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PROCEEDINGS AND DEBATES OF THE 99th CONGRESS, SECOND SESSION

SENATE—*Saturday, September 27, 1986*

(Legislative day of Wednesday, September 24, 1986)

The Senate met at 8 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Lord, give us ears to hear, hearts to receive, and the will to obey Your word.

Though I speak with the tongues of men and of angels, and have not love, I am become as sounding brass, or a tinkling cymbal. And though I have the gift of prophecy, and understand all mysteries, and all knowledge; and though I have all faith, so that I could remove mountains, and have not love, I am nothing. And though I bestow all my goods to feed the poor, and though I give my body to be burned, and have not love, it profiteth me nothing. Love suffereth long, and is kind; love envieth not; love vaunteth not itself, is not puffed up, Doth not behave itself unseemly, seeketh not her own, is not easily provoked, thinketh no evil; Rejoiceth not in iniquity, but rejoiceth in the truth; Beareth all things, believeth all things, hopeth all things, endureth all things. Love never faileth: but whether there be prophecies, they shall fail; whether there be tongues, they shall ease; whether there be knowledge, it shall vanish away. For we know in part, and we prophesy in part. But when that which is perfect is come, then that which is in part shall be done away. When I was a child, I spake as a child, I understood as a child. I thought as a child: but when I became a man, I put away childish things. For now we see through a glass, darkly; but then face to face: now I know in part; but then shall I know even as also I am known. And now abideth faith, hope, love, these three; but the greatest of these is love.—I Corinthians 13. Amen.

RECOGNITION OF THE ASSISTANT MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished and able assistant majority leader is now recognized.

THE CHAPLAIN'S PRAYER

Mr. SIMPSON. Mr. President, how very topical are the remarks of our Senate Chaplain as he touches us deeply with the currency of his message. That is, of course, one of the inspirational parts of the Bible. The 13th chapter of First Corinthians, if I recall, not being a complete student, I can assure you, of that particular book, but knowing hopeful parts of it that guide us in our lives.

It is a powerful statement.

We will need all of that today. I think there is good spirit as we proceed. We have much to do. We had a late night last night and I commend Senator PACKWOOD and Senator BYRD in closing up the shop in the early hours and Senator BYRD is right here again this morning, and Senator PACKWOOD also.

SCHEDULE

Mr. SIMPSON. The convening hour is here. All time until 4 p.m. is divided for Senators to speak on the tax reform conference report by previous unanimous consent. Also by previous consent, a vote will occur on the adoption of the conference report no later than 4 p.m. today.

Following the disposition of the conference report, the Senate will resume consideration of the drug reform bill. Therefore, votes will occur during today's session.

Also, for the information of all Senators, if you have indicated to the leadership that you intend to speak today on the conference report, you are urged to be prompt in that effort and make the statements as brief as possible—if that is possible!

With that, I believe there is no leadership time reserved, but I certainly yield to the Democratic leader, Senator BYRD.

THE CHAPLAIN'S PRAYER

Mr. BYRD. Mr. President, let me share the distinguished acting Republican leader's observations about the Chaplain's prayer.

The Chaplain's prayer was a prayer of scriptural reading. And what is more inspirational than reading from God's word? Man adds nothing; man can only subtract.

I think it is well that we take a moment and reflect upon the prayer of the Chaplain and recall that our forefathers believed in God and that all throughout our history there runs that continuous thread of belief in a divine being.

The country will soon observe its 200th birthday, and I refer to the writing of the Constitution. The country has been here for millions or billions of years, but the Constitution was written by our illustrious forebears in Philadelphia, the City of Brotherly Love, 200 years ago next summer.

During those long 3 months, in that hot Philadelphia summer, our forefathers labored, argued, and, at times, it seems that their labors would end in vain. There was much divisiveness and quarreling.

One day Benjamin Franklin stood and addressed the Chair in which sat Gen. George Washington. Franklin said:

> Sir, I have lived a long time. And the longer I live, the more convincing proofs I see that God still governs in the affairs of men. If a sparrow cannot fall to the ground without our Father's notice, is it possible that we could build an empire without our Father's aid? I believe the sacred writings, sir, which say, "except the Lord build the house, they labor in vain that build it. Except the Lord keep the city, the watchman waketh but in vain."

The oldest man at that gathering went on to say:

> I move you, sir, that henceforth we begin our deliberations with prayer, else we shall

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

succeed no better than did the builders of Babel.

That should be a lesson to all of us. Franklin's motion was agreed to, the deliberations moved forward, and out of that Constitutional Convention came the greatest document of its kind that was ever written—the Constitution of the United States.

Franklin's words came, as they did, from a wise man, a man of varied experience, a man of great vision. Franklin spoke in that great gathering of men—Washington, the General of the Armies at Valley Forge, the future first President of the United States. Franklin had the boldness and the good sense to stand and reflect openly and publicly as I have quoted him.

Yet, today, God's name is often used but only in vain. We pause too seldomly to reflect upon His goodness to us, and the blessings that He has showered upon this Nation. I am glad that, once, at least once every day, we do pause to reflect upon His works. "* * * except the Lord build the house, they labor in vain that build it."

I indicated last night that I would take 10 minutes to speak on the tax conference report. I have taken my 10 minutes to speak on something far more worthy.

Mr. SIMPSON. Mr. President, that was a very moving revelation by the Democratic leader. He is our historian. He is the person that shares with us the most about the history of this institution that we love and cherish, and is truly a student of our nascent growth and the Senate's growth as a legislative body. Another example of that was his very moving commentary about those early beginnings.

I indeed thank him for that.

(The remarks of Mr. Byrd at this point relating to the conference report on the tax bill are printed later in today's Record.)

Mr. SIMPSON. It is my peripheral vision that now notes the Senator from Oregon beginning to pace, which is his wont. I do not believe there is any time for the leader, and therefore——

Mr. PACKWOOD. Actually, if I might interrupt the acting leader, in our unanimous consent we agreed that the time between 8 and 9 o'clock would not be charged to our time. We hope to have speakers here at 8:15 and another 9:30. And that time will be charged. Until they arrive, and we have no speakers, we would be perfectly agreeable to go on.

Mr. SIMPSON. I do have a comment or two, but it has nothing to do with First Corinthians or the early history of our legislation and our legislature.

There are those here in this Chamber who are interested, I think, in this issue of which I shall speak so I will take 5 minutes and yield to myself what time is really unyieldable and comment very briefly on immigration.

IMMIGRATION LEGISLATION

Mr. SIMPSON. Mr. President, I know the occupant of the chair, the chairman of the Judiciary Committee, Mr. Thurmond, has been the most extraordinarily supportive and gracious chairman that I could ever have to deal with on this issue, which again I say, as I have said many times before is fraught with emotion, fear, guilt, and racism. Yesterday, the great engines of immigration reform churned the craft into the shoals of the House of Representatives. There is really no need to place blame. There is surely enough blame to go around when you get to this very emotional issue. But it would be very unfortunate to say that it fell aground on the issue of partisanship.

The issue is not a partisan issue. It passed this Senate three times in past years by substantial votes, 80 to 19, 76 to 18, and 69 to 30 was the last time. If we keep going, we will slip down under 50 before we know it because people seek perfection somehow in this particular legislation. There is no such thing a perfection in legislation any more than there is perfection in our lives.

The steady players have remained the same over there, Congressman Rodino, Congressman Mazzoli, Mr. Fish, and Mr. Lungren. A new and bright player Chuck Schumer, a Democrat from Brooklyn, felt he had the key to perhaps getting it out of the House with his proposal. That did not prove to be so. It proved to be very contentious. It was an issue that had to do with guest-workers, if you will, or at least agricultural labor. And that is a very contentious issue, obviously.

The problem was with the crafting of a rule. And in the crafting of the rule it was felt that there was an exclusion of a side, and that one of the sides would not be heard under the crafting of the rule and thus arose the specter of partisanship which is, I believe, more intense in the House than here. That is a reality. I think that comes from a House that has remained in control of one party for so many years.

It is a cleansing experience to have a legislative body change its party leadership, and party majority. I would say that—and I have said it—about Republican-controlled legislative bodies. I really do believe that. I said that about our own legislature when I was a member of the majority party in Wyoming.

You do not really need to sweep house with the member players. You need to sweep house with the encrusted staff down underneath who watch the Mazzolis come forward or the Lungrens come forward in recent years and they kind of chuckle and say, "Oh, wait a minute. Somebody did that back in 1960. It did not work then, and you don't want to mess around with that." They become cynical staff. That it what I find when you see the encrusted staff of either party who become barnacles to show us in what we try to do as we press and slide forward with our fragile barks in this place. But I think they put an exquisite twist on the rack over there while trying to get their fingerprints off the windpipe after the assault. That is always difficult to do.

I do not think the Republicans in the House brought down immigration reform. I do not believe that at all. That would be an absurd statement, any more than that the Democrats brought down immigration reform.

I noted the morning press comment of Mr. Wade Henderson of the ACLU, for whom I have the greatest respect. He is a remarkable young man. He was laying a bit on Dan Lungren. Yet in this session, as I say there is a seeking of perfection, and that organization, I think, sometimes only fuels the confusion, the chaos, and the discrimination that is present in the status quo. The status quo in America is that there are 3 to 12 million human beings here being used and exploited. This bill would have legalized their presence in the United States. I think it was a worthy goal.

□ 0820

But at least the organization was half right in the comment that I noted this morning.

It is that the greed of the growers in the perishable fruit and crop industry, particularly in the west coast area is insatiable. I do say that clearly and that is not said in harshness or vituperation. It is the total reality of immigration reform.

There is no way that they can be satisfied. Their entire function in life is that when the figs are ready, the figs should be harvested and if they need 4,000 human beings to do that, they do not want to mess around with the Department of Labor or the ordinary procedures of the H-2 Worker Program, which is used very well in many States, including the State of the Democratic leader. The H-2 Program is not used because the other is so abused.

So, the greed of the growers brings it down one more time and yet the irony of it is that only 8 to 15 percent of the illegal undocumented persons work in agriculture.

So as we fiddle around with the issue—watching this tremendous tail which is larger than a mastodon's tusk controlling the whole body of immigration reform, which is about the size of a pack rat, then you know something is out of whack in America and these growers make it out of whack.

So, I hope the people of America will now really turn their attention to that particular group and maybe ask them if they are so dependent upon illegal, undocumented, exploited people that they will go broke, and if that is the case, then let us find that out on the floor of the legislature instead of dabbling in the revelry of what we do here. That is the issue and that is the issue that should be addressed.

I would just say, too, that the President has always been right there with us on immigration reform. He has always been willing to meet with Congressman RODINO and the rest of us on the issue. It would be most unfortunate and unfair to say that he was somehow at the root of the failure of the legislation.

The failure of the legislation came in the agriculture area with an amendment that was very thoughtfully presented which would have essentially allowed a person to receive a green card, the "creme de la creme" of entry into the United States, if they worked in agriculture for only 60 man-days a year.

That is what brought it down. There is not a question in my mind that we could not have resolved our differences on that in conference, but so it is. And the irony of that measure would have been that those people—such as these literally toiling within yards of our Capitol building who labor as dishwashers and construction crewmen and have been here for 5, 6, 10 years, and established equities, and often given birth to U.S. citizen children would not have received the same status. They would have received a lesser status than someone who had been here for 60 days working in agriculture, and that was the reason the President could not come aboard. He would have, I think, vetoed the bill if that had remained, but there was not a question in anyone's mind we could not have resolved that in conference.

So that is a little bit of a relation of where we are. The interesting thing about this arena is you do not really have time to exult in victory, but that gives you the opportunity not to have the time either to be morose in defeat. You just move on to another item.

So, I share with my colleagues that there are still some days left in the session and it will not be my intent to belabor it or go off in the corner and pout and think of greater days. But as that famous coach of the old Washington Bullets said, "the opera is not over until the fat lady sings," and additionally it is baseball season, too. I have seen some games go 24 innings. Maybe we can yet present something to the House which will enable them to act because I know that if they get to an honest up or down vote there will be, I think, a good expression of support.

That vote has not been able to be attained. Maybe it can, but I do not choose to take any of my colleagues through the jumps over here, but we shall see what we might do. The House Rules Committee may meet again. I think they well may do that over there. In an hour they could craft a new rule which would give an up and down vote on that agriculture issue and then we would see what would occur.

If nothing does occur this year, it will be my honest intent, without any sense of petulance, as I say, to go forward next year in my duties, God willing, in the majority or in the minority—and, of course, I fully assume that that we will be the majority—and I shall work toward the corrections that need to be accomplished with legal immigration in America because we have a situation where we have lost track of the need for seed immigrants, we have a huge and rather distorted legal immigration theme working out. Senator KENNEDY is interested in some new legislation with regard to Irish immigration, others seek a reexamination of preferences, exclusions under McCarran-Walters, and those kinds of things. We would await the House of Representatives to send us something, and I think that sometime next year they will, because I think there are serious pressures on the United States and the Congress when we have a 1.8 million people crossing our borders illegally last year from 81 different nations and here we wonder about and debate and discuss here terrorism and illegal drugs.

I have never used the immigration bill to excite people on those lines, and I will not, or that it was a jobs bill.

But I think that obviously if you are going to talk about the security and the sovereignty of a country you have to control your borders. It is that simple.

It is no xenophobia. It is reality.

And I have been watching carefully. The Senator from Oregon is still pacing and no one is here at the present time.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. SIMPSON. Indeed I yield to the Democratic leader.

Mr. BYRD. Mr. President, Plato thanked the gods for having lived in the age of Socrates.

May I say to the distinguished Senator who has tried and tried again to get an immigration bill enacted, it was not perfect, as no legislation is ever perfect, but immigration legislation is needed. He has seen it fail more than once.

Yet, I hope that the distinguished majority whip will take comfort that another great philosopher, Plato, I am told, wrote the opening sentence of the Republic 16 times before he was satisfied.

Thomas Carlyle once after years of labor loaned a friend a transcript of his new book to read and to comment on to him, the author. The friend's house burned down and with it the cherished work of Carlyle. But Carlyle set to work again and brought forth an even greater product than the earlier one.

So I hope the distinguished majority whip will not be discouraged.

I have found after many, many years that there is nothing like patience and tenacity. When those two virtues are combined one may marvel, "What hath God wrought?"

So take comfort, my friend.

□ 0830

I shall stand with him the next time around again.

Mr. SIMPSON. I thank the Democratic leader for good counsel and friendly advice which I have learned to accept in my time as assistant majority leader. I appreciate that very much. It is just that the midwifery of it all gets heavy. The body remains very heavy and I would like to deliver the whole thing some day.

Mr. BYRD. "The spirit is willing, but the flesh is weak."

Mr. SIMPSON. But I do appreciate that.

Does the Senator from Oregon wish to comment?

Mr. PACKWOOD. No, I could not add anything to the philosphy that has already been expressed by the Democrat and Republican leaders today. I am still exercising patience in the hopes that some of our speakers will show up.

Mr. SIMPSON. Mr. President, I suggest the absence of a quorum.

I do recall a marvelous bit of philosphy which was entitled "Press On," and it talked about the omnipotence, perseverence, and how someone would say, "He was marvelously educated and yet he was an educated derelict, unfortunately," or, "He had this advantage, but unfortunately he did not take advantage of it."

So I would enter that little squib into the record. It is a dandy, and I wish I remembered it all.

Somewhere along the line we all end up where we have to walk the walk instead of talk the talk. That is what this place is about. You can wait for perfection and it will never come. The best way to do it is just to put your head down and plow along. That is what I like to do. I must be a perverse rascal. The Senator from Oregon knows that feeling and the Senator from West Virginia has proven that in his legislative career. You just keep plowing and eventually you get the job done.

Mr. BYRD. Mr. President, I thank the distinguished Senator for the service that he renders daily.

Mr. PROXMIRE addressed the Chair.

The PRESIDENT pro tempore. The distinguished Senator from Wisconsin.

Mr. PROXMIRE. I thank the distinguished President pro tempore.

I might say that the distinguished minority leader never falters. He always comes through with his marvelous sense of humor. He is a great asset to this body. I cannot stand for his downgrading this great talent that he has.

Mr. BYRD. Will the Senator yield?

Mr. PROXMIRE. I yield.

Mr. BYRD. Words fitly spoken are like apples of gold in pictures of silver. I thank the distinguished Senator for his kind and overly charitable remarks. They have given me the tonic that I need for this long day.

Mr. PROXMIRE. I thank my good friend from West Virginia. With the possible exception of George Will, nobody can come up with these quotations better than the minority leader.

IS STAR WARS BAD FOR THE NATION'S SCIENTIFIC PROGRESS?

Mr. PROXMIRE. Mr. President, SDI spinoffs cannot begin to justify the hundreds of billions of dollars this Nation is expected to pour into this project. Recently I contended on the floor that the scientific advances achieved through SDI side effects could be accomplished far more quickly and with a great deal less cost by research aimed directly at the problem. For example, if we need research to improve our conventional arms, we should appropriate money expressly for the purpose of achieving breakthroughs in conventional arms. We should not rely on the happenstance that in trying to build a shield of battle stations to stop adversary ICBM's we may stumble across a development that will enhance the quality of our planes or tanks or attack submarines.

Mr. President, this Senator herewith apologizes for that speech. I was wrong. I was wrong because I badly understated the case against star wars spinoffs. The fact is that SDI will not enhance scientific progress even a little. No, not by erratic, marginal amounts. The fact is that SDI or star wars will retard, and I mean seriously retard, scientific progress in other fields in our country including conventional arms, health, and in this country's industry and commerce. Why is this the case? An article in the September issue of Dun's Business Month by Fred Guterl tells why. The article quotes Arvid Larson, principal at Booz Allen & Hamilton and a consultant to SDI. Larson says, "Most of the technology in SDI just doesn't have any equivalent application in the commercial sector." Edward David, White House Science Adviser to President Nixon, hits the most significant consequence of SDI for American business. He says, "Mega projects like SDI take some of the most sophisticated and best people away from commercial R&D." Mr. David goes on to charge that SDI recruitment has already taken so many researchers from computer related fields that there are few left for civilian pursuits. "In the meantime our manufacturing technology is going to the dogs."

Now, Mr. President, to date this may be an exaggeration but the fierce effect of the brain drain is just beginning. Star wars has been budgeted at about $2 to $3 billion in the last couple of years. It will be budgeted at about $3.5 billion in 1987. That makes it easily the Nation's biggest technology project. But if it is to proceed on schedule it will rapidly become the, and I mean the Nation's overwhelmingly dominant and almost exclusive technology project all by itself. We are not talking about $3 or $4 or $5 billion programs in the future. By 1994 we are talking $90 billion, and hundreds of billions if SDI is ever built and deployed. What does that mean? That means that literally tens of thousands of the Nation's best scientists will be yanked away from conventional weapons research, from safety and health research, from automotive and aeronautic research, and from research designed to make a cleaner environment. They will be put to work to build an impenetrable rainbow that will try to protect our country from incoming nuclear ICBM's.

Can there be any question that each and every one of these fields will make far less of the crucial scientific progress that is so important for our country?

And that is not all.

Mr. President, there are at least two reasons that I have not mentioned why the so-called spinoffs from SDI will be minimal at best and cannot begin to match the loss in scientific progress to this country caused by the diversion of so much of our scientific genius to this hapless, hopeless project. First, as Mr. Guteri points out: "The lion's share of SDI funds are tagged for the development of highly specialized weapons." Think of it, only 3 percent of the SDI budget goes for basic research into broadly applicable technologies. Where does it go? Three-quarters of it goes to defense contractors such as Boeing. Twenty percent goes to Department of Energy laboratories. Oh, sure, some spinoffs may emerge even from this work, but they are very rare, indeed.

Second, Mr. President, virtually every SDI program is classified at least in part. As David Williamson, a policy consultant to NASA has said, "If it's classified, it will sit behind green doors." Obviously the commercial and the industrial sector of our economy is shut out of classified research, so are researchers anxious to pursue health and safty research that could effect the development of cures for cancer.

Perhaps the most eloquent testimony on the failure of SDI spinoffs to compensate for the loss of scientific genius to humane purposes by star wars is personified in the case of Peter Hagelstein. Hagelstein came to research work at the Livermore laboratory as a 22-year-old genius 10 years ago. He came because he dreamed that the super equipment at Livermore might help him develop research that could lead to a cancer cure. He succeeded at Livermore in developing a laser in 1979 that led to the major breakthrough that convinced some that SDI might work in part to defend against an enemy nuclear attack. Here was a young man who epitomized the kind of scientific talent that would enormously advance our struggle against cancer. And what was he doing? He was devoting that ability to star wars. Well, a few weeks ago Hagelstein quit the SDI project. He quit at least in part because he found his great laser breakthrough was most likely to be used primarily for offensive antisatellite purposes. Just think what those 10 years Hagelstein devoted to SDI research might have done for cancer research. Mr. President, multiply that story of this young scientist by the other scientists, the other Peter Hagelsteins currently working on SDI and the far more who will be diverted to it in the future. Of course, there will be an occasional spinoff for a constructive purpose. But the net effect is sure to be a very big loss for this country and for humanity, too, as one of this Nation's most precious assets, its scientific genius, is squandered on this empty dream of star wars.

MYTH OF THE DAY: THE BIGEYE BOMB WORKS

Mr. PROXMIRE. Mr. President, the myth of the day is that the Bigeye bomb works well. The Senate has funded it. It should work well. But it does not.

Nothing has changed since the GAO reported in May that the Bigeye bomb just does not work well.

The GAO, believes, Mr. President, that the Bigeye has not met its technical specifications.

GAO reports that test results to date present major and continuing inconsistencies, test criteria are ambiguous and uncertain, and solutions to the technical problems have only made things worse.

Technical fixes are causing operational problems and uncertainties. In the case of the Bigeye, the cure just might be worse than the disease.

Also, Mr. President, it is questionable whether or not the unitary chemicals inside the bomb will mix properly and make a binary weapon at the right time. And it is also probable that American pilots dropping the bomb will be vulnerable to attack by enemy air defenses.

Some argue, Mr. President, that any chemical defense, even an inadequate one, is better than no defense at all. They say that the Bigeye bomb serves as a deterrent to a more deadly defense, nuclear weapons, that could or might be used by this country if we had nothing else.

Others simply say that the ability to retaliate with chemical weapons will increase the possibility of a nuclear war.

Mr. President, I am not here to argue either of these points.

I am here, however, to see that the American taxpayers get adequate bang for their bucks. Giving the public the false hope that the Bigeye bomb works because the Senate voted to authorize a 5-year, $1 billion production program, is nothing more than a myth.

Let us face it, right now we have a dud. This is not a fancy 20th-century weapon. The Bigeye bomb is nothing more than a long and painful experiment that the Defense Department has been developing for the last 23 years.

And, Mr. President, after 23 years of research and development it still does not work and yet we voted to authorize 5 years of production funding.

□ 0840

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. PACKWOOD. Mr. President, I yield 10 minutes to the Senator from New Mexico [Mr. DOMENICI].

The PRESIDENT pro tempore. The able Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, I thank my friend from Oregon.

TAX REFORM, ACT OF 1986—CONFERENCE REPORT

Mr. DOMENICI. Mr. President, we have arrived at a historic moment in the U.S. Senate and in America. Obviously, a number of Senators have taken to the floor of the Senate and talked about the shortcomings of this tax reform bill. A number have taken to the floor to talk about the positives, the good things, the benefits of this new bill. I just want to take one moment, right at the beginning, to talk a bit about the past tax laws, because basically, I am going to support this bill.

I have come to the conclusion, especially over the last 3 or 4 weeks, that indeed, it deserves the overwhelming support of the U.S. Senate and the American people. But just one word about all of those statements that have been made about the new tax reform, the new law of the land on taxes, and the inequities that people claim are existent within it.

I only wish we would have had time to go into the current tax laws and cite for the U.S. Senate and the American people—I think they already know—the literally thousands of inequities in the law that now exists. For those who think it is unfair that a renter might not be getting quite as good a break as a homeowner under this new code, just imagine how many hundreds and hundreds of tax shelters exist which make millions and millions of Americans say, how come the other fellow pays less taxes and earns about the same amount as I do? In essence, as I look at this, this is hallmark legislation for a number of reasons. We had filled our Tax Codes with shelters, with exemptions, with preferences, for 40 years and it was like a great brick wall, with all different colored bricks, all affecting people differently. This is a historic effort to start anew.

No army is as powerful as an idea whose time has come. The idea is the Tax Reform Act of 1986. So the time is now. That is probably the most powerful idea around.

The American people want tax reform because our system is too complicated, it is inequitable, it interferes with economic choices of households and businesses. This country needs it because our system is a voluntary system, nourished by general taxpayer support which depends on taxpayers' confidence in the fairness of the system.

Over the years, the Tax Code's integrity has been compromised. The size of the underground economy is evidence that compliance has been decreasing. Our underground economy is the seventh largest economy in the world, in excess of $100 billion. Four out of five taxpayers, from what I can discern, look around and say already, at this point, why should I be paying my taxes when others are not paying theirs?

Some have argued that this unfairness is more a perception than a reality. However, the perception is that fairness is eroded by layer upon layer of tax loopholes and shelters. Costs have grown over the years.

In 1967, the value was about $37 billion. The value of all loopholes will now, this year, if we do not carry out this reform, be over $400 billion. This bill eliminates a majority of those loopholes and abuses. It is not perfect but it is fairer than what we have now. Some of these shelters will survive and maybe they should not, but it does go far, far in other areas to make the law more equitable and to make investment in the American economy more neutral.

The bedrock of this tax reform is that people who earn the same amount of money should pay approximately the same amount of taxes—a simple, commonsense proposition. I think it is time we returned to that basic premise. I look around the world and I see some countries—France, for instance—where, when you earn a lot of money, their laws are so complicated that you literally negotiate your tax return with a tax collector. Think what would happen in America if we relied up that instead of the voluntary paying of taxes.

(Mr. PACKWOOD assumed the Chair.)

Mr. DOMENICI. Mr. President, I see my friend from Washington on the floor. I understand he has a time problem. I shall be glad to yield to him. If I have a couple of minutes at the end, I shall just wrap mine up.

Is the Senator prepared to proceed?

Mr. GORTON. Mr. President, I greatly appreciate that kind offer. The Senator from Washington is prepared to proceed.

Mr. DOMENICI. I yield whatever time I have remaining to the Senator from Washington.

Mr. GORTON. I thank my friend from New Mexico.

Mr. President, it is nearly 73 years to the day that this body first approved a permanent income tax law for this country. This new law—which passed on October 1, 1913—was described by its authors as a response to "the general demand for justice in taxation and to the longstanding need of an elastic and productive system of revenue." They predicted that, once the bill was put in place, the new law would "meet with as much general satisfaction as any tax law" and that "all good citizens * * * will willingly and cheerfully support and sustain this, the fairest and cheapest of all taxes."

It did not turn out exactly that way. In the 73 years since these words were written, Congress has expanded, remodeled, refashioned, and revised the Tax Code. The first tax brackets were set at rates between 1 percent and 7 percent—rates have since been, on occasion, above 90 percent. The income tax, which was initially levied on a select few, is now paid by many—indeed, too many—individuals.

Numerous deductions and credits have been added to the code as Congress has increasingly come to view the Tax Code not simply as a revenue-raising system, but as a tool to achieve all sorts of social goals—not always successfully.

In recent years, the Tax Code has become so complex and confusing that even the smartest and most sophisticated taxpayers are frustrated by the task of filling out a tax form. Perhaps the most dramatic symptom of this is the industry of tax avoidance that has grown up around the Tax Code. I am not speaking of ordinary financial planners. I mean the growth of an entire industry that has developed with the goal of trying to structure investments and economic activity simply to avoid taxation. The impression has grown—an impression which unfortunately has much basis in truth—that too many people are getting away without paying their fair share of taxes. This perception is a serious problem in a country that has always had a tradition of voluntary tax compliance.

Mr. President, as a result, today there is once again a "general demand for justice in taxation." There is a significant lack of the "willing and cheerful support" of the Tax Code that was first envisioned in 1913. As a result, Congress has spent 2 arduous years studying and considering this tax reform bill. The distinguished chairman of the Senate Finance Committee and the ranking minority member are to be commended for reporting a bill which, regardless of whether one supports or opposes it, is clearly a serious effort at true tax reform.

☐ 0850

I regard my vote on this measure as one of the most important of my Senate career. I have labored long and hard studying the proposal, and have sought the opinions of innumerable constituents, tax experts, and others. In my mind, the bill must be evaluated against fundamental criteria of fairness and the long-run impact on our economic well-being.

For me, a vital consideration was whether my constituents in Washington State would be treated fairly under the bill. I particularly feared that the citizens of the State of Washington would bear a disproportionate tax burden as a result of this reform. I still believe that the repeal of the sales tax deduction, which affects nearly all itemizers in the State of Washington, unfairly penalizes my constituents. No one knows better how opposed I am to this provision than my friend from Oregon, and Senators EVANS, GRAMM, and ABDNOR, who joined with me successfully to amend the bill with a partial restoration of this provision during debate on the Senate version of this bill.

I recognize, however, that although repealing the sales tax deduction is disadvantageous to the 25 to 30 percent of the taxpayers in my State who claim that deduction, most individual taxpayers of the State of Washington will still see lower tax bills. Indeed, citizens of Washington as a group will save more money than citizens from many of the income tax States because those States income taxes will automatically increase as a result of the broadened definition of adjusted gross income, on which those systems are typically based.

This feature does not make the repeal of the deductibility of State and local sales taxes right. It does not justify the provision, which will interfere with sales-tax dependent States Tax Codes. It does, however, make it clear that all taxpayers in this country will bear the burden of this bill and secure its benefits, and that residents of exclusive sales tax States, like Washington, will gain benefits which are at least equal to the benefits accruing to residents of income tax States.

I have other concerns about the bill. Like many of my constituents, I worry about the effects of repealing the investment tax credit and the special treatment of capital gains. The latter has been part of the Tax Code since the Revenue Act of 1921, and I am especially troubled that its repeal is not accompanied by indexation for inflation on the basis of capital gains. This is especially important in my State because of its critical role in the timber industry, a mainstay of my State's economy.

I am also concerned that some taxpayers will be significantly penalized by retroactive provisions in the bill—especially Federal employees who will be penalized by the repeal of the 3-year basis recovery rule. These people planned wisely for their retirement, but could not predict that Congress would change the rules midstream. Similarly, real estate partnership investors should not have to pay taxes under a different set of rules that applies when they made their investment.

Finally, I am concerned about the absence of greater savings incentives in the bill, particularly in light of the long-run decline in investment as a share of gross national product since the 1950's.

I also believe, however, that there are some enormously positive provisions in the bill. Dramatically lower tax rates will help ensure that our investment decisions are made on economic grounds, and not because of tax considerations. I believe that this will direct resources to their highest and best uses, and contribute to growth, and to job creation.

The bill will take 6 million lower income people off the tax roles—people who should never have been taxed in the first place, but are taxed under the current income Tax Code as a result of the bracket creep and inflation of the 1970's. The great increase in the personal exemption and standard deduction will also contribute to a fairer distribution of the tax burden. Perhaps most importantly, this bill contains a stiff minimum income tax. That will help ensure that wealthy individuals and large, profitable corporations will no longer escape paying their fair share of taxes.

In the past several months I have studied this bill. I have thoroughly weighed its provisions—the good against the bad. I have concluded that we will never be able to predict with certainty all of the effects of the bill, and so my decision must necessarily be made with considerable uncertainty. If we were to require certainty as a condition of adopting changes, however, we would never make any changes at all.

Mr. President, there are many flaws in this bill. It is far short of ideal. If my choice were between this bill and my ideal measure, the choice would be clear, and I would reject this bill. But that is not the choice. Instead, the choice is to pass this bill or to retain current law. On that score, Mr. President, I must support this bill because it is a significant improvement over current law. After reviewing the testimony, and this debate I am convinced that the long-run impact of this bill on the economy will be positive. The deterioration of our current tax system cannot continue. We have the chance to stop it now, and once again to take a major, if incomplete, step toward the "justice in taxation" that must always be our goal.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

☐ 0900

Mr. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.

Mr. CHAFEE. Mr. President, I ask unanimous consent that I be permitted to proceed for 10 minutes, without prejudice to the special order for the Senator from Ohio.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. Mr. President, reserving the right to object——

Mr. CHAFEE. Mr. President, I change that to 5 minutes.

Mr. PACKWOOD. I yield 5 minutes to the Senator from Rhode Island.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAFEE. I thank the distinguished chairman of the committee.

Mr. President, it is with great pride and hopefulness that I stand here today to urge my colleagues to approve the Tax Reform Act of 1986. This is truly a historic occasion and an opportunity to participate in what President Reagan has correctly termed a "revolution."

A vote for this tax reform bill is a vote to free 6 million Americans, who are currently living below the poverty level, from the tax rolls. Eighty percent of all taxpayers will pay taxes at no more than 15 percent of their income.

The biggest beneficiaries of this bill are ordinary taxpayers who have no access to high-priced lawyers and lobbyists. These are the people who file the short form on April 15. They do not itemize, they take the standard deduction and their personal exemptions, and then they pay whatever tax rate the form says. They do not have tax shelters. They do not have any of the special tax credits, deductions or exemptions we have been debating for 2 years. They are real winners.

For those of us who worked closely on this legislation over the past 2 years, the voices of these ordinary taxpayers were often hard to hear over the enormous volume of the special interests clamoring for continuation of all special tax deductions, credits, and exemptions which were on the chopping block.

Well, those voices of ordinary taxpayers may not have been loud, but they were heard.

We have been working on this tax reform bill for 2 long years. The Treasury Department sent its recommendations to the President in the fall of 1984. The President sent his proposal to the Congress in the spring of 1985. The House Committee on Ways and Means marked up a bill in the fall of 1985, and after two trys the House finally passed a bill last December.

In March of this year, Chairman PACKWOOD unveiled his proposal for tax reform, and we are all too familiar with the unfortunate debacle that followed in the Finance Committee. But thanks to the determination of the chairman and the dedication of our small core group, we were able to wipe the slate clean and start over. The tax reform bill which emerged from the Senate Finance Committee was indeed a miracle, and it passed this body by a vote of 97 to 3—a proud moment indeed.

I wish I could say that the bill we are passing here today was the Senate version of the bill, but it is not. There were compromises with the House, and I will be the first to say that I was disappointed with some of these compromises.

I am disappointed, for example, in the retroactive application of some of the provisions, including new provisions adversely affecting Federal workers. These people have been unfairly treated and the responsibility lies with the House, which refused their pleas.

I am also disappointed, to cite another example, that we are severely restricting the ability of States to use tax-free bonds in future years.

But I do not want to dwell on the imperfections. Overall, they are few in comparison to the positive elements of this legislation, which holds true to the spirit of true reform.

We are not overhauling the Tax Code to get more money for the Federal Government. This bill is before us because the existing code is unfair, promotes economic inefficiency and is maddeningly complex.

By eliminating a host of special tax preferences, this bill assures that individuals with similar incomes will pay similar amounts of tax. By instituting a tough, inescapable minimum tax, we have assured that no matter what special tax incentives wealthy individuals or profitable corporations use, they will be required to pay a minimum amount of tax.

We did not eliminate every deduction, credit and exemption, but we did clean house. There was an awful lot to throw out. In 1970, we collected $2.88 for every dollar not collected because of loopholes. In 1984, we collected only 98 cents for every dollar of tax expenditures. Tax expenditures grew from $37 billion in 1967 to over $400 billion in 1985.

Because of these special tax breaks, the public has increasingly lost confidence in the fairness of our tax system. Above all else, this bill will help restore that confidence.

Meanwhile, economic experts have begun to recognize that tax incentives are often not only expensive, but inefficient as well. Too many investment decisions are being made under the current law for tax advantages, not economic advantage.

This tax reform bill eliminates a great deal of the incentive for inefficiency. With this bill, capital will begin to flow to its most productive use. Businesses will base their decisions on how to make the most real economic profit, not on how to make a losing proposition yield income from other taxpayers.

There will have to be adjustments in the short term. In the long run, however, this bill is premised on the fact that the ultimate burden of competitiveness lies not with the government, but with the private sector. This tax reform bill will reduce government interference in private business decisions. Over the long run, it will increase economic growth and productivity.

There is a third major benefit of this bill—simplicity. Americans may not be able to file tax returns on a form that fits on a postcard, but much of the needless complexity of the current law has been removed.

The vast majority of Americans will pay either no taxes or will pay at a single 15 percent rate. Far fewer taxpayers will be forced to hire lawyers and accountants to translate the arcane complexities of the present law into understandable English.

In summary, Mr. President, this bill is of monumental significance. We all have qualms about certain provisions. But in its total impact, this legislation is so superior to current law that no one should hesitate for a moment in voting for it.

For the sake of farmers, for the cause of economic efficiency, and in the interests of promoting simplicity, I urge my colleagues to support this bill.

Mr. President, I thank the minority leader and the Senator from Ohio.

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio now controls 3 hours.

The Senator from Ohio is recognized.

Mr. BYRD. Mr. President will the distinguished Senator yield?

Mr. METZENBAUM. I yield.

Mr. BYRD. Mr. President, I thank the Senator from Ohio for being on the Senate floor at the appointed time, in compliance with the order for his recognition at this time, for the use of 3 hours. I hope other Senators will be prepared during the day to take their turns back-to-back, if possible, because under the order, the Senate will vote no later than 4 p.m. on adoption of the conference report.

Again, I thank the distinguished Senator for his cooperation.

Mr. METZENBAUM. I thank the distinguished minority leader for his comments.

Mr. President, if is my understanding that my 3 hours need not be taken in one total segment and that it can be divided.

The PRESIDING OFFICER. The Senator is correct.

Mr. METZENBAUM. Mr. President, I have been advised by some of those who work in the Senate that Senator ZORINSKY is on his way to the floor and wishes to speak for 3½ minutes. I have no objection to his doing that, but I would not want to interrupt my remarks. Under the circumstances, unless the Senator from Oregon or the Senator from West Virginia have objection, I would suggest the absence of a quorum and ask unanimous consent that it not be charged against my time.

Mr. PACKWOOD. Mr. President, reserving the right to object, I did not hear the request.

Mr. METZENBAUM. Under the circumstances, the minority leader suggests that that might create some problems; and, rather than do that, I will proceed, because I am prepared to proceed.

Mr. President, I see that Senator ZORINSKY just entered the Chamber. Does the Senator from Nebraska have certain time allocated to him?

Mr. President, I ask unanimous consent that I may yield the floor without it being considered a violation of the two-speech rule.

Mr. BYRD. Mr. President, on behalf of Mr. LONG, I yield 10 minutes to the distinguished Senator from Nebraska.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that my first remarks not be charged against me.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Nebraska is recognized for not to exceed 10 minutes.

□ 0910

Mr. ZORINSKY. I thank the Senator from Ohio for his courtesy, and thank you, Mr. President.

Mr. President, on Thursday, the House passed this conference report by a wide margin, but with little enthusiasm. My own feelings as we take this final step in the legislative process are much the same. The package before us has both good and bad features. And I am not sure anyone knows today exactly what the final impact of this legislation will be. But I intend to vote for it because, on balance, I feel it is better than the tax system we have now.

Our current tax system is complex and it impedes economic growth. It creates tax breaks on the basis of political influence instead of economic sense. This bill holds the promise, at least, of some improvement. It promises a tax system that is at once more fair and less complex. Under this bill, many Americans should experience a tax decrease. Those individuals and corporations who have not been paying their fair share of taxes will be forced to do so. No middle income taxpayers from Omaha or Grand Island, NE, should ever again pay more taxes than giant profitable corporations.

I am pleased the conference report includes several provisions that specifically benefit agriculture. Allowing farmers to apply investment tax credits against both future taxes and taxes paid in previous years will cushion the loss of ITC's for this hard-pressed economic group. Likewise, while I am disappointed we were unable to continue income averaging for farmers, I am pleased that at least those participating in the dairy herd buyout program will remain eligible for reduced tax rates under capital gains provisions. Finally, the Conference retained the Senate-passed provision that eliminates taxes on farmers' forgiven debts. This should enable farmers to restructure their debts without incurring the wrath of the tax man.

There are many things I would like to see changed in this bill. For example, I would have preferred some additional moderation of the restrictions on deductibility of individual retirement account contributions. Many other objections I have stem not from the changes, but from the abrupt or retroactive manner in which changes are made. In this vein, I remain extremely concerned about several provisions that will be applied retroactively to business decisions. These changes threaten bankruptcy and foreclosure for real estate firms while they severely damage Government credibility. They set a terrible precedent and will inhibit risk taking and investment. In the area of pensions, we have done a disservice to the Federal work force with the retroactive changes in the taxation of their pensions.

Finally, I am disappointed that, in this tax "reform" bill, we were unable to deny mammoth poultry producers tax breaks that are supposed to be reserved for family farmers. There is something terribly wrong about allowing agribusinesses with hundreds of millions of dollars in annual sales to qualify for "family farm" benefits. While it was not possible to end this inequity in this bill, I serve notice on the Senate that I will not let this issue drop. I will fight vigorously to close what I view as a horrendous tax loophole, if not in the final days of this session, then definitiely early next year.

In closing, let me repeat that I view this bill, despite considerable weaknesses, as better than the tax system that we currently have. The most obvious and overwhelming attraction, of course, is tax rates that at least start low. It is both sad and typical that there is talk of raising these rates, even before they are enacted. I will resist this next year as I have resisted every tax increase since I came to the Senate in 1977—especially while obvious and glaring loopholes remain on the books.

Enacting this legislation only to raise taxes later would negate the single most favorable feature in the bill. And it would leave the American taxpayer with the worst of both worlds. He or she loses many of their deductions and then—once the election is over—their tax rate increases. This would be intolerable and unacceptable.

Still, as the old saw has it, the good should not be the enemy of the perfect. The first step remains to support the lower tax rates in this bill. And the next is to fight off talk of raising taxes next year. That is the course I will follow and I urge my colleagues to do the same.

Mr. President, I yield back the balance of my time.

The PRESIDING OFFICER (Mr. SIMPSON). Under the previous order, the Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, I rise to indicate my support for the tax bill. I believe that it is a good tax bill. I believe that it is an historic tax bill. As a matter of fact, what could be more appropriate than that we remove 6 million working poor from the tax rolls? I think that is such a major step in the right direction that I cannot toss bouquets to those who were involved in bringing that about more extensively than I do. I just think it was a wonderful act on the part of the tax writers.

And I believe that there are tax cuts of most individuals. As a matter of fact, in all honesty, it is my opinion that there is a major misperception out across America that somehow this bill is going to result in increased taxes for many people. Well, I think it will result in increased taxes for many people and, in my opinion, almost all of those people are the people who should be paying increased taxes; that is those who we must describe as the wealthy, who have not been paying taxes, who have used tax shelters and those who have had corporations who have special advantages and made billions of dollars and wound up receiving billions of dollars in tax refunds, not paying, but getting refunds.

I think the bill is good in that it increases the standard deduction for a married couple to $5,000 and the deduction for single persons to $3,000 and the personal exemption is increased to $2,000. I think that is all as it should be.

I think the purpose of an income tax law, one that has progressive rates, is to try to equalize the tax burden between those who are earning the greatest amount of money and those who are earning a lesser amount of money or very little money and not able to pay taxes.

Now I think it is fair to say that I would have preferred that there be more than the progressive rates that are provided for in this bill. I do not think that they go up high enough for those best able to pay.

□ 0920

But I understand there are many people in the U.S. Congress who would not agree with me. And I recognize that the legislative process is a process of give and take. It is a compromise. So I think the rates that are set forth in this bill, although not exactly what I might have chosen had I had the opportunity to do so, move in the right direction, and I think that overall I would commend the committee for their efforts along that line.

I think one of the most meaningful things that this committee has done is to provide for a corporate minimum tax. Corporations will finally pay a substantial tax on their earnings and not be able to use tax shelters to avoid paying any tax. The 20-percent minimum tax in my opinion is a fair figure. I remember standing on the floor of this Senate, and trying to get through a 15-percent minimum tax. And I recollect very well that some of those over there on the other side of the aisle who had been talking about how unfair the tax law is said they did not know that corporations were not paying any taxes, and they were much concerned about that. But they did not see fit to vote for the minimum tax, at least not in substantial numbers. So there were only 18 Members of the U.S. Senate who voted for the corporate minimum tax of 15 percent.

It is obvious that 292 Members of the House voted for the corporate minimum tax of 20 percent. And I think we all agree that when this matter finally comes to a vote substantially in excess of a majority of this body will vote for corporate minimum tax of 20 percent.

I think this bill eliminates many loopholes, and abusive tax shelters that have made tax laws scandalous and contributed to economic polarization. I believe that his bill does the right thing in providing a minimum tax of 21 percent on the wealthy. I think that it is right that everybody share in the tax burden of this country. I am not prepared to say whether 21 percent is exactly the right figure or the wrong figure. But suffice it to say that the conferees came to this conclusion. That is the figure they arrived at. And I do not challenge it.

All of this will bring us closer to a society where initiative and creativity will drive and determine economic decisions, not the Tax Code. People will be going into real estate deals, they will be making business investments, they will be conducting their lives in the whole economic world on the basis of whether it is or is not a good business deal. They will not be basing their judgments and their decisions on how to figure putting in $100,000 where they can take off their taxes $500,000, or $400,000, or $600,000.

What an absurdity that we have permitted that to develop in the laws of this country where people were going out and buying tax shelters rather than making investments based upon the economic realities of the project.

So I think that the bill moves in the right direction in that respect. I think it is good for America that it does. So I would say that on balance, the bill is good. It is a good bill. It is not a perfect bill. There are inequities. I do not expect it to be a perfect bill. But I did not expect that which occurred in the conference committee to occur. And that is that there were inequities as the bill left the Senate, and there were inequities as the bill left the House. I did not realize that there would be a host of new items added to the bill that had never been discussed before in the House or the Senate.

This bill as we see it now with its inequities—particularly I am concerned about the fact that it is not fair to employees, Government employees, and public employees who are near retirement. I think the conclusion that the conference committee reached in that respect does not make good sense. I think it is illogical and I think it picks upon a group of people who have been dedicated public servants, and it makes them bear a special burden. And they are not the people who should be bearing the special burden. Those who have been paying those taxes, whether they are corporations or wealthy individuals, certainly should be bearing much of the burden of the cost in this bill in order to equalize it, and in order to make it fair. But calling upon public employees who are going on retirement to pay a substantial portion of the price of this bill I think was a bad decision.

I do not think it is fair to married couples because this bill restores the marriage penalty. The President himself hailed the 1981 elimination of the marriage penalty as being a profamily movement. Of course, it was. Why in the world do we have a provision in the Tax Code that makes it more expensive to live together as a married couple than to live together as an unmarried couple? How absurd can you get? I think that is a very bad provision. I feel confident that that provision as well as the one dealing with public employees will be a subject that will be revisited in the next session of the Congress.

I think it is not fair, and this bill is not fair to many who rely on IRA's to save for retirement years. We had moved in this country to a point where we were urging people to help provide for their own retirement. And we had something called an individual retirement account. And we provided that it was working. Then all of a sudden we are now taking away much of the right, many of the rights and privileges that people had who were creating their own retirement accounts. We have not taken them all away but we have taken away a substantial portion of those rights. I hope we will revisit that subject as well in the coming session.

It is not fair to the elderly taxpayer with substantial ongoing medical expenses because that elderly person will lose some of that deduction.

Mr. President, I want to point out that we have done this to the elderly taxpayers before. We have provided a new level over which they had to get in order to be able to deduct their medical expenses. And we kept raising that level, and raising that level, and raising that level. As I stand here today, I am not sure what that level is at the moment. But I have some vague recollection that at one point they had gotten up to the fact that the elderly taxpayer would have to pay $540 of his or her own medical bills before Medicare would click in. Five hundred forty dollars is a tremendous amount of money to many elderly taxpayers, I say to the overwhelming majority of them, and yet what we do in this bill is we put another additional burden on the elderly taxpayer by causing them to lose some of their deductions.

I believe this bill is very unfair to the unemployed whose benefits will be subject to taxation. Now, come on. How can anybody suggest that unemployed workers who are getting a very, very modest amount of money from the unemployment compensation benefits argue that those benefits should be subject to taxation? They use those dollars and they are not that large an amount, in order to keep bed, board and family together, to hold it together while they are out looking for another job. That was the whole purpose of it in the first instance.

But now what we are saying is those unemployed workers are going to be called upon to pay a substantial portion of those dollars that they receive in taxes.

Finally, I believe this bill is not fair to millions of Americans who want to believe that the political process is not an auction where those with the best lobbyists walk off with the most goods.

□ 0930

I believe that what has transpired in the conference committee will again cause many in America to lose faith in their own Government. That, to me, is a major issue, the fact that a conference committee saw fit to give away billions of dollars, no public hearings, not even the House being permitted to know what was going on, never learning what the new transition rules were all about until after the bill had been passed.

That is just not right.

I have been in this body since 1974, with a short period when I was out, and in all of that period I have never seen a bill which provided for less information being available to the Members prior to their being called upon to vote.

Never has so much been hidden from so many by so few. Or, put another way, never has so much been hidden for so many by so few.

Think of it. The House Members did not know what was in those transition rules. We in the Senate did not know until the day before yesterday at 6 o'clock. Had we tried to find out? Indeed, we did try to find out, by letters, by telephone calls, by urging privately, "Please, let us have the facts."

But, no, we could not get the facts.

We were supposed to get the facts, according to the determination of the U.S. Senate, because we added an amendment that I had offered to the tax bill which was a sense of the Senate on transition rules. That read as follows:

> It is vital for the Senate to be fully informed about every matter that comes before it. Therefore, it is the sense of the Senate that the conference report on H.R. 3838 shall contain, one, the name of each

business concern or group receiving a special or unique treatment in the bill; two, the reason for the special or unique treatment; and, three, the cost of the special or unique treatment.

At this point, Mr. President, I would like to inquire of the distinguished manager of the bill, the chairman of the Finance Committee, as to why that provision, which was unanimously adopted by the U.S. Senate, was early on dropped by the conference committee. If he would be willing to respond, I would be grateful.

Mr. PACKWOOD. Is this answer on the time of the Senator from Ohio?

The PRESIDING OFFICER. It is.

Mr. PACKWOOD. We tried to give the transition rules to the Senator from Ohio, and to others who asked about them. As best I could say, I thought the list was about 90 or 95 percent accurate. In some cases we did not have estimates, but we tried to give them to the Senator by cost, and with as much about location as we could. The particular rule that the Senator from Ohio asked about was dropped in the conference at the request of the House, because they did not want that type of a rule in the conference report. We acceded to that request.

Mr. METZENBAUM. I thank the distinguished chairman of the Finance Committee.

Did the Senate make any strong effort to keep it in view of the fact that this body had unanimously indicated that that was its position? I would guess if you asked even as of today they would say it is still its position.

I know the chairman of the Finance Committee, when the bill was on the floor originally, was very cooperative and we were able to get, I believe, a list of 174 transition rules at that time. In this connection, I think that the transition rules were available and could have been provided to us earlier. I would guess that the chairman of the Finance Committee and the staff felt somewhat constrained about releasing them to me and others who were seeking them, frankly because the House did not want them to be released before the bill was voted on in the House.

Mr. PACKWOOD. I might have been able to have gotten them to you 4 to 6 hours earlier in a much less accurate form. There are very few transition rules which blindsided anybody interested in the rules. To put it in perspective, there are $10.6 billion of transition rules in the bill. $7.3 billion of the rules were in the House or the Senate bill before we ever went to conference, so, clearly, everyone interested knew what those rules were. That leaves you with roughly $3.3 billion in new transition rules under the conference agreement. We divided the total amount of the $10.6 billion equally. Since we had used up more than our bill than the House had in theirs, they got roughly $2.3 billion of the remaining $3.3 billion and we got $1 billion. The last of those rules were not agreed to until a week ago Thursday at 3, 4, or 5 o'clock in the morning.

The staff did their level best to draft them, to identify them, to get this bill ready. It had 375 new transition rules in it. By new, I do not mean they were necessarily requested after August 16, but new in the sense that they had not been in either the House or Senate bill. Most of them were requested timely, prior to the August 16 conference action. Many of the requests came in because the Members did not know that they were going to need a rule, since they were not exactly sure how the bill was going to read. There was no point in requesting a rule until they had a reasonable idea whether they needed it.

So the last of the requests on transitions were not decided until about a week ago.

The second rule that we operated on in conference was this: So long as the transitions did not violate certain general principles—no passive losses, although we made one exception for low-income housing, no minimum tax, and four or five other generic rules—the House and Senate said to each other, "You put in what transition rules you want so long as they do not violate the general rules, and you pay for them out of your allocation."

A perfect example of this would be the auto transition rules. We had some auto transitions in our bill, and others were omitted. We treated the companies disparately. We covered some auto transitions and we did not cover some other auto transitions.

So in the conference we dropped out all of the auto transition rules, all of them, which at least resulted in treating all of the companies equally. The House chose to put some, but not all, back in.

They did not violate any of our rules, the passive loss, the minimum tax.

So in some cases, some of these rules for the auto companies are new in the sense that they did not appear initially in either bill. But they were paid for our of the House's portion and did not violate any of the specific rules that we said neither the House nor the Senate shall violate in the transitions.

Mr. METZENBAUM. Would the chairman be good enough to advise how did it come about that there was to be $10.6 billion when the House and Senate previously had agreed upon a total of $7.3 billion, if my recollection is correct.

□ 0940

Then there was an agreement that there would be $3.3 billion more, the House to have the right to determine $2.3 billion and the Senate to have the right to add $1 billion; $3.3 billion is not much money in some quarters, but it is a lot of money in other quarters.

Mr. PACKWOOD. It is a lot of money.

Mr. METZENBAUM. How did the conference decide that it would be $3.3 billion? Why did it get up to $3.3 billion?

Mr. PACKWOOD. Part of it was based upon convenience, part of it based upon what we estimated we would need—an estimate—at the start of writing the transition rules, remember, we had over 1,000 requests in the Senate alone since the bill passed. It is not unlike what the Senator has seen before in other conferences, tax or otherwise. You start the conference and say, all right, we are going to allocate $500 million for a certain purpose, and you fit your conference actions within that. That is the amount of money you allocate ahead of time. We simply decided we would take about $3 billion for new transition requests. It came finally to $3.3 billion.

We allocated the total amount between the House and the Senate, including what was in the bill, on an equal amount. We assumed we needed $3 billion. We found we needed about $300 million more. The equal division was a division we had already agreed upon.

Mr. President, let me add something. The reason we picked the $3 billion—that is the figure we tried to work toward. We knew we were going to have lots of legitimate requests for transitions from people who, until the bill had passed the House and the Senate, did not realize they were going to be left outside either bill. It was only at that stage that they then asked. They had not been included in either bill, did not think they were going to need anything. At that stage, they asked and we knew we were going to have a number of justifiable requests for transitions. We estimated it would take about $3 billion to pay for it.

Mr. METZENBAUM. What concerns me, and I guess if the American people knew about it, they would be concerned, is that that $3.3 billion was a way of parceling out, depending upon how you want to describe it, goodies and I think the chairman might agree that some of them might be so categorized, and in the other sense, correcting some inequities.

I think we would both agree that there are proper transition rules. I said that yesterday and I say it today. On the other hand, if it had been something other than $3.3 billion, you could have used $250 million and preserved the right of farmers to have income averaging. Or you could have used a portion of it to preserve the rights of many to have deductions for their IRA's. You could have used part of that $3.3 billion—I do not know whether part or all because I do not have the figures in front of me—so senior citizens' rights with respect to the deductibility of their medical expenses might have been covered.

You could have used part or all of that so the rights of married couples would be protected and that they not be penalized by reason of that marriage.

What concerns me, and I recognize the practicalities, it bothers me that this committee gave two men—and I have total respect for both men involved. I think they have done a herculean job and it is not in any way a personal comment to the Senator from Oregon—it could have been any two men. It could have happened that I would be one of them.

I do not think any two men or women in this Congress have the right to parcel out $3.3 billion over and above that which Congress itself has seen fit to include in the legislation and, at the same time, withdraw from the farmers of this country $250 million in benefits they would have by reason of income averaging, a matter we had addressed by action on the floor of the Senate in my amendment. We could have eliminated something and used that money for that purpose.

What I am trying to say is I do not think the managers of the bill have truly made a strong enough case for their having parceled out this $3.3 billion. I guess I would also say and acknowledge that the chairman of the committee was very candid yesterday in saying, and I think to me at another point, that some of those decisions were purely political. I understand that.

Mr. PACKWOOD. If I said that, I should have phrased it this way—I do not mean to back off that statement—part of some of the decisions were political. I did not say that some of them were all political.

There is no point in fooling ourselves or attempting to fool anybody else. We made subjective judgments in some cases. In any case where you make subjective judgments, you make mistakes. Some of the subjective judgment was based on political considerations. I would not attempt to deny that.

Mr. METZENBAUM. I appreciate that and I am not faulting the Senator for it. What I am perhaps putting at issue is, Do we need 3.3 billion political dollars to spread around? In all fairness, the Senator did not say that the whole $3.3 billion was spread around on that basis. He has already indicated that much of it was based upon what he considered meritorious cases.

Mr. PACKWOOD. Let me respond if I can and mention the delegation of powers to the chairman under the transition rules. It was not just transition rules. The conference committee on both the House and Senate side finally said to Chairman ROSTENKOWSKI and myself, "Will you please get together and attempt to draft the bill?" They did not mean the transition rules alone. They meant sales tax deductions, passive losses, general rules. It was an extraordinary responsibility and an extraordinary grant of authority. We tried to do it as honestly as we could. But I do not want to give the impression nor have the impression left that it was an unusual procedure. It was an unusual grant of authority because this was a big bill. But I would wager the Senator from Oregon and other Senators in this body have been members of conferences where the Senate Members never met, the House Members never met, the entire conference report was drafted by the staff and the Members subsequently ratified it. That is a power we granted to those who are paid to work for us. We got together and ratified it. They were minor bills, this was a major bill.

I have seen other major tax bills when I have been a conferee or chairman where, at the end or the process, when we still had 8 to 10 to haggle over, the Members said to the chairman. "Why not go out and see if you can do something with it and bring it back to us." That was on the last 10 to 15 points, although, as the Senator from Ohio is aware, those are often the hardest ones, because you often put off the most difficult ones until the end.

The only difference here is that, as the conference was meeting, any number of days before they finished, they turned to Chairman ROSTENKOWSKI and myself and said, "Why don't the two chairmen get together and see if they can draft the entire bill?" That is what we attempted to do. We took it back to our conferences for ratification. That is how the conference report came to be. Part of the ratification, part of what we drew up was the transition rules.

In the overall scheme of events in an economy that is $4 trillion a year, this is a 5-year bill in which we are going to collect in taxes about $5 trillion over the 5 years. The transition rules total for the 5 years, including what the House and Senate had already agreed upon, about $10 billion. Those transitions that were added after the House and Senate had finished their work on the bill total about $3 billion.

I am just rounding these off. I do not in any way mean to trivialize $3 billion, but when put in the context of collecting about $5 trillion in taxes, it was a relatively minor part of the whole bill.

Mr. METZENBAUM. I thank the chairman. I want to say I heard the chairman make that same point yesterday. He correctly stated that the transition rules represent $10.6 billion out of $5 trillion over a 5-year period. And he does acknowledge that even we in Congress recognize and agree that $10.6 billion is still a whole lot of money. For $3 billion, you could pay for all the foster care needed in the United States for the next decade. For just $100 million out of $10.6 billion, you could provide complete childhood immunization for 2 million infants, toddlers, and preschoolers.

Nobody can convince me that that $100 million could not have been better spent for those 2 million infants, toddlers, and preschoolers than giving it away to some corporations that had some high-powered lobbyists around these Halls the last several weeks. There are giveaways and some of them may be justified, and a lot of them are not justified. For $75 million, $75 million out of $10.6 billion, you could provide food supplements for an additional 160,000 pregnant women and infants under the WIC Program. You can say $10.6 billion is not that much money as against $5 trillion, but $75 million is not much money as against $10.6 billion; $100 million is not much money as against $10.6 billion. But you could do so much good with it.

We spent $4 million already—and had to fight to get it into the bill—in order to provide additional research with respect to orphan drugs, drugs that pharmaceutical companies are not willing to produce, manufacture, do research on because there is not enough value, they cannot make enough profit. And I respect that. But $4 million does that. There are some dollars around here that go an awful long way, if we have them.

So I cannot look at the $10.6 billion and say, "Well, that's not that much money. That's not that much money when you are talking about $5 trillion."

Mr. PACKWOOD. Could I respond just briefly?

Mr. METZENBAUM. This time on the Senator's time.

Mr. PACKWOOD. I will wait.

Mr. METZENBAUM. There are other reasons, I believe, that it is important to discuss the transition rules. I want to say first, in the middle, and any other point during this discussion today, I support the bill, I respect the chairman, I respect the chairman of the House committee, and I respect their achievement.

But having said that, I must take issue with some portions of their activities and their result, because I think that it has produced and created some inequities and some people have benefited that are not entitled to benefit.

I think the worst thing, the worst thing about these transition rules it not rule 26 or rule 43 or any one of the other particular exemptions. That is not the worst thing. The worst thing is the mystery that has shrouded these transition rules until the House acted and it contines to shroud these transition rules.

I had asked my staff last night when it was indicated to me by the chairman of the committee and one of the Senators on this side of the aisle that the staff was prepared to sit down with my staff in order to go through the transition rules one by one—that is the new ones, not the old ones; we have given our attention to those previously. We did not give our attention to all the House rules but I respect their prerogatives. But I wanted to know what these new 400 rules were all about, and so I asked my staff to spend some time finding the answer. It was about the middle of the evening when that occurred, and my staff tells me that they were able to get through about 40 of the 400.

Now, I think we are entitled to know. Some people may say, "Well, don't worry; Senator Packwood is an honest man. He wouldn't do anything that wasn't right." I hereby stipulate Senator Packwood is an honest man. But having said that, he and I and others as well may have differences as to the proprierty, rightness or wrongness of some of those rules and we have a right to know what they are. How can we determine whether we are for them or against them, how can we talk about them if we do not know what they are? And if you look at the way they are described, they are one-liners and they do not tell you the whole story. They do not tell you the information that was called for in the resolution that was adopted to the tax bill when we passed it, the one that I offered and the one that was immediately dropped in the conference committee.

What concerns me is that when you shroud the legislative process in secrecy you contribute to the views of the average Americans that tax bills hurt average Americans and that only those with clout get taken care of.

If 230 million Americans had the capacity and the ability and the interest and the willingness to study what has transpired in connection with this tax bill, I tell you what they would say. If they knew it fully, they would say, "I appreciate the thrust and the direction of the tax bill, it moves in the right direction, and I think it is going to help me as a middle-class or poor person." But they would also say, "But why do they give away so much money to so many people? How did they decide what to give to this company and that company. Why? They didn't ask me what my problems are. Maybe they should have given me a special tax benefit because I am having difficulty meeting the mortgage payment. I can't pay the payment on my automobile. My employer just cut my wages. And the union went along with it because they had no choice because the employer was going to close down. Maybe we ought to have a special transition rule."

They did not get it. They did not have any lobbyists around here. They did not have anybody at court, and that is what bothers me. What do average Americans think when some get taken care of and so many get left out?

It will help many but many will believe that it will not help them. I believe one of the challenges we face as Members of this body, as Members of the U.S. Congress, one of the most difficult challenges we have is to restore the faith of the American people in their own Government. You have all seen those polls about what people think of Congress—not a very high rating. This adds to that perception. People in this country ought to stand tall and be proud of every Member of Congress and every Member of the U.S. Senate. They ought to be proud of what we are doing in passing this tax bill, but the transition rules, both those at an earlier stage and those that have been put in new, cause the people of this country to lose confidence in their Government and their governmental leaders. That, I believe, is the sad part of the entire issue. Sure, $10.6 billion is either a little money compared to $5 trillion or a lot of money compared to specific expenditures by Government that can help so many. That is not the major issue. The major issue is what do the people of America think about this way of Government?

□ 1000

I think there is nothing more important than trying to restore the faith of the American people in their own Government, in their own governmental leaders. There is nothing more important than openness. We have all talked about the sunshine laws: We have to do business in the sunshine. If we tell the American people what we are doing and why we are doing it, even if we say that we put that particular provision in because we needed to get a majority of members of the Senate Finance Committee to go along with this conference report or there would be no bill, I think the American people would understand that. I think we sometimes do not think that the American people are sophisticated and intelligent enough to understand.

What bothers me is the secretiveness, the failure to disclose. Even as I stand here now, there are 1,800 pages to this conference report that was put on my desk—1,800 pages. It took two volumes in order to print it all. No Member of this body knows what is in those 1,800 pages. It is not possible.

Then, we were handed these two lists of transition rules—one of the old ones and one of the new ones. Here are the old ones. There are 28 pages: RCA Satellite, $1 million; Philadelphia Solid Waste, $13 million; Chester Solid Waste, $22 million; Allegheny Electric Co-op, $10 million.

Do you see anything in here for Mr. James Brown or Mr. George White or Mr. Peter Smith? No. Look at it. It reads like the blue book of American industry.

In some instances, there are smaller companies as well. If you had the right people speaking for you, you would be taken care of.

I am just leafing through it: Mount Vernon Mills, South Carolina, $1 million; Charleston Waterfront, South Carolina, $2 million; Barbara Jordan II Apartments, Rhode Island, $1 million.

I want to make it clear that there are some in here in Ohio as well. I do not think all transition rules are wrong. I think that those in there having to do with my own State, to the best of my knowledge, belong there. But what bothers me is not the fact that any of these are in here. What bothers me is that we do not know what is there, and we do not have enough time to find out. There is nobody in the U.S. Senate who can come on this floor and tell me the answers to each of those. We are entitled to know; the people are entitled to know.

If we fail, the loser is democracy, the loser is our form of government, the finest concept of government that anyone has ever devised and created. It is democracy that suffers, the right of the people to govern themselves.

I think it is necessary that we take the time to turn the transition rules from gobbledygook into plain, old English, and I believe it appropriate that I inquire of the distinguished chairman of the committee with respect to some of the specifics that are in the transition rules. But as I look around the floor of the Senate, I see that there are a number of Members who have come here and wish to be heard on this tax bill.

It is a fact that I indicated that I wanted to be heard at some length, and I wish to inquire of the chairman of the Finance Committee, on my time, in connection with a number of the specific transition rules. Therefore, Mr. President, I am about to yield the floor. But before doing so, will the Chair be good enough to advise the Senator from Ohio how much time he has remaining?

The **PRESIDING OFFICER.** The Senator from Ohio has used 51 minutes of his allotted 3 hours.

Mr. **METZENBAUM.** Is it the fact that the Senator from Ohio would not be subject to the two-speech rule, or do I need unanimous consent in order to protect myself in that respect?

The **PRESIDING OFFICER.** Unanimous consent would be required.

Mr. **METZENBAUM.** Mr. President, I ask unanimous consent that I now be permitted to yield the floor, without my first remarks having been charged against me under the two-speech rule.

The **PRESIDING OFFICER** (Mr. McCONNELL). Is there objection? The Chair hears none, and it is so ordered.

Who yields time?

Mr. **BENTSEN.** Mr. President, I yield 10 minutes to the distinguished Senator from Illinois.

The **PRESIDING OFFICER.** The Senator from Illinois.

Mr. **DIXON.** Mr. President, today we cast a final vote on the question of whether there will be tax simplification and reform in this session of Congress.

A good deal has been said on both sides of the question about H.R. 3838, but I think that almost every Member in either House will agree that this is truly a historic moment in Congress. We say that a good many times; I appreciate that fact. But I think that any Member who has been here for a while appreciates the fact that this is landmark legislation.

Mr. President, this truly is a fundamental reform of the entire Internal Revenue Code of this country. As my distinguished friend from Ohio pointed out when he waved the books concerning this bill which are on our desks, this bill constitutes 925 pages, and the explanation of the bill constitutes another 886 pages.

I think most Members would understand that this is not a simple, black or white decision for any of us. Someone in the House the other day said that this is in varying shades of gray.

Some of us have expressed concern about what this legislation might do to the economy. But I would argue that any bill that takes 14 brackets, with a high of 50 percent, and reduces it to 15 percent and 28 percent, reduces the corporate tax rate from 46 percent to 34 percent, and takes 6 million working poor in this country off the tax rolls, ultimately, in my view, has to be of benefit to our economy.

There are some things about this bill I do not like. I was one of those who led the fight in the Senate to retain the deductibility of the sales tax if you itemize on your return. My State of Illinois and many other States in this Union rely upon the sales tax for one of our major sources of revenue. I am sure they take some exception to the fact that we can no longer deduct the sales tax if we itemize.

I was one of the leaders on the floor of the Senate to attempt to retain full deductibility of the individual retirement accounts. While I am pleased that what the conference committee has done has improved the deductibility of the IRA's over what was done in the Senate, I am disappointed that we do not have full deductibility of the IRA's under the conference report before us.

□ 1010

I am very disappointed that more was not done to ease the transition rules with respect to real estate investment. I truly think there has been some change in the rules in the middle of the game with respect to real estate investments.

But on the positive side, I want to make these observations: In the first place, in this conference report the conferees who have crafted this legislation have literally taken $120 billion in tax liability off the backs of individual American citizens. Now, that is an historic step by this conference committee. Again, may I say this conference report takes 6 million working poor folks in America off the tax rolls completely, Mr. President, a monumental task of great significance to ordinary working people in the country.

On the other side as importantly is the fact that we take the wealthy individuals in the country and the major corporations in the country who on many occasions in the past having realized a substantial profit did not pay taxes and we have insured in the future that they will be paying taxes.

Now, I want to answer several charges that have been made against this bill that I think, Mr. President, are not fair. There has been a suggestion by some that this bill was not fair to middle-class, ordinary folks in the country.

My information with respect to this bill is as follows: That for the tax brackets of $10,000 to $20,000, $20,000 to $30,000, and $40,000 to $50,000 for those tax brackets which I will say for Illinois certainly covers from $10,000 to $50,000 what we ordinarily consider to be middle-class folks in Illinois, each of those categories has a substantial amount of tax relief under this conference report.

For people in the $10,000 to $20,000 bracket, as I understand the report, the tax relief will be 22.3 percent, 22.3 percent. Now, that is a significant tax saving for the people in that bracket.

For the people in the $20,000 to $30,000 bracket the tax savings will be 9.8 percent, almost 10 percent. And for the people in the $40,000 to $50,000 bracket, the savings will be 9.1 percent.

So contrary to what has been represented by some of those opposed to this legislation, in the $10,000 to $50,000 bracket among middle-class American citizens, tax relief runs all the way from 9.1 percent to 22.3 percent, and I would argue that that is a very substantial amount of tax relief.

Now let me address the question of the deficit. Some have said that this bill does not adequately deal with the question of the deficit. I believe that every Member here in the Senate is concerned about our budgetary deficit. I would like to say that this Senator has done what he can about that question. I cosponsored Gramm-Rudman-Hollings. I spoke for it. I voted for it. I supported repairing the trigger on Gramm-Rudman-Hollings when the U.S. Supreme Court broke the trigger on the grounds of separation of powers. I have introduced in every session of Congress a constitutional amendment to give the line item in reduction power to the President of the United States. I voted for the line item in reduction veto power. I spoke for the line item in reduction veto power. On two cloture votes in the Senate, one of which fell short by 2 votes, one that fell short by 3 votes, I voted for cloture to get to the question ultimately of the line item in reduction veto power. I have twice voted for a constitutional amendment to balance the budget, Mr. President.

So I think I have demonstrated by my votes in this Congress and in this Senate my concern for the budgetary deficit. But the plain, simple fact is that nobody ever thought that this tax bill was supposed to do anything about the deficit. Every single, solitary person involved in this process, the President of the United States, the Secretary of the Treasury, the distinguished Senator from Oregon, the chairman of the Finance Committee of the Senate, the distinguished Congressman from the city of Chicago, the chairman of the Ways and Means Committee of the House, all said from the very beginning that the idea here was revenue neutrality in connection with this legislation, that there was not going to be any attempt to raise revenue to reduce the budgetary deficit under this legislation.

The **PRESIDING OFFICER.** The Senator's 10 minutes have expired.

Mr. **DIXON.** I thank the President.

So I will say this in my conclusion: There is no black and white in major things of this kind. But in my view so far as the various shades of gray concerning this legislation are concerned, Mr. President, this is at least 60-40 a substantial improvement over the existing Revenue Code, and at the appropriate time this afternoon when we go to the issue, this Senator will vote "aye" in favor of the conference report and I congratulate my conferees who have crafted this important legislation on the work they have done.

The **PRESIDING OFFICER.** The Senator from Texas.

Mr. **BENTSEN.** Mr. President, I think the distinguished Senator from Illinois has done us a service with a very fine speech addressed to the merits of this bill.

As I have looked at this bill and worked on this bill, I have come to the conclusion that we certainly have a mixed bag on our hands. Isn't that generally the case when we are talking about a major piece of reform legislation? It is never just as you or I would have written it. It is the give and take of the process. That is the way the democratic form of government works and rightfully so. A major bill like this has some pluses and some minuses. To try to decide how to vote on the bill, you have to sit down and start listing the advantages and the disadvantages, and see what the bill does to the American people.

Then you have a philosophical question—the question of whether the tax system should be used to provide economic incentives. Some economists say we should not put any incentives in the tax system, should not tilt the system in one direction or another.

I do not buy that. I do not believe that. The economists say just go ahead and appropriate the money. Let a Government agency run the program; that is the way to take care of the problem of housing needs, and of all the other problems of society. I just happen to think the private sector is more efficient in addressing the problems and that we ought to pursue private-sector solutions through tax incentives.

Mr. President, this bill gets rid of a lot of those tax incentives.

Why, then, would I vote for this bill? The reason I would is because each of those tax incentives is put in place at a time in our history when it serves what we deem to be a worthwhile purpose for our country, some economic objective we think ought to be achieved. But time passes, economic conditions change, and we never go back and revisit the incentives. To do that would be to take something away from special interest groups. So tax incentives pile on top of tax incentives. Finally, people do not make economic decisions about spending and investing; they make tax decisions. And the country ends up with a very unfair tax system.

I can point out many things in this bill I do not like. The Senator from Illinois mentioned one of them, the retroactivity on the real estate rules. That is not fair. People ought to be able to count on the rules we prescribe. If we are going to change the tax rules, we should change them in a prospective way. It is not fair to structure the Tax Code to induce people to commit major financial investments, and then change the rules in a way that completely changes the economics of the investments.

Another problem with this bill is the way it treats the real estate entrepreneur. It prevents the real estate entrepreneur—the bona fide developer—from deducting his rental loss against his commission income, his management fees, and his other development income. That is not right. That is not the way it ought to be. We do not treat other entrepreneurs that way. In effect, we're saying that the real estate developer is always engaged in a tax shelter.

I fought this issue in the committee; I fought it in the conference and I lost. And I do not think it is right. If I get an opportunity in the future to change it, I am going to try to change it, so that there is an even playing ground between real estate and other industries.

The problem is, by the time we get the rules changed, a lot of developers are going to be very seriously hurt, if not bankrupted.

Should we close the tax shelters? Of course, we should. I led the fight in the Senate in 1984 in the Finance Committee to try to cut down on real estate depreciation write-offs. I thought I had won it on a Friday. Over the weekend, two of my colleagues changed their votes. I do not know who talked to them about it, but they changed their votes and I lost. And I must say, the real estate lobby was very unhappy with me.

Now I look at a situation where we have dozens of see-through buildings in Houston. And I see them in a lot of other major cities around the country. I think Washington, DC was well on the way to that. The developers here may be saved from their own folly by the changes in this tax bill.

Take a specific example. After we had over 1 million square feet of vacant commercial space in Houston, all of a sudden I saw a new skyscraper coming out of the ground. That building has to be over 50 stories tall; it's not finished yet. My understanding is they got some mogul from the Middle East to contribute some of the money. And then I understand much of the money came from one of the major banks in the country, one of the very largest. One of the senior vice presidents of the bank was in Houston the other day and he was looking at this tall, tall building, not finished, and he said, "Whose turkey is that?" And the fellow who was with him said, "It's your turkey." He said, "You mean my institution did that? He said, "That is right, your institution put the money into that." Millions upon millions of dollars; what an incredible misallocation of resources that could be used for a much more beneficial purpose.

I listened to my friend from Ohio talking about some of the needs of our country. Consider the situation down in Brownsville, TX. They have to come up with the funds to build one new schoolroom every other week because of illegal immigrants coming in. Well, that problem is going to continue to mount. Wouldn't it be a more appropriate allocation of the resources of this country to build schoolrooms in Brownsville instead of see-through skyscrapers in Houston:

This bill is going to stop the misallocation for the future, and that is a major step forward. But, what has happened in this bill is what happens in so many bills. When things get too bad, we often over-correct. And that is what we have done here in making the real estate rules retroactive. They should be prospective, and we should treat the real estate entrepreneur like we treat other entrepreneurs.

Mr. President, I must say that those who say they do not want tax incentives in the system are kidding themselves. We have a tax incentive in the law for home ownership, and I think it is a good one. We ought to preserve that and encourage home ownership to give stability to our Nation. Home ownership creates community interest in whether the streets are being paved and whether the schools are good.

We also ought to have tax incentives for charitable contributions. This bill pressures the basic charitable deduction, and I applaud that. It would be of great concern to me if this bill slashed charitable giving.

I have to say I do have concerns about including gifts of appreciated property in the minimum tax. I have a hunch my friend from Missouri is right in saying that that is going to slow down some contributions. I have a question about that. Yet, it is true that we have seen abuses where people overvalue property and end up not paying tax.

Another tax incentive is for historic restorations. I have supported that. And I think overall it has done some good.

I drive down Pennsylvania Avenue and I look at the Old Post Office Building, and it is magnificent. I really doubt that that project would have been feasible without the tax incentive. That magnificent old building can be a part of our heritage.

Yet, I have noticed another project on Pennsylvania Avenue where only one little corner of the building is old, and the rest of it is new. My hunch is that the restoration credit was claimed on that. And that is abuse. That is what this bill will stop—those kinds of abuses.

Another incentive now in the law is the capital gains differential. I do not like seeing that repealed. I am one who, along with the Senator from Louisiana and many others here in the Senate, fought to bring the capital gains rate down. We wanted mobility of capital where investors would not lock up their asset where they would not be afraid to sell and put the resources to more productive use, because of fear of paying a high tax rate. So we worked to bring the tax rate down from 49.125 to 28, finally to 20, and here it is jumping back up to 28 again.

Why did I finally go along with this change? I went along with that because of the dramatic reduction in overall rates from 50 to 28 percent, at the top, and to 15 percent for 80 percent of Americans. The low rates mean not only a tax cut for most Americans, but they also mean a better deal for the working people of this country who are trying to get ahead. The person with drive and imagination will now have an incentive to put his or her full efforts into his or her job or business. The Government will take only about one-fourth of the profits—not half. We should not underestimate the incentive power of low rates. That was the big payoff.

I told someone the other day that what finally tilted me all the way to voting for this bill was the great effort to restore some fairness to the tax system. And he turned and said to me, "That is a slender reed to hang your decision on." I do not believe that. I do not think there is a more important reason to be for this very major reform of the tax system than fairness.

□ 1030

Take the fellow who is making $30,000 a year, $40,000 a year, a family of four, working out his tax return on April 15. And he reads about someone making millions and paying no tax. Consider an employee of a company working out his tax return on April 15 who reads about his own company making hundreds of millions of dollars year after year and paying no taxes. He says something is wrong with the system. You know, he is right. That is what we have to change. There is a perception of unfairness in the tax system. It is more than a perception. It is a reality.

Last year I introduced a tough alternative minimum tax for corporations. A number of other Senators have done that. We have put a tough minimum tax in the tax bill. Never again will people be able to point to huge corporations making hundreds of millions of dollars and not paying any taxes. All profitable corporations are going to have to pay their share. So will all wealthy individuals. Is this bill simplification? Yes, major simplification. Approximately 80 percent of returns that will be filed will be the short form. Most taxpayers will not have to pay a fortune to an accountant or a tax lawyer to make out the return.

Unfortunately, I don't think this bill is simplification for the wealthier taxpayer. No. I wish it could have been. I had hoped we could bring that about. But that is not the case. Tax accountants and lawyers will revel in this. They will probably raise their fees if they can go higher than they already are. And out there is that vast army of tax lawyers and accountants, they are working very hard to find new loopholes. And as hard as we have worked on this bill, as much as the chairman has devoted his time to trying to stop those things, as have others on the committee and the staff, next year we will find that the lawyers and accountants have been successful in trying to do some things to try to protect themselves.

I heard one of my friends in the Senate say that the politically smart vote was to vote against this bill. You know, I think he is right. And the reason I think he is right is because the people that are on the losing side in this, and the people who lost their shelters are sure going to know about it. And you have an incredible number of PAC's in this country that are going to be telling them about it. And they are going to be telling them next year, and they are going to be relying on them again in 1988.

How about people that are on the winning side? How about the 6 million working poor? How about low-income people? How about middle-income people who have a substantial percentage tax savings in this? Will you hear from them? Will they know about it? Those are the folks that do not have PAC's. There is no trade organization in Washington sending out a letter right now to each and every one of the working poor that will be taken off the tax rolls, to the low-income people, or to the middle-income people. They are not represented here. The good-news letter will not be sent. The benefits are so diffuse over them that they will not stand out high profile. The fact that a middle-income family might have saved $400 or $500 a year in taxes will really not be driven home to them.

I assure you by election time they will probably have forgotten. But I promise you the PAC's are going to remind those who voted for this bill and they are going to inform their constituency of who voted for it, and remind them of the negative effect the bill had on them because they lost their favorite loophole.

But I believe in this bill that the special interests have been subordinated to the public interest. This is a bill that they said could not be done; that there was no way you could overcome the influence, the contributions, the PAC letters, the organized groups, and bring about this kind of a massive reform of the tax system. But it has happened.

And I think it is a step forward. How is it going to affect the economy? I am not sure. That does concern me. As I listen to the economists, I hear some very erudite, men and women, learned, arguing both sides of that question. Will we be back to visit this bill? Sure we will. Will there be a technical amendments bill next year? Yes. If we see a negative impact on the economy, we will try to do something about it. Repealing the investment tax credit is a risk. Capital investments are down. One of the things that concerns us most is the trade deficit and our failure to modernize the productive capacity of this country so we can compete. There is a risk that the repeal of the ITC will worsen this situation.

I heard the chairman of the House Ways and Means Committee say he does not want to revisit this bill next year. We were over there in the Ways and Means Committee room and he said "I want to put a sign on the doors that says, 'Gone fishing.'" I said to the distinguished chairman, "Don't rent out this room next year. I have a hunch we are going to be back."

Mr. LONG. Mr. President, will the Senator yield?

Mr. BENTSEN. Yes.

Mr. LONG. Mr. President, I could not agree with the distinguished and able Senator from Texas more. He and I know there are a lot of things in this bill that will change. I am for this bill. I think it is a good bill for the country on balance. And, yet, I agree with the Senator from Texas that there are a lot of things in the bill that should be changed. This is a dynamic country.

This country does not stand still. There are things about this bill that will need to be corrected, and the sooner we get to it the better. There will be a bill next year, to correct technical mistakes made in the bill. We know there are mistakes. There always are.

Mr. BENTSEN. I understand there are going to be some of the Senators, I suppose, who will be trying to rewrite the history of this bill down the line; they'll be trying to rewrite their position.

□ 1040

But although some of us may try to rewrite history after this bill is over, overall the facts are that I think it is a bill that is worthy of our support. It is not cosmetic. It helps restore fairness to the system. It says to middle income, "We are going to give you a tax cut."

This bill also says to the working poor, "We are going to give you an additional reason to stay off welfare and go to work because if you are below the poverty line, we are going to take you off the income tax rolls. You are going to pay the payroll taxes; you are going to continue to pay your sales tax. But we are going to give you an additional incentive to have a productive job and get yourself back up to a position where you get back on the income tax rolls."

So those are the positive and affirmative things of this monumental piece of legislation which will pass through this body. I hope my colleagues will support it.

The **PRESIDING OFFICER.** Who yields time?

Mr. **PACKWOOD.** Mr. President, I yield 10 minutes to the Senator from Texas.

Mr. **GRAMM.** Mr. President, I thank the distinguished chairman of the Finance Committee for yielding. Let me begin my discussion of this bill by congratulating the people who wrote it.

Bills like this do not just happen. They happen because of leadership. I remember when we started this term and the objective was a tax reform bill. I looked at the progress that was being made, or the lack thereof, and I wondered whether or not, with all the separate, competing interests that together make up the public interest, if we would ever get a bill written that could be adopted.

I remember that period where we had a collage of all these compromises and things ground to a halt. Then, Chairman Packwood went back to basics. He set out the basic principles we would try to achieve in tax reform and what the end product might look like and started again.

I think it was out of that brilliant decision that we have come to this point. We have an opportunity today to adopt a tax reform bill that will change the Nation and will improve the efficiency with which we invest our resources in this country. I think this bill is more of a testament to one person than anybody else. That is Bob Packwood.

In my 2 years in the Senate everything good that has happened here, at least in terms of my own perspective of what is important, Bob Packwood has had something to do with and has been a key leader. I think this tax bill is another example.

I think his work with Russell Long and with my senior Senator, Lloyd Bentsen, helped produce this product today.

I have heard over the last day of debate a lot of people get up and criticize this bill. If you set out to find problems with it, no doubt they are there. In trying to move to lower rates, one has to truncate the transition from the old Tax Code to the new Tax Code. We all know that the fair way to do that would be to simply set out a day and say, "Every deal entered into before that day will come under the old tax system and every one after that day will come under the new tax system."

The problem in doing that, as the committee found, for obvious reasons, is that unless you truncate the transition process you cannot lower the rates and thereby provide the incentives for Congress to act.

It is obviously unfair to transition out of the old system in 3 years and change the rules of the game on people who made investments in good faith. No matter how inefficient those investments might have been from the point of view of the economy, they were efficient from the point of view of the individual taxpayer.

Each of us can obviously look at the transition rules and the individual items in the bill. If anybody ever told me that I was going to vote for a bill that was going to allow the University of Texas to treat football tickets differently than Texas A&M, I would never have believed them.

But I am here supporting this bill and doing it vigorously not because it is a perfect bill—there is a lot in this bill that I do not like—but I am supporting this bill because it is the first legitimate effort in 50 years to make the tax system more efficient and fairer—fairer in the sense that we close loopholes, eliminate preferential tax incentives, and in doing so assure that everybody pays their fair share.

Mr. President, in the postwar period we have had confiscatory marginal tax rates and the economy has underperformed. We have not had sufficient investment to meet the objectives that we set out for ourselves as a free society. When the private sector did not respond under confiscatory marginal tax rates, we set out to provide special incentives for investments, ranging from investment tax credit to special tax treatment for certain kinds of investments. But the net result was to provide incentives to invest, in some cases intentionally and in some cases unintentionally primarily in areas singled out for political reasons, not singled out for economic reasons.

As a result, we have had for 40 year in this country incentives to invest to avoid taxation rather than to invest economically to create more growth and jobs.

We have all seen numerous instances in our own little hometowns, our own experiences, of a misallocation of resources. I would like to refer to a problem in my hometown on Highway 6, at Market Road 60. We had a Ramada Inn there which changed hands because basically we have a big demand on football weekends an not so much at other times. Then we had an Economy Motel built on another corner. It had not been a big moneymaker. Maybe the bank would take it back but they did not know what to do with it.

You would think with these two motels the last thing on Earth that would happen would be a new one being built right between the two.

This is no Aggie joke.

Right between the two we now have a new Economy Motel.

Only one thing can explain that kind of behavior: Govenment. Only Government could product a policy that would generate that absurd result. That is what the American tax policy, which has existed for the last 40 years, has done. It has provided incentive to invest to avoid taxation instead of incentive to invest to create jobs and economic growth and real return for the investor and for the Nation as a whole.

What this bill does, and what makes it revolutionary, is that it moves away from trying to allocate capital on the basis of Government-provided incentives. It closes off those tax preferences and uses the resources generated to lower marginal rates, so that now on a broad basis there is incentive to invest where economic return exists.

Until we see how people respond to this new system, it will be difficult to predict what the exact revenue flows generated by this bill will be.

But I think the long-run impact is clearly going to be positive. The fact that you can keep 72 cents out of every dollar you make, no matter where you generate that income, combined with the fact that in corporate earnings you are going to pay a maximum of 34 percent, together will be a tremendous stimulate to efficient investment aimed at creating jobs and economic growth.

There is a lot of debate about the impact of the various tax credits and tax loopholes, depending upon your perspective, that we are eliminating. Quite frankly, Mr. President, I think most of those things do not make any difference. Under the current system you can pay up to 49 cents on the dollar, at the higher income levels, to avoid taxation and be better off.

We all read these headlines about people not paying their fair share of taxes. Normally, what is not run in the story is that they pay tremendous amounts of money to avoid taxation by investing at lower rates of return, tying up their money and operating inefficiently from an economic point of view.

That was a deadweight loss to society.

Now we have eliminated that circumstance and nobody is going to pay more than 27 cents out of a dollar to avoid taxation.

□ 1050

As a result, taxpayers will move more of their income into ordinary income, and we are going to have investment made to create jobs and growth. So, Mr. President, I think we have an opportunity to adopt a tax bill that despite all its problems, despite that if creates, as any package of this nature will, its own new inequities, is on balance a very strong and postive move.

People say this is going to kill Gramm-Rudman. I do not see it. I am not positive what the net revenue impact is going to be next year, but I cannot help believing that creating incentives for growth to create new opportunities for our people can only help us in balancing the Federal budget.

If we lose revenues, then we shall have to come back and figure out what we are going to do about it in terms of savings or in terms of replacing those revenues. But when you get down to the bottom line on this vote today, this vote is on a piece of legislation that is a substantial change in tax policy. This bill is the first legitimate effort we have had in this country in the postwar period to make the tax system more efficient in the allocation of the Nation's resources and to make it fairer to the people who do the work and pay the taxes and pull the wagon and make this country work.

Mr. BENTSEN. Mr. President, I congratulate my distinguished colleague. He has a fine record as an economist and has spent many years of his life dedicated to better understanding that very difficult science. I think his statement has been most productive and helpful to us.

Mr. LONG. Mr. President, will the Senator yield on my time?

Mr. GRAMM. I am happy to yield.

Mr. LONG. Mr. President, the Senator touches on a point that I would like to discuss with him for a moment. I think it is inherent in government that we cannot do something without overdoing it. You do not need to go far to see that, in an effort to help people, we often spent a lot of money to bring about the wrong results.

We ought to spend money in ways that will encourage people to do what is best for them and for society.

In this bill, we repeal the investment tax credit.

While in the Senate I have voted three times to put the investment tax credit in place. This will be my third vote to repeal it. In two cases, the same President who asked me to vote to repeal it asked me to reinstate it.

During the periods we have had an investment tax credit, it has done a lot of good. It provides a stimulus to help develop needed investment in plant and machinery. However, at times it went too far and overheated the economy. Thus, we have repealed it twice already. This will be the third time.

Yet if one wants to get the economy moving, I have yet to see a more effective way than the investment tax credit. Time will tell whether we should repeal it forever or not.

It is important to keep it mind that we are simply unable to guarantee that we will stimulate the kind of activity we want to stimulate without doing more. Invariably, if we think something is good, we want to do more of it and we sometimes do too much.

We also have a perception problem. In the past, when we gave a tax subsidy, we made it difficulty favorable that one could avoid paying any tax at all. We know better than that now. We know that the subsidy should not be so large that one could avoid paying income tax completely.

In my judgment, no one here is smart enough to write a tax bill that we will want to apply for all time. But we know that this bill will be a major improvement for now. I believe that, as time goes by, it will be made a better bill. We should have a stimulus to encourage people to do things we think are good for the country. However, we need to learn how to better control it so it is not overdone.

Mr. GRAMM. Mr. President, if I may respond to the distinguished Senator in what I have left of my 2 minutes, I want to say I think the most effective stimulus is the one being provided by this bill. That is a low marginal rate. I think at various times, we have benefited from things like the investment tax credit, but those invariably have been put into place for political reasons to respond to problems that were here today and might be gone tomorrow and often, they misallocate resources even as they create jobs in the process.

I think the beauty of this bill is that by having a low marginal rate, the incentive will be to choose investments on the basis of their economic productivity. So whether this will cause a short-run boost in the economy, I think quite frankly with the problems of the real estate industry it might not, but in the long run it will help.

Mr. LONG. Mr. President, only time will tell whether we are wise to repeal the investment tax credit, or whether it will remain repealed.

I thank the Senator.

Mr. PACKWOOD. Mr. President, I yield 10 minutes to the Senator from California.

The PRESIDING OFFICER. The Senator from California is recognized for 10 minutes.

Mr. WILSON. Mr. President, one of the great fringe benefits of service in this body is the opportunity to learn. I think those who were privileged to be here during the recent exchange between Senator Long and Senator Gramm had that opportunity. There is a great deal of distilled wisdom in the observations made by the ranking member and former chairman of the Committee on Finance. And I would have to say that as I listened to Senator Gramm, he needs to be admonished that if he is not careful, he may give economists a good name.

Mr. President, as have my colleagues, I have spent a very long time considering the need for tax reform, the various legislative proposals that were made to accomplish, to varying degrees, real reform, and the bill that is now before us.

As part of my consideration, I spoke to businessmen and women in my State of California about the pluses and minuses of the different proposals—what effect the proposals would have on their ability to invest and the ability of their customers to buy.

I spoke to people about the proposed changes to the taxation of individuals—what effect the proposals would have on their ability to save, to buy necessities, to purchase a home, and to feed, clothe, and educate their children.

I spoke with economists about the proposed changes—what effect the proposed bills would have on investment, our GNP, our ability to produce domestically and compete internationally.

Mr. President, not long ago, in a mood of near euphoria, we sent to conference the Senate's version of tax reform. What has come back from conference is a report that is not nearly as good as the Senate tax reform bill but, nonetheless, a bill worthy of our support—despite many serious defects.

More to the point, it is not amendable. Therefore, there are two relevant questions that should be facing Members of this body as we contemplate which way to vote on this important legislation.

The first question is this: Is the bill before us an improvement upon the current code?

□ 1100

Second, is it a better place, as Senator Long has admonished, from which to start on further reform than is the current code? The answer to both of these questions, Mr. President, notwithstanding whatever defects and unfairness may exist in this legislation, is yes. The answer to both questions is yes, which is how it comes to pass that the chairman of the Finance Committee, Senator Packwood, and the other supporters of this legislation now defend a whole which contains parts and elements which they did not like and which they resisted, unsuccessfully, in the conference. But the answer to both of these critical questions is "yes," not because this mixed bag contains, on balance, more good than bad, but because it is better than what we have, significantly better; and perhaps even more importantly, because it offers us a better place from which to continue the well begun but unfinished business of tax reform.

It is no secret, Mr. President, that next year we will be facing more than simply a "technical corrections bill prompted by this year's tax reform" effort. Because this bill would sweep away virtually all of the tax shelters that have crept into our system, or at least very many of them, and because it would streamline our Tax Code both on the corporate and individual sides, there are not very many significant places left to trim as a means of either recovering revenues by canceling "tax expenditures" or of revenue-neutral creation of new preferences "tax expenditures." There are no more $23 billion motherlodes to tap. If we are to raise money by adjusting our income taxes either to create a tax preference or for any other purpose, it will have to be done headon by raising rates. That will not be easy, nor should it be. That simple fact alone may constitute the best protection against easy income tax increases or the kind of backsliding that could bring an insidious return of shelter creep to the Tax Code.

Yesterday, Mr. President, I listened to one of the best speeches I have heard on the Senate floor in the time I have been in the Senate. The distinguished Senator from Missouri [Mr. DANFORTH], with eloquence exceeding even his norm, delivered a very thoughtful analysis with very clear conviction, in which he raised a number of cogent arguments for opposing this legislation. So good was his speech that I think it could serve us very well as a matrix against which to test this legislation. He spoke of unfairness and cited many instances of it. I quite agree with him that fairness is the fundamental test of any tax legislation, and I do not dispute any of the examples of unfairness that he brought forward.

Indeed, I do not expect that the chairman or many of this bill's supporters do. Obviously, there were enough conferees who hold a brief for some of those unfair results—because they are in the bill. Indeed, I could add some examples of my own. Perhaps the best example is the issue of the individual retirement accounts which occupied much of my own time and energy on this floor. We came close, but lost on that measure. More regrettable, the public lost. It seems to me more than legitimate for those who are seeking to put something aside to supplement their retirement income to do so with encouragement from the Tax Code. This is a national interest. It is also clear that IRA's have provided a significant source of new savings for new investment to create new jobs.

But for all its unfairness, whatever those instances may be, this bill on balance produces much greater fairness than the current code. The current code taxes both individual and corporate taxpayers at widely differing effective tax rates, and that is not at all fair. These differing effective tax rates, Mr. President, exist because some taxpayers are heavily sheltered; that is to say, because of the preferences in the current code, which this bill will eliminate. The minimum tax provisions which prevent all taxpayers—individual or business—from escaping the payment of any tax, as so many have and can under current code shelters, is a major breakthrough in fairness.

This bill is legitimately entitled to be called reform in contrast to the five previous efforts—which in general simply sought to swap one set of tax preferences for another. It is entitled to be called reform for two reasons—because it has eliminated those shelters and required that all citizens pay at least some minimum tax, and because it has brought about a dramatic reduction in rates which by itself constitutes an enormous increase in fairness to the vast majority of taxpayers.

And here, Mr. President, not at all parenthetically, let us give full credit, as did Senator GRAMM where it is due. Many have spoken over the years of the need to do what now has been done by one man's energy and determination. I commend him and I give full credit to BOB PACKWOOD. One man finally made it happen.

This bill provides dramatic rate reductions while retaining important deductions: That for home mortgage interest; that for State and local income and property taxes; that for charitable contributions, though not, unfortunately, including gifts of appreciated property.

Senator DANFORTH was concerned as well about the economic impact that this legislation will have. I suspect that in the near term he is right; it may well have a dampening effect. The tightening of depreciation, the loss of the investment tax credit, will produce, with other changes, a shift of $120 billion to business from individual taxpayers over the next 5 years. It will affect the cash-flow of businesses. In the heavy industries, in particular, it will probably cancel sales, cancel purchases, which will have implications even for high technology. For example, General Motors is a major purchaser of semiconductors.

But, Mr. President, our economic growth will be far more affected by the success or failure of deficit reduction and by monetary policy, which fact enjoins upon the Governors of the Federal Reserve Board the caution to be adequately expansionary in setting monetary policy in the future.

In the long term, Mr. President, the economic impact of this bill I think inevitably will be a healthier investment climate because reduced borrowing will result from the lessened incentive of reduced rates against which to offset interest deductions. Economic growth will be financed more by equity in the future than by indebtedness, and that is healthier.

This bill will produce a healthier investment climate and greater real economic growth because of the elimination of shelters which have been distorting the marketplace. Let the marketplace govern investment decisions, unfettered by the kinds of distortions that have become the reality over half a century of incremental growth in the Tax Code. The growth in shelters has pushed investors to seek so-called profitable tax losses. It has created a traffic in those losses. That incremental growth in shelters has made our tax system a very inefficient allocator of resources.

Low rates and the loss of shelters, by contrast will encourage investment for real return and remove the incentive for investment in nonproductive assets that contribute no real growth to our economy.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. WILSON. Mr. President, I ask for 3 additional minutes.

Mr. PACKWOOD. Mr. President, let me say this. We have only 48 minutes left on our side. The other side has about 4 hours. If the Senator from California could wrap up in 2 minutes, then I am going to ask the rest of our speakers to hold themselves to the times allocated or the rest of our fellows will not get any time at all. Two minutes.

The PRESIDING OFFICER. The Senator from California is recognized for 2 minutes.

Mr. WILSON. I thank the Chair and the distinguished manager.

Mr. President, deficit reduction was the final concern that I share with Senator DANFORTH. I agree emphatically that deficit reduction is a far more urgent priority even than tax reform. I told the President so at the beginning of his tax reform effort.

What will the impact of this tax bill be on revenues? This coming year it produces a surplus. In the next 2 years it will produce a shortfall in revenues. Only over 5 years does it promise to be revenue-neutral.

But, Mr. President, the brightest note I entertain is that as tax reform in future years encourages investment for real return and discourages heavy borrowing and indebtedness, it will compound its therapeutic effect as an efficient allocator of resources in that it will produce a long overdue drop in real interest rates that have been kept too high by an artificially high and arguably unhealthy level of borrowing and indebtedness. In fact, I think we wil continue to attract foreign capital to create American jobs, but it will take the form of equity rather than debt.

□ 1110

Mr. President, this bill in most instances—though certainly not all—is better than what we have. It is a better place from which to continue real tax reform. If unfinished, this effort at tax reform is well begun.

Let me say that transition rules are not the reason to vote for this bill. Anyone who thinks that, frankly, is a fool. Anyone who seeks a transition rule would be better off seeking to defeat the bill to avoid the change necessitating transition rule relief. No, that is not the reason to support the bill. It should be supported because it is in itself a marked improvement upon existing law, which I think will have greatly beneficial economic impact, and because it provides a framework, for further reform preferable to the present unfair tax structure of too high rates which are inconsistently relieved by a jumble of shelters of widely varying purpose and merit.

I thank the distinguished manager, and I yield the floor.

Mr. PACKWOOD. Mr. President, I am most grateful for the kind comments of the Senator from California and the Senator from Texas [Mr. GRAMM] about my leadership.

This bill, however, did not just spring full-blown out of the Finance Committee secretly. There were many people responsible for it many months and years before. There were Senator BRADLEY and Representative GEPHARDT. Senator KASTEN and Representative KEMP were responsible for a bill that proposed very low rates.

I yield 5 minutes to the Senator from Wisconsin.

Mr. KASTEN. I thank the chairman of the Finance Committee for his kind comments.

Mr. President, the Senate will shortly enact historic legislation to reform the Nation's Tax Code. I applaud that effort.

The tax bill we are about to adopt is historic for several reasons.

First, it will reduce tax rates for the working men and women of the Nation. Just a few years ago, the top personal tax rate was 70 percent. When this bill goes into effect, the top personal rate will drop to 28 percent.

That means that more money will be left in the pockets of American taxpayers.

More assets will be available to make new investments in our economy. Jobs will be created and American made products will become more competitive overseas.

Second, this legislation is profamily. The most essential provisions of the Tax Code for working families are retained and strengthened.

The personal deduction is increased, as is the standard deduction. Furthermore, the most important provision in the Code to encourage home ownership, the mortgage interest deduction, is retained.

In addition, families will be able to continue to borrow against the equity in their home to pay for the education of their children.

This legislation goes even further to assist the poorest families. Over 6 million of our Nation's poor will be given a boost up the economic ladder by being taken off of the tax rolls altogether.

Third, this legislation will return our Tax Code to the fundamental principle of fairness. Individuals making the same amount of money will now pay the same amount of taxes. Special interests will no longer be able to shelter their income and avoid paying taxes.

Included in this legislation is a stiff minimum tax provision. Corporations will no longer be able to dodge paying their fair share of taxes.

Most important of all, this bill takes a major step toward getting Government out of the business decision equation. The tax impact—business to business to business—will be equalized.

As an example of this, look at one of the most important industries in my home State of Wisconsin—agriculture. The current Tax Code encourages large corporate-style farms to make capital investments such as milking parlors, hog confinement operations, and expensive farm machinery, in a number of ways.

The deduction now permitted for passive losses, the current Tax Code also encloses wealthy nonfarm investors to farm the Tax Code, by sheltering money in cattle, hog, and dairy operations.

I believe that we need to encourage capital investment in most areas of the economy. But agriculture has surplus productive capacity now. More capital investment means more production and lower prices for the family dairy farmers of Wisconsin and for family farmers across the country.

Three years ago, there was little talk in this town about real tax reform. When Congressman KEMP and I introduced the "Fair And Simple Tax" bill [FAST], tax reform was not on the inside track. Senator BRADLEY and Congressman GEPHARDT were also early leaders in the effort to reform our Tax Code, as the chairman of the Finance Committee just said.

Then the President and the Secretary of the Treasury weighed in in favor of tax reform. That began to give the issue real momentum. But the credit also belongs to the chairman of the Finance Committee, Senator PACKWOOD, for the work he did in taking this group of ideas and differing opinions and putting them all together. So it is PACKWOOD along with Chairman ROSTENKOWSKI who deserve the credit for bringing these packages together. Ideas have consequences. And I believe this tax bill is an example of the test of that.

This tax bill is yet the latest battle in the supply side revolution. What once was an economic theory followed by a relative few has now become mainstream: it is now embraced on a bipartisan basis.

Experience has shown us again and again that by reducing tax rates, the economy is stimulated and our Nation's economic health is improved.

In 1978, when the capital gains rate was 49 percent, revenues were $9.3 billion. When we cut those rates to 28 percent in 1979, the economy responded with healthy growth in that sector, so much so that revenues increased to $11.6 billion, even though the rate went down. Most recently, when the capital gains top rate was cut to 20 percent in 1981, the economy took off. Revenues from this unleashed sector doubled within 3 years.

It is clear, by lowering tax rates we remove the deterrents to the working people of the Nation to work harder, increase investments, increase savings, and create new jobs.

This legislation returns to the principle that individuals should be rewarded for doing a good job. Economic successes will no longer be penalized by being pushed into higher and higher tax brackets.

Instead, those individuals will be encouraged to reinvest their earnings, and savings will increase. This will further stimulate the Nation's economy.

The Nation will be better off under this new code than the one now in place. Low marginal rates and the key.

The efforts of America's working men and women will no longer be penalized by our Tax Code. People will be better off with lower rates than they are today, and America will be better off, too.

I support the conference report and urge the Senate to quickly adopt it.

The PRESIDING OFFICER. The Senator from Montana [Mr. MELCHER].

Mr. MELCHER. Mr. President, while driving in this morning to come to the Capitol, I listened to National Public Radio. One of the newscasters, quoting the distinguished chairman of the Senate Finance Committee, Senator PACKWOOD, spoke in relationship to the economic conditions that might result if the bill becomes law. She quoted him as saying, "Well, no guts, no glory."

Referring to the 97-to-3 vote that occurred a few weeks ago when the bill passed the Senate, I am certain that the distinguished chairman did not mean that the 97 who voted for the bill had guts and the 3 of us who voted against it did not have guts.

As a matter of fact, what existed at that particular time was a euphoria in the media and the public attitude throughout the country that we had discovered a very amazing way to reducing people's taxes.

Well, it is not the media that really analyze a tax bill. It is not editorial writers and newspaper writers who analyze a tax bill. Accountants, CPA's, economists, and the three of us who voted "no"—Senator LEVIN, Senator

SIMON, and myself—said it was a bad bill.

□ 1120

Now, we have it before us in its final form right here, these two volumes, and these two volumes cannot be amended. We just vote up or down on these. We cannot possibly amend these two volumes.

But at the desk is a third part, the third part of this whole package. It is called House Concurrent Resolution 395 and that is part of it. It is meant to be part of these two volumes. It fits in and completes these two volumes. There must be a couple thousand pages of this. There are 75 or 77 pages of House Concurrent Resolution 395, the third part. We will get to that later on after we dispose of this which cannot be amended.

Strangely enough, we could pass this and never pass the third part. I do not know exactly what that does to us. I do know what passing the third part means to all this. But it is different, this House Concurrent Resolution 395 at the desk. It is different. It can be amended. It is open to amendment.

And all of this needs amendment, very seriously needs amendment.

Let us make a judgment on this part, the part that is before us and that cannot be amended.

What do taxpayers think of it or what will they think of it when it does become law?

There are two basic methods for taxpayers to judge tax bills. The first is will I pay more or less taxes after it becomes law? That is basic.

Then the second basic method by which the average taxpayer judges whether a tax bill is good or bad is, is it good tax policy for the business or the industry with which I am involved, that I depend upon for my livelihood, for my job, or for making a living if I am in small business or I am in farming or ranching or whatever?

Does it not occur to all of us that is the way it boils down, whether the taxpayers, the public at large consider a tax bill good or bad? I think it does.

Let us see on the first question, "Is this a good tax bill for me as a taxpayer?"

Well, let me talk the way I guess any of the 100 of us would have to answer that question candidly and honestly. Yes, I think for myself and my colleagues and my wife and my colleagues' wives, that, yes, we will get a tax cut; maybe it will be about $2,000. That is not bad, is it? So I ought to love this bill. I ought to be voting for it on that criteria.

I do not love this bill. I think it is a bad bill and I am against it. Why would I be against it?

We get a tax cut, but two out of five of our childen will get an increase in taxes of about $200 per year. We get a $2,000 tax cut, but my staff and your staffs and all my colleagues' staffs, about one-third of them, are going to pay more taxes, maybe $200 a year more. That ought to be a wash, should it not, get 10 of our staffs to pay about $200 more and we get about a $2,000 tax cut. That ought to be a wash.

I believe that those with lower income need a tax cut more than I do. So that is one reason I oppose this bill.

On the second point, does this tax bill help the industry or business on whom our livelihoods depend?

On all analyses this bill is bad for basic industry. When you weigh one against the other, one provision against the other, as you must when you analyze the tax bill, this bill is bad for agriculture, for forest products, for mining, for anything, those are basic industries, the most basic of our country, and those are the industries we have in my own State of Montana. We are really basic out there. But we are not so unique. Ours are basic industries. We get our production out of the earth. That is pretty basic for the United States, pretty basic for the world. And this bill is bad for those industries in wiping out capital gains and wiping out income averaging that farmers and ranchers need very badly, with the high swings in their income because of the vagaries of nature, the difference between one year and another with production. This bill wipes out the investment tax credit.

So, I oppose the bill on the second point and I oppose it with all my strength. The economy of this country is built on these basic industries. These industries are struggling now. Some of the individual operators are already broke. They are gone. Many more of them are dying off, going out of business.

For those who are left in these basic industries, this bill obviously makes that recovery back to a profit level more difficult.

These people do not need a crystal ball nor an economic model to know they do not need this tax bill, and they cannot stand it, because many of them cannot survive under this bill. They do not need a crystal ball to see that. They do not need an economic model to run it through large computers to see what it will do to them. They know.

But those who do use the economic models and run it through these huge computers to see what the outcome of it would be over the period of the next 5 years, Chase, Wharton and Data Resources, they all reach the same conclusion: Less investment, less growth, continued high unemployment, and more deficit.

That is not the kind of recipe that we need for the economy of this country during the next 5 years. The economy is shakey enough. We have no need to add to the self-inflicted wounds causing more economic damage to ourselves. So I oppose the bill on that ground.

But there are more reasons to fight the passage of this bill. It is double taxation on retirees who are State, Federal, and local retirees who have contributed into their own retirement funds. They put a nest egg, mind you, each month aside for their retirement and before they put that nest egg aside for their retirement out of their pay they have paid the taxes to the U.S. Government. They have paid their income taxes on that.

But this bill will require them to pay those taxes again when they do retire drawing from their nest eggs that have accumulated for their retirement funds. That is double taxation. That is paying taxes twice and why would we put this tax burden on retirement funds? Why would we do that? Why would we be so mean to retirees, clobber them, clobber our most vulnerable group, retirees who have worked all their lives, who have worked hard on fixed income and just paid in those nest eggs so they could retire with some degree of comfort?

Believe me, this is the first time to my knowledge that we have ever enacted into law this type of taxation on savings for retirees. It is totally unfair. In fact, it is abominable and I will vote against the bill.

But this bill does not stop there in terrible taxation. It has retroactive taxation. In a number of areas, taxes will be collected on past transactions done legally and in good faith according to the law, but this bill retroactively in a number of areas is going to make those transactions subject to tax. In other words, it removes the tax deduction.

□ 1130

When investment was made on one basis legally and in good faith, now to change the bill and make it subject to tax is totally unwise.

What are some of these areas? Well, I just mentioned one. Even the double taxation on retirees is retroactive back to a date this summer, about July 1.

But on investment tax credit, instead of being a tax credit it becomes subject to tax, retroactively, limited partnerships; retirement taxes, as I have already described.

There are a number of areas. It is very difficult—in fact, no one should describe this bill as fair. It should not be described as fair. It is unfair.

For what reason, I ask, should we pass legislation devising newer and greater unfairness in our Tax Code? That is not reform. Personal savings are discouraged by eliminating millions of Americans from IRA's, individual retirement accounts.

Let me get to another point. I grew up learning the philosophy, and I believe in it, that if you were lucky and made more money, you could afford to pay more taxes than when you had earned less, a progressive income tax. I grew up believing in the wiseness of that, and I still believe that it is prudent and a good philosophy because it is good for people and good for the country, especially good for the economy of this land of ours. And this bill virtually ends that concept, that philosophy of the progressive income tax.

And then the bill goes in another direction that seems to me to be totally unwise. It is going to make it harder to be charitable. It makes it harder to donate to our churches, our charitable organization, our colleges, universities, hospitals, research centers, and humane organizations, whether for people or for animals.

This bill discourages charitable donations to these very fine organizations and institutions. For those who want to get it, they are going to have to itemize to get it and that is a discouragement. And then it eliminates from the Tax Code a provision that encourages donations of appreciative property. I believe this is unwise and unneeded.

You know, from cradle to the grave, from kids to the elderly, the bill is unfair and hawks and rooks people on taxes they pay.

What about the good in the bill, though? What about describing the good in the bill? Well, it does close loopholes. That is a good idea. And it knocks off the very low in income from paying any taxes at all. That is a good idea. And it does tax the profitable corporations, setting a minimum tax. And that is a good idea. And I do not quarrel with retailers who point out that they are paying more of their share and the bill has relief for them. Those are good points. Some of them relieve taxes and some of them, in closing loopholes, bring more taxes in and they should be paid.

The point is this: We could do the good things that I have mentioned—closing the loopholes, collecting taxes from those who are escaping paying taxes now—and pay for those good things in the bill without dragging in all this baggage that is adverse to economy, which is very damaging to indiviudal taxpayers, very damaging to those who are trying to make their livelihood in these basic industries, we could do all of the good things without doing the bad things.

There is no reason for dragging in the retirees and double taxation. There is no reason for doing that. That is totally unfair. It is poor tax policy. It is abominable tax policy and it should never be done.

We do not have to abandon the idea of the progressive income tax, as it virtually is abandoned in this bill. And above all, we do not have to have a mixed bag of totally unsupportable, totally unsupportable bad baggage in this bill—retroactivity, these other things that I mentioned—which all add up to create that question that was asked by the reporter on National Public Radio to the chairman of the Finance Committee, who is always very candid, and said: "In light of the serious objections that has been produced on this bill, but particularly in regard to the economic model where it indicates a drag on the economy for the next 5 years, should there not be changes? Is it wise?"

I think it is totally unwise and I am totally against the bill.

And so, when we have the opportunity, if the opportunity occurs, where the third part of the bill, House Concurrent Resolution 395, those 75 additional pages to add to all of this to make it three complete parts, revising the Tax Code under this bill, when it is open to amendment, I would hope to amend this final package and remove some of those horrible, horrible tax policies, horrible steps in the wrong direction, so we could have, truly, an opportunity for the people who are going to be damaged to get some redress before the final action occurs.

I hope we get that opportunity. It is my understanding that the third segment of House Concurrent Resolution 395 could conceivably be held there and never called up. And if that is done, of course, we have no opportunity to correct some of the dangerous laws, bad baggage, in this bill. But I hope the opportunity does occur, and I hope that we will have a chance to make some changes in the public interest.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. DeCONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona [Mr. DeConcini].

Mr. DeCONCINI. I thank the Chair.

Mr. President, I rise to discuss this tax bill because of its importance and because it is going to affect all Americans for a long, long time. I have labored in this Chamber for the 10 years that I have been in the Senate in an attempt to further tax reform. Probably everybody has made their share of speeches on tax reform and I am no different, Mr. President.

□ 1140

I have worked on it. I think some certainly have worked harder and longer than this Senator. Some have devoted a great deal of time—especially those on the Finance Committee, trying to put together a bill that would be comprehensive and of course fair. That is what we are talking about today. Does this bill meet the criteria that we need for tax reform?

I want to comment the chairman, Senator Packwood of Oregon, and the ranking member, Mr. Long of Louisiana, for their dedication and their hard work. It is no simple task—Senator Bradley from New Jersey, Senator Danforth from Missouri, and others on the Finance Committee have spent a great deal of time working to put together what was supposed to be true tax reform, and tax simplification. It is a new era in paying taxes.

No one that I know likes to pay taxes. No one wants to pay more than anyone else. But people have a general sense in this country that we do not have a fair tax system, but that we need a fair tax system. We are confronted today with the question: Is this fair?

We have heard many say that it is fair; that it does some very important things, and I concur. First, it takes 6 million working poor or low-income people off the tax rolls. That indeed is fair, and something that I support and believe is necessary. This bill also imposes a strict minimum tax on most of those 13,000 Americans who had incomes over $1 million last year, and paid no taxes. There is also a tough minimum tax on corporations who through the tax system and without breaking the law have been able to escape paying any taxes.

We all admire that part of the bill. At least this Senator does, and I think everybody supports it. Perhaps, there are a few of those who will now have to pay taxes who haven't in the past who would still like to see the old system.

We are nonetheless confronted with a tax proposal that has some real problems. Is this simplification? Is this massive work that has been put together, two volumes of roughly 1,800 pages—is that simplification? I rather doubt it.

I have proposed, Mr. President, for some years a tax proposal put forth by Professors Hall and Rabushka of the Hoover Institute out of Stanford University. It is radical. It is really new. It strikes at everybody. And some people really dislike it because it touches a sensitive core that is very important to them. But it treats everybody the same. For example, it helps out the working poor. A family of four making under $12,600 will pay no tax. After that everyone would pay a flat tax.

The Senator from Idaho and I introduced that. Then we modified it so we had some progressivity in the bill instead of one flat rate of 19 percent. We had two. But we eliminated almost every deduction.

We had a system that, if you were in business, you could fill out your income tax return on this postcard. This would apply if you were the Exxon Corp. or the IBM Corp., or whether you were a small business in

New York City or Phoenix, AZ. If you were an individual, you also had a postcard, whether you were the President of Chrysler or IBM or whether you were working for an hourly wage.

We eliminated all of those deductions, shelters, and benefits that have been put in the code, many for good reasons, in hopes that we would have a system that would bring a real change. We hoped it would restore the confidence of the American public and that they would believe that everybody was going to pay their fair share, nobody was going to escape. Business would no longer have shelters and deductions, but they would not have to pay tax on their actual investments. they would write those off as expenses until they are totally written off. All the cost of their products would be written off, but no longer could they write off jet airplanes, country club dues, and other excesses as we have seen in the corporate world.

Well, Hall and Rabushka went by the wayside. The Senator from New Jersey, Mr. BRADLEY, and the Congressman from Missouri, Mr. GEPHARDT, came up with their proposal which is not too far from what the Senate passed a couple of months ago. I take my hat off to those two gentlemen for their tireless effort to bring a simple, modern, slightly progressive income tax while eliminating most deductions. Is that what we got?

I do not believe so, Mr. President, though this tax bill eventually gets us to two rates of 15 percent and 28 percent. I have real problems in concurring that this is simplification.

I do not know that this does what we really want to achieve.

Yes, there is a sense of fairness in the bill. But wait until we see what is in this bill. And I dare say, I will submit to anyone in this Chamber or in the country. Is this bill really fair?

First, let me say that there are indeed some positive things in the Senate bill, and I voted for that bill last June. I had great reservations about the bill but I thought here is an opportunity to move into a conference and into negotiations with the House members of the Ways and Means Committee and to come forward with a bill that is real simplification and reform.

At that time, I said that I was going to vote for this bill with the true hope the individual retirement accounts would be substantially improved and provide a greater incentive for savings for more Americans. The changes were not a wide-sweeping as I had hoped.

I was deeply concerned about the elimination of the sales tax deduction. The State of Arizona relies heavily on the sales tax. I had hoped that there would be some consideration in the final version for those States that do not have high income taxes, but do have a relatively high sales tax. There was no such consideration.

The change in the 3-year basis recovery rule for Federal retirees is simply unfair. But worst of all is to make it retroactive to July 1, 1986. That is unfair. It was not in the Senate bill.

The transition rules we are told are necessary, and that we must have a smooth transition to the new law. Let me talk about one particular rule known as the steel transition rule. The special rule provides for the steel industry of this country. This is outrageous. It is not that the steel industry is doing so good, but if we are going to allow the Government to subsidize an industry, we ought to be up front about it and not pretend that we are passing a reform bill.

First, it is not a true transition rule. By definition, a transition rule is to smooth the transition from current law to the new tax bill. However, the steel transition allows a practice that would not be allowed under current law. In the end, the result would be that the Treasury Department will actually write checks to a number of U.S. steel companies totaling in excess of $400 million—perhaps close to one-half billion dollars.

The rationale we are given for this transition rule is that the steel industry has been particularly hard hit, and therefore we must do something to help that industry.

Well, Mr. President, I can tell this body a thing or two about industries that are hard hit. In the State of Arizona, the copper industry has lost 50 percent of its workers—14,000-plus workers no longer have jobs, and half of the mines in the State have been closed. The copper industry has not made profits in the last several years. It is not just in Arizona that the copper industry is so hard hit. It is nationwide. I have been told that the timber industry has similar problems, and similar unused investment tax credit.

Why should they not be helped? Why is steel alone singled out?

□ 1150

The issue comes down to this: Is it fair? I do not think so. I do not think it is fair to single out this industry and have the taxpayers write checks for those unused tax credits that were available when they did not make money and apply them to years when they did make money.

Let us talk a little bit more about some of these other transition rules. It is important that we look carefully at them:

On the minimum tax, we all think that everyone should pay a minimum tax. It is only fair. It is part of being a citizen.

There are three interesting examples of companies to whom the minimum tax does not fully apply. I cannot justify voting for this bill unless that is clearly resolved.

One is Control Data on page 274 of the report, which gets a $25 million break on its minimum tax.

Commonwealth Edison and Middle-South Utilities also get special breaks. We do not know how much the Treasury is going to lose to Commonwealth Edison because the minimum tax does not fully apply, but Middle-South Utilities gets away with $20 million.

Let's look at charitable contributions, most universities will no longer be able to sell athletic seating rights and then have the cost of that serve as a charitable deduction.

That may be necessary to really simplify this bill, well and good. But it is interesting that two universities still have this availability. One is the University of Texas and the other one is identified as Louisiana Academics and Athletics.

Why? Why single these people out for special benefits? I wonder.

What about pension programs? We have a strict rule in this bill that says, "You cannot as a company go in and invade your pension fund and take that money out without paying a penalty so you can be sure that the money will be there when the time comes for the retirees."

However, several companies are exempt from paying that.

Phillips Petroleum Co. will avoid paying $75 million when it takes money out of it's pension plan. Lukens Steel Co. gets a $1 million break, Chris-Craft of New York gets $1 million, Dresser Industries gets $12 million, and Frontier Airlines gets $2 million.

What about low-income housing? There is a generic low-income housing transition in this bill, which is important. I compliment those who considered that a necessity.

The revenue cost of that generic rule, applying to all low-income housing projects, is estimated at $500 million, which is a hefty little piece of change. However, in addition to the generic rule for low-income housing, we have a few others that happened to squeak in.

Chicago Projects for $50 million, the New York City Housing Development Corp. for $50 million, one called Sharp out of Massachusetts for $50 million, and the Texas Rural Low-income Housing Project for $1 million.

It goes on and on, whether we talk about rapid amortization, or accelerated cost recovery system and investment tax credits. There are 220 transition rules in the report for the accelerated cost recovery system and investment tax credit.

Are these good proposals? I do not know. I just got them the day before yesterday.

Are they all worthwhile? I do not know. I can say when you have that many, you have to question the real integrity of this legislation.

I am going to submit for the RECORD right now a list of some of these rules.

The list includes Pan American, $26 million; Delta Airlines, $46 million; Texas Air, $10 million; Northwest Orient Airlines, $61 million; Brooklyn Navy Yard, $9 million.

The list goes on page after page after page after page.

Mr. President, I ask unanimous consent that this list be printed in the RECORD at this point.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

ACCELERATED COST RECOVERY SYSTEM/ INVESTMENT TAX CREDITS

The following is a partial list of the 220.

(NA indicates dollar figures were not made available. M indicates millions of dollars of revenue loss to the Treasury)

Pan Am $26m.

Delta Airlines $46m (GA).

Texas Air $10m.

Northwest Orient Airlines $61m (MN).

Brooklyn Navy Yard $9m (NY).

Brooklyn Renaissance $3m (NY).

Riverwalk $9m (NY).

Carnegie Hall $4m (NY).

Audubon Research $2m (NY).

Viacom $1m (NY).

Merrill Lynch Center $4m (NY).

New York Coliseum Redevelopment, no loss (NYC).

Times Square Redevelopment $27m (NY).

New York Metro Transit Authority $NA (NYC).

Long Lake Energy Corporation $23m (NY).

Pioneer Place Parking Garage $6m (Portland, OR).

Harbor Place $10m (Baltimore, MD).

Atlanta Underground Project $7m (Atlanta, GA).

New Orleans Riverwalk $5m (Louisiana).

Ownings Mill Town Center $9m (MD).

Bayside Center $6m (FL).

Enesco $11m (MO).

Sverdrup $1m (MO).

Vidalia Hydro $94m (LA).

Rialto Tire Burning $2m (CA).

Gilbertine Power, $NA (PA).

Allegheny Electric Coop $10m (PA).

Hellsgate Hydroelectric $NA (CO).

Archibald Power $9m (PA).

Texas City Cogeneration $29m.

Montana Hydroelectric/cogeneration projects $68m (MT).

United Telecom $234m (MO).

Agri-Beef $NA (ID).

MCI $34m.

Alcoa $31m (TN, IO, IN).

PPG $4m.

Pacific-Texas Pipeline $187m (CA, AZ, TX, NM).

Phillips/Point Arguello $59m (CA).

RCA Satellite $1m (NJ).

COMSAT Satellites $0m (DC).

New Orleans Saints $1m (LA).

Greenriver Laundry Plant $5m (WY).

Lake Superior Paper $29m (MN).

Kaiser Power $17m (CO).

Dulles Rapid Transit $6m (DC area).

Temple Inland ($3M) Texas.

Electro/Mold (no loss) Minnesota.

Satellite Industries, Inc. (negligible loss) Minnesota.

Peat Products ($1M) Maine

Super Key Market (negligible loss) Kentucky.

Bethel Cogen (negligible loss) Maine.

Back Bay Tower ($1M) Oregon.

Eastman Place ($1M) New York.

Marquis II Project (no loss) Georgia.

Mid-Coast Marine ($1M) Oregon.

Biogen Power ($9M) Arizona.

Lodging Property (no loss) Iowa.

Brammer Manufacturing Co. (no loss) Iowa.

Lynmer Manufacturing (no loss) Pennsylvania.

Weyerhaeuser ($6M) North Carolina.

Duke Power ($NA) North Carolina.

Kenosha Harbor ($2M) Wisconsin.

Point Gloria ($1M) Massachusetts.

Lakeland Park Phase II (no loss) Louisiana.

Santa Rosa Hotel ($1M) Florida.

Esplanada Village (no loss) Louisiana.

Sheraton Baton Rouge ($2M) Louisiana.

RCI Corporation ($2M) New York.

Kansas City Southern Fiber Optics ($4M) 10 States.

Hardage Enterprises ($6M) State Not Indicated.

Brown & Brown (no loss) Kansas.

Koch Refinery ($7M) Minnesota.

General Aviation Aircraft ($27M) 4 States.

Nichols Boat ($9M) Washington State.

Kennecott Copper ($28M) Utah.

Trolley Square ($1M) Utah.

Pullman Leasing ($1M) Illinois.

Rumford Cogen/Boise Cascade ($27M) Idaho.

Coeur D'Alene Mines ($2M) Idaho.

Media General ($1M) State Not Indicated.

Myrtle Beach ($1M) South Carolina.

Brendle's Inc. (no loss) South Carolina.

Bristol Project (no loss) Rhode Island.

SoutherNet Fiber Optics ($3M) Virginia.

Sierra Pacific ($23M) Nevada.

Reading Anthracite ($43M) Pennsylvania.

Atlantic Richfield ($5M) Alaska.

Mesa Airlines (negligible loss) New Mexico.

Cargill/Northstar Steel ($3M) Ohio.

Mesaba Airlines ($1M) South Dakota.

Sixth & Broadway Project (no loss) Iowa.

Northwestern National Life Insurance of Minneapolis ($1M).

Flushing Center ($5M) New York.

Southeastern Michigan Sports Stadium ($2M).

S.S. Admiral ($7M) Missouri.

Harbert/Infilco Degremont, Inc. (Harlington Wastewater) $NA.

Fort Howard Paper Company ($39M) Georgia.

Central Gulf Lines ($8M) Louisiana.

Monsanto—3 projects ($2M) Missouri.

Greenville, S.C. Wastewater Treatment Plant ($3M).

Delaware Otsego ($1M).

Crown Cork & Seal ($5M) Mississippi.

International Paper ($14M) State Not Indicated.

Covington Riverfront Project ($2M) Kentucky.

Manchester Solid Waste ($3M) New Hampshire.

Mountain View Apartments (no loss) Massachusetts.

Morgan Guaranty Trust Co. ($32M) New York (Wall Street Bldg).

Chrysler Belvedere & St. Louis Plants ($78M) ILL & Missouri.

Peabody Place ($5M) Tennessee.

Ultrasystems-Ogle and TEORCO ($14M) California.

Park Forest/Town Center Redevelopment ($1M) Illinois.

Dexter Corporation Cogeneration Facility ($8M) Connecticut.

Eugenie Terrace ($4M) Illinois.

Brockton, MA Magnetic Resonance Imaging Clinic (no loss).

Mendota Biomass Power Project ($3M) California.

Drexel Burnham Office Building ($20M) New York.

Honey Lake Alternative Energy Project ($1M) California.

Derry, NH Waste-to-Energy Project ($2M).

Burbank Manors (negligible loss) Illinois.

Los Angeles Solid Waste Disposal Project ($5M) California.

Oxford Place ($1M) Oklahoma.

St. Charles Mixed-Use Center ($4M) Missouri.

Illinois Diversatech Campus ($20M).

Navistar ($2M) Illinois.

Zimmer Coal Plant ($71M) Ohio.

Ponderay Newsprint Co. ($7M) Washington State.

Presidential Airlines ($7M) Virginia and South Carolina.

Standard Telephone Company (no loss) Virginia.

Ann Arbor Railroad (no loss) Michigan.

Ada, Michigan Cogeneration ($5M).

Anchor Store Project ($2M) Michigan.

East Bank Housing Project (negligible loss) Michigan.

Wurzburg Block Redevelopment ($2M) Michigan.

Legett and Platt ($2M) Missouri.

Folz Corporation (no loss) New York.

Grand Rapids Arena Project ($2M) Michigan.

Campbell Soup Company ($12M) Pennsylvania & California.

U.S. Trust (Boston Bank) ($1M) Massachusetts.

Harlem Third World Trade Center ($6M) New York.

Overton ($4M) Florida.

El Monte, California Busway Terminal ($1M).

Muskegon Ferry ($1M) Michigan.

S.S. Monterey ($8M) New Jersey.

Steel Rule Modification (LTV) (no loss) State Not Indicated.

Holland Center ($1M) Michigan.

McLouth Steel ($1M) State Not Indicated.

Spray Cotton Mills (negligible loss) North Carolina.

Mr. DECONCINI. Next is rehabilitation tax credits. There are 71 transition rules of that in the report. There is a lot of good to be said about rehabilitation tax credits, but why should only those projects with savvy lawyers or good political contacts be able to take advantage of them?

I ask unanimous consent that the list that I submit to the Chair be printed in the RECORD.

They include such things as Old Main Village, $1 million; Barbara Jordan II Apartments, $1 million; the Willard project, no cost on this one but we know that is right here in Washington. It goes on and on.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

REHABILITATION TAX CREDITS

(NA indicates dollar figures were not made available. "M" indicates millions of dollars lost to the Treasury.)

(Not a complete list.)

Old Main Village $1m (MN).
Washburn-Crosby Mill $2m (MN).
Barbara Jordan II Apt. $1m (RI).
Lakeland/Marble Arcade $1m (FL).
Warrior Hotel $NA (IO).
Willard Project $no loss (DC).
Waterpark $2m (NB).
H.P. Lau Building $1m (NB).
620 Project $1m (KY)
Starks Building $1m (KY)
Bellevue High School $2m (KY).
Robert Mils Project $NA (SC).
Bellevue Stratford Hotel $6m (PA).
Motor Square Garden $5m (PA).
Penn Station/Madison Square Garden $21 m (NY).
30th St. Station $5m (PA).
Bigelow-Hartford $3m (CT).
Shriver-Johnson & Blackstone Inn $1m (SD).
Wayne County Courthouse $4m (MI).
LA City Library $7m (CA)
Dixon Mill $2m (NJ).
125th St./Harlem Urban Devlp. $11m (NY).
American Youth Hostel $1m (NY).
River West Loft Devlp. $1m (IL).
Gaslamp Quarter Historic District $4m (CA).
Eberhardt & Ober Brewery $1m (PA).
Mount Vernon Mills $1m (SC).
Charleston Waterfront $2m (SC).
The Tides $1m (RI).
Kiel Auditorium $12m (MO).

Mr. DECONCINI. I must say there are some transition rules in here that benefit the State of Arizona. I am glad they are there. If we are going to play this game of favorites, I do not want Arizona left out. Our sports stadium that may be built soon is also included, along with about 29 other sports facilities. A lot of those got in.

But I would give them all up, I would give up all the transition rules for the great State of Arizona, if everybody else was willing to play the same game. But everyone won't. That is why this bill is really not a fair, simple tax bill.

The revenue losses that are going to be generated by this bill from 1987 to 1991 are a minimum of $286 million. How can we come forward at a time of the highest deficits ever and propose legislation that is going to cause a greater deficit?

In the first year there will be a $11.4 billion increase. But in 1988 there will be a $16.7 billion loss to the Treasury? In 1989 when there will be a $15.1 billion loss?

Overall, this bill is going to cause more deficits and that really disturbs me.

Economists really argue over the effect of bill.

Some say it is going to help things and some say not. Murray Weidenbaum foresees a disaster as a result of this bill. He predicts a 1-percent reduction in GNP in 1987 and that the unemployment rate will climb by one-half percent next year.

Chase Econometrics say there will be a modest anticipated drop in growth of four-tenths of 1 percent. This will continue to be argued for a long time.

But on the question of fairness and equity, it really is no wonder the American taxpayer doesn't have much confidence in this Government when we promote and we talk and we cite tax simplification, and then we add an additional 400 transition rules put into this bill. It is a ripoff of the taxpayers.

When this bill passed the Senate there were several hundred transition rules and I voted for that bill with great reservation.

I said then that I would give up those few minimal rules that are there for Arizona if we played it fair and did away with them all.

That is not what has happened. We have compounded this by adding 400 more. We are not quite sure if $10 billion covers the loss to the Treasury.

Mr. President, perhaps some will say we made a gallant try on the floor of the House and the floor of the Senate. Let me say to the chairman and the ranking member I understand the difficult problem they have been confronted with. The President has made this a high priority. The public wants true tax reform. I understand the art of compromise.

I know what the need is, to try to put together legislation that can be passed and worked out fairly.

But have we really met the challenge that the people of this country have asked us to meet? Have we come forward with a fair bill that treats everybody alike?

Have we left out a few special interests? If we have, that is good. But there are more than 600 special transition rules in the bill totaling $10 billion of the taxpayers' money. That is more than this Senator can tolerate, for this reason alone it is not a good bill.

Mr. President, I yield the floor and I reserve the remainder of my time.

□ 1200

The PRESIDING OFFICER. Who yields time?

Mr. PACKWOOD. Mr. President, in a moment, I shall put in a call for a quorum and ask unanimous consent that it not be charged against either side.

I suggest the absence of a quorum and ask unanimous consent that it not be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER [Mr. DOMENICI]. Without objection, it is so ordered.

Mr. PACKWOOD. Mr. President, I yield such time as the distinguished Senator from Virginia may need.

Mr. TRIBLE. Mr. President, I thank the Chair. I thank the distinguished Senator from Oregon, and I shall follow his leadership on this tax reform measure.

The tax reform measure is not a perfect one, but it is a good bill and it moves us in the right direction. Lower marginal tax rates will be an incentive for greater economic growth and job creation. This bill will create a fairer tax regime where similarly situated taxpayers will pay roughly the same amount of tax and everyone will pay his fair share.

Moreover, this bill will create a more productive economy, one where economic decisions are based on merit, on real return, and not on tax avoidance. For these and other reasons, I support this measure. I commend the chairman for his leadership.

Let me spell out my thoughts more fully. By dramatically reducing marginal tax rates for all Americans, we will vastly improve the incentives for working, saving, and risk-taking. The result will be an economy that operates more productively.

Ultimately that means more and better paying jobs for all Americans. Significantly lower personal and corporate rates mean that investment and spending decisions will be made on the basis of return—not on the basis of tax avoidance. It will be economic merit, not tax considerations that will drive resource allocation. The result will be an economy that operates more efficiently and effectively.

Our Tax Code now is replete with numerous incentive provisions which encourage some investments rather than others simply because of tax preferences. Government intervention of this sort is cumbersome and inefficient. This bill is a major step in reducing Federal intervention and liberating the economy from the Tax Code.

These incentives are created by making the Tax Code fairer. This bill closes loopholes and imposes a stiff minimum tax on corporations and individuals, thus insuring that everyone pays their fair share.

This bill will dramatically reduce the ability of corporations and individuals to avoid taxes by exploiting loopholes in the law.

For most American taxpayers, this bill means tax reduction. Those for whom shelter means a roof over their head will benefit greatly from this legislation. Put simply, income taxes for typical taxpayers are reduced at every level of income.

This bill contributes to tax simplification. As many as 10 million taxpayers will no longer need to itemize. Instead they will use the short form. Millions of Americans can give up the part-time job of keeping records for the IRS.

The prospects for our Nation and our economy are promising. Rather than being a vehicle for social or economic experimentation, our Tax Code will be a far simpler system designed to collect necessary revenues. The Government's influence over economic decisions will decline and that of individuals will rise.

A smaller role for Congress in allocating resources means a more vibrant and productive economy. The creative energies of Americans will be channeled toward producing goods and providing services and away from seeking favors in Washington.

Although this is generally a fine bill, it needs to be improved in a number of areas and I hope Congress will act promptly to make these changes.

One area of special concern is the tax treatment of contributory pension plans.

For many, many months I have opposed any changes in the method of taxing contributory retirement benefits. I sponsored legislation to keep the current taxation scheme by retaining the 3-year-basis recovery rule. I offered an amendment, narrowly defeated during debate on the tax bill, which would have maintained the current tax method, permitting retirees to receive previously taxed contributions to their pension programs before being subjected to Federal taxes.

I warned my colleages of the drastic consquences of ill-conceived changes. Simply stated, elimination of the 3-year-basis recovery rule will undo years of financial planning by some 30 million Americans who are affected by the basis recovery rule.

I urged my colleagues to be fair, to be just, while considering tax changes. Millions and millions of individuals and families have based their retirement plans on the expectation that under the 3-year-basis recovery rule, they would not be taxed as they withdraw their own aftertax contributions to their retirement programs.

Unfortunately, the provisions of the tax reform conference report affecting the basis recovery rule are not fair. It is unjust to change the rules of the game in effect for the last 30 years when people have made retirement decisions based on this important provision.

Mr. President, not only are these inequitable tax changes being suggested, but the conference committee has determined that they should be made retroactively. Drastic changes in the tax laws, costing individuals thousands of dollars, upsetting retirement plans, are to affect individuals retroactive to July 1, 1986.

Any public employee who retires after July 1, 1986, would be subject to significant tax changes. Mr. President, this is unprecedented. Such treatment of individuals is unconscionable.

The tax reform measure contemplates thousands of changes in current tax law. Yet, of all the changes being proposed in the reform measure, only one provision, affecting individuals only, would apply retroactively. The single retroactive provision applies to public employees who contribute to their retirement programs, by eliminating the 3-year-basis recovery rule effective July 1, 1986.

Why are these 20 million people being singled out for such treatment? Why are we asking them to accept a loss of financial security which we have not required of any other individuals? What is so special about these people that they are the only ones to be subjected to unprecedented tax changes?

Mr. President, I am deeply disturbed by these provisions in the conference report. I think that public employees deserve better treatment, fairer treatment, and hope that Congress will act to restore fairness in this area.

Second, I believe we need to do a better job in providing incentives for investment. There are two areas that are particularly troublesome, the treatment of depreciation and capital gains.

The treatment of depreciation of capital goods is far more restrictive than the current system. I believe this will adversely affect investments in plants and equipment and this issue should be addressed promptly.

Moreover, while it may be appropriate to tax capital gains as ordinary income, it is inappropriate to tax inflationary gains in this manner. Only real gains should be subject to this tax.

Finally I have reservations about the raising of the floor for the deduction of medical expenses. The conference report increases the level from 5 percent of gross income to 7.5 percent. These expenses are not chosen and there is little control that individuals have over these costs.

These concerns, notwithstanding, I believe the good outweighs the bad and that this measure represents an improvement over our present Tax Code. I urge my colleagues to adopt this conference report.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. Does the distinguished Senator from Louisiana yield time to the distinguished Senator from Alabama?

Mr. LONG. I yield, Mr. President.

Mr. HEFLIN. Mr. President, I voted for the Senate tax bill. I did so with some reluctance, but I felt that weighing it in the balance, the Senate bill we passed was good for America. However, I have even greater doubts about the conference report and I am genuinely undecided. I shall continue to listen to the debate. Perhaps it is the experience of having been a judge that makes one want to deliberate carefully before reaching a decision on a matter that could seriously alter the economy of this Nation, and the future of our children and our grandchildren.

First, I want to praise the committee and the chairman, BOB PACKWOOD, who has worked diligently and endeavored to produce a bill that tries to balance equities in a fair manner. I congratulate Senator BRADLEY for the work he has done on this, and especially the master of the tax laws, Senator LONG of Louisiana, who has a tremendous influence on this legislation. I congratulate him, as I have done in the past, for his mastery of complex tax laws and the consequences they will have on the American economy.

I know there are a number of Senators like me who are genuinely undecided. This morning, as I came to the Senate, I ran into Senator NUNN. He and I discussed the tax bill. We both are still undecided. He said, "You know, I feel like perhaps we are engaged in a poker game in which there are no limits and that perhaps we are gambling with America's future. We may be throwing dice relative to the future of our children and grandchildren."

Well, I have never been a gambler. Perhaps my upbringing in a Methodist parsonage as the son of a Methodist minister instilled in me certain beliefs about the ills of gambling. Besides, I grew up in a depression, when a person knew the value of a dollar, and knew that we ought to be careful about the way we spend it.

I played a little poker when I was overseas in the Marine Corps, but I was not very successful, so I gave it up. I never threw dice. I just thought it was too fast a game for me, too risky, too uncertain. So I have always been cautious about gambling with anything, my investments or my livelihood. I have tried to follow a path of being a fiscal conservative.

The first bill I introduced when I came to the Senate was a constitutional amendment to require a balanced budget, and I have continually fought to see that such an amendment is added to our Constitution. I have supported every effort to reduce deficit spending. I gave support to the Gramm-Rudman-Hollings deficit reduction plan. I have supported deficit-reducing budgets throughout my Senate career. I have supported the line-item veto.

Perhaps the biggest mistake I have made since I have been in the Senate was to support the 30-percent supply side tax cut, which has really produced the horrendous deficit problem that we are struggling with today.

I am worried that this tax bill will gamble with America's future too much. I worry that it is too risky. I worry that there are too many uncertainties within the bill and too many uncertainties as to its future influence.

I am terribly afraid that this tax bill causes misplaced priorities. With our ever-increasing deficit approaching astronomical figures, I think we should be concerned with reducing deficit spending instead of allocating potential resources, which could be used toward reducing the deficit, toward nonproductive efforts. This administration has cut nonmilitary government spending substantially during the past 5½ years.

□ 1210

Some of these cuts have been wise but some have been harmful to certain segments of our economy and society. We are faced with the ultimate fact that if we are going to maintain strong military strength to deter military aggression from our enemies and reduce deficit spending, there is no question that additional revenues and further nonmilitary program cutting is going to be necessary.

When we look at potential areas of additional revenue, we dig our heels firmly into the earth and say that we should not increase any taxes which would bring about a business decline or would prevent business growth. Our greatest need today is lasting jobs. I am utterly opposed to increased taxation on the individual.

However, there are clearly areas that revenues can be found without harm to overall business growth and without causing problems to the average taxpayer. But unfortunately this tax bill will eliminate the potential use of these areas for deficit reduction.

Yes, we need to close loopholes, but when loopholes are closed, the revenues gained should be directed toward deficit reduction. Tax shelters need to be eliminated, but when they are eliminated, the gain to revenue should be used to reduce deficits. Profitable corporations which have not been paying taxes should be paying taxes, but when such taxes are paid they should be directed toward the deficit.

I have heard certain administration officials brag to wealthy taxpaying groups that the maximum income tax rate on individuals will have been reduced from 70 to 28 percent under this administration.

Newton's third law of motion states "for every action there is an equal and opposite reaction."

What is the reaction of reducing the tax rate from 70 to 28 percent? The answer comes through loud and clear. "Triple the national debt." To me there is justification for labeling certain Members of Congress as the tax-and-spend crowd. Now there are many who should bear the title of the borrow-and-spend crowd. We must face up to the fact that after the tax bill passes there will be few loopholes to close, fewer shelters to dismantle; the minimum corporate tax will have been misdirected. In other words, many palatable sources of revenue that could have been used to fight the battle of deficit reduction will not be available.

There is a malady that I fear as a result of this tax bill and that is the disease that I will refer to as "rate creep."

Since the tax base now will be larger, we will not be confronted with the difficult task of facing a 10- to 15-percent tax increase vote in the future, but in the future I am afraid I will hear rhetoric ringing forth in this Chamber and in the House of Representatives that the public will understand and accept a 1- or 2-percent tax increase. Then the following year I fear we will hear the same argument. Perhaps a good analogy for "rate creep" is "weight creep." If you are not careful, you can gain 2 or 3 pounds a year and it is not too noticeable, but whether it be "rate creep" or "weight creep," 3 pounds or 3 percent a year amounts to 30 pounds or 30 percent over a 10-year period. Hopefully, 10 years from now, we will not see tax rates back where they are today with no deductions. "Rate creep" is a disease for which we must find a preventive cure.

Another problem that causes me concern about our misdirected priorities is in the area of trade imbalance. Senator **Boren** made an excellent speech in which he brought out the fact that we may really be defeating the "Buy America" spirit that is beginning to grow in this country. He mentioned that we are taking away many incentives for American industrial growth. We are doing away with the investment tax credits and the capital gains deduction. We are also greatly stretching out the depreciation schedules.

Mr. President, I would now like to turn to treatment of the farmer under the tax reform bill. I was dissatisfied with the way Treasury I, Treasury II, the House bill and the Senate Finance Committee bill impacted rural America. When the tax reform bill was on the Senate floor, we made some adjustments in the treatment of farmers. I was very discouraged when the conference report came back without these provisions. I am greatly concerned with the impact this bill will have on rural America, particularly our Nation's farmers, without these provisions. There is no doubt that any tax reform legislation that is approved by Congress and signed into law by the President will have a significant impact on farmers for many years to come. But, I am afraid this bill will have a devastatingly negative impact on agriculture.

A primary goal of tax reform is to bring fairness to our tax system by abolishing loopholes and shelters used by wealthy individuals at the expense of lower- and middle-income taxpayers. H.R. 3838 boldly attempts to achieve this goal by significantly lowering the tax rate for all taxpayers and making up the loss of revenue by abolishing loopholes that serve no socially useful purpose and that distort economic decisions. Unfortunately, farmers depend on many of the incentives in the Tax Code in order to keep their farms running and their heads above water. The economic troubles of rural America are well known. Thousands of farmers have lost their farms.

Will this legislation change this trend? I am afraid not, Mr. President. Will it increase this trend? Mr. President, I am seriously concerned that it will add nails to the coffin of American agriculture.

I am concerned and alarmed at the current economic climate that exist on the farms in Alabama, and all across America today. The economic statistics make it clear that our farmers are in a state of economic depression. Farm income continues to decline. Last year, net income was only $27 billion. This was $8 billion lower than 1984. If the 1985 figures are adjusted for inflation and expressed in "real" dollars, net income was barely one-half of 1979's level. In fact, Mr. President, real net farm income last year was lower than the real net farm income in 1929. Real net farm income was higher in 1939 than it was last year.

Mr. President, I hope my colleagues will closely examine the impact H.R. 3838 will have on future farm income before they vote for final passage. Will this bill stimulate increased revenues for our financially distressed farmers? I do not think so Mr. President.

I want to take a moment to explain, provision by provision the potential impact of this highly praised tax bill on our Nation's farmers. First, farmers would no longer get capital gains treatment from the sale of section 1231 property which includes livestock or timber. Under this bill a noncorporate family farm, with a taxable income of $35,000, would be taxed at a rate of 28 percent on the capital gain from the sale of an asset. Let me make that clear, gains from the sale of capital assets held for any period of time, 3 months of 30 years will be taxed as normal income. Under current law, the tax rate on that same income would also be 28 percent, but only on 40 percent of the gain, thus the effective tax rate would only be 11.2 percent. Also stop and think about the family farmer whose income is between $75,000 and $150,000, the capital gains rate is 33 percent.

Total farm assets declined more than 10 percent last year. Estimated asset value is now $865 billion, down 22 percent from the $1.1 trillion peak reached in 1981. The owner's equity in these assets has fallen to the lowest level since 1977. Will the elimination of the capital gains treatment from the sale of section 1231 property enhance the value of farm assets? I don't think so Mr. President. Many economists believe that eliminating these provisions will, in fact, further depress land and other asset values.

An even greater concern, Mr. President, is the problem this will cause with the families that had planned to use their farms as a source of income for their retirement years. Our Tax Code properly provides for a variety of retirement alternatives. However, in the real world many farmers and small business people do not have the necessary income to take advantage of these retirement programs. These people have all their equity wrapped up in the farm and this represents the bulk of their retirement program.

Mr. President, the one provision that alarms me the most is the repeal of income averaging. Income averaging has been a frequently used provision of the Tax Code up to about now. This provision is extremely necessary for farmers to even out their volatile changes in income. A farm family of five with an income alternating between zero and $40,000 per year would pay five times the tax as a family of five earning $20,000 each year. I believe income averaging should be retained for taxpayers with volatile incomes. Without it farmers with substantial income in the year of sale will not be able to offset that year's gain by prior years of low income or loss.

I addressed this concern previously, when this body considered the Senate committee bill. I worked with many of my colleagues who had expressed the same concern to amend the Senate bill. We were successful in reinstating this much needed provision. But the conferees did not see fit to keep income averaging for our farmers.

This bill also repeals the investment tax credit currently allowed for qualifying capital investments. Most farm machinery and equipment, many farm structures, and certain livestock qualify for the full 10 percent credit. For example, under current law if a farmer buys a tractor for $40,000 his after tax cost would actually be $36,000. If the investment tax credit is repealed his after tax cost would be $40,000 or $4,000 more than under current law. In 1983, farm sole proprietors held over $3 billion in accumulated tax credit and it is likely that current accumulated tax credits equal or exceed this level. Based on 1982 IRS statistics, a large share of these unused tax credits are held by farmers with substantial debt and with little or no off farm income.

Mr. President, hundreds and hundreds of farm equipment dealers and agricultural businesses have folded over the past 5 years. This of course, has devastated main street in many rural communities and small towns. Thousands of jobs have been lost. Economic growth in the farm-belt is dependent on the purchases made by the farmer.

Last week, a farm equipment dealer called my office. He had one question—when does the repeal of investment tax credit take affect? This year or next? When he was informed that it was repealed for property placed into service after December 31, 1986, the farmer that was negotiating a purchase left his office. Mr. President, this was a farmer that is trying to survive under the new farm policy. He is trying to increase his production and cut his cost, but to do so, he needs new equipment to be efficient. Will the repeal of investment tax credits give the needed incentive to increase capital purchases of new and used farm equipment? I do not think so, Mr. President.

I have read some arguments that if the investment tax credit is repealed, the hobby farmer and nonfarmer investor will be forced out of agriculture. This provision of the bill will rid agriculture of overinvestment, I am told. This provision of the bill will encourage only farmers to remain in agriculture, I am told. Mr. President, the IRS has stated that the largest share of unused accumulated tax credits are held by farmers with substantial debt and with little or no off farm income. The IRS agrees that investment tax credit benefits the true family farms. Beside, most hobby farmers and nonfarmer investors long time ago had sense enough to get out of farming. Will the repeal of investment tax credit benefit farmers by getting rid of over-investment in agriculture? I don't think so, Mr. President.

This legislation will also end soil conservation tax credits. Although this is a minor provision, one of little significance to the public, this is a necessary incentive. Farming is not profitable now. Few farmers have the income to justify investing in expensive soil conservation activities. This tax credit gave the little extra incentive to the stewards of the soil to preserve this essential natural resource for future generations. All Americans will lose with the repeal of this provision.

Mr. President, taken alone many of these provisions would not be detrimental to farmers. But added together these changes could prove devastating. I urge my colleagues to closely examine the impact this bill will have on rural America before casting their vote. I shall.

There is a lot of good in the bill. I have in previous speeches outline many of the improvements that will occur with this bill. I am weighing the good against the bad.

The last question that remains for me is whether or not to vote for this bill. I will continue to study this bill, continue to listen to the debate. I believe there is a genuine need for tax reform, but I am concerned about the matters that I have discussed today. As I study the bill further, as I listen to the debate, I realize that I must make up my mind and do what I think is best for this country. I need your advice. I pray I make the right decision for our children and grandchildren.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. PACKWOOD. Mr. President, I ask unanimous consent there be a call of the quorum without the time chargeable to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll to ascertain the presence of a quorum.

The assistant legislative clerk proceeded to call the roll.

□ 1220

Mr. LONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LONG. Mr. President, I yield 5 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 5 minutes.

Mr. HART. I thank the Senator from Louisiana.

Mr. President, the conference report we are about to approve represents the most memorable achievement of the 99th Congress.

It is a memorable achievement in part because it has been so long in arriving. The opportunity to vote for this conference report concludes a campaign that, for many of us, began with our entry into public life. The idea of a broader, more equitable tax base has had to fight for its life at every stage of its development.

The bill that has emerged from these trials is not perfect by any means. No one will find it perfect in every detail, as indeed the Senator from Colorado does not. Yet it is a far better bill than most of us would have thought possible 1 year ago.

It will be good for the taxpayer—not just because it will result in lower tax bills for most, but because of the manner in which it will lower those tax bills.

Equal incomes will be treated far more equitably. And every taxpayer will be encouraged to work more and earn more and invest more productively, with the opportunity to keep far more of what he or she earns.

That is why this bill will be good not only for individuals, and for individual businesses, but for our national economy—the sum of all of our efforts. Changing the philosophy of our Tax Code can confirm our national faith in economic democracy—and so in the effectiveness of our political institutions, as well.

There is another reason this legislation stands out as a monument in the history of this Congress. A vote for this legislation is a vote for the long term good of the Nation over the short-term calculating of politicians.

We all know most of the benefits of this bill will take time to ripen. In the meantime, there will be doubts. Attention will be paid primarily to the widening of the base. We will hear from those who see only the sacrifice imposed upon their particular industry.

Despite this, an overwhelming majority of both Houses of Congress has shown itself willing to support fundamental reform.

And by so doing, we accomplish more than just the repairing of an inflation-ravaged tax structure. We reverse the trend toward ever greater tax expenditures, which in this decade have become a $400 billion a year hemorrhage in our body politic. We also put an end to 5 years of loophole widening and lopsided tax cutting for the benefit of corporations and the wealth—excesses that have contributed mightily to the greatest deficits in our fiscal history.

In this era of immediate political gratification, the willingness of Congress to resist special pleadings and support this far-sighted initiative is memorable indeed.

This Senator was pleased that the Senate bill predominated in conference. The Senate bill offered far more fundamental reform, making more income subject to tax at lower rates.

Much has been made of the progressivity issue, but the current law's progressivity is more apparent than real. We have high rates on paper, but the rich can shelter, exclude, or exempt far more of their income than lower or middle income people. Some estimates indicate that those who make more than $200,000 can now exempt as much as half of it.

This bill lowers everyone's tax rates. But, unlike the 1981 tax cuts, it recognizes that rates don't tell the whole story. The new law enlarges the personal exemption and the standard deduction so that 6 million of the working poor need no longer pay Federal income tax.

Working Americans who have no access to tax avoidance schemes will now find themselves paying less in tax and keeping more of the extra income they may earn. Four out of five taxpayers will pay no more than 15 percent on their taxable income.

This bill installs a tough minimum tax on both corporations and individuals, we need no longer tolerate the insult of major, profitable corporations that pay no Federal income tax.

This bill ends the 60 percent exclusion for capital gains income, so that those whose income comes from investments will be taxed just like those whose income comes from wages. Best of all, this bill ends the practice of using paper losses from one business to reduce one's taxable income from another. Tax shelters contribute to the deficit and distort economic investment.

In the final days of debate on this reform, we have heard that the bill—despite strong support from a Republican President—would actually be bad for American business. And it is true that the bill would increase the total tax burden on corporations by $120 billion over 5 years.

The important thing to remember here is how business taxes are increased. The rate is actually lowered, as individual rates were. But more revenue is raised because the over-generous provisions of the 1981 tax cut—accelerated depreciation—are reined in. Redundant credits—such as the investment tax credit—are repealed.

The tax windfall accruing to corporate takeovers is repealed. Entertainment expenses are no longer fully deductible. Tax deferrals under special accounting methods will be restricted. Is this a soak-the-corporation policy? No. It is a reinstatement of the rules of fair play.

The increase in revenue from corporation taxes—despite sharply lower rates—demonstrates how far the tax-avoidance game had gotten out of hand.

Obviously, such pervasive changes will take some getting used to by individuals, businesses, and the economy as a whole. But greater fairness is compatible with greater growth. And this Senator does not expect to feel nostalgia for a Tax Code that came to dominate everyone's everyday economic decisions.

Rather, this Senator expects this bill to be remembered as a breakthrough for the taxpayer and the economy—and as a demonstration that Congress had more conscience, more wisdom, and more courage than even its own Members believed it had.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. LONG. I yield 5 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 5 minutes.

Mr. LEVIN. I thank the Senator from Louisiana.

Mr. President, today I know what it feels like to be the hometown fan who sits in the stands watching the visting team bound off the field after they have won the seventh game of the World Series.

I an understand their exhilaration. I can respect their skills. But I cannot join in their cheers of victory.

I cannot join in because I cannot explain to the 15 million middle and lower middle income Americans who will get tax increases under this bill why their tax burden had to become heavier as part of the worthy effort to make sure that all profitable corporations and wealthy individuals have at least some tax burden. I am afraid that in taking a long overdue swing at those who had not done their fair share, we ended up socking it to too many of those who do not have a fair shake now, middle income taxpayers.

I cannot join in because I cannot explain to middle-income taxpayers why tax reform required that of those getting tax increases, 80 percent had to be taxpayers making less than $50,000 a year.

I cannot join in because I cannot explain to an elderly couple with high medical bills making $15,000 a year why their taxes are going up at the same time that, according to the best information available, the average tax cut for taxpayers making over $200,000 is $50,000.

I cannot join in because I cannot explain to the renter or to the low equity homeowner why their ability to deduct consumer interest expenses has been eliminated or greatly restricted at the same time that other homeowners with exactly the same income have a way to deduct their consumer interest expenses and, thereby, pay less in taxes.

I cannot join in because I cannot explain to the parents of students who are going to college or to renters why some of them should feel better off even though their small tax cut will be outweighed by increases in tuition or rent.

I cannot join in because I cannot explain to anyone how this bill, which is trumpeted as a triumph of the general interest over the special interest, changes the rules in the middle of the game for tens of millions of Americans and gives special—I repeat special—treatment and privileges to about 700 corporations and projects.

☐ 1230

On the subject of general versus the special interest, while the rhetoric is that this bill protects the common interest and is opposed by the special interests, the reality is that hundreds of lobbying groups endorse this bill and less than five oppose it as far as I know.

I cannot join in because I cannot explain to any one why we are engaging in this enormous effort without doing anything to help solve the fundamental economic problem facing this country today—the huge Federal deficit—and, in fact, why we are setting the stage for making deficit reduction more difficult and less fair.

I cannot join in because I cannot explain to anyone why we are passing this bill at this time when so many economists predict that, at least in the short run, it will slow down our already sluggish economy and run the risk of causing a recession. I cannot explain why we chose to ignore the warnings of some economists that in the long run it will result in fewer jobs at home and make us less competitive abroad. For our economy this is the wrong bill at the wrong time.

And, finally, I cannot join in because I cannot explain to anyone why the noble goals of tax reform—a tough minimum tax on profitable corporations and wealthy individuals, the closing of some awful tax loopholes, and the removal of 6 million working poor from the tax rolls—had to come at this high—this unacceptable high price. We could have achieved those goals and done something substantial and significant to reduce the deficit without paying that price. We Americans pride ourselves on our commonsense, on our shrewdness. But in this bill, we have not paid less to get more. We have ended up paying more to get less.

Mr. President, I again congratulate the managers of the bill, the chairman of the committee, the ranking minority member, particularly Senator BRADLEY, who for so many, many years has been fighting this cause, and while I cannot join in supporting the end product I have nothing but admiration for the people who worked so hard to put it together.

The PRESIDING OFFICER. Who yields time?

The Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, after I had spoken earlier this morning, I indicated that I intended to inquire of the chairman of the Finance Committee as to why certain companies and certain projects were accorded special treatment. I indicated then my concern that two Members of the Congress pretty much concluded who should be in and who should be out, and I think under those circumstances that we have the right to know what was the rationale for exempting certain companies from the general rules, and we have a right to know what is the public policy purpose that is being served and what debate transpired during conference consideration of this bill.

I think the distinguished manager of the bill has indicated that there were no actual votes on individual items by the members of the conference committee but that rather the leadership gave the package on the House side to those members and on the Senate side the same way.

If I could have the attention of the manager of the bill, I would like to point out to him that on page 76 of the conference report, paragraph 11, there is contained therein certain language, and I said to the manager of the bill before when we were speaking, not on the floor as such but in personal conversation, that he might not be able to answer certain of these questions immediately and if he needed a half-hour or hour in order to get the answer I will certain understand that because we are talking about 400 separate items. I have a feeling that the ones I am to ask him may concern matters that he can respond to at this point. On page 76 of the conference report, paragraph 11, it is therein provided:

CERTAIN AIRCRAFT.—The amendments made by section 201 shall not apply any new aircraft with 19 fewer passenger seats if—

(A) The aircraft is manufactured in Kansas, Florida, Georgia, or Texas. For purposes of this subparagraph, an aircraft is "manufactured" at the point of its final assembly;

(B) The aircraft was in inventory—

And these are particularly significant words—

* * * or in the planned production schedule of the final assembly manufacturer, with orders placed for the engine(s) on or before August 16, 1986—

Which was the date of according to this date of conference committee action, and three, and this is also particularly significant—first we have the aircraft was planned, not actually produced, and—

(C) The aircraft is purchased or subject to a binding contract on or before December 31, 1986, and is delivered and placed in service by the purchase, before July 1, 1987.

It goes on to provide that "Section 211(d)(2)(B) shall not apply to aircraft which meet the requirements of this paragraph."

What this means simply is that this bill, this conference committee report, these transition rules, provide investment tax credits for planes that do not exist yet. The planes are only in the planned production schedule and that further provides that benefit for buyers who do not exist yet and who cannot even be identified.

What we are talking about is putting on a platter $27 million for phantom beneficiaries.

What we are talking about is giving $27 million to some people who are going to buy planes and get an investment tax credit. They do not know at this moment they are going to buy those planes. There are no definite contractors. The planes are not produced. All they are is that they are in the planned production schedule.

I had understood, and I think everybody within earshot had understood, that transition rules apply to somebody who had taken certain action and proceeded under the tax law and assumed and then the new tax law changed and they get caught in midstream.

We are not talking about that in this instance. We are talking about a situation where planes have not yet been produced, orders have not yet been received, the identity of the order of those who are placing the orders is not even known. It means that the companies may go out between now and December 31, 1986 and say "Come on give me an order for this plane and if you order it before December 31, 1986, you get an investment tax credit."

Let me be very candid. These are not the only aircraft manufacturing companies in the country. This provision applies only if they are manufactured in Kansas, Florida, Georgia, or Texas.

I am told that there are aircraft companies in Arkansas and Delaware, that are not covered by these rules, companies currently known as Falcon Jet and West Wind. I do not know anything about those companies.

I do not understand how one company can go out and sell planes and say, "You are going to get an investment tax credit if you buy those planes" and another cannot. I do not know why these are called transition rules. I do not know why for planes that have not as yet been produced, that are not being produced—they are only in the production schedule—that buyers about whom nobody knows anything and nobody is in a position to identify them, we are giving away $27 million to them.

This is a rule that exempts noncommercial aircraft. No one signed a contract. I think we are entitled to know what companies benefit, but even more importantly than what companies benefit, because once we know the names, I do not know that makes me particularly satisfied. I think the real question is why is this provision in the bill, and I am told also that not only do they get the investment tax credit, but the buyers will have the right to use 5-year ACRS instead of 7-year depreciation.

□ 1240

And 7 years depreciation, I gather, would be straight-line depreciation, whereas 5 years ACRS would give them the right to have an accelerated depreciation at the early stage.

So since that is one of those special exemptions that I do not consider to be a transition rule, I wonder if the chairman of the Finance Committee would be good enough to enlighten me on this point. And I yield him up to 5 minutes of my time in order to respond.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. PACKWOOD. I thank the Chair.

This was a rule asked for, I think, by the majority leader; I am not sure. We were under the impression it covered all the domestic plane manufacturers in the United States. General aviation manufacturers in this country are in desperate shape. We intended that any planes that were ordered by the end of this year and placed in service by July 1 next year be entitled to the investment tax credit.

It is not significantly different from what we have done for the major airlines, except there planes are normally not manufactured unless there is an order. So the major airlines got a rule that stated if they had ordered by a certain time, and the planes were to be placed in service at a certain time, they would get a transition.

For the general aviation rule, we have said that if they have incurred costs up to one-third of the cost of inventory, they would get the investment tax credit.

It was not designed to help the buyer. It was designed to help the small manufacturer of airplanes.

Mr. METZENBAUM. But, in connection with the commercial aircraft, there were not normally binding contracts that were already existing at the time the conference committee was meeting.

Mr. PACKWOOD. I thought I mentioned that. The difference in the method of operation is in cases where the purchase is of a 747 or DC-10's or planes of that type, manufacturers normally do not manufacture the planes until they have an option or order, because you have a whale of a lot of money tied up in just one plane. But, in general aviation, it is more common to have some in inventory, closer to the way you manufacture cars than the way you manufacture a 747. So some planes are in inventory. They have some in showrooms, if you want to call them that; some that are partially constructed. So we did not apply the binding contract rule to general aviation that we applied for major aircraft, where you only build the plane if you got an order.

Mr. METZENBAUM. Would the manager agree that this is, indeed, not a transition rule but that this is apparently, according to his description, an action taken in order to help an ailing industry?

Mr. PACKWOOD. I think that is a fair statement, although it is a transition rule in the sense that it terminates. The order has to be submitted by the end of this year and the plane has to be delivered by the first of July next year, or you are out. So, in that sense, it is a transition rule. It is not a permanent exemption from the law.

Mr. METZENBAUM. Transition rules, by definition, are that they apply to somebody who has taken action under the old law and would be unfair to change the rules on them in midstream. That is not this kind of a case.

Mr. PACKWOOD. That is fair to say.

Mr. METZENBAUM. Would the chairman be willing to explain why he then selected manufacturers in Kansas, Florida, Georgia, and Texas, and excluded Arkansas and Delaware? I do not know whether there may be some other airplane manufacturers around the country. What are the companies that gain the advantages of this?

Mr. PACKWOOD. I cannot tell you which companies. I do not know the names of the companies. When we put the rule in we were told it was all the domestic manufacturers. Subsequently, one of the Senators from Arkansas has told me about their problem with the Falcon jet, which is a plane that is partially manufactured in France and brought to Arkansas for further assembly. The person that put forth this request for the rule was trying to cover all planes that are fully domestically manufactured and I assumed this covered the domestically manufactured planes. I have not yet heard from any of the Senators from Delaware about any problems in Delaware.

Mr. METZENBAUM. I will not press the point further. I think it is a good example of what happens when we try to make nongeneric tax laws and try to couch them in language to take care of some but not necessarily all. I will not belabor the point further. I will go on to some other subject.

On page 75, a Drexel Burnham office building and on page 81 a Morgan Guaranty Trust Co. Wall Street Building, each specific special treatment, at a total cost of $52 million.

Now, I must confess that $52 million is still a lot of money. It would pay for a lot of programs that are being cut back and phased out during these tight budgetary times.

No one needs to convince the distinguished chairman of the Finance Committee, who is extremely knowledgeable about matters such as this, that Drexel Burnham has been one of the most successfully operated companies in the country. I bear them no malice. In fact, I feel kind of a friendly relationship toward them. And Morgan Guaranty Trust Co. is also an equally strong corporate factor in the investment banking industry.

I have difficulty in understand what kind of motivation would cause the chairman of the Finance Committee or the chairman of the Ways and Means Committee to give $52 million to these two companies. I cannot see any public interest being served. I feel absolutely certain that with or without that special tax incentive those buildings would go forward.

We both know that there are many single deals where these companies make $52 million on one deal. This is $52 million for the two of them.

But for $50 million, we could provide shelters and support services for 2 million runaway youths. For $50 million, we could do more in providing rehabilitation centers and drug treatment centers for those who are drug addicted. And although I did not get a chance to read the full story today, I did read enough of it to indicate drug treatment programs in this community and throughout the Nation.

And so $52 million is but a pittance to Drexel Burnham and Morgan Guaranty and maybe, under certain circumstances, they might be entitled to it. But it is this kind of thing that makes it so difficult for the public to comprehend why did we do this for these two corporations—or maybe they are partnerships.

We are aware of the fact that just a moment ago you explained that you were doing something for the small aircraft industry because they were hurting. Now we have two partnerships or corporations that far from hurting are barreling in the profits at an unprecedented rate. I think Drexel Burnham—I think I saw an article about them recently—that they have progressed more rapidly and further than almost any other firm on Wall Street.

So why give them $52 million?

I yield up to 3 minutes to the distinguished chairman of the Finance Committee.

Mr. PACKWOOD. As I told the Senator from Ohio earlier, we had worked out an agreement with the House that, so long as basic principles—passive income, book income, minimum tax—were not violated, they could put in what transition rules they wanted and pay for them out of the portion of money allocated to the House.

These were both rules put in by the House. Although I can answer as to Morgan Guaranty. It was about 8,500 jobs involved in New York. I believe this request came from Congressman RANGEL, but I would not swear to it. It involved about 8,500 jobs involved in New York. Morgan Guaranty was going to move out. This was an effort to keep the jobs in the State.

□ 1350

Mr. METZENBAUM. I have to say, and I appreciate the answer of the chairman and I recognize that he is responding on the basis of that which somebody else has said. I respect that. We do that around here often. It is not an unusual procedure. I say that those companies that spent all of their time threatening to move out and move, do this, do that, if somebody does not give them a tax break, if somebody does not give them some special industrial revenue bond right, or some other special right, I am not sure that they ought to be embarrassed about it or we ought to be embarrassed about the fact that we are going along with it. I will go on.

On page 148, section 406 has been added to the bill. It is entitled "Retention on Capital Gains Treatment for Sales of Dairy Cattle Under Milk Production Termination Program."

It was neither in the House nor Senate bill. It cost $22 million. And according to the transition list released yesterday, it helps persons or corporations in California and Oklahoma.

I think we have a right to know. Who are those persons? What do they have going for them? Are they small family farmers? Are they large corporations? More importantly, maybe, are they American owned? Are they foreign corporations? Are they foreign-owned corporations? Where did it come from, and how does it fit within the scope of the conference?

Mr. PACKWOOD. Again, it came from the House. The same answer as before: This was offered by the House in the conference. They offered to pay for it out of the money allocated for their portion of the transition rules. This is a genuine transition rule, the whole herd buyout program. Maybe Senators are interested in it. But it was not offered by the Senate side. We accepted it from the House.

Mr. METZENBAUM. The chairman says it was a genuine transition rule? Whom does it benefit?

Mr. PACKWOOD. Again, I have no idea who the individual or corporate beneficiaries are.

Mr. METZENBAUM. Let me read the explanation.

> The amendments made by subtitles A and D of title III shall not apply to any gain from the sale of dairy cattle under a valid contract with the United States Department of Agriculture under the Milk Production Termination Program to the extent such gain is properly taken into account under the taxpayer's method of accounting after—

Not before, after—

> January 1, 1987 and before September 1, 1987.

What special kind of treatment do we give to have them given special treatment with respect to capital gains? We do not know who they are. This is the point that I made to my distinguished colleague earlier today. It is the secrecy. It is the shrouding in a capsule of gauze behind which you cannot see. Who gets this? Why do they get it? And I would ask the chairman of the committee if before we can vote on this bill today at 4 o'clock, before my time expires, whether or not he would not have his staff see if the information cannot be obtained. It certainly seems to me if we are going to do something for somebody, we at least ought to know for whom we are doing it and why we are doing it.

Mr. PACKWOOD. In all deference to the Senator, I do not think I am going to do that. I asked my staff earlier if we could have from the Senator the list he was interested in. He would not give it to us. So I am answering his questions blank without any advance notice from the Senator or his staff at all. Had the Senator been willing to give us the information we wanted, we would have found out.

Mr. METZENBAUM. Under those circumstances, Mr. President, I did not understand that was the problem. I want to accommodate his ability to make available to me all of the information which is available. I will therefore provide him with a list of additional questions and we will be very happy to come back to ask those questions of him at a later point in the day.

Mr. President, I suggest the absence of a quorum.

Mr. KERRY. Will the Senator withhold his request?

Mr. METZENBAUM. I do.

The PRESIDING OFFICER. Who yields his time?

Mr. KERRY. Mr. President, I ask unanimous consent that I be granted 10 minutes from the time of the Senator from Louisiana if I may.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KERRY. Mr. President, comprehensive tax reform—the pursuit of a fairer and more efficient income tax levy—has been a central theme in the American agenda for many years. Over the past decade, as the Federal Income Tax Code became ever more twisted, marginal rates grew more and more burdensome on our people, the importance of that goal increased as the hope that it would ever be achieved diminished.

And now, after years of work, the moment of choice is upon us. Like a cat with nine lives, this bill we have before us today has survived a tortuous path to this peak. Mr. President, this bill has survived many deaths and is here today for one reason—because this country needs a change in our current code. We need it because the current Tax Code has become for too many of our people a symbol of their worst fears about Government. It is awkward and burdensome, it is arbitrary and inconsistent. It is, Mr. President, a mess.

Tax reform is here being debated in the Senate today because we cannot allow this situation to continue.

This bill will provide the basis for the American people to move once again to trust their Federal Government. This may seem a grand claim for a tax bill, but it is a simple fact that for many Americans the most direct, most personal, and certainly the most expensive contact they have with their Government comes on April 15, when they pay their income taxes.

Most Americans are, I believe, willing to pay their fair share of taxes in the spirit of Oliver Wendell Holmes, who said, "Taxes are the price we pay for a civilized society." It is the unfortunate case, however, that our Federal Tax Code has become such an object of derision today that most Americans have come to identify more closely with the old saying which goes something like this: "An honest man is one without opportunities to steal." The fact is, Mr. President, that under the current system, avoiding taxes has become a sadly accepted way of life for many, leaving a wake of cynicism and frustration in their path.

Ordinary citizens—those people without the use of high paid lawyers and fancy tax shelters have had to witness a parade of newspaper headlines heralding the 50 profitable corporations that paid no taxes, and the hundreds of millionaires who paid no Federal income taxes.

This proposal will make that kind of unfairness a thing of the past. This bill closes down unfair tax shelters. It imposes a tough minimum tax for all profitable corporations and individuals with real income. And, at the same time, it offers significant relief to those who have been forced to carry an unfair burden while the rest have gone free. It lowers marginal tax rates significantly. It increases the standard deduction, the personal exemption, and the earned income tax credit, and it removes some 6 million of America's working poor from the Federal income tax rolls entirely.

But while this bill makes major and important changes, it is not perfect. No bill—least of all a tax bill—is perfect, and this one—the product of historic process of compromise and negotiation—is not different. This bill is not as fair as it could be, and makes changes that in my view, may have an adverse effect on our Nation's economy. While I support the bill for the improvements it makes, I feel compelled to address the problems it raises, and to pledge my support for future and immediate efforts to deal with these problems. I view this bill as an effort to clean the slate and begin again the process of formulating a better tax and overall economic strategy. It is in my mind a beginning and not an end. I hope my colleagues will remain committed to making the improvements that are needed upon passage of this legislation. And the improvements are many.

Mr. President, I was one of a near majority of Senators supported an amendment to the Senate bill that would have restored the full $2,000 deduction for individual retirement account contributions, as the House bill did. It is my relief the IRA has encouraged Americans of all income groups to plan for their future security in retirement. At the same time, it is a valuable savings incentive that is desperately needed because our national savings rate has fallen dangerously low, hampering our international competitiveness and increasing the cost of capital. Unfortunately, the conference report eliminates IRA's for many Americans.

Similarly, a controversial provision in the Senate bill eliminated the 3-year recovery rule for State, Federal, and local government pensioners. This change unfairly singles out one group in society, represents a substantial tax increase, and will threaten the financial security of many retirees. But the conference agreement now takes this bad provision of the Senate tax bill and makes it worse by applying the change retroactively. Many individuals had hoped that the prospective date in the Senate bill would at least have provided them with the option of early retirement to avoid the added cost of the new rule. I find the use of retroactive changes—here and throughout the bill—to be a violation of the most basic principal of fairness.

I am also gravely concerned about the increased floor on the deductibility of medical expenses. The impact of this change on those unfortunate individuals and families among us who must bear extraordinary medical and hospital expenses will be painful, and is in my view is callous and unfair.

Another change that I believe is both unfair and unwise is the limitation on the deductibility of interest on student loans. Again, this change is applied retroactively—changing the rules of the game is never fair, but it is particularly contemptuous when the victims of the changes are recent graduates with small incomes and substantial expenses and have come from poor and working class families without the means to finance higher education without loans. As if this weren't bad enough, the conference agreement retains the loophole that allows owners of real property to use home equity to create tax-deductible student loans.

What makes these changes unwise as well as unfair is that they will add sharply to the cost of higher education and deny many gifted and able students the opportunity to achieve their potential and make their greatest contributions to our society. These student loan problems, which were debated on the floor of the Senate more than 2 months ago, could easily have been fixed in conference. It is shameful that they were not addressed, and this is one of the first issues that we will have to correct next year.

Finally, there are a number of types of income—such as workers compensation payments and student fellowships—that will be subject to Federal income taxes for the first time. It seems to me counterproductive for Government to, at one moment, encourage private charities and public institutions to make such funds available and then turn around and tax such financial support.

Stepping back from specific provisions of this kind to take a broader view, I see still more about the conference agreement that troubles me.

I am troubled by the fact that the bill abandons our traditional commitment to a progressive rate structure in the Tax Code. When added to the burden of payroll taxes, the two rates in this bill create what comes close to a flat tax rate for all Americans, with effective tax rates that actually decline as income rises into the range of the wealthy.

The two-rate system is touted for it's simplicity, but simplicity is nothing but a trojan horse for inequity. There is nothing about two rates that makes it any simpler for taxpayers to figure what they owe. They still have to go through innumerable steps to arrive at adjusted gross income—and once there, they still will have to find their adjusted gross income on a table to figure their taxes owed—a table that just as easily could account for additional rates.

There is no reason why a truly progressive, three- or four-rate system could have been applied. This would have made the tax bill a lot better in my view, which is why I supported the amendment offered by my distinguished colleague, Senator MITCHELL, in June and why I believe we should in the future consider proposals to extend the "transitional rate structure" the agreement applies in 1987.

Another serious concern is the way in which the new Tax Code discriminates against those who rent their houses or apartments rather than own them. This tax bill continues the Tax Code's longstanding commitment to promoting homeownership—even to the extent of allowing unlimited mortgage interest deductions for second homes, up to the cost of the home.

Yet the tax benefits afforded to the renter—indirectly through property owners—are being sharply curtailed. The effect, I fear, could be a lower supply of rental housing—especially for low- and moderate-income families, and 5- or 10-percent rent increases for all renters.

Mr. President, throughout the entire debate on the tax bill there was no single issue that consumed me more then the impact of this legislation on renters and rental housing costs. I spoke with Chairman PACKWOOD and other members of the committee, and was a cosponsor, with Senator MITCHELL, of an amendment that was approved on June 24, which addressed this concern.

I have also worked, in cooperation with a coalition of legislators from both the House and the Senate, to see that the final conference agreement contained several transition rules which limit the certain dislocation that will result from the retroactive application of passive loss provisions. While I am pleased that the conference committee agreed to provide the relief these rules allow, I am concerned about the prospective impact of the tax bill on the construction of rental housing.

I also believe the repeated use of retroactive changes in tax law contained in this bill constitute a clear case of the Government breaking faith with investors. This sets a dangerous precedent, which I hope will never be repeated. When people invested in low-income housing and a number of other desirable activities, as the Tax Code had clearly and purposely encouraged them to do, they were an instrument of public policy serving the national interest. If the Congress decides to change the rules for the future, that is fair game. But when Congress changes the rules in midplay, a fundamental notion of fairness is violated. As I stated during the debate on the bill in June, I oppose retroactive changes in the strongest possible terms.

The effect of changes in the tax shelter rules on low-income housing is symbolic of a major policy decision embodied in this bill: It represents a decision that the Tax Code is not the appropriate vehicle for subsidizing a whole range of activities that society has deemed worthy and previously chosen to encourage through the Tax Code. This decision will impose a new burden on the outlay side of the Federal budget. There is no question in my mind, Mr. President, that next year, and for years thereafter, we will see the consequences of this decision in greater demands for housing, for education, for research and development, and for a host of other activities that will require increased Federal support.

Again, looking at the broader impacts of the tax bill, I share with many of my colleagues the concern that the plan not only fails to address the central economic problem facing the country: the Federal budget deficit, but also makes matters much worse. The tax bill exacerbates the deficit problem in two ways.

First, the tax bill makes the deficit worse because it provides a temporary revenue increase of $11 billion in fiscal year 1987. This increase is followed, however, by $34 billion in revenue shortfalls over the next year. As a result, it will be even more difficult for the Congress to meet the deficit reduction targets contained in the Gramm-Rudman-Hollings law.

The second way in which the tax bill stiffles our ability to close the budget deficit is that it makes it impossible to increase revenues without a broad-based tax rate increase. It does this because it takes billions of dollars raised from tax compliance, loophole closing, and the imposition of an alternative minimum tax, and uses these funds not to reduce the deficit—as we could have done—but to cut the tax rates of every American, no matter how high his or her income.

One of the biggest mistakes made by the tax-writing committees when they took up President Reagan's challenge to reform the Tax Code was accepting his condition of revenue neutrality. It is a myth that the only way to raise revenue is through tax increase. As Governor Dukakis has shown with the successful Revenue Enforcement and Protection Program [REAP] in Massachusetts, there is an enormous potential for new revenues from better enforcement of tax laws, and through closing loopholes that allow individuals and corporations to pay less than their fair share. These measures are not new taxes, and they do raise revenue.

One of the most controversial questions about this tax bill is its impact on the economy, and on the international competitiveness of U.S. industry. I am deeply troubled by the possibility that this bill will hurt the economy. The timing of this measure—coming at the tail end of a weak recovery, at a time when the farm, energy, banking, and manufacturing sectors of our economy are all experiencing severe strains—is very bad. But I have listened to the advice of some of the leading economists in this country, and while there are dissenters, the most convincing arguments that I have heard predict that the long-term efficiency gains from this tax bill will exceed the loss from transition shock. In any event, I believe that this Congress should stand ready to correct any mistakes in this bill as soon as they become apparent. Our economic growth and capital formation incentives are one area of this kind where we will have to be particularly attentive.

Despite these reservations with the tax bill, I recognize the extraordinary amount of genuine tax reform it contains, and support it because of the substantial improvements it represents when compared to current law.

Without question, the most important change established by the tax reform bill is a dramatic improvement in horizontal equity. Under this bill, taxpayers can have a greater assurance than ever before that what they pay in taxes is fair and proportionate to what others with similar economic income will have to pay. This is because the bill imposes—for the first time—a truly meaningful alternative minimum tax for corporations and wealthy individuals, because of the passive loss rule limiting the use of tax shelters, and because of limitations on other abusive practices.

The bill also closes down a range of other loopholes that benefit major corporations, such as the much abused completed cost method of accounting, which has caused so much cynicism on the part of ordinary taxpayers who read with horror the news accounts of multibillion-dollar Government contracts going to companies that paid not a penny in Federal taxes.

Another part of the bill that deserves special attention is the area of tax enforcement and administration. On May 8, 1985, during the debate on the budget resolution, I offered, and the Senate approved, an amendment calling for a vastly increased commitment to the enforcement of Federal tax law, and a reduction in the $105 billion annual tax gap—the money owed to the Government but not paid. Following that amendment being approved by a vote of 92 to 3, I filed a bill, S 1152 that suggested many of the ways that the tax gap could be reduced. S. 1152 was referred to the Finance Committee, and several of it's key provisions were included in the Senate tax reform bill. While not all of these proposals were retained in the conference agreement, several of the more important changes were maintained. For example, new reporting requirement for real estate capital gains are contained in this bill. So too are new tax shelter limits, increased penalties for failure to pay taxes, for negligence, fraud, and understatement of tax liability. These changes are an important part of the movement for a fairer system of taxation.

In terms of "vertical equity"—the fairness of the bill when one compares how it treats those at the bottom of the income scale with those at the top—the bill is less than it should be. But make no mistake about it—it represents a definite improvement over current law.

By closing loopholes, eliminating tax shelters and imposing tough minimum tax rules, this tax bill broadens the tax base significantly, and allows for the reduction of marginal tax rates. Under the new rates contained in this bill, 80 percent of American households will be taxed at the low rate of 15 percent. Lower rates not only mean lower taxes for the millions of honest Americans who have not benefited from tax shelters and other avoidance schemes—they also eliminate the distortion of incentive that results from high rates.

The bill increases the zero bracket amount, the personal exemptions, and the earned income tax credit. As a result, the bill takes 6 million low-income individuals off the tax rolls. This is perhaps the most frequently touted virtue of the package, and it should be—for when was the last time we in this Congress had the chance to vote to give benefits to the poor rather than vote to cut them back?

According to the Children's Defense Fund, "a family of four struggling to maintain its independence and self-sufficiency on poverty-level wages; for example, will have over $1,000 in additional income in 1988 as a result of the changes in the Tax Code contained in H.R. 3838." After a 5-year period when the poor have seen both the assistance programs and the safety net they depend on cut to shreds by budget cuts, I find this reform profoundly important.

At the same time that this tax bill broadens the base, lowers tax rates, and removes 6 million of our poor from the income tax rolls, it retains the most popular and widely used deductions: it retains the deduction for home mortgage interest, for charitable contributions, and—significantly, for State and local income and property taxes.

These changes have long been sought by public interest groups and reformers—and have long seemed hopelessly out of reach because of the power of well financed special interests to defeat change.

So, Mr. President, the choice is a difficult one. The bill has its strength, and it has its weaknesses. As Senator DANFORTH noted in his statement yesterday, no tax bill is all good or all bad. This bill, like any bill, is shades of gray. And the choice that we face is whether the benefits of the bill exceed its costs.

Mr. President, I wish there were a different choice available to us today. I wish that we could choose among the various parts of the bill. But we cannot. The choice is simple: it is this bill, or back to business as usual.

I have decided, after extensive deliberation, that the historic opportunity represented by this tax bill deserves my support. To fail to support this bill, Mr. President, is to forsake the hope that we will ever again be able to rally the broad consensus necessary to overcome the special interests, and begin the process of instituting genuine tax reform.

Mr. President, there has been a great deal of debate as there ought to be about a bill of this importance. I think most of my colleagues laid out extremely effectively the very many pluses, and the many potential negatives of this particular piece of legislation. It is not my intention to take the Senate's time of going through each and every one of them. They are a matter of record. I am sure I am not going to differ from those many of my colleagues.

I would like to make a few general comments if I may, about how I arrived at my particular position because I have found this a very difficult decision. I have thought and listened to the eloquent comments of the Senator from Missouri, and the very heartfelt concerns that he has and to the many others who opposed this piece of legislation who have concerns.

I think from a personal level there are many reasons to conclude that it would perhaps be an easier political vote to vote "no" than to vote "yes" in many ways, notwithstanding the degree to which people say this is an historic piece of legislation. It is always simpler, I suppose, to explain now, and hedge future repercussions. I have decided, however, despite very serious concerns that remain to vote in favor of this bill with an understanding that I do so with the perspective that this bill is not an end, but it is a beginning, that this bill merely puts us in a place where we know we have an obligation to begin to make up for what are serious inequities and for what are potential serious negative effects on the economy as a whole.

The reason that I have come to that balance, and the balancing act of weighing the plusses and minuses, is that I think the tortuous path that this bill itself has gone through, perhaps the nine lives this bill has had, is evidence of how difficult it really is to get real tax reform. And in the final analysis, though I may feel that there are retroactive provisions that are unfair, and I think they are, and I think everyone agrees, although there may be down sides in terms of competitiveness and investment, capital formation and housing, this is an opportunity to in a sense create tabula rasa, to clean the slate, to begin where we know there is an enormous political momentum to begin which is to get rid of the shelters, get rid of the loopholes, clean up the process by which Americans come to feel they cannot have faith in the tax system, and renew the effort then to adjust where we have to adjust.

So I am voting for it not because I think it is a perfect bill. I do not think there is any such thing, obviously, as a perfect bill, but because I believe it is so important to seize this opportunity for reform. And the most important thing that this bill does is to get rid of that sense of inequity that people have had about the broad tax system as a whole, which has given credence, I think, to a lot of people's belief that the system symbolizes the old adage that an honest man is one without opportunity to steal.

The past tax structure has given people opportunities and has encouraged people to take opportunities to enhance their positions by virtue of the unfairness that we have built into the tax structure.

So I think that the horizontal equity, the fact that people earning similar incomes in America will pay similar amounts of taxes, an important principle though I regret that principle is being asserted to such a degree that it excludes any of the other principles we have always adhered to about more variation or progressivity, if you will, of the amounts that people pay as they earn more money.

□ 1300

In addition to that, it closes the loopholes and shelters and it keeps much that is good in our tax structure, such as the standard deduction, personal exemption, the earned income tax credit, and I think finally the home mortgage interest rate deduction.

I want to make it clear, Mr. President, that I think the fears of the downside are real, and that I hope the Senate is in concurrence in its understanding that we are going to have to be back here next year to make one of two decisions: Either to adjust it for these inequities through the Tax Code itself, or, if we have made a decision that we are really not going to use the Tax Code for any accomplishment of social goals, that we are willing to spend the money where necessary whether it is for a housing subsidy or for education loans or for the many needs which have been articulated by the distinguished Senator from Ohio.

Moreover, Mr. President, I want to underscore that this is a most critical time in the history of this country in our competitive posture.

We are slipping rapidly as measured against the industrial capacity of other countries. Unless we have the ability to be able to invest capital into new plants and equipment, into new technologies, into research and development, into the renewal of our educational institutions and our laboratories, our ability to be able to participate as we have in the past as the dominant trading partner within the new marketplace is going to slide even further than it has.

I believe this bill does not address those issues as it ought to or as I would perhaps like it to. I hope this Senate will be absolutely committed at the beginning of next year to make certain that whether through fiscal policy or through our expenditures or tax policy we are going to undertake to do that.

Mr. President, I would simply say in closing that while, again, there is much that one could complain about, particularly the retroactivity, which I think runs against the very grain of fairness on which we have built this country, there is much also that we can look to in this bill to set us on a course of tax policy in which people can once again have faith and where we can perhaps even diminish the current willingness of Americans to feel that it is almost a responsibility on their part to find ways not to pay taxes rather than to participate.

I think in that sense this bill is historic and that is the principal reason why I vote for it, but with very, very deep reservations, which I again reiterate I feel are imperative that we address at the earliest possible moment. I yield back whatever time I have remaining.

Mr. PACKWOOD. Mr. President, I yield 3 minutes to the Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I commend the Senator from Oregon [Mr. PACKWOOD] and the members and staff of the Senate Finance Committee and Joint Committee on Taxation for the bill which the Senate presently has before it.

This is one of the most fundamental pieces of tax reform legislation since passage of the Internal Revenue Code of 1954.

The beauty of the bill is that it is a historic shift in tax philosophy that seeks to base taxes on income rather than Federal social and economic policy objectives. That is, if you make such and such income you pay a tax.

The goals are worthy and the task massive:

Simplicity: To reduce the need for individuals to use sophisticated financial arrangements to minimize tax liability.

Fairness: To ensure that persons with similar incomes pay similar tax.

Efficiency: To encourage businesses to make decisions on economic merit rather than tax considerations.

To refer to selected provisions:

Rates and brackets: Top individual rates reduced from 50 percent to 15 percent and 28 percent. In 1987, transition period with five individual rates of 11, 15, 28, 35, and 38.5 percent. In 1988 when new individual tax rates fully effective, 15 and 28 percent. The 28 percent applies to taxable income above $17,850 for single taxpayers, $29,750 for married taxpayers, and $25,288 for single heads of household. All brackets adjusted for inflation in 1989.

Personal exemption: Phased-in increase from present $1,080 to $2,000 in 1989. In 1990 indexed for inflation.

Standard deduction: Increased to $3,000 for single taxpayers, $5,000 for married couples, and $4,400 for single heads of household. Effective January 1, 1988. Adjusted for inflation.

Income averaging: Repealed.

State and local taxes: Repealed.

Consumer credit card and car loan interest: Repealed. Phased-in over a 5-year time period.

Capital gains: Repealed.

Home mortgage interest: Fully deductible.

Medical costs: Deductible if they exceed 7.5 percent of adjusted gross income.

Charitable contributions: Deductible only for itemizers.

Unemployment: Benefits taxable only if they and other income exceed $12,000.

Individual retirement accounts: Taxpayers not under a pension plan can deduct up to $2,000. Both husband and wife ineligible if either is covered by a pension plan. Married couples under an adjusted gross income of $40,000 or $25,000 for a single person, can get up to full $2,000 deduction even if covered by a pension plan. Partial deductions allowed in certain circumstances.

Minimum tax: Individual minimum rate is 21 percent.

Investment tax credit: Repealed as of January 1, 1986.

Corporate tax rates: Reduced to 34 from 46 percent.

To present a few observations regarding this legislation:

It is tax reform, not necessarily "tax relief." Overall, the tax break benefits are modest. For most, $2.50 to $8 a week in 1988. Overall the average individual income tax cut is 6 percent over a 5-year period.

"Revenue neutral" over a 5-year period.

It will create a positive long-term restructuring of the economy. Short-term adjustments by taxpayers will be needed.

A major first step toward addressing widespread inequity in the tax system. It doesn't eliminate it—in fact, it may have even caused some.

We need greater Tax Code stability. People need to know not only what the rules are but also feel confident that they will not be changed against them. Therefore, I urge in the future; prospective changes in tax reform.

Touches all aspects of our economy. Its early results may produce unforeseen and unintended effects. More tax law adjustments may be needed next year.

Concerning the bill's influence on the economy:

Disagreements exist among the experts but there is good reason to believe that the short-term economic effects of the tax plan could be modestly negative; the long-term effects should be generally positive.

It will not significantly affect interest rates, inflation, and economic growth.

It should stimulate the bond market and stock trading, but not the stock market.

Initial huge decreases in construction and business investment are expected.

Slight consumer spending increases may occur.

The following are my primary concerns:

Various retroactive features which penalize those investors who have made long-term commitments in reliance with current law.

We will not have a full IRA deduction program which encourages those to save for their retirement and generates new capital for investment in this country. Will those who qualify for IRA deductions be able to afford it?

Certain sectors of the economy may experience undue hardship, especially in real estate, education, and certain charitable organizations.

It may create short-term cash-flow problems for small businesses.

Not enough benefits were given to middle-income taxpayers and too much to the rich.

That a financial package such as this, where so much time, energy, and attention has been given, does not address the real economic concerns of this country—greater productivity, the trade imbalance, the national debt, new equity investment capital, and the deficit. Basically, I'd like to see a financial package that significantly stimulates the economy.

The general ambivalence and silence that is shared by the American public. The perception of the public needs to be more positive.

Mr. President, this is a positive first step down a long hard road to tax reform. It is the beginning, not the end, of tax reform.

For most taxpayers, the tax rate cuts and increased exemptions will more than offset the loss of deductions.

Creates greater uniformity of tax burdens among businesses and among sectors of the economy.

Virtually eliminates tax shelters, closes dozens of loopholes, slashes tax rates, and removes 6 million from tax rolls.

Tax burden on the working poor reduced; the rich will find taxes harder to dodge; and people with like incomes will generally pay like taxes.

Raises corporate income taxes in the aggregate by $120.4 billion to pay for cuts in individual income taxes of like amount.

Creates new minimum tax provisions that eliminate or restrict the use of tax breaks that companies have been able to use to reduce their tax liability.

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, I would like to address myself for 1 minute to the manager of the bill.

I have a number of other questions. I made those questions available to his staff. I will advise his staff that I am prepared to explore each of the subjects with the manager even if we cannot do them all seriatim at the same time.

As soon as the manager is ready to proceed with respect to any one or all of the questions, I am prepared to move forward.

Mr. President, I just wanted to present that statement. I do not want to keep asking, but I would hope that we can at least take up one and then 10 minutes later come back and take up another one.

Mr. PACKWOOD. Mr. President, it would have been helpful if we had had this list much earlier, 3 or 4 hours earlier. I have one person in charge of transition rules and she is out talking with the aide of another Senator at this time. She is the one I would rely upon.

Yes, we can take one and then take 15 minutes off while we look at another one. How many did the Senator give us?

Mr. METZENBAUM. About 8 or 9.

Mr. PACKWOOD. At the moment my aide is not here. When she returns, we will see how far she has gone.

Mr. METZENBAUM. We are trying to deal with 400 of them in a day and a half. It is not easy, but I think the information is available somewhere. I would hope we would not waste this time. I am prepared to proceed.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Vermont.

Mr. LEAHY. Mr. President, I understand there was a procedure worked out last night concerning the reservation of time. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

□ 1310

Mr. LEAHY. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. Off whose time?

Mr. LEAHY. Off the time of the Senator from Louisiana.

Mr. LONG. Mr. President, I yield the Senator 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. LEAHY. I thank the Senator from Louisiana and thank the Chair.

Mr. President, I shall support this tax bill. I am reminded that last year, the equivalent of one-fifth of all the taxes paid by hardworking Vermonters was used to write a check for a $104-million tax refund, a tax refund to a defense contractor who earned $1.6 billion in profits. That company earned $1.6 billion in profit, paid no taxes at all, and still was able to get over $100 million in a refund.

I think that is the kind of injustice that prompted Congress to act. I congratulate the President for pushing for tax reform. There are a number of provisions of this bill, which are beneficial, which are endorsed by both Republicans and Democrats in this body. That spirit of bipartisanship should make all of us proud to vote for this bill.

The bill in a way is a good news/bad news bill. It is good news for the middle class, bad news for the special interests. It is a tax break for the middle class; it closes loopholes long needed closing for the special interests.

The major benefit of the tax reform bill is that it is going to cut taxes for the average Vermont family by $700. It will put an end to the policy of taxing Americans into poverty. No longer will Americans below the poverty line be taxed. By taking the tax off our poorer citizens, we will make work more attractive than welfare. This achievement is the result of our work with the other body and with President Reagan in the best sense of bipartisan cooperation.

One of the most significant reforms in the tax bill is the doubling of the personal exemption. The personal and dependents exemption was added to the Tax Code in 1948 to help families keep up with the cost of living. Since that time, the value of the exemption has fallen behind the costs of raising a family by 80 percent. It is time that this was corrected.

The tax reform bill will make our tax laws more fair for senior citizens. Under this bill, an elderly couple will be able to keep more of what they make before paying taxes on income.

All of these reforms are financed by slamming the door on tax shelters and by enacting a tough minimum tax to ensure that large, profitable corporations pay their fair share of taxes. Gone will be the days of the tax refund for billion-dollar corporations.

The final tax reform legislation also maintains the deduction for State and local income and property taxes. Earlier this year, the State and local deduction was in jeopardy. I organized a majority of Senate Democrats to oppose any limit on the State and local deduction—a deduction which was first added to the Tax Code 120 years ago by Justin Morrill of Vermont. The State and local deduction saves the average Vermonter more than $600.

In the future, the tax reform bill will also help farmers. The tough anti-tax shelter provisions will ensure that those who farm the land are doing so for legitimate economic and agricultural purposes and not only to gain tax advantages. The bill promotes dairy farming and discourages tax shelter farming.

This tax reform bill is not perfect. Nobody on the floor of the Senate could claim that it is perfect. There is probably no way on God's green Earth that the Senate, the House, and the White House could concur on a perfect tax bill or that we could ever find any three people in the country to concur on what is a perfect tax reform bill.

During Senate debate on the tax reform bill, I voted to maintain the full deduction for contributions to individual retirement accounts [IRA's]. The Senate rejected that amendment and instead decided to permit IRA deductions only for those without other pension arrangements. The tax reform conference agreement is an improvement, but does not go quite as far as I would like.

Mr. President, all of us are concerned about the effects of this radical legislation on the Nation's economy. It may be that tax changes made in the name of fairness and true tax reform will cause a drag. This is one Senator who is willing to say that Congress is not omniscient. If economic problems arise, I hope pride of authorship will not prevent Congress from acting quickly to prevent them.

As I have stated before, Mr. President, I am concerned about some of the retroactive aspects of the tax bill. Nevertheless, I urge the Senate to adopt this important measure. It is a giant step toward true tax reform.

SUBSTANTIAL EQUIVALENCE AT THE UNITED NATIONS

Mr. LEAHY. Mr. President, on Wednesday, the Senate adopted as section 602 of the Intelligence Authorization Act a measure offered as S. 1773 by the distinguished Senator from Maine [Mr. Cohen] and me in October 1985. That measure now goes to conference with the House Intelligence Committee. And I am reasonably confident it will emerge intact.

This provision establishes a national policy of numerical equivalence in the sizes of the United States and Soviet missions to the United Nations in New York. It provides a statutory foundation for actions directed by the President earlier this year to cut some 105 members from the Soviet delegation, and his order expelling 25 Soviet U.N. officials is consistent with the spirit and intent of this second Leahy-Cohen legislation aimed at reducing the Soviet intelligence presence in the United States.

It is because of that, Mr. President, and the reason I address myself to it, that I have been somewhat disturbed to read in the press that the Soviets have been pressing for a rescinding of the expulsion of the 25 Soviets, or for revising the names on the expulsion list, as part of a deal for freeing Nicholas Daniloff. Obviously, the administration would never agree to such a quid pro quo. Those 25 Soviets are known intelligence operatives, and Nicholas Daniloff is an innocent American journalist who was framed by the KGB.

In any event, Mr. President, I want to stress here on the floor of the Senate today that passage of the New Leahy-Cohen legislation—and its ultimate enactment by Congress and signature by the President—adds a new factor into the equation. Even when Nick Daniloff is free, which I hope for him and his family will be very soon, the policy of equivalence in the sizes of the two U.N. missions will remain on the books and will have to be implemented no matter what deals are worked out to get Mr. Daniloff back.

One fact is going to remain: Because of the legislation we have passed, there must be equivalence in those numbers. That means no matter what else, the Soviets are going to have to take an awful lot of their people back home.

So those 25 Soviet spies hidden in their U.N. delegation have to go, and they have to be followed by at least another 40 or 50 more to reach "substantial equivalence," as required by Leahy-Cohen when it is finally signed into law by the President.

Mr. President, this is not a case where somebody can say, "You have given us back Nicholas Daniloff, now you can send back those 25." It does not work that way. Those 25 have to go and worse news is coming: 40 or 50 more are going to have to go, no matter what arrangements are worked out in New York this weekend.

We have had problems with the State Department's attitude in implementing the first piece of Leahy-Cohen legislation, the law enacted last year requiring equivalence in the sizes of the United States and Soviet diplomatic and consular presences in each nation. The aim of that law is that over time State will reduce the number of Soviets with diplomatic immunity in this country, while increasing somewhat the number of Americans with diplomatic immunity in the Soviet Union. The end result should be rough equivalence.

State has chosen instead to try only to increase Americans and avoid any cutbacks of Soviet diplomats even though the FBI has stated publicly that a third or more of these diplomats are KGB agents. That is not the intent of the law, and this Senator wants to make clear right now his firm intention to return to the issue of implementation of Leahy-Cohen I next year as a priority item of business.

This is going to be implemented. It is on the books. It is not a matter of negotiations; it is not a matter of who saves face. It is the law and this Senator intends to make sure the law is upheld.

Mr. President, I ask unanimous consent to include in the Record at the end of my remarks a letter Senator Cohen and I sent Secretary of State Shultz about how accelerated implementation of the Leahy-Cohen diplomatic equivalence amendment might be used as leverage in freeing Nicholas Daniloff.

Let me conclude by reaffirming that the final enactment of the second Leahy-Cohen law aimed at equivalence in the United States and Soviet U.N. missions puts these most recent reductions in a whole new light. There must be no confusion that we can back away from cutting the Soviet U.N. delegation down to rough equivalence or that the Daniloff issue can be used to back the United States away from strong action to get Soviet spying from the U.N. and its Embassy under control.

There being no objection, the letter was orderd to be printed in the RECORD, as follows:

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, September 9, 1986.

Hon. GEORGE SHULTZ,
Secretary of State,
Department of State,
Washington, DC.

DEAR MR. SECRETARY: We want first to emphasize our strong support for your effort to secure the immediate release of Nicholas Daniloff from Soviet custody. His arrest on trumped up charges of spying is an outrage and must be urgently resolved before it irretrievably damages U.S.-Soviet relations and disrupts the arms control talks now underway. If it continues to escalate, the Daniloff matter could jeopardize the chances for a Summit which could lead to a breakthrough toward a new arms reductions agreement.

As you know, last year Congress enacted and the President signed into law an amendment requiring the implementation of numerical equivalance between the sizes of the U.S. and Soviet diplomatic and consular presences in each other's country. We believe this requirement could be used to exert pressure on the Soviet Union to secure the release of Mr. Daniloff, and we urge your serious consideration of this approach.

At present, the Executive branch plans to implement the numerical equivalence requirement over an extended period of time, three years or more. We suggest you consider informing Soviet authorities that the implementation will commence immediately, and the pace and manner of implementation, including the proportion between reductions in Soviet diplomats here and increases of American diplomats in the Soviet Union, will be directly affected by Soviet actions regarding Mr. Daniloff. In other words, how quickly we reach equivalence and how many Soviet diplomats will be reduced will now be determined by how quickly the Soviet Union frees Mr. Daniloff.

Mr. Secretary, as after the KAL 007 tragedy, there will be strong demands in Congress for immediate, and perhaps extreme, measures against the Soviet Union. Such demands may even include disruption of the current talks in preparation for a Summit and for a new strategic arms reductions agreement. The suggestion we offer, if acted upon immediately, could defuse such pressures and prevent more serious damage to U.S.-Soviet relations, while increasing pressure on the Soviet Union to release Mr. Daniloff.

Be assured, Mr. Secretary, that we stand ready to do anything we can to be of assistance.

Sincerely,
WILLIAM S. COHEN,
PATRICK LEAHY.

Mr. COHEN. Mr. President, recently a high ranking Soviet Foreign Ministry official had the audacity to equate the Soviets' hostage taking of United States reporter Nicholas Daniloff with our Nation's legitimate effort to reduce the nest of spies residing in the Soviet mission to the United Nations. We must not and cannot tolerate this exercise in the Orwellian Computation of $2+2=5$.

Specifically, Gennadi Gerasimov, spokesman for Soviet Foreign Minister Eduard Shevardnadze, told reporters, "In your eyes, Daniloff is the obstacle; in our eyes, this order—to expel 25 members of the Soviet U.N. mission—is the obstacle." He further threatened that if the President does not rescind his order that these 25 be expelled, "we are sure we are going to have some retaliation."

Having had one of our citizens fall victim to the Soviets' state-sponsored thuggery, we must not allow our Nation to be held hostage to the extortion tactics and threats of the Soviets as we undertake policies necessary to protect our national security.

The President's announcement of the expulsion order for the 25 so-called U.N. mission officials is a welcome and important first step in the effort to reduce the Soviet espionage threat in the United States. It is fully consistent with the legislation passed by the Senate Intelligence Committee last May and approved by the Senate just this week to reduce the size of the Soviet mission to the U.N.

That legislation, which Senator LEAHY and I sponsored and which has more than a quarter of the Senate as cosponsors, calls for essential equivalence in the sizes of the United States and Soviet U.N. missions. At present, the Soviets have well over 200 officials at their mission, more than double the size of the next two largest missions, those of the United States and the People's Republic of China.

The Soviets somehow claim to be outraged by the President's order that they reduce their mission's size to 218 by Wednesday of next week and to 170 by April 1988. Even when those actions are taken—even when their numbers are reduced to 170 2 years from now—they will still have fully a third more people in their mission than does the United States or the People's Republic of China, and far more than many other countries with extensive activities at the U.N.

I was told by a Soviet U.N. official earlier this year that the Soviets need all these people because of the many so-called peaceful initiatives they sponsor at the U.N. In fact, their activities are far less altruistic.

The FBI has estimated that, as with other Soviet organizations in the United States more than one-third of Soviet personnel at the U.N. mission are professional intelligence officers. As the Senate Select Committee on Intelligence, in its report on the Leahy-Cohen provision of the Fiscal Year 1987 Intelligence Authorization Act, stated:

> The chief damage of this large intelligence component is espionage and other clandestine collection by the Soviets of defense, science and technology, and national security information within the United States. Their large presence at the United Nations also provides the Soviets a great opportunity to attempt to recruit foreign officials at the United Nations as their agents.

Soviet defector Stanislav Levchenko, in an October 1, 1985, Washington Times article, clearly outlined the importance of the Leahy-Cohen legislation and of the action taken by the President which so offends the Soviets:

> The most practical means of disrupting KGB operations in America is to require parity in the number of Soviet diplomats in the United States and America diplomats in the Soviet Union, and to limit drastically the size and operations of the huge Soviet mission to the U.N. If such steps lead to a reduction of 100 or more Soviet offiicals, KGB activities in the United States would be seriously damaged. The KGB would lose many officers who otherwise would be handling active cases. But Moscow still would need to maintain contact with various offices of the U.S. Government. So more of the remaining officials would be occupied with legitimate diplomatic activities, rather than with espionage.

Both the diplomatic equivalence legislation the Senate passed last year and the U.N. mission equivalence legislation we approved this week, coupled with President Reagan's order that the Soviet U.N. mission be reduced in size, follow precisely the prescription laid out by Mr. Levchenko. They will have a salutary effect on the ability of the FBI to deal with the espionage threat represented by Soviet and Eastern bloc officials in this country.

What this entire situation demonstrates is the gravity of problems we face in our counterintelligence efforts. The Zakharov episode showed that each time we arrest a Soviet spy, an innocent American will pay the price. The most recent efforts of the Soviets to tie the Daniloff kidnaping to our legitimate efforts to reduce the Soviet espionage threat the U.N. reflects an even more pernicious and callous attitude on the part of the Soviets.

In the Daniloff case, the Soviets have scored a presummit public relations double whammy. They resolved a crisis of their own creation because of the humanitarian concerns, and they maneuvered the United States into appearing to treat the two cases—Daniloff and Zakharov—in the same way. Now they are going the further step of trying to tie the Daniloff case to important efforts which had been going on long before these most recent episodes to reduce a long-recognized espionage threat.

If the Soviet are allowed to get away with this brazen behavior, we can only expect further acts against our citizens and raise expectations that we will again bow to whatever demands they might choose to put forward.

The Soviets know that we place great value on even a single human life, and they know that we tend to have short memories. Our howls of outrage after, for example, the downing of KAL Flight 007 and the murder of Army Maj. Arthur Nicholson in East Germany in 1985 subsided quickly, yielding to business as usual. By permitting the Soviets to stonewall these acts of international barbarism, we contribute to the perception that the United States is too often unwilling to follow up our words with deeds. it is easy to see why the Soviets are finding our stern words about "next time * * *" to be empty indeed.

I recall a telling statement made about Soviet leader Gorbachev by one of his associates, who said, "He has a nice smile, but he has teeth of iron." Those teeth of iron turned into prison bars for Nicholas Daniloff, and they are removed only when the Soviets were able to piously insist that humanitarian concerns prompted them to release him from the KGB's custody.

This is rubbish, and it should be plainly noted as such. The Soviets have demonstrated themselves once again to be cynical, shrewd manipulators of power politics and public opinion. We now face a very tough task of refuting the perception that we have capitulated to their craven conduct. Rescinding the expulsion order for the 25 Soviet U.N. mission personnel is one thing the President must not do if he is to demonstrate clearly to the Soviets that we will not tolerate either the espionage techniques or their bullying tactics.

Mr. LEAHY. Mr. President, how much time remains to the Senator from Vermont?

The PRESIDING OFFICER. The time remaining is 1 minute and 15 seconds.

Mr. LEAHY. I reserve the remainder of my time and yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. LEAHY. On the time of the Senator from Louisiana.

Mr. LONG. Mr. President, I yield 6 minutes to the Senator from Montana [Mr. BAUCUS].

TAX REFORM ACT OF 1986—CONFERENCE REPORT

Mr. BAUCUS. Mr. President, millions of words have been spoken, and will be spoken, about this tax reform legislation.

It is a massive, landmark bill.

It will affect every business in America and every person in America.

And it will affect different people different ways.

Some are winners, some are losers.

But after thinking about it long and hard, I am going to vote for the conference report, for one simple reason.

With all its flaws, it creates a better tax system than the one we have today.

Any bill of this magnitude contains mistakes. I, for one, am particularly disappointed that the conference report deletes provisions important to agriculture and small business.

But the only fair way to consider this bill is to compare the overall tax system it would create with the overall tax system we have now.

THE GOALS OF REFORM

Any tax reform proposal has three goals: simplicity, fairness, and growth.

So how does this bill measure up?

The bill does achieve simplicity not for all but most Americans.

It takes at least 6 million people off the tax rolls altogether.

It cuts rates dramatically. Instead of 11 rate brackets, we'll have 2. The top rate will fall from 50 percent to 28 percent.

The standard deduction and personal exemption are increased dramatically.

As a result of these changes, the vast majority of all taxpayers will pay a flat rate of 15 percent.

In addition, the low rates will reduce the incentive to cheat or shelter.

The bill also eliminates some complicated deductions and exemptions, so that the average taxpayer will have an easier time filling out his tax return.

To be sure, the bill increases complexity in certain areas, such as the treatment of passive losses. And the new system will take some getting used to.

But on balance, I believe that the bill does simplify our tax system.

Our second goal was fairness:

The bill makes it more likely that people with the same income will pay the same tax.

And it reduces Federal taxes for most low- and middle-income families.

In Montana, the average taxpayer has an adjusted gross income of $17,000. A family of four earning that amount will get a 20-percent tax cut. Overall, Montanans' individual Federal taxes will decline by about 10 percent.

In addition, the bill contains a tight mininum tax and other provisions that will finally assure that every profitable corporation and wealthy individual pays its share of taxes.

Unfortunately, the bill also contains several provisions that are manifestly unfair.

For example, the repeal of income averaging. This is a gratutitous and unjustified slap at a group of people who have very volatile incomes—many of whom, like our farmers, are struggling to survive.

Another example is the new rules for Federal retirees. Whatever the merits of these rules, they should not be imposed retroactively.

However, on balance, I believe that the bill does make our tax system more fair than current law.

Our third goal was economic growth.

Here, the results are mixed.

The bill lowers taxes on individuals. That will put money in people's pockets. Yes, more in some than in others. But in any case, the tax cut will stimulate more spending.

And by eliminating many corporate preferences and lowering corporate rates, it will even out the corporate tax burden. To earn a profit, businesses will have to concentrate on building better products rather than better tax shelters.

In the long run, that should help make American companies more competitive internationally.

On the other hand, the bill increases the overall corporate tax burden. That, in turn, may increase the cost of capital.

Economists who have analyzed the bill disagree about its ultimate economic effect.

Some argue that the repeal of tax incentives will discourage investment.

However, others point out that the tax incentives we have provided in the past have not stimulated increased U.S. investment. Foreign competitors like Germany and Japan, which have higher corporate taxes than we do, also have higher rates of investment and productivity.

If we are honest about it, we should admit that the bill's ultimate economic effect is uncertain.

But uncertainty does not justify inaction.

We have to make decisions in life, many decisions. And we have to do the best we can with the information that we have.

This won't be the last tax reform bill. As our country evolves, we will be adjusting the Tax Code again to keep pace.

CONCLUSION

Looking at the three goals we set out to achieve, this bill falls far short of perfection.

It is a mixed bag.

It is not black or white.

It contains many shades of gray.

Its proponents overstate its benefits.

Its detractors overstate its liabilities.

But, on balance, I believe that this legislation creates a better tax system than we have today.

And it also does something more.

This tax reform bill, and the process by which it is being enacted, represents a triumph of the individual, average American over the larger special interests.

For years, the Washington cynics have said that tax reform could never pass, because too many vested interests have a stake in the existing, loophole-laden system.

This bill proves the cynics wrong. As a result, it will restore public confidence in our tax system and in our Government.

Mr. President, a vote against the conference report is a vote for the current, discredited system.

A vote in favor of the conference report is a vote for reform, with all its risks and imperfections.

I am reminded of what Franklin Roosevelt told an audience in Butte, MT, 52 years ago. "On one side is cynical and unsympathetic acceptance of things as they are. On the other side is our determination and faith in the possibility of change."

I, for one, will vote for the possibility of change.

TRIBUTE TO SENATOR LONG

Mr. President, I applaud Chairman PACKWOOD, Senator BRADLEY, and the other Finance Committee members who have worked hard to achieve tax reform.

But I pay special tribute to the senior Senator from Louisiana [Mr. LONG].

The last time we overhauled the Tax Code was 1954. Eisenhower was President, Joe DiMaggio was married to Marilyn Monroe, and RUSSELL LONG was serving his first term on the Senate Finance Committee.

Every tax bill since then has had Senator LONG's signature on it.

And that has been all to the good.

Through three decades, Senator LONG has had one of the toughest jobs in the country: Raising revenue to support the necessary functions of our Government.

He has discharged that responsibility with tact and with tenacity.

Edmund Burke said that "An ability to preserve, and a disposition to improve, taken together, would be my standard of a statesman."

As much as any person who has ever served in this Chamber, RUSSELL LONG meets that definition.

His leadership will be sorely missed.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the distinguished ranking manager of this bill would yield me 4 minutes and that Senator METZENBAUM would yield me 4 minutes.

The PRESIDING OFFICER. The Senator has 8 minutes.

Mr. ROCKEFELLER. Mr. President, the conference report on the tax bill may represent the most thorough overhaul of the Tax Code to occur in our lifetime. Unlike previous efforts at tax reform, this one is truly sweeping in scope. It is hard to think of a taxpayer or sector of our economy that will not be affected by it in some way.

In my view, this extraordinarily complex piece of legislation is far from perfect. It contains some policy decisions that I find regrettable; every Member of Congress undoubtedly opposes certain parts of it. Because of its magnitude, the legislation inevitably entails some risk. There is really no way for us to be certain of the bill's effects on the economy; without question, we will learn of problems that were not foreseen. I am concerned, as many are, by the possibility that the dislocations related to this bill will compound the troubles of an already-weak economy.

Overall, however, I believe that the bill's strengths clearly outweigh its shortcomings, and that the benefits—those that are certain and those that are probable—make the risks worth taking. I am persuaded that if particular changes are too abrupt, or have unintended effects, we can—and must—make adjustments in subsequent legislation. But we may never have another opportunity to achieve the genuine reforms in this measure if we do not act now.

We should not forget what has propelled this tax reform effort forward. Our current tax system is the object of well-justified public anger and cynicism. We do not have a system that treats people equitably; we do not have a system that requires the wealthy to pay a fair share. Over the years, the proliferation of special breaks has produced a code of outlandish complexity—and left the system wide open to manipulation. A massive industry of accountants and attorneys has grown up for this very reason: exploiting the Tax Code for the advantage of their clients. Far from making the wealthy to pay a fair share, the present system allows people with six-figure incomes to pay little or no tax—often proportionately less than families living close to the poverty line.

The principal purpose of this legislation is to improve equity—to remove numerous special breaks and privileges that cause the tax burdens of people with similar incomes and family circumstances to differ so greatly. Perceptions that the tax laws aren't fair have done much to destroy public confidence in the system—and are undermining the voluntary compliance on which that system depends.

There is a second major failing of the current system, and a second major reason for this legislation. Many of the provisions of the current Tax Code had well-intentioned social or economic purposes. But some of these tax expenditures have not necessarily benefited the economy, nor justified their cost in lost revenues.

The Code's erratic impact cannot be defended. Why should one major corporation face a tax rate of over 40 percent, while another profitable corporation collects refunds from the Government each year? We all know that too many investment decisions are being made because of tax consequences, not economic merit; we have all seen the half-empty office buildings that dot every major city, a testimonial to the misguided incentives of the 1981 tax bill.

Plainly, it will not be easy to reverse course and extricate the Tax Code from investment decisions, and I am not suggesting that this bill does a complete job of it. Nor will it be easy to move from one system to another; some dislocation is unavoidable. But I am convinced that the change of philosophy is necessary, that the legislation moves a long way in the right direction, and that the long-term impact of making the change will be positive for the economy.

Put simply, this legislation aims to treat taxpayers with similar incomes and similar family circumstances, alike. Until now, this goal has eluded the Congress, because of the great difficulty of curtailing numerous tax provisions which have benefited people—and corporations—over the years.

In my view, the most important provisions in the bill involve the restrictions on tax shelters and the repeal of the capital gains differential. Together, these changes substantially limit the ability of wealthy individuals to avoid paying taxes. Under the current system, tremendous energy is devoted to sheltering income or converting it into forms which receive tax advantages, like capital gains. Largely for these reasons, the graduated rate structure we have now is now progressive—despite 15 tax brackets and a top marginal rate of 50 percent.

It is fair to ask if the new rate structure is progressive enough. Under the bill, the top rate for the richest taxpayers is 28 percent, while the marginal tax rate in the income range just below them is 33 percent. I would prefer a system of three explicit rates, with the top marginal rate applied to those in the highest income brackets, and I voted for the Mitchell amendment when the Senate considered it.

I recognize that the low top rate is part of the complex bargain that made this tax reform legislation possible. If the top rate were higher, it would have been extremely difficult to eliminate the differential treatment of capital gains. Nevertheless, I still hope Congress will revisit this issue in the future. A great strength of this legislation is that it greatly reduces opportunities for wealthy people to avoid paying taxes. A great weakness of the legislation, however, is that it offers yet another tax cut to the wealthiest

Americans who have been paying taxes—those who have had their tax burden cut by enormous amounts during the Reagan years. Extending the top rate of 33 percent to the very highest income groups would produce a fairer Tax Code; it would also produce an additional $10 billion annually of badly needed revenue.

I think the majority of West Virginia taxpayers will come out ahead under the bill. Working and moderate-income people should benefit, especially if they haven't been itemizing deductions. Taxpayers who itemize are also likely to gain if their deductions are their mortgages and State and local income and property taxes. The bill should make a major difference to low-income families living at the poverty level, whose taxes have risen considerably in recent years. In addition to removing 6 million poverty-level families from the income tax rolls, the bill provides significant tax cuts to 5 million "working poor" families—enough to offset much of their payroll tax burden.

The antipoverty features of this bill should not be underrated. The economic policies of the Reagan administration have taken an exceptionally heavy toll on the poor. While the 1981 tax act gave huge tax cuts to wealthy people and corporations, families on the edge of poverty faced higher income and payroll taxes, along with substantial cuts in a variety of government benefits. Robert Greenstein of the Washington-based Center on Budget and Policy Priorities called the tax bill "more beneficial for low-income working families than any piece of legislation we have seen—or are likely to see again—for a number of years."

Altogether, roughly 80 percent of all taxpayers are expected to be in the 15 percent tax bracket under the new system, which should go to their advantage. In West Virginia, this percentage may be somewhat higher.

In general, the conference agreement—like the Senate version of the bill—makes more radical changes in the individual tax structure than it does on the business side. Overall, however, corporate taxes will be higher than under existing law. Some of this comes from a tougher corporate minimum tax, intended to end the spectacle of profitable companies paying nothing or receiving tax refunds.

There's considerable disagreement over what the business tax changes could mean for the economy—particularly about whether the bill will depress business investment. The conference agreement repeals the investment tax credit and lengthens some depreciation schedules, particularly for real estate investment. Some experts argue that the higher corporate taxes will have a sufficiently negative effect—at least in the short-term—to worsen the economy's doldrums.

I do not discount these concerns; my State has never fully recovered from the 1981-82 recession, and anything that adversely affects the current fragile economy is extremely worrisome. But there is general disagreement about just what the short-term impact of the tax reform bill will be. It will also be difficult to isolate the effect of tax changes on the economy: overall fiscal and monetary policy, the value of the dollar, and economic conditions in other countries will all have substantial influence on the performance of our economy in the next few years.

I have spoken repeatedly about the declining competitiveness of many U.S. industries; I believe that the challenge of restoring our economic competitiveness is the most crucial problem facing our country. But I do not see how defeating this tax reform package will improve our competitiveness. Without question, the present tax system channels investment into some unproductive areas: half-empty office buildings and shopping malls and other projects that would not be undertaken in the absence of tax breaks. The 1981 tax cut, which gave enormous new breaks to business and spurred the growth of real estate shelters, is partly to blame for this situation. And for all of its emphasis on investment incentives, the 1981 act was primarily a huge raid on revenues—which did not prevent investment from sagging or industrial competitiveness from slipping. Over time, I believe, the tax changes should lead to a more productive economy—by halting the drain of resources into investments which really do not contribute to the Nation's wealth.

The bill could also, over the longer term, prompt industry to expand operations here in this country instead of overseas. A variety of technical changes reduce the ability of multinationals to get tax advantages by shifting income and expenses among foreign subsidiaries. The lower corporate tax rates also reduce the attractiveness of the tax credits multinationals now get for taxes paid to foreign governments. As badly as we need the jobs, we should welcome tax changes which encourage companies to keep plants here at home.

It is also possible that the tax bill will have a favorable effect on interest rates. The combination of lower tax rates and limitations on the deductibility of nonmortgage interest should make borrowing less attractive to consumers and businesses—and push interest rates down. If this happens, the benefits of lower interest rates should make up, at least in part, for the loss of the investment tax credit and resulting increases in the cost of capital.

The bill is designed to reduce wide variations in the effective tax rates corporations now pay. A survey of 30 large companies in last month's Wall Street Journal showed enormous differences, ranging from rates of close to 40 percent to less than zero. The provisions for a 20-percent corporate minimum tax should do much to "level the playing field" by making the tax rates on profitable companies more uniform.

But the short-term effects of the bill may be painful for some industries. Some provisions take effect abruptly—even retroactively, which I consider regrettable. The investment tax credit, for example, is repealed as of January 1, 1986, because the revenue gains from doing so are very large. At least, in this case, businesses saw it coming, as every tax reform proposal since the first Treasury plan included repeal of the ITC. Because of this, it is possible that the main negative effects have already been felt: Business investment surged briefly at the end of last year, in anticipation of the tax change, and has fallen off in 1986.

Because revenue considerations tended to determine how particular provisions were phased-in or out, transitions to the new system were not always smooth. I would have preferred to see more gradual phase-ins—and more of an effort to lessen the possibility of dislocation, as the path to enduring reform.

Parts of the bill—including some of the transition rules—respond to specific problems of certain West Virginia industries. A Senate provision permitting flood-damaged businesses to get the benefit of existing depreciation schedules on investments they make to rebuild their facilities survived in the conference agreement. There is also a very important provision that will reimburse steel companies for a portion of their unused investment tax credits. Another rule permits Weirton Steel to use an expiring tax credit for companies with employee stock ownership plans [ESOP's] for an extra year, through December 1987. And the conference agreement preserved percentage depletion—which is vital to the coal industry, in at least partial recognition of the distressed condition of natural resources industries.

Preferably, major changes in tax policy should be introduced when the economy is healthy. With growth recently down to an anemic pace of 0.6 percent in the second quarter, conditions clearly are not ideal at present. But I don't think we have the luxury of waiting for a better time to pass this bill. Alan Greenspan, former Chairman of the Council of Economic Advisers, recently counselled the Congress that it's really "now or never." We're unlikely to get another chance to move this far with tax reform if we let this opportunity slip by.

Undeniably, there are serious problems with the state of our economy. Growth is sluggish; real interest rates remain very high. We're still facing a sequence of huge structural deficits in the Federal budget, and a trade deficit that could hit $200 billion this year. Productivity growth has been unimpressive in recent years, and unemployment is still quite high by historical standards. There is much we should do—quite apart from the tax bill—to address these problems and improve our overall economic performance.

I am troubled by the very real possibility that the tax bill, in practice, will end up losing revenue. Although the estimates from the Joint Tax Committee are well prepared, and attempt to account for various changes in taxpayer behavior in response to the bill, there are simply too many unknowns to have much confidence in their precision. And because there's more reason to think the revenue estimates are too high than too low, our problems with staggering Federal deficits could become even tougher.

In closing, I do not think we have reached the end of the road with tax reform. The bill does a great deal to remove loopholes and make the system fairer. I recognize the value of letting the dust settle and giving taxpayers some certainty that the rules will not change again for awhile. But if problems we could not anticipate arise, adjustments should be made.

I think it is unfortunate that so often, the bill is described as a tax cut. People have been led to equate tax reform with tax relief—and to focus on how much the bill will lower their taxes. For most individuals, the combination of lower rates and increased standard deduction and personal exemptions will more than offset the loss of particular deductions and credits. For many, however, these benefits will be modest—perhaps several hundred dollars a year. And some people will see their taxes go up.

What the bill really does is broaden the tax base and shift the tax burden: from individuals to corporations; from taxpayers whose main income comes from earnings to those with preference income. In the process, it reverses the policies of the 1981 tax cut—and greatly limits the long-standing practice of using the tax system to achieve specific social and economic goals. With these benefits in mind, I think the risks are worth taking, and I urge adoption of the conference report.

□ 1330

Mr. PACKWOOD. Mr. President, I yield 3 minutes to the Senator from Georgia.

Mr. MATTINGLY. Mr. President, we have had a long and intensive debate on the tax reform bill. We are now down to the final stage. I believe this bill is important for the future of our Nation. It represents a commitment to fairness and equity. It provides an incentive for savings and investment. And it embodies a design for opportunity and growth.

Unlike past changes in the Tax Code, this bill does more than shuffle the loopholes. The rates are simplified. This bill has just two rates—15 and 28 percent. By reducing these rates, we will encourage hard work and good investment decisions based on economic realities. This will help create new jobs for Americans. And there will be only one rate for corporations—34 percent. This lowering of rates is the driving force behind the bill.

Under this bill, 6 million of the working poor will be taken off the tax rolls. This is only right. In some cases, the tax burden they currently face is enough to force them to use food stamps in order to make ends meet. It is time we let those people keep their entire paycheck. These individuals should not have to face the discouragement and heavy burden of these Federal taxes. The bill seeks to help those who seek to help themselves.

But it not only helps our poorest citizens. For the first time, there is a minimum tax so everyone will be paying a fair share of the tax burden. No longer will we read of multi-billion dollar corporations avoiding any tax payment whatsoever. And I think that is right.

This bill is good for American families. It increases the personal exemption and lowers the tax rate. This means most people will have more money to take care of their families. The bill also protects homeownership deductions. It gives the American family a break—a break I certainly believe they deserve.

Mr. President, in a tax reform bill of this magnitude, there will be some provisions which will not please everyone. In fact, there are some issues I would like to have seen treated differently. I have stated throughout the debate on the bill my support for individual retirement accounts [IRA]. I remain convinced they are good public policy and a strong incentive for savings. It was my desire to see current law retained in this area. The retroactive application of many of the provisions in the bill still concern me, also. As I stated on the Senate floor during the debate, I do not believe it is right to penalize taxpayers for investment decisions made in good faith.

But overall, this is a very good bill. My friend and colleague, Senator BRADLEY, summed up this bill in a very eloquent speech he gave on this floor during the Senate debate. At that time, he said:

> Tax reform is not just about money. It is about hope: Hope for low-income people, striving to give their families the chance of a better life; hope for the elderly, struggling to get by on fixed incomes; hope for young couples priced out of the American dream of ownership; and hope for the worker whose future depends on a growing economy.

Mr. President, once we complete our work on this bill, it is America's turn to live with it, and produce with it. But the overwhelming opinion of this country's taxpayers and the Nation's business sector is—Congress should quit changing the tax laws. They do not want to see the old way of doing things return. They do not want to see tax increases and new loopholes added in 1987—and neither do I. Congress should step back and let the private sector take over. They do the best job of running the free enterprise system—not the Government. Continuous changes in the tax laws cause uncertainty in the private sector. This is not what they need. They need stability and reliability.

In conclusion, the final measure of this bill can be addressed in just one question: "Is this tax reform bill better than the current Tax Code?"

I believe the answer is yes. The current Tax Code is sinking under its own weight. This bill will establish a much better Tax Code.

Mr. President, this will be one of the most significant pieces of legislation we will ever vote on during our years in the U.S. Senate. I strongly support this bill and urge my colleagues to join me in this effort.

□ 1340

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time be charged to neither side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, as I indicated earlier, there are a number of these transition rules that were not in either bill and I am having difficulty understanding why they wound up in the 400 addons. I intend as the afternoon wears on to be able to inquire of the manager of the bill concerning a number of them. He and I have an understanding. He is attempting to get the appropriate answers, and I understand that full well.

However, one of them is a matter to which the minority side manager of the bill is prepared to respond and it has to do with Middle South Utilities.

Under the proposed bill any company can get a credit against its minimum tax up to 25 percent of that amount by using its investment tax credits. But one company which, as I understand it, operates I think in Illinois and Louisiana——

Mr. LONG. One company in Illinois benefits from the transition rule the distinguished Senator from Ohio has mentioned. In addition, Middle South Utilities is covered under that transition rule. Middle South serves customers in Louisiana, Arkansas, and Mississippi.

Mr. METZENBAUM. Middle South is in Louisiana, Arkansas, and Mississippi. I thank the Senator for the clarification. I did not know.

That utility has a carve, a special carve, out for it and it will be partially exempt from the new minimum tax rules to the tune of $20 million. Twenty million dollars in the world in which we live around here is not that much money. Or is it? Yes, maybe it is. With $20 million we could make room in the Head Start Program for 4,000 underprivileged kids, 4,000 underprivileged kids in the Head Start Program. Take your choice. Do you want to help Middle South Utilities get a special exemption from the minimum tax provisions that everyone else participates in, that the law is applicable to everyone else, take care of this one company that operates in three States, or take care of 4,000 underprivileged kids so they might be in the Head Start Program?

Mr. President, I, myself, feel that 4,000 underprivileged kids are—there is no comparison. There is no comparison. They are more important.

I do not know more important but equally important is the question of why did we choose one company out of all the companies in the Nation to get this special carve out from the minimum tax.

I say to you, Mr. President, that once we set the ground rules, once we provide an exemption from the minimum tax for one company, watch out, here we come, because everybody else will want an exemption and there are other matters that I expect to get into this afternoon which will prove that very point where there was an intention to provide special consideration for one company. By the time they got done they wound up with a substantially larger number of companies and now I am told they want to make it applicable for all the companies. When you have an exemption around here for one, too often you take care for all.

We do not do that, I might say, when we have Head Start Programs or WIC Programs. We only go so far where we have the money. No one really wants to take care of everybody that is entitled to it.

But in this instance, Middle South is to get a special advantage.

Mr. President, it is my understanding that the distinguished Senator from Louisiana is about to respond as to the reason for this.

I yield the floor.

Mr. LONG. Mr. President, may I speak on the Senator's time? I do not have time. I farmed all my time out to other Senators.

Mr. METZENBAUM. How much time—3 minutes.

Mr. LONG. I might need 5 minutes to respond to the Senator.

Mr. METZENBAUM. I yield 5 minutes.

Mr. LONG. Mr. President, Middle South is an investor-owned utility company serving the States of Louisiana, Arkansas, and Mississippi. Mr. President, I am informed that Middle South has more earned, but as yet, unused tax credits on its books than any other company in the entire United States. A major reason for this is Middle South was prevented from building cheaper natural gas plants by Federal energy policy which only left the option of building two expensive atomic generating plants which we did not want. The people from Arkansas are trying to get completely loose from this thing because it requires their consumers to pay higher utility rates than they would have to pay otherwise. And we in Louisiana and Mississippi will be stuck with higher utility rates because we are compelled to pay for these expensive nuclear generating by Federal energy policy.

So we have all these tax credits. Every dollar of these tax credits which had been earned—I would like the Senator to hear this.

Mr. METZENBAUM. I am sorry.

Mr. LONG. Every dollar of these hundreds of millions of dollars of tax credits—that have been earned by Middle South will be used to reduce the rates the utility charges its customers. Every dollar which the company is permitted to claim under this provision will result in a dollar of savings for the ratepayers. So the $20 million the Senator is talking about is just $20 million that the people of Louisiana served by Middle South will not have to pay.

Now, please understand our consumers are going to be paying for a great deal more to begin with. We will be paying hundreds of millions of dollars in higher rates as a result of the facilities covered by the rule. If Federal energy policy had allowed us to use our own natural gas that we have in abundance in that part of the country the rates would have been hundreds of millions of dollars less.

The House had language in their bill, a so-called megawatt rule, and that is a benefit to the State of Mississippi and also the State of Illinois. I believe it is there because they have a big generating plant in Illinois and I think Illinois was well represented on the House side.

☐ 1350

That rule does not benefit the Louisiana plant. So Illinois could get the benefit of it, the Mississippi plant could get the benefit of it, but the Louisiana plant could not get the benefit of it.

And, why not? Well, because one could get the benefit of it if the capacity was between 1,109 and 1,149 megawatts. Well, it just happens that the Louisiana plant is 1,104 megawatts.

Now, why these numbers? Well, it was drawn for the benefit of the Illinois plant. So it was felt that was not quite fair. And if people were to be permitted to use their tax credits, Middle South that needed it worse than anybody, where every nickel of it would go to the consumers, ought to be permitted to share some of the same benefits that would go to the plant in Illinois.

Mr. President, with respect to every one of these transition rules, any transition rule that benefits the State of Louisiana or anybody in Louisiana, I would have no objection to it being applied generally to others in the same situation across the country.

I told the chairman of the committee that if something benefited the State of Louisiana and could not be made applicable to others in the same situation, he could take mine out, and in some cases he has taken them out.

All we are asking is that we be treated somewhat—not as well—but at least somewhat along the same fashion as the State of Illinois is enjoying with their generating plant and the similar plant in Mississippi.

Understand, Middle South will not be able to keep a nickel of this, it will be passed through to the ratepayers. In any event, the company will still be paying a tax, they will, however, be permitted to reduce a portion of their minimum tax by using tax credits which the company earned slightly earlier. It would just take more time if the rule were not included. This permits them to use their credits a little sooner than they would be able to use it otherwise.

Mr. METZENBAUM. Mr. President, I appreciate the candor of the Senator from Louisiana. And, as always, he is very candid. It is a fact that Illinois, the company in Illinois, gets the benefits, gets carved out and does not have to pay the minimum tax. Now, we come over to Louisiana and they get a carve out from having to pay the minimum tax.

And the argument is made that they have to do that because why should they not since Illinois has already had it? That proves my point. A minimum tax was intended as a minimum tax for everybody; not for somebody, but for everybody.

What we have here is the exact proof positive of the point that I made earlier, and that is that every time you start with one exemption from a law that has not even been enacted into law yet, you carve out one exemption after another exemption after another.

I have said that this was going to be an exemption of 50 percent of the minimum tax. I was mistaken. As the distinguished Senator from Louisiana points out, it is 75 percent of the minimum tax.

Well, why do we not just eliminate the minimum tax entirely? What they are doing is using that investment tax credit, that matter about which so much has been said today and yesterday, and using that in order to keep from having to pay taxes.

Twenty million dollars? The world will not come apart, it will not balance the budget, but it is just another example of one of those provisions in these transition rules.

And this is not a transition rule. This is a rule that is made to benefit a particular utility. The distinguished Senator from Louisiana is kind enough to say it will be passed on to the consumers. Fine. I do not know whether that is a fact or not, but I accept his representation. I am not questioning his representation.

But what about the rest of the people in this country? What we are really saying is that all the taxpayers of the country are going to get together—they do not know it—but what, in effect, we are doing is all the taxpayers of the country are joining together and putting together a little pot so that the consumers in Louisiana will not be paying those rates that they might otherwise be paying.

Now, my feeling is that actually utility companies do not often reduce their rates by reason of special tax credits they get. When they have to pay higher taxes, they increase their rates, but I do not know that they very oftentimes reduce those rates.

But whether they do it or do not is not the issue. The issue is why should all the taxpayers of this country join together and put up a pot of $20 million so that one company in Louisiana may have an exemption from the minimum tax which we have striven so hard to bring into being?

I yield the floor.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Mr. President, I yield myself 1 minute.

Mr. President, the bill makes this company a minimum taxpayer, so the bill creates a problem.

All this says is, just as relief is provided to others who would be adversely affected, some consideration is given to the fact that Middle South is very adversely affected in a fashion that could not be foreseen at the time they built these plants. The company does not end up keeping one nickel of the money. It all goes to the benefit of the ratepayers who are going to have to pay more than the national average anyway because they have these two nuclear plants.

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum and ask that it not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I am trying to turn back to a number of questions that I have for the distinguished majority manager of the bill. I have been trying to work with him so that he may be prepared for the answers. He now tells me that the question in connection with AIG/CIGNA is one for which he is ready.

On page 497, AIG/Cigna is handed $20 million. I am frank to say I do not know what AIG/Cigna is and I certainly do not know why they are given $20 million.

Will the chairman be good enough to so indicate to the Senator from Ohio?

Mr. PACKWOOD. Yes, I will.

Let me ask one question, if I might. When the Senator gave us the transition rules for Ohio, did you give us all the transition rules that people asked you for or did you pick and choose among them and give us some?

Mr. METZENBAUM. The answer is we did not give you all the transition rules people asked us for. We tried to discriminate on the basis of what we thought were meritorious. If we thought a project had been started and really was entitled to a transition rule, we advised you of it.

Mr. PACKWOOD. I will answer your question on AIG/Cigna—they are two companies—but before I do, I have a question about Northstar Steel. Would that fit into that definition you just gave?

Mr. METZENBAUM. It is a perfect example. I went to Northstar Steel the other day and what a wonderful example of development that is. I was in the plant. They took an old plant—I think it was Republic Steel, I am not sure of the name of which one it was, because all of them are closed down in Youngstown—they took this beat up and battered old company and they are spending $80 million of their own money in it. They felt they were entitled to be treated on the basis of the fact that they had already proceeded forward. They have some people working there digging with derricks. I walked through the plant. I got filthy walking through the plant. But there is a lot of work going on there, and that one I am positive is in the transition.

□ 1400

Mr. PACKWOOD. That is a very valid answer, and based upon your judgment and your honest discretion you thought this is one that is entitled to relief.

Mr. METZENBAUM. I saw the facts. I went there to see for myself.

Mr. PACKWOOD. Everyone of us has exercised I think the same kind of judgment you did with Northstar Steel in saying this one I honestly think is worth it.

Mr. METZENBAUM. This one I can vouch for for the fact that they are spending their own money, they are operating and moving forward under the old law, and it is justified.

Mr. PACKWOOD. I am not trying to quarrel with the fact. I think it is justified. That is one of the reasons we put it in among the many requests we had from the different Senators. We put in the Cleveland Dome Stadium. As best as I can tell there has not been a spoonful of earth ever turned yet for the stadium.

Mr. METZENBAUM. But the fact is they have bought a substantial portion of the property, and have demolished buildings where they expect to locate.

Mr. PACKWOOD. I understand that.

Mr. METZENBAUM. They moved forward and are spending money.

Mr. PACKWOOD. The Cleveland Dome Stadium is going to be receiving about $10 million in transition rule bonds, and we know of course who the purchasers of the bonds are. They are easily the highest 1 percent income people in this country. I am thinking of what could have been done with that $2 million. We could have used that $2 million to help 2,000 kids in the Head Start Program. Instead, the money is being used to save the stadium so we can pay the baseball and football players $500 or $1 million, and allow the very richest people in this country to buy the bonds; instead of helping those 2,000 poor little underprivileged kids in Head Start.

Mr. METZENBAUM. I have said consistently I have no quarrel with the legitimate transition rules. But when transition rules are put into effect for people who are going to buy airplanes sometime in the future, that is not a transition rule.

Mr. PACKWOOD. When transition rules are put into effect so people can buy bonds who are as rich as the people who buy airplanes, I am questioning the value.

Mr. METZENBAUM. There is quite a difference because transition rules relate to those people who have already taken some action with the understanding of what the law is. Then you change the law, and you want to not make the new law provide a penalty.

I have said to the Senator from Oregon not once but 10 times both in connection with the original bill and in connection with this one that I do not have any fault to find with it. I have said that publicly on the floor more than once today, and yesterday.

What we are talking about is taking care of reaching out and taking care of a group of insurance companies, and saying they do not have any reason to be involved in transition rules. What I am talking about is these people buying airplanes when nobody knows who they are.

Mr. PACKWOOD. Earlier my good friend was talking about the procedures, the secrecy, and the darkness in which this was done.

Mr. METZENBAUM. There is no secrecy.

Mr. PACKWOOD. That is right.

Mr. METZENBAUM. There is no secrecy as far as the four transition rules we talked about.

Me. PACKWOOD. But secrecy only in this sense: I will wager that all of the transition requests which you got you did not have public hearings on them, and you decided yourself as to which ones you would choose.

Mr. METZENBAUM. Of course.

Mr. PACKWOOD. Utterly in the dark of the office of the night. How do I know who you are trying to favor and not trying to favor with your decision to put them forth quietly and secretly without any publicity.

Mr. METZENBAUM. There is no secrecy at all because we put out press releases saying we were asking and we were told you were asking for them. We never asked you to treat them confidentially. There is a big difference when you hand us 400 transition rules and nobody ever heard of them.

Mr. PACKWOOD. I am saying it is not much different than what you did, you chose among all your constituents which ones to favor and which ones to disfavor by never submitting the transition request. That is not a decision made in the daylight. That is a decision you make privately for whatever personal reasons you choose to pick and choose among the different ones you give us.

Mr. METZENBAUM. I have to respectfully disagree with my colleague because those which we asked for we feel are justified. We know enough about them.

I said to you, and you have already said to me, you do not know the facts with respect to many of these. That is the reason my question is coming to you later in the afternoon because you did not know the answer, and I said fine. I understand that.

(Mr. TRIBLE assumed the chair.)

But the fact is you put your imprimatur on some of those transition rules, an awful lot of them, without knowing anything at all about them. Middle South Utilities is one we just talked about. I have great difficulty in understanding how anybody can give them an exemption from the minimum tax. I have difficulty with many of these others that we are providing it for.

It is my own opinion, if I may respectfully say so, that left to your own designs if you had the votes, you probably would have knocked more of them out than are presently on the agenda.

Mr. PACKWOOD. I would probably what?

Mr. METZENBAUM. You would probably knock out or eliminate a lot more of them.

Mr. PACKWOOD. I have indicated twice before, and I will say again, that in making subjective decisions I would not be surprised if your office, my office, or among our staffs or in the Senate or in the House on occasion political considerations crept in the body politic. That is amazing. I realize we all cannot be pure. Some of us are more pure than others, I guess.

All we can try to do is make an honest decision, as you can, and on occasion you trust somebody else's judgment. On occasion you trust the judgment of DAN ROSTENKOWSKI in the House to be a decent human being, and by and large they are. It is amazing.

Mr. METZENBAUM. Nobody says we do not trust the chairman of the Finance Committee, or the chairman of the Ways and Means Committee. That is not the issue. The issue is why was all of the secrecy, why was it not put up on top of the table, and why are we still having difficulty finding what it is all about?

Mr. PACKWOOD. I will tell you why all the secrecy. To begin with, I was intrigued earlier with what my good friend from Ohio said about the secrecy. This bill, the original bill, that went through the Senate was crafted in secret, and passed in secret in the Finance Committee.

Until the bill was finally approved by the committee, it was drafted in good measure by the staff. My hunch is that television cameras were not grinding away over their shoulder as they drafted and crafted the bill. It was done in secret.

The members of the Finance Committee then took it up, and in the last 4 or 5 days we met behind closed doors. Do you know what we discovered? When we met behind closed doors, every member of the committee was willing to vote for what he thought was in the public interest, and almost every member would come up afterwards and say, "BOB, I am glad we are doing it this way. If I had to vote in public, I would not be able to vote against the insurance companies, homebuilders, or realtors. I want to do what is right for this country."

It was done in secret. Does that make it evil, bad, or terrible that a result was reached without the glare of lobbyists looking over your shoulder. When done in public, we found that as soon as you so much as blink, out go the telegrams to Members, and back come the telephone calls. We discovered that the members would not do what is needed to create the best Tax Code in 70 years.

Mr. METZENBAUM. The Senator knows that I have indicated many times that I intend to support this tax bill. But I am talking about not what the conference committee did in secret. I understand they are having to meet without having television cameras glaring, without having all the media in, and without having all the lobbyists in.

I am talking about the question of the floor, and our knowing about what is going on. And that is a totally different proposition.

Mr. PACKWOOD. Now let us go through the process again so we understand openness versus secrecy. From the time the Senate bill passed, we received roughly 1,000 requests from 94 Senators for additional transition rules for which we have $1 billion to spend.

I started to cost all of those requests out. Finally, they were coming in so fast we could not keep up with the process. The joint committee did the best they could. They could not keep up. But my guess is those rules would cost somewhere between $10 and $20 billion. That was totally inadequate.

I did not sit down and go through all 1,000-plus requests one by one, nor did I try to hold the public hearing on all 1,000 of them. Even if I could give the witnesses 10 minutes each, there would be 10,000 witnesses, and 100,000 minutes.

So what we did is say to the staff, "Here are the rules by which transitions are to be selected. Try to avoid violating those rules." By and large they were successful. We asked them to try to pass on the merits of the rest.

We divided up the total amount of money that we agreed would be used for transition.

The House had more money than the Senate because the Senate had spent more money initially than the House had. We accepted the House requests and they ours, so long as they did not violate the agreed-upon rules.

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Mr. METZENBAUM. I want to repeat, that the Senate had spoken with your approval because it would not be passed without your approval, that when you came back from the conference committee you would tell us the name of the company involved, the reason for the special or the unique treatment, and the cost. That was dropped out summarily at the conference committee. I want to point out that this did not say the House has to be informed. This was the Senate which wanted to be informed. It was the sense of the Senate that this should be continued in the conference report. We were to be informed about it.

I say the House has its way of conducting their business. We have not been able to get the facts.

Now let me permit the chairman of the Finance Committee to respond.

Mr. PACKWOOD. AIG/Cigna are two companies, although we refer to them as hyphenated. The rule applies to reinsurance among related corporations. The rule results in termination of the reinsurance contracts in many cases, since there will no longer be tax advantages. Many of these reinsurance contracts have been in place for many years. This is a 3-year phasein that will give a small transition period to help the companies restructure their business.

To the best of our knowledge, these are the only two companies affected. We rifle shot these two companies so that we did not inadvertently open up a generic rule that other companies would take advantage of.

Mr. METZENBAUM. Am I correct that these two companies are not American companies, or that the home offices are not located here?

Mr. PACKWOOD. Their home offices are in Philadelphia and New York.

Mr. METZENBAUM. Are they not foreign owned?

Mr. PACKWOOD. No.

Mr. METZENBAUM. Is it not a fact that they engage in considerable offshore activities?

Mr. PACKWOOD. Yes, that is correct, as do many other insurance companies.

Mr. METZENBAUM. Are they not engaged in offshore activities which would be tax havens involving their facilities?

Mr. PACKWOOD. Most of the risks that they insure are in major Western European countries.

Mr. METZENBAUM. That was my understanding, that they were really primarily a company dealing with foreign operations rather than American. It was my understanding that they were foreign owned.

Mr. PACKWOOD. I hope my good friend is not implying that American companies should not do business abroad.

Mr. METZENBAUM. I am not suggesting that at all.

I did not quite follow what the Senator was saying. What are they being exempted from?

Mr. PACKWOOD. They would be taxed currently on their foreign taxable income rather than receiving the deferral as under present law. We gave them a 3-year transition to phase in the new tax law.

Mr. METZENBAUM. So that is the $20 million cost?

Mr. PACKWOOD. The net cost of all of these transition rules is about $10.6 billion. Some of them are quite expensive. Here is one for $71 million. Some are less than $100,000 in some cases.

Mr. METZENBAUM. But this particular company would pick up $20 million.

Mr. PACKWOOD. That is corrrect.

Mr. METZENBAUM. Is the chairman of the Finance Committee prepared for additional questions?

Mr. PACKWOOD. I will request a quorum call and find out.

Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PACKWOOD. Mr. President, if the Senator from Ohio wants to go on to the Willard Hotel, we are ready.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, under the transition rules, the Willard Hotel is given an exception not only from a new rule contained in this bill, but from a limitation enacted in 1982.

The question is: A, what will this provision cost the Treasury? B, why 4 years after the 1982 enactment do we go back and change the rule for one developer?

It is certainly hard to make the argument that we did it in order to help him with his development, since the development is already in place and finished.

Mr. PACKWOOD. You are right about the 1982 law. That changed the rehabilitation tax credit but it grandfathered all existing binding contracts. There was a binding contract on the Willard at the time. They had not even started their internal demolition and reconstruction of the hotel. However, grandfathering also required that the project be completed by January 1, 1986.

As most of us are aware, the Willard was a huge rehabilitation project. It encountered delays with the District of Columbia's traffic designers. It slowed down construction through no fault of the Willard.

Because of the size of the project and the delays, the Willard was not opened until the last few weeks. The transition rule merely extends the date by which the project would have been completed.

Mr. METZENBAUM. I accept that explanation. I think, frankly, it is one of the more logical explanations, meaning no disrespect for the previous ones.

I would say it is more justified. It sounds as if they were delayed for reasons beyond their control. I see no objection to doing that. I appreciate the answer.

Mr. PACKWOOD. I am advised that this involves approximately $1 million.

Mr. METZENBAUM. Is the Senator from Oregon prepared with respect to any of the other questions?

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that it not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, page 194 contains a rule regarding an air carrier merger. It is an air carrier merger about which we have heard a good deal. The transition list identifies the beneficiaries as Texas Air and Eastern. It cost $47 million.

Let us be realistic about it. The Texas Air-Eastern merger has been in the works for a long time and it is going forward. In fact, it is just about finalized.

Why are we now saying to them, here is a gift of $47 million from the U.S. taxpayers?

That is beyond me. They make their deal. There is no reason to retroactively make this kind of adjustment. It seems to me that we are just giving away money. They knew the tax bill was being changed. They knew what the new law was going to be. They did not say that their deal was conditioned upon Congress doing something.

They knew all about it. They intended to proceed and did proceed. Under the circumstances, I have great difficulty understanding why the conference committee decided, on this very highly publicized merger, which Texas

Air and Eastern have been working so hard to put through—all of a sudden, we say congratulations and as a token of our recognition of what you have done for yourselves, we will give you $47 million.

I say to my distinguished colleague that my time is beginning to run down. I am not asking him to use his time, but I shall yield him 3 minutes to respond. Beyond that, I ask him to use his own time.

Mr. PACKWOOD. I thank my colleague.

This transition rule was put in by the House. It grandfathers the merger of Texas Air and Eastern from the new limitations on the net operating loss where a loss company is acquired.

Of course, Eastern is a company with significant net operating losses. The new rules go into effect on January 1, 1987. The merger transaction was in process on July 17, 1986, but it cannot be completed before March 1987—again through no fault of the two airlines. So they are caught in this transition period. So we gave them the transition.

Mr. METZENBAUM. Though it is the fact that the January 1, 1987, deadline is there, it is a fact that regardless of what the conference did, they would have been able to use the net operating loss carryforward. They did not need any special tax legislation for that.

It is my understanding that the Senator's amendment provides for some special tax treatment. The net operating loss carryforward I understand. That is an accepted accounting practice. But I believe as I read this—and the Senator might clarify it for me if I am wrong—this gave them some special tax treatment that did not have to do with the fact they had a net operating loss carryforward at Eastern.

As I understand this rule, my staff tells me that this provision exempts them from the provision that is in this bill that precludes a company buying up a net operating loss carryforward and using it against its own income.

Mr. PACKWOOD. The new rules go into effect on January 1, 1987. Because this merger will not be concluded until March, we simply exempted them from that January 1 date. We did not create any new rules or change any results. We simply exempted them from the January 1 deadline.

Mr. METZENBAUM. The point I made previously is they knew what was in the tax bill. They did not know what would be in the conference report.

The PRESIDING OFFICER. The 3 minutes yielded by the Senator have passed.

Mr. METZENBAUM. This will be my own time.

Mr. President, they knew what was going on and they never said, "Our deal is conditioned upon getting this special provision." As a matter of fact, it is certainly a very well publicized fact that Texas Air was trying in every way possible to complete the deal we are concerned with but they could not complete it. Eastern wanted very much to complete the deal. So we did not need to give them the $47 million. That is the thing that concerns me.

I understand in some situations—the Senator told me before that the Morgan Guaranty building, if they did not do it before a certain date the company might have left the area and that would not be in the public interest. That is a fact neither the Senator nor I knows. But the fact is that this is the argument. But here is a company moving forward, making the deal. There is no indication that they would not have made the deal and would have affected any particular public interest for them to make the deal. They wanted to make the deal and wanted to go forward. Why give them $47 million?

Mr. PACKWOOD. They made the deal, as the Senator calls it, on July 17 hoping to complete it this year. They did not complete it this year. On July 17, there had been no conference. The bill had passed the House, had passed the Senate. There was no conference on July 17.

Were they running a risk? Yes, they were running a risk. They were not able to complete the deal through no fault of their own.

It is not unlike the Willard Hotel. They thought they would be done by January 1, 1986. They were not. These two companies thought they would be done with their merger by January 1, 1987. They will not be.

Mr. METZENBAUM. I do not think it is quite comparable to the Willard Hotel situation, but suffice it to say that I do not think that was good judgment or a good use of the taxpayers' money. But I am not going to belabor the point.

Is the Senator from Oregon prepared to discuss some of the other areas I would like to inquire about?

Mr. PACKWOOD. Johnson & Johnson.

Mr. METZENBAUM. Mr. President, page 489 of the bill provides Johnson & Johnson $38 million in benefits. What rule is Johnson & Johnson being exempted from and what public interest is served? I yield the Senator from Oregon 2 minutes of my own time.

Mr. PACKWOOD. The administrative expenses are not allocated to foreign sources if you can trace them to a U.S. corporation. Therefore, a multinational corporation would not have to allocate the funds paid in the United States to foreign sources if they can show it belongs to a U.S. operation. Johnson & Johnson has foreign and domestic operations. They use separate corporations, but they cannot trace the expenses. Therefore, they need a phase-in that would allow them to show their actual tracing. Therefore, we gave them a 3-year phase-in to make that allocation.

Mr. METZENBAUM. Is that part of the Johnson & Johnson operation in Puerto Rico?

Mr. PACKWOOD. No.

Mr. METZENBAUM. Is it not a fact that if we make this rule for Johnson & Johnson, we open up a Pandora's box of other companies who ask for similar treatment because many other companies conduct their business in a similar manner?

Mr. PACKWOOD. No, Mr. President, I do not think so. In the tax reform bill, we have a tracing provision. If you can trace your expenses, then you do not need this rule. Johnson & Johnson cannot at the moment trace and they needed the time to separate the two operations.

Mr. METZENBAUM. They will get $38 million over what period of time?

Mr. PACKWOOD. Three years.

Mr. METZENBAUM. I just have to say, is that not their problem? When we start to make tax laws to accommodate the variety of business methods that are used by various corporations, do we not find ourselves in the position eventually of writing tax bills all with rifle-shot intent to take care of Johnson & Johnson and PDQ and XYZ and every other company? That is part of the problem the Senator from Ohio has with these transition rules, that these are rifle-shot provisions, taking care of a company or two companies—in the case of insurance companies, 15 companies. What this does is wind up subsidizing their foreign operations. That is one of the most defective aspects of it.

Mr. PACKWOOD. My good friend cannot have it both ways. He says the problem is he does not like the rifle-shot picking up one company. He does not mind asking us for Bowling Green solid waste disposal facility or the Zimmer coal plant. These are all rifle-shot for companies in the Senator's State.

Mr. METZENBAUM. Just so we do not get the record confused, I did not ask for all of those. In fact, until the Senator mentioned them—I did not ask for Zimmer. Did the Senator say Bowling Green?

Mr. PACKWOOD. Bowling Green solid waste disposal facility.

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Mr. METZENBAUM. I have no recollection of having asked for that. In fact——

Mr. PACKWOOD. Does the Senator want to see the letter he sent?

Mr. METZENBAUM. I have no recollection. Sure, I would like to.

Mr. PACKWOOD. Does the Senator want to see the letter that he sent asking for it?

Mr. METZENBAUM. In conference?

Mr. PACKWOOD. Yes.

Mr. METZENBAUM. Maybe I did. But I have no recollection of that.

Mr. PACKWOOD. Let me read it if I might. "March 13, 1986, Dear Bob. I have enclosed a copy of a letter that I received from the city of Bowling Green, OH. Last year the city enacted legislation," and so on. And then you asked to be grandfathered. "Sincerely, HOWARD METZENBAUM." I would hope the Senator knows the transition rules he asked for.

Mr. METZENBAUM. I guess, if the Senator just read that letter, I passed the letter on to him. I do not see anyplace where I requested it, did I?

Mr. PACKWOOD. Oh, yes.

> Last year the city enacted legislation authorizing the issuance of industrial development bonds to construct a facility to control air pollution and to dispose of solid waste. The city has asked to be grandfathered from any provisions which would impair their ability to market these bonds in 1986.
>
> Your consideration to their request is greatly appreciated.

I assume that you wanted me to act favorably.

Mr. METZENBAUM. That is a fair interpretation. I agree with that. I have no recollection. Unquestionably, the Senator is right. I sent the letter. But the point is that is not the same as this.

Mr. PACKWOOD. That is a rifle-shot for the Bowling Green bonds.

Mr. METZENBAUM. I understand it is a rifle-shot but now the Senator is addressing himself to the rifle-shot. I am talking about the fact that—we are talking about transition rules. Transition rules are supposed to take care of the very situation we had there in Bowling Green, although I had no recollection of it when the Senator mentioned in on the floor a moment ago, but they obviously were on their way on the project. That kind of rifle-shot I understand. Here you are taking a company—and the rifle-shot I am talking about is you are saying "Well, their accounting procedures don't provide for them to have separate expense accounts for their employees, between their foreign operations and their domestic corporations. Therefore, let's give them a break."

Mr. PACKWOOD. Let us talk about the rifle-shot. The Senator is critical of the fact that we have put into this bill some transition rules from the House that I took on the Houses word, and that we were not familiar with every one of them. The Senator from Ohio does not even know that he asked for one for his own city. If he does not know what he asked for for himself, what kind of a standard is he holding the rest of us to?

Mr. METZENBAUM. As a matter of fact, I was not critical of the Senator from Oregon for taking those from the House. I said I thought we were entitled to know what the facts are. That is what I said.

Mr. PACKWOOD. Right.

Mr. METZENBAUM. Stay with that.

Mr. PACKWOOD. Then a moment ago the Senator was saying, "That is the trouble with the transition rules, they're rifle shots; you are picking out one," just as his requests are picking out one. You cannot have it both ways.

Mr. METZENBAUM. The fact is you can, and there is a rationale, and the rationale is that when a company such as Willard Hotel had moved along and had used the old law and could not finish, I found no objection to that. And I find no objection to many of these others where there are companies that have actually moved along. Johnson & Johnson got special treatment. Johnson & Johnson did not move along. Johnson & Johnson had a different kind of accounting procedure, and so you took care of it. And that is what I object to. That is the kind of rifle shot to which I object.

Mr. PACKWOOD. Johnson & Johnson had an accounting procedure that was used under the present law. We then changed the law.

Mr. METZENBAUM. Right.

Mr. PACKWOOD. We changed the law.

Mr. METZENBAUM. OK.

Mr. PACKWOOD. So we are saying, "Johnson & Johnson, you have relied upon the law, and your accounting procedures have followed the law. We are now going to change the law." And they said, "Give us some time, then, to comply with the new law."

Mr. METZENBAUM. Let me just ask my distinguished colleague, why did you pick out 15 insurance companies and take care of them specially for $119 million without doing it for all companies? And what was there about these 15 companies that made them special that they should get $119 million? Every time we have had a tax bill on the floor, the insurance companies have received special treatment, special treatment. And they take ads in the newspapers telling us that we ought to balance the budget, it is our obligation and we ought to be responsible Americans. They take ads in the Washington Post telling us what we should do. Now they get $119 million given to them as a gift.

Mr. PACKWOOD. This is a very valid criticism that the Senator from Ohio can help alleviate—I mean we can alleviate the problem that the transition rule helps only these 15 companies. This was perhaps the last or next-to-the-last transition rule that Congressman ROSTENKOWSKI and I agreed to at 3 o'clock or 4 o'clock in the morning. And I must confess that on this one I made a mistake. I thought the request related to one company in which the chairman of the Ways and Means Committee was interested. He said, "Bob, this is critical to me and it is critical to the person that I am asking for." He named it. I said, "Mr. Chairman, I will give it to you." I did not know at the time that it related to 15 companies, 15 of the largest—I thought it was one—15 of the largest insurance companies. This transition issue would be much better handled by a generic rule because what you have is 15 of the largest insurance companies getting transition relief on what are called deep discount bonds. I think they buy about 70 percent in the country, but you perhaps have thousands of small insurance companies that buy the other 30 percent that are not covered. I think the rule ought to be changed and it ought to be made generic. I am going to suggest, when we have the concurrent resolution, that we take care of it technically.

Mr. METZENBAUM. But under this provision their taxes would be reduced from 34 to 28 percent; is that correct?

Mr. PACKWOOD. I will take the Senator's word on that. I am not sure.

Mr. METZENBAUM. The profits on these particular bonds?

Mr. PACKWOOD. Under the generic rule, that is correct.

Mr. METZENBAUM. Under the——

Mr. PACKWOOD. Under the bill, that is correct.

Mr. METZENBAUM. Under the bill, that is correct.

Mr. PACKWOOD. Under the generic rule that we have, it would be 32 percent.

Mr. METZENBAUM. It would go from 34 to 32 percent.

Mr. PACKWOOD. Right.

Mr. METZENBAUM. I do not think it ought to go from 34 to 32 but it is less and I gather that that would be revenue equal is what the Senator is saying?

Mr. PACKWOOD. What we would do is extend the transition rule to all the insurance companies in the country, but raise the rate so that we don't lose additional revenue.

Mr. METZENBAUM. I ask my colleagues from Oregon whether or not there are other areas to which he is prepared to respond at this time? I do have a number of other questions.

Mr. PACKWOOD. Mr. President.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. METZENBAUM. Just a minute. I have the floor.

Mr. PACKWOOD. I am not quite prepared to respond right now.

The PRESIDING OFFICER. The Senator from Ohio does indeed have the floor.

Mr. METZENBAUM. Pardon. I have the floor?

The PRESIDING OFFICER. Yes. That is correct.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that I be permitted to yield the floor to the Senator from Minnesota for such limited time as he thinks advisable, provided that that time is charged against someone other than myself and that the Senator from Ohio be recognized immediately thereafter in order that I may proceed.

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard. Who yields time? Who yields time?

Does the Senator from Ohio yield the floor? Who yields time?

Mr. PACKWOOD. Who has the floor?

The PRESIDING OFFICER. The Senator from Ohio still has the floor.

Mr. METZENBAUM. Mr. President, does the Senator from Oregon object to my yielding the floor in order that I may regain it at a later point?

Mr. PACKWOOD. Yes.

Mr. METZENBAUM. Mr. President, how much time does the Senator from Ohio have remaining?

The PRESIDING OFFICER. The Senator from Ohio [Mr. METZENBAUM] has 45 minutes and 14 seconds remaining.

Mr. METZENBAUM. Is it not the fact that if the Senator from Ohio and the Senator from Louisiana and the Senator from Oregon and the Senator from Arizona and the Senator from Montana and perhaps some other Senators as well use up all their time, we will go beyond the hour of 4 o'clock?

The PRESIDING OFFICER. That is indeed the case.

Mr. PACKWOOD. Is that a ruling of the Chair?

Mr. METZENBAUM. I want to clarify that for the Senator.

Mr. PACKWOOD. I do, too, because it is my understanding that we vote at 4 o'clock no matter what.

Mr. METZENBAUM. The Senator from Ohio and the Senator from Oregon are not in disagreement on that.

The PRESIDING OFFICER. If the Senators will be silent for a moment, the vote will come on at 4 o'clock. The Chair will simply state the fact there has been more time allotted than the clock will allow.

Mr. PACKWOOD. I apologize to the Chair. Thank you very much.

The PRESIDING OFFICER. Now, who yields time?

Mr. DANFORTH addressed the Chair.

Mr. METZENBAUM. Mr. President, I think I have the floor.

The PRESIDING OFFICER. The Senator from Ohio does indeed have the floor.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that I be permitted to yield to the Senator from Missouri for the purpose of making a parliamentary inquiry without my losing my right to the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator from Missouri.

Mr. DANFORTH. Mr. President, I thank the Senator from Ohio.

The PRESIDING OFFICER. On whose time should that apply?

Mr. METZENBAUM. On the unexpired time. On the time of all the parties if we have time left.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. METZENBAUM. I yield 1 minute of my time to the Senator from Missouri.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Missouri.

Mr. DANFORTH. Mr. President, at the hour of 4 o'clock would a point of order be in order?

The PRESIDING OFFICER. It would.

Mr. DANFORTH. And would a point of order be in order at any time prior to 4 o'clock?

The PRESIDING OFFICER. It would not.

Mr. DANFORTH. So even if all time has expired and it is 4 o'clock, at that point a point of order would be in order but it would not be in order prior to 4 o'clock?

The PRESIDING OFFICER. That is correct.

Mr. DANFORTH. I thank the Chair and I thank the Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio [Mr. METZENBAUM].

Mr. METZENBAUM. Mr. President, I ask unanimos consent that I be permitted to yield 3 minutes to the Senator from Nebraska and 3 minutes to the Senator from Minnesota, with the understanding that immediately thereafter, on my time, the Senator from Ohio would accorded recognition.

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. METZENBAUM. May I just inquire of the Senator from Oregon the reason for his objection? I have a number of questions that I hope to submit to you. About 1½ or 2 hours ago, I made them available to you and your staff. I have been trying to withhold asking those questions so that you might have time to prepare for the answers. Under the circumstances, I will just go ahead and ask the questions at the present time. The Senator can just say, "I don't have the answer," and that is perfectly agreeable. But the fact is that I am trying to be cooperative with the Senator from Oregon and am having difficulty achieving that objective.

□ 1440

Mr. PACKWOOD. The problem is that under the unanimous-consent agreement, there is about 5½ or 6 hours on your side and 1½ hours on ours, and I am not going to allow you to take the floor back whenever you want, and not be able to give time to some of my Members.

Mr. METZENBAUM. I just offered to give him equal time with the Senator from Nebraska. I offered 3 minutes to the Senator on your side and 3 minutes to the Senator on this side, on my time.

Mr. PACKWOOD. But then you want the time back, and if I have two or three Senators who want to speak, you have the time. So I object.

Mr. METZENBAUM. Then, Mr. President, I do not yield the floor, and I will continue.

I ask the Senator from Oregon if he can explain to me the item on page 73 of the bill which exempts a project of 250,000 square feet:

> . . . a formal Memorandum of Understanding relating to development of the project was executed with the city on July 2, 1986, and the estimated cost of the project is $18,186,424.

The question I have is, what project is this? Is that all that has transpired—a memorandum of understanding signed after the House and the Senate passed the bill, or was it signed while it was in conference, and why is this project being afforded special treatment?

I yield 2 minutes to the Senator from Oregon, on my time, in order that he might respond.

Mr. PACKWOOD. This is another project that was put in by the House, paid for by the House, and did not violate any of the five or six principal rules we laid down with respect to passive losses. It is the Holland, MI project; it involves retail stores in the downtown area. There was a memorandum of understanding on the project executed with the city on July 2.

Mr. METZENBAUM. 1986.

Mr. PACKWOOD. 1986. It has been under development for some time, and it is consistent with other rules. The transition rule results in a $1 million revenue loss.

Mr. METZENBAUM. I ask the Senator from Oregon a question concerning a project in my own State—which of course does not make it right or wrong.

There is an insurance company in the southern part of the State known as the Western and Southern Life Insurance Co. They receive a $10 million benefit. That is described on page 799 of the bill, part of the so-called "Technical Corrections" title to the bill, making technical corrections for changes enacted in 1984. But the change is not technical at all. It gives

Western and Southern $10 million, and it is only fair to point out that that is over and above the amount that was given away to that same company in 1984 with a provision along the same line.

My question is, Why is this provision in the "Technical Corrections" part of the bill, and why is it in at all?

I yield 2 minutes of my time to the Senator from Oregon.

Mr. PACKWOOD. The bill amends a 1984 Act transition rule. The 1984 act imposed a new tax on mutual life insurance companies. The tax is based upon how much surplus a company has. The 1984 act had a transition rule for companies that had very large surpluses, so that the new tax would not hit them too hard right away.

Western and Southern Life Insurance Co., got such a transition rule. The rule did not give them the right amount of transition relief. The tax reform bill corrects the 1984 transition rule. Both the House bill and the Senate bill did it. The House, however, gave Western and Southern additional relief in conference. They wanted to add it, and they paid for it with their portion of the transition money.

Mr. METZENBAUM. I thank the Senator.

I would like to talk for a moment about the usage by the Senator from Oregon of the phrase that he has called upon a number of times today—that "they paid for it," meaning that the House paid for it out of its $2.3 billion. I think that is the correct number, and we had $1 billion to be allocated around.

The House did not pay for it. The Senate does not pay for it. The taxpayers of this country pay for it. Let us not kid ourselves. The people who are paying for these giveaways cannot be called "the House," cannot be called "the Senate." We do not pay for anything. We spend somebody else's money. We spend the taxpayers' money.

Everytime we give $10 million or $20 million or $200 million in a tax benefit to this company or that company, we are digging into the pockets of the rest of the taxpayers of this country and saying, "You've got to pay for it. It's your obligation to cover those costs."

For us to be talking about "They paid for it," in my opinion, is a misuse of the verb or maybe the pronoun. I guess it is the pronoun that is being misused. They did not pay for it. The taxpayers of this country paid for it. It is their money that is being spent, and do not ever kid yourself about that.

If we had $10 million more, we could expand day-care services for 40,000 poor children so that their mothers, who are on AFDC, could work, so that they could go out and earn money and get out of the poverty trap. $10 million! But you try to get some of my colleagues in this body to come up with that $10 million so that the mothers of 40,000 poor children, who are on AFDC, can get a chance to work and earn some money and get off poverty and be productive on their own. In no way can that occur.

So I say to my colleagues, do not tell me about the House paying for it or the Senate paying for it. The people paying for it are the taxpayers.

Mr. BOSCHWITZ. Mr. President, will the Senator yield for a question?

I ask my friend from Ohio: There are some of us who would like to make short statements with respect to the bill. I know that the Senator from Ohio has the right to the time and that the distinguished chairman of the Finance Committee has a right to some time. But I wonder if both would agree to allow Senators to speak about the bill. Some of us have not expressed our viewpoints on the floor, and we would release the floor. I see the Senator from Nebraska is here and perhaps others.

Mr. METZENBAUM. I have attempted to do that, and under the provisions I mentioned previously, I would still be willing to do it.

□ 1450

But absent that I intend to proceed forward.

Mr. BOSCHWITZ. As the Senator knows, he has roughly 40 minutes or so, and the Senator from Oregon has 30 minutes or so, and the Senator from here and there have 8 or 10 minutes, but at 3:30 p.m. Senator LONG is going to be recognized and then the opportunity for those of us who would like to speak a short time about the tax bill, about the general impression of what is right or wrong about the tax bill, will have evaporated.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that I may be permitted to yield 3 minutes to the Senator from Minnesota, 3 minutes to the Senator from Nebraska and 3 minutes to any other Senator on the floor on my time provided at the conclusion of their remarks the Senator from Ohio be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BOSCHWITZ. I say to my friend from Ohio he is perfectly within his rights. As you can see he controls the time to 3:30 p.m., but then he will lose the floor under a preexisting agreement, but he will effectively preclude other Senators from speaking. Why can he not just allow Senators to go back and forth while he controls the time?

Mr. METZENBAUM. Mr. President, I wish to proceed forward.

Mr. President, I ask the Senator from Oregon that on page 85 of this bill Campbell Soup Co. in Pennsylvania and California is granted relief for "property or limited amount of property set forth in submission before September 16, 1986."

I am trying to say I do not understand what that provision means. I do not understand what property it is. I do not know what it means. I practiced law for a long time. I do not understand what it means "set forth in submission." Nor do I understand why Campbell Soup receives a benefit for that provision.

I am prepared to yield 2 minutes to the Senator from Oregon if he cares to respond.

Mr. PACKWOOD. A letter of submission is similar to the letter of the Senator from Ohio submitted about the Bowling Green bonds. It was a letter of submission from the Member identical to that of the Senator from Ohio, concerning a different project. It involves the Campbell Soup Co. That is what I mean by the letter of submission.

Mr. METZENBAUM. Talking about the letter from the Senator, is it the submission the Senator is talking about?

Mr. PACKWOOD. The provision is a House provision. The letter of submission we are talking about is the letter of submission that came from the House Member who requested the provision.

Mr. METZENBAUM. Would the Senator then be good enough to explain what is the property we are talking about and why did Campbell Soup receive that special consideration?

Mr. PACKWOOD. According to the information that was attached to the letter of submission, the board of directors had a master plan to put in equipment for certain facilities for modernization. They had not signed the contracts in time to meet the January 1, 1986, date, but the modernization plans had been underway since early 1985 and, therefore, they got the transition relief. It cost about $1 million.

Mr. METZENBAUM. I thank the Senator.

This is another example of what I consider going beyond the pale with respect to a transition rule. This is a transition rule that is predicated on the fact that the company had a master plan.

You know Mrs. Jones had a master plan to buy a home someday in the suburbs, but now she cannot deduct the interest if she goes to the bank under certain circumstances and makes a loan. I do not want to get into the details of that because I have not stated it accurately as I just related.

But the point I am making is Mrs. Jones, Mrs. Smith, and Mrs. Johnson, and all the other Mr.'s and Mrs.' of this country may have a master plan to do something with their lives, to buy a car, and the interest is not deductible.

Do we have a rule that they intended to buy a car? Maybe we ought to have a provision, anybody who was thinking about or intended to buy a car should be exempt from the provision of this bill. Obviously, that would be absurd and I would be the last to support it.

But the fact is that is just as good as giving Campbell Soup the millions of dollars that are involved in this particular transition rule. I do not remember the exact dollars involved. But I know this; that there are substantial millions involved. Is the Senator from Oregon in a position to advise us as to the number of dollars?

Mr. PACKWOOD. $1 million.

Mr. METZENBAUM. $1 million. They are not going to break the Treasurer for $1 million, but why should we do this for Campbell Soup? Is Campbell Soup hurting? Is someone buying less tomato soup today than 5 years ago or last week or last month before the tax bill? No.

It is a plain gift and those are the kind of things that I object to as being included in this bill, notwithstanding the fact that I repeat I think overall it is a good bill and I am going to vote for it.

I would like to ask the Senator from Oregon another question. On page 279 of the bill he refers to Harza Engineering of Illinois. They are given special treatment. That engineering firm will be exempt from the new rule that requires most larger businesses to use accrual rather than cash.

To the best of my knowledge, that is the only company that is given that right in this entire bill.

So I have to say to the distinguished Senator from Oregon, why? I can tell him that there are literally hundreds of companies, hundreds of partnerships, hundreds of firms that are very much concerned about that new rule. I am not here to debate the merit or lack of merit of the rule but I am very concerned and very interested as to why Harza Engineering of Illinois was given that special treatment. I am prepared to yield 2 minutes to the Senator from Oregon if he is in a position to respond.

Mr. PACKWOOD. Yes. Harza Engineering is another transitional rule the House put in. If I had my druthers this is not one I would have put in to begin with in the Senate bill. The House put the transition rule in and allowed the engineering firm to change the current method of accounting, completed contract method, to cash. And this will settle a dispute with the Internal Revenue Service that did not allow them to do it.

Interestingly enough, it is generally consistent with the bill which allows the employee-owned engineering firms to use the cash method of accounting.

I do not know if Harza Engineering is employee-owned or not. But we did make that provision for employee-owned firms. We had this transitional rule requested in the Senate and we did not put it in.

Mr. METZENBAUM. Is the Senator from Oregon possibly mistaken. I am not saying he is. But the answer he gave sounded like the answer in reference to the problem in the matter of handling the Skidmore, Owings, Merrill situation. Are they both the same or is there some distinction? I think we had Skidmore, Owings, Merrill in the original bill and talked about it that time.

Mr. PACKWOOD. I am advised it is similar to the transitional rule for Skidmore, Owings, Merrill.

Mr. METZENBAUM. I see.

Mr. BOSCHWITZ. May I address my friend from Ohio once again?

The PRESIDING OFFICER. Does the Senator yield?

Mr. METZENBAUM. I do not.

Mr. BOSCHWITZ. May I address a question to the Senator from Ohio?

Mr. METZENBAUM. I yield 10 seconds to the Senator from Minnesota for the purpose of a question.

Mr. BOSCHWITZ. There are $10.6 billion of transition rules. When this Senator from Oregon went to the House there were $25 billion or $26 billion at the House. He has negotiated them down to $10 billion.

The PRESIDING OFFICER. The 10 seconds have expired.

Mr. BOSCHWITZ. May I have 10 additional seconds?

Mr. METZENBAUM. Without losing my right to the floor, I yield and ask unanimous consent that he may have 10 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BOSCHWITZ. The transition rules have to be seen in conjunction with roughly $5 trillion that is going to be collected over the period of this bill so that they are a fraction of 1 percent.

I would hope that rather then take up the balance of the time with transition rules that the Senator from Ohio would allow us to speak.

Mr. METZENBAUM. Mr. President, another question for my colleague from Oregon. I might say parenthetically——

Mr. BOSCHWITZ. Will the Senator respond? Does the Senator insist on maintaining the floor for the whole afternoon?

Mr. METZENBAUM. I was about to. I say parenthetically that there was some question on the part of the Senator from Ohio and many others as well as to why we were going to rush passage of this bill.

The Senator from Minnesota is 100-percent accurate. The bill has to do with $5 trillion. We are talking about a long-range tax policy.

So I did inquire of the majority leader as to why the big rush before we had a chance to give it adequate study. The majority leader indicated, and I can appreciate his position and I do not take issue with it, that he was anxious to move along on this so he might get to the drug bill and then from the drug bill to get to the continuing resolution and such other matters that were within his responsibilities. I accept that.

Last night, many of us were on the floor seeking to get recognition. Earlier in the day I attempted to get recognition and was unable to do so and in the waning hours of the evening I could very easily have obtained recognition but it was not my feeling that that was the time to debate this bill. So as an accommodation and in an effort to be cooperative I said that I had a number of questions with respect to the transition rules and that I expected to get into those questions during the day.

As a consequence I was accorded 3 hours so that I might do that, and that is exactly what I have been doing.

I very much regret the fact I have not been able to yield 3 minutes to the Senator from Minnesota on my time and I appreciate his reasons for doing so, but the Senator from Oregon has seen fit to object and, therefore, I am just going to continue with my inquiries of the Senator from Oregon.

□ 1500

As part of the technical changes, IC Industries is handed a gift of $1 million. I think IC Industries used to be Illinois Central. It is afforded special treatment under the provision of the 1984 tax bill related to the tax treatment of foreign operations. The question I have: Is that a technical change? Is it not truly a substantive change? What public policy purpose is served by permitting Illinois Central to pick up $5 million in this?

Mr. President, I yield 1 minute to the Senator from Oregon so he might respond.

Mr. PACKWOOD. In the 1984 act, passive income earned by the Netherlands Antilles Co. was placed in what we call a separate basket. The result of this is that the company gets a smaller foreign tax credit. The transition rule provides that the foreign tax credit is available for passive income earned before 1984. This income was earned before 1984 and, therefore, the 1984 law applies.

The reason we gave it to only one company is only one company asked. The IRS actually directs that pre-1984 law applies to pre-1984 tax credits.

Mr. METZENBAUM. I again point out that I see no basis for this as a transition rule. I have difficulty in comprehending why IC Industries would get this special treatment, and particularly in view of the fact it has to do with their Netherlands Antilles operation. I, myself, think it does not make good policy and should have not been done. I am not going to belabor the point.

Mr. President, I am not going to continue to ask about each of these because there are other Members seeking recognition, and I certainly want to accord them an opportunity to have that recognition.

I might say, before concluding on the question of individual questions, I had asked previously about the retention on capital gains treatment for the sales of dairy cattle under milk production termination and asked for whom that amendment was offered and whether it was small family farmers or large corporations and the "why" of that amendment. Is the chairman of the Finance Committee in a position to respond to that inquiry at the present time?

I yield 1 minute to the chairman without losing my right to the floor.

Mr. PACKWOOD. I am unable to find out specifically who that applies to.

Mr. METZENBAUM. Would the Senator from Oregon be willing to place that in the Record as soon as he can?

Mr. PACKWOOD. Yes, I would be happy to do that, if I find out.

Mr. METZENBAUM. I thank the Senator.

There are many more rules, special exemptions which should be described—the Royal Worcester Corset Factory, the New England Patriots, the Hoover Dam, the Seabrook Nuclear Powerplant, and many, many, many more. What bothers me, I repeat, is the fact that we cannot find all the answers. And I do not know if we will ever find all the answers. There are too many; there is too much; it is too difficult to find the answers.

I do not believe this is a way to legislate. I believe the overall tax bill is good. But I do not believe that being presented with 400 special exceptions that were not in either the House or the Senate bill and that we suddenly learn about the night before last at 6 o'clock, I do not believe that is right.

I do not have any intention of standing in the way of the passage of the bill. But I want it clearly understood that this is not a proper way to legislate. And I do not say that in any way to denigrate the excellent work that the chairman of the Finance Committee has done. I say it as a general policy for the U.S. Senate and the U.S. House of Representatives. I say it in reference to what the people of the United States think about those of us who hold public office.

There is not any basis and it is not logical to take care of a select few and call those select few provisions that are under the transition rules. Many others are left at the wayside. They did not have proper spokespersons. They did not have a loud voice. They did not have a lobbyist.

I believe that this bill should be enacted, but I hope that this is the last time that we will see legislation brought to the floor involving a package of $10.6 billion when few, if any, of us really know what is in that package.

Mr. President, how much time does the Senator from Ohio have remaining?

The PRESIDING OFFICER. The Senator from Ohio has 16 minutes and 24 seconds remaining.

Mr. METZENBAUM. Mr. President, I yield 3 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska [Mr. Exon] is recognized.

Mr. EXON. Mr. President, there has been a great deal of hard labor in arriving at this revolutionary change in the Tax Code that is long overdue. And I compliment those who have been involved.

This is especially true in the areas of abuses and loopholes in the Tax Code, such as passive investment, tax shelters, and permitting large corporations with huge profits to escape from any tax liability and other abuses. In my view the bill before us is essentially revenue neutral for agriculture, with its primary shortcoming in this area the elimination of income averaging, after we have tried very hard and put that into the Senate version of this bill.

There are all kinds of estimates as to what the redistribution will be among individual taxpayers that will follow the massive shift of revenue obligation to the Federal Government. Some will gain handsomely and some will lose.

There are many changes incorporated in the bill that have my enthusiastic support.

On the negative side, I am not convinced one should support this change with an understanding that it is significant "tax simplification." I have listened with great interest to the informative debate, pro and con, and am convinced that the "safe vote" is to support the measure, as there are some convincing arguments that have been made that the best interests of the country will be advanced. And I support my knowledgeable colleagues who have so stated that.

But that is not the way my vote will be cast, with all due respect to those who have crafted this measure.

My final judgment on this important matter was reached within the hour, and statements by Senator Danforth and Senator Levin on yesterday probably influenced my upcoming opposition more than anything else.

The main problem with this measure is that it will, in my best judgment, cause an overall net reduction in revenue and thereby drive the country further toward the brink of potential economic disaster. All other things aside, good or bad, this measure very likely will tighten the noose further around the throat of American economic viability in these times of skyrocketing deficits and exploding national debt.

As a fiscal conservative willing to stand against the swelling tide and tales of "all is well," notwithstanding the SOS economic signals that engulf us, I object.

As bad as the current Tax Code is and as much as it needs changing, the change in this form that is at best "revenue neutral" and more probably a revenue "shortfall" is not the right course.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I yield 5 minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. BOSCHWITZ. I thank my friend from Oregon.

I would start off by saying that, while I do not like all of the transitional rules that my friend from Ohio speaks about, I think that, overall, they really are insignificant. As I pointed out, they are just a very small fraction of 1 percent of the overall revenues that this bill is going to deal with. And, as my friend from Ohio said, he understood including rules where "they were on their way on the project, that kind I understand," he said. For example, in speaking about the Willard Hotel, he said, they "used the old law and then couldn't continue." Most of the transition rules deal with just that type of situation.

As a matter of fact, there are many, many billions of dollars of preferences that can no longer be used where people started under old rules.

Mr. President, prior to coming here I was an entrepreneur. As I look at this bill as an entrepreneur and switch my hat from the Senate back to my business hat, if this bill had been in effect when I started in business, I think that I would have started even more quickly and more aggressively. In short, I think that this bill will indeed add to the entrepreneurial spirit of Americans, it will cause the creation of new jobs, and it will create new enterprise when a person can keep 72 percent of what he or she earns.

☐ 1510

When a person can keep 72 percent of what they earn, that indeed is an incentive. That is the very root of this bill. The same goes for business. Some of my colleagues say businessmen, whether they be in capital intensive or other businesses, are going to be somehow disadvantaged.

I would point out that the people who run those businesses and the people who are going to get the additional bonuses are going to find that their income is taxed at only 28 percent, and that indeed will be an incentive for them to move forward. That is what the tax bill is supposed to do—provide incentives. This bill does.

So the fact that there is some shifting to new business, not something that I would particularly have approved of, nevertheless I do not think it is going to be debilitating to the people who run those businesses. They are going to be subjected only to a 28-percent maximum rate. They will indeed have the incentive to proceed.

Some of my friends tell me the rents are going to go up. So I went out, I talked with my son, and said this is a time we ought to buy some buildings. But everybody in the real estate business says wait, the price of buildings are going to go down. If the price of buildings is going to go down, then rents are going to go down whether it is because of the longer depreciation periods or whatever. But it is an inconsistency to say rent is going to go up while the real estate value is going to go down.

My principal concern about the bill is capital formulation, long-term gain. So I will be introducing legislation so that for longer holding periods of 1 year and 3 years, there will be lower rates on capital gains.

I think the dual rates of 15 and 28 percent are just terrific. I know my friend, the Senator from Maine, Senator MITCHELL, says there should be a higher rate. That would be fine if people in the higher rate and higher incomes were paying them. But I think history shows if you are making over $200,000 that indeed you know how to protect your tax situation, and people were not paying those rates. Every time we have lowered taxes, we have found that people in the highest brackets indeed become taxpayers, become larger taxpayers. That is the other appealing part of the bill. It makes taxpayers out of everybody. It broadens the base and it gives incentives. I think it is a terrific tax bill.

I congratulate my friend from Oregon and all those who are part of getting this bill to this point.

I yield the floor.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I know the Senator from Ohio wants to make an insertion into the RECORD, and I will be happy to yield 30 seconds for that purpose without losing my right to the floor.

Mr. METZENBAUM. Mr. President, I ask unanimous consent there be included in the RECORD tax reform transition rules, and the new House and Senate transition rules, the final list.

There being no objecton, the material was ordered to be printed in the RECORD, as follows:

TAX REFORM TRANSITION RULES

ACRS ITC: RULES IN SENATE BILL

Company, location, and revenue loss:

1. RCA satellites (I-77), New Jersey—Princeton (HQ), 1 million.
2. Gilbertine Power, Pennsylvania.
3. Philadelphia Solid Waste (gen.), Pennsylvania—Philadelphia, 13 million.
4. Chester Solid Waste (I-79), Pennsylvania—Chester, 22 million.
5. Allegheny Electric Co-op., Pennsylvania, 10 million.
6. Hydro Corp. of Penn. (gen.), Pennsylvania, 1 million.
7. Philadelphia Electric (I-84), Pennsylvania—Philadelphia, 113 million.
8. COMSAT satellites (I-77), District of Columbia (HQ), no loss.
9. Eastern Utilities (I-71), Massachusetts—Boston (HQ) (Burrillville, RI plant), 12 million.
10. Federal Express Satellites (I-77), Tennessee—Memphis (HQ), 1 million.
11. Long Lake Energy (I-69), New York City (HQ) (23 projects), 23 million.
12. CF Industries (I-72), Louisiana—Donaldsonville, 0 loss.
13. New Orleans Saints (I-78), Louisiana—New Orleans, 1 million.
14. Cajun II Generating (I-78), Louisiana—Baton Rouge, 75 million.
15. Edison Chouest (I-79), Louisiana—Galliano, 1 million.
16. Eastbank Wastewater (I-76), Louisiana—Jefferson Parish, 2 million.
17. Williams Co. fiber optics (I-69), 6 million.
18. Telocator (I-77), 9 million.
19. Teleconnect (I-72), 1 million.
20. Temple Eastex (I-77), Texas—Diboll, 22 million.
21. Greenriver Laundry Plant (I-79), Wyoming, 1 million.
22. Pan Am (I-84 generic), 26 million.
23. Delta Airlines (I-84 gen.), Georgia—Atlanta (HQ), 46 million.
24. Greenbrier Leasing (I-72), Oregon—Portland, 5 million.
25. Texas Air (I-84 generic), 10 million.
26. Northwest Orient Airlines (I-84 gen.), Minnesota—St. Paul (HQ), 61 million.
27. Lake Superior Paper (I-71), Minnesota—Duluth, 29 million.
28. Hellsgate Hydroelectric (gen.).
29. Enesco (gen.), Missouri—St. Louis (HQ) (Sheridan, Penn. project), 11 million.
30. Sverdrup (gen.), Missouri—St. Louis (HQ), 1 million.
31. Kaiser Power (I-77), Colorado—Colorado Springs (HQ) (Sunnyside, Utah & York Canyon, New Mexico projects), 17 million.
32. Applied Energy (I-84), 29 million.
33. Brooklyn Navy Yard (I-77), New York—Brooklyn, 9 million.
34. Brooklyn Renaissance (I-80), New York—Brooklyn, 3 million.
35. Riverwalk (I-80), New York City, 9 million.
36. Carnegie Hall (I-80), New York City, 4 million.
37. Audobon Research (I-80), New York City, 2 million.
38. Viacom (generic-rep. lang), New York City (HQ), 1 million.
39. 2 wood energy projects (I-80), Maine, etc.—projects listed, 7 million.
40. Great Northern Nekoosa (I-71), Maine—Millinocke, 16 million.
41. Owings Mills project (I-67), Maryland—Owings Mills, 9 million.
42. Riverwalk project (I-67), Louisiana—New Orleans, 5 million.
43. Norlight, Minnesota/Wisconsin, 4 million.
44. Dineh Power (I-78), New Mexico, 119 million.
45. Agri-Beef (I-69), Idaho—Boise (HQ).
46. 62 Montona hydro projects (covered under generic), Montana—statewide, 68 million.
47. Dulles Rapid Transit (I-78), Metro D.C. Area, 6 million.
48. Times Square Redevelopment, (I-67), New York City, 27 million.
49. Capital District Energy (I-79), Connecticut—Hartford, 1 million.
50. GM Special Tools (deleted), Michigan—Detroit (HQ 44 million).
51. Mississippi Chemical (I-71), Mississippi, 20 million.
52. North Coast Cable (rep. lang), Ohio, 1 million.
53. West Virginia Flood Relief (I-85), West Virginia—statewide.
54. Foster-Wheeler Cogen, Pennsylvania.
55. Fieldcrest Mills (generic), Georgia.
56. Baltimore Gas & Electric (I-84), Maryland—Brandon Shores, 11 million.
57. Steel industry cash—out (I-90), nationwide, 400 million.
58. Farm industry cash-out (I-92), nationwide, 200 million.

ACRS/ITC: RULES IN HOUSE BILL AND HOUSE AND SENATE BILLS

Company, location, and revenue loss:

1. New York Coliseum (I-66), New York City, no loss.
2. Harborplace (I-66), Baltimore, Maryland, 10 million.
3. Pioneer Place (I-66), Portland, Oregon, 6 million.
4. Bayside (I-66), Miami, Florida, 6 million.
5. Westlake (I-66), Seattle, Washington, 5 million.
6. Jacksonville Landing (I-66), Jacksonville, Florida, 3 million.
7. Atlanta Underground (I-67), Atlanta, Georgia, 7 million.
8. Phillips/Pt. Arguello (I-69), Pt. Arguello, California, 59 million.
9. Valley View Energy (I-78), Texas, 38 million.
10. United Telcom (I-69), Kansas City, MO, 234 million.
11. MCI (I-69), 34 million.
12. Alcoa (I-70), Tenn., Iowa, & Indiana plants, 31 million.
13. PPG (I-70), 5 facilities, 4 million.
14. Pacific-Texas Pipeline (I-70), Los Angeles to Midland, TX, 187 million.
15. Cox Broadcasting (I-72), Georgia, 1 million.
16. Multimedia (I-70), 1 million.
17. New England/Hydro-Quebec (I-71), Can. border to Massachusetts, 21 million.
18. Merrill Lynch Center (I-75), New York City, 4 million.
19. Columbia Point, Boston, Massachusetts, 8 million.
20. Sonat Offshore Drilling (I-75), Louisiana, 1 million.
21. Mitex, Inc. (generic), 10 million.
22. Archbald Power, Pennsylvania, 9 million.
23. Chrysler-Mitsubishi (I-78), Illinois, 58 million.

24. Walt Disney/MCA (I-89), 65 million.
25. Quonset Point (generic), Rhode Island.
26. Gilberton Power, Pennsylvania, 26 million.
27. Conemaugh Hydro (gen.), Pennsylvania, 9 million.
28. Cogen Technologies, Iowa, 25 million.
29. Hennepin Solid Waste (generic), Minnesota, 4 million.
30. Texas City Cogen, 29 million.
31. Vidalia Hydro, Louisiana, 94 million.
32. New York Transit Auth. (I-69), New York City.
33. Bangor Solid Waste (generic), Maine, 11 million.
34. Florida Solid Waste (generic), Florida, 8 million.
35. Rialto Tire Burning (generic), California, 2 million.
36. New York Solid Waste, (generic), New York, 140 million.
37. Kern River Pipeline (I-75), California, 129 million.
38. San Diego Resource Recovery, California, 11 million.
39. Catalyst Energy Dev.
40. Arkansas Electric, Arkansas, 28 million.
41. Alabama Electric, Alabama,
42. Ponderay Newsprint, Washington. 18 million.
43. Kysor Industrial (I-77).
44. Tri-Cities Sewage Tr. (I-75),
45. Ashland Coal (I-73), West Virginia.
46. Inland Steel, Pennsylvania.
47. New Martinsville Hydro (generic), 21 million.
48. Sofar Hydro (generic), 72 million.
49. Sohio Endicott (I-72), Alaska, 77 million.
50. Semass Partnership, Massachusetts, 11 million.
51. Hellsgate Hydro (gen.), Colorado.

Rapid Amortization: Rules In the House Bill and/or House and Senate Bills

Company, location, and revenue loss:
1. Lincoln Life Housing, Indiana.
2. Denver & Rio Grande Railroad (I-85), Colorado, Utah, less than $5 million.

Rehabilitation Tax Credits: Rules in Senate Bill

Company, location, and revenue loss:
1. Mount Vernon Mills, South Carolina—Columbia, 1 million.
2. Charleston Waterfront, South Carolina—Charleston, 2 million.
3. Barbara Jordan II Apts., Rhode Island—Providence, 1 million.
4. The Tides, Rhode Island—Bristol, 1 million.
5. Outlet Building, Rhode Island, 1 million.
6. Kiel Auditorium, Missouri—St. Louis, 12 million.
7. Debaliveriere Arcade, Missouri, 1 million.
8. Drake Apartments, Missouri, 2 million.
9. Hayber Development, Minnesota—Minneapolis, 4 million.
10. Strawberry Square, Pennsylvania—Harrisburg, 2 million.
11. North Pier Terminal, Illinois—Chicago, 12 million.
12. New Hampshire Post Office, New Hampshire—Manchester, 1 million.
13. Commercial National Bank, Louisiana—Shreveport, 2 million.

Rehabilitation Tax Credit: Rules in House Bill and/or House and Senate Bills

Company, location, and revenue loss:
1. Warehouse Row, Tennessee.
2. Central Avenue Hist. District.
3. Union Station, District of Columbia, 1 million.
4. Upper Pontabla Bldg. (I-108), Louisiana, 2 million.
5. Hot Springs Nat. Park (I-108), Arkansas.
6. Frankford Arsenal (I-108), Pennsylvania.

Corporate & Minimum Tax: Rules In Senate Bill

Company, location, and revenue loss:
Corporate (NOL Carryforwards):
1. Pennzoil (I-193), Texas—Houston (HQ), 9 million.
2. Mannsville (I-193).
Minimum Tax:
1. Control Data (I-274), 25 million.
Energy:
1. North Sea Oil (I-150).

NOL's and Minimum Tax: Rules in the House Bill and/or House and Senate Bills

Company, location, and revenue loss:
NOL Carryforwards:
1. LTV Corporation (I-194), Pennsylvania.
2. Fuqua Industries (I-194).
3. Berry Holding Co. (I-194).
4. Talman Savings & Loan (I-194).
5. Pennzoil (I-193), Houston, Texas.
Minimum Tax:
1. Commonwealth Edison (I-275), Illinois.

Foreign Tax Issues: Rules in Senate Bill

Company, location, and revenue loss:
1. General Mills (I-467), Minnesota, 9 million.
2. Navy Ships (I-480), 45 million.
3. Chanel (I-499), 12 million.
4. Texaco (I-488), Harrison, NY, 85 million.
5. Avon (I-489), New York City, 50 million.
6. Phillips Petroleum (I-488), Bartlesville, OK, 31 million.

Foreign Tax and Accounting: Rules in House Bill and/or House and Senate Bills

Company, location, revenue loss:
Foreign Tax:
1. Esselte Business Systems (I-484), New York.
2. Murphy Oil (I-488), Arkansas, 5 million.
Accounting:
1. Dominion Properties (I-301).

Accounting: Rules in Senate Bill

Company, location, and revenue loss:
1. General Development (I-301), Florida, 11 million.
2. Phillips Petroleum, 20 million.
3. John Deere, 212 million.
4. Rouse Corp. Projects (I-288), Portland, OR; New Orleans, LA; Jacksonville, FL; Miami, Fl; Baltimore, MD; Owings Mills, Md. 10 million.
5. Skidmore, Owens, 10 million.
6. Times Square, New York City, 15 million.
7. Alaska Pipeline (I-288), Alaska.

Bonds: Rules in Senate Bill

Company, location, and revenue loss:
1. University of Delaware (I-649), Delaware, no loss.
2. Pitt, Temple, & Lincoln (I-649), Pennsylvania, no loss.
3. Mid-Columbia Power (I-649), Washington, 28 million.
4. Bonneville Power (I-594), Washington.
5. Underground Atlanta (I-648), Georgia—Atlanta, 7 million.
6. PASNY (I-617), New York, 64 million.
7. Miami Airport (I-618), Florida—Miami, 14 million.
8. Philadelphia Solid Waste (I-617), Pennsylvania—Philadelphia, 15 million.
9. Riverplace Project (I-618), Minnesota—Minneapolis, 4 million.
10. Portland Convention Center (I-660), Oregon—Portland, 14 million.
11. Providence Convention Ct., (I-633), Rhode Island—Providence, 6 million.
12. Minneapolis Retail Complex (I-629), Minnesota—Minneapolis, 6 million.
13. Kiel Auditorium (I-634), Missouri—St. Louis, 6 million.
14. New Orleans Conv. Center (I-634), Louisiana—New Orleans, 11 million.
15. Albany Convention Center (I-650), New York—Albany, 4 million.
16. Orange County Conv. Center (I-635), Florida—Orlando, 13 million.
17. St. Louis Stadium (I-623), Missouri—St. Louis, 16 million.
18. Arrowhead Stadium (I-623), Missouri—Kansas City, 3 million.
19. Superdome (I-624), Louisiana—New Orleans, 2 million.
20. Tiffany Lanes (I-624), Louisiana—Lafayette, less than $1 million.
21. Astrodome (I-624), Texas—Houston, 5 million.
22. Buffalo Stadium (I-624), New York—Buffalo, 2 million.
23. Atlanta Stadium (I-625), Georgia—Atlanta, 16 million.
24. Baltimore Stadium (I-625), Maryland—Baltimore area, 16 million.
25. Phoenix Sports Complex (I-625), Arizona—Phoenix, 16 million.
26. Isle of Wight Facility (I-625), Virginia—Hampton Roads, 16 million.
27. Pioneer Place (I-636), Oregon—Portland, 3 million.
28. Portland Old Town (I-636/2), Oregon—Portland, 1 million.
29. Philadelphia Airport Hotel, Pennsylvania—Philadelphia, 4 million.
30. Portland Urban Renewal (I-632), Oregon—Portland, 7 million.
31. Riverfront Science Park (I-629), Oregon—Eugene, 3 million.
32. Manhattan UDAG project (I-629), Kansas—Manhattan, 3 million.
33. Denver Downtown (I-630), Colorado—Denver, 5 million.
34. South Pointe (I-630), Florida—Miami Beach, 32 million.
35. Grand Gulf Power (I-620), Mississippi, no loss.
36. Delaware Power & Light (I-620), Delaware, 16 million.
37. Duke Power (I-620), 2 million.
38. Ball Corporation (I-620), (projects in CO, NY, OH, & VA), 1 million.
39. Upper Pontalba Building (I-640), Louisiana—New Orleans, less than $1 million.
40. Ben Tillman Project (I-640), South Carolina, 1 million.
41. Mishoe Towers (I-640), Delaware, less than $1 million.
42. Poplar Hill (I-640), Delaware, 1 million.
43. Hawaii Multifamily Projects (I-641), Hawaii—statewide, 19 million.
44. Arrowhead Springs (I-642), California—Arrowhead Springs, 28 million.
45. Dulles Rapid Transit (I-647), Metro D.C. Area, 19 million.
46. Dallas Rapid Transit (I-647), Texas—Dallas, 16 million.
47. Oregon Hospitals (I-648), Oregon—statewide, 7 million.
48. Philadelphia Conv. Ctr. (I-617), Pennsylvania—Philadelphia, 17 million.

49. Philadelphia Trash-to-Steam (I-617), Pennsylvania—Philadelphia, 15 million.

50. Birmingham Sinking Fund (deleted—not needed), Alabama—Birmingham, no loss.

51. Kansas Private Colleges (I-647), Kansas—Olathe, 8 million.

Bonds: Rules in House and/or House and Senate Bills

Company, location, and revenue loss:

1. Oregon Vet. Dept., Oregon.
2. Texas Vet. Land Bonds, Texas.
3. Little Rock dock-wharf (I-619), Arkansas.
4. Pacific-Texas Pipeline, Los Angeles to Midland, TX.
5. Aloha Tower (I-619), Honolulu, 16 million.
6. Charleston dock/wharf (I-619), South Carolina.
7. Arkansas Nuclear #1 (I-620), Arkansas.
8. Charlotte Poll. Control, North Carolina.
9. Cleveland Stadium (I-622), Ohio.
10. Miami Dolphins Stad. (I-622), Florida.
11. Chicago White Sox Stad. (I-622), Illinois.
12. Memphis Sports Facil. (I-623), Tennessee.
13. Hudson Co. Stadium (I-623), New Jersey.
14. New York University, New York.
15. Georgetown University, District of Columbia.
16. Vanderbilt Univ., New York.
17. Stanford Univ., California.
18. Albany Med. Center, New York.
19. St. Luke's Hospital, New York.
20. St. Francis Hospital, New York.
21. Pittsburgh Airport, Pennsylvania.
22. Overton Park West, Miami, Florida.
23. Chicago North Loop (I-628), Illinois.
24. Chicago South Loop (I-628), Illinois.
25. Chinatown (I-629), Chicago, Illinois.
26. Haymarket, Chicago, Illinois.
27. St. Louis Conv. Center (I-633), Missouri.
28. Akron Convention Center (I-633), Ohio.
29. Miami Beach Conv. Ctr. (I-633), Florida.
30. San Jose Conv. Ctr. (I-633), California.
31. San Fran. Conv. Ctr. (I-633), California.
32. Oklahoma Turnpike (I-639), Oklahoma.
33. Nassau Co. Heating, New York.
34. Hudson Co. (I-623), New York.
35. Memphis Parking, Tennessee.
36. Univ. of S. Carolina, South Carolina, 1 million.
37. Anchorage Pension Bonds (I-645), Alaska.
38. Berkeley Pension Bonds (I-645), California.
39. South Dakota Pen. Bonds (I-645), South Dakota.
40. Columbia Point, Boston, Massachusetts.
41. Eugenie Terrace.
42. Tennessee Student Loans (I-645), Tennessee.
43. Calif. Student Loans (I-639), California.
44. Ind. Solid Waste (gen.), Indiana.
45. San Joaquin Water, California.
46. Rhode Island Housing, Rhode Island.
47. Los Osos Sewage, California.
48. New York Hospitals, New York City.
49. Duke Power, North Carolina, 2 million.

Pensions: Rules in Senate Bill

Company, location, and revenue loss:

1. Paddock Press/Chicago Sun Times, Illinois—Chicago, negligible loss.
2. Fairbanks Newspapers, Alaska—Fairbanks, negligible loss.
3. Peoria Star Journal, Illinois—Peoria, 4 million.
4. Colt Industries (P-834), negligible loss.
5. Avondale Corporation, negligible loss.
6. C&S Groceries, Vermont, negligible loss.
7. Louisiana ESOP's, Louisiana.
8. Phillips Petroleum (I-418), 75 million.

At-risk: Rule in Senate Bill

Company, location, and revenue loss:

1. 3-River Stadium (I-168), Pennsylvania—Pittsburgh, less than $5 million.

Insurance: Rule in Senate Bill

Company, location, and revenue loss:

1. Capital Holding Co. (I-322), Kentucky.

Insurance: Rules in House Bill and/or House and Senate Bills

Company, location, and revenue loss:

1. Mutual of America (I-327).
2. TIAA-CREF (I-327).
3. Hill Country Life (I-327/8).0

New House and Senate Transition Rules—Final List

ACRS/ITC

1. Temple Inland—$3m—Evandale & Orange, Texas.
2. Electro/Mold—no loss—Minneapolis, MN—p. I-82.
3. Satellite Industries, Inc.—negligible loss—Mpls., MN.
4. Peat Products—$1m—Maine—p. I-84.
5. Super Key Market—negligible loss—Kentucky—p. I-83.
6. Bethel Cogen—negligible loss—Maine.
7. Back Bay Tower—$1m—Maine.
8. Eastman Place—$1m—Rochester, New York.
9. Marquis II Project—no loss—Georgia.
10. Mid-Coast Marine—$1m—Coos Bay, Oregon—p. I-83.
11. Biogen Power—$9m—Rillito, Arizona—p. I-85.
12. Lodging property—no loss—Iowa—p. I-82.
13. Brammer Manufacturing Co.—no loss—Davenport, Iowa—p. I-82.
14. Lynmer Manufacturing—no loss—Pennsylvania—p. I-82.
15. Weyerhauser—$6m—North Carolina—p. I-85.
16. Duke Power—Bad Creek, North Carolina—p. I-85.
17. Kenosha Harbor—$2m—Kenosha, Wisconsin—p. I-82.
18. Point Gloria—$1m—Massachusetts—p. I-82.
19. Lakeland Park Phase II—no loss—Baton Rouge, LA—p. I-82.
20. Santa Rosa Hotel—$1m—Pensacola, Florida—p. I-82.
21. Esplanade Village—no loss—New Orleans, Louisiana.
22. Sheraton Baton Rouge—$2m—Baton Rouge, LA—p. I-82.
23. RCI Corp.—$2m—Rochester, New York—p. I-74.
24. Kansas City Southern Fiber Optics—$4m—10 States—p. I-83.
25. Hardage Enterprises—$6m—p. I-85.
26. Brown & Brown—no loss—Salina, Kansas—p. I-82.
27. Koch—Rosemont, Minnesota refinery—$7m.
28. General aviation aircraft—$27m—4 States—p. I-76.
29. Nichols boat—$9m—Whidbey Island, Washington.
30. Kennecott Copper—$28m—Salt Lake City, Utah—p. I-73.
31. Trolley Square—$1m—Utah—p. I-83.
32. Pullman Leasing—$1m—Illinois—p. I-83.
33. Rumford Cogen/Boise Cascade—$27m—Idaho—p. I-82.
34. Coeur D'Alene Mines—$2m—Idaho—p. I-73.
35. Media General—$1m—p. I-85.
36. Myrtle Beach—$1m—Myrtle Beach, SC—p. I-83.
37. Brendle's, Inc.—no loss—South Carolina—p. I-83.
38. Bristol Project—no loss—Bristol, RI—p. I-83.
39. SouthernNet fiber optics—$3m—Virginia—p. I-83.
40. Sierra Pacific—$23m—Nevada—p. I-82.
41. Reading Anthracite—$43m—Pennsylvania—p. I-83.
42. Atlantic Richfield—$5m—Alaska—p. I-73.
43. Mesa Airlines—negligible loss—New Mexico—p. I-85.
44. Cargill-Northstar Steel—$3m—Ohio—p. I-81.
45. Mesaba Airlines—$1m—South Dakota—p. I-76.
46. Sixth and Broadway Project—no loss—Iowa—p. I-80.
47. Northwestern National Life Insurance of Minneapolis—$1m—p. I-79.
48. Flushing Center—$5m—New York.
49. Southeastern Michigan Sports Stadium (Auburn Hills Arena)—$2m—p. I-78.
50. S.S. Admiral—$7m—Missouri—p. I-79.
51. Harbert/Infilco Degremont, Inc. (Harlington Wastewater)—Texas—p. I-76.
52. Fort Howard Paper Company—$39m—Georgia—p. I-72.
53. Central Gulf Lines—$8m—Louisiana—p. I-79.
54. Monsanto (3 projects)—$2m—Missouri—p. I-74.
55. Greenville, South Carolina Wastewater Treatment Plant—$3m—p. I-76.
56. Delaware Otsego—$1m—p. I-78.
57. Crown Cork & Seal—$5m—Mississippi.
58. International Paper—$14m—p. I-72.
59. Covington Riverfront Project—$2m—Kentucky—p. I-80.
60. Manchester, New Hampshire Solid Waste—$3m.
61. Mountain View Apartments—No loss—Mass.—p. I-82.
62. Morgan Guaranty Trust Co. Wall Street Building—$32m—New York City—p. I-81.
63. Chrysler Belvidere & St. Louis plants—$78m—Illinois and Missouri—p. I-71.
64. Peabody Place—$5m—Tennessee—p. I-78.
65. Ultrasystems-Ogle and TEORCO—$14m—California—p. I-81.
66. Park Forest/Town Center Redevelopment—$1m—Illinois—p. I-68.
67. Dexter Corporation Cogeneration Facility—$8m—Conn.—p. I-77.
68. Eugenie Terrace—$4m——Illinois—p. I-81.
69. Brockton, Mass. magnetic resonance imaging clinic—no loss—p. I-82.
70. Mendota Biomass Power Project—$3m—Calif.—p. I-82.
71. Drexel Burnham Office Building—$20m—New York—p. I-75.
72. Honey Lake alternative energy project—$1m—California—p. I-81.
73. Derry, NH waste-to-energy project—$2m—p. I-83.

74. Burbank Manors—negligible loss—Illinois—p. I-84.

75. Los Angeles solid waste disposal project—$5m—Calif.—p. I-83.

76. Oxford Place—$1m—Tulsa, Oklahoma—p. I-83.

77. St. Charles, MO Mixed-use Center—$4m—p. I-83.

78. Illinois Diversatech Campus—$20m—p. I-83.

79. Navistar—$2m—Illinois—p. I-83.

80. Zimmer Coal Plant—$71m—Ohio—p. I-84.

81. Ponderay Newsprint Co.—$7m—Washington—p. I-85.

82. Presidential Airlines—$7m—VA, SC—p. I-85.

83. Standard Telephone Company—no loss—VA—p. I-85.

84. Ann Arbor Railroad—No loss—Michigan—p. I-85.

85. Ada, Michigan Cogeneration—$5m—p. I-85.

86. Anchor Store Project—$2m—Michigan—p. I-85.

87. East Bank Housing Project—negligible loss—Michigan—p. I-85.

88. Wurzburg Block Redevelopment—$2m—Michigan—p. I-74.

89. Legett and Platt—$2m—Missouri—p. I-85.

90. Folz Corp.—no loss—New York—p. I-84.

91. Grand Rapids, Michigan arena project—$2m—p. I-85.

92. Campbell Soup Company—$12m—PA & CA—p. I-85.

93. U.S. Trust (Boston bank)—$1m—Mass.—p. I-81.

94. Harlem Third World Trade Center—$6m—New York—P. I-69.

95. Overton—$4m—Florida—p. I-85.

96. El Monte, California Busway Terminal—$1m—p. I-74.

97. Muskegon Ferry—$1m—Michigan.

98. SS Monterey—$8m—New Jersey—p. I-80.

99. Steel rule modification (LTV)—no loss—p. I-91.

100. Holland, Michigan Holland Center—$1m—p. I-73.

101. McLouth steel—$1m—p. I-92.

102. Spray Cotton Mills—neg. loss—Eden, NC—p. I-85.

103. Riverside Cogeneration—$8m.

104. Waveland Project—$5m—Illinois—p. I-81..

105. Ormesa II—$1m—p. I-80.

106. Angelus Plaza—$2m—Los Angeles, California—p. I-85.

107. Saturn—$70m—Tennessee—p. I-90.

108. Madison Square Garden—$7m—New York—p. I-67.

109. Conyers Wastewater Plant—Georgia.

11o. Oklahoma State University Project.

111. Strathmore Paper Co.

ACCOUNTING

1. Barbara Jordan II Apartments—$1m—Providence, RI—p. I-288.

2. New Jersey emergency hookups of water systems—$3m—p. I-306.

3. Metro—$23m—D.C. area—p. I-307.

4. OTASCO—$22m—California & Oklahoma—p. I-302.

5. Royal Worcester Corset Factory—no loss—Mass.--p. I-289.

6. Integrated Resources—$43m—New York—p. I-279.

7. Caterpillar—$35m—Illinois—p. I-288.

8. Whole Herd Buyout—$22m—Nebraska & California—p. I-148.

9. Bear Stearns—$8m—New York & California—p. I-307.

10. Seagrams—New York—p. I-303.

CORPORATE

1. Paramount Cards—$7m—p. I-758.

2. Heritage Communications (Gen. Util.)—Des Moines, Iowa—p. I-208.

3. Banks of Iowa (Gen. Util.)—$7m—p. I-208.

4. Ideal Basic Industries (NOL)—no loss—Denver, Colo.A—p. I-192.

5. Goldrus Drilling Company (NOL)—$13m—Texas—p. I-193.

6. Original Appalachian Artworks (PHC)—$6m)—Ohio & Georgia—p. I-219.

7. Candle Corporation (PHC)—$13m—California—p. I-219.

8. S.A. Horvitz Testamentary Trust (Gen. Util.)—$1m—Ohio—p. I-207.

9. Green Bay Packaging Corp. (Sub S)—$2m—Wisconsin—p. I-208.

10. New England Patriots (Gen. Util.)—$6m)—p. I-207.

11. Ireton Coal Corp. (NOL)—$18m—p. I-192.

12. Ala-Tenn Resources, Inc. (Gen. Util.)—no loss—p. I-208.

13. Metropolitan-First Minnesota Merger (NOL)—$9m—North Dakota—p. I-194.

14. Texas Air/Eastern Merger (NO)—$47m—p. I-194.

15. Brunswick Corp. (redemptions)—$61mA—IL—p. I-208.

16. Liberty Bell Park (Gen. Util.)—$5m—PA—p. I-206.

17. Beneficial Corp. (Gen. Util.)—$67m—p. I-206.

FINANCIAL INSTITUTIONS (BOND CARRYING CHARGES)

1. Delaware Banks—$1m—p. I-315.

2. UDAG projects—Cassville, MO and Bellows Falls, VT—p. I-315.

3. Charleston, SC Waterfront Park—neg. loss—p. I-315.

4. Clinton, TN Carriage Trace—p. I-315.

5. Upper Pontalba Apartments—$2m—Louisiana—p. I-315.

6. Woodward Wright Building—negligible loss—p. I-315.

7. Speed Mansion Project—neg. loss—Kentucky—p. I-315.

8. Park Forest/Town Center Project—negligible loss—Ill—p. I-315.

9. Chattanooga Warehouse Row—negligible loss—Tennessee—p. I-315.

10. Miller Milling Flour Mill—negligible loss—Minnesota—p. I-315.

11. Standard Electric Co.—negligible loss—WI—p. I-315.

12. Crabtree Warehouse Partnership—negiligible loss—Conn.—p. I-315.

13. Grand Rapids-Central Bank Building—negligible loss—Michigan—p. I-315.

14. City of Wausau—negligible loss—Ohio—p. I-315.

15. Savannah Port Authority Warehouse—negligible loss—Georgia—p. I-315.

16. Towne Square Project—negligible loss—Dalton, Georgia—p. I-315.

17. Outlook Envelope—negiligible loss—IL—p. I-315.

18. Club Apartments—neg. loss—AL—p. I-315.

19. Charlotte, NC mortgage bonds—neg. loss.—p. I-315.

20. Ruppman Marketing—neg. loss—p. I-315.

21. East Broadway Project—neg. loss—Kentucky.

22. O.K. Industries—neg. loss—Oklahoma.

FOREIGN

1. Western Energy—$4m—Montana—p. I-502.

2. Lasco Shipping—negligible loss—Portland, OR—p. I-497.

3. Shell/FIRPTA—no loss—p. I-502.

4. AIG/CIGNA—$20m—p.-497.

5. Johnson & Johnson—$38m—p. I-489.

6. Eli Lilly—$5m—Indiana—p. I-505.

7. La Isla Virgin, Inc.—$5m—p. I-545.

PENSIONS

1. Bishop Estate—$1m—Honolulu, Hawaii—p. I-366.

2. Dresser Industries—$12m—p. I-419.

3. American Airlines—negiligible loss—p. I-426.

4. Lukens Steel—$1m—p. I-418.

5. Chris-Craft—$1m—New York—p. I-418.

6. University of Alabama, Birmingham—$1m—p. I-366.

7. Frontier Airlines—$2m—p. I-419 & 413.

REHAB TAX CREDIT

1. Old Main Village—$1m—Mankato, Minnesota.

2. Washburn-Crosby Mill—$2m—Minneapolis, Minnesota.

3. Barbara Jordan II Apartments—$1m—Providence, RI.

4. Lakeland/Marble Arcade—$1m—Lakeland, Florida.

5. Warrior Hotel—Sioux City, Iowa.

6. Willard Project—no loss—Dist. of Columbia.

7. WaterPark—$2m—Lincoln, Nebraska.

8. H.P. Lau Building—$1m—Lincoln, Nebraska.

9. 620 Project—$1m—Louisville, Kentucky.

10. Starks Building—$1m—Louisville, Kentucky.

11. Bellevue High School—$2m—Bellevue, Kentucky.

12. Mayor Hampden Smith House—$1m—Owensboro, Kentucky.

13. Doe Run Inn—$1m—Brandenburg, Kentucky.

14. State National Bank—$1m—Frankfort, Kentucky.

15. Captain Jack House—$1m—Fleming, Kentucky.

16. Elizabeth Arlinghaus House—$1m—Louisville, Kentucky.

17. Mattress Factory—$1m—Pennsylvania.

18. Limerick Shamrock—$1m—Louisville, Kentucky.

19. Robert Mills Project—South Carolina.

20. Bellevue Stratford Hotel—$6m—Pennsylvania.

21. Motor Square Garden—$5m—Pennsylvania.

22. Penn Station/Madison Square Garden—$21m—New York.

23. 30th Street Station—$5m—Philadelphia, PA.

24. Bigelow-Hartford—$3m—Connecticut.

25. Shriver-Johnson & Balckstone Inn—$1m—South Dakota.

26. Wayne County Courthouse—$4m—Michigan.

27. L.A. City Library—$7m—California.

28. Dixon Mill—$2m—New Jersey.

29. Bernheim Office Center—generic rehab rule.

30. 125th Street/Harlem Urban Development—$11m—New York.

31. American Youth Hostel—$1m—New York.

32. River West Loft Development—$1m—Illinois.

33. Gaslamp Quarter Historic District—$4m—California.

34. Eberhardt & Ober Brewery—$1m—Pennsylvania.

35. Fort Worth Town Square—$3m—Texas.

36. City of Marquette Heritage Hotel—$1m—Michigan.

37. Captain's Walk/Harris Place Development—$3m—Connecticut.

38. Nike/Clemson Mill—$2m—New Hampshire.
39. Grand Rapids Central Bank Building—$1m—Michigan.
40. Velvet Mills—$2m—Connecticut.
41. Roycroft Inn—$1m—New York.
42. Hayes Mansion—$3m—California.
43. Holy Names Academy—$1m—Spokane, Washington.
44. Bristol Carpet Mill—$3m—Connecticut.
45. Woods Common YMCA Building—Pennsylvania.
46. Newport Rehab—Rhode Island.
47. Union Station—Providence, RI.
48. Chattanooga Warehouse Row—Tennessee.
49. Union Station—Indianapolis, IN.
50. Wood Street Commons—Connecticut.
51. John Fitch Court—$2m.—Connecticut.
52. South Pack Plaza—Asheville, NC.

BONDS

1. Great Falls, Montana Redevelopment—neg. loss—p. I-629.
2. Valero Refining—$1m—Corpus Christi, Texas—p. I-621.
3. San Antonio, Texas Sports Facility—$10m—p. I-627.
4. Parking Garages—$4m—Providence, RI—p. I-638.
5. Providence, RI Convention Center/Parking—$3m—p. I-638.
6. Rhode Island bond carryforward—$12m—p. I-653.
7. Tobacco Row—$8m—Richmond, Virginia—p. I-657.
8. Outlet Building Parking—$6m—Providence, RI—p. I-638.
9. Lakeland/Marble Arcade—$1m—Lakeland, FL—p. I-651.
10. Lakeland/Wastewater—$1m—Lakeland, FL—p. I-660.
11. Lakeland/Center Hotel—$1m—Lakeland, FL—p. I-651.
12. Bradenton, Florida Medical Center—$1m—p. I-651.
13. Christian Apartments—$1m—Lakeland, FL—p. I-657.
14. Menlo Park, CA Residental Improvements—$1m—p. I-642.
15. San Jose Stadium—California.
16. Portland, Maine Resource Recovery—$6m—p. I-639.
17. NY University—$14m—p. I-655.
18. Bradley Lake—$14m—Alaska—p. I-656.
19. Autzen Stadium—$4m—Eugene, Oregon—p. I-627.
20. Metro Service District—$12m—Oregon—p. I-658.
21. Eugene, Oregon Parking Facilities—$1m—p. I-638.
22. Oregon TIF Projects—$23m—statewide—p. I-632.
23. Roseburg, Oregon Convention Facility—$1m—p. I-635.
24. Moyer Theater/Parking Garage—$1m—Portland, Oregon—p. I-638.
25. Philadelpha Trash-to-Steam—no loss—p. I-617.
26. Philadelphia Convention Center—no loss—p. I-617.
27. Kossman Projects—$5m—Penn.—p. I-644.
28. Kenosha Harbor—$8m—Kenosha, WI—p. I-632.
29. Andover, Massachusetts Town Hall—neg. loss—p. I-652.
30. Tulane University—$2m—New Orleans, LA—p. I-654.
31. Tulare Co., CA Housing Authority—$1m—p. I-644.
32. Gannon—$4m—St. Louis, Missouri—p. I-627.
33. St. Louis Sewer District—$5m—p. I-660.
34. St. Louis Partnerships—negligible loss—p. I-643.
35. Harbor Channel—$8m—Mobile, Alabama.
36. Bowling Green, OH Pollution Control—$4m—p. I-622.
37. Topeka, Kansas Redevelopment—$1m—p. I-629.
38. Spokane, WA Convention Center—$5m—p. I-635.
39. Central Valley Water Reclamation Project—$8m—p. I-661.
40. Buena Vista—$1m—p. I-644.
41. Moss Point, MS/Int. Paper—neg. loss—p. I-621.
42. Greenville Coliseum—$2m—p. I-636.
43. East Broadway Project—neg. loss—p. I-644.
44. University of Penn.—$7m—Philadelphia, PA—p. I-654.
45. Houston, Texas Metro—$32m—p. I-647.
46. Central Arizona Project—$32m—p. I-652.
47. Hoover Dam—$32m—p. I-656.
48. Sierra Pacific—$16m—p. I-621.
49. Austin, Texas Transitway—$20m—p. I-647.
50. NY Hospital—$12m.
51. Charleston, SC Solid Waste—negligible loss—p. I-639.
52. RFK Stadium—$2m—D.C.—p. I-627.
53. East Baton Rouge, LA Sewage Treatment—$8m—p. I-614.
54. Hernando County, FL Pooled Bonds—$24m—p. I-658.
55. Indiana Bond Bank—$19m—p. I-658.
56. Utah Pooled Bonds—$32m—p. I-658.
57. New Mexico Hospitals/Bond Pool—$3m—p. I-658.
58. Eastbank Wastewater—$8m—Louisiana—p. I-614.
59. Pennsylvania Pooled Bonds—$27m—p. I-658.
60. Orange County, FL Expressway—$40m—p. I-661.
61. Cornell University—New York—p. I-655.
62. Colorado Pooled Bonds—$24m—p. I-658.
63. North Carolina Pooled Bonds—$16m—p. I-658.
64. Tampa Bay Baseball Stadium—$7m—FL—p. I-624.
65. L.A. Coliseum Parking—$12m—California—p. I-637.
66. San Francisco Stadium—$4m—California—p. I-626.
67. Denver Coliseum—$8m—Colorado—p. I-626.
68. Mead-Phoenix transmission line—neg. loss—p. I-617.
69. 30th Street Station—$2m—Philadelphia, PA—p. I-649.
70. Charleston, SC Waterfront—$3m—p. I-619.
71. Charleston, WV Town Center Garage—$4m—p. I-639.
72. Penn Station/Madison Square Garden—$18m—New York—p. I-626.
73. Washington University Medical Center—$8m—Missouri—p. I-653..
74. Georgia Municipal Association—$11m—p. I-658.
75. 2 Kentucky Bond Pools—$30m—p. I-658.
76. Homewood, IL Bond Pool—$24m—p. I-658.
77. Tennessee Pooled Bonds—$23m—p. I-658.
78. Illinois Pooled Bonds—$47m—p. I-658.
79. Oakland Stadium—$8m—California—p. I-626.
80. Sarasota Sports Stadium—$1m—Florida—p. I-626.
81. Austin Convention/Civic Center—$10m—Texas—p. I-634.
82. Columbus Convention Center—$12m—Ohio—p. I-635.
82. City of Mesquite Hotel/Civic Center—$1m—Texas—p. I-634.
84. Los Angeles Pension Bonds—$35m—p. I-646.
85. Ohio Rapid Rail—$40m—p. I-656.
86. Huntsville Solid Waste—no loss—Alabama—p. I-658.
87. Pacific Gas & Electric—$4m—CA—p. I-621.
88. Peabody Place—$17m—Tennessee—pp. I-631 & 636.
89. Northwestern University—$4m—IL—p. I-654.
90. Forest City Parking Facility—$5m—Mass.—p. I-637.
91. O'Hare Airport—$2m—Illinois—p. I-628.
92. Navy Pier—$8m—Illinois—p. I-630.
93. Sacramento, Calif. Airport—$12m—p. I-628.
94. Austin Conservation Program—$6m—Texas—p. I-652.
95. Chicago Mixed-use Center—$8m—Il—p. I-630.
96. Austin Arts Program—no loss—Texas—p. I-655.
97. Oakwood, GA Housing Authority—no loss—p. I-643.
98. Howard University—$9m—D.C.—p. I-655.
99. Harlem Urban Development—$13m—New York City—p. I-633.
100. Olds Plaza Hotel—$1m—Michigan—p. I-651.
101. Shaw—$1m—D.C.—p. I-631.
102. Evanston/Northwestern Univ. Redevelopment—no loss—Illinois—p. I-631.
103. Seabrook Nuclear Power Plant—$6m—NH—p. I-621.
104. Holland, Michigan Holland Center—$1m—p. I-651.
105. Anchor Store Project—$2m—Michigan—p. I-651.
106. Northlake Project—$1m—Illinois—p. I-644.
107. East Bank Housing Project—$1m—MI—p. I-632.
108. Wurzburg Block Redevelopment—$5m—MI—p. I-632.
109. Marquette Heritage Hotel—$1m—MI—p. I-651.
110. Austin Aquafest—no loss—Texas—p. I-634.
111. Grand Rapids, MI arena project—$7m—p. I-627.
112. Harborside Hotel—$3m—Mass.—p. I-628.
113. Columbia University—$23m—New York City—p. I-653.
114. State of Connecticut—$12m—p. I-652.
115. Club Apartments—$1m—Alabama—p. I-643.
116. Benton Park & Soulard—negligible loss—MO—p. I-643.
117. Braintree, Mass. Nursing Home—$1m—p. I-643.
118. Yale University—$7m—Connecticut—p. I-653.
119. Tranquility Irrigation District—$1m—CA—p. I-653.
120. State Office Building/Parking—$2m—L.A., Calif.—p. I-637.
121. 200 N. Dearborn Project—$3m—Illinois—p. I-642.
122. Kenwood-Oakland Apartments—$1m—IL—p. I-642.
123. Greenwood Apartments—$1m—Illinois—p. I-642.

124. St. Mary's Hospital—$2m—Wisconsin—p. I-657.

125. State Theatre—$2m—Minnesota—p. I-631.

126. Hennepin Avenue—$4m—Minnesota—p. I-631.

127. Arkansas Development Finance Authority—$6m—p. I-651.

128. Indian Valley—no—loss—California—p. I-658.

129. San Jose State—no—loss—California—p. I-651.

130. Raleigh & Charlotte, NC housing projects—negligible loss—p. I-657.

131. City of Bell Gardens, Calif.—$1m.

132. Clinton, TN Carriage Trace.

INSURANCE

1. Workers Compensation Self-Insurance Trusts—$10m—Michigan—p. I-871.

2. Extension of 1984 Act relief for certain insurance companies holding market discount bonds—$103m—all on p. I-322.

a. AETNA—$15m.

b. Provident Life & Accident—$2m.

c. Massachusetts Mutual—$11m.

d. Mutual Benefit—$10m.

e. Connecticut Mutual—$10m.

f. Phoenix Mutual—$2m.

g. John Hancock—$10m.

h. New England Life—$1m.

i. Penn Mutual—$5m.

j. Transamerica—$1m.

k. Northwestern—$6m.

l. Provident Mutual—$4m.

m. Prudential—$4m.

n. Mutual of Omaha—$5m.

o. Metropolitan Life—$13m.

MISCELLANEOUS

1. MarkAir (safe-harbor)—$6m—Alaska—p. I-89.

2. Freeport McMoran—consolidated returns—no loss—p. I-221.

3. Middle-South Utilities (ITC/min. tax)—$20m—p. I-275.

4. Louisiana Academics and Athletics (char. cont.)—Baton Rouge, Louisiana—p. I-724.

5. Parsons Corporation (ESOPs)—$1m—Pasadena, Calif.—p. I-418.

6. Rose Spurrier Scholarship Fund (IRC change)—neg. loss—Kingman, Kansas.

7. Technology transfer (tax-exempt orgs.)—$1m—Arizona—p. I-721.

8. Frankford Arsenal (expensing of rehab expenditures)—$10m—Philadelphia, Pennsylvania—p. I-110.

9. Rentar Industries (operating rights)—$1m—p. I-104.

10. Tip reporting modification—no loss.

11. Austin Community College (UBIT)—$1m—Texas.

12. University of Texas (char. cont.)—negligible loss—p. I-724.

LOW-INCOME HOUSING

1. Generic low-income housing relief—$500m.

2. New York City Housing Development Corp.—$50m.

3. SHARP—$50m—Massachusetts.

4. Chicago Projects—$50m.

5. Texas rural low-income housing projects—$1m.

TECHNICAL CHANGES

1. Harza Engineering (sec. 1807)—$5m—Illinois—p.I-279.

2. IC Industries (foreign)—$5m—Illinois—p. I-777.

3. Western and Southern (insurance)—$10m—p. I-799.

4. Tenneco (insurance)—no loss.

Mr. PACKWOOD. I yield 5 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, first I want to thank the distinguished chairman and compliment him for a marvelous job. We will do something historic at 4 o'clock. I wish I had about 30 or 40 minutes but that is not the case.

Mr. President, no army is as powerful as an idea whose time has come. The idea is the Tax Reform Act of 1986 and since there is approximately 1 week of this Congress remaining, the time is now.

The American people want tax reform because our present tax system is too complicated. It is inequitable, and it interferes with economic choices of households and businesses.

The country needs it because our system is a so-called voluntary system which is nourished by general taxpayer support and which depends on taxpayers' confidence in the fairness of the system.

Over the years our Tax Code's integrity has been compromised, and this is reflected by decreased compliance.

The size of the U.S. underground economy is evidence that compliance has been decreasing. Our underground economy is the seventh largest economy in the world—in excess of $100 billion per year that goes unreported to the IRS. More than a $100 billion that should be going to the Treasury.

For those Americans who are paying taxes, there is a perception that the system is not fair.

Some have argued that this criticism is more of a perception than a reality.

However, the perception is that fairness has been eroded by layer upon layer of loopholes.

The cost of loopholes has grown over the years.

In 1967, the value of all loopholes was about $37 billion. In 1986, the value of all loopholes will be over $400 billion.

This bill eliminates a majority of the loopholes and abuses.

It is not perfect, but it is fairer than what we have now.

Some loopholes survive that probably should not. It goes too far in other areas. In short, it creates winners and losers.

The bedrock of this tax reform bill is that people who earn the same amount of money should pay approximately the same tax.

It is simple, common sense proposition.

I am glad we are returning to this basic premise because I sense that without this bill we would soon emulate the French. Their tax system is so perverse that they actually negotiate with their tax collectors.

In France, fairness isn't even a consideration.

In France, uniformity isn't a consideration.

In some ways this bill is simplification. The tax brackets are reduced from 15 to 2 and the standard deduction is increased, allowing more than 14 million people to avoid keeping burdensome records and itemizing their deductions.

The bill retains the most widely utilized itemized deductions, including deduction for home mortgage interest, State and local income and property taxes, and charitable contributions for itemizers and the child care credit. Everyone can continue to contribute to an IRA.

Unfortunately the bill eliminates the deduction for State sales taxes.

It is not perfect, but it is fairer than what we have now.

For a long time I was not enthusiastic about undertaking this massive reform.

Reform means change and change results in unavoidable disruption in the economy.

But during this legislative process that has been going on since the President called for the Treasury study, I have become convinced that there is never a good time to take necessary corrective action of this type.

Therefore, now is as good of time as any, and in fact, it is probably the best time with this President leading the tax reform crusade.

I am convinced that it does not matter whether the economy is at the beginning or end of an economic cycle. There is no magic moment when the code could be changed without affecting the economy.

We have probably seen the impact the uncertainty that has resulted from having this bill pending.

I know of projects that have been canceled in my own State because no one knew what the rules were going to be.

From this standpoint, the important thing is that we end the uncertainty and pass this bill.

It is not perfect, but it is fairer than what we have now.

There are divergent opinions about how this bill will affect the economy.

There is probably a different opinion for every Senator in this Chamber.

However, I believe it depends significantly upon how the American people react.

This is a wonderful economic machine that we have.

It is a flexible, ingenious, resilient system, but the real test will be how the small businessmen react; how the investors react; how corporate America reacts.

No question the Tax Code has diverted investment in the past.

Decisions were not based on the best investment, but the best tax package.

The question we face is, can we prosper in an environment where the tax system is neutral?

Can our economic engine move forward without being in tax overdrive?

In the past tax policy has resulted in terrible waste, tax shelters prospered while good, solid investments in non-tax-favored areas were ignored.

The tax considerations were interfering with capitalism and the free enterprise system.

Tax considerations were misallocating capital and were resulting in higher interest rates.

The bill is not perfect, but it is better than what we have now.

This bill takes 6 million working poor off the tax roles. This really makes sense.

History may look back and record this initiative as one of the most successful welfare programs that benefits the most needy in our society.

A single parent with three children making $12,000 will pay $1,200 less in income tax. That family will get an 83-percent tax cut.

A couple with two kids making $15,000 will receive a tax cut of $826.

Four out of five taxpayers will pay no more than the 15-percent tax rate; 69 million Americans earning under $50,000 in the first year after passage of this bill will get a tax cut; 12 million will have a tax increase; it is not perfect, but it is fairer than what we have now.

This legislation is a historic milestone in our lifetime. I was a child the last time the Congress made changes of this magnitude. Senator PACKWOOD and Senator LONG, the Finance Committee and Joint Tax Committee staffs should be commended for piloting this bill through the Congress.

In a sense this bill is an economic declaration of independence from the Tax Code because this bill significantly reduces the impact of the Tax Code will play in future investment decisions. This is good.

The theory is excellent, but some of the means contained in this bill may end up needing additional consideration. However, I do not want anyone to think it will be easy to enact further changes, because it will not be.

The overall structure of the bill is to reduce the rates and broaden the tax base. Adding back deductions, rules or credits would mean a rate increase—this should be avoided.

There are winners and losers.

It is not perfect, but it is fairer than what we have now.

For a long time businessmen, economists, and economic policy experts have agreed that the economy would function better without having the tax consequences interfere.

Some would argue that we have gone too far. I would agree that those who insist that people actively involved in real estate should not be treated differently under the loss-limitation rules than taxpayers actively invoved in other types of business.

Real estate investors, like other taxpayers, should be able to fully deduct losses that result from actual cash expenses.

Other, the retroactive aspects of the bill are unfair.

I am troubled about farmers and ranchers who have sold land on long-term contracts expecting capital gains treatment, and are locked into their sales, but locked out of taking further capital gains.

This bill eliminates the 3-year recovery rule for Federal employees and other taxpayers with employee contribution plans. I would have preferred that the rule remain. However, the issue lost on the Senate floor in spite of my vote to retain it.

I am pleased with some of the other pension provisions. The bill reduces the number of years that an employer can require an employee to work before the employee gains the right to a pension. The bill expands the participation rules so that more employees would be covered under a plan.

I mention these provisions because they are some of the most controversial, however, they are not enough to justify a vote against this bill.

In the overall package much more is gained.

It is not perfect, but it's a lot fairer than what we have now.

I have received hundreds of letters about tax reform. Most of them focused on one or two provisions which constituents did not like.

As a Senator I cannot view this bill that way.

I have to assess the overall effect of this bill. I am pleased because businesses and individuals who paid little or no taxes before, will pay their fair share now.

I realize these changes can cause problems for the small businessman. Plans will have to be revised and modified. I have to ask everyone to work together on this.

It is not perfect, but it is fairer than what we have now.

Probably the most serious problem with this bill is the deficit implications.

This bill raises revenue by $11.4 billion in fiscal year 1987 which everyone is happy about.

Members will be less happy next year when they find that this bill reduces revenues by $16.7 billion at a time when they are struggling to reach the fiscal year 1988 Gramm-Rudman-Hollings deficit goal of $108 billion.

This means that we will have to find at least $52 billion in budget savings at a time when defense budget authority will have actually gone down for 2 years running, when we have already imposed substantial restraint on appropriated domestic programs and when we have reduced entitlement funding for some programs several years in a row.

And, the revenue pressures from this bill will not end next year. This bill loses $15.1 billion in fiscal year 1989. Our goal under Gramm-Rudman is $76 billion for the deficit.

My point, Mr. President, is that the budget implications of this tax bill, as with many things we do around here, are secondary because we think we have an issue that is so important it shouldn't be bound by the budget.

I want to warn my colleagues today that the revenue loss in this bill for fiscal year 1988 will come back to haunt us when we begin next year's budget process. In the debate on the Senate floor, I had strongly urged the conferees to eliminate these large revenue swings—which are considered as "revenue neutrality" by some—but are revenue losses under the budget process.

However, in spite of the budget implications of this bill, I am going to vote for it and urge my colleagues to vote for it.

In passing this bill, the Congress is doing something positive for America.

It should give the American people a greater confidence about our ability as an institution to deal with other complex issues that confront our Nation.

Thank you, Mr. President.

In summary, the four points I am trying to make are:

First, I used to wonder if now was the right time to pass this bill. I have come full circle, and concluded there would never be a right time if we were waiting around for economists and others in this system to say we are now ready.

So I conclude it is absolutely the right time because we are ready and the people are ready. The President has led us down this path. So it is as right as any time in history.

Second, surely you do not pass this kind of bill without changing things that exist now in a dramatic way. You will get a lot of people who are concerned about moving from the way it is to a new way. We ought to be concerned. But there ought not be any doubt that the new way is better than the previous way because it is. If you put these two bills—the new law and the old law—side by side, with neither of them in effect, 99 percent of the Senate, the House, and everyone would choose the new law. It is because the old law is in place, and you are afraid of the change that you have concern. So I conclude there is a risk but the risk is predominantly short term.

How do we get by the next couple of years as these changes impact on those who are doing business and conducting their investments and their lives under the old law? We can watch that carefully, and if need be, we can make some adjustments.

Third, after the long haul, would it be good or bad for the American economy. There is no doubt in my mind that it will be good for the American economy. I will take one simple aspect.

The most significant negative going in the American economy is high real interest rates. There is no doubt that this bill when it is finally in full effect, and we have got through the change, will cause the allocation of capital to take place on the basis of real economic competition instead of the competition of investments based upon a Tax Code which gives many of them a huge advantage thus causing money to flow their way and the nontax advantage investments pays more for it. In essence, the current tax law misallocates capital, and when we adjust to that, and into a more neutral arena, interest rates will come down I would predict 1 to 2 points in 24 months under this bill because of that new allocation of resources.

My last point is the deficit. We have a deficit problem, and we have a Tax Code problem. Both are serious. We must reform the Tax Code and we must address the deficit. At one time I thought we could ask the tax reform to help with the deficit.

I have concluded we cannot ask the tax reformers who have a difficult time with reform to add to their burden solving the deficit problem.

I have concluded looking at 3 or 4 years tax reform will add somewhat to the deficit problem but the plus is on the side that they have reformed the tax laws.

I do not think we could have done much more. We could not have solved the deficit by adding revenues, and yet get this reform through.

In conclusion, I think this will be a day we will mark in economic history, and in the fair play history of our country as one of the red letter days. To all of those who worked hard, to the President who led, my compliments, and we will watch it carefully collectively.

I believe it will work ultimately to the benefit of Americans, to the benefit of the economy that gives them their economic nourishment and which is basic to all of us who have participated.

I yield the floor.

Mr. PACKWOOD. Mr. President, could I ask how much time I have left?

The PRESIDING OFFICER. The Senator from Oregon has 23 minutes remaining.

Mr. PACKWOOD. As I understand, I will divide 30 minutes equally with Senator LONG starting at 3:30. And Senator LONG will have 15 minutes, and I will have 15 minutes.

The PRESIDING OFFICER. That is correct.

Mr. PACKWOOD. I would like to yield 1 minute to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. SYMMS. Mr. President, first I wish to thank the chairman for yielding, and compliment the chairman for his long, long work on this legislative process.

Mr. President, even though I voted for the tax reform bill in the Finance Committee and on the Senate floor, I did not do so without serious concerns and reservations. The following is a list of provisions that are of particular concern to me and my constituents:

The retroactive provisions. For example, the investment credit is repealed effective January 1, 1986. The passive loss provisions significantly change the treatment of investments made in past years. Changing the rules in the middle of the game is unfair, if not immoral.

Many provisions of the bill have a very negative effect on Idaho farmers. As a farmer myself, I know that they are not happy with the loss of the investment credit, income averaging, and the loss of the capital gain differential.

The bill fails to implement the lower rates at the same time that deductions are lost.

The bill continues the policy of creating additional penalties for failure to meet additional compliance regulations. Both the regulations and the penalties add to the burden of the small taxpayer. The bill also provides that interest paid by the IRS will be 1 percent less than that paid by the taxpayer.

The bill disallows the deduction for a portion of legitimate business expenses: For example, unreimbursed expenses of employees, investment advisory services, union dues, meals, and tax return preparation.

There is serious doubt whether the bill is revenue neutral because it does not take into account the change in taxpayer behavior that will result from its passage. It may raise less revenue than current law.

Several provisions will result in complicated and expensive bookkeeping costs, but will merely speed up by 1-year tax collections. The provisions do not provide for a continuing increase in tax receipts that might warrant the additional cost to the taxpayer.

The repeal of the General Utilities Doctrine means that any artificial appreciation in the value of the land in a small farm corporation due to government-caused inflation will be taxed on liquidation first to the corporation and again at the shareholder level. This could be devastating to a small retiring farmer who is also losing the benefit of the capital gains provision.

The practicality of the book income provision under the minimum tax has not been thought out. How does this affect Idaho corporations when few of them report to the SEC or have audited financial statements?

I am also disappointed with the Senate conferees for giving away provisions important to agriculture, mining, and timber in the final conference report such as: Capital gains treatment for corporations. The retention of this provision is important to the timber industry; exclusion of exploration and development costs as a minimum tax preference for hard rock mining; an agriculture provision increasing the FUTA tax threshold amount for coverage; an agriculture provision that affected the section 1245 recapture on installment sales of irrigation equipment; a provision making 50 percent of hospital insurance deductible by a self-employed person. The conferees compromised the percentage from 50 percent to 25 percent.

Except for the last item, there is no significant revenue involved in any of these provisions.

The dissatisfaction with this bill by many of my farm community constituents is justified and reasonable. I would certainly not vote for the bill if there were not other compelling reasons to vote for it. The best reasons to vote for the bill are:

Four out of five taxpayers will get a tax cut.

Eighty percent of all taxpayers will not pay above 15 percent.

The higher standard deduction will make it simpler for those additional taxpayers who do not have to keep a record of their deductions.

Low rates. Under current law the 50 percent top bracket makes it as profitable to hide existing income as it is to earn additional income under this bill with a maximum rate of 28 percent it will be twice as profitable to earn more as it would be to hide existing income.

Tax shelters will be eliminated and capital will flow where it should for economic reasons rather than for tax reasons.

A tough minimum tax will make it impossible for individuals and corporations with true income to avoid paying taxes.

Because I believe the reasons to support the bill are more compelling from the standpoint that they move the Tax Code generally in a positive direction with respect to rates and the policy of allowing the free market to control the flow of capital, I intend to vote for the bill.

I intend to oppose any attempt in the future to raise the rates and I will make every effort to correct the bill's deficiencies.

Mr. President, I am going to vote for this legislation. There are many objections that I find in the legislation. But I think in the long run, as the Senator from New Mexico has just so eloquently stated, this bill will be an improvement in the tax system. It will be more fair with a historic reduction in tax rates for both business and individuals. I think that the good in the bill far outweighs the bad.

I sat here, and listened to my colleague from Ohio complaining about the transition rules. I did not hear him complain about the transition rule for the steel companies which is not a true transition rule. It gives steel companies preferential treatment that our farmers and miners did not get. I did not hear him speak out to correct this injustice.

The **PRESIDING OFFICER.** The Senator's time has expired.

□ 1520

Mr. **LONG.** Mr. President, I yield 8 minutes to the Senator from Tennessee [Mr. SASSER].

The **PRESIDING OFFICER.** The Senator from Tennessee is recognized.

Mr. **SASSER.** Mr. President, I want to take this opportunity to commend the distinguished chairman of the Senate Finance Committee Mr. PACKWOOD as well as the distinguished ranking member, Senator LONG of Louisiana, the long, diligent effort they have put into this tax bill.

I would be remiss if I did not recognize the effort and talent that the senior Senator from New Jersey [Mr. BRADLEY] in fashioning the final result that we debate today.

Mr. President, tax reform means many things to many persons. But we would all agree that two fundamentals to true tax reform must be simplicity and fairness. I think the drafters of this legislation would agree that if they were working in a perfect world, this legislation would be more simple and it would be more fair, than that presented to us today.

I am mindful of all of the tradeoffs that are necessary in the rough and tumble of writing a tax bill. In the judgment of this Senator, however, this package does not provide the degree of fairness or the level of simplicity that meaningful tax reform demands.

The most glaring example of where this measure fails to fulfull the promise of fairness is the loss of a progressive Tax Code.

Quite simply, this legislation removes any vestige of a progressive tax system. The bill drops the top individual tax rate from 50 percent to 28 percent.

I know it is true that some of the recapture and phaseout provisions in the legislation could impose a marginal rate of 33 percent. But even so, this is a dramatic drop from 50 percent. Although I would agree that perhaps a 50-percent rate should be lowered, the net result is that our highest income earners will be treated in a similar fashion, taxed at the same rate, as the middle-income wage earners.

In short, a head of household with a family of four with a taxable income of $29,750 will be taxed at the same rate as one earning $1 million. A single wage earner with a taxable income of $17,500 would be taxed at the same rate as one with an income of $2 million.

In my judgment, Mr. President, we are going to have a difficult time explaining that element of fairness, or lack of fairness in the view of this Senator, to our constituents.

It is a serious mistake to treat a person with a taxable income in the neighborhood of $30,000 the same as you would a person with a taxable income of $200,000. The economic circumstances are entirely different.

My belief in a progressive tax structure stems in part from a heritage that was born in my native State of Tennessee and a belief in a progressive Tax Code. As many of my colleagues know, the father of the progressive income tax system in this country was Cordell Hull, a native of Pickett County, TN. Cordell Hull shepherded the income tax law of 1913 and its revision in 1916 through the Congress. I believe that Cordell Hull, were he here today, would share my fears over the abandonment of our progressive tax system.

We are seeing right now in this country a growing disparity between the very wealthy and the very poor. This disparity is continuing.

I am mindful of the fact that the drafters of this legislation have attempted to address that by removing millions of individuals below the poverty line from the tax rolls. For that, I commend them. That is a very attractive feature of the legislation and makes voting against it a close call.

But, Mr. President, that does not, in the judgment of this Senator, counterbalance the loss of the progressive tax structure.

I believe that to eliminate the progressive nature of the Tax Code provides a windfall to wealthy Americans throughout America.

It has been reported that over half of the taxpayers earning over $200,000 will receive a tax cut averaging around $25,000 under this bill. Bear in mind, this comes on top of the tax cuts of 1981 in the tax bill which favored upper-income taxpayers at that time to the detriment of middle-income taxpayers.

Once again, it appears to me we are traveling down the road of supply-side economics and hoping for the best.

It has been reported to me, Mr. President, that this bill will actually increase the taxes of 5.8 million Americans who earn less than $20,000. Those middle- and low-income earners who receive a tax cut under this bill are likely to see cuts ranging between $200 and $400. At the same time, they are going to get increases in their Social Security taxes.

So I fear when all of the deductions are gone, when all the calculations are made many of our middle-income taxpayers will find their so-called tax cut is really inconsequential.

The greatest threat to the health of the American economy are the massive budget deficits that have occurred since 1981. There is a persuasive danger that this legislation will add to the deficit. For example Roger Brenner of Data Resources, Inc., estimates that in 1987 the Treasury will lose $21 billion more in revenue than predicted by the Joint Committee on Taxation. Revenue losses of almost $17 billion in 1988 are predicted by the joint Senate House conference committee report and $15 billion in 1989. Should there be a downturn in the economy the deficit would be dramatically increased. It hardly seems the time for legislation that loses revenue and increases the deficit.

There is the question of fairness in the elimination of the deduction for State sales tax. Here the inequity is glaring. The sales tax deduction is the only State or local tax singled out for elimination. All other State or local taxes are deemed worthy of deduction.

Where is the fairness in singling out the sales tax deduction in this manner?

The deductions for sales taxes in my native State of Tennessee were worth $585 per itemizing household in 1985. Without the sales tax deduction, those States that rely on the sales tax to support State government will lose as much as 48 percent of their total savings from the deduction allowed for State and local taxes.

I would point out, Mr. President, that here in this day of the most awesome budget deficit in the history of the United States of America—we have seen our national debt double in the space of 5 years—we are engaging ourselves in adopting a revenue measure which is allegedly revenue neutral. But when you look in the out years of 1988 and 1989, the losses are almost $17 billion in 1988 and almost $15 billion in 1989.

How in the world can we be standing here today debating a revenue measure that is going to lose the Federal Government revenue in 1988 and 1989, that is actually going to increase the Federal deficit?

Now, some of my colleagues will protest that I have a purely parochial interest in this issue. And it is true that my home State of Tennessee would be severely penalized by the loss of the sales tax deduction. Sales taxes account for 58 percent of all State revenues collected in Tennessee. The deduction for sales taxes was worth $585 per itemizing household in Tennessee in 1985. Without the sales tax deduction, Tennessee will lose 48 percent of their total savings from the deduction allowed for State and local taxes.

I would point out to my colleagues, this misguided change does more than hit State government and the citizens of Tennessee in the pocketbook. Elimination of the deduction for State sales taxes interjects the Federal Government into the planning of State tax systems. This bill essentially undermines a State's ability to determine its sources of revenue. There may be merit in the argument that States should not rely on a sales tax as their central revenue source. But the place for that debate is not the U.S. Congress. It is not our place to dictate how a State shall finance its operations. That decision is best left to State officials. I am very disturbed by this Federal intrusion into the fiscal matters of State governments.

The bill is also unfair in its treatment of small business. The Washington Post ran an article on August 25 of this year describing the bill's impact on small business in these terms: "for small businesses, the tax-overhaul bill is bad news—unless the business is an accounting firm." This view was repeated over and over again during the White House Conference on Small Business last month. Several leading small business organizations, National Small Business and the Small Business Legislative Council, oppose the bill. They realize that this bill creates new recordkeeping nightmares for small business. They understand the bill could cripple the formation and growth of small firms.

Specifically, some small businesses will be hurt as they are forced to switch to the calendar year for accounting purposes. Others will have to restructure their employee pension plans. Elimination of the investment tax credit will harm capital intensive small firms. Retroactive application of the repeal of the ITC only compounds this situation. Elimination of the capital gains differential threatens business startups.

This is especially troubling to those of us who have championed small business concerns throughout the tax reform debate. I have worked for more than 2 years to see that the needs of our small business community are addressed in this sweeping reform effort. I am not convinced we have done all that we could in this area.

I am also troubled about the impact of this bill on our economy. As my colleagues know, there is wide divergence of opinion on the impact of this bill on the economy. Most are in agreement that we will see a negative impact in the short-term. With an already ailing economy, can we sustain even a modest downturn wrought by this bill? And what if the dire predictions of significant adverse consequences for economic growth hold true? It appears to me, Mr. President, that we are about to embark on yet another "riverboat gamble." The last time we gambled with such big stakes was in 1981. We've been living with the deficits rung up by that gamble ever since. I question the wisdom of rolling the dice yet again.

And then there is the question of simplicity. The tax returns most Americans will fill out following passage of this bill will be no simpler than what we see today. There are still a host of deductions, exemptions, and credits available to individuals. Indeed, the bill creates many new taxpayer tasks. Calculating the treatment of contributions to IRA's; determining whether miscellaneous itemized deductions exceed 2 percent of one's adjusted gross income; figuring out what portion of business meals, travel, and entertainment are deductible; these all make a mockery of the goal of a simplified tax system.

And this is only the individual side of the ledger. For business, there is even less promise of a simplified tax system. The changes in accounting rules and depreciation schedules promise new complicating forms for business. Restructuring of employee pension plans promises headaches for many. While these changes will mean a boon for accountants across the country, it tears asunder any hope for a simplified Tax Code for our business community.

Mr. President, I am not blind to the fact that there are worthy elements to this package. The bill does take 6 million poor Americans off the tax rolls. This package does manage to close some loopholes which have cost taxpayers millions to dollars. And perhaps, the bill begins to restore the faith of taxpayers in the Federal income tax.

I remain unsatisfied that efforts on these fronts outweigh the concerns I have raised. We have promised the American people quite a bit throughout the tax reform debate. I do not believe this package fulfills those promises. It falls short on delivering a tax system that is both fairer and simpler. We can achieve these goals, Mr. President. But not with this package. I, therefore, will vote against this measure.

Mr. LONG. Mr. President, I yield 2 minutes to the Senator from New Jersey.

The PRESIDING OFFICER. The Senator is recognized for the last 2 minutes.

Mr. LAUTENBERG. Mr. President, I first want to applaud the hard work of the chairman and ranking member of the Finance Committee, and all the members of the conference, who labored long and hard to produce this bill. It is a work of historic dimension.

But, I reserve my highest praise for my colleague from New Jersey, Senator BRADLEY. The fact that the Senate is here today, debating this historic legislation, is a tribute to the persistence and the persuasiveness of my distinguished colleague.

Senator BRADLEY has pursued the goal of tax reform vigorously and relentlessly over the last couple of years and with the consistency of principle that has won him great credit and great respect. He has insisted in public forums and private meetings that fairness and equity in taxation is an essential factor in a democratic society.

Mr. President, today the Senate will make a major change, a change in direction. Today, the Senate redirects our Nation's tax policy. Today, we direct our tax law toward fairness. We direct our tax law toward efficiency. We direct our tax law toward growth.

The tax law has grown into a clumsy and cumbersome thing, dragging along with it a trail of interest groups and special pleaders. Turning our tax law around is no easy feat. It is like making a U-turn on a city street in a tractor-trailer. It is not easy. It takes a strong hand. And it takes a certain amount of faith that nothing gets crushed in the process.

But, turn around our tax law, we have. Today, we point the Nation in a new direction.

Today, the Senate stands up for fairness. It stands up for efficiency.

What is fair?

What is fair is that every income earner and every profitable corporation pay a fair share of tax. And they would, with the stiffest, most far-reaching minimum tax ever enacted.

What is fair is that as a person's income rises, so should the tax rate one pays. This should not only be a rate on a tax table, but the rate one pays. Once we close the tax shelters and loopholes, the rate in the table and the rate one pays will be closer to one and the same.

What is fair is that two people—living in similar houses, earning similar salaries, supporting families of similar size—will pay about the same amount of tax. And they will, with this law.

What is fair is that the working poor, and middle-income Americans get some tax relief. And they would, under this law.

But, Mr. President, we strive today not just for fairness. We strive for efficiency. We strive for a system where investment decisions are made by looking not to the Tax Code, but to the marketplace. We strive for a system where inventors and innovators can get the backing they need, based not on the tax losses they may produce, but based on the products, inventions, and innovations they create.

Mr. President, no bill is perfect. This bill is no exception. I supported amendments to make this bill better, by restoring the universal IRA; by providing greater tax relief to the middle class. I was concerned about the retroactive changes that this law would make. I was concerned about hardship on those who made investments, reasonably relying on the law as it was.

I am concerned about the impact of the bill on investment. I hope and believe that the impact will be positive. I hope and believe that on the whole the economy will be helped.

But, we have to recognize one thing. We have no guarantees. The economists give us predictions, they give us projections. But they don't give us guarantees.

Yet, we are propelled today by one basic notion. That it is better for business to invest based on their real returns, than to invest based on the returns that a jerry-built Tax Code would give. We are motivated by the belief that directing investment toward real returns will yield greater returns, to our Nation, to our economy, and to our people.

But there are no guarantees. And I say now, that we must monitor the results of this law. We must take a good hard look at its effects. We will not know tomorrow if we are more wrong than right. But, we cannot be blind to error. We must be open to make corrections.

And we must live with uncertainty. In no respect does that have a greater impact than with the Nation's budget deficit. We are told the tax bill will boost revenue in 1987. And it will lose revenue in 1988 and 1989. We are told that the law would yield 11 billion more in 1987. Seventeen billion less in 1988. Fifteen billion less in 1989. These swings seem minor when placed aside the total pot of revenue. An error of $10 billion or $15 billion is a minor error.

But, the size of these swings is great, when placed beside a deficit of $200 billion and more. Those swings could wipe out the effect of major cuts in spending. They could trigger across-the-board budget cuts in future years. We just passed a reconciliation bill with $13 billion in saving. We need to be watchful of how the bill affects the deficit. We need to be ready to make corrections, if needed.

One last point, Mr. President. For years, the Tax Code has been a tool of social and economic policy. Today, we do not reject that role. But we recognize that we have chased too many nonrevenue goals; and to date, we have achieved too few.

Today, we do not reject the Tax Code as a tool of social and economic policy. We rejuvenate it, by getting back to basic policy.

The Code we pass today should promote initiative, promote home ownership, and promote investment. The Code we pass today should promote equality, fairness, and efficiency.

Those, Mr. President, are basic goals. Those are goals we should seek.

This is a historic occasion. I urge adoption of the conference report.

The PRESIDING OFFICER. Under the previous order, the Senator from Louisiana [Mr. LONG] is now recognized until the hour of 3:45 p.m.

Mr. LONG. What time is that, Mr. President?

The PRESIDING OFFICER. Until the hour of 3:45 p.m. That is 15 minutes.

Mr. LONG. Mr. President, I yield 5 minutes to the Senator from Iowa [Mr. HARKIN].

The PRESIDING OFFICER. The Senator from Iowa is recognized for 5 minutes.

Mr. HARKIN. Mr. President, I thank the distinguished Senator from Louisiana for yielding me this time.

I had not made up my mind until just a few minutes ago, Mr. President, to vote for this bill. I want to make it clear that I am still not quite adamant on this bill. There are provisions I like; there are provisions I dislike. I want to say at the outset that thanks to the great persuasive powers of my friend and colleague from New Jersey [Mr. BRADLEY], who has enlightened me on the provisions of the bill over the last 3 months, I am convinced there are more pluses than minuses in this bill, and I think it is the right course for the country to take. I want to add, Mr. President, my great esteem for the staying power of Senator BRADLEY. He has fought for this for over 5 years, through thick and thin, when many said the tax reform bill would never make it. If I ever have to go into battle, legislatively or otherwise, I want the Senator from New Jersey, Senator BRADLEY, on my side.

Mr. President, for too long, large corporations in our country have been paying no taxes. It has destroyed the faith of too many of our people in the Tax Code and in the fairness of our society. This bill changes the law that allows large corporations to pay nothing in taxes. For too long, we have had too many corporate mergers which have created no new creative capacity. In fact, I think the mergers have caused harm to the economy.

This bill eliminates many provisions which have promoted the merger of so many corporations into conglomerates.

There is the question of progressivity, however. Prior to 1981, we had a top rate of 70 percent. In 1981, the top rate went to 50 percent. Now it goes down to 28 percent. What this means is that a family of four making $30,000 a year pays the same rate on an extra dollar of income as a family making $500,000 a year. Mr. President, I just cannot believe this is fair. If we had adopted the Mitchell amendment on the floor of the Senate, and if it were in the bill before us, my support for this bill would be very strong. I am hopeful that we can pass a provision along the lines of the Mitchell amendment in the next Congress.

If I thought this bill would stay unchanged for the next 10 years, I would not vote for it. But I know we are going to have to change it.

I also want to talk about the impact on agriculture, Mr. President. Right now, the Government is spending billions of dollars a year through tax provisions that increase production by promoting irrigation and tax shelter investment in cattle production. Then we turn around and spend billions of dollars per year to reduce production. This does not make any sense. This bill does reduce the incentives for tax loss farming. I am convinced that this, in the long run, is going to help our family farmer.

On the other hand, a provision of concern to farmers is the loss of income averaging. I believe it is inherently unfair for families that have, by nature, highly variable income not to be able to average that income. I intend to work for the restoration of income averaging for those whose income is variable due to natural causes, like weather. I hope income averaging will be restored in the next Congress.

Mr. President, the bill is a mixed bag for farmers but on the whole, I believe there are more pluses than minuses, and I believe there will be changes in the next few years that will make it even better.

I am also concerned about the impact on rental housing. There are young families who cannot afford to buy their own house. I am afraid this bill may cause their rents to increase. I hope this does not happen. If it does, I think we are going to have to address this issue in the next Congress also.

As far as the transition rules go, I compliment Senator METZENBAUM for flushing those out and pointing out some of the money inequities in these transition rules.

Let me end by saying if I thought we would have to live with this tax bill for the next 10 years without any changes, I would vote no. But we all know—we all talk about it in the corridors, we talk about it in the Cloakrooms to one another—that we are going to have to make modifications in the next Congress: That being so, I would rather start from this bill as a baseline than from the present code. That is the final reason why I will vote yes.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARKIN. May I have 1 more minute?

The PRESIDING OFFICER. Who yields time?

Mr. LONG. Mr. President, I yield 3 minutes to the Senator from New Jersey.

Mr. BRADLEY. Mr. President, I am enormously proud of this bill and of the Senate today. In approving this conference report, we will be ignoring the screams of special interests, ignoring party labels, and doing something good for America. This is the most significant tax bill since the code was enacted in 1913. It will be a powerful force for growth in our economy and equity in our society. No longer will people invest money to lose it for tax purposes. They will invest in things that have real value in the marketplace.

No longer will tax subsidies cover up inefficient management. As a result, the economy will be healthier, leaner, more competitive.

No longer will people in poverty pay more in taxes than some millionaires. Some low-income families will pay as much as $1,000 less in taxes next year.

No longer will middle-income families pay a higher tax rate than some multibillion-dollar corporations. No, all corporations now will have to pay their fair share. And middle-income taxpayers will get a 15-percent rate while keeping their most important deductions. Over time, as middle-income taxpayers, earn more money, the 15-percent rate will mean that they will keep more of the money that they earn.

Mr. President, the adoption of this conference report should give the American people confidence—confidence in Congress, in us, that, yes, we can get ourselves together and act on a very complicated issue with powerful forces on all sides; confident that we will be able to deal with the other economic problems on our horizon, whether it is exchange rates, third world debt, the budget deficit, or trade legislation. Having done tax reform, those will seem more possible.

Mr. President, it has been an enormously satisfying experience for me to see this idea enacted into law. One person cannot be responsible, but many people working together are responsible—Senator Packwood, Senator Long, Representative Rostenkowski, President Reagan, and many, many more. What the experience tells me is that if you work hard and work together, if you think a problem through and think about how to communicate, how it affects people's lives, you can overcome the most entrenched interests and the greatest obstacles.

Mr. President, that has to be the right feeling to have about the political process and our democracy on this special day.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LONG. Mr. President, I yield 1 minute to the Senator from New York.

Mr. MOYNIHAN. Mr. President, I spoke at some length yesterday and shall make only the briefest statement today.

First, there has been some discussion of transition rules. I would like to record that on the day the conference report on this legislation was filed, I released a statement of all the transition rules that I have been associated with, and have had no comment since regarding them.

Second, I simply restate my view that this is not economic legislation, it is not a revenue measure, it is by contrast a profound statement concerning the requirements of citizenship and the ethical basis of the American Republic.

I thank the Chair.

Mr. LONG. Mr. President, I yield myself such time as I require.

It has been my privilege to serve in the Senate for 38 years. Only three Senators have served longer than that. During that 38 years, for 34 years I have served on the Senate Committee on Finance. For 15 of those years, I served as chairman of that committee.

Mr. President, in my judgment, this bill should be viewed as part of a moving scene because that is what America is. It is part of a continuous, ongoing process. Viewed in that light, this is one of the best revenue bills I have seen in the 34 years I have served on the Committee on Finance.

While it leaves some things to be desired, the good features so enormously outweigh those that will be changed by necessity over the years that I am very happy and proud to vote for it. I congratulate our very able chairman, Mr. Packwood, and all our cohorts who worked with him, on the magnificent job they have done.

□ 1540

The people of Louisiana are at the polls right now voting on my successor. I am retiring after 38 years, and I am satisfied that we leave the Nation in very good hands—the hands of our manager and our present chairman. In my judgment, Mr. President, Mr. Packwood will move along from this to still greater achievements and will be the most outstanding and renowned—and justly famous—person ever to serve on the Senate Finance Committee. I look forward to reading about his exploits in the future.

EMPLOYEE STOCK OWNERSHIP PLANS (ESOPS)

Mr. President, as part of the tax reform bill, the conference committee adopted several amendments which advance the goal of expanded capital ownership through the use of employee stock ownership plans [ESOPS].

During Senate consideration of the tax bill now before us, I called for a rollcall vote in support of those particular amendments and in support of the employee stock ownership amendments enacted in 1984.

My reason for doing this was to identify Senate sponsors and supporters of the concept of encouraging the use of techniques of finance that broaden the base of ownership, and particularly those techniques which promote employee stock ownership. I am happy to report that the vote was a unanimous 99-0, and that the sole absent Senator was one of the 72 original cosponsors of the measure.

Mr. President, I have engaged in a legislative labor of love concerning employee stock ownership—believing that we in the Congress have an obligation to expand capital ownership opportunities to as many Americans as possible, and particularly expand those opportunities to working Americans.

With that in mind, I have sponsored a series of amendments over the years designed to advance this idea through the use of a technique of corporate finance known as the employee stock ownership plan [ESOP].

I am happy to report that, although there is much yet to be done, ESOP's are beginning to have an impact—with more than 10 million employees now participating in ESOP's in more than 7,000 corporations nationwide.

Mr. President, I am convinced that this Nation and this Nation's economy would be much improved if we in the Congress made a point of ensuring more widespread participation in capital ownership. We would have a far more equitable system, a far more productive and competitive economy, and an economic system that those we oppose would find far more difficult to malign.

Working Americans would be better off, the American workplace would be a better place to work, and American families would be more financially secure.

Encouraging the use of financing techniques that expand capital ownership can only result in a better America. That approach can create economic autonomy and personal dignity, and foster social and cultural harmony. In addition, such an approach can engender a renewed respect for private property, and a sense of thankfulness and gratitude for this wonderful Nation in which we live.

I am convinced that a large measure of employee ownership would make us a stronger, more cohesive Nation. And our Nation could once again offer a new vision and a new leadership to a world desperately in need of both.

I am honored that every Member of the Senate joins me in support of this concept. I hope that as I depart other Members will take on the challenge of expanding the incentives for more widespread participation in capital ownership.

Mr. President, I ask unanimous consent to insert in the Record at this point an explanation clarifying certain aspects of the ESOP amendments included in the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATION OF THE ESOP AMENDMENTS IN THE TAX REFORM ACT OF 1986

FACILITATE ESOP FINANCING

As added by the Deficit Reduction Act of 1984 (DEFRA), present law permits an employer to deduct the cost of dividends paid with respect to stock of an employer that is held by an ESOP, but only to the extent that the dividends are actually paid out currently to employees or beneficiaries as taxable income.

In order to accelerate the repayment of ESOP loans, the amendment permits a deduction for dividends on employer securities provided such dividends are used to make payments on an ESOP loan. This amendment was sponsored by 49 Members of the Senate in 1983 and approved by the Finance Committee in 1984.

The amendment also enables employees to more quickly begin receiving company dividends as those ESOP loans would be more rapidly repaid. Thus, this provision should have a positive effect on employees' identification with their employer, with corresponding effects on motivation, dedication, productivity, profitability and tax revenues.

In addition, this provision should enable employees to benefit from the widespread practice of companies repurchasing their stock. Because ESOP dividends are not now deductible until stock is allocated to employees' accounts as an ESOP loan is repaid, companies are encouraged to repurchase their stock without an ESOP and retire the shares, thereafter having to pay no dividends. This provision should make it more likely that such stock repurchases will be financed using ESOPs as the technique of finance.

Under current law, such dividends are deductible with respect to employer stock allocated to participants' accounts as of the date of distribution, but only to the extent that such dividends are paid out currently to employees. Under this bill, an ESOP company could claim a deduction for dividends paid on either allocated or unallocated employer securities if those dividends are used to repay an ESOP loan incurred to acquire the employer securities on which such dividends are paid.

I would also like to point out that the Conference Agreement indicates that such dividends must be reasonable and that they not constitute an evasion of tax. In determining what this means in an individual case, I would like to again address the philosophy behind the deduction for ESOP dividends as explained in my November 17, 1983 statement in which this concept was addressed at some length.

Although in the 98th Congress we only enacted the deduction for ESOP dividends paid out to employees on a current basis, that statement explained the rationale for the deductibility of ESOP dividends whether used to repay an ESOP loan or paid out as a "second income" to ESOP participants and beneficiaries.

Mr. President, the U.S. government is, in effect, a partnership in profit with the private corporation (to the extent of the corporate income tax). The ESOP financing concept suggests that as more working Americans become stock owning partners in the Nation's productive might, government's stake in that profit should be phased out and instead shifted to the individual level.

ESOP dividend deductibility achieves that result to the extent that a corporation's stock is held for employees in an ESOP and the sponsor company either pays out its earnings and profits on a current basis to its employees or applies those earnings and profits to repay an ESOP loan.

This approach also helps to insure that the employees, on whose behalf the stock is being acquired, will realize a fuller payout of the earnings on the capital underlying their ESOP stock. During the period that the ESOP trust is paying for the employees' stock, sponsor companies may wish to pay out only a portion of the dividends, utilizing the balance to repay the ESOP loan more rapidly. Alternatively, employers may choose to utilize company earnings and profits to more rapidly repay an ESOP loan, thereafter paying dividends to employees once the loan is repaid.

Numerous studies have demontrated a strong correlation between employee ownership and employer profitability. This provision provides ESOP companies with a means by which such increased profitability can be made to reach employees—either in the form of an ownership income or in the form of increased capital accumulation in employees' ESOP accounts.

If working Americans are to learn to truly understand and appreciate the value of capital ownership, that ownership should be designed to have some direct effect on their lives. As Ronald Reagan explained in advocating this tax policy in February of 1975: "an ever-increasing number of citizens thus would have two sources of income—a pay check and a share of the profits."

Encourage sales to ESOPs and reduce estate taxes

The bill allows an exclusion from an estate for 50 percent of the proceeds realized on an estate's sale of stock to an ESOP, thereby allowing an executor to reduce taxes on an estate by one-half by selling the decedent's company to an ESOP or to a worker-owned cooperative. Under the bill, certain penalties apply if any portion of the assets attributable to employer securities acquired in such a sale accrue or are allocated for the benefit of a decedent who makes such a sale or a family member of the decedent or any person owning more than 25 percent of the stock of the corporation.

As with the previous provision, this concept was sponsored by 49 Members of the Senate in 1983, including 14 Members of the Finance Committee, and was approved by the Committee in 1984. This amendment to ESOP law should encourage sales of companies to employee stock ownership plans.

In addition, it should help reduce estate taxes. The only real purpose of the estate tax is to break up large accumulations of capital. Tax relief is appropriate for the estates of those who assist others in accumulating capital—particularly when they help those who helped them accumulate that capital. I was disappointed to see the House conferees insist on a 5-year sunset on this provision but I am hopeful that it will be extended before it expires.

ESOP loans

Under current law, banks, insurance companies and commercial lenders making ESOP loans may exclude from their income one-half of the interest earned on such loans. This provision was sponsored by 49 members of the Senate and enacted as part of the Deficit Reduction Act of 1984. The provision is intended to encourage ESOP lending not only by existing commercial lenders but also is intended to encourage those with money to lend to enter into the lending business solely for the purpose of making ESOP loans.

This tax reform bill expands on this concept in two respects. First, the provision designating which lenders are eligible for the 50 percent exclusion on ESOP loans is amended to include loans by regulated investment companies (better known as mutual funds). The amendment intends that the tax treatment accorded such income be permitted to "flow through" to shareholders of the mutual fund under rules analogous to the treatment of tax-exempt income paid on certain Government obligations.

Second, the bill provides that the exclusion is also available with respect to a loan to a corporation to the extent that, within 30 days, employer securities are transferred to an ESOP in an amount equal to the proceeds of the loan and such contributions are allocable to participants' accounts within one year after the date of the loan. In addition, the total commitment period of such a loan is not to exceed seven years.

Under these "immediate allocation" loans, companies are permitted to borrow money on favorable ESOP-related terms, provided that such loans are matched by a contribution of employers securities to the ESOP which are allocable to employees' accounts within one year after the date of the loan. This provision is designed to enable companies to borrow money and immediately allocate the stock to employees' accounts instead of requiring a more complex ESOP loan with employee allocations and employee dividend payouts delayed until the ESOP loan is repaid.

Extending the interest exclusion to loans by (or held by) regulated investment companies is advisable as mutual funds have now become a major new source of funds, with assets skyrocketing to more than $80 billion from just $20 billion since the ESOP lender incentive was enacted in 1984. In addition, this source of funds should provide additional competition among lenders for ESOP loans—with a postive effect on interest rates for ESOP companies.

Thus, in addition to the competition from those commercial lenders who engage solely (or predominately) in ESOP lending, competition for such loans will now be provided by mutual fund lenders, plus lending provided by banks, insurance companies and other commercial lenders who engage in both ESOP loans and other types of loans.

This bill also clarifies that ESOP loans can be refinanced. In the case of "immediate allocation" loans (described above), and in the case in which an ESOP sponsor's loan to its ESOP is repaid more rapidly than the lender's loan to the sponsor, this bill limits to seven years the availability of the lender's partial interest exclusion. The policy objective of this limitation is to encourage rapid allocation to employees' accounts of their stock by encouraging rapid repayment of the stock acquisition loan (i.e., within seven years).

Thus, in such cases, the bill limits to seven years the "total commitment period" (i.e., the original commitment period of the loan plus refinancings) eligible for the partial interest exclusion. In the case in which an ESOP sponsor's loan to its ESOP is repaid more rapidly than the lender's loan to the sponsor, this 7-year limitation is not intended as a limitation on the period over which the lender's loan to the sponsor may be repaid. Thus, for example, so long as the total commitment period of the ESOP sponsor's loan to its ESOP does not exceed seven years, the total commitment period of the lender's loan to the ESOP may be for a period longer than seven years without affecting the qualified status of the first seven years of the lender's loan to the sponsor. Of course, the partial interest exclusion would apply only to the first seven years.

ESOPs as a technique of finance

The bill also exempts ESOPs from the ten percent tax on distributions from qualified plans prior to retirement age. This exemption acknowledges that ESOPs are both a technique of corporate finance and an employee benefit plan and, thus, should be distinguished from conventional retirement plans.

The bill recognizes and statutorily acknowledges that retirement is but one of many events that can trigger a distribution of benefits provided under an ESOP. The exemption applies to distributions to the extent that, on the average, a majority of the plan's assets have been invested in employer securities for the five years immediately preceding such distribution. Special rules apply for amounts transferred or rolled over from other plans.

This amendment recognizes that to treat ESOPs as conventional retirement plans would be inconsistent with Congressional intent encouraging their use as a technique of finance. In addition, because this amendment substantially shortens the period over which ESOP accounts must be paid out to departing employees, applying such a tax on required distributions would be harmful to ESOP participants.

Unfortunately, the House conferees on this bill insisted on a 3-year sunset on this exemption. I am hopeful that the exemption can be made permanent prior to that time.

Encourage excess funds to be retained as an employee benefit

The bill also provides an exemption from the proposed 10 percent tax on pension plan asset reversions to the extent that amounts that would otherwise be reversion amounts are transferred to an ESOP.

Thus, under this provision, employers with excess assets in a defined benefit plan would be able to access that cash for corporate purposes without imposition of the 10 percent reversion excise tax provided the cash is used to buy employer securities in trust for employees.

This should help mitigate the fears of those who worry that the proposed reversion tax may lead to less adequate funding under defined benefit pension plans because, with this relief available, employers could recover the excess funds for corporate purposes, albeit at the "cost" of creating more stockholders.

This provision allows employers additional flexibility in their pension plan funding practices. For example, where their plan's investment experience is better than anticipated, or where their actuarial projections result in pension plan overfunding, the plan sponsor may recover the surplus for corporate use.

If the sponsor corporation puts those assets to use for current shareholders, the company would be required to include the reversion amount in its gross income and pay the 10 percent excise tax as provided under the bill. Where, however, the excess is used by the corporation to acquire employer securities for employees in an ESOP, there would be no income inclusion and the 10 percent excise tax would not apply.

Thus, for example, employers may use the excess assets to buy new (or treasury) shares for the ESOP, thereby keeping the funds for corporate use. Or the plan sponsor may buy outstanding shares to fund the ESOP, thereby losing use of the cash for corporate purposes but nevertheless being exempt from the reversion income inclusion and excise tax. Or some combination of the two practices may be pursued.

This option provides a better alternative for employees because reversion amounts could otherwise be used for any corporate purpose, with employees receiving no benefit from the funds originally set aside for their benefit. Thus, this approach ensures that plan sponsors have an incentive to share with their employees the benefit to which the funds were originally put.

The Finance Committee report requires that employers notify their employees that an overfunded pension plan is the source of the funds used to acquire the employer securities for their ESOP accounts. This is intended to ensure that employees realize the nature of employee benefit funding and the various costs and benefits available under the various types of plans.

The provision also requires that at least 50 percent of those participating in the defined benefit pension plan (from which the surplus assets are transferred) be participants in the ESOP to which the assets are transferred. For purposes of determining which pension plan participants are required to be participants in the ESOP, the Conference Report clarifies that only active employees, as opposed to retirees, who are participants in the pension plan need be included.

In the case of a "spin-off termination", the ESOP must include as participants at least half of the employees who were active participants in a pension plan prior to the spin off and who thereafter remain as active employees of the corporation sponsoring the ESOP.

This provision also enables employers to make such funds less attractive (and less accessible) to corporate raiders and leveraged buyout experts. Excess pension assets are often the prize that awaits corporate raiders. Several notable corporate takeovers have been financed in large part by the termination of the target company's pension plan and the use of surplus assets to repay the cost used to take over the company.

This relief from the reversion excise tax is appropriate because the funds are being retained in trust for employers to provide benefits for employees in the form of employer securities.

Thus, it is not intended that a reversion amount transferred to an ESOP be taken into account as an amount of income, rebate, allowance, or other credit received by an employer for purposes of the contract cost principles and procedures of the federal acquisition regulations relating to contract cost principles and procedures. Nor should such reversion amounts be considered as representing an adjustment of previously determined pension costs for purposes of the federal cost accounting regulations relating to adjustments to pension costs.

Under the provision, the amount transferred from a defined benefit plan to an ESOP may be allocated under the plan to ESOP participants immediately, subject to the dollar limits on annual additions under section 415.

Alternatively, the amount transferred may be held in a suspense account pending allocation (provided allocations are made no more slowly than ratably over a seven-year period).

Thus, allocations need not be made up to the full section 415 limitation each year (the limitation governing maximum annual allocations to employees' ESOP accounts). Instead, allocations may be made more slowly. There is no intent to force employers to allocate up to the full Section 415 limit. The funds transferred may also be used to repay an ESOP loan (including interest).

Similarly, stock acquired with the reversion amount (as well as the reversion amount itself, prior to stock acquisition) may be held in a suspense account. When reversion amounts are utilized to repay an ESOP loan (including interest), allocations from the suspense account are to be made no more slowly than ratably over a seven-year period.

Annual additions to employees' accounts for purposes of Section 415 shall be the lower of the cost of the shares to the ESOP or the value of such shares at the time of allocation.

The reversion amount transferred to an ESOP is not includible in the gross income of the employer. Thus, the provision does not require the utilization of ESOP funding deductions under Section 404 because the assets transferred from the defined benefit plan to the ESOP are not treated as a reversion subject to inclusion in the employer's income but, instead, are treated as a trust transfer of plan assets.

Dividends paid on employer securities held in the suspense account are deductible when applied to repay an ESOP loan or when paid out currently to plan participants and beneficiaries proportionate to their account balances (attributable to such amounts).

Amounts held in the suspense account and required to be allocated are required to be allocated to participants' accounts before any other employer contributions to the ESOP are allocated. In other words, during the period that reversion amounts are held in a suspense account, the employer is not permitted to make additional contributions to the ESOP to the extent that the contributions, when added to the amount required to be allocated from the suspense account (i.e., under the ratable seven-year requirement), will exceed the overall limits on annual additions under a defined contribution plan if allocated to participants' accounts.

Thus, for example, an employer could continue to make contributions to another employer-sponsored defined contribution plan (including an employer-sponsored ESOP) provided the amount contributed, when combined with amounts allocated from the ESOP suspense account, do not exceed the limitation provided under Section 415.

Amounts transferred to a suspense account that (due to the limitations on contributions and benefits under Section 415) cannot be allocated to particpants' accounts within seven plan years (including the plan year in which such amounts were transferred to the plan) must revert to the employer and will be subject to the 10 percent excise tax in the year in which such reversion occurs.

Mr. President, this provision is currently subject to a 3-year sunset. It is my hope that employers and employees will see the merit in this approach to employee benefit funding and will insist that this provision be extended.

Scheduled expiration of tax credit ESOPs

Under current law, employers may claim a tax credit of up to one-half of one percent of payroll provided such funds are used to acquire employer securities for participants' accounts in a tax credit ESOP (better known as a PAYSOP). In order to provide additional incentives for the use of ESOPs as a technique of corporate finance, and in order to make the ESOP provisions in this bill have an overall positive effect on revenues during the relevant budget period, the bill advances by one year (to December 31, 1986) the expiration of the payroll-based tax credit ESOP.

This amendment causes the ESOP provisions, overall, to gain approximately $2.1 billion in Federal revenues in fiscal years 1987-1991.

Mr. President, on this point, according to a General Accounting Office study of ESOPs and related economic trends, the tax credit ESOP accounts for 90 percent of the total tax expenditures associated with ESOP incentives. In addition, roughly 90 percent of all ESOP participants are employees participating in tax credit ESOPs. It is my hope that if ever the Congress revisits the tax credit concept that it will give special attention to the advantages of funding such credits through ESOPs.

For example, this bill repeals the investment tax credit and reduces by 35 percent the tax benefit available through existing investment tax credit carryovers (except to the extent that those carryovers are attributable to the investment tax credit ESOP).

Should the Congress decide, as it has before, to restore the investment tax credit, I urge Members to consider requiring that a substantial portion of such credits be conditioned on that taxpayer-provided corporate cash be used to acquire stock in trust for employees (i.e., in an ESOP).

Under that approach, companies claiming the credit would still have the taxpayer-provided cash with which to make asset acquisitions; only that cash would be used to create capital value not for current stockholders but for employee stockholders.

Restatement of congressional intent

Mr. President, I would also like to briefly address a provision approved by the Senate in its unanimous vote on ESOPs yet dropped in the Conference due not to the merits of the provision but due to concern over Committee jurisdiction in the House.

I have received a number of inquiries concerning this provision, and would like to take a few moments to state for the Record the intent of the Senate provision.

That provision concerns a Congressional Policy provision in the Senate bill, a provision that constitutes practically a verbatim restatement of an Intent of Congress provision agreed to by the House and Senate conferees and enacted as section 803(h) of the Tax Reform Act of 1976.

In order to indicate the substantive identity of the two provisions, Mr. President, the two provisions are reproduced and discussed below.

SECTION 803(h) OF THE TAX REFORM ACT OF 1986

"INTENT OF CONGRESS CONCERNING EMPLOYEE STOCK OWNERSHIP PLANS.—The Congress, in a series of laws (the Regional Rail Reorganization Act of 1973, the Employee Retirement Income Security Act of 1974, the Trade Act of 1974, and the Tax Reduction Act of 1975) and this Act has made clear its interest in encouraging employee stock ownership plans as a bold and innovative method of strengthening the free private enterprise system which will solve the dual problems of securing capital funds for necessary capital growth and of bringing about stock ownership by all corporate employees. The Congress is deeply concerned that the objectives sought by this series of laws will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of the employee trusts and employers to take the necessary steps to implement the plans, and which otherwise block the establishment and success of these plans. Because of the special purposes for which employee stock ownership plans are established, it is consistent with the intent of Congress to permit these plans (whether structured as pension, stock bonus, or profit-sharing plans) to distribute income on employer securities currently."

Mr. President, before setting forth the restatement of this provision approved by the Finance Committee and endorsed by the Senate, let me mention why the restatement is not identical to the language approved by the House and the Senate in 1976.

First, the Congress sanctioned in 1984 a corporate deduction for dividends paid on stock held in an ESOP provided the dividends are paid out currently to ESOP participants. Thus, the 1986 restatement omits the sentence from the 1976 Act indicating Congressional intent that ESOPs be permitted to distribute income on employer securities currently (such current income being one of the "special purposes for which employee stock ownership plans are established").

Similarly, the 1976 provision expresses the fear that ESOPs will be treated as conventional retirement plans by the regulatory agencies responsible for the oversight of such plans. That oversight function, of course, is set forth in the Employee Retirement Income Security Act of 1974 (ERISA). Thus, the 1986 provision refers specifically to ERISA. Again, a distinction without a difference.

Also, whereas the 1976 Act refers to Congressional support for the use of ESOPs "to solve the dual problems of securing capital funds for necessary capital growth and of bringing about stock ownership by all corporate employees", the 1986 restatement rephrases and summarizes that concept by indicating Congressional intent that such plans "be used in a wide variety of corporate financing transactions as a means of encouraging employers to include their employees as beneficiaries of such transactions." Again, a distinction without a difference.

Likewise, since passage of the 1976 Intent of Congress provision, several additional laws have been enacted further encouraging the use of ESOPs as a technique of corporate finance. For example, since 1976, ESOPs were required as the funding mechanism for 15 percent of the Federal government's funding of Conrail and 15 percent of the Chrysler loan guarantee.

In the interim, legislation also clarified that the Samll Business Administration could channel its funding to small businesses through the ESOP financing technique. Similarly, ESOP companies were granted a preference under amendments to the Trade Adjustment Assistance Act provided they agree to fund 25 percent of any government assistance through an ESOP.

In each of the eight major ESOP-related bills enacted since 1976, ESOPs are described in the legislative history as a technique of corporate finance. Rather than cite the entire list within the Congressional Policy provision, this lengthy list is now appended in a subsequent section in the 1986 restatement.

The Senate bill's statement of Congressional policy follows:

"SEC. 1271. STATEMENT OF CONGRESSIONAL POLICY.

(a) CONGRESSIONAL POLICY.—The Congress, in a series of applicable laws and in this Act, has made clear its interest in encouraging employee stock ownership plans as a bold and innovative technique of finance for strengthening the free private enterprise system. It is the policy of the Congress that such plans be used in a wide variety of corporate financing transactions as a means of encouraging employees as beneficiaries of such transactions. The Congress is deeply concerned that the objectives sought by the series of applicable laws and this Act will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans under the Employee Retirement Income Security Act of 1974, which reduce the freedom of employee stock ownership trusts and employers to take the necessary steps to utilize employee stock ownership plans in a wide variety of corporate transactions, and which otherwise impede the establishment and success of these plans.

"(b) APPLICABLE LAWS.—For purposes of this section, the term 'applicable laws' means the Regional Rail Reorganization Act of 1973, the Employee Retirement Income Security Act of 1974, the Trade Act of 1974, the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Revenue Act of 1978, the Regional Rail Reorganization Act Amendments of 1978, the Small Business Development Act of 1980, the Chrysler Loan Guarantee Act of 1980, the Northeast Rail Service Act of 1981, the Economic Recovery Tax Act of 1981, the Trade Adjustment Assistance Act Amendments of 1983, and the Deficit Reduction Act of 1984."

Mr. President, it should come as no surprise to those who have closely studied this matter that the 1986 restatement is not essential and its deletion in the Conference in no way dilutes the effect of the earlier-enacted provision.

My primary purpose in suggesting a restatement of the 1976 provision was due to the thrust of many of the Tax Reform Act's amendments in the employee benefit plan area. In particular, due to this Act's amendments changing the philosophy of many employee benefit plans, the goal was to restate in that context the obvious point made in 1976: ESOPs are not conventional retirement plans.

Instead, that basic point became abundantly obvious from the nature of the amendments approved by both the House and the Senate, all of which were in the nature of further strengthening the ESOP as a technique of finance.

For example, dividends paid on ESOP-held stock will now be deductible to the ESOP sponsor when used to repay an ESOP loan. Thus, in addition to ESOP financing serving to generate current dividend income for employees (due in part to the dividend deduction enacted in 1984), ESOP financing is further favored by a provision now encouraging application of those dividends to more rapidly repay ESOP loans.

Similarly, an exclusion from an estate will now be permitted for 50 percent of the proceeds realized on an estate's sale of stock to an ESOP, hardly a conventional activity for a conventional retirement plan. Instead, a special purpose employee benefit plan (I.e., an ESOP) is being utilized as a financing technique to encourage stockholders to share their success with those who helped them create that success: their employees.

In addition, amendments were approved expanding the ability of plan sponsors and lenders to utilize the ESOP financing incentives (approved by the House and the Senate and enacted in 1984) whereby lenders are allowed to exclude from their income 50 percent of the interest income earned on ESOP loans.

Also, ESOP are further distinguished from conventional retirement plans by the provision exempting ESOP distributions (including dividend distributions) from the Act's provision imposing a 10 percent additional tax on distributions from pension plans prior to retirement age.

Similarly, the distribution of dividends from ESOPs without the consent of the participant or the beneficiary is not treated as a violation of the involuntary cash out requirements applicable to conventional retirement plans.

Mr. President, it is not my intention to belabor the obvious. I hope that this discussion is useful to those attempting to make sense of the Congressional policy reflected in the incentives for ESOP financing, incentives that appear in both ERISA and the Internal Revenue Code.

The issues are complex because ESOPs are a hybrid, combining tax, corporate, employee benefit and labor law—each of which is a difficult area. In combination, the complexity can make for misunderstandings concerning the overall objective. It is my hope that this statement will shed some much-needed light on this difficult area.

Mr. President, I am delighted to see that the distinguished chairman of the Ways and Means Committee, Mr. Rostenkowski of Illinois, in his September 25th statement on the tax bill (Congressional Record, H8362-63) embraces the ESOP as a financing technique and confirms that when an ESOP is involved in a transaction, it should be treated as a third-party investor.

I am happy to note that in his statement Mr. Rostenkowski indicates that he and Congressman Clay, the distinguished chairman of the Subcommittee on Labor-Management Relations, are in agreement on this point. I agree with their analysis that such transactions should be looked at as economic transactions and that any regulatory oversight should insure that ESOP transactions are scrutinized accordingly.

Let me add, Mr. President, that certainly there is nothing intended, either in the original 1976 statement or in the 1986 restatement, to imply that the fiduciary standards of ERISA should be relaxed in the scrutiny of ESOP transactions.

Far from being incompatible with the fiduciary standards of ERISA, ERISA is carefully drafted to insure that such standards do not inhibit the use of ESOP financing in the pursuit of the ESOP's intended goal: encouraging corporations to structure their financings in such a way that employees become beneficiaries of such transactions.

The recognition by Congress of the special purposes of ESOPs does not exempt the ESOP from the general fiduciary standards of ERISA but, rather, requires that those standards be interpreted in light of the special purpose for which Congress sanctioned its special ERISA exceptions for ESOP financing.

Mr. President, I am particularly heartened to see that Congressman Clay anticipates that the Subcommittee on Labor-Management Relations will be holding oversight hearings on ESOPs in the next Congress. The ESOP financing concept has much to gain from additional study by Members of the House. It is my hope that the subcommittee will give particular attention to the use of employee stock ownership plans in leveraged buyout transactions.

The U.S. economy has witnessed a dramatic increase in the role of such transactions as a technique of finance for transferring ownership of enormous amounts of income-producing capital assets.

For example, mergers and acquisitions totalled $35 billion in 1980; by 1985, such transactions had skyrocketed to $175 billion. Since a primary objective of ESOP financing is to advance broader capital ownership in general, and employee stock ownership in particular, these transactions provide a tremendous opportunity for ESOPs to make significant progress toward achieving their primary goal.

Further, these transactions utilize enormous amounts of capital financing tax benefits (for example, interest deductions, depreciation deductions on the stepped-up basis of acquired assets, etc.). Some would argue that regardless of who owns the enormous amounts of income-producing capital assets transferred in such transactions and regardless of who benefits from the ownership of the capital financed with those tax benefits, leveraged buyouts are per se desirable, efficient and good for the economy. Certainly that is an appropriate area of inquiry, and I would hope that both Mr. Clay and Mr. Rostenkowski would examine that issue.

I cannot help but believe that those transactions would be far more desirable, result in far greater efficiency, and do much more good for the economy and for working Americans if they were structured in such a way that employees in those companies are allowed to become substantial beneficiaries of those transactions.

The only financing technique able to accomplish that goal is the ESOP. It is my hope that the ESOP amendments in this bill will provide additional encouragement for such transactions to be structured to include ESOPs.

Mr. President, the ESOP incentives in this bill go to the heart of what type of economic system we intend to have in this country, and what type of economic system we intend to leave for future generations.

I am convinced that at the heart of what this Nation is about is the concept of widespread economic participation. That participation simply cannot and will not be achieved without financing techniques whose purpose it is to expand capital ownership.

The PRESIDING OFFICER. The Senator from Louisiana still controls the time until the hour of 3:45.

Mr. LONG. I yield to the Senator from Maryland.

Mr. MATHIAS. Mr. President, before the Senate today is the conference report on the tax reform bill. This is the final product of several years of labor by the Treasury Department, the House of Representatives, and the Senate.

There is much in this legislation that commends its passage. This bill removes 6 million low-income families from the tax rolls. It eliminates many of the abusive provisions of the Tax Code that have encouraged individuals to invest in real estate or cattle feed lots or any number of other specific tax favored investments, not for the purpose of making money or providing a necessary service, but simply for the purpose of losing money, and thus reducing their taxes. It includes a strong minimum tax provision that assures that wealthy individuals and profitable corporations will pay at least some taxes.

However, there are also serious flaws in this bill. I have previously outlined my reservations about some of these provisions but I would like to comment briefly on a few of them.

When the 1981 tax bill was passed the proponents argued that lowering marginal tax rates for the wealthiest individuals from 70 percent to 50 percent would encourage savings and these savings would stimulate economic growth that would finance the rate reductions. Between 1981 and today the savings rate of individuals as a percentage of national income has declined from 5 percent to the current 3.2 percent. Now we are told that if we eliminate all the direct incentives for savings and investment and cut the top tax rate from 50 percent to 28 percent that this trend will be reversed. I do not believe that recent history provides much support for this economic theory.

The bill eliminates the long-term capital gains exclusion. This provision will raise the tax on capital gains by 40 percent for wealthy taxpayers and by 100 percent and more for middle-income taxpayers.

The bill also eliminates the investment tax credit and lengthens the depreciation period for capital assets, thus increasing the cost of capital and effectively reducing capital spending in this country. Investment in upgrading plant and equipment is critical if the United States is to be competitive in the world economy.

This bill provides a tax cut for most individuals and many corporations. It is said that $120 billion of the tax burden is shifted from individual taxpayers to corporations. But that is not the whole story. This bill shifts $120 billion from individuals to capital intensive corporations, but it also shifts additional billions in taxes from corporations that are not heavily dependent on physical capital to those same capital intensive firms. In sum, it requires the manufacturing sector to finance tax reductions for the rest of the economy.

Unfortunately, manufacturing is the sector of the economy that faces the stiffest foreign competition. Manufactured products move in great volume in the world market. Raising the cost of capital to American manufacturers will make them less competitive in this world market. I fear it will increase our imports and decrease our exports at a time when our balance of trade is already at record deficit levels.

Neutrality among investments is one thing; indifference to investment is quite another. I believe that the elimination of the capital gains differential, the elimination of the investment tax credit and the lengthening of depreciation periods taken together will result in less investment, less productivity growth, and a further erosion of the American balance of trade.

Finally there is one last point I would like to mention. That is the question of the revenue effects of this bill. The proponents claim that the bill is revenue neutral, that it will not increase or decrease revenues over the next 5 years. I hope they are correct. Too many of the provisions designed to raise the revenue being lost through rate reduction may not provide the revenue that has been estimated through the static analysis used by the tax committees.

Every Senator knows the consequences if our hopes are dashed and our fears realized. The reconciliation process we have just completed showed how hard it was to find a combination of $15 billion of spending cuts and revenue increases without raising taxes. If the revenue estimates for this bill are overstated by only 1.5-percent, we will have to make cuts of $15 billion every year to make up that estimation error. This burden will be added to the deficit reduction task we have imposed on ourselves under Gramm-Rudman-Hollings. The revenue estimates on this bill have changed over the past months in response to changing economic projections. A 1.5 percent error is well within the realm of possibility.

These and several other provisions, including the restrictions on the deduction for mortgage interest for the first home; the dramatic changes in tax treatment for universities; the elimination of the deduction for interest expenses associated with educational expenses; and the change in the tax treatment of pension income for individuals who have already retired and for those who will retire over the next few months are cause for grave concerns.

I commend those who have labored so long in the vineyard of tax reform. In many respects, the final bill is an improvement over existing law. In the last analysis we must conclude that it is sufficiently better than existing law to justify the risks it entails for our economy in order to justify and affirmative vote.

I strongly support tax reform and will continue to do so. But we cannot afford to make an error. Our economic situation is too uncertain, our foreign trade deficit is too high, and our Government deficit is too large, for us to close our eyes and hope for the best.

On balance, it would seem that we should embrace the benefits of this bill while they are available, with a clear understanding of the problems it may either create or aggravate and with a firm intention to monitor them closely and to correct them as they develop.

On that narrow basis I shall vote in favor of adoption of the conference report.

Mr. HOLLINGS. Mr. President, it would be naive to expect a bill of this sheer size and scope and ambitiousness to be embraced with enthusiasm in all its thousands of particulars. The fact is—like so many of my colleagues—I am troubled and ambivalent about this much touted tax reform.

On the plus side, we have before us a bill that lowers marginal rates, eliminates wasteful shelters, and removes millions of the poorest Americans from the burden of taxation. At the same time, I regret that this bill is potentially harmful to the international competitiveness of U.S. industry, and that it does absolutely nothing to lessen the deficits that are slowly corroding our economy.

Mr. President, if the Senate rules would permit it, my druthers would be to vote "maybe" on this tax reform bill. But we were not sent to Washington to play Hamlet. I intend to vote "yea" on this bill, realizing full well that next year or the year after, this body will be obliged to reform the reform—to undo certain ill-considered provisions of this bill.

I would urge my colleagues, however, not just to consider the abundant pluses and minuses in these 925 pages, but also to answer these questions: Is the status quo acceptable? Can we continue to live with a tax system where—between 1981 and 1985—130 major U.S. corporations payed zero tax on $73 billion in earnings? Indeed, those corporations got $6 billion in rebates, mostly through accelerated depreciation and investment tax credits. Can we continue to live with a tax system where the size of your tax payment is determined primarily by the cleverness of your tax accountant? Can we continue to live with a tax system that is so studded with inequities that it breeds public cynicism and encourages cheating? Mr. President, we cannot.

Mr. President, we have a duty to look at the broad sweep of this tax reform. Particulars aside, this bill accomplishes two significant reforms.

One, it creates a tax system with significantly lower rates and a broader, fairer tax base. It ensures that corporations and wealthy individuals will pony up their fair share of taxes, so that some 6 million of the poorest families can be taken off the tax roles entirely. At the same time, this bill gives us the industrial world's lowest top rate of personal income tax, and that will act as a powerful spur to work and initiative.

This bill also enacts a second major, overarching reform: It reasserts that the income tax's primary purpose is to raise government revenues, not to serve as a tool of social and economic engineering. It creates a framework where the marketplace will come to exercise more influence over our working, savings, and investing decisions, while the tax code will exercise less.

As well all are aware, the hundreds of tax shelters and preferences in the current code encourage Americans to channel their money into so-called investments in everything from windmills to jojoba beans. Our cityscapes are littered with see-through office buildings—highrises without furniture or tenants that the current Tax Code nonetheless renders profitable. It is high time we did away with these wasteful, nonsensical tax preferences.

I repeat, this bill offers important, long-overdue reforms. But it also contains provisions that range from the ill-advised to the downright dangerous.

I would cite several obvious flaws and inequities in this bill:

Ending the two-earner deduction: By repealing the two-earner deduction for married couples, this bill reinstates the marriage tax. The Federal Government should not preach about the virtues of family life, then turn around and penalize people via the Tax Code for getting and staying married.

Limiting IRA deductibility: The deductibility of IRA's gives individuals a powerful incentive to save and to provide for their retirement. It is a mistake to slam the door on a program that has been so successful and that has served such an important public purpose.

Ending deductibility of charitable contributions: There could not be a worse time to end the deductibility of charitable contributions by taxpayers who do not itemize. Common sense tells us that this will shrink contributions and do harm to the countless churches, synagogs, social agencies, and research groups that rely on private giving.

Increasing taxes on capital gains. The heretofore preferential tax rate on long-term capital gains recognizes the risk and inflation that are built into such investments. By raising the tax rate on capital gains, we will discourage investment in vital industries such as timber and real estate.

Taxing Federal retirees' lump-sum pension payments. It would be a double-cross to turn around and tax lump-sum payments to Federal retirees that were earlier authorized to be tax free.

Mr. President, I also have two broader concerns with the tax bill. First and foremost, I am concerned that this tax bill does nothing to lessen the deficits that are slowly choking our Nation's economy. This bill is revenue neutral, but there is no virtue in neutrality in the face of these killer deficits.

My second overall concern is that—to make possible the lower personal income tax rates—this bill saddles corporate America with $120 billion in additional taxes over 6 years, while also ending investment credits and preferential treatment of capital gains. I fear that this is simply robbing Peter to pay Paul. And, more serious, it could impair the ability of our industry to achieve price competitiveness in international markets.

That said, Mr. President, I have no doubt that the good in this bill outweighs the bad. We will have opportunities in the next Congress to revisist this legislation; where necessary, we can reform the reform.

This bill offers the prospect of a tax system with lower rates, a broader tax base, more efficient investment, and reduced tax avoidance. This is a historic opportunity, and we must seize it—want and all.

Mr. BINGAMAN. Mr. President, I would like to add my strong support for the adoption of the conference report accompanying the Tax Reform Act of 1986 now under consideration and urge its adoption by the Senate.

As we all know, the bill is not the same as the one that passed the Senate on June 24, by a vote of 97 to 3. It is a compromise that adds certain positive as well as negative features to the original bill.

Among the major differences between the Senate bill and the conference report are these: First, the corporate tax rate, the top individual tax rate, and the alternative minimum tax for individuals were each raised by one point in conference; second, the effective date of the tax cut for individuals in 1987 was moved forward; third, the IRA deduction was preserved up to income levels that cover 80 percent of taxpayers, and partially preserved for some others, when the employer of a taxpayer provides a retirement program; fourth, the partial deduction for sales taxes was eliminated; fifth, depreciation schedules were made less generous; sixth, tax preferences for a number of specific industries were scaled back or eliminated; seventh, the floor under itemized medical deductions was lowered from 9 percent to 7.5 percent; and eighth, income averaging for farmers was repealed.

Some of the changes will importantly affect many people. In my home State of New Mexico, the elimination of the deductibility of the sales tax will have a negative impact, because New Mexico relies heavily on sales tax revenues. My State relies on sales taxes more than any other State—72.8 percent of all its revenues are from deductible taxes. As a result, the repeal of the sales deductions will cost taxpayers 36 percent of their total savings from the full State and local deduction, more than twice the national average. Sales taxes account for 42.1 percent of all State tax revenues in New Mexico. I am therefore disappointed that the sales tax deduction is not retained.

Another troubling feature of the conference version is the restriction of the individual retirement account [IRA] as we know it today. The IRA has been the most effective and efficient savings vehicle ever devised in this country. It has caused millions of Americans to save who might not have otherwise. In 1984 IRA's generated $18 billion in new savings—$7 billion in excess of the revenue loss of $11 billion.

It is estimated that 40 million Americans have IRA's with a total value exceeding $250 billion. And, based on IRS data, 65 percent of all IRA's are held by individuals earning less than $40,000.

The use of the IRA as a tool for retirement has met with great success. Furthermore, we need to continue to do more in this country to encourage savings. I am therefore also disappointed by changes affecting it.

I am also troubled by the uncertain impact this bill will have on the present U.S. economy. Some economists, businessmen, and others are concerned that the tax reform bill, by reducing tax incentives for investment, will slow economic growth and intensify the lack of competitiveness of U.S. industry. Others feel the bill will be good for business and the economy. The real uncertainty, however, is the uncertainty over the economy itself. Unfortunately, no one can predict with much assurance the direction the economy will take.

As in any important matter, there are winners and losers in this legislation, but I believe there are many more winners than losers. Most individual taxpayers and most businesses will be winners. As a result, I think the bill will promote a stronger economy. It should result in a more efficient distribution of resources, because investment decisions would be based on economic rather than tax considerations. These provisions I hope, will serve to make us more competitive as a Nation.

One additional troubling aspect of the bill is the fact that it contains some $3.3 billion in so-called transitive rules. While some of these are legitimate efforts to lessen the drastic impact of proposed changes on cities, States, and corporations, some of them are blatantly unfair new tax breaks. I would prefer that these breaks not be in the bill.

I am also concerned with the retroactive impact the bill will have on new Federal retirees. Federal workers who retire after July 1, 1986, under the bill, will have to pay taxes on their Federal pensions. I feel this is unfair and that the tax itself may amount to double taxation.

Nevertheless, I still feel this bill embodies racial, but needed changes in our Tax Code. I still feel it is a watershed. It still calls for a fairer and simpler tax system. And the changes it makes constitute a real improvement in existing law. As I said in June, I felt this bill was a true rarity and was a bona fide tax reform measure. I still feel that way.

Driving my decision to vote for this bill in its final form is the fact that its defeat would delay for 2 more years, and perhaps longer, any significant tax reform. I also believe that even if we defeat this bill today and start over in the next session with a blank page, there is no guarantee that what we would produce then would be better than the bill we have produced now. Nor will there be any guarantee that what we would produce then would be any better than the tax law now on the books, which all of us agree ought to be reformed.

A number of Members in both Houses of Congress have contributed importantly to the final product now before us. Those members of the Senate Finance Committee and House Ways and Means Committee, in particular, deserve our praise for their work in persevering and bringing this bill through the uncertainties of the legislative process.

The bill represents a major restructuring of the Federal income tax system. It significantly reduces tax rates and broadens the tax base by eliminating a variety of tax benefits and preferences.

It calls for a simplified tax structure, with just three rates. It eliminates the current 14 rates—15 for single taxpayers—ranging from 11 to 50 percent, creating instead only two individual tax rates at 15 percent and 28 percent by 1988. It reduces the top corporate tax rate by one-third to 34 percent. And it severely limits the use of tax shelters.

It is fairer to nearly all Americans. Eighty percent of all taxpayers will have a top tax rate no higher than 15 percent, the lowest individual tax rate in over half a century. Six million working poor will be removed from the Federal income tax rolls entirely. Many other working Americans will receive at least a small tax reduction, and some will receive a substantial reduction. And fairness is restored to the tax system with tough antisheltering and minimum tax rules, including an effective minimum corporate tax.

In conclusion let me emphasize again that there are many positive features of this bill. There are also many negative features. The bill is far reaching and complex in its implications. There are indeed uncertainties about the future performance of our economy and the impact this bill will have on our ability to compete internationally.

But after careful consideration I feel the positives outweigh the negatives and that we should not miss this opportunity for historic changes in our Tax Codes. It benefits millions of Americans and I feel that on balance it will help our ability to compete. It removes certain impediments in existing law and it creates new incentives for encouraging investment and enhanced savings. I feel it warrants the support of my colleagues. I urge its adoption.

Mr. WEICKER. Mr. President, today the historic debate on H.R. 3838, the tax reform bill, comes to a climactic conclusion, and we move to final passage on a measure that one way or another will affect the tax liability of virtually every single taxpayer in America, individuals and corporations, the rich and the poor, savers and consumers, for the next generation. And while none will deny that the bill is nothing short of revolutionary, there are some who have reluctantly concluded, as I have, that the promise of H.R. 3838 is not up to the needs of the Nation and that for all the good it contains, there lurks much mischief. I have therefore decided to vote against this bill, and I would like to outline my rationale.

Mr. President, the people of my State are skeptical about this bill. Public demand for tax reform was generated by the outrage over the fact that many corporations and wealthy taxpayers could legally avoid paying their fair share of taxes. I have consistently supported a tough minimum tax. While H.R. 3838 contains such provisions, we have gone well beyond addressing this tax equity issue and have engaged in an economic experiment, with potentially severe consequences.

I have for some time been saying that the greatest and most pressing economic problem we face is the Federal deficit, which in the fiscal year drawing to a conclusion on Tuesday, will reach record levels of $240 billion. Nothing could be of greater peril for our future growth than the specter of an endless stream of triple-digit billion dollar deficits sapping our credit markets and triggering a spiraling trade deficit. Rather than focusing on changing the tax laws to make them seem fairer, we should be asking how can we change the system to increase revenues to a level approximating our expenditures. Until we get our budgetary house in order, we simply cannot afford to gamble with the revenue side of this already fragile equation. And in the minds of many economists this bill is a riverboat gamble since nobody can say with confidence what will be the economic consequences of H.R. 3838.

The Joint Tax Committee predicts that the new tax law will be revenue neutral over the next 5 years, but even their best estimates conclude that within that timespan there will be substantial fluctuations of revenue from year to year. Next year the bill will actually raise taxes by $11 billion, only to reduce revenues by some $16 billion in both fiscal year 1988 and 1989. So if this bill facilitates our task under Gramm-Rudman-Hollings for fiscal year 1987, when we are supposed to reduce the deficit to $144 billion, it only exacerbates our difficulties in fiscal year 1988 when the deficit targets are far more stringent. How can we possibly live up to our responsibilities to move toward a balanced budget if today we are enacting a law which only increases the deficit in future years?

Now, Mr. President, the fuel that has sparked interest in this bill is the lure of lower rates: Lowering the top individual rate from 50 percent to 28 percent and the top corporate rate from 46 percent to 34 percent sounds good. But in the process of slashing the top rates, we're bulldozing over a generation of deductions and credits many of which achieved important social and economic goals. The question is not whether I support lower tax rates. Clearly I do. However, at what cost are we achieving these rate reductions? Furthermore, how long will these lower rates last? Given the imperatives of the deficit, I fear that our universal enthusiasm for low rates will bow before the need for enhanced revenues, and inevitably we'll be back here raising taxes.

Furthermore, this tax bill calls for a transfer of $120 billion in new taxes to our corporations over the next 5 years, that are currently being paid by individuals. We are in effect raising their taxes by $120 billion while cutting the tax on individuals by an equal amount. This tax increase particularly hits our manufacturing sector the hardest, and comes at a time when we are finding it increasingly difficult to compete in the international markets.

Perhaps my greatest concern with H.R. 3838 is that it will have devastating, perhaps even crippling effects on capital formation especially for small business. As chairman of the Small Business Committee, I am well aware that nothing could be more crucial for the future well-being of the country than the economic health of small business. Small business provides some 80 percent of the new jobs in our country, it makes a substantial contribution to our GNP, and it is responsible for about 50 percent of the innovation. Small business grows through its ability to attract new capital. As far as raising capital is concerned, this bill spells devastation. It eliminates the investment tax credit [ITC], which gives a taxpayer a 10 percent dollar for dollar credit for investments in new machinery and equipment. Here is a vital incentive to invest in the latest state-of-the-art technology, to take a gamble on the future by modernizing or expanding. And that is gone, despite the fact that the ITC has been in place for decades to spur investment, to encourage planning for the future.

In addition, for the first time since 1921, virtually since we began taxing income in 1913 under our first Tax Code, we are eliminating the preferential tax rate for capital gains. Unlike earned income, capital gains have always been taxed at lower rates in part to encourage investments in capital assets, in part to avoid the unfairness of taxing several years of gains all in the year of realization. The capital gains tax differential is a powerful incentive for investing in capital assets; it recognizes the greater risks undertaken by one who invests in the future, with all the inherent risks. It seeks to reward the risk-takers by taxing them at a lower rate than if they had simply been receiving a stream of dividends or cashing in their paycheck. Our system thrives on such risk-taking and now we will upset all tradition in this country by telling investors they are no better off investing in a risky start-up than simply putting their money in blue chips.

Finally I note that a mere 5 years after all the hoopla surrounding the enactment of accelerated depreciation schedules under the economic recovery Tax Act of 1981, we today are backing down and lengthening those timetables for some in our manufacturing base. Of all the areas of our economy that has yet to show any confirmed signs of recovery, the manufacturing base is clearly the most conspicuous. How can we expect relief for all our economic problems with a bill which in the end simply raises the cost of capital for all?

Mr. President, at the onset of debate in the Senate earlier this summer, I chaired a hearing of the Small Business Committee on the impact on small and emerging business of the elimination of the capital gains differential. And I was impressed that almost every witness both from academia and from the world of business concluded that the capital gains differential was crucial for small business and that its elimination would devastate the venture capital industry which provides seed capital to so many of our Nation's emerging companies. Without venture capital so many of our greatest success stories like Apple Computer and Federal Express would still be thoughts on a drawing board.

I am also disturbed that this bill touted in the name of fairness and equity strikes an unpardonable blow of unfairness on millions of good faith innocent taxpayers who followed the lead of Congress in investing in tax shelters. Oh, I'm well aware that tax shelters have been abused. But today we abandon a longstanding tradition of fair play in this country, retroactively pulling the rug out from under millions of people who may well have made these investments as part of long-term financial planning. They will find that the passive loss deductions that they had counted on are no longer available to be used and they will be left holding the bag. Egregious as the treatment we inflict on them, I wonder about the harm to the reputation of America as a place to invest one's money. Who will trust the word of Congress in the future? What's to keep us from continuing on this merry road of reversing ourselves suddenly to the financial detriment of the people in the interests of raising some quick revenues? Today we seize upon tax shelters; perhaps tomorrow we will serve similar treatment on our bondholders and other creditors.

Mr. President, a country's reputation as a haven of trustworthiness is a precious commodity. Our good name should never be tarnished, no matter what the short-term consequences for a quick fix. The shortcuts we take today will I fear cause us unmeasurable harm in the future.

In addition to these overriding concerns that the bill will have a negative influence on capital formation and on the economy in general, there are other areas of vital concern to me, which will be harmed by the bill. I speak in particular of housing, charitable giving, higher education and savings.

One unintended but predictable effect of this bill will be an adverse impact on rental housing, especially for the middle class. Because of this bill, the cost of ownership of real estate will go up because the marginal rates go down. The incentives to build rental housing also will go down, because those units that do not make a profit will offer no tax advantages to the owners. Therefore, investors will demand higher rents just to break even on their real estate investments. The middle class, the young married couple, the student living in off-campus housing, the blue collar worker who can't afford to own a house, will all see their rents go up by far more than they will see their tax bill go down. They will be the ones unfairly squeezed.

Equally hurt will be our institutions of higher education who find suddenly that they will be cut off from issuing any more tax exempt bonds if they have exceeded the toally arbitrary cap of $150 million, thus limiting a vital source of capital used for construction of university facilities. Additionally, we now require that gifts of appreciated property be included in the minimum tax which means that a number of wealthy donors will be reluctant to give stock or appreciated real estate. Finally, the bill taxes fellowships and scholarships for the first time.

Mr. President, this bill will also have a depressing effect on charitable institutions and on institutions of higher education especially in the private sector. H.R. 3838 calls for the elimination of the charitable contribution for nonitemizers. Most American taxpayers don't bother itemizing; the vast majority will receive no fiscal incentive for the occasional small gift they make to their church or other nonprofit institution. So suddenly the cost of giving goes up and unless there is a dramatic increase in eleemosynary inspiration, giving will decline by virtue of these changes.

Mr. President, this bill is proconsumption. It provides an average tax cut of 6 percent, and provides real disincentives to save that money. I am concerned that this bill restricts the IRA deduction. We expanded the IRA concept in ERTA in 1981 and it has proved one of the greatest successes in tax history. The American people fell in love with the IRA. It let them plan, manage, and supervise their own retirement vehicles, and by bringing them into the details of these savings plans it unwittingly forced millions of Americans to think about their future in a very real way. In this bill, we limit the IRA deduction, especially among those Americans in higher brackets who are the biggest users of the IRA deduction. In the face of clear evidence that we are still not saving enough, last year we saved about 4.5 percent of our income well below the 20 percent current in Japan, we take one further step today to discourage saving and encourage immediate consumption.

Finally, while we are today debating a tax bill for all Americans, this measure will weigh disproportionately on the citizens of my State. Connecticut has the highest State sales tax in the Nation at 7.5 percent; we rely almost completely for State revenues on the sales tax since we have no income tax. Under this bill, however, my constituents would be unable to deduct these tax expenditures. This will in effect raise the cost of all consumer items for them, more than for any other State, since they pay more than anyone else. For those that buy big ticket items such as home appliances, Connecticut shoppers will have incentives to go next door to New York or Massachusetts or Rhode Island where the sales tax is less. Merchants in my State will bear the burden of this new tax bill. Like many, I was disappoined by the original Senate bill proposal to limit the sales tax deduction, and I joined my colleagues in urging the Senate conferees to restore the full deductibility of the sales tax. Their failure to do so has made H.R. 3838 even more unappealing to the Senator from Connecticut.

Mr. President, we could have easily satisfied the clamor for reform by simply devising a rigorous minimum tax law that would have prevented millionaires and profitable companies from escaping paying their full share and still taken the 6 million working poor off the tax rolls without the severe dislocations to the economy that this bill causes. This bill reflects the good intentions of many, but I believe that it misses the mark of the Nation's needs and saddles our economy with so many disincentives for productive real growth that I fear we will soon be revising this act in the 100th Congress.

Mr. CHAFEE. Mr. President, I would like to make a few comments on a new tax incentive which we have put in this tax reform bill—the low-income housing tax credit. This new credit was originally part of the Senate version of the bill, and I am very pleased that it remains part of the conference agreement.

I strongly supported the development of a satisfactory tax incentive to assure the continued development of low-income rental housing targeted to those most in need. Within the targeted group of low-income individuals are persons with disabilities who have historically faced the fewest options in terms of adequate and accessible community-based housing.

In recent years, tax incentives available for the development of low-income housing have helped promote the private development of specialized housing to meet the needs of disabled individuals. In the State of Connecticut, the Corporation for Independent Living [CIL] was successful in utilizing private syndication financing as an alternative to existing government capital funding programs. New, small community-based housing opportunities during the past 3 years were created by CIL for over 600 disabled individuals.

I am pleased that the conference agreement will assure the continued availability of incentives for private individual and corporate support for development of housing to meet the needs of disabled individuals. The low-income rental housing credit will enable an effective response to the critical shortage of adequate and accessible housing needed by thousands of individuals who are poor and severely disabled. Small community based living units such as group homes and independent living apartments would qualify for use of the credit.

Also pleasing is the fact that the conference report clarifies that the gross rent limitation applies only to payments made directly by the tenant, assuring efficient utilization of any rental assistance payments made on behalf of the tenant such as those provided through section 8. It is my understanding that similar treatment will be given to rental assistance subsidies offered by States to assist low-income individuals, particularly persons with disabilities. It is certainly not in the best interest of Congress to penalize those States who have made their own commitment to expanding housing supports beyond those available through Federal subsidies.

Technological and service delivery advancements, human rights concerns, and litigated mandates have prompted dramatic increases in the development and use of small community-based living situations for disabled individuals. But too many individuals are still consigned to institutional life who are in need of appropriate community-based housing. I would hope that States making decisions about utilization of the credit will respond to this continuing need for specialized housing development for low-income individuals with disabilities. It is also my hope that developers of more traditional low-income housing who utilize this new credit will make an increased effort to develop adaptable and accessible units to serve individuals with specialized needs.

Mr. President, given the massive reforms in this bill and the nature of legislative/political process, it is inevitable that the finished product is not perfect. I have already stated my reasons for enthusiastically supporting this historic tax reform bill, but I would now like to mention one area of this bill which does cause me concern.

The decisions of the tax reform conferees with regard to provisions of the code that encourage support for the activities of the nonprofit charitable sector of this country could cause problems in the future.

Representatives of the charitable sector will be among the first to say that it is too early to know the exact impact of the tax bill on their institutions and agencies. They are deeply concerned that this bill will significantly reduce existing tax incentives designed to encourage contributions to charity, whether that charity is a hospital, a private college or public university, an arts organization, a museum, or some other worthy institution.

The bill could also reduce incentives designed to encourage needy and/or talented students to pursue postsecondary education.

Further, it may, in some States, severely restrict the ability of some major educational and research institutions to borrow money through the tax-exempt bond market to finance the construction and renovation of academic facilities and the purchase of new equipment.

Thus the ability of our nonprofit sector to meet the needs of the public at large could well be diminished. Our nonprofit organizations, which do indeed serve public purposes, will be called upon to meet these new challenges, and I hope they can summon the same resourcefulness and vigor we have witnessed in the past. We should be mindful, however, that we are calling upon them to do so at a time when the congressional budgetary policies of the 1980's have already significantly reduced direct, Federal support for these same institutions and agencies—and thus, for the constituents whom they serve.

Over the years, this country has built a unique and efficient dual system of providing services to the public through the Federal Government and through the Nation's charities. It is important that we, as legislators, monitor the effects of this bill upon those nonprofit institutions and charities. If the results are as unfortunate as some leaders in the nonprofit sector believe, it behooves us to take corrective action. I for one am prepared to do so if required.

Thank you, Mr. President.

Mr. ANDREWS. Mr. President, comprehensive tax reform is a matter which is long overdue.

Our present Tax Code has evolved into a maze of tax deductions, credits, and loopholes which have only helped the rich get richer and the poor get poorer.

While I intend to vote for this historic measure, I do so with reservations about some of the provisions contained in the conference report on the tax bill.

As is true of any piece of legislation of this magnitude, it has some compromising items in it. Its not nearly as fair as the bill we passed in the Senate

Nonetheless, I believe that on the whole this legislation is a giant step in the right direction toward greater tax fairness for the American taxpayer.

In my home State of North Dakota, Agriculture is our No. 1 industry.

As my colleagues in the Senate are well aware, tough times have fallen on rural America in recent years.

When I looked through the provisions in the conference report, I wanted to make sure that this legislation, on the whole would be beneficial to the people on the farms and in the small towns of North Dakota.

While I didn't like some of the things I saw in this conference report, overall it paints a much larger picture of equity and fairness for this Nation.

RETROACTIVE REPEAL OF ITC

Mr. President, I don't believe that the retroactive repeal of the investment tax credit is fair to many farmers and small business people who made equipment purchases earlier this year.

They made their investment decisions based on the law that was on the books at that time.

Retroactive legislation is not good legislation.

REPEAL OF INCOME AVERAGING

While I realize that income averaging is much more important in our present tax system with 14 narrow rate brackets, than in the proposed system which has only two.

Nonetheless, farming is a very cyclical business. Income can fluctuate greatly from year to year depending on the crop yield and the commodity prices. It is not uncommon for a farmer's crops to be hailed out in one year and to produce a bumper crop the next. Farm prices can be equally as volatile.

This is not a loophole for the rich, but rather a tax equity device. Income averaging would still have merit under the tax reform bill.

REPEAL OF CAPITAL GAINS EXLCUSION

Another matter in this bill which I have concerns about is the repeal of special capital gains treatment. Most farmers accumulated their farmland years ago at substantially lower prices, therefore they have a low basis in their property. Upon selling or transferring that property they realize sizable capital gains, due primarily to inflation. Taxing these gains at the same rates as ordinary income could have a negative impact particularly if the sale is made under threat of bankruptcy. This concern applies likewise to the small business owner or the investor.

TAX SHELTER FARMING

While I applaud the efforts which this bill makes to restrict tax loss investments, I have concern about some of the language in the passive loss section affecting legitimate farmers. Although the conference report gives added language on the material participation test for farmers, I don't believe it fully clarifies the issue. I'm not convinced the IRS will have an understanding of what a real farmer is in applying this section.

Mr. President, while I have reservations about these and other provisions in the conference report on the tax reform bill, I find many more items in this legislation which I believe will be of benefit to the typical American taxpayer. By plugging loopholes for the rich and imposing a strict alternative minimum tax on corporations, we are able to cut the top individual tax rate nearly in half from 50 to 28 percent. By equalizing the tax responsibility for all Americans, we are able to assure that the wealthy begin to pay their fair share of tax, while the poor people get a tax break. Creating a tax system which is fair is the greatest deterrent to taxpayer fraud.

Mr. President, I'm a stong believer in our free enterprise system. I believe that letting the average American keep more of the dollars that he or she earns is the greatest incentive for work, savings and investment. This tax bill will once again allow investment decisions to be made based on their potential for economic profits, rather than their potential for tax avoidance.

While I hope future Congresses will not alter the fundamentals of this tax reform legislation, I cannot help but think Mr. President, that we will have to "fine tune" some of the provisions in this bill within the next few years. Although tax reform may have a few "bugs" in it, overall it's an amazing piece of legislation and I applaud the efforts of the conferees in producing such a work.

Mr. DIXON. Mr. President, I have stood on the floor many times in my time in the Senate and listened to Senators describing passage of a bill as a historic act. The conference report now before us is a bill that truly measures up to that standard. It is landmark legislation. It is nothing less than fundamental reform of the entire Internal Revenue Code.

This is a long and complex bill. The text itself runs 925 pages, and the accompanying report, which only begins to explain the details of this revolutionary bill, is 886 pages in length.

What makes this legislation so important, however, is not its bulk, but rather the extraordinary scope, extent, and character of the changes it makes. There can be no doubt that this bill will touch the lives of every American. There can also be no doubt that this bill will have a significant impact on business and investment, and on our overall economy.

Tax reform has received a somewhat skeptical reception in my State and around the country. Millions of Americans are fearful that they will be paying higher taxes under the bill. Numerous important economic interests and industries believe they will be adversely affected.

I would be the first to agree that H.R. 3838 is far from perfect. I will not take the time of the Senate to discuss all of the areas where I have concerns about the bill. Instead, I would like to simply briefly list three examples where, I believe, many of my colleagues would share my views.

First, I think it was a mistake to eliminate the deductibility of State sales taxes. This change disadvantages States like Illinois that use the sales tax as a major revenue source, and it tends to force States into greater reliance on income and property taxes in the future, since those taxes remain deductible.

Second, I am very disappointed by the way IRA's were treated by the conference. My reason is simple: IRA's work. I do not think it was wise to restrict IRA's and to therefore reduce the savings incentives they provide. I am pleased that the conference product makes fully deductible IRA's available to many more Americans than the original Senate-passed bill. However, I would much prefer to see IRA's fully restored to all Americans.

Third, I think the conference report transition rule for the real estate industry is not adequate. I am concerned that the result of this flaw will be substantial disruption of the real estate industry, leading to inadequate investment in rental housing and higher rents.

These problems and many others I could mention are very serious. However, I think it is important not to lose sight of all the good this bill does. This bill takes over $120 billion in tax liability over the next 5 years off the back of individual Americans. Almost 80 percent of taxpayers will end up with a tax cut. It takes well over 6 million low-income taxpayers off the tax rolls altogether. It ensures that wealthy individuals who were paying either very low tax rates, or even no tax at all, will now pay their fair share. It ensures that corporations who have earned literally billions of dollars in income, but paid no tax, will now pay tax.

The tax relief this bill provides is directed toward low, moderate, and middle income Americans. For example, under this bill, in 1988 people with income between $20,000 and $30,000 will have their overall tax liability fall by 9.8 percent. Those with an income between $40,000 and $50,000 will get an overall reduction in their tax liability of 9.1 percent. People with an income between $10,000 and $20,000 will have their aggregate tax liability reduced by 22.3 percent. Those with incomes of over $200,000, on the other hand, would have their taxes reduced by only 2.3 percent.

These figures make it clear, Mr. President, that the bill preserves the principle of progressivity in our tax laws. It is true that the conference report now before us replaces the current 14-bracket, 50 percent top rate tax system with a 2-bracket, 28 percent top rate system. However, the 50 percent top rate under current law is all too often an illusion, because wealthy taxpayers have been able to use other provisions of law to reduce the amount of taxes they actually pay well below 50 percent. The conference report lowers the top rate, but goes a long way toward ensuring that it is a rate that is effective in fact, instead of in theory. The experts tell me that the bill now before us is just as progressive as the tax system it is replacing.

The guiding principle of this bill, it seems to me, is fairness. Of course, it cannot achieve perfect fairness. But it does significantly reduce the inequities that plague our existing Tax Code. It attempts to ensure that everyone pays tax. It attempts to ensure that people making the same amount of income pay roughly the same amount of taxes. It attempts to ensure that individual and business investment decisions are made for economic reasons, not tax reasons.

It does not do everything. It does not, for example, solve the deficit problem. However, it was never intended to solve that problem. The President made it clear from the beginning that the tax reform effort must be revenue neutral, and that it could not be made into a tax increase in disguise.

I continue to believe that deficit reduction must be our first priority. That is why I supported the Gramm-Rudman-Hollings deficit reduction bill last year. That is why I authored line item veto legislation. That is why I have twice voted for the balanced budget constitutional amendment, and that is why I am continuing to support efforts to further reduce deficits now.

I do not believe, though, that tax reform has displaced deficit reduction as a priority for Congress. I am pleased that we seem to be well on our way toward meeting the Gramm-Rudman-Hollings targets for next year. I think this Congress has taken action to put Federal deficits on a downward glide slope, and I therefore believe that it is not reasonable to suggest that tax reform should not pass because, while it does not increase deficits, it does not reduce them.

We are now at the end of the road. The question before us is no longer how tax reform should be changed. The bill cannot now be amended. Rather, the question is whether this admittedly flawed bill should be enacted. The question is whether the good that this bill does outweighs its problems.

On balance, Mr. President, I have to answer these questions in the affirmative. The bill is not without risk, but the reform it promises is real. I believe this bill deserves to be enacted. I urge the Senate to join the House of Representatives, where this bill passed by an overwhelming vote of 292 to 136. It is time to send this bill to the President, and for it to be signed into law.

REGARDING SECTION 1804 OF THE TAX REFORM ACT OF 1986

Mr. STEVENS. Mr. President, I would like to commend the House and Senate conferees on the tax bill for their heroic efforts and I would like to cite, in particular, the wise decision they made with regard to inclusion of an amendment I sponsored covering affiliation of Alaska Native corporations with other companies. This provision is already beginning to provide the type of benefits and compensation these organizations need. The Native corporations are acting quickly and responsibly to utilize this provision, which will be a great benefit to our State.

The conference report language states that the benefits of these transactions may not be denied, in whole or in part, by application of section 269, section 482, the assignment of income doctrine, or any other provision of the Internal Revenue Code or principle of law. This broad-based relief from unnecessary bureaucratic redtape will serve the social purpose concept I described in my floor statement. The term "principle of law" is to be interpreted broadly and is intended to avoid needless administrative delay, and the applicability of regulations not truly geared to the type of unique transfers contemplated in this amendment. The entities formed or utilized to facilitate the affiliation of an Alaska Native corporation in accordance with section 1804 of the Tax Reform Act of 1986 will not operate in a manner that will be of competitive significance. Indeed, except for whatever minimal contribution is made by the Native corporation, in many cases these entities will be capitalized solely with income assigned to them by other parties to the transaction. As a result, it was my intention that statutes imposing filing and similar requirements that are meaningful for corporations truly participating in the competitive marketplace should not apply to NOL's transactions. For example, the notification and waiting period requirements found in Public Law 94-435, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, should not apply to transactions provided for under my amendment.

I urge all agencies to consider the underlying social purpose of this amendment, and the unique status of Alaska Native corporations, when assessing this provision of the tax bill.

Mr. INOUYE. Mr. President, over a year ago the Congress started on a crusade to reform the Tax Code; to make it more simple, efficient, and fair for all Americans. We set out to quell the widespread dissatisfaction with our tax system, and in so doing, persuade individuals and businesses to make spending, saving, and investment decisions based on economic considerations, rather than tax considerations. Since then, this effort has taken many twists and turns, often apparently dying, only to be resurrected anew. Throughout this process, the unflagging efforts of Finance Committee chairman, Senator PACKWOOD, and ranking minority member, Senator LONG, have been an inspiration to this body and have set an unprecedented example in perseverance. As a result, we stand here today prepared to pass the tax reform bill that most said would never happen.

Unfortunately, in the rush to reach this once seemingly unattainable goal, I fear we have lost sight of the motives that started us on this quest. We have let the drive to pass a tax reform bill take priority over the principles we originally set out to achieve. Reforming the Tax Code has become more important than improving the Tax Code, and slapping together a viable political package has become the goal rather than crafting legislation which is truly more fair and effective for the American taxpayer. Victory at any cost has supplanted the noble ideals which once drove the tax reform effort and have left the victory, I feel, quite hollow.

I will vote against the tax reform bill today, and I will do so with great disappointment. I had high expectations for tax reform when it started, but I cannot with good conscience overlook the major shortfalls I see in this bill merely because of the momentum it has gained.

I feel that in general, this bill is a failure with regard to increased fairness. The progressivity which has always been the hallmark of our Tax Code has been eroded for the sake of simplicity. Under this bill, single taxpayers earning $20,000 a year will pay at the same 27-percent rate as those earning $20 million. As a result, while the average tax cut for all individuals as a result of this bill will be about $200 a year, the average tax cut for those earning over $200,000 will be greater than $5,800. Moreover, for those in this income group who will actually receive a tax cut, they can expect an extra $52,000 a year. This does not represent fairness to me, it represents a windfall for those who least need it.

The economic effects of this tax bill are also, I believe, reason for concern. With the current stagnant condition of the American economy, the radical changes in the business tax structure which are incorporated in this bill, exacerbated by its negative revenue effect and the possible Gramm-Rudman sequester it could trigger, could push us into a recession. Former Chairman of the President's Council of Economic Advisers, Murray Weidenbaum, has estimated that this tax reform bill will result in over 1 million American jobs being lost by the end of the decade. Lawrence Chimerine of Chase Econometrics projects that the measure will lower the growth rate of the economy by 0.5 percent. Many other economists feel the general result of the tax reform bill will be a reduction in investment, economic growth, job creation, and international competitiveness. These are not the goals we set out to achieve in tax reform and it would certainly be ironic if economic recession became the legacy of a tax reform effort aimed at improving economic efficiency.

There are certain provisions of the tax reform bill we are considering today which are particularly troublesome to me. These provisions include the retroactive repeal of the 3-year basis recovery for retirees who contribute to their pension plan. These retirees, most of whom are Government employees, have long contributed to their pension plans, paying taxes with the expectation of receiving these already taxed contributions back during the first 3 years of retirement. Under the tax reform bill, not only would this 3-year rule be repealed, but it would be done so retroactively. Thus workers who retired after July 1 of this year with the understanding that they would be entitled to 3 tax-free years of recovering the contributions they had made and paid taxes on throughout their careers will be told "tough luck." Through no delinquency or oversight of their own, they will find out after they retire that the rules in effect when they retired have been changed and as a result the nest egg they had been working so hard for will be snatched away. For those retirees who opted for a lump sum payment of their contribution under the 3-year recovery rule, this will mean they will suddenly be required to make a large up-front tax payment which was not even discussed when they retired. For many Government retirees, this could result in a previously unexpected tax payment of $20,000 or more. Calling this unfair, I feel, is a gross understatement. Treatment such as this is nothing short of criminal, and it was this provision that finally convinced me to make the difficult decision to vote against this tax reform bill.

Another part of the tax reform bill which is unfairly applied retroactively is the provision relating to passive losses. I would be the first to agree that the treatment of passive losses in our Tax Code needs to be changed to eliminate unproductive tax shelters. However, to penalize taxpayers who have, in good faith, entered into real estate investments based on current tax law is not fair. Moreover, it will have damaging effects on millions of innocent taxpayers; not only those who are involved in the real estate investments, but also those Americans who rent their homes and apartments. Because passive losses will no longer be allowed on existing investments, previously attractive investments will suddenly become disasters and will be defaulted on. These properties will revert to the banks who financed the transactions, putting great strain on them at a time they can ill-afford it. All this could have a chilling effect on the construction and housing industries and cause great hardship to lower- and middle-class Americans whose rents could skyrocket overnight. Former Chairman of the President's Council of Economic Advisers Martin Feldstein has estimated that rents nationwide will rise by 10 percent to 15 percent. This certainly seems like an unacceptable tradeoff for the average taxpayer who will gain only $4 to $5 a week from tax reform and in return will have to pay significantly more in rent.

There are other parts of this tax reform bill which also give me cause for great concern. I feel the new limitations on IRA's are unduely burdensome on middle-income Americans, especially those who were enticed into making the long-term investment in an IRA by the tax laws passed just 5 years ago. If the national savings and investment encouraged by IRA's was good for the economy then—and it was—why isn't it good for the economy now?

The elimination of the deduction for State and local sales tax is also a matter of concern. Such a policy discriminates against States such as Hawaii which depend on the sales tax to raise revenues. By allowing deductions for State income tax but not for State sales tax, the tax reform bill arbitrarily limits a State viable options in revenue raising. I find this to be a blow to States rights and I find no acceptable rationale for such a policy.

I am also disappointed that the bill before us contains a limitation of the deduction for business meals. By allowing only 80 percent deductibility for business meal expenses, the bill delivers a punishing blow to the hotel, restaurant, and entertainment industries. Charles Clotfelter in the American Economic Review predicted that by limiting deductibility, we would "undoubtedly cause sharp declines in employment in hotels and restaurants." Indeed the Hotel and Restaurants Employee Union estimates a loss of 30,000 to 40,000 jobs over 5 years, and a decline of $56 billion in spending on business meals over this period. This is a harsh blow to this industry which will have serious multiplier effects on other sectors of the economy such as the tourists industry which is, of course, vital to the welfare of my State of Hawaii.

Finally I must express my disappointment that the conference committee has brought us a bill which contains no charitable deduction for nonitemizers. At a time when Federal support for charitable and other nonprofit organizations is diminishing, I find it quite distressing that we are taking this action which will hinder the private fund raising done by these groups. Thirty percent of all individual charitable donations are currently made by nonitemizers, accounting for some $20 billion a year. Prof. Lawrence Lindsay at Harvard has estimated that by eliminating the charitable deduction for nonitemizers, there will be an annual reduction of $12 billion in charitable giving at the lower tax rates in this bill. This represents a 15-percent reduction in giving, which can ill be afforded by the nonprofit groups who depend on this funding, and those Americans who depend on the services provided by these groups; organizations which include churches, synagogues, schools, museums, hospitals, and other groups that help this country's needy. Considering the relatively small revenue impact of the retention of this deduction, which had finally been fully phased in to the Tax Code just this year, I find it disturbing that it has been dropped. I can only hope that in future years we can reevaluate the effect of this action on the charitable groups of this Nation and move to reestablish this sound tool of public and economic policy.

In conclusion, Mr. President, it is with great sadness, yet with great conviction, that I vote against the tax reform bill before us today. I feel our noble efforts to make the Tax Code more efficient and more equitable have gone astray and I cannot merely vote for a principle which I feel has been unfulfilled. I hope to continue to work with my colleagues in the coming months and years to keep pursuing the goals we set out to achieve in this effort over a year ago, and I hope that we will be more successful in forging the kind of tax system all Americans can have faith in. Until then, I feel this body must vote its conscience and reject this good intention gone awry.

Mr. DENTON. Mr. President, I must again state that I would have preferred that the Congress not consider a tax reform bill until the Congress had addressed the Federal budget deficit. I joined several of my colleagues in a letter to President Reagan urging that the Congress address the Federal budget deficit prior to acting on tax reform. The Senate is now ready to vote on the final passage of H.R. 3838.

I rise to express my reluctant support for H.R. 3838, the Tax Reform Act of 1986. I want to commend the chairman of the Senate Finance Committee, Mr. PACKWOOD, the chairman of the House Ways and Means Committee, Mr. ROSTENKOWSKI, and the other members of the conference committee for their work on this bill.

The whole area of tax policy and theory is undergoing intense scrutiny by the 99th Congress, and rightly so. I believe that a tax system that discourages working and saving should be overhauled, and I strongly support efforts to reduce taxes and to simplify our income tax system. We must be careful that in our desire to reform, we do not take any steps that would discourage economic growth.

In too many cases the Federal income tax system needlessly frustrates taxpayers and encourages noncompliance, estimated to cost $95 billion a year, which could otherwise be used to pay off the national debt. In the interest of restoring order to the income tax system, we now have before the Senate the final version of H.R. 3838.

I support the fundamental direction reflected in this tax reform package. Like many, however, I am concerned that the tax bill has serious flaws and may not go far enough to reform the tax system. I have concerns about some specific provisions and believe we will have to give them further consideration eventually.

The elimination of the capital gains deduction is one of the most radical changes proposed by this bill. It has been a fixture almost from the beginning of the income tax system. I am in favor of special tax treatment for capital assets held for long periods of time such as the old family farm, small businesses which have passed from generation to generation and timber which takes several decades to mature. In times like these, some are having to sell the fruits of a lifetime to pay off debts. To tax them at ordinary income rates is simply unfair.

I am particularly concerned about how the loss of this deduction will effect the timber industry and other capital intensive industries. A healthy timber and forest products industry is crucial to the economic growth of Alabama. Timber requires 30 years or more before the timber owner receives income. The tax laws should recognize this unique situation.

I joined several of my colleagues in the Senate in urging the conferees to retain the deduction for annual timber management expenses and to continue the capital gains differential for individuals. While we were able to persuade the conferees to retain the deduction for annual expenses, the conferees unfortunately eliminated the capital gains deduction for both corporations and individuals.

I strongly supported and voted for the provision to restore income averaging for farmers. This provision is needed to aid the family farm. Farmers will need this provision to help them get back on their feet when times get better. I was pleased that the Senate restored income averaging for farmers. I believe the elimination of this provision in the conference agreement is a serious mistake.

I voted for the amendment offered by Senator TRIBLE to restore the 3-year recovery rule. The majority of the Senate, however, supported spreading the tax-free portion of the benefits over the retiree's life expectancy. The Senate bill, however, provided for this change to be phased-in, so that individuals retiring in 1987 would not be affected. I encouraged the conferees to endorse the Senate treatment of the 3-year recovery rule, which was at least fair to those retiring in the near future. Unfortunately, this bill adopts the House treatment of the recovery rule, eliminating it retroactively to July 1, 1986.

The bill operates as a two-edged sword on tax shelters. It corrects the abuses of the past which allowed many to pay little or no tax at all. I think it may have gone too far, though. People who have relied in good faith on the existing provisions of law that have encouraged people to invest in real estate and other legitimate investments should not be unfairly treated.

The retroactive revocation of these incentives may force some honest taxpayers into bankruptcy. These people have signed notes obligating them to make annual payments for as many as 20 years with respect to projects that can show no profit without the benefit of tax credits and deductions. This action on our part may cause rent payments to rise to such a point that the benefits of the tax bill for many will be wiped out.

I joined several of my colleagues in urging the conferees to reconsider the proposed changes in the Tax Code that would retroactively deny certain deductions for existing investments. Unfortunately, despite our efforts, the conferees agreed to limit the deductibility of certain passive losses. I am pleased, however, that a reasonable transition rule was provided for low-income housing.

This bill includes many important provisions that were threatened with elimination. I believe that the loss of these deductions would have been a mistake.

I have supported the use of IDB's and will continue to do so. I worked with Senator STENNIS and several other Senators to preserve the tax favored treatment to IDB's. I'm pleased that a compromise measure was reached to preserve the special treatment of IDB's; such treatment is essential, in my opinion, to the promotion of economic activity and employment in Alabama and many other States.

I worked extensively to arrange meetings between representatives of certain tax-exempt organizations and Senators and the staff of the Finance Committee to ensure the protection of 403(b) retirement plans. This bill preserves the 403(b) retirement plans for employees of nonprofit organizations. As a result, the retirement plans of our educators, religious leaders, and social workers are safe, ensuring a secure retirement for some of our most important public servants.

I was concerned about the proposed loss of the individual retirement account deduction. The IRA is one of the most important tax innovations in recent history. It provides America with capital and it gives the average citizen some control over his destiny—a small measure of financial security for the retirement years. To eliminate the IRA deduction would have been one of the worst things that we could do to middle-class taxpayers.

I voted to restore the IRA deduction in the Senate tax bill. Unfortunately, the measure failed to pass by a slim margin. However, the Senate did vote for the conferees to give their highest priority to the retention of the IRA deduction. I announced to the full Senate that I would strongly consider voting against the final bill if it did not include the IRA. Fortunately for the people of this country this bill provides for the deduction, by the majority of taxpayers, of amounts contributed to an IRA.

The bill includes many positive changes in the Federal Tax Code. The Senate bill reduces the number of tax brackets from 15 to 2 brackets. The 2 brackets will be 15 percent and 28 percent. Over 80 percent of all taxpayers will be in the 15-percent bracket. I believe that this is a major improvement over the complex Tax Code that currently exists.

The bill also provides for a standard deduction of $5,000 for a married couple filing jointly and $3,000 for singles. An additional deduction of $600 for a married person and $750 for a single person is allowed for an elderly or blind person. In addition, the personal exemption will be increased from $1,080 to $2,000. I have strongly supported increasing the standard deduction and the personal exemption. These provisions are important for all families in this Nation. Especially the elderly who have carried the burdens of this country and given this country so much, they deserve this special consideration.

The bill will also continue several important personal deductions that middle-class Americans rely on to preserve and maintain a strong family life. The bill allows the continued deduction for first and second mortgages. This provision is important to all homeowners and those young people who hope to own a home in the near future.

The bill also continues to a great degree the deduction for State and local taxes. Unfortunately, the bill does not provide the deduction of State and local sales tax. Alabama depends heavily on State and local sales tax and the elimination of this deduction tax will hurt Alabamians.

Charitable organizations have been meeting needs throughout the history of this country—the Red Cross, United Way, and small country churches have all helped. They meet these needs through generous gifts and tithes of common men and women. This bill continues to allow these people to deduct charitable contributions if they itemize. However, nonitemizers are not allowed to deduct their charitable contributions. I wish we would continue this important deduction. I think it helps to encourage giving.

While the tax burden is being shifted from individuals to business under this bill, there are some provisions in this bill that are beneficial to business. One of the most important is the provision that allows taxpayers to expense up to $10,000 of the cost of tangible personal property used in a business. This will lower the tax bill of small businessmen and farmers, helping the businesses to grow—to create more jobs and goods—helping the farmer to get back on his feet.

Serious questions have been raised about the bill's short-term economic impact. Even more concern is raised over its long-range effects on investment. No tax bill will ever be perfect or satisfy everyone. Inevitably, transition difficulties from the old rules to the new will arise. I fear that we will be back next year to solve these problems.

Lowering the top marginal rates, both individual and corporate, is one of two most important benefits of this bill and tax reform. The other is the sweeping away of many artificial preferences and incentives that distort economic decision making. These two changes represent true tax reform and hold great promise for our Nation's economy.

Eighty-five percent of all Americans will only pay 15 percent in taxes. Most importantly, everyone, including corporations will pay their fair share of taxes when the bill is fully in place. Only the very poor will not pay tax, helping these people to better provide for themselves.

The new tax bill represents a revolutionary shift away from the destructive tax philosophy of the past. This is not the last tax bill and it will serve as a starting point for future changes in the Tax Code. It is a significant improvement over what we have now.

To condemn the entire bill because some special breaks are not continued is unfortunate. Even though this bill is not perfect it accomplishes more than what anyone ever dreamed possible when we first considered Kemp-Roth 5 years ago. The important thing is that we are still on a course that holds the possibility of leading us to true reform and simplification.

Clearly the national interest, in the long run, would be better off if the tax system were stable for 5 years or more. However, the excesses and deficiencies of this bill will eventually have to be cured. I am confident that another "technical corrections bill" will pass next year. I am hopeful that any such bill will be another step toward true reform and fairness.

Mr. GRASSLEY. Mr. President, today is a moment of reckoning. Perhaps, for those of us on the Finance Committee, it feels as if the day would never come. We've heard from hundreds of lobbyists and thousands of constituents. It began over 20 months ago. First came the Treasury proposal, then the President's proposal, followed by the House staff proposal and the House bill, followed by Chairman PACKWOOD's proposal and ultimately a quite different Senate bill. Now we have the conference agreement. There is enough good in this bill for everyone to claim victory for something. But, there is enough that is not so good, to give even the most fervent supporters of tax reform good cause for concern.

The major benefit of the bill are the low rates. Lower rates will make the Tax Code less important in making economic decisions, because all deductions will be worth less. This tax bill will provide the greatest relief for the working poor. Six million taxpayers are dropped from the tax rolls.

There are lots of problems with the conference report. In many areas I would have preferred the Senate version. But the issue now is whether, on balance, the conference report is better than current law. Perhaps, the best way to make that judgment, is to examine how many of our original goals have been achieved.

When the great tax debate began, Treasury and the President spoke of simplicity. Success on that score depends upon how one defines simplicity. Accountants, lawyers, small businesses and those individuals who continue to itemize on their tax returns, will not find complying with the law under this tax bill much simpler. During the transition period it may even be more complex. But the 80 percent of those individuals who don't itemize on their returns will find the tax system simpler. The tax system will also be simpler for those who have spent their energy and their income on sheltering other income. There will no longer be any tax motivated purpose for engaging in uneconomic activities.

Although simplicity for all may not have been achieved, I believe progress has been made in making the tax system more fair. My conversations at home and the pro-tax reform mail I have received suggest that what people want most is fairness. The conference report, drawing on key provisions in the Senate bill restores that sense of fairness. Corporations will now pay tax on their economic income under the new corporate minimum tax provisions. Individuals will no longer be able to shelter economic income by investing in noneconomic passive activities.

American businesses and individuals have made substantial progress toward the goal of leveling the playing field. Under current law, corporations with virtually the same economic income, yet engaged in different activities, can have widely different tax liabilities. This bill will substantially reduce the difference in tax rates among industries. The combined effect of the passive loss rules and the individual minimum tax provisions will have a similar effect upon individuals.

The effect of this tax bill on the agricultural sector will not go unnoticed. The passive loss rules and the limitations on deductions for prepaid expenses for cash-basis taxpayers will substantially reduce the tax incentives which attract outside capital in agriculture. The bill provides much needed relief for farmers facing taxation on cancellation of indebtedness income, arising from the write-down of troubled farm loans. Self-employed individuals, many of whom are farmers, will for the first time be able to deduct a percentage of their health insurance premiums.

In my opinion the conference agreement did not go far enough. I wanted a longer depreciable life for single-purpose agriculture structures. I fear the requirement to capitalize preproductive expenses may introduce complexity in recordkeeping for some farmers. I am deeply concerned about the adverse impact of repealing the capital gains exclusion, the ITC, and income averaging. For farmers lucky enough to be making money, these are the tax preferences that reduce their tax liability the most. The loss of these items may cause some increase in their tax liability in the short-run. For those farmers going out of business, loss of the capital gains exclusion and income averaging could be a problem. Only time will tell whether it was worth giving up these items for what I believe will be a positive effect on agriculture in the long run.

There are some other provisions in this bill that I don't like. While all can agree that the passive loss rules are the right result, I'm sure many of my colleagues share my concern about the retroactivity of these rules. Some relief was provided for low-income housing projects and historic rehabilitation tax credits in the conference report. That is only a partial and inadequate answer for those individuals who have invested in other real estate partnerships, and the banks that hold the mortgages on the property.

I'm quite concerned about the limitation on the deductibility of mortgage interest. A similar provision was defeated in an amendment on the Senate floor. But the conference agreement goes beyond the scope of even that amendment. As I understand it, individuals will no longer be able to deduct mortgage interest in excess of the fair market value or their cost basis in the house and capital improvements, plus loans taken out for medical and educational expenses.

Because the budget deficit remains the No. 1 problem for our economy, I have never been the greatest enthusiast for the tax bill. But I have remained committed to participating in the process, and seeking to achieve the best possible tax bill for the people of Iowa. This bill isn't close to everything I wanted. But in the final analysis, I believe it is a step forward, an improvement over current law.

There is no doubt the progress this bill makes toward putting fairness in the tax system is tempered greatly by provisions the impact of which, simply cannot be known. The massive changes to the Code, and the interaction of these provisions will not be discovered fully until taxpayers begin to file their tax returns in 1988. I have no illusions about this being the tax bill to end all tax bills. I'm sure the Finance Committee will be back at it next session; modifying, correcting, even repealing, portions of this bill. But that is the process. And in the long run, I believe the process works. Adoption of this conference agreement is forward progress in creating fairness in the tax system.

Mr. McCONNELL. Mr. President, as I rise today in support of the Tax Reform Act of 1986, I would like to thank the distinguished chairman and ranking minority member of the Finance Committee for their remarkable efforts and leadership throughout this entire process we have come to know as "Tax Reform." I would just like to make a few brief remarks concerning this legislation, and why I believe it is vital the Senate give its approval and send this bill on to the White House.

Mr. President, this bill will make great strides in restoring public confidence in our tax system by simplifying the tax filing process, removing the incentive to engage in tax avoidance schemes by significantly lowering rates and insuring investment resources are put to their best economic use and not bottled up in unproductive tax shelters. This bill will take 6 million of our Nation's working poor off the tax rolls, giving them an extra incentive to pursue productive employment, and it will place four out of every five taxpayers in the lowest possible tax bracket.

Mr. President, this legislation, which will achieve the most sweeping reform of our tax system in the last half century, offers significant hope for working Americans who believe that our current income tax structure is too complex, too weighed down with special provisions, with rates too high to be fair to most taxpayers. One of the greatest obstacles to voluntary compliance and lack of confidence in our system is that it's just too complex. It is no wonder that 40 percent of individual tax forms and 60 percent of all long forms (1040 forms) are prepared by paid professionals. As many before me have stated, this bill may not be perfect, but it represents a giant step in the right direction.

Of equal, if not greater importance, Mr. President, is the fact that tax favors which reward unproductive investment will be removed. Significant resources have been denied our Nation's manufacturing sector which could have utilized this capital to improve its competitive position through research and modernization. It is vitally important that we not continue to deny these essential investment resources, particularly in light of the record trade deficits we are now experiencing. Because this capital will no longer be bottled up in unproductive investment schemes, this bill will help to spur small business, which is our Nation's greatest source of job creation and economic growth.

Mr. President, despite the great improvements this bill promises, it is not without its downside. I speak primarily of the bill's retroactive approach in many of its provisions. Most of us were taught that its just not fair to change the rules in the middle of the game. Further, the retroactive nature of this bill will cast economic hardships on many who took risks and devoted their hard earned dollars based on promises the Government made to them. It's too late to change this aspect of the bill, and I hope that something may be done in the not to distant future to help those whose ill fortune it was to place their trust in their Government.

In summary, Mr. President, I would just reiterate that I believe that on balance, this bill is not only in the best economic interest of the country, but offers significant hope for the working poor of America as well as the average taxpayer, who will pay no more than 15 percent of his income in taxes. I believe this bill represents a tremendous accomplishment and successfully demonstrates true dedication to the public welfare.

Mr. GORTON. Mr. President, I would like to direct a question to Chairman PACKWOOD in reference to the statements on page 690 of the Statement of Managers relating to the use of electricity pursuant to certain pooling and exchange arrangements. Power pooling and exchange are universal and essential elements of efficient energy management in the Pacific Northwest and elsewhere. It is my understanding that these statements are not intended to subject such pooling and exchange arrangements to an additional set of tests, but rather simply to identify certain types of arrangements that do not give rise to trade or business use.

Specifically, the Bonneville Power Administration is involved in two types of pooling and exchange arrangements as part of its statutory responsibility to manage the Federal hydroelectric system in the Northwest. The first uses coordination agreements, in which both governmentally owned and investor owned utilities make power available to a power pool. Each utility has the right to draw power from the pool which approximately equals the amount of power made available to the pool. Because of variations in rainfall, snowfall, and runoff, some of these agreements have to utilize a 4-year critical water planning period to coordinate the use of each utility's hydroelectric resources in a manner that is most efficient for the region as a whole.

The second residential purchase and sale agreements mandated by the Regional Power Act. Under these agreements, Bonneville exchanges power with both governmentally owned and investor-owned utilities for the purpose of spreading the benefits of Federal hydroelectric energy to the residential customers of these utilities.

It is my understanding that neither of these arrangements gives rise to a trade or business use of bond proceeds on the part of Bonneville. Is that correct?

Mr. PACKWOOD. Yes; that is correct.

Mr. WILSON. Mr. President, the State of California is fortunate to be one of the foremost producers of agricultural commodities in the Nation. One of the crops that recently has experienced great growth in the California agricultural industry is pistachios.

In the past 10 years, production of pistachios has increased from approximately 300,000 pounds to approximately 70 million pounds. The growth continues as trees that were planted in the late 1970's are now beginning to produce commercial crops.

The pistachio industry has engaged in a progressive program to fight unfair trade practices by the Iranian Government and its growers of nuts and has recently begun to establish itself as an exporter of premium quality pistachios.

Due to a concern that the benefits of the successful trade actions would result in overplanting of trees by domestic farming syndicators, the industry sought a provision in the Tax Reform Act of 1986 that would require the capitalization of preproductive expenses involved in planting and cultivating pistachios. As a result, the House version of the Tax Reform Act provided that capitalization of preproductive expenses incurred in growing pistachios would be required.

Ranchers of other permanent crops who are governed by the uniform capitalization rules and who produce a crop with a preproductive period exceeding 2 years have the right to elect either to expense their preproductive costs and receive an immediate deduction or to capitalize their preproductive costs and depreciate them over the life of the plant—an opportunity not granted to pistachio ranchers.

When the Senate version of the Tax Reform Act was issued it included the requirement that passive losses in excess of passive income could not be used to offset income that a taxpayer received as wages, salary or portfolio income. This provision, coupled with the additional requirement that farming tax shelters could not use the cash method of accounting, will effectively limit the number of syndicators that are interested in becoming involved with a crop such as pistachios, that requires 8 years of preproductive time before a viable product is available for marketing.

In effect, the language of the Senate bill provided protection to all farms from potential overproduction by syndicators.

Upon learning of the terms of the Senate bill, the industry appealed to the House and Senate conferees to allow the continuation of expensing so that the legitimate growers would not be negatively affected by having to deduct the expenses incurred over the 8-year preproductive period. The concerns regarding syndicators were diminished by the restrictions of the Senate bill.

Unfortunately, when the conference report was issued, the language of the House bill requiring capitalization by the pistachio growers was included despite the inclusion of the restrictive passive investment terms.

At this time, it is too late to remedy the inclusion of the capitalization requirement other than to allow the matter to be resolved through the future tax legislation to resolve the pistachio rancher's dilemma.

The pistachio industry seeks only the same treatment that is accorded other permanent crops and requests that consideration of its appeal be given attention in 1987.

Mrs. HAWKINS. Mr. President, the tax reform bill before us here today is indeed a historic piece of legislation. Since 1980 President Reagan has worked to reform our tax laws. In so doing, both houses of Congress have tangled with simplifying and making our current Tax Code more fair and progressive. As the Senator from Florida, a State with no income tax, I've been a strong proponent of tax fairness and simplification for a number of years. However, the tax reform process here in Congress was not an easy one. I was disappointed many times along the way.

I was disappointed when the Senate tax bill eliminated the full IRA deduction, and the State sales tax deduction, last July. I fought with a number of Senators to reinstate the IRA's on the Senate floor, but we only came away with a promise that the issue would be addressed in conference and it was, partially. The IRA and the State sales tax deduction was not a tax loophole and it was not an abused tax provision. The IRA was a tax law intended to increase savings and it provided 28 million Americans with a supplemental retirement program.

I remain very concerned with the retroactive aspects of this bill. Deductions for investments made over the years in complete compliance and even encouragement of the current tax law will now be eliminated. The Constitution of the United States in criminal matters has never allowed for ex post facto laws. This is perhaps, the provision which concerns me the most, it will be an area which will be revisited in the future and I hope be made more equitable, for its sets a bad precedent. Another provision mistreated in conference was the elimination of subpart F regarding American flag ships. The removal of this provision will severely affect the cruise ship industry in this country. The provision was retained in the Senate bill but was eliminated in the Senate-House conference. It is my understanding that this and the State sales tax deduction provisions will also be revisited in the near future.

While I still harbor some fears over the real progressivity of this bill, it is a historic step in the right direction. This legislation establishes a true foundation for future reform. It does eliminate a number of loopholes specifically, it calls for a corporate minimum tax, under this bill all corporations will pay a tax.

The centerpiece of this reform is the two new income tax brackets of 15 and 28 percent. By eliminating the current 14 tax brackets, taxes will be cut for millions of Americans. The broadening of the tax base reduces the top individual effective tax rate from 50 to 28 percent, the lowest it has been in 50 years, 80 percent of all taxpayers will receive a tax cut of close to 6.1 percent. This is historic and major reform. While it is not perfect tax reform, 6 million of this Nation's elderly and poor will be taken off the tax rolls. Low-income housing deductions are still intact under this bill.

Mr. President, my faith in the Tax Reform Act, hinges not only on the provisions of this tax bill but on the ingenuity of the American spirit, on the industriousness of the American people. Since 1980 President Reagan's reform of our Tax Code has resulted in lower tax rates and soon a new corporate minimum tax. It has resulted in a drop in individual tax rates of close to 40 percent. As this historic debate continues we must not forget that back in 1980 the top individual rate was 70 percent. I feel that in time this new reform will bring about tax simplification, greater allocation of investment resources and new economic growth and fairness.

Mr. HATFIELD. Mr. President, before we vote to adopt the conference report on H.R. 3838, the Tax Reform Act of 1986, I want to briefly discuss my reasons for deciding to support it.

In reviewing this legislation, I have attempted to evaluate each provision in the context of how it fits in the entire bill. As with all legislation, there are provisions in H.R. 3838 I support and those with which I disagree. Ultimately, my decision comes down to whether the advantages of this tax bill, taken as a whole, are greater than the disadvantages. After careful consideration of the conference report, and with confidence in the good efforts of my colleague from Oregon, Senator PACKWOOD, I conclude that they are. I believe this tax bill is superior to current law, and have decided to vote for it.

Mr. President, I have long advocated the reform of our overly complicated Tax Code and have introduced my "Simpliform Tax Act" in every Congress since 1972. Simpliform incorporated five basic reforms: First, broadening the tax base; second, reducing the number of exemptions, deductions and credits; third, lowering the marginal tax rates; fourth, simplifying the Tax Code; and fifth, providing incentives for saving.

Our present Tax Code is hopelessly complicated and burdened with loopholes and special provisions that promote inefficiency and inequity. The cost to the Treasury for the total amount of personal and corporate tax breaks currently in the Tax Code has increased from $36 billion in 1967 to $427.5 billion in 1985. Because of the tendency to expand the size and scope of available tax breaks each time Congress amends the Tax Code, less than half of personal income is currently subject to income taxation.

In the last 32 years, we have come to view the Tax Code not as a means to efficiently raise the amount of money needed to operate the Government, but rather as an instrument of social intervention, as a method of fine tuning the economy, and as a vehicle to subsidize favorite causes and industries. Because of the current state of the Tax Code, taxpayer confidence has been seriously eroded and we are losing the foundation of our tax system: Voluntary compliance.

I am gratified that the tax reform bill before us today incorporates some of the basic reforms contained in my Simpliform Tax Act. By reducing the number of deductions, exemptions and credits, this bill broadens the tax base of every taxpayer. In exchange, the marginal tax rates are substantially reduced to 15 percent and 28 percent, thereby lowering the tax burden for most Americans. Certainly the reduction of the tax rates is the single most important feature of this legislation.

I am pleased that the bill increases the personal and dependent exemption and the standard deduction. These changes, along with an increase in the earned income credit, will eliminate approximately 6 million working poor families from the tax rolls. The significance of this change cannot be understated.

The bill also provides for a new alternative minimum tax for higher-income individuals and corporations, ensuring that all taxpayers will pay their fair share of taxes. Most economists believe that this monumental tax reform effort will benefit our economy in the long run by promoting investment decisions which are based on economic, rather than tax, considerations. Under this bill, our country's capital will be directed toward more efficient uses that have an economic return, thus creating jobs and economic growth, rather than toward those uses which have special tax breaks attached to them.

I do admit, however, that I do not like some provisions in this bill. The elimination of capital gains for individuals and corporations likely will have a serious impact on Oregon's Christmas tree farmers and small woodlot owners. I am certainly concerned about this sector of Oregon's economy and have communicated that concern to the chairman of the Finance Committee. I will be keeping a watchful eye on how this change will affect Oregon's timber industry.

I also disapprove of the retroactive application of some provisions, such as the elimination of the investment tax credit. I am equally concerned with the wide swings in revenue this bill produces over the next 5 years, further complicating our budgetary process. Nor do I believe that a revenue neutral tax bill is appropriate in the face of our immense budget deficits. In fact, we will likely be back on this floor in the near future talking about raising the corporate and individual rates to make up the forecasted revenue shortfalls.

Mr. President, this is by no means a perfect bill; but taken as a whole, I believe the anticipated benefits of this legislation outweigh the suspected costs, and believe H.R. 3838 is an improvement over current law. Therefore, I will vote for the bill.

Mr. STEVENS. Mr. President, as we are now completing our efforts on tax reform I would like to take a few minutes and commend the efforts of Mark Springer of my staff. Mark has been on assignment in my office for the last year as a tax fellow. Mark has worked tirelessly on this bill from its very inception, and in all of its various forms through the conference report that is here before us today. He is highly competent, and among the finest professionals that I have had the pleasure to work with during my tenure here in the Senate.

Today, on behalf of myself, and the State of Alaska I want to thank Mark for his effort and his competence in seeing our concerns through the end of this process. I would also like to thank Mark's wife Susan, and their young baby Allison for their cheerful tolerance of the late hours that accompanied the work on this bill.

Mr. PRESSLER. On May 27, 1985 President Reagan spoke to the American people from the Oval Office. The topic was tax reform. His speech was filled with hope and promise. Businessmen and individuals alike embraced the President's message. The movement to reform our Nation's Tax Code was begun in earnest.

"I want to talk about taxes;" said the President, "about what we must do as a nation, this year, to transform a system that's become an endless source of confusion and resentment into one that is clear, simple, and fair for all * * *."

Now, almost a year and a half later, Congress nears a final vote on the most sweeping tax legislation in 50 years. Unfortunately, I believe the ideals we set out to achieve have been lost along the way. There is no doubt the bill contains many excellent provisions. However, on balance, the bill does not make the Tax Code clearer, simpler, or fairer.

I support the concept of tax reform. It is a most worthy goal. But, Mr. President, this is tax reshuffling, not true tax reform. I joined with many of my colleagues in various efforts to improve this bill. During Senate consideration, I fought for concepts I believed to be vitally important. Those of us supporting these issues did not carry the day. That is fine. It is how this system works.

I do want to thank the members of the conference committee for working with me to obtain a number of transition rules for projects which are extremely important to my home State of South Dakota. These will serve to mitigate some of the damage this legislation will cause. Unfortunately, Mr. President, a handful of transition rules is simply not enough to convince this Senator we are doing the right thing by allowing this bill to become law. Let me take just a moment to highlight some of my concerns.

This bill will not simplify the Tax Code. It is true that many loopholes have been closed. However, the thousands of new pages of law and regulations that this bill will generate will not make the Tax Code clearer or simpler. I submit that because we did not go far enough in simplification, thousands of attorneys and accountants will create hundreds of new loopholes. This is what I mean by tax reshuffling.

Not only is this a reshuffling, but once the cards are dealt, I do not believe any of us knows what will be in the hand. Every Member of this body painfully remembers the contemporaneous recordkeeping requirement for substantiating business use of automobiles—the "log book" issue.

This provision was included in the Tax Reform Act of 1984—legislation which pales in scope when compared to the pending bill. Yet, many did not know what we had created until the Internal Revenue Service implemented its regulations. I submit, Mr. President, that the Tax Reform Act of 1986 very likely contains hundreds of log book type provisions, and we will be back here next year with the Tax Reform Act of 1987 which will do nothing more than correct the mistakes made in this bill—mistakes we do not even know exist today.

More importantly, the bill fails to achieve fairness. While numerous provisions of the legislation are unfair, perhaps the most glaring example is the section which eliminates the itemized deduction for sales tax expenses, while retaining the deduction for other State and local taxes. This will interfere with the right of States to choose the form of taxation used to raise revenue. The proposal is also unfair in that two taxpayers living in different States, who now pay an equal amount in overall State and local taxes, would pay different amounts of Federal taxes if this becomes law.

U.S. taxpayers would lose an average of 31 percent of their tax savings if this deduction were eliminated. However, because my home State of South Dakota has no personal property or State income tax, we stand to lose 46 percent of our Federal income tax savings. Thus, South Dakotans, who benefit least from the current deduction for State and local taxes according to Department of the Treasury statistics, would be the fifth hardest hit in the Nation under the new tax bill.

Additionally, if the deduction is eliminated, public pressure may mount to hold down taxes and spending at State and local levels. This would come at a time when the budget deficit has caused the Federal Government to require these governments to do more with their own resources.

The loss of this deduction might also result in reduced Federal revenue because States could shift their tax burdens to those taxes which remain deductible. Such a shift could conceivably reduce Federal revenue over the next 5 years by one-quarter of a billion dollars.

Mr. President, I am also extremely concerned about what this bill will do to the Nation's already beleaguered agricultural economy. While those who support the bill argue that many of its provisions will discourage outside investment in agricultural operations by those who only desire the writeoff, many of these provisions may also make things more difficult for legitimate farmers and ranchers.

Under the bill, the preferential treatment of capital gains would be eliminated and these gains would be taxed as ordinary income. This would mean farmers and ranchers would likely see their taxes increase if they sell their land and breeding stock.

The bill would also eliminate Investment Tax Credits [ITC's] retroactively to January 1, 1986. While there is some debate about whether ITC's have, in some cases, encouraged farmers and ranchers to increase their debt load by making unwise investments simply for the tax break, the credit has also served a useful purpose in many operations. In addition, farmers and ranchers would not even be able to fully redeem ITC's which they have carried forward as allowed under present law. Even if ITC's should or must be done away with, to do so retroactively is unfair. I will address the issue of retroactivity more fully in a moment.

Finally, I am troubled by the elimination of income averaging for farmers and ranchers. This has been a very important tax preference for many involved in agriculture as income in this industry tends to fluctuate widely from year to year. This change is estimated to cost farmers and ranchers $300 million. I joined with many of my colleagues during Senate consideration of the bill in supporting a successful amendment to restore income averaging. Unfortunately, the provision was dropped in conference.

Another issue which I wish could have been addressed during this process is the effective dates of the various provisions of the bill. On December 19, 1985, this body passed Senate Resolution 281 which was cosponsored by over half of the Senate. That resolution was an instruction to the Senate Finance Committee on the will of the Senate regarding the effective dates of major changes in our tax law. If I may quote briefly from the resolution:

> Therefore, be it Resolved, That it is the sense of the Senate that the effective date of any fundamental tax reform legislation should generally be January 1, 1987 while recognizing that appropriate transition rules may be necessary to avoid unintended adverse effects both on taxpayers and the United States Treasury and recognizing further that retroactive effective dates may be necessary to extend certain provisions which expire before January 1, 1987.

We all felt we had acted very responsibly when we passed this resolution. Unfortunately, the sentiment it expressed has not become reality. Several provisions contained in the conference package will be implemented retroactively. While these changes may be necessary, it is not fair to change the rules in the middle of the game. Many taxpayers have made investment decisions this year based on current law. These individuals will now find the implications of these investments to be considerably different. This is patently unfair.

Finally, we all know economists are divided on whether the bill will help or hurt our Nation's economy. Proponents tell us it will lead to capital formation the likes of which we have not seen in decades. Opponents tell us it will add tens of billions of dollars to the Federal budget deficit, eliminate jobs and greatly reduce the amount of capital available to our small and large businesses.

The fact is, Mr. President, this bill is so sweeping that computer models have not been developed which can estimate its impact on the economy. While we have had over a year of extensive hearings on various issues such as capital gains and the ITC, no hearings have been held on what this bill, with all of its sections working in unison, will do. We simply cannot be sure of what we are creating.

In fact, the bill is barely one week old. Without further study, a vote for this bill requires an incredible leap of faith. Given the current state of our economy, do we make the leap hoping we will fly and not fall? I think it is too big a gamble. We should reform the Tax Code, but in so doing, we should be as sure as is humanly possible that it is positive reform.

An extraordinary amount of time and effort has gone into ths process. Let us not be so wed to the idea of reform that we pass a bill which we do not fully understand simply because it has the word "reform" in its title. The risk is simply too great. For the reasons I have just outlined, I regret I have no choice but to vote against this bill.

Mr. CHILES. Mr. President, shortly after we passed the tax bill here in the Senate, I wrote an editorial on tax reform. I was optimistic then that we were embarking on an historic overhaul of our Nation's tax laws. I called it a good beginning. Now, after having seen the conference report, I'm afraid that it was just a false start.

The Tax Code that we have today is riddled with loopholes and special preferences. It needs to be changed. I've always been a supporter of tax reform. I always will be, but I can't support this massive overhaul of the Tax Code when it fails to deliver the promise of true reform.

We promised the American people a tax reform package that was fairer, simpler, and a boost to our economy. I don't think we've kept our promise.

The tax reform bill may be somewhat fairer. That's its most redeeming quality, but it's definitely not any simpler and it takes a big bite out of businesses at a time when the economy is sluggish and the international trade situation is deteriorating. It fails to deal with budget deficit. In fact, it will likely make it worse.

I believe the tax writing committees should be commended for their efforts to restructure the Nation's tax laws. A revised minimum corporate tax will bring many of America's largest businesses onto the tax rolls. The removal of unproductive tax shelters and preferences will equally require the rich to contribute their fair share, as well.

I would like to join with many of my colleagues today to vote for lower tax rates. But I can't. It's hard to vote against lower rates. But I believe that voting for the lower rates in this bill would be unfair to the public. These lower rates are a false promise.

The bill we are debating today is not fair to middle-income taxpayers. It promises they will pay lower taxes in the future. But this bill's revenue loses, $17 billion in 1988 alone, will come back to haunt the average taxpayer, either in the form of higher tax rates or in the form of regressive excise taxes. I don't think that's what the public wants. I'm sure that's not what they're expecting.

This bill does more than ignore the deficit. It worsens it. Gramm-Rudman dictates a maximum deficit of $108 billion for fiscal year 1988. Right now, we are having a difficult time bringing the deficit down to $154 billion. for 1988 the Gramm-Rudman target drops to $108 billion. We'll have a difficult time getting even close. The last thing we need to do now is to legislate an additional $17 billion shortfall.

It's not fair. We would be enacting a hidden tax. A deficit tax. And middle-income Americans will be called upon to pay the tab.

Mr. President, it's been said that the American public is dissatisfied with the current tax system. I believe that. There are lot of things wrong with the current system. But American taxpayers aren't welcoming this new bill with open arms either. They're skeptical. At best indifferent.

Tax reform keeps its promise of fairness—for some. It closes loopholes, cracks down on wasteful tax shelters, and beefs up the minimum tax. It removes the very poor from the tax rolls. Those are laudable accomplishments.

But how fair is tax reform when millions of low- and middle-income taxpayers will actually see their taxes rise? The Joint Tax Committee tells us that almost half of all individuals expected to see their taxes rise, earn less than $30,000. Yet those are clearly not the people who have been skirting paying their fair share of taxes through the use of exotic tax shelters.

How fair is tax reform when the average taxpayer earning between $30,000 and $40,000 receives a tax cut of a couple hundred dollars when the most wealthy individual receives a tax cut of almost 3 grand? How fair is a tax system that taxes middle- and high-income households at the same rate and, in fact, includes a higher marginal tax rate of 33 percent for upper-middle-income individuals, while offering a lower 28-percent rate for the very wealthy?

How fair is it to keep the deduction for State and local income taxes for some States but not the sales tax for others? I have a hard time swallowing that. Eliminating the deduction for sales tax is neither fair nor in the spirit of tax reform. Residents of States like Florida that rely heavily on sales tax shouldn't be singled out to lose a deduction, while taxpayers in States that rely on income tax keep theirs. This summer, the Senate agreed overwhelmingly to my resolution to restore the sales tax deduction. And the bill that went to conference at least saved part of it. It came back empty.

There are a lot of other things that don't seem fair; like the repeal of the 3-year recovery rule. Not only are the rules changed, but the law takes effect retroactively. That isn't fair to our public employees.

Homeowners can take a deduction for interest on student loans. Renters can't. The IRA is deductible for some people, but not for everyone. Certain industries were hit pretty hard. Like real estate. Oil and gas fares a lot better. That's not very even-handed.

Tax reform doesn't keep its promise of simplicity. As one tax expert put it, "One thing this bill won't provide is simplification. * * * If anything, life will be more complex."

There's nothing inherently simple about a two-rate tax structure. Or is it three?

Although there are a few less deductions and credits, there's more floors and ceilings. Blended rates in 1987. A host of phased-in provisions. The tax return won't look any simpler. Taxpayers will still puzzle over the calculations for years to come.

Tax reform doesn't keep its promise of economic growth. It takes a big bite out of businesses—$120 billion over 5 years. I won't argue with tightening the corporate tax provisions, but that could be too dramatic a shift at the present time. It certainly won't help our sluggish economy or trade defict.

The short-term outlook isn't all that optimistic. In the short-run, there could be less investment; a decline in construction activity; less national savings. This bill's corporate provisions may be prudent in the long run, but in the near term they will increase the cost of capital to beleagured U.S. companies who are already confronted with a sluggish economy and intense foreign competition.

Tax reform fails to deal with the budget deficit. At the outset of the tax debate, one of my biggest concerns was that we would undertake this enormous task of revamping the Tax Code without finding revenues to reduce the deficit. Yet, I am afraid that's what happened, and tax reform might even add to the deficit. It seems to me that's the biggest drawback of the package. We missed a chance with tax reform to do something about the deficit.

Tax reforms claims that it's revenue neutral, but there's a lot of us who feel it's actually going to lose money. If that's not bad enough, it dangles savings of $11 billion in front of us in 1987. There are those with blinders on who want to grab that money and apply it against the deficit. They conveniently forget that in 1988 tax reform loses $17 billion. They wouldn't be helping to solve the deficit problem. They would only be making it worse.

I want to make the record clear. I support true tax reform, but I won't endorse an impostor. I won't endorse a mediocre tax bill that may be slightly fairer, is definitely more complex, and is at best inconclusive on economic growth. The tax bill that came out of conference is like being served a bad meal in a fine restaurant. Because our expectations are so high, we're afraid to admit that it's not any good. We're afraid to send it back. I am not.

Mr. GLENN. Mr. President, I rise in support of the conference report, but I do so with some grave reservations. These reservations go further than a mere uneasiness about what the effect of the bill will be. They go instead to the issue of whether citizens can rely on their Government to set fair rules of the game and stick by them.

Let me first talk about the good news in this bill.

When I came to the Senate, I worked with then Senator Muskie, who served so admirably as the first chairman of the Senate Budget Committee, on some of the zero-based budgeting concepts that passed the Senate but unfortunately failed in the House. At that time, we estimated that revenue forgone through tax loopholes, preferences, and incentives amounted to $126 billion, a number we thought was huge at the time.

Through the years it has been very easy for us to vote additional tax incentives, rather than voting additional appropriations to do the same job. But in this decade, the current estimate of revenues forgone—that is, tax incentives and tax expenditures—has grown out of control, to a whopping $478 billion that is estimated for fiscal year 1986.

This is obviously an out-of-control growth that cannot go forward without dire consequences to our economy. It is long overdue for correction in this bill. Regardless of its other provisions, the bill addresses this issue by cutting down significantly on revenue forgone.

It has not been possible to get an accurate estimate of the specific effect this bill will have on reducing losses through tax loopholes. But it is clear that cutting into that enormous $478 billion item, and reducing tax rates, is the only approach that can effectively curb this unnecessary aspect of fiscal and budget policy. This consideration has been the overriding reason for my support of this bill, even though I have very serious reservations about the fairness of some of its provisions.

In any change of policy of this magnitude, I guess we must assume there will be some inequities, and I had hoped they would be kept to a lower level than has been the case with this legislation. In spite of those considerations, however, the paramount objective of reducing $478 billion in revenue forgone must stand as a major achievement of this bill and a major reason for my support.

Another important aspect of this bill is that it will encourage more and more business decisions to be made on the basis of their economic merit rather than on tax considerations. There is no economist who can predict exactly what this bill will do to the economy. However, I believe that good tax policy is also good economic policy, and there is no doubt that the bill before us is more neutral, and contains fewer loopholes and other incentives than existing law.

I realize that there are some economists, even prominent economists, who oppose this bill. They fear that shifting the tax burden from individuals to business, and cutting incentives for capital investment, will harm the economy. While I understand their point, I do not share their fears. We do, indeed, need higher levels of capital investment in our country. Nothing can demonstrate this more vividly than to travel through portions of my own State of Ohio, where millions if not billions of dollars of old capital plant stand idle, made obsolete by someone else's newer capital plant.

However, there is no direct correlation between business tax levels and economic growth. For example, in 1965, corporate taxes stood at 22.3 percent of Federal revenues; they now stand at 8.7 percent of Federal revenues; and the tax bill is not likely to increase this share of Federal revenues by more than 3 to 5 percent—far below the historical burden of corporate taxation.

Furthermore, for every economist that you can quote who dislikes the bill, you can find one or more who speak out in its favor. For example, the renowned economist, Robert Eisner, who has spent much of his career in the study of business investment, has concluded that at the most each lost dollar of tax revenues from the most effective investment incentives in the code gains only 40 cents of added investment.

With its dramatic cuts in marginal tax rates, this bill will significantly raise after-tax incomes of millions of people. It will hopefully increase respect for the Tax Code, because it will ensure that more people will pay their fair share of taxes. For many, it will simplify the horrible prospect of filling out their long forms: the large increase in the personal exemption and standard deduction means that millions more will use the short form. What impresses me most about the bill is that 6 million poor people will be taken off the tax rolls completely. I have always thought it was unfair that many people living below the poverty line had to pay taxes, and this bill corrects that problem to a large extent.

Let me now explain my reservations about the bill.

In several instances, the bill reaches back and imposes a new, sometimes high tax burden on transactions that have already taken place.

This retroactive feature of the bill goes against normal procedure and runs counter to basic concepts of tax equity. In some cases it could impose a heavy penalty on persons who relied on existing law to make substantial financial commitments. It contradicts the practice in previous tax law changes, where Congress has been careful to write transition rules that do not leave investors high and dry with investments that no longer make any economic sense.

Mr. President, let me be direct about this. I support this bill, but I have grave reservations about how it treats people who have made financial commitments using existing law. I would like to see an effective date as the date of enactment, or even next January, for such provisions as the investment credit repeal, and for prospective investments in real estate or other tax shelters. I would like to see the investor protected—especially investors who are required to pay assessments on their investment for the next several years—so that the new Tax Code does not put them into a financial bind. I realize that it is too late to make changes in the bill, but I feel strongly enough about this aspect of the bill to want to go on record.

Mr. President, a close look at the tax bill reveals a number of provisions that are either retroactive or whose effective is retroactive—such as the passive loss limitation rule. That rule, and the investment tax credit repeal, are of course the most highly publicized provisions of this kind. But let me cite some others.

Under the bill, students who have completed several years of education supported by student loans will now find that interest on their student loans is no longer deductible. Some of these loans may have been entered into long before H.R. 3838 was ever considered. Payments on these loans will extend many years into the future.

Up until now, many Federal employees, and thousands of State and local employees in Ohio, have planned for their retirement based on the effects of the so-called 3-year rule. Often that planning has involved the purchase of Treasury bonds that they will cash in during the early months of retirement, at a lower tax rate than if the rule didn't exist. Now they are being told by their own Government that they shouldn't have made this investment for this reason, and that their plans were wrong.

Under the bill, the limits on tax-exempt financing take place prospectively, but in fact its effect is retroactive. In many instances a community may have worked for years and even enacted new taxes, to finance a project that will now be denied tax-exempt financing under this bill. What the bill does is to take such projects and say, "Sorry, Jack, but you shouldn't have relied on the Government to keep the law as it was. You'll have to go back to the drawing boards and develop your project all over again."

Other parts of the bill that are retroactive in their effect include the changes in the completed contract method of accounting, and the tax credit for historic rehabilitation expenditures. Parts of the bill that are retroactive in law include the repeal of the provision allowing farmers to expense land-clearing expenditures, the limitation on the general business tax credit, gains on the disposition of converted wetlands, and certain aspects of the general utilities rule repeal.

Now I realize that some of these changes had been foreseen—the repeal of the investment tax credit, for example. I also realize that there is a vehicle for easing the pain of sudden shifts in the Tax Code: transition rules. In fact, I am pleased to see that important transition rules that I helped seek—the Cleveland Dome and the Columbus Convention Center are two examples—were accepted by the drafters of the bill.

But what about the person who isn't an expert in tax law and who didn't have lawyers and accountants looking out for him during consideration of the tax bill? And what about the Federal employees who got snookered by the retroactive repeal of the 3-year rule? Frankly, Mr. President, for all the goods things about the bill, and there are many, these cases are so troublesome as to make the bill much, much less than what was originally promised.

I shall vote for this bill, I don't know what it does to my taxes, but I do know what it does for lower income people, for those wealthy people who have paid no taxes, and for millions who have struggled with the long form. But I have some strong misgivings about this bill, and I see that I am in good company, having listened to this debate during the day.

Mr. President, I have misgivings about other parts of the bill that we shall have to watch closely. The changes in the tax treatment of gifts of appreciated property, for example, may be good tax policy on the grounds of making people pay their fair share, but they are bad tax policy so far as our support of charitable giving is concerned. Similarly, denying nonitemizers a deduction for charitable giving is bad policy, in my view, I am a trustee of a liberal arts college in Ohio, and I know how much institutions such as Muskingum College rely for their very existence on tax incentives for charitable giving.

The limits on business entertainment are based, I am sure, on a well-intentioned effort to curb abuses in this area. But what about the firm or individual that has followed the law; this change will not be fair for that taxpayer. Is this tax reform?

The limits on the use of the completed contract method of accounting are also well intentioned. However, because of this reform may tax firms for income they might not have physically received, it means that some firms will have to go out and borrow money in order to pay their taxes. Is this tax reform?

The repeal of the general utilities doctrine was intended to remove an incentive for predatory constructive mergers, but it was done crudely, and removed an incentive for mergers that have kept firm in business and people at their jobs. Is this tax reform?

Mr. President, only God can be perfectly just; and the Tax Code never aspired to that level of perfection. However, we can do something about obvious and avoidable unfairness. I temper my enthusiasm for the Tax Reform Act of 1986, and my pride for the limited share I have had in drafting it, with the knowledge that for some people this will not be tax reform but a tax increase.

Mr. HEINZ. Mr. President, it is not without reservation that I state that I shall vote "aye" on the question of passage of H.R. 3838, the tax reform legislation. The legislation is far from perfect. Many parts of it are less than desirable—some are patently unfair.

Foremost among such provisions is the retroactive denial of certain tax benefits to persons who made economic decisions in reliance on existing tax law, tax law enacted by Congress in order to stimulate specific behavior. Fair-minded people may disagree about the merits of tax preferences contained in the Code, but they cannot disagree that individuals who made good faith decisions based on existing preferences should be protected against ex post facto changes.

Those who invested in real estate ventures, Federal retirees who planned to retire under the exclusionary rule, and others similarly affected, are justifiably angry at the abrupt reversals contained in this legislation. For their government to tell them that they are to be penalized for their actions is, I believe, a breach of faith. The retroactive provisions of this bill set a dangerous precedent.

I strongly support a minimum tax provision that assures that those individuals and corporations that have avoided taxes in the past will pay their fair shares of taxes in the future. I believe, however, that the minimum tax contained in this bill is too broad. As a consequence, many capital intensive, import sensitive industries which make no profits—indeed, suffer yearly losses—will be forced into the minimum tax. They can escape only if they are able to achieve and maintain an extraordinarily high level of profits in proportion to their annual investments in machinery and equipment. The irony of this new minimum tax is that the more a taxpayer spends on capital equipment, the greater will be his minimum tax burden.

As currently drafted, the minimum tax has two rates: a 20-percent rate for the "very bad" companies and a 10-percent rate for the "slightly bad." Under this minimum tax, capital intensive industries such as steel, aluminum, mining, chemical, automobile, paper, railroads, and airlines are all "very bad" for some reason. Yet banks, insurance, and service industries are only "slightly bad." This is clearly unfair.

During the last year I have worked to eliminate many of the injustices of the minimum tax. In particular, changing the depreciation preference and allowing the ITC to be used to offset a portion of the minimum tax liability. While I am pleased that the conference agreement adopted a modified version of my proposals, I do not believe that these changes are adequate to eliminate the impact that the minimum tax will have on our basic industries.

There is no question but that the uncertainty engendered by the 2-year process of completing this legislation has exacted a toll from the economy, and I am among those who will pose major revisions in the Tax Code next year. Nevertheless, I am convinced that the minimum tax provisions contained in this bill will mortally wound the capital intensive and import sensitive industries I have already mentioned.

The minimum tax provision can be changed so that beleaguered industries are not damaged further while still ensuring that profitable corporations pay their fair share. We will undoubtedly need to visit this problem next year—or face disastrous consequences for the manufacturing sector or our economy. Taxing marginally profitable industries is bad public policy.

Ensuring a tax structure to sustain increases in productivity and economic growth in our basic industries has been a major goal of mine throughout this tax reform process. The repeal of the ITC retroactively was a decision in which I reluctantly acquiesced: However, I did so because the Senate bill improved current law depreciation. As one of the primary authors of 200 percent ACRS, I believed that in the Senate Finance Committee we had developed a depreciation system that would allow our basic industries to compete with imports. While the conference committee adopted the basic structure of 200 percent ACRS, modifications were made to asset lives. These modifications have severely weakened the Senate depreciation system. We need to monitor these changes, to make sure that they will not hamper the ability of our basic industries to compete with imports.

Throughout our deliberations, a primary concern has been the fiscal impact of this legislation. The President conditioned his support for tax reform on revenue neutrality. H.R. 3838 meets that criteria over a 5-year period. However, its year-to-year effect is far from neutral. Tax reform will generate an extra $11 billion in revenue in 1987, but it loses revenue in 1988 and 1989—$17 billion in 1988 and $21 billion in 1989. Revenue swings of this nature ought to concern all of us.

Admittedly, in comparison with total annual revenues of nearly a trillion dollars, yearly variations of $20 billion may not seem significant. The tax losses for 1988 and 1989, however, coupled with Gramm-Rudman deficit targets of $108 billion and $72 billion, respectively, will assure a headlong confrontation with the need to find additional revenues in 1988 and beyond. This almost certainly will ensure a tax increase in the next Congress.

Furthermore, I question whether the massive and overly heavy shift of $120 billion in taxes from individuals to businesses, including the repeal of capital gains, is appropriate given the fragile state of the national economy. By going beyond the $90 billion increase in business taxes contemplated in the Senate tax bill, we unduly stimulate consumption at the expense of savings and investment. A lack of investment in plants and jobs will hamper several important sectors of our economy and this risks making us less competitive in the world marketplace than we already are. Make no mistake, a failure to modernize, to invest in new plants and technology, and to ensure the viability of jobs and industries, will jeopardize our economic security in the years ahead.

There are other changes embodied in this bill that may cause some economic disruptions. The concept of partial deductibility is repugnant; any legitimate business expense should be fully deductible. Our universities and charities are carrying a disproportionate burden of this reform effort as well.

Finally, the bill before us would, unfortunately, make individual savings much less attractive than they are now. Individual retirement accounts, which have increased the public's awareness of the need to save and have stimulated individual savings, will be limited by this bill. I am pleased that the full IRA deduction will still be available for all low-and moderate-income workers, and for all workers who did not have pensions. I am concerned, however, that middle-income couples who have only a small employer pension will not be encouraged to save additional amounts for their retirement.

Having discussed what I think is wrong with this package, I shall now discuss what is positive about it.

The decision to vote in favor of this bill is not an easy one. It is not without trepidation that we sail into these uncharted waters, where no economist, however sagacious, and no computer model, however sophisticated, can predict with certainty how the American economy will react.

Some economic uncertainty is inevitable in any overhaul. However, failure to adopt this legislation today will only add to the already large burden of doubt and economic distrust to generate further uncertainty. For the last 2 years, business investment decisions have been postponed, long-term planning has been paralyzed, growth has been retarded—all businesses and investors have been waiting to find out what changes in the tax law would ultimately be made.

There is much to be said for this bill. It is the first true reform of the Tax Code we have witnessed since 1913. Serious imperfections aside, we have taken a major step toward economic efficiency. Business decisions should reflect economic conditions in the marketplace, and not the artificial superstructure of tax benefits. Millions of decisions that must be made every day in the private business sector will now begin to center on what makes sense in terms of everyday business demands.

For the first time in years, we will have a Tax Code that is premised on equity. Every survey taken in recent years has shown that the American public believes that the current Tax Code is unjust. The wealthy are able to position themselves to avoid taxes by taking advantage of the host of loopholes in the current law. Our constituents react with anger when they read about wealthy individuals and profitable corporations that pay little or no taxes. They demand a tax system that ensures that all individuals and corporations will pay their fair share of taxes. This bill answers a good many of those demands.

Importantly, H.R. 3838 is the most significant antipoverty measure ever considered. It will take 6½ million working poor off the tax rolls. Moreover, it will reduce the tax burden of those individuals who are above the poverty line but who struggle to make ends meet. It will nearly double the personal exemption, substantially increase the standard deduction, retain the child care credit, and retain indexing for inflation. The favored tax treatment of the family home is protected by continuing the deduction for mortgage interest payments.

For young people entering the work force, this bill will provide the greatest incentive of all: low tax rates. Their labor will produce take home dollars and not be consumed by oppressive taxes. Eighty percent of American workers will be in the 15 percent bracket and will not have a penny of their earnings taxed at a higher rate. This bill also continues the targeted jobs tax credit [TJTC] for handicapped and disadvantaged citizens who have difficulty finding employment. By extending the TJTC, we will tell employers: "Take a chance on these individuals, give them special help, let these people enjoy the self-esteem that comes from gainful employment." we are all the long-term beneficiaries of this employment tax credit.

H.R. 3838 would preserve the historic rehabilitation tax credit which has provided an important incentive to restore inner cities and save national landmarks for enjoyment by future generations. I am proud that my State of Pennsylvania has used this credit in a manner unprecedented elsewhere. Harrisburg, Pittsburgh, and Philadelphia stand as testaments to the value of the historic rehabilitation tax credit.

As chairman of the Aging Committee and as chairman of the Finance Subcommittee on Pensions and Investment Policy, I am very pleased with and proud of the dramatic pension reform package contained in H.R. 3838. That package is based on the Retirement Income Security Act [RIPA] which I introduced earlier in this Congress. As I have more fully explained in a separate statement, the pension reform package in this bill will ensure that the legitimate retirement benefits of the average American worker are protected.

Finally, perhaps the greatest benefit to be gained from the tax reform bill will be a restoration of the confidence in our voluntary tax system. That alone, it seems to me, justifies our efforts over the past 2 years. Recent times have seen a serious erosion in the confidence of the American people that the Internal Revenue Code was a fair and effective means of raising revenue. This measure will go a long way toward reestablishing that confidence.

Mr. SIMPSON. Mr. President, the question before us today of whether to support or oppose the conference agreement on H.R. 3838 is one of the more difficult decisions I have had to make in my tenure in the U.S. Senate. Unfortunately, we are not afforded the luxury of voting "maybe."

I have long been a supporter of tax reform. I believe that our current system has been causing serious damage to our economy. Our confusing, contradictory, and constraining tax system increasingly stifles initiative and misdirects our resources. I voted, along with 94 of my colleagues, in support of the Senate package which I believe would have gone a long way toward correcting many of the ills in our current system. Now the question we have before us is, Does this compromise with the House accomplish the same goals and would it be better than our current system? After closely reviewing the package I must conclude that to me it does not meet that test.

There are many aspects of the bill which I wholeheartedly support. The sharp reduction in tax rates for both individuals and businesses, collapsing the brackets from 14 to 2, closing many abuses and loopholes, and the tough minimum tax which would ensure that all wealthy individuals and profitable corporations pay their fair share of taxes are all major steps in the direction of tax reform.

However, I believe that the negative aspects of this bill outweigh the positive. I am especially concerned about the effects this bill will have on productivity, capital investment, and economic growth. The repeal of the investment tax credit, the elimination of the special capital gains tax treatment and the changes in the depreciation schedules will likely stunt the availability of capital for productive investments and business expansion. At a time when the United States is experiencing record trade deficits, such shocks to the business community will only further impair the ability of our industries to compete with foreign imports.

In the zeal of tax reform I believe that we may have lost sight of what makes a strong and growing economy. I—like any other Member of Congress—would like nothing better than to lower taxes for 80 percent of Americans. But we must look at the full costs of taking such sweeping actions. Transferring $121 billion in tax liabilities from individuals to businesses is a drastic move that could easily hit some already ailing and reeling industries, such as energy, agriculture, and banking, with enough of a jolt to knock them out of the box and plunge the rest of the economy into further decline or a recession. We cannot trample on businesses without paying a dear price.

There are a number of other aspects about the bill that I find especially troublesome, such as the repeal of income averaging which is so necessary for our distressed farmers and ranchers, and the retroactivity of the investment tax credit, some of the real estate provisions, and pension rule changes for Federal employees. I do not believe that it is fair to newly burden individuals for proper decisions that were made by them in the past, based on the laws that were in effect when the decisions were carefully made.

Another issue of particular concern to Wyoming is the elimination of the deductibility of State and local sales taxes. Wyoming relies extensively on the sales tax, and we do not even have a State income tax. Along with a very few other States we are rather fortunate to be able to avoid that type of tax, and I do not believe that Wyoming should be somehow penalized for its citizens' choice of revenue-raising devices.

Another issue which needs to be addressed is that of tax certainty. One of my primary reasons for support of major tax reform legislation is that Congress has fallen into a nasty and common habit of changing the rules every year or so, making planning for the future almost impossible. Tax reform was supposed to end that uncertainty once and for all. Yet, I have heard my colleagues say that they do not like many of the provisions of this bill but that they are willing to vote for this package, knowing that they will attempt to change the especially clumsy or troublesome provisions next year. Likewise, the chairman of the House Ways and Means Committee is already advocating increases in the tax rates in order to reduce the deficit. We cannot have it both ways. If we are going to make significant changes in the tax bill we should do so in such a way that individuals and businesses are allowed to plan around those changes for at least several years into the future.

I am not now prepared to take the leap of faith that is being asked of us in a vote for this legislation without fully knowing more of what the consequences will really be of such a sweeping reform of our taxation system. Although I remain very supportive of the theme of the bill—eliminating many tax credits, exclusions, deductions, and other tax loopholes in exchange for these sharply reduced and simplified rates—in good conscience I am not able to lend final support to legislation which I believe will have very negative consequences on the economy of my State of Wyoming and on the economy of this Nation.

I am not one who believes that we must pass this legislation now simply because Congress has spent so much time on the issue. I, like my good friend and colleague from Wyoming, MALCOLM WALLOP, am reluctant to support legislation which was significantly altered after the conferees signed the final agreement. Tax reform is a very serious issue that will have a very significant impact on our economy, and legislation enacting such changes should be done in a very careful and cautious manner. I applaud my colleagues—and especially BOB PACKWOOD, a superb and fair legislator who has shouldered the burdens of Atlas in moving this matter through the legislative processes—for all the time and effort that he and Senator LONG and Senator BRADLEY and others have devoted to this mammoth task—but I cannot support the final product.

Mr. HATCH. Mr. President, this conference report represents a turning point in the tax policy of the United States. No longer will it encourage investment in capital goods; no longer will it encourage investment in the future education of our children; no longer will it encourage investment in long-term projects; no longer will it encourage investment for an adequate retirement; and no longer will it encourage support for the neediest of society. This bill does not increase fairness, it does not simplify our current tax system, it does not even lower the overall burden of taxation on Americans. It does purport to lower the taxes on individuals by $120 billion and to raise taxes on businesses by the same amount. But who pays for the increased taxes on businesses? The businesses will simply pass these increased costs on to the individual consumer. Corporations do not pay taxes—people do.

I agree with the initial premise of true tax reform: To simplify the tax system; to treat individual taxpayers more fairly and equitably; to allow the free market to be the basis for investment rather than tax considerations; and to get the Government out of the business of making decisions for businesses and individuals. Unfortunately, this bill does not achieve any of its stated goals.

Indeed, some individuals may receive tax cuts, but they will also have to pay more for their housing and other goods and services.

Further, these added costs of doing business may not be equitably apportioned to consumers. In fact, it is likely that the higher costs will fall disproportionately on the poor. These are the very individuals that are supposed to benefit the most from this bill.

The tax bill already has been very disruptive to the economy. Businesses, both large and small, have not been allowed to make long-term investment decisions. Indeed, many have been penalized for decisions based on the current Tax Code. No longer will businesses wish to make long-term investment decisions, because they will fear that the law could be changed unfavorably. This uncertainty in the future will encourage shortsighted decisions that will lead to a lessening of economic activity and an inefficient allocation of resources.

Some politicians have made irresponsible statements regarding further changes in the tax law next year. Many have even called for raising taxes—while we are obstensibly attempting to provide relief for taxpayers. In fact, businesses are already anticipating the reinstatement of accelerated depreciation and the investment tax credit [ITC] and are delaying purchases of equipment. This change may become a self-fulfilling prophecy.

Individuals also will suffer because of the uncertainty created by this tax bill. No longer will they be encouraged to save and invest for the future because they will fear that the rules will be changed. No longer will individuals be encouraged to give significant amounts to private charitable organizations. No longer will individuals be able to plan for a secure retirement. The U.S. saving rate is already one of the lowest in the world. This can only lead to further burdens on Social Security and other Government programs.

The bill actually results in a revenue loss over the long term; that is, beyond 5 years. This happens because many so-called sources of increased revenue rely on timing changes. These changes in the tax law, depreciation for example, simply shift future deductions outside the 5-year scope of the bill. Taxpayers will still be depreciating the same aggregate amount, but the deductions are simply spread over a longer period of time. So while tax revenues are supposedly neither increased nor decreased over the next 5-years, revenue in subsequent years, so-called outyears will actually be lower.

The bill will have an impact on the budget deficit in 1987 and for years to come. We have been told that this bill is revenue neutral; but if I had a nickel for every revenue estimate made for this tax bill, I wouldn't just represent Utah; I'd own it. The bill poses a greater threat to our efforts to control the deficit than does the uncontrolled spending of many in Congress.

While I believe that this bill is not good for Americans overall, it does contain certain transition rules that help to mitigate some of the most negative consequences of this bill. Chairman PACKWOOD deserves a great deal of credit in balancing the multitude of requests for transition rules which he received. He has succeeded, where others before him have failed, in devising a sweeping modification of our Tax Code.

Kennecott Copper will be permitted to use current law depreciation and the investment tax credit [ITC] for its Bingham mine modernization project. Western Airlines will be permitted to use current law depreciation and ITC for the purchase of 21 aircraft. Kaiser Power will be permitted to use current law depreciation and ITC for a cogeneration plant to be constructed in Sunnyside, UT. The Trolley Square shopping and entertainment facility also will be permitted to use current law depreciation and ITC.

The Denver and Rio Grande Railroad will be permitted to use accelerated depreciation and ITC for railroad grading and tunnel boring equipment used in the reconstruction of the railroad which was damaged by a mudslide in Thistle, UT.

Geneva Steel will be permitted to carryback 50 percent of its unused ITC for 15 years against taxes previously paid.

The Utah Municipal Finance Cooperative for 103 cities will be permitted to issue tax-exempt bonds which are exempt from having to remit earnings from the investment of the bond proceeds to the Federal Government for 3 years.

While these transition rules are good for Utah, they would not be necessary if it was not for this bill. In fact, I am disappointed that many other transition rules were not included in this bill. This fact alone illustrates the inherent unfairness of this bill. There are still too many unanswered questions. Mr. President, I intended to vote no. We must have sound economic reasons to vote for a bill with such a broad scope. It is said that justice is blind, but are Congressmen and Senators blind too. We in Congress will be taking a big risk with our economy by passing this bill. I will be closely monitoring the bill's effect on the economy, and I intend to take appropriate action to mitigate any negative consequences.

Mr. HEINZ. Mr. President, I want to address one specific area of H.R. 3838. It is an area of generally good news in a bill where I otherwise have singled out serveral provisions about which I have serious reservations.

The good news is the dramatic pension reform package. The pension reform provisions in this bill will make the average American worker a big winner in retirement security.

Two years ago we celebrated the 10th anniversary of ERISA—the Employee Retirement Income Security Act. Younger workers today, however, still face a tough challenge: they are going to have to build retirement resources to stretch further than any generation before theirs.

Unfortunately, for most people today, collecting a pension benefit is still a gamble. Half of the work force isn't even in a pension plan. Many of those who are in pension plans never earn benefits or lose their benefits after they are earned. As a matter of national policy, we need to improve pension security for the average worker by bringing more people under pension plans and fitting pensions more effectively to the reality of today's mobile work force.

The pension provisions in this bill were carefully considered and badly needed. Senator CHAFEE and I culled from 2 years of work with experts from business, labor, and government the ideas that were embodied in the Retirement Income Policy Act [RIPA] that we introduced last fall. The reforms in our bill were the subject of hearings in both the House and the Senate, and ultimately comprised the body of the pension reform provisions included in this tax bill.

Mr. President, the result is, I think, a tax bill with the right mix of pension reforms to really boost retirement income in the future. For families whose breadwinners are today in their thirties and fourties, the tax bill would raise the average pension income by 22 percent and reduce the number reaching retirement without pension income by 37 percent.

In the decade 2011-20, there will be some 22 million families who will be receiving higher pension incomes as a result of this bill. What that means in terms of the average family who would get a pension 25 years from now is—in 1986 dollars—roughly an increase of $1,800 a year every year in retirement.

These retirement income gains would come about because the tax bill would make employer plans a safer bet for the average worker, bringing more people under pensions, making it easier for them to earn benefits, and making it more certain that they receive the benefits they earn.

First, it would bring more people under plans so they can begin earning benefits. Under current law an employer can set up a pension plan for some employees and not allow other employees to participate. In fact, an employer can have a plan that excludes nearly half of his employees—or even more if the IRS can be assured that the plan isn't solely for the most highly paid employees.

The tax bill would force employers to cover more of their lower paid workers. The bill would reduce the proportion of lower paid employees who can be excluded from the pension plan to 30 percent. Alternatively, it would make it difficult for an employer to get IRS approval if plans were not provided for all or nearly all employees.

The second major change is to help more people who are in pension plans earn benefits. Today, most people have to stay with the same employer for 10 years before they have earned the right to receive a benefit, or are "vested" in their pension plan. If they are in the pension plan, and they leave after 9 years and 6 months, they receive nothing.

The tax bill shortens the vesting period from 10 years to 5. In the first year alone, the 5-year drop would entitle nearly 2 million additional workers to benefits. Thereafter, millions of mobile workers who would have earned nothing before will have an opportunity to earn retirement benefits.

The third major pension reform in the tax bill is to limit the ability of an employer to deprive lower paid workers of their pension benefits because their Social Security benefits are considered adequate. Employers today can keep low-paid workers out of a pension plan or eliminate their pension benefits when they retire by "integrating" the benefit with Social Security.

The Senate tax bill would end this kind of abuse. Under the Senate bill, employers who combine the Social Security and pension benefits would still have to give an employee at least half of the pension benefit they would have had without considering Social Security.

Finally, the Senate bill would encourage people to keep pension money in retirement plans and thus ensure its availability for their retirement. Many pension and savings plans today let employees cash out their pension money if they leave the company before retirement. Recent studies have shown that only 5 percent of the pension money cashed out for employees before retirement is rolled into another retirement savings account. As a result, too much retirement savings is being cashed out and spent for cars and vacations before retirement ever occurs.

The pension provisions in this tax bill clearly would make saving more attractive than spending. Tax benefits would continue only if the employee rolled the money into an IRA or another retirement plan. Retirees, on the other hand, could continue to take their benefits as retirement income without penalty.

Mr. President, quite rightly this bill focuses on getting people retirement benefits from their employer-sponored plans. Employer pensions, after all, will be the main source of retirement income for most of today's workers. Already, more than half of the work force is covered by a pension at their place of work, with more than $1 trillion already invested to pay their future benefits. While these plans benefit the owners and highly paid executives, they also benefit the lower paid, rank-and-file workers who otherwise might have great difficulty saving for retirement.

While the pension reform provisions of this tax bill are generally sound retirement policy, the final version, as it has been reported from the conference committee, is not everything I would have wanted. I am particularly concerned that as this bill has moved through the legislative process, provisions have been added that may discourage retirement savings, reduce some of the incentives for employers to sponsor plans, and possibly reduce pension funding.

When we introduced the Retirement Income Policy Act last year, our intention was to encourage individual savings for retirement to supplement employer-provided pensions benefits. The bill before us would unfortunately make individual savings much less attractive than they are now. Individual retirement accounts, which have increased the public's awareness of the need to save and have stimulated individual savings, will be limited by this bill. I am pleased that the full IRA deduction will still be available for all low- and moderate-income workers, and for all workers who do not have pensions. I am concerned, however, that middle-income couples who have only a small employer pension will not be encouraged to save additional amounts for their retirement.

In addition, the final version of the bill would make the thrift and savings plans and 401(k) plans that employers have sponsored much less attractive. The limits, restrictions, and tax penalties that have been placed on savings in employer plans are greater in this bill than in the earlier Senate version. While I have supported the idea that we should emphasize employer-financing of retirement benefits, the excessive restrictions on individual savings plans incorporated in the final version go beyond simply restoring that emphasis—they may well discourage responsible savings among younger workers and rank-and-file employees. I hope this does not prove to be the case.

There is also a danger that the combination of pension reforms and lower individual and corporate tax rates may discourage some employers from adopting pension plans for their employees. A major goal in our Retirement Income Policy Act was to simplify some of the complex pension rules that made administering a pension plan burdensome. I had particularly hoped that we could simplify the coverage tests, integration rules, and section 415 combined limits on benefits and contributions. Unfortunately, with the exception of the integration rules, I think the final bill adds complexity in these areas. Even the integration rules did not come out as simply as I had hoped.

I am particularly concerned about the combined effects that the pension reforms and lower tax rates may have on pension coverage among small employers. Pension plans are already too scarce among small employers, and this bill may well make a pension impractical for a small employer who doesn't already have one. Next year, the Congress must begin to look for ways to make pensions more attractive for small companies.

Finally, we had hoped, when we introduced the Retirement Income Policy Act, to encourage more stable funding of pension plans by simplifying the section 415 limits and indexing them for wage increases. While the 415-limit changes represent some progress I regret that they create some incentives to underfund pension plans. This is particularly true of provisions for an actuarial reduction in the limits for early retirement, which will make it impossible for employers to fund benefits they now provide. In light of the concerns that are now surfacing about underfunded pension plans, this change is bad policy.

Even with these limitations in the final bill, I am generally pleased with the substantial and necessary pension reforms we have accomplished in this tax bill. These reforms will truly help the average workers. They stand as one of the strongest threads in the fabric of this bill.

Mr. SPECTER. Mr. President, after careful thought and extensive consultation with my constituents, I have decided to vote in favor of the conference report on the tax reform bill.

During my Senate service, I have seldom seen a bill on which the public's reaction was as ambiguous as it is on this one. On the one hand, there is genuine enthusiasm in my State, in the country, and the U.S. Congress for the goal of simplification, and certainly, for lower rates.

The provisions of this bill which remove millions of low-income people from the tax rolls and which reduce rates of taxation for low- and middle-income people are major accomplishments. All of us in the 99th Congress will be able to look back with pride on having achieved passage of such provisions, which have eluded us so often in the past. And more generally, this bill should have a beneficial effect on the economy because it will reduce the incentive to base investment decisions on tax considerations, and increase incentives to invest in projects that will be genuinely profitable and productive.

On the other hand, a number of provisions in this bill give me serious concern. It is my sense that it will be necessary for us to revisit some of these issues next year, and I personally will support efforts to do so. Among the important questions that I believe will need to be revisited are:

Whether the bill establishes rates of taxation that are sufficiently progressive. I question the fairness of taxing those with incomes of $29,000 per year at the same rate as those with incomes in the millions of dollars. I supported an amendment to add a higher bracket for the very wealthy. I remain very concerned about this aspect of the legislation.

The nondeductibility of contributions to individual retirement accounts. Although the lower tax rates in this bill should reduce the negative effects of eliminating this deduction, I believe the deductibility of the IRA's should have been retained. As we develop a better sense of how the tax bill works in practice, I believe we will need to consider an amendment on this issue.

The provision of the bill providing for taxation of unemployment compensation benefits. In portions of my State that have not fully benefited from the economic recovery, many unemployed people simply cannot understand how Congress could make life even more difficult by imposing a tax on benefits for people facing an already difficult situation. For steelworkers and coal miners who have been out of work for 1 year, 2 years, or even longer, this is a blow that simply is not acceptable. We should rethink this provision.

The change in rules for taxation of Federal employee pensions. Previously, the first 3 years of pension benefits for retired government employees were treated as a payback of the employee's contribution, and thus were tax free. Under this bill, the employee contribution will be amortized over the actuarial life of the pension, so that taxes will have to be paid beginning in the first year of the pension. To impose this change on employees who have been planning their retirement on the assumption that the first 3 years would be tax free is simply unfair. We must reconsider this issue, too.

The elimination of the deduction for union dues. In some unions, these dues are quite expensive. Many union members have contacted me, expressing the feeling that they are being treated unfairly because certain other business expenses will remain deductible for management.

The elimination of the investment tax credit. This tax provision has been of immense benefit to heavy industry, which has long been the cornerstone of Pennsylvania's economy but which is now suffering terribly under a floodtide of imports that are subsidized and dumped by foreign governments. The elimination of the ITC, like taxation of unemployment benefits, is viewed by many as an attempt to kick someone who is already down.

The further restriction imposed by this bill on industrial development bonds, which are of tremendous importance to local municipalities in Pennsylvania and around the country in promoting and directing economic development. Again, as a representative of a State still recovering from major economic problems, I am deeply concerned about any further loss of this important job-creation tool.

The elimination of the elderly exemption and the increase in the minimum threshold for deducting medical expenses from 5 percent of income to 7.5 percent. Many senior citizens on tight budgets are deeply concerned about these changes.

The need for these changes must not cause us to lose sight, however, of the many improvements that have been made in this bill since tax reform first began to be discussed in the 99th Congress. Among the improvements that have been made are:

There will be no taxation of fringe benefits as originally proposed by the administration. Many Pennsylvanians and others bitterly opposed this idea;

There will be continued deductibility of State and local taxes, which will help State and local governments maintain current levels of service;

The depletion allowance for coal, a hard hit but vital industry in the Commonwealth of Pennsylvania, will be maintained;

Proposals to tax the inside buildup of life insurance have been rejected, thus protecting this valuable investment for millions of Americans;

A $500 million transition rule for the investment tax credit has been included for the steel industry, which simply cannot afford any further adverse developments under the law or otherwise for the immediate future.

Mr. President, I could discuss many more aspects of this extremely long and complicated bill, but I can sum up my thinking by saying that the pluses outweight the minuses, especially when this bill is compared with current law. Overall, this conference report will improve our tax system, although it will still leave us far from perfection. In the 100th Congress, we must strive to inch still closer toward the best tax system possible, especially as regards the issues I have mentioned earlier. But to throw away this opportunity for improvement would be a mistake. That is why I am voting "aye."

Mr. MATSUNAGA. Mr. President, as the foremost advocate of renewable energy in the U.S. Congress I am pleased to report that the Tax Reform Act of 1986 reaffirms our Nation's commitment to the development of renewable energy. This should provide many of my colleagues, as it does me, with additional reason for supporting the pending conference report.

Mr. President, it is my firm conviction that unless we establish ourselves as an energy self-sufficient Nation, we shall never be able, fully and effectively, to control our own economic destiny. This imperative, in turn, requires us to exploit our renewable energy resources and to broaden the mix of these sources that we employ—in our industries, in our commerce and transportation, and in our households.

The conference report on the Tax Reform Act of 1986 (H.R. 3838) contains a number of provisions of significant benefit to the development of renewable energy. Under this legislation, the solar business energy tax credit is extended for 3 years through 1988; the geothermal business energy tax credit is extended for 3 years through 1988; the ocean thermal energy credit is extended for 3 years through 1988; and the biomass energy credit is extended for 2 years through 1987. As the author of this amendment which I offered during the Senate Finance Committee's deliberations earlier this year, I am pleased that the House conferees, as well as the full House membership, have now joined in this vital commitment.

The conference report contains another provision which I proposed, and which will be of particular benefit to the renewable energy industry. I refer specifically to the retention of the 5-year depreciation treatment for solar, wind, geothermal, ocean thermal, and biomass property.

Finally, Mr. President, the conference agreement provides for a transition period for supply or service contracts from the repeal of the investment tax credit. Where a company already is legally obligated to build generating facilities in order to meet a qualified power sales contract, the facilities are grandfathered for the tax credit. The supply or service contracts rule will provide for the orderly transition of business operations under the new law.

Mr. President, in the face of international trade competition in technology, the tax credits and accelerated depreciation treatment provide necessary backing for the domestic renewable industry. In the business of renewable energy, technological discoveries and developments require rapid changes in the industry. This is true for all domestic manufacturers, but especially for our high technology sectors. To remain at the leading edge, our domestic industries must adopt the best technology and the best commercial applications. This competitive strategy requires not only business flexibility, but it also requires continued research and development. Without this basic work, we will never be able to rejuvenate our industrial base. In this regard, the Federal Government has a responsibility to help lay the foundation for dynamic industrial growth at home.

In the renewable energy area, we have been temporarily lulled by low oil prices. This situation is hardly a permanent one. Indeed, the market is utterly unpredictable. Conditions will change and when they do, it is my fervent hope that the domestic economic dislocations which occurred in the past can be avoided because this Congress had the foresight to anticipate them. By supporting continued technological innovations in renewable energy, we will not only enjoy lower energy costs, we will enjoy the economic resiliency with which to meet any future oil crisis.

Mr. NUNN. Mr. President, I would like to extend my appreciation to the Chairman of the Finance Committee, Senator PACKWOOD, for the outstanding job he did in bringing this bill to fruition. I would also like to thank my friend, the distinguished ranking member of the Finance Committee, Senator LONG, for his leadership on this issue and for his extended service to the Senate and our Nation in the formulation of our country's tax policy. I would also commend Senator BRADLEY for his early and effective initiatives in the area of tax reform. Finally, the members of the staff should be recognized for the incredible amount of effort they expended under difficult conditions.

There are many good aspects of this bill: It reduces the effect of tax loopholes on economic decisions, removes 6 million working poor from the tax rolls and requires that a significant alternative minimum tax be paid. I support those provisions of the bill. The negative aspects of this bill have been fully set forth in debate. I am concerned about the unfairness of the retroactive sections of the bill; the lack of understandable and objective standards for the transition rules; whether lower tax rates are really going to result in lower tax bills for the middle class; the negative impact on charitable organizations including our private colleges and universities; the inequitable treatment of retirees who contributed to their retirement program.

If the question were simply this tax bill versus the present Tax Code and we could exclude all questions of our fragile economy—our eroding competitive position in the world—our budget deficit and our trade deficit—the choice would be clearer. I do not believe, however, we can avoid these essential questions in examining this bill. My concern is that, while expending great effort to bring about tax reform, this Congress and the President have not addressed these underlying fundamental questions. As we approach a vote on this matter, my overriding fear is that we have not focused on or discussed, much less analyzed, the macroeconomic effects of this bill. There has been no attempt to determine what this bill does to our competitive position in the world market. I fear the result will be negative because of disincentives for long-term investment. This is a consumption-oriented tax bill in a period when we should be encouraging savings and investment.

There has been little analysis on how this bill, if it becomes law, will compare to the tax systems of the countries with which we trade and invest. This country has a serious economic problem related to our budget and trade deficits. Our budget deficit affects our trade deficit which impacts all Americans either directly or indirectly. This bill does nothing to improve our budget deficit problem. In fact, it was designed to be revenue neutral, but I fear that it will contribute to larger deficits when all is said and done. The revenues associated with closed loopholes, eliminated tax shelters and the alternative minimum tax could have been applied against the deficit but were not. The tax bill has taken our eyes off the deficit while the deficit is eroding our ability to compete in the world.

How does the elimination of investment tax credit and capital gains affect capital formation and job creation in this country? Does that elimination give a long/term competitive advantage to companies from Japan—Europe—the Pacific basin? I fear the answer is yes. There has been little analysis or debate on these questions. I also must confess that, though I believe the lower rates of the 1981 tax bill have been helpful, I believe that this bill goes too far in this respect. I do not have an adequate explanation for single individuals with taxable income over $17,600 per year or married individuals who file jointly with taxable income over $29,300 per year who ask "Why is my rate of taxation the same as Lee Iacocca, the Gettys, and the Mellons?"

In the final analysis, Mr. President, this bill is a gigantic gamble. We are rolling dice for huge stakes. We are gambling with the American economy and our ability to compete in the world. We are playing a big poker game with no limit on the size of the bet. I have searched my mind and find that I am too cautious to support this big of a gamble. I hope I am being too conservative. I hope that the gamble pays off and America wins.

Mr. GORE. Mr. President, as the long and difficult process of tax reform, begun almost 2 years ago, comes to a close, I want to express my high esteem for the hard work by members of the Finance Committee. A revision of this magnitude is not an easy task, and it is simply impossible to accomplish in a manner that pleases everyone.

I am certainly not pleased with every provision of the conference report. However, I do believe that it will result in a fairer system in which neither very wealthy individuals nor highly profitable corporations can totally escape paying taxes. By closing many unjustified loopholes, the bill produces a little more fairness in the Tax Code and removes some distortions that have channeled investment into shelters. Moreover, it gives needed relief to the poorest of the working poor. Therefore, I support the bill.

Nevertheless, there are many specific provisions in the measure about which I have serious concerns or which I, quite frankly, oppose. Overall, I am disappointed that this bill, in many ways, does not result in simplification. That is an important goal in tax reform, and, except to the extent that this bill closes many loopholes, the goal of simplification is not served by this reform.

While the bill is fairer on the whole for the average taxpayer, there are specific items which will have unforeseen and, quite likely, unfortunate results. During debate on the Senate bill, I supported amendments to change many of these provisions. Some of the amendments did not pass and others did not survive the conference. I was not pleased at this result, and I have carefully reconsidered my support for this measure as a result.

Among the provisions which I find most troublesome are:

Elimination of deductibility of state sales taxes;

Retroactive transition for the ITC, certain real estate investments, and retiring Government employees;

Elimination of income averaging for farmers;

Elimination of deductability of interest on student loans and other provisions that will restrict the ability of educational and charitable institutions to raise funds;

Stricter limits on IRA deductability.

Finally, the impact of this bill on the economy is a subject of keen debate. However, I firmly believe that, in the long run, the economy will be stronger when decisions are made on the basis of profit and sound business judgment rather than on tax benefits handed out from Washington. The Federal Government has attempted to direct investment into areas that the free market would not otherwise support. The result has been declining corporate income tax collections and misdirected investment in the economy. Although the transition to more market freedom in business decisions may not be easy, in the long run it should result in more efficient allocation of investment in those business endeavors that produce a greater return.

I would have preferred greater progressivity in this tax bill, and I voted for an amendment during debate on the Senate bill that would have assured it. However, as my colleague, the senior Senator from New Jersey, has pointed out so ably in debate on this bill, elimination of loopholes does, indeed, produce a high degree of progressivity. Under this bill, an estimated 30,000 people with incomes of $250,000 who paid virtually no taxes in 1983 will have to assume their share of the tax burden. And, again, the bill does remove over 6 million of the working poor from the tax roles by increasing the standard deduction, the personal exemption, and the earned income tax credit.

So, while I join a large majority of my colleagues in supporting the conference report, it is not an easy decision. The concerns I have expressed make it a close question, and I fully respect the opinions of my colleagues who have concluded that these reservations outweigh the benefits of this reform effort and, therefore, oppose the bill. I do, however, support it and will vote "aye."

FOREIGN CURRENCY TRANSACTIONS

Mr. DOLE. Mr. President, I would like to address the issue of our expectations of the IRS's treatment of various issues resolved for future years by certain provisions of this bill. We are all aware that implementation of the Tax Reform Act of 1986 will add a considerable burden to the already strained resources of the Internal Revenue Service. We all expect that this increased burden will be short-term because the major reforms contained in this bill will, in the long run, encourage compliance with the tax laws and, therefore, reduce the tax administrator's burden.

Many of the legislative changes in the bill are the result of the IRS challenging, without success, positions taken by taxpayers in situations where the law was unclear. Where the bill clarifies the appropriate treatment of these issues for the future, I urge the IRS to consider settling pending cases in accord with the provisions of the bill. One issue where such consideration would be appropriate is the treatment of foreign currency exchange gains and losses.

Mr. CRANSTON. Mr. President, I support the conference report on the tax reform bill.

This bill is a progressive reform. It could be better. But it is more progressive than the original Senate bill. It is more progressive than the original House bill. And it is more progressive than current law.

An article in "Tax Notes" for September 22 reviews the progressivity effects of the 1986 tax reform bill. The article supports the view that on any index of progressivity the conference report is superior to current law, to the Senate bill, and to the House bill.

The House-Senate conferees have produced a bill that's better than either the House or Senate bill—a worthy accomplishment.

The 1986 Tax Reform Act is progressive because it broadens the tax base by closing loopholes and limiting deductions which advantage high income taxpayers. This increases the tax burden on these taxpayers and makes it possible to reduce the tax burden on lower income taxpayers. And it makes it possible to lower the rates for all individuals and corporations.

It's true, however, that the very few extremely wealthy families—those described in the report of the Joint Economic Committee as the 840,000 families who own 53 percent of the wealth of the country—will still be able to avoid paying their fair share of taxes if their income comes entirely or largely from the tax-exempt status of local government bonds. The extremely wealthy, according to the Joint Economic Committee report, own over 70 percent of all tax exempt bonds held by individuals. Tax exempt bonds were kept alive despite the reform bill because they make it possible for local communities to finance needed services and facilities.

Since early January 1985, I have held over 50 community meetings in California in which I listened to and participated in roundtable discussions with Californians of all walks of life on tax reform and other issues. I learned that Californians, like Americans everywhere, are dismayed by our loophole ridden tax system. I also learned that Californians, like Americans everywhere, were very interested in tax reform but were reluctant to let go of the system they knew in exchange for a new, unknown tax system.

That's a reasonable attitude.

Change, however, takes place in the future. And as we all know—or should know—it is very difficult to predict the future accurately. No one can promise that this tax reform bill will be successful in terms of its economic consequences. I do have hope, however, for one particular reason. Investors and business leaders should make their future decisions based less on the tax conveniences and more on the economic circumstances of a given opportunity, and that should bode well in the long run for our economy.

I will not enumerate my regrets for some of the negative aspects of the bill. I did play a part in some of the improvements that have been achieved: for example regarding retroactive transition, low-cost housing, and IRA's, and fortunately deductibility of State income taxes has been preserved.

Before I opened each community forum on tax reform I posed this question to the participants:

> Do the benefits our economy and our society derive from the current tax system outweigh the fact that it places an unfair tax burden on the majority of Americans?

That is the question we will answer finally when we vote to approve the conference report on the Tax Reform Act of 1986.

Mr. BIDEN. Mr. President, I intend to support tax reform legislation as presented by the conference. This final bill follows the form of the Senate-passed version, which I also supported. Some changes have been made with which I do not agree, but on balance it is a good bill.

I have supported tax reform since before I came to the Senate. I cosponsored the original Fair Tax Act authored by Senator BRADLEY. The present bill is based in large part on this bill. Because the Senate bill was framed on the Bradley model, I supported a no-amendment strategy during consideration of tax reform in the Senate designed to preserve that model. The conference has retained that structure. Therefore, I belive that tax reform will prove to have been the single most positive economic decision made by Congress since I became a Senator.

The long-term impact of this legislation will be beneficial. It will provide an elemental fairness in the sharing of the tax burden that is missing from the present tax law. And it will result in a more effective use of our economic resources.

The tax reform proposal before us broadens the tax base and lowers rates. Most Americans will pay a 15 percent rate and find their tax bills reduced. That is possible because other taxpayers, individual and corporate, who have been using a variety of tax shelters and preferences, will be paying a larger, more equitable share.

The bill reduces rates, to 15 percent and 28 percent, to reward work.

It includes a strong minimum tax, for corporations as well as individuals, to ensure that all who should pay, will pay taxes.

It eliminates tax shelters which have allowed so many to avoid paying any tax at all.

It increases the personal exemption as well as the standard deduction, which will result in removing 6 million lower income Americans from the tax rolls. This will also benefit many of our senior citizens.

For many Americans, the Federal income tax is the only and the most direct contract they have with the Federal Government. In recent decades, the complexity of the Tax Code, and its unfairness, have contributed to public cynicism and distrust of Government. If Government is to be effetive, we must restore public confidence in the elemental fairness of how the people's resources are used to finance it.

But this bill will also create a more efficient economy by greatly reducing tax advantage as a consideration in economic decisionmaking. Investors will give more thought to the economic value of their decisions, and less to achieving tax advantage. The Federal Government will have a reduced role in "managing" the economy. While there may be transition problems as tax advantages are withdrawn, the long term effect on the health of the American economy will certainly be favorable.

Although the bill represents a major accomplishment, I do have concerns about some of its aspects. We should closely monitor the implementation and effects of this law and be willing to make changes if necessary, when they are needed. That is one reason I voted against a proposal offered during Senate debate on the bill in June that there be no further changes in tax laws for 5 years.

When this tax reform measure was before the Senate, I expressed my concern about the need for greater progressivity in the rate structure. I supported Senator MITCHELL's amendment which sought to add a third rate and thus increase progressivity.

A study of the conference bill by the Congressional Research Service demonstrates that the effective tax rates will climb as income rises. The reformed Tax Code laid out in this bill will be more progressive than the Senate bill or even than present law. The increase in progressivity comes from the broadening of the tax base and the elimination of tax shelters and preferences. But I would also prefer a more progressive rate structure.

The long term effect of tax reform on the American economy will be positive. Its restoration of market discipline will improve the competitiveness of American business as a whole. The much lower rates and resulting greater after-tax income will be an incentive for savings and investment. Removing the Government from the business of allocating capital though the Tax Code and instead allowing taxpayers to make decisions on investment based on market considerations will lead to a stronger more productive economy.

Right now, the American economy is sluggish. Many economists are forecasting more or the same or worse in the months ahead. This weakness has been caused by the faulty and shortsighted policies of the current administration. In particular, the President's unwillingness to come to grips with budget deficits bears a large share of the blame. The stagnation in economic activity has led some to suggest that this is the wrong time to enact tax reform—that it might make the economic situation worse.

Mr. President, I just don't believe it. If the economy slows even more in the months ahead, it will not be because of tax reform. It will be because we have failed to deal with the underlying causes of recession—budget deficits, poor trade performance, the enormous domestic and world debt—and due to other factors somewhat beyond our immediate control, such as the decline in oil prices and the weakness of the economies of many other countries.

If our economy remains sluggish, Congress is likely to consider some antirecessionary action. Mr. President, I believe it would be most appropriate to link that type of action with further tax reforms, which, while building upon the reform base being laid by this bill, could also raise revenue necessary to pay for any such actions. Further reform measures might include such things as denying deductibility of interest on debt incurred for non-productive mergers and similar activities.

While some mergers make sense, in order to create economies of scale, fear of acquisition has created a corporate managerial mentality that emphasizes short-term profits to ward off take overs, rather than long-term investment to increase productivity and growth. Commitment of billions of dollars to debt service for these mergers instead of the capital investment necessary to improve productivity seems dubious to me in this trade sensitive economy. We know that the surest way to increase our competitiveness in the world economy is to increase our productivity. Certainly encouraging wasteful mergers through the tax system is a mistake and ought to be rectified at the earliest opportunity.

Tax reforms alone, of course, will not guarantee a bright future for the American economy. We have buried ourselves in the past years in a variety of problems, international and domestic. We must reduce debt and deficits. We must improve our trade performance and reestablish our position in world markets. We must work with our economic partners to solve the foreign debt problem.

The economic challenges facing us are enormous. But tax reform is a good place to start. It can restore the marvelous dependability and productability of the free market system to economic decisionmaking. It will assure Americans who work for a living that they will have a fairer share of their earnings left after taxes. It can also assure them that all Americans are bearing an appropriate share of the tax burden.

If we can restore the discipline of the market, if we can restore the faith of Americans in the financing of their Government because the system is fair, we will then have a good basis from which to move on to solving our other economic problems.

That is why I will vote for the tax reform conference report.

Mr. President, in closing, I wish to express my thanks and congratulations to the distinguished Senator from Oregon, Senator PACKWOOD—the chairman of the Finance Committee—and the distinguished ranking member of that committee, the Senator from Louisiana, Senator LONG, without whose leadership this legislation would not be before the Senate today.

Finally, let me reiterate my regard for my good friend, the distinguished Senator from New Jersey, Senator BRADLEY, who has played, in this Senator's opinion, the key role in bringing tax reform to the American people. Six years ago, I would have said a bill like this was impossible. Many times along the way it appeared the effort might fail. But the Senator from New Jersey persisted and, as a result, we now have the opportunity today to vote for truly historic legislation.

Mr. WARNER. Mr. President, it is with a sense of regret that I rise in opposition to H.R. 3838, the tax reform legislation as reported by the conference. The most serious problem confronting our Nation today is the rising Federal deficit occasioned by unrestrained Federal spending. "What does this legislation offer to lessen the burdens of this increasing deficit?"; this is the question each Senator should answer in casting his or her vote.

The economic consequences of this bill are uncertain. Will it stimulate the economy or depress it? Although this bill brings in $11 billion more revenue in fiscal year 1987, it loses $22 billion the next year. This will create another major obstacle—a need to find spending cuts or revenue to offset—Congress must overcome in meeting the Gramm-Rudman-Hollings goals. We must achieve a balanced Federal budget by 1991 as required by the Gramm-Rudman-Hollings legislation, and that task is difficult enough in view of uncertain economic forecasts.

Mr. President the reduction of the Federal deficit ought to be our Nation's top priority and this bill, I believe, could reduce our chances of meeting this goal. It took this country 205 years to run up the first trillion dollars of national debt, but only 6 additional years to acquire the second trillion. Think of it, a $2 trillion debt to be thrust upon our children! In this era of dangerously high national debt is it wise fiscal policy to create a tax system that has a rate of 28 percent for the wealthiest of taxpayers? Is this something our country can afford?

With the conflicting forecasts on the impact this bill will have on the economy, I believe it is far too risky in this era of economic uncertainty and high Federal and international debt.

Further, the retroactive nature of this bill adds to our economic uncertainties by penalizing certain businesses and individuals who had made good faith decisions based on tax laws previously passed by Congress. While the conference has made good faith efforts to provide relief in the form of transition rules for many worthy projects which fall into this category, providing enough assistance to protect all of these projects would have effectively neutralized many of the major components of this tax reform bill. Let me add that assistance for some projects and industries in my own State was included in this bill, at my request, and I commend the Senator from Oregon and the staffs of the Senate Finance Committee and the Joint Tax Committee for their assistance.

Fairness has been an integral part of the tax reform process over the last 2 years. I must ask my colleagues, however, whether the retroactive change in the tax treatment of contributory public and private sector pension plans in any way represents fair treatment. In my State alone, thousands of newly retiring Federal workers stand to lose the long-promised tax-free return of their own previously taxed mandatory pension contributions. In simple language—this is a promise broken by the very same Government that made the promise to it's own employees.

Members who bear the responsibility of representing Government retirees know the hardship the pension tax change will have. With the enactment of the tax reform package, years of careful retirement planning, planning we have encouraged, will be abrogated. It is regrettably ironic that with this singular opportunity to provide productive and fair taxation for the entire Nation, the very governmental workers who will be implementing the tax program will be among those hardest hit.

Our distinguished chairman of the Finance Committee, Senator PACKWOOD, has made a strong effort, which I appreciate, to lessen the impact of the pension tax change. My colleagues who supported us will recall that we lost 42 to 57 on the Senate floor in our attempt to eliminate from the bill the tax change altogether. Lacking that action, the final Senate provision did provide a reasonable 2-year phase-in beginning in 1988. That was unacceptable to the House conferees, Senator PACKWOOD then attempted a compromise with an effective date of January 1, 1987. That proposal would have been the minimum we would have expected in terms of fair warning and adequate notice. But no, even that was unacceptable, and we are left with the original House effective date, July 1, 1986, and full retroactive application.

I am concerned for other reasons, such as the worsening of our international balance of payment and the future uncertainty expressed by responsible, thoughtful elements of the private sector over the Tax Code, that I think have been amply covered so I will not go into them here.

Lastly, Mr. President, many residents of Virginia will pay higher State taxes. Some Virginia taxpayers will be able to offset their increased State tax liability since they pay less Federal tax under the proposed lower rates. However, other Virginians who experience no decrease in Federal taxes may pay higher State taxes.

Thus, for these reasons I cannot support the conference report.

APPLICATION OF NEW ALLOCATION OF EXPENSE RULES TO POSSESSIONS INCOME

Mr. MOYNIHAN. Mr. President, the conference agreement contains a provision dealing with the allocation of interest and other expenses. Under the conference agreement, this provision, pursuant to regulations, is to apply to provisions dealing with international taxation. I would appreciate the confirmation of the distinguished chairman that the new rule of section 864(e)(1) does not apply for purposes of computations under section 936(h).

Mr. PACKWOOD. Yes, it is my understanding of the conference agreement that the new rule of section 864(e)(1) does not apply for purposes of computations under section 936(h).

Mr. BRADLEY. It is my understanding that new code section 904(d)(5) requires the Secretary to prescribe regulations under the "look-through of new section 904(d)(3) which will provide that dividends, subpart F inclusions, interest, rents, and royalties received by a controlled foreign corporation from another member of the same affiliated group—determined under section 1504 without regard to subsection (b)(3) thereof—shall be treated as income in a separate category if—and only if—such income is attributable directly or indirectly to separate category income of any other member of such group. This was the rule adopted in the Senate bill and the rule in the Ways and Means Committee report accompanying the House version of H.R. 3838. Such a rule would give taxpayers an incentive to reduce foreign taxes on nonseparate category income without penalty and would conform to the clearly expressed intent of both Houses of Congress.

I assume that such regulations are required to be promulgated under this provision and that such regulations must be fully effective from the effective date of new section 904(d). Is my understanding correct?

Mr. PACKWOOD. The Senator's understanding is correct.

TRANSITIONAL RULE ON INTEREST EXPENSE

Mr. WILSON. Mr. President, it is my understanding that the conference agreement adopts the general interest allocation transitional rules of the House bill applying the 3-, 4-, and 5-year transitional rules as set forth in that bill. Further, the agreement adopts a number of 10-year targeted transitional rules. It is my understanding that there is an example on page 380 of the Ways and Means Committee report explaining and illustrating these rules. It is my further understanding that this example is applicable to the final agreement of the conferees. The example illustrating these rules is as follows:

> Thus, for example, under the three-year "phase-in," if a calendar year taxpayer's debt outstanding on November 16, 1985, was $100, and its debt outstanding at all times during 1986 is $75, the bill will not affect interest expenses paid or accured during that second taxable year.

I would like to ask the distinguished chairman of the committee whether my understanding is correct and whether the example I have given is a proper interpretation of the conference report transitional rules.

Mr. PACKWOOD. Yes, your understanding is correct. The example you have given from the Ways and Means Committee report is a correct illustration of the various transitional rules as agreed to by the Conferees.

Mr. BENTSEN. Mr. President, I wish to raise a point of clarification in regard to section 1221 of the bill, which would amend the definition of "foreign personal holding company income" subject to current taxation under subpart F. One provision of the new definition would cover an item entitled "income equivalent to interest." The provision has the effect of treating as foreign personal holding company income "any income from interest, including income from commitment fees—or similar amounts—for loans actually made." It is my understanding that this provision was contained in the Senate bill and not in the House bill, and that the House receded to the Senate amendment. The term "income equivalent to interest" was inserted in the conference comparison prepared for the House-Senate conference merely as a clarification of the term "interest."

It was certainly my understanding that this clarification was intended to be interpreted in the normal way the term is used, to apply to interest such as commitment fees and certain items that have historically been interpreted as the equivalent of interest. This provision was never intended to reach broad categories of income which have consistently been differentiated from interest. In this regard, I refer specifically to income from factoring receivables where both the obligor and the seller of the receivable are unrelated to the purchaser. Such income has been distinguished from interest not only under generally accepted accounting principles but in a number of court cases and pronouncements of the Internal Revenue Service. In these circumstances I seek clarification that "income equivalent to interest" was not intended to cover unrelated party factoring income.

Mr. DANFORTH. Before the Senator from Oregon responds to this question, I would like to join in the request by the Senator from Texas. In this regard, I want to point out that Congress specifically considered factoring income in the 1984 Tax Act and enacted a statutory scheme to deal with it. The bill would leave that scheme in place subject to certain minor technical corrections. If factoring income was the equivalent of interest these provisions would be, in large measure, redundant.

I suggest that it would be inappropriate and extremely unfair to apply the "interest equivalent" language to override specific provisions that were enacted as recently as 2 years ago. If such is our intention, we should have specifically enacted the necessary statutory language. Accordingly, I believe that factoring income should not be interpreted as within the scope of the term "income equivalent to interest."

Mr. PACKWOOD. The Senators are correct that this was a Senate provision to which the House receded. The Senators are also correct in his understanding that the term "income equivalent to interest" is not to apply to or refer to income from unrelated party factoring. Finally, the Senators are also correct that the term "income equivalent to interest" was intended to have a meaning relating solely to taxpayers who make formal adjustments avoiding the new rules relating to offshore passive investments.

I want to make a further point that the cases are clear and confirm the views of the Senate conferees that under a normal interpretation income from factoring operations is not the equivalent of interest. Interest is compensation for the use of forebearance of money. A factor does not advance funds to an obligor, but rather purchases receivables outright from a third party. The factor's income is viewed by both the business community, and, informally, but the Internal Revenue Service as a commission "for the service of passing on credits, assuming all credit risks, and keeping the accounts.": (See G. Johnson & J., Gentry, Jr., "Finney & Miller's Principles of Accounting" (7th ed. 1974); GCM 39220 (April 24, 1984); PLR 8338043 (June 17, 1983)).

A factor assumes substantial collection risks and is in no way assured that it will receive a specific yield as is usually the case in a lending transaction. Because factoring involves active collection operations, with costs, expenses, and risks, identical to the collection activities of the seller of goods, income therefrom should not be treated as the equivalent of interest. Factoring income was intended by the conferees to be includible under subpart F only if it constitutes related party factoring income under section 864(d), as amended by section 1810(c)(2) of the bill, and not as income equivalent to interest.

I want to assure my colleagues if we had intended to include factoring income as a category of foreign personal holding company income we would have specifically stated it as such.

Mr. BOREN. Mr. President, I would like to engage the distinguished chairman of the Senate Finance Committee, Mr. Packwood in a colloquy concerning an ambiguity contained in the conference report on tax reform.

At conference, the House receded to the Senate on section 1215(c)(2)(C) of H.R. 3838, yet portions of the House language were incorporated in the rule. The House language which is picked up in the conference report refers to "interest expenses paid or accrued with respect to the amount of indebtedness" which could be interpreted as applying the rule to level of interest instead of level of indebtedness of a company. It is my understanding that this rule would apply to the level of indebtedness and not to the level of interest expense. Is that your understanding?

Mr. PACKWOOD. Yes, this is my understanding.

Mr. DURENBERGER. Section 1301 of the Tax Reform Act of 1986 broadly overhauls and amends section 103 of the Internal Revenue Code of 1954. I would like to seek a clarification from the chairman of the Finance Committee concerning the effect of section 1301, including, but not limited to, section 1314(d), as it relates to section 1316(k) of the bill. Section 1316(k) amends section 1104 of the Mortgage Subsidy Bond Tax Act of 1980, as added by the Tax Reform Act of 1980. It is my understanding that the changes in the law made by section 1301 of the Tax Reform Act of 1986, including, but not limited to section 1314(d), does not apply to section 1316(k). Thus, bonds under section 1316(k) will be subject to the same rules as they would have been had they been issued on August 15, 1986.

Mr. PACKWOOD. The Senator from Minnesota is correct.

Mr. DURENBERGER. I thank the distinguished Senator from Oregon for this clarification.

Mr. BENTSEN. Mr. President, with respect to the new generation-skipping transfer tax, the grandfather provision of the prior law was intended to apply to:

> A trust which includes a limited power of appointment, so long as the exercise of the power (including the creation of a trust) cannot result in the creation of an interest which postpones, or a new power which can be validly exercised so as to postpone, the vesting of any estate or interest in the trust property for a period ascertainable without regard to the date of the creation of the trust. S. Rep. No. 1236, 94th Cong. 2nd Sess. 621.

The concepts of this legislation history have been embodied in Treasury Regulation, section 26.2601-1(e)(3).

Would the chairman confirm my understanding that the same result would obtain under the new generation-skipping tax provisions.

Mr. PACKWOOD. The understanding of the Senator from Texas is correct. As in the case of the old provision, the new provision will not apply to the exercise of a limited power of appointment under an otherwise grandfathered trust or to trusts to which the trust property is appointed provided that such exercise cannot postpone vesting of any estate or interest in the trust property for a period ascertainable without regard to the date of the creation of the original trust.

Mr. BENTSEN. I thank the chairman.

FREIGHT FORWARDER OPERATING AUTHORITIES

Mrs. KASSEBAUM. Section 243(b) of the bill amends section 266 of the Economic Recovery Tax Act of 1981 to provide for a ratable deduction over a 60-month period with respect to freight forwarding operating authorities. Under section 243(b)(2) of the bill, the 60-month period commences as early as the so-called deregulation month, which is defined in section 243(b)(3) of the bill to mean the month in which the Secretary of the Treasury or his delegate determines that a Federal law has been enacted which deregulates the freight forwarding industry.

Is it intended that the "deregulation month" be that month determined by the Secretary of the Treasury or his delegate to be the month in which a Federal law has been enacted deregulating the freight forwarding industry? For example, if a Federal law deregulating the freight forwarding industry is enacted in October 1986 and the Secretary of the Treasury or his delegate determines in January 1987 that such deregulation has occurred, will October 1986 be the "deregulation month"?

Mr. PACKWOOD. Yes.

Mrs. KASSEBAUM. Section 266(c) of the Economic Recovery Tax Act of 1981 provides for an elective adjustment to the basis of motor carrier operating authorities where stock of a corporation holding such authority is acquired. Will that election, under the bill, be available to adjust the basis of freight forwarder operating authorities where stock of a corporation holding, directly or indirectly, such authority is acquired?

Mr. PACKWOOD. Yes.

Mr. BENTSEN. I would appreciate receiving clarification on one point relating to the discussion of landfill depreciation on page 40 of the report. Although the case law is not cited, I believe it is the sense of the report that the Tax Court's decision in *Sexton* v. *Commissioner*, 42 T.C. 1094 (1964) correctly applies current law to allow the recovery of capital costs to the extent such costs are properly allocable to the space to be filled with waste, rather than to the underlying land. In other words, a landfill with 10 million cubic yards of capacity with a depreciable basis of $10 million in excess of salvage value would be entitled to a deduction of $1 per cubic yard when and as filled. Is my understanding correct?

Mr. PACKWOOD. Yes. We believe the Sexton case is the applicable standard under current law, and the committee intends no change in current law.

FLUIDIZED ENERGY FRACKVILLE ASSOCIATES

Mr. HEINZ. I would like to address a question regarding the interpretation of one of the transition rules to the floor manager of this historic piece of legislation, my good friend and distinguished colleague from Oregon, Mr. Packwood.

Can you confirm my understanding that the transition rule contained in section 204(a)(2)(A) is meant to cover facilities such as one in my State that received a certification by the Federal Energy Regulatory Commission on August 5, 1985, as a qualifying facility for purposes of the Public Utility Regulatory Policies Act of 1978 so long as no substantial change is made to the facility as certified, and, that a design change to capture economies of scale that would increase the output of the facility by 25 percent, without changing the basic configuration of the facility, the fuel source for the facility or the use of the output would not be a substantial change to the facility within the meaning of this transition rule.

Mr. PACKWOOD. I would be pleased to confirm the gentlemen's understanding of section 204(a)(2)(A). The facility he describes would be considered transition property under the rule even if FERC subsequently amended the existing certification for the facility or recertified the facility, since the changes he described would not be substantial modifications.

TRANSITION PROJECTS UNDER THE "GENERAL TRANSITION RULE" PERTAINING TO REAL ESTATE REHABILITATION PROJECTS

Mr. McCONNELL. Will the Senator yield?

Mr. PACKWOOD. I would be delighted to yield to my good friend, the junior Senator from Kentucky.

Mr. McCONNELL. I thank the distinguished Senator from Oregon. Mr. President, on behalf of my distinguished colleage from Kentucky, Senator Ford, and myself, I would like to thank both the majority and minority managers of the tax reform bill for their fine work and leadership throughout this effort. One of my primary concerns about this bill is the lack of clarity with respect to certain general transitional rules pertaining to historic rehabilitation projects, as detailed in section 251 of the bill.

A number of questions have been raised as to those projects this provision was intended to cover. I would ask the chairman if it is his understanding that the provision in question does in fact cover the below named projects.

The Bernheim Officentre Project.

The Old Louisville Trust Building—First National Bank, Kentucky Title Rehabilitation Project.

The Stewarts Building.

Mr. PACKWOOD. Yes; it is this Senator's understanding the projects in question are covered under section 251 of the bill, dealing with the general transitional rule pertaining to historic rehabilitation projects.

Mr. McCONNELL. I thank the chairman. This will eliminate the concerns of those whose projects have been determined by the Finance Committee to clearly meet the requirements for transition rules but did not receive line-item treatment in section 251 of the Tax Reform Act of 1986. Again, I thank the distinguished chairman.

Mr. FORD. I want to thank my colleague, the distinguished chairman of the Finance Committee, Senator Packwood, for clarifying this issue for us. While it appeared that these Kentucky projects would be covered by the general transition rule for the rehabilitation tax credit, I am pleased that we are able to clarify for the record and the legislative history of this bill the intention of the conferees to include them under the general transition rule. These three projects, the Old Louisville Trust Building—First National Bank/Kentucky Title, the Stewarts Rehabilitation Project, and the Bernheim Office Center, are all important projects to Louisville and the Commonwealth as a whole. I thank my colleagues for their assistance in this matter.

Mr. HEINZ. Mr. President, section 212(f)(2) of the Tax Reform Act permits the LTV Corp. to use amounts they will receive under the special steel industry ITC rule to purchase insurance that would pay premiums to keep their life and health insurance policies in force for their retirees in the event payments for these policies were suspended in bankruptcy. The provision, as it is drafted, refers to life and health coverage that the company, but for its involvement in bankruptcy, would be obligated to provide. This qualification of the company's obligation, is in my view, unfortunate.

Specifically, the provision states that the amounts would be used by the corporation:

> * * * To purchase an insurance policy which provides that, in the event the corporation becomes involved in a title 11 or similar case * * * the insurer will provide life and health insurance coverage during the 1-year period beginning on the date such involvement begins to any individual with respect to whom the corporation would (but for such involvement) have been obligated to provide such coverage, the coverage provided by the insurer will be identical to the coverage which the corporation would (but for such involvement) have been obligated to provide, and provides that the payment of insurance premiums will not be required during such 1-year period to keep such policy in force.* * *

Mr. President, in my opinion, this provision does not imply that the company's obligations to provide life and health benefits to its retirees change or do not continue because the company is filing for bankruptcy under chapter 11. I also do not believe that it is intended to modify any provision of the Bankruptcy Code establishing procedures which companies filing for bankruptcy must follow if they intend to terminate employee or retiree benefits that have been collectively bargained.

I would like to ask the chairman of the Finance Committee if he would agree with my interpretation that the language of this section is not intended to affect, in any way, the obligations companies filing for bankruptcy may or may not have under the Bankruptcy Code.

Mr. PACKWOOD. I agree with the Senator from Pennsylvania. In my judgment this provision merely states that LTV must use amounts received through the steel transition rule either in connection with the trade or business of the corporation in the manufacture or production of steel, or to provide life or health insurance benefits for LTV retirees or workers. It does not comment, in any way, on the obligations of the employer in bankruptcy.

Mr. HEINZ. I thank the Senator for his clarification.

Mr. McCONNELL. Will the Senator yield?

Mr. PACKWOOD. I would be delighted to yield to my good friend the junior Senator from Kentucky.

Mr. McCONNELL. On behalf of my distinguished colleague from Kentucky, Senator Ford, and myself, I would like to express our serious concern about a provision in the bill relating to horse depreciation. The problem arises because there is no class life in the case of race horses and an inadequate class life in the case of older breeding horses under existing Treasury Department regulations. This causes a problem under section 168(g)(2) of the new code.

We would greatly appreciate the assistance of the chairman of the Finance Committee in developing appropriate depreciation guidelines for these horses.

Mr. PACKWOOD. I understand the Senators' concerns. As you know, I believe we were quite mindful of the depreciation rules relating to the horse industry in the bill passed by the Senate. The problem you raise occurs because of a provision adopted by the conference committee which was not in the Senate-passed bill.

Under section 168(i)(1)(B) of the new code, the Treasury Department is authorized to establish a class life for any property which does not now have a class life and to modify the class life of any property where appropriate. In this connection, it would be my understanding that the Treasury Department should give high priority to evaluating the actual experience of race horses and older horses and, based on those findings, expeditiously assign a class life to race horses and to determine whether a separate class life for other older horses should be determined, and if so, to determine what that class life should be.

Mr. McCONNELL. I thank the chairman. Both Senator FORD and I are greatly appreciative of your past efforts with respect to this matter. We believe this will address our concerns. Again, we are very appreciative of your sensitivity to our concern.

Mr. FORD. I thank my distinguished colleague, Chairman PACKWOOD, for clarifying this issue. It is of great concern to a major industry in my State, and I am pleased we have been able to raise this matter. I urge the Treasury Department to take expeditious action on this issue and will be closely watching the Department's action to ensure it reflects this understanding.

CLARIFICATION OF BINDING CONTRACT FOR DEPRECIATION/ITC TRANSACTION RULE

Mr. MOYNIHAN. Mr. President, I would like to engage the chairman in a coloquy.

Mr. PACKWOOD. Certainly.

Mr. MOYNIHAN. The conference report contains a general transition rule exempting projects already under a binding contract from the depreciation and investment tax credit provisions of the bill.

I would like to engage the chairman in a discussion of some of the elements that should be looked at to determine whether or not a series of agreements may consititue a binding contract in the case of projects which are joint public-private endeavors. These public-private partnerships, more than most arrangements, are characterized by a series of arrangements which cumulate; and which make a taxpayer liable for damages if the taxpayer fails to perform under the agreements.

I would like to ask the chairman if he agrees that a key to determining whether there is a binding contract is whether the taxpayer would be liable for damages for failing to live up to his or her agreement?

Mr. PACKWOOD. I do. In fact the conference report states that for a contract to be binding it must be enforceable under State law and must subject the taxpayer to damages if the taxpayer breaches the contract, so long as the amount of damages is not limited to a specified dollar amount.

Mr. MOYNIHAN. I think the Senator from Oregon. I would also like to inquire if the chairman understands that when the conference report speaks of a binding contract, in fact—if State law so provides—the contract could consist of more than one document, even if not executed at the same time, as long as the subject of the overall agreement is the construction of the same property and the agreements subject the taxpayer to significant damages if he or she does not meet his or her obligations under the contract. In other words, if the State law so provides, the contract need not be contained solely within the four corners of a single document.

Mr. PACKWOOD. I do understand that to be the meaning of the conference report.

Mr. MOYNIHAN. Once again, I thank my good friend from Oregon. But I would like to pursue this point a little further and ask him if he would agree that such a series of documents would be agreements between the taxpayer and a municipality a final binding stipulation that settles a lawsuit, involving a community group and a municipality, by obligating the taxpayer to meet certain requirements regarding the construction of the property, including obligations to modify setbacks, reduce the cubic volume of the building, add additional floors, reduce floor heights and use specified facade material and dessign elements. Would the chairman agree?

Mr. PACKWOOD. Yes, I would.

Mr. MOYNIHAN. I thank the Senator form Oregon.

FERC LICENSE RULE

Mr. GLENN. Mr. President, I want to ask the distinguished chairman of the Finance Committee a question about the so-called FERC license rule.

Under section 204(a)(2) of the bill, property would be grandfathered from loss of the investment credit and current depreciation allowances if the property is part of a project that the Federal Energy Regulatory Commission certified before March 2, 1986, as a qualifying facility for purposes of the Public Utility Regulatory Policies Act.

There are two ways that a project can become a qualifying facility. FERC regulations provide that the owner or operator of a facility may either send the agency notice that the facility meets the requirements for a qualifying facility or request a formal order from FERC certifying the project.

The statement of the managers says that projects certified by formal order have grandfather protection under the FERC rule. A project that a developer has simply put FERC on notice as a qualifying facility is not protected. That's because the latter project has not been certified by FERC.

My question is: What happens if FERC acknowledged in a formal order before March 2, 1986, that a project is a qualifying facility, but the focus of the order was a separate issue?

A constituent of mine, Energy Conversions of America, Inc., [ENCOA], has been working since 1978 to build a facility in Cincinnati that will burn the city's garbage to generate electricity. The electricity will be sold to the local utility. ENCOA signed a contract with the city in 1979 and began negotiating with the utility in 1982. Although a construction contract has still not been signed, ENCOA made a series of trips to the Federal Reserve Regulatory Commission beginning in 1982 for orders to help in the negotiations. For example, in 1982, a hearing officer for the State of Ohio insisted that the State lacked authority, because of Federal preemption, to become involved in determining the utility's avoided cost for purchasing electricity from the Cincinnati facility. ENCOA sought an order from FERC setting the rates that the utility should pay for the electricity. The FERC order states, among other things that—and I am reading—

> [W]hen completed, ENCOA will be the operator of a qualifying small power production facility as defined in section 201 of the Public Utility Regulatory Policies Act of 1978 [PURPA] and section 292.204 of the Commission's regulations.

The question is: Does the FERC rule in the bill cover this project?

Mr. PACKWOOD. It was the intent of the conferees as indicated in the conference report that the FERC rule in the bill would cover a facility where a FERC order states that when completed, a company will be the operator of a qualifying small power production facility as defined in section 201 of PURPA.

Mr. GLENN. I thank the distinguished Senator for his clarification.

Mrs. HAWKINS. Mr. President, in the Senate report accompanying the tax bill, the deduction for losses is to be disallowed under title XIV, subtitle A for any activity in which the taxpayer does not materially participate on a regular, continuous and substantial basis. The committee report was unclear as to whether a taxpayer working full time elsewhere as an employee or in a professional service business is less likely to materially participate in a general partnership or S corporation which is engaged in a business involving orange groves than a taxpayer whose primary business is growing oranges. We respectfully and firmly believe that the material participation criterion can be met by the taxpayer who works elsewhere if he or she participates actively in the management decisions concerning the citrus grove. This would include planting, grove care, maintenance, harvesting, and the negotiation of contracts for the sale of fruit decisions.

The nature of the citrus business is such that experienced grove care professionals are a necessity in the daily operation of the grove even when owning participants are involved in nearly every other operational decision. It is my understanding that a taxpayer is not excluded from the material participation standard solely because of his or her noninvolvement in the day-to-day physical labor connected with citrus grove management.

It is my understanding that Chairman Packwood has also agreed that as long as citrus grove owners are regularly making decisions related to the management and upkeep of their groves and are participating in the sale of their fruit, they be allowed to utilize the deductions under citrus ownership, even though they are employed elsewhere.

Is that correct?

Mr. PACKWOOD. That is correct especially, regarding the day-to-day physical labor, however, the taxpayer must be involved substantially in the management decisions exercising independent judgment and input regarding the operations of the citrus activity.

SECTION 204 (A) (2) OF H.R. 3838

Mrs. HAWKINS. I would like to engage the chairman in a colloquy regarding the effective dates for title II. Section 204(a)(2) makes an exception for property that is part of a project that the Federal Energy Regulatory Commission certified before March 2, 1986 as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 [PURPA].

The statement of managers to the bill explains that this exemption will not apply if a FERC certification is substantially amended after March 1, 1986. The managers statement further explains, however, that "minor modifications" after the deadline would not affect the application of this exemption and cites several examples of such minor modifications: "technical changes in the description of a project, extension of a deadline for placing property in operation, changes in equipment or in the configuration of equipment."

I am aware of two cogeneration projects which have undergone some changes since March 1, 1986, and I would like the chairman to comment on whether he understands these to be minor or substantial modifications. The first project was originally certified by FERC on April 24, 1985, as a facility that would burn culm to generate steam and electricity. Culm is a waste byproduct of coal mining. The FERC order indicates that the facility will have a net electricity output of 17.27 megawatts. However, when the project was put out for bids, the construction company that was given the job was chosen because it showed how the project could be built using roughly the same quantity of culm to product more steam and electricity. The facility will now have a net electricity output of 20.2 megawatts. These efficiencies have reduced the cost of the project from what the developer contemplated when the project was first certified by FERC. The developer will have to have the original certificate amended to reflect the higher electricity output.

The second project, which was originally certified by FERC on June 27, 1985, as a "qualifying facility" for purposes of PURPA, has undergone similar changes and is also in need of a clarification as to what are "minor modifications." The project has the same size cogeneration plant. It has the same plant design. It has the same use of process steam—that is, enhanced oil recovery. It is in the same general location—in the same oilfield—although the exact site has been moved approximately 3 miles. It has the same power sale agreement with the same utility, which will interconnect with the same substation. It will use the same type and source of fuel. There are, however, a few differences with the original project. The new project includes ownership of the oil company. The exact plant site has been moved about 3 miles, although it is still in the same oilfield. Although the original developer of the project remains actively involved and a managing partner, there is a possibility that one of the other original partners will be replaced with one or more new partners and somewhat less steam than originally envisioned will be provided to the oilfield.

So I have described two cases wherein some changes have occurred in cogeneration projects since the March 1, 1986 deadline. The first case involved changes to a FERC order reflecting the introduction of efficiencies which resulted in a reduction of the project cost and increase in net electricity output and wherein three separate facilities are combined into a single powerhouse. The second case involves a project that was originally certified for one site and user on a geological oil field and is subsequently relocated within the same oilfield to another user and the FERC certificate is amended to reflect that change. The second case further involves a certification for a project that was originally obtained by a general partnership, but one of the original partners may be replaced by one or more other partners and the FERC certificate is amended to reflect the same. However, the partner who developed the project will remain as a managing partner.

The cases I have described seem to me to fit into the category of minor modifications. My question is whether the chairman agrees.

Mr. PACKWOOD. I agree with the distinguished gentle lady from Florida that the amendments to the FERC orders that she describes fit into the category of minor modifications.

DEPRECIATION AND ITC TRANSITION RULES

Mr. GLENN. I would like to confirm with the distinguished Senator from Oregon the operation of the transition rule for supply or service contracts set forth in section 204(a)(3) of H.R. 3838 as reported out by the conference committee and currently under consideration by the Senate, particularly its application to holders of television franchise rights. H.R. 3838 as passed by the Senate on June 24, 1986 contained section 202(d)(11) which provided, in part, that the amendments made by section 201 would not apply to any property which is readily identifiable with or necessary to carry out a binding obligation with a municipality under an ordinance granting television franchise rights if the ordinance was enacted on July 22, 1985 and a construction contract was signed before April 1, 1986.

While the version of H.R. 3838 presently under consideration by the Senate does not contain the precise language set forth in section 202(d)(11) of the bill as originally passed by the Senate, the conference report accompanying the conference's version of the bill states that with respect to the supply or service contract exception, the conferees wish to clarify that this rule applies to cable television franchise agreements embodied in whole or in part in municipal ordinances or similar enactments before March 2, 1986, January 1, 1986, with respect to the investment tax credit. I would like to confirm that the supply or service contracts transition rule, the statutory language of which was not amended by the conference committee, is intended to cover the holder of any television franchise which would have been covered by the original section 202(d)(11).

Mr. PACKWOOD. That is correct.

Mr. GLENN. Thus, in the case of a cable franchise which was granted a cable franchise on July 22, 1985 and pursuant to which a definitive franchise agreement was negotiated—and subsequently approved and signed after March 1, 1986—and which entered into a construction contract prior to April 1, 1986, its cable related property would fall within the supply or service contracts transition rule?

Mr. PACKWOOD. That is correct. It was the intent of the conferees, as indicated in the conference report, that the definitive franchise agreement which was contemplated by the July 1985, ordinance would be considered embodied in that ordinance and as such would qualify as a supply or service contract entered into prior to March 2, 1986, with respect to the depreciation rules and January 1, 1986, in the case of the investment tax credit rules.

Mr. GLENN. I thank the distinguished Senator for his clarification of this issue.

SUPPLY OR SERVICE CONTRACTS TRANSITION RULE FOR THE INVESTMENT TAX CREDIT

Mr. MATSUNAGA. Mr. President, I seek a clarification from the distinguished manager of the conference report, the Senator from Oregon, as to the investment tax credit supply or service contracts transition rule with regard to transfers of rights to property required by such contracts and transfers of such contracts.

Sections 203 and 204 of the conference bill establish the binding contracts provision and the supply or service contracts provision as general transition rules for purposes of depreciation and the investment tax credit. Identical rules were included in the Senate bill and the House bill.

Under the binding contracts provision, transition property includes "any property which is constructed, reconstructed, or acquired by a taxpayer pursuant to a written contract that was binding" on December 31, 1985 and at all times thereafter for purposes of the investment tax credit. Similarly, under the supply or service contracts provision, transition property includes "any property which is readily identifiable with and necessary to carry out a written supply or service contract, or agreement to lease, which was binding" on December 31, 1985 and at all times thereafter.

The House and Senate reports as well as the conference report provide interpretative rules to implement these transition provisions. The binding contracts rule sets forth the basic concept; the other transition measures are corollaries based on the binding contract concept. In this light, some of the interpretative rules under the binding contracts provision are limited to that provision; other interpretative rules under the binding contracts provision provide general rules of interpretation for other corollary transition provisions. With regard to this interrelation, the conference report expressly states that a supply or service contract must satisfy the requirement of a binding contract.

My question concerns the conferees' intention to allow transfers. In particular the conference report at pages I-54 and I-55 states that under the binding contracts rule a contract will not be considered binding at all times after December 31, 1985, if it is substantially modified after that date. The report further provides that transfers of property under contract or transfers of the contracts are nonetheless allowed under the transition provision. The report states:

> If a taxpayer transfers his rights in any such property under construction or such contracts to another taxpayer, the bill does not apply to the property in the hands of the transferee, as long as the property was not placed in service before the transfer by the transferor.

This transfer rule seems to be a general rule of interpretation that also applies to the supply or service contracts provision. It would seem that property or a contract can be transferred under the supply or service contracts provision and still be covered by the transition provision.

Is this Senator's understanding correct that the transfer rule of interpretation also applies to the supply or service contracts transition provision? Is this Senator's understanding correct that the transfer of such supply or service contracts will not be considered a significant modification so that the contracts remain binding at all times notwithstanding such a transfer?

Mr. PACKWOOD. The Senator from Hawaii is correct. If a taxpayer transfers his rights to property under a qualified service contract, the repeal of the investment credit does not apply to the property in the hands of the transferee, as long as the property was not placed in service before the transfer. Similarly, if the taxpayer transfers his rights to such service contracts, the repeal of the investment tax credit still would not apply to property readily identifiable with and necessary to carry out the contract.

Mr. MATSUNAGA. I thank the distinguished manager for this clarification.

Mr. HEINZ. Mr. President, I wish to seek clarification from the chairman of several points relating to a transitional rule to preserve 3,000 to 4,000 new jobs at the Frankford Arsenal.

First, I understand the committee's intent is to not only treat the improvements and repairs and maintenance to the buildings and to the property which were to be incurred over an 8-year period commencing January 1, 1987 as paid or incurred in 1986 but that such expenditures would be expensed in 1986.

Second, I also understand that the committee intends to allow the total amount of improvements to the buildings and the infrastructure of the project which were to be incurred over an 8-year period commencing January 1, 1987 to be eligible for the rehabilitation tax credit in 1986.

Mr. PACKWOOD. The Senator from Pennsylvania is correct in his understanding of the committee's intent. It is hoped that this provision will save the 3,000 to 4,000 new jobs that this project will spawn. It is our intent that language clarifying these points will be included in appropriate legislation in the next Congress.

Mr. CRANSTON. Mr. President, I would like to clarify the application of the investment tax credit transition rules to self-constructed property. Under the bill, the repeal of the investment tax credit does not apply to property that is constructed or reconstructed by the taxpayer if the lesser of $1 million or 5 percent of the cost of the property was incurred or committed by January 1, 1986, and the construction or reconstruction began by that date. For purposes of this rule, a taxpayer who serves as the engineer and general contractor of a project is treated as constructing the property and construction is considered to have begun when physical work of a significant nature starts. Construction of a facility or equipment is not considered as begun if work has started only on minor parts or components. I would like to ask the distinguished chairman of the Committee on Finance to clarify whether in the following circumstances construction of property will be considered to have been commenced so as to qualify the property for the investment tax credit under this transition rule.

Prior to January 1, 1986 an aircraft manufacturer entered into binding contracts with third parties for the construction of aircraft subassemblies to be included by the manufacturer in the construction of the completed aircraft. The cost to the aircraft manufacturer of these subassemblies is approximately $300,000, which together with the costs of other components of the aircraft which the manufacturer had incurred or was required to incur on December 31, 1985, exceeds 5 percent of the cost of the aircraft. These subassemblies were designed for this model of aircraft, were specifically ordered for the aircraft and are essential to its operation, and include wing trailing edges, ailerons and tabs, and rudders and tabs. The subcontractors commenced physical construction of these subcomponents prior to January 1, 1986. Prior to the date the aircraft is placed in service the manufacturer will transfer it to its wholly-owned subsidiary that is included in the same consolidated tax return as the manufacturer. My question of the distinguished chairman of the Committee on Finance is whether in these circumstances an aircraft will qualify for the investment tax credit transition relief.

Mr. PACKWOOD. Yes, such an aircraft qualifies for the investment tax credit under the transitional rule for self-constructed property. Construction of the aircraft would be considered to have begun by the aircraft manufacturer when the subcontractors commenced physical construction of the subassemblies on behalf of the manufacturer pursuant to the binding written contract.

Mr. CRANSTON. I thank the distinguished chairman for this clarification.

PRE-1981 STRADDLES

Mr. DOLE. The conferees considered the provisions of section 108 of the Tax Reform Act of 1984 as part of this legislation. I understand that the conference report does not amend the provisions of the 1984 act as they affect investors, and that the conferees rejected any additional benefit for these investors. I further understand that the statement of managers explaining the conference report did not include the language of the House report that discussed investors and that the conference report is the entire agreement of the conferees.

Mr. PACKWOOD. The understanding of the Senator from Kansas is correct.

Mr. DOLE. I thank the distinguished chairman.

INTEREST DEDUCTIBILITY

Mr. BENTSEN. Mr. President, I would like to clarify the treatment of interest on a loan which is secured by a recorded deed of trust, mortgage, or other security interest in a taxpayer's principle or second residence, in a State such as Texas, where the enforceability of such recorded security instrument will be restricted by State and local laws, such as the Texas homestead law. It is my understanding that under section 1421 of H.R. 3838, such interest is treated as qualified residence interest, provided the interest on the debt is otherwise qualified residence interest. Does the chairman share my understanding?

Mr. PACKWOOD. The understanding of the Senator from Texas is correct.

TREASURY STUDY OF IMPACT ON BANKS OF REPEAL OF LOAN LOSS RESERVE

Mr. MOYNIHAN. Mr. President, I remain concerned that one of the provisions contained in the tax reform bill could have serious implications for the health of our financial institutions.

The issue of the bad debt reserve deduction for commercial banks involves a range of complex factors, including the interplay of the tax and financial accounting treatment of bad debt reserves. Moreover, these factors had to be assessed against a changing landscape, that is, an industry that at this point in its history is experiencing extraordinary pressures.

The bank regulators have expressed concern about the potential impact of the repeal of the bad debt reserve on the safety and soundness of the banking industry. The FDIC, for example, in testimony before the Joint Economic Committee on September 15, 1986, has identified 399 banking organizations, with $2.3 trillion in assets and 80 percent of the loans in the banking industry, that would be affected by repeal of the reserve method. I do not think we can be certain that this change will not have an undesirable effect on bank earnings and bank capital, and on the safety and soundness of banking practices.

I, therefore, think we should seek to assure ourselves about the concerns expressed by the bank regulators. As you know, Mr. Chairman, the conference agreement on page II-316 directs the Secretary of the Treasury to issue a report on the issues involved in determining if a debt is worthless for Federal income tax purposes. We should be certain that the Treasury Department study includes the impact of repeal of the bad debt reserve on the safety and soundness of the U.S. banking industry.

Mr. PACKWOOD. I believe the Senator's comments reflect the concerns of the Finance Committee. The study to be conducted by the Treasury Department should cover the areas described by the Senator.

Mr. THURMOND. I would like to ask the distinguished chairman of the Finance Committee a question about the treatment of certain tax-exempt insurance companies under the bill. Section 1012 of the bill repeals the tax-exempt status of certain organizations providing commercial-type insurance. For this purpose, the provision expressly excludes from the term commercial type insurance "property or casualty insurance provided (directly or through an organization described in section 414(e)(3)(B)(ii) by a church or convention or association of churches for such church or convention or association of churches. * * *"

Would this provision exclude from the term "commercial-type insurance" property by a mutual insurance company (1) which was in existence and exempt from tax on August 16, 1986, (2) which does not have any taxable subsidiary or any subsidiary doing business with any person other than a church or convention or association of churches, and (3) whose only policyholders are churches, conventions or associations of churches, or religious agencies or institutions owned and controlled by churches regardless of the number of different denominations represented by the policyholders or the fact that no single church, convention or association of churches controls such mutal insurance company?

Mr. PACKWOOD. I am happy to clarify for the distinguished colleague from South Carolina that commercial-type insurance would not, for purposes of the bill, include the insurance activities he has described.

CORPORATE-OWNED LIFE INSURANCE

Mr. DOLE. I would like to engage the distinguished chairman of the Finance Committee in a colloquy about a provision in the tax bill concerning loans taken out on life insurance policies owned by businesses. Section 1003 of H.R. 3838 limits the interest deduction on indebtedness in excess of $50,000 per insured under certain life insurance policies owned by a business taxpayer. The limitation applies only to indebtedness under contracts purchased after June 20, 1986.

Concern has been expressed about whether this provision will apply to a policy purchased on or before June 20, 1986, if the policy is changed in a way that was contemplated by the parties and is customary with respect to such insurance. I would appreciate confirmation of my understanding that none of the following changes to a policy would be treated as the purchase of a new policy: A change in the owner of the policy, the exercise of an option or a right granted under a contract as originally issued—including the substitution of insured but excluding conversion to term insurance—or a change in administrative provisions, loan rates, or any other item that does not affect the major terms of the policy. However, a policy exchanged for a policy issued by a different insurance company would be treated as a new policy.

Mr. PACKWOOD. Your understanding is correct.

Mr. DOLE. I am confident that all the sponsors of this provision did not intend to disallow interest on a taxpayer's normal business indebtedness. I would, therefore, appreciate confirmation that this provision will not disallow interest on indebtedness incurred for a business purpose merely because the taxpayer has purchased a cash-value life insurance policy or has later used the policy as collateral for borrowings other than to carry the policy. For example, would the provision apply to a farmer who borrowed to plant crops and who pledged his life insurance along with his other assets as security?

Mr. PACKWOOD. The new provision would not disallow interest on indebtedness incurred under the circumstances my distinguished colleague has described, including interest paid by the farmer in your example.

Mr. DOLE. I would like to ask the distinguished chairman to clarify one additional issue. The provision applies only to indebtedness under contracts purchased after June 20, 1986.

As I understand the business, applications for a policy of this sort are often sent after consideration of competing bids, and an application is usually considered to be acceptance of the insurance company's bid. However, I am informed that the exact point in this process when there is a technical purchase is not clear and may differ from State to State.

My understanding of this provision has been that policies are considered purchased for purposes of the effective date once the policy has been applied for or the insurer is committed to issue it. To avoid any misunderstanding of our intent, I would appreciate having the chairman confirm my understanding.

Mr. PACKWOOD. The understanding of the distinguished majority leader is correct. The new provision does not limit deductions for interest on indebtedness under a policy for which an application was submitted or commitment to issue made on or before June 20, 1986.

Mr. President, I would like to ask the distinguished Senator from Louisiana if he shares my views on each of these issues.

Mr. LONG. I am pleased to be able to confirm that my views on how these items should be interpreted are the same as those of the chairman and the majority leader.

ESOP'S AND PENSION PLAN SPINOFF TERMINATIONS

Mr. President, I would like to engage the distinguished chairman of the committee, Senator PACKWOOD, in a brief colloquy concerning one aspect of an amendment in this bill regarding employee stock ownership plans [ESOP's].

The ESOP provisions in this bill were proposed by me and originated in the Finance Committee. Thus, it would be useful if the committee chairman and key conferee were to confirm the interpretation of one aspect of section 4980(c)(3) of the bill concerning the provision providing an exemption from the proposed 10-percent tax on pension plan asset reversions to the extent that amounts that would otherwise be reversion amounts are transferred to an ESOP.

The bill provides that the exception for reversions transferred to ESOP's applies if at least half of the participants in the qualified plan—the plan paying the reversion—are participants in the ESOP.

The conference committee report clarifies that for purposes of determining which plan participants in the defined benefit plan—from which assets were transferred to the ESOP—are required to be participants in the ESOP, the conferees intend that only active employees, as opposed to retirees, who are participants in the plan need be included.

In a standard termination of a defined benefit plan, this requirement presents no problem. In a common spinoff termination, however, the plan is split into two parts, with the portion covering retirees spun off as a separate plan and then terminated. Active employees remain in the ongoing plan and are provided for under applicable agency guidelines.

In a spinoff termination, the plan from which the reversion amounts are transferred is technically the spunoff plan for retirees, none of whom are active employees and, thus, none of whom would be required to become participants in the ESOP to which the reversion amounts are transferred.

The issue I wish to clarify is what happens to employees who were participants in a pension plan prior to the spinoff termination and who thereafter remain active employees of the employer sponsoring the ESOP. It is my understanding that 50 percent of such employees are to be included in the ESOP to which the reversion amounts are transferred.

Thus, let me confirm with the distinguished sponsor of the amendment that this interpretation is correct. It is my understanding that the amendment is intended to cover reversions attributable to spinoff termination transactions provided that employees participating in the ongoing plan—from which the reversion amounts are transferred—at the time of termination are also counted when determining—under section 4980(c)(3)(D)—whether 50 percent of participants in the terminated plan are required to be included as participants in the ESOP.

Mr. PACKWOOD. I agree with Senator LONG's interpretation. The intent is to ensure that at least half the participants in a defined benefit pension plan—from which reversion amounts are transferred—will be included as participants in the ESOP to which those amounts are transferred, provided they are still employed by the employer sponsoring the ESOP.

Mr. CHAFEE. I understand that Blue Cross and Blue Shield organizations no longer will be tax exempt as social welfare organizations after December 31, 1986.

Mr. PACKWOOD. That is correct, but those organizations will be allowed a special deduction in recognition of their community service activities. The deduction is equal to the excess of 25 percent of the organization's claims and administrative expense for the taxable year over the organization's prior year's surplus.

Mr. CHAFEE. I would appreciate the chairman's clarifying some aspects of that important provision. The bill limits the use of the deduction to existing Blue Cross and Blue Shield organizations which do not materially change their operations after the date of the conference agreement. Does this mean that any change in the organization's operations after that date will cause it to lose the deduction?

Mr. PACKWOOD. Certainly not. The purpose of the limitation is to deny the deduction to the organization only if it makes a change in its operations which is so material that the change has the effect of eliminating coverage for a high risk segment of its business. An example of such a material change would be elimination of coverage for individuals.

Mr. CHAFEE. Would offering a new product, such as a special plan for nonsmoking individuals, or changes in benefits offered to high risk segments of business, constitute a material change?

Mr. PACKWOOD. Not at all. The committee is fully aware of the dynamic nature of the health benefits industry and recognizes that consent changes in products and benefits are the order of the day. We cannot expect the Blue Cross and Blue Shield organizations to freeze their operations and not adapt to their changing environment.

Mr. CHAFEE. Would an increase in the organization's existing premium rate structure to cover anticipated costs of coverage of individual or small group subscribers be a material change in operations?

Mr. PACKWOOD. Not at all. The organizations are not required to lose money on their high risk business.

Mr. CHAFEE. I also have a technical question concerning the calculation of the surplus for purposes of determining the amount of the special deduction. I notice there is a provision concerning weakening of loss reserves after the date of the Conferees' action. How does that work?

Mr. PACKWOOD. The conferees wanted to make clear that the organizations' 1986 loss reserves would not be changed artificially to reduce taxable income in 1987. We intend that the incurred-but-not-paid claims reserve at the end of 1986 will be the claims incurred in 1986 and actually paid in 1987. That amount will be used for purposes of both determining both the surplus at December 31, 1986, and the opening loss reserve at January 1, 1987. Use of actual experience to determine those amounts will eliminate potential controversy over the proper amount of the surpluses and reserves for 1987 tax purposes.

Mr. CHAFEE. Thank you, Mr. Chairman. Your clarifications will make it much easier for the Blue Cross and Blue Shield organizations to determine their federal income tax liability in 1987. We will be monitoring the organizations' experience with the new provisions to determine if revisions are necessary.

Mr. HATFIELD. Mr. Chairman, we are now considering the conference report on H.R. 3838, the Tax Reform Act of 1986, and the statement of managers. On June 24, 1986, during the Senate debate on the Senate amendments to H.R. 3838, you and I discussed the meaning of "materially participating" as that term applies to condominium hotel unit owners in determining whether their activity is active or passive. The statement of managers states that "materially participation" has the same meaning in the conference report as set forth in the Senate report. Am I correct in understanding that our discussion on June 24, 1986, on the floor of the Senate, in which we clarified the meaning of the Senate report in this regard, continues to be an accurate statement of the intended meaning of "material participation" as defined in the Senate report and now adopted in the conference report on the subject we discussed?

Mr. PACKWOOD. Yes, Senator, you are correct. Our clarification of the meaning of "material participation" in our discussion of condominium hotel unit owners on June 24, 1986, on the floor of the Senate, carries over from the Senate report and applies fully and in its entirety to the definition of "material participation" as the term is used in the conference report on H.R. 3838 before us today.

MIRROR SUBSIDIARIES

Mr. DOLE. Mr. Chairman, as you know, the conferees agreed to a number of sweeping changes to subchapter C of the Internal Revenue Code, including repeal of the general utilities doctrine. While I believe the conference report is clear on this particular point, I would like to confirm my understanding that Treasury Regulations section 1.1502-34 will continue to apply for purposes of defining the scope of section 332(b) and new section 337. In particular, I would like to confirm that so-called mirror subsidiary transactions will not be affected by the repeal of general utilities.

While the Treasury Department has authority to propose regulations changing the treatment of mirror subsidiary transactions on a prospective basis, they are not required to do so by this legislation. In my opinion, it would be unsound economic and tax policy to prohibit such transactions. Indeed, the prevailing view as reflected in all major studies on reform of subchapter C, is that this type of transaction should be facilitated. In any event, I hope that Treasury will take no action in this area by regulations. This issue, and myriad others, are properly the subject of the Treasury report on subchapter C that is mandated by section 634 of the bill.

Mr. PACKWOOD. My understanding of the conference report regarding section 332 and mirror subsidiary transaction is the same as that of the majority leader. While this legislation does give the Treasury Department broad authority to promulgate legislative regulations, I agree that the focal point of the Treasury's efforts should be on timely completion of the subchapter C report. I share your view that it would be inappropriate to change the treatment of mirror subsidiary transactions before a full Treasury review of subchapter C, and trust that we would be notified in advance of any such efforts.

Mr. DOLE. I thank the distinguished chairman for sharing his views on this subject.

EFFECT ON NOL RULES ON CONTINGENT INTERESTS

Mr. DOLE. The effective date for implementing amended section 382(1)(3)(A) is ambiguous as it pertains to contingent interests.

It is my understanding that contingent interests arising prior to January 1, 1987, for example, contingent options created in business transactions occurring prior to that date, are not treated as ownership changes merely by operation of the January 1, 1987, effective date. Does the distinguished chairman agree that this is a correct interpretation?

Mr. PACKWOOD. I share the majority leader's interpretation of this provision.

INSTALLMENT INDEBTEDNESS

Mr. DOLE. I understand that the conference report treats a taxpayer's allocable installment indebtedness as a payment received on an applicable installment obligation. Specifically, the disposition on an installment basis, after August 16, 1986, of real property used in a business or held for the production of rental income is subject to the proportionate disallowance rule if the sales price exceeds $150,000.

The conference report also authorizes the Treasury Department to prescribe regulations to prevent circumvention of the proportionate disallowance rule through the use of related parties, passthrough entities, or intermediaries.

I would like to clarify that the proportionate disallowance rule will not apply if, prior to August 16, 1986, there is a disposition on the installment basis of less than a 50-percent interest in a partnership that owns only nondealer rental real property. Does the distinguished chairman of the Finance Committee agree that this interpretation is correct?

Mr. PACKWOOD. The majority leader's understanding of the provison is correct. A disposition on the installment basis of nondealer rental real property, whether directly or indirectly, prior to August 16, 1986, will not be subject to the proportionate disallowance rule.

APPLICATION OF PASSIVE LOSS RULES TO CLOSELY HELD CORPORATIONS

Mr. JOHNSTON. Mr. President, I wish to confirm my understanding of the application of the new so-called passive activity loss and credit rule that is embodied in section 501(a) of the conference report to accompany H.R. 3838, the Tax Reform Act of 1986. As I understand the conference agreement: First, rental activity is per se classified as passive activity; second, income derived from the investment of working capital is characterized as portfolio income; third, C corporations may offset losses from passive activities against income from an active trade or business but not against portfolio income; and fourth, losses from an active trade or business may be offset against income derived from the investment of working capital and vice versa.

To assure that my interpretation is correct, I would like to ask the distinguished chairman of the Finance Committee to confirm the accuracy of a number of examples of this rule. I also ask unanimous consent that a chart summarizing the facts in these examples be made a part of the RECORD at this time.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

	Equipment leasing activity	Real estate rental activity	Active trade or business	Income from working capital
1	($200)	($200)	$500	$100
2	(200)	(200)	(500)	100
3	(200)	(200)	(500)	(100)
4	200	(200)	500	100
5	200	(200)	(500)	100
6	200	(200)	(500)	(100)
7	(200)	200	500	100
8	(200)	200	(500)	100
9	(200)	200	(500)	(100)
10	200	200	500	100
11	200	200	(500)	100
12	200	200	(500)	(100)
13	200	200	500	(100)
14	200	(200)	500	(100)
15	(200)	200	500	(100)
16	(200)	(200)	500	(100)

Mr. JOHNSTON. First, do I understand that if a closely held C corporation has $400 in losses from passive activities—such as equipment leasing and/or real estate transactions, $500 in income from an active trade or business—which is not a passive activity—and $100 of portfolio income, the company may offset the $400 in passive losses against the $500 of active trade or business income, leaving taxable income of $200, $100 or which is attributable to the active trade or business and $100 of which is attributable to working capital—portfolio income.

Mr. PACKWOOD. The Senator from Louisiana's understanding is correct.

Mr. JOHNSTON. If a closely held C corporation had $400 in losses from passive activities, $500 in losses from an active trade or business and $100 in portfolio income, its $100 in portfolio income can partially offset the $500 in losses from an active trade or business, leaving a $400 loss carryforward from the active trade or business and a $400 passive loss carry forward.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If a closely held C corporation had $400 in losses from passive activities, $500 in losses from an active trade or business and $100 in losses from portfolio income, the company could carry forward $400 in passive losses and $600 in other losses.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If a closely held C corporation had $200 in equipment leasing income, $200 in real estate activity losses, $500 in active trade or business income and $100 in portfolio income, the company could net its equipment leasing income against its real estate loss, giving it $600 in taxable income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If this corporation had $200 in equipment leasing income, $200 in real estate activity losses, $500 in active trade or business losses and $100 in portfolio income, the equipment leasing activity income would totally offset the real estate activity losses. The company could then use the $100 in portfolio income to partially offset its active trade or business losses, leaving a $400 carryforward of losses from the active trade or business.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If the company had $200 in equipment leasing income, $200 in real estate activity losses, $500 in active trade or business losses and $100 in portfolio losses, the equipment leasing activity income would offset the real estate rental activity losses, leaving $600 in carryforward losses that are attributable to the active trade or business and the portfolio income account.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If the company had $200 in equipment leasing activity losses, $200 in rental real estate income, $500 in active trade or business income and $100 in portfolio income, the equipment leasing and rental real estate activities will completely offset each other, leaving $600 in taxable income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If the company had $200 in equipment leasing activity losses, $200 in rental real estate income, $500 in active trade or business losses and $100 in portfolio income, the equipment leasing and rental real estate activities will completely offset each other. The $100 in portfolio income would partially offset the $500 in losses from active trade and business, leaving $400 in active trade or business losses to be carried forward.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If the closely held C corporation has $200 in equipment leasing losses, $200 in rental real estate activity income, $500 in active trade or business losses and $100 in portfolio losses, the equipment leasing activity would completely offset the real estate rental activity income and the company could carry forward $600 in losses from its other activities.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If a company has $400 in income from passive activities, $500 income from its active trade or business and $100 in portfolio income, it would have $1,000 in taxable income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If a company has $400 in passive activity income, $500 in losses from its active trade or business and $100 in portfolio income, the passive activity income could partially offset $500 in losses from the active trade or business. The company would also be able to use the remaining $100 in losses from the active trade or business to totally offset its portfolio income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If a company has $400 in passive activity income, $500 in losses from its active trade or business and $100 in portfolio losses, it could use the passive income to partially offset its active trade or business loss, leaving it a $200 loss carry forward that is equally attributable to its active trade or business and its portfolio account.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If a company has $400 in passive activity income, $500 in active trade or business income and $100 in portfolio losses, it could use its portfolio loss to partially offset the income derived from the active trade or business, leaving it with $800 in taxable income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If the closely held corporation had $200 in equipment leasing income, $200 in rental real estate losses, $500 in active trade or business income and $100 in portfolio losses, its equipment leasing income would offset its rental real estate losses. It could also use its portfolio loss to partially offset its active trade or business income, leaving it with $400 in taxable income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. If the company had $200 in equipment leasing losses, $200 in rental real estate income, $500 in active trade or business income and $100 in portfolio losses, its equipment leasing activity would offset its rental real estate activity and the $100 in portfolio losses could partially offset the active trade or business income, leaving it with $400 in taxable income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. Finally, if a company had $400 in passive losses, $500 in active trade or business income and $100 in portfolio losses, the passive losses, $400, and portfolio losses, $100, would completely offset its active trade or business income.

Mr. PACKWOOD. The Senator is correct.

Mr. JOHNSTON. I thank the distinguished chairman for his assurances.

SECTION 401(k) MASTER PLAN

Mr. BAUCUS. Section 1142 of the conference agreement pertains to master and prototype plans for qualified cash or deferred arrangements under section 401(k). A master or prototype plan is a plan whose form is approved by the National Office of the IRS. An employer that adopts a master or prototype plan, making only those elections permitted in the plan, can rely on the plan's qualification under the relevant law.

The master and prototype program is not dictated by the Tax Code but is instead set up by the IRS as a streamlined procedure to handle its workload while eliminating paperwork for small employers. These plans are most suitable for small businesses with 100 or fewer employees. I understand that a master plan can cost as little as $100 to a small employer who wishes to set up a 401(k) plan for himself and his employees, as compared with a typical cost range of $1,500 to $10,000 in legal fees for an individually structured plan. Also, adoption of a master plan would save the employer time and even reduce IRS workloads by cutting down on the number of plan approval requests.

The Senate bill required IRS to begin issuing determination letters by May 1, 1987, to make 401(k) plans more widely available to small businesses. The conference report indicates that IRS will begin accepting applications for opinion letters by May 1, 1987. Is my understanding correct that this change will delay the availability of 401(k) plans at a reasonable cost to small businesses?

Mr. PACKWOOD. Yes, the Senator's understanding is correct. Because of the pending backlogs at IRS, a May 1, 1987, deadline for determination letters was administratively impossible. However, it is unfair to penalize small employers any further beyond the time delay provided to IRS.

I expect that, even with the delaying provision of the final language, the IRS will make every effort to issue favorable opinion letters on master and prototype 401(k) plans as quickly as possible. I have heard of cases where sponsoring organizations have waited over 2 years to receive final approval of their plans. The deadline imposed in this legislation shows that Congress intends that such delays will not occur in the future.

Mr. BENTSEN. Mr. President, section 1301 of the bill provides that a public approval requirement will apply to all private activity bonds, as provided in new section 147(f) of the 1986 code. Under section 1316(a) of the bill, a land program with a long history in my State, the Texas Veterans Land Bond Program, is now characterized as a private activity bond, and will be subject to this public approval requirement. These bonds are issued to fund a pool of loans to Texas veterans meeting certain State law criteria, and they are issued pursuant to constitutional referenda approved, from time to time, by the voters of the State of Texas. It is my understanding that bonds issued as part of the Texas Veterans' Land Bond Program pursuant to any prior or future referendum approved by the voters of the State of Texas amending article III of the constitution of the State of Texas will satisfy the requirements of such new section 147(f) even though the identity of individual borrowers/mortgagors and the location of land to be financed is not known prior to or on the date such bonds are approved or issued. It is also my understanding that such a referendum amending the Texas Constitution will satisfy the requirements of section 147(f) provided a public hearing is held with respect to any issue subsequent to the first issue covered by the referendum.

I want to ask the chairman if my understanding is correct.

Mr. PACKWOOD. The Senator from Texas is correct. The public approval requirement will be satisfied in the circumstances he described.

Mr. MOYNIHAN. I have a question with respect to the treatment of tax and revenue anticipation notes issued by State and local governments to finance their working capital needs for periods during which they incur cashflow deficits. In particular, I am concerned with the impact of the arbitrage rebate rules on these financings which are essential to the day-to-day operations of many of our State and local governments.

In general, issuers of State and local government obligations are not required to make rebate payments to the Federal Government, if the proceeds of the obligations are spent within 6 months of issuance. Section 144 of the Internal Revenue Code, as amended by the bill, provides a safe harbor for determining whether the proceeds of the obligations have been spent. This safe harbor indicates that the proceeds will be deemed to be spent if the size of the issue of tax and revenue anticipation notes does not exceed a specified amount. It is my understanding, however, that the safe harbor stated in the code is not intended to be the sole method by which an issuer of tax and revenue anticipation notes may establish that it has spent the proceeds within 6 months of the issuance of the notes. State and local government issuers of such notes will be exempt from any rebate requirement if they have actually spent the proceeds of the notes within 6 months of their issuance.

Mr. PACKWOOD. That is correct. The safe harbor provision does not limit the ability of issuers of such notes to qualify for the 6 month expenditure exception to the rebate rules, and it was not the intention of the conference committee to do so.

DEPRECIATION AND ITC TRANSITION RULES

Mr. GLENN. I would like to confirm with the distinguished Senator from Oregon the operation of the transition rule for supply or service contracts set forth in section 204(a)(3) of H.R. 3838 as reported out by the conference committee and currently under consideration by the Senate, particularly its application to holders of television franchise rights H.R. 3838 as passed by the Senate on June 24, 1986, contained section 202(d)(11) which provided, in part, that the amendments made by section 201 would not apply to any property which is readily identifiable with or necessary to carry out a binding obligation with a municipality under an ordinance granting television franchise rights if the ordinance was enacted on July 22, 1985, and a construction contract was signed before April 1, 1986. While the version of H.R. 3838 presently under consideration by the Senate does not contain the precise language set forth in section 202(d)(11) of the bill as originally passed by the Senate, the conference report accompanying the conference's version of the bill states that with respect to the supply or service contract exception, the conferees wish to clarify that this rule applies to cable television franchise agreements embodied in whole or in part in municipal ordinances or similar enactments before March 2, 1986—January 1, 1986, with respect to the investment tax credit. I would like to confirm that the supply or service contracts transition rule, the statutory language of which was not amended by the conference committee, is intended to cover the holder of any television franchise which would have been covered by the original section 202(d)(11).

Mr. PACKWOOD. That is correct.

Mr. GLENN. Thus, in the case of a cable franchise which was granted a cable franchise on July 22, 1985, and pursuant to which a definitive franchise agreement was negotiated, and subsequently approved and signed after March 1, 1986, and which entered into a construction contract prior to April 1, 1986, its cable related property would fall within the supply or service contracts transition rule?

Mr. PACKWOOD. That is correct. It was the intent of the conferees, as indicated in the conference report, that the definitive franchise agreement which was contemplated by the July 1985 ordinance would be considered embodied in that ordinance and as such would qualify as a supply or service contract entered into prior to March 2, 1986, with respect to the depreciation rules and January 1, 1986, in the case of the investment tax credit rules.

Mr. GLENN. I thank the distinguished Senator for his clarification of this issue.

Mr. PACKWOOD. I thank the Senator.

FERC LICENSE RULE

Mr. GLENN. Mr. President, I want to ask the distinguished chairman of the Finance Committee a question about the so-called FERC license rule.

Under section 204(a)(2) of the bill, property would be grandfathered from loss of the investment credit and current depreciation allowances if the property is part of a project that the Federal Energy Regulatory Commission certified before March 2, 1986 as a qualifying facility for purposes of the Public Utility Regulatory Policies Act.

There are two ways that a project can become a qualifying facility. FERC regulations provide that the owner or operator of a facility may either send the agency notice that the facility meets the requirements for a qualifying facility or request a formal order from FERC certifying the project.

The statement of the managers says that the project certified by formal order have grandfather protection under the FERC rule. A project that a developer has simply put FERC on notice as a qualifying facility is not protected. That's because the latter project has not been certified by FERC.

My question is: What happens if FERC acknowledged in a formal order before March 2, 1986, that a project is a "qualifying facility," but the focus of the order was a separate issue?

A constituent of mine, Energy Conversions of America, Inc. [ENCOA], has been working since 1978 to build a facility in Cincinnati that will burn the city's garbage to generate electricity. The electricity will be sold to the local utility. ENCOA signed a contract with the city in 1979 and began negotiating with the utility in 1982. Although a construction contract has still not been signed, ENCOA made a series of trips to the Federal Energy Regulatory Commission beginning in 1982 for orders to help in the negotiations. For example, in 1982, a hearing officer for the State of Ohio insisted that the State lacked authority, because of Federal preemption, to become involved in determining the utility's avoided cost for purchasing electricity from the Cincinnati facility. ENCOA sought an order from FERC setting the rates that the utility should pay for the electricity. The FERC order states, among other things that—and I am reading:

> [When completed, ENCOA will be the operator of a qualifying small power production facility as defined in section 201 of the Public Utility Regulatory Policies Act of 1978 [PURPA] and section 292.204 of the Commission's regulations.

The question is: Does the FERC rule in the bill cover this project?

Mr. PACKWOOD. It was the intent of the conferees as indicted in the conference report that the FERC rule in the bill would cover a facility where a FERC order states that when completed, a company will be the operator of a qualifying small power production facility as defined in section 201 of PURPA.

Mr. GLENN. I thank the distinguished Senator for his clarification.

Mr. BYRD. Mr. President, the tax conference report before us today responds to the demand of the American people for fundamental reform of our tax system. It closes down the most abusive tax shelters and many unwarranted cooperate tax loopholes. It also establishes tough minimum tax provisions for both high-income individuals and corporations.

Tax shelters have been growing rapidly in recent years. Those who sell tax shelters blatantly advertise that, if your income is high enough, you can stop paying taxes. The boom in tax shelters has not only increased cynicism about the Tax Code; it has also corroded public confidence in Government.

The conference report also takes 6 million of the working poor off the income tax rolls.

If we fail to seize this opportunity to adopt these major reforms of our tax system, another opportunity may be a long time in coming.

I regret that some middle-income taxpayers will face a tax hike under this bill.

Yet, this conference report has moved the starting date for rate reductions up by 6 months to January 1, 1987—the same date that it removes many deductions. Therefore, the average taxpayer's weekly paycheck will rise 3 months from now, not 9 months from now. This means that, despite the loss of some deductions, far fewer middle-income people will have a tax hike next year and many more will get a larger tax cut.

Moreover, the conference report does better by the middle class in its treatment of IRA's than did the Senate bill. Full deductibility for IRA contributions is assured up to income levels that cover 80 percent of taxpayers and partial deductibility is retained for another 10 percent of taxpayers.9

However, I am particularly concerned about our capital-intensive industries, such as chemicals and steel, coal, natural gas, and oil. These are the very industries that are predominant in my State of West Virginia.

The economic health of these industries has already been eroded. The repeal of the investment tax credit will lessen the money invested in modernization and rehabilitation of these basic industries, which could lead to a further erosion of our competitive position.

I am pleased that the conference report does provide a transition rule to allow the steel industry to utilize some of the investment tax credits that its firms have accumulated, while requiring that any credits that are utilized by a steel company must be used for modernization of steel plant and equipment. The elimination of the investment tax credit and reduction of the R&D credit will reduce incentives for industry to make this country more competitive. However, those two provisions may be offset by other provisions that can improve our competitiveness.

Finally, bearing in mind our experience with the 1981 tax bill, I am concerned that the revenue estimates for this bill may turn out to be overly optimistic, thus compounding the already difficult task of reducing Federal budget deficits to meet the Gramm-Rudman targets.

Indeed, the projections of economic performance over the next 5 years themselves are controversial—even without considering changes in the Tax Code. There is a wide margin for error and the revenue losses for 1988 and 1989, currently estimated at $16.7 billion and $15.1 billion, respectively, may be understated.

It will be important that Congress carefully monitor the impact of this bill on the Nation's industry and on competitiveness, as well as on Federal revenues, as this bill goes into effect. If this measure results in further erosion of our manufacturing base and our industrial competitiveness Congress must be prepared to take the necessary actions to bolster them in the most efficient way possible.

I nonetheless believe that, on balance, it is worthy of support for the basic reforms it achieves. I will, therefore, reluctantly vote for this bill, and hope that the possible consequences, to which I have referred, do not materialize.

The PRESIDING OFFICER. The Senator from Louisiana retains the time.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Louisiana wish to yield his time?

Mr. LONG. Mr. President, I yield my time to the Senator from Oregon.

The PRESIDING OFFICER. The Senator, the distinguished chairman of the Senate Finance Committee [Mr. PACKWOOD] is now recognized.

Mr. PACKWOOD. I thank my good friend and distinguished colleague from Louisiana.

There are a few remarks that I wish to make about him very shortly, but for the moment I would like to yield 5 minutes to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas, the distinguished majority leader, is now recognized.

Mr. DOLE. Mr. President, I thank the distinguished chairman of the committee.

Mr. President, it has taken a long time to get to this point. In his 1984 State of the Union Address, President Reagan first called for the Treasury Department to report to him on tax reform options. The President sent his proposals to us in May 1985, and we have been working on tax reform ever since. There were several times when the media reported that tax reform was dead, and I will admit to having some doubts myself whether tax reform could survive the legislative process.

But tax reform has survived, and we now have come to the final step—approval of this conference report. I hope the Senate will vote overwhelmingly to take this final step to send tax reform legislation to the President this year.

REAL REFORM

Tax reform means different things to different people and, for that reason, we cannot expect any comprehensive change in the tax laws to be adopted by unanimous consent. However, this conference report can lay claim to the title "tax reform" by any fair definition of the term.

The easy thing to do would be to vote against tax reform. I am sure that every Member has received more letters against various provisions in the bill than we would care to count. But we should not forget that people are less inclined to contact us if they like something we are doing than if they hope we won't do it. I urge my colleagues to balance the good in this conference report against the complaints about particular provisions. I am confident that they will come to the same conclusion as this Senator has—it is good legislation and it should become law.

There are a number of items which I strongly believe should have been handled differently or not changed at all. For instance, I am particularly concerned about the inadequate transition from present law to this revised tax system, and I have said so on several occasions. But all the concerns should not overshadow the basic soundness of this bill.

GENERAL FAIRNESS VERSUS SPECIAL INCENTIVES

To my mind, the most important feature of any tax reform legislation is fairness. Without fairness and the perception of fairness, our system of voluntary compliance falls apart. In fact, in recent years we have seen the so-called compliance gap rise to a point where unreported taxes have risen to nearly $100 billion per year. This has occurred despite our efforts in 1982 and 1984 to increase reporting requirements and increase penalties for noncompliance.

Obviously, many Americans are not paying the taxes they owe. I expect that much of the talk of complexity and lack of fairness in the tax laws really translates into a suspicion that the average taxpayer is missing something that a more sophisticated taxpayer is using to his advantage. It is easy to understand a taxpayer's reluctance to pay all the taxes he owes when he reads that corporations with huge reported profits pay little or no income tax or that wealthy individuals invest in tax shelters to avoid taxes they otherwise would have to pay.

This bill goes a long way toward dispelling this cynicism. However, one problem we have encountered is that we now know a lot more about how individuals and corporations avoid paying taxes on all their economic income. They reduce taxes by taking advantage of the incentives that we have enacted to encourage different activities. For example, they take advantage of deductions for interest that they pay, they invest in depreciable property and take advantage of the investment tax credit and accelerated depreciation, and they invest in property that can qualify for the special tax rate for long-term capital gains.

Not surprisingly, many Members have expressed misgivings about reducing or eliminating these and other special incentives. For this reason, we did not eliminate or reduce most employee benefits. We did not eliminate the deduction for State and local income or property taxes. We did not reduce or eliminate the home mortgage deduction. We retained IRA's for most Americans, and we have expanded pension coverage for employees. These are just a few examples of special incentives that will remain in the law. There are many more and there is nothing wrong with that. We have had an opportunity to review and reevaluate our priorities, and we have made the decisions we think are appropriate.

THE BASIC REFORMS OF THIS LEGISLATION

The Tax Reform Act will make basic changes in our tax laws which almost everyone will applaud. It will, for example, significantly increase the income level at which tax liability begins. As a result, over 6 million lower income Americans will no longer be liable for income tax. This is a change that I had hoped to accomplish, and had proposed on three different bills, while I was chairman of the Committee on Finance.

The bill will also significantly reduce tax rates. When fully effective, it will dramatically reduce the maximum rate for both individuals and corporations. This should help take tax planning out of the decisionmaking process on most occasions.

Most individuals will be in the 15-percent bracket, but, perhaps more important, most individuals and particularly lower and middle income taxpayers will have major decreases in tax liability. It is worthy of note that, even though we will reduce the top individual tax bracket to 28 percent, lower and middle income taxpayers will receive a larger percentage tax reduction than higher income individuals. For instance, taxpayers with incomes between $10,000 and $20,000 will have a tax cut, on average, of 22.3 percent. Taxpayers with incomes between $20,000 and $30,000 will have a tax cut of 9.8 percent. On the other hand, taxpayers with incomes over $100,000 will have a tax cut of less than 2.5 percent.

On the corporate side, the conference report will cause income from different types of business activities to be taxed in a more similar manner. When we enact different incentives for different industries, whether it be the investment tax credit for buying equipment or the 20-percent reduction in tax liability for life insurance companies, we are, in effect saying that these taxpayers do not have to pay taxes at the same rate as other businesses. This legislation stil retains some incentive for capital-intensive industries, but it takes the view that tax rates should be low for all corporations, not just a select few. So we will have a 34-percent maximum rate for all corporations, not a 46 percent rate for some and a negative rate for others.

As I suggested earlier, we retained some tax incentives in the tax law that will reduce taxable income in some cases below real economic income. That caused some concern about whether some corporations could escape tax, even under the new rules. As a result, the Senate adopted a very stringent minimum tax. The House had a somewhat different and less inclusive approach, but they had a higher rate. The conference agreement adopts a comprehensive minimum tax similar to the Senate bill and adopts the tax rate from the Senate bill. We should feel confident that we now have an "escape-proof" minimum tax.

LEVEL OF CORPORATE TAX LIABILITY

There is some concern about the overall increase in corporate tax liability. In the short run, I think some of this concern is justified. In 1987, corporate income taxes are estimated to increase by $25 billion. At the same time, individual taxes will be reduced by almost $14 billion. That will help, but there will be a net 1-year tax increase of $11.4 billion. Of course, over 5 years the bill is estimated to be revenue neutral, but we may have a somewhat rougher transition than we would have hoped.

Most economists, including the Council of Economic Advisors, believe that over the long run this bill will have a positive effect. GNP will be higher than if we retained present law. Assuming that they are right, and we really have no reason to believe otherwise, this legislation will not just be a cosmetic change with some positive psychological and compliance benefits. It will help spur economic growth as the President intended when he first sent his proposals to Congress for our consideration. This legislation will inevitably change the flow of capital in this country. However, there is good reason to believe that this change will be for the better—that there will be a more efficient allocation of capital and a stronger economy in general.

RATE REDUCTION AND FUTURE PROSPECTS

To many people, tax reform means simply lower rates. They treat the more comprehensive definition of what is income as a necessary evil to get the lower rates. Others would say that defining income for tax purposes so that it more nearly resembles common understanding of income in an economic sense is reform in its own right. But, whatever way you analyze it, the only thing that has allowed tax reform to succeed is that it combines both rate reduction and so-called base-broadening.

If we had merely adopted the rate reduction contained in this bill, we would have had a reduction in revenues which would have greatly increased the budget deficit. If we had just broadened the tax base as contained in this conference report, we would have increased revenues enough to jeopardize our whole economy. Neither approach would have had the slightest possibility of success.

All this is to say that I would sincerely hope that no one seriously thinks that unraveling either part next year is a good idea. I do not think such an effort would succeed.

This conference report is not perfect and I expect that we will have to follow next year with a technical corrections act. There is nothing unusual in that. We have followed each major piece of tax legislation in recent years with a fairly substantial technical corrections bill. In addition to the inevitable typographical errors, I am sure that there will be provisions that do not work the way we intended. I also would hope that we could smooth out some of the rough spots in this legislation. For instance, the so-called phantom 33-percent rate is an issue which I believe should be addressed.

However, I hope we will remain deaf to the pleas to reintroduce special tax benefits paid for by raising the rates. Similarly, I hope that we will not take seriously arguments in favor of raising revenues by raising the rates that we are now voting to reduce. I have already heard some suggest that we could raise $100 billion by freezing the tax rates at the levels applicable in 1987 or that we could raise $20 billion by not letting the top rate drop below 33 percent in 1988. I would hope my colleagues will ignore all suggestions to raise the rates. We are going to have to address the deficit next year. I am sure that there will be proposals to raise tax rates, rather than make more difficult choices, but the American taxpayer deserves better than that.

CONTRIBUTIONS OF SENATOR PACKWOOD AND SENATOR LONG

I have already mentioned the efforts of President Reagan. We would not be debating this conference report today absent his efforts. However, the distinguished chairman of the Finance Committee, Bob Packwood, also deserves much of the credit for this bill. It was the distinguished Senator from Oregon who initiated the proposals which allow the rates to be reduced even below the levels proposed by the President. And it was the distinguished Senator who developed the consensus in committee that brought tax reform back from a hope to a possibility and now nearly a certainty.

We should also recognize the extraordinary contributions of the distinguished ranking member and former chairman of the Finance Committee, Russell Long. As a member of the Finance Committee and a former chairman myself, I know first-hand how important the distinguished Senator from Louisiana is when you want to put together a major tax bill or just about anything else. But my colleagues know that you don't have to be a member of the Finance Committee to realize what an effective Senator Russell Long is. This is Senator Long's last tax bill and it shows his influence in many ways. I will personally miss the Senator's wise counsel in the years to come. I know we all will.

CONCLUSION

I urge my colleagues to agree to this conference report. It may not be the last tax reform measure that any of us see in our careers in the Senate, but it is a worthy bill. We can be proud of this legislation and proud that we voted in favor of it. It is a tax bill that we can honestly describe to the American people as tax reform.

Mr. President, I spent most of the day in my office watching the debate. It has been a very good debate. There have been some outstanding statements made. I know that Members either feel good about this bill or they have some problems with it. I guess perhaps when you are in doubt the theory around here is you vote no. But I think this is an exception. I think if there is any doubt, it is doubt whether we went far enough as far as tax reform is concerned. I believe we have made a big, big step in that direction.

There is no doubt about it, it has been bipartisan from the start—nonpartisan may be even a better word. We have had leadership all over this place and all over the House and the White House and around the country. We have had 2 or 3 years of discussion, and it has been on the merits.

As I said, I know tax reform can mean different things to different people. I recall we had withholding on interest and dividend income. Somebody told me that was tax reform but I learned it was not. The President said it was. Treasury said it was. A lot of other people said it was. I said many times my banker got so mad at me over that one he came by and picked up his toaster and set of dishes. So I learned that was not tax reform.

But if there is any doubt, maybe the easy thing to do is to vote no. I hope we have an overwhelming vote in support of this product. I have listened with interest to the distinguished Senator from Ohio [Mr. Metzenbaum], on transition rules, and I do not disagree; if we rifle shot so we pick out one person or one company, this sometimes creates a problem. But the transition rules are not per se bad, they help taxpayers with special circumstances to adjust to change. I think they have always been around. I understand there are even some in Ohio. There are some in Kansas, some in nearly every State.

The final point I would emphasize, because I do not want to detract from the time of the distinguished chairman, is that I am not certain we have gained a lot as far as simplicity but I think we have gained a lot as far as fairness. When I travel around my State and other States, I find most people do not mind paying their taxes—they would rather not—but they do not really want to pay if they believe they are paying more than their fair share compared to someone who is paying zero or very little, whether it is a corporation or somebody with a lot of money who has been legally sheltering his income or taking advantage of the Code. I do not say it is illegal, but it does not help instill confidence in the system.

I guess the one satisfaction in this bill is that you know that even though you have not closed up every loophole you made a big, big effort. And Congress will meet again next year.

If we have gone too far, as I heard the distinguished Senator from New Mexico indicate earlier, if we do find some of these provisions are creating economic problems, I guess we can address that next year or the year after. But I think there are a number of good things that have been done, and I certainly want to commend everyone for their efforts.

Obviously, the President played a vital role. He was out there giving speeches when the rest of us thought it was all over. I remember when he went to North Carolina State he said he had been interrupted 17 times by applause. I think the distinguished senior Senator from North Carolina said, "Yes, once he said 'Tomorrow is Friday' and the students burst into loud applause." That may not have been an indication of support for the tax bill, but the President hung in there. It was the President, it was the chairman of the Finance Committee, Senator Packwood, it was the distinguished ranking Democratic member of that committee, Senator Long, it was Senator Bradley, it was Senator Danforth, Senators on both sides of the aisle. So I would hope when we vote today there will be an overwhelming vote in support of tax reform and fairness for the American taxpayer.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, one of the more diligent reporters covering the Finance Committee and Ways and Means Committee is Jeffrey Birnbaum of the Wall Street Journal. He is writing a book on the passage of the tax bill which, based upon the time he spent with me, will be roughly as long as "The Decline and Fall of the Roman Empire." But he discovered one fact that he has woven a theory around, a very long, almost conspiratorial theory. He has discovered that when I was a senior in high school, I had been assigned to do a little paper on U.S. Senators. I had chosen Russell Long. Jeff suggests that in the choosing of Russell Long there was some Machiavellian plot. I assured him it had nothing to do with that; I simply checked when the Senators had been elected. Senator Long had only been elected in 1948 and could not have done much. Therefore, my paper would not have to be long. [Laughter.]

I had no idea, when I selected Russell Long as the subject of my paper as a high school senior, that I would one day have the privilege of serving with him and learning from him. I have learned, I think, more from him than I have learned from any other man in my life, perhaps save my father. He is a genius at legislative strategy, he is a true humanitarian, and he is a man who understands that you do not bear grudges in this business. Your enemy this week is your ally next week, and the fact that someone votes against you today will not mean that he is against you forever.

□ 1550

I say that because I know that some of the people who worked hardest on this bill are going to vote against it, and vote against it, in their minds, for good reason.

Clearly, the basic decisions on this bill have to be subjective decisions: Does this bill work? Will this bill help the economy? Will this bill hurt the economy? There is not a person in this room—not RUSSELL LONG, not BOB PACKWOOD, not JACK DANFORTH, not BOB DOLE, not BILL BRADLEY, or anybody else—who can tell you for sure.

Taxes are about more than money; they are about more than economics. They are about fairness—and this bill is fair. This bill is fair for two or three very simple reasons.

Rates: We did not do everything, but we did more than we thought possible a year ago. Rates low enough that most decisions will be based upon what you will earn from an investment rather than how you are directed by the Tax Code.

I simply say again, in concluding—I will be prepared to yield back my time and vote—that there were, there are, 100 heroes in this battle. BILL BRADLEY has been justifiably lauded. JACK DANFORTH has not been sufficiently justifiably lauded. He was a Member of the core group; and when we had vote after vote after vote on this floor, attempting to undo the handiwork of the Finance Committee, only JACK DANFORTH of the core group, of seven, voted time after time against amending the bill. Even BILL BRADLEY and I on occasion voted to amend it.

Then, at the end, JACK DANFORTH, who meant so much to the success of this bill, found himself in opposition, for perfectly moral, understandable reasons. He and I disagree. We are friends. We shall remain friends.

The argument has been made that we did not address the deficit. But I come back again to my conclusion that there is more to taxes than money. We did not solve the deficit problem in this bill. It was questionable whether we would even achieve tax reform. We have.

The minimum tax: So that never again do we have to hear, "Why don't they pay something?" The "theys," of course, are the profitable corporations—in some cases, billions of dollars of profit—that pay no taxes.

Then, the so-called passive loss rule: The net effect of restricting passive losses means that henceforth people are going to invest money for the purpose of making money. I know that sounds strange. But for years in this country, people have been investing money for a different reason. I cannot help but believe that it will be good for the economy of this country if henceforth people put their money into something in the hope that they will make an economic return on their investment.

Those three provisions, in and of themselves, justify voting for this bill: the rates, the minimum tax, the passive losses.

There are 100 other things you could argue pro and con. We have argued all afternoon about the transition rules.

Everyone can vote for this bill with pride and dignity. You can go back to your constituents, the textile mills, the lumber mills, the farms, and the ranches, and you can hold your head up and say, "We did something good for America."

Mr. President, I am prepared, if the Senator from Louisiana is prepared, to yield back my time and vote. I yield back the remainder of my time.

The PRESIDING OFFICER. Is there a request for the yeas and nays?

Mr. PACKWOOD. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the conference report on H.R. 3838. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

I further announce that, if present and voting, the Senator from Utah [Mr. GARN] would vote "nay."

Mr. CRANSTON. I announce that the Senator from Illinois [Mr. SIMON] is necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of death in the family.

I further announce that the Senator from Illinois, [Mr. SIMON] would vote "nay".

The PRESIDING OFFICER (Mrs. HAWKINS). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 74, nays 23, as follows:

[Rollcall Vote No. 296 Leg.]

YEAS—74

Andrews
Armstrong
Baucus
Bentsen
Biden
Bingaman
Boschwitz
Bradley
Broyhill
Bumpers
Burdick
Byrd
Chafee
Cochran
Cohen
Cranston
D'Amato
Denton
Dixon
Dole
Domenici
Durenberger
Evans
Ford
Glenn
Goldwater
Gore
Gorton
Gramm
Grassley
Harkin
Hart
Hatfield
Hawkins
Hecht
Heinz
Hollings
Humphrey
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Laxalt
Leahy
Long
Lugar
Mathias
Matsunaga
Mattingly
McClure
McConnell
Metzenbaum
Mitchell
Moynihan
Murkowski
Packwood
Pell
Proxmire
Quayle
Riegle
Rockefeller
Rudman
Sarbanes
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wilson
Zorinsky

NAYS—23

Abdnor
Boren
Chiles
Danforth
DeConcini
Dodd
Eagleton
Exon
Hatch
Heflin
Helms
Inouye
Levin
Melcher
Nickles
Nunn
Pressler
Roth
Sasser
Simpson
Wallop
Warner
Weicker

NOT VOTING—3

Garn
Pryor
Simon

So the conference report was agreed to.

[Applause in the gallery.]

Mr. BYRD. May we have order in the gallery?

The PRESIDING OFFICER. The leader will suspend until the Sergeant at Arms has restored order in the gallery.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Madam President, I move to reconsider the vote by which the conference report was agreed to.

Mr. LONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PACKWOOD. Mr. President, I would like to say just a few words of congratulations to BOB DOLE who in the passing around of the accolades about the tax bill is not often mentioned.

Yet it was BOB DOLE who, on the day that we started the critical markup in the Senate Finance Committee on the first vote that we had to put back in one of the very, very popular deductions that we had taken out to lower the rates, voted first and before he voted made a very eloquent statement as to why he was going to vote against putting the deduction back in. Had this particular motion to put it back in passed, the bill would fall apart and it would have, and that was a 9-to-9 vote.

But for his leadership and his voting first at that time we would not have had a tax bill out of the committee or through the floor today.

Second, at every turn in the road at any time I needed help or a vote or a proxy he has supported me. He has been behind me on everything we have done on this bill, including late last night when it was questionable whether or not we could get a unanimous-consent agreement, and he gave me the leeway to negotiate anything possible to get the vote today.

In every sense he is deserving of great, great tribute, and I am delighted he was a major part of this bill.

Mr. WEICKER. Mr. President, while I have the floor even though I voted against the distinguished Senator from Oregon, I am going to tell you I have seen very few true miracles performed out here in the legislative process since I came to the Senate 16 years ago. What he did through committee and on the floor can be classified as a legislative miracle and my hat is off to him, No. 1, and No. 2, the comments which he attributes to our majority leader are well deserved in terms of the majority leader's role.

So my compliments to both of them and certainly, you know, you win some, you lose some. I lose in the sense of the vote but I hope they win when it comes to the economics of this country.

Mr. PACKWOOD. Mr. President, I thank my good friend from Connecticut and while we parted ways on this bill as most of the Senate is well aware, it is very seldom we part ways. We fought more battles back to back for the sake of civil liberties and other rights in the country. I expect looking at some of the things coming down the pike we will be engaged in those battles again.

Mr. WEICKER. I thank my distinguished colleague.

□ 1620

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Madam President, I want to thank my colleagues for their patience and understanding in helping us through the tax reform conference report. I think the vote is an indication of the strength of the package.

I thank again the distinguished chairman, Senator PACKWOOD. I thank the ranking member, Senator LONG.

Mr. BUMPERS. Madam President, will the majority leader yield?

Mr. DOLE. I am happy to yield.

ORDER OF PROCEDURE

Mr. BUMPERS. Can the majority leader give us some idea about how long he thinks we will be in this evening?

Mr. DOLE. I believe it is going to be several hours. We are not going to try to stay in real late. We were somewhat late last evening. I think we can tell in about an hour and a half if we are making real progress. Then I think we should continue. There is still a glimmer of hope of getting out of here next week.

Mr. HATFIELD. Will the majority leader yield?

The PRESIDING OFFICER. (Mr. WILSON). The Senate is not in order. Senators will take their conversations off the floor into the cloakrooms. The Senate will not proceed until order has been restored.

The Sergeant at Arms will assist in restoring order in the gallery.

Senators will please take their conversations off the floor.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. HATFIELD. Mr. President, will the Senator from Texas yield for a moment?

Mr. BENTSEN. I wonder if the Senator from Texas would be willing to yield in order for me to pose a question for the majority leader regarding the calendar.

Mr. BENTSEN. I am pleased to yield to the Senator from Oregon.

Mr. LEAHY. May we have order, Mr. President?

The PRESIDING OFFICER. The Sergeant at Arms will assist in preserving order in the gallery.

Will all Senators please take their conversations off the floor, and will staff take their conversations or themselves off the floor?

The Senator from Oregon is recognized.

Mr. HATFIELD. I thank the Senator from Texas for yielding in order that I may ask the majority leader a question.

In the event that the drug bill now pending before the body is not concluded today, Saturday, what is the majority leader's expectation as to the schedule on Monday regarding particularly the continuing resolution?

Mr. DOLE. As indicated earlier to the distinguished chairman of the Appropriations Committee, if we do not complete the drug bill today, we will turn to the continuing resolution on Monday. I think we have a gentleman's agreement that there will be no votes before 3 p.m. If there are votes requested prior to that time, maybe we could stack the votes. I know the Senator from Oregon would rather not do that, but there have been requests on each side, if we can accommodate them.

Mr. HATFIELD. I would like to see if I could urge the majority leader to see Monday made a working day, and to make it a working day means there has to be a strong probability of votes. I would only say that the most optimistic feeling in my current estimate of the situation is that it will take us perhaps 2½, maybe 3 days to complete the continuing resolution on appropriations which is the largest vehicle on appropriations we have ever acted upon.

I am very hopeful that we will be able to maintain the bill as reported from the Appropriations Committee of the Senate, which was a clean bill. I do not have great expectations that we will be able to do that. But on the other hand, I would like to suggest to the majority leader that once we take up the appropriations continuing resolution that we move through to the completion of it in order to get to the conference with the House in order to get back with the conference report. And therefore, it would be my expectation as comanager of the bill to begin that bill as early on Monday morning as we might convene to go through into the evening at a modest evening hour, and then to begin on Tuesday morning and go through to completion even if it meant all night on Tuesday night.

It is not my choice, but it seems to me that will be the only way we can maintain the schedule of completing the appropriations to fund the Government for the coming fiscal year by the October 1 deadline.

I say to the leader that therefore I hope Senators would be on the deck Monday morning at whatever time we convene and be ready to offer their amendments. If we find ourselves in a situation where we have to have continuing quorums because people are not back from the constituency knowing there are not votes until 3, I would hope maybe that we could make certain that those votes will occur at 3, if we have to make that commitment. I would like to see us be able to say there might be votes at 9:30 if we convene at 9, or if we convene at 9:30, votes could occur anytime thereafter. But I am willing to comply with the majority leader's desire. We may have people here offering amendments before 3 o'clock.

Mr. DOLE. I think that is the problem, if the Senator from Texas will yield. If we say no votes before 3, nobody is going to show up with amendments. Perhaps let me visit with the distinguished minority leader if we are going to do that to try to accommodate those who do not want to miss votes, if we can find others who will be here to offer amendments. We will get back to the Senator in the next couple of hours.

Mr. BIDEN. Will the Senator from Texas yield for a question?

Mr. BENTSEN. Yes.

Mr. BIDEN. I ask the majority leader before he leaves the floor if he is at liberty to tell us what he intends to do with the drug bill? It would be my hope we could finish it in an hour and a half. It is a good bill. We could do that. If we do not finish it tonight, does that mean we are off the drug bill until Wednesday or Thursday?

Mr. DOLE. Hopefully we will complete action on the continuing resolution, and be back on this Wednesday. We will probably have an override on Wednesday.

Mr. BIDEN. I thank the majority leader.

I thank the Senator from Texas.

Mr. BYRD. Mr. President, will the distinguished Senator yield? I would not want the distinguished majority leader to be left standing alone on this matter on the continuing resolution. I fully respect the interest and concern of the distinguished Senator from Oregon [Mr. HATFIELD]. But I want to say that I will do everything I can on this side to help the majority leader to get amendments up in the interest of stacking those votes until 3:30 or 4, and hopefully at 4 o'clock. But I will certainly try to help them move the matter along.

In the meantime, I want to cooperate with the majority leader in that regard, and with the chairman.

I thank the Senator for yielding.

OMNIBUS DRUG ENFORCEMENT, EDUCATION, AND CONTROL ACT

Mr. DOLE. Mr. President, what is the pending business.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.

The Senate resumed consideration of the bill.

Mr. DOLE. Mr. President, let me indicate that we are on the drug bill. There will be votes. We have been working again throughout the day and yesterday to give Members an opportunity first of all to study the 250-page bill; and, second, the staff on each side to get together.

We think some amendments are acceptable on each side. There are other legitimate—they are all legitimate. But we are not trying to manufacture votes. That is what I am trying to say. There are amendments which will require votes. I am prepared.

I think everybody is prepared to move on that as quickly as we can.

AMENDMENT NO. 3039

(Purpose: to provide additional authorization for the procurement of secure voice radios for federal law enforcement agencies, to earmark certain funds for the same purpose)

Mr. BENTSEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. BENTSEN], proposes an amendment numbered 3039.

Mr. BENTSEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SECTION 1. At the appropriate place in the bill, insert the following language:

In addition to any other amounts that may be authorized to be appropriated for fiscal year 1987, the following sums are authorized to be appropriated to procure secure voice radios:

Federal Bureau of Investigation	$4,000,000
Secret Service	5,000,000

SEC. 2. Amend Title II, Subtitle J (Authorization of Appropriations for Drug Law Enforcement) Sec. 1451 (a), by adding after the words "All Source Intelligence Center;" in line seven, the following language:

further provided, that of the funds authorized to be appropriated under this subsection, $7,000,000 shall be for the procurement of secure voice radios for the Drug Enforcement Administration.

□ 1630

Mr. BENTSEN. Mr. President there seems to be little doubt that the problem of slowing the flow of illegal drugs into the United States is one that requires additional assets at the Federal level. All available statistics indicate that our borders are being flooded with shipments of heroin, cocaine, and marijuana, to such an extent that our law enforcement personnel cannot begin to stop more than a small fraction of them. The measure that we are considering here in this Chamber contains numerous provisions that address this problem. There is one area, however, where there is a gap, and this amendment fills that gap.

One of the problems experienced by our law enforcement agencies is that they communicate by radio, and most of these radios broadcast in the clear, without encryption. It is easy—painfully easy—for criminals to intercept these transmissions and thereby avoid the net that is being cast for them. We have heard stories of drug smugglers listening in on DEA or other officials by means of sophisticated vans, crammed with the latest in electronic gear.

I am here to tell you that this is not necessary, and in doing so, let me say that I am not revealing anything that is not already well-known by drug smugglers.

I say sophistication through the mail, from a commercial publisher, a book—like the one I have here—detailing the frequencies used by such agencies as DEA, FBI, Customs, Secret Service, and others. My office ordered this book from an advertisement in a popular magazine. Nothing about it is classified, and here you can find the radio frequency used by the DEA's EPIC Center in El Paso, TX. Or perhaps you would rather know what frequency some other agency is using in some other part of the country. It is all here in this book, and it is all perfectly legal. Then all you need is a scanner of the type available through any number of consumer electronics stores, and you are in business.

OMB has not been kind to the need for secure voice communications for Federal law enforcement agencies. For example, they cut DEA's 1987 request for secure voice walkie-talkies to zero, and they have historically placed a very low priority on this as a budget item.

To me, it makes little sense to devote literally hundreds of millions of dollars a year to law enforcement efforts directed against the smuggling of illegal drugs, without at the same time securing the tactical communications of our enforcement agents against electronic snooping by the criminals. There are in the bill before us some $678 million for drug interdiction efforts. In the area addressed by this amendment—secure voice communications equipment—there is included $20 million for the Customs Service and $20 million for the Coast Guard. I have talked with these agencies and looked at their needs, and I believe that these funds are needed by them. I do not propose to touch this money.

What I am proposing is a very modest increase in the total amount in the bill—a total increase of only $9 million—to take care of the needs expressed in this area by two other of our Federal law enforcement agencies, the FBI and the Secret Service.

The FBI has made significant progress in this area in the past few years, but I have been working with them, and their shortfall for fiscal year 1987 is some $4 million. This amendment would authorize those funds that they have been telling me they need for this purpose, and which I have confirmed with them only this week.

The Secret Service, too, has a gap in this area. You may ask, why Secret Service? Why on a drug bill? In addition to their well-known duties of protecting the President and other high officials, the Secret Service is charged with enforcing our laws against counterfeiting and credit-card fraud. As you might imagine, there is a tremendous overlap between people who commit one of these crimes, and those who engage in the illegal drug traffic. In discussing this problem with the Secret Service, I was told that two of the biggest counterfeiting cases they have had recently involved drug smugglers in Miami and Colombia. So if we are going to have a comprehensive approach to the drug problem in this country, we should make it truly comprehensive. We should include the necessary funding to give protection to the communications of both FBI and Secret Service.

The second section of my amendment provides an earmarking of funds for the Drug Enforcement Administration in this area. When DEA submitted its budget for fiscal year 1987, OMB had already taken a cut of $7 million in the area of secure voice radios. This bill as a whole provides a net increase for DEA of about $27 million. I believe that we ought to earmark $7 million of that total increase to provide the funding that DEA determined it needed in this area. I realize that FBI and DEA have been working together to coordinate their secure radios so that they can share the same networks, and that a study of this situation has been going on for over a year. I am told by these agencies that the study is almost complete, and that they can use the additional funds in this area in this year. I believe we ought to provide it to them.

Compared with the total amount in this bill, the funds required to close this gap in the armor of Federal law enforcement officials are relatively small, and it is a one-time expense. As I said earlier, the amount added to the $678 million total by this amendment is only $9 million. This is a modest amount, I submit to you, to stop criminals from being able to eavesdrop on the FBI, DEA, and Secret Service.

I urge your support of this amendment.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr. CHILES. Mr. President, the amendment has certainly been cleared on our side and we support it. I understand Senator Thurmond is speaking for the majority side and supports it.

Mr. BENTSEN. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3039) was agreed to.

Mr. BENTSEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3040

Mr. ABDNOR. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. Abdnor], for himself and Mr. DeConcini, proposes an amendment numbered 3040.

Mr. ABDNOR. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill insert the following:

(a) Recruitment and training of volunteers for the U.S. Customs Service.

The Commissioner of Customs, acting under the direction of the Secretary of the Treasury (hereinafter referred to as "the Commissioner") is authorized to recruit, train, and accept without regard to the civil service classification laws, rules, or regulations the services of individuals without compensation as volunteers to aid the U.S. Customs Service in the performance of its responsibilities. In accepting such services of individuals or volunteers, the Commissioner shall not permit the use of volunteers in policymaking processes, or to displace any employee. The Commissioner shall not permit the use of volunteers in hazardous duty or law enforcement work unless the Commissioner determines that they are skilled in performing such hazardous activities or are trained in law enforcement work.

(b) Establishment of U.S. Customs Reserve.

The U.S. Customs Reserve (hereinafter "Reserve") is an organization of volunteers administered by the Commissioner of Customs under the direction of the Secretary.

(c) Purpose.

The purpose of the Reserve is to assist the U.S. Customs Service:

(a) to foster a wider knowledge of, and better compliance with, the laws, rules, and regulations enforced or administered by the U.S. Customs Service; and

(b) to facilitate the operations of the U.S. Customs Service

(d) Eligibility, enrollments and disenrollment.

The Reserve shall be composed of citizens of the United States and its territories and possessions, who by reason of their interests, special training or experience are deemed by the Commissioner to be qualified for duty in the Reserve and who may be enrolled therein pursuant to applicable regulations. Members of the Reserve may be disenrolled pursuant to applicable regulations.

(e) Membership in other organizations.

Membership in the Reserve shall not be a bar to membership in or employment in any civilian or military organization of the U.S. Government.

(f) Use of volunteers facilities.

The Customs Service may utilize for any purpose incident to carrying out its functions and duties as authorized by the Secretary any property placed at its disposition for any of such purposes by any individual, corporation, partnership, or association, or by any State or political subdivision thereof.

(g) Vessel, vehicle, or aircraft deemed public vessel or public aircraft.

Any vessel, vehicle or aircraft while assigned to authorized Customs Service duty shall be deemed to be a public vessel, public vehicle or public aircraft of the United States, and shall be deemed to be a vessel, vehicle or aircraft of the Customs Service, but shall not be counted against any limits expressed in authorization acts.

(h) Availability of appropriations.

Appropriations of the Customs Service shall be available for the payment of incidental expenses, such as uniforms and necessary traveling expense and subsistence, or per diem in lieu of subsistence, of volunteers and members of the Reserve assigned to authorized specific duties and for actual necessary expenses of operation of any vessel, vehicle, aircraft, or radio station or other special equipment when assigned to Customs Service duty, but shall not be available for the payment of compensation for personal services, incident to such operation. The term "actual necessary expenses of operation," as used in this section, shall include payment for fuel, oil, power, water, supplies, provisions, replacement or repair of equipment, repair of any damaged vessel, vehicle, aircraft, or radio station where it is determined, under applicable regulations, that responsibility for the loss or damage necessitating such replacement or repair of equipment, or for the damage or loss, constructive or actual, of such vessel, aircraft, or radio station rests with the Customs Service.

(i) Assignment and performance of duties.

No volunteer or member of the Reserve solely by reason of such volunteer status or membership, shall be vested with, or exercise, any right, privilege, power, or duty vested in or imposed upon the personnel of the Customs Service except that any such member may, under applicable regulations, be assigned specific duties, which after appropriate training and examination, he has been found competent to perform, to effectuate the missions of the Customs Service. No volunteer or member of the Reserve shall be placed in charge of a vessel, vehicle, aircraft, or radio station assigned to Customs duty unless he has been specifically designated by authority of the Commissioner or his designee to perform such duty. Volunteers and Members of the Reserve, when assigned to specific duties as herein authorized shall, unless otherwise limited by the Commissioner, be vested with the same power and authority, in the execution of such duties, as members of the regular Customs Service assigned to similar duty. When any volunteer or member of the Reserve is assigned to such duty he may, pursuant to regulations issued by the Secretary, be paid actual necessary traveling expenses, including a per diem allowance in conformity with standardized Government travel regulations in lieu of subsistence, while traveling and while on duty away from his home. No per diem shall be paid for any period during which quarters and subsistence in kind are furnished by the Government.

(j) Federal employee status for volunteers—

(1) Employment status of volunteers. Except as otherwise provided in this section, a volunteer or member of the Reserve shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(2) Tort claims and litigation. For the purpose of the tort claim provisions of title 28 of the United States Code, and litigation against individuals when performing official business, a volunteer under this Act and a member of the Reserve on duty shall be considered a Federal employee and entitled to official representation by the Department of Justice.

(3) Civil employees. For the purposes of subchapter I of chapter 81 of title 5 of the United States Code relating to compensation to Federal employees for work injuries, volunteers and members of the Reserve when performing authorized activities under this Act shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply. When any volunteer or member of the Reserve is physically injured or dies as a result of physical injury incurred while performing any specific duty to which he has been assigned by competent Customs authority, such member or his beneficiary shall be the performance of a specific duty as the term is used in this section includes time engaged in traveling back and forth between the place of assigned duty and the

permanent residence of a volunteer or member of the Reserve.

(4) A volunteer shall be considered an employee of the Customs Service for purposes of—

(A) section 552a of title 5 (relating to disclosure of information);

(B) section 1905 of title 18 (relating to confidential business and trade secrets);

(C) any other law governing access to records;

except that such information shall be made available to volunteers only to the extent that the Commissioner determines that the duties assigned to such volunteers so require.

Mr. ABDNOR. Mr. President, the amendment I am offering is a noncontroversial one. Simply put this provision would authorize Customs, under the direction of the Department of the Treasury to accept volunteer services. The Park Service, Forest Service, Coast Guard, and the Air Force all have volunteer service statutes similar to this provision.

Mr. President, the respective auxiliaries provide a service that is matched by none. They assist each of these agencies by performing many valuable tasks. Under this amendment volunteer services would be accepted to assist Customs employees, for example, by providing translation services, answering hot line telephones, operating nonessential radio services, cleaning and maintaining official vehicles and vessels, conducing low risk surveillance similar to what the Civil Air Patrol presently performs for Customs, and other such tasks.

Mr. President, this would be particularly valuable in that it would free Customs officers to concentrate on enforcement activities, inspections and the clearance of merchandise. In addition it would allow Customs to train and recruit a group of individuals who would be available to assist Customs in performing its responsibilities during emergencies.

Mr. President, I hope that my colleagues agree with me that adoption of this amendment will provide invaluable assistance to the Customs Services as it carries out its duties.

Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. THURMOND. Mr. President, we think the amendment will be helpful. We will accept it.

Mr. CHILES. Mr. President, the amendment has been cleared on our side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3040) was agreed to.

Mr. ABDNOR. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHILES. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3041

(Purpose: To strengthen penalties for individuals, over the age of 18, who knowingly and intentionally sell a controlled substance to a pregnant woman)

Mrs. HAWKINS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Florida [Mrs. HAWKINS] proposes an amendment numbered 3041.

Mrs. HAWKINS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Section 1102 is amended by amending the proposed section 405B of the Controlled Substances Act by adding at the end thereof the following subsection:

"(f) except as authorized by this title, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this title. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e).".

Mrs. HAWKINS. Mr. President, I would like to quote to you from a tragic story in Newsweek about a growing problem in our Nation.

> Guillermo, a newborn at Broward General Medical Center in Fort Lauderdale, has spent his whole short life crying. He is jittery and goes into spasms when he is touched. His eyes don't focus. He can't stick out his tongue, or suck. Born a week ago to a cocaine addict, Guillermo is described by his doctors as an addict himself. Nearby, a baby named Paul lies motionless in an incubator, feeding tubes riddling his tiny body. He needs a respirator to breathe and a daily spinal tap to relieve fluid buildup on his brain. Only one month old, he has already suffered two strokes.
>
> Guillermo and Paul are two heirs of America's deadly romance with cocaine.

This searing narrative tells of a horrible new phenomenon that has swept across not only my State of Florida but across our Nation * * * cocaine babies. Children, born to addicted parents, who are themselves addicts.

Infants of mothers who use drugs are often underweight. They suffer the same withdrawal symptoms as adults—seizures and convulsions. They are jittery, irritable and hyperactive. There may be developmental delays and mental retardation. Many children wind up with learning disabilities.

And in some instances, children have been so damaged by drug exposure that they are unwanted by their real parents or prospective adoptive parents, as I witnessed last week when I visited one of these clinics. This means, of course, that the affected youngsters linger in public custody.

Mr. President, to me this is the most catastrophic form of child abuse imaginable. Placing at risk the life and well-being of a child who may never experience the breadth of opportunities that might otherwise have been enjoyed. To distribute cocaine to an obviously pregnant woman is the most heinous of crimes. Once again, the insensitivity and greed of the drug mafia, the purveyors of human misery, have claimed innocent victims.

Mr. President, my amendment is simple. My amendment would revise the juvenile drug trafficking provisions of this omnibus drug legislation. It would add a new paragraph stressing strict penalties for any individual who knowingly or intentionally provides or distributes a controlled substance to any pregnant individual.

It is essential that this amendment be considered as part of the bipartisan drug package. We must guarantee that the strictest penalties are placed upon those who would sell drugs to a pregnant woman, all the while knowing of the long-term negative ramifications upon the unborn infant and upon our society as a whole.

Mr. President, I know of no objection to this amendment.

Mr. BIDEN. Mr. President, I did not hear the last statement of the Senator from Florida.

Mrs. HAWKINS. I know of no objection to this amendment.

Mr. BIDEN. Mr. President, I would like to ask a question, if I may, I would like to ask my colleague from Florida if this amendment requires an enhanced penalty for someone who sells cocaine to a pregnant woman. Is that correct?

Mrs. HAWKINS. Any drug.

Mr. BIDEN. Any drug at all?

Mrs. HAWKINS. Yes.

Mr. BIDEN. Any drug covered in the act?

Mrs. HAWKINS. Yes. Section 405B.

Mr. BIDEN. Can the Senator tell us whether or not there is a requirement of knowledge that the woman is pregnant? How would the person selling know whether or not the woman was pregnant?

Mrs. HAWKINS. I guess they would ask first, if it is not obvious by looking.

Mr. BIDEN. Are you serious? You would ask and say, "Are you pregnant?" If the woman says she is not pregnant——

Mrs. HAWKINS. My young daughter was just treated by a dermatologist and he said, "Are you pregnant?" And she said, "No." He said, "Have you any desire to become pregnant soon?" And she said, "No."

He said that she could not use that drug for him to operate on her skin if she were pregnant or going to be pregnant.

□ 1640

I believe the standard is reasonable knowledge.

Mr. BIDEN. I am not sure—I do not know of any standard in law—I am unaware of any criminal standard called "reasonable knowledge." I am a little concerned as to what this means.

For example, I am anxious to see to it that anyone who sells drugs at all goes to prison; second, that anyone who sells drugs to a pregnant woman knowing that woman was pregnant should have an enhanced penalty. What I am trying to find out here is whether or not the explanation the Senator just gave me, which is that the drug dealer should ask, "Are you pregnant" and the women looks at him and says "No, I am not pregnant"—is that sufficient defense in court that in fact he did not sell to a pregnant woman, even though she might actually be pregnant?

Mrs. HAWKINS. As I understand it, knowingly and intentionally is a standard of proof for a prosecutor. So no one should be nervous about being unfair to a drug pusher——

Mr. BIDEN. I am not nervous about being unfair to a drug pusher. I am nervous, if I am nervous about anything, about the legal standard.

Mrs. HAWKINS. Let us let the drug traffickers assume the risk.

Mr. BIDEN. I understand that the Senator can be flippant about that.

Mrs. HAWKINS. I am not being flippant, Mr. President. I have been in that clinic for many hours. I am not flippant. I suggest any Senator, if they have any squeamishness about this at all, visit one of these clinics that are filled with these babies.

Mr. BIDEN. Mr. President, I say to my colleague I have no squeamishness about that; I have no squeamishness about dealing with this issue. I do have a squeamishness about not knowing what the law is. That is my squeamishness. What I am trying to find out here is whether or not there is a requirement of knowledge. Every other crime, or at least felony, requires knowledge. I am not talking about who held what babies, or how many babies who has held. I am trying to find out whether or not there is a requirement of knowledge. The Senator tells me that there is a requirement of knowledge, is that correct?

Mrs. HAWKINS. Intentionally, yes. I believe we find this standard in other parts of this bill where a landlord cannot rent to a tenant knowingly or intentionally, knowing that the apartment would be used for drug trafficking. This is a copy of my amendment with that standard.

Mr. BIDEN. Mr. President, I now have a copy of the amendment. It says:

> "(f) except as authorized by this title, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this title.

I am still confused as to whether or not the Senator believes, under this amendment, that it requires an affirmative question on the part of the drug dealer of the pregnant person and if in fact the pregnant person responds, "No, I am not," whether or not we are going to allow, that that will allow in fact as the Senator has explained, that the drug dealer can get off. The Senator has just established, as I understand it, in our little discussion here that if, if fact, the pregnant woman says, "No, I am not pregnant," that is a defense.

Mrs. HAWKINS. It is up to the prosecutor, as I understand it, to prove that.

Mr. BIDEN. Mr. President, I am willing to accept the amendment notwithstanding that.

Mr. METZENBAUM. Mr. President, I am not willing to accept the amendment.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. I say to the distinguished Senator from Florida it is very simple when we are dealing with a drug bill to want to accept everything, throw the book at the drug users or dealers. But that does not mean we ought to make bad law. The Senator from Florida said something that almost proved the point, I say to the Senator from Florida. She said that if the drug dealer asks whether the woman is pregnant and she says no, then it would be up to the prosecutor to prove that he had knowledge. It would be up to the prosecutor. I do not quite understand that.

As bad as drug dealers are, I did not think we were out here today to see if we can just change all the rules of the Constitution and the law and the rights of people. I am assuming the drug dealer—whom I do not know. I do not know one drug dealer from another one. I am assuming that he or she is entitled to the same equal consideration and rights under the law that all of us have.

This whole idea that here is an amendment, there is an amendment, another amendment, saying that the drug dealer who sells to the pregnant woman, thinking that the woman is not pregnant, being told by her that she is not pregnant, does he have to do some kind of a test—I do not know what all the tests are that are being used in this day and age, but some kind of test to see whether she is pregnant?

It seems to me that what we are doing is taking a bill that a lot of people have worked very hard on. I cannot claim to be one of them because I was not a party to those negotiations. Though someone on my staff may have been, I was not. Now it seems what we are trying to do is, let us find a few amendments that will really stick it to them, make it so difficult that some people will have difficulty voting for it. Or maybe we will prove to ourselves how great we are at trying to have strong laws against drug dealers.

There are 100 Members of the U.S. Senate. One hundred Members of the U.S. Senate want to have a strong antidrug law. But that does not mean that every single idea that comes down the pike has to be added to this bill. To the Senator handling the bill on that side of the aisle, I must confess that I am somewhat concerned that this is the first of a series of amendments that are going to make it possible for the bill to be defeated.

We may be able to chortle about what a great job we did in getting an amendment passed or two amendments passed or three. If we do not get the bill passed, or if we do get it passed and it is a bad bill, I do not think that is anything to make anybody proud.

Mrs. HAWKINS. Mr. President, let me respond by saying that subtitle C in the RECORD of September 25, 1986, page S13651, subtitle C of the Juvenile Drug Trafficking Act of 1986, says:

> Part D of the Controlled Substances Act is amended by adding after section 405A a new section as follows:
>
> "Employment or Use of Persons under 21 Years of Age in Drug Operations."

We have already accepted that.

> "Section 405B(a) 'Except as authorized by this title' it shall be unlawful for any person at least eighteen years of age to knowingly and intentionally"—

then it has several different subtitles——

> (1) employ, hire, use, pursuade, induce, entice, or coerce, a person under twenty-one years of age to violate—

so do we have to have a card? If we keep that section of it, you have to have a card, how old are you? You would have to have a false ID.

It is to this whole title called Juvenile Drug Trafficking Act of 1986 we add section (f) by this amendment.

I hope all 100 Senators are reading this entire bill, probably the most important legislation that parents are following in the United States of America today. If any of the national news journals are an indicator of what they think we should be about, this is it, protecting children, especially the unborn.

We are adding section (f) under this Juvenile Drug Trafficking Act of 1986, using all the reasonable standards of proof as were used for employment and other areas, stating that anyone that knowingly or intentionally distributes any controlled substance to a pregnant individual—I would say it is easier to tell if somebody is pregnant than if they were 21.

(Mr. MATTINGLY assumed the chair.)

Mr. WILSON. Mr. President, will the Senator yield?

Mrs. HAWKINS. Yes.

Mr. WILSON. I believe I just heard the Senator from Florida state that there is a requirement for knowledge on the part of the accused in this instance. Is that correct? There is a requirement for knowledge?

Mrs. HAWKINS. Yes, reasonable knowledge.

Mr. WILSON. Mr. President, it seems to me that this is not any deviation constitutionally from the norm in criminal law, where knowledge is required and the establishment of knowledge on the part of the accused is one of the burdens of the prosecution.

Mr. BIDEN. Will the Senator from California yield for a question?

Mr. WILSON. Certainly, Mr. President.

Mr. BIDEN. I share his view. My confusion was in the explanation of the Senator from Florida.

□ 1650

I now have the amendment. The amendment is constitutional. The amendment does not say reasonable knowledge. That is what confused me and I suspect may confuse the Senator from Ohio. It says knowingly and intentionally. That is a criminal standard we all know. What threw me off, and the reason why I raise it—I did not have the amendment in my hand at the time, but when the Senator said that you would ask someone whether or not they were pregnant, or used an example of employment, those are totally different standards. They have nothing to do with the criminal standard. The Senator from Florida has an amendment, though, that on its face does meet the scienter requirement of the criminal law. I just want the legislative history to show that the notion that a defendant would be able to plead as a defense in court that he asked the person to whom he sold the drugs if they were pregnant and the person who purchased the drugs said, "No, I'm not," that would not be necessarily a defense. That is the first thing I want to make clear. I would hate to have that stay in the legislative history.

The second point that I wish to make is that reasonable knowledge is not a term of art in the criminal law. It is knowingly and intentionally. A reasonable man standard is a standard that is in civil law. We have a higher standard in the criminal law. The Senator from California accurately and precisely points that out. The amendment points it out.

I hope that clears up the legislative history on this because it would be awful if we passed this bill and because of the comments made about reasonable knowledge, this would be in effect declared unconstitutional further down the road. But on its face this legislation says, and I quote, "any person who knowingly and intentionally provides." And that is the criminal standard which exists throughout this legislation. I suggest that we accept the amendment.

Mr. WILSON addressed the Chair.

Mr. BIDEN. I thank my friend from California.

Mr. WILSON. Mr. President, I am glad to have heard the Senator from Delaware express acceptance of what I think is a very good addition to the criminal law. I think that it is clearly established that the standard of proof that is required here is the customary standard. What the Senator from Florida is addressing is a peculiar problem, one with which we have only recently become acquainted, and that is that there is a new victim, a victim particularly defenseless against the trafficker, one who is the victim of his or her own mother's habit.

I think that a special penalty should be involved to protect those who are especially defenseless. I think that perhaps more time has been taken than is necessary to establish what is an obvious and customary standard, but I think that what we should be doing is to give the kind of notice that this statute will give to those who would, without regard for the incredible suffering that they would inflict upon a child in the womb and shortly thereafter exposed to the rigors of life without the kind of support system that a healthy child would have, we should give notice that those people are going to especially pay for their crime. So I would expect and hope that both sides would with some alacrity accept this provision. It is needed.

I commend the Senator from Florida for her effort.

Mrs. HAWKINS. Mr. President, there is a phenomenon that is occurring in this country.

In our Nation's hospitals, there are babies being born to mothers who have used illicit drugs during pregnancy. These infants are more likely to be premature and underweight. Some suffer problems ranging from strokes, to heart attacks, to loss of the sucking reflex. Many will experience learning disabilities or cerebral palsy. And some will be born experiencing all of the symptoms of withdrawal—including seizures and convulsions, hyperreflexia and vomiting. All through no fault of their own.

The problem is new, but it is already having a significant impact on our country. Recent testimony before Congress revealed a five-fold increase in the number of damaged or addicted babies born to subtance abusing mothers. Today in New York, 8 out of every 1,000 babies bear the scars of a substance abusing parent. And at Broward General Medical Center's neonatal unit, the largest in Florida, an average of about 20 percent of the newborns being treated were the victims of substance abusing mothers. Saving the life of one of these babies can cost as much as $135,000. And taxpayers in Florida, New York, and around the country will pay for decades for these children who risk developing long-term illnesses.

Mr. President, it is my understanding that about 5 percent—or about $22 million—of the new authorization for the alcohol, drug, and mental services block grant will be reserved for high-risk youth.

Mr. President, may I address a question to my distinguished colleague from Utah, Mr. HATCH, the chairman of the Senate Committee on Labor and Human Resources and the task force on the education, prevention and treatment provisions of this bill.

The identified child of a substance abuser is considered a "high-risk youth." Am I correct in understanding that this would include a baby who is born addicted. Would this child qualify for rehabilitative services under the current provisions of the new and old ADMS treatment programs?

Mr. HATCH. Yes, under the language of this legislation, high-risk youth are targeted for treatment, rehabilitation, and prevention programs and would include children of substance abusers. I commend Senator HAWKINS for bringing this issue to the attention of the Congress and applaud her dedication to help those very unknowing victims of children born to substance abusers.

Mrs. HAWKINS. Thank you for clarifying this issue for me.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I think the amendment is in good shape, and I am very pleased the distinguished Senator from Delaware agreed that the wording is correct. It is in the usual form in laws of this kind and I hope he will see fit to accept it.

Mr. METZENBAUM. I have no objection. As the Senator from Delaware has indicated, the language is far stronger than was the other, because the language clarifies that it has to be knowingly or intentionally making the sale. That is totally different than reasonably should have known. And under those circumstances I have no difficulty with the amendment.

Mr. BIDEN. The minority is prepared to accept the amendment.

Mr. THURMOND. Mr. President, the majority is prepared to accept the amendment. We think it is a good amendment.

The **PRESIDING OFFICER.** Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3041) was agreed to.

Mr. BIDEN. Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER.** The clerk will call the roll.

Mr. WEICKER. Mr. President, I ask unanimous consent that the call for the quorum be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

Mr. BIDEN. Reserving the right to object——

Mr. WEICKER. First, Mr. President, I move to reconsider the vote on the amendment just passed.

Mrs. HAWKINS. I move to lay that motion on the table.

Mr. WEICKER. Secondly, I assume we are here to work on the bill.

The **PRESIDING OFFICER.** Will the Senator please suspend.

Did the Senator from Delaware object to the calling of the quorum?

Mr. BIDEN. The Senator from Delaware does not object on calling of the quorum for the purpose——

The **PRESIDING OFFICER.** Then the quorum call will be rescinded.

The Senator from Connecticut is recognized.

Mr. WEICKER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BIDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BIDEN. Mr. President, I suggest the absence of a quorum.

Mr. WEICKER. Might I ask the distinguished Senator before he pursues his request.

The **PRESIDING OFFICER.** Is there objection?

Does the Senator withhold his request?

Mr. BIDEN. I object to withdrawing of the quorum call.

The **PRESIDING OFFICER** (Mr. Wilson). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1700

Mr. WEICKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

AMENDMENT NO. 3042

(Purpose: To require the Alcohol, Drug Abuse, and Mental Health Administration to include as a top priority research on neuronal receptors)

Mr. WEICKER. Mr. President, on behalf of myself, Mr. Hatch, and Mrs. Hawkins, I send an amendment to the desk.

The **PRESIDING OFFICER.** The amendment will be stated.

The legislative clerk read as follows:

> The Senator from Connecticut [Mr. Weicker], for himself, Mr. Hatch, and Mrs. Hawkins, proposes an amendment numbered 3042.

Mr. WEICKER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The **PRESIDING OFFICER** (Mr. Denton). Without objection, it is so ordered.

The amendment is as follows:

> At the end of subtitle A of title IV, add the following:
>
> SEC. 4017. PRIORITY RESEARCH.
>
> The Alcohol, Drug Abuse, and Mental Health Administration shall include as a top priority research on neuronal receptors.

Mr. WEICKER. Mr. President, much will be said during the course of the debate about affecting the drug problem through additional law enforcement and harsher punishments. The fact remains that I firmly believe the three most important areas are, No. 1, education with respect to the young; No. 2, scientific research as to the problem of addiction; No. 3, the matter of rehabilitation.

The amendment that the Senate has before it now addresses the area of scientific research, and I think it is rather dramatic insofar as its subject matter is concerned. The amendment urges the Alcohol, Drug Abuse, and Mental Health Administration to pursue research on neuronal receptors.

Rather than do a bad job as a layman in describing the subject matter, I will read a letter addressed to me by Dr. Donald Ian Macdonald, the Administrator of the Alchol, Drug Abuse, and Mental Health Administration.

I hope Senators will be patient with me, because I think they will understand, on the basis of what is said here, No. 1, the complexity of this drug problem and, No. 2, how it eventually will be resolved. The letter reads:

> Dear Mr. Chairman: It was a pleasure meeting with you yesterday. As we discussed, research into the neurobiological bases of drug abuse has been both a stimulus to and beneficiary of recent advances in the understanding of the brain and behavior. I appreciate your interest and would like to take this opportunity to elaborate further on this subject and its critical significance in addressing the drug abuse crisis both in the United States and abroad.
>
> The brain is composed of billions of individual nerve cells. These nerve cells come in a variety of specialized forms and are arranged in distinct functional units. The functions of these nerve cells depend on: (1) their location in the brain, (2) their degree of specialization, (3) the kinds of substances they ordinarily use to communicate with each other, (4) the manner in which they are grouped together in bundles (nuclei), and (5) how they are wired together (nerve tracts). For example, your eye is made up of specialized nerve cells that are particularly responsive to light. The visual information received by the eye is sent to other parts of the brain composed of nerve cells dedicated to receiving and processing information about the world around us. A similar description can be made for the other special sensory organs (ear, nose, tongue, etc.) that tell us about our immediate environment. But whatever their specialized (or general) nature, the characteristic that these nerve cells have in common is their capacity for transmitting "information" in the form of electrical energy—called a nerve pulse—from one cell to another.
>
> Moving from the "geography" of nerve cells, e.g. how they are grouped or wired together, to the cellular level, we see that nerve cells are separated from one another by a small space called a synapse. A nerve impulse must cross this gap to create a "closed circuit" if the brain is to perform any of its multitudinous functions. This "circuit closing" or bridging function is performed by chemical substances produced by the brain that are called neurotransmitters. These substances are released from the end terminals of a message-sending (presynaptic) cell, cross over the synaptic gap, and make contact with the message-receiving (postsynaptic) cell which is next in line along the pathway. This physical activity which takes only the minutest fraction of a second to complete (and is occurring in millions of cells simultaneously) is responsible for the most complex human thought processes and the most elemental human behaviors.
>
> How is the message from one nerve cell to another actually received at the molecular level where the substances released by the presynaptic cell interact with the postsynaptic cell? It is made possible by specialized structures on the postsynaptic cell, called receptors. These receptors are activated by specific neurotransmitters which generate a new nerve impulse in a postsynaptic cell to which they are connected. (This is analogous to a key being able to open a specific lock if the fit is "just right.") In order for the nerve impulse to be turned off (so that the specific activity engendered by the nerve impulse does not continue on indefinitely) the neurotransmitters are almost immediately inactivated by a variety of mechanisms shortly after they have created the circuit which delivers the "message."
>
> Abused drugs and alcohol exert their deleterious influence on brain function by interfering with a number of the mechanisms described above. They interfere with: (1) The transmission of the nerve pulse within an individual cell, (2) the release of neurotransmitters, (3) the inactivation of neurotransmitters, and (4) the receptor themselves. It is precisely these processes that scientists are studying when performing research on drug effects on the brain through highly sophisticated methodologies and creative techniques. Unfortunately, it is both figuratively and literally true that when people abuse drugs they are performing "experiments" on themselves to alter their brain function (with unforseeable consequences). The results are sometimes merely unpleasant, and not infrequently disastrous.
>
> With this as background, I would like to discuss recent discoveries with direct relevance to the problems of heroin and cocaine addiction.
>
> In the early 1970s it was generally assumed that opiate drugs, such as heroin, must act on the nervous system through specific receptors in nerve cells. At that

time a search was undertaken for these receptors, and in 1973 several groups of scientists discovered the "opiate receptor." All drugs have specific chemical shapes or configurations. The opiate receptor is specialized to be activated by only one class of drugs. Going back to the analogy used earlier, if you view drugs as keys and receptors as locks, then the opiate receptor (lock) will only allow opiate drugs (keys) to fit the slot. This discovery immediately explained another phenomenon that scientists had observed for some time; that there were drugs called opiate antagonists that actually blocked the effects of heroin. It was very clear that while all opiate-like drugs might fit the slot, not all had the exact configuration to turn the key (and activate the cell). Some drugs (i.e. the antagonists) while occupying the slot, permitted no other keys, such as heroin, to have access to the lock. This concept opened up whole new avenues of research into the development of drugs with specific abilities to block, antagonize, or minimize undesirable effects of opiate drugs.

With the discovery of the opiate receptor, scientists theorized that the brain must contain some internally produced, opiate-like chemicals to activate it. It did not seem reasonable that the evolutionary process had created a special cell in the brain that was responsive only to substances which are found in nature in certain limited areas of the globe (i.e. the poppy plant). Indeed, in the mid-seventies a whole variety of endogenous (the scientific term for chemicals made by the body) opiate-like substances called enkephalins, were discovered. This finding, as well as the discovery of the opiate receptor, was made entirely by ADAMHA supported scientists.

□ 1710

That is ADAMHA. That is our unit, our governmental unit, if you will, the Alcohol, Drug Abuse and Mental Health Administration, of which Dr. Macdonald is the head.

As is so often the case in basic research and knowledge development, the discovery of endogenous opiate-like drugs had implications for a wide variety of other biomedical areas. Essentially every research program at the NIH is now supporting research in this and related areas. The possible benefits of this research include the treatment of high blood pressure, stroke, obesity, and pulmonary disease.

Current drug abuse research is also aimed at attempting to understand the genetic mechanisms which control and regulate opiate receptors and endogenous opiate-like substances. One hypothesis being investigated is that some people may be particularly vulnerable to opiate addiction because of an abnormality in their endogenous opiate system. For example, it is thought that the opiate system may play a role in mood regulation. Some people may not secrete enough enkephalins (one of the endogenous opiate-like substances referred to above) to feel "normal", and they may be particularly at risk of becoming addicted if they are exposed to outside (exogenous) opiates like heroin. In a sense, some addicts may be conceptualized as having an enkephalin deficiency syndrome in a similar way to which a diabetic suffers from inadequate insulin availability. I must emphasize that this is only a hypothesis and in any case would not explain all of heroin addiction.

While the problem with heroin has been with us for far too long, the recent epidemic of cocaine use has caused us to refocus attention on this drug. While some research is being directed at identifying a "cocaine" receptor this may not prove fruitful. We do, however, have a reasonable, if incomplete, idea about how cocaine works. As mentioned above, nerve cells communicate through the release of neurotransmitters. After performing their function the neurotransmitters are inactivated. One way in which this occurs is through a process of "reabsorption" of the neurotransmitter by the same nerve cell that released it. Cocaine is a "reuptake blocker" in that it prevents this process of reabsorption and causes the neurotransmitters to remain in the synapse with constant activation of the next nerve cell in the chain. Moreover, this effect of cocaine occurs at a place in the brain that appears to play a major role in modulating feelings of well-being as well as intense craving for the drug. This intense craving can occur in the absence of physical dependence on the drug. In fact, recent studies have shown that two distinct sites in the brain can be identified, one controlling physical dependence on drugs, and another controlling drug-seeking behavior.

Knowledge of cocaine's actions has led us to explore a number of ways of treating cocaine abuse. These have focussed on ways to counteract cocaine's effect on neutrotransmitters and to replace deficiencies in neurotransmitters that can occur after chronic cocaine exposure. Some of these approaches appear to hold reasonable promise of success.

Of course, this brief summary can only touch upon the advances made in the neurosciences as they relate to drug abuse. I anticipate major expansions of knowledge and understanding in the very near future. Our research program will focus on developing new prevention and treatment approaches based on fundamental knowledge of brain mechanisms. For example, we are seeking to develop narcotic antagonists that will block the effects of opiate drugs for prolonged periods of time and we are developing new approaches to diminishing the intense craving and drug seeking behavior that is a part of drug addiction. As we understand more and more about the biochemical nature of the brain and the relationship between the structure of brain chemicals and behavior, we will have profound capabilities for altering human capabilities and experience. We will, in the very real sense of the word, begin to understand the essence of what we are.

That is what this amendment is about, scientific research, not coming after the fact in terms of punishment or during the fact in terms of law enforcement, but indeed to the best of our scientific abilities see that there is no problem to begin with or at least see that the problem is caught at its earliest stages. There is nothing very dramatic about this. It really makes us think rather than appreciate the violence of either the problem of the solution. In the long term, the subject matter of this amendment is by far and away probably one of most important matters which we will include in this legislation this evening.

I move adoption of the amendment.

□ 1720

Mr. WEICKER. Mr. President, one last comment. There are no additional funds that are requested in this amendment, although there obviously are additional funds contained in the authorization bill itself.

But what I wanted to do was to set the stage as to what I intend to do next year when it comes to appropriations time. At appropriations time, I intend to follow through on this type of authorization language seeking additional funds for research in the matter of such things as neuronal receptors. What I am trying to do is build a public knowledge in a direction which I feel will have a salutory effect on the problem that we all face.

Mr. CHILES. Mr. President, we concur in the amendment on this side and feel that it is a good amendment and urge its adoption.

Mr. BIDEN. Mr. President, I wish to compliment the Senator from Connecticut. I think this is an excellent amendment and focuses research on new ways of solving drug abuse. Because, as was stated by the Senator when he first spoke on this bill before we even brought the bill to the floor, when he agreed to waive his rights to debate whether or not we were going to bring up this bill, he spoke with some eloquence. And I hope the staffs and my colleagues will go back and dig out what he said, that unless we get to the point of dealing with, as our friend from New York, Senator MOYNIHAN, has said, the pharmacology of this issue, we are not going to get to the question of whether or not we are going to be able to do much at all.

Any well-coordinated strategy on this issue requires an emphasis on new treatment approaches. I think the Senator from Connecticut knows a great deal about this area and makes a very significant contribution here because, as I say again, unless we find ways and focus research and attention on ways to deal with solving the drug abuse problem, all the courts, all the interception of interdiction, all the prosecution is not going to solve the problem.

I compliment my colleague from Connecticut.

Mr. WEICKER. I thank my distinguished colleague from Delaware for those very gracious remarks.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

MR. THURMOND. I believe we have expressed our approval of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Connecticut [Mr. WEICKER].

The amendment (No. 3042) was agreed to.

Mr. WEICKER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3043

(Purpose: To provide funds for programs which identify the needs of drug-dependent offenders)

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

Mr. BIDEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I ask for immediate consideration of the amendment that I have sent to the desk.

The PRESIDING OFFICER. The clerk will report.

The Senator from Delaware [Mr. BIDEN], for Mr. KENNEDY proposes an amendment numbered 3043.

Mr. BIDEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

Section 1552(a)(3) of the bill is amended by amending proposed section 1302 of part M of title I of the Omnibus Crime Control and Safe Streets Act of 1968 by—

(1) striking "and" at the end of clause (5);

(2) striking the period at the end of clause (6) and inserting ", and"; and

(3) adding at the end thereof the following:

"(7) provide grants for programs which identify and meet the needs of drug-dependent offenders for treatment as provided in section 403(a)(8).".

● Mr. KENNEDY. Mr. President, one of the key components of an effective antidrug program is treatment of drug abusers.

My amendment would authorize grants to State and local governments to fund the Treatment Alternatives to Street Crime [TASC] Program, which provides treatment to drug-abusing offenders. The grants would be part of the drug law enforcement grant program created by the Anti Drug Abuse Act of 1986.

The TASC programs are currently funded by grants from the Bureau of Justice Assistance, but the Senate version of the State, Justice, Commerce appropriations bill contains no funding for Bureau of Justice Assistance grants. These vitally important programs will go unfunded if this amendment is not adopted.

The TASC Program was designed as a response to a rapidly increasing property crime rate caused, in significant part, by drug offenders. Pretrial, probation, and parole clients are placed in treatment programs under close supervision to prevent their return to illicit drug use and crime. As of 1983, over 52,000 drug-abusing offenders had participated in 72 TASC programs. Savings have been realized from the program due to decreased correctional, court, prosecutorial, and probation workloads. For example, of those successfully completing the program in one project, 91 percent had no subsequent arrests.

Although budget reductions have precluded comprehensive program evaluations since 1983, there is every indication that the TASC Program continues to be useful and effective. In 1986, Alabama, Alaska, Arizona, Delaware, Hawaii, Maryland, North Dakota, and Wisconsin used TASC as their primary Justice Assistance Act Program. There are currently 100 TASC programs in 18 States receiving $460,000 in Federal justice assistance funds.

It is essential, as part of our war against drugs, that we continue to fund these treatment programs. I urge my colleagues to adopt this amendment.●

Mr. BIDEN. Mr. President, by way of explanation here—and I thank you for your gracious patience while I fumble through my papers here. So many of my colleagues have come forth with amendments asking me to look at them and clear them that I lost the amendment in a pile of about 12 others that have been suggested.

Mr. President, I offer this amendment on behalf of Senator KENNEDY.

Mr. President, one of the key components of an effective antidrug program is the treatment of drug abusers. Senator KENNEDY's amendment would authorize grants to the State and local governments to fund what are called treatment alternatives to street crime, TASC. This program provides treatment for drug-abusing offenders. The grants would be part of the Drug Law Enforcement Grant Program created by the Antidrug Abuse Act of 1986.

The TASC Programs are currently funded by grants from the Bureau of Justice assistance, and the Senate version of the State, Justice, and Commerce appropriations bill contains no funding for the Bureau of Justice assistance grants. These vitally important programs will now go unfunded if this amendment is not adopted. The TASC Program was designed as a response to a rapidly increasing proper crime rate caused, in significant part, by drug offenders.

We all know why that is. The fact of the matter is that, unless you happen to be a multimillionaire or have access to a bank, if you have a drug habit, it is an expensive habit.

And there is no doubt in anyone's mind why there is so much street crime. Somewhere on the order of 50 percent of all the street crime in America is attributable to drug abuse. That is, when someone wants to go buy the cocaine or go buy the heroin or go buy the marijuana, they crack someone over the top of the head, take their wallet, take their purse, and half the time they are under the influence at the time.

I see my colleague from Arizona standing. I am happy to yield to him.

Mr. GOLDWATER. I was interested in what the Senator had to say about the cost of the dope habit. And I recall—I may be wrong—but I think I recall that England at one time sold narcotics at drugstores without prescriptions or anything else. I have often wondered—not facetiously—whether that might not be a cure in our country. They are going to kill themselves eventually. Let them do it cheap.

Mr. BIDEN. Well, you know, Mr. President, we sometimes smile about that, but the Senator from Arizona has raised a question that a number of very, very thoughtful and intelligent people have raised, and that is the argument has been underway for sometime in this country along the following lines: If, in fact, we not only have spawned a multibillion-dollar industry—over $110 billion a year in profits to illegal syndicates and individuals, not unlike the days of prohibition—in light of that fact and coupled with the fact that 50 percent of the crime on the street, violent crime, is attributable to a junky going out and forcibly wresting from a citizen their dollars and their cents and their money and in the process, many times, killing, maiming, or at least abusing them; and the fact that over 50 percent of the burglaries in America, the reason why people break and enter into homes is in order to pay for their drug habit—they steal your television, sell your television, and buy the heroin—they say, "Well, if that is the case, why don't we just legalize it?"

Now, it sounds funny, but look at it for a moment. If, in fact, drugs were legalized, that any heroin addict could walk into a clinic and get heroin, then the need to go out and mug my mother in the parking lot of the Acme is diminished, because they do not need the money in her purse. And also those major crime syndicates, which flourish and feed off society, would have their pocketbooks emptied very rapidly because people would not be paying for it. So it is not a crazy idea.

But I would say to my friend from Arizona, who is in fact one of the true civil libertarians in this country—and I mean that sincerely—the answer is one that will not come to him as one that is unexpected and one that his philosophy, understandably, will find somewhat difficult. It is that big brother made a judgment that, in fact, we not only should protect those addicts and junkies who will kill themselves—the average age, for example, of a heroin addict, the life expectancy is about 28 years of age. They die by then not because they are shot by the police as they are jumping barriers, but because they overdose on heroin. They, in fact, kill themselves with the drug. And that is why the average life expectance of drug user is relatively low.

So we, as a society, have made the judgment, which I happend to subscribe to, that we should, in fact, protect our citizens even those who are inflicting this sin upon themselves.

□ 1730

The second reason is that as a people it seems to me, I say to my friend from Arizona, the Government of the United States should not knowingly condone something they have no doubt about the effect of the use of. In other words, even though we would diminish, I have no doubt, diminish crime, and we would diminish the size of the syndicates, it seems to me, I say to my friend from Arizona, we would be making such a statement about the morality of this country that it is something we could not live with, that if we as a country were to conclude that notwithstanding the fact we could reduce crime, the price at which we would reduce it would be to legalize something that is patently immoral on its face, and legalize something that in fact we know will result in the death of thousands and thousands of American. Although on balance the argument can be made we probably would have less crime, and we would have less of a pernicious impact on the part of organized crime, and we have as a society opted not to do that. As usual—and I am not being solicitious—my friend from Arizona not only has the insight to raise the tough questions, but has the courage to raise them.

Quite frankly, as my colleague from Arizona knows, most people would not even want to raise that question for fear that the political opposition would run around saying, "Charlie Smith is for heroin, and Charlie Smith is for such and such." We need more of that kind of input into this question. I compliment my colleague. I do not ask him to accept the answer other than to acknowledge that that is the reason why we have chosen not to go that route.

Mr. GOLDWATER. I am quitting politics. So I can accept the Senator's answer. He has satisfied me.

Mr. BIDEN. I say to my colleagues, and I say to the entire Nation that is all of our loss.

I sincerely wish the Senator from Arizona was not leaving this body. He keeps us all straight. As I said once before, I will say it again, I have been here 14 years. I have been in elective office 16 years. And the Senator from Arizona has more integrity in his little finger than most people I have met have in their whole body, and it is a loss to this body that he will be leaving.

I will yield to my colleague from Florida. Then I would like to at some point finish my statement.

Mr. CHILES. On the question of this amendment before us, I wanted to say to the Senator from Delaware we have had some of these demonstration projects in Florida. They have worked extremely well. In fact, I have heard about those demonstration projects from the law enforcement people who say that the idea of having the counselors come in to the jail and counsel addicts that are there has been extremely beneficial.

I think part of the package that we are dealing with here recognizes that we are going to increase penalties, and we are going to throw people into the slammer if they are involved in drugs. At the same time, I think we want to give them some help while they are there so that they do not just stay there for a period of time, learn different trades of how to go out and steal a little better to feed their drug habit, and go back in.

So I think treatment at the same time with the incarceration makes sense. It is working in those demonstration projects we have had in Florida. As I say, the law enforcement people themselves know that you have to have something like this. It is not enough just to put people off the streets for a while and warehouse them if you are not doing something to allow them to kick that habit.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I do not want to speak on the amendment.

I wanted to indicate that I have had a lot of inquiries from colleagues on both sides who understand there will not be any votes tonight. That is not the case. I hope we understand there are going to be votes, and what we are trying to do is avoiding those four or five blockbuster amendments. There may be other amendments that will require a vote but will not tie up this bill. As far as I know, there has been no agreement that there would not be any votes.

Mr. DECONCINI. Will the majority leader yield?

Mr. DOLE. We have some Members who do not want to miss any votes, and they would rather we would take up some of those legitimate amendments that require votes now so that when they leave they will miss fewer votes.

So I hope we can accommodate some of the other colleagues who have a conflict.

I am happy to yield.

Mr. DECONCINI. Mr. President, I am prepared to offer two amendments, one dealing with posse comitatus, and I am sure my colleague is interested in it. Another one deals with the pretrial diversion program. I have recently been advised that it will require a vote. I am ready to go whenever the managers want to go.

Mr. DOLE. I think we want to avoid those that we know are going to tie us up here, if we can. Let me list some: Drug testing, drug czar, death penalty, exclusionary rule.

Mr. DECONCINI. Mine are not those.

Mr. DOLE. That is right.

There is habeas corpus, and beyond that I think we ought to bring them up, shoot them up, or whatever.

Mr. HUMPHREY. Mr. President, will the Senator yield?

Mr. GOLDWATER. Will the Senator yield? Will he give me an idea of how late we are going to be?

Mr. DOLE. I think about 9 o'clock.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, on two separate items, one in response to the Senator from Kansas. I think we can do exactly what he said. I know my Republican colleagues have a couple of amendments and may very well require rollcall votes. My Democratic colleagues do. We had a list of amendments that we believe are acceptable on both sides. There are a couple of those left. Then we have a tentative agreement, as I understand, that we just alternate back and forth with amendments. That is fine with the Senator from Delaware, the manager of the bill, and the Senator from Florida, Senator CHILES.

On another point and I can finish up this amendment if I may, and we can get on with those amendments, with regard to the TASC programs. The act is if I can follow up by the comment made by Senator CHILES from Florida, the experience in Delaware has been the same. We have had this program for the last 8 years. It is a good way to identify and provide immediate counseling.

One of the problems is we put these people in jail and we say we want to help them. Really we are helping ourselves. If we do not do something about it, unless we are ready to throw the key away and in some cases we are ready to throw the key away if we do not do something about putting these people in a better position and have a shot of making it when they get out on the street drug free, then we are back with it again. I say to my colleagues that in significant part pretrial, probation, and parole clients are placed in treatment programs under close supervision to prevent their return to illicit drugs and crime.

As of 1983, over 50,000 drug abusers and offenders have participated in 72 TASC programs not only in Florida, Delaware, but many other places. Savings have been realized from the program due to the decreased correction court prosecutional and probation workloads.

For example, of those successfully completing the program in one project, 91 percent had no subsequent arrest. That is only one program, I acknowledge. But it was significant. Although budget reductions have precluded comprehensive program evaluations since 1983, there is every indication that the TASC program continues to be useful and effective.

In 1986, Alabama, Alaska, Arizona, Delaware, Hawaii, Maryland, North Dakota, and Wisconsin used TASC as their primary justice assistance program. There are currently 100 TASC programs in 18 States receiving $460,000 in Federal justice assistance funds. It is essential as part of our war against drugs that we continue to fund these treatment programs, and I urge my colleagues to adopt the Kennedy amendment on which I ask to be added as a cosponsor.

I yield the floor.

Mr. DeCONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. THURMOND. Mr. President, we are willing to approve this amendment.

Mr. BIDEN. I move the amendment's adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Massachusetts.

The amendment (No. 34043) was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1740

AMENDMENT NO. 3044

(Purpose: To provide additional requirements for Department of Defense support of drug interdiction activities)

Mr. DeCONCINI. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Arizona [Mr. DeConcini], for himself, Mr. Dixon, Mr. D'Amato, Mrs. Hawkins, Mr. Mattingly, and Mr. Wilson proposes an amendment numbered 3044.

Mr. DeCONCINI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title III, insert the following new section:

SEC. 3602. ADDITIONAL DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE.

(a) General Requirement.—(1) Within 90 days after the date of enactment of this Act, the Secretary of Defense shall prepare and submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives—

(A) a detailed list of all forms of assistance that shall be made available to civilian drug law enforcement and drug interdiction agencies, including the United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service, and

(B) a detailed plan for promptly lending equipment and rendering drug interdiction-related assistance included on such list.

(2) The list required by paragraph (1)(A) shall include, but not limited to, the following matters:

(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

(B) Communications equipment, including secure communications.

(C) Support available from the reserve components of the Armed Forces for drug interdiction operations of civilian drug law enforcement agencies.

(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(c) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities, as authorized by law.

(b) Committee Approval and Final Implementation.—Within 30 days after the date on which the Committees referred to in subsection (a) receive the list and plan submitted under such subsection, the Secretary of Defense shall convene a conference of the heads of the Federal Government agencies having jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or other assistance made available by the Department of Defense to such agencies. Not later than 60 days after the date on which such conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such matters.

(c) Application to Other Department of Defense Narcotics Enforcement Assistance in This Act.—Subsections (a) and (b) shall not apply to any assets, equipment, items of support, or other assistance provided or authorized in any other provision of this title.

(d) Review of Department of Defense Compliance by the General Accounting Office.—The Comptroller General of the United States shall monitor the compliance of the Department of Defense with subsectins (a) and (b) and, not later than 90 days after the date on which the conference is convened under subsection (b), transmit to the Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).

Mr. DeCONCINI. Mr. President, the amendment that I am offering today with Senator Dixon, Senator D'Amato, and Senator Hawkins, and others, addresses one of the most important, and yes, one of the most controversial issues surrounding this omnibus drug bill. The issue that is the focus of our amendment is the role that the military should play in our war on drugs, and how far the country is prepared to go in bringing the Armed Forces directly into our national effort to combat the drug trafficker. The House of Representatives has spoken loud and clear on this matter. The so-called Hunter amendment passed by a vote of 237 to 177, after the House passed the Bennett amendment by a landslide 359 to 52. These amendments in tandem not only authorized the Secretary of Defense to put his troops directly into the process of assisting civilian law enforcement officers in the search, seizure, and arrest of drug smugglers, it directed the President of the United States to use the military to halt any penetration of the drug smuggler across our borders, within 45 days of enactment of this bill. As our kids might say, "That is serious stuff".

Mr. President, the Hunter and Bennett amendments represent a dramatic change in how we attack the drug problem. It turns the troops loose on the drug smuggler. It virtually abolishes the restraints under posse comitatus that have been with us since the 18th century. And it also signals to the Nation and to this body, the frustration that millions of people share on the drug trafficking problem. But perhaps equally important, it shows that the House of Representatives is fed up with the footdragging and lack of initiative by our military to assist our civilian drug enforcement agencies within the bounds of current law and restraints.

Mr. President, I share many of the concerns, frustrations, and anger that our colleagues in the House have expressed in their votes 2 weeks ago. Frankly, if the Hunter and Bennett amendments were offered on the Senate floor, I would vote for both of them.

But I understand there is a strong feeling against this approach. In lieu of that, I am realistic enough to know that we should find perhaps another solution first. In so doing, therefore, Mr. President, I have crafted an amendment that would force the Pentagon to either "fish or cut bait" on the subject of assisting our civilian drug enforcement agencies under current law. This amendment also will put a heavy burden on our primary Armed Forces oversight committees—Armed Services and Appropriations—to approve the use of more existing DOD assets and resources for civilian drug enforcement support.

First, let me say what this amendment does not do. It does not, unfortunately, contain any remnant of the Hunter or Bennett amendments that passed the House. And there is nothing in this amendment that provides any new arrest or seizure authority to the Armed Forces. Posse comitatus is not amended, nor even clarified under our amendment. Here is how our amendment would work:

First. The Secretary of Defense would have 90 days from the date of enactment of this bill to do a complete inventory of all military equipment; assets; support; intelligence; and other forms of assistance that shall—not "may"—be made available to the civilian drug agencies to help combat the drug smuggler.

Second. In that same 90-day period, the Secretary must also prepare an actual implementation plan as to how he shall—not "may"—loan such equipment and assistance to the civilian drug agencies. The amendment does not make either the inventory or the implementation plan discretionary on the part of the Secretary. He has to produce it.

Third. The inventory and implementation plan are then submitted directly to the two major committees of Congress with jurisdiction over the Armed Forces—the Armed Services Committee and the Committee on Appropriations. These committees will then have only 30 days to either approve or disapprove each and every item contained in the Secretary of Defense's report on what can be provided to civilian drug enforcement agencies from DOD.

Fourth. The committees submit their recommendations directly back to the Secretary of Defense—there is no "middle man" agency involved in our amendment. The Secretary must then immediately convene a conference of all heads of the drug enforcement agencies to discuss the distribution of the approved items of assistance that have been recommended by the Secretary and approved by the committees. Memoranda of agreement [MOA] would be signed and distribution of the assets or commitments of assistance would be completed within 60 days from the convening of the conference of agency heads and the Secretary. The agency heads themselves must participate in the conference—not their designees.

Fifth. Finally, the General Accounting Office would monitor the entire reporting and distribution process and report directly to Congress regarding DOD's compliance and cooperation in carrying out these new statutory requirements to assist our civilian drug agencies.

Sixth. These provisions and this amendment would not—repeat, not—apply to the assets, resources, assistance, and other forms of support that are contained in this omnibus drug bill. The inventory of assets and assistance from the Secretary would contain assets and assistance over and above the items of assistance; assets; and other forms of support authorized and assumed in this bill, or if there are some added by amendment.

That is it, Mr. President, plain and simple. There is nothing complicated about this amendment. There is no smoking gun or hidden agenda. It puts the burden squarely on the shoulders of those who are feverishly fighting the Hunter amendment and singing the blues about the Pentagon being asked to do more. Well our amendment gives those folks, especially the Pentagon and the four major oversight committees in Congress, about 6 months to show the Nation that they really do want to help in our war on drugs—and not just complain about the House action. This amendment will give DOD and Congress a chance to show what the boundaries of posse comitatus really are and how much we can really do within its boundaries.

Mr. President, it is true that the Department of Defense and the committees could recommend no additional support for civilian drug interdiction or enforcement. It is true that the committees could turn down each and every recommendation of the Secretary of Defense. It is true that both the committees and the Secretary could ignore the deadlines imposed in the amendment. There are no civil or criminal penalties attached to this amendment for noncompliance by the Secretary or the committees. But let me say right here and now so that there is no misunderstanding among my colleagues. If this amendment is rejected, or if it is approved and there is not substantial compliance with the provisions in the amendment, then I will work tirelessly next year with Congressman HUNTER, Congressman BENNETT, and other Members of Congress to legislate the direct use of the military in drug interdiction and enforcement. In fact, I will offer an amendment to the DOD authorization bill or another comparable vehicle to accomplish this goal if we do not see something along this line by DOD over the next 6 months.

Mr. President, President Reagan has declared a national security emergency regarding the drug threat to the United States. Polls show that the majority of American people are willing to do whatever it takes, including using the military, to rid the Nation of drugs.

This amendment does not have the whole answer, I realize that. But it will smoke out anyone who does not want to get into this battle, and it will smoke out some of those in the military—and I do not use a wide brush because there are many in the Pentagon who agree that a lot more could be done. It will force them to come forward with plans and assets and maybe we can really move on the drug war.

Mr. GOLDWATER. Mr. President, will the Senator yield?

Mr. DECONCINI. I am happy to yield.

Mr. GOLDWATER. Mr. President, I think my friend from Arizona has offered a workable amendment. As chairman of the Armed Services Committee, I find nothing difficult in accepting this, although I will not be here to see whether it is working or not.

I think, though, we should clear this up about the military. It has only been a short while that there has been any suggestion—not demands—made on the military for the use of their equipment.

□ 1750

I have to say that there has been no real concentrated effort to come up with sensible suggestions. I have heard, well, we ought to use AWACS aircraft. Nobody has said precisely how it could be used to identify a man or two or three men coming across our border that we are so well acquainted with. The suggestion that I do not want to entertain, and I hope it is not made, is that the military use their forces to arrest.

To give some idea of what we are talking about, if that became a law and it was necessary, to accomplish the purpose I have heard said or stated, that we surround the borders of the United States with troops, that would cost about $40 million a day. I know my friend from Arizona would never think of doing that. I think it would be a very, very dangerous thing to repeal the act that was passed just after the Civil War that prevents an American man in uniform from making an arrest. I can think back and remember Hitler and Mussolini and I do not think we want to have a repetition of that.

I can assure my friend from Arizona that I have no objection to taking this amendment and I can assure him that the armed services will be very happy to work under this plan. Because this is a plan. This is not just a bunch of wild-eyed suggestions that the military has been listening to. This contains sensible suggestions that they can follow and report back. I can assure my friend this will be done.

Mr. DECONCINI. Mr. President, I thank my senior colleague. Indeed, I want to say right here and now that he has been the leading force in moving the armed services to give the—let me say meager—resources of the military over to this use. In this amendment, as the Senator says, I talk about plan. When you talk about war, you first have to have a plan. You have a plan of action, a plan of mobilization and then you move. This is indeed a plan and I thank my senior colleague, Mr. GOLDWATER for his comments.

Mrs. HAWKINS. Mr. President, I applaud the Senator from Arizona [Mr. DECONCINI] for this amendment we have worked together on so it would be acceptable to others who may not feel there is a role for the Department of Defense in the war on drugs. Senator DECONCINI was well known, long before I came to the Senate, as a battler and a great leader in this ongoing action that we have seen year after year. I am glad to be a cosponsor of this amendment.

The Department of Defense, as late as yesterday, was calling. Secretary Weinberger called me to give me assurances that they are doing all they can.

The American people do not have the perception that there is enough action. Day after day, we get letters saying, "If you were really serious about a war on drugs, you would use some of the equipment we have been paying for year after year for readiness. More can be done." And they give a list of items they would like to see used.

This amendment will ensure that the Department of Defense increases its participation in interdiction and drug detection. We assure that DOD assistance can be earmarked if we find we have the resources that can give assistance to State and local law enforcement personnel.

It also would make sure that the Secretary of Defense can increase his accountability to Congress.

For too long, surplus DOD equipment—surface-to-air missiles, aircraft, and other equipment have not been available. For too long, the Air Force has lacked a battle plan to combat the use of drugs. This amendment is our effort to assure that the Department of Defense participates in the national crusade against drugs. I urge our colleagues to join us in accepting this plan.

Mr. President, I urge adoption of the amendment.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The President pro tempore.

Mr. THURMOND. Mr. President, I wish to direct a question to the able Senator from Arizona [Mr. DECONCINI].

Mr. DECONCINI. Yes, Mr. President.

Mr. THURMOND. As I understand it, the original amendment of the able Senator from Arizona provides that the military can make arrests, but I see nothing in here to that effect. I would certainly oppose that. This amendment concerns assistance, equipment, and so forth and I see nothing in this now that we would object to.

Is the statement I made correct, Mr. President?

Mr. DECONCINI. If the distinguished President pro tempore will yield, the amendment that the Senator from Florida and I have been working on for some time would have originally provided very similar language to the Hunter amendment on the House side. We labored on this for some time.

At the same time, I have had on the top of my head a draft of an amendment that would establish a DOD plan first. The Senator from Florida and the other Senators who have cosponsored this amendment agreed that we would try this approach and develop a comprehensive plan out. Quite frankly, as I told my good senior colleague, I may come back later if we get foot-dragging from DOD. I do not want to accuse anybody and I am not, but there is no new authority in this amendment; no changing of the posse comitatus law; no authority given to the military to make arrests or apprehensions.

Mr. THURMOND. There is no authority mandated in this amendment?

Mr. DECONCINI. This is correct.

Mr. THURMOND. With that change, Mr. President, we are willing to accept the amendment.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I have looked at this amendment carefully and while I would certainly oppose the Hunter amendment, as I read it, this amendment is entirely different. This amendment asks the Secretary of Defense to do a careful analysis of what the Department of Defense is now accomplishing in the overall drug field and to make an inventory of assets that could be made available that are not now being made available.

As I understand the amendment, it then mandates that those assets the Secretary of Defense furnishes on the list would be made available. Is my interpretation correct?

Mr. DECONCINI. Yes, Mr. President.

Mr. NUNN. As I understand this amendment, the Senator is saying it does not in any way appeal or amend what is the effective Posse Comitatus Act as amended by the Nunn amendment in 1982.

Mr. DECONCINI. The Senator from Georgia is correct.

Mr. NUNN. One further question. As I understand the amendment, what it really says to the Secretary of Defense is, we want you to furnish us an inventory of ways you can assist us in the drug effort that you are not now doing?

Mr. DECONCINI. That is correct, within 90 days.

Mr. NUNN. The things put on that list to submit to the appropriate committees of Congress will be done as a matter of law, will be implemented, is that correct?

Mr. DECONCINI. The Senator is correct. If the committee approve it within 30 days, then the agencies involved—law-enforcement agencies and the Secretary—will sit down themselves, and sign interagency agreement for transfers of DOD assets.

Mr. NUNN. Mr. President, I think this is a good approach, a responsible approach. There have to be careful analyses done to see what the Department of Defense can do that they are not doing. I think they can do more. I was the one who started this getting the military involved. We do have to draw a line.

I do not think the amendment of the Senator from Arizona crosses the line. I think if the Hunter amendment were proposed, it would cross the line. I urge the Senate to adopt this amendment.

Mr. CHILES. I think this is a very plausible amendment as well. We have been trying to get the military involved or more involved. In the package we have before us, we are asking also for an inventory of installations that we can incarcerate prisoners in. We know there are military installations, some closed and some not, that we can use to incarcerate some of these people we are dealing with.

The Senator from Arizona is going further and saying, let us look at what we have in the way of equipment and the ability that the military would have. I think that is very plausible.

Mr. DECONCINI. If the Senator will yield, the Senator is correct. Also, I think it is important to note that the

Senator from Florida [Mr. Chiles] has been one of those Senators who has continuously pushed, in the Appropriations Committee, which he and I served on. The Senator from Georgia, being the ranking member of the Armed Services Committee, has also been most receptive to this.

Quite frankly, we all know there has been a little bit of footdragging by DOD, maybe for good reason, because of mission or what have you, but the Senator from Florida has been willing to move in this direction. Now we are going to force the Department of Defense to come forward with everything they have. If they do not, quite frankly, I may be one of those to step beyond the line that the Senator from Georgia aludes to.

□ 1800

But I think we have to try something here first.

Mr. CHILES. The Senator is correct. We did sort of join together and ask the Department of Defense to come up with a plan. That plan, I am afraid, was not worth as much as the paper it was written on as far as really trying to nudge them, but in the meantime the President has now issued an Executive order and we are still trying to nudge them to get them to do something.

Mr. DeCONCINI. That is why I offer it in the statute, to make it part of the law. Hopefully it will get action.

Mr. NUNN. Will the Senator yield——

Mr. CHILES. I am happy to yield.

Mr. NUNN. For a question to the Senator from Arizona? The Senator said in his dialog that there would be committee approval required, section B, on page 3, of the amendment. As I read the amendment, though, there is no committee approval required. There simply is a submission to the committees, and then 30 days after the submission the Secretary of Defense shall then undertake an interagency meeting and review. Does the Senator intend for the amendment to require committee approval before implementation?

Mr. DeCONCINI. Yes. I do not have the amendment right here. I sent one to the desk and gave one to my senior colleague. But it is my understanding that it would allow the committees to approve what has been inventoried and sent to them by the Secretary.

Mr. NUNN. I believe the Senator may want to get staff to take a look at that because I believe some language has been left out of the amendment in that regard.

Mr. DeCONCINI. If the Senator will be so kind to direct me to it. On line 12?

Mr. NUNN. It would be line 12, page 3 of the amendment that I have at least. Perhaps I have the wrong amendment. But I believe it is the right one. On line 12 it says: "The committee approval and final implementation," but then it goes on to say, "within 30 days after the date on which the committees referred to in subsection (a) receive the list and plans submitted the Secretary of Defense shall." So there is a receipt required but it does not say anywhere about approval that I can read, unless it is somewhere that I have not found.

Mr. DeCONCINI. I thank the Senator from Georgia. I will, while some other Senators are perhaps discussing this, review that and modify the amendment if necessary. I thank the Senator from Georgia.

Mr. President, I point out that the Senator from Georgia has made a very astute observation, as he does in his legislative capacity. He is correct, that the procedure which I had represented is not here in the amendment, at least not pecisely. It is the intent that the appropriate committees should approve or disapprove these plans. I thank the Senator from Georgia and his staff for bringing it to our attention.

I send a modification to the desk, and I ask unanimous consent that the amendment be so modified.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

The amendment is so modified.

The modified amendment is as follows:

At the end of title III, insert the following new section:

SEC. 3602. ADDITIONAL DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE.

(a) General Requirement.—(1) Within 90 days after the date of the enactment of this Act, the Secretary of Defense shall prepare and submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives—

(A) a detailed list of all forms of assistance that shall be made available to civilian drug law enforcment and drug interdiction agencies, including the United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service, and

(B) a detailed plan for promptly lending equipment and rendering drug interdiction-related assistance included on such list.

(2) The list required by paragraph (1)(A) shall include, but not be limited to, the following matters:

(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

(B) Communications equipment, including secure communications.

(C) Support available from the reserve components of the Armed Forces for drug interdiction operations of civilian drug law enforcement agencies.

(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(G) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities, as authorized by law.

(b) Committee Approval and Final Implementation.—Within 30 days after the date on which the Committees referred to in subsection (a) receive the list and plan submitted under such subsection, the Committees shall submit their approval or disapproval of such list and plan to the Secretary. The Secretary of Defense shall then immediately convene a conference of the heads of the Federal Government agencies having jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or any other assistance made available by the Department of Defense to such agencies. Not later than 60 days after the date on which such conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such matters

(c) Application to Other Department of Defense Narcotics Enforcement Assistance in This Act.—Subsections (a) and (b) shall not apply to any assets, equipment, items of support, or other assistance provided or authorized in any other provision of this title.

(d) Review of Department of Defense Compliance by the General Accounting Office.—The Comptroller General of the United States shall monitor the compliance of the Department of Defense with subsections (a) and (b) and, not later than 90 days after the date on which the conference is convened under subsection (b), transmit to the Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. DIXON. Mr. President, just briefly, before this amendment is adopted—and I realize that the managers of the bill have agreed that they will accept the amendment of the distinguished Senator from Arizona—I wish to state that I am a cosponsor of this amendment. I appreciate the efforts made by the Senator from Arizona.

I think it is very important that the Secretary of Defense and others undertake a study as soon as possible about the available military hardware—airplanes and other materiel—that can be usefully employed in drug interdiction.

However, I want to make this point perfectly clear. I have heard a number of my colleagues express their horror at the adoption of the Hunter amendment by the House. I want to make it very clear to their Members of the Senate—to my colleague from Arizona and others—that this Senator supports the Hunter amendment.

□ 1820

I think that we should do something about posse comitatus. What happened in the Civil War is not applicable in 1986 when we have a drug fight in this country.

I have the Hunter amendment prepared here right now and I may offer it this evening, Mr. President.

I just want to say as a member of the Armed Services Committee that this Senator as a ranking minority member on the Preparedness Subcommittee of the Armed Services Committee, we are spending hundreds of millions of dollars in this country supplying money for steaming time for our ships, for flying time for our aircraft, for wargames by all of our personnel in the Armed Services, and we ought to be spending those hundreds of millions of dollars training those people to interdict drug traffic into the United States of America.

While there may be some concerns by others who I greatly respect on my committee about this question, I have been sitting here for the last few minutes—I had not thought, very frankly—I do not say this critically of my friend from Arizona—that we had compromised this amendment this much. I am going to support this amendment. It is a step in the right direction. But we could be training those young men and women in our country in drug interdiction and doing that steaming time and that flying time and those wargames just as easily to get the job done against the drug traffickers, and I am going to think about it a little while, but I have an amendment right here and the Hunter amendment, as far as this Senator is concerned, is a good idea and it ought to be in this Senate bill.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I wonder if I could ask my friend, Senator DECONCINI, a couple questions about this amendment relative to the new language which he submitted to the desk. I do not have a copy of that language and perhaps he could illuminate it for me.

As I understand the amendment—and by the way, I also support the use of our military at our borders to try to stem the flow into the United States of drugs in ways which are consistent with our Constitution. I think we ought to use them much more than we have.

I think Senator DECONCINI has been leading the way on this and I applaud him for it. I think he has put his finger on something important. It is a threat to this country to have these drugs flowing into this country as much as the military threat so-called or threats to this country.

So I think he is on the right track. My questions come and are asked in that spirit as someone who is trying to help him achieve the purposes of this amendment.

As I understand this amendment, as amended or modified, there is a plan that is submitted by the Executive to the committees, the Armed Services Committees of both the House and the Senate, as to how the Executive would use the military in greater ways in stopping drug traffic into this country.

Am I correct in saying that in the event the committees of Congress which are identified in this amendment disapprove this plan in some way, formally or informally, that the executive could nonetheless carry out that plan.

Mr. DECONCINI. Mr. President, if the Senator will yield. First let me thank the Senator for his strong feelings about the plan and also about the use of the military. I concur with him. The Senator is correct, that the plan must be submitted to the Armed Services and Appropriations Subcommittee on Defense within 90 days.

Under the scenario the Senator points out, if that plan was not approved, what could the Department do? It can still act. It could act today without any change in current law. The point of this legislation is to force the Department of Defense to act. Of course, if it submits a plan and follows the law, which I think it will, the point of having the committees review it is so that they will have an opportunity to maybe move the Defense Department even further or to ask the pertinent questions. For example, if the Secretary of Defense claims that there are only four P-3's available in our stockpile to make available to civilian agencies for drug enforcement, or C-12's or E-2C's, when in fact the authorization committee knows how many are available for this mission and can easily say, "Wait a minute, you can do more than 4, why can't you do 20?"

That is the purpose and I thank the Senator for clarifying that.

Mr. LEVIN. So this amendment then does not get us into the situation where there is a legislative veto which would be permitted either by Congress or by a committee or subcommittee of Congress of a decision of the executive branch.

Mr. DECONCINI. If the Senator from Michigan will yield, he is absolutely right. This does not go to that because it does not bind or prevent someone from acting, in this case the Department of Defense, if the authorizing and the Appropriations Committee did not approve the plan.

Mr. LEVIN. I, too, am disappointed that this amendment cannot go further for the reasons which I think have been clarified on the floor as to what the practical situation is here.

But I do commend the Senator for at least advancing this matter one small step farther.

I yield the floor.

The PRESIDING OFFICER. Is there further debate?

Mr. CHAFEE. Yes, Mr. President.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I would like to ask a question to see if I thoroughly understand this amendment. As I understand the amendment, the Secretary of Defense, within 90 days, shall compile a list of that equipment which he believes is appropriate for interdiction activities to assist our other drug enforcement agencies, the Coast Guard, and so forth, for interdicting drug supplies coming into the country and then at the end of those 90 days he shall submit the list to the appropriate committees, the appropriate committees as I understand it being the Appropriations Committee and the Armed Services Committee and their counterparts in the House.

Mr. DECONCINI. Mr. President, if the Senator will just yield, the Senator, as far as he goes, is correct. But the Secretary also submits a plan on how the implementation and transfer of these assets will be made available; in what period of time; in what quantity; and so forth.

Mr. CHAFEE. Just carrying it that far, is it the equipment that he has in his total inventory or is it equipment that he believes can be made available? For example, suppose he has a total of 30 P-3's, and he is using these P-3's in antisubmarine activities. I said, for example, he had 30, let us say he is using 25. He feels he could release five. Is he required to submit on this list 5 or 30?

Mr. DECONCINI. If the Senator will yield, he does a complete inventory of DOD assets that can be made available to customs or other civilian agencies on loan, or through DOD support. In the instance of the example of the Senator from Rhode Island used, the Navy has 30 P-3's. The Secretary submits what he believes can be made available directly to the agencies or used by the Navy to support this effort by civilian law enforcement. So he may not submit the 30. But he may submit that as an indication of how many he has totally. He would not submit that. He would submit how many he believes could be turned over to the agencies or used to enhance this war on drugs.

Mr. CHAFEE. Is it how many he believes could be successfully used in this effort, or how many—let us say, he concludes that it will be useful to have 10 P-3's in this effort, but his own demands as Secretary of Defense require that he have 25. So, he does not have 10 available. What does he put on this list, the 10 or what he has available, let us assume, is five?

Mr. DECONCINI. Mr. President, if the Senator will yield. The Secretary would submit a plan of what he has available that is not obviously being used for the national security of the country. That leaves a great deal of discretion but it forces, in my judgment, the Secretary and his Under Secretaries and Assistant Secretary and the Chiefs of Staff to go through a rigorous inventory of these items; what is there that can be used that is not being used now; and what could be loaned to the civilian agencies, such as Customs. So he would submit the 5, as available for loan to the agencies.

Mr. CHAFEE. Let us proceed to the next step. So he has submitted his list and the respective committees review it, and as I understand in 30 days they make some decision that, yes, we would like to use this equipment, we believe it can be used. Then what happens? And I am not sure and perhaps this has been touched on in the discussion.

Mr. DECONCINI. Then the Secretary convenes the agencies involved, that is, those law enforcement agencies, the heads of those agencies and service branches that would transfer this equipment and they sit down and enter into memoranda of agreement to exchange on a loan basis the particular equipment. They have 60 days to enter into these agreements and to implement those exchanges.

Mr. CHAFEE. Now, what confuses me is the amount of discretion here. In other words, I am not clear who is running the operation.

So he then enters a memorandum of agreement with, say, the head of the Drug Enforcement Agency to turn over this equipment or see that this equipment is employed in accordance with some of this program that previously they have drawn up.

☐ 1830

Mr. DECONCINI. The Senator is correct.

Mr. CHAFEE. Now, suppose the Secretary of Defense says, "I have this equipment in our inventory, but we have requirements and we are going to have requirements that will conflict with this equipment being deployed in accordance with the plan that the Drug Enforcement Agency, for example, has"? Who is in charge? That really is my question.

Mr. DECONCINI. If the Senator would yield, he raises a good question.

But if the Senator would back up a step or two, what the Secretary must do in his inventory and plan, is submit that plan to the committees of what is available, what is not necessary for the immediate national security mission right at that time. That plan, let us say for our purposes, is approved or amended by the committees. The Secretary gets it back. He now takes that plan to the Drug Enforcement Administration, Customs, and to the heads of the other agencies and sits down with them and says: "Let's implement this plan right now."

So the answer to the Senator's question is that the Secretary has substantial discretion in developing the inventory and implementation plan.

And let us carry it a little further and say the Secretary submits a plan and that says: "Out of all the assets we have in the country, we have one P-3 we can offer you folks. That is it."

I think there is going to be a great upheaval, both in those committees, and by this Senator and others who are going to know what kind of assets, at least to some extent, the Secretary could have made available. This makes the Secretary look at all those assets and make an honest judgment and effort.

After that, we have GAO monitoring compliance in here to help insure that the Secretary does look very earnestly at those assets; develop an inventory and provide an action plan. But the discretion as to who is in charge, the answer to the Senator from Rhode Island is the Secretary still has the ultimate decision of whether or not to submit any plan, or how the plan is developed.

Mr. CHAFEE. Let us assume that the committees are not satisfied with the amount of equipment that the Secretary has proposed to be available. He has said one P-3 and they say, "No, we are demanding 10." And so the committees demand the 10 in their plan.

Now who resolves the conflict? They demand 10, the Secretary says 1. Who is in charge?

Mr. DECONCINI. Well, the Secretary's plan is submitted and is approved and/or disapproved or amended. If they disapprove it, the Secretary is left out there without an approval plan. But there is nothing in the amendment that would preclude him from moving ahead on his own with the agencies under current law. And you are going to know that. Because the time limit in the statute will require the committee to respond.

To me, it makes very good sense. The Secretary stays in charge of our national security, which he has a responsibility to do. But the Secretary is going to have to think about the war on drugs, and the need to use additional assets in the military that are not essential at that time for our national security, and to loan them. So the Secretary stays in charge.

This does not give the authority to the Congress to tell the Secretary to send 10 P-3's, unless they want to pass a bill to do it, as we have had to do up to now. But it is going to force the committees that have jurisdiction here to work with the Secretary to implement this plan.

And, as the Senator from Illinois has pointed out, I would go further. But in deference to the good judgment and wisdom here of the Senator from Rhode Island and the Senator from Georgia and my senior colleague from Arizona, I have consented to let us do a plan and let us get the Secretary really involved.

Let us get the Department of Defense and all those Pentagon experts really involved in coming forward with a plan of using some of these assets before we consider, as the House did, mandating that they do more, beyond the bounds of posse comitatus.

Mr. CHAFEE. Well, I certainly would not be for that mandate.

I have some reservations about the Secretary of Defense's drawing up master plans to combat drug trafficking. That is not his expertise.

In drawing up this plan, is he to consult with or does he have access to the drug enforcement officials, the Coast Guard officials? Are they consultants in this plan?

Mr. DECONCINI. If the Senator will yield, of course, I disagree with him. I think the Secretary, because the President said drugs are the No. 1 national security problem, should be deeply involved. But let us put that aside. The Senator from Rhode Island thinks he should not be.

He is not laying out a master plan for "drug enforcement." What he is doing is coming forward with the "assets" that he thinks he could let go or permit to be used by the law enforcement agency. And the Secretary or chief of staff is going to talk to those agencies during the 90-day period, saying "What do you need?" I am not sure there is that communication now. Up to now, the Congress has stepped in and mandated transfer of equipment today that the Secretary has not volunteered to our law enforcement agencies and mandating that the communication; intelligence gathering; aerostat balloons, E2C airplanes, and many other helicopters, and so forth, are made available to Customs, Coast Guard, and other agencies.

This is going to force the Secretary to come forward with something. And I think he will. I do not think he is going to sit there and say, "How am I going to stop all drugs?" That is not the intent of this. The intent is "what do I have in the military inventory that could be used by civilian law enforcement and that I can permit them to have?" To me it makes sense. The Senator may disagree.

Mr. CHAFEE. I thank the Senator.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. NUNN. Mr. President, may I just offer one word here? I think that some type of an overall plan and inventory is absolutely essential. I think the Hunter amendment is the equivalent of passing a law saying the President shall, by Thanksgiving, devise a cure for the common cold.

I do not think that passing a law is going to make it happen. When we say, "Stop every ship, stop every plane, stop drugs coming into this country, we order you to, Mr. President," I think it is ridiculous. We could order him to stop the Soviet missiles deploying SDI, we could order him to do a lot of things, but passing a law does not make it an actuality.

I hope if they offer the Hunter amendment, I hope they consider it carefully because it would basically require more surveillance aircraft for this one job than we have in the whole inventory, than we have in the whole world. So I think we need to proceed cautiously here and I think the Senator from Arizona is doing that.

The Senator from Arizona is asking for an inventory and asking for a plan. That is a condition precedent to any kind of analytical, objective approach to this subject.

So I think it is a good amendment. I would say to the Senator from Arizona that he may want to consider a rollcall vote on this one because I think there are a lot of people who perhaps would like to go on record. I do not know how many other amendments there are and whether they want to stack them or not.

Mr. THURMOND. Mr. President, unless rollcalls are necessary, we have a lot of work to do and we are going to finish the bill tonight. We have accepted the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. McCLURE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DeCONCINI. Mr. President, I ask unanimous consent that the Senator from California, Mr. WILSON, be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DeCONCINI. Mr. President, let me say I am prepared to move to a vote. I think we are moving a little bit closer to the Hunter amendment. I would like to have an opportunity to debate that, because, with the greatest respect to my colleague from Georgia and my senior colleague from Arizona, I am not sure that if the verbatim, actual words that are in the Hunter amendment, were modified, we could end up with the Hunter amendment if DOD fails to respond to this amendment. But, indeed, there is need to employ our military resources in a far more aggressive way than what we are doing.

Mr. President, I ask unanimous consent that the Senator from Michigan, Mr. [LEVIN], be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there further debate? If not, the question is on agreeing to the amendment of the Senator from Arizona [Mr. DeCONCINI]. The yeas and nays have been ordered and the clerk will call the roll.

The Legislative Clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Utah [Mr. GARN], the Senator from Washington [Mr. GORTON], the Senator from S. Dakota [Mr. PRESSLER], the Senator from Indiana [Mr. QUAYLE], the Senator from Vermont [Mr. STAFFORD], and the Senator from Wyoming [Mr. WALLOP], are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Massachusetts Mr. KENNEDY], the Senator from Massachusetts Mr. KERRY], and the Senator from Illinois [Mr. SIMON are necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR, is absent because of death in the family.

The PRESIDING OFFICER (Mr. BOSCHWITZ). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 83, nays 4, as follows:

[Rollcall Vote No. 297 Leg.]

YEAS—83

Abdnor
Andrews
Armstrong
Baucus
Biden
Bingaman
Boschwitz
Bradley
Broyhill
Bumpers
Burdick
Byrd
Chafee
Chiles
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Dixon
Dodd
Dole
Domenici
Eagleton
Exon
Ford
Glenn
Goldwater
Gore
Gramm
Grassley
Harkin
Hart
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Lautenberg
Laxalt
Leahy
Levin
Long
Lugar
Mathias
Matsunaga
Mattingly
McClure
McConnell
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Proxmire
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simpson
Specter
Stevens
Symms
Thurmond
Trible
Warner
Wilson
Zorinsky

NAYS—4

Durenberger
Evans
Stennis
Weicker

NOT VOTING—13

Bentsen
Boren
Cochran
Garn
Gorton
Kennedy
Kerry
Pressler
Pryor
Quayle
Simon
Stafford
Wallop

So the amendment (No. 3044), as modified, was agreed to.

Mr. DeCONCINI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DIXON. I move to lay that motion on the table.

The motion to lay on the table was agreed.

AMENDMENT NO. 3045

(Purpose: To increase the assistance furnished by the Federal Government to officers and employees who abusively use drugs or alcohol)

Mr. DURENBERGER. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER], for himself and Mr. TRIBLE, proposes an amendment numbered 3045.

Mr. DURENBERGER. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment, add the following:

TITLE VI—FEDERAL EMPLOYEE SUBSTANCE ABUSE EDUCATION AND TREATMENT

SEC. 6001. SHORT TITLE.

This title may be cited as the "Federal Employee Substance Abuse Education and Treatment Act of 1986".

SEC. 6002. PROGRAMS TO PROVIDE PREVENTION, TREATMENT, AND REHABILITATION SERVICES TO FEDERAL EMPLOYEES WITH RESPECT TO DRUG AND ALCOHOL ABUSE.

(a) IN GENERAL.—(1) Chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

"§ 7361. Drug abuse

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the President, with the Secretary of Health and Human Services (acting through the National Institute on Drug Abuse), and with other agencies, and in accordance with applicable provisions of this subchapter, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of employees and to employees who have family members who are drug abusers. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 527 of the Public Health Service Act (42 U.S.C. 290ee-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7362. Alcohol abuse and alcoholism

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the Secretary of Health and Human Services and with other agencies, and in accordance with applicable provisions of this subpart, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 523 of the Public Health Service Act (42 U.S.C. 290dd-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7363. Reports to Congress

"(a) The Office of Personnel Management shall, within 6 months after the date of the enactment of the Federal Employee Substance Abuse Education and Treatment Act of 1986 and annually thereafter, submit to each House of Congress a report containing the matters described in subsection (b).

"(b) Each report under this section shall include—

"(1) a description of any programs or services provided under section 7361 or 7362 of this title, including the costs associated with each such program or service and the source and adequacy of any funding such program or service;

"(2) a description of the levels of participation in each program and service provided under section 7361 or 7362 of this title, and the effectiveness of such programs and services;

"(3) a description of the training and qualifications required of the personnel providing any program or service under section 7361 or 7362 of this title;

"(4) a description of the training given to supervisory personnel in connection with recognizing the symptoms of drug or alcohol abuse and the procedures (including those relating to confidentiality) under which individuals are referred for treatment, rehabilitation, or other assistance;

"(5) any recommendations for legislation considered appropriate by the Office and any proposed administrative actions; and

"(6) information describing any other related activities under section 7904 of this title, and any other matter which the Office considers appropriate.".

(2) The analysis for chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

"Sec.
"7361. Drug abuse.
"7362. Alcohol abuse and alcoholism.
"7363. Reports to Congress.".

(b) Technical and Conforming Amendments.—The Public Health Service Act is amended—

(1) in section 521 (42 U.S.C. 290dd-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively; and

(2) in section 525 (42 U.S.C. 290ee-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively.

SEC. 6003. EDUCATIONAL PROGRAM FOR FEDERAL EMPLOYEES RELATING TO DRUG AND ALCOHOL ABUSE.

(a) Establishment.—The Director of the Office of Personnel Management shall, in consultation with the Secretary of Health and Human Services, establish a Government-wide education program, using seminars and such other methods as the Director considers appropriate, to carry out the purposes prescribed in subsection (b).

(b) Purposes.—The program established under this section shall be designed to provide information to Federal Government employees with respect to—

(1) the short-term and long-term health hazards associated with alcohol abuse and drug abuse;

(2) the symptoms of alcohol abuse and drug abuse;

(3) the availability of any prevention, treatment, or rehabilitation programs or services relating to alcohol abuse or drug abuse, whether provided by the Federal Government or otherwise;

(4) confidentiality protections afforded in connection with any prevention, treatment, or rehabilitation programs or services;

(5) any penalties provided under law or regulation, and any administrative action (permissive or mandatory), relating to the use of alcohol or drugs by a Federal Government employee or the failure to seek or receive appropriate treatment or rehabilitation services; and

(6) any other matter which the Director considers appropriate.

SEC. 6004. EMPLOYEE ASSISTANCE PROGRAMS RELATING TO DRUG AND ALCOHOL ABUSE.

(a) In General.—Chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"§ 7904. Employee assistance programs relating to drug abuse and alcohol abuse

"(a) The head of each Executive agency shall, in a manner consistent with guidelines prescribed under subsection (b) of this section and applicable provisions of law, establish appropriate prevention, treatment, and rehabilitation programs and services for drug abuse and alcohol abuse for employees in or under such agency.

"(b) The Office of Personnel Management shall, after such consultations as the Office considers appropriate, prescribe guidelines for programs and services under this section.

"(c) The Secretary of Health and Human Services, on request of the head of an Executive agency, shall review any program or service provided under this section and shall submit comments and recommendations to the head of the agency concerned.".

(b) Conforming Amendment.—The analysis for chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"7904. Employee assistance programs relating to drug abuse and alcohol abuse.".

SEC. . SUBSTANCE ABUSE COVERAGE STUDY.

(a) Study.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academy of Sciences to conduct a study of (1) the extent to which the cost of drug and alcohol abuse treatment is covered by private insurance, public programs, and other sources of payment, and (2) the adequacy of such coverage for the rehabilitation of drug and alcohol abusers.

(b) Report.—Not later than one year after the date of the enactment of this Act the Secretary of Health and Human Services shall transmit to the Congress a report of the results of the study conducted under subsection (a). The report shall include recommendations of means to meet the needs identified in such study.

SEC. . HEALTH INSURANCE COVERAGE FOR DRUG AND ALCOHOL TREATMENT.

(a) Findings.—The Congress finds that—

(1) drug and alcohol abuse are problems of grave concern and consequence in American society;

(2) over 500,000 individuals are known heroin addicts; 5 million individuals use cocaine; and at least 7 million individuals regularly use prescription drugs, mostly addictive ones, without medical supervision;

(3) 10 million adults and 3 million children and adolescents abuse alcohol, and an additional 30 to 40 million people are adversely affected because of close family ties to alcoholics;

(4) the total cost of drug abuse to the nation in 1983 was over $60,000,000,000; and

(5) the vast majority of health benefits plans provide only limited coverage for treatment of drug and alcohol addiction, which is a fact that can discourage the abuser from seeking treatment or, if the abuser does seek treatment, can cause the abuser to face significant out of pocket expenses for the treatment.

(b) Sense of Congress.—It is the sense of Congress that—

(1) all employers providing health insurance policies should ensure that the policies provide adequate coverage for treatment of drug and alcohol addiction in recognition that the health consequences and costs for individuals and society can be as formidable as those resulting from other diseases and illnesses for which insurance coverage is much more adequate; and

(2) State insurance commissioners should encourage employers providing health benefits plans to ensure that the policies provide more adequate coverage for treatment of drug and alcohol addiction.

Mr. DURENBERGER. Mr. President, I rise today, as one Senator to add my brief perspective on what I believe is at least part of the answer to the Nation's tragic drug problem. The bill before us, I will acknowledge, is a substantial improvement over the House and the administration proposals to solve the problem and on balance it is a measure that I think I can support as it now stands, but I would like to take a few minutes to express my concern over some of the steps not taken and errors which may yet be made on this bill unless we bring the proper focus and approach to this measure.

Listening to the opening statements on this floor about this bill I have heard speaker after speaker refer to this bill, in so many words, as a comprehensive answer to our Nation's drug problem. That it categorically is not. Here is the official title of the Senate bill: "A bill to strengthen and improve the enforcement of laws against illegal drugs and for other purposes."

For once, Mr. President, we have truth in labeling of a Senate bill. This legislation is predominantly a crime bill: interdiction; stiff penalties; new authority for law enforcement. That is an important response, but one that falls far short of a national solution.

I would submit that illegal drug abuse is as much a health problem as it is a crime problem. It is just part of the broader substance abuse problem, along with alcohol and legal-drug abuse. As chairman of the Health Subcommittee of Senate Finance, I am greatly concerned that in an excess of haste, we are ignoring the very serious public health issues which foster crimes this bill is aimed at preventing. In pursuit of the urgent, we are overlooking the important.

Mr. President, I want to read from a document produced by the Hazelden Foundation of Minneapolis, MN:

> The problems of chemical dependency and addiction are immense. The crisis facing the nation is staggering, but the real story is the lives of individuals and families that are ruined through alcohol and drug abuse.
>
> THE NATION'S NUMBER ONE HEALTH PROBLEM
>
> Ten to fifteen percent of all men who drink and three percent of all women who drink can be classified as heavy drinkers. Approximately nine percent of the population can be labeled as "problem drinkers." And the problem of alcohol abuse is not limited to adults. A recent survey of tenth through twelfth graders showed that eighty-one percent reported drinking at least once a week at an average of five or more drinks each occasion. Thirty-one percent of the youth were intoxicated during the past year.
>
> It is little wonder that last year's Gallup Poll reported that one of five Americans found drinking to be a problem in his or her family.
>
> Alcoholism is not the only chemical abuse problem facing the nation. Approximately one out of five Americans used prescription psychotropics. Of those who use minor tranquilizers and sedatives, one-third can be classified as heavy users.
>
> The Drug Abuse Warning Network (DAWN) reports that the most frequently encountered drugs in hospital emergency situations are: (1) alcohol in combination with other drugs, (2) Valium, (3) heroin/morphine, (4) aspirin, (5) methaqualone, (Quaaludes), (6) Dalamane, (7) marijuana, (8) PCP combinations, (9) cocaine, and (10) Tylenol.

Drug and alcohol problems have serious long-term health effects, which effect Medicaid, Medicare, the Veterans' Administration, and the Department of Defense budgets. The criminal justice system can make only small contribution to reducing the number of chemically dependent Americans. The health care delivery system will have to do the rest.

State and local governments and public health departments have already assembled hard-earned expertise in these areas. Private health care providers have moved into this area and are beginning to develop an impressive record of success. This is a wealth of information and experience which we at the Federal level must tap in our own national drug policy. To my mind, the bill before us, constrained as it is by time, does not adequately reflect these concerns, and I am hopeful that it can be improved along these lines before it goes to the President's desk.

When millions of lives are profoundly affected by chemical abuse, and when there aren't half enough treatment programs to handle those that ask for help, and when abusers use health care services 3 to 5 times as much as nonabusers—now that's a public health problem. And the only way to get this legislative locomotive to its station is with a balanced load of law enforcement and health initiatives.

I have an amendment that would help us balance the load. I must first compliment the leadership in the progress that they have made in infusing more reason and thoughtfulness into this legislation. But, the bill is silent on one of the first subjects that put this train on the track. The President has called on the Federal Government to be a model employer for the Nation in fighting drug—and alcohol—abuse. This bill offers us a golden opportunity to prove that this means more than just not tolerating abuse on the job, but also that the Federal Government is compassionate and concerned about the health and well-being of its employees.

My amendment has two parts. First, it would confirm that this Government cares about its 4.3 million employees by requiring all Federal agencies to have employee assistance programs. It would also set up Governmentwide prevention, treatment, rehabilitation, and education programs for chemically dependent employees. I would like to add, Mr. President, that I may at a future date offer another amendment that would call for a 3-year demonstration program in the Federal Employee Health Benefits Program to test the feasibility of providing health insurance coverage for substance abuse treatment.

Now, Mr. President, if we are asking the Federal Government to be a model employer, I think it is only fitting for this Congress to call upon private employers to do their part too. The second part of my amendment would call for a study of substance abuse treatment coverage in private health insurance plans and express a sense of Congress that employers should provide adequate coverage for substance abuse treatment in employee health plans.

I don't know of any plan that offers coverage that even comes close to "adequate." Insurers are afraid this benefit will break the bank, yet there are many examples of creative, effective plans we can look to. Seventeen States mandate some minimum amount of coverage, and eight States require that it be an option. My home State of Minnesota has been a pioneer in substance abuse insurance coverage. Since 1978, insurers in Minnesota must offer both inpatient and outpatient treatment coverage. Minnesota is one of the only States to do this.

This is encouraging, but more is needed. Studies consistently show the cost-effectiveness of treatment—spending the money up front on treatment results in significant savings on total health care expenses. A study at the St. Paul Ramsey Medical Center in my home State of Minnesota recently showed that within 12 months of treatment, abusers' work performance problems, absenteeism, and job loss decreased substantially. And their arrests for misdemeanors both related to and not related to chemicals declined by over 75 percent. Now that's obviously good for everyone—employee, employer, and society. If employers and insurers don't know that, we're here to tell them and encourage them to get on the bandwagon.

I hope that these matters will be added to this bill. In my capacity as chairman of the Health Subcommittee of the Finance Committee, I want to also announce at this time my intention to hold hearings on the issues of public and private coverage for substance abuse treatment program, before the end of the year.

Mr. President, it is a common practice in this body for Members to take advantage of a popular and fast moving package to move proposals which cannot stand on their own. Such will undoubtedly be the case on this bill, and I want to state my support for the efforts of the leadership to keep a number of contentious constitutional issues off this bill. I, for one, will not allow this bill to become a vehicle for the reinstitution of a Federal death penalty. I will not support changes in procedures which diminish constitutional protection of due process and privacy. I will not support a hasty rewrite of the Freedom of Information Act or the missions of the Defense Department or the Central Intelligence Agency. There are social cost and consequences to these possible amendments, which the Senate cannot properly assess in the time available.

Mr. President, my final concern is that in passing this legislation, that the Congress and the American people have a proper understanding of this exercise. This is not the beginning of the end of America's substance abuse problem, it is only the end of the beginning of that struggle. It is the nature of our people and their Government that what is a burning issue one day may be humdrum the next. We would be compounding this national tragedy if this legislation becomes only a hit-and-run response to substance abuse. We are making a national commitment in this bill to the long, difficult, and yes expensive effort to restore a greater degree of individual independence to our people.

We also need to understand where this battle will be won or lost. At its root, drug and alcohol abuse are not legal problems or medical problems, they are values problems. Our culture has been infected with an instant gratification ethic, and chemical stimulation is a large part of it. We need to reassert the value of a drug- and alcohol-free lifestyle. Who carries that message? Certainly not the Congress of the United States in a drug bill. That responsibility falls on teachers, coaches, preachers, employers, and everyone in the society that has credibility and authority in the eyes of Americans. Most of all, it starts at home. An old Spanish proverb goes: An ounce of mother is worth a pound of priest. Don't bring this problem to Washington, it belongs to all of us.

Mr. President, George Washington wrote:

> It is only after time has been given for cool and deliberate reflection that the real voice of the American people can be known.

America is reacting today with horror and revulsion to the killing invasion of illegal drugs in our society. It will now be the job of leadership, the President—you and I—Americans—as persons as well as parents, to coolly and deliberately treat the problems which already exist and reshape the values which created them. That is the long journey we begin today.

The PRESIDING OFFICER. Is there any debate on the amendment?

Mr. CHAFEE. Mr. President, I would just like to ask, Is there any funding provided for this?

Mr. DURENBERGER. There is no specific authorization for funding in the amendment.

Mr. CHAFEE. I think it is an excellent idea, what the Senator is doing. I am not sure how effective it is going to be without some money. But let us go ahead and try it and see what they can do with the funds they are able to obtain. I just hope it is not going to be a great letdown, particularly when we are talking about not only employees but also their families as well. That is a big order, to do that without money.

Mr. DURENBERGER. Mr. President, in quick response, let me say this amendment has been discussed over a period of time with the Office of Personnel Management. OPM has already called on all agencies to set up employee assistance programs. Some have and some have not. The administrative work is already being done and these costs are being met within current budgets of the agencies that have the programs. Basic administrative costs and skills are already in place. EAP's are not expensive, as a matter of fact, they are cost effective for employers and employees in terms of increasing job productivity, decreasing absenteeism, and improving an employee's health overall. Developing and maintaining these programs can be done within the OPM's and agencies' budgets.

□ 1910

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. We are willing to accept the amendment on this side.

Mr. BIDEN. And we are willing to accept the amendment on this side. I think it is a good amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3045) was agreed to.

Mr. DURENBERGER. I move to reconsider the vote by which the amendment was agreed to.

The PRESIDING OFFICER. Is there a motion to table?

Mr. DIXON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

AMENDMENT NO. 3046

(Purpose: To encourage increased participation by the Civil Air Patrol in the Federal Government's drug interdiction program)

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I have an amendment on behalf of myself, Senator DOLE, Senator HAWKINS, Senator BIDEN, Senator BINGAMAN, Senator NUNN, Senator DIXON, AND Senator CHILES which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself and others, proposes an amendment numbered 3046.

Mr. HARKIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of subtitle A of title III, insert the following:

SEC. . CIVIL AIR PATROL.

(a) SENSE OF CONGRESS.—It is the sense of Congress (1) that the Civil Air patrol, the all volunteer auxiliary of the Air Force, can increase its participation in and make significant contributions to the drug interdiction efforts of the Federal Government, and (2) that the Secretary of the Air Force should fully support that participation.

(b) AUTHORIZATION.—From within any unobligated and uncommitted balances of appropriations for the Department of Defense for fiscal year 1986, carrying forward into fiscal year 1987, there are authorized to be appropriated for the Civil Air Patrol, in addition to any other amounts appropriated for the Civil Air Patrol for fiscal year 1987, $7,000,000 for the acquisition of the major items of equipment needed by the Civil Air Patrol for drug interdiction surveillance and reporting missions.

(c) REPORTS.—(1) The Secretary of the Air Force shall make quarterly reports to the Committees on Appropriations and on Armed Services of the Senate and House of Representatives on the use of such unobligated funds made available pursuant to the authorization contained in subsection (b).

(2) Each report under paragraph (1) shall include a detailed description of the activities of the Civil Air Patrol in support of the Federal Government's drug interdiction program.

(3) The first report under paragraph (1) shall be submitted on the last day of the first quarter ending not less than 90 days after the date of the enactment of this Act.

Mr. HARKIN. Mr. President, I ask unanimous consent to add the name of Senator DECONCINI as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

(Note: In the RECORD of September 27, 1986, the remarks of Mr. HARKIN as they appear on pages S 13984 and S 13985 are incomplete due to the inadvertent omission of certain paragraphs. In the permanent RECORD the remarks will be printed as follows:)

Mr. HARKIN. Mr. President, in all of the debate and the effort so far to enlist the aid of our military forces, police forces, Customs agents, and everything to fight the war on drugs, I believe we are missing one vital component that we ought to enlist on our side. Mr. President, I want to take just a few minutes of the Senate's time to talk about that vital component and how I believe it can really fill one window that needs to be closed. I am talking about the Civil Air Patrol.

Mr. President, today the Civil Air Patrol is perhaps America's most unique volunteer public service organization. Its thousands of professional pilots and vast network of aircraft gives the United States a civilian emergency services capability matched by no other nation. Since its inception at the beginning of World War II, this organization has come to the aid of our Nation time after time saving thousands of lives. The Civil Air Patrol established very early in its existence the ability to assist our Nation in time of crisis. When the Army and the Navy in the first few months of 1942 were unable to strike back at the deadly submarine menace off our Atlantic coast, it was the Civil Air Patrol that stepped in and literally saved the day.

Mr. President, I do not want to take a lot of time of the Senate. I believe the amendment will be accepted, but I do believe it is important and I do want to bring to the attention of the Senate the important work that the Civil Air Patrol has done and can do in this effort.

We all know what the Civil Air Patrol did during World War II, how it patrolled our coasts and sank submarines. However, the Civil Air Patrol has been for the last 30 to 40 years assisting the Air Force in all kinds of search and rescue services and other public service type of services to our country.

The legacy of the Civil Air Patrol's World War II experience was the creation of a public service organization able to perform a variety of emergency missions. Today the Civil Air Patrol has 65,000 members, standing ready to perform a variety of emergency missions. There are 1,570 aircraft owned by the Civil Air Patrol and it has over 10,000 member-owned aircraft. They are deployed over the entire continent of the United States, Alaska, Hawaii, and Puerto Rico. They support a large number of actual emergency missions.

The fact is, Mr. President, the Civil Air Patrol flies 80 to 85 percent of all the U.S. search and rescue missions coordinated by the Air Force Rescue Coordination Center, and I might add at a savings estimated to be over $25 million a year.

Last year alone the Civil Air Patrol flew over 14,000 hours on operational emergency missions. These emergency missions include the airlift of blood and vital organs, bay and river patrol, and, of course, search and rescue.

The use of the Civil Air Patrol, as I said, saves the U.S. Government millions of dollars each year and in search and rescue alone over $25 million annually.

Now, last fall the Civil Air Patrol approached the Customs Service and offered its services in the drug interdiction effort, Customs enthusiastically accepted the offer.

The Civil Air Patrol Pilot Drug Interdiction Program began September 1, 1985 in Florida. This Pilot Program was successful and CAP Drug Program regulations were published dealing with flight safety and operational concerns, and I might add that the Civil Air Patrol's participation is restricted to patrolling and reporting activities only. CAP members are forbidden from carrying weapons, making arrests, or chasing after suspects.

Since January 1 of this year, the CAP Drug Interdiction Program has flown over 600 hours on 160 authorized missions and while the results of most of these CAP missions are generally not made public, it is publicly known that at least one ship carrying a sizable amount of drugs was seized as a result of the CAP actions.

Mr. President, I want to point out to the Senate that the average cost of the Civil Air Patrol for flying these missions is only $30 an hour. Let me repeat that, $30 an hour. We can get Civil Air Patrol pilots flying these missions in surveillance and reporting of suspicious traffic coming into this country around the coast of Florida, the border of Arizona and California.

I might just point out that in many of the high-technology, high-flying planes that we are getting now, we are talking about operational costs of thousands of dollars an hour and here we are getting it only for $30 an hour. That is because of the 300 pilots and observers who have volunteered for these interdiction missions. Many are professional airline pilots, retired Air Force pilots, retired Navy pilots, and others. They are willing to serve their country in this vital war against drugs.

I want to stress again these are volunteers. They are volunteering their time. It is like a volunteer fire department. All they want is the truck. They are willing to give of their time and their experience. And so this amendment which I have offered is for $7 million which will buy not one, not two, but between 45 and 50, as many as 50 single-engine Cessna 182's. It will buy three twin-engine aircraft, it will buy and secure communications equipment needed to talk with the customs people, and it will give it all of the avionics they need for these 45 to 50 single-engine aircraft.

Again, I want to point out that we have a lot of high-technology, high-speed equipment that we are purchasing, but there is one window that is still open and that is that "low and slow" window. This is really what we need. When things are dumped in the ocean for boats to pick up, you cannot find this from a high-flying jet that is flying at 300 knots, but you can find it with a Cessna 182 that is flying at about 120 knots.

Also, in Arizona and California, a lot of small amounts of drugs are filtering across the border, many small boats coming up into California. That is the window that can be effectively closed by the Civil Air Patrol. And as I said, what you are really getting is a lot of bang for the buck, for 30 bucks an hour, if we can get highly qualified volunteers, people who have flown in the military, who are airline pilots, who will take from their free time on weekends and vacations, to go down and help us in this war against drugs.

So as I said, Mr. President, what it is, it is like a volunteer fire department. They are highly qualified. They are highly motivated. They are highly trained. They are mission qualified. All they want is the equipment and for $30 an hour, let me tell you that is a lot of bang for the buck.

Mr. President, I strongly urge the body approve this amendment. I apologize for taking the time of the body but I thought it was important for Senators to know about the Civil Air Patrol, what it does and how effectively it can be utilized, and the cost, how cheap it is going to be to get the Civil Air Patrol involved in interdicting drugs coming into this country.

I apologize for taking the time of the body but I thought it was important for Senators to know about the Civil Air Patrol, what it does, how it can be effectively utilized and how cheap it is going to be to get the Civil Air Patrol involved in interdicting drugs coming into this country.

Mr. THURMOND. Mr. President, we have agreed to accept this amendment and we are going to finish this bill tonight, but if people talk this long on all these amendments we will not get away from here until 3 o'clock in the morning. When we agree to accept them, why not accept them?

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER (Mr. BOSCHWITZ). The Senator from Virginia.

Mr. WARNER. Mr. President, if I could have the attention of the sponsor of the amendment, the distinguished Senator from Iowa, it is this Senator's intention to support the amendment, but I think that in fairness, as we begin to take more and more from the Department of Defense, we should ask ourselves several key questions.

□ 1920

Who is in overall control of this war on drugs; and who will be the overall manager of these assets to be provided by the Department of Defense in response to this amendment of the distinguished Senator from Iowa and especially the earlier amendment of the distinguished Senator from Arizona? Where is the plan for the war on drugs that we are requiring the Department of Defense to support? Who is going to coordinate and who is going to be responsible and who is going to formulate this war plan for the war on drugs?

Personally, I believe that drugs pose a formidable threat to this country—in many respects, greater in the immediate future than any other threat we face. That is why I support the amendment. But, in fairness, we should know who is in charge, and we should have some kind of plan and strategy in order to attain the optimum results from the resources and assets we are requiring the Department of Defense to provide.

Mr. HARKIN. I cannot speak about the whole bill, who is in charge of everything. I do know that the Civil Air Patrol operates under the auspices of the Department of the Air Force, and the Civil Air Patrol comes from the Department of Defense to the Department of the Air Force.

With regard to this particular mission, they would be coordinating with the U.S. Customs Department and would receive their direction and guidance about what to patrol and what to do from the U.S. Customs.

Mr. WARNER. I thank the Senator. I hope he will bear in mind the question of who is in control.

Mr. BIDEN. Mr. President, we accept the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. GOLDWATER. Mr. President, before the amendment is adopted, I want to compliment the Senator from Iowa for coming up with this idea.

The Civil Air Patrol is probably the best equipped organization—including the Air Force and the Navy, including all flying outfits—to perform the kind of flying missions necessary. When you patrol the 850-mile border we have with Mexico, there are no roads, where people can walk at night and not be seen.

I can tell you from personal experience with the Civil Air Patrol in World War II that the type of mission we are going to ask them to do is precisely the mission they did so well during World War II.

I think the suggestion made by the distinguished Senator from Iowa is probably one of the best that we have heard so far. In fact, it has so much merit that I would go so far as to suggest that we might even start on that as a plan.

The Senator from Virginia has pointed out that nobody has laid out a plan. We have the Justice Department, we have the FBI, we have any number of people that the President has mentioned who might be head of this war on drugs. But, so far, nobody is heading it up. I have heard a lot of talk about what States are going to do about drugs, but it is going to take leadership.

I can go back to the CAP and say with authority that this is the easiest and quickest type of flying we have, and it would produce more results than all the AWACS, Mojave Sidewinders, and high-speed aircraft we have, for similar patrol.

I congratulate the Senator.

Mr. HARKIN. I thank the distinguished Senator from Arizona. He is a long supporter of the Civil Air Patrol. As a pilot, he knows what these qualified pilots can do. They want to help, if we will only give them a little help. Some of these low-flying airplanes can do the job.

I thank the Senator from Arizona for his remarks.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3046) was agreed to.

SEVERAL SENATORS addresed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 3047

Mr. ANDREWS. Mr. President, I have an amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. ANDREWS] proposes an amendment numbered 3047.

Mr. ANDREWS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amend section 4107(b)(1)(A) as follows: insert after the words, "including parent groups," the following: "and community action agencies,"

Mr. ANDREWS. Mr. President, my amendment will afford Community Action Agencies [CAPS] the opportunity to offer local broad based programs for alcohol and drug abuse prevention.

It is vitally important that these services are made available to all Americans, especially the working and nonworking poor. It is this group that benefits from the services provided by the CAPS. Both alcohol and drug abuse know no limits in terms of economic status. They are diseases not encumbered by the boundaries of wealth, class, education, or ethnicity. Just as public education is available to all Americans, so too should the accessibility to information regarding the dangers of alcohol and drug abuse.

North Dakota is served by seven Community Action Agencies. I have visited these agencies and their effectiveness is undeniable. I am confident that the CAPS will be an excellent source for providing American communities these much needed alcohol and drug abuse programs.

Mr. President, I understand that this amendment has been cleared on both sides of the aisle, and I urge its adoption.

Mr. BIDEN. That is correct. Mr. President, it is a good amendment, and we accept it. I believe the majority accepts it, also.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3047) was agreed to.

AMENDMENT NO. 3048

Mr. ANDREWS. Mr. President, I have a second amendment at the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. ANDREWS] proposes an amendment numbered 3048.

Mr. ANDREWS. Mr. President, I ask unanimous consent that reading of the amendment be dispenses with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amend Section 4218 as follows:

Strike subsection (b) and insert in lieu thereof the following: "(b) the powers and authorities conferred herein shall be exercised in accordance with an agreement entered into between the Secretary and the Attorney General of the United States."

Mr. ANDREWS. Mr. President, section 4128 provides statutory authority for the Secretary of the Interior to authorize employees of the Department of the Interior, to exercise law and order powers in Indian country. Subsection (b) authorizes the Secretary to commission law enforcement personnel of other Federal agencies and tribal, State, or local law enforcement personnel to exercise such authority.

The Department of Justice has expressed concern that the authority provided in subsection (b) may be overly broad and has requested this amendment.

This amendment deletes the provision of subsection (b) and provides alternative language that will require that the powers and authorities conferred in section 4218 shall be exercised in accordance with an agreement between the Secretary of the Interior and the Attorney General.

Mr. President, this amendment has been cleared on both sides of the aisle, and I urge its adoption.

Mr. BIDEN. Mr. President, we accept the amendment. It is a good amendment. I believe the majority also accepts the amendment.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr. ANDREWS. I appreciate the Senator's accepting the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3048) was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

AMENDMENT NO. 3049

(Purpose: To call for a stronger response to the Daniloff arrest)

Mr. MOYNIHAN. Mr. President, I send an amendment to the desk for myself, Mr. HUMPHREY, and Mr. DOLE, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from New York [Mr. MOYNIHAN], for himself, Mr. HUMPHREY, and Mr. DOLE, proposes an amendment numbered 3049.

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . (a) FINDINGS.—The Senate finds that—

(1) On August 30, 1986, Nicholas Daniloff was arrested, apparently in response to the arrest of the Soviet spy Gennadi F. Zakharov;

(2) On September 5, 1986, President Reagan sent a message to Soviet General Secretary Gorbachev offering the President's personal assurance that Mr. Daniloff was not a spy;

(3) Despite the President's assurances, the Soviet Union indicted Mr. Daniloff on September 7, 1986;

(4) The Soviet Union demonstrated an unprecedented disregared for the word of a United States President, while continuing to blatantly distort and conceal the facts surrounding the detention of Mr. Daniloff;

(5) Such mendacity jeopardizes the furtherance of any constructive relationship between the United States and the Soviet Union; and

(6) Hundreds of Soviet espionage agents operate at the United Nations, under cover of the Soviet mission to the United Nations and as members of the Secretariat of the United Nations.

(B) The Senate hereby—

(1) Declares that the Soviet action in imprisoning and falsely charging Mr. Daniloff reflects once again the failure of the Soviet Union to observe internationally recognized standards of human rights and civil conduct and raises profound doubts about Soviet willingness to live up to their responsibilities and commitments under any international or bilateral agreement.

(2) Urges the President to continue his forthright demands for the immediate and unconditional release of Mr. Daniloff.

(3) Calls on the President to condition his agreement to a summit meeting with Secretary Gorbachev on the prompt return of Mr. Daniloff from the Soviet Union.

(4) Expresses opposition to any new economic or commercial agreement with the Soviet Union, or any new transactions under existing economic or commercial agreements with the Soviet Union until Mr. Daniloff has been granted unconditional permission to depart the Soviet Union.

(5) Calls on the President to demand that the Soviet Union remove its spies from its United Nations mission and from the United Nations Secretariat and to take all measures necessary to bring an end to such direct Soviet violations of Articles 100, Section 2, of the United Nations Charter.

Mr. MOYNIHAN. Mr. President, this is a straightforward amendment which has been discussed in various ways on the floor for the past 2 weeks, during which the Senate has been looking for an occasion to express its despair.

□ 1930

The Senate has been seeking an opportunity to express its dismay at the KGB's arrest and indictment of Nicholas Daniloff in Moscow on a clearly fabricated charge of espionage, the first such event since the era of Stalin in our relationship, and to express equal dismay at one of the most extraordinary repudiations of our President we have seen from a Soviet leader in this whole area of our relations.

The President of the United States personally declared to Secretary Gorbachev that Mr. Daniloff was in no way connected with our intelligence agencies as an agent. Secretary Gorbachev's response was to escalate the crisis by indicting Mr. Daniloff on espionage charges, followed by Mr. Gorbachev's personal statement that Mr. Daniloff was a spy who had been caught redhanded.

We ask that the President maintain his staunch position in this regard, that he condition any meeting at the summit with Mr. Gorbachev on Mr. Daniloff's freedom, that he put an end to any discussion of new economic or trade relations with the Soviets until Mr. Daniloff is free, and, finally, that he insist that the Soviets abide by the United Nation's Charter and take their intelligence agents out of the United Nations Secretariat.

Mr. President, I yield the floor to my colleague, Mr. HUMPHREY, who has joined me in this matter throughout.

The PRESIDING OFFICER. Is the Senator from New Hampshire seeking recognition? The Senator from New Hampshire.

Mr. HUMPHREY. May we truly have order, Mr. President?

The PRESIDING OFFICER. The Senator is correct.

Mr. HUMPHREY. Mr. President, the drug bill is very, very important but the hostage holding by Moscow of American citizen Nicholas Daniloff makes it imperative, it seems to this Senator, that we consider this matter that we sought to consider such to bring to the floor for over a week. Indeed, it is more imperative than ever because, according to press stories in recent days, the last day or two, including one in the Washington Times, the Soviet Foreign Minister Shevardnadze is almost setting a deadline, if you will, for the resolution of this matter.

Mr. Shevardnadze is quoted by the Washington Times as saying his departure for Ottawa this coming Tuesday represents a sort of deadline by which time the President of the United States had better come to terms with the Soviet Union in this matter.

Mr. President, I think Mr. Shevardnadze and, indeed, Mr. Gorbachev simply do not understand the gravity of the situation which they have precipitated, and it is not hard to understand why they do not understand. It is because the Soviet tradition, the Soviet history, the Soviet practice has been to ignore the rights, to trample on the rights, of individual Soviet citizens.

The Soviet Government has wiped out literally millions of its citizens for the convenience of the state or the party, if you will, and that goes on today. Millions of citizens languish in jails to suit the convenience of the Soviet state and the party.

So they simply do not understand why Americans would get so excited about one single itty-bitty American citizen.

They have to be made to understand that we have a different system of values, that in this country under our Constitution each citizen has every right to protection of his rights and to the protection by the Government as have 100 million citizens.

So it is my contention, Mr. President, that we will help President Reagan impress upon the Soviet Government the gravity of the situation, the imperative this Government has to protect the rights of Mr. Daniloff and the rather little latitude there is for the President in negotiating this matter.

Mr. President, I think we will augment the President's case, we will buttress his case. To what extent it is hard to say. By itself this amendment which is in the form of a resolution, except it does not have a resolve clause—by itself we know the words of the Senate are not going to carry the day, but we hope that this on top of other evidence will press the Soviets and bring into clearer focus for them the circumstances of this unfortunate case and bring about a just and early resolution such that our fellow citizen Nicholas Daniloff will be freed and returned very soon.

Mr. President, I conclude by ticking off the five principal points of this amendment.

(1) Declares that the Soviet action in imprisoning and falsely charging Mr. Daniloff reflects once again the failure of the Soviet Union to observe internationally recognized standards of human rights and civil conduct and raises profound doubts about Soviet willingness to live up to their responsibilities and commitments under any international or bilateral agreement.

(2) Urges the President to continue his forthright demands for the immediate and unconditional release of Mr. Daniloff.

This is most important—

(3) Calls on the President to condition his agreement to a summit meeting with Secre-

tary Gorbachev on the prompt return of Mr. Daniloff from the Soviet Union.

(4) Expresses opposition to any new economic or commercial agreement with the Soviet Union, or any new transactions under existing economic or commercial agreements with the Soviet Union until Mr. Daniloff has been granted unconditional permission to depart the Soviet Union.

(5) Calls on the President to demand that the Soviet Union remove its spies from its United Nations mission and from the United Nations Secretariat and to take all measures necessary to bring an end to such direct Soviet violations of Articles 100, Section 2, of the United Nations Charter.

I would think this is an uncontroversial proposal in all of its five points.

Mr. President, may I simply state in closing that the stronger the vote, and I will ask for a rollcall vote, the stronger the vote, the stronger the message and the more help we will be to the President in resolving this thorny problem.

I thank the Chair.

Mr. MOYNIHAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Mr. President, I support the amendment offered by the distinguished Senators from New Hampshire and New York on the Daniloff case.

In doing, so, I want to commend those two Senators for bringing their resolution to the floor. We've been working with them for more than a week to do just that. So I'm pleased we are finally dealing with this issue in legislation.

Let me say, also, that it is my understanding that both of those Senators want a strong statement on Daniloff, and that the Senator from New Hampshire, at least, would welcome some additional language to strengthen his resolution. But he, quite understandably, wanted to attract the greatest possible vote on this matter and to get it to the floor as soon as possible, and so chose to go with the version he has now offered.

I certainly wish the language could be toughened up even more. We need a resolution that is as strong as our feelings about this matter.

The message I would like to see sent is that there can be no new initiatives or breakthroughs in our relations with the Soviet Union in any sphere until Daniloff is given unconditional permission to depart that country. To put it another way, I want to make clear that we consider the freedom, rights, and safety of an American citizen, whether that citizen happens to be in Moscow or wherever, as being at the absolute top of our agenda of national interests. Nothing should take higher priority for our Government than doing everything it can to protect American citizens. The Daniloff case is the top item on our agenda. When that is settled, then we can get on with other things. Until it is, then we can't.

The resolution before us does help send this kind of message. For that reason I welcome and support it, even while expressing the hope we could be even stronger in our language.

LET'S PUT TEETH IN THIS RESOLUTION

And let me add just one final word. There has been a lot of tough talk on this matter from a lot of people. And a lot of suggestions that we do this or that—stop grain sales or whatever. But when you try to get some of these people to do something really meaningful, to put some teeth in our message, then we start to hear all the excuses—all the reasons why we have to be careful or judicious or diplomatic or some other codeword for doing nothing.

Well, time is up for that tack. It's time now to act—to vote on something that shows we really mean business. That shows we really put the freedom and safety of Americans at the top of our agenda.

Mr. President, the Humphrey-Moynihan resolution is the best available vehicle to make that statement, so I will vote for it.

Mr. THURMOND. Mr. President, I ask unanimous consent to be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Ohio.

Mr. METZENBAUM. Mr. President, because we have not been able to obtain a copy of the amendment—I just have it. Never mind. I withdraw my objection.

Mr. LEAHY. Mr. President, I will not delay matters here at all. I would hope that the Senator from New York and the Senator from New Hampshire noted the passage earlier this week by the Senate of Leahy-Cohen II.

The Leahy-Cohen law that passed last year and has been signed into law by the President says that the United States and the Soviet Union shall have equivalency in their diplomatic missions and something that would require the Soviets to come in line with us to draw down substantially from their mission here in the United States. It is now in about a 3-to-2 ratio. There is about a 3-year time limit to put this into play.

Senator COHEN and I have both written to the Secretary of State. Senator COHEN and I have written to the Secretary of State and recommended that he notify the Soviet Union that if Nicholas Daniloff is not released immediately and unconditionally then the United States instead of taking 3 years to implement Leahy-Cohen would do it in a much more rapid period of time.

That would require a very substantial number, perhaps as many as 100 Soviets to leave immediately.

Now, this week earlier, the Senate unanimously passed Leahy-Cohen II, which is in the intelligence authorization, in the open part of it, discussed by Senator COHEN and I at the time it came up here. That, I have reason to believe, will be in the final conference report which will go to the President, and I understand will be signed into law by the President, which once in law would require the Soviet Union not only not to be able to bring back the 25 they now have in the U.N. mission, but they would have another 50 to 75 leave.

I mention this only, and I must say that the distinguished Senator from New York was one of those who strongly supported Leahy-Cohen I, and even back when before it was that, because I hope the administration has taken note of it and others have.

Under the law which passed the U.S. Senate this week, the one that I have every reason to believe will eventually be signed into law by the President, there is no room to negotiate for those 25 Soviets to come back. They are gone. And in fact, once this law goes into effect, another as many as 50 to 75 from the U.N. mission will still have to leave to reach the equivalence that we have talked about.

So I notice there has been a lot of speculation in the press and among Members of Congress and all of that, whether some of the 25 Soviets might come back, which ones they might be, and which ones they will not be.

The fact of the matter is under Leahy-Cohen they go, another 50 go, from the U.N. missions and as much as a third of the normal Soviet diplomatic mission will over the next 3 years have to leave to bring into equivalency.

This is not retaliation, this is nothing other than just following what is in the law.

I want my colleagues to be well aware of that.

SEVERAL SENATORS. Vote! Vote!

Mr. MOYNIHAN. Mr. President, I believe the Senator from Rhode Island wishes to speak.

The PRESIDING OFFICER. The Chair did not hear the Senator's remark or question.

Mr. MOYNIHAN. Mr. President, I said I believe the distinguished Senator from Rhode Island wishes to speak.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, in general this amendment is a fine one and good idea. But, there is one sentence in it that concerns me. That is sentence No. 3. It calls on the President to condition the agreement to a summit meeting with Secretary Gorbachev on the prompt return of Mr. Daniloff from the Soviet Union.

□ 1940

I think we all agree that the arrest of Mr. Daniloff is dreadful and wrong and an improper action on the part of the Soviets. There is no question about it. But there are other problems that we are dealing with in the world today as well. And the most important problem area that we have today, the most important area of vital concern to us all, is that of arms control and this means moving on with some method of communication between our two sides, such as a summit, and some method of getting a grip on these weapons.

I believe to try to relate the Daniloff release to this much larger issue of the summit is a very bad mistake. Daniloff himself said he hoped he would not be used as an excuse to postpone a summit meeting.

I am not sure what the attitude is of the administration. But, I would be surprised if they would like to see the President lose his freedom to negotiate with the Soviets and be denied the opportunity to a summit meeting because of an action on the part of the Senate. To my mind this is also too important an issue to decide this way, rather hastily, as an amendment on the drug bill.

I would very much hope that it would not pass at this time. I see real harm in calling on the President to condition his agreement to a summit meeting with Secretary Gorbachev on the prompt return of Mr. Daniloff from the Soviet Union.

Mr. HUMPHREY. Mr. President, I assure my colleagues I will be brief. The declaratory statement to which the Senator from Rhode Island refers, in plain English, says "No Daniloff, no summit." That is what we mean to say and that is what we have said. It is a clear choice for Senators. On that basis, we ask them to make the choice.

Mr. MOYNIHAN. Might I just make a final observation. Those who wish to see the relations between the Soviet Union and the United States improve must also wish to see the Soviet Union understand the principles of American national life which the distinguished Senator from New Hampshire set forth with such clarity. Absent that understanding of such fundamental principles, there can be no superstructure of understanding. We want both those things and we urge our colleagues to support this amendment. We have no doubt in our minds that the President would wish us to have the Senate go on record in this way.

Mr. LEAHY. Will the Senator from New York yield for a question?

Mr. MOYNIHAN. I am happy to yield.

Mr. LEAHY. Mr. President, I wonder if the Senator from New York could advise the Senator from Vermont—and I ask this question because the Senator from Vermont has long been one who has stated we should not condition arms control negotiations and arms control agreements on matters such as Daniloff—does this resolution condition the ongoing arms control agreements in Geneva upon the release of Mr. Daniloff?

Mr. MOYNIHAN. I am happy to respond to the distinguished Senator and vice chairman of the Intelligence Committee to say the answer is no; in no way does this amendment address itself to the ongoing arms negotiations nor indeed to any arms agreement that might be reached in the course of those negotiations.

Mr. LEAHY. Would the Senator from Vermont be correct in reading down through this—and I must admit that this seems unlikely in the arena of tensions created by the arrest of Mr. Daniloff—but is there anything here that would tell the President of the United States that he would not be able to initial an agreement if the chance of an agreement acceptable to the United States in arms control were to come out of Geneva?

Mr. MOYNIHAN. I say to my friend, I believe it would be unconstitutional for the Senate to instruct the President on what he may or may not do. Whether we subsequently approve a treaty is our constitutional responsibility. But the Senator may be assured that in no way does this either instruct or inhibit the President's action with respect to arms control.

Mr. LEAHY. I anticipated, in asking the question, that the distinguished Senator from New York would have that response, he having had more diplomatic experience in that regard than the Senator from Vermont and most of us here. The answer is what I anticipated and is most acceptable and I appreciate it.

Mr. MOYNIHAN. Mr. President, we move the question.

Mr. LEVIN. Mr. President, I may have missed the answer to a question from the Senator from Rhode Island, but I am wondering if I could ask my friend from New York a question. Has the State Department or the White House given their comment on this resolution? Do we know what their position is?

Mr. MOYNIHAN. May I say to my friend from Michigan that the Executive does not oppose this matter. They take no stance. They take no position. They thought it was a proper decision for the Senate to make.

Mr. LEVIN. Does this language in paragraph 3, which calls on the President to condition his agreement to a summit meeting on the prompt return of Mr. Daniloff from the Soviet Union, is this saying that the Senate urges the President not to agree to meet with Mr. Gorbachev to discuss the Daniloff affair?

Mr. MOYNIHAN. As my friend, my colleague in this matter, the distinguished Senator from New Hampshire said, the answer to your question, my friend from Michigan, is yes.

Mr. LEVIN. So that I am very clear on it, we would oppose Reagan and Gorbachev meeting to discuss the release of Daniloff?

Mr. MOYNIHAN. Mr. President, might I say, I think the Senator from New Hampshire might be asked to address this matter. I cannot imagine the President would.

Mr. HUMPHREY. If I may respond, it is hard to imagine a meeting between the President and the General Secretary of the Communist Party of the Soviet Union getting together without that being a summit. Clearly, in paragraph 3, we call upon the President—that is all we are doing; we have no means to compel him, obviously—calling upon the President to condition his agreement to a summit meeting on the prompt return of Mr. Daniloff. The language is clear and we mean exactly what it says.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan has the floor.

Mr. LEVIN. I will be happy to yield to my friend from Virginia in a moment or right now.

I just want to get a clear answer to that question. If the President of the United States said that he has agreed to a summit with Mr. Gorbachev and there are three items on the agenda of that summit—the first one is the unconditional release of Daniloff; the second one is the release or the permission to leave the Soviet Union of hundreds of thousands, indeed, perhaps more, people who want to leave the Soviet Union but who cannot; and the third thing is arms control—that this resolution puts us on record as opposing that agenda and opposing the President even going to that kind of summit? That is the impact of this resolution, as I understand it; is that correct?

Mr. HUMPHREY. May I respond?

Mr. LEVIN. Sure.

Mr. HUMPHREY. I think the Senator, particularly with respect to his second point, puts forth a highly unlikely hypothetical; indeed, an absurd hypothetical.

We are saying the President should not meet with Mr. Gorbachev until Mr. Daniloff is returned.

Mr. LEVIN. If I could just press for a direct answer to this question: If the President announced tomorrow that he has reached an agenda in a summit and the agenda is made up of a number of items and the first item on that agenda is the unconditional release of Mr. Daniloff, with a number of other items on that agenda, this resolution puts us on record as opposing the President going to that summit; is that correct?

Mr. HUMPHREY. I will answer the Senator's question directly, but let me first preface it by saying that this Senator believes it would be highly improper and unseemly for the President of the United States to meet with Mr. Gorbachev while Daniloff continues to be held hostage. The direct answer to the Senator's question is, yes.

Mr. LEVIN. I thank my friend from New Hampshire and I yield the floor.

Mr. WARNER. Mr. President, I think my question has been answered. In other words, if Daniloff is not back in the United States, there should be no summit?

□ 1950

Mr. HUMPHREY. As I said earlier, and I say to my colleague from Virginia, no Daniloff, no summit.

Mr. WARNER. Which means that the summit might afford the President the opportunity to explore the options to bring him back, and the Senator precludes the President from even giving that opportunity a chance.

Mr. MOYNIHAN. Might I respond because we are together in one view on that matter? We are asking that the Senate support the declared intention of the President. If in his own judgment a situation of extraordinary opportunity arises in which he wishes not to take or accept our urging, he is free to do so. He is the President. But it is our view he would not, and that he ought not.

Mr. LEVIN. Mr. President, I want to see the release of Nicholas Daniloff from Soviet custody just as much as anyone else in this Chamber. It is for that reason that I am voting against the Moynihan amendment, which conditions a summit between President Reagan and General Secretary Gorbachev on the release of Nicholas Daniloff. This sense of the Senate resolution is so tightly drawn that it could create an obstacle to his release because it would prohibit the President from attending a summit, even if the first item on the summit's agenda was the release of Daniloff. This resolution would, thus, tie the President's hands, not increase his power to obtain the release of Daniloff.

I agree that the President should use the possibility of a summit as leverage to obtain Daniloff's release. However, we should not complicate his efforts in a way which might limit that leverage itself. In fact, if the President has an agreement prior to a summit that Daniloff would be released shortly after that summit, then a resolution prohibiting him from attending that summit, would be, in effect, a "Keep Daniloff A Hostage Resolution."

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment of the Senator from New York. On the question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. ARMSTRONG], the Senator from Mississippi [Mr. COCHRAN], the Senator from Utah [Mr. GARN], the Senator from Washington [Mr. GORTON], the Senator from South Dakota [Mr. PRESSLER], the Senator from Indiana [Mr. QUAYLE], the Senator from Vermont [Mr. STAFFORD], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Massachusetts [Mr. KERRY], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of death in the family.

The PRESIDING OFFICER (Mr. GRASSLEY). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 57, nays 29, as follows:

[Rollcall Vote No. 298 Leg.]

YEAS—57

Biden
Boschwitz
Bradley
Broyhill
Bumpers
Byrd
Chafee
Chiles
Cohen
D'Amato
Danforth
DeConcini
Denton
Dixon
Dole
Domenici
Ford
Glenn
Goldwater
Gore
Gramm
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Johnston
Kassebaum
Kasten
Lautenberg
Long
Lugar
Mattingly
McClure
McConnell
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Riegle
Rockefeller
Rudman
Sarbanes
Sasser
Simpson
Stennis
Symms
Thurmond
Trible
Wilson
Zorinsky

NAYS—29

Abdnor
Andrews
Baucus
Bingaman
Burdick
Cranston
Dodd
Durenberger
Eagleton
Evans
Exon
Grassley
Harkin
Hart
Inouye
Laxalt
Leahy
Levin
Mathias
Matsunaga
Melcher
Metzenbaum
Pell
Proxmire
Roth
Specter
Stevens
Warner
Weicker

NOT VOTING—14

Armstrong
Bentsen
Boren
Cochran
Garn
Gorton
Kennedy
Kerry
Pressler
Pryor
Quayle
Simon
Stafford
Wallop

So the amendment (No. 3049) was agreed to.

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Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BURDICK. Mr. President, I would like to explain my vote on the Moynihan-Humphrey amendment to H.R. 5484. The amendment was called up without my notice, and the voting was in progress when I learned of it.

The amendment contains the following language:

(B) The Senate hereby—

(4) Expresses opposition to any new economic or commercial agreement with the Soviet Union, or any new transactions under existing economic or commercial agreements with the Soviet Union until Mr. Daniloff has been granted unconditional permission to depart the Soviet Union.

I voted "No" on the amendment. I think it is unwise to terminate the sales of grain to the Soviet Union on this issue. A similar attempt was made under the Carter administration, it was a mistake then and it is a mistake now. This action will not punish the Soviets, but will simply drive them to other grain suppliers.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alaska.

AMENDMENT NO. 3050

(Purpose: To exempt certain maritime operations from the restrictions regarding participation in foreign police arrest actions)

Mr. MURKOWSKI. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI] proposes an amendment numbered 3050.

Mr. MURKOWSKI. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In title II, section 08, strike out in paragraph (3) "paragraph" and inserting in lieu thereof "paragraphs."

In title II, at the end of section 08, strike out the quotation marks and the second period.

In title II, at the end of section 08, add the following new paragraph:

"(4) With the agreement of a foreign country, paragraph (1) shall not apply to maritime law enforcement operations in the territorial sea of such country.".

Mr. DOLE. Mr. President, I know a lot of Members would like to be out of here and so would I. We are making very good progress. I hope, particularly where amendments are going to be accepted, we can move very quickly and that we not get into a lot of extraneous amendments that are not germane. I hope we can stay here. The last vote was 7½ minutes over the time. We are going to start blowing the whistle at the end of 15 minutes now.

Mr. METZENBAUM. Will the majority leader yield for an observation?

Mr. DOLE. Yes, Mr. President.

Mr. METZENBAUM. I think there has been an effort, as far as I can see, to avoid the highly controversial issues. It is now my understanding that there are certain Members who are insisting, within their rights, to offer some very highly controversial amendments. I think it should be pointed out that if that were to develop, we would really get bogged down on this drug bill. The majority leader and others on both sides of the aisle have given great leadership on this bill, but if we get into really controversial issues, there is no question that there is going to be a lot of debate.

I hope the majority leader will use his persuasive powers to see that we not get into that kind of situation because many of us want to be helpful on this bill, but we also have some strong feelings on certain issues.

Mr. GOLDWATER. Mr. President, will the majority leader yield for an observation?

Mr. DOLE. I am happy to yield.

Mr. GOLDWATER. I inform the majority leader that one of the coming amendments, as I understand it, will be the Hunter amendment coming over from the House. I think I am safe in saying if that amendment is offered, some of us will talk all night.

Mr. BIDEN. Mr. President, will the majority leader yield?

The PRESIDING OFFICER. The Senator from Alaska has the floor.

Mr. BIDEN. Will the Senator yield for an observation?

Mr. MURKOWSKI. I am happy to yield.

Mr. BIDEN. I say to my friend from Arizona that I believe we can, in fact, take all the amendments from the so-called Hunter amendment to the death penalty amendment and in fact be out of here and have a drug bill, have a drug bill that is of some consequence, as long as we all do not spend the rest of the night attempting to figure out how we can make it politically difficult for one another to, in fact, vote the remainder of the night.

There is an essence of an agreement here. We have a bill of significant consequence which, in fact, is about ready to move. There are only, as best this Senator can count, six controversial amendments, all of which, I believe, but one have an agreement that they will be withheld.

If, in fact, any one is not withheld, then, then obviously, no one will withhold. So I urge my colleagues to do their level best to do something about the drug problem because, as I understand it, we are in a position that if we do not finish tonight, we will not be back on this bill until sometime Wednesday. We have, I am told, at that time everything from the apartheid override vote to the impeachment of a Federal judge still on the docket. I believe we can finish it, I urge my colleagues.

I thank my friend from Alaska for yielding, but I urge my colleagues who are the major sponsors of any of those six or seven amendments to withhold introduction, withhold their tempers, withhold everything for a few minutes to see if, in fact, we might not be able to work something out here.

I thank my friend from Alaska.

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Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska has the floor.

Mr. MURKOWSKI. I yield without losing my right to the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, I would just like to make this comment in connection with all the discussions that have taken place. Several here who have spent most of the time today discussing issues, including one of my warm friends who was allotted 3 hours earlier today, now does not want some of us to discuss issues we consider vitally important if you want to address the question of drug interdiction in the United States.

It is true that I have sent to the desk with cosponsors of Senator DeConcini, Senator Hawkins, Senator Mattingly, and Senator D'Amato a refinement of the Hunter amendment. It is a very substantial refinement of that amendment. I would simply like to say this to the Senate. Last year the House offered us a DOD authorization bill that moderately amended posse comitatus to use military hardware in connection with drug interdiction. We took it out last year.

This year they passed the Hunter amendment, much stronger than what I want to talk about here, if you will let me debate it shortly, significantly stronger than what I want to do. I would suggest that the attitude of the Senate is rather delicate on this subject matter. I have the posse comitatus law here and it is a very simple law. It says very clearly that if we want to permit the President or the Government to do anything in this area, we have to do something to amend the posse comitatus law. Now, if the Senate does not want to discuss that subject matter at all, I just want to say that so far as this Senator is concerned, you have done a lot of fine things tonight but you have not done the necessary bottom-line, important thing that you have to do to address this question of drug interdiction. I will just tell you one thing that happened to me years ago when I was in the Illinois Legislature and we were passing all kinds of new mandatory sentencing laws on crimes in Illinois. Mayor Richard J. Daly made a speech one night and what he said was, "All I need is more policemen on the streets of Chicago and I can take care of crime in Chicago."

You can do all these fancy things and if you do not give the military some powers and make some amendments in posse comitatus, you are not going to do the final necessary thing you have to do tonight.

I would like to take some time to discuss that. Some of my colleagues would like to discuss it.

Mr. DOLE. Regular order, Mr. President.

Mr. DIXON. I have an amendment at the desk and expect to call for its consideration unless otherwise dissuaded.

The PRESIDING OFFICER (Mr. Grassley). Regular order has been called for. The Senator from Alaska.

Mr. MURKOWSKI. I can assure my colleagues that my amendment will probably take less time than the comments of my friend from Illinois.

Mr. President, as a former member of the Coast Guard in Alaska, I'm pleased to offer this amendment.

This amendment exempts the Coast Guard from the restrictions of the Mansfield amendment as modified by this bill. It will allow the Coast Guard, with the consent of another nation, to enter the territorial waters of that nation to directly enforce U.S. drug trafficking laws. In other words, it will permit the Coast Guard to make arrests—rather than ask foreign officials to make those arrests.

This amendment permits the U.S. Coast Guard to participate in cooperative enforcement activities abroad to assist foreign counterparts in controlling narcotic traffic affecting the United States. Because of restrictions imposed by the Mansfield amendment the Coast Guard has been hindered in carrying out its drug interdiction responsibilities. The Mansfield amendment has been interpreted as permitting the Coast Guard to act alone in foreign waters, with the consent of the foreign sovereign, to enforce U.S. law. However, the Coast Guard could not directly assist or arrest foreign personnel in the enforcement of their laws. Under these restrictions, any joint operation or training in foreign territorial waters is hindered significantly. I submit for the record two cases where the interpretation of the Mansfield Act, as amended, has stymied Coast Guard operations.

Mr. President, if we are serious about this war against drug abuse we must give our law enforcement officials the ability to assist their foreign counterparts in complying with the 1961 single convention on narcotic drugs. That convention requires that parties "assist each other in campaigns against the illicit traffic of narcotic drugs."

I share the concern of my colleagues that American law enforcement officials not become inappropriately involved in the internal affairs of sovereign foreign nations. To allay concerns about the impact my amendment might raise in this regard, I will outline the process the Coast Guard must go through before engaging in enforcement action in the territorial waters of another nation.

When the Coast Guard encounters a foreign vessel they suspect to be engaged in narcotics trafficking, they follow procedures for dealing with nonmilitary incidents established by Presidental directive 27. That directive requires the Coast Guard to contact the Department of State and the Department of Justice. The case is discussed to determine if the Coast Guard has a valid reason to pursue the investigation. If both the Justice Department and the State Department agree, the Department of State must contact the flag state of the vessel to get permission to proceed. I also add that the government in whose territorial water the Coast Guard is located must also have agreed to this type of operation.

I believe the process just outlined, adequately protects the Coast Guard from becoming inappropriately involved in the internal affairs of foreign nations.

I urge my colleagues to support this amendment. It will significantly enhance the Coast Guard's drug interdiction capabilities.

Mr. President, it is my understanding that this amendment has been accepted by the administration, by the Justice Department, by the Coast Guard, and it has been accepted by both sides. I ask unanimous consent to add Senator Hawkins as a cosponsor at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Any further discussion?

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I would like to be added as a cosponsor and commend the Senator from Alaska for his excellent amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. We are willing to accept the amendment.

The PRESIDING OFFICER. Is there any further discussion?

Mr. MURKOWSKI. I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment by the Senator from Alaska.

The amendment (No. 3050) was agreed to.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have an amendment that I am going to send to the desk and ask for its immediate consideration.

Mr. MURKOWSKI. I wonder if my colleague from New Mexico will yield.

I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3051

(Purpose: To increase funds for treatment)

The PRESIDING OFFICER. The clerk will report the amendment of the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I understand we are supposed to rotate.

Mr. METZENBAUM. Mr. President, I think that is the understanding. Mr. President.

The PRESIDING OFFICER. The Senator from Ohio is correct, but the Senator from Illinois was seeking the floor. He did not ask for recognition of the Chair first but I was going to call on the Senator from Illinois.

Mr. METZENBAUM. I think I have a noncontroversial amendment we are prepared to accept.

The PRESIDING OFFICER. The Senator from Ohio is recognized because he addressed the Chair first.

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 3051:

In section 4002(a)(1), strike out "$675,000,000" and insert in lieu thereof "$736,000,000".

In section 4002(a)(2), strike out "$136,000,000" and insert in lieu thereof "$186,000,000".

Mr. METZENBAUM. Mr. President, the amendment which I have sent to the desk provides an additional $50 million for drug abuse treatment programs under title IV of the bill. Currently, the bill authorizes $186 million for such programs, the House authorized $280 million.

Mr. President, It is clear that when we talk about demand reduction we must ensure that treatment programs are available for current drug abusers. If not, we can fund all the interdiction initiatives we want; we can call out the Army, the Air Force, and the Marines; we can propose tougher sentences for drug traffickers; but, Mr. President, we won't tackle the problem. We've got to get the current abusers off the drugs. It is simple as that.

In this morning's Wasington Post, we read about the delays which someone seeking help will encounter. At Second Genesis here in Washington, the backlog is so great that people seeking treatment must wait at least a month before they can get their names on a long waiting list. Phoenix House, the Nation's largest drug-treatment program, with facilities in New York and California, there is a 4-week wait before a person with a drug problem can even get an appointment for a diagnosis.

Mr. President there are an estimated 500,000 heroin addicts and 4 million regular users of cocaine, not to mention the millions who abuse other drugs including alcohol and prescription medicines.

It is estimated that out of the 24.5 million individuals who have a drug problem, only 272,042 are receiving treatment. It is also estimated that only 10 percent of those actively seeking treatment are able to enroll in a program.

Mr. Chairman, the infrastructure for drug abuse treatment exists. The centers are there. We know what works and what doesn't work. Currently only 19 percent of the money being spent for education and treatment comes from the Federal Government. It is our job to ensure that the Federal Government plays its part in combatting this problem. I urge my colleagues to support this amendment.

It is my understanding Senator HAWKINS, Senator THURMOND, Senator DOLE, and Senator BIDEN have all indicated their willingness to accept the amendment. I hope that is the case.

The PRESIDING OFFICER. Any further discussion on the amendment by the Senator from Ohio? If not, the question is on agreeing to the amendment.

The amendment (No. 3051) was agreed to.

Mr. METZENBAUM. Mr. President I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3052

(Purpose: To establish the President's Media Commission on Drug Abuse)

Mr. DOMENICI. Mr. President, I send an amendment to the desk. My cosponsors are Senators HAWKINS, SPECTER, WILSON, MURKOWSKI, BINGAMAN, and TRIBLE. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself and others, proposes an amendment numbered 3052.

Mr. DOMENICI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following: TITLE —PRESIDENT'S MEDIA COMMISSION ON DRUG ABUSE

SEC. . SHORT TITLE.

This title may be cited as the "President's Media Commission on Drug Abuse title".

SEC. . ESTABLISHMENT

There is established a commission to be known as the President's Media Commission on Drug Abuse (hereinafter in this title referred to as the "Commission").

SEC. . DUTIES OF COMMISSION.

The Commission shall—

(1) examine public education programs in effect on the date of the enactment of this title which are—

(A) implemented through various segments of mass media; and

(B) intended to prevent narcotic and psychotropic drug abuse;

(2) act as an administrative and coordinating body for the voluntary combination of resources of—

(A) television, radio, motion picture, and print media;

(B) the advertising industry; and

(C) the corporate sector of the United States; in order to assist the implementation of new programs and national strategies for dissemination of information intended to prevent narcotic and psychotropic drug abuse;

(3) produce and disseminate through the mass media public service announcements and advertisements aimed at preventing narcotic and psychotropic drug abuse.

(4) monitor the effectiveness and assist in the update of programs and national strategies formulated with the assistance of the Commission.

SEC. . MEMBERSHIP.

NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members appointed by the President within 30 days after the date of the enactment of this title, and should include representatives of—

(1) advertising agencies;

(2) motion picture, television, radio, and print media;

(3) the recording industry;

(4) other segments of the corporate sector of the United States; and

(5) experts in the prevention of narcotic and psychotropic drug abuse.

(b) TERMS.—(1) Except as provided in paragraphs (2), (3), and (4), members shall be appointed for terms of 3 years.

(2) Of the members first appointed—

(A) 4 shall be appointed for terms of 1 year;

(B) 4 shall be appointed for terms of 2 years; and

(C) 4 shall be appointed for terms of 3 years;

as designated by the President at the time of appointment.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(4) A member may serve after the expiration of his term until his successor has taken office.

(c) BASIC PAY AND EXPENSES.—(1) Except as provided in paragraph (2), members of the Commission shall serve without pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code.

SEC. . MEETINGS.

(a) IN GENERAL.—(1) The Commission shall meet at the call of the Moderator.

(2) The Moderator shall convene the 1st meeting of the Commission within 30 days after the date of the completion of appointments under section 4(a).

(b) MODERATOR.—One member of the Commission shall be designated by the President to serve as Moderator of the Commission.

(c) QUORUM AND PROCEDURE.—The Commission shall adopt rules regarding quorum requirements and meeting procedures as the Commission deems appropriate at the 1st meeting of the Commission.

(d) VOTING.—Decisions and official acts of the Commission shall be according to the vote of a majority of members voting at a properly called meeting.

SEC. . DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

(a) DIRECTOR AND STAFF.—(1) Subject to paragraph (2), the Moderator, with the approval of the Commission, may employ and set the rate of pay for a Director and such staff as the Moderator deems necessary.

(2) Rates of pay set under paragraph (1) shall be less than the rate of basic pay payable under section 5316 of title 5, United States Code.

(b) EXPERTS AND CONSULTANTS.—The Moderator, with the approval of the Commission, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(c) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title.

SEC. . POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) OBTAINING OFFICIAL DATA.—Upon the request of the Moderator of the Commission, the Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. . REPORT.

The Commission shall transmit to the President and to each House of Congress a report not later than July 31 of each year which contains a detailed statement of the activities of the Commission during the preceding year, including a summary of the number of public service announcements produced by the Commission and published or broadcast.

Mr. DOMENICI. Mr. President, I think this is an amendment that most Senators will support. It has been cleared on both sides, and it simply does this: It establishes a Presidential Media Commission on Drug Abuse. I thought as I read this bill that one of the things missing was some way for us to tell the media of America that we want their help, and I did not want to mandate anything. I at one time thought maybe we should tell the networks that they ought to run more public service announcements against drugs in prime time, but I thought better of it. This amendment establishes a 12-member Commission made up of media people, broadcasters, publishers, advertisers, those who produce films and programs, and professionals in the field of drug abuse. They will pool private resources for the commission and they will have five jobs that I think are very important in terms of our ability to wage a war on drugs.

First, they will examine the antidrug efforts of radio, television, motion pictures, et cetera. Second, they will voluntarily coordinate the resources of the television, motion picture, magazine, advertising and other industries. Third, they will create antidrug public service announcements for broadcast and publication. Fourth, they will monitor the effectiveness of the program, and fifth, they will report annually to the President and to the Congress on the effectiveness of their program.

□ 2030

Frankly, I believe that this will have a very significant impact. The media of our country wants to help. This will permit them to coordinate their best efforts in a way that will assure that the communications industry will be involved in the war on drugs in the best possible way.

I do not believe that either the manager or the ranking minority member objects. I think this has a real chance of working.

Mr. THURMOND. Mr. President, we accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3052) was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from North Carolina is seeking the floor.

AMENDMENT NO. 3053

(Purpose: To eliminate the sugar quota of countries with governments involved in the trade of narcotics illegal in the United States, to maintain the sugar quota for specified countries, and for other purposes)

Mr. HELMS. Mr. President, I have an amendment, the cosponsors of which are Senators DODD, HATCH, HAWKINS, HECHT, HUMPHREY, INOUYE, KASSEBAUM, MELCHER, MCCLURE, SYMMS, THURMOND, TRIBLE, WILSON, and ZORINSKY.

Mr. President, the original amendment at the desk has been modified to include a provision which otherwise would have been offered as a separate amendment by the distinguished Senator from Montana [Mr. MELCHER] and the distinguished Senator from Utah [Mr. HATCH].

I now call up the amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS], for himself and others, proposes an amendment numbered 3053.

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. —. (a) Notwithstanding any other provision of law:

(1) The President may not allocate any limitation imposed on the quantity of sugar to—

(A) any major illicit drug producing country or major drug-transit country, as determined by the President, or;

(B) any foreign country that imports sugar produced in Cuba, determined by the President.

(2) The President shall—

(A) use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 201 of the Agriculural Act of 1949 (7 U.S.C. 1446) at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation; and

(B) subject to paragraph 1, and to the extent possible, subject to subparagraph (A), allocate any limitation imposed on the quantity of sugar entered during calendar year 1987 among foreign countries in a manner that ensures that the total quantity of sugar allocated under such limitation to each beneficiary country for calendar year 1987 is not less than the total quantity of sugar entered during quota year 1986 that are products of such beneficiary country.

(b) For purposes of this section—

(1) The term "beneficiary country"—

(A) has the meaning given to such term by section 212(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)); and

(B) includes the Republic of the Philippines and the Republic of Ecuador.

(2) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(3) The term "customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

SEC. —. Congress finds that the Philippines—

(1) have been a reliable supplier of sugar to the United States since 1796 when the first shipment of their sugar arrived at Boston Harbor;

(2) have a special historical relationship with the United States and has been one of this Nation's most constant and dependable allies;

(3) rely on the exportation of sugar to generate needed capital;

(4) have not been afforded fair and adequate access to the United States sugar market since import quotas were imposed on sugar in 1982; and

(5) should be given access to the United States sugar market on terms at least as favorable as those provided to any other country.

SEC. —. Notwithstanding any other provision of law—

(a) beginning with the first calendar quarter of 1987, the total base quota amount of sugars, sirups, and molasses permitted to be imported into the United States under headnote 3, subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States shall be allocated on such basis that the quota allocated to the Republic of the Philippines shall not be less than the quota allocated to any other country;

(b) during any calendar year in which sugars, sirups, and molasses from any country are not subject to any rate of duty provided for in subpart A or part 10 of schedule 1 of the Tariff Schedules of the United States and are permitted to enter the United States duty-free, sugar, sirups, and molasses from the Republic of the Philippines shall be permitted, to the same extent, to enter duty-free; and

(c) unless specifically authorized by statute, no agency or instrumentality of the United States shall provide, in any rule, regulation, shipping schedule, or otherwise, for the entry into the United States of sugars, sirups, and molasses from any country under terms or conditions more favorable than those applicable to the entry of sugars, sirups, and molasses from the Republic of the Philippines.

Mr. HELMS. Mr. President, throughout the Third World, one of the most important subsidies granted by our country is our sugar quota. It guarantees selected sugar-producing countries a price for sugar three times the world price.

Unfortunately, the manner in which this lucrative subsidy is allocated may well be promoting drug traffic.

Under the current formula for allocating sugar quotas, countries which support illegal drug trade are treated exactly the same as are countries which are actively working to help us fight the drug trade.

Mr. President, this arrangement makes no sense. We should not reward those governments who are actively involved in peddling drugs. However, that is exactly what we are now doing with our sugar quota.

With this in mind, I am offering an amendment which aims to use our sugar quota policy in such a fashion so as to discourage the trade of illegal narcotics.

Specifically, this amendment would eliminate the quota of any major illicit drug producing country or major drug-transit country. By so doing, it will send a very clear message to those governments that would destroy our youth, and promote crime on our streets that they can not expect subsidies from the United States.

I might point out, Mr. President, that this restriction simply ties in with the limitations placed on foreign aid already included in the bill.

In light of the very active role Cuba is playing in promoting illegal drug trade, we should not subsidize the Cubans with our sugar quota either. With this in mind, the amendment would eliminate the quota of any country importing sugar produced in Cuba.

This provision assures that countries will not be able to continue the practice of using our quota to ship us Cuban sugar at three times the world price.

To combat the drug trade effectively, however, we need to do more than just penalize those governments who traffic in drugs—we need to help our friends discourage the drug trade.

How we allocate our sugar quota could well determine how successful we are in these efforts. Continual reductions in our sugar quota for the countries of the Caribbean Basin Initiative have encouraged anti-American feelings, and made it more attractive for persons within these countries to become involved in drug trade.

I hear this every day in my capacity as chairman of the Senate Agriculture Committee.

An article on the first page of Friday's Wall Street Journal discusses this very problem. The article is entitled "Cross Purposes: U.S. Sugar Quotas Impede U.S. Policies Toward Latin America," and reports that:

> Decreased sugar exports to the U.S. have added to Barbados's unemployment woes and thereby indirectly helped elect a new left-leaning government strongly critical of the U.S. In Jamaica and St. Kitts-Nevis, as in Belize, unemployment caused by the sugar depression makes government efforts to persuade farmers not to grow marijuana all the more difficult.

Mr. President, I ask unanimous consent that the entire text of this article be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. Mr. President, most of the countries in the Carribbean basin have governments which are not involved in drug traffic. It seems to me unfair and unwise to reduce the quota for these neighbors to the South whose economies are dependent on sugar at a time when their help is needed in fighting the drug war.

In passing the Caribbean Basin Initiative, Congress recognized that the economic situation of this region is of vital strategic importance to our Nation. Our current sugar quota policy runs counter to the efforts embodied in the CBI program.

With this in mind, this amendment would call for increasing the 1987 sugar quota for the Caribbean Basin Initiative countries to a level not less than the 1986 quota. In addition, at the behest of a number of my colleagues, and to reward countries who are facing hurdles implementing free-enterprise economic policies, the amendment similarly increases the quota for the Philippines and for Ecuador for the same period. If enacted, this amendment, as modified, would save the CBI countries an estimated $65 million, the Philippines an estimated $45 million, and Ecuador an estimated $2 million.

In addition, by restating the no-cost provisions of the 1985 farm bill, the amendment clarifies that it calls for no change in our domestic sugar program.

Mr. President, this amendment would redress the current situation whereby governments which encourage drug trade are rewarded with lucrative sugar quotas—and do so at no additional cost to taxpayer or consumer. I urge adoption of the amendment.

EXHIBIT 1

U.S. SUGAR QUOTAS IMPEDE U.S. POLICIES TOWARD LATIN AMERICA

(By Clifford Krauss)

LIBERTAD, Belize—Patricia Browne, the wife of a local sugar executive, wrote a letter to Nancy Reagan a year ago this month, warning of an impending setback in the war against drugs in this Central American country. Cuts in U.S. sugar import quotas, she predicted, were about to force the closing of a local sugar mill, which in turn would cause newly unemployed workers to grow marijuana.

Mrs. Browne asked Mrs. Reagan to use her influence to reduce U.S. sugar protectionism. She is still waiting for a reply.

The White House says it knows nothing of her letter. But today, as foretold, the area around Libertad is fast becoming a major new marijuana cultivation center. Most of the 500 or so other laid-off workers who aren't growing pot have migrated illegally to the U.S. in search of work.

Libertad, a sweltering town of wooden shacks set on stilts, illustrates the effects Washington's sugar policies are having on U.S. interests in the Caribbean and Central America. While President Reagan's heralded Caribbean Basin Initiative and other aid projects are designed to promote political and economic stability and to control illegal migration and drug trade, repeated sugar-quota cuts since 1982 have worked in the opposite direction. Regional leaders question how serious Washington is about dealing with their problems when the U.S. seems to take away with one hand what it gives with the other.

CATASTROPHIC POLICY

Carlos Morales Troncoso, the vice president of the Dominican Republic, says U.S. sugar policy has been "catastrophic." He estimates that the region's sugar producers have lost at least $300 million in export earnings since 1984 because of the quota cuts. Of the 1.7 million tons of sugar allowed to be imported to the U.S. this year, 11 Caribbean and Central American countries were allotted just 35% of the total. Robert L. Paarlberg, a Harvard University expert on international trade, calls U.S. sugar protectionism "a preposterous policy inimical to U.S. policy interests."

The effects of the U.S. sugar squeeze, which compounds the problems accompanying a world sugar price depressed since 1981 by European protectionism, vary from country to country. The U.S. pushed for land reform in El Salvador, but cuts in sugar imports are contributing to the financial failure of several cooperatives there. Decreased sugar exports to the U.S. have added to Barbados's unemployment woes and thereby indirectly helped elect a new left-leaning government strongly critical of the U.S. In Jamaica and St. Kitts-Nevis, as in Belize, unemployment caused by the sugar depression makes government efforts to persuade farmers not to grow marijuana all the more difficult. Overall, U.S. sugar policy has cost the region an estimated 130,000 jobs since 1984, according to Peter Laurie, Barbados's ambassador in Washington.

SOVIET BENEFITS

Washington's efforts to improve relations with Guyana, and to drive a wedge between that nation and Cuba, are complicated by the decrease in Guyana's sugar exports to the U.S. And the Soviet bloc benefits in other ways. The Soviet Union has significantly increased its non-Cuban Caribbean sugar trade to fill the trade vacuum. And, more important, Cuba made tens of millions of dollars in the past year by buying excess Caribbean sugar from brokers for re-export to the Soviet Union at highly favorable prices.

In alliance with other farm lobbies, U.S. sugar growers persuaded Congress in 1981 to set a minimum domestic price for raw sugar of about 20 cents (more than twice the world price at the time and more than three times the going price today). To protect the price without subsidizing the farmers directly out of the federal budget, President Reagan propounded the trade quotas, which Congress has subsequently cut several times. Without the quotas, the argument goes, the livelihoods of some 15,000 U.S. sugar-cane farmers would be in jeopardy.

CORN SIRUP INROADS

Over the years, the corn lobby has become the strongest advocate of the quotas. Suffering from a glut of corn on the market, U.S. corn farmers have been able to make up for some lost profit by producing high-fructose corn sirup, which is profitably sold to soft-drink bottlers because domestic sugar prices are propped up so much. Caribbean producers fear that the corn farmers, spurred by subsidies, will develop a way to crystallize their sirup and eventually supplant cane sugar.

("Given the stressful time in agriculture, the fructose market is one of the few bright spots we have," comments Alan Tank, the vice president of the National Corn Growers Association. He adds: "We simply say our domestic market must be equally important to the U.S. as the Caribbean Basin and as the sugar quota is to them.")

Sugar imports have been reduced year after year, with the 1.7 million-ton 1986 quota from all sources reduced from 2.4 million tons in 1985. If it hadn't been for White House and State Department pressure, as well as the lobbying efforts of Michael Deaver, the former Reagan aide and lobbyist for the 10-nation Caribbean Basin Initiative Sugar Group, Congress might well have cut this year's quotas even more. The 1987 quotas are due to be set in mid-December, and most analysts expect them to be reduced again.

The State Department goes to great lengths to compensate for a sugar policy it doesn't support. It lobbied in Congress for a clause in the 1985 farm bill that allows Washington to buy commodities such as rice, soybeans and wheat from domestic producers to grant to Caribbean countries so as to make amends for the damages of the sugar policy. But by flooding Caribbean markets and driving commodity prices down, the U.S. is making it more difficult for local farmers to replace sugar with those other crops. "It gets to be comical," says Richard Holwill, the deputy assistant secretary of state for the Caribbean. "It makes us look like damn fools when we go down there and preach free enterprise."

Foreign-policy issues aren't discussed much in rural Caribbean sugar areas; unemployment is the topic of the day.

As Nicolas Casasnova, the leader of the Dominican sugar planter's federation, drives through the rolling sugar plains in the eastern part of the Dominican Republic, skinny, bare-chested peasants jump out of the clumps of cane in front of his car to get his attention. From one pink and aqua clapboard hamlet to the next, peasants whistle and scream at Mr. Casasnova, pleading for work. He consoles them with pats on the back and, in jest, suggests they can always find a skiff captain to take them to Puerto Rico, from which they can sneak onto the U.S. mainland posing as Puerto Ricans.

PROD TOWARD COMMUNISM

In private, Mr. Casasnova turns serious and blames U.S. sugar protectionism for the contracting local economy. "If things keep going the way they are, the people will lose faith in democracy," he warns. "They'll be converted into Communists."

The Dominican Republic, the largest foreign supplier of sugar to the U.S., has suffered a direct loss of at least $75 million in foreign exchange at a time when Washington is encouraging Santo Domingo to meet its obligations in its $3.9 billion debt. From a 1982 export to the U.S. of 447,000 tons, the country's sugar quota this year was reduced to 278,000 tons.

Higher coffee prices, a booming tourist industry, lower oil prices and reduced interest rates have enabled the Dominican Republic to continue making its debt payments, but the government's State Sugar Council is bankrupt. Santo Domingo's coffers are being drained by subsidies it grants the public sugar company in order to keep the state's 12 sugar mills in operation.

Still, the State Sugar Council can't come up with sufficient funds to pay the country's 8,000 small and medium-sized private cane farmers for their produce and owes them about $15 million. In turn, the cane farmers have been forced to lay off 20,000 of their 100,000 workers. There are few alternatives for the peasants than to migrate to the rancid slums of Santo Domingo or to the U.S. (Already one out of every seven Dominicans lives in the U.S., and officials say that illegal migration is picking up.)

SUGAR OR CATTLE

The U.S. Embassy in Santo Domingo is advising the government to diversify its economy; but that isn't easy. The soils of the eastern Dominican Republic are rocky and poor—only appropriate for sugar growing or cattle raising. While 20,000 acres of sugar land employs 5,000 workers, cattle raising provides only about 30 jobs on the same plot.

And the Dominican sugar situation is getting worse. President Joaquin Balaguer's new government is thinking about closing up to five of the mills as an economy measure.

The 2,300 workers at the Catarey sugar mill in Villa Altagracia are bracing for the worst. The sugar unions are mobilizing a campaign to put political pressure on the government. "You can be sure if the government tries to close the plant, they'll have to kill five or six of us in the streets first," says Zacarias Chacon, a 32-year-old union leader. Referring to the last time U.S. troops landed here to quell disturbances, he adds: "It would be 1965 all over again."

Inside the dank and cluttered plant, 19 workers take a break and talk of the future. Grumbling that to take jobs in citrus fields now being planted in the area would be a step down for them, 13 say they will try to go to the U.S. if the plant is closed. "If I find a [rubber] tube or skiff, I'm gone," bellows Lucas Medina, 25. "I already have a family there who'll be waiting for me on the beach."

A FARAWAY MILL

The sugar mill in Libertad, one of two in all of Belize, closed late last year, and the consequences to the local economy have been severe. Local planters must now spend extra money on fuel to transport their cane to a faraway mill, and by the time they get there, much of the cane has been dried out. There is also a multiplier effect: Local stores and discotheques have closed, and bankers complain that people are defaulting on their mortgages. But the factory workers have been hurt the most.

One unemployed worker, who used to earn $55 a week mixing herbicides at the sugar mill, now makes four times that planting marijuana on dry plots amid mangrove swamps. While he prunes the leaves of one four-foot-high lush plant, in preparation for his first major sale, he says he plans to add to his acreage in the coming months.

"A majority of us—those who didn't have the money to leave—are growing it," he says. "When I was working, I never do that." His guilty feelings about his new work are palpable. He says he isn't going to tell his wife about his new crop. "You think they'll ever open the plant again?" he wonders.

Mr. HELMS. Mr. President, I yield to the distinguished Senator from Montana, who will explain the portion of this amendment which was added at the request of the Senator from Montana and the Senator from Utah [Mr. HATCH].

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, my Philippine sugar quota addition to this amendment simply allows the Philippines as good a sugar quota as any of the other countries get and the same opportunities as other countries. It is sugar quota equity for the Philippines. It will be encouraging to both the Filipino people and their new government. It will give their very sluggish economy a shot in the arm and a chance for them to begin their recovery. It will provide import duty equity for Filipino sugar. They shall have the chance they deserve as our long-time friends and allies to start a new day of opportunity. The poor people of Negros, with their sugar fields unplanted, the sugar mills now closed, will know that help is coming and their work can be revived. Filipinos will know America cares.

This amendment allowing a larger share for the Philippines for the United States foreign sugar quota has been a long time coming. It is for them a chance to have recovery at the grassroots level, and it is the kind of help that President Aquino so eloquently and so graciously suggested that we undertake as friends of Filipinos.

I fully support the amendment. I assure my colleagues that it does no harm to U.S. domestic sugar quotas. It leaves them intact. U.S. sugar production will remain at the same level.

I hope the Senate adopts the amendment.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr CHAFEE. Mr. President, I think we are making a mistake here tonight to get involved, in the middle of a drug bill, with sugar quotas. This is a subject that certainly none of us expected in connection with a drug bill.

I wish to ask a couple of questions of the sponsor of the measure.

The Senator discussed eliminating the quota of any major drug trafficking country. Is that decision made by the President?

Mr. HELMS. That is correct.

Mr. CHAFEE. Then, this goes way beyond that. It says that it eliminates the quota of any country that is taking sugar from Cuba, and this clearly has nothing to do with drugs. We are getting into an entirely new area that I think deserves far more study than we have given it here tonight.

So I hope that this amendment will not be accepted. The next amendment that would come along, I suppose, would deal with the import of shoes from the Caribbean nations.

□ 2040

Those countries that have been providing shoes and possibly purchasing some shoes from Cuba would not be able to export into the United States.

There are all kinds of ramifications to this, Mr. President. I think it is an unfortunate amendment to come up at half past 8 on Saturday night in connection with a drug bill.

Mr. HELMS. Mr. President, I can understand the concerns of the Senator, but let me explain further. The bill already limits other U.S. assistance to countries involved in drug trade.

Second, there is a loophole in existing law whereby countries are allowed to fill their quotas from Cuban sugar. The 1985 farm bill contains a provision included in the conference report which was intended to close this loophole, but due to a technicality it has not been effective.

Had it not been for this technical error there would be no need for this amendment.

According to the Foreign Agriculture Service, only one quota country still buys Cuban sugar, and that is Canada. However, under this legislation the Canadians could cease this practice and maintain their quota.

The question was raised by one of my colleagues, when we discussed the matter in the cloakroom, he said, "But, this amendment violates GATT."

The answer to his concern is that this amendment is no less consistent with GATT than the amendment this body passed on the South African sanctions bill transferring the South African sugar quota to the Philippines.

The Senator did not object to that violation of GATT.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there any further discussion on the amendment?

Mr. DODD. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. HELMS. I have yielded the floor.

Mr. DODD. Mr. President, briefly, I realize my good friend is concerned about the GATT. They are legitimate concerns to raise in an amendment like this.

Certainly, I do not know of any more effective means of saying to those nations who are directly involved and every bit of intelligence we have indicates that many of the countries who are involved in sugar production are also involved, if not involved, at least turning a blind eye and deaf ear to the activities in their country.

We can talk all we want about exercising leverage on those countries by cutting off aid or trade, but if you really want to make a difference and send a signal this evening to those countries involved in that activity, then the Senator from North Carolina has offered the proper amendment.

Certainly, I think a generous gesture to suggest that the Philippines might be the beneficiary of some of this is one I think even makes it more attractive. Nonetheless, even in the absence of that provision, I would support that amendment because I do think it sends that unequivocal, clear signal to those nations in our own hemisphere involved in this activity.

It is an appropriate place for this amendment on this particular bill dealing with drug interdiction, though I know many of the colleagues here sometimes wonder when they hear the name of Helms and Dodd on the amendment. I happen to think it is a good amendment.

He has my support. I hope it is adopted.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, may I ask my colleague from North Carolina a question about what this does for the Philippines?

I am very anxious to give some assistance to the Philippines. I hope we can do it before this session ends.

I would like a little explanation about what this amendment would do for the Philippines.

Mr. HELMS. Mr. President, let me get the figure from my file. There will not be any precise figures, as the Senator will understand, because much depends upon how the overall quota is determined. But it will give the Philippines an extra 40,000 to 70,000 ton quota for 1986 depending upon the final outcome of the South Africa sanctions bill.

Mr. NUNN. It will definitely increase the Philippine sugar quota?

Mr. HELMS. The able Senator is correct.

Mr. NUNN. I thank the Senator from North Carolina.

Mr. HELMS. In effect, this amendment as modified will raise the Philippine percentage overall quota from 13 to 27 percent.

The PRESIDING OFFICER. Is there any further discussion?

Mr. METZENBAUM. Mr. President, I do not understand some portions of this bill and I am inclined to agree with the Senator from Rhode Island. We find this amendment totally by surprise.

But there is some language in it that I would like to have the Senator from North Carolina be good enough to explain to me. It provides:

> The President shall—use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation . . .

The difficulty I am having with that is it does not seem to have anything at all to do with countries that are involved in drug trafficking. It does not seem to have anything to do with the Philippines. It seems to me to be a little bit out of the general purview.

Would the Senator from North Carolina, who is more familiar with this kind of legislation than the Senator from Ohio, be good enough to explain the significance of that first paragraph?

Mr. HELMS. I say to the Senator if he will yield to me, and I thank him, that the portion of the amendment to which he refers simply restates the 1985 farm bill which is already law.

Mr. METZENBAUM. That language is in the law?

Mr. HELMS. That is correct.

Mr. METZENBAUM. Then why is the Senator putting it in at this point since he is adding it as a new section, because at the very beginning of the bill he says, "At the end of the bill add the following," and then he is adding it. If it is already in the law, then why would the Senator be adding it?

Mr. HELMS. Simply, I will say to the Senator, to assure that the program is operated at no cost to the taxpayer.

Mr. METZENBAUM. Does it have any more significance than that it will be at no cost to the taxpayer? Is there something behond that that the Senator from North Carolina can advise me about?

Mr. HELMS. No, I say to my friend. The purpose is simply to assure that this amendment would not change the no-net cost provisions already in law.

Mr. METZENBAUM. And what about the second paragraph of that same subject, "to the extent possible subject to paragraph 4," and then it goes on?

I think the point that I am making is that the very point the Senator from Rhode Island made and that is it is a totally new subject, something we were not prepared for, and it very well might have a lot of merit to it but it has taken us totally by surprise at almost 9 o'clock in the evening and we just want to be certain when we wake up in the morning we do not find we enacted something that does more than we thought we were enacting, and I thought that was what some of the concern was about.

Mr. HELMS. The Senator need not be concerned about that. I frankly do not understand the Senator's question about the second paragraph on page 2. Perhaps it would be helpful if he will restate it.

Mr. METZENBAUM. In the first paragraph the Senator states paragraph (A) is merely a restatement of the present law.

Mr. HELMS. That is correct.

Mr. METZENBAUM. Then the second paragraph provides:

> (B) subject to paragraph 1, and to the extent possible, subject to subparagraph (A), allocate any limitation imposed on the quantity of sugar entered during calendar year 1987 among foreign countries in a manner that ensures that the total quantity of sugar allocated under such limitation to each beneficiary country for calendar year 1987 is not less than the total quantity of sugar entered during quota year 1986 that are products of such beneficiary country.

My question to the Senator really is it seems to me he achieves his total objective with respect to the substance or thrust of his legislation without those two paragraphs. Therefore, I am asking why they are there.

Mr. HELMS. With all due respect to the Senator, and I respect him highly, the language is so clear to me that I do not understand his question about it.

But let me put it this way. It is simply a statement assuring that the overall quota will not be too large due to the increase to keep the sugar program from operating on a no-cost basis.

Mr. METZENBAUM. I do not have any desire to tie up this body.

Mr. HELMS. I do not try to confuse the Senator. The amendment is entirely consistent with the language in the 1985 Farm Bill.

Mr. MELCHER. Mr. President, will the Senator yield to me?

Mr. METZENBAUM. I yield.

Mr. MELCHER. I thank the Senator for yielding, Mr. President.

Might I just state that the second paragraph that the Senator from Ohio just read simply leaves the quota for importation of sugar at the present level.

Mr. HELMS. That is correct.

Mr. MELCHER. That is what we need to do to assure the Philippines and other countries what their quota is going to be for next year.

Mr. METZENBAUM. I am not going to tie up the Senate further, but I am very confused, and I am not sure that even though the Senator from North Carolina has been good enough to try to explain it to me as the Senator from North Carolina knows well, it is one of the prices we pay when we get a new subject suddenly on a bill where we did not expect that subject to be brought in.

Mr. HELMS. If the Senator will yield, let me say to him we are now referring to what we are trying constantly to try to produce—farm legislation. It is not easy.

I thank the Senator.

□ 2050

The PRESIDING OFFICER. Is there any further discussion?

Mr. CHAFEE. Mr. President, we have had a couple of ringing speeches here tonight about how this gets right at the subject we are concerned about and it is a way to get at the drug problem, and there is a lot of merit to that.

But, as you know, in this there is a part that has nothing to do at all with drugs. "Any foreign country that imports sugar produced in Cuba," so on and so forth, that is a farm bill. That has nothing to do with drugs.

I do not think this is a proper place to bring that up. I wonder if the Senator insists on that section of his bill.

Mr. HELMS. Absolutely. I would insist on it because Cuba is the problem.

Mr. MELCHER. Will the Senator from Rhode Island yield to me?

Mr. CHAFEE. I will. I just asked a question of the Senator from North Carolina.

Mr. HELMS. There is no question about the orchestration of the drug traffic by Cuba. The loophole exists now and unless we close it with this amendment it is going to continue to exist.

The Senator from Connecticut, Mr. Dodd, stated it absolutely correct. Cuba is the problem and we are getting at that cancer with this amendment.

Mr. MELCHER. Would the Senator yield now for a question?

Mr. CHAFEE. Yes.

Mr. MELCHER. The Senator from Rhode Island has twice asked a legitimate question about Cuba. But I think what might be confusing him is the fact of what some of us know, that by allowing importation of sugar we are allowing it at a price that is set at 18 cents, 12 cents a pound above what the world price of sugar is right now and what it was 6 months ago.

And for a country like Canada, or any other country, to buy sugar from Cuba at 6 cents per lb. helping them, and then taking that profit, seems to us to be a terrible travesty on spending taxpayers' money; and costing United States consumers' money; particularly it is wrong when they buy it for profit from Cuba, a country that we have reason to believe causes us a considerable amount of trouble.

Cuba has benefited and we do not like Canada or any other country buying from Cuba and then bringing the sugar in here and taking the profit of 12 cents a pound.

Mr. CHAFEE. Mr. President, there may be merit to that argument. But there is no question but what we have discussed sugar and farm bills on this floor every year, practically. In every farm bill, we have discussed sugar. And for this provision somehow not to have been dealt with there in the proper arena and to come up on a drug trafficking bill seems to me unfortunate.

I am not going to press it further, but when you do call for the vote, I would like it to be a voice vote and I would like to be recorded in opposition, Mr. President.

Mr. TRIBLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. TRIBLE. Mr. President, I would like to engage the Senator from North Carolina in a very brief colloquy. I would direct the Senator's attention to paragraph 1(A) of his amendment. I believe the language of that paragraph is overly broad.

The language of that paragraph says:

> Any major illicit drug producing country or major drug-transit country, as determined by the President.

My concern is that the language will apply to countries like Ecuador which is cooperating with the United States and, by the terms of this bill would otherwise benefit.

I would suggest that perhaps the Senator might substitute the following language which I think would achieve the full purposes of the Senator from North Carolina. That language would be:

> Any country which has a government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities defined in section 2002.

In other words——

Mr. HELMS. I understand exactly what the Senator is saying. I agree with him. I ask that the amendment be so modified.

The PRESIDING OFFICER. The Senator has a right to modify his amendment. Does he request that modification?

Mr. HELMS. I do, Mr. President.

The PRESIDING OFFICER. The amendment, then, is modified according to the author's request. It is modified as the language submitted to the desk.

The amendment (No. 3053), as modified, reads as follows:

> At the end of the bill, add the following:
>
> Sec. . (a) Notwithstanding any other provision of law:
>
> (1) The President may not allocate any limitation imposed on the quantity of sugar to—
>
> (A) any country which has a government involved in the trade of illicit narcotics or is failing to cooperate with the U.S. in narcotics enforcement activities as defined in section 2002, or;
>
> (B) any foreign country that imports sugar produced in Cuba, determined by the President.
>
> (2) The President shall—
>
> (A) use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation; and
>
> (B) subject to paragraph 1, and to the extent possible, subject to subparagraph (A), allocate any limitation imposed on the quantity of sugar entered during calendar year 1987 among foreign countries in a manner that ensures that the total quantity of sugar allocated under such limitation to each beneficiary country for calendar year 1987 is not less than the total quantity of sugar entered during quota year 1986 that are products of such beneficiary country.
>
> (b) For purposes of this section—
>
> (1) The term "beneficiary country"—
>
> (A) has the meaning given to such term by section 212(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)); and
>
> (B) includes the Republic of the Philippines and the Republic of Ecuador.
>
> (2) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.
>
> (3) The term "customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.
>
> At the end of the pending amendment add the following:
>
> Sec. . Congress finds that the Philippines—
>
> (1) have been a reliable supplier of sugar to the United States since 1796 when the first shipment of their sugar arrived at Boston Harbor;
>
> (2) have a special historical relationship with the United States and has been one of this Nation's most constant and dependable allies;
>
> (3) rely on the exportation of sugar to generate needed capital;
>
> (4) have not been afforded fair and adequate access to the United States sugar market since import quotas were imposed on sugar in 1982; and
>
> (5) should be given access to the United States sugar market on terms at least as favorable as those provided to any other country.
>
> Sec. . Notwithstanding any other provision of law—
>
> (a) beginning with the first calendar quarter of 1987, the total base quota amount of sugars, syrups, and molasses permitted to be imported into the United States under headnote 3, subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States shall be allocated on such basis that the quota allocated to the Republic of the Philippines shall not be less than the quota allocated to any other country;
>
> (b) during any calendar year in which sugars, syrups, and molasses from any country are not subject to any rate of duty provided for in subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States and are permitted to enter the United States duty-free, sugar, syrups, and molasses from the Republic of the Philippines shall be permitted, to the same extent, to enter duty-free; and
>
> (c) unless specifically authorized by statute, no agency or instrumentality of the United States shall provide, in any rule, regulation, shipping schedule, or otherwise, for the entry into the United States of sugars, syrups, and molasses from any country under terms or conditions more favorable than those applicable to the entry of sugars, syrups, and molasses from the Republic of the Philippines.

Mr. DANFORTH. Mr. President, I would like to ask the Senator from North Carolina if the second part of his amendment would have the effect—that is, the part of the amendment that is not directly dealing with the drug problem but is dealing with trying to create a secondary boycott against Cuban sugar—I wonder if the effect of that amendment would be to terminate the sugar quotas that we now have allocated to Canada, Mexico, Costa Rica, Peru, and the Dominican Republic. It is my understanding that the effect of that second part of the amendment is that those five countries—Canada, Mexico, Costa Rica, Peru, and the Dominican Republic—would have their quotas terminated.

If that is correct, I am wondering if that is what we want to do on this drug bill. It seems to me that maybe the thrust of the amendment is pretty well handled in the first part of the amendment, which is the one that goes directly to the drug trafficking problem. But then, when we get to the area of the secondary boycott, we have created, as I understand it, direct problems under the General Agreement on Tariffs and Trade, and specifically problems for these five countries.

Mr. HELMS. In the first place, the countries that you have mentioned are cooperating with us. In the second place, I do not think that you would want the American taxpayer to continue to subsidize Cuban sugar at three times the market price. In the third place, only Canada is importing sugar from Cuba and reselling it in and to the United States.

MR. DANFORTH. Well, it is my understanding that they are cooperating with us with respect to the drug problem, which is the subject matter of this bill.

Mr. HELMS. Correct.

Mr. DANFORTH. And, with respect to any sugar that is exported from those countries to the United States, those exports are under certification that the sugar does not come from Cuba. My concern is that these countries are not exactly sound economically and we do have very real problems in Central America. I am concerned that we are treading in an area where we are, in a drug bill, cutting off a major source of income for these Central American countries.

Mr. HATCH. Will the Senator yield?

Mr. HELMS. Yes.

Mr. HATCH. As I understand it, the quota remains the same. The importance of this amendment is, it is going to help the Philippines. That is the real import of it. But you are talking about the GATT problem.

Mr. DANFORTH. Mr. President, if the Senator from Utah will yield—I do not know who has the floor—but responding to the Senator from Utah, my understanding of this portion of the amendment is that if these five countries are importing any sugar from Cuba, their allocation from the United States is terminated and that they, therefore, are unable to do business with us. I mean, it is a fine thing to help the Philippines—after Mrs. Aquino came here, I think all of us want to help the Philippines—but my concern is that, irrespective of any drug problem, or irrespective of any cooperation from these countries in trying to deal with the drug problem, what we are doing here is providing economic sanctions against Canada, Mexico, Costa Rica, Peru, and the Dominican Republic.

Mr. HATCH. If I could——

Mr. MELCHER. Will the Senator yield?

Mr. HELMS. Let me say to the Senator—and then I will yield, of course, to my friends from Utah and Montana—as long as the President certifies, as stipulated in this bill, that countries cease importing Cuban sugar, then these countries will not be affected at all.

Mr. DANFORTH. But these countries do import some sugar from Cuba. These countries do send some sugar, quite a lot of it, maybe, to the United States.

□ 2100

They certainly think that what they are importing from Cuba does not go to the United States. Granted, sugar is I guess fungible. But I am wondering if we want to alter the business practices, and the trade practices of friendly countries that are cooperating with us in the drug area in the drug bill if the effect of doing that is to impose economic sanctions on some countries that have real economic problems themselves and have been friendly to the United States.

Mr. HELMS. I say to my friend from Missouri, yes. They can import sugar from countries other than Cuba. I say again that I do not think the Senator wants to continue this process whereby the American taxpayers are subsidizing sugar produced in Cuba at three times the world market.

There is no problem in this regard since the huge world surplus enables countries to get sugar elsewhere. If they are unwilling to get it elsewhere, then I have no sympathy for them.

Mr. DODD. Will the Senator yield on that point?

Mr. HELMS. Yes.

Mr. DODD. It concerns the problem, but of the countries that the Senator has listed, only one country actually gets any sugar from Cuba. That is Canada. The Central American countries that the Senator mentions do not receive a single bale or pound of sugar from Cuba. So I say to my friend from Missouri that they would not be affected by that provision in the bill.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I do not intend to take too long. I commend the Senator from North Carolina for this amendment, as a cosponsor. This amendment eliminates the archaic sugar import quotas from the countries involved in trade of illegal drugs, or countries that import sugar from Cuba. Only one country is involved. Once these countries realize that there will be economic consequences of their acquiescence to drug trade, perhaps they will help us in our efforts to eliminate drugs. That is why this is such an important amendment.

This amendment will help the Philippines, among other countries. It will not cost the Federal Government a dime. The Philippines deserve our support. The Philippines should be encouraged to strengthen its economy to increase trade from the United States.

I commend the distinguished Senator from North Carolina for this amendment, and I hope the leaders of the bill will accept it.

The PRESIDING OFFICER. Is there any further discussion?

Mr. BIDEN. The amendment is acceptable on this side.

Mr. THURMOND. We have already accepted the amendment on this side.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from North Carolina.

The amendment (No. 3053), as modified, was agreed to.

Mr. HELMS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I rise today to offer my support for the bipartisan drug bill, H.R. 5484. I would first like to commend my many colleagues who have labored extensively on this measure. I think the Senator from Delaware, Mr. BIDEN, the minority leader, Mr. BYRD, the Senator from Florida, Mr. CHILES, and my friend from West Virginia, Mr. ROCKEFELLER on this side as well as the majority leader and the junior Senator from Florida, Mrs. HAWKINS, the Senator from New York, Mr. D'AMATO and the other Members who have contributed to this bill deserve our thanks. They have crafted a bipartisan bill which goes a long way in addressing a major problem in today's society.

As a Senator representing a border State I am acutely aware of the problems and difficulties that accompany illegal drug enforcement. Drug traffickers have developed complex and extensive networks to penetrate our borders and distribute their merchandise. But despite the recent rhetoric surrounding the drug problem, support for civilian drug enforcement authorities has not reflected the concern of the American public. This bill helps to rectify that situation.

And, as this bill recognizes, the supply of drugs is only one facet of the problem. In order to truly decrease the amount of substance abuse in our Nation, we need to attack not only the supply, but also the demand for drugs. The use of drugs among our youth has risen dramatically. Substance abuse is all too prevalent among students and young adults. Yet, we all know that substance abuse is not limited to the young. In fact, I think it took the tragic and unnecessary deaths of two promising young athletes to finally inspire this Nation to act on the drug problem. The simple fact is that large numbers of people, adults and youth, use and abuse drugs. Indeed, increased drug interdiction is necessary, but so is increased education and rehabilitation. Our youth need to know the dangers of substance use; our abusers need the opportunity to break their addictions. This bill provides much needed revenue to establish such education and rehabilitation programs.

Despite the necessity of this legislation, our haste to enact a drug bill before we adjourn this Congress raises some questions and some potential concerns. Are we acting to insure short-term political gain from a sudden and popularly recognized problem? Or are we making a commitment to address a serious social malaise? Drugs will not disappear because we pass a law. We must remember that we are talking about lives, that we are talking about health, that we are talking about the vitality of our population when we talk of drugs. This bill should represent the initial, not the final, step in our attempt to decrease our reliance on drugs. Particularly in education, our commitment must be continuous or we will face the risk of forfeiting all progress in decreasing substance abuse. Our colleague from New York, Senator MOYNIHAN, introduced a bill in the initial days of this Congress that addressed the drug issue. I was pleased to cosponsor that legislation and I am pleased that the bill before us now incorporates large parts of that measure. However, the footdragging that accompanied Senator MOYNIHAN's proposal and the circumstances surrounding the intense interest in the legislation today worry me. Once the media attention fades, will congressional commitment wane proportionally? The fight against drugs will be long; we must recognize that and be ready to allocate the necessary resources over the course of the battle.

As a former attorney general of the State of New Mexico, I am very familiar with the problems of drug abuse. I spent a significant amount of my time as attorney general trying to help enforce and improve our State drug abuse laws. As a result, I welcome the action of the Congress in trying to assist these important local efforts. But let us make sure we maintain this commitment.

The bill before us is extensive. Among other provisions it authorizes an additional $115 million for the U.S. Customs Service for domestic drug enforcement and it earmarks additional appropriations for the U.S. Coast Guard and the Department of Defense for enhancement of drug interdiction assistance. The bill provides funds for more Drug Enforcement Agency personnel, more prosecutors, and more prisons so that convicted violators will not be released because of prison overcrowding. Additionally, $115 million is authorized in the form of grants to States to pursue further drug enforcement activities, while the measure establishes tougher penalties for individuals convicted of drug-related crimes.

The bill corrects a serious deficiency in our current treatment of the drug problem. The Federal Government now allocates only $3 million a year for drug abuse education. For a nation seriously committed to eradicating a problem, $3 million is strikingly inadequate.

H.R. 5484 provides $150 million for drug education—for programs aimed at the prevention of drug and alcohol abuse. Not only has the present administration, despite its rhetoric, provided only minimal funds for drug education, the amount of money for drug rehabilitation has also decreased in recent years. H.R. 5484, however, increases the authorization for the alcohol, drug abuse and mental health services block grant to $675 million. Of these funds, $125 million is reserved for State alcohol and drug abuse treatment programs.

This bill also includes an urgently needed subtitle to address the alcohol and substance abuse problem among the American Indian population. Alcohol and substance abuse is one of the most serious health and social problems facing Indian tribes today. The bill authorizes funds to establish much needed community-based rehabilitation and followup services for Indian youth who are alcohol or substance abusers. It provides for further education about alcohol and substance abuse for Indian youth and earmarks more resources for enhanced tribal law enforcement, including funds for training of tribal law enforcement and judiciary personnel and tougher penalties for drug violations on Indian lands.

I am also pleased that this measure has incorporated a variation of an idea that I suggested in S. 400, the Indian Health Promotion and Disease Prevention Act. The Secretary of Health and Human Services is directed to make grants to the Navajo Tribe to establish a demonstration program in Gallup, NM, to rehabilitate adult Navajo Indians suffering from alcoholism or alcohol abuse.

Mr. President, I want to emphasize again that this bill represents a solid bipartisan effort that avoids the many controversial questions raised by the House and administrative proposals. Exclusively rule exceptions, drug testing of Federal employees, radical expansion of military involvement in domestic law enforcement, and capital punishment provisions have been omitted from this bill. In the spirit of bipartisan compromise, I support these omissions. Again, I hope this measure is the start of a long term commitment to dealing with drugs. Indeed, an effective anti-drug policy must embody three components—interdiction, education, and rehabilitation. This bill has those three parts and I am pleased to support it.

Thank you Mr. President.

AMENDMENT NO. 3054

(Purpose: To establish a community wide drug and alcohol prevention and health promotion demonstration program)

Mr. BINGAMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] for himself, Mr. DECONCINI, Mr. DOMENICI, and Mr. BRADLEY, proposes an amendment numbered 3054.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amend Section 4228 by redesignating subsection (c) as (d) and inserting a new subsection (c) to read as follows:

"(c)(1) Demonstration Program.—The Secretary of Health and Human Services shall establish at least one demonstration project to determine the most effective and cost-efficient means of—

"(A) providing health promotion and disease prevention services,

"(B) encouraging Indians to adopt good health habits,

"(C) reducing health risks to Indians, particularly the risks of heart disease, cancer, stroke, diabetes, depression, and lifestyle-related accidents,

"(D) reducing medical expenses of Indians through 7th promotion and disease prevention activities,

"(E) establishing a program—

"(i) which trains Indians in the provision of health promotion and disease prevention service to members of their tribe, and

"(ii) under which such Indians are available on a contract basis to provides such services to other tribes, and

"(F) providing training and continuing education to employees of the Service, and to paraprofessionals participating in the Community Health Representative Program, in the delivery of health promotion and disease prevention services.

"(2) The demonstration project described in paragraph (1) shall include an analysis of the cost effectiveness of organizational structures and of social and educational programs that may be useful in achieving the objectives described in paragraph (1).

"(3)(A) The demonstration project described in paragraph (1) shall be conducted in association with at least one—

"(i) health profession school,

"(ii) allied health profession or nurse training institution, or

"(iii) public or private entity that provides health care.

"(B) The Secretary is authorized to enter into contracts with, or make grants to, any school of medicine or school of osteopathy for the purpose of carrying out the demonstration project described in paragraph (1).

"(C) For purposes of this paragraph, the term 'school of medicine' and 'school of osteopathy' have the respective meaning given to such terms by section 701(4) of the Public Health Service Act (42 U.S.C. 292a(4)).

"(4) The Secretary shall submit to Congress a final report on the demonstration project described in paragraph (1) within 60 days after the termination of such project.

"(5) for purposes of this paragraph, the term 'health promotion' shall include:

"(A) reduction in the misuse of alcohol and drugs,

"(B) cessation of tobacco smoking,

"(C) improvement of nutrition,

"(D) improvement in physical fitness,

"(E) family planning, and

"(F) control of stress.

"(6) for purpose of this paragraph, the term "disease prevention" shall include:

"(1) immunizations,

"(2) control of high blood pressure,

"(3) control of sexually transmittable diseases,

"(4) prevention and control of diabetes,

"(5) pregnancy and infant care (including prevention of fetal alcohol syndrome),

"(6) control of toxic agents,

"(7) occupational safety and health,

"(8) accident prevention,

"(9) fluoridation of water, and

"(10) control of infectious agents.".

"(7) Sec. 4228 is amended by adding at the end the following "provided that $500,000 shall be made available for activities described under section 4228(c)(1).

Mr. BINGAMAN. Mr. President, this amendment I am offering on behalf of myself, Senator DeConcini, Senator Domenici, and Senator Bradley which attempts to earmark $500,000 which is already in the bill from an amount of $4 million in the bill for a communitywide demonstation project to determine the most effective and cost-efficient means of preventing alcohol and drug abuse among Indian people.

There are several recent studies that confirm the high incidence of alcohol and drug abuse among Indian people. Clearly, this is a way to come to grips with that. This is a proposal which I believe has been cleared on both sides. I know of no opposition to it.

Mr. President, this amendment is essentially a portion of the Indian Health Promotion and Disease Prevention Act, S. 400. I would first like to commend my colleague from North Dakota, Senator Mark Andrews, and my colleague from Montana, Senator Melcher, for their leadership in Indian health issues.

Last year, I held a field hearing in Gallup, NM, on S. 400, the Indian Health Promotion and Disease Prevention Act of 1985, a bill I introduced. S. 400 establishes a health promotion and disease prevention service within the Indian Health Service. Integral to the definition of health promotion is the reduction of alcohol and drug abuse. Consequently, testimony from the witnesses included discussion of the alcohol abuse epidemic in Indian country.

The hearing testimony revealed many health problems, but the No. 1 problem remained the same—alcoholism and alcohol related diseases, injuries, and death. It is clearly the most pervasive health and social problem facing Indians today. Larry Miike of the Office of Technology Assessment testified:

> The need for such multiple approaches (outside the medical area) to the prevention and control of alcohol abuse makes the impact of any single program, however, broad, difficult to assess, but it is clear that a simple medical approach is insufficent and comes too late for most alcoholics.

As a result of this, other testimony, and my first-hand experiences with several Indian communities, I am convinced that intervention and prevention are the key and must begin at the youngest ages possible.

The Indian community is not unaware of this problem and its impact. Gilbert Pena, chairman of the All Indian Pueblo Council, which includes 18 pueblos in New Mexico, explained in his testimony:

> The most obvious and vicious threat to the lives and well-being of our pueblo people is the damage brought on by alcoholism related destruction. Alcohol is a contributing factor in most of the motor vehicle accidents in our communities. Many of the costly hospital admissions are in some way connected with alcohol abuse.
>
> However, in terms of the substantial cost of primary care and the strain on this nation's budget, economic cost is really nothing compared to the social cost to the Tribe. An extremely important part of the Indian culture and tradition lies in the sharing of experience and wisdom between the elders and the young people. Given the tragic rates of accidents and death among the younger age groups it is easy to see how the social order is severely impacted. Many promising young Indian leaders are now a part of the statistics.

Although the statistics paint a grim picture, some important attempts are being made to educate Indian people to the dangers of alcohol and drug abuse. In northern New Mexico, Tom Lujan, director of social services for the Eight Northern Indian Pueblos Council has an innovative and proven program directed to Indian youth. Tom teaches the children native dances and helps them identify with their cultural heritage. This in turn has helped them develop a positive self-concept as young adults. Such efforts need to be continued, but the battle is lost if we approach the task in a piecemeal fashion.

As the bill before us recognizes, rehabilitation and education is an important part of any comprehensive drug package. Section 4228 provides for training and community education that shall be undertaken between the Secretary of Interior and the Secretary of Health and Human Services. The training and education is intended to provide concise and timely information to the community leadership of each tribal community. My amendment compliments these efforts.

The amendment establishes at least one, but not more than four, demonstration projects to determine the most effective means of providing for drug and alcohol abuse prevention and general health promotion. These projects are to be undertaken in conjunction with health professionals and a health profession school. The Secretary is required to report on the success of the demonstration project. The amendment earmarks $500,000 for the demonstration project.

I urge my colleagues to join with me in supporting the adoption of this amendment.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr. BIDEN. We think it is a good amendment. We accept it.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 3054) was agreed to.

Mr. BINGAMAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BIDEN. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER (Mr. Warner). The Senator from New York.

Mr. D'AMATO. Mr. President, I introduce this statement on S. 2878, the bipartisan senate drug bill, to highlight how many of the provisions of the bill have their origin in legislative initiatives that have either been passed by the Senate or have been pending in the Senate for many months.

CRIMINAL PENALTIES

As in S. 2787, the Mandatory Crack and Other Drug Penalties Act that I introduced on August 15, 1986, this bill provides mandatory prison terms for persons—20 years to life for repeat offenders, or if death or serious bodily injury results—trafficking in specified amounts of certain drugs.

As in S. 2580, the Meaningful Crack and Cocaine Penalties Act that I introduced on June 20, 1986, and S. 2787, the amount of drugs required to trigger the minimum and maximum prison terms, has been substantially lowered.

The amounts that shall now trigger the most severe minimum prison terms are: 1 kilogram of a mixture or substance containing heroin; 5 kilograms of a mixture or substance containing cocaine; 50 grams of a mixture or substance containing cocaine base; 100 grams of PCP; 10 grams of a mixture or substance containing LSD; 400 grams of a mixture or substance containing fentanyl or 100 grams of a mixture or substance an analog of fentanyl; or 1,000 kilograms of a mixture or substance containing marijuana. Lower minimum mandatories are provided for those trafficking in smaller amounts of these drugs.

USE OF FORFEITURES TO HELP FUND THE WAR ON DRUGS

In the area of forfeiture, I note that the essence of S. 1583, a bill I introduced on August 1, 1985, has been incorporated in this bill. This bill creates a new special forfeiture fund consisting of 90 percent of any funds not expended or obligated from the Justice or Customs assets forfeiture funds. Instead of being forwarded to the general treasury, these funds shall be made available for enhanced Federal, State, and local drug law enforcement, prevention, education, treatment, rehabilitation, and research.

MONEY LAUNDERING

The laundering of billions of dollars of drug money is addressed in this bill along lines almost identical to those I have proposed. The money laundering section of S. 2787 is essentially the same as the money laundering amendment to the debt ceiling extension bill that I introduced and that passed the Senate by vote of 98 to 0 on July 31, 1986.

This bill provides the Department of Treasury with an administrative subpoena power to investigate money laundering, as first proposed in S. 2579, a bill I introduced on April 13, 1984, and reintroduced as S. 571 on March 5, 1985.

S. 2787 also makes money laundering a crime, as first proposed by S. 572, which I introduced on March 5, 1986. It combats smurfing, one of the most effective evasion techniques favored by money launderers. Smurfing is the structuring of deposits so that each one totals less than the $10,000 amount that brings the law's reporting requirements into play. Making multiple deposits of $9,000 or $8,000 enables money launderers to avoid the Bank Secrecy Act's reporting requirements. S. 2787 follows the lead of S. 2306, a bill I introduced on April 15, 1986, by making this intentional evasion of the Bank Secrecy Act a criminal offense.

MILITARY ASSISTANCE FOR THE WAR ON DRUGS

On August 6 and 7 I was proud to join Senators Stevens and DeConcini in offering amendments 2565 and 2588 to S. 2638, the Defense Department Reauthorization Act. Working with Senators Goldwater, Nunn, Chiles, Wilson, and Cohen, we were able to win the unanimous approval of the Senate to these amendments, which provide our Coast Guard and Customs Service with hundreds of millions of dollars' worth of additional resources, and require the Department of Defense to attempt to locate facilities under its control that can be used to house criminal aliens.

This bill contains many of the most important provisions contained in these amendments. It mandates that at least 500 Coast Guard personnel be assigned to naval vessels to assist in drug interdiction.

It provides $212.1 million for enhanced intelligence collection activities and for E2C Hawkeye surveillance aircraft and other drug interdiction aircraft and aerostat radar to be used by the U.S. Customs Service and the U.S. Coast Guard.

Title III provides a total of $678 million to strengthen the interdiction capability of the Coast Guard and Customs Service, and contains many of the provisions contained in S. 2764, the National Drug Interdiction Improvement Act that Senator DeConcini and I introduced on August 14, 1986. Among the major provisions in S. 2878 that had their origin in S. 2764 are:

An additional $90 million for Defense Department aerostat radars and Black Hawk helicopters to be used by our civilian agencies in drug interdiction; $153 million for the Coast Guard and $115.9 for the Customs Service; $25 million for the establishment of command, control, communications, and intelligence (C-31) centers; and $15 million for a joint United States-Bahamas Drug Interdiction Task Force.

Title III also contains the essential elements of S. 2748, the Customs Enforcement Improvement Act, a bill Senators Hawkins and DeConcini and I introduced on August 15.

REDUCING THE DEMAND FOR DRUGS

On May 1 the Senate voted 82 to 12 to accept amendment 1810 to Senate Concurrent Resolution 120, the Budget Resolution, increasing support for drug prevention, treatment, and research by $100 million per year. My amendment made it possible to increase the alcohol, drug abuse, and mental health block grant to $500 million. The Nation owes a debt of thanks to Senator Weicker, the chairman of the Labor, HHS Appropriations Subcommittee, for making certain that the full amount was included in his recommendation to the Appropriations Committee. On August 15, the Senate Appropriations Committee approved the full amount.

S. 2878 builds on this initiative by authorizing an additional $150 million for drug education and prevention, and an additional $186 million for drug treatment and rehabilitation.

I am proud to note that this is significantly more than the $200 million increase originally provided for in S. 2850, which was introduced on Tuesday, September 23. Senator Hatch, the chairman of the Labor and Human Resources Committee, other Senators, and I have been working all week to develop a stronger effort to reduce the demand for drugs through prevention and treatment. This bill reflects our efforts.

The $130 million is provided through a new education and prevention block grant, $80 million of which will be transferred to State and local education agencies, and $50 million of which will be available to such agencies and to local community groups; $20 million is being made available for national programs and regional training centers.

The alcohol, drug abuse, and mental health block grant is increased from $500 million to $686 million; $550 million shall be distributed under the existing block grant formula, with a special set aside for high risk youth. An additional $125 million shall be distributed as follows: 25 percent to States on the basis of population, and 75 percent to States, such as New York, that have especially long treatment waiting lists and severe drug abuse levels; $11 million shall be transferred to veterans substance abuse programs.

The National Institute on Drug Abuse is reauthorized at a level of $129 million, and the National Institute on Alcohol and Alcohol Abuse is reauthorized at a level of $69 million.

Mr. President, on September 11 I wrote the majority leader urging him to include each of these initiatives in the comprehensive antidrug legislation that he was developing. I note for the record that he has done so. Among the other provisions I recommended that are in this bill are:

First, the denial of most-favored-nation trading status, foreign aid, and other assistance to any nation that refuses to cooperate in stopping drug production, and in prosecuting drug traffickers;

Second, strong criminal legislation against so-called designer drugs;

Third, especially severe penalties for those who make use of children in drug trafficking or who traffick in drugs near schools; and

Fourth, additional resources for our overburdened prison systems and law enforcement agencies.

I urge my colleagues to give this bill their full support, so that these and other initiatives that are essential for a real war on drugs and that have been pending for so long can become law.

Thank you, Mr. President.

Mr. President, I ask unanimous consent that the full text of this letter be printed in its entirety.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, September 11, 1986.
Hon. ROBERT DOLE,
Majority Leader, Washington, DC.

DEAR BOB: As work proceeds on the development of comprehensive anti-drug legislation, I want to call your attention to several important legislative initiatives I have long been advocating. Despite news stories suggesting that financing an anti-drug program is a controversial matter, I also want to note how many of these proposals the United States Senate has endorsed by overwhelming margins.

On May 1, for example, I introduced an amendment to this year's budget resolution adding $100 million per year for 3 years for drug-education and rehabilitation programs. The Senate adopted this amendment by a vote of 82 to 12.

On July 31, I introduced a comprehensive money laundering amendment to the debt-ceiling extension bill. It passed the Senate by a vote of 98 to 0. This amendment contains the language of S. 2683, the consensus money laundering bill introduced on July 24. It makes money laundering a crime, addresses the critical problem of structuring, provides the Treasury Department with administrative subpoena power, subjects money launderers to maximum prison terms, fines, and forfeitures, and provides for a sharing of money forfeited from money launderers with police and other state and local law enforcement agencies.

On August 6 and 7, Senators DeConcini, Stevens, Cohen, and I introduced amendments to the Defense Reauthorization bill providing $512 million for a major interdiction initiative. These amendments, which passed unanimously and which were supported by the chairman of both the Armed Services Committee and Defense Appropriations Subcommittee, shift funds from the Navy and Air Force to the Coast Guard and Customs Service. They authorize the purchase of E-2C radar planes, patrol boats, aerostat radar balloons, and the placing of 500 Coast Guard personnel on naval vessels operating in drug interdiction areas.

Most recently, on August 15, the Senate Appropriations Committee approved the full $100 million increase provided for in my amendment to the budget resolution. This includes, among other items:

A $31 million increase for State and local drug-prevention and rehabilitation programs, including full restoration of Gramm-Rudman cuts;

$10 million for the nation's first drug-prevention demonstration-grant program, with an increased emphasis on identifying and assisting local prevention programs that work; and

$17 million for alcohol abuse prevention and rehabilitation.

In addition to measures that have passed the Senate, I also urge you to support the following.

DEMAND REDUCTION: PREVENTION AND REHABILITATION

Above all, we must reduce the demand for drugs through increased funding of drug-prevention and rehabilitation programs. To focus on areas with the greatest need, avoid wasteful "throwing money at the problem," and identify programs that work, we must strongly emphasize demonstration grants and program evaluations in the Senate bill. In addition to the use of direct appropriations, I recommend a new source of funding, as provided for in S. 1583, namely, the use of drug-asset forfeitures.

GETTING AT THE SOURCE: INTERNATIONAL COOPERATION

On the international front, we should deny most-favored-nation trading status, foreign aid, and other assistance to any nation that refuses to cooperate in stopping drug production and in prosecuting drug traffickers, especially those which torture and kill American drug-enforcement agents. We must make it clear to every nation that comes to us for help: you must cooperate in a real war on drugs first.

INTERDICTION

In the case of interdiction, I recommend amending the Posse Comitatus law to permit more direct involvement of the Armed Forces, as well as the approach contained in S. 2748, the Customs Enforcement Act that Senator Hawkins and I have introduced, and S. 2764, the Drug Interdiction Improvement Act. S. 2764 authorizes $1.4 billion in Navy and Air Force support for the Coast Guard and Customs Service, including the placement of 500 Coast Guard Law Enforcement Detachments (LEDETS) on naval vessels, and additional funding for DEA, federal prosecution and other law-enforcement agencies.

INCREASED CRIMINAL PENALTIES AND ENFORCEMENT

On the subject of criminal penalties, we must enact mandatory minimum sentences for cocaine, heroin, PCP, and designer drugs, with especially severe sentences for repeat offenders and for those involving children in drug trafficking and selling within 1,000 feet of a school.

In supporting this effort, I introduced S. 2580, the Crack and Cocaine Meaningful Penalties Act, and S. 2787, the Mandatory Crack and other Drug Penalties Act. These bills lower the amount of drugs that trigger maximum sentences, and provide mandatory minimum terms of 5 years for first offeders and 10 years for repeat offenders who traffic in crack, heroin, PCP, and LSDs. S. 2787 also imposes prison terms of 20 years to life for drug trafficking where, as in the Len Bias case, death results.

As you know, the Senate has already demonstrated its support for strong legislation against so-called "designer drugs" and provided a good faith exception to the exclusionary rule, only to see these bills languish in the House. Now is a most opportune time to review these initiatives.

If these tough measures are to have a real deterrent effect, the 5 percent cut in law-enforcement budgets that was passed by the House on July 17 has to be overturned. It is not enough to pass tough new laws. We must provide the resources to enforce them. The action of the Senate Appropriations Committee in affirming the budget proposed by Senator Rudman on August 14, restoring $200 million to our prison system, courts, prosecutors, and INS, needs—and deserves—the support of the entire Congress.

There is no greater challenge we face than to increase the effectiveness of our interdiction and eradication efforts, to make our criminal justice system work again, and to teach our children to say "no" to drugs.

Your commitment to this effort gives me great confidence that, at long last, we are going to launch a real war on drugs in order to provide the domestic tranquility our Constitution promises, and guarantee for our children the full and healthy lives that they were born to live.

I look forward to working with you on this, our nation's most urgent domestic priority.

Sincerely,
ALFONSE M. D'AMATO
U.S. Senator.

AMENDMENT NO. 3055

(Purpose: To prohibit possession, manufacture, sale, importation, and mailing of ballistic knives)

Mr. D'AMATO. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO] for himself and Mr. MOYNIHAN proposes an amendment numbered 3055.

Mr. D'AMATO. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill insert the following:

SEC. SHORT TITLE.

This Act may be cited as the "Ballistic Knife Prohibition Act of 1986".

(A) PROHIBITION OF POSSESSION, MANUFACTURE, SALE, AND IMPORTATION OF BALLISTIC KNIVES

(a) The Act entitled "An Act to prohibit the introduction, or manufacture for introduction, into interstate commerce of switchblade knives, and for other purposes" (15 U.S.C. 1232 et seq.) is amended by adding at the end the following:

"SEC. 7. (a) Whoever knowingly possesses, manufactures, sells, or imports a ballistic knife shall be fined as provided in title 18, United States Code, or imprisoned not more than 10 years, or both.

"(b) Whoever possesses or uses a ballistic knife in the commission of a Federal or State crime of violence shall be fined as provided in title 18, United States Code, or imprisoned not less than five years and not more then ten years, or both.

"(c) The exceptions provided in paragraphs (1), (2), and (3) of section 4 with respect to switchblade knives shall apply to ballistic knives under subsection (a) of this section.

"(d) As used in this section, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechanism".

(B) NONMAILABILITY OF BALLISTIC KNIVES

(b) Section 1716 of title 18, United States Code, is amended by inserting after subsection (h) and before the first undesignated paragraph after such subsection the following:

"(i)(1) Any ballistic knife shall be subject to the same restrictions and penalties provided under subsection (g) for knives described in the first sentence of that subsection.

"(2) As used in this subsection, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechanism.".

Mr. D'AMATO. Mr. President, I rise today to introduce the ballistic knife prohibition amendment. This amendment is identical to S. 2411, which I introduced on May 6 and which has bipartisan support. The amendment has been cleared on both sides. Basically, this amendment enjoys the total support of the law enforcement community in every group everywhere, from the National Sheriffs Association to the International Brotherhood of Police Officers, and to the Federal Law Enforcement Officers Association.

The legislation bans the manufacture, importation, sale, or possession of the so-called ballistic knife. This weapon has a detachable blade propelled by a spring-operated mechanism. It is important that this amendment be added because the ballistic knife is a favored weapon used by drug dealers. Indeed, the first time it came into the possession of law enforcement officials was during a drug raid in New York. The danger to law enforcement officers to quote the district attorney of Nassau County when he said, "The officer seeing the knife may not know that all the criminal has to do is to press a button and the knife is shot into his body," It can be propelled 30 feet with a force velocity sufficient to bring death.

I urge my colleagues to support this amendment. It has been cleared on both sides.

I would like to ask that Senator Chiles be added as a cosponsor.

Mr. BIDEN. Mr. President, we accept the amendment.

Mr. THURMOND. Mr. President, we accept the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New York.

The amendment (No. 3055) was agreed to.

Mr. D'AMATO. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DIXON. Mr. President, before I refer to my amendment, may I yield to my distinguished friend from New Mexico for an amendment we are cosponsoring that is in agreement on all sides?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 3056

(Purpose: To provide access for eligible homeless individuals to benefits under the food stamp, job training, AFDC, supplemental security income, medicaid, and veterans programs)

Mr. DOMENICI. Mr. President, I thank my friend from Illinois. On behalf of myself, Senators Dixon, Gorton, Gore, Wilson, Bingaman, Dole, Heinz, Hatfield, Danforth, Trible, and Dodd, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. Domenici] for himself and others proposes an amendment numbered 3056.

Mr. DOMENICI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amdt. add the following new title:

TITLE —HOMELESS ELIGIBILITY CLARIFICATION ACT

SECTION —. SHORT TITLE.

This title may be cited as the "Homeless Eligibility Clarification Act".

Subtitle A—Emergency Food for the Homeless

SEC. —. SHELTER MEALS.

(a) Definition of Food.—Section 3(g)(8) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)(8)) is amended by striking out "women and children temporarily residing in public or private nonprofit shelters for battered women and children" and inserting in lieu thereof "individuals temporarily residing in emergency shelters".

(b) Definition of Household.—The last sentence of section 3(i) of such Act is amended by striking out "public or private nonprofit shelters for battered women and children" and inserting in lieu thereof "emergency shelters".

(c) Prices Charged.—Section 7(b) of such Act (7 U.S.C. 2016(b)) is amended by adding at the end thereof the following new sentences: "Notwithstanding the preceding sentence, an emergency shelter may not charge prices for meals served to eligible households temporarily residing in such shelters that are higher than prices served to other individuals temporarily residing in such shelters.".

(d) Redemption of Coupons.—The first sentence of section 10 of such Act (7 U.S.C. 2019) is amended by striking out "public and private nonprofit shelters that prepare and serve meals for battered women and children" and inserting in lieu thereof "emergency shelters that prepare and serve meals for individuals".

SEC. —. PREPARED MEALS.

Section 3(g) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)) is amended—

(1) by striking out "and" at the end of clause (7); and

(2) by inserting before the period at the end thereof the following: ", and (9) in the case of individuals that do not reside in permanent dwellings or who do not have fixed mailing addresses, meals prepared by and served in public or private nonprofit establishments (eating or otherwise) that feed such individuals or in private establishments that contract with the appropriate agency of the State to serve meals to such individuals at concessional prices".

Subtitle B—Job Training for the Homeless

SEC. —. JOB TRAINING FOR THE HOMELESS.

(a) Economically Disadvantaged to Include Homeless.—Section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)) is amended—

(1) by striking out "or" at the end of subparagraph (D);

(2) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof "(F) an individual who is homeless and whose total income is not in excess of the income levels described in subparagraph (B).". (b) Job Training Plan.—Section 104(b)(2) of the Job Training Partnership Act (29 U.S.C. 1514(b)) is amended by inserting before the semicolon a comma and the following: "and a description of how the program will be established in locations providing services to the homeless".

(c) Barriers to Employment Rule.—Section 203(a)(2) of the Job Training Partnership Act (29 U.S.C. 1603(a)(2)) is amended by striking out "or addicts" and inserting in lieu thereof "addicts, or homeless".

Subtitle C—Entitlements Eligibility

SEC. —. TREATMENT OF HOMELESS INDIVIDUALS ELIGIBLE UNDER AFDC, SSI, AND MEDICAID PROGRAMS.

(a) AFDC.—Section 402(a) of the Social Security Act (42 U.S.C. 602(a)) is amended—

(1) by striking "and" at the end of paragraph (38),

(2) by striking the period at the end of paragraph (39) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(40) provide a method of verifying the eligibility of, and making aid available with respect to, a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(b) SSI Program.—Section 1631(e) of such Act (42 U.S.C 1383(e)) is amended by adding at the end the following new paragraph:

"(3) The Secretary shall provide a method of verifying the eligibility of, and making payments under this title to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(c) Medicaid Program.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (45),

(2) by striking the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(47) provide a method of verifying the eligibility of, and making medical assistance available to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(d) Effective Date.—

(1) Except as provided in paragraph (2), the amendments made by this section shall become effective October 1, 1986.

(2) If a State agency administering a plan approved under part A of title IV of the Social Security Act or under title XIX of such Act demonstrates, to the satisfaction

of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by subsection (a) or (c) of this section, respectively, the Secretary may prescribe that, in case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or after October 1, 1986. For purposes of the preceding sentence, the term "session of a State's legislature" includes any regular, special, budget, or other session of a State legislature.

SEC.—. SINGLE APPLICATION FOR SSI AND FOOD STAMP BENEFITS BY SSI PRE-RELEASE INDIVIDUALS.

Section 11 of the Food Stamp Act of 1977 (7 U.S.C. 2020) is amended by adding at the end thereof the following new subsection:

"(p) The Secretary and the Secretary of Health and Human Services shall develop a system under which an individual applying for supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) prior to the discharge or release of the individual from a public institution under the pre-release program established under section 1635 of such Act shall also be permitted to apply for participation in the food stamp program by executing a single application.".

SEC. —. DELIVERY OF VETERANS' BENEFITS PAYMENTS.

(a) IN GENERAL.—(1) Section 3003 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Benefits under laws administered by the Veterans' Administration may not be denied an applicant on the basis that the applicant does not have a mailing address.".

(2) Section 3020 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) In the case of a payee who does not have a mailing address, payments of monetary benefits under laws administered by the Veterans' Administration shall be delivered under an appropriate method prescribed pursuant to paragraph (2) of this subsection.

"(2) The Administrator shall prescribe an appropriate method or methods for the delivery of payments of monetary benefits under laws administered by the Veterans' Administration in cases described in paragraph (1) of this subsection. To the maximum extent practicable, such method or methods shall be designed to ensure the delivery of payments in such cases.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a)(1) shall take effect on the date of enactment of this Act.

(2) The amendment made by subsection (a)(2) shall take effect with respect to payments made on or after October 1, 1986.

HOMELESS ELIGIBILITY CLARIFICATION ACT

Mr. DOMENICI. Mr. President, there is no more obvious and tragic group of drug and alcohol abusers than those abusers who are homeless.

In December 1984, the Federal Task Force on the Homeless reported to the Secretary of Health and Human Services [Margaret M. Heckler] that the homeless fall into three categories:

First, people who have suffered recent economic setbacks;

Second, people who have experienced severe, personal crises;

Third, people who are chronically disabled by mental illness and/or alcohol and drug abuse.

The third group, a combination of mental illness and substance abuse, is estimated in this report to the Secretary to be "from one-half to two-thirds of the homeless population."

Other estimates place the drug and alcohol abusers at about one-third of all homeless individuals. (Third report by the House Committee on Government Operations, "The Federal Response to the Homeless Crisis," April 18, 1985, p. 25.)

This House report makes the following observation:

> Until the 1970's, the homeless were usually single white males suffering from alcoholism or drug dependency. However, today's population is more heterogeneous. The homeless of today are younger, and include much larger percentages of minorities, women, children and entire families.

Thus, Mr. President, while the homeless population as a group has changed and grown, those who are alcohol and drug abusers remain homeless and in need of our assistance. It is the homeless drug abuser and the homeless alcoholic who are the victims of our war on drugs. These are the ones who have lost the battle with heroin, cocaine, crack, designer drugs, and hallucinogens. These are the disillusioned and the depressed. They are the ones who have turned to the bottle, the pill, or the needle for relief. Instead of relief, they have found more health problems, less mental capacity, and more frustrations. They are the showcase of the ultimate results and lifestyle of extreme drug abuse.

While no one can tell us with certainty about the links between mental illness and substance abuse, the homeless are our constant reminder that there is a link. I would also want to caution my colleagues about linking all homeless with these problems. There are clearly other reasons for homelessness, as I have mentioned. Yet, we cannot deny that the abuse of drugs and alcohol are related causal factors in the downward spiral that leads to the serious and complex mental problems of too many homeless people.

Our war on drugs would be lacking, Mr. President, if we ignored the homeless drug and alcohol abuser. This amendment removes the legal barriers that exist in our law that can prohibit a homeless person from receiving benefits to which he or she should be entitled. In its simplest terms, this amendment provides that the lack of a fixed address will no longer be a barrier in qualifying the homeless for the following programs—job training, aid to families with dependent children [AFDC], supplemental security income [SSI], Medicaid, and veterans programs.

Another important feature of this amendment is the addition of emergency shelters as an allowable place to use food stamps. We also provide that shelters may redeem food stamps only for food and cannot charge food stamp recipients more for meals than nonrecipients. The final feature of this amendment is the provision that allows a single application for SSI and food stamps in the existing pre-release program for institutionalized individuals.

This is a "no-cost" bill Mr. President. My attached explanation of the provisions of this amendment explains the source of Congressional Budget Office analyses supporting our conclusion that this is a no-cost bill.

In summary, passage of this amendment will open doors that are now closed to homeless individuals. These are people who are otherwise eligible for assistance from the Federal Government. The lack of a fixed address, however, gives a conscientious Federal employee a reason to deny benefits that should otherwise flow to many homeless people. We believe, Mr. President, that there is not a single Federal worker who enjoys denying vital and minimal benefits to people in desperate need. This amendment will allow Federal employees, in the name of the people of the United States of America, to qualify those homeless people, who otherwise fit program criteria, to become fully eligible for AFDC, SSI, Medicaid, job training, and veterans programs.

I ask unanimous consent that the explanation of the provisions of the amendment be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AN AMENDMENT TO THE DRUG CONTROL BILL TO ASSURE ACCESS FOR ELIGIBLE HOMELESS PERSONS TO GOVERNMENT ASSISTANCE PROGRAMS

LINK TO DRUG CONTROL BILL

One third of homeless persons are substance abusers or members of families of drug and/or alcohol abusers.

PURPOSE

An amendment to assure access for eligible homeless persons under the food stamp, job training, Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Medicaid and veterans programs. This amendment is designed to achieve these objectives by making modifications that CBO has determined will not result in additional costs. The CBO estimates were made in conjunction with the introduction of the bills identified below.

LEGISLATIVE HISTORY

These provisions are currently contained in two House bills, H.R. 5139 and H.R. 5140, and two Senate bills, S. 2608 and S. 2533, which were introduced in the House of Representatives and in the Senate in June of 1986. H.R. 5139 was introduced by Congressman Leland (D-TX) and Congressman Rodino (D-NJ) and has been referred to the Ways and Means Committee. H.R. 5140 was introduced by Congressman Leland and 52 co-sponsors and has been referred jointly to the Ways and Means, Agriculture, Education and Labor, Banking, Energy and Commerce and Veterans' Affairs Committees.

S. 2608 was introduced by Senator Gore (D-TN) and Senator Moynihan (D-NY) and has been referred to the Finance Committee. S. 2533 was introduced by Senator Dixon (D-IL) and has been referred to the Agriculture Committee.

PROVISIONS

1. *Purchase of shelter meals with food stamps.*—Amends the Food Stamp Act to allow residents of emergency shelters to use their food stamps to purchase meals at the shelter. The amendment would also provide that shelters may redeem food stamps only for food and cannot charge food stamp recipients more for meals than non-recipients.

2. *Use of food stamps by homeless persons to buy prepared meals.*—Amends the Food Stamp Act to allow persons without a fixed address to use food stamp coupons to buy meals in public or private non-profit establishments and certified feeding sites.

3. *Job training for the homeless.*—Amends the Job Training Partneship Act to include the homeless as a targeted group and requires job training plans under the Act to include a description of how programs will be established in locations providing services to the homeless.

4. *Access to the AFDC program.*—Clarifies existing law to assure that eligible homeless persons will not be denied AFDC benefits because they do not have a fixed address.

5. *Access to SSI benefits.*—Clarifies existing law to assure that eligible homeless persons will not be denied SSI benefits because they do not have a fixed address.

6. *Access to the Medicaid program.*—Clarifies existing law to assure that eligible homeless persons will not be denied Medicaid benefits because they do not have a fixed address.

7. *Single application for SSI and food stamps by pre-release individuals.*—Reduces administrative burdens by allowing individuals about to be released from a public institution to execute a single application for SSI and food stamp benefits under the existing pre-release program.

8. *Access to veteran's benefits.*—Clarifies existing law to assure that eligible homeless persons will not be denied veterans' benefits because they do not have a fixed address.

CBO COST ESTIMATES

1. *Purchase of shelter meals with food stamps.*—A CBO estimate made in conjunction with the introduction of S. 2533 indicated no additional cost for this provision.

2. *Use of food stamps by homeless persons to buy prepared meals.*—A CBO estimate made in conjunction with the introduction of S. 2533 indicated no additional cost for this provision.

3. *Job training for the homeless.*—A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

4. *Access to the AFDC program.*—A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

5. *Access to SSI benefits.*—A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

6. *Access to the Medicaid program.*—A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

7. *Single application for SSI and food stamps by pre-release individuals.*—As a result of this change, federal paperwork will be reduced because a single application will replace the two applications presently required.

8. *Access to veteran's benefits.*—A June 25, 1986 CBO estimate made in conjunction with the introduction of H.R. 5140 indicated no additional cost for this provision.

Mr. DOMENICI. Mr. President, this amendment we call the homeless eligibility clarification amendment.

I think most Senators would be surprised to know that about 30 percent of the homeless suffer from either alcoholism or drug abuse symptoms. I think most of my colleagues would be surprised to know that homeless Americans, men, women, and children, under existing law do not qualify for many of the programs if they do not have a fixed address. Federal employees could legitimately, in doing a good service for their Government, turn down homeless people for veterans' benefits because the homeless applicant does not have an address. They could turn down homeless applicants for aid to families with dependent children because they do not have an address. They could turn down a homeless person for an SSI check because he did not have an address.

This amendment has no net estimated cost attached to it, according to the Congressional Budget Office but will qualify homeless Americans for those programs that they would otherwise be entitled to. The only other thing it does is to permit them to use food stamps, which they are entitled to, to pay the reasonable costs of food at shelters which they attend, an anomaly in the law. Homeless people can get food stamps, but by definition they have no home. So they cannot go to a grocery store and buy food to prepare because they have no place to cook it. Our amendment will permit them to use food stamps in the shelters to pay reasonable costs, if they were entitled to the food stamps. It is those kind of things that are in existing law that frustrate the efforts of volunteers, of cities, of various organizations that are trying to help.

Mr. NUNN. Will the Senator yield?

Mr. DOMENICI. I am pleased to yield.

Mr. NUNN. I would like very much to be added as a cosponsor. I have read the amendment. I think it is an excellent amendment. I support it.

Mr. DOMENICI. I ask unanimous consent that Senator Nunn and Senator Chiles be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 2110

Mr. LEVIN. Mr. President, I want to commend the Senator from New Mexico for taking the time in this mad rush that we are going through this Saturday night to remember to treat these people he has referred to as fellow citizens properly. I would like to cosponsor the amendment.

Mr. DOMENICI. Mr. President, I do not want to take all the credit because, as a matter of fact, there are two major bills that do much of this. I was a cosponsor. They are running their course through the Congress. They are going to take a long time.

We got together with the National Coalition for the Homeless and a number of Senators. We took from those bills the things we could do tonight. The committees have accepted them. They have looked at them and said, "We should do this."

This helps in our drug efforts because many of these people suffer from drug problems. They will get relief.

Mr. LEVIN. It is typical for the Senator to share the credit but it is important for us to note that this Senator has taken the time, as he has tonight, to do this, and I commend him for it, the Senator from New Mexico. I ask to be added as a cosponsor.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Senator Levin be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, my principal cosponsor is Senator Dixon of Illinois.

Mr. DIXON. Mr. President, I am pleased to join the distinguished senior Senator from New Mexico in sponsoring this package of amendments which will have a major impact on the lives of the homeless and no impact on the Federal deficit.

I sponsored legislation earlier this year which would authorize the redemption of food stamps for prepared meals in nonprofit facilities. Many of my colleagues may not realize that the current law does not permit food stamps to be redeemed for hot meals. This seems unreasonable since life on the street often does not provide access to cooking facilities or refrigeration, thereby making it impossible to prepare a hot meal or store food.

The legislation being proposed would allow the homeless to redeem food stamps, to which they are already entitled, for prepared meals in authorized facilities. It is a commonsense approach to feeding the neediest among us.

In addition, it will spread the limited resources of soup kitchens a little further, in that they will be able to redeem these food coupons for more food.

Many facilities turn away people every day. They have far more mouths to feed than provisions with which to feed them. Even minimal assistance to feeding centers which provide meals at an average cost of about 75 cents, can make a big difference.

In addition, there are many personal efforts being made to feed hungry people. One example is from my hometown of Belleville, IL. William Land and his wife, Dorothy, operate the Cozy Kitchen. They have been feeding anyone who needs a meal since 1983, paying for this out of their own pockets. It begins to add up after awhile. The Land's estimate that they have served 6,400 people in the past 3½ years. The intention of this legislation would be to allow such people to apply for participation in this program so that they could be minimally reimbursed for their food expenses. There is no requirement that anyone participate. It is strictly voluntary.

The Congressional Budget Office informed me there was no additional cost associated with this change. In fact, it would probably mean a more cost-effective way of redeeming food stamps, since people wouldn't have to purchase more costly prepared foods and would not waste that which could not be stored properly.

The Food Stamp Act makes it impossible for the homeless to effectively utilize a progam which was designed to meet the needs of the most destitute in our society. Therefore it just makes plain sense to tailor the program for those it was intended to serve.

Although my original legislation also included two other provisions which had some minimal costs associated with them—reimbursement to States for food stamp outreach to the homeless and an increase in the authorization of the temporary emergency food assistance program—the food stamps for meals portion is the heart of the proposal. I am hopeful, however, that next year we will be able to address the other pieces of my original legislation.

Another provision of our amendment would add the homeless as a target group for the Job Training Partnership Act.

The amendment would direct job training plans which are required under provisions in the act, to include a description of how job training programs will address the homeless population. It is hoped that this will provide a special concentration on the homeless and make job training programs more responsive to the homeless who are already technically eligible, so that their special needs can be addressed.

The final section of this amendment generally addresses the problems associated with getting benefits to which the homeless are entitled. It clarifies existing law to assure that just because an individual lacks a permanent address, benefits should not be denied. This would apply to aid to families with dependent children, Social Security benefits, Medicaid, and veterans' benefits.

The amendment also cuts through some redtape by providing that people who are about to be released from public institutions will be able to apply for supplemental security income benefits and food stamps in a single application.

Mr. President, we continue to make progress, little by little, in alleviating the suffering of our Nation's poor. Although these simple changes may seem inconsequential, they can mean better nutrition, improved chances for a job, a streamlined delivery system for benefits and an ultimate hope of greater dignity, and independence for America's poor.

Mr. DOMENICI. Mr. President, I ask unanimous consent that all Senators who asked to be made cosponsors be made cosponsors, including Senator THURMOND.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORE addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. GORE. Mr. President, I commend the Senator from New Mexico. I have worked with him on this matter. As he noted, there are a couple of bills pending, one being S. 608, which I introduced along with the Senator from New York, Senator MOYNIHAN. These provisions are among the several in that bill.

We worked together to pull them out. They make very good common sense. They should be adopted. They have no cost. They will not solve the entire problem faced by homeless persons in the United States, but they constitute important steps forward. They should be adopted unanimously. I urge all of my colleagues to support the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. DOMENICI. Mr. President, I ask unanimous consent that Mr. RUDMAN be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the amendment.

The amendment (No. 3056) was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHILES. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, my friend from Utah has a matter that will require about 30 seconds. I would like to accommodate him.

AMENDMENT NO. 3057

(Purpose: To ensure full one-half of 1 percent ($650,000) minimum grant to each of the 50 States under subtitle B—Drug-Free Schools and Communities Act of 1986)

Mr. HATCH. Mr. President, I send an amendment to the desk on behalf of Senator ABDNOR and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. ABDNOR, proposes an amendment numbered 3057.

Mr. HATCH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Subtitle B—Drug-Free Schools and Communities Act of 1986 is hereby amended by striking "$500,000" in line 8, page 3, and inserting in lieu thereof "$650,000".

Mr. HATCH. Mr. President, I am offering an amendment on behalf of Senator ABDNOR. This amendment would increase the minimum allotment for the new education/prevention block grant from $500,000 to $650,000. I understand that this amendment has been cleared and I urge adoption of this amendment.

Mr. ABDNOR. Mr. President, as a member of the Education/Treatment Task Force, I understood our agreement concerning the education for prevention grant to States provided for under Subtitle B—Drug-Free Schools and Communities Act of 1986—of this bipartisan antidrug legislation included a one-half of 1 percent minimum for each of the 50 States. Initially, the Dole bill provided for a $100 million substance abuse education program. One-half of 1 percent of that amount would be $500,000. The bipartisan package now before us, however, provides for a $150 million education/prevention program of which $130 million is to be distributed to the States for school and community-based efforts.

Mr. President, I do not believe anyone intended to provide less than the full one-half of 1 percent State minimum. My amendment simply ensures that each State receives no less than one-half of 1 percent of the $130 million made available for State grants, or $650,000.

Again, I believe the intent was to provide a minimum of one-half of 1 percent to each of the States for vital education for prevention programs aimed at our Nation's youth. In the interest of fairness, I urge my colleagues to adopt my amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3057) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3058

(Purpose: To make technical corrections)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself and Mr. KENNEDY, proposes an amendment numbered 3058.

Mr. HATCH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out section 4002(a) of the bill and insert in lieu thereof the following:

(a) Section 1911 is amended—

(1) by striking out "the purpose of grants and allotments under section 1913" and inserting in lieu thereof "purposes of carrying out this part";

(2) by striking out "$576,000,000" and inserting in lieu thereof "$686,000,000"; and

(3) by adding at the end thereof the following new sentence: "If the total amount appropriated under the preceding sentence for fiscal year 1987 exceeds $500,000,000, 27 percent of the amount of such excess shall be added to and included with the amounts otherwise available under this part for allotments to States under section 1913 for such fiscal year, 67 percent of the amount of such excess shall be available for allotments to States under section 1921 for such fiscal year, and 6 percent of the amount of such excess shall be available for transfer to the Administrator of Veterans' Affairs under section 1923.".

At the end of the first section 1922 of the Public Health Service Act set out in section 4002(b)(1) of the bill, strike out the end quotation marks and the second period.

Strike out the second section 1922 of the Public Health Service Act set out in section 4002(b)(1) of the bill and insert in lieu thereof the following:

"TRANSFER TO THE ADMINISTRATOR OF VETERANS' AFFAIRS

"SEC. 1923. The Secretary shall transfer to the Administration of Veterans' Affairs the amount which, under the second section of section 1911, is available for such transfer. The amount transferred pursuant to the preceding sentence shall be used for outpatient treatment, rehabilitation, and counseling under section 612 of title 38, United States Code, of veterans for their alcohol or drug abuse dependence or abuse disabilities and for contract care and services under section 620A of such title for veterans for such disabilities.".

Mr. HATCH. Mr. President, I am offering a technical amendment for myself and Senator KENNEDY to correct title IV-A, section 4002a. This amendment clarifies the use of new substance abuse money, the ADMS block grant, and the Veterans' Affairs money.

Mr. President, I understand this has been cleared by both sides and is acceptable.

The PRESIDING OFFICER. Is there further debate?

Mr. THURMOND. Mr. President, we will accept the amendment.

Mr. CHILES. Mr. President, it has been cleared on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3058) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATCH. I thank the Senator from Illinois for his courtesy. I hope that was quick enough.

AMENDMENT NO. 3059

Mr. DIXON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DIXON], for himself, Mrs. HAWKINS, Mr. DECONCINI, Mr. MATTINGLY, and Mr. D'AMATO, proposes an amendment numbered 3059.

Mr. DIXON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the amendment and the following:

(a) GENERAL REQUIREMENT.—

(1) AUTHORITY TO LOCATE, PURSUE, AND SEIZE AIRCRAFT AND VESSELS.—Within 30 days after the date of the enactment of this Act, the President shall deploy equipment and personnel of the Armed Forces to address the unlawful penetration of United States borders by aircraft and vessels carrying narcotics. Such equipment and personnel shall be used to locate, pursue and seize such vessels and aircraft and to arrest their crews. Military personnel may not make arrests of crew members of any such aircraft or vessels after the crew members have departed the aircraft or vessels, unless the military personnel are in hot pursuit.

(2) RADAR COVERAGE.—Within 30 days after the date of the enactment of this Act, the President shall deploy radar aircraft in reasonably available numbers so that during the hours of darkness there is continuous aerial radar coverage of the southern border of the United States to the extent possible.

(3) PURSUIT AIRCRAFT.—The President to the extent possible also shall deploy sufficient numbers of rotor wing and fixed wing aircraft to pursue and seize intruding aircraft detected by the radar aircraft referred to in paragraph (2). The President shall use personnel and equipment of the United States Customs Service and the Coast Guard to assist in carrying out this paragraph.

(4) USE OF NATIONAL GUARD AND RESERVES.—In carrying out this section, the President shall use members of the National Guard and the Reserves. The tours of such members shall correspond to their training commitments and shall be considered to be within their mission. The President shall withhold Federal funding from any National Guard unit whose State commander does not cooperate with the drug interdiction program required by this Act.

(5) EXPENSES.—The expenses of carrying out this section shall be borne by the Department of Defense.

(b) 45-DAY DEADLINE.—The President to the extent possible shall substantially halt the unlawful penetration of United States borders by aircraft and vessels carrying narcotics within 45 days after the date of the enactment of this Act.

(c) REPORT.—Within 60 days after the date of the enactment of this Act, the President shall report to Congress the following:

(1) The effect on military readiness of the drug interdiction program required by this section and the costs in the areas of procurement, operation and maintenance, and personnel which are necessary to restore readiness to the level existing before commencement of such program.

(2) The number of aircraft, vessels, and persons interdicted during the operation of the drug interdiction program and the number of arrests and convictions resulting from such program.

(3) Recommendations for any changes in existing law that may be necessary to more efficiently carry out this program.

(d) REQUEST FOR FUNDING.—Within 90 days after the date of the enactment of this Act, the President shall submit to Congress a request for—

(1) the amount of funds spent as a result of the drug interdiction program required by this section; and

(2) the amount of funds needed to continue operation of the program through fiscal year 1987.

Such request shall include amounts necessary to restore the readiness of the Armed Forces to the level existing before commencement of the program.

(e) BUDGET REQUESTS.—Beginning with the budget request for fiscal year 1988 and for each fiscal year thereafter, the President shall submit in his budget for the Department of Defense a request for funds for the drug interdiction program required by this section in the form of a separate budget function.

Mr. DIXON. Mr. President, this amendment is cosponsored by the distinguished Senator from Florida, Senator HAWKINS; the distinguished Senator from Arizona, Senator DECONCINI; the distinguished Senator from Georgia, Senator MATTINGLY; and the distinguished Senator from New York, Senator D'AMATO.

Essentially this amendment is a very substantial modification of the so-called Hunter amendment which has been considered in the House. It is a very substantial modification of that.

It authorizes the President to use equipment and personnel of the Armed Forces to address the unlawful penetration of the United States by aircraft and vessels carrying narcotics.

Such equipment and personnel are to be used to locate, pursue and seize such aircraft and vessels and to arrest their crews. This amendment makes it clear that those arrest powers may be employed only in the cases of hot pursuit where civilian personnel are not available at the time of seizing the contraband to make the arrest.

Why is that an important issue? Well, it is an important issue because section 1385 of chapter 18 of the U.S. Code, known as the posse comitatus section of the Code, essentially prevents the use of the Army or the Air Force to enforce the laws of the United States and to perform arrests.

The Coast Guard, as most of us here already know, is employed for that purpose.

What we are saying is, let us take the military hardware that is available.

In my amendment, we make it very clear that it must be whatever is available at the time. I have provided here to the extent possible to use whatever is reasonably available to make these kinds of arrests.

Someone has suggested, for instance, that it might be very difficult to find sufficient radar surveillance aircraft.

I just want to give you an example of the present situation.

There are presently 83 E2C's in the military inventory. Of those 83 E2C's, only 24 are currently deployed. That leaves 59 E2C's available right now of which only 20 would be needed for the interdiction mission.

As a matter of fact, here is a map of the southern part of our country. I understand those E2C's have a 400-mile radius. As you can see by looking at this map the deployment of those E2C's in six areas of our country stretching from Florida all the way along the southern coast of California, we could put the entire southern area of this country under complete radar surveillance with the deployment of these aircraft.

□ 2120

Mr. President, I appreciate the fact there will be some expression of opposition to this amendment. A much stronger amendment has passed the House, substantially stronger than the amendment suggested by this Senator. Last year, as I indicated, the House acted on the DOD authorization bill and we did not agree to what the House had done in that authorization bill. But I must say to my colleagues, I happen to be the ranking member of the Preparedness Subcommittee. We spend many hours in that subcommittee talking about having sufficient money appropriated so that our ships can steam, so that all of our pilots can fly and get sufficient air time so that we can have the kind of war games that we need to prepare our military personnel for any kind of military experience that our country might face.

I say let us usefully employ military personnel to the extent possible in a reasonable way. Let us usefully employ that equipment to the extent possible in a reasonable way.

I urge my colleagues to read my amendment, where I say throughout the amendment, "Where it is reasonably available," "to the extent possible," "to address this problem."

May I say to my colleagues, I do not think this is going to cost our country any additional money. These pieces of equipment, this military hardware, is already there and in place. We are appropriating the money for it. Our personnel are there. Need I remind this body that we are presently considering, in a conference between the two Houses, the DOD authorization bill, which will come out with a number somewhere around $2.9 billion? Our budget was $2.4 billion for DOD military authorization this year. I say why should we not be using those forces and why should we not be using that hardware to do the job?

Posse comitatus—here is the law on it and it is only one paragraph in the code. It came into existence essentially after the war between the States, when there was concern about using military personnel as police in parts of the country that were then essentially occupied by the military.

I can understand the reason for it then. The law is quite clear. Here is the case law on it. I have researched the case law. The case law simply says on posse comitatus that they do not have that authority unless granted by Congress.

That is why I am offering this amendment. I am offering this amendment to say that Congress grants the President of the United States the power to employ, in the Army and the Air Force, personnel, military hardware, aircraft, ships, ground equipment, weapons to enforce the laws with respect to drugs that we are passing here tonight and for purposes of drug interdiction. I entreat my colleagues to seriously consider this question.

I conclude by saying it is the enforcement of the laws that count. We can pass all kinds of mandatory sentencing laws here. I understand we are not going to go to the death penalty question tonight. If we went to it, I would vote for it. But we can do anything we can to make the laws stricter. We can fill the pages of the books with all kinds of laws. But unless we provide the personnel to enforce these laws similar to the State laws—if you do not have the cops on the streets, if you do not have them in the neighborhoods—you cannot enforce the laws. I am saying let us enforce these laws.

Let us use these hundreds of military personnel. Let us use these billions of dollars in aircraft and ships and guns and equipment to enforce these drug laws. If we do that, then I think before folks try to bring this poison into our country to rob the minds and the physical health of our children and our youth, they will think twice when they know that we are there and we mean business and we are backing up our bark with real bite.

I think this amendment is a good amendment. I urge my colleagues to seriously consider this amendment in a favorable way.

Mr. GOLDWATER addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. GOLDWATER. Mr. President, I discussed this amendment with my friend from Illinois. I would have liked to talk him out of proposing it but he decided against that .

Mr. President, here we are, voting on an antidrug bill, a bill that is supposed to declare war against the use and purchase of narcotics in this country. I find myself in perfect agreement with the purposes, but when you go to war, you have to have plans.

I have not heard one single plan on how this is to be done. My good friend from Illinois talks about using the military. Who is going to be the boss? How is it going to be run? How are they going to be employed? We are absent plans, we are absent any procedural plans for the purpose of accomplishing what we are setting out to do.

Mr. President, I have heard a lot about using the military. I approved without any question an amendment offered tonight by my friend from Arizona, my junior colleague, that would direct the Pentagon to list as soon as possible all of the equipment, the personnel, the planes, anything they have that could be used in this war against drugs. Just to make it perfectly plain to my friends in this body what we are faced with if we adopt the amendment of my friend from Illinois in the way of money, I shall just start out by telling my colleagues, about $40 million a day. I know my colleagues will laugh at that, but I shall repeat it: $40 million a day.

Let me try to spell that out a little bit. I received some of these documents from the Department of Defense that described to some extent the force requirements in the event of our military being asked to help with sealing our borders. This prevails throughout the argument. Here is what we will need:

We will need 90 AWACS aircraft. That is far more than we own and we need them overseas; 188 fighters on alert; 36 tankers per day; 88 E-2-C aircraft—and there are only 85 available in the whole country; 88 P-3 aircraft, which just about uses up our entire inventory; 132 ships—these include destroyers, cruisers, hydrofoils—and there are only 194 available; 800 helicopters—well, we have 1,400 of those available; 133 infantry battalions, 106,400 personnel. This comes to about the entire continental U.S. division combat strength.

I remind all of my colleagues that tasking our military with this mission will absorb a considerable amount of our national military assets—and I want you to get this one—at a time when the Department of Defense is facing $30 billion cuts in this year. $30 billion, and we are being asked now to ask our taxpayers to bump that to $40 million a day.

In addition, there is talk that our forces will have to be reduced due to the large defense cuts we now face.

Let me say that again: I am not trying to fool you on this. We have reached a point in our military authorizations where we are being asked to take one more cut from the budget.

□ 2130

Mr. President—and the Presiding Officer knows this as well as I do—we are faced with reducing the force structure of our military, the worst, the most dangerous action that can be taken by any military regardless of whether it is the United States or wherever it is in the world. We have today the finest military personnel strength I have ever known in my life, and yet we are now at that point where we might have to reduce them, and here we have legislation asking that the whole kit and caboodle will be used to circle our country to prevent the intrusion of narcotics. I am not opposed to that, if we had some kind of plan. I do not know what the devil they would do. They would stand every 10 feet on the dark Mexican border that runs along the bottom of my State. They are not going to catch them.

It would be devastating to military readiness and our capability if this amendment were allowed to pass. I have to say, Mr. President, that this amendment has a lot of political sex appeal. You can go home and say, "Well, we have sure taken a crack at the narcotics business. We've put all our forces against them." Well, we might some day have to go to war. I hope we do not. But we have to maintain the military strength in this country or we are inviting war—not just war with narcotics but war with the real enemy. I am not saying we cannot accomplish this with the military. We may be able to and we probably can, but we cannot do it without a plan. I urge my friends on the floor who are running for reelection, who are backing this legislation, to get a plan and let us know what it is.

Mr. President, that is all I have to say on it. I yield the floor.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, I know that everyone would like to make this a short amendment, and so would I, but it is going to have to require a good deal of discussion, and this is not in any way to say it is going to take 4 or 5 hours. I do not intend that. But I really think we have to have everyone understand it and if they want to vote for it, that is fine.

Mr. President, I have been involved in trying to strengthen our domestic law enforcement in the narcotics field for a long time, in fact for about 12 years now. It was my amendment in 1981 that amended the original posse comitatus law. I went down and talked to the President about it. President Reagan had just come into office at the time we were proposing that legislation. We carefully amended that law to permit the military to assist domestic law enforcement in their surveillance, in their intelligence, in their communication, in their equipment, which they can do right now because of that legislation. We did it, though, without granting them the power of arrest. For over 100 years now, we have precluded the military from being domestic law enforcement agents. This amendment tonight by my good friend from Illinois repeals that concept totally. I know that there is every sincere effort behind this to curb drugs. I share the goal. We all have the same goal. We are talking about how we do it.

If President Reagan was here tonight asking the Senate of the United States to give him this authority, we would have a filibuster. We would have a filibuster. The only reason people are going to vote for this tonight is because they do not think he will use the power to do it. The reason we would have a filibuster is because it would be the largest grant of power in peacetime to a President of the United States that I can remember in the history of our country. Someone may think of another one. I cannot. This would permit any member of the Army involved in the pursuit of drug traffic on the ground, any member of the Air Force pursuing in an F-15, any member of the Navy pursuing in a ship, to make arrests of civilians without a warrant, without a warrant within the United States—in the United States. That is what we are granting.

If that is what we want to do, fine. I do not think I would get very good marks from the civil libertarian groups on that proposal.

Not only was it my amendment that amended the posse comitatus law, it was also my amendment that gave the Internal Revenue Service the mandate to begin working with domestic law enforcement on cash-flow cases. I do not think I got good marks from the ACLU on either one of those. But here we are tonight at 9:35 about to make the U.S. military law enforcement officials within the United States. That is what we are talking about. So this amendment is a serious amendment.

Let me just say that this amendment has greatly watered down the original Hunter amendment. But the Senator from Illinois and the Senator from New Mexico and the junior Senator from Florida, and others have said here on this floor that what they really support is the Hunter amendment. That has been said tonight. I am going to address my remarks to the Hunter amendment, recognizing that the Senator from Illinois has made changes in that but recognizing that if the only thing the Senator from Illinois wants to do, absent the right of arrest, is the watered down version he is presenting tonight, if he is not really for the Hunter amendment, what he wants to do then has already been done in the DeConcini amendment which we adopted. We had a rollcall vote on that. Everyone has already voted to get a plan from the military and to require the Secretary of Defense to have a plan about everything he can do to assist in law enforcement.

So I am saying that what we are really voting on tonight is the Hunter amendment. That is in the bill on which we are going to be going to conference. So if we vote for this amendment tonight, what we are saying is we are in favor of the Hunter amendment. That is the way I am taking it. Now, I understand the Senator from Illinois would argue the other side of that because in technical terms he has amended the Hunter amendment.

Mr. DOMENICI. Will the Senator yield for a question?

Mr. NUNN. Yes.

Mr. DOMENICI. The Senator mentioned the Senator from New Mexico was in support of the Hunter amendment. The Senator was not referring to this Senator.

Mr. NUNN. I meant to say the Senator from Arizona, the junior Senator from Arizona [Mr. DECONCINI]. If I said the Senator from New Mexico, I misspoke.

Mr. DOMENICI. I thank the Senator.

Mr. NUNN. I thank my friend for correcting me.

Mr. President, the Hunter amendment, which we will have in conference and which this amendment is going to be a symbolic vote toward, requires the President to engage the Armed Forces within 30 days, within 30 days. The DeConcini amendment we passed gave him 90 days to make a plan, but the Hunter amendment gives him 30 days to implement it. We do not even know what it is. Thirty days to locate, pursue and seize—to locate, pursue and seize all drug-carrying aircraft and vessels entering the boundaries of the United States. This includes, according to the definition as I would read it, the U.S. proper as well as Hawaii and Alaska, all of our States. Also it gives arrest authority—the Dixon amendment does this—arrest authority to the military for the warrantless arrest of crews of the ships and planes that they stop, including the right to follow these individuals in hot pursuit to effectuate their arrest.

For some reason the amendment omits the authority to arrest passengers on ships or planes who may be equally culpable in the drug smuggling. Only the crews. So if there were eight passengers on an airplane and a loading crew, they could not arrest those passengers, just the crew. We have to define what a crewmember is, I suppose, under the law. That is a good one for the lawyers to chew over.

Mr. WARNER. Mr. President, will the Senator yield for a question——

Mr. NUNN. I yield to my friend.

Mr. WARNER. Since he is addressing the Hunter amendment, I find in the amendment proposed by our colleague from Illinois an astonishing request, and I wonder if it is also in the Hunter amendment, and that request is that the National Guard and Reserves of the United States shall be employed under this amendment and the President is directed within 45 days to implement all these forces to stop the flow of drugs into the United States. Now, that is indeed a commendable goal. But if the National Guard does not comply with the orders, the amendment provides that if the State commander fails to cooperate, the funds are withdrawn by the United States of America to the National Guard and Reserves.

Mr. NUNN. The Senator from Virginia is correct, and that is not only in this amendment, it is also in the Hunter amendment.

Mr. WARNER. I hope every Senator takes the time to read this and I would certainly call your Governor and inquire if that is the obligation you want to put on your Guard and Reserve and to send these young men and women, members of the Guard and Reserve, out in hot pursuit, armed, against these drug traffickers, many of them having received little or no training in the military at the time they entered the Guard. And I do not not believe many Guard units train their personnel in connection with the pursuit of felons and the use of force and the making of an arrest.

□ 2140

Mr. NUNN. I say to the Senator from Virginia that I think it is indeed a paradox that we have had a filibuster threatened on the exclusionary rule, which employs a good faith kind of effort, instead of the present rule for domestic law enforcement, who are trained in law enforcement. We have had another filibuster threatened on any kind of change in habeas corpus, and another filibuster threatened on capital punishment. But this amendment gives the military the right, without warrant, with no training in law enforcement, no provision for training, within 30 days—they do not have time to get trained—to go out and start shooting folks down. There is no exclusionary rule for that. You just shoot them down—bang. They have to shoot quick because an F-15 cannot trail——

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator form Georgia has the floor.

Mr. WARNER. I ask another question of the Senator: Does he find in the Hunter amendment or the amendment at the desk any direction or qualification or definition of what is hot pursuit?

Mr. NUNN. There is no definition that I find.

Mr. DIXON. Addresed the Chair.

Mr. WARNER. Does the Senator find in there any direction or description as to the circumstances under which civilian authority is to provide for the arrest?

Mr. NUNN. There is no provision I know of in there.

Mr. WARNER. So, under this amendment, we are delegating to young, untrained members of the Armed Forces of the United States, Reserve and Guard, to determine for themselves what is hot pursuit and when force may be used.

Mr. NUNN. As I understand the amendment, the President of the United States could call up the Virginia National Guard and say: "Go get them, fellows; take your F-4's, F-15's, whatever aircraft you have. If you see a passenger plane coming in, you don't know what kind of authority it has, shoot it down. If you see a ship out there, maybe it's a yacht sailing around and lost, and if you think it has drugs on board, fire a torpedo, shoot it down. Don't worry about the exclusionary rule, habeas corpus, all those good things."

It might be the answer to capital punishment. Kill them before they are tried. [Laughter.] Do not worry about delays in the trial. Just shoot them down. I thought I was pretty tough on law enforcement until I saw this amendment.

Mr. DIXON. Mr. President, will the Senator from Georgia yield for a moment?

Mr. NUNN. Let me finish my remarks.

Mr. DIXON. I want to strike something out.

Mr. NUNN. I like it the way it is. Let us leave it the way it is for a few minutes, and then I will yield.

Mr. DIXON. I would like to strike that section from page 2.

Mr. NUNN. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Let us talk about it the way it is. I know that the Senator, if he had time, would probably change the whole amendment; and if he hears what we are going to tell him about the amount of military force required to carry out the intent of this amendment, I believe the Senator might reconsider it.

Mr. DIXON. If my friend from Georgia will permit me to interrupt—I have great admiration for him—I would like to strike out all the section challenged by the Senator from Virginia, so that it is no longer part of the debate, because I agree with my colleagues in respect to those lines, 18 through 22, on page 2.

I ask that those lines be stricken from the amendment.

Mr. NUNN. Mr. President, I yield to the Senator from Illinois for that purpose.

Mr. DIXON. I thank my friend from Georgia.

The PRESIDING OFFICER. Is the Senator from Illinois making the modification he has proposed?

Mr. DIXON. I ask for that modification, Mr. President.

The PRESIDING OFFICER. The amendment is so modified.

The modified amendment is as follows:

At the end of the amendment add the following:

(a) GENERAL REQUIREMENT.—

(1) AUTHORITY TO LOCATE, PURSUE, AND SEIZE AIRCRAFT AND VESSELS.—Within 30 days after the date of the enactment of this Act, the President shall deploy equipment and personnel of the Armed Forces to address the unlawful penetration of United States borders by aircraft and vessels carrying narcotics. Such equipment and personnel shall be used to locate, pursue, and seize such vessels and aircraft and to arrest their crews. Military personnel may not make arrests of crew members of any such aircraft or vessels after the crew members have departed the aircraft or vessels, unless the military personnel are in hot pursuit.

(2) RADAR COVERAGE.—Within 30 days after the date of the enactment of this Act, the President shall deploy radar aircraft in reasonably available numbers so that during the hours of darkness there is continuous aerial radar coverage of the southern border of the United States, to the extent possible.

(3) PURSUIT AIRCRAFT.—The President, to the extent possible also shall deploy sufficient numbers of rotor wing and fixed wing aircraft to pursue and seize intruding aircraft detected by the radar aircraft referred to in paragraph (2). The President shall use personnel and equipment of the United States Customs Service and the Coast Guard to assist in carrying out this paragraph.

(4) Use of National Guard and Reserves.—In carrying out this section, the President shall use members of the National Guard and the Reserves. The tours of such members shall correspond to their training commitments and shall be considered to be within their mission.

(5) Expenses.—The expenses of carrying out this section shall be borne by the Department of Defense.

(b) 45-Day Deadline.—The President, to the extent possible shall substantially halt the unlawful penetration of United States borders by aircraft and vessels carrying narcotics within 45 days after the date of the enactment of this Act.

(c) Report.—Within 60 days after the date of the enactment of this Act, the President shall report to Congress the following:

(1) The effect on military readiness of the drug interdiction program required by this section and the costs in the areas of procurement, operation and maintenance, and personnel which are necessary to restore readiness to the level existing before commencement of such program.

(2) The number of aircraft, vessels, and persons interdicted during the operation of the drug interdiction program and the number of arrests and convictions resulting from such program.

(3) Recommendations for any changes in existing law that may be necessary to more efficiently carry out this program.

(d) Request for Funding.—Within 90 days after the date of the enactment of this Act, the President shall submit to Congress a request for—

(1) the amount of funds spent as a result of the drug interdiction program required by this section; and

(2) the amount of funds needed to continue operation of the program through fiscal year 1987.

Such request shall include amounts necessary to restore the readiness of the Armed Forces to the level existing before commencement of the program.

(e) Budget Requests.—Beginning with the budget request for fiscal year 1988 and for each fiscal year thereafter, the President shall submit in his budget for the Department of Defense a request for funds for the drug interdiction program required by this section in the form of a separate budget function.

Mr. NUNN. Mr. President, what the Hunter amendment does—I argue, in all sincerity, that what we are voting on tonight is tantamount to the Hunter amendment. If this amendment is adopted, that is where we will be going next year.

What we are doing by legislative fiat is that we are declaring that the President should deploy the strategic defense initiative by Christmas, and then we could stop all the missiles coming in.

While we are doing that, we should legislate that by February, we abolish the common cold. I know the majority leader has one tonight.

That is what we are basically doing. We are not considering the ramification of this.

I think we should discuss this a few minutes.

I have a preliminary report from the Joint Chiefs of Staff, and I have to say that this is a very sketchy report. It may be that, after further study, this can be changed upward or downward; but because we have to consider this in a short time, my colleagues are at least entitled to know that the Joint Chiefs think this would require.

Mr. GRAMM. Mr. President, will the Senator yield for a question?

Mr. NUNN. I yield.

Mr. GRAMM. In looking at the mandate in this timetable, does this amendment contemplate the use of nuclear weapons? [Laughter.]

Mr. NUNN. I say to the Senator from Texas that it does not preclude it and does not mandate it.

Mr. WARNER. At that point, we have to allow the Senator from Illinois to clarify the amendment to exclude the use of nuclear weapons.

Mr. NUNN. There may be a case for the neutron weapons.

Let me say here what we have been told by the Joint Chiefs. This is a preliminary estimate.

The Air Force says that to cover the country as they are being mandated to do, they would be required to deploy 90 AWACS aircraft. That is our most sophisticated surveillance plane. To cover the borders, the Air Force estimates that 18 permanent orbits would be required. To cover those for 24 hours a day, five planes are needed for each orbit. That is what is required. We do not have 32 AWACS in the whole world. We would have to come up with 58 AWACS aircraft in 30 days. We might call this the Boeing amendment before it is over. [Laughter.]

Mr. MATTINGLY. Mr. President, will the Senator yield for a question?

Mr. NUNN. I yield.

Mr. MATTINGLY. There is something else that can be used, other than AWACS. What about the E-2-C's?

Mr. NUNN. I am glad the Senator brought that up. I will get to it. The AWACS have the big orbits. With the E-2-C's, they would have to have 88. There are currently only 85 E-2-C's in the entire Navy. So we would have to bring all of them home.

In fact, this makes the Mansfield amendment look like an aggressive, forward defense strategy. We will have to bring everybody home. We will have to bring the Navy home, because they will not have surveillance.

Let me go forward and describe it a little further.

The amendment would also require 180,000 hours of flight time. The Senator from Illinois is one of our outstanding Members who has spent a lot of time on the operation and maintenance. We have just seen the Appropriations Committee cut some $2.5 billion out of that account, and we know that will put a squeeze on operation and maintenance.

The Joint Chiefs estimate that it would require 180,000 hours of flight time. The current 1987 budget programs only 30,000 hours of flight time for all the AWACS aircraft we have in the world. Six times what we have programmed for next year is required just for this mission.

The Department of Defense, under this amendment, would use up the entire allotment of AWACS flying time in 51 days.

Such a proposal would also require four new operating locations with maintenance facilities. I might add that with such a level of operation, current reserve spare parts we have for AWACS would be depleted after 15 days. That would not leave us any for war. Maybe we can get the Russians to be nice guys and maybe we can protect the Middle East with friends there. Maybe we can pull back from the Pacific. That is basically what we are talking about here tonight.

Even if the amendment were changed to require interdiction of only the southern border—we eliminate the requirement that all the borders be protected—it would require 6 AWACS, with 5 planes on an orbit, for a total of 30 planes.

□ 2150

That would defeat the entire 1987 flight time program after 15 days.

Mr. BIDEN. Mr. President, will the Senator yield for a question?

Mr. NUNN. I can go on. It gets worse.

Mr. BIDEN. I have been here with the Senator from Georgia as long as he has been here and having witnessed a number of debates, I never witnessed the moral equivalent of the requirement of surrender here.

Would the Senator from Georgia allow the rest of the Chamber to surrender and vote with him and get on with the vote? His case is so overwhelming, so compelling, I do not know how anyone could vote for it, although it is enjoyable to listen to it. I think maybe we could suggest the sponsor of the amendment bring the amendment down and we can go with the rest of this vote.

Mr. NUNN. Mr. President, let me just give you a couple more statistics.

Mr. BIDEN. The Senator does not want to surrender.

Mr. NUNN. It would take 800 helicopters.

Mr. BIDEN. What does it take to get the Senator to stop?

Mr. CHAFEE. Is the Senator prepared to take a few prisoners?

Mr. NUNN. The F-15's have a problem. They cannot land on short airfields. You have to have helicopters and the helicopters have to be all over the United States so they can deploy within 15 to 20 minutes. Otherwise, they cannot get to the plane before the drugs would be unloaded even if the F-15 forces it down.

They would have to have some 800 helicopters and new bases all over the country and still have not done anything to protect the border from traffic of men coming across.

If we want to protect the Mexican border, we are going to have to spend, and that is not required in this amendment—I want to acknowledge that—if we want to protect the Mexican border we would have to move every U.S. Army division in the United States to the borders and deploy them and that probably still would not do it. It will take about 10 divisions. They would have to have probably 250 to 300 military bases.

To further clarify the helicopter requirement, there is an additional problem in the deployment of the helicopters that would have to be used to search and seize the drug smuggler once he has landed. Since the drug smugglers can land anywhere, DOD would have to establish bases throughout the United States so that they can quickly reach the downed plane before the drugs can be unloaded. DOD projects that the Blackhawks would have to be located no further than 75 nautical miles from potential landing sites to guarantee proper response time.

This will mean huge costs for logistics and support functions for these new helicopter bases. It also means that new bases would have to be established within the United States since drug planes commonly land in Tennessee, Virginia, and elsewhere. DOD estimates a minimum of 80 bases would be needed to meet this assignment. Of those 80 new bases, only 49 could be located at available civilian fields. The remaining 31 would have to be set up as tent cities within the domestic United States.

A minimum of 800 helcopters would have to be deployed to satisfy the amendment. This would amount to 56 percent of all available helicopter resources, including reserves, or 80 percent of the 1,000 active duty copters.

DOD would have to assign 7,400 MP's to man these helicopters for drug interdiction. This compares with a total complement of 13,600 MP's in the continental United States.

These MP's would be the best military personnel available for law enforcement purposes. Nevertheless, none of the MP's are trained for customs, maritime or civilian law enforcement tasks. For example, it takes 9 months currently for the Coast Guard to train their personnel for use on TACLETS teams on Navy ships.

Should military personnel begin making arrests, many troops would be further burdened by the requirement to appear as witnesses in often lengthy civilian drug trials. This could mean not only the MP's or TACLETS members but also the officers and crew of the ships or planes that participated in an interception.

Imagine the commander of an aircraft carrier in the Mediterranean having to return to Miami to sit in court for several weeks while the trial drags on or for pretrial proceedings.

Mr. LEVIN. Mr. President, I favor greater use of the military in the war against drugs. We should do so in a planned manner, as was called for by the DeConcini amendment, which I cosponsored and which was adopted earlier this evening. However, if a sincere attempt is going to be made to implement the Dixon amendment now before us, then I have some concerns about its implications for the normal operations of the military in meeting its present obligations. Senators GOLDWATER and NUNN amply described the practical problems with this amendment. Until those practical problems are addressed, I believe we have no choice but to table this amendment, although I generally support the direction in which it would move us.

Mrs. HAWKINS. Mr. President, 90 percent of the drugs consumed in the United States are produced abroad—this vicious white and green and brown tide poses a clear and present national security threat to America.

I told you about my trip to Guantanamo Bay in Cuba with the commandant of the Coast Guard to inspect vessels seized in "Operation Hat-Trick."

I spoke, Mr. President, about looking inside a shrimp boat and finding a bridge that looked like the control tower at Miami International Airport. There is no more glaring evidence than this that we are in a war. And we have no doubt, Mr. President, of who is winning a war. The forces of law and order are outspent, outmanned, and outgunned by the drug-lords. They control the seven seas and they are quickly gaining the upper hand on control of American airspace.

Mr. President, every day I receive a stack of letters. They tell me, Senator if you really wanted to stop the flow of drugs, you would take some real action. You would get the military involved. For years we have heard that we should "call out the troops" to help local and Federal officials fight the war on drugs. There are those who propose this as if it were a new idea. When the plain truth is that we have been talking about this and have had it at our disposal for years.

Last week I spelled out what the military is doing to help.

Navy and Air Force radar aircraft are flying missions to detect drug traffickers offshore in support of the Coast Guard and Customs Service.

Navy ships operating in coastal waters are constantly vigilant for suspect vessels and some carry Coast Guard tactical lawenforcement teams which board suspect vessels.

The Marines operate aircraft for night detection of drug smugglers.

Air Force aircraft are flying frequent training missions in support of the drug enforcement community.

According to a recent White House strategy report, the Air Force provided the Customs Service access to all information obtained from a joint surveillance military/civilian surveillance system and from two balloon-borne radars which provided coverage off the coast of my State of Florida.

Recent testimony in the Appropriations Committee went on for nine pages about DOD assistance to law enforcement.

Time after time, the Defense Department gives assurances—to the White House and to Congress. Still, the American people do not perceive that there is enough action. And I must say, neither do I. So much more can be done. Here are some facts, Mr. President:

First. There are an estimated 10,000 intruding aircraft per year that refuse to land at border airports. These intruders should be pursued. That averages out to about two drug planes per hour penetrating American airspace. These planes are small. They are slow. They could easily be picked up by military planes.

Second. Total coverage of the entire southern border during the hours of darkness would require six military E2-C's. Six planes could cover the entire southern border. There are now 83 of these planes in the military inventory. An there are only 24 currently deployed.

Third. Other equipment * * * F-4 fighters. There are currently 1,650 of them. OV-10 aircraft. There are 118 of them. Blackhawk helicopters. There are 335. These aircraft can chase and interdict drug-bearing planes.

The Pentagon continues to assert that it has little or no role in this war. That is not acceptable, Mr. President. The Congress did not go to the trouble of amending the posse comitatus just to have our wishes ignored.

The amendment we are introducing today calls for action and examines exactly where the DOD is falling down on its responsibility to fight the war on drugs. We will look at the assets that are available. And we will examine how they can be used. Armed with this evidence, Mr. President, the Congress and the American people will be in a position to demand specific involvement by the military.

As I said here on the floor earlier, Mr. President, perhaps we can stretch the definition of DOD responsibility.

Several Senators addressed the Chair.

Mr. LEAHY. Will the Senator yield?

Mr. NUNN. I yield the floor.

The PRESIDING OFFICER (Mr. WILSON). The Senator from Georgia has the floor.

Mr. NUNN. Mr. President, I yield.

Mr. LEAHY. Mr. President, will the Senator yield to me?

Mr. NUNN. I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I think we should conclude this debate promptly but on a very serious note. The posse comitatus law has been on the statutes of the United States for over 100 years. It has withstood the test of time, the stresses of major wars, and the impact on the civilian law enforcement, but the wisdom of the Congress to date has prevailed and that law should not be changed.

I urge the rejection of this amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President, I will be brief.

Mr. President, I am greatly concerned about our situation regarding drug trafficking. I am gravely concerned. I would go to almost any length to do whatever is necessary. But I certainly would not go into the military and take our men and our equipment. We have to turn somewhere else.

I have been connected with law enforcement officers and public servant people a long time. I am a former district prosecuting attorney, former trial judge, and I have been up here a good while.

I wish, above all things, that I would furnish a remedy on this drug matter. But I would not dare undertake this pattern of going this route. We will not only fail to get a remedy but we would destroy or greatly impair our regular military group.

So I warn that let us not make this error. It looks attractive on the surface, maybe, to some. But it will be a great mistake and will not accomplish good but would make us worse off than we were.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. GOLDWATER. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. (Mr. WARNER). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DIXON. Mr. President, I am perfectly prepared to vote on the motion to table.

The PRESIDING OFFICER. The Chair wishes to point out to the distinguished Senator from Illinois that a motion to table is not debatable.

Mr. DIXON. And this Senator wishes to point out to the President that this Senator knows that rule very well and this Senator has extended the courtesy to a great many Senators since he has served here to be briefly heard, and this Senator would like to be briefly heard before the motion to table is voted upon.

The PRESIDING OFFICER. It was not the intention of the Chair to be discourteous but merely to advise the Senator of the rules.

The majority leader.

Mr. DOLE. Mr. President, I ask unanimous consent he may have 5 minutes.

The PRESIDING OFFICER. Without objection, the Senator from Illinois has 5 minutes.

Mr. DIXON. Mr. President, there has been a degree of levity here about this particular amendment. This amendment that I have offered is substantially modified from what the House of Representatives has already done. All this talk about using all the AWACS and using all the airplanes and using all the troops has excited a good many Senators here. I see that.

But the fact is that all that my amendment does is permit the Government to employ the military as an exception to the posse comitatus law to interdict drugs coming into the United States and then only under the law of hot pursuit.

When someone says what is the law of hot pursuit, that matter has been passed upon thousands of times by thousands of courts in this country. There is absolutely nothing the matter with his amendment if folks in this Senate want to do something about drug interdiction into this country.

We are simply permitting the military in those cases of hot pursuit to enforce the law. We are not saying how many AWACS we use or how many other kinds of pieces of military hardware or equipment we might use.

Nothing like that is said in this bill. When my friend from Arizona said who is the boss on this plan, my answer is the amendment says the President is, the President of the United States.

When my friend from Arizona says where is the plan, the amendment spells out on page 2 that in 60 days the President of the United States will bring you the plan.

I say to my friends here that it is all very well to belittle what is being offered here in this amendment. The House has done something similar to this twice. I think that this law would be a reasonable one and it would be the most important single powerful weapon to deal with drug interdiction that this Senate could possibly consider.

I understand that, Mr. President, some others have asked to speak on my side. My distinguished friend from Arizona has asked to be heard. I would like to ask the indulgence of the Senate so that others who are of a like view to this Senator might be heard briefly on the subject.

Mr. DECONCINI. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DECONCINI. How much time remains?

The PRESIDING OFFICER. The time remaining is 2 minutes and 3 seconds.

Mr. DECONCINI. Mr. President, I guess I should be grateful and thankful and on and on about how nice it is the Senator from Illinois gets 5 minutes and I appreciate him very much yielding to me. You know, if we are going to play these tactics, as soon as we disagree with something on the floor we get recognition and then move to table, we can all play those games. We can all get tough and get our backs up and hang around here a real long time. I do not usually play that game and I believe in debate and then voting on it.

I happen to think the Senator from Illinois has offered a genuine amendment and those who disagree with it have a right to spell it out in levity or whatever way they want to do it.

To play that kind of game, it irritates this Senator so much, so I have not decided what I am going to do, if anything, and maybe nobody cares.

I do not appreciate the "unopportunity" for the Senator from Illinois and this Senator from Arizona, or anybody else around here, who might want to debate this in opposition to the armed services experts here. I recognize their expertise and particularly the President sitting in the chair right now.

But I think we have gone overboard to try to demonstrate how we are going to have to have 90 AWACS out there.

It did not say anything about 90 AWACS here. It talks about getting the sufficient number of rotar-wings and fixed-wings aircraft to pursue and seize interdicting aircraft detected by radar aircraft. It does not say that you have to have 90 out there.

The Senator from Georgia knows that as well as I do and besides the Air Force and the Army and the Navy and the Defense Department is against the Hunter amendment, so what kind of impartial report are you going to get. Just like when we were trying to put the P-3's in the Defense Department authorization who is here lobbying against it—Secretary Weinberger and Secretary Lehman?

They say we are for fighting drugs but we do not want to put in a couple more airplanes to detect them because our mission is something else. I mean we are for fighting drugs. I think the time has come to get tough like everybody says around here and what is the matter with telling the President to get tough. He is the one who has said he is going to get tough. He called drugs the No. 1 national security issue. It is not the Senator from Arizona saying that.

☐ 2200

So I think the Senator's amendment, as modified, makes some real sense. And I think we ought to look at it a little bit more carefully.

It says that the President shall deploy equipment and personnel of the Armed Forces to address the unlawful penetration of narcotics in the United States.

Why should the President not do that? And maybe he is. Maybe he will do some more if we pass this amendment.

It talks about radar coverage within 30 days after the date of enactment of this act. "The President shall deploy radar aircraft in reasonable available numbers."

Does that tell the President to put 90 AWACS up there? You know it does not.

It says pursuit. The Senator from Illinois pointed out very well what hot pursuit means. There is not anybody here or in law enforcement that does not know what hot pursuit is. It does not mean you are going to shoot them down out of the sky.

We had a candidate run in our State once for a law enforcement officer and he had a commercial about shooting down any airplane that flies in from Mexico if they did not identify themselves. Well, fortunately, nobody took him seriously, including the voters.

It says to use the National Guard and Reserve. We are talking about the Arizona National Guard that supposedly has no training; they do not know anything; they cannot stop people.

Well, what have they been doing at the Arizona National Guard is prepare to fight anyplace they are sent and to do any mission they have been told to do. That is what our Guard is for, to defend our country.

And this is a defense of something heinous. This is not just a political game on election night or election eve, as we all talk about it, because it is kind of ironic that we have had 2 years here. I have 10 years here and we never passed a major bill. There were some crime sentencing reforms that were pretty important.

The time is long overdue and I suggest that Members look at this. It is not going to cause us a great deal of harm to pass this amendment that the Senator from Illinois has offered and as he has amended.

I thank the Chair.

Mr. THURMOND. Mr. President, I ask unanimous consent to go for 2 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. GOLDWATER. I have moved to table. I call for the rule.

Mr. THURMOND. Mr. President, I ask unanimous consent to go for 2 minutes. As manager of the bill, I think I have a right to express my position on it.

The PRESIDING OFFICER. The Chair wishes to state that we are now 3 minutes beyond the time.

Is there objection on the part of anyone to that?

Mr. THURMOND. I ask unanimous consent——

The PRESIDING OFFICER. Is there objection to the request of the Senator from South Carolina?

Mr. DIXON. Mr. President, reserving the right to object.

Mr. President, the Senator from New York State, Senator D'AMATO, has come to the floor. He is a cosponsor and wanted to be heard. There are several people who support this amendment and want to be heard.

Now, I appreciate the attitude of those who do not support this amendment. But I have never, in the time that I have been here, tried to prevent someone from being heard on an issue that they cared about.

Before this debate started, this Senator offered to limit the debate on each side to 10 minutes a side. Now, the managers know that. If they want to cut off those of us who want to be heard on this issue, that is all right. There stands the Senator from New York State. Go ahead and cut us off. Some of us think we are right on this amendment.

Several Senators addressed the Chair.

Mr. THURMOND. Mr. President, as I said, let us give them all 2 minutes. Anybody that wants to talk, give them 2 minutes.

The PRESIDING OFFICER. The Chair recognizes the Senator from South Carolina.

Mr. THURMOND. I think that anybody who wants to talk, give them 2 minutes. It is a big issue.

Mr. GOLDWATER. What is the rule?

Mr. THURMOND. We want to save time. Some of them have talked too long here. But this is an issue of great importance.

The PRESIDING OFFICER. The Chair respectfully requests the Senator from South Carolina to specifically state his request to the Chair.

Mr. THURMOND. I just ask for 2 minutes on this bill.

The PRESIDING OFFICER. Is there objection to 2 additional minutes to be granted prior to the vote?

Mr. GOLDWATER. Mr. President, reserving the right to object.

Mr. D'AMATO. Mr. President, reserving the right to object.

Mr. GOLDWATER. Mr. President, I beat him to it. I do not want to object to the chairman asking for time, but then we are going to have requests from everybody on this issue. I think the rule of tabling calls for no debate. If we are going to break the rules, let us get started.

Several Senators addressed the Chair.

Mr. THURMOND. Mr. President, I am surprised that anybody would try to deny anyone the right to talk for 2 minutes on a bill as important as this. I do not care what Senator he is or who he is. You have a right to be heard in this body. I have not been heard. I am one of the managers of the bill.

The PRESIDING OFFICER. The Senate has before it a unanimous-consent request by the Senator from South Carolina to extend the time for debate for 2 minutes to each Senator desiring to address the bill. Is there objection?

Mr. GOLDWATER. I object.

The PRESIDING OFFICER. Objection is heard.

The Chair now rules that the question is on the motion to——

Mr. NUNN. Mr. President, I ask unanimous consent that each side be given an additional 3 minutes, with the Senator from South Carolina managing his 3 minutes and the Senator from Illinois managing his 3 minutes. I believe if we agree to this we will all get out of here a lot sooner.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Georgia?

Without objection, each side is granted 3 minutes.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I am going to take a very brief period to speak. I want to say first that, in my judgment, this amendment would impair law enforcement. In the second place, I think it will weaken our defense.

The Secretary of Defense is opposed to it. The administration is opposed to it. The armed services members are opposed to it. In my opinion, it will be a great mistake to do it.

I want to say further that the House has already included the Hunter amendment in this bill. The Hunter amendment goes too far now, and then this comes along and aids the Hunter amendment. How could we negotiate with the House if we add any more to the Hunter amendment? I think it would be a great mistake to do it.

I went for the DeConcini amendment. I felt that was reasonable. I think that is as far as we ought to go.

I am opposed to the Dixon amendment. It goes entirely too far. I think it is a dangerous amendment and should be defeated.

The PRESIDING OFFICER. The Chair recognizes the Senator from New York.

Mr. D'AMATO. Mr. President, I support this amendment, because it is about time we really use the resources of this country to wage a real war. We have talked a good game, but we have not committed the resources.

Eighteen thousand planes carry cocaine and other drugs into this country. We interdicted at a little more than 1 percent, 204. Most of those that we interdicted we found by accident, they crash landed in a field or the sheriff stumbled upon them.

It is a gross exaggeration made by the opponents to this bill. If you read the bill, it says the President will use radar aircraft and have it deployed when reasonably available—reasonably available. It says, to the extent it is possible, we will use these planes. It says the President, to the extent possible—possible—will meet these criteria.

There is no mandate for using 82 AWACS or 88 E-2C's.

The fact of the matter is 60 percent of the cocaine coming into the country comes in by air; 90 percent of that at night. The points that have been made in opposition do not take into consideration the fact that there is a real war being waged today. I say, let us use the military resources, because those planes that are carrying in their cargo of drugs are as deadly as any Soviets and they are bringing death and destruction to our neighborhoods. I think we have waited long enough.

If you give the military their option, they will not become involved at all. We have had to drag them, over the years, to come forward to say they are going to use their resources. I suggest that we get to the business of really mobilizing a real war.

I yield back the balance of my time.

The PRESIDING OFFICER. The Chair wishes to advise the Senate that the proponents have 1 minute and 16 seconds and the opponents 2 minutes and 10 seconds.

Who yields time?

SEVERAL SENATORS. Vote!

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. I yield back my time.

Mr. DIXON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on the motion of the Senator from Arizona [Mr. GOLDWATER] to table the amendment of the Senator from Illinois [Mr. DIXON]. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. COCHRAN], the Senator from Utah [Mr. GARN], the Senator from Washington [Mr. GORTON], the Senator from South Dakota [Mr. PRESSLER], the Senator from Indiana [Mr. QUAYLE], the Senator from Vermont [Mr. STAFFORD], and the Senator from Wyoming [Mr. WALLOP] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. BENTSEN], the Senator from Oklahoma [Mr. BOREN], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Massachusetts [Mr. KERRY], the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR], is absent because of death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 72, nays 14, as follows:

[Rollcall Vote No. 299 Leg.]

YEAS—72

Andrews
Armstrong
Baucus
Biden
Bingaman
Boschwitz
Bradley
Broyhill
Bumpers
Byrd
Chafee
Chiles
Cohen
Cranston
Danforth
Denton
Dodd
Dole
Domenici
Durenberger
Eagleton
Evans
Exon
Ford
Glenn
Goldwater
Gore
Gramm
Harkin
Hart
Hatch
Hatfield
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Laxalt
Leahy
Levin
Lugar
Mathias
Matsunaga
McClure
Melcher
Metzenbaum
Mitchell
Moynihan
Nunn
Packwood
Pell
Proxmire
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simpson
Specter
Stennis
Stevens
Symms
Thurmond
Trible
Warner
Weicker
Zorinsky

NAYS—14

Abdnor
Burdick
D'Amato
DeConcini
Dixon
Grassley
Hawkins
Long
Mattingly
McConnell
Murkowski
Nickles
Riegle
Wilson

NOT VOTING—14

Bentsen
Boren
Cochran
Garn
Gorton
Kennedy
Kerry
Lautenberg
Pressler
Pryor
Quayle
Simon
Stafford
Wallop

So the motion to lay on the table amendment No. 3059 was agreed to.

□ 2230

Mr. DOLE, Mr. MATTINGLY, and Mr. FORD addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, let me indicate that with some cooperation, we can finish here before midnight. It is going to take some cooperation. I know some Members have concerns they want to raise. Let me indicate again I do not know that this is going to be the perfect bill. I am not certain we have to do everything in this bill tonight. Maybe we can do it next year and not clean up everything this year. I would like passage of a drug bill in this Senate. We are very close.

We have the continuing resolution on Monday, Tuesday, and Wednesday of next week, probably Thursday. We have the trial. I would guess that whether we go out or not, the House is going to be itching to go out of here next week. If we go to conference on the House bill, we will have to finish this tonight. Let us see how far we can go in the next hour and if we are still a long way off—and some have some questions about how we are going to pay for this and I do not disagree with them.

Mr. BYRD. Mr. President, will the majority leader yield?

The PRESIDING OFFICER (Mr. TRIBLE). The minority leader.

Mr. BYRD. Mr. President, I have asked the distinguished majority leader to yield.

Mr. DOLE. I yield, Mr. President.

Mr. BYRD. I share the hope of the majority leader and I believe we have good reason to share that hope. May I say, though, about Monday, it is important, as the distinguished majority leader has said earlier, that we get amendments in early Monday on the continuing resolution, the chairman of the committee [Mr. HATFIELD] will have up the continuing resolution and the majority leader and I are hopeful that we can get action on amendments and hopefully stack votes on those amendments until about 4 o'clock.

I am encouraging our people, if they have amendments on the continuing resolution, to get them in early Monday. Let us not wait until 4 o'clock to start off with amendments, because we have a long way to go and many promises to keep.

So I am taking this occasion to say with the majority leader that we want to finish this tonight, at least have up until the final vote, and hopefully carry over the final vote with no amendments. But let us get our amendments in on the continuing resolution early on Monday.

Mr. DOLE. That is going to be critical. I am not certain we can honor the wish of many Senators to be protected until 4 o'clock. If the managers of the bill come over here and nobody will be here to offer amendments, it will be a little frustrating. Unless there are no amendments to the conference report, which will be the best of both worlds, but I assume there will be one or two.

Mr. WEICKER. Will the distinguished majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. WEICKER. I do not wish to mislead my colleagues, particularly the distinguished majority and minority leaders, but I have a problem. I may as well put it out on the table.

The fact remains that in this bill, there is $150 million additional money called for to provide funds for the local school districts to provide drug education programs. There is an additional $175 million being added to the ADAMHA block grant; $50 million of the $175 million goes directly to the block grant; $125 million goes to those States with a high incidence of drug abusers. We have an additional $50 million for the distinguished Senator from Ohio [Mr. METZENBAUM] all for a grand total of $375 million for the programs under my supervision in terms of appropriations.

I am up against my 302(b) allocation with not one nickel left. The distinguished chairman of the Appropriations Committee is not here, but I think I am safe to say, being a member of that committee, that the committee is up against its allocation as a whole. Unless somebody can tell me where we are going to get $375 milion, I am not going to be part of, nor will I permit that type of charade to take place. If this is important, if this is a priority, then I suggest that we not only give all the authorization and all the speeches and all the amendments, but we find $375 million for rehabilitation, for school education, and for the alcohol, drug abuse, and mental health block grant.

You go ahead and tell me if you have it. If it is new money, new allocations, whatever, fine, I have no problem. But right now that money is not here and my colleagues should know exactly where we sit on this matter.

Mr. EVANS. Will the Senator from Connecticut yield?

Mr. WEICKER. I will yield on the time of the distinguished majority leader. But the funding issue is my problem and I do not want the majority leader—who, I know, along with many others, has been pressing hard for this legislation—to all of a sudden come to the end of the amendments without my colleagues' understanding that this is a rather large problem that has not been faced up to and that everybody is going to object to the Senator from the State of Connecticut for holding them up from getting home. I do not know if anybody else feels as I do, but somewhere along the line, if it is important, pay for it.

I would like to yield for a minute or I hope the majority leader will yield to the Senator from Washington.

Mr. DOLE. We shall try to address that while we are taking up the next couple of amendments.

Mr. EVANS. Mr. President, I want to say I agree wholeheartedly with the Senator from Connecticut. I think he is absolutely right. This is not the only bill but the most egregious and recent one where we have just chosen to blithely pile on new responsibilities on Federal agencies and choose not to pay for them. Somehow, some way, we have to start paying for what we would like to spend.

I say to the Senator from Connecticut that I do have a way to pay for it. I have an amendment here that I am perfectly prepared to propose and I know very well what will happen to it. I cannot think of a better way to pay not only for what he has to do but for the other elements of the bill which add up to close to $700 million or $800 million in the next year and close to $1 billion in the years afterwards.

The administration does not like taxes very well. They want to duck and dodge and they have not provided any help or any ideas as to where to get money to pay for this bill. I cannot think of anything but what they do like and that is user fees. They seem to like user fees pretty well and I cannot think of a better user fee to help handle this situation than a slight increase on the other two addictive drugs used in this country.

This amendment calls for a 12.5-cent additional tax on beer, wine, and other spirits and tobacco to raise us close to $800 million in the first year and close to $1 billion in the years after this year. It fits in with precisely what we have to do. I am fully prepared to offer that and I have a suspicion that I know what will happen. But I am going to offer it unless somebody comes up with a better idea and somebody comes up with a good answer to the Senator from Connecticut.

Several Senators addressed the Chair.

Mr. DOLE. Mr. President, I am not going to yield any more. Let us go to debate on the amendment.

Mr. MATTINGLY addressed the Chair.

The PRESIDING OFFICER. Does the majority leader yield?

Mr. DOLE. I yield.

The PRESIDING OFFICER. The Senator from Georgia.

AMENDMENT NO. 3060

(Purpose: To provide for the imposition of the death penalty for certain continuing criminal enterprise drug offenses)

Mr. MATTINGLY. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Georgia [Mr. MATTINGLY], for himself, Mrs. HAWKINS, Mr. D'AMATO, and Mr. DENTON proposes an amendment numbered 3060.

Mr. MATTINGLY. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill add the following section:

SEC. . DEATH PENALTY FOR CERTAIN CONTINUING CRIMINAL ENTERPRISE DRUG OFFENSES.

(a) ELEMENTS OF OFFENSE.—Section 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended—

(1) by striking out "(a) Any" and inserting "(a)(1) Except as otherwise provided in this section, any" in lieu thereof;

(2) by striking out "; except that if" and inserting ". If" in lieu thereof; and

(3) by adding at the end the following:

"(2) If an individual intentionally engages in conduct during the course of a continuing criminal enterprise and thereby knowingly causes the death of any other individual, the individual so engaging shall be subject to the death penalty in accordance with this section.".

(b) PROCEDURE APPLICABLE WITH RESPECT TO THE DEATH PENALTY.—

"Hearing Required With Respect To The Death Penalty

"(d) A person shall be subjected to the penalty of death for any offense under this section only if a hearing is held in accordance with this section.

"Notice By The Government In Death Penalty Cases

"(e)(1) Whenever the Government intends to seek the death penaltiy for an offense under this section for which one of the sentences provided is death, the attorney for the Government, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court, and serve upon the defendant, a notice—

"(A) that the Government in the event of conviction will seek the sentence of death; and

"(B) setting forth the aggravating factors which the Government will seek to prove as the basis for the death penalty.

"(2) The court may permit the attorney for the Government to amend this notice for good cause known.

"HEARING BEFORE COURT OF JURY

"(f)(1) When the attorney for the Government has filed a notice as required under subsection (d) and the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury;

"(iii) the jury which determined the defendant's guilt has been discharged for good cause; or

"(iv) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the Government.

"(2) A jury impaneled pursuant to paragraph (1)(B) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than 12.

"PROOF OF AGGRAVATING AND MITIGATING FACTORS

"(g) Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), no presentence report shall be prepared. In the sentencing hearing, information may be presented as to any matter relevant to the sentence and shall include matters relating to any of the aggravating or mitigating factors set forth in subsections (j) and (k), or any other mitigating factor. Where information is presented relating to any of the aggravating factors set forth in subsection (k), information may be presented relating to any other aggravating factor. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The Government and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors, and as to appropriateness in that case of imposing a sentence of death. The Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the Government, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the information.

"RETURN OF FINDINGS

"(h) The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any mitigating factors, and any aggravating factors set forth in subsection (k), found to exist. If one of the aggravating factors set forth in subsection (k)(1) and another of the aggravating factors set forth in subsection (k), is found to exist, a special finding identifying any other aggravating factor may be returned. A finding of any aggravating or mitigating factor by a jury shall be made by unanimous vote. If an aggravating factor set forth in subsection (k)(1) is not found to exist or an aggravating factor set forth in subsection (k)(1) is found to exist, but no other aggravating factor set forth in subsection (k) is found to exist, the court shall impose a sentence, other than death, authorized by law. If an aggravating factor set forth in subparagaph (k)(1) and one or more of the other aggravating factors set forth in subsection (k) are found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"IMPOSITION OF SENTENCE

"(i) Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law.

"MITIGATING FACTORS

"(j) In determining whether a sentence of death is to be imposed on a defendant, the following mitigating factors shall be considered but are not exclusive:

"(1) The defendant was less than 18 years of age at the time of the crime.

"(2) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to the charge.

"(3) The defendant was under unusual and substantial duress, although not such duress as constitutes a defense to the charge.

"(4) The defendant is punishable as a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, although not so minor as to constitute a defense to the charge.

"(5) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of the offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"AGGRAVATING FACTORS

"(k) If the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the following aggravating factors shall be considered but are not exclusive:

"(1) The defendant—

"(A) intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury which resulted in the death of the victim; or

"(C) intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim.

"(2) The defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(3) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

"(4) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

"(5) In the commission of the offense or in escaping apprehension for a violation of subsection (a)(1), the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) The violation of this chapter in relation to which the conduct described in subsection (a)(2) occurred was a violation of section 405.

"(7) The defendant committed the offense in an especially heinous, cruel, or depraved manner.

"(8) The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(9) The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(10) The defendant committed the offense against a judge, a law-enforcement officer, or an employee of a penal or correctional institution, while that victim was performing official duties or because of that victim's status as a public servant of the United States, or a State or political subdivision of the United States. For purposes of this paragraph the term 'law-enforcement officer' means a public servant authorized by law to conduct or engage in the prevention, investigation, or prosecution of an offense.

"INSTRUCTION TO JURY ON RIGHT OF THE DEFENDANT TO JUSTICE WITHOUT DISCRIMINATION

"(1) In any hearing held before a jury under this section, the court shall instruct the jury in its consideration of whether the sentence of death is justified it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury shall return to the court a certificate signed by each juror that consideration of race, color, national origin, creed, or sex of the defendant was not involved in reaching his or her individual decision.

"SENTENCING IN CAPITAL CASES IN WHICH DEATH PENALTY IS NOT SOUGHT OR IMPOSED

"(m) If a person is convicted for an offense under subsection (a)(2) and the court does not impose the penalty of death, the court may impose a sentence of life imprisonment without the possibility of parole.".

"APPEAL IN CAPITAL CASES

"(n)(1) In any case in which the sentence of death is imposed under this section, the sentence of death shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time prescribed for appeal of judgment in section 2107 of title 28 of the United States Code. An appeal under this section may be consolidated with an appeal of the judgment of conviction. Such review shall have priority over all other cases.

"(2) On review of the sentence, the court of appeals shall consider the record, the evidence submitted during the trial, the information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under this section.

"(3) The court shall affirm the sentence if it determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of every aggravating factor upon which the sentence was based, together with the failure to find sufficient mitigating factors as set forth or allowed in this section.

In all other cases the court shall remand the case for reconsideration under this section. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence.".

Mr. MATTINGLY. Mr. President, I hope we shall be able to dispose of this amendment in a relatively short period of time. I rise to urge the support of my colleagues for a death penalty amendment. I believe that it is a very essential component of any serious, comprehensive effort to control drug trafficking in this Nation.

The bill which we have before us does enhance this Nation's law enforcement capabilities. It provides for stricter penalties for those who engage in the illegal drug trade. I support these. But I believe that if we mean business, if we expect to stop the violent criminal activities of the drug kingpin, then we cannot withhold the ultimate judicial sanction. We must make the death penalty available against this menace of society who wantonly kills, who will stop at nothing to turn a profit and who jeopardizes the welfare of the Nation.

As my colleagues know, I have previously introduced legislation which would make the death penalty available to juries in certain cases. And the Republican Drug Control Act, S. 2850, also contains such a provision.

My colleagues are also aware that earlier this month the House of Representatives, by an overwhelming vote of 296 to 112, approved a death penalty for drug dealers amendment offered by Representative GEKAS. At last, the full House was afforded an opportunity to pass judgment on the issue. The statement was emphatic, and I believe it accurately represents the sentiment of the majority of Americans. This amendment is identical to the House language.

We have been told by some of my Senate opponents that we must not attempt to include a death penalty sanction in this bill because it is controversial and they have threatened to filibuster the bill and therefore kill the bill! Mr. President, the actions of these murderous drug kingpins are controversial. More than that, they are outrageous. And they cannot be tolerated in this society. Those dealers must know that they cannot expect to kill and to destroy without jeopardizing their own lives.

I firmly believe that this amendment serves as a deterrent. These drug kingpins, as I have suggested before, are in the trafficking business for one reason—to turn a profit. No matter what the cost and no matter who they injure or kill. In assessing their activities, I believe they will weigh the risks of death against the profits. The possibility of the loss of their own life is indeed a heavy risk. We must remember that the types of criminals about which we are speaking today are cold and ruthless.

One clear example of a murder that can be tied to drug kingpins was the killing several years ago of Federal District Judge John Wood in Texas. The judge was murdered by a hit man who was allegedly working on behalf of a major drug dealer named Jimmy Chagra. Judge Wood had been involved as a judge in some prosecutions of Chagra's narcotics operations. Chagra himself was acquitted of murder, but three others, including Chagra's brother and sister were convicted of offenses relating to Judge Wood's murder. It is significant to note that Chagra has since been indicted for the attempted murder of an assistant U.S. attorney who was the chief narcotic prosecutor in San Antonio.

This illustrates clearly, I believe, that the vicious actions of major drug dealers are deliberate, and not the result of passion. But of one thing we can be certain. Imposing and carrying out the death penalty is a 100-percent guarantee that one drug dealer at least will be permanently deterred from such future activities.

Again, Mr. President, let me clarify for my colleagues that this amendment targets kingpins, those who intentionally kill in the course of a continuing drug enterprise, the Mr. Bigs, those individuals who put the public at risk daily, who would kill anyone—a law enforcement officer, a judge, a prosecutor—who would stand in the way of their enterprise. And that enterprise itself is deadly. It enslaves our children, killing some of them. It undermines the very values which bind this Nation together and which we hold dear.

Mr. President, this amendment is critical because it will demonstrate to the American people whether or not we are serious about ridding America of the scourge of drugs. If we are interested in effective action more than rhetoric, we must approve this amendment. Let us face facts. Drug kingpins and killers are the enemies of this Nation. We are engaged in war with them. We must make available to ourselves the best and most effective weapons. In my view, that is what this amendment would accomplish, and I urge its adoption.

□ 2240

Mr. D'AMATO addressed the Chair.

The PRESIDING OFFICER. The Senator from New York (Mr. D'AMATO).

Mr. D'AMATO. Mr. President, I rise to support my colleague, Senator MATTINGLY, in this amendment, which calls for the death penalty for those who are involved in a continuing criminal enterprise, who either themselves carry out a killing or more often than not have someone from their organization undertake the killing or death of another individual.

Mr. President, I believe we erred when we did not support the use of the military. I think the interdiction of the drug runners becomes difficult, if not impossible, without the use of those military resources.

But there is another area where we can do something, where we can say that we give more than rhetoric and lip service, or that when we identify those continuing criminal enterprises, as we are beginning to do, when we target the leaders, when we are able to turn someone who has been caught and get them to cooperate for fear that they will face incarceration for the rest of their life—and under this bill, if this bill is passed, this proposal, the fear that they themselves may have to forfeit their lives—it will make much easier the task of our law enforcement agencies to get to the heart of those criminal enterprises.

I believe that this legislation can be used very successfully in beginning to make it possible for us not only to get the street level dealers, the middlemen, so to speak, but to make it possible for us to penetrate with the fear of that death penalty those who have intentionally carried out a murder. And we have had many occasions where law enforcement officers have picked up the triggermen or those who ordered the hit, and with the possibility of the death penalty facing them I believe the opportunity for us to get the higher-ups becomes a more substantial probability.

There is another side to this, and Senator MATTINGLY touched on it. These people are bringing death and destruction to our communities. They are poisoning the environment for our youngsters. They have no compunction in terms of ordering the elimination of those who pose a threat to their enterprise, whether it is law enforcement officers or whether it is others who are interfering in their territory or whether it is to enforce their code of violence, to see to it that they are more effective. They are ruthless and life means little, if anything, to them.

In New York, it is not uncommon to pick up the paper and see two, three, four, five, six people in a family wiped out—women, children. Can anyone here really say that someone who has ordered the execution of people in cold blood, including men and women, should not be subjected to the death penalty?

I do not believe that our society should countenance that and I do believe it is long past time for us to say that we will enact legislation that will give to our law enforcement officers the tools to pierce those veils of secrecy and yet to get to not only the executioner but to the person who set in motion those executions.

I hope we pass this amendment and give some substance to our desire to undertake a successful battle against those who bring drugs into our country and those who traffic in drugs once in our borders.

□ 2250

Mrs. HAWKINS. Mr. President, I applaud the comments of the Senator from Georgia [Mr. MATTINGLY] and the Senator from New York [Mr. D'AMATO].

The time has come this morning to discuss the most controversial aspect of the drug bill. There are those who would strike out the death penalty provision. There are those who tell us that they will filibuster for this provision. There are those who would offer eloquent justifications and appeals here on the floor. I would like to counter with the voice of the people. We do not hear from the people very much. We have been here on the floor all day today and many days previous to this.

However, in anticipation of this issue coming to the floor, I sent out an alert to my constituents. I wanted to hear from the people who put me here. I must say, Mr. President, that the response has been remarkable.

We all know that drugs are on the minds of the American people. But until you actually hear from them directly, you never know the anger, the frustration, the fury, and the fear. These letters are raw. I could bring huge boxes of them here. They are equal in eloquence to everything we are going to hear on the floor on this subject this evening. This is the voice of the American people. I urge my colleagues to listen:

> Dear Senator Hawkins . . . If we do not use stronger medicine we shall never succeed . . . The Congress should enact a new law lifting temporarily the present right of individuals caught in financing, pushing, selling or smuggling drugs . . . The verdict should be life imprisonment or execution by firing squad or hanging all this done within one week . . . Of course, such an action would bring a howl of protest from our super-liberals who prefer to protect the criminals, and from lawyers who receive very large fees from these criminals . . . Why should we, in the name of humanity, hesitate to get rid of a few worthless individuals if we can eradicate their horrible trade.

> Dear Senator Hawkins . . . As with anything you want to stop, you have to get to the source of it. That means death to the pushers. Which is more important? Protecting the pushers (who don't care anything about our country) or protecting the future of a great country that is rapidly falling apart. Wake up Congress, get your heads out of the sand and do something before it's too late.

> Dear Senator Hawkins . . . As an ex-Special Agent, FBI, I know that if the prospect of big money is great enough, many criminals will risk being caught . . . Drug importers and dealers actually are selling poison to the public—including our children—I suggest that you introduce legislation making the punishment fit the crime. It should have a salutory effect by making headlines throughout the nation, making it quite clear that we are no longer so concerned with rehabilitating drug operators as we are with exterminating them without mercy.

> Dear Senator Hawkins . . . Here's what I know (not what I think). I support immediate penalties . . . For example a dope seller, death immediately. This is war you know. Let's quit these baby antics! Please Paula Hawkins how can I help? I hate drugs and I wish I knew some formula to fight this war. In the mean time, Please ask our judges to do their most precious duty.

> Dear Senator Hawkins: The drug abuse effort is for the birds as it stands now. The only language those criminals understand is drastic measures. They are the scum of humanity, there is not one ounce of decency left in them. The best way to deal with them is put them to the nearest wall and let them have it. After all, they deal in murder themselves.

I have more, Mr. President, many more. I have stacks of letters in my office just like these. Their sentiment could not be expressed any more clearly by any Member of this body. The American people have had it. They are fed up, and they are angry. They want action, and they want it now. They believe that the time for talk ended.

The American people are ready for this bill and the changes it offers. While I know that many of the people's legislators in this body might feel differently, I hope that hearing their cries for help will make each Senator think twice. I hope we will vote for the death penalty, the only cure for an ailment that is killing this Nation.

Mr. LEVIN. Mr. President, this is a complicated amendment. The amendment raises a lot of questions and should be considered in detail. Twenty minutes of debate is not enough.

It is deserving of debate and considerations by the Senate.

I therefore oppose tabling the amendment. Many others who oppose the death penalty also oppose tabling this amendment.

Mr. EAGLETON. Mr. President, in 1972, the Supreme Court struck down virtually every death penalty statute in the country, holding that they created a substantial risk that the punishment would be imposed in an arbitrary, capricious, and discriminatory manner. More recently, in the case of Zant versus Stephens the Supreme Court held that the single most important function of a constitutional death penalty scheme is that it provides some guidance to the jury in deciding who should live and who should die.

Mr. President, this death penalty scheme is so broadly written that it fails to provide the type of guidance that the Supreme Court has said is constitutionally required.

I suggest my colleagues read on this subject matter "Capital Punishment in the United States" by Professors Bowers and Pierce (1980).

I will vote to table the Mattingly amendment.

Mr. DURENBERGER. Mr. President, I rise to oppose with all the conviction I possess, this ill-timed, unfounded, and unconscionable amendment to this antidrug bill. Addition of a death penalty to this amendment to this bill is the ultimate attempt to rush an extremely controversial choice through while the attention of the Nation is distracted.

Let me begin by sharing with my colleagues a few paragraphs that appeared on January 24 in Time magazine:

> The chair is bolted to the floor near the back of a 12-ft. by 18-ft. room. You sit on a seat of cracked rubber secured by rows of copper tacks. Your ankles are strapped into half-moon-shaped foot cuffs lined with canvas. A 2 in.-wide greasy leather belt with 28 buckle holes and worn grooves where it has been pulled very tight many times is secured around your waist just above the hips. A cool metal cone encircles your head. You are now only moments away from death.
>
> But you still have a few seconds left. Time becomes stretched to the outermost limits. To your right, you see the mahogany floor divider that separates four brown church-type pews from the rest of the room. They look odd in this beige Zen-like chamber. There is another door at the back through which the witnesses arrive and sit in the pews. You stare up at two groups of fluorescent lights on the ceiling. They are on. The paint on the ceiling is peeling.
>
> You fit in neat and snug. Behind the chair's back leg on your right, is a cable wrapped in gray tape. It will sluice the electrical current to three other wires: Two going to each of your feet, and the third to the cone on top of your head. The room is very quiet. During your brief walk here, you looked over your shoulder and saw early morning light creeping over the Berkshire Hills. Then into the silent tomb.
>
> The air vent above your head in the ceiling begins to hum. This means the executioner has turned on the fan to suck up the smell of burning flesh. There is little time left. On your right, you can see the waist-high, one way mirror in the wall. Behind the mirror is the executioner standing before a gray marble control panel with gauges, switches and a foot-long lever of wood and metal at hip level.
>
> The executioner will pull this lever four times. Each time 2,000 volts will course through your body, making your eyeballs first bulge, then burst, and then broiling your brains. * * *

This description brings home what we are debating today. It is not neat, clean, and painless. Society putting another human being to death is messy, painful and inhumane.

My opposition to this bill is a manifestation of my belief in the unique worth and dignity of each person from the moment of conception, a creature made in the image and likeness of God. It is particularly important that this belief be affirmed with regard to those who have failed or whose lives have been disturbed by suffering or hatred, even in the case of those who by their actions have failed to respect the dignity and rights of others. This recognition of the dignity of all human beings is a compelling factor in my decision to oppose this measure—we should be unwilling to treat as expendable the lives of even those who have taken human life.

By enacting this legislation, we would be refuting the dignity of human life and sanctioning the current trend of the State's toward increased executions. If we extend this trend to the level necessary to make the capital system viable, the execution rate would have to rise significantly above that countenanced in modern times. Before there could be any reduction of the death row population, which is now over 1,000, it would be necessary to kill 200 defendants each year just to offset the new arrivals on death row. In the decade of the 1960's, prior to the moratorium on execution, there was an average of 19.1 executions per year. The sixties were atypical, however, because of the developing moratorium and the large number of steps leading up to it. Potentially more representative are the 1950's, when the average number of executions per year was 72, or in the 1940's, when it was 128. The 1930's had the highest annual rate, with an average of 152 executions per year. During this period, from 1936-66, the public support for the death penalty fell consistently. Is it going to be different when as a nation we begin to approach 200 executions per year? No; the moral consensus of society will be an abhorrence of these executions, and today, we have a chance to be in the vanguard of public opinion and send a message to the States against capital punishment.

I regret that the vehicle to send this message is a bill that would reinstitute capital punishment. We should be debating a measure that would abolish capital punishment. As the U.S. Catholic Bishops stated:

> Abolition would send a message that we can beat the cycle of violence, that we need not take life for life, that we can envisage more humane and more hopeful and effective responses to the growth of violent crime. It is a manifestation of our freedom as moral persons striving for a just society. It is also a challenge to us as a people to find ways of dealing with criminals that manifest intelligence and compassion rather than power and vengeance. We should feel such confidence in our civic order that we use no more force against those who violate it than actually required.

Although the compelling reason I oppose this bill is my commitment to the value and dignity of human life, other grounds exist for rejecting this measure.

I oppose the bill because a compelling rationale for the death penalty does not exist. Proponents of the death penalty say that the presence of the possibility of death will deter criminals from their murderous acts. There is no solid evidence to support this contention and common sense should tell us that this is not the case. We are talking about murderous criminals, people who have the capacity to kill another human being are not held by the rational constraints that bind the rest of us. Can you honestly say that a person who is about to pull the trigger will pause and say to himself that he should stop because of the remote possibility that he could be put to death? You and I know that just does not happen.

Since deterrence is not a basis for capital punishment, what about an eye for an eye or in technical terms the retribution theory? Admittedly, capital offenders should be punished for their crimes, but is one murder vindicated by committing a second murder? I think not. In fact, it has been argued that the second murder is more reprehensible because it is officially sanctioned and done with great ceremony in the name of us all. This second killing is worse than the first. Murder committed by the psycopath or the cold-blooded killer is a random event not subject to control, but a well-orchestrated modern execution is well thought out and is horrible because the Government is always in control; it knows better, but kills anyway.

The legal history of our country's struggle with the death penalty is well known. Significant progress has been made to eliminate the imposition of the death sentence in an unfair and discriminatory manner. Currently, if specific evidence of bias or discrimination in sentencing can be provided for particular cases, the higher courts will not uphold sentences of death in these cases.

But we must also reckon with a legal system which, while it does provide counsel for indigent defendants, permits those who are well off to obtain resources and the talent to present their case in as convincing a light as possible.

The legal system and the criminal justice system both work in a society which bears in its psychological, social, and economic patterns the mark of racism. These marks remain long after the demolition of segregation as a legal institution. The end result of all this is a situation in which those condemned to die are nearly always poor and are disproportionately black. Thus, 47 percent of the inmates on death row are black, whereas only 10 percent of the American population is black.

Admittedly, abolition of the death penalty will not eliminate racism and its effects, an evil which we are called to combat in many different ways. But it is a reasonable judgment that racist attitudes and the social consequences of racism have some influence in determining who is sentenced to die in our society. This I do not regard as acceptable.

In advocating my opposition to this bill, the argument about the possibility of mistake cannot be overlooked. As Senator LEVIN has so thoughtfully reiterated on this floor, our judicial history contains examples of people sentenced who later were proven to be innocent of the crimes for which they were convicted. Carrying out the death sentence leaves no margin for error where errors have been proven to exist. Additionally, inflection of the death penalty extinguishes possibilities for reform and rehabilitation for the person executed. It cuts off the possibility of a new beginning and of moral growth in a human life which has turned away from the inherent capacity for good, which we are born with, to evil.

I vote no on this amendment, thereby affirming my commitment to the sanctity of human life in all its stages. I do not wish to equate the situation of criminals convicted of capital offenses with the condition of the innocent unborn or of the defenseless aged or infirm, but I do believe that the defense of life is strengthened by eliminating the possibility of judicial authorization to take human life.

Mr. HATFIELD. Mr. President, drug use and drug trafficking are two of the most serious problems facing our society. The drug problem is a constant drain on the productivity and health of our Nation's people. Neither the young, old or middle aged are exempt from the sinister arm of the drug-dealer which reaches into the homes and hearts of Americans and turns them upside down. The drug pusher does not care whether you are rich or poor, educated or uneducated or whether you have a family, a job or are carrying a baby. The drug pusher first wants your interest, then your money and eventually he wants your life.

There is no question that short of a national mobilization against this problem, it will continue to grow like an insidious cancer. Eventually, if unabated, this cancer will spread to such a degree that it will suffocate the creative resources and productivity that energizes our societal life. Action must be taken to excise this cancer. Congress must play a key part in this effort. The drug bill before us can be an important step. It authorized needed assistance to Federal, State, and local officials for drug enforcement, drug education and drug rehabilitation.

Mr. President, while I support efforts to combat the growing drug problem, I am deeply concerned over several amendments being discussed to the proposed Senate bill, particularly the establishment of a Federal death penalty. In our fervor to "get tough on drugs," we must guard against adopting any means to achieve that end. In addition, the nationwide clamor for action on the drug problem, must not be used as a smoke screen for enacting judicial reforms many of us believe pose serious constitutional and moral questions. Such issues require full and fair debate. And I fear, Mr. President, such consideration is impossible during the closing days of the 99th Congress, given the list of "must pass items." This "take it or leave it" mentality will place Senators and Representatives in the dangerous position of supporting drug legislation that sacrifices the rights and liberties of Americans under the guise of wiping out drugs. After all, no one wants to look "soft on drugs."

Mr. President, during the debate in the House of Representatives on a death penalty amendment to the drug bill, proponents referred to it as the "ultimate weapon," and that it is part of the great movement in the war against drugs. Well, Mr. President, I resent the death penalty being used as a litmus test for one's commitment to fighting the drug problem or to the sanctity of life. My record clearly shows a consistent commitment to the sanctity of life and it is that very commitment that underlies my adamant opposition to capital punishment. The death penalty brings into sharp focus the matter of a society's adherence to the sanctity of life and the responsibilities incumbent upon all of us to protect this precious grant from our Creator.

Mr. President, we live in a world of constant danger. All of us long to live our lives in peace. We long to rid the world and our society of the threat of war and violence, and to find someway to reduce the tension between the superpowers that keeps this world an impulse away from nuclear holocaust.

As Americans, we consider ourselves the principle peacemakers. Our 210 year history distinguishes the United States as a peace seeking country, and this quest for peace is undergirded by our strong sense of repulsion each time a sovereign state is attacked or occupied by tyrants, tyrants whose respect for life extends only as far as their own self-interest.

But I am here today to say that those proclamations for peace are hypocritical. I do not believe peace is possible abroad when there is violence at home. I do not believe the United States will ever be at peace with any country until it is at peace with itself. And we will never be at peace with ourselves until we cease destroying life and cease enhancing our capabilities to exterminate all life.

While abortion has assumed the status of the most visible agent of violence in America, it is by no means the only permissible campaign against life taking place in America. For the last several years the electric chairs have been smoking from exhaustion as more and more States turn to capital punishment to satiate the public's desire for vengeance against criminals who commit brutal acts of violence. Since the Supreme Court's decisions upholding the constitutionality of certain State death penalty procedures in 1976, 47 executions have taken place in the United States. Well over half of the executions have taken place since 1983. Clearly the pace is quickening.

The resurgence of the use of capital punishment is but a symptom of a deeper problem. I believe this resurgence is a reflection of a new mean spirit sweeping across America. Ignited by a frustration over the growing drug problem and the high level of violent crime in our Nation, this new mean spirit renounces reconciliation and instead heralds confrontation. Look at the state of our legal system. Our courts are suffocating under piles of pleadings of lawyers who help people litigate instead of mediate.

This spirit of confrontation instead of cooperation, this spirit of aggravation instead of reconciliation, condone the taking of life as a means of embracing life. It responds to violence by engaging in violence. In my view, Mr. President, if we believe in the sanctity of all human life, then no premeditated taking of life is justifiable. I have come to this position based on my observations as Governor and Senator of crime and punishment.

Mr. President, my experience with the death penalty spans over a quarter of a century. As the newly-elected Governor or Oregon in 1958, I had to make probably the most agonizing decision of my political career in ordering an execution. The State of Oregon had in place a death penalty statute at that time and the people of Oregon were on record as being opposed to the repeal of that statute. However, as Governor, I possessed the power to commute the sentence of that man who had been sentenced to death.

I spent hours in prayer and in deep personal anguish regarding the decision set before me. I could either commute the sentence under the legal power vested in me as Governor, or uphold the State's constitution which, under oath, I had committed myself to uphold. After much soul-searching, I decided that the trust that the people had placed in me to represent their will must be honored, notwithstanding the conflict of that choice with my own personal convictions. As Governor, I believed this fulfilled my constitutional responsibility to carry out justice on behalf of the people of Oregon. I do not believe, Mr. President, I would make that same decision today.

During my tenure in the Senate, I have confronted repeatedly this issue on the policy level. Legislation to establish a Federal death penalty has been pending in the Senate since the 93d Congress. The Senate has twice voted on death penalty legislation, but Congress has taken no final action. I have listened to the arguments raised by proponents of the death penalty and remain unconvinced. At the heart of it all, Mr. President, is my view that the death penalty is immoral, unconstitutional and lies outside the legitimate authority of government.

Let me turn now to discuss briefly several reasons which buttress my firm opposition to the death penalty.

First, the sentence of death has not been proven a successful deterrent. Any thoughtful examination of deterrence exposes the truth of the matter. By and large people who commit the heinous crimes for which they might get sentenced to death either expect to get away with it or they act under pressures of the moment. Those who expect to get away with it, need to know they will not. They need to know they will be caught and punished severely. However, in this case, life imprisonment should provide a sufficient deterrent.

In the case of unpremeditated murders, good common sense is proof enough. These murders are deterred by nothing. They do not give detached, introspective reflection to the consequences of their actions. They are persons ruled by impulses, and because the sentence of death only applies to criminals who commit especially heinous crimes, they are persons often mentally or emotionally impaired, alienated from society themselves. For these persons, it is hard to imagine how any punishment, however, severe, would be a deterrent.

Empirical studies examining State homicide rates have led to inconclusive results. States that have abolished the death penalty generally have not shown a statistically significant increase in their homicide rate. In fact, one study with which I am familiar showed that Michigan, which did away with the death penalty, had an identical homicide rate to its neighboring States which kept their execution statutes. However, there are other studies that point in the other direction. The facial logic of deterrence is undeniable. The effectiveness of deterrence, on the other hand, is negligible at best.

Second, Mr. President, the sentence of death has been handed out in such an arbitrary manner that it perverts even the most rudimentary notions of justice. This arbitrariness is demonstrated by a reported case in which one codefendant was executed while his equally guilty fellow offender was eligible for parole in 6 years. Another illustrative example involved a case in which the triggerman in a murder got a term of life imprisonment while the nontriggerman was executed. Justice Brennan, in the famous *Furman* v. *Georgia* case, framed this issue as follows:

> When the punishment of death is inflicted in a trivial number of the cases in which it is legally available, the conclusion is virtually inescapable that it is being inflicted arbitrarily. Indeed, it smacks of little more than a lottery system.

A lottery system Mr. President. This is the concept Justice Brennan has chosen to describe the death penalty in America. Who are the losers of this lottery? The poor, the uneducated, those criminals lacking the resources necessary to garner the legal representation available to the lottery winners.

Justice Marshall in a speech before the Judicial Conference for the Second Circuit, pointed to the following two aspects as further exacerbating the problem:

> First, capital defendants frequently suffer the consequences of having trial counsel who are ill-equipped to handle capital cases. Death penalty litigation has become a specialized field of practice, and even the most well-intentioned attorneys often are unable to recognize, preserve and defend their clients rights.

Justice Marshall continues:

> The second problem relates closely to the first. It involves what I have called the Rush to Judgment—that is, the willingness of the courts and the State governments to expedite proceedings in order to bring about speedy executions. I would have thought that cases involving the death penalty might receive especially cautious handling and attention to minimize errors. The reality, however, is exactly the opposite. Contrary to popular perceptions, all capital defendants have not spent years filing frivolous claims in Federal courts. Many of these defendants have not yet filed any federal claims when their execution dates are set.

Who are the losers Mr. President? They are those unable to afford expert counsel both before and after receiving their death sentence. They are those who are on death row, not by virtue of the severity of their crime, but because of the inequitable nature of the system.

One need not be a Justice of the Supreme Court or a constitutional scholar to recognize the arbitrary manner in which the sentence of death is imposed. If any pattern is to be gleaned from the individuals waiting on death row, it is one based on race and nationality. Statistics compiled nationally from 1930 through 1967 reveal that black persons, although never exceeding more than 12 percent of the population, constituted over 53 percent of all those executed during this period. Today, there are approximately 1,800 inmates on death row. According to the NAACP Legal Defense Fund, over 41 percent of those inmates are black.

A 1983 study by Prof. David C. Baldus examined the discrimination question from a different angle. His study found that if a murder victim was white, the defendant's changes of being condemned to die were twice as high as those of a defendant whose victim was black. Other more recent studies of death sentences in selected States also found that blacks convicted of killing whites were more likely to receive the death penalty. Clearly, Mr. President, racial prejudice continues to taint our criminal justice system through which convicted persons are sentenced to death.

The Supreme Court has agreed to review this issue during its upcoming term. The case, *McCleskey* v. *Kemp*, will give the Court a chance to examine what is in my view, a clear case of discrimination in the application of the death penalty. It is my hope that the Justices will concur in the circuit court's opinion, and declare the Georgia statute unconstitutional and effectively remove this stain on our Nation's collective conscience.

The third objection I would like to raise is that I oppose the death penalty because the sentence of death is an inappropriate response to this Nation's malfunctioning criminal justice system. The public cries for a meaningful penalty for a murderer, and the criminal justice system responds with a "life imprisonment" sentence which is something far less than life imprisonment. A 1984 Justice Department study found that among 840 convicted murderers sentenced to life imprisonment, the median time served was only slightly more than 5 years. That is the problem, Mr. President.

Twenty years ago public opinion polls on the death penalty showed 45 percent of Americans were in favor and 43 percent were opposed. Today these polls are reporting that 72 percent of the public favor the penalty of death. Why the change Mr. President? Has there been a dramatic moral shift in favor of capital punishment? Possibly, but I think not. Americans are simply fed up with our corrections system and see the death penalty as the only viable alternative to protect our society. A recent Gallop Poll indicated that support for capital punishment would drop by 16 percentage points if life imprisonment meant simply that.

Such frustration on the part of the American people is understandable. Our corrections system is our of control. Today it is bursting at its seams and ready to explode because of overcrowding. The year 1985 marked another record year for incarcerations. By the end of the year over 500,000 persons were behind bars. The increase for 1985 brought the total growth in the prison population since 1977 to over 200,000, an increase of 68 percent in 8 years. Thirty-four States reported operating at approximately 100 percent or more of their highest capacity. Because of overcrowding 29 of 52 jurisdictions reported prison backups early releases.

Spending for prisons and jails rose 50.9 percent during the first part of the decade. A recent Bureau of Justice statistics report found that $170 per American was spend on police, courts and prisons. The cost of feeding and housing a prisoner has reached $15,000 to $20,000 annually. In my home State voters have turned down four prison bond measures since 1980. In announcing his resignation, a former superintendent of the Oregon State Penitentiary, summarized the situation as follows, "The whole criminal justice system in this State is near collapse and nobody's doing anything about it, so I am just going to leave."

It is no wonder that the public has turned to the death penalty as the panacea for our crime and corrections ills. Such problems, however, do not provide sufficient justification for opting for execution instead of life imprisonment. Let us keep in mind that of the over 500,000 people in prison, only 1,800 of them are on death row. On the other hand, about half of this Nation's prison population is serving time for nonviolent offenses.

If we are to address the overcrowding question and the skyrocketing costs of the system, we should begin with the nonviolent offenders, and not by cranking up the electric chairs. Community service, restitution and other alternatives forms of punishment provide viable options to incarceration, options which both insure public safety and save the taxpayers millions of dollars. You could execute all the prisoners on death row and the crisis in our corrections system would virtually remain unchanged.

Mr. President, there is no one in this chamber that grieves more at the taking of life than I do. Murderers and violent offenders belong in prison and should stay there. It is the lack of coordination in the corrections system that has led to the early release and liberal parole programs. Under these programs the life sentence has been distorted to the point that a murderer is out on the street within 5 to 7 years. However, Mr. President, I am convinced that if life imprisonment meant "for life," the penalty of death would find far few supporters.

Let me reiterate that these issues of deterrence, discrimination and corrections are secondary to my deep conviction that the death penalty lies outside the bounds of a government's moral authority. It adds to the further erosion of the sanctity of at a time when we desperately need to reaffirm the value of life.

In conclusion, Mr. President, there is no question that there is a rampant drug problem in America today. Action by the Congress on drug legislation which is both affordable and constitutional can be a critical step toward making progress in our fight against drug use and abuse. The establishment of the death penalty will not solve the drug problem. Drug dealers and traffickers have the vast resources necessary to hire the best lawyers able to work the legal loopholes necessary to avoid the severest of punishment. I strongly object to any amendment to establish a Federal death penalty under the guise of the war on drugs and the preservation of life. It will serve neither purpose.

Thank you Mr. President.

Mr. COHEN. Mr. President, just a few moments ago, I heard the distinguished majority leader indicate that he wants a drug bill this evening, or at least a bill that is in such form that by Monday at some time we can vote final passage.

I think the subject of capital punishment is an important issue, and it is one that is deserving of eloquence on both sides. Unfortunately, it is 5 minutes to 11, Saturday night, and there are many Members in this Chamber who would like to take a long time to address the issue of capital punishment.

The Senator from Georgia believes that fundamentally it is a strong deterrent. I think there are other Members in the Chamber who feel that it is not a strong deterrent, or at least that there is no evidence that it is a strong deterrent, or who can make arguments that we should not return to the Code of Hammurabi, a code of justice we deem to be something less than enlightened.

It is a debate that should take place, but not at 5 minutes to 11, under the pressure of passing this bill this evening, or coming close to passing it this evening.

Mr. President, I move to table the Mattingly amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

Mr. THURMOND. Mr. President, will the distinguished Senator yield?

The PRESIDING OFFICER. The motion is not debatable. A motion has been made to table the Mattingly amendment. (Putting the question.)

Mr. MATTINGLY addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MATTINGLY. Mr. President, I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Mississippi [Mr. Cochran], the Senator from Utah [Mr. Garn], the Senator from Arizona [Mr. Goldwater], the Senator from Washington [Mr. Gorton], the Senator from South Dakota [Mr. Pressler], the Senator from Indiana [Mr. Quayle], the Senator from Utah [Mr. Stafford], and the Senator from Wyoming [Mr. Wallop] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Texas [Mr. Bentsen], the Senator from Oklahoma [Mr. Boren], the Senator from Massachusetts [Mr. Kennedy], the Senator from Massachusetts [Mr. Kerry], the Senator from New Jersey [Mr. Lautenberg], and the Senator from Illinois [Mr. Simon] are necessarily absent.

I also announce that the Senator from Arkansas [Mr. Pryor] is absent because of a death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 25, nays 60, as follows:

[Rollcall Vote No. 300 Leg.]

YEAS—25

Andrews
Boschwitz
Burdick
Chafee
Cohen
Cranston
Danforth
Durenberger
Eagleton
Evans
Glenn
Harkin
Hart
Hatfield
Inouye
Mathias
Matsunaga
Melcher
Metzenbaum
Mitchell
Pell
Proxmire
Sarbanes
Stennis
Weicker

NAYS—60

Abdnor
Armstrong
Baucus
Biden
Bingaman
Bradley
Broyhill
Bumpers
Byrd
Chiles
D'Amato
DeConcini
Denton
Dixon
Dodd
Dole
Domenici
Exon
Ford
Gore
Gramm
Grassley
Hatch
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Johnston
Kassebaum
Kasten
Laxalt
Leahy
Levin
Long
Lugar
Mattingly
McClure
McConnell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Riegle
Rockefeller
Roth
Rudman
Sasser
Simpson
Specter
Stevens
Symms
Thurmond
Trible
Warner
Wilson
Zorinsky

NOT VOTING—15

Bentsen
Boren
Cochran
Garn
Goldwater
Gorton
Kennedy
Kerry
Lautenberg
Pressler
Pryor
Quayle
Simon
Stafford
Wallop

So the motion to lay on the table amendment (No. 3060) was agreed to.

□ 2310

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MATTINGLY. Mr. President, I believe that the Senate has very clearly spoken out on the death penalty amendment. I think we have stated that the ultimate judicial sanction, the death penalty, should be available in cases where the drug kingpins involved in continuing criminal enterprises intentionally cause the death of another.

We have indicated that we concur with the decision made in the House when it overwhelmingly approved the Gekas amendment.

Mr. President, as I said, we have had our vote. The Senate has spoken. I will shortly withdraw my amendment.

Before I do, I want to say that I believe the Senate has sent a very strong signal to the Senate conferees that we believe that the Senate should accept the House provision on the death penalty. I hope that we have that assurance.

Mr. President, understanding that the opposition would filibuster and kill this vital bill before they would allow the Senate to work its clear will up or down, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

AMENDMENT NO. 3061

(Purpose: To restore the Federal Pre-Trial Diversion Program)

Mr. DeCONCINI. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. DeConcini], for himself and Mr. Leahy, proposes an amendment numbered 3061.

Mr. DeCONCINI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

In Subtitle B—Drug Possession Penalty Act of 1986.

Sec. 1052—Penalty for Simple Possession: Redesignate (b) as (c) and add the following new (b):

(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this subchapter or subchapter II of this chapter, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

(2) Upon the dismissal of such person and discharge of the proceedings against him

under paragraph (1) of this subsection, such person, if he was not over twenty-one years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the Department of Justice under paragraph (1)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-one years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The PRESIDING OFFICER. The Senate will be in order. Senators are asked to take their seats.

Mr. DeCONCINI. Mr. President, I hope the managers will accept this amendment.

Mr. BIDEN. Mr. President, the minority is happy to accept the amendment. I think it is a good amendment.

Mr. DeCONCINI. Mr. President, this amendment reinstates a program that has been part of the judicial system for 16 years. Without hearings on excluding it, it has been taken out. It has worked well that we know of. We have had no objections or criticisms. I think, before we talk about eliminating a positive program in the Justice Department, that we ought to hold hearings.

□ 1120

And I hope the managers of the bill could——

Mr. CHAFEE. Mr. President, we are unable to hear the Senator from Arizona.

The PRESIDING OFFICER. The Senate is out of order.

Mr. CHAFEE. I wonder if he can use the microphone.

The PRESIDING OFFICER. We also ask Senators to take their seats. Those Senators—the Senator will suspend. Those Senators engaged in conversation are asked to retire to the cloakroom. Those Senators who are standing are asked to take their seats. The Senator from Arizona.

Mr. DeCONCINI. I thank the Chair.

Mr. President, as I was saying, this amendment before us puts back into the law the way it is right now the program that is termed "pretrial diversion." It is a very important and successful program and has been part of our criminal justice system for 16 years. It has worked well. I did not realize when we put this bipartisan package together that this was taken out. The new fine that is in for the first time of the person who is diverted is in this new amendment. So there would be the $1,000 fine if this program goes into effect.

Mr. President, we have had no hearings. Actually I have had no complaints that this program has ever been misused or abused. It has worked in my State. I started one in my State. It has been most successful. It worked in the State of the Senator from Vermont. The Senator from Vermont is one of the national leaders in this area. So you can spend the time to prosecute and have the police going after the big drug dealers.

I regret that this is even brought up tonight. I think the managers did not intend for it to be part of that. I hope they will accept my amendment that would reinstate the present law with the fine.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, there are serious questions about this amendment on both sides. At any rate, we will accept it, and take it to conference.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 3061) was agreed to.

Mr. DeCONCINI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DeCONCINI. Mr. President, I thank the managers of the bill.

AMENDMENT NO. 3062

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I send an unprinted amendment to the desk in behalf of myself, and Mr. MATTINGLY, Mr. DENTON, Mr. MURKOWSKI, Mr. BINGAMAN, Mr. WILSON, Mr. TRIBLE, and Mr. SYMMS, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself, and Mr. MATTINGLY, Mr. DENTON, Mr. MURKOWSKI, Mr. BINGAMAN, Mr. WILSON, Mr. TRIBLE, and Mr. SYMMS proposes an amendment numbered 3062.

Mr. DOMENICI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. 4016: EFFORTS OF THE ENTERTAINMENT INDUSTRY

It is the sense of Congress that, whereas illegal drug consumption and the trafficking in those illegal drugs is a major problem in the United States; whereas this problem is particularly prevalent among and harmful to the Nation's young people; and whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country, the entertainment industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and the entertainment industry further is encouraged to develop films, television programs, records, and videos which encourage the rejection of illegal drug usage.

The PRESIDING OFFICER. The Senator will suspend until the Senate is in order. The Senate will be in order.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have one additional amendment that I will offer later. But I say to the Senators that when I offer it, I will attempt to explain the requests for additional funds in this bill. Although this bill is authorizing legislation, I do have the funds authorized listed in categories so that the Senate will know what it is doing in defense, what it is doing in transportation, and what it is doing in health and human services et cetera. But that is not this amendment. I will do that when it is my next turn.

This is a very simple amendment. It is a congressional resolution. It expresses the sense of Congress that the entertainment industry should take certain steps to assist us in curbing drug use. It requests the industry to refrain in a voluntary manner from producing films, and TV programs which galmorize drugs. This resolution passed the House. It is acceptable to the manager and the ranking member.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on this amendment?

Mr. WEICKER. Yes, Mr. President. I wonder if we could have the amendment read to us.

Mr. LEAHY. May we have order?

Mr. STENNIS. Mr. President, can we suspend until we have quiet? We need to hear.

Mr. WEICKER. I ask that the amendment be read. I realize it is late at night. But when I hear words like we are going to have a sense-of-the-Senate resolution telling a particular institution within our society what it can or cannot do, we are sort of getting into the free speech area. That is why I want to read this amendment. If the clerk would please read it, I would appreciate that.

Mr. DOMENICI. Mr. President, why not do this? While the Senator reads it, I ask unanimous consent that my amendment be set aside temporarily and that we proceed to another. We can return to mine after the Senator has had time to read it.

The **PRESIDING OFFICER.** Is there objection to that request? Without objection, it is so ordered.

AMENDMENT NO. 3063

(Purpose: To add provisions regarding testing, licensing and qualification of operators of commercial motor vehicles)

Mr. **DANFORTH.** Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER.** The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. DANFORTH] proposes an amendment numbered 3063.

Mr. **DANFORTH.** Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered,

The amendment is as follows:

TITLE—COMMERCIAL MOTOR VEHICLE SAFETY

SHORT TITLE

SEC. —01. This title may be cited as the "Commercial Motor Vehicle Safety Act of 1986".

PURPOSE

SEC. —02. The purpose of this title is to enhance the safe operation of commercial motor vehicles on the Nation's highways by developing national uniform standards for the testing, licensing, and qualification of commercial motor vehicle operators, and by increasing inspections of commercial motor vehicle operators and the equipment they operate.

DEFINITIONS

SEC. —03. As used in this title, the term—

(1) "commerce" means—

(A) trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside of the United States); or

(B) trade, traffic, or transportation in the United States which affects any trade, traffic, or transportation described in subparagraph (A);

(2) "commercial motor vehicle" means any self-propelled or towed vehicle used on highways in commerce to transport passengers or property if—

(A) such vehicle has a gross vehicle weight rating of twenty-six thousand and one or more pounds, or such lower weight rating (not less than ten thousand pounds) as the Secretary considers appropriate;

(B) such vehicle is designed to transport more than fifteen passengers, including the driver; or

(C) such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.);

(3) "controlled substance" shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6));

(4) "employee" means an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety;

(5) "employer" means any person engaged in a business in commerce who owns or leases a commercial motor vehicle in connection with such business, or assigns employees to operate such vehicle;

(6) "Secretary" means the Secretary of Transportation; and

(7) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or the Commonwealth of the Northern Marianas.

NATIONAL UNIFORM COMMERCIAL MOTOR VEHICLE OPERATORS LICENSE

SEC. —04. (a)(1) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which establish minimum Federal standards for the licensing, testing, qualifications and classification of operators of commercial motor vehicles. Such regulations shall, at a minimum—

(A) prohibit any person who operates a commercial motor vehicle in commerce from possessing more than one license to operate a commercial motor vehicle;

(B) establish minimum Federal standards for written tests and driving tests of persons who operate such vehicles;

(C) require a driving test of each person who operates or will operate a commercial motor vehicle in commerce in the type of vehicle such person operates or will operate, except the Secretary may, by regulation, permit any State to waive such test in the case of any such person who applies for renewal of a license to operate a commercial motor vehicle;

(D) establish minimum scores for passing such tests;

(E) ensure that each person taking such tests is qualified to operate a commercial motor vehicle in commerce under regulations promulgated under this section, regulations contained in subpart E of part 391 of title 49 of the Code of Federal Regulations, and such other Federal Motor Carrier Safety Regulations contained in title 49 of the Code of Federal Regulations as the Secretary considers appropriate;

(F) establish a schedule of offenses and corresponding suspensions, revocations and cancellations for cause of licenses to operate commercial motor vehicles, which shall include requirements for the prompt suspension, for a period of not less than one year, of the operator's license of any individual who is determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit to such a test or who is found to be operating a commercial motor vehicle while under the influence of a controlled substance or who refuses to submit to such a test, and for the immediate revocation of the operator's license of any individual who has been twice determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who has twice refused to submit to such a test, or who has been twice determined to have operated a commercial motor vehicle while under the influence of a controlled substance or who has twice refused to submit to such a test;

(G) establish a system of classification for licensing that provides different minimum Federal testing standards for operation of different classes of commercial motor vehicles; and

(H) provide that each license to operate a commercial motor vehicle shall contain, at a minimum—

(i) the legal name, date of birth (including day, month and year) sex, and a physical description of the person to whom such license is issued;

(ii) other identifying information which the Secretary considers necessary or appropriate;

(iii) the type of commercial motor vehicle which such person is authorized to operate under such license;

(iv) the name of the State which issued such license; and

(v) the dates between which such license is valid.

(2) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which shall be in addition to regulations promulgated under paragraph (1) of this subsection and which shall establish minimum Federal standards for the licensing, testing, qualifications and classification of any person who operates or will operate a commercial motor vehicle carrying a hazardous material (as defined in section 103(2) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1802(2)). Such regulations shall—

(A) ensure that such person is qualified to operate a commercial motor vehicle in accordance with all regulations pertaining to motor vehicle transportation of such hazardous material issued by the Secretary under the Hazardous Materials Transportatiopn Act (49 App. U.S.C. 1801 et seq.);

(B) establish minimum Federal standards for, and scores for passing, written tests which ensure that such person is knowledgeable regarding (i) all such regulations, (ii) the basic properties and handling of such hazardous material, and (iii) the appropriate response to emergencies arising out of the transportation of such hazardous material; and

(C) establish minimum Federal standards for driving tests which ensure that such person is knowledgeable regarding the type of vehicle that such person operates or will operate and regarding the safety system of such vehicle.

The Secretary may exempt any such person from any requirement of this title if the material to be transported is a hazardous material listed pursuant to section 306(a) of the Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Department of Transportation, or if the material to be transported is a consumer commodity or limited quantity hazardous material, as defined in section 171.8 of title 49 of the Code of Federal Regulations.

(3)(A) Section 521(b) of title 49, United States Code, is amended—

(i) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(ii) by inserting immediately after paragraph (11) the following:

"(12) The provisions of this subsection shall apply to any violation of the Commercial Motor Vehicle Safety Act of 1986, except that—

"(A) the amount to be assessed under this subsection for any such violation shall not exceed $5,000 for each such violation; and

"(B) the exceptions regarding employees in paragraphs (2) and (6) of this subsection shall not apply to any violation of the Commercial Motor Vehicle Safety Act of 1986, but (i) in the case of paragraph (2) of this subsection, the amount to be assessed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation, and (ii) in the case of paragraph (6) of this subsection, the penalty to be imposed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation or imprisonment for a term not to exceed one year, or both.".

(B) The Secretary shall establish guidelines for civil and criminal penalties to be imposed by the States for a violation of this subsection. Such penalties shall not exceed $5,000 for each such violation, and shall not provide for imprisonment of more than one year.

(b)(1) No person may operate a commercial motor vehicle in commerce unless such person—

(A) complies with all requirements imposed by regulations promulgated under subsection (a) of this section; and

(B) has a blood alcohol content level of less than 0.04 percent while operating a commercial motor vehicle.

(2)(A) Except as provided in subparagraph (B) of this paragraph, paragraph (1) of this subsection shall become applicable with respect to any person who operates or will operate a commercial motor vehicle in commerce on the date on which the State in which such person is domiciled adopts a classified licensing program under subsection (c)(1) of this section or September 1, 1989, whichever is earlier, except that, with respect to a person to whom a license to operate a commercial motor vehicle has been issued on or before such applicable date, who has not been found to have violated a State or local law relating to motor vehicle traffic control (other than a parking violation) in the three-year period ending on such date, and who has not been disqualified by the Secretary pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle in commerce or has had a license to operate a commercial motor vehicle suspended, revoked or cancelled for cause at any time during such three-year period, paragraph (1) of this subsection shall only take effect on the date after such date on which—

(i) such license is required to be renewed under State law,

(ii) such person is found to have violated such a State or local law, or

(iii) such person is disqualified pursuant to title 49 of the Code of Federal Regulations by the Secretary from operating a commercial motor vehicle in commerce and has had such person's license suspended, revoked or cancelled for cause by a State,

whichever is earliest.

(B) If any such person is not domiciled in a State that has adopted such a classified licensing program, the Secretary may, in accordance with regulations to be prescribed by the Secretary, permit such person to obtain a license to operate a commercial motor vehicle from any State that has adopted such a program.

(c) On or before September 1, 1989, each State shall, at a minimum—

(1) adopt and administer a classified licensing program for the issuance of licenses to operate commercial motor vehicles that includes testing and qualification standards for persons who operate commercial motor vehicles in commerce in accordance with all of the minimum Federal standards established by the Secretary under subsection (a) of this section, which program (A) may include standards for its domiciliaries that are more stringent than the minimum Federal standards established by the Secretary under subsection (a) of this section; and (B) shall provide that such State shall recognize any license issued by another State if such license meets all of the Federal minimum standards established by the Secretary under subsection (a) of this section;

(2) not issue a license to operate a commercial motor vehicle to a person unless such person passes a written test and driving test for the operation of a commercial motor vehicle which complies with such minimum standards and complies with all requirements imposed by regulations promulgated under subsection (a) of this section;

(3) ensure that each classified license to operate a commercial motor vehicle contains the information described in subsection (a)(1)(H) of this section;

(4) until the information system established under section —05 of this title provides a means of rapid communication of the information specified in such section, (A) notify the Secretary, before the issuance of a classified license to operate a commercial motor vehicle, of the proposed issuance of such license and such other information as the Secretary may require to ensure identification of the person applying for such license; (B) within 30 days after issuance of a classified license to operate a commercial motor vehicle, notify the Secretary of the issuance of such a license; and (C) maintain information regarding and, upon the request of another State, transmit to such State or, upon the request of an employer or prospective employer, transmit at such State's option to such employer or prospective employer, to the extent permitted by law, information regarding (i) any suspension, revocation or cancellation for cause of such a license and any disqualification pursuant to title 49 of the Code of Federal Regulations of the holder of such a classified license from operating a commercial motor vehicle for a period of 60 days or more, (ii) a decision to deny for cause a license to a person applying for such a license, or (iii) the conviction of the holder of such a classified license of any of the offenses specified in section —05(b)(2) of this title;

(5) when the information system established under section —05 of this title allows for the rapid communication of information, comply with the requirements of all regulations within such time periods as the Secretary establishes under section —05(d) of this title, including a requirement that the State shall respond to all requests for information from employers;

(6) before issuance of a classified license to operate a commercial motor vehicle, contact any other State which has issued to such person such a license to determine the driving record of such person and, if the State determines as a result of such contact that such person has been disqualified pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle by the Secretary, or has had a license suspended, revoked or cancelled for cause for violation of an offense pursuant to subsection (a)(1)(F) of this section, within three years before application has been made for such a classified license, not issue such a classified license to such person;

(7) not issue a classified license to operate a commercial motor vehicle to any person to whom such a license has been issued by any other State unless such person first returns such license issued by such other State;

(8) prior to issuing a classified license to operate a commercial motor vehicle to any person, consult the National Driver Register established pursuant to the National Driver Register Act of 1982 (23 U.S.C. 401, note) (after such Register is determined by the Secretary to be operational) to determine whether such person has either been disqualified from operating a motor vehicle other than a commercial motor vehicle, or has had a license other than a license to operate a commercial motor vehicle suspended, revoked or cancelled for cause, within three years before application has been made for such a classified license, or has been convicted of any of the offenses specified in section 205(a) of the National Driver Register Act of 1982 and, if the State is informed that such person has been so disqualified or convicted or such license has been suspended, revoked or cancelled for cause, not issue a classified license to operate a commercial motor vehicle to such person;

(9) impose such penalties for a violation of subsection (a) of this section as the State determines appropriate, if such penalties are the same as or more stringent than the guidelines established by the Secretary in subsection (b)(3)(B) of this section; and

(10) suspend, revoke or cancel, in accordance with subsection (a)(1)(F) of this section, a license to operate a commercial motor vehicle.

(d)(1) The Secretary may make a grant to a State in a fiscal year if the State enters into an agreement with the Secretary to comply with all provisions of subsection (c) of this section.

(2) The amount of a grant under this subsection to any State shall not be less than $100,000 in any fiscal year.

(3) The Secretary may not make a grant to any State under this subsection unless such State agrees that the aggregate expenditures of funds of the State, exclusive of Federal funds, for testing and licensing of operators of commercial motor vehicles will be maintained at a level which does not fall below the average level of such expenditure for the last two fiscal years preceding the date of enactment of this Act.

(4) A State which received a grant under this subsection may use the funds provided under such grant only for testing and licensing of operators of commercial motor vehicles.

(5) A grant made under this subsection shall be for a period of 1 year.

(6) Funds made available to carry out this subsection shall remain available for obligation by the Secretary for the fiscal year in which such funds are made available and the three fiscal years after such fiscal year.

(7) There shall be available to the Secretary to carry out this subsection—

(A) $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) for each of fiscal years 1987, 1988, 1989, 1990, and 1991; and

(B) after deducting the amount permitted under section 402(c) of title 23, United States Code, $3,000,000 from funds made available to carry out section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration, for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

(e)(1) The Secretary shall withhold highway funds from any State that is not in compliance with this section after September 30, 1992.

(2) The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c) of this section (other than a requirement of subsection (c)(10) of this section).

(3) The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second fiscal year beginning after September 30, 1992, and the first day of each fiscal year thereafter, in which the State does not comply with any requirement of subsection (c) of this section (other than a requirement of subsection (c)(10) of this section).

(4)(A) The Secretary shall withhold 2 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(B) The Secretary shall withhold not less than 2 percent nor more than 5 percent, as the Secretary determines to be appropriate, of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second through fifth fiscal years beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(C) The Secretary shall withhold not less than 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the sixth fiscal year, and each fiscal year thereafter, beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(5)(A) Any funds withheld under this subsection from apportionment to any State after September 30, 1992, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(A) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(5)(B) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(iii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) If, before the last day of the period for which funds withheld under this subsection from apportionment are to remain available for apportionment to a State under subsparagraph (A) of this paragraph, the State complies with the provisions of this section, the Secretary shall, on the day following the date on which such State complies, apportion to such State the withheld funds remaining available for apportionment to such State.

(C) Any funds apportioned pursuant to subparagraph (B) of this paragraph shall remain available for expenditure as follows:

(i) Funds apportioned under section 104(b)(5)(A) of title 23, United States Code, shall remain available until the fiscal year succeeding the fiscal year in which such funds are so apportioned.

(ii) Funds apportioned under section 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) of title 23, United Staes Code, shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse.

(D) If, at the end of the period for which funds withheld under this subsection from apportionment are available for apportionment to a State under subparagraph (A) of this paragraph, the State has not complied with the provisions of this section, such funds shall lapse.

COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM

SEC. —05. (a) Not later than January 1, 1989, the Secretary, after consultation with the States, shall cause to be in operation an information system pertaining to the driving status and licensing of operators of commercial motor vehicles. The information system shall serve as a clearinghouse by which the States may communicate rapidly concerning the licensing, identification and driving records of operators of commercial motor vehicles.

(b) The information system established under this section shall—

(1) provide for a depository of information that will, at a minimum, include (with respect to each operator of a commercial vehicle)—

(A) the birth date and physical description of such operator, and any other information which the Secretary considers necessary or appropriate to identify specifically such operator;

(B) the address of such operator; and

(C) all States in which such operator currently has a license to operate a commercial motor vehicle; and

(2) provide a system of communication among States that, at a minimum, shall provide exchange of information specified in paragraph (1) of this subsection and information regarding whether such operator has been denied a license to operate a commercial motor vehicle, has been disqualified by the Secretary pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle, has had a license suspended, revoked or cancelled for cause, or has been convicted under the laws of any State for (A) operating a commercial motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; (B) violating a traffic rule or ordinance arising in connection with a fatal traffic accident, reckless driving, or racing on the highways and involving a commercial motor vehicle; (C) failing to render aid or provide indentification when involved in an accident involving a commercial motor vehicle which resulted in a fatality or personal injury; or (D) committing perjury or knowingly making a false affidavit or statement to officials in connection with activities governed by a law or regulation relating to the operation of a commercial motor vehicle.

(c)(1) Upon request of a State, the Secretary or a State, as appropriate, shall make available to the requesting State information in the information system established under this section. Upon request of an employer or prospective employer of an employee, the Secretary or a State, as appropriate, shall, to the extent otherwise permitted by law, make available to such employer or prospective employer information in such system relating to such employee.

(2) Any prospective employer of a person as an operator of a commercial motor vehicle shall consult the information system established under this section to determine, prior to employing such person, whether a license to operate a commercial motor vehicle issued to such person has been suspended, revoked or cancelled for cause. If such prospective employer determines, as a result of such consultation, that such person's license has been suspended, revoked or cancelled for cause, the prospective employer shall not employ such person as an operator of a commercial motor vehicle.

(d) When the information system required by this section has become available, the Secretary shall issue regulations establishing appropriate time periods for transmission of informaton, as provided in section —04(c) (4) and (5) of this title.

(e) The Secretary shall establish and the Secretary or a State, as appropriate, shall collect fees for utilization of the information system established under this section. The amount of fees collected by the Secretary or a State under this subsection in any fiscal year shall as nearly as possible equal the costs of operating the information system in such fiscal year. The Secretary shall deposit fees collected by the Secretary under this subsection in the general fund of the Treasury.

(f) There shall be available for fiscal year 1987 to the Secretary for purposes of establishing the information system under this section not to exceed $2,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304). Such sums shall remain available until expended.

FREQUENT INSPECTIONS

SEC. —06. (a) Section 402(b)(1) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)(1)) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by striking the period in subparagraph (G) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(H) with respect to any fiscal year beginning with fiscal year 1989, provides for the adoption and implementation of an effective program to conduct inspections of commercial motor vehicles, which program shall provide—

"(i) that commercial motor vehicles are inspected frequently (as determined by the Secretary), and that such inspections are conducted at roadside;

"(ii) for the administration of observations or tests, or both, to determine the blood alcohol content level of the operator of a commercial motor vehicle; and

"(iii) for the prompt suspension, for a period of not less than one year, of the operator's license of any individual who is determined, as a result of an observation or test administered under clause (ii) of this subparagraph, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit to such a test, and for the immediate revocation of the operator's license of any individual who has been twice determined, as a result of such an observation or test, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who has twice refused to submit to such a test.".

(b) Section 402(b) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)) is amended by adding at the end thereof the following:

"(3)(A) As part of a grant made under this subsection, the Secretary may also provide funds to encourage the States to adopt and implement programs providing for the administration of tests to determine whether the operator of a commercial motor vehicle is under the influence of a controlled substance while operating such motor vehicle.

"(B) For purposes of this subsection, the term 'controlled substance' shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6)).".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. —07. (a) Section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) is amended—

(1) by striking "$40,000,000" and inserting in lieu thereof "$50,000,000";

(2) by striking "and" after "1987,";

(3) by striking "$50,000,000" and inserting in lieu thereof "$60,000,000"; and

(4) by striking out "1988'." and inserting in lieu thereof "1988; not to exceed $70,000,000 in the fiscal year ending September 30, 1989; and not to exceed $80,000,000 in the fiscal year ending September 30, 1990.".

(b) Any activity of the Secretary under this title shall only be undertaken to the extent that appropriations have been made available in advance for such activity.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

The Senate will be in order. It is becoming increasingly difficult to hear or to be heard at this late hour. The Senators are respectfully requested to return to the Cloakroom to carry on their conversations. The Senators standing are urged to take their seats.

The Senator from Missouri [Mr. DANFORTH].

Mr. DANFORTH. Mr. President, I believe this is a noncontroversial amendment. I have discussed it with the managers on both sides. I am told they will accept it.

This amendment was part of the Republican portion of the drug package that was put together. It is the Commercial Motor Vehicle Safety Act of 1986. It is a noncontroversial piece of legislation. We had hearings on it in the Commerce Committee. It was unanimously reported out of the Commerce Committee. It does not have aspects to it which are beyond the drug issues, strictly speaking, but it also touches very plainly on the drug question.

The bill provides for increased random motor vehicle equipment inspections which would include along with inspecting the equipment at truck stops, the opportunity to observe the behavior of drivers and possibly test them for alcohol abuse, and observe the possibility of drug use.

The PRESIDING OFFICER. The Senator will suspend.

Those Republican staffers that are standing and talking are directed to leave the Chamber now. The Sergeant at Arms is directed to carry out that order. Senators have a right to be heard. Senators cannot be heard.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr. BIDEN. Mr. President, we are willing to accept the amendment.

Mr. DANFORTH. I would be happy to explain.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. SPECTER. Mr. President, I send an amendment to the desk.

Mr. LEAHY addressed the Chair.

Mr. DANFORTH. Mr. President, have we had a vote?

The PRESIDING OFFICER. No; the issue before us is the Danforth amendment. Is there further debate on the Danforth amendment?

AMENDMENT NO. 3064

Mr. SPECTER. Mr. President, I send to the desk an amendment in the second degree to the Danforth amendment and asked for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 3064.

Mr. SPECTER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

STUDY BY THE DEPARTMENT OF TRANSPORTATION

SEC. . The Secretary of Transportation shall, not later than October 1, 1988, submit to the Congress a study regarding the manner in which the requirement of section —04(a)(1)(F) regarding blood alcohol content level impacts on operators of commerical motor vehicles who are required by their employers to be available to operate such commerical motor vehicles on short notice.

Mr. SPECTER. Mr. President, this is a noncontroversial amendment which has been cleared with the distinguished Senator from Missouri, and provides for a congressional study committee regarding the alcohol blood content level.

Mr. DANFORTH. Mr. President, this amendment is acceptable.

The PRESIDING OFFICER. Is there further debate on the amendment in the second degree?

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr. BIDEN. We are willing to accept the amendment, as amended.

Mr. SPECTER. I understand this is important legislation. There is one particular aspect of it on which I want to comment and my amendment addresses that subject. That subject is the "call back" to which some commercial drivers are subject. Under the call back provision of some labor agreements certain drivers are required to report to work on short notice. If one of these drivers has been drinking prior to the call to work he may face a difficult choice. The choice is whether to disclose that he is possibly in violation of this legislation's requirement that a commercial driver not have 0.04 blood alcohol content or more or to accept the call. The driver could be concerned that the former might lead to discipline while the latter might require violating the standard. My amendment would require the Secretary of Transportation to study this issue and report to Congress no later than October 1, 1988.

Mr. DANFORTH. I thank the Senator from Pennsylvania for his comments and I accept his amendment. The issue of call back was raised during hearings I conducted on truck safety and I believe it is worthy of further study. I want to point out that the 0.04 blood alcohol standard is an important part of this legislation. It is the standard that is used in the railroad industry for train crews and it is also the standard that is used in the airline industry for both pilots and flight attendants. I think it is important that transportation professionals in the truck and bus industries be held to this standard.

THE "COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986"

Mr. DANFORTH. Mr. President, I urge all my colleagues to support an amendment adding the "Commercial Motor Vehicle Safety Act of 1986," to the by-partisan Senate drug bill. This amendment will save lives by removing unsafe commercial drivers from our highways, particularly those who use drugs or alcohol.

Last December, I introduced the Commercial Motor Vehicle Safety Act of 1985 (S. 1903), on behalf of myself and Senator PACKWOOD, to address a number of critical motor carrier safety issues. The Commerce Committee held a hearing on the bill in July and on August 7 ordered it reported favorably with an amendment in the nature of a substitute. My amendment is identical to the committee reported version of S. 1903 except for two changes. The first change provides for the immediate suspension of the license of a commercial driver who operates a vehicle under the influence of drugs. The second change provides the States additional time to comply with the legislation.

Motor carrier safety has long been a substantial problem in the United States, and the problem appears to be worsening. In 1983, 31,000 interstate truck accidents were reported to the Department of Transportation [DOT]. In 1984, interstate truck accidents increased by 18 percent to 37,000 and in 1985, they jumped another 6 percent to over 39,000, and in 1985, they jumped another 6 percent to over 39,000. Those 39,000 accidents resulted in almost 2,700 fatalities and 29,000 injuries. Intrastate truck accidents claim another 2,000 lives each year. Bus safety is also a problem. Reported intercity bus accidents have increased by over 300 percent in the last 2 years.

Let me give you some examples of the human tragedy that is behind these numbers. In August, a truck driver allegedly shot country singer Ricky Skaggs' 7-year-old son because he thought the boy's mother had cut too closely in front of his truck. Press reports indicate the driver had drugs including cocaine, amphetamines, and marijuana in his truck. In May, a bus crashed in Walker, CA, killing 20 elderly people and injuring 21 more. The driver of that bus reportedly had been fired from another bus company after being arrested for driving with a suspended license, had eight speeding tickets for driving buses in excess of 70 mph, and had three accidents that were never reported to the police.

In Commerce Committee hearings we have identified a number of areas of motor carrier safety that must be improved if we are to prevent such tragedies. First, we must stop the serious drug problem in the trucking industry. The Skaggs case was not an isolated example of drug use by a truck driver. During our hearings, it has been reported that with the assistance of the CB radio drugs are sold openly at most truck stops. The State of Tennessee has arrested and prosecuted almost 700 truck drivers for drug possession in the last 18 months. Drug use by truck drivers is not a "victimless" crime. It contributes to the annual toll of 5,000 deaths from truck and bus accidents.

Second, we must ensure that all commercial drivers are qualified to do the demanding work of operating a truck or bus. Today, 20 States will issue a license entitling any individual who merely passes a regular motorist test in a compact car to drive a tractor-trailer truck nationwide. In fact, only 12 States require a license applicant to take a driving test in the type of truck or bus he or she is to be licensed to operate.

It is especially important to establish standards for drivers transporting hazardous materials. On July 8, 1986, the Office of Technology Assessment [OTA] released a study requested by the Commerce Committee on hazardous materials transportation, which included the finding that human factors, rather than equipment shortcomings, cause 62 percent of reported vehicle accidents and hazardous materials spills. Noting the importance of an adequately prepared driver as an accident prevention tool, the OTA study recommended the creation of a national motor carrier driver's license, with special certification requirements for hazardous materials drivers. Current DOT requirements include a written test of 66 questions, which a driver does not need to pass and which has only eight questions pertaining to hazardous materials transportation. Only California and Michigan require additional special qualifications for hazardous materials drivers. The Commerce Committee concurs with OTA's assessment that the protection of both drivers and the public requires that more be done to ensure that drivers of hazardous materials are adequately prepared to transport safely such materials and to respond appropriately in the event of an accident.

Third, the practice of multiple license use by commercial drivers must be stopped. In 1962, the States developed the Drivers License Compact, which is a voluntary cooperative effort whose major objectives are the development of a one-license/one-record concept. These voluntary efforts have failed miserably. A 1981 National Highway Traffic Safety Administration [NHTSA] study found, for example, that over 32 percent of South Carolina's, over 29 percent of Alabama's, and almost 22 percent of California's interstate truck drivers had more than one license. Commercial drivers shuffle multiple licenses like a deck of cards. They use them to spread their traffic violations over a number of licenses, and maintain a "good driver" rating regardless of the number of violations.

Fourth, it is important to establish Federal standards that curb alcohol abuse by commercial drivers. On February 18, 1986, I chaired Commerce Committee hearings that identified alcohol abuse as a serious problem in all the transportation industries. Employees in the railroad and airline industries are prohibited from operating these forms of transportation while having 0.04 percent or more blood alcohol content [BAC]. Setting 0.04 as the standard for the suspension or revocation of commercial drivers' licenses is one method of controlling alcohol abuse in the motor carrier industry.

Fifth, we need to expand the Motor Carrier Safety Assistance Program [MCSAP]. At present, the MCSAP provides grants to states for inspections of truck and bus equipment. These efforts are long overdue. For example, in the first 5 months of this year a Maryland inspection team funded by a MCSAP grant inspected 17,800 vehicles. Maryland found that over 5,000 of these vehicles had unsafe brakes. Others had inadequate lighting. Others had defective steering, coupling devices and tires. Almost 13,000 of these vehicles, or over 72 percent of those inspected, were in such bad shape that they were immediately put out of service.

We have made some success, but this is only the tip of the iceberg. Although 49 jurisdictions are using these grants, many of the unsafe trucks and buses will go undetected unless we have more inspectors. The drivers simply pull off the side of the road and wait for the inspection station to close down or take an alternate route with no inspectors.

My amendment would improve motor carrier safety in each of these critical areas. First, it provides for increased motor carrier equipment inspections and commercial driver drug and alcohol checks through MCSAP.

Second, it would direct DOT to establish Federal minimum standards for licensing, testing, qualification, and classification of commercial drivers. These standards would: First, prohibit commercial drivers from possessing more than one commercial license; second, require that commercial drivers pass meaningful written and driving tests; third, provide special qualifications for hazardous materials drivers; and fourth, provide that a commercial driver found to have a .04-percent or more BAC would receive a 1-year license suspension for the first offense and permanent license revocation for the second offense.

Third, the amendment directs the States to issue and administer licenses consistent with DOT standards. A total of $8 million would be authorized during each of fiscal years 1987 through 1991 to assist the States in complying with Federal licensing standards. States that do not comply with the Federal licensing standards would be subject to having portions of their highway funding withheld.

Fourth, DOT is directed to ensure that a commercial drivers license information system is established so that the States could determine if a license applicant had another license, and transmit and receive driver record information to stop unsafe drivers from operating commercial vehicles. There would be $2 million authorized for the start up of this system, and user fees would cover the costs of its operation.

Fifth, the amendment would increase and extend funding authorizations for MCSAP. Currently, the program has years 1987 and 1988 would increase to $50 and $60 million, respectively. There would be new authorizations for fiscal years 1989 and 1990 of $70 and $80 million, respectively.

The time for this legislation is now. Most commercial drivers are qualified, safe professionals who operate safe equipment. We need this legislation, however, to ensure that all commercial drivers have the skills needed to operate trucks that weigh an average of 60,000 to 80,000 pounds and buses that carry dozens of people. We need to stop those drivers who flaunt the law with a wallet full of licenses and who drink or use drugs while operating a truck or bus. We need it to get the unsafe equipment with faulty brakes and faulty steering off the road.

Mr. President, I urge all my colleagues to support this amendment for improving highway safety and fighting drug abuse.

The PRESIDING OFFICER. Is there further debate on the amendment now before us in the second degree?

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, might I inquire of the Chair what the amendment is before us?

The PRESIDING OFFICER. Will the Senator restate the question?

Mr. HARKIN. Parliamentary inquiry, Mr. President: Can the Chair tell us what the second-degree amendment is?

□ 2330

The PRESIDING OFFICER. The clerk will read the amendment.

The bill clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 3064.

At the end of the amendment, add the following:

STUDY BY THE DEPARTMENT OF TRANSPORTATION

SEC. . The Secretary of Transportation shall, not later than October 1, 1988, submit to the Congress a study regarding the manner in which the requirement of section —04(a)(1)(F) regarding blood alcohol content level impacts on operators of commercial motor vehicles who are required by their employers to be available to operate such commercial motor vehicles on short notice.

The PRESIDING OFFICER. Is there further debate on the amendment to the amendment? If not, the question is on agreeing to the amendment to the amendment.

The amendment (No. 3064) to amendment No. 3063 was agreed to.

Mr. SPECTER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DANFORTH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now recurs on the amendment, as amended.

The amendment (No. 3063), as amended, was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the amendment, as amended, was agreed to.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3062

The PRESIDING OFFICER. The question recurs on the Domenici amendment which was previously temporarily laid aside by unanimous consent.

Mr. DOMENICI. Mr. President, I understand that the distinguished Senator from Connecticut wants to discuss this amendment. I would be pleased to do that. I will just take a couple of minutes. I have no intention of delaying the Senate.

I want to first say that the U.S. House of Representatives adopted this amendment when it was offered on the floor. I will read it rather than debate it. The amendment reads as follows:

It is the sense of Congress that, whereas illegal drug consumption and the trafficking in those illegal drugs is a major problem in the United States; whereas this problem is particularly prevalent among and harmful to the Nation's young people; and whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country, the entertainment industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and the entertainment industry further is encouraged to develop films, television programs, records, and videos which encourage the rejection of illegal drug usage.

Nothing is intended to be binding on the production of films and programs. We are merely encouraging the industry to do voluntarily what they can to produce for general consumption programs and films that do not glamorize drugs and illicit drug activities.

I believe it is something we ought to speak out on. It is simple in nature. It is binding on no one, but it indicates the true sense of the Congress, that we are concerned that much of the attitudes of our people come from what they see on television, in films, and other mass media. It urges that they deglamorize drugs. Nothing more, nothing less.

I understand that the Senator wonders what glamorizing is. I think the industry knows. But if they do not know, we are not binding them with any objective rules. Just if they can, if they would, "Please, to the best of your ability, industry, do not glamorize drugs."

That is the essence of my sense-of-the-Congress resolution.

I say to the Senator from Connecticut, if he desires that we stay here a while on this one, we will, and if he wants a vote we will stay here a while and we will have a rollcall vote.

Mr. MATTINGLY. Mr. President, this amendment simply urges the media and the entertainment industry to participate more actively our national war on drugs.

The President has identified the drug problem as one deserving national attention and requiring a national effort to overcome it. He has called the dissemination of accurate and credible information about the effects of illegal drug use a national priority.

In this endeavor, the national broadcast media, with access to almost every home in America, are a unique resource. They are, in fact, one which should be utilized to the greatest extent possible. If this is to occur, however, decisionmakers with the industry itself must make a firm commitment to help win the fight. Local broadcasters have made important contributions through the airing of public service announcements. My wife and I have recorded PSA's as I know many of my colleagues have. I appreciate this participation by broadcasters and believe it has benefited the public. But this is not enough. As the problem has grown, I believe that greater involvement, on a national scale, is required. We need more public service announcements, shown during prime time. And we need much more than PSA's. Prime time programming should address the issue, giving an accurate picture of the dire consequences of drug use through drama and documentary.

We all recognize the fact that young people are seriously influenced by what they see and hear. Often, the characters they watch become role models to emulate. For this reason, we should urge that programmers refrain from including positive glamorous references to illegal drug use from programming. It is only fair to acknowledge that some in the television industry have been responsive to similar requests in the past.

The motion picture and recording industries, on the other hand, have not been as cooperative. In fact, through the widespread depiction and glamorization of drug use, they can be said to have negatively influenced and often misled our youth about the realities of drug use. The amendment simply urges these industries to respond to the President's challenge and the public's concern by refraining from including these references from their productions. In other words, this calls upon the industries to act with the welfare of the Nation foremost in mind.

I sincerely hope, Mr. President, that these industries will understand the vital role they can play in helping protect our young people from the tragedy of drug abuse—and that those who have the ability to reach the public with the truth about drugs are accountable. It is my hope that with the urging of this body, the entertainment industry will utilize their resources for the common good. I hope as well that my colleagues will join in sending a strong message to these industries that our Nation needs their assistance in confronting and defeating a real, present, and dangerous enemy.

Mr. **WEICKER**. Mr. President, I wonder if I might have a copy of the amendment. It is the only copy floating around.

I thank my distinguished colleague from New Mexico for the copy.

Mr. President, there are real problems with this. There are certainly no problems with the whereas clauses.

> It is the sense of Congress that, whereas illegal drug consumption and the trafficking in those illegal drugs is a major problem in the United States—

We all agree.

> Whereas this problem is particularly prevalent among and harmful to the Nation's young people—

We all agree to that.

> Whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country—

Now we are starting to enter the gray area.

> The entertainment industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs.

How about the written media? How about broadcasting?

Tell me, who is going to define "which in any way glamorizes or encourages the use of illegal drugs"? Certainly, there are enough lawyers present in this body to realize there is not very much precision in that phrase. That could very well be used against anyone, in any form of communication.

That is exactly what this bill was not meant to be. Nobody is going to disagree with the problems that confront us. If we are going to save the entertainment industry, then somebody, I am sure, will have a similar amendment to apply to the written media, the press. We will have it apply to those engaged in the electronic media, and so on down the line.

> In many way glamorizes or encourages.

Define it for me.

Then I am told, and the distinguished Senator from New Mexico has every right to refute this, I am told in my discussion with the Senator from New Mexico that that means in their definition, because they can define it for themselves.

So what is the point of having the resolution then?

This is exactly the type of danger that comes along under the guise of drugs, to start encroaching on the matter of free speech.

Nobody denies the problem, but this is the first step toward encroaching on the Constitution.

I do not intend to go ahead and in any way have an extended debate on this matter. I would suggest you read the amendment. I think I have made the words plain as to what it encompasses. I would hope it would get voted down.

I suggest to you that the problem that is raised is the most serious problem in a bill of this sort. Politics and panic take over and the Constitution takes a hind seat.

Can anyone of you in this room define for me the term "in any way glamorize or encourages the use of illegal drugs"?

Even factual reporting: even a factual film? You could apply that standard.

I do not care what they do in the House of Representatives. That is their business. That is not the basis for adopting an amendment over here. This is the great deliberative body. It is exactly this type of thing that is supposed to come under our careful scrutiny.

I would hope that this amendment is not adopted because of the dangers it represents.

We are not trying to moralize for anybody in this bill. What we are trying to do is to address a specific problem—the drug problem. If we are going to address it, we are going to address it by education, by rehabilitation, and by scientific research.

I have seen this brave body perfectly willing to go ahead and vote an amendment to throw the switch on someone and yet nobody yet is standing up here who has the courage to say, "Let us pay for the bill, let us pay for the education, for the scientific research, and for the rehabilitation."

This amendment is just one more easy solution to the drug problem. Let us go ahead and point the finger "at the entertainment industry which in any way glamorizes or encourages the use of illegal drugs."

If there is one thing that this body is, it is the last protection of the Constitution of the United States.

This ought to stand out like a red flag in the eyes of every person on this floor. I hope the amendment is defeated.

Mr. **DOMENICI** addressed the Chair.

The **PRESIDING OFFICER**. The Senator from New Mexico.

Mr. **DOMENICI**. Mr. President, I want to say I think we are infringing on the free speech of no one. I think, as a matter of fact, by the adoption of the resolution the U.S. Senate is engaging in its free speech, nothing more, and nothing less.

If we do not think television and movies can deglamorize drugs in the United States, then vote no on this.

If they think they can, then give them a little encouragement. That is all.

There is no standard, absolutely none. If they would just sit around some board meetings and look at their product and say, "Hey, maybe this ought to be stopped; it is a little bit too much of a glorification of drugs," that is all we are asking of them.

They can debate it and say, "No, it has a nice moral overtone. It ends up right." Nobody is talking about that.

I submit if we cannot in the so-called war on drugs bill encourage the industry of the United States that molds the minds of our young people, just encourage them, voluntarily to deglorify drugs, then we have declared peace. There is no war. We will have decided that we do not want to do anything about it, even something as simple as exercising our prerogative to have a collective opinion that we urge on them voluntarily.

□ 2340

The **PRESIDING OFFICER**. Is there further debate?

Mr. **THURMOND** addressed the Chair.

Mr. **HARKIN** addressed the Chair.

The **PRESIDING OFFICER**. The Senator from Iowa is recognized.

Mr. **HARKIN**. Mr. President, I think it is time now for me to speak on this drug issue. I was prepared to speak on the last amendment. I am going to talk about this one now because I agree with the Senator from Connecticut that we have reached the point of approaching this problem with somewhat of a tinge of absurdity.

I applaud the interest the other body has shown in this problem. Two weeks ago, the House passed a bill to provide $2 billion for antidrug activities next year, more than $4 billion over the next 3 years. In the Senate we now have an amendment talking about the entertainment industry not glamorizing and encouraging the use of illegal drugs. There is one drug that is being glamorized more than any other drug in this country and no one is even talking about it. I think it is time we talked about it and who is glamorizing it.

It is the most widely used drug in America. It also contributes to other drug abuse. It is the most lethal, deadly drug in our society and kills more people than any illegal drug, imported or domestic, in this society. No one is talking about it. But you know what I am talking about. I am talking about alcohol. If we want to get serious about winning the war rather than just winning an election, let us not kid ourselves as to the nature of the enemy.

Look at the figures. According to the National Institute on Drug Abuse, among 1985 high school seniors, one-time use of marijuana is down. So is the use of inhalants, hallucinogens, stimulants, sedatives, barbiturates, and cigarettes. Several categories have held steady, including amyl and butyl nitrates, LSD, PCP, heroin, opiates other than heroin, and tranquilizers. They are all either holding steady or going down. But what is going up in use among the youths of our country? Alcohol. It goes up every day, every week, every month. Now we want to have a sense-of-the-Senate resolution asking entertainers to deglamorize illicit drugs.

Now we say we are going to deglamorize drugs while at the same time, the most deadly drug in our society is glamorized every day, a legal drug, alcohol.

In all the hoopla over drug abuse, alcohol is left out. And it is ironic, because alcohol should be the biggest target we aim for. There are 18.3 million adult heavy drinkers in America, at an economic cost to this country of more than $116.7 billion per year. That's what we paid in 1983 to take care of and rehabilitate our alcoholics. We paid for their early mortality and made amends for their reduced productivity and the crimes they committed. The economic cost to this country of alcohol abuse is double that of illicit drug abuse.

And the social cost to this country is astonishing. Just like heroin and cocaine, alcohol is a dependence-forming psychoactive drug. Alcoholism is a chronic, progressive and potentially fatal disease. Unlike heroin and cocaine, alcohol killed 98,188 people in 1980. They died from cirrhosis, other medical consequences, alcohol-related motor vehicle accidents, alcohol-related homicides, suicides, and nonmotor vehicle accidents.

Fifty-four percent of jail inmates convicted of violent crimes were drinking before they committed the offense. Sixty-two percent of those convicted of assault had been drinking and 49 percent of those convicted of murder or attempted murder had been drinking.

Talk about a threat to society; alcohol was involved in 50 percent of all car accidents last year. Fifty percent. In 1984, there were 44,241 highway deaths of which 23,500 or 53 percent were alcohol-related. In Iowa, total of 234 persons died in 202 alcohol-related fatal crashes—an increase from 1984 when 201 people were killed. Of the 234 killed, 159 were the drunken drivers; 74 were their innocent victims. Mr. President, according to the U.S. Department of Transportation, 65 out of every 100 persons in the United States will be in an alcohol-related crash in their lifetimes.

Between 400 and 800 boating fatalities annually involve alcohol, and alcohol is implicated in from 65 to 69 percent of all reported drownings. In nonhighway settings, alcohol is a contributing factor in at least 15,000 fatal and 6 million nonfatal injuries.

Chronic brain injury caused by alcohol is second only to Alzheimer's disease as a known cause of mental deterioration in adults. Drinking during pregnancy, linked to infant mortality and low birth weight, is the third leading cause of birth defects with accompanying mental retardation.

One out of every three American adults—56 million Americans—says that alcohol abuse has brought trouble to their family. Drinking is estimated to be involved in about 50 percent of spouse abuse cases and up to 38 percent of child abuse cases. Perhaps most tragic, Mr. President, is that the children of alcoholics have a four times greater risk of developing alcoholism than children of nonalcoholics.

What does this have to do with this amendment? What about the nonadult drinkers? Alcohol is America's No. 1 drug problem among youth. Alcohol is twice as popular among college students as the next leading drug, marijuana, and over five times as popular as cocaine.

I ask the Senators to take a look at this chart if they do not think alcohol is a problem in this country. Here is the prevalance of use among high school students last year. The top of the graph shows if they have ever used the drug at all. Ninety-two percent of high school students have used alcohol, 62 percent in the last month. Fifty-four percent have used marijuana, cocaine 17 percent, heroin 1 percent.

That is the drug problem in America right there. Alcohol. But nobody wants to talk about it. We want to talk about cocaine and PCP and crack. I do not see why everybody gets so excited about crack when a six-pack is right around the corner the kids can go and get.

Approximately 10,000 young people aged 16 to 24 are killed each year in alcohol-related accidents of all kinds, including drownings, suicides, violent injuries, homicides, and injuries from fire. And alcohol-related highway deaths are the No. 2 killer of 15- to 24-year-olds. Drivers 16 to 24 years old represent 20 percent of licensed drivers and less than 20 percent of total miles driven, yet, these drivers account for 42 percent of all fatal alcohol-related crashes.

Both the director of the National Institute on Drug Abuse, Dr. Charles Schuster, and Director of the White House Drug Abuse Policy Office, Dr. Carlton Turner, agree that the No. 1 drug threat in America today is alcohol. In my home State of Iowa, 80 percent of drug abuse is attributed to alcohol. A Drug program that ignores or underplays the peril of alcohol abuse is bound to miss the mark. What good does it do to spend vast amounts of time and money warning youngsters about crack and pot and PCP and heroin when all they have to do is go around the corner and buy a six-pack or a fifth or a pint or a quart.

Mr. BOSCHWITZ. Will the Senator from Iowa yield for a question?

Mr. HARKIN. No, Mr. President, not right now. I want to finish my statement. Then I shall yield.

□ 2350

I feel bad about taking the time of the Senate this evening to talk about this, but no one has talked about this subject of alcohol and I think it ought to be talked about. We permit alcohol to get off scot free. I guess the reason is that it is too close to where we live, the corner pub, the Superbowl, the New Year's Eve party, the 19th hole.

If we really believe that new and draconian laws are going to stop drug abuse, maybe we should reconsider our permissive laws governing alcohol. You want to talk about having the entertainment industry produce films and television programs to encourage rejection of illegal drug abuse, just listen to this figure. A child will see alcohol consumed an average of 75,000 times on TV before he or she finishes high school—75,000 times a child will see alcohol consumed on television before they finish high school. Adolescents and young adults are more heavily exposed to alcohol ads on TV and magazines and they are more likely to perceive drinking attractive, acceptable and rewarding than those who have been less heavily exposed.

Now, I am not saying that we ought to become a bunch of Carry Nations. I do not think we ought to go in and bust up the bars, I do not want to bring back prohibition; but if we are going to talk about deglamorizing drugs, if we are going to talk about deglamorizing crack, pot, heroin, PCP, as we should, let us talk about deglamorizing alcohol.

Now, the distinguished Senator from New Mexico wants us to have the entertainment industry provide films, television programs, records, and videos to encourage rejection of illegal drug use.

Mr. President, let us just take a look at a series of recent magazines to show the hypocrisy of what we are talking about. Here is Time magazine's cover story, July 28. "The Army Joins the

Drug War." You open it up and there is a nice big bottle of Scotch in the sand, right on the beach for you. Let us crack down on drugs but let us go ahead and drink. Here is one, the cover magazine of Time, "Drugs on the Job," March 17, 1986. And you open it up and what do you see? First big ad here for cognac: "Hennessey, the civilized way to catch someone's eye." There are people on an airplane; they are taking a flight and everybody is out of it except the two people who are drinking. Talk about glamorizing alcohol.

Here is the cover story, "Drugs on the Job," and here are people flying an airplane and the two people who are with it are drinking.

Oh, here is another ad, same magazine, same cover story, "Drugs on the Job." The ad says, "The Spirit of America." What is the spirit of America? Not hard work, not thrift, not saving. It is having a shot of bourbon at night before you go to bed. That is what is says. That is the spirit of America. That is what it says right here. It says, "Somewhere west of Laramie, men still ride from dawn to dusk and settle down to a shot of bourbon against the chill of night."

And then here is the last page. Here is an imported beer from Denmark. It is "the greatest export since the Vikings," they say. Here is another magazine story Newsweek, March 17, 1986, "Kids and Cocaine," cover story. You open it up: "Be a part of it," it says, two young people being a part of it, drinking a little whiskey. "Be a part of it," it says. Glamorizing alcohol for our young people.

Here is another one, Time magazine, June 2, "Crack's Deadly Threat," and you open it up. What do you have here? Oh, right on the inside cover, "Here is to more gin taste."

You open it up and there is another ad in here—there are a lot of ads in this one. There is another ad in here for—oh, yes, "Be a part of it," again, two young people. "Be a part of it, Canadian Club." In other words, drink whiskey and you're "with it," otherwise you're not a part of being "with it."

Well, I hope my point is made. We talk about deglamorizing drugs and yet the most widely used drug is not only legal but glamorized all over America. And you know as well as I do that before you smoke pot, before you take PCP, before you shoot up with heroin, before you sniff the coke, you have been drinking. The data shows it. Before they do that, they are out drinking whiskey or gin or beer.

Now, again, I want to make it clear, I do not believe in prohibition. We should not burn down the bars and close them up. But I do believe if we are going to talk about drug abuse, let us talk about the No. 1 drug problem in America, the one that kills young people, the one that breaks up homes, the one that costs us more money than all of the illegal drugs put together in our society. And yet nobody—I have listened in vain, but no one has come forth in all of this debate about cracking down on drugs and pointed out the glamorizing of alcohol. Perhaps, if those fancy ads were not tax deductible, they would think twice about putting it in a magazine.

Now, again, I am not saying I want to restrict anyone's first amendment rights. I am just saying here we are, giving tax deductions to people who want to advertise alcohol. Tax deductions, And we turn right around and spend $116 billion a year to take care of the problem caused by alcohol in this country.

Well, I am opposed to the amendment just offered, but if the amendment is going to make any sense at all, it ought to read that it is "the sense of Congress that whereas illegal drug consumption and alcohol consumption and the trafficking in those legal and illegal drugs is a major problem in the United States, whereas the problem of alcoholism is particularly prevalent among and harmful to the Nation's young people," et cetera, the entertainment and written media industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and alcohol. So we ought to include the written media in there, too.

Mr. GLENN. Mr. President, might we have order. I think what the Senator is saying is very important. I have been listening to it. I wish everyone was.

Mr. HARKIN. Thank you, Mr. President. I thank the distinguished Senator from Ohio. As I said, I know it is late. I did not mean to take this much time. But I wanted to make this point on alcohol. I have been waiting a long time during this debate on drugs to hear someone get up and talk about it. I thought the last amendment may have been it but now they talk about glamorizing illegal drugs and you flip through the magazines and it is a legal drug that is glamorized.

Mr. BIDEN. Will the Senator yield for a question?

Mr. HARKIN. I will in just a moment. I am going to finish very shortly.

When we talk about glamorizing the drugs, there is nothing more glamorized than alcohol and yet there is little in this bill that is going to attack alcoholism at all. And I will also further point out—I see my distinguished chairman Senator WEICKER sitting here, who has done an outstanding job in this regard—just last February the administration proposed cutting the Alcohol, Drug Abuse, and Mental Health Administration's funding by $12 million—cutting it when we need the kind of help that the distinguished chairman has been trying to provide, to help with the problem of acute alcoholism in this country and the problems that it causes with mental health.

I do not have an amendment ready on alcohol, but I think this body ought to address itself to it, either on tax-deductible status of advertising or deglamorizing alcohol, but we ought to pay attention to it and we ought not to shirk our responsibility to provide adequate funds necessary to combat alcoholism in this country. More money should be put into the education of our young on this issue.

If we can provide $4 billion over the next 4 years to buy jets and high-speed aircraft and radar stations, and lord knows what else, to keep the illegal drugs from coming into this country, surely we can spend a few million to cut down on the alcohol abuse by our young people in this country. It would cost a heck of a lot less and it would go a lot further toward really stopping drug use in this country than all those radar stations, all those high-speed aircraft, and everything else. You deglamorize alcohol, you educate the kids about alcohol as a drug, and then we will get them thinking about not taking the hard drugs.

I want to end on this point about the attitudes of young people toward alcohol.

☐ 2400

Young people in this country do not believe that alcohol is a drug. In fact, in a recent study that was made, most of the young people in the country, high school students, when asked to identify whether alcohol was a drug, said that it was not a drug. They identified PCP, crack, pot, barbiturates, and heroin as drugs, but over 72 percent of the youths said alcohol is not a drug.

That is the real problem. That is what we ought to start teaching our young people.

The most insidious drug in our society is alcohol. Yet, we are not even teaching them that.

So, rather than trying to offer amendments to get videos to produce films and programs and records to reject illegal drug use, my amendment, as a sense-of-the-Senate resolution, would encourage our schools to start teaching young people that alcohol is a drug, an addictive drug. If we want to win the war on drugs, let us fight the first battle, against alcohol. If we win that battle, we can win the other ones.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. HARKIN. I yield to the Senator from Ohio.

Mr. GLENN. Mr. President, I compliment the Senator from Iowa. I think his remarks have been right on target this evening. I know this may not be the hour for his comments, and they were not particularly well listened to, but I hope he will repeat them at a later date.

I visited one of our leading drug and alcohol treatment centers in this Nation a few weeks ago and talked to people there and know the trauma they have been through.

I think the Senator is right on target. Alcohol kills 25,000 people a year just on the highways of our country. Every 2 years, we equal all the slaughter of the Vietnam war—every 2 years.

The real answer to alcohol and drugs is not sealing our borders. It is as we get peer pressure not to use. We are only putting some 10 percent of the money in this bill into education, in trying to get the peer pressure off using.

A little while ago, the distinguished Senator from Connecticut [Mr. WEICKER] was talking about the need for $375 million, and I agree with Senator WEICKER's comments on that. I submit that we might add that to what we did on the reconciliation bill last week. What a sham that was. We did everything else on the reconciliation bill; we might as well do this, too.

So there is no problem getting the money, after what we did last week.

I compliment the Senator for his remarks. I hope they are repeated in this Chamber when the audience is a little more receptive and when people across the country are watching. I think he was right on target.

AMENDMENT NO. 3065

(Purpose: To express the sense of Congress that the entertainment industry take certain steps to assist in the national war against illegal drugs)

Mr. HARKIN. Mr. President, there is an amendment at the desk. I assume that it is going to be voted on and that there will be a rush of judgment to show our strength and determination to stop drug use. In that sense, I send to the desk an amendment in the nature of a substitute.

The PRESIDING OFFICER (Mr. MCCONNELL). The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN] proposes an amendment numbered 3065 to amendment numbered 3062:

On page , line , after , insert the following:

It is the sense of Congress that, whereas illegal drug consumption and alcohol consumption and the trafficking in those legal and illegal drugs is a major problem in the United States; whereas the problem of alcoholism is particularly prevalent among and harmful to the Nation's young people; and whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country, the entertainment and written media industry should voluntarily refrain from producing material meant for general or encourages the use of illegal drugs and alcohol and the entertainment which in any way glamorizes industry and written media further is encouraged to develop films, television programs, records, and videos and advertising which encourages the rejection of illegal drug usage and alcohol use.

SEVERAL SENATORS. Vote! Vote!

Mr. DOMENICI. Mr. President, as I understand it, the amendment adds the written industry and adds alcohol wherever the Domenici amendment referred to the entertainment industry and drugs. I think the amendment is a good amendment. I accept it, and I hope the Senate will adopt this substitute.

Mr. THURMOND. Mr. President, we accept the amendment on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 3062), as modified by amendment No. 3065 was agreed to.

Mr. CHILES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BIDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3066

Mr. LEAHY. Mr. President, I have an amendment on behalf of myself, Senator HATCH, and Senator DENTON, which I send to the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mr. HATCH, and Mr. DENTON, proposes an amendment numbered 3066.

Mr. LEAHY. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike section 1802 of the bill and insert in lieu thereof the following:

SEC. 1802. CRIMINAL ORGANIZATIONS, FEES AND FEE WAIVERS.

(a) Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

"(A) the investigation or proceeding involves a possible violation of criminal law; and

"(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

"(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirments of this section unless the informant's status as an informant has been officially confirmed.

"(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence [(as defined in Executive Order 12333)], or international terrorism [(as defined in the Foreign Intelligence Surveillance Act)], and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.".

(b) Paragraph (4)(A) of section 552(a) of title 5, United States Code, is amended to read as follows:

"(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

"(ii) Such agency regulations shall provide that—

"(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

"(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

"(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

"(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; or a requester is indigent and can demonstrate a compelling need for the documents.

"(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. No fee may be charged by any agency under this section—

"(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

"(II) for any request described in clause (i)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

"(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

"(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

"(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo provided that the court's review of the matter shall be limited to the record before the agency.

Mr. LEAHY. Mr. President, the bill contains language concerning release of law enforcement records under the Freedom of Information Act which passed the Senate in 1984. The language of our amendment addresses the problem which was the concern of the original proposal, the use of FOIA by sophisticated criminal enterprises to learn about ongoing criminal investigations. But, it is narrower and more acceptable to legitimate users of FOIA, especially the news media.

In addition, our amendment addresses the problem of FOIA fees and fee waivers so that more of the costs of FOIA will be recouped, and at the same time relieve the news media of the need to pay a high cost for access to Government records.

Mr. MATHIAS. Mr. President, will the Senator yield so that I may offer an amendment to the amendment?

Mr. LEAHY. I yield.

AMENDMENT NO. 3067

Mr. MATHIAS. Mr. President, I send to the desk an amendment to the amendment.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Maryland [Mr. MATHIAS] for Mr. LEAHY, himself, and Mr. THURMOND, proposes an amendment numbered 3067 to amendment No. 3066.

Mr. MATHIAS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. MATHIAS. Mr. President, today the Senate considers an amendment to the drug bill that embodies an important bill to enhance the privacy of Americans and update the provisions the 1968 Wiretap Act—the Electronic Communications Privacy Act of 1986.

A measure similar to this amendment has already been approved by the other body. H.R. 4952 passed the House Judiciary Committee by a vote of 34 to 0. That bill passed the House by a voice vote on June 24. In the Senate, the Electronic Communications Privacy Act has also been thoroughly considered. The Subcommittee on Patents, Copyrights and Trademarks held hearings last fall on an earlier version of this legislation. After House passage of H.R. 4952, I joined with Senator LEAHY to introduce an identical companion bill, S. 2575. With some modifications, that bill received the unanimous approval of the Subcommittee on Patents, Copyrights and Trademarks on August 12, and, with further improvements, was ordered reported by the full Judiciary Committee on September 19. The revised version embodied in this amendment enjoys the active support of the Department of Justice, of numerous affected communications and computer businesses and trade associations, and of the American Civil Liberties Union.

I have given this thumbnail sketch of the history of this legislation in order to show that the problems addressed by this amendment have been thoroughly studied, and the solutions it proposes have been significantly refined, throughout the legislative process. In these closing days of the Congress, many measures come before the Senate without the benefit of such careful scrutiny; I can assure the Senate that this is not one of them.

As I mentioned earlier, this amendment enjoys the strong support of the Department of Justice. Currently, the Department is operating under the 1968 Wiretap Act. Many vital law enforcement functions are unnecessarily inhibited because that act, written almost 20 years ago, did not anticipate the many changes in technology and business organization that have occurred over the past two decades.

For example, this amendment would provide the Department with clear authority to conduct so-called "roving" wiretaps. Many drug dealers are sophisticated. They know that their phone could be tapped under an appropriate court order. Therefore, they do not use their own phone. They instead use public telephones—moving among several phones for their illicit business contacts. This amendment gives the FBI explicit authority to obtain a court order to tap these phones and listen to these conversations. It recognizes that under carefully defined circumstances the court should be able to order the conversations of a particular person to be taped rather than just those from a specific telephone.

The bill also clarifies the use of pen registers and trap and trace devices. Pen registers keep a record of all the phone numbers dialed from a particular phone. Trap and trace devices are similar, keeping track of the phone numbers from which all incoming telephone calls are placed. Pen registers have been in existence for many years, but effective and inexpensive trap and trace devices are of much more recent vintage and were not practical at the time the 1968 law was written. With the breakup of the Bell System, the need has grown for uniform statutory rules covering these devices. This amendment provides explicit authority for magistrates to order the installation of pen registers and trap and trace devices, providing another important tool for law enforcement agencies in their effort to root out organized drug syndicates.

Another important law enforcement feature of this amendment is the clarification of the status of mobile tracking devices. These electronic devices can be installed in the vehicle of a suspect, or secreted in an illicit shipment of drugs so that law enforcement agents can follow the movements of the vehicle or the countraband shipment. Under existing law there are several ambiguities about the use of such devices. This is particularly true when a device is installed in an object that may move across jurisdictional lines. This amendment clarifies the law and makes it clear that a court has the authority to order the installation of such a device, and that once installed that order remains valid even if the vehicle or other object in which the device is installed is moved across jurisdictional lines by the suspect. This will greatly enhance the Government's ability to follow drug shipments and establish the chain of distribution.

These important law enforcement tools should be provided to law enforcement agencies to aid them in acquiring the necessary evidence against major drug smugglers and distributors.

In essence, the Electronic Communications Privacy Act [ECPA] responds to new developments in computer and communications technology by amending title III of the Omnibus Crime Control and Safe Streets Act of 1968—the Federal wiretap law—to protect against the unauthorized interception of electronic communications. Currently, title III covers only voice communications. The amendment expands coverage of the wiretap act to include data and video communications on nearly the same basis as conventional telephone technology. In addition, the amendment eliminates the distinction between common carrier communications and private carrier communications. The ECPA extends privacy protection to new forms of electronic communications, but is careful to exempt media in which privacy is not expected, such as tone only paging devices; amateur radio services; police, fire, and other public safety radio communications systems; and many satellite transmissions, including network feeds destined for rebroadcast, and satellite cable programming as defined in section 705 of the Communications Act of 1934.

The amendment that Senator LEAHY and I are offering today incorporates the improvements in the ECPA made by the Subcommittee on Patents, Copyrights and Trademarks and by the full Judiciary Committee. This substitute amendment makes several minor and technical changes in the bill. Senator LEAHY has already placed a summary of this amendment in the RECORD. But I want to call the attention of my colleagues to the most important differences between the Senate and House versions of this important legislation.

First, the Federal Communications Commission has brought to our attention the problem they have encountered in a recent highly publicized case of "jamming" of satellite cable programming. The FCC has suggested a new provision to clarify and strengthen legal protection against deliberate or malicious interference with satellite transmissions. Senator THURMOND has suggested that this bill may be an appropriate vehicle for this important but noncontroversial change, and the subcommittee has agreed.

Second, a recurring concern throughout the consideration of this legislation has been the fear of liability for inadvertent overhearing of electronic communications. The changes made by the House have gone a long way toward allaying this fear, but to drive the point home, this amendment provides that only intentional acts of interception—those meeting the highest standard of specific intent—can be punished criminally.

Finally, the Judiciary Committee has wrestled with another problem that was considered at length on the House side: criminal liability for unencrypted radio signals, particularly private satellite video transmissions.

The problem is to strike the right balance between privacy policy and the realities of physics. Individuals and businesses surely expect privacy when they participate in a private video-teleconference or, in the case of a television network, when they transmit raw news footage via satellite by a "backhaul feed." Certainly the law ought to enforce that expectation of privacy. At the same time, the engineers tell us that home satellite dishes may be able to receive some of this material, and that for truly private communications, encryption is a viable alternative.

This amendment contains substantial barriers to imposing liability on satellite dish owners: the exemption for cable programming and network feeds, for example, and the requirement of an "intentional" interception. But, at the urging of Senator LAXALT, Senator GRASSLEY, and others, we have re-examined this issue. The amendment before the Senate provides a remedy for intentional interception of private video transmissions via satellite; but in a proceeding brought by the g[Government it would reduce that sanction to the lowest possible level—injunctive relief. It also provides for lower statutory damages in private suits involving interception of video transmissions via satellite than those imposed for other types of violations. We believe this strikes the right balance: It defines these interceptions as wrongful, but takes into account the equities on the other side of the issue. This is particularly true since these interceptions are already covered by section 705 of the Communications Act. The provisions in this legislation are in addition to any remedies that may be available to the Government or to a private party under the Communications Act.

In addition, the substitute amendment now before the Senate incorporates important changes suggested by Senator SIMON and adopted by the Judiciary Committee. One of those changes is the elimination of the 6-month jail term, included in the House-passed bill, for first offenders whose conduct is the interception of the cellular portion of a telephone call and when the offender has committed no act beyond listening to the contents of the call. In this instance as well, we submit—and the Judiciary Committee has agreed without dissent—that the preservation of a criminal penalty for these cases, although at a sharply reduced level of punishment, embodies an appropriate balancing of the interests involved.

As I have already mentioned, many Senators have contributed to the development of this comprehensive privacy legislation. However, I would like to take this opportunity to commend particularly the efforts of the Senator from Vermont [Mr. LEAHY] who has worked tirelessly on this proposal from its origination through its successful conclusion. In the other body, the chairman and ranking minority member of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Representatives ROBERT KASTENMEIER and CARLOS MOORHEAD, have shown exemplary leadership on this issue, and I am confident that through their continued efforts, this important and innovative bill will soon arrive on the President's desk for signature.

Mr. LEAHY. Mr. President, today we take up the Anti Drug Abuse Act of 1986. I was on the task force that produced major portions of this bipartisan package. This bill, S. 2878, is important legislation. It will go a long way in our national fight against drug abuse.

Senator MATHIAS is offering an equally important amendment. The amendment is the Electronic Communications Privacy Act which the Senate Judiciary Committee passed unanimously on September 19, the House has already unanimously passed the companion measure, H.R. 4952. The distinguished chairman of the Judiciary Committee, Senator THURMOND, is a cosponsor of this amendment.

Mr. President, let me take a few minutes to explain why this electronic communications privacy amendment is not just important, but necessary. Not long ago, a message was transmitted by first-class mail, by wire, or by some form of wireless communications link. Each had its advantages and vulnerabilities. Each was regulated by separate legislation that provided a legal framework of appropriate privacy protection for the user. It was a neat and tidy world, in which private users, common carriers, and Government knew their rights and limits.

Today, Americans have at their fingertips a broad array of telecommunications and computer technology, including electronic mail, voice mail, electronic bulletin boards, computer storage, cellular telephones, video teleconferencing, and computer-to-computer links. These technological advances are wonderful. They make the lives of individual citizens easier and they promote American business.

Unfortunately, most people who use these new forms of technology are not aware that the law regarding the privacy and security of such communications is in tatters.

The primary law in this area is the Federal wiretap statute, title III of the Omnibus Crime Control and Safe Streets Act of 1968. When title III was written 18 years ago, Congress could barely contemplate forms of telecommunications and computer technology we are starting to take for granted today. Congress could not envision the dramatic changes in the telephone industry which we have witnessed in the last few years. Today, a phone call can be carried by wire, microwave or fiber optics. Even a local call may follow an interstate path. And an ordinary phone call can be transmitted in different forms—digitized voice, data or video. In addition, since the divestitute of AT&T and deregulation, many different companies, not just common carriers, offer a wide variety of telephone and other communications services.

In short, technology and the structure of the communications industry have outstripped existing law.

Senate bill 2575, the Electronic Communications Privacy Act of 1986 which I introduced with Senator MATHIAS and which Senators THURMOND, STAFFORD, ANDREWS, and DECONCINI have cosponsored, is designed to update title III of the Omnibus Crime Control and Safe Streets Act to provide a reasonable level of Federal privacy protection to these new forms of communication.

The amendment Senators MATHIAS, THURMOND, and I are offering today is the culmination of 2 years of hard work with Congressmen KASTENMEIER and MOORHEAD and their staffs on the House Judiciary Subcommittee on

Courts, Civil Liberties, and the Administration of Justice. We have also worked with the Department of Justice, the American Civil Liberties Union, representatives of the computer and telecommunications industry, the Federal Communications Commission, representatives of the satellite dish industry and satellite dish owners, radio hobbyists, and technology and privacy groups. I want to thank all those people who have worked with me, with Senator Mathias and our staffs to make the Electronic Communications Privacy Act better.

Let me describe the Electronic Communications Privacy Act briefly. It provides standards by which law enforcement agencies may obtain access to both electronic communications and the records of an electronic communications system. These provisions are designed to protect legitimate law enforcement needs while minimizing intrusions on the privacy of system users as well as the business needs of electronic communications system providers.

At the request of the Justice Department, we strengthened the current wiretap law from a law enforcement perspective. Specifically, we expanded the list of felonies for which a voice wiretap order may be issued and the list of Justice Department officials who may apply for a court order to place a wiretap. We also added a provision making it easier for law enforcement officials to deal with a target who repeatedly changes telephones to thwart interception of his communications, and created criminal penalties for those who notify a target of a wiretap in order to obstruct it.

These provisions are particularly important to the Justice Department's fight against drugs.

The legislation also creates a statutory framework for the authorization and issuance of orders for pen registers and trap and trace devices. It also creates civil penalties for the users of electronic communications services whose rights under the bill are violated. Finally, it preserves the careful balance governing electronic surveillance for foreign intelligence and counterintelligence purposes embodied in the Foreign Intelligence Surveillance Act of 1978. And it provides a clear procedure for access to telephone toll records in counterintelligence investigations.

Since we introduced S. 2575 in June, Senator Mathias and I have continued to improve this legislation, and the amendment we are offering today includes several important changes.

In order to address the recent "Captain Midnight" incident, at the request of the FCC, we added a provision to increase the penalties for the intentional or malicious interference with a satellite transmission.

We wanted to underscore that the inadvertent reception of a protected communication is not a crime. In order to do that, we changed that state of mind requirement under title III of the Omnibus Crime Control and Safe Streets Act from "willful" to "intentional."

Mr. President, as the Subcommittee on Patents, Copyrights and Trademarks prepared to mark up S. 2575, Senators Laxalt, Grassley, DeConcini, Gore, and Simpson expressed concerns about the bill's penalty structure for the interception of certain satellite transmissions by home viewers. In order to address those concerns we have completely restructured the penalty provisions for such conduct.

That restructuring is accomplished through Senator Grassley's proposal which eliminates from the Electronic Communications Privacy Act, criminal penalties for the home viewing of private satellite video communcations. Senators Laxalt, McConnell, Simpson, and Denton are cosponsors of the Grassley amendment.

Senator Grassley's proposal is incorporated in the amendment we are offering today. I would like to describe that proposal briefly. The criminal penalties and civil liability provisions of chapter 119 of title 18 of the United States Code have been modified so that there is a two-track, tiered penalty structure for home viewing of private satellite transmissions when that conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage for private commercial gain.

On the public side, a first offender would be subject to a suit by the Government for injunctive relief. If injunctive relief is granted, one who violates the injunction would be subject to the full panoply of enforcement mechanisms within the court's existing authority, including criminal and civil contempt. Second and subsequent offenses carry a mandatory $500 civil fine for each violation. The term "violation" in this context refers to each viewing of a private video communication.

On the private side, a person harmed by the private viewing of such a satellite communication may sue for damages in a civil action. If the defendant has not previously been enjoined in a Government action as described above, and has not previously been found liable in a civil suit, the plaintiff may recover the greater of his actual damages or statutory damages of $50 to $500. A second offender—one who has been found liable in a prior private civil action or one who has been enjoined in a Government suit—is subject to liability for the greater of actual damages or statutory damages of $100 to $1,000. Third and subsequent offenders are subject to the bill's full civil penalties.

It also takes outside the penalty provisions of the Electronic Communications Privacy Act, the interception of a satellite transmission via audio subcarrier if the transmission is intended for redistribution to facilities open to the public, provided that the conduct is not for the purpose of direct or indirect commercial advantage or private financial gain. Audio subcarriers intended for redistribution to the public include those for redistribution by broadcast stations and cable and like facilities. They also include those for redistribution to buildings open to the public like hospitals and office buildings that pump in music which has been transmitted via subcarrier. As specified in the substitute, this audio subcarrier exclusion does not apply to data transmissions or to telephone calls.

The private viewing of satellite cable programming, network feeds, and certain audio subcarriers will continue to be governed exclusively by section 705 of the Communications Act, as amended, and not by chapter 119 of title 18 of the United States Code.

Mr. President, this is a very good compromise. Those Senators who originally brought these concerns to our attention, are happy with it. So are the representatives of the satellite dish owners and manufacturers.

Senator Simon expressed concerns that the Electronic Communications Privacy Act's penalties were too severe for the first offender who, without an unlawful or financial purpose, intercepts a cellular telephone call or certain radio communications related to news-gathering. Senator Mathias and I have accepted Senator Simon's proposal, and it is incorporated in the amendment we are offering today. Senator Simon's proposal reduces the penalty for such an interception of an unencrypted, unscrambled cellular telephone call to a $500 criminal fine. Unencrypted, unscrambled radio communications transmitted on frequencies allocated under subpart D of part 74 of the FCC rules are treated like private satellite video communications are under Senator Grassley's proposal.

Because we have been able to reach agreement on the Grassley and Simon proposals there are no outstanding issues to be resolved in the Electronic Communications Privacy Act.

Mr. President, the staff of the Senate Judiciary Committee's Subcommittee on Patents, Copyrights and Trademarks has prepared a summary of the Electronic Communications Act. I ask unanimous consent that the summary of the amendment be printed in the Record following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. LEAHY. Mr. President, I would like to thank all those who have worked with us to bring the Electronic Communications Privacy Act to the point of Senate passage. First, let me thank Senator MATHIAS and his staff, Steve Metalitz and Ken Mannella. Senator THURMOND and his staff, Dennis Shedd and Cindy Blackburn have been very helpful.

I also would like to thank Congressmen KASTENMEIER and MOORHEAD and the staff of the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice, David Beier, Deborah Leavy, and Joe Wolfe. Finally, I would like to thank my own staff, John Podesta, Ann Harkins, and Tom Hodson.

Mr. President, let me just remind my colleagues in closing, that since the beginning of our national history, first-class mail has preserved privacy while promoting commerce. Today a wide variety of new technology is used in American businesses and American homes side by side with first class mail. It is high time we updated our laws to bring them in line with that technology.

EXHIBIT 1

A SUMMARY OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT

The Electronic Communications Privacy Act amends Title III of the Omnibus Crime Control and Safe Streets Act of 1968—the federal wiretap law—to protect against the unauthorized interception of electronic communications. It amends the 1968 law to update and clarify federal privacy protections and standards in light of dramatic changes in new computer and telecommunication technologies. Originally introduced in the Senate as S. 1667 by Senators Leahy and Mathias, and H.R. 3378 by Congressmen Kastenmeier and Moorhead, the bill has gone through a substantial revision as a result of negotiations with interested Senators and their staffs, various industry and privacy groups and the Department of Justice.

On June 11, the House Judiciary Committee unanimously reported H.R. 4952. On June 19, Senators Leahy and Mathias introduced that bill as S. 2575. On June 23, the House passed H.R. 4952. On August 12, the Subcommittee on Patents, Copyrights and Trademarks of the Senate Judiciary Committee reported S. 2575. During Subcommittee consideration some Senators expressed concern that the penalties for private viewing of certain satellite transmissions were too severe. Their concerns have been addressed by a reduction of the private and public penalties for home viewing. The bill also addresses the recent Captain Midnight incident by increasing penalties for interference with satellite transmissions. On September 19, the Judiciary Committee passed the Electronic Communications Privacy Act.

The Justice Department strongly supports this legislation.

Highlights of the Electronic Communications Privacy Act of 1986 follow:

Currently, Title III covers only voice communications. The legislation expands coverage to include video and data communications.

Currently, Title III covers only common carrier communications. The legislation eliminates that restriction since private carriers and common carriers perform so many of the same functions today that the distinction no longer serves to justify a different privacy standard.

At the request of the Justice Department, the Electronic Communications Privacy Act continues to distinguish between electronic communications (data and video) and wire or oral communications (voice) for purposes of some of the procedural restrictions currently contained in Title III. For example, court authorization for the interception of a wire or oral communication may only be issued to investigate certain crimes specified in Title III. An interception of an electronic communication pursuant to court order may be utilized during the investigation of any federal felony.

Wire communications in storage, like voice mail, remain wire communications.

To underscore that the inadvertent reception of a protected communication is not a crime, the legislation changes the state of mind requirement under Title III from "willful" to "intentional."

Certain electronic communications are exempted from the coverage of the Electronic Communications Privacy Act including:

The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

Tone-only paging devices;

Amateur radio operators and general mobile radio services;

Marine and aeronautical communications systems;

Police, fire, civil defense and other public safety radio communications systems;

Specified transmissions via audio subcarrier;

The satellite transmission of network feeds;

The satellite transmission of satellite cable programming as defined in Section 705 of the Communications Act of 1934;

Any other radio communication which is made through an electronic communications system that is configured so that such communication is "readily accessible to the general public," a defined term in the bill.

The term readily accessible to the general public does not include communications made by cellular radio telephone systems; therefore, the bill continues current restrictions contained in Title III against the interception of telephone calls made on cellular telephone systems. However, the criminal penalty for an unlawful interception of a cellular phone call and similar communications is reduced from the current five-year felony.

Under the Simon amendment that criminal penalty is reduced to a $500 fine.

The Electronic Communications Privacy Act expands the list of felonies for which a voice wiretap order may be issued. It also expands the list of Justice Department officials who may apply for a court order to place a wiretap.

The Electronic Communications Privacy Act creates a limited exception to the requirement that a wiretap order designate a specific telephone to be intercepted where the Justice Department makes a showing that the target of the wiretap is changing telephones to thwart interception of his or her communications.

A telephone company may move to quash an order for such a "roving tap" if compliance would be unduly burdensome.

The Electronic Communications Privacy Act makes it a crime for a person who has knowledge of a court authorized wiretap to notify any person of the possible interception in order to obstruct, impede or prevent such interception.

Title II of the legislation creates parallel privacy protection for the unauthorized access to the computers of an electronic communications system, if information is obtained or altered. It does little good to prohibit the unauthorized interception of information while it is being transmitted, if similar protection is not afforded to the information while it is being stored for later forwarding.

The legislation establishes criminal penalties for any person who intentionally accesses without authorization a computer through which an electronic communication service is provided and obtains, alters or prevents authorized access to a stored electronic communication. The offense is punished as a felony if committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain; otherwise it is punished as a petty offense.

Providers of electronic communication services to the public and providers of remote computing services to the public are prohibited from intentionally divulging the contents of communications contained in their systems except under circumstances specified in the Electronic Communications Privacy Act.

The contents of messages contained in electronic storage of electronic communications systems which have been in storage for 180 days or less may be obtained by a government entity from the provider of the system only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent state warrant.

The content of messages stored more than 180 days and the contents of certain records stored by providers or remote computer processing services may be obtained from the provider of the service without notice to the subscriber if the government obtains a warrant under the Federal Rules of Criminal Procedure or with notice to the customer pursuant to an administrative subpoena, a grand jury subpoena, or a court order based on a showing that there is reason to believe that the contents of the communication are relevant to a legitimate law enforcement inquiry. Provisions for delay in notice are also included.

An electronic communications or remote computing service provider may disclose to a non-governmental entity customer information like mailing lists, but not the contents of the communication. Disclosure of such information to the government is required, but only when the government obtains a court order, warrant, subpoena, or customer consent.

At the FCC's request, a section was added to the legislation to address problems highlighted by the recent Captain Midnight incident. The Electronic Communications Privacy Act increases penalties for the intentional or malicious interference with satellite transmissions.

The legislation clarifies that telephone companies and other service providers are not civilly or criminally liable for good faith assistance to law enforcement agencies.

Civil penalties are created for users of electronic communications services whose rights under the legislation are violated.

The Grassley amendment, which the sponsors have accepted, sets up a reduced penalty structure for the private home viewer whose reception of specified satellite transmissions is not for commercial gain.

The Simon amendment, which the sponsors have accepted, sets up the same penalty structure for the interception of radio communications transmitted on frequencies allocated under subpart D of part 74 of the FCC rules.

The penalty structure under the Grassley and Simon amendments is:

A first offender will be subject to a suit by the federal government for injunctive relief. If injunctive relief is granted, the court may use whatever means in its authority, including civil and criminal contempt, to enforce that injunction. It must impose a $500 civil fine. In addition, the penalty for second and subsequent offenses is a $500 fine in a suit brought by the government.

Under the private civil damages provisions of the Electronic Communications Privacy Act the first offender may be sued for the greater of actual damages or statutory damages of $50 to $500. The second offender is subject to suit for the greater of actual damages or statutory damages of $100 to $1000. Third and subsequent offenders are subject to full civil damages under the Electronic Communications Privacy Act.

The legislation creates a statutory framework for the authorization and issuance of an order for a pen register or a trap and trace device based on a finding that such installation and use is relevant to an on-going criminal investigation.

Mr. THURMOND. Mr. President, today, I rise in support of the amendment to H.R. 5484, the Electronic Communications Privacy Act of 1986. This amendment is similar to S. 2575, the Senate companion, which is currently pending in the Judiciary Committee.

As a cosponsor of S. 2575, the Senate bill, I commend Senator PATRICK J. LEAHY and Senator CHARLES McC. MATHIAS, JR., for introducing this much-needed legislation. The bill is the product of over a year's worth of negotiations and is now strongly supported by business groups as well as the Justice Department.

This legislation updates present wiretap law which currently provides privacy protection only for voice communications that are transmitted in whole or part by wire by adding new protection for certain voice communications, regardless of how they are transmitted, as well as data communications and electronic mail.

This legislation is necessary due to the changes that have occurred in communications technology since the current law was enacted in 1968. Along with providing privacy protection for new forms of technology, this bill also clarifies the procedures that law enforcement officers must follow when they seek permission for a wiretap.

When S. 2575, which is currently pending in the Judiciary, was first introduced and referred to the committe, it contained a provision that would make it a criminal offense to intercept satellite communications—known as "backhauls"—which are transmissions between a television affiliate and the network, as well as video conferences transmitted by satellite. Concern has been expressed in the committee that such a provision may unfairly subject unknowing satellite dish owners to criminal liability. This amendment responds to this concern by providing that a person must intentionally intercept such communications to be subject to penalties, and those penalties will be civil only. This amendment also contains other changes which serve to strengthen this bill.

I believe that this amendment strikes a reasonable balance between legitimate privacy concerns and the importance of Federal officials using electronic surveillance as an effective and valuable law enforcement tool. Because this needed legislation is supported by all members of the Judiciary Committee, and because I have been informed that the essence of this Senate amendment will be maintained through conference, I am willing to support this expedited process. My colleagues in the Senate should also be aware that the sponsors of this legislation will continue to seek Judiciary Committee approval of the companion bill. I urge each one of my colleagues to vote for this amendment, and support the amended bill.

Mr. President, the House has passed this amendment. The Senate Judiciary Committee considered it carefully. We approved it, and the report is here now in the Senate. We accept the amendment.

Mr. DANFORTH. This legislation covers some conduct that also is prohibited under section 705 of the Communications Act of 1934. Do I understand correctly that the sanctions contained in this legislation would be imposed in addition to, and not instead of, those contained in section 705 of the Communications Act?

Mr. MATHIAS. That is correct. This legislation is not intended to substitute for any liabilities for conduct that also is covered by section 705 of the Communications Act. Similarly, it is not intended to authorize any conduct which otherwise would be prohibited by section 705. The penalties provided for in the Electronic Communications Privacy Act are in addition to those which are provided by section 705 of the Communications Act.

As a general rule, conduct which is illegal under section 705 of the Communications Act would also be illegal under this bill. These supplemental sanctions are particularly important where an unauthorized interception is made for direct or indirect financial gain. This bill is designed to help put an end to such conduct.

The exception to the general rule is that we do not provide liability for the noncommercial private viewing of unscrambled network feeds to affiliated stations by the owners of home satellite dishes. Accountability for that conduct will be determined solely under section 705 of the Communications Act. The private viewing of any other video transmission not otherwise excepted by section 705(b) could be subject to action under both the Communications Act and this legislation.

Mr. DANFORTH. So although the proposed legislation which amends title 18 of the United States Code replaces, for specified conduct, the penalty structure of the Electronic Communications Privacy Act as introduced, and substitutes a scheme of public and private remedies under title 18, am I correct that conduct prohibited by the Communications Act will continue to be governed by that act?

Mr. MATHIAS. That is correct. Conduct which is not prohibited by the Electronic Communications Privacy Act, but which is prohibited by the Communications Act, still will be subject to the full range of remedies and penalties under the Communications Act.

Mr. DANFORTH. I thank the distinguished Senator for this clarification.

Mr. HATCH. Mr. President, I am pleased to join this amendment. Senator LEAHY and I have worked together to fashion a balanced protection for law enforcement records.

We have added protections for foreign counterintelligence and terrorism records. On this portion, we owe gratitude to Senator DENTON whose work on the Terrorism Subcommittee aided this amendment.

The limited fee waivers of this change also facilitate the beneficial goal of media access to some records.

These and many other provisions will greatly strengthen the enforcement ability against this national drug crisis. Another important provision involves the Freedom of Information Act. This section will protect a few narrow law enforcement files from mandatory disclosure. This section was nearly the same as part of S. 774 which unanimously passed the Senate last Congress.

Most important, this section will directly improve drug enforcement. In 1982 the DEA did a study on the impact of FOIA on drug investigations. That study found, among other things, that:

85 percent of the DEA's Agents considered the FOIA to be inhibiting their operations.

78 percent of DEA's investigations (303 cases) involved the recruitment and use of confidential sources. Of this total:

(a) 47 percent of the enforcement investigations involved difficulty obtaining information from witnesses or defendants. Sixteen percent of these problems were directly attributed to the FOIA; and

(b) 26 percent of the enforcement investigations involved a reluctance or an unwillingness on the part of informants to cooperate with DEA. One-third of the instances were directly attributed to the FOIA.

> More than 60 percent of the FOIA and Privacy Act requests received by DEA originate from within the criminal element.

This study focused on only investigations that were actually initiated. No insight was gained as to the opportunities lost on investigations that were not developed because persons failed to come forward with information for fear of FOIA exposures. In the final analysis, the loss of such investigative opportunities may far outweigh the adverse effects revealed in the study. That 1982 study concluded that many investigations are aborted, compromised, or reduced in scope because of FOIA exposure.

This is not the only study establishing the problem. In 1978 the Senate Judiciary Subcommittee on Criminal Law concluded that:

> It can safely be said that none [of the sponsors of FOIA] foresaw the host of difficulties the legislation would create for the law enforcement community, nor did they foresee the utilization that would be made of the act by organized crime and other criminal elements or the damage it would do to the personal security of individual citizens, * * * Informants are rapidly becoming an extinct species because of fear that their identities will be revealed in response to a FOIA request.

In that same year the General Accounting Office released a study detailing 49 instances of potential informants refusing to cooperate with law informants refusing to cooperate with FOIA. In 1979, FBI Director Webster supplied documentation of over 100 instances of FOIA interference with law enforcement investigations or informants. In 1981, his list was expanded to 204 examples. In 1983, even more examples were brought out by his testimony. In fact, no fewer than five different reports studying the impact of FOIA have concluded that the act has harmed the ability of law enforcement officers to enlist informants and carry out confidential investigations. Among these, the Attorney General's 1981 Task Force on Violent Crime found the FOIA should be amended because it is used by lawbreakers "to evade criminal investigation or retaliate against informants."

A mainstay of drug enforcement today is the volunteered statements and background information provided to Federal agencies by confidential sources, particularly for key criminal enterprises relating to narcotics, organized crime, and extremist violence. However, because of the large volume of FOIA requests from known or suspected criminals, many sources—citizens and "street" informants alike—have become reluctant to assist the FBI or DEA because of fears that the Government cannot protect their identities. This is not merely a perception problem. Indeed, confidential law enforcement information is disclosed to organized crime and drug dealers through FOIA.

Perhaps I could explain these provisions more carefully. FOIA contains an exemption that is supposed to protect informants, but even a quick look at that language reveals that the current protection is not sufficient. Exemption 7 protects "investigatory records compiled for law enforcement purposes but only to the extent such records * * * would disclose the identity of a confidential source * * * and then only when that information was furnished only by the confidential source." Let's examine the massive loopholes in that language. If a record would disclose an informant's identity but is not an investigatory record, it must be disclosed. If a record would disclose an informant's identity but was not compiled for law enforcement purposes, it must be disclosed. Thus, if a record contains informant identities and is not an investigatory record, but a summary of recent successes in drug cases submitted to the Drug Policy Board, it must be disclosed. Is this the kind of protection that our informants deserve. After all, they have put their lives on the line to help us control the drug crisis.

Let us look further at the requirement that a record could only be disclosed if it "would disclose" the identity of an informant. This is a dangerous standard. If a record says that the informant, Joe Jones, drove away in a green sedan, the language of the statute allows the deletion of the informant's name, but that is not the only identifier. The requester who may be the felon, and remember over 80 percent of those requesting information from the DEA in 1985 were from the criminal element, knows that he only has one friend with a green sedan. Yet the DEA has no way of knowing if that information "would identify" the informant. The language of the statute does not clearly protect that information.

Let's look at another example. The DEA record would mention only that the informant is a "she." The statute does not necessarily permit deletion of that pronoun because it referes to half of humanity. It does not clearly identify informant, but what the DEA does not know is that the criminal requester knows that he only told one female, his girlfriend, about his crime. He has found the informant. Without going into more details, I assure my colleagues that this last example is not hypothetical.

The problem with the narrow "would disclose" language is that there is no way for the DEA to know what the criminal requester knows. The criminal may know that one of his friends always calls a party a "bash" or a soft drink a "pop." If one of those words appear in a requested record, he has identified the informant.

I could go on with other examples. For example, the statute says a record may be withheld only if disclosed "only by" that informant. This means that if the DEA also received the information from another informant, it cannot protect either of the two informants because neither are independent sources. Yet the criminal element is not going to worry about such technicalities, it is going to take action when it identifies an informant.

In 1978, our colleague, Senator NUNN held a hearing on this subject. He interviewed an admitted murderer and convicted felon, Gary Bowdach. This is a verbatim rendering of that discussion:

> Mr. NUNN. Turning to the Freedom of Information Act, what was your motivation in filing FOIA requests on you own behalf.
>
> Mr. BOWDACH. To try to identify the informants that revealed information to the agencies. * * *
>
> Mr. NUNN. Why did you want to get their names?
>
> Mr. BOWDACH. To know who they were, to take care of business later on.
>
> Mr. NUNN. To take care of business later on? You mean by that to murder them?
>
> Mr. BOWDACH. Yes sir.

What more needs to be said? This murderer states forthrightly that FOIA is used to take revenge on informants. To address this problem, this amendment recommeds very modest changes. It does not gut the information act, but simply states that records may be withheld if it is reasonable to expect that the record could lead to disclosure of the informant's identity. This is reasonableness test that can be tested in the courts. With this background it is easy to see why this language unanimously passed the Senate last Congress.

The current seventh exemption exempts investigatory records compiled for law enforcement purposes if those records also meet one of six further requirements (A to F). The six further criteria are intended to protect enforcement proceedings and against disclosures to suspects, fair trials, personal privacy, identities of informants, investigative techniques, and the life and safety of law enforcement personnel.

The current threshold language of the exemption means that records may be eligible for protection if they are investigatory records complied for law enforcement purposes. This could mean that a record which jeopardizes one of the six requirements, such as "endanger the life * * * of law enforcement personnel," could be disclosed simply because it does not satisfy the formalistic rest of being an investigatory record. This exalts form over substance.

The current language of (7)(A) requires an agency to show that disclosure of a record "interferes" with an enforcement proceeding. At the outset of an investigation, however, the agency often does not know which aspects of a record, if disclosed to the suspect, would interfere with the investigation. Thus the existing language could disclose to a suspect vital information about an ongoing investigation.

The current language of (7)(D) requries that a record conclusively "disclose the identity of an informant" before it qualifies for exemption. This ignores the commonsense principle that some information that does not in itself identify the informant can, in some circumstances known only to the suspect, result in such identification. This is particularly true in organized crime investigations because of the institutional memory of these organizations.

The threshold language about "investigatory" has meant that law enforcement manuals were not covered by the exemption for law enforcement techniques and procedures. The courts have also reached conflicting results about the protection to be afforded prosecutorial guidelines and other law enforcement techniques and procedures.

Finally, the language in (7)(F) has an obvious and absurd limitation. Under this language, records are only exempt if they endanger the life of a police officer, without giving similar protection to the life of any natural person.

Some kinds of investigations are particularly difficult to protect from abuse under FOIA. These are characteristically the kinds of investigations that involve organized crime, terrorism, and foreign counterintelligence. In these instances, the suspects often have the time, resources, and inclination to use FOIA to learn the identities of informants, the progress achieved by various investigations, and methods to avoid detection and prosecution. In short, these entities have in common a detached coordinating agent with the ability and motivation to circumvent the intent of the exemptions.

In hearings before the Constitution Subcommittee, FBI Director Webster documented 204 recent examples of FOIA substantially jeopardizing law enforcement.

This amendment would exempt from disclosure any information that could reasonably be expected to disclose a confidential source, including a State or local government agency or foreign government. This change would afford greater protection to information which should clearly be exempt from disclosure due to its serious implications for law enforcement investigations and the safety of confidential informants.

The present exemption that would disclose a confidential source—the rationale is to broaden the definition of confidential source to include State, local, and foreign governments. Some of the formalistic requirements of exemption 7, such as the threshold requirement that the record must be investigatory, are deleted to focus on preventing harm to law enforcement functions.

With regard to organized crime, there is much evidence of the existence of sophisticated networks of FOIA requesters. Under the current FOIA there is a real danger which accompanies FOIA requests by organized criminal groups who have both the incentive and the resources to use the act systematically—to gather, analyze, and piece together segregated bits of information obtained from agency files. These sophisticated criminals can use the FOIA to determine whether an investigation is being conducted on him or his organization, whether there is an informant in his organization, and even who that informant might be. The release of records containing dates of documents, locations reporting investigations, the amount of material, and even the absense of information are all meaningful when compiled in the systematic manner employed by organized crime.

This amendment would broaden b(7) and provide some additional provisions to protect records compiled in a lawful investigation of organized crime or drug offenses.

Finally, the bill acknowledges that drugs and organized crime constitutes a special problem under FOIA. There is much evidence of the existence of sophisticated networks of organized crime FOIA requesters. For example, organized members in the Detroit area have been instructed to submit FOIA requests to the FBI in an effort to identify FBI informants. Through this concerted effort, the members and associated of this family have obtained over 12,000 pages of FBI documents.

The withholding of information on the basis of one of the enumerated exemptions can often be ineffective in avoiding the anticipated harms that would accompany disclosure because invoking the exemption itself becomes a piece of the mosaic. To invoke (b)(7)(D), for example, is to tell the requester, potentially a criminal seeking information in his illicit organization, exactly what he may want to know—that his organization has an internal informant. Thus, we are adding the new provisions of this bill.

In such a case, the Freedom of Information Act presents the potential for damage to sensitive FBI investigations, even though no release of substantive information is made. A requester with an awareness of the law's provisions, a familiarity with an agency's records systems, and whatever personal knowledge he brings to the situation, can gain insight into FBI operations regardless of his ability to procure a release of Bureau documents. For example, knowledge that a suspected informant's file has grown over a period of time is often enough to tip off the sophisticated criminal that the suspected informant has been talking to law enforcement official too often.

Because of the mosaic problem with FOIA and the particular threat posed by organizations with historical continuity and an institutional memory and further because use of the exemptions themselves can become a "piece of the mosaic," simply broadening existing exemptions will not cure the problem of organized crime abuse of FOIA. Accordingly, the proposed bill's changes to b(7) and the new additions to FOIA relative to law enforcement would exclude from disclosure all documents compiled in a lawful investigation of organized crime which would harm investigations or informants. The new provisions apply with equal force to records concerning foreign counterintelligence and terrorism which have been classified.

FEES AND WAIVERS

The fee waiver provision incorporated into this amendment is taken from H.R. 6414, a bill introduced in the 98th Congress. This provision was changed from the version found in H.R. 6414 to indicate our intent to resolve a few important FOIA issues.

In the first place, this change from H.R. 6414 removes the language "by or on behalf of" to limit the breadth of the categorical waiver provision to those requesters who seek Government records for their own scholarly work or media work. Next, we are removing the language "nonprofit group that intends to make the information available" to clarify that organizations seeking to establish private repositories of public records shall not qualify for a waiver. These groups purport to act as an intermediary between the Government and requesters in seeking records that requesters could seek directly from the Government. This type of private library of public documents, whether operated for profit or not, should not qualify for a waiver under the standards of this bill. Congress never intended such a result and does not change its intention with language.

This amendment also adds the words "in the public interest because it" to bring the new language more into conformance with the standards and language of current law.

This change also strikes from the provisions of the bill allowing reduction of fees the words "a requester is indigent and can demonstrate a compelling need." By striking this language, we intend to eliminate prisoners and other indigents from eligibility for reduced fees.

Finally this provision limits significantly the denovo review standard found in H.R. 6414. It strikes the words "reduction or" to specify that denovo review is to apply only to the waiver provisions of this section. Thus, denovo review applies to review of eligibility of scholar, bonafide news representatives, and commercial requesters for waivers. It does not apply to reductions of fees requested under the standards of (iii). These reduction issues will continue to be reviewed under the arbitrary and capricious standard.

The scope of denovo review is also limited to the administrative record. This denovo standard should not be construed to apply to any matters not raised or any evidence not presented in the administrative record.

It's also important to note that this provision makes commercial requesters subject to processing costs in addition to search and duplication fees. This could generate as much as $60 million in additional fees to offset the costs of FOIA processing.

I ask unanimous consent to have a letter from Director Webster printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, DC., September 27, 1986.

Senator ROBERT DOLE,
Majority Leader, U.S. Senate, Washington, DC.,

DEAR SENATOR DOLE: The Omnibus Drug Enforcement, Education, and Control Act contains a provision vitally important to FBI efforts to strengthen drug and organized crime law enforcement programs. This provision would amend the Freedom of Information Act to offer needed protections for confidential undercover informants and investigations.

The cooperation of confidential sources is a mainstay of nearly every successful drug enforcement effort. However, because of the increasingly large volume of FOIA requests from known or suspected criminals, many such sources have become reluctant to assist the FBI or the DEA. Moreover, FOIA disclosures have on numerous occasions compromised investigations and jeopardized the safety of informants.

No fewer than five separate reports on the impact of FOIA, including one done by the GAO, have concluded that the Act has had a harmful effect on undercover and confidential investigations. A recent report by the Drug Enforcement Administration documented that "14% of DEA's investigations were adversely affected by FOIA-related problems to the extent that investigations were aborted, significantly compromised, reduced in scope, or required significant amounts of additional work."

As I have testified before the Senate on a number of occasions, the provisions contained in the pending drug bill are long overdue and likely to make a substaintial contribution to the success of our national battle against harmful drugs and the organized crime elements which distribute them. The Senate has unanimously approved these exact provisions in the previous Congress and I strongly encourage it to do so again.

Sincerely,

WILLIAM H. WEBSTER,
Director.

Mr. GRASSLEY. Mr. President, I am very pleased with the agreements we were able to reach concerning the provisions in this bill which relate to home dish users. First, we have affirmed the right of dish users to listen to all unencrypted audio subcarriers that are redistributed by facilities open to the public. This includes subcarriers meant for redistribution by broadcast stations, cable systems, and like facilities and those subcarriers made available in office buildings and other public places. Further, we have decriminalized the private noncommercial viewing of unscrambled satellite video programming that would have previously resulted in the imposition of criminal sanctions on people who simply view television in the privacy of their own homes.

Anyone who has actually viewed programming from a satellite Earth station will find that many channels are indistinguishable from one another in terms of network, nonnetwork, backhaul, or affiliate feeds. With dozens of sporting events, for example, it is difficult to tell whether one is watching a so-called affiliate feed or a backhaul feed. Similarly, with teleconferences, there is often little difference in screen format from our own hearing or Senate floor coverage.

Finally, by decriminalizing the private viewing of most satellite television signals, we avoid the problem of potentially invading the privacy of these people who watch television in their own homes.

The new sections regarding home dish viewing of private unencrypted satellite video transmissions provide for injunctive relief in the case of intentional viewing of such signals. Intentional viewing means that the Earth station owner must know that he is viewing a prohibited signal and that that type of viewing is not permitted under the act.

So, in this case, the applicable remedy would be injunctive relief and, upon a second occurrence, a $500 civil penalty. This would give networks and other programmers the ability to claim protection under the act without scrambling their signals. These claims would largely be a fiction under any set of circumstances; however, I cannot see imposing criminal sanctions on an innocent viewing public for the benefit of those who could scramble but choose not to.

The new satellite dish provisions would affect 1.5 to 2 million American families nationwide who receive their television programming via satellite. Satellite dish technology is especially important to rural Americans who do not have the same access to a multiplicity of television programming as do their urban counterparts.

I wish to thank my colleagues, Senators LEAHY and MATHIAS, and their competent staffs for their diligent work on resolving the satellite dish issues.

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Mr. WEICKER. Might I ask the distinguished Senator from Maryland what the cost is?

Mr. MATHIAS. There are no costs to this amendment.

Mr. WEICKER. There are no costs involved, there is no additional authorization in this amendment?

Mr. MATHIAS. No.

The PRESIDING OFFICER. The question is on the second-degree amendment.

Mr. CHILES. I move adoption.

Mr. HATCH. I move adoption of the amendment as modified.

The PRESIDING OFFICER. The question is on the second-degree amendment.

Mr. HATFIELD. Mr. President, is there an amendment pending at this moment?

The PRESIDING OFFICER. There are two amendments pending.

Mr. MATHIAS. I move adoption.

Mr. LEAHY. I move adoption of the amendment.

The PRESIDING OFFICER. We have not yet adopted the amendment. The question is on the second-degree amendment.

The amendment (No. 3067) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the first-degree amendment as amended.

The amendment (No. 3066) as amended was agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3068

(Purpose: To amend the Internal Revenue Code of 1954 to provide for the reimbursement to State and local law enforcement agencies for costs incurred in investigations which substantially contribute to the recovery of Federal taxes)

Mr. CHILES. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Florida [Mr. CHILES] proposes an amendment numbered 3068.

Mr. CHILES. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SECTION 1. RECOVERY OF COSTS INCURRED BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) IN GENERAL.—Subchapter B of chapter 78 of the Internal Revenue Code of 1954 (relating to general powers and duties) is amended by adding at the end thereof the following new section:

SEC. 7624. REIMBURSEMENT TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) AUTHORIZATION OF REIMBURSEMENT.—Whenever a State or local law enforcement agency provides information to the Internal Revenue Service that substantially contributes to the recovery of Federal taxes, such agency shall be reimbursed by the Internal Revenue Service for costs incurred in the investigation (including but not limited to reasonable expenses, per diem, salary and overtime) not to exceed 10 percent of the sum ultimately recovered. The Internal Revenue Service shall maintain records reflecting the receipt of information from the contributing agency, and shall notify the agency when a recovery has been effected. Following such notification, the agency shall submit a statement detailing the investigative costs incurred. Where more than 1 State or local agency has given information that substantially contributes to the recovery of Federal taxes, the Internal Revenue Service shall equitably distribute the costs reimbursements among those agencies up to an aggregate sum of 10 percent of the taxes recovered.

(b) ESTABLISHMENT OF A FUND.—The Commissioner of the Internal Revenue Service shall establish a fund for recovering that portion of recovered Federal taxes authorized under subsection (a) and intended as reimbursements for state and local law enforcement agencies. In conjunction with the fund, the Commissioner shall develop guidelines on the procedures and timetables for reimbursing those law enforcement agencies which have contributed to the recoupment of Federal taxes.

(c) REIMBURSEMENT.—Reimbursements under section (a) shall be made directly from the fund under subsection (b) prior to the deposit of such funds into the United States Treasury.

(d) CLERICAL AMENDMENT.—The table of sections for such subchapter B is amended by adding at the end thereof the following new item:

"Sec. 7624. Reimbursement to State and local law enforcement agencies."

Mr. CHILES. Mr. President, today I am offering an amendment to H.R. 5484. This proposal would amend the Internal Revenue Code of 1954 so as to provide for the reimbursement of investigative expenses incurred by State and local law enforcement agencies when those agencies provide information to the Internal Revenue Service which substantially contributes to the recovery of Federal tax dollars. This reimbursement would not exceed 10 percent of the total sum recovered.

The amendment I introduce today is similar to a bill I introduced earlier in the 99th Congress, S. 2352. This proposal is a result of a series of discussions that I had with law enforcement officials in Florida. It is designed to provide assistance to State and local law enforcement authorities in their efforts to reduce drug-related crime. It corrects an inequity in the present system which leaves State and local authorities uncompensated for their investigative assistance when that assistance leads to recovery of Federal taxes.

Because law enforcement officials bear a large part of the burden in the war on drugs, in terms of time and resources, they should be compensated for these costs. In my own State of Florida, the department of law enforcement has been an ally of the Federal Government in its investigation of targeted crime organizations. It does not recoup its investigative costs. As a result of this practice, the financial benefits go to the Federal Government, while the States suffer from a drain on their resources.

My proposal would also serve to encourage further participation by local agencies in Federal antidrug efforts.

Investigating the financial or economic aspect of criminal activity can be time consuming and expensive. State and local agencies might not have the resources to conduct an investigation of this type and instead choose to leave these investigations alone. The proposed legislation provides a guarantee of reimbursement thereby making it economically feasible for local agencies to assist Federal authorities.

Mr. President, this amendment I am introducing will go a long way in helping our law enforcement authorities crack down on those involved in the drug trade. These officials deserve our help. I ask that this amendment be adopted.

Mr. President, we encourage people to try to help the Internal Revenue Service all the time. Our State and local law enforcement people are doing that.

We have had some big, big major recoveries in which State and local law enforcement have spent much of their resources in doing and find that they could not even share in the proceeds of this.

This amendment will encourage State and local law enforcement agencies to assist IRS. It will bring additional money in.

It can be up to IRS for them to make the decision as to whether they have been of assistance or not. They can only get up to the amount of their expenses and never more than 10 percent.

We have discussed the amendment with the other side. I think it certainly will be greater encouragement to State and local law enforcement agencies and I would like to urge its adoption.

Mr. THURMOND. Mr. President, we accept the amendment.

Mr. CHILES. I move adoption of the amendment, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3068) was agreed to.

Mr. CHILES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3069

(Purpose: To protect against wrongful use of cyanide)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for Mr. GORTON, proposes an amendment numbered 3069.]

Mr. HATCH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following:

SEC. . (a) The Administrator of the Environmental Protection Agency shall conduct a study of the manufacturing and distribution process of cyanide with a view to determining methods, procedures, or other actions which might be taken, employed, or otherwise carried out in connection with such manufacturing and distribution in order to safeguard the public from the wrongful use of cyanide.

(b) Such study shall include, among other matters, the following:

(1) a determination of the sources of cyanide, including the name and location of each manufacturer thereof;

(2) an evaluation of the means and methods utilized by the manufacturer and others in the distribution of cyanide, including the name and location of each such distributor;

(3) an evaluation of the procedures employed in connection with the selling, at the wholesale and retail level, of cyanide, including a determination as to whether or not persons selling cyanide require the intended purchaser to identify himself or herself;

(4) a determination as to the extent to which recordkeeping requirements are imposed on, or carried out by, manufacturers of cyanide with respect to the specifications of each lot of cyanide produced by such manufacturer;

(5) a determination as to the feasibility and desirability of establishing a central registry of all lot specifications of cyanide for the purpose of providing quick access to investigative and law enforcement agencies;

(6) a consideration and review of all aspects of the matter of interstate versus intrastate to the extent that it involves the manufacturing, distribution, or use of cyanide;

(7) a determination as to the feasibility and desirability of requiring manufacturers

of cyanide to color all such cyanide with a distinctive color so that the consuming public can more readily identify products laced with cyanide;

(8) a determination as to the feasibility and desirability of requiring limited-access storage for cyanide at universities, laboratories, and other institutions that use cyanide for research or other purposes;

(9) a determination as to the feasibility and desirability of issuing regulations to require any person who sells or otherwise transfers, at a retail level, any cyanide to record such sale or transfer, including the identity of the person purchasing or otherwise receiving such cyanide, the address of such person, and the intended use of such cyanide. Such records shall be available for such use, and retained for such period, as the aforementioned Administrator shall by regulation require.

(b) On or before the expiration of the 180-day period following the date of the enactment of this section, the Administrator of the Environmental Protection Agency shall report the results of such study to the Congress, together with his or her recommendations with respect thereto.

(c) As used in this section, the term—

(1) "person" means any individual, corporation, partnership, or other entity; and

(2) "cyanide" means sodium cyanide, potassium cyanide or any other toxic cyanide compound.

(3) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Mr. HATCH. Mr. President, I am, on behalf of Senator GORTON, offering an amendment to require the Environmental Protection Agency to study the manufacture and processing of cyanide.

I understand that this amendment has been cleared on both sides.

I ask that the amendment be adopted.

Mr. THURMOND. Mr. President, we accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3069) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3070

(Purpose: To amend the provisions of the Federal Food, Drug, and Cosmetic Act relating to infant formula)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 3070.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title IV, insert the following:

SEC. —. INFANT FORMULA.

Section 412 of the Federal Food, Drug, and Cosmetic Act is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively;

(2) by striking out the last sentence of paragraph (1) of subsection (f) (as redesignated by clause (1) of this section) and inserting in lieu thereof the following new sentence: "Such records shall be retained for at least one year after the expiration of the shelf life of the infant formula.";

(3) by striking out "(a) and (b)" in the first sentence of subsection (g)(1) (as redesignated by clause (1) of this section) and insert in lieu thereof "(a), (b), and (c)";

(4) by striking out "(c)(1)" in the second sentence of such subsection and inserting in lieu thereof "(d)(1)";

(5) by striking out "(c)(1)(B)" in such sentence and inserting in lieu thereof "(d)(1)(B)";

(6) by striking out "(a) and (b)" in subsection (g)(2) (as redesignated by clause (1) of this section) and inserting in lieu thereof "(a), (b), and (c)";

(7) by striking out "subsection (a)(2)" in subsection (h) (as redesignated by clause (1) of this section) and inserting in lieu thereof "subsection (a)(3)"; and

(8) by striking out subsections (a) through (d) and inserting in lieu thereof the following:

"(a)(1) An infant formula, including an infant formula powder, shall be deemed to be adulterated if—

"(A) such infant formula does not provide nutrients as required by subsection (h);

"(B) such infant formula does not meet the quality factor requirements prescribed by the Secretary under this section; or

"(C) the processing of such infant formula is not in compliance with the good manufacturing practices and the quality control procedures prescribed by the Secretary under this section.

"(2)(A) The Secretary shall by regulation establish requirements for quality factors for infant formulas to the extent possible consistent with current scientific knowledge, including quality factor requirements for the nutrients required by subsection (h).

"(B) The Secretary shall by regulation establish—

"(i) good manufacturing practices for infant formulas, including quality control procedures; and

"(ii) requirements respecting the retention of records,

that the Secretary determines are necessary to assure that an infant formula provides nutrients in accordance with this section and is manufactured in a manner designed to prevent adulteration of the infant formula by any poisonous or deleterious substance which may render such infant formula injurious to health, except that in the case of any substance which is not added substance, an infant formula shall not be considered adulterated for purposes of this clause if the quantity of such substance in such infant formula does not render such infant formula injurious to health.

"(C) The good manufacturing practices and quality control procedures prescribed by the Secretary under subparagraph (B)(i) shall include requirements for—

"(i) the testing, by the manufacturer of an infant formula or an agent of such manufacturer, of each batch of infant formula for each nutrient required pursuant to subsection (h) prior to the distribution of such batch in accordance with the provisions of subparagraph (D);

"(ii) regularly scheduled testing, by the manufacturer of an infant formula or an agent of such manufacturer, of samples of infant formulas during the shelf life of such formulas in order to ensure that such formulas are in compliance with this section;

"(iii) in-process controls including, where necessary, testing required by good manufacturing practices designed to prevent adulteration of each batch of infant formula by any poisonous or deleterious substance which may render such infant formula injurious to health, except that in the case of any substance which is not an added substance, an infant formula shall not be considered adulterated for purposes of this clause if the quantity of such substance in such infant formula does not render such infant formula injurious to health; and

"(iv) the conduct by the manufacturer of an infant formula of regularly scheduled audits to determine that such manufacturer has complied with the regulations prescribed under subparagraph (B)(i).

"(D)(i) At the final product stage, each batch of infant formula shall be tested for Vitamin A, Vitamin B1, Vitamin C, and Vitamin E to ensure that such infant formula is in compliance with the requirements of this section relating to such vitamins.

"(ii) Each nutrient premix used in the manufacture of an infant formula shall be tested for each relied upon nutrient required pursuant to this section contained in such premix to ensure that such premix is in compliance with its specifications or certifications by a premix supplier.

"(iii) During the manufacturing process or at the final product stage and before distribution of an infant formula, an infant formula shall be tested for all nutrients required to be included in such formula pursuant to subsection (h) for which testing has not been conducted pursuant to clause (i) or (ii). Testing under the preceding sentence shall be conducted in order to—

"(I) ensure that each batch of such infant formula is in compliance with the requirements of this section relating to such nutrients; and

"(II) confirm that nutrients contained in any nutrient premix used in such infant formula are present in each batch of such infant formula in the proper concentration.

"(iv) For purposes of this section, the term 'final product stage' means the point in the manufacturing process, before distribution of an infant formula, at which an infant formula is homogenous and is not subject to further degradation.

"(E) The record retention requirements prescribed by the Secretary under clause (ii) of subparagraph (B) shall include requirements for—

"(i) the retention of all records necessary to demonstrate compliance with the good manufacturing practices and quality control procedures prescribed by the Secretary under clause (i) of such subparagraph, including records containing the results of all testing required under subparagraph (C);

"(ii) the retention of all certifications or guarantees of analysis by premix suppliers;

"(iii) the retention by a premix supplier of all records necessary to confirm the accuracy of all premix certifications and guarantees of analysis;

"(iv) the retention of—

"(I) all records pertaining to the microbiological quality and purity of raw materials used in infant formula powder and in finished infant formula; and

"(II) all records pertaining to food packaging materials which show that such materials do not cause an infant formula to be adulterated within the meaning of section 402(a)(2)(C);

"(v) the retention of all records of the results of regularly scheduled audits conducted pursuant to the requirements prescribed by the Secretary under subparagraph (C)(iv); and

"(vi) the retention of all complaints and the maintenance of files with respect to, and the review of, complaints concerning infant formulas.

"(F)(i) Records required under subparagraphs (B)(ii) and (E) with respect to an infant formula shall be retained for at least one year after the expiration of the shelf life of such infant formula. Except as provided in clause (ii) of this subparagraph, such records shall be made available to the Secretary for review and duplication upon request of the Secretary, including records and files maintained under clauses (i) through (v) of subparagraph (E) which may reveal the possible existence of a hazard to health.

"(ii) A manufacturer need only provide written assurances to the Secretary that the regularly scheduled audits required by subparagraph (C)(iv) are being conducted by the manufacturer, and need not make available to the Secretary the actual written reports of such audits.

"(G) In prescribing requirements for audits under subparagraph (C)(iv), the Secretary shall provide that such audits be conducted by appropriately trained individuals who do not have any direct responsibility for the manufacture or production of infant formula.

"(3) The Secretary may by regulation—

"(A) revise the list of nutrients in the table in subsection (h); and

"(B) revise the required level for any nutrient required by subsection (h).

"(4) If pursuant to paragraph (3), the Secretary adds a nutrient to the list of nutrients in the table in subsection (h), the Secretary shall by regulation require that the manufacturer of an infant formula test each batch of such formula for such new nutrient in accordance with clause (i), (ii) or (iii) of paragraph (2)(D).

"(b)(1)(A) No person shall introduce or deliver for introduction into interstate commerce any new infant formula unless—

"(i) such person has, prior to introducting such new infant formula, or delivering such new infant formula for introduction, into interstate commerce, registered with the Secretary the name of such person, the place of business of such person, and all establishments at which such person intends to manufacture such new infant formula; and

"(ii) such person has at least 90 days prior to marketing such new infant formula, made the submission to the Secretary required by subsection (c)(1).

"(B) For purposes of this section, the term 'new infant formula' includes—

"(i) an infant formula manufactured by a person which has not previously manufactured an infant formula; and

"(ii) an infant formula manufactured by a person which has previously manufactured infant formula and in which there is a major change, in processing or formulation, from a current or any previous formulation produced by such manufacturer.

For purposes of this subparagraph, the term 'major change' has the meaning given to such term in section 106.30(c)(2) of title 21, Code of Federal Regulations (as in effect on August 1, 1986), and guidelines issued thereunder.

"(2) If the manufacturer of an infant formula for commercial or charitable distribution for human consumption determines that a change in the formulation of the formula or a change in the processing of the formula may affect whether the formula is adulterated under subsection (a), the manufacturer shall, prior to the first processing of such formula, make the submission to the Secretary required by subsection (c)(i).

"(c)(1) A person shall, with respect to any infant formula subject to subsection (b), make a submission to the Secretary. Each such submission shall include—

"(A) The quantitative formulation of the infant formula;

"(B) a description of any reformulation of the formula or change in processing of the infant formula;

"(C) assurances that the infant formula will not be marketed unless it meets the requirements of subsections (a)(2)(A) and (h), as demonstrated by the testing required under subsection (a)(2)(C); and

"(D) assurances that the processing of the infant formula complies with subsection (a)(2)(B)(i).

"(2) After the first production of an infant formula subject to subsection (b)(1), and before the introduction into interstate commerce of such formula, the manufacturer of such formula shall submit to the Secretary, in such form as may be prescribed by the Secretary, a written verification which summarizes test results and records demonstrating that such formula complies with the requirements of subsection (a)(2)(A), (a)(2)(B)(i), (a)(2)(C)(i), (a)(2)(C)(iii), and (h).

"(d)(1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required by subsection (h); or

"(B) may be otherwise adulterated or misbranded,

the manufacturer shall promptly notify the Secretary of such knowledge. If the Secretary determines that the infant formula presents a risk to human health, the manufacturer shall immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary.

"(2) For purposes of paragraph (1), the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(e)(1) If a recall of infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary shall prescribe under paragraph (2), and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2); and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risk to human health presented by the formula subject to the recall.

"(3) The Secretary shall by regulation require each manufacturer of an infant formula who begins a recall of such formula because of a risk to human health to request each retail establishment at which such formula is sold or available for sale to post at the point of purchase of such formula a notice of such recall at such establishment for such time that the Secretary determines necessary to inform the public of such recall.".

Mr. METZENBAUM. Mr. President, the amendment I have offered is not directly related to the legislation currently pending before the Senate.

My amendment, Mr. President, deals with the quality, the purity and the safety of the baby formula consumed by this Nation's infants.

My colleagues will recall that the Senate voted on this matter earlier in the year—and a full two-thirds of the membership of this body approved my amendment to strengthen the rules governing infant formula production.

That amendment, however, is attached to a piece of legislation that appears to by dying in the House.

I feel so strongly about this issue—particularly since so many of my colleagues have gone on record as supporting a stronger infant formula law—that I am offering another amendment which will have a greater prospect of becoming law.

Mr. President, I ask unanimous consent that a letter from the parent's group "Formula" be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FORMULA,
Washington, DC, September 1986.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: We need your support of the proposed amendments to section 412 of the Food, Drug, and Cosmetic Act, relating to requirements for infant formulas. This amendment is similar to a measure which was approved by the Senate in May.

When the Infant Formula Act was signed into law in 1980, it set nutrient standards for all infant formulas, and gave the FDA authority to promulgate quality control regulations.

Why does this law need to be amended now?

The answer is very simple. Defective infant formula can still reach consumers because manufacturers are not required to test each batch of infant formula for all the nutrients specified in the law before it leaves the factory. (See attached list.)

The need to correct this problem was pinpointed by Judge Kenneth H. Starr in his recent opinion before the U.S. Court of Appeals for the District of Columbia Circuit in which he acknowledged that "deficient formula . . . could be on grocery shelves for three months before the required periodic analysis would detect the deficiency." (No. 84-5747, Dec. 31, 1985, p. 32.)

The proposed amendments will:

1. Require manufacturers to test each batch of infant formula for each legally mandated nutrient before the formula leaves the factory.

2. Provide that nutrient levels be routinely tested throughout the product's shelf-life.

3. Require manufacturers to test each batch of formula for hazardous extraneous materials (e.g., heavy metals, carcinogens, pesticides, and other industrial contaminants).

4. Ensure that record retention requirements apply to infant formula powders.

5. Provide for point-of-purchase recall notification.

We believe these amendments will provide protection for our Nation's most precious resource—our children.

We established FORMULA, a national non-profit parents' organization seven years ago when our two children became seriously ill after consuming the defective infant formula Neo-Mull-Soy. Since then, more than 70,000 parents have contacted us.

On behalf of all parents, we strongly urge you to support these infant formula amendments.

Thank you for your consideration in this matter.

Sincerely,

CAROL R. LASKIN.
LYNNE J. PILOT.

Attachment (list of recent problems with infant formulas).

PROBLEMS WITH INFANT FORMULAS SINCE 1982

1. Wyeth. More than 3 million cans of SMA and Nursoy recalled because they lacked vitamin B6. (1982)

2. Abbott-Ross. Similac and Isomil found to contain carcinogens trichlorethylene (TCE) and perchlorethylene (PCE) due to contaminated well water. FDA considers these "weak carcinogens" and does not order a recall. (Food and Chemical News, Nov. 28, 1983.) In July 1985, American Academy of Pediatrics asks for sampling of groundwater, a testing procedure which FORMULA proposed back in 1982.

3. Loma Linda. Soyalac Powder (16 oz. cans) recalled because of a loss of vitamin A activity (August 1983).

4. Filmore Foods. Naturlac (distributed by Sunshine & Rainbow and sold in health food stores) recalled because of a lack of thiamine, copper, and vitamin B6. (Food & Chemical News, Sept. 12, 1983)

5. Scott Treadway (Kama Nutritional). Kama-Mil Powder recalled by Wishing Well Distributing Co. and Threshold Enterprises because product deficient in folacin, zinc, and vitamin D. Class I recall. Product never registered with FDA. Someone notified FDA anonymously. FDA has had difficulty in locating manufacturer. (Food & Chemical News, April 22, 1985)

6. Scott Treadway (Kama Nutritional). Nutra-Milk Powder, recalled by Wishing Well Distributing Co., Threshold Enterprises, and Stowe Mills. Class I recall. Nutrient deficiencies and lack of registration. Manufactured from 1980-1985 without FDA's knowledge. FDA has had difficulty in locating manufacturer. (1985)

7. Gerber Foods. Gerber Meat Base Formula (MBF) recalled because some lots contained excess vitamin A. Gerber had purchased the vitamin premix from Watson Food Company. (Food & Chemical News, Feb. 25, 1985)

8. Ross-Abbott. Three reformulations made without notifying FDA: (a) revision in the concentration of total solids, fat, and protein for Similac with Whey ready-to-feed, (b) revision of the mineral premix used in Similac with Iron and Similac with Whey Plus Iron, and (c) reduction of the protein levels and change in the mineral source for calcium and phosphorus for Isomil ready-to-feed and concentrate. (Food & Chemical News, July 29, 1986)

9. Loma Linda. Soyalac Powder (1.2 oz. foil pouches provided to physicians as samples) recalled because of progressive vitamin A degradation. (FDA enforcement Report, Feb. 12, 1986)

10. Powdered Formulas. There are no provisions for the FDA to examine quality control and production records of powered formulas. Unlike liquid infant formulas, powdered formulas are not covered by existing low acid canned food regulations. According to a Michigan FDA investigator, this situation could result in "serious food borne disease in infant formula powders." (Food & Chemical News, July 9, 1984)

11. Watson Foods Company. The U.S. Department of Justice filed a motion for a preliminary injunction because "as a result of inadequate quality control, numerous Watson vitamin and mineral mixes [used in infant formulas] have been misbranded and adulterated." (Department of Justice Statement, Jan. 2, 1986)

Mr. METZENBAUM. Mr. President, when the Senate approved my earlier amendment on infant formula, the Senator from Utah was in strong opposition to my approach. Since that time, there have been extensive negotiations between my office and Senator HATCH's office—as well as Senator KENNEDY, the FDA, and representatives of the infant formula manufacturers.

The result of those meetings is the amendment I have offered today. I believe it addresses Senator HATCH's concern that we were overregulating the industry and that the earlier proposal was unreasonably burdensome.

While I do not share Senator HATCH's views on the earlier amendment, I have worked with him in a spirit of cooperation in the hope of alleviating his concerns.

Mr. President, this amendment simply sets up quality control testing, good manufacturing practices, recordkeeping requirements, and recall procedures which will prevent our Nation's children from ever again being threatened by defective baby formula.

The most important provision of this amendment is the simple requirement that each batch of formula must be tested for each essential nutrient that must be contained in the formula.

At this point I will take a moment to remind my colleagues of the circumstances which have forced the Senate to act on this matter.

The amendment now pending before us strengthens the Infant Formula Act of 1980, a law which was supposed to ensure that defective and, indeed, life-threatening infant formula would never again reach the grocery shelves.

Many Members of this body will recall that the Infant Formula Act was a bipartisan congressional response to a tragic incident which jolted us into the awareness that we were not doing everything that we could to protect the lives and health of newborn babies.

In 1979, the Syntex Corp., at that time a major manufacturer of baby formula, produced and sold a formula which subjected infants to what was later described as "a unique form of malnutrition."

Twenty thousand babies were exposed to this defective formula. Some died. Some will suffer the formula's harmful effects for the rest of their lives.

So we responded with the Infant Formula Act. During the last days of the Carter administration, FDA wrote regulations to accompany this new law. The regulations were carefully crafted and quite detailed.

Problem solved—case closed, right? Wrong.

Those regulations were never put into effect. A new draft was produced. When the new regulations were unveiled, it was quite apparent that the effectiveness of the Infant Formula Act had been gutted.

Let me quote from an internal memo by an FDA attorney which was uncovered by congressional investigators:

The FDA official called the rewritten regulations "hardly recognizable" and he stated that if a court challenge of the regs were made "the agency [FDA] would probably lose."

The FDA lawyer went on to add that the new regulation "incorporates most changes desired by the industry—it seems very unlikely that any industry group will complain about the current draft."

That's not all. He continued: "Substituting general standards for specific rules has so altered the proposed regulation that the two drafts cannot be meaningfully compared section by section."

So now the new FDA had new regulations that met a curious criteria: Industry groups would not complain.

FDA's redrafted regs said "each manufacturer may establish a (quality control) system that best suits its own needs."

But what about meeting the needs of infants? FDA Commissioner Arthur Hull Hayes, Jr., dismissed those concerns by saying, "We do not believe that the slight additional public health benefit that may be gained by adopting a very detailed rule can be justified in view of the significant additional costs of such a rule."

There you have it. The FDA Commissioner came up with some half-baked cost-benefit analysis and the babies lost out to the lobbyists.

Where does all this leave us today in terms of the safety of baby formula? In spite of a law which could have kept even a single defective can of formula from reaching consumers, well over 3 million cans of dangerous formula have had to be recalled. Why? Because inadequate testing allowed bad formula to leave the manufacturing facility and end up in our homes.

My amendment, Mr. President, simply sets up the kind of quality control system that we voted for in 1980. It plugs the holes in the current regulations and will make parents secure in the knowledge that the formula they give their babies has been tested and is safe.

Let me demonstrate exactly the kind of risks we are taking, Mr. President. In January and February 1982, Wyeth Laboratories produced an infant formula that contained absolutely no vitamin B6. A mistake was made in the mixture of the formula, but the company's quality control system did not catch it.

According to the FDA:

> Wyeth failed to exercise reasonable supervision to ensure proper handling of raw materials * * * Wyeth allowed poor raw material handling practices to develop and continue without adequate controls thereby creating an environment conducive to errors.

So 4 million bottles of baby formula were produced without vitamin B6—a situation that threatened to "cause serious adverse health consequences or death." FDA said:

> The total absence of vitamin B6 in the diet of an infant for more than a few weeks may cause convulsions and, in more serious instances, brain damage. A vitamin B6 deficiency represents a severe hazard to infants who receive formula as a sole source nutrition.

By accident, Wyeth discovered the B6 problem. But not before 2½ million bottles were distributed nationwide. According to FDA investigators, if Wyeth had not made this "fortuitous discovery, its infant formula products could have had catastrophic consequences."

Mr. President, Wyeth has not been the only manufacturer to produce defective formula since 1980. Companies like Mead Johnson, Abbott Ross, and Gerber have also failed to catch harmful baby formula before it hit the stores.

Mr. President, we worry so much today about tampering of consumer products, and yet we are not doing everything we can to make sure that baby formula is wholesome when it leaves the plant. That's absurd.

In an 1983 incident, another manufacturer of infant formula had private laboratory results confirming that its product was defective. But the company went ahead and authorized the sale of the formula anyway.

And despite the fact that FDA had information that the formula was defective on August 5, 1983, the recall did not get started for over 2 months. Why? Because FDA recall regulations are completely inadequate.

Mr. President, I am certainly not the only one concerned with the current situation. At a conference on infant formula last year, an FDA official noted that a total of five infant formulas had to be recalled in the preceding year, and explained that poor quality control resulted in the marketing of a hazardous infant formula.

He went on to say that FDA is worried because some quality control plans seemed to be poorly organized in an overall sense. This, of course, makes it more difficult for us to make accurate assessments of the job that manufacturers are doing to assure that nutrient requirements are being met.

That statement alone ought to be enough to convince us that we are walking a tightrope with respect to the lives and health of America's infants. The fact that we allow baby formula manufacturers to get away with sloppy safety procedures is absolutely unacceptable.

If we don't do something more to strengthen the regulations of the Infant Formula Act, we will see another infant formula disaster. It's as simple as that.

Why should we wait for another disaster before we are compelled to act? Too often, Mr. President, we find ourselves reacting to a tragedy, rather than acting to prevent a tragedy.

Mr. President, there is simply no margin for error in the production of baby formula. An infant relies on the formula to sustain life and provide the proper nourishment at a time of rapid physical and mental development.

It's time to end FDA's policy of "let the baby beware" and institute the safeguards our children deserve.

The details of this amendment are as follows.

Each batch of formula must be tested for each nutrient required by the law to be present in an infant formula.

This testing can be conducted at any point during the manufacture of the formula, with the exception of tests for vitamin A, vitamin B1, vitamin C and vitamin E. These four vitamins must be tested at the final product stage, for they are vulnerable to degradation before the formula is released for sale.

At any rate, every nutrient—under current law there are 29—must be tested for in each batch of formula before it leaves the factory.

Infant formula manufacturers increasingly rely on the use of formula "premixes" in the production of baby formula. Currently, a premix supplier must only provide a written assurance that its premix products are properly tested.

Although I have no objection to the use of premixes, we have learned through unfortunate experience that this method of certification is woefully inadequate. Earlier this year, the Department of Justice filed a motion for a preliminary injuction against Watson Foods Co., a premix supplier, because "as a result of inadequate quality control numerous Watson vitamin and mineral mixes—used in infant formula—have been misbranded and adulterated."

Therefore, my amendment requires each premix supplier to retain the actual records of analysis upon which they base the certificate they must provide infant formula manufacturers. As a further safeguard, infant formula manufacturers must confirm a premix supplier's guarantee by testing for each nutrient reported to be present in the premix. Additionally, this amendment institutes a second level of verification which will ensure that the premix has been added to the formula in the proper concentration.

This amendment also requires the Secretary of Health and Human Services to develop good manufacturing practices for infant formula production which will further ensure that all formula products will be safe and effective when they leave the factory.

The legislation before us states that the "Secretary shall by regulation establish requirements for quality factors for infant formulas, including quality factor requirements for the nutrients required by subsection (H).

Although this amendment requires the Secretary to establish quality factors, we were informed through the Food and Drug Administration that the state of knowledge and science with respect to quality factors is still evolving. We were informed that for these reasons it is possible to establish appropriate quality factor standards for only one nutrient at present and FDA has already done so. Therefore, it is not possible to require more at this time.

However, we want to leave no doubt that the legislation contemplates that the Secretary will move to promptly develop and promulgate appropriate quality factor standards for different nutrients as the state of the science progresses. We feel these quality factors are important, we expect to see additional factors emerge from time to time, and we expect the Secretary to move forward as quickly as scientific advances will allow.

Manufacturers will also be required to institute in process controls and testing to ensure that each batch of formula is free from poisonous or deleterious substances that would render it injurious to a baby's health.●

This amendment spells out specific requirements for the retention of records regarding the production of infant formula.

While most of these recordkeeping requirements need no explanation, I want to make very clear my intent with respect to the section of this amendment addressing the record retention requirements regarding the microbiological quality and purity of raw materials and the reference to food packaging materials.

This section imposes no new requirements for analysis. It imposes no new procedures. It simply mandates the retention of all records that demonstrate that the law as it stands has been followed regarding raw materials and food packaging materials. Where this amendment changes current quality control standards or tests, it does so explicitly.

I continue to be concerned, however, that our food and drug laws do not differentiate between foods and infant formulas. But they are fundamentally different. An infant formula is designed as the sole source of nutrition for a baby. An infant formula is used daily. A baby must thrive from its contents for the first and most formative months of his or her life.

I expect the Secretary to look closely at whether or not our standards in this area for foods are adequate standards for infant formula. I have no reason at this time to suspect that there is a problem here. But I continue to urge the Secretary to give thorough consideration to the important distinctions between infant formula and other foods, as well as food additives which may be used with infant formulas.

Subsections (b)(1) and (b)(2) require, among other things, that prior to the first processing, in some cases 90 days prior to marketing, manufacturers of infant formula make a submission to the Secretary if the formula is new, or its composition or processing involves changes which might affect the product's safety. Subsection (c)(1) sets forth the contents of the submission: The quantitative formulation of the infant formula; a description of any reformulation or change in processing; assurances that before marketing, the formula will meet the quality factor of nutrient content requirements of the law, as demonstrated by the testing called for in the amendments; and assurances that the formula's processing complies with the good manufacturing practices for infant formulas, including quality control procedures.

Subsection (c)(2) then requires a second submission, confirming the disclosures and assurances in the first, after the first production of the formula and before its introduction into interstate commerce. This second submission is to contain a verification of test results and records demonstrating that the formula and its processing comply with the amendments' requirements for quality factors, nutrient content, good manufacturing practices, vitamin, and batch testing.

Under the testing and good manufacturing requirements of this amendment, the manufacturer will be routinely sampling and testing the formula, checking procedures and environmental parameters, and so forth. These steps will generate test and quality control records, the results of which will then be furnished to FDA prior to first placing the formula in interstate commerce. Thus, FDA will have in its possession tangible evidence that the nutrient checklist and other requirements of the infant formula law have been complied with.

My colleagues will recall that when my earlier amendment was approved by the Senate, it contained a provision which would have required a premarket approval by the Secretary for new or altered formulas. The FDA has since made a strong case that a premarket approval is not desirable in this instance. FDA points out that the burden to produce a safe and effective formula should remain squarely on the shoulders of the manufacturer.

On this point, I agree with the FDA. These submissions will provide FDA with the vital production information that it needs.

The sponsors of this amendment are aware that the good manufacturing practices and quality control procedures now in effect and to be promulgated under these amendments contain a variety of requirements. Some specify actual manufacturing process steps or conditions; for example, sterile handling procedures, and the failure to follow these requirements, may jeopardize the integrity of the infant formula. Other requirements are more administrative or record related; for example, initialing a form, and may not pose the same kind of risk is violated.

It is not our intent that formula be deemed adulterated or that the submission requirement of subsection (b)(2) or the notification requirement of subsection (d)(1) be triggered by violations such as clerical lapses, unless of course they are of such nature as may affect the quality or content of the formula. We fully recognize that some recordkeeping or other clerical violations may indeed affect the formula. We are, therefore, directing the Secretary to establish regulations or guidelines distinguishing the one variety of violation from the other for the purposes of this amendment.

We also note that, even where such violations are purely technical and without public health significance, the Secretary would retain current authority to find a violation of the good manufacturing practices or quality control procedures and to take appropriate action.

We also observe that the submission requirement of subsection (b)(2) should apply in any event to deliberate changes in processing rather than to unintended departures from good manufacturing practices or the quality control requirements, which will instead be handled as violations.

Additionally, this amendment strengthens the recall procedures for infant formulas, should a defective formula somehow make its way to the marketplace. Included in those recall procedures is a requirement for the posting of a notice of the recall at the point of purchase to better inform consumers who may otherwise be unaware of any problems with a defective formula.

Mr. President, a newborn baby is totally reliant on his or her parents to survive in this world. Obviously, breastfeeding is the most desirable method for the baby. But some mothers are not able to nurse their newborns, for a variety of reasons.

These mothers use infant formulas to nourish their babies. Mr. President, we have a responsibility to those mothers, to those new fathers, and most of all to those new babies to ensure that the formula purchased from the grocery shelves provides the nutrition that the law requires.

Today, we are not fulfilling that obligation. With the adoption of these strengthening amendments, Mr. President, we will finally realize the goals of the Infant Formula Act of 1980—to prevent a single can of infant formula from damaging a single infant.

Mr. President, this amendment is not a new subject for this body. This amendment is the amendment having to do with infant formula. We passed it on a vote of 60-some-odd to 30 previously.

At that time the distinguished Senator from Utah was in the opposition. I know tonight he is prepared to look favorably upon the amendment.

I yield the floor to him.

Mr. HATCH. Mr. President, I responded to the amendment of the Senator from Ohio with mixed feelings.

I discussed it with him. We worked together on it for a number of weeks. He has always been ready to consider my response and consider my desire for a practical piece of legislation.

The amendment he offers today would add a new requirement to the law regulating to the manufacture of infant formula.

It is a far better amendment than the one adopted when we passed the drug export bill. So I am going to support him on it and ask to be a cosponsor of the amendment, and I believe this amendment has been cleared by both sides and recommend its passage.

Mr. HATCH. I would like to clarify a couple of points on my friend's infant formula amendment proposal, which Senator KENNEDY and I have worked on with him. We agree there should be regulations or guidelines for subsection (b)(2) and particularly (d)(1). Anytime an infant formula product fails to include a required nutrient or contains a required nutrient at a level substantially above or below the Secretary's maximum or minimum requirements, a recall would clearly be in order. Similarly, the presence of any substance at levels that would render the product adulterated and likely to cause injury would also be a case where a recall should be required. We didn't feel that notification or recalls should be required in all cases which might constitute a technical adulteration or misbranding, but, rather, felt that an actual rather than theoretical risk to human health must exist before a recall would be required. In brief, it seems to me that whenever use of a product is likely to cause harm in the short term because of an adulteration or misbranding situation it should be recalled.

On the other hand, there are instances where violations may have occurred, but short-term or even long-term use of the product would not be likely to result in any risk to human health. Examples of such situations would be typographical errors on labels, only minor and insignificant deviations from the required nutrient tables. Minor deviations from good manufacturing practices or quality control procedures would not result in a mandatory recall unless a specific health hazard could be demonstrated.

I also agree with the FDA that premarket approval is not desirable in this instance and understand that this procedure is not intended to become a precursor of such FDA action.

Mr. METZENBAUM. Mr. President, the struggle to strengthen our infant formula law has been a long one, and a few people should be singled out for their work in this effort.

Carol Laskin and Lynne Pilot of the parent's group "Formula" have given of themselves for the past 6 years to make infant formula safe and wholesome for every baby in America who relies on it for nourishment.

Alan Laskin and Larry Pilot, their husbands, have been instrumental in crafting this piece of legislation. Their guidance and experience has been of invaluable assistance on this issue.

I also want to express my gratitude to Kathy Meyer of public citizen's litigation group. Without Kathy's years of work and commitment to this matter, this amendment could never have been adopted by the Senate.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. METZENBAUM. May we have action?

Mr. THURMOND. Mr. President, we have accepted the amendment.

AMENDMENT NO. 3071

(Purpose: To help prevent rape and other sexual violence by prohibiting dial-a-porn operations)

Mr. HELMS. Mr. President, I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 3071 to amendment numbered 3070.

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At an appropriate place in the pending amendment, add the following:

"SEC. —. Section 223(b) of the Communications Act of 1934 is amended—

(1) in paragraph (1)(A), by striking out 'under eighteen years of age or to any other person without that person's consent';

(2) by striking out paragraph (2);

(3) in paragraph (4), by striking out 'paragraphs (1) and (3)' and inserting in lieu thereof 'paragraphs (1) and (2)'; and

(4) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.".

Mr. HELMS. Mr. President, the purpose of this amendment is to eliminate completely the so-called "dial-a-porn" operations by repealing a few words in section 223(b) of the Communications Act of 1934. The amendment adds no substantive language of any kind to current law; it—purely and simply—removes a gaping loophole in existing law.

Mr. President, American parents have enough to contend with in 1986 without having to worry about whether their children will be able to pick up the phone, dial a number, and then hear an obscene recorded message. Yet, since Congress first addressed the problem of dial-a-porn in December 1983, the dial-a-porn industry has flourished, and our children in particular and American society in general have been the losers.

The loophole in existing law is that it affirmatively authorizes dial-a-porn for consenting adults. Thus, dial-a-porn operators are given a green light to go into business, and then the practical problem arises as to how to keep children from calling the dial-a-porn numbers. That practical problem, Mr. President, has proven to be totally insoluble. Moreover, there is no good reason for Congress to authorize our interstate telephone system to be used for the communication of pornographic messages—even to adults.

Mr. President, the prohibitions currently in place under section 223(b) of the Communications Act of 1934 are sufficient to shut down the dial-a-porn industry, if we simply eliminate the loophole. The loophole has two parts.

The first part of the loophole is that portion of section 223(b)(1)(A) which makes dial-a-porn criminal only if it goes to a person under 18 years of age or to a person who has not consented to receiving the message. My amendment eliminates this crippling qualification to the prohibition against dial-a-porn. Thus, the prohibition against dial-a-porn would apply to everyone—not just minors and nonconsenting adults as is currently the case.

The second part of the loophole is all of section 223(b)(2) which provides: "It is a defense to a prosecution under this section that the defendant restricted access to the prohibited communication to persons 18 years of age or older in accordance with procedures which the Commission (the FCC) shall prescribe by regulation." My amendment would remove this complete, affirmative defense to prosecution under section 223(b), and it would make the current penalties for dial-a-porn under section 223(b) meaningful for the first time.

Mr. President, many constituents have contacted me on this problem of dial-a-porn. Most recently I received a letter from the father of a 9-year-old boy. The father sent me a copy of his telephone bill and underlined three long distance calls to a "900" number. "While questioning my son about these calls," the father wrote, "I discovered that the long distance calls were placed to a service which provides sexually explicit messages. Apparently, some older children told my son that this number was the number of 'Teddy Ruxpin', the talking teddy bear. The joke was not very funny when one considers the fact that the morals of young children are being corrupted in the process."

Mr. President, the need for this legislation, I believe, is completely evident in this father's letter. We in Congress owe the parents of America better than what they now have to contend with on this matter of dial-a-porn. I urge adoption of this amendment.

Mr. DENTON. Mr. President, I rise in stong support of the amendment offered by my distinguished colleague from North Carolina, JESSE HELMS, which will close the gaping loophole in the existing law dealing with "dial-a-porn."

Mr. President, pornography attacks human dignity at its very core. It is an epidemic that devastates the personal and social well-being of contemporary society. We must remain alert to its effects and take countermeasures to prevent its spread. Pornography encourags the sexual exploitation and abuse of men, and women and children, with tragic consequences.

Testimony received in the Judiciary Subcommittee on Juvenile Justice indicates beyond a doubt the effects of pornography are devastating, both to the individual and to society. The sex industry abuses and exploits not only those who engage in making it, and those who are exposed to it, but also those who are victimized by its effects on other people. It uses every means of social communication: books, magazines, tabloids, films, video cassettes, subscription television, video games, coin-operated machines, and more recently erotic telephone messages.

The crass commercial exploitation of human sexuality by the multi-billion-dollar pornography business is an affront to every individual and to every community that strives to maintain a decent society and to protect its citizens and their fundamental freedoms.

Innovations in the methods of distributing pornography, particularly in the area of interstate telephone service, make it imperative that Congress act effectively.

The ease with which children may obtain access to pornography via the "Dial-It" sex services, is well documented. In my own State of Alabama, a news article appearing in the Montgomery Advertiser and Journal, on June 5, 1983, listed story after story of how children as young as 6 years old have been indiscriminantly exposed to pornographic messages and images through dial-a-porn services, against the will of and without the consent of their parents. This problem continues unabated. In view of the seriousness of the factors involved, the present abdication of Government supervision over the public channels of communications cannot be justified.

Mr. President, this amendment will remove the loophole from the existing law dealing with "dial-a-porn" which allows dial-a-porn operators to go into business serving consenting adults before addressing the practical problem of preventing children from using the dial-a-porn numbers.

Mr. President, the current prohibitions are sufficient to eliminate the dial-a-porn industry, if the current loophole is eliminated. The loophole has two parts.

First, that portion of section 223(b)(1)(A) of the Communications Act of 1934 which makes dial-a-porn criminal only if it goes to a person under 18 years of age or to a person who has not consented to receiving the message creates a loophole. This amendment would eliminate the crippling qualification to the prohibition against dial-a-porn. Thus, the prohibition against dial-a-porn would apply equally to everyone—not just minors and nonconsenting adults as is currently the case.

Second, a loophole is found in section 223(b)(2) of the Communications Act of 1934 which provides: "It is a defense to a prosecution under this section that the defendant restricted access to the prohibited communication to persons 18 years of age or older in accordance with procedures which the Commission (the FCC) shall prescribe by regulation." This amendment would remove the complete, affirmative defense to prosecution under section 223(b), and it would make the current penalties for dial-a-porn under section 223(b) meaningful for the first time.

Mr. President, the need for this amendment is clear if we are to continue to fight the evils of pornography.

I urge my collegues to support the amendment.

Thank you, Mr. President.

Mr. METZENBAUM. Mr. President, will the Senator from North Carolina be good enough to yield for a question?

Mr. HELMS. Yes.

Mr. METZENBAUM. Is this the amendment that would impose a penalty on those who use telephones to sell obscene or indecent messages to individuals under 18 or nonconsenting adults? Is that the thrust of the amendment?

Mr. HELMS. That is it, yes.

Mr. METZENBAUM. Would the Senator from North Carolina consider our accepting the amendment and eliminating the word "indecent"?

Let me explain the reason I raise the question.

Constitutionally the Senator is fully protected in this amendment with respect to the limitation on obscene telephone calls.

Mr. HELMS. Will the Senator withhold? I cannot hear.

Mr. METZENBAUM. I am sorry.

Mr. HELMS. I am sorry.

Mr. METZENBAUM. What I am suggesting to the Senator from North Carolina is the possibility that he would be willing to eliminate the word "indecent" from his amendment keeping in the language about the obscenity to sell obscene messages to individuals.

I say that because he and I are not in disagreement on the thrust of the amendment, but my concern is and I think it would be his as well that when you had a phrase such as "indecent" which is not easily subject to definition, I believe the amendment would be unconstitutional.

I believe that it would be totally constitutional to ban the selling of obscene messages to individuals, and with that I do not think he would be in disagreement.

I think that the Senator would achieve the objective which he seeks and which I am prepared to join him in.

So all it would mean that the selling of obscene messages would be the law but the language "indecent" would be eliminated and frankly that is pretty hard to define.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. METZENBAUM. Certainly.

Mr. HELMS. My problem with the Senator's suggestion and I wish I could accept it, but I cannot, is that "indecent" is already in the current law, the word.

Mr. METZENBAUM. That is correct. But then when the Senator adds his language to it according to the best constitutional advice I have had that creates the constitutional problem. The courts have already recognized on a number of occasions the right to ban obscenity and no constitutional protection with respect to obscenity. With respect to the indecent language the courts have somewhat indicated that that would be unconstitutional.

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Mr. HELMS. I will level with the Senator. I will take my chances on the court doing anything about this amendment. I do not think the court will. I thank the Senator for his offer, but I cannot accept it.

Mr. President, I am not a lawyer—which may be one reason why the people of North Carolina reelected me in 1984.

But it does not take any great wisdom to see that lawyers and Federal judges have made a shambles of the traditional laws in our country banning obscene and indecent material. These laws were reasonable and had a long and honorable history. They kept at bay certain vile and base instincts of our fallen human nature for the good of individuals and society alike. Through these laws, decency and modesty and sound family life were promoted.

Today, however, these laws have been undercut by a patchwork guilt of confused and confusing Federal court rulings. From what legal scholars tell me—and I mean genuine legal scholars, not liberal activists temporarily parked in academe—there is probably no area of constitutional law more removed from the text and history of the Constitution than the Federal case law on obscenity. The principles used by judges are constantly changing, the reach of Federal jurisdiction is always expanding, and the results in any given case are usually unpredictable.

Mr. President, the precedents of the Supreme Court and other Federal courts on the subject of obscenity are more properly labeled constitutional chaos than constitutional law. The fact is that the first amendment and antiobscenity laws existed side by side, without serious conflict, for all of American history until the second half of this century.

Then, still having the same old Constitution but imbued with a new liberal ideology, the Supreme Court started hacking away at traditional laws against smut. In short, the libertines of the ACLU combined with usurpers on the Federal bench to repeal decency in this country—all under the guise of constitutional law.

Discovered for the first time in the history of the Constitution were elaborate and technical tests which anti-porn laws had to pass before they could be enforced. Not surprisingly, few laws could pass this new extra-constitutional muster. The philosopher-kings had finally arrived in America, and they sat in black robes on Federal court benches armed with new, radical ideas about the Constitution.

Where in the midst of all of this were those intrepid watchdogs of adversary journalism—the major news media? Did they expose and object to this distortion of the Constitution and its adverse impact on American society? Unfortunately not. They were too busy genuflecting at the throne of this new source of liberal power. The major news media, when it came to Federal judges' undercutting obscenity laws, proved to be more lapdogs than watchdogs.

The results in 1986, Mr. President, are plain to see. The United States of America is now a society satiated with obscene, indecent, and pornographic materials. Not only are they available everywhere in the public domain, but thanks to a dial-a-porn industry not even 5 years old, they are even available over the telephone in every home in America.

Mr. President, the patriots of the American revolution and the framers of the Constitution did not sacrifice their lives, their fortunes, and their sacred honor so that a coterie of dial-a-porn operators could become millionaires in the 20th century. Our forebears had higher ideals in mind. The great principles of freedom they put in the Constitution were meant to serve the common good, not the prurient interest.

In this Senator's opinion, the Constitution does not force Congress to sanction a dial-a-porn industry which corrupts the morals of children and pollutes the minds of adults. The Constitution is not a death wish reduced to writing. It does not require us to commit cultural suicide by tolerating vice and the cultivation of vice for profit.

Even a nonlawyer can see that the whole tenor and purpose of the Constitution is to uphold the principles of life, liberty, justice, decency, and honor. We in Congress are therefore obliged, by the Constitution itself, to suppress as far as possible the trade in human degradation otherwise known as the pornography business. We owe this effort not only to our forefathers but also to our grandchildren.

The question today, Mr. President, is not whether my amendment is unconstitutional—it clearly violates no provision of the Constitution—but whether we in Congress have the courage to stand up against the porn kings and smut peddlers and stand up for the American people and public morality. I urge the adption of this amendment.

Mr. President, I have received a letter and legal memorandum on the issue of the constitutionality of my amendment from Bruce A. Taylor, general counsel of Citizens for Decency Through Law, in Scottsdale, AZ. These materials are persuasive, scholarly, and well done, and I ask unanimous consent that they be printed in the RECORD.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

CITIZENS FOR DECENCY
THROUGH LAW, INC.,
Scottsdale, AZ, April 15, 1986.

Hon. JESSE HELMS,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR HELMS: Our legal staff has reviewed your proposal to amend Section 223(b) of the Communications Act of 1934 and we are of the opinion that it is totally within constitutional limits and will be upheld by the U.S. Supreme Court if passed. Your bill, as well as H.R. 4439, would merely correct the statute to be consistent with the law as it existed for fifty years prior to its amendment in 1983. The First Amendment does not protect the mass availability of "indecent" material by telephone, even among "consenting adults," and Section 223 can and must be changed to include "indecent" dial-porn commerce.

When Congress was considering the amendments to Section 223 in 1983, it was reacting to the F.C.C. position, followed by the courts, that interpreted the "old" Section 223 to apply only to "makers" of harassing phone calls which are obscene or indecent. The F.C.C., we think, took too restrictive a position on the legislative history and intent of Congress and could have interpreted the law to cover commercial dial-porn services, as the courts and F.C.C. did in construing 18 U.S.C. 1464 to prohibit indecent television as a form of "radio communication." However, the F.C.C. has not stated that the law could not have regulated indecent dial-porn, only that it did not cover this new technology as enacted fifty years before. The issue is more political than legal or constitutional. The F.C.C. and its Chairman are philosphically oriented, and with it their "Legal opinions," away from their mandated function of law enforcement and industry regulation for the public good and in favor of a laissez faire attitude toward the commercial interests of the "regulated" private business interests. The Supreme Court has not required the legalization of obscenity and indecency over phone, cable, and satellite. In fact, it was an erroneous legal interpretation of the existing law which caused Congress to legalize obscene and indecent phone services unless they knowingly went to children or unconsenting adults. That 1983 dial-porn amendment was the first and only time in the 200 year history of the country that Congress legalized any form of obscenity. The 1983 amendment should only have made the technical changes needed to apply the law to the caller and the provider. The changes instead adopted the recommendations originally conceived by the pornography industry and echoed by the 1970 President's Commission on Pornography, recommendations which were rejected by the Senate in 1970 with only 5 votes in their favor. The 1983 law, in effect, criminalized only the knowing provision of "indecent" calls to children, thereby legalizing them for adults and allowing the messages to be available openly to any phone in the world. Congress also required the F.C.C. to fashion a defense for potential defendants who violate the law and provide the service to children. The F.C.C. first refused to adopt rules which would protect children. After its first attempt to provide the dial-porn industry a defense was struck down by the courts as useless in protecting children, the F.C.C. announced a second set set of rules which are now in litigation. The second guidelines require credit cards or access codes, but these will not protect children, they still legalize obscenity and indecency in mass communications, and they will be hard to defend in light of the F.C.C.'s previous position which rejected such measures in its first regulations.

It is clear, therefore, that only Congress can correct the legal, social, and ethical disaster created by the 1983 amendments to Section 223. In the past two years, the courts have prevented the phone companies from cutting the services, prevented local prosecution under state laws, dismissed the federal prosecution under the "old 223" and even under other federal obscenity statues, and the "new 223" has been unenforced by agreement of the F.C.C. and the Department of Justice. Meanwhile dial-porn grosses millions in illegal profits for pimps and pornographers whose only business purpose is to violate the law. Congress has made it possible for children to get dial-porn and for this industry to grow rich and powerful. Only Congress can cure this national disgrace.

If your bill or Representative Bliley's bill passes, then commercial services will no longer provide "indecent" messages over the telephone system. The Supreme Court's precedent will support such a law, as it would have before 1983. In 1978, the Court held that federal law and the F.C.C. could prohibit "indecency", such as George Carlin's "7 dirty words", over radio. The Court said mass communications need not be limited to the obscenity standard, as are "adult" theatres and bookstores. There is no technical distinction or legal principle that would protect telephone indecency more than radio or television indecency. Telephone systems are no less "mass communication" facilities, are no less pervasive, no less available to children, and the reasoning and opinion of the Supreme Court in *F.C.C. v. Pacifica* is as much or more on point in regard to modern day dial-porn.

CDL's legal staff, Ben Bull, Paul McCommon and I, are involved in lawsuits brought by the dial-porn company and expect to continue to do research and litigation in this area of law. I fully expect that the courts would uphold the "indecency" restrictions and I have included a leal memorandum drafted by my collegues in support of this opinion.

Respectfully submitted,
BRUCE A. TAYLOR,
General Counsel.

CITIZENS FOR DECENCY
THROUGH LAW, INC.,
Scottsdale, AZ.

MEMORANDUM OF LAW IN SUPPORT OF H.R. 4439

This legislation proposes to amend Section 223 of the Communications Act of 1934 (47 U.S.C. § 223), and as amended will prohibit obscene and indecent communications by means of telephone to any person, regardless of age. It is the purpose of this memorandum of law to demonstrate the need for this legislation, and to provide supporting legal authority for its enactment.

I. THE HISTORY OF DIAL-A-PORN AND THE FAILURE OF PREVIOUS LEGISLATIVE EFFORTS.

* * * * *

On May 24, 1985, any child in Northern Arizona could hear the above message by dialing "1-976-2727." Other messages similarly available contain graphic descriptions of incest, bondage, and sex with animals. Attorneys representing this industry are admitting that dial-a-porn is openly available to children, but according to them:

> The exposure of this material to children is the price we must pay for a free society.

In every major city across this country, dial-a-porn telephone services became readily accessible to children by mid-1985, with federal and state law enforcement agencies apparently unable or unwilling to stop it.

This dial-a-porn "industry" is still in its infancy, dating back to March of 1983. Yet, in less than three years, it has grown from only one service operating nationally from its New York headquarters, to many services operating in every major city. The messages continue to become more sexually explicit and deviant in their content.

When dial-a-porn first became available in March 1983, it should have been prosecuted under already existing federal law. 47 U.S.C. Section 223 of the Federal Code then provided: "(a) Whoever—(1) in the District of Columbia or in interstate or foreign communication by means of telephone—(A) makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent . . . shall be fined not more than $500 or imprisoned not more than six months or both." Section 223, by its plain meaning, should have been used by the FCC and the Department of Justice (DOJ) to control dial-a-porn services. However, throughout 1983, the FCC and DOJ issued letters to one another and to the general public creating every possible excuse as to why Section 223 could not be enforced.

The FCC went on record as ruling: "Section 223(1)(A) applies only to persons who utter obscene or indecent words during calls they place." "Second Report and Order," Gen. Docket No. 83-989 (Oct. 16, 1985). According to the FCC, since dial-a-porn dealers did not "place" the calls, Section 223 did not apply to them. This restrictive and erroneous interpretation given Section 223 by the FCC resulted in a lack of legal action taken against dial-a-porn during its first year of operation. The FCC refused to take administrative action, and the DOJ refused to take criminal or civil court action. Such lack of prosecution allowed the services to flourish. Meanwhile, the content of the messages became far more sexually explicit, moving from merely "indecent" suggestive language, to language which clearly fell within the restrictions of both state and federal obscenity legislation.

Congress became frustrated at the lack of legal action taken against dial-a-porn and, in late 1983, amended Section 223, making it a crime to make "any obscene or indecent communication for commercial purposes to any person under 18 years of age or to any other person without that person's consent." 47 U.S.C. Section 223(b)(1)(A). In so amending Section 223, Congress "legalized" dial-a-porn. For the first time in the history of this country, obscene material was de-criminalized for "consenting adults." This legalization of obscene dial-a-porn messages for consenting adults directly violated legal precedent as established by the Supreme Court in cases such as *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 (1973), which rejected the "consenting adults" defense.

In amending 223, Congress further provided that the FCC was to issue regulations which would deny access to dial-a-porn services to persons under 18 years of age. Compliance with these regulations would be a complete defense to liability under Section 223. In other words, even if a minor breaks through the restrictions and calls dial-a-porn, the dealer, having complied with FCC regulations, cannot be prosecuted.

Attempts by the FCC to issue regulations pursuant to § 223(b)(2) have been totally unsuccessful, and it is now clear that no regulations from the FCC will adequately protect children from these dial-a-porn services. The first set of FCC regulations, issued in 1984, were struck down as unconstitutional by the Second Circuit Court of Appeals. *Carlin Communications, Inc. v. FCC*, 749 F.2d 113 (2nd Cir. 1984). A second set of FCC regulations, issued on October 16, 1985, are presently pending before the Second Circuit Court. Even if the second set of regulations is upheld by the Second Circuit, it is clear that the regulations will be ineffective—the "access code" requirement was rejected by the FCC as unworkable before they issued their 1984 regulations.

The above described history reveals two major flaws in the 1983 amendments to Section 223 which have resulted in the failure to control dial-a-porn. First of all, legalizing dial-a-porn for "consenting adults" was contrary to the decisions of the U.S. Supreme Court and placed Section 223 in conflict with all other federal obscenity statutes. Consequently, the legalization of dial-a-porn assured that it would always be accessible to children. The second major flaw in the 1983 legislation was to give the FCC the power to issue defenses to liability under § 223(b)(2)—the FCC has demonstrated its inability to issue workable regulations that will protect children.

Finally, as a result of the 1983 legislation and of the indecision by the FCC on this matter, the courts and the law enforcement community are in a state of confusion concerning the control and/or prosecution of dial-a-porn distributors. At the present time, federal prosecutors will not prosecute the distributors of obscene dial-a-porn messages, even where they have been made blatantly available to children. The reason for this lack of federal enforcement is the belief that dial-a-porn distributors can only be prosecuted under § 223(b) and under none of the other federal obscenity laws.[1] State law enforcement authorities will not prosecute because of the confusion in the federal arena, fear of legal action by the dial-a-porn industry against state officials, and a mistaken belief that the FCC has preempted this field of law. At the writing of this memorandum, there are no federal or state criminal cases pending against dial-a-porn distributors—they are operating freely, sensing a complete immunity from prosecution.

II. THE PROPOSED AMENDMENT TO 47 U.S.C. § 223 DOES NOT VIOLATE DIAL-A-PORN RECIPIENT'S RIGHT TO PRIVACY OR RIGHT TO ACCESS

The first objection that may be leveled at this legislation is that it violates a customer's right to receive dial-a-porn messages. As will be shown, this criticism is without merit. It is well settled that obscenity, in whatever form, is not protected by the First Amendment. *Miller v. California*, 413 U.S. 15 (1973); *Kaplan v. California*, 413 U.S. 115 (1973). Hence, the states and federal government may lawfully prohibit its commercial distribution, whether telephonically or through other media. *Id.* The Supreme Court has made clear that the "mere private possession of obscene material" in the home cannot be made a crime. *Stanley v. Georgia*, 394 U.S. 557 (1967). However, there is no correlative right to purchase obscenity in the public marketplace or to have it distributed to your house through channels of public commerce.

In *United States* v. *12 200-ft Reels*, 413 U.S. 123 (1973), the Court held that the "right to possess obscene material in the privacy of one's home does not give rise to a correlative right to have someone sell or give it to others." 413 U.S. at 128. In so holding, the Court ruled that Stanley is to be viewed as "explicitly narrow and precisely delineated." 413 U.S. at 127. "We are not disposed to extend the precise, carefully limited holding of *Stanley*. . . ." 413 U.S. at 128. Indeed, the Court has squarely held that there is no right to "receive it" in "the privacy of the home." *United States* v. *Orito*, 413 U.S. 139, 141 (1973) (emphasis added). In *Orito*, the Court further held that there is no right to use "common carriers in interstate commerce" (such as the telephone company) for delivery of obscene material to the home. 413 U.S. at 142. *See also, United States* v. *Reidel*, 402 U.S. 351, 353-54 (1971) (there is *no* right to deliver obscene material for use in the home.)

Furthermore, the Supreme Court in *FCC* v. *Pacifica Foundation*, 438 U.S. 726 (1978), held, *inter alia*, that radio and television do not have the right to "broadcast" "indecent" material into the home. The Court rejected the contention that an individual has a right of access in the privacy of his home to "indecent" radio or television broadcasts. The Court reasoned that such broadcasts are "uniquely accessible to children" and "that the governments interest in the 'well-being of its youth' justified the regulation of otherwise protected speech." 438 U.S. at 749. This government interest in the "well-being of its youth" and the "accessibil[ity] to children" are similarly present, and are triggered, upon the transmission of "indecent" or "obscene" dial-a-porn into the home. As the Court stated: "[T]he ease with which children may obtain access. . . , coupled with the concerns [for children] recognized in *Ginsberg*, amply justify special treatment of indecent" material. 438 U.S. at 250.

Assuming *arguendo* that exposure of dial-a-porn to children can be prevented, the Supreme Court has rejected the contention that the distribution or transmission of obscene materials between consenting adults is constitutionally sanctioned. In *Paris Adult Theatre I* v. *Slaton*, 413 U.S. 49 (1973), the Court held that notwithstanding lack of exposure to children, the distribution of obscene material between consenting adults coud be regulated:

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[1] Federal criminal charges were dismissed last year in Utah, where numerous children had been exposed to the dial-a-porn services. Because § 223(b) is in a state of confusion, the U.S. Attorney attempted to prosecute Carlin Communications and others for violations of other federal obscenity laws. However, the Judge dismissed the indictments, ruling that violations could only be prosecuted under § 223(b). *U.S. v. Carlin Communications, Inc., et al.*, No. CR-85-00086G (D. Utah 1985).

> We categorically disapprove the theory . . . that obscene, pornographic films acquire constitutional immunity from state regulation simply because they are exhibited for consenting adults only. . . . [W]e hold that there are legitimate state interests at stake in stemming the tide of commercialized obscenity, even assuming it is feasible to enforce effective safeguards against exposure to juveniles and to passersby. Rights and interests other than those of the advocates are involved.—413 U.S. at 57.

This holding squarely does away with any contention that "consenting adults" have a right to transmit or receive obscene dial-a-porn. It should again be stressed, however, that many dial-a-porn distributors have openly made their "product" available to children and have refused to acknowledge any responsibility for excluding children's access.

The products of the dial-a-porn industry are clearly not protected by a constitutional right of privacy. These messages are being publicly distributed and have become openly available to children through channels of public commerce. Because of the complete public and commercial nature of this dial-a-porn industry, regulation under Section 223 is clearly permissible.

III. THE FEDERAL GOVERNMENT MAY LAWFULLY PROHIBIT THE TRANSMISSION OF OBSCENE AND INDECENT DIAL-A-PORN.

A. Obscene Dial-A-Porn

Without question, obscene speech is not protected by the First Amendment. *Brockett v. Spokane Arcades, Inc.*, 472 U.S.—, 86 L.Ed.2d 394, 105 S.Ct.— (1985); *Miller v. California*, 413 U.S. 15 (1973). Hence, the government may lawfully prohibit its distribution, whether telephonically or through other media. *Kaplan v. California*, 413 U.S. 115 (1973). *See also, United States v. Lampley*, 573 F.2d 783, 50 A.L.R. Fed. 525 (3rd Cir. 1987) (upholding constitutionality of 47 U.S.C. § 223). This issue is so well settled that there has been no serious claim to date that the Congress may not constitutionally prohibit "obscene" dial-a-porn.

B. Indecent Dial-A-Porn

The more frequently repeated assertion is that Congress may not legislate against "indecent" dial-a-porn. This assertion is erroneous and ignores sound legal precedents permitting the use of the "indecency" standard for the telephone medium. These precedents and authority are set forth herein.

In its landmark case of *F.C.C. v. Pacifica Foundation*, 438 U.S. 726 (1978), the Supreme Court defined the word "indecent" as "nonconformance with accepted standards of morality." It is a "shorthand term for patent offensiveness." *Id.*, at 470 n. 15. This definition obviously does not coincide with the three-part definition of "obscenity" found in *Miller v. California*. Yet, the Supreme Court has never limited government restrictions on speech to the obscenity standard.[2] For example, the Court has upheld restrictions on all of the following types of speech: false advertising, speaking a prayer in a public school, libel, slander, speaking words which amount to a conspiracy or an obstruction of justice, sedition, yelling fire in a crowded theatre, using words which constitute offering a bribe, words that threaten social harm because they advocate illegal acts, words (from a loudspeaker) at 3:00 a.m. in a residential neighborhood, speaking in contempt of court, committing perjury under oath, television cigarette advertisements, saying words which have been classified (e.g., secret) by the government, copyright violations, pretrial publicity which might interfere with a defendant's opportunity to secure a fair trial, U.S. government employees engaging in political speech (Hatch Act), sexually explicit material which is harmful to minors, non-obscene sexually explicit movies shown in violation of a zoning ordinance, child pornography, and finally, "indecent" speech.[3] Thus, the broad contention that government restrictions on expression are limited to the obscenity standard are quite incorrect. Regulation of sexually-oriented expression has by no means been limited to that standard, although the degree of permissible regulation has varied with the circumstances.

The application of the "indecency" standard to dial-a-porn is supported by the Supreme Court's analysis of the First Amendment, which accords some varieties of speech (e.g., "indecent" speech) less protection than others.[4] The Supreme Court's rulings that certain types of expression are entitled to little or no protection under the First Amendment find their modern beginnings with *Chaplinski v. New Hampshire*, 315 U.S. 568 (1942), where the Court upheld a "fighting words" statute under which Chaplinski had been convicted for calling a policeman "a God damned racketeer" and a "damned fascist." *Id.* at 569. Justice Murphy's rationale for upholding the statute against a First Amendment attack is set forth in the following excerpt from the opinion:

> There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.—*Id.* at 571-72.

The Supreme Court has embraced the position that differing degrees of protection are afforded different classes of speech.

Speech protected in some contexts may in others be so harmful, or of so little value, that it can be regulated because the harm to society outweights the expressive interests. Thus, First Amendment protection "often depends on the content of the speech." *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 66 (1976). Furthermore, as Justice Stevens has stated, "the First Amendment affords some forms of speech more protecton from governmental regulation that other forms of speech," *New York v. Ferber*, 102 S. Ct. 3348, 3367 (1982) (Stevens, J. concurring), and the *context* of speech may determine whether or not it is protected. *F.C.C. v. Pacifica Foundation, supra, at 747-48 (1978). The Court has allowed government regulation of non-obscene speech, based upon subject matter and context, in numerous cases. See, Rowan v. Post Office Department,* 397 U.S. 728 (1970) (banning erotic material from the mails at recipient request); *C.B.S. v. Democratic National Committee*, 412 U.S. 94 (1973) (upholding network refusal to accept commercial advertising); *Lehman v. Shaker Heights*, 418 U.S. 298 (1974) (Upholding policy of accepting commercial advertising but refusing political advertisements on city-owned bus line); *Greer v. Spock*, 424 U.S. 828 (1976) (barring political speakers from a military base); *Jones v. North Carolina Prisoners Union*, 433 U.S. 119 (1977) (banning in-prison solicitation of membership in a prisoners union); *Young v. American Mini Theatres, supra*, and *Renton v. Playtime Theatres, Inc.*, — U.S.—, 89 L.Ed.2d 29, 106 S.Ct.—(1986) (placing zoning restrictions on the location of adult theatres); *F.C.C. v. Pacifica, supra*, (prohibiting radio broadcast of *indecent* programming); *Board of Education v. Pico*, 457 U.S. 853 (1982) (certain books may be removed from a high school library because of their vulgarity); *New York v. Ferber, supra*, (banning non-obscene sexually explicit depictions of minors); *Ginsberg v. New York*, 390 U.S.C. 629 (1968) (banning distribution to minors on non-obscene material which is "harmful to minors").

It is important to recognize that laws restricting "indecent" or "obscene" speech are not directed at a particular viewpoint. They proscribe only the mode or form of expression, not any ideas the "indecent" language or pictures may purport to convey. If the speaker is concerned with ideas, he can escape the penalty by expressing them in some other form. The Court has recognized that content is separable from form and that other modes of expression are virtually always available. Restrictions on "indecent" or "obscene" speech do not preclude advocacy of any ideas such speech might otherwise convey. For example, prohibitions on "indecent" telephone recordings may be compared with a lawyer who, in open court, addresses the judge in "indecent" terms. Rules against that sort of speech will undoubtedly be enforced by the judge (holding lawyer in contempt). The Court recognizes that other more acceptable means of objecting to the judge are available and the lawyer must use them. As the Court stated in *Pacifica:*

> A requirement that indecent language be avoided will have its primary effect on the form, rather than the content, of serious communications. There are few, if any, thoughts that cannot be expressed by the use of less offensive language. . . . At most . . . [i]t will deter only . . . patently offensive references to excretory and sexual

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[2] In its unamended pre-1983 form, § 223 prohibited the use of the telephone to make "any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent . . ." 47 U.S.C. § 223 (a)(1)(A). This precise language was upheld as constitutional in *United States v. Lampley*, 573 F.2d 783, (3rd Cir. 1978). Hence, the prohibition on "indecent" telephone language in § 223 has already passed constitutional muster.

[3] See, "Where Do You Draw the Line?," ed. Victor B. Cline (Brigham Young University Press, 1974).

[4] See, L. Tribe, American Constitutional Law, § 12-18 (1978); Krattenmaker & Powe, "Televised Violence : First Amendment Principles and Social Science Theory," 64 VA. L. Rev. 1123, 1207-1212 (1978); Stone, "Restrictions of Speech Because of its Content: The Peculiar Case of Subject Matter Restrictions," 46 U. of Chi. L. Rev. 81 (1978); Note, "Young v. American Mini Theatres, Inc. : Creating Levels of Protected Speech," 4 Hastings Const. L. Quarterly 321, 344-54 (1977); "The Supreme Court, 1975 Term," 90 Harv. L. Rev. 58, 200-205 (1976).

> organs and activities. . . . [T]hey surely lie at the periphery of First Amendment concerns.—438 U.S. at 473 n.18.

Since March of 1983, when dial-a-porn was first commercially marketed, countless children have been exposed to it. It constitutes an attractive nuisance in every home in America where children are present. There is no completely effective way to prevent children from being exposed to "indecent" or "obscene" dial-a-porn so long as it is lawfully and commercially marketed. Make no mistake, dial-a-porn providers care little whether a caller is a child of 9 or an adult of 19—their motive is profit. Children are being injured every day through "indecent" dial-a-porn.

The Supreme Court has repeatedly held that where the interests of children are at stake the government is fully justified in regulating non-obscene material. This significant governmental interest in the protection of minors has been identified in a number of cases. *See, Prince v. Massachusetts,* 321 U.S. 158, 168 (1944) ("[a] democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens"); *New York v. erber, supra,* 756-57 ("a states interest in 'safeguarding the physical and psychological well-being of a minor'" is "compelling" and justifies banning non-obscene sexually explicit depictions of minors); *F.C.C. v. Pacifica, supra,* 749 (government interest in the "well-being of its youth" sufficient to ban all indecent broadcasting to children, as well as adults). In *Ginsberg v. New York, supra,* the Supreme Court upheld a ban on the distribution of non-obscene sexually explicit material to children. The prohibition on distribution of such "indecent"[5] material to children is supported by the exact same interest present when "indecent" dial-a-porn is exposed to children. The "governments interest in the 'well-being of its youth' and in supporting 'parents' claim to authority in their own household justified the regulation of otherwise protected expression." *Pacifica, supra,* at 749; *Ginsberg, supra,* at 639-40. The Court in *Ginsberg* elaborated on these compelling interests. There were two governmental interests which justified limitations on the availability of sexually explicit ("indecent") material to children. First, the Court noted that "constitutional interpretation has consistently recognized that the parents claim to authority in their household to direct the rearing of their children is basic in the structure of our society," and that parents and others responsible for children's well-being "are entitled to the support of laws designed to aid discharge of that responsibility." *Id.,* at 639. Second, the Court stated that "government has an independent interest in the well-being of its youth." *Id.,* at 640. The Court declared that:

> While the supervision of children's reading may best be left to their parents, the knowledge that parental control or guidance cannot always be provided and society's transcendent interest in protecting the welfare of children justify reasonable regulation of the sale of material to them. It is, therefore, altogether fitting and proper for a state to include in a statute designed to regulate the sale of pornography to children special standards, broader than those embodied in legislation aimed at controlling dissemination of such material to adults.

Id. Indeed, Justice Stewart, in his concurring opinion in *Ginsberg,* at 649-50, provided an additional theoretical justification for stricter regulation of dissemination of sexually explicit "indecent" material to minors:

> I think a State may possibly determine that, at least in some precisely delineated areas, a child—like someone in a captive audience—is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees.

As the Court more recently stated, the Government's interest in "safeguarding the physical and psychological well-being of a minor" is "compelling." *New York v. Ferber, supra,* at 756-57 (emphasis supplied). Today, children are suffering injury through exposure to sexually explicit "indecent" dial-a-porn. Thus, "society's right to 'adopt more stringent controls on communicative materials available to youths than on those [only] available to adults'" is well established. *Pacifica, supra.* at 757 (Powell, J. concurring) (quoting *Erznoznik v. Jacksonville,* 422 U.S. 205, 212 (1975)); *See also, Miller v. California, supra,* at 36 n. 17; *Interstate Circuit, Inc. v. Dallas,* 390 U.S. 676, 690 (1968); *Jacobellis v. Ohio,* 378 U.S. 184, 195 (1964). No member of the present Court has dissented from this principle.

This governmental right to restrict access to non-obscene but "indecent" material even to adults, when it is sufficiently harmful to children, is a key part of the Court's rationale in the landmark *F.C.C. v. Pacifica Foundation* case.[6] Radio and television broadcasting, like the telephone, is "uniquely accessible to children." *Id.,* at 749.

The Court's willingness to deny access to non-obscene material to adults when children would otherwise be harmed was demonstrated in *Board of Education v. Pico,* 457 U.S. 853 (1982). In *Pico,* the Court remanded with instructions for the lower court to determine whether improper motivations had tainted the Board's removal of certain books from a high school library. The First Amendment would be offended if the court found the books had been removed with intent "to deny respondents access to ideas with which petitioners disagreed." *Id.,* at 872. On the other hand, "an unconstitutional motivation would not be demonstrated if it were shown that petitioners had decided to remove the books at issue because those books were pervasively vulgar." *Id.,* at 871. *Pico* identifies another context in which government may restrict dissemination of indecent materials to children, as well as adults.

Probably the most frequently cited case in opposition to the use of an "indecency" standard is *Butler v. Michigan,* 352 U.S. 30 (1957), with its oft-quoted assertion that the government may not "reduce the adult population . . . to reading only what is fit for children." *Id.,* at 383. In a brief opinion the Court struck down a criminal conviction under a manifestly overbroad Michigan statute that forbade the publication, sale or other distribution of any publication, writing, picture:

> or other thing, including any recordings, containing obscene, immoral, lewd or lascivious prints, pictures, figures or descriptions, tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth . . .

Id., at 381. The Court correctly ruled that the law was overbroad and "not reasonably restricted to the evil with which it is said to deal." *Id.,* at 383. It is significant to note that Michigan had another statute specifically proscribing the distribution of erotic materials to minors, but that statute was not before the Court. *Id.*

The more recent *Pacifica* Court limited the *Butler* case by distinguishing it. In a real sense, of course, *Pacifica* bans the broadcast of "indecent" material to adults as well as children. However, the Court ruled that unlike *Butler,* the F.C.C. order did not "reduce adults to hearing only what is fit for children" because adults "may purchase tapes and records or go to theatres and nightclubs to hear these words." *Pacifica, supra,* at 750 n. 28; and *See,* Powell, J. (concurring) at 760 ("the Commissions holding does not prevent willing adults from purchasing Carlin's ["indecent"] records, from attending his performances, or, indeed, from reading the transcript reprinted as an appendix to the Courts opinion"). Clearly, this analysis is squarely applicable to "indecent" recordings heard over the telephone. They are easily available to adults from other sources and their removal from the telephone (where they are exposed to children) would not "reduce adults to hearing only what is fit for children" Indeed, the Court itself analogized "indecent" broadcasting with "indecent" telephone language, stating that neither is given "constitutional immunity" to "avoid a harm that has . . . taken place." *Id.,* at 749. The Court cited as justification for its holding the need for newly enacted Congressional legislation against "obscene or profane" telephone language. *Id.,* at n. 27.

One must remember that the *Butler* statute prohibited the distribution of all material "unsuitable" for minors no matter what the source or media. It made it impossible for adults to obtain the material anywhere. As in *Pacifica,* the dial-a-porn prohibition would deal only with one medium which is uniquely hurtful to children. As Justice Powell stated in his *Pacifica* concurrence:

> In most instances, the dissemination of this kind of degrading speech to children may be limited without also limiting willing adults access to it. Sellers of printed and recorded matter and exhibitors of motion pictures and live performances may be required to shut their doors to children, but such a requirement has no effect on adults access. . . . The difficulty is that such a physical separation of the audience cannot be accomplished in the broadcast [or telephone] media. . . . [B]oth adults and unsupervised children are likely to be in the broadcast or [dial-a-porn] audience, and the broadcaster [or provider] cannot reach willing adults without also reaching children.

Id., at 758-59 (Powell, J. concurring). Justice Powell went on to state that "[t]his, as the Court emphasizes, is one of the distinctions between" such media and others "justifying a different treatment . . . for First Amendment purposes." *Id.*

As in *Pacifica,* the prohibition of "indecent" dial-a-porn involves a limited form of regulation of a single medium whose adult and youth audiences cannot be physically separated. *Butler,* on the other hand, applied to all media and embraced a wide-ranging (and vaguely defined) subject matter. Moreover in *Butler,* dissemination of the materials to children could generally be controlled at the point of distribution without denying access to willing adults. This is impossible with broadcast radio (as in *Pacifica*) and dial-a-porn.

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[5] "Bookstores and motion picture theatres, for example, may be prohibited from making indecent material available to children." *F.C.C. v. Pacifica Foundation, supra,* at 749 (explaining *Ginsberg*).

[6] The Court also rested its holding on the "pervasiveness" of the medium which carries the "indecent" material to children, discussed *infra.* 438 U.S. at 748.

Indeed, the very facts present in *Butler* limit it to the situation wherein the distributor of "indecent" material can differentiate between adults and children. This obviously cannot be done when the child telephones a tape-recorded message. Clearly, the ruling that better applies to dial-a-porn is *Pacifica*. Telephones are precisely like radio and television because of their easy accessibility to children and the virtual impossibility for parents to monitor their use.[7]

The Court in *Pacifica* also reasoned that "broadcast media" has a pervasive presence in the lives of all Americans. "Patently offensive, indecent material presented over" such a pervasive media "confronts the citizens . . . in the privacy of the home, where the individuals right to be left alone plainly outweighs the First Amendment rights of an intruder." *Id.*, at 748 (citing *Rowan v. Post Office Dept., supra*, banning erotic material from the mails at recipients request). This analysis is squarely applicable to dial-a-porn. It is of the utmost importance to be cognizant that dial-a-porn is presently in the home whether the homeowner wants it or not. Today one cannot have telephone service in the privacy of one's family environment without being required to have dial-a-porn with it. Families with children must give up telephone service to be "left alone" from exposure of their children to this "intruder." Is there really a medium more "pervasive" than the telephone? We know that children (especially teens) spend countless hours on the telephone. At present, no family can be left alone in their own homes without the harmful nuisance of indecent or obscene dial-a-porn.

Further, an argument can be made that because the telephone system is a regulated and protected sysem serving such a vital public function, it should be held to a higher standard of conduct than, say, a newspaper. In essence, the telephone system carries out the governmental function of providing telephone communication to all citizens who choose to have it at a rate set by governmental regulatory bodies. They are given de facto monopoly protection by the government and often use publicly owned property to carry out their business. In return for such privileged status, the telephone system has a public trust. The trust is breached when the telephone system enters the pornography business by exposing "indecent" dial-a-porn to virtually every child in America. *Cf., United Church of Christ v. F.C.C.*, F.2d 994, 1003 (D.C. Cir. 1966) (opinion authored by Chief Justice Burger, then a member of the District of Columbia Court of Appeals).

IV. UNDER 47 U.S.C. § 223(b)(5), THE ATTORNEY GENERAL MAY LAWFULLY ENJOIN TRANSMISSION OF DIAL-A-PORN WHICH VIOLATES § 223(b) (1)(A) OR (1)(B).

Without question, the government may lawfully restrain a party's violation of an obsenity statute through the use of a civil injunction proceeding, as permitted by 47 U.S.C. § 223(b)(5). Such a procedure, whereby the government files a civil action petitioning the court to issue an injunction against the future distribution of specifically named or identified materials has been categorically approved by the Supreme Court. *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 50-55 (1973); *Kingsley Books v. Brown*, 354 U.S. 436, 441 (1956). The holdings of *Paris Adult Theatre* and *Kingsley Books* are clearly applicable to § 223(b)(5) and permit the Attorney General to proceed against violations of this statute by injunction.

The Supreme Court has set forth the guidelines for such an injunction proceeding in several cases. Specifically, the Court has held such a proceeding is constitutionally permissible when, as here, the burden of proof and of initiating the judicial review is the governments, and the dial-a-porn provider is allowed to transmit pending a full adversary judicial proceeding, with a prompt final judicial review available. *Paris Adult Theatre*, 413 U.S. at 55; and see *Blount v. Rizzi*, 400 U.S. 410 (1971); *Freedman v. Maryland*, 380 U.S. 51 (1965). Subsection 223(b)(5) if fully supported by authority of the Supreme Court.

V. CONCLUSION

It has been demonstrated that the open availability of dial-a-porn is a serious problem for adults, as well as children. It has further been demonstrated that attempts to regulate dial-a-porn have been a complete failure since the start of this "industry" in 1983. This present situation can only be corrected if the present legislation is enacted by Congress. The legislation will obviously receive vigorous opposition from the dial-a-porn businesses themselves—this is to be expected since they stand to lose millions of dollars if an enforceable § 223 is enacted. However, this memorandum of law has clearly shown that § 223 as amended is firmly supported by legal precedent, and by a tradition for the protection of children from this type of harm. In conclusion, there is no legal obstacle to the passage of this legislation by Congress, and its enactment will finally allow for the regulation of this dial-a-porn industry and its often "illegal" product.

Respectively submitted,
PAUL C. MCCOMMON III,
Legal Counsel.
BENJAMIN W. BULL,
Legal Counsel.
BRUCE A. TAYLOR,
General Counsel.

Mr. HELMS. Mr. President, let me make one clarification. My legislation is not intended to cover common carriers when their activities go no further than that of a common carrier. Common carriers as such do not have the requisite control over a telephone, as contemplated by section 223 of the Communications Act, to bring them within its prohibitions. Nothing in my amendment is intended to change this situation.

Mr. METZENBAUM. Mr. President, section 233 of the Communications Act of 1934 imposes a penalty on those who use telephones to sell obscene or indecent messages to individuals under 18 or to nonconsenting adults.

The law also permits an individual to defend a prosecution for transmitting such a message by complying with FCC Regulations designed to insure that obscene or indecent messages do not reach children or nonconsenting adults.

This amendment would eliminate these provisions of the law.

This amendment would make it a crime to send these messages to consenting adults.

This amendment would also make the work of the FCC to protect children and nonconsentng adults irrelevant.

There is no question that this amendment is unconstitutional. The first amendment does protect the right to make or receive any communication, over the telephone or otherwise, as long as the communication is constitutionally protected.

The courts have held on numerous occasions that obscene communications are not protected by the first amendment.

So there is nothing wrong with saying that obscene commercial phone calls should not be permitted.

But this amendment goes further. It would make it illegal to transmit nonobscene phone messages to consenting adults. This is unconstitutional.

The Supreme Court and lower Federal courts have said that children can be protected against sexual material even if that material is not obscene. But they have said that this regulation must be done in a way which preserves the first amendment rights of adults.

I repeat, we can legislate to protect children.

We can give the FCC some guidelines to follow so that they can continue to work out a solution which meets the legitimate concerns of parents.

We can give the FCC some guidelines so that Regulations can be issued which will protect adults who don't want these calls coming into their homes.

The FCC has been working on this problem for 2 years. They have tried twice to write regulations which would solve these legitimate concerns.

Twice the Second Circuit Court of Appeals told the FCC to go back and try again. The most recent decision is dated April 11, 1986, I want to put it, as well as the earlier one in the RECORD.

Why did the court strike down the FCC's efforts?

Because the FCC could not show that it had adopted the solution which would least infringe first amendment rights.

I am sure everyone here wants to be sure that the privacy of children and nonconsenting adults is protected. I sure want to be sure that they are protected.

But as I am forced to say again and again, we have to respect our Constitution while we accomplish our goals. I know that its not easy to stand up for the Constitution when it is an election year. It's not easy when someone may misrepresent your vote.

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[7] Also, one cannot discount the fact that *Pacifica* in 1978 is the most recent expression of the Supreme Court's will. No member of the 1957 *Butler* Court remains on the Supreme Court bench. Indeed, Justice Stewart, who dissented in *Pacifica*, is no longer a member of the Court.

But the courts have been clear. Protecting children is a legitimate goal. Protecting nonconsenting adults from material they do not want to receive is also a legitimate goal.

But you cannot do it unless you satisfy the very strict standards of the first amendment.

We should all work together to solve the legitimate problem of protecting children and nonconsenting adults. This is not a constructive solution; this is not a constitutional solution.

I ask unanimous consent that the decisions of the Second Circuit Court of Appeals be printed in the RECORD.

There being no objections, the material was ordered to be printed in the RECORD, as follows:

CARLIN COMMUNICATIONS, INC., AND DRAKE PUBLISHER, INC., PETITIONERS,

V.

FEDERAL COMMUNICATIONS COMMISSION, RESPONDENT.

CARLIN COMMUNICATIONS, INC., CAR-BON PUBLISHERS, INC., AND DRAKE PUBLISHER, INC., PLAINTIFFS-APPELLANTS,

V.

WILLIAM FRENCH SMITH, AS ATTORNEY GENERAL OF THE UNITED STATES, AND FEDERAL COMMUNICATIONS COMMISSION, DEFENDANTS-APPELLEES

Nos. 270, 295, Dockets 84-4086, 84-6202.

United States Court of Appeals, Second Circuit.

ARGUED SEPT. 17, 1984.

DECIDED NOV. 2, 1984.

A petition sought review of a rule-making order or regulation of the Federal Communications Commission, promulgated in response to a statute, and in a second case an appeal was taken from denial of a preliminary injunction against enforcement of statute by the United States District Court for the Southern District of New York, Constance Baker Motley, Chief Judge. The Court of Appeals, Oakes, Circuit Judge, held that the Federal Communications Commission, failed adequately to demonstrate that its scheme of regulating "dial-a-porn" services, i.e., by requiring operation only between hours of 9:00 p.m. and 8:00 a.m. eastern time or by requiring payment by credit card before transmission of the message, was well tailored to its ends or that those ends could not be met by less drastic means, the regulation being both overinclusive and underinclusive, and regulation thus could not stand.

Petition to reveiw granted and regulation set aside; judgment of the district court affirmed.

1. Statutes 🔑216

Views of sponsor of legislation are by no means conclusory but are entitled to considerable weight, particularly in absence of a committee report. Communications Act of 1934, §§ 223, 233(b), as amended, 47 U.S.C.A. §§ 223, 223(b).

2. Constitutional Law 🔑 46(1)

Before court would consider constitutional validity of statute, court would look first to validity of regulation promulgated pursuant thereto. Communications Act of 1934, § 223(a, b), as amended, 47 U.S.C.A. § 223(a, b); U.S.C.A. Const.Amend. 1.

3. Telecommunications 🔑 273

In considering constitutionality of Federal Communications Commission regulation under which operation of "dial-a-porn" services would not be punishable if operation was only between hours of 9:00 p.m. and 8:00 a.m. eastern time or if operators required payment by credit card before transmission of the message, court would take into account fact that regulation was content based, not applying to all "dial-it" services, and accordingly it would be reviewed under higher standard of scrutiny than that of reasonableness and thus it was to be determined whether regulation precisely furthered compelling governmental interest. Communications Act of 1934, § 223(a, b), as amended, 47 U.S.C.A. § 223 (a, b); U.S.C.A. Const. Amend. 1.

4. Constitutional Law 🔑 90.1(1)
Infants 🔑 13

Interest in protecting minors from salacious matter is quite compelling, from constitutional viewpoint, but such interest must be served only by narrowly drawn regulations, i.e., by employing means closely drawn to avoid unnecessary abridgement, and government bears heavy burden of demonstrating that compelling state interest could not be served by restrictions that are less intrusive on protected forms of expression. Communications Act of 1934, § 223(b), (b)(2), as amended, 47 U.S.C.A. § 223(b), (b)(2); U.S.C.A. Const.Amend. 1.

5. Constitutional Law 🔑 90(1)

State may not regulate protected forms of expression at all if it turns out that even the least restrictive means of regulation is still unreasonable when its limitations on freedom of speech are balanced against benefits gained from the limitations. Communications Act of 1934, § 223(a, b), (b)(2), as amended, 47 U.S.C.A. § 223(a, b) (b)(2); U.S.C.A. Const.Amend. 1.

6. Telecommunication 🔑 273

Federal Communications Commission failed adequately to demonstrate that its scheme of regulating "dial-a-porn" services, i.e., by requiring operating only between hours of 9:00 p.m. and 8:00 a.m. eastern time or by requiring payment by credit card before transmission of the message, was well tailored to its ends or that those ends could not be met by less drastic means, the regulation being both overinclusive and underinclusive and regulation thus could not stand. Communications Act of 1934, § 223(a, b), (b)(2), as amended, 47 U.S.C.A. § 223(a, b), (b)(2); U.S.C.A. Const. Amend. 1.

Jonathan L. Rosner, New York City (Lawrence E. Abelman, Peter J. Lynfield, Marianne F. Murray, Abelman Frayne Rezac & Schwab, New York City, of counsel), for plaintiffs-apellants.

Bruce E. Fein, Gen. Counsel, F.C.C., Washington, D.C. (Daniel M. Armstrong, Sue Ann Preskill, Sharon Kelley, Steve Kaminer, Washington, D.C., of counsel), for defendants-appellees.

John Messenger, Washington, D.C. (Saul Fisher, Melvin A. Cohen, White Plains, N.Y., of counsel), for intervenors N.Y. Telephone Co. and New England Telephone Co.

Judith A. Maynes, G. Daniel McCarthy, New York City, for intervenor American Tel. & Tel. Co.

George Shapiro, James P. Mercurio, Gerald E. Oberst, Jr., Arent, Fox Kintner & Kahn, Washington, D.C., John S. Redpath, Jr., Harold Akselrad, New York City, Henry J. Gerken, Daniel J. Danser, Englewood, Colo., for amici curiae Home Box Office, Inc. and American Television and Communications Corp.

John J. Walsh, Brooklyn, N.Y., for amicus curiae Morality in Media, Inc.

Before OAKES, KEARSE, and PRATT, Circuit Judges.

OAKES, Circuit Judge.

Carlin Communications, Inc. Provides a telephone "service," colloquially called "dial-a-porn," to local and long distance callers at ordinary rates. The callers hear prerecorded messages, which change several time daily as in the case of weather or sports results, describing actual or simulated sexual activity apparently in explicit terms. A dial-it service can receive up to 50,000 calls per hour to an individual number, and, rather incredibly, 800,000 calls per day were made to dial-a-porn in May, 1983; 180,000,000 calls in the year ending February, 1984. Dial-a-porn, accessible by calls to or in the Metropolitan New York area codes 212, 516, and 914, all to the 976 exchange, was far more popular than the horse-race results, the second most popular dial-it service, which received 79,000 calls per day or 29,000,000 per year. Eighty percent of dial-a-porn calls are local, and twenty percent long distance.

Drake Publisher began offering dial-a-porn in the New York area in February of 1983. Carlin replaced Drake the following month and has since expanded to several cities, advertising the dial-a-porn numbers in adult-type magazines owned by Drake and Car-Bon Publishers, Inc. Under the New York leased-line tariffs, Carlin makes two cents per local or long distance call, and the telephone companies—for local calls, New York Telephone Co. and New England Telephone Co., now the NYNEX Telephone Companies (hereinafter NYNEX), and for long distance calls, American Telephone & Telegraph Co. (hereinafter AT&T) and NYNEX—receive the remaining revenues.

The instant case is really two cases. In one, No. 84-4086, Carlin and Drake petition for review of an FCC rulemaking order or regulation[1] promulgated in response to a statute, 47 U.S.C.A. § 223(b) (Supp.1984,[2] mandating FCC action.) In the second case, No. 84-6202, Carlin, Drake and Car-bon[3] appeal from the denial of a preliminary injunction against enforcement of section 223(b) by the United States District Court for the Southern District of New York, Constance Baker Motley, Chief Judge. We affirm the judgment in the appeal, No. 84-6202. We grant the petition to review in No. 84-4086 and set aside the regulation.

THE UNDERLYING STATUTE AND REGULATIONS

The drive to regulate dial-a-porn began when the County Executive for Suffolk County, New York, Peter F. Cohalan, commenced an action against Carlin and the FCC in New York state court, since dismissed.[4] Subsequently Cohalan and a member of Congress, Thomas J. Bliley (R-Va.) sought to have the FCC terminate Carlin's dial-a-porn service by administrative action under then existing legislation, but the FCC concluded that federal law did not restrict dial-a-porn.[5] In light of the FCC's inaction, Congressman Bliley proposed an amendment to section 223 of the Communications Act, 47 U.S.C. § 223 (1982), as a rider to H.R. 2755, 98th Cong., 1st Sess. (1983), the FCC appropriations bill. The House Committee on Energy and Commerce agreed to Congressman Bliley's amendment to H.R. 2755 by voice vote on June 30, 1983,

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Footnotes at end of article.

and reported the bill to the full House on September 15, 1983. The legislation prohibited obscene dial-a-porn service:

Section 8 amends section 223 of the Communications Act of 1934 by adding a new subsection (b) . . . that extends section 223's prohibition against obscene telephone calls to prerecorded messages. Obscene messages, whether made directly or by recording device, are prohibited without regard to whether the sender of the message initiated the call. The Committee intends that this section will prohibit obscene messages otherwise available over "Dial It" services.

H.R. Rep. No. 356, 98th Cong., 1st Sess. 19 (1983), U.S. Code Cong. & Admin.News 1983, pp. 2219, 2235.

[1] With discussion on the floors of both Houses of Congress on November 18, 1983, the legislation was amended into its present form before being passed.[6] The amendment explicitly covered "indecent" language and authorized the FCC to promulgate defenses to the act's coverage. 129 Cong. Rec. H10,559-60 (daily ed, Nov. 18, 1983); *id.* at S10,866-67. Congressman Bliley indicated that "indecent" was to be defined by *FCC* v. *Pacifica Foundation,* 438 U.S. 726, 98 S.CT. 3026, 57 L.ED.2d 1073 (1978) (upholding FCC adjudication that specific broadcast was "indecent" as distinct from obscene).[7] On December 8, 1983, the legislation was signed by the President.[8]

In the wake of section 223(b)'s passage, the Commission initiated notice and comment rulemaking proceedings. *See* 48 Fed. Reg. 43,348 (1983); 49 Fed.Reg. 2124 (1984). On June 4, 1984, the Commission issued a Report and Order, 49 Fed.Reg. 24,996 (1984), containing the legislatively mandated regulation establishing defenses to prosecution under section 223(b). The regulation, *id.* at 25,003, provides:

It is a defense to presecution under Section 223(b) of the Communications Act of 1934, as amended, 47 U.S.C. § 223(b) (1983), that the defendant has taken either of the following steps to restrict access to communications prohibited thereunder.

(a) Operating only between the hours of 9:00 p.m. and 8:00 a.m. Eastern Time or

(b) Requiring payment by credit card before transmission of the message(s).

Subsection (a) is intended to regulate dial-a-porn services, while subsection (b) is intended to regulate live telephone services providing sexually explicit conversation, while requireing payment by charge or credit card. Subsection (b) cannot be relied upon by dial-it services because a dial-it caller does not pay "before transmission of the message."

CONTENTIONS OF THE PARTIES AND AMICI

Carlin levels several challenges at the time-channeling regulation. Carlin argues that it is (A) violative of the First Amendment's requirement that a restriction on protected speech be the least restrictive alternative for protecting a compelling governmental interest, (B) either impermissibly overbroad or vague, (C) arbitrary and capricious because the FCC had no legitimate reason for allowing live services to use credit cards and not allowing dial-it services to use automated access codes, and (D) in conflict with common carrier tariffs that require continuous, uninterrupted automatic announcement and recorded program services. Carlin also argues that the statute is vague and overbroad by, inter alia, its proscription of "any obscene or indecent communication." The statute is also said to create an impermissible national standard of obscenity and to constitute a unconstitutional delegation of lawmaking authority.

The Commission counters each of Carlin's claims, arguing, in particular, that the regulatory scheme does not violate the First Amendment because the Commission reasonably rejected as ineffective or impractical other suggested methods for restricting access to dial-a porn.

The NYNEX Companies, intervenors, argue that the FCC properly rejected proposals for automatic screening and blocking of calls to dial-a-porn services and that the time-channeling regulation does not conflict with telephone company tariffs. AT&T, another intervenor, argues that the FCC did not violate rules prohibiting ex parte contacts by meeting with telephone company representatives on April 16, 1984, to review telephone industry blocking capabilities or capriciously in determining that the industry lacked the capability of effectively blocking calls at customers' request. Home Box Office, Inc., and American Television and Communication Corp., amici, argue that section 223(b) is unconstitutionally overbroad because its coverage is not limited to expression that is obscene under *Miller v. California,* 413 U.S. 15, 93 S.Ct 2607, 37 L.Ed. 2d 419 (1973). Morality in Media, Inc., amicus, argues essentially that the time-channeling regulation is ineffective and fails to satisfy Congress's mandate.

DISCUSSION

[2] In any constitutional case we start with the prudential consideration perhaps best set forth by Justice Brandeis in his concurring opinion in *Ashwander v. Tennessee,* 297 U.S. 288, 341, 56 S.Ct. 466, 480, 80 L.Ed. 688 (1936), that courts should not "anticipate a question of constitutional law in advance of the necessity of deciding it," *id.* at 346-47, 56 S.Ct. 482-83 (quoting *Liverpool, New York & Philadelphia Steamship Co. v. Commissioners of Emigration,* 113 U.S. 33, 39, 5 S.CT. 352, 355, 28 L.Ed. 899 (1885), and citing in text or footnote numerous other cases). Thus, if the FCC regulation is invalid facially or as applied, we need not reach the question of the constitutionally of the underlying statute, which makes it a defense, 47 U.S.C. § 223(b)(2), that the putative defendant "restricteed access to persons eighteen years of age or older in accordance with procedures" prescribed by the Commission's regulation. Congress surely did not intent that the statute be enforced without a valid regulation in place. The Justice Department seemed to recognized that the statute was unenforceable absent such a regulation when it advised the district court that it "does not anticipate seeking to enforce subsection (b) of 47 U.S.C. § 223 until the pertinent FCC regulations have been promulgated." Letter of Lawrence Lappe, Chief of General Litigation and Legal Advice Section, Criminal Div., U.S. Dep't of Justice (Dec. 21, 1983). While the letter is couched in qualified terms, its purport would seem to reflect Congress's intent. Thus we look first to the validity of the time-channeling regulation.

Justice Brandeis's caution against considering constitutional questions does not allow us to avoid determining whether the regulation violates the First Amendment, for each of Carlin's nonconstitutional challenges to the regulations fails. While the FCC failed to allow a substantial period of time for comments in response to its ex parte discussions with the telephone company representatives, the procedures attending those discussions cannot be said to run afoul of either the FCC's own regulations or general principles of administrative procedure for notice and comment rulemaking.[9] In addition, Carlin's tariff concerns are assuaged by NYNEX's argument, concurred in by the FCC, that a recorded message informing callers that sexually suggestive messages are transmitted after 9:00 p.m. would satisfy the tariff. Finally, whatever the problems with the FCC's regulatory determinations, they do not rise to the level of arbitrariness or capriciousness. The FCC had legitimate reasons for distinguishing between the use of credit cards by live pornographical telephone services and the use of credit cards or access codes by dial-a-porn. The live services require payment by credit card. Thus, the credit card regulation engenders no extra costs as applied to live services. Dial-a-porn cannot use credit cards. While it might use an automated access code, any automated access code system would surely impose costs on users, on the services, or perhaps on the carriers. Moreover, live services presumably have operators taking credit card numbers; an automated access code system would not. Treating live and dial-it services differently is not arbitrary and capricious.

Turning to the constitutionality of the regulation, we first assume that Carlin is injured by the regulation of indecent speech. We have to make this assumption because our record, while replete with descriptions of the telephone messages, is singularly devoid of information as to their actual content except for three such messages attached to a complaint by Congressman Bliley. *See supra* note 5. The assumption is not inappropriate given the vagaries of the line distinguishing between obscene and indecent speech. With this assumption, we address whether time-channeling is a constitutionally valid means of regulating the kind of speech this regulation seeks to cover.

We recognize that the Supreme Court has usually viewed freedom of expression contextually. Thus, while it has said that obscene "material" is "unprotected" by the First Amendment, *Miller,* 413 U.S. at 23, 93 S.Ct. at 2614; *Paris Adult Theatre I v. Slaton,* 413 U.S. 49, 54, 93 S.Ct. 2628, 2633, 37 L.Ed.2d 446 (1973), it has emphasized that regulatory schemes designed to regulate obscene materials must be "carefully limited" because of the "inherent dangers of undertaking to regulate any form of expression." *Miller,* 413 U.S. at 23-24, 93 S.Ct. at 2614-2615. The Court has also suggested that different (and less restrictive) constitutional limits apply to legislation that prohibits the distribution of certain material to young persons but does not directly infringe upon the right of adults to obtain materials they wish to see. *See Ginsberg* v. *New York,* 390 U.S. 629, 639, 88 S.Ct. 1274, 1280, 20 L.Ed.2d 195 (1968). So, too, the Court has distinguished between legislation that deals with public displays, unsolicited mailings, or other conduct "thrusting" sexual materials upon those who do not want them, which constitute "an assualt upon individual privacy," *Redrup v. New York,* 386 U.S. 767, 769, 87 S.Ct. 1414, 1415, 18 L.Ed.2d 515 (1967), and legislation that regulates the private viewing of sexual material, *Redmond v. United States,* 384 U.S. 264, 265, 86 S.Ct. 1415, 1416, 16 L.Ed.2d 521 (1966) (obscene private correspondence); *cf. Stanley v. Georgia,* 394 U.S. 557, 568, 89 S.Ct. 1243, 1249, 22 L.Ed.2d 542 (1969) (private possession of obscene matter cannot constitutionally be made a crime). *But cf. United States v. Orito,* 413 U.S. 139, 143-44, 93 S.Ct. 2674, 2677-78, 37 L.Ed.2d 513 (1973) (upholding prohibition of transportation in interstate commerce of obscene materials by common carrier, whether for private or commercial purposes); *California v. LaRue*, 409 U.S. 109, 117-18, 93 S.Ct. 390, 396-97, 34 L.Ed.2d 342 (1972) (nude dancing in bars regulable under Twenty-first Amendment); *Ginzburg v. United States*, 383 U.S. 463, 475-76, 86 S.Ct. 942, 949-50, 16 L.Ed.2d 31 (1966) (dubiously obscene material treated as obscene when advertised as erotically appealing). Similarly, the Court has, in some cases, looked to the form in which the expression is cast, be it book, magazine, movie, play, or T-shirt, giving books a "preferred place in our hierarchy of values," because they contain "the printed word," *Kaplan v. California*, 413 U.S. 115, 119, 93 S.Ct. 2680, 2684, 37 L.Ed.2d 492 (1973) (but where a book is "made up entirely of repetitive descriptions of physical, sexual conduct, 'clinically' explicit and offensive to the point of being nauseous," *id.* at 116-17, 93 S.Ct. at 2682-83, distribution even to an adult may be criminalized). Finally, the Court has been sensitive to whether a regulatory scheme operates as a prior restraint on speech. *See, e.g., Southeastern Promotions Ltd. v Conrad,* 420 U.S. 546, 552-53, 95 S.Ct. 1239, 1243-44, 43 L.Ed.2d 448 (1975) (holding that denial of use of municipal auditorium for a production because of its content constitutes a prior restraint and violates the First Amendment because of a lack of procedural safeguards).

We also pay heed to the plurality opinion of the Court in *Yound v. American Mini Theatres, Inc.*, 427 U.S. 50, 63-70, 96 S.Ct. 2440, 2448-2452 49 L.Ed.2d 310 (1976) (plurality opinion) (upholding adult-film zoning ordinances), that the content of expression is, or any be, relevant in First Amendment analysis, although '[t]he sovereign's agreement or disagreement with the content of what a speaker has to say may not affect the regulation of the time, place or manner of presenting the speech." *id.* at 64, 96 S.Ct. at 2449. At the same time, we are mindful of the teaching of *Consolidated Edison, Co. v. Public Service Commission*, 447 U.S. 530, 536, 100 S.Ct. 2326, 2332, 65 L.Ld.2d 319 (1980) (citations and footnote omitted).

A restriction that regulates only the time, place or manner of speech may be imposed so long as it is reasonable. But when regulation is based on the content of speech, governmental action must be scrutinized more carefully to ensure that communication has not been prohibited "merely because public officials disapprove the speaker's views." • • As a consequence, we have emphasized that time, place, and manner regulations must be "applicable to all speech irrespective of content." • • • Governmental action that regulates speech on the basis of its subject matter "slip[s] from the neutrality of time, place, and circumstance into a concern about content.' " • • • Therefore, a constitutionally permissible time, place or manner restriction may not be based upon either the content or subject matter of speech.

Finally, we note the Court's recent reaffirmation of the holding in *Butler v. Michigan*, 352 U.S. 380, 77 S.Ct. 524, 1 L.Ed.2d 412 (1957), that "the government may not 'reduce the adult population • • • to reading only what is fit for children.' " *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 103 S.Ct. 2875, 2884, 77 L.Ed.2d 469 (1983) (quoting *Butler v. Michigan*, 353 U.S. at 383, 77 S.Ct. at 526). The Bolger Court, 103 S.Ct. at 2884, also reiterated the language of *Pacifica* that "emphasiz[es] the narrowness of [its] holding," 438 U.S. at 750, 98 S.Ct. at 3041, and highlighted the adverb "uniquely" in the *Pacifica* explanation that broadcasting is "uniquely pervasive" and uniquely accessible to children, even those too young to read," 438 U.S. at 748, 98 S.Ct. at 3040. *Bolger* thus singles out the broadcasting media as subject to a "special interest of the federal government in regulation" that "does not readily translate into a justification for regulation of other means of communication." 103 S.Ct. at 2884.

With this constitutional background in mind, we assess the time-channeling regulation. We begin by noting that the regulation does not warrant the special treatment that the Court has espoused in some contexts. The regulation concerns a telephone service that requires dialing on the part of the would-be listener, as opposed to a public display, in unsolicted mailing, or other means of expression as to which the receiver has no chance to withhold his or her consent.[10] Moreover, the telephone transmits the spoken word, not photograph, moving pictures, or live performances." And, while the aim of the regulation is to limit or prevent access by minors to dial-a-porn messages, its operative effect is to deny access to adults as well. Finally, for the reasons cited by the Court in *Bolger*, it may well be that the Court's holding in *Pacifica* is inapplicable outside the broadcast context.

[3-5] We must reject the FCC's argument that the regulation should be upheld as a reasonable time, place, or manner restriction. Until better informed, we are required to recognize a certain inconsistency between the language of the *American Mini Theatres* plurality, pointing out the frequent necessity of looking at the content of expression to determine its regulability, and the Court's language in *Consolidated Edison*, calling for a higher standard of scrutiny than reasonableness when a regulation is based on the content or subject matter of speech. For the present, we follow the *Consolidated Edison* approach, noting that while the Court has states that "[t]he question whether speech is, or is not, protected by the First Amendment often depends on the content of the speech," *New York v. Ferber*, 458 U.S. 747, 763, 102 S.Ct. 3348, 3358, 73 L.Ed.2d 1113 (1982) (quoting *American Mini Theatres*, 427 U.S. at 66, 96 S.Ct. at 2450), a majority of the Court has never accepted the view that courts should establish a hierarchy of categories of protected speech. We take it as a given fact that the state cannot stifle speech because it disagrees with the speaker's view. Every content-based regulation thus should be reviewed under a stricter scrutiny than that of reasonableness because of the difficulty under *American Mini Theatres*, 427 U.S. at 67, 96 S.Ct. at 2451, of determining whether the state is simply "hostile" to the speaker's point of view. Thus, because the regulation is content based—it does not apply total dial-it services, but only to those transmitting absence[12] or indecent messages—we scrutinize it more closely.

Under this more exacting scrutiny, we must determine whether the regulation precisely furthers a compelling governmental interest. The interest in protecting minors from salacious matter is no doubt quite compelling. *See Ginsberg, supra.* Such an interest must be served, however, only by "narrowly drawn regulations," *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 637, 100 S.Ct. 826, 836 63 L.Ed.2d 73 (1980), that is, by employing means "closely drawn to avoid unnecessary abridgment," *Buckley v. Valeo*, 424 U.S. 1, 25, 96 S.Ct. 612, 638, 46 L.Ed.2d 659 (1976). The Government bears the heavy burden of demonstrating that the compelling state interest could not be served by restrictions that are less intrusive on protected forms of expression. *See Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 74, 101 S.Ct. 2176, 2185, 68 L.Ed.2d 671 (1981). And the State may not regulate at all if it turns out that even the least restrictive means of regulation is still unreasonable when its limitations on freedom of speech are balanced against the benefits gained from those limitations. For example, a statute may be unconstitutional even in the absence of an identifiable less restrictive means if there is "no substantially relevant correlation between the governmental interest asserted and the state's" regulatory scheme. *First National Bank v. Bellotti*, 435 U.S. 756, 795, 98 S.Ct. 1407, 1426, 55 L.Ed.2d 707 (1978) (quoting *Shelton v. Tucker*, 364 U.S. 479, 485, 81 S.Ct. 247, 250, 5 L.Ed.2d 231 (1960)).

[6] In the present case, the FCC has failed adequately to demonstrate that the regulatory scheme is well tailorded to its ends or that those ends could not be met by less drastic means. On one hand, the regulation is both overinclusive and underinclusive. As noted above, the regulation denies access to adults between certain hours, but not to youths who can easily pick up a private or public telephone and call dial-a-porn during the remaining hours. And apparently they do not prohibit Carlin from publishing a continual message suggesting a call-back for explicit sex-talk at the appropriate hour and putting youth on notice about when to call back. Moreover, the record before us offers little that demonstrates why a prohibition on dial-it services is needed during daytime school hours when children are for the greater part of the year likely to be in class under adult supervision, while the prohibition is not needed after 9:00 p.m. Eastern Time (6:00 p.m. on the West Coast), when a young person needs to be unsupervised for only about ninety seconds in order to dial the number and hear the message.

On the other hand, the rulemaking record does not show that time channeling is the least restrictive method for protecting youths from dial-a-porn. The FCC expressly rejected certain alternatives, but the record provides minimal explanation for why screening or blocking or using access numbers would not be both more effective in limiting the dial-it audience to those over the age of eighteen and less restrictive of adults' freedom to hear what they want when they want to hear it.

One approach suggested by commenters during the rulemaking process involved giving subscribers the option of blocking access to certain telephone numbers from their premises.[13] As the Commission said, "Since neither the Government nor common carriers would be burdened with the responsibility of making obscenity determinations under this approach, First Amendment problems would be avoided." 49 Fed. Reg. at 24,998-99. The Commission Report and Order noted that "[s]ubscriber screening schemes may be accomplished either by: (1) The installation of appropriate capability within the local telephone company's central office . . . or (2) The development of a screening function within terminal equipment at the customer's premises." *Id.* at 24,999. The FCC rejected both options on the basis of comments by the telephone industry. The Commission found that a blocking or screening scheme, whether implemented from the telephone company's central office or customers' premises would require time to develop and could entail costs that would outweigh the benefits to be obtained, so that such schemes do not "at this time, represent viable regulatory option[s]." *Id.*

The telephone industry commenters indicated that central-office blocking would require extensive modifications to existing equipment. "It appears," according to the FCC, "that central-office equipment currently in use is incapable of selective screening or blocking on an entire seven or ten digit basis," *id.*, so that any attempt to provide such a service would first require the development and implementation of special facilities for that purpose. But the Commission does not refer to the option of simply blocking all "976" calls.[14]

The FCC rejected a blocking device installed in telephone equipment at the customers' premises because it required "the development and installation of new equipment." *Id.* According to industry commenters, "no existing commercial device has a screening capability that could be deployed within the subscriber's terminal equipment." *Id.* Yet certain federal building actually have blocked all 976 calls,[15] at least since substantial billings were run up in calls from certain Washington offices to dial-a-porn. It the "architecture" of the system works here, why not elsewhere? The record should analyze every option.[16]

Another approach suggested by commenters was that access to dial-a-porn be restricted requiring each caller to provide an access number for identification to an operator or computer before receiving the message. Because dial-it services function by allowing multiple callers virtually unlimites simultaneous access to prerecorded messages requiring operator intervention was though to be economically impracticable. *Id.* at 25,000. The Commission rejected an automatic access code system not by questioning its technical feasibility [17] but by noting that it "would place substantial economic and administrative burdens on recorded service providers." *Id.* While Carlin argued that the interposition of an automated access or identification code system would be upalatable administratively and financially prohibitive we see no great administrative difficulty in having each person who desired access to dial-a-porn services fill out some type of application form, which would then be sent to the appropriate dial-a-porn message service provider who would have a rely on some system of age verification.[18] We recognize, as did the Commission, that the inconvenience associated with this practice might discourage many adults from using the service, and thereby conceivably place its financial viability in jeopardy. We also recognize that such a system would impose burdens upon those adults who do not have access or identification codes but wish to patronize dial-a-porn services, but we need not determine whether this alternative regulatory scheme would present insuperable constitutional problems. The FCC embraced the time-channeling scheme in the face of an argument by Carlin that it will have a disastrous financial effect, by noting that there is not evidence that callers will not call after 9:00 p.m., but rejected the automated access code scheme, by accepting Carlin's argument that the scheme jeopardized Carlin's financial viability.[19] The Commission did not make the crucial determination about which scheme would be less restrictive of freedom of expression.

Certainly the FCC cannot successfully counter Carlin's challenges by arguing that Carlin did not urge these alternative methods of regulation at the rulemaking stage. The FCC's rules apply to everyone and must stand on their own. The FCC must give us a record that shows, convincingly, that the regulations were chosen after thorough, careful, and comprehensive investigation and analysis. Our unanswered questions at oral argument and in this opinion suggest that the FCC has fallen short of that high, but necessary, standard.

In light of our holding, we need not address Carlin's other constitutional challenges to the regulation or its challenges to the facial validity of section 223(b). And while the Government has not stated that it will not enforce the statute after the time-channeling regulation has been set aside, we presume that the Justice Department will continue its earlier policy of not enforcing section 223(b) without a regulation governing dial-a-porn. If the Government does restate its earlier policy, a preliminary injunction is surely inappropriate because of a lack of irreparable injury to Carlin.[20]

Petition to review granted and regulation set aside. Judgment of the district court affirmed.

FOOTNOTES

1. 49 Fed.Reg. 24,996, 25,003 (1984) (to be codified at 47 C.F.R. § 64.201).

2. Federal Communications Commission Authorization Act of 1983, Pub.L. 98-214, § 8, 97 Stat. 1467, 1469.

3. Hereinafter we use Carlin to refer to both the appellants in No. 84-6202 and the petitioners in No. 84-4086.

4. *Cohalan v. High Soc'y Magazine, Inc.*, No. 3490/1981 (N.Y.Sup.Ct.), dismissed for lack of jurisdiction on removal, No. CV 83-603 (E.D. N.Y. Mar. 16, 1983).

5. *In re Application for Review of Complaint Filed by Peter F. Cohalan*, F.C.C. File No. E-83-14, Memorandum Opinions and Orders Adopted May 13, 1983, and March 5, 1984.

6. Section 223(b) as amended provides:

(1) Whoever knowingly—

(A) in the District of Columbia or in interstate or foreign communication, by means of telephone, makes (directly or by recording device) any obscene or indecent communication for commercial purposes to any person under eighteen years of age or to any other person without that person's consent, regardless of whether the maker of such communication placed the call; or

(B) permits any telephone facility under such person's control to be used for any activity prohibited by subparagraph (A), shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(2) It is a defense to a prosecution under this subsection that the defendant restricted access to the prohibited communication to persons eighteen years of age or older in accordance with procedures which the commission shall prescribe by regulation.

(3) In addition to the penalties under paragraph (1), whoever, in the District of Columbia or in interstate or foreign communication, intentionally violates paragraph (1)(A) or (1)(B) shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(4)(A) In addition to the penalties under paragraphs (1) and (3), whoever, in the District of Columbia or in interstate or foreign communication, violates paragraph (1)(A) or (1)(B) shall be subject to a civil fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(B) A fine under this paragraph may be assessed either—

(i) by a court, pursuant to a civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

(ii) by the Commission after appropriate administrative proceedings.

(5) The Attorney General may bring a suit in the appropriate district court of the United States to enjoin any act or practice which violates paragraph (1)(A) or (1)(B). An injunction may be granted in accordance with the Federal Rules of Civil Procedure.

Section 8(c) of Pub. L. No. 98-214 mandated that: The Federal Communications Commission shall issue regulations pursuant to Section 223(b)(2) of the Communications Act of 1934 (as added by subsection (a) of this section) not later than one hundred and eighty days after the date of the enactment of this Act.

7. While the views of a sponsor of legislation are by no means conclusive, they are entitled to considerable weight, particularly in the absence of a committee report. *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 526-27, 102 S.Ct. 1912, 1920-21, 72 L.Ed.2d 299 (1982). Congresman Bliley had this to say about the term "indecent" and *Pacifica, supra*, in his opening remarks in support of his amendment:

The amendment omits the terms "lewd, lascivious, filthy" from the section 8 of the bill. This change is merely to clarify that Congress intends to be consistent with Supreme Court rulings on obscenity which require a violation of community standards and an appeal to prurient interests. In *Manual Enterprises* v. *Day*, 370 U.S. 478 [82 S.Ct. 1432, 8 L.ED.2d 639], Justice Harlan observed that though words such as these have different shades of meaning in common usage, they are all aimed at obnoxiously debasing portrayals of sex. Therefore, it is not necessary to keep the litany of terms as currently in the statute to prohibit that kind of material. It was necessary, however, to maintain the term "indecent" since the Supreme Court upheld the FCC's assessment of a fine based on indecent material in the Pacifica case.

I would observe as an aside that the ruling in Pacifica clearly affirms the FCC's ability and authority to examine material to determine whether it is obscene or indecent and to assess fines on that basis. This amendment clarifies that question and obviates the need for the FCC's pending inquiry on that issue, though I believe it was absurd for the FCC to ever consider their authority in that area questionable based on Pacifica.

129 Cong.Rec. H16,559 (Nov. 18, 1983).

8. Six days after the bill became law, Congressman Kastenmeier, a cosponsor of section 223(b), extended his remarks concerning the legislation in the Congressional Record:

Last, I would like to take issue with the restrictive interpretation by my colleague of the regulations to be issued by the FCC under section 223(b)(2) of my amendment. As noted in my own earlier remarks:

Congress intends that the FCC promulgate reasonable time, place, and manner restrictions calculated to restrict access to prohibited communications by persons under 18 years of age.

Under the Supreme Court's holding in *Butler v. Michigan*, 352 U.S. 380, 77 S.Ct. 524, 1 L.ED.2d 412 (1957), Congress cannot expect the FCC to impose blanket restrictions on dial-a-porn services if time, place, and manner restrictions are technically infeasible or impracticable. . . . [W]e have carefully constructed section 223, as amended, to avoid reducing the adult population to hearing only what is fit for a child. We leave it to the FCC to prescribe the specific regulations that permit adult access while limiting children's access. If, however, no such regulations are feasible, then less restrictive measures rather than broader restrictions will have to suffice to avoid any constitutional infirmity.

129 Cong.Rec. E5966-67 (daily ed. Dec. 14, 1983).

9. The Commission met ex parte with telecommunications industry representatives on April 16, 1984, to discuss the difficulty and cost of implementing blocking and screening schemes. The Commission's ex parte rules, 47 C.F.R. § 1.1231 (1983), adopted in response to *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 51-59 (D.C. Cir.), *cert. denied*, 434 U.S. 829, 98 S.Ct. 111, 54 L.Ed.2d 89 (1977), specifically permit ex parte contacts in informal rulemaking proceedings, such as this one, until an item is placed on the Commission's meeting agenda. In fairness to parties who are not included in the ex parte meeting, the rules require that a summary of the subject of the meeting be placed in the record, 47 C.F.R. § 1.1231(b)(2), and that the meeting's occurrence be reflected in a public notice, *id.* § 1.1231(b)(4). Both steps were taken here. *See* FCC Public Notice, No. 4052 (May 8, 1984). Indeed, the Commission went further and placed a transcript of the meeting in the record. We note, however, the public notice that information had been received ex parte, that summaries of it were available, and that responses were invited was not made until May 8, 1984, less than a month before the regulations were announced. This timetable suggests that anyone,

including Carlin, had little time to react to the ex parte material. It also offers indirect evidence tending to indicate that the FCC's rulemaking was rushed, doubtless due in part to the 180-day congressional injunction, making its investigation somewhat superficial.

10. Although an unconsenting adult may call dial-a-porn by accident or as the result of a practical joke, the caller can avert his or her ear. Moreover, the regulations are not aimed at this problem. At oral argument the FCC General Counsel stated that the statute's knowingly requirement protected Carlin from prosecution on the basis of wrong numbers. Yet this interpretation proves too much; it would protect Carlin from any prosecution. If Carlin does not act knowingly with respect to wrong numbers, it does not act knowingly with respect to minors.

11. As we have said, we are not concerned here with live services, which requires payment by credit card.

12. Of course, Congress and the Commission have a much freer hand with regulating obscene speech, which is not protected by the First Amendment.

13. The Commission noted that "[t]his method is analogous to a scheme used by the postal service whereby individuals may request material that they consider 'to be erotically arousing or sexually provocative' not be delivered." 49 Fed. Reg. at 24,998–99 (quoting 39 U.S.C. § 3008 (1982)).

14. Blocking 976 exchange calls raises other problems. In order to prevent calls to the dial-a-porn numbers the subscriber would not be able to receive the weather dial-it service or other concededly First Amendment protected information. Nevertheless, without intimating our views were such a regulation adopted, the subscriber would make the choice.

15. This information was not in the record but was provided during oral argument.

16. During the ex parte discussion between the FCC and the telecommunication industry representatives, the participants expressed concern about the cost of screening to the customer. Yet we do not see why the financial burden could not be placed on dial-it services. For example, an alternative regulation might provide a defense to dial-it services that provide screening devices to telephone customers who request the installation of such devices.

17. It should be noted that NYNEX, in its brief, suggests that an automated access code system is infeasible. The FCC, however, did not make an assessment of or rely on NYNEX's claim. *See* 49 Fed. Reg. at 25,000.

18. Perhaps a system of age verification would not be necessary. After all, parents do have "substantial control over the disposition of mail once it enters their mailboxes." *Bolger*, 463 U.S. at —, 103 S.Ct. at 2884. An access code sent to a child would presumably be intercepted by his or her parents.

19. Dial-a-porn use between the promulgation of the regulation and this decision may provide Carlin and the FCC with data to test the FCC's position. As the FCC acknowledges, any regulation that drives Carlin out of business would seem to fall under *Butler v. Michigan*.

20. Arguably, in these circumstances, the district court did not go far enough, as it might have dismissed the complaint. As we recently noted in *Seafarers Int'l Union V. United States Coast Guard*, 736 F.2d 19, 26 (2d Cir. 1984): "Ripeness . . . requires at twofold inquiry evaluating the hardship to the parties of withholding judicial determination and evaluating whether the issues are fit for judicial determination." An explicit policy of nonenforcement suggests that withholding judicial consideration causes no hardship to Carlin, and the incomplete regulatory scheme shows that the issues are not "fit for judicial determination." Where the Government does not intend to prosecute, there is no justiciable "case or controversy." *See O'Shea v. Littleton*, 414 U.S. 488, 493–94, 94 S.Ct. 669, 674–75, 38 L.Ed.2d 674 (1974); *St. Martin's Press, Inc. v. Carey*, 605 F.2d 41, 44 (2d Cir. 1979); 13 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3532, at 241 (1975). However, the Government's letter here was sufficiently equivocal and not expressly applicable to the regulation's being held invalid, as here, so that dismissal of the complaint was, and is at present, unnecessary.

[U.S. Court of Appeals for the Second Circuit]

No. 638—August Term, 1985

(Argued December 19, 1985)

(Decided April 11, 1986)

Docket No. 85-4158

Carlin Communications, Inc. and Drake Publishers, Inc., Petitioners; Federal Communications Commission and United States of America, respondents

Before: Oakes, Kearse, and Pierce, Circuit Judges.

Federal Communications Commission regulation requiring providers of "dial-a-porn" services to provide their services only to callers with access codes set aside with respect to those services operating under New York Telephone's Mass Announcement Network. Held, there was no evidence that access codes are technically feasible under the NYT system; the record contained insufficient evidence that access codes are the least restrictive means of limiting minors' access to dial-a-porn since the Commission failed to consider adequately customer premises blocking devices and possibility of transferring costs thereof to service providers and telephone company.

Petition granted; regulation set aside.

Lawrence E. Abelman, Abelman Frayne Rezac & Schwab, New York, NY (Marianne F. Murray, of counsel), *for Petitioners.*

Sue Ann Preskill, Washington, DC (Richard K. Willard, Hermes Fernandez, United States Department of Justice; Jack D. Smith, Daniel Armstrong, Federal Communications Commission, of counsel), *for Respondents.*

Oakes, Circuit Judge:

We are not without empathy towards a federal agency torn between a congressional directive on the one hand and a court-imposed constitutional limitation on the other hand. Congress has directed the Federal Communications Commission ("Commission" or "FCC") to make regulations restricting access by minors to "dail-a-porn," the shorthand nomenclature of a telephone service that provides a caller with sexually explicit messages. 47 U.S.C. § 223(b)(2) (Supp. I 1983).

Under section 223(b)(2), compliance with these regulations establishes a defense to criminal prosecution for violating section 223(b)(1): making "any obscene or indecent communication for commercial purposes to any person under eighteen years of age . . . ." This prohibition was enacted by a Congress well aware that not only were "very complex issues" relating to "technical feasibility" involved, 105 Cong. Rec. E5966–67 (daily ed. Dec. 14, 1983) (remarks of Rep. Kastenmeier), but that under the Constitution the adult population may not be reduced to "hearing only what is fit for a child." *Id.* at E5966 (citing *Butler v. Michigan*, 352 U.S. 380, 383 (1957)). The regulations are to "permit adult access while limiting children's access," having in mind that "[i]f . . . no such regulations are feasible, then less restrictive measures rather than broader restrictions will have to suffice to avoid any constitutional infirmity." 105 Cong. Rec. at E5966.

When the FCC's dial-a-porn regulations first came before us, we held that they were both overinclusive and underinclusive, *Carlin Communications, Inc. v. FCC*, 749 F.2d 113 (2d Cir. 1984) ("Carlin I"). The Commission had sought to restrict the dial-a-porn operation of petitioner Carlin Communications, Inc. ("Carlin"), and its related corporations to the hours between 9 p.m. and 8 a.m. Eastern Time. 47 C.F.R. § 64.201 (1985). Without declaring that regulation impermissible, we held that the record was insufficiently developed to uphold it. Specifically, while holding that "[t]he interest in protecting minors from salacious matter is no doubt quite compelling," 749 F.2d at 121 (citing *Ginsberg v. New York*, 390 U.S. 629 (1968)), we nevertheless found that the Commission had "failed adequately to demonstrate that the regulatory scheme is well tailored to its ends or that those ends could not be met by less drastic means." 749 F.2d at 121. In fact, the time-channeling regulation denied adults access to dial-a-porn messages during daytime hours but did not prevent minors from calling the service during nighttime hours. Moreover, we expressed concern that the Commission had not adequately examined other alternatives that might better serve the competing interests at stake. We noted, for example, that it might be possible to "giv[e] subscribers the option of blocking access to certain telephone numbers from their premises," *id.* at 122 (footnote omitted), or to "requir[e] each caller to provide an access number for identification to an operator or computer before receiving the message." *Id.* After further development of the record, the Commission has approved a regulation that adopts this second suggestion. We are, however, on the record as developed before the Commission, not yet convinced that the regulation was chosen with the appropriate constitutional strictures in mind even though more "comprehensive investigation and analysis," *id.* at 123, was given on this trip around.

We therefore grant the petition to review, continue the stay of the FCC order, which we granted pending appeal, and remand to the Commission. The stay, however, is granted only at the behest of the petitioners here, Carlin and Drake Publishers, Inc., and not on behalf of any of their affiliates or any other corporations located anywhere else in the United States and applies only to dial-a-porn service providers on the New York Telephone Company ("NYT") system. We are cognizant of the representation of petitioners' counsel at oral argument and otherwise that the petitioners do business only in the State of New York (even though long distance telephones may access their services). We also are aware of the very thorough and persuasive presentation before the Commission by the NYNEX telephone companies (NYT and New England Telephone and Telegraph Company) dated May 14, 1985, and incorporated in the record before us. Irrespective of whether the regulation may conceivably be valid as applied to the rest of the country, it is clearly arbitrary and capricious as to dial-a-porn providers on the NYT system.

The NYT Mass Announcement Service ("MAS") is a one-way distribution system in which it is technically infeasible to provide the two-way access (which apparently is available in most other parts of the country) between the caller and the information provider on which the so-called "access code" regulation now espoused by the Commission is based. In short, the FCC regulations would put Carlin out of business in New York. While this might be a consummation devoutly to be wished by some, it comports neither with this court's prior ruling, nor with overall constitutional or statutory considerations. So stating, we do not decide the constitutionality of feasibility or the Commission's access code regulation insofar as it applies to dial-a-porn providers outside the NYT system. Nor do we express any opinion on the advisability or propriety of the Commission's imposing different requirements depending upon the telephone system involved.

FACTUAL BACKGROUND

We will assume a familiarity with or prior decision in *Carlin I.* To the extent necessary we will update the facts from the record before the Commission and this court.

We note that for the six months ending April, 1985, dial-a-porn calls appear to have leveled off at 6 to 7 million per month, approximating 15 to 18% of the total NYT MAS network calling volumes. Based on the NYT's MAS tariffs as of May 1985, which yield 2.0¢ per call to the "provider" of services, it is evident that the gross revenue of the dial-a-porn service providers[1] is in the vicinity of $130,000 per month. NYT receives 9.4¢ per call (the average revenue per message of 11.4¢ less 2.0¢) to compensate it for the services it renders to the information providers, including collecting revenues from customers. Thus, telephone company gross revenues from dial-a-porn exceed a half million dollars a month.

NYNEX normally does not keep data on usage of pay telephones by MAS callers in general or by dial-a-porn callers in particular. However, NYT did perform a study which found that out of 8,358 calls placed to the eight "adult entertainment" channels in the MAS network during the study period, only 144 or 1.72% were placed from coin lines. There was no indication what, if any, proportion of these 144 callers were minors. Telephone company data also point out that the incidence of interstate coin calling by minors to dial-a-porn is likely to be even less given the relatively high price—$2 or more—for the 57-second phone message, and the fact that any non-paid use of a pay phone, presumably charging the call to a home or credit card number, to call dial-a-porn intestate would show up on a bill. Thus, it is apparent that any solution to the dial-a-porn problem would not necessarily be rendered unacceptable merely because it did not cover coin calling.

THE SECOND NOTICE OF PROPOSED RULEMAKING

Following our decision of November 2, 1984, setting aside the time-channeling regulations, the FCC, in 40 Fed. Reg. 10510 (1985), issued a Second Notice of Proposed Rulemaking ("Second Notice") proposing "to amend its rules to provide a defense to enforcement of prohibitions against dial-a-porn services," *id.*, and soliciting additional comments on its regulations. The Second Notice invited comment on a new approach that "responds directly to the need of parents to police the use of their telephones." *Id.*, at 10512. Under this approach telephone companies would be required to report on monthly bills to their customers any local or long distance calls made to 976-type numbers[2] and the dial-a-porn service providers would be required to reimburse the telephone companies for their administrative costs.

The Commission also called for comments on screening and blocking devices and services, *i.e.*, blocking access to one or more preselected telephone numbers either by installation of specialized equipment at the local telephone company's central office or by the use of callblocking technology in the telephone customer's own terminal equipment. Previously the FCC had concluded that blocking or screening would require time to develop and could entail costs that would outweigh the benefits to be obtained. In the Second Notice, the Commission noted that since its original hearings, "there have been significant changes in the telephone industry," *id.*, and thus "[i]t is possible * * * that screening at the originating central office is tenable." *Id.* With reference to a blocking device installed at the calling customer's premises, the Commission had originally concluded that " 'no existing commercial device has a screening capability that could be deployed within the subscribers's terminal equipment.' " *Id.* at 10513 (quoting 49 Fed. Reg. 24996, 24999 (1984)). This court had noted, however, that certain federal buildings have installed equipment that blocks all outgoing 976 calls. *Carlin I*, 749 F.2d at 122 & n.15. We also suggested that a regulation could be promulgated to provide the section 223(b) defense to a message provider who makes a blocking device available to telephone customers who request it. *Id.* at n.16. The Second Notice stated that "there is considerable competition among terminal equipment supplier, and it follows that there is an incentive among manufacturers, presumably eager for new opportunities, to develop a device that blocks outgoing calls from a subscriber's premises. We believe, therefore, that there exists a ready means of supplying such a device." 50 Fed. Reg. at 10513. The Commission added that there would appear to be no patently insurmountable obstacle to development of, for example, a simple electronic device with a locking cover that would allow a subscriber to block one of a series of telephone numbers—even an entire exchange—from being dialed from his or her premises. . . . Such a device would obviate the need for replacing or modifying any telephone within a home or office to prevent minors from dialing dial-a-porn numbers; and the "lock" would serve as practical means of discouraging children from tampering with the programming.

Id. (footnote omitted). The FCC concluded that "the option of relying upon a blocking device at the subscriber's premises * * * remains a practical option by wh[i]ch we may accomplish the mandate of Congress." *Id.*

It also asked for comments upon access and identification codes, and suggested that an automatic coding scheme known as "scrambling," *i.e.*, mixing the content of a signal before transmission and reconstituting it on receipt, which the FCC has not previously considered, might be feasible and warranted public comment. Finally, since this court did not rule out the limitation of operational hours when carefully evaluated against all reasonable alternatives, *see* 749 F.2d at 123, the Commission invited comment on other time-channel approaches.

COMMENTS IN RESPONSE TO THE SECOND NOTICE

In response to the Second Notice, the Commission received numerous comments, of which the following are included in our record: Carlin; NYNEX; the American Civil Liberties Union (ACLU); Ameritech Operating Companies; Telecommunications Technology Corp. (TTC); Cincinnati Bell Telephone Co; Home Box Office and American Television & Communications Corp.; Pacific Bell and Nevada Bell; Pennsylvania Public Utilities Commission; American Telephone and Telegraph Co.; BellSouth Companies; Bell Atlantic Telephone Companies; and Mountain States Telephone and Telegraph Co., Northwestern Bell Telephone Co. and Pacific Northwest Bell Telephone Co. Reply comments followed from Carlin, NYNEX, the ACLU, and Carlin's counsel.[3]

NYNEX's May 14, 1985, comments to the Commission described its mass announcement service, which is offered to the public pursuant to state tariff. The provider makes record announcements available to large numbers of callers simultaneously without adversely affecting telephone service to others on the public switch network. There are 44 channels on NYT's MAS network. Separate channels provide time and weather information, stock market reports, state lottery results, off-track betting information, and sexually explicit messages. According to NYNEX, the Bell operating companies, including NYNEX, may not provide recorded message services except for time and weather information, partly as an outgrowth of *United States v. AT&T*, 552.F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland V. United States* 460 U.S. 1001 (1983). As a result, NYNEX awarded the use of MAS channels to information providers through a random drawing procedure. Those awarded a channel provide the messages and, under the state tariff, are solely responsible for the contents of the recorded message. The 44-channel system handled over 470 million calls during 1984. Although the aggregate calling volume to the adult entertainment channels has diminished both in absolute numbers and as a proportion of all MAS calling, dial-a-porn remains one of the most popular programs.

NYT's MAS system is a one-way dedicated network. A subscriber calling a MAS number is not connected to the information provider or even to the master center, where the recorded message are piped from the provider's premises. Rather, the call is connected to one of fifteen subcenters, where the caller is bridged onto the recording on a receive only basis. Theoretically, over 7,900 callers can be connected simultaneously to the same recorded message and the system as a whole can handle over 400,000 calls per hour.

The NYT MAS system features synchronous entry and automatic cut-off so that a caller is cut in at the beginning of a desired message and is disconnected after hearing the message once. The three phases operate so that no caller has to wait more than twenty seconds for the message to begin. While he is waiting a ring is heard, which presumably represents the connection through the public switched network to the designated subcenter. NYNEX carefully pointed out that "[m]ass announcement equipment used by other telephone companies around the country may include features (such as two-way communication between caller and information provider, or variable pricing arrangements) which the New York system, given its particular technology and call volume requirements, cannot provide." NYNEX comments took the position that an access code approach is not technically feasible in New York because the access code requires a two-way system and NYT's network is only one-way.

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[1] Although the record indicates that there are eight dial-a-porn channels on NYT's MAS network, it does not indicate the identities of the service providers. Carlin was the only subscriber to submit comments to the FCC or to petition this court, and nothing in the record indicates that Carline could not control several channels.

[2] "976" is the exchange used by NYT's MAS system, as well as other telephone companies' MAS systems, but there is no technical requirement that MAS channels be limited to the 976 exchange.

[3] Other parties submitting comments or replies in response to the Second Notice was Congressman Thomas Bliley; Continental Telecom, Inc.; Dial Info, Inc.; District of Columbia Public Service Commission; Minnesota Attorney General; Morality in Media; New York Department of Public Service; Phone Programs and Info Line, Inc. (joint comments); Productions-by-Phone; Southwestern Bell; Tel Control; United States Catholic Conference; and United States Telephone Association (USTA). Late-filed reply comments submitted by Telecommunications Research and Action Center were accepted for filing as informal comments. 50 Fed. Reg. 42699, 42700 n.3 (1985).

NYNEX also commented on its billing procedures, pointing out that it does not report local calls to its 976 numbers or for that matter to any other local numbers on customers' monthly bills. Indeed, to report the 976 local calls would cost almost $48 million per year plus a start-up cost of almost $7 million. On the other hand, interstate calls are reported separately on monthly bills by interexchange carriers. NYNEX's comments quoted Representative Kastenmeier to the effect that "parental responsibility must play a role here. If a family's telephone bill shows long distance calls—including any to a dial-a-porn number—it should be up to the parents, not the Congress or the FCC, to set rules which limit access by children to these messages." 105 Cong. Rec. at E5967.

Although NYNEX took the approach that blocking at the local telephone company offices is infeasible, it asserted that blocking at the caller's premises is an "[a]ttractive [o]ption," and is both "technically and economically feasible." NYT said it was currently developing a working model of a blocking circuit. Upon its installation where the access line enters the caller's premises (or on a single extension phone if the customer wishes), the circuit may be programmed to recognize up to 128 combinations of dialed digits and, upon such recognition, the circuit drops the connection to the central office. Consequently, the call is never connected through the switch and therefore is not billed. NYNEX "anticipated that the final design of the circuit will permit the individual subscriber to select the numbers to be blocked, and to modify the selection subsequently. . . . [T]he programmable blocking circuit will sell for less than $50 per circuit." The comments went on to say that such a blocking circuit "would be more effective at its intended purpose—restricting minors' access to dial-a-porn—than screening and blocking in the central office." It would work equally well regardless of the type of central office and would not depend upon the availability of code controls. It also would not be restrictive of the ability of adults and minors to make permissible calls because it can be programmed to block dial-a-porn numbers while permitting access to other MAS numbers. Moreover, it is not limited to blocking numbers on the 976 exchange. It would also save the telephone company administrative and installation costs as compared to central office blocking. As previously indicated, the telephone company also considered that dial-a-porn calling from pay telephones is minimal.

NYNEX then addressed the critical question who should bear the costs of blocking devices and whether telephone companies should be required to notify subscribers that blocking devices are available. NYNEX supported the Commission's suggestion in the Second Notice that the cost of obtaining and installing a blocking device be borne by the dial-a-porn operators. It did warn that implementation of such a cost-shifting measure raises three questions: (1) who decides who the dial-a-porn operators are; (2) how should costs be allocated among them; (3) what mechanism should be used for collection? NYNEX suggested that one solution that one solution would require all persons wishing to avail themselves of the section 223(b) defense to prosecution to identify themselves to some central authority, either the Commission or an independent association. This authority would serve as a clearing-house, maintaining an up-to-date list of participants with appropriate identifying information, and administering a funding and allocation scheme, perhaps based on calling volumes or revenues. Parents or telephone companies desiring to be reimbursed for blocking devices would present their claims to the central authority for payment.

NYNEX, in its reply comments as of June 11, 1985, noted that one equipment vendor, TTC, is already marketing customers premises blocking equipment, but that by virtue of the divestiture decree NYNEX would not be able to market its own device. It suggested that the Commission may be able to fulfills its congressional mandate simply by finding that an appropriate blocking device is feasible and available in the marketplace and capable of assisting concerned parents. It agreed with several other telephone companies and the U.S. Telephone Association that "such a market-based approach—under which those customers desiring to block calls from their premises would obtain blocking devices in the competitive marketplace, at their own expense—may be the best solution." But NYNEX stated that if the cost of such a device is too great to be borne by concerned parents the Commission should not impose that burden on telephone common carriers or their ratepayers. The NYNEX reply comments indicate that the Commission may prefer to go instead to a scrambling, access code, or time-channeling approach, the cost of which would fall on the dial-a-porn operators and their patrons. The reply comments do not address themselves to the infeasibility of the access code approach.

By letter of counsel dated July 29, 1985, Carlin also maintained that "the only technical solution that is both feasible and likely to pass constitutional muster is the utlization of currently available customer premises equipment which allow [*sic*] telephone subscribers to block or limit outgoing calls," and that "[s]uch devices have been endorsed by various telephone operating companies." Calin noted Pacific Bell's announcement on NBC's "Today Show" on July 2, 1985, that it will offer customer premises call control devices to all subscribers for nominal one-time charge of not more than $5. Carlin's May 13, 1985, comments also stated that "[a]ny access and identification code procedure would be economically and administratively impracticable where the viability of the system relies on the ability to simultaneously service multiple callers."

THE COMMISSION'S SECOND REPORT

The Commission's Second Report and Order was adopted October 10, 1985, and published October 22, 1985, 50 Fed. Reg. 42699. The Commission rejected all network (exchange, line number, and equal access number forwarding) blocking, by which outgoing calls are impeded at telephone company central offices, because of economic and technical infeasibilty. The Commission also found exchange (three- or four-digit) blocking constitutionally flawed because it would block all "dail-it" messages, *see* 749 F.2d at 122 n.14; moreover, it would be ineffective since MAS numbers are not legally or technically required to be assigned to 976 exchanges.

The Commission rejected line number (seven-digit) blocking, even though there is "a recently innovated service commonly referred to a as Customer Local Area Signalling Service (CLASS)," *id.* at 42703, which would permit such blocking from central offices. Telephone company comments indicated that although feasible, CLASS is currently experimental in nature and implementation of it entails an expensive process not expected to be generally available prior to 1987. Moreover, the CLASS blocking feature is not adequate to handle the large number of dail-a-porn systems currently in operation.

The Commission also rejected another blocking scheme, "equal access (ten digit) number forwarding," finding that number forwarding is not expected to become available on a nationwide basis for some fifteen years and even than would be of only limited use. The Commission indicated that it would continue to monitor the development of these blocking schemes and would be prepared to consider them as regulatory alternatives in the future. We commend the Commission for its careful consideration of these schemes and for its openminded flexibility toward dealing with them in the future. These findings relative to network blocking are fully supported by the evidence, are clearly not arbitrary and capricious, and do not merit further consideration in this opinion.

The Commission also considered the methods by which blocking may be implemented at the premises of dial-a-porn service providers, including time-channeling, message scrambling, and access and identification codes. Time-Channeling was rejected along the lines of our previous opinion, on the basis that "it prevents adults from obtaining access to the messages during specified hours but does not provide reasonable assurance that minors will be restricted during the hours when general access is permitted." *Id.* at 42704. The FCC found message scrambling to be technological feasible and not to require any network modification. The cost of scrambling equipment ranged from $150 to $1000 for each originating facility. NYNEX noted that implementation of this scheme is relatively simple as its is based on a one-way transmission system, which is the system employed by NYT. Message scrambling, however, requires that adults who desire to hear messages install decoding devices that cost $15 to $20 each. The Commission also pointed out that scrambling schemes impose a 24-hour per day restriction upon adults who wish to hear the messages but do not have the appropriate equipment. The Commission believed that a scheme that prevented minor's access to dial-a-porn by requiring all customers who wish to receive "adult" meassages to be responsible for providing decoding equipment misallocated the burdens involved, and noted that the burdens on customers arising from implementation of a scrambling regulation are greater than those presented by other access-limiting schemes.

The Commission concluded that the most effective means of restricting access by minors to dial-a-porn services while at the same time minimizing restrictions on the rights of adults was to require providers of such services either to send messages only to those adults who first obtain an access or identification code from the service provider or, alternatively, to require the caller to pay for the call by credit card before access is obtained. Under an access and identification code requirement, dail-a-porn providers would be required to issue personal identification numbers or authorization codes to requesting adult customers. Although the Commission concluded that live operator intervention for such call would be economically impracticable, it felt that an automated code-verification system would be feasible. Under such a system, transmission of dial-a-porn messages would not occur until an authorized access code was communicated by the subscriber to the service provider. Each message provider would develop its own access code database and implementation scheme. Access or identification codes would be provided by mail to applicants "after 'dial-a-porn' providers reasonably ascertain that the applicant is at least eighteen years of age." *Id.* at 42705 (footnote omitted). The provider must use a written application procedure that seeks information such as the date of birth and credit card or driver's license number of the applicant. The provider would also have to implement a procedure to cancel codes that are reported lost, stolen, or misused. The Commission did point out that while use of the automated access code system would require that callers use dial-tone multifrequency telephones, rotary dialing equipment with ancillary tone equipment simulating tones made by multifrequency telephones could also be used. Thus, that part of the public that apparently still has rotary telephones[4] could nevertheless access dial-a-porn messages by purchasing and installing a relatively inexpensive device.

The Commission noted NYNEX's strenuous objection to the access code system based on the assertion that such a system requires two-way transmission and is therefore technically infeasible in NYT's one-way dedicated network. In the NYT system as noted *supra*, message providers supply recorded messages to a master center, which distributes the calls to subcenters on a "receive only" basis. The subcenters then transmit calls to the calling party. Although there is no two-way connection between the caller and the service provider or between the caller and the master center, the Commission rejected NYNEX's contentions, stating that nothing in the record indicated that an access code system could not be implemented at the master center. The FCC also stated that a service provider could "choose not to utilize 976 'dial-it' services," but rather could use the normal two-way telephone lines, without mentioning that no revenues would be earned by this alternative. 50 Fed. Reg. at 42705. In any event, the Commission found that the costs of any such systems should be borne by the service providers, not by the telephone companies or customers.

The Commission noted Carlin's response that access and identification codes would be economically and administratively impracticable where the viability of the system relies on the ability simultaneously to service multiple callers, but rejected this assertion as "not constitut[ing] an adequate factual basis upon which we can conclude that [such a] scheme would be more costly than any other alternative." *Id.* It also found that "[u]nder the guidelines set forth in *Carlin* [I] and in view of the absence of data suggesting financial impracticability, we find that an access code requirement is generally less burdensome to 'dial-a-porn' purveyors and less restrictive of adult's access to the messages than network blocking alternatives, time channeling or scrambling." *Id.* at 42706. As to concerns that adults would be reluctant to release personal information to the message providers in order to obtain the access codes, the Commission simply said that "[t]hese comments suggest that 'dial-a-porn' providers devise methods to quickly process access code applications and use advertisements or other means to educate their customers of the requirement." *Id.* n.52.

As to the alternative of blocking at customer premises, the Commission followed up on the Second Notice's expectation that entrepreneurs could produce such devices, and noted that commenting parties indicated that such devices "have been developed and are becoming available at moderate prices." *Id.* at 42705. The Commission took note of several specific devices. Implicitly recognizing their technical and economic feasibility, the Commission said that they "quite apart from our regulation will assist parents in effectively supervising their minor children and limiting access to 'dial-a-porn' or other message services. . . ." *Id.* at 42706. Nevertheless, it found that they did not constitute the least restrictive means of accomplishing the intent of Congress since they did not restrict minors' access to dail-a-porn services from telephones not so equipped. Moreover, in response to comments that the cost for such devices should not be imposed upon parents, the Commission stated, "Requiring telephone subscribers to purchase these devices misallocates the burden of implementing a restriction on access to 'dial-a-porn' services by minors." *Id.* It considered the access code a "less restrictive means." *Id.*

The Commission's final conclusion and the one Carlin challenges is that its access code regulation "represents the most effective available means to limit minors' access to the messages but, at the same time, offers the least restriction on adults' access." *Id.* at 42707 (footnote omitted). The Commission said that "[w]hile [the access code regulation] may incidentally restrict adults' convenience in accessing 'dial-a-porn' messages, we believe our regulation reaches just far enough to achieve Congress' mandate and to meet the court's constitutionality guidelines." *Id.* Again, limiting our decision to the situation presented by the NYT one-way telephone network, we disagree.

DISCUSSION

We reiterate the legal standard for analyzing the FCC's dial-a-porn regulations set forth in *Carlin I,* 749 F.2d at 121:

> Because the regulation is content based—it does not apply to all dial-it services, but only to those transmitting obscene or indecent messages—we scrutinize it more closely.
>
> Under this more exacting scrutiny, we must determine whether the regulation precisely furthers a compelling governmental interest. The interest in protecting minors from salacious matter is no doubt quite compelling. Such an interest must be served, however, only by "narrowly drawn regulations," that is, by employing means "closely drawn to avoid unnecessary abridgment." The Government bears the heavy burden of demonstrating that the compelling state interest could not be served by restrictions that are less intrusive on protected forms of expression. And the State may not regulate at all if it turns out that even the least restrictive means of regulation is still unreasonable when its limitations on freedom of speech are balanced against the benefits gained from those limitations.

(Footnote and citations omitted.) *See also City of Renton v. Playtime Theaters, Inc.,* 54 U.S.L.W. 4160, 4161 (U.S. Feb. 25, 1986) ("regulations enacted for the purpose of restraining speech on the basis of its content presumptively violate the First Amendment"). As we also state in *Carlin I,* we will not consider the question of the constitutionality of the underlying statute if the FCC regulation is invalid facially or as applied. *Id.* at 118. Because we find that the record does not support the FCC's conclusion that the access code requirement is the least restrictive means to regulate dial-a-porn, we again do not address the constitutionality of section 223(b).

We think the Commission has failed adequately to consider the feasibility of shifting the cost of customer premises blocking equipment to the providers of services and/or the telephone companies that gain income from the calls. On the record before us, it may well be that the least restrictive means for complying with the congressional mandate lies in this now plainly feasible device available from various manufacturers. The TTC device, for example, operates without the need for equipment modifications, either in telephone company facilities, information provider premises or residences, according to the Commission itself. Yet the only possibility to which the Commission addressed itself was that the telephone customer be required to pay for these devices.

We cannot understand why the Commission did not address the matter of transferring the cost of customer blocking to the providers/telephone companies as a feasible system to comply with the congressional mandate, especially in view of the Commission's decision to impose the cost of access code identification procedures on the providers. The Commission's failure is especially troubling in light of the feasibility problems of an access code with respect to the NYT one-way MAS network, which apparently does not permit the caller to communicate the access code to the telephone company or service provider.[5] The FCC stated

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[4] This record does not indicate the percentage of New York customers served by rotary phones.

[5] The Commission stated that "nothing in the record suggests that implementation of a software supported access code recognition system at the master distribution center in a one-way system such as NYNEX's would be infeasible." 50 Fed. Reg. 42699, 42705 (1985). Alternatively, the Commission suggests parties wishing or needing to assert the defense "might simply choose not to utilize 976 'dial-it' facilities. Rather [they] may choose to implement access code recognition in two-way incoming trunks." *Id.*

The Commission's second "alternative" is rather peculiar since a provider not on the 976 network (such as "Dial-a-Prayer" in New York) does not receive revenues on incoming calls; the provider must have eleemosynary motives. One also might ask how many lines such a provider would need to take the place of the MAS 976 number, and what the effect would be on the central system to which such a provider is connected.

As to the first alternative, "implementation of a software supported access code recognition system at the master distribution center in a one-way system," we find no evidence in the record, and neither the Commission nor its brief point to any, that would support a finding of economic or technical feasibility. The only suggestion of technical feasibility is contained in the comments of Ameritech, that service providers "will have incentives to implement a code recognition system because it represents the most effective and least cumbersome means of satisfying the regulatory mandate." 50 Fed. Reg. at 42705. As the Commission did not consider the alternative of cost-shifting of customer blocking devices to the service providers, however, the record is barren as to why the service provides would not equally have incentives to implement a customer blocking system, which surely is less cumbersome since it does not involve the purchase of ancillary tone devices for rotary dialing equipment, mailings, or written age identification and cancellation procedure.

In short, on the record before us, we are unconvinced that, as to the NYT system, the access code requirement is the least restrictive means for complying with the congressional mandate. Accordingly, we remand to the Commission for exploration of the alternative of shifting the cost of customer premises blocking equipment to service providers and/or telephone companies.[6]

In so doing, we do not rule out altogether, nor do we pass on the constitutionality of, the use of access codes for, as we have stated, this decision relates only to Carlin and the NYT system.[7] Moreover, after the two schemes and cost-shifting devices pertaining to each of them have been more thoroughly examined, it may be that the Commission will conclude that its order is after all the correct one for reasons that it may develop. We do not preclude it from such a conclusion, although we are not impressed by the fact that pay phones would not be covered by the customer blocking device system, at least in the absence of evidence contradicting the NYT study discussed *supra*. At the same time, the customer blocking device system does have the advantage of not hindering access by adults who wish to use these services or who would be deterred therefrom if required to place their name on someone's list.

Petition to review granted; regulation set aside as to the NYT MAS network.

Mr. THURMOND. Mr. President, we are willing to accept the amendment. We think it is a wholesome amendment and it will protect the young people.

Mr. CHILES. We are willing to accept the amendment.

Mr. METZENBAUM. Mr. President, I think we are prepared to act in connection with the amendment.

The PRESIDING OFFICER. The question is on the second-degree amendment.

The amendment (No. 3071) was agreed to.

The PRESIDING OFFICER. The question is on the first-degree amendment, as amended.

The amendment (No. 3070), as amended, was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. I thank the Chair for recognizing the Senator from Oregon.

Mr. President, I would like to raise the vulgar subject of money at this late date. As I have roughly computed this authorization bill, we now have about $375 million of additional spending. And I want to remind the body that the budget resolution that was passed by this body, and the appropriations that have been made under the restrictions and the definitions of that budget resolution, are now at the limit.

I would also point out to the body that the President of the United States, under the budget resolution, has about a $4 billion emergency category that only he can request expenditures from. The President has not made any request for these moneys, that I know of, to be spent on the drug war.

I want to just say that, as chairman of the Appropriations Committee, it would be very difficult, if not totally impossible, to fund this measure. We are, as I say, at our limits. The White House, through the OMB, has notified the Senate committee that they approve of our appropriations levels, but we have yet to come to the floor and receive the onslaught of amendments that I know are waiting. Then we have to go the the House conference and they, with the exception of one or two, are at a higher funding levels than the Senate appropriation bills.

Therefore, this becomes a very important question. It is going to be wonderful for us to pass this bill and go out and say, "We have passed a bill declaring war on drugs," without any attention given to where the funding is coming from or at what point in time we are going to make that decision.

Mr. President, let me say, I can see the scenario right now. We will hang this back on the continuing resolution. And it will be very easy for this body to say, "We have declared a war." It is very easy for the President of the United States to say we are declaring a war, but the way it will end up is the Appropriations Committee will then be given the responsibility of finding the money. And if we are going to redistribute the money, we are going to be in that same clash between expenditures going for military and expenditures for nonmilitary programs.

Mr. HATCH. Will the Senator yield on this point?

Mr. HATFIELD. Yes.

Mr. HATCH. This is under my committee's jurisdiction and, of course, when we did the work on this bill, new spending came to $325 million. Then we added another $50 million.

The House is looking in terms of authorizing around $1 billion in these areas. So I think the Senator from Oregon is making a very good point.

I might add that I have a great deal of respect for my colleague, Senator WEICKER from Connecticut, who, I think is as reasonable a person in these areas as we have in the Senate. Senator WEICKER understands the budgetary difficulties and the appropriations difficulties. And he is justifiably upset, in my opinion, as is the distinguished Senator from Oregon.

As the chairman of the authorizing committee, I have to say that we tried to do our best to keep this within reasonable paramenters. So I share the same frustrations as my two colleagues.

Mr. DECONCINI. Will the Senator yield for a question?

Mr. HATFIELD. I just want to say, then I will be happy to yield, I would like to say again that when you look at the nondefense appropriation bills and you take them in toto in the last 5 years, you will find a general reduction of about 33 percent. You will find about a 69-percent increase in the military budget during that same period of time.

Now, at the present time, we have $292 billion for defense 050 for 1987. The House has about $286 billion and

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which state that in Illinois Bell's one-way system the caller connects to the central office and that the access code screening operations could be performed there. Ameritech noted that this procedure would involve the exchange carrier and would impose upon it prohibitive expense and administrative burdens. The FCC made no reference to Ameritech's statements concerning access codes. Moreover, in NYT's system, the caller connects to one of fifteen subcenters, not a central office. Even assuming the feasibility of locating the access codes at Illinois Bell's central office, as to which the FCC made no findings, there is nothing in the record to indicate feasibility in the NYT system. At the least, the Commission must show a " 'rational connection between the facts found and the choice made.' " *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 419 U.S 281, 285 (1974) (quoting *Burlington Truck Lines, Inc. v United States*, 317 U.S. 156, 168 (1962)), *see SEC v. Chenery Corp.*, 332 U.S. 194, 196-97 (1947). On remand the Commission, if it is still seriously considering access code identification for the NYT MAS network, will no doubt wish to elaborate on the feasibility of such a system, especially on the availability of technology to permit its use on a one-way network in general and the NYT system in particular, as well as on the billing and cost problems referred to in the Comments of Pacific Bell and Nevada Bell, Ameritech, and USTA. We further note that the record is rather barren even as to the economic feasibility of access codes in two-way systems.

[6] We do not at this point decide whether the FCC has the authority, under section 223 or otherwise, to require the telephone companies, which receive significant revenues from dial-a-porn, to help pay for customer premises blocking equipment. We note that shifting the total cost onto providers/telephone companies may result in a certain amount of "free ridership" among customers who are interested in the device for reasons unrelated to blocking access to dial-a-porn. We therefore recommend that the Commission consider the deterrent effect of imposing a percentage of the cost on customers.

[7] The Commission's failure to consider shifting the cost of customer premises equipment makes it unnecessary for us to decide the constitutionality of the access code plan. That plan may very effectively prevent minors from accessing dial-a-porn, but we express our concern over the potential chilling effect of a written application and identification procedure. *See Talley v. California*, 362 U.S. 60, 64-65 (1960); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 466 (1958).

we are going to be battling in conference as a matter of compromise between those levels.

I could very easily fund this program by just deducting it from the $292 billion level for the military. I am but one Member and I do not think at this point in time I would have the votes for that. But I think it borders on the realm of irresponsibility and miscommunicating to the public that somehow we are committed to a war on drugs and we are going to fight a war.

You do not fight a war without ammunition and the ammunition in this case is money.

I applaud the President for his initiative, but I think it also is the responsibility of the President to declare exactly where the war is going to be financed. And at this point in time, unless I have missed on the information line, there has been no information except some generalities about redistributing funds from this and from that and so forth.

There is a $4 billion figure from which the President—and I would like to yield to the chairman of the Budget Committee, as he had asked me to do, to comment on this.

I would say that if we want to play a responsible role, then we should amend this bill and say all of this is contingent upon the President of the United States requesting the moneys to wage this war or declare precisely where he will provide the funds within the budget resolution that we have already acted upon.

I do not have to repeat what the Senator from Connecticut has said, but I can tell you one thing: It is not going to come out of the Labor-HHS appropriations bill. We are already at the limit of the funding of those programs for fiscal year 1987. Those are programs in place and some of them are badly neglected and undernourished. We do not have $375 million, or whatever the figure ended up to be, to reduce from the current funding level.

I yield to the Senator from New Mexico.

Mr. DOMENICI. I thank my friend, the chairman of the Appropriations Committee, for yielding.

Let me say that I agree with the chairman in terms of the general statements, but I think it is even a little worse. Frankly, the bill that we are going to pass, if our numbers are right, Mr. President, will add $1.4 billion in budget authority over the budget resolution and in excess of presently appropriated programs in the 13 bills. And it will add $632 million in outlays in everything from Commerce; State-Justice; Defense; Transportation; and Labor, Health and Human Services. And, actually, Labor, Health and Human Services, $205 million in outlays, $410 million in budget authority.

The Appropriations Committee has only $200 million in outlays of the whole budget that you have not yet appropriated as per your allocations.

And you are right on the money. There is not one bill that is in excess of the budget resolution allocation. So there is only $200 million there. And that was not intended for this, but it is there. There is plenty of budget authority under the budget resolution.

So it seems to me that the chairman of the Appropriations Committee is making a good point.

I will tell you this: If the CR comes to the floor and somebody says, "Let us fund this bill," they are going to have to go through the various appropriations bills and amend or offer it as a lump sum amendment at the botton and it will be out of order. Because, somebody will stand up—I guarantee you, if no one else does, I will—and just say, "By $632 million, it violates the budget resolution in outlays."

So it seems to me we have to be realistic about it. We want to declare this war and pay for it.

☐ 0030

I think we should express ourselves tonight, in some way, that we have to find additional resources to pay for this. And I am willing to work with the White House, and I am sure the Senator is, in an effort to see how they will pay for it. Frankly, the contingency fund is rather clear. If the President wants more defense, more foreign affairs money or anything that he determines an emergency, the resolution says up to $4 billion is there, if he requests it, and tells us how we pay for it.

We have 5 or 6 more days, I say to my friend from Oregon, and clearly I think with his help and with the help of the subcommittee and the ranking member, we ought to pass it with some indication that we expect to find a way to pay for it.

Mr. WEICKER. Will the Senator from New Mexico yield?

Mr. DOMENICI. I will yield the floor. The chairman has the floor.

Mr. HATFIELD. I am very happy to yield. I want to make one additional remark, then I would be happy to yield. In fact, I will yield the floor unless someone else asks me a question. I would be very happy to work with the Senator from New Mexico, and any others, on this matter that we have raised on the floor.

I want to say that as I sense the mood of the Senate, we were moving toward a third reading and wanting to complete this bill. I want to put the Senate on notice that I have no intention of letting this bill be completed, not because I do not join in the war on drugs, but we have to be responsible. Before we send this bill to third reading, and all that goes with that, and finally act on this bill, it has to have a provision for funding.

Mr. WEICKER. Will the Senator yield?

Mr. HATFIELD. I will yield to the Senator from Connecticut.

Mr. WEICKER. Is it true, I ask the distinguished chairman of the Appropriations Committee, that upon passage of the bill we no longer have an authorizing problem. We have an appropriations problem. That is very easy then to say, well, look, it is your baby. You find the money within those allocations. We are not telling you what to do. You find the money. We are already at the ceiling.

I would only say this to my colleagues: that even before the bill came to the floor and the President made his proposal, that proposal was predicated on taking money away from alcohol programs, away from drug programs, away from the mentally ill, et cetera. That and those comments made on this floor is what resulted in the revision of the leadership package. So if the leadership package did not take money from those programs, it just did not say anything.

So in effect what you are going to do is if you pass this bill without this matter being tended to, then in effect the original proposition is back in place. We have to take it from the mentally ill, we have to take it from alcohol, education, and so on down the list. It is not to keep you here late this evening. It is not to stall the war on drugs. If the chairman is adamant as he is, and I am as adamant I might add in joining him in opposing the passage of this bill, it is only to make everyone realize, especially the President since he is the one declaring and staring this fight, if we are going to have a war on drugs, we are going to pay for the war on drugs, period. It is as simple as that.

I can assure my colleagues if the money were there, hey, I am not up here to oppose this. I think politically, realistically, any way you want to have it, this bill is going to make a great deal of sense. But if indeed you are going to sacrifice everyone in terms of winning this war, then at least let us make the sacrifice with a little courage here to do what has not been done up to the point which is to pay for it before, if I may conclude, it becomes a situation where the only way to pay for it is to penalize other elements of our society who indeed are just as weak as those addicted to drugs.

Mr. HATFIELD. Mr. President, I yield to the Senator from Florida, and then I would like to yield the floor so others may get the floor in their own right.

Mr. DECONCINI. I would like to ask a question.

Mr. HATFIELD. I would be happy to yield to the Senator from Arizona.

Mr. CHILES. I would ask my friend who is the chairman of the Appropriations Committee if he understands that the Senator from New Mexico—and the Senator from Florida is going to oppose—is going to offer an amendment before we go to third reading that will make very clear that this is an authorizing bill, and that it has not obligated or appropriated any money. That is an amendment that the Senator from New Mexico is going to propose, and has only held back to make sure that we cover any other section that might come up in some amendment on this floor.

I think we have studied the bill so far. We know any area that might be a problem. But we want to make sure no other amendment is adopted and does not add to that problem. In other words, we would be able to take care of that amendment, too. So as this bill will pass, it would only be an authorizing bill. Then I would just say to my friend, it seems if it is an authorizing bill, for all of its good intentions, it does not spend any money. It does not take any money from the programs of the Senator from Connecticut, or until something happens later which then certainly there will be some proposal made on the continuing resolution. But at that time, that proposal must stand on the proposition of which it is made, and I think the Senator would have every right to say how is it going to be funded. Where is it going to be funded?

I say to my good friend I do not know that he says when the armed services bill comes on the floor, wait a minute, this is spending money.

So we are not going to go to third reading on this bill until you have the money that you are going to spend in here because it is an authorizing bill, as are all of the authorizing bills that come up, and I know of none of them where we say, wait a minute, we are not going to go to third reading on that bill because we do not know where that is going to be spent.

So the Senator from New Mexico, I think I am speaking for him, certainly intends to put that amendment. I intend to join with him on it to see this is only an authorizing bill, and when this then as proposed, we go on to something else. I think the Senator is exactly right. You are going to have to say how are we going to pay for it, where is the money going to come from, and address it at that time.

We are not going to adjourn this session without some kind of a program on drugs, whether it is this bill precisely or a combination. We know that. I think we have to face that reality. What I am saying is if we had a provision in this bill that was contingent upon the President of the United States making his simple request under that contingency fund, it would be a very simple thing.

There is no reason why we cannot identify that predicated upon the President's request as a source for funding this. But if we do not do something like that under the circumstances and the exigencies of the time I know precisely what the scenario is going to be and so does the Senator from Florida. The pressure is going to be so overwhelming on that continuing resolution process because let us face it, we are going to hang everything on that before we finish with it. We are going to hang everything on that before we finish with it. We are going to be authorizing programs. We enacted the most comprehensive crime bill in the history of the country on the appropriations process. It is the last train out of the station. That is where we are going to do all of these things. Then we will be back there with the job of finding the funding.

Mr. DECONCINI. Will the Senator yield for a question?

Mr. HATFIELD. Yes.

Mr. DECONCINI. Is the Senator from Arizona correct that on this continuing resolution which the House passed, they funded the drug bill, and they passed it with a 0.34-percent cut in all discretionary accounts?

Mr. HATFIELD. Yes, a totally unsatisfactory system of providing that funding. The White House said they would veto the bill under that funding mechanism because that was an action of sequestering appropriated funds that they were trying to avoid under the reconciliation process.

So I might say that is out of the picture. But there is going to be something placed in that void.

Mr. DECONCINI. If the Senator will yield, the chairman says that is out of the picture. It seems to me the White House has said no new revenues or we are going to veto it.

Mr. HATFIELD. That is not the only reason they have listed for vetoing the bill. But that is one of the reasons.

Mr. DECONCINI. They said no new revenues.

Mr. HATFIELD. They said across-the-board reductions would not be satisfactory for them to sign a continuing resolution. I am very, very anxious to send a continuing resolution that can be signed.

Mr. DECONCINI. Of course I am too. But I think we are confronted here with maybe no answer. If the White House has said no new revenues, they should send up an idea on how to fund their drug bill. They say, "hey, House, you cut 0.34. What do we have to do here?" If that is the case, it seems to me like maybe it is appropriate to ask the White House what are you going to do, Mr. President? We are going to take a cut.

Mr. HATFIELD. My proposal is to throw the ball back in the President's court by asking for a declaration from the President to take the program, and the funding of it, out of his contingency budget.

Mr. President, I yield the floor.

□ 0040

Mr. EVANS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. Mr. President, since the Senator from Oregon has yielded the floor, let me say to him that I agreed wholeheartedly earlier in the evening, suggesting that I did have a way to pay for what we are about to do. I think it is absolutely and totally irrational for us to claim to be fighting a war on drugs and say, "Oh, my, this is just an authorizing bill."

Fine war. Blank bullets. We are really not doing much of a job if we do that.

This Senator, in spite of the fact that it is 20 minutes to 1 on a Sunday morning, now intends to pursue his method of funding unless I hear that someone else has come in with a better one.

This is in the nature of a user fee, if you will, a modest increase on the licit drugs in this country to help pay for a war on the illicit drugs.

Mr. President, I have a couple of other amendments that I am sure will be accepted by both sides, but at some point, and maybe now is the point, unless I hear to the contrary——

Mr. BIDEN. Will the Senator yield for a moment?

Mr. EVANS. I yield.

Mr. President, we do not have order in the Senate.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BIDEN. The Senator from Washington made an indirect reference to me. He said he had two other amendments that he believed would be acceptable. I hope he is correct. Hope springs eternal at this hour of the morning. I would suggest he move the two amendments that he thinks will be accepted before we get to the immigration bill by the Senator from Wyoming and some easy votes on some of the other things.

Mr. EVANS. I would suggest it would be appropriate, with the understanding that this 500-pound gorilla is waiting in the wings and before we get to third reading, if we do not have a better idea, I intend to bring it forward.

Mr. FORD. Will the Senator yield for another question?

Mr. EVANS. Yes.

Mr. FORD. The Senator has referred to a 12.5-percent increase for distilled spirits, beer, wine, and cigarettes. Is that the amendment?

Mr. EVANS. I say the Senator is correct.

Mr. FORD. Let me say that a motion will be made, I hope, to table your amendment. But if your amendment is not tabled, in the terms of a former colleague, Senator Jim Allen of Alabama, you may take your trip to Mandalay.

Mr. EVANS. I hear the Senator from Kentucky, but at the same time I believe that somewhere, someday, sometime—probably today—we have to be honest with ourselves and recognize that we have to pay for a war and we have to pay for it somehow. If we choose to pay for it this way, I am perfectly prepared and willing to join in the sponsorship with any or all Senators on an alternative that honestly pays for the war. I do not intend, regardless of the time, to sit here and to go to third reading and pass a bill that is so blatantly on the cuff. You cannot fight a war on the cuff.

AMENDMENT NO. 3072

Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. EVANS] proposes an amendment numbered 3072.

After the word "aircraft" in Sec. 3004(e)(1)(A), insert the following:

Provided, that no funds may be expended to modify any existing aircraft for air surveillance purposes unless the proposed modifications comply with validated requirements and specifications developed by the Coast Guard.

Mr. EVANS. Mr. President, I think the amendment is self-explanatory. There is authorized $45 million for the procurement of radar installations on Coast Guard planes. This would merely require that before we do so, we go through a process of specifications and requirements for what amounts to really a new type of surveillance aircraft.

I belive it has been cleared on both sides of the aisle.

Mr. THURMOND. Mr. President, we accept the amendment.

Mr. CHILES. We discussed the amendment and we accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3072) was agreed to.

Mr. EVANS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3073

(Purpose: To create a White House Conference on Drug Abuse and Control)

Mr. EVANS. Mr. President, I have a second amendment I send to the desk and I ask for its immediate consideration.

The PRESIDING OFFICER (Mr. ARMSTRONG). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. EVANS] proposes an amendment numbered 3073.

Mr. EVANS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of Title I, insert the following new subtitle:

SEC.—. SHORT TITLE.

This subtitle may be cited as the "White House Conference on Drug Abuse and Control Act".

SEC.—. ESTABLISHMENT OF THE CONFERENCE.

There is established a conference to be known as "The White House Conference on Drug Abuse and Control". The members of the Conference shall be appointed by the President.

SEC.—. PURPOSE.

The purposes of the Conference are:

(a) to share information and experiences in order to vigorously and directly attack drug abuse at all levels, local, State, Federal, and international;

(b) to bring public attention to those approaches to drug abuse education and prevention which have been successful in curbing drug abuse and those methods of treatment which have enabled drug abusers to become drug free;

(c) to highlight the dimensions of the drug abuse crisis, to examine the progress made in dealing with such crisis, and to assist in formulating a national strategy to thwart sale and solicitation of illicit drugs and to prevent and treat drug abuse.

(d) to examine the essential role of parents and family members in preventing the basic causes of drug abuse and in successful treatment efforts.

SEC. —. RESPONSIBILITIES OF THE CONFERENCE.

The Conference shall specifically review—

(a) the effectiveness of law enforcement at the local, State, and Federal levels to prevent the sale and solicitation of illicit drugs and the need to provide greater coordination among such programs;

(b) the impact of drug abuse upon American education and the effectiveness of drug education programs in our schools, with particular attention to those schools, both public and private, which have maintained a drug free learning environment;

(c) the extent to which Federal, State, and local programs of drug abuse education, prevention, and treatment require reorganization or reform in order to better use available resources and to ensure greater coordination among such programs; and

(d) the impact of current laws on efforts to control international and domestic trafficking of illicit drugs.

SEC. —. CONFERENCE PARTICIPANTS.

In order to carry out the purposes and responsibilities specified in sections — and —, the Conference shall bring together individuals concerned with issues relating to drug abuse education, prevention, and treatment, and the production, trafficking, and distribution of illicit drugs. The President shall—

(a) ensure the active participation in the Conference of the heads of appropriate executive and military departments, and agencies, including the Attorney General, the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Transportation, and the Director of ACTION;

(b) provide for the involvement in the Conference of other appropriate public officials, including Members of Congress, Governors of States, and Mayors of Cities;

(c) provide for the involvement in the Conference of private entities, especially parents' organizations, which have been active in the fight against drug abuse; and

(d) provide for the involvement in the Conference of individuals distinguished in medicine, law, drug abuse treatment and prevention, education and law enforcement.

SEC. —. ADMINISTRATIVE PROVISIONS.

(a) All Federal departments, agencies, and instrumentalities shall provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

(b) The President is authorized to appoint and compensate an executive director and such other directors and personnel for the Conference as the President may consider advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 52 of such title relating to classification and General Schedule pay rates.

(c) Upon request by the executive director, the heads of the executive and military departments are authorized to detail employees to work with the executive director in planning and administering the Conference without regard to the provisions of section 3341 of title 5, United States Code.

(d) Each participant in the Conference shall be responsible for the expenses of such participant in attending the Conference, and shall not be reimbursed for such expenses from amounts appropriated to carry out this subtitle.

SEC. —. FINAL REPORT.

Not later than six months after the effective date of this Act, the Conference shall prepare and transmit a final report to the President and to Congress, pursuant to sections — and —. The report shall include the findings and recommendations of the Conference as well as proposals for any legislative action necessary to implement such recommendations.

SEC. —. AVAILABILITY OF FUNDS.

No more than $2,000,000 shall be appropriated to carry out this subtitle. Amounts appropriated under this section shall remain available until expended.

SEC. —. EFFECTIVE DATE.

This section shall become effective upon enactment of this Act.

Mr. EVANS. Mr. President, this combines what I believe is the best of an element that was in each of the two original bills presented to the Senate. That is to call for a White House Conference on Drugs, a broadly based conference that is aimed at doing what I think is terribly necessary. That is bringing together not just the expertise and those who need to be working together at the Federal level, but also to bring in those from States and local communities and those private citizens who have much to contribute and who, after all, are going to be the foot-soldiers in this war against drugs.

I believe the amendment has been cleared on both sides of the aisle.

Mr. BIDEN. Mr. President, this amendment is a very good amendment, in my view, one that we have discussed in the past. I believe I am a cosponsor of it. If not, I would like to be. I would highly recommend to the managers of the bill that we accept this amendment.

Mr. EVANS. Mr. President, I ask unanimous consent that Senator BIDEN be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, we accept the amendment.

Mr. CHILES. Mr. President, we accept the amendment also.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3073) was agreed to.

Mr. EVANS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 3074

(Purpose: To designate alcohol and drug abuse prevention programs targeted at student athletes)

Mr. METZENBAUM. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 3074.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Section 4106 of the bill is amended—

(1) in subsection (c)(2)(B) by inserting after "administrators," the following: "athletic directors,"; and

(2) in subsection (d)(1)—

(A) in clause (D) by inserting after "counselors," the following: "athletic directors,"; and

(B) by redesignating clause (I) as clause (J) and inserting after clause (H) the following:

"(I) special progams and activities to prevent drug and alcohol abuse among student athletes, involving their parents and family in such drug and alcohol abuse prevention efforts and using athletic programs and personnel in preventing drug and alcohol abuse among all students; or

Mr. METZENBAUM. Mr. President, if there is to be an all out war on drugs, there can be no doubt about the location of the front line. It is America's schools. Here our children are introduced to drugs; here they make their decisions about drug use; here we must draw the line in the sand.

We all recognize that there is a problem: 92 percent of high school seniors use alcohol; 85 percent use alcohol or other drugs; 30 percent use these drugs every week; 15 percent use them every day; 10 percent are chemically dependent.

What is the answer? Education and prevention. It is the only way. No matter how heroic our efforts interdicting drugs or prosecuting drug pushers, drugs will find their way to kids. Our only hope is aggressive, thoughtful drug abuse programs in our schools.

One such program has been implemented in the Forest Hills school district of Cincinnati. The principal of Anderson High School, Mr. Michael Hall, has been instrumental in establishing a comprehensive high school drug intervention program that has produced results. The program has been singled out as a model by the Drug Enforcement Administration for its emphasis on student athletes.

Mr. President, my amendment designates alcohol and drug abuse prevention programs targeted at student athletes. It does not cost anything. It simply adds student athlete drug prevention programs to the list of activities which communities and schools can support with the Federal funds authorized under this bill.

Mr. President, I would like to outline briefly the full scope of the model program operating in Cincinnati—a major component of which is the focus on student athletes.

The Anderson High School program is run by a group called the Core Team which consists of volunteer teachers and administrators who have all had extensive training in state-of-the-art drug and alcohol abuse programs. Mr. President, let me emphasize from the outset that alcohol is a priority. It is in Mr. Hall's words, "The biggest problem we've got." Sometimes that point gets lost in the shuffle with all the attention paid to crack, heroin, and other narcotic drugs.

The first step in the Core Team's program is identifying drug abusers. The purpose is to identify kids with a problem so that the school can intervene and try to get these users to stop their abuse of alcohol and/or drugs. A lot of work is involved in identifying the kids with a drug problem. There are no easy clues. It often takes a trained eye to spot a kid who needs help. Surveys are also necessary to monitor the extent of the problem in the school.

The second step is to conduct awareness programs for staff, parents, and students. The purpose here is to develop the best possible avenues for conveying accurate, scientific information on the prevalence and the dangers of drug abuse.

The third step is a special prevention program for student athletes. The centerpiece of the effort is the high school coach who is charged with making the drug abuse prevention effort a critical component of high school athletics at every level.

The program includes surveys of drug use among athletes; training for coaches; drug awareness meetings with parents; involment of high-school booster clubs; the use of team captains as role models; sessions with student athletes presented by recovering student athletes and professional athletes.

The main thrust of the program is coaches working with kids. The goal to develop a counter peer pressure among athletes who are role models not just for their teammates but for the student body at large. In 3 years at Anderson High School, the number of drug users among senior student athletes has declined by 44 percent, among eighth graders by 68 percent.

The Justice Department's Drug Enforcement Administration has singled out the Anderson High School effort as a model program and I ask unanimous consent to place in the RECORD the DEA booklet "Team Up for Drug Prevention" which is based on the Anderson High School program.

There being no objection, the pamphlet was ordered to be printed in the RECORD, as follows:

[From the U.S. Department of Justice, and Drug Enforcement Administration]

TEAM UP FOR DRUG PREVENTION WITH AMERICA'S YOUNG ATHLETES

U.S. DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION,
Washington, DC.

DEAR COACH: We are pleased to provide this set of materials to assist you in developing a drug abuse prevention program at your school. For their efforts in compiling this information we wish to thank Dr. William P. Deighan, Superintendent; Michael D. Hall, Athletic Director, and Peg Rider, Coordinator of Special Programs of Youth; Forest Hills School District, Cincinnati, Ohio. There are variety of materials in the packet that should be very helpful to you.

The National High School Athletic Coaches Association and its affiliated state associations, as well as the National Football League, the National Football League Players Association and the International Association of Chiefs of Police, are working closely with the Drug Enforcement Administration in a program of cooperative action to prevent drug abuse by high school youth. All groups have collaborated on the development and production of materials which have relevance to coaches and their responsibilities to their student-athletes. We challenge you to become involved in this program

In the booket entitled "For Coaches Only: How To Start a Drug Prevention Program," we gave you some ideas and challenges. This packet is more than that, it is an ACTION PLAN . . . a way to implent those ideas and challenges that we talked about.

As a former high school coach, I am sure that it you take the action and administer the plan, you will achieve the results of having an impact on the drug abuse problems in your school.

Sincerely,

John C. Lawn,
Deputy Administrator.

National High School
Athletic Coaches Association,
Ocala, FL.

Dear Coach: Please let us express our appreciation to you for taking a positive step toward drug abuse prevention in your community. As an athletic coach and a caring person, you are uniquely qualified to be the catalyst who may "make the difference" in the lives of students in your school.

Your National High School Athletic Coaches Association in cooperation with the Drug Enforcement Administration has made the commitment to the high school boys and girls to become an integral part of the solution of the drug abuse problem. While the ultimate solution may rest with drug prevention education in the elementary schools, we high school people must confront the problem . . . head-on . . . in our individual schools . . . with our own athletes . . . with our own students in our classroom . . . this year. . . . now!!!

We are pleased to report that the National Football League, the International Association of Chiefs of Police, and the National Football League Players Association will assist the DEA and the National Association in the implementation of the Drug Prevention Program.

Coaches in twenty thousand high schools . . . each with his or her own athletes, other students, coaching staffs, administrators, parents, and community leaders as part of the process . . . have the potential to "move mountains" in a drug prevention program. We are proud that you have accepted this professional responsibility in your school and community. As a leader, you will want to engage other coaches and teachers in this thrust to prevent drug abuse. The simple fact that a school may not now have a drug problem does not preclude that possibility that a problem may emerge in the near future!! Drug abuse prevention is an investment in tomorrow's America . . . not an expense in today's budgets to time, effort, and money!!

The attached information has been examined by your NHSACA and comes highly recommended for your use in your school and community. Thanks again!

Sincerely,

Carey E. McDonald,
Executive Director.

Forest Hills School District,
Cincinnati, OH

Dear Coach: You took an important step in the fight against drug and alcohol abuse among students when you sent for this packet. Enclosed you will find material that was prepared by key staff members in the Forest Hills School District for use with the Drug Enforcement Administration's booklet, "For Coaches Only: How to Start a Drug Prevention Program."

All of the materials that are included in this packet are used in the drug prevention program for athletes in Forest Hills. They form the basis on which our drug prevention program is based.

As you will see the program described in these materials does not cost anything to put into operation. Your only investment, then, in starting a similar program is your time and effort.

The packet of information includes the following printed material:

1. Effects of athletics on young people.
2. Reasons why athletes use alcohol and other drugs.
3. Enabling behaviors of coaches.
4. Responsibilities of the coach in regard to chemical abuse.
5. Suggestions to coaches on starting a drug prevention program for athletes.
6. Nine (9) step drug prevention program for athletes.
7. Suggestions for captains when dealing with their teammates.
8. Initial survey to be given to your athletes.
9. Sample letters to parents.
10. Coaches' survey (to be returned to the Forest Hills School District).

Before using the material from this packet of information, we would like to suggest that you share it first with your principal as some of the items may involve school policy.

The Forest Hills School District is committed to the importance of drug education and prevention programs for athletes and we are willing to help you in any way that we can. If you have questions, comments, need suggestions, or would like to discuss an idea about prevention, give us a call (513-231-3600).

Yours truly,

Dr. William P. Deighan,
Superintendent.
Michael D. Hall,
Coordinator of Athletics.

EFFECTS OF ATHLETICS ON YOUNG PEOPLE

In order to understand why our athletes drink or use other drugs we should look at the effect that athletics has on young people.

There is a heavy focus on athletics in virtually every high school and junior high school in the counrty.

Schools often are rated according to how good their athletic program is.

Pressure to perform is put on athletes from Mom, Dad, other students, teachers, young kids.

Athletes have everything that all other kids have as problems, plus the other pressures that athletics bring:

1. Pressure to win.

2. Pressure to perform well: "People will think less of me." Athletes are placed in a position where there is a lot of chance for failure. Pressure to maintain the image that "I'm better than you." The public hold high expectations for athletes.

3. Athletics give to young people a high rate of unearned esteen (14 to 16 year old kids walking around town like they were "big shots")

SOME RESAONS WHY ATHLETES USE ALCOHOL AND OTHER DRUGS

Let's focus on a diagram called a "Feeling Continuum." It is a model of the full range of a person's feelings. The model goes from one extreme of a very low feeling (even depression) to feelings of elation, or a high feeling.

Try to focus on the time when you felt your very best or highest. What was your highest high?

1. Was it when you participated on an athletic team and you has a big win or won the league championship . . . or was it when you participated in the state tournament . . . or played well in a difficult game.

2. Was it the day you got married . . . or was it the day you had your first baby?

3. Was it a time when you used alcohol and drugs?

Feelings that athletes get from alcohol and other drugs are the same feelings that they get from winning and losing. They come off the playing field or leave the gym with their adrenalin flowing and very aroused . . . they want to keep that feeling. What do they often turn to? . . . alcohol.

Alcohol works every time . . . Our sports program, or curriculum, our boy scout troop, the best father . . . is not going to make them feel good every time—but alcohol/drugs will!

It is a way for some athletes to cope with pressure and stress.

Some athletes receive a lot of peer pressure from other students, and even other athletes, to use alcohol and other drugs.

We all do the things we do because we believe they are the best things to do. But sometimes some of the things that we do as coaches make it easy or enable athletes to use mood-altering chemicals. The following are examples of enabling behaviors used by some coaches which help and encourage kids to use:

1. We overhear party plans but pretend that we did not hear.

a. What a coach should do is to confront the athlete immediately and tell them that kind of talk and that behavior is inappropriate. . .and you should not ignore it.

b. Tell the athletes you are concerned about them.

2. We smell alcohol or marijuana but do nothing.

a. Coaches rationalize and discount this information.

b. The athlete is thinking that you must know. (If you don't confront them, they will interpret it as if you, the coach, don't care.)

c. You should confront the athlete immediately.

3. Keeping secrets from assistants and the team.

a. The whole team knows anyway.

4. They don't talk about past chemical abuse incidents.

a. Coaches often will avoid the subject of alcohol and drugs.

(1) Some coaches mention the subject at the start of the season and never mention it again.

(2) Forms of denial by coaches: (a) "We don't have a problem." (b) "It is not a problem on my team—it is a problem on other teams." (c) "If a problem exists on my team it is a reflection on me. (Therefore I am going to ignore the problem.)" (d) "Whatever is done will not work anyway."

b. Chemical abuse incidents that have occurred in your school are relevant and meaningful to your athletes, and your athletes can learn good lessons when you discuss those incidents with them.

5. Not enforcing the rules: (a) Learn to be firm; (b) Set limits and stick with them; and (c) This is a very important part of the program. Do not minimize the importance of enforcing rules.

6. Inappropriate use of alcohol by coaches at clinics, summer activities, adult parties,

victory celebrations or drowning sorrows at local watering holes: (a) Through our own behaviour, we sometimes send the message to the kids that it is okay to use alcohol; (b) Coaches should, at all times, be a good model for their athletes; and (c) One of the long range goals for any school athletic program to think about is to try to get every coach to sign a pledge not to use alcohol during his/her sport season.

RESPONSIBILITIES OF THE COACH

You are a teacher . . . you are a coach . . . you are an adult and your number one concern should be the welfare of children. You should, therefore, be concerned about the seriousness of drug abuse among young people. In your position it is expected that you would take the responsibility for a drug prevention program for student athletes.

You don't have to be a counselor . . . you don't have to be an expert in treating drug abuse.

You must be able, however, to recognize the signs of alcohol and other drug abuse.

You must know where to get help: School Counselors; Drug Abuse Coordinator in your school; Core Team in your school; Intervention Team in your School; and Local agencies whose purpose is to help young people with chemical abuse problems.

If we diagnose a student as having a reading difficulty, we send that student out for help. It follows that if we diagnose a chemical dependency problem, we should also send that student out for help.

Don't be turned off from starting a drug prevention program for student/athletes because you feel that you do not know enough. It is important for you to remember: You don't have to be an expert.

SUGGESTIONS FOR COACHES

1. Call your captains together and talk about alcohol and other drug abuse.

(a) Ask the captains to make a commitment to actively work at getting their teammates not to break any training rules during the sport season.

(b) The commitment is what the "star" on the sleeve is all about.

(c) Meet with the captains regularly. Included in this packet is a list of "Suggestions for Captains."

2. Open the dialogue with your athletes on alcohol and other drug abuse.

(a) Talk about past and present chemical abuse incidents. Don't avoid the subject. Don't keep any secrets.

(b) Keep everything up front all season long.

(c) Communicate to your athletes that you really care about their use. It's important for you to communicate this. They need to know that you care.

(d) Talk to your athletes about the results of the initial survey that you do with the team. Ask for a change in their behavior.

(e) We want our coaches to make a minimum commitment. We want our coaches to talk to their athletes a minimum of once per week on the subject of use of alcohol and others drugs

3. In order for our drug program to work—to be effective—we have to get our athletes to use peer pressure on teammates to not use any mood-altering chemicals.

(a) Ask your athletes to turn peer pressure around to *not* use.

(b) Team members have the right to put peer pressure on teammates who are not following the rules. With some team members not following training rules, it could an often does cause serious morale problems on the team.

(c) Team member should confront "users" and say, "one more time and we go to the coach." "I will do whatever it takes to get you to knock it off."

4. Enforce all training rules:

(a) Report all violations to your athletic director or principal.

(b) "Stars" included.

(c) Be firm, do not deviate from the rules.

5. Know the symptoms—Recognize the signs: (a) Mood swings from the very high to the very low; (b) Recognize changes in personality; (c) Apathetic and listless behavior; (d) Loss of coordination; (e) Red eyes; (f) Profuse sweating (way beyond normal sweating); (g) Late to practice: Do not show at Saturday practice because they are "sick" (h) Listen for subtle cries for "help."

6. Have a definite plan in mind when one of your athletes is caught; (a) Investigate the incident; (b) Go to your athletic director to start the process; (c) Involve the family: If the recovery does not involve the family, the recovery rate is 1 to 20; If the recovery involves the family, the recovery rate is 1 to 2.

7. When you overhear students talking about an athlete(s) who has broken training rules, investigate.

(a) We must actively try to catch violators of training rules.

(b) In the past, coaches have ignored this kind of information and athletes have been allowed to get by, undisciplined.

(c) All coaches must participate in presenting and enforcing rules: Assistant coaches can not ignore the problem.

8. When you overhear party plans, confront the athlete immediately.

(a) Tell them that kind of talk and that behavior is inappropriate.

(b) Tell the athlete how you feel.

(c) Do not pretend you did not hear: They know you heard.

9. When you smell alcohol or some form of tobacco, confront the athlete immediately: (a) Start the discipline process.

10. Get parents involved in co-signing training rule pledge cards.

11. Check on your athletes . . . call them at home . . . let them know that you care.

12. Follow up any discipline with help for your athlete.

(a) It is important for your athletes to know that you will enforce the rules but you are not going to reject them.

(b) After they have been disciplined, they need your help in order to regain their dignity and get their life in order.

c. You don't have to be an expert at drug counseling: Know where help is available, i.e: counselors, drug prevention coordinator, core team, etc.

d. In the Forest Hills School District, we tell our athletes: If the athlete turns himself in for chemical abuse, they remain on the "team" and we give him counseling and/or treatment; and If we catch the athlete violating training rules, they are off the team . . . but they still get counseling or treatment.

13. Coaches should be good role models.

14. Find alternative activities for athletes after contests.

(a) Parties can be organized by parents in a parent's home: Invite team, their friends, cheerleaders, parents and coaches; Serve hot dogs, pop, potato chips; One rule: "If you come, you must stay until 11:30 p.m."; Show a video tape of the game.

(b) Swimming parties.

(c) Racket Club parties.

(d) Ask the team for suggestions.

(e) Students and athletes are really looking for alternatives to parties where there is alcohol and other drugs.

(f) Our Booster Clubs have offered to help plan and be involved in the alternative activities. You should ask for their help.

THE FOREST HILLS DRUG PREVENTION PROGRAM FOR ATHLETES

The First Step.—We decided to find out just how serious the problem was in the Forest Hills School District with our athletes. Our first step was to do a "needs assessment" by way of a questionnaire. We surveyed all senior athletes at each high school and all 8th grade athletes and cheerleaders at the junior high school. The results were startling. The results indicated that our athletes were, in fact, serious users and abusers of alcohol and other drugs.

The results showed:

1. High School: (a) 65% admitted using alcohol during their sport season; (b) 12% admitted using pot during their sport season; (c) 5% admitted using other drugs during their sport season.

2. Junior High School: (a) 38% admitted using alcohol during their sport season; (b) This is where the program must start.

3. 92% of the senior athletes and cheerleaders reported that it was true that there were parties every weekend involving drinking by athletes that are participating in a sport season.

4. The seniors estimated that from 50 to 90% of our athletes use alcohol once per week, every week of the year.

The above figures are just the highlights of some of the results of the survey. In fact, the results of our surveys are in line with the results of similar surveys from school systems all over the United States. The results of our survey and other national surveys are pretty typical of what is going on—probably including your high school and your junior high school.

Medical studies show that the use and abuse of alcohol and other drugs by athletes will affect their participation and the development of their skills. But of even more concern, is another fact that our athletes have told us. Our athletes say that there are few social drinkers or users among teenagers. They tell us that when kids drink, two things happen:

1. They drink till they pass out or get sick.

2. They drink until the alcohol runs out.

If our athletes are abusing almost every time they use, it is harmful—it is unhealthy—and it is dangerous for our athletes and we should do something about it. We should do something about it before someone gets killed in an accident.

The Second Step.—(If we did not pass this step, we would not have gone on with the program.)

We met with our coaching staff. We asked our coaches to look at the problem. They did—and they accepted the problem as a challenge and decided to do something about it. We held several meetings with coaches and developed a plan to attack the chemical abuse situation before it got any more out of hand. We then developed some guidelines and suggestions for coaches.

The Third Step.—In the fall, we met with the captains of every sport as a group. We asked our captains to make a commitment and that commitment was to actively work at getting their teammates to not break any training rules during the sport season. The commitment that we asked them to make is what the "star" on the sleeve is all about.

We continue to meet with our captains regularly.

The Fourth Step.—We sent two letters to the parents of our athletes. The first letter reported on the survey that was taken in the previous spring. Many of the parents expressed alarm and concern after seeing the results of the survey. In the second letter we talked to parents about the "pledges" the athletes would be taking at the beginning of each sport season and the meaning of those pledges. (Parents are asked to cosign the pledge.) We discussed the role of parents and what further action parents can take.

The Fifth Step.—The Booster Clubs became very involved in our undertaking. They purchased a brochure entitled, "My Parents Don't Think I Drink Because I'm in Sports." They handed a copy of that brochure to the parents of each athlete at the start of each sport season, at an activity we call "Meet the Team Night."

The Sixth Step.—Several parent drug awareness meetings were held throughout the year. The purpose of the meetings: Help parents recognize the problems of drug abuse among young people. Give parents help in dealing with the problem.

As a "draw" to get parents out to this meeting, we had a big name professional athlete speak who was, himself, recovering from the use of alcohol and other drugs.

The Seventh Step.—We scheduled three (3) general sessions for athletes. These sessions will be held in the fall, winter and spring. They were conducted during practice time because our coaches are committed to the program and are willing to give up practice time for the program. The presenters in these sessions will be recovering student/athletes and pro athletes. We want our athletes to know how alcohol and drugs can mess up their lives. Therefore, we'll bring someone that they can relate to in that regard.

The Eighth Step.—At the end of our first year in the program, we conducted another survey of our senior athletes and 8th grade athletes and then compared the results of that survey to the survey conducted when we started the program.

The Ninth Step.—We will conduct a year-end evaluation with our coaches, captains, athletes and parents.

The Main Thrust.—The main thrust of our program is coaches working with kids. We have given our coaches a considerable amount of training. The outcome of that we hope will be . . . athletes using peer pressure on teammates to not use alcohol and other drugs. If our program is to be successful, it will be because of athletes using peer pressure on teammates to follow the rules.

Is the Program Working?.—Yes, our drug prevention program is working. This is what we have seen so far this year:

People are talking about the program and the problem. There has been a lot of focus in the media.

Some athletes are stating publicly that they are no longer going to use.

Some athletes who were using last year are not using this year and they say it is because of this program.

One father turned his son in for drinking because the father felt an obligation to do so after co-signing a training rule pledge card. We have a tremendous amount of respect for that father.

One mother of a female student called the principal of the high school to tell him that our coaches had ruined her daughter's party. She went on to say that our coaches had told their players that they were not to attend the party because alcohol was going to be served. Needless to say, we were thrilled that this incident happened.

Several of our teams have told their coaches that last year there was a high percentage of team members who were using alcohol and other drugs. This year they prided themselves on being absolutely clean in regard to training rules. We are very pleased that this has happened on some of our teams. The athletes further told their coaches that they changed their attitude because of the focus our coaches put on chemical use.

These are positive signs that our drug program for athletes is working. At the time of the writing of this packet of material, we are in the process of completing the year-end survey of our athletes . . . those statistics were not available for this publication.

There are school systems in Minnesota who have had similar programs to ours for years and they are reporting a history of a lot of success . . . and it looks like we're headed for that also.

SUGGESTIONS FOR CAPTAINS

1. In order for our drug program to be effective . . . we want our captains and our athletes using peer pressure on their teammates not to use any mood altering chemicals.

2. You should talk with your team. Say to your team how you feel and mean what you say:

(a) "This is what I want to see happen":

No one uses. Everyone follows the rules . . . the "star" of the team included.

"I do not want to see or hear about anyone using."

(b) "This is what I will do—and this is a promise."

If I see it or hear about it, I will confront you and warn you once.

I will do everything I can to get you to stop and that includes going to the coach.

I will go to the coach if you do it a second time.

(c) Training rules are important:

In order for us to be the best athletes that we can be.

In order to have a great team.

(d) If you cannot follow the training rules . . . quit the team.

There is nothing that will tear down team morale faster than one or two players who refuse to abide by the training rules.

We do not want anyone on our team who can not follow the training rules.

If you have to use alcohol and other drugs . . . do it not as a member of our team.

3. Each captain should be a model:

(a) Your team looks up to you.

(b) Young people in the community look up to you.

(c) Do not put yourself in a position where people could accuse you of drinking or using other drugs: It is strongly suggested that you do not attend any parties where alcohol is served.

(d) You must be above reproach.

4. Find some alternative activities for your team . . . alternatives to going to parties where alcohol is served.

(a) Do things together as a team, such as: Pizza; Movie; Organize a party at your home; Etc.

(b) Ask the team for suggestions.

(c) The Booster Club and your coach will help plan and be involved in alternative activities. Ask for their help.

5. Make it clear to your teammates that if any of them think they have a chemical abuse problem, there is help available.

(a) It does not mean that they are off the team, if they ask for help: The coach, AD and princial guarantee that they will provide help while leaving the player on the team.

6. Being a captain is a year-round commitment . . . it is not a seasonal commitment.

(a) You should be a year-round model that your team can look up to.

CONFIDENTIAL TO THE COACH—ALCOHOL/DRUG SURVEY FOR ATHLETES

The first step in any drug prevention program for athletes is to take a survey in order to positively determine the extent of the chemical use among your athletes. The survey establishes the facts on which you can base your program . . . without the survey, you are only guessing at the extent of chemical use among your athletes.

When you finish the survey and compile the results you will know the following:

1. The amount of alcohol and other drugs used by your athletes: during the sport seasons; during the school year; male or female; at each grade level.

2. Suggestings from your athletes on how you can help.

3. How prevalent the use of alcohol and other drugs are in your community: Athletes, as a group, use on the same percentage as the rest of the student body.

4. You will know exactly what the alcohol and other drug use is in your community . . . before, you were only guessing.

It is recommended that before you conduct the alcohol/drug survey of your athletes, you first touch base with your school administration. You will need their support to know what your program is all about.

ALCOHOL/DRUG SURVEY FOR ATHLETES

Your response to this survey will be kept strictly confidential. Do not put your name on this survey.

The purpose of this survey is to gather information about the use of alcohol and other drugs among student athletes. Please be as honest as you can about your experiences and feelings about alcohol and other drugs.

Directions: Place an "X" on the appropriate blank line.

1. Male— Female—.

2. 7th— 8th— Freshman— Sophomore— Junior— Senior—.

3. Check the line for each substance that best describes your alcohol and other drug use:

	Never use	Used once in last 12 months	Used 3–9 times last 12 months	Used 10–39 times last 12 months	Used over 40 times last 12 mo.	Used at least once per week
Alcohol						
Marijuana						

	Never use	Used once in last 12 months	Used 3–9 times last 12 months	Used 10–39 times last 12 months	Used over 40 times last 12 mo.	Used at least once per week
Tobacco (smoke or chew)						
Uppers (speed)						
Downers (Quaaludes or valium)						
Other Drugs						

4. Did you any of the following substances during your last sport season?

alcohol, yes— no—.

marijuana, yes— no—.

tobacco, (smoke or chew) yes— no—.

other drugs, yes— no—.

5. Would you go to a student party where alcohol (including beer) is being served? yes— no—.

6. Would you stay at a party where training rules are being violated? yes— no—.

7. Did you ever feel that you had a problem with your alcohol or drug use? yes— no—.

If you answered yes, was it: —alcohol? —drugs? —both?

8. Did anyone ever say to you that they were concerned about your alcohol or drug use? yes— no—.

9. Does a member of your immediate family (father, mother, sister, or brother) have a problem with alcohol and drugs? yes— no—.

10. Do your parents know when you have been drinking or using other drugs? I *never* drink or use drugs—. My parents never know—. My parents know once in a while—. My parents know most of the time—. My parents know all the time—.

11. Describe what you believe should be done by the coaches to fact the issues that this survey has raised.

(Suggested First Letter to Parents)

Dear Parents of XXXXXXX High School Athletes:

You are probably aware that in the spring of last year a survey was conducted of all XXXXXXX High School Athletes and Cheerleaders on the subject of alcohol and other drug use. The purpose of this letter is to inform you of some of the results of the survey.

64 percent of the senior athletes and cheerleaders surveyed reported using alcohol during their sport season last year.

16 percent reported using marijuana during their sport season.

80 percent of the senior athletes and cheerleaders reported that it was true that there are parties every weekend involving drinking by athletes that are participating in a sport season.

The seniors estimated that from 50% to 90% of our athletes use alcohol once per week.

The above figures are just the highlights of some of the results of the survey. The results of our survey are in line with the results of similar surveys from school system, all over the United States.

The results of the survey indicates that our athletes are serious users of alcohol and other drugs. One of our coaches said, after seeing the results of the survey, "I used to think that the athletic drug problems is not my problem, but now I know that I must do something about it."

Medical studies show that the use and abuse of alcohol and other drugs by athletes will affect their participation and the development of their skills. But of even more concern is another fact that our athletes have told us. Our athletes tell us that there are few social drinkers or users among teenagers. They tell us that two things happen:

1. They drink till they pass out or get sick.
2. They drink until the alcohol runs out.

If our athletes are abusing almost every time they use, it is harmful—it is unhealthy—and it is dangerous for our athletes and we should do something about it. We should do something about it before someone gets killed in an accident.

Medical experts long ago established that alcohol is a serious drug. The results of our survey point out that the abuse of that drug among our athletes is acute. We have been somewhat unaware of the seriousness of the situation because alcohol and other drug abuse among our athletes has been underground. We can not ignore this study—the facts are there.

Our coaching staff has studied the results of the survey and they are very concerned about our athletes and their use and abuse of alcohol and other drugs. Our coaches have accepted this problem as a challenge and we have a plan to attack this chemical abuse situation before it gets any more out of hand.

Parents, we will be getting back to you in the very near future to let you know more of the details on our plan.

Sincerely

——.

——

(Sugested Second Letter to Parents)

Dear Parents of XXXXXXX High School Athletes: Your job as a parent is an important one but a difficult one—and it is not being made any easier by young people using alcohol and other drugs. Recently I sent you a letter outlining some of the results of a survey on alcohol and other drug use by our athletes. Many of you expressed alarm and concern after seeing the results of the survey.

There is no question that alcohol and other drug abuse is one of the most serious problems facing you as a parent and we as school teachers, coaches and administrators.

The coaching staff at XXXXXXX High School is moving ahead with plans to confront the problem of chemical abuse among our athletes. They need your help, as parents.

How can you help?

1. Talking and listening to your son or daughter about alcohol and other drugs. There is all kinds of research that concludes that a key to combating drug abuse is "in the home." Experts believe that parents must spend time in face to face talks with their children, in order to listen and to discuss drug issues with them.

2. Sign the training rule pledge card. One of the things that parents are asked to do when their son or daughter goes out for an athletic team, is co-sign a "training rule pledge card." This pledge card must be signed by the athlete and parent before the athlete can participate in a sport or cheerleading squad. By signing the pledge card, the player makes a commitment that he/she will not drink or use other drugs or violate any training rules during the sport season. We ask that you spend time with your son or daughter to make sure they are willing to make the commitment to not violate any training rules during their sport season. We would like you to make a firm commitment to help us monitor the fact that your son/daughter is not breaking training rules. This is the help we need from you in order to reverse this present trend of excess chemical abuse by our athletes.

3. Attend a parent training session. The school district will sponsor parent training seminars throught this school year. These meetings will provide parents with help in dealing with the problem of chemical abuse among our young people. The information that will come out of these meetings will be helpful for you as a parent. We will let you know when a date has been set for these sessions.

We would like to know your thoughts about our chemical abuse program for athletes and cheerleaders. Give us a call so we can talk about it with you.

Yours for excellence in athletics,

——.

——

Forest Hills School District,
Cincinnati, OH.

SURVEY FOR COACHES

The purpose of this survey is to gather information on how coaches feel about the use and abuse of alcohol/drugs by student athletes. Please be as honest as you can about your initial feelings about chemical use by student athletes.

Your response to this survey will be kept strictly confidential. Please do not put your name on this survey.

When you finish with the survey please return it to the Forest Hills School District at the address listed above. After we compile the results, we would be happy to share our findings with you.

1. Age— Male— Female—.

2. List the sports that you coach —.

3. What level do you coach: High School— Junior High— Elementary— Other—.

4. Approximate number of students in your school—.

5. How do you feel about this issue of Jr.-Sr. High School athletes being serious users and abusers of alcohol and other drugs? Where would you place yourself on a scale of one to 10? Place an "X" on the scale below where it would reflect your current feelings about the issue.

(Chart not reproduced in Record.)

6. As a coach how do you react to the following statements?

(a) A coach should be a good model for his/her athletes. yes— no—.

(b) A coach should report all violations of the training rules by any member of his/her squad. yes— no—.

If you answered no, please comment here:

(c) When a coach overhears party plans by his/her athletes, the coach should confront the athletes immediately. yes— no—.

7. After you have read the booklet from the Drug Enforcement Administration and have read this packet of information:

(a) Does the program make sense to you? yes— no—.

(b) Are you willing to make a commitment to do something about the use of alcohol and others drugs among student athletes? yes— no—.

(c) If you are willing to make a commitment, how much of a commitment are you willing to make? Please check one blank.

—I would like to make a commitment but . . . I'm not ready to make the commitment at this time.

—I'll do the survey only and see how serious the problem is in my school.

—I'll try a few steps in the suggested plan and see what happens.

—I'm willing to go all the way and start a complete program.

—Other. Please explain.

8. Would you be willing to sign a pledge card (along with your athletes) that you would not use alcohol or others drugs during your sport season? yes— no—.

9. Please list here any suggestions that you have for improving the drug prevention program for athletes that is included in this packet of information.

Thank you for your participation in this survey. Please write or call us if you would like a copy of the result of this survey.

MICHAEL D. HALL,
Coordinator of Athletics.

Mr. METZENBAUM. Mr. President, the fourth component of the model high school drug intervention effort, is student support groups. Students who have similar problems can get together and share their concerns about their own drug use or the drug use of friends or family.

The fifth component is the training of students as peer counselors. At Anderson High School 15 students have had extensive training in a technique called peer group counseling. These high school students will be working with and counseling students in the fifth grades at all Forest Hills Elementary School. This phase of the program is based on the fact that fifth grade students listen better to high school students about certain subjects than they listen to adults.

The school has also established "the room" which is a place where students can go any time during the school day to discuss a problem, drug related or not. The room is staffed by student peer counselors as well as a professional counselor. The peer counseling effort also extends to efforts to combat drunk driving. At Anderson High, a group of 22 students are involved in projects to prevent drunk driving.

The sixth component of the program is a parents communication network which is an organization of concerned parents who support each other in discouraging the illegal use and abuse of chemicals by their children. The group is a network of parent support and communication which develops guidelines and standards to follow.

Mr. President, my amendment simply ensures that programs targeted to student athletes are specified as options for schools and local communities.

The other components of the model program currently in place at Anderson High School in Cincinnati are already contained in this legislation.

Mr. President, it is also my understanding that coaches and athletic directors will be included in the membership of the advisory councils established under section 4006 of the bill.

Mr. CHILES. Mr. President, this amendment will strengthen the emphasis on using athletic directors, coaches, and athletic programs to reduce drug use among student athletes and the student body at large. It will emphasize the need to involve coaches in the training and programs for prevention of alcohol and drug abuse. It is a good amendment.

Mr. THURMOND. Mr. President, in view of the widespread use of drugs among athletes, we believe this amendment would be helpful and we will accept it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3074) was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHILES. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. SIMPSON. Mr. President, I have never been to Mandalay and I really do not want to go. [Laughter.]

But I think that Senator REIGLE is about to send me a ticket.

Mr. President, I had two amendments. One was with relation to the reallocation of funds for the INS. I believe we have intruded a bit on Senator RUDMAN's turf.

I think we can get that resolved in the continuing resolution. Therefore, I am not going to propose that amendment.

The other amendment I just would like to speak on a moment without placing it before the body since I am sure that a unanimous consent request that further reading be dispensed with might not be. I do not want to be here that long.

Let me just say that it is not my intent to create difficulty. That is not my wont.

It is or has been my intent to present a vehicle for the consideration of immigration reform that you dealt with very patiently here. Three separate times I have taken you through the jump or the hump of immigration reform. I am not going to do that again next year, if I am chairman or ranking minority member, whatever the status might be.

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And that is not a statement of petulance. It is a statement of reality.

The House yesterday, through a procedural effort, really did not allow an up or down vote on immigration reform. Illegal immigration is what we are talking about, not legal immigration. We are talking about the 1.8 million people who cross our borders from 81 different nations and I shall not even go into that. We have been there.

I am just going to speak 2 or 3 minutes and tell my colleagues that it was the intent to present the Senate version of the Immigration Reform Act as an amendment to this. Indeed, it was never my proposal that immigration reform be discussed as a jobs bill or a drug bill. Suddenly, it is linked in. That was not my preference.

Certainly, it is linked in. We find that apprehensions have increased over 50 percent on the southern border. Violent encounters, assaults, a $150 million pickup in a van the other day, three people in a van the week before and a $53 million pickup. That is what it is going to be in the United States of America.

I just share with you, and I understand the intensity of my friend from Michigan when I say that I think we will find if we do not deal with this issue, we will lose our compassion for legal immigration. That is what is going to happen. And we will turn toward true xenophobia and we shall reach the ultimate discrimination. This is the odd thing to me in this situation because I know my friend from Michigan is a true civil libertarian.

There are 3 to 12 million human beings in the United States who are here illegally. They are being used and exploited and this is their only vehicle out of the dark because everyone here knows that we will never grant a separate legalization to these unfortunate people unless we know it is not going to happen again. The way it does not happen again is that we penalize employers who knowingly hire these illegal persons.

That is where we are. I wish it were not that way. So the ultimate discrimination will be the status quo and the status quo is very simple: We will do nothing or we will do something. We will give more money to the INS, more money to the Border Patrol. Then, after the employer has been busted about six times and they have rolled him up and shut his business, he says, "I have got this thing figured out. I am never going to hire anybody again who 'looks foreign'."

That is where this bizarre subject goes, this bill, with the emotion, guilt, fear and racism. I have been there. I shall not take you through the jumps again. This was an attempt to send something to the House which would get them to an up-or-down vote which they have not had this session, and see whether we go to conference. There is no doubt in my mind we could have an agreement on the Schumer thing if we could get to conference, but that is not to be.

I did want to share with you that was my intent without question. I think the President would sign the legislation that would come out of conference and I shared with you that I am not going to take you through that again. I shall wait until next year and see what the House sends us. Surely they will send something, especially now that we have linked this with a drug issue. That will be a nice little bit of fluidity to the skids on immigration reform. It will help push it along. Now we will see whether that will come to pass.

But when they send me something, we will have immediate hearings, we will proceed with the bill and I pledge that. If there is no way to send it over for an up-or-down vote, I am not going to belabor it or take the time. We are very patient people who, in a very bipartisan way, have passed three times a fascinating illegal immigration addressing-that-issue bill.

With that, I yield to my friend from Michigan. I know he has a comment.

Mr. RIEGLE. I thank the Senator for yielding and I shall be very brief. I have enormous regard for the Senator, as he knows. I think he is one of the best Senators we have. I am sorry that I do not see this issue the same way he does.

I am also concerned about the fact that the drug bill go over unencumbered, because I think there is a very good chance that the House will take the Senate drug bill as is. Time is short. I think it is important that that issue be resolved. I think it is put in some jeopardy if this is added, but quite apart from the objections I would have to aspects of the immigration bill.

I am not sure there is a need to say more at this point.

Mr. SIMPSON. I thank the Senator from Michigan.

Mr. WILSON. Mr. President, will the Senator yield?

THE PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Mr. President, the hour is very late. Everybody on this floor is very tired, but I am going to detain us for just a couple of minutes in order to make a plea. The plea is earnest and arises from a situation that has been timely reported in the public press as being out of control. The border has been described as hemorrhaging.

It is my hope that we can see an immigration reform bill very close to that passed by the Senate become law this year. Because, Mr. President, what the able and energetic Senator from Wyoming has described as his fear is in fact becoming a reality. I can think of nothing sadder, nothing really more tragic than the conversion of good will, bridging a border between good neighbors, turning sour, Mr. President, as the result of the kind of massive illegal immigration that suddenly, in just the time I have been in the U.S. Senate, has transformed my home area of southern California from one where illegal immigration was tolerated somewhat with a wry smile in days past to the point where, today, it has reached a saturation. It is an area where people are afraid as they never were before, where they view illegal aliens suddenly with apprehension. The kind of xenophobia the Senator from Wyoming describes is the ugliest thing I can conceive of in America. It is not an American trait. It is not the kind of thing that any of us can look upon with indifference. There is a certain ugly contagion about it.

Mr. President, what the Senator from Wyoming is telling us is that there is a need for his bill to become law. No; he does not want to take us over the jumps again and none of us wants to go. We know the situation, although I think perhaps those of us who live on the border inescapably have come to the conclusion that we really cannot wait much longer before the situation deteriorates into something very ugly.

This is a nation of immigrants. Ironically, we are the richest, strongest, most resourceful nation in the world precisely for that reason. But no nation, as he has told us many times, can absorb without limit immigration, legal or illegal. I tell you that this year, there will be detected, detained, and apprehended in the San Diego sector of that border alone over 600,000 people. For everyone detained, at least one is getting through.

This is not a situation that can simply be ignored. We cannot simply continue to experience massive hemorrhaging of illegal immigration.

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What the Senator from Wyoming has said is that the time has come—some of you may not remember that at my first opportunity I voted against his bill; I really was not certain that it was the answer—I am absolutely certain that the time has come at the very least to test employer sanctions to determine whether or not they can be effective, because, Mr. President, there is not anything, else, and if that does not work and if the Mexican Government does not restrain illegal immigration on their side, then we have very few and very ugly options. So I hope that we listen when the Senator from Wyoming asks our cooperation because time is not on our side. In the time that I have been in the Senate, the situation has reached such a deteriorated stage that I am truly alarmed at what further delay will bring.

So, Mr. President, I will not say more tonight but I earnestly implore the Members of this body to be sensitive to the situation. They do not all live at or near the border, but I think they are sensitive to the kind of America that we want to have, and I think they understand that we are in danger in certain areas of seeing the traditional attitude of American hospitality dissipated and moved to something much different—by fear, by resentment of a kind that is inevitable if unlimited illegal immigration is permitted to continue.

I thank my colleagues for the attention. I hope that that will translate into a sensitivity to the problem and bring some movement. The time for movement is at hand.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER [Mr. BOSCHWITZ]. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I want to say a word on this matter. This is a bill that came from the Judiciary Committee. We have had hearings on this matter three different years, reported this bill out three different times. It has passed the Senate three different times and gone to the House. I am not too sure when we will get a bill unless we handle it this way. We thought we had a bill last year, and just a few, just a handful of people in the House obstructed and we did not get it. Now, if we put this bill here on the drug bill, then it will go in conference, it will be reported to the whole body and without question I think the whole House will pass it. But if we have to do it piecemeal, as we have done in the past, hold another conference and go through the same thing again—we have been through it three times. This is the best hope of getting a bill—I would hope the distinguished Senator would not oppose this procedure because we have worked hard to get a bill. The distinguished Senator from Wyoming has done a fine job on it. We have about 12 million illegal people in this country and we need to take steps to stop more from coming in. It is not fair for those who would come under a normal quota to be denied entrance and let the others come in illegally. I hope the Senator would think over this carefully and see clear to let us put it on this bill now so it will go to conference so the entire House can vote on it and not have a separate conference. If not, I am afraid it will be thwarted as it has three different times in the past.

Mr. RIEGLE. Mr. President, I just say to the Senator from South Carolina, also for whom I have great regard, that my position has not changed. I do not think this is an appropriate measure to attach at this hour of the night to this drug bill. I think it would create problems for the drug bill. I happen to have substantive disagreements with aspects of the immigration bill. I opposed it when it passed here before, and so I am just not in a position to agree to it tonight.

AMENDMENT NO. 3075

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. Dole] proposes an amendment numbered 3075.

Mr. DOLE. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

To be added in the appropriate interdiction section:

"Sec. . Effective October 1, 1986 and ending September 30, 1987 the number of officers of the Marine Corps authorized under section 525(b)(1) of Title 10, United States Code, to be on active duty in the grade of lieutenant general is increased by one. This authorization of lieutenant general is contingent on a Marine Corps lieutenant general serving as Director of the Department of Defense Task Force on Drug Enforcement."

Mr. DOLE. Let me indicate what this amendment does. During consideration of the DOD authorization bill, the Department of Defense requested and received an overage in the number of general officers in anticipation of an Army lieutenant general filling the job as director of their task force on drug enforcement. The bill's language specifies this overage is for an Army officer only. They have now selected a Marine officer, so I do not think there is any problem with this. I understand it has been cleared on both sides.

Mr. THURMOND. Mr. President, we are willing to accept it.

Mr. NUNN. Will the Senator yield for a question? I do not in any way object to adding a Marine officer, but do you subtract an extra Army officer from that?

Mr. DOLE. It does not subtract, I am advised.

Mr. NUNN. I had made it known earlier that we need to have a subtraction if we are going to have an addition. Otherwise, you have provided an extra Army officer for a job that is no longer in the Army.

The PRESIDING OFFICER. Is there further debate?

Mr. DOLE. Let me check the amendment.

Mr. NUNN. Mr. President, if the majority leader will assure that that technical amendment could be added, we could get unanimous consent later to that the amendment. I think that was the intention and that is what I had discussed earlier.

Mr. DOLE. Let me hold the amendment—somebody else can offer an amendement—and we can do it later.

The PRESIDING OFFICER. Is the majority leader asking unanimous consent to lay the amendment aside?

Mr. DOLE. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3076

(Purpose: To authorize the Secretary of Agriculture to expand law enforcement programs necessary to prevent the manufacture, distribution, or dispensing of marijuana and other controlled substances on National Forest System lands)

Mrs. HAWKINS addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mrs. HAWKINS. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Florida [Mrs. Hawkins] proposes an amendment numbered 3076.

Mrs. HAWKINS. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title III, add the following new subitle:

Subtitle *—National Forest System Drug Control

SEC. 3**1. SHORT TITLE.

This subtitle may be cited as the "National Forest System Drug Control Act of 1986".

"SEC. 3**2. PURPOSE.

(a) The purpose of this subtitle is to authorize the Secretary of Agriculture (hereinafter in this subtitle referred to as the "Secretary") to take actions necessary, in connection with the administration and use of the National Forest System, to prevent the manufacture, distribution, or dispensing of marijuana and other controlled substances.

(b) Nothing in this subtitle shall diminish in any way the law enforcement authority of the Forest Service.

(c) As used in this subtitle, the terms "manufacture", "dispense", and "distribute" shall have the same meaning given such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SEC. 3**3. POWERS.

For the purposes of this subtitle; if specifically designated by the Secretary and specially trained, not to exceed 500 officers and employees of the Forest Service when in the performance of their duties shall have authority within the boundaries of the National Forest System to—

(1) carry firearms;

(2) conduct investigations of violations of and enforce section 401 of Controlled Substances Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(3) make arrests with a warrant or process for misdemeanor violations, or without a warrant or process for violations of such misdemeanors that any such officer or employee has reasonable grounds to believe are being committed in his presence or view, or for a felony with or without a warrant if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony;

(4) serve warrants and other process issued by a court or officer of competent jurisdiction;

(5) search without warrant or process any person, place, or conveyance according to Federal law or rule of law; and

(6) seize without warrant or process any evidentiary item according to Federal law or rule of law.

SEC. 3**4. COOPERATION.

For the purposes of this subtitle, in exercising the authority provided by section 3**3—

(1) the Forest Service shall cooperate with any other Federal law enforcement agency having primary investigative jurisdiction over the offense committed; and

(2) the Secretary may authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision in the investigation of violations of and enforcement of section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, both within and outside the boundaries of the National Forest System.

SEC. 3**5. PENALTY.

Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by adding to the end thereof the following subsection:

"(e)(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more then 10 years and shall be fined not more than $10,000.

"(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years and shall be fined not more than $20,000.

"(3) For the purposes of this subsection, the term 'boobytrap' means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached."

SEC. 3**6. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $20,000,000 for each fiscal year to carry out this subtitle.

SEC. 3**7. APPROVAL OF SECRETARY OF AGRICULTURE AND ATTORNEY GENERAL.

The authorities conferred herein shall be exercised pursuant to an agreement approved by the Secretary of Agriculture and the Attorney General.

Mrs. HAWKINS. Mr. President, the amendment I am offering today addresses a problem that threatens the safety of the thousands of Americans who visit and work in our national forests, it is the problem of marijuana cultivation on the national forests by a ruthless criminal element. My amendment would give the Forest Service the tools necessary to attack this threat including new authority to investigate and enforce violations of the Controlled Substance Act and clarification of current Forest Service law enforcement authorities including the right to carry firearms and serve and process warrants. The need for this amendment is dramatically pointed out by reports I have received of recent incidents on national forests.

Mr. President, the growing season for cannabis is almost over. The Forest Service will not be able to compile new statistics for calendar year 1986 for some-time. Nonetheless, even a cursory look at some of the figures compiled by the Forest Service for 1985 will illustrate the scope of this problem.

Last year on one particular national forest, some 269 garden plots of cannabis or marijuana were known to have been planted by so-called growers. These plots were known to have yielded 25,550 plants. Forest Service records for this same forest also revealed that 39 arrests, 41 weapons, and 9 boobytraps were associated with illegal cannabis activities. Further, cannabis growers were known to have fired upon law enforcement personnel employing helicopters for surveillance on four separate occasions, and growers were known to have fired 17 shots at law enforcement personnel.

Even more alarming than these stark statistics is the fact that cannabis growers are commonly using boobytraps and other homemade weapons to protect their plots. These devices, although often crudely built, have one purpose and one purpose only and this is injure, maim, or even kill. For example, these boobytraps range from a rattrap shotgun shell type, which was designed to fire if the trap was set off, to fishhooks strung out with monofilament line to injure anyone making contact.

Other serious effects recorded by the Forest Service in the examples I am citing include the following: At least three fires where known to have been started by these growers. A conservation estimate of five trees—over 6" DBH—per garden for a total of 1,345 trees were cut down by cannabis growers. The growers cut the trees because plots need sunlight to reach the plants, even while a certain degree of camouflage is required, and because the growers usually construct some type of shelters.

Wilderness areas are not immune from these activities. In fact, the Forest Service indicates that roadless areas, as well as roads closed for wildlife protection, have become increasingly attractive to cannabis growers for use as garden sites. In some instances, growers go into wilderness areas with4-wheel vehicles, three-wheel ORV's, and motorcycles.

Wildlife is especially vulnerable. Over 200 cases of wildlife violations were observed by the Forest Service. Every garden in this instance had two or more methods of killing animals coming onto or ranging near cannabis plots. Large rattraps were the most common with an average of one plus rattraps per plant.

Many gardens had two traps per plant. Also three dozen steel leghold traps were removed, and the poison Decon and other brands were present in almost every garden plot including poison bait. One grower with 325 plants had put out five cases of rattraps and three cases of Decon. That grower had placed traps not only in the garden plot but up to 100 feet around the outside perimeter, too.

Water sources are also impacted. Growers deposit into streams, both directly and indirectly, a wide variety of fertilizers, insecticides, rat and deer poisons, human waste, detergents, and remains of animals killed.

Finally, Mr. President, there are the dangers posed to innocent and unaware visitors, private contractors engaged in legitimate business activities, and Forest Service employees trying to carry out their land management responsibilities. In this particular example, the Forest Service recorded approximately two dozen complaints from recreationists who suddenly found themselves in or near an area of cannabis activity.

One very close call occurred when a deer hunter stumbled onto a cannabis garden and camp. He was confronted by armed men and also very nearly set off a boobytrap. Officers found that the tripwire was attached to a trap armed with a 12-gauge shotgun shell.

Mr. President this amendment inflects changes brought about by several days of negotiation.

The amendment provides for new enforcement authorities for the Forest Service. These enforcement authorities are limited to preventing the cultivation of marijuana on national forest lands. Further, this amendment provides that those employees of the Forest Service must be specially trained; specially designated for the purpose of the act.

The amendment limits Forest Service enforcement and investigatory activities to within the boundaries of the National Forest System lands.

Finally, the amendment has been modified to require any authorities conferred on the Forest Service to be exercised pursuant to an agreement approved by the Secretary of Agriculture and the Attorney General.

In its modified form the amendment is supported by the administration.

I understand that the amendment is acceptable to the distinguished managers on both sides. I ask for its adoption and thank my colleagues for their support.

Mr. BIDEN. That is correct.

Mr. CHILES. We have cleared it on this side.

Mr. THURMOND. Mr. President, we have no objection.

Mr. HELMS. Mr. President, I strongly support the amendment offered by the distinguished Senator from Florida [Mrs. HAWKINS].

Mr. President, this amendment expressly addresses the problem of marijuana production of our national forest lands. It is estimated, Mr. President, the marijuana grown in the National Forest System accounts for 20 to 30 percent of all the marijuana grown in the United States; this is a substantial increase from 5 percent in 1980.

Not only is more marijuana originating from our National Forest System, but also the nature of marijuana cultivation has taken a sinister turn. The marijuana plots and plantations we now find on our public lands are no longer tended by a few solitary hippies. Instead these illicit operations are increasingly sophisticated and large in scale, and their caretakers have proven extremely dangerous to innocent people who stumble across their path.

Mr. President, the marijuana crop being produced is of higher quality than in the past, and of greater value. For this reason, cultivators have turned increasingly dangerous, and employ more sophisticated growing techniques. The GAO, in a November 1984 report, confirmed this shift toward increased sinsemilla production, a marijuana product which yields higher levels of the psychoactive, element, THC. The GAO went on to report that the successful marijuana grower could garner $3,350 from a single sinsemilla plant. Law enforcement officials, using various values ranging from $1,000 per plant to $2,500, would price a healthy plot of 150 plants at between $150,000 to $375,000.

Unfortunately, the element of danger posed by the marijuana grower is proportional to the value of his crop. The trend toward violence by these criminals is up, and they employ the most brutal means to safeguard their illegal crop. The Forest Service has reported a bewildering array of booby traps associated with the marijuana plots. These dangerous devices include pipe bombs, punji pits, shotgun shell booby traps, guard dogs, and fishing hooks dangled at eye level from monofilament lines. So insidious are these devices and the criminals that deploy them, that according to George Dunlop, Assistant Secretary of Agriculture for Natural Resources and Environment, who oversees the Forest Service, on close to a million acres of national forest lands' normal recreation and land management activities have been severely affected. In a Washington Post article, September 25, 1986, Ward Sinclair reported that in the Klamath National Forest a path of marijuana was discovered, "with individual plants wired to explosives that would detonate if the plants were touched."

Mr. President, I ask unanimous consent that the Washington Post article by Ward Sinclair be included in the RECORD following my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. In a September 30, 1982, hearing before a subcommittee of the Agriculture Committee, chaired by Senator S.I. Hayakawa, the Forest Service indicated its concerns with marijuana production were threefold: First, and most important, is the threat posed to law-abiding citizens using the national forests, and the Forest Service employees. Second, these marijuana plantations adversely affect the surrounding environment by the associated indiscriminate use of pesticides and herbicides, and third, these illegal operations conflict with the Forest Service's ability to properly manage these lands.

As the situation now stands, the Federal Government and the American taxpayer, through ownership of these national forest lands, are the unwitting accomplices to the criminal marijuana grower. The marijuana cultivator has every reason to use our public lands for growing his illegal crop. Generally, these lands are remote, and enforcement authorities cannot seize these lands as they would private property, and of course it is more difficult to link a marijuana patch on public lands to the identity of the grower.

Mr. President, clearly we cannot tolerate this situation. This amendment will put a stop to the flood of marijuana that corrupts our moral fiber, threatens our health, and ruins the potential of our country's children. This amendment provides the U.S. Forest Service the authority to aggressively halt the production of marijuana and other dangerous drugs now taking place in our National Forest System.

Specificially, Mr. President, the amendment will permit the Secretary of Agriculture to designate a limited number of well-trained Forest Service employees to investigate and enforce laws relating to the production and processing of illicit drugs. While performing their drug enforcement duties these well-trained employees could carry firearms, serve and process warrants, and search and seize without a warrant.

This legislation would also amend the Controlled Substances Act so that criminals employing booby traps to protect their drug plots or drug processing facilities could receive severe prison sentences and/or fines.

Now, Mr. President, some of my distinguished colleagues have expressed concerns that this amendment grants the Forest Service far-reaching powers that may prove coercive. Specifically, some fear the authority that permits the Forest Service to enforce drug laws on private lands adjacent to national forest lands. Let me explain the need for this authority. Often our national forests are not solid continuous blocks of public land. Instead private lands are often interspersed among national forest lands, and criminals often use this to their advantage by growing the marijuana on public land and supporting the process from adjacent private lands, or vice versa. Also, Mr. President, this amendment focuses strongly on the cooperative aspects of drug enforcement. The Secretary of Agriculture would be required to cooperate with other Federal law enforcement agencies.

Let me conclude with the reassurance that only specially trained and specifically designated Forest Service personnel would carry firearms, serve warrants, conduct searches and seizures, and enforce title 21 of the Controlled Substances Act. Before assuming their duties, these employees would receive special training such as now is provided to many other law enforcement authorities at the Federal Law Enforcement Training Center at Glynco, GA.

Mr. President, it utterly confounds me that criminals have so successfully used our public lands to grow their poisonous crop, and not only do they profit at our expense, they also prevent the public from safely using these lands. If a private landowner allowed criminals to grow marijuana on his land, that landowner could be arrested and/or his property seized. It's about time the Federal Government assume the same responsibilities we expect of private landowners.

Mr. President, let me reiterate that it has been estimated that about 30 percent of all marijuana in the United States is produced on Forest Service land.

At the present time, officials' hands are tied in going after the massive violations of our laws on Forest Service lands.

Indeed, almost 1 million acres have been declared off limits to the general public because of the danger in some of these—generally remote—areas where drugs are grown.

If we want to reduce the availability of drugs to our Nation's young people, we need to go after the source. And, unfortunately, one of the primary sources is in our national forests.

The 500-person team authorized by the legislation is a small, but significant, effort in light of the overall number of Forest Service personnel numbering 40,000.

Mr. President, essentially this amendment would bring the Forest Service up to the same level of law enforcement authority in drug-related cases that is already quite common in other areas of the Department of Agriculture and within the National Park Service of the Department of the Interior.

For instance, Mr. President, the Office of Inspector General was authorized in the 1981 farm bill to have arrest and firearms authority in the investigation of various crimes under USDA statutes. These have involved primarily food stamp trafficking cases and certain meat inspection cases. Additionally, tick eradication officers have been given firearms authority because of the occasional danger posed by their inadvertent discovery of armed illegal aliens.

Certainly the hazard to Forest Service employees is at least as dangerous as these other serious instances which have necessitated arrest and firearms authority.

Additionally, the National Park Service has broad authority for a wide range of arrest authority on national park lands.

This amendment establishes such authority for Forest Service employees only in the cases involving prevention of the manufacture, distribution, or dispensing of marijuana or other controlled substances.

I have heard from various Forest Service employees on the frontlines who would welcome this authority, and I believe the Senate should convey this limited authority in an effort to preserve our national forest lands.

Mr. President, I want to emphasize that the authority for Forest Service personnel to engage in these antidrug activities is limited to personnel specifically designated by the Secretary of Agriculture and specially trained for these law enforcement activities.

Additionally, these authorities are conveyed only when they are "in the performance of their duties."

Mr. President, I also think it should be understood that the primary reason that Forest Service personnel would have law enforcement authority outside of the boundaries of the Forest Service lands would be to pursue persons who had engaged in illegal activities on Forest Service lands. This is commonly known as a doctrine of hot pursuit.

For instance, many Forest Service lands are in remote areas and are contiguous to private lands. Such criminals might flee Forest Service lands, and, of course, law enforcement agents of the Forest Service should be able to pursue them.

Additionally, occasions may arise when other participants in the drug-related violations will need to be apprehended. The Forest Service is required to cooperate with other law enforcement authorities with primary jurisdiction over such violations in these cases.

Mr. President, the provision also specifies that the designation of personnel to exercise these authorities is to be made pursuant to an agreement approved by both the Secretary of Agriculture and the Attorney General of the United States.

A similar requirement is in effect for the authority granted to the Office of Inspector General of the Department of Agriculture. Under that authority—(granted in the 1981 farm bill, P.L. 97-98—the Attorney General has 30 days in which to disaprove any designation of the Inspector General. It would be the expectation that a similar disapproval period would be established for the Attorney General to respond expeditiously to the Secretary's request for such authority. Obviously, with the present Attorney General, I feel certain that all means of cooperation will be followed. I should also note that it is expected that this approval authority would not be delegated to agency heads, but would remain with the Attorney General. I am concerned that we not develop any type of turf battle with agencies such as the Drug Enforcement Agency within the Justice Department. We want an expansion of drug enforcement efforts, not competition between jealous agencies.

EXHIBIT 1

USDA SEEKS ARMED TEAMS TO RID FORESTS OF DRUG CROP

(By Ward Sinclair)

Marijuana growers have taken over almost 1 million acres of the national forest system, forcing an outgunned and intimidated Agriculture Department to declare the tracts "unmanageable" and to close them to the public.

As a result, the USDA is asking Congress to authorize the arming of special teams of U.S. Forest Service agents and give them sweeping powers against marijuana growers.

The intent, according to George S. Dunlop, the assistant secretary of agriculture who oversees the Forest Service, is to give the agency more muscle to deal with marijuana growers, who are increasingly apt to protect their pot patches with guns, booby traps, land mines and attack dogs.

"The problem is getting to be nationwide," Dunlop said, "but it is most severe in California. North Carolina, Arkansas, Florida and Missouri are other areas with the most serious problems. . . . Because our enforcement powers are limited, the forests have become a safe haven for these people."

"Our present enforcement activity is limited to eradicating the marijuana plants—we go in and rip them up. But that is not working," Dunlop added. "When a forest supervisor finds booby traps or guard dogs, he says, 'We won't manage that area or let the public into the area.' "

Dunlop said an increase in marijuana growing by "a dangerous criminal element" has forced the Forest Service to close 946,000 acres of its 191 million-acre system.

The assistant secretary said the Forest Service relies on state and local police agencies for enforcement help. But he said Forest Service employes have been injured in shootouts and that some of them, although not empowered to do so, occasionally have used firearms to defend themselves.

Dunlop agreed that the USDA could use other federal drug enforcers to help regain control of the forests. But he said giving the Forest Service new enforcement powers would "assure that any activity is done consistent with our forest management role . . . so we don't turn Smokey the Bear into a law enforcement agent."

Paul Steensland, a Forest Service law enforcement official in San Francisco, said there has been occasional violence in an area of California known as the "Emerald Triangle," which covers national forest in Humboldt, Trinity and Mendocino counties and is the largest illicit growing area in the forest system.

Steensland said the shooting of a ranger and the burning of two guard stations in Shasta-Trinity National Forest led to the formation of a team of Forest Service agents and sheriff's deputies who have "recaptured" about 40,000 acres once deemed unmanageable.

"We finally said 'no more' after those incidents, and the effort has been successful," Steensland said.

In the adjacent Six Rivers National Forest in Humboldt County, Steensland said, the team this year has seized 6,000 marijuana plants, arrested 12 growers and confiscated 16 firearms. But the growers are persistent. A marijuana patch was found this week, near a road in the Klamath National Forest, with individual plants wired to explosives that would detonate if the plants were touched, Steensland said.

According to Dunlop, an estimated 20 percent of the de[omestic marijuana crop is produced in forest areas deemed "out of control" and too dangerous for the public and forest rangers to enter.

The USDA's figures show that in 1980, marijuana was being grown on 220,000 acres of Forest Service land. By last year, 946,000 acres were involved and Forest Service rangers destroyed marijuana plantings at 2,692 sites. Eradication work cost the agency $830,000 last year, compared to $96,000 in 1981.

A bill drafted by the USDA at the request of Senate Agriculture Committee Chairman Jesse Helms (R-N.C.) would empower the USDA to create special drug enforcement teams. It would establish fines and prison terms for possession of firearms or the use of dangerous devices such as booby traps related to marijuana growing or other illegal drug-related activities in forests.

Dunlop said the Reagan administration has not given its formal approval to the proposal, which was introduced this month by Sen. Paula Hawkins (R-Fla.).

Under the bill, the secretary could designate Forest Service employees to carry firearms; serve and process warrants; make arrests, searches and seizures without warrants. The secretary could extend these powers to other unspecified federal employees to assist the Forest Service.

Forest Service agents could pursue suspects outside the boundaries of the national forests and independently investigate violations of forestry laws and regulations.

Although the bill was referred to Helms' Agriculture Committee for action, a committee spokesman said the Forest Service plan probably will be included in a Senate version of broad new drug-enforcement legislation adopted by the House earlier this month.

Mr. DOLE. Has the amendment of the Senator from Florida been adopted?

The PRESIDING OFFICER. Not yet. The question is on agreeing to the amendment of the Senator from Florida.

The amendment (No. 3076) was agreed to.

Mr. DOLE. I move to reconsider the vote by which the amendment was agreed to.

Mr BIDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 0110

Mr. DOLE. Mr President, the pending business is my amendment. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. I am advised by the distinguished Senator from Georgia that there is no problem with the amendment.

Mr. NUNN. Under the statutory provisions, the slot I was concerned about would be automatically eliminated.

Mr. DOLE. That is my understanding.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas.

The amendment (No. 3075) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3077

(Purpose: To provide a mandatory minimum sentence for juvenile drug traffickers)

Mr. LEVIN. Mr. President, I send an amendment to the desk on behalf of myself and Senator DECONCINI.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN], for himself and Mr. DECONCINI, proposes an amendment numbered 3077.

Mr. LEVIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

An amendment to Section 1102 of H.R. 5484 by striking all after the word "by" on line 23, page 19 through the word "offense" on line 1, page 20, and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to twice that authorized by section 401(b) of this title, or twice the fine authorized by section 401(b) of this title, or both, and at least twice any special parole term authorized by section 401(b) of this title for a first offense."

H.R. 5484 is amended in section 1102 by striking all after the word "by" on line 5, page 20, through the word "section" on line 10, page 20, and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to three times that authorized by section 401(b) of this title for a first offense under that section, and at least three times any special parole term authorized by section 401(b) of this title for a first offense under that section."

H.R. 5484 is further amended by adding a new section 1105 as follows: "section 405 of the Controlled Substances Act is further amended by striking in paragraph (a) all after the second word "by" and inserting lieu thereof the following: "a term of imprisonment of not less than one year and up to twice that authorized by section 401(b), a fine up to twice that authorized by section 401(b) or both."

H.R. 5484 is further amended by adding a new section 1106 as follows: "Section 405 of the Controlled Substances Act is amended by striking in paragraph (b) all after the second word "by" and adding the following in lieu thereof: "a term of imprisonment of not less than one year and up to three times that authorized by section 401(b), and a fine of up to three times that authorized by section 401(b), or both. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving five grams or less of marijuana."

H.R. 5484 is further amended by adding a new section 1108 as follows: "Section 405A of the Controlled Substances Act is amended by striking all after the second word "by" and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to twice that authorized by section 401(b), a fine up to twice that authorized by section 401(b) or both; and (2) at least twice any special parole term authorized by section 401(b) for a first offense involving the same controlled substance and schedule. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving five grams or less of marijuana."

Mr. LEVIN. Mr. President, the amendment is straightforward. I understand it has been agreed to by both sides.

The amendment would require that any person convicted of an offense involving the distribution of drugs to children, the manufacture or distribution of drugs near schools, or the employment or use of children to distribute drugs would face a mandatory minimum of a year in prison. All other penalty provisions would be unaffected in the pending bill.

I note that this amendment relates only to distribution of drugs, and it relates to offenses involving children or schools. Unfortunately, there is no provision that would require mandatory minimum penalties for a certain offense involving distribution of controlled substances such as heroin and crack to children, and this amendment would fill that gaping hole.

Mr. THURMOND. Mr. President, we are willing to accept the amendment.

Mr. CHILES. We accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3077) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LEVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3078

(Purpose: To provide for the inclusion of certain drug-related information on passports)

Mr. HELMS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina [Mr. HELMS] proposes an amendment numbered 3078:

At an appropriate place in the bill, add the following:

SEC. . The first section of the Act entitled "An Act to regulate the issue and validity of passports, and for other purposes", approved July 3, 1926 (22 U.S.C. 211a) is amended by adding at the end thereof the following:

"The Secretary of State shall prescribe such regulations as shall be necessary to establish procedures for indicating on passports issued by the United States the fact that the holder of such passport has been convicted of an offense under a Federal or State law relating to controlled substances or has been assessed a fine or civil penalty or has incurred a forfeiture under any Federal or State law relating to controlled substances.".

Mr. HELMS. Mr. President, I discussed this amendment earlier with the distinguished managers of the bill, the chairman and Mr. BIDEN.

This amendment would require a special identifying mark in the passports of those who have been involved in drug offenses under Federal or State law. With such a mark in their passports, individuals who have a history of drug offenses can then be carefully scrutinized by the Customs Service as they reenter the United States from abroad. This requirement, I believe, will be a powerful deterrent against further drug crimes by previous offenders.

Mr President, it has been reported to me that more than 289 million people entered the United States in 1985. U.S. Customs officials are faced with the difficult task of identifying those persons engaged in international transportation of narcotics and dangerous drugs. To this end, they have developed methods of identifying violators based on their appearance, actions, or documentation in their possession.

My amendment, Mr. President, would give Customs officials a new and effective tool in identifying potential drug violators.

Mr. President, it is my intention that this amendment authorize and require the Secretary of State not only to mark newly issued passports but to recall existing passports and mark them as drug-related convictions occur. This second feature obviously will take a major effort by the State Department, but I believe the results will justify the effort. As to the details of carrying out the marking of passports proposed, the amendment leaves them to the discretion of the Secretary of State.

I urge adoption of the amendment.

Mr. BIDEN. Mr. President, it is true that the Senator from North Carolina did indicate to me earlier this evening his intention to move this amendment. At first blush, it seemed very appealing to me, and I told the Senator at that time that I was inclined to look favorably on it. I later told him I could not support it.

Let me suggest, first of all, that I truly commend the Senator for what he is attempting to do here. But this is like having a magic wand to find out who are the major drug dealers in the country and those from abroad as they pass through our borders.

The problem is that most dealers do not have legal passports. They have false passports, to begin with. The major dealers in this country who are American citizens or foreign nationals travel under false passports. So it would not get those folks.

Second, the concern I have here is that the amendment says: "convicted of an offense under a Federal or State law relating to a controlled substance or has been assessed a fine or a civil penalty."

My concern is that we have a notion in this country that once one is convicted of a crime and serves their time, society, with rare exceptions, other than those cases where there are jobs requiring certain security clearance or where there is a requirement that exceeds something related to the particular nature of the crime, we treat them as if they have served their time. They have in fact paid their penalty, their price to society, and are whole again.

The problem here is that not only would it not require a criminal offense, but if there had been a civil penalty imposed, it would be stamped on the passport. From that moment on, the passport, the official means by which people are able to ingress and egress their own country—they would be a marked person for the rest of their life.

First, it seems to me not to solve the problem, which is the well-intended aim of the Senator from North Carolina, which is to get at these people who are flying back and forth and trafficking in drugs. Second, it would violate the basic assumptions upon which we have allowed our criminal justice system to function and the way we treat people under our laws once they have served their time.

Last, it does not guarantee that there would be equal application. As the Senator from North Carolina may or may not know, not all of the State offenses are automatically plugged into the Federal keyboard, so to speak, so that there would be many times when the Secretary of State, who is the one in charge of this, establishing the procedures—there would be times when somebody is convicted in a State and those records have been moved up to the Federal level and they might have this on their passport; and someone convicted of a more heinous crime in the area of drugs would not have it on their passport.

The last thing I suggest to my colleagues is that we are in a situation where right now the Federal Government, the agents of the Federal Government, have access to computers that they can punch out to, in effect, identify those people who are known traffickers and who are major traffickers in the business.

□ 0120

Those people are repeated offenders, those people who we are seeking to get to.

I would suggest that, and I respectfully make this suggestion, maybe the Senator from North Carolina would be willing to work with the Senator from Delaware, and others, like Senator DeConcini, who have expressed interest in this area and Senator Hawkins and others, to work out a system whereby we are able to have the Federal Government and the Federal agencies involved get greater and quicker access to records of individuals who are brought under suspicion.

When someone is trying to transit the border there are many times the customs agents have concern and wonder about the nature, because of a suspicious nature, because, of some action they take or do not take, to be able to punch up that person rapidly and determine whether or not they are either out on bail, they are in fact fugitives from the law, they are in fact known traffickers, one thing. But to carry like a scarlet letter on your passport the rest of your life, the notion that you are a drug dealer which would be the implication or you are a convicted drug felon, it would not even say that. If you had a civil penalty, the scarlet letter would be pasted on the passport and the passport to America is as close to a sacred document as one can get. It is something that is revered, something that means a great deal, something that is with them for the rest of their life.

So I would suggest, and I say this respectfully to my colleague from North Carolina, that maybe he would consider withdrawing the amendment so that could work out a means by which we could more appropriately get at what I know he intends to do, and that is to identify people.

Mr. EAGLETON. Mr. President, will the Senator yield for a question?

Mr. BIDEN. I yield for a question, yes.

Mr. EAGLETON. Does the amendment of the Senator from North Carolina, as the Senator reads it, differentiate between a crime, shall we call it, of greate severity and a civil penalty insofar as the mark which will be affixed on the passport?

Mr. BIDEN. The answer is, and the Senator from North Carolina would be better able to answer, on the face of it it clearly does not do that. I say one more thing you would be able to if you were convicted of having two grams of marihuana when you were 19 years old, which is not something to take lightly, I am not suggesting, or you would now have this scarlet letter on your passport, but if you had been a convicted murderer who had been paroled and then given a passport, you would not have that on your passport.

Mr. EAGLETON. Mr. President, will the Senator yield for another question?

Mr. BIDEN. I surely will.

Mr. EAGLETON. Is the Senator aware that in many States civil penalties for controlled substance violations, civil penalties I emphasize, are sometimes as low as $25, $50, and $100?

Mr. BIDEN. The Senator from Delaware is aware of that.

Mr. EAGLETON. Is the Senator from Delaware aware that aggregate parking meter violations in the District of Columbia sometimes can exceed $100?

Mr. BIDEN. Not from experience, I am not awared of it.

Mr. EAGLETON. I have it only by hearsy.

And the Senator from Delaware is aware that under the Helms proposal a murderer is not branded with the scarlet letter, a kidnaper who has his passport restored is not so branded, and embezzler is not so branded, but here in this Helms amendment even for a civil penalty as low as $25 or $50 he is branded.

Now, since I have used the word "branded," I just wonder out loud to the Senator from Delaware and within earshot to the Senator from North Carolina: would it not be better if he would just brand them on their forehead, in the manner of cattle, and then not have to deal with the passport document at all?

Mr. BIDEN. I say to my friend from Missouri that I do not think that is really what the Senator from North Carolina is attempting to do.

I think what he is attempting to do is a serious effort to deal with the genuine problem, the genuine problem in that we have known traffickers who, in fact, are transiting the border without us having any access to determine what their background or their business is.

I just would suggest that I do not believe as well intended as the Senator is that this amendment accomplishes that, and quite frankly, I think it goes well beyond that point.

So I say to my friend from North Carolina, I would have to object to the amendment and urge my colleagues to vote against it, but I hope he considers maybe taking the amendment down to see if we could work out something dealing with what is a real problem which is a lack of access of information for INS officers or customs officers of the nature that they should have available to them, in the opinion of the Senator from Delaware.

Mr. HELMS. The Senator makes a reasonable proposition. At least, the Senate has considered it for these brief moments. Maybe we ought to have a brand on Senators' foreheads who talk too much. We might consider that.

Mr. GRAMM. We would need 100.

Mr. HELMS. But the proposition is not to brand anybody. It is to help the customs people who had to deal with 289 million people last year.

Now, anybody in his right mind who believes they are going to punch up on a computer, even if they have one, 289 names, is out of his mind.

I am perfectly willing to work out something that will be reasonable and feasible.

But I do not accept ridiculing of a legitimate idea. I do not like it and I do not do that to other Senators when they offer amendments.

But since the Senator has made a gracious offer, I will accept it and I will withdraw the amendment with the understanding that we work on the prospects of accomplishing something like this.

Mr. BIDEN. I say to the Senator, and I appreciate that, I hope he did not think I was ridiculing him.

Mr. HELMS. I was certainly not talking about the Senator from Delaware.

Mr. BIDEN. What I do not want to do, though, is I do not want to hold out the notion that we can work this out this evening on this bill.

Mr. HELMS. Oh, no.

Mr. BIDEN. I make a commitment I do not. I say to the majority leader, having apoplexy, I say I am not seeking that.

I do suggest if it is agreeable to the Senator, I commit to the Senator that I will as a member, as either a ranking member or probably ranking member of the Judiciary Committee—even were I the chairman, I would be the ranking member, as long as Senator

THURMOND is there—I think it is something we should hold hearings on. We have touched on it and I promised the Senator from North Carolina I will work with him and try to work something out.

Mr. HELMS. Fair proposition.

Mr. President, I withdraw the amendment.

The PRESIDING OFFICER. The Senator from North Carolina withdraws his amendment. The amendment is withdrawn.

AMENDMENT NO. 3079

(Purpose: To establish the American Conservation Crops)

Mr. MATHIAS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Maryland [Mr. MATHIAS] for himself and Mr. MOYNIHAN proposes amendment number 3079.

Mr. MATHIAS. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert the following new subtitle:

Subtitle * —American Conservation Corps Act of 1986

SECTION *01. SHORT TITLE.

This subtitle may be cited as the "American Conservation Corps Act of 1986".

SEC. *02. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) conserving or developing natural and cultural resources and enhancing and maintaining environmentally important lands and waters through the use of the Nation's young men and women is beneficial not only to the youth of the Nation by providing them with education and work opportunities but also for the Nation's economy and its environment; and

(2) through this work experience opportunity, the Nation's youth will further their understanding and appreciation of the natural and cultural resources in addition to learning basic and fundamental work ethics including discipline, cooperation, understanding to live and work with others, and learning the value of a day's work for a day's wages.

(b) PURPOSE.—It is the purpose of this subtitle to—

(1)(A) enhance and maintain conservation, rehabilitation, and improvement work on public lands and Indian lands,

(B) improve and restore public lands and Indian lands, resources, and facilities,

(C) conserve energy, and

(D) restore and maintain community lands, resources, and facilities;

(2) establish an American Conservation Corps to carry out a program to improve, restore, maintain, and conserve these lands and resources in the most cost-effective manner;

(3) assist State and local governments and Indian tribes in carrying out needed public land and resource conservation, rehabilitation, and improvement projects;

(4) provide for implementation of the program in such manner as will foster conservation and the wise use of natural and cultural resources through the establishment of working relationships among the Federal, State, and local governments, Indian tribes, and other public and private organizations; and

(5) increase (by training and other means) employment opportunities for young men and women including, but not limited to, those who are economically, socially, physically, or educationally disadvantaged and who may not otherwise be productively employed.

SEC. *03. DEFINITIONS.

For purposes of this subtitle:

(1) The term "public lands" means any lands or waters (or interest therein) owned or administered by the United States or by any agency or instrumentality of a State or local government.

(2) The term "program" means all activities carried out under the American Conservation Corps established by this subtitle.

(3) The term "program agency" means any agency designated by the Governor to manage the program in that State, and the governing body of any Indian tribe.

(4) The term "Indian tribe" means any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior. Such term also includes any Native village corporation, regional corporation, and Native group established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1701 et seq.).

(5) The term "Indian" means a person who is a member of an Indian tribe.

(6) The term "Indian lands" means any real property owned by an Indian tribe, any real property held in trust by the United States for Indian tribes, and any real property held by Indian tribes which is subject to restrictions on alienation imposed by the United States.

(7) The term "employment security service" means the agency in each of the several States with responsibility for the administration of unemployment and employment programs, and the oversight of local labor conditions.

(8) The term "chief administrator" means the head of any program agency as that term is defined in paragraph (3).

(9) The term "enrollee" means any individual enrolled in the American Conservation Corps in accordance with section *05.

(10) The term "crew leader" means an enrollee appointed under authority of this subtitle for the purpose of supervising other enrollees engaged in work projects pursuant to this subtitle.

(11) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(12) The term "economically disadvantaged" with respect to youths has the same meaning given such term in section 4(8) of the Job Training Partnership Act.

SEC. *04. AMERICAN CONSERVATION CORPS PROGRAM.

(a) ESTABLISHMENT OF AMERICAN CONSERVATION CORPS.—There is hereby established an American Conservation Corps.

(b) REGULATIONS AND ASSISTANCE.—Not later than 120 days after the date of enactment of this subtitle, the Secretary of the Interior and the Secretary of Agriculture, after consultation with the Secretary of Labor, shall jointly promulgate the regulations necessary to implement the American Conservation Corps established by this subtitle. Within 30 days after the enactment of this subtitle, the Secretary of the Interior and the Secretary of Agriculture shall establish procedures to give program agencies and other interested parties, including the public, adequate notice and opportunity to comment upon and participate in the formulation of such regulations. The regulations shall include provisions to assure uniform reporting on the activities and accomplishments of American Conservation Corps programs, demographic characteristics of enrollees in the American Conservation Corps, and such other information as may be necessary to prepare the annual report under section *10.

(c) PROJECTS INCLUDED.—The American Conservation Corps established under this section may carry out such projects as—

(1) conservation, rehabilitation, and improvement of wildlife habitat, rangelands, parks, and recreational areas;

(2) urban revitalization and historical and cultural site preservation;

(3) fish culture and habitat maintenance and improvement and other fishery assistance;

(4) road and trail maintenance and improvement;

(5)(A) erosion, flood, drought, and storm damage assistance and controls,

(B) stream, lake, and waterfront harbor and port improvement, and

(C) wetlands protection and pollution control;

(6) insect, disease, rodent, and fire prevention and control;

(7) improvement of abandoned railroad bed and right-of-way;

(8) energy conservation projects, renewable resource enhancement, and recovery of biomass;

(9) reclamation and improvement of strip-mined land; and

(10) forestry, nursery, and silvicultural operations.

(d) PREFERENCE FOR CERTAIN PROJECTS.—The program shall provide a preference for those projects which—

(1) will provide long-term benefits to the public;

(2) will instill in the enrollee involved a work ethic and a sense of public service;

(3) will be labor intensive; and

(4) can be planned and initiated promptly.

(e) LIMITATION TO PUBLIC LANDS.—Projects to be carried out by the American Conservation Corps shall be limited to projects on public lands or Indian lands except where a project involving other lands will provide a documented public benefit as determined by the Secretary of the Interior or the Secretary of Agriculture. The regulations promulgated under subsection (b) shall establish the criteria necessary to make such determinations.

(f) CONSISTENCY.—All projects carried out under this subtitle for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with the provisions of law and policies relating to the management and administration of such lands, with all other applicable provisions of law, and with all management, operational, and other plans and documents which govern the administration of the area.

(g) APPLICATION PROCEDURES.—(1) Each program agency may apply for approval to participate in the American Conservation Corps under this subtitle.

(2) Applications for participation in the American Conservation Corps on Federal

public lands shall be submitted to the Secretary of the Interior or the Secretary of Agriculture in such manner as is provided for by the regulations promulgated under subsection (b). Applications for participation in the American Conservation Corps on non-Federal public lands or Indian lands shall be submitted to the Secretary of the Interior. Applications for participation in the American Conservation Corps on projects on lands described in subsection (e) shall be submitted to the Secretary of Agriculture or the Secretary of the Interior as the case may be. No application may be submitted to the Secretary of the Interior or the Secretary of Agriculture before the 30-day period for review and comment by the appropriate State Job Training Coordinating Council (established under the Job Training Partnership Act), if any, which shall consult with the appropriate Private Industry Council, or Councils, in the area in which a project is carried out. Comments of the State Job Training Coordinating Council and Private Industry Council shall be forwarded to the Secretary at the time the grant application is submitted.

(3) Each application under this section must be approved by the Secretary of the Interior or the Secretary of Agriculture, as the case may be, and shall contain—

(A) a comprehensive description of the objectives and performance goals for the program, a plan for managing and funding the program, and a description of the types of projects to be carried out, including a description of the types and duration of training and work experience to be provided;

(B) a plan to make arrangements for certification of the training skills acquired by enrollees and award of academic credit to enrollees for competencies developed from training programs or work experience obtained under this subtitle;

(C) an estimate of the number of enrollees and crew leaders necessary for the proposed projects, the length of time for which the services of such personnel will be required, and the services which will be required for their support;

(D) a description of the location and types of facilities and equipment to be used in carrying out the programs; and

(E) such other information as the Secretary of the Interior and the Secretary of Agriculture shall prescribe.

(4) In approving the location and type of any facility to be used in carrying out the program, the Secretary of the Interior and the Secretary of Agriculture shall give due consideration to—

(A) the proximity of any such facility to the work to be done;

(B) the cost and means of transportation available between any such facility and the homes of the enrollees who may be assigned to that facility;

(C) the participation of economically, socially, physically, or educationally disadvantaged youths; and

(D) the cost of establishing, maintaining, and staffing the facility.

Every effort shall be made to assign youths to facilities. as near to their homes as practicable.

(5)(A) Every program shall have sufficient supervisory staff appointed by the chief administrator which may include enrollees who have displayed exceptional leadership qualities.

(B) No project shall be undertaken without the on-site presence of knowledgeable and competent supervision, and all projects undertaken shall be documented in advance in an approved written project plan.

(h) Local Participation.—Any State carrying out a program under this subtitle shall provide a mechanism under which local governments and nonprofit organizations within the State may be approved by the State to participate in the American Conservation Corps.

(i) Agreements.—Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(j) Joint Projects.—

(1) Department of labor.—The Secretary of the Interior and the Secretary of Agriculture are authorized to develop jointly with the Secretary of Labor regulations designed to allow, where appropriate, joint projects in which activities supported by funds authorized under this subtitle are coordinated with activities supported by funds authorized under employment and training statutes administered by the Department of Labor (including the Job Training Partnership Act). Such regulations shall provide standards for approval of joint projects which meet both the purposes of this subtitle and the purposes of such employment and training statutes under which funds are available to support the activities proposed for approval. Such regulations shall also establish a single mechanism for approval of joint projects developed at the State or local level.

(2) Department of defense.—The Secretary of the Interior, the Secretary of Agriculture, and program agencies may enter into agreements, jointly or separately, with the Secretary of Defense to assist the military by carrying out projects under this subtitle. Such projects may be carried out on a reimbursable basis or otherwise.

SEC. *05. ENROLLMENT, FUNDING, AND MANAGEMENT.

(a) Enrollment in Program.—(1)(A) Enrollment in the American Conservation Corps shall be limited to individuals who, at the time of enrollment, are—

(i) unemployed;

(ii) not less than 16 years or more than 25 years of age (except that programs limited to the months of June, July, and August may include individuals not less than 15 years and not more than 21 years of age at the time of their enrollment); and

(iii) citizens or nationals of the United States (including those citizens of the Northern Mariana Islands as defined in Public Law 98-213 (97 Stat. 1459)) or lawful permanent residents of the United States.

(B) Special efforts shall be made to recruit and enroll individuals who, at the time of enrollment, are economically disadvantaged.

(C) In addition to recruitment enrollment efforts required in subparagraph (B), the Secretary of the Interior and the Secretary of Agriculture shall make special efforts to recruit enrollees who are socially, physically, and educationally disadvantaged youths.

(D) Notwithstanding subparagraph (A), a limited number of special corps members may be enrolled without regard to their age so that the corps may draw upon their special skills which may contribute to the attainment of the purposes of the subtitle.

(2) Except in the case of a program limited to the months of June, July, and August, individuals who at the time of applying for enrollment have attained 16 years of age but not attained 19 years of age, and who are no longer enrolled in any secondary school shall not be enrolled unless they give adequate written assurances, under criteria to be established by the Secretary of the Interior and the Secretary of Agriculture, that they did not leave school for the express purpose of enrolling. The regulations promulgated under section *04(b) shall provide such criteria.

(3) The selection of enrollees to serve in the American Conservation Corps shall be the responsibility of the chief administrator of the program agency. Enrollees shall be selected from those qualified persons who have applied to, or been recruited by, the program agency, a State employment security service, a local school district with an employment referral service, an administrative entity under the Job Training Partnership Act, a community or community-based nonprofit organization, the sponsor of an Indian program, or the sponsor of a migrant or seasonal farmworker program.

(4)(A) Except for a program limited to the months of June, July, and August, any qualified individual selected for enrollment may be enrolled for a period not to exceed 24 months. When the term of enrollment does not consist of one continuous 24-month term, the total of shorter terms may not exceed 24 months.

(B) No individual may remain enrolled in the American Conservation Corps after that individual has attained the age of 26 years, except as provided in subsection (a)(1)(D) of this section.

(5) Within the American Conservation Corps the directors of programs shall establish and stringently enforce standards of conduct to promote proper moral and disciplinary conditions. Enrollees who violate these standards shall be transferred to other locations, or dismissed, if it is determined that their retention in that particular program, or in the Corps, will jeopardize the enforcement of such standards or diminish the opportunities of other enrollees. Such disciplinary measures will be subject to expeditious appeal to the appropriate Secretary.

(b) Services, Facilities, Supplies.—The program agency shall provide facilities, quarters, and board (in the case of residential facilities), limited and emergency medical care, transportation from administrative facilities to work sites, and other appropriate services, supplies, and equipment. The Secretary of the Interior and the Secretary of Agriculture may provide services, facilities, supplies, and equipment to any program agency carrying out projects under this subtitle. Whenever possible, the Secretary of the Interior and the Secretary of Agriculture shall make arrangements with the Secretary of Defense to have logistical support provided by a military installation near the work site, including the provision of temporary tent centers where needed, and other supplies and equipment. Basic standards of work requirements, health, nutrition, sanitation, and safety for all projects shall be established and enforced.

(c) Requirement of Payment for Certain Services.—Enrollees shall be required to pay a reasonable portion of the cost of room and board provided at residential facilities into rollover funds administered by the appropriate program agency. Such payments and rates are to be established after evaluation of costs of providing the services. The rollover funds established pursuant to this section shall be used solely to defray the costs of room and board for enrollees. The Secretary of the Interior and the Secretary of Agriculture and the Secretary of Defense are authorized to make available to program agencies surplus food and equipment as may be available from Federal programs.

SEC. *06. FEDERAL AND STATE EMPLOYEE STATUS.

Enrollees, crew leaders, and volunteers are deemed as being responsible to, or the responsibility of, the program agency administering the project on which they work. Except as otherwise specifically provided in the following paragraphs, enrollees and crew leaders in projects for which funds have been authorized pursuant to section *13 shall not be deemed Federal employees and should not be subject to the provisions of law relating to Federal employment:

(1) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to the compensation of Federal employees for work injuries, enrollees and crew leaders serving American Conservation Corps program agencies shall be deemed employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provision of that subchapter shall apply, except—

(A) the term "performance of duty" shall not include any act of an enrollee or crew leader while absent from his or her assigned post of duty, except while participating in an activity authorized by or under the direction and supervision of a program agency (including an activity while on pass or during travel to or from such post of duty); and

(B) compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee's or crew leader's employment is terminated.

(2) For purposes of chapter 171 of title 28, United States Code, relating to tort claims procedure, enrollees and crew leaders on American Conservation Corps projects shall be deemed employees of the United States within the meaning of the term "employee of the Government" as defined in section 2671 of title 28, United States Code.

(3) For purposes of section 5911 of title 5, United States Code, relating to allowances for quarters, enrollees and crew leaders shall be deemed employees of the United States within the meaning of the term "employee" as defined in that section.

SEC. *07. USE OF VOLUNTEERS.

Where any program agency has authority to use volunteer services in carrying out functions of the agency, such agency may use volunteer services for purposes of assisting projects carried out under this subtitle and may expend funds made available for those purposes to the agency, including funds made available under this subtitle, to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, subsistence, recruiting, training, and supervision. The use of volunteer services permitted by this section shall be subject to the condition that such use does not result in the displacement of any enrollee.

SEC. *08. TENNESSEE VALLEY AUTHORITY.

The Board of Directors of the Tennessee Valley Authority may accept the services of volunteers and provide for their incidental expenses to carry out any activity of the Tennessee Valley Authority except policymaking or law or regulatory enforcement. Such volunteers shall not be deemed employees of the United States Government except for the purposes of chapter 81 of title 5 of the United States Code, relating to compensation for work injuries, and shall not be deemed employees of the Tennessee Valley Authority except for the purposes of tort claims to the same extent as a regular employee of the Tennessee Valley Authority would be under identical circumstances.

SEC. *09. SPECIAL RESPONSIBILITIES.

(a) PAY.—(1) The rate of pay for enrollees shall be the equivalent of 95 percent of the pay rate for members of the Armed Forces in the enlisted grade E-1 who have served for four months or more on active duty, from which a reasonable charge for enrollee room and board shall be deducted by the program agency.

(2) Enrollees shall receive $50 cash incentive stipends for every three months of enrollment in the program.

(3) The rate of pay for crew leaders shall be at a wage comparable to the compensation in effect for grades GS-3 to GS-7.

(b) COORDINATION.—The Secretary of the Interior and the Secretary of Agriculture and the chief administrators of program agencies carrying out programs under this subtitle shall coordinate the programs with related Federal, State, local, and private activities.

(c) CERTIFICATION AND ACADEMIC CREDIT.—Pursuant to the provisions of paragraphs (B) and (C) of section *04(g)(3), the Secretary of the Interior and the Secretary of Agriculture shall provide guidance and assistance to program agencies in securing certification of training skills or academic credit for competencies developed under this subtitle.

(d) RESEARCH AND EVALUATION.—The Secretary of the Interior shall provide for research and evaluation to—

(1) determine costs and benefits, tangible and otherwise, of work performed under this subtitle and of training and employable skills and other benefits gained by enrollees, and

(2) identify options for improving program productivity and youth benefits, which may include alternatives for—

(A) organization, subjects, sponsorship, and funding of work projects;

(B) recruitment and personnel policies;

(C) siting and functions of facilities;

(D) work and training regimes for youth of various origins and needs; and

(E) cooperative arrangements with programs, persons, and institutions not covered under this subtitle.

(e) CCC SITES.—The Secretary of the Interior, after consultation with the Secretary of Agriculture, shall study sites at which Civilian Conservation Corps activities were undertaken for purposes of determining a suitable location and means to commemorate the Civilian Conservation Corps. Not later than one year after the date of the enactment of this subtitle, the Secretary of the Interior shall submit a report to the Congress containing the results of the study carried out under this section. The report shall include cost estimates and recommendations for any legislative action.

(f) STUDY.—(1) Program agencies shall not use more than 10 percent of the funds available to them to provide training and educational materials and services for enrollees and may enter into arrangements with academic institutions or education providers, including local education agencies, community colleges, four-year colleges, area vocational-technical schools and community based organizations, for academic study by enrollees during nonworking hours to upgrade literacy skills, obtain a high school diploma or its equivalency, or college degrees, or enhance employable skills. Enrollees who have not obtained a high school diploma or its equivalency shall have priority to receive services under this subsection. Whenever possible, an enrollee seeking study or training not provided at his or her assigned facility shall be offered assignment to a facility providing such study or training.

(2) Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in programs conducted under paragraph (1) shall be consistent with the requirement of applicable State and local law and regulations.

(g) GUIDANCE AND PLACEMENT.—Program agencies shall provide such job guidance and placement information and assistance for enrollees as may be necessary. Such assistance shall be provided in coordination with appropriate State, local, and private agencies and organizations.

SEC. *10. ANNUAL REPORT.

The Secretary of the Interior and the Secretary of Agriculture shall prepare and submit to the President and to the Congress at least once each year a report detailing the activities carried out under this subtitle in the preceding fiscal year. Such report shall be submitted not later than December 31 of each year following the date of enactment of this subtitle.

SEC. *11. LABOR MARKET INFORMATION.

The Secretary of Labor shall make available to the Secretary of the Interior and the Secretary of Agriculture and to any program agency under this subtitle such labor market information as is appropriate for use in carrying out the purposes of this subtitle.

SEC. *12. EMPLOYEE APPEAL RIGHTS.

(a) FEDERAL EMPLOYEES.—In the case of—

(1) the displacement of a Federal employee (including any partial displacement through reduction of nonovertime hours, wages, or employment benefits) or the failure to reemploy an employee in a layoff status, contrary to a certification under section *13(c) (1) or (2), or

(2) the displacement of such a Federal employee by reason of the use of one or more volunteers under section *07 of this subtitle,

such employee is entitled to appeal such action to the Merit Systems Protection Board under section 7701 of title 5, United States Code.

(b) OTHER INDIVIDUALS.—In the case of—

(1) the displacement of any other individual employed (either directly or under contract with any private contractor) by a program agency or grantee, or the failure to reemploy an employee in layoff status, contrary to a certification under section *13(c) (1) or (2), or

(2) the displacement of such individual by reason of the use of one or more volunteers under section *07 of this subtitle,

the requirements contained in section 144 of the Job Training Partnership Act (Public Law 97-300) shall apply, and such individual shall be deemed an interested person for purposes of the application of such requirements.

(c) DEFINITION.—For purposes of this section, the term "displacement" includes, but is not limited to, any partial displacement through reduction of nonovertime hours, wages, or employment benefits.

SEC. *13. AUTHORIZATION OF APPROPRIATIONS.

(a) DISTRIBUTION OF FUNDS.—Of the sums appropriated pursuant to subsection (g) to carry out this subtitle for any fiscal year—

(1) not less than 50 percent shall be made available to the Secretary of the Interior for expenditure by State program agencies which have been approved by the Secretary of the Interior for participation in the American Conservation Corps;

(2) not less than 15 percent shall be made available to the Secretary of Agriculture for expenditure by agencies within the Department of Agriculture, subject to the provisions of subsection (e);

(3) not less than 5 percent shall be made available to the Secretary of Agriculture, under such terms as are provided for in regulations promulgated under section •04(b), for expenditure by other Federal agencies;

(4) not less than 25 percent shall be made available to the Secretary of the Interior for expenditure by agencies within the Department of the Interior, subject to the provisions of subsection (e), and for demonstration projects or projects of special merit carried out by any program agency or by any nonprofit organization or local government which is undertaking or proposing to undertake projects consistent with the purposes of this subtitle;

(5) not less than 5 percent shall be made available to the Secretary of the Interior for expenditure by the governing bodies of participating Indian tribes.

(b) AWARD OF GRANTS.—Within 60 days after enactment of appropriations legislation pursuant to subsection (g), any program agency may apply to the Secretary of the Interior for funds under this subtitle. In determining the allocation of funds among the program agencies, the Secretary shall consider each of the following factors:

(1) The proportion of the unemployed youth population of the State.

(2) The conservation, rehabilitation, and improvement needs on public lands within the State.

(3) The amount of other support for the program and the extent to which the size and effectiveness of a program will be enhanced by the use of the Federal funds.

Any State receiving funds for the operation of any program under this subtitle shall be required to provide not less than 50 percent of the cost of such program.

(c) NON-DISPLACEMENT.—The Secretary of the Interior and the Secretary of Agriculture shall not fund any program or enter into any agreement with any program agency for the funding of any program under this subtitle unless the Secretary concerned or such agency certifies that projects carried out by the program will not—

(1) result in the displacement of individuals currently employed (either directly or under contract with any private contractor) by the program agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the program agency concerned;

(3) impair existing contracts for services; or

(4) result in the inability of persons who normally contract with the agency for carrying out projects involving forestry, nursery, or silvicultural operations on commercial forest land to continue to obtain contracts to carry out such projects.

For purposes of paragraph (4), the term "commercial forest land" means land in the National Forest System or land administered by the Secretary of the Interior through the Bureau of Land Management which is producing, or is capable of producing, 50 cubic feet per acre per year of industrial wood and which is not withdrawn from timber utilization by statute or administrative decision.

(d) STATE SHARE TO LOCAL GOVERNMENTS.—If, at the commencement of any fiscal year, any State does not have a program agency designated by the Governor to manage the program in that State, then during such fiscal year any local government within such State may establish a program agency to carry out the program within the political subdivision which is under the jurisdiction of such local government. Such local government program agency shall be in all respects subject to the same requirements as a State program agency. Where more than one local government within a State has established a program agency under this subsection, the Secretary of the Interior shall allocate funds between such agencies in such manner as he deems equitable.

(e) PROGRAMS ON FEDERAL LANDS.—Funds provided under this section to any Federal agency shall be used to carry out projects on Federal lands and to provide for the Federal administrative costs of implementing this subtitle. In utilizing such funds, the Federal agencies may enter into contracts or other agreements with program agencies and with local governments and nonprofit organizations approved under section •04(h).

(f) PAYMENT TERMS.—Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretary of the Interior or the Secretary of Agriculture, as appropriate, finds necessary.

(g) USE OF FUNDS.—Contract authority under this subtitle shall be subject to the availability of appropriations. Funds provided under this subtitle shall only be used for activities which are in addition to those which would otherwise be carried out in the area in the absence of such funds. Not more than 10 percent of the funds made available to any program agency for projects during each fiscal year may be used for the purchase of major capital equipment.

(h) ADMINISTRATIVE EXPENSES.—The regulations under section •04(b) shall establish appropriate limitations on the administrative expenses of Federal agencies and program agencies carrying out programs under this subtitle. Such limitations shall insure that administrative expenses of such programs shall be minimized to the extent practicable taking into consideration the purposes of this subtitle and the nature of the programs carried out under this subtitle.

(i) APPROPRIATION LEVELS.—There is authorized to be appropriated for the purposes of carrying out this subtitle $75,000,000 for each of the fiscal years 1987 through 1989. Funds appropriated under this subtitle shall remain available until expended.

Mr. MATHIAS. Mr. President, drug abuse is one of the most serious problems facing this country. But it is also a symptom of another, equally serious, problem: youth unemployment. The two problems are inextricably linked. Therefore, as we work on the drug bill, we must keep in mind that successful treatment of drug addiction, like any disease, must go hand in hand with the successful treatment of its symptoms.

Statistics repreatedly demonstrate that, despite the decrease in overall unemployment over the last few years, teenage unemployment remains tenaciously high. At last count, 17.7 percent of all teenagers, and double the percentage of black teenagers, are without work. And it is no coincidence that it is these same young people, especially those who live in the inner city, who turn to drugs to deal with the frustration and boredom inherent in their everyday lives. Today, I offer an amendment that is an effective response to this two-pronged dilemma.

My amendment would create the American Conservation Corps [ACC], a program which would provide employment and training opportunities for young men and women while at the same time rehabilitating and improving the Nation's public lands and community resources. The bill is nearly identical to H.R. 99, which passed the House early this Congress. The Senate approved similar legislation which was enacted by the 98th Congress, but was pocket vetoed by the President for budget reasons. Taken in the context of the national commitment to fight drug abuse, however, and money spent on a program as constructive as the ACC is money well spent. For the benefit of my colleagues who are unfamiliar with this issue, I will summarize the content of my amendment and indicate where it differs from the House-passed bill.

The ACC has both year round, for youths ages 16-25, and summer, for youths ages 15-21, components. While open to all eligible youths, special efforts would be made to enroll and recruit youth who are economically disadvantaged, as defined in the Job Training Partnership Act. Regulations for the program are to be developed by the Secretaries of Interior and Agriculture, in consultation with the Department of Labor, and with public participation.

The Corps' work would include conservation of forests, fish, wildlife, rangelands, and soils; revitalization of urban areas and preservation of historic and cultural sites; development and maintenance of recreational areas, roads, and trails; erosion and pest control; energy conservation and production of renewable energy; and emergency rehabilitation services and other functions.

The bill also provides for educational and training opportunities. Appropriations of $75 million would be authorized for each of the fiscal years 1987 through 1989. The House bill appropriated funds as necessary; 50 percent of the funding would be shared by States and local governments and 5 percent by Indian tribes; the remainder would be used by the Departments of Agriculture and Interior and other Federal agencies.

Due in part of the President's veto message and in part to a sincere effort to improve the bill, my amendment differs in some aspects from H.R. 99 as it passed the House. First, changes were made to place more emphasis on

State and local participation in the program. Although Federal agencies would still have the discretionary authority to carry out their own Conservation Corps programs, they would be encouraged to use other program agencies and State-approved local governments and nonprofit organizations to do the actual work.

In the same vein, emphasis is placed on spurring new and expanded programs and assuring that current levels of effort are not inadvertently reduced. For instance, the award of State funds will be made on a competitive basis, taking into consideration the youth population of an area, the amount of public lands and the extent to which they can be serviced, and the amount of other support for the program, and the extent to which Federal funds would enhance the size and effectiveness of the program. More important, the match requirement for State grants is increased from 25 to 50 percent.

Other changes include encouraging noncash Federal contributions to these programs. Thus, the Secretaries of Interior, Agriculture, and Defense are authorized to provide services, facilities, supplies and equipment, and any surplus food to participating programs. Finally, by streamlining reporting requirements and by requiring that the Secretary of the Interior only review applications for entire programs, and not for each conservation center, administrative expenses will be reduced.

Creative judges have often looked outside of the courtroom and the jail in order to steer first time drug offenders, especially youthful offenders, away from drugs. The idea, which is a good one, is to remove young people from an environment which fosters drug abuse and put them in a drug-free environment in which they can be rehabilitated, learn, and work. The ACC would provide such as environment.

As my colleagues are aware, I have been an advocate of an ACC for many years. Programs like the ACC have proven their effectiveness at the State level in employing and training teenagers and young adults. And jobs are essential to the task of combating drug abuse among our young people. My colleagues need only recall their first jobs to recognize the value of employment. The lessons in responsibility, the growth in self-assurance and self-esteem and pride in accomplishment provided the bases upon which we structured the rest of our lives. But these fundamentals are missing from the lives of many unemployed teenagers and adults. Participation in the ACC would provide these fundamentals.

If the collective judgment of the Senate and House is to take this omnibus step to deal with the drug problem in the United States, one rational and necessary element of our efforts must include something along the line of the ACC. I, therefore, urge my colleagues to adopt this amendment.

I offer this amendment on behalf of myself and the distinguished Senator from New York, Mr. MOYNIHAN.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, this matter is, of course, within the jurisdiction of the Committee on Energy and Natural Resources, and as the Senator from Maryland has indicated, the similar but not necessarily identical, but similar legislation was passed 2 years ago.

We have not considered this legislation during the last 2 years, although since the action taken in the House of Representatives on similar legislation, we have been trying to negotiate with them on some legislation that might be precisely this or precisely like the House language but at least similar thrust as a part of two of three measures that might well be negotiated yet during this session of Congress.

If the Senator would be willing to allow us that opportunity to try to negotiate with the House on that package of legislation, I think it might enhance the likelihood that we would be successful in doing what the Senator desires.

Mr. MATHIAS. As the chairman of the committee with jurisdiction, the Senate support and interest in this program is absolutely vital and essential, and I am encouraged by the fact that he has these negotiations underway.

Under those circumstances, Mr. President, I will be inclined to rely upon his assurances and withdraw the bill.

The PRESIDING OFFICER. The Senator withdraws his amendment. The amendment is withdrawn.

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Mr. THURMOND. Mr. President, I think we have come about to the end of the road now. Unless somebody else has an amendment, we could go to third reading.

Mr. CHILES. We do have a couple of technical amendments.

Mr. WEICKER. Mr. President, I would only request of the managers of the bill, since we are in discussions here, that prior to going to third reading, we put in a call for a quorum.

Mr. CHILES. I think the Senator from New Mexico has a technical amendment, and I have a little one after that.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

TRANSFER OF WASHINGTON NATIONAL AND DULLES AIRPORTS

Mr. WARNER. Mr. President, I have an amendment here, but before sending it to the desk, I should like to discuss procedure. This is the amendment which this Chamber has considered before. It provides for the transfer of Washington National and Dulles Airports to a private authority with every expectation that funding will be raised from the private sector to provide for much needed modernization of both of these facilities.

Mr. President, I have, out of courtesy, acquainted those who have spoken against this legislation before. And it would not be my intention to have the Senate engaged tonight in prolonged debate on this bill which is now submitted in the form of an amendment.

I submit it on behalf of Mr. TRIBLE and myself. It provides essentially the same relief that the bill that was passed by this Chamber provided, modified only to enable the House of Representatives to accept it, hopefully in the form of the amendment that will be sent to the desk and thereby avoid the necessity of a conference.

The present form of this amendment has been discussed at great length with those in the House of Representatives that would have a strong voice on the adoption of this legislation and it comports, as near as we have been able to fashion it, with their objectives as well as the objectives of the Senate.

But recognizing the importance of this piece of legislation, I do not want to send forth an amendment that would result in any prolonged debate. So my offer would consist of not more than 3 or 4 minutes' explanation of this amendment and then the amendment could be voted on in a 10-minute vote following whatever vote may be taken hereafter in connection with another amendment, thereby being convenient to the Members of the Senate at this late hour.

If there are those present tonight that wish to have an extended debate, then I would not send the amendment forward. Rather, I would represent that this amendment would be brought up at the time of the continuing resolution. And it would be my hope, if there are Senators in opposition, that they would present to the Senate their own amendment, fashion an amendment. Mr. TRIBLE and I do not take any pride that we are the only ones that know how to solve this problem. There may be others who know how to do it better. And that amendment could be put on in the nature of a substitution and then allow the Senate to make its choice between the two amendments.

Mr. President, with that in mind, I am prepared to send this amendment to the desk, but I see my distinguished colleague from South Carolina on his feet and, before sending it, I would be happy to hear from him.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I thank the distinguished Senator from Virginia for his courtesy. There is certainly a very, very strong feeling on behalf of this Senator and several others in this body. What we have heard heretofore is really the dialog between the State of Maryland and the State of Virginia.

Obviously, the State of Maryland has had quite an interest, in that they have not only purchased an airport, the Baltimore-Washington International, but they have expended some $100 million in State bonds or more—I think it is around $150 million—and, necessarily, they are in direct competition. And both the distinguished Senator, the senior and the junior Senator, have articulated it very well to the point that perhaps it has been rejected on the reconciliation bill, this very same measure this last week.

What really happened is we have not had a full discussion of the tremendous waste that this particular bill proposes. I really, having had a slight experience in this body, rather get caught up with myself hearing about waste, fraud, and abuse in military contracts when the waste, fraud, and abuse begins on the floor of the Senate itself.

And in this particular instance of trying to talk about balanced budgets and doing away with deficits and spending money that we do not have, and there with billions of dollars, which Washington National and Dulles International have every right, title, and interest thereto, ready to be used to equip and renovate and otherwise to engage in this giveaway and buyoff and sham. There is no other way to describe it, as this Senator sees it. They have sort of upped the price, put in the politics—four Senators and four Congressmen, and now they bought off the State of Maryland—not the distinguished Senators from the State of Maryland, which put this in that different position. I have been advised of that this evening.

You can bet your boots this Senator has an amendment. First, on the fair market value; second, for the sale of landing slots at these particular facilities, which is another sham in and of itself; whereby, for example, in my own personal experience, having practiced in this particular area with respect to public convenience and necessity, these landing slots over the years have built up over public convenience and necessity.

My own hometown is a typical example, of Charleston, where I had three direct flights into National. It was owned by National Airlines, then transferred to Pan Am, then transferred to Air Florida. And then, when they had the crash, they had the right to sell. And so they sold off for millions of dollars these particular landing rights.

Now, I spend half of my time in Charlotte, NC, where I ought to run from the State of North Carolina. I am there more than I am my hometown, trying to get home. It used to be a direct flight of an hour's time, now it is 3 hours. Instead of the price going down, it is already up to $185. I can fly 500 miles further to Miami. This is what has been going on.

I have an amendment with respect to the nighttime noise limitation, with respect to the maintenance of the control, with the makeup of the particular commission itself. But, more than anything else, Mr. President, I have had, I say to the Senator from Virginia, an amendment to take from the trust fund this $8.5 billion.

I have been paying for 20 years as a Member of the Senate my 8 percent going to and from every weekend, practically, last year and all except two weekends this year. We have all paid in. We bought these national facilities.

But somehow this fits into the President's silly idea of no revenues and doing away with the Government.

Here, the Government has the funds. We spend $2.5 billion, but we bring in $3.5 billion. They told us it took $250 million; I would say nearly $400 million. The fund is growing in interest more than that each year, just take the interest, not for South Carolina, Virginia, or Maryland's airport, but for all the 50 airport facilities. These are being operated efficiently. The Federal Aviation Administration, everyone has agreed to that in the particular hearings. I cannot get any movement on my bill, and everybody knows the reason why.

But I can tell you here and now, all they need do is take the money from the trust fund, like they took the $150 million for Dallas-Forth Worth, like they took the $100 million for Atlanta, like they took the $90 million just to extend the runway down at St. Thomas.

But, somehow, we cannot get a red cent out of the Virginia Airport Trust Fund to go ahead and modernize. The plans are there. They are not going to be made up by a commission. We have those in the Department of Transportation for the landing, for the parking garages, to modernize, to connect it with the subway, the transit system.

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We have it for the end field terminals needed at Dulles International. We have it all on board. All we need is the money. What do we do to get $250 million? I will use that figure because that is what we have from CBO. We spend $172 million to get the $250 million, and now an extra $100 million to pacify Maryland which is $850 million, plus the cost itself which is another $150 million. So we are spending $1 billion for nothing. We got the airports. They are ours. They belong to us. They belong to everybody.

So you can see I am prepared to talk at length on the merits of this, and it never has been discussed.

Mr. LEAHY. Will the Senator yield?

Mr. HOLLINGS. I will be delighted to yield for a question because I have been in this experience of losing the floor.

Mr. LEAHY. Will the Senator be able to yield for a brief question without losing his right to the floor?

As a former prosecutor, I find this discussion of drug law enforcement fascinating that we have been having in the last few minutes.

I am wondering, Is there going to be a break this morning for us to go to church on Sunday? Maybe we can get some idea.

Mr. HOLLINGS. Ask the Senators who are managing this bill. I am trying to protect the taxpayers. The National Taxpayers Union came out categorically—I did not by the way quote my other clients. I was only talking about what they said in the newspaper about the trial lawyers. I would like to ask the American Bar Association, the Consumers Union of America, the Association of Supreme Court Justices of America, the Association of State Attorneys General, and none of these teams were in the particular articles that were ever written, you see.

We were, because we were polite about it, and we yielded too much. We never could talk about other clients. I have some other clients.

Mr. BIDEN. Will the Senator yield?

Mr. HOLLINGS. For a question only.

Mr. BIDEN. I would like to ask the Senator if he would mind adding me as one of his clients.

Mr. HOLLINGS. Yes.

Mr. BIDEN. I would like to ask the Senator whether or not he thinks the Senator from Virginia got the message and maybe that the Senator from Virginia might be willing now to let us get on with the business of the drug bill. That is my question. Does the Senator think he did? If he did, would the Senator be willing to stop?

Mr. WARNER. Mr. President, I am willing to respond to that if the Senator from South Carolina will graciously allow me 2 minutes.

Mr. HOLLINGS. I am delighted so long as I do not lose the right to the floor. I ask unanimous consent that I do not lose the right to the floor.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. WARNER. Mr. President, I first ask unanimous consent that my amendment be printed.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

At the end of the bill, add the following new title:

TITLE VI—METROPOLITAN WASHINGTON AIRPORTS

SEC. 6001. SHORT TITLE.

This title may be cited as the "Metropolitan Washington Airports Act of 1986".

SEC. 6002. FINDINGS.

The Congress finds that—

(1) the two federally owned airports in the metropolitan area of Washington, District of Columbia, constitute an important and growing part of the commerce, transportation, and economic patterns of the Commonwealth of Virginia, the District of Columbia, and the surrounding region;

(2) Baltimore/Washington International Airport, owned and operated by the State of Maryland, is an air transportation facility that provides service to the greater Metropolitan Washington region together with the two federally owned airports, and timely Federal-aid grants to Baltimore/Washington International Airport will provide additional capacity to meet the growing air traffic needs and to compete with other airports on a fair basis;

(3) the Federal Government has a continuing but limited interest in the operation of the two federally owned airports, which serve the travel and cargo needs of the entire Metropolitan Washington region as well as the District of Columbia as the national seat of government;

(4) operation of the Metropolitan Washington Airports by an independent local agency will facilitate timely improvements at both airports to meet the growing demand of interstate air transportation occasioned by the Airline Deregulation Act of 1978 (Public Law 95-504; 92 Stat. 1705);

(5) all other major air carrier airports in the United States are operated by public entities at the State, regional, or local level;

(6) any change in status of the two airports must take into account the interest of nearby communities, the traveling public, air carriers, general aviation, airport employees, and other interested groups, as well as the interests of the Federal Government and State governments involved;

(7) in recognition of the limited need for a Federal role in the management of these airports and the growing local interest, the Secretary has recommended a transfer of authority from the Federal to the local/State level that is consistent with the management of major airports elsewhere in the Nation;

(8) an operating authority with representation from local jurisdictions, similar to authorities at all major airports in the United States, will improve communications with local officials and concerned residents regarding noise at the Metropolitan Washington Airports;

(9) a commission of congressional, State, and local officials and aviation representatives has recommended to the Secretary that transfer of the federally owned airports be as a unit to an independent authority to be created by the Commonwealth of Virginia and the District of Columbia; and

(10) the Federal interest in these airports can be provided through a lease mechanism which provides for local control and operation.

SEC. 6003. PURPOSE.

(a) In General.—It is therefore declared to be the purpose of the Congress in this title to authorize the transfer of operating responsibility under long-term lease of the two Metropolitan Washington Airport properties as a unit, including access highways and other related facilities, to a properly constituted independent airport authority created by the Commonwealth of Virginia and the District of Columbia, in order to achieve local control management, operation, and development of these important transportation assets.

(b) Inclusion of BWI Not Precluded.—Nothing in this title shall be construed to prohibit the Airports Authority and the State of Maryland from entering into an agreement whereby Baltimore/Washington International Airport may be made part of a regional airports authority, subject to terms and conditions agreed to by the Airports Authority, the Secretary, the Commonwealth of Virginia, the District of Columbia, and the State of Maryland.

SEC. 6004. DEFINITIONS.

In this title—

(1) Administrator.—The term "Administrator" means the Administrator of the Federal Aviation Administration.

(1) Airports authority.—The term "Airports Authority" means the Metropolitan Washington Airports Authority, a public body to be created by the Commonwealth of Virginia and the District of Columbia consistent with the requirements of section 6007.

(3) Employees.—The term "employees" means all permanent Federal Aviation Administration personnel employed on the date the lease under section 6005 takes effect by the Metropolitan Washington Airports, an organization within the Federal Aviation Administration.

(4) Metropolitan Washington Airports.—The term "Metropolitan Washington Airports" means Washington National Airport and Washington Dulles International Airport.

(5) Secretary.—The term "Secretary" means the Secretary of Transportation.

(6) Washington Dulles International Airport.—The term "Washington Dulles International Airport" means the airport constructed under the Act entitled "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and includes the Dulles Airport Access Highway and Right-of-way, including the extension between the Interstate Routes I-495 and I-66.

(7) Washington National Airport.—The term "Washington National Airport" means the airport described in the Act entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686).

SEC. 6005. LEASE OF METROPOLITAN WASHINGTON AIRPORTS.

(a) Authority To Enter Into Lease.—The Secretary is authorized to enter into a lease of the Metropolitan Washington Airports with the Airports Authority for a 50-year term and to enter into any related agreement necessary for the transfer of authority and property to the Airports Authority. Authority to enter into a lease and agreement under this section shall lapse two years after the date of the enactment of this title.

(b) Payments.—

(1) Lease payments.—The lease shall provide for the Airports Authority to pay to the general fund of the Treasury $150,000,000 over the term of the lease, in equal annual installments.

(2) Retirement obligations.—

(2) Discontinued service.—Not later than one year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the actual added costs incurred by the Fund due to discontinued service retirement under section 8336(d)(1) of title 5, United States Code, of employees who elect not to transfer to the Airports Authority.

(B) Unfunded liability.—Not later than one year after the lease takes effect, the Airports Authority shall pay to the Treasury of the United States, to be deposited to the credit of the Civil Service Retirement and Disability Fund, an amount determined by the Office of Personnel Management to represent the present value of the difference between (1) the future cost of benefits payable from the Fund and due the employees covered under section 1008(e) of this title that are attributable to the period of employment following the date the lease takes effect, and (ii) the contributions made by the employees and the Airports Authority under section 1008(e). In determining the amount due, the Office of Personnel Management shall take into consideration the actual interest such amount can be expected to earn when invested in the Treasury of the United States.

(c) Minimum Terms and Conditions.—The Airports Authority shall agree, at a minimum, to the following conditions and requirements in the lease:

(1) Operation of airports as a unit.—The Airports Authority shall operate, maintain, protect, promote, and develop the Metropolitan Washington Airports as a unit and as primary airports serving the Metropolitan Washington area.

(2) Airport purposes.—The real property constituting the Metropolitan Washington Airports shall, during the period of the lease, be used only for airport purposes. For the purposes of this paragraph, the term "airport purposes" means a use of property interests (other than a sale) for aviation business or activities, or for activities necessary or appropriate to serve passengers or cargo in air commerce, or for nonprofit, public use facilities. If the Secretary determines that any portion of the real property leased to the Airports Authority pursuant to this Act is used for other than airport purposes, the Secretary shall (A) direct that appropriate measures be taken by the Airports Authority to bring the use of such portion of real property in conformity with airport purposes, and (B) retake possession of such portion of real property if the Airports Authority fails to bring the use of such portion into a conforming use within a reasonable period of time, as determined by the Secretary.

(3) AIP requirements.—The Airports Authority shall be subject to the requirements of section 511(a) of the Airport and Airway Improvemnt Act of 1982 and the assurances and conditions required of grant recipients under such Act as of the date the lease takes effect. Notwithstanding section 511(a)(12) of such Act, all revenues generated by the Metropolitan Washington Airports shall be expended for the capital and operating costs of such airports.

(4) CONTRACTS.—In acquiring by contract supplies or services for an amount estimated to be in excess of $200,000, or awarding concession contracts, the Airports Authority shall obtain, to the maximum extent practicable, full and open competition through the use of published competitive procedures. By a vote of seven members, the Airports Authority may grant exceptions to the requirements of this paragraph.

(5) CONTINUATION OF REGULATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), all regulations of the Metropolitan Washington Airports (14 C.F.R. part 159) shall become regulations of the Airports Authority on the date the lease takes effect and shall remain in effect until modified or revoked by the Airports Authority in accordance with procedures of the Airports Authority.

(B) EXCEPTIONS.—The following regulations shall cease to be in effect on the date the lease takes effect:

(i) section 159.59(a) of title 14, Code of Federal Regulations (relating to new-technology aircraft); and

(ii) section 159.191 of title 14, Code of Federal Regulations (relating to violations of Federal Aviation Administration regulations as Federal misdemeanors).

(C) OPERATIONS.—The Airports Authority may not increase or decrease the number of instrument flight rule takeoffs and landings authorized by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on the date of the enactment of this Act and may not impose a limitation after the date the lease takes effect on the number of passengers taking off or landing at Washington National Airport.

(6) TRANSFER OF RIGHTS, LIABILITIES, AND OBLIGATIONS.—

(A) IN GENERAL.—Except as specified in subparagraph (B) of this paragraph, the Airports Authority shall assume all rights, liabilities, and obligations (tangible and incorporeal, present and executory) of the Metropolitan Washington Airports on the date the lease takes effect, including leases, permits, licenses, contracts, agreements, claims, tarriffs, accounts receivable, accounts payable, and litigation relating to such rights and obligations, regardless whether judgment has been entered, damages awarded, or appeal taken. Before the date the lease takes effect, the Secretary shall also assure that the Airports Authority has agreed to cooperate in allowing representatives of the Attorney General and the Secretary adequate access to employees and records when needed for the performance of functions related to the period before the effectiveness of the lease. The Airports Authority shall assume responsibility for the Federal Aviation Administration's Master Plans for the Metropolitan Washington Airports.

(B) EXCEPTIONS.—The procedure for disputes resolution contained in any contract entered into on behalf of the United States before the date the lease takes effect shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract. Claims for monetary damages founded in tort, by or against the United States as the owner and operator of the Metropolitan Washington Airports, arising before the date the lease takes effect shall be adjudicated as if the lease had not been entered into.

(c) PAYMENTS INTO EMPLOYEES' COMPENSATION FUND.— The Federal Aviation Administration shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of title 5, United States Code, for compensation paid or payable after the date the lease takes effect in accordance with chapter 81 of title 5, United States Code, with regard to any injury, disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.

(d) COLLECTIVE BARGAINING RIGHTS.—The Airports Authority shall continue all collective bargaining rights enjoyed before the date the lease takes effect by employees of the Metropolitan Washington Airports.

(7) AUDITS.—The Comptroller General of the United States may conduct periodic audits of the activities and transactions of the Airports Authority in accordance with generally accepted management principles, and under such rules and regulations as may be prescribed by the Comptroller General. Any such audit shall be conducted at such place or places as the Comptroller General may deem appropriate. All books, accounts, records, reports, files, papers, and property of the Airports Authority shall remain in possession and custody of the Airports Authority.

(8) CODE OF ETHICS.—The Airports Authority shall develop a code of ethics and financial disclosure in order to assure the integrity of all decisions made by the board and its employees.

(9) RESTRICTION ON USE OF CERTAIN REVENUES.—Notwithstanding any other provision of law, no landing fee imposed for operating an aircraft or revenues derived from parking automobiles—

(A) at Washington Dulles International Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington National Airport; or

(B) at Washington National Airport may be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington Dulles International Airport.

(10) GENERAL AVIATION FEES.—The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft, except that the Airports Authority may require a minimum landing fee not in excess of the landing fee for aircraft weighing 12,500 pounds.

(1) OTHER TERMS.—The Secretary shall include such other terms and conditions applicable to the parties to the lease as are consistent with and carry out the provisions of this title.

(d) SUBMISSION TO CONGRESS.—The Secretary shall submit the lease entered into under this section to Congress. the lease may not take effect before the passage of (1) 30 days, or (2) 10 days in which either House of Congress is in session, which ever occurs later.

(e) ENFORCEMENT OF LEASE PROVISIONS.—The district courts of the United States shall have jurisdiction to compel the Airports Authority and its officers and employees to comply with the terms of the lease. An action may be brought on behalf of the United States by the Attorney General, or by any aggrieved party.

SEC. 6006. CAPITAL IMPROVEMENTS, CONSTRUCTION, AND REHABILITATION.

(a) IMPROVEMENTS.—It is the sense of the Congress that the Airports Authority should—

(1) pursue the improvement, construction, and rehabilitation of the facilities at Washington Airport simultaneously; and

(2) to the extent practicable, cause the improvement, construction, and rehabilitation proposed by the Secretary to be completed at both of such Airports within 5 years after the earliest date on which the Airports Authority issues bonds under the authority required by section 6007 of this title for any such improvement, construction, or rehabilitation.

(b) SECRETARY'S ASSISTANCE.—The Secretary shall assist the three airports serving the Washington, D.C. metropolitan area in planning for operational and capital improvements at those airports and shall accelerate consideration of applications for Federal financial assistance by whichever of the three airports is most in need of increasing airside capacity.

SEC. 6007. AIRPORTS AUTHORITY.

(a) POWERS CONFERRED BY VIRGINIA AND THE DISTRICT OF COLUMBIA.—The Airports Authority shall be a public body corporate and politic, having the powers and jurisdiction as are conferred upon it jointly by the legislative authority of the Commonwealth of Virginia and the District of Columbia or by either of the jurisdictions and concurred in by the legislative authority of the other jurisdiction, but at a minimum meeting the requirements of this section.

(b) PURPOSE.—The Airports Authority shall be—

(1) independent of the Commonwealth of Virginia and its local governments, the District of Columbia, and the Federal Government; and

(2) a political subdivision constituted solely to operate and improve both Metropolitan Washington Airports as primary airports serving the Metropolitan Washington area.

(c) GENERAL AUTHORITIES.—The Airports Authority shall be authorized—

(1) to acquire, maintain, improve, operate, protect, and promote the Metropolitan Washington Airport for public purposes;

(2) to issue bonds from time to time in its discretion for public purposes, including the purposes of paying all or any part of the cost of airport improvements, construction, and rehabilitation, and the acquisition of real and personal property, including operating equipment for the airports, which bonds—

(A) shall not constitute a debt of either jurisdiction or a political subdivision thereof; and

(B) may be secured by the Airports Authority's revenues generally, or exclusively from the income and revenues of certain designated projects whether or not they are financed in whole or part from the proceeds of such bonds;

(3) to acquire real and personal property by purchase, lease, transfer, or exchange, and to exercise such powers of eminent domain within the Commonwealth of Virginia as are conferred upon it by the Commonwealth of Virginia;

(4) to levy fees or other charges; and

(5) to make and maintain agreements with employee organizations to the extent that the Federal Aviation Administration is so authorized on the date of enactment of this title.

(d) CONFLICT-OF-INTEREST PROVISIONS.—The Airports Authority shall be subject to a conflict-of-interest provision providing that members of the board and their immediate families may not be employed by or otherwise hold a substantial financial interest in any enterprise that has or is seeking a contract or agreement with the Airports Authority or is an aeronautical, aviation services, or airport services enterprise that otherwise has interests that can be directly affected by the Airports Authority. Exceptions to requirement of the preceding sentence may be made by the official appointing a member at the time the member is appointed, if the financial interest is fully disclosed and so long as the member does not participate in board decisions that directly affect such interest. The Airports Authority shall include in its code developed under section 6005(c)(8) of this title the standards by which members will determine what constitutes a substantial financial interest and the circumstances under an exception may be granted.

(e) Board of Directors.—

(1) Appointment.—The Airports Authority shall be governed by a Board of directors of 11 members, as follows:

(A) 5 members shall be appointed by the Governor of Virginia;

(B) three members shall be appointed by the Mayor of the District of Columbia;

(C) two members shall be appointed by the Governor of Maryland; and

(D) one member shall be appointed by the President with the advice and consent of the Senate.

The Chairman shall be appointed from among the members by majority vote of the members and shall serve until replaced by majority vote of the members.

(2) Restrictions.—Members shall (A) not hold elective or appointive political office, (B) serve without compensation other than for reasonable expenses incident to board functions, and (C) reside within the Washington Standard Metropolitan Statistical Area, except that the member appointed by the President shall not be required to reside in that area.

(3) Terms.—Members shall be appointed to the board for a term of 6 years, except that of members first appointed—

(A) by the Governor of Virginia, 2 shall be appointed for 4 years and 2 shall be appointed for 2 years;

(B) by the Mayor of the District of Columbia, 1 shall appointed for 4 years and 1 shall be appointed for 2 years; and

(C) by the Governor of Maryland, 1 shall be appointed for 4 years.

(4) Removal of presidential appointees.—A member of the board appointed by the President shall be subject to removal by the President for cause.

(5) Required number of votes.—Seven votes shall be required to approve bond issues and the annual budget.

(f) Board of Review.—

(1) Composition.—The board of directors shall be subject to review of its actions and to requests, in accordance with this subsection, by a Board of Review, of the Airports Authority, established by the board of directors. The Board of Review shall consist of the following, in their individual capacities, as representatives of users of the Metropolitan Washington Airports:

(A) 4 members of the House of Representatives from a list provided by the Speaker of the House;

(B) 4 members of the Senate from a list provided by the President pro tempore of the Senate; and

(C) one member chosen alternately from members of the House of Representatives and members of the Senate, from a list provided by the Speaker of the House or the President pro tempore of the Senate, respectively.

The members of the Board of Review shall elect a chairman. A member of the House of Representatives or the Senate from Maryland or Virginia and the Delegate from the District of Columbia may not serve on the Board of Review.

(2) Terms.—Members of the Board of Review appointed under subparagraphs (A) and (B) of paragraph (1) shall be appointed for terms of 6 years, except that of the members first appointed one member under each of subparagraphs (A) and (B) shall be appointed for a term of two years and one member under each of subparagraphs (A) and (B) shall be appointed for a term of four years. Members of the Board of Review appointed under subparagraph (C) shall be appointed for terms of 2 years. A vacancy in the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term.

(3) Procedures.—The Board of Review shall establish procedures for conducting its business. The procedures may include requirements for a quorum at meetings and for proxy voting. The Board shall meet at least once each years and shall meet at the call of the chairman or 3 members of the Board. Any decision of the Board of Review under paragraph (4) or (5) shall be by a vote of 5 members of the Board.

(4) Disapproval procedure.—

(A) Submission required.—An action of the Airports Authority described in subparagraph (B) shall be submitted to the Board of Review at least 30 days (or at least 60 days in the case of the annual budget) before it is to become effective.

(B) Actions affected.—The following are the actions referred to in subparagraph (A):

(i) the adoption of an annual budget;

(ii) the authorization for the issuance of bonds;

(iii) the adoption, amendment, or repeal of a regulation;

(iv) the adoption or revision of a master plan, including any proposal for land acquisition; and

(v) the appointment of the chief executive officer.

(C) 30-day disapproval period.—If the Board of Review does not disapprove an action within 30 days of its submission under this paragraph, the action may take effect. If the Board of Review disapproves any such action, it shall notify the Airports Authority and shall give reasons for the disapproval.

(D) Effect of disapproval.—An action disapproved under this paragraph shall not take effect. Unless an annual budget for a fiscal year has taken effect in accordance with this paragraph, the Airports Authority may not obligate or expend any money in such fiscal year, except for (i) debt service on previously authorized obligations, and (ii) obligations and expenditures for previously authorized capital expenditures and routine operating expenses.

(5) Request for consideration of other matters.—The Board of Review may request the Airports Authority to consider and vote, or to report, on any matter related to the Metropolitan Washington Airports. Upon receipt of such a request the Airports Authority shall consider and vote, or report, on the matter as promptly as feasible.

(6) Participation in meetings of airports authority.—Members of the Board of Review may participate as nonvoting members in meetings of the board of the Airports Authority.

(7) Staff.—The Board of Review may hire one staff person, to be paid by the Airports Authority. The Airports Authority shall provide such clerical and support staff as the Board may require.

(8) Liability.—A member of the Board of Review shall not be liable in connection with any claim, action, suit, or proceeding arising from service on the Board.

(g) Certain Actions To Be Taken by Regulation.—Any action of the Airports Authority changing, or having the effect of changing, the hours of operation of or the type of aircraft serving either of the Metropolitan Washington Airports may be taken only by regulation of the Airports Authority.

(h) Limitation on Authority.—If the Board of Review established under subsection (f) is unable to carry out its functions under this title by reason of a judicial order, the Airports Authority shall have no authority to perform any of the actions that are required by subsection (f)(4) to be submitted to the Board of Review.

SEC. 6008. FEDERAL EMPLOYEES AT THE METROPOLITAN WASHINGTON AIRPORTS.

(a) Employee Protection.—Not later than the date the lease under section 6005 takes effect, the Secretary shall ensure that the Airports Authority has established arrangements to protect the employment interests of employees during the 5-year period beginning on such date. These arrangements shall include provisions—

(1) which ensure that the Airports Authority will adopt labor agreements in accordance with the provisions of subsection (b) of this section;

(2) for the transfer and retention of all employees who agree to transfer to the Airports Authority in their same positions for the 5-year period commencing on the date the lease under section 5 takes effect except in cases of reassignment, separation for cause, resignation, or retirement;

(3) for the payment by the Airports Authority of basic and premium pay to trnsferred employees, except in cases of separation for cause, resignation, or retirement, for 5 years commencing on the date the lease takes effect at or above the rates of pay in effect for such employees on such date;

(4) for credit during the 5-year period commencing on the date the lease takes effect for accrued annual and sick leave and seniority rights which have been accrued during the period of Federal employment by transferred employees retained by the Airports Authority; and

(5) for an offering of not less than one life insurance and three healh insurance programs for transferred employees retained by the Airports Authority during the 5-year period beginning on the date the lease takes effect which are reasonabley comparable with respect to employee premium cost and coverage to the Federal health and life insurance programs available to employees on the day before such date.

(b) Labor Agreements.—

(1) Adoption.—The Airports Authority shall adopt all labor agreements which are in effect on the date the lease under section 6005 takes effect. Such agreements shall continue in effect for the 5-year period commencing on such date, unless the agreement provides for a shorter duration or the parties agree to the contrary before the expiration of that 5-year period. Such agreements

shall be renegotiated during the 5-year period, unless the parties agree otherwise. Any labor-management negotiation impasse declared before the date the lease takes effect shall be settled in accordance with chapter 71 of title 5, United States Code.

(2) Continuation.—The arrangements made pursuant to this section shall assure, during the 50-year lease term, the continuation of all collective bargaining rights enjoyed by transferred employees retained by the Airports Authority.

(c) Rights of Terminated Employees.—Any transferred employee whose employment with the Airports Authority is terminated during the 5-year period beginning on the date the lease under section 6005 takes effect shall be entitled, as a condition of any lease entered into in accordance with section 6005 of this title, to rights and benefits to be provided by the Airports Authority that are similar to those such employee would have had under Federal law if termination had occurred immediately before such date.

(d) Annual and Sick Leave.—Any employee who transfers to the Airports Authority under this section shall not be entitled to lump-sum payment for unused annual leave under section 5551 of title 5, United States Code, but shall be credited by the Airports Authority with the unused annual leave balance on the date the lease under section 6005 takes effect, along with any unused sick leave balance on such date. During the 5-year period beginning on such date, annual and sick leave shall be earned at the same rates permitted on the day before such date, and observed official holidays shall be the same as those specified in section 6103 of title 5, United States Code.

(e) Civil Service Retirement.—Any Federal employee who transfers to the Airports Authority and who on the day before the date the lease under section 6005 takes effect is subject to subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title shall, so long as continually employed by the Airports Authority without a break in service, continue to be subject to such subchapter or chapter, as the case may be. Employment by the Airports Authority without a break in continuity of service shall be considered to be employment by the United States Government for purposes of such subchapter and chapter. The Airports Authority shall be the employing agency for purposes of such subchapter and chapter and shall contribute to the Civil Service Retirement and Disability Fund such sums as are required by such subchapter and chapter.

(f) Separated Employees.—An employee who does not transfer to the Airports Authority and who does not otherwise remain a Federal employee shall be entitled to all of the rights and benefits available under Federal law for separated employees, except that severance pay shall not be payable to an employee who does not accept an offer of employment from the Airports Authority of work substantially similar to that performed for the Federal Government.

(g) Access to Records.—The Airports Authority shall allow representatives of the Secretary adequate access to employees and employee records of the Airports Authority when needed for the performance of functions related to the period before the date the lease under secion 6005 takes effect. The Secretary shall provide the Airports Authority access to employee records of transferring employees for appropriate purposes.

SEC. 6009. RELATIONSHIP TO AND EFFECT OF OTHER LAWS.

(a) Other Laws.—In order to assure that the Airports Authority has the same proprietary powers and is subject to the same restrictions with respect to Federal law as any other airport except as otherwise provided in this title, during the period that the lease authoirized by section 6005 of this title is in effect—

(1) the Metropolitan Washington Airports shall be considered public airports for purposes of the Airport and Airway Improvement Act of 1982 (49 App. U.S.C. 2201 et seq.); and

(2) the Acts entitled "An Act to provide for the administration of the Washington National Airport, and for other purposes", approved June 29, 1940 (54 Stat. 686), "An Act to authorize the construction, protection, operation, and maintenance of a public airport in or in the vicinity of the District of Columbia", approved September 7, 1950 (64 Stat. 770), and "An Act making supplemental appropriations for the support of the Government for the fiscal year ending June 30, 1941, and for other purposes", approved October 9, 1940 (54 Stat. 1030), shall not apply to the operation of the Metropolitan Washington Airports, and the Secretary shall be relieved of all responsibility under those Acts.

(b) Inapplicability of Certain Laws.—The Metropolitan Washington Airports and the Airports Authority shall not be subject to the requirements of any law solely by reason of the retention by the United States of fee simple title to such airports or by reason of the authority of the Board of Review under section 6007(f).

(c) Police Power.—The Commonwealth of Virginia shall have concurrent police power authority over the Metropolitan Washington Airports, and the courts of the Commonwealth of Virginia may exercise jurisdiction over Washington National Airport.

(d) Planning.—

(1) In general.—The authority of the National Capital Planning Commission under section 5 of the Act of June 6, 1924 (40 U.S.C. 71d) shall not apply to the Airports Authority.

(2) Consultation.—The Airports Authority shall consult—

(A) with the National Capital Planning Commission and the Advisory Council on Historic Preservation before undertaking any major alterations to the exterior of the main terminal at Washington Dulles International Airport, and

(B) with the National Capital Planning Commission before undertaking development that would alter the skyline of Washington National Airport when viewed from the opposing shoreline of the Potomac River or from the George Washington Parkway.

(e) Operation Limitations.—

(1) High density rule.—The Administrator may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the High Density Rule (14 C.F.R. 93.121 et seq.) at Washington National Airport on the date of the enactment of this title and may not decrease the number of such takeoffs and landings except for reasons of safety.

(2) Annual passenger limitations.—The Federal Aviation Administration air traffic regulation entitled "Modification of Allocation: Washington National Airport" (14 C.F.R. 83.124) shall cease to be in effect on the date of the enactment of this title.

SEC. 6010. AUTHORITY TO NEGOTIATE EXTENTSION OF LEASE.

The Secretary and the Airports Authority may at any time negotiate an extension of the lease entered into under section 1005(a).

SEC. 6011. SEPARABILITY.

Except as provided in section 6007(h), if any provision of this title or the application thereof to any person or circumstance is held invalid, the remainder of this title and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 6012. NONSTOP FLIGHTS.

A person may not operate an aircraft nonstop in air transportation between Washington National Airport and another airport that is more than 1,000 statute miles away from Washington National Airport.

The table of contents of the bill is amended by adding at the end thereof the following:

TITLE VI—METROPOLITAN WASHINGTON AIRPORTS

Sec. 6001. Short title.
Sec. 6002. Findings.
Sec. 6003. Purpose.
Sec. 6004. Definitions.
Sec. 6005. Lease of Metropolitan Washington airports.
Sec. 6006. Capital improvements, construction and rehabilitation.
Sec. 6007. Airports authority.
Sec. 6008. Federal employees at the Metropolitan Washington airports.
Sec. 6009. Relationship to and effect of other laws.
Sec. 6010. Authority to negotiate extension of lease.
Sec. 6011. Separability.
Sec. 6012. Nonstop flights.

Mr. WARNER. Second, I will not send forth the amendment tonight.

I am pleased that the Senator from South Carolina has in mind, as he stated, the framework of the bill. I hope he will join in time the continuing resolution when Mr. Trible and I put forth our bill. We will lay the Senator's right alongside as a substitute, and Mr. Trible and I will not take up the very, very modest amount of time explaining our bill, and if necessary and even less amount of time rebutting or in any way protesting the Senator's bill, provided the Senate can then make a choice between the two proposals.

I thank the Chair.

I thank my distinguished colleague.

Mr. HOLLINGS. Mr. President, I am prepared now to yield the floor. Before I yield it, I want to clearly understand that I am not necessarily accepting that as the proposal other than the fact that it is not coming on this bill tonight. We will be prepared to argue this in depth with respect to the selling off of the public's property in a fire sale which is being operated very efficiently and very properly. It just needs modernization. It needs expansion out there, with end field terminal facilities at Dulles.

We have studied it very, very thoroughly. I very much regret the idea that somehow this is going to be for the public benefit—this particular amendment. We know where the public's interest lies. If they will not stand up and talk, this Senator intends to do it.

I do not like the Conrail sale. I want that clearly understood here at a quarter to 2 in the morning. That one has brokers running all around here, and doing everything else, and doing exactly the opposite of what the will of the U.S. Senate was. We went through with the deliberate operational sale that will continue the public service. Now we are going in with a scam of everybody getting in with brokers, money, and everything else of that kind. I do not like it.

I am saying so in conference. I am a minority of a minority.

So I am not going to let this one go when I have some chance of being heard on it.

I thank the distinguished chairman.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 3080

(Purpose: To conform certain provisions of the bill to the requirements of the Congressional Budget Act of 1974)

Mr. DOMENICI. Mr. President, I send an unprinted amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] proposes an amendment numbered 3080.

Mr. DOMENICI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In section 1152(a) of the bill, strike paragraph (1) and redesignate the subsequent paragraphs appropriately.

In paragraph (9)(B) of secton 524(c) of title 28, United States Code, as added by section 1152(a)(6) of the bill, insert "in such amounts as are specified in appropriation Acts," after "disbursed,".

In section 1152(b)(1) of the bill, strike subparagraph (A) and redesignate the subsequent subparagraphs appropriately.

Strike subsection (c) of section 1152 of the bill.

In section 981(e) of title 18, United States Code, as added by section 1356(a) of the bill, insert "except secton 3 of the Anti-Drug Abuse Act of 1986," after "law,".

In section 981(i)(1) of title 18, United States Code, as added by section 1356(a) of the bill, insert "except section 3 of the Anti-Drug Abuse Act of 1986," after "law,".

In paragraph (2)(A) of section 511(e) of the Controlled Substances Act (42 U.S.C. 881(e)), as added by section 1772 of the bill, insert ", to the extent provided in appropriation Acts," after "title shall".

Mr. DOMENICI. Mr. President, the bill before us clearly states that it is an authorizing bill. The language was drawn and inserted in the bill. But after that language was drawn other items were put in the bill. So this amendment cross-references those other items to the previous section which clearly makes it an authorizing bill, notwithstanding any language which might indicate to the contrary.

Second, it strikes a provision in this bill which dictates scoring requirements for purpose of section 302 of the Budget Act. Such language is supposed to be produced only by the Budget Committee.

Those who have proposed it understand these minor problems and have no objection to the amendment. I understand the two floor managers have no objection to the technical amendments here in this amendment. Senator CHILES joins me in offering it.

Mr. EVANS. Would the Senator yield for a question?

Mr. DOMENICI. Indeed I am pleased to.

Mr. EVANS. Would it be accurate to say this is in the nature of a procedural kind of amendment but the end result of it in blunt terms is to say that this bill now provides all the guns we need in the war against drugs but so far there are no bullets? Is that pretty accurate? The bullets being the dollars?

Mr. DOMENICI. But the bill without this technical amendment is 99 percent without the bullets. We just wanted to make sure that 1 percent is also without. It was already almost completely clean of entitlements or direct spending. But amendments were added. They were not referenced.

Mr. EVANS. I understand that.

Mr. DOMENICI. Now they all refer to it being only an authorizing bill.

Mr. EVANS. So it is 100-percent pacifist proposition right now.

Mr. DOMENICI. It is a 100-percent declaration of war but we do not have any armaments yet.

Mr. CHILES. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from New Mexico.

The amendment (No. 3080) was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHILES. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3081

(Purpose: To correct drafting errors to clarify intent of section 1451)

Mr. CHILES. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Florida [Mr. CHILES] proposes an amendment numbered 3081.

Mr. CHILES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike everything beginning on page 79, line 4 through and including line 13 on page 80 and insert in lieu thereof the following:

(a) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Drug Enforcement Administration $11,000,000; except that notwithstanding section 1345 of title 31, United States code, funds made available to the Department of Justice for the Drug Enforcement Administration in any fiscal year may be used for travel, transportation, and subsistence expenses of State, county, and local officers attending conferences, meetings, and training courses at the FBI Academy, Quantico, Virginia.

(b) The Drug Enforcement Administration of the Department of Justice is hereby authorized to plan, construct, renovate, maintain, remodel and repair buildings and purchase equipment incident thereto for an All Source Intelligence Center.

(c) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Federal Prison System, $78,000,000, of which $50,000,000 shall be for the construction of Federal penal and correctional institutions and $28,000,000 shall be for salaries and expenses.

(d) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Defender Services, $18,000,000.

(e) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Fees and Expenses of Jurors and Commissioners, $7,500,000.

(f) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Office of Justice Assistance, $2,000,000 to carry out a pilot prison capacity program.

(g) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for support of United States prisoners in non-Federal Institutions, $2,000,000.

(h) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Offices of the United States Attorneys, $6,000,000.

(i) Authorizations of appropriations for fiscal year 1987 contained in this section are in addition to those amounts contained in H.R. 5161, as reported to the Senate by the Committee on Appropriations on September 3, 1986.

Mr. CHILES. Mr. President, this technical amount now authorizes only those incremental amounts which the sponsors intended to be provided for in section 1451.

Mr. DOMENICI. Mr. President, I agree. That is what it does. I support it. It should be adopted.

Mr. CHILES. I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Florida.

The amendment (No. 3081) was agreed to.

Mr. CHILES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOMENICI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I misspoke myself in a dialog with the distinguished chairman of the Appropriations Committee. I indicated that the President sent us a request for a drug bill indicating that it was an emergency, and that the President had not sent up a method of paying for it.

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As a matter of fact, the proposal that the President sent up was less than what we have before us in terms of dollars requested and programs requested.

The President did send up his proposal as how he would pay for it, with different offsets, cancellations of certain progams. I do not desire this evening to go into the details as to whether those offsets would be acceptable to the Senate, other than to say they were adequate in a technical manner offset the cost of the bill the President requested.

So as to clarify the record, I ask unanimous consent to have the submission of the President made part of the record at this point. I believe his request to about $255 million. This bill as we priced it, the one before us, if fully funded, will be about $642 million.

So the President would not have enough offsets for this bill. I hope the leader will ask over the weekend whether the President supports our bill and, if he does, I would hope he would be asked to recommend the ways he would pay for it by way of offsets, cuts, or reductions.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

DRUG-FREE AMERICA INITIATIVE

[In million of dollars]

Program and agency	Total program		Budget amendment		Outlay offsets
	Budget authority	Outlays	Budget authority	Outlays	
Southwest border:					
Defense:					
Various	309.9	64.0	[1] 309.9	64.0	64.0
Air Force	15.0		15.0		
Justice:					
U.S. attorneys	6.0	17.4	6.0	17.4	
Drug Enforcement Administration	26.0		26.0		
Treasury: Customs	10.2	3.2	10.2	3.2	
ACTION	5.0	3.0	5.0	3.0	
Defense/Justice/Treasury (Operations and maintenance)	33.0	([2])			
Legislated savings: Bureau of Customs					25.0
Subtotal, Southwest border	405.0	87.6	372.1	87.6	89.0
Goal I: Drug-free Federal workplace (all agencies)	56.0	56.0			56.0
Goal II: Drug-free schools (education)	100.0	10.7	[3] 97.0	[3] 10.7	[3] 9.7
Goal III: Substance Abuse Services. (HHS)	233.0	140.0	225.3	140.0	140.0
Southeast border (international cooperation and law enforcement)	100.0	([4])			([4])
Total	894.0	294.2	694.4	238.2	294.7

[1] No formal congressional action required.

[2] Funds will not be used until fiscal years 1988 and 1989.

[3] The increase is offset by a reduction to the amount proposed for later transmittal for student financial assistance.

[4] Outlays not known at this time. Will be offset.

OFFSETS TO INCREASES FOR THE DRUG-FREE AMERICA INITIATIVE

As required by the Gramm-Rudman-Hollings Act, all fiscal year 1987 outlays associated with the President's Drug-Free America Initiative are fully offset by reductions in other programs. Each of these 1987 offsets is discussed below in terms of the reductions in budget authority needed to achieve them.

Outlay increases for subsequent years will be absorbed within Gramm-Rudman-Hollings limits in the budgets for those years.

Budget authority

[In thousands of dollars]

Program, agency, and account	*Amount*
Department of Defense—Military:	
Operation and maintenance, Air Force (a reduction in Air Force Industrial Fund activities)	6,400
Aircraft procurement, Navy (a reduction in the procurement of F-18 aircraft)	152,400
Aircraft procurement, Air Force (a reduction in the procurement of F-16 aircraft)	73,600
Other procurement, Air Force (cancellation of the procurement of ground terminals for the Precision Location Strike System and a delay in the procurement of ground terminals for the Milstar satellite system)	74,500
Military construction, Air Force (a delay in the procurement of the Protected Combat Targeting Center at Ramstein Air Force Base, Germany)	18,000
Total	324,900

The requested authorization legislation for these projects was not enacted. Consequently, fiscal year 1987 budget authority has been reduced by $324.9 million, and fiscal year 1987 outlays will be $64 million less.

Program, agency, and account	*Amount*
Department of the Treasury:	
Customs Service (proposed legislation)	25,000

User Fees are collected by the Customs Service under the authority of Public Law 99-272, the Consolidated Budget Reconciliation Act of 1985, for services provided outside of normal business hours. Under the proposed offset, these collections ($25 million) would be paid into the general fund of the Treasury rather than remain available to reimburse Customs for overtime costs. Overtime costs for customs will be absorbed within appropriated funds; these user fees would be used to reduce the deficit.

Program, agency, and account	*Amount*
Goal I: Drug-free Federal workplace:	
All Federal agencies	56,000

The $56 million cost of insuring a drug-free Federal workplace will be absorbed within the currently available resources of the various Federal agencies. These costs, including testing and employee assistance programs, will be accommodated within the agencies' fiscal year 1987 operating budgets, without reducing the services and benefits provided.

Goal II: Drug-free schools:	
Department of Education: Student financial assistance (proposed for later transmittal)	97,000

The proposed offset for student financial assistant represents only 2.5 percent of the amount proposed for this activity in the President's 1987 budget. This difference would not have a significant impact on the amount of student aid available nationally, nor on college attendance. This $97 million reduction in budget authority would result in a $9.7 million reduction in budget authority would result in a $9.7 million reduction in outlays in fiscal year 1987.

Goal III: Substance abuse services:	
Department of Health and Human Services: Public Health Service (PHS)	$165,342

The Administration believes support for drug abuse research and treatment are now more urgent than general areas of biomedical research and health services. Accordingly, the President has proposed budget amendments to reallocate $165 million or 1.8 percent of the fiscal year 1987 request for the PHS from general biomedical research and health services into research and treatment services targeted on drug abuse.

Health Resources and Services Administration: Health resources and services	(75,042)

The President's antidrug abuse initiative will focus a portion of Federal primary care funds on community based drug abuse prevention, rehabilitation and treatment programs. The proposed $75 million offset from the primary care block grant recognizes that drug abusers are among the population currently served by Federal primary care funds. The President's antidrug abuse initiative would thus focus a portion of these funds more directly on drug abuse treatment.

Centers for Disease Control (CDC): Disease control, research, and training	(1,953)

The proposed offset of $2 million or 2.1 percent from CDC's preventive health block grant reflects the administration's belief that additional general health services funds should be targeted on drug treatment.

National Institutes of Health:	
National Cancer Institute	(15,223)
National Heart, Lung, and Blood Institute	(16,898)
National Institute of Dental Research	(2,160)
National Institute of Diabetes and Digestive and Kidney Diseases	(6,646)
National Institute of Neurological and Communicative Disorders and Stroke	(8,695)
National Institute of Allergy and Infectious Diseases	(2,827)
National Institute of General Medical Sciences	(3,308)
National Institute of Child Health and Human Development	(6,244)
National Eye Institute	(2,338)
National Institute of Environmental Health Sciences.	(2,968)
National Institute on Aging	(2,532)
National Institute of Arthritis and Musculoskeletal and Skin Diseases	(2,254)
Research resources	(16,054)
John E. Fogarty International Center	(200)
Subtotal, National Institutes of Health	(88,347)

The proposed $88 million NIH offset represents 1.8 percent of the fiscal year 1987 request and is derived from research centers, research project grants, and training. These offsets will be taken against general research projects and will not, for example, reduce the recent increases proposed for AIDs research.

Social Security Administration:	
Low income home energy assistance program (LIHEAP)	60,000

The Administration's proposed LIHEAP funding reduction to $1,812 million is appropriate in light of: Precipitious declines in energy prices. The Senate Appropriations Committee notes that fiscal year 1987 home energy costs are expected to drop to fiscal year 1982 levels. Substantial State grants available from petroleum overcharge case settlements—over $2 billion alone from the recent Stripper Well decision.

The Senate cites these considerations in reducing the Appropriations Committee LIHEAP funding mark by $50 million to $1,825 million—essentially the same offset proposed by the Administration.

Total, HHS	225,342

Outlays in fiscal year 1987 will be $140 million less as a result of this $225 million reduction in budget authority.

Mr. DOMENICI. Mr. President, I would say to the Senate I do not think you should hold your breath for that proposal. The way the Budget Act reads, the President can recommend offsets, items that we have refused to cut in the past that he has asked about. So it would be a resubmission, in a sense, of what he sent to us before.

Nevertheless, we ought to receive it if he is willing to give it to us.

Mr. THURMOND. Mr. President, if there are no further amendments, I ask for a third reading.

Mr. WEICKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Mr. President, while a proposed consent agreement is being discussed, I thought it might be appropriate and perhaps helpful to the Senate over the weekend before we return to the matter if Senators might have a chance to review the contents of the bill that is before us as it relates to the current appropriations bills that the United States Senate will have before it in the continuing resolution.

This is a detail of all of the program add-ons and new programs in this bill for which funding is requested. All of them are in excess of or new as compared with current law and current funding in the continuing resolution.

They amount to $1.4 billion in budget authority and $632 million in outlays.

I ask unanimous consent that a table of those new provisions be made part of the RECORD for the information of Senators.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

SENATE APPROPRIATIONS PLUS DRUG BILL VERSUS 302(b) ALLOCATION—FISCAL YEAR 1987

[Dollars in millions]

	Budget authority	Outlays
Commerce, State, Justice		
Drug Enforcement Administration	11	9
Federal prison construction	50	16
Federal prison salaries and expenses	28	24
Judiciary, defender services	18	11
Judiciary, fees of jurors and commissioners	8	7
Justice assets forfeiture fund	45	38
Justice programs, Office of—pilot program	2	1
Justice statistics, Bureau of	3	1
Justice—Hawaii helicopter	7	4
Mandatory sentencing	2	2
State and local narcotics control assistance	115	29
U.S. Attorneys	6	5
U.S. Information Agency	2	1
U.S. prisoners nonfederal	2	2
Total Commerce, State, Justice	299	150
Defense		
Aerostat Radar Systems—3	50	3
Defense for transfer to DOT for Coast Guard on ships	15	13

SENATE APPROPRIATIONS PLUS DRUG BILL VERSUS 302(b) ALLOCATION—FISCAL YEAR 1987—Continued

[Dollars in millions]

	Budget authority	Outlays
Defense—360 radar on Coast Guard airplanes	45	6
Enhanced intelligence collection	12	10
Helicopter and 4 Aerostat radar	90	12
Refurbish and replace E2C	138	12
Transfer 4 helicopters—operations and maintenance	13	10
United States/Bahamas task force	15	9
Total defense	377	75
Transportation		
Coast Guard aquisition, construction, and improvement	114	42
Coast Guard operating expenses	39	14
Total transportation	153	56
Foreign assistance		
Agency for International Development	3	2
Narcotics foreign assistance	63	23
Total foreign assistance	66	24
Labor, Health and Human Services		
Action grants	3	2
Alcohol, drug abuse, and mental health service grant	175	141
Drug-free learning—State Grant Program	150	12
Indian Programs	52	29
National Institute on Drug Abuse	13	9
National plan/studies	1	1
Transfer to veteran's medical care	11	9
Youth suicide information	1	1
Total Labor, Health and Human Services	407	205
Treasury, Postal		
Customs Forfeiture Fund	20	20
Customs operations and maintenance—air interdiction	50	28
Customs—salaries and expenses	66	60
Intelligence Center C-3I	25	14
Total Treasury, Postal	161	122
Total increase	1,462	632
Senate, CR appropriations versus 302(b) allocation	(7,300)	(200)
Senate appropriations plus drug bill versus 302(b) allocation	(5,838)	432

Note: Preliminary SBC estimates.

Mr. HOLLINGS. Mr. President after years of program cuts and indifference, Congress and the President have finally got the message on drugs. The American people are tired of hearing about athletes dead from overdoses, pushers plying their trade with brazen openness, entertainers glamorizing this sickness on TV and in movies. The people want more than lip service and exhortation. They want action, and they want it now.

There are those who question the motives and commitment of elected officials who are belatedly jumping on this antidrug bandwagon. Well, I am not among them. I say, if it takes an election year to stir politicians to action, then so be it. If it takes the death of a gifted young basketball player or the spread of an insidious new form of cocaine to rouse the public's ire, then so be it. Let us seize the moment and take decisive action to deal with this menance.

Truly, the drug problem has reached grotesque proportions in our Nation. Estimates of the size of the narcotics industry go as high as $110 billion a year. Five percent of high school seniors smoke marijuana on a daily basis. The number of cocaine-related deaths has tripled since 1981. In New York and Washington, DC, according to a recent study, 56 precent of crime suspects are using drugs at the time of arrest.

We must face the reality, too, that we are dealing with a deeply entrenched enemy, a fifth column whose recruits have infiltrated our schools and playgrounds, our factories and offices. Federal seizures of cocaine have increased tenfold in 5 years, but the available supply on the street has not been dented. Two years ago, a huge cocaine factory in Colombia was seized by U.S. agents—a cocaine city in the jungle, complete with airport, dormitories, and hospital. Ten tons of pure cocaine were seized. But the impact was nonexistent. The narcotics market didn't skip a beat.

Confronted with these facts, we become pessimistic if not fatalistic. It is tempting to think of drug control as the unwinnable Vietnam war of law enforcement. And, yes, we must acknowledge up front that there will be no final victory in this war on narcotics. But we must wage it nonetheless.

And no war should be fought by half measures. We must give our agents the money and equipment and manpower to do the job. And we must make clear our national resolve to wage this war without compromise. The words of Winston churchill at the outset of a different war are strangely appropriate to this new scourge: "We shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills."

The Senate bill sets forth a policy of carrots and sticks: Carrots for the addicts and abusers who are willing to accept help, sticks for the producers, distributors, and retailers who are killing our children.

Inevitably, the question is asked, "Can we afford to wage this war?" The obvious reply is that we cannot afford not to. By declaring war on drugs, are we surrendering in the battle of the budget? The answer is "Of course not." Gramm-Rudman-Hollings was never intended as austerity for the sake of austerity. It called for setting budget priorities and paying in full for programs that are essential to the national welfare. This bill does not stand in the way of our meeting the Gramm-Rudman-Hollings targets for fiscal year 1987.

The fact is, only the Federal Government has the resources and national focus to confront the narcotics crisis. We cannot shirk our responsibility. But, I repeat, even the full panoply of Federal resources—Customs, the FBI, DEA—is not going to solve this problem. There are limits to what we can accomplish on the supply side, by stepping up interdiction, enforcement, and so forth.

We must also fight this narcotics war on the demand side. Mrs. Reagan has the right idea with her "Just Say No" campaign. To win this war, we must first win the hearts and minds of American youth. This means saying no not only to drug use, but to TV programs and movies that glamorize drugs, and to the whole notion that drug use is socially acceptable behavior.

And this is where every citizen has a role to play. For too long—going back to the 1960's—this society one way or another has made excuses for drug use. The biggest lie of all is that drug use is somehow a matter of personal freedom or self-expression. We need a new attitude, an attitude not just of passive abstinence, but of aggressive intolerance toward drug use—whether in social settings, in the workplace, or wherever this sickness rears its ugly head.

Mr. BENTSEN. Mr. President, once in a great while an issue comes before this body that is compelling in the extreme. When that happens, the Senate is often able to act with a near-unanimity that confuses those on the outside and leads critics to suggest that the issues have not been properly considered or that legislative measures have not been thoroughly researched. I have been hearing this criticism from some individuals and organization with regard to the antidrug legislation that we are debating today. While I understand their concern, I reject their conclusion.

While the totality of the antidrug package that we now have before us is more complete and comprehensive than anything we have looked at in one piece in the past, the concern that many of us have with illegal drugs is not something that originated with cover stories in Time and Newsweek.

There are suggestions that the illegal drug problem has been exaggerated by a sensationalist media, and I certainly do not underestimate their ability to take a small fire and turn it into a conflagration. But there is no doubt in my mind that there is a fire out there, and whether it has reached the proportions of a conflagration is not the point. I say it is not the point because in my own State of Texas, I can look at the cold, hard statistics regarding cocaine seizures and know that we have a genuine problem with illegal drugs in this country today.

In 1983, there was a total of 9 pounds—that is correct—9 pounds of cocaine seized along the Texas-Mexico border. In 1984, that amount increased to 436 pounds. By 1985, 846 pounds of cocaine were seized in just one load in south Texas, and the total for the year for the southwest region, which includes Texas, was well over 3,000 pounds. For 1986, the total is undoubtedly higher yet. Cynics might suggest that sure, the amount is higher because there were more agents from the Drug Enforcement Administration assigned to the area. I wish that were the case.

In point of fact, while the amount of cocaine seized was going up dramatically, the number of DEA agents assigned to Texas leaped from 180 in 1979 all the way to 184, 5 years later. Four more men. Not much of an explanation, is it?

Or, you might want to look at the number of cases of cocaine poisoning that reach hospital emergency rooms. There are two Texas cities, San Antonio and Dallas, that participate in the Drug Abuse Warning Network that provides statistical information to DEA. From 1982 to 1985, cocaine abuse emergencies jumped from 22 to 194 in Dallas and from 6 to 39 in San Antonio. This is roughly a sixfold increase in 4 years. And let me tell you something. Texas ranks at or near the bottom of the 50 States in cocaine-related hospital emergencies.

No, the smuggling of illegal narcotics into the United States is getting worse, and this is a problem that must be dealt with at the Federal level. The problem is not one that can appropriately be countered at the State level alone, though State authorities are certainly doing what they can in this area. As far as I am concerned, the responsibility for keeping our borders secure, whether it is to defend us against a foreign army or an invasion of drugs, is properly a national one. I believe that the bill we have before us is a good one, representing a comprehensive approach to a problem that compels our attention.

It is a bill that was developed in a bipartisan fashion, reflecting the fact that the problem of illegal drugs is not something on which our two political parties hold differing views. It is not a perfect measure—no piece of legislation ever is—but it is a reasoned bill, and it is a reasonable bill.

Among other provisions, it includes funding for additional interdiction efforts directed at the borders of our country; it includes increased punishment for those who smuggle illegal drugs across our borders; it provides penalties for those who operate common carriers while under the influence of illegal drugs or alcohol. In a section that I, as a member of the Select Committee on Intelligence believe is particularly good, it recognizes the role that our intelligence community can play in combating the international narcotics trade and increases the priority that the Director of Central Intelligence should place on this task.

Finally, the bill we are considering today includes significant increases in the amount of funding devoted to educational efforts directed specifically at discouraging our young people from ever beginning to use illegal drugs. Many of us once held a vision of the drug addict as a dilapidated bum of the skidrow variety. Today, the person who regularly uses cocaine or marijuana is just as likely to be the child from the middle class.

According to figures from the National Institute on Drug Abuse, some 17 percent of high school seniors in 1985 had tried cocaine. That is one out of six seniors, and that was before the widespread availability of "crack," the cheap variety of cocaine that seems to be sweeping the Nation. Some individuals are saying that one-sixth is not all that bad. Well, I believe it is appalling, and I believe it is a percentage that will rise significantly if we do not as a nation commit ourselves to combating this scourge.

I have not mentioned every provision in the bill before us today. It is a lengthy measure that represents the combined efforts of many knowledgeable and dedicated individuals. It is a bill that can make an impact on the drug problem here in this country. It will strengthen our law enforcement agencies and say to drug traffickers across the world, "We are ready for you and we will not allow you to win." In the end, though, the best weapon we have against these criminals is the American people themselves.

I receive scores of letters and telephone calls from the citizens of Texas every week, and their message is almost uniformly the same: give us the help we need, because we cannot do it alone. This bill provides that help. The American people deserve a fighting chance in this battle against illegal drugs, and I believe this bill will give it to them.

SUPPORT FOR CRIME LABORATORIES

Mr. COCHRAN. As we consider this important legislation to provide additional resources for law enforcement capabilities in the war against illegal drugs, I feel it is important that we not overlook a vital element in the prosecution of drug offenders. That element is the processing of evidence seized by our law enforcement agencies.

All evidence seized in the apprehension of persons who possess or deal in illegal drugs must be examined by and processed through our law enforcement crime laboratories. The crime labs and the work performed in the crime labs are an essential step in the effective investigation and prosecution of drug crimes. It is vital, therefore, that we recognize the need for additional resources for our crime labs as we provide direction and funds to our States for law enforcement and prosecution efforts.

It was my intention to offer an amendment to the drug legislation to ensure that sufficient resources are provided to our crime labs in order that they may carry out their duties effectively. I understand that the bill establishes a Drug Law Enforcement Grant Program under the Department of Justice and authorizes $115 million in 1987, and the same amount in each of the following 2 years, for State grants for drug law enforcement. Is this correct?

Mr. THURMOND That is correct.

Mr. COCHRAN. It is my understanding that these State grants are to be used to provide additional resources for apprehension and prosecution of drug offenders. Is there any earmarking in the bill to ensure that crime labs will receive support as part of this Grant Program?

Mr. THURMOND. The bill does not earmark specific expenditures for the Grant Program, so that State authorities may use their discretion to ensure that this money is directed where it is most urgently needed. However, the bill does include specific language directing that the States utilize these grants to provide additional resources for upgrading and increasing the number of law enforcement crime laboratories.

Mr. COCHRAN. I feel it is important that we send a clear signal to the Attorney General and to State authorities who will be implementing this grant program of the intention of Congress that crime labs be provided additional resources from the funds we authorize in this drug package. If our interdiction, investigation, and prosecution efforts are to be effective, we must ensure that our crime labs are provided with the necessary resources to examine and evaluate the evidence gathered in drug crimes.

Mr. THURMOND. The Senator from Mississippi is correct and I am pleased that the bill draws attention to the need for additional support for law enforcement crime labs.

Mr. COCHRAN. Thank you, Mr. Chairman.

Mr. CRANSTON. Mr. President, as we debate the details of the Anti-Drug Abuse Act of 1986, I want to pay tribute to the bipartisan leadership which has helped us craft this measure in its present form.

As one who has long supported stepped-up Federal efforts to combat drug abuse, and who has authored important legislation in this area, I know that many Americans are voicing deep concern about illegal drugs and the effects they are having in our communities.

In responding to this concern—which is not new, but rather, intensified of late—there certainly is present the danger that Congress may go overboard in its response.

But, I believe that Senators DOLE and BYRD have made every effort, through their consultations with the Members of this body, in formulating the package before us, to try to ensure that we have a chance to adopt a truly bipartisan bill that can muster the overwhelming support of this body.

But, Mr. President, such a bill will result only if the Senate finds a way to avoid the problems that a few of the bill's present provisions and many of the controversial amendments waiting in the wings pose.

Mr. President, I am proud to have played a role in crafting this bill. It demonstrates the serious intent to this Congress to crack down on the flow of dangerous drugs flooding our country.

It is designed to help rid our streets of those who profit from illicit drug distribution, and those whose crimes under the influence of drugs or to support their drug habits have terrorized so many in our communities.

In its present form, I believe much of this bill provides America with a base from which local governments and communities can carry on the very arduous, but necessary, task of removing dangerous drugs from our schools, homes, streets, and communities.

This legislation provides tremendous new resources to assist our efforts at law enforcement, international narcotics control, interdiction, education, treatment, and rehabilitation.

Specifically, S. 2878 stiffens penalties against drug traffickers, especially those dealing in cocaine and designer drugs. For the first time, it makes using children to distribute illegal drugs a Federal offense. It provides vital money to build more Federal prisons and to enable the Coast Guard, the Customs Service, and the Justice Department all to act more effectively against drug trafficking.

At last we have realized that if we are to be successful in combating drugs, we must keep the disease of addiction from spreading and help those who have been stricken, as well as put behind bars those who profit by spreading the disease.

It is clear that we must make, for really the first time, a major, effective effort at educating children, parents, and communities about the dangers of drug abuse and how to prevent it. Yet, at present, less than one-tenth of 1 percent of the Drug Enforcement Administration's budget and less than 1 percent of the Department of Education's budget is spent on those vital purposes.

That is fighting the battle against drugs with one hand tied behind our back, because so long as there is high demand for illegal drugs, there will be profiteers willing to violate laws and find ways to meet that demand.

Yet, despite all the expressions of concern, our Government is now supporting less activity on drug education and prevention than we did 6 years ago.

The bipartisan Senate package—far more than the administration or House proposals—seeks to correct the short-sighted short changing of these efforts.

In acting so swiftly and firmly to pass this major bill, I sincerely hope that our repulsion for illegal drugs and those who distribute them does not overwhelm our love of freedom, of individual rights, and of the Constitution that guarantees them.

I join in endorsing the great statement made early in this debate by the senior Senator from Arizona [Mr. Goldwater] on the dangers posed by amending this bill to involve military personnel in domestic law enforcement, as one example.

I also have my own concerns, which I know are shared by others, about the threat to freedom of the press and to the public's right to know, contained in the sweeping exemptions from the Freedom of Information Act in subtitle S of this bill.

Drug trafficking is a business in which huge amounts of cash are available to tempt those who may be corruptible. Well-intended provisions aimed at preventing disclosure of law enforcement activities to those who are its targets can also be used to keep evidence of corruption from public scrutiny. I will support anticipated efforts to improve this section.

There are always risks in acting hastily in the belief that doing anything one can think of about the drug problem is better than doing nothing at all.

I remind my colleagues of a historical example of how haste in the war on drugs may make waste.

Several years ago, a floor amendment was offered by several Senators concerned about drug production in Colombia. The Senate Foreign Relations Committee had already considered and rejected this proposal, but not out of any lack of concern about drug production.

The Foreign Relations Committee was, at the time, engaged in a detailed study of how past United States aid to Colombian authorities had been misused—apparently, to line the pockets of those conducting drug trade.

Many Foreign Relations Committee Senators of both parties urged the Senate to await completion of this formal, bipartisan staff investigation before spending even more money on the Colombian drug problem.

Congress has appropriated some $64 million for Colombian drug interdiction efforts in the past 20 years.

Nevertheless, some of my colleagues persisted in offering an amendment to add on money for Colombian drug interdiction.

Senators Lugar and Pell, Stevens and Kassebaum, and I joined with many colleagues in opposing the floor add-on.

Subsequently, the bipartisan Foreign Relations Committee investigation concluded that the Colombian Program was so corrupt that the United States needed first to reform the antidrug cooperation effort before wasting additional taxpayer money on it.

That was not a weak moment in the war on drugs, Mr. President, but an attempt to make the war on drugs stronger and more effective,

I am submitting for the record a detailed analysis of the Colombian drug issue, prepared by members of the Foreign Relations Committee staff. I ask unanimous consent that the analysis appear in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

U.S. Senate,
Committee on Foreign Relations,
Washington, DC, September 25, 1986.

To: Senator Cranston.
From: Gerald E. Connolly and Peter Galbraith.
Subject: Colombian narcotics amendment to 1979 Foreign Assistance legislation.

This is in response to your request for background information on the Senate's consideration in 1979 of an amendment to earmark $16.6 million in narcotics control assistance for Colombia.

The issue was first raised in the Senate during the Foreign Relations Committee consideration of S. 584, the 1979 Foreign Assistance legislation. Senator Jacob Javists, then the ranking minority member, proposed an amendment to add $16.6 million for Colombia. The funds—which constituted an eight-fold increase in the Colombia program—were to be used to buy aircraft, helicopters, and other transport to support a Colombian military anti-narcotics drive in the Guajira Peninsula.

Senator Church opposed the Javits amendment, noting:

"I am told by the staff that the problem in connection with this whole program in Colombia is that the corruption is so bad that we are not achieving our objectives and the money is just being siphoned away. I am told that, among other things, the jail in the capital is so corrupt that the army has quite sending smugglers there. The objective I think is fine, but I would just wonder if we would be wasting the money."

The Committee then agreed to defer the amendment, pending a staff study of whether the funds would be effectively used. Peter Galbraith and Gerald Decker (now no longer on the Committee staff) were assigned to investigate the corruption charges including allegations of collusion between the military involved in the anti-narcotics effort and the drug kingpins.

On May 22, 1979, while the staff study was underway, the Senate took up S. 584, the Foreign Assistance bill. Senator DeConcini again proposed adding the $16.6 million for Colombia.

The Foreign Relations Committee managers of the bill asked Senator DeConcini to withdraw his amendment, pending completion of the staff study. Both managers noted that the $16.6 million was already in the House passed bill and assured the Senate that, unless the staff study found serious corruption in Colombia's anti-drug effort, the Senate would accept the House money. Senator DeConcini nonetheless pressed for a vote and prevailed 65–29.

The Senate vote made the staff study moot and as a result no final staff report was filed. As it turned out, the staff investigation did find substantial evidence of corruption in the Colombia anti-narcotics effort. This corruption extended to the military's Guajira campaign (which was to be the prime beneficiary of the $16.6 million) and indeed the investigation supported the notion that the Guajira campaign had done more to corrupt the military than to wipe out narcotics. A key finding, from a draft of the staff study is as follows:

"The disruption (of the flow of marijuana in the Guajira) appears to have been only temporary. In spite of the ongoing campaign, DEA analysts tell us that the flow of marijuana from Columbia has now exceeded the flow in the months immediately preceding the Guajira campaign. One senior analyst offered a simple explanation for this turn of events: He hypothesizes that when the military first moved into the Guajira, it disrupted the established patterns of corruption between local officials and the traffickers. Also, in order to establish themselves as the dominant force in the area, the military made some large seizures. Now, the analyst told us, the smugglers have made their arrangements with the appropriate military authorities and trafficking patterns are back to normal."

It is important to note that it was precisely the Guajira campaign that the DeConcini amendment was designed to assist—the very program that federal officials and analysts were warning was rife with corruption and inefficiencies. It was out of concern that these funds would not be put to the proper uses for which they were intended that the Committee did not support the $16.6 million add-on.

Just this year Committee staff (including Gerald E. Connolly) travelled to Colombia to review the current program there, and to assess the benefits of past aid efforts in the fight against drugs. The staff report concluded the following about the anti-narcotics efforts in Colombia before 1984:

"Prior to that time the narcotics control strategy had been a haphazard effort by the military, and the National Police, to interdict large shipments of marijuana or cocaine, and to seize and destroy the odd laboratory that might have been located in the countryside. Serious interdiction of the major trafficking routes almost never occurred, and eradication efforts were given lip service at best. *In fact, the State Department has reviewed the past U.S. assistance program there—including a major Congressional initiative that provided $16 million to provide patrol boats for interdiction, and numerous vehicles for army sweeps of areas known to harbor narcotics producers and traffickers—and judged much of it unsuccessful.* Traffickers were operating with impunity and the quantities of cocaine and marijuana originating in Colombia were greater than ever. *After the unhappy experience (in 1978-79) of the military narcotics sweeps which had led to some very serious corruption of high ranking officers in the Colombian military,* Colombia reorganized its narcotics control apparatus designating the National Police as primarily responsible for anti-narcotics strategies." (Italic added for emphasis.)

It is important to stress that in private briefings by federal officials here in Washington, and at the embassy in Bogota, no analyst disagreed with the assertion that the special $16.6 million Colombian effort had indeed been unsuccessful, and essentially a waste of U.S. resources because (a) the military receiving the equipment were corrupted; (b) the Colombians themselves had not at that time committed themselves to a serious anti-narcotics strategy; (c) other instrumentalities, such as extradition agreements with the U.S., and the establishment of a specially designated anti-narcotics police unit, were not yet in place. No one briefing staff earlier this year on the Colombian program, seven years after the adoption of the DeConcini amendment, could cite a single accomplishment or benefit that accrued from the provision of that money.

PREVENTION, TREATMENT AND REHABILITATION

Mr. CRANSTON. Mr. President, I am very pleased that this bipartisan bill, like the Senate Democratic bill, includes significant provisions on education, prevention, treatment, and rehabilitation.

I will be addressing separately a provision included in the bill at my initiative to increase support for the Veterans' Administration drug and alcohol treatment and rehabilitation efforts.

S. 2878 would help remedy the deficiency in our drug education efforts, which I mentioned earlier, by authorizing the establishment of a new school- and community-based education program. This program would provide direct financial and technical assistance to schools and community-based organizations to develop sound drug abuse education and prevention programs.

Every school and community must become actively involved in increasing public awareness about cocaine and other drug problems and in developing strategies to combat them. This legislation would promote getting that job done.

Mr. President, I am very pleased and proud that California already has one such effort underway. The Californians for Drug-Free Youth, Inc., a statewide organization encompassing many local parent community groups, is sponsoring—along with the California Department of Drug and Alcohol programs—a statewide public education program on drug abuse.

This program—called the Red Ribbon Campaign—will be conducted during the week of October 27.

Private undertakings like this can help the overall effort greatly.

S. 2878 will also expand our efforts to help drug and alcohol abusers break their addiction.

Too often, people who desperately want to get clean are turned away from treatment programs that lack the funding to serve them.

We must help addicts break the cycle of addiction to give them a fresh start on life. This bill will provide a separate block of funding specifically targeted to treat and rehabilitate substance abusers.

Mr. President, we have put together a bill strongly supported by a bipartisan coalition, which can make a major difference in the war against drugs.

Our task is to keep this legislation free of divisive amendments which will fragment the coalition and prevent prompt enactment of what is now a basically sensible bill.

Mr. ROTH. Mr. President, it's been said that the future of America marches forward on the feet of our youth, and although the term "milestone" is oven overused, I am hopeful that as far as our youth are concerned we are about to pass a major one.

When we discuss the dangers that affect our country, drug abuse must be at the top of the list. Nothing challenges the future of America more than the internal decay caused by drug abuse, and demographics of illegal use show that we are far from declaring victory in our on-going war with narcotics. More than 24 million Americans, more than one-tenth of our population, experiment with cocaine. Surveys show that seniors in the class of 1985 are using this drug at unprecedented levels. Over 32 million Americans smoke marijuana at least once a year. Twenty million smoke it at least once a month, these include 29 percent of our high school seniors. Several million others take hallucinogens, stimulants, sedatives, and tranquilizers without medical supervision.

I once heard the task of turning back the spread of illegal drugs likened to turning back the tide with a teaspoon. I hope that with this legislation those days are numbered. Hopefully, this Senate proposal will resolve some of the grey areas of law that mire our drug enforcement officials. I believe this legislature is a good start, and those many distinguished Members of this body who worked on it should be commended. We all know that there is more that can be done, but this bill will increase our odds of winning the fight against those who try to contaminate and destroy our Nation's young people—quite literally our most precious natural resource.

And this is good news to me. As chairman of the Permanent Subcommittee on Investigations, I have been concerned with the dangerous trends in drug abuse. I've held hearings to examine the trafficking and abuse of narcotics such as crack, and I've proposed provisions that will help our drug enforcement officers fight back. Part of these include provisions that will make it illegal to launder drug money, that will outlaw drug paraphernalia, and that will increase penalties for those who manufacture and distribute drugs near a school or use children at their runners.

I'm delighted that this package before us makes use of these proposals. And I appreciate the opportunity I've had to work closely with leadership on both sides of the aisle and in cooperation with other Senate committees to create this important legislation. I'm also pleased that our fight against drug abuse goes further than simply focusing on our youth. As chairman of the Committee on Governmental Affairs, I was able to work closely with many of my distinguished colleagues to close an unnecessary loophole in the law relating to civil servants.

Again, Mr. President, the measures we are taking today are only steps on a long and difficult road to a drug-free society. There is so much more to do, if, indeed, this drug-free society is to exist. But these are good, solid steps. The unity demonstrated by this distinguished body portends that such a society may be possible. There is common resolve in all branches of Government, and it represents an important opportunity for progress. The time has come for us to chart a new course for public policy, to commit our resources for lasting solutions, and to keep this issue as a viable component of our national agenda.

Mr. SYMMS. Mr. President, the Senate has taken a great step in an effort to control the use and abuse of illegal drugs. The American public has requested increasing the assistance of the Federal Government by introducing legislation aimed at this very serious problem. Although I believe in a restricted central government, I feel limited Federal assistance is necessary in maintaining the safety and well-being of every American, especially in the area of drug enforcement. I am very pleased to see this body take such a responsible role.

The 97th and the 98th Congresses were "banner" sessions in passing legislation to control illegal drugs. This session will prove to be even greater with the passage of tougher laws and improved enforcement. I am pleased the Senate has been kept well informed on this issue, thanks to several of our colleagues. But none have responded to this increasing problem as much as my friend and colleague from Florida, Senator HAWKINS. I wish to commend her for her perseverance on this issue. In 1981, I joined Senator HAWKINS and several other of my colleagues in forming the U.S. Senate Drug Enforcement Caucus. I am proud to be a member of this group in our continuing efforts to combat drug abuse and provide stricter enforcement of our narcotics laws.

Mr. President, I am very concerned about the issue of drug abuse in our Nation, and the State of Idaho. In Idaho, we have a marijuana, cocaine, and heroin problem. Although heroin is not as common as the other drugs, in the past 2 years, it has become an increasing concern among law enforcement agencies. Moreover, when speaking with Idaho's law enforcement officials on this issue, I found it very interesting that 50 percent of all major crimes committed in Idaho were drug related. Drug abuse is not an issue based on population. It is not confined to our large metropolitan areas. It is a major issue in every State and every town in the Nation, regardless of size.

What concerns me is the use of drugs among our youth. I have heard many stories that drug users are getting younger all the time. First, it was our college students using drugs. Then drugs were introduced to our high school students. Now it has reared its ugly head in our grade schools. This is very distressing, and I'm sure it is even more disturbing for the mothers and fathers who receive a telephone call from their child's school principal to learn that their 9- or 10-year-old child was using illegal drugs. Most of us in this body are parents, and I'm sure each would find such a telephone call terribly frightening. As Congress has taken a responsible role, so must our parents, teachers, and other elected officials. We must educate our children early, on the facts about drugs. Given the proper education, I believe our youth will realize the importance of staying away from this menacing problem. They are our greatest resource. We must put our trust in them, and develop their sense of responsibility. Responsibility for their own lives, and in the years to come, responsibility to others.

We have been asked to perform a task. That task is to cut the use and distribution of drugs. Mr. President, we are on the verge of completing this monumental task. I am hopeful we can finish the debate on this issue, pass an appropriate piece of legislation that is acceptable to both Houses, and move this through for the President's signature.

Again, I commend the dedicated Senator from Florida, and I also commend the able majority leader in his moving this important bill so expeditiously.

PROGRAM SUPPORT MONEYS FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. WEICKER. Mr. President, during this time that we have debated and discussed ways of reducing drug trafficking in our Nation, and ways of increasing treatment and prevention of alcohol and drug abuse in our country, we have directed the Department of Health and Human Services, through the Alcohol, Drug Abuse and Mental Health Administration, to help in these efforts. Specifically, we have asked the Department of Health and Human Services to assist in the new treatment programs under title IV, subtitle A and the education and prevention programs under title IV, subtitle B. We are also requiring the expansion of the current alcohol and drug abuse clearinghouses maintained at the Alcohol, Drug Abuse and Mental Health Administration, requiring several studies to be undertaken at the Department of Health and Human Services, and that the Department of Education coordinate and report to Congress on State education and prevention activities. Nowhere in this bill is there a line item authority to pay for these additional and necessary activities.

Mr. HATCH. That is correct. It is my understanding that program support for the Alcohol, Drug Abuse and Mental Health Administration is funded under existing authority of the Public Health Service Act. However, I do agree with you that we have given a stronger mission to the Alcohol, Drug Abuse and Mental Health Administration through this legislation that will require an increase in support funding.

Mr. WEICKER. Would you agree to up to 1½ percent of the new money for education, prevention, and treatment for program support at ADAMHA in order to gain the financial resources to carry out the provisions of this new legislation?

Mr. HATCH. I would strongly support the chairman of the Senate Appropriations Subcommittee on Labor/HHS and Education in providing funding for the support services of the Alcohol, Drug Abuse and Mental Health Administration.

Mr. PRESSLER. Mr. President, I ask unanimous consent to ask a question of the distinguished Senator from Utah, the chairman of the Senate Committee on Labor and Human Resources, without losing my right to the floor. I understand that the language of amendment No. 2866 which I introduced on Monday and is filed at the desk, has been incorporated into the comprehensive drug legislation we are now considering. Is that correct?

Mr. HATCH. I would like to thank my friend and distinguished colleague from South Dakota for bringing this issue to the attention of the bipartisan task force on education, prevention, and treatment. Section 4116 does contain amendment No. 2866, a provision relating to a sense of the Senate resolution urging the motion picture industry to incorporate a subcategory in its voluntary movie rating system to identify clearly films which depict alcohol and drug use in a favorable light. I commend my colleague from South Dakota for bringing this issue to the attention of the Congress. He, along with other members of the task force including Senator ABDNOR, Senator HAWKINS, and Senator CHILES, deserve praise from parents and children around the country. The war on drugs must be fought on every front—with all the ammunition we can muster. The glamorization of drugs in movies sends a very wrong message to everyone, especially our young people. Senator PRESSLER and others have done a tremendous service to our Nation.

Mr. PRESSLER. I thank my good friend and would like to commend him and Senators HAWKINS, DOLE, and others for agreeing to include this important amendment in the drug abuse legislation. I also want to thank Senators BOREN and NICKLES who are cosponsors of my amendment. I understand that Senator BOREN also wishes to speak briefly on this subject.

I will not take up much of the Senate's time, but I wish to take a few minutes to discuss the content of the Pressler-Boren amendment. As you know, this is a sense of the Senate resolution which calls on the Motion Picture Association of America to adopt a subcategory "D" within its current rating system, for movies which clearly depict drug use in a benign or favorable light. Our amendment was endorsed by the National PTA, the National Association of Secondary School Principals, the American Association of School Administrators, the National Association of Elementary School Principals, and the American Association for Counseling and Development.

The purpose of this amendment is clear. Parents, teachers, school administrators, and others are desperately trying to teach our youth of the dangers of drug use. However, during their leisure, children and teenagers may be receiving a counseling and counterproductive message regarding drug use from the movies they see in their neighborhood movie theater. Many motion pictures specifically targeted for the youth market have depicted drug use in a casual and permissive manner. For this reason, I feel it is important that parents be given advance notification that a certain movie portrays drug use in this fashion.

The current movie rating system was created in 1968 for this reason—to provide parents with information necessary to make an informed decision about the movies their children wish to attend. I commend the Motion Picture Association for recognizing this need, and voluntarily adopting its current rating system. It is my hope that this bill will send a clear signal to the motion picture industry that we need their help to successfully fight the war on drugs.

Mr. HATCH. During President Reagan's first term in office, his wife, Nancy, began a national crusade to educate parents, young people—indeed all Americans—to the real dangers of drug abuse. The First Lady lent her prestige to help publicize the problem and the availability of services to individuals in need of help. The President instructed his Cabinet officers to begin to address this problem head on.

And each year, the leadership of the House of Representatives turned a deaf ear on the cries of parents, husbands, wives, and children who urged that tough legislation be enacted to get the drug pushers and kingpins off the streets. But this summer, Members of the other legislative body got the message, and when they did, they moved full speed ahead to get a bill passed. A few years ago, a song at the top of the charts was entitled "Too Much, Too Little, Too Late." Not only does that phrase make for a catchy rock lyric, I think it accurately describes the bill that was sent over from the House.

But let me add a few lines to that lyric today. I'll start with too happy. Those of us who have been fighting for years to eradicate this scourge are only too happy to welcome our colleagues whose interest in this issue has suddenly been piqued. We're happy to take this opportunity to acquaint them with some of the programs we've been supporting, to direct some of their newfound energies to making existing programs work better, and to harness some of this momentum into pushing some new initiatives along the same path.

When you consider the fact that more than one in four young adults has tried cocaine, and three of five high school seniors have tried an illegal drug, we know there is too much drug abuse. When we know that workers on drugs are nearly 30 percent less productive than their peers, we know that too many lives are being wasted.

When the amount of cocaine entering this country has quadrupled in a decade, we know too little has been done to slow the rising demand for this poison. And when the national cost of drug abuse has been estimated at $60 billion for 1983 alone, we know that we are too late in making the fight against drug abuse a national priority.

First, however, I think my colleagues should understand that getting tough on drug abuse means more than reconnaissance planes, jail cells, and glass jars—although I can't help but observe that many of the toughest talkers today have been purring pussycats on those subjects in the past. It means education, prevention, treatment, rehabilitation, and research.

Certainly, we have made much progress in the drug crisis in recent years. Thirty-seven Federal agencies are working together in a vigorous national effort. Through legislation such as the Comprehensive Crime Control Act, we have increased seizures of illegal drugs. In 1985 alone, over 10,000 drug criminals were convicted, and nearly $250 million of their assets were seized by the Drug Enforcement Administration.

In addition, individual use of drugs has dropped: In 4 years the number of high school seniors using marijuana on a daily basis has dropped from 1 in 14 to 1 in 20, and the military has cut the use of illegal drugs among its personnel by 67 percent since 1980. In this important effort, by next year spending for drug law enforcement will have more than tripled from its 1981 levels.

And, we're making some progress in the area of treatment and prevention. In fiscal year 1986, 78.2 percent of all the money in the Alcohol, Drug Abuse, and Mental Block Grant Program was used for treatment services. In it is estimated that 1,410 drug treatment units were funded while another 2,115 units were able to offer both drug and alcohol treatment programs. More than 300,000 persons were treated in publicly funded drug rehabilitation centers. And many individuals were treated in private rehabilitation centers.

However, despite these efforts, illegal cocaine is coming into our country at alarming levels. It is estimated that 4 to 5 million people are regular cocaine users. One in twelve persons smokes marijuana regularly. Five hundred thousand Americans are addicted to heroin. Nationwide, law enforcement officials are overwhelmed by increasing availability of drugs and growing crime rates in rural as well as urban areas. In fact, drug traffickers outman our efforts and outclass our high-tech communication systems, radar systems, and intelligence networks with their sophisticated technologies.

And I'm sure some of my colleagues will be gratified to hear that this is one issue we cannot approach just from the supply side. Even if we comb every inch of border, prosecute and even execute every pusher, and kick every kid using drugs out of school, we will never end this plague unless we dry up the demand for drugs.

On the research front, the National Institute on Drug Abuse has made strides in the areas of cause of use and abuse; trends in use; the abuse of potential new drugs, including so-called "designer drugs." NIDA has placed particular emphasis to the problem of drug-abusing women and their children. And NIDA has gotten that information to the public, other researchers and treatment staff through an aggressive dissemination campaign.

Several programs under the jurisdiction of the Senate Labor and Human Resources Committee, which I chair, are already addressing the drug problem from that angle. The legislation we are considering today will increase funding for the ADMS block grant. It will provide funds for model community programs that will serve the populations that are most at risk so that we can get the help to those who need it. And the States will be given more flexibility in their use of these funds.

The bill directs the Secretary of Education with the assistance of the Secretary of Health and Human Services to establish a new block grant program that will provide the money to fund drug education and prevention programs in both schools and communities. This program to be administered by the Governors of each State is primarily aimed at but not limited to getting help to young people both in and out of school. Because right now, our children may be receiving drug education of the very worst kind—through personal experience.

And we've got to place greater emphasis on research. Research efforts by the National Institute on Alcohol and Alcoholism and the National Institute on Drug Abuse have helped expose the destructive influence of drugs, not just on users but on society as a whole. Research has debunked the theories of the Timothy Leary's and Peter Bourne's and others who alleged that occasional drug use would do no harm.

We will fund these institutes at higher levels—beef up their clearinghouse operations, help them warn Americans about the clear and present dangers of drug abuse, and enable NIDA to present a national plan to combat drugs to complement NIAAA's plan to combat alcoholism. And believe me, our new efforts will not be ridiculed like some of the earlier attempts, as in the film "Reefer Madness," for example.

But I also agree with my colleagues that we need new initiatives to fight drugs, and I believe we need to get the best and brightest minds from all facets of society together to come up with that battle plan. Again, I'm only too happy to welcome my colleagues to these ongoing efforts to get America to say no to drugs. But let me make one plea: Let's not abuse the issue of drug abuse. Let's not try for a political high for either party, for either body, for any individual, or for any branch of Government.

We must add one more line to our lyric: Too important. You see, critics of this drug abuse effort have already begun to crop up. They are charging that in the stampede to get out front on this issue, we are throwing too much money, trampling on civil rights and legal precedents, giving too much power to the military.

Some of the criticisms have a modicum of validity. But it's going to be pretty tough to convince me that any of those concerns fully outweigh the need for action, and action soon. Because this moment will pass too soon. Too soon, the interest in this issue will dissipate as quickly as it arose. Too soon, the elections which have spurred this drive for action will be over. Already, those opposing such action are trotting out numbers and statistics to support their position and taking their concerns to court. Partisan posturing would only serve to fuel such criticism, succor such opposition, encourage such dilatory action.

But I think we can overcome these problems because this is responsible legislation. Therefore, I believe we will overcome partisan fervor, overcome the usual obstructionism of the ACLU and employee representatives, overcome those who have a financial stake in the megabillion dollar drug trade. Why? Because America is too angry.

Parents are angry. I know, because I am a parent, and I have two precious and beautiful youngsters in high school. I am a grandparent with young ones heading for the elementary schools and playgrounds where, unbelievably, incredibly, tragically, most first-time experience with drugs now occurs. Today, parents can only hope and pray that they have prepared their youngsters to ward off the lethal parasites who will prey on them. And if these tender little lambs cannot escape the wolves, parents can only weep—rage and weep.

Teachers are angry—angry that they have given a lifetime to learning and to their work, only to find that their stoned students cannot take anything in and will not allow others to. Employers are angry—angry at the billions of dollars that drugs are draining from their workplaces and their retail establishments.

Doctors and nurses are angry—angry that treatment of drugs is taking so much of our medical resources, angry at having to nurse to a normal life tiny, innocent babies born already leashed to this vicious master they did not court and cannot understand.

Law enforcement people are angry—angry at the explosion of violent and vicious crime surrounding the production, distribution and use of drugs, angry at their helplessness to stop this scourge at its source.

And I'm angry, too—angry as a leader of this Nation trying to return our Nation to the greatness she once knew, watching our next generation, those whom we are trying to lead to a promised land of peace and prosperity, be washed away in a tidal wave of vile pills and potions. I see the bright smiles and sparkling eyes of our children giving way to broken wills, lost years, suicides, might-have-beens. I grieve and America grieves with me.

But today and in the days to come, we have a historic opportunity—maybe our only opportunity—to turn America's grief and anger into triumph. We have an opportunity to have more than too much, too little, too late—if we work together. Together Republican and Democrat, Senate and House, legislative and executive, public and private, parents, teachers, employers, enforcement personnel, politicians. Together, we can save the next generation from the dealers of death now seducing them. We can save America from ourselves.

STATE HIGH RISK YOUTH PROGRAMS

Mr. DODD. The "State High Risk Youth Programs" section of this package is based on S. 2800, "The Drug Abuse and Alcohol Abuse Prevention, Treatment and Rehabilitation Model Projects for High Risk Youth Act of 1986." I introduced S. 2800 as part of the comprehensive measure developed by the Democratic Task Force on Drug Abuse to target prevention and treatment services to children at risk.

We know that during adolescence, a significant number of young people are the victims of child abuse, drop out of school, run away from home, become teen parents, fail to get a job, remain economically disadvantaged, commit violent or delinquent acts, experience mental health problems, or attempt to injure themselves. Such young people are also at great risk of abusing drugs and alcohol.

In this era of limited resources, it makes good sense to target community-based prevention and treatment programs for children at risk which explore the connections between alcohol and drug abuse and the other risk factors delineated above.

Mr. HATCH. That is correct. Another group of young people at risk are those who have been identified as the children of substance abusers. They will also be targeted in the "State High Risk Youth" provisions of this bill.

Mr. DODD. Given that the funding mechanism for these programs was modified during negotiations on this bipartisan package, I would like to ask for some clarification. It is my understanding that the 5-percent set-aside for the State high risk youth programs is to be used for innovative, model community-based programs which provide multiple, coordinated services. In other words, States are directed to fund new multiple service approaches in their efforts to prevent and treat substance abuse among children at risk.

Mr. HATCH. The gentleman from Connecticut is correct.

Mr. DODD. It is further my understanding that the 5-percent set-aside for high risk youth will apply to both the authorization of appropriations for alcohol and drug abuse programs under the ADMS block grant and 5 percent of the new authorization for substance abuse treatment in this bill. If the programs are appropriated at the authorization level, that should amount to $25 million for fiscal year 1987.

Mr. HATCH. The Senator from Connecticut is correct.

Mr. DODD. Although I would have preferred further resources to be targeted toward those children who are at such high risk, I commend my colleague from Utah for agreeing to include the provisions described above in this package. And I thank him for engaging in this colloquy with me.

Mr. GRASSLEY. Mr. President, some have contended that this bill and the bill passed by the House of Representatives earlier this month are little more than political gimmickry. But in my estimation, we might be more accurately accused by our critics of being deleterious in addressing the problem of drug abuse in our Nation. This bill comes as a much-needed step in what must be an ongoing effort to stamp out drug abuse.

Drug abuse is a serious problem on many levels. For those who use drugs, as well as their families and friends, it is a heartbreaking personal tragedy. But drug abuse is much more than just a personal tragedy. It is a national tragedy as well. It saps our vitality as a Nation, and seriously weakens our moral fabric. How many lives have been wasted, how many productive hours have been lost due to the effects of drug abuse?

The bill before us takes a comprehensive approach to dealing with this Nation's drug problem. That is entirely appropriate, because nothing less than a comprehensive approach will suffice to deal with our drug problem. This bill strengthens penalties for those who profit from the illicit drug trade in this country. It strengthens our efforts abroad to curb the production of illegal drugs, and to control the international drug trade. It takes needed steps at home to close our borders to the influx of illicit drugs. This bill also takes important steps in this country to attack the drug problem at its source. Through education and treatment, it seeks to discourage people, especially young people, from abusing drugs to begin with, and provides additional funding for programs to treat those who have, much to their regret, begun to abuse drugs.

But the importance of this legislation goes beyond the individual measures contemplated therein. Iowa has a nationally recognized model program, in which all institutions are emphasized and integrated. The Iowa program has demonstrated that you cannot isolate one institution in drug abuse prevention efforts and expect it to work. All institutions must play a role, including government, law enforcement and the courts, the church, media, and the schools. Like the Iowa program, this bill is greater than the sum of its parts because it will draw together a wide range of institutions—government at all levels, law enforcement and the courts, community- and parent-based organizations, and schools—with one end in mind: to end drug abuse in America.

This legislation is important on a symbolic level as well. Both Congress and the President are on record as being unalterably opposed to drug abuse. Not only are we unalterably opposed, but we have shown that we are at long last willing to take strong measures to eradicate drug abuse. I hope this legislation will create a climate in this country that is hostile to drug abuse. I hope it will help to bring an end to a certain state of mind that has tended in the past to wink at drug abuse, to ignore or underestimate its human costs and its moral implications.

Mr. President, I would like to compliment all who have had a hand in crafting this legislation. I hope that it will receive speedy approval by the Senate.

Mr. STENNIS. Mr. President, it pleases me that the U.S. Senate is focusing on a comprehensive approach to the drug problem which is growing at an alarming rate throughout our Nation. The drug epidemic demands our attention at this time; we cannot afford to delay. Drug abuse is tearing at the moral fiber of our society, taking a heavy toll on the potential of our young people in particular. This bipartisan legislative package offers real hope that the tide can be turned, and I commend every Member of this body who has had a part in putting this bill together and bringing it to the floor for action at this time.

Although much as been said about the sudden focus on drug abuse, this is by no means a new issue. As a youngster working in my uncle's drugstore in the small town where I grew up, I observed first hand the terrible effects of drug abuse on people who even then had become virtual slaves to drugs. Of course, the problem has increased dramatically since that time as illegal drugs have become more accessible to more and more people. Now the problem is widespread. No community, no matter how small, can consider itself immune to the problem of drug abuse, and no segment of our society and no age group can claim immunity. This is truly a national problem which threatens us all in a very real way.

Congress has tried to address the problem in various ways over recent years. We have made some very valuable initiatives through interdiction efforts, treatment, education, and enforcement. There are some good programs already in place.

We are now recognizing that more must be done in a comprehensive, coordinated effort. We have the resources to meet the challenge, and eagerness to act on this bill at this time is evidence of the determination of our entire Nation to tackle the drug problem head-on. We will not allow drug abuse to rob our Nation of its bright potential represented in the talent and abilities of our youth who are the primary target of drug traffickers.

Efforts to stem the flow of illegal drugs into our country through tougher interdiction have been underway for several years now. We have made some progress in better equipping agencies responsible for drug interdiction for the job they are called on to do, but the more we have done, the more we have seen that needed to be done. The sophisticated and well-financed operations of drug traffickers dwarfed our interdiction efforts as we have become increasingly aware of the magnitude of the problem.

I, myself, have been involved to a degree through the Appropriations Committee in beefing up our interdiction efforts—by providing more resources for our Coast Guard, Customs Service, and Drug Enforcement Administration in order to work more effectively in interdicting drugs smuggled into the United States on all fronts—land, sea, and air.

Obviously, we must do more. Estimates are that less than 15 percent of all drugs flowing into the country are now confiscated. Our drug enforcement agents are doing their best to combat the problem at our borders but it is clear that they are outgunned and outmanned. This package gives them more of what they need to get the job done. We cannot realistically hope to solve the problem through interdiction alone, but we can do more through provisions in this bill which will give us a fighting chance against traffickers.

Penalties for drug crimes have been toughened in recent years, but not enough. This bill strengthens the severity of those penalties and creates new criminal offenses in relation to the illegal drug industry. We must establish punishment that recognizes the severity of the crimes committed by those who deal drugs. These people are taking the very lives of the people to whom they sell drugs at huge profits. I applaud the proposal of a mandatory minimum sentence of 10 years without parole for major drug dealers. I believe that a 20-year minimum jail term is appropriate if a sale of drugs leads to the death of the user. We must make the punishment for these crimes more severe. There is no question that it should be unlawful to employ or use children in distributing these drugs and this bill calls for that.

There are also a lot of people on the fringes of drug trafficking and dealing who are providing support and assistance to drug dealers and are reaping huge profits. These profits come at the expense of the often innocent victims of drug abuse, and they come at the expense of our national productivity. These people may dress up in suits every day, and they may appear to be respected members of their communities, but they are truly the scum of the earth. They are the coconspirators who have brought about this problem for their own personal gain and who will continue to exploit drug abuse victims as long as they can get by with it.

We are talking about a $100 billion a year industry which involves a lot of people in a lot of schemes to hide the money from authorities. We can do more when it comes to addressing money laundering and this bill provides a way. This so-called money laundering is certainly critical to the success of the whole illegal drug operation. We must penetrate these elaborate schemes which make illegally gained money appear to be legal.

This bill provides more assistance to our local and State law officials in enforcing State drug laws where much of the burden falls. I have been particularly concerned that our State crime laboratories which do the very important work of analyzing the evidence used in prosecuting these cases are often left out when talk turns to additional moneys. Our crime labs play a vital role and cannot be neglected as we attempt here to assist all the players in this battle against drugs.

In my State of Mississippi, I am familiar with the valuable work of our State crime laboratory. The personnel work tirelessly in analyzing the evidence that is so critical to successfully getting these criminals duly punished. Our lab also does much in the way of assisting Federal agencies such as the Drug Enforcement Agency, the U.S. Customs Service, and the Coast Guard when drugs are seized at our borders or interstate drug crimes are involved.

If this drug bill does what we want it to do, more arrests will be made, more testing of the drugs seized must be done. We must see that these State crime laboratories are adequately funded in order to carry out their important role. I am hopeful that through the grant program created in this legislation for drug law enforcement our State crime labs can be assisted in this vital work.

Certainly, no legislative proposal would be complete without focusing in a direct way on both the victims of drug abuse and the potential victims. It is when we bring the problem home to the human aspect that we gain the true momentum for action. When we look at how many young lives are ruined, how many dreams lost, how much potential destroyed, we know we must do more to fight this madness that plagues our society. Education, rehabilitation, and treatment are vital in this effort and I thank my colleagues for including these important provisions in the package.

Perhaps our greatest potential for success in the battle against drugs is in equipping our young people with the strength and fortitude to resist the temptation to experiment with drugs. There have been many attempts in the area of drug education in recent years, and we can now assess which programs have been most successful in reaching young people. We must duplicate those programs in schools throughout the country, and this bill gives us the means with which to do that.

Although I only touched on a few aspects of this critical legislation, the bottom line is that it provides the means for us to do more in addressing this problem and do it with a more coordinated approach. We all know that the legislative proposal before us cannot begin to be the cure-all. However, it lays the groundwork for a comprehensive strategy that won't just strike at the problem but will equip us to stage a long-term battle. It is a battle we cannot afford to lose if we hope to maintain our strength and vitality as a Nation. We must act on this problem promptly.

DRUG EDUCATION

Mr. PELL. The degree of drug abuse among school-aged youth is alarming. Close to two-thirds of all high school seniors have admitted use of drugs. And, this situation reaches down into the very early grades. One-third of all seventh graders report some illicit drug use.

Clearly, a massive assault on drug abuse must be launched in our schools. As frightening as this situation is, however, I must admit that I have severe reservations about the approach we are taking in this legislation. Quite simply, we do not have enough information on the education aspects of the problem. We do not know, for example, where the incidence of drug abuse is greatest. We therefore do not know how—or where—to effectively target the use of education funds. Beyond that, we cannot adequately identify model education and prevention programs. I am of the mind that we should have this important information before we act so precipitously.

At the same time, however, I recognize that we are faced with an emergency situation—one which requires immediate and direct attention in our schools. I do believe, therefore, that, subsequent to the passage of this legislation, we must have a very careful examination—and reexamination—of what we have done.

Mr. FORD. Mr. President, I rise today in support of S. 2878, the Anti-Drug Abuse Act. I am pleased that this important concern has been brought to the forefront as Congress attempts to tackle this epidemic problem.

This epidemic has had devastating effects on millions of Americans. Lives of drug users are being ruined and millions of families are suffering as a result.

Last week, I became a cosponsor of similar legislation, the Comprehensive Narcotics Control Act of 1986. This proposal was one of the first of the evolving attempts to find a solution of this ever-growing problem.

Kentucky law enforcement officials say that the problem is not yet epidemic in my home State. I am hopeful that this legislation will prevent that from ever happening.

I believe that the provision calling for demand reduction is the most important. If we can stop the demand for illegal drugs through education and rehabilitation, we are beginning to solve the problems of future generations. Our Nation's youth are our Nation's future. Passage of this legislation today will help ensure that the temptations of today will not face the youth of tomorrow.

Mr. LUGAR. Mr. President, the bipartisan drug legislation before us responds to the public outcry to battle drug abuse and trafficking at home and abroad. Americans have made their view clear: The flow of drugs into the United States and their abuse by Americans has gotten out of hand and they want it to stop. Drug abuse and trafficking undermines the emerging democracies of Latin America, has escalated crime on American streets, and has brought incalculable pain to numerous families.

The Senate has responded; and, in my view, in this bipartisan package, we have responded well. This legislation is a signal act in the long struggle to resist and defeat the abuse of illicit drugs. But it is only a step. In the words of Senator TRIBLE, who has made such a major contribution to this package, the war against drugs will not be won in the Halls of Congress or the corridors of the Justice Department. It will be won in the school yards, the church basements, and the communities of America. This comprehensive legislation tells the parents, teachers, and community leaders on the front lines of this struggle, "We're here to back you up."

The Foreign Relations Committee, in cooperation with the majority and minority leaders, fashioned several important initiatives contained in title II of the bill. Illicit drugs are flooding across our borders, and a part of any comprehensive antidrug strategy must be a campaign to reduce production abroad; $63 million in narcotics assistance moneys are authorized for our international programs to promote eradication of illicit crops and interdiction within the producing countries.

A major provision of title II is the revision of the Foreign Assistance Act governing conditions on assistance to major drug-producing and drug-transit countries. Under current law, the President must positively find a country to be taking inadequate steps in combating drug production and trafficking before foreign assistance is cut off. Despite the skyrocketing increases in production of illicit drugs overseas, no such determination has ever been made by a President and submitted to Congress.

Under this package, foreign assistance will be withheld, negative votes in the MDB's will be mandated, no generalized system of preferences tariff benefits will be granted any major drug-producing or drug-transit country, unless the President annually certifies that the country has fully cooperated with the United States in combating narcotics or is taking adequate steps on its own. For an uncooperative country, the President may make a certification based on vital national interest grounds, but this certification, as well as any other certification, is open to a congressional resolution of disapproval under expedited procedures.

The effect of this legislation will be to place a sharply increased burden of proof on producing countries with the U.S. executive branch that the countries from which illicit narcotics originate live up to their promises of cooperation. In all honesty, I must say also that this legislation will place an added burden on the Congress to weigh carefully the costs and benefits of imposing sanctions on drug-producing or drug-transit countries. It will no longer be enough for Congress to say simply that the executive branch and the State Department aren't getting tough enough with drug-producing countries. Yearly, when the President's certification arrives, any Member will have an opportunity to introduce a resolution of disapproval if he or she is dissatisfied with the President's judgment and argue that position on the floor of the Senate.

This measure also contains a proposal sponsored by Senator TRIBLE, Senator HAWKINS, and myself which adds a country's willingness to cooperate with the United States in preventing money-laundering of drug moneys as a major factor to be considered in Presidential certifications making countries eligible for assistance. In addition, a very important proposal by Senator MURKOWSKI was included which amends present law forbidding U.S. narcotics enforcement personnel from participating in arrest actions overseas. Should this legislation pass, our drug enforcement personnel abroad will be able to assist in arrests but not make arrests directly. They also will be permitted to take appropriate self-defense actions.

Mr. President, title II contains a good number of other provisions: One changes the conditions on assistance to Bolivia in recognition of their cooperation in operation blast furnace; another imposes sanctions on countries whose officials engage in drug trafficking or fail to prosecute those responsible for killing and torturing our drug enforcement agents unless the President reports to Congress why the sanctions would be against our vital interests. But as important as these international initiatives are, drug abuse will be sharply curtailed when Americans begin to, in the words of the first Lady, "Just say no."

In this respect I would like to briefly acknowledge the leadership of Senator PAULA HAWKINS on the drug issue. For many months, hers was a lonely voice. Senators from both sides of the aisle have long been concerned with this issue, and I would especially mention here Senators BIDEN and DECONCINI. But, Senator HAWKINS' steadfast commitment to combating the menace of drugs, has brought into special focus for the Congress and the country the devastation wrought by drugs on young Americans' bodies, minds, and spirits.

Drugs have wrecked families, perhaps our Nation's most precious asset. Drugs have made it unsafe to walk what were once safe streets. Drugs have so empowered international criminal syndicates that they threaten to topple the newly emerging democracies of Latin America. Senator HAWKINS has persistently been making these points to her colleagues. This comprehensive legislation is long overdue, and we owe Senator HAWKINS a large debt of gratitude for it being before the Senate today.

Mr. KENNEDY. Mr. President, I would like to call my colleagues' attention to an often overlooked issue related to the drug crisis in the United States, that is the central role of Puerto Rico in both the problem and the solution.

Mr. President, as we should always be aware, Puerto Rico is a Commonwealth of the United States, and its citizens are citizens of the United States. Because of its critical strategic location, the Island of Puerto Rico is a hub for transportation, commerce, and tourism in the Western Hemisphere. Because of its proximity to Latin America, Central America, and the Caribbean, Puerto Rico is a source of much of the drug traffic destined for the United States. A recent New York Times article stated that approximately 80 percent of the drugs coming into Puerto Rico are eventually transshipped to the mainland United States. Thus to attack the drug problem at America's borders and virtually ignore the problem in Puerto Rico, makes little sense.

Mr. McCLURE. Mr. President, there has been substantial intelligence on the use of the Commonwealth of Puerto Rico as a major entry point for illicit drugs from abroad. The proximity of Puerto Rico to the United States mainland as well as the Caribbean and Latin America, and its inclusion within the custom zone of the United States make it a particularly vulnerable point for transshipment. The United States Drug Enforcement Administration estimates that 80 percent of drugs brought into Puerto Rico are bound for the United States mainland.

Both H.R. 5484 and S. 2798 have recognized the need to provide Puerto Rico with resources to give assistance needed to enforce Federal and Commonwealth drug laws. However, the package introduced last Friday by the Senate majority leader does not contain specific allocation of resources to the Commonwealth of Puerto Rico to combat drug abuse.

Mr. KENNEDY. Gov. Rafael Hernandez Colon has taken unprecedented efforts to combat drugs by establishing a program to coordinate drug enforcement efforts with local and Federal agencies and by establishing drug programs for public servants in sensitive government positions. I believe we should commend these efforts and help him solve this very serious situation affecting us all.

Mr. McCLURE. President, I agree with my colleague Senator KENNEDY that the administration of Gov. Rafael Hernandez Colon of the Commonwealth of Puerto Rico has made crime control a high priority and has developed a comprehensive plan of joint efforts with the Federal Government to crack down on drug-related crimes. The assistance provided by the bills before Congress would obviously help Puerto Rico implement this plan. An important resource that would not be provided by this legislation is a radar equipped lighter-than-air vehicle—Aerostat—that the Federal Government should operate over the island to protect the United States border in Puerto Rico. The Aerostat is needed because current radar surveillance does not cover the entire island.

Mr. KENNEDY. In both House and Senate legislation, funding is provided for lighter-than-air Aerostat vehicles to protect the U.S. border. The United States border in Puerto Rico is critical to the success of the Interdiction Program. In voting for this bill today, it is my hope that the Commonwealth of Puerto Rico will have all necessary tools, including the radar Aerostat, to successfully intercept illicit drugs before they are transshipped to the United States mainland.

Mr. McCLURE. Puerto Rico must have the necessary resources to combat drug abuse and drug-related crime. It is my hope in supporting the legislation before us today that such assistance will indeed be provided to the Commonwealth.

Mr. JOHNSTON. Mr. President, I concur with my colleagues' concerns about the situation in Puerto Rico. Obviously we know that the entry of illegal drugs onto the island contributes to the significant crime levels in Puerto Rico. However, I am also concerned about the strategic role Puerto Rico plays in the Western Hemisphere, as an important partner in the transportation, commerce, and tourism of the Caribbean and all of Latin America. It seems to me that we should use every effort to ensure that the United States border in Puerto Rico is adequately covered by the best available surveillance technology, so that we can intercept drug transit to Puerto Rico before it is passed on to the rest of the United States.

I think the Aerostat system would vastly improve radar surveillance across the whole Island, and can go a long way toward stopping the massive transshipment of drugs through Puerto Rico. Let's not plug up some of the borders of our Nation and open the floodgates at other points. Let's stop the drug traffic where it enters our country, and let's not leave out the significant transit through Puerto Rico.

Mr. DECONCINI. Mr. President, there has been a great deal of discussion about the fight against drugs in Puerto Rico. I am aware that because Puerto Rico serves as a major transportation hub, it is a target for those seeking to flood the mainland United States with illegal drugs.

I am also aware of estimates that suggest that up to 70 percent of the crime in Puerto Rico is drug related. While I recognize that this is a significant internal problem for Puerto Rico, and that because drugs are being moved to the mainland that it is a problem for all of us, I would like to know the best way to combat the problem in Puerto Rico.

As someone who has spent many years studying the technology related to drug interdiction, I am agreeable to examining the feasibility of introducing Aerostat radar capabilities into Puerto Rico as part of the effort to strengten our borders.

FEDERAL DRUG CONTROL EFFORT SHOULD FOCUS MORE RESOURCES ON EDUCATION AND ERADICATION

Mr. NUNN. Mr. President, there is ample evidence of the dimensions of the threat posed by illicit drugs. For example, for 1985 in New York City alone, public health officials reported more than 1,600 drug-related deaths. For the same year, 27 other metropolitan areas reported 7,500 additional lives claimed by drugs. It is estimated that thousands more drug-related deaths go unreported.

The volume of cocaine smuggled into the United States this year is expected to be double that of 1985, according to the Customs Service.

In the State of Georgia, there have been large increases in narcotics usage. From 1981 to 1985, the Georgia Bureau of Investigations reported the following increases in arrests for drug violations: cocaine, 409 percent; hallucinogens, 108 percent; heroin, 106 percent; synthetic narcotics, 155; and drug paraphernalia 564 percent.

Overall, the toll imposed on this country from illicit drugs is large, by any measure—be it in lives lost, careers ruined, crimes committed, resources wasted. One judge has estimated that half the workload of the criminal justice system is drug related. Drug money has given new credence to the saying, "Every man has his price." So much cash is generated by narcotics trafficking that it contributes to public corruption and causes an erosion in people's faith in government.

Illegal narcotics profits are so huge that they have even been found to distort real estate values as drug dealers, anxious to legitimize illicit moneys, pay exorbitant prices for buildings and homes.

The drug problem has deeply troubled the American people for several years. Recent surveys show it to be among their greatest concerns. For his own part, this Senator has taken initiatives which addressed the drug issue by trying to strengthen law enforcement's hand.

In 1981, with support from both sides of the aisle, I introduced legislation reversing a 100-year-old policy preventing any military assistance to civilian law enforcement efforts against drug traffickers. The purpose of the measure was to permit the use of military technology such as radar systems for use in detecting suspicious private aircraft and small ocean vessels. The proposal, which became law in 1981, amended the Posse Comitatus Act of 1876 which had effectively barred such assistance in the fight against the drug smuggler.

In 1982, basing the next proposal on the results of hearings before the Permanent Subcommittee on Investigations, I introduced legislation, which was enacted that same year, that brought another branch of our Government back into the antidrug effort. This bill amended the Tax Reform Act of 1976 which has effectively taken the Internal Revenue Service out of the battle against major narcotics dealers and organized crime figures.

In 1983, legislation was enacted with my cosponsorship which allowed for increased penalties for major narcotics traffickers and the denial of bail to those who were determined to be a danger to their community. These proposals, along with other needed reforms of the Federal criminal laws, were included in the Comprehensive Crime Control Act of 1984.

Those measures were necessary and have assisted drug enforcement efforts. In addition, I have supported proposals to enlarge Federal drug treatment and education programs. Still, the drug problem persists. Why? Part of the answer is that all too often Federal programs have been disjointed, have worked at cross purposes with each other and have suffered from a lack of effective leadership and coordination.

The often conflicting pursuits of Federal drug control efforts were seen recently in hearings on crack cocaine before the Permanent Subcommittee on Investigations. As has happened in the past, it quickly became apparent that it would be difficult to achieve a working consensus on how to solve the drug problem.

Witnesses from the education and treatment side testified that more resources are needed to instruct and counsel people on the dangers of drug abuse and to help addicts break their habits. Spokesmen from law enforcement stepped forward to urge a commitment of more resources to police work.

Equally important, many other knowlegeable experts in this field have argued that we will never stop the drug traffic until we go a step beyond the interdiction stage and eradicate the drug crops under cultivation.

There is something to be said for each approach: eradication; law enforcement and interdiction; and education. Unfortunately, the current approach has been heavily weighted in favor of the middle factor of the three-pronged equation, interdiction and law enforcement, and grossly neglectful of the most promising programs—education and eradication.

The two approaches of education and eradication have been treated like homeless orphans in the past, while billions have been spent on interdiction and the country still has as great a drug problem as it has ever had. Mr. President, there are two sources of our drug problem—the source where drugs are produced and the source where drugs are consumed. Eradication and education offer the Nation its best chance of curtailing both the supply of drugs and the demand for them. I call this stopping drugs at the source. Education strikes at the problem by reducing demand. Eradication strikes at the problem by reducing supply. Interdiction and law enforcement do not strike effectively at supply or demand yet get most of the money. This does not mean we should not improve law enforcement and interdiction. It does not mean we must balance our priorities.

One assumption that needs to be reassessed in drug control efforts is the belief that interdiction should be the first line of defense against drug trafficking. I favor interdiction. I have initiated programs and supported others to strengthen law enforcement in drug control efforts. But compared to interdiction, eradiction is quicker, cheaper and more effective, and should enjoy a much higher position in our list of priorities.

Once the drug is an entity, once the plants are off the farm and on their way to market, they are very difficult to track. We should try literally to nip them in the bud. As a matter of policy, we should broaden that first line of defense to the task of converging on and destroying the source of the drugs themselves. That is to say, in cooperation with the host country, we should first prevent the drug-producing crops from being planted or, if that fails, eliminate the crops while they are still under cultivation or during or shortly after their harvest.

It is estimated that the interdiction strategy results in seizure of only about 10 percent of the drugs smuggled into the country. Obviously, that is not sufficient to make a substantial dent in the traffic. It seems to me that we have no choice but to commit additional financial and diplomatic resources to going directly to the sources of the drugs and eradicating them before they are shipped from the countries of origin.

Eradication is cost effective. For example, prior to the State Department's eradication effort in Colombia in 1984-85, that Nation supplied 80 to 90 percent of the marijuana shipped into the United States. Eradication, which cost between $5 million and $8 million, wiped out 85 percent of the Colombian drop, according to State Department statistics. We can only imagine the additional millions of dollars our Interdiction Program would have cost to have produced the same results.

The narcotic-growing nations of the world must be made to understand that the United States does not want them to grow dope anymore. The message must be clear—yet tempered by the assurance that, wherever appropriate and practical, we will help them develop new and legitimate crops and assist in other ways as they seek to compensate for the losses in revenues resulting from the drug eradication effort.

This approach is not without difficulties. Some areas where opium poppies, marijuana, and coca leaves are grown or processed are not readily accessible to the host governments. First, terrorists or insurgents may control the region and may possibly be in league with drug traffickers. Second, the host government may not know the whereabouts of the crops in less developed areas of their countries.

Those constraints are real and there is no intention to underestimate them, but they do not apply in every instance. And they are not insurmountable barriers. With imagination, determination, and international cooperation, they can be overcome to a considerable extent.

The Senate bipartisan legislative package on drug abuse speaks to the eradication question in a number of ways, including reasonable and essential increases in the State Department's budget for international narcotics control projects. Moneys appropriated for this mission now total about $60.2 million. The figure which had been proposed by the administration for next year was $65 million. The new bill calls for that amount to be increased to about $120 million. This represents a substantial increase. But it is what I call a slow beginning in a good direction. I believe it should be more when compared to the amount of money—some $600 million—earmarked for enforcement and interdiction and the additional $115 million set aside for assistance to State and local law enforcement agencies for narcotics enforcement.

In addition, this bill mandates the withholding of foreign assistance to every major drug-producing or transit country unless the President certifies to Congress that the particular foreign country has taken adequate steps to eradicate local production or to prevent the transshipment of drugs through its territory. By doing so, this bill will send a clear message to those producing nations, "You either start helping us or we're going to stop helping you."

But even with strong emphasis on eradication, another strategy should be pursued with renewed resources—that of education. Prevention—saying no in the first instance—is the best cure for drug abuse.

The Senate bipartisan drug bill spells out a coordinated strategy to educate the public about drugs. The legislation substantially increases the Federal commitment in the most critical area of drug education efforts.

The bill encourages the development of concrete plans and programs for drug abuse education and offers asssistance to State boards of education and local school districts in the implementation of those plans.

The measure provides increased Federal funds for those States and localities that aggressively pursue education and public awareness programs to eliminate the demand for drugs among their youth.

The bill addresses the critical problem of treatment and rehabilitation for drug offenders. For too long, addict rehabilitation programs have received insufficient support. The bill addresses this issue by providing matching grants to those State and local agencies that treat the victims of drug addiction.

The bill encourages a coordinated education effort with direct input to local schools. It provides for Federal assistance to those private and public agencies operating in our local communities that can have the greatest impact upon young people. This substantial Federal effort in education will help stimulate similar interest and programs at the community level. We can most effectively reach the drug user or potential drug user at the grassroots level.

In total, the bill directs some $150 million for drug education, which is far greater than the $3 million being spent now by the U.S. Department of Education on this task and other sums spent by the Department of Health and Human Services.

Law enforcement and interdiction, absorbs the lion's share of the bill, as some $600 million is authorized for the Drug Enforcement Administration, the Justice Department, the Customs Service, the Coast Guard and the Defense Department.

In addition, the bill enlarges the numbers of drug agents and prosecutors, increases the number of prisons, and provides $115 million in assistance to State and local law enforcement agencies for narcotics enforcement.

The bill strengthens the penalties for major drug traffickers including forfeiture provisions. It creates new criminal offenses for money laundering, designer drugs, and crack cocaine.

In order to pay for many of these programs, the legislation removes the current unrealistic ceilings on the Departments of Justice and Treasury's forfeiture funds which now limit the amount of seized and forfeited assets that can be used for drug enforcement efforts. We allow all moneys remaining in these forfeiture funds at the end of each fiscal year to be used, if necessary, to pay for Federal, State, and local drug control programs.

Overall, then, the legislation supports every aspect of the drug control effort—eradication, interdiction, and law enforcement and education, treatment and rehabilitation. As a member of the Democratic Work Group on Drug Substance Abuse, I have worked with my colleagues on both sides of the aisle on this measure and believe we have taken the first step in moving the Nation forward on the long and trying road toward control of the drug traffic.

The bill is not perfect. It is still heavily weighted on the side of interdiction and law enforcement. Much more remains to be done in eradication and education. Moreover, it is readily apparent to this Senator that, while there are many good and constructive provisions in this bill, the overall law itself was put together much too hastily.

But in summary—this is a major step forward.

CAYMAN-UNITED STATES COOPERATION

Mrs. HAWKINS. Mr. President, our bipartisan drug bill authorizations and specifically earmarks funds to support increased narcotics interdiction operations in the Bahamas. While this step is a major accomplishment, we also must consider our joint efforts with other Caribbean jurisdictions.

Whenever one of our neighbors in the Western Hemisphere joins us in the war against narcotics, there are important double benefits. First, this cooperation—the flow of intelligence and joint interdiction efforts—enables us to accomplish more with the same resources than we could ever hope to accomplish acting independently. And second, our partnership sends a signal to the drug trafficker that no protection is to be found on our partner's soil or seas.

One of the first Caribbean jurisdictions to extend its hand to us in cooperation was the Cayman Islands; today, in many respects, this British Crown Colony of only 17,000 persons is still leading the way.

The Cayman Islands were the first in the Caribbean, Mr. President, to enter into an agreement with us expressly waiving strict financial-privacy laws for documents which our Attorney General could certify relate to a narcotics investigation or processing. This 1984 narcotics agreement has won Justice Department praise for providing vital evidence in a number of major drug cases. Because of its success, other Caribbean nations are now showing a willingness to sign similar agreements as well.

Last July, our partnership with the Cayman Islands produced the first Caribbean treaty to provide for mutual legal assistance on a broad range of criminal matters, including "insider" securities trading, racketeering, and fraud. Cayman Gov. G. Peter Lloyd called the Mutual Legal Assistance Treaty "a sign to the world that the offshore outlaw has no home in the Cayman Islands," adding that the Cayman people "will not permit our confidentiality laws to be used as a shield behind which criminal elements seek to operate with impunity."

Joint United States-Cayman drug interdiction efforts have yielded vital intelligence, arrests and seizures. The DEA Miami Field Division's Caribbean Affairs Coordinator, S.B. Billbrough, has referred to the assistance and advice of the Royal Cayman Police Force as "exemplary," adding that "on numerous instances, major investigations being conducted by DEA could not have been successfully completed without this total cooperation."

Mr. President, our bill providing for assistance to the Bahamas is an example of United States assistance to an international partner in this struggle. Beyond this help, I hope the administration and Congress will look to other opportunities to increase the capabilities of Caribbean jurisdictions to help us interdict drug traffic. Specifically, I hope any requests for assistance from the Cayman Islands will be treated favorably and with dispatch.

Mr. TRIBLE. Mr. President, I strongly support the Senate's antidrug trafficking package. It is a powerful first step in what will be a long and difficult battle against the international drug trade.

This legislation will be the most comprehensive antidrug trafficking bill ever enacted by the Congress, and it attacks the problem of drugs on many fronts. First, it hits the drug trade at its source by withholding U.S. financial support from drug source nations that fail to cooperate. Second, it provides increased resources for interdicting illicit drugs before they reach our shores. Third, it substantially increases the criminal penalties for drug dealers. And finally, it enlarges the Federal Government's role in drug abuse education, rehabilitation, and prevention programs.

I am especially pleased that this comprehensive package contains two bills that I authored to combat the illicit drug trade. The first of those measures provides for life imprisonment of major drug traffickers and raises the fines applicable to such offenses so that they more accurately reflect the huge amounts of cash involved in drug running.

At present, the benefits of drug trafficking far outweigh the risks imposed by society. A single drug transaction can produce millions of dollars in profits. Yet, the likelihood of arrest, conviction, and punishment is slight. For example, U.S. officials estimate that they presently intercept only a small percentage of the illegal drugs entering the United States from abroad. It is time for more vigorous law enforcement and for tougher penalties that will put major drug traffickers out of business forever.

For that reason, I introduced legislation to impose life imprisonment on those convicted of continuing criminal enterprises involving large-scale drug trafficking, and I am pleased that it is part of this bipartisan package. This initiative is focused on the Nation's major drug runners—those who operate large-scale distribution schemes that reap substantial profits. It is these drug kingpins who contribute most to the widespread availability of illegal drugs. And it is they who are most deserving of severe punishment.

The second of my bills adopted as part of this package is aimed at breaking the vital economic link in the international drug chain—the laundering of profits from the production and sale of illicit drugs.

This legislation will prohibit foreign assistance to those nations that refuse to help prevent and punish the laundering of drug-related profits. It also requires that the international narcotics control strategy report identify those nations that are significant centers of drug money laundering, and report on the efforts those nations are making to eliminate laundering activities within their territory.

For several years, Federal law has prohibited foreign assistance to nations that fail to prevent drug cultivation within their territory. This lever has proved tremendously effective, and has helped to prod foreign governments into stepping up their crop eradication efforts. I believe we must adopt the same approach with respect to drug money laundering activities.

The methods by which drug runners conceal their illicit profits and reinvest them in the drug trade are a vital part of the overall drug problem. The Senate recognized this reality when it voted 98 to 0 recently for a bill making willful laundering of profits from criminal enterprises a Federal offense.

Surely, we must attack this problem on an international scale. It is no secret that many countries are havens for drug money laundering. Panama, Colombia, and Mexico are among the world's principal laundering centers. Earlier this year, for example, the State Department testified that Panama is "virtually made to order" for laundering United States currency. The Treasury Department estimates that up to $600 million may be laundered every year through Panama alone.

Mr. President, as long as large amounts of cash abound in the drug trade, our efforts to wipe out crops or stop the distribution of deadly drugs will not succeed. That's why I believe this proposal is an essential part of the Senate's comprehensive drug bill.

Illegal drugs smuggled across our borders are exacting a great price in lives and human suffering. America watches as thousands and thousands of our young people experience the living hell of drug abuse. Yet, today, our response to this onslaught of crystalline death and destruction has been mostly rhetorical.

It's time for strong and decisive action. Our war on drugs cannot succeed—will not succeed—unless we go to the source nations and by quiet diplomacy or otherwise stop the production of deadly and dangerous drugs.

We did this successfully in Turkey in the 1970's and it worked temporarily a few years ago in Mexico.

Some countries—Colombia, Bolivia, Peru, Mexico, and others—are in the drug business. Colombia provides 80 percent of the world's cocaine. Peru and Bolivia grow 95 percent of the coca from which cocaine is made. Mexico provides most of our heroin and marijuana.

These countries are attacking the United States and we must defend ourselves.

If we take strong action overseas, we won't have to worry about stopping drugs at our border or testing workers because the presence of drugs in our society would be sharply curtailed.

Mr. President, I was pleased to help shape the provisions of title II and believe that the adoption of this legislation will substantially strengthen international narcotics control.

The war on drugs will not be won by one Congress or in 1 day or 1 year. Rather it will take a sustained effort and a comprehensive response on the part of all of our citizens. This bill represents an important step in the right direction and I urge my colleagues to give this legislation their enthusiastic support.

Mr. GORE. I am pleased to be cosponsor of this amendment. It embodies several parts of The Homeless Persons' Survival Act of 1986, which I introduced a few months ago. This amendment will not solve all of the problems of the homeless, and my colleagues should know that we must revisit this issue next year. But this amendment does make important steps forward.

It will allow homeless persons otherwise eligible for entitlement benefits and job training to receive them notwithstanding the fact that they don't have an address. It will also allow homeless persons to use food stamps for the purchase of prepared meals at shelters. After all, they do not have kitchens. So these changes really make good common sense. But let me repeat, Mr. President, that we will need to do more—particularly in the area of low-income housing. That is the heart of the problem. And we must act.

Too often, the apathetic cling to the notion that homelessness is merely a local issue, like parking tickets or street crime. If only it were that simple. If only cities could cure homelessness by passing an ordinance or turning to local charities.

The problem is to big for that. The causes of homelessness are extremely complex, and a solution is even more elusive. But one thing is painfully clear: in the long run, the homeless must become a national responsibility. The fate of the homeless is in all our hands, and we must reach out to them as a nation.

Across the country, people are beginning to realize that we can't turn our backs any longer. Homelessness hasn't been this bad since the Great Depression—and it continues to get worse. Requests for emergency shelter increased by 25 percent last year. That doesn't include the hundreds of thousands of homeless too proud or too downtrodden to seek help.

The face of homelessness is changing all the time. Young women, families with children—thousands of Americans who through no fault of their own find themselves with nowhere to go.

Our Government can't turn away from that fact any longer. The American people have a much broader vision of government than our current leaders might think. This administration seems to have forgotten that through the years, we have come so far together by making sure no one gets left behind.

Half a century ago, in the depths of the Great Depression, we made up our minds no one in this country should ever face such suffering again. We began weaving a safety net so that Americans who fell could get back up again. In later years, we set out to become the kind of society where the young would never go hungry and the elderly would not have to grow old alone or in abject poverty.

We made great strides toward that vision. But in recent years, our country has beat a hasty retreat from the war on poverty. Lately, our Government has given in to hunger and malnutrition, and let more than 6 million Americans drop below the poverty line.

We can't let the country slip any further. I think it's time to repair the damage. It's time to look at what's left to the safety net, and fix the gaping holes that have let thousands of Americans slide into oblivion.

As I mentioned, this amendment includes some of the best parts of S. 2608, a bill I introduced along with the Senator from New York [Mr. MOYNIHAN] to put these forgotten citizens back onto the national agenda. It's called the Homeless Persons' Survival Act, and survival is what my bill and this amendment are all about—the survival not only of thousands of needy Americans, but of our reputation as a caring society.

S. 2608 attempts to provide a comprehensive solution to a vast, almost overwhelming problem. It addresses the needs of the homeless today, and sets out to make sure there will be fewer homeless tomorrow.

S. 2608 has three parts: emergency relief, preventive measures, and long-term solutions to homelessness—from low-income housing to mental health care.

The bill takes simple steps to ease the plight of the homeless. It provides grants to improve health care and mental health services for the homeless. It assures that the homeless will receive and be able to use the food stamps to which they are already entitled. The amendment we consider this evening adopts a provision of S. 2608 eliminating the need for an address in obtaining entitlements. This amendment also incorporates a provision of S. 2608 which would permit the use of food stamps for prepared meals at shelters and elsewhere.

Besides addressing these short-term needs, S. 2608 outlines several ways to prevent homelessness in the first place. It sets guidelines against unnecessary eviction from public housing, and authorizes funds to preserve existing SRO's and other low-income housing. The bill also makes the homeless a target group for job training programs.

In the long run, of course, the only way to relieve the plight of the homeless is to relieve the shortage of low-income housing. S. 2608 sets money aside to expand the stock of affordable housing in this country. It calls for an increase in the number of subsidized housing certificates and public housing units, and for the preservation of existing units. It provides for community residence programs to meet the special housing needs of the mentally ill.

All in all, the Homeless Persons' Survival Act offers a good answer to one of the toughest questions of our time. This amendment to the Anti-Drug Abuse Act includes only some of the provisions of S. 2608. I intend to pick up where we leave off once the new Senate convenes in 1987.

We live in an age of limits, and in the face of those limits, we must learn to do more with less. But as any homeless person will tell you, there is only so much you can do with so little.

This homeless initiative doesn't plunge the Government into some expensive new direction. All it asks is that we take another look at safety net programs that have been cut—and that used to work.

No one expects the Federal Government to solve this problem on its own. Private individuals and charities have always been the homeless person's best friend, and will continue to lead the fight. In my home State of Tennessee, I am sponsoring a series of workshops for people to discuss what each of us can do to help the homeless. The response to these workshops has already been remarkable.

But in the end, we must reach out to help the homeless together, as a Nation. I believe the American people are ready for a new challenge and a new era. It's time to start building a society that can do more than just say no. It's time for America to give its people the tools to survive, and to bring back into the fold those whom our society has left out. We must set out once again to replace obstacles with opportunities.

We care too much about the homeless to ignore them any longer. I urge the adoption of this amendment.

Mr. DOMENICI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE RESOLUTION HELD AT THE DESK

Mr. INOUYE. Mr. President, I ask unanimous consent that Senate resolution 495 be held at the desk. This matter has been cleared on both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

ANTIDRUG ABUSE ACT OF 1986

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, I am advised by the managers that there could be one additional amendment.

Mr. HATCH. Senator Metzenbaum is waiting for one to come.

Mr. DOLE. In any event, we need to get a unanimous-consent agreement to get final passage and to figure out a funding amendment, one from the distinguished Senators Domenici and Chiles and the other from Senators Hatfield and Stennis, and that no other amendments be in order. I hope we can reach that agreement.

I do not anticipate any more record votes. I have consulted with the managers on each side.

Unless Senators want to stay here for the agreement, they can probably go home.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 0200

Mr. CHILES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHILES. I ask unaniamous consent that the Chiles amendment No. 3081 be modified to include the text of Senator Bentsen's amendment No. 3039, adopted earlier today.

The PRESIDING OFFICER. Is their objection? Without objection, it is so ordered.

Mr. CHILES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 0210

Mr. SIMPSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 1026, THE CONTINENTAL SCIENTIFIC DRILLING AND EXPLORATION PROGRAM

Mr. PRESSLER. Mr. President, on behalf of myself and the 415 cosponsors of S. 1026, the Continential Scientific Drilling and Exploration Program, I urge my Senate colleagues to approve this important legislation. The Continental Scientific Drilling Program [CSDP] is an important national scientific endeavor that is vital to the understanding of the geologic evolution of the Earth and the economic value of its structure. This is an issue which I believe parallels in importance our efforts in the Space Program.

The CSDP is designed to resolve basic questions concerning the dynamics, structures, properties, and evolution of the Earth's crust that require samples and measurements from drill holes. By increasing the basic understanding of the Earth, an effective program has practical daily applications in areas dealing with oil, gas, coal, and geothermal energy sources. The Drilling Program will also aid in the development of better technologies related to mineral resource development, water resource management, and a better understanding of natural hazards such as earthquakes, volcanic eruptions, and the disposal of hazardous wastes.

Mr. President, I believe a brief legislative history will provide my colleagues with a better understanding of the provisions of this bill and how we arrived at this juncture.

In the fall of 1984, I introduced a resolution setting forth the policy goals of CSDP and putting the Congress on record in support of its implementation. The resolution was accepted as an amendment to the fiscal year 1985 continuing resolution and signed into law on October 12, 1984. The following April I introduced the bill currently before us, S. 1026. As of today, we have 14 cosponsors from both sides of the aisle, including Senators Durenberger, Matsunaga, Moynihan, Heinz, Domenici, Nickles, Stevens, Bentsen, Warner, Murkowski, Dixon, Simon, Abdnor, Gramm, and Bingaman.

In July, the Subcommittee on Natural Resources Development and Production held hearings on this important bill. Under the able guidance of the subcommittee chairman, Senator Warner, the hearing examined many of the technical aspects of implementing the program and provided an opportunity to gauge the depth and breadth of support for CSDP. I would like to thank Senator Warner and his staff for all their assistance in holding the hearing and in guiding this bill through the committee. I participated in that hearing, which I believe provides an excellent basis for, and justification of, this legislation.

Mr. President, let me highlight just briefly what the bill does. In setting forth the "purposes" and "findings," it highlights some of the most fundamental benefits to be derived from the program. Section 4 contains the operative language. In essence, it encourages the continuation of the cooperative effort that has been going on for many years between the Departments of the Interior and Energy and the National Science Foundation. The Interagency Coordinating Group referred to in the legislation has been in existence for roughly 3 years. Perhaps most importantly, section 4 directs the Interagency Coordinating Group to prepare and submit to Congress a plan of action for the implementation of CSDP. In essence, we are asking them to tell us how long it would take, how much it costs, and what specific benefits we can expect to gain from a Continental Scientific Drilling Program.

Mr. President, the United States has a lot of catching up to do in the deep drilling area. The Soviet Union and many of our European counterparts are far ahead of us in developing this important scientific technology.

This bill is brief. Its language is self-explanatory. It would require no additional funding. I want to emphasize that point to allay any budgetary concerns on the part of my colleagues. The administration has been very supportive of the effort. Finally, I know of no opposition to this bill. This is a very important measure which I urge my colleagues to support.

I would ask unanimous consent that the text of S. 1026 be printed at this point in the Record.

THE PRESIDENT'S VETO OF H.R. 4868, THE COMPREHENSIVE ANTI-APARTHEID ACT OF 1986, SHOULD BE OVERRIDDEN

Mr. DIXON. Mr. President, as my colleagues know, the President yesterday vetoed H.R. 4868, the Comprehensive Anti-Apartheid Act of 1986. In my view, the President has made a terrible mistake, one that I hope the Senate and House of Representatives will promptly correct by overriding the veto.

I want to remind my colleagues that the package of sanctions the President so unwisely vetoed passed this body just last month by an overwhelming vote of 84 to 14, and passed the House by an equally impressive 308 to 77 vote. The margins in both the Senate and the House were far in excess of the two-thirds required to overturn a veto.

I have read the President's lengthy veto message, but I cannot agree with its analysis nor its conclusions. The President continues to cling to the bankrupt and discredited "constructive engagement" policy, even though he no longer uses that term. He refuses to see that United States failure to act on the sanctions issue creates the appearance of American Support for a South African Government, and the repugnant system of institutionalized racism, known as apartheid, that it practices.

It is not enough for the United States, as the leader of the free world, to express rhetorical abhorrence of apartheid. We must act.

That is why I supported South African sanctions legislation. That is why, when the bill was before the Senate, I voted for every amendment to strengthen the sanctions, so that we could put the maximum pressure on the South African minority government.

If the United States does not stand with the South African black majority, then it stands with a totally discredited South African Government that uses its police, its army, and every other mechanism of state power to grind its black and other minority citizens or into the dirt.

We are a country that was founded on the principles of democratic government. We fought a war to achieve self-rule. In this year of the centennial of the Statue of Liberty, it is well to remember that we did not fight the fight alone. We had help from the French.

Black South Africans are not asking us to fight with them as we did the French. They only ask that we conduct our trade in a way that does not help support apartheid. That, it seems to me, is the least that we can do.

Reverend Tutu and other black South African leadership support sanctions. The black front-line states that could be severely hurt by South African retaliation support sanctions. Importantly, the American people also support sanctions.

They know what the administration seems not to know: that enactment of this legislation is not only a moral and ethical necessity, but that it is also in our long-term foreign policy interests.

I therefore pledge to my constituents and to the Senate that I will do everything I can to see that the President's veto is overridden just as quickly as is possible. The legislative package the President vetoed was the product of a strong, bipartisan congressional consensus. I fervently hope that the same strong, bipartisan consensus will override that veto. It is the right choice. Indeed, it is the only choice.

MEASURES PLACED ON THE CALENDAR

The Committee on Commerce, Science, and Transportation was discharged from the further consideration of the following bill; which was placed on the calendar:

H.R. 4212. An act to provide for the reauthorization of the Deep Seabed Hard Mineral Resources Act, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Veterans Affairs, without amendment:

S. 2885: An original bill to amend title 38, United States Code, to provide for certain Veterans' Administration benefits, which are paid based on the service-connected disability or death of a veteran, to be paid in accordance with laws administered by the Veterans' Administration and to provide for certain Veterans' Administration insurance policy loans to be made and revolving funds to be administered in accordance with such laws, and to provide for Veterans' Administration home loan guaranty reports under certain circumstances, and for other purposes (Rept. No. 99-494).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 230: A bill for the relief of the city of Dickinson, North Dakota (Rept. No. 99-495).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with amendments:

H.R. 5028: A bill entitled: "The Lower Colorado Water Supply Bill" (Rept. No. 99-496).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment:

H.R. 5465: A bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances (Rept. No. 99-497).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, without amendment:

S. 2483: A bill to amend the Fire Island National Seashore Act of 1964 (Rept. No. 99-498).

H.R. 2182: A bill to authorize the inclusion of certain additional lands within the Apostle Islands National Lakeshore (Rept. No. 99-499).

By Mr. THURMOND, from the Committee on the Judiciary with an amendment in the nature of a substitute:

S. 2575: A bill to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. PACKWOOD (for Mr. Metzenbaum (for himself, Mr. Nickles, Mr. Hatch, Mr. Quayle, Mrs. Hawkins, Mr. Weicker, Mr. Thurmond, Mr. Grassley, Mr. Dole, Mr. Nunn, Mr. Heinz, Mr. Mattingly, Mrs. Kassebaum and Mr. Gorton)):

S. 2884. A bill to amend the Fair Labor Standards Act of 1938, to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor; considered and passed.

By Mr. MURKOWSKI, from the Committee on Veterans' Affairs:

S. 2885. An original bill to amend title 38, United States Code, to provide for certain Veterans' Administration benefits, which are paid based on the service-connected disability or death of a veteran, to be paid in accordance with laws administered by the Veterans' Administration and to provide for certain Veterans' Administration insurance policy loans to be made and revolving funds to be administered in accordance with such laws, and to provide for Veterans' Administration home loan guaranty reports under certain circumstances, and for other purposes, placed on the calendar.

By Mr. NICKLES (for himself and Mr. Boren):

S. 2886. A bill to amend the Internal Revenue Code of 1954 to impose a fee on the importation of crude oil or refined petroleum products; to the Committee on Finance.

By Mr. ROTH (for himself, Mr. Chiles, Mr. Durenberger, Mr. Levin and Mr. Rudman):

S. 2887. A bill to amend chapter 35 of title 44, United States Code, relating to the coordination of Federal information policy, and for other purposes; to the Committee on Governmental Affairs.

By Mr. SIMPSON (for Mr. Thurmond):

S. 2888. A bill to temporarily delay the repeal of the United States Trustee System; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. INOUYE:

S. Res. 495. Resolution to honor Princess Pauahi Bishop; ordered held at the desk.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NICKLES (for himself and Mr. Boren):

S. 2886. A bill to amend the Internal Revenue Code of 1954 to impose a fee on the importation of crude oil or refined petroleum products; to the Committee on Finance.

OIL IMPORT FEE

Mr. NICKLES. Mr. President, today Senator Boren and I are introducing legislation for an oil import fee, which would place a fee on imported crude oil equal to the difference in international prices for crude oil and $20. It would impose an additional fee on imported products equal to the oil fee plus $3.

Mr. President, our country cannot stand idly by and allow foreign governments to manipulate the marketplace to devastate our domestic oil and gas industry. The consequences of doing nothing can also be devastating to our national security interests. We do not have and have not had a free market in world energy prices for some time. OPEC member countries conspired to reduce production and drive up prices in the seventies, and this year we have witnessed again manipulation of production to move prices downward.

One year ago world oil prices were in the $28 to $30 range, and today we are looking at oil prices between $13 and

$15. A few weeks ago imported oil was coming into the United States for as low as $9. Again this is not free market forces at work but due to actions taken by a few governments, not private companies. For example, Saudi Arabia increased production from 2.2 million barrels per day to over 6 million barrels per day. The small rebound in prices was due to a tentative agreement with OPEC members to reduce production from 20 million barrels per day to 16½ million barrels per day. While the Saudis and other OPEC countries are working to manipulate markets to their advantage, I think it would be only prudent for us as a government to take some action to see that their manipulations do not cause a severe economic and national security disaster.

The bill I am introducing today would place a floor of $20 for crude oil produced in the United States. The U.S. Government would tax the difference between $20 and the price of imported oil coming into the country. Some would say this is protectionist and in violation of free market principles, but I would respond and say we do not have a free market when you have governments manipulating wild variations in production schedules, which totally distort market prices. The fee is equitable since windfall profit taxes are applied only to domestic production and not imports. Domestic producers since 1980 have paid a total of $77 billion in windfall profits tax. Imports have paid zero. The windfall profit tax raised an average of $5 per barrel over the last several years. If the prices of oil coming into the United States is $14, the amount of imported fee would be $20 minus $14 or $6 on imported crude or $9 on imported products. We are presently importing over 2 billion barrels per year. If the fee averages $5 it would gross the Government over $10 billion per year, which would and should be used for reducing the deficit.

Mr. President, the effect of this fee on imported oil will be positive in at least two respects.

First, it will help stabilize the domestic oil and gas industry, which is presently struggling to stay alive. The number of active rigs has fallen to a historical low dating back to the 1940's. Presently there are 730 active rigs in the country compared to a high of 4,500 rigs in 1981. In Oklahoma we have only 104 active rigs running compared to a high of 880 in 1981. The number of energy loans and banks which have failed have been increasing at an alarming rate and the economic consequences have been felt throughout the Nation.

Second, this tax will help reduce our dependence on foreign sources. Our country is becoming dangerously dependent on foreign sources of oil. Last week we imported 6.85 million barrels per day which equals 42 percent of our consumption. A year ago we were only importing 27 percent. We should not forget the lesson we learned when we became dependent on the OPEC nations and in 1973 were importing 35 percent of our oil needs. In 1979 we imported 45 percent of our oil needs and in both years we suffered because OPEC countries withheld shipments to the United States. Our domestic production has fallen from 8.9 to 8.6 million barrels per day and regretfully will decline further in the future. Imposition of this fee would at least help slow down the reduction in domestic production in the United States.

Mr. President, this bill does not contain exemptions for other countries. It does not have or provide an exemption for crude oil used as a primary feed stock. My expectation is that if the Saudis and other exporting countries would see that the United States and other importing nations would establish such a fee they would reassess their position of wild manipulation of world oil prices.

I hope my friends and colleagues in the Senate as well as the American people will wake up and realize that action should be taken now to avoid our overdependence on unreliable sources, which have the potential for wrecking extreme hardships and high prices on our country in the future.

ADDITIONAL COSPONSORS

S. 1773

At the request of Mr. LEAHY, the name of the Senator from Missouri [Mr. EAGLETON] was added as a cosponsor of S. 1773, a bill to express the policy of the Congress on the number of members of the Soviet mission at the United Nations Headquarters.

S. 2281

At the request of Mr. TRIBLE, the name of the Senator from South Carolina, [Mr. THURMOND] was added as a cosponsor of S. 2281, a bill to amend title 18, United States Code, to provide additional penalties for fraud and related activities in connection with access devices and computers, and for other purposes.

S. 2800

At the request of Mr. DODD, the names of the Senator from Georgia [Mr. NUNN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Massachusetts [Mr. KERRY], the Senator from Tennessee [Mr. SASSER], the Senator from Montana [Mr. BAUCUS], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Texas [Mr. BENTSEN], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Arkansas [Mr. BUMPERS], the Senator from North Dakota [Mr. BURDICK], the Senator from Illinois [Mr. DIXON], the Senator from Missouri [Mr. EAGLETON], the Senator from Nebraska [Mr. EXON], the Senator from Kentucky [Mr. FORD], the Senator from Hawaii [Mr. MATSUNAGA], the Senator from Ohio [Mr. GLENN], the Senator from Tennessee [Mr. GORE], the Senator from Iowa [Mr. HARKIN], the Senator from Colorado [Mr. HART], the Senator from Alabama [Mr. HEFLIN], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Hawaii [Mr. INOUYE], the Senator from Louisiana [Mr. JOHNSTON], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Michigan [Mr. LEVIN], the Senator from Louisiana [Mr. LONG], the Senator from Montana [Mr. MELCHER], the Senator from Ohio [Mr. METZENBAUM], the Senator from Rhode Island [Mr. PELL], the Senator from Wisconsin [Mr. PROXMIRE], the Senator from Arkansas [Mr. PRYOR], the Senator from Michigan [Mr. RIEGLE], the Senator from Maryland [Mr. SARBANES], the Senator from Illinois [Mr. SIMON], the Senator from Mississippi [Mr. STENNIS], and the Senator from Nebraska [Mr. ZORINSKY] were added as cosponsors to S. 2800, a bill to require the Secretary of Health and Human Services to make grants to public and nonprofit private entities for drug abuse and alcohol abuse prevention, treatment, and rehabilitation model projects for high risk youth.

SENATE JOINT RESOLUTION 112

At the request of Mr. PELL, the name of the Senator from Nevada [Mr. LAXALT] was added as a cosponsor of Senate Joint Resolution 112, a joint resolution to authorize and request the President to call a White House Conference on Library and Information Services to be held not later than 1989, and for other purposes.

SENATE RESOLUTION 495—HONORING PRINCESS BERNICE PAUAHI BISHOP

Mr INOUYE submitted the following resolution; which was ordered held at the desk:

S. RES. 495

Whereas Princess Bernice Pauahi Paki was born December 19, 1831, to High Chiefess Laura Konia, the granddaughter of Kamahameha I, and her husband, High Chief Abner Kuho'oheihei Paki of the Kiwala'o and Kamehameha Nui lineages;

Whereas Princess Pauahi was the great-granddaughter and last direct descendent of King Kamehameha I, who united the Hawaiian Islands under one ruler;

Whereas Bernice Pauahi married Charles Reed Bishop, a New York native whose immense success as a businessman and governmental advisor in Hawaii, attest to the trust and esteem in which both native and foreign communities held him;

Whereas Princess Pauahi Bishop declined the request of King Kamehameha V to assume the Crown of the Hawaiian Kingdom following his death, that she might better serve her people while living among them;

Whereas Mrs. Bishop was regarded as the noblest example of womanhood and served as the salutary bridge between her Hawaiian people and the Westerners in Hawaii, and whose home was the center of unpretentious, yet elegant, hospitality to her people and foreigners alike;

Whereas Mrs. Bishop, before her death, was moved by the alarming decline in number and condition of her people, and was determined to find ways that she could best help succeeding generations of the Hawaiian children that she would never know;

Whereas Mrs. Bishop saw that a good education was the key to the future success of her people, and therefore willed her entire estate to the founding and maintaining of the Kamehameha Schools;

Whereas it is by her explicit instructions that all assets inherent in or accruing from her estate be used to the utmost advantage of her beneficiaries for so long as resources permit;

Whereas Mrs. Bishop's selfless giving of her ancestral lands and properties to the benefit of her people has provided unequaled learning opportunities to thousands of Hawaiian children for more than 100 years;

Whereas the Kamehameha Schools/Bernice Pauahi Bishop Estate accepted its first students in 1887, and has since educated more than 12,000 graduates, who have established themselves in careers and occupations in communities around the world, bringing honor and pride to the Schools/Estate and Hawaii;

Whereas on the 150th aniversary of her birth, Mrs. Bishop was honored by the Governor of the State of Hawaii with a proclamation that December, 1981, was to be Bernice Pauahi Bishop Month in Hawaii; and

Whereas it is appropriate and fitting that on the centennial anniversary of Kamehameha Schools/Bishop Estate Bernice Pauahi Bishop be acknowledged by all to be one of the greatest humanitarians in Hawaiian history: Now, therefore, be it

Resolved, That the United States Senate does hereby recognize Bernice Pauahi Bishop as one the great humanitarians in United States History.

● Mr. INOUYE. Mr. President, I am today submitting a Senate resolution honoring Princess Bernice Pauahi Bishop, a member of the Hawaiian royal family and founder of the Kamehameha Schools.

She was a beloved Hawaiian princess—the last direct descendant of the royal lineage of the Kamehamehas. She was the great-granddaughter of Kamehameha the Great, the warrior king who brought the Hawaiian Islands under one rule and ushered in an era of swift and sure justice and one of lasting peace. Yet, to this gentlewoman would be accorded the tribute of "the last and best of the Kamehamehas."

On the last day of October 1883, a year before she died, Princess Bernice Pauahi Bishop affixed her seal to her will. The bulk of her estate which consisted of approximately a half million acres of ancestral crown lands was to be applied to the endowment and maintenance of what were to be known as the Kamehameha Schools. The major beneficiaries of her estate were to be the children of Hawaiian ancestry.

In order to appreciate her dream—her vision as manifested in her will—one must understand the turmoil and troubles of her day. During her lifetime, she witnessed the decimation of her native Hawaiian population of 400,000 to fewer than 45,000. She witnessed the displacement of her people by the rapid expansion and acceptance of western legal, political and economic systems completely foreign to the Hawaiians.

She saw a foreign concept of land ownership abruptly and tragically alienate her people from their ancestral homelands. Never was so much change demanded of a people in such a short span of time. All this she witnessed and against this physical and social deterioration of her people she staked her legacy of education.

On November 4, 1887, 3 years after the death of the princess, the Kamehameha School for Boys was dedicated with a student enrollment of 37 boys and five teachers. Ninety-nine years later, having graduated more than 12,000 Hawaiian children, Kamehameha Schools for Boys and Girls have an enrollment of 2,773 with 183 faculty members.

Today, there are 31 educational programs at Kamehameha Schools, ranging from providing education to boarding students, financial assistance to students, to providing cultural programs and lecture series to the community-at-large. These programs also include all classes from kindergarten to 12th grade.

Initially providing vocational education, Kamehameha Schools have evolved into a college preparatory institution of academic excellence. Of the graduating class of 1986, a class of 359 graduates, 323 have made arrangements to enroll in colleges and universities. I might note that among her distinguished alumni is the first elected congressman of native Hawaiian ancestry, the Honorable DANIEL K. AKAKA.

As we approach the centennial celebration of the founding of the Kamehameha Schools for Boys and Girls, we would be remiss if we did not give tribute to both its founders. For, together with the trusteeship established by the Princess' will, her husband, Charles Reed Bishop, joined his personal fortune and endeavors to make his wife's dream for her people a reality.

Princess Pauahi was never to see her dream realized in her lifetime. However, one can speculate that the reality of the Kamehameha Schools as they exist today would fill her with immense pride in the academic achievements of her students; in the remarkable leadership her graduates have displayed in the Hawaii community and abroad; in the renaissance of a proud Hawaiian heritage that her students have generated and supported; and in the noble principles and discipline that her students carry with them as exemplified by the princess.

On his deathbed, Kamehameha V asked Bernice Pauahi Paki Bishop to become his successor to the throne of the Hawaiian Kingdom. Of her refusal, it has been written:

"Refusing a crown, she lived that which she was—crowned. Refusing to rule her people, she did what was better, she served them and in no way so grandly as by her example."

Princess Pauahi served the native people of Hawaii as their monarch in all but formal title. In recognition of her noble achievements on behalf of the Hawaiian people, I offer the Senate for its consideration this resolution honoring Princess Bernice Pauahi Paki Bishop.●

AMENDMENTS SUBMITTED

ANTI-DRUG ABUSE ACT OF 1986

BENTSEN AMENDMENT NO. 3039

Mr. BENTSEN proposed an amendment to the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes; as follows:

SECTION 1. At the appropriate place in the bill, insert the following language:

In addition to any other amounts that may be authorized to be appropriated for fiscal year 1987, the following sums are authorized to be appropriated to procure secure voice radios:

Federal Bureau of Investigation	$4,000,000
Secret Service	5,000,000

SECTION 2. Amend Title II, Subtitle J (Authorization of Appropriations for Drug Law Enforcement) Sec. 1451(a), by adding after the words "All Source Intelligence Center;" in line seven, the following language: "*Further provided*, That of the funds authorized to be appropriated under this section, $7,000,000 shall be for the procurement of secure voice radios for the Drug Enforcement Administration."

ABDNOR (AND DECONCINI) AMENDMENT NO. 3040

Mr. ABDNOR (for himself and Mr. DECONCINI) proposed an amendment to the bill H.R. 5484:

At the appropriate place in the bill insert the following:

(a) RECRUITMENT AND TRAINING OF VOLUNTEERS FOR THE U.S. CUSTOMS SERVICE.—The Commissioner of Customs, acting under the direction of the Secretary of the Treasury (hereinafter referred to as "the Commissioner") is authorized to recruit, train, and accept without regard to the civil service classification law, rules, or regulations the services of individuals without compensation as volunteers to aid the U.S. Customs Service in the performance of its responsibilities. In accepting such services of individuals or volunteers, the Commissioner shall not permit the use of volunteers in policy-making processes, or to displace any employee. The Commissioner shall not permit the use of volunteers in hazardous duty or law enforcement work unless the Commissioner determines that they are skilled in performing such hazardous activities or are trained in law enforcement work.

(b) ESTABLISHMENT OF U.S. CUSTOMS RESERVE.—The U.S. Customs Reserve (hereinafter "Reserve") is an organization of volunteers administered by the Commissioner of Customs under the direction of the Secretary.

(c) PURPOSE.—The purpose of the Reserve is to assist the U.S. Customs Service:

(a) to foster a wider knowledge of, and better compliance with, the laws, rules, and regulations enforced or administered by the U.S. Customs Service; and

(b) to facilitate the operations of the U.S. Customs Service

(d) ELIGIBILITY, ENROLLMENTS AND DISENROLLMENT.—The Reserve shall be composed of citizens of the United States and its territories and possessions, who by reason of their interests, special training or experience are deemed by the Commissioner to be qualified for duty in the Reserve and who may be enrolled therein pursuant to applicable regulations. Members of the Reserve may be disenrolled pursuant to applicable regulations.

(e) MEMBERSHIP IN OTHER ORGANIZATIONS.—Membership in the Reserve shall not be a bar to membership in or employment in any civilian or military organization of the U.S. Government.

(f) USE OF VOLUNTEERS FACILITIES.—The Customs Service may utilize for any purpose incident to carrying out its functions and duties as authorized by the Secretary any property placed at its disposition for any of such purposes by any individual, corporation, partnership, or association, or by any State or political subdivision thereof.

(g) VESSEL, VEHICLE, OR AIRCRAFT DEEMED PUBLIC VESSEL OR PUBLIC AIRCRAFT.—Any vessel, vehicle or aircraft while assigned to authorized Customs Service duty shall be deemed to be a public vessel, public vehicle or public aircraft of the United States, and shall be deemed to be a vessel, vehicle or aircraft of the Customs Service, but shall not be counted against any limits expressed in authorization acts.

(h) AVAILABILITY OF APPROPRIATIONS.—Appropriations of the Customs Service shall be available for the payment of incidental expenses, such as uniforms and necessary traveling expense and subsistence, or per diem in lieu of subsistence, of volunteers and members of the Reserve assigned to authorized specific duties and for actual necessary expenses of operation of any vessel, vehicle, aircraft, or radio station or other special equipment when assigned to Customs Service duty, but shall not be available for the payment of compensation for personal services, incident to such operation. The term "actual necessary expenses of operation," as used in this section, shall include payment for fuel, oil, power, water, supplies, provisions, replacement or repair, or radio station where it is determined, under applicable regulations, that responsibility for the loss or damage necessitating such replacement or repair of equipment, or for the damage or loss, constructive or actual, or such vessel, aircraft, or radio station rests with the Customs Service.

(i) ASSIGNMENT AND PERFORMANCE OF DUTIES.—No volunteer or member of the Reserve solely by reason of such volunteer status or membership, shall be vested with, or exercise, any right, privilege, power, or duty vested in or imposed upon the personnel of the Customs Service except that any such member may, under applicable regulations, be assigned specific duties, which after appropriate training and examination, he has been found competent to perform, to effectuate the missions of the Customs Service. No volunteer or member of the Reserve shall be placed in charge of a vessel, vehicle, aircraft, or radio station assigned to Customs duty unless he has been specifically designated by authority of the Commissioner or his designee to perform such duty. Volunteers and Members of the Reserve, when assigned to specific duties as herein authorized shall, unless otherwise limited by the Commissioner, be vested with the same power and authority, in the execution of such duties, as members of the regular Customs Service assigned to similar duty. When any volunteer or member of the Reserve is assigned to such duty he may, pursuant to regulations issued by the Secretary, be paid actual necessary traveling expenses, including a per diem allowance in conformity with standardized Government travel regulations in lieu of subsistence, while traveling and while on duty away from his home. No per diem shall be paid for any period during which quarters and subsistence in kind are furnished by the Government.

(j) FEDERAL EMPLOYEE STATUS FOR VOLUNTEERS.—

(1) Employment status of volunteers. Except as otherwise provided in this section, a volunteer or member of the Reserve shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(2) Tort claims and litigation. For the purpose of the tort claim provisions of title 28 of the United States Code, and litigation against individuals when performing official business, a volunteer under this Act and a member of the Reserve on duty shall be considered a Federal employee and entitled to official representation by the Department of Justice.

(3) Civil employees. For the purposes of subchapter I of chapter 81 of title 5 of the United States Code relating to compensation to Federal employees for work injuries, volunteers and members of the Reserve when performing authorized activities under this Act shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply. When any volunteer or member of the Reserve is physically injured or dies as a result of physical injury incurred while performing any specific duty to which he has been assigned by competent Customs authority, such member or his beneficiary shall be The performance of a specific duty as the term is used in this section includes time engaged in traveling back and forth between the place of assigned duty and the permanent residence of a volunteer or member of the Reserve.

(4) A volunteer shall be considered an employee of the Customs Service for purposes of—

(A) section 552a of title 5 (relating to disclosure of information);

(B) section 1905 of title 18 (relating to confidential business and trade secrets);

(C) any other laws governing access to records;

except that such information shall be made available to volunteers only to the extent that the Commissioner determines that the duties assigned to such volunteers so require.

HAWKINS AMENDMENT NO. 3041

Mrs. HAWKINS proposed an amendment to the bill (H.R. 5484), supra; as follows:

Section 1102 is amended by amending the proposed Section 405B of the Controlled Substances Act by adding at the end thereof the following subsection:

"(f) except as authorized by this title, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this title. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e).".

WEICKER (AND OTHERS) AMENDMENT NO. 3042

Mr. WEICKER (for himself, Mr. HATCH, and Mrs. HAWKINS) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the end of subtitle A of title IV, add the following:

SEC. 4017. PRIORITY RESEARCH.

The Alcohol, Drug Abuse, and Mental Health Administration shall include as a top priority research on neuronal receptors.

KENNEDY (AND BIDEN) AMENDMENT NO. 3043

Mr. BIDEN (for Mr. KENNEDY (for himself and Mr. BIDEN)) proposed an amendment to the bill (H.R. 5484), supra; as follows:

Section 1552(a)(3) of the bill is amended by amending proposed section 1302 of part M of title I of the Omnibus Crime Control and Safety Streets Act of 1968 by—

(1) striking "and" at the end of clause (5);

(2) striking the period at the end of clause (6) and inserting ", and"; and

(3) adding at the end thereof the following:

"(7) provide grants for programs which identify and meet the needs of drug-dependent offenders for treatment as provided in section 403(a)(8).".

DECONCINI (AND OTHERS) AMENDMENT NO. 3044

Mr. DECONCINI (for himself, Mr. DIXON, Mr. D'AMATO, Mrs. HAWKINS, Mr. MATTINGLY, Mr. WILSON, and Mr. LEVIN) proposed an amendment which was subsequently modified, to the bill (H.R. 5484), supra; as follows:

At the end of title III, insert the following new section:

SEC. 3602. ADDITIONAL DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE.

(a) GENERAL REQUIREMENT.—(1) Within 90 days after the date of the enactment of this Act, the Secretary of Defense shall prepare and submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives—

(A) a detailed list of all forms of assistance that shall be made available to civilian drug law enforcement and drug interdiction agencies, including the United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service, and

(B) a detailed plan for promptly lending equipment and rendering drug interdiction-related assistance included on such list.

(2) The list required by paragraph (1)(A) shall include, but not be limited to, the following matters:

(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

(B) Communications equipment, including secure communications.

(C) Support available from the reserve components of the Armed Forces for drug interdiction operations of civilian drug law enforcement agencies.

(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(G) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities, as authorized by law.

(b) COMMITTEE APPROVAL AND FINAL IMPLEMENTATION.—Within 30 days after the date on which the Committees referred to in subsection (a) receive the list and plan submitted under such subsection, the Committees shall submit their approval or disapproval of such list and plan to the Secretary. The Secretary of Defense shall then immediately convene a conference of the heads of the Federal Government agencies having jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or and other assistance made available by the Department of Defense to such agencies. Not later than 60 days after the date on which such conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such matters.

(c) APPLICATION TO OTHER DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE IN THIS ACT.—Subsections (a) and (b) shall not apply to any assets, equipment, items of support, or other assistance provided or authorized in any other provision of this title.

(d) REVIEW OF DEPARTMENT OF DEFENSE COMPLIANCE BY THE GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States shall monitor the compliance of the Department of Defense with subsections (a) and (b) and, not later than 90 days after the date on which the conference is convened under subsection (b), transmit to the Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).

DURENBERGER (AND TRIBLE) AMENDMENT NO. 3045

Mr. DURENBERGER (for himself and Mr. TRIBLE) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the end of the amendment, add the following:

TITLE VI—FEDERAL EMPLOYEE SUBSTANCE ABUSE EDUCATION AND TREATMENT

SEC. 6001. SHORT TITLE.

This title may be cited as the "Federal Employee Substance Abuse Education and Treatment Act of 1986".

SEC. 6002. PROGRAMS TO PROVIDE PREVENTION, TREATMENT, AND REHABILITATION SERVICES TO FEDERAL EMPLOYEES WITH RESPECT TO DRUG AND ALCOHOL ABUSE.

(a) IN GENERAL.—(1) Chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"Subchapter VI—Drug Abuse, Alcohol Abuse, and Alcoholism

"§ 7361. Drug abuse

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the President, with the Secretary of Health and Human Services (acting through the National Institute on Drug Abuse), and with other agencies, and in accordance with applicable provisions of this subchapter, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of employees and to employees who have family members who are drug abusers. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 527 of the Public Health Service Act (42 U.S.C. 290ee-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7362. Alcohol abuse and alcoholism

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the Secretary of Health and Human Services and with other agencies, and in accordance with applicable provisions of this subpart, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 523 of the Public Health Service Act (42 U.S.C. 290dd-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

§ 7363. Reports to Congress

"(a) The Office of Personnel Management shall, within 6 months after the date of the enactment of the Federal Employee Substance Abuse Education and Treatment Act of 1986 and annually thereafter, submit to each House of Congress a report containing the matters described in subsection (b).

"(b) Each report under this section shall include—

"(1) a description of any programs or services provided under section 7361 or 7362 of this title, including the costs associated with each such program or service and the source and adequacy of any funding such program or service;

"(2) a description of the levels of participation in each program and service provided under section 7361 or 7362 of this title, and the effectiveness of such programs and services;

"(3) a description of the training and qualifications required of the personnel providing any program or service under section 7361 or 7362 of this title;

"(4) a description of the training given to supervisory personnel in connection with recognizing the symptoms of drug or alcohol abuse and the procedures (including those relating to confidentiality) under which individuals are referred for treatment, rehabilitation, or other assistance;

"(5) any recommendations for legislation considered appropriate by the Office and any proposed administrative actions; and

"(6) information describing any other related activities under section 7904 of this title, and any other matter which the Office considers appropriate.".

(2) The analysis for chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

"Sec.
"7361. Drug abuse.
"7362. Alcohol abuse and alcoholism.
"7363. Reports to Congress.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The Public Health Service Act is amended—

(1) in section 521 (42 U.S.C. 290dd-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively; and

(2) in section 525 (42 U.S.C. 290ee-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively.

SEC. 6003. EDUCATION PROGRAM FOR FEDERAL EMPLOYEES RELATING TO DRUG AND ALCOHOL ABUSE.

(a) Establishment.—The Director of the Office of Personnel Management shall, in consultation with the Secretary of Health and Human Services, establish a Government-wide education program, using seminars and such other methods as the Director considers appropriate, to carry out the purposes prescribed in subsection (b).

(b) Purposes.—The program established under this section shall be designed to provide information to Federal Government employees with respect to—

(1) the short-term and long-term health hazards associated with alcohol abuse and drug abuse;

(2) the symptoms of alcohol abuse and drug abuse;

(3) the availability of any prevention, treatment, or rehabilitation programs or services relating to alcohol abuse or drug abuse, whether provided by the Federal Government or otherwise;

(4) confidentiality protections afforded in connection with any prevention, treatment, or rehabilitation programs or services;

(5) any penalites provided under law or regulation, and any administrative action (permissive or mandatory), relating to the use of alcohol or drugs by a Federal Government employee or the failure to seek or receive appropriate treatment or rehabilitation services; and

(6) any other matter which the Director considers appropriate.

SEC. 6004. EMPLOYEE ASSISTANCE PROGRAMS RELATING TO DRUG ABUSE AND ALCOHOL ABUSE.

(a) In General.—Chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"§ 7904. Employee assistance programs relating to drug abuse and alcohol abuse

"(a) The head of each Executive agency shall, in a manner consistent with guidelines prescribed under subsection (b) of this section and applicable provisions of law, establish appropriate prevention, treatment, and rehabilitation programs and services for drug abuse and alcohol abuse for employees in or under such agency.

"(b) The Office of Personnel Management shall, after such consultations as the Office considers appropriate prescribe guidelines for programs and services under this section.

"(c) The Secretary of Health and Human Services, on request of the head of an Executive agency, shall review any program or service provided under this section and shall submit comments and recommendations to the head of the agency concerned.".

(b) Conforming Amendment.—The analysis for chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"7904. Employee assistance programs relating to drug abuse and alcohol abuse.".

SEC. —. SUBSTANCE ABUSE COVERAGE STUDY.

(a) Study.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academy of Sciences to conduct a study of (1) the extent to which the cost of drug and alcohol abuse treatment is covered by private insurance, public programs, and other sources of payment, and (2) the adequacy of such coverage for the rehabilitation of drug and alcohol abusers.

(b) Report.—Not later than one year after the date of the enactment of this Act the Secretary of Health and Human Services shall transmit to the Congress a report of the results of the study conducted under subsection (a). The report shall include recommendations of means to meet the needs identified in such study.

SEC. —. HEALTH INSURANCE COVERAGE FOR DRUG AND ALCOHOL TREATMENT.

(a) Findings.—The Congress finds that—

(1) drug and alcohol abuse are problems of grave concern and consequence in American society;

(2) over 500,000 individuals are known heroin addicts; 5 million individuals use cocaine; and at least 7 million individuals regularly use prescription drugs, mostly addictive ones, without medical supervision;

(3) 10 million adults and 3 million children and adolescents abuse alcohol, and an additional 30 to 40 million people are adversely affected because of close family ties to alcoholics;

(4) the total cost of drug abuse to the nation in 1983 was over $60,000,000,000; and

(5) the vast majority of health benefits plans provide only limited coverage for treatment of drug and alcohol addiction, which is a fact that can discourage the abuser from seeking treatment or, if the abuser does seek treatment, can cause the abuser to face significant out of pocket expenses for the treatment.

(b) Sense of Congress.—It is the sense of Congress that—

(1) all employers providing health insurance policies should insure that the policies provide adequate coverage for treatment of drug and alcohol addiction in recognition that the health consequences and costs per individuals and society can be as formidable as those resulting from other diseases and illnesses for which insurance coverage is much more adequate; and

(2) State insurance commissioners should encourage employers providing health benefits plans to ensure that the policies provide more adequate coverage for treatment of drug and alcohol addiction.

HARKIN (AND OTHERS) AMENDMENT NO. 3046

Mr. HARKIN (for himself, Mr. Dole, Mrs. Hawkins, Mr. Biden, Mr. Bingaman, Mr. Nunn, Mr. Dixon, Mr. Chiles, and Mr. DeConcini) proposed an amendment to the bill (H.R. 5484), supra; as follows:

Amendment No. 3046

At the end of subtitle A of title III, insert the following:

SEC. —. CIVIL AIR PATROL.

(a) Sense of Congress.—It is the sense of Congress (1) that the Civil Air Patrol, the all volunteer auxiliary of the Air Force, can increase its participation in and make significant contributions to the drug interdiction efforts of the Federal Government, and (2) that the Secretary of the Air Force should fully support that participation.

(b) Authorization.—From within any unobligated and uncommitted balances of appropriations for the Department of Defense for fiscal year 1986, carrying forward into fiscal year 1987, there are authorized to be appropriated for the Civil Air Patrol, in addition to any other amounts appropriated for the Civil Air Patrol for fiscal year 1987, $7,000,000 for the acquisition of the major items of equipment needed by the Civil Air Patrol for drug interdiction surveillance and reporting missions.

(c) Reports.—(1) The Secretary of the Air Force shall make quarterly reports to the Committees on Appropriations and on Armed Services of the Senate and House of Representatives on the use of such unobligated funds made available pursuant to the authorization contained in subsection (b).

(2) Each report under paragraph (91) shall include a detailed description of the activities of the Civil Air Patrol in support of the Federal Government's drug interdiction program.

(3) The first report under paragraph (1) shall be submitted on the last day of the first quarter ending not less than 90 days after the date of enactment of this Act.

ANDREWS AMENDMENT NOS. 3047 AND 3048

Mr. ANDREWS proposed two amendments to the bill (H.R. 5484), supra; as follows:

Amendment No. 3047

Amend section 4107(b)(1)(A) as follows: insert after the words, "including parent groups," the following: "and community action agencies,"

Amendment No. 3048

Amend section 4218 as follows:

Strike subsection (b) and insert in lieu thereof the following:

"(b) The powers and authorities conferred herein shall be exercised in accordance with an agreement entered into between the Secretary and the Attorney General of the United States."

MOYNIHAN (AND OTHERS) AMENDMENT NO. 3049

Mr. MOYNIHAN (for himself, Mr. Humphrey, and Mr. Dole,) proposed an amendment to the bill (H.R. 5484), supra; as follows:

Amendment No. 3049

At the appropriate place in the bill, insert the following new section:

Sec. . (a) Findings.—The Senate finds that—

(1) On August 30, 1986, Nicholas Daniloff was arrested, apparently in response to the arrest of the Soviet spy Gennadi F. Zakharov;

(2) On September 5, 1986, President Reagan sent a message to Soviet General Secretary Gorbachev offering the President's personal assurances that Mr. Daniloff was not a spy;

(3) Despite the President's assurances, the Soviet Union indicted Mr. Daniloff on September 7, 1986;

(4) The Soviet Union demonstrated an unprecedented disregard for the word of a United States President, while continuing to

blatantly distort and conceal the facts surrounding the detention of Mr. Daniloff;

(5) Such mendacity jeopardizes the furtherance of any constructive relationship between the United States and the Soviet Union; and

(6) Hundreds of Soviet espionage agents operate at the United Nations, under cover of the Soviet mission to the United Nations and as members of the Secretariat of the United Nations.

(B) The Senate hereby—

(1) Declares that the Soviet Union action in imprisoning and falsely charging Mr. Daniloff reflects once again the failure of the Soviet Union to observe internationally recognized standards of human rights and civil conduct and raises profound doubts about Soviet willingness to live up to their responsibilities and commitments under any international or bilateral agreement.

(2) Urges the President to continue his forthright demands for the immediate and unconditional release of Mr. Daniloff.

(3) Calls on the President to condition his agreement to a summit meeting with Secretary Gorbachev on the prompt return of Mr. Daniloff from the Soviet Union.

(4) Expresses opposition to any new economic or commercial agreement with the Soviet Union, or any new transactions under existing economic or commercial agreements with the Soviet Union until Mr. Daniloff has been granted unconditional permission to depart the Soviet Union.

(5) Calls on the President to demand that the Soviet Union remove its spies from its United Nations mission and from the United Nations Secretariat and to take all measures necessary to bring an end to such direct Soviet violations of Articles 100, Section 2, of the United Nations Charter.

MURKOWSKI AMENDMENT NO. 3050

Mr. MURKOWSKI (for himself and Mr. PELL) proposed an amendment to the bill (H.R. 5484), supra; as follows:

In title II, section 08, strike out in paragraph (3) "paragraph" and inserting in lieu thereof "paragraphs".

In title II, at the end of section 08, strike out the quotation marks and the second period.

In title II, at the end of section 08, add the following new paragraph:

"(4) With the agreement of a foreign country, paragraph (1) shall not apply to maritime law enforcement operations in the territorial sea of such country.".

METZENBAUM AMENDMENT NO. 3051

Mr. METZENBAUM proposed an amendment to the bill (H.R. 5484), supra; as follows:

In section 4002(a)(1), strike out "$675,000,000" and insert in lieu thereof "$736,000,000".

In section 4002(a)(2), strike out "$136,000,000" and insert in lieu thereof "$186,000,000".

DOMENICI (AND OTHERS) AMENDMENT NO. 3052

Mr. DOMENICI (for himself, Mrs. HAWKINS, Mr. SPECTER, Mr. WILSON, Mr. MURKOWSKI, Mr. BINGAMAN, and Mr. TRIBLE) proposed an amendment to the bill (H.R. 5484); as follows:

At the appropriate place, insert the following:

TITLE —PRESIDENT'S MEDIA COMMISSION ON DRUG ABUSE

SEC. —. SHORT TITLE.

This title may be cited as the "President's Media Commisison on Drug Abuse title".

SEC. —. ESTABLISHMENT.

There is established a commission to be known as the President's Media Commission on Drug Abuse (hereinafter in this title referred to as the "Commission").

SEC. —. DUTIES OF COMMISSION.

The Commission shall—

(1) examine public education programs in effect on the date of the enactment of this title which are—

(A) implemented through various segments of mass media; and

(B) intended to prevent narcotic and psychotropic drug abuse;

(2) act as an administrative and coordinating body for the voluntary combination of resources of—

(A) television, radio, motion picture, and print media;

(B) the advertising industry; and

(C) the corporate sector of the United States;

in order to assist the implementation of new programs and national strategies for dissemination of information intended to prevent narcotic and psychotropic drug abuse;

(3) provide and disseminate through the mass media public service announcements and * * *.

(A) monitor the effectiveness and assist in the update of programs and national strategies formulated with the assistance of the Commission.

SEC. —. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 12 members appointed by the President within 30 days after the date of the enactment of this title, and should include representatives of—

(1) advertising agencies;

(2) motion picture, television, radio, and print media;

(3) the recording industry;

(4) other segments of the corporate sector of the United States; and

(5) experts in the prevention of narcotic and psychotropic drug abuse.

(b) TERMS.—(1) Except as provided in paragraph (2), (3), and (4), members shall be appointed for terms of 3 years.

(2) Of the members first appointed—

(A) 4 shall be appointed for terms of 1 year;

(B) 4 shall be appointed for terms of 2 years; and

(C) 4 shall be appointed for terms of 3 years;

(3) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(4) A member may serve after the expiration of his term until his successor has taken office.

(c) BASIC PAY AND EXPENSES.—(1) Except as provided in paragraph (2), members of the Commission shall serve without pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code.

SEC. —. MEETINGS.

(a) IN GENERAL.—(1) The Commission shall meet at the call of the Moderator.

(2) The Moderator shall convene the 1st meeting of the Commission within 30 days after the date of the completion of appointments under section 4(a).

(b) MODERATOR.—One member of the Commission shall be designated by the President to serve as Moderator of the Commission.

(c) QUORUM AND PROCEDURE.—The Commission shall adopt rules regarding quorum requirements and meeting procedures as the Commission deems appropriate at the 1st meeting of the Commission.

(d) VOTING.—Decisions and official acts of the Commission shall be according to the vote of a majority of members voting at a properly called meeting.

SEC. —. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

(a) DIRECTOR AND STAFF.—(1) Subject to paragraph (2), the Moderator, with the approval of the Commission, may employ and set the rate of pay for a Director and such staff as the Moderator deems necessary.

(2) Rates of pay set under paragraph (1) shall be less than the rate of basic pay payable under section 5316 of title 5, United States Code.

(b) EXPERTS AND CONSULTANTS.—The Moderator, with the approval of the Commission, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(c) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title.

SEC. —. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) OBTAINING OFFICIAL DATA.—Upon the request of the Moderator of the Commission, the Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. —. REPORT.

The Commission shall transmit to the President and to each House of Congress a report not later than July 31 of each year which contains a detailed statement of the activities of the Commission during the preceding year, including a summary of the number of public service announcements produced by the Commission and published or broadcast.

HELMS (AND OTHERS) AMENDMENT NO. 3053

Mr. HELMS (for himself, Mr. ZORINSKY, Mrs. HAWKINS, Mr. MELCHER, Mr. HATCH, Mr. SYMMS, Mr. HECHT Mr. THURMOND, Mr. DODD, Mr. HUMPHREY, Mr. MCCLURE, Mr. INOUYE, Mr. WILSON, Mr. TRIBLE, Mrs. KASSEBAUM) proposed an amendment which was subsequently modified, and to the bill (H.R. 5484), supra; as follows:

At the end of the bill, add the following:

SEC. —. (a) Notwithstanding any other provision of law:

(1) The President may not allocate any limitation imposed on the quantity of sugar to—

(A) any country which has a government involved in the trade of illicit narcotics or is failing to cooperate with the U.S. in narcotics enforcement activities as defined in section 2002, or;

(B) any foreign country that imports sugar produced in Cuba, determined by the President.

(2) The President shall—

(A) use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation; and

(B) subject to paragraph 1, and to the extent possible, subject to subparagraph (A), allocate any limitation imposed on the quantity of sugar entered during calendar year 1987 among foreign countries in a manner that ensures that the total quantity of sugar allocated under such limitation to each beneficiary country for calendar year 1987 is not less than the total quantity of sugar entered during quota year 1986 that are products of such beneficiary country.

(b) For purposes of this section—

(1) The term "beneficiary country"—

(A) has the meaning given to such term by section 212(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)); and

(B) includes the Republic of the Philippines and the Republic of Ecuador.

(2) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(3) The term "customs territory of the United States" means the States, the District of Columbia and Puerto Rico.

At the end of the pending amendment add the following:

SEC. —.Congress finds that the Philippines—

(1) have been a reliable supplier of sugar to the United States since 1796 when the first shipment of their sugar arrived at Boston Harbor;

(2) have a special historical relationship with the United States and has been one of this Nation's most constant and dependable allies;

(3) rely on the exportation of sugar to generate needed capital;

(4) have not been afforded fair and adequate access to the United States sugar market since import quotas were imposed on sugar in 1982; and

(5) should be given access to the United States sugar market on terms at least as favorable as those provided to any other country.

SEC. —. Notwithstanding any other provision of law—

(a) beginning with the first calendar quarter of 1987, the total base quota amount of sugars, syrups, and molasses permitted to be imported into the United States under headnote 3, subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States shall be allocated on such basis that the quota allocated to the Republic of the Philippines shall not be less than the quota allocated to any other country;

(b) during any calendar year in which sugars, syrups, and molasses from any country are not subject to any rate of duty provided for in subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States and are permitted to enter the United States duty-free, sugar, syrups, and molasses from the Republic of the Philippines shall be permitted, to the same extent, to enter duty-free; and

(c) unless specifically authorized by statute, no agency or instrumentality of the United States shall provide, in any rule, regulation, shipping schedule, or otherwise, for the entry into the United States of sugars, syrups, and molasses from any country under terms or conditions more favorable than those applicable to the entry of sugars, syrups, and molasses from the Republic of the Philippines.

BINGAMAN (AND OTHERS) AMENDMENT NO. 3054

Mr. BINGAMAN (for himself, Mr. DECONCINI, Mr. DOMENICI, and Mr. BRADLEY) proposed an amendment to the bill, H.R. 5484, supra, as follows:

Amend Section 4228 by redesignating subsection (c) as (d) and inserting a new subsection (c) to read as follows:

"(c)(1) DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services shall establish at least one demonstration project to determine the most effective and cost-efficient means of—

"(A) providing health promotion and disease prevention services,

"(B) encouraging Indians to adopt good health habits,

"(C) reducing health risks to Indians, particularly the risks of heart disease, cancer, stoke, diabetes, * * * depression, and lifestyle-related accidents,

"(D) reducing medical expenses of Indians through health promotion and disease prevention activities,

"(E) establishing a program—

"(i) which trains Indians in the provision of health promotion and disease prevention services to members of their tribe, and

"(ii) under which such Indians are available on a contract basis to provide such services to other tribes, and

"(F) providing training and continuing education to employees of the service, and to paraprofessionals participating in the Community Health Representative Program, in the delivery of health promotion and disease prevention services.

"(2) The demonstration project described in paragraph (1) shall include an analysis of the cost effectiveness of organizational structures and of social and educational programs that may be useful in achieving the objectives described in paragraph (1).

"(3)(A) The demonstration project described in paragraph (1) shall be conducted in association with at least one—

"(i) health profession school,

"(ii) allied health profession or nurse training institution, or

"(iii) public or private entity that provides health care.

"(B) The Secretary is authorized to enter into contracts with, or make grants to, any school of medicine or school of osteopathy for the purpose of carrying out the demonstration project described in paragraph (1).

"(C) For purposes of this paragraph, the term 'school of medicine' and 'school of osteopathy' have the respective meaning given to such terms by section 701(4) of the Public Health Service Act (42 U.S.C. 292a(4)).

"(4) The Secretary shall submit to Congress a final report on the demonstration project described in paragraph (1) within 60 days after the termination of such project.

"(5) For purposes of this paragraph, the term 'health promotion' shall include:

"(A) reduction in the misuse of alcohol and drugs,

"(B) cessation of tobacco smoking,

"(C) improvement of nutrition,

"(D) improvement in physical fitness,

"(E) family planning, and

"(F) control of stress.

"(6) For purposes of this paragraph, the term 'disease prevention' shall include:

"(1) immunizations,

"(2) control of high blood pressure,

"(3) control of sexually transmittable diseases,

"(4) prevention and control of diabetes,

"(5) pregnancy and infant care (including prevention of fetal alcohol syndrome),

"(6) control of toxic agents,

"(7) occupational safety and health,

"(8) accident prevention,

"(9) fluoridation of water, and

"(10) control of infectious agents.

"(7) Sec. 4228 is amended by adding at the end the following 'provided that $500,000 shall be made available for activities described under section 4228(c)(1).

D'AMATO (AND OTHERS) AMENDMENT NO. 3055

Mr. D'AMATO (for himself, Mr. TRIBLE, Mr. DOLE, Mrs. HAWKINS, Mr. MOYNIHAN and Mr. CHILES) proposed an amendment to the bill, H.R. 5484, supra, as follows:

At the appropriate place in the bill insert the following:

SEC. . SHORT TITLE.

This Act may be cited as the "Ballistic Knife Prohibition Act of 1986".

(a) PROHIBITION OF POSSESSION, MANUFACTURE, SALE, AND IMPORTATION OF BALLISTIC KNIVES.—The Act entitled "An Act to prohibit the introduction, or manufacture for introduction, into interstate commerce of switchblade knives, and for other purposes" (15 U.S.C. 1232 et seq.) is amended by adding at the end the following:

"SEC. 7. (a) Whoever knowingly possesses, manufactures, sells, or imports a ballistic knife shall be fined as provided in title 18, United States Code, or imprisoned not more then ten years, or both.

"(b) Whoever possesses or uses a ballistic knife in the commission of a Federal or State crime of violence shall be fined as provided in title 18, United States Code, or imprisoned not less than five years and not more than ten years, or both.

"(c) The exceptions provided in paragraphs (1), (2), and (3) of section 4 with respect to switchblade knives shall apply to ballistic knives under subsection (a) of this section.

"(d) As used in this section, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechansim.".

(b) Nonmailability of ballistic knives.—Section 1716 of title 18, United States Code, is amended by inserting after subsection (h) and before the first undesignated paragraph after such subsection the following:

"(i)(1) Any ballistic knife shall be subject to the same restrictions and penalties provided under subsection (g) for knives described in the first sentence of that subsection.

"(2) As used in this subsection, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechanism.".

DOMENICI (AND OTHERS) AMENDMENT NO. 3056

Mr. DOMENICI (for himself, Mr. Dixon, Mr. Gorton, Mr. Gore, Mr. Heinz, Mr. Bingaman, Mr. Dole, Mr. Wilson, Mr. Nunn, Mr. Chiles, Mr. Levin, Mr. Thurmond, Mr. Danforth, Mr. Trible, Mr. Hatfield, and Mr. Dodd) proposed an amendment to the bill (H.R. 5485), supra; as follows:

At the end of the amendment add the following new title:

TITLE —HOMELESS ELIGIBILITY CLARIFICATION ACT

SECTION —. SHORT TITLE.

This title may be cited as the "Homeless Eligibility Clarification Act".

Subtitle A—Emergency Food for the Homeless

SEC. —. SHELTER MEALS.

(a) Definition of Food.— Section 3(a)(8) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)(8)) is amended by striking out "women and children temporarily residing in public or private nonprofit shelters for battered women and children" and inserting in lieu thereof "individuals temporarily residing in emergency shelters".

(b) Definition of Household.—The last sentence of section 3(i) of such Act is amended by striking out "public or private nonprofit shelters for battered women and children" and inserting in lieu thereof "emergency shelters".

(c) Prices Charged.—Section 7(b) of such Act (7 U.S.C. 2016(b)) is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding sentence, an emergency shelter may not charge prices for meals served to eligible households temporarily residing in such shelters that are higher than prices served to other individuals temporarily residing in such shelters.".

(d) Redemption of Coupons.—The first sentence of section 10 of such Act (7 U.S.C. 2019) is amended by striking out "public and private nonprofit shelters that prepare and serve meals for battered women and children" and inserting in lieu thereof "emergency shelters that prepare and serve meals for individuals".

SEC. —. PREPARED MEALS.

Section 3(g) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)) is amended—

(1) by striking out "and" at the end of clause (7); and

(2) by inserting before the period at the end thereof the following: ", and (9) in the case of individuals that do not reside in permanent dwellings or who do not have fixed mailing addresses, meals prepared by and served in public or private nonprofit establishments (eating or otherwise) that feed such individuals or in private establishments that contract with the appropriate agency of the State to serve meals to such individuals at concessional prices".

Subtitle B—Job Training for the Homeless

SEC. . JOB TRAINING FOR THE HOMELESS.

(a) Economically Disadvantaged to Include Homeless.—Section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)) is amended—

(1) by striking out "or" at the end of subparagraph (D);

(2) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof "(F)" an individual who is homeless and whose total income is not in excess of the income levels described in subparagraph (B).".

(b) Job Training Plan.—Section 104(b)(2) of the Job Training Partnership Act (29 U.S.C. 1514(b)) is amended by inserting before the semicolon a comma and the following: "and a description of how the program will be established in locations providing services to the homeless".

(c) Barriers to Employment Rule.—Section 203(a)(2) of the Job Training Partnership Act (29 U.S.C. 1603(a)(2)) is amended by striking out "or addicts" and inserting in lieu thereof "addicts, or homeless".

Subtitle C—Entitlements Eligibility

SEC. . TREATMENT OF HOMELESS INDIVIDUALS ELIGIBLE UNDER AFDC, SSI, AND MEDICAID PROGRAMS.

(a) AFDC.—Section 402(a) of the Social Security Act (42 U.S.C. 602(a)) is amended—

(1) by striking "and" at the end of paragraph (38),

(2) by striking the period at the end of paragraph (39) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(40) provide a method of verifying the eligibility of, and making aid available with respect to, a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(b) SSI Program.—Section 1631(e) of such Act (42 U.S.C. 1383(e)) is amended by adding at the end the following new paragraph:

"(3) The Secretary shall provide a method of verifying the eligibility of, and making payments under this title to, and eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(c) Medicaid Program.—Section 1902(a) of such Act (42 U.S.C. 1396(a)) is amended—

(1) by striking "and" at the end of paragraph (45);

(2) by striking the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(47) provide a method of verifying the eligibility of, and making medical assistance available to, an eligible individual who does not reside in permanent dwelling or does not have a fixed home or mailing address.".

(d) Effective Date.—

(1) Except as provided in paragraph (2), the amendments made by this section shall become effective October 1, 1986.

(2) If a State agency administering a plan approved under part A of title IV of the Social Security Act or under title XIX of such Act demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by subsection (a) or (c) of this section, respectively, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or after October 1, 1986. For purposes of the preceding sentence, the term "session of a State's legislature" includes any regular, special, budget, or other session of a State legislature.

SEC. . SINGLE APPLICATION FOR SSI AND FOOD STAMP BENEFITS BY SSI PRE-RELEASE INDIVIDUALS.

Section 11 of the Food Stamp Act of 1977 (7 U.S.C. 2020) is amended by adding at the end thereof the following new subsection:

"(p) The Secretary and the Secretary of Health and Human Services shall develop a system under which an individual applying for supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) prior to the discharge or release of the individual from a public institution under the pre-release program established under section 1635 of such Act shall also be permitted to apply for participation in the food stamp program by executing a single application.".

SEC. . DELIVERY OF VETERANS' BENEFITS PAYMENTS.

(a) In General.—(1) Section 3003 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Benefits under laws administered by the Veterans' Administration may not be denied an applicant on the basis that the applicant does not have a mailing address.".

(2) Section 3020 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(f)(1) In the case of a payee who does not have a mailing address, payments of monetary benefits under laws administered by the Veterans' Administration shall be delivered under an appropriate method prescribed pursuant to paragraph (2) of this subsection.

"(2) The Administrator shall prescribe an appropriate method or methods for the delivery of payments of monetary benefits under laws administered by the Veterans' Administration in cases described in paragraph (1) of this subsection. To the maximum extent practicable, such method or methods shall be designed to ensure the delivery of payments in such cases.".

(b) Effective Date.—(1) The amendment made by subsection (a)(1) shall take effect on the date of enactment of this Act.

(2) The amendment made by subsection (a)(2) shall take effect with respect to payments made on or after October 1, 1986.

ABDNOR AMENDMENT NO. 3057

Mr. HATCH (for Mr. Abdnor) proposed an amendment to the bill (H.R. 5484), supra; as follows:

Subtitle B—Drug Free Schools and Communities Act of 1986 is hereby amended by striking "$500,000" in line 8, page 3, and inserting in lieu thereof "$650,000".

HATCH (AND KENNEDY) AMENDMENT NO. 3058

Mr. HATCH (for himself and Mr. KENNEDY) proposed an amendment to the bill (H.R. 5484), supra; as follows:

Strike out section 4002(a) of the bill and insert in lieu thereof the following:

(a) Section 1911 is amended—

(1) by striking out "the purpose of grants and allotments under section 1913" and inserting in lieu thereof "purposes of carrying out this part";

(2) by striking out "$576,000,000" and inserting in lieu thereof "$686,000,000"; and

(3) by adding at the end thereof the following new sentence: "If the total amount appropriated under the preceding sentence for fiscal year 1987 exceeds $500,000,000, 27 percent of the amount of such excess shall be added to and included with the amounts otherwise available under this part for allotments to States under section 1913 for such fiscal year, 67 percent of the amount of such excess shall be available for allotments to States under section 1921 for such fiscal year, and 6 percent of the amount of such excess shall be available for transfer to the Administrator of Veterans' Affairs under section 1923.".

At the end of the first section 1922 of the Public Health Service Act set out in section 4002(b)(1) of the bill, strike out the end quotation marks and the second period.

Strike out the second section 1922 of the Public Health Service Act set out in section 4002(b)(1) of the bill and insert in lieu thereof the following:

"TRANSFER TO THE ADMINISTRATOR OF VETERANS' AFFAIRS

"SEC. 1923. The Secretary shall transfer to the Administrator of Veterans' Affairs the amount which, under the second section of section 1911, is available for such transfer. The amount transferred pursuant to the preceding sentence shall be used for outpatient treatment, rehabilitation, and counseling under section 612 of title 38, United States Code, of veterans for their alcohol or drug abuse dependence or abuse disabilities and for contract care and services under section 620A of such title for veterans for such disabilities.".

DIXON (AND OTHERS) AMENDMENT NO. 3059

Mr. DIXON (for himself, Mrs. HAWKINS, Mr. DECONCINI, Mr. MATTINGLY, and Mr. D'AMATO) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the end of the amdt add the following:

(a) GENERAL REQUIREMENT.—

(1) AUTHORITY TO LOCATE, PURSUE, AND SEIZE AIRCRAFT AND VESSELS.—Within 30 days after the date of the enactment of this Act, the President shall deploy equipment and personnel of the Armed Forces to address the unlawful penetration of United States borders by aircraft and vessels carrying narcotics. Such equipment and personnel shall be used to locate, pursue, and seize such vessels and aircraft and to arrest their crews. Military personnel may not make arrests of crew members of any such aircraft or vessels after the crew members have departed the aircraft or vessels, unless the military personnel are in hot pursuit.

(2) RADAR COVERAGE.—Within 30 days after the date of the enactment of this Act, the President shall deploy radar aircraft in reasonably available numbers so that during the hours of darkness there is continuous aerial radar coverage of the southern border of the United States, to the extent possible.

(3) PURSUIT AIRCRAFT.—The President, to the extent possible also shall deploy sufficient numbers of rotor wing and fixed wing aircraft to pursue and seize intruding aircraft detected by the radar aircraft referred to in paragraph (2). The President shall use personnel and equipment of the United States Customs Service and the Coast Guard to assist in carrying out this paragraph.

(4) USE OF NATIONAL GUARD AND RESERVES.—In carrying out this section, the President shall use members of the National Guard and the Reserves. The tours of such members shall correspond to their training commitments and shall be considered to be within their mission.

(5) EXPENSES.—The expenses of carrying out this section shall be borne by the Department of Defense.

(b) 45-DAY DEADLINE.—The President, to the extent possible shall substantially halt the unlawful penetration of United States borders by aircraft and vessels carrying narcotics within 45 days after the date of the enactment of this Act.

(c) REPORT.—Within 60 days after the date of the enactment of this Act, the President shall report to Congress the following:

(1) The effect on military readiness of the drug interdiction program required by this section and the costs in the areas of procurement, operation and maintenance, and personnel which are necessary to restore readiness to the level existing before commencement of such program.

(2) The number of aircraft, vessels, and persons interdicted during the operation of the drug interdiction program and the number of arrests and convictions resulting from such program.

(3) Recommendations for any changes in existing law that may be necessary to more efficiently carry out this program.

(d) REQUEST FOR FUNDING.—Within 90 days after the date of the enactment of this Act, the President shall submit to Congress a request for—

(1) the amount of funds spent as a result of the drug interdiction program required by this section; and

(2) the amount of funds needed to continue operation of the program through fiscal year 1987.

Such request shall include amounts necessary to restore the readiness of the Armed Forces to the level existing before commencement of the program.

(e) BUDGET REQUESTS.—Beginning with the budget request for fiscal year 1988 and for each fiscal year thereafter, the President shall submit in his budget for the Department of Defense a request for funds for the drug interdiction program required by this section in the form of a separate budget function.

MATTINGLY (AND OTHERS) AMENDMENT NO. 3060

Mr. MATTINGLY (for himself, Mrs. HAWKINS, Mr. D'AMATO, and Mr. DENTON) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the appropriate place in the bill add the following section:

SEC. . DEATH PENALTY FOR CERTAIN CONTINUING CRIMINAL ENTERPRISE DRUG OFFENSES.

(a) ELEMENTS OF OFFENSE.—Section 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended—

(1) by striking out "(a) Any" and inserting—

"(a)(1) Except as otherwise provided in this section, any" in lieu thereof;

(2) by striking out "; except that if" and inserting ". If" in lieu thereof; and

(3) by adding at the end the following:

"(2) If an individual intentionally engages in conduct during the course of a continuing criminal enterprise and thereby knowingly causes the death of any other individual, the individual so engaging shall be subject to the death penalty in accordance with this section.".

(b) PROCEDURE APPLICABLE WITH RESPECT TO THE DEATH * * *.—

"HEARING REQUIRED WITH RESPECT TO THE DEATH PENALTY

"(d) A person shall be subjected to the penalty of death for any offense under this section only if a hearing is held in accordance with this section.

"NOTICE BY THE GOVERNMENT IN DEATH PENALTY CASES

"(e)(1) Whenever the Government intends to seek the death penalty for an offense under this section for which one of the sentences provided is death, the attorney for the Government, a reasonable time before trial or acceptance by the court of a plea of guilty, shall sign and file with the court, and serve upon the defendant, a notice—

"(A) that the Government in the event of conviction will seek the sentence of death; and

"(B) setting forth the aggravating factors which the Government will seek to prove as the basis for the death penalty.

"(2) The court may permit the attorney for the Government to amend this notice for good cause shown.

"HEARING BEFORE COURT OR JURY

"(f)(1) When the attorney for the Government has filed a notice as required under subsection (d) and the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the judge who presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. The hearing shall be conducted—

"(A) before the jury which determined the defendant's guilt;

"(B) before a jury impaneled for the purpose of the hearing if—

"(i) the defendant was convicted upon a plea of guilty;

"(ii) the defendant was convicted after a trial before the court sitting without a jury;

"(iii) the jury which determined the defendant's guilt has been discharged for good cause; or

"(iv) after initial imposition of a sentence under this section, redetermination of the sentence under this section is necessary; or

"(C) before the court alone, upon the motion of the defendant and with the approval of the Government.

"(2) A jury impaneled pursuant to paragraph (1)(B) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist of any number less than 12.

"PROOF OF AGGRAVATING AND MITIGATING FACTORS

"(g) Notwithstanding rule 32(c) of the Federal Rules of Criminal Procedure, when a defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), no presentence report shall be prepared. In the sentencing hearing, information may be presented as to any matter relevant to the sentence and shall include matters relating to any of the aggravating or mitigating factors set forth in subsections (j) and (k), or any other mitigating factor. Where information is presented relating to any of the aggravating factors set forth in subsection (k), information may be presented relating to any other aggravating factor. Information presented may include the trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant, regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. The Government and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the aggravating or mitigating factors, and as to appropriateness in that case of imposing a sentence of death. The Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of any aggravating factor is on the Government, and is not satisfied unless established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless established by a preponderance of the information.

"RETURN OF FINDINGS

"(h) The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any mitigating factors, and any aggravating factors set forth in subsection (k), found to exist. If one of the aggravating factors set forth in subsection (k)(1) and another of the aggravating factors set forth in subsection (k) is found to exist, a special finding identifying any other aggravating factor may be returned. A finding of any aggravating or mitigating factor by a jury shall be made by unanimous vote. If an aggravating factor set forth in subsection (k)(1) is not found to exist or an aggravating factor set forth in subsection (k)(1) is found to exist but no other aggravating factor set forth in subsection (k) is found to exist, the court shall impose a sentence, other than death, authorized by law. If an aggravating factor set forth in subparagraph (k)(1) and one or more of the other aggravating factors set forth in subsection (k) are found to exist, the jury, or if there is no jury, the court, shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, the jury by unanimous vote, or if there is no jury, the court, shall return a finding as to whether a sentence of death is justified.

"IMPOSITION OF SENTENCE

"(i) Upon a finding that a sentence of death is justified, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law.

"MITIGATING FACTORS

"(j) In determining whether a sentence of death is to be imposed on a defendant, the following mitigating factors shall be considered but are not exclusive:

"(1) The defendant was less than 18 years of age at the time of the crime.

"(2) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to the charge.

"(3) The defendant was under unusual and substantial duress, although not such duress as constitutes a defense to the charge.

"(4) The defendant is punishable as a principal (as defined in section 2(a) of title 18 of the United States Code) in the offense, which was committed by another, but the defendant's participation was relatively minor, although not so minor as to constitute a defense to the charge.

"(5) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of the offense resulting in death for which the defendant was convicted, would cause, or would create a grave risk of causing, death to any person.

"AGGRAVATING FACTORS

"(k) If the defendant is found guilty of or pleads guilty to an offense under subsection (a)(2), the following aggravating factors shall be considered but are not exclusive:

"(1) The defendant—

"(A) intentionally killed the victim;

"(B) intentionally inflicted serious bodily injury which resulted in the death of the victim; or

"(C) intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim.

"(2) The defendant has been convicted of another Federal offense, or a State offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by statute.

"(3) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

"(4) The defendant has previously been convicted of two or more State or Federal offenses punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance.

"(5) In the commission of the offense or in escaping apprehension for a violation of subsection (a)(1), the defendant knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) The violation of this chapter in relation to which the conduct described in subsection (a)(2) occurred was a violation of section 405.

"(7) The defendant committed the offense in an especially heinous, cruel, or depraved manner.

"(8) The defendent procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(9) The defendent committed the offense as consideration for the receipt, or in the expectation of the receipt, or anything of pecuniary value.

"(10) The defendant committed the offense against a judge, a law-enforcement officer, or an employee of a penal or correctional institution, while the victim was performing official duties or because of that victim's status as a public servant of the United States, or a State or political subdivision of the United States. For purposes of this paragraph the term 'law-enforcement officer' means a public servant authorized by law to conduct or engage in the prevention, investigation, or prosecution of an offense.

"INSTRUCTION TO JURY ON RIGHT OF THE DEFENDANT TO JUSTICE WITHOUT DISCRIMINATION

"(l) In any hearing held before a jury under this section, the court shall instruct the jury that in its consideration of whether the sentence of death is justified it shall not consider the race, color, national origin, creed, or sex of the defendant. The jury shall return to the court a certificate signed by each juror that consideration of race, color, national origin, creed, or sex of the defendant was not involved in reaching his or her individual decision.

"SENTENCING IN CAPITAL CASES IN WHICH DEATH PENALTY IS NOT SOUGHT OR IMPOSED

"(m) If a person is convicted for an offense under subsection (a)(2) and the court does not impose the penalty of death, the court may impose a sentence of life imprisonment without the possibility of parole.".

"APPEAL IN CAPITAL CASES

"(n)(1) In any case in which the sentence of death is imposed under this section, the sentence of death shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal must be filed within the time prescribed for appeal of judgment in section 2107 of title 28 of the United States Code. An appeal under this section may be consolidated with an appeal of the judgment of conviction. Such review shall have priority over all other cases.

"(2) On review of the sentence, the court of appeals shall consider the record, the evidence submitted during the trial, the information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under this section.

"(3) The court shall affirm the sentence if it determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor; and

"(B) the information supports the special finding of the existence of every aggravating factor upon which the sentence was based, together with the failure to find sufficient mitigating factors as set forth or allowed in this section.

In all other cases the court shall remand the case for reconsideration under this section. The court of appeals shall state in writing the reasons for its disposition of the review of the sentence.".

DECONCINI (AND LEAHY) AMENDMENT NO. 3061

Mr. DECONCINI. (for himself and Mr. LEAHY) proposed an amendment to the bill (H.R. 5484), supra; as follows:

In Subtitle B-Drug Possession Penalty Act of 1986, Section 1052 Penalty for Simple Possession, redesignate (b) as (c) and add the following new (b):

(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this subchapter or subchapter II of this chapter, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person, if he was not over twenty-one years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the Department of Justice under paragraph (1)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-one years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provisions of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

DOMENICI (AND OTHERS) AMENDMENT NO. 3062

Mr. DOMENICI (for himself, Mr. MATTINGLY, Mr. DENTON, Mr. MURKOWSKI, Mr. BINGAMAN, Mr. WILSON, Mr. TRIBLE, and Mr. SYMMS) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the appropriate place insert the following:

SEC. 4016. EFFORTS OF THE ENTERTAINMENT INDUSTRY

It is the sense of Congress that, whereas illegal drug consumption and the trafficking in those illegal drugs is a major problem in the United States; whereas this problem is particularly prevalent among and harmful to the Nation's young people; and whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country, the entertainment industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and the entertainment industry further is encouraged to develop films, televison programs, records, and videos which encourage the rejection of illegal drug usage.

DANFORTH AMENDMENT NO. 3063

Mr. DANFORTH proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the appropriate place in the bill, insert the following:

TITLE ——COMMERCIAL MOTOR VEHICLE SAFETY

SHORT TITLE

SEC. —01. This title may be cited as the: "Commercial Motor Vehicle Safety Act of 1986".

PURPOSE

SEC. —02. The purpose of this title is to enhance the safe operation of commercial motor vehicles on the Nation's highways by developing national uniform standards for the testing, licensing, and qualification of commercial motor vehicle operators, and by licensing inspections of commercial motor vehicle operators and the equipment they operate.

DEFINITIONS

SEC. —03. As used in this title, the term—

(1) "commerce" means—

(A) trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside of the United States); or

(B) trade, traffic, or transportation in the United States which affects any trade, traffic, or transportation described in subparagraph (A);

(2) "commercial motor vehicle" means any self-propelled or towed vehicle used on highways in commerce to transport passengers or property if—

(A) such vehicle has a gross vehicle weight rating of twenty-six thousand and one or more pounds, or such lower weight rating (not less than ten thousand pounds) as the Secretary considered appropriate;

(B) such vehicle is designed to transport more than fifteen passengers, including the driver; or

(C) such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.);

(3) "controlled substance" shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6));

(4) "employee" means an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety;

(5) "employer" means any person engaged in a business in commerce who owns or leases a commercial motor vehicle in connection with such business, or assigns employees to operate such vehicle;

(6) "Secretary" means the Secretary of Transportation; and

(7) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or the Commonwealth of the Northern Marianas.

NATIONAL UNIFORM COMMERCIAL MOTOR VEHICLE OPERATORS LICENSE

SEC. —04. (a)(1) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which establish minimum Federal standards for the licensing, testing, qualifications and classification of operators of commercial motor vehicles. Such regulations shall, at a minimum—

(A) prohibit any person who operates a commercial motor vehicle in commerce from possessing more than one license to operate a commercial motor vehicle;

(B) establish minimum Federal standards for written tests and driving tests of persons who operate such vehicles;

(C) require a driving test of each person who operates or will operate a commercial vehicle in commerce in the type of vehicle such person operates or will operate, except that the Secretary may, by regulation, permit any State to waive such test in the case of any such person who applies for renewal of a license to operate a commercial motor vehicle;

(D) establish minimum scores for passing such tests;

(E) ensure that each person taking such tests is qualified to operate a commercial motor vehicle in commerce under regulations promulgated under this section, regulations contained in subpart E of part 391 of title 49 of the Code of Federal Regulations, and such other Federal Motor Carrier Safety Regulations contained in title 49 of the Code of Federal Regulations as the Secretary considers appropriate;

(F) establish a schedule of offenses and corresponding suspensions, revocations and cancellations for cause of licenses to operate commercial motor vehicles, which shall include requirements for the prompt suspension, for a period of not less than one year, of the operator's license of any individual who is determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit so such a test or who is found to be operating a commercial motor vehicle while under the influence of a controlled substance or who refuses to submit to such a test, and for the immediate revocation of the operator's license of any individual who has been twice determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who has twice refused to submit to such a test, or who has been twice determined to have operated a commercial motor vehicle while under the influence of a controlled substance or who has twice refused to submit to such a test;

(G) establish a system of classification for licensing that provides different minimum Federal testing standards for operation of different classes of commercial motor vehicles; and

(H) provide that each license to operate a commercial motor vehicle shall contain, at a minimum—

(i) the legal name, date of birth (including day, month and year) sex, and a physical description of the person to whom such license is issued;

(ii) other identifying information which the Secretary considers necessary or appropriate;

(iii) the type of commercial motor vehicle which such person is authorized to operate under such license;

(iv) the name of the State which issued such license; and

(v) the dates between which such license is valid.

(2) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which shall be in addition to regulations promulgated under paragraph (1) of this subsection and which shall establish minimum Federal standards for the licensing, testing, qualifications and classification of any person who operates or will operate a commercial motor vehicle carrying a hazardous material (as defined in section 103(2) of the Hazardous Materials Transportation Act (49 App. U.S.C 1802(2)). Such regulations shall—

(A) ensure that such person is qualified to operate a commercial motor vehicle in accordance with all regulations pertaining to motor vehicle transportation of such hazardous material issued by the Secretary under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.):

(B) establish minimum Federal standards for, and scores for passing, written tests which ensure that such person is knowledgeable regarding (i) all such regulations, (ii) the basic properties and handling of such hazardous material, and (iii) the appropriate response to emergencies arising out of the transportation of such hazardous material; and

(C) establish minimum Federal standards for driving tests which ensure that such person is knowledgeable regarding the type of vehicle that such person operates or will operate and regarding the safety system of such vehicle.

The Secretary may exempt any such person from any requirement of this title if the material to be transported is a hazardous material listed pursuant to section 306(a) of the Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Department of Transportation, or if the material to be transported is a consumer commodity or limited quantity hazardous material, as defined in section 171.8 of title 49 of the Code of Federal Regulations.

(3)(A) Section 521(b) of title 49, United States Code, is amended—

(i) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(ii) by inserting immediately after paragraph (11) the following:

"(12) The provisions of this subsection shall apply to any violation of the Commercial Motor Vehicle Safety Act of 1986, except that—

"(A) the amount to be assessed under this subsection for any such violation shall not exceed $5,000 for each such violation; and

"(B) the exceptions regarding employees in paragraphs (2) and (6) of this subsection shall not apply to any violation of the Commercial Motor Vehicle Safety Act of 1986, but (i) in the case of paragraph (2) of this subsection, the amount to be assessed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation, and (ii) in the case of paragraph (6) of this subsection, the penalty to be imposed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation or imprisonment for a term not to exceed one year, or both.".

(B) The Secretary shall establish guidelines for civil and criminal penalties to be imposed by the States for a violation of this subsection. Such penalties shall not exceed $5,000 for each such violation, and shall not provide for imprisonment of more than one year.

(b)(1) No person may operate a commercial motor vehicle in commerce unless such person—

(A) complies with all requirements imposed by regulations promulgated under subsection (a) of this section; and

(B) has a blood alcohol content level of less than 0.04 percent while operating a commercial motor vehicle.

(2)(A) Except as provided in subparagraph (B) of this paragraph, paragraph (1) of this subsection shall become applicable with respect to any person who operates or will operate a commercial motor vehicle in commerce on the date on which the State in which such person is domiciled adopts a classified licensing program under subsection (c)(1) of this section or September 1, 1989, whichever is earlier, except that, with respect to a person to whom a license to operate a commercial motor vehicle has been issued on or before such applicable date, who has not been found to have violated a State or local law relating to motor vehicle traffic control (other than a parking violation) in the three-year period ending on such date, and who has not been disqualified by the Secretary pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle in commerce or has had a license to operate a commercial motor vehicle suspended, revoked or cancelled for cause at any time during such three-year period, paragraph (1) of this subsection shall only take effect on the date after such date on which—

(i) such license is required to be renewed under State law,

(ii) such person is found to have violated such a State or local law, or

(iii) such person is disqualified pursuant to title 49 of the Code of Federal Regulations by the Secretary from operating a commercial motor vehicle in commerce and has had such person's license suspended, revoked or cancelled for cause by a State,

whichever is earliest.

(B) If any such person is not domiciled in a State that has adopted such a classified licensing program, the Secretary may, in accordance with regulations to be prescribed by the Secretary, permit such person to obtain a license to operate a commercial motor vehicle from any State that has adopted such a program.

(c) On or before September 1, 1989, each State shall, at a minimum—

(1) adopt and administer a classified licensing program for the issuance of licenses to operate commercial motor vehicles that includes testing and qualification standards for persons who operate commercial motor vehicles in commerce in accordance with all of the minimum Federal standards established by the Secretary under subsection (a) of this section, which program (A) may include standards for its domiciliaries that are more stringent than the minimum Federal standards established by the Secretary under subsection (a) of this section; and (B) shall provide that such State shall recognize any license issued by another State if such license meets all of the Federal minimum standards established by the Secretary under subsection (a) of this section;

(2) not issue a license to operate a commercial motor vehicle to a person unless such person passes a written test and driving test for the operation of a commercial motor vehicle which complies with such minimum standards and complies with all requirements imposed by regulations promulgated under subsection (a) of this section;

(3) ensure that each classified license to operate a commercial motor vehicle contains the information described in subsection (a)(1)(H) of this section;

(4) Until the information system established under section ——05 of this title provides a means of rapid communication of the information specified in such section, (A) notify the Secretary, before the issuance of a classified license to operate a commercial motor vehicle, of the proposed issuance of such license and such other information as the Secretary may require to ensure identification of the person applying for such license; (B) within 30 days after issuance of a classified license to operate a commercial motor vehicle, notify the Secretary of the issuance of such a license; and (C) maintain information regarding and, upon the request of another State, transmit to such State or, upon the request of an employer or prospective employer, transmit at such State's option to such employer or prospective employer, to the extent permitted by law, information regarding (i) any suspension, revocation or cancellation for cause of such a license and any disqualification pursuant to title 49 of the Code of Federal Regulations of the holder of such a classified license from operating a commercial motor vehicle for a period of 60 days or more, (ii) a decision to deny for cause a license to a person applying for such a license, or (iii) the conviction of the holder of such a classified license of any of the offenses specified in section ——05(b)(2) of this title;

(5) when the information system established under section ——05 of this title allows for the rapid communication of information, comply with the requirements of all regulations within such time periods as the Secretary establishes under section ——05(d) of this title, including a requirement that the State shall respond to all requests for information from employers;

(6) before issuance of a classified license to operate a commercial motor vehicle, contact any other State which has issued to such person such a license to determine the

driving record of such person and, if the State determines as a result of such contact that such person has been disqualified pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle by the Secretary, or has had a license suspended, revoked or cancelled for cause for violation of an offense pursuant to subsection (a)(1)(F) of this section, within three years before application has been made for such a classified license, not issue such a classified license to such person;

(7) not issue a classified license to operate a commercial motor vehicle to any person to whom such a license has been issued by any other State unless such person first returns such license issued by such other State;

(8) prior to issuing a classified license to operate a commercial motor vehicle to any person, consult the National Driver Register established pursuant to the National Driver Register Act of 1982 (23 U.S.C. 401, note) (after such Register is determined by the Secretary to be operational) to determine whether such person has either been disqualified from operating a motor vehicle other than a commercial motor vehicle, or has had a license other than a license to operate a commercial motor vehicle suspended, revoked or cancelled for cause, within three years before application has been made for such a classified license, or has been convicted of any of the offenses specified in section 205(a) of the National Driver Register Act of 1982 and, if the State is informed that such person has been so disqualified or convicted or such license has been suspended, revoked or cancelled for cause, not issue a classified license to operate a commercial motor vehicle to such person;

(9) impose such penalties for a violation of subsection (a) of this section as the State determines appropriate, if such penalties are the same as or more stringent than the guidelines established by the Secretary in subsection (b)(3)(B) of this section; and

(10) suspend, revoke or cancel, in accordance with subsection (a)(1)(F) of this section, a license to operate a commercial motor vehicle.

(d)(1) The Secretary may make a grant to a State in a fiscal year if the State enters into an agreement with the Secretary to comply with all provisions of subsection (c) of this section.

(2) The amount of a grant under this subsection to any State shall not be less than $100,000 in any fiscal year.

(3) The Secretary may not make a grant to any State under this subsection unless such State agrees that the aggregate expenditure of funds of the State, exclusive of Federal funds, for testing and licensing of operators of commercial motor vehicles will be maintained at a level which does not fall below the average level of such expenditure for the last two fiscal years preceding the date of enactment of this Act.

(4) A State which receives a grant under this subsection may use the funds provided under such grant only for testing and licensing of operators of commercial motor vehicles.

(5) A grant made under this subsection shall be for a period of 1 year.

(6) Funds made available to carry out this subsection shall remain available for obligation by the Secretary for the fiscal year in which such funds are made available and the three fiscal years after such fiscal year.

(7) There shall be available to the Secretary to carry out this subsection—

(A) $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) for each of fiscal years 1987, 1988, 1989, 1990, and 1991; and

(B) after deducting the amount permitted under section 402(c) of title 23, United States Code, $3,000,000 from funds made available to carry out section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration, for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

(e)(1) The Secretary shall withhold highway funds from any State that is not in compliance with this section after September 30, 1992.

(2) The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c) of this section (other than a requirement of subsection (c)(10) of this section).

(3) The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second fiscal year beginning after September 30, 1992, and the first day of each fiscal year thereafter, in which the State does not comply with any requirement of subsection (c) of this section (other than a requirement of subsection (c)(10) of this section).

(4)(A) The Secretary shall withhold 2 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(B) The Secretary shall withhold not less than 2 percent nor more than 5 percent, as the Secretary determines to be appropriate, of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second through fifth fiscal years beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(C) The Secretary shall withhold not less than 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the sixth fiscal year, and each fiscal year thereafter, beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(5)(A) Any funds withheld under this subsection from apportionment to any State after September 30, 1992, shall remain available for apportionment to such state as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(A) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(5)(B) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(iii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) If, before the last day of the period for which funds withheld under this subsection from apportionment are to remain available for apportionment to a State under subparagraph (A) of this paragraph, the State complies, with the provisions of this section, the Secretary shall, on the day following the date on which such State complies apportion to such State the withheld funds remaining available for apportionment to such State.

(C) Any funds apportioned pursuant to subparagraph (B) of this paragraph shall remain available for expenditure as follows:

(i) Funds apportioned under section 104(b)(5)(A) of title 23, United States Code, shall remain available until the end of the fiscal year succeeding the fiscal year in which such funds are so apportioned.

(ii) Funds apportioned under section 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) of title 23, United States Code, shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse.

(D) If, at the end of the period for which funds withheld under this subsection from apportionment are available for apportionment to a State under subparagraph (A) of this paragraph, the State has not complied with the provisions of this section, such funds shall lapse.

COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM

SEC. —05. (a) Not later than January 1, 1989, the Secretary, after consultation with the States, shall cause to be in operation an information system pertaining to the driving status and licensing of operators of commercial motor vehicles. The information system shall serve as a clearinghouse by which the States may communicate rapidly concerning the licensing, identification and driving records of operators of commercial motor vehicles.

(b) The information system established under this section shall—

(1) provide for a depository of information that will, at a minimum, include (with respect to each operator of a commercial motor vehicle)—

(A) the birth date and physical description of such operator, and any other information which the Secretary considers necessary or appropriate to identify specifically such operator;

(B) the address of such operator; and

(C) all States in which such operator currently has a license to operate a commercial motor vehicle; and

(2) provide a system of communication among States that, at a minimum, shall provide exchange of information specified in paragraph (1) of this subsection and information regarding whether such operator has been denied a license to operate a commercial motor vehicle, has been disqualified by the Secretary pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle, has had a license suspended, revoked or cancelled for cause, or has been convicted under the laws of any State for (A) operating a commercial

motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; (B) violating a traffic rule or ordinance arising in connection with a fatal traffic accident, reckless driving, or racing on the highways and involving a commercial motor vehicle; (C) failing to render aid or provide identification when involved in an accident involving a commercial motor vehicle which resulted in a fatality or personal injury; or (D) committing perjury or knowingly making a false affidavit or statement to officials in connection with activities governed by a law or regulation relating to the operation of a commercial motor vehicle.

(c)(1) Upon request of a State, the Secretary or a State, as appropriate, shall make available to the requesting State information in the information system established under this section. Upon request of an employer or prospective employer of an employee, the Secretary or a State, as appropriate, shall, to the extent otherwise permitted by law, made available to such employer or prospective employer information in such system relating to such employee.

(2) Any prospective employer of a person as an operator of a commercial motor vehicle shall consult the information system established under this section to determine, prior to employing such person, whether a license to operate a commercial motor vehicle issued to such person has been suspended, revoked or cancelled for cause. If such prospective employer determines, as a result of such consultation, that such person's license has been suspended, revoked or cancelled for cause, the prospective employer shall not employ such person as an operator of a commercial motor vehicle.

(d) When the information system required by this section has become available, the Secretary shall issue regulations establishing appropriate time periods for transmission of information, as provided in section —04(c) (4) and (5) of this title.

(e) The Secretary shall establish and the Secretary or a State, as appropriate, shall collect fees for utilization of the information system established under this section. The amount of fees collected by the Secretary or a State under this subsection in any fiscal year shall as nearly as possible equal the costs of operating the information system in such fiscal year. The Secretary shall deposit fees collected by the Secretary under this subsection in the general fund of the Treasury.

(f) There shall be available for fiscal year 1987 to the Secretary for purposes of establishing the information system under this section not to exceed $2,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304). Such sums shall remain available until expended.

FREQUENT INSPECTIONS

SEC. —06. (a) Section 402(b)(1) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)(1)) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by striking the period in subparagraph (G) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(H) with respect to any fiscal year beginning with fiscal year 1989, provides for the adoption and implementation of an effective program to conduct inspections of commercial motor vehicles, which program shall provide—

"(i) that commercial motor vehicles are inspected frequently (as determined by the Secretary), and that such inspections are conducted at roadside;

"(ii) for the administration of observations or tests, or both, to determine the blood alcohol content level of the operator of a commercial motor vehicle; and

"(iii) for the prompt suspension, for a period of not less than one year, of the operator's license of any individual who is determined, as a result of an observation or test administered under clause (ii) of this subparagraph, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit to such a test, and for the immediate revocation of the operator's license of any individual who has been twice determined, as a result of such an observation or test, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who has twice refused to submit to such a test.".

(b) Section 402(b) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)) is amended by adding at the end thereof the following:

"(3)(A) As part of a grant made under this subsection, the Secretary may also provide funds to encourage the States to adopt and implement programs providing for the administration of tests to determine whether the operator of a commercial motor vehicle is under the influence of a controlled substance while operating such motor vehicle.

"(B) For the purpose of this subsection, the term 'controlled substance' shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6)).".

AUTHORIZATIONS OF APPROPRIATIONS

SEC. —07. (a) Section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) is amended—

(1) by striking "$40,000,000" and inserting in lieu thereof "$50,000,000";

(2) by striking "and" after "1987,";

(3) by striking "$50,000,000" and inserting in lieu thereof "$60,000,000"; and

(4) by striking "1988." and inserting in lieu thereof "1988; not to exceed $70,000,000 in the fiscal year ending September 30, 1989; and not to exceed $80,000,000 in the fiscal year ending September 30, 1990.".

(b) Any activity of the Secretary under this title shall only be undertaken to the extent that appropriations have been made available in advance for such activity.

SPECTER AMENDMENT NO. 3064

Mr. SPECTER proposed an amendment to amendment No. 3063 proposed by Mr. DANFORTH to the bill (H.R. 5484), supra; as follows:

At the end of the amendment, add the following:

STUDY BY THE DEPARTMENT OF TRANSPORTATION

SEC. —. The Secretary of Transportation shall, not later than October 1, 1988, submit to the Congress a study regarding the manner in which the requirement of—04(a)(1)(F) regarding blood alcohol content level impacts on operators of commercial motor vehicles who are required by their employers to be available to operate such commercial motor vehicles on short notice.

HARKIN AMENDMENT NO. 3065

Mr. HARKIN proposed an amendment to amendment No. 3062 proposed by Mr. DOMENICI (and others) to the bill (H.R. 5484), supra; as follows:

On page , line , after , insert the following:

It is the sense of Congress that, whereas illegal drug consumption and alcohol consumption and the trafficking in those legal and illegal drugs is a major problem in the United States; whereas the problem of alcoholism is particularly prevalent among and harmful to the Nation's young people; and whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country, the entertainment and written media industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and alcohol and the entertainment industry and written media further is encouraged to develop films, television programs, records, and videos and advertising which encourage the rejection of illegal drug usage and alcohol use.

LEAHY (AND OTHERS) AMENDMENT NO. 3066

Mr. LEAHY (for himself, Mr. HATCH, and Mr. DENTON) proposed an amendment to the bill (H.R. 5484), supra; as follows:

Strike section 1802 of the bill and insert in lieu thereof the following:

SEC. 1802. CRIMINAL ORGANIZATIONS, FEES AND FEE WAIVERS.

(a) Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

"(A) the investigation or proceeding involves a possible violation of criminal law; and

"(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceeding,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the section.

"(2) Whenever informant records maintained by a criminal law enforcement agency under an informants' name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

"(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence [(as defined in Executive Order 12333)], or international terrorism [(as defined in the Foreign Intelligence Surveillance Act)], and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.".

(b) Paragraph (4)(A) of section 552(a) of title 5, United States Code, is amended to read as follows:

"(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

"(ii) Such agency regulations shall provide that—

"(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

"(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

"(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

"(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester; or (II) a requester is indigent and can demonstrate a compelling need for the documents.

"(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. No fee may be charged by any agency under this section—

"(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

"(II) for any request described in clause (i)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

"(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion or the agency has determined that the fee will exceed $250.

"(vi) Nothing in this paragraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

"(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo provided that the court's review of the matter shall be limited to the record before the agency.".

MATHIAS (AND OTHERS) AMENDMENT NO. 3067

Mr. MATHIAS (for Mr. LEAHY, for himself, Mr. MATHIAS, and Mr. THURMOND) proposed an amendment to amendment No. 3066 proposed by Mr. LEAHY (and others) to the bill (H.R. 5484), supra; as follows:

At the end of the amendment insert the following:

TITLE *—ELECTRONIC COMMUNICATIONS PRIVACY ACT OF 1986

SEC *01. SHORT TITLE.

This title may be cited as the "Electronic Communications Privacy Act of 1986".

Subtitle A—Interception of Communications and Related Matters

SEC. *11. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.

(a) DEFINITIONS.—(1) Section 2510(1) of title 18, United States Code, is amended—

(A) by striking out "any communication" and inserting "any aural transfer" in lieu thereof;

(B) by inserting "(including the use of such connection in a switching station)" after "reception".

(C) by striking out "as a common carrier" and

(D) by inserting before the semicolon at the end the following: "or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit".

(2) Section 2510(2) of title 18, United States Code, is amended by inserting before the semicolon at the end the following: ", but such term does not include any electronic communication".

(3) Section 2510(4) of title 18, United States Code, is amended—

(A) by inserting "or other" after "aural"; and

(B) by inserting ", electronic," after "wire".

(4) Section 2510(5) of title 18, United States Code, is amended in clause (a)(i) by inserting before the semicolon the following: "or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business".

(5) Section 2510(8) of title 18, United States Code, is amended by striking out "identity of the parties to such communication or the existence,".

(6) Section 2510 of title 18, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (10);

(B) by striking out the period at the end of paragraph (11) and inserting a semicolon in lieu thereof; and

(C) by adding at the end the following:

"(12) 'electronic communication' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

"(A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

"(B) any wire or oral communication;

"(C) any communication made through a tone-only paging device; or

"(D) any communication from a tracking device (as defined in section 3117 of this title);

"(13) 'user' means any person or entity who—

"(A) uses an electronic communication service; and

"(B) is duly authorized by the provider of such service to engage in such use;

"(14) 'electronic communications system' means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"(15) 'electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications;

"(16) 'readily accessible to the general public' means, with respect to a radio communication, that such communication is not—

"(A) scrambled or encrypted;

"(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

"(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

"(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

"(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

"(17) 'electronic storage' means—

"(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

"(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

"(18) 'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.".

(b) EXCEPTIONS WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—

(1) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof" and inserting in lieu thereof "such disclosure";

(B) by striking out "the carrier" and inserting in lieu thereof "such person"; and

(C) by striking out "an order or certification under this subparagraph" and inserting in lieu thereof "a court order or certification under this chapter".

(2) Section 2511(2)(d) of title 18, United States Code, is amended by striking out "or for the purpose of committing any other injurious act".

(3) Section 2511(2)(f) of title 18, United States Code, is amended—

(A) by inserting "or chapter 121" after "this chapter"; and

(B) by striking out "by" the second place it appears and inserting in lieu thereof ", or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing".

(4) Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

"(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

"(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

"(ii) to intercept any radio communication which is transmitted—

"(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

"(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

"(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

"(IV) by any marine or aeronautical communications system;

"(iii) to engage in any conduct which—

"(I) is prohibited by section 633 of the Communications Act of 1934; or

"(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

"(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

"(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

"(h) It shall not be unlawful under this chapter—

"(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

"(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Chapter 119 of title 18, United States Code, is amended—

(A) in each of sections 2510(5), 2510(8), 2510(9)(b), 2510(11), and 2511 through 2519 (except sections 2515, 2516(1) and 2518(10)), by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof; and

(B) in section 2511(2)(b), by inserting "or electronic" after "wire".

(2) The heading of chapter 119 of title 18, United States Code, is amended by inserting "and electronic communications" after "wire".

(3) The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United States Code is amended by inserting "and electronic communications" after "Wire".

(4) Section 2510(5)(a) of title 18, United States Code, is amended by striking out "communications common carrier" and inserting "provider of wire or electronic communication service" in lieu thereof.

(5) Section 2511(2)(a)(i) of title 18, United States Code, is amended—

(A) by striking out "any communication common carrier" and inserting "a provider of wire or electronic communication service" in lieu thereof;

(B) by striking out "of the carrier of such communication" and inserting "of the provider of that service" in lieu thereof; and

(C) by striking out ": *Provided*, That said communication common carriers" and inserting ", except that a provider of wire communication service to the public" in lieu thereof.

(6) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "communication common carriers" and inserting "providers of wire or electronic communication service" in lieu thereof;

(B) by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(C) by striking out "if the common carrier" and inserting "if such provider" in lieu thereof.

(7) Section 2512(2)(a) of title 18, United States Code, is amended—

(A) by striking out "a communications common carrier" the first place it appears and inserting "a provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "a communications common carrier" the second place it appears and inserting "such a provider" in lieu thereof; and

(C) by striking out "communications common carrier's business" and inserting "business of providing that wire or electronic communication service" in lieu thereof.

(8) Section 2518(4) of title 18, United States Code, is amended—

(A) by striking out "communication common carrier" in both places it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "carrier" and inserting in lieu thereof "service provider".

(d) PENALTIES MODIFICATION.—(1) Section 2511(1) of title 18, United States Code, is amended by striking out "shall be" and all that follows through "or both" and inserting in lieu thereof "shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5)".

(2) Section 2511 of title 18, United States Code, is amended by adding after the material added by section 102 the following:

"(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

"(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then—

"(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

"(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than $500.

"(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

"(i) to a broadcasting station for purposes of retransmission to the general public; or

"(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

"(5)(a)(i) If the communication is—

"(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

"(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

"(ii) In an action under this subsection—

"(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

"(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

"(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.".

(e) EXCLUSIVITY OF REMEDIES WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—Section 2518(10) of title 18, United States Code, is amended by adding at the end the following:

"(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.".

(f) STATE OF MIND.—Paragraphs (a), (b), (c), and (d) of subsection (1) of section 2511 of title 18, United States Code, are amended by striking out "willfully" and inserting in lieu thereof "intentionally".

(2) Subsection (1) of section 2512 of title 18, United States Code, is amended in the matter before paragraph (a) by striking out "willfully" and inserting in lieu thereof "intentionally".

SEC. •12. REQUIREMENTS FOR CERTAIN DISCLOSURES.

Section 2511 of title 18, United States Code, is amended by adding at the end the following:

"(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

"(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

"(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

"(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

"(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

"(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.".

SEC. •13. RECOVERY OF CIVIL DAMAGES.

Section 2520 of title 18, United States Code, is amended to read as follows:

"§ 2520. Recovery of civil damages authorized

"(a) In General.—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) Relief.—In an action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) Computation of Damages.—(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

"(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5)(a)(i) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500.

"(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5)(a)(i) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1,000.

"(2) In any other action under this section, the court may assess as damages whichever is the greater of—

"(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

"(d) Defense.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other law.

"(e) Limitation.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.".

SEC. •14. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.

Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division".

SEC. •15. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.

(a) Wire and Oral Interceptions.—Section 2516(1) of title 18 of the United States Code is amended—

(1) in paragraph (c)—

(A) by inserting "section 751 (relating to escape)," after "wagering information),";

(B) by striking out "2314" and inserting "2312, 2313, 2314," in lieu thereof;

(C) by inserting "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),";

(D) by inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," after "1952 (interstate and foreign travel or transportation in aid of racketeering enterprises),";

(E) by inserting ", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organizations)"; and

(F) by—

(i) striking out "or" before "section 351" and inserting in lieu thereof a comma; and

(ii) inserting before the semicolon at the end thereof the following: ", section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)";

(2) by striking out "or" at the end of paragraph (g);

(3) by inserting after paragraph (g) the following:

"(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

"(i) any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code;

"(j) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act); or";

"(k) the location of any fugitive from justice from an offense described in this section;

(4) by redesignating paragraph (h) as paragraph (l); and

(5) in paragraph (a) by—

(A) inserting after "Atomic Energy Act of 1954)," the following: "section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel),";

(B) striking out "or" after "(relating to treason),"; and

(C) inserting before the semicolon at the end thereof the following: "chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)".

(b) Interception of Electronic Communications.—Section 2516 of title 18 of the United States Code is amended by adding at the end the following:

"(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.".

SEC. •16. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF ORDERS.

(a) Place of Authorized Interception.—Section 2518(3) of title 18 of the United States Code is amended by inserting "(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)" after "within the territorial jurisdiction of the court in which the judge is sitting".

(b) Reimbursement for Assistance.—Section 2518(4) of title 18 of the United States Code is amended by striking out "at the prevailing rates" and inserting in lieu thereof "for reasonable expenses incurred in providing such facilities or assistance".

(c) Commencement of Thirty-Day Period and Postponement of Minimization.—Section 2518(5) of title 18 of the United States Code is amended—

(1) by inserting after the first sentence the following: "Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered."; and

(2) by adding at the end the following: "In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not rea-

sonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.".

(d) Alternative to Designating Specific Facilities From Which Communications Are To Be Intercepted.—(1) Section 2518(1)(b)(ii) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "a particular description".

(2) Section 2518(3)(d) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "there is".

(3) Section 2518 of title 18 of the United States Code is amended by adding at the end the following:

"(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

"(a) in the case of an application with respect to the interception of an oral communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

"(iii) the judge finds that such specification is not practical; and

"(b) in the case of an application with respect to a wire or electronic communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

"(iii) the judge finds that such purpose has been adequately shown.

"(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.".

(4) Section 2519(1)(b) of title 18, United States Code, is amended by inserting "(including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title)" after "applied for".

SEC. *17. INTELLIGENCE ACTIVITIES.

(a) In General.—Nothing in this title or the amendments made by this title constitutes authority for the conduct of any intelligence activity.

(b) Certain Activities Under Procedures Approved by the Attorney General.—Nothing in chapter 119 or chapter 121 of title 18, United States Code, shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to—

(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978; or

(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978.

SEC. *18. MOBILE TRACKING DEVICES.

(a) In General.—Chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"§ 3117. Mobile tracking devices

"(a) In General.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

"(b) Definition.—As used in this section, the term 'tracking device' means an electronic or mechanical device which permits the tracking of the movement of a person or object.".

(b) Clerical Amendment.—The table of contents at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"3117. Mobile tracking devices.".

SEC. *19. WARNING SUBJECT OF SURVEILLANCE.

Section 2232 of title 18, United States Code, is amended—

(1) by inserting "(a) Physical Interference With Search.—" before "Whoever" the first place it appears;

(2) by inserting "(b) Notice of Search.—" before "Whoever" the second place it appears; and

(3) by adding at the end the following:

"(c) Notice of Certain Electronic Surveillance.—Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

"Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.".

SEC. *20. INJUNCTIVE REMEDY.

(a) In General.—Chapter 119 of title 18, United States Code, is amended by adding at the end the following:

"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.".

(b) Clerical Amendment.—The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by adding at the end thereof the following:

"2521. Injunction against illegal interception.".

SEC. *21. EFFECTIVE DATE.

(a) In General.—Except as provided in subsection (b) or (c), this subtitle and the amendments made by this subtitle shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

(b) Special Rule for State Authorizations of Interceptions.—Any interception pursuant to section 2516(2) of title 18 of the United States Code which would be valid and lawful without regard to the amendments made by this subtitle shall be valid and lawful notwithstanding such amendments if such interception occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of State law conforming the applicable State statute with chapter 119 of title 18, United States Code, as so amended; or

(2) the date two years after the date of the enactment of this title.

(c) Effective Date for Certain Approvals by Justice Department Officials.—Section *14 of this title shall take effect on the date of enactment of this title.

Subtitle B-Stored Wire and Electronic Communications and Transactional Records Access

SEC. *31. TITLE 18 AMENDMENT.

Title 18, United States Code, is amended by inserting after chapter 119 the following:

"CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

"Sec.

"2701. Unlawful access to stored communications.

"2702. Disclosure of contents.

"2703. Requirements for governmental access.
"2704. Backup preservation.
"2705. Delayed notice.
"2706. Cost reimbursement.
"2707. Civil action.
"2708. Exclusivity of remedies.
"2709. Counterintelligence access to telephone toll and transactional records.
"2710. Definitions.

"§ 2701. Unlawful access to stored communications

"(a) Offense.—Except as provided in subsection (c) of this section whoever—

"(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

"(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

"(b) Punishment.—The punishment for an offense under subsection (a) of this section is—

"(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain—

"(A) a fine of not more than $250,000 or imprisonment for not more than one year, or both, in the case of a first offense under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than two years, or both, for any subsequent offense under this subparagraph; and

"(2) a fine of not more than $5,000 or imprisonment for not more than six months, or both, in any other case.

"(c) Exceptions.—Subsection (a) of this section does not apply with respect to conduct authorized—

"(1) by the person or entity providing a wire or electronic communications service;

"(2) by a user of that service with respect to a communication of or intended for that user; or

"(3) in section 2703, 2704 or 2518 of this title.

"§ 2702. Disclosure of contents

"(a) Prohibitions.—Except as provided in subsection (b)—

"(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

"(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(b) Exceptions.—A person or entity may divulge the contents of a communication—

"(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

"(2) as otherwise authorized in section 2516, 2511(2)(a), or 2703 of this title;

"(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

"(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

"(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

"(6) to a law enforcement agency, if such contents—

"(A) were inadvertently obtained by the service provider; and

"(B) appear to pertain to the commission of a crime.

"§ 2703. Requirements for governmental access

"(a) Contents of Electronic Communications in Electronic Storage.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

"(b) Contents of Electronic Communications in a Remote Computing Service.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

"(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

"(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena; or

"(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

"(2) Paragraph (1) is applicable with respect to any electronic communication that is held or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(c) Records Concerning Electronic Communication Service or Remote Computing Service.—(1)(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury subpoena;

"(ii) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

"(iii) obtains a court order for such disclosure under subsection (d) of this section; or

"(iv) has the consent of the subscriber or customer to such disclosure.

"(2) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

"(d) Requirements for Court Order.—A court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

"(e) No cause of action against a provider disclosing information under this chapter.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

"§ 2704. Backup preservation

"(a) Backup Preservation.—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

"(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

"(3) The service provider shall not destroy such backup copy until the later of—

"(A) the delivery of the information; or

"(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

"(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

"(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

"(B) has not initiated proceedings to challenge the request of the governmental entity.

"(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

"(b) Customer Challenges.—(1) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate United States district court or State court. Such motion or application shall contain an affidavit or sworn statement—

"(A) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

"(B) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

"(2) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, the term 'delivery' has the meaning given that term in the Federal Rules of Civil Procedure.

"(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

"(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

"(5) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

"§ 2705. Delayed notice

"(a) Delay of Notification.—(1) A governmental entity acting under section 2703(b) of this title may—

"(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

"(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

"(2) An adverse result for the purposes of paragraph (1) of this subsection is—

"(A) endangering the life or physical safety of an individual;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

"(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

"(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

"(A) states with reasonable specificity the nature of the law enforcement inquiry; and

"(B) informs such customer or subscriber—

"(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

"(ii) that notification of such customer or subscriber was delayed;

"(iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and

"(iv) which provision of this chapter allowed such delay.

"(6) As used in this subsection, the term 'supervisory official' means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

"(b) Preclusion of Notice to Subject of Governmental Access.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

"(1) endangering the life or physical safety of an individual;

"(2) flight from prosecution;

"(3 destruction of or tampering with evidence;

"(4) intimidation of potential witnesses; or

"(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"§ 2706. Cost reimbursement

"(a) Payment.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

"(b) Amount.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

"(c) The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (a) if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

"§ 2707. Civil action

"(a) Cause of Action.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) Relief.—In a civil action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c); and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) Damages.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000.

"(d) Defense.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense to any civil or criminal action brought under this chapter or any other law.

"(e) Limitation.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

"§ 2708. Exclusivity of remedies

"The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

"§ 2709. Counterintelligence access to telephone toll and transactional records

"(a) Duty to Provide.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

"(b) Required Certification.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(c) Prohibition of Certain Disclosure.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

"(d) Dissemination by Bureau.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(e) Requirement That Certain Congressional Bodies Be Informed.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made under subsection (b) of this section.

"§ 2710. Definitions for chapter

"As used in this chapter—

"(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section; and

"(2) the term 'remote computing service' means the provision to the public of computer storage or processing services by means of an electronic communications system.".

(b) Clerical Amendment.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by adding at the end the following:

"121. Stored Wire and Electronic Communications and Transactional Records Access

SEC. *32. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect ninety days after the date of the enactment of this title and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

Subtitle C—Pen Registers and Trap and Trace Devices

SEC. *41. TITLE 18 AMENDMENT.

(a) In General.—Title 18 of the United States Code is amended by inserting after chapter 205 the following new chapter:

"CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

"Sec.
"3121. General prohibition on pen register and trap and trace device use; exception.
"3122. Application for an order for a pen register or a trap and trace device.
"3123. Issuance of an order for a pen register or a trap or trace device.
"3124. Assistance in installation and use of a pen register or a trap and trace device.
"3125. Reports concerning pen registers and trap and trace devices.
"3126. Definitions for chapter.

"§ 3121. General prohibition on pen register and trap and trace device use; exception

"(a) In General.—Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

"(b) Exception.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

"(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

"(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or

"(3) where the consent of the user of that service has been obtained.

"(c) Penalty.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

"§ 3122. Application for an order for a pen register or a trap and trace device

"(a) Application.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

"(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

"(b) Contents of Application.—An application under subsection (a) of this section shall include—

"(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

"§ 3123. Issuance of an order for a pen register or a trap and trace device

"(a) In General.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

"(b) Contents of Order.—An order issued under this section—

"(1) shall specify—

"(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

"(B) the identity, if known, of the person who is the subject of the criminal investigation;

"(C) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

"(D) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

"(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.

"(c) Time Period and Extensions.—(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

"(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed sixty days.

"(d) Nondisclosure of Existence of Pen Register or a Trap and Trace Device.—An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that—

"(1) the order be sealed until otherwise ordered by the court; and

"(2) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

"§ 3124. Assistance in installation and use of a pen register or a trap and trace device

"(a) Pen Registers.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 3123(b)(2) of this title.

"(b) Trap and Trace Device.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in section 3123(b)(2) of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order.

"(c) Compensation.—A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

"(d) No cause of action against a provider disclosing information under this chapter.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

"(e) Defense.—A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

"§ 3125. Reports concerning pen registers and trap and trace devices

"The Attorney General shall annually report to Congress on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the Department of Justice.

"§ 3126. Definitions for chapter

"As used in this chapter—

"(1) the terms 'wire communication', 'electronic communication', and 'electronic communication service' have the meanings set forth for such terms in section 2510 of this title;

"(2) the term 'court of competent jurisdiction' means—

"(A) a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals; or

"(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device;

"(3) the term 'pen register' means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

"(4) the term 'trap and trace device' means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted;

"(5) the term 'attorney for the Government' has the meaning given such term for the purposes of the Federal Rules of Criminal Procedure; and

"(6) the term 'State' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.".

(b) Clerical Amendment.—The table of chapters for part II of title 18 of the United States Code is amended by inserting after the item relating to chapter 205 the following new item:

"206. Pen Registers and Trap and Trace Devices .... 3121".

SEC. •42. EFFECTIVE DATE.

(a) In General.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect ninety days after the date of the enactment of this title and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

(b) Special Rule for State Authorizations of Interceptions.—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under Federal law as amended by this subtitle; or

(2) the date two years after the date of the enactment of this title.

SEC. •43. INTERFERENCE WITH THE OPERATION OF A SATELLITE.

(a) Offense.—Chapter 65 of title 18, United States Code, is amended by inserting at the end the following:

"§ 1367. Interference with the operation of a satellite

"(a) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both.

"(b) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States."

(b) Conforming Amendment.—The table of sections for chapter 65 of title 18, United States Code, is amended by adding at the end the following new item:

"1367. Interference with the operation of a satellite.".

CHILES AMENDMENT NO. 3068

Mr. CHILES proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the appropriate place in the bill, insert the following:

SECTION 1. RECOVERY OF COSTS INCURRED BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) In General.—Subchapter B of chapter 78 of the Internal Revenue Code of 1954 (relating to general powers and duties) is amended by adding at the end thereof the following new section:

SEC. 7624. REIMBURSEMENT TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) Authorization of Reimbursement.—Whenever a State or local law enforcement agency provides information to the Internal Revenue Service that substantially contributes to the recovery of Federal taxes, such agency shall be reimbursed by the Internal

Revenue Service for costs incurred in the investigation (including but not limited to reasonable expenses, per diem, salary and overtime) not to exceed 10 percent of the sum ultimately recovered. The Internal Revenue Service shall maintain records reflecting the receipt of information from the contributing agency, and shall notify the agency when a recovery has been effected. Following such notification, the agency shall submit a statement detailing the investigative costs incurred. Where more than 1 State or local agency has given information that substantially contributes to the recovery of Federal taxes, the Internal Revenue Service shall equitably distribute the costs reimbursements among those agencies up to an aggregate sum of 10 percent of the taxes recovered.

(b) ESTABLISHMENT OF A FUND.—The Commissioner of the Internal Revenue Service shall establish a fund for recovering that portion of recovered Federal taxes authorized under subsection (a) and intended as reimbursements for state and local law enforcement agencies. In conjunction with the fund, the Commissioner shall develop guidelines on the procedures and timetables for reimbursing those law enforcement agencies which have contributed to the recoupment of Federal taxes.

(c) REIMBURSEMENT.—Reimbursements under section (a) shall be made directly from the fund under subsection (b) prior to the deposit of such funds into the United States Treasury.

(d) CLERICAL AMENDMENT.—The table of sections for such subchapter B is amended by adding at the end thereof the following new item:

"Sec. 7624. Reimbursement to State and local law enforcement agencies."

GORTON AMENDMENT NO. 3069

Mr. HATCH (for Mr. GORTON) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the appropriate place in the bill, insert the following:

SEC. . (a) The Administrator of the Environmental Protection Agency shall conduct a study of the manufacturing and distribution process of cyanide with a view to determining methods, procedures, or other actions which might be taken, employed, or otherwise carried out in connection with such manufacturing and distribution in order to safeguard the public from the wrongful use of cyanide.

(b) Such study shall include, among other matters, the following:

(1) a determination of the sources of cyanide, including the name and location of each manufacturer thereof;

(2) an evaluation of the means and methods utilized by the manufacturer and others in the distribution of cyanide, including the name and location of each such distributor;

(3) an evaluation of the procedures employed in connection with the selling, at the wholesale and retail level, of cyanide, including a determination as to whether or not persons selling cyanide require the intended purchaser to identify himself or herself;

(4) a determination as to the extent to which recordkeeping requirements are imposed on, or carried out by, manufacturers of cyanide with respect to the specifications of each lot of cyanide produced by such manufacturer;

(5) a determination as to the feasibility and desirability of establishing a central registry of all lot specifications of cyanide for the purpose of providing quick access to investigative and law enforcement agencies;

(6) a consideration and review of all aspects of the matter of interstate versus intrastate to the extent that it involves the manufacturing, distribution, or use of cyanide;

(7) a determination as to the feasibility and desirability of requiring manufacturers of cyanide to color all such cyanide with a distinctive color so that the consuming public can more readily identify products laced with cyanide;

(8) a determination as to the feasibility and desirability of requiring limited-access storage for cyanide at universities, laboratories, and other institutions that use cyanide for research or other purposes;

(9) a determination as to the feasibility and desirability of issuing regulations to require any person who sells or otherwise transfers, at a retail level, any cyanide to record such sale or transfer, including the identity of the person purchasing or otherwise receiving such cyanide, the address of such person, and the intended use of such cyanide. Such records shall be available for such use, and retained for such period, as the aforementioned Administrator shall by regulation require.

(b) On or before the expiration of the 180-day period following the date of the enactment of this section, the Administrator of the Environmental Protection Agency shall report the results of such study to the Congress, together with his or her recommendations with respect thereto.

(c) As used in this section, the term—

(1) "person" means any individual, corporation, partnership, or other entity; and

(2) "cyanide" means sodium cyanide, potassium cyanide or any other toxic cyanide compound.

(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

METZENBAUM AMENDMENT NO. 3070

Mr. METZENBAUM proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the end of title IV, insert the following:

SEC. . INFANT FORMULA.

Section 412 of the Federal Food, Drug, and Cosmetic Act is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively;

(2) by striking out the last sentence of paragraph (1) of subsection (f) (as redesignated by clause (1) of this section) and inserting in lieu thereof the following new sentence: "Such records shall be retained for at least one year after the expiration of the shelf life of the infant formula.";

(3) by striking out "(a) and (b)" in the first sentence of subsection (g)(1) (as redesignated by clause (1) of this section) and insert in lieu thereof "(a), (b), and (c)";

(4) by striking out "(c)(1)" in the second sentence of such subsection and inserting in lieu thereof "(d)(1)";

(5) by striking out "(c)(1)(B)" in such sentence and inserting in lieu thereof "(d)(1)(B)";

(6) by striking out "(a) and (b)" in subsection (g)(2) (as redesignated by clause (1) of this section) and inserting in lieu thereof "(a), (b), and (c)";

(7) by striking out "subsection (a)(2)" in subsection (h) (as redesignated by clause (1) of this section) and inserting in lieu thereof "subsection (a)(3)"; and

(8) by striking out subsections (a) through (d) and inserting in lieu thereof the following:

"(a)(1) An infant formula, including an infant formula powder, shall be deemed to be adulterated if—

"(A) such infant formula does not provide nutrients as required by subsection (h);

"(B) such infant formula does not meet the quality factor requirements prescribed by the Secretary under this section; or

"(C) the processing of such infant formula is not in compliance with the good manufacturing practices and the quality control procedures prescribed by the Secretary under this section.

"(2)(A) The Secretary shall by regulation establish requirements for quality factors for infant formulas to the extent possible consistent with current scientific knowledge, including quality factor requirements for the nutrients required by subsection (h).

"(B) The Secretary shall by regulation establish—

"(i) good manufacturing practices for infant formulas, including quality control procedures; and

"(ii) requirements respecting the retention of records,

that the Secretary determines are necessary to assure that an infant formula provides nutrients in accordance with this section and is manufactured in a manner designed to prevent adulteration of the infant formula by any poisonous or deleterious substance which may render such infant formula injurious to health, except that in the case of any substance which is not an added substance, an infant formula shall not be considered adulterated for purposes of this clause if the quantity of such substance in such infant formula does not render such infant formula injurious to health.

"(C) The good manufacturing practices and quality contol procedures prescribed by the Secretary under subparagraph (B)(i) shall include requirements for—

"(i) the testing, by the manufacturer of an infant formula or an agent of such manufacturer, of each batch of infant formula for each nutrient required pursuant to subsection (h) prior to the distribution of such batch in accordance with the provisions of subparagraph (D);

"(ii) regularly scheduled testing, by the manufacturer of an infant formula or an agent of such manufacturer, of samples of infant formulas during the shelf life of such formulas in order to ensure that such formulas are in compliance with this section;

"(iii) in-process controls including, where necessary, testing required by good manufacturing practices designed to prevent adulteration of each batch of infant formula by any poisonous or deleterious substance which may render such infant formula injurious to health, except that in the case of any substance which is not an added substance, an infant formula shall not be considered adulterated for purposes of this clause if the quantity of such substance in such infant formula does not render such infant formula injurious to health; and

"(iv) the conduct by the manufacturer of an infant formula of regularly scheduled audits to determine that such manufacturer has complied with the regulations prescribed under subparagraph (B)(i).

"(D)(i) At the final product stage, each batch of infant formula shall be tested for Vitamin A, Vitamin B1, Vitamin C, and Vitamin E to ensure that such infant forumla is in compliance with the requirements of this section relating to such vitamins.

"(ii) Each nutrient premix used in the manufacture of an infant formula shall be tested for each relied upon nutrient required pursuant to this section contained in such premix to ensure that such premix is in compliance with its specifications or certifications by a premix supplier.

"(iii) During the manufacturing process or at the final product stage and before distribution of an infant formula, an infant formula shall be tested for all nutrients required to be included in such formula pursuant to subsection (h) for which testing has not been conducted pursuant to clause (i) or (ii). Testing under the preceding sentence shall be conducted in order to—

"(I) ensure that each batch of such infant formula is in compliance with the requirements of this section relating to such nutrients; and

"(II) confirm that nutrients contained in any nutrient premix used in such infant formula are present in each batch of such infant formula in the proper concentration.

"(iv) For purposes of this section, the term 'final product stage' means the point in the manufacturing process, before distribution of an infant formula, at which an infant formula is homogenous and is not subject to further degradation.

"(E) The record retention requirements prescribed by the Secretary under clause (ii) of subparagraph (B) shall include requirements for—

"(i) the retention of all records necessary to demonstrate compliance with the good manufacturing practices and quality control procedures prescribed by the Secretary under clause (i) of such subparagraph, including records containing the results of all testing required under subparagraph (C);

"(ii) the retention of all certifications or guarantees of analysis by premix suppliers;

"(iii) the retention by a premix supplier of all records necessary to confirm the accuracy of all permix certifications and guarantees of analysis;

"(iv) the retention of—

"(I) all records pertaining to the microbiological quality and purity of raw materials used in infant formula powder and in finished infant formula; and

"(II) all records pertaining to food packaging materials which show that such materials do not cause an infant formula to be adulterated within the meaning of section 402(a)(2)(C);

"(v) the retention of all records of the results of regularly scheduled audits conducted pursuant to the requirements prescribed by the Secretary under subparagraph (C)(iv); and

"(vi) the retention of all complaints and the maintenance of files with respect to, and the review of, complaints concerning infant formulas.

"(F)(i) Records required under subparagraphs (B)(ii) and (E) with respect to an infant formula shall be retained for at least one year after the expiration of the shelf life of such infant formula. Except as provided in clause (ii) of this subparagraph, such records shall be made available to the Secretary for review and duplication upon request of the Secretary, including records and files maintained under clauses (i) through (v) of subparagraph (E) which may reveal the possible existence of a hazard to health.

"(ii) A manufacturer need only provide written assurances to the Secretary that the regularly scheduled audits required by subparagraph (C)(iv) are being conducted by the manufacturer, and need not make available to the Secretary the actual written reports of such audits.

"(G) In prescribing requirements for audits under subparagraph (C)(iv), the Secretary shall provide that such audits be conducted by appropriately trained individuals who do not have any direct responsibility for the manufacture or production of infant formula.

"(3) The Secretary may by regulation—

"(A) revise the list of nutrients in the table in subsection (h); and

"(B) revise the required level for any nutrient required by subsection (h).

"(4) If pursuant to paragraph (3), the Secretary adds a nutrient to the list of nutrients in the table in subsection (h), the Secretary shall by regulation require that the manufacturer of an infant formula test each batch of such formula for such new nutrient in accordance with clause (i), (ii) or (iii) of paragraph (2)(D).

"(b)(1)(A) No person shall introduce or deliver for introduction into interstate commerce any new infant formula unless—

"(i) such person has, prior to introducing such new infant formula, or delivering such new infant formula for introduction, into interstate commerce, registered with the Secretary the name of such person, the place of business of such person, and all establishments at which such person intends to manufacture such new infant formula; and

"(ii) such person has at least 90 days prior to marketing such new infant formula, made the submission to the Secretary required by subsection (c)(1).

"(B) For purposes of this section, the term 'new infant formula' includes—

"(i) an infant formula manufactured by a person which has not previously manufactured an infant formula; and

"(ii) an infant formula manufactured by a person which has previously manufactured infant formula and in which there is a major change, in processing or formulation, from a current or any previous formulation produced by such manufacturer.

For purposes of this subparagraph, the term 'major change' has the meaning given to such term in section 106.30(c)(2) of title 21, Code of Federal Regulations (as in effect on August 1, 1986), and guidelines issued thereunder.

"(2) If the manufacturer of an infant formula for commercial or charitable distribution for human consumption determines that a change in the formulation of the formula or a change in the processing of the formula may affect whether the formula is adulterated under subsection (a), the manufacturer shall, prior to the first processing of such formula, make the submission to the Secretary required by subsection (c)(1).

"(c)(1) A person shall, with respect to any infant formula subject to subsection (b), make a submission to the Secretary. Each such submission shall include—

"(A) the quantitative formulation of the infant formula;

"(B) a description of any reformulation of the formula or change in processing of the infant formula;

"(C) assurances that the infant formula will not be marketed unless it meets the requirements of subsections (a)(2)(A) and (h), as demonstrated by the testing required under subsection (a)(2)(C); and

"(D) assurances that the processing of the infant formula complies with subsection (a)(2)(B)(i).

"(2) After the first production of an infant formula subject to subsection (b)(1), and before the introduction into interstate commerce of such formula, the manufacturer of such formula shall submit to the Secretary, in such form as may be prescribed by the Secretary, a written verification which summarizes test results and records demonstrating that such formula complies with the requirements of subsections (a)(2)(A), (a)(2)(B)(i), (a)(2)(C)(i), (a)(2)(C)(iii), and (h).

"(d)(1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required by subsection (h); or

"(B) may be otherwise adulterated or misbranded,

the manufacturer shall promptly notify the Secretary of such knowledge. If the Secretary determines that the infant formula presents a risk to human health, the manufacturer shall immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary.

"(2) For purposes of paragraph (1), the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(e)(1) If a recall of infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary shall prescribe under paragraph (2), and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2); and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risk to human health presented by the formula subject to the recall.

"(3) The Secretary shall by regulation require each manufacturer of an infant formula who begins a recall of such formula because of a risk to human health to request each retail establishment at which such formula is sold or available for sale to post at the point of purchase of such formula a notice of such recall at such establishment for such time that the Secretary determines necessary to inform the public of such recall.".

HELMS AMENDMENT NO. 3071

Mr. HELMS proposed an amendment to amendment No. 3070 proposed by Mr. METZENBAUM to the bill (H.R. 5484), supra; as follows:

At an appropriate place in the pending amendment, add the following:

"SEC. . Section 223(b) of the Communications Act of 1934 is amended—

(1) in paragraph (1)(A), by striking out 'under eighteen years of age or to any other person without that person's consent';

(2) by striking out paragraph (2);

(3) in paragraph (4), by striking out 'paragraphs (1) and (3)' and inserting in lieu thereof 'paragraphs (1) and (2)'; and

(4) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.".

EVANS AMENDMENT NO. 3072

Mr. EVANS proposed an amendment to the bill (H.R. 5484), supra; as follows:

After the word "aircraft" in Sec. 3004(e)(1)(A), insert the following:

"*Provided*, that no funds may be expended to modify any existing aircraft for air surveillance purposes unless the proposed modifications comply with validated requirements and specifications developed by the Coast Guard."

EVANS (AND BIDEN) AMENDMENT NO. 3073

Mr. EVANS (for himself and Mr. BIDEN) proposed an amendment to the bill (H.R. 5484), supra; as follows:

At the end of Title I, insert the following new subtitle:

SEC. . SHORT TITLE.

This subtitle may be cited as the White House Conference on Drug Abuse and Control Act".

SEC. . ESTABLISHMENT OF THE CONFERENCE.

There is established a conference to be known as "The White House Conference on Drug Abuse and Control". The members of the Conference shall be appointed by the President.

SEC. . PURPOSE.

The purposes of the Conference are:

(a) to share information and experiences in order to vigorously and directly attack drug abuse at all levels, local, State, Federal, and international;

(b) to bring public attention to those approaches to drug abuse education and prevention which have been successful in curbing drug abuse and those methods of treatment which have enabled drug abusers to become drug free;

(c) to highlight the dimensions of the drug abuse crisis, to examine the progress made in dealing with such crisis, and to assist in formulating a national strategy to thwart sale and solicitation of illicit drugs and to prevent and treat drug abuse.

(d) to examine the essential role of parents and family members in preventing the basic causes of drug abuse and in successful treatment efforts.

SEC. . RESPONSIBILITIES OF THE CONFERENCE.

The Conference shall specifically review—

(a) the effectiveness of law enforcement at the local, State, and Federal levels to prevent the sale and solitication of illicit drugs and the need to provide greater coordination among such programs;

(b) the impact of drug abuse upon American education and the effectiveness of drug education programs in our schools, with particular attention to those schools, both public and private, which have maintained a drug free learning environment;

(c) the extent to which Federal, State, and local programs of drug abuse education, prevention, and treatment require reorganization or reform in order to better use available resources and to ensure greater coordination among such programs; and

(d) the impact of current laws on efforts to control international and domestic trafficking of illicit drugs.

SEC. . CONFERENCE PARTICIPANTS.

In order to carry out the purposes and responsibilities specified in sections and , the Conference shall bring together individuals concerned with issues relating to drug abuse education, prevention, and treatment, and the production, trafficking, and distribution of illicit drugs. The President shall—

(a) ensure the active participation in the Conference of the heads of appropriate executive and military departments, and agencies, including the Attorney General, the Secretary of Education, the Secretary of Health and Human Services, Secretary of Transportation, and the Director of ACTION;

(b) provide for the involvement in the Conference of other appropriate public officials, including Members of Congress, Governors of States, and Mayors of Cities;

(c) provide for the involvement in the Conference of private entities, especially parents' organizations, which have been active in the fight against drug abuse; and

(d) provide for the involvement in the Conference of individuals distinguished in medicine, law, drug abuse treatment and prevention, education and law enforcement.

SEC. . ADMINISTRATIVE PROVISIONS.

(a) All Federal departments, agencies, and instrumentalities shall provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

(b) The President is authorized to appoint and compensate an executive director and such other directors and personnel for the Conference as the President may consider advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 52 of such title relating to classification and General Schedule pay rates.

(c) Upon request by the executive director, the heads of the executive and military departments are authorized to detail employees to work with the executive director in planning and administering the Conference without regard to the provisions of section 3341 of title 5, United States Code.

(d) Each participant in the Conference shall be responsible for the expenses of such participant in attending the Conference, and shall not be reimbursed for such expenses from amounts appropriated to carry out this subtitle.

SEC. . FINAL REPORT.

Not later than six months after the effective date of this Act, the Conference shall prepare and transmit a final report to the President and to Congress, pursuant to sections and . The report shall include the findings and recommendations of the Conference as well as proposals for any legislative action necessary to implement such recommendations.

SEC. . AVAILABILITY OF FUNDS.

No more than $2,000,000 shall be appropriated to carry out this subtitle. Amounts appropriated under this section shall remain available until expended.

SEC. . EFFECTIVE DATE.

This section shall become effective upon enactment of this Act.

METZENBAUM AMENDMENT NO. 3074

Mr. METZENBAUM proposed an amendment to the bill H.R. 5484, supra; as follows:

Section 4106 of the bill is amended—

(1) in subsection (c)(2)(B) by inserting after "administrators," the following: "athletic directors,"; and

(2) in subsection (d)(1)—

(A) in clause (D) by inserting after "counselors," the following: "athletic directors,"; and

(B) by redesignating clause (I) as clause (J) and inserting after clause (H) the following:

"(I) special programs and activities to prevent drug and alcohol abuse among student athletes, involving their parents and family in such drug and alcohol abuse prevention efforts and using athletic programs and personnel in preventing drug and alcohol abuse among all students; or

DOLE AMENDMENT NO. 3075

Mr. DOLE proposed and amendment to the bill (H.R. 5484), supra; as follows:

To be added in the appropriate interdiction section:

"SEC. . Effective October 1, 1986 and ending September 30, 1987 the number of officers of the Marine Corps authorized under section 525(b)(1) of Title 10, United States Code, to be on active duty in the grade of lieutenant general is increased by one. This authorization of lieutenant general is contingent on a Marine Corps lieutenant general serving as Director of the Department of Defense Task Force on Drug Enforcement."

HAWKINS (AND OTHERS) AMENDMENT NO. 3076

Mrs. HAWKINS (for himself, Mr. HELMS, Mr. THURMOND, and Mr. WILSON) proposed an amendment to the bill H.R. 5484, supra; as follows:

At the end of title III, add the following new subtitle:

Subtitle *—National Forest System Drug Control

SEC. 3 ** 1. SHORT TITLE.

This subtitle may be cited as the "National Forest System Drug Control Act of 1986".

SEC. 3 ** 2. PURPOSE.

(a) The purpose of this subtitle is to authorize the Secretary of Agriculture (hereinafter in this subtitle referred to as the "Secretary") to take actions necessary, in connection with the administration and use of the National Forest System, to prevent the manufacture, distribution, or dispensing of marijuana and other controlled substances.

(b) Nothing in this subtitle shall diminish in any way the law enforcement authority of the Forest Service.

(c) As used in this subtitle, the terms "manufacture", "dispense", and "distribute" shall have the same meaning given such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SEC. 3 ** 3. POWERS.

For the purposes of this subtitle; if specifically designated by the Secretary and specially trained, not to exceed 500 officers and employees of the Forest Service when in the performance of their duties shall have authority within the boundaries of the National Forest System to—

(1) carry firearms;

(2) conduct investigations of violations of and enforce section 401 of Controlled Substances Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(3) make arrests with a warrant or process for misdemeanor violations, or without a warrant or process for violations of such misdemeanors that any such officer or employee has reasonable grounds to believe are being committed in his presence or view, or for a felony with or without a warrant if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony;

(4) serve warrants and other process issued by a court or officer of competent jurisdiction;

(5) search without warrant or process any person, place, or conveyance according to Federal law or rule of law; and

(6) seize without warrant or process any evidentiary item according to Federal law or rule of law.

SEC. 34. COOPERATION.**

For the purposes of this subtitle, in exercising the authority provided by section 3**3—

(1) the Forest Service shall cooperate with any other Federal law enforcement agency having primary investigative jurisdiction over the offense committed; and

(2) the Secretary may authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision in the investigation of violations of and enforcement of section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, both within and outside the boundaries of the National Forest System.

SEC. 35. PENALTY.**

Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by adding at the end thereof the following subsection:

"(e)(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years and shall be fined not more than $10,000.

"(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years and shall be fined not more than $20,000.

"(3) For the purposes of this subsection, the term 'boobytrap' means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.".

SEC. 36. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated $20,000,000 for each fiscal year to carry out this subtitle.

SEC. 37. APPROVAL OF SECRETARY OF AGRICULTURE AND ATTORNEY GENERAL.**

The authorities conferred herein shall be exercised pursuant to an agreement approved by the Secretary of Agriculture and the Attorney General.

LEVIN (AND DECONCINI AMENDMENT NO. 3077

Mr. LEVIN (for himself and Mr. DECONCINI) proposed an amendment to the bill, H.R. 5484, supra, as follows:

An amendment to Section 1102 of H.R. 5484 by striking all after the word "by" on line 23, page 19 through the word "offense" on line 1, page 20, and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to twice that authorized by section 401(b) of this title, or twice the fine authorized by section 401(b) of this title, or both, and at least twice any special parole term authorized by section 401(b) of this title for a first offense."

H.R. 5484 is amended in section 1102 by striking all after the word "by" on line 5, page 20, through the word "section" on line 10, page 20, and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to three times that authorized by section 401(b) of this title for a first offense under that section, and at least three times any special parole term authorized by section 401(b) of this title for a first offense under that section."

H.R. 5484 is further amended by adding a new section 1105 as follows: "section 405 of the Controlled Substances Act is further amended by striking in paragraph (a) all after the second word "by" and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to twice that authorized by section 401(b), a fine up to twice that authorized by section 401(b), or both."

H.R. 5484 is further amended by adding a new section 1106 as follows: "Section 405 of the Controlled Substances Act is amended by striking in paragraph (b) all after the second word "by" and adding the following in lieu thereof: "a term of imprisonment of not less than one year and up to three times that authorized by section 401(b), a fine up to three times that authorized by section 401(b), or both. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving five grams or less of marijuana."

H.R. 5484 is further amended by adding a new section 1108 as follows: "Section 405A of the Controlled Substances Act is amended by striking all after the second word "by" and inserting in lieu thereof the following: "a term of imprisonment of not less than one year and up to twice that authorized by section 401(b), and a fine of up to twice that authorized by section 401(b), or both; and (2) at least twice any special parole term authorized by section 401(b) for a first offense involving the same controlled substance and schedule. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving five grams or less of marijuana."

HELMS AMENDMENT NO. 3078

Mr. HELMS proposed an amendment to the bill, H.R. 5484, supra as follows:

At an appropriate place in the bill; add the following:

SEC. . The first section of the Act entitled "An Act to regulate the issue and validity of passports, and for other purposes", approved July 3, 1926 (22 U.S.C. 211a) is amended by adding at the end thereof the following:

"The Secretary of State shall prescribe such regulations as shall be necessary to establish procedures for indicating on passports issued by the United States the fact that the holder of such passport has been convicted of an offense under a Federal or State law relating to controlled substances or has been assessed a fine or civil penalty or has incurred a forfeiture under any Federal or State law relating to controlled substances.".

MATHIAS (AND MOYNIHAN) AMENDMENT NO. 3079

Mr. MATHIAS (for himself and Mr. MOYNIHAN) proposed an amendment to the bill, H.R. 5484, supra as follows:

At the end of the bill insert the following new subtitle:

Subtitle * —American Conservation Corps Act of 1986

SECTION *01. SHORT TITLE.

This subtitle may be cited as the "American Conservation Corps Act of 1986".

SEC. *02. CONGRESSIONAL FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) conserving or developing natural and cultural resources and enhancing and maintaining environmentally important lands and waters through the use of the Nation's young men and women is beneficial not only to the youth of the Nation by providing them with education and work opportunities but also for the Nation's economy and its environment; and

(2) through this work experience opportunity, the Nation's youth will further their understanding and appreciation of the natural and cultural resources in addition to learning basic and fundamental work ethics including discipline, cooperation, understanding to live and work with others, and learning the value of a day's work for a day's wages.

(b) PURPOSE.—It is the purpose of this subtitle to—

(1)(A) enhance and maintain conservation, rehabilitation, and improvement work on public lands and Indian lands,

(B) improve and restore public lands and Indian lands, resources, and facilities,

(C) conserve energy, and

(D) restore and maintain community lands, resources, and facilities;

(2) establish an American Conservation Corps to carry out a program to improve, restore, maintain, and conserve these lands and resources in the most cost-effective manner;

(3) assist State and local governments and Indian tribes in carrying out needed public land and resource conservation, rehabilitation, and improvement projects;

(4) provide for implementation of the program in such manner as will foster conservation and the wise use of natural and cultural resources through the establishment of

working relationships among the Federal, State, and local governments, Indian tribes, and other public and private organizations; and

(5) increase (by training and other means) employment opportunities for young men and women including, but not limited to, those who are economically, socially, physically, or educationally disadvantaged and who may not otherwise be productively employed.

SEC. *03. DEFINITIONS.

For purposes of this subtitle:

(1) The term "public lands" means any lands or waters (or interest therein) owned or administered by the United States or by any agency or instrumentality of a State or local government.

(2) The term "program" means all activities carried out under the American Conservation Corps established by this subtitle.

(3) The term "program agency" means any agency designated by the Governor to manage the program in that State, and the governing body of any Indian tribe.

(4) The term "Indian tribe" means any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior. Such term also includes any Native village corporation, regional corporation, and Native group established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1701 et seq.).

(5) The term "Indian" means a person who is a member of an Indian tribe.

(6) The term "Indian lands" means any real property owned by an Indian tribe, any real property held in trust by the United States for Indian tribes, and any real property held by Indian tribes which is subject to restrictions on alienation imposed by the United States.

(7) The term "employment security service" means the agency in each of the several States with responsibility for the administration of unemployment and employment programs, and the oversight of local labor conditions.

(8) The term "chief administrator" means the head of any program agency as that term is defined in paragraph (3).

(9) The term "enrollee" means any individual enrolled in the American Conservation Corps in accordance with section *05.

(10) The term "crew leader" means an enrollee appointed under authority of this subtitle for the purpose of supervising other enrollees engaged in work projects pursuant to this subtitle.

(11) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(12) The term "economically disadvantaged" with respect to youths has the same meaning given such term in section 4(8) of the Job Training Partnership Act.

SEC. *04. AMERICAN CONSERVATION CORPS PROGRAM.

(a) ESTABLISHMENT OF AMERICAN CONSERVATION CORPS.—There is hereby established an American Conservation Corps.

(b) REGULATIONS AND ASSISTANCE.—Not later than 120 days after the date of enactment of this subtitle, the Secretary of the Interior and the Secretary of Agriculture, after consultation with the Secretary of Labor, shall jointly promulgate the regulations necessary to implement the American Conservation Corps established by this subtitle. Within 30 days after the enactment of this subtitle, the Secretary of the Interior and the Secretary of Agriculture shall establish procedures to give program agencies and other interested parties, including the public, adequate notice and opportunity to comment upon and participate in the formulation of such regulations. The regulations shall include provisions to assure uniform reporting on the activities and accomplishments of American Conservation Corps programs, demographic characteristics of enrollees in the American Conservation Corps, and such other information as may be necessary to prepare the annual report under section *10.

(c) PROJECTS INCLUDED.—The American Conservation Corps established under this section may carry out such projects as—

(1) conservation, rehabilitation, and improvement of wildlife habitat, rangelands, parks, and recreational areas;

(2) urban revitalization and historical and cultural site preservation;

(3) fish culture and habitat maintenance and improvement and other fishery assistance;

(4) road and trail maintenance and improvement;

(5)(A) erosion, flood, drought, and storm damage assistance and controls,

(B) stream, lake, and waterfront harbor and port improvement, and

(C) wetlands protection and pollution control;

(6) insect, disease, rodent, and fire prevention and control;

(7) improvement of abandoned railroad bed and right-of-way;

(8) energy conservation projects, renewable resource enhancement, and recovery of biomass;

(9) reclamation and improvement of strip-mined land; and

(10) forestry, nursery, and silvicultural operations.

(d) PREFERENCE FOR CERTAIN PROJECTS.—The program shall provide a preference for those projects which—

(1) will provide long-term benefits to the public;

(2) will instill in the enrollee involved a work ethic and a sense of public service;

(3) will be labor intensive; and

(4) can be planned and initiated promptly.

(e) LIMITATION TO PUBLIC LANDS.—Projects to be carried out by the American Conservation Corps shall be limited to projects on public lands or Indian lands except where a project involving other lands will provide a documented public benefit as determined by the Secretary of the Interior or the Secretary of Agriculture. The regulations promulgated under subsection (b) shall establish the criteria necessary to make such determinations.

(f) CONSISTENCY.—All projects carried out under this subtitle for conservation, rehabilitation, or improvement of any public lands or Indian lands shall be consistent with the provisions of law and policies relating to the management and administration of such lands, with all other applicable provisions of law, and with all management, operational, and other plans and documents which govern the administration of the area.

(g) APPLICATION PROCEDURES.—(1) Each program agency may apply for approval to participate in the American Conservation Corps under this subtitle.

(2) Applications for participation in the American Conservation Corps on Federal public lands shall be submitted to the Secretary of the Interior or the Secretary of Agriculture in such manner as is provided for by the regulations promulgated under subsection (b). Applications for participation in the American Conservation Corps on non-Federal public lands or Indian lands shall be submitted to the Secretary of the Interior. Applications for participation in the American Conservation Corps on projects on lands described in subsection (e) shall be submitted to the Secretary of Agriculture or the Secretary of the Interior as the case may be. No application may be submitted to the Secretary of the Interior or the Secretary of Agriculture before the 30-day period for review and comment by the appropriate State Job Training Coordinating Council (established under the Job Training Partnership Act), if any, which shall consult with the appropriate Private Industry Council, or Councils, in the area in which a project is carried out. Comments of the State Job Training Coordinating Council and Private Industry Council shall be forwarded to the Secretary at the time the grant application is submitted.

(3) Each application under this section must be approved by the Secretary of the Interior or the Secretary of Agriculture, as the case may be, and shall contain—

(A) a comprehensive description of the objectives and performance goals for the program, a plan for managing and funding the program, and a description of the types of projects to be carried out, including a description of the types and duration of training and work experience to be provided;

(B) a plan to make arrangements for certification of the training skills acquired by enrollees and award of academic credit to enrollees for competencies developed from training programs or work experience obtained under this subtitle;

(C) an estimate of the number of enrollees and crew leaders necessary for the proposed projects, the length of time for which the services of such personnel will be required, and the services which will be required for their support;

(D) a description of the location and types of facilities and equipment to be used in carrying out the programs; and

(E) such other information as the Secretary of the Interior and the Secretary of Agriculture shall prescribe.

(4) In approving the location and type of any facility to be used in carrying out the program, the Secretary of the Interior and the Secretary of Agriculture shall give due consideration to—

(A) the proximity of any such facility to the work to be done;

(B) the cost and means of transportation available between any such facility and the homes of the enrollees who may be assigned to that facility;

(C) the participation of economically, socially, physically, or educationally disadvantaged youths; and

(D) the cost of establishing, maintaining, and staffing the facility.

Every effort shall be made to assign youths to facilities. as near to their homes as practicable.

(5)(A) Every program shall have sufficient supervisory staff appointed by the chief administrator which may include enrollees who have displayed exceptional leadership qualities.

(B) No project shall be undertaken without the on-site presence of knowledgeable and competent supervision, and all projects undertaken shall be documented in advance in an approved written project plan.

(h) Local Participation.—Any State carrying out a program under this subtitle shall provide a mechanism under which local governments and nonprofit organizations within the State may be approved by the State to participate in the American Conservation Corps.

(i) Agreements.—Program agencies may enter into contracts and other appropriate arrangements with local government agencies and nonprofit organizations for the operation or management of any projects or facilities under the program.

(j) Joint Projects.—

(1) Department of Labor.—The Secretary of the Interior and the Secretary of Agriculture are authorized to develop jointly with the Secretary of Labor regulations designed to allow, where appropriate, joint projects in which activities supported by funds authorized under this subtitle are coordinated with activities supported by funds authorized under employment and training statutes administered by the Department of Labor (including the Job Training Partnership Act). Such regulations shall provide standards for approval of joint projects which meet both the purposes of this subtitle and the purposes of such employment and training statutes under which funds are available to support the activities proposed for approval. Such regulations shall also establish a single mechanism for approval of joint projects developed at the State or local level.

(2) Department of Defense.—The Secretary of the Interior, the Secretary of Agriculture, and program agencies may enter into agreements, jointly or separately, with the Secretary of Defense to assist the military by carrying out projects under this subtitle. Such projects may be carried out on a reimbursable basis or otherwise.

SEC. *05. ENROLLMENT, FUNDING, AND MANAGEMENT.

(a) Enrollment in Program.—(1)(A) Enrollment in the American Conservation Corps shall be limited to individuals who, at the time of enrollment, are—

(i) unemployed;

(ii) not less than 16 years or more than 25 years of age (except that programs limited to the months of June, July, and August may include individuals not less than 15 years and not more than 21 years of age at the time of their enrollment); and

(iii) citizens or nationals of the United States (including those citizens of the Northern Mariana Islands as defined in Public Law 98-213 (97 Stat. 1459)) or lawful permanent residents of the United States.

(B) Special efforts shall be made to recruit and enroll individuals who, at the time of enrollment, are economically disadvantaged.

(C) In addition to recruitment enrollment efforts required in subparagraph (B), the Secretary of the Interior and the Secretary of Agriculture shall make special efforts to recruit enrollees who are socially, physically, and educationally disadvantaged youths.

(D) Notwithstanding subparagraph (A), a limited number of special corps members may be enrolled without regard to their age so that the corps may draw upon their special skills which may contribute to the attainment of the purposes of the subtitle.

(2) Except in the case of a program limited to the months of June, July, and August, individuals who at the time of applying for enrollment have attained 16 years of age but not attained 19 years of age, and who are no longer enrolled in any secondary school shall not be enrolled unless they give adequate written assurances, under criteria to be established by the Secretary of the Interior and the Secretary of Agriculture, that they did not leave school for the express purpose of enrolling. The regulations promulgated under section *04(b) shall provide such criteria.

(3) The selection of enrollees to serve in the American Conservation Corps shall be the responsibility of the chief administrator of the program agency. Enrollees shall be selected from those qualified persons who have applied to, or been recruited by, the program agency, a State employment security service, a local school district with an employment referral service, an administrative entity under the Job Training Partnership Act, a community or community-based nonprofit organization, the sponsor of an Indian program, or the sponsor of a migrant or seasonal farmworker program.

(4)(A) Except for a program limited to the months of June, July, and August, any qualified individual selected for enrollment may be enrolled for a period not to exceed 24 months. When the term of enrollment does not consist of one continuous 24-month term, the total of shorter terms may not exceed 24 months.

(B) No individual may remain enrolled in the American Conservation Corps after that individual has attained the age of 26 years, except as provided in subsection (a)(1)(D) of this section.

(5) Within the American Conservation Corps the directors of programs shall establish and stringently enforce standards of conduct to promote proper moral and disciplinary conditions. Enrollees who violate these standards shall be transferred to other locations, or dismissed, if it is determined that their retention in that particular program, or in the Corps, will jeopardize the enforcement of such standards or diminish the opportunities of other enrollees. Such disciplinary measures will be subject to expeditious appeal to the appropriate Secretary.

(b) Services, Facilities, Supplies.—The program agency shall provide facilities, quarters, and board (in the case of residential facilities), limited and emergency medical care, transportation from administrative facilities to work sites, and other appropriate services, supplies, and equipment. The Secretary of the Interior and the Secretary of Agriculture may provide services, facilities, supplies, and equipment to any program agency carrying out projects under this subtitle. Whenever possible, the Secretary of the Interior and the Secretary of Agriculture shall make arrangements with the Secretary of Defense to have logistical support provided by a military installation near the work site, including the provision of temporary tent centers where needed, and other supplies and equipment. Basic standards of work requirements, health, nutrition, sanitation, and safety for all projects shall be established and enforced.

(c) Requirement of Payment for Certain Services.—Enrollees shall be required to pay a reasonable portion of the cost of room and board provided at residential facilities into rollover funds administered by the appropriate program agency. Such payments and rates are to be established after evaluation of costs of providing the services. The rollover funds established pursuant to this section shall be used solely to defray the costs of room and board for enrollees. The Secretary of the Interior and the Secretary of Agriculture and the Secretary of Defense are authorized to make available to program agencies surplus food and equipment as may be available from Federal programs.

SEC. *06. FEDERAL AND STATE EMPLOYEE STATUS.

Enrollees, crew leaders, and volunteers are deemed as being responsible to, or the responsibility of, the program agency administering the project on which they work. Except as otherwise specifically provided in the following paragraphs, enrollees and crew leaders in projects for which funds have been authorized pursuant to section *13 shall not be deemed Federal employees and should not be subject to the provisions of law relating to Federal employment:

(1) For purposes of subchapter I of chapter 81 of title 5, United States Code, relating to the compensation of Federal employees for work injuries, enrollees and crew leaders serving American Conservation Corps program agencies shall be deemed employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provision of that subchapter shall apply, except—

(A) the term "performance of duty" shall not include any act of an enrollee or crew leader while absent from his or her assigned post of duty, except while participating in an activity authorized by or under the direction and supervision of a program agency (including an activity while on pass or during travel to or from such post of duty); and

(B) compensation for disability shall not begin to accrue until the day following the date on which the injured enrollee's or crew leader's employment is terminated.

(2) For purposes of chapter 171 of title 28, United States Code, relating to tort claims procedure, enrollees and crew leaders on American Conservation Corps projects shall be deemed employees of the United States within the meaning of the term "employee of the Government" as defined in section 2671 of title 28, United States Code.

(3) For purposes of section 5911 of title 5, United States Code, relating to allowances for quarters, enrollees and crew leaders shall be deemed employees of the United States within the meaning of the term "employee" as defined in that section.

SEC. *07. USE OF VOLUNTEERS.

Where any program agency has authority to use volunteer services in carrying out functions of the agency, such agency may use volunteer services for purposes of assisting projects carried out under this subtitle and may expend funds made available for those purposes to the agency, including funds made available under this subtitle, to provide for services or costs incidental to the utilization of such volunteers, including transportation, supplies, lodging, subsistence, recruiting, training, and supervision. The use of volunteer services permitted by this section shall be subject to the condition that such use does not result in the displacement of any enrollee.

SEC. *08. TENNESSEE VALLEY AUTHORITY.

The Board of Directors of the Tennessee Valley Authority may accept the services of volunteers and provide for their incidental expenses to carry out any activity of the Tennessee Valley Authority except policy-making or law or regulatory enforcement. Such volunteers shall not be deemed employees of the United States Government except for the purposes of chapter 81 of title 5 of the United States Code, relating to compensation for work injuries, and shall not be deemed employees of the Tennessee Valley Authority except for the purposes of tort claims to the same extent as a regular employee of the Tennessee Valley Authority would be under identical circumstances.

SEC. *09. SPECIAL RESPONSIBILITIES.

(a) PAY.—(1) The rate of pay for enrollees shall be the equivalent of 95 percent of the pay rate for members of the Armed Forces in the enlisted grade E-1 who have served for four months or more on active duty, from which a reasonable charge for enrollee room and board shall be deducted by the program agency.

(2) Enrollees shall receive $50 cash incentive stipends for every three months of enrollment in the program.

(3) The rate of pay for crew leaders shall be at a wage comparable to the compensation in effect for grades GS-3 to GS-7.

(b) COORDINATION.—The Secretary of the Interior and the Secretary of Agriculture and the chief administrators of program agencies carrying out programs under this subtitle shall coordinate the programs with related Federal, State, local, and private activities.

(c) CERTIFICATION AND ACADEMIC CREDIT.—Pursuant to the provisions of paragraphs (B) and (C) of section *04(g)(3), the Secretary of the Interior and the Secretary of Agriculture shall provide guidance and assistance to program agencies in securing certification of training skills or academic credit for competencies developed under this subtitle.

(d) RESEARCH AND EVALUATION.—The Secretary of the Interior shall provide for research and evaluation to—

(1) determine costs and benefits, tangible and otherwise, of work performed under this subtitle and of training and employable skills and other benefits gained by enrollees, and

(2) identify options for improving program productivity and youth benefits, which may include alternatives for—

(A) organization, subjects, sponsorship, and funding of work projects;

(B) recruitment and personnel policies;

(C) siting and functions of facilities;

(D) work and training regimes for youth of various origins and needs; and

(E) cooperative arrangements with programs, persons, and institutions not covered under this subtitle.

(e) CCC SITES.—The Secretary of the Interior, after consultation with the Secretary of Agriculture, shall study sites at which Civilian Conservation Corps activities were undertaken for purposes of determining a suitable location and means to commemorate the Civilian Conservation Corps. Not later than one year after the date of the enactment of this subtitle, the Secretary of the Interior shall submit a report to the Congress containing the results of the study carried out under this section. The report shall include cost estimates and recommendations for any legislative action.

(f) STUDY.—(1) Program agencies shall not use more than 10 percent of the funds available to them to provide training and educational materials and services for enrollees and may enter into arrangements with academic institutions or education providers, including local education agencies, community colleges, four-year colleges, area vocational-technical schools and community based organizations, for academic study by enrollees during nonworking hours to upgrade literacy skills, obtain a high school diploma or its equivalency, or college degrees, or enhance employable skills. Enrollees who have not obtained a high school diploma or its equivalency shall have priority to receive services under this subsection. Whenever possible, an enrollee seeking study or training not provided at his or her assigned facility shall be offered assignment to a facility providing such study or training.

(2) Standards and procedures with respect to the awarding of academic credit and certifying educational attainment in programs conducted under paragraph (1) shall be consistent with the requirement of applicable State and local law and regulations.

(g) GUIDANCE AND PLACEMENT.—Program agencies shall provide such job guidance and placement information and assistance for enrollees as may be necessary. Such assistance shall be provided in coordination with appropriate State, local, and private agencies and organizations.

SEC. *10. ANNUAL REPORT.

The Secretary of the Interior and the Secretary of Agriculture shall prepare and submit to the President and to the Congress at least once each year a report detailing the activities carried out under this subtitle in the preceding fiscal year. Such report shall be submitted not later than December 31 of each year following the date of enactment of this subtitle.

SEC. *11. LABOR MARKET INFORMATION.

The Secretary of Labor shall make available to the Secretary of the Interior and the Secretary of Agriculture and to any program agency under this subtitle such labor market information as is appropriate for use in carrying out the purposes of this subtitle.

SEC. *12. EMPLOYEE APPEAL RIGHTS.

(a) FEDERAL EMPLOYEES.—In the case of—

(1) the displacement of a Federal employee (including any partial displacement through reduction of nonovertime hours, wages, or employment benefits) or the failure to reemploy an employee in a layoff status, contrary to a certification under section *13(c) (1) or (2), or

(2) the displacement of such a Federal employee by reason of the use of one or more volunteers under section *07 of this subtitle,

such employee is entitled to appeal such action to the Merit Systems Protection Board under section 7701 of title 5, United States Code.

(b) OTHER INDIVIDUALS.—In the case of—

(1) the displacement of any other individual employed (either directly or under contract with any private contractor) by a program agency or grantee, or the failure to reemploy an employee in layoff status, contrary to a certification under section *13(c) (1) or (2), or

(2) the displacement of such individual by reason of the use of one or more volunteers under section *07 of this subtitle,

the requirements contained in section 144 of the Job Training Partnership Act (Public Law 97-300) shall apply, and such individual shall be deemed an interested person for purposes of the application of such requirements.

(c) DEFINITION.—For purposes of this section, the term "displacement" includes, but is not limited to, any partial displacement through reduction of nonovertime hours, wages, or employment benefits.

SEC. *13. AUTHORIZATION OF APPROPRIATIONS.

(a) DISTRIBUTION OF FUNDS.—Of the sums appropriated pursuant to subsection (g) to carry out this subtitle for any fiscal year—

(1) not less than 50 percent shall be made available to the Secretary of the Interior for expenditure by State program agencies which have been approved by the Secretary of the Interior for participation in the American Conservation Corps;

(2) not less than 15 percent shall be made available to the Secretary of Agriculture for expenditure by agencies within the Department of Agriculture, subject to the provisions of subsection (e);

(3) not less than 5 percent shall be made available to the Secretary of Agriculture, under such terms as are provided for in regulations promulgated under section *04(b), for expenditure by other Federal agencies;

(4) not less than 25 percent shall be made available to the Secretary of the Interior for expenditure by agencies within the Department of the Interior, subject to the provisions of subsection (e), and for demonstration projects or projects of special merit carried out by any program agency or by any nonprofit organization or local government which is undertaking or proposing to undertake projects consistent with the purposes of this subtitle;

(5) not less than 5 percent shall be made available to the Secretary of the Interior for expenditure by the governing bodies of participating Indian tribes.

(b) AWARD OF GRANTS.—Within 60 days after enactment of appropriations legislation pursuant to subsection (g), any program agency may apply to the Secretary of the Interior for funds under this subtitle. In determining the allocation of funds among the program agencies, the Secretary shall consider each of the following factors:

(1) The proportion of the unemployed youth population of the State.

(2) The the conservation, rehabilitation, and improvement needs on public lands within the State.

(3) The amount of other support for the program and the extent to which the size and effectiveness of a program will be enhanced by the use of the Federal funds.

Any State receiving funds for the operation of any program under this subtitle shall be required to provide not less than 50 percent of the cost of such program.

(c) NON-DISPLACEMENT.—The Secretary of the Interior and the Secretary of Agriculture shall not fund any program or enter into any agreement with any program agency for the funding of any program under this subtitle unless the Secretary concerned or such agency certifies that projects carried out by the program will not—

(1) result in the displacement of individuals currently employed (either directly or under contract with any private contractor) by the program agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the program agency concerned;

(3) impair existing contracts for services; or

(4) result in the inability of persons who normally contract with the agency for carrying out projects involving forestry, nursery, or silvicultural operations on commercial forest land to continue to obtain contracts to carry out such projects.

For purposes of paragraph (4), the term "commercial forest land" means land in the National Forest System or land administered by the Secretary of the Interior through the Bureau of Land Management which is producing, or is capable of producing, 50 cubic feet per acre per year of industrial wood and which is not withdrawn from timber utilization by statute or administrative decision.

(d) STATE SHARE TO LOCAL GOVERNMENTS.—If, at the commencement of any fiscal year, any State does not have a program agency designated by the Governor to manage the program in that State, then during such fiscal year any local government within such State may establish a program agency to carry out the program within the political subdivision which is under the jurisdiction of such local government. Such local government program agency shall be in all respects subject to the same requirements as a State program agency. Where more than one local government within a State has established a program agency under this subsection, the Secretary of the Interior shall allocate funds between such agencies in such manner as he deems equitable.

(e) PROGRAMS ON FEDERAL LANDS.—Funds provided under this section to any Federal agency shall be used to carry out projects on Federal lands and to provide for the Federal administrative costs of implementing this subtitle. In utilizing such funds, the Federal agencies may enter into contracts or other agreements with program agencies and with local governments and nonprofit organizations approved under section *04(h).

(f) PAYMENT TERMS.—Payments under grants under this section may be made in advance or by way of reimbursement and at such intervals and on such conditions as the Secretary of the Interior or the Secretary of Agriculture, as appropriate, finds necessary.

(g) USE OF FUNDS.—Contract authority under this subtitle shall be subject to the availability of appropriations. Funds provided under this subtitle shall only be used for activities which are in addition to those which would otherwise be carried out in the area in the absence of such funds. Not more than 10 percent of the funds made available to any program agency for projects during each fiscal year may be used for the purchase of major capital equipment.

(h) ADMINISTRATIVE EXPENSES.—The regulations under section *04(b) shall establish appropriate limitations on the administrative expenses of Federal agencies and program agencies carrying out programs under this subtitle. Such limitations shall insure that administrative expenses of such programs shall be minimized to the extent practicable taking into consideration the purposes of this subtitle and the nature of the programs carried out under this subtitle.

(i) APPROPRIATION LEVELS.—There is authorized to be appropriated for the purposes of carrying out this subtitle $75,000,000 for each of the fiscal years 1987 through 1989. Funds appropriated under this subtitle shall remain available until expended.

DOMENICI AMENDMENT NO. 3080

Mr. DOMENICI proposed an amendment to the bill, H.R. 5485, supra, as follows:

In section 1152(a) of the bill, strike paragraph (1) and redesignate the subsequent paragraphs appropriately.

In paragraph (9)(B) of section 524(c) of title 28, United States Code, as added by section 1152(a)(6) of the bill, insert "in such amounts as are specified in appropriation Acts," after "disbursed,".

In section 1152(b)(1) of the bill, strike subparagraph (A) and redesignate the subsequent subparagraphs appropriately.

Strike subsection (c) of section 1152 of the bill.

In section 981(e) of title 18, United States Code, as added by section 1356(a) of the bill, insert "except section 3 of the Anti Drug Abuse of 1986," after "law,".

In section 981(i)(1) of title 18, United States Code, as added by section 1356(a) of the bill, insert "except section 3 of the Anti Drug Abuse Act of 1986," after "law,".

In paragraph (2)(A) of section 511(e) of the Controlled Substances Act (42 U.S.C. 881(e)), as added by section 1772 of the bill, insert ", to the extent provided in appropriation Acts," after "title shall".

CHILES AMENDMENT NO. 3081

Mr. CHILES proposed an amendment to the bill (H.R. 5484), supra; as follows:

Strike everything beginning on page 79, line 4 through and including line 13 on page 80 and insert in lieu thereof the following:

(a) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Drug Enforcement Administration $11,000,000; except, that notwithstanding section 1345 of title 31, United States Code, funds made available to the Department of Justice for the Drug Enforcement Administration in any fiscal year may be used for travel, transportation, and subsistence expenses of State, county, and local officers attending conferences, meetings, and training courses at the FBI Academy, Quantico, Virginia.

(b) The Drug Enforcement Administration of the Department of Justice is hereby authorized to plan, construct, renovate, maintain, remodel and repair buildings and purchase equipment incident thereto for an All Source Intelligence Center.

(c) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Federal Prison System, $78,000,000, of which $50,000,000 shall be for the construction of Federal penal and correctional institutions and $28,000,000 shall be for salaries and expenses.

(d) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Defender Services, $18,000,000.

(e) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Fees and Expenses of Jurors and Commissioners, $7,500,000.

(f) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Office of Justice Assistance, $2,000,000 to carry out a pilot prison capacity program.

(g) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for support of United States prisoners in non-Federal Institutions, $2,000,000.

(h) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Offices of the United States Attorneys, $6,000,000.

(i) Authorizations of appropriations for fiscal year 1987 contained in this section are in addition to those amounts contained in H.R. 5161, as reported to the Senate by the Committee on Appropriations on September 3, 1986.

COMPENSATION AND ESTABLISHING LIABILITY FOR OIL SPILLS

MITCHELL AMENDMENT NO. 3082

Mr. MITCHELL proposed an amendment to the bill (S. 2799) to consolidate and improve Federal laws providing compensation and establishing liability for oil spills; as follows:

On page 42, line 19, section 205 is amended to read as follows:

"SEC. 205. Title III, other than section 302, of the Outer Continental Shelf Lands Act Amendments of 1978 is hereby repealed."

ADDITIONAL STATEMENTS

TAKING THE PRESIDENCY TO THE PEOPLE

● Mr. HATFIELD. I would like to draw attention to an article authored by the Acting Archivist of the United States, Dr. Frank Burke, describing the Presidential library system. The article, entitled "Taking the Presidency to the People," appears in the summer issue of Prologue, the magazine of the National Archives and Records Administration. It deserves attention because of its excellent statement of the fact that Presidential libraries are not simply memorials to former Chief Executives. Rather, they are rich storehouses of information benefiting scholars and laypersons who seek to understand the Presidency, our system of Government and the process of our international relations.

These libraries have been the focus of criticism from some quarters. Yet such criticism fails to understand that libraries, in general, are stones in the foundation of a democracy, that at the base of a free society is the access to knowledge provided in libraries and that Presidential libraries are a part of these great institutions of democracy. Besides the material contained in each one, the Presidential libraries promote seminars, plan exhibits, and public programs, and encourage intellectual pursuits by the public and scholars which benefit everyone. I strongly urge the continued support, development, and maintenance of the Presidential library system where the past, which is prologue, is housed.

I commend the Acting Archivist for highlighting the importance that these institutions play, and ask that the article be printed in the RECORD.

The article follows:

TAKING THE PRESIDENCY TO THE PEOPLE

(By Frank G. Burke)

Over the years, criticism of the presidential library system has grown as the number of libraries has increased. The libraries are sometimes characterized as "paper pyramids" by their detractors, and their operating budgets are rarely differentiated from the costs of Secret Service protection, secretarial and postage allowances, and other benefits that directly relate to former presidents and their families.

These simplifications do a sad disservice to our former chief executives and the American public. The presidential library system was *never* intended to benefit retired presidents directly. Modeled upon the library set up by President Franklin D. Roosevelt in 1939, the system was officially established by Congress in 1955. Since then the seven (soon to be eight) libraries have evolved into rich research institutions that serve not only scholars and students but, equally as important, the communities around them.

Among the least examined but most beneficial aspects of these libraries are the contributions they receive from and return to the cities and states they serve. The involvement of local citizens in Boston and Austin in the volunteer tour programs of the Kennedy and Johnson libraries, for example, is a boon to visitors as well as an enriching service to the community. The residents of Independence, Missouri, and nearby Kansas City have heard countless distinguished historians, soldiers, and former cabinet members discuss public policy during the Truman years. Conferences and lectures of national importance—many of them led by President Ford—have been held at the Ford Library in Ann Arbor and the Ford Museum in Grant Rapids, Michigan.

In addition to sponsoring hundreds of conferences, exhibitions, and public programs, the presidential libraries work with local educators and civic groups to encourage the use of original records in the study of the presidency and national policy. The Kennedy Library, for example, has helped teachers develop materials drawn from library holdings for classroom use. These have been used in schools throughout the country. The Eisenhower Library has held a series of workshops for students from the Topeka schools. The Hoover, Roosevelt, and Truman libraries have worked with local public schools to develop programs for elementary, junior high, and high school students to use the resources there in teaching American history and government and international relations.

Presidential libraries also encourage schools to use their museums as educational resources. The Johnson Library in Austin has developed educational games to assist in interpreting exhibitions and has developed special tours for the blind and handicapped. At the Carter Library, which will open this fall in Atlanta, visitors can touch a computer monitor linked to a television screen to choose one of more than one hundred questions to be posed to the former president in a simulated town meeting. An image of Mr. Carter will answer questions ranging from daily life in the White House to the Iranian hostage crisis. Last year nearly 1.5 million people visited the seven presidential museums.

The vitality that these libraries contribute to the intellectual life of the surrounding communities should not be overlooked. In an editorial last year, the *Kansas City Times* called the libraries "reservoirs of history, some remote from Washington, that are accessible to millions of Americans. For many, it is their only direct contact with their national history . . . the cost is reasonable for what America has gotten and will continue to get in return."

Information from presidential library holdings is available to every American. Writers and historians have based thousands of works on material from the libraries, including several that have won Pulitzer, Bancroft, and Parkman prizes. Historian Walter McDougall recently paid tribute to "the dedicated professionals" at the Truman, Eisenhower, Kennedy, and Johnson libraries in the foreward to his new book. He did extensive research in the records of these four institutions for *The Heavens and the Earth: A Political History of the Space Age*, for which he recently won a Pulitzer Prize. More than five hundred books have been based on the holdings of the Roosevelt Library in Hyde Park alone.

Regardless of these benefits, the costs of operating and maintaining these libraries continue to cause concern. Although the libraries are built with private funds, inflation continues to add to the cost of their upkeep. In view of this concern, recent legislation passed by Congress requires that all future libraries built after President Reagan's be endowed with a fund equal to 20 percent of building, land, and equipment costs. This law also gives to the Archivist of the United States the authority to set standards to ensure efficient and appropriate design of all future libraries. It is hoped that this legislation will put to rest many of the concerns about "escalating costs" as the library system growns.

The White House creates a voluminous historical record. Manuscript holdings at presidential libraries of presidents and administration officials now exceed 200 million pages. Through acquisition of documents, books, and bibliographic information, each library serves as a research center for the study of the presidency and national and international affairs. Each has extensive audiovisual collections, oral history programs, and a wide range of gifts from private citizens and heads of state. These materials afford the scholar and citizen alike a comprehensive view of the presidency "with all the bark off," in Lyndon Johnson's words.

The presidential libraries, as part of the National Archives, have succeeded in making certain that presidential papers are opened for research as promptly as possible. Before their establishment, the papers of presidents often remained closed for long periods. Abraham Lincoln's papers, for example, were not opened for research until 1947, eighty-two years after his death; John Adams's remained closed for 153 years after he left the presidency. In contrast, the main body of Franklin D. Roosevelt's papers—85 percent of them—were opened to researchers in March 1950, less than five years after his death. The first portions of Lyndon Johnson's papers were made available in 1972, less than four years after he left office. This high degree of accessibility has set new standards that have been applauded by scholars and emulated by other achival institutions.

In the course of its history, the presidential libraries system has developed highly effective means of preserving permanently valuable presidential papers and related historical materials and making them available to scholars and the public at large. These programs have assured that "first-hand" information about public policy is deposited with the libraries by administration officials, and that these collections are readily accessible in many forms to the communities and researchers they serve. For scholars and citizens alike, the historical record in its entirety is the finest way to bring the presidency to the people.●

POSITIVE IMPACT OF 1985 FARM BILL ON INTERNATIONAL AGRICULTURE TRADE

● Mr. BOSCHWITZ. Mr. President, as a member of the Senate Committee on Agriculture, Nutrition, and Forestry it is gratifying to read of the positive impact the 1985 farm bill has made on international agriculture trade. Obviously, many of our trading partners do not view our legislation as a boon to the world market as it is aimed at improving the trade of U.S. agricultural commodities.

In an article published in the Sydney (Australia) Morning Herald on August 6, John Campbell, a Senate agriculture committee staff member currently completing post-graduate work at Sydney University, discusses the benefits of the farm bill in response to criticism of United States agricultural problems. Those of us who worked on the bill with John will remember him as a diligent worker and an exceptionally bright young man.

Clearly, the reaction of Australians to the new farm legislation reveals its role in making the United States more competitive in the marketplace.

I respectfully submit Mr. Campbell's article for the RECORD.

[From the Sidney Morning Herald, Aug. 16, 1986]

WHEAT: AUST'S FREE RIDE ENDS

The other day I rang Telecom information to get the telephone number of the US Agricultural Attaché. The operator, recognising my obvious American accent, said the US could take its agriculture "up on the next space shuttle".

There has always been room for more rational discussion of agricultural problems. The near-panic generated by US Congressional proposals to widen the American export subsidy program to include the Soviet Union and China makes it even more necessary to examine the reasons for this "crisis".

The problem is a combination of three fundamental facts. First, the world does not want to buy in international trade as much wheat as it did only a few years ago. Since the 1980–81 crop year, world wheat trade has been flat or falling and now stands at about 10 percent less than it did six years ago and 13.5 per cent less than it did only two years ago.

Second, production of wheat by exporting countries, on the whole, has not changed. Production in Australia and the EC has been rising over the past five years with offsetting production declines in the US and Argentina.

Third, only one country, the US, has had a deliberate policy of trying to reduce production and hold stocks off the market in an effort to keep prices as high as they were when demand was stronger.

It may seem like common sense that when consumers do not want to buy as much, but producers keep the same amount on the market, prices go down. I have used wheat as the example, but the same could be said of cotton, coarse grains and rice. Why then do farmers insist on various forms of government intervention to shield them from the realities of the market place?

Before the new US farm bill became law, American farmers had a vast network of subsidies all aimed at idling land and keeping stocks off the market so that prices would be kept high. Australian wheat farmers have, until 1984, had a scheme whereby domestic users paid a higher price for wheat than the world market price and taxpayers footed the bill if world market prices were not as high as the guaranteed minimum export price. The Australian wheat scheme only protects export prices and is expected to pay wheat farmers if prices drop because of the US subsidy plan.

European farmers have a system whereby domestic consumers pay a price vastly higher than the world price and all production in excess of domestic needs is dumped on the world market for whatever price it will bring.

Although all of the major wheat exporting nations have support schemes for wheat farmers, only the US is operating a scheme to reduce production and keep supplies off the market. The outcome has been that America has lost its share of a shrinking market while its competitors, including Australia, have gained. American wheat farmers listen grimly to US Department of Agriculture predictions that their wheat exports will fall 44 per cent from the 1983-84 crop, the largest year-to-year drop in exports ever recorded. Overall, since the peak export year of 1980-81, American wheat farmers have lost 40 per cent of their market share.

Meanwhile, Australian farmers during this period have been happily producing and exporting more and more as if nothing had changed in the world market place. In fact, the Australian Wheat Board recently predicted their third straight record export year on a volume basis. Australia's market share has risen from roughly 11 per cent in crop year 1980 to more than 17 per cent in crop year 1985—more than a 50 per cent increase. The European Community has also increased its market share in the face of falling world demand.

How could this happen? Most of the blame can be laid directly at the doorstep of past US farm policy. The rest can be blamed on exchange rate fluctuations and refusal by the EC to moderate their export dumping policies. As stated earlier, American farm policy has attempted unilaterally to alter supply and demand conditions. The result: US markets have been taken up (American farmers would say stolen) by Australia and others just below the US asking price.

The 1983 US payment-in-kind program is a good example. In that year, 32 million hectares were taken out of production—more than one and a half times the entire amount of Australian land in broadacre production. American farmers were compensated for idling this massive amount of land. Combined with a summer drought, production was reduced and prices were increased.

How did US competitors react? As could be expected with higher prices, they increased the area sowed to wheat by 26 million hectares, almost cancelling the impact of the US program.

Enter the new US farm bill. Seeing the error of past American farm policy, Congress moved decisively to reduce the price of American wheat, coarse grains, cotton, and rice, to limit the amount of land taken out of production in a year, and to close loopholes in farm programs which rewarded increased output when a farmer's acreage was reduced. To protect American farmers from bankruptcy because of these sharply lower prices, direct cash subsidies were kept fairly high, but not as high as in the past.

In addition to these direct income subsidies, American farmers were assured they would not be left on their own to fight unfair competition sponsored by foreign governments. The export subsidy program so much in the news today was an effort on the part of Congress to assure hard-pressed farmers that the Government was fighting for them against the European Community and other governments perceived to be predatory competitors.

Despite the possible negative consequences of the export subsidy program on third countries such as Australia, the 1985 farm bill has much to offer in the way of improving the environment for agricultural production and trade.

The 1985 farm bill will force American farmers to face the realities of the market place to a greater degree than has been the case in the past. Over the life of the bill, subsidies are being reduced. It will also end the free ride Australian and other competitors have used to increase their share of the world market at the expense of American farmers and taxpayers. The most efficient farmers and best marketing systems will have a better chance of finishing ahead.

Finally, by dramatically increasing the cost of European farm programs, it may even bring the EC to change its farm policy—something long sought by Australians as well as Americans.

In the long-term, the new farm legislation has the potential to bring more balance into international agricultural trade—something low-cost Australian farmers should applaud.

The reasons farmers are so successful in convincing governments of major industrialised countries to disrupt world markets is because they have political clout far beyond their numbers, and in most cases far beyond their economic importance.

Australians are basically correct in actively opposing an expansion of such subsidies. However, to do so on the basis that Australia is a free trader is dishonest. Although Australian agricultural products are probably produced and traded in a less protectionist environment than the US or the EEC, there are certainly numerous government programs set up to help farmers. These are nicely outlined in the April 15 Government White Paper on the Rural Economy. The dairy and egg industries are good examples of highly protected Australian agricultural industries. In addition, where the Australian votes are counted—in labour and industry—the Australian Government has over the years built one of the most protectionist societies in the world.

It is time industrialised nations demanded some accountability on the part of farmers and resisted the temptation to dish out political rewards for short-term gain. American farmers should not demand their markets back in one year after taking six to lose them. And Australian farmers should not mimic American farmers by demanding that their government shield them.●

THE URANIUM REVITALIZATION AND TAILINGS RECLAMATION ACT OF 1986

● Mr. WALLOP. Mr. President, I stand in support of S. 1004, the Uranium Revitalization and Tailings Reclamation Act of 1986. This bill will reestablish a viable domestic uranium industry, ensure a long-term supply of domestic uranium and enrichment capacity for this country's nuclear power program and establish a program to finance reclamation and remedial action at active uranium sites. S. 1004 will approve the Energy Department's utility services enrichment contracts and thereby recognize that these contracts reflect relevant criteria for providing the enrichment services. It provides relevant criteria for providing the enrichment services. It provides that the enrichment program's unrecovered costs incurred by DOE in providing services to commercial customers are established at $350 million. This bill also requires the President to submit to Congress within 1 year a report on alternative means of managing the enrichment enterprise. This bill is supported by the Uranium Producers of America, the Oil Chemical & Atomic Workers, the Edison Electric Institute, the American Mining Congress, the National Taxpayers Union, and the western uranium-producing States.

The domestic uranium industry is a vital factor to the U.S. energy independence and for energy security and national security reasons this country must not permit this energy source, slip away. This industry has been devastated by a variety of economic factors, policies of foreign governments, foreign export penalties, Federal regulatory requirements, cancellation of nuclear powerplants and Government uranium enrichment policies.

Under section 161(v) of the Atomic Energy Act, the Energy Department must maintain a viable domestic uranium industry. Section 161(v) specifically states:

> That the Commission, to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States.

In September 1985, Energy Secretary Herrington declared the domestic uranium industry nonviable. Yet after years of prodding by Senator DOMENICI, myself, and Senator SIMPSON, the Energy Department has not taken any positive steps to assist the uranium industry to return to a viable status. S. 1004, of which I am a cosponsor will permit the domestic uranium industry to survive the difficult times it is facing today.

My State of Wyoming has been hard hit by mine closings and layoffs, as have the States of New Mexico, Colorado, Texas, and Washington. This comprehensive bill addresses the deep problems facing Wyoming's uranium industry and will go far toward getting Wyoming miners back to work. I urge passage of the bill and encourage the House of Representatives to act speedily on this legislation.●

ORDERS FOR MONDAY, SEPTEMBER 29, 1986

Mr. SIMPSON. Mr. President, we come to the conclusion of a long day. I recognize the Democratic leader; he and I started this action this morning about 7:30, and we both drew the short straw again I see.

RECESS UNTIL 11:30

After conferring with the Democratic leader, I ask unanimous consent once the Senate completes its business today it stand in recess until 11:30 a.m. on Monday, September 29, 1986.

RECOGNITION OF CERTAIN SENATORS

Following the recognition of the two leaders under the standing order, I ask unanimous consent that the following Senators be recognized for not to exceed 5 minutes each for special orders: Senator HAWKINS and Senator PROXMIRE.

ROUTINE MORNING BUSINESS

Following the special orders just identified, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond 12:30 p.m. with Senators permitted to speak therein for not more than 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. SIMPSON. At 12:30 p.m. it will be the majority leader's intention to turn to House Joint Resolution 738, the continuing resolution.

Then, Mr. President, votes will occur during Monday's session, and hopefully an announcement will be made when the Senate convenes as to what time the first vote will occur on Monday. I believe Senator LAXALT and one other Senator from the other side have a scheduling problem.

□ 0220

EXTENDING THE U.S. TRUSTEE SYSTEM

Mr. SIMPSON. Mr. President, I send a bill to the desk on behalf of Senator THURMOND and ask for its immediate consideration.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2888) to temporarily delay the repeal of the U.S. Trustee System.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. THURMOND. Mr. President, the legislation before the Senate at this time would temporarily delay the repeal of the U.S. Trustee System, and is necessary because of the current status of the Senate-House conference on H.R. 5316, the bankruptcy bill.

Mr. President, I am pleased to report that last evening the Senate and House conferees came to an agreement on H.R. 5316. This legislation includes several important improvements in our Nation's bankruptcy system.

One of those improvements will make the U.S. Trustee System a 'nationwide, permanent program. The U.S. Trustee System was enacted as a pilot program in 1978 and, by most reports, has been a resounding success.

The legislation before the Senate is necessary because, under current law, the U.S. Trustee System will be automatically repealed on September 30, 1986—this coming Tuesday. It is very unlikely that the conference report on H.R. 5316 will be ready for House and Senate consideration before Tuesday. This bill will extend the sSystem until November 10, 1986, and provide time for Congress to act on H.R. 5316, and time for enrollment and presentment of the bill to the President.

I urge my colleagues to support this legislation to ensure the survival of this important program.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2888

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That effective immediately before September 30, 1986, section 408(c) of the Act of November 6, 1978 (Public Law 95-598; 92 Statute 2687), is amended by striking out "September 30, 1986" and inserting in lieu thereof "November 10, 1986".

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

OIL POLLUTION LIABILITY AND COMPENSATION ACT

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 970, S. 2799, the Oil Pollution Liability and Compensation Act.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 2799) to consolidate and improve Federal laws providing compensation and establishing liability for oil spills.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Environment and Public Works, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics):

S. 2799

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Oil Pollution Liability and Compensation Act of 1986".

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

DEFINITIONS

SEC. 101. For the purposes of this Act—

(1) the terms "vessel", "public vessel", "owner or operator", "remove" or "removal", "contiguous zone", "onshore facility", "offshore facility", and "barrel" shall have the meaning provided in section 311(a) of the Clean Water Act;

(2) the terms "person", "navigable waters", *and* "territorial seas" shall have the meaning provided in section 502 of the Clean Water Act;

(3) the term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(4) the term "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from a discharge of oil;

(5) the term "claimant" means any person who presents a claim for compensation under this Act;

(6) the term "damages" means damages for economic loss or the loss of or injury to natural resources as specified in section 102(a) of this Act;

(7) the term "deepwater port facility" means an offshore facility which is or was licensed under the Deepwater Port Act of 1974;

(8) the term "discharge" means any emission, intentional or unintentional, into the environment, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(9) the term "environment" means the navigable waters, the waters of the contiguous zone, the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act, adjoining shorelines, and the ambient air above such waters and shorelines;

(10) the term "foreign offshore unit" means a structure or group of structures which is located, in whole or in part, in the territorial sea or on the continental shelf of a foreign country and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the seabed beneath the foreign country's territorial sea or from the foreign country's continental shelf;

(11) the term "Fund" means the Oil Spill Compensation Fund, hereby established under this Act;

(12) the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act or section 311(p) of the Clean Water Act;

(13) the term "lessee" means a person holding a leasehold interest in an oil or gas lease on submerged lands of the Outer Continental Shelf, granted or maintained under the Outer Continental Shelf Lands Act;

(14) the term "liable" or "liability" under this Act shall be construed to be the standard of liability which obtains under section 311 of the Clean Water Act;

(15) the term "mobile offshore drilling unit" means a vessel capable of use as an Outer Continental Shelf facility to drill for oil;

(16) the term "natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone estblished by the Magnuson Fishery Conservation and Management Act), any State or local government, or any foreign government;

(17) the term "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(18) the term "Outer Continental Shelf facility" means an offshore facility which is located, in whole or in part, on the Outer Continental Shelf and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf;

(19) the term "owner or operator" means—

(A) with respect to an Outer Continental Shelf facility other than a pipeline or mobile offshore drilling unit, the lessee or permittee of the area in which the facility is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which the facility is located (where the holder is a different person than the lessee or permittee);

(B) with respect to a mobile offshore drilling unit being used as an Outer Continental Shelf facility, from which oil is discharged on or above the surface of the water (or which posed a substantial threat of such a discharge), the owner or operator of the unit, and such unit shall be deemed to be a tanker;

(C) with respect to a mobile offshore drilling unit being used as an Outer Continental Shelf facility—

(i) from which oil is discharged on or above the surface of the water (or which posed a substantial threat of such a discharge), to the extent removal costs or damages exceed the limitation specified in section 102(c)(1)(A), or

(ii) from which oil is discharged below the surface of the water (or which posed a substantial threat of such a discharge),

the *lessee or* permittee of the area in which the unit is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which the unit is located (where the holder is a different person than the lessee or permittee);

(20) the term "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act;

(21) the term "removal costs" means the costs of removal taken after a discharge of oil has occurred or where there was a substantial threat of a discharge of oil, to prevent, minimize, or mitigate oil pollution from that incident, including all costs of completing removal as determined under section 106(d);

(22) the term "tanker" means a vessel constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo; and

(23) the terms "United States" and "State" mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

LIABILITY

SEC. 102. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section, the owner or operator of a vessel or an onshore or offshore facility from which oil is discharged, or which posed the threat of a discharge which causes the incurrence of removal costs, shall be liable for—

(1)(A) all removal costs incurred by the United States Government or a State under subsection (c), (d), (e), (f)(4), or (l) of section 311 of the Clean Water Act or under the Intervention on the High Seas or section 18 of the Deepwater Port Act of 1974; and

(B) any removal costs incurred by any person, including, but not limited to, any State; and

(2) all damages or economic loss or loss of natural resources resulting from such a discharge, including—

(A) any injury to, destruction of, or loss of any real or personal property;

(B) any loss of use of real or personal property;

(C) any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

(D) any loss of use, including loss of subsistence use, of any natural resources, without regard to the ownership or management of such resources;

(E) any loss of income or profits or impairment of earning capacity resulting from injury to or destruction of real or personal property or natural resources, without regard to the ownership of such property or resources; and

(F) any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or political subdivision thereof, for a period of not to exceed one year.

(b)(1) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the discharge or threat of discharge of oil and the damages resulting therefrom were caused solely by—

(A) an act of God;

(B) an act of war;

(C) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (i) the defendant exercised due care with respect to the oil concerned, taking into consideration the characteristics of such oil, in light of all relevant facts and circumstances, and (ii) the defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(D) any combination of the foregoing paragraphs.

(2) In any case where the owner or operator of a vessel or an onshore or offshore facility can establish by a preponderance of the evidence that a discharge and the damages resulting therefrom were caused solely by an act or omission of a third party in accordance with paragraph (1)(C) (or solely by such an act or omission in combination with an act of God or an act of war), such third party shall be liable under this section as if such third party were the owner or operator of a vessel or onshore or offshore facility from which the discharge actually occurred. Where the owner or operator of a tanker or an onshore or offshore facility which handles or stores oil in bulk or commercial quantities, from which oil is discharged, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall promptly pay to the United States Government, and any other claimant, the costs of removal or damages claimed and shall be entitled by subrogation to all rights of the United States Government or other claimant to recover such costs of removal or damages from such third party under this subsection.

(c)(1) The liability of an owner or operator of a vessel or an onshore or offshore facility for damages and removal costs under this section for each discharge or incident shall not exceed—

(A) [$420] *$500* per gross ton or $10,000,000, whichever is greater, of any tanker carrying oil in bulk or in commercial quantities as cargo, including any such barge operating in the navigable waters;

(B) $300 per gross ton or $500,000, whichever is greater, of any other vessel;

(C) the total of all removal costs under subsection (a)(1) of this section plus $75,000,000 for any Outer Continental Shelf facility;

(D) $100,000,000 for any deepwater port facility (including the liability of the licensee for a discharge from any vessel moored at such port, in any case where $100,000,000 exceeds [$420] *$500* per gross ton of such vessel); or

(E) $100,000,000 for any other onshore or offshore facility.

The liability of an owner or operator under this section for interest (including prejudgment interest) shall not be subject to the limitations of this paragraph.

(2) Notwithstanding the limitations of paragraph (1) of this subsection, the liability of the owner or operator of a vessel or an onshore or offshore facility under subsection (a) of this section shall be the full and total damages and removal costs not offset by any removal costs incurred on behalf of such owner or operator, if (A) the discharge of oil was the result of willful misconduct or gross negligence within the privity or knowledge of the owner or operator or of a violation (within the privity or knowledge of the owner or operator) of applicable safety, construction, or operating standards or regulations; or (B) the owner or operator fails or refuses to *report the discharge where required by law or to* provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities or to provide removal action upon order of a responsible official. *For the*

purpose of this paragraph, applicable standards or regulations with respect to a vessel shall be those adopted or promulgated by a Federal agency.

(3) Notwithstanding the limitations of paragraph (1) of this subsection or the defenses of subsection (b) of this section, all removal costs incurred by the United States Government or any State of local official or agency in connection with a discharge of oil from any Outer Continental Shelf facility or a vessel carrying oil as cargo from such a facility shall be borne by the owner or operator of such facility or vessel.

(4)(A) The President is authorized to establish by regulation, with respect to any class or category of onshore or offshore facility subject to paragraph (1)(D) or (E) of this subsection, a maximum limit of liability under this section of less than $100,000,000, but not less than $8,000,000, taking into account the size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility.

(B) The President shall, by regulation, not less often than every three years, adjust the limits of liability specified in paragraph (1) of this subsection to reflect significant increases in the Consumer Price Index.

(d)(1) In the case of an injury to, destruction of, or loss of natural resources under subsection (a)(2)(C) of this section, liability shall be (A) to the United States Government for natural resources belonging to, managed by, controlled by, or appertaining to the United States, and (B) to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State, and (C) where subsection (e) of this section applies, to the government of a foreign country for natural resources belonging to, managed by, controlled by, or appertaining to such government. The President, or the authorized representative of any State or of the foreign government, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subsection (a)(2)(C) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this Act for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same discharge and natural resource.

(2)(A) The President shall designate the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this Act for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials discretion, assess damages for those natural resources under the State's trusteeship.

(B) The Governor of each State shall designate State officials who may act on behalf of the public as trustee for natural resources under this Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act for those natural resources under their trusteeship.

(C) Any determination or assessment of damages to natural resources for the purposes of this Act made by a Federal or State trustee in accordance with the regulations promulgated under **[**section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act**]** *paragraph (3) of this subsection* shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act.

(3)(A) The President, acting through the Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Administrator of the Environmental Protection Agency, the Director of the Fish and Wildlife Service, and the heads of other affected agencies, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil for the purpose of this Act.

(B) Such regulations shall specify (i) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or units of affected areas, where damages equal the costs of restoration, replacement, or acquisition of equivalent resources, plus demonstrated additional lost use value or other damages beyond such costs, and (ii) alternative protocols for conducting assessments in individual cases to determine the type and extent of short and long term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss, and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(C) Such regulations shall be reviewed and revised as appropriate every two years.

(e)(1) Except where title III of this Act applies, the recovery of removal costs and damages by (A) persons residing in a foreign country, (B) the government of a foreign country, or (C) any agency or political subdivision of a foreign country, under this Act, shall be exclusively in accordance with this subsection.

(2) A claimant under this subsection must demonstrate that the claimant has not been otherwise compensated for incurred removal costs or damages. Except with respect to paragraph (3)(D) of this subsection, a claimant under this subsection must demonstrate (A) that recovery is authorized by a treaty or executive agreement between the United States and the claimant's country, or (B) that the Secretary of State, in consultation with the Attorney General and other appropriate officials, has certified that the claimant's country provides a comparable remedy for United States claimants.

(3) Where a discharge, or substantial threat of a discharge of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign country occurs, claims for removal costs and damages may be made under this subsection if the removal costs or damages resulted from a discharge of, or substantial threat of a discharge, of oil from—

(A) an Outer Continental Shelf facility or a deepwater port facility,

(B) a vessel occurring in the navigable waters of the United States,

(C) a vessel carrying oil as cargo between two ports subject to the jurisdiction of the United States; or

(D) a tanker that received oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act for transportation to a port in the United States, the discharge or threat having occurred prior to delivery to that port.

(4) This subsection shall apply only in the case of discharges of oil occurring after the enactment of this Act.

(f)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or onshore or offshore facility or from any person who may be liable for a discharge or threat of discharge under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this Act, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(g) The owner or operator of a vessel shall be liable in accordance with this section, the International Convention on Civil Liability for Oil Pollution Damage, 1984, and section 311 of the Clean Water Act, under maritime tort law, and as provided in section 106 of this Act, notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183), or the absence of any physical damage to the proprietary interest of the claimant.

USES OF FUND

SEC. 103. (a) The President shall use the money in the Fund for the following purposes:

(1) all removal costs or other costs of carrying out the purposes of subsections (c), (d), (i), and (l) of section 311 of the Clean Water Act, sections 5 and 7 of the Intervention on the High Seas Act, and section 18 of the Deepwater Port Act, with respect to discharges, **[**or**]** *of* substantial threats of discharges, or oil (as the term "oil" is defined in each respective Act);

(2) payment of any claim for removal costs or damages—

(A) in excess of the amount for which the owner or operator of the vessel or onshore or offshore facility from which oil is discharged is liable under section 102 of this Act;

(B) where the source of the discharge of oil is not known or cannot be identified;

(C) in any case where the claim has not been satisfied in accordance with subsection (c) of this section; and

(D) subject to, but in excess of the combined compensation available under, the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1984;

(3) payment of any claim for removal costs and damages that have resulted from the discharge, or substantial threat of a discharge, of oil from a foreign offshore unit;

(4)(A) payment of costs incurred by any State in responding to a discharge, or substantial threat of a discharge, of oil into the navigable waters or adjoining shorelines from a vessel, an onshore facility, an offshore facility, or a foreign offshore unit, as provided in subsection (d) of this section;

(B) reimbursement to any State for the payment of any claims for removal costs or damages payable under this Act which such State has paid with funds under the control of such State, including payment pursuant to a delegation under subsection (c) of this section;

(5) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a discharge of oil;

(6) the costs of Federal or State efforts in the res-toration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of any discharge of oil;

(7) payment of contributions to the International Fund as prescribed in section 305 of this Act;

(8) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and of establishing and maintaining damage assessment capability, for any Federal agency involved in strike forces, emergency task forces, or other response teams;

(9) the costs of a program to identify, investigate, and take enforcement and abatement action against discharges of oil, including the provisions of section 311(j)(1) (C) and (D) of the Clean Water Act; and

(10) all administrative and personnel costs of administering the Fund and this Act.

(b) The maximum amount which may be paid from the Fund with respect to any single discharge or incident, in combination with payment, if any, under the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1984, shall not exceed $500,000,000.

(c)(1) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with subsection (a) of this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State with an adequate program operating under a cooperative agreement with the Federal Government.

(2) The President is authorized to delegate the administration of his duties and authorities under this Act to the heads of those Federal departments, agencies, and instrumentalities which the President determines appropriate.

(3)(A) The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims for removal costs or damages resulting from the discharge, or substantial threat of a discharge, of oil under this Act.

(B) Whenever the President receives information from any person alleging that a person has incurred removal costs or damages resulting from the discharge, or substantial threat of a discharge, of oil respecting which the owner or operator of a vessel or onshore or offshore facility is or may be liable under section 102 of this Act, the President shall notify the owner, operator, or guarantor òr such vessel or facility of that allegation. Such owner or operator or guarantor may, within five days after receiving the notification or presentation of any claim by a claimant, deny the allegation, or deny liability for removal costs and damages for any of the reasons set forth in subsection (b) of section 102 of this Act.

(C) The owner or operator of any vessel or onshore or offshore facility from which oil has been discharged shall provide notice to all potentially injured parties.

(D) No claims may be asserted against the Fund pursuant to subsection (a) unless such claim is presented in the first instance to the owner or operator or guarantor of the vessel or onshore or offshore facility from which oil has been discharged, if known to the claimant, and to any other person known to the claimant who may be liable under section 102. In any case where the claim has not been satisfied within [sixty] *one hundred eighty* days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

(d) The Governor of each State, or any appropriate State official designated by the Governor, is authorized to obligate the Fund for the payment of removal costs in an amount not to exceed $250,000 per discharge or substantial threat of discharge of oil, for the purpose of immediate response, subject only to the requirement that the President be notified within twenty-four hours of any such obligation under the authority of this sentence. In addition, the President shall enter into an agreement with the Governor of any interested State to provide a procedure by which the Governor or designated State official may undertake additional removal action or obligate the Fund for the additional payment of removal costs for response to a particular discharge or substantial threat of discharge, subject to such terms and conditions as may be agreed upon. Payments under subsection (a)(4)(A) of this section, other than as authorized by the first sentence of this subsection, shall be made in accordance with such agreements. *The President shall, not later than six months after the enactment of this Act, publish proposed regulations further establishing how the authority of this subsection to obligate the Fund or enter into agreements is to be exercised, and, not later than three months after the close of the comment period on such proposed regulations, shall promulgate such regulations.*

(e)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation all rights of the claimant to recover the removal costs or damages from the responsible party.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for costs or damages shall be subrogated to all rights, claims, and causes of action for those costs and damages that the claimant has under this Act or under any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and, without regard to any limitation of liability with respect to an owner or operator under section 102(c), all costs incurred by the Fund by reason of the claim, including interest (including prejudgment interest), administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any owner or operator or *(subject to section 104(e))* guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the cost or damages for which the compensation was paid. *Such an action shall be commenced against the responsible foreign government or other responsible party to recover any removal costs or damages paid from the Fund as the result of the discharge, or substantial threat of discharge, of oil from a foreign offshore unit.*

(f) The Fund shall not be available to pay any claim for costs or damages to the extent the discharge or the damages had been caused by the gross negligence or willful misconduct of that particular claimant.

(g) The Comptroller General shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of *the* Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after the establishment of the Fund. The Comptroller General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(h)(1) No claim may be presented under this section for recovery of removal costs after the date six years after the date of completion of all removal action.

(2) No claim may be presented under this section for recovery of damages unless the claim is presented within three years after the date of the discovery of the loss and its connection with the release in question, or in the case of damages under section 102(a)(2)(C), if later, the date on which final regulations are promulgated under section [301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act.] *102(d)(3) of this Act.*

(3) The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches eighteen years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

(i) Where the President has paid out of the Fund for any removal costs or any costs specified under subsection (a) (6) or (7), no other claim may be paid out of the Fund for the same costs.

(j) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

FINANCIAL RESPONSIBILITY

SEC. 104. (a)(1) The owner or operator of any vessel over three hundred gross tons (except a non-self-propelled barge that does not carry oil as cargo or fuel), using any port or place in the United States or the navigable waters or any outer continental shelf facility or deepwater port facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to meet the maximum amount of liability to which, *in the case of a tanker* the owner or operator could be subjected under section [102] *102(c)(1)(A)* of this Act, *or to which, in the case of any other vessel, the owner or operator could be subjected under section 102(c)(1)(B) of this Act,* in a case where the owner or operator would be entitled to limit liability under that section. If the owner or operator owns or operates more than one vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection or the regulations issued hereunder.

(3) The Secretary of the department in which the Coast Guard is operating may (A) deny entry to any outer continental shelf facility, and deepwater port facility, or any port or place in the United States, or (B) detain at such a facility or port or place, any vessel that, upon request, does not produce the certification required under this subsection or the regulations issued hereunder.

(4) Any vessel subject to the requirements of this subsection which is found in the navigable waters without the necessary evidence of financial responsibility shall be subject to seizure by the United States of any oil carried as cargo.

(b) Each owner or operator with respect to an outer continental shelf facility, deepwater port facility, or other offshore facility, shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the owner or operator could be subjected under section 102 of this Act in a case where the owner or operator would be entitled to limit liability under that section, *or, in the case of an Outer Continental Shelf facility, in the amount of $100,000,000.* Such evidence of financial responsibility shall be established according to regulations prescribed by the President.

(c) Financial responsibility under this section may be established by any one, or by any combination, of the following methods, which the President determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.

(d) Any claim for which liability may be established under section 102 of this Act may be asserted directly against any guarantor providing evidence of financial responsibility for an owner or operator liable under that section for costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under section 102. The guarantor may also invoke the defense that the discharge was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that might be available in proceedings brought by the owner or operator against the guarantor.

(e) The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 102 for the purpose of satisfying the requirement for evidence of financial responsibility. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiation or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 102 of this Act or other applicable law.

(f)(1) Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of this section or the regulations issued thereunder, or with a denial or detention order issued under subsection (a)(3) of this section, shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the President by written notice. In determining the amount of the penalty, the President shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require. The President may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this paragraph. If any person fails to pay an assessed civil penalty after it has become final, the President may refer the matter to the Attorney General for collection.

(2) In addition to, or in lieu of, assessing a penalty under paragraph (1) of this subsection, the President may request the Attorney General to secure such relief as necessary to compel compliance with this section, including, but not limited to, a judicial order terminating operations. The district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(g) Any regulation respecting financial responsibility, which has been issued pursuant to any provision of law repealed or superseded by this Act, and which is in effect on the date immediately preceding the effective date of this Act, shall be deemed and construed to be a regulation issued pursuant to this section. Such a regulation shall remain in full force and effect unless and until superseded by new regulations issued under this section.

LITIGATION, JURISDICTION AND VENUE

SEC. 105. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Except as provided in subsections (a) and (c) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act (which shall be deemed to include actions under the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984), without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or injury or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for service of process. For the purposes of this section, the Fund and the International Fund, established under article 2 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, shall reside in the District of Columbia.

(c) A State trial court of competent jurisdiction over similar claims may consider claims under section 102 or State law and any final judgment of such court (when no longer subject to ordinary forms of review) shall be recognized, valid, and enforceable for all purposes of section 102, section 103, and title III of this Act.

(d) The provisions of subsections (a), (b), and (c) of this section shall not apply to any controversy or other matter resulting from the assessment or collection of any tax, as provided by title IV of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(e) The President may prescribe the necessary regulations to carry out this Act and all obligations of the United States under the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

(f) No provision of this Act shall be deemed or held to moot any litigation concerning any discharge of oil, or any damages associated therewith, commenced prior to enactment of this Act.

(g)(1) Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within three years after the date of the discovery of the loss and its connection with the release in question, or in the case of damages under section 102(a)(2)(C), if later, the date on which regulations are promulgated under section [301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act.] *102(d)(3) of this Act.*

(2) An [initial] action for recovery of removal costs referred to in section 102(a)(1) must be commenced within three years after completion of the removal action. In any such action described in this subsection, the court shall enter a declaratory judgment on liability for removal costs or damages that will be binding on any subsequent action or actions to recover further removal costs or damages. [A subsequent action or actions under section 102 for further remov-

al costs at the vessel or facility may be maintained at any time during the removal action, but must be commenced no later than three years after the date of completion of all removal action.] Except as otherwise provided in this paragraph, an action may be commenced under section 102 for recovery of removal costs at any time after such costs have been incurred.

(3) No action for contribution for any removal costs or damages may be commenced more than three years after—

(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

(4) No action based on rights subrogated pursuant to this Act by reason of payment of a claim may be commenced under this Act more than three years after the date of payment of such claim.

(5) The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches eighteen years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

STATE LAWS AND PROGRAMS

SEC. 106. (a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the discharge of oil or other pollution by oil within such State. Nothing in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to discharges of oil.

(b) Nothing in this Act or in section 9507 of the Internal Revenue [Act] *Code* of 1954 shall in any way affect, or be construed to affect, the authority of any State—

(1) to establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or

(2) to require any person to contribute to such a fund.

(c) A State may enforce, on the navigable waters of such State, the requirements for evidence of financial responsibility applicable under section 104 of this Act.

(d) The President shall consult with the affected State or States on the appropriate removal action to be taken. Removal with respect to any discharge or incident shall be considered completed when so determined by the President and the Governor or Governors of the affected State or States.

(e) Nothing in this Act, the Act of March 3, 1851, as amended (46 U.S.C. 183 et seq.), or section 9507 of the Internal Revenue [Act] *Code* of 1954, shall in any way affect, or be construed to affect, the authority of the United States or any State or political subdivision thereof—

(1) to impose additional liability or additional requirements, or

(2) to impose, or to determine the amount of, any fine or penalty (whether criminal or civil in nature) for any violation of law, relating to the discharge, or substantial threat of a discharge, of oil.

STUDY OF SPILL PREVENTION IN RESTRICTED WATERS

SEC. 107. The President shall conduct a study, and report the results of such study to the Congress not later than one year after the enactment of this Act, on improved methods for the prevention of discharges of oil in restricted waters and similar portions of bays, estuaries, and near shore waters. In the conduct of such study, the President shall examine the causes of recent major discharges of oil from vessels in the Delaware River, and consider modifications in tanker construction and operation standards, crew training and locale familiarization requirements, improvements in navigation aids, and other approaches with the potential for reducing the likelihood for discharges of oil in such waters.

TITLE II—CONFORMING AMENDMENTS

TRANS-ALASKA PIPELINE FUND

SEC. 201. (a) Section 204(b) of the Trans-Alaska Pipeline Authorization Act is amended, in the first sentence—

(1) by inserting after the words "any area" the words "in the State of Alaska";

(2) by inserting after the words "any activities" the words "related to the Trans-Alaska Oil Pipeline"; and

(3) by inserting at the end of the subsection the following new sentence: "This subsection shall not apply to removal costs covered by the Oil Spill Liability and Compensation Act of 1986.".

(b) Section 204(c) of the Trans-Alaska Pipeline Authorization Act is repealed. This repeal shall not affect the applicability of that section to claims arising before the enactment of this Act. The repeal of paragraph (4), (5), and (8) of that provision shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under subsection (c) of this section and the rebate of all remaining amounts under, and the completion of all actions required to carry out, such subsection.

(c)(1) Not later than two hundred and ten days after the date of enactment of this Act, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the President the total amount of claims outstanding against that Fund as of the date of enactment of this Act. The amount of that Fund exceeding the total amount so certified shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(2) After the settlement of all claims described in paragraph (1) and the completion of all actions, if any, by the Trans-Alaska Pipeline Liability Fund for recovery of amounts paid on such claims, the remaining amounts in that Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(3) Whenever a rebate is made on a pro rata basis to the owners of oil under paragraph (1) or (2) of this subsection, each owner's share of the rebate shall be an amount determined by dividing the amount contributed by that owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners to that Fund.

(d) Trustees and former trustees of the Trans-Alaska Pipeline Liability Fund who were designated by the Secretary of the Interior shall not be subject to any liability incurred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

INTERVENTION ON THE HIGH SEAS ACT

SEC. 202. Section 17 of the Intervention on the High Seas Act is amended to read as follows:

"SEC. 17. The Fund established under the Oil Spill Liability and Compensation Act of 1986 shall be available to the Secretary for actions taken under sections 5 and 7 of this Act.".

CLEAN WATER ACT

SEC. 203. Section 311 of the Clean Water Act is amended as follows:

(a) Subparagraph (H) of paragraph (2) of subsection (c) amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: "in the case of any discharges of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Fund established under the Oil Spill Liability and Compensation Act of 1986".

(b) Subsection (d) is amended by striking out the last sentence.

(c)(1) Subsections (f), (g), and (i) of section 311 of the Clean Water Act shall not apply with respect to any discharge of oil resulting in removal costs for which liability is established under section 102 of this Act.

(2) Paragraphs (2) and (3) of subsection (f) are amended by striking out "under subsection (c) for the removal of such oil or substance by the United States Government" each place it appears and inserting in lieu thereof "under subsection (c) for the removal of such oil or substance by the United States Government and for payments made pursuant to section 103(a)(4)(A) of the Oil Pollution Liability and Compensation Act of 1986".

(d) Subsection (i) is amended by striking out "(1)" after "(i)" and striking out paragraphs (2) and (3).

(e) Subsection (k) is repealed. Any amounts remaining in the revolving fund established under that subsection shall be deposited in the Fund established under this Act. The Oil Spill Compensation Fund shall assume all liability incurred by *the* revolving fund established under section 311(k) of the Clean Water Act.

(f) Subsection (1) is amended by striking out the second sentence.

(g) Subsection (p) is repealed.

(h) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Oil Spill Compensation Fund, established under the Oil Pollution Liability and Compensation Act of 1986, shall be available to carry out subsections (c), (d), (i), and (l) as those subsections apply to discharges, or substantial threats of discharges, of oil. Any amounts received by the United States under this section shall be deposited in such Oil Spill Compensation Fund.".

DEEPWATER PORT ACT

SEC. 204. The Deepwater Port Act of 1974 is amended as follows:

(a) In section 4(c)(1) strike "section 18(l) of this Act;" and insert in lieu thereof "section 104 of the Oil Spill Liability and Compensation Act of 1986,".

(b) Subsections (b), (d), (e), (f), (g), (h), (i) (j), (l), (n), and paragraph (1) of subsection (m) of section 18 are deleted.

(c) Paragraph (3) of subsection (c) of section 18 is amended by striking "Deepwater

Port Liability Fund established pursuant to subsection (f) of this section", and inserting in lieu thereof "fund established under the Oil Spill Liability and Compensation Act of 1986".

(d) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d) respectively, and paragraphs (2), (3), and (4) of subsection (m) are redesignated (1), (2), and (3), respectively.

(e) Any amounts remaining in the Deepwater Port Liability Fund, established under section 18(f) of the Deepwater Port Act of 1974, shall be deposited in the Fund established under this Act. The Oil Spill Compensation Fund shall assume all liability incurred by the Deepwater Port Liability Fund.

OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS

SEC. 205. Title III of the Outer Continental Shelf Lands Act Amendments of 1978 is hereby repealed. Any amounts remaining in the Offshore Oil Pollution Compensation Fund established under section 302 of that title shall be deposited in the Fund established under this Act. The Oil Spill Compensation Fund shall assume all liability incurred by the Offshore Oil Pollution Compensation Fund.

NOTICE TO STATE; INCREASED PENALTIES FOR FAILURE TO REPORT

SEC. 206. (a) The first sentence of section 311(b)(5) of the Clean Water Act is amended by inserting after "of the United States Government" the phrase "and of any affected State".

(b) The second sentence of section 311(b)(5) of the Clean Water Act is amended by striking "fined not more than $10,000, or imprisoned for not more than one year, or both" and inserting in lieu thereof "fined in accordance with the applicable provisions of title 18 of the United States Code, or imprisoned for not more than three years (or not more than five years in the case of a second or subsequent conviction), or both".

TITLE III—IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

DEFINITIONS

SEC. 301. For the purposes of this title—

(1) the terms "ship", "owner", "oil", "pollution damage", and "incident" shall have the meaning provided in article I of the Civil Liability Convention;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984;

(3) the term "financial responsibility" shall have the same meaning as "financial security" under the Civil Liability Convention;

(4) the term "Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984; and

(5) the term "International Fund" means the International Oil Pollution Compensation Fund, established under article 2 of the Fund Convention.

APPLICABILITY OF CONVENTIONS

SEC. 302. If the Civil Liability Convention and the Fund Convention are *ratified by the United States, with the advice and consent of the Senate, and* determined by the President to be consistent with the provisions of sections 102, 103, and 106 of this Act, during any period that the Civil Liability Convention and the Fund Convention are in force with respect to the United States, liability of an owner for pollution damage arising from an incident involving a ship shall be determined in accordance with the Civil Liability Convention and Fund Convention. During such a period, no claim with respect to pollution damage which is compensable under the International Fund may be made against the Oil Spill Compensation Fund under paragraph (2) (A), (B), or (C), or (4)(B) of section 103(a) of this Act. *Nothing in this title shall constitute a ratification of either the Civil Liability Convention or the Fund Convention.*

RECOGNITION OF INTERNATIONAL FUND

SEC. 303. The International Fund is recognized under the laws of the United States as a legal person, and shall have the capacity to acquire and dispose of real and personal property, and to institute and be party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State as the International Fund's agent for the service of process in any legal proceedings involving the International Fund within the United States. The International Fund and its assets shall be exempt from all direct taxation in the United States.

ACTION IN UNITED STATES COURTS

SEC. 304. (a) In any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention.

CONTRIBUTION TO INTERNATIONAL FUND

SEC. 305. (a) The amount of any contribution to the International Fund which is required to be made under article 10 of the Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall be paid to the International Fund from the Oil Spill Compensation Fund, established under this Act.

(b) The President may, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal, installation, or other installations in the United States under article 10 of the Fund Convention to provide all information relating to that oil as may be necessary to carry out subsection (a) of this section and articles 10, 12, 13, 14, and 15 of the Fund Conventions.

RECOGNITION OF FOREIGN JUDGMENTS

SEC. 306. Any final judgment of a court of any country which is a party to the Civil Liability Convention or to the Fund Convention in an action for compensation under either convention shall be recognized by any court of the United States having jurisdiction under this Act, when that judgment has become enforceable in that country and is no longer subject to ordinary form of review, except where—

(1) the judgment was obtained by fraud, or

(2) the defendant was not given reasonable notice and a fair opportunity to present its case.

FINANCIAL RESPONSIBILITY

SEC. 307. (a) The owner of each ship which is documented under the laws of the United States which is subject to the Civil Liability Convention shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility as required in Article VII of the Civil Liability Convention.

(b) The owner of each ship (other than a ship to which subsection (a) applies or a ship which is a public vessel), which is subject to the Civil Liability Convention and which enters or leaves a port or terminal in the United States or uses an outer continental shelf facility or deepwater port facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility as required in article VII of the Civil Liability Convention. Any ship which has on board a valid certificate issued in accordance with article VII of the Civil Liability Convention shall be considered as having met the requirements of this subsection. Any ship carrying only oil as cargo, fuel, or residue, which has on board a valid certificate issued in accordance with article VII of the Civil Liability Convention shall be considered as having met the requirements of section 104 of this Act.

(c) The President is authorized to issue any certificate of financial responsibility which the United States may issue under the Civil Liability Convention.

(d) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate demonstrating compliance with this section.

(e) The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility or to any port or place in the United States, or (2) detain at the facility or port or place in the United States, any ship subject to this section which, upon request, does not produce the certificate demonstrating compliance with this section or regulations issued hereunder.

(f) Any person who, after notice and an opportunity for a hearing, is found to have violated this section, any regulation issued thereunder, or any denial or detention order issued under subsection (e) of this section shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the President in accordance with the procedures set forth in section 104(f) of this Act.

(g) The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the Fund Convention relating to any ship owned by the United States and used for commercial purposes.

The **PRESIDING OFFICER.** The question is on agreeing to the committee amendments en bloc.

The committee amendments were agreed to.

AMENDMENT NO. 3082

Mr. **MITCHELL.** Mr. President, I send an amendment to the desk.

The **PRESIDING OFFICER.** The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL] proposes an amendment numbered 3082.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 42, line 19, section 205 is amended to read as follows:

"SEC. 205. Title III, other than section 302, of the Outer Continental Shelf Lands Act Amendments of 1978 is hereby repealed."

THE PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3082) was agreed to.

Mr. MITCHELL. Mr. President, I am pleased that the Senate is considering S. 2799, the Oil Pollution Liability and Compensation Act of 1986. This legislation, which I introduced on September 9, provides a comprehensive framework for compensation of damages and costs associated with oil spills. This issue is of critical importance to Maine and other coastal States that need every available means of protecting their vulnerable marine resources.

Maine has over 3,000 miles of tidal coastline. It is the largest coastal State with its own oil spill statute and compensation fund. The Maine statute has been used to respond to over 100 spills in our waters. It has worked effectively to protect our shores, without being so burdensome as to discourage vessels from using Maine waters.

Due to this experience, I have long held that any Federal oil spill legislation must build on, not erase, State statutes such as Maine's. This legislation preserves the authority of States to retain or enact their own oil spill statutes and compensation funds.

I am not alone in this belief. The Environment and Public Works Committee unanimously reported S. 2799 on September 23, after 2 days of hearings on the bill. The States we heard from were opposed to preemption.

The preemption issue has long been a stumbling block to enactment of legislation. For over 10 years Congress has struggled with this issue, trying to reach an accord that treats all interested parties in a reasonable fashion.

The search for Federal oil spill legislation has been complicated this year by the pending international protocols on oil pollution liability. The protocols, as currently drafted, preempt Federal and State law. This is unacceptable to me, as I indicated in testimony before the Senate Foreign Relations Committee earlier this year. I will continue to oppose the protocols unless they are accompanied by a reservation that provides the protocols are not preemptive. The Department of Transportation, as well as the State Department, are providing constructive assistance in developing such reservations to the protocols.

Preemption is an issue debated by Congress when considering almost any legislation. This is particularly true in the environmental arena. Debate over each of our environmental laws has included an examination of preemption of States' authority to continue to protect their own citizens. Each of those debates has concluded with the same result: preemption of State laws is rejected. This is true in each of our Federal environmental statutes, including Superfund, the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act.

There is no justification for making the first exception to our nonpreemption policy in this case. States, like the Federal Government, are given the responsibility of protecting their citizens. Reasonable States can and do differ on the best methods of providing such protection. If the Federal Government disagrees with the States, our system permits each scheme to remain in force to maximize protection of the public.

The policy of nonpreemption does not require each State to have a statute, or to have a statute that differs from the approach taken by the Federal Government. For example, a coastal State may review this legislation and decide it is a needed improvement over State law. That State may choose to utilize only the Federal system. Similarly, States such as Maine, may continue to use their own statute as a complement to the Federal regime.

Some declaim the necessity for preemption. If preemption of State oil spill laws is an essential part of interstate commerce, as they suggest, there is no evidence for it. Maine has seen no diminution in the number of vessels traveling in her waters due to her 15-year old statute, which provides for strict, joint and several liability. Representatives of industry testifying before the Environment Committee affirmed that they are unaware of any shift in traffic due to State oil pollution laws.

In States such as Maine, assuring fishermen that they will be compensated is very important. Few can think of Maine without imagining our shores highlighted by lobster pots. It is understandable that a State in which fishing and tourism are such central industries would want to provide adequate protection. It is also essential that such a right be preserved. Without such rights of States, I would be unalterably opposed to any Federal oil spill legislation. Because I believe this Congress will continue its policy of nonpreemption, I introduced this legislation and support its passage here today. We have come too far to deprive States of these essential rights.

Mr. President, I urge the passage of S. 2799.

Mr. LAUTENBERG. Mr. President, I rise in strong support of S. 2799, a bill that will address the serious environmental threat posed by oil spills. I joined Senators MITCHELL, STAFFORD, and other members of the Environment and Public Works Committee in introducing this legislation, and worked along with my colleagues on the committee to perfect the bill before us today.

As was vividly underscored by the oil spill in the Delaware River on September 10, this is a critical problem for coastal States. Indeed I stand here today with the images of the recent spill in the Delaware River fresh in my mind. The day after I joined in introducing the bill before us today, we in the Delaware River region found ourselves facing the third major oil spill in the last year.

I flew to the site of that spill to monitor firsthand how the cleanup efforts were proceeding. And this experience made me even more determined to produce a bill that will address and prevent oil spills.

S. 2799 is such a bill. It not only establishes a comprehensive liability and funding system, but also allows fund money to be used for the costs of measures to identify, investigate, and take enforcement and abatement action against spills. This means fund money is provided not only for compensation but for prevention of damages.

We must get a better handle on why spills are happening and what can be done to prevent them. That is why during committee consideration of this bill, I introduced two amendments specifically addressing the prevention issue, both of which were unanimously adopted.

My first committee amendment was designed to respond to and ameliorate the troubling trend in the Delaware River region. The amendment requires the President to conduct a study, and report the results to Congress not later than 1 year after enactment of oil spill legislation, on improved methods for preventing oil spills. The President is specifically required to examine the causes of recent major oil spills in the Delaware River, and consider modifying requirements for such things as crew training and tanker construction, with the goal of reducing the likelihood of oil spills. In addition, under section 103(a)(9), the President shall use money from the oil spill fund established under this bill, for the costs of this study.

In light of the three major spills that have occurred in the last year in the Delaware, this study is needed, and should have a significant positive effect for oil spill prevention in my region and across the Nation.

Mr. President, my second committee amendment broadened current law's requirements for notification in the event of a spill and stiffened the penalties for failure to notify. Under current Clean Water Act provisions, as soon as the person in charge of a vessel or other facility knows of a spill, he must immediately notify the appropriate Federal agency. This amendment required that the appropriate State agency also be notified. This ensures that States get the same speedy notification received by the Coast Guard, and will assist our States in responding to and assessing spills.

To provide stronger incentives for notification, the amendment also stiffened the penalties for failure to provide immediate notification. Following the format of the criminal penalty provision I sponsored in the Senate Superfund bill, and which the conference adopted, this provision in S. 2799 affords felony status to failure to notify, increasing the term of imprisonment to not more than 3 years, or 5 years for a second or subsequent conviction, and increasing monetary penalties to up to $250,000. This amendment will deter oil spillers for providing late notification, a practice which exacerbates a spill by delaying quick response.

With the addition of these provisions, S. 2799 responds to the problem that there is no comprehensive program for responding to oil spills. Some States have spill laws and funds. Patchwork Federal laws exist. And, international conventions are pending before the Senate.

The need for comprehensive legislation is clear. We just had a 300,000 gallons spill in the Delaware. In addition, last September a spill of 435,000 gallons of oil in the Delaware River damaged the shores of New Jersey, Pennsylvania, and Delaware. The spill, one of the largest ever on the Delaware, killed thousands of birds and other wildlife, and left a lasting mark on the shoreline following a weeklong cleanup. During the 7-month period following this spill, Coast Guard statistics show that other major mechanical failures on 45 vessels caused groundings, collisions with piers, and leaking storage tanks.

Following the spill last September, another tanker hit a pier and spilled 189,000 gallons of crude oil into the Delaware. Such spills reflect ships with poorly trained crews or badly maintained equipment. And such spills are a national problem. In the last few years alone we have had major spills affecting California, Texas, Louisiana, and Oregon.

We need a Federal oil spill bill. A Federal mechanism for oil spill cleanup and compensation to aid States that are vulnerable to spills. A bill that protects our precious waterways, oceans, marine, and other wildlife from the ravages of oil spills.

S. 2799 will meet these goals. It establishes a comprehensive Federal oil spill system that covers all potential sources of oil spill. It sets out liability for oil pollution damages and establishes a fund to pay damages when compensation from polluters is not available, or when damages exceed liability limits. And importantly, it applies to the previous spills, including, for example, those recently occurring in the Delaware River, such as the discharge on September 10, 1986, by the Viking Osprey.

S. 2799 achieves these objectives without preempting State oil spill programs. It has been my position for some time that Federal oil spill legislation must not undermine successful State programs. S. 2799 clearly states that it does not preempt State laws or funds.

The importance of a nonpreemption provision is underscored by the Supreme Court's decision in Exxon versus Hunt, which followed 6 years of litigation. That decision essentially preempted New Jersey's taxing authority for the State spill fund.

The spill fund contested in that litigation is the same fund in New Jersey which covers oil spills. An amendment I sponsored to the Senate Superfund bill to prevent this preemption was adopted by the conference on H.R. 2005.

I strongly support S. 2799, legislation which provides a Federal solution to a serious national problem, and does so without compromising the important efforts many coastal States are making. It is an important step forward in protecting and cleaning up the environment from the effects of oil spills.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2799

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Oil Pollution Liability and Compensation Act of 1986".

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

DEFINITIONS

SEC. 101. For the purposes of this Act—

(1) the terms "vessel", "public vessel", "owner or operator", "remove" or "removal", "contiguous zone", "onshore facility", "offshore facility", and "barrel" shall have the meaning provided in section 311(a) of the Clean Water Act;

(2) the terms "person", "navigable waters", and "territorial seas" shall have the meaning provided in section 502 of the Clean Water Act;

(3) the term "act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

(4) the term "claim" means a request, made in writing for a sum certain, for compensation for damages or removal costs resulting from a discharge of oil;

(5) the term "claimant" means any person who presents a claim for compensation under this Act;

(6) the term "damages" means damages for economic loss or the loss of or injury to natural resources as specified in section 102(a) of this Act;

(7) the term "deepwater port facility" means an offshore facility which is or was licensed under the Deepwater Port Act of 1974;

(8) the term "discharge" means any emission, intentional or unintentional, into the environment, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping;

(9) the term "environment" means the navigable waters, the waters of the contiguous zone, the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act, adjoining shorelines, and the ambient air above such waters and shorelines;

(10) the term "foreign offshore unit" means a structure or group of structures which is located, in whole or in part, in the territorial sea or on the continental shelf of a foreign country and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the seabed beneath the foreign country's territorial sea or from the foreign country's continental shelf;

(11) the term "Fund" means the Oil Spill Compensation Fund, hereby established under this Act;

(12) the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this Act or section 311(p) of the Clean Water Act;

(13) the term "lessee" means a person holding a leasehold interest in an oil or gas lease on submerged lands of the Outer Continental Shelf, granted or maintained under the Outer Continental Shelf Lands Act;

(14) the term "liable" or "liability" under this Act shall be construed to be the standard of liability which obtains under section 311 of the Clean Water Act;

(15) the term "mobile offshore drilling unit" means a vessel capable of use as an Outer Continental Shelf facility to drill for oil;

(16) the term "natural resources" includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone estblished by the Magnuson Fishery Conservation and Management Act), any State or local government, or any foreign government;

(17) the term "oil" means petroleum, including crude oil or any fraction or residue therefrom;

(18) the term "Outer Continental Shelf facility" means an offshore facility which is located, in whole or in part, on the Outer

Continental Shelf and is or was used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil produced from the Outer Continental Shelf;

(19) the term "owner or operator" means—

(A) with respect to an Outer Continental Shelf facility other than a pipeline or mobile offshore drilling unit, the lessee or permittee of the area in which the facility is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which the facility is located (where the holder is a different person than the lessee or permittee);

(B) with respect to a mobile offshore drilling unit being used as an Outer Continental Shelf facility, from which oil is discharged on or above the surface of the water (or which posed a substantial threat of such a discharge), the owner or operator of the unit, and such unit shall be deemed to be a tanker;

(C) with respect to a mobile offshore drilling unit being used as an Outer Continental Shelf facility—

(i) from which oil is discharged on or above the surface of the water (or which posed a substantial threat of such a discharge), to the extent removal costs or damages exceed the limitation specified in section 102(c)(1)(A), or

(ii) from which oil is discharged below the surface of the water (or which posed a substantial threat of such a discharge),

the lessee or permittee of the area in which the unit is located, or the holder of a right of use and easement granted under the Outer Continental Shelf Lands Act for the area in which the unit is located (where the holder is a different person than the lessee or permittee);

(20) the term "permittee" means a person holding an authorization, license, or permit for geological exploration issued under section 11 of the Outer Continental Shelf Lands Act;

(21) the term "removal costs" means the costs of removal taken after a discharge of oil has occurred or where there was a substantial threat of a discharge of oil, to prevent, minimize, or mitigate oil pollution from that incident, including all costs of completing removal as determined under section 106(d);

(22) the term "tanker" means a vessel constructed or adapted for the carriage of oil in bulk or in commercial quantities as cargo; and

(23) the terms "United States" and "State" mean the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

LIABILITY

SEC. 102. (a) Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section, the owner or operator of a vessel or an onshore or offshore facility from which oil is discharged, or which posed the threat of a discharge which causes the incurrence of removal costs, shall be liable for—

(1)(A) all removal costs incurred by the United States Government or a State under subsection (c), (d), (e), (f)(4), or (l) of section 311 of the Clean Water Act or under the Intervention on the High Seas or section 18 of the Deepwater Port Act of 1974; and

(B) any removal costs incurred by any person, including, but not limited to, any State; and

(2) all damages or economic loss or loss of natural resources resulting from such a discharge, including—

(A) any injury to, destruction of, or loss of any real or personal property;

(B) any loss of use of real or personal property;

(C) any injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

(D) any loss of use, including loss of subsistence use, of any natural resources, without regard to the ownership or management of such resources;

(E) any loss of income or profits or impairment of earning capacity resulting from injury to or destruction of real or personal property or natural resources, without regard to the ownership of such property or resources; and

(F) any direct or indirect loss of tax, royalty, rental, or net profits share revenue by the Federal Government or any State or political subdivision thereof, for a period of not to exceed one year.

(b)(1) There shall be no liability under subsection (a) of this section for a person otherwise liable who can establish by a preponderance of the evidence that the discharge or threat of discharge of oil and the damages resulting therefrom were caused solely by—

(A) an act of God;

(B) an act of war;

(C) an act or omission of a third party other than an employee or agent of the defendant, or than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (i) the defendant exercised due care with respect to the oil concerned, taking into consideration the characteristics of such oil, in light of all relevant facts and circumstances, and (ii) the defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(D) any combination of the foregoing paragraphs.

(2) In any case where the owner or operator of a vessel or an onshore or offshore facility can establish by a preponderance of the evidence that a discharge and the damages resulting therefrom were caused solely by an act or omission of a third party in accordance with paragraph (1)(C) (or solely by such an act or omission in combination with an act of God or an act of war), such third party shall be liable under this section as if such third party were the owner or operator of a vessel or onshore or offshore facility from which the discharge actually occurred. Where the owner or operator of a tanker or an onshore or offshore facility which handles or stores oil in bulk or commercial quantities, from which oil is discharged, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall promptly pay to the United States Government, and any other claimant, the costs of removal or damages claimed and shall be entitled by subrogation to all rights of the United States Government or other claimant to recover such costs of removal or damages from such third party under this sub-section.

(c)(1) The liability of an owner or operator of a vessel or an onshore or offshore facility for damages and removal costs under this section for each discharge or incident shall not exceed—

(A) $500 per gross ton or $10,000,000, whichever is greater, of any tanker carrying oil in bulk or in commercial quantities as cargo, including any such barge operating in the navigable waters;

(B) $300 per gross ton or $500,000, whichever is greater, of any other vessel;

(C) the total of all removal costs under subsection (a)(1) of this section plus $75,000,000 for any Outer Continental Shelf facility;

(D) $100,000,000 for any deepwater port facility (including the liability of the licensee for a discharge from any vessel moored at such port, in any case where $100,000,000 exceeds $500 per gross ton of such vessel); or

(E) $100,000,000 for any other onshore or offshore facility.

The liability of an owner or operator under this section for interest (including prejudgment interest) shall not be subject to the limitations of this paragraph.

(2) Notwithstanding the limitations of paragraph (1) of this subsection, the liability of the owner or operator of a vessel or an onshore or offshore facility under subsection (a) of this section shall be the full and total damages and removal costs not offset by any removal costs incurred on behalf of such owner or operator, if (A) the discharge of oil was the result of willful misconduct or gross negligence within the privity or knowledge of the owner or operator or of a violation (within the privity or knowledge of the owner or operator) of applicable safety, construction, or operating standards or regulations; or (B) the owner or operator fails or refuses to report the discharge where required by law or to provide all reasonable cooperation and assistance requested by a responsible official in connection with removal activities or to provide removal action upon order of a responsible official. For the purpose of this paragraph, applicable standards or regulations with respect to a vessel shall be those adopted or promulgated by a Federal agency.

(3) Notwithstanding the limitations of paragraph (1) of this subsection or the defenses of subsection (b) of this section, all removal costs incurred by the United States Government or any State of local official or agency in connection with a discharge of oil from any Outer Continental Shelf facility or a vessel carrying oil as cargo from such a facility shall be borne by the owner or operator of such facility or vessel.

(4)(A) The President is authorized to establish by regulation, with respect to any class or category of onshore or offshore facility subject to paragraph (1)(D) or (E) of this subsection, a maximum limit of liability under this section of less than $100,000,000, but not less than $8,000,000, taking into account the size, storage capacity, oil throughput, proximity to sensitive areas, type of oil handled, history of discharges, and other factors relevant to risks posed by the class or category of facility.

(B) The President shall, by regulation, not less often than every three years, adjust the limits of liability specified in paragraph (1) of this subsection to reflect significant increases in the Consumer Price Index.

(d)(1) In the case of an injury to, destruction of, or loss of natural resources under subsection (a)(2)(C) of this section, liability shall be (A) to the United States Government for natural resources belonging to, managed by, controlled by, or appertaining to the United States, and (B) to any State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State, and (C) where subsection (e) of this section applies, to the government of a foreign country for natural resources belonging to, managed by, controlled by, or appertaining to such government. The President, or the authorized representative of any State or of the foreign government, shall act on behalf of the public as trustee of such natural resources to recover for such damages. Sums recovered by the United States Government as trustee under this subsection shall be retained by the trustee, without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources. Sums recovered by a State as trustee under this subsection shall be available for use only to restore, replace, or acquire the equivalent of such natural resources by the State. The measure of damages in any action under subsection (a)(2)(C) shall not be limited by the sums which can be used to restore or replace such resources. There shall be no double recovery under this Act for natural resource damages, including the costs of damage assessment or restoration, rehabilitation, or acquisition for the same discharge and natural resource.

(2)(A) The President shall designate the Federal officials who shall act on behalf of the public as trustees for natural resources under this Act. Such officials shall assess damages for injury to, destruction of, or loss of natural resources for purposes of this Act for those resources under their trusteeship and may, upon request of and reimbursement from a State and at the Federal officials discretion, assess damages for those natural resources under the State's trusteeship.

(B) The Governor of each State shall designate State officials who may act on behalf of the public as trustee for natural resources under this Act and shall notify the President of such designations. Such State officials shall assess damages to natural resources for the purposes of this Act for those natural resources under their trusteeship.

(C) Any determination or assessment of damages to natural resources for the purposes of this Act made by a Federal or State trustee in accordance with the regulations promulgated under paragraph (3) of this subsection shall have the force and effect of a rebuttable presumption on behalf of the trustee in any administrative or judicial proceeding under this Act.

(3)(A) The President, acting through the Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Administrator of the Environmental Protection Agency, the Director of the Fish and Wildlife Service, and the heads of other affected agencies, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil for the purpose of this Act.

(B) Such regulations shall specify (i) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or units of affected areas, where damages equal the costs of restoration, replacement, or acquisition of equivalent resources, plus demonstrated additional lost use value or other damages beyond such costs, and (ii) alternative protocols for conducting assessments in individual cases to determine the type and extent of short and long term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss, and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

(C) Such regulations shall be reviewed and revised as appropriate every two years.

(e)(1) Except where title III of this Act applies, the recovery of removal costs and damages by (A) persons residing in a foreign country, (B) the government of a foreign country, or (C) any agency or political subdivision of a foreign country, under this Act, shall be exclusively in accordance with this subsection.

(2) A claimant under this subsection must demonstrate that the claimant has not been otherwise compensated for incurred removal costs or damages. Except with respect to paragraph (3)(D) of this subsection, a claimant under this subsection must demonstrate (A) that recovery is authorized by a treaty or executive agreement between the United States and the claimant's country, or (B) that the Secretary of State, in consultation with the Attorney General and other appropriate officials, has certified that the claimant's country provides a comparable remedy for United States claimants.

(3) Where a discharge, or substantial threat of a discharge of oil in or on the territorial sea, internal waters, or adjacent shoreline of a foreign country occurs, claims for removal costs and damages may be made under this subsection if the removal costs or damages resulted from a discharge of, or substantial threat of a discharge, of oil from—

(A) an Outer Continental Shelf facility or a deepwater port facility,

(B) a vessel occurring in the navigable waters of the United States,

(C) a vessel carrying oil as cargo between two ports subject to the jurisdiction of the United States; or

(D) a tanker that received oil at the terminal of the pipeline constructed under the Trans-Alaska Pipeline Authorization Act for transportation to a port in the United States, the discharge or threat having occurred prior to delivery to that port.

(4) This subsection shall apply only in the case of discharges of oil occurring after the enactment of this Act.

(f)(1) No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any vessel or onshore or offshore facility or from any person who may be liable for a discharge or threat of discharge under this section, to any other person the liability imposed under this section. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(2) Nothing in this Act, including the provisions of paragraph (1) of this subsection, shall bar a cause of action that an owner or operator subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(g) The owner or operator of a vessel shall be liable in accordance with this section, the International Convention on Civil Liability for Oil Pollution Damage, 1984, and section 311 of the Clean Water Act, under maritime tort law, and as provided in section 106 of this Act, notwithstanding any provision of the Act of March 3, 1851 (46 U.S.C. 183), or the absence of any physical damage to the proprietary interest of the claimant.

USES OF FUND

SEC. 103. (a) The President shall use the money in the Fund for the following purposes:

(1) all removal costs or other costs of carrying out the purposes of subsections (c), (d), (i), and (l) of section 311 of the Clean Water Act, sections 5 and 7 of the Intervention on the High Seas Act, and section 18 of the Deepwater Port Act, with respect to discharges, or substantial threats of discharges, of oil (as the term "oil" is defined in each respective Act);

(2) payment of any claim for removal costs or damages—

(A) in excess of the amount for which the owner or operator of the vessel or onshore or offshore facility from which oil is discharged is liable under section 102 of this Act;

(B) where the source of the discharge of oil is not known or cannot be identified;

(C) in any case where the claim has not been satisfied in accordance with subsection (c) of this section; and

(D) subject to, but in excess of the combined compensation available under, the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1984;

(3) payment of any claim for removal costs and damages that have resulted from the discharge, or substantial threat of a discharge, of oil from a foreign offshore unit;

(4)(A) payment of costs incurred by any State in responding to a discharge, or substantial threat of a discharge, of oil into the navigable waters or adjoining shorelines from a vessel, an onshore facility, an offshore facility, or a foreign offshore unit, as provided in subsection (d) of this section;

(B) reimbursement to any State for the payment of any claims for removal costs or damages payable under this Act which such State has paid with funds under the control of such State, including payment pursuant to a delegation under subsection (c) of this section;

(5) the costs of assessing both short-term and long-term injury to, destruction of, or loss of any natural resources resulting from a discharge of oil;

(6) the costs of Federal or State efforts in the res-toration, rehabilitation, or replacement or acquiring the equivalent of any natural resources injured, destroyed, or lost as a result of any discharge of oil;

(7) payment of contributions to the International Fund as prescribed in section 305 of this Act;

(8) subject to such amounts as are provided in appropriation Acts, the costs of providing equipment and similar overhead, related to the purposes of this Act and section 311 of the Clean Water Act, and of establishing and maintaining damage assessment capability, for any Federal agency involved in

strike forces, emergency task forces, or other response teams;

(9) the costs of a program to identify, investigate, and take enforcement and abatement action against discharges of oil, including the provisions of section 311(j)(1) (C) and (D) of the Clean Water Act; and

(10) all administrative and personnel costs of administering the Fund and this Act.

(b) The maximum amount which may be paid from the Fund with respect to any single discharge or incident, in combination with payment, if any, under the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1984, shall not exceed $500,000,000.

(c)(1) The President is authorized to promulgate regulations designating one or more Federal officials who may obligate money in the Fund in accordance with subsection (a) of this section or portions thereof. The President is also authorized to delegate authority to obligate money in the Fund or to settle claims to officials of a State with an adequate program operating under a cooperative agreement with the Federal Government.

(2) The President is authorized to delegate the administration of his duties and authorities under this Act to the heads of those Federal departments, agencies, and instrumentalities which the President determines appropriate.

(3)(A) The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims for removal costs or damages resulting from the discharge, or substantial threat of a discharge, of oil under this Act.

(B) Whenever the President receives information from any person alleging that a person has incurred removal costs or damages resulting from the discharge, or substantial threat of a discharge, of oil respecting which the owner or operator of a vessel or onshore or offshore facility is or may be liable under section 102 of this Act, the President shall notify the owner, operator, or guarantor or such vessel or facility of that allegation. Such owner or operator or guarantor may, within five days after receiving the notification or presentation of any claim by a claimant, deny the allegation, or deny liability for removal costs and damages for any of the reasons set forth in subsection (b) of section 102 of this Act.

(C) The owner or operator of any vessel or onshore or offshore facility from which oil has been discharged shall provide notice to all potentially injured parties.

(D) No claims may be asserted against the Fund pursuant to subsection (a) unless such claim is presented in the first instance to the owner or operator or guarantor of the vessel or onshore or offshore facility from which oil has been discharged, if known to the claimant, and to any other person known to the claimant who may be liable under section 102. In any case where the claim has not been satisfied within one hundred eighty days of presentation in accordance with this subsection, the claimant may present the claim to the Fund for payment. No claim against the Fund may be approved or certified during the pendency of an action by the claimant in court to recover costs which are the subject of the claim.

(d) The Governor of each State, or any appropriate State official designated by the Governor, is authorized to obligate the Fund for the payment of removal costs in an amount not to exceed $250,000 per discharge or substantial threat of discharge of oil, for the purpose of immediate response, subject only to the requirement that the President be notified within twenty-four hours of any such obligation under the authority of this sentence. In addition, the President shall enter into an agreement with the Governor of any interested State to provide a procedure by which the Governor or designated State official may undertake additional removal action or obligate the Fund for the additional payment of removal costs for response to a particular discharge or substantial threat of discharge, subject to such terms and conditions as may be agreed upon. Payments under subsection (a)(4)(A) of this section, other than as authorized by the first sentence of this subsection, shall be made in accordance with such agreements. The President shall, not later than six months after the enactment of this Act, publish proposed regulations further establishing how the authority of this subsection to obligate the Fund or enter into agreements is to be exercised, and, not later than three months after the close of the comment period on such proposed regulations, shall promulgate such regulations.

(e)(1) Payment of any claim by the Fund under this section shall be subject to the United States Government acquiring by subrogation all rights of the claimant to recover the removal costs or damages from the responsible party.

(2) Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for costs or damages shall be subrogated to all rights, claims, and causes of action for those costs and damages that the claimant has under this Act or under any other law.

(3) Upon request of the President, the Attorney General shall commence an action on behalf of the Fund to recover any compensation paid by the Fund to any claimant pursuant to this Act, and, without regard to any limitation of liability with respect to an owner or operator under section 102(c), all costs incurred by the Fund by reason of the claim, including interest (including prejudgment interest), administrative and adjudicative costs, and attorney's fees. Such an action may be commenced against any owner or operator or (subject to section 104(e)) guarantor, or against any other person who is liable, pursuant to any law, to the compensated claimant or to the Fund, for the cost or damages for which the compensation was paid. Such an action shall be commenced against the responsible foreign government or other responsible party to recover any removal costs or damages paid from the Fund as the result of the discharge, or substantial threat of discharge, of oil from a foreign offshore unit.

(f) The Fund shall not be available to pay any claim for costs or damages to the extent the discharge or the damages had been caused by the gross negligence or willful misconduct of that particular claimant.

(g) The Comptroller General shall provide an audit review team to audit all payments, obligations, reimbursements, or other uses of the Fund, to assure that the Fund is being properly administered and that claims are being appropriately and expeditiously considered. The Comptroller General shall submit to the Congress an interim report one year after the establishment of the Fund. The Comptroller General shall thereafter provide such auditing of the Fund as is appropriate. Each Federal agency shall cooperate with the Comptroller General in carrying out this subsection.

(h)(1) No claim may be presented under this section for recovery of removal costs after the date six years after the date of completion of all removal action.

(2) No claim may be presented under this section for recovery of damages unless the claim is presented within three years after the date of the discovery of the loss and its connection with the release in question, or in the case of damages under section 102(a)(2)(C), if later, the date on which final regulations are promulgated under section 102(d)(3) of this Act.

(3) The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches eighteen years of age or the date on which a legal representative is duly appointed for the minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

(i) Where the President has paid out of the Fund for any removal costs or any costs specified under subsection (a) (6) or (7), no other claim may be paid out of the Fund for the same costs.

(j) Except in a situation requiring action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources or similar need for emergency action, funds may not be used under this Act for the restoration, rehabilitation, or replacement or acquisition of the equivalent of any natural resources until a plan for the use of such funds for such purposes has been developed and adopted by affected Federal agencies and the Governor or Governors of any State having sustained damage to natural resources within its borders, belonging to, managed by or appertaining to such State, after adequate public notice and opportunity for hearing and consideration of all public comment.

FINANCIAL RESPONSIBILITY

SEC. 104. (a)(1) The owner or operator of any vessel over three hundred gross tons (except a non-self-propelled barge that does not carry oil as cargo or fuel), using any port or place in the United States or the navigable waters or any outer continental shelf facility or deepwater port facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility sufficient to meet the maximum amount of liability to which, in the case of a tanker, the owner or operator could be subjected under section 102(c)(1)(A) of this Act, or to which, in the case of any other vessel, the owner or operator could be subjected under section 102(c)(1)(B) of this Act, in a case where the owner or operator would be entitled to limit liability under that section. If the owner or operator owns or operates more than one vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the largest of such vessels.

(2) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any vessel subject to this subsection that does not have the certification required under this subsection or the regulations issued hereunder.

(3) The Secretary of the department in which the Coast Guard is operating may (A) deny entry to any outer continental shelf

facility, and deepwater port facility, or any port or place in the United States, or (B) detain at such a facility or port or place, any vessel that, upon request, does not produce the certification required under this subsection or the regulations issued hereunder.

(4) Any vessel subject to the requirements of this subsection which is found in the navigable waters without the necessary evidence of financial responsibility shall be subject to seizure by the United States of any oil carried as cargo.

(b) Each owner or operator with respect to an outer continental shelf facility, deepwater port facility, or other offshore facility, shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the owner or operator could be subjected under section 102 of this Act in a case where the owner or operator would be entitled to limit liability under that section, or, in the case of an Outer Continental Shelf facility, in the amount of $100,000,000. Such evidence of financial responsibility shall be established according to regulations prescribed by the President.

(c) Financial responsibility under this section may be established by any one, or by any combination, of the following methods, which the President determines to be acceptable: evidence of insurance, surety bond, guarantee, letter of credit, qualification as a self-insurer, or other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.

(d) Any claim for which liability may be established under section 102 of this Act may be asserted directly against any guarantor providing evidence of financial responsibility for an owner or operator liable under that section for costs and damages to which the claim pertains. In defending against such a claim, the guarantor may invoke all rights and defenses which would be available to the responsible party under section 102. The guarantor may also invoke the defense that the discharge was caused by the willful misconduct of the owner or operator, but the guarantor may not invoke any other defense that might be available in proceedings brought by the owner or operator against the guarantor.

(e) The total liability of any guarantor in a direct action suit brought under this section shall be limited to the aggregate amount of the monetary limits of the policy of insurance, guarantee, surety bond, letter of credit, or similar instrument obtained from the guarantor by the person subject to liability under section 102 for the purpose of satisfying the requirement for evidence of financial responsibility. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual, or common law liability of a guarantor, including, but not limited to, the liability of such guarantor for bad faith either in negotiation or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed, interpreted, or applied to diminish the liability of any person under section 102 of this Act or other applicable law.

(f)(1) Any person who, after notice and an opportunity for a hearing, is found to have failed to comply with the requirements of this section or the regulations issued thereunder, or with a denial or detention order issued under subsection (a)(3) of this section, shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the President by written notice. In determining the amount of the penalty, the President shall take into account the nature, circumstances, extent, and gravity of the violation, the degree of culpability, any history of prior violation, ability to pay, and such other matters as justice may require. The President may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this paragraph. If any person fails to pay an assessed civil penalty after it has become final, the President may refer the matter to the Attorney General for collection.

(2) In addition to, or in lieu of, assessing a penalty under paragraph (1) of this subsection, the President may request the Attorney General to secure such relief as necessary to compel compliance with this section, including, but not limited to, a judicial order terminating operations. The district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(g) Any regulation respecting financial responsibility, which has been issued pursuant to any provision of law repealed or superseded by this Act, and which is in effect on the date immediately preceding the effective date of this Act, shall be deemed and construed to be a regulation issued pursuant to this section. Such a regulation shall remain in full force and effect unless and until superseded by new regulations issued under this section.

LITIGATION, JURISDICTION AND VENUE

SEC. 105. (a) Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within ninety days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

(b) Except as provided in subsections (a) and (c) of this section, the United States district courts shall have exclusive original jurisdiction over all controversies arising under this Act (which shall be deemed to include actions under the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984), without regard to the citizenship of the parties or the amount in controversy. Venue shall lie in any district in which the discharge or injury or damages occurred, or in which the defendant resides, may be found, has its principal office, or has appointed an agent for service of process. For the purposes of this section, the Fund and the International Fund, established under article 2 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984, shall reside in the District of Columbia.

(c) A State trial court of competent jurisdiction over similar claims may consider claims under section 102 or State law and any final judgment of such court (when no longer subject to ordinary forms of review) shall be recognized, valid, and enforceable for all purposes of section 102, section 103, and title III of this Act.

(d) The provisions of subsections (a), (b), and (c) of this section shall not apply to any controversy or other matter resulting from the assessment or collection of any tax, as provided by title IV of this Act, or to the review of any regulation promulgated under the Internal Revenue Code of 1954.

(e) The President may prescribe the necessary regulations to carry out this Act and all obligations of the United States under the International Convention on Civil Liability for Oil Pollution Damage, 1984, and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984.

(f) No provision of this Act shall be deemed or held to moot any litigation concerning any discharge of oil, or any damages associated therewith, commenced prior to enactment of this Act.

(g)(1) Except as provided in paragraphs (3) and (4), no action may be commenced for damages (as defined in section 101(6)) under this Act, unless that action is commenced within three years after the date of the discovery of the loss and its connection with the release in question, or in the case of damages under section 102(a)(2)(C), if later, the date on which regulations are promulgated under section 102(d)(3) of this Act.

(2) An action for recovery of removal costs referred to in section 102(a)(1) must be commenced within three years after completion of the removal action. In any such action described in this subsection, the court shall enter a declaratory judgment on liability for removal costs or damages that will be binding on any subsequent action or actions to recover further removal costs or damages. Except as otherwise provided in this paragraph, an action may be commenced under section 102 for recovery of removal costs at any time after such costs have been incurred.

(3) No action for contribution for any removal costs or damages may be commenced more than three years after—

(A) the date of judgment in any action under this Act for recovery of such costs or damages, or

(B) the date of entry of a judicially approved settlement with respect to such costs or damages.

(4) No action based on rights subrogated pursuant to this Act by reason of payment of a claim may be commenced under this Act more than three years after the date of payment of such claim.

(5) The time limitations contained herein shall not begin to run—

(A) against a minor until the earlier of the date when such minor reaches eighteen years of age or the date on which a legal representative is duly appointed for such minor, or

(B) against an incompetent person until the earlier of the date on which such incompetent's incompetency ends or the date on which a legal representative is duly appointed for such incompetent.

STATE LAWS AND PROGRAMS

SEC. 106. (a) Nothing in this Act shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to the discharge of oil or other pollution by oil within such State. Nothing in this Act shall affect or modify in any way the obligations or liabilities of any person under other Federal or State law, including common law, with respect to discharges of oil.

(b) Nothing in this Act or in section 9507 of the Internal Revenue Code of 1954 shall in any way affect, or be construed to affect, the authority of any State—

(1) to establish, or to continue in effect, a fund any purpose of which is to pay for costs or damages arising out of, or directly resulting from, oil pollution or the substantial threat of oil pollution; or

(2) to require any person to contribute to such a fund.

(c) A State may enforce, on the navigable waters of such State, the requirements for evidence of financial responsibility applicable under section 104 of this Act.

(d) The President shall consult with the affected State or States on the appropriate removal action to be taken. Removal with respect to any discharge or incident shall be considered completed when so determined by the President and the Governor or Governors of the affected State or States.

(e) Nothing in this Act, the Act of March 3, 1851, as amended (46 U.S.C. 183 et seq.), or section 9507 of the Internal Revenue Code of 1954, shall in any way affect, or be construed to affect, the authority of the United States or any State or political subdivision thereof—

(1) to impose additional liability or additional requirements, or

(2) to impose, or to determine the amount of, any fine or penalty (whether criminal or civil in nature) for any violation of law,

relating to the discharge, or substantial threat of a discharge, of oil.

STUDY OF SPILL PREVENTION IN RESTRICTED WATERS

SEC. 107. The President shall conduct a study, and report the results of such study to the Congress not later than one year after the enactment of this Act, on improved methods for the prevention of discharges of oil in restricted waters and similar portions of bays, estuaries, and near shore waters. In the conduct of such study, the President shall examine the causes of recent major discharges of oil from vessels in the Delaware River, and consider modifications in tanker construction and operation standards, crew training and locale familiarization requirements, improvements in navigation aids, and other approaches with the potential for reducing the likelihood for discharges of oil in such waters.

TITLE II—CONFORMING AMENDMENTS

TRANS-ALASKA PIPELINE FUND

SEC. 201. (a) Section 204(b) of the Trans-Alaska Pipeline Authorization Act is amended, in the first sentence—

(1) by inserting after the words "any area" the words "in the State of Alaska";

(2) by inserting after the words "any activities" the words "related to the Trans-Alaska Oil Pipeline"; and

(3) by inserting at the end of the subsection the following new sentence: "This subsection shall not apply to removal costs covered by the Oil Spill Liability and Compensation Act of 1986.".

(b) Section 204(c) of the Trans-Alaska Pipeline Authorization Act is repealed. This repeal shall not affect the applicability of that section to claims arising before the enactment of this Act. The repeal of paragraph (4), (5), and (8) of that provision shall only become effective upon the payment by the Board of Trustees of the Trans-Alaska Pipeline Liability Fund of all claims certified under subsection (c) of this section and the rebate of all remaining amounts under, and the completion of all actions required to carry out, such subsection.

(c)(1) Not later than two hundred and ten days after the date of enactment of this Act, the Board of Trustees of the Trans-Alaska Pipeline Liability Fund shall certify to the President the total amount of claims outstanding against that Fund as of the date of enactment of this Act. The amount of that Fund exceeding the total amount so certified shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(2) After the settlement of all claims described in paragraph (1) and the completion of all actions, if any, by the Trans-Alaska Pipeline Liability Fund for recovery of amounts paid on such claims, the remaining amounts in that Fund shall be rebated directly, on a pro rata basis, to the owners of the oil at the time it was loaded on the vessel.

(3) Whenever a rebate is made on a pro rata basis to the owners of oil under paragraph (1) or (2) of this subsection, each owner's share of the rebate shall be an amount determined by dividing the amount contributed by that owner to the Trans-Alaska Pipeline Liability Fund by the total amount contributed by all such owners to that Fund.

(d) Trustees and former trustees of the Trans-Alaska Pipeline Liability Fund who were designated by the Secretary of the Interior shall not be subject to any liability incurred by that Fund or by the present and past officers and trustees of that Fund, other than liability for gross negligence or willful misconduct.

INTERVENTION ON THE HIGH SEAS ACT

SEC. 202. Section 17 of the Intervention on the High Seas Act is amended to read as follows:

"SEC. 17. The Fund established under the Oil Spill Liability and Compensation Act of 1986 shall be available to the Secretary for actions taken under sections 5 and 7 of this Act.".

CLEAN WATER ACT

SEC. 203. Section 311 of the Clean Water Act is amended as follows:

(a) Subparagraph (H) of paragraph (2) of subsection (c) amended by striking out "from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal" and inserting in lieu thereof the following: "in the case of any discharges of oil from a vessel or facility, for the reasonable costs incurred in such removal from the Fund established under the Oil Spill Liability and Compensation Act of 1986".

(b) Subsection (d) is amended by striking out the last sentence.

(c)(1) Subsections (f), (g), and (i) of section 311 of the Clean Water Act shall not apply with respect to any discharge of oil resulting in removal costs for which liability is established under section 102 of this Act.

(2) Paragraphs (2) and (3) of subsection (f) are amended by striking out "under subsection (c) for the removal of such oil or substance by the United States Government" each place it appears and inserting in lieu thereof "under subsection (c) for the removal of such oil or substance by the United States Government and for payments made pursuant to section 103(a)(4)(A) of the Oil Pollution Liability and Compensation Act of 1986".

(d) Subsection (i) is amended by striking out "(1)" after "(i)" and striking out paragraphs (2) and (3).

(e) Subsection (k) is repealed. Any amounts remaining in the revolving fund established under that subsection shall be deposited in the Fund established under this Act. The Oil Spill Compensation Fund shall assume all liability incurred by the revolving fund established under section 311(k) of the Clean Water Act.

(f) Subsection (l) is amended by striking out the second sentence.

(g) Subsection (p) is repealed.

(h) Section 311 is amended by adding at the end thereof the following new subsection:

"(s) The Oil Spill Compensation Fund, established under the Oil Pollution Liability and Compensation Act of 1986, shall be available to carry out subsections (c), (d), (i), and (l) as those subsections apply to discharges, or substantial threats of discharges, of oil. Any amounts received by the United States under this section shall be deposited in such Oil Spill Compensation Fund.".

DEEPWATER PORT ACT

SEC. 204. The Deepwater Port Act of 1974 is amended as follows:

(a) In section 4(c)(1) strike "section 18(l) of this Act;" and insert in lieu thereof "section 104 of the Oil Spill Liability and Compensation Act of 1986,".

(b) Subsections (b), (d), (e), (f), (g), (h), (i) (j), (l), (n), and paragraph (1) of subsection (m) of section 18 are deleted.

(c) Paragraph (3) of subsection (c) of section 18 is amended by striking "Deepwater Port Liability Fund established pursuant to subsection (f) of this section", and inserting in lieu thereof "fund established under the Oil Spill Liability and Compensation Act of 1986".

(d) Subsections (c), (k), and (m) of section 18 are redesignated (b), (c), and (d) respectively, and paragraphs (2), (3), and (4) of subsection (m) are redesignated (1), (2), and (3), respectively.

(e) Any amounts remaining in the Deepwater Port Liability Fund, established under section 18(f) of the Deepwater Port Act of 1974, shall be deposited in the Fund established under this Act. The Oil Spill Compensation Fund shall assume all liability incurred by the Deepwater Port Liability Fund.

OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS

SEC. 205. Title III, other than section 302, of the Outer Continental Shelf Lands Act Amendments of 1978 is hereby repealed.

NOTICE TO STATE; INCREASED PENALTIES FOR FAILURE TO REPORT

SEC. 206. (a) The first sentence of section 311(b)(5) of the Clean Water Act is amended by inserting after "of the United States Government" the phrase "and of any affected State".

(b) The second sentence of section 311(b)(5) of the Clean Water Act is amended by striking "fined not more than $10,000, or imprisoned for not more than one year, or both" and inserting in lieu thereof "fined in accordance with the applicable provisions of title 18 of the United States Code, or imprisoned for not more than three years (or not more than five years in the case of a second or subsequent conviction), or both".

TITLE III—IMPLEMENTATION OF INTERNATIONAL CONVENTIONS

DEFINITIONS

SEC. 301. For the purposes of this title—

(1) the terms "ship", "owner", "oil", "pollution damage", and "incident" shall have the meaning provided in article I of the Civil Liability Convention;

(2) the term "Civil Liability Convention" means the International Convention on Civil Liability for Oil Pollution Damage, 1984;

(3) the term "financial responsibility" shall have the same meaning as "financial security" under the Civil Liability Convention;

(4) the term "Fund Convention" means the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1984; and

(5) the term "International Fund" means the International Oil Pollution Compensation Fund, established under article 2 of the Fund Convention.

APPLICABILITY OF CONVENTIONS

SEC. 302. If the Civil Liability Convention and the Fund Convention are ratified by the United States, with the advice and consent of the Senate, and determined by the President to be consistent with the provisions of sections 102, 103, and 106 of this Act, during any period that the Civil Liability Convention and the Fund Convention are in force with respect to the United States, liability of an owner for pollution damage arising from an incident involving a ship shall be determined in accordance with the Civil Liability Convention and Fund Convention. During such a period, no claim with respect to pollution damage which is compensable under the International Fund may be made against the Oil Spill Compensation Fund under paragraph (2) (A), (B), or (C), or (4)(B) of section 103(a) of this Act. Nothing in this title shall constitute a ratification of either the Civil Liability Convention or the Fund Convention.

RECOGNITION OF INTERNATIONAL FUND

SEC. 303. The International Fund is recognized under the laws of the United States as a legal person, and shall have the capacity to acquire and dispose of real and personal property, and to institute and be party to legal proceedings. The Director of the International Fund is recognized as the legal representative of the International Fund. The Director shall be deemed to have appointed irrevocably the Secretary of State as the International Fund's agent for the service of process in any legal proceedings involving the International Fund within the United States. The International Fund and its assets shall be exempt from all direct taxation in the United States.

ACTION IN UNITED STATES COURTS

SEC. 304. (a) In any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention, the plaintiff or defendant, as the case may be, shall serve a copy of the complaint and any subsequent pleading therein upon the International Fund at the same time the complaint or other pleading is served upon the opposing parties.

(b) The International Fund may intervene as a party as a matter of right in any action brought in a court in the United States against the owner of a ship or its guarantor under the Civil Liability Convention.

CONTRIBUTION TO INTERNATIONAL FUND

SEC. 305. (a) The amount of any contribution to the International Fund which is required to be made under article 10 of the Fund Convention by any person with respect to oil received in any port, terminal installation, or other installation located in the United States shall be paid to the International Fund from the Oil Spill Compensation Fund, established under this Act.

(b) The President may, by regulation, require persons who are required to make contributions with respect to oil received in any port, terminal, installation, or other installations in the United States under article 10 of the Fund Convention to provide all information relating to that oil as may be necessary to carry out subsection (a) of this section and articles 10, 12, 13, 14, and 15 of the Fund Conventions.

RECOGNITION OF FOREIGN JUDGMENTS

SEC. 306. Any final judgment of a court of any country which is a party to the Civil Liability Convention or to the Fund Convention in an action for compensation under either convention shall be recognized by any court of the United States having jurisdiction under this Act, when that judgment has become enforceable in that country and is no longer subject to ordinary form of review, except where—

(1) the judgment was obtained by fraud, or

(2) the defendant was not given reasonable notice and a fair opportunity to present its case.

FINANCIAL RESPONSIBILITY

SEC. 307. (a) The owner of each ship which is documented under the laws of the United States which is subject to the Civil Liability Convention shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility as required in Article VII of the Civil Liability Convention.

(b) The owner of each ship (other than a ship to which subsection (a) applies or a ship which is a public vessel), which is subject to the Civil Liability Convention and which enters or leaves a port or terminal in the United States or uses an outer continental shelf facility or deepwater port facility, shall establish and maintain, in accordance with regulations promulgated by the President, evidence of financial responsibility as required in article VII of the Civil Liability Convention. Any ship which has on board a valid certificate issued in accordance with article VII of the Civil Liability Convention shall be considered as having met the requirements of this subsection. Any ship carrying only oil as cargo, fuel, or residue, which has on board a valid certificate issued in accordance with article VII of the Civil Liability Convention shall be considered as having met the requirements of section 104 of this Act.

(c) The President is authorized to issue any certificate of financial responsibility which the United States may issue under the Civil Liability Convention.

(d) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States of any ship which does not have a certificate demonstrating compliance with this section.

(e) The Secretary of the department in which the Coast Guard is operating may (1) deny entry to any facility or to any port or place in the United States, or (2) detain at the facility or port or place in the United States, any ship subject to this section which, upon request, does not produce the certificate demonstrating compliance with this section or regulations issued hereunder.

(f) Any person who, after notice and an opportunity for a hearing, is found to have violated this section, any regulation issued thereunder, or any denial or detention order issued under subsection (e) of this section shall be liable to the United States for a civil penalty, not to exceed $25,000 per day of violation. The amount of the civil penalty shall be assessed by the President in accordance with the procedures set forth in section 104(f) of this Act.

(g) The United States waives all defenses based on its status as a sovereign State with respect to any controversy arising under the Civil Liability Convention or the Fund Convention relating to any ship owned by the United States and used for commercial purposes

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MITCHELL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TIME LIMITATION AGREEMENT—H.R. 5484

Mr. SIMPSON. Mr. President, I ask unanimous consent that at 2 p.m. on Tuesday, September 30, the Senate resume consideration of the drug bill, H.R. 5484, and the following amendments be the only amendments in order, with the exception of the pending amendment in the nature of a substitute; and they be first degree amendments only;

An amendment to be offered by Senators DOMENICI and CHILES dealing with the funding of the bill, to be limited to 1 hour, to be equally divided in the usual form;

An amendment to be offered by Senators HATFIELD and STENNIS dealing with the funding of the bill, to be limited to 1 hour, to be equally divided in the usual form.

I ask unanimous consent that following the disposition of the two above mentioned amendments, the Senate proceed immediately, without any intervening action, motion, or debate to adoption of the substitute amendment, as amended, to be followed by third reading without any intervening action, motion, or debate and final passage of H.R. 5484, as amended, without any intervening action, motion, or debate.

The PRESIDING OFFICER. Without objection it is so ordered.

Mr. SIMPSON. Finally, I ask unanimous consent that no motions to commit the bill be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I would inquire of the Democratic leader if he has any further business.

Mr. BYRD. No, Mr. President.

I thank the distinguished majority whip and I wish him a good night and pleasant Sunday and hope to see him again on Monday but not as early as this morning.

Mr. SIMPSON. Indeed I share that view. It has been a pleasure working with the Democratic leader.

RECESS UNTIL 11:30 A.M., MONDAY, SEPTEMBER 29, 1986

Mr. SIMPSON. Mr. President, in accordance with the previous order, I move that the Senate stand in recess until 11:30 a.m. on Monday, September 29, 1986.

The motion was agreed to, and at 2:21 a.m., the Senate recessed until Monday, September 29, 1986, at 11:30 a.m.

SENATE—*Monday, September 29, 1986*

(Legislative day of Wednesday, September 24, 1986)

The Senate met at 11:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Bless the Lord, O my soul, and all that is within me, bless His holy name.

Gracious God, we are so grateful to hear of the release of Nicholas Daniloff, and we commend him and his family to You.

Almighty God, Ruler of the nations, as we enter these final days of the 99th Congress, we experience with some sadness the retirement of six worthy Members. With profound gratitude, we honor them for their long and distinguished careers in the U.S. Senate. We pray that these next few days will be filled with very special meaning for Senators EAGLETON, GOLDWATER, HART, LAXALT, LONG, and MATHIAS. Make them aware of the respect, admiration, and affection in which they are held by their peers and all who labor here. May they leave the Senate with a sense of significant achievement, few regrets, and many precious memories. May they realize that they will be greatly missed. Grant to each of them and their loved ones an even more significant future than their faithful, fruitful past. In the blessing of their Lord. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE, of Kansas, is recognized.

Mr. DOLE. Mr. President, I thank the distinguished Presiding Officer, the senior Senator from South Carolina, Senator THURMOND.

SCHEDULE

Mr. DOLE. Under the standing order, the leaders have 10 minutes each, followed by special orders in favor of Senators HAWKINS and PROXMIRE for not to exceed 5 minutes each, and routine morning business not to extend beyond the hour of 12:30 with Senators permitted to speak therein for not more than 5 minutes each.

At 12:30, the Senate will begin consideration of the continuing resolution, House Joint Resolution 738. Votes will occur during today's session. However, there will be an effort, if we can get amendments over here, and I think it will be satisfactory with the chairman, to postpone any votes until 3:30 or 4 o'clock today. But it is going to take the cooperation of Members who are here to protect Members who are not here. So I would hope that Members who have amendments can accommodate those who cannot be here until later in the afternoon.

VITIATION OF SPECIAL ORDER FOR SENATOR HAWKINS

Mr. DOLE. Mr. President, I ask unanimous consent that the special order in favor of Senator HAWKINS be vitiated.

The PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, we have been indicating for some time that we were nearing the end of the session. I think it is fair to say that we probably can state that with a little more validity now than we could have, say, last Monday. And I want to both thank and maybe apologize to my colleagues for the endurance contest we had last week.

I was just talking to the distinguished minority leader. He did not get any sleep at all, hardly any sleep at all. I think it was about 1 a.m. on Saturday morning and 2:30 on Sunday morning. But that happens from time to time, particularly when we are in the last days of the session.

We accomplished a great deal in those two late, late sessions. We completed action on the historic tax reform conference report. That bill is, or will soon be, on its way to the President. We are inches away from passing a major drug abuse enforcement act, a bipartisan bill introduced by myself and the distinguished minority leader last week. There may be one vote or two votes left on that and they will happen tomorrow afternoon. So we made a great deal of progress.

We still have the continuing resolution, the increase in the debt limit—that is in conference—the budget reconciliation, which is in conference; the vote to override the veto on South Africa sanctions; and finally Superfund, which is in conference. So many of these matters that we are going to take up are going to happen. If we get a conference report, we should be able to dispose of that rather quickly.

We also have the impeachment trial of Judge Claiborne. There is going to be some difficulty in completing action on that matter this week for a number of reasons. First, just getting the material here so that Senators will have an opportunity to look at it. That may not even be available until Wednesday or Thursday. And we are in the process, through counsel, of discussions with Members of the House who would have to try the case, and also with Judge Claiborne's counsel.

So I do not see any way we are going to complete our work this week, because we also have a holiday for many of our colleagues which begins at sundown on Friday. And that would mean we will not have, or it is very unlikely we will have, a Saturday session.

There are a number of other issues out there that I would like to complete. The highway authorization bill is very important. We would hope the House would consent to go to conference. The immigration bill appears to be dead for the year because of failure to act on the House side; transfer of National Airport which has passed the Senate is hung up on the House side.

There is some interest in modifying the laws on the books with reference to farm legislation. I have indicated an interest in some changes, Senator BOREN from Oklahoma has also indicated an interest in some changes, a number of my colleagues on each side would also like to make changes. Again, it is going to depend on whether or not we can, first of all pay for it, and second, find time to do it and a place to do it.

There is a Farmers Home Administration bill that I hope we can now pass. It was being delayed because of the Daniloff resolution, the Humphrey-Moynihan resolution, which passed the Senate sometime Saturday night. I should also mention there will be continuing news on the Daniloff case throughout the day.

HOME STRETCH

Mr. DOLE. Mr. President, again as I have indicated, we are in the home stretch. With only days remaining in the 99th Congress, we can look back with a sense of achievement and pride. Just 2 days ago, the Senate cleared a sweeping tax reform bill for the President's signature. We all but completed an omnibus drug package.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

Marathon end-of-the-session weeks are not unusual. That does not make them right. Like everyone else, I would like the Senate and Congress to run more efficiently. I would like us to make decisions about how we spend the taxpayers dollars in a calm, rational way—not in the hurly burly atmosphere of a continuing resolution debate when we are deciding how much to spend on every single function of the Federal Government.

But the truth is, we live in an era of retrenchment. This Congress must cope with the reality of a shrinking Federal pie. It is not easy, and it's certainly not fun. We have the budget process, and we have Gramm-Rudman-Hollings—both of them designed to force us to make choices about what we want to spend and where. This year the process has worked, but just barely.

I do not have any foolproof answers. But I do know that if the President had line-item veto authority today, chances that the Federal Government would shut down on Wednesday because a massive continuing resolution was unacceptable, would be greatly diminished.

And I do know that if a constitutional amendment requiring a balanced budget were in place, we would not spend so much time hemming and hawing for the first 6 months of the year about budget details—we'd get down to business, and do what we had to do.

The Senate will meet its obligations this week. It may not be pretty, and it may not be fun, but we will make sure that the Government keeps running. If we and the President had those two fiscal tools, though, the line-item veto and the balanced budget constitutional amendment, not only would the decisionmaking process run more smoothly, but the bottom line of the balance sheet would look a lot better.

I believe the Senate can meet its obligations this week. It may take some time. Senator HATFIELD, the chairman of the Appropriations Committee, is talking about a late, late, late night tomorrow night. I think we will need a window tomorrow night, as I recall in visiting with the distinguished minority leader. But, in any event, we are going to do the best we can to complete all of our legislative business by Friday. That would leave us with the impeachment trial. That is our hope. I reserve the remainder of my time.

RECOGNITION OF THE DEMOCRATIC LEADER

Mr. BYRD addressed the Chair.

The PRESIDENT pro tempore. The able and distinguished Democratic leader, Senator ROBERT BYRD, is recognized.

SCHEDULE

Mr. BYRD. Mr. President, I thank the distinguished majority leader for laying out the schedule as he has.

In view of the long list of very important and, in some cases, critical legislation, together with the impeachment trial of Judge Claiborne, in view of all of this workload, I do not believe it is realistic to believe that the Senate can complete its work at the close of business Friday. That is what the majority leader is saying. That is what I am saying. I want to alert our colleagues that they should keep in mind that it will be virtually impossible to complete all of this workload prior to the close of business on Friday night.

I hope, however, we will not go too late too often, too many times this week.

Last week, I had 10 hours of sleep over a period of 67½ hours, beginning Thursday morning and going until a little after 4 o'clock on Sunday morning, when I was finally able to get to bed.

I want to compliment the majority leader on the work that was accomplished during those 3 days. Thursday was mostly utilized in the brouhaha over the Chair's ruling in connection with the two-speech rule.

But Friday and Saturday, with the work that was done on the tax conference report, and again on the compromise that was reached on the drug bill, I think it was really a tremendous accomplishment. I want to congratulate the majority leader on that.

But we simply cannot kill Senators. There are not too many of us young men around here who can stand 67 hours with only 10 hours of sleep. I would rather not repeat it any more than once over the next 25 years, if I can avoid it. But the trial of Judge Claiborne just simply cannot wait until next year. There are some who might advocate putting that over and who say that can be done. I do not think that the Senate would have to begin ab initio next year, but still that would be the argument, to go over, let us start it over again. We cannot do that. Here is a Federal judge who was imprisoned, he is on the Federal payroll. He is entitled to action. The people are entitled to action. And I am sure that the Senate can hardly get that work done this week.

It, of course, is possible to go from legislative session to the trial, and back to legislative session, but that is not very practical, I do not think, certainly this week.

I say to our colleagues, I think we had better not pack our bags for leaving in contemplation of sine die adjournment Friday night. The majority leader has mentioned the religious holidays which will keep the Senate from voting on Saturday. The Senate recognizes the importance of these religious holidays to all of us.

That being said, I do not know of anything else I would say, except, I am pleased, too, to see that Daniloff has been released, on the AP wire, Moscow.

> American reporter Nicholas Daniloff was released by the Soviet Union today and taken to the Moscow airport in a U.S. Embassy car to board a flight to West Germany.

The Chaplain mentioned this in his prayer. I am glad to see it on the wire. The distinguished majority leader has alluded to it. I hope, indeed, that this is the beginning of the end of that part of the problem.

Mr. President, do I have any time remaining?

The PRESIDING OFFICER (Mr. ANDREWS). The Senator has 5 minutes remaining.

Mr. BYRD. I ask unanimous consent that I may reserve the balance of my time throughout the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin, Senator PROXMIRE, is recognized for not to exceed 5 minutes.

Mr. PROXMIRE. Thank you, Mr. President.

HOW CONGRESS IS BECOMING A PARTY TO DELIBERATE TREATY VIOLATIONS

Mr. PROXMIRE. Mr. President, in the past couple of weeks this country has been haunted by the prospect that in the vigorous pursuit of SDI—or star wars—we may violate the Antiballistic Missile Arms Control Treaty. The ABM is a permanent treaty. It was overwhelmingly ratified by this body by an 89-to-2 vote.

Members of this body have rightly made a major issue over the alleged Soviet violation of the treaty by locating a large radar at Krasnoyarsk in Siberia. Why is this location alleged to be a violation of the ABM Treaty? Because the treaty specifically limits the location of such radar to the perimeter of each superpower. The Krasnoyarsk radar is located hundreds of miles within the Soviet Union. Does the Soviet violation constitute a militarily significant violation? In other words, does it of and by itself give the Soviets a significant advantage in defending against ICBM attack? The answer to that question is "no." Why "no"? Because until the Soviets deploy interceptors capable of stopping ICBM attack, the radar could not by itself permit the Soviets to stop a United States missile attack. Our nuclear deterrent would be intact. And, of course, the purpose of the ABM Treaty was to preserve the credibility of the nuclear deterrent of both superpowers. Nevertheless the Krasnoyarsk radar does, indeed, constitute a clear technical—I repeat, technical—violation, and a potential militarily significant violation. The President, the Secretary of Defense, and many Members of the House and Senate have made an emphatic point of this.

But how long, Mr. President, can we make this kind of charge with clean hands? We are rapidly developing a problem in this respect. Here is why: It may be that our country has violated the ABM Treaty by conducting a successful missile defense test earlier this month. Here is the way the test was described in an article in the Washington Post on September 15:

> The experiment began in Florida with the launch of a Delta rocket that carried special sensors on its second and third stages. Initially the sensors were used to observe the plume of a second rocket, later they helped direct an attack by one stage against the other.

Critics say that this test was authentic enough to violate a treaty provision barring space tests of missile interceptors. The Defense Department insists the test was within the treaty limits. Others disagree. John Rhinelander, who was the chief legal adviser to the United States delegation during the ABM negotiations, said that "a Soviet test of this type would clearly raise some serious questions and worry us a great deal."

Peter Zimmerman, a physicist who helped review the experiment at the Arms Control and Disarmament Agency, said that of all the SDI experiments he had seen, this one gave him the most trouble.

Mr. President, is the United States playing the same kind of game in violation of the ABM Treaty with the SDI experiment as the Soviets have done with their Krasnoyarsk rader? Maybe, maybe not. But, Mr. President, there is no question that as the strategic defense initiative proceeds, it is a lead pipe cinch to violate the ABM Treaty root and branch. After all what is the purpose of the Antiballistic Missile Treaty? It is simple.

The ABM Treaty single purpose is to stop the construction of a comprehensive defense against intercontinental ballistic missiles. Why was the ABM Treaty signed and ratified? Because both sides recognized that the superpower nuclear deterrents, for all their terrible potential for a total holocaust destruction, were the twin forces that had kept the peace since the dawn of the nuclear age. They were the fulfillment of the observation of Churchill that in the nuclear age "safety is the twin child of terror." And yet it is a simple fact that every dollar we appropriate for SDI is designed to create an antimissile system that will destroy the credibility of the Soviet's deterrent. Why has not there been a wider recognition of this grim fact? Answer: This has been largely because few if any opponents of SDI in the Congress imagined that his star wars dream would go so far.

There has been a general conviction that before star wars proceeded to the point where the violations of the ABM Treaty were overt and generally acknowledged, the futility of this trillion dollar SDI Program would be so apparent that it would die. This Senator is convinced that the Congress will never approve a comprehensive deployment of star wars. But I am also convinced that until January 20, 1989 when Ronald Reagan leaves office, SDI will continue to zip along from one violation or near violation of the ABM Treaty to another. Mr. President, this is almost inevitable.

Let me repeat what is the prime purpose of SDI? It is to establish an effective and comprehensive antimissile program. And what is the single mission of the ABM Treaty? It is to prohibit precisely such a deployment by either superpower. As long as the Congress continues to increase funding for SDI, we are asking for continued near or actual violations of the ABM Treaty. Some of these will sooner or later certainly violate the treaty in significant ways. With every month that passes, this prospect will become more and more likely. Our country will be engaging in virtually certain violations of the ABM Arms Control Treaty, a permanent treaty signed by our President and overwhelmingly ratified by this U.S. Senate.

Mr. President, I ask unanimous consent that the article in the Washington Post to which I have referred by Jeffrey Smith from the September 15, 1986 edition be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SDI AND COMPLIANCE: LATEST TEST REVIVES ABM TREATY DILEMMA

(By R. Jeffrey Smith)

An old problem came back to haunt some of the Pentagon's engineers last week after a successful test of missile defense technology in outer space: How can one conduct an experiment that results in significant technical progress, yet remain in compliance with an international treaty that was essentially devised to prevent a scientific breakthrough?

The dilemma has been faced frequently by the managers of the Strategic Defense Initiative (SDI) program, aimed at creating a comprehensive ballistic missile defense that is clearly at odds with the 1972 Antiballistic Missile (ABM) Treaty. At a news conference last Thursday, they said that a spectacular space experiment conducted the previous week was a significant step toward meeting the missile defense goal, but also that it was clearly within the treaty limits.

Several critics, including a member of Congress, a prominent legal expert and a former government arms control analyst, disagree with the Pentagon. "It was possibly a violation, and I know damn well that's what the Soviets will think," said Rep. George E. Brown Jr. (D-Calif.), an SDI critic.

Similarly, John Rhinelander, a Washington attorney who was chief legal adviser to the U.S. delegation during the ABM negotiations, said that "a Soviet test of this type would clearly raise some serious questions and worry us a great deal."

And Peter Zimmerman, a physicist who helped review the experiment at the Arms Control and Disarmament Agency, noted that "of all the SDI experiments we looked at, this is the one that gave me the most heartburn. Nothing else planned between now and the early 1990s seemed as worrisome."

Designed over the past 14 months, the experiment began in Florida with the launch of a Delta rocket that carried special sensors on its second and third stages. Initially, the sensors were used to observe the plume of a second rocket; later, they helped direct an attack by one stage against the other, which the critics say was authentic enough to violate a treaty provision barring space tests of missile interceptors.

At the news conference, Pentagon officials denied this claim, even as they disclosed a surprising amount of information about the experiment, including such details as the principal type of sensors that the missile stages used, the number of radars involved (38) and the fact that one stage struck another at a relative speed of 6,500 mph.

In an interview, Lt. Col. Michael Rendine, the experiment's manager, said that the extraordinary disclosure was not specifically made to dampen Soviet suspicions. But he also said that "from the information we provided, it should be clear that the experiment was within the treaty limits."

Both sides conceded that the treaty is fairly vague about the difference between a prohibited and a permitted test, a factor that complicates experimental design as well as public justification.

In this instance, for example, the Pentagon had decided that the relatively slow speed of attack in the recent test proves its lack of authenticity, and therefore its legality. Rendine said that the issue is clear-cut, because the principal sensor on the attacking missile stage is incapable of operating at authentic interceptor speeds, which some experts peg at more than 13,000 mph.

"Our choice of that sensor was both deliberate and obvious," Rendine said. "They're smart enough to figure it out." This point is also made by Lee Minichiello, an assistant deputy undersecretary of defense who is responsible for reviewing the legality of SDI experiments.

Critics such as Zimmerman said that the issue is not so certain, because missile interceptions can theoretically occur at relatively slow speeds if a missile is attacked directly from the rear. Rhinelander agreed, noting that "a Soviet test at that speed would raise many questions on our side, particularly if the experiment involved a large radar network, as ours did."

Other critics, who declined to be identified, also complained because of the Pentagon presumption that the Soviets could assess the precise capability of the principal attack sensor, which was borrowed from the Phoenix air-to-air missile. "How can they possibly determine that it wasn't modified?" one expert asked. "How can we be certain that the Soviets were able to observe the experiment, which lasted only two hours and 45 minutes?"

Rendine and others offered three responses. First, he said, a genuine missile interception at such a slow speed would be unusual; "in fact, it would virtually require Soviet cooperation." Second, Rendine said that the principal sensor was not modified. "I'm not concerned about what the Soviets perceive or don't perceive," he said, "because I know what the facts are."

Third, senior Pentagon officials said that the Soviets could have observed the experiment if they wanted to, and also could have measured the relative speed of the two missile stages. "There is no legal requirement to make things verifiable," said one official, who asked not to be identified. "But it may be a good thing to do, and in this case I think it was done."

Zimmerman, now with the Carnegie Endowment for International Peace, pointed out that the dispute would never have arisen if the two missile stages had been instructed to pass each other by, not collide. "If it had been a deliberate miss, the compliance concern would have been much weaker," he said, "and they probably could have gathered just as much useful data."

According to various officials, that option was never seriously considered, even though it might have compromised only the last 0.16 seconds of data collection. As the SDI director, Air Force Lt. Gen. James A. Abrahamson, explained at the news conference, the "end game," or last few seconds of guidance, was judged "absolutely critical" because it proved that the sensors and guidance mechanism on the attacking missile stage worked.

MYTH OF THE DAY

Mr. PROXMIRE. Mr. President, my myth of the day is that offering financial incentives and preferential treatment to attract new business is always in the best interest of a community.

Until recently, States and localities were engaged in an escalating bidding war to snare footloose corporations. These giveaways approached the frenzy of daytime television game shows. The incentives ranged from tax-forgiveness to site preparation and improvement.

Now, as reported in a recent article in the Wall Street Journal, some areas are having second thoughts about their programs to lure new businesses. Many community leaders are finding that the incentives were not critical in plant location decisions and that some businesses were failing to keep their promises to workers and the community.

It is not surprising that offering short-term incentives will sometimes attract firms interested in quick profits rather than long-term growth. This type of firm frequently has little or no concern for the long-term well-being of the local community and workers.

Some financial assistance may be appropriate to help finance the substantial startup costs often associated with new business ventures. However, what makes a community really attractive to forward looking business people involves the more general local economic climate.

The elements of an attractive local economic environment must include:

First, the availability of a well-educated, well-trained and highly motivated work force. The community can assist in providing this element by offering excellent elementary and secondary schools, fine vocation and technical education and first rate public universities and colleges.

Second, a high quality of life. Here the local community best serves itself and the new business venture by supporting local recreational facilities, cultural programs and public safety and health activities.

The type of entrepreneur who is more interested in the general economic environment rather than the short-term financial incentives will most likely be the one who will work well with local and community officials and will contribute substantially to the economic and social well-being of the area.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold?

Mr. PROXMIRE. I withhold.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business for not to extend beyond the hour of 12:30 p.m., with statements limited therein to 5 minutes each.

Mr. PROXMIRE. Mr. President, I withhold my request.

Mr. BYRD. Mr. President, does the Senator need more time?

Mr. PROXMIRE. I have finished my statement. I appreciate the minority leader's offer.

DEFENSE APPROPRIATIONS BILL FOR FISCAL YEAR 1987

Mr. D'AMATO. Mr. President, I rise to commend my good friend and distinguished colleague, the senior Senator from Alaska, for bringing us an excellent defense appropriations bill. At this point, however, I would like to draw the attention of our colleagues and the attention of the Defense Logistics Agency and the Defense Industrial Supply Center to report language included with this legislation mandating compliance with the Cargo Preference Act of 1904.

The law is clear: wherever possible Defense Department supplies must be shipped only on U.S. Government owned vessels or on U.S.-flag commercial vessels. Foreign flag shipping is permissable only in the exceptional condition when U.S. Government owned or U.S.-flag commercial vessels are unavailable.

In my opinion, it is totally unacceptable, therefore, that DLA and its subsidiary organization, DISC, have encouraged violations of this law by being extremely lax in taking action against those defense suppliers who fail to comply with the Cargo Preference Act of 1904. All defense suppliers were put on notice last September that these requirements would be strictly enforced. Yet this warning was not enforced strictly. Violations occurred, and went unpunished.

We are not asking the Defense Department to go back to the beginning of time and take action against all past violations. What we are asking in this report language is simple that the law be strictly enforced henceforth and that violations since the September, 1985 notice be pursued vigorously. This is my understanding of the meaning of this report language. I would like to inquire if it is also the chairman's understanding.

Mr. STEVENS. Mr. President, I thank the Senator from New York for his clear and concise description of the problem. I am pleased to associate myself with his statements and I wish to put our colleagues and the Defense Department on notice that my understanding of this report language is precisely the same as his own.

Mr. D'AMATO. Mr. President, I thank the chairman and I want to say that it was indeed a pleasure to work with him on this matter.

THE NEED FOR COMPETITIVE INTELLIGENCE ANALYSIS: A NEW B TEAM

Mr. HELMS. Mr. President, last week the Senate passed two amendments to the fiscal year 1987 intelligence authorization bill. The first dealt with 10 topics, but I will now address only one of them—the matter of "competitive intelligence analysis."

I have been concerned about this problem for several years. Last October, I wrote a letter to the President with a series of questions about intelligence issues which I believed needed to be treated by competitive analysis. Several months later CIA Director Casey brought over to me some highly classified answers to my questions. I was not at all satisfied with these answers, and my staff engaged in lengthy consultations with top CIA analysts about improving CIA's answers to my questions. Indeed, I wrote several additional letters to CIA Director Casey pointing out problems with his answers, and posing many additional questions which I believed should be treated by competitive analysis.

Mr. President, this correspondence is very sensitive, and the answers to my questions are certainly highly classified. But two of my letters posing questions for competitive analysis are not classified, and I therefore ask unanimous consent that they be printed in the Record at the conclusion of my remarks, together with their enclosures. Thus my interest in competitive intelligence analysis is a longstanding one. I believe that these intelligence issues are of vital importance to our national security because they deal with the problem of CIA's longstanding underestimation of Soviet intentions and military forces.

The PRESIDING OFFICER. Without objection, it is so ordered. (See Exhibit II.)

Mr. HELMS. Mr. President, we know that competitive analysis can be beneficial to our national security, because in the past it has resulted in at least short-term improvements in the quality of our CIA intelligence assessments of the Soviet Union. When my intelligence amendments were being debated, I mentioned the need for a new B Team to direct the CIA to conduct the competitive analysis called for of the 32 issues I listed. I believe a new B Team should be created by the President's Foreign Intelligence Advisory Board for the purpose of doing the competitive analysis of the required 32 issues in competition with the CIA.

An excellent article has just appeared on the history of the first B Team established in 1976, by its distinguished chairman, Dr. Richard Pipes, Baird Professor of History at Harvard University. The article appears as the lead article in the October edition of Commentary. I wish that I had been able to quote from it before my amendments were passed, but my issue of Commentary arrived a day late.

Mr. President, I would like to take just one quotation from the article, which shows the need for a new B Team to do competitive analysis against the CIA on the 32 issues. Dr. Pipes writes that:

> People well informed about the NIE process say that the current "competitive analyses" are in-house undertakings, much more limited in scope than Team B had been. Recently the CIA has let the press know that it once again takes a "less grim" view of Soviet military preparations than the Pentagon, and maintains its "independence" from the Reagan Administration's "more conservative direction" . . . See Michael R. Gordon in The New York Times, July 16, 1986.

Mr. President, this quotation clearly suggests that there has been a regression in the CIA's methodology. I believe it is time the CIA is challenged to do its utmost to implement the B Team concept.

Mr. President, I ask unanimous consent that Richard Pipes' article entitled "Team B: The Reality Behind the Myth," be printed in the Record after my two letters and their enclosures.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. HELMS. Mr. President, this excellent article clearly demonstrates the need for CIA to be directed to submit itself to the competitive analysis challenge of a new B Team established by the President's Foreign Intelligence Advisory Board.

Exhibit 1

U.S. Senate,
Washington, DC, October 2, 1985.

The President,
The White House, Washington, DC.

Dear Mr. President: In the past we have written to you seeking information about the long-standing problem at the Central Intelligency Agency regarding an apparent analytical bias which continuously under-estimates Soviet intentions and capabilities. Some have even characterized this bias as "pro-Soviet." We posed a series of questions, the answers to which would assist us in reviewing this problem, on April 25, 1985; to date no response has been received.

Now the problem has surfaced in public again. According to a recent newspaper article, the CIA's internal publication Studies in Intelligence, recently published a book review of a volume by two distinguished academic scholars on the topic of Soviet Disinformation. Soviet Disinformation is a very serious intelligence and political problem to which you, Mr. President, have personally called world-wide attention. Soviet Disinformation techniques are part of a larger intelligence problem which entails Soviet "Active Measures"—the so-called Maskirovka techniques of Camouflage, Concealment and Deception.

Yet according to the article attached, the review by CIA's publication reads as though it were written in Moscow. Instead of criticizing the analysis of the authors, it attacks the very concept that Maskirovka actually exists. Indeed, according to the information available, the CIA's review reads like a piece of disinformation itself, and appears to serve Soviet foreign policy interests. Of course, we do not have the actual text, so we ask that you supply the text to us. The article we seek is an unclassified review by Avis Boutell in Studies in Intelligence of the book Dezinformatsia by Richard H. Shultz and Roy Godson.

It seems strange for the CIA to be attacking the serious analysis of Soviet Disinformation, when the CIA should be taking the lead in unmasking Soviet Disinformation. This appears to be part of the well-documented, much larger problem at CIA—the long-standing habit of the CIA of under-estimating Soviet intentions and military capabilities. America is now faced with the dangerous implications of Soviet military supremacy, as you have confirmed by at least eight statements you have made since 1982, and by the numbers and trends in comparative U.S.-Soviet armaments.

In the most important measures of military power, the gaps between U.S. and Soviet capabilities are growing larger, not smaller, despite your vigorous Defense Modernization Program. We are still losing ground to the Soviets—and these gaps will continue to widen over the next five years. In fact, we are over 38 billion dollars behind President Carter's Five Year Defense Program, as you pointed out on March 22, 1985. Thus the "correlation of forces" has indeed decisively shifted against the United States, as Soviet political and military leaders frequently assert.

The bias of the CIA for under-estimating Soviet intentions and capabilities over the last 25 years has already had a deleterious effect on U.S. national security. But the recent implications of information resulting from KGB defections suggests that we should inquire further into the problem of this bias. Accordingly, we therefore request answers to the following additional questions as soon as possible:

1. Why does the CIA produce single-source analysis of Soviet and Communist Chinese open publications such as is done by Foreign Broadcast Informaton Service?

2. Is there an internal CIA review process to identify possible pro-Soviet bias in published unclassified or classified analytical products?

3. Was the attached article mentioned above screened to detect its possible pro-Soviet bias? If not, why not? If so, why was it published under the official imprimatur of the CIA?

4. Is there a possible pro-Soviet bias in many CIA products over the past 20 years?

5. Is there any evidence of the influence of possible pro-Soviet penetrations, moles or bias in the preparation, analysis and dissemination of intelligence products on the Soviet Union over the past 20 years?

6. Has any important intelligence analysis or evidence related to the Soviet Union ever been withheld or suppressed within or by the CIA? Did any of this intelligence evidence or analysis reveal Soviet deception? What is the Counterintelligence significance of the suppression of intelligence on Soviet deception?

7. Could a possible pro-Soviet bias have played a role in the prolonged and worsening CIA under-estimates of Soviet strategic forces in the 1960's and 1970's?

8. We have recent reports that the CIA:

(a) Has further down-graded Soviet Backfire bomber range estimates;

(b) Is negatively reassessing evidence of Soviet Biological and Chemical Warfare arms control violations;

(c) Is trying to change seismic verification methodology to make Soviet violations of the Threshold Test Ban treaty disappear;

(d) Has down-graded the accuracy of the Soviet SS–19 ICBM in a belated attempt to disprove the B Team;

(e) Is denying and down-playing evidence of Soviet Camouflage, Concealment and Deception (Maskirovka);

(f) Is denying the possibility of Soviet mole penetrations and deception in humint espionage channels;

(g) Has finally completed National Intelligence Estimate 11-11 on Soviet Strategic Deception after three years, but continues to deny Soviet SALT I negotiating deception on the size of the Soviet SS–19 ICBM, the range of the SS–N–8, the number of Soviet SLBMs in 1972, the "geographical asymmetries" rationale for Soviet SLBM superiority, Brezhnev's pledge not to build mobile ICBMs, Brezhnev's Backfire bomber pledge, Soviet-supplied Backfire bomber range data, and the Soviet SALT II Data Base.

Are these recent reports correct? Are they best explained by an under-estimative analytical bias, a possible pro-Soviet bias, bureaucratic incompetence, or all of the above?

9. Was John Paisley likely to have been a Soviet KGB mole inside the CIA, who may have been assassinated by the KGB in order to protect other CIA moles? What is the best assessment of Paisley's full career and death? Have traces of other CIA moles ever been detected?

10. Are reports that CIA has regressed into continued under-estimation of Soviet military spending correct?

11. Did the CIA miscount both the Soviet ICBM and SLBM totals, the main limitations, during SALT I? Did Soviet Camouflage, Concealment and Deception play a role in causing these miscounts?

12. Did the CIA also fail to project either the heavy throw-weight of the SS-19 or the long range of the SS-N-8 at the time SALT I was signed in 1972? Was Soviet Camouflage, Concealment and Deception involved in these under-estimates?

13. Has the CIA consistently under-estimated Soviet global objectives and misunderstood Soviet arms control objectives?

14. Can at least five years of the 10 year 1980-1990 U.S. "window of vulnerability" be attributed to under-estimates by CIA of Soviet ICBM accuracies?

In sum, we strongly agree with CIA Director Casey's initial assessment of the CIA's analytical track record made on February 13, 1981: "The most frequent criticism is that our [CIA's] interpretations and assessments have shown a tendency to be *overly optimistic*, to place a *benign interpretation* on information which could be interpreted as indicating danger. It's our obligation to present conclusions which emphasize hard reality undistorted by preconceptions or by wishful thinking . . . I found in SALT I, for example, that some of the [CIA] judgements were *soft*. They leaned toward a kind of *benign interpretation* rather that a harder interpretation of assessing or viewing a situation as being more dangerous." (Emphasis added.)

We fear, however, that despite Director Casey's best efforts, the CIA's performance has not improved.

Thank you for your prompt response to these important questions. We also again request belated answers to our April 25, 1985 questions (letter attached).

Sincerely,

JESSE HELMS.

U.S. SENATE,
Washington, DC, April 25, 1985.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: As you know, we have long been concerned about improving U.S. capabilities to verify arms control treaties with the Soviet Union. In addition, we have long been concerned with enforcing Soviet compliance, now that multiple Soviet violations have been confirmed.

As strategic arms control negotiations resume in Geneva, we have some additional concerns about U.S. ability to verify existing and proposed arms control treaties. We have a series of questions on arms control verification for which we request expedited answers:

1. In 1983, the CIA published a National Intelligence Estimate entitled "Soviet Arms Control Objectives." This NIE reportedy concluded that the Soviets would never sign an arms control treaty with the U.S. with the intention of violating it, but that the Soviets would merely exploit loopholes and ambiguities. This conclusion, however, contradicts the Defense Department Annual Report for FY 1985, which states: "Several of these violations must have been planned by Soviet authorities many years ago, in some cases perhaps at the very time the Soviet union entered into the Agreements."

The NIE also contradicts your own Presidential Reports to Congress on Soviet Arms Control Violations of January 23, 1984, October 10, 1984, and February 1, 1985. Who was the Chief of CIA's Arms Control Intelligence Staff and the National Intelligence Officers for Strategic Programs and USSR when this NIE was written? Has the CIA's view of Soviet arms control objectives changed now that multiple Soviet violations have been confirmed?

2. In March, 1982, CIA Director Casey was interviewed by U.S. News and World Report on the Kennedy-Khrushchev Agreement ending the 1982 Cuban Missile Crisis. Casey stated that the Soviets had been violating this agreement since 1962 by deploying offensive weapons in Cuba. The Chief of CIA's Arms Control Intelligence Staff then, however, reportedly refused to admit that the Soviets had made any commitments under the Kennedy-Khrushchev Agreement. Did the State Department allow the CIA access to the diplomatic history of the Kennedy-Khrushchev Agreement? Who was CIA's Chief of ACIS at that time? Has his view changed, in light of your own two public charges that the Soviets have violated the Kennedy-Khrushchev Agreement?

3. In September, 1981, the Soviets failed to give proper notification of their Zapad 81 military exercise under the terms of the Helsinki Agreement. Did CIA officially notify the Arms Control Agency of this fact, so that ACDA could make a Derwinski Amendment (Section 37 of ACDA Act) Report to Congress at the time? Who was CIA's ACIS Chief at the time?

4. In 1976, the Soviets sent their first Kiev class aircraft carrier through the Turkish Straits. Did CIA report this to ACDA at the time, so that ACDA could report it to the Congress as a Soviet violation of the Montreux Convention? Who was in charge of CIA's arms control intelligence at the time? Has CIA ever reported Soviet Montreaux Convention violations to ACDA?

5. The Soviets have reportedly been engaged in a continuously expanding pattern of Camouflage, Concealment, and Deception (CCD) since the SALT I negotiations began in November, 1969. Yet the February 1978 Carter Administration White Paper on Soviet Arms Control Compliance states that when the U.S. brought this expanding pattern of Soviet Camouflage, Concealment, and Deception to the attention of the Soviets in the SALT Standing Consultative Commission in the Spring of 1975, the pattern ceased to expand. The 1978 Carter White Paper was incorrect, however. The 1979 Molander report to Congress on the verifiability of SALT II confirms that the pattern of Soviet CCD continued to expand. The pattern continued to expand since 1979, and has continued to expand through today.

This Soviet CCD is a violation of SALT I and SALT II, because it constitutes deliberate interference with U.S. National Technical Means of Verification. Soviet CCD has not been mentioned in either the January 23, 1984 or February 1, 1985 Presidential Reports On Soviet SALT Violations. Why? Who was CIA chief of arms control intelligence in 1978 and in 1984? Why has Soviet CCD not been reported to Congress as a SALT violation?

6. Has CIA at any time contradicted the judgement of the 1978 Carter White paper that Soviet CCD did not violate SALT? If so, then why was this judgement not part of the two Presidential Reports to Congress on Soviet Violations? If not, does CIA believe that Soviet CCD is consistent with the provisions of SALT I and SALT II? Who was CIA's chief of ACIS at the time of the 1984 and 1985 Presidential Reports?

7. Did CIA do a report that the Soviet SS-16 mobile ICBM was probably deployed in violation of SALT II prior to ACDA's "Sorrells" report in April 1982? Who was in charge of CIA's ACIS at that time?

8. The Conventional Weapons Convention entered into force on December 2, 1983. Yet since then there have been public reports that the Soviets have used booby traps designed to look like toys and cluster bomb anti-personnel munitions to maim and kill countless Afghan women and children in violation of the Conventional Weapons Convention. Has CIA reported these atrocities to ACDA, so that they could be reported to Congress under the Derwinski Amendment? Who was in charge of CIA's ACIS in 1983?

9. Has CIA's ACIS ever furnished to ACDA an Intelligence Report on the verifiability of the Outer Space Treaty of 1967, so that ACDA could make a Section 37 report to Congress? Who has been in charge of arms control intelligence at CIA since 1967?

10. The Soviets have reportedly been testing surface-to-air missiles and radars in an Anti-Ballistic Missile mode since SALT I was ratified in 1972. Did CIA ever report this Soviet testing of SAMs in a prohibited AMB mode to ACDA, so that a report to Congress could be made? Who has been in charge of CIA arms control intelligence since 1972?

11. Has CIA issued a report to ACDA on Soviet arms shipments into the Western Hemisphere which may have violated the Rio Pact of 1947? Was the Marxist-Leninist government of Nicaragua a recipient of these contraband Soviet arms? Who is in charge of CIA's arms control intelligence?

12. Soviet Air Force Backfire bombers have reportedly been staged and based at Arctic bases beginning in 1983. Did CIA report this to ACDA so that a report could be made to Congress? Who was in charge of CIA's arms control intelligence?

13. In April, 1984, a salvo of multiple Soviet SS-20's was reportedly fired on a northerly azimuth aimed at the U.S. Did CIA report this to ACDA so that ACDA could report to Congress? Did this affect the CIA's assessment of whether the SS-20 might be a covert ICBM, and did this affect the CIA's assessment of the Soviet's SALT II Data Base? Who was in charge of arms control intelligence at CIA at this time?

14. Soviet Biological Warfare facilities reportedly continued to expand after the Biological Warfare Convention was signed in 1972, and they reportedly continued to expand after the Convention was ratified by the Soviets in 1975. Did CIA report these expansions to ACDA? How many innocent people have been killed since 1972 by Soviet Biological Warfare agents? Did CIA oppose the establishment of a BW Verification Interagency Group in the spring of 1976? Who was in charge of arms control intelligence then at CIA?

15. Have Soviet submarine tunnels impeded US verification of SALT I and SALT II? Are they completed? Did CIA report their hindrance of verification and their completion to ACDA, so ACDA could report to Congress? Who was in charge of CIA's arms control intelligence at this time?

16. Has the Under Secretary of Defense for Policy just turned down a RAND Corporation proposed study of Soviet Camouflage, Concealment, and Deception? Why?

Mr. President, these are all serious questions, which we request answers for as soon as possible. We are planning to request Senate hearings on the issues covered by these questions, as well as on the Constitutional aspects of arms control treaty making.

With warmest personal regards,
Sincerely,
STEVE SYMMS.
MALCOLM WALLOP.
JESSE HELMS.

[From the Washington Times, July 16, 1985]

MISINFORMATION ON DISINFORMATION

(By Arnold Beichman)

I recently read a review, published in a certain magazine to be identified later of a book, "Dezinformatsia," by two respected academics. Professor Richard H. Shultz Jr., of Tufts University's Fletcher School of Diplomacy and Roy Godson of Georgetown University. The review made the following serious charges against this book:

The book was said to use "specious arguments to prove the obvious."

It misrepresents reality to prove a simplistic point.

It is "misguided," exhibits a "total lack of understanding" about Clausewitz, shows "a superficial understanding of current history and the Soviet Union."

It didn't "fairly report" the content of Soviet journals, it has treated the subject "irresponsibly," it suffers from "extraordinarily naive assumptions" and "erroneous history."

And the book was said "ultimately" to serve "neither scholarship nor the national interest."

Such harsh language about the published work of academics can be defined as a form of character assassination, since it questions their honor as teachers and researchers. For my part, to be even harsher, I would say that this review could, with little editing, have appeared in a Soviet publication.

Now, then, would you like to guess in what left-wing, pro-Soviet, progressive journal this book review appeared? If you're very smart and sophisticated, you might try and guess, but you'd be wrong. I'll have to tell you:

This book review appeared in an official magazine of the government of the United States, a magazine published by the Central Intelligence Agency—yes, by the CIA under the supervision of the Deputy Directorate for Intelligence that is responsible for all CIA analyses of world affairs.

The publication, a quarterly called "Studies in Intelligence," is an "in-house" publication. It is not distributed publicly since some articles are classified, others, such as the book review I am discussing, are unclassified. The essay-review, in the magazine's winter 1984 issue, was written by Avis Boutell, a CIA analyst, who works for the Foreign Broadcast Information Service.

When I read the Shultz-Godson book some months ago to prepare my own favorable reviews, I found it a cool, scholarly examination of Soviet propaganda and disinformation strategies. So did a number of other distinguished Sovietologists and publicists, such as Professors Adam Ulam and Uri Ra'anan. Dr. Robert Conquest, and Professor Sidney Hook, who wrote the laudatory introduction.

The book, now in its third edition, included what I regarded as highly informative interviews with defectors who had specialized, while in the service of the KGB in the U.S.S.R. and Czechoslovakia, in "active measures." The Soviet strategy of "active measures" involves, for the most part, covert disinformation as "a non-attributed or falsely attributed communication, written or oral, containing intentionally false, incomplete, or misleading information (frequently combined with true information), which seeks to deceive, misinform, and or mislead the target," according to the Shultz-Godson definition.

In other words, the book describes a panoply of Soviet tactics to manipulate the media in the democracies, the use of "agents of influence," sponsorship of clandestine radio broadcasts, and use of international front organizations. These strategies and tactics are excellently described in this important book.

Not only is "Studies in Intelligence" an official government magazine, but it also is published by a U.S. secret service. It therefore must be assumed that whatever is published therein represents the official view of the CIA or, at the very least, the point of view of CIA analysts. As an analogy, a Voice of America editorial, for example, must be approved by responsible State Department officials before it can be read on the air.

If the CIA book review reflects the political culture of the CIA and the world in which its analysts live, then some of the egregious errors about Soviet intentions made by the CIA over the past 15 or more years, errors which have been publicly discussed in the press and by the two congressional committees on intelligence oversight, become understandable.

One could take apart, paragraph by paragraph, this CIA book review to demonstrate its use of the rhetoric of overkill.

Here I want merely to deal with the political approach of a CIA analyst whose views, no matter what the CIA might say, seem to harmonize with the agency's ethos, which I pray is not that of William J. Casey, CIA director. That his review got past Mr. Casey, I can understand: he has more important problems to deal with. But isn't there somebody in his organization who has the wit, understanding, and common decency to realize that the language used to discuss the Shultz-Godson book might be better suited to a review of Hitler's *"Mein Kampf"*?

Take this sneering, reductive sentence in the review: "They [the authors] seem less concerned to understand the Soviet Union than to prove that it is irrational and the West totally benign."

Now anyone who has read this book knows that the authors do not seek to prove that the U.S.S.R. is irrational. On the contrary, what they demonstrate is that the Soviet KGB is performing with great skill its assignment to further the Politburo's foreign-policy objectives. The givaway phrase in that sentence is "to prove . . . the West totally benign."

Of course, the authors nowhere try to show that the West is totally benign. Such a thesis is irrelevant to the book since it is merely attempting to discuss Soviet "active measures," not the good intentions of the West.

But let's face it: couldn't a victim of Soviet totalitarianism, rotting in one of its prison camps—or an Andrei Sakharov or Anatoly Shcharansky—say that, in comparison to the wholly rational tyranny of the U.S.S.R., the West is "totally benign?"

What the author (and in this, I am sure, the reviewer reflects the views of the CIA establishment) clearly rejects (and the targets of the review do not) is the meaning of Marxism-Leninism as a permanent constituent of Soviet foreign policy. What that doctrine means is that Mikhail Gorbachev cannot regard as legitimate any system of rule other than communism. Marxism-Leninism sees other political systems as doomed to fall because of the "contradictions of capitalism."

Since Marxism-Leninism carries the banner of history and the future, the U.S.S.R. alone has the right to judge who shall live and who shall die. That is why negotiation with the Soviet Union, except on its own terms, is doomed to fail until the Soviet Union accepts—in practice, not in joint communiques—an amendment to the eschatology of Marxism-Leninism.

The CIA reviewer demonstrates—let's call it naivete—a surprising naivete in assuming that the Soviet media, during the Nixon-Kissinger-Ford detente period, out of conviction sincerely ascribed to the West "realistic, positive qualities.".

And she attacks the authors for not giving due credit to this thawing of the eternal Soviet winter. Of course, the Soviet media were willing to be kinder and less strident because it was during detente that the U.S.S.R. engaged without Western opposition in the greatest arms-building program of any country in history. The Soviets continue that program to this very day.

But then there came a time when the kissing had to stop. The Soviet media changed the lovey-dovey, bear-hugging music. What in heavens' name did the West do that forced upon a doting Soviet Union a change of tune, from detente mellowness to cold war harshness? Was the error to accept sadly the destruction of 269 lives on KAL 007? Sadly accept the killing of Major Nicholson? Sadly accept the attempt on the pope's life? Sadly accept martial law for Poland? Sadly accept the Soviet invasion of Afghanistan?

But let us assume that the reviewer is correct in some of her criticisms. Does that call for a savage rhetorical barrage which borders on high-level billingsgate? Does it call for a cannonade of unprovable charges such as the claims that the book "hurts" the profession of intelligence, and the efforts to develop "a rational foreign policy," and that that the book services "neither scholarship nor the national interest?" If anybody has "hurt" the profession of intelligence, it would be Avis Boutell and whoever edits the CIA magazine.

What kind of behavior is that, William Casey? Is someone down there trying to get even with somebody else?

(Arnold Beichman, a founding member of the Consortium for the Study of Intelligence, of which Professor Godson is coordinator, frequently writes about intelligence matters.)

EXHIBIT 2

TEAM B: THE REALITY BEHIND THE MYTH

(By Richard Pipes)[1]

Four year ago, the Secretary of Defense, Caspar Weinberger, in answer to a question whether the United States expected to emerge victorious from a nuclear war, responded that anyone in his position who did not prepare to prevail in a war deserved to be impeached. This statement did not attract a great deal of attention, for it seemed obvious, although in fact it repudiated the doctrine of Mutual Assured Destruction (MAD) that had dominated U.S. policy since the late 1950's. To understand this evolution in American strategic thinking it is worthwhile recalling the episode of "Team B" which occurred ten years ago as a result of the decision of the then-Director of Central Intelligence, George Bush, to commission alternative assessments of the Soviet strategic threat.

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[1] RICHARD PIPES is Baird Professor of History at Harvard and served in 1981-82 at the National Security Council as Director, East European and Soviet Affairs. His latest book is *Survival Is Not Enough*. Among his previous articles in COMMENTARY are "How To Cope With the Soviet Threat" (August 1984) and "Soviet Global Strategy" (April 1980).

When the United States dropped atomic bombs on Japan, the military effect of these new weapons escaped no one, but their impact on future strategy was only dimly understood and a subject of controversy. The consensus of the scientific community, which had designed the new weapons, held that by virtue of their unprecedented destructiveness as well as their imperviousness to defenses, they had fundamentally and permanently altered the nature of warfare. Once other countries had acquired the ability to manufacture similar weapons—and the scientists correctly predicted that this was bound to occur before long—they would become unusable. With more than one power disposing of nuclear weapons, they could not be employed with impunity, as they had been by the U.S against Japan: hence they would have only one conceivable function and that would be to deter others. Since victory in nuclear war was out of the question, nuclear weapons could not be rationally put to offensive purposes.

This outlook, championed in the pages of the *Bulletin of Atomic Scientists* and, later, *Scientific American*, did not gain immediate ascendancy. Presidents Truman and Eisenhower, confronting Communist aggression in Europe and Asia and unable—because of fiscal restraints—to stop Soviet expansion with conventional forces, had no choice but to rely on the threat of nuclear response. That this threat could be effectively used, Eisenhower demonstrated in 1953 when he compelled the North Koreans to accept an armistice. Later he and his slogan of "massive retaliation" with which they hoped to contain the Soviet Union and its clients at minimum cost and without resort to the unpopular military draft.

Such nuclear blackmail, of course, was possible only as long as the United States retained a monopoly on the manufacture of nuclear weapons and the vehicles (bombers) able to deliver them to other continents. This monopoly eroded faster than expected. The Soviet explosion of a fission bomb in 1949 and fusion (hydrogen) bomb four years later shocked the United States, but it did not yet force it to abandon the strategy of "massive retaliation" because the Russians lacked adequate means of delivering these explosive devices against the United States. These means they acquired in 1957 when Sputnik demonstrated their ability to launch intercontinental missiles. Since there existed at the time no effective means of intercepting such missiles, certain to be armed with nuclear charges, the United States faced, for the first time in its history, a direct threat to its national survival.

This prospect traumatized President Eisenhower, forcing him radically to alter U.S. strategic doctrine. Unable to resort to the threat of nuclear annihilation to contain the Soviet Union, he decided henceforth to seek security through accords with Moscow. Such a course had been urged by many leading scientists. Within weeks after Moscow had sent Sputnik into space, Eisenhower moved the Science Advisory Committee chaired by the provost of MIT, James Killian, to the White House to give him guidance in these matters. This step marked a break in the U.S. defense planning because it involved, for the first time, civilian experts in the formulation of military strategy. Henceforth the scientific community, working through the Advisory Committee as well as other channels, acquired a dominant voice in the formulation of U.S. nuclear strategy. The scientists used this voice to lead U.S. strategy away from traditional ways of military thinking and toward arms-control negotiations. They were to retain this voice for nearly a quarter of a century, until the advent of the Reagan administration.

II

The growing influence of scientific modes of thinking on all aspects of life is probably the most outstanding feature of modern Western culture. It began in the 16th century with the revolution in astronomy and then spread into other realms of thought, including the humanities and social studies. Properly speaking, science is not content but method—a strictly empirical way of dealing with phenomena which assumes that whatever cannot be observed and measured does not exist.

Applied to human affairs, this method has produced the "science of man" or sociology. Conceived in France in the early years of the 19th century, sociology and its theoretical underpinning, positivism, deprecate national culture and history as factors that shape human behavior in favor of abstract conceptions of man, isolated from time and space. In the words of Leszek Kolakowski:

> Contemporary positivism is an attempt to overcome historicism once and for all . . . it . . . frees us from the need to study history, which—since any philosophy worthy of the name must be cumulative in character—must appear to those professing this doctrine as a succession of barren, futile efforts, basically unintelligible as to results, and only very occasionally illuminated by a ray of common sense.

Scientists are by schooling and experience committed positivists. They are impatient with everything that they regard as "irrational," that is, outside the reach of scientific observation. F.A. Hayek has explained well the *déformation professionelle* of the scientist when confronted with the messy world of living human beings:

> What men know or think about the external world or about themselves, their concepts and even the subjective qualities of their sense perception are to science never ultimate reality, data to be accepted. Its concern is not what men think about the world and how they consequently behave, but what they ought to think.

When they run into what they regard as "irrational" ideas or forms of behavior, scientists turn into educators who instruct wayward mortals what to think. It is psychologically as well as intellectually impossible for most of them, and especially for the most gifted, to accept the irrational as real. So persuaded are many scientists of the incontrovertible and universal validity of their method that in their public capacity they readily succumb to a fanaticism that is quite impervious to both argument and experience. They are no more prepared to take seriously the proposition that nuclear weapons might be effective instruments of warfare than to waste time proving that the earth is not flat.

Of course, there is no iron necessity that a scientifically trained person must think and act in this manner: Andrei Sakharov and Edward Teller are proof that great scientists can entertain a variety of points of view on human affairs. But it takes a great deal of civic courage to stand up to a consensus of one's peers, especially if it is reinforced with political influence and access to funding. Experience shows that most people will more readily face enemy bullets than what Samuel Johnson called the hiss of the world.

Having been brought into the process of decision-making and given political influence never before enjoyed by members of their profession, American scientists quickly formulated a body of opinion that brooked no opposition. Alternative views were silenced, their advocates ostracized. The scientists were divided among themselves on certain issues but they were united in the belief that the only rational function of nuclear weapons was to deter.

One group, which soon came to dominate the debate, called for deterrence through agreement. Its advocates, among whom Hans Bethe was one of the most visible, believed that nuclear weapons were so destructive that they could deter at a low level. Instead of building more weapons of this kind (especially the hydrogen bomb, which they opposed), the U.S. should intensify efforts to reach arms-control agreements with the Soviet Union. A second group, led by Edward Teller, advocated deterrence through strength. It wanted to neutralize the Soviet threat with still more potent and accurate bombs on the ground that in a world of sovereign states international accords provided inadequate guarantees of national security. The first group urged avoiding an arms race with Moscow in favor of "educating" the Russians to its futility and striving, through bilateral agreements and even, if need be, unilateral concessions, for mutual reductions. The second group wanted, if necessary, to match and surpass the Soviet effort. How intolerant scientists can be when vested with political power they demonstrated in 1957 by excluding Teller and all who throught like him from the influential Science Advisory Board. In this way, through exclusion, they achieved a consensus that allowed them to offer Presidents advice with singular authority.

The strategic policy imposed by scientists and adopted by the U.S. government in the 1960's may be summarized as follows: the only scientifically sound strategy is Mutual Assured Destruction. This means that once both superpowers have acquired a certain level of retaliatory power, should either of them dare to attack the other, it would be struck with so devastating a blow that it would suffer as much as its victim. As defined by Secretary of Defense Robert McNamara, MAD demanded that the United States, after absorbing a Soviet surprise first strike, be capable of responding with a retaliatory strike that would wipe out between one-fifth and one-third of the Soviet Union's population and between one-half and three-quarters of its industrial capacity. Anything beyond this arbitrarily established standard of "unacceptable damage" was redundant and "destabilizing." McNamara decided that a force of 1,000 ICBM's, 41 submarines, and 600 bombers would ensure the U.S. of the ability to inflict such damage on the Soviet Union even under the "worst-case" scenario.

This strategy regarded defenses of any sort as unsettling the balance because they raised the prospect that either country, using them as a shield, could launch a preemptive strike with relative impunity. For MAD to work, both sides had to be vulnerable to destruction. One of the earliest advocates of this doctrine, Arnold Wolfers, formulated what must surely be the most bizarre doctrine in the history of military thought when he argued that for the United States to feel secure from the Soviet Union it had to make certain that the Soviet Union possessed the ability totally to destroy it.

The public at large was not initiated into the complexities of Mutual Assured Destruction. It was told simply that there was "overkill," that nuclear build-ups beyond the figures set by McNamara constituted "madness," and that henceforth security lay not in unilaterally arming but in mutually disarming. These propositions became dogma.

Since scientists tend to endow people, as they do inanimate objects, with an innate logic, they entertained no doubt that nuclear weapons could have but one "rational" use. The Soviet Union could no more produce a Communist nuclear strategy than a Communist science of physics. This reasoning led to the inescapable conclusion that the Soviet Union had either already adopted MAD or would do so in time, in deference to the immutable laws of nuclear reality. That the USSR was indeed moving in this direction, the scientists had an opportunity to persuade themselves in the course of arms-control negotiations, in which they played an important role, as well as form contacts with Soviet scientists at various private conferences which proliferated in the 1960's. Totally ignorant of Communist politics and not particularly interested in them, these scientists turned strategists and diplomats allowed themselves to be persuaded by their Soviet counterparts that the latter enjoyed the same influence in Moscow that they themselves had in Washington, and were also working to restrain their own "hawks" and their own "military-industrial complex."

Thus it happened that for two-and-one-half decades arms control rather than arms build-up became the centerpiece of U.S. defense policy: a situation without historic precedent and testimony to the success of American scientists in persuading the country that the atomic bomb had completely altered the conduct of international affairs, creating an environment in which, as in Alice's Looking Glass world, everything was topsyturvy.

The scientists in charge of U.S. strategy, confirming Hayek's observation, blandly ignored that human affairs are subject to different rules and that in a century-and-a-half of strenuous efforts sociologists have failed to come up with universal laws of human conduct remotely resembling those of the exact sciences. They seem to have been unaware of the distinction between the value-free ("objective") natural sciences and the value-determined ("subjective") social sciences which philosophers like Heinrich Rickert and Nicholas Mikhailovsky had demonstrated already in the 19th century. Their ignorance of history blinded them even to the possibility that the Soviet leadership, steeped as it was in a radically different political culture and pursuing different objectives, could also view nuclear weapons differently.

The Soviet *nomenklatura* (the ruling elite of the Communist party), very experienced in taking advantage of the weaknesses of its victims, brilliantly exploited the political innocence of American scientists (as well as the vanity which is perhaps the most vulnerable trait of intellectuals) to persuade them of a spurious identity of views and interests between East and West. At Pugwash, Dartmouth, and countless other formal and informal meetings held now in the U.S. and now in the Soviet Union, they told the Americans just what the Americans wanted to hear: that MAD was indeed the only strategic doctrine that made sense, that parity was all their country wanted, and that arms control, not arms build-up, was the way to assure both national and international security. The time had come for scientists of all countries to take power away from politicians and generals.

When more skeptical American scientists raised awkward questions, their Soviet counterparts had ready answers. The Soviet civil- and military-defense effort? That was against China, of course. Continuing quantitative and qualitative improvements in Soviet missiles? The Russian tradition, shaped by centuries of foreign invasions, calls for overinsurance. The refusal to furnish figures on the Soviet nuclear arsenal or to allow on-site inspection? Unfortunately, Russians have always been a secretive nation. By pretending (in private only) to hold their people and some of its leaders in low esteem, they created an atmosphere of make-believe mutual trust that dissolved such misgivings as American scientists might still have had.

Had U.S. scientists not relied so much on private confidences but taken the trouble to read Soviet military literature and to look, without preconceptions, at ongoing Soviet strategic programs, they would have had to realize that something was terribly wrong with their assumptions. Soviet military publications, which are subject to the most rigid censorship imaginable and therefore always speak with an official voice, made no secret of the fact that Moscow had decided nuclear weapons could be used not only to deter but also to overpower. From the early 1960's on, Soviet strategists argued that nuclear weapons were the decisive weapons of modern warfare and the key to victory, for which reason the Strategic Rocket Forces had become the mainstay of Soviet armed might.

Had Soviet strategists done nothing more than assert this thesis, one could have dismissed such talk as pap for the generals. But they also provided a rationale. They argued that nuclear charges and intercontinental missiles had revolutionized warfare by making it possible to launch preemptive strikes, which, in contrast to conventional war, allowed a country to gain a strategic decision at once rather than slowly, from a patient accumulation of tactical victories. When speaking to each other in the pages of Soviet military journals, Soviet experts simply ignored the doctrine of Mutual Assured Destruction which Soviet disinformation agents were ladling out at their convivial encounters to science professors from Harvard, MIT, and Stanford. Nor did Soviet experts pay more than marginal attention to arms control, so central to U.S. strategic thinking. Soviet professional literature, such as the journal *Voennaia mysl' (Military Thought)*, concerned itself exclusively with the question that has stood at the center of military thinking since the dawn of history: how to win wars.

It is especially baffling that American strategic amateurs ignored even the warnings of Andrei Sakharov, a fellow scientist and a member of the Soviet defense establishment, whose moral integrity and expertise were beyond question. In 1975, this creator of the Soviet hydrogen bomb stated in a book published in English in the United States, as if it were a self-evident truth, that the introduction of missiles with multiple and independent warheads (MIRV's) would make it attractive for a potential aggressor to attack:

The fact that the Vladivostok agreement seemed to legitimize multiple, independently targetable warheads is . . . alarming. . . . Put quite simply, it would become *strategically advantageous, and relatively safe,* for either side to deliver a preemptive strike with nuclear missiles.[2]

And if such "soft" evidence did not convince, then the "hard" data on Soviet deployments should have provided food for thought. When McNamama served as Secretary of Defense, the U.S., accepting his notion of what was required to inflict "unacceptable damage," unilaterally froze its strategic arsenal. By this restraint it enabled the Soviet Union to catch up and thereby create the "stability" posited by MAD. The only subsequent upgrading of U.S. strategic forces was the introduction of MIRV's intended to give the U.S. retaliatory force the ability to respond effectively after much of it had been lost to a Soviet first strike.

The Soviet Union took advantage of this restraint to gain strategic parity by 1969. Then, instead of freezing its arsenal as well, it merrily proceeded to deploy a fourth generation of MIRVed missiles with throw-weights and accuracies that could have no other conceivable mission that the elimination of the U.S. deterrent in time of war. Concurrently, it carried out an ambitious program of strategic defenses which had no counterpart on the U.S. side: air defense, anti-satellite systems, civil defense, and an anti-ballistic-missile defense system around its capital city. These measures alone should have alerted the American scientific community that the Soviet Union did not subscribe to MAD, since they contradicted its fundamental principle that each country had to remain a willing hostage to the other.

But all the evidence which did not accord with the hallowed MAD doctrine was ignored. The American scientific community soon joined by bevies of political scientists, economists, philosophers, and even lawyers, physicians, and psychiatrists, came to regard strategy not as a theory of conflict but as an intellectual game. And since in intellectual circles the highest honors go to individuals who produce the most innovative ideas, whatever their relationship to reality, if any, the greatest fame and influence went to those who formulated the most original and elegant ideas. Soviet views were ignored precisely because they fell far short of these standards.

And indeed, the strategic theories formulated by American natural and social scientists were entirely fresh: they demonstrated how wrong it is to say that there are no new ideas under the sun. Among these were such propositions as "the task of the military is not to win wars but to prevent them," "offense good, defense bad," and "killing cities is right, killing missiles is wrong." All such propositions would qualify for what Ivan Turgenev used to call "reverse commonplaces."

III

The task of collecting and analyzing data on Soviet strategic deployments falls on the U.S. intelligence community, headed by the Director of Central Intelligence (DCI), who also serves as Director of the Central Intelligence Agency (CIA). It consists of a number of bureaus of which the most important are the Defense Intelligence Agency (DIA) and the National Security Agency (NSA). In producing its estimates, the intelligence community relies almost exclusively on satellite and electronic surveillance because the Soviet Union has consistently refused not only to allow on-site inspection but even to provide comprehensive figures on its nuclear arsenal.

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[2] *My Country and the World* (Knopf, 1975), p. 71, emphasis added.

Possibly the single most important product of the intelligence community is the National Intelligence Estimate on Soviet Strategic Objectives, known as NIE 11⅜. Prepared annually, toward the end of the year, in time for the new defense budget, it is released to a select body of officials who have the "need to know." This NIE summarizes the information available on Soviet strategic capabilities, projects them into the future, and assesses their probable missions. The personnel assigned the task of drafting this document under the National Intelligence Officer for the Soviet Union are to ignore U.S. capabilities and avoid balance-of-power estimates ("new assessments"). The function of NIE 11⅜ is simply to inform the decision-maker: as best as we can determine, the Soviet Union is developing such and such strategic capabilities; it is up to you to decide what these developments portend for U.S. security and how to respond to them.

Although the bulk of such data is gathered by mechanical devices that are free of value judgments, they must be interpreted by human beings who are never without them. In practice it is not possible completely to divorce an assessment of capabilities from the judgment of intention: the significance of a person's purchasing a knife is different if he is a professional chef or the leader of a street gang, although the technical "capability" which the knife provides is the same in each case. In one way or another, more often unconsciously than not, the analyst who studies Soviet nuclear capabilities injects into this analysis subjective opinions as to their purpose, which, in turn, derive from his view of why the Soviet Union builds a nuclear arsenal in the first place. Even the most technical assessment of "capabilities," therefore, entails some view of the motives of the opposite party.

Now he who speculates on the motives of others can proceed in one of two ways. He can ask himself: (1) given what I know of these people, what can be on their minds?; or (2) if I were in their shoes, why would I do what I observe them doing? Clearly, the first of these approaches is preferable. It is also the more difficult because it requires knowledge of alien cultures and psychologies, not to speak of an effort of the imagination. If we add to this difficulty the fact that the scientists and engineers entrusted with responsibility for preparing these estimates tend to belittle the influence of cultural factors on human behavior, it is hardly surprising that the U.S. intelligence community, in assessing Soviet strategic programs, has relied heavily on the second approach, popularly known as "mirror-imaging." This practice attributes to others one's own motives and intentions on the unspoken assumption that these alone are "normal" or "rational." "Mirror-imaging" is the very antithesis of the scientific method which seeks to eliminate personal and subjective factors from the process of observation and analysis. Yet, paradoxically, it is precisely how scientists are likely to proceed once they leave the realm of the exact sciences.

A nation's intelligence community reflects the habits of thought of its educated elite from whose ranks it is recruited and on whom it depends for intellectual sustenance. The CIA is no exception. Its analytic staff, filled with American Ph.D.'s in the natural and social sciences along with engineers, inevitably shares the outlook of U.S. academe, with its penchant for philosophical positivism, cultural agnosticism, and political liberalism. The special knowledge which it derives from classified sources is mainly technical; the rest of its knowledge, as well as the intellectual equipment which it brings to bear on the evidence, comes from academia.

In the 1970's, collating and analyzing the evidence on Soviet strategic programs, the U.S. intelligence community (with some exceptions, notably the DIA) tended to reason in terms of conventional wisdom. It took for granted the universal validity of MAD and interpreted the data on Soviet strategic programs to mean that whatever the USSR constructed had to serve deterrent purposes exclusively. It ignored Soviet pronouncements to the contrary, partly because they appeared scientifically absurd, partly because it felt uncomfortable with "soft" data. On these grounds, it implicitly minimized the Soviet strategic threat.

The intellectual predispositions which led to such conclusions were reinforced by political pressures from the Nixon White House. Having staked their political careers on détente, Richard Nixon and Henry Kissinger disliked intelligence estimates that stressed the Soviet threat to the United States and showed the USSR moving beyond deterrence. Persons who at the time worked in the intelligence community assert that in 1969–70 the White House began to intervene in the estimating process. It did so not by demanding that the estimates came up with politically acceptable conclusions, but that they concentrate exclusively on the technical data or hardware, avoiding what Kissinger called "talmudic" estimates. This had the same effect because by eliminating informed, conscious, and overt political judgment from the estimates, it led to the injection of surreptitious political judgments disguised as hardware analyses.

Thus, paradoxically, as satellite surveillance enhanced the ability of the U.S. to monitor Soviet nuclear deployments, its ability to interpret them declined. The intelligence community expressed no alarm at the unanticipated build-up of Soviet strategic capabilities in the 1970's, the decade when the United States virtually froze its nuclear arsenal in the expectation that Moscow would do likewise. The fact that in the 1970's the USSR deployed eleven new strategic systems as against one deployed by the U.S. was brushed aside with arguments that made sense only in terms of the MAD doctrine.

Some individuals in and out of government, however, grew uneasy about the assurances issued by the CIA and began to urge an independent review of its data base to determine whether a second reading of the evidence would not yield different results.

Overseeing the performance of the intelligence community on behalf of the Executive is the responsibility of the President's Foreign Intelligence Advisory Board (PFIAB), composed of prominent business executives and other public figures, engineers, and scientists. The group meets several times a year to review intelligence reports, raise questions, serve as devil's advocate, and make recommendations to the President and the Director of Central Intelligence. In the summer of 1976, PFIAB had fourteen members. Four of them were chief executive officers of high-technology corporations: William O. Baker of Bell Telephone Laboratories, John S. Foster, Jr. of TRW, Robert W. Galvin of Motorola, and Edwin H. Land of Polaroid. Two—Admiral George W. Anderson, former Chief of Naval Operations, and General Lyman L. Lemnitzer—were professional soldiers. Edward Teller was the sole scientist. The remaining seven figured prominently in public life: John B. Connally (former Governor of Texas), Gordon Gray (one-time Secretary of the Army), Clare Booth Luce (the writer and former Ambassador to Rome), Robert D. Murphy (a retired diplomat), George P. Shultz (then ex-Secretary of the Treasury), and Edward Bennett Williams (a well-known Washington attorney). Leo Cherne, an economist and director of Freedom House, chaired the group. The composition of PFIAB was weighted in favor of realists who viewed with varying degrees of skepticism the doctrines of soft-line scientists and professional arms controllers.

Early in 1975 PFIAB began to feel uneasy over the performance of the CIA in estimating the trend of Soviet strategic forces. Several factors contributed to this anxiety. In 1974, Albert Wohlstetter, a leading specialist on nuclear weapons, had published evidence to show that although the public, remembering the "missile-gap" fiasco, considered the intelligence community guilty of exaggerating the Soviet nuclear threat, in fact it had persistently underestimated it. It so happened that at about the same time, on the basis of fresh data, the CIA upgraded its estimate of Soviet defense expenditures from 6–8 percent of GNP (which was only slightly higher than the American figure) to 11–13 percent. This radically revised estimate not only made the Soviet threat loom much greater, but cast fresh doubts on the quality of intelligence assessments. Quite independently, John Collins of the Congressional Research Service, on the basis of open sources, published in January 1976 a study of the Soviet military effort which painted a much grimmer picture than that proffered by intelligence: an updated edition, completed later that year, proved so disturbing and so much at odds with the government's policy that the study's sponsor, the Senate Armed Services Committee, saw fit to suppress it.

Reports of such contrary opinions worried PFIAB, which approached President Nixon at the beginning of 1975 with the suggestion that he appoint an independent body of experts to look into the intelligence data. Nixon showed no interest in this suggestion, the more so since William Colby, his Director of Central Intelligence, strongly objected to outsiders "second-guessing" the staff of his agency.

When Gerald Ford replaced Nixon as President, PFIAB restated its concerns. In August 1975, its chairman, Admiral Anderson, proposed a "competitive analysis," to be carried out under the direction of the White House through its National Security Council. That would pit a team of outside experts against the CIA, to determine whether the two groups, using the same data, would or would not reach the same assessment of the Soviet strategic threat. Ford liked the idea but Colby remained adamantly opposed. To appease the critics, Colby now proposed to conduct an in-house review of the Agency's "track record" in regard to the three most controversial aspects of the Soviet strategic effort: air defense, missile accuracy, and strategic objectives. For this project, he selected active and recently retired personnel of the CIA. According to Lionel Olmer, who was PFIAB's executive secretary at the time:

The CIA produced a "track record" study about 75 pages long. It was so astonishing that Bush (Colby was gone by then) had absolutely no option but to accept the A-B Team proposal. The study was so condemnatory of the performance of the community over a period of ten years on those three issues that it left no room for argument that something ought to be done.[3]

In late 1975 George Bush took over a battered and demoralized CIA: he was so troubled by its condition that soon after assuming office he commissioned the consulting firm Arthur D. Little to look into its problems. Bush was much more receptive to PFIAB's proposal, and in June 1976 agreed with its new chairman, the ebullient Leo Cherne, to carry out an experiment in "competitive analysis," but under his own auspices rather than those of the National Security Adviser. Three outside teams were to be selected to look into Soviet air defenses, missile accuracies, and strategic objectives. The CIA's group, charged with drafting the current (1977) NIE 11⅜ would be known as "A Team." "B Teams" would consist of independent outside experts: they were to work with the same raw data that the Agency supplied to its A Team. The analyses were to be completed by November 1976, in time to permit revisions in the forthcoming NIE, due in December, if such were deemed necessary. The experiment required complete secrecy in order to prevent the leakage of sensitive intelligence material and to keep the findings from being exploited for partisan political purposes.

The rules having been agreed upon, the CIA (rather than PFIAB, as is often erroneously asserted) began the search for outside experts to man the three B teams. It encountered little difficulty in staffing the groups investigating missile accuracies and air defenses, for their tasks were narrowly technical. Staffing Team B on Soviet strategic objectives proved more difficult because its task called not only for technical expertise but also for political judgment. As I was to learn later, the Agency approached unsuccessfully two individuals to chair this team. One, on active government service, was refused leave by his superior, Secretary of State Kissinger, to take on the assignment. The other declined for personal reasons. On the recommendation of his National Intelligence Office staff, and in agreement with William Hyland of the National Security Council, Bush then selected me for the post.[4]

My wife and I were spending the summer of 1976 in London where I was working in the British Museum Library on the Russian Civil War. I knew, of course, nothing of the negotiations between PFIAB and the CIA over competitive analyses of National Intelligence Estimates. By profession and preference a historian, I had had only limited political experience, owing mainly to the interest which Senator Henry Jackson and his assistant, Dorothy Fosdick, had shown in my criticism of détente. In 1973, Richard B. Foster, head of the Strategic Studies Center in Washington, a branch of the Stanford Research Institute (SRI), had invited me to join his Center as a consultant, in which capacity I directed several studies of Soviet foreign policy. Even so I was in no sense a member of the establishment of defense experts; since the purpose of Team B was to take a fresh look at the Soviet nuclear effort, however, my being an outsider, without a vested interest in the consensus, was an advantage.

In mid-July 1976 Foster called me in London to say that I had been offered, through SRI, an interesting and important assignment connected with Soviet strategy. Since I intended to return to the United States soon, we agreed that he would give me the details when we next met in Washington.

I returned home on July 22, and the following day saw Foster as well as a representative of the CIA, John Paisley, who outlined to me the purpose and scope of the undertaking. I then spoke with E. Henry Knoche, the Agency's Deputy Director, and Howard Stoertz, the National Intelligence Officer responsible for drafting NIE 11⅜, whose counterpart I was to become. To these officials I posed the principal questions on my mind. Our mandate: how far-reaching an inquiry did they envisage? I also wanted to know whether we were expected to act as a panel of judges, adjudicating between contending points of view, or advocates of an alternative point of view to that found in the official estimates. The answer I received to the first question sounded vague, from which I concluded that the team I was being asked to chair could cast its nets as widely and deeply as it thought necessary. In view of the complaints repeatedly voiced later that our team had "exceeded its mandate," it needs to be stressed that all the officials to whom I spoke before and after accepting the assignment left it up to us to determine what we needed to do to answer the question: what are Soviet strategic objectives? The response to the second question was: make as strong a case as you can if you disagree with the official estimate.

The task looked challenging and important. If, nevertheless, I hesitated at first to take it on, it was because of fear that I lacked the necessary expertise in the scientific and engineering issues involved in the designing, testing, deploying, and targeting of nuclear missiles. Foster dispelled these doubts by arguing that the whole subject had too long been analyzed in narrowly technical terms, as if the strategic competition involved impersonal weapons systems rather than the human beings who controlled them. As for the technical expertise, this could be assured by appointing to the group professional missile specialists.

Inasmuch as the work required access to highly classified sources, I had to undergo a series of intensive security clearances that included an encounter with the polygraph. These and other preliminaries were completed by the middle of August, at which time I began work. The Agency assigned to me as liaison John Paisley. Paisley had retired two years earlier as Deputy Director of the CIA's Office of Strategic Research, in which capacity he had participated in the drafting of NIE's. This soft-spoken man with a perpetually worried face, who was to die a mysterious death two years later, rendered my Team B essential services. But he also had an additional task, which was to keep an eye on Team B on behalf of the Agency: in this second capacity he was later to behave in a quite unsavory manner.

Paisley presented me with a list, drawn up by the Agency, of candidates for membership on my team: as far as I recall, it consisted mostly of military officers and defense scientists. From this list I selected only two names: Lieutenant General John W. Vogt, Jr., the recently retired commander of the U.S. Air Forces in Europe, and the missile specialist, Brigadier General Jasper A. Welch, Jr., then still on active service.

For the other members of the team, I preferred to go outside the ranks of technical specialists in the narrow sense of the term. I acted on the premise (which I still believe correct) that Soviet leaders, in contrast to those of the West, neither draw a sharp distinction between nuclear and conventional weapons nor divorce military objectives from political ones. Soviet strategy claims to be and indeed is "grand strategy" which avails itself of a wide range of instrumentalities, military force very much included, to pursue what, in the end, are always political ends. Seen from this perspective, Soviet strategic forces can have no independent mission as determined by the alleged properties of nuclear weapons: in Soviet practice, military missions are driven by political missions, not the other way around. This view is axiomatic in Soviet military writings: "The organic unity of military strategy and policy with the determining role of the latter," in the words of one Soviet general writing in a publication "for official use only," "signifies that military strategy proceeds from policy, is determined by policy, is totally dependent on policy, and accomplishes its specific tasks only within the framework of policy."[5] Nothing could be more emphatic. Clearly, to understand the task of Soviet Strategic Rocket Forces one has to combine knowledge of Soviet nuclear capabilities with an understanding of the policy in which it is embedded.

With these criteria in mind, I recommended to the DCI nine additional names. They were: Paul Nitze, a one-time Deputy Secretary of Defense and probably the country's leading expert on arms control; Lieutenant General Daniel O. Graham, who had retired earlier that year as Director of the Pentagon's Defense Intelligence Agency, an institution which had consistently taken a more somber view of Soviet capabilities and intentions than the CIA; Professor William van Cleave, a strategic expert from the University of Southern California and one-time member of the SALT I delegation; Foy Kohler, an ex-Ambassador to Moscow; Paul Wolfowitz, a young specialist from the Arms Control and Disarmament Agency; Thomas Wolfe of RAND, the author of several works on Soviet military doctrine; and Seymour Weiss, then Ambassador to the Bahamas, recently retired as Director of the Bureau of Political and Military Affairs in the Department of State. These names received approval. The CIA turned down two additional candidates I proposed, one on the grounds that he lacked the necessary security clearances, the other for reasons which it did not care to spell out.

IV

Team B held its first meeting on August 25 in quarters assigned to it in Arlington, Virginia. the group promptly agreed on the

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[3] "Watchdogging Intelligence," in *Seminar on Command, Control, Communications, and Intelligence* (Incidental paper, Center for Information Policy Research, Harvard University, 1980).pp. 179-80.

[4] For the sake of brevity, I shall henceforth apply the term "Team B" to the group charged with analyzing Soviet strategic objectives, but it must be borne in mind that there were two other B Teams.

[5] Colonel General A. Maiorov in *Voennaia mysl'*, No. 1, January 1975.

structure of its report: it would not be an alternative NIE 11⅜ but a broad and in-depth survey of Soviet strategic policies and programs. We had to work on an exceedingly tight schedule because to be of use to the CIA our report had to be in hand early in November. We agreed to have a preliminary draft ready on October 14: a deadline which proved unrealistic and had to be extended. The report was to consist of three parts. Part One would analyze the methodology used by the CIA in arriving at its estimates: I assumed responsibility for this task. Part Two would have several studies of specific Soviet strategic programs each of which would lay out the nature of the available evidence, the interpretation given this evidence by the CIA, and possible alternative interpretations. Responsibility for this, the longest segment of the report, was distributed among members of the team in accord with their special expertise and personal preferences. Part Three, to be drafted collectively, was to provide a general political-military assessment of the Soviet strategic build-up. (Later on, we added an Appendix with recommendations for improving the NIE process.)

We set to work at once. Paisley and his assistant, Don Suda, supplied us with the intelligence data used by Team A to prepare the current NIE 11⅜, and such additional information as we requested. Some of this material was so sensitive that the Agency would not let it out of its Langley headquarters and made us read it on the premises. I found the personnel at Langley correct but suspicious and hostile: they seemed to look on our undertaking as yet another assault on this Agency which was still reeling from recent congressional investigations.

Team B met in its full complement a dozen times. At these meetings we heard from the rapporteurs and went over their drafts. Opinion was far from unanimous and as the work progressed some heated exchanges took place. Part Three proved to be especially contentious. It had to be edited over and over again to produce a consensus. For a while it looked as if it would require separate majority and minority statements, but in the end this proved unnecessary.

Paisley, who attended most of our meetings as an observer, seems to have sent Langley alarmed reports that Team B was going beyond its mandate: instead of focusing exclusively on current intentions of the Soviet Union, it was also delving into the reasons why the Agency had in the past misinterpreted these intentions. Not long after our work had gotten under way, I received through him a request from Langley that we not engage in "recriminations" over the CIA's track record.

We decided not to follow this advice and this on grounds that can best be explained in connection with the recent space-shuttle accident. The commission appointed to study the causes of the *Challenger's* explosion could have confined itself strictly to technical matters, namely, the reasons for the failure of the booster mechanism. If NASA had been in charge of the inquiry, this almost certainly would have been its preference. But NASA's mistakes are not shielded by walls of secrecy as are those of the intelligence community. The commission President Reagan appointed wisely chose to broaden its investigation to include questions of management and decision-making at NASA. It did so not to engage in "recriminations" and find scapegoats but to identify the human failures behind the mechanical ones. The inquiry quickly ascertained serious managerial failings that had caused the catastrophe and recommended changes in personnel and procedures.

Team B felt, on similar grounds, that if the Agency had for years turned out faulty estimates—and, in common with Colby's in-house review, we believed that this had been the case—then it would be of little value to provide merely an alternative estimate. Our group, after all, was an ad-hoc body, destined to dissolve in a couple of months. If the NASA reverted to its old ways after the experiment was over and continued to provide flawed estimates, then our whole effort would have been in vain. On this reasoning we felt it necessary to broaden our inquiry to include methodological as well as procedural factors responsible for the faulty estimates so that they could be corrected. Robert Galvin, whom PFIAB had designated to deal with our team, agreed with this reasoning during my only encounter with him early in September.

Team B's report remains highly classified. Its classification is so restrictive as to grant access to it only to a very small number of persons among the many who have a professional interest in it. I cannot help feeling that such extreme restrictiveness has less to do with the sensitivity of its material than with the political embarrassment that it has caused the CIA. It should certainly be possible to remove from it references to the classified data and to release publicly a sanitized version.

Be that as it may, it is not possible at this time to reveal the contents of Team B's report, and one can refer to it only in the most general terms. The report charged that in estimating Soviet strategic objectives the CIA had consistently engaged in "mirror-imaging," including insertions of unproven assumptions about Soviet behavior, as well as surreptitious "net assessments." The products of such faulty methodology had served to buttress the apparent belief of the Agency's analysis that the Soviet Union, like the United States, accepted the Mutual Assured Destruction doctrine and built its strategic arsenal for strictly defensive (retaliatory) purposes. Without actually proving the point with reference to U.S. capabilities (which they were enjoined from doing), CIA analysts had conveyed the impression that the Soviet strategic build-up presented no threat to U.S. security.

The political implications of such an assessment happened to favor détent and to place the main burden for its success on the United States, to the extent that Soviet deviations from MAD were ascribed to Russian paranoia that America alone could assuage. Although the Agency's analysts had a great deal of both "hard" (technical) and "soft" (verbal) evidence to demonstrate if not necessarily the validity, then at least the feasibility, of another interpretation, they chose to ignore it. Their approach indicated neither knowledge of Russia and Communism nor concern with these subjects: they treated the Soviet threat as if it derived from inanimate objects, not from the people who stood behind them.

We, on our part, concluded that the evidence indicated beyond reasonable doubt that the Soviet leadership did not subscribe to MAD but regarded nuclear weapons as tools of war whose proper employment, in offensive as well as defensive modes, promised victory. Soviet nuclear strategy had to be seen in the context of "grand strategy." We also suggested procedures for the preparation of NIE's that would ensure that such faults as we had identified would not recur: they essentially boiled down to the proposition that Soviet nuclear programs be interpreted in Soviet, not American, terms.

During the first two months of their work, Team A and Team B did not communicate. Then, torward the end of October, as prearranged, the two teams exchanged drafts. The Team A document which we were given did not differ much from previous NIE 11⅜'s either in premises or in conclusions. It continued to interpret Soviet behavior in American terms: here and there, for purposes of self-protection, the analysts inserted cautionary statements to the effect that perhaps, after all, the USSR did not have exclusively defensive objectives in mind.

On November 5, at 1 p.m., the two teams confronted each other at Langley to criticize their respective drafts. The news of what was certain to be a lively encounter spread quickly in the intelligence community and admission to the crowded room was said to have been at a premium. In this highly charged atmosphere. Teams A and B took seats on opposite sides of a long table. Howard Stoertz, the head of Team A, chose to sit in the back, entrusting the opening skirmish to his junior staff.

As subsequently reported in the press, the meeting proved a "disaster" for Team A. This outcome was at least in some measure due to the Agency's unwise decision to field against senior outside experts a troop of young analysts, some of them barely out of graduate school, who, even if they had had a better case to make, could not help feeling intimidated by senior government officials, general officers, and university professors. The champion for Team A had barely begun his criticism of Team B's effort, delivered in a condescending tone, when a member of Team B fired a question that reduced him to a state of catatonic immobility: we stared in embarrassment as he sat for what seemed an interminable time with an open mouth, unable to utter a sound. Later Stoertz came to the rescue, but he did not save the Agency and his office from emerging badly mauled.

I do not know what happened within the Agency immediately after this encounter, but I strongly suspect that George Bush intervened to have Team A substantially revise its draft to allow for Team B's criticism. On December 2, the chairmen of both teams presented their findings to PFIAB. Bush attended the meeting but did not speak. I listened with mounting disbelief as Team A advanced an estimate that in all essential points agreed with Team B's position. Then my turn came to deliver a summary of our findings. It was slightly disconcerting to have no reaction from PFIAB, for the few questions which followed were quite perfunctory. At the time I did not know what to make of it but I was later told that the panel's silence was due to its being "thunderstruck" at hearing what many of its members regarded as the first realistic assessment of Soviet strategic intentions to come before it.

Team B met for the last time on the morning of December 21 at Langley. Here, in a large auditorium filled with personnel from various branches of the intelligence community, the A team and the three B teams presented summaries of their findings. George Bush thanked us for our efforts and invited us to lunch: I could not help noticing that no member of my Team B was asked to sit at his table. Bush's position was delicate in the extreme, given the sweeping criticism of his Agency by a group which he had brought into being, and he may not have wished to identify openly with it. He had shown great courage in allowing an external review of the work for which he bore ultimate responsibility. Later on, during congressional hearings, he stated that he strongly favored competitive analyses and would recommended to his successor that he continue them. That day he signed the revised NIE 11⅜ that was to set a new standard.

Four years later, when I joined the staff of the National Security Council, I had a chance to convince myself that the post-1976 strategic estimates in every respect excelled those which we had read and criticized. And these new estimates, of course, exerted influence on U.S. defense policies, in a limited way under President Carter and in a major one under President Reagan.

V

There was one respect in which the experiment in competitive analysis did not succeed and that was in maintaining secrecy. While our work was still in progress, Paisley told me that he had received a call from David Binder of the New York Times. He managed to put Binder off for the time being but the secret clearly was out and, given its explosive nature, the press was certain soon to be in hot pursuit. Indeed, on October 20, 1976, the Boston Globe carried an article by William Beecher, one of Washington's outstanding defense reporters, with a brief description of Team B's work and a partial list of its members. Other media ignored this news, as they did Beecher's account on December 17, which concluded that "well-placed sources familiar with the story say [Team B's report] is the most devastating indictment ever made of the CIA's Board of Intelligence Estimates." Who had leaked to Binder and Beecher I have never found out. In view of these leaks it occurred to me that it might be advisable for the DCI and PFIAB to release a brief official statement. The powers that be, however, rejected this suggestion: its only effect was to make me a prime suspect in the leaks.

Then the New York Times once again demonstrated that in the United States an event is news only when its editors designate it as such. On Sunday, December 26, the Times carried on its front page an article by Binder headlined "New CIA Estimate Finds Soviet Seeks Superiority in Arms." This item stimulated an avalanche of public inquiries, and for the next several weeks Team B was constantly in newspaper headlines and on prime-time television.

Binder (who had been a tutee of mine at Harvard in the 1950's) called me a few days prior to the appearance of his article to request an interview. I refused but promised to reconsider when he told me that he had already spoken with George Bush and Richard Lehman, a high CIA official. I called Lehman to verify Binder's account. He confirmed it and encouraged me to talk to Binder as well. I saw Binder subsequently at Washington's National Airport and gave him a hurried interview on the Team A-Team B experiment, in broad outline, avoiding particulars.

Binder confused some of the facts, but in its essentials his account was correct. The TV networks at once seized on the news and deluged me with requests for appearances, all of which I turned down. I did, however, give some additional newspaper interviews and published rejoinders in the *Times* and the Washington *Post*.

The story broke at the very time the Ford administration was about to vacate the White House. Although as its whole previous history indicates, the experiment in competitive analysis had nothing whatever to do with this transition, which was as unanticipated as it was irrelevant to its task, journalists and, following them, some legislators hastened to interpret Team B as nothing but a crude political ploy. President-elect Carter had pledged to pursue SALT II negotiations and to cut back the defense budget by $5 billion. If, at the very moment he was assuming office, the intelligence community, acting under alleged external pressure, had altered its estimate to make the Soviet threat appear more menacing, the effect pointed to the motive: to wreck SALT II and compel Carter to increase the defense budget. To make this argument it was necessary to impugn the integrity of Team B and PFIAB.

The initial reaction of the Carter administration—whether out of ignorance or for purposes of obfuscation, it is difficult to tell—was to pretend that Team B had questioned the U.S.'s ability to meet the Soviet military threat. On January 1, 1977 President Carter stated: "We're still by far stronger than they are in most means of measuring military strength." He repeated this assurance in his State of the Union Address later that month. The Secretary of State designate, Cyrus Vance, during his confirmation hearings showed more caution but was equally far off the mark when he voiced confidence that there existed "general parity" between the two superpowers. When pressed, he conceded that the had neither read the Team B report nor received a "thorough briefing" on it.

The outgoing Secretary of State also rushed into the fray. When the experiment was taking place Kissinger seems to have raised no objections to it, possibly because it began during the presidential campaign when he had other things on his mind and ended when he was about to leave office. But he realized that the thesis of the Team B report struck at the very heart of his Soviet policy, which had posited that the nuclear competition should not prevent the two sides from reaching accords on a broad range of issues because they both subscribed to MAD. On January 10, 1977, at a farewell gathering at the National Press Club, he disposed of the whole exercise as nothing more than an effort to "sabotage SALT II." He went on to assure his audience "that no American President would ever allow the Soviet Union to gain superiority over the United States." In the next breath, he added that "the concept of 'supremacy' makes no sense in the nuclear age." Sober heads among his listeners must have wondered why, if supremacy no longer made sense, a President of the United States should work so hard to deny it to the Soviet Union.

It may be added as a postscript that two years later, in a complete about-face, Kissinger told the London *Economist* that he had erred in adhering to the MAD doctrine: nuclear supremacy did, indeed, matter very much. Why he had once held the one view and now its opposite, and what had made him change his mind, he did not explain.

Prominent legislators also rushed into the fray. One of them was Senator William Proxmire, who lost no time declaring that Team B's supposed allegations—that the Soviet Union had "already achieved military superiority over the U.S." and was "not only aiming at superiority but preparing for war"—could only be explained by the tendency of the military establishment . . . to cry wolf at budget time." Even a cursory reading of press reports should have told the Senator that Team B neither made such claims nor worked for the military establishment. Proxmire cited the opinion of the chairman of the Joint Chiefs of Staff, General George Brown, who said that while he believed the Soviet Union did not as yet enjoy military superiority, "the available evidence indicates that the USSR is engaged in program" to achieve such superiority. This, of course, was exactly the conclusion of Team B: the "available evidence" to which the General referred could only have been its report and the revised NIE. Yet Proxmire praised General Brown for his "courageous statement," although he did nothing but echo Team B which Proxmire himself had accused of "crying wolf."

I clipped and filed the press notices, which were amost uniformly hostile. The editorial writers and columnists of the New York Times, the Washington Post, and the Washington Star concurred that the Team A-Team B exercise had been misbegotten and that it primary purpose had been not to reach an objective judgment but to derail the "orderly process of intelligence evaluation" for purely political ends. The British press taking its cue from the U.S., fell into step. So did Red Star, the organ of the Soviet military, and Pravda, which cited Western opinions to argue that Team B was yet another effort of American "hawks" to scuttle détente and raise defense expenditures. Brezhnev professed to be bored by the whole affair. "Frankly speaking," he declared in mid-January, "this noisy and idle talk has become quite tiresome. The allegations that the Soviet Union is going beyond what is sufficient for its defense, that is it striving for superiority in armaments with the aim of delivering a first strike are absurd and totally unfounded." For good measure Brezhnev added that this country "will never take the path of aggression, and will never raise a sword against other nations." This was going a bit far perhaps, but at least Brezhnev showed that unlike the incumbent U.S. President and his Secretary of State, much of Congress, and most of the Western media, he at least knew what Team B was about: not Soviet capabilities but Soviet intentions.

Among the self-styled "experts" on Team B who proliferated at this time, the most voluble was a certain Arthur May Cox. Cox had long ago worked for the CIA, which lent him an air of authority in matters concerning intelligence. By the time the Team B story broke, he was among the most extreme advocates of détente: a reviewer of a book Cox published in 1976 said that the author believed the "arms race will end when the United States decides to end it." Cox had never seen the Team B report even from a distance, but this did not inhibit him from declaring categorically in the *New York Review of Books* that "all its conclusions are either wrong, or distorted, or based on misinterpretation of the facts."

And finally, there was the scientific community. Team B challenged its most cherished political convictions as well as its political interests. If Team B's conclusions became U.S. policy, then the hold which the scientists of the "deterrence-through-agreement" school had had on U.S. strategic planning and weapons programs for twenty years would be broken. The scientists reacted, therefore, with understandable anger. I did not follow their pronouncements on the subject closely, but I see no reason to think that the reaction of two prominent scientists from Cambridge, Massachusetts in an interview with the *Harvard Crimson* was an isolated example. Bernard Feld, an MIT physicist, dismissed Team B's findings on the grounds that the group consisted of "well-known spokesmen for the American Right." The Harvard chemist, George Kistiakowsky, labeled the undertaking "one of those red-herring stories." Neither gentleman was familiar with the contents of Team B's report, and neither responded to its findings as reported in the press. Their reaction was strictly *ad hominem*, a kind of pseudo-argument that always betrays the absence of ideas.

The shower of confused and ignorant abuse was, of course, unpleasant. But it was even more disturbing. It revealed that the intellectual elite of the United States, which had arrogated to itself the right to determine U.S. defense strategy, was unable, intellectually as well as psychologically, to cope with alternative points of view.

Having spent my entire adult life in scholarship, I took it for granted that a statement of fact, provided it is not meaningless, can only be either correct or false—it cannot be "good" or "bad", "moral" or "immoral." He who makes a factual statement can be faulted on no other grounds than wrong perception of the facts or faulty inference from them. His motives in making it are as irrelevant to its veracity as are its implications. This much seems obvious. No one in his right mind would accuse a physician who diagnoses a patient as suffering from terminal illness of harboring ill will toward the patient and his family: at most one would question his judgment and seek another opinion. But in politics, as I was to learn in the winter of 1976-77, other rules prevail. Here the first, and often the last, question asked is not: is the proposition true?, but: why has it been made and what are its practical consequences?

In all the discussions of Team B the one question that mattered the most was never raised: was the Soviet Union really seeking nuclear superiority? So preoccupied were the politicians, journalists, and left-wing intellectuals with what they presumed to have been the motives of Team B and the potential political fallout from its findings that they never bothered to inquire whether its principal conclusion was correct. In any event, in my extensive collection of newspaper clippings there is not one which addresses itself to this central issue. In this respect, the writers for the New York *Times*, Washington *Post*, London *Sunday Times*, *Red Star*, and *Pravda* differed only in their journalistic manners, not in the quality of their thinking.

It was also disconcerting to learn that those who had claimed the final say on nuclear strategy could not distinguish the discrete elements that go into security estimates. Soviet nuclear capabilities and intentions were hopelessly mixed up with each other and with the separate question of the overall military balance. The proposition that "the Soviet Union strives for nuclear superiority" was confounded with the question of whether the Soviet Union intended imminently to attack the United States. In the end, the reaction boiled itself down to the juvenile boast, "I am stronger than you," supplemented with the MAD qualifier, "But even if I am not, it does not matter because there can be no fighting." It is not difficult to imagine with what amusement Soviet professional strategists must have followed this particular "national debate."

Regrettably, the same confusion was to attend subsequent U.S. public discussions of arms control, nuclear programs, and strategic defenses.

VI

On January 7 and 8, 1977, the press announced that no fewer than three congressional committees were undertaking to investigate the Team A-Team B affair. The most important of these was the Senate Select Committee on Intelligence whose Subcommittee on Collection, Production, and Quality of Intelligence, chaired by Adlai Stevenson, was to determine whether any improper pressure had been brought to bear on the Agency to have it "slant" its estimate. It gives some idea of the spirit in which these inquiries were carried out that neither I nor any other member of Team B was invited to testify before those committees. Their source of information was the CIA, which thus enjoyed the enviable position of appearing as both plaintiff and sole witness.

The Senate Foreign Relations Committee held a closed hearing on January 18, at which George Bush testified. Although the Washington Post headlined its report "'Worst-Case' Intelligence Hit," every Senator who spoke to its correspondent after the hearing praised the Team A-Team B experiment. Hubert Humphrey, Clifford Case, and Jacob Javits commended the Agency for organizing the competition and incorporating Team B's findings into its estimate. Case declared that "political considerations" had not altered the official estimates. Humphrey expressed the opinion that the U.S. still enjoyed a nuclear "edge," but that it was "questionable whether we can maintain that edge" into the 1980's. Charles Percy thought that to alert the Russians to American concerns, the new findings should be made public, but he failed to convince Bush.

The Senate Foreign Relations Committee held "hearings," a format which permits diverse opinions to be heard and enables the Senators to take part in the inquiry. The Senate Intelligence Committee, however, chose a different and much less satisfactory route of preparing a "report." This procedure requires no witnesses to be called. It is a research effort in which busy Senators do not participate personally but rely on their staffs; at best the Senators read the finished product before affixing their signatures to it and contribute a personal statement. In such an exercise, the quality of the staff is critical. The Intelligence Committee assigned the task of drafting its report on Team A-Team B to two staff members who had strong ideological and personal biases against Team B and everything it stood for. The staff director of the Committee, William G. Miller, had drafted the Cooper-Church Amendment that cut off aid to Vietnam, and, as Senator Cooper's assistant, had actively fought the ballistic-missile defense program (ABM). It was presumably his responsibility to select the person in charge of the Team A-Team B report. His choice fell on Harold Ford, a recently retired employee of the CIA (which he subsequently rejoined). By virtue of his entire background, Ford could hardly have been expected to sit in judgment on a case so painful to his colleagues in the Agency. The two men worked assiduously and quietly, with the assistance of the CIA. So it happened that the Team A-Team B inquiry was conducted by active and retired CIA personnel—that is, essentially by Team A. Ford briefly interviewed some members of Team B, but he relied mainly on testimony by Paisley who provided a highly partisan account.

I first learned of these developments in July 1977 when I received a letter from General Graham in which he wrote that he had heard through the "grapevine" that the Intelligence Committee had drafted, in utter secrecy, a biased and denigrating report on Team B. I immediately wrote Senator Stevenson requesting permission to see this document. I argued that if the intelligence community had been given the opportunity to present its side, then Team B should at least be allowed to read and comment on the Committee's product. Senator Stevenson must have been unaware of what Messrs. Miller and Ford had been doing on his Subcommittee's behalf, for he immediately agreed that Nitze, Graham, and myself should be given access to the classified report.

The document I saw was an indictment of Team B, filled with slanderous accusations. As I now learned, it had been completed as early as May but had not yet received the approval of the Committee, which gave us an opportunity to correct its misstatements and slurs. Its most offensive feature was its questioning of the personal integrity of PFIAB and Team B, whose members stood accused of conniving to carry out, in the guise of intellience estimating, a political operation. It charged Team B with exceeding its original mandate; of ignoring the "raw data" supplied to it by the Agency; of conspiring with PFIAB in the selection of personnel as well as the formulation of conclusions; of reaching conclusions before it had seen the evidence; and of leaking to the press. The principal source of these accusations was Paisley.[6] These charges notwithstanding, the report found many of the criticisms which Team B had made, and many of its recommendations, to be sound and worthwhile. It did not explain how a group of such low integrity, using such flawed procedures, could produce anything of value, but this contradiction could not be avoided since the authors of the report, while condemning Team B, had to explain why the Agency had allowed itself to be so strongly influenced by it.

Appended to the report was a personal statement by Senator Gary Hart which summarized this whole indictment. "The [Intelligence] Committee report and the information from other sources," Hart wrote, "has convinced me that 'competitive analysis' and use of selected outside experts was little more than a camouflage for a political effort to force the National Intelligence Estimates to take a more bleak view of the Soviet strategic threat." Whether he realized it or not (for such senatorial statements are usually prepared by staff), Senator Hart was accusing the fourteen members of PFIAB and the ten members of Team B of placing their personal political objectives ahead of the nation's interest.

I submitted to Senator Stevenson a point-by-point rebuttal. (So did, separately, Nitze and Graham.) I asserted that we could not have "exceeded our mandate" since no responsible person in the Agency had restricted the scope of our inquiry. As for our alleged disregard of the "raw data," I observed that the Committee could arrive at such a conclusion only by ignoring Part Two of our report, which almost entirely relied on them. I stated that prior to joining Team B, I had not met a single member of PFIAB (I later learned that PFIAB had been equally ignorant of my existence) and hence that no "collusion" could have taken place even if it had been on anyone's mind. I had talked only once to Robert Galvin, and then in Paisley's presence. I, not PFIAB, had personally selected all the members of Team B, and my choices had the approval of the Director of Central Intelligence who had picked me to be chairman. The charge that Team B had reached its conclusions before analyzing the CIA material could be disproven with reference to its work schedule, which I provided. The Committee report furnished no evidence to substantiate its charge that members of Team B had had unauthorized communication with the media. As for Senator Hart's accusations, I found them contemptible slander: the best that could be said in his favor was that he did not realize what he was saying when he accused ex-Secretaries of the Treasury and the Army, an ex-Deputy Secretary of Defense, a one-time Chief of Naval Operations, and presidents of major corporations of deliberately misleading their government on a matter of the greatest importance to national security.

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[6] Except for some minor matters connected with Team B finances, this was my last contact with Paisley. On October 1, 1978, his badly decomposed body was found floating in Chesapeake Bay. There was a bullet wound in his head and diver's belts were wound around his waist. The circumstances of his death have not been cleared up to this day (the CIA conducted an investigation but did not release its findings). The most likely verdict is suicide but murder cannot be precluded. Some journalists have claimed that at the time of his disappearance Paisley had materials on Team B on his sailboat. See the New York *Times Magazine*, January 7, 1979.

These rejoinders fortunately did attract the attention of the Committee, because it held up approval until the report could be revised to allow for our corrections. The staffs of Senators Malcolm Wallop and Daniel Patrick Moynihan greatly contributed to this editorial work. The Committee finally approved the revised text on February 16, 1978. I have not seen the full, classified text but the public version showed considerable improvement.[7] The verdict remained negative. While it commended Team B for having made "some valid criticisms" and "some useful recommendations," the Committee thought that the experiment proved less valuable than it might have been because Team B was too one-sided in its composition and had exceeded its mandate. Press leaks have further reduced its value. Still—in the public version, at any rate—the personal attacks on members of PFIAB and Team B were omitted. The Committee report also accepted one of the basic premises of Team B, that "strategic" should be interpreted "in the context of Soviet interest and policies."

Appended to the Committee's public report, alongside Senator Hart's statement, were "separate views" by Senators Moynihan and Wallop which appraised positively the work of Team B and refuted some of the criticisms by the Committee's majority. Moynihan disposed of the complaint that the undertaking had been carried out in an "adversarial" manner because of the "one-sided" composition of Team B:

Given the B Team's purpose, it is hardly surprising that its members' view reflected "only one segment of the spectrum of opinion." Inasmuch as the main purpose of the experiment was to determine why previous estimates had produced such misleading pictures of Soviet strategic developments, it was reasonable to pick team members whose views of Soviet strategy differed from those of the official estimators, just as a similar experiment, had one been conducted in 1962, might have called for a "B Team" composed of strategic analysts who had been skeptical of the "missile gap."

Senator Wallop criticized the preoccupation of the Committee's report with procedures. The Intelligence Committee, in common with the media, had refused to address itself to the central issue, namely, the soundness of Team B's findings, preferring to concentrate on the producers it had used. This was a strange self-imposed limitation for a group charged with overseeing the quality of intelligence. Conceding that the revised report improved on the original, Wallop nevertheless thought it "still fundamentally flawed, because, in the words of the [Committee] report, it "makes no attempt to judge which group's estimates concerning the USSR are correct." Therefore the report's "findings and recommendations for improving the quality of future NIE's on Soviet capabilities and objectives are primarily directed at procedural issues." But it is logically impossible to determine the *quality* of opposing arguments without reference to the *substance* of those arguments. After all, the *quality* of an estimate depends above all upon its *accuracy*. In order to make judgments concerning quality, never mind suggesting improvements, one must judge where the truth lies against which the estimate's accuracy is to be measured.

By the time this report was released, Team B had faded from memory, and it attracted little attention. The original draft, however, even though eventually discarded, managed to inflict serious harm on the intelligence process. In May 1977, when Harold Ford completed his draft, PFIAB, which it cast as the chief culprit, was peremptorily abolished. Leo Cherne, its chairman, received, along with his letter of dismissal, an application for unemployment insurance. The timing may have been coincidental; but it is more likely that the new DCI, Admiral Stansfield Turner, used the initial draft of the report to rid himself of the group charged with overseeing his Agency.[8]

VII

The subject which remains to be discussed is Team B's influence on the attitudes of the U.S. government and public opinion toward the Soviet nuclear threat. Such matters are inherently difficult to appraise. Team B did not so much come up with fresh revelations as articulate and justify doubts about Soviet intentions which had been gaining ground among political and military experts for some time. Such impact as it exerted resulted from the fact that it stated what many were thinking but did not dare to say. This is confirmed by the speed with which the views of Team B, once the spell of conformity had been broken, spread in and out of government. Proponents of MAD found themselves for the first time confronted with an articulate and well-informed opposition: their monopoly on opinion fell apart. Barely a year after the event, in his appendix to the Intelligence Committee's report, Senator Moynihan wrote that Team B's "notion that the Soviets intend to surpass the United States in strategic arms and are in the process of doing so, has gone from hearsay to respectability, if not orthodoxy." Ideas spread this rapidly only when they have already germinated in many minds.

Within the government, as I have noted, the views advanced by Team B initially affected thinking through the revised 1977 NIE and its successors. In the years that followed, the Agency's analysts ceased to "mirror-image": this fact alone gives the lie to the charge that Team B had "pressured" the Agency to alter its 1977 estimate. In fact, miniature Team B's had existed all along inside the intelligence community, the CIA included, but they were silenced by the official consensus and confined to cautionary remarks and dissenting footnotes. Team B gave these minority views such strong and persuasive support that they emerged on top. Team B through its recommendations also had a lasting effect on the manner in which estimates were henceforth prepared. According to Herbert Meyer, who recently retired from the National Intelligence Council of the CIA, "We have put a major emphasis on competitive analysis. The estimates now routinely include dissenting opinions."[9]

The responsibilities of office quickly cured the Carter administration of its glib and uninformed opinions of Team B. On assuming his duties, Zbigniew Brzezinski, Carter's National Security Adviser, commissioned a number of studies on the Soviet strategic threat and potential U.S. responses. This work, carried out quietly to avoid the kind of public controversy that had followed the A-B Team experiment, promptly led to the conclusion that Team B had been correct in its assessments: the Soviet Union was indeed developing a first-strike capability. In 1980, probably in an effort to refute candidate Ronald Reagan's criticism of their administration's nuclear policy, Carter's officials began to leak these findings to the press. Once again, the redoubtable William Beecher of the Boston *Globe* broke the news. On July 27, 1980, he published an article headlined "U.S. Reshaping N-Strategy Against the Soviets," in which he reported that a new statement was being drafted in the National Security Council on U.S. nuclear strategy. It would reject Mutual Assured Destruction and the targeting doctrine based on it, which called for the retaliatory strike to concentrate on civilian targets, in favor of one directed principally at political and military targets. The purpose of the new strategy was to ensure that even if attacked in a first strike, the U.S. would have the ability to wage a protracted war. The new strategic doctrine, formulated in the summer of 1980 in a Presidential Directive (PD 59), marked the beginning of a radical shift in U.S. strategic policy.

No less important were parallel shifts in public opinion. Here a major contribution was made by the Committee on the Present Danger (CPD), a bipartisan body of prominent public figures founded in Washington in the summer of 1976. (To prevent exploitation of its findings for campaign purposes, the founders of CPD postponed formal announcement until after the presidential election of that year.) Paul Nitze, a member of Team B, was one of the Committee's founders. Its other leaders—among them, Eugene V. Rostow, Dean Rusk, Lane Kirkland, Max Kampelman, Richard Allen, David Packard, and Henry H. Fowler—felt apprehensive about the strategic balance and dedicated themselves to alerting the public to the decline in U.S. military capabilities.

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[7] The National Intelligence Estimates—A-B Team Episode Concerning Soviet Strategic Capability and Objectives, released by the Senate Select Committee on Intelligence on February 16, 1978.

[8] President Reagan reinstituted PFIAB shortly after assuming office.

[9] *Insight*, June 23, 1986, p. 15. People well informed about the NIE process say that the current "competitive analyses" are in-house undertakings, much more limited in scope than Team B had been. Recently the CIA has let the press know that it once again takes a "less grim" view of Soviet military preparations than the Pentagon, and maintains its "independence" from the Reagan administration's "more conservative direction." As an illustration of "past political pressures," its spokesmen referred to the A-Team/B-Team experiment. This may be a sign of the changing political climate. See Michael R. Gordon in the *New York Times*, July 16, 1986.

Early in 1977 I was invited to join CPD's Executive Committee and wrote two programmatic statements for it, one on Soviet global strategy ("What Is the Soviet Union Up To?"), the other on Soviet arms-control policies ("Why the Soviet Union Wants SALT II").[10] Under the skilled direction of Charles Tyroler, CPD conducted press conferences, commissioned opinion polls, and released facts and figures on the strategic balance. In the propitious atmosphere created by the Team B controversy, public interest was keen. CPD had much influence on public perceptions of the Soviet threat, with the result that voters soon took a more favorable view of increased defense expenditures and a more critical one of SALT II, which CPD selected as its particular target. My article, "Why the Soviet Union Thinks it Could Fight and Win a Nuclear War," published in the July 1977 issue of Commentary, explained how and why politicized scientists and uncritical devotees of arms control had misconstrued the Soviet strategic threat.

By the time President Reagan took office, the views of Team B and CPD were unmistakably in the ascendant. A remarkable shift in public opinion had taken place, which helped the new administration to proceed with its ambitious program of defense procurements. Several commentators, seeking to define President Reagan's views on foreign and defense policies, found their source in Team B.[11] It did not escape them, either, that nearly thirty of the officials whom Reagan—himself a member of CPD—chose for high posts in the first weeks of his administration belonged to the Committee on the Present Danger, an organization that saw eye-to-eye with Team B. President Reagan's distaste for arms control as a political tool, his insistence on building up first offensive nuclear forces and then anti-nuclear defenses, all rested on the premise that the U.S.S.R. held a different view of the utility of nuclear weapons from the United States, regarding them as guarantors not of peace but of victory. From this premise it followed that if the U.S. deterrent were to prove effective it had to be constructed in terms that were credible to the Soviet General Staff, even if they held no appeal for American civilian strategists.

Thus the United States government at last came to terms with the military implications of a weapon that it was the first to develop and employ but for a long time refused to acknowledge as a reality in the international balance of power. The opponents of this realistic view have had to retreat. They have regrouped and returned to the fray in President Reagan's second term, bringing to bear powerful pressures from such diverse sources as the Department of State, much of Congress, and the European allies. President Reagan is once again told that national security is best assured not by the construction of offensive and defensive weapons but by accords with the Soviet Union. The battle is far from won. But at least the arms-control lobby no longer has a monopoly on opinion: it obstructs but it does not dictate U.S. defense policies.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1200

Mr. SIMPSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wyoming is recognized.

CALENDAR

Mr. SIMPSON. Mr. President, after conferring with the Democratic leader, I inquire of the minority leader if he is in a position to pass the following items on the calendar: Calendar Nos. 925, 932, 933, 935, 987, and 988.

Mr. BYRD. Mr. President, those items which have been enumerated by the distinguished majority whip have been cleared by all Members on this side and the minority is ready to proceed.

Mr. SIMPSON. Mr. President, I ask unanimous consent that the calendar items just identified be considered en bloc and passed en bloc and that all committee-reported amendments, preambles, and title amendments be agreed to en bloc.

Mr. BYRD. Mr. President, reserving the right to object, I shall not object.

NATIONAL HUNGARIAN FREEDOM FIGHTERS DAY

The joint resolution (S.J. Res. 385) to designate October 23, 1986, as "National Hungarian Freedom Fighters Day," was considered.

● Mr. RIEGLE. Mr. President, I commend the Senate for giving its unanimous support to Senate Joint Resolution 385, designating October 23, 1986, as "National Hungarian Freedom Fighters Day."

This year will mark the 30th anniversary of the courageous effort by the Hungarian people to free themselves from their Soviet oppressors. For the Hungarian-American community in this country, and for the Hungarian people living in the homeland, the memory of that event is as vivid today as it was three decades ago.

That point was eloquently made in a letter I received from a woman, whose seriously ill mother, a native of Hungary, was touched to learn of Congress' commemoration of Hungarian Freedom Fighters Day. She wrote of her mother's reaction to the resolution which retells the story of the Hungarian people's struggle for freedom:

> [My mother] is Hungarian, is 76 years old, and remembers well the uprising * * *. I read your article to her. She was thrilled to hear about it and really spoke of events at that time with a very pleasing animation, something she's not been able to do for a long time.
>
> She was very happy to hear that you would feel that efforts made by the Hungarian citizens should be remembered 30 years later. She came to America to live in the glorious freedom that so many of us take for granted here in this country. She says she wants to live to see October 23, Freedom Remembrance Day, and all our family surely hopes that she will.

Mr. President, it is for this special woman, her family, and all those who share her memories of the uprising and a desire to return freedom to the homeland, as well as for those who perished in the struggle for freedom, that this resolution commemorating Hungarian Freedom Fighters Day is dedicated.

Its importance, however, reaches beyond the Hungarian people, and extends to all the people of the world who have lost their freedom.

It is for the people of Afghanistan, Poland, Czechoslovakia, and of all of the captive nations of Eastern Europe who are no longer free, that we, who enjoy freedom, must speak. We must recall their suffering, and must help keep their dream of freedom alive.

The commemoration of National Hungarian Freedom Fighters Day on October 23 is an important part of that effort, and I thank my colleagues for their unanimous support.●

The joint resolution (S.J. Res. 385) was ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, with its preamble, is as follows:

S.J. Res. 385

Whereas the antidemocratic Government of Hungary was installed and is supported by the Government of the Soviet Union;

Whereas, on October 23, 1956, freedom fighters in Hungary attempted to establish a coalition government and free the people of Hungary from oppression by ending the political and economic domination of the people of Hungary by the Government of the Soviet Union;

Whereas the continued oppression of the people of Hungary by the Government of the Soviet Union is a violation of the principles set forth in the Yalta Agreement of 1945, the Universal Declaration of Human Rights, and the Helsinki Final Act of the

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[10] These documents, along with others released by the Committee, are reproduced in Charles Tyroler II, ed., *Alerting America* (Committee on the Present Danger, 1984), pp. 10-15 and 166-69.

[11] See, for example, Hedrick Smith in the New York *Times*, May 25, 1980 and Godfrey Hodgson in the *New Statesman*, September 5, 1980. Hodgson wrote that "Reagan's foreign policy is rooted in the world view of Team B." Jim Klurfield concluded, in what is one of the best journalistic accounts of Team B (*Newsday*), June 14-15, 1981), that "on November 4, 1980, Team B, in essence, became Team A."

Conference on Security and Cooperation in Europe, of which the Government of the Soviet Union is a signatory or under which such Government is otherwise obligated;

Whereas the Congress supports the efforts of the people of all nations to assert the right of self-determination; and

Whereas October 23, 1986, is the thirtieth anniversary of the uprising of the people of Hungary against the antidemocratic Government of Hungary: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 23, 1986, is designated "National Hungarian Freedom Fighters Day", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.

Mr. SIMPSON. I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COLLECTION OF STATISTICS ON DOMESTIC APPAREL AND TEXTILE INDUSTRIES

The bill (H.R. 2721) to amend title 13, United States Code, to require the collection of statistics on domestic apparel and textile industries, was considered.

Mr. COCHRAN. Mr. President, H.R. 2721, as reported by the Governmental Affairs Committee, will mandate the collection of quarterly statistics on domestic apparel and textile industries.

Statistics on domestic production are a key element in the determination of whether or not injury or disruption has occurred in the apparel industry that would prompt the imposition of import controls. The Census Bureau currently collects industry data on its annual survey and through its monthly surveys. However, annual production data often trails its collection by as much as 2 years, and efforts to obtain and publish more recent and detailed data on the monthly surveys had been less than successful because survey response is voluntary. Mandatory quarterly surveys will provide more specific data on a timely basis.

H.R. 2721 has the support of the Department of Commerce, the Office of Management and Budget, the American Textile Manufacturers Institute, and the American Apparel Manufacturers Association. The bill was reported from my Subcommittee on Energy, Nuclear Proliferation, and Government Processes and subsequently was approved by the full committee without objection. The bill passed the House of Representatives by voice vote on April 14, 1986.

Quality data, produced on a timely basis, are critical in establishing an accurate description of the effect of imports on domestic apparel and textile industries. Careful monitoring of both import penetration and domestic production will enhance the efficient administration of our trade laws.

The bill (H.R. 2721) was ordered to a third reading, read the third time, and passed.

Mr. SIMPSON. I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ELIMINATION OF REQUIREMENT RELATING TO DECENNIAL CENSUS OF DRAINAGE

The Senate proceeded to consider the bill (H.R. 2722) to amend title 13, United States Code, to eliminate the requirement relating to decennial censuses of drainage, which had been reported from the Committee on Governmental Affairs, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

H.R. 2722

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 142 of title 13, United States Code, is amended—

(1) in subsection (b), by striking out "and **[**drainage." and inserting in lieu thereof a period;**]** *drainage";* and

(2) by amending the section heading to read as follows:

"§ 142. Agriculture and irrigation".

(b) The heading of suchapter II of chapter 5 of title 13, United States Code, is amended by striking out "DRAINAGE".

[(b)**]** *(c)* The analysis for chapter 5 of title 13, United States Code, is amended—

(1) in the item relating to subchapter II, by striking out "DRAINAGE," ; and

(2) by striking out the item relating to section 142 and inserting in lieu thereof the following:

"142. Agriculture and irrigation.".

The committee amendments were agreed to.

Mr. COCHRAN. Mr. President, H.R. 2722, as approved by the Governmental Affairs Committee, will eliminate the requirement that the Census Bureau conduct decennial censuses of drainage.

Every 10 years the Census Bureau conducts a survey of private and public drainage systems and the amount of acreage drained. The last drainage census was conducted for the year 1978, and one is scheduled to be conducted for the year 1987.

In the early part of this century, the Federal Government encouraged the drainage of land for agricultural purposes, and the collection of statistical data on drainage systems was an important monitoring tool. But new drainage development has declined, and there is little use for the information produced from this survey. The Interagency Committee of the Water Resources Council, established to recommend data needs for the 1978 Census of Irrigation and Drainage, recommended that it be discontinued. The major user is the Soil Conservation Service of the Department of Agriculture upon which the Census Bureau has relied for assistance in collecting the data.

H.R. 2722 is supported by the Department of Commerce and the Department of Agriculture. The Census Advisory Committee on Agriculture Statistics, which is composed of representatives from the major farm associations and organizations, does not object to the elimination of the drainage census. The bill was passed by the House of Representatives on November 12, 1985.

The amendments were ordered to be engrossed and the bill to be read a third time. The bill was read the third time, and passed.

Mr. SIMPSON. I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SOLOMON BLATT, SR., POST OFFICE BUILDING

The bill (S. 2452) to designate the U.S. Post Office to be constructed in Barnwell, SC, as the "Solomon Blatt, Sr., Post Office Building," was considered.

Mr. HOLLINGS. Mr. President, I am most pleased that the Senate is about to approve S. 2452, a bill that my senior colleague [Mr. THURMOND] joined me in introducing in order to name the soon to be built post office in Barnwell, SC, in honor to Solomon Blatt, Sr. A native of Barnwell, and a long-time legislator representing Barnwell in the South Carolina House of Representatives, Mr. Blatt died May 14, 1986. When he died at age 91, "Mr. Sol" was the Nation's oldest legislator. His death marked the end of an era in which he, as part of the famous "Barnwell Ring," greatly influenced the direction of South Carolina government for over 50 years.

Mr. President, this outstanding man's achievements are many, and when I introduced this bill on May 15, I submitted several inserts outlining his record in more detail. Mr. Sol was a great friend to me, and in politics he was like a father. I served as speaker pro tem to Speaker Blatt from 1951 to 1954 and worked closely with him as Lieutenant Governor and Governor. He holds the record of being speaker of the South Carolina House of Representatives longer than anyone. As a long-time friend and observer of Mr. Sol's considerable talents, I can say without hesitation that he exerted a greater influence on the direction of South Carolina's government than any other person in the last 50 years.

Mr. President, one of the last things he discussed with me was the location of a new post office for Barnwell. He was determined that the new facility would be built on a site that would best serve the community. Characteristically, he was tireless in working out the details with Mayor Rodman Lemon and other local officials, and he got me to go to bat for Barnwell with the Postal Service. Like so many things in which he was involved, this, too, had a successful conclusion as the Postal Service had agreed to the preferred Main Street site. So, Mr. President, it is a fitting tribute to this outstanding man that we name the postal facility, soon to be built, for him.

Mr. President, in closing, I thank the distinguished senior Senator from Alaska [Mr. STEVENS] for his great assistance in getting this bill reported. As the Senate may recall, we had this in the urgent supplemental appropriations bill for a while and I am grateful to the junior Senator from South Dakota [Mr. ABDNOR] the distinguished chairman of our Treasury, Postal Service, and General Government Subcommittee, for his help. While we now have processed the bill in the regular manner, having it in the supplemental was a contributing factor in bringing this bill to this point.

The bill (S. 2452) was ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2452

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the United States Post Office to be constructed on Main Street in Barnwell, South Carolina, shall be known and designated as the "Solomon Blatt, Sr., Post Office Building". Any reference in any law, regulation, document, record, map, or other paper of the United States to such post office is deemed to be a reference to the "Solomon Blatt, Sr., Post Office Building".

Mr. SIMPSON. I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PARTICIPATION OF JUDGES OF THE COURT OF INTERNATIONAL TRADE IN JUDICIAL CONFERENCES

The bill (H.R. 2183) to amend title 28 of the United States Code to make certain changes with respect to the participation of judges of the Court of International Trade in judicial conferences and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

Mr. SIMPSON. I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VISITATION RIGHTS OF GRANDPARENTS

The concurrent resolution (H. Con. Res. 67) expressing the sense of the Congress that a uniform State act should be developed and adopted which provides grandparents with adequate rights to petition State courts for privileges to visit their grandchildren following the dissolution, because of divorce, separation, or death of the marriage of such grandchildren's parents, and for other purposes, was considered, and agreed to.

The preamble was agreed to.

Mr. SIMPSON. I move to reconsider the vote by which the House concurrent resolution agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES—AUTHORIZATION

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 4588, to authorize appropriations for the Administrative Conference, and I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objections?

Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 4588) to authorize appropriation for the Administrative Conference of the United States and for other purposes.

The bill was considered, ordered to a third reading, read the third time, and passed.

Mr. SIMPSON. I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

SUSQUEHANNA RIVER BASIN COMPACT AMENDMENTS

Mr. SIMPSON. I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 2971, the Susquehanna River Basin compact, and I ask for its immediate consideration.

Mr. BYRD. Mr. President, there is no objection to the request.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2971) granting the consent of the Congress to the amendments to the Susquehanna River Basin compact.

The bill (H.R. 2971) was considered, ordered to a third reading, was read the third time, and passed.

Mr. SIMPSON. I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

9-1-1 EMERGENCY NUMBER DAY

Mr. SIMPSON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Joint Resolution 405.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representative:

Resolved, That the resolution from the Senate (S.J. Res. 405) entitled "Joint resolution to designate September 11, 1986, as '9-1-1 Emergency Number Day' ", do pass with the following amendments;

Page 2, line 3, strike out "1986," and insert "1987,".

Amend the title so as to read: "Joint resolution to designate September 11, 1987, as '9-1-1 Emergency Number Day'.".

Mr. SIMPSON. I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. SIMPSON. I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

NATIONAL INDEPENDENT RETAIL GROCER WEEK

Mr. SIMPSON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Joint Resolution 263.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S.J. Res. 263) entitled "Joint resolution to designate the week of September 7 through September 13, 1986, as 'National Independent Retail Grocer Week' ", do pass with the following amendments:

"Page 2, strike out lines 3 and 4, and insert "That September 1986 be proclaimed 'National Independent Retail Grocer Month'.".

Amend the title so as to read: "Joint resolution to designate September 1986 as 'National Independent Retail Grocer Month'.".

Mr. SIMPSON. I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. Is there objection?

The motion was agreed to.

Mr. SIMPSON. I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMERICAN LIVER FOUNDATION NATIONAL LIVER AWARENESS MONTH

Mr. SIMPSON. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Joint Resolution 202.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S.J. Res. 202) entitled "Joint resolution designating November 1985 as 'American Liver Foundation National Liver Awareness Month'", do pass with the following amendments: Page 2, line 3, strike out "November 1985", and insert "October 1986".

Amend the title so as to read: "Joint resolution designating October 1986 as 'American Liver Foundation National Liver Awareness Month'.".

Mr. SIMPSON. Mr. President, I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. SIMPSON. I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BILL HELD AT DESK—H.R. 4302

Mr. SIMPSON. I ask unanimous consent that when the Senate receives from the House H.R. 4302, Dwight David Eisenhower Centennial Commission Act, it be held at the desk pending further disposition.

The PRESIDING OFFICER (Mr. MURKOWSKI). Is there objection? Without objection, it is so ordered.

Mr. SIMPSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

☐ 1240

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DANILOFF RELEASE

Mr. DOLE. Mr. President, I am certain many people already know, but I would indicate that U.S. News & World Report journalist Nick Daniloff has been released by the Soviets, and is now enroute, or soon will be, back to the United States.

Although all the information surrounding Daniloff's release is not yet available, it appears his release is unconditional. Implicitly, at least, the Soviets are admitting that Nick Daniloff was not a spy; and they are trying to find a way out of a colossal blunder.

If there are some other shoes to drop on this matter—more details on any deal surrounding the release—I will hold off commenting on them until it is clear what happens. For now, let me just say that the Senate has spoken formally on the Daniloff case twice—we passed two strong resolutions—and I think every Senator has personally spoken out on this matter. I wired Gorbachev directly on this case, and I know other Senators did, too. All of us were outraged by Daniloff's arrest and mistreatment; all of us were united in a demand for his release; and we are all very, very pleased that he is coming home, safely, and with no question about his innocence of the charges levied against him by the Soviets.

This has always been, essentially, a humanitarian, human rights and very personal case, not a political one—though it did reflect, once again, the very harsh political realities of the Soviet State. So, on a personal level, I want to offer Nick Daniloff the wish for a quick, safe trip home.

I assume there will be additional information on other facets in the next 24 hours.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Oregon is recognized.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 999, House Joint Resolution 738, the continuing resolution.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Oregon?

There being no objection, the Senate proceeded to consider the joint resolution, which had been reported from the Committee on Appropriations, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic):

H.J. RES. 738

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of the Government for the fiscal year 1987, and for other purposes, namely:

SEC. 101. **[**(a) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5177, the Agriculture, Rural Development, and Related Agencies Appropriations Act, 1987, as passed by the House of Representatives on July 24, 1986.**]**

(a) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5177, the Agriculture, Rural Development, and Related Agencies Appropriations Act, 1987, as reported to the Senate on September 11, 1986.

[(b) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5161, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1987, as passed by the House of Representatives on July 17, 1986.**]**

(b) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5161, the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1987, as reported to the Senate on September 3, 1986.

[(c) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5438, the Department of Defense Appropriations Act, 1987, as reported to the House of Representatives on August 14, 1986.**]**

(c) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in S. 2827, the Department of Defense Appropriations Act, 1987, as reported to the Senate on September 17, 1986.

[(d) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5175, the District of Columbia Appropriations Act, 1987, as passed by the House of Representatives on July 24, 1986.**]**

(d) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5175, the District of Columbia Appropriations Act, 1987, as passed by the Senate on September 16, 1986.

[(e) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5162, the Energy and Water Development Appropriations Act, 1987, as passed by the House of Representatives on July 23, 1986.**]**

(e) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the

manner provided for in H.R. 5162, the Energy and Water Development Appropriations Act, 1987, as reported to the Senate on September 15, 1986.

[(f) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5339, the Foreign Assistance and Related Programs Appropriations Act, 1987, as reported to the House of Representatives on August 5, 1986.]

(f) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in S. 2824, the Foreign Assistance and Related Programs Appropriations Act, 1987, as reported to the Senate on September 16, 1986.

[(g) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5313, the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1987, as passed by the House of Representatives on September 12, 1986.]

(g) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5313, the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1987, as reported to the Senate on September 25, 1986.

[(h) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5234, the Department of the Interior and Related Agencies Appropriations Act, 1987, as passed by the House of Representatives on July 31, 1986.]

(h) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5234, the Department of the Interior and Related Agencies Appropriations Act, 1987, as passed by the Senate on September 16, 1986.

[(i) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5233, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1987, as passed by the House of Representatives on July 31, 1986.]

(i) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5233, the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1987, as passed by the Senate on September 10, 1986.

(j) Such amounts as may be necessary for programs, projects, or activities provided for in H.R. 5203, the Legislative Branch Appropriations Act, 1987, to the extent and in the manner provided for in the conference report and joint explanatory statement of the committee of conference (House Report 99-805) as filed in the House of Representatives on August 15, 1986, as if enacted into law.

[(k) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5052, the Military Construction Appropriations Act, 1987, as passed by the House of Representatives on June 25, 1986.]

(k) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5052, the Military Construction Appropriations Act, 1987, as passed by the Senate on August 13, 1986.

[(l) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5205, the Department of Transportation and Related Agencies Appropriations Act, 1987, as passed by the House of Representatives on July 30, 1986.]

(l) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5205, the Department of Transportation and Related Agencies Appropriations Act, 1987, as passed by the Senate on September 17, 1986.

[(m) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5294, the Treasury, Postal Service, and General Government Appropriations Act, 1987, as passed by the House of Representatives on August 6, 1986.]

(m) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5294, the Treasury, Postal Service, and General Government Appropriations Act, 1987, as reported to the Senate on August 14, 1986.

(n) Such amounts as may be necessary for continuing the following activities, not otherwise provided for in this joint resolution, which were conducted in the fiscal year 1986, under the terms and conditions provided in applicable appropriations Acts for the fiscal year 1986, at the current rate or as otherwise provided herein: *Provided*, That no appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or authority were not available during fiscal year 1986 unless otherwise provided for herein:

[Public health activities authorized by sections 331-338, 513, 517, 1001, and 2010 of the Public Health Service Act;]

Refugee and entrant assistance activities authorized by title IV of the Immigration and Nationality Act, part B of title III of the Refugee Act of 1980, and section 501 of the Refugee Education Assistance Act of 1980 except that no activity authorized by such Acts shall be funded beyond September 30, [1987;] *1987.*

[Programs authorized by the Head Start Act, as amended;

[Dependent Care activities authorized by Chapter 8-D of title VI-A of the Omnibus Budget Reconciliation Act of 1981, as amended;

[Activities authorized by the Native Americans Programs Act, as amended;

[Activities authorized by the Community Services Block Grant Act, as amended;

[Activities authorized by the Follow Through Act;

[Activities authorized by the Rehabilitation Act of 1973;

[Activities authorized by the Higher Education Act;

[Activities authorized by the Mutual Education and Cultural Exchange Act;

[Activities authorized by title XIII, part H, subpart I of the Education Amendments of 1980;

[Activities authorized by sections 405 and 406 of the General Education Provisions Act;

[Economic Development Administration, "Economic development assistance programs", $7,500,000, to remain available until expended, for a grant to continue economic development facilities and related infrastructure activities of the Fort Worth Stockyards Project at full Federal expense: *Provided*, That in addition, the Secretary of the Army, acting through the Chief of Engineers, using any funds heretofore, herein, and hereafter available to the Corps of Engineers, is authorized and directed to develop at full Federal expense detailed plans and specifications and to construct measures in Tarrant County, Texas, to eliminate flood damage in the historical stockyards area along Tony's Creek and Marine Creek;

[Activities authorized by the Domestic Volunteer Service Act of 1973, as amended;

[United States Institute of Peace authorized by the United States Institute of Peace Act;

[From existing funds the Secretary of Defense shall take additional steps for further development of planning, research, and facilities for physical acoustics and related matters;

[For carrying out the Low Income Home Energy Assistance Program as authorized by title XXVI of the Omnibus Budget Reconciliation Act of 1981, as amended, $1,986,000,000; and

[Activities authorized by the "Construction Industry Labor Law Amendments of 1985" as passed by the House of Representatives on April 17, 1986.]

SEC. 102. Unless otherwise provided for in this joint resolution or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this joint resolution shall be available from October 1, 1986, and shall remain available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) enactment of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) September 30, 1987, whichever first occurs.

SEC. 103. Appropriations made and authority granted pursuant to this joint resolution shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this joint resolution.

SEC. 104. Expenditures made pursuant to this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

[SEC. 105. None of the funds in this Act may be used to issue regulations before June 1, 1987, to modify the formula used during fiscal year 1986 to divide funds among State agencies under section 17(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786) to carry out the special supplemental food program for women, infants and children (WIC), or to implement such regulations before October 1, 1987.

[SEC. 106. Notwithstanding any other provision of law, including section 502(c)(2) of the Housing Act of 1949 (42 U.S.C. 1471 et seq.), none of the funds appropriated under this or any other Act shall be used in fiscal year 1987 to accept prepayment of any loan made under section 515 of the Housing Act of 1949, unless such loan was made at least twenty years prior to the date of prepayment.

[Sec. 107. The Secretary of Agriculture may transfer surplus agricultural commodities from inventory in an amount not to exceed $600,000 to the Department of Defense for use in complementing support provided by the Department of Defense to the Tenth International Pan American Games to be held in Indianapolis, Indiana.

[Sec. 108. (a) Amendments to Food Security Act of 1985.—Effective with respect to each of the 1987 through 1990 crops, section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended by—

[(1) striking out paragraphs (1), (2), and (3), and inserting in lieu thereof the following:

["(1) For each of the 1987 through 1990 crops, the total amount of deficiency payments (excluding any deficiency payments described in paragraph (2)(B)(iv) of this section) and land diversion payments that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for wheat, feed grains, upland cotton, extra long staple cotton, and rice may not exceed $50,000.

["(2)(A) For each of the 1987 through 1990 crops, the total amount of payments set forth in subparagraph (B) that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 for wheat, feed grains, upland cotton, extra long staple cotton, rice, honey, and (with respect to clause (iii)(II) of subparagraph (B)) other commodities, when combined with payments for such crop described in paragraph (1), shall not exceed $250,000.

["(B) As used in subparagraph (A), the term 'payments' means—

["(i) any part of any payment that is determined by the Secretary of Agriculture to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

["(ii) any disaster payment under one or more of the annual programs for a commodity established under the Agricultural Act of 1949;

["(iii)(I) any gain realized by a producer from repaying a loan for a crop of wheat, feed grains, upland cotton, rice, or honey at the rate permitted under section 107D(a)(5), 105C(a)(4), 103A(a)(5), 101A(a)(5), or 201(b)(2), respectively, of the Agricultural Act of 1949, or (II) any gain realized by a producer from repaying a loan for a crop of any other commodity at a lower level than the original loan level established under the Agricultural Act of 1949;

["(iv) any deficiency payment received for a crop of wheat or feed grains under section 107D(c)(1) or 105C(c)(1), respectively, of the Agricultural Act of 1949 as the result of a reduction of the loan level for such crop under section 107D(a)(4) or 105C(a)(3) of such Act;

["(v) any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(b), 105C(b), 103A(b), or 101A(b), respectively, of the Agricultural Act of 1949; and

["(vi) any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(g), 105C(g), 103A(g), or 101A(g), respectively, of the Agricultural Act of 1949.

Such term shall not include loans or purchases, except as specifically provided for in this paragraph.

["(C) The total amount of loans on a crop of honey that a person may have outstanding at any one time under the annual program established for such crop under the Agricultural Act of 1949 may not exceed $250,000 less the amount of payments, as described in paragraph (1) and subparagraphs (A) and (B) of this paragraph, received by such person for the crop year involved.

["(3) Notwithstanding the foregoing provisions of this section, if the Secretary of Agriculture determines that any of the limitations provided for in paragraph (2) will result in a substantial increase in the number or dollar amount of loan forfeitures for a crop of a commodity, will substantially reduce the acreage taken out of production under an acreage reduction program for a crop of a commodity, or will cause the market prices for a crop of a commodity to fall substantially below the effective loan rate for the crop, the Secretary shall adjust upward such limitation, under such terms and conditions as the Secretary determines appropriate, as necessary to eliminate such adverse effect on the program involved.";

[(2) adding at the end of subparagraph (A) of paragraph (5) the following: "Such regulations shall provide that the term 'person' does not include any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers."; and

[(3) in paragraph (6), striking out "lands owned" and inserting in lieu thereof "lands or animals owned", and inserting after "lands are farmed" the following: "or animals are husbanded".

[(b) Application of Amendments.—The amendments made by subsection (a) shall not apply with respect to any payment or loan received under any agreement or contract made before the date of enactment of this Act.

[(c) Revision of Regulations.—

[(1)(A) The Secretary of Agriculture shall review the regulations in effect on the date of enactment of this Act that define "person" under section 1001 of the Food Security Act of 1985 and related regulations in effect on such date otherwise affecting the payment limitations under such section, to determine ways in which such regulations can be revised to better ensure the fair and reasonable application of limitations and eliminate fraud and abuse in the application of such payment limitations.

[(B) The Secretary also shall review the amendments to section 1001 of the Food Security Act of 1985 made by this section.

[(2) Based on the reviews conducted under paragraph (1), the Secretary of Agriculture shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives, not later than March 1, 1987, a report on such reviews and—

[(A) with respect to the matters reviewed under paragraph (1)(A), proposed regulations or amendments to regulations, to take effect not earlier than October 1, 1987, that will meet the objectives with respect to limitations specified in paragraph (1)(A); and

[(B) with respect to the matters reviewed under paragraph (1)(B), recommendations on legislative changes to section 1001 of the Food Security Act of 1985 that the Secretary determines are necessary or appropriate.

[Sec. 109. The Food Security Act of 1985 is amended by inserting at the end thereof the following new sentence: "Effective for each of the 1987 through 1990 crops, the Secretary may not deny a person status as a separate person under paragraph (1) solely on the ground that a family member cosigns for, or makes a loan to, such person and leases, loans, or gives such person equipment, land or labor, if such family-members were organized as separate units prior to December 31, 1985.".

[Sec. 110. Within the available funds of the Rural Electrification Administration loan authority made available by this Act, $3,000,000 shall be provided to the Choctaw Electric Cooperative to implement section 5 of the Rural Electrification Act.

[Sec. 111. (a) National School Lunch Act.—Section 12(d)(5) of the National School Lunch Act (42 U.S.C. 1760(d)(5)) is amended in the first sentence by striking "except private schools whose average yearly tuition exceeds $1,500 per child,".

[(b) Child Nutrition Act of 1966.—Section 15(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1784(c)) is amended in subparagraph (A) of the first sentence by striking "except private schools whose average yearly tuition exceeds $1,500 per child,".

[(c) The amendments made by this section shall take effect July 1, 1987.

[Sec. 112. Notwithstanding any provision of title I of the Local Public Works Capital Development and Investment Act of 1976, as amended (Public Law 94-369), or any other provision of law to the contrary, any funds authorized and appropriated under title I of such Act, as amended, in any fiscal year for projects in (1). New York, New York, but obligated as of December 19, 1985 and not disbursed, shall remain available for obligation and expenditure through March 31, 1988 for any authorized project in New York, New York under title I of such Act, as amended, or for any project in New York, New York, determined to be eligible under title I of the Public Works and Economic Development Act of 1965, as amended, if the total amount of such funds is not finally determined by October 15, 1986.

[Sec. 113. Notwithstanding any other provision of law or a contract to the contrary, the SEDA-COG Joint Rail Authority, Lewisburg, Pennsylvania, may sell any portion of the real property that was acquired in part with proceeds of a grant from the Economic Development Administration (grant number 01-19-02563) and may retain all of the proceeds of any such sale so long as the proceeds are used for purposes which meet the criteria of and are approved by the Economic Development Administration.

[Sec. 114. (a) Duties of Under Secretary of Defense for Acquisition.—Section 133 of title 10, United States Code (as redesignated by section 101(a) of the Goldwater-Nichols Department of Defense Reorganization Act of 1986), is amended to read as follows:

["§ 133. Under Secretary of Defense for Acquisition

["(a) There is an Under Secretary of Defense for Acquisition, appointed from civilian life by the President, by and with the advice and consent of the Senate. The Under Secretary shall be appointed from among persons who have an extensive management background in the private sector.

["(b) Subject to the authority, direction, and control of the Secretary of Defense, the Under Secretary of Defense for Acquisition—

["(1) is responsible for setting overall policy for, and supervises, all acquisition activities of the Department of Defense; and

["(2) shall perform such duties and exercise such powers as the Secretary of Defense may prescribe.

["(c) The Under Secretary—

["(1) is the senior procurement executive for the Department of Defense for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3));

["(2) is the Defense Acquisition Executive for purposes of regulations and procedures of the Department providing for a Defense Acquisition Executive; and

["(3) to the extent directed by the Secretary, supervises all other officers in the Office of the Secretary of Defense who have acquisition responsibilities.

["(d) Supervision of the audit and oversight functions performed by the Defense Contract Audit Agency on the date of the enactment of this section shall be carried out in the same manner as in effect on such date.

["(e) The Secretary of Defense shall prescribe the precedence of the Under Secretary in the Department of Defense.".

[(b) Independence of Director of Operational Test and Evaluation.—Section 138(d) of title 10, United States Code (relating to the Director of Operational Test and Evaluation), as redesignated by section 101(a) of the Goldwater-Nichols Department of Defense Reorganization Act of 1986, is amended by inserting "personally" after "Secretary of Defense" in the first sentence.

[(c) Armed Forces Policy Council.—Section 171(a) of such title (relating to the Armed Forces Policy Council) is amended—

[(1) by redesignating paragraphs (3) through (11) as paragraphs (4) through (12), respectively;

[(2) by inserting after paragraph (2) the following new paragraph (3):

["(3) the Under Secretary of Defense for Acquisition;"; and

[(3) by striking out "Under Secretaries of Defense" in paragraph (7) (as so redesignated) and inserting in lieu thereof "Under Secretary of Defense for Policy and the Director of Defense Research and Engineering".

[(d) Prevention of Duplication of Certain Contract Audit and Oversight Activities.—(1) Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

["§ 2214. Audit and oversight of contractor activities: coordination and prevention of duplicative policies

["(a) Coordination.—The Secretary of Defense shall prescribe procedures to ensure that Department of Defense policies for the audit and oversight of contractor activities are coordinated and carried out in a manner to prevent duplication of audit and oversight activities by different elements of the Department.

["(b) Consultation.—In carrying out this section, the Secretary shall consult with the Under Secretary of Defense for Acquisition and the Inspector General of the Department of Defense.".

[(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

["2214. Audit and oversight of contractor activities: coordination and prevention of duplicative policies.".

[Sec. 115. (a) Safeguarding of Military Whistleblowers.—The Congress makes the following findings:

[(1) In the course of their duties, members of the Armed Forces may become aware of information evidencing wrongdoing or waste of funds.

[(2) It is generally the duty of members of the Armed Forces to report such information through the chain of command.

[(3) Reporting such information through the chain of command does not always result in correction and may, in some cases, be futile.

[(4) Members of the Armed Forces who become aware of such information should be encouraged to disclose it to an Inspector General or Member of Congress if necessary.

[(5) Members of the Armed Forces who disclose such information should be protected from adverse personnel consequences (or threats thereof) as a result of such disclosures.

[(6) Members of the Armed Forces who believe they have been subject to retaliation (or the threat thereof) should have the right to a speedy Inspector General investigation and administrative review of their cases.

[(b) Whistleblower Protection.—(1) Section 1034 of title 10, United States Code, relating to communicating with a Member of Congress, is amended to read as follows:

["§ 1034. Communicating with a Member of Congress or Inspector General

["(a) Restricting Communications With Members of Congress and Inspectors General Prohibited.—

["(1) General rule.—No person may restrict a member of an armed force in communicating with a Member of Congress or an Inspector General.

["(2) Exceptions.—Paragraph (1) does not apply to a communication that—

["(A) is unlawful; or

["(B) violates a regulation necessary to the security of the United States.

["(b) Prohibition of Retaliatory Personnel Actions.—No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of an armed force for making or preparing a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted.

["(c) Inspector General Investigation.—

["(1) Investigation of certain allegations.—The Inspector General of the Department of Defense shall expeditiously investigate an allegation by a member of the armed forces that a reprisal prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication to a Member of Congress or an Inspector General making a complaint or disclosing information that the member of the armed forces reasonably believes evidences—

["(A) a violation of a law, rule, or regulation; or

["(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

["(2) Time for Allegation.—The Inspector General is not required to make an investigation under paragraph (1) in the case of an allegation made more than 90 days after the reprisal (or threatened reprisal) that is the subject of the allegation.

["(3) Investigation of subject matter of disclosure.—If the Inspector General has not already done so, the Inspector General shall commence a separate investigation of the information that the member believes evidences wrongdoing as described in subparagraph (A) or (B) of paragraph (1).

["(4) Report.—Not later than 10 days after completion of an investigation under this subsection, the Inspector General shall submit a report on the results of the investigation to the Secretary of Defense. The Inspector General shall provide an unclassified copy of that report to the member concerned.

["(5) Time for report.—If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (2) within 30 days of the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense and to the member making the allegation a notice—

["(A) of that determination (including the reasons why the report may not be submitted within that time); and

["(B) of the time when the report will be submitted.

["(6) Content of report.—The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. If a person agrees to be interviewed only on the condition that the person's identity not be disclosed, the report shall not contain any information about such interview. The report shall contain no findings of disputed fact or recommendations as to the disposition of the complaint.

["(7) Delegation.—The Inspector General of the Department of Defense may delegate any function, power, or duty of the Inspector General under this subsection to any other Inspector General in the Department of Defense.

["(d) Correction of Records.—

["(1) Boards for correction of military records.—In resolving an allegation made by a member of an armed force to whom the Inspector General has reported under subsection (c), a correction board acting under section 1552 of this title, on the request of the member or otherwise, may—

["(A) direct further investigation;

["(B) direct the production of evidence;

["(C) direct the examination of witness;

["(D) receive oral argument; or

["(E) direct or conduct an evidentiary hearing.

["(2) Legal assistance.—A member to whom the Inspector General has reported under subsection (c) is entitled to the assistance of a judge advocate in filing a petition for correction under section 1552 of this title.

["(3) Board decisions.—The Board shall issue a final decision with respect to the petition within 120 days after the filing of such petition. If the Board fails to issue such a final decision within such time, the member shall be deemed to have exhausted administrative remedies under section 1552 of this title to the extent that such exhaustion may be required in any judicial proceeding concerning the relief sought in the petition for correction. The decision of the Board shall be in writing and shall include findings of fact and a statement of reasons.

The Board shall cause its decision to be served on the petitioner by first class mail to the address listed in the petition for correction within 10 days of the date of the decision. A determination by the Board by a preponderance of the evidence that a personnel action adversely affecting a member would not have been taken in the absence of a complaint or disclosure of information described in subsection (c)(1) shall constitute a determination of a prohibited retaliatory personnel action under subsection (b).

["(4) Corrective action.—The Board shall order such action as is necessary to correct the record and the effect of a prohibited retaliatory personnel action.

["(5) Disciplinary action.—If the Board determines that a prohibited retaliatory personnel action, as defined in subsection (b), has occurred, the Board shall refer the record of the matter to the officer exercising general court-martial jurisdiction over the person who committed the prohibited retaliatory personnel action.

["(e) Judicial Review.—

["(1) Right of review.—(A) A member of an armed force aggrieved by a final order of the Board may obtain judicial review of the order by filing a petition for review before the end of the 60-day period beginning on the later of—

["(i) the date the member received notice of the order of the Board; or

["(ii) the date on which the member was deemed to have exhausted administrative remedies under subsection (d)(3).

["(B) A petition for review under subparagraph (A) shall be filed with the United States Court of Appeals—

["(i) for the circuit in which the member resides;

["(ii) for the circuit in which the member is stationed; or

["(iii) in the Court of Appeals for the District of Columbia.

["(2) Review of record.—With respect to any case for which a petition for review is filed under paragraph (1)(A), the court—

["(A) shall review the record; and

["(B) in any case in which it determines that the record fails to resolve significant issues of fact, may refer the case to the appropriate United States district court for a hearing de novo.

["(3) Standard of review.—The court shall set aside any order of the Board that, upon completion of a review under paragraph (2), is determined to be—

["(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or

["(B) not supported by substantial evidence.

["(4) Attorneys fees.—If, upon completion of a review under paragraph (2), the court finds that the claim of the member is meritorious, the court shall award such member reasonable attorneys fees and costs.

["(f) Regulations.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section. Such regulations shall include regulations for which violations are subject to section 892 of this title (article 92 of the Uniform Code of Military Justice).".

[(2) The item relating to such section in the table of sections at the beginning of chapter 53 of such title is amended to read as follows:

["1034. Communicating with a Member of Congress or Inspector General.".

[(c) Deadline for Regulations.—The Secretary of Defense and the Secretary of Transportation shall prescribe regulations required by subsection (e) of section 1034 of title 10, United States Code, as added by subsection (a), not later than 120 days after the date of the enactment of this joint resolution.

[Sec. 116. (a) Protection of Contractor Employees From Reprisal for Disclosure of Certain Information.—(1) Chapter 141 of title 10, United States Code, is amended by adding at the end the following new section:

["§ 2408. Contractor employees: protection from reprisal for disclosure of certain information

["(a) Prohibition of Reprisals.—(1) A contractor of the Department of Defense may not take a reprisal action against any officer or employee of that contractor for disclosing to an appropriate Government official information relating to a contract (or the negotiation or competition for a contract) between such contractor and the Department of Defense which the officer or employee reasonably believes evidences—

["(A) a violation of law, rule, or regulation; or

["(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

["(2) In this section, the term 'appropriate Government official' includes—

["(A) an officer or employee of the Department of Defense;

["(B) a Member of Congress or an officer or employee of Congress, the General Accounting Office, the Congressional Budget Office, or the Office of Technology Assessment;

["(C) any other officer or employee of the United States whose duties include the investigation or enforcement of any law, rule, or regulation relating to defense acquisition; and

["(D) a member or employee of any authorized commission established for purposes related to defense acquisition.

["(b) Remedies.—(1) An officer or employee of a defense contractor who believes that such officer or employee has been subject to a reprisal prohibited by subsection (a) may file a complaint with the Secretary of Defense.

["(2)(A) Under procedures prescribed by the Secretary of Defense by regulation, the Secretary shall investigate each complaint filed under paragraph (1).

["(B) If, after an investigation under subparagraph (A), the Secretary believes there is a reasonable likelihood that a reprisal prohibited by subsection (a) has occurred, the Secretary shall provide the contractor with an opportunity to show cause why the Secretary should not order corrective action and assess penalties under subparagraph (C).

["(C) If, after considering the presentation of the contractor under subparagraph (B), the Secretary finds that a reprisal prohibited by subsection (a) has occurred, the Secretary shall—

["(i) order the contractor to take action to eliminate the adverse effect of the reprisal on the complainant; and

["(ii) assess a monetary penalty against such contractor.

["(D) The Secretary shall impose penalties, which may include monetary fines and debarment from further contracts, against any contractor who fails to comply promptly with an order of the Secretary under subparagraph (C).

["(E) The Secretary shall issue a decision on a complaint filed under paragraph (1) within 45 days of receipt of the complaint.

["(3)(A) The decision of the Secretary under paragraph (2) shall be a final agency action for purposes of chapter 7 of title 5.

["(B) Failure of the Secretary to decide on a complaint within the period provided in paragraph (2)(E) shall be deemed to be final agency action for purposes of chapter 7 of title 5.

["(C) In any action brought under chapter 7 of title 5 related to a reprisal under subsection (a), a court may assess against the defense contractor, or against the United States, reasonable attorney fees and other litigation costs reasonably incurred by an officer or employee of the contractor who substantially prevails in such action.

["(c) Regulations.—The Secretary of Defense shall prescribe regulations to carry out this section (other than subsection (b)(3)). Such regulations shall provide that any firm which negotiates with the Department of Defense for a contract or competes for a Department of Defense contract thereby submits to the jurisdiction of the Secretary of Defense for purposes of this section.".

[(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

["2408. Contractor employees: protection from reprisal for disclosure of certain information.".

[(b) Initial Regulations.—The Secretary of Defense shall prescribe the regulations required by subsection (c) of section 2408 of title 10, United States Code, as added by subsection (a), not later than the end of the 90-day period beginning on the date of the enactment of this joint resolution.

[(c) Effective Date.—Section 2408 of title 10, United States Code, as added by subsection (a), shall apply with respect to any reprisal action taken on or after the date of the enactment of this joint resolution.

[Sec. 117. (a) Conflict-of-Interest in Defense Procurement.—(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2397a the following new sections:

["§ 2397b. Certain former Department of Defense procurement officials: limitations on employment by contractors

["(a)(1) Any person—

["(A) who is a former officer or employee of the Department of Defense or a former or retired member of the armed forces; and

["(B) who, during the two-year period preceding the person's separation from service in the Department of Defense, participated personally and substantially, and in a manner involving decisionmaking responsibilities, in a procurement function with respect to a contract through contact with the contractor.

may not accept compensation from that contractor for a period of two years following the person's separation from service in the Department of Defense.

["(2) In paragraph (1), the term 'decisionmaking responsibilities' includes the following activities with respect to a contract: approval or disapproval, or making recommendations or engaging in negotiations, with regard to a procurement function.

["(3) For purposes of paragraph (1), whether or not a person is a contractor (as defined in subsection (f)(2)) is determined as of the date of the separation from service of the officer or employee of the Department of Defense or member of the armed forces involved.

["(4) Any person who knowingly violates paragraph (1) shall be imprisoned for not more than one year and shall be subject to a fine in the amount provided in title 18.

["(5) Any person who knowingly offers or provides any compensation to another person, and who knew or should have known that the acceptance of such compensation is or would be in violation of paragraph (1), shall be imprisoned for not more than one year and shall be subject to a fine in the amount provided in title 18.

["(b)(1) This section applies only to—

["(A) civilian positions for which the rate of pay is equal to or greater than the minimum rate of pay payable for grade GS-13 of the General Schedule; and

["(B) to positions held by members of the armed forces in a pay grade of O-4 or higher.

["(2)(A) When a vacancy occurs in a sensitive civilian procurement executive position, the Secretary of Defense, with the concurrence of the Director of the Office of Government Ethics, may exempt the person appointed to fill the vacancy from the provisions of subsection (a) by reason of service in such position.

["(B) For purposes of subparagraph (A), a sensitive civilian procurement executive position is a position—

["(i) which is identified under paragraph (1);

["(ii) which is a civilian position to which a person is appointed by the President, by and with the advice and consent of the Senate; and

["(iii) with respect to which the Secretary of Defense determines that the duties inherent in the position involve personal and substantial participation in procurement functions (to the extent to which subsection (a)(1) applies) with so many contractors that implementation of subsection (a) with respect to persons serving in the position would seriously hamper the ability of the Department of Defense to obtain the services of a highly qualified person to serve in the position.

["(C) An exemption granted under this paragraph shall not apply to the extent that the person granted the exemption acts as a Government representative in the negotiation or settlement of a contract with a contractor.

["(D) Whenever the Secretary of Defense grants an exemption under this paragraph, the Secretary shall promptly submit to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and the Judiciary of the House of Representatives a report describing the exemption and setting forth the specific reasons for the exemption.

["(c) The Secretary of Defense shall provide to each person separated from service in the Department of Defense in a position described in subsection (b)(1) who, within the two years preceding the date of such separation, participated in a procurement function of the Department a notice with respect to this section. Such notice shall include—

["(1) a written explanation of the provisions of this section; and

["(2) the name of each contractor from whom such person is prohibited from accepting compensation under this section.

["(d) This section does not apply—

["(1) to a contract for an amount less than $100,000;

["(2) to compensation of a person by an entity that did not have a Department of Defense contract in excess of $100,000 at the time the person participated personally and substantially in a procurement function (to the extent to which subsection (a)(1) applies) with respect to a contract with that entity; or

["(3) to a contractor that was awarded contracts by the Department of Defense during the preceding fiscal year in a total amount less than $100,000.

["(e)(1) A person who is considering the propriety of accepting compensation that might place the person in violation of subsection (a) may, before acceptance of such compensation, apply to the Director of the Office of Government Ethics for advice on the applicability of this section to the acceptance of such compensation.

["(2) An application under paragraph (1) shall contain such information as the Director requires.

["(f) In this section:

["(1) The term 'compensation' includes any payment, gift, benefit, reward, favor, or gratuity—

["(A) which is provided, directly or indirectly, for services rendered; and

["(B) which is valued in excess of $250 at the prevailing market price.

["(2) The term 'contractor' means—

["(A) a person that contracts to supply the Department of Defense with goods or services; and

["(B) a person that controls, is controlled by, or is under common control with a person described in subparagraph (A).

Such term does not include a State or local government or an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code.

["(3) The term 'procurement function' includes, with respect to a contract, any function relating to—

["(A) the negotiation, award, administration, or approval of the contract;

["(B) the selection of a contractor;

["(C) the approval of changes in the contract;

["(D) quality assurance, operational and developmental testing, the approval of payment, or auditing under the contract; or

["(E) the management of the procurement program.

["(4) The term 'armed forces' does not include the Coast Guard.

["(g) For the purposes of this section and section 2397c of this title, a member or former member of the armed forces shall be considered to have been separated from service in the Department of Defense upon the member's discharge or release from active duty.

["§ 2397c. Defense contractors: requirements concerning former Department of Defense officials

["(a)(1) With respect to a contractor that during a fiscal year enters into contracts with the Department of Defense for the procurement of goods and services in amounts aggregating $100,000 or more, each contract for procurement of goods or services entered into by the Department with that contractor during the next fiscal year shall include a provision under which the contractor agrees not to provide compensation to a person if the acceptance of such compensation by such person would violate section 2397b(a)(1) of this title.

["(2) Such a contract shall also provide that if the contractor knowingly violates a contract provision required by paragraph (1) the contractor shall pay to the United States, as liquidated damages under the contract, an amount equal to the greater of—

["(A) $100,000; or

["(B) three times the compensation paid by the contractor to the person in violation of such contract provision.

["(b)(1)(A) Each contractor subject during a calendar year to a contract term described in subsection (a) shall submit to the Secretary of Defense not later than April 1 of the next year a report covering the preceding calendar year. Each such report shall list the name of each person (together with other information adequate for the Government to identify the person) who—

["(i) is a former officer or employee of the Department of Defense or a former or retired member of the armed forces; and

["(ii) was provided compensation by that contractor during the preceding calendar year, if such compensation was provided within two years after such officer, employee, or member left service in the Department of Defense.

["(B) Each such listing shall—

["(i) show each agency in which the person was employed or served on active duty during the last two years of the person's service in the Government;

["(ii) show the person's job titles during the last two years of the person's service in the Government;

["(iii) contain a full and complete description of the duties of the person during the last two years of such service; and

["(iv) contain a description of the duties (if any) that the person is performing on behalf of the contractor.

["(2) A person who knowingly fails to file a report required by paragraph (1) shall be fined not more than $10,000.

["(3) The Secretary of Defense shall review each report under paragraph (1) to assess the report for accuracy and completeness and for the purpose of identifying possible violations of paragraph (1) or section 2397b(a) of this title or of a contract provision required by subsection (a). The Secretary shall report any such possible violation to the Attorney General.

["(c)(1) The Director of the Office of Government Ethics shall have access to the reports submitted under subsection (b)(1) and shall conduct an annual random review of the reports for violations of section 2397b(a) of this title and subsections (a) and (b)(1).

["(2) Not later than October 1 of each year, the Director shall submit to Congress a report on the operation of this section. Each such report shall include the findings of the Director based on the examination of reports for the preceding calendar year.

["(d) This section does not apply to a contract for an amount less than $100,000.

["(e) The definition set forth in section 2397b(f) of this title apply to this section.".

[(2) The table of sections at the beginning of chapter 141 of title 10, United States Code, is amended by inserting after the item relating to section 2397a the following new items:

["2397b. Certain former Department of Defense procurement officials limitations on employment by contractors.

["2397c. Defense contractors requirements concerning former Department of Defense officials.".

[(b) REPEAL.—Effective on the effective date of this section, section 921 of the Defense Procurement Improvement Act of 1985 (title IX of Public Law 99-145; 10 U.S.C. 2397a note) is repealed.

[(c) Effective Dates.—

[(1) In general.—Subject to paragraphs (1) and (2), this section and the amendments made by this section shall take effect 180 days after the date of the enactment of this joint resolution.

[(2) Effective date for regulatory authority.—Subsection (b) of section 2397b of title 10, United States Code, as added by subsection (a), shall take effect on the date of the enactment of this joint resolution. The Secretary of Defense shall prescribe and publish in the Federal Register regulations under that subsection not later than 180 days after such date.

[(3) Effect on employment.—(A) The amendments made by this section—

[(i) do not preclude the continuation of employment that began before the effective date of this section or the acceptance of compensation for such employment; and

[(ii) do not, except as provided in subparagraph (B), apply to a person whose service in the Department of Defense terminates before the effective date of this section.

[(B) Subparagraph (A)(ii) does not preclude the application of the amendments made by this section to a person with respect to service in the Department of Defense by such person on or after the effective date of this section.

[(4) Effective date for reporting requirement.—The first report under section 2397c(c)(2) of title 10, United States Code, as added by subsection (a), shall be submitted not later than October 1, 1987.

[Sec. 118. (a) Limitation on Use of Funds for Undefinitized Contractual Actions.—

[(1) Limitation on use of funds.—(A) On the last day of a fiscal quarter during a covered fiscal year, the amount of funds represented by undefinitized contractual actions (as determined under paragraph (3)) entered into by the Secretary of Defense (with respect to the Defense Logistics Agency) or the Secretary of a military department during the reporting period with respect to such quarter may not exceed 10 percent of the amount of funds represented by all contractual actions entered into by the Secretary during such period.

[(B) If at the end of a fiscal quarter during a covered fiscal year the amount of funds represented by undefinitized contractual actions under the jurisdiction of a Secretary that were entered into during the reporting period with respect to such quarter exceeds the limit established in subparagraph (A), the Secretary may not enter into any additional undefinitized contractual actions until the end of the following quarter.

[(2) Quarterly reports to defense committees.—(A) During each covered fiscal year, the Secretary of Defense and the Secretaries of the military departments shall each submit to the defense committees a report at the end of each fiscal year quarter concerning—

[(i) the amount of funds represented by contractual actions under the jurisdiction of the Secretary that were entered into during the reporting period with respect to the month for which the report is submitted; and

[(ii) the amount of such funds represented by undefinitized contractual actions.

[(B) A report required by subparagraph (A) shall be submitted not later than the end of the 45-day period beginning on the first day following the fiscal year quarter for which the report is submitted.

[(C) The first reports required by subparagraph (A) shall be with respect to the fiscal year quarter ending on December 31, 1986.

[(3) Determination of amounts of contractual actions.—For purposes of this section, the amount of funds represented by a contractual action shall be—

[(A) the contractual price; or

[(B) in the case of an undefinitized contractual action, the negotiated overall ceiling price.

[(4) Definitions.—For purposes of this subsection:

[(A) The term "covered fiscal year" means fiscal year 1987 or 1988.

[(B) The term "defense committees" means the Committees on Armed Services and on Appropriations of the Senate and House of Representatives.

[(C) The term "reporting period" means, with respect to any month of a covered fiscal year, the period beginning on the first day of such fiscal year and ending on the last day of such month.

[(D) The term "Secretary concerned" means—

[(i) the Secretary of Defense, with respect to matters concerning the Defense Logistics Agency; and

[(ii) the Secretary of a military department, with respect to matters concerning that military department.

[(E) The term "undefinitized contractual action" has the meaning given such term in section 2325(g) of title 10, United States Code (as added by section 3(a)(1)).

[(b) Requirments With Respect to Undefinitized Contractual Actions.—(1)(A) Chapter 137 of title 10, United States Code, is amended by adding at the end the following new section:

[“§ 2325. Undefinitized contractual actions: restrictions

[“(a) In General.—The head of an agency may not enter into an undefinitized contractual action unless—

[“(1) the request to the head of the agency for authorization of the contractual action includes a description of the anticipated effect on requirements of the military department if a delay is incurred for purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action; and

[“(2) the contractual action provides for determination of contractual terms, specifications, and price by the earlier of—

[“(A) the end of the 180-day period beginning on the date that the contractual action is initiated; or

[“(B) the date on which the amount of funds obligated or expended under the contract is equal to 50 percent of the amount of the negotiated overall ceiling price.

[“(b) Limitation on Obligation of Funds.—(1) Except as provided in paragraph (2), the contracting officer for an undefinitized contractual action may not expend with respect to such contractual action an amount that is equal to more than 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

[“(2) If a contractor submits a proposal to definitize an undefinitized contractual action before an amount equal to more than 50 percent of the negotiated overall ceiling price is expended on such action, the contracting officer for such action may not expend with respect to such contractual action an amount that is equal to more than 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

[“(c) Inclusion of Non-Urgent Requirements.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefinitized contractual action for spare parts and support equipment that are needed on an urgent basis unless the head of the agency approves such inclusion as being—

[“(1) good business practice; and

[“(2) in the best interests of the United States.

[“(d) Modification of Scope.—The scope of an undefinitized contractual action under which performance has begun may not be modified unless the head of the agency approves such modification as being—

[“(1) good business practice; and

[“(2) in the best interests of the United States.

[“(e) Allowable Profit.—The head of an agency shall ensure that the profit allowed on an undefinitized contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

[“(1) the reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

[“(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

[“(f) Applicability.—This section does not apply to the Coast Guard or the National Aeronautics and Space Administration.

[“(g) Definition.—In this section, the term ‘undefinitized contractual action’ means a new procurement action entered into by the head of an agency for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action.”.

[(B) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

[“2325. Undefinitized contractual actions: restrictions.”.

[(2) Section 2325 of title 10, United States Code (as added by subsection (a)(1)), applies to undefinitized contractual actions that are entered into after the end of the 30-day period beginning on the date of the enactment of this joint resolution.

[Sec. 119. (a) Defense Acquisition Corps.—Part II of subtitle A of title 10, United States Code, is amended by inserting after chapter 83 the following new chapter:

[“CHAPTER 84—DEFENSE ACQUISITION CORPS

[“Sec.
[“1611. Establishment.
[“1612. Appointments.

[“§ 1611. Establishment

[“(a) Establishment.—There is in the Department of Defense a Defense Acquisition Corps consisting of acquisition-related positions in the Office of the Secretary of Defense, the military departments, and the Defense Agencies specified in regulations prescribed by the Secretary of Defense. The head of the Defense Acquisition Corps is the Under Secretary of Defense for Acquisition.

[“(b) Number.—The number of Defense Acquisition Corps positions in a military department shall be determined by the Secretary of Defense.

[“§ 1612. Appointments

[“The Secretary of Defense shall make appointments to the Defense Acquisition Corps from the best-qualified military personnel. The qualifications of such personnel shall be established based on levels of education, experience, and training and performance on examinations.”.

[(b) COMPENSATION AND PERSONNEL MANAGEMENT INITIATIVE.—

[(1) IN GENERAL.—The Secretary of Defense shall develop a plan for a compensation and personnel management initiative to enhance the professionalism of military personnel in the Defense Acquisition Corps.

[(2) REPORT.—The Secretary shall submit to Congress a report describing the plan developed as required by paragraph (1) not later than April 15, 1987.

[(c) CLERICAL AMENDMENT.—The tables of chapters at the beginning of subtitle A of such title and at the beginning of part II of such subtitle are each amended by inserting after the item relating to chapter 83 the following new item:

[“84. Defense Acquisition Corps .... 1611”.

[SEC. 120. For the purposes of this joint resolution, section 9094 on page 80 of H.R. 5438, the Department of Defense Appropriations Act, 1987, as reported to the House of Representatives on August 14, 1986, shall be deemed to read as follows:

[“None of the funds appropriated or made available by this Act shall be available to overhaul the SSBN 642 or SSBN 624, unless a request to reprogram funds for the overhaul of SSBN 642 and SSBN 624 is submitted to and approved by the Committees on Appropriations of the Senate and House of Representatives.”

[TRANSFER OF FUNDS

[SEC. 121. Of the funds made available in H.R. 5438, the Department of Defense Appropriations Act, 1987, as reported to the House of Representatives on August 14, 1986, $1,500,000 for “Operation and maintenance, defense agencies” shall be transferred to the Department of Commerce, International Trade Administration, “Operations and administration”, for export administration activities.

[SEC. 122. (a) The Secretary of Defense shall conduct through the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) a demonstration project on the treatment of alcoholism designed to compare the use of chemical aversion therapy with the use of other treatments. The Secretary shall submit to the Committees on Appropriations and Armed Services of the Senate and House of Representatives a report describing the proposed conduct of the demonstration project not later than November 1, 1986. The Secretary shall implement the demonstration project not later than February 1, 1987. At the conclusion of the demonstration project, the Secretary shall submit to such committees a report on the results of the project.

[(b) Until the report required by subsection (a) on the results of the demonstration project is submitted, the Secretary of Defense shall ensure that coverage of beneficiaries under section 1079(a) or 1086(a) of title 10, United States Code, shall provide for chemical aversion treatment of beneficiaries for alcoholism to the same extent as for any other treatment of beneficiaries relating to alcoholism.

[SEC. 123. In addition to the funds appropriated or made available in the Department of Defense Appropriations Act, 1987 (H.R. 5438), as reported to the House of Representatives on August 14, 1986, the following additional amounts are appropriated: $37,200,000 for “Procurement of Ammunition, Army” and $10,000,000 for “Other Procurement, Navy”, to be offset by corresponding general reductions in the named appropriations.

[SEC. 124. (a) GOVERNOR CONSENT FOR ACTIVE DUTY OF NATIONAL GUARD MEMBERS.—Section 501 of title 32, United States Code, is amended by adding at the end the following new subsection:

[“(c) With regard to active duty outside the United States, its territories, and its possessions, the consent of the Governor described in sections 672(b) and 672(d) of title 10 may not be withheld in whole or in part because of any objection to the location, purpose, type, or schedule of such active duty.”.

[(b) CONFORMING AMENDMENT.—Section 672 of title 10, United States Code, is amended—

[(1) by inserting “except as provided by section 501(c) of title 32” after “as the case may be” in subsection (b); and

[(2) by inserting “except as provided by section 501(c) of title 32” after “whichever is concerned” in subsection (d).

[SEC. 125. None of the funds provided in this Act, or any other Act, may be used by the Corps of Engineers to lease, contract or otherwise transfer to a non-government entity any parks or recreation resources, or the management or operation thereof, located at Greers Ferry Lake or Little Red River in the State of Arkansas, for which such arrangements did not exist on or before September 1, 1986, until the Corps has studied the economic, environmental and public use impact of leasing to private enterprise the parks and other recreation resources at lakes, reservoirs and reaches of river under its jurisdiction and such study has been reviewed by the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works in the Senate.

[SEC. 126. None of the funds made available by this Act or any other Act for any fiscal year may be used hereafter to study, to plan, to implement, to construct, or to issue any permit for the Northfield Mountain Water Supply Project, Massachusetts or the Millers and Tully Rivers Water Supply Project, Massachusetts: *Provided*, That this section shall not apply to environmental studies undertaken by the United States Fish and Wildlife Service.

[SEC. 127. Within available funds, the Secretary of the Army acting through the Chief of Engineers is authorized and directed to modify the Black Warrior and Tombigbee Rivers, Alabama, project, to provide a safe channel and general navigation facilities in the vicinity of Jackson, Alabama, at an estimated cost of $8,200,000. Necessary training works to provide a safe channel shall be constructed at full Federal expense as part of the Operation and Maintenance, General program. Development of general navigation facilities to provide a spur canal for a port facility at Jackson, at an estimated cost of $2,300,000, shall be part of the Construction, General program and shall be cost shared under terms and conditions acceptable to the Secretary of the Army as set forth in a binding agreement with a non-Federal sponsor desiring to participate in project construction.

[SEC. 128. Section 8 of the Act of June 3, 1960 (74 Stat. 156; Public Law 86-488), is amended by inserting “(a)” after “Sec. 8.” and by inserting at the end thereof the following new subsection:

[“(b) Notwithstanding any other provision of law, none of the costs associated with, or resulting from, the following which have been or will be incurred shall be recovered by the Secretary, directly or indirectly, from power contractors of the Central Valley project:

[“(1) the construction of such distribution systems and drains as are not constructed by local interests;

[“(2) the construction of the San Luis interceptor drain; or

[“(3) the construction or acquisition of any facilities by the United States or the Westlands Water District as partial or full alternatives to the San Luis interceptor drain.”.

[SEC. 129. From within the amounts made available in section 101(e) for Atomic Energy Defense Activities, not less than $664,600,000 shall be made available for defense waste and byproducts management.

[SEC. 130. Notwithstanding the provisions of H.R. 5339, the United States Governor of the Inter-American Development Bank may subscribe without fiscal year limitation to the callable capital portion of the United States share of such increase in capital stock in an amount not to exceed $1,111,561,128.

[SEC. 131. Of the amount made available in section 101(g) for “DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—MANAGEMENT AND ADMINISTRATION—SALARIES AND EXPENSES”, $225,000 shall be available only for expenses of the Department of Housing and Urban Development in operating a field office of the Department in Springfield, in the State of Illinois. The Secretary of Housing and Urban Development shall reopen such field office upon the enactment of this joint resolution and may not terminate operations at such office before September 30, 1987.

[SEC. 132. The Interagency Committee on Cigarette and Little Cigar Fire Safety, established pursuant to Public Law 98-567, shall have an additional six months to complete its final technical report and submit policy recommendations to the Congress.

[SEC. 133. National Park Service, “Construction”, $5,000,000, in addition to funds made available by any other provision of this joint resolution and notwithstanding section 102 of this joint resolution, to restore the Roundhouse at Steamtown U.S.A. in Scranton, Pennsylvania, to remain available until expended.

[SEC. 134. The funds appropriated for fiscal year 1987 under this or any other Act to carry out part A of title IV of Public Law 92-318 (Indian Education Act) shall be distributed under the same proof of eligibility requirements as applied in fiscal year 1986.

[SEC. 135. Smithsonian Institution, “Salaries and Expenses”, $1,000,000, in addition to funds made available by any other provision of this joint resolution, for the acquisition, curation, care, maintenance, reproduction and dissemination, through publication and recording, of the Duke Ellington Collection.

[SEC. 136. (a) Any individual who—

[(1) on the day before the date on which food services operations for the House of Representatives are transferred by contract to a corporation or other person—

[(A) is a congressional employee (as defined in section 2107 of title 5, United States Code), other than an employee of the Architect of the Capitol, engaged in providing such food services under the administrative control of the Architect of the Capitol; and

[(B) is subject to subchapter III of chapter 83 of title 5, United States Code, or chapter 84 of such title;

[(2) as a result of such contract, ceases to be an employee described in paragraph (1); and

[(3) becomes employed to provide such food services under contract, including a successor contract;

may, for purposes of the provisions of law specified in subsection (b), elect to be treated, for so long as such individual continues to be employed (without a break in service) as described in paragraph (3), as if such individual had not ceased to be an employee described in paragraph (1). Such election shall be made on or before the day referred to in paragraph (1) and shall be available only to an individual whose transition from the employment described in paragraph (1) to the employment described in paragraph (3) takes place without a break in service.

[(b) The provisions of law referred to in subsection (a) are—

[(1) subchapter III of chapter 83 of title 5, United States Code (including section 8339(m) of such title (which shall be applied, when an employee retires on an immediate annuity or dies, as if the employment at the time of retirement or death were under a formal leave system), with respect to unused sick leave to the credit of an employee on the day referred to in subsection (a)(1));

[(2) chapter 84 of title 5, United States Code; and

[(3) title III of the Federal Employees' Retirement System Act of 1986.

[(c)(1) At the earliest practicable opportunity, the Director of the Office of Personnel Management shall, in consultation with the Architect of the Capitol, prescribe regulations to carry out this section with respect to matters within the jurisdiction of the Office, including regulations under which—

[(A) an individual who makes an election under subsection (a) shall pay into the Civil Service Retirement and Disability Fund any employee contributions which would be required if such individual were a Congressional employee; and

[(B) the employer furnishing food services under a contract referred to in subsection (a) shall pay into the Civil Service Retirement and Disability Fund amounts equal to any agency contributions which would be required if the individual were a Congressional employee.

[(2) At the earliest practicable opportunity, the Executive Director of the Federal Retirement Thrift Investment Board shall, in consultation with the Architect of the Capitol, prescribe regulations to carry out this section with respect to matters within the jurisdiction of the Board.

[SEC. 137. (a) The Secretary of the Air Force may use not more than $600,000 (from funds described in subsection (b)) to provide assistance, by grant or otherwise, to the Douglas School District in Box Elder, South Dakota, near Ellsworth Air Force Base, South Dakota, for purposes of mitigating any adverse impact on the schools in such district determined by the Secretary to result from deployment of the B-1 bomber or establishment of the strategic training center at such base.

[(b) Assistance under subsection (a) shall be provided from funds appropriated to the Air Force for fiscal year 1987 for military construction projects at Ellsworth Air Force Base, South Dakota, or from prior-year funds available for military construction projects at such base that are no longer required for the project for which originally made available.

[SEC. 138. None of the equipment, boats, or personnel of the Coast Guard may be used after the date of the enactment of this Act for purposes of extending the navigation season on any of the Great Lakes or the Saint Lawrence River beyond January 15 of any year or conducting demonstration projects for the extension of the navigation season, unless such extension is necessary because of emergency navigational or other emergency circumstances: *Provided*, That nothing in this section shall preclude the Coast Guard from performing routine search and rescue operations.

[SEC. 139. Within 30 days of enactment, the Federal Aviation Administration shall initiate rulemaking action to consider the question of requiring the installation and carriage of operating transponders with automatic altitude reporting capability for all aircraft operating in terminal airspace where the Federal Aviation Administration provides radar service, and in all controlled airspace above a minimum altitude to be determined by the Federal Aviation Administration. This regulation shall be effective on the earliest feasible date.

[SEC. 140. The Secretary of Transportation shall approve the construction of the Interstate Highway H-3 between the Halawa Interchange to, and including, the Halekou Interchange (a distance of approximately 10.7 miles), and such construction shall proceed to completion notwithstanding section 138 of title 23 and section 303 of title 49, United States Code.

[SEC. 141. Section 11321(b) of title 49, United States Code is amended by striking out in the first sentence "that is not operated through the Panama Canal and".

[SEC. 142. The Administrator of the General Services Administration, under section 210(h) of the Federal Property and Administrative Services Act of 1949, as amended, shall acquire, by means of a lease of up to 30 years duration, space for the United States Courts in Tacoma, Washington at the site of Union Station, Tacoma, Washington.

[SEC. 143. None of the funds appropriated by this Act or any other Act shall be used for the processing of any application for a certificate of label approval for imported distilled spirits, malt beverages, or wine under section 205(e) of the Federal Alcohol Administration Act, unless each application is accompanied by appropriate documentation.

[SEC. 144. (a) CIVILIAN PAY RAISE.—(1) Notwithstanding any other provision of law, in the case of fiscal year 1987, the overall percentage of the adjustment under section 5305 of title 5, United States Code, in the rates of pay under the General Schedule, and in the rates of pay under the other statutory pay systems, shall be an increase of 3 percent.

[(2) Each increase in a pay rate or schedule which takes effect pursuant to paragraph (1) shall, to the maximum extent practicable, be of the same percentage, and shall take effect as of the first day of the first applicable pay period commencing on or after January 1, 1987.

[(3)(A) Notwithstanding any other provision of law, determinations relating to amounts to be appropriated in order to provide for the adjustment described in paragraph (1) shall be made based on the assumption that the various departments and agencies of the Government will, in the aggregate, absorb 50 percent of the increase in total pay for fiscal year 1987.

[(B) Subparagraph (A) does not apply with respect to the Department of Defense or pay for employees of the Department of Defense.

[(4) For purposes of this subsection—

[(A) the term "total pay" means, with respect to a fiscal year, the total amount of basic pay which will be payable to employees covered by the statutory pay systems for service performed during such fiscal year;

[(B) the term "increase in total pay" means, with respect to a fiscal year, that part of total pay for such year which is attributable to the adjustment taking effect under this section during such year; and

[(C) the term "statutory pay system" has the meaning given such term by section 5301(c) of title 5, United States Code.

[(b) MILITARY PAY RAISE.—(1) Any adjustment required by section 1009 of title 37, United States Code, in elements of the compensation of members of the uniformed services to become effective during fiscal year 1987 shall not be made.

[(2) The rates of basic pay, basic allowance for subsistence, and basic allowance for quarters of members of the uniformed services are increased by 3 percent effective on January 1, 1987.

[TITLE II

[OMNIBUS DRUG SUPPLEMENTAL APPROPRIATIONS ACT OF 1987

[CHAPTER I

[DEPARTMENT OF JUSTICE

[LEGAL ACTIVITIES

[SALARIES AND EXPENSES, UNITED STATES ATTORNEYS

[For an additional amount for "Salaries and Expenses, United States Attorneys", $31,000,000.

[SALARIES AND EXPENSES, UNITED STATES MARSHALS SERVICE

[For an additional amount for "Salaries and Expenses, United States Marshals Service", $15,000,000.

[SUPPORT OF UNITED STATES PRISONERS

[For an additional amount for "Support of United States Prisoners", $5,000,000 of which $3,000,000, to be available until expended, is for the Cooperative Agreement Program.

[DRUG ENFORCEMENT ADMINISTRATION

[SALARIES AND EXPENSES

[For an additional amount for "Salaries and Expenses", $114,000,000, of which $54,000,000 shall be available for cooperative interdiction operations in the Bahamas.

[FEDERAL PRISON SYSTEM

[SALARIES AND EXPENSES

[For an additional amount for "Salaries and Expenses", $7,000,000.

[BUILDINGS AND FACILITIES

[For an additional amount for "Buildings and Facilities", $140,000,000, to remain available until expended.

[OFFICE OF JUSTICE PROGRAMS

[JUSTICE ASSISTANCE

[For an additional amount for "Justice Assistance", $660,000,000, to remain available until expended, for grants for drug law enforcement programs authorized by title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended as passed the House on September 11, 1986.

[THE JUDICIARY

[COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

[SALARIES AND EXPENSES

[For an additional amount for "Salaries and Expenses", $4,500,000, to carry out the provisions of the Drug and Alcohol Dependent Offenders Treatment Act of 1986 as passed the House on September 11, 1986.

[RELATED AGENCY

[UNITED STATES INFORMATION AGENCY

[SALARIES AND EXPENSES

[For an additional amount for "Salaries and Expenses", $2,000,000, to be available only for drug education programs abroad authorized in H.R. 5484 as passed the House on September 11, 1986.

[CHAPTER II

[FOREIGN ASSISTANCE

[BILATERAL ECONOMIC ASSISTANCE

[FUNDS APPROPRIATED TO THE PRESIDENT

[AGENCY FOR INTERNATIONAL DEVELOPMENT

[Education and human resources development, Development Assistance:

[For an additional amount to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, $3,000,000: *Provided*, That these funds shall be used pursuant to section 126(b)(2) of the Foreign Assistance Act of 1961 for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries: *Provided further*, That funds made available by this paragraph shall be available through the regular notification procedures of the Committees on Appropriations.

[DEPARTMENT OF STATE

[INTERNATIONAL NARCOTICS CONTROL

[For an additional amount to carry out the provisions of section 481 of the Foreign Assistance Act of 1961, $35,000,000: *Provided*, That funds may be available for this purpose only if the President has submitted to the Congress: (1) a budget request for the funds, (2) a plan showing how the requested funds will be used, including a description of how regional cooperation on narcotics control matters would be promoted by the use of the funds: *Provided further*, That funds made available by this paragraph shall be available through the regular notification procedures of the Committees on Appropriations.

[CHAPTER III

[DEPARTMENT OF THE INTERIOR

[NATIONAL PARK SERVICE

[OPERATION OF THE NATIONAL PARK SYSTEM

[For an additional amount for "Operation of the National Park System", $1,000,000.

[BUREAU OF INDIAN AFFAIRS

[OPERATION OF INDIAN PROGRAMS

[For an additional amount for "Operation of Indian programs", $19,860,000, of which the funds made available to tribes and tribal organizations through contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450 et seq.) shall remain available until September 30, 1988.

[CONSTRUCTION

[For an additional amount for "Construction", $34,000,000, to remain available until expended.

[TERRITORIAL AND INTERNATIONAL AFFAIRS

[ADMINISTRATION OF TERRITORIES

[For an additional amount for "Administration of territories", $4,000,000, to remain available until expended.

[DEPARTMENT OF HEALTH AND HUMAN SERVICES

[HEALTH RESOURCES AND SERVICES ADMINISTRATION

[INDIAN HEALTH SERVICES

[For an additional amount for "Indian health services", $37,500,000: *Provided*, That funds made available to tribes and tribal organizations through grants and contracts authorized by the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450 et seq.) shall remain available until September 30, 1988.

[INDIAN HEALTH FACILITIES

[For an additional amount for "Indian health facilities", $4,000,000, to remain available until expended.

[CHAPTER IV

[DEPARTMENT OF HEALTH AND HUMAN SERVICES

[ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

[EMERGENCY SUBSTANCE ABUSE TREATMENT AND PREVENTION

[For carrying out drug abuse prevention and treatment activities authorized by title XIX of the Public Health Service Act as amended by title IX of the Omnibus Drug Enforcement, Education, and Control Act of 1986 (H.R. 5484), as passed the House of Representatives on September 11, 1986, $280,000,000.

[ALCOHOL, DRUG ABUSE AND MENTAL HEALTH

[For an additional amount for carrying out the study on the coverage of drug abuse treatment and rehabilitation services authorized by title IX of the Omnibus Drug Enforcement, Education, and Control Act of 1986 (H.R. 5484), as passed the House of Representatives on September 11, 1986, $1,000,000.

[RELATED AGENCIES

[ADVISORY COMMISSION ON THE COMPREHENSIVE EDUCATION OF INTERCOLLEGIATE ATHLETES

[SALARIES AND EXPENSES

[For expenses necessary to carry out title IX of the Omnibus Drug Enforcement, Education, and Control Act of 1986 (H.R. 5484), as passed the House of Representatives on September 11, 1986, with respect to the Advisory Commission on the Comprehensive Education of Intercollegiate Athletes, $650,000.

[DEPARTMENT OF EDUCATION

[DRUG ABUSE EDUCATION AND PREVENTION

[For carrying out the Drug Abuse Education and Prevention Act of 1986, as authorized by title VIII of the Omnibus Drug Enforcement, Education, and Control Act of 1986 (H.R. 5484), as passed the House of Representatives on September 11, 1986, $350,000,000 to remain available until September 30, 1988.

[CHAPTER V

[DEPARTMENT OF TRANSPORTATION

[COAST GUARD

[OPERATING EXPENSES

[For an additional amount for "Operating expenses", $59,000,000.

[ACQUISITION, CONSTRUCTION, AND IMPROVEMENTS

[For an additional amount for "Acquisition, construction, and improvements", $59,000,000, to remain available until September 30, 1991.

[RESERVE TRAINING

[For an additional amount for "Reserve training", $9,000,000.

[CHAPTER VI

[TREASURY DEPARTMENT

[U.S. CUSTOMS SERVICE

[SALARIES AND EXPENSES

[For an additional amount for "Salaries and expenses", $52,431,000.

[OPERATION AND MAINTENANCE, AIR INTERDICTION PROGRAM

[For an additional amount for "Operation and Maintenance, Air Interdiction Program", $147,000,000.

[CUSTOMS FORFEITURE FUND

[For an additional amount for the "Customs Forfeiture Fund", $12,000,000, to be derived from deposits in the Fund.

[PAYMENT TO THE GOVERNMENT OF PUERTO RICO

[For payment of a grant to the government of Puerto Rico, $7,800,000, to remain available until expended.

[EXECUTIVE OFFICE OF THE PRESIDENT

[WHITE HOUSE CONFERENCE ON DRUG ABUSE AND CONTROL

[SALARIES AND EXPENSES

[For necessary expenses of the White House Conference on Drug Abuse and Control, $5,000,000.

[GENERAL PROVISIONS

[In order to meet the outlay limits established in the Congressional budget resolution for fiscal year 1987, notwithstanding any other provision of this resolution, further reductions of .34 percent (thirty-four one-hundredths of 1 per centum) shall be made in each appropriation item of new discretionary budget authority made available in this resolution, rounded to the nearest thousands of dollars: *Provided*, That such reductions shall be applied proportionally to each program, project, and activity.]

Mr. HATFIELD. Mr. President, House Joint Resolution 738, the continuing resolution for fiscal year 1987, is the single largest appropriations measure this body has ever considered. It provides funding for the entire fiscal year for all the programs, projects, and activities normally provided for in 13 separate, regular appropriations bills. The total amount of funding provided by this resolution as recommended by the Committee on Appropriations is $556,138,358,343.14.

The 13 regular bills are at various stages in the process. Six fiscal year 1987 appropriations bills have passed both Houses of Congress. They are the appropriations bills for the District of Columbia, Interior, Labor-HHS-Education, legislative branch, military construction, and Transportation. A conference has been held on the legislative branch appropriations bill, and the conference report was filed in the House on August 15. Senate and

House conferees have been appointed on Labor-HHS-Education and military construction, and the conference on Labor-HHS-Education begins today. The Senate has asked for a conference and appointed conferees on the District of Columbia, Interior, and Transportation appropriations bills, but the other body has not responded.

The other seven fiscal year 1987 appropriations bills have been reported to the Senate by the Committee on Appropriations and are on the calendar awaiting action. Those bills are the appropriations bills for agriculture, reported on September 11; the Commerce bill, reported on September 3; the defense bill, reported on September 17; the Energy and Water bill, reported on September 15; the foreign assistance bill, reported on September 16; the HUD bill, reported on September 25; and the Treasury bill, reported on August 14. I should point out that two of these bills, the Defense bill and the foreign assistance bill, are original Senate measures, since the other body has not acted on either.

Despite the magnitude of this resolution in terms of the funding levels provided, it is relatively simple and straightforward. The committee recommendations simply substitute the funding levels of the Senate appropriations bills for the funding levels of the appropriations bills of the other body as referenced in the continuing resolution, and strike all other extraneous provisions. The substance of the continuing resolution recommended by the committee is covered in only 11 pages of bill text; the remaining 62 pages consist of extraneous matter adopted by the other body, which the committee has stricken through committee action.

I expect to hear a number of complaints that this is no way to do the Nation's business. I could not agree more. I find it deplorable that we have come to September 29, just 2 days away from the start of fiscal year 1987, and we do not have a single appropriations bill enacted into law. The Members of this Congress, and the people they represent, deserve better consideration of these funding measures than they are getting.

But while we may be dismayed, Mr. President, we should not be surprised at this turn of events. The Congress has created all sorts of institutional barriers to expeditious handling of appropriations bill, and from time to time I and others have warned that we were inevitably headed toward the circumstance in which we now find ourselves today.

The original budget Act of 1974 stipulated that a conference agreement on a budget resolution should be adopted by May 15, and that no appropriations measure for a given fiscal year would be in order in either the House or the Senate prior to that action. The Gramm-Rudman-Hollings legislation was supposed to expedite action by stipulating that the conference agreement on the budget resolution should be adopted by April 15, a month earlier than the budget act. That no appropriations measure for a given fiscal year would be in order in the Senate, but not the House until adoption of the conference agreement on the budget resolution, and that no appropriations bill would would at that time be considered by the committee unless the committee had made its subcommittee allocations pursuant to section 302(b) of the Budget Act, subsequent to receiving its 302(a) allocation from the Budget Committee after adoption of the conference agreement on the budget resolution.

What has happened this year, the first year of the new, improved procedure under Gramm-Rudman-Hollings? We missed the goal of adopting a final budget resolution by 10 weeks. The Senate did not agree on a resolution until May 1, and the conference report was not adopted until June 26, not April 15, as designated. The Senate promptly recessed for 2 weeks, so it was not until July 14 that the information on the Appropriations Committee's 302(a) allocation was available. By this time, the process was nearly 3 months behind schedule. Instead of beginning to act on appropriations measures shortly after April 15, we could not get started until mid-July. The Committee on Appropriations filed its 302(b) report on July 29, and promptly began action on fiscal year 1987 appropriations bills, managing to report nine bills in the 3 weeks before the August recess.

So, Mr. President, when we bemoan the excesses of a comprehensive continuing resolution brought to the floor at the very last minute, I hope we will recall the events of the past several months. I hope my colleagues will not lay the blame for this at the feet of the Appropriations Committee. I believe the committee has done a very good job under very difficult circumstances. We have really had only about 6 weeks to do our work, and in that time we have reported all 13 bills, passed 6, and kept them all within the rigorous constraints of our 302(b) allocations, in accordance with Gramm-Rudman-Hollings. Would that the other provisions of that piece of legislation were so consistently observed.

The matter of our 302(b) allocations is my final point, Mr. President. Since all of our bills are at our 302(b) ceilings, Senators who wish to offer amendments adding money to this continuing resolution should know that those amendments will be subject to a point of order that can be waived only by a three-fifths vote. Since that will be very difficult to do, I expect that we will not see many amendments proposing to add more money to this continuing resolution. The bulk of what we will face will be authorizing legislation that should not be offered to this vehicle in the first place. I intend to oppose such amendments, and ask my colleagues to join me in defeating them, so that we may have some chance of concluding our business at a reasonable hour and avoid the silliness of shutting down the Government because of a situation where we have no money.

At this time we are waiting for clearance from the Democratic cloakroom on a matter relating to adopting the committee amendments en bloc. Until we receive that information, Mr. President, I would like to yield at this time to the very distinguished Senator from Mississippi, the cochair managing this bill, and the ranking member of the full Senate Appropriations Committee, a man with whom I have been delighted to work with over a number of years and who has carried a major part of the burden in bringing this continuing resolution to the floor at this time.

Mr. STENNIS addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President and Members of the Senate, first I want to inform, applaud, and approve all the major points here that have been made by the chairman of our committee regarding the proceedings, the situation, and the problem that goes with this matter of meeting the requirements of our law and reading the situation as to the need of the country.

Mr. President, I am a great believer in the committee system. I think it is in the committees that Senators make their main contributions during their tenure. It is through the efforts of the committee as a whole that gives strength, practicality, and worthiness to our laws that we pass, particularly those with reference to the money situation, and the budget matters in the course of each 12-month period.

□ 1300

I think the emphasis, the proper emphasis, which has been given heretofore has contributed to the real strength and operation, the successful operation, of our Government. We are approaching the day when we will celebrate the 200th anniversary of the use and operation under our Constitution, its provisions.

I think running through the stream of time, down the avenue of achievement, the strength of our Nation is the work of these committees in the legislative branch. The President, of course, has his office, but it is the activities, the strengths and the adjustments, the capacity of the Members of the legislative body, which meets the problems day by day, that strengthens our country's development and carries on in a fine fashion.

I am sorry to say, but I think we are getting into a practice, by necessity we are getting into a practice, that is affecting the committee system. There is no doubt in my mind about this. I do not think it can continue to function until we rectify these errors that we are making and go back to the sound system of bringing these necessary bills in and passing them when there is time to really consider them after they have been fully considered by the committee, having the benefit of the expertise of valuable staff members. Compromise has been entered by the committees and by the bodies.

It is only under such a system as that that we can exercise the give and take that goes with our system of government.

I am here today in a sense of duty, but I do not approve the idea at all of going on year after year at the last minute, more or less abandoning the consideration that we ordinarily give to these problems, and, finally, compromise and pass something that will at least temporarily meet the situation. I think we are practically destroying the bulwark and foundations of our system of government as reflected in our Constitution, which is a give-and-take and a compromise system, to a degree. It will not work under the system we are trying to apply now.

I am not here just to complain. We are here now to do the best we can in the time that is left. I want to emphasize, though, that there has been excellent work done this year, a continuous effort by the individual Members of this body and the House of Representatives. The chairmanship of each committee has been outstanding, and the staff work has been as high, I believe, as it has ever been in any other year. It is perhaps getting stronger all the time.

These things which could weaken us are not happening. It is the indulgence of our lack of planning and the lack of use of our own time in consummating these necessary laws that have to be passed to operate the Government, to collect taxes and collect the means by which to run its affairs.

I wish we could do better than this. I pray that we will. But it will not come through the efforts of anyone else. It has to come through our efforts. We have to work within the framework of the dates which the chairman has so vividly pointed out, which have such terrific meaning to the proper application of those rules. When they are omitted, they give trouble to the rest of the session.

I am here, as are other Members, to address this matter the best we can under the circumstances. I hate to see some of these matters passed on without time, proper attention and maturity, with full debate. But we will have to cut down the time and go on and pass this legislation. We will just do the best we can to be of such service as we can be to other Members of the body.

Mr. President, I ask unanimous consent that a paper entitled "Opening Points by Senator STENNIS on the Continuing Resolution" be included in the RECORD.

There being no objection, the paper was ordered to be printed in the RECORD, as follows:

OPENING POINTS BY SENATOR STENNIS ON THE CONTINUING RESOLUTION

1. Senator Hatfield the Chairman of the Senate Appropriations Committee has outlined the situation well as it regards this Continuing Resolution. Senator Hatfield is the best floor manager I have ever seen on this kind of massive bill. If anyone can carry it through, he can and I intend to back him up.

2. This is a massive bill, probably the most massive money bill ever adopted by the Congress. It totals $552B in new budget authority and the programs covered by it account for some $560B in outlays.

3. About 65 percent of this money is for various defense programs and the balance covers every other function of the government which requires money to operate.

4. The bill covers all 13 appropriation bills by refernce. The amounts to the massive omnibus appropriation bill covering thousands and thousands of individual line items and programs.

5. Six of the appropriation bills have already passed the Senate floor and the other 7 have been reported by the full committee to the Senate.

6. This is a very tight budget situation. Under the budget action a point of order would lie against any amendment which exceeds the allocations made to the subcommittee covered by the amendment. In almost all cases this Continuing Resolution as reported uses up allocation of outlays to each subcommittee. That means any amendment that would add outlays would be out of order.

7. There are a great many legislative amendments which are rumored to be available for the Continuing Resolution. This is not the bill to make major legislative changes which do not carry committee recommendations, hearings or any other requirement of good legislation in the Senate. I would urge my colleagues to withhold such legislative amendment which under Senate rules are not appropriate to Appropriation Bills.

Mr. HATFIELD. Mr. President, I now have the unanimous-consent request which I was about to propound which has been cleared on both sides of the aisle.

Therefore, at this time I ask unanimous consent that the committee amendments to House Joint Resolution 738 be considered and agreed to en bloc, provided that no points of order under rule XVI be waived thereon and that the measure as amended be considered as original text for the purpose of further amendment, with the exception of the following: The committee amendment on page 7, lines 7 through 18, which is the Treasury-Post Office appropriations bill. This relates to an amendment we commonly refer to as the beer amendment.

The PRESIDING OFFICER (Mr. MATTINGLY). Is there objection?

Without objection, it is so ordered.

The committee amendments were considered and agreed to en bloc, with the exception of the following: page 7, lines 7 through 18, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic):

[(m) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5294, the Treasury, Postal Service, and General Government Appropriations Act, 1987, as passed by the House of Representatives on August 6, 1986.**]**

(m) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5294, the Treasury, Postal Service, and General Government Appropriations Act, 1987 as reported to the Senate on August 14, 1986.

Mr. HATFIELD. Mr. President, we are expecting that many amendments which will be offered will require a rollcall vote. It is my understanding that the leadership has indicated in some way or another that perhaps there would not be rollcall votes until 3 or 3:30 this afternoon. We are ready to receive and consider amendments at any time. I would suppose that any such amendments that might require a recorded vote would then be stacked or be postponed until that hour of 3 or 3:30.

I understand, secondly, that there may be a number of amendments which will be offered that will not require a rollcall vote. Therefore, Senators are urged to come to the floor sometime this afternoon to handle those amendments.

It is also expected that the amendment relating to the Treasury-Post Office bill will require rather extended debate. It is hopeful that we can resolve that problem without extended-extended debate. So it is hoped that that amendment will be considered perhaps between 1:30 and 1:45.

□ 1310

Now, that is sort of a rough outline. I am hopeful we can go at least until 8 o'clock tonight or an hour longer, and if not longer then we would be in tomorrow at an early hour and I would hope that we could pursue this bill to its finality sometime tomorrow night or Wednesday morning, that is, early Wednesday morning. We must get to the House conference to resolve the differences that will inevitably develop between the House bill and the Senate bill. There are those differences already present and perhaps even more differences will accrue throughout the full proceeding of this bill. So my indication at this time is to hopefully get through the entire bill by pursuing it with great diligence throughout the entire day and tomorrow night and to get as much work on the bill completed as we can today.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MELCHER. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Montana.

Mr. MELCHER. Mr. President, while the chairman, the Senator from Oregon [Mr. HATFIELD], and the ranking Democratic member of the Appropriations Committee, the senior Senator from Mississippi, [Mr. STENNIS], and their staffs are fresh and alert, before we get into the grueling process of passing this continuing resolution, I would like to take a few minutes to explain some of the amendments that I shall offer to attempt to expand agricultural exports.

The decline in agricultural exports in the past several years has been disastrous and it is one of the major reasons why the trade imbalance for the United States in comparison with imports has approached about $200 billion for this current calendar year. This bill, unfortunately, or a bill similar to it, in the coming few days left in this Congress, will be the last chance for Congress to do something to change this disastrous drop in exports. The amendments I will offer will be to utilize the surplus commodities that we have in Federal storage for our domestic nutrition programs and, secondly, to utilize them for programs overseas to assist friendly countries. The amendments will be drafted to utilize these commodities for foreign donations through section 416.

Now, there is no budgetary impact on outlays either using the surplus commodities for domestic nutrition programs or for foreign food assistance under section 416. In other words, these surplus commodities have already been paid for, they are in Federal storage, and the outlay has been previously made. It will not be counted twice. This will be disposal of these commodities, and to that extent, there is no budgetary impact.

Now, on transportation costs or on processing costs, that is a different matter. And while the value involved is the surplus commodity itself—in other words, the food—if there are transportation costs or if there are processing costs, then that is a different matter and would have to be scored differently as to budgetary impact.

In drafting the amendments, we will try to take note of that and try to fit those costs, those incidental costs, in funds already appropriated so the amendments themselves are sound from the aspect of not having budgetary impact and therefore no point of order would lie against them. It is a difficult task to draft amendments in that way but, nevertheless, we are attempting to do that. And when they are ready, I will be happy to present them on the Senate floor and hope that they meet that test and the Senate will approve them.

But I want to reemphasize it is essential Congress act on agricultural exports during these few days left in this Congress. We cannot leave town without having taken steps to make certain that during the next 2 or 3 or 6 months, agricultural surplus now in storage is being disposed of at a faster pace than has happened so far this calendar year.

The further damage it will do to the producers of these commodities as prices continue to sag, as the surplus mounts, the damage it does to agribusiness, caught in the trap of miserable performance of agriculture exports, the damage it does to the entire economy, not just of agriculture but to the entire economy of this country, must be responded to in this Senate by passing legislation which will spur the bureaucracy of the State Department and the Agriculture Department and the White House itself to approve these exports and get these surplus commodities moving.

It seems entirely heartless to have the surplus commodities in such great piles, where some of the wheat is lying on the ground for lack of storage, and not make it available to the American people who could use this additional nutrition to augment the meager funds they have available to purchase food.

So the amendments will be our last opportunity in this Congress to move in the right direction.

Mr. President, I thank the managers of the bill for this opportunity to describe the amendments.

DEFENSE SPENDING RECOMMENDATIONS IN THE CONTINUING RESOLUTION, H.J. RES. 738

Mr. STEVENS. Mr. President, the defense spending levels reported to the Senate in House Joint Resolution 738 are consistent with the recommendations contained in S. 2827 reported by the Appropriations Committee on September 17, 1986. The committee's amendment to section 101(c) incorporates S. 2827 as the recommended level for defense spending for fiscal year 1987.

While this procedure for recommending defense appropriations levels is the most expeditious means available given the time constraints we face under the current congressional calendar, I am concerned about the pattern we are building in this regard. Congress has not enacted a regular appropriations bill for defense since fiscal year 1984. Since that time, we have repeatedly incorporated reported bills in a manner similar to the resolution before the Senate today. But this continuing resolution is particularly unique in that all 13 appropriations bills are incorporated in this resolution. It is not my preference that we handle appropriations bills in this manner, but I recognize the realities that have driven us to this conclusion.

It is important to look at the events which led to this situation, and recognize the developing pattern over the last few years. First, the Congress has been consistenly late enacting the annual budget resolution. In order for the appropriations process to work in a timely manner and comply with congressional budget targets, we've got to enact the budget resolution at an earlier point in the year than we have been in recent years. Second, the appropriations process is expected to recognize and conform to the defense authorization process. Any Member of this body needs to look no farther back than the debates this past spring as to the problems which arise when the appropriations bill conflicts with the authorization bill. Despite this interest in conformance, it should be noted that the Appropriations Committee has not received the benefit of the authorizing legislation as yet. At this point, the House and Senate conferees are still deliberating on the Defense Authorization Act. This too has been a continuing pattern. In 4 of the last 5 years, the conference agreement on defense authorization has not been available in sufficient time to include all the specifics into the appropriations bill. Despite this timing problem, there continues to be some concern that the appropriations process is usurping the defense authorization jurisdiction. To the contrary, these problems have developed because of the lack of time to fully incorporate the defense authorization conference positions.

In addition to these timing problems, there has also been a major change in the basic ground rules for reporting appropriations bills. Unlike the House, or any of our counterpart authorizing committees, the Senate Appropriations Committee may not report bills which exceed the Budget Act spending targets for either budget authority or outlays. While this puts our committee at a decided disadvantage for conference, the restrictions assure that we only report bills in full compliance with the congressional budget deficit reduction efforts.

The chairman of the Appropriations Committee has already mentioned that the referenced bills are in compliance with the resolution. Recommendations for fiscal year 1987 defense appropriations strictly adhere to our committee allocations of the budget targets. The proposals match the 302(b) allocation for defense at $277.1 billion in budget authority and $264.5 billion in outlays. This is the defense appropriations portion of the $292 billion in budget authority and $279 billion in outlays agreed to in the budget resolution for the national defense 050 function. Although the bill agrees with the resolution, it should be recognized that we are cutting $25.2 billion in budget authority and $13.8 billion from outlays from the President's request from last February.

This has been a particularly difficult bill because I am convinced that the budget resolution significantly understates the outlays required to support the budget authority targets. I believe the resolution outlay targets are at least $5 billion below the amounts required to support the spending levels Congress has agreed to. As a consequence, the recommendations incorporate deep program spending reductions but also several initiatives aimed at outlay control.

It should be noted that the Senate authorization bill levels are more than $3 billion in budget authority and $8 billion in outlays above the 302(b) allocations. As a result, it simply wasn't possible to fashion an appropriations bill in strict adherence to the authorization bill and still comply with the budget resolution targets.

There are a few initiatives I would like to highlight in particular:

The sum of $2.96 billion is recommended to replace the shuttle orbiter *Challenger*. Just last month, the President decided to proceed with the fourth orbiter and dedicate most of the shuttle launches planned in the future for defense satellites and mission payloads.

The recommendations include a total of $3.4 billion for the strategic defense initiative, and $400 million for conventional defense initiatives provided for in the Senate-passed defense authorization bill.

A $4.5 billion rescission package is recommended to recoup savings from previously appropriated levels. This will result in an immediate $1.4 billion outlay savings and an additional $1 billion in fiscal year 1988. Much of these funds result from lower inflation than anticipated.

As a further means to meet the outlay targets, a series of policy changes are recommended to effect defense procurement contract procedures. In particular, the bill includes a provision to reduce the percentage of progress payments from the current level of 80 percent to 70 percent for all procurement contracts signed in fiscal year 1987. This will yield an outlay savings of $1.15 billion in the coming fiscal year. The provision also includes a requirement that defense contracts must cover the "up-front" cost of production tooling. In fiscal year 1987 enactment of this provision would save $560 million. The tooling provision is the first step toward the larger objective contained in the provision which is to redirect the Defense Department's profit policy from the current emphasis on cost as a determination of profit margin and instead emphasize investment and capital risk. The intent is to encourage and reward productivity and efficiencies as a means to reduce unit costs. These issues, including CBO's scoring of the proposals, were discussed at a subcommittee hearing on August 7, 1986.

Throughout the bill, Members will notice a series of procurement production rate adjustments. We must start holding production rates to stem the tide of the outyear "bow wave" from procurement outlays. Each year, the level of outlays derived from prior year spending has been growing dramatically. In fiscal year 1987, over $102 billion—nearly 40 percent—of the outlays from this bill will stem from programs Congress agreed to in the past. The balance is largely consumed through outlay-intensive personnel and readiness-related costs. In short, our maneuver room will continue to shrink unless we take action now to stabilize production rates and curb outyear expenditure growth. Recommendations for the F-16 and F-18 aircraft, M-1 tank, fighting vehicles, and several missile programs reflect this attempt to reduce production rates to current levels. There are also some "tough to swallow" new start deferrals recommended in order to further diminish the outyear impact. The most obvious example in the package is the recommendation to defer production of the C-17 airlifter.

Just before recess last month, the House reported its version of the defense appropriations bill, H.R. 5438, and included in its recommendations a series of legislative provisions contained in the House authorization bill. The referenced defense bill in this resolution does not contain any of these legislative provisions dealing with SALT II compliance, antisatellite testing, chemical weapons, or the nuclear test ban. All of these provisions are currently being debated in the joint conference on the defense authorization bill which is where these legislative matters ought to be settled.

These are the highlights of the defense appropriations bill, S. 2827. I hope the Senate will support the committee's recommendations which comply with the budget resolution targets, adhere to the general guidelines contained in the defense authorization bill by the Senate, and give the Senate the best possible negotiating position with the House in Conference.

Mr. DOMENICI. Mr. President, I support House Joint Resolution 738, the fiscal year 1987 continuing resolution, as reported by the Senate Appropriations Committee. I do not support it in terms of procedure, for obviously we have a very difficult time with 13 bills in a continuing resolution. I do not know whether anything different could have occurred this year because of the schedule, and although this is not an ideal procedure, I support the effort that developed the resolution now before us.

This year for the first time in the history of Congress, the Appropriations Committee in the Senate was not only charged with meeting a budget resolution in terms of overall budget authority and outlays, but it was further charged with the responsibility of adhering to the individual section 302(b) allocations of budget authority and outlays to the 13 respective subcommittees. The committee did that because the law requires it. The Appropriations Committee made the subcommittee allocations before it proposed a single bill, as the law requires. The committee proposed 13 bills, some of which have cleared the Senate, but all 13 have been reported by the Appropriations Committee and are incorporated herein.

I am pleased to state that with reference to outlays—that is, the actual dollars estimated to be expended—all of the 13 subcommittees are generally consistent with their outlay allocations. This scoring is based on Congressional Budget Office estimates. The subcommittees did not exceed their individual allocations of budget authority. The funding recommendations of the committee result in an overall availability of budget authority, while the outlay allocation has largely been met.

So I support the committee in that regard. Clearly, this resolution meets the test we prescribed in an effort to get to the Gramm-Rudman-Hollings totals. Some do not like the priorities and would prefer a different approach. Some concur with the priorities in the bill now before us.

With respect to defense, I support that effort. After many months of debate, the Senate and the House went to conference on a budget resolution. We compromised on defense outlays at a lower level than what the President requested and than what the Senate had voted in its resolution.

Nonetheless, the Senate Appropriations Committee had developed a budget for defense that indeed allocates the funding among the various programs, such that we do reach the outlay level that is recommended in the Senate budget resolution almost to the dollar. To the contrary, the House is substantially lower in the defense function.

Finally, Mr. President, the Senate version of the continuing resolution provides $539 billion in budget authority and $353.9 billion in outlays to fund the activities of the Federal Government in fiscal year 1987. When outlays from prior-year budget authority and other adjustments are taken into account, the bill provides a total of $552 billion in budget authority and $560.2 billion in outlays for fiscal year 1987.

The Senate bill is $7.3 billion in budget authority and $0.2 billion in outlays under the Senate Appropriations Committee overall 302(a) allocation under the fiscal year 1987 budget resolution.

Mr. President, these numbers illustrate three important points.

First, this is the largest continuing appropriations bill ever reported to the Senate. It contains all of the 13 regular appropriation bills. Without this continuing resolution, our Government would cease to function after September 30. More than ever, this bill requires the Congress to act prudently to keep the Government running.

Second, this continuing resolution is $0.2 billion in outlays under the Senate Appropriations Committee overall 302(a) allocation under the fiscal year 1987 budget resolution. The chairman of the Appropriations Committee, the senior Senator from Oregon, deserves great praise for his hard work and his commitment to holding to the budget targets for his committee.

The continuing resolution, however, is no more or less than the sum of its parts, so I want to acknowledge the great efforts of the 13 subcommittee chairmen. Not one subcommittee exceeded its 302(b) allocation by more than $50 million in either budget authority or outlays. It was often painful to meet these targets, but each subcommittee succeeded.

Third, the Senate must hold to these numbers to meet the $154 billion deficit target set by the Balanced Budget Act. If we can enact a continuing resolution that holds to the Senate levels, and can pass a reconciliation bill along the lines of the bipartisan leadership bill, then I can assure my colleagues we will meet that $154 billion target.

Mr. President, I compliment the chairman and the ranking minority member of the Appropriations Committee and each subcommittee.

I urge my colleagues to support this bill, to oppose all amendments that add to the deficit, and to move this bill along swiftly.

Mr. President, I ask unanimous consent that tables showing the relationship of the reported bill to the committee's section 302(a) spending and credit allocations, the President's request, the House-passed level, and the Senate-passed level, and a summary of congressional action to date, be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the tables were ordered to be printed in the RECORD, as follows:

APPROPRIATIONS COMMITTEE: CONTINUING APPROPRIATIONS FOR FISCAL YEAR 1987, SPENDING TOTALS—SENATE-REPORTED BILL

[In billions of dollars]

	Fiscal year 1987	
	Budget authority	Outlays
Outlays from prior-year budget authority, permanent and advance appropriations, and other actions completed this session	12.7	205.5
H.J. Res. 738, as reported in the Senate	539.0	353.9
Possible later requirements: Veterans compensation COLA	([1])	.2
Adjustment to conform mandatory programs to budget resolution assumptions and other adjustments	+.3	+.7
Adjusted committee total	552.0	560.2
Senate Appropriations 302(a) allocation	559.3	560.4
President's request [2]	571.3	574.3
House-reported level [2]	548.5	558.8
Adjusted committee total compared to:		
Senate Appropriations 302(b) allocation	−7.3	−0.2
President's request	−19.3	−14.0
House-reported level	+3.5	+1.4

[1] Less than $50 million.

[2] Includes adjustment for CCC for comparability with Senate crosswalk.

Note.—Details may not add to totals due to rounding.

APPROPRIATIONS COMMITTEE: CONTINUING APPROPRIATIONS FOR FISCAL YEAR 1987, CREDIT TOTALS—SENATE-REPORTED BILL

[In billions of dollars]

	Fiscal year 1987	
	Direct loans	Loan guarantees
Obligations from prior-year commitments	6.2	0.3
H.J. Res. 738, as reported in the Senate	14.7	93.3
Adjusted committee total	20.9	93.6
Senate Appropriations 302(a) allocation	20.3	67.9
President's request	18.1	69.2
House-reported level	20.2	68.1
Adjusted committee total compared to:		
Senate Appropriations 302(a) allocation	+0.6	+25.7
President's request	+2.8	+24.4
House-reported level	+0.7	+25.5

Note.—Details may not add to totals due to rounding.

H.J. RES. 738, CONTINUING RESOLUTION FOR FISCAL YEAR 1987, SENATE REPORTED

[In billions of dollars]

Subcommittee	Senate, Appropriations 302(b) allocaiton		Adjusted subcommittee totals [1]		Subcommittee compared to allocation	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
Agriculture	31.3	24.1	31.3	24.1	−([2])	+([2])
Commerce-Justice	12.1	12.3	11.8	12.3	−.3	−([2])
Defense	227.1	264.5	272.5	264.5	−4.6	−([2])
Deficiencies and Supplementals	.8	.1			−.8	−.1
District of Columbia	.6	.6	.6	.6	−([2])	−([2])
Energy-Water	14.5	14.9	14.5	14.9	+([2])	+([2])

H.J. RES. 738, CONTINUING RESOLUTION FOR FISCAL YEAR 1987, SENATE REPORTED—Continued

[In billions of dollars]

Subcommittee	Senate, Appropriations 302(b) allocaiton		Adjusted subcommittee totals (1)		Subcommittee compared to allocation	
	Budget authority	Outlays	Budget authority	Outlays	Budget authority	Outlays
Foreign Operations	13.0	10.8	13.0	10.8	+(2)	+(2)
HUD-Independent	54.3	56.4	53.9	56.4	-.4	+(2)
Interior	7.8	8.8	7.7	8.8	-.1	-(2)
Labor-HHS	114.0	118.0	113.4	118.0	-.6	+(2)
Legislative Branch	1.7	1.7	1.6	1.6	-.1	-.1
Military Construction	8.2	7.9	8.2	7.9	+(2)	+(2)
Transportation	10.6	26.9	10.2	26.9	-.4	-(2)
Treasury-Postal Service	13.3	13.4	13.3	13.4	-(2)	+(2)
Total, Appropriations Committee	559.3	560.4	552.0	560.2	-7.3	-.2

(1) In addition to the bill, includes outlays from budget authority enacted in prior years, possible later requirements, adjustments to conform mandatory items to budget resolution level, and other adjustments.
(2) Less than $50 million.

Note.—Details may not add to totals due to rounding.

CONTINUING RESOLUTION FOR FISCAL YEAR 1987, H.J. RES. 738, SENATE REPORTED, CREDIT ACTIVITY

[In billions of dollars]

Subcommittee	Senate Appropriations 302(b) allocation		Adjusted subcommittee totals (1)		Subcommittee compared to allocation	
	Direct loan obligations	Loan guarantees	Direct loan obligations	Loan guarantees	Direct loan obligations	Loan guarantees
Agriculture	7.45	2.9	7.5	2.9	+0.1	-(2)
Commerce-Justice	1.1	3.4	.6	3.4	-.5	-(2)
Defense						
Deficiencies and Supplementals						
District of Columbia						
Energy-Water	.1		.1		-(2)	
Foreign Operations	6.65	11.7	7.4	12.3	+.7	+.6
HUD-Independent	3.45	49.9	3.5	74.8	+(2)	+24.9
Interior	(2)	(2)	(2)	(2)		
Labor-HHS	1.45		1.3		-.1	
Legislative Branch						
Military Construction						
Transportation	.1		.1		-(2)	
Treasury-Postal Service						
Total, Appropriations Committee	20.3	67.9	20.3	93.3	+(2)	+25.5

(1) In addition to the bill, includes obligations from prior year commitments.
(2) Less than $50 million.

Note.—Details may not add to totals due to rounding.

Prepared by Senate Budget Committee staff.

CONGRESSIONAL ACTION TO DATE, CONTINUING APPROPRIATIONS FOR FISCAL YEAR 1987—H.J. RES. 738: SENATE-REPORTED BILL

[In billions of dollars]

	Fiscal year 1987	
	Budget authority	Outlays
Congressional action to date (1)	567.3	670.8
H.J. Res 738, as reported in the Senate	539.0	353.9
Offsetting receipts	26.1	26.1
Possible later requirements (2) (see attached table for details)	.8	.7
Total	1,081.0	999.2
Budget resolution (S. Con. Res. 120)	1,093.4	995.0
Over (+)/under (-) budget resolution	12.4	+4.2

Note.—Details may not add to totals due to rounding.
(1) This figure relects legislation enacted in previous sessions of Congress, legislation enacted this session, and conference reports agreed to by both Houses as of September 29, 1986.
(2) CBO estimates that entitlements and other mandatory programs will need the additional funding shown here based on the assumptions contained in the FY 1987 budget resolution (S. Con. Res. 120).

CONGRESSIONAL ACTION TO DATE, CONTINUING APPROPRIATIONS FOR FY 1987—H.J. RES. 738: SENATE-REPORTED BILL, POSSIBLE LATER REQUIREMENTS

[In billions of dollars]

	Fiscal year 1987	
	Budget authority	Outlays
Possible later requirements (1):		
Claims, defense	(2)	(2)
Compact of free association	(2)	(2)
Payments to air carriers, DOT	(2)	(2)
Retired pay, Coast Guard	(2)	(2)
Guaranteed student loans	.1	
Special milk	(2)	
Advances to unemployment trust fund (3)	(2)	(2)
Black lung trust fund	.3	.3
Special benefits for disabled coal miners	(2)	
Assistance payments	.3	.3
Readjustment benefits	(2)	(2)
Total—possible later requirements	.8	.7

(1) CBO estimates that entitlements and other mandatory programs will need the additional funding shown here based on the assumptions contained in the FY 1987 budget resolution (S. Con. Res. 120).
(2) Less than $50 million.
(3) This is an interfund transaction that does not add to budget totals.

Note.—Details may not add to totals due to rounding.

Mr. HATFIELD. Mr. President, I thank the Senator from New Mexico, the chairman of the Budget Committee for his remarks.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. BYRD. I ask unanimous consent to speak out of order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I do this at a time when the distinguished manager of the bill has left the floor temporarily, seeking to get himself a little nourishment, a little bite of lunch before he begins his long and arduous task. Therefore, I feel that this is an appropriate time to make these brief comments.

SENATOR JOHN C. STENNIS

Mr. BYRD. Mr. President, in yesterday's Washington Post the renowned columnist George Will wrote a fascinating column about our very distinguished colleague, Senator JOHN STENNIS. The column succinctly and vividly portrays and highlights the career of the senior Senator from the State of Mississippi. George Will's column points out that if Senator STENNIS wins reelection in 1988, then on September 18, 1989, he will surpass the all-time record of 41 years, 10 months, and 12 days of Senate service held by the late Senator Carl Hayden of Arizona.

The column also calls attention to a number of interesting facts about the remarkable career of this highly esteemed public servant. Senator STENNIS began his career in the U.S. Senate on November 5, 1947. At that time, I was a meatcutter at Crab Orchard, Raleigh County, WV. I was serving my first year in the West Virginia House of Delegates. Since then, Senator STENNIS has served under eight Presidents, beginning with Harry Truman and extending through Presidents Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, and Reagan.

I can very well remember Senator STENNIS when I came to the Senate. I came to the Senate in January 1959. I had been in the House of Representatives for 6 years. Senator STENNIS already had been in the Senate more than 11 years when I reached the Senate. I had watched him from afar with considerable interest. I had looked up his picture in the little pictorial Congressional Directory and I can remember how impressed I was with that handsome man from the State of Mississippi, to whom I referred then—and have on several subsequent occasions—as a man who looks like a Senator, talks like a Senator, and who should be a Senator and is a Senator.

Senator STENNIS has frequently gone out of his way to help and to encourage younger Senators, new Senators. My recollection goes back to the early days when I was in the Senate, which is in fact many years, I having served here now coming up on the close of my 28th year in the Senate.

Senator STENNIS came to me, I remember, after I had worked for a while as chairman of the Subcommittee on Appropriations for the District of Columbia. He said, "Young man, that is an important assignment you have." I had heard a good many Senators derogate that assignment, but not Senator STENNIS. He importuned me to believe that it was indeed a very important assignment, reminding me of my old church pastor, Shirley Donnelly, who was a colonel in General Patch's army in World War II. Colonel Donnelly was the pastor of my Crab Orchard Missionary Baptist Church. He always said to me, "Remember that a big man makes a little job big."

That was the theme of Senator STENNIS' advice to me on that particular occasion. He said, "That is an important subcommittee assignment. You give it your best and in due time, there will be other assignments and you will go on to other subcommittees. But you should prove by your work on that subcommittee that you are diligent and have a strong sense of duty."

I shall not forget that. I served 7 years in that position as chairman of the Subcommittee on Appropriations for the District of Columbia. Seven years. I recall that Jacob sought to have Rachel as his wife and he went to Rachel's father and promised to work for Rachel's father for 7 years, in return for which Rachel's father would give Rachel to Jacob, Jacob being very much in love with Rachel. Jacob worked 7 years and Rachel's father gave to Jacob, not Rachel, but Leah, who was "weak-eyed," we are told. But Jacob, never to be discouraged, worked 7 years more for Rachel.

Fortunately, I did not have to work 7 years more on the District of Columbia Appropriations Subcommittee. There finally came an opportunity after 7 years for me to serve as chairman of another subcommittee, so I went on.

Upon occasions subsequent to that experience, Senator STENNIS has said to me, "I know that you will put your hand to the plow." He has that southern, down-home descriptive way of saying things that cling like barnacles to your memory.

"You will put your hands to the plow; you will do a good job."

I leave it to others as to whether or not I have done a good job. The point I am making here is that Senator STENNIS went out of his way to attempt to encourage me as a new Member of the Senate and, over the years, has done the same over and over again. There have been occasions that he has taken time out of his busy day and has sat down and written a letter to me. He did not dictate it to someone on the staff; he took the time to write it out in longhand and pass a compliment for this or that. I have one of those letters framed in my office in the Hart Building. That letter will go to West Virginia University some day along with my other papers.

I have had the occasion to visit Mississippi—on one occasion at the invitation of Senator STENNIS—and I was impressed by the warmth with which his people held him in their high affection.

Only four Senators are still in this body who were here when I came here. They are Senator STENNIS, Senator LONG, Senator THURMOND, and Senator PROXMIRE.

From the very beginning, I was not only impressed but also took a great liking to, and greatly admired, Senator STENNIS. He and I were students of the late Richard B. Russell, as we sat at his feet, as it were, as admirers of his, with deep appreciation of his grasp of the Senate rules and his love for the Senate.

While I cannot hope to match George Will in the beauty of his column, I want to add my bit here today out of respect for this gentleman from the State of Mississippi. He is indeed a gentleman. We often say "a gentleman of the old school." There is more to that than just mere words. There are those I have heard say: "The South begins where boys and girls say, 'Yes, ma'am,' and 'No, ma'am,' and, 'Yes, sir,' and, 'No, sir.'" There is a lot to that. But Senator STENNIS is one of those true southern gentlemen of whom George Will makes reference when he says that the talk of Mr. STENNIS is "lightly laced with regional and archaic phrases"—a beautiful, beautiful commentary—as "when speaking of a friend from his distant youth," he says, "he lived over near the Big River."

That is the way those people in Mr. STENNIS' community, in that bygone day, referred to the Mississippi—"the Big River." They "lived over near the Big River."

He has been an example not only to me, but also, to future generations. What a breadth and depth of this Nation's history he has seen flow by him—like the Big River. Eight Presidents!

He has seen Senators come and go. He is really one of our national treasures, with his statesmanship, his gentle demeanor, his courtesy, his patriotism, and his dedication to duty.

Robert E. Lee said, "Duty is the sublimest word in the English language." I listened to Senator STENNIS a few minutes ago, and he used the word "duty." He spoke of his duty. He typifies that duty today—right now—as he sits in the first chair on the Democratic side of the aisle. Why is he sitting in that chair? Because it has become customary over the past several years for the managers of bills to take these two first desks here, ordinarily used by the majority leader and the minority leader. So Senator Stennis is at his post of duty in that particular chair on this morning.

I saw him Saturday night, when the Senate was in late, voting on the bill conference report and on the drug bill. I went back to Senator Stennis and I said, "You're staying here awfully late." His answer was that he felt it was his duty to be here, and he was casting his votes and listening to the debate.

Franklin, I am told, had as one of his favorite scriptural passages: "He that is diligent in his business shall stand before kings." Here is a man who has been diligent in his business, and I am sure that he has stood before many kings and princes and presidents and statesmen and leaders from all over the world.

He is an inspiration, as I say, and has been a guiding light for many Members of this body. He will remain so for generations to come, and those generations will note, as Marc Antony said of Caesar: "His life was gentle and all the elements so mixed in him that nature might stand up and say this was a man. When comes such another?"

Mr. President, I ask unanimous consent to have printed in the Record the column by George Will.

There being no objection, the material was ordered to be printed in the Record, as follows:

Senator of the Old School

(By George F. Will)

Early in many a morning, when John Stennis, 85, arrives at work, the United States Capitol is as quiet as vespers. The only voices heard have the soft sound of ashes falling upon ashes. Soon the place is noisy. He never has been, never will be. He is a senator of the old school, the last of that school of no-waste motion and few public flourishes.

His talk is lightly laced with regional and archaic phrases, as when, speaking of a friend from his distant youth, he says, "He lived over near the Big River." There is a faint, sweet echo of a vanished America in that almost reverent reference to a dominating geographic fact.

Before he was a senator—"I had a little leaning toward government," which is quite an understatement—he was a trial judge. He says that experience made him used to making decisions alone. He must often feel alone these days in halls haunted by distinguished ghosts.

All flesh is as grass, but some flesh, like some grass, is especially durable. Few people have ever endured in Washington longer than the senior senator from Mississippi—who was a junior senator for 31 years.

The list of senators serving when he came included Alben Barkley, Homer Capehart, Tom Connally, Carl Hayden, William Knowland, Joe McCarthy, Leverett Saltonstall, Robert Taft. A Florida senator who had already served 10 years when Stennis arrived was defeated in 1952, then was elected to Congress 10 years later and sits there now: Claude Pepper, age 86.

Since Stennis arrived here, 284 persons have served in the Senate, not counting the handful who served only a few days or weeks. In the last eight years the death, defeat or retirement of six senators—Eastland of Mississippi, Young of North Dakota, Tower of Texas, Javits of New York and Magnuson and Jackson of Washington—took from the Senate 186 years of seniority. Two of today's senators (Nickles of Oklahoma and Gore of Tennessee) were born after Stennis became a senator.

Today there are 64 senators who have served less than 10 years. A new infusion of inexperience is just a few months away. Stennis stands out as a large portion of the Senate's institutional memory.

With unfeigned self-effacement, Stennis recalls his first visit to the White House to visit the current president. "I told him my name. And I said 'I'm a Woodrow Wilson Democrat.'" The young whippersnapper Reagan said, according to Stennis, "That's what I am!"

Stennis has served in Washington with eight presidents—20 percent of the total this republic has had. He is an old man who reminds you of how young the nation is. The young Stennis—he followed newspaper reports of ratification of the Seventeenth Amendment, which provided for popular election of senators—had a Wilsonian faith in a world court to tame the nations. But he really is a Richard Russell Democrat. He is an old man with a young man's capacity for having a hero, and his is the Georgia senator who died 13 years ago.

In an institution not famous for the relentless reticence of its members, Stennis is remarkably reluctant to talk about himself. However, he speaks often and with a moving warmth about Russell, who was a senator's senator before publicity became the means and the end of much political action.

In 1947 the condition of blacks in Mississippi was more like that of the condition of blacks in 1847 than in 1986. Stennis says, with nice understatement, that the civil-rights revolution has made life in the Senate "less tense." But asked to cite the most striking change in America during his lifetime, he cites the increased participation of women. Women, like blacks, could not even serve on Mississippi juries when Stennis was a judge.

In 1973 Stennis spent three months in a hospital after being shot in front of his Washington home by muggers. He is in a wheelchair now, but his capacity for work equals that of senators young enough to be his grandchildren. If he runs and wins in 1988, he will, on Sept. 18, 1989, break the Senate record for service set by Arizona's Carl Hayden: 41 years, 10 months, 12 days.

By then Stennis will have served in the Senate through more than one-fifth of the life of the Constitution. May his career flow on, like the Big River.

□ 1330

(Mr. MATTINGLY assumed the chair.)

Mr. STENNIS. Mr. President, will the Senator yield to me, briefly?

Mr. BYRD. I yield.

Mr. STENNIS. Mr. President, let me warmly thank the Senator personally and individually and officially, if I may use that word, for his fine sentiments and expressions of encouragement.

I remember so well that we have had many pleasant experiences together, but I remember most of all when you got here, Senator. We all spotted you then as a worker, a man who took responsibility seriously and learned his lessons, who sought and looked for an answer, and was usually successful by finding the right kind of answer. Certainly, you have been a big reward to me, and I know you have been to many others over the years.

I commend you highly and thank you warmly.

I yield the floor, Mr. President.

□ 1340

Mr. BYRD. Mr. President, I thank the distinguished Senator.

Mr. HATFIELD. Mr. President, I would like to associate myself with the remarks made by the distinguished Democratic leader. I think that anytime that anyone rises on this floor to pay tribute or to offer a commendation to the Senator from Mississippi, it immediately, of course, triggers response from both sides of the aisle and from everyone within the body.

I know that if Members were at all aware that this is a moment when we are paying tribute to Senator Stennis, certainly not so designated but just out of the spontaneity of the heart of the minority leader, all Members would want to associate themselves not only with his remarks but to add remarks that they would choose to make for themselves.

I, of course, recall almost 20 years ago when I came to the Senate and fortunately I learned to know the Senator from Mississippi very early on in my career here in the Senate. I might say as it relates to the evolution of a Senate, in those days a freshman Member was a freshman Member and one did not choose to speak almost until invited to speak in those days. Certainly no one thought about offering a major proposal on the floor until a maiden speech had been delivered and we went through a rather extended procedure like that.

But I can recall the Senator from Mississippi deliberately reached out to those of us who were new Members and who felt like we really were not quite part of the organization yet, and he made us feel very much a part of this body of 100 coequal Members as we like to refer to it.

Then as I served on the committee, first the Appropriations Committee, he was the chairman of the subcommittee that I was fortunate enough to be appointed to, dealing with energy and water and important projects not only to his part of the country but to the West in general and the Nation.

Again I had the privilege of being tutored in my whole experience on the Appropriations Committee by the Senator from Mississippi.

I could go on and mention many things that I can recall that were so important in my getting started in this body as a Member of the Senate and sensing the tradition of the Senate and the glue that holds this Senate together.

Then I recall vividly when the Senator from Mississippi was called upon by his colleagues to exercise an extra duty, a very unpleasant duty, to sit in judgment of a fellow Senator, a most difficult task, difficult for all of us. But I remember in the Republican cloakroom there was a group talking one day that if any of us were ever in a very unfortunate situation or circumstance where we were being brought before a justice to be tried, there would be no man we could think of we would rather have as our judge to know that we would have a fair and equitable hearing, trial, whatever.

So, these are but a few of those vignettes that I have the pleasure in recounting to indicate my long affection and my long time respect for the Senator from Mississippi. People call him the ranking minority member of the committee today and they call me chairman of the committee. But I fully understand the Senator from Mississippi is the sage of the committee. We are all but still neophytes really, in effect, learning our way as we go and still seeking to achieve the status of wisdom and judgment the Senator from Mississippi represents not only for our Committee on Appropriations but for all of us in the Senate.

Mr. President, my choice would be to continue the rest of the afternoon paying tribute to my dear friend from Mississippi, but the exigency of the time, the demand of keeping this Government moving, I know the Senator from Mississippi will be the first to say let me get on with the business at hand.

Mr. STENNIS. Mr. President, if the Senator will yield, I do want to thank the Senator for his very generous words and as a fellow Senator thank him for the splendid work he has done here from the day he got here until now this very minute.

I am grateful and fortunate to have been associated with him and appreciate it very much.

Mr. HATFIELD. I thank the Senator.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

The Senate continued with the consideration of the joint resolution.

Mr. HATFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD the full statement of the letter from Mr. James C. Miller III, the Director of the Office of Management and Budget.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, September 26, 1986.
Hon. MARK O. HATFIELD,
Chairman, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MARK: We have reviewed your draft of the Continuing Resolution for fiscal year 1987, and find it a marked improvement over the Resolution that passed the House last evening. The spending levels you proposed are acceptable to the Administration so long as an acceptable Reconciliation measure is enacted that gets the estimated deficit below the $154 billion "margin of error" that would trigger the need for a sequester under Gramm-Rudman-Hollings and so long as we resolve several significant policy matters that, in part, have given rise to veto threats on eight of the 13 individual appropriations measures. On the latter, I appreciate your desire to keep the Resolution free of extraneous amendments and your commitment to seek resolution of policy problems prior to the conference report.

By contrast to your Resolution, the House version, which reduces defense spending, increases domestic spending, and restricts the President's authority to conduct essential national security programs, is altogether unacceptable.

Thank you for your leadership in addressing the President's concerns. We very much hope that Congress will produce a Continuing Resolution the President can approve.

Sincerely yours,
JAMES C. MILLER III,
Director.

Mr. HATFIELD. Mr. President, this letter, just merely to highlight it, is dated September 26, and I think it represents a fairly good indication of the opinion of the administration as to the measure now pending before the Senate, the continuing resolution.

He says, in part:

> We have reviewed your draft of the Continuing Resolution for fiscal year 1987, and find it a marked improvement over the Resolution that passed the House last evening. The spending levels you proposed are acceptable to the Administration so long as an acceptable Reconciliation measure is enacted that gets the estimated deficit below the $154 billion "margin of error" that would trigger the need for a sequester under Gramm-Rudman-Hollings and so long as we resolve several significant policy matters that, in part, have given rise to veto threats on eight of the 13 individual appropriations measures. On the latter, I appreciate your desire to keep the Resolution free of extraneous amendments and your commitment to seek resolution of policy problems prior to the conference report.

Now, Mr. President, basically there are three criteria that the administration has indicated that would provide the opportunity to sign the CR rather than veto it despite the rumors about veto.

No. 1, the spending levels, and here we have a commitment that the spending levels in this bill are acceptable. Second, resolution of some policy matters which are yet to be resolved and I think they will be apparent, if not now, a little bit later. And third, that we act on the reconciliation resolution.

The Senate has achieved that objective and that resolution is in conference.

So, that, I think, should dispel some of the thinking that I have heard expressed that, well, why not offer our amendments now on this one because it is going to be vetoed anyway and I can at least have gotten my amendment adopted on this continuing resolution.

I am very hopeful that based on this letter and other assurances we will still show restraint in offering amendments, such as any spending amendment that would violate the committee's section 302(b) allocations would be subject to a point of order and/or policy amendments which would make the signing of this bill difficult for the administration, if not impossible, and would be beyond the scope of this committee's action anyway because they would be legislative matters that should be dealt with by the legislative committees.

So I think we have two good legs up on getting this continuing resolution signed as now before us and then the resolving of those policy issues is the third part of that consideration which I think we ought to be able to reach at least in conference with the House of Representatives if not here on the floor.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. HATFIELD. I am happy to yield to the Senator from Louisiana.

Mr. JOHNSTON. I wonder if the distinguished chairman would be prepared to say what his intentions are with respect to amendments which may constitute legislation. I am happy to have two very good amendments if those might be accepted, but I was wondering if the chairman has decided yet whether to oppose all legislation on the CR or whether to take them based upon their merits.

Mr. HATFIELD. It is very difficult to answer the Senator's question without it sounding like either a threat or an invitation.

First of all, I would say that I am prepared to resist all nongermane extraneous amendments on this CR.

But, having said that, I have to face the reality that that position may not be supported by the majority in the body. Whether we challenge through a point of order or through some other tactic, I do not know.

□ 1350

But I will have to answer your question in the affirmative.

On the other hand, it seems to me that if we are defeated in that effort—

again not to make it sound like an invitation, but it would be very difficult to be selective in this situation; if it is violated, it is violated—again, I would continue to resist, but my resistance would, obviously, be in a little different context.

I just have to say, the only other thing that I have tried to come up with some creative thinking on would be to invite all Senators to the floor at one time, ask them to identify their amendments and adopt them all en bloc and then get on to the conference committee and drop them all en bloc. But that I do not think would be an acceptable procedure, either.

So I am going to have to say we will resist them and if we are run over, in a sense, by a vote that runs against this policy, so be it. That should not then at that time and in that situation cause the Senator from Louisiana any great hardship as far as not pursuing his own proposals.

Mr. JOHNSTON. I thank the distinguished Senator.

Mr. HATFIELD. I yield the floor.

AMENDMENT NO. 3084

(Purpose: To allocate $200,000,000 of economic support fund assistance for the Philippines out of funds appropriated under Budget Function 150.)

Mr. BYRD. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. There is a pending committee amendment.

Mr. HATFIELD. Mr. President, I ask unanimous consent to temporarily lay aside the pending committee amendment in order that the Senator from West Virginia may call up his amendment.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Oregon.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from West Virginia [Mr. Byrd] for himself, Mr. Kennedy, Mr. Dodd, and Mr. Kerry, proposes an amendment numbered 3834.

At the appropriate place in the joint resolution, insert the following new section:

Sec. . (a) Notwithstanding any other provision of this joint resolution, of the funds appropriated or otherwise made available by this joint resolution for any program, project, or activity covered by Budget Function 150, $200,000,000 shall be available only for assistance to the Philippines in accordance with the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund).

(b) Funds allocated by subsection (a) shall be in addition to amounts of such assistance otherwise available for the Philippines.

AMERICA'S INVESTMENT IN THE PHILIPPINES

Mr. BYRD. Mr. President, the distinguished chairman of the Foreign Relations Committee, Mr. Lugar, and I have discussed this amendment. We are both in agreement with the objectives thereof. We are not in agreement with respect to the sources from which the $200 million would be drawn.

It is our understanding that he will offer an amendment in the second degree to my amendment in the first degree. His amendment will carry out the same purpose, and will indicate the source from which the $200 million would come. And, as I have already implied, the source would be a different one from which my amendment would draw the money.

Mr. President, this amendment is intended to provide needed economic support for the strenuous efforts that President Corazon Aquino is making to stabilize the internal situation in the Philippines. It is clear that the Philippines has serious economic and security problems, and that the wounds opened up as a result of years of corruption and neglect under the previous government will take years of sustained effort to heal. The United States needs to stand by the Philippines at a time of trial.

I believe most Senators, if not all Senators, attended the joint meeting when President Aquino gave her stirring resumé of the resurrection of democracy in the Philippines. It was one of the most inspirational moments in recent memory, certainly to this Senator, and I believe it has been generally acclaimed as having been such. Her visit was truly a trip in celebration of the democracy peacefully regained in February of this year. As she reminded us, this body played a role in those developments. When the Senate declared the results of the Marcos-manipulated elections to be a fraud, and supported the genuine victory of Mrs. Aquino, we broke the illusion of U.S. support for a dictatorship and inspired the accumulating forces of democracy which brought Mrs. Aquino to power. The Senate played a role, an important one. The Senate needs now to build on those actions by the Senate.

Mr. President, there have been some mixed signals coming out of the commission writing the new Philippine Constitution. The Philippine policy regarding nuclear weapons is now somewhat unclear, and the manner of renewing the bases agreement, when it lapses in 1991, is somewhat unclear. But these things can be ironed out. The base facilities that currently exist in the Philippines are essential to America's security interests in the Pacific and the continued close relationship between our two governments is essential.

Not only are those American bases essential to United States security, they are also very essential to the security of the Philippines.

I am not proposing that we appropriate new funding for the Philippines and add to our budget deficit. I am suggesting by this amendment, which I have offered on behalf of myself and Senator Kennedy, Senator Dodd, Senator Kerry and others, that we transfer this needed money from other uses that have an important priority but, in my judgment, a lower priority.

The pot of money from which I propose to direct $200 million for Philippine economic assistance is the overall worldwide pot that is encompassed by budget function 150, which includes all foreign aid, as well as other international functions. The overall dollar value of the conference report regarding budget function 150 activities, entitled "International Affairs," is $17.4 billion in authority and $14 in outlays. Surely about 1 percent of that function can be redirected without doing irreparable damage elsewhere. The amendment leaves it up to the administration to find those areas which can be pared back to free up an additional $200 million in economic support funds for the Philippines.

What we are talking about here is perhaps 1 percent, perhaps a wee bit less or a wee bit more.

□ 1400

Budget function 150 includes a wide range of activities, including all development assistance, all security assistance, the entire budget of the State Department in its conduct of foreign affairs, all foreign information and exchange activities, such as USIA, and international financial programs, such as the Export-Import Bank. The administration has complete latitude in adjusting its overall international budget to accommodate this additional amount for Philippine economic support.

It is easy to pass resolutions of support. But it gets to be a little harder when we have to reorient a few priorities to invest not only in the security of the Philippine people, but also to invest in our own security, and our own future in the Pacific.

(Mr. SYMMS assumed the chair.)

The Philippine Government has a large external debt, some $28 billion, and it sops up one-half of that Nation's export earnings to service that debt every year. Furthermore, the billions stolen by Marcos and his cronies, which were intended for the betterment of the Philippine people, did not build the roads, improve the rural infrastructure, improve power, irrigation, and credit availability needed to stimulate the economy. The Philippines, in many ways, has to start over.

The Philippines desperately needs—and I am persuaded it can wisely use—an additional $200 million in aid, above and beyond the administration's request of $233 million for fiscal year 1987. That is a total of $433 million. That is still nearly $100 million below what we are going to give El Salvador, for example, next year. El Salvador has a guerrilla problem which is relatively under control, a guerrilla force which is less than half the size of the Communist guerrilla movement in the Philippines. Every improvement that can be made in the Philippine countryside will help put the guerrillas on the defensive and help erode the base of support for the Communists.

There are many other comparisons which can be made, and there are always good arguments for every account and every program. It is clear that the foreign assistance accounts have been stretched thin. The committee has cut the administration's request by over $3 billion. But, Mr. President, at this particular time, America's attention toward and support for the new democratic government of one of our oldest allies needs top priority. The money can and should be found from other accounts and I feel that I have, in this amendment which I have offered on behalf of myself and others, pointed the way to get that done.

I urge that the Senate adopt the amendment, and I yield the floor.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

AMENDMENT NO. 3085

(Purpose: To transfer $200,000,000 for economic support fund assistance for the Philippines)

Mr. LUGAR. Mr. President, I send an amendment in the second degree to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Indiana [Mr. LUGAR] proposed an amendment numbered 3085.

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) The Congress finds that the policy of the Unted States is—

(1) to assist the Government of the Philippines in strengthening democracy and in defeating the Communist insurgency; and

(2) to promote directly the vital security interests of the United States by creating conditions which will enhance continued access to United States military facilities in the Philippines.

(b)(1) There are hereby transferred to the President to carry out chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund) with respect to the Philippines $200,000,000 of unobligated funds from such accounts for which appropriations were made for the Department of Defense for the fiscal year 1987 as the President shall designate.

(2) The assistance provided with the funds transferred under paragraph (1) shall be made available on a grant basis as a cash transfer.

(c) Fifteen days in advance of the designation of accounts under subsection (b)(1), the Presidents shall notify the Committee on Armed Services, the Committee on Appropriations and the Committee on Foreign Affairs of the House of Representatives and the Committee on Armed Services, the Committee on Appropriations and the Committee on Foreign Relations of the Senate of the specific accounts from which funds are to be transferred and the amount of funds to be transferred from each such account.

Mr. LUGAR. Mr. President, I ask unanimous consent to send to the desk a modification of the amendment which I understand will bring this into technical conformity.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

The amendment will be so modified.

The amendment (No. 3085), as modified, is as follows:

On line 4 of the amendment 3084 strike all after the comma and insert the following:

The Congress finds that the policy of the United States is—

(1) to assist the Government of the Philippines in strengthening democracy and in defeating the Communist insurgency; and

(2) to promote directly the vital security interests of the United States by creating conditions which will enhance continued access to United States military facilities in the Philippines.

(b)(1) The amounts appropriated by section 101(c) are hereby reduced by $200 million.

(2) The amounts appropriated by section 101(f) are hereby increased by $200 million.

(c)(1) The funds appropriated pursuant to subsection (b) shall be available only to carry out chapter 4 of part II of the Foreign Assistance Act with respect to the Philippines.

(2) The assistance provided with the funds transferred under paragraph (1) shall be made available on a grant basis as a cash transfer.

Mr. LUGAR. I thank the Chair.

Mr. President, I deeply appreciate the distinguished minority leader bringing to the attention of this body the issue of the Philippine foreign assistance as the first priority of this debate on the continuing resolution.

I certainly share the sense of priority and urgency which he has eloquently expressed.

Mr. President, I expect that the problem we have in dealing with this assistance, which I am certain the majority of this body would want to proceed with, is simply the question of how to pay for it. That has been the lingering question ever since the eloquent address by President Aquino to a joint session of Congress.

Mr. President, the distinguished minority leader has proposed one method of doing this; namely, that $200 million of additional support, the economic support fund, for the Philippines should come from the 150 account; that is, the foreign assistance account.

The second-degree amendment which I have forwarded to the desk asks consideration of this body for the transfer to come from the Defense Department accounts.

Mr. President, let me be as specific as I can to what is in this transfer. The Chair has already called for a reading, but let me reiterate that essentially we are talking about 15 days of advance notice to the Foreign Affairs Committees of the House and the Senate, the Armed Services Committees of the House and the Senate, and the Appropriations Committees of the House and the Senate to take a look at the proposal for that transfer. The Defense Department budget is a very large budget. The argument can be made that it has already been cut and stretched.

Mr. President, I would suggest that given this latitude and this amount of flexibility there is the possibility at least of the administration finding within the defense account sometime during fiscal year 1987 the $200 million required for the economic support fund for the Philippines, and after notifying all of the relevant committees of the House and the Senate, finding their objections, if there are any, coming to a consensus as to where that money could best be found.

Mr. President, I make this argument because essentially I believe we are dealing with a defense issue. President Aquino made very clear during her address to the Congress that she is dealing with a Communist insurgency group in the Philippines, and that without economic and political revival, the chances of success in that particular battle become more difficult.

☐ 1410

There is no doubt that the enthusiasm that was evidenced during her visit and her speech gave her added strength, and the reception back in the Philippines has given encouragement to all countries of that country. She has come together with her cabinet and they are discussing intently, presently, two basic issues: how to deal with the insurgency; and second, how to deal with their constitutional problems. Those include a constitutional commission, a referendum or plebiscite that is on the horizon, and the election of local officials as well as the Congress of the Philippines.

This is a time when the relationship of the Philippines and the United States is being discussed in a very important constitutional setting, the relationships that we are going to have with regard to bases, with regard to our assistance, military, political and economic.

Mr. President, that is why I agree so much with the distinguished minority leader that this is a matter of urgency and we dare not fail.

I approach the subject with the same trepidation I am certain he approached it with. We know the problems of appropriations currently. Therefore, we are trying to identify the funds. The issue before us is simply how to best advance the interests of this country in defense and foreign policy both.

I have chosen to offer this second-degree amendment because the foreign assistance problem is the more acute, in my judgment, of the two.

The foreign assistance problem comes down to the fact that we already know we are going to fully fund obligations to the Camp David accord countries, specifically Israel and Egypt.

We are going to fully fund those obligations we have to the so-called base rights countries, countries in which we have agreements to give either a best effort for certain expenditures or even more spcific stipulations in our agreements.

This means that the funds for Latin America, for Africa, for developing nations and Asia are going to be cut. Various commentators have suggested the amount of the cuts. I have seen no one who has suggested less than a 30 or 40 percent cut and some have suggested over half of funds for those countries be cut.

Our Secretary of State and, therefore, our President have very few initiatives in the event we should have an opportunity for a foreign policy success. Even before we begin the fiscal year we know we are blocked out from those initiatives unless there are further cuts made in vital obligations.

Mr. President, we have argued the foreign assistance situation before during the Budget Act and during various discussions of authorization, and we have discussed the fact, as the distinguished minority leader pointed out, that $3 billion has been lopped off of those accounts already. At least 20 percent of all the funds that we suggested even by the President are at a fairly late point.

Therefore, Mr. President, it seems to me that we best direct our attention to the security issues and the rationale for the expenditure transfer we would propose today.

Mr. President, I will not prolong this argument because there are many issues that this body wants to discuss. I think this is an important one. I again appreciate the minority leader bringing it before us so that there will be an early vote as Members come back.

I would simply suggest, Mr. President, that we are, in fact, dealing with a crucial issue of American foreign policy, and the expectations that we will act fairly are very high in the Philippines.

One could argue that they should not be high; that, after all, given the foreign assistance problems that we have, the defense problems that we have, that no country, however friendly or however vital, can be guaranteed favorable consideration on any sum of money at this point.

Mr. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senator is correct. Will the Senators in the rear of the Chamber please retire to the cloakrooms?

Mr. LUGAR. I thank the Chair and the distinguished minority leader.

Mr. President, let me make just this one point without going into overdramatics about the Philippines: We do have very substantial obligations to the Camp David accord countries. That is a very important part of our foreign policy, to try to bring a peace process that is meaningful and successful in the Middle East. Therefore we must be constant with regard to our assistance in those areas.

Mr. President, the base rights agreements are important to us in the projection of American military power, our ability to deal with terrorism or to come into any area of the globe and to have about us an aura of effectivenss that gives comfort to all of our alliances as well as to the American people.

Mr. President, let me simply say that or relationship with the Philippines is a very special relationship. It must be a high priority relationship. It must be on the front burner for consideration now. It will not do to simply say we applaud the revolution that occurred in February, that we are aware of 40 years of friendship with that country and the fact that over 17,000 Americans are buried in the Philippines from the successful defense of that country and our alliance in World War II. It will not do to ignore what followed the World War II situation, in which there were implied promises on the part of our country for something approximating a Marshall plan for those who fought alongside us in the Philippines.

But a Marshall plan was not forthcoming for the Philippines, despite the long, historical ties, despite the fact that the Philippines had a special relationship.

Mr. President, that has not been forgotten. Anyone who has dealt recently with the leadership in the Philippines appreciates the poignancy, the sense of disappointment that attended that 40 years. We had a new opportunity in February of this year and the United States did the right thing. It was a foreign policy success unlike any we have had for a long while. It occurred because people in the Philippines were prepared to fight and to die for democracy, and many did in that particular election that Members of the Senate and the House witnessed. Over 100 people lost their lives. They did so frequently because they defied the warlords, they defied the accepted practices. They were determined to prove that democracy works in an Asian nation of over 50 million people, the 15th largest country in the world.

Now their gallant President comes to us and says, "We have to help in the Philippines presently because the former President looted the treasury. The whole treasury was gone by the end of February, spent in election campaigning."

The distinguished President, Mrs. Aquino, comes to us and says, "We want to work with the United States in mutual defense, both of us respecting each other, two great countries."

This is a time of special urgency. The House of Representatives responded and voted $200 million on the afternoon of her address.

One can argue that that action may have been hasty, that perhaps they had not thought precisely through where the money was coming from. They suggested unused funds from fiscal year 1986. I do not criticize their judgment. It was a close vote but they, in fact, voted the $200 million.

Mr. President, we must act affirmatively. To do anything else is to create, in my judgment, a very severe foreign policy dilemma for our country, quite apart from the fact that we ought to want to assist at this particular time, to not be perceived as a burden but as an opportunity to consolidate a relationship, to change the course of the Philippines debate toward friendship between our two countries, to give very substantial support to the great new President of the Philippines as she works through what others have characterized as an impossible agenda but does so, in my judgment, with very great dignity, grace and skill.

□ 1420

So, Mr. President, I ask Members to consider this issue carefully. I am hopefully that the transfer will come from those funds of the Department of Defense which, throughout the whole fiscal year 1987, have not been expended, that that will be the alternative that the Senate will choose to adopt today.

I yield the floor.

Mr. DOLE. Mr. President, I certainly appreciate the statements of both the distinguished minority leader and the distinguished chairman of the Committee on Foreign Relations. I think in the process of trying to rush to judgment on $200 million—as far as I know, there have been no hearings on it. There were no hearings in the House. It was just a knee-jerk proposal in the House. They passed it by a 6-vote margin. I do not believe because the House passes it without any consideration, we have to pass it without any consideration, without any hearings without some determination of where the money comes from, without some determination of what may happen to our base rights in the Philippines.

I think we have lost sight of some very salient facts. We have already given the Philippines a half billion dollars in fiscal year 1987. That makes the Philippines one of the four or five largest recipients of aid in the United States.

We also seem to be forgetting something just as important. We were on the floor at 2 o'clock Sunday morning saying we cannot pass the drug bill to help people in this country unless we can find a way to pay for it. We finally recessed at some time after 2 A.M. Sunday morning and we have votes scheduled tomorrow at 2 o'clock. The chairman of the Appropriations Committee and the chairman of the Budget Committee and others are insisting that we find a way to pay for this $400 or $500 million to use in this country—this country—to fight the drug problem.

So, how do we pay for this, with no hearings, never came out of the Foreign Relations Committee, nobody knows what it is going to be used for? Well, we are going to take it out of one or two accounts. It seems to me we are making a mistake in each case.

There has been no serious consideration given to this matter. I do not know of anybody in this Chamber who does not want to help the Philippines. I do not know of anyone who heard Mrs. Aquino who was not impressed with what she said. I am not certain that means we respond by saying "Here's $200 million," which we do not have. We have not raised the debt ceiling this year. It is still pending. We are going to raise the debt ceiling to $2.3 trillion. We are going to pay an interest this year on the debt of $150 billion.

It seems to me that we should not be asked to follow an action taken on the House side without 1 minute's consideration. It was introduced and passed. Nobody considered how it was going to be paid for. They were just going to add it to the deficit this year; that is how they were going to pay for it. That is what they suggested we should do in the Senate, that we just add it to the deficit—$200 million would not make much difference, the deficit is so large it would hardly be noticed.

As far as I know, there has been no action by the Appropriations Committee. I understand the distinguished minority leader would take it out of function 150, which is State, foreign aid, and the rest. We are advised by the Secretary of State, Secretary Shultz, that this account is nearly empty now—unless we want to start taking away from Israel, Egypt, and the other countries mentioned by the distinguished chairman of the Foreign Relations Committee, and I doubt that that would be done.

The chairman of the Foreign Relations Committee wants to take it from the Defense Department. I do not know of any other department that has been cut more than the Defense budget by Congress in the last 2 or 3 years. There is not much doubt that the Philippines deserve more aid and I guess most people here would support it. But it does seem to me it is not going to make much difference whether we do it now or tomorrow or the next day or the next day, until we give this some serious thought.

At the very time the President of the Philippines was here, the Philippines Commission on the Constitution was meeting. They took two actions which particularly troubled me. First, the Commission decided that the current bases agreement, which governs the presence of the bases until 1991, could not be renewed. That is a subtale but important hardening of the Philippines' position which previously had not foreclosed the possibiity of an extension of the current agreement. Instead, the Commission has proclaimed that if the bases are to be continued, it will have to be by a new treaty. Amendment of that will require Philippine Senate action. It could very well require plebiscite by the Philippine people.

In either case, it means that the bases question is going to be a red-hot, divisive political issue in the Philippines when we get around to new negotiations. It could end up that the bases could be political hostage to whatever political winds happen to be blowing across the Philippines at that time. I do not have too much optimism about the political winds in light of the fact that the Commission was prepared to ban the bases right now—right now, on the very day that this authorization bill passed the House, without any discussion, without any hearings, any witnesses. Just give $200 million to the Philippines.

A third of the Constitutional Commission of the Philippines was going to ban the bases right now.

The other action by the commission that bothers me is its declaration that the Philippines is a nuclear-weapons-free country. How you square that position with the presence of the nuclear missiles on our ships that park in Subic Bay is not at all clear.

Some have said this declaration is just in the form of a statement of principle and a popular and powerful President like Mrs. Aquino will be able to get around it. That may be true, but that is not the point. The point is that this action and this language, if it were written into the Philippines' Constitution, does write a big new questionmark over the future of the bases. It may not mean categorically that the bases will have to go but it certainly does not offer me any reason to conclude that they will stay.

I suspect—and obviously that is a choice that the Philippines have a right to make. They are a sovereign nation. I do not suggest that they do not have the right to do whatever they wish to do. They have their rights and we have some rights, too.

Some say we do not have any right to criticize what the Commission does since it is a legally established Commission in accord with the sovereign rights of the Philippines. I reject that argument, too. After all, the Commission is not only talking, it is acting and acting unilaterally on this important bilateral matter. The Commission does not appear to be overly concerned about the responsibility of the Philippines under the existing agreement to address this matter bilaterally, no later than 1988. It does not appear to have paid attention to Mrs. Aquino's decision to decline to discuss this issue with us. We raised it in private meetings and its was not discussed.

I would say the result is that the Philippines seem to want in both ways. They will not discuss the issue with us, citing the provisions of the agreement, but will take action on its own, ignoring the provisions of the same agreement.

I would just say finally, if someone can find $200 million for the Philippines that we do not need for the drug enforcement bill to help people in this country, or do not need for some other purpose, and we do not take it away from our other friends and allies who are probably just as dependent on us in many ways or more, that is fine. It would be a unanimous vote.

□ 1430

But it would seem to me that we should have some hearings. I know $200 million may not be a lot of money around here, but it is $200 million—$200 million that is going to be authorized and appropriated without one witness, without one hearing, just an amendment, passed, the bill passed the House. I would guess we are going to have a number of hard choices to make for a lot less money in the continuing resolution.

If we start off approving an amendment for $200 million that we either pay for by taking away from Israel or Egypt or some African country or taking it out of the defense side—and I understand the distinguished Senator from Alaska [Mr. STEVENS] wants to be heard on that particular side of it—then I think we really have not accomplished a great deal except we have reduced the funds in one account to take care of the $200 million, and in the other cases there have been hearings—in both the defense side and the foreign aid side—there have been witnesses and there have been judgments by members of the committee.

I know both the distinguished minority leader and the chairman of the Foreign Relations Committee feel very strongly about helping the Philippines, and I would guess that is true of everyone in this Chamber. But unless we can find some way to do it, without in effect taking it away from some other account, then we may have to make another judgment. Maybe there is some other way to do it. But we have been searching for a way since this bill came from the House side. I have been unable to find a way to do it without taking away from some other function. So we are right back where we were 2 o'clock Sunday morning when I was told that we were not going to pass the drug bill until we came up with a way to pay for it. I do not quarrel with the chairman; he told me that. The distinguished chairman of the Appropriations Committee said this bill is not going to pass. And I would hope that we would use the same restraint, the same discipline with this amendment.

Mr. HATIFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I, too, would like to support this proposal made by the distinghished Democratic leader and the chairman of the Foreign Relations Committee, but I do feel that we have to be very, very careful as to the procedure by which we go about this task.

I cannot support either proposal as to the mechanics of how we are going to find $200 million. First of all, Mr. President, if you take the amendment of the Democratic leader and the proposed funding of $200 million, it in effect leaves to the President of the United States that choice to make amongst the so-called accounts or programs in function 150, foreign operations. First of all, this transcends any one subcommittee. It involves a number of the appropriations subcommittees. It is not just foreign operations, but it involves Public Law 480, Food For Peace, which comes out of the agriculture subcommittee budget. It involves such accounts as UNICEF, a very, very important fund for the relief of suffering of the poor and the hungry. It includes the possibility of being taken from what we call IFAD, or the International Fund for Agricultural Development, one of the most significant programs of the United Nations which is an attempt to resolve some of the problems in the long term for people in the hungry parts of the world. It involves the Refugee Assistance Act. It can be taken from it. It involves the development banks. And I would remind the Senate that the administration exorcised the funding request for the Export-Import Bank, which the Congress, at least as far as the Senate Appropriations Committee is concerned, has felt is of such significance that we are funding it at $900 million for fiscal year 1987. It involves specific programs relating to military assistance to countries like Israel, Egypt, Pakistan, Turkey, and others.

Now, Mr. President, what strikes me is the fact that we have granted a line-item veto to the President. In a sense we have said to the President, you can go through any and all accounts and you can deduct such moneys that are required to reach a $200 million goal. That is a line-item veto. I am not about ready, no matter how noble the purpose and how justified the objective, to grant the President a line-item veto through the back door.

The same is true with the amendment offered by the Senator from Indiana, the chairman of the Foreign Relations Committee. He is saying in effect by his amendment that you can get $200 million from the Department of Defense appropriation bill. Little did I ever think I would be standing on the floor defending the Department of Defense appropriation bill, but I think we have to realize again it is not so much whether I believe the total level of spending in defense is too much or too little, but the point is he can pick from any account within the Department of Defense bill, which again is a line-item veto.

Now, we are doing something far more significant than trying to say, "Find $200 million in these accounts or these accounts or some other accounts." We are in effect giving to the President of the United States the total responsibility.

Now, I say to either Senator, I would certainly support the $200 million for the Philippines if we specified the account rather than giving to the President this broad line-item veto, in effect in reverse; he is reducing certain accounts to add to the others.

And I say to the Senator from Indiana, I would support it if he would specify that particular account in the Department of Defense budget—in fact, I would be happier to support his proposal on that basis than the proposal of the Democratic leader that could conceivably involve everything from child survival funds to all of these humanitarian programs that none of us really feel are overly funded at the moment. But I just want to raise this other issue. Let us not abdicate our financial funding responsibility by allowing the President a blank opportunity to find $200 million, even though we may set certain parameters of accounts from which he may draw the $200 million.

As to the Department of Defense amendment offered by the Senator from Indiana, let me remind my colleagues that includes the Corps of Engineers budget as well because it says moneys appropriated to the Defense Department. The administration had had a hit list now for about 15 years on certain Western water projects. This is a great way to get at those projects that we have been able to defend from the administration's onslaught, both the Carter and the Reagan administrations. Tug Fork in West Virginia has not been high on the President's request list any more than Bonneville Lock in the Columbia River. I can just imagine, if the amendment of the Senator from Indiana should pass, the Senator from West Virginia and mine might be at least two of the very immediate places we could find at least part of the $200 million, if we gave the President that kind of carte blanche to dig into any account he wants, exercising in a sense a line-item veto. That is why I say let us specify where we are going to draw this $200 million and you will get my full support because I believe that the Ambassador to America from the Philippines, having sat down with him and gone over some of these concerns expressed by my leader, Senator DOLE, about the proposed Constitution and some of the commission reports on the future of the bases and nuclear power and all that, has satisfactorily answered my concerns. But certainly I would be very reticent to adopt an amendment here to give to the President of the United States this kind of wide, broad authority that I do not think is necessary.

□ 1440

If the Senator would like to modify his amendment to take it from the nerve gas account, I would be delighted to move that amendment quickly through here today and through conference. If he could take $200 million from nerve gas, I would be with him all the way.

Mr. LUGAR. I say to the distinguished Senator, the chairman of the Appropriations Committee, that the arrangement provided for in my amendment is that 15 days in advance of designation of where the money was to come from, there be notification of the Committees on Armed Services, Foreign Affairs, and Appropriations of both Houses. In other words, the distinguished Senator would not be surprised, as chairman of the Appropriations Committee. As a matter of fact, he would play a very substantial role in consultation with the Executive as to where the money might be found.

It seems to me that this would eliminate the argument against the line-item veto or arbitrary designation by the Chief Executive. As a matter of fact, it would lead into a colloquy with Congress that I think would be appropriate.

Mr. HATFIELD. If I understand the Senator, he is referring to page 2, line 12, of his amendment, which is merely a notification act on the part of the President.

Mr. LUGAR. That is correct.

Mr. HATFIELD. What is the value of notification, other than information, in this case?

Mr. LUGAR. The value would be that it would lead the administration to look elsewhere. There are checks and balances provided by this procedure, without trying to designate which accounts, because at some point during fiscal 1987, there still may be some money in the accounts. But it at least gives an opportunity for there to be consultation before that money is found.

Mr. HATFIELD. I say to the Senator that notification after the fact, or merely notification of intention to act, in which Congress has no authority to either veto or to suggest some alternative, is really not answering the question that I raise—simply, that it does not constitute, in a sense, a type of line-item veto. The President, merely by being required to notify—in no way does that diminish the power we are giving to the President. We are giving to the President the power, under the amendment, as I understand it, to go back over all these accounts and to revise accounts that he has once signed into law by the action of the two Houses and the conference reports being adopted and the signature to the CR. It gives the President the power to go back over all those accounts and devise those accounts, as a single act of authority—namely, that of the President. That is why I have fought the line-item veto.

He has authority now, even after all those actions have been taken, to offer rescissions and deferrals. But his is outside of that. This comes back to an immediate revision of the accounts that have been written into law through the normal legislative process.

Therefore, I would not support this general bestowal of power on the President, even for $200 million.

Mr. BYRD. Mr. President, I have listened with a great deal of interest and a modicum, perhaps, of amusement to some of the arguments that have been made against the amendments.

I, of course, prefer to provide for the funding of the thrust of the amendment and the thrust of the amendment offered by the distinguished Senator from Indiana—I prefer to provide that those moneys come from the economic support function.

The distinguished Senator from Indiana is saying take those moneys out of defense. Of course, defense and foreign assistance, in some ways, converge; and foreign assistance becomes defense, and defense sometimes becomes a kind of assistance one way or another, perhaps, to the recipient country. But I favor taking the $200 million out of foreign aid, if I may use that term—foreign assistance, economic support functions. So that we are not talking about apples and oranges, but are talking about economic support in both instances.

The distinguished Senator from Indiana would take the $200 million for economic support for the Philippines out of the defense function. I realize that the overall defense expenditures—appropriations, outlays, budget authority, and so forth—constitute far greater sums than those that are involved in foreign aid or economic support functions. But the defense functions have been severely impacted upon, severely cut, and it seems to me that the $200 million quite rightly should come from the economic support function. That is the reason why I drew the amendment as I did.

I listened to the distinguished majority leader, and I respect his views, as I respect him. He said that this amendment has had no hearings by a committee. Mr. President, the same thing was said—was said by me—with respect to the Gramm-Rudman legislation that passed the Senate last year. There had been no hearings on that legislation. It sprang up like the prophet's gourd overnight here, as an amendment from the floor. It had no committee hearings, and it had no committee markup. It had no debate in committee, no witnesses were called before any committee. But what a mammoth earthquake that became.

So we have heard that argument before. I have made it myself in the past. But, in this instance, I do not think it is a very persuasive argument, so I will say no more on that point.

As to the reference to the drug bill the other night, statements have been made—quite appropriately, I think—that "we need to do some things for people in our own country."

☐ 1450

I have said that about the overall economic aid program for years. At the same time, I have recognized there are some parts of that program that serve our own national defense. I feel there should be economic aid to Turkey and Greece, both of them NATO countries, and economic aid to Israel and Egypt. These are countries that are on the front line of defense against communism, and it seems to me that we have to recognize that it is important to the national security of our own country sometimes that we do appropriate moneys for assistance to other countries. That was the basic underlying premise of the Marshall Plan. It, too, was in the overall interests of the United States.

So sometimes we have to recognize and admit that foreign economic support is, in the final analysis, in the interest of our own national security.

So, yes, we need to do something for the people in this country. That is what we are doing now. That is what this amendment is about. It protects the interests of the people in our own country who have paid with their hard-earned tax dollars, for many years, to establish and develop our two very important bases in the Philippines, the Air Force base there and the naval base.

Those were moneys that were appropriated and spent on behalf of, after all, the United States. We are talking about the interests of the people in this country. It is time to do something for the people in this country. That is what we were doing then when we established, built and, over the years, maintained those huge army and naval bases.

That is what we are talking about today. We do not want to see those bases go by the wayside. Where can bases of the same utility, the same strategic location, and, dollar for dollar, the same value be established in that part of the world if those bases were no longer there? This amendment, then, is in the interest of the people of our country, yes.

This is no knee-jerk reaction. It is a recognition of the importance of democracy in the Philippines, the importance of helping that fledgling democratic government to deal with the harsh problems that confront it. It is an effort to help that government deal with the Communist forces that would overthrow it. It is an effort to step into the breach that was created by a thief who stole the moneys that were appropriated by Congress over the years, and to assist that government at a time when it is in its hour of great need, $200 million.

We are talking about not only a major naval base, not only a major Air Force base, but also other very vital communications facilities there in the Philippines of importance to the security interest of the United States. This is no knee-jerk reaction.

I heard the same argument when I offered a national security amendment to the Defense authorization bill here just a while back. "It has not had any committee hearing; do not offer it. We will have committee hearings."

I say the same thing then I say now: you know and I know that a trade bill, will not reach the President in this session of Congress and if it did reach the President, it would be vetoed.

So the time is now. If we do not take this action now—here we are talking about adjourning sine die next Friday—I do not believe we will, but hopefully we will adjourn sine die the following week. But when is there going to be a better opportunity? This is the time, this is the place, this is the bill.

So let us meet those needs now. Call it knee-jerk if one will. It is not knee-jerk to act in the protection of bases upon which the American people have spent billions of dollars and that are of importance to the national security interests of our country. It is important that we act in a moment of need to help a fledgling sister democracy, a country whose people over many, many years have been our friends.

This does not add one red cent to the budget deficit over and above the moneys that are already provided in the continuing resolution.

What we are doing is say take it out of other similar funding, other similar economic support functions.

I hope that the amendment of the distinguished Senator, the chairman of the Foreign Relations Committee, who is allied with me in the objective which we both seek, the common objective, will not prevail for the reasons I have stated, and I hope that the amendment I have offered will prevail. My amendment is in the first degree.

I could modify the amendment, may I say, so that it is free of points of order that could be raised against it, if that would help.

As to its being a line item veto, may I say to my good friend, the chairman of the Appropriations Committee, with whom I am an ally and a charter member of that alliance—both of us oppose line item vetoes—I do not believe that is so persuasive an argument today as it has been on other occasions.

I have a letter to the distinguished Senator from Hawaii [Mr. INOUYE], written by Kelly C. Kammerer, Director of the Office of Legislative Affairs, Agency for International Development, describing how AID, the Agency for International Development, would utilize $200 million in additional funds for the Philippines, and he is talking about additional international support funds, if appropriated by Congress. I will read just one paragraph therefrom:

> The Philippine Government would deposit an equivalent amount of pesos in a special account to be used for mutually agreed economic development purposes. We would seek to address the key rural problems of unemployment and low incomes. Eligible activities would generally include provision of rural infrastructure designed ot improve the climate for new investment and heightened economic activity, particularly in agriculture. Examples are support for improvements in transportation, communications, power, irrigation, credit, and marketing and processing facilities. The effort would be to try to promote the economic recovery or the rural areas.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AGENCY FOR INTERNATIONAL DEVELOPMENT,
Washington, DC, September 18, 1986.

Hon. DANIEL K. INOUYE,
Ranking Minority Member, Subcommittee on Foreign Operations, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR SENATOR INOUYE: I am writing to describe how A.I.D. would utilize $200 million in additional ESF funds for the Philippines if appropriated by Congress.

A.I.D. would provide the full $200 million as a cash transfer to the Philippines this fiscal year. The dollars would be available to the Philippines as foreign exchange.

The Philippine Government would deposit an equivalent amount of pesos in a special account to be used for mutually agreed economic development purposes. We would seek to address the key rural problems of unemployment and low incomes. Eligible activities would generally include provision of rural infrastructure designed to improve the climate for new investment and heightened economic activity, particularly in agriculture. Examples are support for improvements in transportation, communications, power, irrigation, credit, and marketing and processing facilities. The effort would be to try to promote the economic recovery of the rural areas.

Administrator McPherson reviewed these subjects in his meeting with President Aquino September 17.

Please let us know when we can be of further assistance.

Sincerely,

KELLY C. KAMMERER,
Director, Office of Legislative Affairs.

□ 1500

Mr. BYRD. Mr. President, if the Chair will indulge me just 30 seconds.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

THE UNITED NATIONS

Mr. HEINZ. Mr. President, I would ask my colleagues to indulge me for about 2 or 3 minutes to bring to this body's attention something that I think is quite pertinent to the good news we have received earlier today regarding the releast of Nicholas Daniloff.

Mr. President, we are on the continuing resolution, and I will, at the appropriate point, be offering an amendment to it. The background is really this:

Even though Nick Daniloff is free, I do not think we should forget why he was taken hostage in the first place. It was our determination to crack down on the Soviet espionage abuses in the United States that prompted this thoroughly illegal and completely cynical seizure by the Kremlin. Mr. Daniloff is out of Lubyanka, but, in this Senator's opinion, it is also time to get the KGB out of the United Nations.

My colleagues know that I have been a strong supporter of the mission of the United Nations. I believe it is a positive force for the resolution of conflicts and a forum for international cooperation. But the Soviet perversion of the United Nations for their own purposes simply cannot and should not go on. And I refer to the process known as "secundment," where the Soviet Union openly infiltrates hundreds of KGB agents into the United Nations bureaucracy.

I want to advise the Senate, as I did in a "Dear Colleague" letter last week, that I plan to offer an amendment to the continuing resolution which will put the strongest possible pressure on the United Nations Secretary General to clean up what has become a Soviet spy nest in the U.N. Secretariat.

Mr. President, my colleagues and the public by now should be familiar with this Soviet scheme. It is the scheme that skims the salaries of these Soviet citizens working for the United Nations, using U.S. contributions, in part, to the United Nations to do so, to finance Soviet spying and subversion.

My amendment would cut off U.S. taxpayers' money to the U.N. Secretariat until the United Nations is committed to cleaning up its own house and addressing the outrageous Soviet shell game of "secundment" and the other serious abuses that have been documented by our intelligence community representatives.

So today, as we welcome home Nick Daniloff, the latest victim of the Soviets' relentless war of espionage against the West, I think it is not only appropriate that we consider this subject, but, indeed, it would be ironic if the Senate were to act today or tomorrow on the continuing resolution not taking action on this amendment I plan to offer and, thereby, continue to finance Soviet theft of American secrets with our own national budget.

I would call that feeding the hand that bites us, Mr. President. Hard-earned American money should not go to an organization—in this case, I am talking about the Secretariat—unless it takes the steps necessary to enforce its own fundamental code of conduct.

Mr. President, last spring there was a very excellent report done by the Senate Intelligence Committee on Soviet abuse of the U.N. Secretariat and it is well reading. My colleagues should give this report their careful attention so that they can consider the evidence of serious abuses before voting on this issue.

I ask unanimous consent that the committee report be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

SOVIET PRESENCE IN THE UN SECRETARIAT[1]

SUMMARY

The Soviet Union is effectively using the UN Secretariat in the conduct of its foreign relations, and the West is paying for most of it. The 800 Soviets assigned to the United Nations as international civil servants report directly to the Soviet missions and are part of an organization managed by the Soviet Ministry, intelligence services, and the Central Committee of the Communist Party. The Soviets have gained significant advantage over the West through their comprehensive approach to the strategy and tactics of personnel placement and their detailed plans for using the United Nations to achieve Soviet foreign policy and intelligence objectives.

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[1] This report was prepared for the Select Committee on Intelligence by elements of the U.S. intelligence community.

Soviet and Eastern Bloc personnel use their positions to promote a broad range of foreign policy objectives in the United Nations and its specialized agencies. They gather information to provide early warning of possible UN actions and are involved in shaping conference papers controlling the flow of news to staff and delegations, influencing delegations seeking Secretariat advice, and aiding Soviet diplomats during conference and other deliberations. Western diplomats have protested specific instances of Soviet staff abuses, but no comprehensives effort has been undertaken by the United Nations to enforce UN Charter and Secretariat staff regulations that prohibit employees from acting on behalf of their government.

Soviet employees use the United Nations to support Soviet propaganda activities worldwide. Soviet Secretariat officials receive instructions directly from Moscow on propaganda placements for coverage in the Soviet media and to arrange for the UN Secretary General to make favorable reference to statements of Soviet leaders or announcements of the Central Committee. Documents supporting Soviet interests are entered into UN records and later presented as a UN document in Soviet propaganda placements.

Key Soviet personnel have been placed in UN offices responsible for UN relations with nongovernmental organizations and Soviet front groups. Nongovernmental organizations such as the World Peace Council participate in UN activities. Soviet interest in these groups stems from their ability to influence UN debate and the domestic political process in their own countries.

Approximately one-fourth of the Soviets in the UN Secretariat are intelligence officers and many more are co-opted by the KGB or GRU. All Soviets in the Secretariat must respond to KBG requests for assistance. The Soviet intelligence services use their UN assignments to collect information on UN activities; to spot, assess, and recruit agents; to support worldwide intelligence operations; and to collect scientific and technical information of value to the USSR.

Soviet subversion of UN programs have been prevented on occasion by strong US protests and action by UN officials. Secretary General Perez de Cuellar has thwarted some Soviet personnel moves, but he is dependent on Soviet support for UN diplomatic efforts. The Soviets will maintain a distinct advantage in the United Nations until their diplomatic and intelligence efforts are matched by systematic, long-term Western opposition.

Soviets in the United Nations and its specialized agencies, by organization in 1984

Organization	*Number of Soviets*
Total	773
United Nations, New York, Geneva, Vienna, Nairobi, etc	469
International Atomic Energy Agency [IAEA], Vienna	69
International Civil Aviation Organization [ICAO], Montreal	20
International Labor Organization [ILO], Geneva	43
International Maritime Organization [IMO], London	8
International Telecommunications Union [ITU], Geneva	11
United Nations Development Program [UNDP], New York	4
United Nations Educational, Scientific, and Cultural Organization [UNESCO], Paris	59
United Nations Children's Fund [UNICEF], New York	4
United Nations Institute for Training and Research [UNITAR], New York	1
United Nations Relief Refugees in the Near East [UNRWA], Beirut	1
Universal Postal Union [UPU], Berne	4
World Health Organization [WHO], Geneva	51
World Intellectual Property Organization [WIPO], Geneva	6
World Meteorological Organization [WMO], Geneva	17
World Tourism Organization [WTO], Madrid	6

SOVIET PRESENCE IN THE UN SECRETARIAT

"Members of the Secretariat shall subscribe to the following oath of declaration: I solemnly swear (undertake, affirm, promise) to exercise in all loyalty, discretion, and conscience the functions entrusted to me as an international civil servant of the United Nations, to discharge these functions and regulate my conduct with the interests of the United Nations only in view, and not to seek or accept any instructions in regard to the performance of my duties from any Government or other authority external to the Organization."

UN REGULATION 1.9

The Soviet Union is effectively using the UN Secretariat in the conduct of its foreign relations, and the West is paying for most of it. In contrast with Western members whose citizens normally work as international civil servants, Soviets in the UN system are part of a large and complex system designed to:

Determine how to integrate UN activities with other foreign policy and intelligence efforts.

Identify the specific positions in the UN system that can contribute to those efforts.

Secure and keep targeted positions.

Manage the work of Soviet citizens holding UN jobs.

The lines of authority for this system begin in Moscow with the Politburo and run through the Foreign Ministry, the KGB, and GRU to the Soviet Missions in New York, Geneva, Paris, Vienna, and other cities with UN agency headquarters. The Societ missions, in turn, directly control the 800 Soviet citizens employed by the United Nations and its specialized agencies. In addition, the Soviets have direct control over third-country agents recruited by the KGB and have influence over the 200 Eastern Bloc employees. Thus, Western delegations face not only the large Soviet delegations and the Third World majority in the United Nations but also an organization of 800 people within its bureaucracy who have been placed by, are managed by, and are responsible to the Soviets and their allies.[2]

The Soviets' comprehensive approach to the strategy and tactics of personnel placement is unique in the UN system. Soviet personnel placements reflect overall Soviet objectives in propaganda, acquisition of Western technology, and intelligence activities. In the Security Council and the General Assembly, the Soviets seek positions from which they can protect or promote Moscow's broad political and intelligence objectives.

In addition to their comprehensive approach to placement, the Soviets maintain effective control over their citizens in the UN system. Most Western employees are career international civil servants on contract with the United Nations. Soviet citizens are first carefully selected for a specific function and often stay on that career track, rotating on short-term contracts among assignments in international organizations and related Soviet ministry slots. No Western state or group of states can match the combination of expertise and placement strategy of the Soviet Union and the Eastern Block in the UN system.

Ninety percent of the salaries for Soviet personnel in the UN Secretariat is paid by the contributions from other member states. Moreover, the Soviets also net an estimated $20 million in hard currency each year from kickbacks they require from their UN staff. These funds are used to finance other diplomatic, propaganda, and intelligence activities.

Soviet objectives [3]

Moscow has specific objectives and detailed plans concerning its participation in the UN system. The Soviets serving in the UN system have four basic objectives:

Promote Soviet and allied interests in the United Nations.

Spread Soviet propaganda.

Use status to influence individuals and groups within member states.

Undertake intelligence operations.

Geographical distribution of UN staff

In 1957 the admission of 20 new members to the United Nations prompted UN General Assembly consideration of the equitable distribution of positions in the UN Secretariat. The General Assembly recommended to the Secretary General that representation of new members be increased by giving preference in hiring to nationals of "underrepresented" countries and by increasing the number of fixed-term contracts, by which officials of governments are loaned or "seconded" to the United Nations for a fixed number of years.

The Secretary General responded by ordering publication of a report each year that shows the representation in the UN Secretariat by country and posts, including all political posts (P-1 and higher), and by developing a system of desirable ranges for specific countries and regions based on population, cultural tradition, political system, and UN contribution. From the beginning, the United States and Western Europe have been overrepresented, and the Third World and the Eastern Bloc have been underrepresented.

The trend of the last 20 years has been to increase the number and proportion of Third World and Eastern Bloc nationals. Since the UN Secretariat has increased in size, the number of Western Secretariat officials also has increased, but their proportion in the Secretariat and their dominance of the institution have decreased.

Promoting Soviet interests

Soviet and Eastern Bloc personnel in the UN Secretariat use their positions to promote Soviet and Eastern Bloc interests in all phases of UN action. Their efforts begin with gathering information to provide early warning of possible UN actions and do not end until the final report has been disseminated. Soviet and Eastern Bloc personnel are involved in shaping conference papers, controlling the flow of news to staff and delegations, influencing delegations seeking Secretariat advice, and aiding Soviet diplomats during conferences and other deliberations.

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[2] See appendix A for details of the organization that controls Soviet UN Secretariat employees.

[3] See appendix B for details on Soviet interest in UN components.

The kickback system

The Soviet Union receives about $20 million per year in salary kickbacks from Soviet employees in the United Nations and its specialized agencies. Although this sum does not cover the full cost of Soviet participation in the United Nations, it is a major subsidy for Soviet diplomatic and intelligence efforts.

The kickback system did not begin as a calculated scheme but rather as a Soviet Government response to the ruffled feathers of Soviet ambassadors jealous of the perquisites of their offices. In the early 1960s the Ambassador to Austria complained that young diplomats recently graduated from college and working for international organizations were getting three times his salary. Worse, the youngsters were buying Western cars. As a member of the Central Committee, the Ambassador got the support of his high-ranking colleagues, and the practice of salary kickbacks was begun.

An identical kickback system is at work throughout the United Nations. Each position in the UN Secretariat is assigned a rank and pay grade equivalent to that in the Soviet Mission, which is roughly comparable to an individual's diplomatic status. No matter his rank or grade, each Soviet employee is required to turn over his entire UN salary to a finance clerk in the Soviet Mission. The clerk then pays the Soviet Secretariat employee the standard hard currency salary paid to mission personnel of the same rank plus 10 percent. If the Soviet resides outside the Soviet compound, he also receives an apartment allotment. The payment usually does not meet the actual rental expense. The hard currency contribution Soviets make to the UN pension fund is turned over to the Soviet mission when they leave the UN Secretariat.

Early Warning.—Each Soviet Secretariat employee has his UN work reviewed by the Soviet mission for analysis and comment. In addition the KGB has access to some UN code cables, some of which are copied and sent to Moscow. Through these efforts, the Soviet mission is aware of the initiation of Secretariat actions and is able to intervene early on when the substance of the recommendations are more easily influenced. Early warning also gives Soviet diplomats longer leadtimes to prepare for a meeting.

Conference Preparations.—Groundwork for major UN conferences begins years in advance with the Secretariat's preparation of the basic documents for discussion. Soviet and Eastern Bloc personnel are in a position to shape these documents to favor their governments' positions. Soviet employees directly influenced key conference documents for the UN Special Sessions on Disarmament in New York and the UN Conference on Trade and Development (UNCTAD) in Belgrade in 1983. The UNCTAD document was such an egregious distortion of Soviet-versus-Western aid efforts that it drew a sharp US protest.

News Service.—The Soviets have tried to gain control of the Political Information and News Services (PINS) established by the United Nations to provide Secretariat staff and member states with synopses of media reports. Supervision of PINS was assigned to the office of UN Secretariat Under Secretary General Viacheslav Ustinov, who delegated the editorial responsibilities to his special assistant Viktor Andreyev.

Control of PINS gives the Soviets an opportunity to select and edit press items. Review of PINS products indicates an anti-US bias and an absence of unfavorable coverage of the Soviet Union. For example, during the US election in the fall of 1984, PINS used selective coverage from US newspapers to support the Soviet position that President Reagan's arms control proposals were motivated by campaign politics.

History of Soviet presence in the UN Secretariat

Soviet activities since the founding of the United Nations in 1945 indicate that USSR participation has evolved through three phases:

From 1945 to 1954. Moscow sent few of its people to serve in the Secretariat, and those sent tended to be senior officials responsible for monitoring UN activities.

From 1954 to 1970. The Soviets established themselves in key Secretariat positions and developed tactics to shape Secretariat activities to meet their needs.

From 1970 to the present. Moscow refined its system of personnel placement and control so that Soviets in the Secretariat function reasonably well as adjuncts of the Soviet Foreign Ministry and intelligence services.

Before 1954 the Soviet Government considered the United Nations a pro-US organization and was unwilling to commit resources to it. The government also feared that giving Soviet citizens the status of international civil servants would lead to defections. Consequently, only a few well-screened Soviet officials were employed in the UN Secretariat, and only a handful of KGB officers were under UN cover.

In 1955 Nikita Khrushchev recognized that the trend toward decolonization would mean the admission of a large number of newly independent states to the United Nations, which would transform the character of the organization. The Soviet Foreign Ministry responded with new interest to the United Nations by enlarging its Department of International Organizations and creating new sectors to deal with disarmament and international economic organizations. A Khrushchev demand for a more equal representation in the Secretariat caused a push for UN positions, which initially were staffed by poorly qualified individuals.

As the Soviets gained more UN posts, the pool of qualified people with UN experience increased. More acceptable candidates were provided for vacancies, and the KGB became increasingly subtle in seeking advantageous positions for its officers. The 800 Soviets currently employed in the United Nations reflect this focus on increasing the quality and influence of Soviet placements.

Influence on Other Delegations.—Secretariat staff officials are often asked for advice and assistance, particularly by Third World delegations. Such exchanges allow the Soviets in the Secretariat to influence the presentation of positions of friendly Third World delegations. Soviets in the Secretariat also use third-country nationals to sound out Third World or Western countries on proposals the USSR wants to introduce. By taking these soundings through third country nationals and then having a client sponsor the initiative, the Soviets avoid some the disadvantages of Soviet sponsorship.

Support for Meetings.—Soviet and Eastern Bloc personnel also use their positions to assist their delegations attending UN meetings. These efforts provide small but significant advantages. For example, the Soviet-dominated Office of Conference Services gives Soviet diplomats the advance copy of speeches that are prepared for the interpreters. The Soviets also receive advance copies of documents prepared for the official record of UN meetings, which facilitates their preparations.

Soviet Secretariat staff members do not hesitate to manipulate UN procedures to favor the Soviets and their allies. During the 1968 UN General Assembly (UNGA) debate on China's representation in the United Nations, Viktor Lesiovskiy, who was serving as a special assistant to Secretary General U Thant, drew a formal protest from the US Mission when he put the United States in a disadvantageous position on the speakers list.

Decorum does not preclude Soviet UN officials from providing advice to Soviet delegates during UN proceedings. At the January 1962 debate on the Congo issue, the Soviet Under Secretary General passed five penciled notes to Soviet representative Valerian Zorin, drawing complaints from non-Communist delegates that the action was highly improper.

Soviets in the Secretariat provide internal UN budget information directly to the Soviet representative on the UNGA's Fifth Committee which is responsible for the budget. In technical conferences, Soviet Secretariat officials have been assigned directly to the Soviet delegation.

Obtaining UN Resources. Soviets in the UN Secretariat are instructed to get back as much as possible of the USSR's contribution to the United Nations. Some of the activities include getting the United Nations to sponsor conferences in the USSR and to publish Russian UN documents. In the UN Educational, Scientific, and Cultural Organization (UNESCO), Soviets are diveting programs to the USSR intended for underdeveloped countries.

Soviet tactics for securing UN jobs

The Soviet Government accomplishes its personnel objectives in the United Nations through a combination of long-range planning and dogged persistence. The Soviets usually begin their efforts to secure slots through the formal UN personnel systems, but they also use a variety of other tactics to gain their ends. One ploy is to remain geographically underrepresented in the Secretariat to improve their chances of securing desired posts. If the Soviets are particularly interested in a specific position, they will present a well-credentialed, outstanding candidate for the post. This method was used in securing the directorship of the Dag Hammerskjold Library at UN headquarters in New York. When a qualified person is not available, a resume is falsified. Political pressure also is used to gain personnel concessions. For example, the USSR has blocked the transition of the UN Industrial Development Organization into a specialized agency to make sure a deputy director general position is reserved for the Eastern Bloc countries.

The Soviets also achieve their objectives by ignoring or manipulating the UN vacancy notice system. As Director of Personnel in Geneva, Gely Dneprovsky used his authority to hire locally on temporary contract without approval from New York. He moved Soviets or their allies into key positions as temporary appointees so that they could subsequently apply as internal candidates. The Soviets have also used friendly third-country nationals to protect their slots. For example, when a KGB agent who was filling a senior political officer slot returned to the USSR on leave for a year, a Spanish national working under Soviet supervision as a manual laborer was shifted to fill the slot ad interim. The Soviets have also been known to exclude highly qualified third-country candidates from consideration to make their own nationals look better and have intervened at the highest levels to protect incompetent Soviet officials.

Propaganda placement

The Soviets use the United Nations to support Soviet propaganda activities worldwide. Secretariat officials receive instructions directly from Moscow on placing materials or staging propaganda events for coverage in the Soviet media. Communist Party groups in the secretariats of international organizations concentrate on the use of UN posts for Soviet propaganda.

Soviets in the Secretariat are instructed to arrange for the UN Secretary General to make favorable reference to the statements of Soviet leaders or announcements of the Central Committee. The Soviets circulate these statements and a wide variety of decisions and announcements of the Soviet Government as UN documents, which are then reported in Soviet media as having been acknowledged by the United Nations. As a matter of practice, the United Nations allows documents of any delegation to be entered in the record and circulated as official UN documents. The fact that the documents have been circulated in the United Nations is used by the Soviet press and other media in a way that gives the Soviet propaganda placement more credibility.

The Soviet delegation exploits UNESCO for propagandizing Soviet achievement in agriculture, science, culture, and education and the advantages of the Soviet way of life. The Soviets use the organization's programs, international forums, information and publication activities, and its audiovisual services.

The party committees in the Soviet communities in New York, Geneva, Paris, and Vienna are actively involved in Soviet propaganda activities. The party structure is made up of the Soviets in the embassy, consulate, the trade mission, and groups from the secretariats of each international organization. Each group has a propaganda committee that meets to discuss practical steps for attaining Soviet propaganda objectives. One or more representatives of each committee attends the main propaganda committee meeting once a month. The main committee meeting is chaired by the Ambassador, who is assisted by the Party Secretary, whose instructions come from the Central Committee.

The Ambassador holds periodic meetings to review the progress of the propaganda program and to discuss plans for increasing the effort. Occasionally, an official of the Cadres Abroad Department of the Central Committee visits the UN representing himself as a member of a delegation to an international organization or conference, but actually his mission is to discuss the propaganda activities conducted within the secretaries of international organizations.

Support of Soviet interest outside the United Nations

Soviet Secretariat employees use their positions to influence not only the diplomatic activity within the United Nations but also the groups and individuals within member states. To accomplish this objective, they are focusing particularly on nongovernmental organizations (NGOs) associated with the United Nations and Soviet front groups.

NGOs.—Groups such as the World Peace Council participate in a wide variety of UN activities to bring nonofficial views and information to member states. NGO representatives may attend conferences as observers; submit papers, which become part of the official record; and at times speak at meetings. The NGOs are targets because of their potential to influence UN debate and because of their interaction in the political process of their countries.

International Year of Peace

Preparations under way for the 1986 International Year of Peace (IYP) are an example of the ability of the Soviets in the Secretariat to influence organizations outside the UN system. The UNGA proclaimed 1986 as International Year of Peace and invited member states to participate in its observance. Soviet Under Secretary General Ustinov was assigned responsibility for the project. His UN staff is soliciting funds for the project and organizing regional meetings of nongovernmental organizations. In this way, individuals and groups will participate in a UN project without suspecting that the effort is managed by a Soviet.

The Soviets have key personnel in offices responsible for UN Secretariat relations with nongovernmental organizations. In New York, Anatoly Mkrtchyan heads the External Relations Division of the Department of Public Information. At UNESCO, Assistant Director General Sema Tanguiane personally approves the list of invitees to UNESCO nongovernmental meetings. In Geneva, Political Officer Vladimir Soloviev is in charge of seminars and relations with NGOs in the Information Service.

Front Groups.—The KGB and the Central Committee actively promote the connection between UN and Soviet front organizations such as the World Peace Council (WPC). Soviet Secretariat employees also attempt to get high-level UN representation at meetings and conferences sponsored by front organizations. When WPC President Romesh Chandra visits the United Nations, Soviet personnel in the Secretariat are instructed from Moscow to coordinate the visit and arrange meetings with the UN Secretary General and the presidents of the Security Council and the General Assembly.

The Soviets use the UN imprimatur and funds to lend credibility and prestige to Soviet front organizations involved in Moscow's peace offensive in the Third World and Western Europe. The front organizations participate in the meetings of major UN committees, subordinate organizations, regional commissions, and specialized agencies. They are in contact with the Secretary General and departments of the Secretariat.

Intelligence operations

Approximately one-fourth of the Soviets in the UN Secretariat are intelligence officers. Moreover, many other Soviets are coopted by the KGB and GRU. All Soviets in the UN system must respond to KGB requests for assistance.

In the early years of Soviet participation in the United Nations, Moscow placed a few intelligence officers in New York, but they were not very successful in collecting information. The KGB and GRU initially used UN positions only as a cover for intelligence activities. Over time, Soviet intelligence services have become experienced in the use of the UN system and its personnel and program resources to support their efforts. They now use their UN assignments and the organization itself to collect information on UN activities; to spot, assess, and recruit agents; to support worldwide intelligence operations; and to collect scientific and technical information of value to the Soviet Union.

No kid stuff

The Youth Forum, sponsored by the National Swiss Commission for UNESCO, is a tradition. Since 1953, 500 schoolchildren from the four corners of Switzerland and bordering French regions have assembled in Geneva once a year to "play" United Nations. As in the General Assembly, the young people are grouped by the countries represented in the United Nations and debate a specific topic for three days.

For 25 years, the Forum was held in the Palace of Nations, an official UN building, which gave the event an added sense of authenticity. But since 1978, following an interesting and revealing incident, the forum has been held at the International Conference Center, which belongs to the city of Geneva.

The topic of the Forum that year was "The Charter of the United Nations and the Human Rights Declaration." On the afternoon of the first day, a young boy "representing" the United Arab Emirates motioned for the elimination of the two seats occupied by the Ukrainian and Byelorussian Soviet Socialist Republics, which are an integral part of the USSR. He considered it unfair that the Soviets had three votes in the General Assembly—which has been the case since the United Nations was established in 1945—when they are the greatest violators of human and civil rights. The motion was adopted.

This nonconsequential play acting sparked a high-level Soviet response. A Soviet official of the UN press service happened to see the proceedings and reported them to the Soviet Ambassador. The next morning, Ambassador Zoya Mironova woke the director of the Palace of Nations and demanded that he terminate the Forum. The director, Luigi Cottafavi, explained that the assembly entailed no commitment for the United Nations, but, when the young people arrived at the Palace about 9 a.m., they found the doors locked. The decision has been made by the official in charge of conference services, Vladimir Lobachev, a Soviet, without consulting the director of the Palace. The young people had lost. They left the Palace and never returned to disturb the peace and quiet of the diplomats.

Cover. UN staff assignments are used as cover for operations directed at the host country and third countries. UN Secretariat status provides intelligence officers with the opportunity to travel unencumbered by restrictions imposed on Soviet diplomats. Furthermore, UN identification does not disclose nationality, which allows Soviet UN employees to attend professional, academic, or political meetings and to develop contacts without revealing their nationality.

One example of Soviet use of UN cover involves Anatoliy Andreyev, an intelligence officer who worked as a UN librarian. In 1973 Andreyev met a civilian employee of the US military at a librarians conference on Long Island. After a year of exchanging unclassified documents, Andreyev offered to help the military employee financially in exchange for specific classified documents. Andreyev left the United States after a quiet protest from the UN mission.

Another GRU officer, Kirill Chekotillo, worked in the UN Office of Political and Security Council Affairs for the Soviet Under Secretary General. During that time, Chekotillo also traveled around the United States visiting various research institutes. Using the coverage of a German working for the United Nations on Law of the Sea negotiations, he was able to gather information on the status of US oceanographic research. When the United States pointed out these clandestine activities to the Secretary General, Chekotillo resigned and returned to Moscow.

Recruitment. The prestige and importance of a UN post for European and Third World diplomats provide an excellent opportunity for the Soviets to meet and develop long-term intelligence sources and agents of influence. In New York, Geneva, and Vienna extended contact with Africans and Asians does not arouse the suspicion it would in the diplomats' home capitals, where Soviet officers may be under heavy surveillance.

The United Nations is fertile ground for Soviet recruitment efforts. Soviets working in the UN personnel system use their access to personnel records for spotting and assessing possible recruits. UNESCO, the International Atomic Energy Agency (IAEA), UNCTAD, and other UN agencies sponsor seminars and conferences in the Soviet Union, and the Soviets in the secretariats control or monitor the invitations to these events. In the Soviet Union, the attendees are targets for Soviet intelligence officers. Soviets in the UN personnel system also help their agents get UN jobs. These posts may be used to enhance the political or diplomatic career prospects of an agent of influence or UN employee as an enticement or reward for service. The Soviets can be as effective in a negative way; they prevent promotions and make working conditions unpleasant for uncooperative UN employees.

Third-Country Operations. Soviet intelligence officers use the headquarters of UN international organizations to support their third-country operations. Meetings are planned for New York, Geneva, Vienna, or Paris, although the agent's travel and business have nothing to do with the United Nations. UN conferences held in these cosmopolitan cities allow Soviets extended contact with agents with whom it would be difficult to meet in their home countries. A recent case involved Arne Treholt, a prominent member of Norway's UN delegation from 1980 to 1982. The Norwegian State's attorney accused Trehold of obtaining NATO classified information and passing it to the Soviets. He met his KGB case officer at the UN Library in New York.

Scientific and Technical Collection.—The USSR also takes advantage of its positions in international organizations to acquire scientific and technical information and equipment. A large portion of the individuals who come to the UN Secretariat from the State Committee for Science and Technology and related academic institutions are KGB or GRU personnel, or have been co-opted by the intelligence services. Soviet tactics vary from simply taking hardware and shipping it to Moscow to arranging for international organizations to conduct or support research that fills gaps in Soviet technological knowledge.

The Soviets use the UN copying facilities and have shipped boxes of technical literature back to the USSR at no cost to the Soviet Government. As the Soviets have assumed more responsible positions as directors of research programs, they have been able to establish data bases of specific interest to the Soviet Union, again at UN expense.

The Soviets began using the UN in their scientific and technical collection effort at the International Atomic Energy Agency in the late 1950s. Positions acquired in IAEA libraries and research offices gave them legitimate access to Western equipment and publications, computer systems, software, and data bases.

Chernenko the UN Delegate

In 1974 Konstantin Chernenko, then Chief of the CPSU Central Committee's General Department, visited the United States as a member of the Soviet delegation to the UN Special Session on Raw Materials. He was interested in how the UN Secretariat worked and what kind of technical services were provided. He also was interested in familiarizing himself with US automated data-processing systems.

Chernenko's trip to Washington included a tour of the US Government computer center. In the briefing, he was introduced to The New York Times Data Bank system. The system was queried for information on Chernenko, and to his surprise and amusement two separate press items came up. The news items were printed and given to the visitor. The next week the wife of the KGB Resident assigned to the New York Soviet Mission to the United Nations began using the UN computerized Data Bank Service to tap into The New York Times Data Bank.

APPENDIX A

Soviet organization in the United Nations

Soviet ability to use the UN Secretariat as an instrument of its foreign policy depends on a large organizational structure capable of managing the 800 Soviet and the Eastern Bloc citizens working in the United Nations and its specialized agencies. The process begins with the selection of personnel. The Foreign Ministry, the KGB, other ministries, and the party Central Committee apparatus all are involved in the process. The Soviet missions to the various UN organizations are the focal points for managing and evaluating the Soviet employees in the UN system. Finally, the specific plans and instructions for actions in the United Nations are formulated and approved in Moscow by the Foreign Ministry, the KGB, and the Central Committee.

The personnel selection process

Soviets do not apply directly to the United Nations for employment. They are nominated by Moscow and "seconded" or loaned to the United Nations as Soviet Government employees. The Office of Personnel Administration in the Foreign Ministry has an International Organization Section that acts as the clearinghouse for appointments to the UN Secretariat. The UN Information Office in Moscow does the paperwork for the application. Although the office is a formal part of the UN Secretariat, it is staffed and controlled by the KGB.

The Office of Personnel Administration of the Foreign Ministry manages a pool of ministry professional and clerical employees whose specialty is international organizations, and receives nominations from other ministries and institutions in the Soviet Union. This office maintains contact with the UN Office of Personnel and the permanent missions of the USSR to the various UN institutions. The Foreign Ministry notifies the other ministries of anticipated UN openings and prepares the formal nominations for the Central Committee. Over the years a quota system has emerged, and various ministries have come to regard particular jobs in the United Nations as their property.

The Foreign Ministry provides the largest number of employees for UN assignments. Foreign Ministry candidates for UN posts are drawn from three main sources: the substantive offices that deal with the United Nations, foreign service officers on rotational tours, and schools sponsored by the Foreign Ministry, such as the Institute of International Relations.

The KGB and GRU provide the second group of candidates. The Office of Personnel Administration is in constant touch with the KGB. The paperwork is done by the Foreign Ministry. The forms, which are submitted to the Cadres Abroad Department of the Central Committee, provide the fictitious backgrounds developed by the KGB for its personnel.

Other ministries, state committees, and academic institutions also provide candidates to the UN system according to their functions. For example, the State Committee for Science and Technology contributes scientists to carry out its role in acquiring Western technology, and the Health Ministry provides doctors to the World Health Organization.

The Communist Party Central Committee apparatus from time to time provides personnel for particular UN jobs. The key offices are the International Department headed by Boris Ponomarev, and the International Information Department, headed by Leonid Zamyatin. Stanislav Menshikov of the International Department served in the Economic and Social Department of the UN Secretariat in New York in the 1970s.

In addition to the formal procedures for personnel selection, an extensive network of personal contacts influences the process. The Permanent Representatives in New York, Geneva, and Vienna have considerable influence in nominating proteges for key posts. Prominent party and Foreign Ministry officials find jobs in the United Nations for their relatives and friends. In 1983 three children of high-level Foreign Ministry officials worked in the UN Secretariat in New York.

Bureaucratic contests also become a factor in the process if a UN job attracts the attention of more than one ministry. When KGB officer Viktor Lesiovskiy was invited by Secretary General U Thant to be his assistant, the KGB was given the right to nominate his successor over the objections of the Foreign Ministry. Disputes of this sort are resolved at the highest level of the respective ministries. Sometimes the Politburo has been required to resolve conflicts between the KGB and the Foreign Ministry.

The Central Committee approves all candidates for UN jobs. Once the nominations are made and the KGB has done a background investigation, the credentials are submitted by the Foreign Ministry to the Central Committee's Cadres Abroad Department for further screening. The nomination for UN Under Secretary General, the senior Soviet position in the United Nations, is submitted to the Politburo.

Role of the mission

When a Soviet citizen reports for work at a UN office in New York, Geneva, Vienna, or elsewhere, he has already checked in with his boss in the Soviet mission to the UN organization. The Soviet mission instructs him, supervises his work, evaluates his performance, monitors his loyalty, and reports his activities to Moscow. The Soviet mission is the link between the Soviet citizen and the Communist Party and Soviet Government.

The USSR ambassador to a UN organization is the formal head of the Soviet organization and is responsible for the overall operations of the mission. He reports through diplomatic channels to the Foreign Ministry. The regular diplomatic work of the mission is organized by divisions and sectors that parallel the UN committees and Secretariat offices. The key managers for diplomatic activity are called issue referents. They usually are foreign service officers and handle all the mission activity related to substantive issues, such as disarmament, or to functional specialties, such as personnel. KGB and GRU officers from the mission and Secretariat are also assigned to these sectors for cover purposes and are theoretically required to spend one-third of their time on diplomatic work.

The Communist Party organization constitutes the second major control mechanism. Each Soviet in the UN Secretariat belongs to a party group. The party secretary ensures that all decisions of the Central Committee are brought to the attention of the Soviet community abroad. He also is responsible for assuring that the Soviets in the UN Secretariat use their UN jobs to promote current propaganda and front activities directed by the Central Committee.

The third mechanism for controlling Soviets in the Secretariat is the mission Security Officer, who is a member of the KGB. His job is basically counterintelligence. Assisted by other KGB officers and informants in the various offices, he monitors the activities of all Soviets in the mission and the Secretariat.

The fourth set of links to Soviets in the Secretariat involves the individual's home organization, ministry, state committee, or component. The lines of communication of ministries, which only occasionally send people to international organizations, are generally weak and informal, but control mechanisms can be extremely strong, as in the case of the KGB.

The KGB has a separate chain of command and communications outside the mission referent system that links directly to Moscow. The standard Soviet practice is to place a KGB officer as the second senior Soviet official in a Secretariat office. He is then in a position to free other KGB and GRU officers under his supervision in the United Nations for their intelligence activities. Individuals are managed by the Resident through the KGB structure. Other Soviets, including their Soviet non-KGB supervisors, have little knowledge of the activities of these officials and exert no authority over them.

KGB use of Soviet Secretariat employees is managed directly by the KGB officers in the Secretariat or from the mission. In the majority of cases, the KGB simply asks the Soviet for information concerning specific intelligence requirements on the political or economic conditions in countries of UN diplomats or third-country Secretariat employees. Sometimes the Soviet is required to initiate contact and report the information. The KGB also directs Soviet Secretariat officials to obtain employment in the United Nations for individuals recruited by the KGB.

Soviets in the Secretariat also use the Secretariat employees from Eastern Bloc countries and client states. Eastern Bloc employees routinely check with Soviet supervisors when they are unsure of the Soviet line and need guidance on how to handle their UN work. When an Eastern Bloc employee is favorably placed to accomplish a Soviet objective, he is given direct instruction from Soviet supervisors in the Secretariat.

Reporting and work for the mission

The divisions and sectors within the mission parcel out their work to the Soviets in the Secretariat. Using Secretariat research and library facilities, the Secretariat employees draft contributions to mission cables. Soviets in supervisory positions in the United Nations use their non-Soviet employees to support their mission-related projects.

The Soviet Secretariat employees form an integral part of Soviet mission operations. On each issue or project, the potential Secretariat contribution is considered at the outset. Soviets in the Secretariat sometimes take the initiative in suggesting strategy and tactics for the use of Secretariat resources and the UN mantle of legitimacy in support of Soviet objectives.

Each Soviet in the Secretariat has reporting requirements beyond the scope of his response to specific KGB requests or his regular input through the mission sector. The Soviets in the United Nations must report every contact with foreigners including workrelated meetings and social occasions. To avoid being seen and having to complete a report, the Soviets make a point of not meeting Western friends in the restaurants or coffee shops in UN buildings.

Evaluation

The Soviets in the UN Secretariat are within the personnel evalution system of the Soviet Government. The mission and local party committee provide the standard personnel evaluation reports on Soviet Secretariat personnel. The KGB and GRU prepare a separate evaluation report to which the Soviet supervisors in the United Nations or the mission make pro forma contributions. The mission's evaluation includes several parts, including a description of the job and an evaluation of performance. The substantive part is provided by the sector or division chief in the mission. The party secretary and KGB security officer in the mission also add comments, and the Soviet supervisors in the Secretariat report on the employee's work in the United Nations.

In addition, each Soviet employee is required to complete an annual report of his activities within the Secretariat. The report contains an estimate of the value of the particular UN slot to the Soviet operation and of the strengths and weaknesses of the organizational setup and provides suggestions for improvements. The senior Soviets report on the overall operations of their offices, or, in the case of the Under Secretary General, on the whole Soviet operation in the UN Secretariat. The analysis of these reports by the Personnel and Finance Sector in the Department of International Organizations in the Foreign Ministry provides the basis for the long-range plans for allocation of Soviet personnel in the UN Secretariat.

Instructions from Moscow

Soviet Secretariat employees regularly visit the mission to get instruction from their supervisors. As a general rule, the Foreign Ministry instructions to the Soviet mission are sufficient to guide the conduct of Secretariat employees. The Foreign Ministry usually assumes that these instructions will also initiate specific action by Soviets in the Secretariat. Foreign Ministry personnel in the Secretariat occasionally receive specific instructions requiring them to contact particular foreign diplomats with whom they have close relationships to gather information or lobby on a specific issue. The Foreign Ministry and KGB communication systems are used by the International Department of the Central Committee, headed by Boris Ponomarev, to send instructions by special cable to Soviets in the Secretariat concerning UN support for Soviet-controlled front organizations.

Leonid Zamyatin of the Central Committee's International Information Department is concerned with propaganda, and the Cadres Abroad Department manages the party mechanism within the Soviet delegations abroad. Both of these Central Committee offices use the Foreign Ministry and KGB communications systems and sometimes send cables to the exclusive attention of particular Soviets in the UN Secretariat.

The KGB and GRU maintain a communications system separate from Foreign Ministry channels. KGB headquarters instructs the Resident, who deals directly with KGB officers in the UN Secretariat.

APPENDIX B

Soviet interest in UN components

Over the past 20 years, the Soviets have developed a strategic approach to the placement of their personnel within the UN system. Analysis of the functions of UN offices and evidence of Soviet interests by the placement of personnel reveal the following motives and interest in particular UN offices.

The UN Secretariat in New York

The Executive Office of the Secretary General provides staff support to the Secretary General, manages his personal activities, and has direct access to any office in the UN system in the Secretary General's name. This has been a KGB slot since Viktor Lesiovskiy became as assistant to U Thant. Today, Guennadi Yevstaf'iev monitors these activities and has access to all personnel records and applications for UN employment.

The Department of Political and Security Council Affairs is responsible for assisting the Secretary General in his relations with the Security Council and has a broad mandate to deal with political issues. According to Trgyve Lie, in 1946 the Big Five powers agreed that the top post would be held by a Soviet national. The Under Secretary General in charge of that department has always been a Soviet. Under Secretary General Ustinov first served in the United Nations in the late 1950s. The department has 15 Soviets and has been the primary focus of political influence and intelligence operations in the Secretariat in New York.

The Department of Conferences Services contains the largest contingent of Soviets in New York. A high proportion of KGB and GRU officers serve in this department. The Soviet translators are together in one Russian-language section, where the Soviet supervisors can free the KGB officers to do their "other work," as it is called in the United Nations. The Soviets are also interested in the Dag Hammerskjold Library because it provides an opportunity to acquire US technical publications and lets KGB and GRU officers travel throughout the United States to meet people with access to vast collections of technical literature.

The KGB is vitally interested in the Office of Personnel for access to personnel files and applications for UN employment. This gives the Soviets considerable leverage over applicants and provides information on possible character weaknesses and financial difficulties of current employees. The office also maintains information on personnel disputes within the Secretariat and deals with disgruntled employees.

The Financial Services Office helps the extremely cost-conscious Soviets to keep UN expenses and contributions under control. The Ministry of Finance puts experts on budget planning and accounting in this office to aid Soviet delegates on the UN budget committee. The KGB is interested in monitoring how the Soviets in the Secretariat spend their money to assure that the USSR gets every penny of hard currency kickback from its UN employees.

Soviet participation in the Department of Legal Affairs is designed to control from within the Secretariat attempts to expand the UN mandate. A Soviet has held the Directorship of the Codification Division since 1965; particular interests are the Law of the Sea negotiations and the review of the Antarctic Treaty. A defector reports that the office also deals with legal questions pertaining to employment regulations and procedures for promotions and has information on private monetary, marital, and employment difficulties of UN employees, which are of interest to the KGB.

The Department of Public Information is a focal point for propaganda and intelligence efforts. Anatoly Mkrtchyan is Director of the External Relations Division and handles relations with nongovernmental organizations and the program that brings graduate students from all over the world for a UN work-study program. These activities are important to the KGB and the Central Committee for recruitment and for supporting their front organizations. The department as a whole has relatively few Soviets at present but it is a high priority for future Soviet placements because it manages the UN information offices worldwide, maintains contacts with journalists and the media, and publishes much of the UN promotional literature.

Geneva, Vienna, Paris, and Nairobi

Soviet activities in the New York component are only part of the overall effort in the United Nations and its specialized agencies. Since the 1920s the Soviets have been active in technical and scientific organizations. In 1956, when they joined the International Atomic Energy Agency, the Soviets began their concerted effort to provide staff to international organizations with access to Western technology.

Geneva.—The Geneva office of the United Nations is the center for research and discussion of North-South issues and is the site of more than a dozen specialized UN agencies and affiliated bodies in which the Soviets disseminate propaganda and collect technical information.

A Soviet national, Gely Dneprovsky, was particularly successful in placing personnel in the UN Geneva office. In spite of press publicity regarding his alleged KGB connections, Dneprovsky was appointed chief of personnel in 1978. By the end of his tenure in 1983, he had worked effectively behind the scenes to oust Westerners and to put UN personnel functions in Geneva in the hands of the Soviets and their allies. Disregarding UN personnel rules, he gave the largest division—Conference Services—to a Soviet.

Soviet staff members try to discredit Western aid programs, promote Soviet ideological doctrine on economic issues, and present the Soviet domestic economy in a favorably light, while protecting the USSR from Third World criticism and demands for aid. This has been accomplished through prepublication censorship of official UN documents, alteration of statistics, and pressure on Western or Third World UN employees to follow the Soviet line. The Soviets also take advantage of the vast array of technical information in the technical libraries of the United Nations and its specialized agencies. Soviet employees routinely photocopy documents on behalf of the Soviet Mission.

Vienna.—The Soviet Union and the Western nations have shared a mutual interest in nonproliferation issues. International Atomic Energy Agency participation gives the Soviets a chance to monitor some aspects of nuclear programs in the West and developing countries as well as to try to acquire Western technology. The Soviets have high-level posts staffed by people technically and politically qualified to expolit the information available in the institution.

The Soviets use the UN Industrial Development Organization (UNIDO) not only to acquire technology through participation in the work of the organization but also to try to circumvent US and COCOM controls on technology transfer to the Soviet Union. The Soviets attempt to get UNIDO to sponsor development projects in client states that use advanced computers and industrial processes. The purchase of the equipment through UNIDO and shipment to Eastern Europe allow the Soviets to obtain US technology and get the United Nations to pay for it.

Paris.—Moscow has effectively and consistently exploited UNESCO programs in education, science, and communications. UNESCO is tailor-made for Soviet initiatives designed to influence media content, particularly in the Third World, to establish contact with influential persons in UNESCO-interested fields, and to gain specific technical information. The Soviets have developed contacts with Secretariat officials responsible for publication and broadcasting and have targeted UNESCO information services as a vehicle for disseminating Soviet propaganda.

The senior Soviet in the Secretariat, Assistant Director General Sema Tanguiance, is a tough bureaucrat in his third tour in UNESCO. Tanguiane has great influence over the employment process in the Education Sector and approves lists of individuals invited by UNESCO to represent nongovernmental organizations at all UNESCO meetings.

Nairobi.—The UN office provides staff for the UN Environment Program and the UN Center for Human Settlements. The Soviets have the largest delegations to the UN institutions, and their presence contains a high proportion of KGB officers. The Soviets take frequent tirps to other African countries.

The senior Soviet in the UN Center for Human Settlements, Sergei Stepanov, sees his real job as initiating and developing UN projects for "like-minded socialist countries."

Mr. HEINZ. Mr. President, I thank my colleagues for giving me this opportunity to interrupt the discussion of the amendments of the Senators from Indiana and West Virginia. I thank them for their courtesy.

AMENDMENT NO. 3085 TO AMENDMENT NO. 3084

Mr. BRADLEY. Mr. President, I rise to support the amendment offered by the Senator from Indiana that takes $200 million for the defense account and spends it on consolidation of democracy in the Philippines.

Mr. President, the United States-Philippine relationship is, by any standard, a special one. It is widely perceived as such—in this country, in the Philippines, and throughout the world. How we respond to a special friend in need will send a powerful message about friendship with America—to other friends, would-be friends, and, yes, to adversaries.

The Philippine people are going through a critical period. Millions of Americans watched on television as the Filipino people pulled off a spectacular, yet peaceful, democratic revolution. During Mrs. Aquino's speech last week before the House, she called it the cheapest revolution in history.

The Filipinos were prepared to lay down their lives for free elections and restoration of democracy. They are now struggling to consolidate that democratic revolution under extraordinarily difficult conditions.

What are those conditions? A crushing $26 billion foreign debt, two insurgencies and widespread poverty. Mrs. Aquino has reached out to us for a helping hand. She did so eloquently and persuasively this last week.

In fact, as the majority leader escorted her from the Chamber, he said to her that she hit a home run. Mrs. Aquino responded by asking: "Were the bases loaded?"

Mr. President, though she spoke from her heart and touched many hearts here and made a very strong and reasoned case, the question is still out as to whether the bases were loaded. This amendment is one of the things that will determine that, Mr. President.

Following through on the House vote to provide $200 million supplemental assistance is, I believe, a sound investment which will support our strategic interests in Asia and the Pacific. It will support the consolidation of democracy in the Philippines. It will support the credibility of our oft-proclaimed commitment to promoting democracy around the world. And it will demonstrate that the United States is not just a fair weather friend but one that comes through with not just words, but deeds.

Mr. President, a strong democratic government in the Philippines and a healthy United States-Philippine relationship based on mutual understanding and respect are the best insurance that negotiations on the bases will produce a mutually satisfactory outcome. The opponents of this amendment, Mr. President, seem to be afraid of democracy. They want to promote democracy, but then they want to control how democracy will shape a relationship. It is impossible to have it both ways.

Mr. President, the best way to consolidate the Philippine democratic revolution and to build a strong democratic government is to respond now, when our help is most needed; $200 million delivered now will yield 10 times more political punch than it would 10 years from now. We all know that $20 or $200 or $200 million, extended promptly when it is most needed, means more than the same amount, grudgingly delivered, at a less critical moment. Early money is the best money.

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Mr. President, if we can spend literally billions of dollars over the years in supporting counterrevolution, it seems to me that democratic revolution deserves at least this additional $200 million, because there are all too few democratic revolutions in the world today for us to treat this one as an ordinary event. Consolidating democracy is difficult, even under the best of circumstances much less under those that prevail in the Philippines today. The United States has a great stake in the Philippines experiment in democracy. Its success will resonate throughout Asia and the developing world.

Mr. President, I might say so will its failure. Sometimes we see the Congress and the Senate act in extremely contradictory ways. Not so long ago we agreed to subsidize the purchase of grain by the Soviet Union. Mr. President, that I did not feel was in our long-term strategic interest. Now we have a chance to aid a budding democratic revolution with just $200 million and some are saying, no, we should not go forward.

If ever the Philippines needed a strong and willing friend, it is now. Extending $200 million is an eminent and wise investment in democratic government and in the healthy relationship that will do most to ensure that our strategic interests are preserved. I hope we will support the amendment of the Senator from Indiana.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, if I had to choose which one of these amendments to support I would support the amendment by the able Democratic leader, Mr. BYRD, because the amendment by my good friend, the able chairman of the Foreign Relations Committee, takes this money from defense. I think a point of order will lie against his amendment because it appropriates new money, and makes no provision to raise that money to provide for the appropriation.

Mr. President, if this money should be taken from defense, it is going to further hamper our Defense Establishment. I want to say the President requested $320 billion for defense this year. The Senate went along with $295 billion. The House has cut it down to $285 billion.

We are in conference now. We are having a very difficult time retaining what is needed to provide the kind of defense that President Reagan says we need, the kind of defense the Defense Department says we need, and the kind of Defense Department that a great many Members of Congress, including myself, think we need.

Mr. President, I think it would be a great mistake to take this money out of defense, and therefore I would hope that the point of order will be made, and if the chairman of the committee does not make it, I will make it myself because we cannot afford to take any further money from defense.

As to the amendment by the distinguished Senator from West Virginia, I want to say there, why take it out of Foreign Relations? Mr. President, we have been spending money here for a number of years that we do not have. The Federal Government deficit has existed in 38 out of the last 46 years. We have not balanced the budget in 38 times out of the last 46 years. We have not balanced the budget but one time in the last 26 years.

Mr. President, no individual and no corporation could stay in business that operates on such a basis. And governments cannot either. This Government cannot keep on as it is going, spending, spending more than we take in, year after year. As I said, 38 of the last 46 years we have not balanced the budget, for 25 of the last 26 years we have not balanced the budget, and we just cannot keep on going like that.

Our national debt now is, and I believe according to the able chairman of the Appropriations Committee he stated it would be $2.3 trillion at the end of this year.

This would amount to somewhere between $8,000 or $9,000 for every man, woman, and child in America. This amounts to almost 50 percent of the gross national product of this Nation.

Mr. President, it seems to me that if we are going to provide, as the distinguished chairman of the Appropriations Committee said, a half a billion dollars for the Philippines, I believe that is the figure he mentioned, that probably ought to be sufficient for the President.

I realize the importance of the Philippines. I think Mrs. Aquino made a magnificent address, and her appeal has been met. It has been met by placing half a billion dollars of help. I favor helping the Philippines.

But I think before we give $200 million more we better think about the situation with regard to our fiscal situation in this country.

As the able majority leader said a few minutes ago, we worked on a drug bill last weekend. We worked on it until about 2:30 Sunday morning. I am in favor of that drug bill. But I remember then the distinguished chairman of the Appropriations Committee said we do not have the money to pay for it. Where is the money coming from? Everybody is in favor of the drug bill. Where is the money coming from?

Mr. President, how can we afford now to add $200 million more and not provide for this drug bill? This drug bill is something that vitally affects our own people. I think it is important. If we had not done anything for the Philippines, it would be different. But we have provided a half billion dollars already to which the chairman of the Appropriations Committee said we are providing, and it seems to me that would be adequate for the moment.

Mr. President, I hope the amendment bill be withdrawn, and certainly the amendment by the able chairman of the Foreign Relations Committee should be defeated, and that we can move on to something else.

I feel the time has come now when we have got to think about balancing this budget. And it is a worthy cause, no doubt, as it is for many countries, and there are many other causes in this country that ought to be helped. But we have to balance this budget. We cannot go on as we are going.

For those reasons, Mr. President, I intend to vote against both of these amendments under present circumstances.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The distinguished Democratic leader.

Mr. BYRD. Mr. President, I shall modify my amendment to cure the point of order that may be otherwise made against it.

Let me emphasize again, this is not adding one thin dime, this amendment in itself, to the budget. We are taking money out of a function that is provided for in the bill, and we are transferring $200 million for this particular purpose.

The economic support fund—that is what we are talking about—the budget request which came up from the administration was for $4,093,800,000. The House allowed almost $3.2 billion. The committee is recommending $3.9 billion. In other words, the committee recommendation is under the budget request submitted by the President of the United States.

If Senators care to look, the report accompanying S. 2824, submitted by Mr. KASTEN from the Committee on Appropriations on page 83, sets forth the details for the economic support fund budget for fiscal year 1987.

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I am advised that the impact of this amendment on that overall Economic Support Fund Program will not affect our other major commitments worldwide.

Mr. President, I hope Senators will not listen to the point that, "We must not increase our budget deficit with this amendment," and "it is a knee-jerk amendment," or "there were no hearings conducted on it," or "it is time we do something in the interest of the people of this country." That is exactly why I am on my feet right now—supporting this amendment in the interest of our own country, in the interest of our own people, and in the interest of democracy in the Philippines. It does not add one thin dime to this bill. It simply takes a little out of a particular function that is already set out in the budget and allocates it to the Philippines. I hope Senators will support the amendment I have offered. I prefer, as I have already indicated, to draw it out of the economic support function, over taking it out of the defense function, as is recommended by the distinguished Senator from Indiana.

Mr. President, I modify the amendment in the following way:

(a) Notwithstanding any other provision of this joint resolution, of the funds appropriated or otherwise made available to the economic support fund by section 101(f) of this joint resolution, $200,000,000.

And so forth.

I send the modification to the desk.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

The amendment, as modified, is as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Notwithstanding any other provision of this joint resolution, of the funds appropriated or otherwise made available to the economic support fund by section 101(f) of this joint resolution, $200,000,000 shall be available only for assistance to the Philippines in accordance with the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund).

(b) Funds allocated by subsection (a) shall be in addition to amounts of such assistance otherwise available for the Philippines.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, let me respond quickly to the arguments that have been made. I would say, first of all, that the Foreign Relations Committee did, in fact, consider in hearings the Philippine question. We have, in fact, conducted extensive hearings on the question.

I say that as a matter of fact because the question has been raised and I am surprised that this issue came up today. We have discussed it for 6 months. It is well known to Members of this body. There are few issues that are better known.

I say that Members at some point will have to make some difficult choices. The distinguished minority leader and I both suggested at the beginning of our arguments, that this issue arises at a difficult time for us. It is a tough set of votes but, nevertheless, those issues are in front of us.

Second, Mr. President, let me indicate that the argument that somehow we are busting the budget has clearly been overtaken by both alternatives the Members have. There is no budget busting today. There are no problems with the debt ceiling. It is a very clear choice. Two hundred million dollars for the Philippines either from the defense budget or from the ESF. It is a simple transfer with either one of those choices. Those, I think, have been fairly well illuminated. We are not taking away any money and we are not adding any new money to the budget today.

Mr. President, the thought has been expressed why spend this money on the Philippines as opposed to ourselves in this country? I think that is a good issue. It probably comes down to the whole question of the defense budget and the foreign assistance budget. All things considered, there are many of us who prefer to spend less money with regard to a situation of our national security if we did not have a problem. We see that we have a lot of problems with the Soviet Union, with other countries that do not wish us well, with the extension of American authority to keep the high seas, with all sorts of predicaments. That is the reason we spend money. It is not a charitable request. We are taking a look at our national interest.

Clearly, the Philippines is a national interest, a very important one. Some of us feel it is a very high priority and that is why we are in the debate today. I have no argument that there are ways and means that will have to be found to support the drug legislation. I have no doubt that Members are going to look at it about the same way we have been looking at it today, with regard to this national security interest and our relations with the Philippines.

Finally, Mr. President, let me simply indicate that when we begin to get into a debate on this floor with regard to the specific debate going on in the Philippine Constitutional Commission, we must understand that that debate has been going on for several weeks. Most of that debate has not been highlighted. The visit of the President of the Philippines perhaps led to a highlighting of specific questions.

The distinguished minority leader is correct in saying that many of the members of the commission are not favorable to the United States-Philippine base relationship. I wish this was not so, but I recognize that it is. This is a very tough issue.

I would have thought, Mr. President, that the fact that there is a substantial minority presently does not wish well a continuation of the relationship, that we ought to recognize a substantial majority do wish well that relationship and are working constructively, sometimes against very heavy odds to make certain that our countries pull together, that the relationship continues.

The $200 million we are talking about today is the cementing of a very important relationship at a time of constitutional commission work that is going to lead to a future that is either a better one or one that is less bright for the relationship.

Therefore, Mr. President, I would hope that we would act favorably. I have suggested the alternative that I would favor. I would ask the attention of Members to that first. I appreciate the arguments of the minority leader and would ask members to consider those carefully.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending question is the amendment of the Senator from Indiana.

Mr. HATFIELD. Mr. President, I raise a point of order under section 302(f) of the Budget Act, as amended, that the amendment provides budget authority and outlays in excess of the subcommittee's 302(b) allocation under the fiscal year 1987 concurrent resolution on the budget and is not in order.

The PRESIDING OFFICER. Against which amendment does the Senator raise the point of order?

Mr. HATFIELD. On the Lugar amendment, the pending amendment before the body.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. I move to waive those provisions of the Budget Act that form the basis of the point of order raised by the distinguished Senator from Oregon.

The PRESIDING OFFICER. The question is on the motion to waive.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Will the Chair advise the body how many votes are required to sustain the motion made by the Senator from Indiana?

The PRESIDING OFFICER. Section 302(f) of the Budget Act requires a vote of three-fifths of the Senators duly chosen and sworn to sustain the motion.

Mr. HATFIELD. Mr. President, I ask the Chair what the situation is if this Budget Act is not waived by a vote and, therefore, the amendment of the Senator from Indiana falls. What is the underlying, pending amendment?

The PRESIDING OFFICER. The amendment of the Senator from West Virginia.

Mr. HATFIELD. The question of Philippine aid would still be before this body as expressed through the amendment of the Democratic leader?

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The PRESIDING OFFICER. That is correct.

Mr. HATFIELD. I thank the Chair.

Mr. LUGAR. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, as I understand it, this is a debatable motion, is that correct?

The PRESIDING OFFICER. Yes, the motion is debatable.

Mr. KENNEDY. Mr. President, I know the Senate wants to work its will on this particular measure. I do not intend to delay the Senate. I just want to take a moment of its time to commend both the chairman of the Committee on Foreign Relations [Mr. LUGAR] and the Senator from West Virginia [Mr. BYRD] for raising what I think is one of the most important foreign policy issues that this body will face in this Congress.

I know that there are those who would support the aid bill and are troubled by the various questions in terms of the budget. Over the course of the year, we have had an opportunity to debate and discuss many of those issues. It is appropriate for this body to recognize the very unique and special relationship which has existed between the United States and the Philippines over the long course of our history. Our two people fought and died together for freedom during World War II. There are Americans still buried in graveyards in the Philippines whose lives were lost in that war. The security interests which bind the United States and the Philippines are still compelling and strong and vital.

In her outstanding speech to Congress, President Aquino pointed out very eloquently for the American people that her revolution was bloodless. It was not costly to the American people in terms of our Treasury, nor in terms of human life. People throughout the world now are looking to the United States to see whether we will provide tangible support for the democracy and freedom to which President Aquino has committed herself. Now we are being asked to state very clearly whether we are a country and a nation that is committed to the democratic values expressed in our own Constitution and our own Declaration of Independence.

I believe President Aquino, her government and the Filipino people have demonstrated, their commitment to these values. I think we are being called upon to demonstrate whether we believe that we should be committed to them as well.

Finally, I would say, Mr. President, all of us are very familiar with the ability to have any crowd in this country rise and stomp their feet by thrashing foreign aid. All of us are familiar with that particular kind of demagoguery. We are being asked now, I believe, by those on the committee and those who have worked on this issue over a long period of time to express our best intentions and our best values by supporting this aid to the Philippines. I hope that the point of order will fail and that we will go on record in support of a courageous and brave people who are today committed to the same values of democracy, justice and freedom upon which this country was founded.

Mr. HATFIELD. Mr. President, let me make clear, and I know many people have just come to the floor and have not heard the full discussion—that Philippine aid is not determined by this vote. This is a vote on a point of order. That vote that was made is on the motion to waive that point of order. So we are not going to vote for the fledgling democracy of Mrs. Aquino's government and all those other things that some of us strongly support. That decision in not being made on this vote. I could very well end up, because of the modification of the amendment offered by the Democratic leader, supporting that because of the fact that we are now really trying to decide whether the $200 million is going to be taken from the Foreign Operations Subcommittee appropriations bill or whether it will be taken from the defense appropriations bill.

I, of all people on this floor, would prefer to see it taken from the defense appropriations bill if it were clearly a matter of where we find $200 million. But this body voted for Gramm-Rudman. I did not vote for it. I believe whatever we adopt, we should try to make work.

The issue before us now is a point of order on taking one $200 million lump from the Defense Department and violating sec. 302(b) as we will be doing over here on foreign operations. This is not an up-or-down vote on Philippine aid as far as the ultimate decision of this body. This is a vote to waive the Gramm-Rudman requirement on this particular issue. So let us bear that in mind.

I asked the question a while ago, what will be the pending business after this is disposed of? The Chair responded that it will be the amendment offered by the Senator from West Virginia, asking to have this body go on record as appropriating $200 million from the foreign operations economic development section of that bill.

Mr. EVANS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. Mr. President, I disagree with my neighbor and colleague from the State of Oregon [Mr. HATFIELD]. He is technically correct when he says this is indeed a vote on a point of order, but it makes a good deal of difference to many in this body—it certainly will make a good deal of difference to me—whether we have the opportunity to modestly trim from a $300 billion defense budget or whether we will take the money from an infinitely smaller, already shrunken, sadly underfunded foreign operations budget.

It is far more than a point of order. It is the heart of whether this does or does not pass—or it could be.

I, for one, would support enthusiastically the amendment of the Senator from Indiana. That comes, I believe, from the work that has been done on the Foreign Relations Committee and the 6 months of work he has talked about, the policies and the concerns and the relationship of one nation with another around the world, all measured against the best interests and the concerns of the United States. Now to suggest that we can somehow shoehorn another $200 million in aid to the Philippines into this budget simply does not make sense.

So I suggest that this vote is an important vote. It may well determine whether or not this aid goes forward. But let me turn to that a bit later.

Last Saturday night, after midnight—I guess it was Sunday morning—in the final hours of debate on the drug bill, this whole question of who will pay came up. In fact, I heard the distinguished senior Senator from South Carolina [Mr. THURMOND] concerned about who will pay and balancing the budget. Yet we are on the verge of blithely adding the better part of a billion dollars to spending in the drug bill, which we shall vote upon tomorrow. Maybe we will and maybe we will not come in with a last-minute amendment to appropriately fund it.

I spoke out strongly Sunday morning and, in fact, suggested a way of funding it, clearly a way that I think would be appropriate. I am sure that a number of my colleagues would take strong objection to funding the war against drugs with a user charge against those who use our legal drugs, alcohol and tobacco. Nonetheless, it was an honest attempt to fund a new program, one which will cost a lot of money. So far, right now, that war against drugs, which we so piously proclaim, is a war which we will fight with blank bullets, because we have not provided one single extra dollar for what we have said we want to do. Now we debate once again foreign assistance.

The conventional wisdom and the things that people say, week after week on the floor of this body, is that we need the money at home. There is always someone poor at home, there is always someone homeless at home, there is always a reason to bring money back home and not spend it on foreign nations. If that is not enough, Mr. Presdient, the other argument used most frequently is, well, we will give the money but give the money only if a certain nation jumps through the hoops and over the hurdles and does precisely what we choose to ask them to do, not allowing them any freedom or any exercise of their own independence. When you combine those two, it is no wonder that the foreign operations budget and the appropriations this year, for 1987, are cut more than any other part of the budget we face—drastically below the administration's request. I do not think there is anyone in this Chamber who would suggest that the current administration is somehow loose or overgenerous or profligate with the taxpayers' money when it comes to foreign assistance.

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We have simply let ourselves be lulled into believing somehow we could cut and cut and cut and cut on foreign assistance and it would be all right at home.

Mr. President, we have not only done that, but during the course of the last several months we have added and poked into that budget additional spending. We have said we want to help Ireland and Great Britain come together on the great agreement that they are struggling for as it affects Northern Ireland, additional spending but no new money. When there was a revolution in Haiti, we said we ought to help them—additional aid but no new money. In Central America we have advocated more economic help, but there is no more new money. And within that shrunken and underfunded budget, we have set aside certain nations and certain functions that we believe ought not to be touched, ought not to share in any cuts.

I think I would join with my colleagues in believing that is appropriate. Our aid to Egypt and Israel in an attempt to keep peace in the Middle East has been kept sacrosanct. But a combination of all of these efforts has put us in perilous danger for America's best interests as we view the problems of Africa, Central and South America, and parts of Asia, where in each of those instances nations struggle to find their equivalent of an American democracy. They are nations that are either still struggling to remove the yoke of oppression or that have done so. They need our help. They need our assistance in order to make progress, become stronger friends of the United States and ultimately to become economically independent.

Mr. President, I can think of nothing that would be more adverse to America's best interests than to continue to poke more and more responsibilities into the foreign operations budget and now to come in and say, "Here is where you are going to take yet another big chunk." We simply cannot do it and carry out our interests across the world. If we fail, if we choose to ignore these problems overseas, believing that aid begins at home and that we have plenty of our own problems, I suggest that we open the doors for subversion in nations that are currently friendly to us; we close the doors of freedom to people in many nations still struggling for freedom; we advance the cause of totalitarianism across this world simply because we are afraid to put up a small amount of money to assist our own interests.

Believe me, if we fail to do that, the future costs will be much larger. The future costs are not likely to be just those costs in money or additional foreign aid. They increase the danger remarkably that those future costs will include young American men and women of the Armed Forces in conflict somewhere across the world.

Mr. President, let me come back to where I began—first, that I thoroughly endorse the amendment, and I hope the point of order falls. I believe it is the most appropriate place and most responsible place short of this body raising new revenues, which I am confident it will not do. It makes far more sense and is far more less deleterious than if we were to adopt the amendment, no matter how well meant, by the Democratic leader because it takes money from a place that we should not take any more money.

And then let me finally address myself not just to the chairman of the Appropriations Committee but all my colleagues, for I know that the chairman of the Appropriations Committee did not vote for Gramm-Rudman. He did not like it one darned bit. In fact, I hate to put words in his mouth but I suspect that he does not like the Budget Act very much either and believes that we have unduly complicated our budgeting and our appropriations—and I think I agree with him, at least in the terms of complication. But we have come to a strange pass now where this year virtually every appropriation bill will be wrapped into one continuing resolution, which we are now debating. We have no chance as a body to deal independently with first one appropriation and then another and then another in regular order. We have no chance of dealing with one and perhaps cutting that appropriation below its limits, freeing up some money, which would be much easier then as we dealt with the next appropriation bill to add for important new functions.

Instead, we find ourselves trapped under the acts we have passed where we will only have one continuing resolution. If you are not on the Appropriations Committee, you have not one single chance short of a point of order and a 60-vote majority to deal in this one bill with important new policies.

Mr. President, I think that is wrong. And, of course, let me only carry it one step further, I think it is wrong for us to put together this kind of a consolidated appropriations bill with all that it may contain and all that may be hung on it and give the President one vote, yes or no, to sign or to veto, not at least the 13 opportunities he ought to have with separate appropriations bills which start their way through this body and which get stalled along the way.

I think we will find before we end our efforts on this continuing resolution we have trapped ourselves in a way we did not intend and this perhaps is the first, perhaps a very good example, of just what I mean.

Mr. President, I hope that we will vote for the setting aside of this point of order so that we can adopt the amendment of the Senator from Indiana.

Mr. LUGAR addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I thank the distinguished Senator from Washington for a very eloquent statement and for a remarkable argument in favor of my point of view. Mr. President, having surveyed the scene at this point, having visited with many colleagues, having looked for the potential of three-fifths in support and having determined that we would fall far short of that, because of the time urgency in this continuing resolution consideration, the fact that we might simplify the situation considerably, I shall not press the vote that I had called for.

Mr. President, I ask to withdraw my amendment.

The PRESIDING OFFICER. The Senator has a right to withdraw his amendment. The amendment is withdrawn. The motion to waive the Budget Act for consideration of that amendment falls and the point of order falls. The question is on agreeing to the amendment proposed by the Democratic leader.

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Mr. KERRY. Mr. President, the choice having been made now somewhat simpler, between the choice of my Democratic leader and the choice of the chairman of my committee, I rise in support of the amendment of the Senator from West Virginia.

I had the privilege of serving, along with the distinguished chairman of the Foreign Relations Committee, as a member of the Presidential Commission which went to the Philippines to view the elections recently. It is really in that context and in the context of the work that the Foreign Relations Committee has done that I support this amendment and that I urge on my colleagues, as strongly as I can, their consideration and their vote in favor of this amendment, notwithstanding the fact that some of them may have wished that the full amount of money appropriated in the other account was still going in that direction.

I think that those who have been following closely the events of the Philippines—and because of President Aquino's visit to this country recently, everybody has been following them closely—understand that this is a critical juncture in the course of events in the Philippines.

I have heard one argument put forth that we should not proceed forward because we have not had hearings as to this $200 million. The fact is that there is an issue about which we know more on the surface and about which people have thought more than the question of fostering democracy in the Philippines.

Second, there are many issues which have come before us in recent months which we have been quick to support, which have required expenditure, sometimes of considerably more funds, that have not had hearings. The most recent significant amount was $300 million, which was part of the appropriation for Central America. There was no hearing on that particular money. Those who have raised the argument about hearings were quick to support those particular funds.

More important, Mr. President, what is at stake in this vote? Is this just a simple vote as to whether or not we are going to appropriate the $200 million, or does it have significant implication that goes well beyond the expenditure of the money? I think that everybody who listened to President Aquino—most of them in this Chamber applauding her at great length for her comments—understands that this is a vote about a larger concern of this country.

If I may, I should like to take a moment to recall for some of my colleagues events which the chairman and I and others who were privileged to be there during the election witnessed, because I think we were reminded in some ways that we are seldom reminded in this country about the meaning of what those people were struggling for and trying to achieve.

I walked through villages in the southern part of the Philippines, in Mindanao, and watched literally thousands of Filipinos lined up, pressed against each other in the heat of the day, waiting for hours, to be able to vote, going through a process of proving their ability to be able to vote that is 10 times more complicated than anything we go through in this country—putting up with checks of their names, with photographs, with signatures. It was a far more lengthy and time-consuming, and almost burdening kind of process than probably any citizens in this country would willingly want to undertake, in its current context, in order to vote. But they did it, and they did it because they wanted a chance to vote against President Marcos; because they saw this as the opportunity in which the United States was playing a role to enable them to be able to make real the concept of democracy for which they had fought previously and which they had seen stolen from them by a dictator.

Then, in the later hours of the day, I saw nuns standing up to machineguns and housewives repelling armed goons who came in to scoop up the ballot boxes and throw them in the water.

Then we saw housewives, mothers, link their arms—arm to arm to arm—from the place where the voting took place all the way to the place where the ballots would be counted; and they did that in order to guarantee the sanctity of the ballot, to make absolutely sure that this right was not going to be stolen from them again.

I saw people who were willing to volunteer, at risk of life, to go into Marcos strongholds in order to be able to exercise this right to vote.

Then, at 1:30 in the morning, on the evening before the election, I stood in the same cathedral where Nino Aquino was eulogized only a short time previous to that, and I listened while 29 young computer operators, at risk of their lives as well as the threat of the loss of their jobs and their families, because Marcos was still in control—I listened to them in tears, in this church, where they sought sanctuary, talk about why they were not going to put up any longer with the fraud at that election.

They told us and they told the world—thereby providing the smoking gun, if you will—of evidence against the Marcos regime; that they were putting good numbers into the computer but that bad numbers were coming out. In desperation, they said to us, "We don't want to be used in this way."

Mr. President, all across that country, we were privileged to witness firsthand and the world was privileged to witness firsthand, because of instant communications, the extraordinary commitment of the Filipino people to a concept that we are privileged to be able to take for granted in this country—and some do. We listened to these people make a statement that I thought was one of the most eloquent statements I have heard in the course of my involvement in political life. All America watched that with excitement and wonder. Before our eyes, we saw the most fundamental principles of our own country blooming in another country, as we saw what Mrs. Aquino called a very inexpensive revolution unfold.

That is simply what is a stake in this vote. The House of Representatives has already voted $200 million of additional aid to the Philippines.

The question now is, with the expectations increased in the Philippines, with the world watching to see whether or not this country will really put money into those efforts that we say are important, will the Senate do the same as the House, and will we send the message to the world that this is genuinely of concern to us? I think that is what this vote is. It is about a message of whether or not we really do care as much as we say we do and whether or not we are going to follow through at a most important time.

One of the problems that the Philippines faces is that today every major institution that delivers services to the people in the countryside has gone through an extraordinary process of disintegration. After 20 years of a dictatorship, you now have a whole new group of people who have a dream of making democracy real again but who do not have the services and the institutional ability to be able to deliver the services.

As I think all of us have learned, nothing feeds communism faster than to have a population in the countryside which does not get what the Government has promised to deliver and which does not get what they need. That is why, under Marcos, we saw the Communist rebellion go from 500 people to 16,000 people, even at a time when the army was trying, at its utmost, to prevent that very thing from happening.

So, Mr. President, this is the moment of need for the Philippines. This is the moment they are looking to the United States of America to find out whether or not we really do care.

If my colleagues read the newspaper columns after President Aquino returned to the Philippines from her trip here, they would have read that already there was a simmering of disappointment in the Philippines. Already, President Aquino has had to lay the groundwork for potential disappointment from this country. Already, the Filipinos are once again saying to themselves: "Does the United States really care or does it not? Does the United States place the base issue ahead of the issue of democracy?"

Mr. President, at great labor and great effort of the Foreign Relations Committee, and working jointly with the Secretary of State and Assistant Secretary Wolfowitz and Assistant Secretary of Defense Armitage, there was a general principal on which we acted in bipartisan fashion.

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The general principle on which we acted was a strong commitment to the notion that the bases were going to be secondary to the effort to get democracy to grow in the Philippines. Democracy came first and other interests of the United States come second.

Now, for $200 million, Mr. President, we have an opportunity to be able to really make democracy make that kind of difference.

So I think there are a number of principal reasons that I will sum up that I hope my colleagues will vote for this overwhelmingly.

No. 1, it sends a strong message about democracy. It says something about what the United States is willing to do and not do.

No. 2, it does a great deal to impress upon the Filipino people those things that the United States holds as priorities and to reenforce in the Filipino people our own commitment to their peaceful effort which was, as we have said, a courageous and extraordinary one.

No. 3, it provides aid at the most critical time of need in the Philippines when they have a crushing $26 billion debt and at the moment that they most need the assistance in order to be able to deliver the services to their people.

No. 4, it allows the United States to avoid what I think will be interpreted as a bitter disappointment if not an embarrassment for our foreign policy to have had the President here, to have listened to her at a joint session, to have had what was supposed to be one of the most successful visits and then to turn around and say "Thank you, but even after the courage you have displayed and even after the history of your country's commitment to freedom, and even after your own return to this country as President of a free people, we are not able to help you to the tune of $200 million."

I think it would be the strongest single enforcement that we could make to whatever other secondary long-term interest we have.

Mr. President, if we want a base agreement negotiated in 1988 when it begins and in 1992 when it is up, I think the best thing we could do is make sure we have a democratic country with which to negotiate it and, second, make sure that we have a people who feel good enough about the United States that they are willing to say to us, "Yes, we think your presence here is in the interest of those of us here."

I think $200 million is an inexpensive way of lowering the price on those future negotiations, Mr. President.

Finally, and most importantly, I cannot think of anything that spoke more eloquently to this need than the words that we applauded, all of us, a few weeks ago. At that time I heard Speaker O'NEILL say that this was the best speech he has heard in all the years that he has been in Washington. "The most effective speech," I believe he said. I heard Senator MATHIAS say to President Aquino at lunch in the Foreign Relations Committee room that it was the most effective and important speech that he had heard in all his years on the Foreign Relations Committee, and we know the distinguished service that he has made to this institution.

Mr. President, President Aquino said before all of us and I want to quote from her because no words say more about the need for this $200 million than her own. She said:

> Today, we face the aspirations of a people who had known so much poverty and massive unemployment for the past 14 years and yet offered their lives for the abstraction of democracy. Wherever I went in the campaign, slum area or impoverished village, they came to me with one cry: Democracy! Not food, although they clearly needed it, but democracy; not work, although they surely wanted it, but democracy. Not money, for they gave what little they had to my campaign. They didn't expect me to work a miracle that would instantly put food into their mouths, clothes on their back, education for their children, and work that will put dignity in their lives. But I feel the pressing obligation to respond quickly as the leader of a people so deserving of all these things.
>
> We face a Communist insurgency that feeds on economic deterioration, even as we carry a great share of the free world defenses in the Pacific. These are only two of the many burdens my people carry even as they try to build a worthy and enduring house for their new democracy, that may serve as well as a redoubt for freedom in Asia. Yet, no sooner is one stone laid than two are taken away. Half our export earnings, $2 billion out of $4 billion, which was all we could earn in the restrictive markets of the world, went to pay just the interest on a debt whose benefit the Filipino people never received.
>
> Still we fought for honor, and, if only for honor, we shall pay. And yet, should we have to wring the payments from the seat of our men's faces and sink all the wealth piled up by the bondsman's 250 years of unrequited toil?

This, I think, is the most important part, Mr. President:

> Yet to all Americans, as the leader of a proud and free people, I address this question: Has there been a greater test of national commitment to the ideals you hold dear than that my people have gone through? You have spent many lives and much treasure to bring freedom to many lands that were reluctant to receive it. And here you have a people who won it by themselves and need only the help to preserve it.
>
> Three years ago, I said, thank you, America, for the haven from oppression, and the home you gave Ninoy, myself, and our children, and for the 3 happiest years of our lives together. Today, I say, join us, America, as we build a new home for democracy, another haven for the oppressed, so it may stand as a shining testament of our two nations' commitment to freedom.

Mr. President, that is what this vote is about, and I cannot think of one vote that I have had occasion to pass on in the last 2 years, with the exception of our Defense budget that has given us a greater opportunity to be able to take a position that assists the preservation of freedom and democracy, and I hope we will vote for it.

Several Senators addressed the Chair.

The **PRESIDING OFFICER.** The Senator from Arizona.

Mr. **DECONCINI.** Mr. President, I rise to question this amendment. Quite frankly, I know the purpose behind the distinguished minority leader's efforts here and I applaud them.

I first of all want to just lay before the Senate that I consider myself a friend of the Philippines and am pleased with the results and that the administration was able to assist and that this Congress supported the Aquino government and that we acted, I think, quite strenuously against the fraud there.

I call to attention a resolution, Senate Concurrent Resolution No. 349, relating to the democracy in the Philippines—it passed this body February 20, 1986—which I offered, and I must say the Senator from Indiana, the distinguished chairman of the committee, and his staff are extremely helpful in wording this in such a manner that it would not be detrimental to attempts to bring the Marcos government to realize that elections were what he had promised and what we were all about.

That particular resolution passed in February 1986. I listened to my friend from Massachusetts and realize the importance of this particular effort to communicate and to give further economic assistance to the Philippines.

Let me just tell my good friend that it is not one area of the world I think we have neglected. In 1981, it was $173 million; in 1982, it was $158 million; in 1984, it was $157 million; and now in this year we are in now, it amounts to $505 million. This includes the emergency supplemental which added on $100 million in the economic security fund and $50 million in the military area.

So this year on a $233-million request we are ending up giving to the Philippines $505 million.

There is nothing to indicate that we are not backing democracy and we are not supporting a friend of this country.

So I think we need to move a little bit slowly when we start tossing around these kinds of figures when we cannot come up with money to do the drug bill that we were on the floor here until 2 o'clock or later Sunday morning. As the distinguished minority leader pointed out, that was important to the people of this country and we still had trouble coming up with the money.

□ 1610

Now, my next question is: You know, the bases there, as the distinguished Senator from Massachusetts pointed out, we are not going to trade bases for democracy and we do not want to be put in that position. And I respect the Senator and he has more experience than I do, having been there and witnessed those elections. I have traveled there. I have only been to the bases, quite frankly, with a very limited amount of give and take with the Philippine people, so I am not sure what the attitude is there, whether or not we are in a position of buying only goodwill or misusing the amount of moneys that we may be able to transfer to the Philippine Government.

But everybody knows quite clearly how important these bases are. It has been estimated it could cost as much as $5 billion if we had to replace them. Dispersing the facilities around the Pacific would require the purchase and deployment of new ships and planes and could cost, the physical necessities, over $5 billion. So we are talking about an awfully important symbol, I believe, of democracy, and that is the presence of the United States bases in the Philippines in that part of the world.

Now, we have the constitution being written by the Filipino people. And we wish them every success and certainly are not intending to intervene in any ay. But, so far, the wording, as I understand it, is that there is some real questions being asked by the Filipino people and in their constitution about whether or not bases or nuclear weapons could be positioned in those bases. Are we really using the kind of wisdom that we should use in stepping out and offering another $200 million, with little or no concern, or there appears to be no concern that what helps maintain democracy and freedom in that part of the world is the presence of the United States?

Further, Mr. President, I am a little bit reluctant to dabble in the minority leader's business here because I know what he is interested in, but I do have a concern and perhaps he could clarify his amendment for me or just give me his interpretation.

As I understand the parliamentary situation, the Lugar amendment has been withdrawn and now we have freestanding the Byrd amendment. As I read this amendment, it is totally discretionary upon the President of the United States to take from the account that he mentions here—budget function 150, which is foreign assistance, as I understand it, under the Foreign Assistance Act of 1961—the necessary $200 million and take it from any function, any area within those functions to fulfill this requirement if that became law.

Would the minority leader please correct me if I am speaking incorrectly? Is it totally discretionary upon the President to take the funds from that function out of the ESF, the Economic Security Fund?

Mr. BYRD. The ESF only. Yes, it would come out of ESF only.

I should state to the distinguished Senator from Arizona that, with respect to Israel and Egypt, may I say that I have the same concern, the same interests in our not waiving the earmarkings for those countries. In the committe report, Egypt and Israel, among a few others, have been specifically set forth in that report. It is certainly not my intention by this amendment to waive those paragraphs' earmarkings for those countries.

Mr. DECONCINI. Well, I thank the leader.

Mr. BYRD. The committee recommendation is $3.9 billion, which is almost the full budget request of $4.09 billion. And there are 56 countries in the table on pages 83 and 84 of the committee report; $815 million is for Egypt. There is $1.2 billion for Israel. Those figures, together with the earmarkings that I have already referred to, plus my stated intent as one of the authors of the amendment, I would hope would satisfy the concerns of the distinguished Senator from Arizona.

Mr. DECONCINI. I thank the minority leader.

I was going to address that. It does concern me, particularly in the Middle East situation, where we have now the Ambassador from the great nation of Egypt returning to Jerusalem where we have seen some positive things there toward and end of Mr. Peres' term.

The Senator from Arizona would feel more comfortable with the minority leader's amendment here if there was an explicit statement indicating that the funds would not be detracted or could not be detracted from the account for the State of Israel and the State of Egypt. I would send an amendment to the desk, unless my good friend from West Virignia would have great consternation—and it is not my purpose to do that—to find another way to protect those funds.

Mr. BYRD. I do not have any consternation, I say to my good friend. On the legislative history, I think we have attempted to establish that, and I compliment the Senator for his questions because the questions do help to establish that legislative history as to the intent.

But if the Senator feels he would like to offer an amendment to make the intent preeminently clear beyond any peradventure of doubt, he may do so, and I would certainly have no problem with it.

Mr. DECONCINI. I just want to thank the minority leader. I think I agree—I do not think I agree, I can agree with the statement of the minority leader as to the history and as to the reports that have come out and to the figure he points out, $3.9 billion.

But, Mr. President, I send an amendment to the desk.

Mr. DOLE. Will the Senator yield before he does that?

Mr. DECONCINI. Yes, I yield.

Mr. DOLE. What about the other earmarked funds, the earmarked funds for Ireland, earmarked funds for Pakistan? I understand that those funds are about $3.9 billion. You take Israel and Egypt, and that is about $2 billion, and that leaves about $1.9 billion.

I am advised if we are going to get the $200 million, you are going to have to cut some other request 50 or 60 percent.

Again, it goes back to the earmarkings against Israel, $1.2 billion; Egypt, $815 million; Cyprus, $15 million; Ireland, $35 million; Pakistan, $250 million; Portugal, $80 million; Uruguay, $15 million; tied aid credits of $100 million. I think Turkey is in there. It is not earmarked.

But I guess what we need to find out is what countries are we going to take it from? If you eliminate half of it, we cannot take it from $2 billion because of the political sensitivity, and we end up taking $200 million from the balance. I am just wondering if we can find out before we vote which countries are going to pay, are going to contribute to the $200 million for the Philippines.

Mr. DECONCINI. If the majority leader will yield, I can tell him that this Senator does not know and I doubt, I suspect, the majority leader or anyone in this body knows, because the amendment of the Senator from West Virginia leaves it as a discretion of the President and the administration to make that decision.

I have some great reluctance of transferring another $200 million, even more so if it were new money, but certainly even doing this. But I listened to the minority leader and other speakers—the Senator from Massachusetts—and they make a pretty good case. Maybe we better go one step further.

This Senator says to himself, OK, if we go one step, let us not pull the brick away or pull the house down that we have been building for a long time, and it looks like we are about to put a roof on it at long last, and that is between Egypt and Israel.

Mr. DOLE. Will the Senator yield?

Mr. DECONCINI. I am glad to yield.

Mr. DOLE. As the Senator from Arizona points out, it is not as though we have not been responsive to the Philippines. It is about $500 million in fiscal 1987, which is a rather dramatic increase from previous years.

I guess I go back to the same question I asked earlier.

We tell the President he had to estimate if he cannot touch Israel or Egypt, he cannot touch $200 million for the Philippines. but it is all right to take it from Central America, Portugal, Turkey, Jamaica, Andes, Subsaharan African countries, Jordan, Morocco, Tunisia, and Oman, also our friends and also democratic countries. Also you could make the same speech about each one. So we are going to reduce the amount they receive to make certain because somebody came here and made a speech they get $200 million more, when we have already increased the amount they received for fiscal year 1987.

It seems to me that is not very good policy. Again, we have not had hearings. I imagine if the subcommittee could go back and have hearings they could make a fair division. They could even add $200 million to the Philippines and find out where they are going to take it from.

Now I assume it is going to be up to the President, as the distinguished Senator from Oregon said earlier. In effect it is a line item veto for the President with some exception. He cannot touch Egypt, Israel, or the Philippines. So he has to find $200 million out of a balance of about $1.7 billion, and I understnad it is really not 1.7.

So I hope before we vote on either one of these we can know precisely what may happen to the countries who are friends and fighting for democracy, and the very things the Philippines are fighting for.

Mr. EVANS and Mr. ABDNOR addressed the Chair.

Mr. DECONCINI. If I can respond to the Senator, I believe I have the floor, I will yield in just a moment. I share the majority leader's concern here. Quite frankly, I would be reluctant to vote for this amendment, as well intended as it is. But certainly, if we are not going to provide some protection in an area that I think is extremely sensitive, then I hate to say it is more sensitive than Central America, or more sensitive than Pakistan aid, or what have you. But in essence, I am saying that, that is what this amendment says, that with this effort in the Middle East where we now have Israel and Egypt back on track, we now have the possibility of moving forward with a little more stability and perhaps reaching some conclusion over there, long-term. To permit the President, if he should elect—I am not leaving any accusations here that he will do so—to take moneys away from those two nations to me would be grievous.

I would be glad to yield, without losing my right to the floor, to the Senator from Washington.

Mr. EVANS. I thank the Senator from Arizona.

Let me expand on my understanding at least on what the majority leader has asked about because I find myself in a somewhat different position, perhaps even in the majority. I believe that the extra aid is desirable. We ought to fund it, but not from here. Let me, in the nature of a question, ask the Senator from Arizona—I know his concern about the earmarking for Israel and Egypt.

Let me read the whole list of what we have already specified of what we are going to earmark: $1.2 billion to Israel, $815 million to Egypt, $230 million to Pakistan, $15 million to Cyprus, $15 million to Uruguay, $100 million in tied aid, $80 million in Portugal, $20 million to Tunisia, and $295 million now to the Philippines. We already had $95 million. Now we are going to add $200 million. Thirty-five million dollars to Ireland, and $5 million to Haiti. That is $2.81 billion.

We only authorized or we have only appropriated $3.9 billion. But then we have another proviso that only 3.5 of it be spent or obligated before the end of the fiscal year. So we are down to about $690 million for everybody else, and we face a House-passed bill that is $700 million lower than ours. We are certainly going to compromise somewhere in between.

I ask the Senator from Arizona: Is it appropriate now knowing that we want to protect these nations which we have explicitly earmarked funds for to honestly believe that we cannot find $200 million out of what is practically nothing remaining that has not been earmarked here?

Mr. DECONCINI. I thank the Senator from Washington for his question. The answer simply is this: I cannot vote for this aid to the Philippines as offered because as I stated before I think it is not necessary, and I think it is not a good idea, and I think that we have done amply. We have accomplished what this country can under our monetary restraints here. But the Senator from West Virginia is bringing before this body a very important issue; that is, are we going to really stay committed to this democratic government there? And, this democratic government is having a lot of problems, and he has not offered new money.

So he has suggested by his amendment that he take money from existing accounts. That is fine.

But as far as this Senator is concerned, I have a priority. I think that the Middle East is it. I know of no place that could get us in deeper and a greater confrontation with the Soviet Union and a number of other countries than the Middle East. I do not say that those other areas of aid and assistance should be neglected. But we have to make some priorities. That is why the Senator from Arizona is considering this amendment at this time.

Mr. KERRY. Would the distinguished Senator yield?

Mr. DECONCINI. Mr. President, I am glad to yield. I do want to offer an amendment.

Mr. KERRY. Will the Senator yield for a question?

Mr. DECONCINI. I will be glad to yield for a question without losing the right to the floor.

Mr. KERRY. I would like to ask the Senator—I appreciate enormously the comments that he is making regarding the area of concern. I think I share that. I am sure others here share it. I can understand why he wants to protect it. But I wonder if he is aware—and perhaps the majority leader might also be able to answer this—and whether or not he would be agreeable to looking toward, say, $300 million which was not requested by the administration?

The administration never asked for $300 million for Central America. But it found itself in the bill here. I would ask him if he knows or the majority leader could tell us how that $300 million that we just passed with the $800 million that we put into Central America, which means a total of $4 billion that we have spent there since 1981, is going to be spent, and whether or not that $300 million—on which incidentally we did not have any hearings and which the administration did not ask for, but got passed anyway—why could we not look to that $300 million as the area? Would the Senator be willing to specify that?

Mr. DECONCINI. I wish I could answer my friend from Massachusetts. I cannot answer that. I am sorry. I do not know how it happened. It certainly is a good question. It needs to be answered before we cast some important votes here.

Mr. KERRY. Would the Senator permit me to ask the majority leader through him?

Mr. DECONCINI. I would be glad if the majority leader wants to respond to that without my losing my right to the floor, and I ask unanimous consent for the majority leader to do so.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERRY. I ask the distinguished majority leader—I am not trying to be clever, but there is a $300 million amount which the administration did not ask for which we did pass. I do not believe we have any real sense of how that money is to be spent with specificity. I wonder if we would not be able to look to that or a portion of it to be provided.

Mr. DOLE. If the Senator from Arizona will yield, I might in response say to the distinguished Senator, that is an area we looked at to see if that might be possible. It was included in the House bill at the request, I understand, of the Democratic leadership, but there is some question whether or not it is going to disappear on Tuesday night.

If we could resolve that, then I think we might resolve the whole problem. There would be unanimous vote in my view to use that money for the Philippines rather than to get into all of these other countries and cutting back some of those countries, as the distinguished Senator from Washington pointed out, maybe in half.

Let me explore that if I might again.

Mr. KERRY. I appreciate it.

Mr. DECONCINI. I am glad to yield to my friend from South Dakota without losing my right to the floor. I ask unanimous consent.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ABDNOR. If I could ask the majority leader a question on that through the Senator.

Mr. DECONCINI. I hate to dominate the floor.

Mr. ABDNOR. I would like to ask of the majority leader whether the $200 million that we are talking about would be taken from foreign aid to Central America. Such aid expires, as I understand it, at the end of this fiscal year. He said there may be some way to allow those funds to go to the Philippines.

Is it the intent of the administration to carry on with aid to Central America in fiscal 1987 and 1988 or is it just a one-time shot? Is that the intent of the program? Is it intended to have continuing economic aid for Central America?

□ 1630

Mr. DECONCINI. Mr. President, I will be glad to yield without losing my right to the floor. I ask if the majority leader might respond to the question.

Mr. DOLE. It is a good question and I am not certain I can answer it. It was not requested by the administration. It was in the House bill. I think it is a one-shot program. There is a question whether it is going to disappear at the end of the fiscal year or if we have it in the next fiscal year. If we have it in the next fiscal year, it would make our effort here very easy. There would not be any problem at all. I think that is the same question, just guessing, that the distinguished minority leader may have referred to. He may have looked at that area and wondered whether it was going to be around or not.

Mr. BYRD. Will the Senator yield to me to respond?

Mr. DECONCINI. I yield without losing my right to the floor.

Mr. BYRD. It was earlier my intention to get this money from what I referred to as a "slush" fund. It is a fund made up of unobligated balances. There is some question as to whether or not that will still be available after midnight tomorrow night. For that reason, I wrote the amendment as it has today been offered. It would be fine with me to take the money from that fund, if it continued to exist. In the meantime, I believe this is a very good amendment. I would hope that Senators would not let their fears overcome their good judgment and common sense.

I have heard it said here that there would only be $600 million left once all the earmarking is done, from which to draw the $200 million.

Let us take a look at the figures. As I said before, there is $4.1 billion requested. The committee has recommended $3.9 billion. The figure would be $4,093,000,000, but rounding it out would be $4.1 billion. The committee recommended $3.9 billion.

The total recommended by the committee is $3.9 billion, less Israel at $1.2 billion, leaving $2.7 billion; less Egypt, which is the second country earmarked, which is $815 million, leaving $1.825 billion; less Jordan, which is the third country for which earmarking has been made, at $15 million. That leaves $1.870 billion. Less number four, Cyprus, $15 million, leaving $1.855 billion. Pakistan is not included; Ireland is not included. Those countries appear in this table, 45 countries appearing in the table. But the earmarkings are not for 56 countries. There are only four countries, may I say to the distinguished majority leader, four earmarkings, in the appropriations measure, and they do not include Pakistan and they do not include Ireland.

So what I would say, finishing with my mathematical computations, less Israel, less Egypt, less Jordan, less Cyprus, we have $1.855 billion. It is not $600 million. It is $1.855 billion.

I certainly am sympathetic with the just concerns of the Senator from Arizona. I will be glad to support his amendment——

Mr. DECONCINI. I thank the Senator from West Virginia. We are talking about some discretion on the part of the President, with the figure of $1.850 billion for discretionary funds, if I understand what the Senator from West Virginia said.

Mr. DOLE. Will the Senator yield?

Mr. DECONCINI. I will be glad to yield without losing my right to the floor.

Mr. DOLE. I am not an expert, but I am advised that there are other earmarkings in the authorization bill which have the same impact as in this legislation. Those were the earmarkings discussed earlier by Senator EVANS. When you consider those earmarkings plus the House earmarkings and the fact that you have to bring the two together, I think you are down to $600 or $700 million as you have left. So you give the President the authority to find $200 million out of the $600 million.

Mr. MELCHER. Will the Senator yield?

Mr. DECONCINI. I will be glad to yield. However, I would like to offer my amendment. I will yield without losing my right to the floor.

Mr. MELCHER. If the Senator from Arizona is just going to offer his amendment and yield the floor, I will seek the floor at that time.

Mr. BYRD. Before the Senator offers his amendment, may I ask one question?

Mr. DECONCINI. I am glad to yield without losing my right to the floor.

Mr. BYRD. May I say concerning the distinguished majority leader's concerns about earmarking, and we start with the $1.855 billion which I have referred to, coming out of the original $4.1 billion, less Israel, less Egypt, less Jordan, less Cyprus, if we want to take the authorization earmarkings for Ireland, it is $45 million, take out Uruguay, leaving $1.805 billion, and subtract Portugal, $80 million, leaving $1.725 billion. It is $1.7 billion, not $600 million that has been earmarked, both by the appropriations and the authorization measures.

AMENDMENT NO. 3086 TO AMENDMENT NO. 3084

Mr. DECONCINI. Mr. President, I send my amendment to the desk. I can see that a lot of Senators will speak on this subject matter.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Arizona [Mr. DECONCINI] proposes an amendment numbered 3086.
>
> Add new subsection (c): None of the funds allocated for Israel and Egypt shall be used for the purposes outlined in subsection (a).

Several Senators addressed the Chair.

Mr. DECONCINI. Mr. President, I believe I had the floor.

The PRESIDING OFFICER. The Senator from Arizona loses the floor when he offers the amendment.

Mr. DECONCINI. Do I have the floor or not?

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, I think we have to understand how much money we have. I will try to determine that. In addition to the earmarking and the authorization, there is also a limit of $3.5 billion. You cannot spend $3.9 billion as I understand it. I think that is another $40 million that has to come out of the pie.

I know the distinguished Senator from Washington has those figures. I wonder if he might make those available to us so we will have the information.

Mr. EVANS. Let me read them once again. I believe I am correct. If I am not, we should get the correct figures.

In terms of the appropriations earmarkings and the authorization earmarkings, it is my understanding it adds up to $1.2 billion for Israel, $815 million for Egypt, $230 million for Pakistan, $15 million for Cyprus, $15 million for Uruguay, $100 million in Tied aid, $80 million to Portugal, $20 million to Tunisia, $295 million to the Philippines—that is the $95 million plus the $200 million being suggested now—$35 million to Ireland, and $5 million to Haiti. That adds up to $2.81 billion. While it is true that there is $3.9 billion appropriated, there is also a proviso in the bill that allows only $3.5 billion to be obligated during the course of the next fiscal year prior to October 1, 1987. That is where I get down to the squeeze that exists, and it is indeed a squeeze.

Mr. DOLE. Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I am trying to follow through in this effort to see if the money does or does not exist and the place to find it.

In the joint resolution, which is the continuing resolution, there is a reference, on page 6, line 15, to the MilCon Appropriations Act.

□ 1640

That incorporates by reference into the continuing resolution the MilCon Act. In the MilCon Act, there is on the last page the statement that the $300 million shall remain available for obligation until September 30, 1987, notwithstanding any other provision under the law. Then within the act itself, there is a requirement only that $100 million of that shall be obligated on or before September 30. So the September 30 expenditure runs only as to the $100 million. Under the preceding line, section 205(a), line 21, there is $300 million of unobligated funds which will remain available through 1987. So in point of fact, my reading of that at least, and I believe staff's reading of it—and we all rely on that as much as anything—is that the money in fact be available. If it were not available it would only take the reauthorization of the famine relief fund to make it available at some time later in the year.

That may be a way out of this impasse. I think it would protect adequately the concerns of the Senator from Arizona, it would provide us with adequate money, would not go counter to the wishes of the administration, and would take money from things on which we have had hearings in this particular expenditure.

Mr. DOLE. There seems to be some real dispute between GAO and OMB and others on exactly what happens. That would expire at the end of the fiscal year. We may not enact this continuing resolution before the end of the fiscal year.

I am advised that in any event, it would be scored against the 1987 fiscal year.

Mr. KERRY. Only $100 million would expire before the end of the fiscal year; therefore, it would not matter if we passed it before the end of this fiscal year because the total amount is throughout fiscal year 1987.

Mr. DOLE. That is something we have been looking at. Perhaps we can get a satisfactory answer from GAO or OMB.

Mr. KERRY. Is it something the majority leader might be willing to pursue at this moment before we act on the amendment of the Senator from Arizona? It may be a way, if we are serious about looking for it, of resolving the issue. If we can resolve that question now, I do not think we have to have contention over it.

We can have a major vote of approval of the expenditure and I think all sides would be happy.

Mr. DOLE. I would be happy to see what we might do with it. I understand in any event, it is going to come out of fiscal year 1987. If we could pass this fiscal year, there would be no problem, but I do not think that is going to happen. Let us explore it in any event.

Mr. MELCHER. Mr. President, it is obvious that what the House appropriated 10 days ago, $200 million, is not going to disappear unless somebody spends it. I do not believe it has been spent. It is going to be there. Whatever it takes in language to make sure that that $200 million is there after October 1, I think we are capable of devising before the continuing resolution leaves this Chamber.

I would like to address a couple of points that have been made here. One is a restoration of how much in appropriations has gone to the Philippines this year. It totaled something over $500 million. But those are funds for the large part—not entirely, but the big bulk—are funds that were held up in the previous fiscal year for base rental for Clark and Subic. They were not sent to the Philippines, that $180 million for the last fiscal year, until this fiscal year.

Another $180 million was sent this fiscal year. That adds up to this total, of slightly over $500 million, with $180 million base rental for this fiscal year, that is $360 million. What are the base rental figures? They are $180 million per year base rentals for Clark and Subic in the Philippines. I might point out that that $180 million per year for those two bases is a great deal less than what we pay annually for bases in Turkey, for bases in Greece, and for bases in Spain.

The question that this amendment poses to the Senate and to the country, our country, is simply what is the priority of sending $200 million to the Philippines? I believe the priority is extremely high. Our interest in the Philippines, the interest of the United States in the Philippines, I believe, is threefold. We have an alliance, a longstanding practice, a longstanding business interest in trade in the Philippines.

Second, we have a longstanding alliance of friendship with the people in Southeast Asia. No. 1 of all of Southeast Asia in our alliance of friendship is the Philippines.

Third, we have vital stakes in the mutual alliance of defense with the Philippines which, of course, includes both Subic Bay for our Navy and Clark Air Force Base for our Air Force. The question was raised, what about the attitude of the Philippine people, both its government and the people, toward those two bases? What about the attitude of the Philippine Government and the Philippine people on the question of nuclear weapons?

Let me assure the Senate that the attitude of the Philippine Government and the Philippine people toward Subic Bay is that the practice of United States naval repair, naval dockage service, for all of our fleet in the Pacific remains today the same as it was yesterday and last year, and will remain the same in the future. To the extent that the U.S. Navy are in Subic Bay, they are welcome. The Philippine people do not resist, have no antagonism toward that, nor does its government.

I think we should know that the commander of the armed forces of the Philippines is General Ramos, a graduate of West Point in the class of 1950. I think we should note that the confidence of our Armed Forces leader, the commanders of our fleets, that the entire general staff all are confident in and respect the cooperation that our armed forces of the United States have with the armed forces of the Philippines and have a particular confidence in General Ramos.

The Philippine people desperately need help and they need it now. President Corazon Aquino, with whom I spoke a few hours ago this day, reiterated what she presented so eloquently and so magnificently in her address to the joint session a week ago.

□ 1650

She presented her case on the part of the Philippine people. Their need is indeed very real. I can assure the Senate that in all of Southeast Asia, the Philippines are our best friends. I believe we should pass this amendment presented by the distinguished Senator from West Virginia, the Democratic leader, we should pass it forthwith and provide this amount of help to the Philippines.

Mr. President, I yield the floor.

Mr. ABDNOR addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. ABDNOR. I will be very brief. I have been listening to this discussion with a great deal of interest. Foreign aid has been something that I have not strongly supported, knowing the financial situation of our country and the problems we have in trying to meet our present targets for reducing the deficit. We find it almost impossible, yet we continue trying to carry the load of the whole world and help all countries, which may be a noble goal—if you can afford it. The President of the United States at this very minute is speaking in South Dakota, and I can assure you there are now thousands of farmers and ranchers not far away from where he is speaking who are protesting the strained economic conditions which they face. It seems to me you have a rather difficult time trying to explain to those people how we have the funds to keep adding more and more of these so-called worthy causes. I do not deny that many of them are worthy, but sometimes our farmers and ranchers wonder why they are not considered ahead of the other problems in this world. I find myself in agreement with them.

Some of the problems around this world, it seems to me, ought to be the problems of other nations as well. I have not seen some of the other prosperous nations of the world, which are doing far better in trade and bettering their economic conditions in general, rushing to aid all these worthy causes. Yet they supposedly are just as interested as we are in improving conditions everywhere. One of these days there must be a stop.

As much as I could ascertain from what I have been listening to for the last hour or two, instead of getting on with the problems at hand, of passing a continuing resolution so Government can continue for all the people of this Nation, we are debating foreign aid. And I am not too sure anyone has a good understanding of the situation, who is going to be hurt, where the money is to come from, who is damaged and who is to benefit.

I know it was not long ago the subject was brought up about the assistance we provided for Central America in the military construction bill. The question comes about whether that funding expires at the end of this month or whether it carries over into the next fiscal year. But I have to ask, if we are really as intent as it appeared we were some time back, if we are that intent to provide economic aid to Central America—and I did oppose it—where are we going to come out and who are the ones who are going to suffer? Are we going to have to make further cuts in our own domestic programs in order to give this great assistance to the less fortunate countries of the world? Or are we going to insist that other nations of the world that have the means to do so will make their contribution? Mr. President, let me point out that since World War II, our Nation has provided almost $338 billion in foreign assistance of one kind or another.

There are a lot of questions, and I think they ought to be taken up and studied a lot more closely by the Foreign Relations Committee and the other committees involved in foreign assistance and its impact on our budget. It seems to me it is a poor place to try to solve these problems for the first time on the floor of the U.S. Senate, when we are running out of time and there are so many necessary appropriation measures that must be dealt with between now and the next few days. So I urge that we move on and that we vote down this amendment.

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I modify my amendment to offer language that is presented in the amendment of Senator DECONCINI.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as further modified, is as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Notwithstanding any other provision of this joint resolution, of the funds appropriated or otherwise made available to the Economic Support Fund by section 101(f) of this joint resolution, $200,000,000 shall be available only for assistance to the Philippines in accordance with the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund).

(b) Funds allocated by subsection (a) shall be in addition to amounts of such assistance otherwise available for the Philippines.

(c) None of the funds allocated for Israel and Egypt shall be used for the purposes outlined in subsection (a).

Mr. DECONCINI. Mr. President, I thank the minority leader for the modification. He did so after discussing the amendment with me. I feel far more comfortable in supporting the amendment. I still have great reservations because of the $505 million that has been made or will be made available this year to the Philippines and the amount of money that we are going to continue to allocate that way, but I think this amendment protects a vital interest in the Middle East. I thank the minority leader.

□ 1700

Mr. CHAFEE. Mr. President, as I understand the state of play now, the Philippine provision would come out of the foreign aid, less the roughly two-thirds that is set aside for Israel and Egypt. In other words, the entire impact would fall on roughly one-third of the foreign aid budget. Is that correct?

Mr. HATFIELD. Yes.

Mr. CHAFEE. That would mean a very heavy cut on some of the remaining items in the budget—sub-Saharan Africa countries, Jordan, Morocco, Jamaica, Turkey, Portugal. They would bear the entire brunt of the cut as I understand it.

I ask the distinguished manager of this bill if that is correct.

Mr. HATFIELD. The Senator is correct. To the best of our understanding, the modification of the Byrd amendment, modifying it to exempt the Israeli and the Egyptian part of the budget, offered by the Senator from Arizona [Mr. DECONCINI], would then, in effect, create a more narrow baseline from which the $200 million could be taken and given to the Philippine Government.

Mr. CHAFEE. So the total pie has been so reduced that the $200 million falls against a tiny portion of the total. That seems very unfair to those countries that are not receiving a great deal of money—namely, the ones I have talked about, particularly the sub-Saharan countries, which desperately need any relief that might be given to them.

So I, for one, will vote against the amendment, and I hope it will be defeated.

Mr. DODD. Mr. President, I rise in support of the amendment offered by the able minority leader. This amendment simply provides that $200 million be earmarked within the foreign affairs budget account for additional economic assistance to the Government of the Philippines. This amendment does not add any new spending to the bill, and represently only a fraction of the funds to be appropriated for this account.

Last year at this time, I do not think that anyone would have predicted that the Senate would be considering measures to provide additional economic and military assistance to the Government of the Philippines. In fact, many in this body were terribly concerned over the course of events in that country under the Presidency of Ferdinand Marcos. However, between last summer and this, a remarkable series of events has led to the dramatic reemergence of democracy in the Philippines. Last February the people of the Philippines, in an act of tremendous political courage, voted Ferdinand Marcos out of office and proclaimed Corazon Aquino as their new leader. Ballot box tampering and intimidation of voters could not stem the desire of the Filippino people to overturn an authoritarian regime and to replace it with one in which democracy would be the watchword.

We in the United States watched these events with considerable excitement as the evening news each night dramatically captured these historic moments, unfolding. Clearly the subject of the Philippines was a "front burner" issue for the American public at large, as well as for the Reagan administration and the Congress. We must take care to remember that these dramatic moments were merely a first step, albeit an important one, to the renaissance of democracy in the Philippines.

Much remains to be done to ensure that democracy will be allowed to flourish. Chief among the obstacles which the Aquino government must overcome is the serious state in which it finds the economy. One of the Marcos legacies is an external debt of $26 billion—a staggering sum for an economy the size of the Philippines. The repayment of this debt places an inordinate burden on the export earnings of the Philippines—some 40 percent of these earnings are currently devoted to debt repayment—as well as on that Government's budget deficit. There is no question that these funds are badly needed for programs which will revitalize the private sector of the Philippines, so that the economy can begin to grow once again, and the more than 50 percent of Filipino workers who are currently unemployed or underemployed, can return to productive jobs. Not only is this desirable from an economic perspective, but also from a political one as well, if the Communist-led insurgency is to be thwarted in efforts to gain recruits from this large pool of impoverished Filipinos.

The Aquino government must and should act creatively and on a sustained basis to resolve the host of problems which stand in the way of a strong and vibrant economy. However, I believe that the United States can play an important role in assisting Mrs. Aquino in this regard. Obviously, we must provide additional economic assistance, over and above what Congress has already appropriated for fiscal year 1986. In addition, some imaginative efforts are called for by the Reagan administration to assist the Philippines in coping with its serious external debt crisis.

I suggested one fruitful area for exploration in this regard when the Foreign Relations Committee considered this issue. I offered an amendment urging the President to consider temporarily suspending the collection of payments coming due in 1986 and 1987, on debts owed to the United States by the Philippines, and entering into an official debt rescheduling agreement with the Aquino government to establish a more realistic repayment plan for these debts. The amendment also urged other creditors do likewise on debts owed to them by the Philippines. That amendment was incorporated as a sense of the Congress provision in the authorization bill reported earlier by the Foreign Relations Committee.

Since a large portion of Filipino debt coming due over the next few years is to official creditors—some $67 million in 1986 and $220 million in 1987 to the United States Government alone—this action is more than just a symbolic gesture. It could make a real difference to the success or failure of the Aquino government in its efforts to revitalize the Filipino economy. The United States and the international community at large are truly in a position to do something constructive to assist the Aquino government on the economic front. I urge the President to give serious consideration to this idea. The special circumstances of the Philippines justify special efforts on the part of the United States, if we are to keep faith with the Filipino people in their quest for freedom and democracy.

I know we all were terribly impressed by Mrs. Aquino's address to a joint meeting of the Congress earlier this month. She demonstrated clearly that she is prepared to do all within her power to fulfill the dreams of her people. We must do our part to ensure that her efforts meet with success. I believe a first step toward doing that is to provide additional aid. I urge the adoption of this amendment offered by the distinguished senior Senator from West Virginia.

Mr. BYRD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. GRAMM). Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, title III of the military construction bill makes $300 million available for assistance for Central American democracies. That is the fund to which reference was made a little while ago. If title III of the military construction bill is deemed to be operative—and that is what some of the questions are being asked about—the President could take this $200 million for the Philippines from an economic support fund enlarged by that title. If this amendment is adopted, I am advised that the $200 million could be taken out of that enlarged amount.

Mr. President, I am ready to vote. I yield the floor.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from North Carolina [Mr. BROYHILL], the Senator from Utah [Mr. GARN], and the Senator from Florida [Mrs. HAWKINS] are necessarily absent.

Mr. BYRD. I announce that the Senator from Texas [Mr. BENTSEN] and the Senator from California [Mr. CRANSTON] are necessarily absent.

I also announce that the Senator from Arkansas [Mr. PRYOR] is absent because of death in the family.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 43, nays 51, as follows:

[Rollcall Vote No. 301 Leg.]

YEAS—43

Baucus
Biden
Boren
Bradley
Bumpers
Burdick
Byrd
Chiles
DeConcini
Dodd
Eagleton
Exon
Ford
Glenn
Gore
Harkin
Hart
Heflin
Hollings
Inouye
Johnston
Kassebaum
Kennedy
Kerry
Lautenberg
Leahy
Levin
Lugar
Mathias
Matsunaga
Melcher
Metzenbaum
Mitchell
Moynihan
Nunn
Pell
Proxmire
Riegle
Rockefeller
Sarbanes
Sasser
Simon
Wilson

NAYS—51

Abdnor
Andrews
Armstrong
Bingaman
Boschwitz
Chafee
Cochran
Cohen
D'Amato
Danforth
Denton
Dixon
Dole
Domenici
Durenberger
Evans
Goldwater
Gorton
Gramm
Grassley
Hatch
Hatfield
Hecht
Heinz
Helms
Humphrey
Kasten
Laxalt
Long
Mattingly
McClure
McConnell
Murkowski
Nickles
Packwood
Pressler
Quayle
Roth
Rudman
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Zorinsky

NOT VOTING—6

Bentsen
Broyhill
Cranston
Garn
Hawkins
Pryor

So the amendment (No. 3084), as modified, was rejected.

□ 1730

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

The Senate will be in order.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I do not have an amendment to offer tonight. I do want to use this opportunity, before another amendment is offered, to explain why I did not vote for the amendment, and, perhaps being presumptuous, why a lot of people did not vote for it.

I hope it is not assumed that we are not for some additional aid for the Philippines. We are for it, but there is a bigger problem. What this amendment tried to do is to take a foreign aid bill that has been reduced $1.5 billion this year compared with last year. In that same bill, Israel and Egypt go up $200 million, and all the rest of the world—little countries, emerging democracies in Central America, the African countries trying to rationalize their economies—all get less because the whole international function of the budget is less. The whole bill is less.

As I just told my colleagues within that $1.5 billion reduction from last year we raise those two Middle East countries by $200 million. With what little is left then we take $200 million for more emergency aid to the Philippines in addition to the $250 million already in this continuing resolution. We are going to take it from Central America and all those small countries that are not earmarked. Frankly, that dismal prospect for Latin America and Africa is why this Philippines amendment lost.

We want to help the Philippines, but we want to help Central America also. They have already been cut signficantly. Some want to cut them some more for this $200 million. We have to find a better way, a fairer way.

We have a lot of friends in the world. We have a lot of friends who need help in the world, not just the Philippines. So that is why I voted no.

We can find a way to do it in a fairer way. We cannot take more money away from all our other friends who have already been substantially affected by budget cuts and are asked to succeed as new democracies without enough resources. These little countries are paying off national debts in excess of earnings from their new productivity, and then we cut their foreign assistance. And some want to cut it some more, and transfer it to an emergency grant to the Philippine Islands. Let us work on a better way to do this.

Mr. EVANS. Mr. President, will the Senator from New Mexico yield for a question?

Mr. DOMENICI. I was going to yield the floor.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon

Mr. HATFIELD. Mr. President, we have been 4½ hours on one amendment. I think everyone has certainly had an opportunity to give extended remarks. I only want to say that to the best of my knowledge we have literally probably closs to 120 amendments that we are going to have to dispose of, and hopefully in time to meet the deadlinge of the fiscal year, which is October 1.

We have had a stated proposition that we could well face a filibuster on two sides of a couple or three of those amendments that are pending. So let me just say again with 4½ hours on this one subject, this one amendment, which is very important, I hope we can move along because it would be my hope that we will go all night tomorrow night until we finish the bill once we adjourn at a decent hour tonight.

Mr. EVANS. Will the Senator yield for a question?

Mr. METZENBAUM. Will the Senator yield for a question?

Mr. HATFIELD. Yes. I yield to the Senator from Ohio for a question.

Mr. METZENBAUM. I want to say to the chairman of the Appropriations Committee that there is an amendment that is very controversial. It involves, as the chairman well knows, the Treasury appropriations bill that has not passed the Senate but came out of committee. That bill incorporates a matter that was pending before the Judiciary Committee having to do with the antitrust laws not being applicable to beer distributors. That is a very highly controversial issue, and it deserves to stand on its own. It deserves to fall, according to this Senator, on its own.

But there are others who feel strongly it should pass. Under any and all circumstances it does not belong in this appropriations bill. It did not belong in the Treasury appropriations bill.

The distinguished President pro tempore of the Senate, Senator THURMOND, as well as the distinguished Senator from Iowa, Senator HARKIN and a number of the other Senators, including myself are prepared to speak at great length in order to eliminate this very gnawing and very difficult problem.

I do not believe that serves the purposes of the Senate well. I am embarrassed to be in the posture of having to speak at length on a matter of this kind that has nothing at all to do with the substance of the appropriations bill. And I want to urge the manager of the bill, and I know he is not unsympathetic to my point of view, and recognizes that amendment did not belong in the Treasury appropriations bill.

I just think that we would be imposing upon the Senate and wasting the Senate's time, not really adding to the luster of this body if we had to stand here on the floor making lengthy speeches as to why this measure should not be adopted. But since I am forced into that position, I want to say that I think there are Members of this body prepared to speak not for 4 hours but to speak for 4 days on this very highly controversial issue. I would hope that the leadership might find some alternative procedure in order to eliminate that portion of the Treasury appropriations bill and not waste this body's time on this subject.

Mr. HATFIELD. I did not get the question of the Senator.

Mr. METZENBAUM. The question I would like to ask the Senator from Oregon——

[Laughter.]

Mr. HATFIELD. I thank the Senator.

I am happy to yield to the Senator from Washington.

Mr. EVANS. Mr. President, this question is really addressed as much to the Senator from New Mexico, chairman of the Budget Committee, as it is to the chairman of the Appropriations Committee. It seems to me, Mr. President, that we have gotten ourselves into a rather strange fix here with the need years ago, as I understood it, to create a Budget Act in order to ensure that as we went through the separate appropriations bills we would do so with some sense of the overall target we were shooting for, and certain levels were given to each of the appropriations subcommittees to ensure that we would hit that final target. Am I so far reasonably correct in my assumption?

Mr. HATFIELD. The Senator is correct. The continuing resolution, as the Senator knows, has 13 separate appropriation bills wrapped in it, and each one of them has stayed within the 302(b) allocations which were set under the Budget Act. Therefore, they are all valid bills.

Mr. EVANS. I understand that. But the point I am making and the question I have is whether that is really valid. We have come back full circle, it seems to me, and now we have what in effect is a consolidated budget. Everything is in one. We are dealing with it all within one large pie. We know what the total requirement is. That was set by Gramm-Rudman. It is the estimated revenues for next year plus the $154 billion deficit target.

I fail to see any current reason under a consolidated budget like this why we are in a situation as we were earlier this afternoon when a point of order was called on the chairman of the Foreign Relations Committee because we were moving form one function to another. What difference does it make any more as long as we keep within the total target of the consolidated appropriation bill?

Mr. HATFILED. Let me clarify for the Senator. The Senator is correct in his assumption under the Budget Act of 1974. The Senator is not correct in his assumption under Gramm-Rudman. Gramm-Rudman further subdivided the responsibilities of the Appropriations Committee to meet a target on each of the separate 13 appropriation bills regardless of the total figure.

☐ 1740

Mr. EVANS. I understand that.

Mr. HATFIELD. Regardless of the total. The total figure for each of the 13 would, of course, be within the total. Before the Appropriations Committee could have a higher figure in one bill and a lower figure in another bill. But under Gramm-Rudman we had to reach a certain target figure for each of the 13 bills, so, in effect, it is still not a consolidated budget.

Mr. EVANS. We did that, I am sure, because we wanted to assure that each Appropriations Act went through the Congress and each one would meet that target and, by definition. When the last one went to the President the total would be the target. Now we have one bill. We have one opportunity.

It seems to me that we ought to have some flexibility as the Senate to take this one consolidated budget and if we at this point think there are some reasons to change priorities we have not violated the spirit of Gramm-Rudman one bit. We have not violated the Budget Act one bit. We may have been caught in a technicality. My inclination would be to suggest that maybe it would be wise to propose an amendment or a motion that for purposes of this year and under this consolidated budget, as long as we are dealing with it all at once, that we waive those requirements.

Mr. HATFIELD. I would be very happy to join in the repeal of the whole Gramm-Rudman.

Mr. EVANS. I am not suggesting that.

Mr. HATFIELD. That is not the point. I think you have to understand, Senator, that Gramm-Rudman bestowed upon the committee the responsibility to make the 302(b) allocations. Having done that, the Gramm-Rudman made the exceeding of those levels a point of order.

Mr. EVANS. I understand.

Mr. HATFIELD. That is where we are now with this particular consolidated, as you call it, budget. It is really 13 appropriations in one vehicle, but 13 separate target figures for levels of spending.

Mr. President, the pending amendment before the Senate is what?

The PRESIDING OFFICER. The committee amendment.

Mr. DECONCINI. Will the distinguished chairman yield?

Mr. HATFIELD. I am happy to.

Mr. DECONCINI. I want to make a comment. The Senator from Ohio pointed out this being a controversial amendment on this bill, and I think he said, if I heard him correctly, that it was still pending before the Judiciary Committee.

It has passed the Judiciary Committee and is on the calendar. It is ready to be voted on.

Mr. METZENBAUM. The Senator is correct. I think I did say it was pending. It has been in the Judiciary Committee but it is pending in the Senate.

Mr. DECONCINI. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, this amendment includes the Treasury bill and the Treasury bill includes the antitrust exemption for the beer distributors of this country.

First of all, I have to object to the procedure. To incorporate the entire Treasury bill into the continuing resolution would not in and of itself be objectionable. But to put an antitrust exemption for the beer distributors of this country into the Treasury bill is very objectionable. What possible basis could there be to have this kind of an amendment included in a Treasury appropriations bill? Under the rules of the Senate, it would be out of order. It is out of order. It is legislation on an appropriation bill.

Having said that it is out of order does not make it out of order because that issue should be submitted to the Senate. If that were so, I am afraid that that very powerful beer lobby would have done their work very effectively with their strong political action committee. I am concerned that there might be an effort to overturn the rules of the Senate.

Mr. President, I ask that there be order in the Senate.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Ohio.

Mr. METZENBAUM. I thank the Chair.

Unquestionably, this is one of the worst special interest bills ever to come before the Senate. What could be more ridiculous than a special antitrust standard for the beer industry?

I remember some years ago when we had a proposal for a special antitrust exemption for the bottler, the beverage bottler, and I remember so well the occasion when I indicated that for certain we would have more of these exemptions for special interest groups whether it had to do with the matter of which company was going to have the right to sell automobiles in a certain area.

Mr. President, there is not order in the Senate.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Ohio.

Mr. METZENBAUM. What we find here is that one small group, the beer distributors, want to be able to raise the price of beer to every American who wants to buy a bottle of beer. Why? Is there any special logical reason?

Yes. The logical reason is that the beer distributors could make more money. But the person buying a six-pack will be paying more for that beer and there will be no limit on it.

We had a press conference the other day and somebody came in and told us after the press conference that he had been distributing beer in New Jersey, if my recollection is right, and that when the State of New Jersey put in some limitations with respect to the place from which he could buy the beer he had been buying previously in Florida the price to his customers and his price just zoomed.

It is a free enterprise economy. We believe in free competitive forces being able to work. We believe that if somebody is willing to sell beer or automobiles or desks or food or whatever at a lower price, then that is the way it ought to be.

But this bill just says all of that is thrown out the window. It could give beer distributors the right actually to set or certainly to control prices.

How far have we gone?

Then it is not bad enough that they want to exempt the beer industry from the antitrust laws; they want to do it on a Treasury appropriations bill which is to be incorporated by reference into this bill, which is a continuing resolution.

I cannot believe at a quarter to 6, when the chairman of the Appropriations Committee is telling us that there are 120 amendments that are still to be disposed of, that this august body is wasting its time in debating this issue. This issue should never be before us. If the only way to get the Treasury appropriations bill before us is by including this provision, then the Treasury appropriations bill ought to be left out there hanging.

But the fact is this is a committee substitute for the House bill and the House bill did not have it in.

So let us just go back to the House bill and we have no problem at all. You have the appropriations for the Treasury fully taken care of.

Now, they needed a vehicle, they needed someplace to hang this iniquitous piece of legislation so we find it on the Treasury appropriations bill, an exemption from the antitrust laws for the beer distributors of this country.

We ought to call that the power PAC, not the six-pack. The beer pack has become the power PAC. It is a PAC making it possible to get votes around here based upon the strengths of a political action committee and not one single bit of logic in behalf of the industry.

□ 1750

No reason. Sometimes you come before this body and you say some particular industry needs help because they are hurting. The beer industry is not hurting. The beer industry has been setting their prices up and up and up and the antitrust laws have been applicable. What will happen when the antitrust laws are no longer applicable?

This bill is totally anticonsumer, totally anti-free-enterprise. What does the beer industry want? They want to be able to establish territorial monopolies, so that they will have no competition in any geographic area. If you are the beer distributor in Jackson, MS, there will be no competition. If you are the beer distributor in Cleveland, OH, there will be no competition. Why? Why? Is there some logical reason, that it is going to improve the quality of the beer to have no competition? Or improve the quality of the profits of the beer distributor?

It is hard to believe an industry would have the nerve, the guts, to come before Congress and ask for the right to be protected from competition. But they have done it. And they made their case on the basis of their political action committees' activities. This is not only special interest legislation, Mr. President, this is not only anticonsumer legislation, but this is done in a way to come in through the back door, on a Treasury appropriations bill. That Treasury appropriations bill has not even come to the floor and it is brought here by reference.

Read the bill. Read the bill that is before us or read the Treasury appropriations bill. Read this bill and you cannot even find any reference to beer. The word "beer" is not mentioned anywhere in the continuing resolution. It is not there by implication. The bill does not talk about alcoholic beverages. You cannot even see it, you cannot smell it, you cannot hear it, you cannot read about it. It is not there. But go back and look at the Treasury bill and there it is.

Why is this on an appropriations bill? There is no question that this is legislating on an appropriations bill. Not only is it legislating on an appropriations bill, but it is the wrong way. This bill that is attached to the Appropriations Committee bill, the Treasury Appropriations Committee bill, is actually worse than the beer bill that was considered by the Judiciary Committee.

The Senator from Arizona raised the question with me about the fact of whether it had or had not been considered by the Judiciary Committee. I said to him, yes, indeed, the beer bill antitrust exemption had been considered by the Judiciary Committee but, in all fairness, it is a totally different bill. That bill, at least, had an express provision prohibiting price fixing. This bill has no specific provision. This bill does not have that express provision prohibiting price fixing.

The original bill, at least, had a provision saying it does not preempt State laws. This bill does not have that.

So is the intent of this bill to permit price fixing? Is it the intent to override State laws? If these were necessary in the original bill, why not now?

The proponents argue that the beer industry does not know what law it is supposed to comply with, that the law for everyone is somehow unfair to the beer industry. Come on. Who are they kidding? Unfair to the beer industry?

Right now there is a fair and reasonable standard under the law that applies to beer wholesalers and everyone else. Under the law today, an agreement between a manufacturer and a wholesaler to establish an exclusive territory is judged under the rule of reason. Under that standard, the court will weigh the harm to competition compared to the benefits to competition. If the arrangement does not harm competition, it is perfectly legal. Since 1977, the law has been clear that exclusive territories are not automatically illegal. But the standard that applies to everyone else is not good enough for the beer industry. It is the old story: Free enterprise for everyone else but not for me.

Mr. President, I am aware of the fact that there are several Members of this body who are on the floor seeking to speak to this issue.

I intend to speak at some considerable length, but I think in fairness to the man who is the proponent of the measure, as well as to the others who are opponents, it is only fair that I yield the floor at this time so they may be heard. I ask unanimous consent that I may be permitted to yield the floor without having my remarks charged against me under the two-speech rule.

The PRESIDING OFFICER. Is there objection to the Senator's request? Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1820

Mr. ABDNOR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. HARKIN. Mr. President, I object.

The PRESIDING OFFICER (Mr. STAFFORD). Objection is heard.

The clerk will resume the call of the roll.

The legislative clerk resumed the call of the roll.

Mr. ABDNOR. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ABDNOR. Mr. President, I ask unanimous consent that I be allowed to speak as though in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRESIDENT REAGAN VISIT TO SOUTH DAKOTA

Mr. ABDNOR. Mr. President, while there is a lull in the proceedings on the subject before us in the Chamber, I would like to take a moment to tell my colleagues that I was proud to have the privilege of welcoming President Reagan to South Dakota today. It was his first visit to the State since becoming President.

There was an overwhelming crowd today with standing room only at the Sioux Falls Arena. Well over 9,000 people were present. The President was given an extremely warm reception by the crowd. Last week when I announced on very short notice that the President was coming, the response was overwhelming. Tickets that were made available at both my campaign office and the central committee office were gone within a day and a half's time. It was a wonderful day.

As we all know, the farm problem is a very serious situation out in South Dakota. A group of demonstrators was among those there. I do not know the exact number, but have heard that there might well have been up to 1,000 people close by.

The two leaders of the group were asked to ride to the airport with President Reagan, and they had quite a discussion. The President had to leave the car once they got to the airport. Mr. Regan, who was with him, spent considerable time making notes and visiting with the group leaders.

How pleased the farmers were to have had an opportunity to talk with the President more specifically about the problem facing them.

□ 1830

All in all it was a good day for South Dakota. The day was beautiful. The weather was perfect. The crowd was overwhelming and very warm, and the President was very well received. It was good news for South Dakota and I wanted to share with my colleagues the fact that we, too, out in South Dakota have a high, high regard for the President.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1910

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call call be rescinded.

The PRESIDING OFFICER. (Mr. ABDNOR). Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, it does not appear that we are going to be able to accomplish any more tonight on the continuing resolution. I think we have a number of amendments that could be brought up and, as I understand, the chairman, Senator HATFIELD, would like to resolve the question on an amendment in the Treasury and Post Office bill. That has not been accomplished, so it would seem to me that we do not gain much by just staying here.

Mr. DECONCINI. Will the majority leader yield for 1 minute?

Mr. DOLE. I am happy to yield.

Mr. DECONCINI. I agree with the majority leader it does not seem we are getting anyplace. This Senator wants us to proceed with the continuing resolution. The Senator from Arizona and the Senator from South Dakota have no intentions of holding up this body and we would be more than happy to have a vote. If the Senator from Ohio or others can beat this, fine; that is the way this place ought to run in this Senator's judgment.

Mr. DOLE. I hope we might be able to do that, but, if not, maybe we can go on to other amendments tomorrow and then come back to this issue later. I know the Senator from South Dakota and the Senator from Arizona feel strongly about their position, but I guess there are others who feel almost as strongly about theirs, so we have a small problem there—hopefully, a small problem.

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent there now be a period for the transaction of routine morning business not to extend beyond 7:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE HOUSE

At 4:08 p.m, a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 2888. An act to temporarily delay the repeal of the United States Trustee System.

The message also announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 1082. An act granting the consent of Congress to the Arkansas-Mississippi Great River Bridge Construction Compact.

The message further announced that the House has passed the following bills, with amendments, in which it requests the concurrence of the Senate:

S. 209. An act to amend chapter 37 of title 31, United States Code, to authorize contracts retaining private counsel to furnish legal services in the case of indebtedness owed the United States; and

S. 2129. An act to facilitate the ability of organizations to establish risk retention groups, to facilitate the ability of such organizations to purchase liability insurance on a group basis, and for other purposes.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 5052) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1987, and for other purposes; it agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. LEHMAN of Florida, Mr. GRAY of Pennsylvania, Mr. CARR, Mr. DURBIN, Mr. MRAZEK, Mr. SABO, Mr. WHITTEN, Mr. COUGHLIN, Mr. CONTE, Mr. PURSELL, and Mr. WOLF as managers of the conference on the part of the House.

The message further announced that the Speaker makes the following correction in the appointment of conferees in the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5300) entitled "An Act to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987."

The fourth group of conferees from the Committee on Energy and Commerce are also appointed for consideration of subsections (f) through (k) of section 10205 of the House bill; the second group of conferees from the Committee on Government Operations are appointed for consideration of section 10206, rather than 10207 of the House bill; the conferees from the Committee on Ways and Means are also appointed for consideration of that portion of section 202 of the Senate amendment which amends section 15(c) of the Export-Import Bank Act of 1945.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 3737. An act to amend the Immigration and Nationality Act to deter immigration-related marriage fraud and other immigration fraud;

H.R. 4059. An act to recognize the organization known as the Red River Valley Fighter Pilots Association;

H.R. 4444. An act to amend the Immigration and Nationality Act, and for other purposes;

H.R. 4823. An act to amend the Immigration and Nationality Act to improve the administration of the immigration and nationality laws, and for other purposes;

H.R. 5362. An act to extend the authority of the Supreme Court Police to provide protective services for Justices and Court personnel;

H.R. 5363. An act to amend the interest provisions of the Declaration of Taking Act;

H.R. 5490. An act to amend title 11 of the United States Code to clarify the current meaning of section 1113 relating to the rejection of collective bargaining agreements by debtors in bankruptcy;

H.R. 5495. An act to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes;

H.R. 5554. An act to transfer the Community Development Credit Union Revolving Loan Fund to the National Credit Union Administration and to authorize the National Credit Union Administration Board to administer the Fund; and

H.R. 5558. An act to amend title III of the Immigration and Naturalization Act to provide for administrative naturalization, and for other purposes.

MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent; and placed on the calendar:

H.R. 3737. An act to amend the Immigration and Nationality Act to deter immigration related marriage fraud and other immigration fraud;

H.R. 5166. An act to designate certain lands in the Cherokee National Forest in the State of Tennessee as wilderness areas, and for other purposes; and

H.R. 5363. An act to amend the interest provisions of the Declaration of Taking Act.

MEASURES HELD AT THE DESK

The following bill was ordered held at the desk by unanimous consent, pending further disposition:

H.R. 4302. An act to establish a commission for the purpose of encouraging and providing for the commemoration of the centennial of the birth of President Dwight David Eisenhower.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3774. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the President's seventh special message for fiscal year 1986; pursuant to the order of January 30, 1975, referred jointly to the Committee on Appropriations, the Committee on the Budget, the Committee on Energy and Natural Resources, and the Committee on Finance.

EC-3775. A communication from the Comptroller General of the United States, transmitting, pursuant to law, reports on the status of budget authority the deferral of which the Congress disapproved in the Urgent Supplemental Appropriation Act for fiscal year 1986; pursuant to the order of January 30, 1986, referred jointly to the Committee on Appropriations, the Committee on Agricutlure, Nutrition, and Forestry, the Committee on Banking, Housing, and Urban Affairs, the Committee on the Budget, the Committee on Commerce, Science, and Transportation, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, and the Committee on Labor and Human Resources.

EC-3776. A communication from the Assistant Secretary of the Navy (Shipbuilding and Logistics) transmitting, pursuant to law, a report on the conversion of certain functions at various facilities to performance under contract; to the Committee on Armed Services.

EC-3777. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, notice that the Department of the Navy intends to exercise provisions of law for exclusion of the clause concerning examination of records by the Comptroller General; to the Committee on Armed Services.

EC-3778. A communication from the Chairman of the National Transportation Safety Board, transmitting, pursuant to law, the annual budget submission of the Board for fiscal year 1988; to the Committee on Commerce, Science, and Transportation.

EC-3779. A communication from the Secretary of Energy, transmitting, pursuant to law, the annual report on the State Energy Conservation Program for calendar year 1985; to the Committee on Energy and Natural Resources.

EC-3780. A communication from the Secretary of Energy, transmitting, pursuant to law, the 24th quarterly report on General Biomass Energy Development; to the Committee on Energy and Natural Resources.

EC-3781. A communication from the Secretary of the Interior, transmitting, pursuant to law, a report summarizing the progress on discussions on California offshore oil and gas leasing; to the Committee on Energy and Natural Resources.

EC-3782. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Impact of Medicare Prospective Payment System on Admissions; Need for Volume Adjusters and/or Pre-Admission Certification"; to the Committee on Finance.

EC-3783. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Financial Audit: United States Postal Service's Financial Statements for 1985"; to the Committee on Governmental Affairs.

EC-3784. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Auditor's Survey of Employment Contracts and Severance Agreements Among University Presidents"; to the Committee on Governmental Affairs.

EC-3785. A communication from the D.C. auditor, transmitting, pursuant to law, a report entitled "Review of Allegations Related to Food Service Operations and Unauthorized Use of Facilities at Coolidge Senior High School"; to the Committee on Governmental Affairs.

EC-3786. A communication from the Acting Deputy Chief of Staff for Installations and Logistics, Department of the Navy, transmitting pursuant to law, the annual report of the retirement plan for civilian employees of the U.S. Marine Corps Exchange Service; to the Committee on Governmental Affairs.

EC-3787. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a list of the reports issued by the General Accounting Office for August 1986; to the Committee on Governmental Affairs.

EC-3788. A communication from the national president of the Women's Army Corps Veterans Association, transmitting, pursuant to law, the annual audit report of the association for 1985-86; to the Committee on the Judiciary.

EC-3789. A communication from the President of the National Safety Council, transmitting, pursuant to law, the annual audit report of the Council for fiscal years 1986 and 1985; to the Committee on the Judiciary.

EC-3790. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the 1985 annual report on the Runaway and Homeless Youth Program; to the Committee on Labor and Human Resources.

EC-3791. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Toward a National Plan to Combat Alcohol Abuse and Alcoholism"; to the Committee on Labor and Human Resources.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-865. A resolution adopted by the Board of County Commissioners of Monroe County, FL, requesting full funding for the budget request of Key Deer Refuge acquisition; to the Committee on Appropriations.

POM-866. A joint resolution adopted by the legislature of the State of California relating to the recent air disaster in Cerritos; to the Committee on Commerce, Science, and Transportation.

"ASSEMBLY JOINT RESOLUTION NO. 110

"Whereas, the Legislature of the State of California mourns the tragic midair collision between an AeroMexico airliner and a private airplane over Cerritos on August 31, 1986; and

"Whereas, the Legislature sends it heartfelt condolences and sympathy to the victims' families and to the residents of Cerritos who endured the disaster; and

"Whereas, the Legislature recalls a similar midair collision in San Diego on September 25, 1978, and finds that the response of the Federal Aviation Administration to the San Diego collision was inadequate to prevent further midair collisions; and

"Whereas, the Legislature understands that electronic devices can be installed on all aircraft to help prevent midair collisions; and

"Whereas, the Legislature recognizes the importance of air safety to aircraft passengers and to the public on the ground; now, therefore, be it

"Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California urges the Federal Aviation Administration to thoroughly investigate the cause of the midair collision on August 31, 1986, and to take steps which are necessary to protect the public safety from the recurrence of such a disaster; and be it further

"Resolved, That the Legislature further urges the Congress of the United States to enact legislation requiring collision avoidance systems on all commercial and private aircraft entering controlled airspace in the United States; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Administrator of the Federal Aviation Administration, the Speaker of the United States House of Representatives, and each Senator and Representative from California in the Congress of the United States."

POM-867. A joint resolution adopted by the legislature of the State of California; to the Committee on Commerce, Science, and Transportation:

"ASSEMBLY JOINT RESOLUTION NO. 104

"Whereas, current statistics of the Department of the California Highway Patrol relating to accidents involving commercial vehicles, show that the leading cause of those accidents is speeding, which is a problem attributable to the driver; and

"Whereas, many of the drivers of commercial vehicles in California are licensed by other states to drive those vehicles; and

"Whereas, California can only effectively deal with drivers licensed in this state by suspension or revocation of the driving privilege of negligent operators; and

"Whereas, when that action is taken, some drivers, because of interstate operation, are able to secure a driver's license in another state; and

"Whereas, some commercial vehicle operators carry more than one driver's license to prevent the loss of any one license by splitting the traffic violations between those licenses; and

"Whereas, the Congress of the United States is currently considering legislation involving the licensing of drivers of commercial vehicles; and

"Whereas, it is important that national standards be developed to assure improvement in the quality of drivers of commercial vehicles on any federal or state highway; now, therefore, be it

"Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully requests the Congress of the United States to enact legislation which would require the Department of Transportation to provide for state administration of national uniform standards for licensing of

drivers of commercial vehicles. The standards should include all of the following:

"(a) A definition of "commercial motor vehicle operator" as applied to vehicles of over 26,000 pounds gross vehicle weight and for-hire passenger buses.

"(b) One license issued only by the state of residence of each commercial motor vehicle operator. Each state shall fully recognize the license issued by the state of residence.

"(c) A single driver record for each commercial motor vehicle operator maintained by the state of license issuance.

"(d) Exchange of commercial motor vehicle operator records from one state to another, when the state of residence is changed.

"(e) Information to be included on commercial motor vehicle operator driver records.

"(f) Classified licensing system based on weight and type of truck or bus to be operated.

"(g) Testing of commercial motor vehicle operators in the type of vehicle they intend to drive.

"(h) A requirement that, prior to issuing a commercial vehicle operator's license, the state of issuance determine if the operator holds a commercial motor vehicle operator's license in another jurisdiction.

"(i) A requirement that applicants for a commercial motor vehicle operator's license be required to provide a thumbprint or fingerprints with the application.

"(j) Any other matters the Secretary of Transportation deems appropriate, including estimates of costs to implement the national standards, and possible funding sources; and be it further

"Resolved, In order to ensure the highest standard of commercial vehicle operator safety, the national uniform standards for licensing of commercial vehicle operators shall not be less stringent than the standards of the State of California or preempt the authority of a state to adopt more stringent commercial vehicle operator license standards; and be it further

"Resolved, That legislation enacted by Congress also provide for a national commercial vehicle operator identifier file which would contain the thumbprint or fingerprints of commercial vehicle operators licensed in each state in order to identify those commercial vehicle operators with more than one license and to enable states to combine the conviction records of multiple licensed drivers to determine whether or not action to suspend or revoke the commercial vehicle operator's license should be taken; and be it further

"Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States Senate, the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States and the Secretary of the Department of Transportation."

POM-868. A petition from a citizen of Las Vegas, NV, praying for an opportunity to be heard in the matter of the impeachment of the Honorable Harry E. Claiborne; ordered to lie on the table.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATFIELD, from the Committee on Appropriations:

Report to accompany the joint resolution (H.J. Res. 738) making continuing appropriations for fiscal year 1987, and for other purposes (Rept. No. 99-500).

By Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2714. A bill to authorize appropriations for the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes (Rept. No. 99-501).

By Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, without amendment and with a preamble:

S.J. Res. 336. A joint resolution to express the sense of Congress on recognition of the contribution of the seven Challenger astronauts by supporting establishment of a Children's Challenger Center for Space Science (Rept. No. 99-502).

By Mr. THURMOND, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1363. A bill to prohibit the use of the mails to send dangerous martial arts weapons (Rept. No. 99-503).

By Mr. THURMOND, from the Committee on the Judiciary:

Report to accompany the bill (S. 985) to protect the rights and victims of child exploitation (Rept. No. 99-504).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated.

By Mr. INOUYE:

S. 2889. A bill to amend title 38, United States Code, to treat the Commonwealth of the Northern Mariana Islands as a State for purposes of such title; to the Committee on Veterans' Affairs.

By Mr. TRIBLE:

S. 2890. A bill to designate the U.S. Courthouse for the eastern district of Virginia in Alexandria, VA, as the "Albert V. Bryan Federal Courthouse"; to the Committee on Environment and Public Works.

By Mr. BIDEN (for himself, Mr. PELL and Mr. MATHIAS):

S. 2891. A bill to initiate a United States strategy, and to further multilateral action, in response to the problem of global warming; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. INOUYE:

S. 2889. A bill to amend title 38, United States Code, to treat the Commonwealth of the Northern Mariana Islands as a State for purposes of such title; to the Committee on Veterans' Affairs.

AVAILABILITY OF VETERANS' ADMINISTRATION PROGRAMS IN THE NORTHERN MARIANA ISLANDS

● Mr. INOUYE. Mr. President, in my continuing efforts on behalf of the Northern Mariana Islands, today I introduced a measure to extend to and make available in America's newest insular jurisdiction the programs of the Veterans' Administration.

Since 1978 when the covenant establishing our political relationship with the Northern Mariana Islands, a substantial number of its young men and women have enlisted in the Armed Forces of the United States, including about 100 troops in Active Reserve duty. Reportedly, there are about 80 veterans and retired personnel residing in these islands.

The Northern Mariana Islands is the only United States insular jurisdiction where the programs of the Veterans' Administration are inapplicable. This measure proposes to change that.●

By Mr. BIDEN (for himself, Mr. PELL, and Mr. MATHIAS):

S. 2891. A bill to initiate a U.S. strategy, and to further multilateral action, in response to the problem of global warming; to the Committee on Governmental Affairs.

GLOBAL CLIMATE PROTECTION ACT

● Mr. BIDEN. Mr. President, it is a sad truth of human affairs that however well we as individuals may anticipate dangers in the distant future, and however severe those dangers may be, our public policies—even with responsive democratic government—seldom take serious account of consequences on a time horizon stretching beyond the next election.

This Nation's perilous economic situation amply demonstrates the point. For 5 years, an administration policy of reflation through massive government borrowing has contributed to a sustained, if uneven, recovery—and has therefore proven politically as well as economically expedient. Unfortunately, the negative effects of an accumulating national and international debt, while slow to manifest themselves, may eventually prove ruinous. Future administrations and future Congresses will be left to cope—while cursing this generation's lack of economic foresight and responsibility.

THE OUTLINES OF A POTENTIAL CATASTROPHE

But deferral to future generations may simply not be possible with certain problems relating to the environment in which we live. In an age when mankind's numbers and activities are so extensive as to affect the planetary conditions that have been the very basis of human life, the cost of irresponsibility could be survival itself.

Environmental problems are interrelated. Only now, for example, are we beginning to understand, and address, the potentially far-reaching environmental consequences of a rate of tropical deforestation by which mankind is annually eliminating from the Earth's surface a forest area the size of West Virginia. We do not yet know the full implications of this trend. What we do know is that tropical forests, while covering only 7 percent of Earth, serve as an important source of oxygen in our atmosphere, that they provide sanctuary to approximately half the animal species now living, and the current rate of destruction would, if perpetuated, nearly erase tropical forests from the face of our planet during the 21st century. Accordingly, I have been pleased to support H.R. 2957, the tropical deforestation legislation by which Congress is manifesting at least one fortunate exception to our generally weak institutional capacity for foresight. In this regard, I pay special tribute to the fine work done on this legislation by my colleague from Delaware, Senator ROTH, and by the distinguished ranking member of the Foreign Relations Committee, Senator PELL.

But a related problem as yet unaddressed, and at least as ominous as tropical deforestation, is "global warming"—a term, though seemingly esoteric, that could, as time passes, come to signify an environmental disaster second only to nuclear war.

Scientists now predict that, by the middle of the next century, accumulated emissions of certain man-made pollutants—carbon dioxide, chlorofluorocarbons [CFS's], and other trace gases—could, through the so-called greenhouse effect, raise the average temperature on Earth by 3 to 8 degrees. In terms of human comfort, this temperature change may seem merely inconvenient—and, for some persons, even welcome. But the effects would not be. Life on this planet exists only under highly specialized circumstances, occurring within a band of a few thousand feet above and below Earth's surface. Similarly, all life exists within a very narrow range of temperatures and under specialized atmospheric and climatic conditions. Indeed, so special are these circumstances that even a small rise in temperature could disrupt the entire complicated environment that has nurtured life as we know it.

For man, a central element in this equation is the delicate dependency of food production on weather. Within living memory, such shifts in weather patterns as the recent drought in Africa, El Nino in the Southern Hemisphere, and the North American dust bowls of the 1930's have devastated agriculture, producing enormous human suffering. Yet global warming, should scientific fears be realized in the decades immediately ahead, would produce climatic changes far more extensive and disastrous.

In the United States, agriculture is particularly vulnerable to climatic change. Across the surface of the planet, any global warming would be uneven—less near the oceans, with a greater temperature rise in the middle of continents. For the North American Farm Belt, situated in midcontinent, global warming could mean a new and permanent dust bowl.

Scientists predict also that global warming would mean temperature increases more rapid near the poles than at the Equator. This would mean a partial melting of the polar ice caps and of glaciers at the higher latitudes. Water released from these ice concentrations would raise sea levels up to 4 to 5 feet, producing widespread coastal flooding. Should this occur, mankind could—within the lifetimes of many now alive—witness a sudden alteration in global geography unlike any change in recorded history.

Over the longer term, the consequences of global warming, while less certain, are even more ominous. A 1985 report of the distinguished multinational Scientific Committee on Problems of the Environment, after detailing the climatic effects in the midterm, went on to ask whether any subsequent equilibrium would permit man's continued existence on Earth. The answer: "We don't know."

THE RANGE OF UNCERTAINTY

At present, amidst the considerable uncertainty surrounding the global warming theory, some cause for optimism may be found in evidence running counter to the direst predictions. Under the postulated greenhouse effect, manmade pollutants rise into the atmosphere and prevent heat from escaping to space. Yet for all of the carbon dioxide, methane, and CFC's released into the atmosphere since the industrial revolution, temperatures in the northern latitudes, including the United States, have actually declined slightly during the last half-century.

No scientist, however, disputes the validity of the greenhouse theory, nor is there doubt that the level of carbon dioxide in the atmosphere is steadily increasing. Moreover, while the northern latitudes have cooled marginally in recent decades, the Southern Hemisphere has warmed steadily. Scientists theorize that warming in the Northern Hemisphere may simply have been postponed by an increased cloudiness that has temporarily—but only temporarily—offset the greenhouse effect.

Such uncertainty means that we cannot cite as evidence of global warming such simple statistics as the fact that, in our Nation's Capital, 3 of the 10 hottest years in the century have occurred in the 1980's. Weather patterns in any specific year in particular area are too unpredictable to provide evidence for a long-term trend. Nor can we say with any certainty that the recent drought in the Southern United States is an early and already observable result of the global warming phenomenon.

What we can say is that this drought, the most severe since recordkeeping began, is the kind of climatic change that global warming would cause. It is a relatively mild and deeply sobering example of just what global warming would mean, should it occur. We would thus prudently regard this current, limited disaster as a potential harbinger deserving of serious heed.

Global warming, should it occur in accord with the direst predictions, would be a catastrophe of biblical proportions for the entire world. The human activities that could bring it about—the inefficient burning of fossile fuels, the atmospheric release of CFC's, the destruction of tropical forests—are occurring right now. And unless these activities are changed in the next few years—through sharply stepped up energy conservation, restrictions of CFC emissions, and preservation of tropical forests—a disastrous and irreversible warming could become inevitable. As a major producer of atmospheric pollutants and as a major potential victim of global warming, the United States has a profound responsibility and interest in moving promptly to address—and lead others to address—the global warming question.

A LEGISLATIVE START TOWARD A NATIONAL STRATEGY

Toward that end, I am today introducing legislation to codify the process of developing an effective American response to the threat posed by global warming. I take note of comprehensive hearings conducted this summer by Senator CHAFEE's Subcommittee on Environmental Pollution, which did much to underscore the seriousness of the problem. And I note also a concurrent resolution introduced last December by Senator GORE, which pointed to the need for cooperative international research with respect to the greenhouse effect. I believe, however, that there is now need for formal legislation to bring about a concerned governmental response. The bill is short and self-explanatory. Its effect is to create a top-level executive branch task force—a Task Force on the Global Climate—to develop, in the next 12 months, a governmentwide strategy to assess the threat raised by global warming and to respond to that threat by national and multinational means.

Underscoring the international dimension of the problem, the legislation designates as chairman of the task force the Secretary of State, who bears primary responsibility within the Government for the conduct of international environmental affairs. The task force mandate, in addition to conducting further study of all phenomena associated with global warming, is to develop "specific recommendations for cooperative action to be undertaken with other nations." Three months following its completion, the President would submit the strategy to Congress with specific recommendations for further legislative action.

I am aware that some members of the Committee on Environment and Public Works have requested that the Environmental Protection Agency conduct two studies related to the greenhouse effect—one on environmental effects, the other on needed policy changes. This legislation would be consistent with the initiative, in that it mandates the Administrator of EPA to serve as the vice chairman and executive director of the Government task force.

The legislation also takes account of multilateral efforts already underway through the International Geosphere-Biosphere Program, under the sponsorship of the International Council of Scientific Unions, the membership of which includes the scientific academies of 71 nations, as well as international scientific organizations in all fields of physical and biological science. Under a plan approved by the union's assembly earlier this month, 4 years of preparation and planning will now precede a major multilateral activity—analogous to the Geophysical Year of 1957-58—to be conducted in the early 1990's. This effort has received pledges from the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and the National Science Foundation, the head of each of which would be a member of the task force created by this legislation.

Because the participation of such diverse and separate agencies in multilateral activities related to global warming can be expected to increase steadily, the legislation would direct the President to appoint an ambassador-at-large to coordinate and lead such participation. Operationally, this high-level official would also, on a practical basis, usually represent the Secretary of State in the workings of the Task Force on the Global Climate. One duty of this ambassador-at-large would be to seek early designation, within the United Nations system, of an International Year of Global Climate Protection. The designation of an International Year of the Greenhouse Effect was originally proposed by Senator GORE in his concurrent resolution, and this legislation would mandate carrying that good idea formally into the international arena.

Finally, the legislation calls upon the President to give high priority to global warming on the agenda of United States-Soviet relations. As the world's major consumers of fossil fuels, the superpowers are the largest producers of the atomspheric emissions that could produce global warming. And with vast continental agricultural belts in the northerly latitudes, both are especially vulnerable to the climatic shifts that could result. Both nations, consequently, have a powerful obligation and interest in the global warming question.

Some months ago, Senators PELL and LUGAR demonstrated considerable vision, I believe, in offering a Senate resolution, later unanimously adopted, calling upon the two superpowers to join in leading a cooperative multilateral effort to achieve the World Health Organization goal of universal child immunization by the year 1990. The subject of global warming holds comparable potential and need for effective superpower cooperation.

At last year's Geneva summit, President Reagan told Secretary General Gorbachev "that if we had an invasion from Mars, both sides would put aside our differences." While not an extraterrestrial threat, global warming could prove no less dangerous. Even though decades away, the most serious consequences of global warming could prove unavoidable unless we act now to prevent them. Our failure to show foresight when the dangers are clearly discernible would be an unforgivable dereliction of duty to our children and all mankind not yet born.●

ADDITIONAL COSPONSORS

S. 2410

At the request of Mr. BAUCUS, the names of the Senator from Vermont [Mr. LEAHY] and the Senator from Nevada [Mr. HECHT] were added as cosponsors of S. 2410, a bill to amend the Social Security Act to provide for improved treatment of small rural hospitals and sole community hospitals under title XVIII and XIX of such Act, and for other purposes.

S. 2479

At the request of Mr. TRIBLE, the names of the Senator from Ohio [Mr. GLENN] and the Senator from Tennessee [Mr. GORE] were added as cosponsors of S. 2479, a bill to amend chapter 39 of title 31, United States Code, to require the Federal Government to pay interest on overdue payments, and for other purposes.

S. 2605

At the request of Mr. SYMMS, the name of the Senator from Nebraska [Mr. ZORINSKY] was added as a cosponsor of S. 2605, a bill to amend the Foreign Assistance Act of 1961 to facilitate the use of economic support fund assistance for commodity import programs.

S. 2723

At the request of Mr. STEVENS, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 2723, a bill to amend title 39 of the United States Code to restore limited circulation second-class rates of postage for copies of a publication mailed to countries adjacent to the county of publication, and for other purposes.

S. 2770

At the request of Mr. COCHRAN, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 2770, a bill to amend the Farm Credit Act of 1971 to provide the opportunity for competitive interest rates for the farmer, rancher, and cooperative borrowers of the Farm Credit System, and for other purposes.

SENATE JOINT RESOLUTION 359

At the request of Mr. NICKLES, the name of the Senator from Arkansas [Mr. PRYOR], was added as a cosponsor of Senate Joint Resolution 359, a joint resolution to designate March 17, 1987, as "National China-Burma-India Veterans Association Day."

SENATE JOINT RESOLUTION 417

At the request of Mr. NUNN, the names of the Senator from New York [Mr. MOYNIHAN], the Senator from Alabama [Mr. HEFLIN], the Senator from Florida [Mr. CHILES], the Senator from Texas [Mr. BENTSEN], the Senator from Oregon [Mr. PACKWOOD], the Senator from Wisconsin [Mr. KASTEN], the Senator from Nevada [Mr. LAXALT], and the Senator from Arkansas [Mr. BUMPERS], were added as cosponsors of Senate Joint Resolution 417, a joint resolution designating the week of January 25 through January 31, 1987 as "National Productivity Improvement Week."

SENATE JOINT RESOLUTION 418

At the request of Mr. PACKWOOD, the names of the Senator from Utah [Mr. HATCH], the Senator from Indiana [Mr. QUAYLE], the Senator from Pennsylvania [Mr. SPECTER], the Senator from Connecticut [Mr. DODD], the Senator from Michigan [Mr. LEVIN], and the Senator from California [Mr. CRANSTON], were added as cosponsors of Senate Joint Resolution 418, a joint resolution designate February 4, 1987, as "National Women in Sports Day."

SENATE JOINT RESOLUTION 420

At the request of Mr. GOLDWATER, the names of the Senator from Massachusetts [Mr. KENNEDY], the Senator from Ohio [Mr. GLENN], and the Senator from Indiana [Mr. LUGAR], were added as cosponsors of Senate Joint Resolution 420, a joint resolution relating to the commemoration of January 28, 1987, as "National Day of Excellence."

AMENDMENTS SUBMITTED

EMERGENCY ACQUISITION OF BANKS

PROXMIRE AMENDMENT NO. 3083

(Ordered to lie on the table.)

Mr. PROXMIRE submitted an amendment intended to be proposed by him to the bill (S. 2752) to extend

titles I and II of the Garn-St Germain Depository Institutions Act of 1982, to provide for emergency acquisitions of banks in danger of closing, to recapitalize the Federal Savings and Loan Insurance Corporation, and for other purposes; as follows:

At the appropriate place, insert the following:

BANK CHARTERS, INSURANCE, AND ACQUISITIONS

SEC. . (a) Prior to August 13, 1987, the Comptroller of the Currency shall not grant final approval of any application for a charter, for amendment of an institution's articles of association to eliminate restrictions on powers, or for the exercise of banking powers pursuant to section 26-103(b) of the District of Columbia Code, by any association or entity that is not (or upon the commencement of business, will not be) a bank within the meaning of section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)).

(b) Prior to August 13, 1987, the Federal Deposit Insurance Corporation shall not grant final approval of any application under section 5(a) of the Federal Deposit Insurance Act by a State bank which is not a bank within the meaning of section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)) to become an insured bank, unless the bank is required by State law to obtain Federal deposit insurance and, if controlled by a company, was controlled by such company on August 13, 1986.

(c) Prior to August 13, 1987, the appropriate Federal banking agency shall disapprove any notice under section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) involving the acquisition of control of an insured bank which is not, or upon consummation will not be, operated as a bank within the meaning of section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)).

(d) Prior to August 13, 1987, the Board of Governors of the Federal Reserve System shall not approve any application by a bank holding company under section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843), to acquire or expand the activities of an insured bank that is not a bank within the meaning of section 2(c) of that Act, unless such insured bank engages solely in activities permissible for bank holding companies by regulation adopted pursuant to section 4(c)(8) of that Act on or before August 13, 1986.

(e) This section shall not apply to an insured bank that—

(1) engages exclusively in credit card operations;

(2) does not accept demand deposits or deposits the depositor may withdraw by check or similar means for payment to third parties or others and is not in the business of making commercial loans;

(3) does not accept any savings or time deposits unless such deposit is in an amount of more than $100,000; and

(4) maintains only one office.

(f) For purposes of this section, the term "insured bank" has the same meaning as in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)).

BANK HOLDING COMPANY ACTIVITIES

SEC. . Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(1) by striking out the period at the end of paragraph (14) and inserting in lieu thereof "; and"; and

(2) by inserting after paragraph (14) the following:

"(15) shares of any affiliate that—

"(A) deals in and underwrites all obligations issued or guaranteed by or on behalf of a State or any political subdivision thereof or any agency or instrumentality of either of the foregoing, except industrial development bonds as defined in section 103(b)(2) of the Internal Revenue Code of 1954. Affiliates of bank holding companies may deal in and underwrite such industrial development bonds, the interest on which is exempt from Federal income tax under section 103(a) of the Internal Revenue Code of 1954, if (i) a State, territory, possession of the United States, or any political subdivision of the foregoing, or the District of Columbia pledges its full faith and credit for the payment of all principal and interest on such bonds or (ii) the issuer, or the State or local governmental unit on behalf of which the industrial development bonds were issued, is considered the sole owner, for Federal income tax purposes, of the facility with respect to which financing is to be provided from the proceeds of such industrial development bonds;

"(B) deals in and underwrites promissory notes secured by real estate mortgages or credit obligations secured by real or personal property manufactured housing and participation interests in such notes and credit obligations or mortgage related payment bonds secured by such notes or participation interest. For purposes of this subparagraph, a mortgage related payment bond means an obligation (which may be with or without recourse to the issuer thereof) which, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the above requirements or participation interests therein which are pledged as security for such obligation and which are rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization; and

"(C) underwrites, deals in, sells, and distributes, as principal or agent or both, commercial paper issued by any entity.".

CONTINUING APPROPRIATIONS, 1987

BYRD (AND KERRY) AMENDMENT NO. 3084

Mr. BYRD (for himself and Mr. KERRY) proposed an amendment, which was subsequently modified, to the joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes; as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Notwithstanding any other provision of this joint resolution, of the funds appropriated or otherwise made available to the Economic Support Fund by section 101(f) of this joint resolution, $200,000,000 shall be available only for assistance to the Philippines in accordance with the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund).

(b) Funds allocated by subsection (a) shall be in addition to amounts of such assistance otherwise available for the Philippines.

(c) None of the funds allocated for Israel and Egypt shall be used for the purposes outlined in subsection (a).

LUGAR AMENDMENT NO. 3085

Mr. LUGAR proposed an amendment, which was subsequently modified, to amendment No. 3084 proposed by Mr. BYRD to the joint resolution (H.J. Res. 738), supra; as follows:

On line 4 of the amendment 3084 strike all after the comma and insert the following:

The Congress finds that the policy of the United States is—

(1) to assist the Government of the Philippines in strengthening democracy and in defeating the Communist insurgency; and

(2) to promote directly the vital security interests of the United States by creating conditions which will enhance continued access to United States military facilities in the Philippines.

(b)(1) The amounts appropriated by Section 101(c) are hereby reduced by $200 million.

(2) The amounts appropriated by Section 101(f) are hereby reduced by $200 million.

(c)(1) The funds appropriated pursuant to subsection (b) shall be available only to carry out chapter 4 of part II of the Foreign Assistance Act with respect to the Philippines.

(2) The assistance provided with the funds transferred under paragraph (1) shall be made available on a grant basis as a cash transfer.

DeCONCINI AMENDMENT NO. 3086

Mr. DECONCINI proposed an amendment to the amendment No. 3084, proposed by Mr. BYRD and subsequently modified, to the joint resolution (H.J. Res. 738), supra, as follows:

Add new subsection (c).

None of the funds allocated for Israel and Egypt shall be used for the purposes outlined in subsection (a).

DIXON (AND GLENN) AMENDMENT NO. 3087

(Ordered to lie on the table.)

Mr. DIXON (for himself and Mr. GLENN) submitted an amendment intended to be proposed by them to the joint resolution (H.J. Res. 738), supra, as follows:

At the end of the joint resolution, add the following:

SEC. . The United States Housing Act of 1937 is amended by adding at the end the following new section:

"PUBLIC HOUSING RESIDENT MANAGEMENT

"SEC. 20. (a) PURPOSE.—The purpose of this section is to encourage increased resident management of public housing projects, as a means of improving existing living conditions in public housing projects, by providing increased flexibility for public housing projects that are managed by residents by—

"(1) permitting the retention, and use for certain purposes, of any revenues exceeding operating and project costs; and

"(2) providing funding, from amounts otherwise available, for technical assistance to promote formation and development of resident management entities.

"(b) PROGRAM REQUIREMENTS.—

"(1) RESIDENT COUNCIL.—As a condition of entering into a resident management program, the elected resident council of a public housing project shall approve the establishment of a resident management corporation. The resident management corporation and the resident council may be the same organization, if the organization complies with the requirements applicable to both the corporation and council. If there is no elected resident council, a majority of the households of the public housing project shall approve the establishment of a resident council to determine the feasibility of establishing a resident management corporation to manage the project.

"(2) PUBLIC HOUSING MANAGEMENT SPECIALIST.—The resident council of a public housing project, in cooperation with the public housing agency, shall select a qualified public housing management specialist to assist in determining the feasibility of, and to help establish, a resident management corporation and to provide training and other duties agreed to in the daily operations of the project.

"(3) BONDING AND INSURANCE.—Before assuming any management responsibility for a public housing project, the resident management corporation shall provide fidelity bonding and insurance, or equivalent protection, in accordance with regulations and requirements of the Secretary and the public housing agency. Such bonding and insurance, or its equivalent, shall be adequate to protect the Secretary and the public housing agency against loss, theft, embezzlement, or fraudulent acts on the part of the resident management corporation or its employees.

"(4) MANAGEMENT RESPONSIBILITIES.—A resident management corporation that qualifies under this section, and that supplies insurance and bonding or equivalent protection sufficient to the Secretary and the public housing agency, shall enter into a contract with the public housing agency establishing the respective management rights and responsibilities of the corporation and the public housing agency. Such contract may include specific terms governing management personnel and compensation, access to public housing projects records, submission of and adherence to budgets, rent collection procedures, tenant income verification, tenant eligibility determinations, tenant eviction, the acquisition of supplies and materials, and such other matters as may be appropriate.

"(5) ANNUAL AUDIT.—The books and records of a resident management corporation operating a public housing project shall be audited annually by a certified public accountant. A written report of each audit shall be forwarded to the public housing agency and the Secretary.

"(c) COMPREHENSIVE IMPROVEMENT ASSISTANCE.—Public housing projects managed by resident management corporations may be provided with comprehensive improvement assistance under section 14 for purposes of renovating such projects in accordance with such section. If such renovation activities (including the planning and architectural design of the rehabilitation) are administered by a resident management corporation, the public housing agency involved may not retain, for any administrative or other reason, any portion of the assistance provided pursuant to this subsection.

"(d) OPERATING SUBSIDY AND PROJECT INCOME.—

"(1) CALCULATION OF OPERATING SUBSIDY.—Notwithstanding any provision of section 9 or any regulation under such section, and subject to the exception provided in paragraph (3), the portion of the operating subsidy received by a public housing agency under section 9 that is allocated to a public housing project managed by a resident management corporation shall not be less than the public housing agency per unit monthly amount provided in the previous year as determined in an individual project basis.

"(2) CONTRACT REQUIREMENTS.—Any contract for management of a public housing project entered into by a public housing agency and a resident management corporation shall specify the amount of income expected to be derived from the project itself (from sources such as rents and charges) and the amount of income funds to be provided to the project from the other sources of income of the public housing agency (such as operating subsidy under section 9, interest income, administrative fees, and rents).

"(3) CALCULATION OF TOTAL INCOME.—

"(A) Subject to subparagraph (B), the amount of funds provided by a public housing agency to a public housing project managed by a resident management corporation may not be reduced during the 3-year period beginning on the date of the enactment of the Housing Act of 1986 or on any later date on which a resident management corporation is first established for the project.

"(B) If the total income of a public housing agency (including the operating subsidy provided to the public housing agency under section 9) is reduced or increased, the income provided by the public housing agency to a public housing project managed by a resident management corporation shall be reduced or increased in proportion to the reduction or increase in the total income of the public housing agency, except that any reduction in operating subsidy that occurs as a result of fraud, waste, or mismanagement by the public housing agency shall not affect the funds provided to the resident management corporation.

"(4) RETENTION OF EXCESS REVENUES.—

"(A) Any income generated by a resident management corporation of a public housing project that exceeds the income estimated for purposes of this subsection shall be excluded in subsequent years in calculating (i) the operating subsidies provided to the public housing agency under section 9; and (ii) the funds provided by the public housing agency to the resident management corporation.

"(B) Any revenues retained by a resident management corporation under subparagraph (A) shall be used for purposes of improving the maintenance and operation of the public housing project, for establishing business enterprises that employ residents of public housing, or for acquiring additional dwelling units for lower income families.

"(e) RESIDENT MANAGEMENT TECHNICAL ASSISTANCE AND TRAINING.—

"(1) FINANCIAL ASSISTANCE.—To the extent budget authority is available for section 14, the Secretary shall provide financial assistance to resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development of resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.

"(2) LIMITATION ON ASSISTANCE.—The financial assistance provided under this subsection with respect to any public housing project may not exceed $100,000.

"(3) FUNDING.—Of the amounts available for financial assistance under section 14 for fiscal year 1987, the Secretary may use not more than $1,500,000 to carry out this subsection.".

BIOLOGICAL DIVERSITY IN DEVELOPING COUNTRIES

LUGAR AMENDMENT NO. 3088

Mr. DOLE (for Mr. LUGAR) proposed an amendment to the bill (H.R. 2958) to amend the Foreign Assistance Act of 1961 to protect biological diversity in developing countries; as follows:

On page 7, line 24, after the word provide insert the following: ", subject to obtaining the necessary appropriations,".

JOB TRAINING PARTNERSHIP AMENDMENTS

HATCH AMENDMENT NO. 3089

Mr. DOLE (for Mr. HATCH) proposed an amendment to the amendment of the House bill (S. 2069) to amend the Job Training Partnership Act; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Job Training Partnership Act Amendments of 1986".

DESIGNATION OF SERVICE DELIVERY AREAS BASED ON LABOR MARKET AREAS

SEC. 2. Section 101(a)(4)(A)(ii) of the Job Training Partnership Act (hereinafter in this Act referred to as the "Act") is amended by striking out "a labor market area" and inserting in lieu thereof "one or more labor market areas".

LITERACY AND DROPOUT PREVENTION PROGRAMS

SEC. 3. Section 123 of the Act is amended—

(1) in subsection (a)—

(A) by striking out "and" at the end of paragraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(C) by inserting at the end of such subsection the following new paragraph:

"(3) to provide—

"(A) literacy training to youth and adults;

"(B) dropout prevention and reenrollment services to youth, giving priority to youth who are at risk of becoming dropouts;

"(C) a State-wide school-to-work transition program operated in a manner consistent with section 205(e); or

"(D) any combination of the activities described in subparagraphs (A), (B), and (C) of this paragraph."; and

(2) in subsection (c)—

(A) by striking out the first sentence of paragraph (2)(B) and inserting in lieu thereof the following: "Funds available under this section shall be used for clause (3) for the Federal share of the cost of carrying out activities described in such clause."; and

(B) by striking out "clause (1)" in paragraph (3) and inserting in lieu thereof "clauses (1) and (3)".

PRESIDENTIAL AWARDS FOR OUTSTANDING PRIVATE SECTOR INVOLVEMENT IN JOB TRAINING PROGRAMS

SEC. 4. Part D of title I of the Act is amended by adding at the end thereof the following new section:

"PRESIDENTIAL AWARDS FOR OUTSTANDING PRIVATE SECTOR INVOLVEMENT IN JOB TRAINING PROGRAMS

"SEC. 172. (a)(1)(A) The President is authorized to make Presidential awards for outstanding achievement by the private sector in the job training partnership program authorized by this Act. The President is authorized to make such awards to individuals who, and organizations which, have demonstrated outstanding achievement in planning and administering job training partnership programs or in contributing to the success of the job training partnership program.

"(B) In making the awards pursuant to subparagraph (A) of this paragraph, the President shall consider the effectiveness of the program for which the award is made.

"(2) The President is authorized to make Presidential awards for model programs in the job training partnership program authorized by this Act which demonstrate effectiveness in addressing the job training needs of groups of individuals with multiple barriers to employment.

"(b)(1) Each year the President is authorized to make such awards under subsection (a) of this section as the President determines will carry out the objectives of this Act.

"(2) The President shall establish such selection procedures, after consultation with the Secretary and the Governors of the States, as may be necessary.".

INTRASTATE HOLD HARMLESS ALLOCATION REQUIREMENT

SEC. 5. (a) Section 202(a) of the Act is amended—

(1) in paragraph (2), by striking out "Of" and inserting in lieu thereof "Subject to the provisions of paragraph (3), of";

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) For fiscal years beginning after September 30, 1986, no service delivery area within any State shall be allocated an amount equal to less than 90 percent of the average of its allocation percentage for the two preceding fiscal years preceding the fiscal year for which the determination is made. The allocation percentage for a service delivery area is the percentage which the service delivery area received of the total amount allocated pursuant to this subsection to all service delivery areas within the State for each such preceding fiscal year. If the amounts appropriated pursuant to section 3(a) and (b) are not sufficient to provide an amount equal to at least 90 percent of such allocation percentages to each such area, the amounts allocated to each area shall be ratably reduced.".

(b) Section 251(b) of the Act is amended by striking out "section 202(a)(2) and (3)" and inserting in lieu thereof "section 202(a)(2), (3), and (4)".

USE OF INCENTIVE GRANT FUNDS

SEC. 6. Section 202(b)(3)(B) of the Act is amended—

(1) by striking out "which do not qualify for incentive grants under this subparagraph"; and

(2) by adding at the end thereof the following: "Funds available under this subparagraph may, without regard to section 108(a), be used by the Governor or a service delivery area during not more than two program years to develop and implement a data collection system to track the postprogram experience of participants under this part.".

SERVICES TO YOUTH

SEC. 7. Section 203(b)(1) of the Act is amended by adding at the end thereof the following new sentence: "For the purpose of the preceding sentence, the term 'eligible youth' includes individuals who are 14 and 15 years of age and enrolled in pre-employment skills training.".

SUMMER YOUTH EMPLOYMENT ASSESSMENT AND GOALS

SEC. 8. (a) Part B of title II of the Act is amended by—

(1) resdesignating sections 251 through 254, an all references thereto, as sections 252 through 255, respectively; and

(2) inserting after the part heading the following new section:

"PURPOSE

"SEC. 251. The purpose of programs assisted under this part is to—

"(1) enhance the basic educational skills of youth;

"(2) encourage school completion, or enrollment in supplementary or alternative school programs; and

"(3) provide eligible youth with exposure to the world to work.".

(b) Section 253 of the Act (as redesignated by subsection (a)(1) of this section) is amended by—

(1) inserting "(a)" before "Funds"; and

(2) adding at the end thereof the following new subsection:

"(b) A service delivery area shall assess the reading and mathematics skill levels of eligible participants in programs funded by this part and shall expend funds (from this Act or otherwise available to the service delivery area, or both) for basic and remedial education as described in the job training plan under section 104.".

(c) Section 255 of the Act (as redesignated by subsection (a)(1) of this section) is amended by—

(1) inserting "(a)" before "Private"; and

(2) adding at the end thereof the following new subsection:

"(b) In accordance with the provisions of subsection (a), each service delivery area shall establish written program goals and objectives which shall be used for evaluating the effectiveness of programs conducted under this part. Such goals and objectives may include—

"(1) improvement in school retention and completion;

"(2) improvement in academic performance, including mathematics and reading comprehension;

"(3) improvement in employability skills; and

"(4) demonstrated coordination with other community service organizations such as local educational agencies, law enforcement agencies, and drug and alcohol prevention and treatment programs.".

(d) The table of contents of the Act relating to part B of title II is amended to read as follows:

"PART B—SUMMER YOUTH EMPLOYMENT AND TRAINING PROGRAMS

"Sec. 251. Purposes.
"Sec. 252. Authorization of appropriations; allotment and allocation.
"Sec. 253. Use of funds.
"Sec. 254. Limitations.
"Sec. 255. Applicable provisions.".

AVAILABILITY OF SUMMER YOUTH PROGRAMS DURING NONSUMMER MONTHS

SEC. 9. Section 254(a) of the Act (as redesignated by section 8(a)(1) of this Act) is amended by inserting before the period at the end thereof the following: ", except that a service delivery area may, within the jurisdiction of any local educational agency that operates its schools on a year-round, full-time basis, offer the programs under this part to participants during a vacation period treated as the equivalent of a summer vacation".

PROHIBITION OF MATCHING ON GRANTS FROM SECRETARY'S DISCRETIONARY FUNDS UNDER TITLE III

SEC. 10. Section 301(c) of the Act is amended by adding at the end thereof the following new sentence: "Such criteria shall not include any requirement that, in order to receive assistance under this subsection, the State shall provide a matching amount with funds available from one or more other sources.".

IDENTIFICATION OF DISLOCATED WORKERS

SEC. 11. (a) Section 302(a) of the Act is amended—

(1) by striking out "or" at the end of clause (2);

(2) by striking out the period at the end of clause (3) and inserting in lieu thereof a semicolon and the word "or"; and

(3) by inserting at the end thereof the following:

"(4) were self-employed (including farmers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters subject to the next sentence.

The Secretary shall establish categories of self-employed individuals and of economic conditions and natural disasters to which clause (4) of the preceding sentence applies.".

(b) Section 302(c) of the Act is amended by adding at the end thereof the following new paragraph:

"(3) A State may serve any eligible individual under this part without regard to the residence of such individual.".

TAXATION OF JOB CORPS OPERATIONS PROHIBITED

SEC. 12. Section 437(c) of the Act is amended to read as follows:

"(c) Transactions conducted by a private for-profit contractor or a nonprofit contractor in connection with the contractor's operation of a Job Corps Center, program, or activity shall not be considered as generating gross receipts. Such contractors shall not be liable, directly or indirectly, to any State or subdivision thereof (nor to any person acting on behalf thereof) for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes imposed on, or measured by, gross receipts in connection with any payments made to or by such contractor for operating a Job Corps Center, program, or activity. Such contractors shall not be liable to any State or subdivision thereof to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such contractors of any property, service, or other item in connection with the operation of a Job Corps Center, program, or activity.".

ADDITIONAL EXPERIMENTAL AND DEVELOPMENTAL PROJECTS AUTHORIZED

SEC. 13. Section 453(a) of the Act is amended—

(1) by inserting "(1)" after the subsection designation, and

(2) by adding at the end thereof the following new paragraph:

"(2) From funds made available under this part, the Secretary may provide financial assistance for pilot projects for the training of individuals who are threatened with loss of their jobs due to technological changes, international economic policies or, general economic conditions.".

PROJECTS FOR SPECIAL POPULATIONS

SEC. 14. (a) Part D of title IV of the Act is amended by adding at the end thereof the following new section:

"PROJECTS FOR SPECIAL POPULATIONS

"SEC. 456. In carrying out this part, the Secretary shall include projects designed to serve populations with multiple barriers to employment, such as individuals listed in section 203(a)(2) and individuals not otherwise targeted for assistance under this Act, with special consideration for displaced homemakers and the handicapped.".

(b)(1) Section 4 of the Act is amended by inserting at the end thereof the following new paragraph:

"(29) The term 'displaced homemaker' means an individual who—

"(A) was a full-time homemaker for a substantial number of years; and

"(B) derived the substantial share of his or her support from—

"(i) a spouse and no longer receives such support due to the death, divorce, permanent disability of, or permanent separation from the spouse; or

"(ii) public assistance on account of dependents in the home and no longer receives such support.".

(2) The table of contents of the Act is amended by adding after item "Sec. 455." the following new item:

"Sec. 456. Projects for special populations.".

VETERANS AMENDMENTS

SEC. 15. (a)(1) Section 4(5) of the Act is amended by inserting after "handicapped" a comma and the following: "including disabled veterans".

(2) Section 4(27) of the Act is amended by adding at the end thereof the following new subparagraph:

"(C) The term 'recently separated veteran' means any veteran who applies for participation under any title of this Act within 48 months of the discharge or release from active military, naval, or air service.

"(D) The term 'Vietnam era veteran' means a veteran any part of whose active military service occurred between August 5, 1964, and May 7, 1975.".

(b) Section 106(d)(3) of the Act is amended by striking out "and offenders" and inserting in lieu thereof "disabled and Vietnam era veterans, including veterans who served in the Indochina Theater between August 5, 1964, and May 7, 1975, and offenders".

(c) Section 108(c)(2)(B)(ii) of the Act is amended by inserting after "handicapped individuals" a comma and the following: "including disabled veterans".

(d) Section 121(c)(10) of the Act is amended by adding before the period at the end thereof a comma and the following: "including Veterans' Administration programs".

(e) Section 123(c)(1) of the Act is amended by inserting after "offenders" a comma and the following: "veterans,".

(f) Section 124(b) of the Act is amended by inserting after "nonprofit private organizations" a comma and the following: "including veterans organizations".

FARMER AND RANCHER DISLOCATION REPORT

SEC. 16. Within 12 months after the date of enactment of this Act, the Secretary of Labor shall submit a report to the Congress which—

(1) uses data sources within the Departments of Labor, Agriculture, Commerce, and other Federal agencies to describe the dislocation of farmers and ranchers resulting from farm and ranch failures;

(2) identifies and utilizes data sources and on-going studies conducted at the State and local levels, both within the public and private sectors, identifying and outlining the problem of farmer and rancher dislocation; and

(3) examines the feasibility of establishing a national statistical data collection program for permanently dislocated farmers and ranchers.

CONTINUING APPROPRIATIONS, 1987

GORE (AND OTHERS) AMENDMENT NO. 3090

(Ordered to lie on the table.)

Mr. GORE (for himself, Mr. FORD, Mr. BUMPERS, Mr. SASSER, Mr. COCHRAN, and Mr. MCCONNELL) submitted an amendment intended to be proposed by them to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the bill, insert the following new sections:

SEC. . (a) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting after section 510 the following new section:

"WILLFUL AND MALICIOUS INTERFERENCE WITH SATELLITE COMMUNICATIONS AND OPERATIONS"

"SEC. 511. Whoever without authorization willfully or maliciously interferes with, or causes interference to, the transmission of any lawful communication conveyed by means of satellite, or the operation of any satellite, shall, upon conviction, be fined not more than $250,000 or imprisoned not more than ten years, or both.".

(b) Within thirty days after the date of enactment of this Act, the Federal Communications Commission shall commence an inquiry into equipment, methods, and systems for the detection and prevention of violations of section 511 of the Communications Act of 1934 and other potentially damaging signal interference with satellite communications. In conducting such inquiry, the Commission shall consult with the National Telecommunications and Information Administration and other interested Federal agencies.

(c) Section 1362 of title 18, United States Code, is amended by adding at the end thereof:

"This section shall not apply to conduct prohibited by section 511 of the Communications Act of 1934, relating to interference with satellite communications.".

FAIR MARKETING OF CERTAIN SATELLITE COMMUNICATIONS

SEC. . Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c)(1) Any person who is encrypting satellite cable programming for private viewing on or after thirty days of enactment of this Act shall—

"(A) make such programming available for private viewing by home satellite antenna users;

"(B) in the case such persons utilizes cable systems to distribute the encrypted satellite programming to home satellite antenna users—

"(i) not restrict such systems from selling service outside of the franchised areas of such a system, and not discriminate in price, terms, or conditions based on whether sale of such programming is for a cable subscriber or home satellite antenna user; or

"(ii) establish reasonable financial and character criteria under which noncable distributors may qualify to distribute such programming to home satellite antenna users and not discriminate on price, terms, or conditions among different distributors offering similar distribution services to the consumer.

"(2) Any person aggrieved by any violation of paragraph (1) of this subsection may bring a civil action in a United States district court or in any other court of competent jurisdiction. Such court may—

"(A) grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain such violations; and

"(B) direct the recovery of full costs, to a prevailing plaintiff including awarding reasonable attorney fees, actual damages, and additional profits of the violator, or statutory damages for all violations in a sum of not more than $500,000 as the court considers just.".

DEFINITIONS

SEC. . Section 705(d) of the Communications Act of 1934 (as redesignated by section (2)(1) of this Act) is amended—

"(1) 'satellite cable programming' means programming transmitted via a domestic geostationary communications satellite intended for reception by cable systems subscribers;";

(2) in paragraph (4) by striking out "and" and at the end thereof;

(3) in paragraph (5) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(4) by adding at the end thereof the following new paragraphs:

"(6) 'home satellite antenna user means a person who utilizes a satellite reception antenna to view or listen to, in his home or residence, communications received directly from a communications satellite in Earth orbit; and

"(7) 'reasonable financial and character criteria' means commonly prudent business standards designed to facilitate payment to the programmer and maintenance of the business reputation of the programmer, which are calculated to facilitate the existence of multiple noncable distributors.".

NOTICES OF HEARINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. MATHIAS. Mr. President, I wish to announce that the Committee on Rules and Administration will meet in SR-301, Russell Senate Office Building, on Wednesday, October 1, 1986, at 2 p.m., to conduct a business meeting.

On its executive agenda, the committee will be considering nominations of Thomas J. Josefiak and Scott E. Thomas to be members of the Federal Election Commission.

Legislative business to be marked up includes S. 2673/H.R. 4545, American Folklife Center reauthorization; S. 2448, to abolish the National Armed Forces Museum Advisory Board of the Smithsonian Institution; Senate Joint Resolution 268, reappointment of Murray Gell-Mann to be a citizen regent of the Smithsonian Institution Board of Regents; Senate Resolution 330, to create a Special Committee on Families, Youth, and Children; Senate Resolution 482, a printing resolution for the Committee on Environment and Public Works; and original rsolutions authorizing the payment of gratuities to survivors of deceased Senate employees.

The committee will also be considering a number of items on its administrative agenda; among them are Senator INOUYE's proposal for the design and use of a Senate flag.

For further information concerning this meeting, please contact Carole Blessington of the Rules Committee staff on extension 40278.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON RULES AND ADMINISTRATION

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Monday, September 29, in order to hold hearings on the nomination of T.J. Josefiak, and Scott E. Thomas to be members of the Federal Election Commission, and to continue a hearing on the operations and functions of the Office of Sergeant at Arms of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Monday, September 29, to hold a hearing on the nomination of Frank Shakespeare, to be Ambassador to the Holy See.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

ABORTION AND INFORMED CONSENT: ILLINOIS

● Mr. HUMPHREY. Mr. President, this letter from Vicki in Illinois points to the tragic consequences of abortion. She tells a story similar to those I have entered in the RECORD over the past weeks. It is a story of pain and suffering which was never contemplated or prepared for. It is a story of failure: The failure to inform a young woman about the implications of abortion.

We can prevent this from happening repeatedly by requiring that informed consent be given to every young woman who has an unplanned pregnancy. We can mandate that they all be given the pertinent facts about abortion and its alternatives. I hope my colleagues will joint me in cosponsoring S. 2791, and help to end this conspiracy of silence which is so perilous to the lives of American women.

WAUKEGAN, IL, *June 16, 1986.*

DEAR SENATOR HUMPHREY: I had an abortion 11 years ago. It was, without a doubt, the worst experience of my life. I was backed into a corner with my own problems and didn't know what to do. As a result, I was talked into making the wrong decision. I had gone to Planned Parenthood for a pregnancy test and upon confirmation was told that abortion was my only choice. The word baby was never mentioned. My child was called a "mass of tissue." Adoption and unwed mothers' homes were never mentioned. Abortion was pushed. My boyfriend agreed all the way.

I'd like to tell you about that day. I was 17 and very scared. My boyfriend and I skipped school and he drove to Chicago. When we got there, the first thing they asked for was money, then my name. I was taken to a large room with many other girls and given a gown. A woman stood in the front and told us we would feel some discomfort, but "not much more than a vaginal exam." Then we were lined up in single file. I remember feeling like I was in a cattle drive being led to the slaughterhouse, but I squashed those feelings.

We were taken one by one into a small room where the abortion would take place. The abortionist was cold. He never said a word, just put me in the position. The sound was horrible, as was the pain. It was many years before a vacuum cleaner didn't bother me because of this. After it was over, I was taken back to the small cubicle where I had left my clothes. I was not told about the mental anguish and physical pain I would feel for many years. We drove home and I fell asleep (my way out). When we arrived at my house, I was awakened with a slap. "You're home," he said, that's all. My 7 week old baby was gone.

As a direct result of this, I have lost 5 babies through miscarriages. My first daughter was born with heart disease. She underwent heart surgery and much pain and I suffered much guilt. Because of my pain and shame, I stand and say abortion is wrong!

In love,

MRS. VICKI SEKICH.●

RURAL HEALTH CARE

● Mr. BAUCUS. Mr. President, in an appropriate place in today's RECORD I have asked that the Senator from Vermont [Mr. LEAHY] be added as a cosponsor to S. 2410, the Rural Care Improvement Act of 1986, a bill that I introduced last May to provide for fairer treatment by the Medicare Program of the Nation's small rural hospitals.

I am pleased that the distinguished Senator from Vermont is a cosponsor of this legislation. Due to an oversight, his name was not included earlier as a cosponsor S. 2410. The notice in today's RECORD corrects that oversight.

The Senator from Vermont is a member of the Senate rural health caucus, a bipartisan group of over one-third of the Members of the U.S. Senate who have come together to find ways to improve the quality of health care for rural Americans.

I look forward to working with the Senator from Vermont on the Rural Health Care Improvement Act and other legislation to make sure that rural Americans receive the quality health services that they deserve.●

BUDGET SCOREKEEPING REPORT

● Mr. DOMENICI. Mr. President, I hereby submit to the Senate the budget scorekeeping report for this week, prepared by the Congressional Budget Office in response to section 308(b) of the Congressional Budget Act of 1974, as amended. This report also serves as the scorekeeping report for the purposes of section 311 of the Budget Act.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 29, 1986.

Hon. PETE V. DOMENICI,
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the budget for fiscal years 1986 and 1987. The estimated totals of budget authority, outlays, and revenues for each fiscal year are compared to the appropriate or recommended levels contained in the most recent budget resolutions, S. Con. Res. 32 for fiscal year 1986, and S. Con. Res. 120 for fiscal year 1987. This report meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32 and is current through September 26, 1986. The report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended.

Since my last report, Congress has cleared for the President's signature S. 1965, Higher Education Amendments of 1986, and H.R. 3838, the Tax Reform Act, changing budget authority, outlay and revenue estimates for 1987.

With best wishes,
Sincerely,

EDWARD GRAMLICH
(For Rudolph G. Penner).

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 99TH CONG., 2D SESSION, AS OF SEPT. 26, 1986

[Fiscal year 1986; in billions of dollars]

	Current level [1]	Budget resolution, S. Con. Res. 32	Current level +/− resolution
Budget authority	1,053.0	1,069.7	−16.7
Outlays	980.0	967.6	12.4
Revenues	778.5	795.7	−17.2
Debt subject to limit	2,096.3	[2] 2,078.7	17.6

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] The current statutory debt limit is $2,111.0 billion.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 99TH CONGRESS, 2D SESSION, AS OF SEPT. 26, 1986

[Fiscal year 1987; in billions of dollars]

	Current level [1]	Budget resolution, S. Con. Res. 120	Current level +/− resolution
Budget authority	634.0	1,093.4	−459.4
Outlays	734.5	995.0	−260.5
Revenues	857.1	852.4	4.7
Debt subject to limit	2,096.3	[2] 2,322.8	−226.5
Direct loan obligations	20.4	34.6	−14.1
Guaranteed loan commitments	33.1	100.8	−67.7

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other programs requiring annual appropriations under current law even though the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] The current statutory debt limit is $2,111.0 billion.

FISCAL YEAR 1986 SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONG., 2D SESS., AS OF SEPTEMBER 26, 1986

[In millions of dollars]

	Budget Authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			777,794
Permanent appropriations and trust funds	723,461	629,772	
Other appropriations	525,778	544,947	
Offsetting receipts	−188,561	−188,561	
Total enacted in previous sessions	1,060,679	986,159	777,794
II. Enacted this session:			
Commodity Credit Corporation Urgent Supplemental Appropriation, 1986 (P.L. 99–243)			
Federal Employees Benefits Improvement Act of 1986 (P.L. 99–251)		4	
VA Home Loan Guarantee Amendments (P.L. 99–255)		−51	
Omnibus Budget Reconciliation Act of 1985 (P.L. 99–272)	−4,259	−6,001	765
Department of Agriculture Urgent Supplemental, 1986 (P.L. 99–263)			
Advance to Hazardous Substance Response Trust Fund (P.L. 99–270)			
FHA and GNMA Credit Commitment Assistance Act (P.L. 99–289)		−380	
Federal Employees Retirement Act of 1986 (P.L. 99–335			−90
Temporary Extension of Certain Housing Programs (P.L. 99–345)		−304	
Military retirement Reform Act (P.L. 99–348)	−25		
Urgent Supplemental Appropriations, 1986 (P.L. 99–349)	−3,508	475	
Panama Canal Commission Authorizing Act (P.L. 99–368)	18	16	
Total	−7,773	−6,240	675
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses			
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Compact of free association	3	3	
Special benefits (Federal employees)	14	14	

FISCAL YEAR 1986 SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONG., 2D SESS., AS OF SEPTEMBER 26, 1986—Continued

[In millions of dollars]

	Budget Authority	Outlays	Revenues
Family social services	100	75	
Payment to civil service retirement [1]	(37)	(37)	
Total entitlements	118	93	
Total current level as of Sept. 26, 1986	1,053,024	980,012	778,469
1986 budget resolution (S. Con. Res. 32)	1,069,700	967,600	795,700
Amount remaining:			
Over budget resolution		12,412	
Under budget resolution	16,676		17,231

[1] Interfund transactions do not add to budget totals.

Note.—Numbers may not add due to rounding.

FISCAL YEAR 1987 SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONG. 2D SESS. AS OF SEPT. 26, 1986

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			843,799
Permanent appropriations and trust funds	733,558	647,692	
Other appropriations		195,861	
Offsetting receipts	−165,990	−165,990	
Total enacted in previous sessions	567,568	677,563	843,799
II. Enacted this session:			
Federal Employees Benefits Improvement Act of 1986 (P.L. 99–251)		2	
Technical Corrections Amends to Food Security Act (P.L. 99–253)	50	450	
VA Home Loan Guarantee Amendments (P.L. 99–255)		49	
Food Security Improvements Act of 1986 (P.L. 99–260)	−115	−115	
White Earth Reservation Land Settlement Act of 1985 (P.L. 99–264)	10	10	
Consolidated Omnibus Budget Reconciliation Act of 1986 (P.L. 99–272)	155	−3,553	2,503
FHA and GNMA Credit Commitment Assistance Act (P.L. 99–289)		−178	
Federal Employees' Retirement System Act of 1986 (P.L. 99–335)	−150	−1,670	−666
Judicial Improvements Act (P.L. 99–336)	2		
Temporary Extension of Certain Housing Programs (P.L. 99–345)		85	
Military Retirement Reform Act (P.L. 99–348)	−47	146	
Urgent Supplemental Appropriations, 1986 (P.L. 99–349)	−278	−914	
Panama Canal Commission Authorizing Act (P.L. 99–368)		2	
Omnibus Diplomatic Security and Anti-terrorism Attack Act (P.L. 99–399)	1	1	
Children's Justice and Assistance act (P.L. 99–401)	10		
Total enacted this session	−362	−6,254	1,837
III. Continuing resolution authority			
IV. Conference agreements ratified by both Houses:			
Socorro County Land Conveyance (S. 1963)	−1	−1	

FISCAL YEAR 1987 SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONG. 2D SESS. AS OF SEPT. 26, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Tax Reform Act (H.R. 3838)	65	65	11,462
Higher Education Amendments of 1986 (S. 1965)		−579	
Total conference agreements	64	−515	11,462
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Payment to the CIA retirement fund	126	126	
Claims, defense	156	150	
Payment to the foreign service retirement trust fund [1]	(173)	(173)	
Range improvements	10	7	
BLM: Miscellaneous trust fund	(2)	(2)	
Compact of free association	42	42	
Administration of territories	35	30	
Payments to air carriers, DOT	32	30	
Retired pay—Coast Guard	370	341	
Maritime, operating-differential subsidies		297	
BIA: Miscellaneous trust funds	1	1	
Social services block grant	2,700	2,538	
Family social services	758	584	
Guaranteed student loans	3,219	2,580	
Guaranteed student loans (S. 1965)	−75	−65	
Higher education facilities loans and insurance	19		
Government payments for annuitants	1,459	1,301	
Retirement pay for PHS officers	83	81	
Medicaid	19,595	19,241	
Medical facilities guarantee and loan fund	20	19	
Payments to health care trust funds [1]	(20,826)	(20,826)	
Special milk program	16	11	
Child nutrition programs	4,212	3,791	
Federal unemployment benefits and allowances	103	102	
Advances to unemployment trust fund [1]	(9)	(9)	
Special benefits (general retirement and federal employee retirement)	257	257	
Black lung disability trust fund	549	549	
Supplemental security income	7,846	7,846	
Special benefits for disabled coal miners	698	638	
Assistance payments	7,350	7,350	
Child support enforcement	599	583	
Payments to social security trust funds [1]	(501)	(501)	
Veterans insurance and indemnities	5	4	
Veterans readjustment benefits	750	723	
Veterans compensation	10,300	9,360	
Veterans pensions	3,684	3,385	
Veterans burial benefits	138	138	
Salaries of judges	104	103	
Fees and expenses of witnesses	46	37	
Compensation of the President	(2)	(2)	
Payment to civil service retirement trust fund [1]	(4,557)	(4,557)	
National wildlife refuge fund	6	6	
Military pay raises and benefits	1,566	1,539	
Total entitlements	66,780	63,728	
Total current level as of Sept. 26, 1986	634,050	734,521	857,098
1987 budget resolution (S. Con. Res. 120).	1,093,350	995,000	852,400
Amount remaining:			
Over budget resolution			4,698

FISCAL YEAR 1987 SUPPORTING DETAIL FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONG. 2D SESS. AS OF SEPT. 26, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
Under budget resolution	459,300	260,479	....

[1] Interfund transactions do not add to budget totals.

[2] Less than $500 thousand.

Note:—Numbers may not add due to rounding.●

ON S. 1004, THE URANIUM REVITALIZATION AND TAILINGS RECLAMATION ACT OF 1986

● **Mr. WALLOP.** Mr. President, I stand in support of S. 1004, the Uranium Revitalization and Tailings Reclamation Act of 1986. This bill will reestablish a viable domestic uranium industry, ensure a long-term supply of domestic uranium and enrichment capacity for this country's Nuclear Power Program and establish a program to finance reclamation and remedial action at active uranium sites. S. 1004 will approve the Energy Department's utility services enrichment contracts and thereby recognize that these contracts reflect relevant criteria for providing the enrichment services. It provides that the enrichment program's unrecovered costs incurred by DOE in providing services to commercial customers are established at $350 million. This bill also requires the President to submit to Congress within 1 year a report on alternative means of managing the enrichment enterprise. This bill is supported by the Uranium Producers of America, the Oil Chemical and Atomic Workers, the Edison Electric Institute, the American Mining Congress, and the Western uranium producing States.

The domestic uranium industry is a vital factor to the U.S. energy independence and for energy security and national security reasons this country must permit this energy source slip away. This industry has been devastated by a variety of economic factors, policies of foreign governments, foreign export penalties, Federal regulatory requirements, cancellation of nuclear powerplants and Government uranium enrichment policies.

Under section 161v of the Atomic Energy Act, the Energy Department must maintain a viable domestic uranium industry. Section 161v specifically states "That the Commission, to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States." In September 1985, Energy Secretary Herrington declared the domestic uranium industry nonviable. Yet after years of prodding by Senator DOMENICI, myself and Senator SIMPSON, the Energy Department has not taken any positive steps to assist the uranium industry to return to a viable status. S. 1004, of which I am a cosponsor will permit the domestic uranium industry to survive the difficult times it is facing today.

My State of Wyoming has been hard hit by mine closings and layoffs, as have the States of New Mexico, Colorado, Texas, and Washington. This comprehensive bill addresses the deep problems facing Wyoming's uranium industry and will go far toward getting Wyoming miners back to work. I urge passage of the bill and encourage the House of Representatives to act speedily on this legislation.

WELCOME TO DR. JOHN H. ALEXANDER OF SUN CITY

● **Mr. GOLDWATER.** Mr. President, I join my distinguished colleague, Senator KASTEN of Wisconsin, in welcoming Dr. John Alexander, who was the Senate's guest chaplain last week.

Dr. Alexander is a respected religious leader in Sun City, AZ, one of the finest retirement communities in the United States. He came to Sun City with his wife, Donna, in 1976 to found the first traditional Congregational Church in Arizona.

The success of the Congressional Church of Sun City, which just celebrated its 10th anniversary, is a tribute to Dr. Alexander's distinguished ministry. The first meeting of 12 individuals who were to become the core of the church was held on April 15, 1976, in the living room of the Alexander's home. Today, more than 300 members worship in the beautiful sanctuary of the spacious church building they dedicated in 1982.

In 1985, the church members honored their pastor, whom they affectionally call "Dr. John" and his wife by dedicating the church's new fellowship hall "Alexander Hall."

Mr. President, in the church pamphlet welcoming newcomers to Sun City, Dr. Alexander describes the religious philosophy of the Congregational faith:

> We hold to the freedom of each individual's conscience and to the right of private judgment in applying the principles found in the life and teachings of Jesus Christ to one's own life.
>
> Our purpose is to provide a fellowship of friendship and service in which each person can realize fullness of life under the inspiration of God's Holy Spirit.
>
> We are a covenant not a creedal church. This means that we respect each person's right to differ in interpretation as long as a spirit of Christian friendship prevails.

Dr. Alexander has infused that spirit of Christian friendship in many ways during his service in Arizona. He is a past president of the Sun City Ministerial Alliance and a past chairman of the board of directors of Cook Christian Training School in Tempe. The Cook School is a postsecondary theological training institution serving Indian youth from throughout the United States.

Dr. Alexander's work with the Cook School is an example of his lifelong commitment to Christian mission work. Throughout his dedicated years of leadership to the National Association of Congregational Christian Churches, he has been involved in the association's 25 foreign and 18 North American missions, all of which are supported by the voluntary contributions of NA member churches.

Most recently, Dr. Alexander counseled a group of Congregationalists in Chandler, AZ, as they formed a new church, continuing a calling he has followed since his ordination in 1948—to encourage personal freedom and fellowship in the expression of religious faith.

And, the Alexanders have been involved in Sun City community service organizations. Dr. Alexander is a member of Rotary and the Masons. Mrs. Alexander is a member of Rotary Anns, and PEO. Both are members of Republican Forum West.

Mr. President, as I near my own retirement from the life of civic service I have enjoyed for more than 30 years, I extend my personal congratulations to Dr. Alexander for the spiritual leadership he has given his congregations, the educational leadership he has given throughout the years to Christian youth organizations, and the intellectual leadership he has given to the Congregational denomination in its struggle to remain a free fellowship of Christian churches.

His ministry, especially over the past decade to the older citizens of Sun City, has been a source of strength and comfort to all whose lives he has touched.

I join their many friends in Sun City, in Arizona, and in the many other churches and States they have served, in wishing Dr. and Mrs. Alexander many more bountiful and happy years together.

Mr. President, I ask that an article on Dr. and Mrs. Alexander published in the Sun City News Sun following their participation in an international Congregational fellowship meeting in London in 1977 be included in the RECORD following my remarks.

The article follows:

CONFERENCE

(By Lynn Pyne)

As co-chairman of the first International Congregational Fellowship, Rev. John Alexander of Congregational Church of Sun City delivered the opening sermon in London.

Hundreds of people listened to his talk in Penge Congregational Church July 10, and thousands more tuned in to the sermon over BBC radio.

Dr. Alexander and his wife Donna participated in the assembly July 10-16 with about 400 registered delegates, 300 of whom were Americans who paid their own way to England.

Dr. Alexander was one of the organizers of the assembly and for many reasons believes it was crucial to the Congregationalist members to commune with one another now.

But to fully understand, one must look back to the Congregationalist roots in England centuries ago.

Religious dissent in the Church of England produced two groups, the Puritans and the Separatists, he said. The Puritans wanted to purify the church but stay within it. The Separatists met in homes outside of the church and had their own worship and read the Bible themselves.

They were scattered around, with many in the town of Scrooby. (On Dr. Alexander's trip, he saw the home of one of Scrooby's Separatist leaders, postmaster William Brewster and the assembly presented a plaque.)

The Separatists fled from persecution to Holland in 1609. In 1620, under the leadership of William Bradford, they immigrated to America as the Pilgrim Fathers.

"Congregationalists in America trace their heritage to the Pilgrims in 1620," Dr. Alexander said. "Congregationalists in England trace theirs to the Separatists."

He said, "They adopted free religious experience because they didn't feel their minds should be bound by kings or bishops. They wanted to build a democratic society in the state and the church."

Believing from the start in an educated laity, the Congregationalists established the first Sunday schools, public schools, and college (Harvard and Dartmouth among them) in this country.

"Education is the basis for religious as well as political and social activities," Dr. Alexander said. "Weakness comes into society and religious life when a large segment of the population of these religious bodies evidences lack of education."

Because of the educational emphasis in the church's beginnings and history, Congregationalist thought tends to be less emotional in its religious approach, he said.

"Ours is not a creedal church. Congregationalists allow each individual to interpret the teachings of Jesus and adapt them to everyday life with a wide degree of personal freedom. We set few boundaries on a person's beliefs or actions."

Another characteristic of Congregationalism is its independence. Local churches are independent and work together voluntarily. They believe in cooperation, rather than merger.

"When churches get over-organized they become business instruments, rather than spiritual communities of committed Christians," he said.

"There are exceptions, but generally you find that the bigger a church gets, the less important the individual is. We want an environment in which people can live and be fulfilled in their relationships with God and with other people."

From 1825 up until World War II, the Congregational church was very active in overseas missions. There are Congregationalists in Hong Kong, Taiwan, Africa, Greece, and other countries and it is difficult to determine how many, Dr. Alexander said.

Much of the uncertainty is because of recent-mergers of groups of Congregationalists with other religious groups, he said.

In the United States in 1959, about nine-tenths of the Congregationalists merged with the United Church of Christ. The rest stayed with the National Association of Congregational Christian churches, a voluntary organization without authority founded in 1955.

This move toward merger has been echoed in many countries, including England in 1971. With the mergers, the International Congregational Council disappeared in 1964 and independent Congregationalists no longer had a method of bringing church members together from around the world, he said.

Dr. Alexander and about two dozen other Congregationalists met in England a few years ago and decided to call an international meeting. They had three main reasons:

The first was "to demonstrate to the Christian church community and to the world that the Congregational way still exists in the hearts and lives of many people throughout the world," he said.

Secondly, such a gathering would provide a sense of oneness and stability to many Congregationalists who live almost in isolation or in very small groups throughout the world.

"The third reason was to give human demonstration of the vitality of voluntary fellowship in the name of Jesus Christ," he said. "We were there because we wanted to come. A real sense of community and spirit developed and was expressed."

Dr. Alexander, who founded the church here after spending nine years as an executive of the National Association of Congregational Christian Churches, helped to plan the program. Logistics mainly were left to the English co-chairman.

Dr. Alexander was one of the ministers to serve Holy Communion in Westminster Abbey, the first time in more than 250 years that this has been permitted to worshipers who aren't members of the Church of England.

He spoke in the closing program before about 1,500 people from throughout England. The specially-written program for this rally service was designed to cover a wide range of theological viewpoints.

Besides business sessions, reports from various countries, tours, and addresses, the fellowship included workshops on such things as "Christian Missions," "Youth Work in the Churches," and "Theological Education."

Mrs. Alexander was a resource leader for the "Personal Devotional Life" workshop.

After the assembly ended, the Alexanders headed for a 350-year-old cottage in Devon and relaxed for six days.

Dr. Alexander preached at the Victoria Congregational Church in Blackpool July 24. Then on July 28 the American Congregationalists reconvened in Leiden, Holland, for a worship service in the Peiterskirk, a church located in the community where the Separatists lived from 1609-1620.

That service commemorated the Pilgrim Fathers and concluded the overseas odyssey to the international fellowship. Mrs. Alexander read a poem that had been written by one of the British ministers during the England meetings.

In the final statement adopted by the London assembly, the participants said, "We believe that Congregationalism, once more gathered by God's grace in reasonable strength, is entering a new day after a long night of darkness and division."

Dr. Alexander and 16 other leaders were elected by the Fellowship as an executive committee. They agreed to meet in the spring of 1979 to plan the next assembly, set for four years from now.

The fellowship was intended to "give a sense of oneness, to review for ourselves where our position is in the universal church, and to lay a foundation where we can work together in creatively witnessing to the Christian Gospel according to the Congregational ways.

"I would say we accomplished that."●

NAUM AND INNA MEIMAN: DEATH BY POLITICS

● Mr. SIMON. Mr. President, Nicholas Daniloff, the American journalist unjustly accused of espionage in the Soviet Union, landed, a free man, in West Germany today. I am happy for Mr. Daniloff and his family and welcome this action by the Soviets.

Unfortunately, there are still people in the Soviet Union who are being held against their will. My two good friends, Naum and Inna Meiman, have been attempting to emigrate to the West for more than a decade.

After removing four malignant tumors from Inna's spine, the Soviet doctors foresee no future treatment for Inna's fifth and most recent tumor. Although experimental treatment is available for Inna here in the West, the Soviets refuse her permission to leave. The Meimans should not have to suffer because of politics. This is a minor request, but one which would save an innocent human life.

I strongly urge the Soviet Union to allow Naum and Inna Meiman to emigrate to Israel.●

TRADE ADJUSTMENT ASSISTANCE FOR UNEMPLOYED OIL AND GAS WORKERS

● Mr. JOHNSTON. Last Friday, the distinguished Senator from Pennsylvania [Mr. HEINZ] offered an amendment to H.R. 5548, the Export-Import Bank Act amendments which included the language of an earlier amendment that I had offered to H.R. 4510, the predecessor of H.R. 5548. Specifically, the language of my amendment would extend trade adjustment assistance benefits to unemployed oil and gas workers. I want to thank the Senator from Pennsylvania for including this language in his amendment.

Mr. HEINZ. I want to assure my colleague from Louisiana that I was pleased to include the language of his trade adjustment assistance amendment in the amendment I offered to H.R. 5548. As we all know, the Senator from Louisiana has diligently sought to extend trade adjustment assistance benefits to unemployed oil and gas workers; and in fact, his amendment to H.R. 4510 represented the fourth time he has initiated full Senate debate of this matter. I hope the

House will agree to accept the Senator's amendment as it is incorporated in H.R. 5548.

I also want to note the tireless efforts of the Senator from Oklahoma [Mr. NICKLES] to see that legislation of this kind is adopted. He strongly supported this amendment each time that it has been offered to this bill.●

JENIFER ENDS DISTINGUISHED CAREER AS NEW JERSEY'S VICE CHANCELLOR OF HIGHER EDUCATION

● **Mr. LAUTENBERG.** Mr. President, I rise today to pay tribute to an exceptional individual in my State, Mr. Franklyn G. Jenifer, who will soon be leaving his position as New Jersey's vice chancellor of higher education to assume the position of chancellor of the Massachusetts Board of Regents.

Dr. Jenifer has served as vice chancellor of New Jersey's State Department of Higher Education since 1979. During his tenure in this position, Dr. Jenifer has served with distinction. Dr. Jenifer's academic career, which includes managing a 300-person office in the New Jersey education office and 2 years as associate provost at Rutgers University, has distinguished him as an extraordinary leader in the education community.

It is an honor and distinct pleasure to extend a heartfelt thanks to Dr. Jenifer for his commitment to helping others and furthering the goals of providing a quality education to all citizens.●

PROTECTION OF BIOLOGICAL DIVERSITY IN DEVELOPING COUNTRIES

Mr. DOLE. Mr. President, I ask unanimous consent the Senate now turn to the consideration of Calendar No. 974, H.R. 2958, dealing with protection of biological diversity in developing countries.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2958) to amend the Foreign Assistance Act of 1971 to protect biological diversity in developing countries.

The Senate proceeded to consider the bill which had been reported from the Committee on Foreign Relations, with an amendment to strike out all after the enacting clause, and insert the following:

That section 119 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151g) is amended by striking out subsections (c) and (d) and inserting in lieu thereof the following:

"(c) Of the funds available to carry out this part (excluding funds made available to carry out section 104(c)(2), relating to the Child Survival Fund)—

"(1) for the fiscal year 1987, not less than $2,500,000,

"(2) for the fiscal year 1988, not less than $5,000,000, and

"(3) for the fiscal year 1989, not less than $10,000,000, shall be allocated for assistance pursuant to subsection (b) for activities which were not funded prior to fiscal year 1987. In addition, the Agency for International Development shall, to the fullest extent possible, continue and increase assistance pursuant to subsection (b) for activities for which assistance was provided in fiscal years prior to fiscal year 1987.

"(d) Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to conserve biological diversity, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(e) To the fullest extent possible, projects supported under this section shall include close consultation with and involvement of local people at all stages of design and implementation.

"(f) Whenever feasible, the objectives of this section shall be accomplished through projects managed by appropriate private and voluntary organizations, or international, regional, or national nongovernmental organizations, which are active in the region or country where the project is located.

"(g) The Administrator of the Agency for International Development shall—

"(1) cooperate with appropriate international organizations, both governmental and nongovernmental;

"(2) look to the World Conservation Strategy as an overall guide for actions to conserve biological diversity;

"(3) engage in dialogues and exchanges of information with recipient countries which stress the importance of conserving biological for the long-term economic benefit of those countries and which identify and focus on policies of those countries which directly or indirectly contribute to loss of biological diversity;

"(4) support training and education efforts which improve the capacity of recipient countries to prevent loss of biological diversity;

"(5) whenever possible, enter into long-term agreements in which the recipient country agrees to protect ecosystems or other wildlife habitats recommended for protection by relevant governmental or nongovernmental organizations or as a result of activities undertaken pursuant to paragraph (6), and the United States agrees to provide additional assistance necessary for the establishment and maintenance of such protected areas;

"(6) support, as necessary and in cooperation with the appropriate governmental and nongovernmental organizations, efforts to identify and survey ecosystems in receipient countries worthy of protection;

"(7) cooperate with and support the relevant efforts of other agencies of the United States Government, including the United States Fish and Wildlife Service, the National Park Service, the Forest Service, and the Peace Corps;

"(8) review the Agency's environmental regulations and revise them as necessary to ensure that ongoing and proposed actions by the Agency do not inadvertently endanger wildlife species or their critical habitats, harm protected areas, or have other adverse impacts on biological diversity (and shall report to the Congress within a year after the date of enactment of this paragraph on the actions taken pursuant to this paragraph);

"(9) ensure that environmental profiles sponsored by the Agency include information needed for conservation of biological diversity; and

"(10) deny any direct or indirect assistance under this chapter for actions which significantly degrade national parks or similar protected areas or introduce exotic plants or animals into such areas.

AMENDMENT NO. 3088

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senator Lugar to the committee substitute.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. LUGAR, proposes an amendment numbered 3088:

On page 7, line 24, after the word provide insert the following: ", subject to obtaining the necessary appropriations,".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3088) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

Mr. LUGAR. Mr. President, I would like to bring before the Senate a bill which amends the Foreign Assistance Act to assure that our economic foreign assistance programs more effectively address an important international environmental issue, biological diversity.

H.R. 2958 would revise policy in relation to the conservation of biological diversity and would require minimum funding levels for activities implementing this policy.

Mr. President, the issue of conservation of biological diversity is a critical issue, not only for the developing world but for the United States as well. Tropical forests are a major world resource but the importance of forests and tree cover is often ignored. Tropical deforestation has produced an alarming rate of loss of habitat and a resultant loss of species. According to some estimates, 20 percent of all species could be lost in the next century.

This loss has both environmental and economic consequences. The loss of species can alter animal and plant population patterns and thus disrupt natural ecosystems. The loss of forest cover affects watersheds, can cause serious erosion problems and, on a large scale, can alter the climate. Deforestation is the major cause of desertification.

Modern agriculture and the pharmaceutical industry are highly dependent on plants and animals to develop new hybrids and new drugs. Extinctions represent a potentially serious loss of genetic and biological resources.

Recognizing this problem, Mr. President, the Congress in 1983 enacted the International Environmental Protection Act. That act, authored by my distinguished colleague on the Foreign Relations Committee, Senator PELL, created section 119 of the Foreign Assistance Act, entitled "Endangered Species." The bill which I bring before the Senate today builds on that accomplishment by substantially modifying and strengthening section 119, and also by creating a new section 118 which greatly enhances existing policy toward tropical deforestation.

Mr. President, this is a critical issue. The legislation before us substantially enhances the ability of our foreign assistance programs to address these issues in the developing world. I urge the adoption of this legislation by the Senate.

Mr. ROTH. Mr. President, I am pleased to have been the original sponsor of H.R. 2958. This legislation amends the Foreign Assistance Act of 1961 to protect biological diversity in developing countries. The critical international environmental problems that confront us today must be addressed and I am glad that the 99th Congress has taken the leadership and initiative to make these environmental issues an important objective of U.S. developmental assistance.

Mr. President, the complexity of our international environment has become one of the most difficult and stressful issues of our time. The most vivid example I can recall is the death and destruction we faced due to the 1982-83 El-Nino/Southern oscillations. These storms caused record damage along the U.S. west coast. In northern Peru and other South American countries, flood damage, from torrential rains was massive. In northwest Africa, the winter rains never came. The Ethiopian drought intensified and spread southward along the entire African Continent.

Mr. President, I raise this issue to illustrate an important point. The weather patterns caused by the 1982-83 "El-Nino" had significant adverse effects on our world environment. Similarly, the occupation, development, and misuse of tropical forests affect hundreds of millions of people through increased flooding, soil erosion, silting of waterways, and shortages of firewood and timber. Forest loss may alter regional and even global climate. Our responsible action today will incorporate protective measures into foreign development assistance, it designs new projects and programs, and ensures that ongoing activities do not destroy these critical resources.

Although tropical forests now cover only 8 percent of the Earth's land surfaces, they contain at least two-fifths of the Earth's plant and animal species and are an important source of raw materials for agriculture, industry, commerce, and medicine. They have supplied the origins of rice, millet, yams, bananas, pineapple, sugarcane, and many more await investigation. The wild relatives of modern food crops provide genetic resources to increase productivity, nutritive content, to resist new diseases, pests, and environmental stresses.

The United States shares with South and Central America and the Caribbean area hundreds of species of migratory animals, whose survival depends to varying degrees on tropical forests.

Many U.S. public institutions have statutory and policy responsibilities to protect and manage wisely the environment and natural resources of our Nation. The wise management and use of our biological resources is of continual interest to the Congress in its oversight and authorization responsibilities. Various bills have been enacted to express congressional concern over the diminishing biological resource base.

Mr. President, we must all work to stop the loss of these irreplaceable systems and ensure a progressive and sustainable future. The bill we are passing today builds upon what Congress has already done, to maintain biological diversity, while helping developing nations resolve their economic problems.

Mr. EVANS. Mr. President, I rise in support of H.R. 2958, to protect biological diversity in developing countries. I strongly urge my colleagues to join me in supporting this bill dealing with an important environmental issue of global consequence. I was pleased to chair the hearings on this bill when it came before the Foreign Relations Committee.

Tropical forests are a major world resource and the importance of forests and tree cover to developing countries is often ignored. Tropical deforestation is not a new problem, in fact loss of forest resources were reported as early as 450 B.C. in Africa. Yet the present rate of destruction and degradation of tropical forests makes this a real and significant global problem. Experts estimate that every year approximately 11.3 million hectares of the Earth's remaining tropical forests—or an area the size of Pennsylvania—are cleared and converted to other uses. This estimate does not include those forests subject to severe degradation that significantly lowers the production potential of these forest resources.

The combined pressures of population, poverty, and the desire for short-term economic development are the main cause of tropical deforestation and degradation. Yet, the loss of forest cover often perpetuates poverty and hinders development efforts. Deforestation affects watersheds and the rivers they feed, can cause serious erosion and, on a large scale, can alter the climate. Deforestation is also the principal cause of desertification.

A related measure, H.R. 2957, directs the Agency for International Development to place a high priority on the conservation and sustainable management of tropical forests and to increase assistance to developing countries regarding these resources. It also directs AID not to support certain types of activities that destroy or degrade forest resources, unless strict criteria are met.

During consideration in the Foreign Relations Committee, I offered, for myself and Senators LUGAR and PELL, an amendment in the form of a substitute for H.R. 2958, to protect biological diversity in developing countries. This substitute is before us now.

A rich diversity of plants and animals is essential for a healthy, productive ecosystem. Tropical forests are great natural reservoirs of biological diversity. These forests are thought to contain two-thirds of the world's plant and animal species, many of which have not been identified or cataloged. Many tropical species are commercially important in agriculture, medicine and trade, and we cannot afford to underestimate the economic value of this genetic material. Wild plants are frequently interbred with domestic crops to strengthen them against diseases and predators. Some experts contend that upward of 10 percent of plant species could contain anticancer properties; sadly, research in this area has been terribly limited.

Unfortunately, if current trends continue, it is estimated that at least one-fifth of the species now on Earth will be extinct in 20 years. Other estimates predict that 20 percent of all species could be lost in the next century. The accelerating rate of loss of species is of particular concern, especially in tropical environments where species-rich forests are rapidly disappearing.

Mr. President, these are critical issues—not only for developing countries but for our country as well. The extinction of species and their replacement by others is part of the evolutionary dynamic. But the balance between loss and replacement seems to have changed. The present rate of destruction and degradation of tropical forests and estimated extinction rates clearly indicate that human activity is causing a fundamental change in the Earth's biota and its capacity to respond to change. We must act to restore that balance and I believe the bill is a good first step toward that end. I urge my colleagues to support this bill.

Mr. CHAFEE. Mr. President, today we are considering a bill reflecting the fact that environmental protection is an international issue, H.R. 2958. In October 1985, Senators ROTH, PELL, CRANSTON, STAFFORD, and I introduced the Senate version of this bill, S. 1748. Approval of this bill by the Senate is an important event that should not be overlooked in our rush toward adjournment.

The failure to preserve biological diversity in countries around the world can have profound effects in this country. As a world leader in the area of environmental protection and as a country with an immediate and real stake in such protection and preservation, it is a responsibility of the United States to help protect our global environment.

This bill would require additional U.S. actions to prevent extinction of animal and plant species in developing nations.

Tropical deforestation in developing nations is a result of rapid population growth and development pressures. Recent studies have taught us that an area the size of Pennsylvania is being deforested every year. Only in relatively recent years have researchers learned more about the environmental effects of deforestation.

Clearing of rain forests increases the carbon dioxide in the atmosphere; the carbon dioxide absorbs solar radiation and leads to climatic warming, this is known as greenhouse effect.

Tropical deforestation is expected to combine with fossil fuel burning to cause temperatures around the world to increase beginning in the 1990's. Thermal expansion of the oceans and some melting of the polar icecaps may occur, resulting in a rise in the sea level.

Tropical deforestation also is thought to change global rainfall as bare soil reflects increased solar radiation and air circulation is altered.

Population pressures are leading to attempts to turn tropical forests into farmland. There is also a problem called by some the hamburger connection, the conversion of tropical forests to grazing land to produce beef, which is primarily for U.S. fast-food restaurants.

Rain-forest soils are poor; most of the nutrients are in the foliage. After the nutrients from the burnt trees have washed away, silting rivers, crops fail, and pasturelands must be abandoned.

Though tropical forests cover only about 6 percent of the Earth's land surface, they are thought to contain more than 40 percent of its plant and animal species. It is believed that as forests are cut down species that have not yet been identified are becoming extinct. It has been estimated that by the year 2000 up to 2 million species may be extinct.

This bill will strengthen existing provisions of the Foreign Assistance Act. It builds upon what Congress has already done to establish as priorities the preservation of tropical forests and biological diversity while helping developing nations to resolve their economic problems. The bill calls on the administration to accelerate efforts to incorporate protective measures into foreign development assistance, design new projects and programs, and to ensure that ongoing activities do not destroy these critical resources.

Mr. President, this is an important bill. It is supported by numerous groups including the Natural Resources Defense Council, World Wildlife Fund-U.S., National Audubon Society, National Wildlife Federation, Sierra Club, and Environmental Policy Institute. Senator ROTH, members of the Foreign Relations Committee, including the distinguished chairman, Senator LUGAR, Senators EVANS and PELL, and our colleagues in the House should all be congratulated for their efforts and for presenting us with the opportunity to enact this legislation.

The PRESIDING OFFICER. The question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

Mr. DOLE. I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay on the table the motion to reconsider.

The motion to lay on the table was agreed to.

JOB TRAINING PARTNERSHIP AMENDMENTS

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 2069.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2069) entitled "An Act to amend the Job Training Partnership Act", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "Job Training Partnership Amendments of 1986".

(b) REFERENCES.—References in this Act to "the Act" are references to the Job Training Partnership Act.

SEC. 2. DEFINITION OF ECONOMICALLY DISADVANTAGED.

Section 4(8)(B) of the Act is amended by striking out "six-month period" and inserting in lieu thereof "12-month period".

SEC. 3. DESIGNATION OF SERVICE DELIVERY AREAS BASED ON LABOR MARKET AREAS.

Section 101(a)(4)(A)(ii) of the Act is amended by striking out "a labor market area" and inserting in lieu thereof "one or more labor market areas."

SEC. 4. LITERACY AND DROPOUT PREVENTION PROGRAMS.

Section 123 of the Act is amended—

(1) in subsection (a)—

(A) by striking out "and" at the end of paragraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(C) by inserting at the end of such subsection the following new paragraph:

"(3) to provide, in accordance with agreements under subsection (a)—

"(A) literacy training to youth and adults;

"(B) dropout prevention and reenrollment services to youth, giving priority to youth who are at risk of becoming dropouts;

"(C) a State-wide school-to-work transition program operated in a manner consistent with section 205(e); or

"(D) any combination of the activities described in subparagraphs (A), (B), and (C) of this paragraph."; and

(2) in subsection (c)—

(A) by striking out the first sentence of paragraph (2)(B) and inserting in lieu thereof the following: "At least 80 percent of the funds available under this section shall be used for clauses (1) and (3) of subsection (a) for the Federal share of the cost of carrying out activities described in such clauses, and at least 40 percent of the funds available under this subparagraph shall be used for clause (3) for the Federal share of the cost of carrying out activities described in such clause."; and

(B) by striking out "clause (1)" in paragraph (3) and inserting in lieu thereof "clauses (1) and (3)".

SEC. 5. INTRASTATE HOLD HARMLESS ALLOCATION REQUIREMENTS.

(a) Section 202(a) of the Act is amended—

(1) in paragraph (2), by striking out "Of" and inserting in lieu thereof "Subject to the provisions of paragraph (3), of";

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) For fiscal years beginning after September 30, 1986, no service delivery area within any State shall be allocated an amount equal to less than 90 percent of its allocation percentage for the fiscal year preceding the fiscal year for which the determination is made. The allocation percentage for a service delivery is the percentage which the service delivery area received of the total amount allocated pursuant to this subsection to all service delivery areas in all the States for such preceding fiscal year. If the amounts appropriated pursuant to section 3(a) and (b) are not sufficient to provide an amount equal to at least 90 percent of such allocation percentages to each such area, the amounts allocated to each area shall be ratably reduced.".

(b) Section 251(b) of the Act is amended by striking out "section 202(a) (2) and (3)" and inserting in lieu thereof "section 202(a) (2), (3), and (4)".

SEC. 6. USE OF FUNDS TO SUPPORT SUMMER YOUTH PROGRAMS.

Section 203(b)(2) of the Act is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end thereof the following new subparagraph:

"(B) A service delivery area may use funds provided under this part to provide or support remedial education under part B of this title during the interval between participants' regular school years, if the service delivery area sets forth in its plan a description of the methods by which the services, facilities, or equipment provided or supported will be available for use by participants under this part and part B throughout the program year. Any funds made available under part B of this title that are used to provide or support such remedial education may be counted toward not more than one-fourth of the amount required (by paragraph (1)) to be expended under this part to provide authorized services to eligible youth.".

SEC. 7. USE OF INCENTIVE GRANT FUNDS.

Section 202(b)(3)(B) of the Act is amended—

(1) by striking out "which do not qualify for incentive grants under this subparagraph"; and

(2) by adding at the end thereof the following: "Funds available under this subparagraph may, without regard to section 108(a), be used by the Governor or a service delivery area during not more than five program years to develop and implement a data collection system to track the postprogram experience of participants under this part.".

SEC. 8. AVAILABILITY OF SUMMER YOUTH PROGRAMS DURING NONSUMMER MONTHS.

Section 253(a) of the Act is amended by inserting before the period at the end the following: ", except that a service delivery area may, within the jurisdiction of any local educational agency that operates its schools on a year-round, full-time basis, offer the programs under this part to participants during a vacation period treated as the equivalent of a summer vacation".

SEC. 9. PROHIBITION OF MATCHING ON GRANTS FROM SECRETARY'S DISCRETIONARY FUNDS UNDER TITLE III

Section 301(c) of the Act is amended by adding at the end thereof the following new sentence: "Such criteria shall not include any requirement that, in order to receive assistance under this subsection, the State shall provide a matching amount with funds available from one or more other sources.".

SEC. 10. IDENTIFICATION OF DISLOCATED WORKERS.

Section 302(a) of the Act is amended—

(1) by striking out "or" at the end of clause (2);

(2) by striking out the period at the end of clause (3) and inserting in lieu thereof a semicolon and the word "or"; and

(3) by inserting at the end thereof the following:

"(4) were self-employed (including farmers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disaster, subject to the next sentence.

The Secretary shall establish categories of self-employed individuals and of economic conditions and natural disasters to which clause (4) of the preceding sentence applies.".

SEC. 11. TAXATION OF JOB CORPS OPERATIONS PROHIBITED.

Section 437(c) of the Act is amended to read as follows:

"(c) Transactions conducted by a private for-profit contractor or a nonprofit contractor in connection with the contractor's operation of a Job Corps Center, program, or activity shall not be considered as generating gross receipts. Such contractors shall not be liable, directly or indirectly, to any State or subdivision thereof (nor to any person acting on behalf thereof) for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes imposed on, or measured by, gross receipts in connection with any payments made to or by such contractor for operating a Job Corps Center, program, or activity. Such contractors shall not be liable to any State or subdivision thereof to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such contractors of any property, service, or other item in connection with the operation of a Job Corps Center, program, or activity.".

SEC. 12. COOPERATIVE LABOR MARKET INFORMATION.

Section 462 of the Act is amended—

(1) by inserting before the period at the end of the first sentence in subsection (d)(1) the following: ", taking into account both urban and rural areas"; and

(2) by adding at the end thereof the following new subsection:

"(f)(1) The Secretary shall develop a means by which statistical data relating to permanent dislocation of farmers and ranchers due to farm and ranch failures can be collected and shall collect such data.

"(2) The Secretary shall publish a report based upon such data as soon as practicable after the end of each calendar year. Such report shall include a comparison of data contained therein with data currently used by the Bureau of Labor Statistics in determining the Nation's annual employment and unemployment rates and an analysis of whether farmers and ranchers are being adequately counted in such employment statistics.".

Amend the title so as to read: "An Act to make certain amendments to the Job Training Partnership Act.".

AMENDMENT NO. 3089

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendment with a further amendment which I send to the desk on behalf of Senator HATCH.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. HATCH, proposes an amendment numbered 3089.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

SHORT TITLE

SECTION 1. This act may be cited as the "Job Training Partnership Act Amendments of 1986".

DESIGNATION OF SERVICE DELIVERY AREAS BASED ON LABOR MARKET AREAS

SEC. 2. Section 101(a)(4)(A)(ii) of the Job Training Partnership Act (hereinafter in this Act referred to as the "Act") is amended by striking out "a labor market area" and inserting in lieu thereof "one or more labor market areas".

LITERACY AND DROPOUT PREVENTION PROGRAMS

SEC. 3. Section 123 of the Act is amended—

(1) in subsection (a)—

(A) by striking out "and" at the end of paragraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(C) by inserting at the end of such subsection the following new paragraph:

"(3) to provide—

"(A) literacy training to youth and adults;

"(B) dropout prevention and reenrollment services to youth, giving priority to youth who are at risk of becoming dropouts;

"(C) a State-wide school-to-work transition program operated in a manner consistent with section 205(e); or

"(D) any combination of the activities described in subparagraphs (A), (B), and (C) of this paragraph."; and

(2) in subsection (c)—

(A) by striking out the first sentence of paragraph (2)(B) and inserting in lieu thereof the following: "Funds available under this section shall be used for clause (3) for the Federal share of the cost of carrying out activities described in such clause."; and

(B) by striking out "clause (1)" in paragraph (3) and inserting in lieu thereof "clauses (1) and (3)".

PRESIDENTIAL AWARDS FOR OUTSTANDING PRIVATE SECTOR INVOLVEMENT IN JOB TRAINING PROGRAMS

SEC. 4. Part D of title I of the Act is amended by adding at the end thereof the following new section:

"PRESIDENTIAL AWARDS FOR OUTSTANDING PRIVATE SECTOR INVOLVEMENT IN JOB TRAINING PROGRAMS

"SEC. 172. (a)(1)(A) The President is authorized to make Presidential awards for outstanding achievement by the private sector in the job training partnership program authorized by this Act. The President is authorized to make such awards to individuals who, and organizations which, have demonstrated outstanding achievement in planning and administering job training partnership programs or in contributing to the success of the job training partnership program.

"(B) In making the awards pursuant to subparagraph (A) of this paragraph, the President shall consider the effectiveness of the program for which the award is made.

"(2) The President is authorized to make Presidential awards for model programs in the job training partnership program authorized by this Act which demonstrate effectiveness in addressing the job training needs of groups of individuals with multiple barriers to employment.

"(b)(1) Each year the President is authorized to make such awards under subsection (a) of this section as the President determines will carry out the objectives of this Act.

"(2) The President shall establish such selection procedures, after consultation with the Secretary and the Governors of the States, as may be necessary.".

INTRASTATE HOLD HARMLESS ALLOCATION REQUIREMENT

SEC. 5. (a) Section 202(a) of the Act is amended—

(1) in paragraph (2), by striking out "Of" and inserting in lieu thereof "Subject to the provisions of paragraph (3), of";

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) For fiscal years beginning after September 30, 1986, no service delivery area within any State shall be allocated an amount equal to less than 90 percent of the average of its allocation percentage for the two preceding fiscal years preceding the fiscal year for which the determination is made. The allocation percentage for a service delivery area is the percentage which the service delivery area received of the total amount allocated pursuant to this subsection to all service delivery areas within the State for each such preceding fiscal year. If the amounts appropriated pursuant to section 3(a) and (b) are not sufficient to provide an amount equal to at least 90 percent of such allocation percentages to each such area, the amounts allocated to each area shall be ratably reduced.".

(b) Section 251(b) of the Act is amended by striking out "section 202(a)(2) and (3)" and inserting in lieu thereof "section 202(a)(2), (3), and (4)".

USE OF INCENTIVE GRANT FUNDS

SEC. 6. Section 202(b)(3)(B) of the Act is amended—

(1) by striking out "which do not qualify for incentive grants under this subparagraph"; and

(2) by adding at the end thereof the following: "Funds available under this subparagraph may, without regard to section 108(a), be used by the Governor or a service delivery area during not more than two program years to develop and implement a data collection system to track the postprogram experience of participants under this part.".

SERVICES TO YOUTH

SEC. 7. Section 203(b)(1) of the Act is amended by adding at the end thereof the following new sentence: "For the purpose of the preceding sentence, the term 'eligible youth' includes individuals who are 14 and 15 years of age and enrolled in pre-employment skills training.".

SUMMER YOUTH EMPLOYMENT ASSESSMENT AND GOALS

SEC. 8. (a) Part B of title II of the Act is amended by—

(1) redesignating sections 251 through 254, an all references thereto, as sections 252 through 255, respectively; and

(2) inserting after the part heading the following new section:

"PURPOSE

"SEC. 251. The purpose of programs assisted under this part is to—

"(1) enhance the basic educational skills of youth;

"(2) encourage school completion, or enrollment in supplementary or alternative school programs; and

"(3) provide eligible youth with exposure to the world of work.".

(b) Section 253 of the Act (as redesignated by subsection (a)(1) of this section) is amended by—

(1) inserting "(a)" before "Funds"; and

(2) adding at the end thereof the following new subsection:

"(b) A service delivery area shall assess the reading and mathematics skill levels of eligible participants in programs funded by this part and shall expend funds (from this Act or otherwise available to the service delivery area, or both) for basic and remedial education as described in the job training plan under section 104.".

(c) Section 255 of the Act (as redesignated by subsection (a)(1) of this section) is amended by—

(1) inserting "(a)" before "Private"; and

(2) adding at the end thereof the following new subsection:

"(b) In accordance with the provisions of subsection (a), each service delivery area shall establish written program goals and objectives which shall be used for evaluating the effectiveness of programs conducted under this part. Such goals and objectives may include—

"(1) improvement in school retention and completion;

"(2) improvement in academic performance, including mathematics and reading comprehension;

"(3) improvement in employability skills; and

"(4) demonstrated coordination with other community service organizations such as local educational agenices, law enforcement agencies, and drug and alcohol prevention and treatment programs.".

(d) The table of contents of the Act relating to part B of title II is amended to read as follows:

"PART B—SUMMER YOUTH EMPLOYMENT AND TRAINING PROGRAMS

"Sec. 251. Purposes.

"Sec. 252. Authorization of appropriations; allotment and allocation.

"Sec. 253. Use of funds.

"Sec. 254. Limitations.

"Sec. 255. Applicable provisions.".

AVAILABILITY OF SUMMER YOUTH PROGRAMS DURING NONSUMMER MONTHS

SEC. 9. Section 254(a) of the Act (as redesignated by section 8(a)(1) of this Act) is amended by inserting before the period at the end thereof the following: ", except that a service delivery area may, within the jurisdiction of any local educational agency that operates its schools on a year-round, full-time basis, offer the programs under this part to participants during the vacation period treated as the equivalent of a summer vacation".

PROHIBITION OF MATCHING ON GRANTS FROM SECRETARY'S DISCRETIONARY FUNDS UNDER TITLE III

SEC. 10. Section 301(c) of the Act is amended by adding at the end thereof the following new sentence: "Such criteria shall not include any requirement that, in order to receive assistance under this subsection, the State will provide a matching amount with funds available from one or more other sources.".

IDENTIFICATION OF DISLOCATED WORKERS

SEC. 11. (a) Section 302(a) of the Act is amended—

(1) by striking out "or" at the end of clause (2);

(2) by striking out the period at the end of clause (3) and inserting in lieu thereof a semicolon and the word "or"; and

(3) by inserting at the end thereof the following:

"(4) were self-employed (including farmers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters subject to the next sentence.

The Secretary shall establish categories of self-employed individuals and of economic conditions and natural disasters to which clause (4) of the preceding sentence applies.".

(b) Section 302(c) of the Act is amended by adding at the end thereof the following new paragraph:

"(3) A State may serve any eligible individual under this part without regard to the residence of such individual.".

TAXATION OF JOB CORPS OPERATIONS PROHIBITED

SEC. 12. Section 437(c) of the Act is amended to read as follows:

"(c) Transactions conducted by a private for-profit contractor or a nonprofit contractor in connection with the contractor's operation of a Job Corps Center, program, or activity shall not be considered as generating gross receipts. Such contractors shall not be liable, directly or indirectly, to any State or subdivision thereof (nor to any person acting on behalf thereof) for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes imposed on, or measured by, gross receipts in connection with any payments made to or by such contractor for operating a Job Corps Center, program, or activity. Such contractors shall not be liable to any State or subdivision thereof to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such contractors of any property, service, or other item in connection with the operation of a Job Corps Center, program, or activity.".

ADDITIONAL EXPERIMENTAL AND DEVELOPMENTAL PROJECTS AUTHORIZED

SEC. 13. Section 453(a) of the Act is amended—

(1) by inserting "(1)" after the subsection designation, and

(2) by adding at the end thereof the following new paragraph:

"(2) From funds made available under this part, the Secretary may provide financial assistance for pilot projects for the training of individuals who are threatened with loss of their jobs due to technological changes, international economic policies or, general economic conditions.".

PROJECTS FOR SPECIAL POPULATIONS

SEC. 14. (a) Part D of title IV of the Act is amended by adding at the end thereof the following new section:

"PROJECTS FOR SPECIAL POPULATIONS

"SEC. 456. In carrying out this part, the Secretary shall include projects designed to serve populations with multiple barriers to employment, such as individuals listed in section 203(a)(2) and individuals not otherwise targeted for assistance under this Act, with special consideration for displaced homemakers and handicapped.".

(b)(1) Section 4 of the Act is amended by inserting at the end thereof the following new paragraph:

"(29) The term 'displaced homemaker' means an individual who—

"(A) was a full-time homemaker for a substantial number of years; and

"(B) derived the substantial share of his or her support from—

"(i) a spouse and no longer receives such support due to the death, divorce, permanent disability of, or permanent separation from the spouse; or

"(ii) public assistance on account of dependents in the home and no longer receives such support.".

(2) The table of contents of the Act is amended by adding after item "Sec. 455." the following new item:

"Sec. 456. Projects for special populations.".

VETERANS AMENDMENTS

SEC. 15. (a)(1) Section 4(5) of the Act is amended by inserting after "handicapped" a comma and the following: "including disabled veterans".

(2) Section 4(27) of the Act is amended by adding at the end thereof the following new subparagraph:

"(C) The term 'recently separated veteran' means any veteran who applies for participation under any title of this Act within 48 months of the discharge or release from active military, naval, or air service.

"(D) The term 'Vietnam era veteran' means a veteran any part of whose active military service occurred between August 5, 1964, and May 7, 1975.".

(b) Section 106(d)(3) of the Act is amended by striking out "and offenders" and inserting in lieu thereof "disabled and Vietnam era veterans, including veterans who served in the Indochina Theater between August 5, 1964, and May 7, 1975, and offenders".

(c) Section 108(c)(2)(B)(ii) of the Act is amended by inserting after "handicapped individuals" a comma and the following: "including disabled veterans".

(d) Section 121(c)(10) of the Act is amended by adding before the period at the end thereof a comma and the following: "including Veterans' Administration programs".

(e) Section 123(c)(1) of the Act is amended by inserting after "offenders" a comma and the following: "veterans,".

(f) Section 124(b) of the Act is amended by inserting afer "nonprofit private organizations" a comma and the following: "including veterans organizations".

FARMER AND RANCHER DISLOCATION REPORT

SEC. 16. Within 12 months after the date of enactment of this Act, the Secretary of Labor shall submit a report to the Congress which—

(1) uses data sources within the Departments of Labor, Agriculture, Commerce, and other Federal agencies to describe the dislocation of farmers and ranchers resulting from farm and ranch failures;

(2) identifies and utilizes data sources and on-going studies conducted at the State and local levels, both within the public and private sectors, identifying and outlining the problem of farmer and rancher dislocation; and

(3) examines the feasibility of establishing a national statistical data collection program for permanently dislocated farmers and ranchers.

Mr. HATCH. Mr. President, 4 years ago, on October 13, 1982, President Reagan signed the Job Training Partnership Act into law. I believe this act to be one of the most significant and constructive social policy reforms in recent years, and I was pleased to have played a part in its enactment.

Invariably, however, after 4 years, certain problems become identifiable and statutory corrections and improvements are desirable. S. 2069 is a package of amendments which will help clarify congressional intent on several points. The bill, sponsored originally by Senators QUAYLE and KENNEDY, has been the subject of several hearings and informal meetings, and we have been grateful for the input of literally hundreds of private industry council members, local elected officials, service providers, and JTPA administrators all over the country.

In keeping with the bipartisanship that marked passage of the Job Training Partnership Act in 1982, this amendment to S. 2069 has been worked out with our colleagues on the Education and Labor Committee in the House of Representatives. I think it is a good bill which merits the support of the Senate, and I hope we can move forward with it expeditiously.

Mr. QUAYLE. I am delighted to join Senators HATCH, KENNEDY, and SIMON in cosponsoring this amendment to S. 2069, the Job Training Partnership Act [JTPA] Amendments of 1986. This legislation perfects or clarifies some aspects of program operations in response to congressional oversight findings.

As I consider these amendments and contemplate that the fourth anniversary of JTPA is on October 13, I am proud to have played a major role in its development. JTPA is a significant development in the evolution of our job training laws and has become a model for other public-private approaches to solving social or economic problems. It is built on sound principles: a partnership between business and government; a recognition of the differing functions played by local, State and Federal governments; and an emphasis on achieving results rather than regulating process. The fact that 4 years later we are making only modest amendments is evidence that the act was soundly conceived.

It is also satisfying to know that S. 2069, which I introduced in February this year, has reached the final stage of the legislative process. I want to extend my appreciation to all those who assisted in the oversight and development of S. 2069, especially my constituents who have energetically and eagerly accepted the challenge of making JTPA a success.

I commend the chairman of the committee, Senator HATCH, and the ranking minority member, Senator KENNEDY, for their excellent leadership during the development of this bill. I also want to extend my appreciation to the rest of the members of the committee for their strong support and interest in JTPA that reflects a real commitment to job training. It was a pleasure to work with them, as well as with others who are not on the committee, to address their suggestions and concerns.

As with the original legislation, this bill is noncontroversial and has had bipartisan support throughout its development. I urge my colleagues to join with us in support of S. 2069.

The version of S. 2069 that we have before us today contains amendments that were approved by the House. Although not significantly different in nature and scope, there were differences between the House and Senate passed bills that needed to be resolved. After close consultation among the chairman and ranking minority members of both House and Senate committees and subcommittees with jurisdiction over JTPA and other concerned members, we developed a compromise that we are now offering as an amendment in the nature of a substitute.

As part of the legislative history of these amendments, I ask unanimous consent that the following summary and explanation of the changes contained in the substitute be printed in the RECORD. This summary and explanation should be treated as a statement of managers. I am authorized to say that not only is this acceptable to the chairmen and ranking minority members of the Senate Committee on Labor and Human Resources and Subcommittee on Employment and Productivity, it has also been agreed to by the House chairmen and ranking minority members for the Committee on Education and Labor and the Subcommittee on Employment Opportunities. In order to avoid any discrepancy in the legislative history, an identical summary and explanation will also appear in the House record of proceedings during its final consideration of S. 2069.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY AND EXPLANATION OF S. 2069

DESIGNATION OF SERVICE DELIVERY AREAS BASED ON LABOR MARKET AREAS

Sec. 2. This bill permits local governments to join together to apply for service delivery area (SDA) designation to serve one or more labor market areas rather than a single labor market. This change is necessary to clarify the original intent of Congress.

LITERACY AND DROPOUT PREVENTION PROGRAMS

Sec. 3. The bill strengthens the education coordination and grants section of JTPA by mandating that the funds be expended on three high priority areas without being prescriptive on programmatic details. First, in response to concerns about the increasing rate of illiteracy among youth and adults and the increase in the number of school dropouts, the bill mandates that funds under Section 123 of the Act be used to respond to these national problems.

The bill also addresses the barriers confronted by disadvantaged youth who do not plan to pursue additional education beyond high school by authorizing statewide school-to-work transition programs under Section 123 of the Act. High school students served under these programs must continue to meet the eligibility requirements under the Act.

Funds expended under the new authority in Section 123 of the Act can be spent for any one type of program, or any combination thereof. Further, programs operated under this new authority are not exempt from meeting the cooperative agreement requirements under current law.

The Committees are supportive of the recent decision by the Department of Labor to require reporting on the use of the eight percent set-aside.

PRESIDENTIAL AWARDS

Sec. 4. The bill authorizes the President to make awards for outstanding private sector achievement in job training programs and for model programs serving individuals with multiple barriers to employment.

INTRASTATE HOLD HARMLESS ALLOCATION REQUIREMENT

Sec. 5. The legislation mandates a 90% substate hold harmless for all SDAs within a state for titles II-A and B of the Act applied to the average of the relative shares of funds each SDA received in the previous two program years. This requirement shall be satisfied after meeting the requirements at 201(b)(2) of the Act.

USE OF INCENTIVE GRANT FUNDS

Sec. 6. The bill expands the use of funds available for technical assistance under Section 202(b)(3) of the Act to permit technical assistance to be provided to all service delivery areas. Current law provides for such assistance to be provided only to service delivery areas which fail to meet performance standards. The rationale for this change is to enable States to anticipate program deficiencies and take corrective action prior to such failure.

The Committees want to clarify that technical assistance means activities directly related to program performance, including preventive technical assistance.

A second change to Section 202(b)(3) of the Act permits the use of technical assistance funds for the cost of post program data collection, for up to two years. Either States or service delivery areas may use the funds available for the cost of post program follow up; however, the Committee intends that those performing such data collection receive funds for this purpose.

The Committes intend that these amendments be effective retroactive to program year 1986.

SERVICES TO YOUTH

Sec. 7. The bill requires that the cost of providing preemployment skills training to 14 and 15 year olds under Title II-A be counted toward meeting the requirement in Section 203(b)(1) of the Act.

SUMMER YOUTH EMPLOYMENT ASSESSMENT AND GOALS

Sec. 8. The Committees expressed their strong concern about the alarming problem of youth illiteracy. The Committees agree that the deficit of basic education skills among the targeted population of youth is so acute that a mandate to provide remedial education programs in the Summer Youth Employment and Training Program (SYEP) is justified. The provision requires that service delivery areas, as part of their planning process, assess the reading and math abilities of eligible youth and provide basic and remedial education programs in their summer programs. The provision does not require service delivery areas to conduct new tests or tests separate from local education agencies in order to assess the basic educational skills of eligible youth. Existing data and information may be used.

The Committees want to clarify their intent on three points. First, neither the Governor of a state, nor the Secretary of Labor, may require a specific service level or percentage expenditure of funds to satisfy this mandate. The Committees defer to the judgment of the private industry councils and local elected officials to expend appropriate resources to address this problem.

Second, the Committees reiterate the importance of Section 141(b) of the Job Training Partnership Act, and do not wish to supplant resources contributed for basic and remedial education programs by other sources.

Third, the Committees have included a provision requiring service delivery areas to develop written goals and objectives for the summer components. Two of the suggested evaluation criteria require explanation. The goal of "improvement in academic performance, including mathematics and reading comprehension" does not necessarily mean students must show an increase in test scores. Second, the goal of "improvement in employability skills" means that a youth has performed satisfactorily on a job, that he or she has been instilled with work habits, skills, and attitudes sought by employers. The Committees agree that, while a youth participant earns a wage the real benefit to the participant is learning real-world labor market skills which will be of long-term benefit.

The Committees have underscored these beliefs by including a statement of purpose for the Title II-B program as a whole.

AVAILABILITY OF SUMMER YOUTH PROGRAMS DURING NONSUMMER MONTHS

Sec. 9. The bill provides that SDAs may offer the programs under Title II-B (summer youth) to participants during a vacation period treated as the equivalent of a summer vacation if the local education agency operates on a year-round calendar.

PROHIBITION OF MATCHING ON GRANTS FROM SECRETARY'S DISCRETIONARY FUNDS UNDER TITLE III

Sec. 10. The legislation reaffirms the intent of Congress prohibiting a matching requirement for the Secretary's discretionary funds under Title III of the Act.

IDENTIFICATION OF DISLOCATED WORKERS

Sec. 11. In order to address the problems associated with determining eligibility for dislocated farmers and self-employed individuals under the Dislocated Workers Program, the bill includes a provision clarifying that self-employed individuals, including farmers, are eligible for participation under Title III, if they have been displaced due to economic conditions or natural disasters.

The Committees in no way intend for this language to be interpreted as being more restrictive than that already provided for under current law.

This legislation adds language to the definition of dislocated workers at Section 302(c)(3) of the Act to clarify that eligible individuals may be served without regard to their residence.

TAXATION OF JOB CORPS OPERATIONS PROHIBITED

Sec. 12. The bill amends section 437(c) to ensure that all Job Corps activities and transactions authorized under Part B of Title IV of the Act which are carried out pursuant to contracts with the Secretary by either for-profit or non-profit Job Corps contractors are exempted from all State gross receipts, excise, sales, use, business privilege, or similar taxes (such as occupational taxes) measured by gross receipts. This language is fully consistent with the original Congressional intent of the Act, and is supported by the Department of Labor.

ADDITIONAL EXPERIMENTAL AND DEVELOPMENTAL PROJECTS AUTHORIZED

Sec. 13. The bill authorizes the Secretary to conduct pilot projects to retrain individuals threatened with the loss of their jobs due to technological changes, international economic policies, or general economic conditions. The Committees hope that the pilot projects authorized will provide an opportunity to demonstrate the effectiveness of preventive training programs.

PROJECTS FOR SPECIAL POPULATIONS

Sec. 14. The bill contains a provision mandating the Secretary of Labor to expend a portion of the discretionary funds for research, demonstration and pilot projects under Title IV of the Act for programs to assist groups of individuals who are not otherwise targeted with federal, state, or service delivery area set-asides. Special consideration should be given to displaced homemakers and the handicapped.

VETERANS AMENDMENTS

Sec. 15. Throughout the Act there are examples of potential groups of eligible recipients. These examples are illustrative and are not intended to be exclusive. Groups such as the handicapped and high school dropouts are examples of individuals who have an unusually great need for JTPA services. The bill amends some of these illustrative lists to highlight the fact that, in developing their job training plans, service delivery areas should also give consideration to the needs of veterans, particularly disabled and Vietnam era veterans who have disproportionately high rates of unemployment or low labor force participation.

FARMER AND RANCHER DISLOCATION REPORT

Sec. 16. In order to adequately identify those dislocated farmers and ranchers who would qualify for assistance under the Act, the Committees agree that more information needs to be gathered at the Federal, State, and local levels to determine the true extent of the farmer dislocation problem and to determine how this lack of information affects National employment statistics.

To address these concerns, the bill amends Title IV of the Act, the Cooperative Labor Market Information Program, to require the Secretary of Labor to make a special report which uses existing data within the Departments of Labor, Agriculture, Commerce, and other appropriate Federal agencies, to describe the dislocation of farmers and ranchers resulting from farm and ranch failures. The Secretary is also directed to identify and utilize existing data sources and on-going studies conducted at the State and local levels which examine the problem of farm and ranch dislocation. Based on this information, the Secretary will examine the feasibility of establishing a National, on-going statisical data collection program to identify permanently dislocated farmers and ranchers, and will make recommendations to the Committees on such a program within one year from the date of enactment.

OTHER ISSUES

Older Workers

The Committees acknowledge the need for coordination between the Older Worker program under the Act and the Senior Community Services Employment program. Title V of the Older Americans Act. Although we approve of and encourage coordination between the two programs, we recognize the important differences in the goals of these programs. The program operated under the Act is designed to provide training for placement in unsubsidized employment, not to place participants in community service jobs.

Because both programs are under the juridiction of the Department of Labor, we believe that the Department should take steps to improve coordination and keep the respective Congressional Committees apprised of its efforts in this regard.

Job Corps Coordination Efforts

Section 424(a) of the Act requires the Secretary to prescribe specific standards and procedures for the screening and selection of Job Corps applicants to insure that the program serves the most severely disadvantaged and hard-to-serve young men and women. The Secretary is obliged, through arrangements with a wide variety of agencies and entities, including service delivery areas, to insure that the selection process identifies those youth and adults in need of such intensive and comprehensive services who cannot be adequately served in their home communities.

The Committees are not satisfied that the purposes of Section 424(a) of the Act are being adequately met and thus request that the Secretary undertake a study of the screening and selection process for Job Corps enrollees. Findings should be reported to the authorizing Committees by June 30, 1987, on the steps taken to achieve this goal.

Definition of Economically Disadvantaged

The Committees concur that data are lacking in this area, and rather than take an action that might reduce overall participation, request that the General Accounting Office undertake a study to determine the overall impact of changing from an annualized six-month income figure to a twelve-month income figure.

Committee Reports

The Committee reaffirms the directives contained in House Report 99-754 and Senate Report 99-317 while acknowledging that the Department of Labor has begun to comply with some of these requests.

Mr. KENNEDY. Mr. President, the Job Training Partnership Act continues our commitment to provide opportunity and work to the economically disadvantaged, dislocated workers and older workers all across this country. The Job Training Partnership Act, which Senator QUAYLE and I worked to create, also represents a new era in cooperation between the public and private sectors to achieve the shared goal of providing jobs for our people. As the welfare reform debate is joined in the next Congress and new programs are created to address the lessons of the last 20 years, we should incorporate the successes of a program like JTPA. By joining the energies of the private sector to the commitment of the Federal Government, we have shown that social services can be more effectively and efficiently delivered. We should and shall build on the successes of this program and its approach. The amendments incorporated in the legislation we pass today do not change the important focus and approach of this program. Instead, they fine tune the administration of the program to permit its more effective implementation. The hard work that has gone into the revision and updating of this program after study of its first years of successful implementation should be applauded and welcome by those who carry out its designs and by those who shall benefit from its continued vitality. We should especially thank the many staff who have worked long and carefully to craft this legislation. I know that my own State of Massachusetts has profited greatly from the JTPA program. In part, the exemplary Education and Training Choices Program has used JTPA funds to train and place long-term recipients of public assistance. The success of that endeavor has been a catalyst for promising programs across this country. It is with pride and pleasure that I support the passage of this legislation today.

Mr. SIMON. Mr. President, I rise in strong support of the Job Training and Partnership Act Amendments of 1986. I want to commend my colleagues on the Labor and Human Resources Committee, especially the chairman of the full committee and the chairman of the Subcommittee on Employment and Productivity, with whom I am proud to serve as the ranking Democrat, for their excellent work in developing these amendments to strengthen JTPA. In working with the House, we did not fall prey to the temptation to rewrite the law 1 year after its implementation. Equally important, we listened to the people in the States, who are working daily to implement the original law in making these modest changes. My colleague and neighor from Indiana led the way by holding extensive hearings throughout his State. These amendments are responsive and responsible.

I want to limit my discussion of the Job Training Partnership Act Amendments of 1986 to three key provisions which are of particular interest to me. The first provision, section 3 of the amendments, involves the literacy and dropout prevention programs. By the latest estimates, 60 million youths and adults in the United States may be functionally illiterate. Although a recent report, released by the Department of education on September 24, suggest that the number may be fewer, it is clear that the lack of basic literacy skills is the most important barrier to an individual's employability. Further, the skills seem to be in short supply among young adults. As a result, these citizens suffer from unemployment, low income, and low self-esteem. The expenses for training these individuals, as well as the costs to employers for poor job performances, are tremendous. The cost of illiteracy to the United States is estimated at $224 billion each year. Dropout rates are no more encouraging. In October 1985, an estimated 4.3 million students between the ages of 16 and 24 dropped out of school. The overall dropout rate for this age group is 13 to 14 percent. The consequence of this? Poor job opportunities for those who have not finished high school; this is particularly true of black and other minorities who drop out. These statistics are totally unacceptable.

I want to commend my friend and colleague, the chairman of the House Education and Labor Committee for his leadership on this issue. In response to these problems, the bill mandates that funds under section 123 of the act be used to respond to these problems. Currently, 8 percent of the money a State receives is held for joint education-SDA—student delivery areas—programs. The amendment requires that 40 percent of these funds be focused on literacy/dropout prevention, or statewide school-to-work transition programs, or any combination of the two. In total, 2.5 percent of the funds received by the State under the basic State grant would be received for these purposes. Students served under the school-to-work transition programs, found to be very successful by recent studies, must continue to meet the eligibility requirements included in the act. These programs are geared to assimilate disadvantaged youth who do not intend to pursue further education upon graduation from high school. The bill strengthens the education coordination and grants section of the JTPA by mandating that the funds be expended on both the Literacy/Dropout Program and the School-to-Work Program without being specific on programmatic details.

Another key provision contained in the proposed amendments is the summer youth employment assessment and goals, section 8. The lack of basic educational skills among the targeted population of youth is so phenomenal that a provision for remedial education programs in the Summer Youth Employment and Training Program [SYEP] is justified. The provision requires that the SDA's, as part of their planning process for their summer youth program in title II-B, assess the reading and mathematics abilities of eligible youth and provide basic and remedial education programs within the summer program. SDA's need not conduct new tests or tests separate from local education agencies in order to assess youth skills. Extant data and information may be used. The SDA's will now be required to develop written goals and objectives for the summer components.

One of the suggested evaluative criteria is the goal of "improvement in academic performance including math and reading comprehension." This improved performance need not be manifested by increased test scores. Another criterion is the goal of "improvement in employability skills," which means that a youth has performed satisfactorily on a job, that he or she has developed work habits, skills, and attitudes desirable by employers. While the participant does earn a wage, the real benefit is in learning marketable labor skills; this education will have a long-term benefit. The Secertary of

Labor will implement performance standards based on ongoing studies in September 1990, at which time the 25-percent requirement for the SDA allocation will be removed.

Finally, I would like to express my support for the additional experimental and developmental projects authorization, section 13. The provision authorizes the Secretary to conduct pilot projects to retrain individuals threatened with loss of their jobs due to technological changes, international economic policies, or general economic conditions. Hopefully, the projects will demonstrate the effectiveness of preventive training programs. We need such a program in order that our human resources not go to waste. The Caterpillar Co. in my State of Illinois wants to retrain its current work force in order to remain technologically competitive and to preserve jobs in Illinois. The State shares that objective and they have joined in mutual efforts to achieve their share objective. I think that the Federal Government should be a part of the partnership, except that under current law we are unable to act. This new demonstration authority will permit us to explore the possibility of retraining people under JTPA so that can save jobs before we lose them.

It is important that the needs of disadvantaged youth and adults—the illiterate, the undereducated, and the unemployed—become and remain a high national priority.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I move that the Senate concur in the House amendment to the title.

The motion was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER FOR H.R. 5166, TENNESSEE WILDERNESS BILL TO BE PLACED ON CALENDAR

Mr. DOLE. Mr. President, I ask unanimous consent that H.R. 5166, the Tennessee wilderness bill, be placed on the calendar when it is received from the House.

The PRESIDING OFFICER. Without objection, it is so ordered.

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PHYSICAL EDUCATION FOR SCHOOLCHILDREN

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be discharged from further consideration of Senate Concurrent Resolution 145, relating to exercise in schools, and I ask for its immediate consideration.

Mr. BYRD. Mr. President, I have no objection on this side to either of the requests.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution will be stated by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 145) to encourage State and local governments and local educational agencies to require quality daily physical education programs for all children from kindergarten through grade 12.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 145

Whereas physical education is essential to the physical development of the growing child;

Whereas physical education helps improve the overall health of children by increasing cardiovascular endurance, muscular strength and power, flexibility, weight regulation, improved bone development, improved posture, skillful moving, increased mental alertness, active lifestyle habits, and constructive use of leisure time;

Whereas physical education helps improve the mental alertness, academic performance, readiness to learn, and enthusiasm for learning of children;

Whereas physical education helps improve the self-esteem, interpersonal relationships, responsible behavior and independence of children;

Whereas children who participate in quality daily physical education programs tend to be more healthy and physically fit;

Whereas physically fit adults have significantly reduced risk factors for heart attacks and strokes;

Whereas the Surgeon General, in Objectives for the Nation, recommends increasing the number of school mandated physical education programs that focus on health-related physical fitness; and

Whereas a quality daily physical education program for all children from kindergarten through grade 12 is an essential part of a comprehensive education: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress encourages State and local governments and local education agencies to require quality daily physical education programs for all children from kindergarten through grade 12.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDERS FOR TUESDAY

RECESS UNTIL 9:15 A.M.

Mr. DOLE. Mr. President, I ask unanimous consent that once the Senate completes its business today, it stand in recess until 9:15 a.m. on Tuesday, September 30, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF CERTAIN SENATORS

Mr. DOLE. Mr. President, I also ask unanimous consent that following the recognition of the two leaders under the standing order, there be special orders in favor of the following Senators, for not to exceed 5 minutes each: Senators HAWKINS, PROXMIRE, LUGAR, KASSEBAUM, LAUTENBERG, and MURKOWSKI.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that following the special orders, there be a period for the transaction of routine morning business, not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DOLE. Mr. President, following morning business, the Senate will resume the continuing resolution, House Joint Resolution 738. Votes will occur throughout tomorrow's session, and I believe we will be in very late tomorrow evening, but there will be a window provided at the request of a number of Senators.

I think we will forego the 2-hour policy luncheon so we can continue action on the bill throughout the noon hour, if that is satisfactory with the minority leader.

Mr. BYRD. Yes. The Senate would not then be in recess?

Mr. DOLE. The Senate will not be in recess.

Mr. BYRD. All right.

Mr. DOLE. Then, as our Members will recall, at 2 p.m. tomorrow we will temporarily lay aside the continuing resolution to consider the drug bill. Only two amendments are in order, dealing with funding, and limited to 1 hour each. Therefore, final passage of the drug bill will occur during tomorrow's session.

Anything else?

Mr. BYRD. No.

RECESS UNTIL 9:15 A.M. TOMORROW

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I move that the Senate stand in recess until 9:15 a.m. on Tuesday, September 30, 1986.

The motion was agreed to, and at 7:20 p.m., the Senate recessed until tomorrow, Tuesday, September 30, 1986, at 9:15 a.m.

HOUSE OF REPRESENTATIVES—*Monday, September 29, 1986*

The House met at 12 noon and was called to order by the Speaker pro tempore [Mr. WRIGHT].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON DC,
September 25, 1986.

I hereby designate the Honorable JIM WRIGHT to act as Speaker pro tempore on Monday, September 29, 1986.

THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We pray, O God, that You would teach us that our own ultimate worth and value is not dependent on our own successes or failures, or on what others may say or think about us, but because we have been created in Your image, and You have breathed into us the very breath of life. As we face the pressures and opportunities of seeking to be responsible in our lives, may we always remember, Gracious God, that we carry with us the mark of Your creation and an eternal blessing placed by Your hand. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 5521. An act to extend until October 13, 1986, the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository Institutions Act of 1982.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 5548. An act to amend the Export-Import Bank Act of 1945.

The message also announced that the Senate had passed bills, a joint resolution, and concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 2799. An act to consolidate and improve Federal laws providing compensation and establishing liability for oilspills;

S. 2880. An act to provide a temporary extension of the interstate transfer deadline for the H-3;

S. 2884. An act to amend the Fair Labor Standards Act of 1938 to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor;

S. 2888. An act to temporarily delay the repeal of the U.S. trustee system;

S.J. Res. 353. Joint resolution to provide for the extension of certain programs relating to housing and community development, and for other purposes; and

S. Con. Res. 166. Concurrent resolution expressing the sense of Congress in opposition to employment discrimination against individuals who have, or have had, cancer based on such individual's cancer history.

CORRECTION IN APPOINTMENT OF CONFEREES ON H.R. 5300, OMNIBUS BUDGET RECONCILIATION ACT OF 1986

The SPEAKER pro tempore. Without objection, the Chair makes the following correction in the appointment of conferees on H.R. 5300, the reconciliation bill.

The fourth group of conferees from the Committee on Energy and Commerce are also appointed for consideration of subsections (f) through (k) of section 10205 of the House bill; the second group of conferees from the Committee on Government Operations are appointed for consideration of section 10206, rather than 10207, of the House bill; the conferees from the Committee on Ways and Means are also appointed for consideration of that portion of section 202 of the Senate amendment which amends section 15(c) of the Export-Import Bank Act of 1945.

There was no objection.

The SPEAKER pro tempore. The Clerk will notify the Senate of the change in conferees.

BUG OFF, MR. GORBACHEV—HANDS OFF OUR EMBASSY

(Mr. BROOMFIELD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROOMFIELD. Mr. Speaker, I was shocked to read in the paper over the weekend that our new $300 million-plus Embassy complex in Moscow may have to be torn down before it is ever occupied.

Soviet builders have included additional features in our new Embassy in Moscow, all at no extra charge. The walls in that new building have "ears." Our new Embassy has been "bugged" even before we can move in.

Today, I introduced legislation which prohibits Soviet diplomats from occupying their new Embassy in Washington until they stop bugging our new Embassy in Moscow.

Now is the time for Congress to speak out on this vital issue. Enough is enough, Mr. Gorbachev.

I am angered by a report in the Sunday, September 28 edition of the Washington Post that our Embassy in the Soviet Union is crawling with electronic bugs. Steel beams, cement floors, and pillars have been salted with those sophisticated listening devices. The problem is so severe that the new chancery building may have to be torn down.

Fortunately, State Department technicians detected the devices early on in the construction process.

Now is the time for our Government to make it clear that no Russian diplomats can occupy their new chancery here in Washington until those technical problems at our Embassy in Moscow are resolved and construction of our building is complete. We must insist that the existing agreement on this issue is adhered to.

We are the No. 1 surveillance target in that city, and our people must have a secure building in which to work.

PLAYBOY AND BRAILLE

(Mr. FAZIO asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FAZIO. Mr. Speaker, last week there was a little noticed, but significant victory for one of our fundamental freedoms. A Federal court declared unconstitutional a congressionally mandated ban on the production of braille editions of Playboy magazine through the Library of Congress Books for the Blind Program.

This was a victory not only for blind Americans but for all of us. The disabled individuals realized from the start that Congressman WYLIE's amendment was an affront to their rights and an act of paternalism they could live without. Under the guise of fiscal responsibility, the amendment singled out the blind for censorship by

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☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

allowing Congress—not the blind themselves—to determine what material would be available to them.

With the drum beat of intolerance growing increasingly louder, this Court stood fast for the Constitution and the cherished first amendment. It rejected what has now become all too fashionable a tendency, in the name of "traditional values" to trod on other American's rights. We are told a chosen few know what books we should read, what records we should listen to, and what movies we should see.

This is the kind of intolerance that our forefathers fought a revolution over. They did not pledge their lives and sacred honor so that a few, however well intentioned, could dictate to Americans what rights they could exercise.

The irony of all this is that the Republican Conservative Opportunity Society proponents of the Wylie amendment made their case for censorship by claiming it a cost cutting measure. But in the final analysis that misguided effort cost the taxpayers far more than they purported to save.

My congratulations to the minority of Members who voted no on the Wylie amendment last year and the 42 who joined together to fight for the rights of the blind in the courts.

APPOINTMENT OF CONFEREES ON H.R. 5205, DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATION BILL, FISCAL YEAR 1987

Mr. LEHMAN of Florida. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5205) making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1987, and for other purposes; with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida? The Chair hears none and, without objection, appoints the following conferees: Messrs. LEHMAN of Florida, GRAY of Pennsylvania, CARR, DURBIN, MRAZEK, SABO, WHITTEN, COUGHLIN, CONTE, PURSELL, and WOLF.

There was no objection.

□ 1210

KING RON I

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GONZALEZ. Mr. Speaker, in yesterday's two San Antonio Sunday editions on the front pages were the headlines: "Reagan vows shutdown of Federal Government" and the other, "Reagan vows to shut Capitol."

One article said:

> WASHINGTON.—President Reagan threatened on Saturday to shut down the federal Government and make Capitol Hill lawmakers work "by candlelight" unless they strip pet programs and arms control provisions from a massive spending bill designed to keep the government from going broke.

Another article said:

> WASHINGTON (UPI).—President Reagan threatened Congress Saturday that he would lock the Capitol doors and turn off the light rather than accept an end-of-the-year "spending spree" posing as a federal budget.

Well, this is not funny as it sounds, because it clearly, more than anything else, reveals Ronald Reagan's imperial presidency: King Ron the Infallible. It also illustrates his gross ignorance of the basic governances of our form of structured government under the Constitution: The equality, coequality, the independence and the separation of the three branches.

I guess next President Reagan will borrow a leaf from his friendly despot south of the border and maybe he will suspend Congress.

Maybe he will call the troops from around the forts and surround the Congress and maybe just cut out Congress altogether.

King Ron the First.

EXTENSION OF U.S. TRUSTEE SYSTEM

Mr. RODINO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2888) to temporarily delay the repeal of the U.S. trustee system, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. WRIGHT). Is there objection to the request of the gentleman from New Jersey?

Mr. MOORHEAD. Mr. Speaker, reserving the right to object, I do not intend to object, but I would ask the gentleman from New Jersey [Mr. RODINO] to explain what we are doing here.

Mr. RODINO. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from New Jersey.

Mr. RODINO. I thank the gentleman for yielding, and I would be delighted to explain this matter to my colleague, who serves on the committee.

Mr. Speaker, I urge that the House pass S. 2888. This bill, passed by the other body late Saturday, will extend the expiration date of the U.S. Trustee Pilot Program of Bankruptcy Administration from September 30, 1986 to November 10, 1986.

Mr. Speaker, the U.S. Trustee Pilot Program requires this short, 5-week extension to permit it to keep running and to prevent a gap in bankruptcy administration until the conference report on H.R. 5316 is filed, and the President signs the legislation. H.R. 5316, which was passed by the House on August 12, 1986, makes the U.S. Trustee Program permanent and nationwide and also provides for new bankruptcy judges across the country and includes family farm bankruptcy provisions. I am pleased to report that the conferees met last Friday and resolved all differences between the bills passed by the two Houses. We expect to file a conference report this week.

Mr. MOORHEAD. I thank the gentleman for that statement.

Do we expect that conference report to be on the floor this week?

Mr. RODINO. Yes, we do.

Mr. MOORHEAD. I thank the gentleman for his statement.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The Clerk read the Senate bill as follows:

S. 2888

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That effective immediately before September 30, 1986, section 408(c) of the Act of November 6, 1978 (Public Law 95-598; 92 Statute 2687), is amended by striking out "September 30, 1986" and inserting in lieu thereof "November 10, 1986".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

MEASURING VALUES BY A FALSE STANDARD

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, Hugh McCulloch was one of the ablest Secretaries of the Treasury this country has produced. He served from 1865 to 1868 during the fiat money episode in the wake of the Civil War. He urged the Nation to return to sound money, and his words have a message for us as well:

> The extreme high prices which now prevail are an unerring indication that the business of the country is in an unhealthy condition. We are measuring values by a false standard. We have a circulation altogether larger than is needed for legitimate business; the excess is used in speculation. The longer the inflation continues, the more difficult it will be to get back to the solid ground of specie payments. There are other objections. It is corrupting the public morals. It is converting the business of the

country into gambling, and seriously diminishing the labor of the country. Men are apparently getting rich, while morality languishes and the productive energy of the country is reduced.

Upon the demoralizing influence of an inconvertible government currency it is not necessary to enlarge. It is not to be expected that a people will be more honest than the government under which they live, and while the United States refuses to pay its notes according to their tenor, or at least as long as it fails to make proper effort to do so, it practically teaches the people the doctrine of repudiation.—(Annual Report on the Finances, 1867. Reproduced in: Man and Measures of Half a Century, New York, 1898, p. 202.)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The **SPEAKER** pro tempore. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken after debate has been concluded on all motions to suspend the rules.

RETIREE BENEFITS UNDER LABOR CONTRACTS

Mr. RODINO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5490) to amend title 11 of the United States Code to clarify the current meaning of section 1113 relating to the rejection of collective bargaining agreements by debtors in bankruptcy.

The Clerk read as follows:

H.R. 5490

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1113(f) of title 11, United States Code, is amended by inserting "(including any provision relating to benefits for retired former employees)" after "provisions" the first place it appears.

The **SPEAKER** pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from New Jersey [Mr. Rodino] will be recognized for 20 minutes, and the gentleman from California [Mr. Moorhead] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. Rodino].

Mr. RODINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I strongly urge that the House pass H.R. 5490. This bill will greatly ease the concerns of thousands of our Nation's retirees who fear that their former employers will suddenly and unilaterally cut off vital health and life insurance benefits provided under collective bargaining agreements if the employer files chapter 11 bankruptcy.

H.R. 5490 will clarify the current meaning of section 1113 of the Bankruptcy Code, which was passed by Congress only 2 years ago and has applied to all bankruptcies filed since then. This legislation will insert a short parenthetical phrase in section 1113 to make clear that retirees' benefits—like all other benefits in a collective bargaining agreement—are protected from unilateral rejection by an employer who files a petition under chapter 11 of the Bankruptcy Code.

H.R. 5490 was favorably reported by the Judiciary Committee last week by unanimous vote.

Mr. Speaker, I firmly believe that current law already protects retiree benefits, just like all other benefits in a labor contract, from an employer's unilateral rejection. In enacting section 1113, Congress clearly stated its intention to protect labor contracts in their entirety. Subsection (f) of section 1113 provides:

> No provision of the [Bankruptcy Code] shall be construed to permit a trustee to unilaterally terminate or alter *any* provision of a collective bargaining agreement prior to compliance with the provisions of this section.

The plain meaning of this subsection requires employers to honor the complete contract and prevents them picking and choosing among provisions.

But despite this plain meaning, questions have been raised in recent months as to whether retiree benefits enjoy the same protection as other benefits in labor contracts. By inserting an express reference to retiree benefits in subsection (f), H.R. 5490 will clarify this issue. It will leave no doubt that Congress meant what it said in 1984 when it passed section 1113: A company filing for bankruptcy under chapter 11 must first comply with clearly stated procedures before it terminates or alters any provision dealing with retiree benefits included under a collective bargaining agreement.

I believe it is critical that we dispel any doubt that retiree benefits are protected from precipitous and arbitrary rejection. Retirees depend on these benefits, particularly health insurance benefits, on a day-to-day basis. They have given years of service to the company in return for these benefits. Unlike business creditors of the company, retirees are likely to have no other resources to fall back on. Retirees simply cannot be lumped together with unsecured business creditors and forced to wait until the company's reorganization to find out what remains of their benefits.

H.R. 5490 will assure retirees that any benefits they are guaranteed under a collective bargaining agreement cannot be changed or terminated until the company follows the procedures in section 1113 and obtains court permission. I urge my colleagues to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5490 clarifies that chapter 11 debtors in possession or trustees cannot terminate or alter retiree benefits arising in the context of collective bargaining agreements without complying with the requirements of section 1113. Such unilateral terminations or alterations of benefits may already violate the explicit language of current section 1113(f), which specifies:

> No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter *any* [emphasis added] provision of a collective bargaining agreement prior to compliance with the provisions of this section.

This bill is similar to S. 2806, introduced by Senator Metzenbaum on September 10 with bipartisan cosponsorship.

The impetus for H.R. 5490 is an initial decision by the LTV Corp. to stop paying for retirees' medical and life insurance benefits on July 17, 1986, the day it filed a reorganization petition under chapter 11 of the Bankruptcy Code.

After filing under chapter 11, LTV Corp. took the position that it lacked statutory authority to continue funding medical and life insurance benefits for pre-July 17 retirees without authorization from a bankruptcy judge. The company, in a July 28 letter to retirees and surviving spouses, indicated that arrangements had been made for interested retirees to purchase private medical insurance without reference to existing medical conditions.

On July 30, 1986, LTV Corp. filed an application with the Bankruptcy Court for the Southern District of New York requesting authorization to restore plan benefits temporarily. The application pointed out that employees or former employees of LTV Steel picketed in response to the cessation of plan benefits—and a strike followed. That same day Bankruptcy Judge Burton R. Lifland issued an order permitting the debtors to pay medical and life insurance plan benefits "if the strike * * * shall have been previously terminated * * *."

LTV Corp. apparently takes the position that Bankruptcy Code section 1113, governing rejection of collective bargaining agreements, is inapplicable to retirees' medical and life insurance benefits because retirees no longer are employees of the company. This position does find support in the recent Unimet Corp. bankruptcy case. Bankruptcy Judge James H. Williams concluded that—

[T]he retiree * * * clearly cannot be said to be within that protected sphere of 'employee' interests contemplated under section 1113 of the Bankruptcy Code. In the Matter of: Unimet Corporation, Case No. 685-00240 (U.S. Bankruptcy Court, N.D. Ohio, September 27, 1985).

This legislation contains an important clarification of the law. It makes section 1113(f) of the Bankruptcy Code explicitly applicable to any provision of a collective bargaining agreement relating to benefits for retired former employees. The Congressional Budget Office estimates that no cost to the Federal Government or to State or local governments would result from enactment of this bill. I urge my colleagues to support this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. RODINO. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas [Mr. FROST].

Mr. FROST. I thank the gentleman for yielding time to me.

Mr. Speaker. I rise in strong support of this bill. It does not change bankruptcy law. It very simply clarifies the intent of Congress that retiree benefits obtained through collective bargaining agreements cannot be arbitrarily canceled or changed by employers. The measure guarantees that employers will follow the guidelines included in section 1113 of the bankruptcy before any changes are made in retiree benefits.

The recent LTV bankruptcy is a clear indication that this legislation is needed. When LTV filed for reorganization under chapter 11 of the Bankruptcy Code on July 17 of this year, the company determined on its own that retiree health and life insurance benefits were not protected under section 1113 of the Bankruptcy Code and canceled these benefits for its almost 70,000 retirees—giving them no warning and no option for obtaining alternative coverage. Retirees who'd given their best work years to LTV and been promised health and life insurance coverage in their retirement years were stripped of their benefits.

LTV's Aerospace Division is headquartered in Dallas, and its major manufacturing plants is located in my district. Thousands of LTV retirees are my constituents. I know that for many retirees their health and life insurance benefits are the most important parts of their retirement package. The sudden loss of these benefits left them vulnerable to a fate I believe we all fear—suffering sickness or injury with no way to pay for the medical care needed.

Although LTV has temporarily reinstated the health and life insurance benefits of its retirees, the problem has not been resolved. LTV is obligated to continue coverage only until January 18. At that time, retirees may again find themselves stripped of health and life insurance benefits. That's why its important that we approve the measure before us today. Congress won't be in session on January 18. We won't be able to respond if the company again decides to renege on its commitment to its retirees. We must act favorable on the legislation today to insure that LTV retirees retain their benefits and to reassure all other retirees that their retirement benefits cannot be pulled from under them without warning and without fair consideration by the bankruptcy courts.

Mr. Speaker, I cosponsor this measure and strongly support clarification of our bankruptcy statutes. I would like to engage in a brief colloquy, however, to make sure that the intent of the bill is understood.

The need for the measure was clearly demonstrated when on July 17, LTV Corp. filed for reorganization under chapter 11 of the Bankruptcy Code and immediately suspended the health and life insurance benefits of the company's almost 70,000 retirees, without fulfilling the requirements mandated under section 1113 of the Bankruptcy Code.

Does the gentleman agree that the legislation before us today makes clear that the intent of Congress, all along, has been that retiree benefits are protected under section 1113 of the Bankruptcy Code?

Mr. RODINO. If the gentleman will yield, Mr. Speaker, H.R. 5490 clarifies the current meaning of section 1113. Section 1113 has applied to every chapter 11 petition filed after July 10, 1984. Accordingly, H.R. 5490 will clarify the law applicable to those post-July 1984 filings.

Mr. FROST. Mr. Speaker, I thank the committee chairman. I believe it is very important that we emphasize that this measure reiterates current law—that health and life insurance benefits, like those provided to LTV retirees, are benefits that have been protected by section 1113 since the statute was first approved by Congress.

LTV's Aerospace Division is headquartered in Dallas, and its major manufacturing plant is located in my district.

I appreciate the gentleman's courtesy and in advancing this legislation and seeing to it that it was brought to the floor today.

□ 1225

Mr. MOORHEAD. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH].

Mr. FISH. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, the 98th Congress enacted Bankruptcy Code section 1113—dealing with rejection of collective bargaining agreements—in response to the Supreme Court's decision in *NLRB v. Bildisco & Bildisco,* 465 U.S. 513 (1984). In that case, the Supreme Court held in part that a debtor in possession does not commit an unfair labor practice by "unilaterally breaching a collective-bargaining agreement before formal Bankruptcy Court action." Id at 534.

The new congressional scheme—embodied in 11 U.S.C. 1113—permits a debtor in possession or trustee to assume or reject a collective bargaining agreement only in accordance with certain provisions. Before seeking rejection of a collective bargaining agreement, the debtor in possession or trustee must submit a proposal to the authorized representative of the employees "which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor * * *." The statute also mandates good-faith meetings in an attempt to reach mutually satisfactory modifications of the agreement. Only the court can approve an application for rejection of a collective bargaining agreement—and only if the employees' representative has refused to accept a proposal "without good cause" and "the balance of the equities clearly favors rejection of such agreement."

H.R. 5490 clarifies that section 1113 of the Bankruptcy Code applies to retiree benefit-related provisions of collective bargaining agreements. A literal reading of current subsection (f) indicates that such provisions already are covered. "No provision of this title," according to the mandate of subsection (f), "shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section." In spite of this language, however, a real controversy has developed over the application of section 1113 to retiree benefit provisions.

At a hearing in August, the Subcommittee on Monopolies and Commercial Law received testimony on both sides of this question. LTV Corp., which initially terminated funding retiree health and life insurance benefits when it filed for protection under the bankruptcy laws, expressed the belief that "the focus of section 1113(f) is the continuation of payments to current employees." The United Steelworkers of America, however, argued that "[b]y unilaterally terminating retiree life and medical benefits on July 17, 1986, as of the chapter 11 filing, LTV violated the Bankruptcy Code by unlawfully terminating the provisions of a collective bargaining agreement without complying with the detailed, mandatory, exclusive provision of section 1113 of the Code." Bankruptcy attorney Herbert P. Minkel, Jr., and New York University Law School Prof.

Lawrence P. King pointed out: "The LTV chapter 11 illustrates the fact that reasonable persons disagree as to the effect of section 1113 on the rights of union retirees to receive benefits subsequent to the filing of a chapter 11 case."

This legislation resolves any ambiguity in the law by specifying that the reference in section 1113(f) to "any provisions of a collective bargaining agreement" includes retiree benefit-related provisions. The statutory clarification recognizes that retiree benefits are central to the well-being of people who have worked for many years. Such bargained-for benefits—as a matter of sound public policy—must not be subject to unilateral termination or alteration prior to compliance with procedures established by Congress governing rejection of collective bargaining agreements.

Mr. Speaker, H.R. 5490 enjoys bipartisan support in the Committee on the Judiciary. I urge my colleagues to approve this important clarification on bankruptcy law.

Mr. RODINO. Mr. Speaker, I yield 2 minutes to the distinguished majority leader, the gentleman from Texas [Mr. Wright].

Mr. WRIGHT. Mr. Speaker, I commend the gentleman from New Jersey, the chairman of the Committee on the Judiciary, for his leadership in bringing this bill to the House floor.

I also desire to note the beneficial and constructive supportive work of my colleagues, the gentleman from Texas, Mr. Frost; the gentleman from Indiana, Mr. Visclosky; the gentlemen from Ohio, Mr. Traficant, Mr. Seiberling, Mr. Feighan, and Mr. Stokes; the gentleman from Minnesota, Mr. Oberstar; the gentleman from West Virginia, Mr. Rahall; as well as the distinguished gentlemen from Pennsylvania, Mr. Kolter, Mr. Murphy; and others who have insisted upon passage of this legislation.

It is extremely important that we adopt this clarifying language. And while I know the gentleman from New Jersey has brought this measure to the floor in order to deal with a general principle of justice rather than with any particular bankruptcy situation, it does, in fact, address the very special and severe problems faced by many thousands of LTV retirees when that company filed a chapter 11 bankruptcy petition on July 17, 1986.

As many of my colleagues are aware, LTV decided to terminate the health and life insurance policies of some 78,000 retirees. This action in my opinion would exhibit a kind of moral bankruptcy in addition to a financial bankruptcy.

By means of this bill today, the House makes clear that benefits won by employees through collective bargaining agreements cannot be terminated as part of a chapter 11 bankruptcy proceeding. The measure before us is a simple one. It is a matter of simple justice and plain human decency.

A large number of the LTV retirees whose benefits were abruptly canceled by the company are steel workers, 40 percent of whom are not yet 65 and are not covered by Medicare. Many thousands are simply uninsurable at this stage in their lives. Or, if they do find a health or life insurance policy available to them in their advanced years or with their medical history, too often the policy is simply unaffordable.

Passage of this measure today will send the message to LTV executives, and other corporate decisionmakers as well, that the company is contractually obligated to make medical and life insurance benefits available to its retirees, in accordance with collective bargaining agreements already on the books. Because this company has chosen to take unilateral action in terminating the insurance programs—programs upon which these retirees depend for their health care and for their financial and psychological well-being—the Congress must act.

Today, let us act on the side of compassion and fairness. Let us protect the rights of so many thousands of retirees who have suddenly found themselves, through no fault of their own, stripped of their health and life insurance policies.

Positive action today will help to restore a measure of faith among these retirees and among other American retirees and current workers as well—faith that was shattered when LTV decided to cut off the insurance benefits of these loyal employees. This trauma has shaken their faith in the ability of Government to protect its citizens against this kind of flagrant abuse. It falls to us, here in the Congress, to stand up for those who have no other recourse and who seek nothing more than the full protection of the law in the fulfilment of agreements which they made in good faith and on which they have every right to rely. Surely we cannot afford to turn a deaf ear to the alarmed cries of these LTV retirees in their time of desperate need.

And so I urge my colleagues to give resounding support to this legislation.

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. RODINO. Mr. Speaker, may I inquire how much time I have remaining?

The SPEAKER pro tempore. (Mr. Gray of Illinois). The gentleman from New Jersey has 12 minutes remaining.

Mr. RODINO. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. Stokes], who has been very responsible for initiating this action this afternoon, along with the Members who were cited by the distinguished majority leader.

MR. STOKES. Mr. Speaker, I rise in support of this legislation.

I want to commend the gentleman from New Jersey [Mr. Rodino], the distinguished chairman for his expeditious conduct of hearings on the legislation which I introduced in this matter.

I am also an original cosponsor of the bill which Chairman Rodino introduced and which was passed out of the full committee.

Mr. Speaker, the LTV Corp. filed for bankruptcy under chapter 11 of the U.S. Bankruptcy Code. This petition represented the largest bankruptcy filing in the history of our Nation. However, even more devastating than the bankruptcy petition was LTV's cruel, callous, and unlawful action in terminating the health and life insurance benefits of its 78,500 retirees.

Mr. Speaker, LTV contended that by filing for bankruptcy under chapter 11, they were prohibited from continuing to honor their obligation to pay their retirees their health and life insurance benefits. This interpretation of the law is not only patently wrong, but imposes a severe hardship on the many seniors who depend on these benefits for their very survival. Section 1113(f) of the Bankruptcy Code specifically prohibits the unilateral termination or alteration of any provision of a collective bargaining agreement. The meaning of this section could not be clearer, it means that it says, "no provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement."

Mr. Speaker, it is evident that health care for retired workers is not a luxury. It is a vital lifeline that for many, represents the difference between self sufficiency and an existence in total destitution.

Life after retirement is frequently referred to as the "golden years," at which time the elderly can enjoy the fruits of a lifetime of labor. The truth, however, is that precious few of America's elderly can enjoy retirement years. They are constantly trying to make ends meet, find enough food to eat, and keep their tired bodies in working order. America's senior citizens already have a tough enough time living on a fixed income. If they lose their health care benefits, many would be financially devastated by even a minor ailment, let alone the major medical problems that occur naturally with advanced age.

Mr. Speaker, it is regrettable that we must be here today to restate the law to the LTV Corp. However, in light of their actions in terminating the health care benefits of its retirees, it becomes imperative that we pass this legislation and prevent this scenario from ever being acted out again. Our Nation's senior citizens are some of the most vulnerable persons in society, and this bill will grant them a certain degree of security, by again, ensuring that their bargained for health care benefits will not be unilaterally altered or terminated.

Mr. RODINO. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. Murphy].

Mr. MURPHY. Mr. Speaker, I thank the gentleman from New Jersey for yielding this time to me.

Mr. Speaker, I rise in strong support of this measure as a sponsor of it. I want to thank Chairman Rodino, the gentleman from New Jersey, and the entire membership of the Judiciary Committee from both sides of the aisle for bringing this matter up before the House in such an expeditious manner.

For too long, we have seen inept corporation officials and directors take the health and welfare benefits down the drain with them when they found an easy path to the bankruptcy court. Well this clarifies what Federal law really means, that when they negotiate in sincerity a labor contract, that they must abide by that contract and not run off to a bankruptcy court and scuttle the rights of the retirees for their health and welfare benefits.

I thank the chairman for his time and support.

Mr. RODINO. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana [Mr. Visclosky].

Mr. VISCLOSKY. Mr. Speaker, I rise in strong support of H.R. 5490. As an original cosponsor of the legislation of the gentleman from Ohio [Mr. Stokes], I want to especially thank the gentleman for initiating this effort, and also my special thanks to Chairman Rodino for holding hearings expeditiously and for bringing this legislation to the floor today.

It was prompted because of the actions of the LTV Corp. Once a petition for bankruptcy had been filed, steel workers of local 10 and 11 in East Chicago, IN, represented by John Sako, stood up for the retirees who were no longer a member of that local to make sure that the rights of the 4,000 retirees in my district were protected.

I want to make as part of the record my close association with the colloquy engaged in by Mr. Frost and Mr. Rodino today, implying that this legislation does impact on the situation at LTV.

Last, I would make a comment that a shutdown of the largest steel producer in this country and with the bankruptcy of the second largest steel producer, we have a bipartisan effort today. I would hope that that extends some day to 1600 Pennsylvania Avenue and we have a national steel policy so we do not have to have legislation like this in the future.

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Mr. RODINO. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. Kolter].

Mr. KOLTER. I thank the gentleman for yielding me this time.

Mr. Speaker, as the cosponsor of the Studds bill and now the cosponsor of the Peter Rodino bill, I stand in strong support of this legislation. I want to thank the Members on the other side of the aisle for their bipartisan efforts on behalf of the working people of America, those Americans who have worked so hard all their lives and are now retired.

I would like to state for the Record that back on July 18, the day after the announcement was made that our retirees were going to lose their benefits to the efforts of the LTV Corp., we researched the law and we strongly feel that the law passed in 1984 was clearly broken; that law which protected the benefits of the retirees that they earned through collective bargaining.

This legislation, the Peter Rodino legislation, clarifies the issue and I urge strong support, strong, bipartisan support for this issue.

Mr. BEVILL. Mr. Speaker, we have on our agenda today a bill which is very important to many, many retired steelworkers, both union and salaried. This bill, H.R. 5490, makes it perfectly clear that benefits for retired employees covered under collective-bargaining agreements cannot be taken away when an employer files for bankruptcy.

This bill is necessary because when LTV Corp. filed for bankruptcy last July, the company notified its retirees that it had terminated their life and medical insurance coverage.

This was devastating news to the more than 70,000 retirees of LTV Corp., many of whom live in my district. They are people like Charles Mason of Gadsden, who came to Washington today with his wife Eleanor to rally on the Capitol steps in support of this bill.

Mr. Mason worked for 42 years as a metallurgist for Republic Steel (which merged with LTV Corp.). Now, at age 64, he's fighting for his benefits—benefits which he earned, which he deserves and which he should not have to fight for.

It is so unfair for these hardworking people who gave so many years to the company to be left with an uncertainty regarding their health and life insurance coverage.

This situation could have been avoided if LTV had recognized that the retirees' benefits are covered by section 1113(f) of the bankruptcy law. The law already requires that firms filing for bankruptcy must follow certain procedures for "any" provision relating to collective bargaining agreements they have entered into.

Today, we are voting on a bill that will, in effect, force LTV to obey the current law. This bill makes it plain that "any" provision specifically includes any provision of collective bargaining agreements relating to retired former employees.

We must not leave these retirees hanging out on a limb. LTV has agreed to continue paying the benefits, but only until January 17, 1987. I believe these benefits need to be permanently reinstated.

Retirees like Charles and Eleanor Mason should not be forced to hunt for new coverage at this time in their lives. We can't let them down.

Mr. TRAFICANT. Mr. Speaker, I rise today to ask my colleagues for their strong support of H.R. 5490, a bill which would clarify the protections afforded to retirees' benefits included in a collective-bargaining agreement when a company files chapter 11 bankruptcy. This legislation represents the hard work and determination of Chairman Rodino and others who recognize the dire need for clarification of this most important provision in the U.S. Bankruptcy Code. I'd like to commend my colleagues from Ohio as well as other Members who have shown direction and leadership in bringing this bill before the House of Representatives for our consideration and ultimate passage.

As we are all aware, the LTV Corp. filed for bankruptcy on July 17, 1986. As a result of this action, thousands of LTV retirees were left without proper health and hospitalization coverage—without prior notice—simply because the company chose not to assume their contract. Fortunately, the company has agreed to extend coverage until January 1987. However, what happens after this deadline is uncertain. Hundreds of thousands of American workers depend solely on collectively-bargained-for health and hospitalization benefits to enable them to meet their present and future medical needs. The recent LTV situation shows us just how vulnerable these benefits become in the event of bankruptcy.

It is urgent that the question of retirement benefits be clarified with regard to bankruptcy. Section 1113(f) of the Bankruptcy Code was intended to preserve the sanctity of collective-bargaining agreements. The LTV situation clearly shows that more action is needed by Congress to further clarify the policy regarding health care benefits. I ask that my colleagues join me in support of H.R. 5490 which represents a step forward in the protection of our retirees' benefits.

While on this issue, I'd like to take time today to express my concern over the health and hospitalization benefits for salaried retirees. Although their benefits are not collectively bargained for, salaried retirees are also affected by bankruptcy. That's why I introduced H.R. 5376, which seeks to amend section 365 of the U.S. Bankruptcy Code to prevent agreements providing health and hospitalization benefits from being rejected in the event of bankruptcy. This legislation would include union as well as nonunion agreements. As one who has been involved with this issue from the start, I am happy to see legislation such as H.R. 5490 reach the floor of the House of Representatives. The passage of this bill will certainly be looked upon as a victory for the majority of our retirees. But, that is only half the battle. I ask that my colleagues not forget those thousands of salaried retirees who also deserve to have their benefits protected. Indeed, we as Members of Congress must continue to work on legislative solutions which would clarify policies affecting America's working men and women; union and nonunion alike.

Mr. OBERSTAR. Mr. Speaker, I rise in strong support of H.R. 5490, Bankruptcy Code coverage of retiree benefits. The purpose of this legislation is to protect the health benefits of retirees in the event the company to which they gave dedicated service throughout their working years, must seek protection of the bankruptcy laws.

This legislation was made necessary by the hundreds of individual human tragedies that occurred when LTV declared bankruptcy earlier this summer and announced termination of health benefits coverage for its retirees. The bill does not change the substance of current bankruptcy law; however, it does restate with unmistakable clarity what Congress meant when we amended the Bankruptcy Code in 1984 in the wake of the Bildisco case. Congress then passed legislation to require that collectively bargained agreements cannot be unilaterally suspended or canceled when a company files for bankruptcy under chapter 11—and that includes retirees' benefits.

On July 16, 1986, the LTV Corp., faced with insurmountable financial problems, filed a petition for reorganization under chapter 11 of the Federal Bankruptcy Code; on July 17, 1986, LTV announced unilateral termination of health and life insurance benefits for its retirees, citing its chapter 11 proceedings. LTV at that time claimed that the Bankruptcy Code required the termination of retirees' health benefits coverage.

Later, however, when threatened with a strike which would have jeopardized prospects for a successful reorganization under bankruptcy proceedings, LTV reinstated life and health insurance protection for all retirees, but only after obtaining so-called permission to do so from the bankruptcy court. In taking that action, LTV in effect turned the law upside down.

Neither LTV nor any other corporation filing under chapter 11 requires the permission of a court to meet its legal and moral obligations to its retirees. Section 1113 of the Bankruptcy Code, prohibits corporations from discontinuing collectively bargained agreements until and unless they are modified by new collective-bargaining action or ordered suspended by the bankruptcy court. To suggest otherwise is to distort the clear meaning of Public Law 98-353 which was, itself, a statement of the Congress that neither active employees' nor retirees' collectively bargained benefits could be unilaterally suspended in contravention of section 8 of the National Labor Relations Act.

H.R. 5490 is a simple and straightforward restatement of the action Congress took in 1984 to set forth the rights and responsibilities of corporations and both their active and retired employees in a reorganization proceeding.

The immediate effect of this legislation will be minor for LTV's retirees nationwide, including the 1,015 who reside in my congressional district. LTV has reinstated benefits for its retirees and has declared its intent to continue these benefits through January 15, 1987, and then, once more, to suspend these benefits. The legislation before us would tell LTV and other similarly situated companies in no uncertain terms that the law does not allow suspension of collectively bargained agreements for retirees without the express authority of the bankruptcy court.

A thousand other retirees in my district are also currently without life and health insurance which they earned through years of work and which was collectively bargained on their behalf. They are the retirees of Reserve Mining Co., a corporation which was jointly owned by subsidiaries of LTV and Armco and from which each of the partners withdrew. Since Reserve itself has few or no assets, retirees to date have had their medical bills rejected or simply not paid. These retirees will ultimately have to seek relief from the parent corporations in a court of law. Nevertheless, unless the right of retirees under collectively bargained agreements is upheld, there will be no avenue of relief for Reserve's retirees.

More importantly, if Congress leaves unchallenged the contention of LTV that it has no obligation to its retirees, each and every corporation filing for chapter 11 reorganization in the future can be expected to do the same.

Mr. Speaker, the total number of retirees in Minnesota affected by the LTV and Armco bankruptcy petitions is estimated to be between 1,950 and 2,010, including both salaried and hourly workers. At Erie Mining Co. there are an estimated 1,000 retirees affected by the bankruptcy petition, but they are covered by the health benefits agreement worked out with United Steelworkers and will remain covered until January 15, 1987.

At Reserve Mining Co., there are an estimated 950 to 1,000 retirees who have no health or life insurance benefits whatever at this time.

Inevitably, an unforeseen action of this kind, so massive in nature, has its victims—unintended, but nonetheless caught in the tangled web of bankruptcy proceedings. I'd like to cite just a few examples to underscore the reason for which speedy action is needed on this bill, why it must pass before the end of this 99th Congress:

Mrs. Joseph Goryance of Aurora had been scheduled for foot surgery following an accident but was forced to delay the surgery until an understanding could be reached between an insurance company and the hospital, with help of the Steelworkers Union; she is now covered by the LTV reinstatement of health benefits, through January 15, 1987.

In Two Harbors, Don Grosker, whose wife died of cancer this past July, requires cancer treatment himself. His wife's medical bills total in excess of $39,000—all prepetition, since she died on the date of the LTV bankruptcy filing, and well ahead of Armco's filing. There is still no resolution of this problem and I've sent the bills to the attorney designated by the trustee to serve as representative for active and retiree benefits.

At Tofte, Ken Peterson's wife died after a lingering illness, leaving $31,000 in unpaid bills. Mr. Peterson was told Reserve Mining Co. wouldn't be able to cover the bills; he is still waiting for a resolution to that problem.

In Duluth, Loren Radke's wife requires constant home nursing care. He has been told that the care will be cut off unless he can find some way to guarantee payment, which, in his financial situation, will be extremely difficult, if not impossible, to do.

There are numerous other persons whose personal stories are still being tabulated, who walked out of dental, optical, or other medical appointments because they were afraid that the health care they needed would not be covered by insurance and they knew they couldn't afford it themselves, so they are simply doing without.

Mr. Speaker, this legislation will restore justice to those cases I've mentioned and dozens of other needy and deserving people who ask only to live a life of dignity without the specter of medical catastrophe hanging over their heads each time illness strikes. I am certain the House will pass this bill without hesitation and I urge prompt action in the other body and signature by the President, because health care needs don't wait for acts of Congress; tragedy strikes unexpectedly, suddenly, usually with very costly consequences. I urge an aye vote on H.R. 5490.

Mr. RODINO. Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from New Jersey [Mr. RODINO] that the House suspend the rules and pass the bill, H.R. 5490.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore. The Chair will remind visitors that the Members are happy to have you here, but it is a violation of the House rules for guests in the gallery to engage in any type of demonstration.

GENERAL LEAVE

Mr. RODINO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

NATURALIZATION AMENDMENTS OF 1986

Mr. MAZZOLI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5558) to amend title III of the Immigration and Naturalization Act to provide for administrative naturalization, and for other purposes.

The Clerk read as follows:

H.R. 5558

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "Naturalization Amendments of 1986".

(b) Amendments to Immigration and Nationality Act.—Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Immigration and Nationality Act.

SEC. 2. ADMINISTRATIVE NATURALIZATION.

Section 310 (8 U.S.C. 1421) is amended to read as follows:

"NATURALIZATION AUTHORITY

"Sec. 310. (a) Authority in Attorney General.—The sole authority to naturalize persons as citizens of the United States is conferred upon the Attorney General.

"(b) Administration of Oaths.—An applicant for naturalization may choose to have the oath of allegiance under section 337(a) administered by the Attorney General or by any District Court of the United States for any State or by any court of record in any State having a seal, a clerk, and jurisdiction in actions in law or equity, or law and equity, in which the amount in controversy is unlimited. The jurisdiction of all courts herein specified to administer the oath of allegiance shall extend only to persons resident within the respective jurisdiction of such courts.

"(c) Appeal to BIA; Judicial Review.—A person whose application for naturalization under this title is denied, after a hearing before an immigration officer under section 336(a), may seek review of such denial before the Board of Immigration Appeals (established by the Attorney General under part 3 of title 8, Code of Federal Regulations). The decision of such Board is reviewable by the United States district court for the district in which such person resides in accordance with chapter 7 of title 5, United States Code.

"(d) Sole Procedure.—A person may only be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this title and not otherwise.".

SEC. 3. SUBSTITUTING 3 MONTHS RESIDENCE IN INS DISTRICT OR STATE OR 6 MONTHS RESIDENCE IN A STATE.

Section 316(a)(1) (8 U.S.C. 1427(a)(1)) is amended by striking "and who has resided within the State in which the petitioner filed the petition for at least six months" and inserting "and who has resided within the State or within the district of the Service in the United States in which the applicant filed the application for at least three months".

SEC. 4. CONFORMING AMENDMENTS.

(a) Conforming Amendments to Section 310 Revision.—(1) The item in the table of contents relating to section 310 is amended to read as follows:

"Sec. 310. Naturalization authority.".

(2) Section 101(a)(36) (8 U.S.C. 1101(a)(36)) is amended by striking "(except as used in section 310(a) of title III)".

(b) Conforming Amendments to Change in Residence Requirement.—(1) Section 319 (8 U.S.C. 1430) is amended—

(A) in subsection (a), by striking "has resided within the State in which he filed his petition for at least six months" and inserting "has resided within the State or the district of the Service in the United States in which the applicant filed his application for at least three months",

(B) in subsections (b) and (d), by striking "within the jurisdiction of the naturalization court" and inserting "in a State or a district of the Service in the United States", and

(C) in subsection (c), is amended by striking "within the jurisdiction of the court" and inserting "district of the Service in the United States".

(2) Section 322(c) (8 U.S.C. 1433(c)) is amended by striking "within the jurisdiction of the naturalization court" and inserting "within a State or a district of the Service in the United States".

(3) Section 324(a)(1) (8 U.S.C. 1435(a)(1)) is amended by inserting "or district of the Service in the United States" after "State".

(4) Section 328 (8 U.S.C. 1439) is amended—

(A) in subsection (a)—

(i) by inserting "or district of the Service in the United States" after "State", and

(ii) by striking "for at least six months" and inserting "for at least three months";

(B) in subsection (b)(1), by striking "within the jurisdiction of the court" and inserting "within a State or district of the Service in the United States"; and

(C) in subsection (c), by inserting "or district of the Service in the United States" after "State".

(5) Section 329(b) (8 U.S.C. 1440(b)) is amended—

(A) in paragraph (2)—

(i) by inserting "or district of the Service in the United States" after "State", and

(ii) by inserting "and" at the end of paragraph (2);

(B) by striking paragraph (3), and

(C) by redesignating paragraph (4) as paragraph (3).

(c) Substitution of Application for Naturalization for Petition for Naturalization.—The text of the following provisions is amended by striking "a petition", "petition", "petitions", "a petitioner", "petitioner", "petitioner's", "petitioning", and "petitioned" each place it appears and inserting "an application", "application", "applications" or "applies" (as the case may be), "an applicant", "applicant", "applicant's", "applying", and "applied", respectively:

(1) Section 313(c) (8 U.S.C. 1424(c)).

(2) Section 316 (8 U.S.C. 1427).

(3) Section 317 (8 U.S.C. 1428).

(4) Section 318 (8 U.S.C. 1429).

(5) Section 319(a) and (c) (8 U.S.C. 1430(a), (c)).

(6) Section 322(a) (8 U.S.C. 1433).

(7) Section 324 (8 U.S.C. 324(a)).

(8) Section 325 (8 U.S.C. 1436).

(9) Section 326 (8 U.S.C. 1437).

(10) Section 328 (8 U.S.C. 1439).

(11) Section 329 (8 U.S.C. 1440), other than subsection (d).

(12) Section 330(a)(1) (8 U.S.C. 1441(a)(1)).

(13) Section 331 (8 U.S.C. 1442), other than subsection (d).

(14) Section 333(a) (8 U.S.C. 1444(a)).

(15) Section 334 (8 U.S.C. 1445).

(16) Section 335 (8 U.S.C. 1446).

(17) Section 336 (8 U.S.C. 1447).

(18) Section 337 (8 U.S.C. 1448).

(19) Section 338 (8 U.S.C. 1449).

(20) Section 344 (8 U.S.C. 1455).

(21) Section 1429 of title 18, United States Code.

(d) Substituting Appropriate Administrative Authority for Naturalization Court.—(1) Section 316 (8 U.S.C. 1427) is amended—

(A) in subsection (b), by striking "court" each place it appears and inserting "or the Attorney General",

(B) in subsection (b), by striking "date of final hearing" and inserting "date of any hearing under section 336(a)",

(C) in subsection (e), by striking "the court" and inserting "the Attorney General",

(D) in subsection (g)(1), by striking "within the jurisdiction of the court" and inserting "within a particular State or district of the Service in the United States", and

(E) in subsection (g)(2), by amending the first sentence to read as follows: "An applicant for naturalization under this subsection may be administered the oath of allegiance under section 337(a) by any district court of the United States, without regard to the residence of the applicant.".

(2) The second sentence of section 317 (8 U.S.C. 1428) is amended by striking "and the naturalization court".

(3) The third sentence of section 318 (8 U.S.C. 1429) is amended—

(A) by striking "finally heard by a naturalization court" and inserting "considered by the Attorney General", and

(B) by striking "upon the naturalization court" and inserting "upon the Attorney General" .

(4) Section 319 (8 U.S.C. 1430) is amended—

(A) in subsection (b)(3), by striking "before the naturalization court" and inserting "before the Attorney General", and

(B) in subsection (c)(5), by striking "naturalization court" and insert "Attorney General".

(5) Section 322(c)(2)(C) (8 U.S.C. 1433(c)(2)(C)) is amended by striking "naturalization court" the first place it appears and inserting "the Attorney General".

(6) Section 324 (8 U.S.C. 1435) is amended—

(A) in subsection (a)—

(i) by inserting "and" at the end of paragraph (1),

(ii) by striking the comma at the end of paragraph (2) and inserting a period, and

(iii) by striking paragraphs (3) and (4);

(B) in subsection (b), by striking "naturalization court" and inserting "the Attorney General"; and

(C) in subsection (c)—

(i) in paragraph (2), by striking "the judge or clerk of a naturalization court" and inserting "the Attorney General or the judge or clerk of a court described in section 310(b)", and

(ii) in paragraph (3), by striking "or naturalization court" each place it appears and inserting "court, or the Attorney General".

(7) Section 327(a) (8 U.S.C. 1438(a))—

(A) by striking "any naturalization court specified in section 310(a) of this title" and inserting "the Attorney General or before a court described in section 310(b)"; and

(B) by inserting "and by the Attorney General to the Secretary of State" after "Department of Justice".

(8) Section 328(c) (8 U.S.C. 1439(c)) is amended by striking "the final hearing" and inserting "any hearing".

(9) Section 331(b) (8 U.S.C. 1442(b)) is amended by striking "called for a hearing" and all that follows through "to be continued" and inserting "considered or heard except after 90 days' notice to the Attorney General to be considered at the examination or hearing, and the Attorney General's objection to such consideration shall cause the application to be continued".

(10) Section 332(a) (8 U.S.C. 1443(a)) is amended—

(A) by striking "for the purpose" and all that follows through "naturalization courts" in the first sentence, and

(B) by striking the second sentence.

(11) Section 333(a) (8 U.S.C. 1444(a)) is amended by striking "clerk of the court" and inserting "Attorney General".

(12) Section 334 (8 U.S.C. 1445) is amended—

(A) by amending the heading to read as follows:

"APPLICATION FOR NATURALIZATION; DECLARATION OF INTENTION";

(B) in subsection (a)—

(i) by striking "in the office of the clerk of the naturalization court" and inserting "with the Attorney General",

(ii) by striking "upon the hearing of such petition" and inserting "under this title";

(C) in subsection (b)—

(i) by striking "(1)",

(ii) by striking "and (2)" and all that follows through "Attorney General", and

(iii) by striking "petition for";

(D) by amending subsections (c) through (e) to read as follows:

"(c) Hearings under section 336(a) on applications for naturalization shall be held at regular intervals, to be fixed by the Attorney General.

"(d) Except as provided in subsection (e), an application for naturalization shall be filed in person in an office of the Attorney General.

"(e) A person may file an application for naturalization other than in the office of the Attorney General, and an oath of allegiance administered other than in a public ceremony before the Attorney General or a court, if the Attorney General determines that the person has an illness or other disability which—

"(1) is of a permanent nature and is sufficiently serious to prevent the person's personal appearance, or

"(2) is of a nature which so incapacitates the person as to prevent him from personally appearing."; and

(E) by striking the first sentence of subsection (f) and inserting the following: "An alien over 18 years of age who is residing in the United States pursuant to a lawful admission for permanent residence may file with the Attorney General a declaration of intention to become a citizen of the United States. Such a declaration shall be filed in duplicate and in a form prescribed by the Attorney General and shall be accompanied by an application prescribed and approved by the Attorney General.".

(13) Section 335 (8 U.S.C. 1146) is amended—

(A) by amending the heading to read as follows:

"INVESTIGATION OF APPLICANTS; EXAMINATION OF APPLICATIONS";

(B) in subsection (a), by striking "At any time" and all that follows through "336(a)" and inserting "Before a person may be naturalized";

(C) in subsection (b)—

(i) by striking "preliminary" each place it appears,

(ii) in the first sentence, by striking "to any naturalization court" and all that follows through "to such court",

(iii) by striking "any court exercising naturalization jurisdiction as specified in section 310 of this title" in the second sentence and inserting "any District Court of the United States"; and

(iv) by striking "final hearing conducted by a naturalization court designated in section 310 of this title" in the third sentence and inserting "hearing conducted by an immigration officer under section 336(a)";

(D) in subsection (c)—

(i) by striking "preliminary" each place it appears, and

(ii) by striking "recommendation" and inserting "determination"; and

(E) by amending subsections (d) through (f) to read as follows:

"(d) The employee designated to conduct any such examination shall submit to the Attorney General a determination as to whether the application be granted, or denied, or continued, with reasons therefor.

"(e) After an application for naturalization has been filed with the Attorney General, the applicant shall not be permitted to withdraw his application, except with the consent of the Attorney General. In cases where the Attorney General does not consent to the withdrawal of the application, the application shall be determined on its merits and a final order determination made accordingly. In cases where the applicant fails to prosecute his application, the application shall be decided on the merits unless the Attorney General dismisses it for lack of prosecution.

"(f) An applicant for naturalization who moves from the district of the Service in the United States in which the application is pending may, at any time thereafter, request the Service to transfer the application to any district of the Service in the United States which may act on the application. The transfer shall not be made without the consent of the Attorney General. In the case of such a transfer, the proceedings on the application shall continue as though the application had originally been filed in the district of the Service to which the application is transferred.".

(14) Section 336 (8 U.S.C. 1447) is amended—

(A) by amending the heading to read as follows:

"HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION";

(B) by amending subsections (a) and (b) to read as follows:

"(a) If, after an examination under section 335, an application for naturalization is denied or continued, the applicant may request a hearing before an immigration officer.

"(b) Where there has been a failure to make a determination under section 335 on an application or a failure to have a hearing under subsection (a) on a denial or continuance of an application, the Board of Immigration Appeals (established by the Attorney General under part 3 of title 8, Code of Federal Regulations) may, in its discretion, and shall, at the request of the applicant in extraordinary circumstances, require such a determination or hearing.";

(C) in subsection (c), by striking "court" and inserting "immigration officer";

(D) in subsection (d)—

(i) by striking "clerk of the court" and all that follows through "naturalization" and inserting "immigration officer shall, if the applicant requests it at the time of filing the request for the hearing",

(ii) by striking "final" each place it appears, and

(iii) by adding at the end the following: "Such subpenas may be enforced in the same manner as subpenas under section 335(b) may be enforced."; and

(E) in subsection (e)—

(i) by striking "naturalization of any person," and inserting "administration by a court of the oath of allegiance under section 337(a)", and

(ii) by striking "included in the petition for naturalization of such persons" and inserting "included in an appropriate petition to the court".

(15) Section 337 (8 U.S.C. 1448) is amended—

(A) in subsection (a)—

(i) in the first sentence, by striking "in open court" and inserting "in a public ceremony before the Attorney General or a court with jurisdiction under section 310(b)",

(ii) in the second and fourth sentences, by striking "naturalization court" each place it appears and inserting "Attorney General", and

(iii) in the fourth sentence, by striking "the court" and inserting "the Attorney General";

(B) in subsection (b)—

(i) by striking "in open court in the court in which the petition for naturalization is made" and inserting "in the same public ceremony in which the oath of allegiance is administered", and

(ii) by striking "in the court";

(C) in subsection (c)—

(i) by striking "being in open court" and inserting "attending a public ceremony", and

(ii) by striking "a judge of the court at such place as may be designated by the court" and inserting "at such place as the Attorney General may designate under section 334(e)"; and

(D) by adding at the end the following new subsection:

"(d) The Attorney General shall prescribe rules and procedures to ensure that the public ceremonies conducted by the Attorney General for the administration of oaths of allegiance under this section are in keeping with the dignity of the occasion.".

(16) Section 338 (8 U.S.C. 1449) is amended—

(A) by striking "by a naturalization court",

(B) by striking "the clerk of such court" and inserting "the Attorney General",

(C) by striking "title, venue, and location of the naturalization court" and inserting "location of the District office of the Service in which the application was filed and the title, authority, and location of the official or court administering the oath of allegiance",

(D) by striking "the court" and inserting "the Attorney General", and

(E) by striking "of the clerk of the naturalization court; and seal of the court" and inserting "of an immigration officer; and the seal of the Department of Justice".

(17) Section 339 (8 U.S.C. 1450) is amended to read as follows:

"FUNCTIONS AND DUTIES OF CLERKS AND RECORDS OF DECLARATIONS OF INTENTION AND APPLICATIONS FOR NATURALIZATION

"SEC. 339. (a) The clerk of each court that administers oaths of allegiance under section 337 shall—

"(1) issue to each person to whom such an oath is administered a document evidencing that such an oath was administered,

"(2) shall forward to the Attorney General information concerning each person to whom such an oath is administered by the court, within 30 days after the close of the month in which the oath was administered,

"(3) make and keep on file evidence for each such document issued, and

"(4) forward to the Attorney General certified copies of such other proceedings and orders instituted in or issued out of the court affecting or relating to the naturalization of persons as may be required from time to time by the Attorney General.

"(b) Each district office of the Service in the United States shall maintain, in chronological order, indexed, and consecutively numbered, as part of its permanent records, all declarations of intention and applications for naturalization filed with the office.".

(18) Section 340 (8 U.S.C. 1451) is amended—

(A) in the first sentence of subsection (a), by striking "in any court specified in subsection (a) of section 310 of this title" and inserting "in any District Court of the United States",

(B) by amending the second sentence of subsection (h) to read as follows: "The clerk of the court shall transmit a copy of such order and judgment to the Attorney General.",

(C) by striking the third sentence of subsection (h), and

(D) in subsection (j), by striking "any naturalization court" and all that follows through "to take such action" and inserting the following: "the Attorney General to correct, reopen, alter, modify, or vacate an order naturalizing the person".

(19) Section 344 (8 U.S.C. 1455) is amended—

(A) in subsection (a)—

(i) by striking "The clerk of the court" and inserting "The Attorney General",

(ii) in paragraph (1), by striking final, and

(iii) in paragraph (1), by striking "the naturalization court" and inserting "the Attorney General";

(B) by striking subsections (c), (d), (e), and (f);

(C) in subsection (g)—

(i) by striking ", and all fees paid over to the Attorney General by clerks of courts under the provisions of this title,", and

(ii) by striking "or by the clerks of the courts";

(D) in subsection (h)—

(i) by striking "no clerk of a United States court shall" and inserting "the Attorney General may not",

(ii) by striking ", and no clerk of any State court" and all that follows through "charged or collected", and

(iii) by striking the second sentence;

(E) in subsection (i), by striking "clerk of court", "from the clerk,", "such clerk", and "by the clerk" and inserting "Attorney General", "from the Attorney General,", "the Attorney General", and "by the Attorney General", respectively; and

(F) by redesignating subsections (g), (h), and (i) as subsections (c), (d), and (e), respectively.

(20) Section 348 (8 U.S.C. 1459) is amended—

(A) by striking subsections (b) and (c); and

(B) by striking "(a)" in subsection (a).

(e) Striking Miscellaneous Material.—(1) Section 311 (8 U.S.C. 1422) is amended by striking the second sentence.

(2) Section 316 (8 U.S.C. 1427) is amended by striking subsection (f).

(3) Section 324(a)(4) (8 U.S.C. 1435(a)(4)) is amended by striking "and the witnesses have" and inserting "has".

(4) Section 329 (8 U.S.C. 1440) is amended by striking subsection (d).

(5) Section 330 (8 U.S.C. 1441(a)) is amended—

(A) by striking paragraphs (2) and (3) of subsection (a) and by striking "(a)(1)" in subsection (a), and

(B) by striking subsection (b).

(6) Section 331 (8 U.S.C. 1442) is amended by striking the second sentence of subsection (d).

(f) Corrections of Table of Contents.—(1) The items in the table of contents relating to sections 334 through 336 are amended to read as follows:

"Sec. 334. Application for naturalization; declaration of intention.
"Sec. 335. Investigation of applicants; examination of applications.
"Sec. 336. Hearings on denials of applications for naturalization.".

(2) The item in the table of contents relating to section 339 is amended to read as follows:

"Sec. 339. Functions and duties of clerks and records of declarations of intention and applications for naturalization.".

SEC. 5. EFFECTIVE DATES AND SAVINGS PROVISIONS.

(a) Effective Date.—

(1) No new court petitions after effective date.—No court shall have jurisdiction, under section 310(a) of the Immigration and Nationality Act, to naturalize a person unless a petition for naturalization with respect to that person has been filed with the court before the effective date (as defined in paragraph (3)).

(2) Treatment of current court petitions.—

(A) Continuation of current rules.—Except as provided in subparagraph (B), any petition for naturalization which may be pending in a court on the effective date shall be heard and determined in accordance with the requirements of law in effect when the petition was filed.

(B) Permitting withdrawal and consideration of application under new rules.—In the case of any petition for naturalization which may be pending in any court on the date of the enactment of this Act, the petitioner may withdraw such petition and have the petitioner's application for naturalization considered under the amendments made by this Act, but only if the petition is withdrawn not later than 3 months after the effective date.

(3) Effective date defined.—As used in this section, the term "effective date" means the first day of the fourth month beginning after the date of the enactment of this Act.

(4) General effective date.—Except as otherwise provided in this section, the amendments made by this Act are effective as of the date of the enactment of this Act.

(b) Interim, Final Regulations.—The Attorney General shall prescribe regulations (on an interim, final basis or otherwise) to implement the amendments made by this Act on a timely basis.

(c) Continuing Duties.—The amendments to section 339 of the Immigration and Nationality Act (relating to functions and duties of clerks) shall not apply to functions and duties respecting petitions filed before the effective date.

(d) General Savings Provisions.—(1) Nothing contained in this Act, unless otherwise specifically provided, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certification of citizenship, or other document or proceeding which is valid as of the effective date; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, as of the effective date.

(2) As to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters, the provisions of law repealed by this Act are, unless otherwise specifically provided, hereby continued in force and effect.

SEC. 6. G-IV SPECIAL IMMIGRANTS.

(a) Special Immigrant Status for Certain Officers and Employees of International Organizations and Their Immediate Family Members.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended—

(1) by striking "or" at the end of subparagraph (G),

(2) by striking the period at the end of subparagraph (H) and inserting "; or", and

(3) by adding at the end the following new subparagraph:

"(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for admission under this subparagraph no later than his twenty-fifth birthday or six months after the date this subparagraph is enacted, whichever is later;

"(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the 7 years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) applies for admission under this subparagraph no later than 6 months after the date of such death or 6 months after the date this subparagraph is enacted, whichever is later;

"(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the 7 years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) applies for admission under this subparagraph before January 1, 1993, and no later than 6 months after the date of such retirement or 6 months after the date this subparagraph is enacted, whichever is later; or

"(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family.".

(b) Nonimmigrant Status for Certain Parents and Children of Aliens Given Special Immigrant Status.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended by striking out "or" at the end of subparagraph (L), by striking out the period at the end of subparagraph (M) and inserting in lieu thereof "; or", and by adding at the end the following new paragraph:

"(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i), but only if and while the alien is a child, or

"(ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I).".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Kentucky [Mr. Mazzoli] will be recognized for 20 minutes and the gentleman from California [Mr. Lungren] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kentucky [Mr. Mazzoli].

Mr. MAZZOLI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5558, a bill which provides for administrative naturalization.

This bill vests authority for naturalization with the Attorney General. Currently, the Immigration and Naturalization Service does all the processing of an application for naturalization. This involves an investigation of the applicant and a test on English language and U.S. history and Government. After an interview with the applicant, INS then makes a preliminary decision and recommends disposition to the court. Traditionally, however, the court's role is of a ceremonial nature and very rarely does it overturn an INS decision. In fact, only 131 of 200,000 applications were denied by the courts in fiscal year 1984.

H.R. 5558 simply allows the INS to carry its process one step further by performing the ceremonial aspects of naturalization. In cases where the applicant may wish to have a court ceremony, that will be arranged.

In my 6 years as Immigration Subcommittee chairman, this issue has been one of the most frequently addressed during the oversight process. Each year, the Immigration Subcommittee has grappled with the increased volume of naturalization applications by authorizing more personnel and funding to reduce backlogs: In fiscal year 1984, the committee authorized the addition of 140 positions; fiscal year 1985, 170 positions; fiscal year 1986, 94 positions. Additionally, in 1981, the subcommittee processed legislation under the "INS Efficiency Bill" which removed the two witness requirement for naturalization to streamline the naturalization process.

The Immigration Service has also attempted to cope with the heavy increases in the naturalization program through computerization of records, institution of new management programs, and more efficient utilization of resources, as well as dispatching task forces to high backlog areas.

The courts, too, have scheduled more hearings to try to accommodate the increase in applicants.

But even with all these efforts, naturalization backlogs continue in the courts: U.S. District Court, west North Carolina, 8 months; U.S. District Court, Texas, 12 months; and U.S. District Court, Newark, 18 months.

For these reasons, H.R. 5558 appears to be a helpful step.

By granting authority to the Attorney General, the subcommittee envisions a naturalization process which can be shared with family, friends, and the community through possible "circuit-riding" to various locations by the INS. The committee believes that the INS has sufficient pride in its mission to carry out the naturalization role with appropriate dignity and decorum.

The applicant is the paramount concern in this legislation. It is for the future citizen that the process is streamlined and for whom this bill merits passage.

Mr. LUNGREN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of the passage of the administrative naturalization bill, the INS efficiency bill, the consular efficiency bill and a bill to deter marriage fraud, all of which are before us on the Suspension Calendar.

These bills were passed quickly both in the Subcommittee on Immigration and Refugees and the full Judiciary Committee. The administrative naturalization bill, the first one before us, vests authority for naturalization in the Attorney General. Under this bill, immigration judges, in addition to Federal and State judges, would be allowed to conduct naturalization ceremonies.

As the gentleman from Kentucky has mentioned, we have heavy backlogs in the naturalization process in some areas around the country, including my own home area of Los Angeles, CA.

While I believe the INS has done a fairly good job in the last couple of years to bring those backlogs down, they are still extant in several areas of the country. While we have had the INS to improve their operations in some areas of the country, the difficulty arises from the fact of congestion of the Federal courts.

This bill will allow an option, that is, whether one wants to go through an administrative naturalization ceremony as opposed to the court naturalization ceremony. This does not really change the substance of the applications; it does not change the judgment made about whether one can become naturalized. It rather goes to the question of the ceremony.

One thing I might point out: As much as I support this legislation which would allow, as I say, at the option of the applicant, the administrative approach, we should bear in mind that State judges are allowed under the law to perform such ceremonies. In some areas of the country, there has existed for some period of time a custom where that is not done. That is, where State judges are not involved in naturalization proceedings. That is the case in my own area of southern California.

While there may have been good and sufficient reason for that in the past, I would hope that in those areas where we have backlogs we might more seriously look at the use of State judges. That continues the dignity of the court proceeding, but it allows us to have many more judges involved.

Some complaint in the past has been that the INS is required to do all the paperwork instead of the courts, but in our own area, the Los Angeles region, the INS is required to do that with the Federal courts. So it would require no more work on the part of the INS than is now the case in Federal courts.

So as we move toward allowing administrative ceremonies, I would hope we would not lose sight of the fact that State court judges can be utilized, and I would hope, as the chairman of our committee has suggested, that we might evidence our support for this and let the INS know that we certainly support this because it seems to me the very worst thing we could do is to delay an actual naturalization ceremony such that an individual who has done everything he or she is supposed to do to become an American citizen is not allowed to become an American citizen because he or she has to wait and wait and wait.

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It particulary pains me in an election year to see some people who have qualified in every other respect to become American citizens denied that most precious of gifts of American citizenship, the right to vote, because we have a backlog and they cannot get into the courts to have the ceremony done.

We hope this bill will help us in that effort. But as I say, I hope it is only part of the solution to the problem.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. Fish].

Mr. FISH. Mr. Speaker, I support Chairman Rodino's administrative naturalization bill (H.R. 5558) which develops an alternative administrative process for naturalization. Under this bill, immigration judges, in addition to Federal and State judges, will be allowed to conduct naturalization ceremonies. The purpose of the bill is to help reduce the heavy backlog in the naturalization process which some areas around the country have been experiencing.

Of particular interest to me is a provision found in both Chairman RODINO's naturalization bill and the INS efficiency bill (H.R. 4823), the so-called G-IV provisions. This G-IV has been part of the major immigration reform bill for the last several years and was again included in the current immigration reform bill (H.R. 3810). Although this provision is very much needed, it continues to be delayed because of our inability to enact major immigration reform legislation.

The G-IV provisions would allow retired international public servants and their spouses the right to adjust their status to that of a permanent resident if they have been in this country for an aggregate period of at least 15 years. In the case of an unmarried child, an aggregate period of at least 7 years—between the ages of 5 and 21—would be necessary.

Under present law, staff members of international organizations—for example, the United Nations, World Bank, International Monetary Fund, Inter-American Development Bank, International Finance Corporation, OAS, Inter-American Defense Board, and Intelsat—and family members residing in their households come to the United States on nonimmigrant G-IV visas.

But such visas are available only while the staff member remains an employee of the international organization or while the dependents continue to reside in the staff member's household. When the staff member retires—or if he or she dies in office—the family must leave the United States promptly, unless it is able to obtain another visa status—which is generally extremely difficult. Grown children who leave the staff member's household also lose their visa eligibility.

These provisions have caused extreme hardships over the years. Many staff members remain with an international organization for long periods. Their children, who grow up in the United States, receive their education here, and are "Americanized" in every way, may now be forced to leave when their parent is no longer employed by the international organization or when they leave the parent's household.

Widows or widowers and retired staff members who have lived in the United States throughout their most productive years may be forced to move elsewhere, regardless of their economic self-sufficiency and the dislocation involved.

While precise data are not available, based on information received from the major international organizations, it is estimated that the number of persons who will be eligible to apply under the pending G-IV immigration bills will be 2,900 children the first year, and 300 annually thereafter, 200 retirees and spouses annually, and 25 surviving spouses annually. The large number of first-year eligibles reflects the fact that many children already meet the durational residency requirements in the bill and have been waiting for the enactment of the G-IV bill.

These G-IV provisions have bipartisan support in the Immigration Subcommittees in both Houses and are supported by the heads of all the major international organizations. Both the current administration and the former administration have supported G-IV relief. Virtually every living Secretary of State (including Secretary Shultz), Secretary of the Treasury and the President of the World Bank (Hon. Barber Conable) has strongly supported this legislation.

Although I would surely hope that the comprehensive immigration reform bill would also be completed this year, I am pleased that the much needed G-IV provisions are being considered as part of these two bills (H.R. 5558 and 4823) today. I am hopeful that this immigration legislation will receive the support of my colleagues and be passed by the House and Senate before the end of this session.

Mr. MAZZOLI. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey [Mr. RODINO].

Mr. RODINO. Mr. Speaker, first of all I want to commend the chairman of the subcommittee and the ranking member, the gentleman from California [Mr. LUNGREN] for having, in such a timely and expeditious fashion, taken up this naturalization bill.

Mr. Speaker, I rise today in support of H.R. 5558, a bill which streamlines the process by which persons become naturalized.

There is no procedure and no ceremony more critical to a participatory democracy than naturalization. Through the naturalization process, an individual drops his or her alien status and becomes a citizen of the United States of America. Immigrants must prove themselves worthy of citizenship by voluntarily meeting certain requirements set forth in the law.

The present system has been bogged down with administrative and logistical problems and has not kept pace with the exponential increase in applications for citizenship. The number of applications for naturalization has increased from 171,000 in 1981 to 286,000 in 1984. In my district alone the waiting period is 21 months with a current backlog of 14,000 applications in New Jersey. Other areas of the country are experiencing minor backlogs. This lack of uniformity is simply unfair.

These persons are being denied employment opportunities, travel, the ability to confer immigration benefits on relatives, and other privileges of citizenship which they have rightfully earned. Most important, they are denied the right to vote.

My bill seeks to address this specific hardship by making naturalization primarily an administrative function, as it is in most other countries of the world. Currently, the Immigration and Naturalization Service does virtually all the processing and preliminary determinations and then makes recommendations on the cases to the courts. The courts, however, have the role of final disposition in the manner of swearing-in the applicant. It is generally recognized that the role of the court is almost exclusively ceremonial and that recommendations of the Attorney General are rarely overturned by the court.

H.R. 5558 will streamline this complicated and burdensome two-step process by allowing the Attorney General to make determinations on eligibility for citizenship and perform the swearing-in of the applicants. The bill specifically requires the Attorney General "to ensure that the public ceremonies conducted by the Attorney General for the administration of oaths of allegiance * * * are in keeping with the dignity of the occasion."

The substantive conditions and requirements for naturalization would not be changed by the bill except that the period of time an individual would be required to reside in a State or INS district immediately before filing his or her naturalization application would be reduced from 6 to 3 months.

Once the naturalization processing is complete, the applicant would be given the option of being sworn in as a U.S. citizen in a judicial or an administrative ceremony. That is, he or she could choose to be formally naturalized in the district court of the United States, where he or she resides or its territories or by any State court.

Full protection would be provided for individuals under these streamlined procedures. The bill provides that a person whose application for naturalization is denied after a final hearing before an immigration officer may seek review of such denial before the Board of Immigration Appeals. The decision of the Board is, in turn, reviewable by the appropriate U.S. district court.

This step is not taken lightly. The Congress, the executive branch, and the judiciary have all attempted to address the backlogs through legislation in 1981, through more funding and manpower, through management improvements, computerization and more logistical support—but these efforts have met with only limited success.

This legislation simply codifies existing practice in a more cost-effective, efficient manner while relieving the applicant of onerous paperwork burdens and the maze of dealing with two different branches of Government. The intent of the legislation is in no way to diminish the importance of naturalization by removing it from the judiciary. On the contrary, the intent is to adhere to the constitutional mandate that Congress "establish a uniform rule of naturalization," regardless of where the applicant for citizenship lives.

I urge my colleagues' support of this urgently needed legislation.

Mr. LUNGREN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MAZZOLI. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from Kentucky [Mr. MAZZOLI] that the House suspend the rules and pass the bill, H.R. 5558.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

PRIVATE DEBT COLLECTION

Mr. GLICKMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5541) to amend section 3718 of title 31, United States Code, to authorize contracts retaining private counsel to furnish legal services in the cases of indebtedness owed the United States, as amended.

The Clerk read as follows:

H.R. 5541

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONTRACTS FOR CERTAIN LEGAL SERVICES.

Section 3718 of title 31, United States Code, is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (d), (e), and (f), respectively;

(2) in subsection (d), as redesignated by paragraph (1), by inserting "or (b)" after "subsection (a)";

(3) in subsection (e), as redesignated by paragraph (1)—

(A) by striking out "(b)" and inserting in lieu thereof "(d)"; and

(B) by inserting "or (b)" after "(a)"; and

(4) by inserting after subsection (a) the following new subsections:

"(b)(1)(A) The Attorney General may make contracts retaining private counsel to furnish legal services, including representation in negotiation, compromise, settlement, and litigation, in the case of any claim of indebtedness owed the United States. Each such contract shall include such terms and conditions as the Attorney General considers necessary and appropriate, including a provision specifying the amount of the fee to be paid to the private counsel under such contract or the method for calculating that fee. The amount of the fee payable for legal services furnished under any such contract may not exceed the fee that counsel engaged in the private practice of law in the area or areas where the legal services are furnished typically charge clients for furnishing legal services in the collection of claims of indebtedness, as determined by the Attorney General, considering the amount, age, and nature of the indebtedness and whether the debtor is an individual or a business entity. If the Attorney General makes a contract for legal services to be furnished in any judicial district of the United States under the first sentence of this paragraph, the Attorney General shall use his best efforts to obtain, from among attorneys regularly engaged in the private practice of law in such district, at least four such contracts for legal services with private individuals or firms in such district. Nothing in this subparagraph shall relieve the Attorney General of the competition requirements set forth in title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 and following).

"(B) The Attorney General shall use his best efforts to enter into contracts under this paragraph with law firms owned and controlled by socially and economically disadvantaged individuals, so as to enable each agency to comply with paragraph (3).

"(2) The head of an executive or legislative agency may, subject to the approval of the Attorney General, refer to a private counsel retained under paragraph (1) of this subsection claims of indebtedness owed the United States arising out of activities of that agency.

"(3) Each agency shall use its best efforts to assure that not less than 10 percent of the amounts of all claims referred to private counsel by that agency under paragraph (2) are referred to law firms owned and controlled by socially and economically disadvantaged individuals. For purposes of this paragraph—

"(A) the term 'law firm owned and controlled by socially and economically disadvantaged individuals' means a law firm that meets the requirements set forth in clauses (i) and (ii) of section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C) (i) and (ii)) and regulations issued under those clauses; and

"(B) 'socially and economically disadvantaged individuals' shall be presumed to include these groups and individuals described in the last paragraph of section 8(d)(3)(C) of the Small Business Act.

"(4) Notwithstanding sections 516, 518(b), 519, and 547(2) of title 28, a private counsel retained under paragraph (1) of this subsection may represent the United States in litigation in connection with legal services furnished pursuant to the contract entered into with that counsel under paragraph (1) of this subsection.

"(5) A contract made with a private counsel under paragraph (1) of this subsection shall include—

"(A) a provison permitting the Attorney General to terminate either the contract or the private counsel's representation of the United States in particular cases if the Attorney General finds that such action is for the convenience of the Government;

"(B) a provision stating that the head of the executive or legislative agency which refers a claim under the contract retains the authority to resolve a dispute regarding the claim, to compromise the claim, or to terminate a collection action on the claim; and

"(C) a provision requiring the private counsel to transmit monthly to the Attorney General and the head of the executive or legislative agency referring a claim under the contract a report on the services relating to the claim rendered under the contract during the month and the progress made during the month in collecting the claim under the contract.

"(6) Notwithstanding the fourth sentence of section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)), a private counsel performing legal services pursuant to a contract made under paragraph (1) of this subsection shall be considered to be a debt collector for the purposes of such Act.

"(7) Any counterclaim filed in any action to recover indebtedness owed the United States which is brought on behalf of the United States by private counsel retained under this subsection may not be asserted unless the counterclaim is served directly on the Attorney General or the United States Attorney for the Judicial district in which, or embracing the place in which, the action is brought. Such service shall be made in accordance with the rules of procedure of the court in which the action is brought.

"(c) The Attorney General shall transmit to the Congress an annual report on the activities of the Department of Justice to recover indebtedness owed the United States which was referred to the Department of Justice for collection. Each such report shall include a list, by agency, of—

"(1) the total number and amounts of claims which were referred for legal services to the Department of Justice and to private counsel under subsection (b) during the 1-year period covered by the report;

"(2) the total number and amount of those claims referred for legal services to the Department of Justice which were collected or were not collected or otherwise resolved during the 1-year period covered by the report; and

"(3) the total number and amount of those claims referred for legal services to private counsel under subsection (b)—

"(A) which were collected or were not collected or otherwise resolved during the 1-year period covered by the report;

"(B) which were not collected or otherwise resolved under a contract terminated by the Attorney General during the 1-year period covered by the report; and

"(C) on which the Attorney General terminated the private counsel's representation during the 1-year period covered by the report without terminating the contract with the private counsel under which the claims were referred.".

SEC. 2. REPORT BY ATTORNEY GENERAL.

Not later than 180 days after the date of the enactment of this Act, the Attorney General of the United States shall transmit to the Congress a report on the actions taken under section 3718(b) of title 31, United States Code (as added by section 1 of this Act).

SEC. 3. PILOT PROGRAM.

The Attorney General shall carry out subsections (b) and (c) of section 3718 of title 31, United States Code (as added by section 1 of this Act), through a pilot program in each of at least 5 and not more than 10 judicial districts selected by the Attorney General.

SEC. 4. REGULATIONS.

The Attorney General shall issue regulations to carry out this Act and the amendments made by section 1 of this Act. The Attorney General shall submit the regulations to the Congress at least 60 days before they become effective.

SEC. 5. TERMINATION.

This Act and the amendments made by section 1 of this Act shall be in effect for a period of three years, beginning on the date on which regulations become effective under section 4.

SEC. 6. AUDIT BY COMPTROLLER GENERAL.

(a) CONTENTS OF AUDIT.—The Comptroller General of the United States shall, at the end of the 3-year period referred to in section 5, conduct an audit of the actions of the Attorney General under subsection (b) of section 3718 of title 31, United States Code (as added by section 1 of this Act), under the pilot program referred to in section 3. The Comptroller General shall determine the extent of the competition among private counsel to obtain contracts awarded under such subsection, the reasonableness of the fees provided in such contracts, the diligence and efforts of the Attorney General to retain private counsel in accordance with the provisions of such subsection, and the results of the debt collection efforts of private counsel retained under such contracts.

(b) REPORT TO CONGRESS.—After completing the audit under subsection (a), the Comptroller General shall transmit to the Congress a report on the findings and conclusions resulting from the audit.

The SPEAKER pro tempore. Is a second demanded?

Mr. FISH. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Kansas [Mr. GLICKMAN] will be recognized for 20 minutes and the gentleman from New York [Mr. FISH] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5541 would authorize a 3-year pilot project under which the Department of Justice would contract with private law firms for legal services to collect debts owed to the Federal Government.

The nonpayment of debts to the Government is a serious problem, one that threatens the very existence of such programs as student loans. The dimensions of the problem are hard to believe. OMB has reported that at the beginning of fiscal year 1985, $19.9 billion in non-tax-delinquent debts were owed to the U.S. Government. By the end of fiscal year 1985, this amount had grown to $23.6 billion. Experience has shown, and these figures appear to reflect, that many debtors will not pay their debts unless threatened with litigation, and that some will not pay unless they are actually sued. However, the lack of resources in the Department of Justice to litigate these cases means that debtors know that failure to pay on the debts will probably go unaddressed, and that ultimately the applicable statute of limitations will forever bar recovery of the debt by the Government.

Under the Debt Collection Act of 1982, private collection services may use all normal collection procedures to collect debts owed the Federal Government, as long as those procedures are in conformance with all Federal and State laws and regulations related to debt collection practices, such as the Fair Debt Collection Practices Act. However, these companies are not authorized to pursue any legal remedies to collect these debts. In the event legal action must be undertaken, the debt account must be referred back to the agency to which the debt is owed. That agency may then refer debts in excess of $600 to the Department of Justice for legal action.

Within the Department of Justice, the offices of the various U.S. attorneys are responsible for handling legal action on the debts. Because of the high cost of litigating to collect debts, the U.S. attorneys do not initiate legal action on debts less than $600 and on many of the small debts above this amount which are referred to their offices.

H.R. 5541 is designed to address the situation where nothing short of actual or threatened litigation will be sufficient to cause a debtor to pay his debt. Under it, private attorneys would be authorized to perform legal services for the United States for the collection of these debts. This grant of authority should not only lead to more debts being paid as a result of litigation, but should also lead to the earlier payment of debts because of the threat of litigation.

I particularly want to emphasize the safeguards included in H.R. 5541 to ensure a fair selection of law firms for these contracts: the Attorney General would be required to use his best efforts to enter into such contracts with at least four law firms in each selected judicial district, and to enter into such contracts with minority law firms. Also, each agency would be required to use its best efforts to refer 10 percent of the amount of all referred claims to minority law firms selected by the Department of Justice.

I also want to emphasize that this is not a permanent program. This pilot program will last for only 3 years. We will then be able to assess its effectiveness and operations before we decide whether it should be made permanent.

In addition, as a protection for those who do owe debts to the Government, it is important to note that these private counsel would be subject to the provisions of the Fair Debt Collection Practices Act.

This bill should substantially improve the debt collection efforts of the Federal Government, and I urge that it be passed by the House.

□ 1255

Mr. Speaker, I should like to pay special note to a few Members who have been most helpful, including Congressman JIM MOODY, who was the original sponsor of this bill; Congressman BARNEY FRANK, Congressman JOHN KASICH, Congressman HAMILTON FISH, and a broad variety of other Members who were very, very instrumental in getting this bill moving. A similar bill has passed the other body, and it is my hope that we can move this bill and get it passed this session.

Mr. FISH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in 1982, Congress enacted the Debt Collection Act which, for the first time, permitted the Federal Government to utilize private collection services. This important law was part of the Reagan administration's effort to combat "fraud, waste, and abuse."

Today, we have before us legislation which will further this effort. H.R. 5541 authorizes a 3-year pilot program under which the Department of Justice will contract with private law firms for legal services to collect the debts owed to the Federal Government. Currently, all agencies of the Federal Government must refer debt cases requiring legal action to the Department of Justice. the Department of Justice lacks the staff and litigation resources necessary to deal with this significant volume of cases.

The taxpayers of our Nation are losing more than $5 billion every year because of defaulted Federal loans. It is my strong view that H.R. 5541 will help return millions of dollars to the U.S. Treasury—that otherwise would go uncollected—and, at the same time, would allow the Department of Justice to devote its valuable resources to more critical work such as fighting drug trafficking and organized crime.

In order to safeguard the public interest, this legislation does authorize the Department of Justice to terminate such contracts and to recall any claim referred by an agency if it would be in the public interest.

Mr. Speaker, I was an early cosponsor of predecessor legislation in this

Congress sponsored by Congressman Moody. In addition, I want to give note and credit to my friend and colleague, the junior Senator from New York, Senator D'Amato, for his invaluable and instrumental activities on behalf of this legislation.

Mr. GLICKMAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. Kasich].

Mr. KASICH. Mr. Speaker, I greatly appreciate the subcommittee chairman yielding time to me.

My only regret today is that this legislation is being considered under the suspension calendar and is probably not going to receive the kind of attention by the Members of this House that it really deserves.

First let me say that the gentleman from Kansas [Mr. Glickman] is doing the taxpayers not only of his district, but in my view the taxpayers of this country, a giant service by moving this legislation. It has been no small task, because there has been great opposition to it. He was able to put together a compromise to settle the concerns of some people, and establish a pilot program that is going to work for 3 years.

I am not satisfied that we have gone far enough, but this is the best we could get at this point. It is a giant step forward in solving a problem that is probably America's greatest unknown or unrecognized problem today, and that is the problem of debt collection.

The gentleman from New York [Mr. Fish] mentioned that in 1982 we enacted the Debt Collection Act to try to improve the collection procedures of the Federal Government. In 1982, total delinquencies owed to the Federal Government were $38 billion not $38 million, but $38 billion. As of June 30, 1985, those delinquencies had grown to $64 billion. Today, it is probably closer to $70 billion.

Our bookkeeping is so fouled up in the Federal Government that we do not even know really what our total debts are.

At a time when we talk about Gramm-Rudman, it is just inconceivable to me that we have not been more aggressive in collecting the money owed the Federal Government. It took the leadership of the gentleman from Kansas [Mr. Glickman] to resolve just on part of the problem, allowing us to use private lawyers to try to litigate some of these overdue debts.

Let me just put it so that we can all clearly understand the difficulty. Whenever the Federal Government wants to litigate and establish its right to collect overdue funds, it goes to the Justice Department. The Justice Department currently has a backlog of 95,000 cases. There are who knows how many thousands more that we are not even beginning to litigate at this point because the Federal Government does not even want to think about them with the 95,000-case backlog. Since last year, the backlog in the Justice Department has grown by 16,000 cases.

The Washington Post reported a story some time ago about a company that received a loan of $64 million from the Maritime Administration. This firm planned to use the loan to burn toxic wastes and dump them in the ocean. They got money to build the ships in order to burn the toxic wastes, and then they went to the EPA for the permits, but the EPA said, "No way."

So the company ended up going bankrupt. The ships are dry-docked somewhere off the east coast. You would say, "Why doesn't the Federal Government seize these ships and sell them in order to recover at least some of the money owed to us?

Well, the problem is with the 95,000-case backlog, by the time the Federal Government litigates this case we will all be dead and gone.

So what the gentleman from Kansas [Mr. Glickman] is trying to do here is to say we should let the Justice Department contract with private law firms that can assist the Department in trying to litigate these cases.

The gentleman is exactly right when he says we have written off an awful lot of debt. In 1984—this number is astounding—the Federal Government wrote off $2.5 billion in debts that were owed to the Federal Government—$2.5 billion simply written off because we do not have the procedures by which we can collect or litigate or assert the Government's right to be able to force people to pay money that is owed to the taxpayers of this country.

What the gentleman from Kansas [Mr. Glickman] has done, with the gentleman from Wisconsin [Mr. Moody], who deserves as much credit as the gentleman from Kansas [Mr. Glickman] and the gentleman from New York [Mr. Fish], who went to the committee chairman and said, "Let's try to move something through this Congress. We already have it through the Senate. This ties it all up. We will have an experimental program where law firms can assist the Justice Department in resolving this incredible 95,000-case backlog, a backlog that has grown by 16,000 over the last year, in an effort to start to solve this incredible growing problem of delinquencies owed to the Federal Government."

The taxpayers of this country want this money collected. This is one piece of the puzzle that will help us resolve what really has become now a $65 to $70 billion problem.

As I said, this is one of what I think is a number of things that need to be done to resolve this problem of growing debt delinquencies owed by individuals and companies; but I take my hat off today to the gentleman from Kansas [Mr. Glickman], the gentleman from Wisconsin [Mr. Moody], and the gentleman from New York [Mr. Fish] for having the persistence to resolve at least one part of the problem here with debt collection.

Mr. FISH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GLICKMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to pay special tribute also to the distinguished junior Senator from New York, Senator D'Amato, because it was largely through his persistence and interest that we have been able to move this work product as far as we have.

I want to thank my colleague, the gentleman from Ohio, for his kind remarks.

Mr. MOODY. Mr. Speaker. I am extremely pleased to support H.R. 5541, the Federal Debt Recovery Act, which I initially authored as H.R. 979.

I also want to take this opportunity to thank my colleagues on the Judiciary Committee, Chairman Rodino and Mr. Glickman, for their leadership in bringing this bill to the floor. I also want to thank Senator D'Amato, the primary sponsor in the other body, for his parallel efforts with S. 209. Janet Potts and Elaine Mielke of the Judiciary Committee staff and Lisa Kaeser and Chuck Rosenberg, of my staff, provided invaluable support and assistance along the way to passage. I am grateful to them as well.

Mr. Speaker, in the 98th Congress and again early this session I introduced legislation to materially assist the Federal Government in recovering billions of dollars in delinquent debt. H.R. 979 and now the committee redraft, H.R. 5541, will permit the Attorney General to contract with private legal counsel to recover nontax debt owed the United States—debt which now totals almost $25 billion.

We, the taxpayers, are now losing $15.3 million per day due to the statute of limitations, which places more of the debt beyond legal reach each day, and to increased borrowing costs for the Federal Government to carry this debt.

The amount of delinquent debt owed to the Federal Government has grown enormously over the past few years. At the end of fiscal year 1984 $19.9 billion in nontax delinquent debt was owed to the Federal Government—to the American people. At the end of fiscal year 1985, it had ballooned to $23.9 billion, a 20-percent increase. Without H.R. 5541 it will continue to grow.

It is important to note that the amount of nontax debt that is more than 1 year overdue has grown steadily from $12.3 billion in fiscal year 1984 to $14.9 billion in fiscal year 1985, a 17-percent increase. Meanwhile, debt that is more than 6 years overdue has grown from $6.2 billion to $7.45 billion, a 20-percent increase.

Delinquent debts directly increase the Federal deficit. Imagine how important $25 billion would be to reducing the $200 billion deficit.

Imagine how hard it would be to raise $25 billion in new taxes. Imagine how many truly valuable programs could be spared some excessively deep cuts were only a part of that $25 billion available to them.

Not collecting delinquent debt owed to the Federal Government also threatens the political support and the integrity of worthy lending programs, such as farm loans, small business credit, student loans, et cetera.

H.R. 5541 will help to protect these important lending programs with negligible bureaucratic effort or cost to the Federal Government. And it will help reduce the deficit.

I am pleased that we have the opportunity today to pass this important bill. I urge its adoption.

Mr. GLICKMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from Kansas [Mr. GLICKMAN] that the House suspend the rules and pass the bill, H.R. 5541, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

SUPREME COURT POLICE

Mr. GLICKMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5362) to extend the authority of the Supreme Court Police to provide protective services for Justices and Court personnel.

The Clerk read as follows:

H.R. 5362

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 9(c) of the Act entitled "An Act relating to the policing of the building and grounds of the Supreme Court of the United States", approved August 18, 1949 (40 U.S.C. 13n(c)), is amended in the first sentence by striking "one year after the date of the enactment of this subsection" and inserting "on December 29, 1990".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Kansas [Mr. GLICKMAN] will be recognized for 20 minutes, and the gentleman from California [Mr. LUNGREN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5362 amends section 13n of title 40, United States Code, by extending the sunset date until December 1990—only 4 years.

Without this legislation, the authority of the Supreme Court Police to carry weapons and protect the Supreme Court Justices, employees, building and grounds will expire.

I do not believe that anyone can argue that the protection of the Supreme Court—Justices, employees, and property—is not very important.

Congress first authorized the Supreme Court Police to carry weapons in 1982. As an additional oversight protection, the legislation requires the Marshal of the Supreme Court to file an annual report with Congress concerning the administrative costs of this protection.

H.R. 5362 does not alter the reporting requirement, it only extends the sunset provision for another 4 years.

I strongly urge my colleagues to support enactment of H.R. 5362.

Mr. LUNGREN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Kansas has explained very well what this bill is.

I just might mention that over the past 4 years the protective services that have been rendered has been accomplished with minimal cost to the taxpayer. Since the 1982 change in the law, there have been only 30 requests, for instance, for protection outside the Washington metropolitan area, at a cost of a mere $2,700.

It seems to me that the arrangement that was made in the earlier law ought to be continued and we should recall that if we fail to reauthorize this law, the Supreme Court Police will not be able to provide vital protection services to Justices and Court personnel outside the Court premises. As a result, alternative and more costly arrangements would have to be made for their security.

Accordingly, I urge my colleagues to support this legislation. It is common sense legislation. It is fiscally responsible as well.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH].

Mr. FISH. Mr. Speaker, I rise in support of H.R. 5362, a bill to reauthorize the authority of the Supreme Court Police to provide protective services to the Justices, Court personnel and official visitors outside of the Court premises. The current law has been operating on a temporary reauthorization from December 29 of last year and is set to expire in December 29 of this year. Consequently, we must act now to prevent this important authority from lapsing.

Mr. Speaker, Congress first granted the Supreme Court Police the authority to provide protective services to the Justices and Court personnel outside the physical building of the Court in 1982, as a result of growing security concerns. Given the growing number of threats against certain Justices, it is obvious that such authority is critical to the operation of the Court.

Over the past 4 years, the protective services that have been rendered have been accomplished with minimal cost to the taxpayer. Since the 1982 change in the law, there have been only 30 requests for protection outside the Washington metropolitan area at a cost of $2,700. Should we fail to reauthorize this law, Supreme Court Police will not be able to provide vital protective services to Justices and Court personnel outside the Court premises. As a result, alternative and more costly arrangements will have to be made for their security. I accordingly urge my colleagues to support this legislation.

Mr. LUNGREN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GLICKMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kansas [Mr. GLICKMAN] that the House suspend the rules and pass the bill, H.R. 5362.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

ARKANSAS-MISSISSIPPI GREAT RIVER BRIDGE CONSTRUCTION COMPACT

Mr. GLICKMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5390) granting the consent of the Congress to the Arkansas-Mississippi great river bridge construction compact.

The Clerk read as follows:

H.R. 5390

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONSENT OF CONGRESS TO COMPACT.

The Congress consents to the Arkansas-Mississippi Great River Bridge Construction Compact, which was entered into between the States of Arkansas and Mississippi and was approved by law in the State of Arkansas on February 7, 1985, and in the State of Mississippi on March 19, 1985. The compact is substantially as follows:

"ARKANSAS-MISSISSIPPI GREAT RIVER BRIDGE CONSTRUCTION COMPACT

"ARTICLE I

"The purpose of this compact is to promote the construction of a highway bridge or a combined highway-railroad bridge connecting the States of Mississippi and Arkansas at, near or between Rosedale, Mississippi, and McGehee and Dumas, Arkansas, and to establish a joint interstate authority to assist in these efforts.

"ARTICLE II

"This compact shall become effective immediately as to the States ratifying it whenever the States of Arkansas and Mississippi have ratified it and Congress has given consent thereto.

"ARTICLE III

"(a) The states which are parties to this compact (hereinafter referred to as 'Party States') do hereby establish and create a joint agency which shall be known as the Arkansas-Mississippi Great River Bridge Authority (hereinafter referred to as 'The Authority'). The membership of The Authority shall consist of five (5) members from the State of Mississippi, to be selected in such manner as may be provided by laws enacted by the Legislature of the State of Mississippi, and five (5) members from the State of Arkansas, to be selected in such manner as may be provided by laws enacted by the Arkansas General Assembly. The terms of the members of such Authority from each of the Party States, the method of appointing successor members, and the method of filling vacancies on The Authority, shall be determined by the laws of Mississippi and Arkansas.

"(b) The members of The Authority shall not be compensated for services on The Authority, but each member shall be entitled to actual and reasonable expenses incurred in attending meetings or incurred otherwise in the performance of his/her duties as a member of The Authority.

"(c) The members of The Authority shall meet upon the call of the chairman and hold such other meetings as its business may require. Special meetings of The Authority may be called by the chairman or upon written request of a majority of the members of The Authority from each of the Party States. The Authority shall choose annually a chairman and vice chairman from its members, and the chairmanship shall rotate each year among the Party States, in order of their acceptance of this compact.

"(d) The Secretary of The Authority (hereinafter provided for) shall notify each member in writing of all meetings of The Authority in such a manner and under such rules and regulations as The Authority may prescribe.

"(e) The Authority shall adopt rules and regulations for the transaction of its business; and the secretary shall keep a record of all its business and shall furnish a copy thereof to each member of The Authority.

"(f) It shall be the duty of The Authority, in general, to promote, encourage, and coordinate the efforts of the Party States to secure the development of the Arkansas-Mississippi Great River Bridge at, near or between Rosedale, Mississippi, and McGehee-Dumas, Arkansas. Toward this end, The Authority shall have to power to:

"(i) Hold hearings;

"(ii) Conduct studies and surveys of all problems, benefits, and other matters associated with the construction of the Arkansas-Mississippi Great River Bridge, and to make reports thereon;

"(iii) Acquire by gift, grant or otherwise, from local, federal, or private sources, such money or property as may be provided for the proper performance of their function, and to hold and dispose of the same and to expend such monies as is necessary to defray the costs of establishing and operating The Authority;

"(iv) Cooperate with other public or private groups, whether local, state, regional, or national, having an interest in the bridge construction;

"(v) Formulate and execute plans and policies for emphasizing the purpose of this compact before the Congress of the United States and other appropriate officers and agencies of the United States;

"(vi) Negotiate with one or more railroads in the State of Mississippi and the State of Arkansas, and with the appropriate Federal authorities for the construction of the Arkansas-Mississippi Great River Bridge as a combined highway-railroad bridge. If necessary, The Authority may enter into a contract with one or more railroads and/or the appropriate agencies of the United States to borrow funds for the construction of the railroad portion of the bridge, to be reimbursed, including all costs of principal, interest and other costs in connection with such indebtedness, by revenues derived from rental fees, grants, or other charges, with such indebtedness to be secured solely by a pledge of such revenues; and

"(vii) Exercise such other powers as may be appropriate to enable it to accomplish its functions and duties in connection with the construction of the Arkansas-Mississippi Great River Bridge as a highway bridge or a combined highway-railroad bridge, and to carry out the purposes of this compact.

"ARTICLE IV

"The Authority shall appoint a secretary, who shall be a person familiar with the nature, procedures, and significance of the bridge construction and the informational, educational, and publicity methods of stimulating general interest in such developments, and who shall be the compact administrator. The term of office of the secretary shall be at the pleasure of The Authority and such officer shall receive such compensation as The Authority shall prescribe from monies provided to The Authority under Article III(f)(iii). The secretary shall maintain custody of The Authority's books, records, and papers, which shall be kept by the secretary at the office of The Authority, and shall perform all functions and duties and exercise all powers and authorities which may be delegated to the secretary of The Authority.

"ARTICLE V

"Nothing in this compact shall be construed so as to conflict with any existing statute, or to limit the powers of any Party State, or to repeal or prevent legislation, or to authorize or permit curtailment or diminution of any other bridge project, or to affect any existing or future cooperative arrangement or relationship between any federal agency and a Party State.

"ARTICLE VI

"This compact shall continue in force and remain binding upon each Party State until the Legislature or Governor of each or either state takes action to withdraw therefrom; provided that such withdrawal shall not become effective until six (6) months after the date of the action taken by the Legislature or Governor. Notice of such action shall be given to the other Party State by the secretary of state of the Party State which takes such action.".

SEC. 2 FEDERAL JURISDICTION RETAINED.

Nothing in the compact approved by section 1 shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States.

SEC. 3. RESERVATION.

The right to alter, amend, or repeal this Act is expressly reserved.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Kansas [Mr. GLICKMAN] will be recognized for 20 minutes, and the gentleman from California [Mr. LUNGREN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5390 grants the consent of Congress to an interstate compact between the States of Arkansas and Mississippi.

On February 7, 1985, and March 19, 1986, the States of Arkansas and Mississippi ratified the Arkansas-Mississippi Great River Bridge compact. The States now need the consent of Congress.

The purpose of the compact is to promote the construction of a highway bridge or a combined highway-railroad bridge connecting the States of Mississippi and Arkansas, and to establish a joint interstate authority to assist in this effort.

Mr. Speaker, I know of no opposition to this bill and I urge my colleagues to support it.

□ 1310

Mr. LUNGREN. Mr. Speaker, I yield myself suct time as I may consume.

Mr. Speaker, I am pleased to rise in support of this legislation. The Arkansas-Mississippi Great River Bridge compact will establish a regional authority to oversee the development and construction of a highway-railroad bridge which will join the two States.

The administration advises that it has no objection to passage of the bill, and I would note for the record that the bill was recently passed unanimously by the Judiciary Committee. CBO estimates that the bill will result in no cost to the Federal Government or to State or local governments.

Mr. Speaker, the 10-person authority established by the compact will have the powers necessary to accomplishing its tasks. The compact also contains a provision which clearly notes that no Federal right in and over the region in question would be impaired by the compact.

The only concern raised prior to Judiciary Committee of the bill was a technical drafting error relating to the ability of the authority to enter "into contracts with one or more railroads and/or the appropriate agencies of Congress." This was obviously a mistake as there are no agencies of Congress. The committee subsequently received clarification from the attorneys general of the two States and that the intent was "agencies of the Federal Government," rather than the misstated "agencies of the Congress." With this assurance the Judiciary Committee approved the legislation and I now urge its passage by the full House.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. Fish].

Mr. FISH. Mr. Speaker, I rise in support of H.R. 5390, a bill to grant the consent of Congress to the Arkansas-Mississippi great river bridge construction compact.

This bill will allow the States of Arkansas and Mississippi to commence construction of a combined highway-railroad bridge connecting the two States near Rosedale, MS, and McGhee and Dumas, AR. The compact calls for the establishment of a 10-person Arkansas-Mississippi Great River Bridge Authority to oversee and encourage construction of the bridge. The Authority will have the power to hold hearings, conduct necessary studies and surveys, acquire gifts and grants, negotiate with interested parties and exercise any other powers necessary and appropriate to fulfilling the Authority's mission.

Among its many provisions, section 2 of the compact makes clear that nothing in the compact would be construed as impairing any Federal right or jurisdiction in and over the region of Mississippi and Arkansas which forms the subject of the compact.

Mr. Speaker, there was only one technical problem with the bill, and I believe that it has been corrected in the bill we are considering today. The original language of the compact as passed by the two State legislatures in question stated:

> The Authority may enter into a contract with one or more railroads and/or the *appropriate agencies of Congress* to borrow funds * * * [Emphasis added].

Since there are no "agencies of Congress" from which to borrow funds, there was a question as to whether the compact would have to be corrected and brought back to Congress for approval. Prior to Judiciary Committee actions on the bill, the committee received written notice from the attorneys general of Arkansas and Mississippi as to the intent of the language being not the misstated "agencies of Congress" but "agencies of the Federal Government." As a result of this clarification, we passed H.R. 5390. I urge a yes vote on the bill.

Mr. GLICKMAN. Mr. Speaker, I encourage my colleagues to support this bill. I would like to pay special tribute to the two Members of the House who represent the affected districts, the gentleman from Mississippi [Mr. Franklin], and the prime sponsor of this bill, the gentleman from Arkansas [Mr. Anthony].

Mr. FRANKLIN. Mr. Speaker, I am happy to have the opportunity to speak in support of H.R. 5390, the Arkansas-Mississippi great river bridge compact.

This compact will allow the States of Arkansas and Mississippi to coordinate their efforts to plan for and to build a bridge between Bolivar County, MS, and McGehee and Dumas, AR. Our passage of this bill will insure that the two States can proceed with this project in a timely fashion, and this is certainly appreciated by people on both sides of the river.

I appreciate the efforts of my colleague from Arkansas, Mr. Beryl Anthony, and the members of the Judiciary Committee, for their efforts in expediting this bill.

Mr. ANTHONY. Mr. Speaker, I rise in support of H.R. 5390, legislation granting the consent of the Congress to the Arkansas-Mississippi great river bridge construction compact. This very worthy legislation will provide the catalyst to stimulate the industrial and economic growth of southeast Arkansas, a region of my State which is in dire need of the essential transportation routes necessary to attracting new industry.

I strongly believe that Congress must give this region the opportunity to attract new industry, and support of this bill will enhance that opportunity. The construction of a highway bridge or a combined highway-railroad bridge connecting the States of Mississippi and Arkansas will be a signal of the commitment for improvement essential to attracting new industry. Clearly, this project is the key to expanding the transportation link necessary in attracting new industry and providing convenience for the day to day commerce of the region.

I urge my colleagues to adopt this measure and show the people of Arkansas and Mississippi that they have the support of Congress in this endeavor.

Mr. GLICKMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Gray of Illinois). The question is on the motion offered by the gentleman from Kansas [Mr. Glickman] that the House suspend the rules and pass the bill, H.R. 5390.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

RED RIVER VALLEY FIGHTER PILOTS ASSOCIATION CHARTER

Mr. GLICKMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4059) to recognize the organizations known as the Red River Valley Fighter Pilots Association.

The Clerk read as follows:

H.R. 4059

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CHARTER

Section 1. The Red River Valley Fighter Pilots Association (River Rats), doing business as the Red River Valley Association, Incorporated, a nonprofit corporation organized under the laws of the State of Kansas, is recognized as such and is granted a Federal charter.

POWERS

Sec. 2. The Red River Valley Association (hereinafter in this Act referred to as the "corporation") shall have only those powers granted to it through its bylaws and articles of incorporation filed in the State or States in which it is incorporated and subject to the laws of such State or States.

OBJECTS AND PURPOSES OF CORPORATION

Sec. 3. The objects and purposes of the corporation are those provided in its articles of incorporation.

SERVICE OF PROCESS

Sec. 4. With respect to service of process, the corporation shall comply with the laws of the States in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

MEMBERSHIP

Sec. 5. Eligibility for membership in the corporation and the rights and privileges of members of the corporation shall be as provided in the constitution and bylaws of the corporation.

BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES

Sec. 6. The composition of the board of directors of the corporation and the responsibilities of such board shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

OFFICERS OF CORPORATION

Sec. 7. The positions of officers of the corporation and the election of members to such positions shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State or States in which it is incorporated.

RESTRICTIONS

Sec. 8. (a) No part of the income or assets of the corporation may inure to the benefit of any member, officer, or director of the corporation or be distributed to any such individual during the life of this charter. Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation or reimbursement for actual and necessary expenses in amounts approved by the board of directors.

(b) The corporation may not make any loan to any officer, director, or employee of the corporation.

(c)(1) The corporation may not contribute to, support, or otherwise participate in any political activity or attempt in any manner to influence legislation.

(2) No officer or director of the corporation, acting as such officer or director, may commit any act prohibited under paragraph (1) of this subsection.

(d) The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) The corporation shall not claim congressional approval or the authorization of the Federal Government for any of its activities.

LIABILITY

SEC. 9. The corporation shall be liable for the acts of its officers and agents whenever such officers and agents have acted within the scope of their authority.

BOOKS AND RECORDS; INSPECTION

SEC. 10. The corporation shall keep correct and complete books and records of account and minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors. The corporation shall keep, at its principal office, a record of the names and addresses of all members having the right to vote in any proceeding of the corporation. All books and records of such corporation may be inspected by any member having the right to vote in any corporation proceeding, or by any agent or attorney of such member, for any proper purpose at any reasonable time. Nothing in this section shall be construed to contravene any applicable State law.

AUDIT OF FINANCIAL TRANSACTIONS

SEC. 11. The first section of the Act entitled "An Act to provide for audit of accounts of private corporations established under Federal law", approved August 30, 1964 (36 U.S.C. 1101), is amended by adding at the end thereof the following:

"(65) Red River Valley Fighter Pilots Association (River Rats)".

ANNUAL REPORT

SEC. 12. The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. Such annual report shall be submitted at the same time as the report of the audit required by section 11 of this Act. The report shall not be printed as a public document.

RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER

SEC. 13. The right to alter, amend, or repeal this Act is expressly reserved to the Congress.

DEFINITION OF "STATE"

SEC. 14. For purposes of this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

TAX-EXEMPT STATUS

SEC. 15. The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1954. If the corporation fails to maintain such status, the charter granted by this Act shall expire.

TERMINATION

SEC. 16. If the corporation shall fail to comply with any of the restrictions of provisions of this Act, the charter granted by this Act shall expire.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Kansas [Mr. GLICKMAN] will be recognized for 20 minutes, and the gentleman from California [Mr. LUNGREN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Speaker, I yield myself such time as I may consume.

H.R. 4059 recognizes the Red River Valley Fighter Pilots Association and grants it a Federal charter.

The Red River Valley Fighter Pilots Association meets all the committee requirements for a Federal charter. It is a patriotic and charitable organization, is tax exempt and has been incorporated in the State of Kanasa since 1969.

One of the most important activities of the Red River Valley Fighter Pilots Association is its scholarship program. This scholarship fund was established in 1970, and since that time has awarded scholarships to over 400 children of those who were killed in Southeast Asia or who remain missing in action.

I strongly urge my colleagues to support the bill, H.R. 4059.

Mr. LUNGREN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of this particular bill. As was stated by the gentleman from Kansas [Mr. GLICKMAN], this organization meets all of the requirements that we impose as far as our subcommittee and committee are concerned in granting such charters. At the same time, above and beyond that, we should recognize the worthy cause of this organization.

This organization sponsors, among other things, efforts to increase the public awareness as to American soldiers killed or missing in action, and that is something that we ought not to lose sight of at this point in time despite the passage of the years.

In addition, this organization does support scholarship programs that are specifically designated for children of those servicemen missing in action or killed in Southeast Asia. As I understand it, the organization also now includes children of those who died as a result of the raid on Iran in April 1980 as well.

So, Mr. Speaker, this is one of these organizations that probably stands as well as any other in terms of reason for our supporting a national charter. The gentleman from Arizona [Mr. McCAIN], as has been stated, is the prime sponsor of this legislation. Mr. McCAIN, as many know, is a Vietnam veteran, a former prisoner of war, and obviously has a very strong and deep and abiding concern for those of his comrades who were lost and those missing.

As a result, Mr. Speaker, I think that we could do little more than this organization to remember the sacrifices that they have made as well as in a very real sense to give an imprimatur, so to speak, to an organization that is following up in terms of supporting scholarship efforts for the children of the people thus affected.

Mr. FISH. Mr. Speaker, I rise in support of this bill to grant a Federal charter to the organization known as the Red River Valley Fighter Pilots Association. This bill was sponsored by our colleague from Arizona, Mr. McCAIN, himself a Vietnam area veteran and prisoner of war.

The Red River Valley Fighter Pilots Association was incorporated in 1969 and has made significant efforts in increasing public awareness as to American soldiers killed or missing in order. The organization has also served to encourage and inform American youth and public as to the purpose, potential and safety of American aviation.

The "River Rats" membership exceeds 4,000 individuals and supports a scholarship program open to the children of those servicemen killed or missing in action in Southeast Asia. To date, this fund has given over 365 such scholarships valuing some $250,000. It now also includes the children of those soldiers who died as the result of the aborted raid into Iran in April 1980 as well.

Mr. Speaker, the Red River Valley Fighter Pilots Association complies with all the requirements set forth by the Judiciary Committee for the granting of Federal charters. They are a tax-exempt organization in existence for over 10 years and, most importantly, they do indeed promote a civic and patriotic purpose.

Mr. LUNGREN. Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona [Mr. McCAIN].

Mr. GLICKMAN. Mr. Speaker, will the gentleman yield?

Mr. McCAIN. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Speaker, I am not one of these real strong advocates of Federal charters, because there are limits to the kinds of organizations which ought to get them, but this is clearly an organization that deserves a Federal charter. It does the kind of continuing work to help folks, particularly younger folks who have lost their fathers in service, who may have been missing in action or shot down. It has a continuing purpose.

I think that there are people from just about every State in the country who are represented in this organization. I might add that it happens to be chartered in my own State of Kansas, which has given me a little personal interest in it. I know of the gentleman's deep and abiding need and desire to help folks who served in the Vietnam conflict, and so because of that I am proud to move this legislation along.

Mr. McCAIN. Mr. Speaker, I thank the gentleman from Kansas. I would again like to express my appreciation to him for his efforts in expediting this bill's passage through the Subcommittee on Administrative Law and the Committee on the Judiciary.

As you know, if enacted, H.R. 4059 would recognize and grant a Federal charter to the organization known as the Red River Valley Fighter Pilots Association. I believe the Red River Valley Fighter Pilots Association justifiably warrants a Federal charter because of its members' dedicated service to Vietnam veterans and their families for the past two decades.

The "River Rats," as this group is commonly called, is comprised of over 4,500 members, most of whom flew along the Red River Valley in Vietnam. Conceived in 1967 by Col. Howard C. "Scrappy" Johnson for the purpose of increasing aircrew effectiveness and reducing combat losses, the members shared friendship, knowledge, and their experiences. During their time under enemy fire this group of individuals fostered a unique brotherhood which continued upon their return to the United States. It has been this family relationship that has allowed the River Rats to expand their purpose toward generating an awareness of the plight of the prisoner of war, and those missing and killed in action.

Currently, one of the organization's most important endeavors is its scholarship program. Inaugurated in 1971 because of concern for the families of fellow River Rats who were POW's MIA's or KIA's, this vital program has provided some form of financial assistance to over 400 students. Today, scholarships are awarded to children of any aircraft crew member in Southeast Asia in the MIA/KIA category, as well as to children of those who participated in the 1980 ill-fated rescue attempt in Iran and the recent raid of Libya.

Mr. Speaker, Members of Congress and the River Rats Association realize that the number of students who will receive Federal scholastic financial assistance will, regrettably, continue to decrease in the future. However, enthusiasm and financial backing for the River Rats' scholarship program continues to increase. I believe this is indicative of the strong commitment this association has made to the families of our Nation's fallen warriors, and it exhibits the River Rats' dedication to a well educated America.

The Red River Valley Fighter Pilots Association has provided an invaluable service to the families of the over 2,400 servicemen still listed as missing in action. These men served in the most recent and one of the more volatile aerial combat wars in our Nation's history. And the survivors of this war will never forget the commitment and sacrifices made by America's soldiers and the families of these individuals; because as we all know, the pain does not end when the shooting stops. I strongly urge my colleagues to vote in favor of this bill, so that this group can continue the vital programs they have implemented.

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Mr. LUNGREN. Mr. Speaker, I yield back the balance of my time.

Mr. GLICKMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from Kansas [Mr. GLICKMAN] that the House suspend the rules and pass the bill, H.R. 4059.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

DECLARATION OF TAKING ACT AMENDMENTS

Mr. GLICKMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5363) to amend the interest provisions of the Declaration of Taking Act.

The Clerk read as follows:

H.R. 5363

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of Februray 26, 1931 (40 U.S.C. 258a through 258e), is amended—

(1) in the second paragraph of the first section by striking "interest at the rate of 6 per centum per annum", and inserting "interest in accordance with section 6 of this Act"; and

(2) by adding at the end the following:

"SEC. 6. Interest required to be paid under this Act shall be calculated by the district court as follows:

"(1) Where the period for which interest is owed does not exceed one year, interest shall be calculated for such period from the date of taking at an annual rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 week United States Treasury bills settled immediately before the date of taking.

"(2) Where the period for which interest is owed is more than one year, interest for the first year shall be calculated in accordance with paragraph (1) and interest for each additional year shall be calculated on the combined amount of the principal (the amount by which the award of compensation exceeds the deposit referred to in the first section of this Act) and accrued interest at an annual rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 week United States Treasury bills settled immediately before the beginning of each additional year.

The Director of the Administrative Office of the United States Courts shall distribute to all Federal courts notice of the rates described in paragraphs (1) and (2).".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Kansas [Mr. GLICKMAN] will be recognized for 20 minutes, and the gentleman from California [Mr. LUNGREN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5363 amends the interest provisions of the Declaration of Taking Act. This act is the statute under which the Federal Government derives its authority for the acquisition of any land or easement or right of way in land for the public use. The current statute provides for interest at the rate of 6 percent per annum. This interest rate has not been changed since the statute was enacted in 1931. The courts have generally interpreted the 6-percent interest in the statute as a floor, but there has not been agreement as to what securities should be examined in order to determine the rate of interest in a given case.

This amendment provides the courts with a statutory formula based on the yield rates of one year Treasury bills, using the average accepted auction price of the last auction of the bills settled immediately prior to the date of taking. If interest is owed for more than 1 year, the bill provides for compounded interest using the same formula but based on the auction price established each subsequent year.

This bill was introduced at the request of the Department of Justice.

I urge my colleagues to vote to pass the bill, H.R. 5363.

Mr. LUNGREN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5363, a bill to amend the Declaration of Taking Act. Currently, interest in instances of condemnation is set at 6 percent per annum. Even in this era of declining interest rates, the statutory limit is still set too low for fair and equitable payment in instances of condemnation. This bill will adjust the rate of interest to that of the 52-week Treasury coupon yield. This will insure a more realistic interest rate in condemnation proceedings involving the United States.

This legislation has the support of the Administrative Office of the U.S. Courts and was passed unanimously by the Judiciary Committee. I urge my colleagues to cast a yes vote.

Mr. Speaker, I yield back the balance of my time.

Mr. GLICKMAN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kansas [Mr. GLICKMAN] that the House suspend the rules and pass the bill, H.R. 5363.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

PRIVATE DEBT COLLECTION

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 209) to amend chapter 37 of title 31, United States Code, to authorize contracts retaining private counsel to furnish legal services in the case of indebtedness owed the United States, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 209

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Debt Recovery Act of 1985".

SEC. 2. Section 3718 of title 31, United States Code, is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (d), (e), and (f), respectively;

(2) in subsection (d), as redesignated by paragraph (1), by inserting "or (b)" after "subsection (a)";

(3) in subsection (e), as redesignated by paragraph (1)—

(A) by inserting "or (b)" after "(a)" in the first sentence; and

(B) by striking out "(b)" in the second sentence and inserting in lieu thereof "(d)"; and

(4) by inserting after subsection (a) the following new subsections:

"(b)(1) The Attorney General may make contracts retaining private counsel to furnish legal services, including representation in negotiation, compromise, settlement, and litigation, in the case of any claim of indebtedness owed the United States. If the Attorney General makes a contract for legal services to be furnished in any judicial district of the United States under the first sentence, the Attorney General shall use his best efforts to retain, from among attorneys regularly engaged in the private practice of law in such district, more than one private counsel to furnish such legal services in such district. Each such contract shall include such terms and conditions as the Attorney General considers necessary and appropriate, including a provision specifying the amount of the fee to be paid to the private counsel under such contract or the method for calculating that fee. The amount of the fee payable for legal services furnished under any such contract may not exceed the fee that counsel engaged in the private practice of law in the area or areas where the legal services are furnished typically charge clients for furnishing legal services in the collection of claims of indebtedness, as determined by the Attorney General, considering the amount, age, and nature of the indebtedness and whether the debtor is an individual or a business entity.

"(2) The head of an executive or legislative agency may, subject to the approval of the Attorney General, refer to a private counsel retained under paragraph (1) of this subsection claims of indebtedness owed the United States arising out of activities of that agency.

"(3) Notwithstanding sections 516, 518(b), 519, and 547(2) of title 28, a private counsel retained under paragraph (1) of this subsection may represent the United States in litigation in connection with legal services furnished pursuant to the contract entered into with the counsel under paragraph (1) of this subsection.

"(4) A contract made with a private counsel under paragraph (1) of this subsection shall include—

"(A) a provision permitting the Attorney General to terminate the contract if the Attorney General determines that the termination of the contract is for the convenience of the Government;

"(B) a provision permitting the Attorney General to have any claim referred under the contract returned to the Attorney General if the Attorney General finds such action to be in the public interest;

"(C) a provision permitting the head of any executive or legislative agency which refers a claim under the contract to resolve a dispute regarding the claim, to compromise the claim, or to terminate a collection action on the claim; and

"(D) a provision requiring the private counsel to transmit periodically to the Attorney General and the head of the executive or legislative agency referring a claim under the contract a report on the services relating to the claim rendered under the contract during the period for which the report is made and the progress made during such period in collecting the claim under the contract.

"(5) Nothwithstanding the fourth sentence of section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)), a private counsel performing legal services pursuant to a contract made under paragraph (1) of this subsection shall be considered a debt collector for the purposes of such Act.

"(c)(1) The Attorney General shall transmit to the Congress an annual report on the activities of the Department of Justice to recover indebtedness owed the United States which was referred to the Department of Justice or to a private counsel for collection. Each such report shall include a list, by agency, of the total number and amounts of collected and uncollected claims of indebtedness which were referred to the Department of Justice or to a private counsel for collection, shall separately specify any uncollected claim of indebtedness which was covered by a contract (A) which was terminated by the Attorney General under subsection (b)(4)(A) of this section or (B) under which the claim was returned to the Attorney General under subsection (b)(4)(B) of this section, and shall describe the progress made by the Department of Justice in collecting uncollected claims of indebtedness during the one-year period covered by the report.

"(2)(A) The Comptroller General of the United States shall carry out an annual audit of the actions taken by the Attorney General under subsection (b) of this section during the preceding twelve months. The Comptroller General shall determine the extent to which there is competition among private counsel to obtain contracts awarded under such subsection, the reasonableness of the fees provided in such contracts, the diligence and efforts of the Attorney General to retain counsel in accordance with the provisions of this section, and the results of the debt collection efforts of private counsel retained under such contracts.

"(B) After completing each audit under subparagraph (A), the Comptroller General shall transmit to the Congress a report on the findings and conclusions resulting from the audit.".

SEC. 3. Not later than 180 days after the date of enactment of this Act, the Attorney General of the United States shall transmit to the Congress a report on the actions taken under section 3718(b) of title 31, United States Code (as added by paragraph (4) of section 2 of this Act).

MOTION OFFERED BY MR. GLICKMAN

Mr. GLICKMAN. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. GLICKMAN moves to strike out all after the enacting clause of the Senate bill, S. 209, and to insert in lieu thereof the text of H.R. 5541 as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "An Act to amend section 3718 of title 31, United States Code, to authorize contracts retaining private counsel to furnish legal services in the case of indebtedness owed the United States."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 5541) was laid on the table.

ARKANSAS-MISSISSIPPI GREAT RIVER BRIDGE CONSTRUCTION COMPACT

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 1082) granting the consent of Congress to the Arkansas-Mississippi Great River Bridge Construction Compact, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1082

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given to the Arkansas-Mississippi Great River Bridge Construction Compact entered into between the States of Mississippi and Arkansas. Such compact is substantially as follows:

"ARKANSAS-MISSISSIPPI GREAT RIVER BRIDGE CONSTRUCTION COMPACT

"ARTICLE I

"The purpose of this compact is to promote the construction of a highway bridge or a combined highway-railroad bridge connecting the States of Mississippi and Arkansas at, near or between Rosedale, Mississippi, and McGehee and Dumas, Arkansas, and to establish a joint interstate authority to assist in these efforts.

"ARTICLE II

"This compact shall become effective immediately as to the States ratifying it whenever the States of Arkansas and Mississippi have ratified it and Congress has given consent thereto.

"ARTICLE III

"(a) The states which are parties to this compact (hereinafter referred to as 'Party States') do hereby establish and create a joint agency which shall be known as the Arkansas-Mississippi Great River Bridge Authority (hereinafter referred to as 'the Authority'). The membership of The Authority shall consist of five (5) members from the State of Mississippi, to be selected in such manner as may be provided by laws enacted by the Legislature of the State of Mississippi, and five (5) members from the State of Arkansas, to be selected in such manner as may be provided by laws enacted by the Arkansas General Assembly. The terms of the members of such Authority from each of the Party States, the method of appointing successor members, and the method of filling vacancies on The Authority, shall be determined by the laws of Mississippi and Arkansas.

"(b) The members of The Authority shall not be compensated for services on The Authority, but each member shall be entitled to actual and reasonable expenses incurred in attending meetings or incurred otherwise in the performance of his/her duties as a member of The Authority.

"(c) The members of The Authority shall meet upon the call of the chairman and hold such other meetings as its business may require. Special meetings of The Authority may be called by the chairman or upon written request of a majority of the members of The Authority from each of the Party States. The Authority shall choose annually a chairman and vice chairman from its members, and the chairmanship shall rotate each year among the Party States, in order of their acceptance of this compact.

"(d) The Secretary of The Authority (hereinafter provided for) shall notify each member in writing of all meetings of The Authority in such a manner and under such rules and regulations as The Authority may prescribe.

"(e) The Authority shall adopt rules and regulations for the transaction of its business; and the secretary shall keep a record of all its business and shall furnish a copy thereof to each member of The Authority.

"(f) It shall be the duty of The Authority, in general, to promote, encourage, and coordinate the efforts of the Party States to secure the development of the Arkansas-Mississippi Great River Bridge at, near or between Rosedale, Mississippi, and McGehee-Dumas, Arkansas. Toward this end, The Authority shall have power to:

"(i) Hold hearings;

"(ii) Conduct studies and surveys of all problems, benefits, and other matters associated with the construction of the Arkansas-Mississippi Great River Bridge, and to make reports thereon;

"(iii) Acquire by gift, grant or otherwise, from local, federal, or private sources, such money or property as may be provided for the proper performance of their function, and to hold and dispose of the same and to expand such monies as is necessary to defray the costs of establishing and operating The Authority;

"(iv) Cooperate with other public or private groups, whether local, state, regional, or national, having an interest in the bridge construction;

"(v) Formulate and execute plans and policies for emphasizing the purpose of this compact before the Congress of the United States and other appropriate officers and agencies of the United States;

"(iv) Negotiate with one or more railroads in the State of Mississippi and the State of Arkansas, and with the appropriate Federal authorities for the construction of the Arkansas-Mississippi Great River Bridge as a combined highway-railroad bridge. If necessary, The Authority may enter into a contract with one or more railroads and/or the appropriate agencies of Congress to borrow funds for the construction of the railroad portion of the bridge, to be reimbused, including all costs of principal, interest and other costs in connection with such indebtedness, by revenues derived from rental fees, grants, or other charges, with such indebtedness to be secured solely by a pledge of such revenues; and

"(vii) Exercise such other powers as may be appropriate to enable it to accomplish its functions and duties in connection with the construction of the Arkansas-Mississippi Great River Bridge as a highway bridge or a combined highway-railroad bridge, and to carry out the purposes of this compact.

"ARTICLE IV

"The Authority shall appoint a secretary, who shall be a person familiar with the nature, procedures, and significance of the bridge construction and the informational, educational, and publicity methods of stimulating general interest in such developments, and who shall be the compact administrator. The term of office of the secretary shall be at the pleasure of The Authority and such officer shall receive such compensation as The Authority shall prescribe from monies provided to The Authority under Article III(f)(iii). The secretary shall maintain custody of The Authority's books, records, and papers, which shall be kept by the secretary at the office of The Authority, and shall perform all functions and duties and exercise all powers and authorities which may be delegated to the secretary of The Authority.

"ARTICLE V

"Nothing in this compact shall be construed so as to conflict with any existing statute, or to limit the powers of any Party State, or to repeal or prevent legislation, or to authorize or permit curtailment or diminution of any other bridge project, or to affect any existing or future cooperative arrangement or relationship between any federal agency and a Party State.

"ARTICLE VI

"This compact shall continue in force and remain binding upon each Party State until the Legislature or Governor of each or either state takes action to withdraw therefrom; provided that such withdrawal shall not become effective until six (6) months after the date of the action taken by the Legislature or Governor. Notice of such action shall be given to the other Party State by the secretary of state of the Party State which takes such action.".

SEC. 2. The right to alter, amend, or repeal this Act is expressly reserved.

MOTION OFFERED BY MR. GLICKMAN

Mr. GLICKMAN. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. GLICKMAN moves to strike out all after the enacting clause of the Senate bill, S. 1082, and to insert in lieu thereof the provisions of H.R. 5390 as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 5390) was laid on the table.

IMMIGRATION AND NATIONALITY AMENDMENTS OF 1986

Mr. MAZZOLI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4823) to amend the Immigration and Nationality Act to improve the administration of the immigration and nationality laws, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4823

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Immigration and Nationality Amendments of 1986".

(b) AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided, whenever in this Act a section or other provision is amended or repealed, such amendment or repeal shall be considered to be made to that section or other provision of the Immigration and Nationality Act.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ENTRY AND ADJUSTMENT OF STATUS

PART A—ENTRY AND ADJUSTMENT OF STATUS OF IMMIGRANTS

Sec. 101. Elimination of reentry doctrine.

Sec. 102. Treatment of immigrants employed by multinational corporations as special immigrants.
Sec. 103. G–iv special immigrants.
Sec. 104. Requiring members of professions to have an appropriate college degree or significant experience.
Sec. 105. Allowing surviving spouses of citizens to petition for immediate relative status.
Sec. 106. Sponsorship for Amerasians.
Sec. 107. Elimination of job offer requirement in certain cases.
Sec. 108. Rentry permits.

Part B—Entry and Adjustment of Status of Nonimmigrants

Sec. 121. Treating certain bus drivers as crewmen.
Sec. 122. Permitting alien crewmen on fish vessels to stop temporarily at ports in Guam.
Sec. 123. Nonimmigrant traders and investors.
Sec. 124. Treatment of H nonimmigrants and vocational students.
Sec. 125. Visa waiver pilot program for certain visitors.

Part C—Refugee-Related Provisions

Sec. 141. Admitting refugees as permanent residents.

TITLE II—EXCLUSION AND DEPORTATION

Sec. 201. Waiver of certain grounds of exclusion.
Sec. 202. Deportation in certain cases involving 3rd or 6th preference aliens for failure to be employed in field of expertise.
Sec. 203. Suspension of deportation for certain aliens.
Sec. 204. Annual report on suspensions of deportation.

TITLE III—ENFORCEMENT

Part A—Marriage-Related Provisions

Sec. 301. Deterring immigration-related marriage fraud.
Sec. 302. Preventing marriage fraud with respect to "k" nonimmigrants.
Sec. 303. Restrictions on future entry of aliens involved with marriage fraud.
Sec. 304. Restrictions on adjustment of status or petitions based on marriages entered while in exclusion or deportation proceedings.
Sec. 305. Exclusion for misrepresentations.

Part B—Other Provisions

Sec. 311. Clarifying temporary nature of detention in exclusion and deportation cases.
Sec. 312. Increase in fine levels; authority of the INS to collect fines; use of part of civil penalties and fines by INS.
Sec. 313. Modification of responsibility of carriers concerning detention of aliens.

TITLE IV—CITIZENSHIP AND NATURALIZATION

Sec. 401. Reduction of citizen residency requirement to transfer citizenship at birth to children.
Sec. 402. Derivative naturalization of children.
Sec. 403. Issuance of certificates of citizenship for children adopted by United States citizens.
Sec. 404. Limiting circumstances for derivative revocation of naturalization.
Sec. 405. Clarification of loss of nationality provision.
Sec. 406. Permitting distribution of naturalization material to nonprofit organizations.

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Statistical information system.
Sec. 502. Equal treatment of fathers.
Sec. 503. Miscellaneous technical amendments.

TITLE I—ENTRY AND ADJUSTMENT OF STATUS

PART A—ENTRY AND ADJUSTMENT OF STATUS OF IMMIGRANTS

SEC. 101. ELIMINATION OF REENTRY DOCTRINE.

(a) Modification of Definition of "Entry".—Section 101(a)(13) (8 U.S.C. 1101(a)(13)) is amended—

(1) by inserting "(other than an alien having a lawful permanent residence in the United States)" after "any coming of an alien", and

(2) by striking ", except that" and all that follows up to the period.

(b) Clarification of Right To Detain Returning Permanent Residents.—Section 242 (8 U.S.C. 1252) is amended by adding at the end the following new subsection:

"(i) In the case of an alien having a lawful permanent residence in the United States who is coming into the United States from a foreign port or place or from an outlying possession, the Attorney General may, under subsection (a), immediately detain the alien pending a determination of deportability.".

(c) Effective Date.—The amendments made by this section shall apply to aliens coming into the United States after the date of the enactment of this Act.

SEC. 102. TREATMENT OF IMMIGRANTS EMPLOYED BY MULTINATIONAL CORPORATIONS AS SPECIAL IMMIGRANTS.

(a) In General.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended—

(1) by striking "or" at the end of subparagraph (G),

(2) by striking the period at the end of subparagraph (H) and inserting "; or", and

(3) by adding at the end the following new subparagraph:

"(I) an immigrant (and the immigrant's accompanying spouse and children)—

"(i) who was continuously employed outside the United States for the year immediately preceding the time of filing of a petition seeking classification under this subparagraph, by a corporation or other legal entity engaged in business which either has a net income of at least $25,000,000 in its previous fiscal year from operations outside the United States or has foreign assets of at least $50,000,000, and which employs as full-time permanent workers at least 100 individuals who are citizens or nationals of the United States or aliens lawfully admitted for permanent residence and which will continue to engage in foreign operations of an equivalent magnitude,

"(ii) who will be employed in the United States by the corporation or entity, or a parent, subsidiary, or affiliate of the corporation or entity, and

"(iii) whose employment under clause (i) was, and under clause (ii) will be, in an executive or managerial capacity.".

(b) Numerical Limitation on Approval of Applications.—Section 224 (8 U.S.C. 1204) is amended—

(1) by inserting "(a)" after "224.",

(2) by inserting "and in subsection (b)" after "section 221", and

(3) by adding at the end the following new subsection:

"(b) With respect to any corporation or legal entity in any fiscal year, the maximum number of applications for special immigrants under section 101(a)(27)(I) which may be approved is the lesser of—

"(1) one plus (X-100)/200, where 'X' is the number of full-time permanent workers of the corporation or entity who are citizens or nationals of the United States or aliens lawfully admitted for permanent residence, or

"(2) 75.".

SEC. 103. G-IV SPECIAL IMMIGRANTS.

(a) Special Immigrant Status for Certain Officers and Employees of International Organizations and Their Immediate Family Members.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)), as amended by section 103, is amended—

(1) by striking "or" at the end of subparagraph (H),

(2) by striking the period at the end of subparagraph (I) and inserting "; or", and

(3) by adding at the end the following new subparagraph:

"(J)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the 7 years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 7 years between the ages of 5 and 21 years, and (II) applies for admission under this subparagraph no later than the immigrant's 25th birthday or 6 months after the date this subparagraph is enacted, whichever is later;

"(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the 7 years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) applies for admission under this subparagraph no later than 6 months after the date of such death or 6 months after the date this subparagraph is enacted, whichever is later;

"(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the 7 years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) applies for admission under this subparagraph before January 1, 1993, and no later than 6 months after the date of such retirement or 6 months after the date this subparagraph is enacted, whichever is later; or

"(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause

(iii), accompanying or following to join such retired officer or employee as a member of the immigrant's immediate family.".

(b) NONIMMIGRANT STATUS FOR CERTAIN PARENTS AND CHILDREN OF ALIENS GIVEN SPECIAL IMMIGRANT STATUS.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended by striking "or" at the end of subparagraph (L), by striking the period at the end of subparagraph (M) and inserting "; or", and by adding at the end the following new subparagraph:

"(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(J)(i), but only if and while the alien is a child, or

"(ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(J).".

SEC. 104. REQUIRING MEMBERS OF PROFESSIONS TO HAVE AN APPROPRIATE COLLEGE DEGREE OR SIGNIFICANT EXPERIENCE.

(a) IN GENERAL.—Section 101(a)(32) (8 U.S.C. 1101(a)(32)) is amended by inserting at the end the following: "An individual is not considered to be a member of a profession if the individual does not have an appropriate degree in the respective specialized field from a college or university or does not have significant experience in the particular field (as determined under regulations issued by the Attorney General).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to petitions and applications filed after the date of the enactment of this Act.

SEC. 105. ALLOWING SURVIVING SPOUSES OF CITIZENS TO PETITION FOR IMMEDIATE RELATIVE STATUS.

(a) TREATMENT AS IMMEDIATE RELATIVES.—Section 201(b) (8 U.S.C. 1151(b)) is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end the following new paragraph:

"(2) In the case of an alien who was the spouse of a citizen of the United States at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, the alien shall be considered, for purposes of this title, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under section 204 within 3 years after such date and only until the date the spouse remarries.".

(b) PETITIONING.—Section 204(a) (8 U.S.C. 1154(a)) is amended by inserting after the first sentence the following: "An alien desiring to be classified as an immediate relative under section 201(b)(2) may file a petition with the Attorney General for such classification.".

(c) CONFORMING AMENDMENTS.—Subsections (a) and (g)(1) of section 204 (8 U.S.C. 1154) are each amended by striking "201(b)" and inserting "201(b)(1)".

(d) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any alien whose citizen spouse dies after the date of the enactment of this Act.

SEC. 106. SPONSORSHIP FOR AMERASIANS.

(a) REDUCING REQUIRED SPONSORSHIP PERIOD TO TWO YEARS.—Section 204(g)(4)(A)(ii)(II) (8 U.S.C. 1154(g)(4)(A)(ii)(II)) is amended by striking "five-year period" and inserting "2-year period".

(b) PERMITTING PRIVATE AGENCY SPONSORSHIP FOR ADULT AMERASIANS.—Section 204(g)(4)(A)(i) (8 U.S.C. 1154(g)(4)(A)(i)) is amended—

(1) by inserting "(I)" after "consular officer", and

(2) by inserting after "permanent residence" the following: "or (II) in the case of an alien who is 18 years of age or older, by a private agency or organization (hereinafter in this paragraph also referred to as the 'sponsor') which meets such conditions as the Attorney General may establish".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to guarantees of legal custody and financial responsibility for an alien for whom a petition is approved under section 204(g)(1) of the Immigration and Nationality Act on or after the date of the enactment of this Act.

SEC. 107. ELIMINATION OF JOB OFFER REQUIREMENT IN CERTAIN CASES.

(a) IN GENERAL.—Section 212(d) (8 U.S.C. 1182(d)) is amended—

(1) by striking paragraphs (9) and (10), and

(2) by adding at the end the following new paragraph:

"(9) The requirement in sections 202(e)(3) and 203(a)(3) relating to an offer of employment from an employer in the United States may be waived with respect to any alien who—

"(A) is seeking to enter the United States as an immigrant under section 203(a)(3),

"(B) is of extraordinary ability in the arts, and

"(C) has been, and is, traditionally self-employed,

if the Attorney General deems it to be in the national interest with respect to that alien.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(2) shall apply to aliens seeking to enter the United States after the date of the enactment of this Act.

SEC. 108. REENTRY PERMITS.

(a) IN GENERAL.—Section 223 (8 U.S.C. 1203) is amended—

(1) in subsection (a)—

(A) by striking "permit to reenter the United States" and inserting "travel permit", and

(B) by inserting "in the United States" after "Such application shall be made"; and

(2) in subsection (b)—

(A) by striking "not more than two years" and inserting "5 years", and

(B) by inserting after the first sentence the following: "The issuance of such a permit shall only establish the alien's status at the time of issuance, and does not authorize the alien to remain abroad for an uninterrupted period of 5 years.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to permits issued after the date of the enactment of this Act.

PART B—ENTRY AND ADJUSTMENT OF STATUS OF NONIMMIGRANTS

SEC. 121. TREATING CERTAIN BUS DRIVERS AS CREWMEN.

(a) IN DEFINITION.—Section 101(a)(10) (8 U.S.C. 1101(a)(10)) is amended by adding at the end the following: "For purposes of sections 235, 237, 243, 244(f)(1), 245, 252, 256, 257, 263, and 271, such term includes a person serving as an operator of a motor common carrier of passengers.".

(b) ADMISSION.—Section 101(a)(15)(D) (8 U.S.C. 1101(a)(15)(D)) is amended—

(1) by inserting "(i)" after "(D)", and

(2) by adding at the end the following new clause:

"(ii) an alien serving in good faith as an operator of a motor common carrier of passengers engaged in regular route transport across an international boundary who intends (I) to travel to the alien's destination in the United States with intermittent stops as prescribed by the schedule established by the carrier, (II) to remain in the United States temporarily and solely in pursuit of the alien's employment as an operator of such a carrier, and (III) to depart from the United States with the carrier on which he arrived or some other motor common carrier of passengers;".

(c) CONFORMING AMENDMENTS.—

(1) The second sentence of section 243(c) (8 U.S.C. 1253(c)) is amended by striking "vessels or aircraft" and inserting "vessels, aircraft, or motor common carrier".

(2) Section 252 (8 U.S.C. 1282) is amended—

(A) by inserting "or stay" after "to land" each place it appears;

(B) in subsection (a)(1)—

(i) by inserting "(A) in the case of a nonimmigrant described in section 101(a)(15)(D)(i)," after "(1)",

(ii) by striking "; or" and inserting ", or", and

(iii) by adding at the end the following new subparagraph:

"(B) in the case of a nonimmigrant described in section 101(a)(15)(D)(ii), the period of time (not exceeding 29 days) during which the motor common carrier of passengers remains in the United States in accordance with the schedule established by the carrier; or"; and

(C) in subsections (a)(2) and (b), by striking "or aircraft" each place it appears and inserting ", aircraft, or motor common carrier".

(3) Section 256 (8 U.S.C. 1286) is amended by striking "or aircraft" each place it appears and inserting ", aircraft, or motor common carrier".

(4) Section 257 (8 U.S.C. 1287) is amended by striking "or aircraft" each place it appears and inserting ", aircraft, or motor common carrier".

(5) Section 271(a) (8 U.S.C. 1321(a)) is amended by striking "or aircraft" each place it appears and inserting ", aircraft, or motor common carrier".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to aliens who enter the United States after the date of the enactment of this Act.

SEC. 122. PERMITTING ALIEN CREWMEN ON FISH VESSELS TO STOP TEMPORARILY AT PORTS IN GUAM.

(a) NEW NONIMMIGRANT CREWMAN CLASSIFICATION.—Section 101(a)(15)(D)(i) (8 U.S.C. 1101(a)(15)(D)(i)), as amended by section 121(b), is amended—

(1) by inserting "(a)" after "(D)(i)", and

(2) by adding at the end the following new subdivision:

"(b) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fish vessel having its home port or an operating base in the United States who intends to land temporarily in Guam and solely in pursuit of the alien's calling as a crewman and to depart from Guam with the vessel on which he arrived;".

(b) TREATMENT OF DEPARTURES FROM GUAM.—In the administration of section 101(a)(15)(D)(i)(b) of the Immigration and Nationality Act (added by the amendment made by subsection (a)), an alien crewman shall be considered to have departed from Guam after leaving the territorial waters of Guam, without regard to whether the alien arrives in a foreign state before returning to Guam.

SEC. 123. NONIMMIGRANT TRADERS AND INVESTORS.

(a) Broadening of Classification.—Section 101(a)(15)(E) (8 U.S.C. 1101(a)(15)(E)) is amended—

(1) in clause (i), by inserting ", services, or transfer of technology in a capacity that is supervisory or executive or involves specialized knowledge" after "substantial trade", and

(2) by inserting "or trade agreement" after "treaty of commerce and navigation".

(b) Admission as Nonimmigrants of Certain Traders and Investors not Covered Under Treaty or Agreement.—

(1) In general.—Section 101(a)(15)(E) (8 U.S.C. 1101(a)(15)(E)) is further amended—

(A) by striking "(i)" and "(ii)" and inserting "(a)" and "(b)", respectively,

(B) by inserting "(i)" after "(E)", and

(C) by adding at the end the following new clause:

"(ii) an alien (and the spouse and children of any such alien if accompanying or following to join him) who is a national of a foreign state which has not entered into a treaty or agreement described in clause (i) and who seeks to enter the United States (a) solely to carry on substantial trade, principally between the United States and the foreign state of which he is a national, or (b) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital in which enterprise the alien will be a principal manager and which enterprise will benefit the United States economy and create full-time employment in the United States for not fewer than 5 United States domestic workers, other than the spouse or children of the alien, but only if the foreign state of which the alien is a national provides similar reciprocal immigration rights to nationals of the United States;".

(2) Conforming amendment.—Section 247 (8 U.S.C. 1251) is amended by striking "(15)(E)" each place it appears and inserting "(15)(E)(i)".

(c) Clarification of Substantial Trade, Etc.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following new paragraph:

"(43) The term 'substantial' means, for purposes of paragraph (15)(E) with reference to capital, trade, services, or transfer of technology, such an amount of capital, trade, services, or transfers as is established by the Secretary of State, after consultation with the United States Trade Representative and the Secretary of Commerce.".

(d) Report on Admission of Traders and Investors.—The Attorney General and the Secretary of State shall jointly—

(1) monitor and review the admission of nonimmigrant traders and investors (described in section 101(a)(15)(E) of the Immigration and Nationality Act), and

(2) report to Congress, not later than 2 years after the date of the enactment of this Act, on the terms and conditions of their admission, the impact of their admission on the United States and on international trade, and the extent to which their admission has promoted reciprocal trading between the United States and foreign states.

(e) Effective Date.—The amendments made by this section shall apply to the entry of aliens into the United States on or after the date of the enactment of this Act.

SEC. 124. TREATMENT OF H NONIMMIGRANTS AND VOCATIONAL STUDENTS.

(a) Separation of Professionals.—Section 101(a)(15)(H)(i) (8 U.S.C. 1101(a)(15)(H)(i)) is amended—

(1) by striking "is of distinguished merit and ability and who" and inserting "(a) is of distinguished merit and ability and", and

(2) by inserting after "such merit and ability," the following: "or (b) is a member of a profession or a high level executive and is coming temporarily to the United States to perform services in such profession or as such an executive,".

(b) Nonimmigrants Employed Temporarily as Trainees.—

(1) Requiring formal occupational training program.—Section 101(a)(15)(H)(iii) (8 U.S.C. 1101(a)(15)(H)(iii)) is amended by inserting "in a formal occupational training program" after "trainee".

(2) Effective date.—The amendment made by paragraph (1) shall apply to petitions filed after the date of the enactment of this Act.

SEC. 125. VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS.

(a) Establishing Visa Waiver Pilot Program.—Chapter 2 of title II is amended by adding after section 215 the following new section:

"VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS

"Sec. 216. (a) Establishment of Pilot Program.—The Attorney General and the Secretary of State are authorized to establish a pilot program (hereafter in this section referred to as the 'pilot program') under which the requirement of paragraph (26)(B) of section 212(a) may be waived by the Attorney General and the Secretary of State, acting jointly and in accordance with this section, in the case of an alien who meets the following requirements:

"(1) Seeking entry as tourist for 90 days or less.—The alien is applying for admission during the pilot program period (as defined in subsection (e)) as a nonimmigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding 90 days.

"(2) National of pilot program country.—The alien is a national of a country which—

"(A) extends (or agrees to extend) reciprocal privileges to citizens and nationals of the United States, and

"(B) is designated as a pilot program country under subsection (c).

"(3) Executes entry control and waiver forms.—The alien before the time of such admission—

"(A) completes such immigration form as the Attorney General shall establish under subsection (b)(3), and

"(B) executes a waiver of review and appeal described in subsection (b)(4).

"(4) Round-trip ticket.—The alien has a round-trip, nontransferable transportation ticket which—

"(A) is valid for a period of not less than one year,

"(B) is nonrefundable except in the country in which issued or in the country of the alien's nationality or residence,

"(C) is issued by a carrier which has entered into an agreement described in subsection (d), and

"(D) guarantees transport of the alien out of the United States at the end of the alien's visit.

"(5) Not a safety threat.—The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

"(6) No previous violation.—If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

"(b) Conditions Before Pilot Program Can be Put Into Operation.—

"(1) Prior notice to congress.—The pilot program may not be put into operation until the end of the 30-day period beginning on the date that the Attorney General submits to the Congress a certification that the screening and monitoring system described in paragraph (2) is operational and effective and that the form described in paragraph (3) has been produced.

"(2) Automated data arrival and departure system.—The Attorney General in cooperation with the Secretary of State shall develop and establish an automated data arrival and departure control system to screen and monitor the arrival into and departure from the United States of nonimmigrant visitors receiving a visa waiver under the pilot program.

"(3) Visa waiver information form.—The Attorney General shall develop a form for use under the pilot program. Such form shall be consistent and compatible with the control system developed under paragraph (2). Such form shall provide for, among other items—

"(A) a summary description of the conditions for excluding nonimmigrant visitors from the United States under section 212(a) and under the pilot program,

"(B) a description of the conditions of entry with a waiver under the pilot program, including the limitation of such entry to 90 days and the consequences of failure to abide by such conditions, and

"(C) questions for the alien to answer concerning any previous denial of the alien's application for a visa.

"(4) Waiver of rights.—An alien may not be provided a waiver under the pilot program unless the alien has waived any right—

"(A) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

"(B) to contest, other than on the basis of an application for asylum, any action for deportation against the alien.

"(c) Designation of Pilot Program Countries.—

"(1) Up to 8 countries.—The Attorney General and the Secretary of State acting jointly may designate up to eight countries as pilot program countries for purposes of the pilot program.

"(2) Initial qualifications.—For the initial period described in paragraph (4), a country may not be designated as a pilot program country unless the following requirements are met:

"(A) Low nonimmigrant visa refusal rate for previous 2-year period.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

"(B) Low immigrant visa refusal rate for each of 2 previous years.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(3) Continuing and subsequent qualifications.—For each fiscal year (within the pilot program period) after the initial period—

"(A) CONTINUING QUALIFICATION.—In the case of a country which was a pilot program country in the previous fiscal year, a country may not be designated as a pilot program country unless the sum of—

"(i) the total of the number of nationals of that country who were excluded from admission or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

"(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

"(B) NEW COUNTRIES.—In the case of another country, the country may not be designated as a pilot program country unless the following requirements are met:

"(i) LOW NONIMMIGRANT VISA REFUSAL RATE IN PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

"(ii) LOW NONIMMIGRANT VISA REFUSAL RATE IN EACH OF THE 2 PREVIOUS YEARS.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

"(4) INITIAL PERIOD.—For purposes of paragraphs (2) and (3), the term 'initial period' means the period beginning at the end of the 30-day period described in subsection (b)(1) and ending on the last day of the first fiscal year which begins after such 30-day period.

"(d) CARRIER AGREEMENTS.—

"(1) IN GENERAL.—The agreement referred to in subsection (a)(4)(A) is an agreement between a carrier and the Attorney General under which the carrier agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the pilot program—

"(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A), and

"(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the pilot program.

"(2) TERMINATION OF AGREEMENTS.—The Attorney General may terminate an agreement under paragraph (1) with five days' notice to the carrier for the carrier's failure to meet the terms of such agreement.

"(e) DEFINITION OF PILOT PROGRAM PERIOD.—For purposes of this section, the term 'pilot program period' means the period beginning at the end of the 30-day period referred to in subsection (b)(1) and ending on the last day of the third fiscal year which begins after such 30-day period.".

(b) LIMITATION ON STAY IN UNITED STATES.—Section 214(a) (8 U.S.C. 1184(a)) is amended by adding at the end the following new sentence: "No alien admitted to the United States without a visa pursuant to section 216 may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.".

(c) PROHIBITION OF ADJUSTMENT TO IMMIGRANT STATUS.—Section 245(c) (8 U.S.C. 1255(c)) is amended by striking "or" before "(3)" and by inserting before the period at the end the following: "; or (4) an alien (other than an immediate relative as defined in section 201(b)) who was admitted as a nonimmigrant visitor without a visa under section 212(l) or section 216".

(d) PROHIBITION OF ADJUSTMENT OF NONIMMIGRANT STATUS.—Section 248 (8 U.S.C. 1258) is amended by striking "and" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ", and" and by adding at the end the following new paragraph:

"(4) an alien admitted as a nonimmigrant visitor without a visa under section 212(l) or section 216.".

(e) CONFORMING AMENDMENT TO TABLE OF CONTENTS.—The table of contents is amended by adding after the item relating to section 215 the following new item:

"Sec. 216. Visa waiver pilot program for certain visitors.".

PART C—REFUGEE-RELATED PROVISIONS

SEC. 141. ADMITTING REFUGEES AS PERMANENT RESIDENTS.

(a) IN GENERAL.—Paragraph (4) of section 207(c) (8 U.S.C. 1157(c)) is amended to read as follows:

"(4)(A) Any alien admitted under this subsection shall be considered to be admitted as an alien lawfully admitted to the United States for permanent residence.

"(B) Lawful permanent residence granted under this subsection may be rescinded by the Attorney General, under such regulations as the Attorney General prescribes, if the Attorney General determines that the alien was not in fact not admissible as a refugee under this subsection. Such rescission shall be effective as of the date of the alien's admission.".

(b) CONFORMING AMENDMENTS.—(1) Section 209 (8 U.S.C. 1159) is amended—

(1) by striking subsection (a),

(2) in subsection (b)—

(A) by striking "(b) Not more than five thousand of the refugee admissions" and inserting "(a) The number of refugee admissions specified for the adjustment of status of aliens under this section",

(B) by striking "(c)" and inserting "(b)", and

(3) by redesignating subsection (c) as subsection (b).

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply to aliens admitted as refugees on or after the date of the enactment of this Act.

(d) TRANSITION FOR CURRENT REFUGEES.—(1) In the case of any alien admitted to the United States under section 207 of the Immigration and Nationality Act before the date of the enactment of this Act, whose admission has not been terminated, and who has not acquired permanent resident status, the alien shall promptly return to the custody of the Immigration and Naturalization Service for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 235, 236, and 237.

(2) Any alien who is found upon inspection and examination before an immigration officer pursuant to paragraph (1) or after a hearing before a special inquiry officer to be admissible (except as otherwise provided under the provisions of section 209(c) of the Immigration and Nationality Act, as in effect before the date of the enactment of this Act) as an immigrant under such Act at the time of the alien's inspection and examination shall, notwithstanding any numerical limitation specified in such Act, be regarded as lawfully admitted to the United States for permanent residence as of the date of the alien's arrival into the United States.

TITLE II—EXCLUSION AND DEPORTATION

SEC. 201. WAIVER OF CERTAIN GROUNDS OF EXCLUSION.

(a) PERMITTING WAIVER OF LITERACY REQUIREMENT FOR SOLE SURVIVING SIBLING.—Section 212(b) (8 U.S.C. 1182(b)) is amended by inserting ", or is 55 years of age or older and is the sole surviving brother or sister," after "daughter, or son".

(b) PERMITTING WAIVER OF SECTION 212(a)(4) GROUND OF EXCLUSION.—Section 212(g) (8 U.S.C. 1182(g)) is amended by inserting "psychopathic personality, mental defect, or " after "afflicted with".

(c) EXPANDING RELATIONSHIPS FOR WHICH A WAIVER UNDER SECTION 212(g) IS AVAILABLE.—The first sentence of section 212(g) (8 U.S.C. 1182(g)) is amended by striking "who (A)" and all that follows through "shall" and inserting the following: "who is the parent, spouse, daughter, or son, or is 55 years of age or older and is the sole surviving brother or sister, of an admissible alien, or any alien lawfully admitted for permanent residence, or any citizen of the United States, shall".

SEC. 202. DEPORTATION IN CERTAIN CASES INVOLVING 3RD OR 6TH PREFERENCE ALIENS FOR FAILURE TO BE EMPLOYED IN FIELD OF EXPERTISE.

(a) IN GENERAL.—Section 241(a) (8 U.S.C. 1251(a)) is amended—

(1) by striking "or" at the end of paragraph (18),

(2) by striking the period at the end of paragraph (19) and inserting "; or", and

(3) by adding at the end the following new paragraph:

"(20) obtains the status of an alien lawfully admitted for permanent residence by virtue of being a preference immigrant described in paragraph (3) or (6) of section 203(a) or a special immigrant described in section 101(a)(27)(C)(ii) and does not, for the first 12 months while in such status, engage in the employment in the occupational field for which the certification under section 212(a)(14) was issued with respect to the alien, unless exigent circumstances beyond the control of the alien prevent the alien from engaging in such employment.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to aliens who obtain lawful permanent resident status on or after the date of the enactment of this Act.

SEC. 203. SUSPENSION OF DEPORTATION FOR CERTAIN ALIENS.

(a) IN GENERAL.—Section 244(b) (8 U.S.C. 1254(b)) is amended—

(1) by inserting "(1)" after "(b)", and

(2) by adding at the end thereof the following new paragraph:

"(2) An alien shall not be considered to have failed to maintain continuous physical presence in the United States under paragraphs (1) and (2) of subsection (a) if the absence from the United States was brief, casual, and innocent and did not meaningfully interrupt the continuous physical presence.".

SEC. 204. ANNUAL REPORT ON SUSPENSIONS OF DEPORTATION.

(a) IN GENERAL.—Section 244(c) (8 U.S.C. 1254(c)) is amended—

(1) in paragraph (1), by striking the second sentence, and

(2) by striking paragraphs (2) and (3) and inserting the following:

"(2) After the end of each fiscal year, the Attorney General shall report to the Congress concerning—

"(A) the number of aliens who applied for suspension of deportation and the number of approvals and denials of such applications,

"(B) the number of aliens whose deportation has been suspended and whose status has been adjusted under subsection (a) during the year, and

"(C) the country of nationality of each such alien, and the country in which each such alien resided before entering the United States.

Such information shall be reported with respect to each district of the Service.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to any fiscal year beginning on or after the date of the enactment of this Act.

TITLE III—ENFORCEMENT

PART A—MARRIAGE-RELATED PROVISIONS

SEC. 301. DETERRING IMMIGRATION-RELATED MARRIAGE FRAUD.

(a) CONDITIONAL BASIS FOR PERMANENT RESIDENT STATUS BASED ON RECENT MARRIAGE.—Chapter 2 of title II, as amended by section 125 of this Act, is amended by adding after section 216 the following new section:

"CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

"SEC. 217. (a) IN GENERAL.—

"(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of this Act, an alien spouse (as defined in subsection (g)(1)) and an alien son or daughter (as defined in subsection (g)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

"(2) NOTICE OF REQUIREMENTS.—

"(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien spouse or alien son or daughter obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such a spouse, son, or daughter respecting the provisions of this section and the requirements of subsection (c)(1) to have the conditional basis of such status removed.

"(B) AT TIME OF REQUIRED PETITION.—In addition, the Attorney General shall attempt to provide notice to such a spouse, son, or daughter, at or about the beginning of the 90-day period described in subsection (d)(2)(A), of the requirements of subsections (c)(1).

"(C) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such a spouse, son, or daughter.

"(b) TERMINATION OF STATUS IF FINDING THAT QUALIFYING MARRIAGE IMPROPER.—

"(1) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

"(A) the qualifying marriage—

"(i) was entered into for the purpose of procuring an alien's entry as an immigrant, or

"(ii) has been judicially annulled or terminated, other than through the death of a spouse; or

"(B) a fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien;

the Attorney General shall so notify the parties involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (or aliens) involved as of the date of the determination.

"(2) HEARING IN DEPORTATION PROCEEDING.—Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

"(c) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—

"(1) IN GENERAL.—In order for the conditional basis established under subsection (a) for an alien spouse or an alien son or daughter to be removed—

"(A) the alien spouse and the petitioning spouse (if not deceased) jointly must submit to the Attorney General, during the period described in subsection (d)(2), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1), and

"(B) in accordance with subsection (d)(3), the alien spouse and the petitioning spouse (if not deceased) must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1).

"(2) TERMINATION OF PERMANENT RESIDENT STATUS FOR FAILURE TO FILE PETITION OR HAVE PERSONAL INTERVIEW.—

"(A) IN GENERAL.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if—

"(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

"(ii) unless there is good cause shown, the alien spouse and petitioning spouse fail to appear at the interview described in paragraph (1)(B),

the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

"(B) HEARING IN DEPORTATION PROCEEDING.—In any deportation proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

"(3) DETERMINATION AFTER PETITION AND INTERVIEW.—

"(A) IN GENERAL.—If—

"(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

"(ii) the alien spouse and petitioning spouse appear at the interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90-days of the date of the interview, as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying marriage.

"(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the parties involved and shall remove the conditional basis of the parties effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

"(C) TERMINATION IF ADVERSE DETERMINATION.—If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the parties involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien spouse or an alien son or daughter as of the date of the determination.

"(D) HEARING IN DEPORTATION PROCEEDING.—Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) and alleged in the petition are not true with respect to the qualifying marriage.

"(4) HARDSHIP WAIVER.—The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that—

"(A) extreme hardship would result if such alien is deported, or

"(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) by the alien spouse for good cause and the alien was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis.

"(d) DETAILS OF PETITION AND INTERVIEW.—

"(1) CONTENTS OF PETITION.—Each petition under subsection (c)(1)(A) shall contain the following facts and information:

"(A) STATEMENT OF PROPER MARRIAGE AND PETITIONING PROCESS.—The facts are that—

"(i) the qualifying marriage—

"(I) was entered into in accordance with the laws of the place where the marriage took place,

"(II) has not been judicially annulled or terminated, other than through the death of a spouse, and

"(III) was not entered into for the purpose of procuring an alien's entry as an immigrant; and

"(ii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien spouse or alien son or daughter.

"(B) STATEMENT OF ADDITIONAL INFORMATION.—The information is a statement of—

"(i) the actual residence of each party to the qualifying marriage since the date the alien spouse obtained permanent resident status on a conditional basis under subsection (a), and "(ii) the place of employment (if any) of each such party since such date, and the name of the employer of such party.

"(2) PERIOD FOR FILING PETITION.—

"(A) 90-DAY PERIOD BEFORE SECOND ANNIVERSARY.—Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

"(B) DATE PETITIONS FOR GOOD CAUSE.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

"(C) FILING OF PETITIONS DURING DEPORTATION.—In the case of an alien who is the subject of deportation hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such deportation proceedings against an alien pending the filing of the petition under subparagraph (B).

"(3) PERSONAL INTERVIEW.—The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

"(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

"(f) TREATMENT OF CERTAIN WAIVERS.—In the case of an alien who has permanent residence status on a conditional basis under this section, if, in order to obtain such status, the alien obtained a waiver under subsection (h) or (i) of section 212 of certain grounds of exclusion, such waiver terminates upon the termination of such permanent residence status under this section.

"(g) DEFINITIONS.—In this section:

"(1) The term 'alien spouse' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

"(A) as an immediate relative (described in section 201(b)) as the spouse of a citizen of the United States,

"(B) under section 214(d) as the fiancee or fiance of a citizen of the United States, or

"(C) under section 203(a)(2) as the spouse of an alien lawfully admitted for permanent residence,

by virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage, but does not include such an alien who only obtains such status as a result of section 203(a)(8).

"(2) The term 'alien son or daughter' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a qualifying marriage.

"(3) The term 'qualifying marriage' means the marriage described to in paragraph (1).

"(4) The term 'petitioning spouse' means the spouse of a qualifying marriage, other than the alien.".

(b) ADDITIONAL GROUND FOR DEPORTATION.—Section 241 (8 U.S.C. 1251), as amended by section 503(m)(3), is amended—

(1) in subsection (a)(9)—

(A) by inserting "(A)" after "(9)", and

(B) by inserting before the semicolon the following: ", (B) or is an alien with permanent resident status on a conditional basis under section 217 and has such status terminated under such section"; and

(2) by adding at the end the following new subsection:

"(f) The provisions of subsection (a)(9)(B) shall not apply in the cases described in section 217(c)(4).".

(c) CLASSIFICATION PETITIONS.—Section 204(a) of such Act (8 U.S.C. 1154(a)) is amended—

(1) by inserting "(1)" after "(a)", and

(2) by adding at the end the following new paragraph:

"(2)(A) The Attorney General may not approve a spousal second preference petition filed by an alien who, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence, unless—

"(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

"(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

In this subparagraph, the term 'spousal second preference petition' refers to a petition, seeking preference status under section 203(a)(2), for an alien as a spouse of an alien lawfully admitted for permanent residence.

"(B) Subparagraph (A) shall not apply to a petition filed by an alien whose prior marriage was terminated by the death of his or her spouse.".

(d) CRIMINAL PENALTY FOR MARRIAGE FRAUD.—Section 275 of such Act (8 U.S.C. 1325) is amended—

(1) by inserting "(a)" after "275.", and

(2) by adding at the end the following new subsection:

"(b) Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.".

(e) LIMITATION ON ADJUSTMENT OF STATUS.—Section 245 of such Act (8 U.S.C. 1255) is amended by adding at the end the following new subsection:

"(d) The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 217.".

(f) CONFORMING AMENDMENT.—The table of contents of such Act is amended by inserting after the item relating to section 216 the following new item:

"Sec. 217. Conditional permanent resident status for certain alien spouses and sons and daughters.".

SEC. 302. PREVENTING MARRIAGE FRAUD WITH RESPECT TO "K" NONIMMIGRANTS.

(a) REQUIRING PREVIOUS MEETING TO OBTAIN "K" NONIMMIGRANT VISA.—The third sentence of section 214(d) (8 U.S.C. 1184(d)) is amended—

(1) by striking "have a bona fide intention to marry" and inserting "have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry,", and

(2) by inserting before the period at the end the following: ", except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person".

(b) RESTRICTING SEPARATE ADJUSTMENT TO PERMANENT RESIDENT STATUS OF "K" NONIMMIGRANTS.—Section 245(d) (8 U.S.C. 1255(d)), as added by section 301(d) of this Act, is amended by inserting before the period at the end the following: "or of a nonimmigrant described in section 101(a)(15)(K)".

(c) REQUIRING FILING OF ADJUSTMENT OF STATUS PETITION.—Section 214(d) (8 U.S.C. 1184(d)) is amended by striking the last sentence.

(d) EFFECTIVE DATES.—(1) The amendments made by subsection (a) shall apply to petitions approved on or after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to adjustments occurring on or after the date of the enactment of this Act.

(3) The amendment made by subsection (c) shall apply to aliens issued visas under section 101(a)(15)(K) of the Immigration and Nationality Act on or after the date of the enactment of this Act.

SEC. 303. RESTRICTIONS ON FUTURE ENTRY OF ALIENS INVOLVED WITH MARRIAGE FRAUD.

(a) IN GENERAL.—Section 204(c) (8 U.S.C. 1154(c)) is amended—

(1) by inserting "(1)" after "if",

(2) by inserting ", or has sought to be accorded," after "previously been accorded", and

(3) by inserting before the period at the end the following: ", or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to petitions filed on or after the date of the enactment of this Act.

SEC. 304. RESTRICTIONS ON ADJUSTMENT OF STATUS OR PETITIONS BASED ON MARRIAGES ENTERED WHILE IN EXCLUSION OR DEPORTATION PROCEEDINGS.

(a) RESTRICTION ON ADJUSTMENT.—Section 245 (8 U.S.C. 1255), as amended by sections 301(d) and 302(b) of this Act, is further amended—

(1) in subsection (c), by striking "The provisions of this section" and inserting "Subsection (a)", and

(2) by adding at the end the following new subsection:

"(e)(1) An alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).

"(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending *regarding the alien's right to enter or remain in the United States.".*

(b) Restriction on Petitions.—Section 204 (8 U.S.C. 1154) is amended by adding at the end the following new subsection:

"(h) Notwithstanding subsection (a), a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period described in section 245(e)(2), until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.".

(c) Effective Date.—The amendments made by this section shall apply to marriages entered into on or after the date of the enactment of this Act.

(d) Report on Section 241(c) Sanctions.—The Attorney General shall study and report to the Congress, not later than 6 months after the date of the enactment of this Act, concerning the application of the 2-year marriage fraud presumption under section 241(c) of the Immigration and Nationality Act (8 U.S.C. 1251(c)). Such report shall include—

(1) the number of cases of deportations effected under such section, and

(2) recommendations for changes in such section.

SEC. 305. EXCLUSION FOR MISREPRESENTATIONS.

(a) In General.—Paragraph (19) of section 212(a) (8 U.S.C. 1152(a)) is amended to read as follows:

"(19) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure, or has sought to procure or has procured, a visa, other documentation, or entry into the United States or other benefit provided under this Act;".

(b) Effective Date.—The amendment made by subsection (a) shall apply to the receipt of visas by, and the admission of, aliens occurring after the date of the enactment of this Act based on fraud or misrepresentations occurring before, on, or after such date.

Part B—Other Provisions

SEC. 311. CLARIFYING TEMPORARY NATURE OF DETENTION IN EXCLUSION AND DEPORTATION CASES.

(a) In Exclusion Cases.—Section 235(b) (8 U.S.C. 1225(b)) is amended—

(1) by inserting "(1)" after "(b)",

(2) by striking "land" and inserting "enter", and

(3) by adding at the end the following new paragraph:

"(2) The Attorney General shall provide for the release, under bond or on parole, of such an alien subject to such reasonable conditions as the Attorney General may establish to assure the presence of the alien at any appropriate proceedings, unless the Attorney General has reason to believe, in the case of a particular alien, that—

"(A) the release of the alien would pose a danger to any other person or to the community,

"(B) the alien meets a condition described in one of the subparagraphs of section 243(h)(2),

"(C) the alien is subject to temporary exclusion under subsection (c) or is inadmissible under section 212(a)(33),

"(D) the alien has violated terms of the alien's release, or

"(E) there is a reasonable likelihood that the alien will abscond.".

(b) In Deportation Cases.—Section 242(a) (8 U.S.C. 1252(a)) is amended—

(1) by amending the second sentence to read as follows:

"The Attorney General shall provide for the release, under bond or on parole, of such an alien subject to such reasonable conditions as the Attorney General may establish to assure the presence of the alien at any appropriate proceedings, unless the Attorney General has reason to believe, in the case of a particular alien, that—

"(1) the release of the alien would pose a danger to any other person or to the community,

"(2) the alien meets a condition described in one of the subparagraphs of section 243(h)(2),

"(3) the alien is subject to deportation under section 241(a)(1) based on a ground described in paragraph (27), (28), (29), or (33) of section 212(a), or under paragraph (6), (7), or (19) of section 241(a),

"(4) the alien has violated terms of the alien's release, or

"(5) there is a reasonable likelihood that the alien will abscond.";

(2) in the third sentence—

(A) by striking "bond or parole" and inserting "release", and

(B) by striking ", in his discretion,"; and

(3) in the fourth sentence, by striking ", release on bond, or parole" and inserting "or release".

(c) Effective Date.—(1) The amendments made by subsection (a) shall apply to aliens arriving at ports of arrival after the date of the enactment of this Act.

(2) The amendments made by subsection (b) shall apply to deportation proceedings commenced after the date of the enactment of this Act.

SEC. 312. INCREASE IN FINE LEVELS; AUTHORITY OF THE INS TO COLLECT FINES; USE OF PART OF CIVIL PENALTIES AND FINES BY INS.

(a) Civil Penalties.—

(1) Failure to deliver manifest.—Section 231(d) (8 U.S.C. 1221(d)) is amended by striking "collector of customs at the port of arrival or departure the sum of $10" and inserting "Commissioner the sum of $300".

(2) Failure to provide for deportation.—Section 237(b) (8 U.S.C. 1227(b)) is amended by striking "district director of customs of the district in which port of arrival is situated or in which any vessel or aircraft of the line may be found, the sum of $300" and inserting "Commissioner the sum of $2,000".

(3) Improper aircraft entry.—Section 239 (8 U.S.C. 1229) is amended by striking "$500" and inserting "$2,000".

(4) Failure to deliver crew manifest.—Section 251(d) (8 U.S.C. 1281(d)) is amended by striking "collector of customs of any customs district in which the vessel or aircraft may at any time be found the sum of $10" and inserting "Commissioner the sum of $200".

(5) Failure to control crew.—Section 254(a) (8 U.S.C. 1284(a)) is amended—

(A) in the first sentence, by striking "collector of customs of the customs district in which the port of arrival is located or in which the failure to comply with the orders of the officer occurs the sum of $1,000" and inserting "Commissioner the sum of $3,000", and

(B) in the third sentence by striking "$200" and inserting "$500".

(6) Employment of certain crew.—Section 255 (8 U.S.C. 1285) is amended—

(A) in the second sentence, by striking "collector of customs of the customs district in which the port of arrival is located the sum of $50" and inserting "Commissioner the sum of $1,000", and

(B) in the third sentence, by striking "collector of customs" and inserting "Commissioner".

(7) Improper discharge of crew.—Section 256 (8 U.S.C. 1286) is amended—

(A) in the second sentence, by striking "collector of customs of the customs district in which the violation occurred the sum of $1,000" and inserting "Commissioner the sum of $3,000",

(B) in the third sentence, by striking "collector of customs" and inserting "Commissioner", and

(C) in the fourth sentence, by striking "$500" and inserting "$1,500".

(8) Assisting unlawful entry of crew.—Section 257 (8 U.S.C. 1287) is amended by striking "$5,000" and inserting "$10,000".

(9) Duty to prevent unauthorized entries.—Section 271(a) (8 U.S.C. 1321) is amended by striking "$1,000" and inserting "$3,000".

(10) Bringing in certain aliens.—Section 272 (8 U.S.C. 1322) is amended—

(A) in subsection (a)—

(i) by striking "collector of customs of the customs district in which the place of arrival is located" and inserting "Commissioner", and

(ii) by striking "$1,000" and inserting "$3,000";

(B) in subsection (b)—

(i) by striking "collector of customs of the customs district in which the place of arrival is located" and inserting "Commissioner", and

(ii) by striking "$250" and inserting "$3,000"; and

(C) in subsection (c), by striking "collector of customs" and inserting "Commissioner".

(11) Unlawful bringing of aliens.—Section 273 (8 U.S.C. 1323) is amended—

(A) in subsection (b), by striking "collector of customs of the customs district in which the port of arrival is located the sum of $1,000" and inserting "Commissioner the sum of $3,000", and

(B) in subsection (d)—

(i) in the first sentence, by striking "collector of customs of the customs district in which the port of arrival is located the sum of $1,000" and inserting "Commissioner the sum of $3,000", and

(ii) in the second sentence, by striking "collector of customs" and inserting "Commissioner".

(b) Criminal Fine Levels.—

(1) Crew member overstaying.—Section 252(c) (8 U.S.C. 1282(c)) is amended by striking "shall be guilty" and all that follows through "six months" and inserting "shall be fined not more than $2,000 (or, if greater, the amount provided under title 18, United States Code) or imprisoned not more than 6 months".

(2) Smuggling aliens.—Section 274(a) (8 U.S.C. 1324(a)) is amended by striking "shall be guilty of a felony" and all that follows through "five years" and inserting "shall be fined under title 18, United States Code, or imprisoned not more than 5 years".

(3) Concealment of aliens.—Section 275 (8 U.S.C. 1325) is amended—

(A) by inserting "or attempts to enter" after "(1) enters",

(B) by inserting "attempts to enter or" after "or (3)", and

(C) by striking "shall, for the first commission" and all that follows through "$1,000" and inserting "shall, for the first commission of any such offense, be fined not more than $2,000 (or, if greater, the amount provided under title 18, United States Code) or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18,

United States Code, or imprisoned not more than 2 years".

(4) UNLAWFUL REENTRY.—Section 276 (8 U.S.C. 1326) is amended by striking "shall be guilty" and all that follows through "$1,000" and inserting "shall be fined under title 18, United States Code, or imprisoned not more than 2 years".

(5) AIDING IN ENTRY OF SUBVERSIVES.—Section 277 (8 U.S.C. 1327) is amended by striking "shall be guilty" and all that follows through "five years" and inserting "shall be fined under title 18, United States Code, or imprisoned not more than 10 years".

(6) IMPORTING PROSTITUTES.—Section 278 (8 U.S.C. 1328) is amended by striking "shall, in every" and all that follows through "ten years" and inserting "shall be fined under title 18, United States Code, or imprisoned not more than 10 years, or both".

(c) USE OF PART OF CIVIL, ADMINISTRATIVE FINES AND PENALTIES COLLECTED BY INS.—Section 280 (8 U.S.C. 1330) is amended—

(1) by inserting "(a)" after "280.", and

(2) by adding at the end the following new subsection:

"(b) Of the amounts collected by the Commissioner under this Act as civil fines or penalties, 50 percent may be used to pay all proper expenses of the Commissioner in the administration and enforcement of this Act.".

(d) EFFECTIVE DATES.—(1) The amendments made by subsections (a) and (b) shall apply to actions taken after the date of the enactment of this Act.

(2) The amendment made by subsection (c) shall apply to fines and penalties collected on or after October 1, 1986.

SEC. 313. MODIFICATION OF RESPONSIBILITY OF CARRIERS CONCERNING DETENTION OF ALIENS.

(a) ASSISTANCE TO CARRIERS IN DETECTING EXCLUDIBLE ALIENS.—(1) Chapter 4 of title II is amended by inserting before section 231 the following new section:

"ASSISTANCE IN DETECTING EXCLUDIBLE ALIENS

"SEC. 230. The Attorney General shall provide technical assistance on a periodic basis to carriers bringing aliens to the United States in the identification of aliens who are excludible and, particularly, in the detection of false, forged, or fraudulent documentation.".

(2) The table of contents is amended by inserting before the item relating to section 231 the following new item:

"Sec. 230. Assistance in detecting excludible aliens.".

(b) CARRIERS NOT RESPONSIBLE FOR DETAINING ALIENS.—(1) Section 232 (8 U.S.C. 1222) is amended—

(A) by striking "on board the vessel or at the airport" and all that follows through "as circumstances may require or justify," and inserting "by the Attorney General", and

(B) by adding at the end the following new sentence: "As soon as practicable after a detention of an alien is effected under this section, the Attorney General shall notify the transportation line, or the master, commanding officer, agent, owner, or consignee of the vessel or aircraft upon which the alien is brought to the United States, of the fact of such detention.".

(2)(A) Subsection (a) of section 233 (8 U.S.C. 1223) is amended to read as follows:

"(a) Upon the arrival at a port of the United States of any vessel or aircraft bringing aliens (including alien crewmen), the immigration officers may temporarily remove such aliens for examination and inspection. Such temporary removal shall not relieve vessels or aircraft, the transportation lines, or the masters, commanding officers, agents, owners, or consignees of the vessel or aircraft upon which such aliens are brought to any port of the United States from any of the obligations which under this Act bind such persons. If such removal results in any subsequent detention of an alien pending a determination of the alien's admissibility, the Attorney General shall notify such persons of such detention as soon as practicable after the time of the removal.".

(B) The first sentence of subsection (b) of such section is amended by striking "to a designated place".

(3) Section 237(b) (8 U.S.C. 1227(b)) is amended by striking clause (2) and by redesignating clauses (3) through (6) as clauses (2) through (5), respectively.

(4) Section 271 (8 U.S.C. 1321) is amended—

(A) in the first sentence of subsection (a)—

(i) by striking "(a) It" and inserting "It",

(ii) by striking "landing" and inserting "arrival",

(iii) by inserting "or at a time" after "entry", and

(iv) by striking "or at any time or place other than as designated by the immigration officers"; and

(B) by striking subsection (b).

(5) Section 273 (8 U.S.C. 1323) is amended—

(A) in subsection (a), by inserting "at the time of embarkation" after "any alien who", and

(B) in the first sentence of subsection (d), by striking "to detain on board" and all that follows through "to deport such stowaway" and inserting "to deport a stowaway".

(c) CARRIER NOT LIABLE FOR DETENTION AND MAINTENANCE COSTS AND PENALTIES IF EXERCISED DUE DILIGENCE.—(1) Section 233(c) (8 U.S.C. 1223(c)) is amended by striking "in the case of (1)" and all that follows up to the period at the end and inserting the following: "if the vessel, aircraft, or transportation line or the master, commanding officer, owner, agent, or consignee of the vessel, aircraft, or transportation line establishes that the ground of exclusion could not have been ascertained by the exercise of due diligence before the alien's embarkation".

(2) The third sentence of section 237(a)(1) (8 U.S.C. 1227(a)(1)) is amended by striking "(A)" and all that follows up to the period at the end and inserting the following: "if the owner or operator establishes that the ground of exclusion could not have been ascertained by the exercise of due diligence before the alien's embarkation".

(3) Section 272(b) (8 U.S.C. 1322) is amended by striking "unless (1)" and all that follows up to the period at the end and inserting "unless the person establishes that the existence of such disease or disability could not have been detected by the exercise of due diligence before the alien's embarkation".

(4) Section 273 (8 U.S.C. 1323) is amended—

(A) in the first sentence of subsection (b), by inserting before the period at the end the following: ", unless the person establishes that, before the departure of the vessel or aircraft from the last port outside the United States, did not know, and could not have had ascertained by the exercise of due diligence, (1) that the individual transported was an alien and that a visa was required and (2) that the visa (if required) was fraudulent, forged, or otherwise invalid",

(B) by striking subsection (c), and

(C) by redesignating subsection (d), as amended by section 312(a)(11)(B) of this Act and subsection (b)(5)(A) of this section, as subsection (c).

(d) LIMITATION ON DETENTION EXPENSES OF CARRIERS TO FIRST 15 DAYS OF DETENTION.—The first sentence of section 233(b) (8 U.S.C. 1223(b)) is amended by striking "subsequent" and inserting "the first 15 days of any such".

(e) CONFORMING AMENDMENT.—Section 235(b) (8 U.S.C. 1225(b)) is amended by striking "273(d)" and inserting "273(c)".

(f) EFFECTIVE DATES.—(1) The amendments made by subsection (a) shall take effect on October 1, 1986.

(2) The amendments made by this section (other than subsection (a)) shall apply with respect to any alien who arrives in the United States at a port of entry on or after the date of the enactment of this Act.

TITLE IV—CITIZENSHIP AND NATURALIZATION

SEC. 401. REDUCTION OF CITIZEN RESIDENCY REQUIREMENT TO TRANSFER CITIZENSHIP AT BIRTH TO CHILDREN.

(a) IN GENERAL.—Section 301(g) (8 U.S.C. 1401(g)) is amended by striking "ten years, at least five" and inserting "5 years, at least 2".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to any person born after the date of the enactment of this Act.

SEC. 402. DERIVATIVE NATURALIZATION OF CHILDREN.

(a) IN GENERAL.—Section 320 (8 U.S.C. 1431) is amended to read as follows:

"CHILD BORN OUTSIDE OF THE UNITED STATES, CONDITIONS UNDER WHICH CITIZENSHIP AUTOMATICALLY ACQUIRED

"SEC. 320. (a) A child born outside of the United States shall, if a parent having legal custody is naturalized, become a citizen of the United States if—

"(1) the naturalization takes place while the child is under the age of 18 years, and

"(2) the child is residing in the United States pursuant to a lawful admission for permanent residence on or after the date of naturalization and begins to reside in the United States while under the age of 18 years.

"(b) Subsection (a) shall apply to an adopted child only if the child is residing in the United States on the date of the naturalization of such adoptive parent, in the custody of the adoptive parent.".

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) Section 321 (8 U.S.C. 1432) is repealed.

(2) The table of contents is amended—

(A) by amending the item relating to section 320 to read as follows:

"Sec. 320. Child born outside of the United States, conditions under which citizenship automatically acquired.", and

(B) by striking the item relating to section 321.

(3) Section 101(c)(1) (8 U.S.C. 1101(c)(1)) is amended by striking ", 321,".

SEC. 403. ISSUANCE OF CERTIFICATES OF CITIZENSHIP FOR CHILDREN ADOPTED BY UNITED STATES CITIZENS.

The Immigration and Nationality Act is amended—

(1) in the table of contents, by inserting after the item relating to section 322, the following new item:

"Sec. 323. Issuance of certificates of citizenship for children adopted by United States citizens."; and

(2) by inserting after section 322 the following new section:

"ISSUANCE OF CERTIFICATES OF CITIZENSHIP FOR CHILDREN ADOPTED BY UNITED STATES CITIZENS

"SEC. 323. (a) The adoptive citizen parent of a child described in subsection (b) may apply to the Attorney General for a certificate of citizenship for the child. Upon proof to the satisfaction of the Attorney General that the applicant is a citizen of the United States, whether by birth or by naturalization, and that the child is described in subsection (b), the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship, but only if the child is at the time within the United States.

"(b) A child described in this subsection is a child born outside of the United States who—

"(1) is under the age of 18 years,

"(2) is adopted before the child reached the age of 16 years by a parent who is a citizen of the United States, either by birth or naturalization, and

"(3) is residing in the United States in the custody of the adopting citizen parent, pursuant to a lawful admission for permanent residence.

"(c) A certificate of citizenship issued under this section may be revoked in the same manner and for the same reasons as an order naturalizing a person as a citizen may be revoked under section 340.".

SEC. 404. LIMITING CIRCUMSTANCES FOR DERIVATIVE REVOCATION OF NATURALIZATION.

(a) IN GENERAL.—The second sentence of section 340(f) (8 U.S.C. 1351(f)) is amended by striking "on any ground other than that the order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation" and inserting "on the ground that the parent was separated from the military, air, or naval forces under other than honorable conditions, or on the ground that the naturalization was illegally procured".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to the revocation and setting aside of the order admitting a parent or spouse to citizenship occurring on or after the date of the enactment of this Act.

SEC. 405. CLARIFICATION OF LOSS OF NATIONALITY PROVISION.

(a) CONFORMING TO JUDICIAL INTERPRETATION.—Section 349(a) (8 U.S.C. 1481(a)) is amended by striking the dash and inserting the following: "voluntarily performing any of the following acts with intent to relinquish nationality:".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to acts performed before, on, or after the date of the enactment of this Act.

SEC. 406. PERMITTING DISTRIBUTION OF NATURALIZATION MATERIAL TO NONPROFIT ORGANIZATIONS.

(a) IN GENERAL.—Section 332(b) (8 U.S.C. 1443(b)) is amended—

(1) by inserting "and to nonprofit organizations approved by the Attorney General which conduct classes for instruction of candidates preparing for citizenship" after "public schools" the first place it appears, and

(2) by inserting "or in classes conducted by such nonprofit organizations" after "public schools" the second place it appears.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1986.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. STATISTICAL INFORMATION SYSTEM.

Section 103 (8 U.S.C. 1103) is amended by adding at the end the following new subsection:

"(c) The Commissioner shall provide for a system for collection and dissemination, to Congress and the public, of information (not in individually identifiable form) useful in evaluating the social, economic, environmental, and demographic impact of the provisions of this Act. Such information shall include information on the alien population in the United States, on the rates of naturalization and emigration of resident aliens, on aliens who have been admitted, paroled, or granted asylum, and on aliens who have been excluded or deported from the United States. Such system shall provide for the collection and dissemination of such information not less often than annually.".

SEC. 502. EQUAL TREATMENT OF FATHERS.

Section 101(b)(1)(D) (8 U.S.C. 1101(b)(1)(D)) is amended by inserting "or to its natural father" after "natural mother".

SEC. 503. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a) Section 101 (8 U.S.C. 1101) is amended—

(1) in subsection (a)(15)(J), by striking "Secretary of State" and inserting "Director of the United States Information Agency",

(2) by striking the second sentence of subsection (a)(38),

(3) in subsection (c)(1), by striking "322, and 323" and inserting "and 322", and

(4) by striking subsection (d).

(b) Section 102(2) (8 U.S.C. 1102(2)) is amended by striking "documentaion" and inserting "documentation".

(c) Section 103 (8 U.S.C. 1103) is amended—

(1) in subsection (a)—

(A) by striking "intructions" and inserting "instructions", and

(B) by amending the fourth sentence to read as follows: "He may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon any other employee of the Service."; and

(2) in subsection (b), by striking ", and shall receive compensation at the rate of $17,500 per annum".

(d) Section 104 (8 U.S.C. 1104) is amended by striking "SECURITY AND" in the heading, and the item in the table of contents relating to section 104 is amended by striking "Security and".

(e) Section 106(a) (8 U.S.C. 1105a) is amended—

(1) in the matter before paragraph (1), by striking "the Act of December 29, 1950, as amended (64 Stat. 1129; 68 Stat. 961; 5 U.S.C. 1031 et seq.)" and inserting "chapter 158 of title 28, United States Code", and

(2) in paragraph (1), by striking "or from the effective date of this section, whichever is the later".

(f) Section 204 (8 U.S.C. 1154) is amended—

(1) in subsection (c), by striking "a nonquota" and inserting "an immediate relative", and

(2) in subsection (g)(3)(A), by striking "(C)(i) of paragraph 2" and inserting "(C)(ii) of paragraph (2)".

(g) Section 207(c)(1) (8 U.S.C. 1182) is amended by striking "otherwide" and inserting "otherwise".

(h) Section 212 (8 U.S.C. 1182) is amended—

(1) in subsection (a)(32), by striking "Commissioner of Education" and "Secretary of Health, Education, and Welfare" and inserting "Secretary of Education" and "Secretary of Health and Human Services", respectively;

(2) in subsection (e)—

(A) by striking "Secretary of State" the first place it appears and inserting "Director of the United States Information Agency", and

(B) by striking "Secretary of State" each subsequent place it appears and inserting "Director";

(3) in subsection (g), by striking "Surgeon General of the United States Public Health Service" each place it appears and inserting "Secretary of Health and Human Services"; and

(4) in subsection (h), by striking "paragraphs" and inserting "paragraph".

(i) Section 222(a) (8 U.S.C. 1202(a)) is amended by striking "whether or not be intends" and inserting "whether or not he intends".

(j) Section 233(c) (8 U.S.C. 1223(c)) is amended by striking "sections 232 and 233" and inserting "this section and section 232".

(k) Section 234 (8 U.S.C. 1224) is amended by striking "Surgeon General of the United States Public Health Service" each place it appears and inserting "Secretary of Health and Human Services".

(l) Section 237(b)(4) (8 U.S.C. 1227(b)(4)), as redesignated by section 313(b)(3), is amended by striking "to ke kept" and inserting "to be kept".

(m) Section 241 (8 U.S.C. 1251) is amended—

(1) in subsection (a)(17), by striking "amendment thereof; the Trading" and inserting "amendment, thereof, known as the Trading",

(2) by striking subsection (d), and

(3) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(n) Section 242(e) (8 U.S.C. 1252(e)) is amended by striking "or from the date of the enactment of the Subversive Activities Control Act of 1950, whichever is the later,".

(o) Section 265 (8 U.S.C. 1305) is amended by inserting above the text the following heading:

"NOTICES OF CHANGE OF ADDRESS".

(p) Section 283 (8 U.S.C. 1353) is amended by striking "the Act of August 2, 1946 (60 Stat. 806; 5 U.S.C., sec. 73b-1)" and inserting "subchapter II of chapter 57 of title 5, United States Code".

(q) Section 287(c) (8 U.S.C. 1357(c)) is amended by inserting "(1) to carry firearms, and (2)" after "shall have the power".

(r) Section 290(c) (8 U.S.C. 1360(c)) is amended by striking "Federal Security Administrator" and "The Administrator" and inserting "Secretary of Health and Human Services" and "The Secretary", respectively.

(s) Section 309 (8 U.S.C. 1409) is amended—

(1) in subsections (a) and (c), by striking "on or after the effective date of this Act" and inserting "after December 23, 1952", and

(2) in subsection (b)—

(A) by striking "prior to the effective date of this Act" and inserting "before December 24, 1952", and

(B) by striking "before or after the effective date of this Act and" and inserting "at any time".

(t) Section 310 (8 U.S.C. 1421) is amended by striking subsection (e).

(u) Section 311 (8 U.S.C. 1422) is amended by striking the last sentence.

(v) Section 313(a)(2)(D) (8 U.S.C. 1424(a)(2)(D)) is amended by striking "totalitarian party or" and inserting "totalitarian party of".

(w) Section 315(b) (8 U.S.C. 1426(b)) is amended by striking "National Military Establishment" and inserting "Department of Defense".

(x) Section 329 (8 U.S.C. 1440) is amended by striking subsection (d).

(y) Section 330 (8 U.S.C. 1441) is amended by striking subsection (b), paragraphs (2) and (3) of subsection (a), and "(a)(1)".

(z) Section 335(f)(2) (8 U.S.C. 1446(f)(2)) is amended by striking ", except that" and all that follows through "date of such transfer".

(aa) Section 336 (8 U.S.C. 1447) is amended by striking "AND WITNESSES" in the heading.

(bb) Section 340 (8 U.S.C. 1451) is amended—

(1) in subsection (c), by striking "the effective date of this Act" and inserting "December 24, 1952",

(2) by striking subsection (e), and

(3) by redesignating subsections (f) through (j) as subsections (e) through (i), respectively.

(cc) Section 343 (8 U.S.C. 1454) is amended—

(1) by striking subsection (a), and

(2) by redesignating subsections (b) through (e) as subsections (a) through (d), respectively.

(dd) Section 344(a) (8 U.S.C. 1455(a)) is amended by striking "title V of the Independent Offices Appropriation Act, 1952 (65 Stat. 290)" and inserting "section 9701 of title 31, United States Code".

(ee) Section 348 (8 U.S.C. 1459) is amended—

(1) by striking subsection (a), and

(2) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(ff) Section 349(a) (8 U.S.C. 1481(a)) is amended by striking "From and after the effective date of this Act a" and inserting "A".

(gg) Section 357 (8 U.S.C. 1489) is amended by striking "upon the effective date of this title" and inserting "before December 25, 1952".

(hh) Section 413 (8 U.S.C. 1523) is amended—

(1) by striking subsections (b), (c), and (d), and

(2) in subsection (a)—

(A) in subparagraphs (D) and (E) of paragraph (2), by redesignating clause (i) and (ii) as clauses (A) and (B), respectively,

(B) in paragraph (2), by redesignating subparagraphs (A) through (H) as paragraphs (1) through (8), respectively,

(C) by redesignating paragraph (2) as subsection (b), and

(D) in paragraph (1), by striking "(a)(1)" and inserting "(a)".

(ii) Section 13(b) of the Act of September 11, 1957 (8 U.S.C. 1255b(b)) is amended by striking "of" after "as of the date".

(jj) Effective as of August 27, 1986, section 14 of Public Law 99-396 is amended—

(1) in quoted subsection (c)—

(A) by redesignating the subsection as paragraph (4),

(B) by striking "section 212(l) of the Immigration and Nationality Act" and inserting "this subsection", and

(C) by transferring and inserting it immediately after quoted paragraph (3); and

(2) by striking the opening quotation marks at the beginning of the quoted subsection (b).

The SPEAKER pro tempore. Is a second demanded?

Mr. SENSENBRENNER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Kentucky [Mr. MAZZOLI] will be recognized for 20 minutes and the gentleman from Wisconsin [Mr. SENSENBRENNER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to present to my colleagues in the House H.R. 4823, an immigration efficiency package assembled by the members of the Immigration Subcommittee of the Judiciary Committee.

This bill enjoys the support of a large majority of the subcommittee and is eagerly awaited by the Immigration Service. It is a package of various noncontroversial amendments to the immigration law designed to improve the efficiency of the Immigration Service, prevent abuse of immigration benefits, and deter immigration fraud.

Some of the provisions are as follows:

Title I of H.R. 4823 deals with the entry and adjustment of status of immigrants and nonimmigrants. It provides for, among other things, the admission of employees of multinational corporations as special immigrants. It requires members of the professions to have an appropriate college degree or significant experience to be eligible to immigrate. In addition, it allows surviving spouses of U.S. citizens to petition for immigration within 3 years of the citizen spouse's death, and revises the requirements for sponsoring Amerasian children to come to this country.

Title I also revises the law governing the admission of aliens engaging in trade or investment in this country, treats certain bus drivers as crewmen for purposes of entry to this country, establishes a visa waiver pilot program and provides immediate permanent resident status to aliens admitted as refugees.

Title II deals with the law of exclusion and deportation. It waives certain grounds of exclusion for close relatives of U.S. citizens and for sole surviving siblings of U.S. citizens. Title II would also require deportation of an alien who has not engaged in the occupation for which a third or sixth preference petition was granted.

Title III strengthens the enforcement capabilities of the Immigration Service. It deters immigration-related marriage fraud and places restrictions on future entry of aliens engaged in fraud and misrepresentation. In addition, Title III increases the levels of fines, collected by the Immigration Service that were originally enacted in 1952. Finally, it clarifies the Immigration Service's policy on detention of aliens.

Title IV contains various provisions dealing with transfer of citizenship and naturalization.

Title V requires the Immigration Service to establish a system to collect and distribute statistical information on immigration issues. It provides equal treatment for natural fathers and deletes several outdated references from the Immigration Act.

H.R. 4823 is a good, sound bill and goes a long way toward improving the implementation of the Immigration Act. The majority of the subcommittee support this bill as does the administration.

I urge my colleagues to support H.R. 4823.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Speaker, this is a noncontroversial bill, as the gentleman from Kentucky [Mr. MAZZOLI] has said. I think it warrants the support of the entire membership.

This bill takes care of those things that have been really hanging around our subcommittee for some period of time that go to the question of the efficiency or lack thereof with the current system. I think it contains virtually all the noncontroversial aspects that we could come up with.

This is really a housekeeping bill and there ought to be no controversy about it. I would suggest that we get a unanimous vote on this bill.

Mr. MAZZOLI. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Speaker, I just want to join with the gentleman from California [Mr. LUNGREN] and the gentleman from Kentucky [Mr. MAZZOLI].

The Subcommittee on Immigration, Refugees, and International Law gets the privilege of dealing with some of the most divisive and controversial issues in the House. I think it is nice to be able to come forward with an example of the bipartisan cooperation that often marks the committee.

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Members are familiar with the intricacies of this, because they are often coming forward with private bills. We can assure the Members that this is one piece of legislation which will relieve many of them from the obligation of occasionally offering private bills.

They are a series of provisions that, because of the interaction of court decisions and statutes and a lot of other unforeseen events, work to put some hardship in the way of people where there should not be hardships.

There is a unanimity, I believe, of those who deal with immigration on this, and I just want to congratulate the chairman of the subcommittee, the gentleman from Kentucky [Mr. MAZZOLI], and the ranking member, the gentleman from California [Mr. LUNGREN], for putting this together and giving us the chance to get it through. I think Members will find it is not only good policy but very much in the interests of those who are not crazy about having to file private immigration bills.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH].

Mr. FISH. Mr. Speaker, I am very happy that we are completing action on the INS efficiency bills, H.R. 4823 and H.R. 5559. H.R. 4823 amends the Immigration and Nationality Act to streamline the current legalization process and ease certain restrictions on legal immigration into the United States.

The Immigration and Naturalization Service [INS] administers the Immigration and Nationality Act which defines aliens and sets forth the conditions under which they may enter the United States. The act forms the cornerstone of U.S. immigration policy.

Mr. Speaker, this legislation amends sections of the Immigration and Nationality Act which establish the preferences for admitting immigrants and define "special immigrant status." In addition, it amends sections of the act governing exclusion and deportation to: First, waive illiteracy and mental illness as grounds of exclusion of the sole surviving sibling (of a U.S. citizen) over the age 55; second, authorize deportation for immigrants who do not engage in the profession of which they were admitted under the third and sixth preferences within 1 year of entry; and third, provide that the requirement that an immigrant have certain continuous presence in the United States is not violated by brief, casual, and innocent absences. The measure also requires annual reports to Congress on suspension-of-deportation cases.

The bill clarifies that INS may detain aliens temporarily pending inquiry into their right to enter the United States, but that such aliens must be released on bond, unless they pose a danger to the community or are likely to flee. This section increases the fines and penalties for violation of entry restrictions, permitting INS to keep half the amount collected. The bill modifies the responsibility of airlines in detaining aliens seeking illegal entry into the United States. Current law holds airlines strictly liable for problems that arise; the bill only holds them responsible for negligent acts.

H.R. 5559 expands the class of special immigrants—who are permitted to enter the United States without restriction—to include religious functionaries and places a 10-year statute of limitations on exclusion from entry based on prior misdemeanors and moral turpitude.

This legislation is needed to promote effective and efficient INS operations. I hope my colleagues will support this legislation and that it will be signed into law before the end of this session.

Mr. MAZZOLI. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as the distinguished subcommittee chairman, the gentleman from Kentucky [Mr. MAZZOLI], and the distinguished ranking member, the gentleman from California [Mr. LUNGREN], have stated, this bill is entirely noncontroversial.

The subcommittee has sifted and winnowed the so-called miscellaneous Immigration Act efficiency proposals, and this bill consists of all proposals which all members of the subcommittee agree upon.

The next bill on the subject, H.R. 5559, does contain two somewhat more controversial proposals and has been split off from the main bill so that it can be debated and voted upon separately.

Mr. Speaker, I know of no opposition to the piece of legislation presently being considered by the House. I believe it merits unanimous support.

Mr. RODINO. Mr. Speaker, I rise in support of H.R. 4823. This bill makes no major policy changes. Nonetheless, it is an important measure in that it corrects a number of deficiencies in current law, thereby making our immigration policy more consistent, more manageable, and more humane.

The bill is similar in scope to a previous efficiency bill reported out of the Judiciary Committee and enacted into law in 1981. By every account, that 1981 legislation has proven sensible and effective in removing some of the rougher edges of our laws. H.R. 4823 continues in that same vein, addressing a number of additional problems which have come to our attention over the past 5 years.

Mr. Speaker, H.R. 4823 was unanimously approved by the Judiciary Committee. It effects needed changes, and for that reason I urge my colleagues to support this meritorious bill.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky [Mr. MAZZOLI] that the House suspend the rules and pass the bill, H.R. 4823, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4823, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1986

Mr. MAZZOLI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4444) to amend the Immigration and Nationality Act, and for other purposes.

The Clerk read as follows:

H.R. 4444

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Immigration and Nationality Act Amendments of 1986".

SEC. 2. Section 101(b)(1)(E) (8 U.S.C. 1101(b)(1)(E)) is amended to read:

"(E) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: *Provided,* That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under the Act; or".

SEC. 3. Section 101 (8 U.S.C. 1101) is amended by striking out paragraph (1) of subsection (c).

SEC. 4. Section 202(b) (8 U.S.C. 1152(b)) is amended to read:

"(b) Each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions, shall be treated as a separate foreign state for the purposes of the numerical limitation set forth in the proviso to subsection (a) of this section when approved by the Secretary of State. All other inhabited lands shall be attributed to a foreign state specified by the Secretary of State. For the purposes of this Act the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that (1) an alien child, when accompanied by or following to join his alien parent or parents, may be charged to the foreign state of either parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the parent or parents, and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached the numerical limitation set forth in the proviso to subsection (a) of this section for that fiscal year; (2) if an alien is chargeable to a different foreign state from that of his spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the spouse he is accompanying or following to join, if such spouse has received or would be qualified for an immigrant visa and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached the numerical limitation set forth in the proviso to subsection (a) of this section for that fiscal year; (3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or, if he is not a citizen or subject of any country, in the last foreign country in which he had his residence as determined by the consular officer; (4) an alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.".

Sec. 5 (a) Section 221 (8 U.S.C. 1201) is amended in the following respects:

(a) Subsection (a) is amended by substituting the words "foreign state" for the word "quota" wherever the latter appears; by changing the word "immigration" to read "immigrant"; and by deleting the words "one copy of".

(b) Subsection (b) is amended to read:

"(b) Each alien who applies for a visa shall be registered in connection with his application, and shall furnish copies of his photograph signed by him for such use as may be by regulations required. The requirements of this subsection may be waived in the discretion of the Secretary of State in the case of any alien who is within that class of nonimmigrants enumerated in sections 101(a)(15)(A), and 101(a)(15)(G), or in the case of any alien who is granted a diplomatic visa on a diplomatic passport or on the equivalent thereof.".

(c) Subsection (c) is amended to read:

"(c) An immigrant visa shall be valid for such period, not exceeding four months, as shall be by regulations prescribed, except that any visa issued to a child lawfully adopted by a United States citizen and spouse while such citizen is serving abroad in the United States Armed Forces, or is employed abroad by the United States Government, or is temporarily abroad on business, shall be valid until such time, for a period not to exceed three years, as the adoptive citizen parent returns to the United States in due course of his service, employment, or business. A nonimmigrant visa shall be valid for such periods as shall be by regulations prescribed. In prescribing the period of validity of a nonimmigrant visa in the case of nationals of any foreign country who are eligible for such visas, the Secretary of State shall, insofar as practicable, accord to such nationals the same treatment upon a reciprocal basis as such foreign country accords to nationals of the United States who are within a similar class. An immigrant visa may be replaced under the original number during the fiscal year in which the original visa was issued for an immigrant who establishes to the satisfaction of the consular officer that he was unable to use the original immigrant visa during the period of its validity because of reasons beyond his control and for which he was not responsible: *Provided*, That the immigrant is found by the consular officer to be eligible for an immigrant visa and the immigrant pays again the statutory fees for an application and an immigrant visa.".

(d) Section 8 of the Act of September 11, 1957 (71 Stat. 641; 8 U.S.C. 1201a) is repealed.

Sec. 6. Section 222 (8 U.S.C. 1202) is amended by—

(a) amending the second and third sentences of subsection (b) thereof to read:

"The immigrant shall furnish to the consular officer with his application a copy of a certification by the appropriate police authorities stating what their records show concerning the immigrant; a certified copy of any existing prison record, military record, and record of his birth; and a certified copy of all other records or documents concerning him or his case which may be required by the consular officer. The copy of each document so furnished shall be permanently attached to the application and become a part thereof.".

(b) amending the first two sentences of subsection (e) thereof to read:

"(e) Except as may be otherwise prescribed by regulations, each application required by this section shall be signed by the applicant in the presence of the consular officer, and verified by the oath of the applicant administered by the consular officer. The application for an immigrant visa, when visaed by the consular officer, shall become the immigrant visa.".

Sec. 7. (a) Section 212(a) (8 U.S.C. 1182(a)) is amended by: repealing paragraph (24) thereof: *Provided*, That no paragraph following paragraph (24) shall be redesignated as a result of this amendment.

(b) Section 238 (8 U.S.C. 1228) is amended by repealing subsection (a) thereof and by redesignating subsections (b), (c), (d), and (e) as subsections (a), (b), (c), and (d) respectively.

(c) Section 2451(a) (8 U.S.C. 1251(a)) is amended by repealing paragraph (10) thereof: *Provided*, That no paragraph following paragraph (10) shall be redesignated as a result of this amendment.

Sec. 8. Section 261 (8 U.S.C. 1301) is amended to read: "No visa shall be issued to any alien seeking to enter the United States until such alien has been registered in accordance with section 221(b).".

Sec. 9. Subsection (a) of section 262 (8 U.S.C. 1302) is amended by deleting the words "section 221(b) of this Act or".

Sec. 10. The first sentence of section 263(a) (8 U.S.C. 1304) is amended to read:

"(a) The Attorney General and the Secretary of State jointly are authorized and directed to prepare forms for the registration of aliens under section 261 of this title, and the Attorney General is authorized and directed to prepare forms for the registration and fingerprinting of aliens under section 262 of this title.".

Sec. 11. Sections (1) and (2) of the Act of October 24, 1962 (76 Stat. 1247, Public Law 87-885) and section 25(a) of the Act of September 26, 1961 (75 Stat. 650, Public Law 87-301) are repealed.

Sec. 12. Section 301(g) (8 U.S.C. 1401(g)) is amended by striking out "ten years, at least five" and inserting in lieu thereof "five years, at least two".

Sec. 13. Subsection (a) of section 309 (8 U.S.C. 1409) is amended—

(a) by striking out "paragraphs (3), (4), (5), and (7) of section 301(a)" and inserting in lieu thereof "paragraphs (c), (d), (e), and (g) of section 301"; and

(b) by striking out all after "wedlock", and inserting in lieu thereof "if a blood relationship between the child and the father is established by clear and convincing evidence, provided the father had the nationality of the United States at the time of the child's birth, the father unless deceased has agreed in writing to provide financial support for the child until such child reaches the age of eighteen years and if, while such child is under the age of eighteen years, (1) such child is legitimated under the law of the child's residence or domicile, or (2) the father acknowledges paternity of the child in writing under oath, or (3) paternity of the child is established by adjudication of a competent court.".

Sec. 14. Section 320(a) (8 U.S.C. 1431(a)) is amended by inserting "unmarried and" after "(1) such naturalization takes place while such child is".

Sec. 15. Section 321(a) (8 U.S.C. 1432(a)) is amended by inserting "unmarried and" after "(4) such naturalization takes place while such child is".

Sec. 16. Section 322(a) (8 U.S.C. 1433(a)) is amended by inserting "unmarried and" after "may be naturalized if".

Sec. 17. Subsection (d) of section 340 (8 U.S.C. 1451) is amended by striking out "within five years after such naturalization" and inserting in lieu thereof "within one year after such naturalization".

Sec. 18. Subsection (a) of section 349 (8 U.S.C. 1481) is amended—

(a) by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "Shall lose his nationality by";

(b) by striking out ", upon an application filed in his behalf by a parent, guardian or duly authorized agent, or through the naturalization of a parent having legal custody of such person" and all that follows through "section 101(a)(27)(E)" in paragraph (1) and inserting in lieu thereof "or upon an application filed by a duly authorized agent, after having attained the age of eighteen years";

(c) by inserting ", after having attained the age of eighteen years" in paragraph (2) after "thereof";

(d) by striking out "unless, prior to such entry" and all that follows in paragraph (3) and inserting in lieu thereof "if (a) such armed forces and engaged in hostilities against the United States, or (b) such persons serves as a commissioned or non-commissioned officer; or"; and

(e) by inserting "after attaining the age of eighteen years" after "foreign state or political subdivision thereof," in subparagraph (4)(A);

(f) by inserting "after attaining the age of eighteen years" after "foreign state or political subdivision thereof," in subparagraph (4)(B).

Sec. 19. Section 349 (8 U.S.C. 1481) is further amended by striking subsection (b).

Sec. 20. Subsection (b) of section 351 (8 U.S.C. 1483) is amended by striking "paragraphs (2), (4)," and inserting in lieu thereof "paragraph (3)".

Sec. 21. Section 2 of chapter 24 of the Act of April 14, 1792, amended by the Act of July 12, 1940, (22 U.S.C. 4195) is amended by striking "article by article,".

The SPEAKER pro tempore. Is a second demanded?

Mr. LUNGREN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Kentucky [Mr. Mazzoli] will be recognized for 20 minutes and the gentleman from California [Mr. Lungren] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kentucky [Mr. Mazzoli].

Mr. MAZZOLI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I present H.R. 4444 for consideration by the House.

H.R. 4444 was introduced by the chairman and the ranking minority member, Mr. Fish, of the House Judiciary Committee at the request of the administration.

Termed the "consular efficiency bill," this legislation contains several provisions aimed at improving the efficiency of the consular officers in implementing the immigration laws.

It streamlines certain duties performed by consular officers. These provisions are aimed at cost-effectiveness and better utilization resources.

Included in its various provisions are items such as eliminating the requirement that consular posts keep duplicate copies of applications, eliminating the requirement of an item-by-item inventory of the estate of a U.S. citizen who died abroad, providing a uniform definition of "child," making finger printing discretionary, et cetera.

Mr. Speaker, this bill is truly noncontroversial and I urge its adoption by my colleagues.

Mr. Speaker, I am including as a part of the record a letter which the committee received today from the distinguished gentleman from Florida [Mr. Fascell], the chairman of the Committee on Foreign Affairs, dealing with this committee, in which the Committee on Foreign Affairs agree that there would be no sequential referral of this bill, in order to expedite its passage.

The letter is as follows:

Committee on Foreign Affairs,
Washington, DC, September 29, 1986.

Hon. Peter Rodino,
Chairman, Committee on the Judiciary, Washington, DC.

Dear Mr. Chairman: I am writing to inform you that the Committee on Foreign Affairs will forego its right to sequential referral of the bill H.R. 4444, the Consular Efficiency Act of 1986, in order to expedite its consideration in the House under suspension of the rules as reported by the Committee on the Judiciary.

Section 4 of the bill imposes new duties on the Secretary of State with respect to determining the status of foreign governments and other foreign entities regarding numerical limitations on certain immigrants. As such, the provisions of this section fall within the shared jurisdiction of the Committee on Foreign Affairs and the Committee on the Judiciary.

The Committee on Foreign Affairs has no objection to the consideration of the provisions contained in section 4 of H.R. 4444, without prejudice to its jurisdiction over these matters under the rules of the House.

With best wishes, I am,
Sincerely yours,
Dante B. Fascell,
Chairman.

Mr. Speaker, I reserve the balance of my time.

Mr. LUNGREN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this consular efficiency bill, much like the INS efficiency bills of today, contains numerous provisions which have been pending in Congress for some time. The consular efficiency bill is the administration's bill, which will, we hope, make the State Department's consular operations more efficient and effective.

These amendments eliminate present provisions of marginal or questionable value. In some instances, these requirements are obsolete and unnecessary, and their elimination will alleviate some of the workload in consular operations.

In other words, Mr. Speaker, we hope this is a streamlining bill. We believe it is noncontroversial.

Mr. Speaker, I yield such time as he may consume to the ranking member of the full committee, the gentleman from New York [Mr. Fish].

Mr. FISH. Mr. Speaker, H.R. 4444, legislation which has the support of the administration, provides for more efficient consular services and operations in carrying out the functions authorized under the Immigration and Nationality Act; that is, issuing immigrant and nonimmigrant visas abroad. In many instances, the bill eliminates sections which have become obsolete.

Some of the more important provisions in this legislation are among others an amendment to current law which eliminates the requirement that a child have been in the custody of the adopting parents for 2 years after adoption to qualify for entry to the United States as a child. Under this bill, Mr. Speaker, the parents need only have legal custody of the child for 2 years, regardless of when adoption becomes final.

Another provision amends the definition of "child" to facilitate U.S. citizenship determinations for children based on legitimation by their American citizen fathers. H.R. 4444 also reduces from 5 years to 2 the period a child born abroad of a U.S. citizen parent and an alien must be physically present in the United States for transmission of citizenship. In addition, under H.R. 4444, consular officers no longer have to fingerprint visa applicants.

The bill also eliminates the requirement for submission and retention by the consular office of duplicate visa application and documentation. This requirement adds a significant increment of administrative workload to the immigrant visa process.

Mr. Speaker, many of these provisions have been pending for several years since Congress passed the last INS efficiency bill. I hope this legislation can be signed into law and implemented speedily.

Mr. RODINO. Mr. Speaker, I rise in support of H.R. 4444, which I introduced at the request of the administration. The bill is designed to streamline and modernize the operation of our immigration laws as they apply to the visa issuance process abroad.

The responsibility to consider visa applications is entrusted by law to the consular officers of the Department of State. These officers must consider literally millions of visa applications each year. The sheer magnitude of this task makes it incumbent upon Congress to review periodically the laws governing this responsibility to ensure that outmoded or only marginally useful provisions are either altered or repealed.

It is for this reason that H.R. 4444 deletes the burdensome requirement that consular officers create and retain duplicate copies of all immigrant files. Similarly, the bill eliminates certain fingerprinting requirements which have proven to be of no law enforcement value. Other changes would ease the requirements for foreign adoptions and clarify the conditions under which a U.S. citizen may expatriate himself.

All of the remaining provisions of H.R. 4444 are equally meritorious and I urge my colleagues to support this important measure.

Mr. MAZZOLI. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. LUNGREN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky [Mr. Mazzoli] that the House suspend the rules and pass the bill, H.R. 4444.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4444, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

IMMIGRATION AND NATURALIZATION SERVICE BILL

Mr. MAZZOLI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5559) to amend the Immigration and Nationality Act to improve the administration of the immigration and nationality laws, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5559

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADMISSION OF RELIGIOUS FUNCTIONARIES AS SPECIAL IMMIGRANTS.

(a) In General.—Clause (i) of section 101(a)(27)(C) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(C)) is amended to read as follows: "(i) an immigrant who, for the two years preceding the immigrant's application for admission, was either (I) solely employed as a full-time minister, wherein the immigrant was fully authorized to perfom all the duties of a minister, or (II) solely employed in a religious occupation by a nonprofit religious organization, and who will be solely employed full-time in such a capacity either by an existing congregation of the same denomination or by the same nonprofit religious organization that employed the immigrant abroad;".

(b) REQUIRING LABOR CERTIFICATION.—Section 212(a)(14) of such Act (8 U.S.C. 1182(a)(14)) is amended by inserting "to special immigrants described in section 101(a)(27)(C)(i)(II)," after "shall apply".

SEC. 2. STATUTE OF LIMITATIONS FOR CERTAIN EXCLUDABLE OFFENSES.

(a) IN GENERAL.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by adding at the end the following new subsection:

"(m) An alien who would be ineligible to receive a visa, or would be excludable, under the provisions of paragraph (9), (10), (12), or (19) of subsection (a), may be granted a visa and admitted to the United States, if otherwise admissible, if it shall be established to the satisfaction of the Attorney General that—

"(1) the act or acts rendering such alien ineligible to receive a visa, or excludable, under such paragraph or paragraphs were committed more than 10 years before the date of application for a visa;

"(2) any conviction in a court of law for the commission of such act or acts occurred more than 10 years before the date of application for a visa;

"(3) any period of confinement resulting from a conviction for the commission of such act or acts terminated more than 10 years before the date of application for a visa; and

"(4) there is a clear record of the alien's rehabilitation during the 10-year period immediately preceding the date of application for a visa.".

(b) APPLICATION TO CERTAIN OTHER GROUNDS FOR EXCLUSION.—Such section is further amended—

(1) in subsection (a)(16), by striking ", unless prior" and all that follows up to the semicolon, and

(2) in subsection (a)(17), by striking "and who seek" and all that follows up to the semicolon and inserting "unless the alien has, since such removal, remained outside the United States for an uninterrupted period of 3 years and has repaid the Government for costs directly related to the alien's removal".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to aliens admitted to the United States after the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. LUNGREN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Kentucky [Mr. MAZZOLI] will be recognized for 20 minutes and the gentleman from California [Mr. LUNGREN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to present for my colleagues consideration, H.R. 5559, a bill to amend the Immigration and Nationality Act.

Section 1 of this bill would permit the admission of a limited number of religious layworkers to work for nonprofit religious organizations. The layworkers would be required to obtain a labor certification prior to entry to ensure that no domestic workers are displaced.

During oversight hearings this year held by the Immigration Subcommittee, the subcommittee became aware of problems in this area, particularly with the admission of nuns and brothers. Under current law, ordained ministers of religion can enter the United States as special immigrants but now ordained religious layworkers must be processed through the preference system. They experience a long delay in entering the country.

A shortage in this country of people entering religious work has resulted in increasing reliance on foreign religious functionaries to staff religious offices and schools. The difficulty of foreign layworkers in obtaining admission to this country has further exacerbated this problem.

Section 1 of this bill would help alleviate this problem but at the same time ensure the protection of domestic layworkers through the labor certification process.

Section 2 of H.R. 5559 would provide a 10-year statute of limitations on certain excludable offenses. The offenses would be: First, a conviction for moral turpitude; second, a conviction of two offenses involving sentences of 5 years or more; third, prostitution; fourth, misrepresentation in the immigration petition; and fifth, previous deportation. In order to qualify for the statute of limitations the alien would have to establish a clear record of rehabilitation since the offense. I would note that drug offenses are not included.

Under current law, waivers of the grounds of exclusion are available to aliens who are close relatives of U.S. citizens. However, everyone else is forever excludable from the United States regardless of the time elapsed since the offense and the clean record of the alien since that time.

The seeming harshness of this rule has resulted in many private bills considered by the Subcommittee on Immigration.

Section 2 would reduce INS workload on processing waivers by placing a statute of limitations on excludability. The administration supports this approach.

I urge my colleagues support of H.R. 5559.

□ 1340

Mr. Speaker, I reserve the balance of my time.

Mr. LUNGREN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I do rise in support of this bill.

I might say that the gentleman from Wisconsin [Mr. SENSENBRENNER] had indicated that he had some problems with what was contained in this bill when it was contained in the overall omnibus efficiency bill. We did work out on the subcommittee level this procedure whereby we would be able to pass the bulk of that bill under the previous legislation, which we did a few moments ago, and then we would give the Members of the House an opportunity for an up-or-down vote on this separately.

The gentleman from Kentucky [Mr. MAZZOLI] I think has described the bills accurately.

The first section of the bill deals with the question of religious functionaries. Originally we had drafted the bill that gave pause, I think, to some people in the administration that we might have too wide a definition of what would constitute a religious group. There was some fear that some people using the guise of religious groups might avoid what we consider to be the legitimate laws of the country with respect to immigration and labor certification.

We have redrawn that more narrowly. At least I am assured in my own mind that we have drawn that more narrowly so that it does not affect this.

We did have testimony before the subcommittee as to the need for this language. The gentleman from Kentucky mentioned many religious groups have other than priests or ministers who are actually dedicated religious workers who do support the religious organization. As the gentleman mentioned, vocations seem to be not as plentiful as they used to be in the United States, and many of these religious organizations now rely on foreign religious people, either lay workers or actual ministers, priests, and so forth.

That testimony, I think, was compelling. I think there is reason for us to make this change because even though some suggest that it can be done now, with the bureaucracy, the time that it takes and the capricious nature, I think, of some decisions, or at least the fear of capricious decisions has led many of these religious groups to come to us and plead their case. I think they have made their case.

With respect to the second portion of the bill, it does deal with the nature of exclusions and whether there ought to be a statute of limitations with respect to certain actions which would give rise to exclusions. Again I believe the administration first came to us and asked for a 3-year statute of limitations saying that that would be the best way for them to make adjustments, not that it would necessarily change the nature of the decisions that they now make, but it would streamline the procedure.

Upon consideration, the subcommittee felt that 3 years was probably too short a period of time, and in the bill before us the statute of limitations is 10 years, which we think is a reasonable period of time.

The gentleman from Wisconsin has very different views on this, has dissenting views in the report and has asked for time.

Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. SENSENBRENNER].

Mr. SENSENBRENNER. I thank the gentleman for yielding.

Mr. Speaker, I rise in opposition to H.R. 5559. This bill makes two changes in our immigration laws, admittedly not major changes but changes nevertheless which I believe require further study and consideration. I would ask the membership of the House today to vote against this bill on suspension of the rules so that the Immigration Subcommittee can deal with these questions next year when the entire subject of legal immigration will be viewed by the subcommittee.

There are two things wrong with this bill. The first, section 102 would allow religious functionaries to enter the United States as special immigrants. A special immigrant is someone who can enter without waiting and is not counted against the overall admission ceiling.

So, what is wrong with that? Besides allowing lay workers from the more traditional religions, it will also allow lay workers from any cult to enter without restriction and without waiting. Additionally, there would be no limit or restriction on the numbers of people who could enter to become permanent resident aliens and ultimately citizens.

If this provision becomes law, there would be no way to prevent someone like the bhagwan from bringing in unlimited numbers of his followers, so long as he met the test of employing those followers with his religion abroad.

This section opens the door that this country is not prepared to open. The supporters of this legislation claim that the labor certification provisions will allow the Immigration Service enough leeway to close the door to bhagwan followers. I am not convinced that is the case both on the facts as well as on the first amendment considerations wherein the Government cannot make a distinction between the more traditional religions and other newer religious cults.

From my reading of the press reports on the bhagwan's operations in Oregon, the people who were providing religious function services were services that nice people do not advertise in the newspaper. Nonetheless, that went on until finally we were able to deport the bhagwan back to where he came from.

I do not believe that we should allow future bhagwans of this world that kind of a legal loophole to come in and establish communes in Oregon or anywhere else in the country.

The second change which is not good public policy makes changes in categories of exclusion for admission to our country. It says that people who are admitted or were convicted of moral turpitude, engaged or profited from prostitution or commercialized vice, convicted and sentenced for at least 5 years regardless of the offense, or tried to enter the United States through fraud, can petition to enter the United States after 10 years and can be admitted.

Now, once a person is admitted he has a period of permanent residence status which eventually leads to citizenship. I do not think it is good policy that we ought to open the door to the prostitutes and the pushers of this world even with a 10-year statute of limitations. But I also think it is unfair that a person who was convicted of these types of offenses in a foreign court can come into the United States and become a citizen and vote in our elections and have full civil rights when someone in the United States convicted of the same offense by an American court loses their civil rights and cannot vote, participate in our society unless either pardoned by the President if a Federal offense, or by the Governor if the conviction occurred in State court.

So by passing this, we are treating our own people less favorably than those who would be brought in under this second provision of the bill.

I am not for the procurers and prostitutes of this world, and I am not for allowing the bhagwans and low-lifers of the world to have unlimited access to our country. I do think that there is a legitimate concern for sisters and brothers who are not ordained. I believe that the best way to go about solving that problem is by tightening the drafting of this particular piece of legislation. That can wait until the next Congress.

Meanwhile, I would urge the membership to defeat this bill.

Mr. MAZZOLI. Mr. Speaker, I yield 5 minutes to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Speaker, I think I speak on behalf of my colleagues, the gentleman from California [Mr. LUNGREN], and the gentleman from New York [Mr. FISH], to say they would also like to join me in being generally opposed to the procurers and prostitutes of this world. I do not think anyone intended this bill as a referendum on them.

In fact, this bill also grows out of our experience in private bills. What we are talking about is no automatic admission, either for junior bhagwans or any other category of undesirables.

With regard to the people who have been convicted, a critical part of this bill says you must establish to the satisfaction of the Attorney General that, among other things, and I quote, "There is a clear record of the alien's rehabilitation during the 10-year period immediately preceding the date of application for a visa." It also says that 10 years has to expire after any prison sentence. So it is only 10 years if the individual committed a crime and served no time. For an individual who serves time, at least 10 years would have to elapse after the completion of the sentence. And then there is nothing automatic, but you would have to show to the Attorney General that the individual has been rehabilitated.

Let us talk about prostitution. We have had situations in this world where societies have unfortunately been badly destabilized by war, and families have been wrecked. Yes, there are some young girls, young women who may have been forced by those circumstances, stuck with younger siblings to support, who turned to prostitution as a result of these kinds of conditions.

What we are saying here is that an individual in that case who can 10 years after any activity of that kind has ceased, or more, who can prove to the Attorney General of the United States, carrying the burden of proof, that she has been rehabilitated, if she can come in and show the special circumstances that drove her to that, she would then be eligible to get on the list to come to this country. That is what we are talking about. There is absolute authority here in the Attorney General to say "no," and people who are worried that the courts will overturn it should understand that the courts have pretty much held that when you are an alien outside this country suing the Federal Government in this kind of a statute you do not have a very good shot at it. The burden of proof is with you to show this to the Attorney General's satisfaction.

We had a case which went through as a private bill, there was an objection in which the gentleman had an offense committed over 40 years ago. He was over 80 years old and wanted to come live with his brother.

Well, there is absolutely no authority to let people in here. Again I would say to Members private bills have been brought forward by many Members which would cover this kind of category. So we are not talking about any automatic entry of undesirables. We are saying in certain categories if 10 years or more have elapsed from the last time anybody served in prison, he or she then does not get admission to the country, he or she gets a right to show the Attorney General that he or she has been rehabilitated. In those special circumstances you can then let people in. There is no presumption that everybody is going to come pouring in.

As far as the religious are concerned, you would still need a labor certification. Again, Members have tried to get labor certification and have probably been frustrated by it. It is a very difficult thing to get. You need the State employment service, you need the Department of Labor.

The notion that State employment services and the Federal Department of Labor are going to be complicit in smuggling in future bhagwans seems to me to be very implausible. This is supported broadly by both sides in the Immigration Subcommittee, in the full committee with administration. The Catholic Church has asked for it. Because it is very, in fact, carefully drafted not to give anybody anything automatic, you still need to prove this to the Attorney General that you have been rehabilitated, you still need labor certification. What it says is there will not be absolute prohibition in all these categories; it wil be possible though not easy for some people to get in.

That is why it has broad bipartisan support, and I hope Members will support it. At the very least, if Members do not support it, I hope none of them are going to come forward as they have in the past with private bills in this very category because Members who vote against this and then come forward with private bills are in a little difficult position.

In fact, these are narrowly drafted, and as the gentleman from California and the gentleman from Kentucky have pointed out, and they do not give anyone automatic admission. They ease the paperwork burden.

In the overwhelming majority of cases here, there would in fact be no controversy about people coming in because the safeguards are used to protect against that.

Mr. RODINO, Mr. Speaker, I rise in strong support of H.R. 5559 providing a special immigrant category on behalf of religious functionaries and a statute of limitations on grounds of exclusion.

The special needs of the religious community were brought to my attention recently by Rev. Msgr. Nicholas DiMarzio, U.S. Catholic Conference, in connection with visa petition processing with the Immigration and Naturalization Service.

Because of the narrow interpretations by the Immigration and Naturalization Service [INS] and the lack of responsiveness to the everchanging needs of the religious community, many religious leaders and their organizations experience great difficulties in meeting their congregational needs. As noted by Monsignor DiMarzio, the INS' "odious comparison" of religion to business has resulted in extreme hardship.

This provision addresses one of the principle problems of the religious community, that it, the need for greater flexibility in the transfer and movement of religious functionaries. The changing pastoral needs of communities in the United States merit a special mechanism to assist them. In a letter to me dated September 29, 1986, Monsignor DiMarzio of the U.S. Catholic Conference, stated:

> The proposed legislation had recognized the fact that schools, orphanages, homes for the aged, hospitals, and other works of charity maintained by religious organizations are dependent upon the services of religious workers such as nuns, sisters, brothers and missionaries. Their work, as result, offers U.S. society a host of special and important benefits.
>
> The special training, commitment, and circumstances of these religious functionaries are not only an invaluable asset to charitable and nonprofit institutions whose staffing needs cannot be filled from within the United States due to severe decline in domestic religious vocations, but also that the special conditions of their attachment to a specific denominational organization places them in an absolutely noncompetitive position vis-a-vis U.S. nationals and legal residents.

The persons to be included in this category are "nuns, sisters, brothers, and missionaries," and I note also cantors and others with a religious commitment are also eligible for special immigrant status.

The statute of limitations provided in H.R. 5558 is also a humanitarian response to inequities in existing law where families are separated due to a transgression of many years previously and for which there is no waiver under current immigration law.

I wholeheartily support passage of H.R. 5559 and urge the support of my colleagues.

Mr. LUNGREN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MAZZOLI. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from Kentucky [Mr. MAZZOLI] that the House suspend the rules and pass the bill H.R. 5559, as amended.

The question was taken.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment bills and a concurrent resolution of the House of the following titles:

H.R. 2183. An act to amend title 28 of the United States Code to make certain changes with respect to the participation of judges of the Court of International Trade in judicial conferences and for other purposes;

H.R. 2721. An act to amend title 13, United States Code, to require the collection of statistics on domestic apparel and textile industries;

H.R. 2971. An act granting the consent of the Congress to the amendments to the Susquehanna River Basin Compact;

H.R. 4588. An act to authorize appropriations for the Administrative Conference of the United States, and for other purposes; and

H. Con. Res. 67. Concurrent resolution expressing the sense of the Congress that a uniform State act should be developed and adopted which provides grandparents with adequate rights to petition State courts for privileges to visit their grandchildren following the dissolution (because of divorce, separation, or death) of the marriage of such grandchildren's parents, and for other purposes.

The message also announced that the Senate agrees to the amendments of the House to the joint resolution (S.J. Res. 202) "Joint resolution designating November 1985 as 'American Liver Foundation National Liver Awareness Month' ".

The message also announced that the Senate agrees to the amendments of the House to the joint resolution (S.J. Res. 263) "Joint resolution to designate the week of September 7 through September 13, 1986, as 'National Independent Retail Grocer Week' ".

The message also announced that the Senate agrees to the amendments of the House to the joint resolution (S.J. Res. 405) "Joint resolution to designate September 11, 1986, as '9-1-1-Emergency Number Day' ".

IMMIGRATION MARRIAGE FRAUD AMENDMENTS OF 1986

Mr. MAZZOLI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3737) to amend the Immigration and Nationality Act to deter immigration-related marriage fraud and other immigration fraud, as amended.

The Clerk read as follows:

H.R. 3737

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Immigration Marriage Fraud Amendments of 1986".

SEC. 2. DETERRING IMMIGRATION-RELATED MARRIAGE FRAUD.

(a) CONDITIONAL BASIS FOR PERMANENT RESIDENT STATUS BASED ON RECENT MARRIAGE.—

Chapter 2 of title II of the Immigration and Nationality Act is amended by adding at the end the following new section:

"CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN ALIEN SPOUSES AND SONS AND DAUGHTERS

"Sec. 216. (a) In General.—

"(1) Conditional basis for status.—Notwithstanding any other provision of this Act, an alien spouse (as defined in subsection (g)(1)) and an alien son or daughter (as defined in subsection (g)(2)) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis subject to the provisions of this section.

"(2) Notice of requirements.—

"(A) At time of obtaining permanent residence.—At the time an alien spouse or alien son or daughter obtains permanent resident status on a conditional basis under paragraph (1), the Attorney General shall provide for notice to such a spouse, son, or daughter respecting the provisions of this section and the requirements of subsection (c)(1) to have the conditional basis of such status removed.

"(B) At time of required petition.—In addition, the Attorney General shall attempt to provide notice to such a spouse, son, or daughter, at or about the beginning of the 90-day period described in subsection (d)(2)(A), of the requirements of subsections (c)(1).

"(C) Effect of failure to provide notice.—The failure of the Attorney General to provide a notice under this paragraph shall not affect the enforcement of the provisions of this section with respect to such a spouse, son, or daughter.

"(b) Termination of Status if Finding that Qualifying Marriage Improper.—

"(1) In general.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if the Attorney General determines, before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence, that—

"(A) the qualifying marriage—

"(i) was entered into for the purpose of procuring an alien's entry as an immigrant, or

"(ii) has been judicially annulled or terminated, other than through the death of a spouse; or

"(B) a fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien;

the Attorney General shall so notify the parties involved and, subject to paragraph (2), shall terminate the permanent resident status of the alien (or aliens) involved as of the date of the determination.

"(2) Hearing in deportation proceeding.—Any alien whose permanent resident status is terminated under paragraph (1) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that a condition described in paragraph (1) is met.

"(c) Requirements of Timely Petition and Interview for Removal of Condition.—

"(1) In general.—In order for the conditional basis established under subsection (a) for an alien spouse or an alien son or daughter to be removed—

"(A) the alien spouse and the petitioning spouse (if not deceased) jointly must submit to the Attorney General, during the period described in subsection (d)(2), a petition which requests the removal of such conditional basis and which states, under penalty of perjury, the facts and information described in subsection (d)(1), and

"(B) in accordance with subsection (d)(3), the alien spouse and the petitioning spouse (if not deceased) must appear for a personal interview before an officer or employee of the Service respecting the facts and information described in subsection (d)(1).

"(2) Termination of permanent resident status for failure to file petition or have personal interview.—

"(A) In general.—In the case of an alien with permanent resident status on a conditional basis under subsection (a), if—

"(i) no petition is filed with respect to the alien in accordance with the provisions of paragraph (1)(A), or

"(ii) unless there is good cause shown, the alien spouse and petitioning spouse fail to appear at the interview described in paragraph (1)(B),

the Attorney General shall terminate the permanent resident status of the alien as of the second anniversary of the alien's lawful admission for permanent residence.

"(B) Hearing in deportation proceeding.—In any deportation proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (A), the burden of proof shall be on the alien to establish compliance with the conditions of paragraphs (1)(A) and (1)(B).

"(3) Determination after petition and interview.—

"(A) In general.—If—

"(i) a petition is filed in accordance with the provisions of paragraph (1)(A), and

"(ii) the alien spouse and petitioning spouse appear at the interview described in paragraph (1)(B),

the Attorney General shall make a determination, within 90-days of the date of the interview, as to whether the facts and information described in subsection (d)(1) and alleged in the petition are true with respect to the qualifying marriage.

"(B) Removal of conditional basis if favorable determination.—If the Attorney General determines that such facts and information are true, the Attorney General shall so notify the parties involved and shall remove the conditional basis of the parties effective as of the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

"(C) Termination if adverse determination.—If the Attorney General determines that such facts and information are not true, the Attorney General shall so notify the parties involved and, subject to subparagraph (D), shall terminate the permanent resident status of an alien spouse or an alien son or daughter as of the date of the determination.

"(D) Hearing in deportation proceeding.—Any alien whose permanent resident status is terminated under subparagraph (C) may request a review of such determination in a proceeding to deport the alien. In such proceeding, the burden of proof shall be on the Attorney General to establish, by a preponderance of the evidence, that the facts and information described in subsection (d)(1) and alleged in the petition are not true with respect to the qualifying marriage.

"(4) Hardship waiver.—The Attorney General, in the Attorney General's discretion, may remove the conditional basis of the permanent resident status for an alien who fails to meet the requirements of paragraph (1) if the alien demonstrates that—

"(A) extreme hardship would result if such alien is deported, or

"(B) the qualifying marriage was entered into in good faith by the alien spouse, but the qualifying marriage has been terminated (other than through the death of the spouse) by the alien spouse for good cause and the alien was not at fault in failing to meet the requirements of paragraph (1).

In determining extreme hardship, the Attorney General shall consider circumstances occurring only during the period that the alien was admitted for permanent residence on a conditional basis.

"(d) Details of Petition and Interview.—

"(1) Contents of petition.—Each petition under subsection (c)(1)(A) shall contain the following facts and information:

"(A) Statement of proper marriage and petitioning process.—The facts are that—

"(i) the qualifying marriage—

"(I) was entered into in accordance with the laws of the place where the marriage took place,

"(II) has not been judicially annulled or terminated, other than through the death of a spouse, and

"(III) was not entered into for the purpose of procuring an alien's entry as an immigrant; and

"(ii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien spouse or alien son or daughter.

"(B) Statement of additional information.—The information is a statement of—

"(i) the actual residence of each party to the qualifying marriage since the date the alien spouse obtained permanent resident status on a conditional basis under subsection (a), and

"(ii) the place of employment (if any) of each such party since such date, and the name of the employer of such party.

"(2) Period for filing petition.—

"(A) 90-day period before second anniversary.—Except as provided in subparagraph (B), the petition under subsection (c)(1)(A) must be filed during the 90-day period before the second anniversary of the alien's obtaining the status of lawful admission for permanent residence.

"(B) Date of petitions for good cause.—Such a petition may be considered if filed after such date, but only if the alien establishes to the satisfaction of the Attorney General good cause and extenuating circumstances for failure to file the petition during the period described in subparagraph (A).

"(C) Filing of petitions during deportation.—In the case of an alien who is the subject of deportation hearings as a result of failure to file a petition on a timely basis in accordance with subparagraph (A), the Attorney General may stay such deportation proceedings against an alien pending the filing of the petition under subparagraph (B).

"(3) Personal interview.—The interview under subsection (c)(1)(B) shall be conducted within 90 days after the date of submitting a petition under subsection (c)(1)(A) and at a local office of the Service, designated by the Attorney General, which is convenient to the parties involved. The Attorney General, in the Attorney General's discretion, may waive the deadline for such an interview or the requirement for such an interview in such cases as may be appropriate.

"(e) Treatment of Period for Purposes of Naturalization.—For purposes of title III, in the case of an alien who is in the United States as a lawful permanent resident on a conditional basis under this section, the alien shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

"(f) Treatment of Certain Waivers.—In the case of an alien who has permanent residence status on a conditional basis under this section, if, in order to obtain such status, the alien obtained a waiver under subsection (h) or (i) of section 212 of certain grounds of exclusion, such waiver terminates upon the termination of such permanent residence status under this section.

"(g) Definitions.—In this section:

"(1) The term 'alien spouse' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise)—

"(A) as an immediate relative (described in section 201(b)) as the spouse of a citizen of the United States,

"(B) under section 214(d) as the fiancee or fiance of a citizen of the United States, or

"(C) under section 203(a)(2) as the spouse of an alien lawfully admitted for permanent residence,

by virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage, but does not include such an alien who only obtains such status as a result of section 203(a)(8).

"(2) The term 'alien son or daughter' means an alien who obtains the status of an alien lawfully admitted for permanent residence (whether on a conditional basis or otherwise) by virtue of being the son or daughter of an individual through a qualifying marriage.

"(3) The term 'qualifying marriage' means the marriage described to in paragraph (1).

"(4) The term 'petitioning spouse' means the spouse of a qualifying marriage, other than the alien.".

(b) Additional Ground for Deportation.—Section 241 (8 U.S.C. 1251) is amended—

(1) in subsection (a)(9)—

(A) by inserting "(A)" after "(9)", and

(B) by inserting before the semicolon the following: ", (B) or is an alien with permanent resident status on a conditional basis under section 216 and has such status terminated under such section"; and

(2) by adding at the end the following new subsection:

"(g) The provisions of subsection (a)(9)(B) shall not apply in the cases described in section 216(c)(4).".

(c) Classification Petitions.—Section 204(a) of such Act (8 U.S.C. 1154(a)) is amended—

(1) by inserting "(1)" after "(a)", and

(2) by adding at the end the following new paragraph:

"(2)(A) The Attorney General may not approve a spousal second preference petition filed by an alien who, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence, unless—

"(i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

"(ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

In this subparagraph, the term 'spousal second preference petition' refers to a petition, seeking preference status under section 203(a)(2), for an alien as a spouse of an alien lawfully admitted for permanent residence.

"(B) Subparagraph (A) shall not apply to a petition filed by an alien whose prior marriage was terminated by the death of his or her spouse.".

(d) Criminal Penalty for Marriage Fraud.—Section 275 of such Act (8 U.S.C. 1325) is amended—

(1) by inserting "(a)" after "275.", and

(2) by adding at the end the following new subsection:

"(b) Any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both.".

(e) Limitation on Adjustment of Status.—Section 245 of such Act (8 U.S.C. 1255) is amended by adding at the end the following new subsection:

"(d) The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 216.".

(f) Conforming Amendment.—The table of contents of such Act is amended by inserting after the item relating to section 215 the following new item:

"Sec. 216. Conditional permanent resident status for certain alien spouses and sons and daughters.".

SEC. 3. PREVENTING MARRIAGE FRAUD WITH RESPECT TO "K" NONIMMIGRANTS.

(a) Requiring Previous Meeting to Obtain "K" Nonimmigrant Visa.—The third sentence of section 214(d) of the Immigration and Nationality Act (8 U.S.C. 1184(d)) is amended—

(1) by striking "have a bona fide intention to marry" and inserting "have previously met in person within 2 years before the date of filing the petition, have a bona fide intention to marry,", and

(2) by inserting before the period at the end the following: ", except that the Attorney General in his discretion may waive the requirement that the parties have previously met in person".

(b) Restricting Separate Adjustment to Permanent Resident Status of "K" Nonimmigrants.—Section 245(d) of such Act (8 U.S.C. 1255(d)), as added by section 2(d) of this Act, is amended by inserting before the period at the end the following: "or of a nonimmigrant described in section 101(a)(15)(K)".

(c) Requiring Filing of Adjustment of Status Petition.—Section 214(d) of such Act (8 U.S.C. 1184(d)) is amended by striking the last sentence.

(d) Effective Dates.—(1) The amendments made by subsection (a) shall apply to petitions approved on or after the date of the enactment of this Act.

(2) The amendment made by subsection (b) shall apply to adjustments occurring on or after the date of the enactment of this Act.

(3) The amendment made by subsection (c) shall apply to aliens issued visas under section 101(a)(15)(K) of the Immigration and Nationality Act on or after the date of the enactment of this Act.

SEC. 4. RESTRICTIONS ON FUTURE ENTRY OF ALIENS INVOLVED WITH MARRIAGE FRAUD.

(a) In General.—Section 204(c) of the Immigration and Nationality Act (8 U.S.C. 1154(c)) is amended—

(1) by inserting "(1)" after "if",

(2) by inserting ", or has sought to be accorded," after "previously been accorded", and

(3) by inserting before the period at the end the following: ", or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws".

(b) Effective Date.—The amendment made by subsection (a) shall apply to petitions filed on or after the date of the enactment of this Act.

SEC. 5. RESTRICTIONS ON ADJUSTMENT OF STATUS OR PETITIONS BASED ON MARRIAGES ENTERED WHILE IN EXCLUSION OR DEPORTATION PROCEEDINGS.

(a) Restriction on Adjustment.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255), as amended by sections 2(d) and 3(b), is further amended—

(1) in subsection (c), by striking "The provisions of this section" and inserting "Subsection (a)", and

(2) by adding at the end the following new subsection:

"(e)(1) An alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).

"(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to enter or remain in the United States.".

(b) Restriction on Petitions.—Section 204 of such Act (8 U.S.C. 1154) is amended by adding at the end the following new subsection:

"(h) Notwithstanding subsection (a), a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period described in section 245(e)(2), until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.".

(c) Effective Date.—The amendments made by this section shall apply to marriages entered into on or after the date of the enactment of this Act.

(d) Report on Section 241(c) Sanctions.—The Attorney General shall study and report to the Congress, not later than 6 months after the date of the enactment of this Act, concerning the application of the 2-year marriage fraud presumption under section 241(c) of the Immigration and Nationality Act (8 U.S.C. 1251(c)). Such report shall include—

(1) the number of cases of deportations effected under such section, and

(2) recommendations for changes in such section.

SEC. 6. EXCLUSION FOR MISREPRESENTATIONS.

(a) In General.—Paragraph (19) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended to read as follows:

"(19) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to

procure, or has sought to procure or has procured, a visa, other documentation, or entry into the United States or other benefit provided under this Act;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to the receipt of visas by, and the admission of, aliens occurring after the date of the enactment of this Act based on fraud or misrepresentations occurring before, on, or after such date.

The **SPEAKER** pro tempore. Is a second demanded?

Mr. **LUNGREN**. Mr. Speaker, I demand a second.

The **SPEAKER** pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The **SPEAKER** pro tempore. The gentleman from Kentucky [Mr. MAZZOLI] will be recognized for 20 minutes and the gentleman from California [Mr. LUNGREN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kentucky [Mr. MAZZOLI].

Mr. **MAZZOLI**. Mr. Speaker, I yield myself such time as I may consume.

□ 1355

Mr. Speaker, H.R. 3737, which was unanimously approved by the Judiciary Committee, addresses the problem of marriage fraud. Because spouses of U.S. citizens and permanent resident aliens are—and I think quite rightly—given special consideration under our immigration laws, many aliens who would not otherwise be allowed to live in the United States find it expedient to enter into a fraudulent marriage.

The bill addresses this problem in five ways. First, it creates a 2-year "conditional" permanent resident status for aliens who are allowed to immigrate to the United States as a result of their marriage, or their parent's marriage, to a U.S. citizen or permanent resident alien. Second, it requires aliens admitted as fiances to have personally met their future U.S. citizen spouse. Third, it makes any attempt to gain immigration benefits on the basis of a fraudulent marriage, grounds for permanent exclusion from the United States. Fourth, it limits the ability of aliens undergoing exclusion, deportation, or similar proceedings to receive immediate immigration benefits on the basis of marriage contracted during the pendency of those proceedings. And fifth, it increases the criminal penalties for marriage fraud to 5 years imprisonment and/or a $250,000 fine.

The Immigration Service estimates that up to one-third of the marriage based petitions that they see involve some type of marriage fraud. In some cases, a U.S. citizen is party to the sham marriage. In many others, a U.S. citizen or permanent resident enters the marriage in good faith only to find out later that he or she has been cruelly duped by a person who wanted no marriage, but permanent residence in the United States.

Mr. Speaker, although present law imposes civil and criminal penalties against those who commit immigration-related marriage fraud, clearly those measures have not proved equal to the task. Recognizing that fact, the administration is strongly supporting this measure, and over in the other body, introduced a companion measure.

I urge my colleagues to support H.R. 3737.

Mr. Speaker, I reserve the balance of my time.

Mr. **LUNGREN**. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I also rise in support of H.R. 3737, Congressman MCCOLLUM's bill, which tightens up provisions in the Immigration and Nationality Act to discourage individuals from entering into fraudulent marriages in order to attain permanent residency.

We frankly do not know what the statistics are here. It was very difficult in the past to prove, basically because we have not had standards with which the INS could work. Yet anectdotal information that we have, plus estimates from some in the Service, have indicated that this is one major way in which people have gotten around the law and come in while others were left behind standing in line following the law.

This bill contains a 2-year conditional resident requirement for spouses. Anyone immigrating on the basis of a marriage entered into with a U.S. citizen would have conditional permanent residency for 2 years. Ninety days before the 2-year marriage anniversary, the couple would have to establish, to the satisfaction of the Attorney General, that the marriage was proper and not entered into fraudulently. The burden of proof is on the Attorney General to prove the marriage was entered into fraudulently.

In addition, this bill states that an alien who is the fiance or fiancee of a U.S. citizen and seeks to enter the United States to marry, must establish that the couple has previously met within 2 years.

The McCollum bill also prohibits conditional permanent residents from attempting to end their conditional status prematurely through adjustment of status on some nonmarriage related basis; for example, a conditional permanent resident by adjusting under the sixth preference.

These conditional residents would have no preference petitioning rights until the 2-year period was up. Finally, the bill makes attempted marriage fraud a ground for deportation. The legislation is supported by the administration.

The Senate passed a similar marriage fraud bill last summer. I am hopeful that we will have this much-needed legislation signed into law before the end of the session.

Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. MCCOLLUM].

Mr. **McCOLLUM**. Mr. Speaker, I want to thank the gentleman for yielding this time to me.

I, right off the top, want to thank those who have really worked so hard to allow this to come to pass. H.R. 3737 was a created idea, but it has gone through a lot of modification and a lot of hard work. I want to commend the chairman of our subcommittee, the distinguished gentleman from Kentucky [Mr. MAZZOLI]. I want to thank the gentleman from Massachusetts [Mr. FRANK] for all his work, and, of course, the gentleman from California [Mr. LUNGREN] for all of his work. I also want to thank Senator SIMON of Illinois for his input into this legislation.

What we have today has been very adequately described by both of the preceding speakers, but I would like to go over for a moment with you the basic premise of why we need this legislation and a couple of aspects that I think need very brief elaboration.

First of all, when you look at statistics, it is true that we do not know how many immigration-related fraudulent marriages there are that have been coming into this country in the last few years, but we know the numbers have been increasing. The press has been reporting them, and we know some statistics. For example, from 1978 to 1984, the number of legal immigrants entering the United States actually declined about 9.6 percent. During that same period, that same 6-year period from 1978 to 1984, the number of immigrants acquiring the status of an immigrant coming into this country legally as a spouse of a U.S. citizen increased by some 43 percent.

There are basically two kinds of fraud that are going on in connection with this. One of them is the kind of case where someone pays the U.S. citizen or permanent resident alien to marry him or her in order to get here to circumvent our laws. That is an ever increasing problem in this country. We have had a number of rings, including one recently in the Haitian community in Miami that has been uncovered involving where citizens actually are marrying 10, 12, or 15 people a year with upward of $10,000 a piece being paid, sometimes of course greater sums for that marriage contract to be consummated.

The second of marriage fraud is even more invidious for the American citizen or permanent resident alien, and that involves the case where an alien spouse who marries an American does that intentionally duping this person into believing that they are really in love, that there is true matrimonial intent here and, as soon as they become capable of becoming citizens of the United States, of course, they get out of that marriage in some way.

The real problem is our Immigration Service is not adequately staffed to be able to handle these matters; and second, even if they were adequately staffed, since we are dealing with matters that come usually through the consular offices abroad, the backgrounds of the parties are not always well known and it is very difficult to document whether the marriage actually is real or fraudulent. What happens is the people get here, they get caught up in the system and we never find out about the fraudulent aspects of it in most cases until it's really too late and the person becomes a citizen.

Under current law, once a person comes to this country, is granted a fiance visa, gets married, whatever the case may be, to a U.S. citizen, they become virtually immediately a permanent resident alien, and they are entitled to apply for citizenship within 3 years, an even shorter period of time than the normal period to become a citizen once you become a permanent resident alien.

Under this legislation we do establish a 2-year conditional period on that permanent resident status, during which time the alien spouse may live in this country, work in this country, gets credit for going toward citizenship in that 3 years and everything else, just like any other permanent resident alien, except that before the end of the 2-year period is up, that alien spouse and the American citizen or permanent resident spouse has to apply by a petition that is sworn to the Attorney General seeking to remove that condition, thereby giving the Immigration Service and the Attorney General a chance, a second look, at that marriage and to look back and see if it has been annulled, if they are really still together, if in fact there was a fraud perhaps perpetrated, and so forth. The petition on its face is not something that is of great burden to anyone. It simply recited the facts that exist at the time and would require the removal, if all things are equal, of that condition by the Attorney General.

If the Attorney General does not grant the conditional removal, then there are all kinds of protections in this legislation for the spouse. There is the opportunity to bring up the issue in any deportation proceeding and to have it contested with the burden being on the Attorney General, and so on. But I think it is a very important provision.

As has been mentioned before, we also increased the penalties for fraud in this case, up to $250,000 in fines or 5 years in jail for knowingly entering into one of these fraudulent marriages and that, of course, includes the American citizen or the American permanent resident alien who is getting involved intentionally into these matters. And there is the requirement to meet in person before you get that fiance visa that is so famous for coming across over here.

□ 1405

So that in the future, an American marrying someone from abroad is going to at least have to have met that person before they get married.

There are a number of other provisions in the legislation, some of which have been outlined by my distinguished chairman and ranking member; I am not going to go into them. I just want, again, to thank all of those who have participated in drawing this legislation. I am very hopeful that we will get it passed now through both bodies of this Congress and onto the President's desk. I think it will be a very valuable tool to our law enforcement officials and maybe can end some of this very gross violation of our laws and circumvention of the legal immigration process through marriages that has occurred.

Again, I want to thank everyone involved.

Mr. MAZZOLI. Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. I thank the gentleman for yielding me this time.

Mr. Speaker, I suppose it is appropriate that a bill dealing with marriage should be something of a love feast, but this one happens to me. I want to congratulate both the chairman and the ranking minority member again for their work on this and also the gentleman from Florida.

This is an important bill for two reasons, in my judgment. One, for the subject that it deals with. We ought not to have people defrauding their way into this country. Marriage is a very important and a very sacred institution, and we should not stand by while people trifle with it to get into the country.

At the same time, there is often a danger when we have abusers in this world that they are going to ruin it for the decent people who are in the majority. There is always a danger that, as we react to prevent that minority who will cheat and defraud that we may overreact and put decent people at a disadvantage. I want to salute the gentleman from Florida's willingness in this case to work very closely with a lot of us to make sure that that did not happen.

I think we have a piece of legislation which empowers those in authority to deal with the abusers and the cheaters while doing minimal, if any damage at all, to the rights of the law-abiding majority. I think in that it is a model. I think it was a model in the way in which the subcommittee was able to work. The gentleman from Florida had the idea; he brought it forward and was very willing to go piece-by-piece so that we could tighten it up in terms of how it ought best to be presented. It is, I think, the right kind of law enforcement. It shows that we can go after abusers and cheaters without impinging on the freedoms that the average citizen ought to have.

I am glad to be part of the coalition that has put this bill forward. I want to congratulate the gentleman from Florida for having the diligence to stick with this and the good parliamentary and legislative skills to give us a bill that does both protect the innocent and give the authorities the tools to go after the guilty.

Mr. LUNGREN. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH].

Mr. FISH. I thank the gentleman for yielding me this time.

Mr. Speaker, H.R. 3737 is designed to discourage aliens from entering into fraudulent marriages to attain permanent U.S. residency. The bill provides a 2-year "conditional" residency period after which the couple must establish to the satisfaction of the Attorney General that the marriage was not entered into fraudulently, and creates criminal penalties for marriage fraud.

U.S. immigration laws has been appropriately tailored to prevent separation of families. Unfortunately, these provisions have been abused, with aliens entering into fraudulent marriages to circumvent the regular preference system. The two most common types of marriage fraud involve cases in which a U.S. citizen accepts cash or other consideration in exchange for marriage vows and those in which an alien marries a U.S. citizen only to abandon the spouse following receipt of a green card.

I am hopeful this legislation will help correct this problem by discouraging fraudulent marriages.

I understand the Senate has already passed a similar bill and is anxious to complete action on this legislation this year.

Mr. LUNGREN. Mr. Speaker, in concluding our remarks on this side, I would say that I support this bill. I might just point out to my colleagues that this does require a 2-year conditional marriage period. That is a little bit longer than the 60-day Schumer amendment we had before us for people working in agriculture. Maybe there is some message there somewhere.

With that, I yield back the balance of my time.

Mr. MAZZOLI. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I think the message here is very clear and I think it has been spoken by my friend, the gentleman from Massachusetts [Mr. FRANK]. The extraordinary cooperation which we have received throughout, that is, "we," the chairman and ranking member of this subcommittee, through this whole session of Congress. I think it is exhibited in the bills that we are bringing to the floor today. Bills which could be very difficult and could be controversial and could have many sharp edges but they do not. They have been worked off, they have been worked at with a sense of cooperation and comity. I think we have produced good, solid, effective legislation.

As chairman of the subcommittee, I want to thank my colleagues personally for their extraordinary level of cooperation and I want to suggest to the House that because this bill and the other bills we have talked about today have been the product of that kind of attitude and outlook, I think that they are good, supportable bills which will make a difference in this immigration law.

Mr. YOUNG of Florida. Mr. Speaker, I rise in strong support of H.R. 3737, legislation to amend the Immigration and Nationality Act to deter immigration-related marriage fraud.

As a cosponsor of this important measure, I share the concern expressed by many of my constituents about our inconsistent and often confusing immigration reforms, and have introduced several bills aimed at correcting serious immigration problems, I found myself unable to support the rule that would have allowed H.R. 3810, the Immigration Control and Legalization Amendments Act of 1985, to come to the House floor for consideration on September 26, 1986. Not only did the rule automatically add over 20 amendments directly to the bill, but it denied Members an opportunity to amend one of the most contentious issues of the legislation—the provisions granting permanent resident status to foreign farmworkers who could prove they had worked at least 60 days in American agriculture between May 1985 and May 1986.

The continued frustration my constituents and I share over our immigration problems cannot continue. While this legislation is but a small step, it is certainly an important one. H.R. 3737 closes the marriage fraud loophole by requiring a 2-year conditional residency period for an alien spouse.

In order for the status to be adjusted to permanent resident, the couple must attend an interview within 90 days of the second anniversary of admission. If the interview reveals that the marriage is a lawful one and not entered into solely for the purpose of obtaining residency, the conditional status will be removed. If, however, the interview reveals that the marriage was fraudulent, deportation hearings would begin. Finally, criminal penalties are established for marriage fraud. Anyone who knowingly enters into a marriage to evade immigration laws is subject to a maximum fine of $250,000 or 5 years imprisonment, or both.

There are many law-abiding individuals throughout the world who are desperate to become United States citizens and who have followed our laws without success. This legislation attempts to close one of the loopholes in our immigration laws that has allowed some to unfairly side-step the law and gain permanent residency ahead of those who have waited for so long.

Mr. Speaker, I urge my colleagues in the House of Representatives to approve this legislation, and call upon the Senate to take prompt and favorable action.

Mr. MAZZOLI. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky [Mr. MAZZOLI] that the House suspend the rules and pass the bill, H.R. 3737, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MAZZOLI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

CHILD SEXUAL ABUSE AND PORNOGRAPHY ACT OF 1986

Mr. HUGHES. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5560) to amend title 18 of the U.S. Code to ban the production and use of advertisements for child pornography or solicitations for child pornography, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5560

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Sexual Abuse and Pornography Act of 1986".

SEC. 2. ADVERTISING OFFENSES RELATED TO SEXUAL EXPLOITATION OF CHILDREN.

Section 2251 of title 18, United States Code, is amended—

(1) in subsection (a), by striking out "subsection (c)" and inserting in lieu thereof "subsection (d)";

(2) in subsection (b), by striking out "subsection (c)" and inserting in lieu thereof "subsection (d)";

(3) by inserting after subsection (b) the following:

"(c)(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering—

"(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

"(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct;

shall be punished as provided under subsection (d).

"(2) The circumstance referred to in paragraph (1) is that—

"(A) such person knows or has reason to know that such notice or advertisement will be transported in interstate or foreign commerce or mailed; or

"(B) such notice or advertisement is transported in interstate or foreign commerce or mailed."; and

(4) by redesignating subsection (c) as subsection (d).

SEC. 3. TRANSPORTATION OF CHILDREN FOR PURPOSES OF SEXUAL EXPLOITATION.

Section 2251(a) of title 18, United States Code, is amended by inserting ", or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in," after "assist any other person to engage in,".

SEC. 4. CLARIFICATION OF MEANING OF VISUAL DEPICTION.

Section 2255 of title 18, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (3);

(2) by striking out the period at the end of paragraph (4) and inserting "; and" in lieu thereof; and

(3) by adding at the end the following:

"(5) 'visual depiction' includes undeveloped film and videotape.".

SEC. 5. MANN ACT AMENDMENTS.

(a) CHAPTER HEADING.—(1) The heading for chapter 117 of title 18, United States Code, is amended to read as follows:

"CHAPTER 117—TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES".

(2) The table of chapters for part I of title 18, United States Code, is amended so that the item relating to chapter 117 reads as follows:

"117. Transportation for illegal sexual activity and related crimes.".

(b) REVISION OF OFFENSE PROVISIONS.—(1) Chapter 117 of title 18, United States Code, is amended by striking out section 2421 and all that follows through section 2423 and inserting in lieu thereof the following:

"§ 2421. Transportation generally

"Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than five years, or both.

"§ 2422. Coercion and enticement

"Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than five years, or both.

"§ 2423. Transportation of minors

"Whoever knowingly transports any individual under the age of 18 years in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than ten years, or both.".

(2) The table of sections at the beginning of chapter 117 of title 18, United States Code, is amended so that the item relating to section 2422 reads as follows:

"2422. Coercion and enticement.".

(c) GENDER-NEUTRAL AMENDMENTS TO SECTION 2424.—(1) Section 2424 of title 18, United States Code, is amended—

"(1) by striking out "female" in the heading for such section and inserting "individual" in lieu thereof;

"(2) by striking out "woman or girl' each place it appears and inserting "individual" in lieu thereof;

"(3) by striking out "she" each place it appears and inserting "that individual" in lieu thereof;

"(4) by striking out "her" each place it appears and inserting "that individual's" in lieu thereof;

"(5) by striking out "him" each place it appears and inserting "that person"; and

"(6) by striking out "his" and inserting "that person's".

The SPEAKER pro tempore. Is a second demanded?

Mr. McCOLLUM. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from New Jersey [Mr. HUGHES] will be recognized for 20 minutes, and the gentleman from Florida [Mr. MCCOLLUM] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. HUGHES].

Mr. HUGHES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, of all of the crimes known to our society, perhaps none is more revolting than the sexual exploitation of children for the production of pornography.

The Subcommittee on Crime, which I chair, has been monitoring our Government's enforcement effort against this terrible crime for several years. Prior to the amendments which were developed in 1984 with the leadership of our committee, and in particular the former Member from Michigan, Hal Sawyer, the Federal Government rarely prosecuted child pornographers. In the 6 years between 1978 and 1984 only 65 individuals were convicted of child pornography offenses. However I am pleased to report to the House that in the 28 months since the Child Protection Act of 1984 was enacted, at least 214 individuals—and probably more since the data is incomplete—have been convicted of these crimes. That number represents 3½ times as many convictions in just over 2 years than in all of the prior 6 years. I am pleased that the Department of Justice is placing a much higher priority on these offenses which are among the most disgusting in the Criminal Code.

Despite the increased enforcement effort, the indications are that these crimes are still being committed in large numbers. The Permanent Subcommittee on Investigations of the other body has extensively examined the program of child pornography and pedophilia. In testimony before the Subcommittee on Crime, it was estimated that there may be as many as one-half million children who are sexually abused annually.

Mr. Speaker, the Committee on the Judiciary has reported a bill to substantially strengthen our ability to investigate and prosecute these crimes.

First, the bill closes a loophole regarding the interstate transportation of children for the purpose of making child pornography to eliminate a requirement that the transportation for the purpose of sexual abuse have a commercial purpose.

Second, the bill prohibits advertising to distribute or purchase child pornography. It also prohibits advertising that will aid in the production of child pornography such as recruiting or offering children to participate in sex acts for the purpose of making child pornography. This provision has been drafted so that it will outlaw the use of computer bulletin boards to exchange information about the availability of children for child pornography.

Third, the bill defines the term "visual depiction" to include undeveloped film and videotape.

Fourth, the bill rewrites the Mann Act relating to interstate transportation of women for the purpose of prostitution or other prohibited sexual activity to modernize the offenses and to make them gender neutral.

I want to commend the ranking Republican member of the subcommittee, BILL MCCOLLUM, for his cooperation and contributions to the bill. It is a good bill. It was unanimously reported from the committee. I urge the House to pass the bill.

Mr. Speaker, I reserve the balance of my time.

☐ 1415

Mr. McCOLLUM. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. FISH], the ranking minority member of the Committee on the Judiciary.

Mr. FISH. Mr. Speaker, I rise in strong support of the Child Sexual Abuse and Pornography Act of 1986 because it expands the Federal arsenal against child abuse. There is no room for leniency in our battle to protects our children from child pornography. The chairman of the Subcommittee on Crime, Mr. HUGHES, and the ranking Republican Mr. MCCOLLUM, deserves great credit for moving this bill to the floor.

The improvements made to Federal child pornography laws in 1984, which I cosponsored, have been highly successful. Public Law 98-292 has lead to 164 Federal child pornography convictions in the last 2 years. This total is roughly three times larger than the number obtained in the previous 6½ years under the old laws. But our work is not complete. We must continue our efforts to wipe out this despicable form of child abuse.

H.R. 5560 makes two important improvements to our Federal laws that protect the younger members of our society. First, it outlaws advertisements for child pornography. Persons advertising pornographic materials depicting children or advertising for the purpose of recruiting children into this despicable activity would be strictly punished. This prohibition is particularly important in today's high technology world because pedophiles and other child abusers are relying more and more on computers to communicate and advertise their criminal activities. The advertising prohibitions in H.R. 5560 will also apply to these computer communications.

Second, this bill makes a vast improvement to the existing law that prohibits the interstate or foreign transportation of children for purposes of sexual abuse. Today, this conduct violates Federal law only if there is a commercial purpose. H.R. 5560 deletes the requirement of a commercial purpose so that the Federal law will punish anyone transporting children in interstate or foreign commerce for purposes of any illegal sexual activity. These children are harmed by sexual abuse whether or not someone profits from it. I therefore support the elimination of the profit motive as a prerequisite to Federal prosecution.

The Child Sexual Abuse and Pornography Act of 1986 also updates the laws on transportation in interstate and foreign commerce for immoral purposes. These provisions, commonly referred to as the Mann Act, use archaic language and apply to the transportation of women. This law updates the language of these sections and makes them gender neutral.

I strongly urge the adoption of H.R. 5560, the Child Sexual Abuse and Pornography Act of 1986 because it provides a substantial improvement in our Federal laws prohibiting the sexual abuse of children. We must continue every effort to protect this Nation's greatest resource: its youth.

Mr. HUGHES. Mr. Speaker, I have no further requests for time.

Mr. McCOLLUM. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Child Sexual Abuse and Pornography Act of 1986 strengthens the existing Federal child abuse statutes in several prominent and potent ways. H.R. 5560 provides additional protection for our children from the slimy underworld of child pornography.

The sexual abuse of a child during the making of pornography is exacerbated by the lifetime fear that the pictures themselves will surface to ruin the adult life of an abused child. Child pornography is horrendous and we must continue our efforts against it.

H.R. 5560 expands the existing child pornography laws to prohibit advertisements for child pornography. The bill also bans advertising by adults who wish to participate in the creation of child pornography and advertisements for the purpose of recruiting children to create pornography. The Permanent Subcommittee on Investigations of the other body has issued an investigative report recommending a ban on advertising child pornography and this bill fulfills that recommendation.

H.R. 5560 also makes transporting children in interstate or foreign commerce for the purpose of making child pornography a crime. This addition to the Federal law also protects our children.

H.R. 5560 modernizes and expands another important Federal criminal law. The Mann Act, which was enacted in 1910, prohibits the transportation of women and the inducement of women to enter interstate or foreign commerce for immoral purposes. The Mann Act also prohibits the harboring of illegal alien women for immoral purposes. A 1978 amendment prohibited the transportation of minors in interstate or foreign commerce for certain sexual activity that is profit motivated.

H.R. 5560 amends the Mann Act to modernize the language and to make its provisions gender neutral. Under an amendment I offered, which the subcommittee adopted, the bill now deletes a requirement that the children be transported with a profit motive. Since I firmly believe that the children suffer from sexual abuse whether or not financial profit is involved, I am glad that this comprehensive protection is included in H.R. 5560.

Federal prosecution of child pornography cases have dramatically increased under the child pornography amendments processed by the Subcommittee on Crime in 1984. Chairman HUGHES was instrumental in the enactment of Public Law 98-292 which has increased convictions under Federal child pornography laws nearly threefold in just 2 years. This proposal continues our effort to stamp out sexual abuse of minors by those criminals in our society who prey on our children.

Mr. Speaker, I yield such time as he may consume to the gentleman from Indiana [Mr. COATS].

Mr. COATS. Mr. Speaker, I want to add my congratulations to the chairman, the gentleman from New Jersey [Mr. HUGHES], and to the ranking member of the Subcommittee on Crime, the gentleman from Florida [Mr. MCCOLLUM], for bringing forth what I think are some very important substantive changes to the existing law regarding child pornography.

We held a hearing in our Select Committee on Children, Youth, and Families not too many months ago on this subject. We were presented with some important testimony from law enforcement officials and others across the country who have spent considerable time in this area.

They outlined for us some of the substantive changes that they thought were necessary to close some loopholes in the existing law. I am pleased that these recommendations have been incorporated in the language in the bill before us today.

I thank the Committee on the Judiciary for that diligent and efficient and effective work in this regard.

Mr. Speaker, the subject of child pornography has been one that has been for too long ignored. It is something that we do not like to think about, that we think only happens to someone else's children. We regret it and deplore it but have not in the past focused enough attention on it.

Child pornography is a significant problem that our society faces, and we must take steps to do everything that we can here at the Federal level of make sure that the commercial exploitation and individual involvement is fully protected against and fully prosecuted.

The Attorney General's Commission on Pornography recently released their report. I would urge Members of this body to take the time to read that report. It has a major section detailing the problems that we face in the area of child pornography.

While the press and the media have attempted to portray this report as simply a witch hunt against some popular men's magazines found in some of our convenience stores, it is far from that. It details, among other things, the involvement of the commercial underworld in terms of exploitation of young people in the area of child pornography. It gives some chilling eyewitness accounts backed up with evidence of the nature and extent of the child pornography industry.

I think it makes a significant contribution to our effort to outlaw and to deal with this problem.

I would urge the Attorney General and the Justice Department to follow the recommendations made by that Commission and bring about enforcement throughout our country of this problem.

We were given testimony before our Select Committee on Children, Youth, and Families that, with a specially targeted effort for a limited period of time, we could have a significant impact in eliminating much of the child pornography business that takes place in this country.

It is not a massive effort that is needed to be undertaken. Specifically targeted, well-enforced prosecution of the laws that are already on the books can bring about a significant decline in the amount of child pornography that currently takes place in this country.

With this strengthening of the law by passage of this bill today, we can provide prosecutors with even better enforcement tools. I urge my colleagues to support the bill that is before us and, again, I thank both the gentleman from Florida [Mr. MCCOLLUM] and the gentleman from New Jersey [Mr. HUGHES] for their efforts in this regard.

Mr. McCOLLUM. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Speaker, it gives me great pleasure to rise in support of this legislation. This is truly a bipartisan effort. I think it is an example for the Congress as to what we can do when we put our minds to it.

I think it is a comment on where we have gone in terms of public opinion, at least in my observation, that 10 years ago we may not have been able to pass legislation like this, not because of the individuals involved here, but I am not sure that the American attitude was what it is now. There was a thought that perhaps pornography was not bad for you; some were even suggesting that it was good for you. Even when you are talking about child pornography, all sorts of excuses were being made as to why we could not attack it.

We have long since passed that time. We are now moving, I think, in a more realistic view of the world. Today we are passing legislation which will allow us on the Federal level to do a better job of controlling those who traffic in child pornography.

One thing we discussed in our subcommittee markup, that I discussed with the chairman, was the recommendation made by the President's Commission on Pornography that somehow perhaps we consider changing the jurisdictional base from that which involves those things found in interstate commerce and that which affects interstate commerce.

The chairman was forthright in suggesting that that may be something we might look at in the future; however, there was some concern that that might impede our ability to get this bill up on the Suspension Calendar and passed this year, together with the other body, out into a single form, and sent to the President.

I agree with the gentleman's decision at this point. I hope that perhaps at some other time, in the next Congress, perhaps, we might look at the question of expanding the jurisdictional base to acts of trafficking in child pornography that impact on or affect interstate commerce, as opposed to merely being in interstate commerce.

That may seem like an arcane difference, but some have suggested it does make a difference in particular cases.

□ 1425

Short of that, Mr. Speaker, I would just say that we ought to be proud of this legislation, proud of the fact that the subcommittee expedited its consideration and got it to the full committee and it is on the Suspension Calendar.

I would hope that all Members would be able to vote for this as just one other tool to give law enforcement on this level, the Federal level, in their war against child pornography.

Mr. McCOLLUM. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. Hughes] that the House suspend the rules and pass the bill, H.R. 5560, as amended.

The question was taken.

Mr. HUGHES. Mr. Speaker, on that, I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore (Mr. Gray of Illinois). Pursuant to clause 5 of rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. HUGHES. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

HOUSING ACT AMENDMENTS

Mr. LUNDINE. Mr. Speaker, I move to suspend the rules and pass the bil (H.R. 5564) to amend the National Housing Act to provide for the eligibility of certain property for single family mortgage insurance.

The Clerk read as follows:

H.R. 5564

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 203 of the National Housing Act is amended by adding at the end the following new subsection:

"(q)(1) Notwithstanding any other provision of this section or any other section of this title, the Secretary may insure and commit to insure, under subsection (b) as modified by this subsection, any mortgage secured by property located on land that—

"(A) is within the Allegany Reservation of the Seneca Nation of New York Indians; and

"(B) is subject to a lease entered into for a term of 99 years pursuant to the Act of February 19, 1875 (Chapter 90; 18 Stat. 330) and the Act of September 30, 1890 (Chapter 1132; 26 Stat. 558).

"(2) A mortgage shall be eligible for insurance under subsection (b) as modified by this subsection without regard to limitations in this title relating to marketability of title or any other statutory restriction that the Secretary determines is contrary to the purpose of this subsection.

"(3) The Secretary, in connection with any mortgage insured under subsection (b) as modified by this subsection shall have all statutory powers, authority, and responsibilities that the Secretary has with respect to other mortgages insured under subsection (b), except that the Secretary may modify such powers, authority, or responsibilities if the Secretary determines such action to be necessary because of the special nature of the mortgage involved.

"(4) Nothwithstanding section 202, the insurance of a mortgage under subsection (b) as modified by this subsection shall be the obligation of the Special Risk Insurance Fund created in section 238.".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from New York [Mr. Lundine] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. Wylie] will be recognized for 20 minutes.

The Chair recognized the gentleman from New York [Mr. Lundine].

Mr. LUNDINE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we are considering a bill designed to provide a very special kind of assistance to a small city in our district, Salamanca, NY. This provision is noncontroversial: it was part of the housing bill which has already passed the House of Representatives.

This legislation enables the Federal Housing Administration to ensure, under the provisions of the National Housing Act, residential mortgages secured by property located on land that is within the Allegany Reservation of the Seneca Nation of Indians. This revenue-neutral provision is of paramount importance to Salamanca.

The city of Salamanca is in a unique situation. Approximately 85 percent of the land upon which the city is located lies within the Allegany Reservation of the Seneca Nation of Indians. The Indian lands are occupied under 99-year leases which are due to expire in 1991. The leases were ratified by Congress in February 1892, under authority of two special acts of Congress.

The impending expiration of these leases and the uncertainties surrounding the method of renewal or renegotiation of the leases have been causing extreme economic hardships for the citizens of Salamanca. While the lease situation has resulted in a gradual erosion of the city's economic base for nearly 10 years, the situation is becoming increasingly urgent due to the complete lack of mortgage financing in the community. As of January 1, 1985, the city's lending institutions have refused to make any loans in Salamanca beyond a 5-year term.

The lack of available financing for industrial, commercial, and even residential transactions has brought most economic activity to a standstill. Failure to address this problem will continue to have serious implications for the city's ability to attract new business, create jobs, and stimulate economic growth. The lack of money for residential mortgages has been a tremendous hardship for families wishing or needing to relocate, as well as for those families wishing to purchase a home in Salamanca.

If there is any community in the country that needs or deserves FHA assistance, it is certainly Salamanca. This city desperately needs the rejuvenation that FHA insurance or residential mortgages will make possible. While the ultimate resolution of this problem must be achieved by the city and the Seneca Nation, the situation in Salamanca is now so serious I feel that outside assistance is essential. Time is running out for Salamanca. Adoption of the legislation before us today will give the city the boost it desperately needs and deserves.

This measure is revenue neutral. Further, it does not represent an unreasonable risk for FHA. The law under which these leases were ratified clearly allows for renewal of the leases; the only unresolved question is the terms of the renewal. All parties involved have a common interest in assuring that these terms are reasonable and that they foster residential and commercial growth for Salamanca's future.

I urge the Members of this body to pass this legislation expeditiously.

Mr. WYLIE. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I think H.R. 5564 is all right and urge its passage. I understand that the gentleman from New York does have a unique problem concerning the FHA that would be alleviated by this legislation.

This legislation, as the gentleman has stated, merely provides for the security of FHA insurance in order to enable some local lenders or other lenders to recommence mortgage lending in the city of Salamanca, NY.

Mr. Speaker, this is not the first time we have addressed the problem of

FHA mortgage insurance when the title has been clouded by remote Indian treaties.

I am aware of at least two other instances when Congress amended the law to allow FHA insurance in such cases. It is unfortunate that we have to do it this way, but it is not catastrophic, I do not think, as far as the FHA insurance program is concerned.

Finally, Mr. Speaker, with FHA insurance authority due to expire tomorrow night, I trust the House will take quick action on the FHA extension bill, which passed the Senate on Friday, so that not only will the citizens of Salamanca, NY, be eligible for FHA based insurance, but that all citizens will be able to use the FHA insurance program.

It would be ironic, indeed, if we passed this bill and the FHA insurance program expired.

Mr. Speaker, I yield back the balance of my time.

Mr. LUNGREN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I wish to thank the gentleman from Ohio for his courtesy and assure him, incidentally, that the people in Salamanca will have no greater rights to FHA insurance than anyone else in America, of course, and also express my deep and sincere thanks to the chairman of the full committee, the gentleman from Rhode Island [Mr. St Germain], and the chairman of the subcommittee, and the ranking member of the Housing Subcommittee, the gentleman from Texas, and the gentleman from Connecticut who have been very helpful to me in this situation.

This may be the last time that I will be—not arguing on a bill, but moving the passage of a bill in the House of Representatives. I guess it is entirely appropriate that it be something that uniquely affects our congressional district.

I genuinely appreciate their courtesy and cooperation in this matter.

Mr. Speaker, I yield back the balance of my time.

The **SPEAKER** pro tempore. The question is on the motion offered by the gentleman from New York [Mr. Lundine] that the House suspend the rules and pass the bill, H.R. 5564.

The question was taken.

Mr. WALKER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The **SPEAKER** pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

COMMUNITY DEVELOPMENT CREDIT UNION REVOLVING LOAN FUND TRANSFER ACT

Mr. ST GERMAIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5554) to transfer the Community Development Credit Union Revolving Loan Fund to the National Credit Union Administration and to authorize the National Credit Union Administration Board to administer the fund.

The Clerk read as follows:

H.R. 5554

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Community Development Credit Union Revolving Loan Fund Transfer Act".

SEC. 2. TRANSFER OF COMMUNITY DEVELOPMENT CREDIT UNION REVOLVING LOAN FUND.

(a) Administration of Fund by NCUA.—

(1) In general.—Beginning on the date of the enactment of this Act, the National Credit Union Administration Board shall administer the Community Development Credit Union Revolving Loan Fund.

(2) Transfer of authority.—All authority to carry out the purposes of the Fund and to prescribe regulations in connection with the administration of the Fund which, on the day before the date of the enactment of this Act, was vested in the Secretary of Health and Human Services shall vest on such date in the Board. Except as provided in subsection (c), the Secretary shall have no further responsibility with respect to the Fund.

(b) Continued Availability of Appropriated Funds.—All funds appropriated to the Fund and interest accumulated in the Fund which continue to be available under section 633 of the Omnibus Budget Reconciliation Act of 1981 shall continue to be available to the Board to carry out the purposes of the Fund.

(c) Transfer of Assets; Etc.—The Secretary shall transfer to the National Credit Union Administration all assets, liabilities, grants, contracts, property, records, and funds held, used, arising from, or available to the Secretary in connection with the administration of the Fund before the end of the 60-day period beginning on the date of the enactment of this Act.

(d) Savings Provisions.—

(1) Regulations.—Any regulations prescribed by the Secretary in connection with the administration of the Fund shall continue in effect until superseded by regulations prescribed by the Board.

(2) Existing rights, duties, and obligations not affected.—Subsection (a) shall not be construed as affecting the validity of any right, duty, or obligation of the United States or any other person arising under or pursuant to any contract, loan, or other instrument or agreement which was in effect on the day before the date of the enactment of this Act.

(3) Continuation of suits.—No action or other proceeding commenced by or against the Secretary in connection with the administration of the Fund shall abate by reason of the enactment of this Act, except that the Board shall be substituted for the Secretary as a party to any such action or proceeding.

(e) Definitions.—For purposes of this section—

(1) Board.—The term "Board" means the National Credit Union Administration Board.

(2) Fund.—The term "Fund" means the Community Development Credit Union Revolving Loan Fund established under title VII of the Economic Opportunity Act of 1964 (as in effect before the date of the enactment of the Omnibus Budget Reconciliation Act of 1981).

(3) Secretary.—The term "Secretary" means the Secretary of Health and Human Services.

The **SPEAKER** pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Rhode Island [Mr. St Germain] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. Wylie] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Rhode Island [Mr. St Germain].

Mr. ST GERMAIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. ST GERMAIN. Mr. Speaker, I have long criticized the financial industry for rolling out the red carpet for affluent customers while slamming the door on the poor and elderly with costly fees and sky-high minimum balance requirements. Worse yet, branch closings in so-called unprofitable areas are leaving customers bankless.

Neighborhood groups are fighting back by opening Community Development Credit Unions, or CDCU's. These CDCU's meet the needs of low-income customers by offering free banking, small business loans, and many other community services.

To support such efforts, the Congress in 1980 authorized $7.1 million in revolving loans to CDCU's. Since then the program, administered by HHS, has helped 42 new and existing credit unions. A $100,000 loan enabled a poor neighborhood in San Francisco's Chinatown to open a CDCU now boasting over 1,000 members and $1 million in assets. Quite a return on a small investment.

Despite its success, the administration wants to kill the fund, leaving 400 CDCU's out in the cold. Today, I urge my colleagues to support H.R. 5554, the Community Development Credit Union Revolving Loan Fund Transfer Act, which will protect the fund by putting it under the jurisdiction of the National Credit Union Administration.

Clearly, these funds are better administered by the agency of Government that is given the basic responsibility for credit unions—NCUA. The transfer of funds, as proposed by the Kaptur-Garcia bill, is both good Government and good credit union policy.

A vote for this bill is a vote for banking services for all of our citizens.

Mr. WYLIE. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, I rise in strong support of H.R. 5554 which would transfer the Community Development Credit Union Fund to the National Credit Union Administration and authorize the NCUA to administer it.

CDCU's offer credit union services to communities lacking in financial services. The program was first authorized in 1964 and administered by the Community Services Administration. In 1980, the program was transferred to the Department of Health and Human Services.

Mr. Speaker, it seems obvious that this program logically should be under the auspices of the NCUA. The NCUA, as the Federal regulator of credit unions, has the knowledge and expertise to properly administer this program. Finally, both the NCUA and the Department of Health and Human Services are in favor of this transfer of authority.

Mr. Speaker, I yield back the balance of my time.

Mr. ST GERMAIN. Mr. Speaker, I yield such time a she may consume to the gentlewoman from Ohio [Ms. KAPTUR], the other sponsor of this legislation.

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Ms. KAPTUR. Mr. Speaker, I thank the gentleman from Rhode Island [Mr. ST GERMAIN], the chairman of the full Banking Committee, and the gentleman from Ohio [Mr. WYLIE], the ranking minority member, for their complete support of this effort, a very simple administrative transfer of the Community Development Credit Union revolving loan fund from the Department of Health and Human Services, where it is presently housed, to the National Credit Union Administration, the appropriate supervisory body for these types of financial institutions.

I would also like to acknowledge the great help and cooperation of the gentleman from New York [Mr. GARCIA] for his leadership and continuing efforts on behalf of community development credit unions.

Mr. Speaker, this revolving loan fund, which provides important injections of capital into selective credit unions, is intended to expand the capital potential of low-income credit unions to serve the needs of low-income people in neighborhoods often ignored by traditional financial services or exploited by loan sharks.

The biggest problem of any poor community, or any community undergoing financial stress, is that there is a negative cash flow: the money goes right through. But someone is making a profit somewhere. A CDCU is one mechanism to catch some of the profits and keep the funds working in the neighborhood for the betterment of the residents residing therein.

These specialized credit unions, which number 300 to 400 nationwide, are located in such areas as: Harlingen, KY; Appalachia; the Uptown Area of Chicago; the Spanish-speaking South End of Boston; the Lower East Side of Manhattan and East Harlen; Columbus, OH, in the Metropolitan Area Credit Union; in the Hope-Coronado Credit Union in Colorado Springs, CO; and in the Steel Worker Community Credit Unions in Weirton, WV.

These credit unions educate members in basic money management and self-reliance and work to promote neighborhood reinvestment and nonprofit financial services in many communities that are predominantly minority.

The primary purpose of these credit unions is to help their member-owners or shareholders establish savings accounts, and to then make loans from that capital base to help low-income families enter the mainstream.

We all know that the low-income consumer has little chance of getting loans at reasonable rates.

With the dissolution of the old Office of Economic Opportunity and the Community Services Administration, this particular fund was inappropriately placed in a social services agency, the Department of Health and Human Services, in 1980, in Public Law 96-123. It really belongs in a financial regulatory agency.

This transfer has no budget impact. No new money is involved. In fact, we are finding that the Department of Health and Human Services is not rolling over the existing loan fund, which totals $6 million plus approximately $1 million in accrued interest.

It is a program that is worthy of support; it is cost-effective; and it has no budget impact.

Mr. GARCIA. Mr. Speaker, the Community Development Credit Union Revolving Loan Fund was established in 1964, and was administered by the Community Services Agency until 1980, when it was transferred to the Office of Community Services at HHS.

The purpose of the program was, and is, to assist groups in low-income communities to start their own community development credit unions, and to provide funds to existing credit unions to enable them to provide various services to the community. However, no new loans have been made since 1983, and there is currently $2½ to $3 million available and not being used.

Because this is a revolving loan fund new loans are made as old loans are repaid, and no Federal funds are necessary. This revolving loan fund is a no-cost, in-place community development program that should be encouraged rather than tied up. CDCU's are required to participate in and support community economic development activities, and encourage business expansion, new employment opportunities and efforts to improve housing conditions.

This fund is important to low-income communities nationwide who have been left without sufficient financial services by institutions that felt the neighborhoods were no longer profitable. The CDCU's provide their members with low-cost savings and checking accounts, as well as low-interest loans to those who are considered too high a risk at other institutions.

The National Credit Union Administration is the appropriate authority to oversee this program, because they have the expertise and the staff to properly administer CDCU's, and merits the authority to do so.

Mr. WYLIE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ST GERMAIN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from Rhode Island [Mr. ST GERMAIN] that the House suspend the rules and pass the bill, H.R. 5554.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

DEPOSITORY INSTITUTION EXAMINATION IMPROVEMENT ACT OF 1986

Mr. ST GERMAIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4917) to improve the quality of examinations of depository institutions, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4917

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Depository Institution Examination Improvement Act of 1986".

SEC. 2. TEMPORARY ASSIGNMENTS AND TRAVEL ALLOWANCES OF FEDERAL EXAMINERS.

The Depository Institutions Examinations Council (as redesignated by section 7(a)) shall prepare guidelines for the Federal depository institutions regulatory agencies which would ensure that any Federal examiner who is temporarily assigned to a place of employment outside the region in which such examiner is regularly employed will receive—

(1) adequate compensation for living expenses incurred in connection with the tem-

porary assignment, taking into account any higher cost-of-living in the place to which the examiner is temporarily assigned; and

(2) adequate amounts for travel expenses to and from the place to which the examiner is temporarily assigned.

SEC. 3. INDEPENDENT AGENCY STATUS OF FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES.

(a) INDEPENDENT AGENCY STATUS.—

(1) CERTAIN AGENCIES NOT SUBJECT TO BUDGET REVIEW.—Section 1105 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(g) Estimated expenditures and receipts of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration to be included in the budget under paragraphs (5) and (6) of subsection (a) shall be submitted to the President before October 16 of each year and included in the budget by the President without change.".

(2) AGENCIES NOT SUBJECT TO FISCAL, BUDGET, AND APPROPRIATION REQUIREMENTS.—Section 1101 of title 31, United States Code, is amended by striking out "or the Supreme Court" and inserting in lieu thereof "the Supreme Court, or any agency which is subject to audit by the Comptroller General under section 714".

(3) AGENCIES NOT SUBJECT TO APPORTIONMENT OF FUNDS REQUIREMENT.—Subsection (b) of section 1511 of title 31, United States Code, is amended—

(A) by adding at the end thereof the following new paragraph:

"(4) any agency which is subject to audit by the Comptroller General under section 714.";

(B) by striking out "and" at the end of paragraph (2); and

(C) by striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and".

(4) BUDGET REDUCTION EXEMPTION.—

(A) IN GENERAL.—Paragraph (1) of section 255(g) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(i) by inserting after the item relating to compensation of the President the following new item:

"Comptroller of the Currency;";

(ii) by inserting after the item relating to the exchange stabilization fund the following new items:

"Federal Deposit Insurance Corporation;

"Federal Home Loan Bank Board;

"Federal Home Loan Bank Board, Federal Savings and Loan Insurance Corporation;"; and

(iii) by inserting after the item relating to intragovernmental funds the following new items:

"National Credit Union Administration;

"National Credit Union Administration, central liquidity facility;

"National Credit Union Administration, credit union share insurance fund;".

(B) CERTAIN EXPENSES.—Section 256(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end thereof the following new paragraph:

"(4) Notwithstanding any other provision of law, this subsection shall not apply with respect to the following:

"(A) Comptroller of the Currency.

"(B) Federal Deposit Insurance Corporation.

"(C) Federal Home Loan Bank Board.

"(D) Federal Savings and Loan Insurance Corporation.

"(E) National Credit Union Administration.

"(F) National Credit Union Administration, central liquidity facility.".

(5) STAFFING DETERMINATIONS NOT SUBJECT TO OUTSIDE CONTROL.—The number of employees employed by any Federal depository institutions regulatory agency shall not be subject to any limitation imposed by any officer of the executive branch of the Federal Government who is not an officer of such agency.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1)(A) Subsection (a) of section 714 of title 31, United States Code, is amended by striking out "and" and by inserting before the period the following: ", the Federal Home Loan Bank Board, the Federal Home Loan Banks, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration".

(B) The heading for such section 714 is amended to read as follows:

"SEC. 714. AUDIT OF FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES AND DEPOSITORY INSTITUTIONS EXAMINATIONS COUNCIL.".

(2) Subsection (b) of section 7 of the First Deficiency Appropriation Act, fiscal year 1936 (15 U.S.C. 712a(b)) is amended by striking out paragraphs 1. and 11. and by redesignating paragraphs 2. through 12. as paragraphs (1) through (10), respectively.

(3) The third proviso of the provision appearing under the heading "FEDERAL HOME LOAN BANK ADMINISTRATION" in title I of the Independent Offices Appropriation Act, 1944 (12 U.S.C. 1439a) is amended by striking out ", subject to subsections (a) and (b) of section 7 of the First Deficiency Appropriation Act, 1936".

(4) Paragraph (5) of section 402(c) of the National Housing Act (12 U.S.C. 1725(c)(5)) and section 19 of the Federal Home Loan Bank Act (12 U.S.C. 1439) are each amended by striking out the last sentence.

(5) Subsection (b) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)) is amended by adding at the end thereof the following new paragraph:

"(9) TREATMENT OF AMOUNTS RECEIVED.—Notwithstanding any other provision of law, no amount received by the Corporation pursuant to any assessment under this section or any other income of the Corporation may be construed to be Government funds or appropriated money and no authority of the Corporation to spend or otherwise obligate any such amount may be treated as budget authority, spending authority, credit authority, or as authority to obligate funds of the United States or be subject to any sequestration order or other reduction under the Balanced Budget and Emergency Deficit Control Act of 1985 or any other Act which was enacted before the date of the enactment of the Depository Institution Examination Improvement Act of 1986.".

(6) Section 404 of the National Housing Act (12 U.S.C. 1727) is amended by adding at the end thereof the following new subsection:

"(j) TREATMENT OF AMOUNTS RECEIVED.—No amount received by the Corporation pursuant to any premium assessed under this section, any deposit required under this section, or any other income of the Corporation may be construed to be Government funds or appropriated money and no authority of the Corporation to spend or otherwise obligate any such amount may be treated as budget authority, spending authority, credit authority, or as authority to obligate funds of the United States or be subject to any sequestration order or other reduction under the Balanced Budget and Emergency Deficit Control Act of 1985 or any other Act which was enacted before the date of the enactment of the Depository Institution Examination Improvement Act of 1986.".

(7) The last sentence of section 19 of the Federal Home Loan Bank Act (12 U.S.C. 1439) (as amended by paragraph (4)) is amended by inserting before the period "; no amount received pursuant to such assessments or any other income of the Board may be construed to be Government funds or appropriated money and no authority of the Board to spend or otherwise obligate any such amount may be treated as budget authority, spending authority, credit authority, or as authority to obligate funds of the United States or be subject to any sequestration order or other reduction under the Balanced Budget and Emergency Deficit Control Act of 1985 or any other Act which was enacted before the date of the enactment of the Depository Institution Examination Improvement Act of 1986".

(8) Section 18 of the Federal Home Loan Bank Act (12 U.S.C. 1438(a)) is amended by striking out subsection (a).

(9) Subsection (b) of section 18 of the Federal Home Loan Bank Act (12 U.S.C. 1438(b)) is amended by adding at the end thereof the following new sentence: "No amount received by the board pursuant to any assessment under this subsection or any other income of the board may be construed to be Government funds or appropriated money and no authority under this Act to spend or otherwise obligate any such amount may be treated as budget authority, spending authority, credit authority, or as authority to obligate funds of the United States or be subject to any sequestration order or other reduction under the Balanced Budget and Emergency Deficit Control Act of 1985 or any other Act which was enacted before the date of the enactment of the Depository Institution Examination Improvement Act of 1986.".

(10) The Federal Credit Union Act (U.S.C. 1751 et seq.) is amended—

(A) by adding at the end of section 105 the following new subsection:

"(f) TREATMENT OF AMOUNTS RECEIVED.—No amount received by the Board pursuant to any fee assessed under this section and no amount referred to in subsection (e)(3) shall be construed to be Government funds or appropriated money and no authority under this Act to spend or otherwise obligate any such amount may be treated as budget authority, spending authority, credit authority, or as authority to obligate funds of the United States or be subject to any sequestration order or other reduction under the Balanced Budget and Emergency Deficit Control Act of 1985 or any other Act which was enacted before the date of the enactment of the Depository Institution Examination Improvement Act of 1986."; and

(B) in subsection (b) of section 203, by inserting after the 1st sentence the following new sentence: "No amount deposited in the fund under the preceding sentence shall be construed to be Government funds or appropriated money and no authority under this Act to spend or otherwise obligate any such amount may be treated as budget authority, spending authority, credit authority, or as authority to obligate funds of the United States or be subject to any sequestration order or other reduction under the Balanced Budget and Emergency Deficit Control Act of 1985 or any other Act which was enacted before the date of the enactment of the Depository Institution Examination Improvement Act of 1986.".

(11) Subsection (c) of section 18 of the Federal Home Loan Bank Act (12 U.S.C. 1438) is amended—

(A) in paragraph (1), by striking out ", and subject to any limitation hereon which may hereafter be imposed in appropriation Acts,";

(B) in paragraph (5), by striking out ", and obligations and expenditures of the board and such agencies in connection with this subsection shall not be considered as administrative expenses";

(C) in the first sentence of paragraph (6), by striking out "(A) annually prepare and submit a budget program as provided in title I of the Government Corporation Control Act with regard to wholly owned Government corporations, and for purposes of this sentence, the terms 'wholly owned Government corporations' and 'Government corporations', wherever used in such title, shall include the board, and (B)"; and

(D) in the second sentence of paragraph (6), by striking out "first budget program shall be for the first full fiscal year beginning on or after the date of the enactment of this subsection, and the".

(12) Paragraph (6) of the Reorganization Plan Numbered 6 of 1961, as ratified and affirmed by the Act entitled "An Act to prevent disruption of the structure and functioning of the Government by ratifying all reorganization plans as a matter of law." and approved October 19, 1984 (98 Stat. 2705), is hereby repealed.

(13) The provision appearing under the heading "LIMITATION ON ADMINISTRATIVE AND EXAMINATION EXPENSES, FEDERAL HOME LOAN BANK BOARD" in title II of the Independent Offices Appropriation Act, 1961 (12 U.S.C. 1438a) is amended by striking out the second proviso.

(14) Paragraph (9) of section 5(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(9)) is amended by striking out the last sentence.

(15) Paragraph (3) of section 407(m) of the National Housing Act (12 U.S.C. 1730(m)(3)) is amended by striking out the second to last sentence.

(16) Section 408(h) of the National Housing Act (12 U.S.C. 1730a(h)(6)) is amended by striking out paragraph (6).

(17) Section 209(b) of the Federal Credit Union Act (12 U.S.C. 1789(b)) is amended by striking out paragraph (1).

(18) Paragraph (2) of section 9101 of title 31, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(K) The Federal Savings and Loan Insurance Corporation.".

(19) Paragraph (3) of section 9101 of title 31, United States Code, is amended by striking out subparagraph (E).

(20) Section 714 of title 31, United States Code, is amended—

(A) by striking out "insured bank" each place such term appears and inserting in lieu thereof "insured depository institution";

(B) by striking out "bank holding company" each place such term appears and inserting in lieu thereof "depository institution holding company"; and

(C) by adding at the end thereof the following new subsection:

"(e) DEFINITIONS.—For purposes of this section—

"(1) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' means—

"(A) any insured bank (within the meaning given to such term by section 3(h) of the Federal Deposit Insurance Act),

"(B) any insured institution (within the meaning given to such term by section 401(a) of the National Housing Act), and

"(C) any insured credit union (within the meaning given to such term by section 101(7) of the Federal Credit Union Act).

"(2) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term 'depository institution holding company' means—

"(A) any bank holding company (within the meaning given to such term by section 2(a)(1) of the Bank Holding Company Act of 1956); and

"(B) any savings and loan holding company (within the meaning given to such term by section 408(1)(D) of the National Housing Act).".

(21) Section 5240 of the Revised Statutes (12 U.S.C. 481 et seq.) (relating to bank examinations) is amended—

(A) in the 2nd sentence of the 2nd paragraph (12 U.S.C. 481), by inserting "without review or the approval of the Secretary of the Treasury" after "Comptroller of the Currency";

(B) in the 2nd sentence of the 3rd paragraph (12 U.S.C. 482), by inserting "without review or the approval of the Secretary of the Treasury" after "Comptroller of the Currency"; and

(C) by inserting after the 3rd paragraph (12 U.S.C. 482) the following new paragraph:

"No authority of the Comptroller of the Currency to spend or otherwise obligate any amount received pursuant to any assessment under this section or any other income of the Comptroller may be treated as budget authority, spending authority, credit authority, or as authority to obligate funds of the United States or be subject to any sequestration order or other reduction under the Balanced Budget and Emergency Deficit Control Act of 1985 or any other Act which was enacted before the date of the enactment of the Depository Institution Examination Improvement Act of 1986.".

(22) Section 328 of the Revised Statutes (12 U.S.C. 8) is amended by striking out ", to be appointed and classified by the Secretary of the Treasury,".

SEC. 4. CONSOLIDATION OF FEDERAL EXAMINER TRAINING.

(a) CONGRESSIONAL POLICY.—It is hereby declared to be the policy of the Congress to consolidate all programs for training Federal examiners (and examiners of such States as may participate in such programs) which may otherwise be conducted by the Federal depository institutions regulatory agencies in one school established and conducted by the Council under section 1006(d) of the Federal Depository Institutions Examination Council Act of 1978 (as redesignated by the amendment made by section 7(b)(1)) to the extent such consolidation is feasible and practicable and in a manner which would—

(1) provide a uniform, high quality education for the Federal examiners employed by each Federal depository institutions regulatory agency; and

(2) make money available for employing additional examiners by eliminating the current duplication of training programs conducted by the Federal depository institutions regulatory agencies in an efficient and cost-effective manner.

(b) PROPOSAL FOR IMPLEMENTING CONSOLIDATED TRAINING PROGRAM.—The Council shall develop a proposal for implementing the policy of the Congress with respect to the consolidation of examiner training in one school to the extent such consolidation is feasible and practicable. In developing the proposal, the Council shall consider—

(1) whether a standard curriculum would be sufficient for training all Federal examiners or whether particular training needs exist with respect to each Federal depository institutions regulatory agency which would require additional courses for examiners employed by each such agency;

(2) whether the faculty should consist primarily of professional educators or professional examiners and the extent to which both educators and examiners should be appointed to the faculty;

(3) the manner in which the school would be administered as a consolidated training institution; and

(4) the manner in which the cost of operating the school would be distributed among the Federal depository institutions regulatory agencies.

(c) REPORT TO CONGRESS.—

(1) REPORT REQUIRED.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Council shall submit a report of the Council's proposal under subsection (b) to the Committee on Banking, Finance and Urban Affairs and the Committee on Post Office and Civil Service of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Governmental Affairs of the Senate.

(2) CONTENTS OF REPORT.—The report shall contain—

(A) a detailed statement of the findings and conclusions of the Council with respect to the implementation of congressional policy on the consolidation of examiner training in one school;

(B) the Council's recommendations for such legislation as it considers necessary or appropriate in order to consolidate such training in the manner proposed by the Council; and

(C) the amount of money which the Council estimates each Federal depository institutions regulatory agency would save as a result of consolidating the training of Federal examiners in one school.

SEC. 5. GRADUATE DEGREE PROGRAM IN FINANCIAL MANAGEMENT ANALYSIS.

(a) IN GENERAL.—The Council shall study the feasibility of establishing a graduate degree program in financial management analysis for officers and employees of Federal depository institutions regulatory agencies and State depository institutions supervisory agencies. In studying the feasibility of establishing such program, the Council shall—

(1) estimate the cost of establishing and operating such a program;

(2) consider whether—

(A) such program should be conducted directly by the Council or by a Federal depository institutions regulatory agency;

(B) such program should be conducted in conjunction with the training school referred to in section 4(a); or

(C) the Council should enter into an agreement with a private or State institution of higher education to conduct the program and issue any degree established under such program either in conjunction with a similar degree program already conducted by such institution or as a separate program; and

(3) consider what minimum requirements should be established for the admission of any individual into the program, including prerequisites relating to the undergraduate or other education of such individual, the experience such individual has had in the field of depository institution examination at the time of such admission, and the length of service with the Federal depository institutions regulatory agency or State depository institutions supervisory agency by which such individual is employed at the time of such admission.

(b) REPORT TO CONGRESS.—

(1) REPORT REQUIRED.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the Council shall submit a report of the Council's study of the feasibility of establishing a graduate degree program in financial management analysis to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) CONTENTS OF REPORT.—The report required under subsection (a) shall contain—

(A) a detailed statement of the findings and conclusions of the Council with respect to such study;

(B) the Council's recommendations for such legislation as it considers necessary or appropriate in order to establish such program in the manner proposed by the Council; and

(C) the estimated cost of establishing and conducting the program in the manner proposed by the Council.

(3) AGENCY APPROVAL.—In addition to the information described in paragraph (2), the report required under paragraph (1) shall indicate whether or not each Federal depository institutions regulatory agency has approved the proposal of the Council contained in such report and, if any such agency has not, the reasons given by such agency for any failure to approve (to the extent the Council has such information).

SEC. 6. MINIMUM REQUIREMENTS FOR STATE EXAMINATIONS OF FEDERALLY REGULATED OR INSURED INSTITUTIONS.

(a) CONGRESSIONAL PURPOSE.—It is the purpose of this section—

(1) to establish a uniform procedure for reviewing, with the consent of the States, the adequacy of State examinations of depository institutions which are also subject to examinations by Federal depository institutions regulatory agencies;

(2) to prohibit Federal depository institutions regulatory agencies from relying on any such State examinations in lieu of conducting their own examinations of such depository institutions if the State examinations are deemed inadequate pursuant to such review or if the State refuses to allow such review to be made; and

(3) to require Federal depository institutions regulatory agencies to accept State examinations of financially sound depository institutions if such State examinations are determined to be adequate pursuant to such review.

(b) ESTABLISHMENT OF MINIMUM REQUIREMENTS.—

(1) IN GENERAL.—In consultation with the liaison committee established by the Council pursuant to section 1007 of the Federal Depository Institutions Examination Council Act of 1978 (as redesignated by the amendment made by section 7(b)(1)), the Council shall establish minimum requirements for examinations of depository institutions by State depository institution supervisory agencies in order for any such examination of any depository institution to be deemed adequate for purposes of Federal law.

(2) CRITERIA FOR REVIEW.—In establishing the minimum requirements described in paragraph (1) for any State depository institution supervisory agency, the Council shall establish standards relating to—

(A) the frequency of examinations of depository institutions;

(B) the quality and thoroughness of such examinations;

(C) the standards and procedures for classifying loans and supervising lending practices;

(D) the ratio between the number of examiners employed by any State depository institution supervisory agency and the number of depository institutions examined by such examiners (taking into account the type of depository institution examined by such examiners);

(E) the education, training, and experience of examiners, supervisors, and other individuals employed by such agency who are involved in conducting or supervising such examinations; and

(F) such other conditions and procedures as the Council may determine to be appropriate.

(3) LIMITATION.—The requirements established under paragraph (1) for any State depository institution supervisory agency, as in effect at any time, may not exceed the minimum standards in effect for Federal examiners at such time.

(c) REQUEST FOR PERMISSION TO REVIEW.—At least once during each calendar year, the Council shall request each State depository institution supervisory agency which conducts examinations of depository institutions within such State which are also subject to examinations by a Federal depository institutions regulatory agency to allow the Council to conduct a review, in accordance with subsection (d), of the administration of such examinations by such State agency.

(d) REVIEW.—

(1) IN GENERAL.—If, pursuant to a request under subsection (c), the Council receives permission to review the administration of examinations by a State depository institution supervisory agency, the Council shall determine whether such agency meets the minimum requirements established under subsection (b) in administering such examinations.

(2) PROCEDURES.—The Council shall prescribe by regulations the procedures for conducting any review under paragraph (1).

(e) NOTIFICATION OF FAILURE TO MEET MINIMUM REQUIREMENT.—

(1) IN GENERAL.—If, at any time, the Council determines a State depository institution supervisory agency does not meet the minimum requirements established under subsection (b), the Council shall notify the head of such agency of such determination. Such determination and notice shall not be made public by the Council.

(2) DETAILED EXPLANATION.—Any notice under this subsection shall be accompanied by a report containing a detailed explanation of the circumstances by reason of which the agency was found not to be in compliance with the requirements established under subsection (b).

(3) PERIOD FOR REMEDYING THE DEFICIENCY.—Upon making a determination described in paragraph (1), the Council shall prescribe, on the basis of all the circumstances of the case, the period of time it will provide to the agency to cure the deficiency giving rise to such determination before taking any action under subsection (f). The period so prescribed may be extended by the Council in its discretion, except that the period so prescribed in any case, including any such extensions, shall not exceed 3 years.

(f) NOTICE TO FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES.—If any State depository institution supervisory agency—

(1) refuses any request by the Council under subsection (c) for permission to review the administration of examinations by such agency, or

(2) fails to remedy any deficiency giving rise to a determination under subsection (e)(1) within the period of time allowed by the Council under subsection (e)(3),

the Council shall notify each Federal depository institutions regulatory agency of such refusal or failure to comply. If examinations of depository institutions which are subject to examination by such agency are actually conducted by regional banks, branches, or other offices of such agency, the agency shall notify each such bank, branch, or other office of any notice received by such agency under the preceding sentence.

(g) SOLE RELIANCE ON STATE EXAMINATIONS PROHIBITED WHILE NOTICE IS IN EFFECT.—While any notice under subsection (f) with respect to any State depository institution supervisory agency is in effect, no Federal depository institutions regulatory agency and no regional bank, branch, or other office of any such agency may rely on any report of examination by such State agency in lieu of conducting examinations otherwise required under any Federal law or any regulation prescribed by such Federal agency.

(h) SPECIAL RULES.—

(1) SEPARATE REVIEW AND NOTICE.—If a State depository institution supervisory agency has separate branches or departments each of which have authority to conduct examinations, the Council may—

(A) review each such department or branch separately under subsection (d); and

(B) limit the scope of any notice issued under subsection (f) to the department or branch in which the deficiency has been found which resulted in the notice.

(2) DEFICIENCIES RELATING TO EXAMINATIONS OF PARTICULAR TYPES OF INSTITUTIONS.—If a State depository institution supervisory agency has authority to examine more than one type of depository institution and the Council's determination of a deficiency which results in a notice under subsection (f) relates to the State agency's capacity to conduct examinations of a particular type of depository institution, the Council may limit the scope of the notice to examinations of that type of depository institution.

(i) ACCEPTANCE OF STATE EXAMINATIONS REQUIRED UNDER CERTAIN CIRCUMSTANCES.—

(1) INSURED BANKS.—Section 7(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(2)) is amended by adding at the end thereof the following new subparagraph:

"(C) REQUIRED ACCEPTANCE OF STATE EXAMINATIONS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Corporation shall accept any report of examination made by a commission, board, or authority described in subparagraph (A) in connection with an examination of a financially sound insured bank if, in the most recent review of such commission, board, or authority by the Depository Institutions Examination Council under section 6(d) of the Depository Institution Examination Improvement Act of 1986, the Council determined that such commission, *board, or authority met the minimum requirements established under section 6(b) of such Act.*

"(ii) NOTICE OF REASON FOR FAILURE TO ACCEPT.—The Corporation may refuse to accept any report of examination described in clause (i) if—

"(I) the Corporation determines that the commission, board, or authority which made the report fails to meet a requirement established under section 6(b) of the Depository Institution Examination Improvement Act of 1986; and

"(II) the Corporation notifies the commission, board, or authority of such refusal and a detailed explanation of the reason for such refusal.

"(iii) FINANCIALLY SOUND INSURED BANK.—For purposes of this subparagraph, the term 'financially sound insured bank' means an insured bank with a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System or an equivalent rating under a comparable rating system.".

(2) MEMBERS OF, AND NONMEMBER BORROWERS FROM, HOME LOAN BANKS.—Section 8 of the Federal Home Loan Bank Act (12 U.S.C. 1428) is amended—

(A) by striking out "SEC. 8. The" and inserting in lieu thereof "SEC. 8. (a) IN GENERAL.—The"; and

(B) by adding at the end thereof the following new subsection:

"(b) REQUIRED ACCEPTANCE OF STATE EXAMINATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Board shall accept any report of examination made by a commission, board, or authority having supervision of State-chartered member or nonmember borrowers under this Act in connection with an examination of a financially sound borrower if, in the most recent review of such commission, board, or authority by the Depository Institutions Examination Council under section 6(d) of the Depository Institution Examination Improvement Act of 1986, the Council determined that such commission, board, or authority met the minimum requirements established under section 6(b) of such Act.

"(2) NOTICE OF REASON FOR FAILURE TO ACCEPT.—The Board may refuse to accept any report of examination described in paragraph (1) if—

"(A) the Board determines that the commission, board, or authority which made the report fails to meet a requirement established under section 6(b) of the Depository Institution Examination Improvement Act of 1986; and

"(B) the Board notifies the commission, board, or authority of such refusal and a detailed explanation of the reason for such refusal.

"(3) FINANCIALLY SOUND BORROWER.—For purposes of this subsection, the term 'financially sound borrower' means a member or nonmember borrower under this Act with a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System or an equivalent rating under a comparable rating system.".

(3) INSURED THRIFTS.—Subsection (m) of section 407 of the National Housing Act (12 U.S.C. 1730(m)) is amended by adding at the end thereof the following new paragraph:

"(5) REQUIRED ACCEPTANCE OF STATE EXAMINATIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the Corporation (or the Federal Home Loan Bank Board on behalf of the Corporation) shall accept any report of examination made by a commission, board, or authority having supervision of State-chartered insured institutions in connection with an examination of a financially sound insured institution if, in the most recent review of such commission, board, or authority by the Depository Institutions Examination Council under section 6(d) of the Depository Institution Examination Improvement Act of 1986, the Council determined that such commission, board, or authority met the minimum requirements established under section 6(b) of such Act.

"(B) NOTICE OF REASON FOR FAILURE TO ACCEPT.—The Corporation (or such Bank Board) may refuse to accept any report of examination described in subparagraph (A) if—

"(i) the Corporation (or the Board) determines that the commission, board, or authority which made the report fails to meet a requirement established under section 6(b) of the Depository Institution Examination Improvement Act of 1986; and

"(ii) the Corporation (or the Board) notifies the commission, board, or authority of such refusal and a detailed explanation of the reason for such refusal.

"(C) FINANCIALLY SOUND INSURED INSTITUTION.—For purposes of this paragraph, the term 'financially sound insured institution' means an insured institution with a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System or an equivalent rating under a comparable rating system.".

(4) INSURED CREDIT UNIONS.—Section 204 of the Federal Credit Union Act (12 U.S.C. 1784) is amended by adding at the end thereof the following new subsection:

"(e) REQUIRED ACCEPTANCE OF STATE EXAMINATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Board shall accept any report of examination made by a commission, board, or authority described in subsection (d) in connection with an examination of a financially sound insured credit union if, in the most recent review of such commission, board, or authority by the Depository Institutions Examination Council under section 6(d) of the Depository Institution Examination Improvement Act of 1986, the Council determined that such commission, board, or authority met the minimum requirements established under section 6(b) of such Act.

"(2) NOTICE OF REASON FOR FAILURE TO ACCEPT.—The Board may refuse to accept any report of examination described in paragraph (1) if—

"(A) the Board determines that the commission, board, or authority which made the report fails to meet a requirement established under section 6(b) of the Depository Institution Examination Improvement Act of 1986; and

"(B) the Board notifies the commission, board, or authority of such refusal and a detailed explanation of the reason for such refusal.

"(3) FINANCIALLY SOUND INSURED CREDIT UNION.—For purposes of this subsection, the term 'financially sound insured credit union' means an insured credit union with a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System or an equivalent rating under a comparable rating system.".

(j) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The eighth paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 326) is amended by adding at the end thereof the following new sentence: "The directors shall not approve any examination by any State authority while any notice under section 6(f) of the Depository Institution Examination Improvement Act of 1986 is in effect with respect to such authority.".

(2) The second sentence of section 7(a)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(2)(A)) is amended by inserting "(other than any such commission, board, or authority with respect to which a notice under section 6(f) of the Depository Institution Examination Improvement Act of 1986 is in effect)" after "authority" the first place such term appears in such sentence.

(3) The 2d to last sentence of section 8(a) of the Federal Home Loan Bank Act (12 U.S.C. 1428) (as amended by subsection (i)(2)) is amended by inserting "(and any State examination with respect to which a notice under section 6(f) of the Depository Institution Examination Improvement Act of 1986 is in effect shall be deemed inadequate)" after "Home Loan Banks".

(4) Subsection (d) of section 204 of the Federal Credit Union Act (12 U.S.C. 1784(d)) is amended by inserting "(other than any such commission, board, or authority with respect to which a notice under section 6(f) of the Depository Institution Examination Improvement Act of 1986 is in effect)" after "credit union".

(k) DELAYED EFFECTIVE DATE.—Subsection (g) and the amendments made by subsections (i) and (j) shall take effect at the end of the 3-year period beginning on the date of enactment of this Act.

SEC. 7. REDESIGNATION OF EXAMINATION COUNCIL AS DEPOSITORY INSTITUTIONS EXAMINATION COUNCIL.

(a) IN GENERAL.—The Financial Institutions Examination Council established by section 1004 of the Federal Financial Institutions Examination Council Act of 1978 is hereby redesignated as the "Depository Institutions Examination Council". Any reference in any law, regulation, document, record, or other paper of the United States to the Financial Institutions Examination Council shall be deemed to be a reference to the Depository Institutions Examination Council.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 1001 of Federal Financial Institutions Examination Council Act of 1978 is amended to read as follows:

"SEC. 1001. SHORT TITLE.

"This title may be cited as the 'Federal Depository Institutions Examination Council Act of 1978'.".

(2) The Federal Depository Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) (as redesignated by paragraph (1)) is amended—

(A) by striking out "Financial Institutions" each place such term appears in such Act and inserting in lieu thereof "Depository Institutions", and

(B) by striking out "financial institutions" each place such term appears in such Act and inserting in lieu thereof "depository institutions".

(3) The heading of title X of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 is amended by striking out "FINANCIAL" and inserting in lieu thereof "DEPOSITORY".

(4) Paragraph (3) of section 1003 of the Federal Depository Institutions Examination Council Act of 1978 (as redesignated by

paragraph (1)) is amended to read as follows:

"(3) the term 'depository institution' has the meaning given to such term by section 19(b)(1)(A) of the Federal Reserve Act.".

(5) Sections 304(f) and 310(a) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(f) and 2809) are each amended by striking out "Financial Institutions" and inserting in lieu thereof "Depository Institutions".

(6) Subsection (e) of section 1112 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(e)) is amended by striking out "Financial Institutions" and inserting in lieu thereof "Depository Institutions".

(7) Sections 714(a) and 718(a) of title 31, United States Code, are each amended by striking out "Financial Institutions" and inserting in lieu thereof "Depository Institutions".

SEC. 8. DEMONSTRATION PROJECT RELATING TO PERSONNEL MANAGEMENT.

(a) Definitions.—For purposes of this section—

(1) Agency.—The term "agency" means—

(A) the Office of the Comptroller of the Currency;

(B) the National Credit Union Administration;

(C) the Federal Home Loan Bank Board;

(D) the Federal Savings and Loan Insurance Corporation;

(E) the Board of Governors of the Federal Reserve System, if it provides written notice within 90 days after the date of the enactment of this Act of its intention to participate in the demonstration project under this section; and

(F) the Federal Deposit Insurance Corporation, if it provides written notice within 90 days after the date of the enactment of this Act of its intention to participate in the demonstration project under this section.

(2) Compensation.—The term "compensation" means the total value of the various forms of compensation provided, including—

(A) basic pay;

(B) bonuses;

(C) allowances;

(D) retirement benefits;

(E) health insurance benefits;

(F) life insurance benefits; and

(G) leave benefits.

(b) General Requirements.—

(1) Relation to section 4703 of title 5.—There shall be conducted under this section a demonstration project which—

(A) except as otherwise provided in this section, shall be conducted in accordance with section 4703 of title 5, United States Code; and

(B) shall, for purposes of subsection (d)(2) of such section, be counted as a single project.

(2) Project design and implementation.—The Office of Personnel Management and each agency shall jointly determine the terms and conditions under which such agency will participate in the demonstration project. In carrying out this section, the head of each agency shall be responsible for the conduct of the demonstration project with respect to such agency.

(3) Positions covered.—Subject to subsections (f) and (g) of section 4703 of title 5, United States Code, the demonstration project shall cover—

(A) any position within an agency which would otherwise be subject to—

(i) subchapter III of chapter 53 of title 5, United States Code, relating to the General Schedule;

(ii) subchapter VIII of chapter 53 of title 5, United States Code, relating to the Senior Executive Service; or

(iii) chapter 54 of title 5, United States Code, relating to the Performance Management and Recognition System; and

(B) in the case of an agency, or any unit of an agency, not covered by one of the pay systems referred to in subparagraph (A), any position within such agency, or within such unit, which would otherwise be subject to a pay system comparable to one of the pay systems referred to in subparagraph (A), as determined by the head of the agency involved. Notwithstanding any other provision of this section, the demonstration project shall not cover positions within the Office of the Comptroller of the Currency which are not under the provisions cited in subparagraph (A)(ii) unless such Office provides written notice within 90 days after the date of the enactment of this Act of its intention to include such positions under the demonstration project.

(c) Specific Requirements.—Under the demonstration project, the head of each agency shall provide that—

(1) the rate of basic pay for a position may not be less than the minimum rate of basic pay, nor more than the maximum rate of basic pay, payable for the pay band (as referred to in paragraph (3)) within which such position has been placed;

(2) the minimum and maximum rates of basic pay for each pay band shall be adjusted at the times, and by the amounts, provided for under subsection (d);

(3) positions shall be classified under a system using pay bands which shall be established by combining or otherwise modifying the classes, grades, or other units which would otherwise be used in classifying the positions involved;

(4) employees shall be evaluated under a performance appraisal system which—

(A) uses peer comparison and ranking wherever appropriate; and

(B) affords appeal rights comparable to those which would otherwise be available with respect to the position involved;

(5)(A) the rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee; and

(B) subject to subsection (d)(3)(A)(i), the adjustment under subparagraph (A) in any year in the case of any employee whose performance is rated at the fully successful level or higher shall be at least the percentage recommended under subsection (d)(1)(B) for such year;

(6) appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided;

(7) performance-recognition bonuses, and recruitment and retention allowances, shall be awarded in appropriate circumstances (but shall not be considered a part of basic pay);

(8) there shall be an employee development program which includes provisions under which employees may, in appropriate circumstances, be granted sabbaticals, the terms and conditions of which shall be consistent with those applicable for members of the Senior Executive Service under section 3396(c) of title 5, United States Code (excluding paragraph (2)(B) thereof);

(9) payment of travel expenses shall be provided for personnel to their first post of duty in the same manner as is authorized for members of the Senior Executive Service under section 5723 of title 5, United States Code, at the discretion of the head of the agency involved;

(10) differentials (which shall not be considered a part of basic pay except for purposes of chapters 81 and 87 of title 5, United States Code) shall, at the discretion of the head of the agency involved, be provided to compensate for regional differences in costs of living; and

(11) performance awards under section 5384 of title 5, United States Code, may be paid without regard to the provisions of subsection (b)(3) of such section.

(d) Compensation Comparability.—

(1) Findings and recommendations required.—The head of each agency shall, by contract or otherwise, provide for the preparation of reports which, based on appropriate surveys—

(A) shall include findings as to—

(i) the extent to which, as of the commencement of the demonstration project, there exists any deficiency in the overall average level of compensation provided with respect to positions within such agency which are under the demonstration project, as compared to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(ii) with respect to each year thereafter, any net increase occurring during such year in the extent of the deficiency in the overall average level of compensation provided with respect to positions within such agency which are under the demonstration project, as compared to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(B) shall recommend a single percentage by which basic pay for all positions within such agency which are under the demonstration project must be increased so that, when considered in conjunction with the other forms of compensation generally provided, any net increase determined under subparagraph (A)(ii) will be eliminated.

(2) Adjustment of rates.—Whenever an agency head receives a recommendation under paragraph (1)(B), that agency head—

(A) shall increase the minimum and maximum rates of basic pay for each pay band by the percentage recommended; and

(B) if and to the extent that funds are available for that purpose, may further increase those minimum and maximum rates to eliminate any part of any remaining deficiency, as originally determined under paragraph (1)(A)(i).

(3) Limitations on amounts payable.—

(A) In general.—Notwithstanding any other provision of this section—

(i) the maximum rate of basic pay payable under any pay band may not exceed the rate of basic pay payable for level IV of the Executive Schedule; and

(ii) the amount of basic pay, bonuses, and allowances paid during any fiscal year to any employee participating in the demonstration project may not, in the aggregate, exceed the annual rate of basic pay payable for level I of the Executive Schedule.

(B) Rules for applying limitation.—

(i) Payment of amounts previously withheld.—Any amount which is not paid to an employee during a fiscal year because of the limitation under subparagraph (A)(ii) shall be paid in a lump sum at the beginning of the following fiscal year.

(ii) Amounts to be taken into account.—Any amount paid under this subparagraph during a fiscal year shall be taken into account for purposes of applying the limitation under subparagraph (A)(ii) with respect to such fiscal year.

(4) TOTAL COST.—Notwithstanding any other provision of this section, the demonstration project shall be conducted in such a way so that, with respect to the 12-month period beginning on October 1, 1986, the total cost to the Government relating to providing compensation to participating employees shall not exceed the total cost which would have resulted if this section had not been enacted.

(5) PLACEMENT IN A LOWER BAND.—

(A) IN GENERAL.—If the minimum rate of basic pay for a pay band, after an increase under paragraph (2)(A), exceeds the rate of basic pay payable to an employee whose position would otherwise be within such pay band, the employee's position may, notwithstanding subsection (c)(1), be placed in the next lower pay band.

(B) APPEALABILITY.—Placement of a position in a lower pay band under subparagraph (A) shall not be considered a reduction in grade or pay for purposes of subchapter II of chapter 75 of title 5, United States Code, or any comparable provision of law.

(e) CONVERSION RULES.—

(1) REDUCTIONS PROHIBITED.—The rate of basic pay for an employee serving in a position at the time it is converted to a position covered by the demonstration project may not be reduced by reason of the establishment of such project.

(2) PRO RATA INCREASES.—

(A) IN GENERAL.—Each employee referred to in paragraph (1) shall be paid—

(i) in the case of an employee serving in a position under the General Schedule on the date the position becomes covered by the demonstration project, a lump-sum, pro rata share of the equivalent of any within-grade increase which would have been due the employee under section 5335 of title 5, United States Code, computed as provided in subparagraph (B),

(ii) in the case of an employee serving in a position subject to chapter 54 of title 5, United States Code, on such date, a lump-sum, pro rata share of the equivalent of the employee's merit increase which would have been due under such chapter, computed as provided in subparagraph (B), and

(iii) in the case of an employee serving in a position referred to in subsection (b)(3)(B), on such date, a lump-sum, pro rata share of any increase comparable to one described in clause (i) or (ii), computed as provided in subparagraph (B),

taking into account the performance requirements applicable to such increase.

(B) ADMINISTRATIVE RULE.—For purposes of subparagraph (A), the pro rata share of an equivalent increase referred to in such subparagraph shall be computed through the day before the date referred to in such subparagraph.

(f) REPORTS AND EVALUATIONS.—

(1) RESPONSIBILITIES OF CONTRACTOR.—

(A) EVALUATIONS.—In carrying out section 4703(h) of title 5, United States Code, with respect to the demonstration project, the Office of Personnel Management shall provide that such project will be evaluated on an annual basis by a contractor. Such contractor shall be especially qualified to perform the evaluation based on its expertise in matters relating to personnel management and compensation.

(B) REPORTS.—The contractor shall report its findings to the Office in writing. After considering the report, the Office shall transmit a copy of the report, together with any comments of the Office and any comments submitted by any agency, to—

(i) the Committee on Banking, Finance and Urban Affairs, and the Committee on Post Office and Civil Service, of the House of Representatives; and

(ii) the Committee on Banking, Housing, and Urban Affairs, and the Committee on Governmental Affairs, of the Senate.

(2) FINAL REPORT.—The Comptroller General shall, not later than 4 years after the date on which the demonstration project commences, submit to each of the committees referred to in paragraph (1)(B) a final report concerning such project. Such report shall include any recommendations for legislation or other action which the Comptroller General considers appropriate.

(g) CONTRACTS.—The authority to enter into any contract under this section may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(h) COMMENCEMENT DATE.—The demonstration project shall commence not later than January 1, 1988.

SEC. 9. DEFINITIONS.

For purposes of this Act—

(1) COUNCIL.—The term "Council" means the Depository Institutions Examination Council (as redesignated by section 7(a)).

(2) FEDERAL DEPOSITORY INSTITUTIONS REGULATORY AGENCIES.—The term "Federal depository institutions regulatory agencies" has the meaning given to such term by section 1003(1) of the Federal Depository Institutions Examination Council Act of 1978 (as redesignated by the amendment made by section 7(b)(1)), except that for purposes of sections 2, 3, and 5 such term also includes the Federal Savings and Loan Insurance Corporation.

(3) DEPOSITORY INSTITUTION.—The term "depository institution" has the meaning given to such term by section 19(b)(1)(A) of the Federal Reserve Act.

(4) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the meaning given to such term by section 1201(a) of the Higher Education Act of 1965.

(5) FEDERAL EXAMINER.—The term "Federal examiner" means any individual employed by a Federal depository institutions regulatory agency or a regional bank, branch, or other office of such agency whose duties involve the examination of depository institutions.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Rhode Island [Mr. ST GERMAIN] will be recognized for 20 minutes, and the gentleman from Ohio [Mr. WYLIE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Rhode Island [Mr. ST GERMAIN].

Mr. ST GERMAIN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, no Member of the House is more concerned about the safety and soundness of our banking system than I am. One of the measures I strongly supported was the establishment of the Federal Financial Institutions Examination Council in March 1979. Its purpose was to improve examiner resources and coordinate actions of our financial regulatory agencies. Six years after the inception of the Council, consolidation and improvement of examiner training has not progressed to any meaningful degree. Moreover, there have been no recommendations from the Council on how to assure through training, compensation, or organization that we have the best examiner corps we can obtain. I recognize the concerns that this bill raises in the minds of some Members. However, faced with an inactive Council, we as a committee, had no alternative but to adopt H.R. 4917, the Depository Institution Examination Improvement Act of 1986, to address the enormous supervision problems that are now facing our country.

H.R. 4917 provides for statutory changes in three critical areas:

First, a personnel management demonstration project is established to give the Federal depository regulatory agencies the flexibility to compensate examiners and other employees at levels closer to parity with the private sector. Because current Federal examiner compensation packages are so low relative to those for similar occupations in the private sector, the turnover rate among examiners is unacceptably high, leaving the agencies with only newer, less-trained, and less-experienced personnel. Implementation of this project will enable the agencies to attract and retain the highly qualified work force needed to examine and supervise depository institutions with growing loan quality problems and increasingly complex operations.

Second, authority is provided to study the feasibility of further consolidating Federal examiner training and establishing a graduate degree program in financial institution examination, and to further coordinate and align Federal and State depository institution examination standards and procedures. Use of this authority will result in better examiner training, reduced training expenses, and more efficient use of State and Federal examiner resources.

Third, budgetary and personnel constraints arising from certain fiscal, budgetary and appropriation requirements are eliminated for the Federal depository institution regulatory agencies. These agencies are specifically exempted from the sequestration requirements of the Balanced Budget and Emergency Deficit Control Act—the Gramm-Rudman-Hollings Act—the apportionment requirements of the Anti-Deficiency Act, and personnel hiring limitations imposed by the Office of Management and Budget or the Office of Personnel Management.

Mr. WYLIE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4917, the Depository Institutions Examination Act of 1986. It is my firm belief that the financial institution supervisory and regulatory agencies should be specifically exempt from Gramm-Rudman and the Anti-Deficiency Act. This is a strong statement, but I am fully prepared to support it.

The evidence is clear that there is higher turnover among bank examiners than among Federal Government employees as a group. The Comptroller of the Currency, the agency responsible for the regulation of approximately 5,000 national banks, has a turnover rate of about 14 percent, compared to a rate of about 3 percent for all of the Federal Government. Over 90 percent of these departing examiners move to the private sector, not to another regulatory agency. This turnover obviously increases costs and reduces the supply of experienced examiners.

The Comptroller of the Currency is not alone in this regard. The Washington Post ran an article on September 21 entitled "Bank Examiners Tread Water." The article focused on the fact that the list of problem banks is growing so fast that Federal banking examiners are overwhelmed by the workload. FDIC Chairman William Seidman is quoted as saying "Nationwide, nearly one-half of our examinations are over 2 years old * * * we're spread very thin. We don't have enough people to catch the problems."

A strong Federal bank and thrift examination system is essential to the safety and soundness of our Nation's financial system. If the Federal financial institution supervisory agencies are unable to retain highly trained and experienced professionals, our examination program will not provide the essential safety and soundness discipline needed to assure a sound financial system.

I believe H.R. 4917 addresses these safety and soundness concerns. The bill includes a number of provisions ranging from a confirmation of the independent status of the Federal regulatory agencies to the consolidation of examiner training programs. In addition the bill establishes a 5-year demonstration project, with annual review, to allow the agencies greater flexibility to adequately compensate employees.

Many may question, why should an exemption from Gramm-Rudman and the Anti-Deficiency Act be made for the financial institution regulators? Our committee debated this question extensively and concluded that we would be remiss if we subjected the Federal financial regulatory agencies—all of which operate with nontax, nonappropriated funds—to the same kind of deficit reduction as other Government programs which are funded at the direct expense of taxpayers. The funding for all three bank regulatory agencies comes from fees charged the banks they supervise, not from taxpayer dollars.

Mr. Speaker, H.R. 4917 was introduced in June 1986, with 39 original cosponsors from the House Banking Committee. In addition, the Senate Banking Committee favorably reported a measure in Agusut 1986 exempting the regulators from the apportionment authority of OMB under the Anti-Deficiency Act.

I strongly urge my colleagues to join me in supporting Representatives CARPER and LUDINE in their efforts to improve the financial institutions supervisory process. We can ill afford to subject the agencies which ensure the health of our banks and thrifts to sequestration or the OMB's apportionment procedures for contributions to budget savings which, in their case, are illusory since they are not operating with taxpayers' funds. If the agencies are hamstrung by arbitrary limitations on their expenses, they may not be able to take timely action to close or merge failing institutions or take other preventative supervisory actions. Mr. Speaker, we should remove any doubts regarding the agencies' ability to maintain close supervision over our depository institutions by specifically exempting them from Gramm-Rudman and OMB apportionment.

Mr. PARRIS. Mr. Speaker, will the gentleman yield?

Mr. WYLIE. I yield to the gentleman from Virginia.

Mr. PARRIS. I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of H.R. 4917.

Mr. ST GERMAIN. Mr. Speaker, I yield 5 minutes to the gentleman from Delaware [Mr. CARPER].

□ 1450

Mr. CARPER. Mr. Speaker, after more than a year of effort, I am pleased that we are considering H.R. 4917, the Depository Institution Examination Improvement Act of 1986, today. My colleague, Mr. LUNDINE, and I introduced an initial version of this legislation last October. On June 3, 1986, we introduced a refined version of the bill with 39 Banking Committee cosponsors. This new bill was the result of bipartisan effort on the part of the committee and extensive consultation with the depository institution regulators.

Safety and soundness are words we used to take for granted when they referred to our financial institutions. However, we have learned not to be so complacent. The media have made us painfully aware of the thrift crises in Ohio and Maryland and the record number of bank and thrift failures that have already taken place in this decade. My colleagues and I on the Banking Committee have devoted considerable time to the questions arising from the difficult times being endured by banks and thrifts. Of paramount importance is ensuring the strength of the Federal Savings and Loan Insurance Corporation [FSLIC], the Federal Deposit Insurance Corporation [FDIC] and the national credit union share insurance fund and taking appropriate actions that could lead to safety and soundness of federally insured and regulated institutions. That means protecting the Office of the Comptroller of the Currency [OCC], the Federal Home Loan Bank Board [FHLBB] and National Credit Union Administration [NCUA].

One common thread ran through the testimony of almost every agency and industry witness during hearings held by the Banking Committee: the quality of the examination and supervisory process must be improved. They all testified to the importance of improving the compensation and training of examiners in order to reduce turnover rates as a fundamental first step, regardless of what other changes may be made. The message is that we must have adequate numbers of examiners to ensure that our institutions do not take excessive risk. If institutional soundness is threatened, we want to step in and supervise it back to health, not wait until the only alternative is to fail the institution.

Our Nation's financial institutions have become more complex in their products and services, and this trend is undoubtedly going to continue as deregulation of the financial service industries goes forward. Unfortunately, however, State and Federal examiners are being overwhelmed by their ever-growing responsibility for supervising these institutions.

It is early detection followed by adequate supervision that is a key to lowering the number of bank and thrift failures. Early detection followed by adequate supervision is a key to lowering the number of bank and thrift failures. Without expert supervision, the result will be more liquidations and mergers which are extremely costly to the agencies.

The turnover rate among Federal and State examiners for all financial institutions is high, higher than the turnover rate for Government employees overall. For example, the FHLBB's turnover rate for the last 2 fiscal years was 27.2 percent and 20.2 percent, respectively, while the latest Government-wide turnover rates were 11.4 percent for fiscal year 1983 and 12.3 percent for fiscal year 1984. After a couple years of experience, many examiners are lured away by the private sector, where they receive immediate increases in compensation and are not required to do the extensive traveling that is required while working as an examiner for a Federal regulatory agency. When we consider that many agencies feel that an examiner needs a minimum of 4 to 5 years of experience before gaining enough longevity in the job, it is clear that the regulatory agencies are sometimes left with an inadequate pool of experienced examiners to do the kind of evaluation that is necessary to assess risk in today's complex institutions.

Our bill makes several important changes to enable the depository institution regulatory agencies to better examine and supervise the institutions for which they are responsible. There are several provisions that address training of examiners. A study would be conducted to determine if examiner training could be improved by consolidating the training done by the different agencies. A second study would assess the feasibility of establishing a graduate degree program in financial management analysis for experienced supervisors and examiners, in hopes that this would be an incentive for experienced personnel to remain in Federal service.

In order to provide more adequate compensation for examination and supervisory personnel, we have developed, in conjunction with Congresswoman OAKAR's Subcommittee on Compensation and Employee Benefits, a demonstration project that would give the agencies who are covered by the compensation sections of title 5 of the United States Code more flexibility to attract and retain experienced personnel. It is hoped that the agencies who already have the statutory authority to better compensate their personnel will move ahead and do so. The bill would also establish more adequate compensation for travel and living expenses for examiners on temporary duty assignments. Temporary assignment can last for a year or more, sometimes resulting in financial hardship for examiners.

The bill would provide for the establishment of minimum requirements for examinations of depository institutions by State supervisory agencies, if these institutions are federally insured. As this new procedure is developed by the Exam Council, we hope that they will build on agreements on examination standards and accreditation procedures already in existence between Federal and State regulators. Our goal is to have a high level of expertise on both the State and Federal levels, enabling the States to examine healthy institutions and leaving the Federal regulatory agencies free to devote their resources to troubled ones.

One of the special aspects of these agencies is that they are user-fee funded—their income derives from premiums and assessments, plus interest on their trust funds. They do not receive money from the U.S. Treasury. Yet, they have staffing and budgetary limitations as if they do receive appropriated funds. The bill would make changes that would free these agencies to establish their own budgetary and personnel needs. This is critical if the agencies are going to be able to do the kind of examination and supervision that is essential today. It is frightening to think that the OCC has more than 1,000 institutions on its current list of problem banks, while in 1980, there were 257 banks on that list. However, in 1980 the OCC had 2,035 field examiners, while on August 30, 1986, they had 1,713. Does it make sense to permit them fewer examiners when they have almost a fivefold increase in the number of problem banks to examine and supervise?

Today, we are considering another banking bill which would, among other things, recapitalize the FSLIC. I strongly endorse the need to strengthen the FSLIC. But, we are kidding ourselves if we think we will achieve anything by recapitalizing the fund and then forcing them to cut their staff.

In conclusion, let me pose the following questions to my colleagues:

At a time when parts of our country are awash in drug money, do we really want to further diminish the supervision of financial institutions and thus make the work of money launderers all the easier?

At a time when the closing of a handfull of thrifts in Maryland and Ohio, and the mere rumor of difficulty at a major American bank creates jitters on international currency markets, do we really want to use fewer resources to reduce that uneasiness?

At a time when there are more bank failures in this country than any time since the depression, do we really want fewer well-trained examiners?

At a time when there are more problem financial institutions throughout this country than at any time in my life, do we really want to reduce the frequency of examining those institutions?

I believe the answer to each of those questions is "No." An overwhelming majority of the Banking Committee believes the answer is "No."

The Federal and State financial regulators, and the institutions they regulate, believe the answer is "No."

If you, my colleagues also believe the answer to these questions is "No," I urge you to then vote yes and pass H.R. 4917.

Mr. McKINNEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I stand in support of this bill. I think the Committee on Banking, Finance and Urban Affairs has done a very good job.

These supervisory, regulatory agencies are paid for by funds other than those of the United States. They are, in fact, paid for by the very banks that they supervise and by the services they supervise.

At a time when the financial institutions of the country are not in the best shape they have ever been, and when the financial world is more complicated than it has ever been before under deregulation, it seems rather ludicrous to cut back on the regulatory and counseling ability of the Comptroller, the FDIC, and the FSLIC. We are aware in many other pieces of legislation of the problems of the FSLIC. We have also had many warnings from Mr. Seidman on the FDIC.

It seems to me that these regulatory agencies should be exempt from the Gramm-Rudman stipulations, exempt from sequestration and should, in fact, have the most experienced men in the regulatory agency rather than those people going to private industry at every turn.

Let me tell my colleagues something, Mr. Speaker. This is not only not costing the Federal Government any money, but in the long run it amazingly enough is saving the Federal Government money because the sooner banking regulators can check to see that banks are in severe trouble, the less they are going to cost us. The longer we wait until the crisis really builds, as we have seen in many other States, particularly in the Southwest and in the South, we wait for a disaster to hit, and then we pay for it. All banking legislation will be aimed away from that last minute savings which costs so much money.

So, Mr. Speaker, I hope everybody will vote for this bill. I think that it is absolutely vital. This is not part of the Federal Government that costs us any money and, in fact, Mr. Speaker, just on crime and drugs alone we are now moving so many banks, because of the shortage of regulators, to computer printouts, under testimony from the Comptroller of the Currency, he stated we could not possibly detect money laundering in any of these institutions.

So, I think there are three reasons: Government efficiency, expense, and the drug war that we ought to pass this piece of legislation.

Mr. ST GERMAIN. Mr. Speaker, I yield 4 minutes to the gentleman from New York [Mr. LUNDINE] a cosponsor of this legislation.

Mr. LUNDINE. Mr. Speaker, the consideration today of the Depository Institution Examination Improvement Act marks an important step toward improving the safety and soundness of our Nation's banking system. As you know, the impetus of this legislation, introduced by my colleague TOM CARPER and I, was the recognition that the existing system of bank examiner training and compensation is in many instances not sufficient to maintain an adequate pool of well-trained and highly qualified examiners and supervisors.

Without a sufficient number of experienced personnel, early detection of problems in a financial institution is extremely difficult. We can only guess at how many of the more serious problems which we have experienced in the past few years, including those of Penn Square and Continental Illinois, could have been avoided through more scrupulous examination.

The financial services industry is a rapidly changing, constantly growing one. Keeping up with these changes will present an increasing and constant challenge to Federal regulatory agencies in the months and years to come. It is imperative that those agencies charged with the responsibility of monitoring the condition of our Nation's financial institutions have the resources to do this job in a competent and efficient manner. The legislation we are considering provides for needed changes in the training and compensation of bank examiners. This is a crucial link in ensuring the safety and soundness of financial institutions.

To address the compensation and training problems that currently hinder the effectiveness of the Federal examination system, the legislation before us provides for changes in three critical areas:

First, a personnel management demonstration project is established to give the Federal depository regulatory agencies the flexibility to compensate examiners and other employees at levels closer to parity with the private sector. Because current Federal examiner compensation packages are so low relative to those for similar occupations in the private sector, the turnover rate among examiners is unacceptably high, leaving the agencies with only newer, less experienced personnel. Implementation of this project will enable the agencies to attract and retain the highly qualified work force needed to examine and oversee the many depository institutions that have loan quality problems and increasingly complex operations.

Second, authority is provided to study the feasibility of further consolidating Federal examiner training and establishing a graduate degree program in financial institution examination, and to further coordinate Federal and State examination procedures. Use of this authority will result in better examiner training, reduced training expenses, and more efficient use of State and Federal examiner resources.

Third, unnecessary, budgetary and personnel constraints arising from certain fiscal, budgetary, and appropriation requirements are eliminated for the Federal depository institution regulatory agencies. These agencies are specifically exempted from the sequestration requirements of Gramm-Rudman-Hollings, the apportionment requirements of the Anti-deficiency Act, and personnel hiring limitations imposed by OMB or OPM.

Mr. Speaker, exemption of the Federal bank and thrift regulatory agencies from the requirements of Gramm-Rudman was extensively debated during full committee markup of this legislation. Those opposed to the exemption argued that taking the agencies out of Gramm-Rudman increased the sequestration burden on the other agencies under the committee's jurisdiction, and that the regulatory agencies in question should, therefore, not be exempted. However, the exemption was retained: because savings resulting from the sequestration process will be returned to the depository institutions examined and supervised by the agencies rather than passed on to the Federal Government, inclusion of the agencies under the Deficit Control Act will not result in actual savings to the Government. Therefore, inclusion under Gramm-Rudman can be construed as improper.

With regard to this debate, it is the general view of the Banking Committee that removing the Federal agencies in question out from under the Deficit Control Act will enable them to more effectively deal with the rising number of problem institutions, and generally increase the stability of the banking system.

Mr. Speaker, I believe that this legislation represents real progress toward addressing some of the weaknesses in the safety and soundness of our Nation's banking system. While it is not an answer to all of the problems which plague our financial system, it is a strong beginning.

□ 1500

Mr. WYLIE. Mr Speaker, I yield 2 minutes to the gentleman from Pennsylvania [Mr. RIDGE].

Mr. RIDGE. Mr. Speaker, I rise in strong support of H.R. 4917 and commend my colleagues and friends from Delaware and New York for their initiative and effort. The bill addresses a recurring and significant economic problem in our country today, that of an increasing number of failures of financial institutions. The possibility exists that a greater number will fail next year. Simultaneously there are increasing numbers of banks, thrift institutions, and other depository institutions that have been identified by Federal regulators as troubled.

This bill will make our regulatory framework more responsive. Problem institutions will be identified sooner and corrective actions taken before the institution fails. This legislation also sets minimum standards for State bank regulators. When these standards are met, the examination reports made by the State regulators will be accepted by the Federal Reserve and the FDIC for State chartered institutions. This will be beneficial in two ways. First, the minimum standards, combined with the accreditation program already maintained by the conference of State bank supervisors, will act to strengthen the State bank regulators. Second, by accepting the examination reports for healthy institutions it frees the resources of the FDIC to concentrate on the troubled institutions.

This legislation will not solve the financial problems faced by financial institutions. However, it will improve the competency of both the Federal and the State bank examiners. Better training for the Federal examiners and incentives for retentions of examiners are provided. Often once a Federal bank examiner is completely trained and thoroughly competent, he or she is hired by a financial institution. Better hours, less time away from home, and higher pay combine to lure the examiner into the private sector. Demonstration projects to assist the Government in developing incentives for retention of bank examiners are provided and necessary.

This bill also provides for greater training for the Federal bank examiners. Congress needs the benefit of the required evaluation of the feasibility of combining all of the Federal examination training programs. In addition, a graduate training program in financial management is to be studied. After these studies are completed, improved training programs will be established.

State bank examiners are strengthened by having the minimum standards provision in the bill to have their examination reports accepted by the Federal regulators. This means that training requirements can be incorporated in the minimum standards. In addition, the CSBS Accreditation Program itself requires that State regulators identify the strengths and weaknesses of their programs. As a result of this process, a list of several criteria have been developed that need to be included in their examinations of State chartered institutions. The accreditation programs combined with the minimum standards provisions in H.R. 4917 will help to improve the quality of State bank examiners.

By improving our State and Federal bank examiners, it will be possible in the future to identify troubled institutions earlier so that corrective action can be taken sooner. I urge passage of this important legislation.

Mr. ST GERMAIN. Mr. Speaker, I yield 2½ minutes to the gentleman from Massachusetts [Mr. BOLAND].

Mr. BOLAND. Mr. Speaker, I rise in opposition to this bill. Just one small voice registering opposition to a bill, which I think is not dangerous in the sense, but a very important one from many points of view. It has already been explained by all of those who are supporters of it.

My understanding is that the Banking Committee supports it unanimously. That is fine. But here we are in the closing days of this session on the suspension calender. This is an important piece of legislation; everybody says it is, and I agree with that.

One of the reasons I oppose it is that since the Federal Home Loan Bank Board was created years ago, the administrative expenses of the Board have always come under the jurisdiction of the Committee on Appropriations. The Appropriations Committee has, from year to year, provided practically all of the funds that the Federal Home Loan Bank Board has requested, and has been flexible in meeting whatever problems the Bank Board has brought to us.

We think, or at least my judgment is, that taking the administrative expense surveyance out of the Appropriations Committee is a step in the wrong direction. It relinquishes the critical piece of Congress' ongoing annual oversight of the Board.

Oh, I know that this bill is going to get by; maybe very few votes will be cast against it. Some of the changes that are proposed in the bill make sense and have wide support. For example, many believe that higher compensation and travel expenses are essential for these agencies to attract and maintain a high caliber examination work force. We have said that all along, and we made provisions for it over the years, with no problems at all from the chairman of the Board or any of the members of the Board.

Many people also believe that there is no reason the Bank Board or the Credit Union Administration should be subject to Gramm-Rudman across-the-board reductions. And I think I can agree with that.

However, the bill does raise serious problems—because it takes such a drastic approach and goes so far. In the name of giving financial institutions additional flexibility, this bill completely removes them from OMB and congressional controls, including all oversight by the Appropriations Committee.

We have discussed this with the Budget Committee. While, it appears that nothing in H.R. 4917 is in direct violation of the Budget Act, this bill runs directly counter to the philosophy of a unified budget with appropriate controls by OMB and Congress. While our review of these agencies is normally pretty much pro forma, this oversight function is important from the standpoint of a balance of powers. As one small example of some of the changes this could prompt, we earmark $800,000 of the Bank Board's fiscal year 1987 funds for State examiner training—as one means of strengthening the overall examination system to reduce S&L failures. The administration and OMB are not in favor of that earmarking, so this bill would likely result in reduced funds for State examiner training.

On the basis of the facts, Mr. Speaker, this bill is an important bill; it is a far-reaching bill; and all of the Members ought to have the right to get a close look at it and whether or not there ought to be amendments to it, I think that is important.

Since the changes this bill would make are drastic and irreversible, it might be prudent to take a closer look at alternative approaches, which could remedy the specific problems and at the same maintain appropriate congressional and OMB oversight. I think the Banking Committee ought to take it back, get another look at it. We can wait another few months to be sure that in whatever we do here we are moving in the right direction and we are helping this particular industry that has had so many problems.

I know the committee is trying to correct them; I have no problem with that. My problem is that this takes jurisdiction completely away from the Appropriations Committee and the Congress for the kind of surveyance that ought to be effected over the administrative expenses of the Federal Home Loan Bank Board, the FSLIC, and the National Credit Union Administration.

Mr. WYLIE. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. Wortley].

Mr. WORTLEY. Mr. Speaker, the act before us is the product of extensive hard work by my colleagues, Mr. Carper and Mr. Lundine, and I wish to compliment them for their ongoing efforts to make this legislation law. As a member of the Banking Committee, I am proud to be an original cosponsor of the bill, and I urge my colleagues to lend their support.

One of the crucial issues currently facing financial institutions of this country is that of safety and soundness. It is no secret that a large number of banks are expected to fail this year. And there is the very troubled thrift industry. Chairman Ed Gray of the Federal Home Loan Bank Board, warns that there are currently 130 thrifts requiring Federal help, and that the costs involved will range from $7 to $10 billion. Yet the primary reserves of the FSLIC fund have dropped to $2.5 billion. Not only money is at stake. I also fear a disastrous loss of confidence in our Nation's Federal financial institutions. A panic along the lines of what happened recently in the Maryland and Ohio thrift industries could fatally harm healthy financial institutions and would certainly create chaos in the economy.

This is not to imply that our overall financial system is in jeopardy, for it is not. However, expedient and preventive steps can be taken now to avert the possibility of any future crisis. This legislation is such a step toward ensuring the health of the Nation's financial industries for many, many years to come.

Traditionally, the regulators have been free of budgetary restraints imposed on other programs or employees of the Federal Government. This was to ensure that consistent, quality examinations of financial institutions took place. The key role of the banking system in our country's ecomomy requires this extra measure of diligence and competency. But in the current budgetary crisis, the regulators have been swept up into an accounting game that counts their operating budget as part of the Federal budget. On paper, the fees and assessments show up as revenue to the Government reducing the need for spending cuts to reduce the deficit as mandated by the Balanced Budget and Emergency Deficit Control Act of 1985.

This is gimmickry and it's dangerous gimmickry because it forces our regulators to comply with regulations and laws that were not intended for them, and it fails to recognize the independence and freedom the regulators must have to commit resources to trouble spots on short notice. And the irony of it all is that the regulators' budget can never be used to help eliminate the budget deficits which concern us all. Under law, if the fees and assessments paid by the financial institutions are not used by the regulators, then they must be rebated to the financial institutions—I repeat, the money is rebated to the private financial institutions and not sent to the Treasury.

Mr. Speaker, this legislation would correct the situation by firmly establishing the independence of the regulatory agencies that oversee our financial institutions. This bill will give the regulators the authority to develop special compensation systems and incentive programs to be able to attract and retain the highly qualified work force needed to examine and supervise depository institutions. The new compensation system will be competitive with the private sector, and it should reverse the currently unacceptable rate of employee turnover at the regulatory agencies.

In addition, the bill removes the regulatory agencies from the requirements of the Balanced Budget and Emergency Deficit Control Act—which was only intended to apply to appropriated funds—and protects the agencies from fund-apportionment requirements.

Mr. Speaker, at a time when many of our financial institutions are suffering at the hands of a very turbulent economy, it becomes of utmost importance to ensure that no shortcuts are being taken and that the institutions are being soundly managed. This is the regulator's chore, and it's important for Congress to understand, support and facilitate the regulators. I would urge my colleagues support of H.R. 4917 so we might avert a financial crisis.

□ 1510

Mr. WYLIE. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. DREIER].

Mr. DREIER of California. Mr. Speaker, I want to congratulate my colleagues on the Banking Committee, Congressman CARPER and Congressman LUNDINE, for the tremendous work they did in writing this important legislation, and their relentless efforts to bring it to the House floor. I was an original cosponsor of H.R. 4917 because we need to beef up the supervisory capabilities of our bank, thrift, and credit union regulators at this very critical time.

Our Nation's depository institutions are facing record failures, and the regulatory agencies lack experienced personnel to adequately examine and supervise these institutions. Over 160 banks are expected to fail this year, compared to a total of 10 failures in 1980. Yet the Comptroller's Office, for example, has 250 fewer examiners; and the problems plaguing our Nation's banks pale to those of the thrift industry.

Today, literally hundreds of thrifts are operating although they are technically insolvent because the FSLIC does not have the resources to liquidate them. That's why we must also pass the FSLIC recapitalization bill.

The recent drain of experienced examiners is compounded by the new Gramm-Rudman law. Funding for the regulatory agencies comes from fees and assessments from depository institutions. Any agency budget reductions triggered by Gramm-Rudman will not bring offsetting reductions in the Federal deficit. Rather, the fees and assessments that are charged to banks, thrifts, and credit unions would be returned back to those institutions.

H.R. 4917 will restore the independence of the FDIC, FSLIC, the Comptroller of the Currency, and the NCUA that they desperately need to meet their increasing supervisory responsibilities. In addition, the demonstration project set up by the legislation will help to attract and retain experienced personnel without any added cost.

Mr. Speaker, I believe H.R. 4917 is necessary to maintain the safety and soundness of our depository institutions. Failure to enact this measure could ultimately result in the need for increased Government expenditures in the future to meet our obligations to insured depositors. For this reason, I strongly urge passage of this legislation.

Mr. ST GERMAIN. Mr. Speaker, I yield 3 minutes to the gentleman from Texas [Mr. GONZALEZ]

Mr. GONZALEZ. Mr. Speaker, I rise in opposition to this bill. I want to correct something here for the RECORD. It was not unanimously agreed to in the committee. It did come out on a voice vote, but we have some preliminary amendments that were certainly not unanimous in the way they were decided. Essentially all of these people that were telling us a year ago that Gramm-Rudman was the savior of everything including the chief sponsors of this bill who voted for Gramm-Rudman are now asking us to exempt a favored few. So last year what had to be passed in toto, this year systematically we have been removing in its coverage and jurisdiction those favorites that some of us liked.

The idea that bank failures and S&L failures are going to be stemmed or could have been prevented by auditors who have been cheek by jowl in the complicity that has given rise to such things as the Penn Square Bank in Oklahoma and the others that I can name, some of the chief banks that have gone under, is absolutely absurd. But the idea that this bill, which will exempt this privileged few from Gramm-Rudman, is going to do anything to stem foreclosures, bank failures, S&L collapses, is absolutely ridiculous and ought to be repudiated on the floor here for the RECORD.

Mr. Speaker, I yield back the balance of my time.

Mr. WYLIE. Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska [Mr. BEREUTER].

Mr. BEREUTER. Mr. Speaker, I rise in support of H.R. 4917, to provide for improved examinations by Federal regulators of depository institutions. This legislation offered by the gentleman from Delaware [Mr. CARPER] and the Gentleman from New York [Mr. LUNDINE] and cosponsored by this Member and many other Members is very much needed. I also commend the respective committee's leadership for bringing the bill to the House floor for consideration. If we are to bring quality examinations and supervision to the federally regulated and insured financial institutions, particularly those many institutions troubled by economic problems in the energy and agricultural sectors of the economy. We must provide the necessary funding and salary benefits to accomplish these ends. All of these costs are borne by dues and assessments on the financial institutions and not by the taxpayers.

This legislation states the Congress' intent to establish uniform procedures for reviewing the adequacy of State examinations and prohibits reliance on inadequate State examinations. The bill also provides for consolidation and improvement of examiner training and establishes the Depository Institutions Examination Council to coordinate training and examination procedures at the national and State levels.

At a time when record numbers of bank failures are occurring and lists of troubled institutions established by the Federal bank regulators are growing, this is not the moment to unduly limit in number or quality, or to hamstring, Federal and State examinations of financial institutions. These systems must be strengthened through the retention and addition of qualified personnel. Now more than ever, we in the Congress have the obligation to strenthen the necessary regulatory and examination procedures and personnel capabilities.

The American public must have confidence in its financial institutions, in depositors' insurance and in the regulators' capacities to carry out quality audits and examinations. This bill is a positive step in that direction, and this member urges its passage.

Mr. WYLIE. Mr. Speaker, how much time do we have remaining?

The SPEAKER pro tempore (Mr. MONTGOMERY). The gentleman from Ohio (Mr. WYLIE) has 5 minutes remaining.

Mr. WYLIE. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana [Mr. HILER].

Mr. HILER. Mr. Speaker, I join the gentlemen from Delaware and New York Mr. CARPER and Mr. LUNDINE, and my other colleagues in support of H.R. 4917, the Depository Institution Examination Improvement Act.

Enactment of H.R. 4917 is absolutely necessary if we are to maintain the safety and soundness of our banking system. This system is now experiencing stresses and strains that are unprecedented in the post-Depression era. Although the banking system in general is under stress, the problems are particularly acute in areas of our country where agriculture and energy are important, if not dominant, economic sectors.

This certainly is no time to deny to our Federal bank regulators the ability to deal adequately and effectively with problem banks. There are now 1,422 banks on the regulators' problem bank list. This compares with about 1,140 problem banks at the end of 1985. If the regulators are denied access to the resources required to closely monitor these institutions, the number of banks that fail next year may rise above the current estimate of 160.

And let us not forget the costs that such failures entail. Bank failures create upheaval for entire communities and for individuals and families within those communities. Moreover, bank failures deplete the resources of the deposit insurance funds, and make it more likely that the American taxpayer will end up shoring up the funds. And because the safety and soundness of the banking system rests on the maintenance of public confidence, bank failures threaten this system, as well as the entire economy, with which the banking system is inextricably linked.

Given the extraordinary problems now besetting our banking system, it is particularly critical that the Federal deposit insurance funds be exempted from the Gramm-Rudman budget axe, as well as from the OMB's apportionment of funds. At a time when the bank regulators are dealing with record numbers of troubled depository institutions, it makes no sense whatsoever to tie the regulators hands by subjecting the deposit insurance funds to Gramm-Rudman sequestration. Perhaps it would be a different story if these insurance funds were funded by taxpayer dollars, but they are not; They are funded exclusively with fees and assessments from depository institutions. It certainly would be ironic if the privately-financed insurance funds became insolvent due to congressional unwillingness to free them from Gramm-Rudman budget constraints, and the American taxpayer ended up having to foot the bill.

I believe that this is a scenario we all would like to avoid. And we can avoid it, if we join Mr. Carper in support of the Depository Institution Examination Improvement Act, a bill that provides the Federal bank examiners with the tools and flexibility they require to keep our banking system safe and sound during a very rocky period.

Mr. ST GERMAIN. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia [Mr. Barnard].

Mr. BARNARD. Mr. Speaker, this is a time of crisis in our financial institutions. Recent economic fluctuations have contributed to bank and thrift failures at a level unknown since the Great Depression. Institutions are entering more speculative areas in an attempt to offset losses incurred from traditional activities. Even there, the depository insitutions are facing increased competition from nondepository financial services providers. In the middle of all this, the Federal agencies who are responsible for overseeing the banking system are faced with budget and staff reductions. I do not believe we can reasonably expect them to continue to do more and more while giving them less and less. In order to ensure the stability of the banking system as a whole, the agencies must be strengthened, not weakened. I thus rise in support of H.R. 4917.

I supported Gramm-Rudman-Hollings but I recognize that some important exceptions should be made, as some already have. The Federal banking agencies, whose work is critical to the Nation's economic well-being, must be one of those exceptions. The exception is doubly supported in this case because those agencies receive no tax revenues but rather operate solely from assessments made on the financial institutions they regulate.

The independence of the agencies must also be guaranteed. Exemptions from the Anti-Deficiency Act and from the apportionment of funds are vitally important to assure that independence.

Mr. Speaker, this is critical legislation at a critical time in the Nation's banking system and I urge its passage.

The Speaker pro tempore. The gentleman from Rhode Island [Mr. St Germain] has 4½ minutes remaining and the gentleman from Ohio [Mr. Wylie] has 3 minutes remaining.

Mr. WYLIE. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. Bartlett].

Mr. BARTLETT. Mr. Speaker, I rise in very strong support of H.R. 4917 and I take this time to commend the leadership of the gentleman from Delaware [Mr. Carper] and the gentleman from New York [Mr. Lundine], who are the principal sponsors of this legislation.

This is bipartisan legislation that was developed by Members on both sides of the aisle. These two individual sponsors in particular saw a problem, recognized it, and then set out to try to resolve that problem, and the result is the legislation that is before us today. This is comprehensive legislation and contains a number of features that improve the quality of the regulatory supervision for the financial institutions of this country. It does so without the expenditure of any additional Federal dollars. The real gainers, the real winners in this will be the consumers and the depositors and the communities who will continue to have safe and sound and healthy financial institutions in their communities.

A few points about this legislation: First, and we all know it, the banking industry is currently experiencing the greatest turmoil that we have seen in perhaps 50 years; 150 failures so far this year, perhaps 140 to 160 expected to fail. This number does not include credit unions or thrifts. This legislation will obtain better supervision, higher quality supervision, earlier supervision, and will prevent an even larger number of failures than would otherwise occur.

Second, applying Gramm-Rudman-Hollings sequestration to these agencies was a mistake in the first place. It was a mistake that I think no one intended to do, and this legislation does not exempt these agencies out, it just simply corrects a mistake that was included in the legislation in the first place. These agencies are not funded by taxpayer funds. They are self-funded. They take the fees from the institutions. Having the agencies included in the sequestration simply does not make sense. Sequestration of these agencies would in fact not return any dollars to the Federal Treasury.

Third, the regulators are losing talented and trained personnel every day. We need to close that 24-percent salary gap relative to private industry.

This bill provides for a demonstration project to allow agencies to attract and retain a pool of experienced personnel. It is a good bill. I urge a "yes" vote on this needed legislation.

Mr. ST GERMAIN. Mr. Speaker, I yield 1 minute to the gentleman from Tennessee [Mr. Cooper].

Mr. COOPER. I thank the chairman for yielding this time.

I congratulate my colleague from Delaware and my colleague from New York for their fine work on this bill, H.R. 4917. This is an outstanding piece of legislation, and I would urge all of my colleagues on both sides of the aisle to support it.

It comes at a crucial time for us. Many of us from energy States and agricultural States are feeling the pinch of financial failures worse than it has been felt since the Great Depression years. My own State of Tennessee, we felt the pinch early. The Butcher banking failures began weeks after I was sworn into office. One of the key causes of the severity of that crisis was the slowness, the weakness in the examination process. Those failures have ended up being the single most expensive financial failures in FDIC history. They could have been prevented, they could have been reduced in their cost to the FDIC funds if an early, timely, and accurate examination had found the shortcomings. This bill will help correct the process. This is good preventive medicine for every financial institution in the country. I would urge my colleagues to support it.

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Mr. ST GERMAIN. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. LaFalce].

Mr. LaFALCE. Mr. Speaker, I rise in support of this very important bill, and I urge my colleagues to adopt it.

H.R. 4917 would take several important steps to enable the Federal bank and thrift regulatory agencies to improve the quality of their examination and supervision of banks, thrifts, and credit unions. It would do this by directing the Federal Financial Institutions Examination Council to develop guidelines to provide adequate compensation for examiners, particularly when they are traveling on an examination assignment. The legislation would also establish a demonstration project to allow the Federal bank regulatory agencies to attract and retain a pool of experienced examination personnel.

The bill would also authorize a study of consolidating Federal examiner training and of establishing a graduate degree program in financial management analysis for experienced bank and thrift examiners.

H.R. 4917 also clarifies the fact that the depository institution regulatory agencies are not subject to certain fiscal, budget, and appropriations requirements and also removes these agencies from the Gramm-Rudman Act and from the provisions of existing law concerning apportionment of funds.

Finally, this measure establishes minimum Federal standards for examinations of depository institutions by State bank and thrift supervisors to ensure that State and Federal regulators of banks and thrifts can rely more assuredly on the examinations of State bank and thrift regulators.

Mr. Speaker, this bill is an essential measure which we must enact to preserve the safety and soundness of our depository institutions. The bill is the outgrowth of hearings conducted by the House Banking Committee on ways to reduce the number of financial institutions failures and improve the condition of the Federal deposit insurance funds.

The Banking Committee found that there was a critical need to improve the quality of the examination and supervisory process for depository institutions and to increase the number and experience of Federal bank and thrift examiners.

There have been a record number of bank and thrift institution failures this year, and improving the bank and thrift examination staff is one important way to reduce the number of these failures. Only through detecting early the problems of financial institutions can we ensure that the problems will not worsen and result in the failure of the institution in question. By improving examiner training and benefits, we can hire and retain competent examination personnel. H.R. 4917 would take much-needed steps toward improving our Federal financial institutions examination staff.

One of the most important aspects of this bill, Mr. Speaker, is the fact that it exempts the Federal bank and thrift regulators from Gramm-Rudman and from the Anti-Deficiency Act, which relates to mandatory apportionment of funds. These aspects of the bill are key to a healthy depository institutions industry.

With respect to apportionment requirements, financial regulatory agencies have to respond in a timely fashion to the increasingly frequent crises encountered by our Nation's banks and thrifts. Requiring Federal financial regulatory agencies to spend their funds on a specific schedule of apportionment simply makes no sense. Financial institutions do not fail on schedule. The bank and thrift regulatory agencies must have absolute flexibility to deal with such failures when they arise. Accordingly, these agencies simply must be exempt from the Anti-Deficiency Act.

Finally, the agencies should also be exempt from Gramm-Rudman. These agencies are unique in the Federal Government in that they are funded by industry user fees, not Federal appropriations. The money sequestered from their accounts under Gramm-Rudman, therefore, would not even be returned to the Federal treasury to reduce the deficit. On the contrary, it would mean that the fees charged to banks and thrifts must be lowered. Ironically, such a lowering of fees will reduce the examination services we can provide to inspect banks and thrifts. Such a result is absurd at a time when the Federal Government is trying its hardest to reverse the record number of bank and thrift failures.

I urge my colleagues to be responsible and to enact H.R. 4917 into law. It is an essential bill that promotes the safety and soundness of our Nation's banks and thrift institutions.

Mr. WYLIE. Mr. Speaker, I yield myself the remainder of my time.

Mr. Speaker, this is a good bill and it should be passed.

I think the point should be reemphasized that the money involved here should never have been on the budget in the first place. The money comes from fees and assessments against the depository institutions. There is no taxpayer money involved. Any money saved by sequestration vis-a-vis Gramm-Rudman would be returned to the depository institutions and would not be returned for use by the Federal Government. So there would be no actual savings.

I think it is a good bill, and I think we should pass it.

Mr. ST GERMAIN. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK. Mr. Speaker, I support this bill.

Mr. Speaker, I have a lot of sympathy with my leader, the gentleman from Texas, with whom I am almost always in agreement. Once again we have some of those who voted for Gramm-Rudman deciding to make an exemption.

I am torn, and there is a certain appeal to letting people stew in their own juice. On the other hand, there are some innocent victims here. I had some concerns because I was afraid that by exempting this particular group from Gramm-Rudman we might be causing undue harm to others. That seems to me to be de minimis.

So I am supportive of this bill. I think it will help the banking system, and there is, of course, one more of the recognition on the part of a great majority of the Members of the House that the Gramm-Rudman bill they were in such haste to pass had more holes than a lot of Swiss cheese.

But I do not want to victimize the banking industry. I think that the bill, despite the element of hypocrisy that will be rattling around this Chamber when we pass it, ought to be passed. It is a result, and the fact that some of the people who come to support it do not have clean hands ought not to be held to the detriment of the people in the banking industry. Maybe if we keep appealing this silly little law piece by piece, sooner or later we will get rid of the whole thing.

Mr. ST GERMAIN. Mr. Speaker, I yield myself the remainder of my time.

Mr. Speaker, I want to commend the gentlemen who cosponsored the legislation, who worked so diligently on the legislation.

I, too wish to call for adoption of the legislation. I think that it is a piece of legislation that is necessary at this time because of the state of our financial industry, and I hope that the support will be as unanimous as possible.

Mrs. ROUKEMA. Mr. Speaker, I rise as a cosponsor of H.R. 4917, the Depository Institution Examination Improvement Act of 1986, and in strong support of its passage today.

We all recognize the importance of adequately trained bank examiners, especially as today's financial industry becomes more varied and complex. This bill, which has been carefully crafted and has been worked out with the Conference of State Banking Supervisors, is very important to standardizing the training which bank examiners receive from State to State and from regulatory agency to agency.

In addition, because the regulatory agencies are not funded with taxpayer money and because there has been a move of senior level, very experienced bank examiners from the Federal Government, it has become necessary to reexamine the way in which these professionals are compensated. Although these examiners are covered under the civil service program, they are not paid by taxpayer funds. This has allowed us to include a section which allows each Federal banking regulatory agency to conduct a survey of comparable private sector compensation for similar positions. The bill also provides that each agency can develop a compensation system classifying positions in pay bands with minimum and maximum pay levels for each band. This language has been worked out with the Subcommittee on Civil Service.

The third important provision in this bill would exempt the Federal Banking Regulators from sequestration orders under the Gramm-Rudman Balanced Budget Act. Again, this is because they receive no funds from the Federal Government. All of their funding, including administrative expenses, comes from assessments on member institutions. They have never had appropriations or authorization for their funding from the Federal Government. Even if we tell them not to spend as much money, the money they save gets rebated back to their member institutions. Not one penny of this lower spending will be available for other Government programs.

For this reason, and because of the additional difficulties facing the financial industry today, I would urge my colleagues to support this bill which exempts the regulators from any Gramm-Rudman sequestration. During this time of difficulty the regulators need to be operating at their peak efficiency. If their operating expenses are in question, they cannot adequately plan for the future and such uncertainty serves no good purpose when the Government cannot recoup any savings.

For greater standardization and additional training for bank examiners for greater flexibility in recruiting and maintaining highly qualified professionals, and for stable planning for regulators' operating expenses, I urge strong support of this bill today.

Mr. ST GERMAIN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Montgomery). The question is on the motion offered by the gentleman from Rhode Island [Mr. St Germain] that the House suspend the rules and pass the bill, H.R. 4917, as amended.

The question was taken.

Mr. GONZALEZ. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

The point of no quorum is considered withdrawn.

GENERAL LEAVE

Mr. ST GERMAIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Rhode Island?

There was no objection.

REQUEST FOR CONSIDERATION OF SENATE JOINT RESOLUTION 353, EXTENSION OF CERTAIN HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate joint resolution (S.J. Res. 353) to provide for the extension of certain programs relating to housing and community development, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. WYLIE. Mr. Speaker, reserving the right to object, I would like to engage in a colloquy with the gentleman from Texas.

This bill would extend FHA authority to September 30, 1987, and I certainly do not have any objection to that. As a matter of fact, I introduced a bill which now has some 250 cosponsors on it which would do exactly the same thing.

The question I have relates to the credit limit. I was toying with the idea a little earlier of introducing an amendment which would extend the credit limits to $100 billion, which is also in House Joint Resolution 656. I talked to the gentleman from Texas and the gentleman from Massachusetts about this. In the continuing resolution, the debt limit ceiling was extended to $80 billion, which was the extent of the budget authority. The Department of Housing and Urban Development thinks that the credit limit will need to be extended to $100 billion before September 30, 1987.

I would just like to get the views of the gentleman from Texas on that, and maybe the gentleman could confirm the fact that I did talk to him and the gentleman from Massachusetts.

Mr. GONZALEZ. Mr. Speaker, will the gentleman yield?

Mr. WYLIE. Mr. Speaker, under my reservation of objection, I yield to the gentleman from Texas.

Mr. GONZALEZ. Mr. Speaker, the gentleman is correct. This is the eighth time we have come to the House for an extension on FHA. I think it is absurd for us to place the mortgage market in such a dilemma.

With respect to raising the credit limits, there is no question that we must.

I would suggest to the gentleman that if he would yield to the chairman of the appropriations subcommittee, I think that with a colloquy here on the House floor we can take care of that item.

Mr. WYLIE. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Massachusetts [Mr. Boland], the distinguished chairman of the subcommittee.

Mr. BOLAND. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I understand the gentleman's concern and that of every Member of the House with reference to raising the limitation on the FHA.

As the gentleman knows, we did have a colloquy when the 1987 HUD appropriations bill was on the floor several weeks ago, and I agreed to a raise in the limitation at the conference stage. Some time ago, when the gentleman from Ohio came to me and indicated he wanted to raise the 1986 FHA credit limitation and that it would be one time, I said I would have no objection to it. I have no objection to raising the 1987 limitation, but I would like to do it in the CR.

I think the gentleman understands that the CR on the other side now has a FHA limitation of $120 billion. I can assure that when the CR is voted on and comes back to the House, I would have no disagreement with raising that limitation to at least $100 billion and perhaps beyond—to perhaps $120 billion.

Mr. WYLIE. Mr. Speaker, I thank the gentleman for that assurance. I would suggest that the continuing resolution may very well be vetoed. If that happens, of course, there is not any credit limit beyond October 1, which is another problem I guess we need to address.

Mr. Speaker, further reserving the right to object, if the gentleman from Massachusetts would like to speak to that, I yield to the gentleman.

Mr. BOLAND. Mr. Speaker, we would have to come back with something at that time. As I said, there is no problem with raising the FHA credit limitation as far as our committee is concerned.

Mr. WYLIE. Mr. Speaker, under my reservation of objection, I yield to the gentleman from Connecticut [Mr. McKinney].

Mr. McKINNEY. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I just want to simply state that this House passed this bill within the housing bill. It passed it again within the reconciliation bill. It has not been recognized by the other body, and their dilatoriness on this has been shocking up to this point. It is now recognized by them in another piece of legislation.

But I think that the fact of the matter is that the housing mortgage aspirations of the American people are being played with like a yo-yo, with Congress, both bodies. It is about time it stopped. It is becoming that the FHA extension is becoming very similar to the debt ceiling limit. It is held captive of other aspirations, other dreams and other fields which have nothing to do with Americans owning their home, and we ought to realize that. I would like to see it extended and its credit limit extended for at least 5 years, but I certainly would be happy to have 1.

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Mr. WYLIE. I thank the gentleman very much for his contribution.

Mr. Speaker, I yield to the gentleman from Virginia [Mr. Parris].

Mr. PARRIS. I thank the gentleman for yielding to me.

Mr. Speaker, I want to extend to the gentleman from Ohio [Mr. Wylie]. and the gentleman from Texas [Mr. Gonzalez] my appreciation for their cooperation in extending this matter for at least 1 year.

Six times, I think, this year we have extended a month at a time; once or twice for 3 months or so. The point is, the short terms have created a great deal of heartburn and uncertainty in the housing industry and the real estate markets in the communities in which I am privileged to serve and has badly impacted in the industry generally.

I congratulate the gentlemen for this longer term action. I appreciate what they are doing.

Mr. WYLIE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. ST GERMAIN. Mr. Speaker, reserving the right to object, as chairman of this committee I am a little chagrined at the fact that I was not consulted about this action.

For that reason, at this point I do object until we can have further conversations on it.

The SPEAKER pro tempore. Objection is heard.

CHARLES McC. MATHIAS, JR., NATIONAL STUDY CENTER FOR TRAUMA AND EMERGENCY MEDICAL SYSTEMS

Mr. WAXMAN. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 210) designating the Study Center for Trauma and Emergency Medical Systems at the Maryland Institute for Emergency Medical Services Systems at the University of Maryland as the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems", as amended.

The Clerk read as follows:

H.J. RES. 210

Whereas Federal funding for emergency medical services systems has decreased, and some States have provided less support for such lifesaving systems;

Whereas private efforts are the primary means of improving the delivery of emergency medical services, and improvements are needed to meet the needs of increasing numbers of the critically ill and injured;

Whereas the designation of a national study center for trauma and emergency medical systems would focus attention on those areas needing improvement in the delivery of systematic emergency care;

Whereas a national study center for trauma and emergency medical systems is needed to serve as a resource center for information and data, and provide technical assistance concerning emergency medical systems; and

Whereas the Maryland Institute for Emergency Medical Services Systems at the University of Maryland has been a national leader in the development of systems of care for the critically ill and injured: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Study Center for Trauma and Emergency Medical Systems at the Maryland Institute for Emergency Medical Services Systems at the University of Maryland shall be known and designated as the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems". Any reference in a law, map, regulation, document, record, or other paper of the United States to such Study Center for Trauma and Emergency Medical Systems shall be held to be a reference to the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems".

The SPEAKER pro tempore. Is a second demanded?

Mrs. BENTLEY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. WAXMAN] will be recognized for 20 minutes and the gentlewoman from Maryland [Mrs. BENTLEY] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. WAXMAN].

GENERAL LEAVE

Mr. WAXMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Joint Resolution 210.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. WAXMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the purpose of House Joint Resolution 210 which is sponsored by a distinguished member of our subcommittee, Ms. MIKULSKI, and cosponsored by a united Maryland congressional delegation, is to designate the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems."

The evolution and growing sophistication of emergency medical service systems have greatly reduced the likelihood of death due to trauma. Each year thousands of citizens are severely injured on our Nation's highways or by acts of violence. In many cases, their lives are saved due to the rapid response of emergency medical personnel and the transfer of such patients to hospitals equipped and trained to practice trauma medicine.

In the State of Maryland, the Maryland Institute for Emergency Medical Services Systems has revolutionalized the practice and organization of emergency medicine. The Maryland Institute has served as an unofficial national center for research, training, and technical assistance in the development and evolution of emergency medical systems. The progress made in Maryland has influenced the development of emergency medical systems throughout the country.

Passage of House Joint Resolution 210 will recognize the Maryland Institute's contribution and continuing role as a comprehensive resource for information on trauma and emergency medicine. Similar legislation, Senate Joint Resolution 97, was unanimously approved by the Senate last year.

Passage of House Joint Resolution 210 also has another purpose. It will allow the Congress to recognize and express its appreciation for the 26 years of public service provided by CHARLES McC. MATHIAS, the senior Senator from the State of Maryland. Senator MATHIAS is retiring at the end of the 99th Congress.

Passage of this joint resolution conveys an honor on the State and citizens of Maryland that is richly deserved. I urge every Member's support.

Mr. Speaker, I reserve the balance of my time.

Mrs. BENTLEY. Mr. Speaker, I yield 1 minute to the gentlewoman from Maryland [Mrs. HOLT].

Mrs. HOLT. I thank the gentlewoman for yielding me this time.

Mr. Speaker, as a cosponsor of House Joint Resolution 210, I urge my colleagues to join me in voting to designate the Study Center for Trauma and Emergency Medical Services at the Maryland Institute for Emergency Medical Services as the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems."

I want to thank my colleague, the gentleman from Illinois, for supporting House Joint Resolution 210 so that it might come up for a vote today under suspension.

Many of you in this Chamber, including my colleague, the gentleman from Illinois, are responsible for the development of emergency care in your home States and districts through the Emergency Medical Systems Act of 1973. The Maryland facility pioneered in this field and has served as an example and source of information, expert advice, and research material for other systems throughout the country and the world.

The study center has from the beginning emphasized the need for and has implemented interstate coordination of EMS activities. These coordinated efforts have resulted in a marked reduction in traumatic deaths and injuries, the costs of which are known to all of you.

When you cast your vote for this bill, you show your commitment to EMS providers in your home State and district and give them the center of support they need to continue to save lives all over America.

Mrs. BENTLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to join the chairman of the Subcommittee on Health and the Environment of the Energy and Commerce Committee and the entire Maryland congressional delegation in supporting House Joint Resolution 210. This legislation, which unanimously passed the Senate on October 4, 1985, designates the Study

Center for Trauma and Emergency Medical Systems at the Maryland Institute for Emergency Medical Services at the University of Maryland as the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems."

The disciplines of trauma care and emergency medical services have become increasingly sophisticated over the past 20 years. In fact, all of the States and territories in the United States have developed some form of a coordinated emergency medical system. The trauma center at the University of Maryland is the oldest trauma center in the country and currently provides state-of-the-art emergency medical care, as well as research, training, and information services on emergency medicine. The designation of the Maryland center will provide the many State and regional emergency medical systems an accessible and centralized resource center.

In addition, it is my pleasure to join my colleagues in commemorating the work of the retiring Senator from the State of Maryland, Mr. MATHIAS, by naming the study center in his honor.

It is my understanding that the ranking Republicans on the Committee on Energy and Commerce, Mr. LENT and Mr. MADIGAN, do not oppose consideration of this bill on the Suspension Calendar. Therefore, I recommend that the House suspend the rules and pass House Joint Resolution 210.

Mr. WAXMAN. Mr. Speaker, I yield such time as she may consume to the author of this resolution, the gentlewoman from Maryland [Ms. MIKULSKI].

Ms. MIKULSKI. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of House Joint Resolution 210, as amended, which would designate the study center for trauma and emergency medical systems as the Charles McC. Mathias, Jr., National Study Center. There would be no cost to the Federal Government.

I was pleased to introduce this resolution with the cosponsorship of the entire Maryland House delegation.

It pays tribute to a nationally recognized medical facility located at the University of Maryland in Baltimore, and to the retiring dean of the Maryland congressional delegation, Senator CHARLES McC. MATHIAS.

Senator MATHIAS has spent 26 years in Congress and has earned the respect and fondness of all of us who were fortunate to work with him.

This tribute is particularly appropriate because he has been a strong advocate for health care and for the study center.

The center itself is well known as a national leader in the field of emergency medicine. Its list of accomplishments and "firsts" is long.

The center conducts studies on regional and national emergency medical issues, serves as a clearinghouse to disseminate the most recent data, and conducts education and training on these issues nationwide.

The U.S. Department of Transportation has long recognized the excellence of the center's work and has promoted the Maryland study center as a model for other States to follow.

Secretary Dole has written that the designation of the Maryland study center is a fitting tribute to its leadership and contributions in improving trauma care in our country.

I believe that this designation has been well earned and I hope my colleagues will join with the Maryland delegation in supporting the resolution.

□ 1545

Mr. WAXMAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Speaker, I rise in strong support of House Joint Resolution 210, a resolution with at least two highly commendable purposes. For one, this measure recognizes the Study Center for Trauma and Emergency Medical Systems located at the Maryland Institute for Emergency Medical Services Systems as the National Study Center for Trauma and Emergency Medical Systems.

The second purpose is to rename this facility as the "Charles McC. Mathias, Jr. National Study Center for Trauma and Emergency Medical Systems." I concur heartily with both important and appropriate purposes.

I would be remiss, however, if I did not add that I was in the Maryland Senate when the State legislation passed, authorizing this, and funding it.

It is appropriate to note that the strongest supporter of that, somebody deeply committed to the trauma center, was Marvin Mandel, then Governor. Although we are naming this the Charles McC. Mathias Center, which I think is appropriate, it would not, in my opinion, have been a reality to the extent that it has become one of the premier shock trauma centers in the world, had it not been for Gov. Marvin Mandel.

In 1969, under the leadership of the Governor, the Center for Study of Trauma opened and began to receive continuous State funding. In 1973, by executive order Governor Mandel created the first statewide emergency medical service in the country and established the Center for the Study of Trauma as an autonomous unit within the University of Maryland.

By designating this Baltimore, MD, research facility as a national center and by naming it after a superlative U.S. Senator, the House of Representatives will be paying a lasting and meaningful tribute to two great American institutions: the National Study Center for Trauma and Emergency Medical Services and Senator CHARLES McC. MATHIAS, Jr.

As a member of the Maryland House of Delegates, as a U.S. Congressman, and as a 18-year Member of the U.S. Senate, MAC MATHIAS has served the people of Maryland and the country conscientiously, with integrity, and compassion. He leaves with an outstanding record of accomplishment in the fields of environment, foreign affairs, education, civil rights, and health.

Most of us are unaware that trauma is the leading cause of death among Americans between the ages of 1 and 39. Trauma is the third leading cause of death among all Americans. Considering the magnitude of this problem and its staggering costs—for example, the cost associated with trauma in 1980 was $88.5 billion—trauma receives only marginal national attention.

The State of Maryland has historically led the United States in the development of trauma services, trauma research, and emergency medical care. The State of Maryland and the University of Maryland have committed tremendous resources and will continue to commit tremendous resources to ensure that this facility maintains its position and effectiveness. This relationship between the study center and the University of Maryland, a major State university, has enabled the study center to benefit from the contributions, expertise, and skills of academe, Government, and the private sector. Indeed, the affiliated Maryland Shock Trauma Center, at the University of Maryland, is the best of its kind in the world.

Through the years, the medical and research communities have lauded this facility as the leader in the fields of trauma and emergency medicine. The American Trauma Society, the American College of Emergency Physicians, the Society of Critical Care Medicine, and the American College of Surgeons, among other professional organizations and societies, have maintained strong ties to and a close relationship with the study center.

The State of Maryland is the proud host, willing partner, and grateful beneficiary of the preeminent research facility for trauma and emergency medicine in the United States. It is perfectly fitting that the name of one of Maryland's great public servants and one of our country's finest Senators adorn the study center.

Mr. WAXMAN. Mr. Speaker, I urge the adoption of this resolution, and I yield back the balance of our time.

Mrs. BENTLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to associate myself with the comments made by my colleague from Maryland, Mr. HOYER, which gave due credit to Governor Mandel for starting the efforts to designate the University of Maryland's Trauma Center. Without his initial commitment, the national designation of this center would not be happening today.

Mr. DYSON. Mr. Speaker, it is with much pride that I rise in support of House Joint Resolution 210 as amended, a resolution designating the Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems. This center, located at University of Maryland campus in Baltimore, will provide a much-needed focus on the discipline of trauma care and emergency medical service methodology. The study center has accumulated and continues to develop an information base through which studies on regional and national trauma system issues can be optimally completed. Technical information and assistance can then be disseminated through established networks to providers as well as other interested organizations. Congressional designation of this study center will significantly improve our ability to provide state-of-the-art trauma and EMS care nationwide.

Mr. Speaker, the dean of the Maryland delegation, Senator CHARLES MCC. MATHIAS, has played a crucial role in the founding and development of the National Study Center as he has with so many issues in his long congressional career spanning 26 years of service both in this body and in the U.S. Senate. It is a fitting tribute to MAC and his interest in the cause of the study center that we amend this resolution to designate the Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems. I happily and most heartily commend to my colleagues House Joint Resolution 210 as amended.

Mrs. BENTLEY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from California [Mr. WAXMAN] that the House suspend the rules and pass the joint resolution, House Joint Resolution 210, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution, as amended, was passed.

The title of the joint resolution was amended so as to read:

A joint resolution designating the Study Center for Trauma and Emergency Medical Systems at the Maryland Institute for Emergency Medical Service Systems at the University of Maryland as the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems."

A motion to reconsider was laid on the table.

PALAU COMPACT OF FREE ASSOCIATION ACT

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 626) to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes, as amended.

The Clerk read as follows:

H.J. RES. 626

Whereas the United States is the administering authority of the Trust Territory of the Pacific Islands under the terms of the Trusteeship Agreement for the former Japanese Mandated Islands entered into by the United States with the Security Council of the United Nations on April 2, 1947, and approved by the United States on July 18, 1947; and

Whereas the United States, in accordance with the Trusteeship Agreement, the Charter of the United Nations and the objectives of the international trusteeship system, has promoted the development of the peoples of the Trust Territory toward self-government or independence as appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the peoples concerned; and

Whereas the United States, in response to the desires of the people of Palau expressed through their freely-elected representatives and by the official pronouncements and enactments of their lawfully constituted government, and in consideration of its own obligations under the Trusteeship Agreement to promote self-determination, entered into political status negotiations with representatives of the people of Palau; and

Whereas these negotiations resulted in the "Compact of Free Association" between the United States and Palau which, together with its related agreements, was signed by the United States and by Palau on January 10, 1986; and

Whereas the Compact of Free Association received a favorable vote of a majority of the people of Palau voting in a United Nations-observed plebiscite conducted on February 21, 1986; and

Whereas the Supreme Court of Palau has ruled that the constitutional process of Palau for approval of the Compact of Free Association in accordance with section 411 of the Compact has not yet been completed; and

Whereas the President of Palau has requested the United States to complete the process of United States approval of the Compact of Free Association in accordance with section 411 of the Compact through enactment of an appropriate joint resolution: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This joint resolution may be cited as the "Palau Compact of Free Association Act".

(b) TABLE OF CONTENTS.—The table of contents for this joint resolution is as follows:

TITLE I—APPROVAL OF COMPACT; INTERPRETATION OF, AND UNITED STATES POLICIES REGARDING, COMPACT; SUPPLEMENTAL PROVISIONS

Sec. 101. Approval of Compact of Free Association.
(a) Approval.
(b) Reference to the Compact.
(c) Amendment, change, or termination of the compact and certain agreements.
(d) Effective date.
Sec. 102. Agreements with Palau.
(a) Law enforcement assistance.
(b) Economic development plans review process.
(c) Agreement on audits.
Sec. 103. Interpretation of and United States policy regarding Compact of Free Association.
(a) Human rights.
(b) Immigration.
(c) Nonalienation of lands.
(d) Nuclear waste disposal.
(e) Impact of Compact on U.S. areas.
(f) Fisheries management.
(g) Foreign loans.
(h) Additional provisions relating to Title Three of the Compact.
Sec. 104. Supplemental provisions.
(a) Domestic program requirements.
(b) Relations with Palau.
(c) Continuing Trust Territory authorization.
(d) Medical referral debts.
(e) Survivability.
(f) Registration for agents of Palau Government.
(g) Noncompliance sanctions.
(h) Continuing programs and laws.
(i) Trust Territory debts to U.S. Federal agencies.
(j) Use of DOD medical facilities.
(k) Technical assistance.
(l) Prior Service Benefits Program.
(m) Indefinite land use payments.
(n) Annual reports on determinations under Compact section 313.
(o) User fees.
(p) Payments.
(q) Civic action teams.
(r) Inventory and Study of Natural, Historical, and Other Resources.
Sec. 105. Construction contract assistance.
(a) Assistance to U.S. firms.
(b) Authorization.
Sec. 106. Timing.
Sec. 107. Implementation of audit agreements.
(a) Transmission of annual financial statement.
(b) Annual audits by the president.
(c) Authority of GAO.
Sec. 108. Compensatory adjustments.
(a) Additional programs and services.
(b) Amounts for adverse impact.
Sec. 109. Additional clarification regarding United States assistance.

TITLE II—COMPACT OF FREE ASSOCIATION

Sec. 201. Compact of Free Association.

TITLE ONE—GOVERNMENTAL RELATIONS

Article I—Self-Government.
Article II—Foreign Affairs.
Article III—Communications.
Article IV—Immigration.
Article V—Representation.
Article VI—Environmental Protection.

Article VII—General Legal Provisions.

TITLE TWO—ECONOMIC RELATIONS

Article I—Grant Assistance.

Article II—Program Assistance.

Article III—Administrative Provisions.

Article IV—Trade.

Article V—Finance and Taxation.

TITLE THREE—SECURITY AND DEFENSE RELATIONS

Article I—Authority and Responsibility.

Article II—Defense Facilities and Operating Rights.

Article III—Defense Treaties and International Security Agreements.

Article IV—Service in Armed Forces of the United States.

Article V—General Provisions.

TITLE FOUR—GENERAL PROVISIONS

Article I—Approval and Effective Date.

Article II—Conference and Dispute Resolution.

Article III—Amendment.

Article IV—Termination.

Article V—Survivability.

Article VI—Definition of Terms.

Article VII—Concluding Provisions.

Sec. 202. Jurisdiction.

(a) Maritime and territorial jurisdiction.

(b) Defense sites.

(c) Offenses.

Title III—Implementation of Public Law 99-239

Sec. 301. Implementation.

TITLE I—APPROVAL OF COMPACT; INTERPRETATION OF, AND UNITED STATES POLICIES REGARDING, COMPACT; SUPPLEMENTAL PROVISIONS

SEC. 101. APPROVAL OF COMPACT OF FREE ASSOCIATION.

(a) APPROVAL.—The Compact of Free Association set forth in title II of this joint resolution between the United States and the Government of Palau is hereby approved, and Congress hereby consents to the agreements as set forth on pages 154 through 405 of House Document 99-193 of April 9, 1986 (hereafter in this joint resolution referred to as subsidiary or related agreements), as they relate to such Government. Subject to the provisions of this joint resolution, the President is authorized to agree, in accordance with section 411 of the Compact, to an effective date for and thereafter to implement such Compact, having taken into account any procedures with respect to the United Nations for termination of the Trusteeship Agreement.

(b) REFERENCE TO THE COMPACT.—Any reference in this joint resolution to the "Compact" shall be treated as a reference to the Compact of Free Association set forth in title II of this joint resolution.

(c) AMENDMENT, CHANGE, OR TERMINATION OF THE COMPACT AND CERTAIN AGREEMENTS.—(1) Mutual agreement by the Government of the United States as provided in the Compact which results in amendment, change, or termination of all or any part thereof shall be effected only by Act of Congress and no unilateral action by the Government of the United States provided for in the Compact, and having such result, may be effected other than by Act of Congress.

(2) The provisions of paragraph (1) shall apply—

(A) to all actions of the Government of the United States under the Compact including, but not limited to, actions taken pursuant to section 431, 432, 441, or 442;

(B) to any amendment, change, or termination in any agreement that may be concluded at any time between the Government of the United States and the Government of Palau regarding Friendship, Cooperation and Mutual Security Concluded Pursuant to Sections 321 and 323 of the Compact referred to in section 462(h);

(C) to any amendment, change, or termination of the agreements concluded pursuant to Compact sections 175 and 221(a)(4), the terms of which are incorporated by reference into the Compact; and

(D) to the following subsidiary agreements, or portions thereof:

(i) Article II of the agreement referred to in section 462(a) of the Compact;

(ii) Article II of the agreement referred to in section 462(b) of the Compact;

(iii) Article II and Section 7 of Article X of the agreement referred to in section 462(f) of the Compact;

(iv) the agreement referred to in section 462(g) of the Compact;

(v) Articles II, III, IV, V, VI, and VII of the agreement referred to in section 462(h) of the Compact; and

(vi) Articles VI, XV, and XVII of the agreement referred to in section 462(i) of the Compact.

(d) EFFECTIVE DATE.—(1) The President shall not agree to an effective date for the Compact, as authorized by this section, until after—

(A) certifying to the Congress that—

(i) The Compact of Free Association between the United States and Palau has been approved in accordance with section 411 of the Compact as set forth in this joint resolution, and that there exists no legal impediment to the ability of the United States to carry out fully its responsibilities and to exercise its rights under Title Three of the Compact, as set forth in this joint resolution, and

(ii) the agreements described in section 102 of this title have been concluded, and

(B) enactment of a joint resolution which has been reported by the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs, the Committee on Foreign Affairs, and other appropriate Committees of the House of Representatives authorizing entry into force of the Compact.

(2) Any agreement concluded with Palau pursuant to section 102 of this title and any agreement which would amend, change, or terminate any subsidiary agreement or related agreement, or portion thereof, as set forth in paragraph (4) of this subsection shall be submitted to the Congress. No such agreement shall take effect until after the expiration of 30 days after the date such agreement is so submitted (excluding days on which either House of Congress is not in session).

(3) No agreement described in paragraph (2) shall take effect if a joint resolution of disapproval is enacted during the period specified in paragraph (2). For the purpose of expediting the consideration of such a joint resolution, a motion to proceed to the consideration of any such joint resolution after it has been reported by an appropriate committee shall be treated as highly privileged in the House of Representatives. Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of Public Law 94-329.

(4) The subsidiary agreements or portions thereof referred to in paragraph (2) are as follows:

(A) Articles III and IV of the agreement referred to in section 462(b) of the Compact.

(B) Articles III, IV, V, VI, VII, VIII, IX, and X (except for Section 7 thereof) of the agreement referred to in section 462(f) of the Compact.

(C) Articles IV, V, X, XIV, XVI, and XVIII of the agreement referred to in section 462(i) of the Compact.

(D) Articles II, V, VI, VII, and VIII of the agreement referred to in section 462(h) of the Compact.

(E) The agreement referred to in section 462(j) of the Compact.

(5) No agreement between the United States and the Government of Palau which would amend, change, or terminate any subsidiary or related agreement, or portion thereof, other than those set forth in subsection (d) of this section or paragraph (4) of this subsection, shall take effect until the President has transmitted such agreement to the President of the Senate and Speaker of the House of Representatives, together with an explanation of the agreement and the reasons therefore.

SEC. 102. AGREEMENTS WITH PALAU.

(a) LAW ENFORCEMENT ASSISTANCE.—

(1) AGREEMENT.—The President of the United States shall negotiate with the Government of Palau an agreement pursuant to section 175 of the Compact which is in addition to the Agreement pursuant to such section dated January 10, 1986, and transmitted to the Congress by the President on April 9, 1986. Such additional agreement shall provide as follows:

(A) MUTUAL ASSISTANCE IN LAW ENFORCEMENT.—The law enforcement agencies of the United States and Palau shall assist one another, as mutually agreed, in the prevention and investigation of crimes and the enforcement of the laws of the United States and Palau specified in subparagraph (C) of this paragraph. The United States and Palau will authorize mutual assistance with respect to investigations, inquiries, audits, and related activities by the law enforcement agencies of both Governments in the United States and Palau. In conducting activities authorized in accordance with this section, the United States and Palau will act in accordance with the constitution and laws of the jurisdiction in which such activities are conducted.

(B) NARCOTICS AND CONTROL OF ILLEGAL SUBSTANCES.—The United States and Palau will take all reasonable and necessary steps, as mutually agreed, based upon consultations in which the Attorney General or other designated official of each Government participates, to prevent the use of the lands, waters, and facilities of the United States or Palau for the purposes of cultivation of, production of, smuggling of, trafficking in, and abuse of any controlled substance as defined in section 102(6) of the United States Controlled Substances Act and Schedules I through V of Chapter 31 of the Controlled Substances Act of Palau, or for the distribution of any such substance to or from Palau or to or from the United States or any of its territories or Commonwealths.

(C) OTHER CRIMINAL LAWS.—Assistance provided pursuant to this subsection shall also extend to, but not be limited to, prevention and prosecution of violations of the laws of the United States and the laws of Palau related to terrorism, espionage, racketeer influenced and corrupt organizations, and financial transactions which advance the interests of any person engaging in unlawful activities, as well as the schedule of offenses set forth in Appendix A of the subsidiary agreement to section 175 of the Compact.

(2) Technical and training assistance.—Pursuant to sections 224 and 226 of the Compact, the United States shall provide non-reimbursable technical and training assistance as appropriate, including training and equipment for postal inspection of illicit drugs and other contraband, to enable the Government of Palau to develop and adequately enforce laws of Palau and to cooperate with the United States in the enforcement of criminal laws of the United States. Funds appropriated pursuant to section 104(k) of this title may be used to reimburse State or local agencies providing such assistance.

(3) Consultation.—Any official, designated by this joint resolution or by the President to negotiate any agreement under this section, shall consult with affected law enforcement agencies prior to entering into such an agreement on behalf of the United States.

(4) Report.—The President shall report annually to Congress on the implementation of this subsection. Such report shall provide statistical and other information about the incidence of crime in Palau which has an impact upon United States jurisdictions, and propose measures which the United States and Palau should take in order better to prevent and prosecute violations of the laws of the United States and Palau. The reports required under section 481(e) of the Foreign Assistance Act of 1961 shall include relevant information concerning Palau.

(b) Economic Development Plans Review Process.—

(1) Submission.—Notwithstanding section 231 of the Compact, the President may agree to an effective date for the Compact pursuant to section 101 of this title if the Government of Palau agrees to submit economic development plans consistent with section 231 of the Compact to the Government of the United States for concurrence at intervals no greater than every 5 years for the duration of the Compact. Any capital construction project and any planned independent purchase of aircraft which is to be financed (directly or indirectly) through the use of funds provided under section 211 of the Compact shall be identified in the economic development plans.

(2) United states government review.—The United States shall not concur in those development plans described in paragraph (1) of this subsection until—

(A) after the President of the United States has conducted a review and reported the findings of the President to the Congress; and

(B) the Congress has had 30 days (excluding days on which both Houses of Congress are not in session) to review the findings of the President.

(3) Report.—The President shall complete the review under paragraph (2) and shall report the findings no later than 60 days after the President's receipt of such plans.

(4) Views and comments.—The report shall include the views of the Secretary of the Interior, the Administrator of the Agency for International Development, and the heads of such other Executive departments as the President may decide to include in the report, as well as any comments which Palau may wish to have included.

(c) Agreement on Audits.—In accordance with section 233 of the Compact, the President of the United States, in consultation with the Comptroller General of the United States, shall negotiate with the Government of Palau modifications to the "Agreement Concerning Procedures for the Implementation of United States Economic Assistance, Programs and Services Provided in the Compact of Free Association", which shall provide as follows:

(1) General authority of the GAO to audit.—

(A) The Comptroller General of the United States (and his duly authorized representatives) shall have the authority to audit—

(i) all grants, program assistance, and other assistance provided to the Government of Palau under Articles I and II of Title Two of the Compact, and

(ii) any other assistance provided by the Government of the United States to the Government of Palau.

Such authority shall include authority for the Comptroller General to conduct or cause to be conducted any of the audits provided for in section 233 of the Compact. The authority provided in this paragraph shall continue for at least three years after the last such grant has been made or assistance has been provided.

(B) The Comptroller General (and his duly authorized representatives) shall also have authority to review any audit conducted by or on behalf of the Government of the United States. In this connection, the Comptroller General shall have access to such personnel and to such records, documents, working papers, automated data and files, and other information relevant to such review.

(2) GAO access to records.—

(A) In carrying out paragraph (1), the Comptroller General (and his duly authorized representatives) shall have such access to the personnel and (without cost) to records, documents, working papers, automated data and files, and other information relevant to such audits. The Comptroller General may duplicate any such records, documents, working papers, automated data and files, or other information relevant to such audits.

(B) Such records, documents, working papers, automated data and files, and other information regarding each such grant or other assistance shall be maintained for at least three years after the date such grant or assistance was provided and in a manner that permits such grants, assistance, and payments to be accounted for distinct from any other funds of the Government of Palau.

(3) Representative status for GAO representatives.—The Comptroller General and his duly authorized representatives shall be accorded the status set forth in Article V of Title One of the Compact.

(4) Annual financial statements.—As part of the annual report submitted by the Government of Palau under section 231(b) of the Compact, the Government shall include annual financial statements which account for the use of all of the funds provided by the Government of the United States to the Government of Palau under the Compact or otherwise. Such financial statements shall be prepared in accordance with generally accepted accounting procedures, except as may otherwise be mutually agreed. Not later than 180 days after the end of the United States fiscal year with respect to which such funds were provided, each such statement shall be submitted to the President for audit and transmission to the Congress.

(5) Definition of audits.—As used in this subsection, the term "audits" includes financial, program, and management audits, including determining—

(A) whether the Government of Palau has met the requirements set forth in the Compact, or any related agreement entered into under the Compact, regarding the purposes for which such grants and other assistance are to be used; and

(B) the propriety of the financial transactions of the Government of Palau pursuant to such grants or assistance.

(6) Cooperation by Palau.—The Government of Palau will cooperate fully with the Comptroller General of the United States in the conduct of such audits as the Comptroller General determines necessary to enable the Comptroller General to fully discharge his responsibilities under this joint resolution.

SEC. 103. INTERPRETATION OF AND UNITED STATES POLICY REGARDING COMPACT OF FREE ASSOCIATION.

(a) Human Rights.—In approving the Compact, the Congress notes the conclusion in the Statement of Intent of the Report of The Future Political Status Commission of the Congress of Micronesia in July, 1969, that "our recommendation of a free associated state is indissolubly linked to our desire for such a democratic, representative, constitutional government" and notes that such desire and intention are reaffirmed and embodied in the Constitution of Palau. The Congress also notes and specifically endorses the preamble to the Compact, which affirms that the governments of the parties to the Compact are founded upon respect for human rights and fundamental freedoms for all. The Secretary of State shall include in the annual reports on the status of internationally recognized human rights in foreign countries, which are submitted to the Congress pursuant to sections 116 and 502B of the Foreign Assistance Act of 1961, a full and complete report regarding the status of internationally recognized human rights in Palau.

(b) Immigration.—The rights of a bona fide naturalized citizen of Palau to enter the United States, to lawfully engage therein in occupations, and to establish residence therein as a non-immigrant, pursuant to the provisions of section 141(a)(3) of the Compact, shall not extend to any such naturalized citizen with respect to whom circumstances associated with the acquisition of the status of a naturalized citizen are such as to allow a reasonable inference, on the part of appropriate officials of the United States and subject to United States procedural requirements, that such naturalized status was acquired primarily in order to obtain such rights.

(c) Nonalienation of Lands.—The Congress endorses and encourages the maintenance of the policies of the Government of Palau to regulate, in accordance with its Constitution and laws, the alienation of permanent and long-term interests in real property so as to restrict the acquisition of such interests to persons of Palau citizenship.

(d) Nuclear Waste Disposal.—In approving the Compact, the Congress understands that the Government of Palau will not permit any other government or any nongovernmental party to conduct in Palau any of the following activities:

(1) Test by detonation or dispose of any nuclear weapon, test, dispose of, or discharge any toxic chemical or biological weapon.

(2) Test, dispose of, or discharge any radioactive, toxic chemical or biological material in an amount or manner which would be hazardous to the public health or safety.

(e) Impact of Compact on U.S. Areas.—

(1) Statement of congressional intent.—In approving the Compact, it is not the intent of the Congress to cause any adverse consequences for the United States territories and Commonwealths or the State of Hawaii.

(2) Annual reports and recommendations.—One year after the date of enactment of this joint resolution and at one year intervals thereafter, the President shall report to the Congress with respect to the impact of the Compact on the United States territories and Commonwealths and on the State of Hawaii. Reports submitted pursuant to this paragraph (hereafter in this subsection referred to as "reports") shall identify any adverse consequence resulting from the Compact and shall make recommendations for corrective action to eliminate any such consequence. The reports shall pay particular attention to matters relating to trade, taxation, immigration, labor laws, minimum wages, social systems and infrastracture, and environmental regulation. With regard to immigration, the reports shall include statistics concerning the number of persons availing themselves of the rights described in section 141(a) of the Compact during the year covered by each report. With regard to trade, the reports shall include an analysis of the impact on the economy of American Samoa resulting from imports of canned tuna into the United States from Palau.

(3) Other views.—In preparing the reports, the President shall request the views of the Government of the State of Hawaii, and the governments of each of the United States territories and Commonwealths, the Federated States of Micronesia, the Marshall Islands, and Palau, and shall transmit the full text of any such views to the Congress as part of such reports.

(4) Commitment of congress to redress adverse consequences.—The Congress hereby declares that, if any adverse consequences to United States territories and Commonwealths or the State of Hawaii result from implementation of the Compact of Free Association, the Congress will act sympathetically and expeditiously to redress those adverse consequences.

(5) Definition of u.s. territories and commonwealths.—As used in this subsection, the term "United States territories and Commonwealths" means the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(6) Impact costs.—There are hereby authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to cover the costs, if any, incurred by the State of Hawaii, the territories of Guam and American Samoa, and the Commonwealth of the Northern Mariana Islands resulting from any increased demands placed on educational and social services by immigrants from Palau.

(f) Fisheries Management.—In clarification of Title One, Article II, section 124 of the Compact:

(1) Nothing in the Compact or this joint resolution shall be interpreted as recognition by the United States of any claim by Palau to jurisdiction or authority over highly migratory species of fish during the time such species of fish are found outside the territorial sea of Palau.

(2) It is the understanding of Congress that none of the monies made available pursuant to the Compact or this joint resolution will be used by Palau for enforcement actions against any vessel of the United States on the basis of fishing by any such vessel for highly migratory species of fish outside the territorial sea of Palau in the absence of a licensing agreement.

(3) Appropriate United States officials shall apply the policies and provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) and the Fishermen's Protective Act of 1967 (22 U.S.C. 1971 et seq.) with regard to any action taken by Palau affecting any vessel of the United States engaged in fishing for highly migratory species of fish in waters outside the territorial seas of Palau. For the purpose of applying the provisions of section 5 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1975), monies made available to Palau pursuant to the provisions of the Compact or this joint resolution shall be treated as "assistance to the government of such country under the Foreign Assistance Act of 1961". For purposes of this joint resolution only, certification by the President in accordance with such section 5 shall be accompanied by a report to Congress on the basis for such certification, and such certification shall have no effect if by law Congress so directs prior to the expiration of 60 days during which Congress is in continuous session following the date of such certification.

(4) For the purpose of paragraphs (1) and (3) of this subsection—

(A) The term "vessel of the United States" has the same meaning as provided in the first section of the Fishermen's Protective Act of 1967 (22 U.S.C. 1971).

(B) The terms "fishing" and "highly migratory species" have the same meanings as provided in paragraphs (10) and (14), respectively, of section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(10) and (14)).

(5)(A) It is the policy of the United States of America—

(i) to negotiate and conclude with the governments of the Central, Western, and South Pacific Ocean (including Palau) a regional licensing agreement setting forth agreed terms of access for United States tuna vessels fishing in the region; and

(ii) that such an agreement should overcome existing jurisdictional differences and provide for a mutually beneficial relationship between the United States and the Pacific Island states that will promote the development of the tuna and other latent fisheries resources of the Central, Western, and South Pacific Ocean and the economic development of the region.

(B) At such time as an agreement referred to in subparagraph (A) is submitted to the Senate for advice and consent to ratification, the Secretary of State, after consultation with the Secretary of Commerce and other interested agencies and concerned governments, shall submit to the Congress a proposed long term regional fisheries development program which may include, but not be limited to—

(i) exploration for, and stock assessment of, tuna and other fish;

(ii) improvement of harvesting techniques;

(iii) gear development;

(iv) biological resource monitoring;

(v) education and training in the field of fisheries; and

(vi) regional and direct bilateral assistance in the field of fisheries.

(g) Foreign Loans.—The Congress hereby reaffirms the United States position that the United States Government is not responsible for foreign loans or debt obtained by the Government of Palau. Neither the Secretary of the Treasury nor any other officer or agent of the United States shall pay or transfer any portion of the sums and amounts payable to the Government of Palau pursuant to this joint resolution to any party other than the Government of Palau.

(h) Additional Provisions Relating to Title Three of the Compact.—

(1) The Government of the United States recognizes and respects the scarcity and special importance of land in Palau. In making any designation of land pursuant to section 322 of the Compact, the Government of the United States shall follow the policy of requesting the minimum area necessary to accomplish the required security and defense purpose, of requesting only the minimum interest in real property necessary to support such purpose, and of requesting first to satisfy the requirement through public real property, where available, rather than through private real property.

(2) The Armed Forces of other nations invited to use military areas and facilities in Palau pursuant to section 312 of the Compact shall be permitted only as it is incident to the authority and under the control of the United States. The activities of such third country forces shall be subject to the same limitations and restrictions applicable to the authority of the United States under the terms of the Compact.

(3) The Government of the United States considers "Exclusive use" areas established for the United States pursuant to Title Three of the Compact to be "within the jurisdiction of Palau", as that term is used in section 324 of the Compact.

(4) Upon entry into force of the Compact, the right of the United States to operate vessels and aircraft within Palau in accordance with section 324 of the Compact shall not constitute an authorization for the United States to engage in actions inconsistent with restrictions or limitations agreed to by the United States in section 324 of the Compact as constitutionally approved by Palau and the United States.

SEC. 104. SUPPLEMENTAL PROVISIONS.

(a) Domestic Program Requirements.—Except as may otherwise be provided in this joint resolution, all United States Federal programs and services extended to or operated in Palau are and shall remain subject to all applicable criteria, standards, reporting requirements, auditing procedures, and other rules and regulations applicable to such programs when operating in the United States (including its territories and Commonwealths).

(b) Relations With Palau.—

(1) The United States representative to Palau pursuant to Article V of Title One of the Compact shall be appointed by the President with the advice and consent of the Senate, and shall be under the supervision of the Secretary of State, who shall have responsibility for government to government relations between the United States and Palau consistent with the authority of the Secretary of the Interior as set forth in this section.

(2) Except for programs or services provided by or through other Federal agencies or officials to Palau or for which the residents thereof are eligible pursuant to the Compact or any other provision of this joint res-

olution, appropriations made pursuant to the Compact or any other provision of this joint resolution may be made only to the Secretary of the Interior. The Secretary of the Interior shall coordinate and monitor any programs or activities, including such activities for which funding is made directly to such other agencies, provided to Palau by departments and agencies of the Government of the United States and related economic development planning pursuant to the Compact or pursuant to any other authorization except for the provisions of sections 163(e), 313, and 351 of the Compact and the authorization of the President to agree to an effective date pursuant to this resolution. Funds appropriated to the Secretary of the Interior pursuant to this paragraph shall not be allocated to other Departments or agencies, except that the Secretary of the Interior shall be able to reimburse departments or agencies for purposes authorized by this joint resolution.

(3) All programs and services provided to Palau by Federal agencies may be provided only after consultation with and under the supervision of the Secretary of the Interior, and the head of each Federal agency is directed to cooperate with the Secretary of the Interior and to make such personnel and services available as the Secretary of the Interior may request.

(4) Any United States Government personnel assigned, on a temporary or permanent basis, to Palau shall, during the period of such assignment, be subject to the supervision of the United States representative to that area.

(5) The President is hereby authorized to appoint an Interagency Group on Freely Associated States' Affairs to provide policy guidance to federal departments and agencies. Such interagency group shall include the Secretary of the Interior and the Secretary of State.

(c) Continuing Trust Territory Authorization.—The authorization provided by the Act of June 30, 1954, as amended (68 Stat. 330) shall remain available after the effective date of the Compact with respect to Palau for the following purposes:

(1) Prior to October 1, 1986, for any purpose authorized by the Compact or this joint resolution.

(2) Transition purposes, including but not limited to, completion of projects and fulfillment of commitments or obligations; termination of the Trust Territory Government and termination of the High Court; health and education as a result of exceptional circumstances; and technical assistance and training in financial management, program administration, and maintenance of infrastructure, except that for purposes of an orderly reduction of United States programs and services in the Federated States of Micronesia, the Marshall Islands, and Palau, United States programs or services not specifically authorized by the Compact of Free Association or by other provisions of law may continue but, unless reimbursed by the respective freely associated state, not in excess of the following amounts:

(A) For fiscal year 1987, an amount not to exceed 75 percent of the total amount appropriated for such programs for fiscal year 1985;

(B) For fiscal year 1988, an amount not to exceed 50 percent of the total amount appropriated for such programs for fiscal year 1985; and

(C) For fiscal year 1989, an amount not to exceed 25 percent of the total amount appropriated for such programs for fiscal year 1985.

(d) Medical Referral Debts.—

(1) Palau.—In addition to the funds provided in Title Two, Article II, section 221(b) of the Compact, following approval of the Compact, the United States shall make available to the Government of Palau such sums as may be necessary for the payment of the obligations incurred for the use of medical facilities in the United States, including any territories and Commonwealths, by citizens of Palau before September 1, 1985.

(2) Use of funds.—In making funds available pursuant to this subsection, the President shall take such actions as he deems necessary to assure that the funds are used only for the payment of the medical expenses described in paragraph (1) of this subsection.

(3) Authorization of appropriations.—There are hereby authorized to be appropriated such sums as may be necessary for the purposes of this subsection.

(e) Survivability.—In furtherance of the provisions of Title Four, Article V, sections 452 and 453 of the Compact, any provisions of the Compact which remain effective after the termination of the Compact by the act of any party thereto and which are affected in any manner by provisions of this title shall remain subject to such provisions.

(f) Registration for Agents of Palau Government.—

(1) In general.—Notwithstanding any provision of the Compact, after approval of the Compact any citizen of the United States who, without authority of the United States, acts as the agent of the Government of Palau with regard to matters specified in the provisions of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611 et seq.) that apply with respect to an agent of a foreign principal shall be subject to the requirements of such Act. Failure to comply with such requirements shall subject such citizen to the same penalties and provisions of law as apply in the case of the failure of such an agent of a foreign principal to comply with such requirements. For purposes of the Foreign Agents Registration Act of 1938, Palau shall be considered to be a foreign country.

(2) Exception.—Paragraph (1) of this subsection shall not apply to a citizen of the United States employed by the Government of Palau with respect to whom the employing Government from time to time certifies to the Government of the United States that such citizen is an employee of the Government of Palau whose principal duties are other than those matters specified in the Foreign Agents Registration Act of 1938, as amended, that apply with respect to an agent of a foreign principal. The agency or officer of the United States receiving such certifications shall cause them to be filed with the Attorney General, who shall maintain a publicly available list of the persons so certified.

(3) Resident representative exemption.—Nothing in this subsection shall be construed as amending Section 152(b) of the Compact.

(g) Noncompliance Sanctions.—

(1) Authority of president.—The President of the United States shall have no authority to suspend or withhold payments or assistance with respect to—

(A) section 211(d)(2), 211(d)(3), 213, 221(b), or 223 of the Compact, or

(B) any agreements made pursuant to such sections of the Compact,

unless such suspension or withholding is imposed as a sanction due to noncompliance by the Government of Palau with the obligations and requirements of such sections of the Compact or such agreements.

(2) Actions incompatible with United States authority.—The Congress expresses its understanding that the Government of Palau will not act in a manner incompatible with the authority and responsibility of the United States for security and defense matters in or related to Palau pursuant to the Compact, including the agreement referred to in section 462(h) thereof. The Congress further expresses its intention that any such act on the part of the Palau Government will be viewed by the United States as a material breach of the Compact. The Government of the United States reserves the right in the event of such a material breach of the Compact by the Government of Palau to take action, including (but not limited to) the suspension in whole or in part of the obligations of the Government of the United States to that Government.

(h) Continuing Programs and Laws.—

(1) Palau.—In addition to the programs and services set forth in section 221 of the Compact, and pursuant to section 224 of the Compact, the programs and services of the following agencies shall be made available to Palau.

(A) the Legal Services Corporation;

(B) the Public Health Service; and

(C) the Farmers Home Administration.

(2) Section 214 determination.—The determination by the Government of the United States under section 214 of the Compact shall be as provided in appropriation Acts.

(3) Tort claims.—At such time as the Trusteeship Agreement ceases to apply to Palau, the provisions of section 177 of the Compact regarding settlement and payment of tort claims shall apply to employees of any Federal agency of the Government of the United States which provides any service or carries out any other function pursuant to or in furtherance of any provisions of the Compact or this joint resolution except for provisions of Title Three of the Compact and of the subsidiary or related agreements related to such Title, in such area to which such Agreement formerly applied. For purposes of this subparagraph (B), persons providing such service or carrying out such function pursuant to a contract with a Federal agency shall be deemed to be an employee of the contracting Federal agency.

(i) Trust Territory Debts to U.S. Federal Agencies.—The Government of Palau shall not be required to pay to any department, agency, independent agency, office, or instrumentality of the United States any amounts owed to such department, agency, independent agency, office, or instrumentality by the Government of the Trust Territory of the Pacific Islands as of the effective date of the Compact. There is authorized to be appropriated such sums as may be necessary to carry out the purposes of this subsection.

(j) Use of DOD Medical Facilities.—Following approval of the Compact, the Secretary of Defense shall make available the medical facilities of the Department of Defense for use by citizens of Palau who are properly referred to such facilities by government authorities responsible for provision of medical services in Palau. The Secretary of Defense is hereby authorized to cooperate with such authorities in order to permit use of such medical facilities for persons properly referred by such authorities.

The Secretary of Health and Human Services is hereby authorized and directed to continue to make the services of the National Health Service Corps available to the residents of Palau to the same extent and for so long as such services are authorized to be provided to persons residing in any other areas within or outside the United States.

(k) Technical Assistance.—

(1) In general.—Technical assistance may be provided pursuant to section 222 of the Compact by Federal agencies and institutions of the Government of the United States to the extent such assistance may be provided to States, territories, or units of local government. Such assistance by the Forest Service, the National Marine Fisheries Service, the Soil Conservation Service, the Fish and Wildlife Service, the United States Coast Guard, and the Advisory Council on Historic Preservation, the Department of the Interior, and other agencies providing assistance under the National Historic Preservation Act (80 Stat. 915; 16 U.S.C. 470–470t), shall be on a nonreimbursable basis. During the period the Compact is in effect, the grant programs under the National Historic Preservation Act shall continue to apply to Palau in the same manner and to the same extent as prior to the approval of the Compact. Funds provided pursuant to sections 102(a), 104(c), 104(i), 104(j), 104(k), 104(l), and 104(m) of this joint resolution shall be in addition to and not charged against any amounts to be paid to Palau pursuant to the Compact or the subsidiary or related agreements.

(2) Peleliu and Angaur.—Not later than one year after the date of enactment of this joint resolution, the Secretary of Agriculture, after appropriate studies conducted in consultation with the Government of Palau, shall report to the President and the Congress concerning the feasibility and cost of rehabilitating and restoring the fertility of the topsoil of the island of Peleliu and Angaur. Upon the request of the Government of Palau, the President shall make the report of the Secretary of Agriculture available to the Government of Palau. Technical assistance to accomplish such rehabilitation and restoration, if feasible, may be provided to the Government of Palau on a nonreimbursable basis, subject to the availability of appropriated funds.

(l) Prior Service Benefits Program.—Notwithstanding any other provision of law, persons who on January 1, 1985, were eligible to receive payment under the Prior Service Benefits Program established within the Social Security System of the Trust Territory of the Pacific Islands because of their services performed for the United States Navy or the Government of the Trust Territory of the Pacific Islands prior to July 1, 1968, shall continue to receive such payments on and after the effective date of the Compact.

(m) Indefinite Land Use Payments.—There are authorized to be appropriated such sums as may be necessary to complete repayment by the United States of any debts owed for the use of various lands in Palau prior to January 1, 1985.

(n) Annual Reports on Determinations Under Compact Section 313.—The President shall report annually to the Congress on determinations made by the United States in the exercise of its authority under section 313 of the Compact. Each such report shall describe the following, on a classified basis if necessary:

(1) The actions that the Government of Palau were required to refrain from pursuant to the determinations of the United States.

(2) The justification for each determination by the United States, and the position of the Government of Palau with respect to such determination.

(3) The effect of the determination on the authority and responsibility of the Government of Palau to conduct foreign affairs in accordance with section 121 of the Compact.

(4) Any domestic effect in Palau resulting from the determination, including any restriction on the civil and political rights of the citizens thereof.

(o) User Fees.—Any person in Palau shall be liable for user fees, if any, for services provided in Palau by the Government of the United States to the same extent as any person in the United States would be liable for fees, if any, for such services in the United States.

(p) Payments.—The enactment of sections 103(h), 103(k), and 105(m) of the Compact of Free Association Act of 1985 (Public Law 99–239) and subsection 104(l) of this joint resolution shall be deemed to constitute a pledge of the full faith and credit of the United States for the full payment of sums and amounts as specified in such subsections, and the obligations of the United States under such subsections shall be enforceable in the United States Claims Court, or its successor court, which shall have jurisdiction in cases arising under such subsections and this subsection, notwithstanding the provisions of section 1502 of title 28, United States Code, and which court's decisions shall be reviewable as provided by the laws of the United States.

(q) Civic Action Teams.—In recognition of the special development needs of Palau and the Marshall Islands, the United States shall make available United States military Civic Action Teams for use in Palau or the Marshall Islands under terms and conditions mutually agreed upon by the Government of the United States and the Governments of Palau or the Marshall Islands, as appropriate. The Government of Palau may use the amount of $250,000 annually from current account funds provided pursuant to section 211 of the Compact to defray expenditures attendant to the operation of the Civic Action Teams made available pursuant to this subsection. The Government of the Marshall Islands may use the amount of $250,000 annually from current account funds provided pursuant to section 211 of the Compact of Free Association with the Marshall Islands to defray expenditures attendant to the operation of the Civic Action Teams made available pursuant to this subsection.

(r) Inventory and Study of Natural, Historic, and Other Resources.—The Secretary of the Interior shall conduct, upon request of Palau, the Federated States of Micronesia or the Marshall Islands, and through the Director of the National Park Service, a comprehensive inventory and study of the most unique and significant natural, historical, cultural, and recreational resources of Palau, the Federated States of Micronesia or the Marshall Islands. Areas or sites exhibiting such qualities shall be described and evaluated with the objective of the preservation of their values and their careful use and appreciation by the public, along with a determination of their potential for attracting tourism. Alternative methodologies for such preservation and use shall be developed for each area or site (including continued assistance from the National Park Service); current or impending damage or threats to the resources of such areas or sites shall be identified and evaluated; and authorities needed to properly protect and allow for public use and appreciation shall be identified and discussed. Such inventory and study shall be conducted in full cooperation and consultation with affected governmental officials and the interested public. The inventory and study shall also identify areas or sites which, if they were located in the United States, would qualify to be listed on the Registry of Natural Landmarks and the National Register of Historic Places. A full report on such inventory and study shall be transmitted to Palau or the Federated States of Micronesia or the Marshall Islands, the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate no later than two complete calendar years after the date of enactment of this joint resolution.

SEC. 105. CONSTRUCTION CONTRACT ASSISTANCE.

(a) Assistance to U.S. Firms.—In order to assist the Government of Palau through private sector firms which may be awarded contracts for construction or major repair of capital infrastructure within Palau, the President shall consult with the Government of Palau with respect to any such contracts, and the President shall enter into agreements with such firms whereby such firms will, consistent with applicable requirements of such Governments—

(1) to the maximum extent possible, employ citizens of Palau;

(2) to the extent that necessary skills are not possessed by citizens of Palau, provide on the job training, with particular emphasis on the development of skills relating to operation of machinery and routine and preventative maintenance of machinery and other facilities; and

(3) provide specific training or other assistance in order to enable the Government to engage in long-term maintenance of infrastructure.

Assistance by such firms pursuant to this section may not exceed 20 percent of the amount of the contract and shall be made available only to such firms which meet the definition of United States firm under the nationality rule for suppliers of services of the Agency for International Development (hereafter in this section referred to as "United States firms"). There are authorized to be appropriated such sums as may be necessary for the purposes of this subsection.

(b) Authorization.—There are authorized to be appropriated such sums as may be necessary to cover any additional costs incurred by the Government of Palau if such Government, pursuant to an agreement entered into with the United States, applies a preference on the award of contracts to United States firms, provided that the amount of such preference does not exceed 10 percent of the amount of the lowest qualified bid from a non-United States firm for such contract.

SEC. 106. TIMING.

No payment may be made pursuant to the Compact nor under any provision of this joint resolution prior to October 1, 1986. The provisions of section 174(a) of the Compact shall apply with respect to any action based on a contract or debt related to any electrical generating plant or related facilities entered into or incurred by Palau prior to the date of enactment of this joint resolution.

SEC. 107. IMPLEMENTATION OF AUDIT AGREEMENTS.

(a) Transmission of Annual Financial Statement.—Upon receipt of the annual financial statement described in sections 102(c)(4), the President shall promptly transmit a copy of such statement to the Congress.

(b) Annual Audits by the President.—(1) The President shall cause an annual audit to be conducted of the annual financial statement described in section 102(c)(4). Such audit shall be conducted in accordance with the Generally Accepted Government Auditing Standards promulgated by the Comptroller General of the United States. Such audit shall be submitted to the Congress not later than 180 days after the end of the United States fiscal year.

(2) The President shall develop and implement procedures to carry out such audits. Such procedures shall include the matters described in section 102(c)(2) of this title.

(c) Authority of GAO.—The Comptroller General of the United States shall have the authority to conduct the audits referred to in section 102(c)(1) of this title.

SEC. 108. COMPENSATORY ADJUSTMENTS.

(a) Additional Programs and Services.—In addition to the programs and services set forth in Section 221 of the Compact, and pursuant to Section 224 of the Compact, the services and programs of the following United States agencies shall be made available to Palau: The Federal Deposit Insurance Corporation, Small Business Administration, Economic Development Administration, the Rural Electrification Administration, Job Training Partnership Act, Job Corps, and the programs and services of the Department of Commerce relating to tourism and to marine resource development.

(b) Amounts for Adverse Impact.—The Government of Palau may submit to Congress reports concerning the overall financial and economic impact on Palau resulting from revisions made to Articles IV and V of Title Two of the 1984 version of the Compact, as set forth in Committee Print Number 4 of the Committee on Interior and Insular Affairs of the House of Representatives of the 99th Congress. There are hereby authorized to be appropriated for fiscal years beginning after September 30, 1990, such amounts as may be necessary, but not to exceed $20 million for Palau, as provided in appropriation Acts, to further compensate the Government (in addition to the compensation provided in subsection (a) of this section) for adverse impacts, if any, on the finances and economies of such area resulting from such revisions. At the end of the initial fifteen-year term of the Compact, should any portion of the total amount of funds authorized in this subsection not have been appropriated, such amount not yet appropriated may be appropriated for Palau based on such Government's showing of such adverse impact, if any, as provided in this subsection.

SEC. 119. ADDITIONAL CLARIFICATION REGARDING UNITED STATES ASSISTANCE.

(a) Amounts appropriated to be paid pursuant to section 177 of Article I of Title One or Articles I and III of Title Two of the Compact of Free Association with the Federated States of Micronesia and the Marshall Islands, as set forth in Title II of the Compact of Free Association Act of 1985, or pursuant to section 103(h), 103(k), or 105(m) of such Act (Public Law 99-239), or pursuant to Article I of Title Two of the Compact with Palau, as set forth in Title II of this joint resolution, or section 104(1) of this joint resolution shall not be reduced, notwithstanding Public Law 99-177, Public Law 99-366, and other laws enacted to implement Public Law 99-177, or any other provision of law.

(b) The programs and services specified in sections 104(h)(1) of this title, section 109(a) of this title, section 221(b) of the Compact, the services of the National Health Services Corps pursuant to section 104(j) of this title, and the technical assistance and National Historic Preservation Act grants pursuant to section 104(k) of this title shall be provided on a nonreimbursable basis.

TITLE II—COMPACT OF FREE ASSOCIATION

SEC. 201. COMPACT OF FREE ASSOCIATION.

The Compact of Free Association is as follows:

COMPACT OF FREE ASSOCIATION

PREAMBLE

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PALAU

Affirming that their Governments and the relationship between their Governments are founded upon respect for human rights and fundamental freedoms for all; and

Affirming the common interests of the United States of America and the people of Palau in creating close and mutually beneficial relationships through a free and voluntary association of their Governments; and

Affirming the interest of the Government of the United States in promoting the economic advancement and self-sufficiency of the people of Palau; and

Recognizing that their previous relationship has been based upon the International Trusteeship System of the United Nations Charter; and that pursuant to Article 76 of the Charter, the peoples of the Trust Territory have progressively developed their institutions of self-government, and that in the exercise of their sovereign right to self-determination they have, through their freely-expressed wishes, adopted a Constitution appropriate to their particular circumstances; and

Recognizing their common desire to terminate the Trusteeship and establish a new government-to-government relationship in accordance with a new political status based on the freely-expressed wishes of the people of Palau and appropriate to their particular circumstances; and

Recognizing that the people of Palau have and retain their sovereignty and their sovereign right to self-determination and the inherent right to adopt and amend their own Constitution and form of government and that the approval of the entry of their Government into this Compact of Free Association by the people of Palau constitutes an exercise of their sovereign right to self-determination;

NOW, THEREFORE, AGREE to enter into a relationship of free association which provides a full measure of self-government for the people of Palau; and

FURTHER AGREE that the relationships of free association derives from and is as set forth in this Compact; and that, during such relationships of free association, the respective rights and responsibilities of the Government of the United States and the Government of the freely associated state of Palau in regard to this relationship of free association derives from and is as set forth in this Compact.

TITLE ONE

GOVERNMENT RELATIONS

Article I

Self-government

Section 111

The people of Palau, acting through their duly elected government established under their constitution, are self-governing.

Article II

Foreign Affairs

Section 121

(a) The Republic of Palau has the capacity to conduct foreign affairs in its own name and right, except as otherwise provided in this Compact and the Government of the United States recognizes that the Government of Palau, in the exercise of this capacity, may enter into, in its own name and right, treaties and other international agreements with governments and regional and international organizations.

(b) In the conduct of its foreign affairs the Government of Palau confirms that it shall act in accordance with principles of international law and shall settle its international disputes by peaceful means.

Section 122

The Government of the United States shall support application by the Government of Palau for membership or other participation in regional or international organizations as may be mutually agreed. The Government of the United States agrees to accept citizens of Palau for training and instruction at the United States Foreign Service Institute, established under 22 U.S.C. 4021, or similar training under terms and conditions to be mutually agreed.

Section 123

In recognition of the authority and responsibility of the Government of the United States under Title Three, the Government of Palau shall consult with the Government of the United States. The Government of the United States, in the conduct of its foreign affairs, shall consult with the Government of Palau on matters which the Government of the United States regards as relating to or affecting the Government of Palau, and shall provide, on a regular basis, information on regional foreign policy matters.

Section 124

(a) The Government of Palau has authority to conduct its foreign affairs relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and nonliving resources from the sea, seabed or subsoil to the full extent recognized under international law.

(b) The Government of Palau has jurisdiction and sovereignty over its territory, including its land and internal waters, territorial seas, the airspace superjacent thereto only to the extent recognized under international law.

Section 125

Except as otherwise provided in this Compact or its related agreements, all obligations, responsibilities, rights and benefits of the Government of the United States as administering authority which have resulted from the application pursuant to the Trusteeship Agreement of any treaty or other international agreement to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact are no longer assumed and enjoyed by the Government of the United States.

Section 126

The Government of the United States shall accept responsibility for those actions taken by the Government of Palau in the area of foreign affairs, only as may from time to time be expressly and mutually agreed.

Section 127

The Government of the United States may assist or act on behalf of the Government of Palau in the area of foreign affairs as may be requested and mutually agreed from time to time. The Government of the United States shall not be responsible to third parties for the actions of the Government of Palau undertaken with the assistance or through the agency of the Government of the United States pursuant to this Section unless expressly agreed.

Section 128

At the request of the Government of Palau and subject to the consent of the receiving state, the Government of the United States shall extend consular assistance on the same basis as for citizens of the United States to citizens of Palau for travel outside of Palau, the Marshall Islands, the Federated States of Micronesia, the United States and its territories and possessions.

Article III

Communications

Section 131

(a) The Government of Palau has full authority and responsibility to regulate its domestic and foreign communications, and the Government of the United States shall provide communication assistance in accordance with the terms of a related agreement which shall come into effect simultaneously with this Compact, and such agreement shall remain in effect until such time as any election is made pursuant to Section 131(b) and which shall provide for the following:

(1) the Government of the United States remains the sole administration entitled to make notification to the International Frequency Registration Board of the International Telecommunications Union of frequency assignments to radio communications stations in Palau; and to submit to the International Frequency Registration Board seasonal schedules for the broadcasting stations in Palau in the bands allocated exclusively to the broadcasting service between 5,950 and 26,100 kHz and in any other additional frequency bands that may be allocated to use by high frequency broadcasting stations; and

(2) the United States Federal Communications Commission has jurisdiction, pursuant to the Communications Act of 1934, 47 U.S.C. 151 *et seq.*, and the Communications Satellite Act of 1962, 47 U.S.C. 721 *et seq.*, over all domestic and foreign communications services furnished by means of satellite earth terminal stations where such stations are owned or operated by United States common carriers and are located in Palau.

(b) The Government of Palau may elect at any time to undertake the functions enumerated in Section 131(a) and previously performed by the Government of the United States. Upon such election, the Government of the United States shall so notify the International Frequency Registration Board and shall take such other actions as may be necessary to transfer to the Government of Palau the notification authority referred to in Section 131(a) and all rights deriving from the previous exercise of any such notification authority by the Government of the United States.

Section 132

The Government of Palau shall permit the Government of the United States to operate telecommunications services in Palau to the extent necessary to fulfill the obligations of the Government of the United States under this Compact in accordance with the terms of related agreements which shall come into effect simultaneously with this Compact.

Article IV

Immigration

Section 141

(a) Any person in the following categories may enter into, lawfully engage in occupations, and establish residence as a nonimmigrant in the United States and its territories and possessions without regard to paragraphs (14), (20), and (26) of section 212(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(a) (14), (20), and (26):

(1) a person who, on the day preceding the effective date of this Compact, is a citizen of Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become a citizen of Palau;

(2) a person who acquires the citizenship of Palau, at birth, on or after the effective date of the Constitution of Palau; or

(3) a naturalized citizen of Palau, who has been an actual resident there for not less than five years after attaining such naturalization and who holds a certificate of actual residence.

Such persons shall be considered to have the permission of the Attorney General of the United States to accept employment in the United States.

(b) The right of such persons to establish habitual residence in a territory or possession of the United States may, however, be subjected to nondiscriminatory limitations provided for:

(1) in statutes or regulations of the United States; or

(2) in those statutes or regulations of the territory or possession concerned which are authorized by the laws of the United States.

(c) Section 141(a) does not confer on a citizen of Palau, the right to establish the residence necessary for naturalization under the Immigration and Nationality Act, or to petition for benefits for alien relatives under that Act. Section 141(a), however, shall not prevent a citizen of Palau from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Section 142

(a) Any citizen or national of the United States may enter into, lawfully engage in occupations, and reside in Palau, subject to the right of that Government to deny entry to or deport any such citizen or national as an undesirable alien. A citizen or national of the United States may establish habitual residence or domicile in Palau only in accordance with the laws of Palau. This subsection is without prejudice to the right of the Government of Palau to regulate occupations in Palau in a non-discriminatory manner.

(b) With respect to the subject matter of this Section, the Government of Palau shall accord to citizens and nationals of the United States treatment no less favorable than that accorded to citizens of other countries; any denial of entry to or deportation of a citizen or national of the United States as an undesirable alien must be pursuant to reasonable statutory grounds.

Section 143

(a) The privileges set forth in Section 141 shall not apply to any person who takes an affirmative step to preserve or acquire a citizenship or nationality other than that of Palau.

(b) Every person having the privileges set forth in Sections 141 and 142 who possesses a citizenship or nationality other than that of Palau or the United States ceases to have these privileges two years after the effective date of this Compact, or within six months after becoming 21 years of age, whichever comes later, unless such person executes an oath of renunciation of that other citizenship or nationality.

Section 144

(a) A citizen or national of the United States who, after notification to the Government of the United States of an intention to employ such person by the Government of Palau, commences employment with that Government shall not be deprived of his United States nationality pursuant to Section 349 (a)(2) and (a)(4) of the Immigration and Nationality Act, 8 U.S.C. 1481 (a)(2) and (a)(4).

(b) Upon such notification by the Government of Palau, the Government of the United States may consult with or provide information to the notifying Government concerning the prospective employee, subject to the provisions of the Privacy Act, 5 U.S.C. 552a.

(c) The requirement of prior notification shall not apply to those citizens or nationals of the United States who are employed by the Government of Palau on the effective date of this Compact with respect to the positions held by them at that time.

Article V

Representation

Section 151

The Government of the United States and the Government of Palau may establish and maintain representative offices in the capitals of the other.

Section 152

(a) The premises of such representative offices, and their archives wherever located, shall be inviolable. The property and assets of such representative offices shall be immune from search, requisition, attachment and any form of seizure unless such immunity is expressly waived. Official communications in transit shall be inviolable and accorded the freedom and protections accorded by recognized principles of international law to official communications of a diplomatic mission.

(b) Persons designated by the sending Government may serve in the capacity of its resident representatives with the consent of the receiving Government. Such designated persons shall be immune from civil and criminal process relating to words spoken or written and all acts performed by them in their official capacity and falling within their functions as such representatives, except insofar as such immunity may be expressly waived by the sending Government. While serving in a resident representative capacity, such designated persons shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by a competent judicial authority, and such persons shall enjoy immunity from seizure of personal property, immigration restrictions, and laws relating to alien registration, fingerprinting, and the registration of foreign agents.

(c) The sending Governments and their respective assets, income and other property shall be exempt from all direct taxes, except those direct taxes representing payment for specific goods and services, and shall be exempt from all customs duties and restrictions on the import or export of articles required for the official functions and personal use of their representatives and representative offices.

(d) Persons designated by the sending Government to serve in the capacity of its resident representatives shall enjoy the same taxation exemptions as are set forth in Article 34 of the Vienna Convention on Diplomatic Relations.

(e) The privileges, exemptions and immunities accorded under this Section are not for the personal benefit of the individuals concerned but are to safeguard the independent exercise of their official functions. Without prejudice to those privileges, exemptions and immunities, it is the duty of all such persons to respect the laws and regulations of the Government to which they are assigned.

Article VI

Environmental Protection

Section 161

The Government of the United States and the Government of Palau declare that it is their policy to promote efforts to prevent or eliminate damage to the environment and biosphere and to enrich understanding of the natural resources of Palau.

Section 162

(a) The Government of the United States and the Government of Palau agree that with respect to the activities of the Government of the United States in Palau, and with respect to substantively equivalent activities of the Government of Palau, each of the Governments shall be bound by such environmental protection standards as may be mutually agreed for the purpose of carrying out the policy set forth in this Compact.

Section 163

In order to carry out the policy set forth in this Article, the Government of the United States and the Government of Palau agree to the following undertakings.

(a) The Government of the United States:

(1) shall apply environmental standards substantively similar to those in effect on the day preceding the effective date of this Compact to any activity requiring the preparation of an Environmental Impact Statement under the provisions of the National Environmental Policy Act of 1969, 83 Stat. 852, 42 U.S.C. 4321 *et seq.*

(2) shall develop, prior to conducting any activity included within the category described in this Section, appropriate mechanisms, including regulations or other standards and procedures, to regulate such activity in Palau in a manner appropriate to the special governmental relationship set forth in this Compact. The Government of the United States shall provide the Government of Palau with the opportunity to comment formally during the development of such mechanisms.

(b) The Government of Palau shall develop standards and procedures to protect the environment of Palau. As a reciprocal obligation to the undertakings of the Government of the United States under this Article, the Government of Palau, taking into account the particular environment of Palau, shall develop standards for environmental protection substantively similar to those required of the Government of the United States by Section 163(a)(1) prior to conducting activities in Palau substantively equivalent to activities conducted there by the Government of the United States and, as a further reciprocal obligation, shall enforce those standards.

(c) Section 163(a), including any standard or procedure applicable thereunder, and Section 163(b) may be modified or superseded in whole or in part by agreement of the Government of the United States and the Government of Palau.

(d) Disputes arising under this Article, except for Section 163(e), shall be resolved exclusively in accordance with Article II of Title Four.

(e) The President of the United States may exempt any of the activities of the Government of the United States under this Compact and its related agreements from any environmental standard or procedure which may be applicable under this Article if the President determines it to be in the paramount interest of the Government of the United States to do so, consistent with Title Three of this Compact and the obligations of the Government of the United States under international law. Prior to any decision pursuant to this subsection, the views of the Government of Palau shall be sought and considered to the extent practicable. If the President grants such an exemption, to the extent practicable, a report with his reasons for granting such exemption shall be given promptly to the Government of Palau.

Article VII

General Legal Provisions

Section 171

Except as provided in this Compact or its related agreements, the application of the laws of the United States to the Trust Territory of the Pacific Islands by virtue of the Trusteeship Agreement ceases with respect to Palau as of the effective date of this Compact.

Section 172

(a) Every citizen of Palau who is not a resident of the United States shall enjoy the rights and remedies under the laws of the United States enjoyed by any nonresident alien.

(b) The Government and every citizen of Palau shall be considered a "person" within the meaning of the Freedom of Information Act, 5 U.S.C. 552, and of the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701-706.

Section 173

The Government of the United States and the Government of Palau, agree to adopt and enforce such measures, consistent with this Compact and its related agreements, as may be necessary to protect the personnel, property, installations, services, programs and official archives and documents maintained by the Government of the United States in Palau pursuant to this Compact and its related agreements and by that Government in the United States pursuant to this Compact and its related agreements.

Section 174

Except as otherwise provided in this Compact and its related agreements:

(a) The Government of Palau shall be immune from the jurisdiction of the courts of the United States, and the Government of the United States shall be immune from the jurisdiction of the courts of Palau.

(b) The Government of the United States accepts responsibility for and shall pay:

(1) any unpaid money judgment rendered by the High Court of the Trust Territory of the Pacific Islands against the Government of the Trust Territory of the Pacific Islands or the Government of the United States with regard to any cause of action arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact;

(2) any claim settled by the claimant and the Government of the Trust Territory of the Pacific Islands but not paid as of the effective date of this Compact; and

(3) settlement of any administrative claim or of any action before a court of the Trust Territory of the Pacific Islands, pending as of the effective date of this Compact, against the Government of the Trust Territory of the Pacific Islands or the Government of the United States, arising as a result of acts or omissions of the Government of the Trust Territory of the Pacific Islands or the Government of the United States.

(c) Any claim not referred to in Section 174(b) and arising from an act or omission of the Government of the Trust Territory of the Pacific Islands or the Government of the United States prior to the effective date of this Compact shall be adjudicated in the same manner as a claim adjudicated according to Section 174(d). In any claim against the Government of the Trust Territory of the Pacific Islands, the Government of the United States shall stand in the place of the Government of the Trust Territory of the Pacific Islands. A judgment on any claim referred to in Section 174(b) or this subsection, not otherwise satisfied by the Government of the United States, may be presented for certification to the United States Court of Appeals for the Federal Circuit, or its successor court, which shall have jurisdiction therefor, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States. The United States Court of Appeals for the Federal Circuit shall certify such judgment, and order payment thereof, unless it finds, after a hearing, that such judgment is manifestly erroneous as to law or fact, or manifestly excessive. In either of such cases the United States Court of Appeals for the Federal Circuit shall have jurisdiction to modify such judgment.

(d) The Government of Palau, shall not be immune from the jurisdiction of the courts of United States, and the Government of the United States shall not be immune from the jurisdiction of the courts of Palau in any case in which the action is based on a commercial activity of the defendant Government carried out where the action is brought, or in a case in which damages are sought for personal injury or death or damage to or loss of property occurring where the action is brought. This subsection shall apply only to actions based on commercial activities entered into or injuries or losses suffered on or after the effective date of this Compact.

Section 175

A separate agreement, which shall come into effect simultaneously with this Compact, shall be concluded between the Government of the United States and the Government of Palau regarding mutual assistance and cooperation in law enforcement matters including the pursuit, capture, imprisonment and extradition of fugitives from justice and the transfer of prisoners. The separate agreement shall have the force of law. In the United States, the laws of the United States governing international extradition, including 18 U.S.C. 3184, 3186 and 3188-3195, shall be applicable to the extradition of fugitives under the separate agreement, and the laws of the United

States governing the transfer of prisoners, including 18 U.S.C. 4100-4115, shall be applicable to the transfer of prisoners under the separate agreement.

Section 176

The Government of Palau confirms that final judgments in civil cases rendered by any court of the Trust Territory of the Pacific Islands shall continue in full force and effect, subject to the constitutional power of the courts of Palau to grant relief from judgments in appropriate cases.

Section 177

(a) Federal agencies of the Government of the United States which provide services and related programs in Palau are authorized to settle and pay tort claims arising in Palau from the activities of such agencies or from the acts or omissions of the employees of such agencies. Except as provided in Section 177(b), the provisions of 28 U.S.C. 2672 and 31 U.S.C. 1304 shall apply exclusively to such administrative settlements and payments.

(b) Claims under Section 177(a) which cannot be settled under Section 177(a) shall be disposed of exclusively in accordance with Article II of Title Four. Arbitration awards rendered pursuant to this subsection shall be paid out of funds under 31 U.S.C. 1304.

(c) The Government of the United States and the Government of Palau shall provide for:

(1) the administrative settlement of claims referred to in Section 177(a), including designation of local agents in Palau, such agents to be empowered to accept, investigate and settle such claims, in a timely manner, as provided in such related agreements; and

(2) arbitration, referred to in Section 177(b), in a timely manner, at a site convenient to the claimant, in the event a claim is not otherwise settled pursuant to Section 177(a).

(d) The provisions of Section 174(d) shall not apply to claims covered by this Section.

TITLE TWO

ECONOMIC RELATIONS

Article I

Grant Assistance

Section 211

In order to assist the Government of Palau in its efforts to advance the well-being of the people of Palau and in recognition of the special relationship that exists between the United States and Palau, the Government of the United States shall provide to the Government of Palau on a grant basis the following amounts:

(a) $12 million annually for ten years commencing on the effective date of this Compact, and $11 million annually for five years commencing on the tenth anniversary of the effective date of this Compact, for current account operations and maintenance purposes, which amounts commencing on the fourth anniversary of the effective date of this Compact shall include a minimum annual distribution of $5 million from the fund specified in Section 211(f).

(b) $2 million annually for fourteen years commencing on the first anniversary of the effective date of this Compact as a contribution to efforts aimed at achieving increased self-sufficiency in energy production, of which annual amounts not less than $500,000 shall be devoted to the energy needs of those parts of Palau not served by its central power-generating facility.

(c) $150,000 annually for fifteen years commencing on the effective date of this Compact as a contribution to current account operations and maintenance of communications systems, and the sum of $1.5 million, to be made available concurrently with the grant assistance provided during the first year after the effective date of this Compact, for the purpose of acquiring such communications hardware as may be located within Palau or for such other current or capital account activity as the Government of Palau may select.

(d) $631,000 annually on a current account basis for fifteen years commencing on the effective date of this Compact for the purposes set forth below:

(1) for the surveillance and enforcement by Government of Palau of its maritime zone;

(2) for health and medical programs, including referrals to hospital and treatment centers; and

(3) for a scholarship fund to support the post-secondary education of citizens of Palau attending United States accredited, post-secondary institutions in Palau, the United States, its territories and possessions, and states in free association with the United States. The curricular criteria for the award of scholarships shall be designed to advance the purposes of the plan referred to in Section 231.

(e) The sum of $666,800 as a contribution to the commencement of activities pursuant to Section 211(d)(1).

(f) The sum of $66 million on the effective date of this Compact, and the sum of $4 million concurrently with the grant assistance to be made available during the third year after the effective date of this Compact, to create a fund to be invested by the Government of Palau in issues of bonds, notes or other redeemable instruments of the Government of the United States or other qualified instruments which may be identified by mutual agreement of the Government of the United States and the Government of Palau. Investment of the fund in qualified instruments of United States nationality, and the distribution of sums derived from such investment to the Government of Palau, shall not be subject to any form of taxation by the United States or its political subdivisions. The Government of the United States and the Government of Palau shall set forth in a separate agreement, which shall come into effect simultaneously with this Compact, provisions for the investment, management and review of the fund so as to allow for an agreed minimum annual distribution from its accrued principal and interest commencing upon the effective date of this Compact for fifty years. The objective of this sum is to produce an average annual distribution of $15 million commencing on the fifteenth anniversary of this Compact for thirty-five years. Any excess or variance from the agreed minimum annual distributions which may be produced from these sums shall accrue to or be absorbed by the Government of Palau unless otherwise mutually agreed in accordance with the provisions of the separate agreement referred to in this paragraph. The annual distributions produced from these sums are not subject to Sections 215 and 236.

Section 212

In order to assist the Government of Palau in its efforts to advance the economic development and self-sufficiency of the people of Palau and in recognition of the special relationship that exists between the United States and Palau, the Government of the United States shall provide:

(a) To the people of Palau, a road system in accordance with mutually agreed specifications, the construction of which shall be completed prior to the sixth anniversary of the effective date of this Compact; and

(b) To the Government of Palau, the sum of $36 million, during the first year after the effective date of this Compact, for capital account purposes.

Section 213

The Government of the United States shall provide on a grant basis to the Government of Palau the sum of $5.5 million in conjunction with Article II of Title Three. This sum shall be made available concurrently with the grant assistance provided pursuant to this Article during the first year after the effective date of this Compact. The Government of Palau, in its use of such funds, shall take into account the impact of the activities of the Government of the United States in Palau.

Section 214

All funds previously appropriated to the Trust Territory of the Pacific Islands for the Government of Palau which are unobligated by the Government of the Trust Territory as of the effective date of this Compact shall accrue to the Government of Palau for the purposes for which such funds were originally appropriated as determined by the Government of the United States.

Section 215

Except as otherwise provided, the amounts stated in Sections 211(a), 211(b), 211(c) and 212(b) shall be adjusted for each fiscal year by the percent which equals two-thirds of the percentage change in the United States Gross National Product Implicit Price Deflator, or seven percent, whichever is less in any one year, using the beginning of Fiscal Year 1981 as the base.

Article II

Program Assistance

Section 221

(a) The Government of the United States shall make available to Palau, in accordance with and to the extent provided in the separate agreement referred to in Section 232, without compensation and at the levels equivalent to those available to the Trust Territory of the Pacific Islands during the year prior to the effective date of this Compact, the services and related programs:

(1) of the United States Weather Service;

(2) provided pursuant to the Postal Reorganization Act, 39 U.S.C. 101 *et seq.*;

(3) of the United States Federal Aviation Administration; and

(4) of the United States Civil Aeronautics Board or its successor agencies which has the authority to implement the provisions of paragraph 5 of Article IX of such separate agreements, the language of which is incorporated into this Compact.

(b) The Government of the United States, recognizing the special needs of the Palau particularly in the fields of education and health care, shall make available, as provided by the laws of the United States,

(1) the annual amount of $2 million which shall be allocated in accordance with the provisions of the separate agreement referred to in Section 232; and

(2) the sums of $4.3 million, $2.9 million and $1.5 million, respectively, during the first, second and third years after the effective date of this Compact, which sums shall be used by the Government of Palau as current account funds to finance programs similar to those programs of the United States that applied to Palau prior to the effective date of this Compact and that provided financial assistance for education to

any institution, agency, organization or permanent resident of Palau or to the College of Micronesia.

(c) The Government of the United States shall make available to Palau such alternate energy development projects, studies and conservation measures as are applicable to the Trust Territory of the Pacific Islands on the day preceding the effective date of this Compact, for the purposes and duration provided in the laws of the United States.

(d) The Government of the United States shall have and exercise such authority as is necessary for the purposes of this Article and as is set forth in the related agreements referred to in Section 232, which shall also set forth the extent to which services and programs shall be provided to Palau.

Section 222

The Government of Palau may request, from time to time, technical assistance from the Federal agencies and institutions of the Government of the United States, which are authorized to grant such technical assistance in accordance with its laws and which shall grant such technical assistance in a manner which gives priority consideration to Palau over other recipients not a part of the United States, its territories or possessions and equivalent consideration to Palau with respect to other states in Free Association with the United States.

Section 223

The citizens of Palau who are receiving post-secondary education assistance from the Government of the United States on the day preceding the effective date of this Compact shall continue to be eligible, if otherwise qualified, to receive such assistance to complete their academic programs for a maximum of four years after the effective date of this Compact.

Section 224

The Government of the United States and the Government of Palau may agree from time to time to the extension to Palau of additional United States grant assistance and of United States services and programs as provided by the laws of the United States.

Article III

Administrative Provisions

Section 231

(a) The annual expenditure by the Government of Palau of the grant amounts specified in Article I of this Title shall be in accordance with an official national development plan promulgated by the Government of Palau and concurred in by the Government of the United States prior to the effective date of this Compact. This plan may be amended from time to time by the Government of Palau.

(b) The Government of the United States and the Government of Palau recognize that the achievement of the goals of the plan referred to in this Section depends upon the availability of adequate internal revenue as well as economic assistance from sources outside of Palau, including the Government of the United States, and may, in addition, be affected by the impact of exceptional, economically adverse circumstances. The Government of Palau shall therefore report annually to the President of the United States and to the Congress of the United States on the implementation of this plan and on its use of the funds specified in this Article. This report shall outline the achievements of the plan to date and the need, if any, for an additional authorization and appropriation of economic assistance for that year to account for any exceptional, economically adverse circumstances. The availability of such additional economic assistance from the Government of the United States shall be subject to the authorization and appropriation of funds by the Government of the United States.

Section 232

The specific nature, extent and contractual arrangements of the services and programs provided for in Section 221 as well as the legal status of agencies of the Government of the United States, their civilian employees and contractors, and the dependents of such personnel while present in Palau, and other arrangements in connection with a service or program furnished by the Government of the United States, are set forth in related agreements which shall come into effect simultaneously with this Compact.

Section 233

The Government of the United States, in consultation with the Government of Palau, shall determine and implement procedures for the periodic audit of all grants and other assistance made under this Title. Such audits shall be conducted at no cost to the Government of Palau.

Section 234

Title to the property of the Government of the United States situated in the Trust Territory of the Pacific Islands and in Palau or acquired for or used by the Government of the Trust Territory of the Pacific Islands on or before the day preceding the effective date of this Compact shall, without reimbursement or transfer of funds, vest in the Government of Palau as set forth in a separate agreement which shall come into effect simultaneously with this Compact. The provisions of this Section shall not apply to the personal property of the Government of the United States for which the Government of the United States determines a continuing requirement.

Section 235

(a) Funds held in trust by the High Commissioner of the Trust Territory of the Pacific Islands, in his official capacity, as of the effective date of this Compact shall remain available as trust funds to their designated beneficiaries. The Government of the United States, in consultation with the Government of Palau, shall appoint a new trustee who shall exercise the functions formerly exercised by the High Commissioner of the Trust Territory of the Pacific Islands.

(b) To provide for the continuity of administration, and to assure the Governments of Palau that the purposes of the laws of the United States are carried out and that the funds of any other trust fund in which the High Commissioner of the Trust Territory of the Pacific Islands has authority of a statutory or customary nature shall remain available as trust funds to their designated beneficiaries, the Government of the United States agrees to assume the authority formerly vested in the High Commissioner of the Trust Territory of the Pacific Islands.

Section 236

Except as otherwise provided, approval of this Compact by the Government of the United States shall constitute a pledge of the full faith and credit of the United States for the full payment of the sums and amounts specified in Article I of this Title. The obligation of the Government of the United States under Article I of this Title shall be enforceable in the United States Claims Court, or its successor court, which shall have jurisdiction in cases arising under this Section, notwithstanding the provisions of 28 U.S.C. 1502, and which court's decisions shall be reviewable as provided by the laws of the United States.

Article IV

Trade

Section 241

Palau is not included in the customs territory of the United States.

Section 242

The President of the United States shall proclaim the following tariff treatment for articles imported from Palau which shall apply during the period of effectiveness of this Title:

(a) Unless otherwise excluded, articles imported from Palau, subject to the limitations imposed under sections 503(b) and 504(c) of title 5 of the Trade Act of 1974 (19 U.S.C. 2463(b): 2464(c)), shall be exempt from duty.

(b) Only canned tuna provided for in item 112.30 of the Tariff Schedules of the United States that is imported from the Federated States of Micronesia, the Marshall Islands and Palau during any calendar year not to exceed 10 percent of the United States consumption of canned tuna during the immediately preceding calendar year, as reported by the National Marine Fisheries Service, shall be exempt from duty; but the quantity of tuna given duty free treatment under this paragraph for any calendar year shall be counted against the aggregate quantity of canned tuna that is dutiable under rate column numbered 1 of such item 112.30 for that calendar year.

(c) The duty-free treatment provided under paragraph (1) shall not apply to:

(1) watches, clocks and timing apparatus provided for in subpart E of part 2 of schedule 7 of the Tariff Schedules of the United States;

(2) buttons (whether finished or not finished) provided for in item 745.32 of such Schedules;

(3) textile and apparel articles which are subject to textile agreements; and

(4) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of chapter V of the Trade Act of 1974 (19 USC 2461 et seq.) on April 1, 1984.

(d) If the cost or value of materials produced in the customs territory of the United States is included with respect to an eligible article which is a product of Palau, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied for duty assessment purposes toward determining the percentage referred to in section 503(b)(2) of title V of the Trade Act of 1974.

Section 243

Articles imported from Palau which are not exempt from any duty under paragraphs (a), (b), (c) and (d) of Section 242 shall be subject to the rates of duty set forth in column numbered 1 of the Tariff Schedules of the United States and all products of the United States imported into Palau shall receive treatment no less favorable than that accorded like products of any foreign country with respect to customs duties or charges of a similar nature and with respect to laws and regulations relating to importation, exportation, taxation, sale, distribution, storage, or use.

Article V

Finance and Taxation

Section 251

The currency of the United States is the official circulating legal tender of Palau. Should the Government of Palau act to institute another currency, the terms of an appropriate currency transitional period shall be as agreed with the Government of the United States.

Section 252

The Government of Palau may, with respect to United States persons, tax income derived from sources within its respective jurisdiction, property situated therein, including transfers of such property by gift or at death, and products consumed therein, in such manner as such Government deems appropriate. The determination of the source of any income, or the situs of any property, shall for purposes of this Compact, be made according to the United States Internal Revenue Code.

Section 253

A citizen of Palau, domiciled therein and who is a nonresident and not a citizen of the United States, shall be exempt from estate, gift, and generation-skipping transfer taxes imposed by the Government of the United States.

Section 254

(a) In determining any income tax imposed by the Government of Palau, the Government of Palau shall have authority to impose tax upon income derived by a resident of Palau from sources without Palau in the same manner and to the same extent as the Government of Palau imposes tax upon income derived from within its jurisdiction. If the Government of Palau exercises such authority as provided in this subsection, any individual resident of Palau who is subject to tax by the Government of the United States on income which is also taxed by the Government of Palau shall be relieved of liability to the Government of the United States for the tax which, but for this subsection, would otherwise be imposed by the Government of the United States on such income. For purposes of this Section, the term "resident of Palau" shall be deemed to include any person who was physically present in Palau for a period of 183 or more days during any taxable year. The relief from liability referred to in this subsection means only

(1) relief in the form of the foreign tax credit (or deduction in lieu thereof) available with respect to the income taxes of a possession of the United States, and

(2) relief in the form of the exclusion under section 911 of the United States Internal Revenue Code of 1954.

(b) If the Government of Palau subjects income to taxation substantially similar to that imposed by the Trust Territory Code in effect on January 1, 1980, such Government shall be deemed to have exercised the authority described in Section 254(a).

Section 255

(a) For purposes of section 936 of the Internal Revenue Code of 1954 Palau shall be treated as if it was a possession of the United States.

(b) Subsection (a) of this Section shall not apply to Palau for any period after December 31, 1986, during which there is not in effect between Palau and the United States an exchange of information agreement of the kind described in section 274(h)(6)(C) (other than clause (ii) thereof) of the Internal Revenue Code of 1954.

(c) If the tax incentives extended to Palau under subsection (a) of this Section are, at any time during which the Compact is in effect, reduced, the United States Secretary of the Treasury shall negotiate an agreement with the Government of Palau under which, when such agreement is approved by law, Palau will be provided with benefits substantially equivalent to such reduction in benefits. If within the 1-year period after the date of the enactment of the Act making the reduction in benefits, an agreement negotiated under the preceding sentence is not approved by law, the matter shall be submitted to the Arbitration Board established pursuant to Section 424. For purposes of Article V of this Title, the Secretary of the Treasury or his delegate shall be the member of such Board representing the Government of the United States. Any decision of such Board in the matter when approved by law shall be binding on the United States, except that such decision rendered is binding only as to whether the United States has provided the substantially equivalent benefits referred to in this subsection.

Article I

Authority and Responsibility

Section 311

The territorial jurisdiction of the Republic of Palau shall be completely foreclosed to the military forces and personnel or for the military purposes of any nation except the United States of America, and as provided for in Section 312.

Section 312

The Government of the United States has full authority and responsibility for security and defense matters in or relating to Palau. Subject to the terms of any agreements negotiated pursuant to Article II of this Title, the Government of the United States may conduct within the lands, water and airspace of Palau the activities and operations necessary for the exercise of its authority and responsibility under this Title. The Government of the United States may invite the armed forces of other nations to use military areas and facilities in Palau in conjunction with and under the control of United States Armed Forces.

Section 313

The Government of Palau shall refrain from actions which the Government of the United States determines, after consultation with that Government, to be incompatible with its authority and responsibility for security and defense matters in or relating to Palau.

Article II

Defense Sites and Operating Rights

Section 321

The Government of the United States may establish and use defense sites in Palau, and may designate for this purpose land and water areas and improvements in accordance with the provisions of a separate agreement which shall come into force simultaneously with this Compact.

Section 322

(a) When the Government of the United States desires to establish or use such a defense site specifically identified in the separate agreement referred to in Section 321, it shall so inform the Government of Palau which shall make the designated site available to the Government of the United States for the duration and level of use specified.

(b) With respect to any site not specifically identified in the separate agreement referred to in Section 321, the Government of the United States shall inform the Government of Palau, which shall make the designated site available to the Government of the United States for the duration and level of use specified, or shall make available one alternative site acceptable to the Government of the United States. If such alternative site is unacceptable to the Government of the United States, the site first designated shall be made available after such determination.

(c) Compensation in full for designation, establishment or use of defense sites is provided in Title Two of this Compact.

Section 323

The military operating rights of the Government of the United States and the legal status and contractual arrangements of the United States Armed Forces, their members, and associated civilians, while present in Palau, are set forth in related agreements which shall come into effect simultaneously with this Compact.

Section 324

In the exercise in Palau of its authority and responsibility under this Title, the Government of the United States shall not use, test, store or dispose of nuclear, toxic chemical, gas or biological weapons intended for use in warfare and the Government of Palau assures the Government of the United States that in carrying out its security and defense responsibilities under this Title, the Government of the United States has the right to operate nuclear capable or nuclear propelled vessels and aircraft within the jurisdiction of Palau without either confirming or denying the presence or absence of such weapons within the jurisdiction of Palau.

Article III

Defense Treaties and International Security Agreements

Section 331

Subject to the terms of this Compact and its related agreements, the Government of the United States, exclusively, shall assume and enjoy, as to Palau, all obligations, responsibilities, rights and benefits of:

(a) Any defense treaty or other international security agreement applied by the Government of the United States as administering authority of the Trust Territory of the Pacific Islands as of the day preceding the effective date of this Compact; and

(b) Any defense treaty or other international security agreement to which the Government of the United States is or may become a party which it determines to be applicable in Palau. Such a determination by the Government of the United States shall be preceded by appropriate consultation with the Government of Palau.

Article IV

Service in the Armed Forces of the United States

Section 341

Any citizen of Palau entitled to the privileges of Section 131 of this Compact shall be eligible to volunteer for service in the Armed Forces of the United States, but shall not be subject to involuntary induction into military service of the United States so long as such person does not establish habitual residence in the United States, its territories or possessions.

Section 342

The Government of the United States shall have enrolled, at any one time, at least one qualified student from Palau as may be nominated by the Government of Palau, in each of:

(a) The United States Coast Guard Academy pursuant to 14 U.S.C. 195; and

(b) The United States Merchant Marine Academy pursuant to 46 U.S.C. 1295b(b)(6), provided that the provisions of 46 U.S.C. 1295b(b)(6)(C) shall not apply to the enrollment of students pursuant to Section 342(b) of this Compact.

Article V

General Provisions

Section 351

(a) The Government of the United States and the Government of Palau shall establish a joint committee empowered to consider disputes which may arise under the implementation of this Title and its related agreements.

(b) The membership of the joint committee shall comprise selected senior officials of each of the participating Governments. The senior United States military commander in the Pacific area shall be the senior United States member of the joint committee. For the meetings of the joint committee, each of the Governments may designate additional or alternate representatives as appropriate for the subject matter under consideration.

(c) Unless otherwise mutually agreed, the joint committee shall meet semi-annually at a time and place to be designated, after appropriate consultation, by the Government of the United States. The joint committee also shall meet promptly upon request of either of its members. Upon notification by the Government of the United States, the joint committee shall meet promptly in combined session with other such joint committees so notified. The joint committee shall follow such procedures, including the establishment of functional subcommittees, as the members may from time to time agree.

(d) Unresolved issues in the joint committee shall be referred to the Government of the United States and the Government of Palau for resolution, and the Government of Palau shall be afforded, on an expeditious basis, an opportunity to raise its concerns with the United States Secretary of Defense personally regarding any unresolved issue which threatens its continued association with the Government of the United States.

Section 352

In the exercise of its authority and responsibility under this Compact, the Government of the United States shall accord due respect to the authority and responsibility of the Government of Palau under this Compact and to the responsibility of the Government of Palau to assure the well-being of Palau and its people. The Government of the United States and the Government of Palau agree that the authority and responsibility of the United States set forth in this Title are exercised for the mutual security and benefit of Palau and the United States, and that any attack on Palau would constitute a threat to the peace and security of the entire region and a danger to the United States. In the event of such an attack, or threat thereof, the Government of the United States would take action to meet the danger to the United States and Palau in accordance with its constitutional processes.

Section 353

(a) The Government of the United States shall not include the Government of Palau as a named party to a formal declaration of war, without the consent of the Government of Palau.

(b) Absent such consent, this Compact is without prejudice, on the ground of belligerence or the existence of a state of war, to any claims for damages which are advanced by the citizens, nationals or Government of Palau which arise out of armed conflict subsequent to the effective date of this Compact and which are:

(1) petitions to the Government of the United States for redress; or

(2) claims in any manner against the government, citizens, nationals or entities of any third country.

(c) Petitions under Section 353(b)(1) shall be treated as if they were made by citizens of the United States.

TITLE FOUR

GENERAL PROVISIONS

Article I

Approval and Effective Date

Section 411

This Compact shall come into effect upon mutual agreement between the Government of the United States, acting in fulfillment of its responsibilities as Administering Authority of the Trust Territory of the Pacific Islands, and the Government of Palau, subsequent to completion of the following:

(a) Approval by the Government of Palau in accordance with its constitutional processes;

(b) Approval by the people of Palau in a referendum called on this Compact; and

(c) Approval by the Government of the United States in accordance with its constitutional processes.

Article II

Conference and Dispute Resolution

Section 421

The Government of the United States and the Government of Palau shall confer promptly at the request of the other on matters relating to the provisions of this Compact or of its related agreements.

Section 422

In the event the Government of the United States or the Government of Palau, after conferring pursuant to Section 421, determines that there is a dispute and gives written notice thereof, the Governments shall make a good faith effort to resolve the dispute among themselves.

Section 423

If a dispute between the Government of the United States and the Government of Palau cannot be resolved within 90 days of written notification in the manner provided in Section 422, either party to the dispute may refer it to arbitration in accordance with Section 424.

Section 424

Should a dispute be referred to arbitration as provided for in Section 423, an arbitration board shall be established for the purpose of hearing the dispute and rendering a decision which shall be binding upon the two parties to the dispute unless the two parties mutually agree that the decision shall be advisory. Arbitration shall occur according to the following terms:

(a) An arbitration board shall consist of a chairman and two other members, each of whom shall be a citizen of a party to the dispute and each of the two parties to the dispute shall appoint one member to the arbitration board. If either party to the dispute does not fulfill the appointment requirements of this Section within 30 days of referral of the dispute to arbitration pursuant to Section 423, its member on the arbitration board shall be selected from its own standing list by the other party to the dispute. Each government shall maintain a standing list of 10 candidates. The parties to the dispute shall jointly appoint a chairman within 15 days after selection of the other members of the arbitration board. Failing agreement on a chairman, the chairman shall be chosen by lot from the standing lists of the parties to the dispute within 5 days after such failure.

(b) The arbitration board shall have jurisdiction to hear and render its final determination on all disputes arising exclusively under Articles, I, II, III, IV, and VI of Title One, Title Two, Title Four and their related agreements.

(c) Each member of the arbitration board shall have one vote. Each decision of the arbitration board shall be reached by majority vote.

(d) In determining any legal issue, the arbitration board may have reference to international law and, in such reference, shall apply as guidelines the provisions set forth in Article 38 of the Statute of the International Court of Justice.

(e) The arbitration board shall adopt such rules for its proceedings as it may deem appropriate and necessary, but such rules shall not contravene the provisions of this Compact. Unless the parties provide otherwise by mutual agreement, the arbitration board shall endeavor to render its decision within 30 days after the conclusion of arguments. The arbitration board shall make findings of fact and conclusions of law and its members may issue dissenting or individual opinions. Except as may be otherwise decided by the arbitration board, one-half of all costs of the arbitration shall be borne by the Government of the United States and the remainder shall be borne by the Government of Palau.

Article III

Amendment and Review

Section 431

The provisions of this Compact may be amended at any time by mutual agreement of the Government of the United States and the Government of Palau in accordance with their respective consititutional processes.

Section 432

Upon the fifteenth and thirtieth and fortieth anniversaries of the effective date of this Compact, the Government of the United States and the Government of Palau shall formally review the terms of this Compact and its related agreements and shall consider the overall nature and development of their relationship. In these formal reviews, the governments shall consider the operating requirements of the Government of Palau and its progress in meeting the development objectives set forth in the plan referred to in Section 231(a). The governments commit themselves to take specific measures in relation to the findings of conclusions resulting from the review. Any alteration to the terms of this Compact or its related agreements shall be made by mutual agreement, the terms of this Compact and its related agreements shall remain in force until otherwise amended or terminated pursuant to Title Four of this Compact.

Article IV

Termination

Section 441

This Compact may be terminated by mutual agreement and subject to Section 451.

Section 442

This Compact may be terminated by the Government of the United States subject to Section 452, such termination to be effective on the date specified in the notice of termination by the Government of the United States but not earlier than six months following delivery of such notice. The time specified in the notice of termination may be extended.

Section 443

This Compact shall be terminated, pursuant to its constitutional processes, by the

Government of Palau subject to Section 452 if the people of Palau vote in a plebiscite to terminate. The Government of Palau shall notify the Government of the United States of its intention to call such a plebiscite which shall take place not earlier than three months after delivery of such notice. The plebiscite shall be administered by such government in accordance with its constitutional and legislative processes, but the Government of the United States may send its own observers and invite observers from a mutually agreed party. If a majority of the valid ballots cast in the plebiscite favors termination, such government shall, upon certification of the results of the plebiscite, give notice of termination to the Government of the United States, such termination to be effective on the date specified in such notice but not earlier than three months following the date of delivery of such notice. The time specified in the notice of termination may be extended.

Article V

Survivability

Section 451

Should termination occur pursuant to Section 441, economic assistance by the Government of the United States shall continue on mutually agreed terms.

Section 452

Should termination occur pursuant to Section 442 or 443, the following provisions of this Compact shall remain in full force and effect until the fiftieth anniversary of the effective date of this Compact and thereafter as mutually agreed:

(a) Article I and Section 233 of Title Two;

(b) Title Three; and

(c) Articles II, III, V and VI of Title Four.

Section 453

Notwithstanding any other provision of this Compact:

(a) The provisions of Section 311, even if Title Three should terminate, are binding and shall remain in effect for a period of 50 years and thereafter until terminated or otherwise amended by mutual consent;

(b) The related agreements referred to in Article II of Title Three shall remain in effect in accordance with their terms; and

(c) The Government of the United States reaffirms its continuing interest in promoting the long-term economic advancement and self-sufficiency of the people of Palau.

Section 454

Any provision of this Compact which remains in effect by operation of Section 452 shall be construed and implemented in the same manner as prior to any termination of this Compact pursuant to Section 442 or 443.

Article VI

Definition of Terms

Section 461

For the purpose of this Compact the following terms shall have the following meanings:

(a) "Trust Territory of the Pacific Islands" means the area established in the Trusteeship Agreement consisting of the administrative districts of Kosrae, Yap, Palau, Ponape, the Marshall Islands and Truk as described in Title One, Trust Territory Code, Section 1, in force on January 1, 1979. This term does not include the area of the Northern Mariana Islands.

(b) "Trusteeship Agreement" means the agreement setting forth the terms of trusteeship for the Trust Territory of the Pacific Islands, approved by the Security Council of the United Nations April 2, 1947, and by the United States July 18, 1947, entered into force July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

(c) "Palau" is used in a geographic sense and includes the land and water areas to the outer limits of the territorial sea and the air space above such areas as now or hereafter recognized by the Government of the United States consistent with the Compact and its related agreements.

(d) "Government of Palau" means the Government established and organized by the Constitution of Palau including all the political subdivisions and entities comprising that Government.

(e) "Habitual Residence" means a place of general abode or a principal, actual dwelling place of a continuing or lasting nature; provided, however, that this term shall not apply to the residence of any person who entered the United States for the purpose of full time studies as long as such person maintains that status, or who has been physically present in the United States or Palau for less then one year, or who is a dependent of a resident representative, as described in Section 152.

(f) For the purposes of Article IV of Title One of this Compact:

(1) "Actual Residence" means physical presence in Palau during eighty-five percent of the period of residency required by Section 141(a)(3); and

(2) "Certificate of Actual Residence" means a certificate issued to a naturalized citizen by the Government which has naturalized him stating that the citizen has complied with the actual residence requirement of Section 141(a)(3).

(g) "Defense Sites" means those land and water areas and improvements thereon in Palau reserved or acquired by the Government of Palau for use by the Government of the United States, as set forth in the related agreements referred to in Section 321.

(h) "Capital Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article I of Title Two, which are to be obligated for:

(1) the construction or major repair of capital infrastructure; or

(2) public and private sector projects identified in the official overall economic development plan.

(i) "Current Account" means, for each year of the Compact, those portions of the total grant assistance provided in Article I of Title Two, which are to be obligated for recurring operational activities including infrastructure maintenance as identified in the annual budget justifications submitted yearly to the Government of the United States.

(j) "Official National Development Plan" means the documented program of annual development which identifies the specific policy and project activities necessary to achieve a specified set of economic goals and objectives during the period of free association, consistent with the economic assistance authority in Title Two. Such a document should include an analysis of population trends, manpower requirements, social needs, gross national product estimates, resource utilization, infrastructure needs and expenditures, and the specific private sector projects required to develop the local economy of Palau. Project identification should include initial cost estimates, with project purposes related to specific development goals and objectives.

(k) "Tariff Schedules of the United States" means the Tariff Schedules of the United States as amended from time to time and as promulgated pursuant to United States law and includes the Tariff Schedules of the United States Annotated (TSUSA), as amended.

(l) "Vienna Convention on Diplomatic Relations" means the Vienna Convention on Diplomatic Relations, done April 18, 1961, 23 U.S.T. 3227, T.I.A.S. 7502, 500 U.N.T.S. 95.

Section 462

The Government of the United States and the Government of Palau shall conclude related agreements which shall come into effect and shall survive in accordance with their terms, and which shall be construed and implemented in a manner consistent with this Compact, as follows:

(a) Agreement Regarding the Provision of Telecommunication Services by the Government of the United States to Palau Concluded Pursuant to Section 131 of the Compact of Free Association;

(b) Agreement Regarding the Operation of Telecommunication Services of the Government of the United States in Palau, Concluded Pursuant to Section 132 of the Compact of Free Association;

(c) Agreement on Extradition, Mutual Assistance in Law Enforcement Matters and Penal Sanctions Concluded Pursuant to Section 175 of the Compact of Free Association;

(d) Agreement Regarding United States Economic Assistance to the Government of Palau Concluded Pursuant to Section 211(f) of the Compact of Free Association;

(e) Agreement Regarding Construction Projects in Palau Concluded Pursuant to Section 212(a) of the Compact of Free Association;

(f) Agreement Regarding Federal Programs and Services, Concluded Pursuant to Article II of Title Two and Section 232 of the Compact of Free Association;

(g) Agreement Regarding Property Turnover, Concluded Pursuant to Section 234 of the Compact of Free Association;

(h) Agreement Regarding the Military Use and Operating Rights of the Government of the United States in Palau Concluded Pursuant to Sections 321 and 322 of the Compact of Free Association; and

(i) Status of Forces Agreement Concluded Pursuant to Section 323 of the Compact of Free Association.

(j) Agreement regarding the Jurisdiction and Sovereignty of the Republic of Palau over its Territory and the Living and Nonliving Resources of the Sea.

Article VII

Concluding Provisions

Section 471

(a) The Government of the United States and the Government of Palau agree that they have full authority under their respective constitutions to enter into this Compact and its related agreements and to fulfill all of their respective responsibilities in accordance with the terms of this Compact and its related agreements. The Governments pledge that they are so committed.

(b) The Government of the United States and the Government of Palau shall take all necessary steps, of a general or particular character, to ensure, not later than the effective date of this Compact, that their laws, regulations and administrative procedures are such as to effect the commitments referred to in Section 471(a).

(c) Without prejudice to the effects of this Compact under international law, this Compact has the force and effect of a statute under the laws of the United States.

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Section 472

This Compact may be accepted, by signature or otherwise, by the Government of the United States and the Government of Palau. Each government shall possess an original English language version.

IN WITNESS THEREOF, the undersigned, duly authorized, have signed this Compact of Free Association which shall come into effect in accordance with its terms between the Government of the United States and the Government of Palau.

DONE AT PALAU, THIS 6TH DAY
OF JANUARY, ONE THOUSAND NINE HUNDRED EIGHTY-FIVE
FOR THE GOVERNMENT
OF
THE UNITED STATES OF AMERICA
FRED M. ZEDER, II

DONE AT KOROR, PALAU, THIS 10TH DAY
OF JANUARY, ONE THOUSAND NINE HUNDRED EIGHTY-FIVE
FOR THE GOVERNMENT
OF
THE REPUBLIC OF PALAU
LAZARUS E. SALII

SEC. 202. JURISDICTION.

(a) MARITIME AND TERRITORIAL JURISDICTION.—With respect to Section 321 of the Compact of Free Association and its related agreements, the jurisdictional provisions set forth in subsection (b) of this section shall apply only to the citizens and nationals of the United States and aliens lawfully admitted to the United States for permanent residence who are in Palau.

(b) DEFENSE SITES.—The defense sites of the United States established in Palau in accordance with the Compact of Free Association and its related agreements are within the special maritime and territorial jurisdiction of the United States as set forth in section 7, title 18, United States Code.

(c) OFFENSES.—(1) Any person referred to in subsection (a) of this section who within or upon such defense sites is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the Territory of Guam by the laws thereof, in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(2) The District Court of Guam shall have jurisdiction to try all criminal offenses against the United States, including the laws of Guam made applicable to the defense sites in Palau by virtue of subsection (c)(1) of this section, committed by any person referred to in subsection (a) of this section.

(3) The District Court of Guam may appoint one or more magistrates for the defense sites in Palau. Such Magistrates shall have the power and the status of Magistrates appointed pursuant to chapter 43, title 28, United States Code, provided, however that such Magistrates shall have the power to try persons accused of and sentence persons convicted of petty offenses, as defined in section 1(3), title 18, United States Code, including violations of regulations for the maintenance of peace, order, and health issued by the Commanding Officer on such defense sites, without being subject to the restrictions provided for in section 3401(b), title 18, United States Code.

TITLE III—IMPLEMENTATION OF PUBLIC LAW 99-239

SEC. 301. IMPLEMENTATION.

The Congress reaffirms all of the understandings, interpretations, and policy statements contained in Public Law 99-239 (99 Stat. 1770). Congressional Resolution 4-60, adopted by the 4th Congress of the Federated States of Micronesia on March 26, 1986, and Resolution No. 62, adopted by the Nitijela of the Marshall Islands on February 18, 1986, do not exclude, limit, or modify any provision of the Compact of Free Association as approved by the United States. To the extent that any of the understandings, interpretations, and policy statements contained in such Resolutions are inconsistent with the provisions of Public Law 99-239, the United States does not concur therein. The President shall take such steps, including, but not limited to, communicating with the Governments of the Federated States of Micronesia and the Republic of the Marshall Islands as may be necessary to preserve all rights of the United States in connection with interpretation and implementation of Public Law 99-239.

The SPEAKER pro tempore. Is a second demanded?

Mr. LAGOMARSINO. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. SEIBERLING] will be recognized for 20 minutes, and the gentleman from California [Mr. LAGOMARSINO] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. SEIBERLING].

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the joint resolution now being considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today we take up the last of the compacts of free association with the new Micronesian nations. These are negotiated agreements between the United States and the various governments in Micronesia with some changes thought necessary by the Congress. House Joint Resolution 626, which is before us today, is with the Government of Palau, and the last bill to alter the political relationship between the United States and the four governments which currently make up the Trust Territory of the Pacific Islands.

In January of this year, President Reagan signed into law Public Law 99-239, legislation which contained the compacts for the Federated States of Micronesia [FSM] and the Marshall Islands. In 1976 a covenant between the Northern Mariana Islands and the United States became public law.

All of these actions on the part of the U.S. Government have cleared the way for the termination of the U.N. trusteeship which has been in existence since 1947. When that occurs, the Northern Mariana Islands will become a full-fledged U.S. commonwealth, and the FSM, the Marshall Islands and Palau will become states in free association with the United States.

Under this new relationship, the last three will become self-governing states with full control over their internal and external affairs, except in the area of defense, which is to be provided by the United States. Additionally, the compacts provide for consultation on foreign affairs.

While the Palau compact contains the same basic provisions as the other two compacts that have been approved by Congress, a complication has arisen in the case of Palau, creating a situation somewhat different from that of the FSM and the Marshalls. After a U.N.-observed referendum was held in Palau on the compact in February, the President of Palau certified to the President of the United States that the compact had been duly approved according to Palau's constitutional processes. And in April the President of the United States forwarded the compact to the Congress and urged the Congress to act positively and quickly on the document.

However, in May a lawsuit was filed in the court of Palau stating that the compact had not been approved by a large enough vote under Palau's Constitution, and in July the Trial Division of Palau's Supreme Court ruled that the compact had not been approved as required by the Constitution of Palau.

Recently the Appellate Division of the Palau Supreme Court, a three-judge panel, upheld the earlier decision. It held that Palau's Constitution required approval by 75 percent of Palau's voters. A mere 72.1 percent voted for it in the last referendum in February.

Despite this we are proceeding with legislative action on the compact. We acknowledge the fact that the Palau Supreme Court, the final arbiter of the Palau Constitution, has spoken. We, of course, accept the court's decision, and have made reference to it within the text of the bill before us today. We believe that action by the U.S. Congress on the Palau compact will enable the Government and people of Palau to take the compact, as modified by this bill, and move forward to complete action on it within the requirements of the Palau Constitution.

As a further safeguard, we have provided, within the text of this bill, that before the President of the United

States can set an effective date for the Palau compact, yet another joint resolution must be enacted by the U.S. Congress establishing such a date.

We believe this makes it clear that final approval by the Congress will not take place until the people of Palau have made their decision in accordance with their constitutional process.

I would urge my colleagues to support House Joint Resolution 626.

Mr. Speaker, House Joint Resolution 626, which contains the compact for Palau, was scrutinized by seven committees of the House: It was jointly referred to the Interior and Insular Affairs Committee which reported it out on July 23, and the Foreign Affairs Committee which reported it on June 26. The Public Lands Subcommittee, which I chair, held three hearings and one markup on it. After these committees had completed action on it, it was sequentially referred to five others: To Appropriations for 15 legislative days; and to Armed Services, Judiciary, Merchant Marine and Fisheries, and Ways and Means until September 17, 1986. The bill before us today represents a consensus of the involved committees. We think that the amendments that have been added to the negotiated document have strengthened and improved it, and we would like to note here what some of these amendments will do, over and above those we mentioned earlier.

First of all, in general, those amendments that were added by the Congress to the compact for the Federated States of Micronesia in 1985, when applicable, were added to the Palau compact. These include continuing to extend the Public Health Service and Legal Services programs to Palau on a nonreimburseable basis.

Section 103(h) addresses some of the concerns expressed in the Palau Supreme Court decision of September 17, 1986, such as the defense site provisions in the compact, and the provision that gives the United States the right to invite armed forces of other nations to use certain areas within the jurisdiction of Palau.

Additionally, the preamble to the compact has been amended to reflect the recent Supreme Court decision.

Language in this resolution makes it clear that programs or services to be provided by or through Federal agencies or officials—other than Interior, such as Public Health Service—will continue to be funded and administered by those other agencies or officials. In other words, their funds do not have to be part of the budget of the Department of the Interior.

There is a transitional authorization that authorizes the continuation of Federal programs available to Palau in fiscal 1985, but not available under the compact, at a declining amount per year, in order to provide for an orderly transition period for these governments for 3 years.

The Secretary of Agriculture is directed to conduct a study on the feasibility and cost of rehabilitating and restoring the fertility of the topsoil of the outer islands of Peleliu and Angaur.

And, the Secretary of Interior is authorized, upon the request of the government of the Federated States of Micronesia, the Marshalls or Palau to conduct, through the National Park Service Director, a comprehensive inventory and study of the most unique and significant natural, historical, cultural, and recreational resources of those areas and to report to the Congress on such inventory and study.

Mr. Speaker, I would like to include in the record of the compact legislation a copy of a letter Mr. UDALL received from the United States negotiator for the Micronesian compacts as well as a copy of a letter of the United States negotiator from the President of the Marshall Islands. Both letters clarify the additional Ejit agreement, requested by the Congress in Public Law 99-239, which was submitted to us on August 1, 1986.

They make it clear that the phrase, "with their democratically expressed consent and approval," which refers to the Bikinians who live on Ejit and which was part of the statute and not specifically part of the agreement, shall be adhered to in implementing any such agreement dealing with Ejit.

THE PRESIDENT'S PERSONAL REPRESENTATIVE FOR MICRONESIAN STATUS NEGOTIATIONS
Washington, DC, September 26, 1986.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I would like to take this opportunity to provide additional information to you with respect to the understanding of the Administration concerning certain provisions of the Agreement Between the Government of the United States and the Government of the Marshall Islands Regarding Use of Certain Lands on Ejit Island By Persons Displaced as a Result of the United States Nuclear Testing Program in the Marshall Islands. That Agreement was concluded on July 21, 1986 in compliance with Section 103(c) of P.L. 99-239.

Specifically, it is the Administration's understanding that the undertaking of the Marshall Islands Government in Article I(3) of that Agreement to apply Article I(1) of that Agreement, including taking substantive or additional measures to meet the needs of the people of Bikini, in accordance with the constitutional processes of the Marshall Islands is consistent with, and fulfills that Congressional expectation, as set out in Section 103(c)(3) that such application including such substitute or additional measures, will be undertaken with the democratically expressed consent and approval of the people of Bikini.

Sincerely,

FRED M. ZEDER II,
Ambassador.

OFFICE OF THE PRESIDENT,
THE MARSHALL ISLANDS,
September 29, 1986.

Hon. FRED M. ZEDER II,
The President's Personal Representative for Micronesian Status Negotiations, Washington, DC.

DEAR AMBASSADOR ZEDER: I have seen the text of your September 1986 letter to Congressman Udall regarding the agreement concluded in respect to section 103(c) of United States P.L. 99-239.

At the outset, let me as a principal land owner of Ejit assure you, and please so inform Congressman Udall, that Ejit shall continue to be available to the Bikinians living there until Bikini can be resettled.

If, in the remote eventuality that it becomes necessary for my government to find another location, or locations, for the Bikinians living on Ejit to reside until Bikini can be resettled, than my government, in consultation with the Bikinians living on Ejit, will select and make available an alternative site or sites.

It would then be the decision of the individual Bikinians residing on Ejit as to whether they relocate to any of the sites selected or to some other place of their choosing. The individual Bikinians residing on Ejit will not be coerced to relocate to a specific alternative site selected by other Bikinians or anyone else, including the Government of the Marshall Islands. A forced relocation would be contrary to our constitution and fundamental human rights.

Best personal regards,

AMATA KABUA,
President.

Mr. Speaker, I reserve the balance of my time.

Mr. LAGOMARSINO. Mr. Speaker, I yield such time as he may consume to the ranking member, the gentleman from Michigan [Mr. BROOMFIELD].

Mr. BROOMFIELD. Mr. Speaker, this resolution approves the Compact of Free Association between the United States and the Government of Palau. I praise the members of the Interior Committee and the Foreign Affairs Committee for this major legislative accomplishment.

This Compact of Free Association provides the people of Palau with self-government, the right to self-determination and the conduct of their own foreign affairs. It is certainly in the interest of the people of Palau and America to have a close and mutually beneficial relationship through this new association.

We all know that the approval of this Congress must be given before the compact can be formally presented to the United Nations. The President has advised that he can fully satisfy America's defense authorities in that important region of the world.

The administration clearly wants this body to move forward and approve the compact. A similar urging was recently received from the President of Palau. There is no need for further delay.

Legislation concerning the Marshall Islands and other South Pacific States was passed by this Congress last year. It is now public law. Similar arrangements have, in general, been applied to the Compact of Free Association.

This compact serves the interests of both Palau and America. I urge your support.

Mr. LAGOMARSINO. Mr. Speaker, I yield such time as he may consume to the gentleman from Iowa [Mr. LEACH], the ranking Republican on the Subcommittee on Asian and Pacific Affairs.

Mr. LEACH of Iowa. Mr. Speaker, I rise in support of House Joint Resolution 626, providing for the approval of the Compact of Free Association between the United States and the Government of Palau.

As Members of this body will recall, Congress adopted legislation last year, which was signed into law by the President in January, approving the Compact of Free Association with the Federated States of Micronesia and the Marshall Islands. Now, today, Congress finally has the opportunity to act on the Compact of Free Association with Palau, thereby bringing to a close the legislative process necessary for United States approval of the compact and thus termination of the Trust Territory of the Pacific Islands at the United Nations.

This is a historic moment in the relationship of the United States with the island states of Micronesia and a major foreign policy achievement both for the administration and for the 99th Congress. For the last 39 years, these islanders have lived under U.S. administration. Failure today by the Congress to act decisively in order to provide for a fair and just termination of this trusteeship relationship, in response to the freely expressed will of the people as demonstrated in a U.N.-observed referendum, would not only be an international embarrassment to this country but a traversty of our international responsibilities and the principles upon which our Nation was founded. In going forward with this process of self-determination we not only honor our trusteeship obligations and historic principles, but we honor as well our men and women who fought so hard less than half a century ago in the great battles of the Pacific basin.

The administration had indicated to Congress its strong desire for the early enactment of the Compact of Free Association for Palau as has the Government of Palau. Although the administration may seek certain changes in the legislation when it reaches the Senate and the Government of Palau is faced with the task of seeing that the constitutional process of approval is completed in its jurisdiction, the House has an obligation to act expeditiously on this legislation.

As Members understand, the Supreme Court of Palau recently decided that the compact, which received a 72 percent approval vote in a recent U.N.-observed referendum, did not meet the constitutional requirement for 75-percent approval. The Constitution of Palau requires that any agreement between Palau and another nation which authorizes the use, testing, storage, or disposal of nuclear, toxic chemical, gas or biological weapons intended for use in warfare must be approved by at least a 75-percent plebiscite.

The United States and the Government of Palau originally agreed, in section 324 of the compact, that the United States would not engage in any of these four specified activities, hoping to avoid the requirement for a 75-percent vote. The United States was able to agree to such provisions because Palau had agreed that the United States would have the right to operate its nuclear capable and nuclear propelled vessels and aircraft within the jurisdiction of Palau without either confirming or denying the presence or absence of any particular type of weapons within the jurisdiction of Palau.

In spite of these carefully crafted provisions of the compact, the Supreme Court of Palau has, in its recent decision, suggested a more expansive definition of the verbs "store" and "use" so as to imply their application to nuclear capable vessels. The court concluded that:

> . . . the nuclear control provisions approved by the people left no room for the Government of Palau to enter into an agreement with any nation, and particularly the United States, which allowed that nation to operate nuclear capable or nuclear powered vessels in the waters of Palau unless the agreement obtained prior 75 percent voter approval.

It added:

> . . . we hold that the four verbs, "use, test, store or dispose of," in the nuclear control provisions were meant to be a brief summation of all that could possibly be done with nuclear substances—in short, a general prohibition against the introduction of nuclear substances into Palau. Accordingly, these four verbs prohibit transit of nuclear powered vessels or vessels equipped with nuclear missiles.

It is clear, in the wake of the court's decision, that action will have to be taken by the United States and the Palau Government to resolve this problem to ensure that the United States will be able to fully carry out its defense authority and responsibility under title III of the compact, including the right of transit for nuclear capable and nuclear powered vessels. To protect the rights of the United States and the Congress in this ongoing process, the legislation before us today includes a provision, authored by the gentleman from California [Mr. LAGOMARSINO] which requires the President to come back to Congress, before implementing the Palau Compact, with a certification that there exists no legal impediment to United States ability to fully exercise its defense authority and rights under the compact.

Mr. Speaker, I might add that most of the provisions in the implementing legislation before us today parallel the provisions in the implementing legislation which accompanied the Compact of Free Association with the Federated States of Micronesia and the Marshall Islands last year, with a few additional modifications.

As I noted earlier, the administration has urged the House to act expeditiously on the compact although it intends to seek certain changes in the legislation in the Senate. I would urge my colleagues to join us in accomplishing this effort to make self-government a reality for our friends in Palau and the Pacific region.

□ 1555

Mr. LAGOMARSINO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as we take up the matter of approving the Palau compact, I would like to establish for the record several important facts which support enactment of House Joint Resolution 626 at this time.

The compact is the result of 16 years of negotiations in which the representatives of the people of Palau and those of the United States carefully crafted what will be a 50-year political, economic, and mutual security partnership. The Palau compact defines a relationship of free association nearly identical to that being established under the compact of free association with the Federated States of Micronesia and the Marshall Islands pursuant to Public Law 99-239, which Congress approved late last year. These compacts provide the basis for termination of the 1947 trusteeship agreement under which the Security Council of the United Nations has oversight with regard to our relations with the Micronesia governments.

Under the compact, Palau will achieve constitutional self-government, including sovereignty and authority over its internal and foreign affairs. The United States will exercise defense authority relating to Palau under the mutual security provisions of the compact.

It should be clear to all, and I mean not just Members of this body and citizens of this Nation, but to all the countries of the world, that the people of the trust territory of the Pacific Islands have freely chosen their political status. As a freely associated state, Palau will realize their goal of national autonomy. In contrast, the people of the northern Mariana Islands chose a close relationship with the United States as a commonwealth, without exclusive autonomy but gaining local self-government and United States citizenship. The Palauans will not become U.S. citizens as a freely associated state, but rather will enjoy some but not all of the privileges accorded to U.S. citizens.

It should be noted here that Palau's internal constitutional approval process has been complicated by a complex legal dilemma. For in three separate votes the compact has been approved by the people of Palau by margins of 62, 67, and 72 percent. This astounding record of support for the compact—including two U.N.-observed plebiscites—has been recognized internationally as a valid process of self-determination. However, the votes have been insufficient to satisfy Palau's extraordinary constitutional requirement for 75-percent approval of the compact. This 75-percent requirement is due to the fact that the United States will have broad defense rights under the compact.

It is significant to note that in the plebiscite of the Marshall Islands and regarding a change in their political status—the compact of free association—the people of the Marshall Islands approved the compact and a new political status by 58 percent. Even though the percentage of the Marshallese voter approval is less than the 72 percent attained in Palau, it represents a bona fide expression of self-determination which has been recognized by the U.S. Congress as sufficient to reflect the will of the people. Congress accepted this choice of the Marshallese people to change their political status when the compact for the Marshall Islands was overwhelmingly approved by the House and Senate last year.

In the last referendum on the compact, the Government of Palau and the United States had agreed on a definition of the Constitution and United States defense rights which both governments believed would resolve the constitutional issue. However, Palau's court ruled that even as revised to comply with the Constitution the compact still needed 75-percent approval. The administration has always taken the position that Palau alone has the right to interpret its Constitution. Now that we appear to have a definitive interpretation of the Constitution, the proper course for the United States is to complete our constitutional approval process. This will allow the Government of Palau to determine how best to comply with the mandate of the court's decision and at the same time carry out the clearly expressed will of the people to enter into free association with the United States.

The options available to Palau in determining how to achieve the aspirations of the people in a manner consistent with their constitution are several, and completion of the United States approval process for the compact is important in order to preserve those options and enable Palau to freely choose their future course.

For example, one of the options available to Palau is amendment of the Constitution, and article XV of the Palau constitution contains an amendment provision expressly for the purpose of achieving compatibility between the compact and the constitution. If Palau chooses to do so, a final compact approved by the United States would enable the Palauans to implement that amendment procedure.

Likewise, if Palau decides to comply with the court's ruling by seeking 75-percent approval of a compact which meets United States and Palauan needs, United States approval of the Palau compact will establish the basis for determining what form the approval procedure will take in light of the court's decision. If the U.S. approval process for the compact is not completed, there will be no definition of what free association is in the form acceptable to the Congress. Only with a final product can the Palauans make an informed choice of how to resolve the political status issue and proceed with termination of the obsolete trusteeship in favor of self-government in accordance with the wishes of the people.

Mr. Speaker, institution of constitutional government in Palau and completion of Palau's political status process has been characterized by a robust public debate in Palau, by intensive political campaigns and no small share of controversy. However, the constitutional system has withstood the stress and the strain of these early years of democratic self-rule. Palau today is a stronger democracy than it was 5 years ago, and it is getting stronger every day. For Palau there will be no turning back to the days when foreign and antidemocratic forms of government dominated the people of Palau.

Those in Palau, and those in this Congress and the administration, who have encouraged and supported the establishment of self-government in Palau know better than anyone how complicated and difficult the problems have been. No doubt there would have been less criticism if the United States had not taken so seriously its obligation to respect the views and positions taken by Palau's Government during the negotiations. But the United States is interested in a stable, long-term relationship based upon trust and understanding. Instead of looking for an easy way around the thorny issues, we have leveled with the Palauans at every stage and attempted to accommodate their suggested solutions whenever possible.

Where this open and cooperative approach has failed to produce ultimate solutions, we have been criticized for even trying. Indeed, our commitment to dealing in good faith with the Palauans has perhaps contributed to the complexity of the legal and political process for completing the negotiations. This is not something of which we should be ashamed. Rather, it is a tribute to our faithful fulfillment of our obligations under the trusteeship. Let the critics say what they will, history will show that when the political status process was finally complete, both Palau and the United States entered into free association with a clear understanding of—and no illusions about—their respective obligations and rights under this new government-to-government relationship.

Mr. Speaker, the vitality of Palau's new democracy is reflected in the fact that there are political figures in Palau who have freely expressed their opposition to the compact, as well their government's policy of encouraging this Congress to approve the compact so that Palau can determine how best to complete their constitutional approval process. So that the record of our action here today reflects accurately the basis for our approval, I would like to include with my statement a letter from the honorable Lazarus E. Salii, who was elected President of Palau by the largest electoral margin in the history of Palauan politics. President Salii has been a great friend of the United States, and his letter of July 25, 1986, makes clear the intention of his government to comply with the court's mandate, as well as his government's understanding that the compact will not take effect until all requirements of Palauan and United States law have been satisfied.

I would also like to include communications we have received recently from Secretary of State Shultz and Ambassador Zeder, which explain several legal and policy issues which have been the subject of some confusion and misinformation.

I would like to acknowledge the efforts of the many individuals who worked diligently to make the Palau compact a reality.

The President's personal representative for Micronesian status negotiations, Ambassador Fred M. Zeder III, made this compact a reality through his persistent, aggressive leadership. While others doubted that any Palau compact was possible, Ambassador Zeder considered various creative legal solutions. In January of this year he directed his assistant, Howard Hills, to sort out some possible solutions with the executive and legislative branches of the Palau Government. It was through Howard Hills' intense efforts of working with the legislature of Palau that a compact was developed with their overwhelming support. I'd also like to add that Jim Berg, also of Ambassador Zeder's staff, with his encyclopedic knowledge of Micronesia, has provided continuous invaluable input throughout every stage of the process. Jim Berg has been especially eloquent and informative at the numerous congessional hearings.

This legislation moved steadily—not hastily, but steadily through Congress due to the diligent efforts and unwavering support of some of my colleagues.

Chairman DANTE FASCELL and ranking Republican BILL BROOMFIELD of the Foreign Affairs Committee and MO UDALL, chairman of the Interior and Insular Affairs Committee, have fully supported action on this legislation. STEVE SOLARZ and JOHN SEIBERLING set the pace in pushing the compact through their subcommittees and full committees. Likewise, JIM LEACH and DON YOUNG, MANUEL LUJAN, BILL RICHARDSON, DOUG BEREUTER, and JERRY SOLOMON have been helpful and supportive.

I must also recognize the contributions and support of another colleague. He has been extremely concerned and interested regarding the outcome of the Palau compact. I have regarded his views on this issue as both important and highly credible. He has the distinction of being the only Member of Congress from Micronesia. I'm referring to BEN BLAZ, one who has consistently recognized the mutual value of the compact of free association to the people of the United States and the people of Palau. I would be remiss if I didn't commend Senators JIM MCCLURE and BENNETT JOHNSTON for their unceasing efforts to bring life to the Palau compact.

Closing, it must be recognized that both the United States and Palau have further steps to take before this compact can take effect. Congress will be scrutinizing the procedures followed to resolve outstanding issues, and we look forward to prompt action to complete Palau's approval process so that the will of the people can be carried out sooner rather than later.

Let me also refer now, if I might, to members of the staff on both sides of the aisle, and if I may be forgiven, I would like to personally commend my assistant, Manase Mansur, who although he has not been a member of the staff for very long has certainly performed valuable and outstanding service for us.

Mr. Speaker, I include the letters referred to above as follows:

REPUBLIC OF PALAU,
WASHINGTON REPRESENTATIVE'S OFFICE,
Washington, DC, July 25, 1986.

Hon. THOMAS P. O'NEILL,
Speaker of the House of Representatives, H204 Capitol Building, Washington, DC.

DEAR MR. SPEAKER: As the Congress continues its deliberations on the Compact of Free Association with Palau, I would like to again reiterate my Government's request that the United States proceed expeditiously with its constitutional processes for approval of the Compact.

Although the Trial Division of Palau's Supreme Court has granted summary judgment on one count of a complaint challenging the validity of Palau's approval process, the Government is appealing that ruling. The Government of Palau supports the Compact and intends to take whatever further steps our Court may require, if any, in order to enable us to implement the Compact. This is the mandate of the people of Palau, and completion of our internal ratification procedure is a prerequisite to carrying out that mandate.

In closing, let me again emphasize that my Government understands that under Section 411 of the Compact, and as explicitly stated in H.J. Res. 626, reported by the House Interior Committee, the Compact will not take effect except upon a determination by the United States that Palau has completed its constitutional processes in accordance with Section 411 and that there are no legal impediments to implementation of the terms of the Compact as approved by the United States Congress, including the protection of all U.S. security interests set forth in the Compact and its related documents.

Thank you.

Sincerely yours,

LAZARUS E. SALII,
President, Republic of Palau.

THE SECRETARY OF STATE,
Washington, September 20, 1986.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives.

DEAR MR. SPEAKER: I am writing about an urgent matter which I hope you will be able to address before adjournment. It could have far reaching effects on United States long-term diplomatic and security interests in the central Pacific region.

Earlier this year the Congress passed implementing legislation for the Compact of Free Association for the Marshall Islands and the Federated States of Micronesia. Similar legislation for the Republic of Palau is now before Congress. Congressional consideration of this legislation has been complicated by a recent Palau Supreme Court decision that, in effect, throws out the results of the February 1986 UN-observed plebiscite on the Compact. This has caused some of your colleagues to ask whether Congress should complete action on the Palau legislation.

In the view of the Administration, and in the view of the Government of Palau, adequate safeguards exist in the proposed legislation and in the Compact itself to ensure that final implementation of the Palau Compact will not occur until the President is satisfied that Palau's approval process is complete and is consistent with our Compact obligations.

The United Nations Trusteeship Council has called for termination of the Trusteeship by September 30. Without approved implementing legislation the United States will not be able to meet that deadline. Unless the Trusteeship can be terminated by that date, important agreements we have negotiated concerning future relationships with the Pacific island territories and access to critical military facilities there could be jeopardized. Moreover, the Soviet Union would certainly move to exploit that delay in its on-going campaign against Trusteeship termination.

Consequently, I would deeply appreciate your assistance in focusing Congressional attention on this issue, with the goal of winning final action on the Palau legislation before September 30.

Sincerely yours,

GEORGE P. SHULTZ.

THE PRESIDENT'S PERSONAL REPRESENTATIVE FOR MICRONESIAN STATUS NEGOTIATIONS,
Washington, DC, September 15, 1986.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Although other issues quite understandably have received greater attention, enactment of Public Law 99-239 must be counted among the most significant achievements of the 99th Congress. This legislation approving the Compact of Free Association with the Federated States of Micronesia and the Marshall Islands provides the statutory framework for the conduct of relations between the United States and the constitutional governments emerging from the Trust Territory of the Pacific Islands. Public Law 99-239 also provides the basis for termination of the Trusteeship Agreement with the Security Council of the United Nations. At a time when the importance of our relations with the island nations of the Pacific is receiving greater recognition, termination of the trusteeship in favor of self-government represents a major foreign policy achievement for the United States.

The sole remaining requirement for action by the United States prior to termination of the trusteeship is completion of our constitutional approval process for the Compact of Free Association with Palau. Because Palau's internal approval process is not yet complete, inaction and delay in completion of the United States approval process may seem acceptable. For the reasons set forth below, the Administration urges Congress not to link United States law and policy on trusteeship termination and free association with Palau to the internal political and legal processes by which Palau is determining for itself the future course it will follow.

Congressional oversight—the need for continuity and consistency in United States law and policy relating to the freely associated states.

The enactment of Public Law 99-239 was made possible through the extraordinary bipartisan efforts and unselfish personal dedication, over a two year period, of the officers and members of several committees of Congress. That enterprise, and its outcome, constitute a great tribute to the commitment of Congress, the Micronesian governments and the Administration to fulfillment of the goals of the trusteeship.

Since President Reagan submitted the Palau Compact to Congress on April 9 of this year, those same committees and their members have produced legislation which would institute with respect to free association with Palau the same statutory framework created for the other two governments under P.L. 99-239. It is the Administration's view that the 99th Congress and the Administration should complete our work on the Palau Compact so that this carefully-constructed legislative package will be in place when Palau's internal process is completed.

H.J. Res. 626 and S.J. Res. 325, as reported by the Foreign Affairs, Interior and Insular Affairs and Ways and Means Committees in the House and the Energy and Natural Resources Committee in the Senate, respectively, reflect the intent of Congress on all fundamental issues and policy matters relating to the transition from trusteeship to free association. This is the legislative package which those members of Congress most directly involved in the approval process agreed upon, and its enactment by the 99th Congress will establish the United States legal regime within which free association with Palau will be instituted.

As explained below, we owe it to the people of Palau to complete our work so that the particulars of free association—in the form acceptable to the United States Congress—is both a matter of United States law and a part of the record in our government-to-government relations. Only then will the intent of Congress as expressed in Public Law 99-239 also be established with respect to the Palau Compact. Completion of the United States approval process will also enable the people of Palau to make an even more informed decision on how to proceed if the Palau court requires that the future political status question be revisited as a matter of internal Palauan law.

Congressional oversight—the Compact for Palau will not take effect until the Congress is satisfied that Palau's constitutional process has been properly completed.

The Palau Compact was signed by the President of Palau on January 10, 1986. The Palau National Congress approved the Compact by the required ⅔ majorities in both houses. On February 21, 1986, the people of Palau approved the Compact by 72% in a referendum observed by a Special Visiting Mission of the United Nations. That vote has been recognized by the U.N. as a valid act of self-determination. Earlier versions of the Compact were approved by majorities of 62% and 67%.

While these votes have satisfied international legal forms for acts of self-determination required for trusteeship termination, in the first two votes the Compact required 75% approval in order to meet certain requirements of Palau's constitution. The question of whether the present Compact also required 75% approval is now before the Palauan courts.

The Government of Palau and the United States believe the question of compatibility between the Compact and Palau's constitution has been resolved, and that the Compact was properly approved in the last referendum. However, the Administration and the Government of Palau have requested Congress to proceed with approval of the Palau Compact with the express understanding that it will not take effect until all requirements of Palau's constitution have been met. Palau's official statement on this matter is attached, and the Administration is pleased to reiterate here that compliance with the requirements of Palau's constitution, including those established as a result of the court's action, is expressly required under Section 411 of the Compact, and by Section 101(d) of H.J. Res. 626 and S.J. Res. 325.

In the absence of a court action, the United States would have relied upon the constitutional acts of the political branches of Palau's government as to whether Palau's approval process has been completed. Since the matter is being adjudicated prior to the Compact's effective date, it is hoped that a very clear judicial mandate will resolve any questions which exist as to the required approval process. Regardless of how the court may have ruled, or whether further approval procedures or other measures to effect compatibility are required, the Compact will not take effect until it has been properly approved.

The Administration believes Section 101(d) of the House and Senate version of the Palau Compact legislation, coupled with Section 411 of the Compact, adequately assure Congress that the Compact cannot be implemented in a manner which would risk successful legal challenge to the validity of the approval process or the enforceability of United States rights. We have also discussed other proposals designed to give Congress assurance that the final Palau Compact, and the manner of its approval and implementation, are subject to appropriate Congressional scrutiny and approval. The Administration supports that goal.

NECESSITY OF EARLY APPROVAL

On March 30, 1986, the Trusteeship Council of the United Nations, which has had direct oversight regarding the trusteeship, adopted a resolution calling for termination of the trusteeship by September 30, 1986. The basis for that resolution and its express applicability to Palau was the Council's determination that the political status of free association has been democratically-approved in a manner acceptable to the U.N., even if such acts of self-determination may not yet have satisfied Palau's internal requirements.

The specific contents of the Compact, its approval in Palau and its subsequent implementation are first and foremost bilateral matters between the United States and Palau. The U.N. has primary cognizance not of these bilateral matters, but of whether the fundamental issue of future political status has been freely determined by the peoples concerned. In contrast, completion of the United States approval process is necessary because by its terms the Trusteeship Agreement cannot be terminated without the consent of the United States. Thus, United States consent to termination will come once a statutory regime to replace the Trusteeship Agreement has been established by Congress and all other conditions and requirements for termination have been met. The legislation approving the Palau Compact provides the legal basis for the United States to bring about termination of the trusteeship with respect to Palau, just as Public Law 99-239 and Public Law 94-241 provide the legal basis for termination of the trusteeship with respect to the FSM and Marshall Islands and to the Northern Mariana Islands, respectively.

Consequently, approval of the Palau Compact now would enable the United States, consistent with United Nations practice, to take up the matter of trusteeship termination at the earliest time possible.

Completion of Palau Compact approval will not interfere with Palau's internal constitutional process.

The United States and Palau have invested 17 years in the negotiation of free association. The agreement signed by our governments and approved by Palau's National Congress and 72% of the people embodies the term of that relationship as currently agreed to by the two governments. Assuming a decision in Palau's court which requires further measures to achieve constitutional compatibility, perhaps even including negotiations or additional approval procedures in Palau, the Compact agreed to and approved by the United States would provide the proper and logical basis for whatever additional undertakings might be required. Any such further measures or undertakings could lead to Compact implementation only if Congress gives its approval, and as stated above, the Administration will support provisions in the approval legislation expressing this requirement in a manner acceptable to Congress.

There is nothing unprecedented in United States approval of an international agreement prior to its approval by the other signatory government. To contrary, it is a proper action for the United States to take given the circumstances in Palau, the United States and the United Nations, as described above. Thus, the Administration urges the enactment of the Palau Compact by Congress at the earlist possible date.

Sincerely yours,

FRED M. ZEDER II,
Ambassador.

Mr. SEIBERLING. Mr, Speaker, I yield myself 30 seconds, simply to say that the gentleman from California [Mr. LAGOMARSINO] should have added his name to the list of commendations, because his help has been tremendous throughout these many years of dealing with the problems of Micronesia. We would not have been able to deal with them effectively if it had not been for the support we have gotten from him, both from the subcommittee and at the full committee level, and in both committees, the Interior Committee and the Foreign Affairs Committee and, of course, we also received the kind of cooperation that the gentleman has outlined from people on both sides of the aisle and staffs of both committees, for which I am very grateful personally.

Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Arizona [Mr. UDALL], the chairman of the Interior and Insular Affairs Committee, without whose sage advice and counsel I do not think we would have made it through all the complicated negotiations.

Mr. UDALL. Mr. Speaker, I want to join in commending all the people who have made this possible. This has been a time when this institution is at its best, and I will not take time to repeat all the Members and others who have made this possible, but it was a difficult job and there is a lot of credit to spread around.

Mr. Speaker, this legislation, a substitute for House Joint Resolution 626, would give preliminary approval to a Compact of Free Association with the Republic of Palau, subject to certain conditions. It would also supplement the approval of Public Law 99-239, which gave conditional approval to a similar relationship with the Federated States of Micronesia and the Republic of the Marshall Islands.

As was the case with Micronesia and the Marshall Islands, the effectiveness of this legislation is contingent upon conditions being met by our administration and the Government of Palau as well as effective amendments of the proposed compact. Unlike the case of Micronesia and the Marshall Islands, however, final approval of the compact with Palau will also require further legislation.

Mr. SEIBERLING. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. FAS-

CELL], the distinguished chairman of the Foreign Affairs Committee, whose support has been instrumental in working out this complicated piece of legislation.

Mr. FASCELL. Mr. Speaker, I rise in support of House Joint Resolution 626, to approve the Compact of Free Association with Palau, and to commend the various chairmen, the subcommittee chairmen and others, both on the majority side and on the minority side for having the determination—to bring this legislation to the floor and to conclude this matter.

This legislation is the product of more than a decade of negotiations between the Governments of the United States and Palau. It is similar to legislation already approved by the Congress last year for two other Micronesian entities, the Federated States of Micronesia and the Marshall Islands. It is the final step toward ending a historical anachronism—the Trust Territory of the Pacific Islands.

I recognize that internal problems in Palau still remain with regard to this legislation. However, our action on this legislation in no way prejudges whatever acts of self-determination the people of Palau may ultimately approve. All we are doing here is to approve an agreement which has been negotiated and agreed to by our two Governments. The Palauan people remain free to accept or reject this compact, but we must first make clear that this agreement would be acceptable to the U.S. Congress.

I must also stress that consideration in the U.N. Security Council of the termination of the entire trusteeship is unlikely to occur unless we approve this legislation. The status of three other Micronesian entities—the Northern Marianas, the FSM, and the Marshalls—cannot be resolved until we approve this legislation. I therefore urge the House to pass House Joint Resolution 626.

Mr. LAGOMARSINO. Mr. Speaker, I yield 1 minute to the gentleman from Nebraska [Mr. BEREUTER], who has been very helpful in this legislation.

Mr. BEREUTER. Mr. Speaker, I would begin to conserve time, by reiterating through reference the compliments and commendations outlined a few minutes ago by the gentleman from California [Mr. LAGOMARSINO], for all the members and leadership of the various committees involved in bringing us this excellent, comprehensive, complex legislation, and to commend the gentleman from California [Mr. LAGOMARSINO] himself for his extremely important role in crafting this legislation through his membership on two of the relevant authorizating committees. In the time available, I would like to concentrate my remarks just on three subsections of the bill: The civic action team section, section 104(q) this Member believes to be very important. The civic action teams have repeatedly proven their worth. I hope the Armed Services Committees will give favorable consideration to our request from the Palau Government to use their allocated funds for this purpose.

With respect to section 104(r) related to important cultural, historic, recreational, and natural resources, I encourage the Government of Palau and the Department of the Interior to cooperatively conduct all necessary studies related to the preservation and enhancement of the Rock Islands of Palau, a world class environmental feature.

Finally, it should be emphasized that section 103(c) contains the strongest possible nonalienation language that the Congress can provide under the constitutional and sovereignty limits we faced.

I commend this legislation to my colleagues and ask for their support.

Mr. SEIBERLING. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from New York [Mr. SOLARZ].

Before I yield the floor, I would like to say that he has been one of the key actors and negotiators in working out this complicated piece of legislation. While we did not always agree on every issue, we managed to work out things in a way that I think satisfied us and met the interests of the people of the nations of Micronesia, as well as the people of the United States.

I think he deserves a tremendous debt of gratitude and commendation from all of us.

Mr. SOLARZ. Mr. Speaker, I thank the very distinguished Member from Ohio for his very kind comments.

Mr. Speaker, a former Member of the other body, Daniel Webster in arguing the Dartmouth College case before the Supreme Court of the United States in the 19th century said, "It is a small college, but there are those who love it."

I think it can be said of the Micronesian entities, "These are small countries, but there are those who love them." Many of them are on the floor of the House at this very moment.

One of the things which really has struck me about this whole process that we have engaged in over the course of the last year is the Compact of Free Association for the various Micronesian entities as it moved its way through the legislative process is the extent to which there were a number of Members of Congress on both sides of the aisle who took a very real and a very keen interest in this issue. It was not because there were many Americans of Micronesian descent living in their districts whose support or favor they were attempted to curry. It was not because for other reasons there was any great political mileage to be gained from an identification with this issue.

If the truth be told, the overwhelming majority of the American people were blissfully unaware of the questions that we are now confronting even existed; but they were involved because they were acting out of a very real sense of responsibility as members of the relevant committees of jurisdiction in the House who found this that responsibility was thrust upon them and because they were determined to discharge those responsibilities in a way which was consistent with the best interests of the United States and with our best values as a nation.

I think those Members, such as the very distinguished gentleman from Ohio who is coming to the conclusion of an extraordinarily distinguished and effective career in the House, most of all deserves credit; but as I look around, I see my good friends on the other side of the aisle, particularly the gentleman from California [Mr. LAGOMARSINO], the gentleman from Iowa [Mr. LEACH], the gentleman from Michigan [Mr. BROOMFIELD], the gentleman from Nebraska [Mr. BEREUTER], all of whom visited these islands, understood the problems, talked to the people, and devoted endless hours to hammering out the legislation now before us.

I would like to assoicate myself with all the substantive arguments that were offered by the gentleman from Ohio. This is a very significant step forward in the process of formally terminating the United States strategic trust over the Micronesian entities which was established at the end of the Second World War. At the time that we undertook that responsibility we pledged ourselves to facilitate a long-term solution compatible with the principles of self-determination for the people of those islands.

I believe we have met that responsibility.

The people of Palau have voted overwhelmingly by a margin of 72 percent in a referendum conducted under international auspices and with U.N. monitors in favor of this Compact of Free Association. Nobody denies or disputes the fact that it was a free and fair election.

By ratifying the compact today, I think we are taking a significant step forward toward the approval of the expressed wishes and will of the people of Palau.

To be sure, there is a constitutional problem on Palau because the referendum got only 72 percent, when under the terms of their constitution in order to accept some of the nuclear provisions they needed 75 percent. We are going to have to find a way to deal with that problem. They may have to change their constitution. They may have to submit the compact to another referendum in which they obtain not 72 percent, but 75 percent. A new formula may have to be negotiated which does not require a new referendum, but which is compatible with their constitution.

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But whichever option they choose, I believe that our action today will facilitate the rapid conclusion of this question.

The other main reason for voting for it is that it would facilitate the final step in the termination of the trusteeship for the Marshall Islands and the Federated States of Micronesia. We have approved the compact for those two entities. The Marshall Islanders and the people of the Federated States of Micronesia have approved the compact. The only thing that remains to be done is for the United Nations to be notified that we have terminated the trusteeship.

Our allies on the Security Council have informed us, however, that their willingness to approve the termination of the compact requires us to submit our notification of termination not just for the Marshall Islands and the Federated States of Micronesia, but for the Marianas and for Palau as well. Unless we take this step today by approving the compact for Palau, we would not be able to make the notification to the Security Council in a timely fashion so that it could be approved in effect without a vote of the Security Council.

If we submit a notice of termination just for the Marshall Islands and the FSM, then a vote would be required and the Soviet Union might very well veto it, and we would have created a very unfortunate situation. So for procedural reasons at the United Nations, our mission in New York and the Department of State have advised us that the approval of the compact for Palau is necessary if we are going to move forward with the termination of the trusteeship for the Marshalls and the FSM.

If we do not formally terminate our trusteeship for the Marshalls and the FSM now, the earliest that we will be able to do it is in February. In the meantime, our agreement to use the Kwajalein test range will expire on September 30. That would have to be renegotiated. It could cost us millions and millions of dollars if we have to cancel tests that are planned for that particular range.

In addition to that, it would also mean that the nuclear claims that have been filed in American courts by the people of the Marshall Islands who say that they were adversely affected by our testing there would be ripe for judicial resolution. There are billions of dollars of claims that have been filed. It could cost the Treasury untold amounts of money. Whereas, if the compact for the Marshall Islands is approved and the trusteeship is terminated, we establish a $150 milllion trust fund to take care of the victims, and the Government of the Marshall Islands formally renounces any claims in American courts.

So it is very much in the economic, strategic, and political interests of the United States to move forward, and that is why I call for the adoption of this historic legislation before us this afternoon.

Mr. LAGOMARSINO. Mr. Speaker, I have no additional requests for time, and I yield back the balance of my time.

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to express my appreciation to the gentleman from Illinois [Mr. ROSTENKOWSKI], the chairman of the Committee on Ways and Means, and to the members of that committee, for the extent to which they have put their forces and their energies to work to help work out the complicated trade and tax aspects of this legislation.

Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. DONNELLY].

Mr. DONNELLY. Mr. Speaker, on behalf of the members of the committee, I appreciate the chairman's remarks.

Mr. Speaker, I rise in support of House Joint Resolution 626. Among its numerous provisions, the proposed Compact of Free Association with the Government of Palau would establish rules for the taxation of certain income and the customs treatment of certain products. These provisions are identical to the tax and trade provisions which the Congress included in the Compact for the Federated States of Micronesia and the Marshall Islands enacted under Public Law 99-239.

The trade provisions of the bill provide specific tariff benefits for products imported into the United States from Palau.

Under sections 241-243 of the proposed compact, all articles of Palau, except certain specific product exclusions and imports of canned tuna above certain levels, would enter duty-free, subject to the rule-of-origin and competitive-need limits and substantial transformation requirements as presently apply under Generalized System of Preferences [GSP] sections 503(b) and 504(c) of the Trade Act of 1974. Unlike GSP, however, up to 15 percent of any U.S. materials may be counted toward the minimum 35-percent local-content requirement.

Products which would be excluded from duty-free treatment are: Watches, clocks, and timing apparatus; buttons; textile and apparel articles subject to textile agreements; and footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not eligible for GSP as of April 1, 1984.

Imports of canned tuna packed in water would be subject to a duty-free quota limiting duty-free entry of imports from the Federated States of Micronesia, the Marshall Islands, and Palau combined during any calendar year to a maximum 10 percent of U.S. consumption during the preceding calendar year.

Articles imported from Palau exempt from duty-free treatment under sections 241-243 would be subject to column 1 rates of duty and all U.S. articles imported into Palau would receive most-favored-nation treatment.

Also, the proposed compact includes a number of tax provisions. Those provisions include the following:

First: Section 252—Section 252 of the proposed compact would allow Palau to tax U.S. persons on income earned, property located, or products consumed, in Palau. This authority extends to taxation of transfers of property by gift or at death. The source of income and the location of property are to be determined under the U.S. Internal Revenue Code.

Second: Section 253—Section 253 of the proposed compact would exempt citizens of Palau, who are domiciled there and who are not U.S. citizens or U.S. residents, from U.S. estate, gift, and generation-skipping transfer taxes. For this purpose, Palau law is to determine residence in, or citizenship of, Palau, while U.S. law is to determine residence in, or citizenship of, the United States.

Third: Section 254—Section 254 of the proposed compact provides that Palau may tax income that residents receive from outside Palau. If Palau exercises this authority to tax local residents on non-Palau income, any individual resident of Palau who is subject to U.S. tax may be eligible for one of two kinds of U.S. tax relief with respect to the tax which would otherwise be imposed by the U.S. Government on that income. For this purpose, the term "resident" means any person who is physically present in Palau for a period of 183 or more days during any taxable year.

The relief available to U.S. persons means only: (i) relief in the form of the foreign tax credit (or the deduction in lieu of the foreign tax credit) available with respect to the income taxes of a U.S. possession, and (ii) relief in the form of the earned income exclusion of section 911 of the code. These kinds of relief are to be available only to the extent otherwise available under the code.

Fourth: Section 255—Section 255 of the proposed compact provides that Palau will be treated as a possession of the United States for purposes of the possession tax credit under section 936 of the code. This treatment will not apply to any period after 1986 during which there is not in effect between Palau and the United States an exchange of information agreement of the kind required for convention treatment for Caribbean Basin countries that provides information about the ownership of bearer shares and bank accounts. If the extension of section 936 benefits to Palau is reduced at any time during which the compact is in effect, the United States is to provide Palau with benefits substantially equivalent to such reduction in benefits.

Section 255 also provides that for purposes of section 274 of the code, which allows deductions for certain expenses incurred at conventions, seminars, or similar meetings, Palau is to be treated as part of the North American area, whether or not Palau is as reasonable a location of the meeting as the United States.

Fifth: Section 103(e)—Section 103(e) of the proposed compact requires an annual report by the President to Congress with respect to the impact of the compact on the possessions of the United States and on the State of Hawaii. Any such report is to identify any adverse consequences resulting from the compact and is to make recommendations for corrective action to eliminate any such consequence. Among the matters to which the reports are to pay particular attention is taxation.

These provisions will provide assistance toward the economic development of Palau while taking into account trade and tax policy concerns of the Congress.

I support the legislation and urge its support.

Mr. SEIBERLING. Mr. Speaker, I yield myself 1 additional minute.

Mr. Speaker, as our colleagues can see, a great many committees have had to do work on this legislation. In addition to those mentioned, we also had the Committee on Armed Services and the Committee on Merchant Marine, and yet this has all come forward and been worked out in a way that has met with the approval of Congress once, and hopefully again in the case of Palau a second time.

I believe that congratulations and commendations are also due to some of our colleagues in the other body, in particular Senator McCLURE and Senator JOHNSTON, as has already been mentioned, as well as Senator PACKWOOD, for the role that he played in working out the tax and trade provisions of this legislation.

Mr. Speaker, if I may be indulged a bit further, I would also like to thank certain members of my subcommittee staff, particularly Pat Krause, Stan Sloss, Jeff Farrow, and Roy Jones, for the tremendous work that they have done from the staff standpoint of making this all possible. Roy Jones and Jeff Farrow are actually on the staff of the Interior Committee, the full committee, but they have worked very closely with us, and they deserve a great deal of thanks.

Mr. SOLARZ. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from New York.

Mr. SOLARZ. I thank the gentleman for yielding time to me.

Mr. Speaker, since the gentleman has, I think with great justification, paid tribute to the people on the staff of the Interior Committee who have worked so long and hard on this, I am sure that he would agree that it would only be appropriate if we mention the incredible and sometimes incredulous labors of the people on the staff of the Foreign Affairs Committee, particularly Stanley Roth, who is the staff director of the Asian and Pacific Affairs Subcommittee, who went all the way out to Micronesia to see for himself, and whose labors here were indispensable.

Also on the staff of the full committee, Marian Chambers did a marvelous job, and our minority staffer, Cindy Sprunger, was with us every step of the way.

I think all of them together with Mr. SEIBERLING's staff deserve the thanks and appreciation of the entire House.

Mr. Speaker, the amendment to the preamble simply conforms it to the changed state of facts as a result of the action of the Supreme Court of Palau.

Mr. JONES of North Carolina. Mr. Speaker, House Joint Resolution 626 was sequentially referred to the Committee on Merchant Marine and Fisheries, as well as to other committees of the House. The membership of the Committee on Merchant Marine and Fisheries had several concerns with this resolution as introduced. In particular, title I, article II, section 124(a) authorized the Government of Palau to conduct foreign affairs with regard to living and nonliving resources of the sea "to the full extent recognized under international law." However, Palau's interpretation of international law with regard to highly migratory species of fish, such as tuna, is in direct conflict with United States policy and law.

Furthermore, title II, article I, section 211 obligated the United States to provide Palau with funds for enforcement and surveillance in its maritime zone. Therefore, under sections 124(a) and 211, the United States could have found itself providing Palau with the funds to enforce laws and policies against our own citizens which the U.S. does not recognize.

Our final concern involved title I, article VI, section 163 which set forth the environmental obligations of the U.S. Government with regard to activities in Palau. This section could have been construed as being more lax than the environmental responsibility provisions in the recently enacted Compact of Free Association for the Federated States of Micronesia [FSM] and Marshall Islands.

The Committee on Foreign Affairs subsequently adopted an amendment (section 103(f) of title I of House Joint Resolution 626) which addressed this committee's past concerns regarding highly migratory tuna. The amendment contained the exact language of title I, section 104(f) of the Marshall Islands compact which had been developed and approved by the Committee on Merchant Marine and Fisheries in the 1st session of the 99th Congress. Briefly, the Foreign Affairs Committee's amendment stated that: First, the United States did not recognize Palau's right to claim jurisdiction over highly migratory tuna caught beyond its territorial sea; second, no compact enforcement moneys could be used for enforcement against United States tuna boats fishing outside Palau's territorial sea; third, compact moneys will be treated as foreign assistance so that they would be subject to the sanctions provided for in section 5 of the Fisheries' Protective Act; and fourth, the United States will continue to support negotiations for a regional fishing license agreement. A complete discussion of this issue can be found in House Report 99-188, part III.

While the adoption of the Foreign Affairs Committee's amendment on fisheries management should have resolved this problem, recent actions by the Marshall Islands and the Federated States of Micronesia have once again raised questions about the viability of the fisheries management language in the Marshall Islands compact as well as in the compact with Palau. The governments of the FSM and the Marshall Islands have recently passed their implementing legislation for their Compact of Free Association with the United States. In their implementing legislation, they: First reassert their jurisdiction over fisheries out to 200 miles; second, expressly reject U.S. policy and law regarding highly migratory tuna; and third, state that the full faith and credit provisions of the compact prevent the United States from withholding compact moneys if a U.S. tuna boat is seized.

The Committee on Merchant Marine and Fisheries is strongly opposed to the fisheries management positions taken by the Marshall Islands and the Federated States of Micronesia. It is for that reason that we strongly support the clarifying amendment establishing a new title III, section 301 for the compact with Palau, which reaffirms our original intent with the fisheries management language for the Marshall Island compact. The executive branch is bound by United States public law to disallow the use of compact moneys for enforcement actions against United States tuna boats and to impose sanctions if a boat is seized, regardless of how the Marshall Islands and the Federated States interpret the compact. This would also be the case if Palau were to enact legislation similar to that passed by the Marshall Islands.

Another area of concern for the Committee on Merchant Marine and Fisheries was the environmental protection provisions contained in section 163 House Joint Resolution 626. An initial comparison of that section of the Palau compact with a similar section in the recently enacted Marshall Islands compact suggested that the environmental protection provisions with regard to United States activities in Palau, were considerably reduced and less specific than those passed by Congress for the Federated States and the Marshall Islands.

In response to an inquiry from the committee, the Department of the Interior generally suggested that there was no intention on their part to significantly or substantively diminish the environmental protection obligations of the United States in Palau, in comparison to those for the Marshall Islands. Since the text of House Joint Resolution 626 does not make that intent abundantly clear, the Committee on Merchant Marine and Fisheries held a markup and subsequently issued a committee report (H. Rept. 99-663, part IV) which clearly states that United States environmental protection obligations in Palau are to be interpreted as being effectively the same as those in the Federated States and the Marshall Islands.

This committee's report notes that, among other things, the requirement to prepare environmental assessment and/or environmental impact statements under the National Environmental Policy Act shall continue to apply to United States activities in Palau in the manner envisioned in the Marshall Islands compact. In addition, at a minimum, section 7, section 9, and section 10 of the Endangered Species Act shall continue to apply to all United States activities in Palau. House Report 99-663, part IV, provides further detail on how the Committee on Merchant Marine and Fisheries views United States environmental obligations in Palau.

In summary, the concerns of the Committee on Merchant Marine and Fisheries have been addressed and I would urge all Members to vote in favor of final passage of House Joint Resolution 626, as amended.

Mr. SEIBERLING. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. (Mr. Montgomery). The question is on the motion offered by the gentleman from Ohio [Mr. Seiberling] that the House suspend the rules and pass the joint resolution, House Joint Resolution 626, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution as amended, was passed.

A motion to reconsider was laid on the table.

SIPSEY WILD AND SCENIC RIVER AND SIPSEY WILDERNESS ADDITION ACT OF 1986

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5508) to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, and to preserve over 30,000 acres of pristine natural treasures in the Bankhead National Forest for the aesthetic and recreational benefit of future generations of Alabamians, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5508

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sipsey Wild and Scenic River and Sipsey Wilderness Addition Act of 1986".

TITLE I—WILD AND SCENIC RIVER

SEC. 101. DESIGNATION

(a) Sipsey Fork, West Fork, Alabama.—Section 3(a) of the Wild and Scenic River Act (82 Stat. 906: 16 U.S.C. 1247(a)) is amended by adding the following new paragraph at the end:

"(56) Sipsey Fork, West Fork, Alabama.—The segments generally depicted on a map entitled "Sipsey Fork, West Fork Wild and Scenic—Proposed", to be administered by the Secretary of Agriculture. For the purposes of the river segment designated by this paragraph, there are authorized to be appropriated such sums as may be necessary for the acquisition of lands and interests in lands and for development.

(b) Renumbering.—Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1247(a)) is amended by redesignating the paragraphs relating to the Au Sable River, the Tuolumne River, the Illinois River, and the Owyhee River as paragraphs (52) through (55) respetively.

TITLE II—WILDERNESS DESIGNATION

SEC. 201. DESIGNATION AND ADMINISTRATION.

(a) Designation.—In furtherance of the purposes of the Wilderness Act of 1964 (16 U.S.C. 1131), certain National Forest System lands located within the William B. Bankhead National Forest, Alabama, which comprise approximately 15,900 acres, as are generally depicted on a map entitled "Sipsey Wilderness Additions—Proposed", dated September, 1986, are hereby designated as wilderness and shall be incorporated in and deemed a part of the Sipsey Wilderness as designated by Public Law 93-622.

(b) Administration.—Subject to valid existing rights, the wilderness designated by this Act shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act of 1964: *Provided,* That any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act.

SEC. 202. RARE II.

(a) Findings.—The Congress finds that—

(1) the Department of Agriculture had completed the second Roadless Area Review and Evaluation Program (RARE II); and

(2) the Congress has made its own review and examination of National Forest System roadless areas in Alabama and of the environmental impacts associated with alternative allocations of such areas.

(b) Congressional Determinations.—On the basis of such review, the Congress hereby determines and directs that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to National Forest System lands in States other than Alabama, such statement shall not be subject to judicial review with respect to National Forest System lands in the State of Alabama;

(2) with respect to the National Forest System lands in the State of Alabama which were reviewed by the Department of Agriculture in the second Roadless Area Review and Evaluation (RARE II) and those lands referred to in subjection (d), that review and evaluation or reference shall be deemed for the purposes of the initial land management plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, to be adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revisions of the plan, but shall review the wilderness option when the plans are revised, which revision will ordinarily occur on a ten-year cycle, or at least every fifteen years, unless prior to such time the Secretary finds that conditions in a unit have significantly changed;

(3) areas in the State of Alabama reviewed in such final environmental statement or referenced in subsection (d) and not designated wilderness upon enactment of this Act shall be managed for multiple use in accordance with land management plans pursuant to section 6 of the Forest and Rangeland Renewable Planning Act of 1974, as amended by the National Forest Management Act of 1976: *Provided,* That such areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of the initial land management plans;

(4) in the event that revised land management plans in the State of Alabama are implemented pursuant to section 6 of the Forest and Rangeland Renewable Resources Act of 1974 as amended by the National Forest Management Act of 1976, and other applicable law, areas not recommended for wilderness designation, need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans and areas recommended for wilderness designation shall be managed for the purpose of protecting their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law; and

(5) unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of National Forest System lands in the State of Alabama for the purpose of determing their suitability for inclusion in the National Wilderness Preservation System.

(c) Revisions.—As used in this section, and as provided in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, the term "revision" shall not include an amendment to a plan.

(d) Areas of Less Than 5,000 Acres.—The provision of this section shall also apply to National Forest System roadless lands in the State of Alabama which are less than 5,000 acres in size.

SEC. 203. MAP AND DESCRIPTION.

As soon as practicable after enactment of this Act, the Secretary of Agriculture shall file a map and legal description of the Sipsey Wilderness Addition with the Committees on Agriculture and Interior and Insular Affairs of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and such map and legal description shall have the same force and effect as if included in this Act: *Provided, however,* That corrections of clerical and typographical errors in such legal description and map may be made. Copies of the legal description and map shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture and the Office of the Supervisor of the Bankhead National Forest.

The SPEAKER pro tempore. Is a second demanded?

Mr. MARLENEE. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. SEIBERLING] will be recognized for 20 minutes, and the gentleman from Montana [Mr. MARLENEE] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. SEIBERLING].

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill would designate a Wild and Scenic River and a 15,900-acre addition to the National Wilderness Preservation System in the William Bankhead National Forest in Alabama. The bill is that of our colleague, Mr. RONNIE FLIPPO, of Alabama's Fifth Congressional District.

The addition of 60 miles of the Sipsey Fork and its tributaries to the Wild and Scenic Rivers System was recommended by the Department of Agriculture. The addition to the Sipsey Wilderness, which was originally designated by the Congress in 1974, is a compromise proposal some 45 percent smaller than that which passed the House in the 97th and 98th Congresses.

In bringing this bill to the floor, I want especially to thank Representative FLIPPO, both for his dedication to the goal of adding deserving lands to round out the Sipsey Wilderness, and for his willingness to seek out compromise and consensus on this issue.

I am personally familiar with the mountain area of northern Alabama in which the Sipsey is located. This land and this river are well-qualified additions to the National Wilderness Preservation System and the National Wild and Scenic River System.

Mr. Speaker, I urge our colleagues to support this bill, and I reserve the balance of my time.

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Mr. MARLENEE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the bill before us proposes to designate approximately 15,900 acres in Alabama as an addition to the existing Sipsey Wilderness in Alabama. It also proposes to designate 60 miles of the Sipsey River as a wild and scenic river.

If this sounds familiar to some of you, it should. We have had similar proposals before the House in both of the last two Congresses. In 1982, a bill to designate 28,500 acres as wilderness passed by a vote of 349 to 59. In 1983, a similar measure passed on a voice vote. In both instances, the bills failed to become law when the delegation was unable to reach a final agreement on the size of the wilderness area.

This year the acreage difference is smaller. The bill before us is a 15,900-acre proposal. It exceeds the recommendation of the forest plan by approximately 5,000 acres. A modest difference. For this reason the Forest Service does oppose the wilderness portion of the bill. However, I believe they, too, recognize that the delegation is attempting to arrive at a consensus and do not object to a bill moving forward at this time. They support designation of the Sipsey River as wild and scenic.

I urge my colleagues to support this bill. I believe the gentleman from Alabama [Mr. FLIPPO] is making an honest attempt at reaching an agreement and has made a strong case in support of wilderness designation in this area. The objectionable features of the bill have been modified and worked out with the assistance of the chairman of the subcommittee, the gentleman from Alabama [Mr. FLIPPO], and other Members of the Alabama delegation.

Mr. SEIBERLING. Mr. Speaker, I yield such time as he may consume to the gentleman from Alabama [Mr. FLIPPO], the author of the bill.

Mr. FLIPPO. Mr. Speaker, I rise in strong support of the Alabama Wilderness Act of 1986.

The bill before the House today would expand the Sipsey Wilderness located in my congressional district and designate about 60 miles of the Sipsey River system as a wild and scenic river.

At the outset, Mr. Speaker, I want to commend and thank the gentleman from Ohio [Mr. SEIBERLING] and the ranking minority member [Mr. MARLENEE] and all the members of the Subcommittee on Public Lands who have been very gracious and generous over the past 4 years in allocating their time, energy, and expertise to the wilderness issue in Alabama.

As many of my colleagues realize and understand, this is not the first time the House has considered legislation dealing with the Sipsey Wilderness. The House has considered and passed Sipsey Wilderness legislation on two previous occasions.

The House first passed the Sipsey Wilderness Addition Act during the 97th Congress in 1982 by a vote of 354 to 49. Similar legislation passed the House again in 1983 during the 98th Congress by a voice vote.

The Subcommittee on Public Lands has conducted public hearings on this legislation on three different occasions in three different years, 1982, 1983, and again in 1986.

I also wish to extend my thanks and appreciation to the distinguished chairman of the Agriculture Committee [Mr. DE LA GARZA], the ranking majority member [Mr. FOLEY], the ranking minority member [Mr. MADIGAN] and the chairman of the Subcommittee on Forests, Family Farms and Energy [Mr. WHITLEY], and the ranking minority member [Mr. MORRISON] for their great contributions to this legislation. This subcommittee also held extensive public hearings on the Sipsey Wilderness in 1982 and 1983.

The bill before the House today is substantially different from previous versions of the Alabama Wilderness Act approved by the House in 1982 and 1983. The Eastern Wilderness Act passed by Congress in 1974 designated 12,040 acres of the 179,924 acres in the William B. Bankhead National Forest as the Sipsey Wilderness. In 1982 and again in 1983 I proposed expanding the Sipsey Wilderness by approximately 29,500 acres following the findings of the RARE II study.

The bill before the House today would provide for expanding the Sipsey Wilderness by approximately 16,000 acres. The acreage expansion provided for in H.R. 5508 is 13,500 acres or 45 percent smaller than previously proposed and approved by the House.

H.R. 5508 is also different in another important aspect. The Sipsey River and its tributaries has long been under consideration for designation as a wild and scenic river. All of the required studies of this matter has been completed and provisions of H.R. 5508 would formally designate about 60 miles of the Sipsey River as a wild and scenic river. The Forest Service has completed a wild and scenic study of the Sipsey River and its tributaries as required by the Congress in 1975. The study report has not yet been transmitted to the Congress. However, the results and recommendation of the study are documented in the land and resources management plan for the national forest in Alabama.

H.R. 5508 is similar to legislation introduced by Senator HEFLIN in August—S. 2782—except that it provides for a slightly larger wilderness area.

The bill under consideration here today is the product of lengthy and tortuous negotiations and compromise extending over 4 years. H.R. 5508 satisfies an estimated 99 percent of the concerns of the interested parties on both sides of the issue. I must admit that there are parties on both sides of the issue who apparently will never endorse a proposal that does not satisfy their very wish and whim.

I say this because it has taken 4 years to reach this point. This House has twice passed enabling legislation, first in 1982 and again in 1983, designating 29,500 acres of publicly owned forest land in Alabama a wilderness, every acre of which was identified in the RARE II study and analyzed extensively for years. In 1982 and again in 1983 the other body failed to take any action on the House-passed bills.

Mr. Speaker, every interested party has been provided ample opportunity over the past 4 years to be heard, to make their case, to offer opposing views. Environmentalists, harvesters of the publicly owned timber, residents of the affected area, public officials, officials of the Forest Service here in Washington and in Alabama, and the general public have been invited and joined in the extensive public debate and hearings.

During these hearings and the lengthy and extensive debate and negotiations many questions and issues were raised and all were resolved long ago except one—acreage.

The only remaining issue is one of acreage. How many acres of publicly held, federally owned forest land will be preserved for present and future generations? There are no other areas of disagreement now and there has not been for years.

The proposed Sipsey additions are based on the results of the RARE II study published in 1979. The RARE II study identified seven roadless areas encompassing 30,658 acres in the Bankhead National Forest. All seven areas are located in Lawrence County in my congressional district or immediately adjacent to my district in Winston County.

The Forest Service recommended that the Sipsey addition area identified as 8-068 on the map and the Borden Creek area identified as 8-208 on the map be designated as wilderness. These two areas account for approximately 7,173 acres. H.R. 5508 would add approximately 16,000 acres of the RARE II lands of the Bankhead Forest to the existing Sipsey Wilderness. This would include in their entirety the Borden Creek area, 8-208; the Sipsey addition area, 8-068; and the Hagood Creek area, 8-208. In addition, a portion of the Thompson Creek area, 8-210, amounting to approximately 5,000 acres would also be designated as wilderness. Under the provisions of the bill, additional acreage including the Montgomery Borden Creek area, 8-209, and the portion of Thompson Creek not designated as wilderness would be managed to assure a semiprimitive setting.

The borders of the proposed wilderness area have been carefully drawn to exclude private land holdings whenever possible. As a result only one small private land holding—160 acres—is included in the proposed additions. It is located in the area known as the Sipsey addition. The Forest Service is actively negotiating a land exchange for this private land. I hope these negotiations will be successfully concluded soon.

The western border of the proposed wilderness in the Thompson Creek area has been carefully drawn to exclude private landholdings and certain large pine plantations while following natural boundaries. The exclusion of these pine plantations would facilitate the ongoing work of the Forest Service in controlling insect infestation. The map will show that a trailhead will provide access to the Gum Pond Cemetery. Thus, hikers, canoeists, horse hikers, and the public at large would have access from both the west and the north to Thompson Creek and the Gum Pond Cemetery.

Similar access would also be provided in the southeast sector of the proposed additions with a trailhead along road 224 permitting access to Borden Creek and the Bunyan Hill Cemetery.

Mr. Speaker, we have attempted in drawing the borderlines to maximize access to the wilderness area for horse hikers, canoeists, and individuals interested in the cemeteries. The borders have also been designed to enhance the management of the proposed wilderness area.

I believe that it is important for the House to view the proposed wilderness expansion in relation to the size and scope of forest activities throughout the State of Alabama.

The forest products industry is the leading primary manufacturing industry in Alabama. This industry provides more than 47,000 full-time jobs and an annual payroll in excess of $800 million.

The commercial forest land base in Alabama is the third largest in the Nation. Only Georgia and Oregon have more commercial forest land than Alabama. Commercial forest land accounts for 21.7 million acres or 66 percent of the total land of Alabama. Some of this land located in the southern half of the State is among the most productive in the Nation.

Like most other Southern States, 75 percent of Alabama's commercial forest land is owned and controlled by thousands of nonindustrial private owners. Our forest industry depends on free timber markets with many participants for most of its wood supply.

Only 5 percent, or slightly more than 1 million acres of the State's forest land, are in public ownership. National forests make up 689,000 acres of the public ownership.

Timber resources and the forest products companies are located in every county in Alabama. Every county has some timber production and every county, except one, has over 100,000 acres of commercial forest land.

H.R. 5508 would expand the size of the Sipsey Wilderness to approximately 29,700 acres. This expanded wilderness would amount to:

Less than two-tenths of 1 percent of the total land area in Alabama.

Less than 1.4 percent of the total commercial forest land in Alabama.

Less than 3 percent of the total public forest lands in the State.

It is clear, Mr. Speaker, that this legislation would not significantly, or substantially reduce the acreage available for commercial timber operations.

Mr. Speaker, H.R. 5508 is offered as a compromise. I obviously believe that the 29,500 acres contained in the 1982 and 1983 bills approved by the House represent the correct and appropriate addition to the Sipsey. But, in the spirit of compromise, I am asking the House today to approve the 15,900 acres contained in H.R. 5508 in hopes of resolving the last remaining issue.

This figure is well within the recommendations of the Forest Service as to the number of acres needed in Alabama. This bill before the House has been endorsed by a large number of public officials throughout the State. It satisfies 99 percent of the interests of both sides. It is up to the Congress to resolve the rest.

Mr. Speaker, the infestation of the southern pine beetle in my State is creating havoc throughout the forest levels. This problem is of vital concern to everyone dependent upon the forest for recreation for their livelihood. The Federal, State, and local authorities in Alabama are expending considerable amounts of time, money, and energy in the battle to stop this infestation.

It is a serious problem. Unfortunately, the scientific community has not reached a conclusive agreement on the appropriate and necessary approach for solving the problem. While there may be some disagreement as to the proper scientific treatment of the pine beetle problem, there is no question or doubt that it will be dealt with.

I am pleased to note that the Forest Service in Alabama has published an environmental impact statement setting forth their plans and policies for dealing with this problem. I want to provide the Forest Service with the maximum amount of flexibility necessary to assist them in this effort.

This bill clearly directs the Forest Service to deal with the pine beetle in the most effective manner available. It is dealt with in this legislation in a manner consistent with the basic wilderness legislation and all other wilderness legislation enacted in the last 4 years in the committee report. And, it is dealt with in a manner most desired by the Forest Service. The pine beetle is not an issue in this legislation.

H.R. 5508 will enlarge the Sipsey Wilderness in the Bankhead National Forest. It would also designate the Sipsey River system as a wild and scenic river. The enactment of this bill would insure protection for one of Alabama's most spectacular botanical areas.

Because this bill represents protection for less than three-tenths of 1 percent of Alabama's forests, it will have an insignificant effect on commercial logging. It would also settle the wilderness question in our State.

I believe H.R. 5508 to be a very reasonable attempt to protect a small portion of Alabama's lush and charming woodlands. Protection will help achieve a diversity of habitat healthy to Alabama's rich wildlife. It is in the best interest of Alabama and the Nation to preserve these areas so that they may remain or become, if altered by man, the way the land was when the first Americans lived on these lands.

I urge my colleagues to vote for H.R. 5508.

WILDERNESS DESIGNATIONS ENACTED SINCE JAN. 1, 1979

Public Law No.	Acreage designated	State(s)
96th Congress:		
1979–80:		
96–312	2,335,320	Idaho.
96–476	33,000	Montana.
96–487	56,484,668	Alaska.
96–550	609,060	New Mexico.
96–560	1,485,200	Colorado (1,424,430 acres), Missouri (27,650 acres), South Carolina (13,720 acres), South Dakota (10,700 acres), and Louisiana (8,700 acres).
97th Congress:		
1981–82:		
97–384	12,953	Indiana.
97–407	6,888	Missouri.
97–411	6,780	Alabama.
97–466	47,800	West Virginia.
98th Congress:		
1983–84:		
98–140	259,000	Montana.
98–280	16,500	Missouri.
98–321	24,339	Wisconsin.
98–322	41,260	Vermont.
98–323	77,000	New Hampshire.
98–324	68,750	North Carolina.
98–328	859,500	Oregon.
98–339	1,029,073	Washington.
98–406	1,063,360	Arizona (1,040,809 acres) and Utah (22,551 acres).
98–425	3,207,510	California (3,207,160 acres) and Oregon (350 acres).
98–428	749,550	Utah.
98–430	49,150	Florida.
98–508	91,103	Arkansas.
98–514	14,439	Georgia.
98–515	5,500	Mississippi.
98–550	884,129	Wyoming (883,359 acres) and Colorado (770 acres).
98–574	34,356	Texas.
98–578	24,943	Tennessee (24,859 acres) and Georgia (83 acres).
98–585	9,705	Pennsylvania.
98–592	55,984	Virginia.
98–603	27,860	New Mexico.
99th Congress:		
1985–86 (to date):		
99–197	13,300	Kentucky.

□ 1630

Mr. MARLENEE. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. Mr. Speaker, I yield 1 minute to the gentleman from Montana [Mr. MARLENEE].

Mr. MARLENEE. Mr. Speaker, it is my understanding that we had some question about a former trail in the Alabama wilderness that the gentleman had some concern about, and that trail was a couple of tracks through the forest that had been used for horse-drawn carts.

Had that issue been resolved satisfactorily?

Mr. FLIPPO. If the gentleman will yield, in my opinion it has been. This bill permits horse hikers, horses in the wilderness; I believe.

Mr. MARLENEE. Mr. Speaker, that presents a very unique opportunity, I believe, with the proper kind of management to assist the handicapped such as the very elderly or those with heart conditions or those who are physically handicapped with debilitating diseases or afflictions to get up through the forest to get into some of those wilderness areas.

It would do me a lot of good and I know it would do the gentleman a lot of good if we could see that kind of accommodation for some of the elderly and some of the very handicapped people who would like to see nature at its best in some of the wilderness areas.

Mr. FLIPPO. Mr. Speaker, I would say that more than 30 States have enjoyed legislation concerning wilderness since 1979, under the leadership of the distinguished ranking minority member, the gentleman from Montana [Mr. MARLENEE] and the gentleman from Ohio [Mr. SEIBERLING], and the gentleman's interest in people having usage of those areas is well noted.

Mr. MARLENEE. Mr. Speaker, we have enjoyed wilderness to the point that, where we can barely stand it in Montana now——

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. FLIPPO. I am delighted to yield.

Mr. WALKER. Mr. Speaker, the gentleman from Kentucky and I have just been having a discussion here, and we are wondering whether or not, under this bill, whether beavers are permitted in the wilderness.

Mr. FLIPPO. I do believe they would be, yes, indeed.

Mr. WALKER. I thank the gentleman.

Mr. SEIBERLING. Mr. Speaker, I yield 2 minutes to the gentleman from Alabama [Mr. ERDREICH].

Mr. ERDREICH. Mr. Speaker, I rise in support of this bill, and I commend my colleague from Alabama who has been so tenacious on the issue of wilderness expansion in our State. My colleague has twice before with my support shepherded an Alabama Wilderness expansion bill through the House, only to see it lie dormant in the Senate. This year, though, the Senate has begun to act on a wilderness bill, and there is a good chance that Alabamians will see parts of the oldest and most scenic woodlands in our State preserved for future generations to enjoy.

Expansion of the Sipsey Wilderness enjoys broad support in Alabama. Indeed, I and many in my county of Jefferson have supported an even larger expansion than this bill proposes, as have the Jefferson County Commission, the Birmingham City Council, the Sierra Club, the Audubon Society, and many private citizens.

The wilderness will be created north of my district, but even in the middle of the State, my area will benefit directly. H.R. 5508 will protect the Thompson creek watershed, which contributes to the water supply for the city of Birmingham. The bill provides added protection by including language asking the Secretary of Agriculture to monitor and maintain the quality of water in the Sipsey River.

H.R. 5508 is based on the proposals contained in the 1979 RARE II study, and its acreage falls within recent recommendations by the U.S. Forest Service in Alabama. I urge my colleagues to support this bill, and commend my good friend and fellow Alabamian for his yeoman's work in bringing the bill to the floor.

Mr. SEIBERLING. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MARLENEE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MONTGOMERY). The question is on the motion offered by the gentleman from Ohio [Mr. SEIBERLING] that the House suspend the rules and pass the bill, H.R. 5508, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on H.R. 5508, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Debate has been concluded on all motions to suspend the rules.

Pursuant to clause 5, rule I, the Chair will now put the question on each motion on which further proceedings were postponed in the order in which that motion was entertained.

Votes will be taken in the following order: H.R. 5559, by the yeas and nays; H.R. 5560, by the yeas and nays; H.R. 5564, de novo; and H.R. 4917, de novo.

The Chair will reduce to 5 minutes the time for any electronic votes after the first such vote in this series.

IMMIGRATION AND NATURALIZATION SERVICE BILL

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 5559, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Kentucky [Mr. MAZZOLI] that the House suspend the rules and pass the bill, H.R. 5559, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 81, nays 308, not voting 43, as follows:

[Roll No. 421]

YEAS—81

Abercrombie
Ackerman
Alexander
Anderson
Atkins
Barnes
Bates
Beilenson
Berman
Bliley
Bonior (MI)
Boucher
Brown (CA)
Clay
Coelho
Cooper
Coyne
Donnelly
Durbin
Dymally
Edwards (CA)
Fazio
Fish
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Garcia
Hamilton
Hayes
Hoyer
Jacobs
Kastenmeier
Kildee
Kostmayer
LaFalce
Leland
Levin (MI)
Lowry (WA)
Lundine
Lungren
Manton
Markey
Matsui
Mavroules
Mazzoli
McHugh
Mineta
Mitchell
Moakley
Moody
Morrison (CT)
Nowak
Oakar
Oberstar
Obey
Owens
Rangel
Rodino
Sabo
Savage
Seiberling
Sikorski
Solarz
Staggers
Stark
Stokes
Studds
Synar
Torres
Towns
Udall
Vento
Visclosky
Waldon
Waxman
Weiss
Wheat
Williams
Wilson

NAYS—308

Akaka
Andrews
Annunzio
Applegate
Archer
Armey
Aspin
AuCoin
Barnard
Bartlett
Barton
Bateman
Bedell
Bennett
Bentley
Bereuter
Biaggi
Bilirakis
Boehlert
Boggs
Boland
Boner (TN)
Borski
Boulter
Boxer
Brooks
Broomfield
Brown (CO)
Bruce
Bryant
Burton (IN)
Byron
Callahan
Carney
Carper
Carr
Chandler
Chapman
Chappell
Chappie
Cheney
Clinger
Coats
Cobey
Coble
Coleman (TX)
Collins
Combest
Conte
Conyers
Coughlin
Courter
Crane
Crockett
Daniel
Dannemeyer
Darden
Daschle
Daub
Davis
de la Garza
DeLay
Dellums
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Dreier
Duncan
Dwyer
Dyson
Early
Eckart (OH)
Eckert (NY)
Edgar
Emerson
English
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Feighan
Fields
Flippo
Florio
Franklin
Frenzel
Frost
Fuqua
Gallo
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hammerschmidt
Hansen
Hawkins
Hendon
Henry
Hertel
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hubbard
Hughes
Hunter
Hutto
Hyde
Ireland
Jeffords
Jenkins
Johnson
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kemp
Kennelly
Kleczka
Kolbe
Kolter
Kramer
Lagomarsino
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Lent
Levine (CA)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Loeffler
Long
Lott
Lowery (CA)
Lujan
Luken
Mack
MacKay
Madigan
Marlenee
Martin (IL)
McCain
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McKernan
McKinney
McMillan
Meyers
Mica
Michel
Mikulski
Miller (OH)
Miller (WA)
Molinari
Mollohan
Monson
Montgomery
Moorhead
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Nelson
Nichols
Nielson
Olin
Ortiz
Packard
Parris
Pashayan
Penny
Pepper
Perkins
Petri
Pickle
Porter
Price
Pursell
Quillen
Rahall
Ray
Regula
Reid
Ridge
Rinaldo
Ritter
Roberts
Robinson
Roe
Roemer
Rogers
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Rudd
Russo
Saxton
Schaefer
Scheuer
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shelby
Shumway
Shuster
Sisisky
Skeen
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Solomon
Spence
Spratt
St Germain
Stallings
Stangeland
Stenholm
Strang
Stratton
Stump
Sundquist
Sweeney
Swift
Swindall
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torricelli
Traficant
Traxler
Valentine
Vander Jagt
Volkmer
Vucanovich
Walgren
Walker
Watkins
Weber
Whitehurst
Whitley
Whittaker
Whitten
Wirth
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)

NOT VOTING—43

Anthony
Badham
Bevill
Bonker
Bosco
Breaux
Burton (CA)
Bustamante
Campbell
Coleman (MO)
Craig
Derrick
Edwards (OK)
Fiedler
Fowler
Gaydos
Gregg
Grotberg
Hartnett
Hatcher
Hefner
Huckaby
Jones (NC)
Kindness
Lantos
Martin (NY)
Martinez
Miller (CA)
Moore
Neal
Oxley
Panetta
Pease
Richardson
Rose
Rostenkowski
Schneider
Siljander
Skelton
Thomas (CA)
Weaver
Wright
Zschau

□ 1655

Messrs. ECKART of Ohio, PERKINS, COYNE, KOLTER, STRATTON, GRAY of Illinois, LEVINE of California, McCLOSKEY, GEJDENSON, PRICE, and NELSON of Florida, Ms. MIKULSKI, Mrs. BOXER, and Messrs. EARLY, BOLAND, DIXON, HALL of Ohio, McCOLLUM, HOWARD, GRAY of Pennsylvania, HERTEL of Michigan, CONTE, and HUGHES changed their votes from "yea" to "nay."

Messrs. COELHO, COYNE, and STARK changed their votes from "nay" to "yea."

So (two-thirds not having voted in favor thereof) the motion was rejected.

The result of the vote was announced as above recorded.

CHILD SEXUAL ABUSE AND PORNOGRAPHY ACT OF 1986

The SPEAKER pro tempore (Mr. MONTGOMERY). The pending business is the question of suspending the rules and passing the bill, H.R. 5560, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey [Mr. HUGHES] that the House suspend the rules and pass the bill, H.R. 5560, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 390, nays 0, not voting 42, as follows:

[Roll No. 422]

YEAS—390

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Barnard
Barnes
Bartlett
Barton
Bateman
Bates
Bedell
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Borski
Boucher
Boulter
Boxer
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Burton (IN)
Byron
Callahan
Carney
Carper
Carr
Chandler
Chapman
Chappell
Chappie
Cheney
Clay
Clinger
Coats
Cobey
Coble
Coelho
Coleman (TX)
Collins
Combest
Conte
Cooper
Coughlin
Courter
Coyne
Crane
Crockett
Daniel
Dannemeyer
Darden
Daschle
Daub
Davis
de la Garza
DeLay
Dellums
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
Emerson
English
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Franklin
Frenzel
Frost
Fuqua
Gallo
Garcia
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich

Glickman
Gonzalez
Goodling
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hammerschmidt
Hansen
Hawkins
Hayes
Hendon
Henry
Hertel
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Hughes
Hunter
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Loeffler
Long
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Lungren
Mack
MacKay
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McKernan
McKinney
McMillan
Meyers
Mica
Michel
Mikulski
Miller (OH)
Miller (WA)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Monson
Montgomery
Moody
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Packard
Parris
Pashayan
Penny
Pepper
Perkins
Petri
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ray
Regula
Reid
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Roemer
Rogers
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Rudd
Russo
Sabo
Savage
Saxton
Schaefer
Scheuer
Schroeder
Schuette
Schulze
Schumer
Seiberling
Sensenbrenner
Sharp
Shaw
Shelby
Shumway
Shuster
Sikorski
Sisisky
Skeen
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Strang
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Vucanovich
Waldon
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams
Wilson
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)

NAYS—0

NOT VOTING—42

Anthony
Badham
Bonker
Bosco
Breaux
Burton (CA)
Bustamante
Campbell
Coleman (MO)
Conyers
Craig
Derrick
Edwards (OK)
Fiedler
Fowler
Gaydos
Gregg
Grotberg
Hartnett
Hatcher
Hefner
Huckaby
Jones (NC)
Kindness
Lantos
Martin (NY)
Miller (CA)
Moore
Neal
Oxley
Panetta
Pease
Richardson
Rose
Rostenkowski
Schneider
Siljander
Skelton
Thomas (CA)
Vander Jagt
Weaver
Zschau

□ 1705

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

HOUSING ACT AMENDMENTS

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 5564.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York [Mr. LUNDINE] that the House suspend the rules and pass the bill, H.R. 5564.

The question was taken.

RECORDED VOTE

Mr. WALKER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 277, noes 112, not voting 43, as follows:

[Roll No. 423]

AYES—277

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Applegate
Archer
Aspin
Atkins
AuCoin
Barnard
Barnes
Bartlett
Bates
Bedell
Beilenson
Bennett
Bereuter
Berman
Biaggi
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Borski
Bosco
Boucher
Boxer
Brooks
Brown (CA)
Brown (CO)
Bruce
Bryant
Carney
Carper
Carr
Chandler
Chapman
Chappell
Clay
Clinger
Coelho
Coleman (TX)
Collins
Conte
Cooper
Coughlin
Coyne
Crockett
Darden
Daschle
Davis
de la Garza
Dellums
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Duncan
Durbin
Dwyer
Dymally
Early
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
English
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Fuqua
Gallo
Garcia
Gejdenson
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Gordon
Gray (IL)
Gray (PA)
Guarini
Gunderson
Hall (OH)
Hamilton
Hawkins
Hayes
Hertel
Hillis
Horton
Howard
Hoyer
Hughes
Hutto
Jacobs
Jeffords
Jenkins
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
LaFalce
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lipinski
Long
Lowry (WA)
Luken
Lundine
MacKay
Madigan
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCollum
McCurdy
McDade
McGrath
McHugh
McKernan
McKinney
McMillan
Mica
Mikulski
Miller (WA)
Mineta
Mitchell
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murphy
Murtha
Natcher
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Penny
Pepper
Perkins
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ray
Regula
Reid
Ridge
Rodino
Roe
Roemer
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage
Scheuer
Schroeder
Schuette
Schumer
Seiberling
Sharp
Shelby
Sikorski
Sisisky
Skeen
Slattery
Smith (FL)
Smith (IA)
Smith (NJ)
Smith, Robert (OR)
Snowe
Solarz
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stokes
Strang
Studds
Sweeney
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Waldon
Walgren
Watkins
Waxman
Weber
Weiss
Wheat
Whitley
Whitten
Williams
Wilson
Wirth
Wise
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (MO)

NOES—112

Armey
Barton
Bateman
Bentley
Bevill
Bilirakis
Bliley
Boulter
Broomfield
Burton (IN)
Byron
Callahan
Chappie
Cheney
Coats
Cobey
Coble
Combest
Courter
Crane
Daniel
Dannemeyer
Daub
DeLay
DeWine
Dickinson
Dreier
Dyson
Emerson
Evans (IA)
Fawell
Fields
Franklin
Frenzel
Gekas
Goodling
Gradison
Green
Hall, Ralph
Hammerschmidt
Hansen
Hendon
Henry
Hiler
Holt
Hopkins
Hubbard
Hunter
Hyde
Ireland
Johnson
Lagomarsino
Latta
Leach (IA)
Lewis (FL)
Lightfoot
Livingston
Lloyd
Loeffler
Lott
Lowery (CA)
Lujan
Lungren
Mack
Marlenee
Martin (IL)
McEwen
Meyers
Michel
Miller (OH)
Molinari
Monson
Moorhead
Morrison (WA)
Myers
Nielson
Packard
Parris
Pashayan
Petri
Rinaldo
Ritter
Roberts
Robinson
Rogers
Rudd
Saxton
Schaefer
Schulze
Sensenbrenner
Shaw
Shumway
Shuster
Slaughter
Smith (NE)
Smith, Denny (OR)
Smith, Robert (NH)
Snyder
Solomon
Stenholm
Stratton
Stump
Sundquist
Swindall
Tauke
Taylor
Vucanovich
Walker
Whitehurst
Whittaker
Wolf
Young (FL)

NOT VOTING—43

Anthony
Badham
Bonker
Breaux
Burton (CA)
Bustamante
Campbell
Coleman (MO)
Conyers
Craig
Derrick
Edwards (OK)
Fiedler
Fowler
Gaydos

Gregg
Grotberg
Hartnett
Hatcher
Hefner
Huckaby
Jones (NC)
Kindness
Kramer
Lantos

Martin (NY)
Miller (CA)
Moore
Neal
Oxley
Panetta
Pease
Richardson
Rose
Rostenkowski

Schneider
Siljander
Skelton
Spence
Thomas (CA)
Vander Jagt
Weaver
Zschau

☐ 1715

Mr. DELAY changed his vote from "aye" to "no."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

DEPOSITORY INSTITUTION EXAMINATION IMPROVEMENT ACT OF 1986

The SPEAKER pro tempore (Mr. MONTGOMERY). The pending business is the question of suspending the rules and passing the bill, H.R. 4917, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Rhode Island [Mr. ST GERMAIN] that the House suspend the rules and pass the bill, H.R. 4917, as ameded.

The question was taken.

Mr. BOLAND. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 342, nays 49, not voting 41, as follows:

[Roll No. 424]

YEAS—342

Abercrombie
Ackerman
Anderson
Andrews
Annunzio
Applegate
Archer
Aspin
Atkins
AuCoin
Barnard
Barnes
Bartlett
Barton
Bateman
Bedell
Beilenson
Bennett
Bentley
Bereuter
Berman
Biaggi
Bilirakis
Bliley
Boehlert
Boner (TN)
Bonior (MI)
Borski
Bosco
Boucher
Boxer
Brooks
Broomfield
Brown (CA)
Bruce
Bryant
Burton (IN)
Byron

Callahan
Carney
Carper
Chandler
Chapman
Chappell
Chappie
Cheney
Clay
Clinger
Coats
Cobey
Coble
Coelho
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Daniel
Darden
Daub
Davis
de la Garza
DeLay
Dellums
DeWine
Dickinson
DioGuardi
Dixon
Donnelly

Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
Emerson
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Feighan
Fields
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Franklin
Frenzel
Frost
Fuqua
Gallo
Garcia
Gejdenson
Gephardt

Gibbons
Gilman
Gingrich
Glickman
Gordon
Gradison
Gray (IL)
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hansen
Hawkins
Hayes
Hefner
Hendon
Henry
Hertel
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Hughes
Hunter
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
LaFalce
Lagomarsino
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levine (CA)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Lloyd
Long
Lott
Lowery (CA)
Luken
Lundine
Lungren
Mack
MacKay
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martinez

Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCollum
McEwen
McGrath
McHugh
McKernan
McKinney
McMillan
Meyers
Mica
Michel
Mikulski
Miller (WA)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Monson
Montgomery
Moody
Moorhead
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Myers
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Packard
Parris
Pashayan
Penny
Pepper
Petri
Pickle
Porter
Price
Pursell
Quillen
Rangel
Ray
Regula
Reid
Ridge
Rinaldo
Ritter
Roberts
Robinson
Roe
Roemer
Rogers
Roth
Roukema
Rowland (CT)
Rowland (GA)
Russo
Sabo
Savage
Saxton
Schaefer
Scheuer
Schroeder
Schuette

Schumer
Seiberling
Sensenbrenner
Sharp
Shaw
Shelby
Shumway
Shuster
Sikorski
Sisisky
Slattery
Slaughter
Smith (FL)
Smith (NE)
Smith (NJ)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Strang
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Swindall
Tallon
Tauke
Tauzin
Taylor
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Udall
Valentine
Visclosky
Volkmer
Vucanovich
Waldon
Walgren
Walker
Waxman
Weiss
Wheat
Whitehurst
Whitley
Whittaker
Wilson
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yatron
Young (AK)
Young (MO)

NAYS—49

Akaka
Alexander
Bevill
Boggs
Boland
Boulter
Brown (CO)
Carr
Dannemeyer
Daschle
Dicks
Dingell
Early
English
Fazio
Gekas
Gonzalez

Goodling
Gray (PA)
Green
Hammerschmidt
Jones (OK)
Kemp
Levin (MI)
Livingston
Loeffler
Lowry (WA)
Lujan
McCurdy
McDade
Miller (OH)
Murtha
Natcher
Perkins

Rahall
Roybal
Rudd
Schulze
Skeen
Smith (IA)
Synar
Traxler
Vento
Watkins
Weber
Whitten
Williams
Yates
Young (FL)

NOT VOTING—41

Anthony
Armey
Badham
Bates
Bonker
Breaux
Burton (CA)
Bustamante
Campbell
Coleman (MO)
Derrick
Edwards (OK)
Fiedler
Fowler

Gaydos
Gregg
Grotberg
Hartnett
Hatcher
Huckaby
Jones (NC)
Kindness
Kramer
Martin (NY)
Miller (CA)
Moore
Neal
Oxley

Panetta
Pease
Richardson
Rodino
Rose
Rostenkowski
Schneider
Siljander
Skelton
Thomas (CA)
Vander Jagt
Weaver
Zschau

☐ 1725

The Clerk announced the following pair:

On this vote:

Mr. Jones of North Carolina and Mr. Rodino for, with Mr. Anthony against.

Mr. STRANG and Mr. SMITH of New Hampshire changed their votes from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION TO FILE CONFERENCE REPORT ON S. 426, ELECTRIC CONSUMERS PROTECTION ACT OF 1985

Mr. WYDEN. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the Senate bill (S. 426), to amend the Federal Power Act to provide for more protection to electric consumers.

This matter has been cleared with the minority, the gentleman from California [Mr. MOORHEAD], specifically.

The SPEAKER pro tempore (Mr. MONTGOMERY). Is there objection to the request of the gentleman from Oregon?

There was no objection.

DEFENSE PRODUCTION ACT AMENDMENTS OF 1986

Mr. LAFALCE. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5480) to extend the expiration date of the "Defense Production Act of 1950 and to authorize appropriations for purposes of such Act," with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 3, after line 17, insert:

SEC. 5. AMENDMENT TO EXPORT ADMINISTRATION AMENDMENTS ACT OF 1985.

Section 116(d) of the Export Administration Amendments Act of 1985 is amended by striking "October 1, 1986" and inserting in lieu thereof "October 1, 1987".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. SHUMWAY. Reserving the right to object, Mr. Speaker, and I do not intend to object, I yield to the gentleman from New York for an explanation of the bill the gentleman has brought before the House.

Mr. LaFALCE. Mr. Speaker, I thank the gentleman from California for yielding.

This legislation would extend the authorities contained within the Defense Production Act of 1950 for 3 years until September 30, 1989.

The act is now scheduled to expire tomorrow. The House passed the reauthorization legislation on Tuesday, September 22.

The amendment added by the Senate would extend for 1 year the time granted to the Department of Commerce to create the position of Under Secretary of Export Administration.

This amendment falls within the jurisdiction of the Foreign Affairs Committee, but I am advised that the committee supports our concurrence in the Senate amendment.

Mr. Speaker, the letter from the chairman of the committee, Congressman Fascell, to that effect follows:

Committee on Foreign Affairs,
Washington, DC, September 29, 1986.

Hon. John LaFalce,
Chairman, Subcommittee on Economic Stabilization, Committee on Banking, Finance, and Urban Affairs, U.S. House of Representatives, Washington, DC.

Dear John: I understand that the Senate has attached to H.R. 5480, the Defense Production Act Amendments of 1986, an amendment which lies within the jurisdiction of the Committee on Foreign Affairs.

This amendment would amend section 15 of the Export Administration Act to extend by a year the date for creation of the position of Under Secretary of Commerce for Export Administration, from October 1, 1986, to October 1, 1987.

This letter is to confirm that the Committee on Foreign Affairs concurs with the Senate amendment and would support the acceptance of the amendment by the House.

I trust this letter will expedite House consideration of this legislation.

With best wishes, I am,
Sincerely yours,
Dante B. Fascell,
Chairman.

Mr. VENTO. Mr. Speaker, under the gentleman's reservation, will the gentleman yield?

Mr. SHUMWAY. Further reserving the right to object, Mr. Speaker, I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I rise in support of H.R. 5480 as amended by the Senate and to commend Chairman John LaFalce and the ranking minority member, Mr. Shumway of the Subcommittee on Economic Stabilization on their actions to bring this legislation to the floor.

Those of us on the committee are familiar with the Defense Production Act and aware of the importance of reauthorizing this Presidential authority.

Chairman LaFalce explained when this measure was before the House the critical nature of the D.P.A. in maintaining our defense industrial base and I would like to further point out the provision of this legislation which clarifies the offsets reporting requirement established by the 1984 Defense Production Act Amendments. This legislation continues the yearly report to the Congress on the types, terms and magnitudes of offset agreements engaged in by U.S. companies, and the impact of the these agreement on the defense preparedness, industrial competitiveness, trade and employment of the United States.

The first report submitted under the 1984 amendments demonstrated the ability of the administration to obtain an extraordinary amount of data. This information is certainly critical for policymakers to evaluate the effect of offset agreements and I expect that this type of information will again be gathered by the administration for its future reports. However, the information alone is not sufficient. The future reports should also provide more in-depth analysis of this information.

Chairman LaFalce spoke earlier of the committee's expectation about the division of responsibilities concerning data collection and the preparation of the report. I share those expectations.

In addition the report should collect more information and provide Congress with more analysis regarding the effect of offsets on subcontractors and on other sectors of our economy which have been affected by offset agreements entered into by major contractors. The committee is concerned that insufficient attention was paid to this ripple effect of offsets. For an example the future reports should describe how indirect offsets, which made that a U.S. company purchase and resell foreign produced goods in domestic or foreign markets, affect domestic industries which produces a product that competes with the foreign import offset package products sold by the U.S. company. The committee has expressed its concern that such indirect offsets could severely and adversely affect smaller businesses. I would expect to see significantly more analysis of this phenomena in future executive reports to Congress and the respective committees.

The report should also focus on the long-term effects of the transfer of technology and productive capacity to foreign countries which are the results of many U.S. public/private offset agreements. The committee has been very concerned that this aspect of offsets may pose the greatest threat to our Nations industrial strength. There are numerous examples where as a part of an offset agreement, U.S. companies have assisted foreign countries to establish new industries not previously operating in the specific country. In these instances, the company enjoys the benefits of a single sale but at the cost of subsidizing future foreign competition for itself and other companies. The report should review previous and current offset agreements to see if these agreements have facilitated the entry of new foreign competators into the market.

The conference report accompanying the 1984 amendments specifically required information on MOU's to be submitted to Congress with the report. The first report only provided a listing of MOU's. In future reports I would expect that a complete discussion of the importance of these MOU's in structuring offset agreements to be contained in the congressional mandated reports. Also copies of the MOU's should be provided to the committee in order that the Congress could evaluate them.

Finally the initial executive summary of the report and to a large extent the initial report itself took a very ideological tone that was not always supported by the departmental reports or by the data obtained through the survey. This became a contentious issue in the hearing and detracted from the value of the information contained in the report. An example of this was a finding stating that the employment effects of sales exceeded by far the adverse effects of offsets. However, a GAO report and the subcommittee hearing found that the finding overstated the certainty of the data and failed to acknowledge the limitations and qualifications of the estimate. In the future I would hope that less emphasis would be placed on ideological consistency and more on an accurate presentation of the data and the departmental analyses.

As the principal author of the original language requiring the section 309 report I continued to have a strong interest in this issue. I look forward to the second report which is due this October and hope that by virtue of the amendments to the act that we are considering today progress will be noted in the methodology and fluency of this report so that a better understanding of the nature and effect of offsets will be provided now and certainly in the future.

Mr. SHUMWAY. Mr. Speaker, I join with the gentleman from New York in urging passage of this legislation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

A motion to reconsider was laid on the table.

PROVIDING STANDARDS FOR COMMEMORATIVE WORKS ON LANDS ADMINISTERED BY NATIONAL PARK SERVICE IN THE DISTRICT OF COLUMBIA

Mr. VENTO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4378) to provide standards for placement of commemorative works on lands administered by the National Park Service in the District of Columbia, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments with amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments and the House amendments to the Senate amendments, as follows:

Senate amendments:

Strike out all after the enacting clause and insert:

PURPOSES

SECTION 1. The purposes of this Act are as follows:

(a) to preserve the integrity of the comprehensive design of the L'Enfant and McMillan plans for the Nation's Capital;

(b) to ensure the continued public use and enjoyment of open space in the District of Columbia;

(c) to preserve, protect and maintain the limited amount of open space available to residents of, and visitors to, the Nation's Capital; and

(d) to ensure that future commemorative works in areas administered by the National Park Service and the General Services Administration in the District of Columbia and its environs (1) are appropriately designed, constructed, and located and (2) reflect a consensus of the lasting national significance of the subjects involved.

DEFINITIONS

SEC. 2. As used in this Act—

(a) the term "Secretary" means the Secretary of the Interior;

(b) the term "Administrator" means the Administrator of the General Services Administration;

(c) the term "commemorative work" means any statue, monument, sculpture, memorial, or other structure or landscape feature, including a garden or memorial grove, designed to perpetuate in a permanent manner the memory of a person, group, event or other significant element of history. The term does not include any such item which is located within the interior of a structure or a structure which is primarily used for other purposes;

(d) the term "person" means an individual, group or organization authorized by Congress to establish a commemorative work in the District of Columbia and its environs;

(e) notwithstanding any other provision of law, the term "the District of Columbia and its environs" means those lands and properties administered by the National Park Service and the General Services Administration located in Areas I and II as depicted on the map numbered 869/86501, and dated May 1, 1986.

CONGRESSIONAL AUTHORIZATION OF COMMEMORATIVE WORKS IN THE DISTRICT OF COLUMBIA AND ITS ENVIRONS

SEC. 3. (a) No commemorative work may be established in the District of Columbia and its environs unless specifically authorized by Act of Congress. All such authorized commemorative works shall be subject to applicable provisions of this Act.

(b) In considering legislation authorizing commemorative works within the District of Columbia and its environs, the appropriate congressional authorizing Committees shall solicit the views of the National Capital Memorial Commission.

NATIONAL CAPITAL MEMORIAL COMMISSION

SEC. 4. (a) The National Capital Memorial Advisory Committee as established by the Secretary is redesignated as the National Capital Memorial Commission. The membership of the Commission shall be expanded to include:

Director, National Park Service (Chairman)
Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Chairman, National Capital Planning Commission
Mayor, District of Columbia
Commissioner, Public Building Service, General Services Administration
Secretary, Department of Defense

(b) The National Capital Memorial Commission shall advise the Secretary and the Administrator on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission shall meet at least twice annually.

AVAILABILITY OF MAP DEPICTING AREA I AND AREA II

SEC. 5. The Secretary and the Administrator shall make available, for public inspection at appropriate offices of the National Park Service and the General Services Administration, the map numbered 869/86501, and dated May 1, 1986.

SPECIFIC CONDITIONS APPLICABLE TO AREA I AND AREA II

SEC. 6. (a) AREA I.—In addition to conditions set forth in subsection (b) of this section, no commemorative work may be located in Area I unless the Secretary or Administrator (as appropriate), after consultation with the National Capital Memorial Commission, finds that the subject of the commemorative work is of preeminent historical and lasting significance to the Nation. The Secretary or Administrator (as appropriate) shall notify the Congress of his determination that a commemorative work should be located within Area I. Unless the Congress enacts a joint resolution approving such determination within ninety days of such notification, the determination shall be deemed disapproved.

(b) AREA II.—Commemorative works of subjects of lasting historical significance may be located in Area II, subject to the following conditions:

(1) A military commemorative work may be established in Area II only to commemorate a war or similar major military conflict or to commemorate any branch of the Armed Forces. No commemorative work commemorating a lesser conflict or a unit of an Armed Force shall be permitted in Area II.

(2) A commemorative work commemorating an individual or group of individuals, other than a military commemorative work as described in subsection (b)(1) of this section, shall not be permitted in Area II until at least twenty-five years after the death of the individual or the last surviving member of the group.

(3) A commemorative work other than a work referred to in paragraph (1) or (2) may be constructed in Area II only to commemorate a subject of lasting historical significance.

SITE AND DESIGN APPROVAL

SEC. 7. (a) Any person authorized by law to establish a commemorative work in the District of Columbia and its environs shall comply with each of the following requirements before commencing construction of the commemorative work:

(1) Such person shall consult with the National Capital Memorial Commission regarding the commemorative work. Such consultation shall include consideration of potential sites in the District of Columbia and its environs.

(2) Following consultation in accordance with paragraph (1) of this section, such person shall submit site and design proposals to the Commission of Fine Arts and the National Capital Planning Commission and the Secretary for Administrator (as appropriate) for their approval.

(b) In considering site and design proposals, the Commission of Fine Arts, the National Capital Planning Commission and the Secretary and Administrator shall be guided by the following criteria:

(1) to the maximum extent possible, a commemorative work shall be located in surroundings that are relevant to the subject of the commemorative work;

(2) a commemorative work shall be so located as to prevent interference with, or encroachment upon, any existing commemorative work and to protect, to the maximum extent practicable, open space and existing public use; and

(3) a commemorative work shall be constructed of durable material suitable to the outdoor environment. Landscape features of commemorative works shall be compatible with the climate.

CRITERIA FOR ISSUANCE OF CONSTRUCTION PERMIT

SEC. 8. (a) Prior to issuing a permit for the construction of a commemorative work in the District of Columbia and its environs, the Secretary or Administrator (as appropriate) shall determine that:

(1) the site and design have been approved by the Secretary or Administrator (as appropriate), the National Capital Planning Commission and the Commission of Fine Arts;

(2) knowledgeable persons qualified in the field of preservation and maintenance have been consulted to determine structural soundness and durability of the commemorative work, and to assure that the commemorative work meets high professional standards;

(3) the person authorized to construct the commemorative work has submitted contracts for construction and drawings of the commemorative work to the Secretary or Administrator (as appropriate); and

(4) the person authorized to construct the commemorative work has available sufficient funds to complete construction of the project.

(b) In addition to the foregoing criteria, no construction permit shall be issued unless the person authorized to construct the commemorative work has donated an amount equal to 10 per centum of the total estimated cost of construction to offset the costs of perpetual maintenance and preservation of the commemorative work: *Provided*, That the provisions of this subsection shall not apply in instances when the commemorative work is constructed by a Department or agency of the Federal Government and less than 50 per centum of the funding for such work is provided by private sources.

(1) Notwithstanding any other provision of law, all moneys provided by persons for maintenance pursuant to this subsection shall be credited to a separate account in the Treasury.

(2) Congress authorizes and directs that the Secretary of the Treasury shall make all or a portion of such moneys available to the Secretary or the Administrator at his request for maintenance of commemorative works. Under no circumstances may the Secretary or Administrator request funds from the separate account exceeding the total moneys deposited by persons establishing commemorative works in areas he administers. The Secretary and the Administrator shall maintain an inventory of funds available for such purposes: *Provided*, That such moneys shall not be subject to annual appropriations.

TEMPORARY SITE STUDY

Sec. 9. (a) Within one year after the date of enactment, the Secretary and the Administrator shall, in consultation with the National Capital Memorial Commission, prepare and transmit to the Congress a study assessing the need for establishing an area within the District of Columbia and its environs where commemorative works may be sited on a temporary basis.

(b) Such a study shall include but not be limited to recommendations regarding the need for such an area; the location; the criteria for placement of commemorative works; management and administration of the area; and other factors as the Secretary and the Administrator deem appropriate.

MISCELLANEOUS PROVISIONS

Sec. 10. (a) Complete documentation of design and construction of each commemorative work located in the District of Columbia and its environs shall be provided to and permanently maintained by the Secretary or the Administrator (as appropriate).

(b) Any legislative authority for a commemorative work shall expire at the end of the five-year period beginning on the date of the enactment of such authority, unless the Secretary or Administrator (as appropriate) has issued a construction permit for the commemorative work during that period.

(c) Upon completion of any commemorative work within the District of Columbia and its environs, the Secretary or Administrator (as appropriate) shall assume responsibility for the maintenance of such work.

(d) The Secretary and the Administrator shall promulgate appropriate regulations to carry out this Act. The regulations shall be published in the Federal Register within one hundred and twenty days after the enactment of this Act.

(e) This Act shall not apply to commemorative works authorized by a law enacted before the commencement of the Ninety-ninth Congress.

Amend the title so as to read: "An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes.".

House amendments to Senate amendments:

Page 3 of the Senate engrossed amendments, line 13, strike out "appropriate congressional authorizing Committees" and insert in lieu thereof "Committee on House Administration of the House of Representatives and the Energy and Natural Resources Committee of the Senate".

Page 4 of the Senate engrossed amendments, strike out line 23 and all that follows through line 8 on page 5, and insert in lieu therof the following:

Sec. 6. (a) Area I.—The conditions set forth in subsection (b) shall apply to the location of a commemorative work in Area I or in Area II. In addition, the Secretary or Administrator (as appropriate) may approve the location of a commemorative work in Area I only if he finds that the subject of the commemorative work is of preeminent historical and lasting significance to the Nation. The Secretary or Administrator (as appropriate) shall notify, after consultation with the National Capital Memorial Commission, the Congress of his determination that a commemorative work should be located in Area I. The location of a commemorative work in Area I shall be deemed disapproved, unless, not later than 150 days after such notification, the location is approved by law.

Page 6 of the Senate engrossed amendments, line 15, strike out "of this section, such person shall submit" and insert in lieu therof ", the Secretary or Administrator (as appropriate) shall submit, on behalf of such person,".

Page 9 of the Senate engrossed amendments, strike out lines 8 through 21 and insert in lieu thereof the following:

TEMPORARY SITE DESIGNATION

Sec. 9. (a) If the Secretary, in consultation with the National Capital Memorial Commission, determines that a site where commemorative works may be displayed on a temporary basis is necessary in order to aid in the preservation of the limited amount of open space available to residents of, and visitors to, the Nation's Capital, he may designate such a site on lands administered by him in the District of Columbia. A designation may not be made under the preceding sentence unless, at least 120 days before the designation, the Secretary, in consultation with the National Capital Memorial Commission, prepares and submits to the Congress a plan for the site. The plan shall include specifications for the location, construction, and administration of the site, and criteria for displaying commemorative works at the site.

(b) Any commemorative work displayed at the site shall be installed, maintained, and removed at the sole expense and risk of the person authorized to display the commemorative work. Such person shall agree to indemnify the United States for any liability arising from the display of the commemorative work under this section.

Page 10 of the Senate engrossed amendments, strike out lines 1 and 2, and insert in lieu thereof "the Secretary or the Administrator (as appropriate) and shall be permanently maintained in the manner provided by law.".

Mr. VENTO (during the reading). Mr. Speaker, I ask unanimous consent that the amendments be considered as read and printed in the Record.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Minnesota?

Mr. LAGOMARSINO. Reserving the right to object, Mr. Speaker, I make my reservation in order to allow the gentleman from Minnesota to explain the bill.

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. LAGOMARSINO. I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, this legislation has received a great deal of favorable attention since its initial passage by this body last May. Such attention is justified as this legislation addresses issues that have long concerned the National Park Service in its management of parkland here in the Nation's Capital, with the never-ending pressure to place additional commemorative works on our limited parkland and the many competing uses for that same land. This legislation would provide an orderly process and reasonable standards so that appropriate commemorative works could be placed here in Washington in the future.

The Senate recently passed H.R. 4378. In so doing it omitted the establishment of a temporary site for commemorative works. In the near future the National Park Service may well find such a site quite necessary to aid in the preservation of the limited open space here in the Nation's Capital. I have, therefore, amended the Senate-passed bill to provide a mechanism so that a temporary site could be established when it becomes necessary after 120 days notification and opportunity for review by the House Interior and Insular Affairs Committee and the Senate Energy and Natural Resources Committee. Such a site would be a permanent location so arranged that commemorative works could be placed on it one at a time before being removed to locations not on land managed by the National Park Service. The expense and risk of displaying commemorative works at such a temporary site would be entirely the responsibility of those displaying them. Such a temporary site could allow groups to display their commemorative works here in the Nation's Capital without permanently adding to the accumulation of commemorative works already here.

I want to especially thank the gentlewoman from Ohio [Mary Rose Oakar] for her attention to this legislation and her concern for the commemorative works of this city. Representative Oakar shares my desire to ensure that this city properly reflect this Nation's heritage. We have carefully evaluated the Senate amendment and cleared up the technical details with our amendment to the Senate amended House measure. I also very much want to thank the gentleman from Arizona [Mo UDALL] for his sponsorship of this legislation. He, too, recognizes the varied and significant purposes of the open space of our Nation's Capital. Finally, Mr. Speaker, I want to especially recognize the good work of a Congressional Fellow from the NPS. Heather Huyck who has done an outstanding job working with the development and refinement of this new public policy; indeed it wouldn't have been enacted without her excellent capable professional efforts.

Mr. Speaker, since its initial passage last May, H.R. 4378 has received much favorable attention in the media. Americans seem to regard the Capital City as our Nation's living room. While they want commemorative works to memorialize our history, they also want such commemorative works to be chosen carefully and want the open space of the Mall and associated parks and Federal lands to be preserved for all the other activities that occur on them.

H.R. 4378 establishes a process for placing future commemorative works on this land, and criteria for such works. That process is intended to ensure that future works reflect a consensus of their significance, and not the wishes of small, if well organized, groups. This principle recognizes that this land belongs to the Nation as a whole—to all Americans—and should be so treated. We cannot go on permitting commemorative works to be placed on this land as if history and the related urge to commemorate will end. Otherwise we face so filling this land with commemorative works that we could not place future ones, nor have future activities, or be forced to remove commemorative works established for their very permanence. At the same time, the Federal land of the Nation's Capital is certainly not the only place worthy of commemorative works. Assuming that it is the only appropriate place to erect commemorative works slights the rest of this Nation.

We charge the National Park Service to manage the land under its care. We leave it to those professionals to juggle people's activities with resource needs, whether the resources and the visitors are in Yellowstone, Independence Hall, or in downtown Washington. National Park land was set aside by our predecessors, who had such vision as to keep it for the common good. As the recipients of such generosity, we must do those things necessary to ensure that our successors will also be able to enjoy the gifts we, ourselves, inherited. We must be stringent in our application of the principles to protect parks, park land, and park resources. We must provide park managers with policy guidance, but also the abiltiy to protect the parks—sufficient resources to protect the resources. We cannot expect park managers to care for the park for the present and future unless we provide such support. This legislation gives such support in two ways—by recognizing the land management issues involved in placing commemorative works on park land, and by providing both a procedure and standards for doing so. This legislation is not intended to prevent future commemorative works from being placed on park land. It is, however, intended to make any such placement subject to rigorous scrutiny.

This legislation also establishes the principle that groups placing commemorative works on NPS or GSA land need to assist in the maintenance cost of such works. Few people realize the extent or cost of maintaining such works. As these commemorative works age, maintenance problems increase. Many people assume that because statues and monuments are made of durable materials, they can last indefinitely without maintenance. Such is not the case.

Any individual or group wishing to place a commemorative work here in the Nation's Capital needs to find a sponsor and go before the committees, including the committee that has jurisdiction on the authorization of commemorative works. No commemorative work may be established without legislation. That committee then seeks the advice of the National Capital Memorial Commission, which has the technical expertise on commemorative works. If the group wishes to place a commemorative work on National Park Service or General Services Administration land, then the appropriate committee responsible for the land managed by those two agencies also need to examine any proposed legislation for its impact on that land. Legislation must not designate the location of a commemorative work, either in specific location or in determining which area for the commemorative work. Determination of the specific location for a commemorative work is a key part of the process as outlined in the generic legislation. Any proposed legislation would then be scrutinized for conformity with this legislation. The proposed legislation then proceeds through the usual legislative process.

Enactment of legislation for a specific commemorative work sets in motion the second part of the process. The group wishing to place the commemorative work must consult with the National Capital Memorial Commission. H.R. 4378 recognizes the excellent work the National Capital Memorial Advisory Committee has done over the years in sifting through the many proposals for commemorative works, in providing a focal point for groups wishing to place commemorative works, and in assisting them in the process. H.R. 4378 redesigns the committee and charges it with greater responsibilities. This group has the technical and professional expertise on commemorative works as well as the indepth knowledge of the lands involved. After this consultation, the Secretary or Administrator—as appropriate—shall submit site and design proposals on behalf of the group to the Commission of Fine Arts, the National Capital Planning Commission and to the Secretary or Administrator—as appropriate—for their respective approvals.

The legislation sets forth criteria for these approvals. Included in these approvals are considerations of protecting existing commemorative works, open space, and existing public use. Also included in the legislation are considerations that commemorative works be constructed of durable materials, such as granite instead of marble, or with designs less susceptible to graffiti and other kinds of vandalism. Landscape features also need to consider the environmental conditions.

The Secretary or the Administrator must also determine the area in which a commemorative work should be placed. He should make such a determination based on the most professional evaluation available of the subject's significance.

Given the scarcity of parkland, particularly in area I, the assumption must be that most commemorative works will be placed in area II or, when it is designated, the temporary-site. The Secretary or Administrator—as appropriate—may approve the location of the commemorative work in area I only if he determines that the work's subject is of the highest significance. The Secretary or Administrator—as appropriate—must consult with the National Capital Memorial Commission on such a decision. If he determines that the subject of the commemorative work is of such significance, and therefore should be placed in area I, he must notify the Congress. After notification, a law must be enacted approving the area I location within 150 days or it is disapproved. No action by Congress is necessary if area II is designated at the present time, but it may well become necessary for a future Congress to place further restrictions and limits on use of public lands in area II.

Assuming that the Commission of Fine Arts, National Capital Memorial Commission and the Secretary or Administrator—as appropriate—give their approval to the proposed commemorative work, the next step is the issuance of a construction permit. At this point, the group wishing to place the commemorative work on Federal land should be engaged in its fundraising and completing its design work. The use of design competitions is encouraged. In addition to ensuring that the necessary site and design approvals have been obtained, the Secretary or Administrator—as appropriate—must be certain that the proposed commemorative work is structurally sound and durable. Too often, past commemorative works have been neither well cast—as in bronze—nor well constructed—as in masonry work. Before a commemorative work is placed on its permanent site, any casting or similar construction needs to be examined for its quality to prevent such problems in the future.

Construction drawings and contracts, as well as proof that the person or group authorized to construct the commemorative work has sufficient funds to complete it, and including a donation of 10 percent of the construction cost to a maintenance fund must also be provided to the Secretary or Administrator—as appropriate. Complete documentation of the design and construction of commemorative works must be permanently kept in order to assist in the maintenance and preservation of commemorative works.

H.R. 4378 will assist in preserving our Nation's Capital as the special place we know today.

[From the St. Paul Pioneer Press and Dispatch, May 6, 1986]

BILL TAKES A CHISEL TO STATUE PLANS

(By Dane Smith)

WASHINGTON.—Question: What do the male victims of the Titanic, the first airmail flight, nuns who have served as battlefield nurses, and the inventor of the screw propeller have in common?

Answer: All are subjects of statues or monuments in Washington. They are just four of 108 such memorials on the National Park Service's limited real estate in the District of Columbia.

While each may deserve recognition, Park Service officials are increasingly concerned about statuary cluttering up the Capitol Mall and the Ellipse.

Reacting Monday to those concerns, the House passed a bill that would establish much tighter standards for commemorative works.

More than 20 new memorials are in various stages of proposal or design. Park Service officials say requests are increasing for space near the "monumental core" next to such prime attractions as the Washington Monument and the Jefferson and Lincoln memorials.

Under the House bill, no new memorials would be approved for the Mall or the Ellipse unless Congress finds the subject to be "of major and lasting significance." Individuals could not be memorialized until 25 years after death.

"There are a lot of good monuments but there are a lot of mistakes, too," said Rep. Bruce Vento, D-Minn., chairman of the House National Parks and Recreation Subcommittee and sponsor of the bill.

Approval for new memorials often comes on a "flurry of emotion," Vento said, and their further spread will detract from the Mall's classic proportions and "open vistas."

Vento said the memorial construction should be "slowed down" and "spread out" to federal lands elsewhere in the District or in adjacent Virginia and Maryland.

To get the bill passed, about a dozen monuments already approved but still in design stages were allowed. These include memorials to Korean War veterans, blacks who served in the Revolutionary War, women in the military, president Franklin D. Roosevelt and poet Kahlil Gibran.

The bill next goes to the Senate.

[From the St. Paul Pioneer Press and Dispatch, Sept. 4, 1986]

Vento Proposal: Monumental Effort

Rep. Bruce Vento has had to duck a few verbal shards fired at him for his effort to slow the proliferation of monuments in Washington. It's the sort of thing that invites teasing. Still, selectivity in statuary is good, and that is the point of Mr. Vento's crusade. He got a bill through the House, and now is trying to enlighten Senators.

There are more than 100 monuments crowding national park land in Washington. Not all of them commemorate Civil War generals, but enough do to prompt Mr. Vento to observe in the New York Times that if other wars had equal representation there would be "concrete from the Capitol to the Potomac."

Mr. Vento's interest in the monument glut relates to his chairmanship of the House Subcommittee on National Parks and Recreation. His concern is that generations to come might find subjects worthy of memorializing but no worthy place to memorialize them. The House bill is a modest one: It would restrict monuments on and near the Capitol Mall to things of "major historical and lasting significance to the nation as a whole" and provide guidelines for memorials elsewhere in Washington.

The least Congress can do for the future is to give it room to grow.

[From the New York Times, Sept. 3, 1986]

Finding the Park Space for Future Memorials

(By Robin Toner)

Washington, September 2.—The first 210 years of United States history produced more than 100 monuments and memorials here. Officials now wonder where the heroes of the next two centuries will be enshrined.

Pierre L'Enfant was generous with public spaces when he designed this city, but even he did not anticipate the American appetite for monuments. It is hard to walk very far in Washington today without confronting some icon.

Many were erected after the Civil War in a great wave of monument-building that left the city under the stern gaze of several Union generals. Others came a few at a time, an almost whimsical accretion of history that honored Henry Wadsworth Longfellow and the lobstermen of Maine, Dante Alighieri and an eclectic list of others from the Boy Scouts to the Seabees.

As a result, the capital is under pressure: There is a dwindling amount of Federal parkland available for monuments, and number of requests to use it is mounting. Eighteen proposals for monuments and memorials are now before the Congress, something of a record, according to the National Park Service. There are already 108 commemorative works on national parkland here.

"The fact of the matter is, you have to leave some space for our nation and for future generations, to commemorate events that they think are significant," said Representative Bruce F. Vento of Minnesota, chairman of the Subcommittee on National Parks and Recreation.

Mr. Vento and others are pushing for legislation that would set strict guidelines on monuments proposed for Federal land in Washington, particularly in the area around the Mall. A bill has passed the House, and a similar measure is pending in the Senate.

Under the bill passed by the House, commemorative works could be placed on the Mall and the area immediately around it only if the subject is "of such major historical and lasting significance to the nation as a whole" that putting it anywhere else would be "inappropriate."

The bill also establishes guidelines for Federal lands elsewhere in Washington. For example, a monument could not be erected to honor a person until 25 years after death. The bill would restrict military commemorations to wars, "similar major military conflicts" and branches of the armed forces.

The monument issue is perhaps a particularly American problem, having much to do with identity and pride in a pluralistic democracy. "Each group wants to be remembered," said James M. Goode, Keeper of the Smithsonian Institution Building. "And they think that by being in the capital, it's a mark of permanence."

If history is written by the victors, monuments are erected by the organized.

Much of the statuary in Washington arose from efforts of widows and veterans' groups in the years after the Civil War. Other groups have mobilized in recent years to preserve places in history, from Vietnam veterans to women who served in the Armed Forces.

Monument-building is not a simple process: a group must raise private money to create the monument and obtain Congressional approval to place it on Federal parkland in the capital. Still, a surprising number of groups and individuals plunge in.

For example, Maurice Barboza began researching his family history several years ago and became fascinated with the role that blacks played in the Revolutionary War. It was a story neglected by the history books, he decided, and worthy of a monument. He began to organize and gained considerable support.

IT PASSED THE HOUSE

As a result, the House adopted legislation last year authorizing installation of a black Revolutionary War patriots memorial in the capital, and the measure is pending in the Senate.

Mr. Barboza said he sympathized with those trying to juggle demands for limited space in the capital. But he argues, with some passion, that it would be wrong to deny blacks and other minority groups their chance at representation in the pantheon of national heroes.

"I think the country has a lot of catching up to do," said Mr. Barboza. "I think it would be unfortunate that at a time when minority groups, such as blacks, have time to concentrate on these things, time has run out."

According to the National Park Service, projects currently proposed for Washington parklands include commemorations of the armored forces, the Third Infantry Division, the Rev. Dr. Martin Luther King Jr., Hispanic American and Native American members of the Armed Forces, American astronauts, American slavery and a peace garden.

The bill passed by the House would exempt several monuments already approved by one or both chambers from the new, stricter guidelines, including Black Revolutionary War Patriots.

PICTURE IS UNBALANCED

There is general agreement that monumental Washington is not a representative portrait of American history. Mr. Goode, for example, makes the point in his book, "The Outdoor Sculpture of Washington, D.C." There is a monument, he notes, to the man who perfected the screw propeller for the Union Navy in the Civil War, but none for Robert Fulton or the Wright Brothers. There is a monument to Longfellow, but none for Thoreau, Whitman, Poe or Twain.

Indeed, only 11 American Presidents are memorialized in Washington, as against 13 military leaders from the Civil War, according to the National Park Service. A memorial to Franklin D. Roosevelt was authorized by Congress years ago, but supporters have not yet been able to get money from Congress to build it.

Still, advocates of the new legislation argue that there is simply not room in the heart of the capital for many more monuments. For example, said Mr. Vento, giving every war equal treatment with the Civil War would mean "concrete from the Capitol to the Potomac."

In addition, they argue, there are many demands on Federal parkland in Washington, from festivals to demonstrations, from frisbee throwing to inaugurations. Adding monuments to these areas not only restricts these uses; it also detracts from the monuments already there, they argue.

Supporters of the legislation take a long view. "History has a way, of course, of continuing," said Mr. Vento in a subcommittee hearing earlier this year. "And future generations will want to commemorate people and events we cannot even imagine now."

[From the Washington Post, Mar. 18, 1986]

A Monumental Task of Statuesque Proportions

(By Sandra Evans)

Should there be monuments in Washington to astronauts, combat glider pilots, war correspondents and Francis Scott Key? Should there be one for Yugoslavian Gen. Draza Mihailovich for his heroics during World War II, or was he really a Nazi sympathizer?

And where in the District should a monument to Revolutionary War patriot Haym Salomon be located? One was approved in the 1930s but never built.

An eclectic collection of heroes and groups—with a heavy emphasis on the militaristic—makes up a growing list of proposals for memorialization in the nation's capital. And worthy as all may be, Congress and the National Park Service are starting to worry.

A Senate subcommittee has scheduled a hearing today on how the competing interests should be sorted out, and Rep. Morris K. Udall (D-Ariz.), chairman of the House Interior and Insular Affairs Committee, has introduced a bill to limit the spread of commemorative metal over the federal city.

The problem is space. With the country only slightly over two centuries old, most of the prime locations for national monuments here are taken—many by statues of Civil War generals who may be lost in obscurity but continue to grace squares and parks throughout the city.

The park service counts 111 monuments, memorials and plaques so far—but only about 50 more spots left for statues in the core of the historic city, where most groups insist their memorials must be sited for proper appreciation. Many of these are traffic islands, and the count does not consider just how many monuments might be squeezed into some large, choice pieces of federal land, such as the 52 acres of Constitution Gardens.

A large memorial to Franklin D. Roosevelt is planned near the Tidal Basin, and the last Congress approved two others, one to Lebanese American poet Kahlil Gibran and another to law enforcement heroes.

So far in this Congress, 17 memorials have been proposed. Three have been approved unanimously by the House and are pending in the Senate: memorials for Korean War veterans, women in the armed services and black Revolutionary War patriots.

This still leaves the question of the 3rd Infantry Division, the 11th Airborne Division, the Native American members of the Armed Forces, the Hispanic American members of the Armed Forces, and armored military units.

Individuals proposed to be honored include Martin Luther King Jr., Francis Scott Key, the controversial General Mihailovich, and Haym Salomon again, who is the subject of legislation despite the park service's position that he is already entitled to his memorial.

A monument has been proposed to victims of American slavery, and the government of Morocco wants to give the United States a remembrance of its friendship.

"We can expect that future generations will want to commemorate important people and events just as we have," said Rep. Bruce F. Vento (D-Minn.), a sponsor of Udall's bill. "The problem is that history continues to happen but spaces to commemorate that history do not increase."

Rep. Mary Rose Oakar (D-Ohio), who chairs a House Administration Committee task force on monuments, had fewer concerns about the current approach, however, saying that Congress already is selective in what it approves. Congress wants them to be noncontroversial, which is why Mihailovich is out, she said.

Other proposals Oakar plans to hold hearings on this year are for monuments to commemorate astronauts and slain war correspondents.

But she said others have merit. For example, a Francis Scott Key memorial proposed for a plot on the Georgetown side of the Key Bridge would result in the weedy area finally being cleaned up, she said.

As to why Kahlil Gibran will get one, Oakar said he is the most translated and best selling of all American authors internationally. "He is prominent on college campuses and has an international cult and following," she said, adding that comedian Flip Wilson participated in a moving hearing on the proposal in which he read from Gibran's "The Prophet" and cried.

The National Capital Memorial Advisory Committee, an interagency group that considers memorial proposals and makes recommendations, recently adopted its own guidelines on monuments in Washington. It wants to limit memorials to events of national or international significance and the military monuments to branches of service.

The Marines already have theirs in the Iwo Jima Memorial, and the park service wants all the Army types to get together on one for themselves.

Not everyone is as anxious as might be expected for a plaque, however.

Julius Hobson Jr., a congressional liaison for Mayor Marion Barry, said he just found out on Friday that a group of District residents had asked the memorial advisory committee to commemorate his father, Julius Hobson Sr., at a park at M Street and New York Avenue NW, across from condominiums named after him.

Julius Hobson Sr., who led the founding of the city's Statehood Party and served on the first City Council under home rule until his death in 1977, had an overriding concern for schools and housing and has had a school and a housing development named after him, his son said.

"I'm not saying it's wrong," Hobson said. "But when you think of the things he fought for, a plaque or a bust on a vacant piece of land just seems a little odd."

[From the Washington Post, May 25, 1986]

Save Some Room for Softball

I am a concerned citizen who deeply appreciates the community benefits of our limited and precious open space. I use the District's open space for the game of softball, a sport that has grown tremendously in recent years for both youth and adults. I have had the good fortune of playing in several softball leagues in Washington for more than 25 years, and the health I enjoy today is due in large measure to my recreational activities throughout my lifetime of 54 years.

Not only has softball provided outdoor exercise for thousands of citizens; it is also superb entertainment for families, friends, tourists, and other spectators who get a lot of enjoyment out of watching the game.

All of this has been made possible by land being made available, very special land, which has been set aside. This land brings opportunities for citizens like me and thousands of others. It provides a humanizing influence on the community. In fact, it has played a very important part in bringing the city to life for those of us who are lucky enough to live here.

This land is the epitome of multiple use; it not only provides for softball but for soccer, football, polo, cricket and numerous other sports; not only for active sports but for spectator sports; not only for fans but for tourists, even for people who want to enjoy a picnic lunch while watching.

To give you some idea of the number of participants using the District's softball fields, take just the nine fields at West Potomac Park during a single season: that number is more than 10,000 people. The number of spectators is some multiple of that. Three hundred and eighty softball teams from Capitol Hill alone used the open space just last year, according to the D.C. Department of Recreation. This does not include teams for football, volleyball and soccer.

If this land were taken away for monuments, it would be gone forever, as would all the benefits I have described. There is nothing more American than sports and athletics—they are the heart of America. We must do all we can to keep them alive and healthy in the capital.

James A. Slater, lives in Virginia. This is adapted from testimony before the House Subcommittee on National Parks and Recreation.

[From the Washington Post May 26, 1986]

They Don't All Have to Be In Washington

We all appreciate the beauty of the nation's capital. Much of its beauty is the product of the open areas in and around the highly visited government structures along and at each end of Pennsylvania Avenue.

As we look to the future, it is not difficult to foresee the addition of many worthy memorials on these limited open areas. Before we realize what is happening, the open space that has made the area so attractive will be gone—and gone forever. The House bill to govern the establishment of commemorative works within the capital looks to that eventuality and sets up a guideline for the future. It provides that the Mall between the Capitol and the Washington Monument, the grounds around the Jefferson and Lincoln Memorials and certain other areas, should be retained essentially as they are.

There are many lands within the city, and in this region, including lands administered by the National Park Service, that may provide suitable sites for commemorative memorials. We do not, in H.R. 4378, foreclose them, but we do believe they should be compatible with the site and conform to other public uses.

New ideas should be encouraged. Every commemorative memorial need not be a statue—living memorials and gardens can provide a pleasant remembrance and be compatible with parklands. We're proposing another concept that seems to be a suitable way to recognize individuals and events without permanently locating a memorial in the Washington area. We think a permanent place should be available for the temporary location of commemorative works.

These "temporary memorials" would receive the usual recognition of "national significance," but would be displayed in Washington only for a limited period of time. At the end of the period, the memorial would be moved to another location to make room for some other deserving commemorative work. In other words, a memorial might be "unveiled" in Washington and then moved to its permanent location in Albuquerque, or Baltimore, or Chicago or some other place suitable for the memorial involved.

There is no good reason why all memorials must be located in the capital. There is good reason to believe that other cities and towns would appreciate—and take pride in—having such memorials in their communities.

(Manuel Lujan, Jr., is a Republican representative from New Mexico and a member of the House Interior and Insular Affairs Committee. This is adapted from testimony before the House subcommittee on national parks and recreation.)

I urge my colleagues to vote for H.R. 4378, as a means of providing for both future commemorative works and future parkland usage.

Mr. LAGOMARSINO. Mr. Speaker, under my reservation of objection, I yield to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Speaker, I thank the gentleman for yielding.

I want to compliment the gentleman from Minnesota and thank him for his cooperation and leadership in this matter.

I want to also compliment besides the distinguished minority leader of the Interior Subcommittee, the minority leader of the Committee on House Administration and our task force, whose staff along with themselves cooperated so that we would preserve our jurisdictional rights and at the same time have some guidelines that were important.

I would like if I can to engage in a brief colloquy with my distinguished chairman of the subcommittee for just a second.

As the gentleman knows, the House passed unanimously three bills related to monuments to be constructed. One was the Korean veterans bill memorializing the veterans of the Korean war conflict. The second bill was for women who served in the military, and the third bill was for black members of the battalion that served in the Revoluntionary War.

I notice in the gentleman's substitute that these three bills which we passed unanimously and the substitute amendment which I agree with were not in the substitute as the gentleman made mention in the original House bill.

I wonder if the gentleman for the record would like to comment on that.

Mr. VENTO. Mr. Speaker, will the gentleman from California yield?

Mr. LAGOMARSINO. Further reserving the right to object, Mr. Speaker, I yield to the gentleman from Minnesota.

Mr. VENTO. Mr. Speaker, I thank the gentlewoman for her assistance again and would just point out that this in no way indicates our support or lack of support. I do support all three of those memorials.

I think as the measure left the House, there was concern as to how the effects of this legislation would work with these three memorials that were in fact passed by the House.

This, if anything, I think, will facilitate the passage of these measures, because the Senate looks to this law as the basic law upon which we will determine the sites, the locations for memorials in the future; so those measures are now awaiting action from the Senate, which I hope, with the gentlewoman that the other body will act.

So I think that in no way does this legislation limit or mitigate against the enactment. In fact, I think it enhances the opportunity for action on those, because we will have a predictable path, a predictable policy, as to how the sites would be selected for those particular memorials.

As the gentleman knows and the other Members here, some of those will go in that core area, in area one, the area that has a great number of memorials today because of the importance of those particular memorials.

Ms. OAKAR. Mr. Speaker, will the gentleman yield further?

Mr. LAGOMARSINO. Further reserving the right to object, Mr. Speaker, I yield to the gentlewoman from Ohio.

Ms. OAKAR. Mr. Speaker, I would just say, I thank the gentleman for that explanation, which I think is very, very important for our record.

I would just hope that since we have been so cooperative with the Senate, I know they have marked up these three bills, they are ready to go to the floor of the Senate. I would hope that they would, in acknowledgement of the cooperation that has been given to the Senate, I certainly hope that they will pass out those bills. It would be terrible after all the work that has been done on passage on the House side and all the work that the committees of the Senate have gone through if in our bargaining with the Senate they did not pass these three bills that they said they were going to pass.

Mr. Speaker, I thank the gentleman for yielding. I am very, very pleased with the consideration that we have worked out.

□ 1740

Mr. FRENZEL. Mr. Speaker, will the gentleman yield?

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, I yield to the gentleman from Minnesota.

Mr. FRENZEL. Mr. Speaker, I want to corroborate the statement of the gentlewoman from Ohio [Ms. OAKAR] that our committee, which has some little piece of the jurisdiction, is very grateful to the gentleman from Minnesota [Mr. VENTO] and the gentleman from California [Mr. LAGOMARSINO] for working out a formula that we can all agree to.

I also would like to say to the gentleman from Minnesota, in echoing the statements of the gentlewoman who is the chairwoman of the Libraries and Memorials Task Force, that the three bills to which she referred—the black patriots, the women heroes, and the Korean veterans—have had an awful lot of work on them, and we would look to the gentleman for help in seeing that those bills are passed and that those memorials are placed in spots that are appropriate. We know that we will get the full cooperation of the gentleman from Minnesota.

Mr. LAGOMARSINO. Mr. Speaker, further reserving the right to object, I rise in support of H.R. 4378, to govern the establishment of commemorative works within the National Capital region of the National Park Service.

The House originally passed this bill in May in response to concerns regarding the increasing pressures of competing uses on park lands in the District of Columbia, particularly the Mall area. These lands support a wide variety of activities including national celebrations, recreational use, and public demonstrations. In addition, there are currently 108 commemorative works, including such well-known memorials as the Lincoln and Jefferson, and the Washington Monument, occupying Park Service lands. Many other commemorative works are currently in the planning process.

In an effort to resolve this problem, H.R. 4378 includes strict standards for the placement of commemorative works on Park Service and other Federal lands in the District of Columbia, particularly in several key areas including the Mall, the Ellipse and the Washington Monument Grounds. It also includes standards to ensure that future commemorative works are structurally sound and durable.

The other body recently amended and approved this legislation. The bill before us today seeks to slightly modify the Senate-passed version. Instead of only allowing a study to determine the feasibility of establishing a site for the placement of temporary commemorative works, this bill goes one step further by allowing the Secretary of the Interior to establish such a site following transmittal of the study. However, I might point out that rigid requirements must be met before any temporary work could be placed at the site.

In addition, the Senate-passed version requires that not only must a determination be made by the appropriate Federal agency that the work to be placed in the central monumental core, known as area I, is of preeminent historical and lasting significance to the Nation, but Congress must approve the determination within 90 days or it is deemed disapproved. The bill before us today would extend the time period from 90 to 150 days. While we feel that it should be very arduous to place new commemorative works in area I, we believe it is important to extend the approval period an additional 2 months to compensate for congressional recesses, adjournments, and so forth. Even with this change, it will still be extremely difficult to locate new commemorative works in this critical area, and well it should be. That is clearly the primary purpose of this legislation.

I might also point out that this bill directs the appropriate authorizing committees to seek the views and recommendations of the National Capital Memorial Commission in authorizing commemorative works. However, I would like to clarify that this language is not intended to be interpreted as meaning that any recommendations provided by the Commission would be binding on the Congress.

I believe the months of hard work and negotiation on H.R. 4378 have produced a fine bill which achieves our major goal—to limit the proliferation of insignificant works on Federal lands in the D.C. area. This bill will still permit the commemoration of worthy individuals and events in our Nation's history, while establishing a good balance of uses for the public lands in our Nation's Capital. Therefore, I urge all of my colleagues to approve the amended version of H.R. 4378 before us today.

Mr. Speaker, I withdraw my reservation of objection.

The **SPEAKER** pro tempore. (Mr. Montgomery). Is there objection to the initial request of the gentleman from Minnesota?

There was no objection.

The **SPEAKER** pro tempore. Without objection the Senate amendment to the title of H.R. 4378 is agreed to.

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. **VENTO**. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the legislation just considered.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The **SPEAKER** laid before the House the following communication from the Clerk of the House of Representatives:

Washington, DC,
September 29, 1986.

Hon. Thomas P. O'Neill, Jr.,
The Speaker, House of Representatives, Washington, DC.

Dear Mr. Speaker: Pursuant to the permission granted in Clause 5, Rule III of the Rules of the U.S. House of Representatives, I have the honor to transmit sealed envelopes received from the White House as follows:

(1) At 5:30 p.m. on Friday, September 26, 1986 and said to contain a message from the President in accordance with the Impoundment Control Act of 1974; and

(2) At 5:30 p.m. on Friday, September 26, 1986 and said to contain H.R. 3247, an Act to amend the Native American Programs Act of 1974 to authorize appropriations for fiscal years 1987 through 1990, and a veto message thereon; and

(3) At 9:25 p.m. on Friday, September 26, 1986 and said to contain H.R. 4868, an Act to prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes, and a veto message thereon.

With kind regards, I am,

Sincerely,

Benjamin J. Guthrie,
Clerk, House of Representatives.

ANTI-APARTHEID ACT OF 1986—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The **SPEAKER** laid before the House the following veto message from the President of the United States.

To the House of Representatives:

I am returning herewith without my approval H.R. 4868, the Comprehensive Anti-Apartheid Act of 1986. Title III of this bill would seriously impede the prospects for a peaceful end to apartheid and the establishment of a free and open society for all in South Africa.

This Administration has no quarrel with the declared purpose of this measure. Indeed, we share that purpose: To send a clear signal to the South African Government that the American people view with abhorrence its codified system of racial segregation. Apartheid is an affront to human rights and human dignity. Normal and friendly relations cannot exist between the United States and South Africa until it becomes a dead policy. Americans are of one mind and one heart on this issue.

But while we vigorously support the purpose of this legislation, declaring economic warfare against the people of South Africa would be destructive not only of their efforts to peacefully end apartheid, but also of the opportunity to replace it with a free society.

The sweeping and punitive sanctions adopted by the Congress are targeted directly at the labor intensive industries upon which the victimized peoples of South Africa depend for their very survival. Black workers—the first victims of apartheid—would become the first victims of American sanctions.

Banning the import of sugar, for example, would threaten the livelihood of 23,000 black farmers. Banning the import of natural resources is a sanction targeted directly at the mining industries of South Africa, upon which more than half a million black laborers depend for their livelihood.

By prohibiting the importation of food and agricultural products, the measure would invite retaliation by South Africa, which since June has purchased over 160,000 tons of wheat from the United States. Denying basic foodstuffs to South Africa—much of which go to feed the black population—will only lead to privation, unrest, and violence. It will not advance the goals of peaceful change.

Are we truly helping the black people of South Africa—the lifelong victims of apartheid—when we throw them out of work and leave them and their families jobless and hungry in those segregated townships? Or are we simply assuming a moral posture at the expense of the people in whose name we presume to act?

This, then, is the first and foremost reason I cannot support this legislation. Punitive economic sanctions would contribute directly and measurably to the misery of people who already have suffered enough. Using America's power to deepen the economic crisis in this tortured country is not the way to reconciliation and peace. Black South Africans recognize that they would pay with their lives for the deprivation, chaos, and violence that would follow an economic collapse. That is why millions of blacks and numerous black leaders in South Africa are as firm in their opposition to sanctions as in their abhorrence of apartheid.

The imposition of punitive sanctions would also deliver a devastating blow to the neighboring states in southern Africa that depend on Pretoria for transportation, energy, markets, and food. An estimated million-and-a-half foreign workers, legal and illegal, now live in South Africa. The number of people, women and children especially, outside South Africa who are dependent upon the remittances of these workers for their survival has been estimated to be over five million. Do we truly wish to be directly responsible for increased suffering, and perhaps starvation, in southern Africa? Do we truly wish our action to be the rational Pretoria invokes for expelling these workers? Do we truly wish to trigger a cycle of economic sanctions and counter-sanctions that end up crippling the economy of South Africa and devastating the economies of the frontline states? What sense does it make to send aid to those impoverished countries with one hand while squeezing their economies with the other?

Disrupting the South African economy and creating more unemployment will only fuel the tragic cycle of violence and repression that has gripped that troubled country. Black unemployment in South Africa in some areas is over 50 percent—and adding to it will create more anger, more violence, and more competition among blacks struggling to survive. It will not improve prospects for negotiations.

Another feature of the bill would require the Administration to publicly identify within six months any and all nations that have chosen not to join us in observing the U.N. arms embargo against South Africa, "with a view to terminating United States military assistance to those countries." But the United States will not revert to a single-minded policy of isolationism, with its vast and unforeseen effects on our international security relationships, that would be dictated by the unilateral decisions of our allies. No single issue, no matter how important, can be allowed to override in this way all other considerations in our foreign policy. Our military relationships must continue to be based upon a comprehensive assessement of our national defense needs and the security of the West.

Not only does this legislation contain sweeping punitive sanctions that would injure most the very people we seek to help, the legislation discards our economic leverage, constricts our diplomatic freedom, and ties the hands of the President of the United States in dealing with a gathering crisis in a critical subcontinent where the Soviet Bloc—with its mounting investment of men and arms—clearly sees historic opportunity. Therefore, I am also vetoing the bill because it contains provisions that infringe on the President's constitutional prerogative to articulate the foreign policy of the United States.

There are, however, several features of the measure that the Administration supports. Title II of the bill, for example, mandates affirmative measures to eliminate apartheid and provide assistance to its victims, including support for black participation in business enterprises as owners, managers, and professionals. It authorizes the President to take steps for the purpose of assisting firms to fight apartheid and extend equal opportunity to blacks in investment, management, and employment. The bill also contains a number of other useful and realistic provisions, such as those calling upon the African National Congress (ANC) to reexamine its Communist ties mandating a report on the activities of the Communist Party in South Africa and the extent to which it has infiltrated South African political organizations. Still other portions of the bill call upon the ANC to condemn the practice of "necklacing" and terrorism and to state affirmatively that it will support a free and democratic post-apartheid South Africa. These provisions, as well as many others in the bill, reflect the agreement of the Congress and the Administration on important aspects of an overall anti-apartheid policy.

The Administration has been—and remains—prepared to work with the Congress to devise measures that manifest the American people's united opposition to apartheid—without injuring its victims. We remain ready to work with the Congress in framing measures that—like the 1962 U.S. embargo of military sales and the carefully targeted sanctions of my own Executive order of 1985—keep the United States at arms distance from the South African regime, while keeping America's beneficient influence at work bringing about constructive change within that troubled society and nation.

It remains my hope that the United States can work with its European allies to fashion a flexible and coordinated policy—consistent with their recent actions—for constructive change inside South Africa. I believe we should support their measures with similar executive actions of our own, and I will work with the Congress toward that goal. It remains my hope that, once again, Republicans and Democrats can come together on the common ground that, after all, we both share: An unyielding opposition both to the unacceptable doctrine of apartheid as well as the unacceptable alternative of Marxist tyranny—backed by the firm determination that the future of South Africa and southern Africa will belong to the free. To achieve that, we must stay and build, not cut and run.

That Americans should recoil at what their television screens bring them from South Africa—the violence, the repression, the terror—speaks well of us as a people. But the historic crisis in South Africa is not one from which the leading nation of the West can turn its back and walk away. For the outcome of that crisis has too great a bearing upon the future of Africa, the future of NATO, the future of the West.

Throughout the postwar era, we Americans have succeeded when we left our partisan differences at the water's edge—and persevered; as we did in the rebuilding of Europe and Japan, as we are doing today in El Salvador. We have failed when we permitted our exasperation and anger and impatience at present conditions to persuade us to forfeit the future to the enemies of freedom.

Let us not forget our purpose. It is not to damage or destroy an economy, but to help the black majority of South Africa and southern Africa enjoy a greater share of the material blessings and bounties their labor has helped to produce—as they secure as well their legitimate political rights. That is why sweeping punitive sanctions are the wrong course to follow, and increased American and Western investment—by firms that are breaking down apartheid by providing equal opportunity for the victims of official discrimination—is the right course to pursue.

Our goal is a democratic system in which the rights of majorities, minorities, and individuals are protected by a bill of rights and firm constitutional guarantees.

RONALD REAGAN.

THE WHITE HOUSE, *September 26, 1986.*

Mr. FASCELL (during the reading). Mr. Speaker, I ask unanimous consent that the message be considered as read and printed in the RECORD.

The SPEAKER. In the opinion of the Chair, that would be setting a precedent, and the Chair believes we should read the message.

Mr. FASCELL. Mr. Speaker, I withdraw my request.

The Clerk concluded the reading of the veto message.

□ 1750

The SPEAKER. The objections of the President will be spread at large upon the Journal, and the message and bill will be printed as a House document.

The question is, Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

The gentleman from Florida [Mr. FASCELL] is recognized for 1 hour.

Mr. FASCELL. Mr. Speaker, I yield 30 minutes to the distinguished gentleman from Michigan [Mr. BROOMFIELD], the ranking minority member on the Committee on Foreign Affairs, and pending that, Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, today the House casts a very significant vote. Those of you who listened to the veto message from the President did not hear anything new or different, and nothing has changed in South Africa since the time Congress first acted on this bill. As a matter of fact, I think it is fair to say the situation continues to get worse.

I shall let others talk about the moral, political imperatives which make it necessary to take this legislative and resulting economic action. But suffice it to say, we need to express very clearly once again our feelings as Americans and as the institution representing the American people. We must express the feelings that we have with regard to apartheid; that we want to separate ourselves in every possible way from the actions of the South African Government and in support of principles that are democratic and not repressive.

The President can, of course, at any time issue an executive order. It does not have to be issued now. One would have to take into consideration the reasons issuing it at this time; and the reasons I think are quite obvious.

We do disagree, but this bill has been through the political process. It is overwhelmingly supported by both parties. So when you look at it in the cold light of day, it concerns the question of votes in the other body. That is the only difference that exists today, and that is, in my judgment and without being disrespectful in any way, the reason for this new executive order.

We, the President and the Congress, have come closer and closer on this issue every time it has come up. But I think the time has come and the time is today, to vote yes on this bill and send a clear and unified message on a bipartisan basis.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, all Americans stand united in their condemnation of apartheid and the human toll that results from this ghastly system of institutionalized racism.

The President spoke for all of us when he stated in his veto message Friday that "normal and friendly relations cannot exist between the United States and South Africa until it become a dead policy."

The United States is on the side of change in South Africa and against those who would maintain the status quo in that country. That is not to say that we are on the side of violence or those who advocate it.

It is my belief that constructive change in South Africa will come about not from the barrel of a gun or from the destruction of the South African economy.

The economy is the most effective force for change in South Africa that exists today.

We should strengthen it, not weaken it.

We should help to build a future for blacks throughout southern Africa.

We should not contribute to the destruction of the major vehicle for their liberation.

I do not consider this position to be dishonorable, as some in South Africa and here in the Congress seem to imply.

Archbishop Tutu has characterized President Reagan's as position "racist", apparently because the two men do not agree on the best way for the United States to encourage constructive change in South Africa. I object to this kind of name-calling. It is not only inflammatory, but does not contribute to a peaceful resolution of the South Africa tragedy. In fact, the archbishop owes the President an apology.

Many prominent anti-apartheid activists in South Africa disagree with the economic sanctions approach. Chief Buthelezi and Helen Suzman surely cannot be accused of racism, and yet opposition to economic sanctions is their position.

In instituting economic sanctions against South Africa—and in effect, all of southern Africa—the Congress would be ensuring the need for dramatically higher levels of foreign aid to most countries in the region. In an era when foreign aid is targeted for deep cuts, can we afford this? I do not think so.

The United States needs to effectively support the forces for peaceful, constructive change in South Africa. This can best be accomplished through joining with our allies in western Europe and with Canada and Japan in whatever actions we take.

For maximum effect, the western industrialized democracies must speak in one clear voice when addressing South Africa. To balkanize our policy response to South Africa reduces the impact we can have on the situation there.

As the President stated in his remarks Friday, "It remains my hope that the United States can work with its European allies to fashion a flexible and coordinated policy—consistent with their recent actions—for constructive change inside South Africa. I believe we should support their measures with similar executive actions of our own, and I will work with Congress toward that goal."

In my judgment, the administration has been dragging its feet. It should have more vigorously pursued this joint approach long ago. However, I believe the President is sincere in his desire to do so now, and he has my support in his efforts.

Mr. Speaker, the escalating violence in South Africa offers no solutions to the plight of blacks in that country. Similarly, doing violence to the economy of South Africa destroys the best change the country has for rapid change and an end to the system of apartheid.

The vote we will soon have to make today poses a dilemma.

On the one hand, we are frustrated by the slow pace of change in South Africa, by the continuing injustice of the apartheid system.

On the other hand, this bill is not a solution to the problem.

I again quote from the President's remarks:

> Let us not forget our purpose. It is not to damage or destroy any economy, but to help the black majority of South Africa and southern Africa enjoy a greater share of the material blessings and bounties their labor has helped to produce—as they secure as well their legitimate political rights.
>
> That is why sweeping punitive sanctions are the wrong course to follow, and increased American and western investment—by firms that are breaking down apartheid by providing equal opportunity for the victims of official discrimination—is the right course to pursue.
>
> Our goal is a democratic system in which the rights of majorities, minorities, and individuals are protected by a Bill of Rights and firm constitutional guarantees.

In a letter to the minority leader, Mr. MICHEL, and myself, the President today outlined the contents of a new executive order he will soon sign which will encompass measures recently adopted by many of our allies. I believe this joint approach has a great deal of merit and a copy of the letter follows my remarks.

A few minutes ago, I talked to the President's national security advisor, Admiral Poindexter, who emphasized the importance at this difficult time of sustaining the President's authority. He also emphasized that the President is committed to assisting responsibly in resolving southern Africa's tragic dilemma.

Mr. Speaker, I urge my collegues to vote no on this measure and sustain the President's veto.

THE WHITE HOUSE,
Washington, September 29, 1986.

Hon. ROBERT H. MICHEL,
Republican Leader, House of Representatives, Washington, DC

DEAR BOB: I understand and share the very strong feelings and sense of frustration in the Congress and in our Nation about apartheid, an unconscionable system that we all reject. The ongoing tragedy in South Africa tests our resolve as well as our patience. None of us wants to aggravate that tragedy.

In the last several months, the South African Government, instead of moving further down the once promising path of reform and dialogue, has turned to internal repression. We all know that South Africa's real problem traces to the perpetuation of apartheid. And we know that the solution to this problem can only be found in lifting the present State of Emergency, repealing all racially discriminatory laws, releasing political prisoners, and unbanning political parties—necessary steps opening the way for negotiations aimed at creating a new, democratic order for all South Africans. The South African Government holds the key to the opening of such negotiations. Emerging from discussion among South Africans, we want to see a democratic system in which the rights of majorities, minorities, and individuals are protected by a bill of rights and firm constitutional guarantees. We will be actively pursuing diplomatic opportunities and approaches in an effort to start a movement toward negotiations in South Africa.

I outlined in my message to the House of Representatives on Friday my reasons for vetoing the Comprehensive Anti-Apartheid Act of 1986, principally my opposition to punitive sanctions that harm the victims of apartheid and my desire to work in concert with our Allies. I also indicated in that message that I am prepared to sign an expanded Executive order that strongly signals our rejection of apartheid and our desire to actively promote rapid positive change in South Africa. I am prepared to expand the range of restrictions and other measures that will characterize our relations with South Africa. There would be strong sanctions in my new order, sanctions that I earnestly wish were unnecessary. These sanctions, directed at the enforcers not the victims of apartheid, encompass measures recently adopted by many of our Allies, as well as many elements of the original Senate Committee version of the bill. They are incontestably necessary in today's circumstances. My intention is to make it plain to South Africa's leaders that we cannot conduct business-as-usual with a government that mistakes the silence of racial repression for the consent of the governed.

My new Executive order will, therefore, reaffirm and incorporate the measures I imposed last year (i.e. bans on loans to the South African Government and its agencies, all exports of computers to apartheid-enforcing entities and the military and police, all nuclear exports except those related to health, safety, and IAEA programs, imports of South African weapons, the import of Krugerrands, and a requirement for all U.S. firms to apply fair labor standards based on the Sullivan principles). The Executive order will also add:

A ban on new investments other than those in black-owned firms or companies applying the fair labor standards of the Sullivan principles;

A ban on the imports from South Africa of iron and steel;

A ban on bank accounts for the South African Government and its agencies;

A requirement to identify countries taking unfair advantage of U.S. measures against South Africa with a view to restricting their exports to the United States by the amount necessary to compensate for the loss to U.S. companies;

A requirement to report and make recommendations on means of reducing U.S. dependence on strategic minerals from southern Africa;

A requirement to provide at least $25 million in assistance for scholarships, education, community development, and legal aid to disadvantaged South Africans with a prohibition on such assistance to any group or individual who has been engaged in gross violations of internationally recognzed human rights;

The imposition of severe criminal and civil penalties under several statutes for violation of the provisions of my Executive order;

A requirement to consult with Allies in order to coordinate policies and programs toward South Africa;

A requirement to report on whether any of these prohibitions has had the effect of increasing U.S. or allied dependence on the Soviet bloc for strategic or other critical materials, with a view to appropriate modifications of U.S. measures under my Executive order should such dependency have been increased;

And a clear statement that the Executive order constitutes a complete and comprehensive statement of U.S. policy toward South Africa, with the intent of preempting inconsistent State and local laws which under our Constitution may be preempted.

Sanctions, in and of themselves, do not add up to a policy for South Africa and the southern Africa region. Positive steps as well as negative signals are necessary. This unusually complex and interrelated part of the world is one that cries out for better understanding and sympathy on our part. We must consider what we can do to contribute to development of healthy economies and democratic institutions throughout the region and to help those who are the victims of apartheid.

Following the Congress' lead and building on existing programs, I plan to expand our assistance to those suffering the cost of apartheid and to help blacks as they prepare to play their full role in a free South Africa. We spent $20 million in FY 86 and have requested $25 million in FY 87. We will do more, much of it along the lines incorporated in the South Africa bill.

I am also committed to present to the next Congress a comprehensive multi-year program designed to promote economic reform and development in the black-ruled states of southern Africa. We intend to seek the close collaboration of Japan and our European allies in this constructive effort. Our goal is to create a sound basis for a post-apartheid region—a southern Africa where democracy and respect for fundamental human rights can flourish.

I believe the United States can assist responsibly in resolving southern Africa's tragic dilemma. Many observers in and outside South Africa regard present trends with despair, seeing in them a bloody inevitability as positions harden over the central question of political power. This is a grim scenario that allows no free choice and offers a racial civil war as the only solution. It need not be so if wisdom and imagination prevail.

South Africans continue to search for solutions. Their true friends should help in this search. As I have said before, our humanitarian concerns and our other national interests converge in South Africa as in few other countries. With the actions I propose today, I believe it is clear that my Administration's intentions and those of the Congress are identical. May we unite so that U.S. foreign policy can be effective in bringing people of good will and imagination in South Africa together to rebuild a better, just, and democratic tomorrow.

Sincerely,

RONALD REAGAN.

□ 1800

Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. KEMP].

Mr. KEMP. Mr. Speaker, I rise with real sadness in my heart. All Americans and particularly those of us in this body have to deal with an issue that is vexing, not only to this body but to parliamentary democratic bodies all over the world. I hope folks listened to the distinguished ranking minority member of the Committee on Foreign Affairs, the gentleman from Michigan [Mr. BROOMFIELD], who made a very thoughtful and positive contribution to this debate.

I hope that one's motives are not challenged for taking a position that seems to, on the surface, look somehow insensitive to an evil that is being practiced in South Africa, the problem of apartheid. We cannot be insensitive to evil and I share the view that pressure on South Africa is essential to the ending of this evil of apartheid.

The gentleman from Michigan reminded us, Mr. Speaker, that all of us who want to dismantle apartheid have to give thought to how we do that without dismantling the economy of the country, how we can help lead a peaceful transition from the evil of apartheid to the justice of democracy and freedom, and equal opportunity for all people in South Africa.

I agree with the gentleman from Michigan, Mr. Speaker, I do not think that constructive engagement is enough, and we need to move beyond constructive engagement. I would hope that our country could establish the type of a moral climate of diplomacy as we did under Camp David, between Israel and Egypt, to bring black and white together in South Africa, to bring down apartheid and those barriers that exist to freedom, dignity, and democracy.

I do not see how we, as Members of this Congress, who will next year celebrate the 200th anniversary of the American Constitution, can do anything less than to speak out and to help put pressure on South Africa to help bring down this practice so abhorrent to all men and women of good will and liberal democratic values.

But I want to say as a matter of conscience that I do not think that disinvestment is the answer. I do not think that preventing new investment is the answer, Mr. Speaker. Frankly, one of the most liberal institutions in South Africa, other than the church, is that led by those men and women who are trying to conduct business or abide by the Sullivan principles which were codified by this body; incidentally, I am very proud to have helped codify those Sullivan principles in an earlier vote on this issue last year.

I hope, as we look for solutions, that we give some thought to what takes place subsequent to apartheid and how we can bring about property rights, political rights, democratic rights and equal rights for blacks for all people in South Africa; and so I am going to support the veto; but want to make it very clear that I think we need to move, as the gentleman from Michigan (Mr. BROOMFIELD) pointed out, beyond constructive engagement, and help make sure that while we take steps to dismantle this evil that we do it in such a way as we help lead to the peaceful transition to democracy, that all men and women of good will want to see occur.

Mr. Speaker, at Camp David we saw a President of your party, President Carter, bring together the leaders of two sovereign nations, which had been long and bitter foes. They reached a peace once thought impossible. As I said, I hope we could do the same for South African blacks.

The hour is not too late—indeed the time is now—for new American leadership in South Africa—leadership that rejects the way of division and violence, and that reaches out to all people willing to work for a just and democratic society. We need a "third force" strategy that rejects communism, and apartheid.

But the President must have our support. We can begin today by standing with him against punitive sanctions, and uniting to help bring a peaceful end to apartheid that will put the United States on the right side of history.

Mr. BROOMFIELD. Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona [Mr. RUDD].

Mr. RUDD. Mr. Speaker, supporters of the South Africa sanctions package say that we need to send a moral signal to South Africa about our outrage over apartheid. But we have sent that signal and although most reforms have been recent, the reforms have been made and the culture of South Africa is in a state of change.

So what are we doing with these sanctions? The European nations have agreed on a set of sanctions and President Reagan is expected to follow suit this week to comply with their sanctions that are more severe than our own. Numerous polls have shown that the people of South Africa, both black and white, are opposed to any of these sanctions because it will cripple the economy upon which they both depend for survival.

In fact, the bill that was vetoed by the President will devastate the black population, the very people we are trying to help. It will also hurt the estimated 500,000 blacks attempting to immigrate to South Africa annually. They come to South Africa because of the economic opportunity there and that directly benefits their own economically troubled countries like Zimbabwe, who, through growing Marxist practices, are destroying their own economies. In Zimbabwe, a state of emergency has existed for 6 years. And where also as many people were massacred by government troops in Matabeleland in 1983 as have died in all the racial violence in South Africa these past 2 years. Yet this same Congress that voted economic sanctions against South Africa has annually approved economic assistance for Mr. Mugabe.

The bill before us today bans the import into the United States of South African agriculture commodities and products. This will result in a loss of 446,000 jobs to support 2.2 million workers and their families. It will ban the import of South African coal, iron and steel. This will result in another loss of at least 145,000 jobs that support 725,000 workers and their families. The bottom line is a loss of 600,000 jobs that provide the livelihood for more than 3 million South African black workers and their families—15 percent of the entire black population. Such unemployment will only lead to more black misery and radicalization seriously reducing the chances for a free and prosperous postapartheid South Africa.

Despite the claims of supporters of sanctions, the pain would not be felt by the South African Government. Pretoria recently announced that it had been stockpiling strategic materials for the last 10 years, in preparation for just such sanctions. Clearly, then, sanctions will not achieve their purported purpose: they will not send a moral signal—one has already been sent—and they will not force the South African Government to do anything more than they are physically able to do.

What is needed instead is a strategy to increase Western contact with and therefore influence with South Africa. The United States, should not withdraw investment from South Africa; rather it should increase western investment there, while continuing to place diplomatic pressure on Pretoria. Sanctions will result in a weakening of Western influence for positive and peaceful change and will lead to further political polarizations that can only benefit those forces seeking a radical and non-Democratic outcome. Therefore, we in Congress, should vote today to sustain the President's veto, and continue through other productive means to speed the demise of apartheid in South Africa.

Mr. WOLPE. Mr. Speaker, I yield 1 minute to the gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Speaker, I am extremely disappointed that our President has once again failed to seize an opportunity to embrace the consensus of the Congress, of the American people and of the world with regard to South Africa by not signing the sanctions bill which Congress recently overwhelmingly adopted.

Nations all around the world are expressing their condemnation of apartheid, and yet this administration had to be pushed and prodded by the Congress to take any action to put this country on record against the South African system of apartheid.

Bishop Desmond Tutu said on Sunday, and I agree, that President Reagan will be judged harshly by history for his veto of tough economic sanctions legislation against South Africa.

Indeed the President's refusal to act fairly with the black population of South Africa is preparing a sorrowful place in history for the United States. If we follow the President, we do so knowing that, years down the road, South Africans will remember that our Nation, which is a beacon of hope for liberty, justice, and equality, stood by this time and did nothing.

Mr. Speaker, it is our responsibility and our great privilege in this House to reflect the fundamental beliefs of the American people and make sure they are embodied in our Nation's policies. There is no more fundamental belief and no greater goal our people strive for than the principle of the equality of man. Our foreign policy should reflect that goal.

Take a stand with the American people on behalf of all the people of South Africa. Vote for freedom. Vote for equality. Vote to override the President's veto.

Mr. WOLPE. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. SOLARZ].

Mr. SOLARZ. Mr. Speaker, the President's position seems to be that the adoption of this legislation would hurt the very people we are trying to help in South Africa.

If President Reagan had evinced any sympathy in the past for the black majority in South Africa, this might have some credibility. As it is, his expressions of concern make crocodile tears seem like Perrier water.

If the black leadership in South Africa were opposed to sanctions, it would constitute a compelling argument against this legislation; but in view of the fact that the overwhelming majority of black leaders; Nelson Mandella, Oliver Tambu, Bishop Tutu, The Reverend Boesak; and black organizations like the United Democratic Front, the Council of Churches, the Conference of Bishops, and virtually all of the organized black independent labor unions in the country are also in favor of sanctions.

It seems to me that the President's position in opposition to this legislation is an act of incredible moral arrogance and supreme political cynicism because he is in effect saying that he knows better than they do what is in their own best interests.

Some have argued that there is no need for this legislation and we should sustain the veto, because the President is about to issue a new Executive order; but there is no relationship between the Executive order and the bill; the Executive order is a counterfeit version of the legislation.

Unlike the bill, it does not prohibit new investment or new loans in South Africa. It does not prohibit agricultural or textile imports. It does not provide for the transfer of the sugar quota from South Africa to the Philippines. It does not prohibit landing rights for South African Airways.

The total economic impact of the bill on South Africa is $3.6 billion, the impact of the Executive order would only be $267 million.

If this vote is sustained, there will be praise in Pretoria and sadness in Soweto; and consequently, I ask you to override the President's veto and vote for the enactment of the legislation.

Mr. WOLPE. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. LEVINE].

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Mr. LEVINE of California. Mr. Speaker, I rise in strong support of the vote to override President Reagan's veto of H.R. 4868, the Anti-Apartheid Act of 1986.

I am not surprised by the President's action. First, through his failed policy of constructive engagement, and most recently behind a smokescreen of professed concerns for the well-being of South African workers, this administration has done everything it can to frustrate efforts to impose tough economic sanctions.

Mr. Speaker, one would have hoped that the administration might have been swayed by the overwhelming bipartisan majorities in both Houses of Congress that supported H.R. 4868; by the desire of the American people to see our Government take strong and unambiguous steps against the odious Pretoria regime; by the support for sanctions by South Africa's black leadership; and by the knowledge of the key leadership role the United States—the leader of the free world—could take in the struggle against apartheid through the implementation of sanctions.

Alas, such was not to be the case. The administration remained unmoved, with its feet stuck in cement and its head stuck in the sand, as one of the most important moral struggles of our time—the battle against apartheid—passed it by.

The potential fallout from the Reagan veto is particularly troubling. Even the chairman of the Senate Foreign Relations Committee—usually a strong supporter of the administration—stated after the veto that this action, if sustained, would make the United States "apologists for apartheid," regardless of Presidential protestations to the contrary.

Mr. Speaker, as the saying goes, actions speak louder than words, and the Reagan veto—of a weaker bill than this body originally passed—represents a flagrant disregard for the will of Congress and the American people, and for the plight of those in South Africa suffering under the yoke of apartheid. As the senior Senator from my own State of California, Alan Cranston, said several days ago, "The President is sacrificing and damaging America's moral leadership in the World."

Frankly, I would have preferred a tougher sanctions bill. I am not convinced that these sanctions will have a meaningful impact on the South African economy. However, the great need for some action, combined with the powerful symbolism which accompanies the imposition of sanctions, compels me to support this bill.

The administration rationale for the veto is that sanctions hurt those they are designed to help, namely, South African blacks. We have heard this argument before, and we should dismiss it. It is merely a cover for continuing the failed policy of constructive engagement.

Mr. Speaker, the case for sanctions against South Africa now is compelling. The moral case for such action is overpowering. American interest and American values are at stake. The South African Government must realize that no amount of force can control the aspirations of millions to be free. We must do all that we can to ensure that black South Africans are free, free from tyranny and free from fear, and that they are free to determine their own destiny. Overriding the President's veto will set forces in motion which will assist that process, and will represent a repudiation of the Reagan approach. I urge my colleagues to vote for the override.

Mr. WOLPE. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. Weiss].

Mr. WEISS. Mr. Speaker, I rise in support of overriding the President's veto.

This administration's policy on South Africa is clear. President Reagan wants to do as little as possible, as late as possible.

For 5½ years, the Reagan administration has been soft on South Africa. Over and over we have heard soothing words about quiet diplomacy, constructive engagement, and restraint.

Is this the kind of language that the South African Government understands? Did that Government use restraint in detaining over 5,000 men, women and children under the state of emergency declared this past June? Have the South African police used restraint as they fired shotgun blasts at unarmed demonstrators—and then attacked the funerals of the people they killed? Was South Africa thinking of constructive engagement when it starved the people of Lesotho into submission, overthrew their government, and installed a quisling regime?

Since the collapse of Nazi Germany, South Africa has been the only country on Earth whose legal and political system is based on explicit, systematic, and all-encompassing racial discrimination. It is the only country that occupies a United Nations trust territory—Namibia—in violation of international law.

South Africa has an unparalleled record of aggression against its neighbors. It has mounted air and ground attacks against Botswana, Zimbabwe, Mozambique, Swaziland, Angola, and Zambia, killing hundreds of people and causing some $10 billion in damage. South Africa, the richest power in the region, has done more than any other to keep its neighbors destitute.

South Africa has shown its contempt for quiet diplomacy and constructive engagement. We have no choice but to show a firmer hand.

Last year President Reagan stopped a sanctions bill with a token Executive order. This year he waited until the last minute to veto a strong antiapartheid bill.

The days of too little, too late are over. The President's veto won't stop this bill. We will override his veto in both houses of this Congress. This is one bill that won't get lost in the last-minute crunch.

There is a growing consensus in this country. In cities and towns and State legislatures across America, people are saying no to apartheid. They are saying no to institutionalized racism. Now we in the Congress are joining that consensus. We must take the necessary action to bring about progressive change in South Africa now.

I urge my colleagues to vote to override the President's veto.

Mr. WOLPE. Mr. Speaker, I yield 1 minute to the gentleman from Washington, Mr. Miller.

Mr. MILLER of Washington. Mr. Speaker, I respect the President's leadership on foreign affairs. Most of what he has done to promote American pride and the cause of freedom abroad I have supported.

But on this issue I cannot support him. On South Africa, the President is wrong.

It all comes down to this—the United States, the leader of the free world in the struggle against Fascist and Communist oppression, must also be a leader in the struggle against racist oppression.

What we say and do here today could help determine whether South Africans are forced to choose between an existing racist police state and a looming communist dominated revolution—or whether there is a third choice—a democratic peaceful alternative.

Our place is with all South Africans who seek that third choice.

Mr. Speaker, we should override the President's veto.

Mr. BROOMFIELD. Mr. Speaker, I yield 2 minutes to the gentleman from Louisiana [Mr. Livingston].

Mr. DANNEMEYER. Mr. Speaker, will the gentleman yield?

Mr. LIVINGSTON. I yield to the gentleman from California.

Mr. DANNEMEYER. Mr. Speaker, I rise in strong support of the President's veto.

The proponents of sanctions against South Africa seem to regard this action as a major initiative, a "shot heard 'round the world." It is instead a shot in our own foot.

Our farmers are faced with a lingering crisis. One of our few positive trade balances in agriculture is with South Africa. Next year—without sanctions—we expect $292 million in exports to that nation, in wheat, rice, corn, cotton, barley, oil, seeds, and animal products. With sanctions, we stand to lose that market to other suppliers.

In 1984, we exported $151.5 million in computer and telecommunications equipment. Again, sanctions will mean the loss of this market to other countries.

We are also plagued with a depressed oil economy. The United States currently exports $50 million in petroleum products to South Africa. Sanctions will thus mean even fewer profits and jobs in our hard-hit oil-producing States.

South Africa is a major buyer of United States aircraft. Purchasing $242 million in planes and equipment in 1983. Again, another American industry is targeted for losses thanks to sanctions.

To add insult to injury, we are also making ourselves liable for litigation. The sanctions bill calls for immediate suspension of the South African airline's landing rights. Our current, in force air agreement requires 12 months notification of termination. An immediate suspension thus gives South Africa an opportunity to sue for damages and reparations.

In all these instances, the intended "victim" is South Africa, but the actual victim is the United States taxpayer. We stand to worsen the plight of farmers, energy producers, and aerospace and high-technology industries. And any damages awarded as a result of breaking a contract must also be born by the taxpayers.

It is obvious that the noble intention of taking a positive stand for human rights has been lost in the harsh reality of this mistaken legislation. South Africa can locate alternative sources and options. We stand to lose much more. Are all those other nations rushing to impose sanctions going to take up the slack and buy our products?

There is also the question of the effects of this legislation on South Africa. The danger to the South African economy, and especially to black workers, looms at least as large as to us. Thousands of jobs are dependent upon U.S. business and investment.

More crucial, however, is the political impact. Sanctions are but one more attempt to destabilize the South African Government. The hidden agenda behind sanctions is not so much reform or human rights as it is the overthrow of a pro-West government which is taking steps to become more democratic and ensure greater freedom for all its citizens.

This, of course, is nothing new. We have been down this road before. In 1965, the White minority-controlled Government of Rodesia declared its independence from Britain. Because there was no provision at that time to transfer power to the majority blacks, sanctions were imposed. This was followed, in 1968, by a U.N-sponsored trade embargo. The United States dutifully went along and, among other items, stopped buying Rhodesian chrome. After all, this was in the name of human rights. We subsequently obtained chrome from the Soviet Union—at three times the price, and we know how wonderful their human rights record is.

By the late 1970's, revolution threatened Rhodesia. We heard many voices here in the United States raised in support of Robert Mugabe, head of one of the largest black political parties, the Zimbabwe African National Union. Others voiced concern that Mugabe was a Soviet puppet who would destroy Zimbabwe-Rhodesia rather than save it. But we were so concerned about the outward appearance of "human rights" that we lost our sense of perspective. Today, 6 years after assuming power, Mugabe has been waging incessant warfare on other blacks; some 6,000 have been killed in the past 2 years. And the economy, once robust and boasting the highest standard of living for Blacks on the African Continent—that distinction, ironically, now belongs to South Africa—has been ravaged.

Is this what we have in mind for South Africa? Replace Mugabe with Nelson Mandela, replace the ZANU, with the ANC—African National Congress—the similarities are striking. And ominous.

The President has valiantly stood his ground against this travesty. It may very well be like trying to stop a runaway train, but this member, at least, is proud that the President is standing firm for principles. We don't need any symbolic act of self-immolation, or of throwing—once more—an ally to the wolves. It is time we aim straight and stop shooting ourselves in the foot.

Mr. LIVINGSTON. Mr. Speaker, I rise in opposition to this attempt to override the President's veto of H.R. 4868. Let me make it clear that I am in complete agreement with those that say that apartheid is an affront to human rights and dignity. In fact, I voted with the majority of the Members of this House for last year's bill, which imposed a number of restrictions on our dealings with the South African Government.

However, the bill before us today simply goes too far, and unduly interferes with the President's ability to conduct our foreign policy. Beyond that, I just don't believe that the sanctions contained in the bill will have the effect that its sponsors anticipate.

In the Philippines, we supported successfully a peaceful transition from autocratic rule to a democracy through our great political leverage over the Marcos government. But, this does not parallel the situation in South Africa. Our already limited political and economic influence over the South Africans will be further reduced by the punitive sanctions contained in this bill. We will not end apartheid any faster by exerting this type of economic pressure, because the South Africans will simply withdraw, as they have always done in the past, and become more self-sufficient and less amenable to outside persuasion.

Further, the disruption to the South African economy causes by these sanctions will serve to support the efforts of the Communist-dominated ANC in their attempt to violently overthrow the current government.

In essence these sanctions will create more black unemployment, reduce the influence of the forces of moderation that are working for peaceful change, and fuel the tragic cycle of violence gripping South Africa.

This is a clear case of bowing to the passions of the moment by cutting off our nose to spite our face. Only it is not our noses that will suffer from our actions, it is the good people, black and white, in South Africa who will suffer.

Mr. Speaker, I urge my colleagues to reject the motion to override the President's veto.

Mr. WOLPE. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. CONTE].

Mr. CONTE. Mr. Speaker, I come before this House today with a heavy heart. It's not easy to come to this floor and ask Members to oppose the President of the United States, the President of my party. But today I must.

I went to South Africa 27 years ago. I saw firsthand the deprivation and brutal conditions under which blacks were forced to live. I saw black people restricted to so-called homelands that weren't fit for cattle. I saw black people branded with passbooks that had to be on their person at all times, or God save them from the consequences. And 27 years later, what has changed? Ten years after Soweto, what has changed? Five years after constructive engagement, what has changed?

Nothing has changed, Mr. Speaker, nothing. Blacks are still second-class, or really third-class citizens in their own country. So-called radicals are still jailed in the name of preserving law and order. And the hopes of those seeking peaceful change and justice are still snuffed out like a candle in a gale.

The bill before us today is already a compromise. It's a far cry from the divestment bill that this House approved, and that I supported, in June. And it's a far cry from the divestment bill signed into law recently by the Republican Governor of California. We can compromise on sanctions no further. Now is the moment for every Member of this House to dig down deep within his or her convictions and vote to hold the line on South Africa. Sanctions will hurt, but from Archbishop Tutu to the Eminent Persons Group, the call has gone out for sanctions as the last, best hope to avert a potential bloodbath in South Africa.

So I stand before this House with a heavy heart, because I think America should speak with one voice on this issue. I beg Members, I plead with you—do the right thing, do the just thing, do the only proper thing and vote to override. Yes, Mr. Speaker, sanctions will hurt, but apartheid kills. Sanctions yes, apartheid no. Vote to override.

Mr. WOLPE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Pennsylvania [Mr. GRAY].

Mr. GRAY of Pennsylvania. I thank the gentleman for yielding.

Mr. Speaker and colleagues, the President on Friday evening in his veto message said black workers, the first victims of apartheid, would become the first victims of American sanctions.

I believe today we have an opportunity to provide a moral and diplomatic wakeup call for a President who does not understand the issue.

Black South Africans are already the victims; they are suffering under apartheid and they know that sanctions may hurt, but they also know that apartheid kills. Over 130 per month this year.

Why is it today we are having such a difficult time understanding that? I cannot for the life of me understand why our President will not listen to the majority, to the Desmond Tutus, to the mine workers, to the black labor leaders, to the Soweto mothers? And why does he listen to P.W. Botha, who says to us the blacks will suffer. Second, the President said the neighboring states will suffer. Well, the neighboring states have issued a joint communique including, some of them having imposed their own sanctions. They know what is in their best interests. Is it not interesting that we know what is in their best interests better than they do?

Then finally the President said we would just be morally posturing. Well, let me tell you something, my friends: Sometime we need to feel good about who we are, what we stand for and what we participate in. And that is why in 20 nations around the world we have imposed sanctions. We did not ask about the victims in Nicaragua, we did not ask about the victims in Cuba, Libya, Poland, Afghanistan or Iran. Why? Because we wanted to stand for something.

Let me tell you something else to those who are concerned about Marxism. This Congressman is concerned about Marxism, too, but you do not stop the spread of communism by supporting racism.

Today we have a choice. We can stand with P.W. Botha and apartheid and Ronald Reagan, or we can stand with the American people, we stand for our ideals and send a wakeup call.

Mr. BROOMFIELD. Mr. Speaker, I yield 1 minute to the gentleman from Illinois [Mr. CRANE].

Mr. CRANE. Mr. Speaker, I rise in support of the President's veto of H.R. 4868, the Comprehensive Anti-Apartheid Act of 1986. Like the President, I agree with the declared purpose of this measure, but fear the impact of imposing punitive economic sanctions against South Africa. Pressure can be brought to bear against the system of apatheid in South Africa without threatening to destroy the entire economy of southern Africa.

Proponents of sanctions claim that this legislation will make a political statement against apartheid. In reality, it is more likely to bring about increased unemployment, starvation, social unrest, and ultimately, violence. Thus, while Congress votes to morally clear its conscience, the blacks in all of southern Africa will suffer the economic consequences.

For example, the provision that bans the import into the United States of South African agricultural products and commodities will cost 446,000 black jobs that support some 2.2 million workers and their families. At the same time, a similar ban on the export of United States agricultural products to South Africa will negatively impact an already depressed American farming industry. The United States maintains a trade surplus in agriculture with South Africa. Some $300 million in U.S. exports of wheat, rice, corn, cotton, barlay, oil seeds, and animal products would be prohibited at the expense of making a political statement. I hope that those Members representing farming districts can justify this additional blow to the American farmer as the elections approach.

Recent statistics indicate that this legislation will result in the loss of some 800,000 jobs for blacks in South Africa. Each of these displaced workers is likely to support a family of five, thereby impacting about 4 million blacks in South Africa. The economic ramifications of this legislative effort is even more extensive when one considers that the economy of southern Africa is closely tied to that of South Africa. Estimates warn that 2 million blacks, supporting about 10 million people, could lose their jobs as a result of this bill. Are the proponents of this bill prepared to shoulder this responsibility?

What is even more distressing, is that these sanctions are not likely to bring about a more representative and free society. The only political system that can possibly emerge from this economic chaos will be a one-party, pro-Soviet, dictatorship. The seeds of a Communist Party have already been planted in South Africa. Let's not be responsible for fostering and nurturing the growth of this movement.

I urge my colleagues to vote responsibly and support the President. We can bring about positive change in South Africa without economically destroying the entire region.

At this time I insert for the record an editorial written by Patrick Buchanan, assistant to the President and White House Director of Communications, which appeared in the New York Times, September 18, 1986.

DESTROY SOUTH AFRICA TO SAVE IT?

(By Patrick J. Buchanan)

WASHINGTON.—On television, you don't sense the daily squalor, the flies, the filth, the dehumanizing way people are just thrown together," said a stunned Archbiship of Canterbury, as he toured the Crossroads squatters camp near Cape Town. "It's so much more dramatically squalid than I had expected."

Yes, it is—and these impoverished workers who came to Cape Town in search of jobs will be the first fatalities of the economic war that Congress has just declared upon South Africa.

Why are we doing this? Because, comes the arch reply, we want to stand up against Botha's regime—and stand with all the people of South Africa. But the people of South Africa, black and white, are opposed to sanctions. According to The Sunday Times of London, a plurality of blacks and virtually the entire white population is begging us not to join this international cartel to cripple the economy upon which they both depend for survival.

Congressional sanctions are targeted directly at South Africa's mining industry, where some 600,000 blacks are employed. Shut down those mines, and the dependent families of migrant workers could starve back home in Malawi and Mozambique. Will these black laborers then think better of the United States? When the Xhosa and Zulu peoples, confined in their segregated townships, are also jobless and hungry, will we all sleep better in Chevy Chase and Georgetown?

Suppose, during the Great Depression, Britain declared she would lead a worldwide boycott of American steel and coal until President Roosevelt desegregated the South and moved America to one-man, one-vote. Would the destitute American workers have welcomed that as the act of a trusted and reliable friend?

Sanctions will advance democracy, our legislators insist. But if so, why are lifelong South African democrats like Helen Suzman and Alan Paton so passionately opposed to them? Why is every antidemocratic element—from the South African Communist Part to the Soviet bloc—demanding their imposition?

And if sanctions advanced democracy, why not impose them upon Zimbabwe, where Prime Minister Robert Mugabe is moving toward a single-party Marxist state, where the state of emergency has lasted six years, where perhaps as many people were massacred by Government troops in Matabeleland in 1983 as have died in all the racial violence in South Africa these past two years? Yet, the same Congress that voted economic sanctions against South Africa has annually approved economic assistance for Mr. Mugabe.

Well, sanctions are designed to make a political and moral statement, we are told. But what political message is sent when the world's richest nation sets about systematically destroying the economy of a developing country that has done no harm to the United States? What moral message is sent when Congress votes to close down to South African Airways the same airports we are opening up to Aeroflot?

When Senator Malcolm Wallop urged the Senate, in the name of some moral symmetry, to impose upon the Soviet Union the same sanctions we impose upon South Africa, moderate Republicans threw in with liberal Democrats to defeat him.

"How can anyone who favors sanctions for Nicaragua oppose them for South Africa?" the press asks.

The answer is simple. While South Africa's racial sins (like our own) are scarlet, she has not adopted as her ruling ideology the century's most odious form of tyranny over the mind of man; she has not endorsed the decade's most monstrous crime—Afghanistan; she has not converted her territory into a staging area for the export of Communist revolution; she has not aligned herself with a regime that has 9,000 ballistic missile warheads pointed at the United States.

South Africa has never sought to be an enemy of the American people. In two World Wars and Korea, her soldiers fought alongside ours. When American pilots attacked the terrorist base camps of Col. Muammar el-Qaddafi, South Africa was almost alone among third world nations to applaud the American action.

What have the people of South Africa done to us that we are now anxious to collude with the most despotic regimes on earth in waging economic war against them? Is it necessary to destroy this country in order to save it?

Surely, Americans can "make a statement" against the discredited doctrine of apartheid without adding to the suffering of its victims. Surely, Americans can manifest their distaste for Pretoria's racial policies without collaborating with a jackal pack of hypocritical despots and Marxists, whose ambition is to bring down the South African republic.

While the Senate clamors for sanctions and the House demands total economic withdrawal—lest we be morally tainted by contact with such a country—Cuban troops, East German secret police, North Korean military advisers and Soviet "diplomats" continue to arrive in neighboring states. Serious men, their agenda does not include power-sharing in Pretoria or desegregating the lunch counters of Durban.

At times, it seems a just God has turned His face against Africa. In the first quarter century of independence, tens of thousands perished in civil wars in Angola and Mozambique and Chad and the Sudan, perhaps a million in Nigeria. Hundreds of thousands died in tribal massacres in Rwanda, Burundi and Uganda. Countless thousands succumbed to barbarism in Equatorial Guinea and the Central African "Empire." Millions have starved in the Sahel region; and in Ethiopia, the greatest human rights holocaust since the fall of Cambodia continues to unfold. Yet no Western moralists clamor for sanctions against these regimes. No Congressman has been sighted lumbering up toward the Ethiopian Embassy to get himself arrested signing "We Shall Overcome."

One wonders exactly which country on the continent Congress wishes South Africa to emulate. Which government in the neighborhood should serve as role model for the South African republic, so that she, like so many of them, can qualify for Western approbation and aid?

"Black Africa has become a theatre of barbarism and exported political sentimentality," writes Bruce Anderson in The Spectator. "Throughout the continent, 'governments' are robbing, oppressing, incarcerating, flogging, torturing and murdering their subjects—but no one in the West gives a damn."

Comes now the Congress of the United States to counsel us that social justice will be advanced on this bleeding patch of earth—if only President Reagan will join hands in choking off the last industrial engine operating on the African continent.

The answer is no. As President Reagan told the world weeks ago, we Americans will not be a party to something like that.

"We know no spectacle so ridiculous as the British public on one of its periodical fits of morality," wrote Thomas Babington Macaulay, a century and a half ago. Unfortunately, Lord Macaulay never got inside the Beltway.

Mr. WOLPE. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. CARNEY].

Mr. CARNEY. Mr. Speaker, I stand to express my disapproval of the President's veto of H.R. 4868, Anti-Apartheid Act of 1986.

The United States has expressed its outrage over apartheid—failing a response from Pretoria—we must express out sentiments in stronger language. For the United States to be a credible voice in Africa and the Third World, we must speak and act plainly. Our opposition to apartheid should be viewed as sincere and tangible.

I regard the President's policy of constructive engagement as a valid attempt to address the repressive and segregatory apartheid. Unfortunately, the reality is that Pretoria has not responded to our efforts in a manner acceptable of an ally. To the contrary, the situation is only deteriorating. Judging from the amount of time this policy has been in effect, and Pretoria's intransigent response to our patient diplomatic efforts, I now feel that the United States must take a stronger stance on this issue and send a more powerful message of disapproval to the South African Government.

I continue to believe that by accepting the Senate version of this bill, we will not be "washing our hands of South Africa," as some more radical proponents of disengagement would suggest. We must retain a voice in that country's affairs and use it constructively. The sanctions offered in the bill send a strong message of disapproval, but are not a punitive strike which will further inflame the situation in that state.

Finally, Mr. Speaker, once these sanctions are in place, we cannot turn our backs on the South African citizens nor the South African Government in the belief that we have done all that we can do. Congress must have a long-term commitment to the resolution of this dilemma, and to bringing about a just and lasting peace to this troubled nation.

Mr. WOLPE. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. MINETA].

Mr. MINETA. Mr. Speaker, on September 26, 1986, the President of the United States vetoed the Comprehensive Antiapartheid Act. In doing so, he turned his back on the millions of South Africans who are crusading for the freedom and justice now denied to them by their Government. Indeed, the President of the United States used the prestige and power of his office to sentence millions of South Africans to a life of terror and oppression.

Now, it is up to the Congress—with the full backing and support of the American people—to overturn this indecent decision by the President.

The Congress did not easily reach the decision to impose economic sanctions on South Africa, knowing as we do the severity of such a policy. But, the intransigence of the South African Government and their rock-solid commitment to apartheid leaves us no alternative. What moral suasion do we have left? The elegant rhetoric and mild rebukes used thus far have produced no discernible progress, and no promises that conditions will improve tomorrow or the next day or the day after. Without this legislation, we have no policy in place to end apartheid. On the contrary, our inactivity breathes new life into a regime that understands all too well empty gestures and unkept promises.

Ours is a nation which treasures justice; and, just as we have fought oppression at home, so must we reject a regime that would perpetuate oppression elsewhere. The South African Government is not my ally and it is not America's ally. The Government spreads more evil than it can contain. The South African Government is not our bulwark against communism nor is it a guarantee of stability. No good can come of a morally corrupt regime.

Therefore, let us not hesitate to act as one nation against apartheid. We must not cede to any President the right to seal the fate of millions to a life of poverty, of humiliation, and worst of all, of hopelessness.

We can be proud when Congress overrides the President's veto. But, we can celebrate only when all South Africans are free. And so, let us begin. Let us repudiate the President's tragic policy toward South Africa.

Mr. BROOMFIELD. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois [Mr. HYDE] a member of the committee.

□ 1825

Mr. McGRATH. Mr. Speaker, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from New York.

Mr. McGRATH. Mr. Speaker, I rise in support of the efforts to override the President's veto of the Anti-Apartheid Act.

Mr. HYDE. Mr. Speaker, punitive sanctions are a form of economic warfare that will be felt not just by the white government, but by the labor intensive industries which provide the jobs, the food, clothing, and shelter for millions of black workers.

Standing over here, with our won civil rights battles hardly over, and pointing our sanctimonious finger at South Africa certainly makes us feel good—it nourishes our supply of self-righteousness—but it moves that tragic land closer to bloody, bloody revolution, and farther away from any evolutionary solution.

What's more, we lose influence and leverage with the Government of South Africa, and leave them to confront those organized revolutionary forces such as the African National

Congress to whom free enterprise is as distasteful as apartheid.

In overriding the President's veto, we turn a deaf ear to the moderate black leaders such as Chief Buthelezi, and Helen Suzman who point out the fatal flaws in a program of punitive sanctions, all the while living under and condemning apartheid as no American can do.

We are rushing in exactly the wrong direction—what is needed is more and more investment which could result in the integration of the work place and the economic betterment of those now in poverty, and accomplish in the factories what ultimately must be accomplished in the nation as a whole.

We should be encouraging the dispossessed blacks to become urbanized, and by working in industry become an indispensable element of the South African economy. Political power will follow as it did to those blacks who migrated to the cities of America during and after World War II.

As many of you vote to override the President, let me express the forlorn hope that some day the citizens of the Soviet Union can organize labor unions and go on strike as they have in South Africa, and that Andrei Sakharov and other victims of the religious apartheid that is institutionalized in the Soviet Union can come and go from Russia as easily as Bishop Tutu can leave and reenter South Africa.

Let us await the millennium when those forces which are unyielding in the face of apartheid spend one-tenth the moral energy on human rights throughout the continent of Africa—starting with Ethiopia and working their way down the map.

The feeding frenzy is on. We all scramble to take the moral high ground. But we are to become engines in a tragedy we will live to regret.

I will support the President's veto as the correct, and yes, the moral choice.

Mr. WOLPE. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. LEVIN].

Mr. FAZIO. Mr. Speaker, will the gentleman yield?

Mr. LEVIN of Michigan. I yield to the gentleman from California.

Mr. FAZIO. Mr. Speaker, I rise in opposition to the President's veto and in support of the override.

Mr. Speaker, in vetoing this legislation, President Reagan has said no to justice, no to civil liberties, and no to the principle of freedom which each of us in this country holds dear.

He has said yes to more oppression, yes to more injustice, and yes to more violence.

But this House must override the President's veto of H.R. 4868, the South Africa sanctions bill. It's time for the United States to stand firmly and unequivocally on the side of freedom and justice once again. The black men, women, and children of South Africa are the real freedom fighters of this decade. They are depending on us, and we cannot afford to let them down.

Since the House and Senate passed their separate economic sanctions bills last year, Government repression and wide-scale civil unrest and violence have escalated not declined. Mr. Botha has shown no inclination to negotiate a peaceful settlement with the leaders of the black majority. And we must punish the Botha regime for its intransigence.

The Reagan administration's policy of constructive engagement has in fact provided no constructive progress in its six year reign. Rather than promoting "reform," the administration's policy has served to consolidate white minority rule and further entrench the abominable system of South Africa.

Contrary to the claims of critics, the economic sanctions in this bill will not hurt blacks in South Africa. It is the moderate blacks themselves who are calling for new sanctions. They insist that the long-run benefits of sanctions far outweigh any limited economic costs. Moreover, sanctions are one of the few peaceful weapons left to help force the Botha government to change.

Our country cannot sit on the fence any longer. The black South Africans need us to be strong, to be true to our ideals, to be true to our principles. That's what this vote is all about. President Reagan is unwilling to lead, unwilling to stand up for the moral imperatives that are in jeopardy this and every day in South Africa.

If President Reagan is unwilling to hand out anything more than a slap on the wrist to the Botha regime, then we in the Congress must fill that void. The costs in spilled blood, wasted lives and human oppression are far too great to ignore. The black men, women, and children of South Africa are calling out for our help, for freedom, and we must listen. We must not turn a deaf ear to their cries. If we do, the result will only be an escalation of the violence, a potential holocaust. We must override the President's veto.

Mr. LEVIN of Michigan. Mr. Speaker, the President has said, and I quote: "For us to take an action now such as some are suggesting, turning our backs and walking away, would leave us with no persuasive power whatsoever."

The truth is that trying to assuage the apartheid government of South Africa is what is undermining our persuasive power.

Secretary of State George Shultz has said, "Moral posturing is no substitute for effective policies."

The truth is that a policy soft on immorality is the one doomed to ineffectiveness.

The President says this bill would isolate America. The truth is that it is the President's unwillingness to stand tall, to stand up and be counted on this issue, that is isolating our country. A policy that makes an enemy out of a person of peace and good will, Bishop Tutu, is a policy doomed to failure, to tragic failure. The only answer is override.

Mr. WOLPE. Mr. Speaker, I yield 2 minutes to the gentleman from Louisiana [Mr. ROEMER].

Mr. ROEMER. Mr. Speaker, I thank the gentleman from Michigan for yielding this time to me.

Mr. Speaker, we are back again. As I listen to the debate today, I am really saddened by what seemed to me to be very lame excuses for us not to stand together on this. For a long time, many of us in the House have worked hard and together on both sides of the aisle to make sure that two things happened: No. 1, that America's position about apartheid is understood in every corner of the Earth; and No. 2, that the Government of South Africa felt some legitimate pressure to negotiate and to yield some freedom and opportunity to all of its citizens.

At the heart of the matter has been the organized Government of South Africa's willingness to treat human beings there like animals, with numbers and degradation by color. It is not right, and America can reach out to South Africa and the people there, but not this way.

I was not surprised when the President offered his veto. I was saddened. I was very saddened. I do not like to have to override a veto on principle. He is my President, too. But here the House must speak and speak with a single voice. We want peace and prosperity and opportunity in South Africa. And if it takes us taking the profit out of apartheid, so be it.

I hope the House can stand as one and tell the President that he is wrong. Let us override this veto. It has as much to do with our country as it does in South Africa; and in both places it puts us on the high road for the long term, and in both places it is the key to peace and opportunity. Override the veto.

Mr. BROOMFIELD Mr. Speaker, I yield 3 minutes to the gentleman from Indiana [Mr. BURTON].

Mr. BURTON of Indiana. Mr. Speaker, last week 12 people from South Africa came to see me. They were members of Inkatha. They were black South Africans speaking for 1.3 million blacks. They told me, speaking for Chief Buthelezi, as well, who represents 6 million Zulus, black South Africans, that these sanctions will work exactly the opposite of what we want them to do. They told me that it is going to play right into the hands of the Communists and the ANC and cause all kinds of problems as far as blood running in the streets down the road. They told me it is going to put hundreds of thousands of black South Africans out of work.

I want to ask a couple of questions. Do we really want to hear what the black South Africans have to say or a handful of leaders? And is everybody who opposes these sanctions racist? Is

Lucy Mvubelo, head of the garment workers union over there a racist, the largest union in South Africa, or at least it was at one time? Bishop Barnabas Lekganyane, head of 6 million black South Africans in his church, the Zion Christian Church? Chief Buthelezi, head of 6 million blacks, is he a racist? Of course not.

Let me ask a few questions because I think these are very relevant.

Do we really want to put 600,000 black South Africans out of work? There is no unemployment compensation over there. There are no food stamps. There are no welfare benefits. Three and a half million black South Africans will be without food in a very short period of time because of these sanctions. Those very same people will be ripe for revolutionary rhetoric coming from the ANC and other radical groups in a very short period of time. They are going to be the cannon fodder in this revolution.

Do we really want to do that? Should we listen to the African National Congress that represents 5,000 to 6,000 people instead of people like Chief Buthelezi who represents 6 million people?

Let us bring this home to America. How would we feel if a foreign government passed legislation that would put Americans out of work by the hundreds of thousands? In your congressional district, how would you feel? Did any country do that in the fifties or sixties when we were suffering racial prejudice in this country and racial strife run rampant in this country? Did any country do that then, and how would we have felt about that?

Last, do we want to hurt Americans? You know, 2.7 million metric tons of corn was purchased by South Africa just 2 years ago. They bought more wheat this year than the Soviet Union has, and they are a cash buyer. And there are many other products that they buy from the United States. It is going to come home to roost and to hurt us as well.

My feeling is, and I feel this sincerely, President Reagan is against apartheid. I am against apartheid. I have been there and have seen how repugnant it is. But to hurt the very people we want to help is not the answer.

So I say to the President of the United States, Mr. President, I admire you standing against this tide, because I believe you are right and I think history will prove you are right.

Mr. WOLPE. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. Fish].

Mr. FISH. Mr. Speaker, I rise in support of overriding the veto of H.R. 4868, the South Africa sanctions bill.

We are asked to undo our already modest efforts and instead follow the lead of our European allies in fashioning a policy. We are told that the sanctions passed by Congress would hurt black South Africans, and would hurt the countries bordering South Africa which rely on their trade and transportation routes across South Africa. I'd like to address each of these points briefly.

The European community—with their economic ties to South Africa—has adopted the "least common denominator" in the spectrum of sanctions. Their sanctions are far weaker than those adopted by Congress and by the 49 commonwealth nations, including the so-called front-line nations bordering South Africa to the north. These nations are calling for tough sanctions. We are asked to oppose the nations with the most at stake simply because the nations of Europe will not take a lead position in supporting strong sanctions. This is unacceptable; it is we who can and should take the lead in taking clear, positive steps.

The sanctions adopted by the Commonwealth nations after the report from the Eminent Persons Group are nearly the same as those adopted by the U.S. Congress: severing air links to South Africa, a ban on new investments and new bank loans, and a ban on the importation of agricultural goods and iron, coal, steel, and uranium. The sanctions passed by the U.S. Congress are therefore clearly in line with the policies of the other countries of the world dedicated to fostering peaceful change in South Africa. It is also clear that to do less would be to abrogate our position as world leader, a position already in doubt by black South Africans after years of hesitancy in our policies.

The Eminent Persons Group, charged with formulating a Commonwealth policy to arrest South Africa's drift to civil war and to initiate a process which might user in a new era, maintains that without support for majority rule from the United States and Great Britain, the long-term result will be an escalation of violence and counterviolence, a drawn-out guerrilla civil war, and a country destroyed. The commonwealth nations maintain that the hurt done blacks in such event would be infinitely greater than that from sanctions. They warn time is running out.

On August 8 Prime Minister Mugabe of Zimbabwe announced his intention to put into effect the Commonwealth-recommended sanctions, despite his nation's reliance on South African trade and transportation. So much for the assertion that South Africa's neighbors might be hurt by sanctions against South Africa. They understand this, but are imposing sanctions themselves nevertheless.

South Africa's blacks support sanctions and they understand clearly they may be affected. Archbishop Tutu has always supported sanctions, but the most eloquent statement of black South African sentiment was made by Winnie Mandela on the "Good Morning America" television show July 15 with interviewer David Hartmann. He asked her, "Mrs. Mandela, the U.S. Government is saying that economic sanctions against your country would hurt the people it's designed to help, that it would cause even more poverty, more problems. What's your reaction to that position by our government?" Her response: "We have told the rest of the caring world; we have appealed to democratic governments who do care, who are not Pretoria's allies, to impose sanctions on our country. We know what we are talking about. We know we shall be the casualties of that kind of measure. We know of no other course that is still open to us. We know of no other door, no other peaceful door, that is still left open for us. We are asking the rest of the caring world to impose sanctions as the only peaceful measure we know of which would reduce the violence we have in the country; which will, in fact, help us save the lives we are losing every day; which would stop the flowing of the blood of innocent men and women, the blood of innocent children, who dared to protest and did what is regarded as democratic throughout the world. To lodge a voice of protest about what you do not agree with in racist South Africa, you die for that."

By doing less than that called for by H.R. 4868 we strengthen Pretoria's intransigence. By taking the steps mandated by H.R. 4868, we exert leadership in concert with the other nations of Africa and of the commonwealth to pressure white South Africans to free political prisoners and negotiate a new order in good faith. I therefore urge my colleagues to vote "aye," override the veto of H.R. 4868, and help set a clear, firm, and positive American policy course in South Africa.

□ 1835

Mr. McKINNEY. Mr. Speaker, will the gentleman yield?

Mr. FISH. I yield to the gentleman from Connecticut.

Mr. McKINNEY. I thank the gentleman for yielding to me.

Mr. WOLPE. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin [Mr. Gunderson].

Mr. GUNDERSON. I thank the gentleman for yielding me this time.

Mr. Speaker, the dispute today if not over goals, it is over methods. Last year, I visited South Africa and last year I introduced legislation calling for conditional investment. Yet today I come before you with these conclusions.

First, we cannot and will not succeed in changing the internal policies of the South African Government and therefore we, as a country, ought to be pursuing policies in our own, long-term best interests.

Second, we must remember that with leadership comes responsibility, and I will forever remember the plea of that black woman in South Africa who said, "If the free leader of the world will not stand up for us, who will?"

Third, let us, with this in mind, remember that whether you are in South Africa, Zimbabwe, Angola or any of the countries of southern Africa, the blacks in that area, right or wrongly, fairly or unfairly, look at free enterprise and democracy and at home, in their land, see that also as meaning political repression. If we want to send a signal that freedom, free enterprise and democracy are all one, we today have to override the President's veto.

Mr. BROOMFIELD. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. Dreier].

Mr. DREIER of California. I thank the gentleman for yielding me this time.

Mr. Speaker, I would like to congratulate the distinguished ranking member of the full committee for his caring and very strong leadership on what certainly is a very difficult issue.

Mr. Speaker, I abhor apartheid. President Reagan abhors apartheid and has made it very clear in his message. he said, "Normal and friendly relations cannot exist between the United States and South Africa until it becomes a dead policy."

Mr. Speaker, a number of people have intimated here, in fact have said strongly, that we will not see a satisfactory resolution of this until we do impose sanctions. I happen to believe that the misery will be greater than apartheid. As the President also said, "The misery of the people who already have suffered enough is too great." We have to look at what the people really want in South Africa. Every single survey that has been taken has overwhelmingly indicated that the people oppose our imposition of sanctions.

The Institute for Sociological and Demographic Research of the Human Sciences Research Council found that 67 percent of all blacks over 18 opposed apartheid and opposed sanctions. Every other organization has done likewise that has taken a survey.

I urge support of the President's veto.

Mr. BROOMFIELD. Mr. Speaker, I yield 1 minute to the gentleman from Michigan [Mr. Pursell].

Mr. PURSELL. I thank the gentleman for yielding me this time.

Mr. Speaker, a couple of years ago, I had the opportunity to visit Africa. I think if you walk down the streets and you talk to the people, the leaders, the blacks and the whites, I think it is obvious that this is a moral issue. That this is a political issue. That this is an economic issue, even in our best interests, if we were to look at it from a very selfish standpoint.

The moral issue is: Will the African people eventually move toward the East or toward the West? I think it is very important today that those who made an early commitment to support and cosponsor the original Gray bill stand up and be counted.

This is one of the easiest votes for me in the 10 years that I have been in Congress. I think we should override the President's veto.

Mr. WOLPE. Mr. Speaker, I yield 1 minute to the gentleman from Texas [Mr. Leland].

Mr. LELAND. I thank the gentleman for yielding me this time.

Mr. Speaker, I come to the well not as a Member of Congress except by the privilege that I have to stand here, but as a human being who cares about the plight of the humanity of those people in South Africa.

I come here to plead with my colleagues on the Republican side of the aisle to support the override. To support something that has not been done yet, so therefore, we have not been able to evaluate whether or not sanctions do indeed represent an effective way by which we deal with the abhorrent apartheid that is imposed on those millions of people.

I speak from an emphatic perspective because I have learned my black history and what happened in this country when black people were fully employed in this country as slaves.

The same thing is happening to those people in South Africa. All I can say is that we were willing, my forebears were willing to suffer all kinds of ill fate, if you will, just to be free. All the people of South Africa are asking is that they should be free. Give them an opportunity and let us, America, stand up and do what is right. Not what is political or what is practical. Let us do what is right.

The President is wrong on this issue. Mr. Speaker, please, I hope that my colleagues in this House will listen to us who are asking for this Presidential veto override.

Mr. BROOMFIELD. Mr. Speaker, may I inquire as to how much time is remaining?

The SPEAKER pro tempore (Mr. Boland). The gentleman from Michigan [Mr. Broomfield] has 10½ minutes remaining, and the gentleman from Michigan [Mr. Wolpe] has 10 minutes remaining.

Mr. BROOMFIELD. Mr. Speaker, I yield 1 minute to the gentlewoman from Illinois [Mrs. Martin].

Mr. WOLPE. Mr. Speaker, I also yield 1 minute to the gentlewoman from Illinois [Mrs. Martin].

The SPEAKER pro tempore. The gentlewoman from Illinois [Mrs. Martin] is recognized for 2 minutes.

Mrs. MARTIN of Illinois. I thank both gentlemen from Michigan for yielding me this time.

Mr. Speaker, back home, we believe that if you work, you have a chance to succeed. Your folks don't have to be rich—they don't have to have been there for 500 years. If you try, you can even be President.

In fact, my district produced this President from just such a background.

But in other parts of the world this dream has died, killed by those who limit opportunity, deny talent, and destroy potential.

That is why, representing that part of America that is home to President Reagan, I must rise to oppose him today.

For, Mr. President, in this veto message about South Africa, you are wrong. What if you had been refused an education in Tampico, IL, because of your color? What if your parents couldn't have moved to Dixon because of travel passes? What if you could not be President because your supporters were denied the right to vote?

This issue finally comes to that—not pious platitudes about specious economic problems or arrogant axioms about patience.

It is a vote on keeping a dream alive. The vote matters not because of what it says about South Africa; it matters more because of what it says about America.

To the party of Lincoln: We cannot forget our roots, and we must vote to override the President's veto

Mr. BROOMFIELD. Mr. Speaker, I yield 2 minutes to the gentleman from Montana [Mr. Marlenee].

□ 1845

Mr. MARLENEE. Mr. Speaker, embargos have been labeled the poison that has killed American agriculture. A vote for the override of the President's veto is a vote for sanctions, make no mistake about that. And a vote for sanctions is essentially a vote for a self-imposed grain embargo against one country.

Another vote of poison for the American producer, a vote of poison exchanged for an illusionary good that we are going to do for some nation. Keep in mind that since June of this year, a short while ago, South Africa has purchased 160,000 tons of wheat, and this body is subsidizing Communist Russia to take some grain.

What a confusing world this Congress creates, what a confusing world. Subsidizing our enemy so they will take grain, and yet, a trading partner that takes cash, that has taken more grain than the Soviet Union, is going to be essentially embargoed.

Our trading partner and friend, South Africa, has purchased over 1.2 billion dollars' worth of U.S. products in the past year, and this body is going to cut off that trade? I never cease to marvel.

I never cease to marvel at the business acumen of Congress. No wonder we have a trade deficit. No wonder we have an overwhelming deficit in our own affairs, internal deficit.

Vote to sustain the President's veto. No more poison for producers, no more sanctions, no more embargoes against American agriculture.

Mr. WOLPE. Mr. Speaker, I yield 1 minute to the distinguished gentleman from California [Mr. MATSUI].

Mr. GEPHARDT. Mr. Speaker, will the gentleman yield?

Mr. MATSUI. I yield to the gentleman from Missouri.

Mr. GEPHARDT. Mr. Speaker, I rise in favor of overriding the veto of the President.

Mr. Speaker, our presence here today should have been unnecessary, for the voice of the American voters has been loud and clear. Unfortunately, their message was not heard in the White House. By vetoing this bill, President Reagan has sent a misleading signal to South Africa and has made effective reforms even more difficult.

More than 3 months ago the House voted for a tough and realistic program of antiapartheid sanctions. Then, when the Senate followed our lead with a less restrictive bill, we agreed to their language without lengthy debate. We agreed because we believed this legislation is important and timely. We also believed its moderation would convince the President to join us in a bipartisan willingness to back up our concern with concrete actions. He would not even meet us half way.

Congress does not expect American sanctions to crumble the system of apartheid overnight. But we should not minimize the importance of our example in mobilizing international action and in convincing the South African Government to begin a real dialogue with all her citizens. In addition, the world still looks to us for moral leadership; still hopes we believe the words in our own Declaration of Independence. Sanctions against the Government of South Africa are an important expression of our faith in democracy. They serve notice that we will not condone apartheid.

Yes, an effective international program of sanctions may impose hardship on the black majority in South Africa. Yet, who are we to say that their dignity is less important than our own, that their struggle for equality is not worth sacrifice? Americans should make it clear that we are committed to justice in South Africa. We must contribute to a solution rather than to the problem.

I am confident that the House of Representatives and the Senate will override this veto by near-unanimous votes. The message will be clear, not just to South Africa, but to our friends around the world.

Mr. RICHARDSON. Mr. Speaker, will the gentleman yield?

Mr. MATSUI. I yield to the gentleman from New Mexico.

Mr. RICHARDSON. Mr. Speaker, I urge an override of the President's veto.

One thing was clear from our recent debate on the Anti-Apartheid Act of 1985—we all deplore the apartheid system in South Africa and are searching for ways that we as a nation can express our support for human rights and democratic reforms in that troubled country.

The legislation before us would prohibit the importation of South African and Namibian coal, uranium ore, and uranium oxide into the United States. Despite the fact that our country has among the largest coal deposits in the world, we continue to increase our coal imports from South Africa—the leading importer of coal to the United States. Our uranium imports from South Africa and Namibia have increased 350 percent since 1981—and this is at a time when the number of domestic uranium mines has dropped from 362 to 15 and 90 percent of our miners have lost their jobs.

While the importation of these minerals holds economic implications for this country, it is also a significant moral issue—labor conditions for black miners in South Africa and Namibia are deplorable. Black miners have virtually no job security; they must contract for a limited number of months and then reapply for their jobs. They are not allowed to live with their families; white miners are. They are prohibited by law from holding skilled labor positions; these slots are reserved for white workers only. They must pay for their health insurance; white miners receive free insurance. And their low wage—one fifth that of the white miner—has artificially depressed the world price of uranium and coal, making U.S. coal and uranium less competitive.

Some 60,000 American coal miners are out of work; our uranium industry is in danger of extinction. We in the Congress now have the opportunity to right two serious wrongs—to hasten the end of apartheid policies which are anathema to our way of life and to show American miners we are willing to take strong measures to put them back to work. I accordingly urge support for overriding the President's veto.

Mr. MATSUI. Mr. Speaker, I come in strong support to override the President's veto. There are basically two reasons I would like to set forth as to why we should do this.

I have heard on the other side of the aisle that there are a lot of jobs to be lost if, in fact, we impose the economic sanctions in our bill. I find that very hard to swallow and understand because I thought that this country, this great Nation of ours, stood for something more than merely materialistic things.

If, in fact, we would have made that statement in the 1770's, we would still today be under British rule. I think that the people of South Africa deserve the right to vote; they deserve freedom from imprisonment without justice, without cause. That is the reason why this battle is being fought, not because of the issue of jobs.

Second, I think that we are giving up our moral leadership. The Members all saw what the Commonwealth nations did just 3 months ago, when they refused to come up with strong sanctions. The reason they did that is because they want to find out what this country would do, what signals we would send.

Just last Friday, a number of us met with a leading official from the nation of Japan, and we asked him why Japan was not imposing stronger sanctions. His answer to us was, "We are looking at you; your President has these sanctions and we are following him."

We have a responsibility to show strong moral leadership on this issue. I urge an override.

Mr. WOLPE. Mr. Speaker, I yield 30 seconds to the gentleman from Florida [Mr. BENNETT].

Mr. BENNETT. Mr. Speaker. I hope we will vote to override the veto.

We are talking here today about the difference between quantity of material things and the quality of life.

It was said in the southland from which I came, and come, and am still a part, that the black people needed their jobs and that slavery should continue. A similar thing is happening now in South Africa.

I am sure the people there want the quality of life. They want to be free; they want to be able to vote; they want to participate in their government.

America should stand by them. America should stand for principle, stand for democracy against totalitarianism of any form.

Mr. WOLPE. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. GARCIA].

Mr. GARCIA. Mr. Speaker, I rise in support of overriding the President's veto.

We are considering today a bill that is in reality a watered down version of the bill that we originally passed. We are, therefore, being forced to override the President's veto of legislation that is, in the eyes of many of us, not nearly strong enough.

We are sending a message primarily to three groups with our action today. They are: South Africa's black, colored, and Asian communities; the people of the United States; and the White House. We are letting all three know that Congress is on the right side of this issue. We are on the side of morality and dignity. We are letting the President know that if he can levy sanctions against Poland, Libya, and Nicaragua then he should certainly be able to do the same against South Africa.

The European Economic Community and the Commonwealth of Nations have all decided that sanctions are not only appropriate but necessary. We must not ignore them and hide behind the straw man that the President is trying to create, that somehow if we don't override this veto we will help South Africa's majority community. We would not. We must listen to Allan Boesak, Winnie Mandela, and Desmond Tutu. They represent the voices of sanity and reason in South Africa. They represent the right side of this issue. If the so-called front line states in southern Africa are willing to support sanctions—and they clearly have more at risk than we do—then we should at the very least listen to their call for action against South Africa. We can do no less.

We are not merely arguing about foreign policy with this legislation. We are arguing about saving a nation. The status quo cannot be maintained. There must be change, real change, now. This is not Boer Bashing. This is the Congress of the United States, on behalf of the people of the United States, taking a stand in favor of the poor and oppressed in South Africa.

If what those who oppose sanctions in South Africa really fear is a Communist take-over of that nation, then we need only continue with our present course and we will make that a reality. We will push South Africa into the hands of our enemies. We must let the people of South Africa know that we are on their side. We must let those who have built South Africa with their sweat and poverty know that we will stand by them in their hour of need.

I visited Zimbabwe a couple of years ago, and I was impressed at how efficiently that nation functioned, both economically and politically. I realize that South Africa is not the same as Zimbabwe, but there is clearly a lesson to be learned from the success of that society.

I understand that the President has just said that he will impose some limited sanctions if we do not override his veto. That's too little, too late. If the President had wanted to truly work with us on this issue, then he had plenty of time. Now, it is our turn to let him know how we feel. I urge my colleagues to override his veto and cast a vote for morality.

In closing, I would like to leave you with a poignant quote from an editorial in today's New York Times:

"What if 1,800 whites had been killed by some regime somewhere in the world," Mr. (former Australian Prime Minister Malcom) Fraser remarks. "Have we got to such a stage that we accept as normal for racist security forces to kill blacks, and that's part of the 20th century? To that terrible question, Mr. Reagan's veto offers a more terrible answer."

Finally, as part of my statement, I am including a list of states that already have imposed sanctions on South Africa, as well as a list of sanctions being imposed by other nations and economic communities, taken from this week's congressional quarterly.

SANCTIONS: SOME STATES ARE WEIGHING IN

State	Date adopted	Type of policy	Assets in funds covered by policy	Assets to be sold to meet policy	Amount sold to date
California	9/85	Divestment [1]	$52.3 billion	$6.3 to 7 billion	0
	7/86	Divestment [1]	9.4 billion	3.1 billion	0
Colorado	8/85	No new investment [1]	983 million	0	0
Connecticut	6/82	Divestment [1]	4 billion	440 million	$86.4 million.
Florida	6/86	No new investment	11.5 billion	0	0
Iowa	5/85	Divestment	3.6 billion	25.5 million	21.2 million.
		Banking restrictions	([3])	0	0
Kansas	9/85	Divestment [1]	3 billion	0	23–24 million.
Louisiana	7/85	Banking restrictions	([3])	([3])	0
Maine	6/85	Divestment [1]	1.3 billion	0	400,000 to 800,000.
Maryland	3/84	Banking restrictions	500 million	0	0
	5/85	No new investment	8 billion	0	0
	5/86	Selective purchasing	No applicable	Not applicable	Not applicable.
Massachusetts	1/83	Divestment [1]	3.25 billion	0	91 million.
	7/86	Not industrial bonds	Not applicable	Not applicable	Not applicable
Michigan	12/80	Banking restrictions	([3])	0	0
	12/82	Divestment [2]	At least 267 million	At least 424,000	At least 62.98 million
Minnesota	10/85	Divestment	10.15 billion	0	0
Nebraska	4/84	Divestment	600 million	3.3 million	60.5 million.
New Jersey	8/85	Divestment	17 billion	4.4–5.4 billion	2.9 billion.
New Mexico	11/85	Divestment [1]	3.5 billion	Less than 180 million	([3])
North Dakota	7/85	No new investment [1]	950 million	0	0
Oklahoma	6/86	Banking restrictions	([3])	([3])	([3])
Rhode Island	6/85	Divestment	1.8 billion	126.9 million	54.8 million.
Vermont	1/86	Divestment [1]	230 million	41–46 million	0
	6/86	Divestment	100 million	0	0
West Virginia	5/86	Divestment [1]	3.9 billion	570 million	85 million.
Virgin Islands	10/84	Divestment	304 million	([3])	([3])

[1] Policy adopted by administrative action.

[2] This law applies to the 13 state universities and colleges in Michigan. The figures in this line are based on responses that have come in from Michigan State University, the University of Michigan, and Wayne State University.

[3] Figures not available.

Source: Investor Responsibility Research Center, Inc.

SANCTIONS LEVIED AGAINST SOUTH AFRICA BY NATIONS AND ECONOMIC COMMUNITIES

	Divestment	Bank loans	Import restrictions	Export restrictions	Landing rights/tourism
H.R. 4868 (cleared by Congress Sept. 12, 1986).	Bans new corporate investment in South Africa and any new loans to government agencies ($1.3 billion in remaining U.S. investments in 1985).	Prohibits U.S. banks from accepting deposits from any South African government agency ($329 million held by U.S. banks for South African banks and government agencies in March 1986). Bans loans to South African government agencies ($148 million outstanding in 1985).	Bans import of steel and iron ($293.6 million in 1985). Bans import of uranium and coal ($140 million, uranium; $43.4 million, coal, in 1985). Bans import of Krugerrand gold coins (1984: $486 million; 1985: $101 million before ban took place). Bans textile imports ($55.1 million in 1985). Bans import of agricultural products ($52 million in fruits and vegetables and $129 million in other products in 1985). Bans import of agricultural products ($52 million in fruits and vegetables and $129 million in other products in 1985)..	Bars export of computers to South African agencies enforcing apartheid. Prohibits petroleum or crude oil exports to South Africa..	Ends landing rights in United States for South Africa Airways (95,000 passengers in 1985).
Reagan Order No. 12532 (extended Sept. 4, 1986).		Bans new loans by U.S. banks or other agencies to any "apartheid-enforcing agency" in South Africa.	Bans import of Krugerrands with option of waiving the order should South Africa begin implementing reforms.	Bars export of computers to South African agencies enforcing apartheid. Bars export of nuclear technology intended for nuclear production facilities..	
Great Britain (announced or renewed Aug. 5, 1986).	Calls for voluntary end to new investment in South Africa ($418 million in 1983).		Bans import of steel and iron ($45 million in 1985). Bans import of Krugerrands ($7 million in 1985). Monitoring of an embargo on trade in arms and paramilitary gear.	Halts oil exports to South Africa. Halts export of "sensitive" equipment destined for use by South African police and armed forces.	Calls for a voluntary end to promotion of tourism. Recalls military attachés accredited to South Africa and refuses to accredit their counterparts in European Community.

SANCTIONS LEVIED AGAINST SOUTH AFRICA BY NATIONS AND ECONOMIC COMMUNITIES—Continued

	Divestment	Bank loans	Import restrictions	Export restrictions	Landing rights/tourism
European Economic Community (announced or renewed Sept. 16, 1986).	Bans new investment ($380 million net investment by the community, excluding Britain, in 1984; $418 million investment by Britain in 1983).		Bans import of iron and steel effective Sept. 27 ($424 million to 12 community nations in 1985). Monitoring of an embargo on exports and imports of arms and paramilitary gear.	Halts oil exports to South Africa. Halts export of "sensitive" equipment destined for use by South African police and armed forces.	Recalls military attachés accredited to Pretoria and refuses to accredit their counterparts in European Community. Refrains from cultural and scientific agreements and freezes sports and security agreements.
Commonwealth of Nations (endorsed Aug. 5, 1986, by Canada, Australia, the Bahamas, India, Zimbabwe and Zambia).	Bans new investment or reinvestment of profits earned in South Africa (no new investments except by Britain in 1986; British investments were $418 million in 1983). Bans government contracts with majority-owned South African companies.	Bans new bank loans (outstanding South African debts to Britain were $7.1 billion in 1985; few new loans approved in 1986). Ends double taxation agreements.	Bans import of agricultural products ($1.1 billion in 1983). Bans government procurement of items contracted for production in South Africa. Bans import of uranium. Bans import of coal ($49 million in 1983). Bans import of iron and steel ($115 million in 1983). Bans Krugerrand imports, as of Sept. 10.	Ends government assistance to, investment in, and trade with South Africa ($2.6 billion in export credits guaranteed by Britain in 1985).	Bans air links with South Africa. Bars South Africans from obtaining visas at Commonwealth consulates in South Africa. Bans promotion of tourism (366,000 tourists from Commonwealth visited, 46 percent of all tourists in South Africa in 1984). Bars government funding for trade missions to South Africa.
Japan (announced or renewed Sept. 19, 1986).			Calls for Japanese to refrain from purchase and import of Krugerrands, effective October 1985). Bans import of iron and steel ($200 million in 1985).	Bans export of computers to South African agencies that enforce apartheid, effective October 1985.	Suspends air links with South Africa. Prohibits use of South Africa Airways by Japanese government officials. Suspends issuing of tourist visas for South Africans. Requests Japanese citizens to refrain from traveling to South Africa.

Note: Listed loan and trade figures are approximations.

Sources: South African Embassy, British Embassy, Japanese Embassy, European Community Information Service, Investor Responsibility Research Center, The New York Times, Aug. 16, 1986.

Mr. WOLPE. Mr Speaker, I yield such time as he may consume to the gentleman from South Carolina [Mr. TALLON].

Mr. TALLON. Mr. Speaker, I rise in strong support of H.R. 4868 and urge all Members to override the President's veto.

This House now stands on the brink of historic legislation. Through the Anti-Apartheid Act, we will establish a national policy of opposition to South African racist governance by threat, violence and repression. One which defends essential democratic principles: the basic rights to vote and to participate on a one-person, one-vote basis in the national Government. We will establish a policy that puts us clearly on the side of change in South Africa.

The Anti-Apartheid Act would prohibit new United State business investment in South Africa, ban some imports, including steel and other products from corporations controlled by the Government, and deny landing rights in the United States to the Government-owned South Africa Airways, along with imposing a number of other restrictions aimed at the government and its commercial enterprises.

It threatens additional, stronger sanctions unless South Africa makes substantial progress within a year to end its apartheid system of racial segregation. The measure also provides for rescinding the sanctions if the South African Government takes steps such as lifting segregationist rules, freeing antiapartheid leader Nelson Mandela, legalizing all political parties and negotiating with black political leaders.

Importantly, this legislation allows States and local governments to continue to individually regulate financial or commercial activity with regard to South Africa. It in no way preempts the efforts or decisions of State and local governments respecting South Africa.

These sanctions represent our first significant step to put moral force behind our rhetorical opposition to apartheid. If rhetoric would change the situation, the Government would have long since folded, and there would be no apartheid today. But that has not happened. South Africa has continued its rule of institutionalized racism, sustained by United States compliance.

The administration has come out quite soundly in support of the status quo in South Africa. Let us think for a moment what a status quo for South Africa means. Status quo in South Africa means repression of 22 million blacks who are deprived of the most basic rights such as the right to vote, to chose a job, an education or a place to live.

South Africa is the only nation on Earth that constitutionally enshrines racism by denying blacks the basic right to vote, the right to move about, freedom of association, equal protection under the law, virtually all of the constitutional freedoms that we know and cherish in this country.

Over the last 20 years some three and one-half million blacks have been relocated by the Government, forcibly onto worthless patches of land. Eight million of them have been stripped of their citizenship. During that same period of time, U.S. investment has grown from about $150 million to a current combined direct and indirect investment of $14 billion. But as the American role has grown in South Africa, so has the tyranny of the South African Government.

Violence and government repression have reached tragic new level in South Africa. The news media carries daily reports of brutal and senseless attacks by the white government against the blacks of South Africa. We see blacks seeking political and humanitarian rights are beaten and imprisoned. Meanwhile, the Government has prohibited almost all public dissent, closed opposition newspapers, and banned television and other press coverage of unrest and police actions.

Mr. Speaker, as the traditional leader of the free world, our Nation has to take a stand. And in the absence of leadership by the President, it is up to the House of Representatives to put America squarely behind liberty and equality. And this is in our own interest because I am certain that blacks in South Africa will inevitably come to power. As a nation, we must be at the time in a posture to be able to say that we were on the right side of this most important social justice issue. I hope my colleagues will join me in sending this message of message of U.S. support for peace and democracy. It is a message we can all be proud of.

Mr. WOLPE. Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin [Mr. MOODY].

Mr. MOODY. Mr. Speaker, I rise in strong support of the override.

Mr. Speaker, there are few issues in this country that touch the hearts and souls of Americans as stongly as the subject of South Africa and apartheid. We have not forgotten our own country's battles against slavery, racial discrimination, and segregation. From Abraham Lincoln's Emancipation Proclamation to Rosa Parks' valiant determination to sit at the front of a Montgomery bus, we as a nation have developed values that simply will not let us forget the injustice of blatant and violent racism.

We all cringe at the moral stench of apartheid. We are all outraged at the system in South Africa. The debate here is over how best to get South Africa onto a path toward true representative democracy, and how to keep it moving on that path at something more than a snail's pace.

Tragically, President Reagan's South African policy statements are greeted with cheers from the Botha government. The policy itself associates our country with the crimes of an international pariah and leaves the machinery of repression intact. Such a policy is simply not good enough.

Our country was lauched in 1776 with these words:

> We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, that whenever any form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it.

How can a nation founded on these principles be satisfied with a policy that does nothing more that gently coax the oppressor to reform, while asking the oppressed to be patient? If we are truly committed to the philosophy penned by Thomas Jefferson, we cannot simply suggest change, we must insist upon it.

President Reagan believes sanctions against South Africa will only hurt those we are trying to help. I believe those people victimized by apartheid are willing to take the same risks our Founding Fathers were in order to ensure their freedoms and civil rights. I believe they are looking to us for help, conscious that there may well be short term costs.

American slaves were not guaranteed food or shelter when they were freed. Unable to read and write, many of them faced great adversity and hardship. But would anyone dare to suggest that the slaves should have been kept in shackles? Would anyone dare to suggest that the cause of freedom does not burn deeper in the heart of man than the desire for economic certainty? I don't think so, and I hope this is not what the President is suggesting.

As Thomas Paine said, "Tyranny, like hell, is not easily conquered." But we have a moral and historical obligation to try, Mr. Speaker. We know who is right and who is wrong in South Africa, and it is time we aligned ourselves with those who are right. I urge my colleagues to support the Anti-Apartheid Act and to override the President's veto.

Mr. WOLPE. Mr. Speaker, I yield such time as he may consume to the gentleman from the Virgin Islands [Mr. de Lugo].

Mr. de LUGO. Mr. Speaker, I rise in strong support of the override.

On June 18, 1986, this House overwhelmingly passed H.R. 997, a bill of which I was proud to be an original cosponsor, and which called for strong economic sanctions against the South African Government. This bill was supported by the American people as well as a majority of people around the world. Even the South African people, those who stand to lose the most under the provisions of the bill, have argued for and encouraged us to impose economic sanctions because they see it as the last peaceable means to bring about positive changes in that country. And yet, the Reagan administration continues to oppose economic sanctions, while advocating its failed policy of constructive engagement.

Today we must send another clear signal to the White House and the Presidential palace in Pretoria, that the American people have had enough and demand that they take action to end the abhorrent system of apartheid. The American people no longer want their Government to pay lip service to the ideals of democracy while at the same time supporting the system that feeds on racism, denies basic justice, promotes the destruction of the family unit, and continues to deny opportunities to children solely on the basis of their skin color. No; we will no longer condone these actions, directly or indirectly.

The measures that we are proposing today are far from adequate. But it is a start. It is a start to tell Pretoria that we are serious; that we, the United States Congress, will no longer give it the economic or political support of the American people until the system of apartheid is abolished. My colleagues, much remains to be done. But let this be the day when in spite of the fact that the President has acted contrary to the will of the American people we do our jobs by expressing the wishes of the American people and pass this legislation.

Mr. Speaker, I urge all of my colleagues to vote for this override. Let this be the beam of hope that we send to the South African people to say that we understand their struggle and that we will actively support them and do whatever we can to bring about the end to the abhorrent system of apartheid.

Mr. WOLPE. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. Ackerman].

Mr. ACKERMAN. Mr. Speaker, I rise in support of the override.

Mr. WOLPE. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. Hayes].

Mr. HAYES. Mr. Speaker, I rise in overwhelming support of the motion to override the President's veto of H.R. 4868, the Anti-Apartheid Act.

Unfortunately, the Reagan administration has again missed a prime opportunity to stand up and show the free world that America lives by the principles on which our Nation was founded—liberty and justice for all. By vetoing this legislation, President Reagan has confirmed the beliefs of those who contend that his administration is not really interested in "constructive change" in South Africa. After 5 years of constructive engagement, the system of South African apartheid is still alive and well.

Black South Africans don't want a modernized version of apartheid, they don't want it stabilized, they don't want it weakened, and they don't want it reformed; they want it dismantled.

The President contends that this legislation will shut the door for further United States leverage in southern Africa. If the United States has so much leverage, where is it? Why hasn't it, after 5 years of constructive engagement, provided any positive improvement in the welfare of black South Africans? Critics say that by imposing these sanctions, we will hurt the very people we are trying to save. Yes, there is no denying that they will be affected. In the struggle for civil rights in this country, black Americans suffered hardships during the economic boycotts in the South. What happened as a result? Those short-term hardships turned into long-term freedoms.

Black South Africans will also suffer short-term hardships. Even moderate black South African leaders acknowledge that no matter what problems sanctions may cause, they can be no worse than what the Government has already done. The net effect of those short-term hardships will be achieving long term political and economic freedom.

The Government of the Republic of South Africa has shown no willingness to change. Constructive engagement certainly failed to budge it. President Reagan's limited sanctions, proposed only to short-circuit the will of this Congress, failed to budge it. We now have the opportunity to put our Government clearly and convincingly on the side of freedom. We have the opportunity to put human rights before profit rights. I urge my colleagues, on both sides of the aisle, to reject the President's veto. Prove to the world that this is in fact the land of liberty and justice for all. Stand up to apartheid and vote to override the veto.

Mr. WOLPE. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. Owens].

Mr. OWENS. Mr. Speaker, to have the leader of the free world and the primary advocate of Judeo-Christian values stand in the road to block the only significant steps toward a peaceful solution to the problem of oppression in South Africa is indeed a tragedy. It is a tragedy not only for the suffering black people of South Africa, it is also a tragedy for civilized people everywhere. If justice cannot be achieved by peaceful means in South Africa, then it will be accomplished by violence. The black majority of South Africa will be free in this century. By closing the gates to the peaceful process, President Reagan guarantees an inevitable bloodbath. This blood will be on the hands of the leader of the free world. Our only hope now lies with the Congress of the United States. This awful catastrophe of bloody upheaval can be averted only by overriding the President's veto. And after the override of this veto, Congress must hold firmly to the reins and maintain its initiative in the shaping of policy for southern Africa. Our executive branch of government has failed humanity. The challenge now belongs to the Congress. We must continue to act to guarantee that in our time there can be revolution and change without massive upheaval and bloodshed. Congress must act repeatedly to guarantee that in South Africa the best in mankind is allowed to triumph.

Mr. BROOMFIELD. Mr. Speaker, I yield 30 seconds to the gentleman from New York [Mr. Gilman].

Mr. WOLPE. Mr. Speaker, I am pleased to yield an additional 30 seconds to the gentleman from New York [Mr. Gilman].

Mr. GILMAN. Mr. Speaker, I rise in strong support of the motion to override the President's veto of the Anti-Apartheid Act of 1986, H.R. 4868.

Mr. Speaker, I very much regret that our President decided to veto this legislation. The Anti-Apartheid Act is a moderate, though pointed, reminder to the South African Government and to the South African people that the American people want the apartheid system dismantled, and are willing to alter our relationship with South Africa to see that that goal is achieved. This is no time for business-as-usual, while thousands of South Africans are still imprisoned on flimsy evidence, and while the South African Government brutally suppresses political dissent in its black community in its present state of emergency.

May I remind my colleagues that this legislation is quite a bit milder than the bill which was passed by this body in June. We do not call for mandatory disinvestment. We do not ban all South African goods from entry into the United States after a date certain. Rather, we selectively ban certain imports and exports. Our sanctions legislation contains provisions designed to cushion the impact of the legislation on the black community, who after all do not bear any responsibility for the present Government's policies. Our legislation, which also bans new investments in South Africa, is calculated to make our point, rather than cause random damage to the South African economy.

Soon after the Anti-Apartheid Act was sent to the President, 40 House Republicans joined with me in a letter to the President urging that he not veto the bill. Our letter pointed out that majorities of both parties in each House supported the legislation and asserted that the legislation "represents the consensus of American views on South Africa." I circulated that letter, because I feel that we, the lawmaking branch of the Government, should set the policy, and that the President should cooperate with us. However, should he feel that he cannot approve the bill, we must do our duty and see that it is passed notwithstanding his objection.

Accordingly, Mr. Speaker, I urge my colleagues to vote for the pending motion to override the President's veto.

Mr. Speaker, I am submitting the full text of our letter to the President to which I referred, together with a list of signatories:

SEPTEMBER 19, 1986.

DEAR MR. PRESIDENT: As Republican Representatives who supported the House's decision to agree to the Senate amendments to H.R. 4868, the Anti-Apartheid Act of 1986 we respectfully request that you not veto that legislation.

We feel that the sanctions contained in the bill, while moderate, clearly reflect the sentiment of the American people that economic pressure should be brought to bear on the South African government as a means of encouraging it to disband the apartheid system. It contains a number of safeguards designed to minimize harm to Black individuals and businesses, addressing a vital concern which we share with you. While this bill contains a number of important provisions, few if any of us, agree with the entire bill.

Nevertheless, this legislation, which was passed by overwhelming margins in both the House of Representatives and the Senate, with strong bipartisan majorities in each House, represents the consensus of American views on South Africa. We feel that it is important that the policy embodied in this act should be enacted into law, and we urge you to lead our Nation in that direction.

With best wishes,

Sincerely,

Benjamin A. Gilman (NY); Doug Bereuter (NE); Sherwood L. Boehlert (NY); Hank Brown (CO); Rod Chandler (WA); William F. Clinger, Jr. (PA); E. Thomas Coleman (MO); Silvio O. Conte (MA); Lawrence Coughlin (PA); Joseph J. DioGuardi (NY); Hamilton Fish, Jr. (NY); William F. Goodling (PA); Bill Green (NY); Steve Gunderson (WI); Paul B. Henry (MI); Elwood Hillis (IN); Frank Horton (NY); James N. Jeffords (VT); Nancy L. Johnson (CT); Jim Leach (IA); Norman F. Lent (NY); John McCain (AZ); Raymond J. McGrath (NY); John R. McKernan, Jr. (ME); Edward R. Madigan (IL); David O'B. Martin (NY); Lynn Martin (IL); John R. Miller (WA); Guy V. Molinari (NY); Sid Morrison (WA); Carl D. Pursell (MI); Thomas J. Ridge (PA); John G. Rowland (CT); Claudine Schneider (RI); Christopher H. Smith (NJ); Olympia J. Snowe (ME); Barbara F. Vucanovich (NV); Robert S. Walker (PA); Vin Weber (MN); George C. Wortley (NY).

Mr. WOLPE. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. BOLAND].

Mr. BOLAND. Mr. Speaker, we have reached a point in the debate on South Africa that most of us would have preferred to avoid.

Both the House and Senate have forcefully endorsed legislation establishing economic sanctions as the means by which to communicate to the Government of South Africa the repugnance with which the people of the United States view the policy of apartheid.

President Reagan has, unwisely, in my judgment, vetoed that legislation.

I intend to vote to override the President's veto and I urge my colleagues to do the same.

Mr. Reagan's position on apartheid stands Teddy Roosevelt's "Big Stick" policy on its head.

The administration verbalizes its opposition to apartheid with words which sound quite convincing.

But they are words with nothing behind them.

The President's policy of constructive engagement has been rejected by this Congress for the best of reasons—it just doesn't work.

It doesn't convince South Arican officials that we are serious about the problem of apartheid, and it doesn't convince the millions of South African people oppressed by that system of discrimination that the United States is their ally.

The President's South African policy has failed, but instead of fashioning a credible alternative, he seeks to perpetuate it.

The modest program of economic sanctions put in place last year was the administration's reaction to a stronger plan passed by this House.

This year, after 12 months of imperceptible progress on the diplomatic front, and after countless acts of violence and civil disarray in South Africa, Congress has voted to make greater use of the only leverage we have with the South African Government, our economic relationships.

We have been joined by corporations, universities, and State governments from across our Nation.

Inexplicably, the administration, instead of upping the ante at this critical time, wants to fold its cards.

And as a result, it will deal a crushing blow to the image of the United States, as a force, for positive change in the world.

No one argues that economic sanctions are a perfect tool.

They are however, the only means available to the United States, to clearly demonstrate that the continuation of apartheid makes impossible the conduct of normal affairs between our country and South Africa.

It is said that sanctions most harm those we most want to help.

That argument assumes, that the political, social, and economic situation in South Africa is static.

But it is not.

That country is moving toward a terrible day of reckoning, the consequences of which, for all South Africans, cannot possibly be compared to the effects of United States imposed economic sanctions.

The only way to avoid that day is to encourage the South African Government to dismantle apartheid—now.

Sanctions can do that.

If we do not apply them, if we give South African officials reason to doubt our meaning or resolve, we hasten the arrival of a human and economic catastrophe in that nation.

Today, this House must choose.

Do we stand with the oppressed in South Africa, or their oppressors?

The ideals upon which our country was founded, and our history as a nation, should make our choice clear.

Override the veto.

☐ 1855

Mr. WOLPE. Mr. Speaker, I yield 30 seconds to the distinguished gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. Mr. Speaker, this is a historic vote. We can learn from the past. The world stood idly by during the Nazi era when millions of people were massacred.

Apartheid is the moral equivalent of nazism. We cannot stand idly by again. We are the leaders in the world.

This vote reflects the ideals of our country. This vote reflects our view of basic human rights.

This vote reflects our morals, our standards.

The time is now for our country to say no to apartheid. The world is watching us today. Will we be idle, as the world was during the Nazi era?

This is an historic vote. Vote "yes" to override the President's veto.

Mr. WOLPE. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. LUKEN].

Mr. LUKEN. Mr. Speaker, today we will vote to override a veto which will put the United States on record against the continuation of South Africa's brutal and oppressive policy of racism. Unfortunately, the legislation before us today is not as strong as it should be—as it once was.

However, it is a first step to demonstrate to South Africa and the rest of the world our Nation's strong disapproval of apartheid. We, the Congress, are saying that we no longer want to be an accomplice to apartheid. We are also saying to the South African Government that they must understand that any hope of preserving minority rule in South Africa is an illusion.

And it is a strong first step. H.R. 4868 bans imports of textiles, agricultural products, coal, uranium, and steel from South Africa. It also bans products produced, manufactured, marketed, or otherwise by African parastatal agencies. It bans virtually all new investments of United States dollars in South Africa, and the overwhelming majority of new loans. Furthermore, the sanctions may not be lifted unless and until South Africa meets a number of stiff criteria aimed at fostering a negotiated political settlement with the representatives of the black majority.

Finally, the bill threatens more sanctions within a year if the South African Government has not made substantial progress in ending apartheid and establishing a nonracial democracy.

The incentives and sanctions work together to provide a carrot and stick approach that has the best chance of bringing about a workable solution to the problem that we face. It is the one that can bring about much needed change in the South African Government.

It is time that we do more than simply talk about democratic values: we must implement them as we have done in other places in the world. It is time that we dispose of the "business as usual" attitude we now have toward South Africa. It is time that we act so that our rhetorical denunciations do not ring hollow. It is time that we override a Presidential veto.

Mr. WOLPE. Mr. Speaker, I yield 30 seconds to the distinguished gentleman from Iowa [Mr. LEACH].

Mr. LEACH of Iowa. Mr. Speaker, ending apartheid in this century is as great a moral imperative as ending slavery was in the last. This is particularly true of my political party, which was founded a little more than a century ago to end apartheid like conditions in the United States.

All we asked of this Republican administration is that it advance a foreign policy consistent with the views of the first Republican administration.

To be true to our heritage, the administration must not be allowed to walk blindly to the grave with the black glove of white supremacy.

This veto should be overridden.

Mr. WOLPE. Mr. Speaker, I yield 1 minute to the distinguished delegate from the District of Columbia [Mr. FAUNTROY].

Mr. FAUNTROY. Mr. Speaker, it was 12 days ago that 308 of my colleagues in this great House of Representatives moved our Nation to the high ground of the principles that we enunciate, but often fail to live. We did it when we voted to approve the Senate-passed version of sanctions on South Africa. We must redo that vote today because the President has vetoed that measure.

We come now to the moment of truth on perhaps the most compelling moral issue of our time: the racist, oppressive system of apartheid in South Africa. The President has attempted to veto the conscience of America on this question: I hope that you will vote to override that veto. I hope that every Member here will examine his own conscience on this matter. This Nation was founded on the principle that governments derive their just powers from the consent of the governed. Today we are committed to a worldwide crusade for democratic government. We preach voting rights and human rights around the world: in Europe, in the Middle East, in Latin America, in Southeast Asia. But, are we to say to the world, and much more importantly to each other, that we espouse the virtue of democracy for everyone except the black majority of South Africa. That we advocate human rights everywhere except for the black majority in southern Africa, who suffer under the brutal, repressive, iron heel of South African apartheid.

Are we to continue to say to the blacks of southern Africa that we affirm human dignity for all human beings except those that live on the continent of southern Africa.

Are we to continue to espouse the virtue of democracy in the world, but halt our championing of democracy at the borders of the nation of southern Africa.

The answers are obvious and compelling. In this vote to override the President's veto we are faced with what is primarily a moral issue. It cannot be dismissed by vague platitudes about how abhorrent apartheid is to us. It cannot be quieted by a symbolic gesture in the appointment of a black Ambassador. It is a time for action. The American people have spoken through us in the passage of this sanction's bill. They deserve to be heard. They don't deserve this Presidential veto. Speak to the President; speak to the black majority in South Africa; speak to the racist regime in Pretoria. Override the President's veto.

I leave you with the words of an English Methodist minister, who on one occasion stated that: "On some issues—cowardice asks the question, is it safe; and vanity asks the question, is it popular; and expediency asks the question, is it politic; but conscience asks the question, is it right?" I ask you to vote to override the President's veto, not because it is safe, or politic or popular to do so, but because conscience dictates that it is right.

Mr. WOLPE. Mr. Speaker, I yield 30 seconds to the gentleman from New York [Mr. MANTON].

Mr. MANTON. Mr. Speaker, I am disappointed that I must rise today on the issue of South Africa. I, like many of my colleagues, had hoped that we would not be forced to take today's action. I thought the President would recognize the strong commitment of the American people to the principles on which this country was founded—freedom, justice and equality. However, by vetoing H.R. 4868, the Anti-Apartheid Act, which passed the House and Senate by overwhelming majorities, the President has ignored the will of the American people.

Mr. Speaker, I firmly believe that we have no choice today but to override the President's veto. The situation in South Africa has reached crisis proportions. America can no longer remain silent in the face of such flagrant disregard for human life and dignity. America must be heard, and heard loudly for what we in America believe is an inalienable right for justice and equality. H.R. 4868 is a responsible reaction to the evil of apartheid and an effective inducement for a nonviolent political settlement in South Africa. We must vote to override the President and enact this vital measure.

For the past 6 years, President Reagan has been given wide latitude to fashion a policy which would bring an end to apartheid. The administration claimed that its program of "constructive engagement" would force South Africa to make important concessions. However, the administration's plan has been a failure. Instead of moving toward a more open and Democratic government, South Africa's response to the President's policy has been intransigence, increased violence and the establishment of the most repressive measures in that nation's history. The South African Government continues to ignore every call for negotiations. In short, we are no closer to negotiations than we were 6 years ago and in the interim thousands of black Africans have been beaten, wounded, imprisoned and killed.

Mr. Speaker, the American people want an end to the repression of South Africa. They want the U.S. Government to take the basic steps in H.R. 4868, which will place our Government firmly on record against apartheid and will increase the pressure on Pretoria to end the oppression of apartheid. Unfortunately, President Reagan fails to understand the position of the American people. With his veto, he has attempted to thwart its will. We must not let that happen. We must vote to override his veto.

Mr. WOLPE. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Georgia [Mr. JENKINS].

Mr. JENKINS. Mr. Speaker, it is always with a great deal of reluctance that I rise to oppose a President in the direction of foreign affairs. In this particular situation, even though I believe that the executive branch should be the controlling force in foreign affairs, I simply believe that the President is wrong. I believe that there is a degree of right and wrong that every Member just make up his mind or her mind on this particular issue. This is not so much an imposition of sanctions, as it is with withdrawal of approval or support in an economic situation.

I do not believe that we as individuals ought to equate profits with human rights.

There is something much deeper than the loss of some economic benefits or the loss of some food. There is the injury of pride. There is the destruction of dignity. There is really a great disservice to the soul of a nation.

Therefore, I think that this body ought to override the President on this issue simply because it is the right thing to do.

I do not have a minority population. It is less than 5 percent in my district, but this issue transcends the normal partisan issues and I am delighted that Republicans and Democrats from the House as well as the Senate seem to be joining together in this particular spot.

Mr. WOLPE. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. WALDON].

Mr. WALDON. Mr. Speaker, the future of South Africa must be based on comprehensive racial equality. If there is to be freedom in South Africa, then all of its people must be free. We can ensure that freedom by breaking the chains of apartheid. The imposition of sanctions with real teeth is the emancipating act in bringing freedom to this troubled land.

America is the cradle of freedom, but unless we move with determination and dispatch the babe of hope will be stillborn in Pretoria. If we fail to override this Presidential veto of H.R. 4868 we are stating to the world that we have a duel standard for freedom; one for blacks and one for whites.

Those who are from black Africa, though they be poor and huddled masses, should taste the joy of sweet freedom. If we fail to override this veto, we are turning our backs on 25 million of the family of man with a darker hue who are fervently looking to America for hope, for justice, and for freedom.

Mr. BROOMFIELD. Mr. Speaker, I yield the balance of our time to the Republican leader, the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Speaker, although I rise in support of sustaining the President's veto, the first thing I want to do is congratulate those who have led the fight to impose sanctions against South Africa.

I disagree with your belief that this will help achieve freedom for black South Africans. But I admire your tenacity, the energy, the commitment and the single-minded purpose you have brought to this task. And to put it in the mildest possible terms, the administration has been less than brilliant in handling this issue.

I would have preferred a bit more cooperation, a bit more sensitivity, and a lot less grandstanding on both sides of this issue.

But just because the administration has not provided inspired leadership doesn't mean we can accept the package before us.

Let me begin by stating what is obvious but is often forgotten in the heat of debate.

We are all against human rights violations in South Africa. We are all against human rights violations in Eastern Europe, in the Soviet Union, in China, wherever they may occur.

The fact that we disagree as to the best means to help achieve freedom in all those countries shouldn't lead us to question the motives of those who choose different means toward the same end. No one in this House has a patent on morality of means.

The sanctions bill is so comprehensive that it would be impossible for me to discuss each section in detail. There are a number of positive aspects of the bill helping black South Africans with housing and education, that are excellent.

But the bill is not only positive. It is punitive. Our disagreement concerns who will be the target of the punitive measures.

Supporters of sanctions say it will be the South African Government opponents of sanctions—in and out of South Africa—say it will be the black majority.

I believe this sanctions package suffers from the same problems most sanctions suffer from—it won't achieve its intended goals and will hurt those it intends to help.

It has been said that those who oppose these sanctions are inconsistent because they support sanctions against Nicaragua, Libya, the Soviet Union, Poland and other countries.

Speaking for myself, I don't like sanctions in general. My record shows it.

But I do see one major difference between those sanctions and the ones proposed against South Africa.

When you have sanctions against Poland or the Soviet Union, you are denying the people of those countries what we produce.

But when you propose sanctions against South Africa, sanctions that prohibit new investment, you are not only denying South Africans—black and white—what we produce, but also, more importantly, denying them the living example of what we stand for.

We are in effect saying that American firms, which are the leading examples of racial equality and economic progress for black South Africa, can not expand that influence.

That is the difference. We don't have American firms in Poland or the Soviet Union that stand up every day against the totalitarian principles of those governments. There are no Sullivan principles at work in Leningrad or Warsaw.

But in South Africa, American firms put into practice economic progress and social advancement. Not just on the job, but in the black communities.

Sanctions against new investment in South Africa are aimed at stopping the expansion of the best thing we have going for us in South Africa right now—the progressive, human-rights policies of American companies.

I am no expert on South Africa. But Alan Paton is. He is the distinguished, courageous and internationally praised champion of black South African rights, himself a white South Afrikaner. He is against sanctions.

Helen Suzman, courageous and dedicated white opponent of apartheid, of the Progressive Federal Party, has said:

" . . . I don't see how wrecking the economy of (South Africa) will insure a more stable and just society."

Chief Buthelezi, head of 6 million Zulus, opposes sanctions. The New York Times has reported that there is a split in the antiapartheid groups about the effectiveness of sanctions. Are all these antiapartheid opponents of sanctions immoral? Are they dupes of the Boers? I can't believe for one moment they are.

Let me get away from the argument of how much these sanctions are going to hurt black South Africans and talk about something different—the distinct possibility that the white South African Government can overcome our sanctions and those imposed by the European Community and Japan.

The South Africans can transship coal and iron and other metals. They can sell them to Communist countries who may in turn, resell them.

As for the Japanese sanctions, does anyone believe that over the long haul the Japanese are going to let their companies suffer losses in this trade area?

I'm not saying this will happen. But it could. And then it would be only American workers who are hurt—as usual.

I opposed sanctions against the Soviet Union because I believed without their being universally applied and carefully monitored by all our allies, the only ones who would be hurt by such sanctions were American farmers and industry.

And I was proven right.

We are told by American supporters of sanctions that blacks in South Africa welcome more pain because they are already suffering and new suffering won't be anything different.

I really wonder if black South Africans—the poor ones the ones you don't hear much about—are as complacent about new suffering as their champions in the West believe? It's so easy to say more suffering won't matter, if you're not the one suffering.

I know from personal experience that the Afrikaners can be tough, stiff-necked, implacable, proud, arrogant, and racist people. I detest their system. But it is because I have met and talked with them that I know they are not going to start progress toward freedom for all South Africans just because we apply the pressure of sanctions. To the contrary—their extremists will be overjoyed.

In conclusion, let me say: Like Alan Paton, like Helen Suzman, like Chief Buthelezi, like those black South Africans shown on last weekend's television, like the United States companies who are living not just talking about, racial equality. I side with those who believe American presence in South Africa helps rather than hurts the cause of black people in South Africa.

That's why I'm voting no to sustain the Presidents' position.

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Mr. WOLPE. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. PEASE].

Mr. PEASE. Mr. Speaker, I rise in support of overriding the veto.

Mr. Speaker, President Reagan says that he vetoed this bill to impose additional sanctions against South Africa for fear that it would further harm the black victims of apartheid.

The truth of the matter is that much of these sanctions will have little or no practical effect. Who will be hurt by banning new bank lending to South Africa when, in fact, little or no such lending has occurred since that country suspended repayment of foreign loans last September? Who will be hurt by a ban on new investment by American firms in South Africa when most of these companies have already stopped because of the political turmoil and the weak economy?

Why then should we vote to override the President's veto? Because much of the world including the authorities in Pretoria will view our actions as a statement on American values and human decency.

Stand up against apartheid in the tradition of Abraham Lincoln, the Great Emancipator. Do not bob and weave with the policy of Ronald Reagan.

Mr. WOLPE. Mr. Speaker, I yield such time as he may consume to the gentleman from Arkansas [Mr. ALEXANDER].

Mr. ALEXANDER. Mr. Speaker, I rise today in strong support of the motion to override the Presidential veto of the Anti-Apartheid Act.

Mr. Speaker, our action today is a vote to reaffirm the values on which our great Nation was built. Today we say to the Government of South Africa that we will no longer directly or indirectly patronize a system that is alien to our own beliefs and values. We will not patronize a system that is repugnant to the ideals of freedom and justice that Americans have given their lives to protect and defend. And we will not support a system that violates the common principles of all free people throughout the world.

For our national security and our national conscience, we can no longer support a relic of a colonial history that results in institutionalized, legally imposed racial discrimination.

I urge a vote in favor of the motion to override the President's veto.

Mr. WOLPE. Mr. Speaker, I yield myself such time as I may consume. Mr. Speaker, I do not think any of us wish that this debate were taking place this evening. It should not be taking place. The President missed a tremendous opportunity to reinforce one of the strongest bipartisan consensuses, that has ever existed within this body when he chose to veto rather than to sign the economic sanctions legislation.

Let there be no mistake, that Presidential decision cost America dearly. It has done enormous damage. On the one hand, the President's continued opposition to economic sanctions against South Africa provides encouragement to the white minority regime which desperately wants to believe that it will be able to maintain the system of apartheid in place without fundamental economic cost, safe in the knowledge that our President will provide protection for the economic sanctions that the rest of the world are attempting to mobilize.

That delays the negotiations that are, in the final analysis, the only alternative to bloodbath in South Africa. That encourages greater repression, greater violence by the South African Government, and greater bloodshed.

Mr. Speaker, the President's action not only undermines the process of change in South Africa itself, but it also reinforces the perception throughout the world that the United States has become an accomplice to apartheid and is pursuing a double standard in our approach to South Africa.

The question that people throughout the world are asking is very simple: If the racial composition of forces in South Africa were reversed, and we had had a black minority imposing the terribly dehumanizing system of apartheid over a white majority, would we for decades now have been debating the wisdom and morality and effectiveness of sanctions?

Do you recall such a debate when we were talking about Nicaragua or Libya or Poland or Afghanistan, or virtually any other country in the world against whom sanctions have been applied? Clearly the answer is in the negative, and the world understands that. It is that double standard that is eroding America's moral authority and our political influence not only in South Africa but around the world.

Mr. Speaker, tonight we have an opportunity to speak not as Democrats and not as Republicans, but as Americans. Please, may this House by an overwhelming bipartisan vote reaffirm the best in American tradition and values. Let us vote to override that veto.

Mr. BIAGGI. Mr. Speaker, I rise once again to express my strong support for H.R. 4868, the Anti-Apartheid Act, and to urge that we override the President's veto of this measure to impose economic sanctions against South Africa.

Mr. Speaker, the New York Times succinctly presented the case for a veto override in an editorial over the weekend appropriately entitled, "Mr. Reagan's Veto, Not America's." In it, they rightfully conclude that President Reagan, by vetoing the Anti-Apartheid Act, "does not speak for the American people." In urging a veto override, they point out that: First, "the vetoed bill is not the sweeping measure voted by the House but the moderate Senate bill"; second, "it expresses condemnation of apartheid without threatening great ruin"; and third, "all penalties would be lifted if Pretoria freed political prisoners and started good-faith negotiations with responsible black leaders."

Both Houses of Congress passed this legislation in overwhelming fashion. Like so many of my other colleagues, I would have preferred to have the tougher House version, but we realized that such a position could have prevented any antiapartheid legislation from reaching the President's desk. We sent a sanctions bill to the President because it was the will of the American people and because apartheid and the bloody civil unrest it is spawning cannot be tolerated. These sanctions will help to force the South African Government to negotiate a peaceful settlement with representative black leaders.

Significantly, on the same day that the President vetoed this legislation, a bomb exploded in downtown Johannesburg, wounding three people. This was the 21st bombing in South Africa since a nationwide state of emergency was declared by President P.W Botha on June 12. These explosions have killed 9 people and wounded 160 others. This violence cannot be allowed to continue and that message must be conveyed in something stronger than words. This legislation offers us that opportunity.

Finally, I would like to address the argument by President Reagan that while he supports the purpose of this legislation—to signal our abhorrence of apartheid—he feels economic sanctions are not the right method. He reasons that economic sanctions would not work and would, in fact, hurt the blacks of South Africa the most. It makes one wonder why that argument is conveniently and selectively used in the case of South Africa, but not in the case of some 20 other countries where United States economic sanctions have been imposed—countries like Poland, Libya, Nicaragua and Afghanistan. Unlike the President, I believe that the case for sanctions is at least as compelling in South Africa as it is in any of those other foreign countries.

But, certainly the best response to the President's concerns comes from the black victims of apartheid themselves. Bishop Tutu and other South African black leaders acknowledge that blacks will have to bear some pain as a result of these sanctions, but it is a price they are more than willing to pay. My distinguished colleague from Pennsylvania, Mr. GRAY, said black labor leaders gave him this message when he visited there in January: "Yes, restrictions will hurt, but we are prepared to endure that hurt if it means that our day of liberation and freedom may come closer because you raise the cost of apartheid for the minority who is living off of our oppression."

That statement, coupled with the accurate observation made by the New York Times that this sanctions measure "expresses condemnation of apartheid without threatening great ruin," should give us all the reason we need today to overwhelmingly vote to override the President's veto.

Mr. Speaker, the sanctions in this bill are both reasonable and justified. They would ban new United States investments in South Africa. They would prohibit the importation of uranium, coal, textiles, iron, steel, arms, ammunition, military vehicles, agricultural products, and food from South Africa. They ban the export of all crude oil, petroleum products, and munitions to South Africa, as well as any parts or technical data used in connection with any nuclear facilities. And, they would ban South African airliners from landing in the United States, and prevent any United States carriers from flying to South Africa. It is an approach that is long overdue. Any further delay will simply mean further bloodshed and a continuation of the morally repugnant apartheid policy of the South African Government. I strongly urge a vote to impose economic sanctions and to override the President's veto.

Mrs. LLOYD. Mr. Speaker, I rise in support of overriding the President's veto of H.R. 4868. The people of the United States oppose apartheid and are calling on their representative Government to express their views. The Congress passed this bill with overwhelming bipartisan margins because the people of America want to express their outrage at the conditions in South Africa.

It is unfortunate that the administration chooses to ignore this message. The Congress must now take the initiative where the administration has remained inactive. The United States should no longer appear to be on the side of racism in South Africa. Our outrage needs to be expressed not only by words but by actions to back them up. A message needs to be sent to the people of South Africa that the United States, a nation which has long been a beacon for freedom and individual human dignity, will not be a part of a system that blatantly denies these freedoms to a majority of the population.

The American people have lost their patience with the failed, do-nothing policy of constructive engagement. This policy was given 6 years to work and has not produced any significant gains against the onerous system of apartheid. Morally and politically it is time to take a new course. I regret to say that on this issue the administration has been left behind, clinging to a failed policy.

I urge my colleagues to accept the responsibility for taking the initiative against apartheid and vote to override the veto.

Mr. MOAKLEY. Mr. Speaker, I rise in support of overriding the Presidential veto of the South Africa sanctions bill (H.R. 4868).

I deeply regret that the Presidential veto has deprived this country of the opportunity to present a totally united front to South Africa, and the rest of the world as other countries weigh responses to the evil of apartheid.

Nevertheless, Mr. Speaker, when this veto is overridden—and I am hopefull that both Houses will do so overwhelmingly—I would hope that foreign observers, particularly in South Africa, would realize that ours is a government of law, and that H.R. 4868 will be the law.

Mr. Speaker, in enacting this legislation, Congress reaches out to the entire continent of Africa and aligns the United States with the future and with basic morality. Whether the present Government of South Africa goes away today, next year, or a decade from now. Whether it goes away by awakening to reality tomorrow, or is washed away in blood thereafter—and of course we all pray that sanity will prevail—we must recognize that the white majority in South Africa is living out an illusion that ended decades ago.

By aligning ourselves with the inevitable future of South Africa, we espouse a foreign policy that will assure our future relations with that nation, rather than with those who temporarily hold the land by force of arms.

Mr. HUBBARD. Mr. Speaker, I plan to vote for overriding President Reagan's veto of this legislation by which we in Congress express condemnation of apartheid in South Africa.

Yes, I support this override attempt because this legislation forbids new investments, curtails loans and imports and denies landing rights to South African airliners. And all the penalties of this legislation would be lifted if Pretoria freed political prisoners and started good-faith negotiations with responsible black leaders.

President Reagan and Members of Congress who support the President's veto of H.R. 4868, the Anti-Apartheid Act, have been accused repeatedly of supporting racism. I regret these unfair accusations.

I want to share with my colleagues an editorial which appeared yesterday in the Paducah Sun, the daily newspaper in Paducah, KY. The editorial is written by the newspaper's editor, Jim Paxton, a constituent of mine whose youth, intelligence, liberal-to-moderate viewpoints and sincerity have won for him and his writings a large audience in western Kentucky and southern Illinois.

Jim Paxton, who is known by black friends as progressive but indeed not a racist, wrote in the following editorial the thoughts of several of my colleagues who will vote today to sustain President Reagan's veto of H.R. 4868.

[Editorial]

MERE GESTURES TO SOUTH AFRICA?

(By Jim Paxton)

We deplore South Africa's policy of apartheid, should any doubt remain among our readers. For those who may not know by now, apartheid is a system of segregation imposed by that country's white minority government. It denies voting rights and other privileges to blacks and citizens of mixed race.

Apartheid has become a major embarrassment for the United States, because of South Africa's status as our trading partner and military ally. Congress and President Reagan have been struggling to come up with ways to pressure the South African government to phase out this policy, because it is so severely inconsistent with this country's longstanding position that it will not support governments that flagrantly ignore human rights.

The problem is, Congress and the president apparently are not going to be able to agree about the best way to apply this pressure.

As we write this, it appears that the president is going to veto the method proposed by Congress—a ban on U.S. bank loans and new investments in South Africa, as well as prohibitions against importing certain goods made in South Africa. The president prefers a different method: the appointment of a black U.S. ambassador to South Africa. It further appears that Congress will override President Reagan's veto, so that both efforts to apply pressure will go into effect.

We believe both proposals fall short of the mark, however. Certainly, appointment of a black ambassador to South Africa will create some embarrassing situations for the white government there, as it will almost certainly have to adopt a double standard if it wants to avoid a major diplomatic incident. But that's about it. South Africa has not allowed our past ambassadors to dictate how it runs its government, so it is naive to believe that it will treat our probable new ambassador, Edward J. Perkins, any differently.

The sanctions proposed by Congress are unlikely to fare much better. In addition to bans on new U.S. loans and investments, the sanctions will halt imports of South African uranium, coal, steel, textiles, military vehicles, and agricultural products. But as NBC News reported last Thursday, the only ban that will really put any significant sting on South Africa will be the ban on steel. South African Prime Minister P.W. Botha told the network those who will suffer most from this will be several thousand black workers who will be laid off from their jobs. The United States will continue to import large quantities of gold, titanium, and other products essential to defense programs and unavailable from other sources.

That is ironic. South African blacks, primarily, will suffer at the hands of the United States, while American producers of coal, steel, uranium, and agricultural products would seemingly benefit.

Thus, both moves, unmasked, are sure politics. They underscore the tentativeness that has made U.S. foreign policy embarrassingly ineffective in recent years. We really haven't given up anything. Meanwhile, we have indirectly added to the oppression of those we say we are trying to help.

If we really believe it is our place to try to force South Africa to end its racial policies—and given the concept of the sovereignity of countries, questions could be raised about whether it is—then we would not be stopping half way. It seems we would be willing to truly share the hardships, by finding substitutes for the commodities we apparently will continue to import. We would end all trade with South Africa, and we would withdraw our diplomats.

It is not our position—at this time—that those specific steps should be taken. We simply point out that the steps taken so far probably will accomplish nothing, and we fear that in the long run, they will be counterproductive for the United States.

Mr. FRENZEL. Mr. Speaker, I don't like sanctions. They just don't work. At least I cannot recall any sanctions which ever served the intended purposes.

Dislike, however, is too mild a word for the feelings shared by most Americans, including myself, about apartheid. There is an overwhelming need for our country to take the lead in demanding an end to that loathsome system.

Of course, the vote is symbolic. Certainly we should not be deluded that our action today will improve conditions in South Africa. Even so, there is really no choice.

This is our only chance to express our feelings about apartheid. I would rather cast that vote for a bill I thought would do some real good. But, I don't have that luxury.

There is only one antiapartheid bill before us. I shall vote for it.

Mr. SHARP. Mr. Speaker, today the House of Representatives takes the historic step of imposing economic sanctions against South Africa until that Government ends its racist policy of apartheid.

It is timely to call to the attention of my colleagues and other Americans an exceptional speech on this subject—informative and inspiring—by an extraordinary, industrialist, philanthropist, and leader, J. Irwin Miller:

I have been asked to discuss U.S. Government Policy Toward South Africa.

As one begins such a discussion, it is first necessary to ask why S.A. is a question of special importance to this country today. South Africa is not, like the Soviet Union, competing with the United States for influence in large and important areas of the planet. It is not, like Japan, a major industrial power invading American markets. It is not, like Cuba, attempting to establish a sphere of influence next door to this country. It is not alone in today's world in violation of human rights, or in possible use of torture.

It is after all a sovereign nation, and there are many sovereign nations whose internal policies we Americans find repugnant, but in whose affairs we feel no particular call to interfere.

Why South Africa?

Perhaps the answer lies in its economic importance to the United States. S.A. contains the world's largest known deposits of chromium, manganese, platinum, vanadium, and gold-all vital minerals to a sophisticated high technology society. In addition it has major deposits of copper, diamonds, iron, nickel, and uranium.

South Africa is an efficient miner, processor, and marketer. The safety and health record of its mine workers is among the best anywhere, and its internal transportation system is the best on the African continent.

Further, the United States has for some time protected itself against possible disruption of supply by a policy, not always fully funded, of stockpiling a 3-year supply of strategic minerals not available to it internally. If supply were shut off, this country could probably outlast South Africa, whose economy would suffer considerable injury if mineral exports to the U.S. were suspended or drastically reduced for an extended time. By intelligent buying on the spot market, a 3-year stockpile might effectively become a 6-year reserve. In short, it is possible with foresight to handle the strategic minerals problem.

South Africa also sits across the major shipping lane from Middle East oil fields to the United States, and might, if turned hostile, attempt to close that lane.

Our own Navy, however, states that the lane is approximately 1,000 miles wide around the Cape of Good Hope, as contrasted with the 50 mile width of the Strait of Hormuz, the most effective point of interdiction. If attempts are made to shut off shipping, the Cape is not the best place to try it.

Why South Africa?

The United States has annual trade with South Africa of $3½ billion. In other sub-Saharan predominantly black African countries, however, its annual trade in the mid-1980s amounted to $14 billion, four times greater. In short, economics does not seem the principal reason for our special concern.

The answer to our question, "Why this special concern for South Africa? Why not equal or more concern for change in Uganda, or Chile, or China, or the Soviet Union," The answer comes down to the imponderables, not to economics, and they are all summed up in that single world, Apartheid," broad discrimination solely on the gounds of race, embodied in the constituton, buttressed by more than 1,000 separate laws and regulations, and enforced by a most effective police and military.

In this word, "apartheid", we Americans are confronted with our own conflicting attitudes toward a number of matters: our biases concerning race, our fears of the spread of Communism, our assumption that white S.A. is part of the West, of the "Free World," and our own remaining unsolved racial problems and tensions.

Perhaps we should stop right here and ask ourselves once more "Why isn't what happens inside S.A. their own affair, and after all none of our business?"

This is a pretty tough question to answer honestly. Our own race relations in the Mississippi Delta have certainly lagged the rest of the country in improvement. And I must confess that, if the Soviet Union were to say to Americans "We will have no more cultural or other exchanges with you until you practise what you preach in Mississippi," I, as one American, would instinctively reply "Mind your own business."

Such an argument, though strong, is nevertheless flawed.

Throughout history every nation has had to have a foreign policy. This might mean a policy to protect itself against a threatening neighbor tribe, or aginst an ambitious world power.

In today's world every nation is some kind of neighbor. We feel compelled to have an active ambassador in every capital city, and that ambassador is well aware of America's goals and targets in respect to that nation. He is well aware of his responsibility to advance them, and he is equally aware of the limitations on our ability to achieve them.

We also recognize the legitimacy of a foreign policy for others, by welcoming ambassadors from other nations, granting them normal freedom to pursue their policies, and diplomatic immunity as well. There are, of course, exceptions, but they are so remarkable and so few that we can nearly count them on our fingers.

So, if there is bound to be a U.S. Policy Toward South Africa, and if that policy is to be compatible with and aimed to advance American interests, what should it be?

Let me approach an answer by means of an analogue, which I will be the first to confess is only partly analogous. Cummins has done business in South Africa for well over 40 years. In our classes of products we have until very recently held dominant positions in the South African market.

The South African Government in turn has long been concerned to be self-sufficient in those important areas where they might be damaged if supply were cut off. Oil was one of these, and many years ago they developed, with American technology, plants to convert coal to oil.

In 1980 the S.A. Government decided that it was important to become self-sufficient in diesel engines. It appropriated $500 million to build and equip a plant, and invited bids from all major world producers to submit engine designs, plant designs, and operating proposals.

Our company was probably a slightly favored bidder, because of the presence we already had in the South African market. We however, declined to bid. Another company from another nation won the bid, and our business in South Africa is now reduced to a fragment of what it was. Why did we decline? Why not operate in each country according to the policies of that country?

Well, a clear purpose of the South African proposal was to anticipate sanctions and to have a dependable government-owned supply of diesel engines for the South African police and military, as well as for domestic use. Since it would be government owned, the plant in all respects would have to operate according to government requirements.

Normally, in foreign operations, we would feel it incumbent upon us to be good citizens, to conform in both letter and spirit to the laws and policies of the nation in which we operate.

In the case of South Africa there is for us a complication. For 50 years our company has done what it could to advance the ideal of equality of opportunity and equality of treatment for every employee and every citizen. We believe this builds a stronger, more competitive business. We believe it is the only sound way to operate. We have pioneered in opening employment to minorities, to welcoming women into every level. Our record has, of course, been spotty, nothing in my opinion to brag about, but the intention has been solid and continuous. Members of the company understand the policy, and it lies at the very heart of our management tradition. It is good for business.

We simply cannot operate in another country in a manner which contradicts what we have worked for and still stand for after 50 years. The internal consequences of such an action would be disruptive and potentially weakening to the whole corporation.

"How about the stockholders?" You have a right to say, "Isn't it the purpose of a corporation to maximize return on its shares? Are you being responsible when you give up annual sales of $20 million and the profit on them for a reason so vague?"

The answer is that, in the continuing long term, the abandonment of the measure of credibility which we may have gained about equal concern for every member of the company would so shake internal confidence in management's commitment as to be truly damaging to shareholder interest. It was an easy decision to make.

It was also in a sense a peculiarly American decision, if I may say so, and relevant to this discussion tonight.

America is a peculiar nation in this world. It is at times difficult for either friend or opponent to understand. Our nation often seems unpredictable, inconsistent, and an unrealistic moralizer in a practical world—altogether a difficult friend and a baffling opponent.

At the same time Americans are apt to feel that they are proceeding perfectly logically, are misunderstood, and can't understand what all the fuss is about.

How can this happen? Well, nothing grips a people more strongly than its traditions, long established, deeply embedded.

For 2,000 years the nations of Europe, and for more than 300 years the nation of South Africa have defined their nations geographically, as cherished and beloved areas of land. To a Welshman Wales is the Welsh Mountains, to a Scot Scotland is the Highlands. To an Austrian Austria is the city of Vienna or the Salzkammergut, and so on. These pieces of land have been fought over, won and lost, for so many centuries that they embody the nation—even for generations who may not know the long history.

For Americans, however, their nation has never been defined in geographical terms. We have had relatively so much land for so few people throughout our history, our borders are not threatened, and we are still so mobile—that we do not define our nation as most others do.

Americans view their country differently. They define it and think of it in terms of principles and concepts—constantly using words like freedom, equality, or phrases like "log cabin to White House," "classless society," "I'm just as good as you." American to Americans is an idea, not a place.

Now our performance in living up to this idea is not any better than it should be. There have been selfish perversions and simplistic definitions of freedom. There continue to be denials of civil rights at the same time that we assert them. We make unequal and unsteady progress on race and on opportunity for women. For years we may slide back, and progress may appear to stop.

But to our credit we are ashamed of bad performance. For all our talk about being or wanting someone to think we are "No. 1," we are less than certain about ourselves, and one of our greatest judges put it correctly when he said "The spirit of America is the spirit that is not quite sure it is right."

American behavior judged by European tradition can, therefore, be at times incomprehensible. American behavior, judged by its own tradition, can be as predictable as that of any other nation.

(Before leaving this discussion I ought in honesty to confess that all too often we Americans seem to think we invented the principles by means of which we define ourselves. We forget that they are in very great part an inheritance from Western Europe, from Greece, from Rome, and from Ancient Israel. It would do us good to remember and to acknowledge this more often.)

Any way—we are what we are. What then does that mean for a fitting U.S. Policy Toward South Africa?

As of 1980 the population of South Africa comprised: 19.8 million Black Africans, 4.5 million Whites, 2.6 million "Colored" (Mixed Race), .8 million Asians, for a total of 27.7 million persons.

Whites made up 16.25% of that total.

Blacks, Colored, and Asians made up 83.75% of the population.

And Blacks alone were 71.5% of the whole.

All racial groups are increasing—but at significantly different rates.

The White proportion, while growing in number, has been decreasing in percentage—Declining from 21.4% in 1911 to 16.25% in 1980.

In the same period the Black African segment increased from 67.3% to 71.5%.

The Colored from 8.8% to 9.4%.

And the Asian from 2.5% to 2.9%.

The White population is divided into 2 major components: The Afrikaners, who constitute 60% of Whites, and the Anglos, who settled later, and make up 40% of the Whites.

The Black birthrate is about twice that of Whites, but Blacks are divided. They are divided by tribal descent. They are divided by language. (There are among them more than 100 different languages and dialects.) And they are divided by regional differences as well.

If present trends continue, by 1990 (4 years hence) All Whites will have declined to 14% of total population, and Blacks, Colored, and Asians (those who are excluded from the vote) will be 86% of the total.

Since 1950, by law, every person has been assigned to one of three groups: White, Colored, or African.

Parliament is supreme, is composed only of Whites, and is chosen only by White voters, the 14%. The President is given extraordinary powers, rendering parliament much weaker than we normally suppose.

There are several thousand laws under which a person's rights depend on race alone. Under such laws a Black or Colored person is told where to live. Seven times as much is still spent on the education of each White child as is spent on each Black child. A person may be detained without right of counsel, with no requirement to notify families, and with no requirement to be charged or brought to trial by a specified time under apartheid laws. For 14% of the population to retain firm control over 86%, something like this is probably necessary.

Some laws (the mixed marriage or immorality act, for example) have, however, recently been repealed, some ignored, and some modified.

I do not have time tonight to describe in more detail the whole apparatus of apartheid beyond this brief account. Suffice it to say that, in general, the White community is not about to give up control, but thinks there has been reform, a commitment to end apartheid some day, and cannot understand why there is growing violence. The Black community is well acquainted with the word, "Democracy," which doesn't apply to them, thinks all proposed reforms are shams, and that nothing has really changed—except that police repression has been increased.

Blacks have learned that, when they are quiet and patient, progress stops, and that the government, when it does move, seems nowadays to move only in response to violence or to the convincing threat of violence.

Blacks will now, however, for the first time tell you that "the end is in sight." At the same time they are well aware that the power of the government is very great indeed and more than adequate to the present occasion.

They feel that for the first time they have the initiative, that the government is reacting to them and has no real policy of its own. It is in the light of all this that Blacks today feel a new sense of confidence.

They will at the same time assure you that they have found no disposition whatever on the part of the S.A. Government to enter into any serious negotiations. This is why you will not find today in the mainstream of Black leadership any so-called "moderate" Blacks. There is a growing feeling that only violence will bring change.

There is also emerging—for the very first time—a broad agreement on what the Black agenda should be. This fact is in sharp contrast to the confusion and varieties of thought among Whites, and it gives the Blacks new confidence.

The consensus among Blacks is to be found in general terms around what has come to be called "The Mandela Package." In brief this could be described as:

Release Mandela.

Un-bann the African National Congress (ANC).

Permit unfettered political activity.

Dismantle all apartheid laws.

Begin serious negotiations toward a non-racial, democratic constitution in an undivided South Africa.

Redistribution of wealth.

A few comments: The demand is for one person, one vote. This is probably still negotiable today, but may not be for too long. if negotiations are seemingly forever postponed and only violence appears to produce movement, then this opportunity may at some time be lost. After all a winner doesn't have to negotiate.

Redistribution of wealth: This is a very fuzzy phrase. I sense no clear agreement as to what form it might take. Why is it on the agenda? Many of the Blacks admittedly live in circumstances no worse, perhaps even better than citizens of most sub-Saharan countries. But in South Africa there is a difference.

First, S.A. Blacks have no choice as to where they may live. They are told by the Government.

Next, thirty minutes to an hour away from squatter communities of half a million persons there exist some of the most beautiful residential communities you can see in any country in the world—all White. Further many township and squatter camp residents work every day as domestic servants in these beautiful residences, or as office workers in downtown Johannesburg or Capetown. They have eyes; they can see.

Does this mean they are Communist, and that we non-Communists must provide arms to those who fear a Communist takeover?

I think it is not so simple as that.

The confrontation in S.A. cannot usefully be described as simply a Capitalist/Communist battleground. The first priority for both White Afrikaners and Black natives is to have the say in their own affairs.

The Afrikaner (10%) has only recently and with great difficulty come to power in his own land. when in history has a ruling group shared power willingly?

The Black (86%) is determined (as one put it to me) "to have a say in what happens to me." And when in history has a 10% ruling group for long been able to deny power to an 85% aroused group, regardless of who has the guns? Not in Czarist Russia. Not in Bourbon France. Not in Iran. Not in British India.

Voltaire said "History is only the patter of silken slippers descending the stairs to the thunder of hobnailed boots climbing upward from below."

Many Black leaders today identify Capitalism with apartheid. Existing, as they do, in such a system and feeling that there is no hope for any change except through continued violence, they find that only Marx and Socialism are using the phrases "social justice" and "elimination of greed." The Capitalist phrases they hear are "Law and Order," "Be Patient." Relatively blind to the failures of socialist societies, they perceive quite clearly that what they call the "Capitalist Nations" and we call the "Free World" are today taking the side of the White Afrikaner Government. So they begin calling each other "comrade."

What then might finally be a U.S. policy toward South Africa in 1986, a policy which our grandchildren in 2036 might say was wise, farsighted, truly in the best interests of this country?

Obviously I can make no claim to special wisdom on this subject. So, anything I say is no more than one person's opinion, and therefore good for little more than to be challenged and disputed.

To me the first great big fact is that the Blacks are going to win—not today, or tomorrow, but sooner or later, and probably sooner than we may think, or than most White South Africans probably think.

The second fact is that, if the Blacks are going to win, it is in our interest that they (whoever "they" may turn out to be) come to look on America as a friend and that we thus might be enabled to have some appropriate and favorable influence in future South African affairs.

A third fact is that, if they are to look upon us as a friend, we must win and deserve that friendship now, in their hour of need, when the issue is still in doubt, when they need us, and not delay and attempt to win their friendship only after they have won.

A final fact is that we have a special interest in doing what we can to help bring about a negotiated power-sharing rather than simply to stand by and watch the final and horrible bloodbath take place.

A violent all-out revolution in S.A. will force this country to take sides. If we cannot avoid taking sides, and if the ultimate outcome is pretty clear (with only the timing uncertain), it would seem more prudent to take sides sooner rather than later.

The Blacks think we have already taken sides, and that we are on the side of the White S.A. Government—regardless of how many times how many American officials say they "Abhor Apartheid." Black South African feelings about the U.S. have reached a new level of hostility and mistrust.

The White S.A. Government is in turn not all that unhappy with our official policy of "constructive engagement," which in six years has not moved them to the negotiating table on Namibia, nor to any meaningful negotiations with any real Black leaders at home. The S.A. Government is comfortable with our present policy.

If then we are once again backing the ultimate loser, if that loser is clearly oppressive and clearly wrong by all standards to which Americans adhere, what should we do? What actions on our part might convince the Black majority that we are their friend and, a revolutionary people ourselves, that we are broadly "on their side?"

To begin with, I think that actions will probably be more convincing than talk.

Second, I believe the U.S. must go ahead and take any actions it decides upon unilaterally. I see little hope for concerted action by the Western powers in the foreseeable future.

Next, I am well aware that unilateral action is very much weaker than concerted action—and may be economically ineffective.

So we come to "sanctions."

The case to be made against sanctions is devastating.

Unilateral sanctions by the U.S. would not end apartheid.

Unilateral sanctions by the U.S. would cause anger but possibly only small inconvenience to the White S.A. Government.

To the extent that sanctions did inconvenience the economy of S.A., any harm caused would be visited mainly on the Black employed population. The Government has the power and the disposition to see to this—and to make life difficult for the border nations as well.

Sanctions might only harden the commitment of the White population to support of present policies.

That is most of the case against sanctions.

On the other side, there is really only one arugment. For the Black community as a whole, and for the emerging Black leaders of growing power, the adoption of significant sanctions has now become the test of "whose side you are on."

In a peculiar sense, the same can be said of the White S.A. Government. Regardless of economic consequences, a unilateral move by the U.S. to meaningful sanctions would come as a major shock.

Now we are in the position where our President says he will veto meaningful sanctions, and the House and Senate will probably send to him for his signature a fairly strong sanctions bill.

If this happens, if it is vetoed, if the veto is sustained, our chances for present and future respect and influence with the Black African majority must be rated very small indeed.

What would I do? I would support a very flawed and imperfect solution. I would adopt a package of sanctions which would constitute at least the minimum that would persuade the Black majority that we were "on their side," and I would do it now, while the issue is still in doubt.

I have not always felt this way. I am aware that, by moving unilaterally, we give considerable opportunity to great Britain, West Germany, and Japan to profit at our expense. I am aware that such an action by us may not work, but we will have come down on the right side, at some cost to ourselves, and in the long run there is no better foreign policy than that.

I would, however, not stop here.

I would promptly establish open communication with the African National Congress, come to know them and their leaders in depth, and gain some measure of knowledge as to their probable reaction to any actions we contemplate.

It has not bothered us to invite the Nicaraguan "Contras" to Washington, even though we maintain our Embassy in Nicaraugua. It has also not bothered us to invite Mr. Savimbi to Washington. Both of these groups practise violent revolutionary tactics, as does the ANC.

But the ANC, whose influence in the Black S.A. population is large and growing, may well have a better claim to be termed "Freedom Fighters" than either of our other two friends.

I would next turn attention to the so-called "Front Line" nations, Angola, Mozambique, Kenya, Zimbabwe, Zambia, Tanzania, Zaire, Botswana, Lesotho, and Swaziland. In a stagnant world economy these nations are in eocnomic depression. Many of them depend on trade with South Africa, and can ship to the world their products and their minerals only by means of South Africa's excellent railway and port facilities. Most of them have been pressing the West for sanctions, though they have not themselves imposed sanctions. If the U.S. acts unilaterally on sanctions, South Africa has the power and incentive to punish these states, with whom we have a potentially important future.

I would regularly consult with and listen to these nations about our policy options in respect to South Africa. And I would go further—I would begin to entertain the possibility of the modern equivalent of a "Marshall Plan" for sub-Saharan Africa.

This would include relief from their landlocked dependence on South Africa, necessary improvements to their own infrastructure—and, under proper conditions, new credits.

I say all this, well aware that many of these nations are riddled by corruption, have one party systems that oppress opposition (certainly far from "democracy"), and are embarked on ill-conceived Socialist adventures, which are either failing already, or are almost bound to fail.

If we were to consider an equivalent "Marshall Plan" for Africa, I would bargain very hard indeed. I would be implacable on corruption and would withdraw aid where corruption continues to be flagrant.

I would move cautiously with unstable governments.

I would not demand that they move dramatically from a socialist ideology to a free enterprise ideology. For many of them, at this stage in their development, neither is appropriate.

Instead I would encourage them to drop slogans, and to move pragmatically rather than ideologically. Insofar as they listened, I would cooperate. Insofar as they were immovable I would not advance funds for guaranteed failure.

Such a "Marshall Plan" is needed. However, such a plan might make more enemies than friends, might be branded "neo-colonialism," and, of course, it might very well fail amidst all kinds of recriminations.

At any rate I would at least test the water.

And all the time I would use whatever influence or power or persuasion I had with the South African Government to urge an honest open negotiation begun now, and aiming at a non-racial, democratic nation, in an undivided South Africa.

You will notice that I have not discussed "disinvestment" or "divestment," phrases much used in America today. The subject is for me quite complex, even though my own company, Cummins, has in effect "divested."

The important goal for me is a revised U.S. Foreign Policy toward South Africa. If a part of that policy were to be a requirement to disinvest, then I think disinvestment would send a powerful message.

If, on the other hand, the U.S. Government "sides with the S.A. Government" (as South African Blacks now think it is doing), disinvestment by private companies in the face of our contrary government policies would probably only confuse.

On this subject I am certain only that a firm clear U.S. Government policy obeyed in letter and spirit by U.S. corporations still resident in South Africa is an urgent need right now. That is why this evening I have concentrated my remarks on government policy.

It is now time to conclude.

This is not a complete list of recommended policy options. It is only an illustrative list.

The U.S. does not have the power to decide the future of South Africa.

Developments there have a life of their own, and whatever will happen there will in all probability happen regardless of what we do.

But it is important to us in our own domestic life and relations, and in our future world influence, that the seemingly inevitable power sharing or power transfer, whichever it may turn out to be, be accomplished as peacefully and rationally as possible, and probably sooner rather than later.

And that in the new South African society the United States be looked upon as a valuable and useful friend.

Thank you for listening. The crystal ball of history is forever clouded, and these are only the ideas of one person, who lives far indeed from the scene.

I have, however, enjoyed the opportunity to try to put my own thoughts together, and it has been a pleasure to be with you tonight.

Ms. MIKULSKI. Mr. Speaker, I rise to express my opposition to the President's veto of the antiapartheid bill both the House and Senate have passed by overwhelming majorities.

In the past I called for the toughest sanctions against the apartheid regime. In May, the House paid heed to that call. I called for those sanctions again earlier this month, and I call for them again today.

It is most unfortunate that the President refuses to join the House of Representatives, the American people, and the Eminent Persons Group in expressing total abhorrence to apartheid. Apartheid enslaves black South Africans. It is evil. The United States will be an accessory to this evil until all ties are cut with the apartheid regime.

I continue to believe that we must send the strongest message possible to the South African regime that we oppose apartheid. I also believe that we must, as a nation, wait no longer to move decisively. Although I believe we should be taking stronger action, I support the action we are taking today.

We speak out today to free South African blacks from political persecution. We also speak out today to free America from our history of racial injustice, and from our present policy of "constructive engagement." The struggle against apartheid is as important to the well-being of this Nation as it is for the lives of our sisters and brothers in South Africa.

The sanctions the President imposed last year have simply not done the job. We must send a stronger message. I urge my colleagues to override the President's veto.

Mr. GRADISON. Mr. Speaker, I rise in support of the motion to override the President's veto of H.R. 4868, the Anti-Apartheid Act of 1986. The proper course of American foreign policy toward South Africa has been a subject of honest, energetic, and often emotional, debate for some time.

Developments in southern Africa are extremely important to the United States. The system of apartheid offends the moral sensibilities of the American people. The systematic violation of fundamental human rights and dignity by the state in South Africa cannot long continue without precipitating wider violence. As a people committed to the principles of liberty and democracy, the situation in South Africa requires a response by the United States.

From a strategic vantage point, southern Africa is not as vital to the future security of the United States as others which present a more subtle challenge. However, neither is it a region of peripheral importance. Economically, politically, and militarily, Pretoria is the dominant factor in the life and politics of southern Africa. The escalating cycle of violence in South Africa threatens the future of that potentially great nation. It also presents opportunities for the Soviet Union and its allies to exploit understandable discontent as a means to extend its influence in the region.

No one engaged in this policy debate disagrees with the premise that it is in the interest or the United States to encourage the peaceful end of the system of apartheid and the transition of South Africa toward a just and open society. The difference of opinion between Congress and the administration centers on the most appropriate means for influencing events in South Africa to reach this desired outcome.

Sanctions against the Pretoria government have been under consideration since the early 1960's. In recent months and years, several Western governments, including the United States, have strengthened or begun a series of loosely coordinated sanctions in response to the unwillingness of the South African Government to address the basic aspirations of its people, an unwillingness that threatens regional stability.

The administration is understandably concerned that tough economic sanctions may embolden those in South Africa who seek a violent Marxist-Leninist revolutionary solution to that nation's problems. As I have previously stated on the floor of this House, "constructive engagement" was a policy that had to be tried, but has yielded few tangible results.

Constructive engagement, however, has offered some insights into South African strategy. Pretoria apparently believes that the United States and the United Kingdom will not allow the South African Government to fall out of a belief that it is the last remaining bulwark in the region to communism. Sanctions undertaken by Canada, Australia, Denmark, and France, among others, are sanctions to be regretted in Pretoria, but can be dealt with. The South African Government seems secure in the belief that it is in the interest of the West for the present Government to remain unchanged and unreconciled to the growing discontent beneath it. The response of the Botha government to President Reagan's diplomatic efforts to find a way toward internal reconciliation in South Africa is indicative of this attitude.

What the South African Government fails to understand is that the position to which it continues to cling makes the revolutionary alternative more, rather than less likely. The enactment of the legislation before us will send an unmistakeable message to Pretoria that cloaking apartheid, the root of the Southern African problem, in anticommunism is no longer sufficient.

I understand that the complex history of South Africa makes it extraordinarily difficult to secure meaningful reform in a short period of time. Men, however, need not be trapped by their history. All South Africans must begin to engage in a meaningful dialog that holds the promise of the evolution of a viable, open, and democratic society. That is the only path by which South Africa will step back from the chaos that threatens to engulf it.

Mr. RODINO. Mr. Speaker, for months we have heard the Reagan administration make appeal after appeal for its constructive engagement policy—a policy that advocates ignoring the evil and destructiveness of apartheid in South Africa.

Clearly, history has taught us that this policy is immoral and an utter failure. Despite constructive engagement, the South African Government continues to violate the basic human rights of a majority of its people, and violence continues to escalate. In the last year alone, hundreds of black South Africans were slaughtered and thousands more were jailed without charge. How long will we, as members of a civilized society, allow this to continue?

President Reagan has argued that constructive engagement is the most effective way to persuade the South African Government to abandon apartheid. Such persuasion has obviously fallen on deaf ears—apartheid is alive and well. The President has also rejected stiff sanctions because, he says, they will harm black South Africans. What could be more devastating to black South Africans than the maintenance of his hideous, racist system of government?

In the 1960's, our Nation's commitment to justice and freedom was tested by the civil rights movement. At that time, a young preacher, Martin Luther King, Jr., warned his countrymen that if the oppression of black Americans continued, "we will have to repent, not merely for the hateful words and actions of the bad people, but for the appalling silence of the good people." We as a nation founded on freedom, dedicated to compassion and justice for all, have an obligation to break the appalling silence and act to put an end to apartheid. Economic sanctions send a firm message to the government in Pretoria that Americans will not stand idle while the basic human rights of South African blacks are violated.

Mr. ACKERMAN. Mr. Speaker, numerous times before I have arisen to voice my approval for punitive sanctions. I have compared those who have hesitated on sanctions with a mythical bird, the mugwamp, known for its uncanny talent of fence-sitting. I have refuted the President's metaphor which equates South Africa with a locomotive speeding toward economic and social progress, when, in reality, it is a nothing more than an old and decadent machine propelled by the inertia remaining from years of hatred and injustice.

Well, today Mr. Speaker, this Congress is going to lay to rest any moral ambivalence which may surround our stance on this issue. The leading nations of the free world have balked at implementing any strict measure against Pretoria because of the United States' unwillingness to do so. Who can blame them?

In human-rights struggles around the globe we lay claim to the championship belt. In countless conflicts on numerous lands, some previously unknown to us, we sacrificed our most precious resource, American lives. In most cases, we have done so without reservation, and with an outpouring of national unity and support.

Today, we are faced with yet another system which is trying to turn back the hands of time and slow the evolution of global freedom. Yet, instead of a rallying cry for justice, our President sends out a message of timidness and accommodation.

It amazes me that we once again must show our displeasure with the administration's posturing on the issue of sanctions against South Africa. Why does the President feel that if he constantly presses the issue, this Congress will cave-in to his desires?

No. Mr. President, the people of this great Nation are fed up with nonconstructive engagement. The time has come to listen to the collective voice of freedom and stand firm against Pretoria's racist government. Sanctions may not be the best method to move the instrasigence which rules South Africa, but it is a far more effective and respectable path than the one we are presently taking.

I urge all my colleagues to send a message to the White House, the world, and most importantly, Pretoria, that the United States opposes its policies and that apartheid must fall. Thank you.

Mr. AuCOIN. Mr. Speaker, 1 year ago, the House of Representatives passed legislation to impose economic sanctions against the Government of South Africa. Tragically, that bill never became law. Instead, the White House put forth a series of flimsy policy changes that were long on public relations but short on substance.

In the 12 months that have passed, the violence in South Africa has escalated—and so has the movement in this country to end support for the repressive Botha regime. The antiapartheid fight that began on college campuses across America has spread to the boardrooms of the Coca-Cola and IBM, to the California Governor's office and the Halls of Congress. The Oval Office alone remains aloof.

The administration's reluctance is surprising, coming as it does on the heels of tough sanctions against Poland and Nicaragua. In the absence of White House action, it's vital that Congress make a clear and forceful statement that the people of the United States do not support apartheid, and will not lend their support to a system that continues to deny basic human rights.

We can make such a statement today by overriding the President's veto of a new bill, passed overwhelmingly by the House and Senate, to impose binding economic sanctions against the Botha Government. The bill prohibits new United States loans and investments in South Africa and bans the imports of Krugerrands, steel, textiles, coal, uranium, sugar, or weapons to the United States. The legislation further prohibits export of computer goods and technology to the South African police and stops shipment of nuclear material or technology unless there is proof that such exports will not harm United States security.

I strongly urge my colleagues to vote to override this veto, and steer the United States toward a policy that holds out hope for change in South Africa.

The SPEAKER. The question is, Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding?

Under the Constitution, this vote must be determined by the yeas and nays.

The vote was taken by electronic device, and there were—yeas 313, nays 83, not voting 37, as follows:

[Roll No. 425]

YEAS—313

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Applegate
Aspin
Atkins
AuCoin
Barnard
Barnes
Bateman
Bates
Bedell
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Biaggi
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Borski
Bosco
Boucher
Boxer
Brooks
Brown (CA)
Brown (CO)
Bruce
Bryant
Bustamante
Byron
Carney
Carper
Carr
Chandler
Chapman
Chappell
Clay
Clinger
Coats
Coelho
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coughlin
Courter
Coyne
Crockett
Darden
Daschle
Daub
Davis
de la Garza
Dellums
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Edgar
Edwards (CA)
English
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Fazio
Feighan
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Franklin
Frenzel
Frost
Fuqua
Gallo
Garcia
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hamilton
Hawkins
Hayes
Hefner
Henry
Hertel
Hiler
Hillis
Hopkins
Horton
Howard
Hoyer
Hubbard
Hughes
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
LaFalce
Lagomarsino
Lantos
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lightfoot
Lipinski
Lloyd
Long
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
MacKay
Madigan
Manton
Markey
Martin (IL)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCloskey
McCurdy
McGrath
McHugh
McKernan
McKinney
Meyers
Mica
Mikulski
Miller (WA)
Mineta
Mitchell
Moakley
Molinari
Mollohan
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Natcher
Neal
Nelson
Nichols
Nowak
O'Neill
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Pashayan
Pease
Penny
Pepper
Perkins
Petri
Pickle
Price
Pursell
Rahall
Rangel
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Roberts
Robinson
Rodino
Roe
Roemer
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage
Saxton
Scheuer
Schroeder
Schuette
Schulze
Schumer
Seiberling
Sensenbrenner
Sharp
Shelby
Sikorski
Sisisky
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Snowe
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stokes
Stratton
Studds
Swift
Synar
Tallon
Tauke
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Waldon
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Wheat
Whitehurst
Whitley
Whitten
Williams
Wilson
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (MO)

NAYS—83

Archer
Armey
Bartlett
Barton
Bilirakis
Boulter
Broomfield
Burton (IN)
Callahan
Chappie
Cheney
Cobey
Coble
Combest
Craig
Crane
Daniel
Dannemeyer
DeLay
DeWine
Dickinson
Dornan (CA)
Dreier
Eckert (NY)
Emerson
Fields
Hammerschmidt
Hansen
Hendon
Holt
Hunter
Hutto
Hyde
Kemp
Latta
Lewis (CA)
Livingston
Loeffler
Lott
Lungren
Mack
Marlenee
McCandless
McCollum
McEwen
McMillan
Michel
Miller (OH)
Monson
Montgomery
Moorhead
Myers
Nielson
Packard
Parris
Porter
Quillen
Ritter
Rogers
Roth
Rudd
Schaefer
Shaw
Shumway
Shuster
Skeen
Slaughter
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snyder
Solomon
Spence
Stenholm
Strang
Stump
Sundquist
Sweeney
Swindall
Taylor
Vucanovich
Whittaker
Young (FL)

NOT VOTING—37

Anthony
Badham
Bonker
Breaux
Burton (CA)
Campbell
Coleman (MO)
Derrick
Edwards (OK)
Fiedler
Fowler
Gaydos
Gregg
Grotberg
Hall, Ralph
Hartnett
Hatcher
Huckaby
Jones (NC)
Kindness
Kramer
Martin (NY)
McDade
Miller (CA)
Moore
Oxley
Panetta
Rose
Rostenkowski
Schneider
Siljander
Skelton
Stangeland
Thomas (CA)
Vander Jagt
Weaver
Zschau

□ 1930

The Clerk announced the following pair:

On this vote:

Mr. Anthony and Mr. Panetta for, with Mr. Oxley against.

So, two-thirds having voted in favor thereof, the bill was passed, the objections of the President to the contrary notwithstanding.

The result of the vote was announced as above recorded.

The SPEAKER. The Clerk will notify the Senate of the action of the House.

GENERAL LEAVE

Mr. WOLPE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4868, the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

PERSONAL EXPLANATION

Mr. JONES of Oklahoma. Mr. Speaker, due to a malfunctioning machine I was not recorded on two votes last week. They were the motions to suspend the rules and pass H.R. 5269 and H.R. 4216, rollcalls 401 and 402, respectively. Had I been present, I would have voted in favor of both motions.

NATIVE AMERICAN PROGRAMS AMENDMENTS OF 1986—VETO MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following veto message from the President of the United States:

To the House of Representatives:

I am returning herewith without my signature H.R. 3247, which would extend and amend the Native American Programs Act of 1974.

I fully support the objectives of the Native American Programs Act of 1974 to help American Indians, Alaskan Natives, and Native Hawaiians achieve economic and social self-sufficiency. My decision not to approve H.R. 3247 is based on my belief that this bill would seriously undermine the administrative flexibility needed to ensure responsiveness to individual tribes and Native American organizations—flexibility that is essential to the effectiveness of the native American programs.

The Executive branch must be allowed to carry out its responsibilities to administer the laws effectively. H.R. 3247 would cause undue interference with ongoing program management. This legislation, if signed into law, would make effective administration of this important program extremely difficult by creating delays in implementing program policy that can only hurt rather than help the Native Americans it is intended to serve.

If H.R. 3247 were to become law, it would require diverting scarce resources away from program-related activities to meet wasteful and unnecessary administrative requirements and would involve the Congress inappropriately in ongoing administrative activities that should be left to the Executive branch. Specifically, the bill would:

- —require "notice and comment" rulemaking for rules and policy statements that have been and should continue to be handled informally, without permitting exceptions for good cause or in other circumstances where exceptions generally apply, thereby substantially increasing administrative costs and delays;
- —require the Administration for Native Americans (ANA) to use peer review panels to review and rank all grant applications, even though the use of such panels is not appropriate in all cases; and
- —require the Secretary of Health and Human Services to report and explain to the Congress all decisions on grant applications at variance with recommendations of the peer review panels.

These provisions of H.R. 3247 would unnecessarily increase administrative requirements and thereby shift resources away from technical assistance and other activities more directly related to helping applicants and grantees. Equally troublesome, they would inevitably involve both the Congress and members of the public in second-guessing the ANA on details related to administration of Native American programs. This would have adverse results for the programs and would potentially set a dangerous precedent for unnecessary restrictions disrupting the operations of other Federal human services programs.

Quite simply, the Executive branch cannot effectively carry out its responsibilities to implement the laws if agencies are required, as a routine procedure, to justify each grant decision to the Congress, or if every general statement of agency policy or procedure must be made through formal notice and comment rulemaking.

The provisions of H.R. 3247 also raise concerns about confidentiality, in requiring the Commissioner of the ANA to discuss publicly the weaknesses and problems of applications submitted by individual tribal organizations. This could well have a chilling effect on the competitive grant process. New and less experienced organizations could be more hesitant to apply, and established Native American organizations might be disturbed about public distribution of information about their applications.

I reiterate my support for the continuation of the Native American programs. I therefore urge the Congress to provide funding for these programs in the fiscal year 1987 continuing resolution and urge that the 100th Congress promptly consider new legislation to authorize appropriations for these programs. The Administration, through the Department of Health and Human Services, looks forward to working with the Congress to develop legislation that will meet the Congress' legitimate concerns for accountability of the Executive branch, while also meeting our concerns that the law not be burdened with requirements incompatible with our responsibility to achieve the statutory purposes of these programs.

RONALD REAGAN.

THE WHITE HOUSE, *September 26, 1986.*

The SPEAKER. The objections of the President will be spread at large upon the Journal, and the message and bill will be printed as a House document.

Mr. KILDEE. Mr. Speaker, I ask unanimous consent that the veto message of the President, together with the accompanying bill, H.R. 3247, be referred to the Committee on Education and Labor.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

NEW DEFERRALS OF BUDGET AUTHORITY UNDER IMPOUNDMENT CONTROL ACT OF 1974—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 99-272)

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Appropriations and ordered to be printed:

(For message, see proceedings of the Senate of September 26, 1986, at page S13838.)

CLARIFYING THE EXEMPTIVE AUTHORITY OF THE SECURITIES AND EXCHANGE COMMISSION

Mr. MARKEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2000) to clarify the exemptive authority of the Securities and Exchange Commission, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. MOORHEAD. Mr. Speaker, reserving the right to object, under my reservation, I will yield to the gentleman from Massachusetts [Mr. MARKEY] to explain what he is doing and what the bill contains.

Mr. MARKEY. Mr. Speaker, the bill S. 2000, like H.R. 5252, which I introduced in the House, cures an unintended application of the Public Utility Holding Company Act of 1935 [PUHCA]. This legislation will permit

the Cabot Corp. to restructure a West Virginia natural gas utility which it owns into a wholly owned subsidiary free of the substantive restrictions of PUHCA. The restructuring is desired by both the West Virginia Public Service Commission and Cabot Corp.

Cabot Corp. is a large, multinational, diversified manufacturer of chemicals, petroleum, and synthetic products. Nearly 90 years ago, the company explored for and discovered natural gas in West Virginia to supply its own operations in that State. Cabot's sales of excess capacity, which account for just over 1 percent of Cabot's revenues, are regulated by the West Virginia Public Service Commission.

By virtue of a joint stipulation and settlement agreement between Cabot and the West Virginia PSC, Cabot has been directed to restructure its public utility division into a subsidiary, an act that would benefit both Cabot and the ratepayers of West Virginia, and would in addition facilitate the work of the West Virginia PSC. Unfortunately, the creation of a wholly owned public utility subsidiary would make Cabot a "public utility holding company" under PUHCA. By virtue of the substantive provisions of that act, Cabot would be forced to divest itself of approximately 99 percent of its businesses in order to accommodate a law applicable to the remaining 1 percent.

S. 2000 solves this Hobson's choice by exempting Cabot from PUHCA. The amendment to S. 2000 which I am introducing today assures that this exemption will be available only to Cabot and to no other companies, which is the intent of the sponsors of this legislation in both the House and Senate.

I share the opinion of JOHN DINGELL, chairman of the Energy and Commerce Committee, and of Richard Ottinger, my predecessor as chairman of the Energy, Conservation and Power Subcommittee, that PUHCA is a cornerstone of the Federal public utility regulatory code, and that the act's twin objectives of investor and ratepayer protection remain as valid in 1986 as they were in 1935. I am convinced, however, that Cabot's current predicament is not an intended outgrowth of PUHCA, and that PUHCA's beneficial contribution to utility regulation will not be compromised by the cure I am proposing today.

I thank my friend and colleague, the ranking minority member from the Energy Subcommittee Mr. MOORHEAD, for his assistance in this matter, and I urge my colleagues to support this timely and equitable initiative.

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Mr. MOORHEAD. Mr. Speaker, the minority has had an opportunity to look over this legislation. We find it satisfactory.

Mr. MOORHEAD. Mr. Speaker, the minority has had an opportunity to look over this legislation. We find it satisfactory.

Mr. Speaker, this the second time this year, and the third time this Congress that we have been asked to consider legislation to relieve certain businesses from the burdensome restrictions of the Public Utility Holding Company Act. I think, by now, it should be clear to everyone that the Public Utility Holding Company Act, or PUHCA as it is known, no longer serves the public interest and should be repealed.

PUHCA inhibits registered electric utility holding companies, especially those which operate interstate, from conducting their business efficiently and competing on an equal basis with other nonregistered utilities. Further, intrastate electric utility holding companies, which are now exempt from Securities and Exchange Commission [SEC] regulation, and therefore, do not face the same restrictions facing registered interstate electric utility holding companies, face the possibility that their exemption might be removed in the future.

Three types of PUHCA restrictions unnecessarily restrict the activities of registered holding companies. First, management of these companies' financial affairs requires the permission of SEC regulators. All issuances of securities, which are defined so broadly as to include such arrangements as guarantees on leases, require SEC approval. Second, electric utility holding companies' activities are restricted to those that are "functionally related" to the utility business and thus limits their flexibility to pursue attractive business ventures. Third, PUCHA includes a grab bag of several other restrictions, such as those governing membership on the boards of directors of holding companies.

These restrictions can harm the economically efficient operation of registered electric holding companies and, therefore, harm electricity consumers. For instance, if a company cannot issue a certain type of security, or cannot issue it on a timely basis because of SEC review, it may have to pay more money than it otherwise would in arranging financing. Also, the costs of simply complying with SEC regulation are not inconsiderable.

PUHCA's major economic inefficiencies, however, are due to its inhibitions on mergers. Utilities that might want to merge with other utilities will not do so if they will thereby subject their financial management to SEC oversight and approval and inhibit their ability to pursue attractive business ventures not functionally related to providing their customers with electric power.

This inhibition frustrates mergers of smaller electric utilities into larger interstate units that in many cases may make sound economic sense. Such mergers could lower customer costs in several ways.

First, large utilities reduce their operating and maintenance costs by operating as a large intracompany power pool. Groups of small utilities often do not operate as a power pool. Mergers of small companies into large ones could bring about operating efficiencies and save customers money.

Second, larger utilities take advantage of economies of scale in the construction and operation of plants and in the procurement of goods and services. Larger utilities also tend to build facilities more cheaply than smaller ones, and are able to add capacity to larger increments which cost less per unit of capacity. The recent intrastate merger of Toledo Edison and Cleveland Electric Illuminating occurred in large part to give the new company greater ability to manage its existing facilities. Yet interstate mergers that could accomplish the same purpose will in all likelihood not take place because such a merger would subject the new company to registered status under PUHCA.

Third, a large utility formed as a result of a merger of several small ones would have less overhead costs per customer. For example, there would be only one headquarters staff and one strategic planning staff rather than several. As a result, per customer costs could be less and the new utility would be more efficient.

Furthermore, economic efficiency may also suffer because nonutilities are inhibited from taking part in ownership of electric generating facilities. If a nonutility owns more than 5 percent of an electric generator—except those built under the Public Utility Regulatory Policies Act of 1978—it would likely become subject to SEC regulation. And, if it owns more than 10 percent of an electric plant, it becomes in most cases a registered holding company and must divest itself of its nonfunctionally related businesses. As a result, nonutilities, such as architect/engineers, component manufacturers, and major contractors, are inhibited from taking large equity stakes in new plants.

Mr. Speaker, we need to create incentives for taking risks and building electric generating capacity to meet an uncertain future. We may be entering a new phase in the electric utility industry, one in which the marketplace will determine whether a new plant is built and whether it will make a profit or a loss. If so, efficient construction and operation may become even more important than it is today.

Further, provided it is consistent with reliability in electric supply, and the interests of residential and industrial customers, perhaps such incentives should be extended to private, nonutility investors. Contractors today sign contracts to build new plants. Maybe plants would be built and operated more efficiently if builders could take an equity stake in the plant, with the incentive that the cheaper the plant is built and operated, the greater their profitability? Yet PUHCA strongly inhibits putting such incentives in place.

The Securities and Exchange Commission has supported repeal of PUHCA under several administrations for many years now. The SEC believes that PUHCA's costs upon society are burdensome and unnecessary. State regulation is much stronger now than when PUHCA was passed in the 1930's. If PUHCA was repealed, customers would be adequately protected by State regulation and by the disclosure and reporting requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934. Surely, we should carefully review the value of PUHCA and its repeal next Congress.

We have no objection to it.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2000

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Notwithstanding section 3(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79c(a)), a holding company which has only one subsidiary company that is solely a gas utility company, as defined in said Act, shall be exempt from all provisions, except section 9(a)(2), of said Act: *Provided,* That, neither the holding company nor any other subsidiary company is a public utility company, the operations of such subsidiary gas utility company do not extend beyond the State in which it is organized, the subsidiary company was incorporated on or before July 1, 1986, for the express purpose of operating as a gas utility company, and all of whose voting securities are owned by the holding company, and neither the holding company, nor any of its subsidiary companies are engaged in residential or commercial plumbing, heating, refrigeration, air-conditioning, or in the sale, installation or servicing of such or related equipment.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. MARKEY

Mr. MARKEY. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Markey: Strike all after the enacting clause and insert:

Notwithstanding section 3(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79c(a)), a holding company which has only one subsidiary company that is solely a gas utility company, as defined in said Act, shall be exempt from all provisions, except section 9(a)(2), of said Act if neither the holding company nor any other subsidiary company is a public utility company, the operations of such subsidiary gas utility company do no exceed beyond the State in which it is organized, the subsidiary company was incorporated on June 16, 1986, for the express purpose of operating as a gas utility company, and all of whose voting securities are owned by the holding company, and neither the holding company, nor any of its subsidiary companies are engaged in residential or commercial plumbing, heating, refrigeration, air-conditioning, or in the sale, installation or servicing of such or related equipment.

The **SPEAKER** pro tempore (Mr. Weiss). The question is on the amendment in the nature of a substitute offered by the gentleman from Massachusetts [Mr. Markey].

The amendment in the nature of a substitute was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that all Members may be given 3 legislative days in which to revise and extend their remarks on the Senate bill just passed.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

TRIBUTE TO HON. DON FUQUA

The **SPEAKER** pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. Bennett] will be recognized for 60 minutes.

Mr. BENNETT. Mr. Speaker, we are here today to pay honor to Don Fuqua.

Mr. Speaker, Don Fuqua came to the leadership of the Science and Technology Committee at a time very important to our country. He measured up to all the stringent leadership requirements of that office. These requirements were not only to have vision as to what could be expected and hoped for, but also to have persistence and dedication to the pursuit of the goals once set.

Much of the time when space exploration was pushed by him and his committee, there were persistent fiscal or money problems tied to low-tax income on the one hand and mounting social or Government housekeeping demands on the other. All of this was at a time when defense expenditures were also increasingly demanding. Mr. Fuqua's leadership helped to save the day for space and other scientific advancements.

Men of lesser stature would have caved in and accepted mediocre attainments. Yet, Mr. Fuqua persisted and our Nation and mankind are deeply his debtor because of this able leadership.

Don is a veteran of the Korean war, honorably discharged in 1955, whereupon he completed his college studies at the University of Florida. He has served ably as president of the University of Florida Alumni Association, another facet of his distinguished public service.

Although we know him mostly for his leadership in space exploration, he has worked effectively in many scientific areas such as designing new energy sources and protecting against environmental hazards. Moreover as the ranking member of the Committee on Government Operations, he has participated ably in many defense-oriented issues.

Among the high honor given him are honorary doctorate degrees from Notre Dame University and Florida Institute of Technology, the Robert Goddard Memorial Trophy and the American Astronomical Society Award for Contributions to Space.

Don will be missed for the products of his thoughtful mind in many fields of legislation. All of us will also miss him for his easily given friendship. We will also miss his wife, Nancy, who has also been a leader on the Washington scene particularly in the Florida State Society but in every good cause that offered a challenge. We are glad that they plan to be with us often, but sorry indeed that it will not be the daily happening of the past.

Mr. Speaker, I yield to the gentleman from Arizona [Mr. Rudd].

Mr. RUDD. Mr. Speaker, I thank the distinguished gentleman from Florida for yielding to me on this important occasion.

I applaud the gentleman for having taken this very, very special order with the departure of our good friend and colleague Don Fuqua. When I came to the Congress, Don Fuqua was an inspiration to me because I served on the Committee on Science and Technology. At that time "Tiger" Teague was then the chairman. We traveled a little bit together, and as a matter of fact I made a trip to Mexico looking into the energy situation at the request of Chairman Teague.

There was no doubt about who should succeed Chairman Teague; of course it was Don Fuqua, a man of great integrity, totally fair, totally dedicated to the task and certainly very sincere in all of the things he was doing, and above all very able.

I have been with him under many different circumstances. He has comported himself with great credit to this body, to himself and to our country.

Mr. Speaker, I admire him, I like him personally and I would just add one thing. I know that he is going to leave our body here and he is going to have a lot to do with the aerospace industry. In my opinion if we are not successful in air and in space, we cannot be successful as a Nation in anything else, because at times we have fallen behind, we pick up, we fall behind. But in the space and in the air is the future of our country, our people, possibly the world.

It is my hope that we will return some leadership in that area, continue to make the great advances that we have. We have a good man in the industry who will lead us and help us do that.

I want to wish Don Fuqua and Nancy, his very nice and lovely bride, the very best of good fortune in the future.

I do again thank you, my good and dear friend from Florida, for taking out this special order.

Mr. BENNETT. I yield to the gentleman from California [Mr. Mineta].

Mr. MINETA. Mr. Speaker, I am proud to join my colleagues in paying tribute to a dear friend and close colleague, the Representative from the Second District of Florida, Don Fuqua.

Don leaves us at the conclusion of the 99th Congress to assume a new challenge: leading the Aerospace Industries Association. This is a job to which he is admirably suited as he is a gifted leader. His approach to issues are thoughtful and deliberative, and he can forge alliances and bring sound reasoning and judgment to bear on even the most difficult of issues.

I have valued Don as a committee chair. He has explored issues within the jurisdiction of the Science and Technology Committee with great interest and curiosity. His has been a quiet brand of leadership and he has wielded his considerable power with fairness, with intelligence, and with dignity.

The issues within the purview of his committee are of no small consequence. More and more, America is trying to come to terms with research and development policy and its effect on the competitiveness of scientific and industrial enterprise. Don's special expertise and vision have been of enormous benefit to those who would have us successfully meet the challenges of tomorrow's technological demands.

Moreover, Don has been a great champion of space exploration and scientific pursuit. His interest has not been restricted to a hearing room; he went out and visited NASA facilities, talked to contractors, met with astronauts—in effect, learned the aerospace field inside out.

And, when we had to contend with our sadness in the aftermath of the *Challenger* accident, it was Don who set the tone for us all. His grief was very deeply felt because he knew the astronauts and their families personally. Still, he proved himself a strong believer in this country's Space Program by insisting that the investigation of the *Challenger* tragedy be conducted fairly, thoroughly, and in full view of the American public. Tirelessly, he has worked to ensure that our Space Program recover fitfully and once again capture America's imagination and respect.

I should also point out that we in the Congress are not alone in wishing to honor Don. He has received many commendations, including a much treasured honorary degree from Notre Dame University. And, notably, Florida State University has endowed a chair in his honor to be named the Don Fuqua Chair in Engineering and Science.

It is an honor to stand before this body and to enumerate just a few of the many accomplishments of a fine colleague. I take less pleasure at the prospect of his departure from the House of Representatives and I will miss his wise counsel. Don has had a distinguished career in the House of Representatives and now he moves on to pursue fresh challenges. Let us all wish him well and offer them our best wishes. What we will not do is say farewell, because Don and Nancy remain our friends and Don remains our colleague and we wish them godspeed wherever his career path may lead them.

Mr. BENNETT. I yield to the gentlewoman from Tennessee [Mrs. Lloyd.]

Mrs. LLOYD. Mr. Speaker, I shall always remember Chairman Don Fuqua for his integrity and fairness. I have known him for 12 years as a fellow member of the Science and Technology Committee and for the 8 years while he served as its chairman. He has always courteously and patiently allowed members to have their say on any issue regardless of their views. He has also been insistent that all interested parties on the committee be fully briefed by the committee staff on any issue of significance to them. As a result, matters before the committee have received the appropriate level of scrutiny.

Don has been identified with space and science but I shall always remember him as a comrade in arms on the energy front. We fought side by side for a balanced U.S. energy development program, not a program which favored one technology over another.

Rather, Don believed in meeting the country's energy needs through the necessary mix of nuclear, fossil, solar, and conservation technologies with prudent synfuels demo plants as well. We'll miss you, Don, because you continued to provide leadership in energy policy long after it was the fashionable thing to do. Godspeed.

Mr. BENNETT. I yield to the gentleman from Florida [Mr. Hutto].

Mr. HUTTO. I thank the gentleman for yielding.

Mr. Speaker, I appreciate our distinguished dean of the Florida delegation for taking this special order this evening.

Mr. Speaker, I rise today in tribute to my fellow Floridian and my good friend, Congressman Don Fuqua, who is retiring from his service to the Second District of Florida.

I am going to greatly miss my colleague for many, many reasons. First of all, I am pleased to count Don Fuqua as one of my good friends in this body since I began my service in Congress some 8 years ago. Actually, I have known Don much longer than that. As a member of the WJHG-TV news staff in Panama City for a number of years, I had the occasion periodically to interview members of the Florida congressional delegation when they came to town or when I covered them in some of the rural areas of northwest Florida. At that time, it was a privilege to interview Don for our channel 7 news on a number of occasions, and I found him to be most responsive and always willing to cooperate. He was a very pleasant person to interview and so it was an honor for me to later be elected to Congress and to serve with members of the delegation with whom I had only had a casual acquaintance through my work in television news.

There is no way one could call Don Fuqua a city slicker. I happen to know this for a fact, because Altha, FL, is not necessarily a great metropolis in our part of the State, but I have known a number of people from that little town who have achieved a great deal of success in their chosen vocation. Don is certainly at the top of this list and not only is Don proud of the fact he is from Altha, I think he also is pleased to point out that Altha is not too far from that great place in northwest Florida called Two Egg. So Don Fuqua's roots are on a level that help him to comprehend the life and problems of people in the rural areas of not only northwest Florida and the State of Florida but also the Nation as well. With this kind of background, I think that his service in the Congress has been one that has been exemplified by recognizing the needs of those in circumstances far different from many Americans who live in the great metropolitan areas.

There isn't any question that our good friend Don is one of the more popular Members of the House of Representatives. He is truly respected by the Members of this body and because of this respect and indeed his personality that allows him to work with so many people of diversified backgrounds, he has been a most effective Member. Obviously, he is held in the same high esteem by his constituents back home who have elected him continuously since they first sent him to Washington at the age of 28. Prior to that, he had served in the Florida House of Representatives as what one might refer to as a "boy wonder." But even that indicates that his leadership abilities were recognized at a very early age by the people of northwest Florida.

We are all very proud of Don and his service as the chairman of the Science and Technology Committee. It is my understanding that he is one of the youngest chairmen, perhaps the youngest chairman of the full committee that this House has had. In this capacity, he has been in the forefront of seeing that our Nation's very important space program has been carried on for the benefit of future generations. I can tell you that he has a sincere interest in this field from many aspects, particularly that of developing scientific information that will benefit those who come later.

Since 1982, when the Nation's House of Representatives' Districts were reapportioned, Don and I have actually shared my home county of Bay in northwest Florida. I often tease him by saying that the legislature reapportioned it but gave me the people and gave him a lot of pine trees. While that's not the exact fact, although he only has a strip of eastern Bay County and approximately 5,000 people, the reapportionment did throw us into a situation of sharing my home county and because of this, Don is in the Panama City area more often, and it has been a pleasure to work with him for the mutual benefit of our constituents.

I serve district one and Congressman Fuqua has district two, so it has been necessary for us to work together on many matters since I came to Congress with the 96th class. In our working together, we have also reported together to the constituents of these two districts by way of a monthly half-hour television program. It has been a joy to work with Don on this program, which is carried by stations in Panama City and in Tallahassee. I will greatly miss this opportunity to get together with him on the air to report what is going on in Washington.

To demonstrate the love and affection of his constituents and to recognize his leadership qualities, Florida State University has now established the "Don Fuqua Eminent Scholar Chair in Engineering and Science." Just last week a dinner to celebrate the establishment of this chair was held at a downtown Washington hotel. At this affair, it was heartwarming to hear speaker after speaker extoll the good works and the fine qualities of Don Fuqua. It is very fitting that Don should be honored in this manner by Florida State University and Florida A&M for which this chair will serve jointly. It is a nice way to remember one who has contributed so much to these fine educational institutions in Tallahassee for more than two decades.

I cannot fault Don's decision to retire at such an early age because frankly, I cannot imagine anyone serving 24 years in the House of Representatives, though I realize that there are so many who have achieved a great deal of success that has carried them through longer periods of service. Nonetheless, 24 years is a long period of time to serve continuously through the rigors of this legislative body and particularly, to have served so well in the largest district geographically east of the Mississippi River. Don has carried out his duties and responsibilities to his constituents as well as anyone I know. He is leaving with the admiration, trust and confidence of the people of Florida as well as the Nation, who recognize him to be a great American and an outstanding Member of Congress. Congratulations, Don, on a job well done. We will greatly miss you and Nancy, but we wish you and your family the best in the years to come. Though you will be busy in the private sector, we do expect you to return and visit us often. God bless you in your retirement.

□ 1955

Mr. BENNETT. Mr. Speaker, I yield to the gentleman from Georgia [Mr. Jenkins].

Mr. JENKINS. Mr. Speaker, I thank the gentleman from Florida for yielding to me.

On behalf of the entire Georgia delegation, including myself, I simply want to take this opportunity to express my appreciation to Don Fuqua for the many years of service that he has given not only to his district, but to the entire Nation.

During the 10 years that I have had the opportunity of serving with Don Fuqua in this House, I have made my own judgment that here is a Member of this House who conducted the affairs of the Nation in a very calm, a very forceful and a very dignified manner. I have watched his efforts as chairman of a very important committee in this House during very difficult times, and I commend the gentleman for his actions not only for other districts, but for the Nation as well.

I shall miss Don Fuqua, not because I ever served on a committee with him, but I have watched him as he related to other Members of the House, as I am sure he has related to the people within his district, and I think he has served his people and the people of this Nation very well. We shall miss him.

Mr. BENNETT. Mr. Speaker, I yield to the gentleman from Pennsylvania [Mr. Ritter].

Mr. RITTER. Mr. Speaker, I thank the gentleman for yeilding, and I thank him for holding this special order for a very special friend and a very special contributor to this Congress and to America's role in the world in science and technology.

I am pleased to have this opportunity to participate in this special order for my friend and colleague, Don Fuqua. Don's years of tireless work to promote U.S. leadership in the world scientific community will be greatly missed. The U.S. scientific community owes him a debt of gratitude, as do all Americans.

Since the early days of the Space Program, Don has been on the forefront in expanding man's knowledge of the universe. In recent years, he has taken the lead role in research and development on such issues as aerospace, energy, and other high tech areas. These are areas which are critical to America's economic future. In addition to serving with Don Fuqua on the Science and Technology Committee, I have had the privilege of serving with him on the Science Policy Task Force. This review of national science policy, examining the basic aims and effectiveness of the Federal role in science, was sorely needed to put priorities on the funding for scientific projects in this era of limited Federal financing.

What made Don such an effective legislator was his low-pressure style of negotiating, a trait that has reflected in his fellow committee members unanimously reelecting him as chairman of the Committee on Science and Technology in the 98th Congress.

During his chairmanship, Don has used his softspoken style of the southern gentleman to keep the Science and Technology Committee nonpartisan. This cautious, thoughtful style has helped him achieve the goals he set out to accomplish for American science, his congressional district, Florida, and his country.

I applaud the fine work done by Chairman Fuqua for over two decades. He will be sorely missed not only by Members of this body but by all Americans concerned with U.S. leadership in Science. I wish him the best in his future endeavors.

□ 2005

Mr. BENNETT. Mr. Speaker, I yield to the gentleman from Mississippi [Mr. Montgomery].

Mr. MONTGOMERY. I thank the gentleman for yielding to me.

Mr. Speaker, I wish to thank the gentleman from Florida for taking this special order to honor Don and Nancy Fuqua. Let me say that Don and Nancy are as well liked as any two people I have ever seen on Capitol Hill. I got to know Nancy through her work with the Congressional Wives Club. When we had problems in different areas such as with the Congressional Cook Book and other things, working the Congressional Wives Club, Nancy was always there.

Don Fuqua and I had the honor of being selected and initiated as 33d degree Masons in Orlando, FL, for the Southeastern States about a year ago. It was a great honor to Don and to myself. It shows that outsiders not only recognize him but we in the Congress of the United States know how popular he is.

In fact, Mr. Bennett, I recall several years ago when we voted on chairmen of the different committees in the Democratic caucus, Don Fuqua was the only chairman that did not get one vote against him in this caucus. I think that just points out how well liked Don Fuqua is.

He has been a steadying hand on the problems that we have had in the Space Program. I know that I have been concerned as well as other Members about what was going to happen. But Don Fuqua came forward, explained the program and said, "Let us move ahead." We accepted that in the Congress.

Don and Nancy Fuqua are beautiful people, and as my colleagues have said, they will be missed.

Mr. BENNETT. Mr. Speaker, I yield to the gentleman from Georgia [Mr. Gingrich].

Mr. GINGRICH. I thank the gentleman for yielding to me.

Mr. Speaker, I just want to take a moment to comment that I have watched with great admiration as the very distinguished chairman of the Science and Technology Committee worked on a bipartisan basis with all members of his committee, and in talking with Members on our side who again and again went on trips with him, they commented to me that they were remarkably educational and serious trips. That this was a chairman of the committee who was determined that if you were going to serve on Science and Technology you were in fact going to learn about science and technology.

I just think that the record would be incomplete if on our side of the aisle we did not make very clear that there was a bipartisan spirit in Chairman Fuqua that was committed to giving America the best possible return on its investment in technology and that he leaves behind him a record of a job very well done during his chairmanship.

Mr. BIAGGI. Mr. Speaker, I am honored today to join in this richly deserved tribute to our distinguished colleague from Florida [Don Fuqua], who is retiring after 24 years of exemplary congressional service.

There is nothing that we can say here today that will match the ultimate tribute Don Fuqua has already received—24 years of admiration and support from his constituents. By re-electing him for each and every term since 1962, Don's constituents have reaffirmed what each of us already knew, that he served his constituents and, indeed, his country with distinction.

One of the toughest aspects of this job is to balance the constituent service needs back home with the pressing national and international issues that face us here in Washington. Don mastered this skill very early in his career—a fact that is verified by his impressive election victories and the high stature he has attained in Congress particularly as chairman of the House Science and Technology Committee.

Since 1979, Don has served as chairman of the Science and Technology Committee. During that time, his low-pressure yet very effective style has made him a popular and very well respected Member of this body. He has spent much of that time promoting and preserving the Space Program, at a time when that program was facing considerable budget-cutting pressures. He has also left his legislative mark on the energy and high-technology industries, particularly in the area of nuclear waste disposal.

Mr. Speaker, Don Fuqua is a man of high intellect, integrity and commitment. His contributions cannot be measured in the words that we speak today, but only in the 24 years of dedicated and valued service he has given his constituents and his country. I join my other colleagues in wishing Don many rewarding and enjoyable years when he leaves this institution. He will be missed.

Mr. ALEXANDER. Mr. Speaker, the House Chamber is nearly empty except for a single Member who followed the speakers rising to honor the the gentleman from Florida [Mr. Fuqua] who is retiring.

I rise tonight to join those who have worked with the gentleman from Florida during his service in Congress.

I have not had the privilege to serve on committees or to work closely with the gentleman. But, I consider him a good friend and appreciate his excellent management of bills he handled on the floor. We are close, but yet so far as Members are so busy doing their jobs.

Don, I wish you continued good health and success in your life after Congress. Come back to see us when you pass by Capitol Hill.

Mr. MARTINEZ. Mr. Speaker, when the 99th Congress adjourns, our friend and colleague, Don Fuqua, will retire from the Congress. His 20 years of distinguished service as a Representative of the Second District of Florida speaks for itself.

Don Fuqua has served on the Committee on Government Operations, where he was second-ranking member and where I had the pleasure of working with him on many important issues. He has also served on the Committee on Science and Technology, where he has achieved special distinction. As the chairman of the Subcommittee on Manned Space Flight, he was responsible for getting the Congressional support necessary for the Apollo mission so that the United States could be the first country to make the historic flight to the Moon. Then, succeeding to the chairmanship of the Committee on Science and Technology, he has become the strong and effective advocate of the Space Program so that, today, we Americans can proudly say we have the most advanced Space Program in the world. As we face the 21st century and increasingly deal with important defense- and technology-related issues, we will more fully be able to appreciate the significance of Don's contribution.

In short, Don Fuqua not only has represented his district, but our country with honor and dedication. Whoever follows in his footsteps will have the best of examples to emulate. I wish him success in his future endeavors.

Mr. NATCHER. Mr. Speaker, one of the able Members to serve in the House of Representatives during the 30th century is my friend Don Fuqua of Florida.

The public service of Don Fuqua is enshrined in the history of his country and State. Throughout this country and abroad, he will be remembered for his leadership as chairman of the Science and Technology Committee and for his success in keeping this program underway, thereby establishing a record which no country in the world can surpass—12 men on the Moon and many other achievements that have been described all down through the years. In addition to being chairman of this committee, he has established an excellent record in the House of Representatives in his representation of the people in his district and in his home State. His concept of public trust is without parallel and never has he hesitated to speak out against any proposal which he felt was not sound and in the best interest of his people. In every position he has held, either public or private, he has achieved distinction. His service in all of his assignments is marked by a high sense of conscience and duty. His character, achievements, and faithful service will be an inspiration to generations yet to come. He will have a high place in the history of our country and in the hearts of his countrymen. His life exemplifies those virtues that make a great Congressman and those are fairness, generosity, a willingness to listen, and an unyielding devotion to the principles of his party and to all matters which are in the best interest of our country.

For a number of years now, Don Fuqua has presided over the Committee of the Whole House on the State of the Union when the appropriations bill which provides funds for the Departments of Labor, Health and Human Services, and Education was presented to the House for final passage. He is one of the best presiding officers in the House of Representatives, and all of the Members respect him. The manner in which he has presided down through the years has placed him in a position where he has experienced no difficulty in presiding, not only over this particular bill, but many others, during the time he served in the House. Every member of the Committee on Appropriations will miss Don Fuqua, and this especially applies to me and the members of our subcommittee who each year present the appropriations bill for the three departments that I just mentioned.

Mr. President, Don Fuqua has established an outstanding record in the Congress of the United States, and he will be missed by every Member in both Houses.

Mr. BADHAM. Mr. Speaker, I rise today to pay tribute to 24 years of dedicated public service in the House of Representatives by my distinguished friend and colleague, Don Fuqua, who will retire after his 12th term representing the good people of Florida's Second District. As chairman of the Committee on Science and Technology, Congressman Fuqua has spent much of the past decade fighting to preserve our Nation's vital Space Program, as well as helping to shepherd the many complex energy issues we face today.

In his role as chairman of the Energy Development and Applications Subcommittee, Congressman Fuqua used his abilities as a compromiser to find the essential middle ground on such matters as nuclear energy and funding for aerospace and high-technology research. This approach had led to resolution of many key issues that have faced his committees over the years.

Of particular interest to me has been Chairman Fuqua's persistent support of the Nation's Space Program, especially the space shuttle. He views the exploration of space, not only with a vision of unlocking new and exciting mysteries, but also with a keen understanding of how man in space can bring great economic and social benefit to man on Earth. It is this kind of pragmatic, realistic approach that ultimately will carry us to our neighboring planets and beyond.

For nearly 30 years, including his service in the Florida Legislature, Congressman Fuqua has represented his constituents effectively and with honor. His dedication and loyalty will be missed here in the House and by those he has so ably represented.

Mr. LOWERY of California. Mr. Speaker, Congressman Don Fuqua has a long list of awards and memberships that covers several pages. The awards are replete with adjectives like "distinguished and outstanding." Such a list chronicles a career of work and recognition, achievement and service.

But no list speaks to the real timbre of the man—that must be left to those who served with him and watched him work.

I am privileged to say Mr. Fuqua was my chairman for 4 years, my first 4 in Congress. As I served with him on the Science and Technology Committee, I came to appreciate that if any one man might be said to have nurtured the Space Program through a most trying time following the end of Apollo, it is Don Fuqua.

Indeed, if any one man might be said to have fathered our space shuttle, it is Don Fuqua. I was just a young San Diegan of 15 in 1963, when Don first started to put his imprint on American space technology as a freshman Congressman with the Committee on Science and Astronautics.

In the ensuing 20-plus years, his expertise in science and technology has become legendary, but perhaps more important and overlooked are his leadership abilities. Don Fuqua's name is synonymous with concensus. With Mr. Fuqua in charge, it was possible to examine the important issues on their merits; the lines of partisan demarcation were diminished severely. And clearly, this is as it should be—science, space, and energy are neither Democrat nor Republican issues.

Mr. Fuqua's constituents recognized his qualities and reelected him to 12 consecutive terms; and I can say without equivocation that he will be sorely missed by Floridians not to mention his colleagues here in Washington.

Quite simply, I believe there is not a finer chairman in the House. To borrow from Shakespeare I would say in this case "clear honor were purchased by the merit of the wearer."

Mr. LEHMAN of Florida. Mr. Speaker, for more than 20 years, Congressman Don Fuqua has represented the Second Congressional District in Florida. I have always known him to be a decent and caring man, and a dedicated and effective chairman of the Science and Technology Committee.

In my judgment, his most significant contribution was the part that he played in the successful landing of the first man on the Moon. As chairman of the key subcommittee, he was the crucial point man during this period in history, and his efforts and participation were vital.

I now wish him every success in his new career. He will certainly be missed by all of his colleagues, and especially by the members of the Florida delegation. I will miss him as my good friend.

Mr. HATCHER. Mr. Speaker, I rise to pay tribute to my colleague and dear friend, the Honorable Don Fuqua of Florida. I have had the privilege of serving in the U.S. House of Representatives with Don for 6 of the 24 years he has ably represented the Second District of Florida. My district in south Georgia borders Don's district; he and I share many concerns because of the similarities between the two districts. I have looked to Don for leadership on countless issues and have always found him to be a kind and giving friend.

It is with sadness that I see Don leave the House after so many years of distinguished service. Florida, as well as the entire Nation, will sorely miss the devotion to his work and the integrity he brought with him to Washington. I am confident, however, that he will continue to be a source of inspiration to those of us who have had the pleasure of knowing him. I wish him the best of success in his future endeavors and I thank him for his guidance over the years. Thank you.

Mrs. MEYERS of Kansas. Mr. Speaker, at the end of this session, Hon. Don Fuqua, my colleague, and chairman of the House Science and Technology Committee, will be leaving the Congress. As a Member who has worked with Don on the Science and Technology Committee, I want to commend him for his effective leadership of the committee.

As a committee chairman, he has worked to increase the committee's oversight role of NASA and aerospace contractor activities, and to strengthen and expand the U.S. role in space. During his years as chairman of the committee, he has worked on the behalf of his constituents and his State; he has been a strong leader in the Space Program; and he has been an active Congressman in a number of other areas, including development of legislation to regulate the area of biotechnology.

On a more personal note, the chairman and his staff have been of great assistance to me as a freshman in Congress. I will remember his great fairness in committee activities, and his willingness to provide the opportunity for members to express their views; his incisive intelligence, and ability to get straight to the point, and most of all, his sense of humor which lightened hearings, and made them all the more enjoyable. For these personal qualities, and his extensive knowledge on space and other science issues, he will be missed by all.

The first time I met Don was at the farewell party here in Washington for Larry Winn, my predecessor in Congress, and ranking member of the Science and Technology Committee. I talked with Larry last week and these are his observations: "As a former Member of Congress who served as the ranking Republican on the Committee on Science and Technology, I'm sorry I am unable to be there to pay tribute to my good friend, Don Fuqua. Don has done so much to make the Space Program a vital and successful one. He should be proud of the strong leadership role he has played over the years. My one regret is that he won't remain to be part of the team that helps get NASA back on track and keep the United States No. 1 in space. Even when Don and I disagreed from time to time, I know he was always very fair to everyone on both sides of the aisle. Joan and I extend our warmest wishes to our dear friends and wish both Nancy and Don the very best in everything they do."

Larry Winn has shared with me many of his feelings and observations about Don Fuqua. He is greatly respected by his colleagues on the committee and by the Members of this body.

I also wish to extend him the best of luck in his future endeavors, and I would like to say a personal thank you for his consideration and support.

Mr. LEWIS of Florida. One of the great joys I've had in my short time in Washington has been to serve with Chairman Fuqua on the House Committee on Science and Technology.

I say that not just because Don and his wife Nancy are such very good friends, but, more so, because Don Fuqua is one of those few truly inspirational leaders with whom you have the privilege of coming in contact during a lifetime.

As the leader of a committee that forges our Nation's science and high technology policy, Chairman Fuqua took on the difficult task eagerly and energetically, because he cares about America, both for today and tomorrow.

Since 1979, Chairman Fuqua's contributions to this Nation's future have multiplied many times over.

Because Don Fuqua was at the helm, we can all rest assured that America will be able to step into tomorrow both prepared and in control.

I'd like to personally thank Chairman Fuqua for the opportunity to serve on the Committee on Science and Technology during his last 5 years in Congress. It has been both an educational and productive experience for me.

Chairman Fuqua has served this committee with distinction, and has earned the respect and admiration of Members from both sides of the aisle. His contributions to science and technology will be long remembered, and he will be greatly missed in the years to come.

I'm just glad he isn't retiring from the business of keeping America on top and won't be so far away that we can't find him in a pinch.

I wish Don and Nancy every success. God bless them.

Mr. GIBBONS. Mr. Speaker, I have known Don Fuqua for about 30 years. We served in the Florida Legislature together and came to Congress after the 1962 election. Don has decided to retire this year, and I will miss him, and I am sure the Congress and the country will miss him.

Don is an effective, hard-working, honest Member of Congress who has given his country some of the best years of his life. He deserves a great retirement and sendoff, and it's unfortunate that his retirement comes at a time when all of us are so busy and there are so many conflicts on our schedules.

Don's long and distinguished service in the Congress has been capped by his successful tenure as chairman of the Committee on Science and Technology. He has had the opportunity to make great contributions to education and to space exploration. During the time Don has served on the Science Committee, man has literally been able to step into space, walk on the Moon and return successfully, and complete numerous scientific experiments and demonstrations.

Don is recognized throughout the land as an expert in science and in education and in space exploration.

Martha joins me in wishing Nancy and Don the very finest of retirement years. We know they will continue to stay active, and they will always occupy a warm place in our hearts as we remember them.

Mr. SCHEUER. Mr. Speaker, I join my colleagues today in paying tribute to Representative Don Fuqua, retiring from Congress after nearly 25 years of dedicated service and leadership. I give great thanks to Chairman Fuqua not only for his work as a Member of Congress from the State of Florida, but also for his role in building and then guiding the Committee on Science and Technology.

Mr. Fuqua joined the committee as a freshman Congressman in 1963—heady days for the fledgling U.S. space program. The early years were indeed a journey "toward the endless frontier." Mr. Fuqua embraced the journey's challenge from the first—and kept his eye fixed on the horizon, even when it would have been easy to veer off the course. He has earned our deepest respect for his commitment to the space program, and especially for his sponsorship of the space shuttle and the manned space station.

Chairman Fuqua also encouraged the committee to recognize the inherent value and infinite potential of other avenues of scientific exploration—be it alternative energy sources, supercomputers, or safer methods for disposing of hazardous waste. He has championed advanced research in universities and colleges nationwide. He has sponsored legislation which would make tangible the benefits of seemingly arcane scientific study.

He has, in short, led the committee, and the Congress, to continue probing that endless frontier. And in doing so, he has helped to secure this Nation's preeminent position in the world of high technology, space exploration and engineering science.

Mr. Speaker, I want to wish Don and his wife Nancy the very best of health, happiness and continued achievement in their retirement. It has been a pleasure and a privilege to have served with the gentleman from Florida.

Mr. ROE. Mr. Speaker, it is indeed a high honor to rise today to join my colleagues in this well deserved tribute to our good friend, DON FUQUA, the esteemed chairman of the House Science and Technology Committee, who has decided to retire from Congress after 24 years of distinguished service to the State of Florida and this Nation.

I for one am deeply saddened by DON's decision to leave us. Under his leadership, our Nation has accomplished the greatest advance in space technology that the world has ever known.

He has also been the acknowledged leader in the battle to secure adequate funding to insure that our colleges and universities are able to produce high caliber scientists, engineers, and teachers who will lead our Nation to new heights in high-technology achievement.

DON FUQUA believes strongly that the young people of America are our greatest national resource and our best hope for the future. His efforts in their behalf were recently recognized with the naming of the Don Fuqua Eminent Scholar Chair in Engineering and Science at Florida State and Florida A&M Universities.

"Youth" has been a key word in DON's life. At age 25, he became the youngest member of the Florida State Legislature. In 1962, at age 29, he was elected to the House of Representatives. In January 1979, he became the youngest Member to become chairman of the House Science and Technology Committee.

In the early years, as chairman of the Committee's Manned Space Flight Subcommittee, he was responsible for major development decisions on the space shuttle and the Apollo-Soyuz mission between American astronauts and Soviet cosmonauts.

Recently, as chairman of the Committee's Subcommittee on Energy Development and Applications he has fought to maintain a meaningful energy research and development program for the Nation at a time when energy concern has frequently turned to energy complaisance.

Throughout his 24-year tenure on the Science Committee, he has been a champion for American scientific strength and technological competitiveness.

Through his leadership as chairman, the committee has worked to improve the Nation's technological innovation, strengthen our engineering base, develop national policy in emerging fields such as materials science, biotechnology, and advanced computing, fortify science and mathematics education at all levels, ensure the necessary reservoir of scientific and technical manpower, maintain a comprehensive energy R&D program, and establish a plan for nuclear waste disposal.

Most recently, DON FUQUA has directed a task force of Science Committee Members in a policy study to examine the last 40 years of American science in order to provide insight and direction for the Nation's scientific success in the next 40 years.

The National Science Foundation recently presented the Distinguished Public Service Award to DON FUQUA in recognition for:

"His concern to promote science not only for the expansion of our total knowledge, but for its proper application to the problems of mankind;

"His unswerving efforts in support of science and engineering research and education;

"His guidance for the Nation's research and development programs; and

"His leadership in directing science for space exploration and space science for the benefit of man on Earth."

He has served this Nation with honor through his dedication to public service and his unceasing work for the betterment of the human condition through science.

Even though DON achieved prominence for his accomplishments, he never forgot that his key role was to serve as the Representative of the people of the Second District of Florida. And serve them he did. He has never forgotten his roots and needs of the people he was fortunate enough to represent in Congress.

I have had the honor and privilege of working with DON FUQUA for the 17 years I have served with him on the Science and Technology Committee. It is my sincere hope that even though he is officially leaving our ranks, that he will continue to provide us with his guidance and wisdom as we strive to put America back in space.

DON, to you and your lovely wife, Nancy, I wish you the best of good health and good fortune in the years ahead.

Mr. WEISS. Mr. Speaker, it is an honor and a privilege to join my colleagues today in paying tribute to the retiring chairman of the Committee on Science and Technology, my good friend from Florida, DON FUQUA.

I don't know who will miss DON more, his loyal constituents in Florida's Second District, or his loyal friends and admirers here in the House. Since I first came to this body almost 10 years ago, I have come to know him as a hard-working, dedicated legislator, whose personal modesty belies his many accomplishments on the Science and Technology Committee.

DON FUQUA has always been ahead of his time. At age 25, he became the youngest member of the Florida State Legislature. At 29, he was elected to Congress, and became this body's youngest Democrat. And at age 45, he became the youngest Member to serve as chairman of the Science and Technology Committee.

Perhaps it was his youth and energy that spawned his interest in the future, in particular, in the future of our Nation's space program. While serving as chairman of the Subcommittee on Space Science and Applications from 1971 to 1981, DON FUQUA was responsible for shepherding our Nation's space program from the proud achievements of the Apollo Program, through the exciting program of planetary space probes, and finally to the space shuttle program we have today. Of course, the space program is only one of the many areas where DON has left his mark. As chairman of the full Science and Technology Committee since 1981, he has worked hard on some of Congress' thorniest environmental issues. Several years ago, he lead the way toward resolving the problem of disposing nuclear waste, and played a key role in drafting the compromise bill that eventually was adopted by the House.

More recently, he has brought his formidable skills to the discussions over the renewal of the Price-Anderson nuclear liability law, working vigorously to reach an agreement with other committees in attempting to bring an equitable bill to the floor.

Thanks to his leadership, math and science education is being upgraded at all levels around the country, insuring coming generations that our country will have an adequate reservoir of well-trained people both for the aerospace industry and the science community in general.

I have had the privilege of serving with DON on the Government Operations Committee, where he is now the ranking majority member. Although much of his time is taken up by the demands of the Science and Technology Committee, he has still found the time to make thoughtful contributions to committee discussions, notably in his work to support inspectors general to monitor bureaucratic waste.

The House will not be the same without DON FUQUA, and he will be sorely missed next year, when for the first time in 24 years, we must confront the issues of the day without his quiet wisdom and guidance.

Mr. NELSON of Florida. Mr. Speaker, during his 8 years as chairman of the Science and Technology Committee, DON FUQUA has shown strong leadership in furthering space exploration for the benefit of mankind. He has diligently and skillfully worked to make sure that space exploration gathers the same support in Congress that it enjoys among the American public.

But, because Chairman FUQUA also is a man with vision, he also threw his crucial support behind basic science research and development of new sources of energy. He has made sure that America has the scientific tools and knowledge it needs to continue its technological lead into the next century.

Researchers working on a most promising new source of pollution-free energy, the use of ocean thermals, have developed numerous breakthroughs in recent years. We have DON FUQUA to thank for that.

This Congress and America will surely miss the congenial leadership and judicious use of authority DON FUQUA showed during his 24 years in the U.S. House of Representatives. I wish him well in his future endeavors.

Mr. FASCELL. Mr. Speaker, I rise today to join in paying tribute to our colleague from the State of Florida and a most distinguished Member, DON FUQUA. I have had the pleasure of serving in this great legislative body with DON for 24 years, and I can certainly attest to the fact that the U.S. Congress will be losing a fine and well-respected statesman when he retires later this year.

DON began his career in politics when he was elected to the Florida House of Representatives in 1958. In 1962, the people of Florida's Second District elected him to the 88th U.S. Congress, and they have since reelected him to each succeeding Congress. His ability to get the job done for the people of Florida and for the Nation is a tribute to his leadership skills and the style which so many have come to admire.

In 1979, DON became the chairman of the House Science and Technology Committee, which has jurisdiction over the development and maintenance of the National Aeronautics and Space Administration [NASA] and the Nation's space program, as well as many of our most important energy-related projects.

As chairman, DON has exhibited exceptional leadership skills which have earned him respect and admiration. Throughout its history, the space program has been a source of inspiration to our Nation's young people, often inspiring a desire to achieve new and more creative aspirations, and DON FUQUA has played an important role in most of its great accomplishments.

DON and I have been colleagues as well as friends for many years, and it is with great pleasure that I join in this tribute today. It is, however, with equal sadness that I see him leave these great Halls of Congress. He and Nancy leave with both my gratitude and my very best wishes for a successful future.

Mr. HUGHES. Mr. Speaker, I am pleased to join in this salute to our colleague, DON FUQUA, for his outstanding service to the House of Representatives.

Although my opportunities to work with Don have, unfortunately, been infrequent, they have always been a genuine pleasure, and a true learning experience in efficient and effective lawmaking. For over 20 years, our Nation has reaped the benefits of his exceptional talent for getting things done. The success of our Nation's research and development efforts, of our national science policy in general, and, of course, of our space program are all largely attributable to his thoughtful and diligent work as chairman of the Committee on Science and Technology.

The House of Representatives will be poorer for the loss of DON'S legislative ability and personal warmth. In bidding him farwell, I extend my sincere gratitude for his fine work, and best wishes for his continued success and happiness.

Mr. MCGRATH. Mr. Speaker, it is a pleasure to join in this tribute to Representative DON FUQUA, chairman of the Committee on Science and Technology. I must say, however, that it is with a measure of sadness that I participate, because DON will be sorely missed by all of us who have had the opportunity to work with him in the House of Representatives.

During his tenure as chairman of the Science and Technology Committee, DON FUQUA led the way in the development of the space program, and in particular, the shuttle program. Since the *Challenger* tragedy, DON has again demonstrated his tremendous capacity for leadership by conducting a thorough investigation and by taking steps to insure that America's space program gets back on track.

DON'S commitment to the U.S. technological excellence has been illustrated by his able chairmanship of the Science Committee. During these times of fiscal restraint, he has demonstrated his willingness to make hard choices, and yet under his leadership the committee has been able to continue to authorize strong programs in the science agencies. For these and all his accomplishments, DON will be fondly remembered.

I join with my colleagues in wishing DON and Nancy a pleasant and relaxing retirement. We wish them the very best and hope the coming years are filled with happiness and the company of family and good friends.

Mr. ANNUNZIO. Mr. Speaker, I rise to join the distinguished chairman of the Florida Congressional Delegation, Congressman CHARLES E. BENNETT, and my colleagues in the House of Representatives, in paying tribute to the Honorable DON FUQUA, who is retiring after 24 years of dedicated service to the people of the Second Congressional District of Florida and to the citizens of this Nation.

DON served our country with distinction during the Korean war in the United States Army Medical Corps, and returned home to complete his college studies, graduating from the University of Florida in 1957. Before coming to Congress, he was twice elected to the Florida House of Representatives in 1958 and 1960.

Elected to the 88th Congress, DON FUQUA has compiled a record of excellence and creative accomplishments as a citizen, as a public servant, and as a Member of the House of Representatives. As the chairman of the House Science and Technololgy Committee, and as chairman of its Subcommittee on Energy Development and Applications, Congressman FUQUA has played a major role in the growth and importance of the National Aeronautics and Space Administration, and has been at the forefront of the development of United States technology as we approach the 21st century. His achievements as a member of the House Government Operations Committee and its Subcommittee on Legislation and National Security are also most worthy of recognition.

DON FUQUA is a fine legislator and a distinguished leader who is highly respected by his colleagues in the House of Representatives. He will be missed by all of those who have had the opportunity to know him and to work with him.

Mr. Speaker, I extend to DON FUQUA my best wishes for continued success and for a healthy and happy retirement.

Mr. BEVILL. Mr. Speaker, I rise today to pay tribute to Chairman DON FUQUA who is retiring from Congress this year after 24 years of distinguished service.

DON has been one of the most respected members of Congress—respected on both sides of the aisle.

As chairman of the House Science and Technology Committee, DON has been an outstanding leader in a field that is so important to our Nation's growth and development. I have enjoyed working closely with him through our respective committees on energy matters. And, I have long admired his vital efforts in support of our space program. DON has also worked very hard as the ranking Democrat on the Government Operations Committee.

We think of DON so much in connection with science and the space program, that we sometimes forget that he is a recognized expert in the agricultural field, having earned his degree in agricultural economics.

DON has served Florida's Second District with unflagging dedication to his constituents and to the Nation as a whole. He is a man of integrity who stands up for what he believes in and works hard to achieve those goals.

DON'S talents will be missed and he will be personally missed in the Congress. I have enjoyed working with DON and I am proud to have him for a friend.

Mr. FORD of Michigan. Mr. Speaker, I am honored to join my distinguished colleagues in paying tribute to DON FUQUA who will be retiring from Congress at the end of this session. DON has served in the House of Representatives since 1962. During that time he has worked diligently both as a legislator and a public servant responding to the needs and concerns of his constituents in the Second District of Florida.

DON was named to the Committee on Science and Technology as freshman in 1963 and assumed chairmanship in 1979. The committee was a significant aid to President John F. Kennedy and his commitment to land a man on the moon within the decade of the 1960's. DON shared in that commitment as he worked hard to develop and continue the space program.

DON has also been an enthusiastic supporter of the space shuttle, launched from Florida's Cape Canaveral. His primary interest in the space shuttle has been in the benefits it can bring to businesses on Earth. His major personal efforts in the space field include a bill to provide financial assistance to private companies undertaking high-risk ventures in orbit.

As chairman of the Energy Development and Applications Subcommittee since 1981, DON has worked hard on the nuclear-waste issue. He drafted his own original bill and then participated in negotiations with the Interior and Commerce committees, which combined to pass a bill establishing procedures for creation of future waste-disposal sites.

DON FUQUA'S low key approach along with his ability to work out compromises has won him respect among his colleagues. I think that House Speaker THOMAS P. O'NEILL said it best when he said: "DON is a total legislator who takes seriously his responsibilities to the Nation without losing contact with the constituents who sent him to Washington."

Mr. Chairman, DON FUQUA has served this body with distinction for many years. He will be sorely missed by his colleagues.

Mr. BOLAND. Mr. Speaker, I want to thank our colleague, CHARLIE BENNETT, for affording us an opportunity to pay tribute to Chairman DON FUQUA.

I have had the privilege of serving with DON FUQUA throughout his tenure in the House of Representatives. He is a legislator of uncommon ability and a person of unquestionable character and integrity. His presence in the House has been of immeasurable benefit to the people of Florida and to all of the citizens of the United States.

The Science and Technology Committee, which DON FUQUA has so ably led since 1979, authorizes many of the programs over which the Appropriations subcommittee that I chair has funding responsibility. As a result, I have worked closely with DON on most of the important science activities of our Nation. This country does not have a more effective nor enthusiastic promoter of science than DON FUQUA. From science education in our schools, to the research activities of the National Science Foundation, to the national effort in space exploration administered by NASA, DON has given of his time and talent to make sure that the United States has viable programs to maintain its international leadership role in science. No one knows better than DON FUQUA that investments in science are investments in the future of our Nation and the world. The United States will reap dividends for generations to come from the investments that bear the stamp of DON FUQUA'S leadership. They will be among his most lasting contributions to our Nation, and they are contributions in which he should take considerable pride.

Mr. Speaker, we will miss DON FUQUA'S expertise in science and energy issues next year and for years thereafter. While I respect his desire to turn his skills to new challenges, he will leave a void in this House that will not be easy to fill. He will be missed, but those who admire DON as I do, can only wish he and his wife, Nancy, good health, happiness, and much success in the future.

Mr. LAGOMARSINO. Mr. Speaker, when I came to Congress in 1974, people told me there would be certain Members I could look to for guidance. That regardless of party, there were people on both sides of the aisle whose example was worth noting, DON FUQUA is one of those people.

As chairman of the Committee on Science and Technology, DON FUQUA is one of the people who were in on the beginning of our manned space program. He was there for the Mercury and Gemini flights, and when the *Eagle* landed on the Moon, DON FUQUA was on hand. When he assumed the chair of the committee almost 8 years ago, we knew the program was in good hands.

Now that he is leaving the House, we are sorry to see him go, but glad that he will still be available for advice and guidance. His foresight has been invaluable, his support unquenchable. He is a true giant in the field, whose faith never wavered and whose hand held firm.

We shall miss him, but after 24 years of public service—more if you count his State legislative service—he may rest assured that the programs he helped initiate and bring to fruition will continue to bear fruit. We wish him and his wife, Nancy, all the best in their new life—we know they will not be strangers.

GENERAL LEAVE

Mr. BENNETT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order tonight.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

THE SEVEN MAJOR CHOICES FACING THE AMERICAN PEOPLE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. GINGRICH] is recognized for 60 minutes.

Mr. GINGRICH. Mr. Speaker, tonight I want to talk about the choice for 1986 because it seems to me as we move toward the last 2 weeks of the House being in session that this is an appropriate time to begin to ask ourselves what is our legacy for November 1986 and what is the base for our thinking about 1987 and 1988 as you move into the 100th Congress.

I just want to report that I think there are seven major choices which face the American people this fall. They are choices built both upon the record of the last 6 years and on the record of this particular Congress.

First, which party can create jobs. Second, which party will protect your pocketbook by fighting tax increases. Third, which party thinks that $1 trillion is enough money to spend of a Government budget, and that Government can in fact get more for its dollar by controlling waste rather than raising taxes. Fourth, which party is serious about fighting drugs and in breaking up the international cocaine and heroin trade. Fifth, which party will work for a strong America in a dangerous world. Sixth, which party has the new ideas necessary to reach into the future, and seventh, which party has the courage to change.

Let me start with No. 1. Which party can create jobs? It seems to me that there has been a studied effort to avoid the record of the last 6 years. But the record is very clear. In 1980, under Carter-Mondale, we had 13 percent inflation, 22 percent interest rates, the economy was collapsing and we were heading into the worst unemployment since the Great Depression.

We began to work on liberating the American economy; on restoring incentives; on creating an opportunity for people to go out and create new jobs. It worked. This year, well over a million new jobs have been added. In fact, over the last few years, under Ronald Reagan, we have added almost 12 million new jobs. Far and away the most powerful economic growth in the Western World. It is the engine of the American economy which has been pulling the entire world economy along.

Even now, as economists look at 1987, they are talking in terms of 2, 3, 3.5 percent real growth, even though historically by now we should be deep into a recession.

So the first fact is that under the leadership of Ronald Reagan, the Republican Party is creating new jobs, it is doing it, first of all, by controlling inflation. We have the lowest inflation rate right now that we have had since the 1950's.

It is doing it, second, by working very hard to ensure that through tax reform, through regulatory reform, by getting Government out of the way of American business that men and women who have new ideas have a chance to create jobs by going out and working at those new ideas.

So the first question a voter should ask themselves is, "Do you want to go back to the 13-percent inflation, the 22-percent interest rates, the economic decay of the late seventies, or, in fact, do you want to vote to continue creating new jobs. I say that in particular for areas where there have been economic problems. The question is, as we continue to work out the problems we inherited from the seventies, the tremendous problem of a farming debt that was created in the late 1970's, the tremendous problem of the oil price ups and downs which has so badly hurt the independents in Texas and Louisiana and Oklahoma, the question is: Which party is more likely to find the formula that creates jobs in the future?

The record of the two parties in the last 15 years is very clear. Under the Democrats, with high inflation and high interest rates we kill jobs; under Ronald Reagan and the Republicans, we have been creating jobs.

Second, which party will protect your pocketbook by fighting tax increases? Here, the record is even clearer and, frankly, I was amazed to hear some leading Democrats calling for tax increases before we had even passed the tax reform bill.

In a very real sense, the question should be raised: Are you, the average voter, the average worker, the average American citizen, are you undertaxed? Do you feel you are not paying enough to your Government? Or, in fact, is Washington overspent?

Let me put it differently. The Republican Party thinks that it is very important to protect your family budget. That if change has to come, that it is time to change the Federal budget in Washington. An awful lot of liberal Democrats, including a number of very important national leaders, have indicated clearly that in their view the Democratic Party platform ought to include raising taxes despite the disastrous result when Walter Mondale preached that in 1984. So the question is very simple and very straightforward: Should we solve the deficit problem by controlling Federal spending and keeping taxes low, or, should we in fact raise taxes on the American people because we cannot control Federal spending?

The continuing resolution passed last week was a clear sign of commitment on the part of the Democrats, the overwhelming majority of whom voted for an enormous increase in spending; the biggest spending bill in history. The Democrats voted last week to say that in their judgment we ought to go ahead and raise taxes. Last Thursday, they passed what has to be considered the first step toward a tax increase when they voted for a $569 billion spending bill, the largest spending bill in the history of mankind. Clearly, the largest spending bill in American history.

The question I would ask is this: Is it not better to vote for a Republican Party which will fight to protect your pocketbook by taking clear, strong steps to control Federal spending so we do not have to raise taxes? That gets me to the third question: Which party thinks $1 trillion is enough for a budget and wants to control Government spending by cutting out waste rather than by raising taxes?

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Think about it this way: If the Federal Government has about $1 trillion to spend, the next time you hear your liberal Democrats say we are not spending enough on this or that we are not spending enough on that, is not the appropriate question, why do we not set better priorities and why do we not cut out waste in Government, rather than why raise taxes?

Is a trillion dollars not probably enough money to spend on behalf of the American people? Does $1 trillion not basically provide the money necessary for 250 million Americans to find their way? That is approximately $4,000 per American. At $4,000 per citizen, do we not have enough Government that the correct steps are to fight waste and to set priorities, rather than to raise taxes?

The Republican Party, and we proved this last week on the vote on the continuing resolution, is committed to controlling spending, cutting out waste and setting priorities. The Democratic Party, once again last Thursday, voted to raise spending in a way which guarantees they would have to raise taxes.

Fourth. Which party is serious about fighting drugs? For example, while we have passed a bill that imposes changes in the country, we have not yet passed a bill which imposes changes in the House.

Consider, for example, we are discovering that there are more and more occupations where there may be people using drugs and where drug testing on a selected basis may be appropriate. What, then, about the employees of the House? What, then, about Members of Congress themselves? Do we have a leadership obligation to selectively look at drug testing for the legislative branch? Should be taking a leadership role in making sure that there are no drugs on Capitol Hill if we do not want drugs in the classrooms or the airline cockpit or among policemen or the military?

We know from the Navy, for example, that selective testing has led to a dramatic drop in the amount of drug use in the Navy. Under President Carter, something like 50 percent of our naval ships had a serious drug problem. Today, with a very serious determined drug testing effort, that is down to under 5 percent of our naval fighting ships. The result is a dramatic increase in combat readiness and a decline in the number of people who suffer injuries on the job.

So the question has to be asked of the Congress itself, is it willing to set the standard? Is it willing to be the model so people can look at Capitol Hill and know that we have established a pattern that says that we are going to seriously fight drugs?

Fifth. Which party will work for a strong America in a dangerous world? In addition to the continuing resolution being the biggest spending bill in history when it was passed last Thursday, it also included a number of very liberal, left-wing ideas which, on foreign policy, would have tied the hands of the U.S. Government.

It is a source of constant amazement to me that liberal Democrat do not seem to get the message that the President of the United States should be able to negotiate with the Soviet Union from a position of strength. While most Americans want us to talk with the Soviets, they want us to talk to the Soviets from a position of being strong, not being weak.

Yet, if you look at the vote last Thursday on the continuing resolution, you find quite clearly that once again, liberal Democrats in the House insisted on putting into the bill a series of amendments, each of which would have weakened the United States Government without getting any concessions from the Soviet Union. This is all being done at a time, for example, when the Soviets had seized Mr. Daniloff as a hostage. It is being done at a time when the Soviets themselves are building up their strength. It is being done when the Soviet Army is still in Afghanistan.

Yet, in the House, and I think in the country, liberal Democrats seem to have a fascination with weakening the American ability to go into negotiations with ensuring that an American President will have his hands tied before he ever starts negotiating.

Sixth. Which party has the new ideas necessary to reach into the future? It was interesting that in 1984 when GARY HART talked a lot about new ideas, in fact, Ronald Reagan had the new ideas. It has been exciting to me to be part, for example, of the tax reform process which passed the largest tax reform bill in 32 years.

It is pretty clear that on a whole range of areas, deregulation, new approaches to health care, new approaches to education, new approaches to stopping drugs, new approaches to military reform, the Republicans have been playing an increasingly active role.

Senator GOLDWATER commented recently that the military reform bill just passed by the Congress was the most important single item of reform involving the Pentagon in his 34 years in the U.S. Congress.

I think if you look carefully, you will see that in a whole range of areas, and again, I would suggest Secretary Bennett of the Department of Education as an example, with his new booklets and pamphlets, his new proposals for drug-free schools, his new proposals for schools that work, his studies on which elementary schools are really teaching people how to read, the fact is that the Republican Party is becoming the idea-oriented party which is vital if we are going to create the new ideas and new approaches necessary to reach into the future.

Finally, which party has the courage to change? One of the things that has tied the liberal welfare state to the Democratic Party is that much of the Democratic Party's money comes from liberal welfare state interest groups; much of the Democratic Party's support politically comes from large labor union leadership and from bureaucracies that are tied to the liberal welfare state.

The fact is that it is very, very difficult for a Democrat to come out for serious changes because their natural allies are opposed to those changes.

The Republican Party, on the other hand, has the advantage, in a sense, having been the minority party for a long time. It has opportunity because it is not tied to the past, to have reached out to a whole range of new ideas and new changes. The fact is that Ronald Reagan has proven again and again that he has the courage to change.

I think that change is basic to the American way of life. Change is fundamental to where we have been as a country.

Let me suggest it this way. When you realize that the Wright brothers first flew at Kitty Hawk 83 years ago, that that entire flight, the first powered flight ever by man, lasted such a short distance that it was shorter than the wingspan of a Boeing 747. When you realize that literally the Wright brothers could have taken off on the right wing of a Boeing 747 and landed on the left wing, and yet now, only 83 years later, a very short time in human history, we routinely go and get in a Boeing 747 and fly across the Atlantic or across the Pacific or across America. When you look at that level of change and you ask yourself, has that been good or has that been bad, and most Americans would agree that being able to fly is a lot better than trying to ride a horse and buggy or trying to cross the Atlantic or Pacific in a sailing ship.

Then you look at our attitude today; 1903, by the way, was a vintage year. Not only was it the year of the Wright brothers, flight, it was the year of the first mass-produced automobile and the year of the first movie that had a plot, "The Great Train Robbery," maybe appropriately in the context of having a President who was a movie star.

What happens 83 years later in 1986? We drive to the airport, several hundred of us, as many as 500, can get on a Boeing 747. We fly for 6 or 7 hours across the ocean or across the continent and when we get off, do we say, what a miracle? Of course not. We say things like, "I have already seen the movie and the food wasn't very good."

We take for granted 500 people flying across an entire continent. Why do we take that for granted?

Because to be American is to change. For example, we now have color television, something we did not have a few years ago. We increasingly have video tape recorders, and something like a third of all American homes now have a video tape recorder. You can go to your local store and rent movies.

We now have cable television, something which did not exist 20 years ago. We watch the weather channel on cable where they show us live satellite coverage by radar of the clouds that are moving across the United States and we take it for granted. Yet the fact is that all these are changes.

Recently, in a speech in Cedartown, GA, to the American Association for Retired Persons chapter, I asked the senior citizens in Cedartown—there were about 100 of them at this meeting—how many had grown up in a house that did not have electricity. Almost two-thirds of the people at that meeting raised their hands; they had lived in a house without electricity.

When you consider that in their lifetime, they have gone from no electricity to electric lights so that they could read in the dark, to refrigerators, to freezers, to electric ice cream makers, to microwave ovens, to regular electric ovens, to coffeepots, air-conditioning, which in Georgia is particularly important, to all of the conveniences we associate—to the invention of radio and the invention of television.

The point I made to that group was that if in your lifetime, you have lived through all of those changes, then we do not have to be afraid because to change is American.

I first really thought about this when President Reagan, in his first inaugural in 1981, used the sentence that I do not think any liberal Democrat could have used. He said, "We have every right to dream heroic dreams. After all, we are Americans."

I think there are three reasons that no liberal Democrat could have said that sentence. In the first place, the concept of being heroic is a romantic concept, and unfortunately, modern liberalism has grown increasingly cynical.

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It has lost the luster of the John F. Kennedys and the Herbert Hoovers and the Hubert Humphreys. It has lost that excitement, that positive sense of the future.

In the second place, he suggested that we could have dreams, that the future could be better, and if you remember, in 1981 he was replacing a President who had offered us malaise instead of dreams, who had offered us pessimism instead of optimism.

Third, President Reagan suggested that to be an American is special, and I think all too many modern liberal Democrats would suggest that is a narrow nationalistic viewpoint; but if we have every right to dream heroic dreams, we have to recognize that those heroic dreams do involve change. That is why I want to go back through the seven choices just for a second.

Which party can create more jobs? I think the record of the last 6 years is clear. The Republican Party can create more jobs, but we do so by liberating individual Americans so that they can go out and start their small businesses, so they can go out and take a part-time job, they can take a second job. They can go back to college. They can create the future and in creating the future they create the jobs of the present.

Second, which party will protect your pocketbook so you can live out your own dreams? Because it really becomes a matter of choice. Republicans want to protect your family budget because we want you to be able to choose in your own town whether to give money to your synagogue or church, whether to give money to your local school or college or library, whether to give money to your local charity, whether to raise your local taxes so you can build a facility or a sewer system that you need.

We believe in the Republican Party that if we protect your family pocketbook by keeping Federal taxes lower, you will have the power then to choose how to spend that money out of your own pocketbook, whereas if liberal Democrats raise taxes and take that money away from you, they have also taken the power to choose away. Then you will not make the choice. Federal bureaucrats will. That is a very important distinction, because you cannot pursue your dreams if you do not have the resources. We want you to have the money in your family pocketbook so that your family budget has the resources so you can pursue your dreams.

Third. Which party is willing to control Government spending and fight waste in Government? It is clear from last Thursday's continuing resolution vote that the Democratic Party still does not believe we need to control Federal spending; yet at a trillion dollars we should have enough Government if we are prudent in how we spend the trillion dollars.

Notice, not a million dollars, not a billion dollars, a trillion dollars. Now, that is enough money to defend America, to stop the drug trade, to take care of our health care, to educate our children, to do the things we need to do; but you cannot waste it. You cannot have a bureaucracy that is unmanageable. You cannot have, as the report which came out yesterday cited on the terrorist conflict around the world, you cannot have our bureaucracies falling over each other. You cannot have dozens of bureaucracies each wasting their bit of overhead administrative paper. You cannot have massive regulatory redtape. A trillion dollars spent wisely is a lot of money.

I think it is clear that it is the Republican Party which is committed to controlling waste and spending and to trying to make sure that trillion dollars is spent intelligently.

Fourth. There are no American dreams if we end up as a drug-addicted nation. There are going to be no children taught in classes where either the teacher or the child is a drug addict. There are going to be no successful workers competing with Japan and Germany if workers on the assembly line are drug addicts. There are going to be no safe airlines if either the air traffic controller or the airline pilot is a drug addict. There can be no honest law enforcement if the sheriff or the judge has been corrupted by a drug dealer.

The question is, Which party is tough enough and firm enough to fight drugs?

I think the choice is very clear. All of us remember Peter Bourne. Peter Bourne was President Carter's drug adviser. He was fired after he illegally prescribed drugs for people he wanted to give the drugs to. Then it turned out, according to Time magazine, not only had he prescribed drugs, not only had he apparently advocated the legalization of marijuana and heroin, but he had also apparently been going to parties and snorting coke. That kind of drug adviser is one of the reasons we have so many drug addicts today, because for all too long our friends on the left argued that soft on drugs, radical styles, do not matter, there really are not any risks kind of policy; yet I would suggest to you that an America which is addicted to cocaine and crack and heroin is an America which can have nightmares, but cannot have dreams. Heroic dreams require a healthy nation that is not addicted and that requires, I think, a Republican Party committed to seriously taking on the war against drugs as an all-out effort to break the back of international narcotics.

Fifth. There can be no dream of a healthy, safe, prosperous, free America, if we are too weak in a dangerous world. Terrorism is real. We should have been reminded of that in Pakistan recently. We should be reminded of it almost every day in the war in Lebanon, in Afghanistan, in Northern Ireland. Terrorism is dangerous. Not only do we sometimes get on airplanes and go to where the terrorists are, but as the French are discovering in Paris, the terrorists can get on airplanes and come after us.

In addition to terrorism, the Soviet empire is real. Soviet colonial forces in Nicaragua are real. Soviet forces in Cuba are real. The Soviet Army in Afghanistan is real. The Soviet occupation army in Poland is real. An America that is weak is an America that will invite that Soviet empire to take dangerous risks.

We discovered in 1961 and 1962 that when Khrushchev thought America had grown weak, the Russians took big risks and the result was the very, very frightening Cuban missile crisis. A strong America is a first step toward a peaceful world.

Again, there is a clear choice. We Republicans believe that we can safely dream our dreams of the future if America is strong, that peace is best secured by having a democracy stronger than a dictatorship.

Our friends on the left believe that strength in democracy is threatening, that strength is by its definition destabilizing. Where our friends on the left would seek arms control by trusting the Soviet Union, we seek arms control by having America's defensive strengths that allows us to rely on American technology, rather than on Soviet good will.

I would suggest that the recent experiences of Mr. Daniloff with the Soviets seizing an innocent hostage are a reminder that a brutal secret police state is willing to do whatever it thinks will work, that we are far better to rely on strong American technology in the strategic defense initiative to protect America and to control Soviet offensive weapons than we are to rely on Soviet pledges and temporary Soviet good will.

Sixth. Dreams are going to require new ideas, new ideas in health care, new ideas in education, new ideas in agriculture, new ideas in energy.

The question has to be, Which party has an optimistic, positive vision of the future?

It is clear that the liberal welfare state has had a consistently pessimistic vision of the future.

Jimmy Carter's sense of malaise was not isolated. He was the spokesman for an entire generation of liberal Democrats, who as one of them said recently, "See America, not at its dawn, not at midday, not even at twilight," but as one Democratic Presidential candidate said recently, "America is close to midnight."

Now, that kind of pessimism is not the way to create new ideas. Pessimism leads to despair, not to innovation.

So the question is, Can we pursue heroic dreams with new ideas? We in the Republican Party think that there is an entire generation of new inventions, new solutions, new scientific breakthroughs, that if we have the courage to go out and try we can create an American future that is even better, even more prosperous, even safer in the future.

That gets down finally to the courage to change. I would like to close with this thought. The courage to change cannot be Ronald Reagan's. You know, in a dictatorship like the Soviet Union, you can point to the guy at the top and say, "He better solve the problems. He is the dictator."

In a free society, we do not have that opportunity. We cannot sit back and say, "Well, I sure hope Ronald Reagan dreams heroic dreams. I sure hope the President of the United States solves it all. After all, he is in charge."

Nor can we even look at the House and at the Senate. We cannot say, "Well, there is my Congressman, there is my Senator. They better solve it. They are in charge."

Unlike a dictatorship, in a free society each one of us every morning brushes the teeth of the person who bears moral responsibility for the survival of freedom. Each one of us every day decides whether or not our children and our grandchildren will live in freedom and prosperity and in safety. Each of us decides whether this magic concept of free elections and free news media and rule of law will continue. Each of us, one by one, has to cast our vote for apathy and dictatorship or for involvement in democracy. I think that is the final issue.

Ronald Reagan in 1980 was elected and saved America from the collapse of a liberal welfare state. He saved America from 13 percent inflation, from 22 percent interest rates. He created for us the opportunity to move into the future; but that is the most any one man can do. While President Reagan saved us from the collapse of the liberal welfare state, he cannot possibly by himself create the reforms that will get us through the 1990's as a competitive, dynamic, strong, and peaceful Nation.

The challenge is to each one of us to look at the 1986 campaign, to be involved, to offer the new ideas, to offer the clear analysis, to face these seven major choices.

President Reagan has bought our generation the time for our generation to roll up its sleeves and do the job. Now the question is for us. Will we have the courage, will we have the new ideas, will we work for the strength, will we fight the drug trade, will we take on the trillion dollar budget and make government work again by cutting out the waste and setting priorities?

Will we protect the family budget by fighting against tax increases? Will we continue the process of creating more jobs than any other country on the planet?

President Reagan has given us the choice. It is up to us to carry that choice out to make it real.

THE OMNIBUS BUDGET RECONCILIATION BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia [Mr. RAY] is recognized for 30 minutes.

Mr. RAY. Mr. Speaker, I want to state for the record my reasons for opposing the omnibus budget reconciliation bill that was passed by the House last week. Normally, I support measures such as this one that result in substantial savings to the Federal Government, and this particular bill is supposed to result in approximately $15 billion worth of savings in 1987.

However, I am concerned that, in passing this bill, the House has done nothing to help balance the budget in the long-run. Taxes are not raised by this bill. Permanent spending cuts are not put into place. Instead, we are merely juggling the books. We have passed a quick fix that was made in haste just to meet a deadline imposed by the Gramm-Rudman-Hollings deficit-reduction law.

The House is so obsessed with avoiding a sequestration order at all costs that it has enacted a bill that does not address the serious deficit situation and, in fact, will make the task of meeting the 1988 deficit target nearly impossible.

Now, I voted in favor of Gramm-Rudman, and I have advocated its full implementation as the only serious effort being made at genuine deficit-reduction. I am fully aware that the authors of this new law never really intended for sequestration to ever take place. Instead, sequestration is merely the gun that is held to Congress' head to force it to enact legislation to bring the deficit down to meet the target for that year.

However, what we have done in passing this particular reconciliation package is engage in a magic act using smoke and mirrors, so that we can return to our constituents and tell them that we have met the requirements of the Gramm-Rudman law in as painless a manner as is possible. In doing so, we have complied with the letter of the law and avoided the awful sequestration, which would have cut funds from every program of the Government.

Mr. Speaker, it does not take an economic expert to figure out that if Gramm-Rudman-Hollings is to really work, massive spending cuts or tax increases or perhaps both will be necessary between 1986 and 1991 to bring the country's spending into balance with its income. What this reconciliation bill does is run from the truth.

This package proposes to increase revenues by selling assets such as loan portfolios and Conrail, the Government-owned freight railroad, and by directing user fees collected by Government agencies to the General Treasury. Certain tax collections will be accelerated, and compliance with the tax laws will be improved by beefing up IRS manpower and resources.

A number of health program changes are made under the bill, such as capping the Medicare hospital deductible. The last revenue sharing payments will be paid out early so that they can be charged against the 1986 deficit, not against the 1987 deficit.

We all know what is wrong with this kind of legislating. Selling Government assets is a way to raise revenues quickly, but its long-term effect is less certain. In fact, many experts predict that it will serve to reduce the Government's revenues in future years, because we will not be receiving the income from these assets.

Charging the revenue sharing payments to the 1986 deficit is strictly a bookkeeping measure and is so contrived that anybody can see through it. This provision in the bill will only help to drive the 1986 deficit up to about $230 billion. Are we any closer to balancing the budget than we were 1 year ago? Certainly not. We seem to be moving in the opposite direction with this kind of legislation!

The most important reason, however, for opposing this measure is that it does not make permanent spending reductions and makes the possiblity of achieving the 1988 Gramm-Rudman deficit target very remote.

I am not willing to act hastily and irrationally just to meet the budget goal for this year and avoid an unpleasant sequestration. This is an issue that affects the entire Nation, and it should be dealt with carefully and correctly, so that it will not jeopardize our long-range plans for reducing the budget deficit.

Right now, this plan will get us out of the rain, but it will throw us right back into a storm come next year.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. STANGELAND (at the request of Mr. MICHEL) from 5:30 p.m. today and tomorrow on account of illness in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. HUNTER) to revise and extend their remarks and include extraneous material:)

Mr. GINGRICH, for 60 minutes, on September 30 and October 1.

Mr. JEFFORDS, for 5 minutes, on October 7, 8, and 9.

(The following Members (at the request of Mr. GONZALEZ) to revise and extend their remarks and include extraneous material.)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. DONNELLY, for 5 minutes, on September 30.

(The following Member (at the request of Mr. GINGRICH) to revise and extend their remarks and include extraneous material:)

Mr. STOKES, for 60 minutes, on October 8.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. OBERSTAR, prior to passage on H.R. 5490, in the House today.

Mr. SEIBERLING, to include extraneous matter with his remarks on House Joint Resolution 626, the Palau Compact.

(The following Members (at the request of Mr. HUNTER) and to include extraneous matter:)

Mr. BROOMFIELD.
Mr. LEWIS of California.
Mr. GILMAN in two instances.
Mr. GREEN.
Mr. LEACH of Iowa.
Mr. LAGOMARSINO in three instances.
Mr. DORNAN of California.
Mr. CRANE.
Mr. MCGRATH.
Mr. KEMP.
Mr. TAYLOR.
Mr. GRADISON.
Mr. BURTON of Indiana.
Mr. BEREUTER.

(The following Members (at the request of Mr. GONZALEZ) and to include extraneous matter:)

Mr. STARK in three instances.
Mr. TORRICELLI.
Mr. FORD of Michigan.
Mr. COELHO.
Mr. SKELTON.
Mr. BONIOR of Michigan.
Mr. OWENS.
Mr. PEASE.
Mr. ANDERSON in 10 instances.
Mr. GONZALEZ in 10 instances.
Mr. BROWN of California in 10 instances.
Mr. ANNUNZIO in six instances.
Mr. JONES of Tennessee in 10 instances.
Mr. BONER of Tennessee in five instances.
Mr. FLORIO.
Mr. HAWKINS.
Mr. RODINO.
Mr. HERTEL of Michigan in two instances.
Mr. BEDELL.
Mr. MRAZEK.
Mr. ERDREICH.
Mr. NELSON of Florida.
Mr. HUBBARD.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 2880. An act to provide a temporary extenson of the Interstate Transfer deadline for the H-3; to the Committee on Public Works and Transportation.

ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill and joint resolutions of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 5506. An act to amend the International Claims Settlement Act of 1949 to provide that the value of claims be based on the fair market value of the property taken;

H.J. Res. 547. Joint resolution to designate October 1986 as "Polish American Heritage Month";

H.J. Res. 611. Joint resolution to designate the period of December 1, 1986, through December 7, 1986, as "National Aplastic Anemia Awareness Week";

H.J. Res. 710. Joint resolution to designate the week beginning October 12, 1986, as "National Children's Television Awareness Week"; and

H.J. Res. 721. Joint resolution to designate the Week of October 12, 1986, through October 18, 1986, as "National Job Skills Week."

SENATE ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The SPEAKER announced his signature to enrolled bills and joint resolutions of the Senate of the following titles:

S. 1542. An act to amend the National Trails Act by designating the Ney Perce (Nee-Me-Poo) Trail as a component of the National Trails System;

S. 1766. An act to designate the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park in honor of H. Glenn Beall, Sr.;

S.J. Res. 263. Joint resolution to designate September 1986 as "National Independent Retail Grocer Month"; and

S.J. Res. 405. Joint resolution to designate September 11, 1987, as "9-1-1 Emergency Number Day."

ADJOURNMENT

Mr. GINGRICH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 36 minutes p.m.), the House adjourned until tomorrow, Tuesday, September 30, 1986, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4266. A letter from the Assistant Secretary of Defense for Health Affairs, transmitting a review of special pay for health professionals for the period July 1, 1984 through June 30, 1986, pursuant to 37 U.S.C. 303a(c); to the Committee on Armed Services.

4267. A letter from the Auditor, District of Columbia, transmitting a copy of his report entitled, "Review of Competitive Sealed Proposal No. JA/86363 Residential Treatment For Youth in Need of Substance Abuse Rehabilitation", pursuant to D.C. Code section 47-117(d); to the Committee on the District of Columbia.

4268. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting notification of a proposed manufacturing license agreement for the production in Argentina of M-908 night vision goggles and of M-845 night vision rifle sights, pursuant to 22 U.S.C. 2776(d); to the Committee on Foreign Affairs.

4269. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting notification of the addition of Sri Lanka to the Anti-Terrorism Assistance Program, pursuant to FAA, section 574(a)(1) (97 Stat. 972); to the Committee on Foreign Affairs.

4270. A letter from the Secretary to the Board, U.S. Railroad Retirement Board, transmitting notification of five new Federal records systems, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4271. A letter from the National President, Women's Army Corps Veterans' Association, transmitting a copy of the Association's 1985-86 audit, pursuant to 36 U.S.C. 1103; to the Committee on the Judiciary.

4272. A letter from the Secretary of the Interior, transmitting the fourth report summarizing the progress of discussions on California offshore oil and gas leasing, pursuant to Public Law 99-190, section 101(d) (99 Stat. 1243); Public Law 99-190, section 149 (99 Stat. 1325); jointly, to the Committees on Appropriations, Interior and Insular Affairs, and Merchant Marine and Fisheries.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[Pursuant to the order of the House on Sept. 25, 1986, the following reports were filed on Sept. 27, 1986]

Mr. GLICKMAN: Committee on the Judiciary. H.R. 5541. A bill to amend section 3718 of title 31, United States Code, to authorize contracts retaining private counsel to furnish legal services in the case of indebtedness owed the United States, with an amendment (Rept. 99-909). Referred to the

Committee of the Whole House on the State of the Union.

Mr. HUGHES: Committee on the Judiciary. H.R. 5560. A bill to amend title 18 of the United States Code to ban the production and use of advertisements for child pornography or solicitations for child pornography, and for other purposes with an amendment (Rept. 99-910). Referred to the Committee of the Whole House on the State of the Union.

Mr. GLICKMAN: Committee on the Judiciary. H.R. 5390. A bill granting the consent of the Congress to the Arkansas-Mississippi Great River Bridge Construction Compact (Rept. 99-911). Referred to the House Calendar.

Mr. GLICKMAN: Committee on the Judiciary. H.R. 5362. A bill to extend the authority of the Supreme Court Police to provide protective services for Justices and Court personnel. (Rept. 99-912). Referred to the Committee of the Whole House on the State of the Union.

Mr. GLICKMAN: Committee on the Judiciary. H.R. 4059. A bill to recognize the organization known as the Red River Valley Fighter Pilots Association. (Rept. 99-913). Referred to the House Calendar.

Mr. GLICKMAN: Committee on the Judiciary. H.R. 5363. A bill to amend the interest provisions of the Declaration of Taking Act. (Rept. 99-914). Referred to the Committee of the Whole House on the State of the Union.

[Omitted from the Record of Sept. 26, 1986]

Mr. MAZZOLI: Committee on the Judiciary. H.R. 4444. A bill to amend the Immigration and Nationality Act, and for other purposes. (Rept. 99-16). Referred to the Committee of the Whole House on the State of the Union.

[Submitted Sept. 29, 1986]

Mr. ROSTENKOWSKI: Committee on Ways and Means. H.R. 2248. A bill to authorize appropriations for the National Highway Traffic Safety Administration, and for other purposes with amendments (Rept. 99-833-Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report on "Buying Blind and Flying Empty: The Postal Service Executive Jet" (Rept. 99-915). Referred to the Committee of the Whole House on the State of the Union.

Mr. RODINO: Committee on the Judiciary. H.R. 5490. A bill to amend title 11 of the United States Code to clarify the current meaning of section 1113 relating to the rejection of collective bargaining agreements by debtors in bankruptcy (Rept. 99-917). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 2868. A bill to settle Indian land claims in the town of Gay Head, Massachusetts, and for other purposes; with amendments (Rept. 99-918). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5459. A bill to direct the Secretary of the Interior to release, on behalf of the United States, certain conditions and reservations contained in a conveyance of land to the State of Utah; with an amendment (Rept. 99-919). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5389. A bill to withdraw certain public lands in the State of Alaska for military purposes, and for other purposes; with an amendment (Rept. 99-920, Pt. 1). Ordered to be printed.

Mr. GLICKMAN: Committee on the Judiciary. H.R. 2484. A bill to amend title 28, United States Code, to exempt States from the statute of limitations applicable to quiet title actions against the United States; with amendments (Rept. 99-924). Referred to the Committee of the Whole House on the State of the Union.

Mr. ROSTENKOWSKI: Committee on Ways and Means. H. Res. 567. Resolution relating to the tariff on chocolate (Rept. 99-925). Referred to the House Calendar.

Mr. DINGELL: Committee on Energy and Commerce. H.J. Res. 699. Resolution to prohibit the Secretary of Energy from providing uranium enrichment services under certain criteria submitted to the Congress pursuant to the Atomic Energy Act of 1954 (Rept. 99-926, pt.1). Ordered to be printed.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. SCHUMER: Committee on the Judiciary. S. 345. An act for the relief of Nabil Yaldo (Rept. 99-921). Referred to the Committee of the Whole House.

Mr. BRYANT: Committee on the Judiciary. S. 197. An act for the relief of Elga Bouilliant-Linet (Rept. 99-922). Referred to the Committee of the Whole House.

Mr. FISH: Committee on the Judiciary. S. 332. An act for the relief of Ramzi Sallomy and Marie Sallomy; with an amendment (Rept. 99-923). Referred to the Committee of the Whole House.

SUBSEQUENT ACTION ON A REPORTED BILL

Under clause 5 of rule X the following action was taken by the Speaker:

H.R. 4568. The Committee of the Whole House on the State of the Union discharged; referred to the Committee on Foreign Affairs and the Committee on Merchant Marine and Fisheries for a period ending not later than October 3, 1986, for consideration of such provisions of the bill and amendment as fall within the jurisdictions of those committees pursuant to clause 1(i) and (n), Rule X, respectively.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. HAWKINS (for himself and Mr. Goodling):

H.R. 5607. A bill to provide for the establishment of a national fund to develop private resources for literacy education programs; to authorize a national program to coordinate and expand the capacity of national, State, and local literacy programs to provide improved services; and to establish a National Board for Literacy Development to advise the Secretary of Education on literacy education; to the Committee on Education and Labor.

By Mr. BEDELL (for himself, Mr. Sharp, Mrs. Martin of Illinois, Mr. Petri, Mr. Wolpe, Mr. Huckaby, Mr. Evans of Illinois, Mr. Beilenson, Mr. Seiberling, Mr. Green, Mr. Walker, Mr. Evans of Iowa, Mr. Lightfoot, Mr. Tauke, Mr. Leach of Iowa, Mr. Morrison of Connecticut, Mr. Hughes, Mr. Bennett, Mr. McCollum, Mr. Chapman, Mr. Schuette, Mr. Kostmayer, Mr. Dyson, Mr. Henry, Mr. Fawell, Mr. Owens, Mr. Gejdenson, and Mr. Conyers):

H.R. 5608. A bill to amend the Reclamation Projects Act of 1939 to require the Secretary of the Interior to charge full cost for water delivered from any reclamation or irrigation project for the production of any surplus program crop; to the Committee on Interior and Insular Affairs.

By Mr. BILIRAKIS:

H.R. 5609. A bill to amend the Internal Revenue Code of 1986 to restore the medical expense deduction limitation to 5 percent of adjusted gross income; to the Committee on Ways and Means.

By Mr. DONNELLY:

H.R. 5610. A bill to amend title 5, United States Code, to provide that annuities under chapter 83 or 84 of such title be treated, for Federal income tax purposes, as if the 3-year basis recovery rule had never been repealed, and to require that the Office of Personnel Management conduct a study relating to the consequences which retroactively repealing such rule would have with respect to Federal personnel management, morale within the Federal civilian work force, and individual retirement planning; jointly, to the Committees on Ways and Means and Post Office and Civil Service.

By Mr. DREIER of California:

H.R. 5611. A bill to establish the Value Engineering Council; jointly, to the Committees on Government Operations and Science and Technology.

By Ms. KAPTUR:

H.R. 5612. A bill to amend the Internal Revenue Code of 1986 with respect to the disclosure of returns and return information in the case of cities with a population of more than 250,000 but not more than 2,000,000; to the Committee on Ways and Means.

By Mr. LEHMAN of California (for himself and Mr. Schumer):

H.R. 5613. A bill to provide for the uniform disclosure of the rates of interest which are payable on savings accounts, to provide for detailed and uniform disclosures of information on interest rates and other fees in applications and solicitations for credit cards, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. MURPHY (for himself, Mr. Petri, Mr. Hawkins, Mr. Jeffords, Mr. Williams, Mr. Clay, Mr. Rahall, Mr. Torricelli, Mr. Jones of Oklahoma, and Mr. Staggers):

H.R. 5614. A bill to amend the Fair Labor Standards Act of 1938 to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor; to the Committee on Education and Labor.

By Mr. FRANK:

H.J. Res. 742. Joint resolution to designate March 1, 1987, as "National Yiddish Books Day"; to the Committee on Post Office and Civil Service.

By Mr. BROOMFIELD:

H. Con. Res. 398. Concurrent resolution to condemn Soviet actions in implanting listening devices in the United States Embassy building being constructed in Moscow and to support the President's policy on when the Soviet Union may begin to use its recently constructed chancery building in the District of Columbia; to the Committee on Foreign Affairs.

By Mr. ROSTENKOWSKI (for himself, Mr. Gibbons, Mr. Stark, Mr.

Jenkins, Mr. Downey of New York, Mr. Guarini, Mr. Russo, Mr. Archer, Mr. Vander Jagt, Mr. Crane, Mr. Frenzel, Mr. Schulze, Mr. Michel, Mr. Aspin, Mr. Bonker, Mr. Fascell, Mr. Hamilton, Mr. Leath of Texas, Mr. Reid, Mr. Roth, Ms. Snowe, Mr. Solarz, Mr. Gilman, Mr. Yatron, Mr. Courter, Mr. Lent, Mrs. Lloyd, Mr. Madigan, Mrs. Collins, Mr. Goodling, Mr. Hatcher, Mr. Lantos, Mr. Lipinski, Mrs. Martin of Illinois, Mr. Rowland of Connecticut, Mr. Walker, Mr. Dingell, Mr. DioGuardi, Mr. Horton, and Mr. Wylie):

H. Res. 567. Resolution relating to the tariff on chocolate; to the Committee on Ways and Means.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. DUNCAN:

H.R. 5615. A bill for the relief of Gregory E. Walters; to the Committee on the Judiciary.

H.R. 5616. A bill for the relief of Rolen-Rolen-Roberts International of Knoxville, TN; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 669: Mr. Bilirakis, Mr. Stangeland, Mrs. Holt, and Mr. Vander Jagt.

H.R. 1213: Mr. Packard and Mr. Dowdy of Mississippi.

H.R. 1375: Mr. McCain.

H.R. 1668: Mr. Towns, Mr. Fauntroy, Mr. Mitchell, Mr. Kleczka, Mr. Levin of Michigan, Mr. Guarini, Mr. Owens, Mr. Atkins, Mr. de Lugo, Mr. Kostmayer, and Mr. Wolpe.

H.R. 1985: Mr. Saxton and Mr. Rodino.

H.R. 4279: Mr. Siljander and Mr. Hyde.

H.R. 4304: Mr. Young of Florida.

H.R. 4709: Mr. McCain.

H.R. 4756: Ms. Kaptur, Mr. Wolpe, Mrs. Boxer, Mr. Edgar, Mr. Daschle, Mr. Wylie, Mrs. Collins, Ms. Snowe, Mr. Scheuer, Mr. Walgren, Mr. Fish, Mr. Stokes, and Mr. Frenzel.

H.R. 4879: Mr. Davis.

H.R. 4911: Mr. Evans of Illinois, Mr. Bryant, Mr. Edwards of Oklahoma, Mr. Slattery, Mr. Lehman of California, Mr. Siljander, Mr. Mitchell, Mr. Hutto, Mr. Kanjorski, Mr. Rodino, and Mr. Hoyer.

H.R. 4922: Mr. Durbin.

H.R. 5064: Mr. Mitchell and Mr. Weber.

H.R. 5116: Mr. Henry and Mr. Hendon.

H.R. 5117: Mr. Henry and Mr. Hendon.

H.R. 5209: Mr. Fish.

H.R. 5255: Mr. Abercrombie.

H.R. 5350: Mr. de la Garza, Mr. Tallon, Mr. Neal, Mr. Bryant, Mr. Moody, Ms. Kaptur, Mr. Hammerschmidt, Mr. Madigan, Mr. Burton of Indiana, Mr. Hendon, Mr. Coelho, and Mr. Hansen.

H.R. 5382: Mr. Mitchell, Mr. Seiberling, and Mr. Rangel.

H.R. 5425: Mr. Abercrombie and Mr. MacKay.

H.R. 5588: Mr. Dorgan of North Dakota, Mr. Clay, and Mr. Stark.

H.R. 5600: Mr. Kastenmeier, Mr. Hutto, Mr. Frank, Mr. Wilson, Mr. Hall of Ohio, Mr. Bevill, Mr. Rinaldo, Mr. Annunzio, Mr. Murtha, Mr. Foglietta, Mr. Bereuter, Mr. Yatron, Mr. Wolf, Mr. Waldon, Mr. Jacobs, Mr. Borski, and Mr. Nelson of Florida.

H.J. Res. 10: Mr. Hefner, Mr. Kostmayer, Mr. Lantos, Mr. Lundine, Mr. McDade, Mr. Martin of New York, Mr. Mavroules, Mr. Ortiz, Mr. Perkins, Mr. Roberts, Mr. Tallon, Mr. Torricelli, Mr. Vander Jagt, and Mr. Waldon.

H.J. Res. 244: Mr. Frank.

H.J. Res. 514: Mr. Lehman of Florida, Mr. Schaefer, Mr. Courter, and Mr. Molinari.

H.J. Res. 524: Mr. Porter, Mr. Hatcher, Mr. Hall of Ohio, Mr. Nielson of Utah, and Mr. Ortiz.

H.J. Res. 657: Mr. Saxton, Mr. Blaz, Mr. Ortiz, Mr. Abercrombie, Mr. Coleman of Texas, Mr. Hendon, and Mr. Torricelli.

H.J. Res. 687: Mr. Boehlert.

H.J. Res. 704: Mr. Abercrombie and Mr. Young of Florida.

H.J. Res. 706: Mr. Morrison of Connecticut, Mr. Mack, and Mr. Hawkins.

H.J. Res. 709: Mr. Brown of California, Mr. Conyers, Mr. Nelson of Florida, Mr. Traxler, Mr. Dyson, Mr. Daub, Mr. Miller of California, Mr. Craig, Mr. Dellums, Mr. Richardson, Mr. Weaver, Mr. Stallings, Mr. Montgomery, Mr. Udall, Mr. Saxton, Mr. Hughes, Mr. McKinney, Mr. Savage, Mr. Alexander, Mr. Goodling, Mr. Hefner, Mr. Abercrombie, Mr. Price, Mr. Schaefer, Mr. Kastenmeier, Mr. Pepper, Mr. Roberts, Mr. St Germain, Mr. Annunzio, Mr. Smith of Iowa, Mr. Florio, Mr. Campbell, Mr. Oberstar, Mr. Lujan, Mr. Biaggi, Mr. Breaux, Mr. Bustamante, Mr. Flippo, Mr. Cooper, Mr. Latta, Mr. Coelho, Mr. Vento, Mr. Foglietta, Mr. Levin of Michigan, Mr. Volkmer, Mr. Siljander, Mr. Kildee, Mr. Callahan, and Mr. Luken.

H.J. Res. 733: Mr. Montgomery, Mr. Livingston, Mrs. Johnson, Mr. Daniel, Mr. Sabo, Mr. Savage, Mr. Bliley, Mr. Regula, Mr. Martin of New York, Mr. Coleman of Missouri, Mr. Sunia, Mr. Whitten, Mr. English, Mr. Moakley, Mr. Sweeney, Mr. Campbell, Mr. Conte, and Mr. Wolf.

H.J. Res. 737: Mr. Owens, Mr. Erdreich, Mr. Perkins, Mr. Ireland, Mr. Smith of Florida, Mr. Fascell, Mr. Neal, Mrs. Collins, Mr. Fauntroy, Mr. Jones of North Carolina, Mr. Feighan, Mr. Fuqua, Mr. Lehman of Florida, Mr. Hammerschmidt, Mr. Mack, Mr. Hughes, Mr. Ford of Michigan, Mr. Rowland of Georgia, Mr. Savage, Mr. Rose, Mr. McEwen, Mr. Weiss, Mr. Conte, Mr. Mrazek, Mr. Barnes, Mr. Price, Ms. Oakar, Mrs. Byron, Mr. Roe, Mr. Borski, Mr. Murphy, Mrs. Lloyd, Mr. Spratt, Mr. Snyder, Mr. Oberstar, Mr. Clay, Mr. Moore, Mr. Solarz, Mr. Bennett, Mr. Natcher, Mr. Daub, Mr. Hayes, Mr. Waldon, Mr. Akaka, Mr. Crockett, Mr. Burton of Indiana, Mr. Wylie, Mr. Hatcher, Mr. Young of Florida, Mr. Quillen, Mr. Schaefer, Mr. Leach of Iowa, Mr. Nelson of Florida, Mr. Atkins, Mrs. Vucanovich, Mr. Abercrombie, Mr. Biaggi, and Mr. Lehman of California.

H. Con. Res. 332: Mr. Gejdenson, Mr. Udall, and Mr. Studds.

H. Con. Res. 352: Mr. Penny, Mr. Frank, Mr. Frenzel, Mr. Combest, Mr. Kindness, Mr. Jeffords, Mr. MacKay, Mr. Hughes, Mr. Packard, Mr. Staggers, Mr. Lungren, Mr. Kolbe, Mr. Cobey, Mr. Wirth, Mr. Dio Guardi, and Mr. Stenholm.

H. Res. 547: Mr. Abercrombie, Mr. Ackerman, Mr. Akaka, Mr. Badham, Mr. Bennett, Mr. Berman, Mr. Biaggi, Mr. Boehlert, Mr. Bustamante, Mr. Courter, Mr. DioGuardi, Mr. Fauntroy, Mr. Feighan, Mr. Fish, Mr. Frost, Mr. Fazio, Mr. Horton, Mr. Kolbe, Mr. Lehman of Florida, Mr. Lightfoot, Mrs. Lloyd, Mr. Manton, Mr. Martinez, Mr. Matsui, Ms. Mikulski, Mr. Nielson of Utah, Mr. Nowak, Mr. Packard, Mr. Porter, Mr. Roe, Mr. Torricelli, Mr. Towns, Mr. Waldon, Mr. Wortley, and Mr. Young of Missouri.

H. Res. 556: Mr. St Germain.

EXTENSIONS OF REMARKS

PASS THE RAILROAD ANTIMONOPOLY ACT

HON. JOHN F. SEIBERLING

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. SEIBERLING. Mr. Speaker, shippers who are dependent on railroads are truly in a quandary. Captive shippers, so named because they are dependent upon single rail carriers for movement of their goods, are forced often to pay excessive and arbitrary rates for rail transportation. Without strong marketplace discipline or meaningful regulation, these shippers have no ability to bargain with the sole service railroad or successfully challenge the rate imposed. As a result, they are compelled to pay excessive prices for rail service, which in turn is passed on to consumers across this Nation.

Mr. Speaker, the Staggers Act has helped revitalize the railroad industry. However, one unintended effect of the act has been to render the Interstate Commerce Commission totally ineffective in limiting rail carrier monopoly abuses. The ICC can intervene only at rate levels that by definition produce monopoly returns. To add insult to injury, the ICC as it stands today will not intervene. Worse yet, a recent Supreme Court decision, *Square D Co.* versus *Niagara Frontier Tariff Bureau, Inc.*, essentially said that the existence of the ICC immunizes the railroads from shipper attack under the antitrust laws.

Railroads are currently under no market force pressure to responsibly bargain with captive shippers. However, legislation currently pending before the House Committee on Rules, H.R. 1140, would curb the excesses of railroad monopoly power by providing captive shippers an effective remedy through the courts, thus restoring an equitable balance to the railroad industry and to the economy as a whole.

H.R. 1140 has widespread, bipartisan support, as well as support from groups such as Western Fuels Association, the American Public Power Association [APPA], the National Rural Electric Cooperative Association, W.R. Grace & Co., and other consumer groups, energy companies, cooperatives, agricultural producers, chemical manufacturers, and fertilizer companies, to name a few.

Recently APPA's publication, Public Power, ran an article by Fred Palmer, general manager of Western Fuels Association, a national fuel supply cooperative comprised of 35 consumer-owned utilities. The article gives a good overview of the problems facing captive shippers, and explains why the antitrust laws are their natural avenue for relief. Palmer's article is reprinted below in its entirety:

PASS THE RAILROAD ANTIMONOPOLY BILL

(By Frederick D. Palmer)

Railroading is a wonderful business. It is romantic, exciting and steeped in history. A decent argument can be made that this country's success results from the success of railroads. The early westward expansion and development of the economy rode the rails.

However, the railroad business is, essentially, anticompetitive. The one thing railroad managers cannot stand is competition. They may claim the bane of their existence is regulation. Do not believe them. For railroads, the silver bullet is competition.

This observation is made from firsthand experience. Western Fuels moves millions of tons of coal by rail each year to consumer-owned electric utilities. We also advise coal-burning consumer-owned electric utilities which have their own railroad relationships.

We have learned through experience that if it is your misfortune not to have competition for your transportation business, there is not a lot you can do, given the legal and regulatory environment that exists for railroads today, capped by a recent Supreme Court decision [1] that confirms my fears of a worst-case result.

Those dependent on railroads today are truly in a quandary. A regulatory agency, the Interstate Commerce Commission (ICC), exists but it has very limited jurisdiction. In what has to be a first in the history of American commercial regulation, the agency can intervene only at rate levels that by definition produce monopoly returns. To add insult to injury, the ICC as it stands today will not intervene.

ICC IMMUNIZES RAILROADS

Worse, yet, the recent Supreme Court decision essentially says the mere existence of the ICC immunizes the railroads from shipper attack under the antitrust laws. They seem to me to be our natural avenue for relief, given the anticompetitive structure of the railroad industry.

In dealing with captive shippers, railroads have, as a matter of course, engaged in virtually every anticompetitive act proscribed by the antitrust laws. Shippers simply cannot challenge such conduct—although shippers are the group that suffers the most harm.

Imagine this situation. You manage a utility operating a large coal-fired steam plant. Your source of coal is 700 miles away and is linked to you by a single railroad. It costs $15 per ton to ship two million tons of coal per year—that's $30 million. During the useful life of the power plant, your gross rail costs would exceed $1 billion. A coal slurry pipeline company wants to move your coal for $10 per ton and asks you to sign a letter of intent. Since savings for your consumers would be enormous you agree, but require a showing that the new pipeline can be financed and completed.

Based on your interest, the pipeline company immediately commences activity to acquire its necessary rights-of-way. Unfortunately for you and the pipeline company, it needs to cross, in a number of places, the railroad that delivers your coal. Even worse, it needs to cross two other railroads serving the same coal fields from which your coal comes.

Railroads know a competitive threat when they see one. They immediately convene a series of meetings and agree to deny the pipeline company rights to cross their property in order to keep the pipeline out of business.

This conspiracy is successful and the pipeline idea dies. You are out your $5 per ton savings. Over the useful life of the power plant, your consumers will pay above $300 million more than they would have but for the anticompetitive activities of the railroads.

What happens next?

The Department of Justice might convene a grand jury and conduct a criminal investigation. The pipeline company might bring an antitrust lawsuit to recover costs and realize trebled profits without having to build a pipeline. But your utility has no recourse, even though it was its business both the railroad and pipeline company pursued.

"Incredible," you say? Agreed, but true.

Yes, there is an Interstate Commerce Commission and, yes, the carrier you do business with is subject to its jurisdiction; but the ICC has no jurisdiction over railroad antitrust violations.

You might challenge the $15 railroad freight rate at the ICC, but the complicated and protracted proceedings hold little chance of any relief given the ICC's limited rate jurisdiction under the Staggers Rail Act of 1980.

A year ago you might have hoped that your own antiturst lawsuit would have merit, but no longer. A long-standing but somewhat ignored U.S. Supreme Court decision barring such actions has now been reaffirmed by the court.

The *Square D* case upheld the continued viability of the *Keogh* decision,[2] which has long been an obstacle to antitrust action by shippers against railroads.

Keogh, in principle, states that because railroad freight rates are subject to ICC jurisdiction, a shipper is unable to challenge such rates in a judicial forum under the antitrust laws. In affirming *Keogh* in the *Square D* case, the court wrote, ". . . *Keogh* rule has been an established guidepost at the intersection of the antitrust and interstate commerce statutory regimes for some six and a half decades. . . If there is to be an overruling of the *Keogh* rule, it must come from Congress rather than this court."

Much is said and written about the deregulated nature of railroads today, but if railroads were truly deregulated, they could not hide behind the ICC. It protects them from application of the antitrust laws governing virtually every other business in the country.

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[1] *Square D Co. and Big D Building Supply Corp.* vs. *Niagara Frontier Tariff Bureau Inc.* et al (No. 85-21).

[2] *Keogh* vs. *Chicago & Northwestern Railroad Co.*, (260 U.S. 156).

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

The railroads require some vestige of regulation to create a "*Keogh* shield" from antitrust law. The image of the giant transportation, energy, and natural resource conglomerates the major railroads have become, crouching behind a shrinking ICC, would be laughable were not hundreds of millions of dollars extracted from the pockets of the nation's consumers the price tag for this tragic farce.

Western Fuels and a group of other captive shippers dared the railroads to step into the ring through support of S. 447 and H.R. 1140—the proposed Railroad Antimonopoly Act, whose principal sponsors are Rep. John F. Seiberling, D-Ohio, and Sen. Dennis DeConcini, D-Ariz. the arena is the current 99th Congress. At stake is an effort to let competition set prices in the transportation marketplace. The bills would do this by requiring monopoly railroads to give access to their tracks to competing railroads, and by removing *Keogh* and other barriers to antitrust relief for shippers.

Not surprisingly, the railroads are fiercely resisting the legislation, after first hoping it would go away if they ignored it. I find fascinating the sequence of events which has brought the proposed Railroad Antimonopoly Act to a real chance for congressional passage this year.

The railroads' traditional forums are the House and Senate committees with jurisdiction over transportation matters. This is their terrain. They know the players better than anyone. Because they have not in more than 60 years been subject to antitrust law, they have virtually ignored the committees to which H.R. 1140 and S. 447 were referred, those with jurisdiction over commercial law. Because they regarded the Consumers United for Rail Equity (CURE) legislation to improve regulation by clarifying the balance between railroads and shippers, H.R. 4096 and S. 477, as their primary (and preferred) threat, the railroads targeted those bills for their ad campaign and lobbying activity, all but ignoring the railroad antimonopoly bills.

It was not until the sixth or seventh hearing on the antimonopoly bills that the railroads even designed to testify in opposition to them. By then, momentum had been gained and, as a result, H.R. 1140 was reported out of subcommittee in March and subsequently by the full House Judiciary Committee.

Only then was sequential referral—consideration by another committee—requested by the House Energy and Commerce Committee. After a single hearing, H.R. 1140 was reported out of that committee in June with an unfavorable recommendation, yet with Chairman John Dingell, D-Mich., stating that while the bill's specific language might not be the preferred "cure" for the woes of captive shippers, a cure was warranted.

The stage is set for the House Rules Committee to let H.R. 1140 go forward for floor action. Likewise, efforts are underway to secure action in the Senate.

You may be a supporter of CURE, or a bystander skeptical that a remedy for rail monopoly and its costly effect could be found. Such skepticism may have been warranted by the tragic state of affairs existing with respect to shipper rights against railroads. But the time has come to rally for the final push. Captive shipper legislation, H.R. 1140, has a real chance of passage in the 99th Congress, the last hurrah for its principal House sponsor, Congressman Seiberling, who is retiring at the end of this Congress.

APPA supports the Seiberling bill. So does the National Rural Electric Cooperative Association. The list of supporting consumer groups, energy companies, cooperatives, agricultural producers, chemical manufacturers and fertilizer companies is long. The networking among representatives and senators which can be done by such a broad-based group should be extensive, and can be effective if every victim of monopolistic pricing, and every user of shipper service captive to the railroads, takes part now, during the closing weeks of the 99th Congress.

It is time for passage of the proposed Railroad Antimonopoly Act, to restore balance in the relationship between railroads and shippers.

IN HONOR OF VERN J. SPOHN

HON. DENNIS M. HERTEL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. HERTEL. Mr. Speaker, I would like to take time today to honor a gentleman who is retiring after many years as a business and civic leader in Wheeling, WV. His business and civic legacy has been one of duty, hard work, integrity, and concern for his fellow citizens. Please join with me today in honoring Mr. Vern Spohn.

Mr. Spohn was born 66 years ago. As a youngster, he did all he could to help his father with the family-owned automobile dealership. Even as a youth, he displayed a gift for salesmanship, selling his first car at the age of 12. This talent would serve him well in the years to come.

Despite responsibilities at home, his sense of duty prompted him to enlist in the military in 1944, serving with the Americal Division in the Philippines. Before being honorably discharged in March 1946, he received two battle stars.

Back home, Mr. Spohn assumed complete control of the family dealership when his father passed away in 1948. From this point, he went on to success and recognition within his profession. He was the youngest Ford dealer to be elected to the National Ford Dealer Council, representing the Northeastern United States. He was elected president of the Wheeling Auto Dealer Association in 1972 and to the board of directors of the West Virginia Automobile Association in 1975. During the same year, he served on the Lincoln-Mercury National Dealer Council. Additional duties included sitting on the board of the Lincoln-Mercury Dealers Association, for a total of 12 years and was its chairman for 9 of those 12 years. In 1979, he received perhaps his biggest honor, receiving national recognition as Time magazine's Quality Dealer of the Year.

Mr. Spohn has been quite active in civic interests as well. He was elected to the Wheeling City Council in 1980, was reelected in 1982 and served until this year. He was appointed to the Wheeling Transit Authority and to the Ohio Regional Transit Authority Board, serving as chairman to the latter in 1980. He served on the board of the Wheeling Area Chamber of Commerce from 1982 to present. He has been involved within his community in several charitable causes as well, among them being the Wheeling Heart Association, the Salvation Army and the Fort Henry Club.

Please join me in honoring my friend, Mr. Vern J. Spohn.

WHILE ROME BURNS

HON. FORTNEY H. (PETE) STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. STARK. Mr. Speaker, during this week in Washington there are a series of important meetings of finance ministers and international bankers discussing the world economic situation, patterns of trade, and what to do about the terrible foreign debt problems of many developing nations—as well as the United States' own growing international indebtedness.

Undoubtedly, there will be calls for each nation to contribute more money to the International Monetary Fund and the World Bank and related banks.

The amounts of money involved in these international banking operations are so huge as to be incomprehensible.

But what is infuriatingly comprehensible is that like Nero who fiddled as Rome burned, these international bureaucrats are having a wonderful time. Maybe the next time these agencies—which are notorious for the luxurious life style of their staffs and directors—come to the Congress and ask for money for regional developent and feeding the poor, we can ask them to tighten their personal belts.

As the following article from the Washington Post of September 28 explains, however, some of them will have a hard time sucking in their guts.

[From the Washington Post, Sept. 28, 1986]

EAT, DRINK, AND SPEND MONEY—FOR WORLD BANKERS, THE INTEREST IS FOOD

(By Sarah Booth Conroy)

Money-masters do not have reputations as givers of wild orgies. No one comes to their parties to enjoy themselves. They come to do business: Their fêtes decide the fates of nations.

Some even say that the gatherings at this week's annual meeting of the International Monetary Fund and the World Bank are—whisper the word—dull. No cakes stuffed with dancing girls, no male disco dancers, no impromptu juggling acts with the champagne glasses. Very few seductive suggestions. These parties are serious work sessions.

But before you crumple up your invitations, hear that these parties also are famous for what financiers do best—spend money. And they're spending their money on Victorian feasts lavish enough to surfeit the greediest gourmand. The bankers may be here to borrow money to feed the starving back home, but while they're in Washington, none will go hungry. As Design Cuisine chief William A. Homan puts it, "They've booked up the whole city." For caterers, hotels, party planners, caterers and limousine companies, this week Washington is Fat City.

No one around town has yet totaled all the breakfasts, morning coffees, lunches, afternoon teas, cocktail parties, dinners and midnight snacks that the 10,000 or so finance ministers, treasury chiefs and central bankers and guests from 150 countries will attend through Thursday. Harriet Schwartz, partner at Washington Inc. estimates 300. Caterer Jeff Ellis says 700. Estimates of the costs vary wildly as well, ranging from $2 million to as much as $10 million.

Ellis says Ridgewell's alone is preparing 29 events in one day. Schwartz says her company is managing 35 major parties during the week. Even in the face of international money worries, Ellis says that "this year, the hosts want more expensive menus, and they're inviting 30 percent more people. No one is stinting—but then they never have."

Because of Washington's acute shortage of royal palaces, where Europeans tend to expect to dine, many galas are scheduled for museums, including Air and Space, the Phillips Collection, the Corcoran Gallery of Art, and Dumbarton Oaks. Craftsmen have been working for a month on marble columns to hold food at Tuesday's party for 3,000 at National Gallery of Art. Woodrow Wilson House has a number of parties, including appropriately, one with music of the 1920s. Columbia President Virgilio Barco Vargas, chairman of the annual IMF/World Bank meetings, is giving the first bash today, a reception for 5,000 at the Sheraton Washington. "There'll be so many VIPs no one will pay them any attention," said a staffer.

One formal seated dinner for 110 catered by Ridgewell's is expected to cost $200 per person. Guests will begin with crab cakes, caviar with creme fraiche, smoked salmon and mini beef Wellingtons. The fish course is lobster with corn rounds followed by citrus sorbet. The main course is duck with lime sauce, served with artichoke bottoms filled with baby carrots and noodle baskets with sesame flecks, mushrooms and honey curried bread. The hearts of palm salad will be served with sage cheese souffles with a port wine dressing. For dessert, a German chocolate tulip filled with amaretto mousse, sauced with raspberry coulis with ice cream bonbons and flaming coffee royale. For those awake after the speeches, light fruit and aperitifs will be served. The women will be banished to a separate room, but they may be glad, because cigars will be passed to the men.

"The Taste of America" party at the Shoreham Hotel, says Schwartz, will be a cook's tour of U.S. cuisine, especially assembled for foreign guests. Lansdowne Catering's sales manager Jerry Croce says he is glad to be serving the international types "because they aren't as obsessed as Americans with tiny portions of health food."

Windows Catering, says director Raz Nielsen, is doing several formal dinners for 20 in intimate style in Georgetown and Kalorama mansions rented for the occasion.

Though many parties are staid, not to say stuffy, a down-home stomp at the Foundry given by Merrill Lynch and the World Bank, will be more relaxed. Owner John Hartley says 1,500 guests will saunter all over the Foundry's 10,000 square feet. People will graze on 30 different foods from gravelax to steak tartare to jambalaya. The Lazy River jazz group will play in the back room and the Buddy Wachter trio on the upper terrace.

Money mongers will be conveyed from place to place by drivers, but not necessarily in stretch limousines. Indeed, Gene Taylor, manager at Cotter Limousines, says of the 100 cars he's sending out, only 20 are limos—standards, not stretch. John Goldberg, manager at Dav-El Limousines, says his requests are 50/50 limos and sedans. "But only five are the big stretch limousines. Bankers don't like to look too prosperous because they owe lots of money to other bankers. It isn't like the last inauguration, where the bigger the limousine, the better."

MICHAEL MANLEY'S DRUG AGENDA

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. DYMALLY. Mr. Speaker, because of the great concern of Members of Congress about drug trafficking in the Caribbean and Latin America, I submit for your review, an extract of a speech delivered by Mr. Michael Manley, leader of the Opposition People's National Party in Jamaica, West Indies, at their 48th annual conference on Sunday, September 21, 1986.

MICHAEL MANLEY

I am going to speak now as a Father . . . The People's National Party is coming with a Drug Agenda. We are going to find a way to mobilise this society to fight drugs. When I watch cocaine entering into our schools everywhere, I know that heroine is next. We have got to mobilise the parents and the children of this nation to fight it.

Let nobody have any doubt, Michael Manley will put the entire resources of a government of a People's National Party behind the mobilisation of the people, the education of the people, mobilising the young, mobilising the teachers, mobilising the parents to stop drugs in Jamaica before it is too late. Let nobody have any doubt about it. If anyone thinks that I am going to preside over a nation that when I watch the young people I will never know who's failing higher schools A'Levels because they are into cocaine and sniffing, they don't know me and our movement. There is no way that is going to go on.

The Ambassador (of the USA) will be the first to tell you that they (USA) are sorry that they woke up so late in America to the danger of what is happening to the whole North American society. Don't let it happen to Jamaica. I am asking you to rally behind me; all of you rally behind me; we are going to stamp out drugs in Jamaica!

IN HONOR OF JAMES L. SCHUELER

HON. DENNIS M. HERTEL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. HERTEL. Mr. Speaker, Mr. James L. Schueler, presently a resident of Grosse Pointe, MI, joined the Michigan Municipal Insurance Co., in 1941 as a claims file clerk. Now, 45 years later, Mr. Schueler is planning to retire. I would like to take this time to honor him in recognition of the years of dedicated service he has provided his company and his community.

Mr. Schueler, a native of Detroit, graduated from the University of Michigan and the Detroit College of Law. From 1942 to 1946, Mr. Schueler valiantly served his country as a 2d lieutenant in the eastern theater during World War II. He later returned to Michigan Mutual and became a trial attorney, followed by a position as claims supervisor.

From 1951 to 1955, Mr. Schueler worked as branch claims manager in the Saginaw office, but returned to the Detroit office to work as a general claims attorney. In 1960, he became an assistant general counsel. Three years later he became an assistant vice president. After another 3 years, Mr. Schueler became head of the legal division in the home office claims department. By 1969, James Schueler was vice president and claims counsel.

In 1981, Mr. Schueler accepted his present position of senior vice president and general counsel. He continues to be responsible for the claims operations of Michigan Mutual and all of its subsidiaries, the Amerisure Co. As only one example of his dedication, James Schueler is going to continue to work beyond his official retirement in order to facilitate the transition of the new senior vice president and general counsel.

In addition to his 45 productive years at Michigan Mutual, James Schueler has been a active member of the community. He is a member of the Detroit Bar, the State Bar of Michigan, and the American Bar Association. He has been on the board of trustees of the Rehabilitation Institute of Detroit, a trustee of the 2d injury fund of the Michigan Department of Labor, and past chair of the third-party committee of the workers compensation section of the State Bar of Michigan.

Other memberships have included the Committee on Corporate Counsel; the Alliance of American Insurers Workers Compensation, Social Insurance and Claims, and legal committees; and the Workers Compensation Committee of the American Mutual Insurance Alliance. His energies have also been channeled, along with his wife Sally, into the raising of his six fine sons: James, Jr.; John; Stephen; David; Peter; and Michael.

As well as his retirement, October will also bring Mr. Schueler's 65th birthday. I ask my colleagues to join me in honoring Mr. James Schueler. This occasion serves as a double celebration in addition to a wish for even better things to come. Congratulations Mr. Schueler.

TRIBUTE TO PAUL SHIMOFF

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. LEWIS of California. Mr. Speaker, it gives me immense pleasure to have this opportunity to recognize a truly outstanding individual, Mr. Paul Shimoff. The San Bernardino County Bar Association will hold its annual installation of officers on October 10 of this year, and Mr. Shimoff will be recognized for his many contributions to the organization as its president for the past year.

I would like to emphasize that the San Bernardino County Bar Association is the oldest continuously active bar association in California. Organized December 11, 1875, by 10 charter members, this voluntary association has now grown to 770.

As president, Paul Shimoff performed a number of significant activities which will benefit the organization for years to come. Members now receive accurate, timely information of bar activities and concerns due to Paul's revitalization of the Bar Bulletin. Paul appeared and often spoke at numerous meetings and other events throughout the country, which served to enhance the image of the bar association and of the legal profession.

The association has benefited tremendously from Paul's superior leadership ability. He directed the activities of the board of directors, various committees, and the family law, probate, and real estate sections of the association. In addition, he improved and supported the bar association's public service programs. Such programs as Legal Aid, Lawyer Referral Service, Tele-Law, and the fee arbitration service were improved by his efforts.

In addition to his role as president, Paul Shimoff has a long history of active involvement in the bar association. Other association positions include membership on the board of directors, secretary/treasurer, and vice president.

His professional activities outside the association are also impressive. Paul is a member, shareholder, officer, and director of McPeters, McAlearney & Shimoff, a professional corporation in San Bernardino, CA. He is also a knowledgeable and talented lecturer. Paul shares his expertise in tax matters through numerous lectures at universities and professional seminars.

Community involvement has not been neglected because of his many activities—Paul is a former member of the board of directors of the Inland Empire Symphony.

Mr. Speaker, I ask that you join me in saluting Mr. Paul Shimoff, an outstanding citizen. I know the San Bernardino County Bar Association will miss such an able contributor, but I am certain his leadership in the field of law and his community will continue for years to come. I offer sincere congratulations and best regards to Mr. Paul Shimoff.

TRIBUTE TO DAROLD JENKINS

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. SKELTON. Mr. Speaker, it was with great sadness that I recently learned of the death of one of the outstanding native sons of my home State, Missouri. We lost, with the passing of Darold Jenkins, a man who dedicated his life to his country and its government.

In his early years Darold Jenkins demonstrated his spirit, courage and dedication through his skill at football, which brought him All-American status. In World War II he was a B-17 pilot in Europe and was shot down, serving as a prisoner of war in Germany.

On his return to his native Missouri, Darold Jenkins pursued the study of law and later distinguished himself as a county prosecuting attorney and as the trial attorney for the Missouri State Highway Commission.

Most of all, though, Darold Jenkins was a great friend. Those of us who came to know him during the years grew to love him. His spirit and energy were an example for all of us. I take this time today to speak of him, to mark his place in the CONGRESSIONAL RECORD, so that his lifelong efforts can be known by all.

TRIBUTE TO ALITA ROBERTS, PEGGY MENSINGER, AND KENNI FRIEDMAN

HON. TONY COELHO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. COELHO. Mr. Speaker, it is with great pride that I pay tribute to three outstanding women in Modesto, CA.

Alita Roberts, Peggy Mensinger, and Kenni Friedman are all in positions to influence major political decisions as well as the career aims and choices of thousands of young women. These three Modestans serve on national boards of two important women's organizations, the League of Women Voters and the Girl Scouts of the USA.

We are proud to call them professional volunteers. They often work more than 40 hours a week, without pay. They each look at the big picture of how their respective organizations operate and deal with issues of the changing role and career opportunities of women.

On behalf of my two teenage daughters, I would like to commend these three women for their hard work and dedication to their organizations, and share with my colleagues this article that appeared in the Modesto Bee.

[From the Modesto Bee (Modesto, CA), Sept. 7, 1986]

THREE MODESTANS MAKE AN IMPACT ON NATIONAL SCENE

(By Judy Sly)

They've lunched at the White House, attended conferences as far away as France, and shared the stage with the likes of George Deukmejian and Pete Wilson.

Those are among the fun parts of their jobs. More difficult are the decisions that affect—literally—millions of girls and women.

Three Modestans now serve on the boards of two national women's organizations—the League of Women Voters and Girl Scouts of the USA. Kenni Friedman, Peggy Mensinger and Alita Roberts are in positions to influence major political decisions as well as the career aims and achievements of thousands. They also have to see that their organizations adapt to a changing society.

Some decisions are difficult, such as recommending a Girl Scout dues increase to keep the organization out of the red—and knowing that it will make Scout membership unaffordable for some girls.

"I think the hardest part is the fact that it is a national board and when you make a decision it has such impact that it takes a lot more thinking," says Friedman, who is secretary-treasurer of the 110,000-member League of Women Voters of the United States and its education fund. Friedman was elected president of the California league in 1981, only eight years after she joined the organization as a Modesto newcomer. She began service on the national board in 1984.

Mensinger, Modesto's mayor, has been on the national board of the Girl Scouts of the USA since October 1978. Her current term expires next year.

Roberts, who left Modesto in 1979 and returned last March, is serving her fifth year on the 50-member board of the Girl Scouts. Both Mensinger and Roberts also serve on the executive committee of the Girl Scouts, which counts more than 2 million girls and 630,000 adult members.

There are several common denominators in their experiences—all three belong to the League of Women Voters, for instance.

In preparing a biographical sketch in 1977, when she was president of both the Muir Trail Council and the Modesto league, Roberts listed herself as a professional volunteer. The label fits Friedman and Mensinger as well. All three women held jobs briefly after college, but interrupted their careers for family. They stepped into many of their community activities via family concerns. Friedman, for instance, fought state government in New York over the widening of the highway in front of her house. She sought help from the league in learning what to do as a political novice.

Mensinger was active in the PTA. She never rose higher than assistant troop leader, but became president of the Muir Trail Girl Scout Council and later moved into the organization's national hierarchy.

Roberts once added up her weekly hours in volunteer projects. They topped 40, none with pay. She prided herself in getting dinner on the table every night—until acquaintances learned that was the ideal time to catch her at home.

Today, the leadership positions filled by these women consume at least several days a month. During one five-week period, Friedman figures, she was only home eight days.

Recently, the three women talked with The Bee in a roundable discussion about their organizations and their roles.

As mayor, Mensinger often criticizes actions by state and federal governments that have a detrimental impact on local entities. That role is reversed in her Girl Scout work.

"It's interesting to get on the other side of the fence and discover that down there in the grass roots they don't understand what you're trying to do," she says.

From the national perspective, the three women are looking at the bigger picture of how their organizations operate. Sometimes, that means suggesting changes in the way things have always been done. A current issue, says Roberts, is advocating another source of Girl Scout funding because "there is a limit to how many cookies people are willing to buy."

And even though staying current is critical in order to keep members and to maintain credibility, these women say, advocating change often means grass-roots dissatisfaction.

"We must spend a great deal of time being concerned with the changing role of women, with the changing roles of families and women's opportunities careerwise," says Roberts.

This year, the Scouts launched a Say No To Drugs campaign. After-school meetings led by stay-at-home moms is no longer the predictable troop routine.

"In recruiting adult volunteers, we are turning more and more to women who are working because that's where the women are," says Mensinger.

National leaders are encouraging women and men to capitalize on their Scout experiences and training. "We've gone into a program where we help them keep track of the experiences they've had and how to convey that experience in job interviews or job applications," says Roberts.

League membership, too, is affected by the growing numbers of women in the workplace.

"Years and years ago, we used to have meetings all day long to discuss issues." says Friedman. "You no longer can do that and you can no longer have day meetings except for a limited number of people. You have to give consideration to the fact that most of your members are fully employed outside the home and plan your meetings to correspond with that. You have to plan activities so the time that they spend is well worth the effort of being there."

The League, whose membership is holding steady after slumps in the 1960s and 1970s, is looking at direct-mail recruitment of members at the national level. Traditionally, state leagues led recruitment efforts, largely by word of mouth.

The Girl Scouts, Mensinger points out, has given priority to reaching minorities. "I think it's significant that more than one-third of the board members are minorities (excluding the men) and more than one-third of the employees. There's a very real effort made to do that because we think we should practice what we profess, which is affirmative action and pluralism."

As board members, these women oversee the paid executive staffs of their organizations. And those staffs face the challenges similar to those of any major corporation.

Peter Drucker, the noted management consultant, recently labeled the national director of the Girl Scouts as the most able executive in the country. "He is constantly citing Girl Scouts of the USA as a model of corporate management," says Mensinger.

Girl Scout executives are exposed to Harvard Business School training; the emphasis on management training filters down to the local troop level.

"You don't have an unlimited amount of money to spend in these organizations so you have to be very efficient or you're just not going to be around," says Friedman.

Adds Roberts: ". . . don't you think it's expected that women will not be as good so we have to be better? We feel we have to prove we can do it better, to attract the funds to function."

None of the three is rapping at the door of male-only organizations. First, they don't have time. Second, they're eager to stress the benefits of contacts made through organizations dominated by women.

"I feel very strongly that the organizations I've been involved in have given me a tremendous amount of networking power," says Friedman. "I've gotten places as a result of networking that has occurred in the league and on the California Coalition For Fair School Finance."

Mensinger agrees: "You get all kinds of insights and connections and it's certainly useful."

Although she's not trying to get into the Rotary, Mensinger says she does not believe women should be excluded from the places and groups where business contacts are made.

Many short-term concerns of these organizations center around finances, membership and for the League, a variety of studies.

What's ahead in the long term?

"Lots of change because of what's going on in society and the changing rules of the male and the female in the workforce," says Friedman. "I think what we do on a day-to-day basis is going to have to change. I can't say what it's going to be but it's going to have to change."

Says Roberts: "I think we'll have to keep on top of the changing needs of girls in our society as we move into the 2000s. We are doing this right now. We just revised our Brownie and junior programs to reflect drug problems, to reflect the need for decision-making skills and this will have to continue."

"From my perspective," notes Mensinger, "Girl Scouting stands for some very long-lasting values which we want to retain but we certainly have to adjust to a world that's different every day."

"We'll stage a celebration," she adds, "when we inaugurate the first woman president."

THE CYPRUS PROBLEM

HON. CHARLES WILSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. WILSON. Mr. Speaker, the Cyprus problem, which now spans more than 30 years, has been a point of contention in the United States-Turkish-Greek relations that has weakened the southern flank of NATO as well as U.S. interests in the region. Recently, efforts to bring the Greek and Turkish communities of Cyprus into constructive discussions on reunification of the Island have focused on the United Nations.

Accordingly, on March 29, 1986, U.N. Secretary General Peres de Cuellar presented a draft framework agreement to both communities. This proposal was the result of numerous negotiations between the Secretary General and representatives of the Greek and Turkish Cypriots. Acceptance of this document would provide the basics for the establishment of a bizonal, bicommunal Federal Republic of Cyprus. Additionally, after its acceptance, the document provided for immediate negotiations on any remaining issues such as a timetable for troop withdrawal, guarantees, and so forth.

On April 21, 1986, the Turkish Cypriots formally accepted the Secretary General's proposal. Anyone who has observed events affecting the Cyprus issue during the past 3 years cannot help but note the genuine desire of the Turksih Cypriots to resolve this dispute. Certainly, they are to be commended for their patience during this period and for accepting the draft framework agreement in good-faith effort to achieve a peaceful settlement. Regrettably, the Secretary General has reported that the Greek Cypriots have rejected the agreement and have instead put forward alternatives which are unacceptable to the Secretary General as well as the Turkish Cypriots. It is unfortunate that the Greek Cypriots and Greece have recently been enthusiastically supporting a Soviet initiative on Cyprus which would have the effect of scuttling the Secretary General's work.

Throughout this period, the administration and the Congress have been supportive of the Secretary General's approach which protects the interests of both communities. The Turkish Cypriots remain committed to this peace initiative which offers the best hope for the solution of the long-running Cyprus problem. I, therefore, call upon the Greek Cypriot side to also accept the document and thus open the way to a cooperative, long-lasting reconciliation for all Cypriots.

"WHY I'M PROUD TO BE AN AMERICAN" ESSAY WINNER

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. FORD of Michigan. Mr. Speaker, I want to share with my colleagues an essay on "Why I am Proud to be an American" written by Jana Seniff of Romulus, MI. Jana's essay was one of the two best essays written last school year by sixth graders at Hale Creek Elementary School. I again want to congratulate Jana on her fine work, and her essay follows:

WHY I AM PROUD TO BE AN AMERICAN

(By Jana Seniff)

I feel fortunate that twelve years ago I was born in this great country, the United States of America. I can only remember the last half of my twelve years, because for the first six years I just learned and understood that my address included a city and state, let alone that Romulus, Michigan is within the boundaries of the United States.

America, since the first expedition in 1584, has allowed any race or color of people to come and build a new life for themselves. From our beginning men, women, and children from all countries have learned to live together.

I live in a land of opportunity where anyone who has the will and desire, may increase in knowledge and advance himself in whatever area pleases him.

America has always promised freedom of religion. It is a privilege to worship God in our own way, attend out own church, and read God's Word, the Bible, without being condemned or persecuted.

It is exciting for me to read of how our country was founded and how our forefathers went about fighting for the freedom and liberty that we all have and can enjoy today and for years yet to come. Throughout history Americans have fought and thousands have died for us to keep the freedom we enjoy.

The American Flag is flown outside schools, businesses, homes, and hung inside buildings for all to see. This proves to me that American people today are proud and love this land that offers them so much.

All other countries recognize our independence. France, back in 1886, gave to us the Statue of Liberty which stands on Ellis Island for all eyes to see as they approach America from the Atlantic Ocean.

I think it is awful to read in the newspaper or see the news on television (this is called Freedom of the Press, which is another right of Americans) that tell of individuals who put down this country, don't support our President, and burn our Flag. If they only could see how other countries are! I have heard many missionaries speak and seen their slides of foreign countries where they serve and these are a few examples:

1. Africa, even today have natives that are living as their forefathers did, very uncivilized.

2. China, very crowded living conditions, where six or seven families live in one room. Building after building of sixteen floors of people living this way is hard to even imagine.

Russia, where at the age of 13 boys have to leave school and be trained for the military.

We as Americans should always remember the liberties we enjoy and should be deeply grateful. We should never take them for granted.

I don't believe there are enough words to describe why I'm proud to be an American. It is a feeling within that gives me joy to know that I live in the greatest and richest country on this earth.

CHILDREN'S WORLD FAIR

HON. BILL GREEN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. GREEN. Mr. Speaker, I would like to share with my colleagues a report of a special event, the second annual Children's World Fair, which has taken place from September 25 through September 27, in Flushing Meadow Park, NY. The theme of this event was to demonstrate peace through participation, which is based on the United Nations' 1986 celebration of the "International Year of Peace."

The opening ceremony on September 25 included the participation of children from over 70 nations. The remaining dates consisted of "School Day," which many high school students attended, and "Family Day," which included active participation from many families.

These unique days provided a forum for children to express their desires for a peaceful world. The environment was conducive to letting our children lead the way with the theory that if children are taught peace, they will become peaceful adults. Our children are the resources to preserve our future.

I should like to commend Dr. Cary Goodman, and Maxine McCrey Montano for coordinating this most noteworthy event. The proceeds of this fair will go toward family and community self-sufficiency projects in poor nations on every continent.

It was clearly indicated that the Children's World Fair was a successful and meaningful event when, at the conclusion, the children signed a large peace treaty.

Mr. Speaker, I ask that my colleagues in the House join me in congratulating the sponsors and participants of the Second Annual Children's World Fair for their dedication to the worthy cause of world peace.

NATIONAL FUND FOR LITERACY DEVELOPMENT ACT

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. HAWKINS. Mr. Speaker, the legislation I am introducing today H.R. 5607 authorizes a modestly funded for promising approach to expand public and private resources for adult literacy programs. Congressman GOODLING and I are sponsoring this bill, the National Fund for Literacy Development Act, as another component of our continuing battle against illiteracy.

The National Fund for Literacy Development Act is the product of the Joint Literary Legislation Action Group, a coalition of major literary service providers, including public agencies, volunteer organizations, community groups, libraries, and businesses. Encouraged by the hearings on illiteracy held by the Subcommittee on Elementary, Secondary, and Vocational Education over the past year, several organizations met to develop legislation to address the most urgent needs in literacy education with limited Federal funding.

The resulting bill is an initial step that could be taken now, laying the groundwork for a more comprehensive program addressing illiteracy. It authorizes Federal funds for the purposes of attracting private dollars, expanding existing programs, and coordinating public and private literacy efforts. This legislation is not intended to be a substitute for the existing Adult Education Act, which is currently underfunded, or for the larger scale remedial and preventive programs that are desperately needed.

This bill recognizes that even with the diversity of agencies, organizations, and institutions offering literacy programs, millions of adults are still not being served. Existing programs are often overwhelmed by the demand but are unable to expand without more personnel and resources.

The National Fund for Literacy Development Act would target private and Federal funds to develop the capacity of literacy providers to expand and improve their services. The bill would establish a national fund for literacy development. This fund would solicit private contributions that will be used in conjunction with Federal seed money for high priority projects to: develop State-wide literacy programs; serve areas with high concentrations of illiterate and semiliterate adults; serve areas with illiterate populations that are hard to reach; address illiterate populations that are underserved; and encourage new approaches to literacy services, such as intergenerational programs.

The Federal seed money is authorized at $5 million for fiscal year 1987, $10 million for fiscal year 1988, and such sums as necessary for the 3 succeeding fiscal years.

I believe this legislation will contribute to congressional discussion this year and next year concerning an expanded Federal role in eradicating illiteracy. This is a problem that will not go away unless we take action.

HOUSTON STEPS FORWARD IN SPACE DEVELOPMENT

HON. MICHAEL A. ANDREWS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. ANDREWS. Mr. Speaker, over the last week, Houston has taken two very important steps in space development. For Houston, a city suffering severe economic troubles, these events bode well for a brighter future based on space commercialization.

Today, Space Industries, a Houston space development company, announced its partnership with Westinghouse Electric Corp. to build the industrial space facility (ISF), a mantended orbiting space laboratory for materials processing and microgravity experiments. This agreement marries the vision of Space Industries with the resources and expertise of Westinghouse and is a significant step toward making the ISF a reality by 1990.

Mr. Speaker, this partnership to build the industrial space facility is the kind of development we, in Congress, have encouraged and must continue to support. In these times of severe budget constraints, the private sector must come forward to expand our Nation's role in space development. The fact that this growth is occurring in Houston is a matter of great pride to myself and all Texans.

On another front, NASA has recently come forward with a revised design for the space station which will assure the Johnson Space Center's continued role in manned space development. This decision, along with the unveiling of a safer and more robust space station design, are very good news for Houston and for space business.

The space station offers many opportunities for businesses to do work in space, and Houston is certainly ready to make the most of this potential.

Taken together, this progress on the industrial space facility and on the space station confirms Houston's role in the space-based economy of the future. Each step we take in tying the engines of private enterprise to development in outer space will mean future growth. Today, it is apparent that a hub of that growth will be in Houston.

TRIBUTE TO ARTHUR H. VAN ZILEN

HON. ROBERT G. TORRICELLI

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. TORRICELLI. Mr. Speaker, I rise in tribute to Arthur H. Van Zilen, who is celebrating his 50th year of active service with the Leonia, NJ, Fire Department.

Mr. Van Zilen was born in Leonia in 1915 and except for 3 years of military service during World War II, has lived in Leonia his entire life.

His family has long been involved in community service. When Artie was born his father, Theodore Van Zilen, was fire chief in Leonia. He was also the Leonia police chief and was killed in a vehicle accident while on duty. Many other members of the Van Zilen family have been involved in community service as firemen and policemen.

He joined the fire department in 1936, and after serving as engineer, chief engineer, lieutenant, captain and deputy chief, he was elected chief of department in 1951 and 1952.

He retired in 1981 as the chief mechanic of the Borough of Leonia, for which he had worked 35 years.

Married to the former Madeline Raschka, they have one son, Arthur J., and one grandchild, Arthur.

Mr. Van Zilen has been a dedicated member of the fire department and given of himself to help others. All who have served with him have the deepest admiration, respect and affection for him. Artie sets a high example for all of us to follow and is truly deserving of recognition from our Nation.

OMNIBUS BUDGET RECONCILIATION ACT OF 1986

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. BIAGGI. Mr. Chairman. I am pleased to indicate my particular reasons for voting in favor of H.R. 5300, the Budget Reconciliation Act, last week. First and foremost, I consider it to be a balanced and responsible bill that if allowed to remain intact throughout the final legislative process, will avert the travesty of a second round of automatic cuts as mandated by Gramm-Rudman-Hollings.

The bill is balanced because it recognizes, unlike the premise of Gramm-Rudman, that there are two ways to reduce the deficit—spending cuts and revenue increases. This legislation employs both and achieves more than $15 billion in deficit reduction. This is done without a real tax increase or by savage across-the-board reductions in programs for our needy.

I find the strongest elements of this legislation to be contained in its various Medicare reform proposals. As an original member of the House Select Committee on Aging I have deep concerns about the present direction of the Medicare Program. My concern stems from the continued implementation of the prospective payment system [PPS]. At the time we passed this plan in 1983, it was based on the premise that it would help to lower overall Medicare costs. It has, no question about it. However, with this modest "cost containment" has also come a growing problem of "care containment." It includes serious quality of care issues as well as continued increases in the amount of funds an older person must pay out-of-pocket.

H.R. 5300 addresses some of these issues in a significant fashion.

In this area of limiting out-of-pocket costs, I strongly endorse this legislations "cap" on the increased scheduled for January 1 in the part A deductible. The part A deductible which is the amount each of the 30 million Medicare recipients must pay before Medicare provides any coverage in a hospital stay would rise to $572 on January 1 from its current $492. That would mean a 43-percent increase in just 2 years. Compare this to the roughly 7-percent increase in the Social Security cost-of-living allowance for the same time period.

H.R. 5300 would hold the increase to just $8 and set it at $500. This follows the introduction of legislation of mine in June of this year, H.R. 5008 which would have limited the increase in the part A deductible to the same level as the 1987 Social Security COLA. The amount recommended in this bill would accomplish this since the increase would be under 2 percent.

It must be remembered that one of the reasons that has led to the increases in the part A deductible is the DRG Program. The average length of hospital stays for Medicare recipients has dropped significantly. This means that more services are provided on the first day of hospitalization. The part A deductible is in fact based on the cost of the first day of hospitalization and therefore it has been triggered upward because of the cost containment consequences of DRG's.

The quality of care provisions which are such a critical part of this legislation address the very critical and growing problems facing millions of elderly on Medicare. These include problems of premature discharge from hospitals and an overall lack of awareness of their rights under DRG's H.R. 5300 addresses these and other problems through provisions to:

Establish a statutory right for Medicare beneficiaries to appeal a hospitals decision to discharge, or conversely to bill them for the costs of a continued stay;

Require hospitals to provide Medicare patients with written notice of their rights to care and appeal discharge decisions;

Require hospitals to provide discharge planning; and

Require peer review organizations to devote a reasonable proportion of their efforts to reviewing quality of care.

I also strongly endorse the provision in this legislation to require HHS to fund at least five demonstration projects to determine whether to include additional services for Alzheimer's disease patients as a Medicare benefit. These projects would address the criteria for determining eligibility, the range of services needed and the cost of such care. There is no higher future priority for Medicare and other Federal programs than to address with compassion the horrors of Alzheimer's disease and its impact on both its victims and their families.

I warmly endorse the provision in H.R. 5300 to eliminate the so-called 3-percent trigger for Social Security cost-of-living increases. If we have the good fortune of being in an economic environment where overall inflation is low, there is no reason to penalize the elderly on Social Security. Two facts must be kept in mind. The first is that the traditional measure of inflation, the Consumer Price Index, does not accurately reflect those items that consume the bulk of the older person's income. As mentioned earlier, if you just take health care costs under Medicare, Social Security recipients had to endure a 23-percent increase in their Medicare part A deductible on January 1. The second fact to remember is that Social Security for about 7 million seniors represents their only source of income. Therefore it is critical that they continue to be provided with COLA's to keep pace with inflation where it affects them most.

Let me address two other provisions in the House-passed bill that I have been closely involved in. The first is the provision in the bill which establishes an oil spill liability fund financed by a 1.3-cent-per-barrel fee on oil. The fee is expected to raise $200 to $300 million over 4 years. This would help to pay clean up costs and certain damages if the responsible party is not found. I am pleased that after almost 10 years of work on this legislation the House has included it in this bill. I first authored an oil spill liability bill in 1981 and as chairman of the Coast Guard Subcommittee at that time, I helped to get the bill out of committee and to the House floor on several occasions. This is good legislation and deserves full approval.

Finally, let me reiterate my support for the provision also included by the Merchant Marine Committee on which I am proud to serve as vice chairman. This would enable the Government to more quickly foreclose on and take possession of vessels that have defaulted on Government backed mortgage loans. Specifically, the merchant marine provision would allow the Government to take title of the vessel once it has paid off the defaulted loan to the commercial lender. We anticipate savings of close to $70 million over the next 2 years.

Again, the choice we have is not really a choice at all. H.R. 5300 is the blueprint for a responsible congressional approach to the evil of Gramm-Rudman. If we fail to pass this legislation we will have no choice but to vote in severe across-the-board cuts on programs which were already cut on March 1. I urge support for H.R. 5300.

A BREAKTHROUGH ON AGENT ORANGE

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. FLORIO. Mr. Speaker, I would like to bring the attention of my colleagues to the work of the New Jersey Agent Orange Commission. Recently the commission announced the results of a 3-year study named "The Point Man Project." Those results clearly show that levels of dioxin in veterans who have been exposed to agent orange can still be measured, today, at alarmingly high levels.

Mr. Speaker, it has been years since these veterans were exposed to the dioxin in agent orange which the New Jersey study discovered in these veterans. We can only imagine as to what levels would have been found had they been tested soon after exposure. As it is, veterans exposed to agent orange have been found with 46 to 49 parts per trillion of dioxin in their bodies. The normal levels in the general population are 5 parts per trillion of dioxin.

I urge my colleagues to read the following two articles. They will soon see that the agent orange issue is not closed. In fact it may only just be beginning.

The articles follow:

[From The New York Times, Sept. 18, 1986]

RESEARCHERS REPORT FINDING TELLTALE SIGN OF AGENT ORANGE

WASHINGTON, Sept. 17 (AP).—A group of Vietnam veterans, scientists and members of Congress today announced the results of a study they say may finally prove the deadly effects of the wartime herbicide Agent Orange.

Scientists said the research, financed by the State of New Jersey, showed for the first time a biological "fingerprint" left in veterans' blood by dioxin, a key ingredient of Agent Orange.

Scientists and spokesmen for the New Jersey Agent Orange Commission, the sponsor of the study, said the research showed that traces of dioxin could still be successfully seen years after exposure. Furthermore, the tests found levels of dioxin 10 times higher in exposed veterans than in other servicemen of the Vietnam era.

The research on 10 highly exposed veterans stops short of linking their health problems directly to the widely used defoliant, the scientists acknowledged.

FINDINGS TERMED BREAKTHROUGH

But they asserted at a Capitol Hill news conference that the study represented a "breakthrough" in efforts to learn the true effects of the herbicide.

They said the results of the study should prompt the Federal Government to drop its longstanding contention that there was no way to prove a cause-and-effect relationship between Agent Orange and poor health.

"The Vietnam veteran has been in a long, dark tunnel, and maybe now we see the light," said Charles Krauss, a resident of Wayne, N.J., who handled Agent Orange in Vietnam and volunteered to be tested.

Veterans and the Government have been deadlocked in the debate about the defoliant used to clear Vietnam's dense jungles to deprive the enemy of cover.

The veterans say Agent Orange is the cause of health problems for them and their families, ranging from serious acne to cancer. Government officials counter that no such link has been proved, a position that prevents the veterans from receiving benefits for the illnesses.

$200 MILLION SETTLEMENT

A lawsuit filed against seven Agent Orange manufacturers by veterans from the United States, Australia and New Zealand resulted in a $200 million settlement in 1984. The litigation, now under appeal, included 245,000 claims of health damage.

Mr. Krauss and nine other Vietnam veterans with a history of handling the defoliant served as patients in the study.

Levels of TCDD, a form of dioxin, averaged about 48 parts per trillion in exposed veterans, as against about four or five parts per trillion in test subjects who saw no Vietnam service, said Ralph Fogelman, a toxicologist.

The cost of the research, about $400,000, was paid for through legislation passed by the New Jersey Legislature. The tests were begun last year at Barnert Memorial Medical Center in Paterson, N.J.

[From the Philadelphia Inquirer, Sept. 18, 1986]

A "BREAKTHROUGH" ON AGENT ORANGE

(By Matthew Purdy)

WASHINGTON.—A team of doctors yesterday announced what they termed a breakthrough in the detection of long-term dioxin contamination of Vietnam veterans who were exposed to Agent Orange, the controversial defoliant used by the U.S. military in Southeast Asia.

In a three-year study by doctors in the United States and Sweden, veterans who had been exposed to heavy doses of Agent Orange were found to have dioxin levels that averaged 10 times the levels found in veterans who had not been exposed to the defoliant or had not served in Vietnam.

Dioxin has been linked to a range of possible health effects including skin disorders, liver and kidney diseases, cancer and birth defects. Veterans groups have estimated that two million veterans were exposed to the chemical between January 1962 and February 1971 when 18.85 million gallons of the herbicide were sprayed in South Vietnam.

The study is considered significant because it offers proof that dioxin can be detected in both the blood and fatty tissue of veterans who were exposed to Agent Orange. That information, the study's sponsors said, can be used to establish a correlation between the contamination and diseases now suspected to be caused by dioxin contamination.

The accurate detection of dioxin and its relationship to diseases has been a missing link in both medical research and legal claims filed against the government by veterans who believe they were exposed to Agent Orange.

Veterans and the government have been deadlocked in the debate about the defoliant.

Veterans contend that Agent Orange is the cause of health problems to them and their families, ranging from serious acne to cancer. Government officials counter that no such link has been proven—a claim that prevents veterans benefits for the illnesses.

"Finally, we have breakthrough," said Rep. Bob Edgar (D., Pa.,), who heads the House Veterans Affairs subcommittee on hospitals and health care.

The detection technique can also be used in the study of other cases of dioxin exposure, such as in Times Beach, Mo., where residents were believed contaminated with dioxin contained in road oil used in that town.

Allen Falk, chairman of the New Jersey Agent Orange Commission, which sponsored the study, said "the Agent Orange issue is not dead and should not be dead. We now have the means to find the answer to the . . . question."

Commission officials said that it would take several years before widespread testing of veterans could be started because of the expense of the tests and the small number of laboratories in the world that could perform them. The officials and congressmen involved in the veteran issue pledged to push the government for money to begin extensive testing programs.

The study was conducted by doctors and scientists at Rutgers University, the New Jersey College of Medicine and Dentistry and the University of Umea in Sweden, where the tests were performed. The results were announced yesterday in Washington and at a medical conference in Japan.

The cost of the research—about $400,000—was paid for through legislation passed by the New Jersey Legislature.

The study tested 27 veterans chosen from a pool of more than 3,000. Of the 27 veterans, 10 had received heavy exposure to dioxin, 10 were Vietnam veterans but were not exposed to dioxin, and seven were Vietnam era veterans but were never stationed in Southeast Asia.

Blood and fatty tissue samples from the 10 who had received heavy exposure contained 46 to 49 parts per trillion of dioxin, while the contaminant was found in samples of the other veterans at levels of between four and nine parts per trillion, according to Michael Gochfeld, a doctor in the study.

Gochfeld said the "background" level of dioxin, or the amount of dioxin found in the general population, is five parts per trillion. He said health information from the study participants was still being compiled to determine if there was a statistical relationship between the dioxin levels and health effects.

Although the number of people tested was small, Gochfeld said that results were unmistakable in proving that dioxin levels could be detected scientifically in those exposed to Agent Orange.

Previously, government groups—including the Centers for Disease Control—have recommended against trying to determine the long-term effects of Agent Orange because officials believed dioxin levels could not be accurately detected.

ZAGONYI'S CHARGE

HON. GENE TAYLOR

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. TAYLOR. Mr. Speaker, on October 25, 1986, the 125th anniversary of the famous "Zagonyi's Charge" on Springfield, MO, will be observed. Maj. Charles Zagonyi, a Hungarian-born cavalry officer serving with the Union Army, led 160 soldiers in an attack on Springfield, to rid the community of an occupation of troops more than 10 times its number.

Following is an account of the skirmish:

THE 125TH ANNIVERSARY OF THE MEMORABLE VICTORY OF FREMONT'S BODY-GUARD AT SPRINGFIELD, MO, OCTOBER 25, 1986

Just a few years after the conclusion of our Nation's Bicentennial celebrations, our attention is called to the 125th anniversary of the commencement of the great drama of the American Civil War, known also as the War of the States. The 125th anniversary of the attack at Fort Sumter in Charleston Harbor in April, 1861, was soon followed by commemorative programs and reenactments of the battles between the North and the South, marked at first, with the exception of a few successful actions on the part of the Union Army, by victories of the Army of the Confederacy.

The first military victory which was greeted by nation-wide acclaim has crowned the dedication and bravery of a relatively small unit of the Union Army, known as Fremont's Body-Guard, serving under General John Charles Fremont, the great discoverer of the American West, and commanded by an immigrant Hungarian-born Hussar officer, Major Charles Zagonyi, a hero of the Hungarian war for freedom and independence of 1848-1849, led by the legendary leader Louis Kossuth.

Zagonyi's dashing charge and the previous history of the Guard were documented and colorfully narrated by not less a person than Mrs. Jessie Benton Fremont, wife of John Charles Fremont, then Major General commanding the Western Department of the Union Army, and the immediate superior of Major Zagonyi. Her fine book entitled "The Story of the Guard" (Boston, 1863), was published in order to establish a fund for the support of the families of the dead of the Body-Guard. Another useful source, particularly for the biographical details of the life of Major Zagonyi, is "Lincoln's Hungarian Heroes. The Participation of Hungarians in the Civil War, 1861-1865", (Washington, D.C. 1939.) by the late Edmund Vasvary, a recognized historian of the American Hungarians.

Since the recruiting and training of the Body-Guard began in August, 1861, it is time to recall the memories of all those who were instrumental in the creation of that fine unit.

Major Zagonyi, who was born at Szatmar, Hungary, in 1862, and fought as a first lieutenant in Hungary in 1848-1849, came to the United States on July 2, 1851, on the "Devonshire" with 40 other Hungarian political refugees. His life in America was filled with trials: he was a member of the male choir of emigre Hungarian officers, then worked in New York and Philadelphia as a house painter. Meanwhile he was married, and when he found out that Stephen Thoult, a former Hungarian officer was in need of a riding master for his riding school in Boston, he went there with his wife. He remained there until the outbreak of the Civil War.

In April 1861, after the firing at Fort Sumter, he immediately volunteered his service in New York, but was not accepted. Since news reached him about the acceptance of several former Hungarian officers by General Frémont, he traveled to Missouri where he was introduced by a fellow Hungarian, General Alexander Asboth, to General Frémont who appointed him a Major entrusting him with the organization of his personal bodyguard of cavalry stationed at Frémont's headquarters in St. Louis.

In the fall of 1861, Frémont's army had moved into southwest Missouri and entered Green County. On August 10, the Union Army under General Nathaniel Lyon had been defeated in this county at Wilson's Creek. In Springfield, the county seat, a pro-Confederate force of the Missouri State Guard was stationed. Possession of the town was important to the Union Army, and Frémont gave Zagonyi permission to attack. The Federals were under the impression that only 300 soldiers held the town, but in reality the force was at least 500 which later grew up to the vicinity of 2000.

Before the attack on the town, Major Zagonyi called upon the soldiers, and told them that any soldier wishing to could turn back. "Not a man flinched", writes Captain James L. Foley, in his "With Frémont in Missouri" (Cincinnati, 1903) "when Zagonyi addressed the column, giving permission to any man, who so desired, to drop out before the fray began. Queer proposition for a foreign-born officer to make to an American soldier under arms in defense of his country. Later this officer learned, as the world has, that the American solider is not given to dropping out in the presence of the enemy."

The Guard, consisting of 160 men, made the attack, later remembered as the "Death Charge of Zagonyi", or the "Death Charge of Frémont's Body-Guard", and not only dispersed the more than ten times as large an army but succeeded in ridding the town of Springfield itself of the Confederates, represented by the Missouri State Guard. Following this resounding success, Fremont's army held Springfield until November 9, 1861, when Frémont, already suspended from the command of the Western Department, was directed from Washington to turn over his forces to General Hunter. With the date of November 11, 1861, General George B. McClellan, Commander-in-Chief of the Union Army, issued an order to Major General Frémont, to dissolve "the cavalry corps, known as your body-guard."

That was the end of the short but glorious service of that small but heroic unit whose death-defying charge and bravery in action deserved later to be remembered as the "American Balaklava", so named after a similar deed of the famous "Light Brigade" performed at the Russian village in 1854.

Zagonyi's personal excellence in command, however, was recognized by General McClellan: he let to notify him, via Brigadier General S.D. Sturgis, that if he would be willing to organize a new cavalry regiment, they would accept them into the army together with the officers whom Zagonyi, their commanding colonel, would select. But Zagonyi did not want to contribute to the humiliation of General Frémont and declined the offer, as did the other officers of the Guard who were informed about it by Major Zagonyi.

In the spring of 1862, General Frémont was given a new command, that of the Mountain Department. Zagonyi, now a colonel, became the commander of the cavalry. He especially distinguished himself in the battles in West Virginia, but he withdrew from active service by June 25th, 1862, and, in the beginning of 1863, resigned from the army with Frémont's entire staff.

In the euphoria of the famous charge of Zágonyi and the Body-Guard, a poem was written by one of the well-known poets of the Civil War period, George H. Boker, of Philadelphia, entitled "Zagonyi. October 25, 1861". The poem by Boker who later was appointed American Minister to St. Petersburg, Russia, was so popular that it was published even in the late 1930's in the collections of patriotic poems.

After the war, Colonel Zagonyi went to live at New York, and, for some time, has participated in the life of New York's growing Hungarian community. It is known that he has suffered some financial reverses, and, then, just faded away, like so many other old soldiers, not even his date of death ascertained by posterity.

Charles Zagonyi paid his dues for his new country in the best way a true soldier was able to do in the service of a noble cause.

FEDERAL RESERVE DISCLOSURE ACT

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. KEMP. Mr. Speaker, I am introducing today, along with Representative BYRON DORGAN, the Federal Reserve Disclosure Act of 1986. The effect of this legislation would be to open up the decisionmaking process of the Federal Reserve Board by requiring structural changes designed to provide American consumers, farmers, and businesses with more reliable and timely information about monetary policy.

The bill's provisions are as follows:

First, the Federal Reserve Open Market Committee shall announce changes in its policy on the day the decisions are adopted.

This measure is advocated by Fed Vice Chairman Manley Johnson, Fed Governor Martha Segar, and by economist Milton Friedman. Currently, the Fed delays making this knowledge public for about 6 weeks.

Second, the 4-year term of the Chairman of the System shall begin in February of the calendar year after the year in which the President's term begins.

This makes the President's and Chairman's terms concurrent except for a 1-year lag. The provision is supported by Chairman Paul Volcker, the Reagan administration, and the House Banking Committee.

Third, the Secretary of the Treasury shall be made an ex officio member of the Federal Open Market Committee.

The Treasury Secretary was a member of the Federal Reserve Board for many years, until the mid-1930's. This provision would restore his earlier status. This would increase the input and understanding of the administration with regard in formulating monetary policy. It would also make it impossible for the administration to disclaim responsibility for a monetary policy in which it had no part. When I questioned him before a House subcommittee recently, Treasury Secretary Donald Regan supported the idea.

Fourth, the terms of the seven members of the Board of Governors would be reduced from 14 to 7 years each.

This would permit a somewhat faster turnover of membership. However, a 7-year term would still provide continuity in policymaking—which was apparently the original idea behind the 14-year term—since it is longer than terms of U.S. Presidents, Senators, or Congressmen.

While monetary policy often seems to be an obscure issue, it really translates into a bread-and-butter issue for all Americans. The decisions of the Federal Reserve Board affect all of us reaching into every farmhouse, boardroom, and home in the United States.

The centerpiece of this legislation is the provision requiring the Fed to immediately inform the public of any changes in monetary policy. These changes have a direct impact on interest rates and therefore affect a whole range of everyday decisions—whether to buy a new home, how much of a particular crop to plant, whether or not to invest in new equipment or hire a new employee. So when the Fed decides to change monetary policy, and withholds this information for a month and a half, American families and businesses are caught in the middle and can be badly hurt. The worse examples of this occurred several years ago when the Fed decide to severerly cut back on money supply growth. In several short 6-week periods in the late winter and early spring, interest rates rose an average of 3 percentage points. This particularly hurt farmers, who were already beginning planting, and homebuyers who had made commitments and watched helplessly as rates began to rise. They had made decisions based on old information and could only reverse these decisions at substantial cost.

On a more general level, the 6-week delay causes great uncertainty in this country's and the world's commodity, credit and currency markets, as they use the "best" information available and react to each rumor and perception of monetary policy changes. In fact many economists believe that this leads to higher interest rates, as traders hedge their bets in fear of what the Fed might have done. This resulting instability has wide-reaching effects on the direction and volume of trade and the level of domestic economic growth. For the efficiency of markets depends on the general availability of accurate information; without it, valuable men and material are wasted. Secrecy and roller-coaster price and rate movements benefit no one except those who trade upon real or imagined inside information.

This legislation does not single out the Fed; all agencies of the Government have undergone similar democratic reforms in the last 10 or 15 years. Disclosure naturally tend to be resisted at first by those within the institutions themselves. But "sunshine" and freedom of information measures have been applied to countless other agencies, with positive effect. The time has come for the U.S. Congress to take the first step toward requiring traditional democratic values at this country's central bank, for its decisions are far too important to be held from the knowledge of the American people.

The ultimate goal of this bill is not to micromanage the Fed but to help those Americans whose lives are touched in any way by the value of money. As removed as they may seem, the actions of the Federal Reserve have as great an effect on our lives as the Tax Code or the budget; they should therefore be subject to the same scrutiny. This legislation will mean that the Federal Reserve will become a member in full standing of our democratic system of Government. And the greater certainty, stability, and efficiency that comes with full information can lead to lower interest rates, greater economic growth, more jobs for working men and women, and a continuation of the progress we've made toward full employment without inflation.

SOLIDARITY USA

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. TRAFICANT. Mr. Speaker, I rise today to pay tribute to a group of people who continue to win my respect and admiration. A group of people who have shown us that in unity there is strength. The group I refer to is "Solidarity USA," whose membership includes LTV retirees and others who support the permanent reinstatement of retiree have health and hospitalization benefits. As we are all aware, such benefits were unilaterally terminated for LTV retirees when the LTV Corp. filed for bankruptcy on July 17, 1986. Since that time, Solidarity USA, with spokesleader Dolores Hrycyk, has been involved in an ongoing undying effort to regain the permanent reinstatement of these benefits which so many retirees depend upon and deserve.

I have had the pleasure of working with Solidarity USA on many occasions. I have attended numerous rallies and meetings sponsored by Solidarity USA in support of their cause, and even travelled with them to New York to present petitions with over 75,000 signatures to the clerk of the court handling this particular bankruptcy case. On each occasion I could not help but notice the great concern they held for each other, and their attitude that by working together they could achieve success.

Today, it was my great privilege to welcome Solidarity USA to our Nation's Capital in yet another effort to make their cause known. More that 700 people from Ohio, Pennsylvania, Alabama, and New York arrived at the west front Capitol steps at 11:30 a.m. for the Solidarity USA rally." I am happy to have served as the host of this 3-hour event, and would like to thank my colleagues, Representatives STOKES, REGULA, KOLTER, APPLEGATE, House Majority Leader WRIGHT, and Senator METZENBAUM, as well as steel union representatives, for also participating in the rally. Special tribute must be made to Chairman PETER RODINO for his swift action. The membership of Solidarity USA certainly has shown their dedication to this cause, and as I take time to pay tribute to them today I also want to reaffirm my commitment to securing the continued health and hospitalization benefits that they so rightly deserve.

At the Solidarity USA rally I overheard a gentleman exclaim "In unity there is strength." Having seen Solidarity USA at work, I have no doubt that they will continue in their efforts until success is theirs. I am happy to join them in their cause.

Solidarity USA has captured the awareness of all Americans—and all Americans benefit from their efforts.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Tuesday, September 30, 1986, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

OCTOBER 1

9:00 a.m.

Armed Services

To hear and consider the nominations of Robert B. Barker, of California, to be Chairman of the Military Liaison Committee to the Department of Energy, William A. Clinkscales, of Virginia, to be Director of the Selective Service System, and James F. McGovern, of Virginia, to be Under Secretary of the Air Force, and military nominations.

SR-222

9:30 a.m.

Foreign Relations

Business meeting, to consider pending calendar business.

SD-419

Select on Intelligence

To hold closed hearings on intelligence matters.

SH-219

10:00 a.m.

Energy and Natural Resources

Business meeting, to consider pending calendar business.

SD-366

Environment and Public Works

To hold oversight hearings to review Federal procedures relating to the proposed Port America site in Prince Georges County, Maryland, including section 404 permits and environmental impact assessments as contained in the National Environmental Policy Act of 1969.

SD-406

2:00 p.m.

Judiciary

To hold hearings on pending nominations.

SD-226

Rules and Administration

Business meeting, to consider S. 2673 and H.R. 4545, authorizing funds for fiscal years 1987-1989 for the American Folklife Center, S. 2448, to repeal the Federal law (P.L. 98-186) which established the National Armed Forces Museum Advisory Board of the Smithsonian Institution, S.J. Res. 268, to provide for the reappointment of Murray Gell-Mann as Citizen Regent of the Board of Regents of the Smithsonian Institution, S. Res. 330, to establish the Special Committee on Families, Youth, and Children, S. Res. 482, to authorize the printing of the report entitled "Highway Bridge Replacement and Rehabilitation Program, Seventh Annual Report To Congress" as a Senate document, the nominations of Thomas J. Josefiak, of Virginia, and Scott E. Thomas, of the District of Columbia, each to be a Member of the Federal Election Commission, and other pending legislative and administrative business.

SR-301

3:00 p.m.

Commerce, Science, and Transportation

Business, Trade, and Tourism Subcommittee

To hold hearings to review travel and tourism statistics.

SR-253

4:00 p.m.
Select on Intelligence
Closed meeting, to discuss intelligence matters.
SH-219

OCTOBER 2

9:30 a.m.
Agriculture, Nutrition, and Forestry
Agricultural Research, Conservation, Forestry, and General Legislation Subcommittee
To hold hearings on S. 1767 and H.R. 148, bills to designate certain public lands in the State of Michigan as wilderness, S. 2838, to designate certain national forest system lands in the State of Georgia to the National Wilderness Preservation System, and H.R. 4685, to modify the boundaries of certain wilderness areas in the State of Texas.
SR-332

10:00 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD-366

Environment and Public Works
To resume hearings on S. 2203, to establish a program to reduce acid deposition and other forms of air pollution, and related measures, including S. 2200 and S. 2813.
SD-406

Judiciary
Business meeting, to consider pending calendar business.
SD-226

OCTOBER 3

9:30 a.m.
Joint Economic
To hold hearings on the employment-unemployment situation for September.
Room to be announced

OCTOBER 9

9:00 a.m.
Armed Services
Task Force on Inventory Management, to hold open and closed hearings on ammunition security.
SR-232A

CANCELLATIONS

SEPTEMBER 30

9:30 a.m.
Judiciary
Constitution Subcommittee
Business meeting, to mark up S. 1580, to revise Federally mandated attorneys fees applicable to civil, criminal, and administrative proceedings involving the United States and Civil proceedings involving State and local governments.
SD-226

OCTOBER 1

9:30 a.m.
Commerce, Science, and Transportation
To hold oversight hearings on activities of the National Highway Traffic Safety Administration, and the implementation of the Motor Carrier Safety Act of 1984.
SR-253

10:00 a.m.
Judiciary
To hold hearings to examine certain criminal activity in the pharmaceutical industry.
SD-226

OCTOBER 3

10:00 a.m.
Environment and Public Works
Nuclear Regulation Subcommittee
To resume hearings to review nuclear power safety measures in the aftermath of the Chernobyl nuclear powerplant accident.
SD-406

SENATE—*Tuesday, September 30, 1986*

(Legislative day of Wednesday, September 24, 1986)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Our prayer will be delivered by Rev. Karen Chalmers Coe, associate minister, Rock Spring Congregational Church, Arlington, VA. Reverend Coe is sponsored by Senator MATHIAS.

PRAYER

The Reverend Karen Chalmers Coe, associate minister, Rock Spring Congregational Church, Arlington, VA, offered the following prayer:

Let us pray.

Most Powerful and Loving God:

You surround us and sustain us in this Chamber and we thank You. When we are wearied by lengthy sessions and long debates You will strengthen us. When we are divided within and among ourselves You will heal us. When we are blinded by many details and small procedures You will remind us of who we are and why we are here and of this most precious and significant task You have set before us.

We trust You God that in Your infinite wisdom You will keep the needs and the hopes of the people of this Nation first in our hearts and always on our minds, even those needs that they cannot express and those hopes they have not been able to articulate. When others call out for war may ours be the voice of peace. When there are those who seek to gain from another's loss may ours be the voice of fairness and compassion. When fear is disguised as strength and privilege becomes a means of power, let ours be the voice of justice and the promise of freedom. May we speak to one another and to those who would hear us as You have spoken to us time and time again.

You surround us and sustain us O God and we thank You. The day will be long and the decisions will be hard; we will be tempted by easy answers and comfortable solutions. But You will wisely and gently guide us until the day is over. We will do the best that You have enabled us to do and our work will be successfully completed. We thank You and we praise You. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator ROBERT DOLE, of Kansas, is now recognized.

Mr. DOLE. Mr. President, I thank the distinguished Presiding Officer, the President pro tempore, Senator THURMOND, from South Carolina.

SCHEDULE

Mr. DOLE. Mr. President, the leaders have 10 minutes each, to be followed by special orders in favor of Senators HAWKINS, PROXMIRE, LUGAR, KASSEBAUM, LAUTENBERG, and MURKOWSKI.

VITIATION OF SPECIAL ORDER FOR SENATOR MURKOWSKI

Mr. DOLE. Mr. President, I ask unanimous consent that the special order in favor of Senator MURKOWSKI be vitiated.

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.

Mr. DOLE. Then there will be routine morning business not to extend beyond the hour of 10 a.m. with Senators permitted to speak therein for not more than 5 minutes each.

At 10 o'clock, we will start again on House Joint Resolution 738, the continuing resolution.

□ 0920

By previous consent agreement we will move to consideration of the antidrug bill at 2 o'clock. There could be as many—there could be two amendments, votes on those, and final passage. So there could be as many as three votes, but I would guess more likely there will be two votes. Hopefully, we can reach some conclusion on the continuing resolution. And votes will occur throughout the day. I hope we can reach some agreement on a time to vote on the veto override.

I know the distinguished minority leader may be filing cloture. Notwithstanding that, if we can agree on a vote, we can continue with the continuing resolution, which would help expedite the business. I will try to obtain that during our luncheon today.

There will be no recess from 12 to 2 o'clock for policy luncheons because of the magnitude of the work we have, in hopes we may finish the legislative work this week.

There will be this evening a window from somewhere in the neighborhood of 7 to 9 o'clock. But there will be action on the floor during that time. Votes, I hope, could be stacked until we return.

UNITED STATES GRAIN SALES TO THE SOVIET UNION

Mr. DOLE. Mr. President, at midnight tonight, President Reagan's offer to sell the Soviet Union, United States grain at world market prices expires. That offer will end with a whimper.

It was obvious the Soviet Union was not very eager to take the President up on his offer. As I have said before, they are not going to do us any favors as we are not going to do them any either. In fact, the Soviets are currently buying heavily subsidized wheat at almost giveaway prices from other suppliers, which just goes to show how far the grain subsidy war is going. The French, for example, have just sold Moscow about 1 million metric tons at $75 per ton. That is $30 below the world market standard.

The President's offer was at least a signal that the administration recognizes the barriers American agriculture exports are facing overseas and one reason American farmers are in such difficulty today. The arrest of Nicholas Daniloff, however, meant that all bets were off with the Kremlin—on all fronts, including any kind of grain deal. The Senate spoke out—quickly and emphatically—against this outrageous act against an American citizen: The Senate resolution we passed last week specifically urged against any new economic transactions with Moscow until the unconditional release of Daniloff. Daniloff has been released. There will be more good news today about that release and what may follow.

However, there are still 3 years remaining on our long-term grain agreement with the Soviet Union. During that time, I and other Members of Congress will continue to look for responsible ways to alter American farm policy to make our world-class products competitive in all foreign markets.

Again, I must underscore if we are not competitive we are not going to sell grain. Our exports have dropped from 40 some billion dollars to 20 some billion dollars, primarily because of the strength of the dollar, and the fact that we have not been competitive, and other countries are directly and indirectly subsidizing their products. They are subsidizing their producers, they are subsidizing the product itself, and we just cannot compete. The net result is bad news for the American farmer.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

So I hope that we can improve, and be a bit more aggressive I might say on behalf of the administration, and I hope the administration can become a bit more aggressive in our export policy.

RECONCILIATION

Mr. DOLE. Mr. President, let me also observe that only three committees have completed action on their portions of reconciliation. We hope to complete that work by 4 o'clock today because that is the deadline established earlier by the Budget Committee.

I know Senator Domenici and Senator Chiles are eager to have us take some action on reconciliation.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. Under the previous order, the Democratic leader is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that I may reserve my time throughout the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

SCHEDULE

Mr. BYRD. Mr. President, I will take 1 minute of it.

What does the distinguished majority leader have in mind throughout the day and how does he see the rest of the week playing out? There is the debt limit extension, and does he see a short-term continuing resolution? What does he see with respect to the trial of Judge Claiborne, the conference report on the Superfund, and various other items that we must act upon before the Senate can adjourn and the House can adjourn sine die?

Mr. DOLE. I am advised that the House is willing to send a short-term continuing resolution hopefully for maybe a day or two. My hope is it would not be any longer than that because if it is 3 days we will spend 3 more days on the continuing resolution. At least that is my view. So the Speaker has indicated his willingness to do that. I assume that will have to be acted on before midnight tonight. We are advised that as far as the debt limit is concerned that we can probably continue the rest of this week without an extension.

I am advised by the chairman of the Ways and Means Committee, Chairman Rostenkowski, that they hope to go to conference on the debt limit, there are 26 State amendments on the debt limit, and try to resolve that during this week.

There is some chance in any event that we might be able to have the long-term debt limit extension before us by Friday.

As far as the trial of impeachment of Judge Claiborne, I am advised as recently as Saturday by Senator Sarbanes and Senator Mathias that because of the—well, just getting the material printed, it may not reach us until late today or Thursday, which would mean that we probably are not going to be able to do much on that this week.

The spending part of Superfund is completed. The allocation part, how do you raise the money to pay for it, is the part that is now in conference with the Finance Committee members, Senator Bentsen, Senator Packwood principally, and the House Ways and Means Committee. They have not agreed on a way to pay for the $8.5 billion Superfund bill.

But, again, I am advised there may be an effort to put a portion of the Superfund authorization in the continuing resolution with a 1-year extension while we determine how to pay for it maybe next year if we cannot reach an agreement this year.

But I did visit briefly by telephone with the Speaker yesterday. He indicated there is no reason we cannot complete our legislative business by Friday. But I understand shortly after I visited with the Speaker his staff called our staff indicating that we might not be able to do that.

Mr. BYRD. Mr. President, I thank the distinguished majority leader.

The Speaker does not have the workload that the Senate has, not having the rules to contend with that the Senate has to contend with.

So I think if we are realistic with our colleagues we will have to say that we will be lucky if we finish our legislative business this week, with the religious holiday coming on Saturday.

Mr. DOLE. If the Senator will yield, I agree we should not be in session on Saturday because of the holiday.

Mr. BYRD. Yes.

Mr. DOLE. That makes it more difficult for us, plus we have the trial.

Mr. BYRD. Plus, we have the impeachment proceeding, the continuing resolution, and the debt limit extension.

Mr. DOLE. I am going to advise Republican Senators today at lunch that it is doubtful that we will complete our work this week.

Mr. BYRD. I think we have to be realistic, and I think our colleagues ought to be informed of that. I think we have done the best we can do. As we look at the workload ahead of us, I just do not think we ought to wait any longer. The House has sent over its appropriation bills as customarily it does, and customarily the Senate will wait on the House bills. The House does not have the Senate rules to contend with when it takes up continuing resolutions, debt limit extensions, and of course, otherwise, they probably could go out, but the Senate transacts its business under its rules which allow for free and somewhat unlimited debate.

□ 0930

I do not like saying this any more than the majority leader does but we do have the Jewish holiday which will begin on Friday. It would seem to me that we just have to do the best we can to finish our business by Friday sundown. On the trial of the impeachment of Judge Claiborne, we cannot possibly complete that this week. The House managers would also have to worry about that, of course. They are acting in the position of prosecutors.

But it is the full intention of the majority leader, I assume, that if the Senate does not complete its business, it will go into next week and it will not delay the trial of the impeachment until after the election or until next year, as some would hope or some would attempt to counsel us. I hope we will not. The people are entitled to have the Senate act on the impeachment and I assume that is the position of the majority leader.

Mr. DOLE. If the minority leader will yield, I agree with the statement he made yesterday, both for the benefit of Judge Claiborne and the American public. They would find it rather difficult to understand if we put it off. To put it off until next year is the easy thing to do. But the American people are already asking questions about someone receiving a full salary after having been convicted for tax evasion. That is very difficult for the American people to understand.

On the other hand, in fairness to Judge Claiborne, he is entitled to his day and to have that matter resolved as quickly as possible. We will complete action on it this year.

There is one other matter, of course, which becomes a factor in all that happens this week. That is the veto concerning South Africa. I will try to shop for a unanimous-consent agreement that will permit us to vote, if not sometime tomorrow morning, then tomorrow afternoon. That, I think, will help the chairman of the Appropriations Committee, with Senator Stennis, to complete the continuing resolution before we have the vote on the override.

Mr. BYRD. Mr. President, I thank the distinguished majority leader. I yield the floor.

RECOGNITION OF SENATOR HAWKINS

The PRESIDING OFFICER. Under the previous order, the Senator from Florida [Mrs. Hawkins] is recognized for not to exceed 5 minutes.

TEN YEARS OF A LIFE BLOWN AWAY

Mrs. HAWKINS. Mr. President, a 24-year-old woman sits in a New York City drug rehabilitation center and tells how she "blew away" 10 years of her life. The simplest part was "getting started," she says. The woman relates how at the age of 12 she moved into a new neighborhood and worried she would never have any friends. She was afraid and lonely. She just walked around her new school, hoping that someone would bother to talk to her. Someone did. A group of other kids came up and asked whether she had ever smoked marijuana. Wanting to fit in, she lied and said, "Yes." Then they all got high.

Peer pressure among kids is so important. This woman, recalling the experience, says she was frightened at the prospect of smoking pot, but it did not seem to matter as much as being accepted. She wanted to be part of the circle, she wanted to belong. It was fun and friendship. The first time seemed so harmless. But it provided the gateway.

It led to other times, and other drugs, more powerful, more dangerous. By the age of 18, she was hooked and thoroughly so, and barely made it through high school. She thought, "If I go away to college, and get away from the old crowd, everything will be OK. I can turn over a new leaf."

But she was wrong. She got to college and it was the same story all over again. This time it was more serious—she was into cocaine. She flunked out of college and went home. It was at this point, she started taking inventory of her life. By now she was 22 years old—much of her life was a failure. She had no goals, no sense of direction, no idea where her life was going. She concluded that actually it was going nowhere. Nowhere but down. And she was faced with the frightening reality that she would be a drug abuser for the rest of her life.

This young woman, named Andrea Ryan, then entered a drug treatment and rehabilitation center, Phoenix House, and began the long journey back to the real world. She started learning about herself and the joy of having real friends, who do not spend their days and nights strung out on drugs.

Andrea Ryan, and the millions of young people in America like her, can never get back the years wasted on drugs. But they can stop the habit, they can set new standards for themselves, new goals, new hope. They can get their life back together again.

Andrea Ryan assesses her situation this way: "I'm lucky. I got a second chance. There are thousands of kids that didn't. And there are probably millions of kids who are growing up the way I did. Not all of them will blow away 5 or 10 years on drugs. But plenty will."

I wish Andrea were wrong on this last prediction. Unfortunately, she will be right. There will be plenty of young people who experiment with drugs in school, who go along with whatever other kids do.

Schools cannot provide all the answers. But few schools have effective drug education programs. That is why I am so insistent that our new anti-drug bill contains adequate provisions for drug education that unequivocally stresses that drugs are wrong and harmful.

Mr. President, every cloud has a silver lining. I learned recently that a high school in my home State has adopted a worthy plan to combat drug use. Lake Mary High School, in Seminole County, offers a contract to each student who wants to be involved in extracurricular activities—from band to baseball. The student pledges that "I do not and will not use drugs" and that commitment is on campus and off campus. The student promises he or she will not attend parties or social functions where drugs are being used.

This is a splendid program and I commend the school officials, students, and parents involved in this joint effort. The message Lake Mary is sending to students elsewhere is "say no to drugs" and I hope that message is heard in every school across the country.

Mr. President, I yield the floor.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin [Mr. PROXMIRE] is recognized for not to exceed 5 minutes.

HOW THE NEW YORK TIMES, EVERYBODY'S BIG DADDY, BLEW THE BIG ONE

Mr. PROXMIRE. Mr. President, many of us can remember how as a child, we first discovered that our father, our role model and idol, was a human being after all. Do you remember when not only did his opinion on a very important matter clash with yours but, when, for the first time you were convinced that he was wrong? That was the time when for the very first time you knew that wise as he was and limited as you were, this time there was no question, he was wrong. That is the reaction this Senator had on Sunday morning when I read the lead editorial in the good, gray New York Times that has been the perpetual wise father for so many of us on matters of national and international concern. The New York Times the most infallible of modern oracles, was wrong. And it was wrong on the most important issue in the world. It was wrong on how this country can most surely work for peace in this increasingly dangerous nuclear world. On that biggest of all issues the New York Times fell flat on its wise and wonderful face.

What was the Times spectacular and tragic error? The error was that this great newspaper came out flatly against the negotiation of a nuclear test ban treaty. Oh sure, the editorial hit the issue obliquely. It stated the opinion it has stated before, that the House was wrong in knocking out funds for 1 year for nuclear weapons tests. The House action required that the Soviets must do likewise. The House also required that the Soviets permit the location of seismic monitoring stations within the Soviet Union. On that issue of Presidential versus congressional power and on the implications for negotiating a test ban treaty with the Soviet Union, the Times could be right.

But the New York Times went farther. Read that editorial and then read it again and you find a clear renunciation of the wisdom of negotiating such a treaty under any circumstances. The editorial argues that the push for a test ban is based on "the simplistic belief that the arms race is driven only by technology and can be halted by stifling innovation." The editorial goes on to contend that not all changes in nuclear weapons are bad. It cites "warhead size reduction" as a change that is not bad, and along with other factors contribute "greatly to a safer world." Mr. President, this is nonsense. Warhead size reduction is precisely the kind of change that will lead us into a far more dangerous world. Why? Why does the reduction of warhead size necessarily usher in a more dangerous nuclear world? Because the smaller the warhead in relationship to its destructive power the cheaper it will be to deliver it and the greater the velocity of delivery. Smaller, cheaper nuclear weapons mean that more and more countries can afford a nuclear arsenal, and will build nuclear arsenals.

In its concluding paragraph, the Times seems to understand that it cannot sell this notion that more effective nuclear weapons are the path to peace and it weighs in with "further limits on testing are highly desirable, but only after the arms race itself has been constrained." But, Mr. President, how do we constrain the arms race if we are rushing ahead pellmell to research, develop, and deploy ever more devastating nuclear weapons.

What the Times does not say is almost as serious a mistake as what it says. The Times says nothing about the fact that the Soviets have not tested for more than a year and will not test until next January or later. It ignores the fact that our country had engaged in far more nuclear weapons tests than the Soviets had engaged in even before the Soviets stopped testing on August 6, 1985. Now, Mr. President, in view of the fact that our country has had more than a year to increase its nuclear weapon technology advantage by testing when the Soviet Union was not testing, in view of the further fact that 6 months ago the Under Secretary of Defense for Research told the Senate Appropriations Committee that we are far ahead of the Soviet Union in virtually every aspect of nuclear weaponry, is it not clear that from a strictly national security standpoint, now is the time to negotiate a mutual, verifiable comprehensive stop to nucelar testing? We are ahead. An end to testing will freeze our advantage in place for years to come. So come on, Dad, I mean New York Times. What is wrong with establishing, confirming, cementing our advantage?

None of this is to say that the nuclear arms race is driven by technology. It is not. The fact that the Soviets are willing to negotiate an end to testing when they certainly know their technology is behind ours proves that on that point the Times is right. So sure, technology doesn't drive the arms race. And yes—as you say, Dad, mistrust does. But how do we overcome distrusts? The Times says nothing about the solemn promise this country made in the most formal kind of international commitment. So for starters in overcoming mistrust how about keeping the promise we made in two treaties: The 1963 Limited Test Ban Treaty and the 1974 treaty on the 150 kiloton limit on the size of nuclear weapon explosion, both of which specifically pledged—that is right, pledged—this country to negotiate a comprehensive mutual, verifiable treaty that would end all nuclear weapons testing? Is a big part of trust keeping promises? Is another big part of trust establishing treaties that both sides can verify with assurance? Think of how we could lessen the fear and distrust on both sides if we would negotiate a treaty with the Soviet Union that provided the stationing throughout both countries of seismic monitoring stations that would detect any explosion above a single kiloton—which is well below the minimum necessary for militarily significant tests.

So, Mr. President, I conclude by saying to my intellectual father—the New York Times, Dad, I still love ya. You are wiser than most, but how about admitting you blew that one, and, Pop, that was a very bad one to blow.

Mr. President, I ask unanimous consent that the editorial from the Sunday, September 28 New York Times be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the New York Times, Sept. 28, 1986]

THE ARMS RACE HAS NO QUICK FIX

Congress threatens to impose on the White House the constraint Mikhail Gorbachev has long sought—a moratorium on testing nuclear weapons. Its motives are wholly different but the result would be the same: a severe weakening of the President's bargaining power and of the national security.

What Mr. Gorbachev seeks in a test ban is a halt in the modernization of American strategic weapons, and a free ride to hamstringing the President's "Star Wars" missile defense. Nuclear tests are necessary for development of the nuclear-pumped X-ray laser, one of Star Wars' most promising components.

Even those who consider countrywide missile defense unworkable should not want to undercut the President's bargaining position in the now-promising Soviet negotiations. A test ban would also freeze the quality of America's strategic deterrent and thus award the Kremlin its two most ardently sought objectives for nothing in return.

How could Congress even contemplate such willful self-damage? The House, in all good will, seeks simply to end the arms race by freezing innovation in nuclear weaponry. It has voted for a one-year moratorium on nuclear tests of more than one kiloton. Les Aspin, the embattled chairman of the Armed Services Committee, is under strenuous pressure from liberal colleagues to make this position prevail in conference with the Senate.

But those who twist Mr. Aspin's arm are demanding two contradictory things. Many also support the single-warhead Midgetman missile—a less tempting, far costlier target—as an alternative to the vulnerable 10-warhead MX. How could Midgetman be made reliable if there's a test ban? As its sponsors well know, a one-year moratorium is likely to become a permanent injunction. That would also prevent reilability testing of the D5 warhead for the accurate Trident II missile and disrupt programs to protect command and control facilities from the effects of nuclear weapons.

Midgetman's design is not final but even if it uses the Mark 21 warhead approved for the MX, that must be adapted to withstand the stress of housing the missile in mobile trucks instead of silos. Failure to test the new design, or any other new weapon, would be pure folly.

That points to a deeper flaw in the Houses's vision: the simplistic belief that the arms race is driven only by technology and can be halted by stifling innovation. The arms race is driven primarily by mistrust, and not all changes in nuclear weaponry are bad. Warhead size reduction, stable basing and improved security contribute greatly to a safer world.

For too long, the Administration opposed a test ban on the ground that it could not be verified. Just because that argument was a smokescreen does not mean there are no valid reasons to test. A quota on tests, which some propose in place of a ban, has the logic of neither position. Further limits on testing are highly desirable, but only after the arms race itself has been constrained. Until then, Congress had better not throw away the key to the technology that assures America's nuclear shield and provides our greatest leverage in negotiating genuine controls.

MYTH: CANADA'S ACID RAIN CONTROL

Mr. PROXMIRE. Mr. President, my myth of the day is that Canada is doing nothing for acid rain control on its side of the border. Nothing could be further from the truth.

Some United States industries, attempting to evade pollution controls themselves, charge that Canada has a poor track record in controlling emissions from its utilities, smelters, and automobiles. "Why should United States utilities and factories clean up," they say, "when the chief beneficiary, Canada, does nothing?"

Since 1970, the year in which the United States and Canada passed their Clean Air Acts, SO_2 emissions have decreased 46 percent on the Canadian side of the border, while decreasing only 24 percent here. As of the end of last year, all of Canada had complied with SO_2 standards, while 63 United States counties were not complying with these standards.

In Canada, smelters account for most SO_2 emissions; in the United States, on the other hand, such emissions come mainly from utilities. While Canada reduced SO_2 emissions from its smelters 60 percent between the years of 1970 and 1980, the United States reduced its emissions from utilities a paltry 10 percent for the same period.

For example, the Inco Smelter, Canada's largest "point source," reduced SO_2 emissions from 2.25 million tons per year in 1965 to less than 700,000 tons per year currently, the largest tonnage reduction for any operation in the world. This is due not only to production cutbacks at Inco, but also to the use of emissions control technology. Inco, a Canadian company, developed the technology for separating pyrrhotite, an iron mineral rich in sulfur, from the nickel smelter feed by a magnetic process.

Emissions of nitrogen oxide, while increasing in both the United States and in Canada, are doing so at a slower pace in Canada than in the United States. New Canadian regulations on automobile emissions, conforming to United States regulations already in place, will be strengthened beginning in 1987.

Mr. President, Canada is not dragging its feet on acid rain control. Let us follow its lead and combat this type of pollution as effectively as possible.

Mr. President, I yield the floor.

RECOGNITION OF SENATOR LUGAR

The PRESIDING OFFICER. Under the previous order the Senator from

Indiana [Mr. LUGAR] is recognized for not to exceed 5 minutes.

THE TIME HAS COME TO END APARTHEID IN SOUTH AFRICA

Mr. LUGAR. Mr. President, in the Los Angeles Times of September 29, Zulu Chief Gatsha Buthelezi, speaking in South Africa on Sunday is quoted as saying:

> If destiny calls on us to fight and die, we will fight and die. We are not afraid to die for things our ancestors died for.
>
> Let no one harbor any illusion that we are afraid to die for things that are honorable.

Widespread publication of Chief Buthelezi's address and responses to it indicate that his warning appeared intended to remind us that moderate black leaders in South Africa feel they have come to the limits of what they can do unless President P.W. Botha and the ruling National Party of South Africa agree to fundamental reforms, including the abolition of apartheid and full black political representation in the Government.

I make this comment, Mr. President, because much has been made of the disunity of blacks in South Africa as they take a look at our debate and the action taken by Western governments and Japan and throughout the world in economic sanctions. Clearly, the case has been made by Chief Buthelezi and others that economic sanctions are in many cases not effective, may cause harm to blacks and whites in South Africa, may be widely evaded, and may, in fact, simply cause polarization of activity; it may cause weakness of South Africa with regard to the Soviet Union or other nations around them that are hostile.

Mr. President, the reason that a majority of Members of the Senate and the House have persisted in trying to think through American foreign policy with regard to Africa is that we sense that 10 percent of the population of that country cannot hold in slavery 85 percent indefinitely. There will come a time, perhaps much sooner than the white government thinks, when the blacks in South Africa—and history will record which blacks in which combinations, which organizations came forward—but blacks in South Africa will control their destiny. The question now is, can we be helpful as a Nation in helping the white government come to their senses, to end apartheid and to enter into meaningful talks about the future, not about a government we prescribe but a government that South Africans would work out, so that civil rights for whites and blacks might still be observed without racial violence, that would clearly engage us and the rest of the world?

Mr. President, we are on the threshold of a tragedy that, hopefully, our timely action might help avert. Congress is wrestling with this problem. I would say personally that I wish the administration had been more helpful during that period of time. The distinguished Senator from Kansas [Mrs. KASSEBAUM] and I, during the management of the South Africa bill, stood here on the floor resisting amendments that we felt were not useful without much assistance from downtown or from others who now wish us well and who have suggested various constructive activities. The will of the Congress through compromises in both Houses with both parties have brought forward good legislation. It deserves to be supported. For that reason, Mr. President, I shall resist the thought that the veto should be upheld. Tomorrow, at last, the legislation will proceed forward.

Mr. PROXMIRE. Will the Senator from Indiana yield briefly?

Mr. LUGAR. I am happy to yield.

Mr. PROXMIRE. I want to say I am very, very impressed by the great record the Senator from Indiana has had as chairman of the Foreign Relations Committee and by his leadership on this particular issue. It is a very, very difficult issue for the Senator from Indiana. He is a faithful and strong supporter of President Reagan. In this case, of course, he disagrees with the President.

I think there are very few Members of the Senate, in my long experience here, who have shown the kind of courage, the kind of wisdom, the kind of force and effectiveness he has. I am not surprised, because he showed that when he was a member of the Banking Committee. Again and again he was the man, although not the chairman or the ranking member, who came up with solutions. He is a fine Senator and I want to tell him how deeply I respect the fine job he has done in this case.

Mr. LUGAR. I thank the Senator.

RECOGNITION OF SENATOR KASSEBAUM

The PRESIDING OFFICER. Under the previous order, the Senator from Kansas [Mrs. KASSEBAUM] is recognized for not to exceed 5 minutes.

APARTHEID IN SOUTH AFRICA

Mrs. KASSEBAUM. Mr. President, I would like to comment as well and second the thoughts of the Senator from Wisconsin on the fine leadership the Senator from Indiana has given as chairman of the Foreign Relations Committee.

Mr. President, sometime this week, the Senate will turn to the question of whether to override the President's veto of the Comprehensive Anti-Apartheid Act of 1986. I will vote to override this veto and I want to explain why.

Last year, Congress deferred to the President on this matter. We set aside legislation and accepted an Executive order imposing limited sanctions on the Government of South Africa. Some Members strenuously objected to this step, but I and others believed it was important to act in conjunction with the President.

I also hoped that last year's Executive order would be the start of an intensified diplomatic effort by the administration to address the deep injustices of apartheid in South Africa. Unfortunately, this has not happened.

Conditions in South Africa have grown worse. The number of killings by participants on both sides of the struggle has risen and the South African Government has become increasingly intransigent toward all suggestions of political change. Despite all of this, our policy has remained virtually unchanged from a year ago, or 5 years ago.

Why South Africa, Mr. President? Why should we care particularly about South Africa, when there are many other nations on the African Continent with brutal, repressive governments, with tragic civil wars, with long lists of human rights violations? It is because we expect more of South Africa—a country of great wealth and national pride, a country of strong institutions, a country which, if it does not address the abiding issue of the day, which is the inevitable political change which must come with the end of apartheid, will be torn asunder by violence. That is why we must care.

The time has come to make clear to South Africa that we not only abhor apartheid, we are willing to take concrete steps to make our feelings known. That is the message that was approved by large, bipartisan majorities in both the House and the Senate when we passed the Comprehensive Anti-Apartheid Act. That is the message we must insist on sending by overriding the President's veto.

In his veto message, the President expressed what is, I believe, a sincere concern that parts of this legislation will harm rather than help the victims of apartheid, South Africa's black majority. Undoubtedly, there is some truth in this concern. There is no way to invoke sanctions against another government without also affecting those who must live under the total domination of that government.

However, none of us should be deluded into thinking that this legislation will either wreak havoc in South Africa or instantly alter the policies of the South African Government. It will not, for example, cut off food supplies to black families—unless the South African Government does so in retaliation.

Neither will it bring President Botha's government to its knees. The

South African Government already has plans in place to evade or nullify most of the sanctions contained in this bill.

What President Botha and his minority government cannot evade, however, is the clear statement made by this legislation. That the Congress of the United States refuses to accept the status quo, that we support the legitimate complaints of those who suffer under apartheid, that the time for political change in South Africa has come.

To do anything less at this time would be a breach of faith not only with the millions of blacks and whites in South Africa who want freedom and democracy, but with the principles that each of us holds dear.

I yield the floor.

ROUTINE MORNING BUSINESS

The **PRESIDING OFFICER**. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond 10 a.m., with statements therein limited to 5 minutes each.

The Senator from Iowa is recognized.

SENATE BIPARTISAN DRUG BILL

Mr. **GRASSLEY**. Mr. President, the tragic death of basketball star Len Bias and subsequent reports that his death was caused by the ingestion of cocaine helped to focus national attention on the problem of substance abuse in America. But Mr. Bias' death is no more tragic than the death of an Iowa teenager in a drunk driving accident or the death of a lone addict in a Bronx shooting gallery. Substance abuse is a heartbreaking personal tragedy.

But substance abuse is much more than a personal tragedy. It is a serious national problem as well. It saps our vitality as a nation and seriously weakens our moral fabric. In 1984, the Alcohol, Drug Abuse, and Mental Health Administration released a study on the economic costs to society of alcohol and drug abuse and mental illness. In that study, it was estimated that the direct and indirect cost of alcohol and drug abuse in 1980 was $136.4 billion.

Some have contended that the Senate bipartisan drug bill and the bill passed by the House of Representatives earlier this month are little more than political gimmickry. But in my estimation, we might be more accurately accused by our critics of being deleterious in addressing the problem of drug abuse in America. The Senate and House bills are a much needed step in what must be an ongoing effort to stamp out drug abuse.

The crux of the matter is that we need to prevent young people from abusing drugs and alcohol in the first place. We need to bring an end to a certain state of mind that has tended in the past to wink at substance abuse, to ignore its human costs and its moral implications. This bill, because it takes a comprehensive approach to the problem, is a very good first step, but it is not the whole solution.

In wrestling with the substance abuse problem in Iowa, the Iowa Department of Substance Abuse determined that a successful substance abuse program must focus on the environment young people live in. Young people are influenced by a broad variety of institutions, including the family, church, the community, and the media. You cannot isolate one institution in substance abuse prevention efforts and expect it to be effective.

Building on that knowledge, the Iowa Department of Substance Abuse developed a nationally recognized model program, where all institutions are emphasized and integrated. The Iowa program is a community-based initiative that involves the family, church, media, schools, law enforcement, and the courts. I am glad to see that the Senate bipartisan bill will enable the Iowa program to continue to build on its record of success. The Drug-Free Schools and Communities Act provides funding for schools and community- and parent-based programs. It envisions a coordinated community-based effort to prevent young people from abusing drugs and alcohol.

But the importance of the Senate legislation goes beyond the individual measure contemplated therein. Like the Iowa program, the Senate bill attempts to draw together a wide range of institutions—government at all levels, law enforcement and the courts, community- and parent-based organizations, and schools—with one common goal: to end drug abuse in America.

This legislation is symbolically important as well. It is a strong statement in opposition to substance abuse. I hope that this legislation will be an object lesson to young people that this Nation's leaders—starting with the President and the Congress of the United States—will not tolerate alcohol and drug abuse. I hope it will help to create a climate in this country that is hostile to substance abuse. But most of all, I hope that it will save young Americans from the tragedy of drug and alcohol abuse.

Mr. President, it was 15 years ago today that the U.S. Government declared war on cancer. There is a feeling that that war on cancer has not been won, and I tend to agree with that. I hope, as the Senate finally passes this historic legislation, we can say, before another 15 years have passed, that we have won the war against substance abuse.

As a Senator, as a member of the Senate Drug Caucus, the Committee on the Judiciary, and the Committee on Labor and Human Resources, I have had an opportunity to play a role in the war on substance abuse. If I can look back on my public service and say that I played even a small role in saving young Americans from the tragedy of alcohol and drug abuse, then on that basis alone I will say that my time in public office has been worthwhile.

Mr. President, I notice the absence of a quorum.

The **PRESIDING OFFICER**. The clerk will call the roll.

The bill clerk proceeded to call the roll.

(Mr. **CHAFEE** occupied the chair during the quorum call.)

□ 1030

Mr. **DOLE**. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER** (Mr. ROTH). Without objection, it is so ordered.

MESSAGES FROM THE HOUSE

At 10:32 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 5480) to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such act.

The message also announced that the House agrees to the amendment of the Senate to the title of the bill (H.R. 4378) to provide standards for placement of commemorative works on land administered by the National Park Service in the District of Columbia, and for other purposes, and that the House agrees to the amendment of the Senate to the text of the bill, with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the bill (S. 2000) to clarify the exemptive authority of the Securities and Exchange Commission; with an amendment in which it requests the concurrence of the Senate.

The message further announced that the House of Representatives having proceeded to reconsider the bill (H.R. 4868) entitled "An act to prohibit loans to, other investments in, and certain other activities with respect, South Africa, and for other purposes," returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

The message also announced that the House has passed the following bills and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 4917. An act to improve the quality of examinations of depository institutions, and for other purposes;

H.R. 5508. An act to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, and to preserve over 30,000 acres of pristine natural treasures in the Bankhead National Forest for the aesthetic and recreational benefit of future generations of Alabamians, and for other purposes;

H.R. 5560. An act to amend title 18 of the United States Code to ban the production and use of advertisements for child pornography or solicitations for child pornography, and for other purposes;

H.R. 5564. An act to amend the National Housing Act to provide for the eligibility of certain property for single family mortgage insurance;

H.J. Res. 210. Joint resolution designating the Study Center for Trauma and Emergency Medical Systems at the Maryland Institute for Emergency Medical Services Systems at the University of Maryland as the "Charles McC. Mathias, Jr., National Study Center for Trauma and Emergency Medical Systems"; and

H.J. Res. 626. Joint resolution to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

The message further announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 1542. An act to amend the National Trails Act by designating the Nez Perce (Nee-Me-Poo) Trail as a component of the National Trails System;

S. 1766. An act to designate the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park in honor of J. Glenn Beall, Sr.;

H.R. 5506. An act to amend the International Claims Settlement Act of 1949 to provide that the value of claims be based on the fair market value of the property taken;

S.J. Res. 263. Joint resolution to designate September 1986, as "National Independent Retail Grocer Month";

S.J. Res. 405. Joint resolution to designate September 11, 1987, as "(9-1-1 Emergency Number Day";

H.J. Res. 547. Joint resolution to designate October 1986, as "Polish American Heritage Month";

H.J. Res. 611. Joint resolution to designate the period of December 1, 1986, through December 7, 1986, as "National Aplastic Anemia Awareness Week";

H.J. Res. 710. Joint resolution to designate the week beginning October 12, 1986, as "National Children's Television Awareness Week"; and

H.J. Res. 721. Joint resolution to designate the week of October 12, 1986, through October 18, 1986, as "National Job Skills Week."

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. THURMOND].

COMPREHENSIVE ANTI-APARTHEID ACT OF 1986—VETO MESSAGE

The PRESIDING OFFICER (Mr. ROTH) laid before the Senate the following message from the President of the United States:

To the House of Representatives:

I am returning herewith without my approval H.R. 4868, the Comprehensive Anti-Apartheid Act of 1986. Title III of this bill would seriously impede the prospects for a peaceful end to apartheid and the establishment of a free and open society for all in South Africa.

This Administration has no quarrel with the declared purpose of this measure. Indeed, we share that purpose: To send a clear signal to the South African Government that the American people view with abhorrence its codified system of racial segregation. Apartheid is an afront to human rights and human dignity. Normal and friendly relations cannot exist between the United States and South Africa until it becomes a dead policy. Americans are of one mind and one heart on this issue.

But while we vigorously support the purpose of this legislation, declaring economic warfare against the people of South Africa would be destructive not only of their efforts to peacefully end apartheid, but also of the opportunity to replace it with a free society.

The sweeping and punitive sanctions adopted by the Congress are targeted directly at the labor intensive industries upon which the victimized peoples of South Africa depend for their very survival. Black workers—the first victims of apartheid—would become the first victims of American sanctions.

Banning the import of sugar, for example, would threaten the livelihood of 23,000 black farmers. Banning the import of natural resources is a sanction targeted directly at the mining industries of South Africa, upon which more than half a million black laborers depend for their livelihood.

By prohibiting the importation of food and agricultural products, the measure would invite retaliation by South Africa, which since June has purchased over 160,000 tons of wheat from the United States. Denying basic foodstuffs to South Africa—much of which go to feed the black population—will only lead to privation, unrest, and violence. It will not advance the goals of peaceful change.

Are we truly helping the black people of South Africa—the lifelong victims of apartheid—when we throw them out of work and leave them and their families jobless and hungry in those segregated townships? Or are we simply assuming a moral posture at the expense of the people in whose name we presume to act?

This, then, is the first and foremost reason I cannot support this legislation. Punitive economic sanctions would contribute directly and measurably to the misery of people who already have suffered enough. Using America's power to deepen the economic crisis in this tortured country is not the way to reconciliation and peace. Black South Africans recognize that they would pay with their lives for the deprivation, chaos, and violence that would follow an economic collapse. That is why millions of blacks and numerous black leaders in South Africa are as firm in their opposition to sanctions as in their abhorrence of apartheid.

The imposition of punitive sanctions would also deliver a devastating blow to the neighboring states in southern Africa that depend on Pretoria for transportation, energy, markets, and food. An estimated million-and-a-half foreign workers, legal and illegal, now live in South Africa. The number of people, women and children especially, outside South Africa who are dependent upon the remittances of these workers for their survival has been estimated to be over five million. Do we truly wish to be directly responsible for increased suffering, and perhaps starvation, in southern Africa? Do we truly wish our action to be the rationale Pretoria invokes for expelling these workers? Do we truly wish to trigger a cycle of economic sanctions and counter-sanctions that end up crippling the economy of South Africa and devastating the economies of the frontline states? What sense does it make to send aid to those impoverished countries with one hand while squeezing their economies with the other?

Disrupting the South African economy and creating more unemployment will only fuel the tragic cycle of violence and repression that has gripped that troubled country. Black unemployment in South Africa in some areas is over 50 percent—and adding to it will create more anger, more violence, and more competition among blacks struggling to survive. It will not improve prospects for negotiations.

Another feature of the bill would require the Administration to publicly identify within 6 months any and all nations that have chosen not to join us in observing the U.N. arms embargo against South Africa, "with a view to terminating United States military assistance to those countries." But the United States will not revert to a single-minded policy of isolationism, with its vast and unforeseen effects on our international security relationships, that would be dictated by the unilateral decisions of our allies. No single issue, no matter how important, can be allowed to override in this way all other considerations in our foreign policy. Our military relationships must continue to be based upon a comprehensive assessment of our national defense needs and the security of the West.

Not only does this legislation contain sweeping punitive sanctions that would injure most the very people we seek to help, the legislation discards our economic leverage, constricts our diplomatic freedom, and ties the hands of the President of the United States in dealing with a gathering crisis in a critical subcontinent where the Soviet Bloc—with its mounting investment of men and arms—clearly sees historic opportunity. Therefore, I am also vetoing the bill because it contains provisions that infringe on the President's constitutional prerogative to articulate the foreign policy of the United States.

There are, however, several features of the measure that the Administration supports. Title II of the bill, for example, mandates affirmative measures to eliminate apartheid and provide assistance to its victims, including support for black participation in business enterprises as owners, managers, and professionals. It authorizes the President to take steps for the purpose of assisting firms to fight apartheid and extend equal opportunity to blacks in investment, management, and employment. The bill also contains a number of other useful and realistic provisions, such as those calling upon the African National Congress (ANC) to reexamine its Communist ties and mandating a report on the activities of the Communist Party in South Africa and the extent to which it has infiltrated South African political organizations. Still other portions of the bill call upon the ANC to condemn the practice of "necklacing" and terrorism and to state affirmatively that it will support a free and democratic postapartheid South Africa. These provisions, as well as many others in the bill, reflect the agreement of the Congress and the administration on important aspects of an overall antiapartheid policy.

The Administration has been—and remains—prepared to work with the Congress to devise measures that manifest the American people's united opposition to apartheid—without injuring its victims. We remain ready to work with the Congress in framing measures that—like the 1962 U.S. embargo of military sales and the carefully targeted sanctions of my own Executive order of 1985—keep the United States at arms distance from the South African regime, while keeping America's beneficent influence at work bringing about constructive change within that troubled society and nation.

It remains my hope that the United States can work with its European allies to fashion a flexible and coordinated policy—consistent with their recent actions—for constructive change inside South Africa. I believe we should support their measures with similar executive actions of our own, and I will work with the Congress toward that goal. It remains my hope that, once again, Republicans and Democrats can come together on the common ground that, after all, we both share: An unyielding opposition both to the unacceptable doctrine of apartheid as well as the unacceptable alternative of Marxist tyranny—backed by the firm determination that the future of South Africa and southern Africa will belong to the free. To achieve that, we must stay and build, not cut and run.

That Americans should recoil at what their television screens bring them from South Africa—the violence, the repression, the terror—speaks well of us as a people. But the historic crisis in South Africa is not one from which the leading nation of the West can turn its back and walk away. For the outcome of that crisis has too great a bearing upon the future of Africa, the future of NATO, the future of the West.

Throughout the postwar era, we Americans have succeeded when we left our partisan differences at the water's edge—and persevered; as we did in the rebuilding of Europe and Japan, as we are doing today in El Salvador. We have failed when we permitted our exasperation and anger and impatience at present conditions to persuade us to forfeit the future to the enemies of freedom.

Let us not forget our purpose. It is not to damage or destroy any economy, but to help the black majority of South Africa and southern Africa enjoy a greater share of the material blessings and bounties their labor has helped to produce—as they secure as well their legitimate political rights. That is why sweeping punitive sanctions are the wrong course to follow, and increased American and Western investment—by firms that are breaking down apartheid by providing equal opportunity for the victims of official discrimination—is the right course to pursue.

Our goal is a democratic system in which the rights of majorities, minorities, and individuals are protected by a bill of rights and firm constitutional guarantees.

Ronald Reagan.

The White House, *September 26, 1986.*

□ 1040

CLOTURE MOTION

Mr. BYRD. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the veto message on H.R. 4868, the Comprehensive Anti-Apartheid Act of 1986.

Dale Bumpers, Bill Bradley, Tom Harkin, Frank Lautenberg, Jim Sasser, Jay Rockefeller, Alan Cranston, Christopher Dodd, Alan J. Dixon, Jeff Bingaman, William Proxmire, John Melcher, Paul Sarbanes, Tom Eagleton, Edward Kennedy, Daniel Moynihan, George J. Mitchell, J. Bennett Johnston, Lawton Chiles, and Wendell Ford.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, the veto message has been spread upon the journal?

The PRESIDING OFFICER. That is correct.

Mr. DOLE. Mr. President, I ask unanimous consent that the veto message be set aside until the end of the calendar day.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, reserving the right to object, I was wondering if the majority leader could give us some indication as to when we might have the opportunity to address this particular issue. We have seen an overwhelming expression by the House of Representatives. I believe that will be repeated here in the Senate.

We certainly want to cooperate with the leader as we come into the final hours of this particular session, but I am wondering if he can give us an indication as to when we might have the opportunity to address this question.

Mr. DOLE. Mr. President, I will say to the Senator from Massachusetts we intend to discuss this at our luncheon today, it will also be discussed with Secretary Shultz in the next few minutes in my office.

Cloture had been filed and I assume there are enough votes for cloture. I would like to reach some agreement for a vote at a time certain so that we can let Senator Hatfield proceed with the continuing resolution. I still believe we can complete the legislative business this week. We may have the impeachment trial to deal with next week. We are trying to work out a time certain.

Mr. KENNEDY. Just to continue, as I say, I want to cooperate with the leaders on both sides. I find it difficult at this time to understand why we cannot be about the business and address this particular question. I want to cooperate and be sure that we are going to meet the leader's calendar and schedule. We do have the cloture motion.

I want us to have the opportunity to at least establish some kind of time when we might be able to do this. I do not know whether there is anything further.

Can the leader give us some assurance that we will address it within the next 24 hours?

☐ 1050

Mr. DOLE. Mr. President, maybe not in the next 24 hours, but I hope shortly thereafter. Our problem with the continuing resolution is if we start on the veto message, it probably will be on the floor for 2 or 3 days—that would be my guess. I think we could spend that time trying to work out an agreement to permit the Appropriations Committee to move forward on the continuing resolution, then go to conference with the House. If we are going to complete our work this week, there is a lot of work to do. I cannot promise that there will be a vote in 24 hours.

Mr. PRESSLER. Will the leader yield?

Mr. DOLE. Yes, Mr. President.

Mr. PRESSLER. Will time against the cloture motion be running at any point that the continuing resolution will be considered? If so, I would have to file an objection to that.

Mr. DOLE. It will ripen on Thursday in any event.

Mr. PRESSLER. That is true, but there are a number of speakers who wish to speak on the South African matter. It is not my intention to have the continuing resolution delayed, but I think those who want to speak will want to use the time.

Mr. DOLE. Right. The reason we are asking for consent until the end of the day is to reach some agreement among those who want to speak against, those who want to speak for, those who may want to filibuster, whatever. I think what we need to do now is let the Senator from Oregon proceed with his continuing resolution. Then we shall try to work out some agreement for everyone during the day.

Mr. BYRD. Mr. President, will the majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. Mr. President, the majority leader is attempting to go forward with the continuing resolution. I can understand those who would like to have some clear idea as to when the Senate will bring up this veto message and vote on it. Without the unanimous-consent request being agreed to and the Senate having to proceed forthwith and discuss the veto message and make a judgment on it to the exclusion of all other business, the cloture motion itself can bring the veto message back before the Senate regardless. The only thing the majority leader can do to avoid proceeding with this veto message now would be to keep the Senate in a quorum call or put us out until tomorrow or the next day. Obviously, he would not do that.

I hope that the leader would indicate that we could proceed on this matter later today if we could come up with an agreement, certainly on this side, that debate would not extend beyond, say, an hour or, at the most, for 2 hours. I would try to get an hour on this side then, say immediately following the vote on the drug bill. I have a feeling I might be able to get that agreement on this side for an hour.

If it is not possible to do that, I certainly hope the majority leader's request will not be objected to, because it only stays the action on the veto message to the end of this calendar day, which is midnight tonight.

I merely offer that as a proposal that might help the majority leader.

Mr. DOLE. It seems to me I am going to need a little time, particularly on this side, to get an agreement. I would prefer that we not object to requests on either side, to give us until the end of the day. It is going to be back tomorrow morning in any event. When we come in, it will be the pending business, action on the continuing resolution would be suspended if it is still here. It seems to me during that time, I can work on this side to see whether we can get a time certain to vote.

There is no reason to delay the vote. It seems to me that one way or the other, we should dispose of this matter. I think what we would like to do now is continue with the continuing resolution. That would give me an opportunity to visit with the distinguished Senator from South Dakota and others on this side who want to speak at some length on the veto message. It will be back tomorrow morning. If we cannot get an agreement to the continuing resolution being suspended, we will be in the soup, but at least, we will have the veto message before us.

Mr. BYRD. In any event, Mr. President, if the consent is agreed to, once the Senate continues beyond the close of this calendar day, if it is 1 o'clock tomorrow morning and the Senate is in session, or if it is 12:01 tomorrow morning and the Senate is in session, the Senate will have to proceed with this veto message. So the majority leader would only have until the end of this calendar day. Whether he would consider renewing the request to a time immediately following the vote on the drug bill would have to be his judgment.

In either event, I shall do what I can on this side to help get a short time agreement for the debate.

With that, I take my seat.

Mr. DOLE. Mr. President, I had hoped Members on this side would not object. Senator HATFIELD will try to complete this today, and we will be back on this tomorrow. This may encourage some Members to withhold their amendments on the continuing resolution, because if we want to extend this session into next week for certain, we can start today on the veto message and consume 3 or 4 days on that.

Mr. PRESSLER. If this unanimous-consent request is agreed to, part of the 48 hours on cloture time is running while we are debating the continuing resolution.

Mr. DOLE. That is correct.

Mr. PRESSLER. I would have to object to that.

Mr. DOLE. Why?

Mr. PRESSLER. Because I and others want to speak on the South Africa issue. Is there a way we can get an agreement that the time will not start to run on the cloture motion until the continuing resolution is finished? I am not trying to undo the continuing resolution.

Mr. DOLE. I think if there is going to be an objection, let us just face it, you are just pushing us into next week.

Mr. PRESSLER. That is not my intention.

Mr. DOLE. But that would be the result.

Mr. WALLOP. Mr. President, will the leader yield?

Mr. DOLE. Yes. Mr. President.

Mr. WALLOP. I urge my colleague from South Dakota not to object to this. The time is going to become the time no matter what on Thursday. Nobody feels more passionately about trying to support the President than this Senator. But I do not see that we add to our position by not continuing to work on the continuing resolution right now. At midnight tonight the continuing resolution is gone. If the Senator so wishes, or any of the rest of us, we can talk about South Africa until Thursday noon, I guess, no matter what.

Mr. BYRD. But, Mr. President, the continuing resolution is not gone by midnight tonight if we go back on this veto override.

Mr. WALLOP. That is what I mean. No matter what takes place, at midnight tonight, the continuing resolution is gone.

Mr. PRESSLER. It is true we go back physically on it, but the time starts to run on cloture right now, does it not?

Mr. DOLE. That is correct.

Mr. PRESSLER. I made a commitment to Senator HELMS that I would make an objection. Unless he relieves me of that—I just talked to him 15 minutes ago—I shall have to respectfully object.

Mr. WALLOP. I urge the Senator to go and call the Senator from North Carolina, because I do not see that we are adding to our position with this. If I found any way in the world to add to our position, I would be adding to our position, I promise you. But I do not see that that does it.

Mr. PRESSLER. Mr. President, I feel I made a commitment to him to object, but if I could consult with him in a short quorum call.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SIMON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. I ask unanimous consent that the quorum call be suspended.

Mr. DOLE. Mr. President, I respectfully object.

The PRESIDING OFFICER (Mr. RUDMAN). Objection is heard.

The legislative clerk continued the call of the roll.

□ 1130

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

There is a unanimous-consent agreement pending. Is there objection?

Mr. BYRD. Mr. President, there is no objection, I am sure, on this side.

Would the Chair state the request again for the information of the Senate?

The PRESIDING OFFICER. The request is that the veto message be laid aside until the end of this calendar day.

Mr. BYRD. I thank the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. PRESSLER. Mr. President, reserving the right to object. I will not object, but reserving the right to object, we are agreeing to this with the understanding that there will be a reasonable opportunity to debate the issue before the cloture vote and after it, because there are some very substantial issues involved. As a supporter of the President's position, I certainly want to be sure that there is ample opportunity. But the majority leader has assured us that will be so, so I will not object.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOLE. Mr. President, I thank my colleagues on each side. We do need to get on to the CR. This will give us 12½ hours. I am not certain we can take care of 182 amendments in 12½ hours. There is one way we could take care of them, and that is not offer them. But I am certain that will be hard to do.

REAGAN/GORBACHEV MEETING

ICELAND MEETING

Mr. DOLE. Mr. President, for those who may not have heard, the President has just announced in the past hour an agreement with the Soviet Union for a second Reagan-Gorbachev meeting, to be held in Iceland on October 11 and 12.

Now that Nick Daniloff has been released unconditionally, and we have the welcome news of the release of the Orlovs, I think that all of us will welcome this agreement for the leaders of the superpowers to meet again. I know the President intends to make a good faith effort to do everything possible, consistent with our national security, to make the newest meeting a success. Hopefully, Gorbachev will come to Iceland in the same spirit.

But I do think it is prudent for all of us to keep a few things in mind in the coming days and weeks.

LET'S KEEP OUR EXPECTATIONS UNDER CONTROL

First of all, let's keep our expectations under control. Holding a presummit opens the opportunity for agreement on any number of substantive issues. But just meeting guarantees agreement, or progress, on nothing. The proof will be in the pudding—if we get carried away by inflated expectations, we risk a big disappointment.

AGENDA GOES BEYOND ARMS CONTROL

Second, we have to make sure that the Soviets do not succeed in turning the Iceland meeting into a one-issue affair. We have a lot more on our agenda than just arms control.

The fact that the Soviets, under great pressure, finally let Nick Daniloff go, does not end our concerns about their often reckless, and inhuman treatment, of human beings. The fact that a few dissidents are to be permitted to emigrate—as much as we welcome that development—does not mean we can wipe human rights, and emigration questions, off the list of things we need to discuss and discuss at length, in Iceland.

Nor can we forget Afghanistan, or Cambodia, or a host of other serious problems we have with Moscow's overseas adventures.

TIME TO RALLY BEHIND PRESIDENT

Finally, I would strongly urge every Member of this body to give special consideration over the next few days to their votes on the defense and foreign policy issues that we will be confronting, in rapid fire order, on the CR and thereafter.

When President Reagan sits down across the table from Mr. Gorbachev in Iceland—when the two men look each other in the eye—I want Gorbachev to see a President who has the clear and strong support—bipartisan support—of the Congress and the people; and who has the unquestioned mandate to speak for us all on national security issues.

Mr. President, the exploratory meeting in Iceland represents a major opportunity for progress on a whole range of important issues. But we will make that progress only if we are united and we all do our part—the President, the Congress, and the people.

THE U.S. SENTENCING COMMISSION

Mr. THURMOND. Mr. President, 2 years ago, the Congress approved the most sweeping anticrime bill in its history, a measure which included—among other things—tougher drug penalties; a crackdown on violent crime and repeat offenders; and important new reforms to the Nation's bail and sentencing laws.

A key part of sentencing reform was the creation of the U.S. Sentencing Commission, a panel of distinguished judges and scholars who were empowered to make specific recommendations to Congress on ways to reduce disparity in Federal criminal sentences and create a more determinate sentencing system.

The chief goal was to create mandatory guidelines, whereby Federal judges would hand down similar sentences for similar crimes. One of the crime bill's mandates was to require Federal judges to explain in a defendant's record why a sentence above or below that recommended by the Commission was applied. While striving to bring more rationality and regularity to our sentencing system, the determinate system does not tie the hands of our judges by requiring fixed sentences for crimes.

Striking the careful balance needed in any such sweeping reform of our sentencing laws requires not only great knowledge of our criminal justice system, but foresight and leadership. On this Commission, we have that knowledge, leadership, and expertise.

As one of the chief authors of this Comprehensive Crime Control Act of 1984, I was particularly pleased that President Reagan appointed as Chairman of the Commission a man in whom I have great confidence: Fourth U.S. Circuit Court of Appeals Judge William W. Wilkins Jr., of Greenville, SC.

Judge Wilkins, a former State prosecutor and U.S. district court judge, has done an outstanding job in leading this Commission into its important work. He, and indeed all of the distinguished members of the Sentencing Commission, are performing a great service to the Nation in examining our Federal sentencing system and recommending specific reforms.

The Commission has finished the first leg of its work in proposing to Congress a sweeping revision of Federal criminal sentences.

An article in today's Washington Post about the Sentencing Commission is particularly interesting, and I want to share it with my colleagues. It provides an insightful update on the work of the Commission, and reflects admirably on its Chairman, Judge Wilkins.

Mr. President, I ask unanimous consent that a copy of the article, entitled, "Rules for Uniform Sentencing, End to Early Parole Proposed," be included in the Record.

There being on objection, the article was ordered to be printed in the Record, as follows:

[From the Washington Post, Sept. 30, 1986]

Rules for Uniform Sentencing, End to Early Parole Proposed

(By Howard Kurtz)

A federal commission proposed a sweeping rewrite of criminal sentencing procedures yesterday, carrying out congressional orders to sharply limit judges' discretion in sentencing and eliminate early release of prisoners through parole.

The U.S. Sentencing Commission, a nine-member panel created by Congress in 1984, published its plan for mandatory sentencing guidelines in a 170-page draft report. The commission will propose final guidelines early next year, which will be binding on all federal judges unless Congress votes to overturn them.

The system would remove the nearly unfettered discretion in sentencing that judges now enjoy, replacing it with a numerical ranking system for all crimes that would require judges to hand down sentences within narrow ranges. Congress enacted the law to reduce wide disparities in sentences for similar crimes.

Commission Chairman William W. Wilkins Jr., a judge on the 4th U.S. Circuit Court of Appeals in Richmond, said the panel plans to seek significantly tougher sentences for white-collar crime and drug trafficking. While only 15 percent of defendants now go to prison for price-fixing, for example, the panel would require two to eight months in prison for offenses involving less than $1 million, while also mandating incarceration for securities fraud and other white-collar offenses.

The system assigns "weights" to different aspects of roughly 2,600 criminal offenses. Judges would have to tally these numbers and hand down sentences within narrow ranges, which could not fall outside the maximum or minimum sentences now on the books.

The most revolutionary change is that the 40,000 prisoners sentenced each year could no longer be paroled after serving as little as one-third of their sentence, as is now common. Instead, prisoners would be required to serve their full terms, with reductions of up to 54 days a year for good behavior.

Wilkins called this "a truth-in-sentencing approach. The sentences will appear to be lower than current practice. Today someone is sentenced for 20 years, and that has a certain sound to it, but in reality they are paroled after serving a third of their sentence."

Under the proposed rules, Wilkins said, "No longer will judges have to calculate an appropriate sentence and then try to second-guess a parole board." Defendants and prosecutors could appeal sentences that fall outside the guidelines, and judges would have to explain any deviation in writing.

The panel said its plan is designed to provide adequate punishment, deter crime, protect the public from the offender and, if possible, help rehabilitate the offender. A number of states also are experimenting with uniform sentencing systems.

Wilkins said the panel deferred action on two controversial issues: the extent to which a defendant's prior criminal history can be considered, and whether limits should be placed on plea bargains. He said prosecutors could not be allowed to ignore the guidelines in negotiating pleas—the method through which 90 percent of criminal cases are resolved—but that the panel did not want "to tie the hands of prosecutors or defense attorneys."

Wilkins said the commission is well aware that mandating stiffer sentences could add to the national problem of overcrowded prisons. "I don't think we should draft our guidelines with prison impact as an artificial restraint," he said, "but we've got to understand the cost of anything we do."

The guidelines rank offenses on a scale from 1 to 360, with sentences to be raised for aggravating factors, such as using a gun during a crime, and cut for mitigating factors.

The proposal would direct judges to consider certain factors related to the crime, but rule out others. In the case of a convicted cocaine dealer, for example, the guidelines would direct the judge to increase the sentence if it were found that a purchaser had died after ingesting the cocaine. But if a search of the dealer's apartment turned up an illegal shotgun, that could not be considered because it is unrelated to the cocaine offense.

The panel plans to receive public comment in six hearings over the next two months.

TAIWAN: ANOTHER STEP TOWARD DEMOCRACY

Mr. PELL. Mr. President, for many years Americans who consider themselves friends of Taiwan have watched that island's remarkable economic progress with considerable enthusiasm, while viewing with equal dismay the lack of comparable political progress toward full democracy. I am pleased today to note today that another step has been taken to bridge this gap.

Over the weekend, a new opposition party—the Progressive Democratic Party—was formally initiated on Taiwan by Taiwanese citizens who are dedicated to democracy and who hope to create a unified and peaceful agent of political change. Earlier today, I joined with Senator Kennedy, who serves with me as an honorary co-chairman of the Committee for Democracy on Taiwan, and with Congressmen Stephen Solarz and Jim Leach, who serve as operational co-chairmen, in welcoming this development.

It is not for Americans to endorse any particular candidate or movement on Taiwan. But Americans can properly support the right of the people on Taiwan to participate more freely in the island's political life. After nearly four decades of economic and educational progress, the emergence of a genuine multiparty system on Taiwan is long overdue; and we must now earnestly hope that the Taiwanese Government will exhibit the wisdom and foresight to permit this new party to participate freely and without constraint in Taiwan's political process. By forging a new unity among Taiwanese who seek a peaceful evolution toward full democracy, the Progessive Democratic Party can—if allowed—make a powerfully constructive contribution to Taiwan's future stability and security.

RAPID CITY INDIAN COMMUNITY HONORS EVA NICHOLS

Mr. ABDNOR. Mr. President, one of South Dakota's most famous citizens was honored at a retirement dinner last Sunday in Rapid City, SD. Ms. Eva Nichols was honored at her second "retirement" party for her nearly half century of service to the Rapid City Native American community.

Eva, in true Lakota and South Dakota tradition, is a strong-minded lady with very definite opinions. She is also a lady who cares deeply about native American issues and has made a mark on all who have been privileged to know her. Knowing Eva, I find it hard to believe that she has any intention of retiring, but just a rumor of such a retirement gives us an additional opportunity to honor her.

Mr. President, I should like to also include a copy of an article which appeared in the September 28 edition of the Rapid City Journal covering the career of Ms. Nichols.

There being no objection, the article was ordered to be printed in the Record, as follows:

Eva Nichols To Be Honored at Second "Retirement" Party

(By Hugh O'Gara)

Rapid City's advocate for the Indian community, 83-year-old Eva Nichols, is going to start slowing down.

For the past 40 years, Nichols has been the voice—and sometimes a controversial one—of the Indian community.

Although she officially retired from the working world in 1965, Nichols continues to work eight hours daily, five days a week and is on call 24 hours a day.

She has belonged to 11 state and regional organizations as well as being a member of such national organizations as the National Congress of American Indians and the National Indian Women's Organization.

Through her efforts, the Black Hills Annual Pow Wow, Indian Community Appreciation Day and the Miss Black Hills Indian Beauty Pageant were begun.

For 20 years, her letters to the Rapid City Journal editorial page reflected her traditional upbringing or what is right and wrong.

Her second "retirement" party is planned for Sunday.

Her family and friends will hold a dinner at 2 p.m. Sunday at the Mother Butler Center to honor Nichols for her decades of contributions to the community.

In traditional fashion, Nichols plans to use the occasion to honor 29 individuals who have helped her efforts over the years.

The honor role covers a wide range of medical service personnel, politicians, judges, law enforcement officials, businessmen, media, government and social service workers. The list reflects the diversity of her work and causes.

The 29 people who contributed to Nichols' efforts will be honored during a private ceremony prior to the dinner.

"I've had some faithful friends who have recognized the needs of not only the Indian community but the whole community," she said. "If you help one part of society, you give stability to the rest of it."

Nichols said she believed in Indian assimilation into the white culture, but only the good parts of it.

"You can travel both paths," she said, "but you've got to take the good from both."

For instance, Nichols opposes bilingual education in the schools to teach Indian children in Lakota.

Her advice: "English is our language—use it." Children shouldn't be allowed to forget their native tongue but she tells parents to "do that at home."

Indian parents, she said, should allow their children to mix with white children so they don't feel alienated from the majority culture.

"Don't separate him from the rest of the children," she said. "He can be Indian and proud of it and also do what others are doing . . . you can succeed."

Although Sunday's dinner allegedly is a retirement party, Nichols still is working on several projects.

She is involved with Western Dakota Arts to reproduce the works of famous Western artists and the Sioux Heritage Baby Doll which are crafted by elderly Sioux in South Dakota.

"I'm not in favor of honoring people, even after their death," she said. We are put on earth, she continued, to do our best to improve the world. It is our duty and doesn't deserve praise.

After all, Nichols said, there have been a lot of little people who have lived honorable lives and never have been recognized.

MEDICAID FUNDING FOR SERVICES FOR DEVELOPMENTALLY DISABLED

Mr. EXON. Mr. President, on September 19, the Health Subcommittee of the Senate Finance Committee held a hearing on the issue of Medicaid funding for the long-term care of developmentally disabled persons. As a former Governor and before that as a private citizen, I have actively supported improvement in all programs for the mentally retarded.

The State of Nebraska is a leader in this area. The progress has not always come easily, but our State has developed extensive community services at the same time that we have greatly improved the quality of care in our larger facilities. I am greatly concerned about any legislation which would eliminate Medicaid funding for certain intermediate care facilities for the mentally retarded. From my point of view, the real issue about long-term care should not be the size of a facility, but the quality of care being provided. Parents and families of the mentally retarded should have as many alternatives as possible from which to choose. Taking money away from one segment of the mentally retarded population to give to another is no solution.

I was pleased that the Health Subcommittee was able to hear the testimony of a fellow Nebraskan who has been involved in this issue for many years. Patricia Crawford is the governmental affairs chair of the Nebraska chapter of the Mental Retardation Association of America.

Mr. President, I will ask unanimous consent that Ms. Crawford's statement appear in the RECORD at the conclusion of my remarks.

I commend Senator DURENBERGER and the Health Subcommittee for holding this hearing and look forward to working with my colleagues in the next Congress on this most important issue.

Mr. President, I ask unanimous consent that Ms. Crawford's statement be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF PATRICIA KELLY CRAWFORD

Senator Durenberger, Senator Chafee, and Sub-Committee members, thank you for the opportunity to relate the views of the members of the Mental Retardation Association of Nebraska (MRAN) regarding long-term care of developmentally disabled persons. I am Patricia Kelly Crawford of Lincoln, Nebraska; my son, Matt, age 25, is a resident of the Beatrice State Developmental Center, an ICF/MR in Beatrice, Nebraska. I am Governmental Affairs Chairman for M.R.A.N. and vice-chairman of the Nebraska Governor's Developmental Disability Planning Council.

You probably saw the U.S. News and World Report article a few weeks ago, "Back in the World and Doing Just Fine," another success story about retarded people liberated from an institution and getting along great in a community setting, and you also may remember Mickey Rooney's portrayal of "Bill", a real life retarded man making it on his own. I'm going to tell you an un-success story about my Matthew. Matt is representative of the 467 residents of the Beatrice State Developmental Center, the only public residential facility for the mentally retarded in Nebraska. Matt lived at home with his older brother and sister and younger brother and sister until age 14. At age 3 he attended a special nursery school for retarded toddlers. As he grew, Matt went to special schools provided by the parents—we had bake sales, garage sales, candy sales and solicited donations from labor unions, church groups, and service clubs to pay our teachers, who were untrained but big hearted. I was very active in all these efforts to keep my son at home. As he entered his teen years, I realized that in spite of my efforts to help establish and keep afloat programs for Matt, the programs didn't meet his needs at all. It became apparent to my husband and me that we could not provide the structure and routine in our home that Matt obviously needed. Although public group homes were available in Nebraska in 1975, we placed Matt at the Beatrice State Developmental Center because he needed a structured program 7 days a week and he needed the routine and the security that only an institution can provide. Because of the constant strain of caring for a profoundly retarded person, we preferred that he be in a facility with three 8-hour shifts per day rather than houseparents.

Matt has profound retardation. He has no speech, he must have help with bathing and personal hygiene. He needs to be directed in every activity. He must be told what to wear, when to eat, when to brush his teeth, to wash his hands, and so forth throughout the day. In his pre-vocational program, he has learned to fold wash cloths, but needs constant encouragement from the staff. His favorite recreation is swimming in the specially designed pool, and he likes to listen to music but he doesn't really seem to be able to do anything else recreational. He is really a cute little man, but his IQ is measured at zero.

The direct care staff tell me they consider Matt to be "high functioning" compared to the 466 other residents—I think they say that because he is likeable. He is 25 years old now and the reality is that Matt and those like him will never be able to live up to the expectations Senator Chafee expressed when he introduced S. 873. He said, "My legislation rediscovers the values of freedom, meaningful work, and the neighborhood by giving mentally retarded and physically disabled individuals an opportunity they have long been denied—the opportunity to participate in the pursuit of these ideals."

At the Beatrice State Development Center where Matt resides 389 of the 467 residents are multiply handicapped. 238 have seizure disorders, 47 have heart defects, 280 are orthopedically handicapped, with 182 wheelchair users; 63 are blind, 101 have a hearing impairment, 18 of those are deaf. 385 have no speech or a speech impairment, 259 require a barrier-free environment. 277 of the residents require feeding assistance, 310 need toileting assistance, 384 need help dressing and 394 need help to bathe. 437 residents are not capable of making an appropriate response to an emergency. 375 residents require 24 hour awake supervision. 177 require physical therapy, 276 residents have behavior problems, and 142 of those are considered to have endangering behaviors. 40 females and 74 males require psychoactive medicine and all of those are on behavior management programs. In addition, there are 66 others on behavior management programs.

Of the 272 male residents, 194 or 71% have profound retardation like Matt, 41 are classed severe. There are 195 women residents, of which 148 or 76% are profoundly retarded, 22 are severely retarded.

If S. 873 or a similar bill should ever be enacted into law requiring a "phase down" of Medicaid dollars to ICF/MR's with more than 15 beds the requirements of these 467 folks will not change. You will simply disperse the people from an ultra-modern residential facility with a full professional staff to rural areas which often lack primary medical care and lack special services of all kinds. M.R.A.N. members believe that the residents of the ICF/MR's would receive far fewer therapeutic regimens because of lack of availability of an array of specialized services in the western two-thirds of Nebraska. At the same time the cost of the Medicaid program will skyrocket because of the inclusion of vast and unknown numbers of heretofore ineligible persons and the all-inclusive list of services to be rendered.

The Medicaid funds supplied to the Beatrice State Developmental Center help to provide habilitation and residential services, educational services, pre-vocational training, recreation activities and self-help instruction. The professional staff delivers Psychological services, Social Services, Speech Pathology, Special Education, Medical and Dental services. The Medical Services Unit provides for the medical and nursing needs of all the residents. All medical services are accredited by the Joint Commission on the Accreditation of Hospitals. The medical staff consists of two part-time physicians, one part-time psychiatrist, one part-time pediatrician, and two physician assistants. The following specialty services supplement the medical staff: ENT, Ophthalmology, Orthopedics, Psychiatry, Neurology, Radiology, Optometry, and Optician. There is a professional nursing staff consisting of registered nurses and licensed practical nurses and a Developmental Therapies department comprised of Physical Therapists and Occupational Therapist and ancillary personnel.

There are four other ICF/MR's in Nebraska which care for a total of 373 mentally retarded people, three are operated by the Lutheran Church and provide services similar to the B.S.D.C.

Because mentally retarded people have such a wide range of abilities/disabilities, there can be no single "appropriate setting", there can be no single "least restrictive environment". The "appropriate setting" and the "least restrictive environment" are not absolutes and must be tailored to each individual. We strongly oppose any "phase down" of funds to institutions as proposed in S. 873; and because we are parents and guardians, we resent, bitterly, forced removal of our children from the residential centers where we have placed them. If these centers close, we will be denied a choice of services. We do not want Big Brother managing our disabled children's lives.

The mildly and moderately retarded people we know who live in our communities are completely different from and have far fewer needs than Matt and his peers in the institutions—ergo, it costs far less to care for them. A "phase-down" of funds to institutions would surely close the private facilities and would threaten, at least, public facilities.

Largely owing to Medicaid monies, Nebraska ICF/MR's are all modern, clean, vital and happy places. Institutions have changed dramatically in the past twenty years. Beatrice State Developmental Center is a model and leader in the care of our most severely handicapped. It is beautifully landscaped—planned by University students and paid for by the Parents' Association. Experimental solar heating is being tested in a few of the barrier-free cottages. Every building is air-conditioned against our torrid summers. Please come to Nebraska for a tour. It will banish all those old stereotypes of institutions once and for all.

M.R.A.N. is a non-profit organization of parents, guardians and friends of retarded persons. We promote common sense advocacy for mentally retarded people. We support good community based programs and quality residential centers, public and private. We believe that parents should have the dominant role in decision-making for our disabled children.

DEPARTMENT OF ENERGY DEFENSE FACILITY COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS

Mr. GLENN. Mr. President, on September 26, 1986, I offered Senate Joint Resolution 421, a joint resolution expressing the sense of Congress relative to bringing the Department of Energy defense facilities into compliance with applicable environmental laws, and for other purposes, known as "Department of Energy Defense Facility Compliance with Applicable Environmental Laws." Due to an oversight, the joint resolution was not printed in the RECORD. I now ask unanimous consent that it now be printed in today's RECORD with my original statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF ENERGY DEFENSE FACILITY COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS

Mr. GLENN. Mr. President, on April 15, 1985, following my own preliminary investigation of the situation at the Feed Materials Production Center at Fernald, OH, I asked the General Accounting Office [GAO]—the investigative arm of Congress—to review the Department of Energy's management of its responsibilities in the areas of environment, safety, and health at DOE nuclear plants around the Nation.

My request has resulted in four recent reports by GAO. Two of them focused on the problems at Ohio facilities; one dealt with the status of DOE's initiatives to strengthen environment, safety, and health activities; and the most recent one documented deficiencies in the process and substance of DOE's Safety Analysis Reviews of its nuclear facilities.

Yesterday, I released the latest report in this series. It surveys the extent of soil and ground water contamination at nine DOE defense facilities located at seven sites around the Nation. And the facts revealed in this report are both shocking and frightening.

Specifically, eight out of the nine facilities surveyed have contaminated ground water with hazardous and/or radioactive materials. At the fuel fabrication plant in South Carolina, solvents in ground water have been found at levels over 30,000 times the proposed drinking water standards. Strontium 90 has been detected in ground water at the N-reactor site in Washington State at levels over 400 times higher than the drinking water standards.

At the Y-12 plant in Tennessee, solvents and nitrates in ground water have each been detected at levels over 1,000 times more than the proposed drinking water standards, mercury has been detected at levels 500 times the drinking water standard; arsenic levels are 60 times the drinking water standards; and chromium levels are over 30 times the standards.

And that's not all. Six of the nine DOE facilities have produced soil contamination in unexpected areas, including offsite locations. This incudes the Y-12 plant at Oak Ridge where mercury contamination of an offsite creekbed and its floodplain is, in some locations, greater than 2,000 times the background levels and more than 150 times greater than guidelines established by the State of Tennessee to protect public health.

At the Fernald plant in Ohio, uranium contamination of the soil is in some places more than 10 times background levels. And at Ohio's Mound Laboratory facility, plutonium levels are as much as 100 times the background levels.

What these figures show is that the Department of Energy and its predecessors have been carrying out their mission to produce nulear weapons with an attitude of neglect bordering on contempt for environmental protection. What they've said, in effect, is "we're going to build bombs—and the environment be damned."

In so doing, they have created a situation that potentially threatens the health of large numbers of Americans. And their actions are going to force the United States to spend hundreds of millions of dollars—perhaps even billions of dollars—to clean up their mess.

Although DOE has recently initiated a number of actions to improve its performance on environmental, safety, and health matters, I believe it is too little, too late. In my judgment, we simply can no longer tolerate the self-regulation that the agency has practiced since the beginning of the nuclear age.

And that's exactly why I introduced a bill last year to give the Environmental Protection Agency complete jurisdiction over the regulation of all mixed waste at DOE facilities—except for mixed waste containing negligible quantities of nonradioactive hazardous materials.

Unfortunately, my bill has gone nowhere. It's still bottled up in committee, while these DOE facilities continue to poison our soil and ground water. Frankly, I don't know what the problem is.

But there's one thing I do know. I know we better wake up in this country; we better wake up before its too late and we find ourselves with an environmental disaster that makes the Chernobyl accident look tame.

So today I am again calling on my colleagues in the Congress to pass my legislation. Now I realize that Congress is unlikely to do so before we adjourn early next month. But in my judgment, the problem is serious enough that we cannot afford to sit around and do nothing until a new Congress is sworn in next January.

Accordingly, I rise to introduce a Senate joint resolution urging Secretary of Energy to do five things.

First, to give environmental protection equal priority with weapons production at all DOE facilities.

Second, to provide for independent inspections of these facilities, focusing on the storage, treatment, and disposal of any mixed wastes at DOE sites. These inspections should be carried out by agencies of the States in which the plants are located.

Third, my joint resolution will urge the Secretary to provide for independent examination by the Nuclear Regulatory Commission of his Department's "Safety Analysis Review" of its nuclear plants.

And fourth, my joint resolution will ask the Secretary to provide Congress with a report detailing his Department's plans, milestones, and cost estimates for bringing these facilities into compliance with all applicable environmental laws.

Finally, and this is by far the most important point of all, my joint resolution will urge the President to include adequate funds for the cleanup of these sites in his 1988 budget. That budget is now in preparation—and the money necessary for cleanup should be included now—instead of forcing us to try and add it to the budget later.

There is no doubt that the cost of cleaning up these plants will be high. But the cost of doing nothing will be even higher. After all, what good does it do to protect ourselves from the Soviets by building nuclear weapons if we poison our own people in the process?

This is no time for tradeoffs. We must produce the nuclear weapons we need—but we must also protect the health of our people. And to protect their health, we must clean up these sites; not clean them up "if," not clean them up "but," and not clean them up "maybe" or "somebody." We must clean them up—period. And we should start today.

The text of the joint resolution follows:

S.J. Res. 421

Whereas serious deficiencies exist at many Department of Energy nuclear defense facilities with respect to protection of environment, safety, and health;

Whereas such deficiencies include failure to comply with applicable environmental laws, substantial contamination of ground water and soil with radioactive and hazardous substances, in some cases exceeding standards or background levels by thousands of times;

Whereas migration of such radioactive and hazardous materials has, in some cases, appeared off-site, and in other cases may eventually appear off-site;

Whereas human exposure to such radioactive and hazardous substances has been linked to adverse health effects;

Whereas the Department of Energy is currently regulating itself on the treatment and disposal of certain mixed wastes at its facilities;

Whereas the Department of Energy has no overall ground water and soil protection strategy;

Whereas there is no independent review, inspection, or oversight of Safety Analysis Reviews of Department of Energy nuclear facilities nor of its methods of treatment and disposal of mixed wastes;

Whereas the Secretary of Energy's recent initiatives for strengthening the environment, safety, and health protection functions of the Department of Energy are welcome, but do not include plans, milestones, and cost estimates for bringing Department of Energy defense facilities into compliance with all applicable environment laws; and

Whereas the General Accounting Office estimates that putting Department of Energy facilities into compliance with applicable environmental laws may cost over a billion dollars: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of the Congress that—

(1) in the absence of a national emergency, putting Department of Energy facilities into compliance with applicable environmental laws should be accorded priority at least equal to that of meeting production goals for nuclear materials and nuclear weapons;

(2) the President's fiscal year 1988 budget should include adequate funds for environmental cleanup at Department of Energy sites, in no case below the amount needed to put Department of Energy facilities in compliance with the Clean Water Act and final permits under the Resource Conservation and Recovery Act;

(3) pending clarification of the Resource Conservation and Recovery Act as to the regulatory responsibilities of Environmental Protection Agency for mixed waste at Department of Energy sites, the Department of Energy should provide for independent inspections by agencies of affected States of Department of Energy operations in regard to the treatment and disposal of any mixed waste that may be exempt from the Resource Conservation and Recovery Act regulation;

(4) the Department of Energy should provide for independent examination by the Nuclear Regulatory Commission of Safety Analysis Reviews of its nuclear facilities; and

(5) the Secretary of Energy should provide to the Congress as soon as practicable, a report containing plans, milestones, and cost estimates for bringing Department of Energy defense facilities into compliance with all applicable environmental laws.

AMENDMENT TO REFORM THE FREEDOM OF INFORMATION ACT

Mr. DENTON. Mr. President, I rise today in strong support of the amendment concerning reform to the Freedom of Information Act [FOIA] which my distinguished colleague from Vermont, Mr. Leahy and I introduced and which was agreed to by voice vote this past Saturday. The amendment will provide for the protection from disclosure of records related to foreign intelligence or counterintelligence and international terrorism.

On December 10, 1981, FBI Director William Webster testified before the Subcommittee on the Constitution of the Senate Judiciary Committee. He described in detail cases in which hostile foreign intelligence services, members of terrorist groups, and others have used the FOIA to identify FBI informants and frustrate FBI investigations. Judge Webster revealed that, as early as 1979 and for that year alone, there were 125 cases where individuals refused to provide the FBI with information because of fears that their names would be released under an FOIA request.

At a hearing on April 3, 1984, before the same subcommittee, W. Raymond Wannall, former Assistant Director of the FBI, noted that he had observed the debilitating effects on our national security of the 1974 amendments to the FOIA and the Privacy Act.

Similarly, the Drug Enforcement Administration has estimated that 14 percent of its investigations were adversely affected by FOIA related problems to the extent that the investigations were aborted, significantly compromised, reduced in scope, or required significant amounts of additional work.

I firmly believe that, in order to deal more effectively with foreign intelligence operatives and international terrorists who have become increasingly more sophisticated in their intelligence-gathering methods and who rejoice at the ease with which they are able to obtain sensitive information in our open, democratic society, we need to close the loopholes in the law that allow them access to information they should not have.

Moreover, we need to rectify the chilling effect that FOIA requests have on informants who fear exposure through information released under the act. Those informants have become increasingly hesitant about cooperating with our law enforcement agencies.

Finally, we should deal with the fact that, in some cases the response to a FOIA request amounts to an acknowledgement by the FBI that a file exists on a specific subject and alerts hostile intelligence services that an investigation is underway or has taken place.

Because of the need to act quickly to protect highly sensitive information gathered for foreign counterintelligence purposes, I joined with Senator Hatch in offering this much needed amendment.

The need for an FOIA exemption for information about foreign counterintelligence and international terrorism was recognized during the Carter administration, when then Attorney General Benjamin Civiletti proposed establishing a moratorium on access through the Freedom of Information Act to any records related to terrorism, organized crime, or foreign counterintelligence.

The need for the exemptions was also identified by the Reagan administration when it undertook its comprehensive review of the Freedom of Information Act during the 97th Congress. Provisions for the exemptions for foreign counterintelligence and international terrorism information were included in S. 1751, which was introduced by Senator Orrin Hatch of Utah, on behalf of the administration on October 20, 1981. Moreover, the Judiciary Subcommittee on the Constitution incorporated exemptions on foreign counterintelligence and international terrorism from S. 1751, the Freedom of Information Reform Act of 1981, into S. 1730, which Senator Hatch had introduced 2 weeks earlier.

After extensive hearings, the Subcommittee on the Constitution approved S. 1730 on December 14, 1981, including the exemptions for foreign counterintelligence and international terrorism information. During the course of seven hearings—three more, incidentally, than were held in 1965 when the FOIA was originally passed—the subcommittee heard testimony from more than 50 witnesses who represented nearly every conceivable viewpoint about the strengths and weaknesses of the act.

In the 98th Congress when Senator HATCH reintroduced S. 1751 and S. 774, but without the terrorism and foreign counterintelligence exemptions, I advised my colleagues on the Judiciary Committee that, although I would support S. 774 as a compromise measure, the Senate and House needed to act quickly to protect information gathered for foreign counterintelligence purposes. For that reason, I introduced S. 2395.

In the 99th Congress, Senator HATCH reintroduced S. 774 as the Freedom of Information Reform Act (S. 150), a bill that I cosponsored even though it lacks the necessary foreign counterintelligence and international terrorism exemptions. I therefore reintroduced S. 2395 as S. 276. The amendment adopted by the Senate on Saturday incorporates the concerns which I raised in S. 2395 and S. 276.

The time has come to stop what amounts to giving help to foreign intelligence services of hostile governments and international terrorists through provisions in a law that was never intended to be used for that purpose. I applaud my colleagues for supporting the amendment.

TRIBUTE TO DR. WILLIAM L. ROPER

Mr. HEFLIN. Mr. President, I am extremely proud to rise today to congratulate Dr. William L. Roper for his election as the first recipient of the Lloyd Noland Health Pioneer Award. The Lloyd Noland Foundation could not have made a more outstanding choice.

Dr. Roper has received an award named for public health and industrial pioneer Dr. Lloyd Noland, who fought tropical diseases in Panama during the building of the Panama Canal. The Tennessee Coal, Iron, and Railroad Co. [TCI] later recruited Dr. Noland to Jefferson County, AL, to use the concepts he had learned in Panama and apply them to what many have called the Nation's first major experiment in industrial medicine.

The Lloyd Noland Health Pioneer Award will be given annually to a recipient selected in one of the areas in which Lloyd Noland excelled—public health, industrial medicine, health education, wellness and preventive medicine, outpatient care, health maintenance organizations, surgery and diagnosis. Dr. Roper is well deserving of this award and has established a career that exemplifies the Lloyd Noland pioneering spirit.

Like Dr. Noland, Dr. Roper has made outstanding contributions to public health. Appointed in May of this year as Administrator of the Health Care Financing Administration [HCFA], Dr. Roper oversees the Medicare and Medicaid Programs which together provide health care financing for 54 million Americans. Dr. Roper has continually worked on the State and national level to provide and administer the best health care system possible. Today's medical challenges not only encompass identifying, curing, and controlling diseases but also the formulation of sound policy to deal with the access of health care and mechanisms of health care financing. Dr. William L. Roper has and will continue to make important contributions to the development of such policy.

A native of Birmingham, Dr. Roper graduated from the University of Alabama School of Medicine and also earned a master of public health degree from the University of Alabama at Birmingham School of Public Health. He is certified by both the American Board of Pediatrics and the American Board of Preventive Medicine. As an undergraduate Dr. Roper was named distinguished scholar in the College of Arts and Sciences and selected into Phi Beta Kappa. In medical school, he was named to the distinguished medical honorary Alpha Omega Alpha.

Before coming to his present position at the Health Care Financing Administration [HCFA] in the Department of Health and Human Services, Dr. Roper worked from 1977 until 1983 as county health officer for the Jefferson County Department of Health. He continued his career in Washington, DC, as a White House fellow assigned to the White House's Office of Policy Development and then became a special assistant to President Reagan for health policy.

This past May, President Reagan appointed Dr. Roper to head the Health Care Financing Administration. Dr. Roper has met this new challenge with a passion and energy that reminds me very much of the young physician, Dr. Lloyd Noland, who came to my home State of Alabama in 1913 to clean up the disease and sickness plaguing the workers of the South's industrial center—Birmingham, AL.

Mr. President, at this time, I would also like to share with my Senate colleagues the story behind this great man, Dr. Lloyd Noland.

As I stated earlier, Dr. Noland worked with Dr. William Crawford Gorgas to fight diseases in the Panama Canal Zone. As part of the American medical team, Dr. Noland established sanitation systems and utilized surgical procedures which saved many workers' lives. His contributions helped to make the canal project a success despite the epidemics of yellow fever and malaria.

Following his stint with Dr. Gorgas, the United States Steel Corp., the owner of TCI, recruited him to Fairfield, AL, just outside of Birmingham, to head its department of health. With the support of TCI, Noland established a progressive public health system and founded TCI Hospital which is today known as Lloyd Noland Hospital. Many considered Noland's hospital to be a model industrial health care facility when it opened in 1919.

Lloyd Noland became a well respected leader of the southern medical community and his hospital became a focal point. He became known as an excellent diagnostician, a compassionate human being, and a remarkable leader.

Noland worked tireless and countless hours to rid TCI's mining camps and company towns of disease and epidemic. Noland also performed breakthrough surgical procedures such as cesarean sections, ran a near infection-free operating room long before the advent of antibiotics, and created a system of neighborhood clinics to better serve patients and their families.

Although Lloyd Noland died in 1949, his pioneering spirit lives on today through the state of the art services and programs at Lloyd Noland Hospital. Under the leadership of only its third medical director, Dr. Leon C. Hamrick, Lloyd Noland Hospital remains as a focal point for the community through family care centers, elder care services, and leadership by its people in both State and national medical organizations. Just recently, Lloyd Noland Hospital's Administrator Gary M. Glasscock was cited as one of the Nation's 51 "leaders of the health care industry for the 21st century" by Hospitals, a magazine published by the American Hospital Association. This fine medical institution has and will continue to set a fine example for all other hospitals in providing high quality and affordable health care for all members of the community.

At this time I would also like to commend Anita Smith on a fine set of books that she has written and thoroughly researched entitled "The Lloyd Noland Story: The Boss and the Legacy." Ms. Smith has been author-in-residence at Lloyd Noland Hospital since 1984 when she was commissioned to write the books.

I would also like to recognize Charlotte Moakley of the University of Alabama Public Television Services who has produced an excellent documentary on Dr. Noland.

Again I give my warmest congratulations to Dr. Roper upon his selection to receive this most prestigious honor: the Lloyd Noland Pioneer Health Award. As Dr. Lloyd Noland, Dr. William L. Roper will leave a legacy for many to follow and will no doubt be remembered as one of the greatest medical heroes in America.

ECONOMIC GROWTH: THE DEVELOPING COUNTRIES

Mr. MATHIAS. Mr. President, a great quest is underway around the globe—a search born of the economic frustrations of the past decade and sustained by renewed determination to find ways to increase the rate of economic growth without reigniting the inflationary fires that have only recently, and rather incompletely, been brought under control. Most developing countries enjoyed strong, even spectacular, economic growth in the early 1970's, 6.2 percent on average in the decade from 1968 through 1977, but, sadly, they have been unable to sustain that growth in recent years. Industrial countries grew more slowly than developing countries in the 1960's and 1970's, 3.6 percent from 1968 through 1977, but a rate sufficient to restrain unemployment. Industrial countries, too, have had difficulty finding the key to sustained growth in the 1980's. Since 1977 there have been only 2 years in which industrial countries as a group have been able to match their average growth rate of the previous decade. Unemployment in most industrial countries is far above the levels prevailing in the 1970's. In Europe, in particular, unemployment rates have continued to rise, and averaged 11.2 percent in 1985.

The problems encountered when trying to achieve and sustain adequate economic growth have been so widespread and persistent, and the pattern of economic recovery so uneven, that our common search for better ways to manage our economies should lead us to reconsider some of the premises on which economic policies have sometimes been based. I wish to focus on two assumptions, one more commonly voiced in the larger countries, the other more frequently heard in the smaller or developing economies. The first: A country need only manage its own domestic economic affairs carefully in order to enjoy economic success—what happens outside its borders is of only marginal interest, or at least will not be much affected by what is done at home. The second: A small or developing country is swept along by currents beyond its control, and can only hope to shelter itself a bit from the force of external economic events—softening and smoothing the impacts from time to time.

My thesis, as you may already guess, is that both assumptions are wrong. Not only are they wrong, but they blind us, preventing us from seeing the way to the higher growth path we so urgently seek.

We are learning the lessons of interdependence, but slowly and painfully. The oil prices shocks of the 1970's taught the general public in the United States that economic events abroad could have a significant effect on the pocketbook of the average U.S. citizen. Currently there is great concern in the United States about the large trade deficit, which has featured not only increased competition for U.S. import-sensitive industries such as textiles, steel and autos, but also weak export performance in agriculture, capital equipment and high technology products—industries long considered to be among the strongest sectors in the U.S. economy.

The public reaction to the trade deficit, and in too many cases the public policy reaction as well, has not always been constructive. The strong temptation to erect new barriers to trade, instead of finding new ways to compete more successfully, has sometimes prevailed. We can all take some comfort from the fact that President Reagan's veto of a protectionist textile bill was sustained by the House of Representatives on August 6, but I fear that the issue is not closed. When Congress reconvenes in September there will be renewed calls for restrictive trade legislation.

We will not be able to overcome these recurrent threats without evidence of new movement toward a more open international trading system. Thus, the effort to launch a new round of GATT negotiations aimed at reducing trade barriers—an effort which will culminate next month at Punta del Este—is critical, in my opinion, if we are to avoid a new round of trade actions that could diminish economic growth in all countries.

I sense growing understanding in the United States and elsewhere that economic interdependence means not only that events abroad can have major consequences for every country, but that domestic actions can have a boomerang effect, returning—for better or worse—the economic impulse directed abroad. When the United States and other major countries began tightening monetary policy in late 1979 in order to curb inflation, there may have been insufficient appreciation that that action would tend to retard growth abroad, especially in the developing countries, as interest rates rose and the economic pull of industrial country markets slackened. And there was little understanding until quite recently that sharply diminished growth in developing countries could have a significant negative impact on the U.S. economy.

Now there is much greater awareness of the negative feedback on the U.S. economy arising from the difficulties developing countries have had in recent years. As developing countries began adjusting in 1982 and 1983 to the diminished availability of foreign capital and the high cost of servicing outstanding foreign debt by taking steps to increase their export competitiveness and discourage imports, trade balances between Latin American countries and the United States were dramatically reversed. The combined balance trade of indebted countries was transformed from a $50 billion deficit in 1982 to a $7 billion surplus in 1985. For the 15 heavily indebted countries mentioned in connection with Secretary of Treasury Baker's debt initiative, import volume fell by about 40 percent between 1981 and 1983. Despite modest increases in imports by those countries in the past 2 years, the United States still has very large bilateral trade deficits with most of them. The negative consequences for employment in U.S. tradable goods industries and agriculture appear to have been substantial, although tempered by strong growth in the economy as a whole.

Concern about the effects of shifts in trade patterns between the United States and developing countries has stimulated discussion of possible changes in U.S. economic policy that might contribute to better outcomes on both sides. The emphasis in the new thinking, as Secretary Baker emphasized in his address in Seoul last October at the annual meetings of the World Bank and International Monetary Fund, is on accelerating economic growth in the developing countries, coupled with continued and strengthened expansion in the industrial countries. Achieving those goals will require cooperative responses by many countries, developing and industrial.

The broad outline of the mutually reinforcing action that is needed is clear. In the United States we must reduce over time the huge Federal Government budget deficits that absorb so much of the rest of the world's savings as well as our own. As we make progress in constraining the budget deficit, expectations of inflation should diminish, bringing real interest rates down nearer the historical trend rate of 3 percent. At the same time we ought to be taking steps to make the U.S. economy more competitive—not by restricting competition at the border or internally, but by encouraging research, investment, and more open competition. We have been moving in this direction, but much remains to be done.

Another lesson of interdependence is that better economic policies in one country, even a country with an economy as large as that of the United

States, is not enough to sustain growth throughout the world. Other countries must act in ways that reinforce economic growth in an open world economy. Our trading partners in the rest of the industrial world have major responsibilities, too, not only to us and to the developing countries, but to themselves. They, too, can benefit from economic policies to strengthen economic growth, especially where there are opportunities to do so without serious risk of accelerating inflation. They could open their markets and reduce their subsidies to exports and to inefficient industries. The resulting savings could be used to reduce taxes and interest rates, which surely ought to contribute to faster, more sustainable economic growth. If they succeed in strengthening their own economies they will make it easier for the United States and the developing countries to succeed, too.

The question for the industrial countries is how to establish a "virtuous circle" of compatible, mutually supportive economic policies that will persist over time, resilient in the face of exogenous shifts in supply and demand of particular commodities, such as oil or wheat or steel, and so broadly attractive that all major political parties can support the necessary policies. The task is daunting. It may seem impossible, but some tentative steps have been taken. The agreement on exchange market intervention reached by the five industrial countries at the Plaza Hotel in New York in September 1985 represented an important advance in multilateral cooperation, and it has been extended and reinforced by the Tokyo summit agreement to establish important new mechanisms for international economic policy coordination.

The developing countries have a big stake in the success of policy coordination among the major industrial countries. Higher rates of economic growth and more open markets in industrial countries will have an important influence on growth in developing countries. The real prices of nonoil primary commodities, for example, might be expected to increase about 2 percent with each 1 percent increase in the rate of industrial country growth, at least in the short run.

But the powerful effects of industrial country growth on the prospects of developing countries does not mean that developing countries must passively await their fate. A rising tide will raise all boats, but those with leaky hulls will still sink. There is very strong empirical evidence that even small, trade dependent developing countries can greatly improve their economic performance by following sound economic policies.

The fact that developing countries have not all fared the same in the economic turbulence of recent years implies that differences in their own economic policies have had much to do with their performance. The debt crisis that spread in late 1982 did not engulf all developing countries. Some had avoided accumulation of large external debt on commercial terms—India, China. Others managed to maintain their creditworthiness despite large external indebtedness—Korea. Others began the process of adjustment early, and have been able to restore satisfactory rates of economic growth—Turkey, Brazil.

Other differences in growth performance are apparent, too. Fuel exporting countries have tended to move along a different track from nonfuel exporters. Asian developing countries have tended to grow more rapidly than developing countries in the Western Hemisphere for the past decade, and Western Hemisphere countries have—despite a generally unsatisfactory rate of growth of developing countries to the problem of debt servicing. The two problems are related, but far from identical.

Many proposals have been made for easing the burden of servicing external debt, and quite a few have already been put in place. From the earliest days of the Mexican debt crisis in 1982 it was apparent that current debt obligations could not be repaid as scheduled—some extension of time for repayment of principal would be necessary. Deferment of payments of principal on bank debt has become a common feature of agreements between indebted countries and their creditors. Total bank debt rescheduled since 1983 exceeds $160 billion. A large quantity of official debt has also been rescheduled. In a few cases—Ecuador, Yugoslavia, and Cote d'Ivoire—it has been possible to reach agreements to reschedule not only the current year's maturities but future years' as well. These multiyear rescheduling, or MYRA's, seem to hold promise for moving toward medium-term management of debt-servicing problems and avoiding the costs and disruption of annual negotiations.

A second feature of debt management has been the effort to reduce the interest rates and charges paid by borrowers. Nominal interest rates have declined substantially since 1983—4.5 percentage points on average, and, for a large share of commercial debt outstanding, are lower today than when the debt was contracted. Fees charged by banks, and margins over the cost of funds to banks, have also been reduced substantially from the levels prevalent in 1983.

A third characteristic of the approach that has been adopted to the debt problem has been the provision of new loans by the banks and international institutions, primarily the International Monetary Fund and World Bank. Commercial banks have disbursed $28 billion in additional loans in the context of financial packages negotiated with indebted countries. The IMF has provided $32 billion since mid-1982 to 72 developing countries; $13 billion of which went to Latin America.

Suggestions for more generous handling of debt problems are numerous. Argentina and other developing countries have put forward important proposals in meetings of the Cartagena Group, and the group of 24, and elsewhere. Prominent individuals and groups in the industrial countries have also presented ideas for alternative ways to handle the problem of indebtedness. Recently my colleague, Senator BILL BRADLEY, has called for further reduction of interest rates on bank debt—even below the cost of funds to the banks—and for a partial writing down of the face amount of loans held by banks. Others have urged greater attention to devising ways to facilitate the conversion of debt into equity.

Fascinating as these plans are—and I do not rule out the possibility that some of them may prove useful—they fall within the general pattern that has prevailed from the onset of the Mexican crisis. The goal is to manage the debt problem, not to solve it once and for all time. Indeed, the solution to the problem of debt is to dissolve the debt in a sustained surge of economic growth. The way in which the problem of external debt-servicing is handled in the short run is a factor in the growth equation, but it is not the only factor, and probably not the largest factor.

Developing countries recognize that they need to increase their rate of investment, but find it hard to do so when government expenditure and private capital outflows deplete the stock of available domestic capital. Capital is slippery stuff; it does not respond readily to the dictates of governments. Efforts to confine capital by using government controls or to redirect it with government subsidies have generally failed—in both industrial and developing countries. An empirical analysis prepared for the World Bank suggests that in appropriate domestic policies—in particular, overvalued exchange rates and financial policies leading to high and variable rates of inflation—are the prime causes of capital flight.

Market participants devise ways to move capital to the points where profits and security of investment are greatest. The challenge for government leaders is to devise policies that will attract capital, both domestic and foreign, without sacrificing other important public policy objectives, such as health, education, and safety.

What can governments do to create the conditions favorable to capital investment and economic growth? I think a careful review of experience in both industrial and developing countries would support the following points.

First, the stifling effects of public or private monopolies and oligopolies ought to be removed as much as possible, consistent with the public interest. This implies, among other things, that antitrust policy is as important as deregulation. Also, in many cases a balance must be struck between a public policy interest in restrained competition and the public interest in the economic efficiency to be gained from unrestrained competition.

In the United States we have had great difficulty striking this balance in the financial services sector. Commercial banks, securities firms, savings and loan associations, credit unions, finance companies, and other enterprises offering one or more financial services are subjected to be a bewildering array of regulation and supervision. The Government's interventions are intended primarily to protect the public from fraudulent practices and preserve the soundness of the financial system. Many of the governmental restraints adopted during the Great Depression of the 1930's are now being eroded by market innovations and the partial deregulatory measures adopted in recent years. I cannot predict the legislative outcome of the additional deregulatory proposals pending in the U.S. Congress, but the market momentum seems to be carrying us farther down the deregulation road.

Let me depart from my main theme for a moment to discuss deregulation.

In the United States, banking deregulation is but part of a larger process of deregulation taking place among a number of other financial institutions, such as savings and loan associations, or "thrift" institutions, as they are called; bank holding companies; insurance companies; and securities dealers. Financial deregulation does not mean an absence of regulation. Rather, it means a shift in the balance between marketplace forces and direct government regulation. Its effects are appearing in prices, products, and geographic arrangements for institutions offering financial services.

Deregulation in the United States has occurred as a result of market forces and also as a result of Government decisions to loosen controls over certain financial institutions. These institutions were finding themselves at a competitive disadvantage in the marketplace because of Government restrictions on their lines of business, maximum interest rates, reserve requirements, lending and deposit-taking, and geographic area of operation.

Technology is one driving force behind deregulation. Another is diversification into depository and lending services by a variety of American businesses ranging from major retailers such as Sears, Roebuck & Co., to consumer banking operations like American Express.

The technology affecting the provision of financial services includes computers with electronic money transfer capabilities that can move vast amounts of credits and debits across the country in the blink of an eye. It also includes automated teller machiners and computerized lending programs.

Diversification involves, among others, securities dealers who formerly dealt only with large public and private institutions. They recognized the enormous untapped market of funds available from individual consumers and created a "bundling" operation in the form of Money Market funds. These funds, which were regulated under the securities laws rather than the banking laws, were not limited as to the interest that could be paid on deposits. These funds offered higher interest rates to individual consumers than the traditional deposit-taking institutions—the banks and thrifts. They "bundled" large numbers of individual deposits into a large fund which then invested in short, medium, and long-term debt instruments of American companies, State and local governments, and some European companies.

Money market funds were first offered to the public in 1972. Merrill Lynch began in September of 1972 to offer a money fund with check writing privileges, a securities margin account, and a credit card.

Faced with this competition and drain on their deposits, the thrift institutions—the savings and loans; savings banks; and credit unions—sought to get out from under the interest rate ceilings imposed by the Government. But these institutions were not receiving a high enough rate of return on their loans, which also serve an important social purpose in the American economy.

The savings and loan institutions were federally chartered, insured, and regulated for the purpose of providing the principal source of home loans for U.S. consumers. More than 60 percent of American households own their own home.

The problem was that the home loan mortgage was for a period of 30 years. As inflation jacked up the costs of goods and services, the costs of doing business for these traditional sources of mortgage loans became very high. They were "lending long" for 30 years at relatively low-interest rates, 5 to 6 percent, while "borrowing short" with demand passbook savings accounts and other short-term deposit instruments of 1 to 5 years.

In June 1978, banks and thrift institutions began offering 6 month savings certificates with rates tied to the U.S. Treasury bill rate. Their goal was to stem the flow of deposits to the money markets mutual funds by offering a competitive interst rate. But the certificates of deposit met with consumer resistance from depositors used to having ready access to their funds through passbook savings accounts.

So the thrifts came to the U.S. Congress asking to be deregulated. They wanted to diversify their lending, shorten the terms of their loans, while gradually increasing the interest rates they were permitted to pay on deposits in order to attract deposits into their institutions again.

They were also feeling at a competitive disadvantage with bank holding companies, which hold controlling intersts in one or more commercial banks and engage in a number of businesses, such as: consumer lending; investment advice, providing bookkeeping and data processing services; underwriting credit, life, accident, and health insurance; sale of money orders and travelers checks; buying and selling gold and silver bullion; arranging equity financing of real estate; securities discount brokerage; operating a distressed savings and loan; engaging in commercial banking abroad; appraising and brokering nonresidential real estate. Bank holding companies number more than 6,000 today and control 92 percent of aggregate bank assets in the United States. They have grown substantially since 1971, when they numbered 1,567 and controlled 57 percent of aggregate bank assets. Historically, both the States and the Federal Government have sought to contain the geographic operation of bank holding companies within the individual States in which they are based. The public policy concern has long been to avoid undue concentration of deposits and, therefore, concentration of sources of credit; avoid unfair competition; and avoid risk associated with the merging of banking activities with other commercial activities.

The Great Depression of the 1930's spawned much of the regulatory framework operating in the United States today. The laws enacted then were intended to build a wall of separation between banking and commerce; to define and separate securities activities from the two; and to reserve to the States the regulation of insurance activities.

In March 1980, the Congress enacted the Depository Institutions and Monetary Control Act to phase out interest rate ceilings on deposits; permit thrifts to offer checking accounts; and expand thrifts' lending powers. Again in 1982, Congress passed another law to further expand the lending powers of thrift institutions, permitting them to invest in commercial paper. Within 3 months of the first offering of money market deposit accounts by banks and thrifts, customers had deposited $320.5 billion.

In the past 6 years, large bank holding companies, such as BankAmerica, and Prudential Insurance Co., have expanded across State lines by acquiring failing banks and thrifts, and have expanded their lines of business. Because of loopholes in the law governing bank holding companies, companies have avoided regulation and begun to establish nationwide lending, consumer credit operations, insurance sales, and mortgage lending.

The results of this deregulation and freer market have been mixed. Many smaller banks and thrifts have been acquired by larger institutions. While the number of savings and loan associations has declined, their assets and branches have increased. At the same time, competition to make home loans has increased among thrifts, banks, and other providers of financial services. The American consumer may well benefit from this competition in the form of lower mortgage interest rates. On the other hand, the traditional sources of credit for home loans, the thrifts, have diversified. The housing sector of the American economy, therefore, is at greater risk of being ignored by lenders should other types of loans produce greater returns in a shorter period of time.

The risk of a major bank failure may be heightened by this consolidation of institutions and lines of business. A record 85 banks have failed so far this year. However, this may only be a shakeout in the industry. Diversification of products and services by banks has strengthened the overall fabric of the financial system, making it better able to withstand the collapse of a major institution.

The experience in the State of Maryland with State-regulated and privately insured savings and loans is instructive, however, for the larger Federal financial system. In Maryland, a run on State-chartered savings and loans began in May of last year. It triggered a run on many of the 114 thrifts in Maryland with the result that all were told to join the Federal insurance and regulation system or go out of business.

Over time it became clear that a few large institutions had been mismanaged over time by their controlling stockholders. It included insider loans at favorable rates and investments in speculative real estate ventures both within and outside the State. It was also clear that State regulators had failed to enforce their own regulations.

Enforcement of existing regulations at the Federal level is an essential ingredient in ensuring that banks, thrifts, bank holding companies, and other financial services institutions minimize the level of risk to the overall system in this relatively new, partially deregulated environment.

Let me return to the subject of growth.

A second responsibility of governments is to reduce the uncertainty that arises from unanticipated changes in government policies affecting the economy. Economic growth is more likely when monetary and fiscal policies are not only prudent, but broadly predictable. On the fiscal policy side, there is little to commend in the record of the United States in recent years: We are now working on the third major tax bill since President Reagan took office, and the Federal budget process is less predictable now than it was before the Gramm-Rudman-Hollings law was adopted. If it were not for the steadying hand of Paul Volcker guiding monetary policy, I believe U.S. economic performance would have been much less favorable.

Third, governments can make a positive contribution to economic growth by supporting the development of human and physical infrastructure, if they do it in the right way. The closer we examine patterns of competitive success in industrial production, the clearer it becomes that a skilled and adaptive work force is a great boon to economic growth. Japan and Germany, have for example, educational systems geared to producing engineers, while in the United States, and in too many other countries, we produce an abundance of lawyers. Education for a growing economy calls for learning how to learn and relearn productive skills. Learning of this sort should replace learning how to survive inside stagnant, inefficient public and private institutions. Public investment in physical infrastructure can also help to spur economic growth, but not if it displaces private enterprise and yields massive, self-perpetuating public entities.

Fourth, governments can stimulate growth by opening their borders to the products, services, and capital foreigners are willing to supply. And there is no need to wait for other governments to move first or to offer reciprocal "concessions." Protected and coddled industries are notoriously inefficient. All too often they exact a tax from consumers in the form of overpriced goods and services and a tax from the general public in the form of inefficiency. I was pleased to note that President de la Madrid of Mexico addressed this problem in very similar terms in his remarks at the National Press Club in Washington earlier this month. Mexico and other developing countries are learning that they can help themselves by exposing public enterprises and private oligopolies to foreign competition. The economic record of countries with free trade policies is so much more favorable than that of closed economies that it is remarkable that more countries have not moved unilaterally to open their markets.

Stronger economic growth is within the grasp of the developing countries, and the industrial countries. The policies that encourage growth are not really very different for countries at different stages of economic development. Once adopted they can become mutually reinforcing. In short, we can make economic interdependence work for us by generating a "virtuous circle" of economic growth in a more open world economy.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

Mr. DOLE. Mr. President, as I understand it, the chairman is here and we are prepared to do business.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

The PRESIDING OFFICER. The clerk will report the continuing resolution.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes.

The Senate resumed consideration of the bill.

Pending: The excepted committee amendment, which reads as follows:

On page 7, strike line 7, through and including line 12, and insert the following:

(m) Such amounts as may be necessary for programs, projects, or activities at the rate for operations and to the extent and in the manner provided for in H.R. 5294, the Treasury, Postal Service, and General Government Appropriations Act, 1987, as reported to the Senate on August 14, 1986.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Oregon is recognized.

Mr. HATFIELD. I thank the Chair. Would the Chair indicate what amendment to the continuing resolution is the pending order?

The PRESIDING OFFICER. The committee amendment is now pending before the Senate.

Mr. HATFIELD. I thank the Chair. Let me indicate briefly what we might anticipate, since tonight at midnight the Government runs out of money and funding.

I found that that is no longer a great leverage to get action on a continuing resolution or appropriation bills in that increasingly it appears that some people feel that that might be the best thing for the sake of the Republic. But we still must continue to recognize that this committee and the Senate as a whole, as well as the House of Representatives, has, and each of us have, a responsibility to prevent this from happening.

In order to meet the reality of the fact we will not complete the CR here on the floor nor in conference by midnight tonight, September 30, in all probability this afternoon we will have action by the House of Representatives in forwarding to the Senate a brief, short-term continuing resolution. That may not seem quite as complex as it may appear on the surface.

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Let me suggest that there are some complexities in this that are not to be overlooked. First of all I do not know yet whether the House will give us a continuing resolution on a day-to-day basis or whether it will be one for approximately a week.

In some respects I guess I would welcome almost a day-by-day in order to keep the leverage here for action to complete the CR. But whatever the case, we will have to have a short-term extension on the funding of the Government.

What level of funding becomes an important part of that continuing resolution. If the House of Representatives follows its traditional pattern they will in all probability in that continuing resolution fund all of the agencies, and the accounts of Government at the current level, or at the House-acted level, at the House-reported level of the committee bill, or at the House-passed level of the committee appropriations bill whichever is the lower.

Again, I am going on the precedent set in previous situations similar to this. Let me emphasize again, because there are persons here who have great interests in the continuation of funding for certain programs in health, education, and welfare. There are others who have a keen interest in the continuation of what level of services in the field of military defense, and various and other sundry special concerns that Members have.

Again, I emphasize for whatever period of time that continuing resolution it will be at a given stated level of services, funding those levels of services at the current level in all probability or at the House-designated level through action of the House Appropriations Committee whichever is lower.

Therefore, each day delay in completing the appropriations work of the Congress means either those programs will struggle as many of them will, or they will find it difficult to maintain their commitments very long under current level if they are funded at a lesser level by the House action.

So bear in mind it is not just a simple matter of Government going on as business as usual under the delays that may be created by a failure of Congress to move the appropriations bills. Again, I emphasize the committee position under the comanagership of Senator STENNIS and myself have committed ourselves to resisting all amendments of extraneous character, especially those that are legislative in character, and which can create even further delays once we get to the conference.

It is our desire to resist all of those amendments that have a budgetary impact of increasing the spending level without appropriate offsets because again we face a point of order problem as well as our own desire to resist such amendments.

We are not operating under the same rules that we operated in the year and a half or 2 years ago. We are under additional set of rules set forth by the Gramm-Rudman budget amendment to the Budget Act.

So we must observe those additional rules, and procedures so that again I emphasize the point that we must move this continuing resolution.

At the current moment it appears that we are bogged down. First, we were restricted from beginning our activity on this bill today because of receiving the President's veto message, and what I feel to be an inordinate delay before we could reach some kind of an understanding of how we were going to handle that.

This afternoon, at around 2 o'clock, our process of appropriations is going to be interdicted again. This time it will be possibly 2 to 3 hours of interdiction because of the drug legislation. It is very important. But I merely want to indicate again every time we interdict the appropriations process we are pushing ourselves further and further into that never land of short-term extensions on levels of services that some of us would find very distasteful, whether we are looking at it from a military point of view or nonmilitary or whatever other point of view we may be looking at.

So let me urge my colleagues today to recognize that I believe both Senate luncheons of the caucuses of the Democratic Party and the Republican Party we are not recessing for, and, therefore, we will continue working right on through the noon hour. I am very hopeful that those who are engaged today in this pending committee amendment that is referred to as the beer issue can move quickly to resolve that, and at least have that kind of openness so that perhaps a compromise can be achieved at some point in order for this not to continue to be the order of business beyond a reasonable period of time.

I would like to yield to my colleague at this point, my comanager, the Senator from Mississippi and the ranking member of the full committee.

Mr. STENNIS addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. STENNIS. Mr. President, I thank the Senator for yielding to me, and for being recognized.

I was going to ask for time to say this: We have had a very fine analysis of the situation by the experienced operator in the field of committees and massive bills that he handles. He stated it mild enough and portrayed it for being easier than it really is because I have seen us get tied up here many times in reference to the likelihood of continuing resolution and its effectiveness and making it legal to carry on the Government.

Before yielding to that, entertaining delays with a lot of tolerance you get deeper into the mire without solving anything.

As the chairman correctly emphasized, we have had additional law now. It is a good law but it makes the situation like this more burdensome. So we are not going to have an operation of the Government. We are not going to get out of these holes that he has referred to, and we are not going to solve these problems until we concentrate on it more and just say that something must be moving. We have never failed to move forward once we have made up our minds.

I join with him in appealing for that cooperation. It is more serious than I realized myself, the way he outlined it. When we realize and it trickles through the membership here as to how serious these matters are, I believe they will respond. But if they do not, we will have to resort to something that looks like a willful act and it may be too severe.

I yield the floor, Mr. President.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, at an earlier point when the President pro tempore was here wishing to address himself to this issue, I think that he now knows that it is appropriate for him to be on the floor to speak to the issue, that he would want to come back for that purpose. I know he waited for a while.

Under the circumstances, I am about to suggest the absence of a quorum in order that we can determine whether or not he does indeed wish to speak at this point.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DENTON). Without objection, it is so ordered.

Mr. THURMOND. I thank the Chair.

THE BEER BILL

Mr. THURMOND. Mr. President, the Committee on the Appropriations has reported H.R. 5294, the fiscal year 1987 Treasury Department appropriation bill, with a very bad piece of antitrust legislation attached, which has nothing whatsoever to do with Treasury Department funding. This item has now been incorporated into the continuing resolution. This is simply an effort by an organized lobby to have anticonsumer legislation passed as a nongermane rider, and this misguided effort should be defeated. What is even worse, the provision in the appropriation bill is different from—and even worse than—a bill that was considered and passed by the Judiciary Committee; yet this provision circumvents the Judiciary Committee, and comes to the floor without consideration of the differences by the proper committee with the expertise.

I might say, Mr. President, that Senator GOLDWATER told me he originally introduced this bill but that he is opposed to it now, as it has been attached to the Treasury Department bill.

Mr. President, the Malt Beverage Interbrand Competition Act—also known as the "beer bill"—has been a source of great controversy, and it will generate lengthy debate. Legislation of such complexity and controversy should not be considered in the context of a spending bill. The continuing resolution, and indeed the Treasury Department appropriations bill, contains funding for many important agencies and functions, and it should not be unwisely tied up over a nongermane matter of this nature.

Mr. President, the language in question—the "beer bill"—is an antitrust measure which falls squarely within the jurisdiction of the Judiciary Committee. Specifically, it purports to clarify the circumstances under which exclusive territorial licenses to distribute and sell malt beverage products are not deemed unlawful. In fact, it confers unwise and unneeded special antitrust immunity on a single industry. This is a complicated and highly contested measure, which has been the subject of extensive hearings and debate in the Committee on the Judiciary. It has nothing to do with the funding of Federal agencies, and it is most inappropriate to fold it into an appropriations bill.

Mr. President, this measure provides that beer wholesalers who have a monopoly on a particular brand in a geographic area would not be governed by the antitrust standards that apply to other industries. Instead, they would be governed by their own, more permissive legal standard, which would make it easier for them to avoid competition and raise prices. Studies have shown that this measure will cost consumers millions and millions of dollars in higher prices—and those higher prices would be permitted because of a loss of competition.

There is no reason in the world for such special treatment, Mr. President, because the current law helps any beer wholesalers with procompetitive arrangements. The Supreme Court has made it clear that manufacturers' limitations on the territories in which their distributors may sell are not presumed to be illegal under the current antitrust laws. Rather, they are presumed to be legal unless proven to be unreasonable under a "rule of reason" analysis which takes into account relevant economic considerations, such as a manufacturer's reasons for using the restrictions. Therefore, any relevant arguments in favor of exclusive territories for beer wholesalers are already considered under current law. There is no need whatsoever for the beer industry to be governed by a special, more permissive standard. The only beneficiaries of such special treatment will be those businesses now engaged in truly anticompetitive and harmful arrangements.

Mr. President, I have expressed my strong opposition to the beer wholesaling legislation that was reported by the Judiciary Committee. The measure before us is even worse, because it does not even contain the saving clause or limitations contained in the reported bill. The reported bill contained a provision saying that these exclusive territorial arrangements cannot be used as a part of a conspiracy among competitors to fix prices or eliminate competition. The measure in the appropriation bill does not even contain such a limitation. The reported bill also contained an important provision saying that the bill would not invalidate any State law—this legislation does not even contain that limitation, which was an important consideration for at least some Senators on the Judiciary Committee. Now committee consideration of these significant differences is being avoided.

Mr. President, this beer wholesaling legislation is opposed by a long and impressive list of knowledgeable parties. The list of opponents includes the Consumer Federation of America, the Federal Trade Commission, the State attorneys general, the Consumers Union, the President's Consumer Affairs Adviser, the Justice Department, the National Association of Retail Druggists, the Food Marketing Institute, the American Bar Association, the National Association of Convenience Stores, and the U.S. Small Business Administration, as well as many retailers of malt beverages. The testimony of such diverse and well-informed witnesses attests to the adverse effects this bill would have on consumers, small business, and competition. This bill will not help small business. The Small Business Administration has expressed its strong opposition to the measure because it will deprive small distributors of the opportunity to grow through competition, and it will be detrimental to small retailers and to consumers.

Mr. President, I want to add my strong opposition to the impressive opposition I have just described. This measure is special-interest legislation, pure and simple. What's more, it is bad legislation. It is bad for the law, bad for competition, and bad for consumers. It should certainly never be approved as an attachment to a spending bill. It should be stricken from the bill immediately.

Mr. President, the Malt Beverage Interbrand Competition Act, S. 412, would make an industry-specific change in the legal standard to be applied to the use of exclusive distribution territories. Such a change would be highly undesirable because it would make it easier for beer distributors to protect local monopolies. At the very best, the bill is simply an unnecessary restatement of existing law. While the supporters claim on several occasions that S. 412 does not modify or is "not very different from" the current antitrust standard, much of the majority report clearly reveals that this bill is intended to establish significantly different treatment for one line of business—beer wholesaling. The majority report sets forth no case or reason for conferring such an extraordinary privilege on this industry; S. 412 is truly a bill without a need.

In order to understand why enactment of S. 412 would be a mistake, it is important to know what the current legal standard is and how it now applies to beer wholesaling. The current antitrust analysis of all agreements between suppliers and distributors—except those relating to resale prices—is governed by the Supreme Court's decision in *Continental T.V., Inc.* v. *GTE-Sylvania, Inc.*, 433 U.S. 36 (1977). In the GTE-Sylvania case, the court held that exclusive territories and other nonprice vertical restraints of trade are to be judged under the "rule of reason." That means, among other things, that such arrangements are not per se illegal, that is, deemed to be unreasonable without further inquiry. Instead, agreements between suppliers and distributors, or between wholesalers and retailers, which set nonprice conditions for the resale of products, are presumed to be lawful until it is proven that they unlawfully injure competition.

Even though, by definition, they restrain competition among distributors of the same brand to some degree, nonprice vertical agreements violate antitrust law only if their adverse effects outweigh their competitive benefits. In other words, only if it is determined that a vertical restraint has a net anticompetitive effect is the restraint unlawful, under the existing standard. Under existing rule-of-reason analysis, all economic factors affecting competition are examined in evaluating the competitive effects of vertical restraints, including the business justifications for the use of such restrictions. Significantly, one of the factors currently considered in the analysis of exclusive territories is the degree of competition that exists among the different manufacturers of different brands of products in the relevant market. In light of the broad scope of this analysis, there is no basis for the proponents of S. 412 to contend that the current rule-of-reason standard gives insufficient weight to proffered justifications for exclusive territories.

The operative provision of S. 412 would provide that nothing contained in any Federal antitrust law shall render unlawful exclusive territorial agreements in any written contract between a wholesale distributor and any brewer, importer, trademark owner, or trademark licensee of a trademarked malt beverage, so long as the malt beverages covered by such agreements are in "substantial and effective" competition with other malt beverage products within a defined geographic area. Since, as previously noted, the current rule of reason already takes account of the degree of competition facing the manufacturer who uses exclusive territories for distribution, the new standard contained in S. 412 is superfluous and unnecessary at best. If it is intended only to clarify the current law, the new standard would fail to do so because it would be no clearer than the current rule-of-reason test; it can only add uncertainty to antitrust analysis. Unfortunately, it appears that the real purpose of S. 412 is to do more than clarify the current standard; in fact, the committee rejected amendments that would have merely clarified that the rule of reason applies to beer distribution exclusive territories. Instead, the true purpose of the bill appears to be to grant the malt beverage industry an unjustified exemption from the antitrust laws and to make it extremely difficult to challenge successfully any territorial monopolies in beer wholesaling.

Since, under the current rule of reason, applicable to all industries, exclusive territorial restraints are lawful unless they are proven to be anticompetitive and injurious to consumers, we must ask why more lenient treatment is necessary and appropriate for restrictions in the malt beverage industry. Why is it desirable to alter the legal standard to legalize what currently fails that standard as anticompetitive and injurious to consumers? The only semblance of a case for enactment of S. 412 appearing in the majority report is that the bill would spare parties in the malt beverage industry the litigation expenses of defending the presumed legality of their territorial restrictions. The bill's proponents complain that the members of the beer wholesaling business must now "endure the uncertainty and confusion" about the rule-of-reason standard and at worst must "defend against meritless antitrust accusations." The committee report suggests that a large number of frivolous cases are tried under an unclear rule-of-reason test, but there is no such evidence in the legislative record of this bill. While the bill's supporters acknowledge that, under the rule of reason, the courts now look at such factors as market shares and competition among brands, they complain of the "side issues" that can arise in rule-of-reason litigation. The report alleges that the threat of suits under the current rule of reason actually chills interbrand competition. Yet the only suit cited in the beer wholesaling business was dismissed. The fact is that no legal standard can prevent suits from being filed. The real effect of S. 412, though, would be to make it almost impossible for private parties or antitrust enforcement agencies to prove that truly harmful exclusive territories violate antitrust law.

THE NEW STANDARD WOULD NOT CLARIFY THE LAW

Vertical restraints analysis would not be made any easier or clearer by substituting the new phrase, "substantial and effective competition." The interpretation and application of this new test in litigation would involve the same costs and the same, if not more, uncertainty as those incurred in the application of the current rule of reason. As a distinguished antitrust lawyer testified on behalf of the American Bar Association:

> No one knows what the new standard means. And it must be a new standard; otherwise the bill is unnecessary. (Testimony of Richard A. Whiting, Chairman of the Section of Antitrust Law of the American Bar Association, May 14, 1985).

The proponents claim to have struck upon a new bright-line test "for deciding whether the benefits of territorial restrictions will clearly outweigh any costs." In fact, this sounds like a restatement of the rule of reason. If this claimed jurisprudential improvement is in fact what S. 412 would accomplish, why is its application confined to beer wholesaling restrictions?

The answer is that, in reality, S. 412 sets up a special, more lenient standard of antitrust law only for members of the beer distribution business. According to the majority, under that standard, a "court would not be asked to measure the degree to which competition was enhanced or impaired by a restraint of trade, but only whether it, that is, competition, was present." In other words, instead of judging a restraint's effects on competition by the amount by which competition is reduced, under S. 412 the courts would be allowed to look only at how much competition is left. Arguably, this new standard could immunize all territorial restrictions except those imposed by a monopolist. While the exact meaning of the new standard is murky, it is clearly a deviation from current antitrust standards. As Mr. Whiting pointed out on behalf of the American Bar Association:

> It is probably not an exaggeration to say the legislation is designed to confer per se legality on exclusive territorial arrangements in the malt beverage industry. (Testimony of Richard A. Whiting, Chairman of Antitrust Law, May 14, 1985)

The only way that the new standard could save litigation costs is to omit from the current legal analysis one or more of the steps, factors or inquiries that are presently part of the rule-of-reason. By deleting those inquiries, the new standard would certainly not amount to recodification or clarification, but would amount to the creation of a more lenient analytical standard. Therefore, the new standard would probably reduce litigation costs only by changing the law to legalize restraints that would presently violate the antitrust laws.

S. 412 WOULD CONFER SPECIAL-INTEREST ANTITRUST IMMUNITY

Vertical restraints are lawful unless their anticompetitive effects outweigh their procompetitive effects. To confer a more lenient standard on certain vertical restraints in a particular industry would not amount to a clarification of law, but would constitute a grant of a special antitrust exemption for the industry. As the Department of Justice has pointed out, the special treatment conferred by S. 412 runs counter to the deregulatory trend in Congress to narrow existing antitrust immunities. Congress has preferred to rely more heavily on competition even in highly regulated industries. This trend is highly evident in the airline, trucking and rail industries and is currently taking place in the telecommunications and financial-institution industries.

> Establishment of an antitrust standard for the malt beverage industry different from that applicable to other industries would be inconsistent with this desirable trend. (Testimony of Charles F. Rule, Acting Assistant Attorney General, Antitrust Division, Department of Justice, May 14, 1985)

□ 1230

THERE IS NO REASON OR NEED FOR SPECIAL TREATMENT FOR THE BEER INDUSTRY

The malt beverage industry has offered, as support for this bill, several justifications for its use of exclusive territories. Even assuming that those justifications are valid, efficiency-enhancing reasons for imposing vertical restraints, they simply do not require the protection of new legislation. To reiterate what must be said often, the current antitrust standard already takes into account a supplier's reasons for imposing vertical restraints, and suppliers are permitted by law to set up distribution systems using such restraints if, on balance, the restraints promote competition or have a neutral net effect on competition. Accordingly, this legislation is not necessary.

It has been argued that this legislation is necessary to insure that the industry can curb "transshipment," which is the practice by wholesalers of reselling outside their assigned territories. It is further argued that this bill is necessary to insure that distributors adequately cover their territories in order to avoid the sale of stale beer, a practice that reflects adversely on a brewer's brand image. Yet these justifications are already cognizable under the rule-of-reason standard. If vertically-imposed restrictions on transshipment do in fact enhance competition among different brands of beer by insuring the proper servicing of sales areas and proper rotation of stock to avoid sales of stale beer, the antitrust laws unquestionably take into account those procompetitive justifications. The law simply does not prevent the supplier's adoption of reasonable restrictions for the purpose of insuring delivery of high-quality products. The witness from the Federal Trade Commission confirmed this point by indicating that the Commission has modified a series of orders over the past year specifically in order to permit sellers' imposition of restrictions on transshipments that are intended to enhance a seller's competitive position.

AN ANTITRUST EXEMPTION FOR THE MALT BEVERAGE INDUSTRY IS ESPECIALLY INAPPROPRIATE

A number of well-informed witnesses indicated that the malt beverage industry is not an industry deserving lenient antitrust treatment, but is an especially inappropriate recipient of a special antitrust exemption. Even though vertical restraints can produce procompetitive effects, witnesses from the Department of Justice and Federal Trade Commission pointed out ways in which vertical restraints can also produce net anticompetitive effects; they pointed out that many of the preconditions for such an outcome exist in the malt beverage industry. The Justice Department described three conditions under which exclusive territories can create a significant anticompetitive threat: High concentration in the manufacturing market; the use of the restraint to distribute a large percentage of the total sales of the product; and the absence of easy entry. As the Federal Trade Commission pointed out:

> The malt beverage industry exhibits the structure characteristics that increase the risk that exclusive territorial arrangements will be used in an anticompetitive manner. The brewing industry is quite highly concentrated. Four firm concentration in beer brewing increased at the national level from 45 percent in 1970 to 77.9 percent in 1983. Moreover, in most states, four firm concentration exceeds 80 percent. We also understand that wholesale concentration is high—perhaps higher than brewing concentration—though we do not have reliable data on the structure of the malt beverage wholesale distribution sector. (Virtually all brewers use exclusive territories; in many markets, different brewers use the same wholesaler.) Finally, we understand that the laws of many states create entry barriers that restrict entry into the wholesale distribution of malt beverages.

That is testimony of Walter T. Winslow, Deputy Director, Bureau of Competition, Federal Trade Commission, May 14, 1985.

It was pointed out that exclusive territories can, in some circumstances, facilitate collusion among competing manufacturers or distributors. If there are regulatory barriers to the creation of additional dealers, distributors may be able to use exclusive territorial franchising as part of a scheme to eliminate competition. If there is only one distributor, or very few distributors, in an area and the State establishes barriers to the establishment of additional dealers, eliminating competition from distributors in other areas by the use of exclusive territorial franchises may permit the distributor or distributors to charge monopoly prices without fear of additional competition. The probability of such anticompetitive conduct depends on the structural conditions of the industry in question. In an industry with a small number of competitors, high concentration, and high barriers to entry, the risk of successful collusion is enhanced.

Accordingly, the market characteristics that might permit vertical restraints to produce net anticompetitive results are found in the malt beverage industry. Yet this legislation, in illogical fashion, would render it more difficult for antitrust law enforcers to challenge monopolistic behavior in this industry than in other industries. The witness from the Consumer Federation of America predicted that this legislation would only extend lawful status to anticompetitive territorial restriction.

> Territorial restrictions which reduce competition will not meet the standards laid down by the Supreme Court in GTE-Sylvania. Thus, if the brewers and beer wholesalers foresee that their proposed system of distribution monopolies will raise prices and further concentrate the industry, then they must seek legislation—because their arrangement would not survive antitrust challenges in the federal courts.

That is testimony of Stephen Brobeck, executive director, Consumer Federation of America, May 14, 1985.

The proponents of S. 412 may point to section 3, the provision of the bill preserving challenges to the enforcement of exclusive territories by horizontal restraints, as a kind of antitrust "saving clause." As the distinguished witness representing the American Bar Association points out, however, section 3 of the bill does not provide antitrust enforcers with the proper statutory tool for attacking vertical restraints that yield anticompetitive consequences.

> It does not address the real concern with exclusive territories—that if used by firms with sufficient market share (whether or not enforced by horizontal agreements), they may facilitate collusion, permit the exercise of the market power, or otherwise foster anticompetitive behavior. The only effect of the bill can be to protect those systems which would not pass muster under the rule of reason. (Testimony of Richard A. Whiting, Chairman of the Section of Antitrust Law of the American Bar Association, May 14, 1985).

The only conclusion to be drawn from this record is that S. 412 is intended to do more than clarify the application of the current rule-of-reason standard to exclusive beer distribution territories. It is apparently intended to afford lenient treatment to arrangements in this industry that would be condemned as unreasonable and anticompetitive under the unquestionably flexible standard of law applicable to all other industries. For the reasons described above, the malt beverage industry is an especially unsuitable candidate for this special leniency.

CONDITIONS IN THE BEER INDUSTRY ARE SUBSTANTIALLY DIFFERENT FROM CONDITIONS LEADING TO SOFT DRINK LEGISLATION

The proponents of S. 412 argue that legislation similar to this bill was deemed appropriate for the soft drink industry and enacted into law in 1980. They further contend that the circumstances that warranted enactment of the soft drink measure exist in the malt beverage industry. However, the record and testimony before this committee belie such a claim. Indeed, the evidence compiled by the committee distinguished the malt beverage industry in several important and material respects from the soft drink industry as it existed at the time of enactment of the Soft Drink Interbrand Competition Act, 15 U.S.C. 3501-03 (1980). In fact, it is particularly significant that former Senator Birch Bayh, the author and principal Senate sponsor of the soft drink legislation, appeared before the committee to point out the distinguishing features of the soft drink and malt beverage industries.

His testimony warrants extensive quotation:

> To the extent that the suppporters of the Malt Beverage bill advocate its passage on the grounds that it "is just like the Soft Drink bill", I should note, with all respect for the good intentions of the supporters, that there are significant differences between the two industries and the circumstances which prompted Congressional consideration of the legislation. Specially:
>
> The structure of the two industries is different.
>
> The economic impact of the two industries' local facilities upon the various communities in which they are located is quite different.
>
> The Constitutional authority and precedent for regulating the two industries are different.
>
> The legal environment in which the malt beverage industry is operating today is much different than the legal environment which confronted the soft drink industry in 1980.
>
> Congress did not intend for the Soft Drink legislation to be utilized as a precedent for any subsequent legislation. (Testimony of Honorable Birch Bayh, Former United States Senator, October 2, 1985.)

An elaboration of these distinctions made by Senator Bayh would be instructive. First, with respect to the structure of the industries, there is a high degree of concentration in the malt beverage industry which has been described previously. While concentration in the soft drink industry is also relatively high, that industry is not characterized by governmentally imposed barriers to entry that could impede the marketplace solution of competitive problems. In the drink industry, the bottlers, who are also distributors, are engaged in production. The bottlers arguably need to be tightly controlled and to have their relatively expensive investments in plant and equipment protected from intrabrand competition. In the malt beverage industry, by contrast, wholesalers do not participate in production of the products. While the malt beverage wholesalers typically have investments in warehouses and trucks, their investments are generally smaller than those made by soft drink bottlers in plants and equipment. Because of these differences in production roles, local soft drink bottling facilities have a different economic impact on their communities than wholesalers, of malt beverages.

In addition, under the 21st amendment to the Constitution of the United States, the malt beverage industry is the subject of extensive State and local regulation and control which is not applicable to the soft drink industry. While additional antitrust law implications of this pervasive scheme of regulations will be discussed below, it is sufficient to note at this point that there is a distinct constitutional authority for regulation of alcoholic beverage markets that differs from anything applicable to the soft drink industry.

A particularly significant distinction between the soft drink bill and S. 412 is the difference in the legal environments of 1980 and today with respect to vertical restraints. Between 1963 and 1977, the analytical standard applicable to nonprice vertical restraints was changed no less than three times by the Supreme Court. In the few years after the GTE-Sylvania decision in 1977, there may well have been insignificant uncertainty about the legal test applicable to exclusive territories in the soft drink industry. No such uncertainty about the applicability of the rule of reason to exclusive territorial agreements in any industry exists today; there is simply no need for clarification. Neither are there any pending or recent antitrust cases that can be perceived or cited as jeopardizing the use of exclusive territories in the malt beverage industry. As Senator Bayh said:

> Indeed, as far as I know, there has been no successful private antitrust suit or proceeding of any kind against the malt beverage industry since before the GTE-Sylvania decision in 1977. (Testimony of Honorable Birch Bayh, p. 6, October 2, 1985).

Finally, in response to those who would cite the soft drink legislation as a reason for enactment of S. 412, former Senator Bayh testified that the 1980 legislation was considered unique, warranted only by the peculiar circumstances in the soft drink industry at that time, and never intended as a precedent for other industries.

□ 1250

STATE ACTION IMMUNITY

Even beyond these persuasive reasons, there is yet another reason why the Malt Beverage Interbrand Competition Act is at best superfluous and unnecessary. We mentioned that the distribution and sale of alcoholic beverages has been the responsibility of the States for many years. A majority of the States—27 at last count—have exercised that authority by adopting laws requiring that malt beverages be wholesaled through exclusive territories. The existence of these mandatory exclusive territory laws provides another reason to reject S. 412.

It is clear from the Supreme Court's recent decisions concerning the "State action" doctrine in antitrust law that the States have the power and the authority to immunize from Federal antitrust liability any persons who properly implement State beer-distribution policies. In *Parker* v. *Brown*, 317 U.S. 341 (1943), the Court refused to apply the Sherman Act to the anticompetitive conduct of a State acting through its legislature. In *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.*, 445 U.S. 97 (1980), the Court laid out a two-prong test for applying the State action exemption to private persons. In Midcal, the Court held that a private party is shielded by the State action exemption if it can show that it acted pursuant to a clearly articulated and affirmatively expressed State policy and that its conduct is actively supervised by the State. Therefore, where States require the use of exclusive territories for the distribution of malt beverages and meet the standards of Midcal—as they very likely do—the private parties whose conduct implements the State policies with respect to alcoholic beverage distribution enjoy State action immunity from Federal antitrust law. Thus, the States already possess the power to shield private parties from antitrust liability; whether the States exercise that authority is a matter correctly left to the States.

Where State legislatures mandate and supervise these exclusive territories, S. 412 would provide no incremental protection to the parties engaged in the conduct contemplated by the States. Where the States have not chosen to enact such laws or have remained neutral on the question, Federal antitrust law would be applicable to the use of exclusive territories; but as explained earlier, the antitrust standard applied to such restrictions is the rule of reason.

The proponents of S. 412 seem to suggest concern that State mandatory exclusive territory laws might be invalidated by the supremacy of Federal antitrust law. (See testimony of Marion Carnell, page 5, May 14, 1985.) Even that concern is groundless and cannot serve as a justification for this legislation. The Supreme Court has recently confirmed that a State statute can be invalidated by Federal antitrust law only if the statute on its face irreconcilably conflicts with Federal antitrust policy. Where a State statute permits or requires conduct by a private party that is subject to analysis under the rule of reason, the statute will not be invalidated. To put it another way, a State statute will be invalidated by conflict with Federal antitrust law only when the State statute requires private parties to act in a manner that is per se illegal under Federal antitrust law. *Rice* v. *Norman Williams Co.*, 458 U.S. 654 (1982). Since the use of exclusive territories is not per se illegal—but is judged by the rule of reason—it is highly unlikely that any State laws mandating exclusive beer distribution territories would be preempted or invalidated. The problem simply does not exist, and it is not even a colorable argument for enactment of this legislation. If the States see fit to act with respect to the use of exclusive territories for distribution of malt beverages, they have that authority under current law. This bill is at best an unnecessary and intrusive overcoating to the well-established principles of State-Federal relations that govern these matters.

HIGHER PRICES UNDER EXCLUSIVE TERRITORIES

While it is generally recognized, after the GTE-Sylvania decision, that the use of many vertical restraints—including exclusive territories—produces results that are procompetitive and beneficial, it is also recognized that in some circumstances the negative effects of vertical arrangements may outweigh the competition—enhancing effects. As we discussed earlier, the antitrust experts who testified before the committee expressed concern that the malt beverage industry exhibits some of the characteristics of markets in which exclusive territories might produce net anticompetitive effects. The evidence submitted to the committee substantiates this concern.

The movements of beer prices before and after the imposition of exclusive territories in some markets strongly suggest that the use of such restrictions can, and does, lead to higher prices. For example, the attorney general of New York submitted data collected from surveys conducted by the New York City Department of Consumer Affairs. Prior to 1983, exclusive territories were not employed by brewers in New York and wholesalers of beer were allowed to ship anywhere in the State, including to New York City. After the two leading brewers adopted exclusive territories in 1983, retail beer prices rose 35.7 percent compared with soft drink prices of 6.7 percent, the national Consumer Price Index [CPI] of 10.7 percent the New York City metropolitan retail CPI of 13.1 percent, the national CPI for food of 8.4 percent and the New York City regional CPI of 9.7 percent. While some of that price rise may have been attributable to the effect of a container deposit law enacted during the relevant period, the deposit law applied equally to soft drinks, the prices of which did not rise nearly as much as beer prices. The witness for the attorney general of New York testified as follows:

> The logical conclusion drawn by this office from these startling figures is that the grossly disproportionate 35.7 percent beer price increase in a 28 month period was due in large part to the effects of the exclusive territories adopted by Busch and Miller in 1983. (Letter from Lloyd Constantine, Assistant Attorney General, State of New York to Senator Strom Thurmond, May 30, 1985).

Mr. President, I want to repeat that sentence. This is New York State. The attorney general of New York State has testified. Here is what he said:

> The logical conclusion drawn by this office from these starting figures is that the grossly disproportionate 35.7 percent beer price increase in a 28-month period was due in large part of the effects of the exclusive territories adopted by Busch and Miller in 1983.

I think that is very clear. It raised the price of beer there by a disproportionate increase of 35.7 percent.

□ 1300

The Consumer Federation of America also provided information on the relationship between exclusive territories and beer prices. In Indiana, price reductions of 20 percent have been attributed to the advent of competition among distribution territories in the 1970's.—Testimony of Stephen Brobeck, executive director, Consumer Federation of America, May 14, 1985.

An illustration of the potential price-increasing effect of exclusive territories was provided by a South Carolina food retailer. He testified that his wholesale supplier of Budweiser charges him $11.20 per case. He knows of another wholesale distributor in South Carolina who has offered a price as low as $9.50 per case. He would like to be able to buy from that wholesaler but exclusive territories prevent him from purchasing from the lower priced supplier.—Testimony of James Reid Boylston III, Barnwell, SC., May 14, 1985.

In othere words, Mr. Boylston was saying to us, "When I sell beer, I want to be able to buy if from an agency in Columbia or buy it from any other agency, from whoever will give me a better price." Then he would pass the savings to his consumers when he purchases at a lower price. But he cannot do that when you have a controlled situation, when you have the regions controlled.

Of course, the Indiana, New York, and South Carolina examples do not lead to the conclusion that all exclusive territories result in harm to competition. To the contrary, exclusive territories are deemed to be lawful until it is proven that in particular circumstances they are producing net anticompetitive effects. However, the price information presented to the committee does demonstrate that the use of exclusive territories can have anticompetitive effects and that distribution monopolies must be examined on a case-by-case basis. The evidence also underscores the conclusion that there is no reason to confer special, more lenient treatment upon exclusive territories in the malt beverage industry.

THERE IS BROAD OPPOSITION TO S. 412

The list of opponents to this measure is long and impressive, and it should carry substantial weight in Senate consideration of this bill. It includes the Consumer Federation of America, the American Bar Association, the National Association of Attorneys General, the Department of Justice, the Federal Trade Commission, Public Citizen, Consumers Union, the President's Consumer Affairs Adviser, the National Association of Retail Druggists, the National Grocers Association, the National Small Business Administration, the Food Marketing Institute, the National Association of Convenience Stores, the National Licensed Beverage Association, and numerous retailers of malt beverages.

The testimony of these diverse and well-informed witnesses attests to and illustrates the adverse effects on consumers, small business and competition that enactment of this bill could facilitate. Their testimony also underscores the point that, even if the bill does not lead to potential negative effects on consumers and competition, it is simply and undeniably unnecessary. It adds nothing to the protection enjoyed by procompetitive or competitively-neutral exclusive territories under antitrust law. It only contributes extra protection to particular exclusive territorial agreements that are on balance anticompetitive.

SUMMARY

The malt beverage industry is asking for special treatment under antitrust law, yet no case has been made for this extraordinary grant of privileged status. Special antitrust status—even where a case has been made—has been only grudgingly conferred by Congress and the courts. Although numerous groups and industries would like to be exempted or treated differently in some way under antitrust law, Congress has repeatedly reaffirmed that the antitrust laws constitute a broad charter of economic freedom and has granted special status only in the most compelling circumstances. As the National Commission for the Review of Antitrust Laws and Procedures stated, special antitrust status should be conferred only "where there is compelling evidence of the unworkability of competition or a clearly paramount social purpose."

In this record, there is no shred of evidence that competition is unworkable in the malt beverage industry or that there is any overriding social policy that could be served by S. 412. Likewise, there is nothing to distinguish malt beverage distributors from the many other wholesale distributors of food and beverage products who all provide refrigeration, storage and transportation services. The case for special industry alteration of the antitrust laws to aid the malt beverage industry just does not exist. The bill, S. 412, is special interest legislation that is unwarranted and unwise. It threatens to lead to higher prices by immunizing the territorial monopolies of beer wholesalers from antitrust challenge. It is at best unnecesary, and at worst it undercuts the ability of antitrust enforcement to preserve the Nation's free market economy.

Mr. GOLDWATER. Mr. President, will the Senator yield for a question?

Mr. THURMOND. Mr. President, I would be very pleased to yield to the very able and distinguished Senator from Arizona.

Mr. GOLDWATER. Mr. President, as the Senator from South Carolina knows, I introduced this bill, along with others, several years ago. In looking through the calendar the other day, I happened to see my name on S. 412. Is that the bill the Senator is discussing?

Mr. THURMOND. That is correct.

Mr. GOLDWATER. That is correct.

Mr. THURMOND. I am discussing the bill now. S. 412 as originally introduced is a different bill than the one on the calendar now as you discussed with me some days ago, that you favor the original bill but you oppose this bill now as it has been modified in the committee.

Mr. GOLDWATER. That is what I wanted to have answered by my friend, because I did not know that this bill was even being considered. I asked my staff if they had agreed to changes and they said no, they had not even been talked to. I am glad the Senator has made that clear.

The measure you are discussing does not contain the provisions my original bill had. It is without those provisions.

Mr. THURMOND. That is correct. It is a different bill than the one originally introduced. I am very pleased that the distinguished Senator from Arizona has made that clear.

Mr. DeCONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

□ 1310

Mr. DeCONCINI. Mr. President, I thank the Chair.

I enjoyed listening to the distinguished President pro tempore, Senator THURMOND, discuss this bill, S. 412. Let me first assure my colleague from South Carolina as to the similarities in these bills. The only changes, I am advised, are quite minimal and I would add or subtract anything my senior colleague Mr. GOLDWATER, did not agree to. The intent of rewriting the Malt Beverage Act to attach it to continuing resolution was to make it conform in a more positive way. The provision that is in the continuing resolution shorten the language which highlights the intent of the bill that it affect only vertical restraints. So we are only talking down vertically.

The language of S. 412 before put in more explanations, but we did not change the affect on antitrust law. We reduced the surplusage by this streamlining language.

It omits some things and that is important to talk about. It shortens the definitions. For example, the definition of a State is not in this version but I think that is very clear, what the definition of a State is. The definition of malt beverage is very clear. Malt beverage is defined by the Federal Government and the regulatory agencies in all the States. So we did not repeat the definitions here.

The definition of antitrust law is a clear reference to the soft drink bill definition that definitions which is extremely clear and is the law today. So instead of spelling out the definition of the Sherman antitrust law and the other ones that were in the original bill, as my distinguished colleague will see, we made a reference to the soft drink bill which does spell all that out. It seems to me it is necessary to condense when you are doing a continuing resolution rather than substantive legislation.

So there was no intent of circumventing anything. Of course, my senior colleagues has the right to do whatever thing he prefers to do on this particular legislation.

There has been some concern expressed here at the necessary inclusion of some essential elements of S. 412, the Malt Beverage Interbrand Competition Act, in this continuing resolution. I would like to set the record straight on this matter and respond to some of those concerns.

Legislation similar to S. 412 has previously been introduced in both the 97th and 98th Congress. This issue has yet to get the Senate attention and the vote that it deserves on this floor. The traditional procedural process of the 99th Congress has been arduous and plagued by every obstacle and stall tactic that is conceivable.

Although a substantial majority of the Judiciary Committee supported this bill, it took many weeks and months before we were able to put the issue to a vote just in that committee. The opposition was unable to present a persuasive argument against the bill so it resorted to avoiding quorums and other tactics. I do not condemn these tactics because I certainly have participated in them. However, it certainly indicated to me that there was a feeling among its opponents that this bill ought not to be given a worthwhile hearing in the committee and should certainly not be given an opportunity to be debated and then voted on on the floor.

After the committee overwhelmingly approved S. 412, we were unable to get any commitment for floor time for months and months. I know this body is very busy and we have some horrendous problems to address, but this is legitimate legislation, as is any other bill that is reported from a committee. I think adding the provisions of S. 412 was the only workable solution that this Senator could come up with so we might get a vote on an issue that is important.

It is important. Just as the soft drink was important to the soft drink industry, this bill is important to the malt beverage industry. This important issue deserves to be resolved with a yes-or-no vote. Those who do not like it should debate it and explain their views and they would hope to convince people to vote against it. Those who feel this is an equitable approach obviously are going to support the bill.

This provision included in House Joint Resolution 738 will build upon previous congressional action in the soft drink industry in applying a clear and precise threshold standard to separate serious antitrust violations from costly and time-consuming nuisance suits. That may sound familiar, because those are words that were said right at this desk, I believe, in front of me, by Senator Bayh of Indiana 6 years ago, when he was promoting and managing a soft drink bill.

Let me remind my colleagues that only three Members of this body voted against that bill. This bill does exactly what was done in the soft drink industry.

This threshold test was recently embraced by the Supreme Court in Mastushita Electric Industrial versus Zenith Radio Corp., and is consistent with Federal antitrust laws and the Supreme Court's earlier ruling in Continental TV versus GTE Sylvania.

Let me state clearly and definitively that this provision will not result in any change whatsoever from the way malt beverages are presently distributed. There has been a lot of misinformation disseminated by the opponents of this provision.

Opponents say it is going to raise beer prices. That is ridiculous. That is what the opponents said when the soft drink bill was before this body. That has not happened. The prices have risen not nearly so fast since the malt beverage bill was passed.

This provision will not make it easier for beer distributors to protect monopolies or engage in unlawful activity. If a distributor or producer acts illegally, the full weight of antitrust law will continue to apply, even after this legislation is enacted.

In light of the cost of antitrust litigation and the burden it places on business and the courts, it is incumbent on Congress to take steps to eliminate frivolous suits. We should seek to limit antitrust actions to those cases where there is no substantial and effective competition.

This bill, like the soft drink bill, sets out a threshold. First, the court determines, "Is there substantial and effective competition in the geography area?" If there is not and the court says so, then the court moves on to the rule of reason. That is exactly what the soft drink legislation is all about.

Let me say, too, that this is a bill that has a lot of similarities and the industry has a lot of similarities with the soft drink industry. First, we are talking about small business here. We are not talking about the Anheuser Busches or the Miller Co. or Stroh's or Coors. We are talking about distributors who are not owned and operated by the breweries. These are small businessmen, usually family businesses. There are 4,500 of them across this country. They are not owned by the national breweries. These are small business people.

As a matter of fact, the average number of employees is between 30 and 40.

The Senator from South Carolina pointed out that we should not put this on the continuing resolution. Mr. President, let me just remind the Senator from South Carolina of some of the very important legislation attempts that have been made to put on continuing resolutions which he and I supported.

□ 1320

One was the McClure-Volkmer Act to bring some sanity to the gun control laws of this Nation, and the Senator voted to invoke cloture on it. It never got put on the bill because Senator McClure pulled it down. The busing bill is another one that attempts were made to put on a continuing resolution. Those examples demonstrate a few of the things that we have attempted to add. I have supported those efforts because I think it is important that these issues have an opportuity to be considered.

The same standards ought to apply here in my judgment as they would for any of these other issues. There is no reason we should have two standards.

People want us to believe that these are two industries—the malt beverage industry and soft drink industry—that are miles apart. Opponents say that there is no similarity to them; that they are completely different. That is just not the case. There are so many similarities to these industries. They have territorial franchises. Those are legal under the Sylvania case, but yet the rule of reason has promoted a tremendous number of lawsuits, just as the Federal Trade Commission ruling against territorial distribution agreements 6 years ago, in 1980, brought about a tremendous number of lawsuits.

Now, it is important to know, too, that there are numerous States which have laws that provide for territorial franchises. That means the States have enacted laws legitimizing territorial franchises. Why? Because they want to regulate this industry. They want to provide the capability of interbrand competition. That is Miller versus Coors, Miller versus Budweiser. That is what promotes lower prices and better consumer availability. Some of the States that have those laws include Arkansas, California, Georgia, Kansas, Kentucky, Illinois, Maine, Maryland. The list goes on: New Hampshire, North Carolina, North Dakota, Ohio, Oregon, South Carolina, Tennessee, West Virginia, and many others. There is only one State that prohibits it, only one State in the Nation prohibits these territorial franchises, and that is Indiana.

Now, why do these States require those territorial franchises? Well, you can speculate, but in my judgment they have them because of the fact that they work to promote competition among major brands, and it also makes it easier for the State liquor boards or liquor license control authorities to regulate the industry.

So, Mr. President, we have a bill here that is asking for parity, the same parity that this Congress, this Senate with the exception of three Members, voted for 6 years ago for the soft drink industry. And the arguments will be made, "Oh, this is different, don't believe it." It is the same bill, it is the same standard, and it is the same problem. Both bills are intended to screen out frivolous antitrust challenges. That is why we passed the soft drink bill, so you could continue to promote brands and competition among the brands. It has worked. You have not noticed soft drink costs go up. These industries are very, very similar.

Let me cite to you, in the soft drink industry, the five top so-called soda manufacturers are Coca-Cola, with 36 percent; Pepsi Cola, with 23 percent; 7-Up, with some 7 percent; Dr. Pepper, with 7; and R.J. Reynolds, with 4.7.

The five top breweries in this country are Anheuser-Busch, with 35; Miller with 20; Stroh's, with 13; G. Heileman, with 9; and Adolph Coors, with 7.25—very similar economics as to the competition between these main brands.

Both this bill and the soft drink legislation that we already enacted introduced the concept of substantial and effective competition. That is the threshold—whether or not you can proceed with your lawsuit claiming that there is some violation of antitrust. We are creating a threshold. That was the argument before the Judiciary Committee at the hearings, and that is how a majority of the Judiciary Committee concluded we ought to vote this bill out. It is fair and it is parity with the soft drink industry. Both industries are characterized by vigorous interbrand competition. Nobody is going to deny that the greatest competition that one sees in advertising is probably beer—even more than soft drinks. Both industries rely on distributing consumer products to a large number of outlets, all over—like I said, 4,500 of them. In the State of Ohio, there are over 150. And they are small businesses. As I said, when the Senator from Ohio was not here, they average 30, 40 employees. Both display certain insignias and consumer brand names and other promotional things that promote price competition. Market share is shifted within one geographic area depending on how competitive the market is. It is a fluid market that exists as we know. I do not say that as a pun, but beer is fluid, it is a fluid market where the consumer is buying the beer and where they are going to get the best price for it.

We hear the argument that, "Well, the soft drink industry is different, their quality control is different." Territorial areas are the same between the soft drink and the malt beverage industry. But let us look at quality control. It is true that in the soft drink business they actually mix the concoction there on the premises. They have a recipe that they read and follow and they have somebody come through from the major company, Coca-Cola or Pepsi-Cola, to test it and make sure they are following the formula. Then they have to package it and store it. Then they have to refrigerate it. Then they have to put it on trucks or on trains, and then they have to take it out to the distributors. Then they have to clean the shelves and they have to put the Coke and 7-Up on the shelves. Then they have to come back and see that the product has not stayed too long and take the product back if it has, and if there is any damage or returns they have to make them good.

What do the malt beverage people do? What do the beer people do? They do not mix it themselves. It is mixed and it is brought in under some very tight quality control restrictions. It has to be kept a certain temperature and it has to be brought to the wholesale distributor at that temperature and stored in a warehouse, then it is tested. And the national breweries, Budweiser or Coors, come around and they test, they go in and they see whether or not it is a clean warehouse, whether or not the temperature is kept right in the summertime and in the wintertime, and then the beer is packaged and put into crates. And then it is put onto trucks and trains and distributed through that territorial area. And when it is distributed it goes into the store, whether it is a 7-eleven, Circle K, Safeway, Walgreen's or a liquor store, or whoever is selling it. It is the same process as in the soft drink industry. Wholesalers they go in, they clear the shelves make sure they are clean, put the beer on the shelves and make sure that any old beer is taken back, thrown away, and if somebody complains they are there to see to the complaints. That is part of their agreement.

So what happens? You now have the malt beverage distributor of, say, Budweiser beer competing with the malt beverage distributor of, say, Miller's. They are in the same territorial area. What do they want? They want a larger share of the market. They want to make a profit. They have a good product to sell. They know it. It has national brand image and recognition, and they want to sell it here in their territorial franchises so they compete, and they have the right to cut the price if they want. They have the right to put up certain advertising if they want, and that is what they do. They also have the obligation as well as the right to be sure that product is kept in quality control and that it is displayed properly in the particular stores—exactly, exactly what is done in the soft drink industry—Pepsi-Cola and Coca-Cola—exactly how they compete.

□ 1330

They can cut the price, if they want to, in their local territory, and they still have the responsibility to present it to the public in an orderly and a clean and inviting way so they can sell. Why? Because they are in the business of making money, and they have a product, and the competition is fierce.

Mr. President, it is important that we proceed and get a vote. That is all we are asking for here. If this body no longer believes that the soft drink industry is entitled to this threshold—substantial, and effective competition standard before the rule of reason is applied—then we should vote on it. Perhaps we will vote it down. If that is the case, fine. Then I have misjudged what is fair for one industry to be applied to another. But I think we should proceed. We have a continuing resolution before the Senate. It is the last train moving before we leave, and it is very important that we pass the continuing resolution. It makes the Government work.

So the only thing right now that keeps us from passing it is the inability to vote on this committee amendment. What is this amendment? This committee amendment does not just contain the malt beverage bill. It also appropriates money for the IRS, for the Customs Service, for the major Treasury and Postal subsidies, and other very important Government agencies. We should pass it. It is very important that we proceed. Why can we not have a vote on this amendment? I do not know why we cannot move ahead and vote yes or no on this amendment. If the votes are not there, so be it.

Mr. METZENBAUM. Mr. President, will the Senator from Arizona yield for a question?

Mr. DECONCINI. I yield.

Mr. METZENBAUM. The Senator from Arizona, in whose integrity I have implicit faith, indicated that prices for soft drinks did not actually go up after the passage of similar legislation for the soft drink industry. Frankly, I have difficulty buying a bottle of pop these days for less than 50 cents, and in some cases 75 cents, and I remember when it was considerably lower than that, prior to the passage of the Soft Drink Act several years ago.

The Senator may have some statistics and some charts and some graphs. But I ask the Senator, as a colleague for whom I have a lot of respect, on a personal basis, does he not think that pop prices have gone up not just a little bit, but a whole lot?

Mr. DECONCINI. First of all, maybe the Senator did not hear what I said. I did not say prices have not gone up. I said prices have not gone up as great as before the soft drink bill was passed.

For 30 months prior to the passage of the soft drink legislation, soft drink prices rose on the consumer price index by 28 percent. For the 30-month period following the passage, as measured by the CPI, soft drink prices increased by only 10 percent. I never said that the price had not gone up. I said it had not gone up as fast as before. I stand by that.

Mr. METZENBAUM. How does that compare with the inflation rate that was the reality prior to passage and the inflation rate afterward? We have to relate soft drink prices not only to the passage of the act, but also to how it compares with the rest of the economy. It seems to me that since we passed the Soft Drink Act—when?

Mr. DECONCINI. 1980.

Mr. METZENBAUM. It seems to me that since 1980, they have gone up a lot more than 10 percent. Ten percent would be about a nickel on a bottle of pop. I do not think we were paying 45 cents a bottle in 1979 and paying 50 cents ever since. I have difficulty in fathoming that, and I wonder what further information the Senator might have available.

Mr. DECONCINI. If the Senator will look at the Consumer Price Index—maybe somebody moved the statistics—I cannot tell the Senator that I have checked them out, but I take them from the Commerce Department. The rate of increases in the soft drink prices slowed following the passage of the act. It does not mean inflation has nothing to do with it. Inflation has a lot to do with the CPI, and I am sure the distinguished Senator from Ohio knows that.

Mr. METZENBAUM. The provision in the Treasury bill goes further than the provisions of the bill that came out of the Judiciary Committee. My understanding is that the provision of the Treasury bill eliminates the prohibition against price fixing. Am I correct in that?

Mr. DECONCINI. No, the Senator is not correct on that.

As I explained when the Senator was not in the Chamber, this is a shortened version. It does not get into that at all. I would be happy to include the particular statement the Senator is talking about that was in the original bill.

The only reason this is changed is to make it conform to this continuing resolution. For example, the definition on antitrust laws is not spelled out in this continuing resolution, whereas it was in the bill the Senator opposed in the Judiciary Committee. The reason is that it makes reference to the Soft Drink Act, which spells out those definitions.

Mr. METZENBAUM. In the proposed act, as it came out of the committee, there was a section 3, and that section provided:

> Nothing in this act shall be construed to legalize the enforcement provisions described in section 2 of this act in any written contract described in that section by means of price-fixing agreements, horizontal restraints of trade, or group boycotts, if such agreements, restraints, or boycotts would otherwise be unlawful.

The only way I can read that is to indicate that the prohibition against that kind of price fixing and horizontal restraint as well as group boycotts is to say that, since it is out by implication, it means they would now be permitted.

Mr. DECONCINI. I think the Senator is aware of the difference between horizontal and vertical and the way the restraints are applied.

We are only talking about a vertical restraint here, and that is why the boycotts and the price fixing are not in there. I would be glad to put it in there. It was not necessary in the first bill, and it is not necessary in this bill. As the Senator knows, it does not apply to anything but a vertical antitrust.

To me, the answer to the Senator's question is very clear. It if made a difference on getting a vote on this, because I think we need to move on with the continuing resolution so that the chairman can take it to conference, I would be glad to put it in. It was not necessary in the Judiciary Committee, because this applies only for vertical antitrust, and I think the Senator knows that.

□ 1340

Mr. METZENBAUM. Well, I think it is horizontal. When two parties agree in the industry to set their prices would the Senator not consider that horizontal?

Mr. DECONCINI. If the Senator will yield, the horizontal would be if two dealers or two people agreed on the price. That is against the antitrust laws and still is if this bill passes, just like it still is against the antitrust laws in the soft drink industry.

This deals with the brewery, the manufacturer and then the wholesaler and distributor and then the retailer. This is what permits a different threshold as the Senator I think well knows.

Mr. METZENBAUM. The point is it would now permit that kind of horizontal agreement.

Mr. DeCONCINI. If the Senator will yield, that is not correct because the existing antitrust laws still apply to the horizontal antitrust provisions. So if anybody goes into that, this rule, the threshold of the substantial competition, does not apply to horizontal, never did, never intended to, and does not in the soft drink industry.

Mr. METZENBAUM. Why did you take it out?

Mr. DeCONCINI. We took it out because it was not necessary. As I said, we put it back in.

That is not what the Senator is really after. The Senator wants to stop us from voting on the continuing resolution and the amendment.

Mr. METZENBAUM. No. I want to stop this bill. Let us face it. The reason I want to stop it is that I do not think the people who buy beer in this country ought to be called upon to pay more for beer just because the beer distributors want to make more profits. This is not an ailing industry. This is a healthy industry.

The question really is, Why, under what circumstance, would anybody argue that you ought to be able to fix prices, join together to raise prices, eliminate a provision having to do with horizontal agreements to set prices?

I must confess I am just flabbergasted that we are even on the floor discussing this. This is so absurd that we should be debating on the floor of the Senate for more than 24 hours the right of people to increase the price for beer.

Come on. What are we talking about?

Then we also had a provision in the bill: "This act shall not invalidate or affect any provision of the laws of any State." That is out. You have taken that out, too.

So that means it can invalidate the laws of any State.

The Senator said something about the fact that——

Mr. DeCONCINI. Will the Senator yield for a question on that point?

Mr. METZENBAUM. Just let me finish my thought.

Mr. DeCONCINI. OK.

Mr. METZENBAUM. The Senator said that prices have not gone up when these provisions have been in effect. I have here experience of two States with such monopolies, New York and Indiana, where exclusive distribution for beer has meant higher prices for consumers.

That is the fact. Higher prices came into being after they provided for exclusive distributorships.

My whole question is what national purpose, what economic purpose, what logic, what reason would cause the Senate to be spending more than 24 hours trying to pass a continuing resolution so the Government may proceed because we are tied up on the question of putting into a Treasury appropriations bill a provision making it possible for people—making it not only possible, but probable, and entirely likely that they are going to have to pay more for their beer?

Mr. DeCONCINI. Mr. President, will the Senator yield?

Mr. METZENBAUM. I yield.

Mr. DeCONCINI. Let me say to the Senator I think he is aware that 49 States have these territorial laws now.

Mr. METZENBAUM. Why do we need more? Is the Senator worried about the one State?

Mr. DeCONCINI. The reason we need more is so it is not against the Federal antitrust laws to have a State law. That is why, as the Senator knows.

Second, he talked about the price increase. What does he do? He holds up New York. Indeed New York went up. And maybe one other State.

But in fact the CPI shows the price of soft drinks has gone down or did not accelerate as fast as it did before that bill. There is every reason to believe it is going to go up. Why did the price of New York go up? Because at the same time that that came into existence they put on a deposit.

Mr. METZENBAUM. I am talking about beer.

Mr. DeCONCINI. I am talking about beer, too.

Mr. METZENBAUM. The Senator said "soft drinks."

Mr. DeCONCINI. That is why the price has gone up, because of the deposit they put on there.

I think it is important when the Senator asks why are we raising the price of beer, we are not raising the price of beer. We are trying to assure that there is a maximum of interbrand competition.

What we want to do is the way the soft drink industry does today. What we want to do is keep those big boys from owning the distributorships all over the country.

That comes from Senator Bayh when he debated the Senator from Ohio on the same issue on the soft drink bill. And I might say the distinguished Senator from Ohio spent a great deal of time going over and over laboriously, I thought, keeping us here for a long time, just like he is here now.

Fortunately, in that case we finally got a bill passed that enhanced the market, and the price has not gone up as fast as it had before.

To me, that is a positive.

Yet here we cannot get to voting on it, just a vote—all this Senator wants is to just have a vote on the issue.

If the Senator is right, and I do not believe that he is, but if the Senator from Ohio is right, that people think this is going to raise prices, then Members out there are not going to vote to raise the beer prices. I can tell the Senator one thing. Politically no one in this body that I know is going to vote to raise beer prices.

Mr. METZENBAUM. Surely they will, if the beer PAC, the beer political action committee, is big enough.

Mr. DeCONCINI. Mr. President, do I still have the floor?

Mr. METZENBAUM. I do not think he does.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. DeCONCINI. I will be glad to yield in a moment to my good friend from Ohio.

I think it is important to know that people who are elected to the Senate are not out here trying to raise the price of beer. No. 1, that is foolish politically. No. 2, it is not necessary. We are not adding a tax to pay for defense or the drug bill or anything else.

We are talking about making sure that there is interbrand competition and that beer is widely distributed and the competitive nature of this business is similar to the soft drink business.

I think the Senator from Ohio knows that.

What the Senator from Ohio is trying to do is keep us from passing a continuing resolution.

Mr. METZENBAUM. Mr. President, I suggest the absence of quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1350

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

WATER PROJECTS.

Mr. GORTON. Mr. President, I have a colloquy, on a separate subject but part of this continuing resolution, in which I would like to engage the distinguished chairman of the Appropriations Committee that concerns two items with respect to the 1987 appropriations for water projects.

Mr. HATFIELD. I would be happy to respond to the Senator from Washington State in a colloquy at this point.

Mr. GORTON. Mr. President, both the Senate and House of Representatives included $750,000 to continue investigations to expand and deepen the East-West and Duwamish waterway for the Port of Seattle. Since that appropriation was recommended, the commissioners of the port have reevaluated the port's harbor development strategy and have concluded that, at this point in time, the Duwamish waterway should become the primary area for barge, bulk, chill, and breakbulk vessels. These types of vessels can safely use the existing channels. Therefore, the appropriation to study expanding the Duwamish waterway is not necessary. Mr. President, I ask unanimous consent that a letter from Port of Seattle requesting this funding be deleted from the 1987 appropriation be printed in the RECORD in its entirety at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

PORT OF SEATTLE,
September 3, 1986.

Hon. SLADE GORTON,
U.S. Senate,
Hart Senate Office Building,
Washington, DC.

DEAR SLADE: On August 12, the Port of Seattle Commission unanimously adopted the Harbor Development Strategy (HDS). The HDS includes changes in Port plans for the Duwamish Waterway and the order in which areas of the harbor will be developed for future container facility expansion. The HDS will guide Port of Seattle development to the year 2000.

The HDS was developed with considerable input and assistance by the Harbor Development Advisory Committee, a 27 member group of Seattle maritime, business, city and neighborhood leaders. The Advisory Committee worked on this strategy for over a year.

Of particular interest to you, because of the considerable effort you and other members of Congress have put into the subject, will be the strategy's recommendation that the Port not develop the Duwamish for container traffic. The Advisory Commission, Port staff, and the Port Commission do not believe that new, large container ships could safely navigate the Duwamish even after considerable widening and deepening. Moreover, the cost of developing the Duwamish for container terminals is prohibitive. For these reasons and others, the HDS recommends that the Duwamish should become the primary area for barge, bulk, chill and breakbulk vessels which can safely and economically use the existing channels.

The Port of Seattle and the local maritime community greatly appreciate your efforts to provide federal funding assistance for the Duwamish project. However, for the reasons stated above, current funding for this project is no longer necessary. Nonetheless, the Port would urge you to maintain the authorization for Duwamish development should circumstances change that would merit its reconsideration.

Please let my office know if you have any questions on the recently adopted Harbor Development Strategy. Thank you for your continued assistance.

Sincerely,

PAUL S. FRIEDLANDER,
President, Port Commission.

Mr. GORTON. Mr. President, the House of Representatives included $450,000 to study the replacement of the East 11th Street Bridge across the Blair waterway in the Port of Tacoma, WA. This project will deepen the Blair waterway from 35 feet to 45 feet below mean low water. It would also widen the channel bottom width to 300 feet to improve the access through the East 11th Street Bridge. In order to accomplish this, the bridge must be replaced.

The port is anxious to widen the channel to mitigate the serious safety problems that exist now because of the narrow span of the bridge. For example, on March 29, 1983, a freighter struck the bridge, unable to navigate the narrow channel, causing $200,000 in damages to the bridge and closing it for 1 month.

Widening the bridge is also a critical component of the future development of the port. Of the port's 2,400 acres, 1,000 acres are on the upper Blair waterway. This area cannot be developed until a deeper and wider channel can provide access. The bridge problem has already cost the port millions of dollars. Sea-Land, which recently moved to Tacoma, had to turn down a terminal site because its ships could not navigate through the narrow Blair waterway bridge.

Development of the port is critical to the State of Washington. International trade with Pacific rim countries through Pacific coast ports has grown dramatically over the last 10 years. It is estimated that 350,000 jobs in Washington, or 1 job out of every 5 in the State, are dependent on international trade. The payroll for Washington State residents in trade-related fields exceeds $6 billion annually. The development at the Port of Tacoma will facilitate increasing international trade.

I would like to ascertain whether, during the conference on the continuing resolution, it would be possible to delete the funding already appropriated for the Duwamish waterway project and reallocate $450,000 of that amount for the Blair Sitcum project in Tacoma, WA? The net effect of this request will be to save the Government $300,000, and I would hope this redistribution of the appropriated funds could be achieved in conference.

Mr. HATFIELD. Mr. President, first of all, I would like to thank my distinguished colleague from Washington State for bringing this very important matter to our attention. I want to ensure my colleague, Senator GORTON, that I will do everything I can to accommodate his request in conference with the House of Representatives. I do not anticipate that there will be any great problems in fully funding the Blair Sitcum project. I also appreciate very much knowing the fact that the funding will not be needed for the Duwamish project and, therefore, it adds a greater degree of a possibility of accomplishing the project for the Senator.

Mr. GORTON. I thank my distinguished colleague, the Senator from Oregon.

I would also like to discuss one other concern with my colleague from Oregon. I had thought of offering an amendment to continuing resolution that would earmark $456,000 for the Federal share of a small beach erosion control project in Seattle, WA. This amendment does not involve additional money. Rather, it would direct that the project be funded through existing section 103 funds.

The city of Seattle owns 130 acres on William's Point in Puget Sound. Approximately 1 mile of shoreline along William's Point, also owned by the city, is protected by a concrete and cobblestone seawall. Severe winter storms in November 1981 seriously damaged this seawall, breaking 80 to 90 feet of the seawall into several sections and moving them seaward. The city of Seattle is in great danger of losing both the seawall and the city's property, including an important metro utility line, due to severe beach erosion and damage to the seawall. These storms also breached or undermined the seawall causing cavitation of the city sidewalk adjacent to the seawall. Emergency repair work consisting of filling the cavities with crushed rock has been a stopgap measure at best.

A study conducted in 1982 by engineers for the city and the Army Corps of Engineers concluded that without effective long-term erosion protection measures, the southwest beach and the seawall at William's Point will continue to fail, resulting in the permanent loss of the city's property. The city can no longer risk the destruction to its property that would result from continued exposure to winter storms. The project will add beach fill to the eroded beach to approximate the original configuration of the shoreline. This will eliminate the erosive action of the water on the seawall.

□ 1400

Mr. HATFIELD. Again, I appreciate the fact that the Senator from Washington State has brought this to our attention, and I want to assure him that I will do my very best in conference to accommodate him, and I believe we can. The House and Senate have each appropriated a different level of funding for the small projects account, and therefore I think we can accommodate the Senator's request. I will do everything possible to do so.

I am very grateful for the Senator bringing this to my attention.

Mr. GORTON. I want to thank the distinguished chairman of the Appropriations Committee for his typical graciousness in considering this request, and I will not offer my amendment given the Senator from Oregon's assurances that this project will be taken care of in conference. It is important that the funding for this project be assured so that the construction can begin on the Lincoln Park project as soon as possible.

Mr. President, I yield the floor.

OMNIBUS DRUG ENFORCEMENT, EDUCATION, AND CONTROL ACT

The PRESIDING OFFICER. Under the previous order, the hour of 2 p.m. having arrived, the Senate will resume consideration of the drug bill, H.R. 5484, which the clerk will report.

The bill clerk read as follows:

> A bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.

The Senate resumed consideration of the bill.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I ask unanimous consent that I may speak for 1 minute.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

REAGAN-GORBACHEV SUMMIT

Mr. PELL. Mr. President, I am delighted that a presummit meeting will be held between President Reagan and General Secretary Gorbachev.

This is the opportunity to lay the groundwork for a substantive and meaningful arms control agreement at the summit meeting.

If both leaders are willing, they can prepare agreements that would limit testing and reduce intermediate range missiles in Europe. Both these steps are very important for our security.

Even more important in the long haul is the question of the reduction of strategic defensive arms. This will have to be discussed along with what limitations there should be on the strategic defense initiative, the so-called star wars.

The summit should seek to resolve the impasse in strategic offensive and defensive arms as well as the impasse on intermediate range nuclear missiles.

I wish President Reagan and Secretary Gorbachev well.

I also congratulate President Reagan on his handling of the Daniloff affair. He worked it out, kept his cool, and brought Daniloff back home. He deserves a "well done."

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

□ 1420

Mr. BURDICK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Helms). Without objection, it is so ordered.

Mr. BURDICK. I ask unanimous consent that I may speak for 2 minutes as if in morning business at the moment.

The PRESIDING OFFICER. Is there objection? The Chair hears none. The able Senator may proceed.

THE DAKOTA MAVERICK

Mr. BURDICK. Mr. President, Bill Langer would have been 100 years old today. He was a friend of my father, Usher L. Burdick, who served North Dakota in the House of Representatives for 20 years. Both men were members of the Nonpartisan League, a unique political organization that held power in North Dakota for many years. The two men constituted power blocs in North Dakota politics, with one in Congress and the other in the Governor's chair and ultimately in the U.S. Senate.

I would like to express my admiration and respect for the late William Langer, better known as "Wild Bill Langer," on his 100th birthday. A few in this body may share the memories of this maverick in American politics, for his career was turbulent and colorful.

Langer was not the ordinary politician. He loved politics and played to win. Of course, his free-swinging style made enemies, which he was to meet and defeat.

The first attack he was to face during his term as Governor of North Dakota was the charge that he conspired to defraud the U.S. Government by taking "kickbacks" from employees who were paid in part by Federal funds. He was convicted but later exonerated. He was removed from office but returned to the Governorship 3 years later.

The next crisis he was to face came in 1940 after his election to the U.S. Senate. His political enemies did not relent in their opposition after his victory, and challenged his right to be seated in the U.S. Senate, charging him with moral turpitude and recalling all the events that had transpired during his political life. His colleagues in the Senate chose to disregard the charges and he was duly seated as the rightful Senator from North Dakota.

Although Langer was backed and supported by the Nonpartisan League, his candidacy was filed in the Republican column at that time. In 1958, the Republican Party refused to endorse Langer for reelection to the Senate. My father was not endorsed at that convention either and decided not to run for reelection.

Langer did run, and he went on to win the primary election and the general election and return to the Senate. I was endorsed for the congressional seat that year by the New Democratic-NPL Party, and went on to become the first Democratic Congressman in the history of the State.

Although plagued with ill health, Langer was a big winner in that 1958 election. It was to be his last, for he died in late 1959. On January 6, 1960, tributes were placed in the Congressional Record from many, including Senators Lyndon B. Johnson, Mike Mansfield, Everett Dirksen, Milton Young, and 33 other colleagues. The Langer years were over, and the maverick had been laid to rest.

I succeeded Langer in a special election in 1960. Many of us will never forget him. He was always fighting for the "underdog," denouncing the "cringing mongrel servants of the plutocrats," with the rhetoric the people of North Dakota understood. Bill Langer's life made a colorful picture in the history of North Dakota—hated by some, loved by others, but never forgotten.

THE 100TH ANNIVERSARY OF THE BIRTH OF SENATOR WILLIAM LANGER

Mr. ANDREWS. Mr. President, when Senator William Langer died in 1959, the Washington Post wrote of him:

> The veteran voice of North Dakota in the U.S. Senate who died yesterday, may have entitled himself handsdown to a history-book designation as the greatest political maverick of them all.

Today is the centennial of his birth in 1886, and I want to honor this true son of North Dakota whose unyielding belief in honest representation earned him the label "maverick of mavericks."

As a testimonial to his political genius, "Wild Bill" Langer managed simultaneously to attract controversy and convert it into political energy. North Dakotans grew accustomed to a recurring syndrome known as "They're after Langer again." As the strong-minded and strong-willed independent representative that he was, Bill Langer was often hounded by those who felt threatened by his populist philosophy. Much to the consternation of his opponents and to non-

North Dakotans, our State understood him, respected him, and took great pride in him. Perhaps that was partially due to the fact that there never was a problem too small for his attention.

After serving as Governor, he was elected to the U.S. Senate in 1940. He served 19 years in the Senate where his dedication to serving the best interests of his people, his North Dakotans, always took precedence.

Bill Langer seemed to confound his adversaries with an uwavering commitment to North Dakotans by never forgetting where he was from or whom he was representing. As North Dakota approaches its own centennial in 1989, we salute the centennial of the birth of one of our favorite sons, Senator William Langer.

Mr. BURDICK. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1430

Mr. SASSER. Mr. President, I ask that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair advises the Senator that save by unanimous consent he cannot address the Senate unless he is offering an amendment, which is stipulated on page 2 of the calendar.

Mr. SASSER. Mr. President, I ask unanimous consent that I be allowed to speak on the Antidrug Abuse Act for a period not to exceed 8 minutes.

The PRESIDING OFFICER. Very well. Is there objection? The Chair hears none, and the Senator from Tennessee is recognized.

Mr. SASSER. I thank the Chair.

OMNIBUS DRUG ENFORCEMENT EDUCATION, AND CONTROL ACT

Mr. SASSER. Mr. President, I add my voice this afternoon to those supporting this important piece of legislation known as the Antidrug Abuse Act.

Those of us on the democratic working group on drug abuse know that a lot of hard work has gone into this bill. I know my colleagues realize the time and care that went into drafting this package. It represents a consensus of the best strategies for attacking the grave problems of drugs in our society. It is a bipartisan effort and it provides a framework on which most Senators can agree.

With passage of this bill, we are taking a major step in the battle against drugs. For the first time, we are addressing the whole drug problem—and we are urging a new approach to this problem that has been with us much too long. We know that a piecemeal approach simply will not work. We simply cannot afford a piece-by-piece or bill-by-bill attack on drugs and drug abuse in our society. We need this type of comprehensive approach which addresses each part of the drug problem.

I am very pleased that this bill contains sections focusing on particular concerns that I have voiced in the past. For instance, we provide for a cooperative study by Federal, State, and local law enforcement officials of Federal drug enforcement efforts. They are required to report their recommendations on enforcement and interdiction to Congress within 6 months of the passage of this act.

This study gives us the opportunity to develop strategies for interdiction in inland States. And there is the expectation on this Senator's part that the study that is authorized in this act will take a look at the problem of inland interdiction, for the flow of drugs to inland States threatens to become a virtual flood without increased inland interdiction efforts. We know that only a fraction of smuggled drugs are intercepted at the border. We need to turn our attention to the bulk of the drugs that avoid that initial dragnet. That means increased attention to drug trafficking in States in the interior of the United States.

Let me give an example. My native State of Tennessee is within easy range of aircraft commonly used by drug smugglers flying from South America. It contains many small rural airports and airstrips that are particularly vulnerable to use by drug smugglers. Law enforcement officials in my State have identified over 30 small rural airports that need additional surveillance. The modus operandi of these drug smugglers using these small airports in inland States is to select one in a rural area, come in at night, perhaps arrange to have the landing lights left on when the operator of the airstrip goes home in the evening.

The aircraft lands, there is a quick unloading, and it is gone. Or now they have perfected the technique where the aircraft does not even land. It simply does what is known as a touch and go, rolling down the airstrip, the bags of drugs are thrown off, and the aircraft is gone in a matter of seconds.

These airports and airstrips are a particular problem. As I indicated earlier, many are operated only in the daytime. At night they are unattended and they are unmonitored. They can be marked simply by automobile headlights being left on at one end of the airstrip and the other just to mark both ends. And a skilled drug smuggler can land his aircraft with just that type of illumination at night. They are perfect landing sites for drug smugglers, and what we are seeing is smugglers flying over Florida and even over Georgia as efforts to interdict drugs have intensified there, landing in the eastern part of Tennessee and drugs actually being moved by automobile back down to the markets in Florida.

Second, throughout the education, prevention, and treatment actions of this bill we ensure that there will be a broad community involvement in the development of these programs. As I have talked to the people in my State who are involved in drug abuse treatment and prevention, they have continuously stressed to me the need to involve all parts of the community if a program is to have any hope of success in dealing with drug abuse and drug treatment.

In addition to these important matters, the bill increases the penalties for drug crimes. It also includes crack as a schedule I drug—that is those that have no medical value. That is where crack belongs. It is as dangerous as any drug on the street and more addictive than almost all of them. The bill also provides assistance to State and local law enforcement agencies, and it provides increased resources for Federal agencies and the military to fight drug smuggling.

On the other side of the equation—that is, what to do to prevent the use of drugs—we provide grants for drug education, treatment, and prevention. We simply must convince our people—especially our young people—to avoid drugs. This portion of the bill will provide the resources so desperately needed by our schools and community groups to provide education and treatment. We also increase funding for the regional training centers so that they may provide training and materials to teachers and school administrators.

So, Mr. President, what we have put together here is a comprehensive bill that gives us a real chance to make headway in our ongoing battle against this poison that is sapping the very vitality of our society. I am pleased that we have taken this step, and again I commend the efforts of all those who have helped draft this legislation.

Mr. President, I would suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1440

Mr. EVANS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EVANS. Mr. President, I ask unanimous consent to speak as in executive session.

The PRESIDING OFFICER. Without objection, it is so ordered.

REMOVAL OF INJUNCTION OF SECRECY—TREATY WITH ICELAND TO FACILITATE THEIR DEFENSE RELATIONSHIP

Mr. EVANS. Mr. President, I ask unanimous consent that the injunction of secrecy be removed from a Treaty between the United States and Iceland to Facilitate their Defense Relationship—Treaty Document No. 99-31—transmitted to the Senate today by the President of the United States.

I also ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message from the President follows:

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratificiation, I transmit herewith the Treaty between the United States of America and the Republic of Iceland to Facilitate their Defense Relationship, with related Memorandum of Understanding, signed at New York on September 24, 1986. I transmit also, for the information of the Senate, the report of the Department of State with respect to this Treaty.

Iceland is a vital United States ally that provides defense facilities of strategic importance to the defense of the United States and NATO. Recently, a troublesome issue has arisen concerning the transportation of cargoes to the base in Iceland, an issue that could impair the critical United States-Iceland defense relationship. Although for approximately 14 years such cargoes had been transported exclusively by Icelandic shipping companies, under U.S. cargo preference laws they have more recently been carried primarily by a United States carrier, which entered the trade in 1984. The Government of Iceland has taken the position that because Iceland's economy and security depend upon its shipping lines, and because of our mutual defense interests, Icelandic lines should have the opportunity to compete for participation in this trade. Iceland's serious concern about this defense issue has been expressed at the highest levels. This Treaty will resolve this matter and will further the cooperation of the United States and Iceland in essential areas of defense.

The Treaty provides an exception to inconsistent cargo preference law with regard to transportation of cargoes shipped between the United States and Iceland for purposes of the 1951 United States-Iceland Defense Agreement. Under the Treaty, transportation of such cargoes shall be provided by vessels of the United States and vessels operated by Icelandic shipping companies on the basis of competition pursuant to the Treaty. Any such competition is to result in contract awards that ensure that both United States flag carriers and Icelandic shipping companies are able to maintain a viable presence in the trade. The related Memorandum of Understanding provides for implementing arrangements necessary to ensure achievement of these objectives.

Because of the unique circumstances involved, this Treaty does not represent a change in the Administration's general policy concerning cargo preference or a precedent for other agreements.

In view of the important national security interests furthered by this Treaty, I recommend that the Senate consider this Treaty as soon as possible, and give its advice and consent to ratification of the Treaty, with related Memorandum of Understanding, during this session.

Ronald Reagan.

The White House, *September 30, 1986.*

Mr. EVANS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DeCONCINI. Mr. President, I ask unanimous consent that the order for quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS DRUG ENFORCEMENT, EDUCATION, AND CONTROL ACT

The Senate continued with the consideration of H.R. 5484.

Mr. DeCONCINI. Mr. President, I ask unanimous consent that I may speak for 10 minutes on the bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DeCONCINI. Mr. President, the bipartisan drug bill that is about to pass, is an outstanding piece of legislation and should be overwhelmingly approved by the Senate.

But, Mr. President, perhaps more remarkable than the actual content of the bipartisan drug bill is how promptly both the House and Senate have brought this critical legislation to the brink of enactment. This legislation is a shining example of what the U.S. Congress can do when it has the will and the backing of a public that wants action, and wants it now.

Mr. President, in just 6 short weeks, both the House and Senate have crafted perhaps the most comprehensive "battle plan" for attacking the drug abuse and drug trafficking problem in the history of this Nation. I am proud to have played a role in that. But I am also extremely proud of the efforts of a number of my colleagues on both sides of the Capitol who were the real catalysts for moving this legislation. I am also extremely proud that, for the most part, the driving force behind this omnibus drug bill were Members of the Democratic Party. The Speaker of the House, the majority leader of the House, and my good friend and colleague, Glen English of Oklahoma, deserve special credit for teaming up to drive home the need for prompt, effective action on a drug bill that hits the drug problem on multiple fronts. Without their initiative, we would not be here today on the threshold of passing historic drug legislation.

□ 1450

I also want to tip my hat to the Republican leadership in both Chambers, Congressman Michel and Senator Dole, our Republican leader in the Senate, for their willingness to put aside the preelection tendencies toward partisanship, and to work with Democrats in both Houses to craft bipartisan drug legislation.

Finally, Mr. President, I want to give special commendation to the Democratic leader, Senator Byrd, who saw the importance of this issue as it was coming toward us, knew the pulse of the American people, and acted swiftly to appoint a committee, a team of what he thought were experts to put together a position for the Democrats, and that is all that he has control of. His leadership, however, and that of the Democratic working group, cochaired by Senator Chiles and Senator Biden, was the glue that kept the momentum going and which ultimately made a bipartisan effort possible.

Mr. President, this legislation sends the clear message to those who decide to make their living in the insidious business of drug trafficking that we are no longer going to tolerate their activities. H.R. 5484 contains extremely stiff penalties for possessing, manufacturing, importing, or distributing drugs. Individuals convicted of first time offenses or possession with intent to distribute moderate amounts of controlled substances are subject to 5 years to 40 years in prison and up to $2 million in fines. In addition, if death or serious bodily harm results from a violation of this section, the drug dealer would face 10 years to life and up to $4 million in fines. Anyone convicted under this section would also be closely supervised after release from prison for 4 years to insure that another violation would not take place. These moderate amounts are defined as 100 grams of heroin, 500 grams of cocaine, or 100 kilograms of marijuana.

Penalties for larger amounts of controlled substances are much greater and include up to life sentences for possession with intent to distribute large amounts even for first convictions. Second and subsequent convictions are dealt with severely. We also attempt to enhance our penalty structure for those who use juveniles to traffic in drugs, those who would entice children with drugs, and those who build large drug trafficking enterprises.

When the penalty structure contained in this bill is in place, the sentences imposed under our criminal code will be served in their entirety. Judges will no longer be able to suspend and offer probation to professional criminals. I believe that the penalties in this bill are severe. But I also believe that the penalties for drug dealers must be severe. If we are to take effective action to reduce drug trafficking, we must let drug dealers know that punishment will be severe, quick, and final. The penalties section of S. 2878 sends this message and we must make dealers understand it.

Mr. President, I am pleased that the bill that we are about to approve contains provisions allowing the Federal Government to seize and obtain forfeiture of substitute assets. This provision will allow Federal prosecutors to pursue the assets of drug dealers even if they have been converted into other forms. In combination with the money laundering provision in S. 2878, we will make it more difficult for drug dealers to keep the profits of their criminal activities.

I am concerned about the newer forms of drugs that have sprung up in recent years. Although the media has focused recently on the dangers of crack cocaine, we in the Senate had earlier this Congress passed legislation aimed at the emerging problem of "designer drugs". Although the Senate passed this bill last December, the House has not as yet considered this issue. It is important that we take immediate steps to control the manufacture of chemical compounds nearly identical in chemical composition to controlled substances. Testimony received last year by the Senate indicated that in many ways these synthetic drugs are even more dangerous than the traditional and natural illegal substances. It is difficult for our law enforcement agencies to keep ahead of drug dealers and organized crime even when they have the legal tools they need. At the present time, the illicit drug industry is able to manufacture new substances faster than States and the Congress can outlaw them. We must take action to make all of these dangerous substances illegal immediately.

Mr. President, I have worked diligently, along with Senators THURMOND and BIDEN and our staffs, to put together a bipartisan bill to make it criminal to launder money received from illicit activities, especially drug trafficking. Our efforts resulted in the introduction of S. 2683, a money laundering bill which was passed by the Senate earlier this year. I am pleased to say that the provisions of S. 2683 were included in the bipartisan drug package. The House has included a money laundering provision in their drug bill so it is most appropriate that we include the Senate-passed bill in our drug bill. I must add that, in my opinion, the money laundering provision in the Senate bill is much preferable to the House bill and I am hopeful that the Senate version will be ultimately enacted.

The substantive law changes contained in this bill will make it much more difficult for drug dealers to thrive as they have in the past. In addition to the reforms discussed above, the bill makes it illegal to sell or mail drug paraphernalia, makes it easier for the Government to protect criminal investigative information from disclosure under the Freedom of Information Act and makes it a Federal crime to operate a common carrier, such as a train or bus, while under the influence of alcohol or drugs. All of these changes will enhance our law enforcement agencies' efforts to protect society from the evils and dangers of drugs and alcohol.

We all know this is not done or accomplished only by Senators. It takes staff a lot of hours, involving Bobby Mills on my staff, and Eddie Baxter, just to mention two, but I think there are comparable names of dedicated staff people that put in dozens and dozens of hours late at light struggling over what kind of bill we were actually going to have.

Mr. President, there is a lot in this bill. There is a lot that needs to be in another bill yet to come.

We talk here a lot about the war on drugs and yet we really have not had a war on drugs in this country because to have a war on drugs you mobilize your nation, all your resources and assets and you go after a victory. That has not been done nor does this bill really start the war.

It does, however, begin the planning process, begin moving assets in a position that we can fire some shots, that they can do something constructive toward slowing down the importation of drugs into this country, that we can reverse what we have seen over the last 6 years' continuous decline in the number of Federal dollars used in rehabilitation and used in education.

So, Mr. President, it is an important beginning, but I do not want the people of this country to think that tomorrow after this bill is signed or next week after it is signed by the President, that we have solved the drug problem. That is not the case. I think the American people know that. I think they have heard it long, long enough that we are going to have a war on drugs and we are going to get tough, and what happens? Not much.

Mr. President, before we vote, we should reflect briefly on what this bill means in terms of both our short-term and long-term plan to attack the drug menace. Is this bill the final answer to solving the drug problem? Of course not. Does it provide the exact mix of toughness and compassion; penalties and treatment; interdiction and investigations, that will adequately address the drug problem for the next decade? Probably not. And we should not assume that providing additional aircraft; more education funding; tougher laws against traffickers; and more prison construction will mean that we can put the drug issue back on the shelf for the next 10 years or even 1 year. This bill is an outstanding beginning to establishing a framework; a blueprint for mobilizing a true war on drugs on multiple fronts, but we can and should do a great deal more. We, as parents, should seize this moment to reintroduce ourselves to our children and talk openly with them at home about the perils of drug abuse, including alcohol, as the Senator from Iowa so vividly outlined the night before last. We, as citizens of this great country, should capture this moment to reflect on what we can do individually and as a group in our hometowns to rally the Nation to put the drug problem at the top of our list of personal and national priorities. And we, as Senators, should grab this opportunity to commit this Chamber, to continue to pursue legislative solutions to the drug problem next year, when the preelection pressures have subsided and when, perhaps, the momentum of the drug issue has waned. I can assure this body that the drug issue will never lose its momentum with this Senator and I hope that is true of this entire body.

What will the budget of next year submitted by President Reagan have in it for enforcement? Will we see continued cuts in customs? Will we see continued cuts in the effort toward interdiction? I hope we will not.

I hope we learned a lesson here that these cuts that only Congress has partially restored over the last several years have brought us to the problem we have today. We are not ready for a war.

This bill should pass the Senate at 100 to zero. Such a vote will tell the Nation that we have responded to their deepest concerns over the drug threat to our children and our country from foreign sources.

This bill is not the end of this matter, only the beginning. It answers some of the questions but poses new questions and new challenges for us for the future. Nevertheless, it represents a small but important beam of light toward the answer of the insidious drug problem facing our entire country.

Mr. President, before closing I would like to acknowledge the outstanding work of certain staff who worked tirelessly on this omnibus drug bill. I would like to thank Eddie Baxter of my staff for his fine work on the judiciary portion of the bill. Other staff who played a major role in crafting this bill are, Tom Carter of Senator DOLE's leadership office; Sally Mernissi of democratic policy; Scott Green of Senator BIDEN's judiciary staff; John Benafolia of Senator BIDEN's staff; Eleanor Hill and John Sopka of Senator NUNN's Governmental Affairs Investigative Subcommittee; Carnie Hayes, Debby Kilmer, Rick Farrell, and Mike Hall of Senator CHILES' office and committee staff; and the other staff representatives who served on the Democratic working group. They deserve great credit for helping us bring this bill to this point.

This is an indication, too, of the willingness of staff to put in so many dedicated hours.

I saw these staff people working on weekends as we worked last weekend going through and struggling on how can we get these assets and these moneys and these programs completed and how can we do it without stepping on someone's toes, without being supercritical of the administration or supercritical of the chairman of the committee or someone who has a different idea.

I think we have the makings of the beginning, as I said, of the real fight to do something about the drug problem in this country.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DIXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DIXON. Mr. President, I ask unanimous consent to proceed on H.R. 5484 for approximately 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator is recognized.

Mr. DIXON. Mr. President, I congratulate the majority and minority leaders in all that is involved in crafting this legislation, H.R. 5484, which is designed to take the first important steps toward dealing with the massive drug problem that we have in this country.

I think that the increase in penalties and the other provisions of this legislation that aid in the interdiction of drug supplies into this country are very important.

I would like to make this observation, though, Mr. President: I think that in at least two particulars things that have been done on the House side in connection with the legislation over there are substantially preferable to what has been done in the Senate bill.

As you know, in connection with our consideration of this legislation, we did not go the question of a death penalty because of objections on this side so that after a motion to table had been adopted we abandoned the question of death penalty provisions in this legislation.

I just want to say, Mr. President, that in dealing with a problem this serious in the country, I would hope that the House stands resolute in its position concerning death penalty provisions in this legislation and amends this Senate bill or otherwise ultimately requires that the legislation in the two Houses be conferenced between the two Houses so that a death penalty provision can be provided for in the ultimate legislation.

□ 1500

I want to say further, Mr. President, that the other night, I think it was Sunday morning, during the extended debate on this legislation, this Senator offered an amendment to use, to the extent practicable, our military in this country for drug interdiction and for hot pursuit of individuals who are trying to smuggle drugs into the United States from other countries. I pointed out at that time that this problem is just too large and too overwhelming for us to deal with it unless we ultimately do something about the posse comitatus law and permit, in certain instances, the use of the military when required for drug interdiction.

I just want to say this to my colleagues in the Senate: Last night, around midnight, after the wonderful dinner here we had honoring those Senators who are retiring from the Senate this year, I returned home and I was watching television. And they had on television a depiction of what is happening in California, southern California.

They showed there the problems in some of these communities on the border where they suggested that, believe it or not, 1 in 20 people in that part of that State are drug addicts as a consequence of the ease of obtaining drugs that are smuggled over the border. They showed pictures of fences with holes in them where individuals are able to crawl through the fences and bring drugs into the country.

They interviewed a woman who sells herself as a prostitute to earn at least $75 a day to support her habit in drug addiction. She was interviewed, and her face was blocked out, and she was saying she wished she lived in the Middle West or some other part of the country where it was not so easy to obtain drugs on a regular basis.

The thought occurred to me at that point, Mr. President, that right there on that border, where those holes in the fence permit the drugs to come into this country on a regular and ongoing basis, that if we had some of our military dispersed in that area, a significant job could be done to support interdiction of that drug supply at its source as it comes into the country.

Now I realize there are civil liberty concerns. I am concerned about that, as well. Someone in the course of the debate the other night, in levity, said, "We are not going to nuke them, are we?" Well, no I do not want to nuke them. I do not want to do ridiculous things.

But I would suggest that we spend hundreds of millions of dollars, Mr. President. We, in this budget, provide for $292 billion for our military spending for the Department of Defense bill this year. There are hundreds of thousands of military personnel in the country; all kinds of surveillance equipment readily available in the military. And I would like to suggest once again that we ought to consider that as part of the drug package we pass.

I think the Hunter amendment in the House is too strong. A careful evaluation of that amendment, Mr. President, convinces me that that amendment would not work. But I think that extending to the administration reasonable powers, within their capacity, with what is available to us in military personnel and military hardware, would be a desirable thing to do. I would hope, Mr. President, that the House stands resolute in its position on the death penalty provision and on doing something in connection with the whole posse comitatus question and the whole question of the use of our military in connection with drug interdiction.

I am delighted to support this bill. I see on the floor my distinguished friend, the President pro tempore, the chairman of the Judiciary Committee. I want to congratulate him on the work he has done, and the leadership and others involved in this legislation, and caution that there is more that can be done and the opportunity to do it is before us now. I hope the final legislation we send to the President of the United States contains these additional provisions.

Mr. President, I yield back the balance of my time and, if it pleases the Chair or those on the floor, I would suggest, Mr. President, the absence of a quorum.

The PRESIDING OFFICER (Mr. ARMSTRONG). The clerk will call the roll.

The legislation clerk proceeded to call the roll.

□ 1540

Mr. HATFIELD. Mr. President, I ask unanimous consent that proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senate will come to order. The Senator from Oregon.

Mr. HATFIELD. Mr. President, could I inquire of the Chair what the parliamentary situation is at the moment?

The PRESIDING OFFICER. The pending business is the committee amendment and under the previous order of the Senate only two amendments are in order, one by the Senator from Oregon and the Senator from New Mexico, and the other by two other Senators.

Mr. HATFIELD. I thank the Chair.

AMENDMENT NO. 3091

(Purpose: To express the sense of the Senate with respect to the appropriation of funds to carry out this Act)

Mr. HATFIELD. Mr. President, I send an amendment to the desk on behalf of the Senator from Mississippi [Mr. STENNIS] and myself and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for himself and Mr. STENNIS, proposes an amendment numbered 3091.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill, add the following:

SEC. . (a) The Senate finds that—

(1) there is an urgent critical need for funds to carry out the programs and activities authorized by the preceding provisions of this Act in order to ensure a drug free America;

(2) this Act is the result of a bipartisan effort to combat our national drug abuse problem; and

(3) only the exceptional nature of the drug abuse problem warrants the expenditure of funds in excess of otherwise applicable budget limitations.

(b) Therefore, it is the sense of the Senate that—

(1) amounts authorized to carry out the preceding provisions of this Act should be provided as new budget authority for fiscal year 1987 in H.J. Res. 738 (99th Congress, 2d Session);

(2) such amounts should not be provided through transfers from, or reductions in, any amount appropriated by such joint resolution for any other program, project, or activity for such fiscal year.

Mr. HATFIELD. Mr. President, let me put this amendment into context. Last week we were engaged in a discussion on a bill that would set up a drug program costing approximately $600 million. I raised the question at that time as to the course of funding that would be pursued to implement it, assuming the drug program authorization was voted. In the meantime, we have discussed this matter with the Budget Committee leadership, we have discussed it with the leadership of the Senate, and other interested parties, and this particular amendment is a sense of the Senate—let me emphasize, it is a sense-of-the-Senate resolution—saying in effect that the funding of any drug program that is authorized by the Senate at this time in the session, being it is so close to the end of the session, will take place from additional resources that will be made available to the appropriators.

Basically, we are at our 302(b) allocations on all 13 bills. We do not have any maneuvering room to fund another $600 million of a very important program should it be authorized relating to drugs. This merely sets the Senate on record as saying in effect that we will lend our best efforts and we will fund such programs out of additional budget authority for the fiscal year 1987 when the drug legislation would be implemented.

We state further that such amounts should not be provided through transfers from or reductions in any amount appropriated by such joint resolution for any other program, project or activity for such fiscal year. In other words, we are looking for additional resources. We are not specifying them at this point, but we are expecting the kind of support that the leadership of the Budget Committee and others who would be a participant in this would give in order to fund the drug program that we ultimately implement through authorization.

That is the sense of the amendment in the most succinct way that I could express it. I think it is very important under these unusual circumstances, for bear in mind that there is a drug program in the House resolution that we will go to conference on and also bear in mind that we are, with the exception of one bill, lower than the House appropriations bills, and we are going to have to have maneuvering room with the House of Representatives on each one of those 13 bills. And so to then superimpose upon that situation another $600 million for 1987 would require additional resources that would be worked out at the time that the CR is finalized under an amendment to the CR.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, we have been working together on this. The continuing resolution as the Senator from New Mexico interprets it, although it says there will be two amendments, one, the amendment offered by the distinguished chairman of Appropriations Committee and the ranking member, which is at the desk, and another that might be offered by the Senator from New Mexico and the senior Senator from Florida, let me say to the Senate clearly I do not intend and I do not think my friend Senator CHILES intends to offer an amendment because we have been working together on this amendment, so it seems to me if the Senate adopts this amendment, and I urge it does, we will be on the way to passing a drug bill.

We have been waiting around to pass it. It is an authorizing bill. We are in a very strange position. The House passed a drug bill with an awful lot of national attention and, interestingly enough, before it ever goes to conference with the Senate, which has an authorizing bill pending at the desk, they have funded aspects of their drug bill in their appropations bill.

□ 1550

We are now in a very strange situation, where we will not have a drug bill finished—or I do not think we will, I say to the chairman—before the CR is voted on in the Senate; that is, the funding bill. So we are called upon, as U.S. Senators, to vote with a lot of vigor for a drug bill before we ever get a drug bill. Yet, we have to pay for some of it in a continuing resolution that is an appropriation bill that is basically pending before the Senate.

So, in working with the appropriators, I find the following, and I urge the Senate to adopt this amendment.

Basically, what our appropriators will have done is taken the budget resolution that came out of conference between the House and the Senate, and in all respects, pursuant to the Congressional Budget Office estimates, on every committee bill, all 13 have met the outlay limitations prescribed by Congress. They do not have much left over. In fact, they met the targets. But we will be asking them, supposedly, in the next 48 hours for a so-called national emergency drug bill, to fund it.

We did not have it in mind when we passed the budget resolution. I mean, at best, it was in the air. People knew we needed to do something. We did not contemplate it. Why not prescribe for it? Why not assume it? But at this late date, it appears that the President—although a little different program—and the House, and shortly the Senate, I assume, will vote in a drug bill they want funded.

I say adopt this amendment, because it is our sense that it is not right for the rest of the programs of the Government, when they have met their targets, met the prescription for what everyone called reasonably good fiscal sanity, to come along and say they are supposed to find this money for this program this late. This says they do not have to. They should not be required to. That would be my interpretation of it.

When the continuing resolution winds its way through, the Senator from New Mexico, as chairman of the Budget Committee, will support the appropriators as they attempt, in whatever manner they see fit, to appropriate the necessary money for the drug bill on the continuing resolution.

What I believe I am saying in supporting it is that that should be done without going back through the appropriating accounts and cutting it—whether it be Defense, whether it be Health and Human Resources, whether it be Senator McCLURE's Interior bill, whatever. That is it, in a nutshell.

Frankly, the appropriators have a lot of budget authority left in the budget resolution. They will need some assistance in the outlays by way of Budget Act restrictions, and I will be there, for what it is worth, saying that it is fair this year to do that. It is $642 million at the most, and it may not be that much when they come out of conference.

So, yes, we will break the budget to that extent. Yes; we will break the crosswalk allocations to that extent. We probably will, if some new source of revenue is not found. I think it is the right thing to do, unless we want to go home and say that we did not want a drug bill funded, that we went through some kind of charade to pass a drug bill and we do not want to pay for it.

That is my version of why we are here.

Mr. STENNIS. Mr. President, will the Senator yield?

Mr. DOMENICI. I yield.

Mr. STENNIS. Mr. President, I am impressed by what the distinguished Senator from New Mexico and the distinguished Senator from Oregon have said. I endorse what they have said about the need for this step to be taken. I feel the requirements of the budget resolution should be unimpaired. We can safely take this step, and should.

Mr. CHILES. Mr. President, I think the sense-of-the-Senate resolution as proposed by the distinguished chairman of the Appropriations Committee, the Senator from Oregon, and the distinguished ranking minority member, the Senator from Mississippi, sets forth the expression of the Senate's feelings in this matter, and certainly the feelings of the Senator from Florida, that this is an emergency program. This is something that the Senate considers to be tremendously worthwhile, that it is in the interests of the country and is something we definitely need to do, and we intend to take action to see that we do it.

At the same time, I think this expresses that the Appropriations Committee, which is getting at the tail end of its work now, having gone through all the subcommittee process, having followed the allocations as set forth under the Budget Act—and, as the distinguished chairman of the Budget Committee said, funding within the allocation in each subcommittee—should not be asked at this stage to tear up the patch, so to speak and say: "Wait a minute. We're going to impose this $648 million on you now. So you just decide how much defense you want to change or how much education programs you want to change or how much alcoholic rehabilitation you want to change." That would not be fair.

We are talking, in effect, about a national emergency that has come upon us. We did not know we were going to have this kind of program or the opportunity to have this kind of program. We have a bill passed by the House, and the Senate hopes to pass it. The President made his response, that he is joining the war on drugs. I think we are saying now that we are going to fight that war, but we are going to recognize that we should not do it at the expense of programs that have already been set, where we have stated within the document which was debated on the Senate floor how we should divide the resources.

I join the Senator from New Mexico in saying that we want to assist when we get to the continuing resolution. At that time, it will have to be an appropriation, because this is still just an authorizing bill. There will not be any programs unless on the continuing resolution we decide to appropriate some money. I hope the Senate is saying that, and I think it is saying that in the sense-of-the-Senate resolution.

In addition, the Senator from New Mexico and the Senator from Florida, in our respective budget positions, are saying that we want to assist at that time in finding how we do this, without having the Appropriations Committee having to invade its 302 allocations; and whether that can be done with a new source of funds or whether it has to be done in some other way, we want to assist.

Mr. HART. Mr. President, will the Senator yield for a question?

Mr. CHILES. I yield.

Mr. HART. The question might better be addressed to the author of the resolution, the Senator from Oregon.

In any case, are we not talking about a very simple proposition here? That is, raising taxes.

Mr. CHILES. I think we could be talking about that. I think we could be talking about whether we are going to have sufficient funding within the reconciliation bill between the other assets that we have. I think we are saying that whatever is necessary to see that we do take care of the funding of this program, we are going to do it.

Mr. HART. Does anybody in the Senate believe that we are really talking about cutting existing programs?

Mr. CHILES. No. That is what we are expressing in this—that we are not going to cut existing programs.

Mr. HART. Why do we not do now what we all know we are going to do?

There is a certain charade about this that I think is wearing a little thin around here. It is partly the ridiculous bind we voted ourselves into with Gramm-Rudman, and it is partly that we have a President who we all know is out of touch with reality, in terms of how to operate this government; and we are all afraid to say the word "tax."

I do not know why we do not put in some reference to pay for this, instead of saying we will put it off to January, February, or March. Because we are afraid of the President, or because we do not want to use common, ordinary words to say what we all know is true? Why do we not go ahead and do it?

Mr. CHILES. The Senator from Colorado will have an opportunity to do that when we get to the continuing resolution. This is the authorizing bill we are on now. This is not the vehicle to do that, just as we would not do that if we come out of the Defense Committee with an authorizing bill. We say how much we are going to authorize to be spent in certain programs. We do not say in that bill we are going to tax certain money to do that. Normally, this would just be an authorizing bill.

There was a concern on the part of the Senator from Connecticut and the distinguished chairman of the Appropriations Committee that this train would get so fast that someone—which the Senator from Colorado thinks will not happen—will just take this out of the existing program.

They were concerned about that. I think this sense of the Senate expresses that we do not intend to do that, and we will face up in the continuing resolution as to how we are going to fund the program.

□ 1600

Mr. HART. I thank the Senator.

If he will yield one further moment, leaving aside the drug question, I do not think we are going to solve the problems this country faces fiscally until people on this floor start dealing more honestly with what we are talking about here.

There are too many people afraid of the President and his veto and the rhetoric about "make my day." We all know it. We just will not say it.

Now we have this emergency crisis situation on drugs that is going to cost some money. It is a new Federal program, $648 million, and we are all dancing around the edge. We all want to be tough on drugs, particularly in an election year. Let us be tough enough to say we are going to have to raise taxes, whether the President likes it or not. Why can we not do that?

It has kind of a certain fundamental integrity to it that I do not find frankly in the wording of this resolution.

I thank the Senator.

The PRESIDING OFFICER. The Chair asks who yields time? Is the Senator from Oregon yielding to the Senator from Connecticut?

Mr. HATFIELD. I yield whatever time is necessary.

Mr. WEICKER. I thank the distinguished Senator from Oregon.

Mr. President, as one among many who raised this issue on the night we were arguing the drug bill, let me just bring into brief focus exactly how this has progressed.

The first call for a drug war came from the President when he set up his initiative here and the way we are going to pay for it was out of exiting programs.

If I were a cartoonist I would sort of sketch the picture of a gun being turned in against myself insofar as the war on drugs being paid for by funds being taken away from alcohol, mental health, and so forth.

Well, everyone found soon enough they did not want to go ahead and fund the war on drugs that way out of existing programs, which is referred to in the sense-of-the-Senate resolution.

The next thing we have is let us not fund it with anything, and if I were a cartoonist I suppose I would picture a gun I see many times with a little flag coming out saying, "bang."

Now, the fact remains that we should have a war on drugs and we should pay for it.

We have come to the realization in this sense-of-the-Senate resolution we are not going to do it out of existing programs; we are not going to penalize the alcoholic, the mentally ill, the retarded, the disabled, to pay for that one.

We do not spend enough on those wars, never mind take away from them for the war on drugs.

Rather, as I understand what will now happen is that we will look for new allocations, and I think that is what is important, not reallocations, but a new allocation in some form to which we will turn to fund what will shortly be the Senate-passed war on drugs, and we will do that as a part of the continuing resolution.

That will be a meaningful statement, not just the authorizing legislation, and I ask that the Nation look carefully on the Senate as to what it does in the next 48 or 72 hours, not to what it does here in a vote in a few minutes when we pass a drug bill. That is meaningless, if either we turn the gun on ourselves or have the flag come out. But rather, as we follow it up, we are going to have an appropriations bill that will take resources of this Nation, new resources, new allocations, and devote them to the war on drugs. That is what is at issue.

Now, admittedly, my problem, and I think the problem of the distinguished chairman of the Appropriations Committee, is that we are doing a lot on faith here. It in effect takes a ball which is not now in the appropriations court and it will put it in the appropriations court when the continuing resolution comes along.

But I can assure everyone here, and I suspect I might have other colleagues, having heard some of the comments around here, yes, I would, yes, I would debate at length the continuing resolution if it does not contain new funds for the war on drugs. I think we have elevated the issue to such a height, to such visibility among the American public, to such visibility that it would indeed be a betrayal of the trust if in the continuing resolution which is the responsibility of the Appropriations Committee we permitted that to get out of here without new funding for this program.

I say to the Senator from Colorado I have no problem with taxes at all, but not at all. If this is such a big deal, then believe me it ought to be a big deal as to how we pay for it, and there is no loose change lying around to do the job that needs to be done.

Have you ever thought about the billions of dollars the drug traffickers and organized crime puts into this product? You do not think we have to match that? Of course, we do.

Did I hear the gavel?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WEICKER. I ask that I have 5 additional minutes to finish my comments.

The PRESIDING OFFICER. Does the Senator yield?

Mr. HATFIELD. I yield 5 additional minutes.

The PRESIDING OFFICER. the Senator is recognized for an additional 5 minutes.

Mr. WEICKER. With the amounts of money that are poured into the evil which we are trying to eradicate, certainly we, representing the U.S. Government, can come up with equivalent amounts or more to deal with a problem and do it in a way which shows some courage on our part and not trampling over the elements of our society that are indeed already the weakest and which need most of our special care, not doing it by giving the impression because we pass a bill that we have done the job.

It is the passing of the bill that is the easiest thing around here. There is not a Senator who does not know that. Funding those bills, that is where the problem arises, and that is where the problem arises here.

So I am satisfied. I support the sense-of-the-Senate resolution. It takes care of the problem. We are not going to take it out of existing programs. We have commitments to that effect. But come that continuing resolution, unless there are new resources and additional allocations, not reallocation, then I can assure you that it is going to be a long time before any continuing resolution gets off this floor.

We will meet our obligations as an Appropriations Committee, but we will meet them honestly as has always been the way under the distinguished chairman from Oregon.

This is great politics; this is great politics, this drug bill. Now you are going to see an exercise in great finance and fiscal responsibility which follows on its heels, and it should not be any other way.

Mr. FORD. Mr. President, will the distinguished Senator from Connecticut yield for a question?

Mr. WEICKER. Of course.

Mr. FORD. Mr. President, the distinguished Senator talked about existing practice. He mentioned alcohol abuse, mental health, et cetera.

Mr. WEICKER. Yes.

Mr. FORD. Do we have aid to the Contras as an existing program?

Mr. WEICKER. Let me say this, that I am going to be consistent in my position as far as existing programs are concerned.

Mr. FORD. That is everything.

Mr. WEICKER. No matter what my personal feelings are, as you know I am opposed to aid to the Contras. I do not want this money to come out of defense. I do not want it to come out of housing or transportation any more than I want it to come out of health, science, and education, which is my responsibility. I do not want it to come out of any of that.

If we have the courage to pass the authorizing bill, we ought to have the courage to pass the money bill; otherwise, all it will boil down to is that we have the gall to pass the authorizing legislation and the cowardice not to do anything when it came to the money bill.

Mr. FORD. I understand the Senator's position, but I would suggest that if you go out on the street today and you ask the people how much money was in the bill the Senate passed to aid the Contras, they would say $100 million. But in fact there was $400 million in that bill, $300 million to salve the other countries to keep them from objecting to our $100 million.

Mr. WEICKER. Yes.

Mr. FORD. I just feel as if we might look in that direction because I am convinced as a Senator from Kentucky what might happen and I am looking for a supersaver to Mandalay.

Mr. WEICKER. The only problem, again I have to repeat, I do not want to be placed in a position of defending Contra money when indeed I fought tooth and nail against it.

Mr. FORD. The Senator is saying, though, that the Contra aid, the $400 million in your interpretation of what you have agreed to, is an existing program.

Mr. WEICKER. I will tell you why I think that it would be a bad way to handle it.

Mr. FORD. I am listening.

Mr. WEICKER. I tell you why I think it would be a bad way to handle it.

□ 1610

I think we are going to lose. I mean, my sense of priorities is somewhat different than the priorities that have been consistently acted by this session of the Congress. And if we start down that road, I can tell you what is going to happen. We will maintain all the programs that you and I probably have fought against and the money is going to be taken from the alcoholic and the mentally ill, et cetera, and we will wind up exactly where we wind up now, which is under my jurisdiction of education and health and science.

I have $33 billion. How much does my friend from the Defense Committee have?

Mr. DOMENICI. The chairman was just here. I do not remember.

Mr. GOLDWATER. $287 billion.

Mr. WEICKER. $287 billion for them; $33 billion for all science, education, and health in the United States. That gives me a pretty good idea how this place is going to vote. I do not want to start that fight because I have a feeling I cannot finish that fight.

So, in that sense, I would far rather say, "Let's do the up-front thing and go look for the money in the sense of the resources," which I am sure my friends on the Budget Committee will be able to find during the entire budgetary appropriations process, which we are not through with yet, either in conference or in terms of for action.

Mr. FORD. I thank the Senator. He and I are both on the same wavelength here and I just wanted to get his feelings as it related to existing programs and what his feeling is. I want to protect your arena. I am very strong for that. I intend to fight with you as long as we can.

But what I am concerned about is that other programs, where there is some money, kind of hidden money, I think we might want to look at that arena, and I might just do that.

Mr. WEICKER. I thank the Senator.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is seeking recognition. Has the Senator from Oregon yielded time?

Mr. HATFIELD. I would be happy to yield 3 minutes to the Senator from Washington. I think I have but 11 remaining.

Mr. DOMENICI. I wonder if the Senator would yield me 30 seconds for an observation.

Mr. EVANS. On your time.

Mr. DOMENICI. Would the Senator yield to me?

Mr. HATFIELD. I yield 3 minutes to the Senator from Washington State and 29 seconds to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, I would just like to remind my friend and good Senator who just spoke about Contra aid, we could also tax cigarettes to pay for this. There has been a lot of talk about that. We have all been trying to leave the tax base like it is until we get through this conference.

The distinguished Senator from Connecticut has said, "Let's leave the programs that were funded by the appropriations as they have been." I respect this observation that there are some programs he likes less than others.

There are also many who think we ought to raise revenues, and some think one of the best ways is a cigarette tax; others think an alcohol tax. We have kind of been trying to get out of here treating the status quo in that regard kind of like it is. And so I hope he knows that is part of this package, too.

The PRESIDING OFFICER. The Senator from Washington is recognized for 3 minutes.

Mr. EVANS. Mr. President, we have a 500-pound gorilla of a problem and I am afraid that this Senate is going to come up with a wizened up, little tiny, scared mouse of an answer. And even that is going to be delayed.

The Senator from Connecticut is absolutely right. The simple facts are that the estimated revenue for the next year, coupled with the deficit we set for ourselves under Gramm-Rudman, coupled with a 7-percent sort of fudge factor which we have already assumed and used, is going to be short. It is going to be short of what we have already set aside for current levels of expenditures and it will be even shorter by several billion dollars of what we intend to spend on the continuing resolution; maybe $13 or $14 billion short, or more.

And how are we going to meet the goal? We can only meet this in one of several ways. We are not going to reduce expenditures. We have heard everybody say that. We are not going to increase taxes. We have got everybody saying the same thing and the administration saying they will not adopt any new taxes or sign them.

We are still short. Something has got to give. And I can tell you what is going to give. We are going to dip into the cookie jar for next year—the tax bill we just passed—which next year, and next year only, will have an $11 billion excess of revenues. The year after, of course, it will be short by $17 or $18 billion.

Now, it is said that that does not make much of a difference. At the end of this year, by October 1, 1987, whether we take one dime of the asset sales out of the reconciliation bill or part of the $11 billion, the same thing, we will be starting the next year short. We cannot use the same thing twice. It is only there once. And that is true.

But let us try to do the right thing now. We have entered into this debate and I think it is time for the Senate to face up to the problems we have. We are trying to spend too much money for the same amount of revenue we are going to have available and we are afraid to close that gap in an honest way.

I think the real question here is whether we have any gorilla tamers in this Senate or whether we are going to continue to jump on a chair and hold up our skirts and be afraid of a mouse that represents the answer.

The Senator from Kentucky has talked at length about the road to Mandalay in case we moved into certain areas of revenue. I have suggested from the beginning that I cannot think of any better place to fund a drug bill than a user charge on those who use the two legal drugs in the United States, alcohol and tobacco.

I just might be prepared—I have never been to Mandalay—it might be fun to take a trip to Mandalay and see if we cannot get back from there.

The PRESIDING OFFICER. Who yields time?

Mr. HATFIELD. I am prepared to yield back the remaining part of my time.

Mr. CHILES. We yield back our time.

The PRESIDING OFFICER. The Chair notes at least one other Senator is seeking recognition to address this issue.

(Mr. EVANS assumed the chair.)

The PRESIDING OFFICER. Who yields time?

Mr. ARMSTRONG. Would one or the other of the managers be kind enough to yield me 5 minutes?

Mr. HATFIELD. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Eight minutes.

Mr. HATFIELD. Mr. President, I yield 5 minutes to the Senator from Colorado.

Mr. ARMSTRONG. Mr. President, I am grateful to the manager for yielding.

I just want to express my profound dismay at the way this is going. This is a copout for sure. It is not the first one of the year; it is not even, I guess, the first one of the week. But I just wanted to note, in passing, instead of addressing the question, we are avoiding it. Just as sure as shootin, Mr. President, we are saying that we are not going to do anything about finding the funds for this. We are not going to raise taxes.

What we are really going to do is borrow some additional money. The essence of this resolution is expressed in the third paragraph of the Senate findings.

> Only the exceptional nature of the drug abuse problem warrants the expenditure of funds in excess of otherwise applicable budget limitations.

What we are saying by the adoption of this—and surely we are going to adopt it; I mean, there is not any doubt about that, the fix is in—what we are saying is we are not going to do anything about it. We are just going to spend a little more. We are not going to cut anyplace.

Everything is exceptional around here. Flood control is exceptional; farm subsidies are exceptional; national defense is exceptional; Contra aid is exceptional; expenditures for the Congress are exceptional; HEW, XYZ, PDQ, everthing is exceptional, and always so exceptional that, in a $1-trillion budget we find someplace to dig up $600 or $300 million or some portion of this even for an expenditure which we think is so all-fired important.

I share the general conviction that we ought to do something about drugs. But the question is not whether or not there is money enough for drugs. In my judgement, the Senator from Washington is correct, and others, who believe that the real issue is whether or not we cannot find someplace where something can be cut. And I just wanted to note, in passing, Mr President, we never somehow got to that point where something can be cut.

Now, I understand the reality of this. We are going to adopt this resolution and then we are going to add incrementally to the deficit. And the reason is because there is not any organized pressure group, there is not any constituency that is going to stand up and fight against raising the deficit by $600 million. we all know that.

Maybe, in due course, we are going to raise taxes. There is a lot of sentiment for that. Maybe it is going to be a cigarette tax, as the Senator from New Mexico suggested, or maybe it is going to be an increase in the income tax. But, my friends, I just hope that at some point we will draw the line and start setting some priorities.

Now, I know it is easy. And I have spoken of some popular programs, and I could have spoken a lot more, many of which are close to my heart, many of which indeed are important programs. But there is not, even in this great, rich country of ours, enough money to do absolutely everything. At some point, we have to be willing to do about budgeting what Mrs. Reagan has properly pointed out is the answer to the drug problem. At some point we just have to say "no."

□ 1620

Mr. GOLDWATER. Mr. President, will the Senator yield for 5 seconds?

Mr. HATFIELD. I am happy to yield.

Mr. GOLDWATER. I want to remind my friend from Colorado that the defense has taken a $34 billion cut in this year.

Mr. ARMSTRONG. Mr. President, if I might respond——

Mr. HATFIELD. I am happy to yield to the Senator from Colorado.

Mr. ARMSTRONG. I thank the Senator from Oregon.

I think the Senator from Arizona may well recall that I have consistently voted against making cuts in that area. But the point is this: The collective wisdom of the body has been to make cuts in really only one area of the budget of any consequence, and that is in the defense area.

We have piled on money for everything else. My point is a little different than that; that is, there is a finite amount that we ought to be spending. And the measure of that, it seems to me, was established by the budget resolution. The budget resolution total was far above what I thought was a responsible number.

But now we are saying no, that was not really the limit. When we get to the point that a program is truly deserving, truly popular, truly 5 weeks before an election, then by gosh, we will go even above the budget limit.

Mr. HATFIELD. Mr. President, I yield back the remaining part of my time.

Mr. CHILES. We yield back our time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment of the Senator from Oregon.

The amendment (No. 3091) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on the substitute.

Mr. CHILES addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. CHILES. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1630

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I will be happy to yield to the Senator from South Carolina.

Mr. THURMOND. Mr. President, as I understand, the distinguished manager on the Democratic side has no objection to the technical amendments.

Mr. BIDEN. No, there is no objection on this side.

Mr. THURMOND. Mr. President, I move the technical amendment be adopted.

The PRESIDING OFFICER. The amendment has not been presented.

AMENDMENT NO. 3092

(Purpose: To make certain technical corrections to sections of H.R. 5484 and appropriate amendments to H.R. 5484, the Anti-Drug Abuse Act of 1986)

Mr. BIDEN. Mr. President, I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the amendment? Without objection, the clerk will report.

The assistant legislative clerk read as follows:

> The Senator from Delaware [Mr. BIDEN], for himself and Mr. THURMOND proposes an amendment numbered 3092.

Mr. BIDEN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amendments to title I:

SECTION 1. Section 1009(b) is amended—

(1) on page 16, line 11, by striking out "Subsection" and inserting "Paragraph" in lieu thereof; and

(2) on page 16, line 13, by striking out the period before the quotation mark and adding a period after the quotation mark.

SEC. 2. Section 1051 is amended—

(1) on page 17, line 19, by striking out "subsection" and inserting in lieu thereof "title or title III";

(2) on page 17, lines 20 and 21, by striking out "this title or title III or under";

(3) on page 17, lines 20 and 21, by striking out "This title or title III or under";

(4) on page 18, line 1, by striking out "subsection" and inserting in lieu thereof "title or title III"; and

(5) on page 18, line 3, by inserting a comma after "State".

SEC. 3. Section 1102 is amended—

(1) on page 19, line 10, by striking out "Except as authorized by this title, it" and inserting in lieu thereof "It";

(2) on page 19, line 15, by inserting "or title III" after "title";

(3) on page 19, line 19, by inserting "or title III" after "title";

(4) on page 19, line 21, by striking out "at least eighteen years of age";

(5) on page 19, line 22, by striking out "section 405B(a) (1) or (2) of this title" and inserting in lieu thereof "subsection (a)";

(6) on page 20, line 2, by striking out "at least eighteen years of age";

(7) on page 20, line 3, by striking out "section 405B(a) (1) or (2) of this title" and inserting in lieu thereof "subsection (a)";

(8) on page 20, line 13, by inserting "a controlled substance or a controlled substance analog" after "distributing"; and

(9) on page 20, lines 24 and 25, by striking out "set out in section 401(b) of this title" and inserting in lieu thereof "applicable".

SEC. 4. Section 1103 is amended on page 21, line 6, by striking out "amended strike" and inserting in lieu thereof "amended by striking".

SEC. 5. Section 1104 is amended—

(1) on page 21, line 16, by inserting "(a)" before "Section 405A";

(2) on page 21, line 17, by striking out ", in subsection (a),";

(3) on page 21, line 18, by inserting "wherever it appears" after "distributing' ";

(4) on page 21, line 19, by inserting "wherever it appears" after "secondary school' "; and

(5) on page 21, by inserting the following after line 22:

"(b) Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by striking out 'involving the same controlled substance and schedule'.

"(c) Section 405A(b) of the Controlled Substance Act (21 U.S.C. 845a(b)) is amended by striking out '(1) by' and all that follows through the end and inserting the following in lieu thereof:

'(1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) a term of imprisonment of up to three times that authorized by section 401(b) of this title for a first offense, or a fine up to three times that authorized by section 401(b) of this title for a first offense, or both, and (2) at least three times any special parole term authorized by section 401(b) of this title for a first offense.' ".

SEC. 6. Section 1202 is amended—

(1) on page 32, line 14, by striking out "internationally" and inserting in lieu thereof "intentionally"; and

(2) on page 32, lines 18 and 22, by inserting "the greater of that authorized in accordance with the provisions of title 18, United States Code, or" after "fined not more than".

SEC. 7. Section 1204(2) is amended by inserting the following at the end thereof, on page 36:

"(g) Sections 924(c)(2) and 929(a)(2) are amended by inserting 'or controlled substance analog' after 'controlled substance'.".

SEC. 8. Section 1751(b) is amended on page 92, line 19, by striking out "or" and inserting in lieu thereof "of".

SEC. 9. Title I is amended by striking out section 1872.

SEC. 10. Title I is amended by striking out section 1874.

SEC. 11. Section 1102 is further amended—

(1) on page 19, line 14, by striking out "twenty-one" and inserting in lieu thereof "eighteen";

(2) on page 19, line 17, by striking out "twenty-one" and inserting in lieu thereof "eighteen"; and

(3) on page 20, line 14, by striking out "twenty-one" and inserting in lieu thereof "eighteen".

SEC. 12. Section 1152(a)(6) is amended by amending proposed paragraph (9)(B) of section 524(c) of title 28, United States Code, by inserting "through the Office of Justice Programs," after "Attorney General,".

SEC. 13. Section 1552 is amended—

(1) on page 82, line 2, by inserting ",through Bureau of Justice Assistance," after "Attorney General"; and

(2) on page 83, by inserting the following after line 19: "This program shall be administered by the Bureau of Justice Assistance pursuant to Part D of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741-3745), except that the minimum allotment under Part M of the Omnibus Crime Control and Safe Streets Act of 1986, as amended, shall be $500,000.".

SEC. 14. Section 1801 is amended by deleting subsection 1801(b) which appears on lines 4 through 12 of page 98 of the bill as introduced.

Amendments to title III:

SEC. 15. Section 3401(b)(1) is amended—

(1) on page 56, lines 20 and 25, by inserting "or controlled substance analog" after "controlled substance";

(2) on page 57, line 2, by inserting "or controlled substance analog" after "controlled substance";

(3) on page 57, line 6, by striking out "term" and inserting "terms" in lieu thereof;

(4) on page 57, line 7, by striking out "has the meaning given to such term" and inserting in lieu thereof "and 'controlled substance analog' have the meaning given to such terms";

(5) on page 57, line 8, by striking out "(5)"; and

(6) on page 57, line 9, by striking out "(6)".

Amendments to amendments previously adopted:

SEC. 16. Amendment No. 3076 is further amended on page 3, line 24, by striking out ", both" and "and outside".

SEC. 17. Amendment No. 3077 is further amended—

(1) on page 1, by striking out the material between the quotation marks on lines 4 through 9 and inserting in lieu thereof the following: "a term of imprisonment up to twice that otherwise authorized, or up to twice the fine otherwise authorized, or both, and at least twice any special parole term otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.";

(2) on page 1, by striking out the material between the quotation marks on lines 13 through 18 and inserting in lieu thereof the following: "a term of imprisonment up to three times that otherwise authorized, or up to three times the fine otherwise authorized, or both, and at least three times any special parole term otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.".

(3) by striking out "section 405" on page 1, line 20, and all that follows through "both" on page 2, line 3 and inserting in lieu therof the following: "Section 405(a) of the Controlled Substances Act (21 U.S.C. 845(a)) is amended by adding the following at the end thereof: 'Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall not be less than one year.' ".;

(4) by striking out "Section 405" on page 2, line 5 and all that follows through "both" on page 2, line 10, and inserting in lieu thereof the following: "Section 405(b) of the Controlled Substances Act (21 U.S.C. 845(b)) is amended by adding the following at the end thereof: 'Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall not be less than one year.' "; and

(5) by striking out "Section 405A" on page 2, line 12, and all that follows through "and schedule" on page 2, line 20, and inserting in lieu thereof the following: "Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by adding the following at the end thereof: 'Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall not be less than one year.' ".

SEC. 18. Amendment No. 3066 is further amended by deleting on page 5, lines 1 and 2 after the word "requester" the following: "; or (II) a requester is indigent and can demonstrate a * * *.

Amend section 2002:

Referring to section 481(h)(1)(A) to read as follows:

"(A) 50 percent of United States assistance allocated for such country notified to Congress in the report required under section 653(a) of this Act shall be withheld from obligation and expenditure;";

Referring to (h)(2)(A)(ii) to read as follows:

"(ii) for a country that would not otherwise qualify for certification under subclause (i), the vital national interests of the United States require the provision of such assistance, financing, or preferential treatment to such country.";

Referring to the introductory clause of (h)(5) to read as follows:

"Any country for which the President has not made a certification under paragraph (2) or with respect to which the Congress has enacted a joint resolution disapproving such certification may not receive United States assistance as defined by subsection (i)(4) of this section, the financing described in (1)(B) of this subsection and the preferential tariff treatment described in (1)(C) of this subsection unless—";

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3092) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BIDEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, a parliamentary inquiry. Does that include a technical amendment by the distinguished Senator from North Dakota, Senator ANDREWS?

The PRESIDING OFFICER. There is no indication that it does. The Chair is unable to tell.

Mr. DOLE. Mr. President, if I may proceed for 1 minute, there is a technical amendment in the process of being cleared. It has not been cleared thus far. We have a number of Members who are in conferences in about nine other places. I think what we ought to do is to go ahead and vote. That amendment has not been cleared. We have been waiting for 30 or 40 minutes. Perhaps we can take care of it afterward.

□ 1640

AMENDMENT NO. 3093

Mr. DOLE. Mr. President, I send a technical amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER.** Is there objection? Without objection, the amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 3093.

Mr. DOLE. I ask unanimous consent that further reading be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

Amend section 4218(b) to read as follows: "(b)(1) the Secretary may utilize by agreements, with or without reimbursement, the personnel services and facilities of any Federal, tribal, State, or local government agency to the extent he deems is necessary and appropriate for effective enforcement of any Federal or tribal laws or regulations in Indian country. The Secretary may commission law enforcement personnel of such agencies to exercise such of the authorities set out in subsection (a) of this section as the Secretary deems appropriate. Appropriate representatives of Federal agencies are hereby authorized to enter into and carry out such agreements with the Secretary or with duly authorized tribal officials.

(2) While acting in the capacity of a person commissioned by the Secretary pursuant to this section, any person who is not otherwise a Federal employee, shall be deemed a Federal employee for purposes of—

(A) section 3374(c)(2) of title 5, United States Code, and

(B) sections 111 and 1114 of title 18, United States Code.

(3) For purposes of subchapter III of chapter 81 of title 5, United States Code, an employee of a tribal, State, or local governmental agency shall be considered an eligible officer while acting in the capacity of an officer commissioned pursuant to this subsection.

(4) An agreement under this subsection for the enforcement of Federal laws shall be in accordance with an agreement entered into between the Secretary and the Attorney General of the United States."

Amend subsection (c) of section 4281 by deleting "The" and inserting in lieu thereof "After consultation with the Attorney General of the United States, the".

The **PRESIDING OFFICER.** The question is on agreeing to the amendment of the Senator from Kansas.

The amendment (No. 3093) was agreed to.

The **PRESIDING OFFICER.** The question is on agreeing to the substitute amendment.

The substitute amendment (No. 3034), as amended was agreed to.

FIGHTING DRUG ABUSE

Mr. LAUTENBERG. Mr. President, I rise today to express strong support for the Anti-Drug Abuse Act of 1986. The work of the bipartisan group that put this bill together combines the essential elements of bills that have been introduced on both sides of the aisle. I was a cosponsor of the bill drafted by the Senate Democratic Task Force on Narcotics which contained the key elements needed to attack the problem of drug abuse. The bill now before us builds on that effort and will make a major attack on drug abuse in this country.

Drugs are a scourge in our society. They are ruining the lives of too many of our young people. Drugs distort people's values, sap their energies, and steal their futures. The ready availability of drugs on the streets of our cities is a shocking disgrace. The blatant selling and use of illegal drugs in the open is a slap in the face to law-abiding citizens and an open expression of contempt for the majority of our society. And drugs increase the wave of urban crime that plagues residents of all our States.

To fight this scourge, we need to make the costs of drug dealing unacceptable to those who exploit our young in a cynical attempt to profit. Drugs cannot be tolerated. Those who would sell them illegally must be stopped. And those who turn to them, either out of unhappiness or from other causes, must be treated. Our young people, at a very early age, must be taught to say no to drugs.

The Anti-Drug Abuse Act recognizes the need to decrease the demand for drugs. It increases the authorization for treatment and rehabilitation programs. It also establishes a new grant program for education programs. These, and other elements in the bill, will raise the visibility and viability of programs to educate young people to the dangers of drugs and to assist those who wish to free themselves of drugs. This is a crucial aspect of any antidrug fight.

But demand is only half of the equation. Supply must also be addressed. Illegal drugs are big business. An enormous amount of money is to be made in this business, starting with the peasant farmers in far off countries right along the chain of supply to the streetwise seller on a city street corner. And the offsetting costs for the suppliers are relatively small. The chances of being intercepted are not great. And when caught, the suppliers find that the penalties are nothing more than a small cost of doing business. The resources of suppliers far outstrip the resources of our hard working law enforcement officers. This balance must be redressed. The resources devoted to blocking supply must be increased, and the costs of being caught must be substantially raised.

The many points in the supply line must be attacked. This bill recognizes that need. Penalties for most drug related crimes are considerably stiffened. Provisions are included to strengthen narcotics control efforts overseas. Additional resources are provided for the Customs Service and Coast Guard. Some resources of the Department of Defense will be devoted to the drug fight.

The battle against the tragedy of drugs must be fought on many fronts—no one program, no one proposal will win this war. Every reasonable weapon must be brought into this fight. The bill we are considering today recognizes the multifaceted nature of the drug problem. It is not a perfect bill. I may quarrel with this or that emphasis. But, the important thing about this bill is that it reflects a strong commitment by Congress to combat the scourge of drug abuse. The high visibility of today's debate puts all on notice that we are getting serious about fighting drugs. Users and people tempted to experiment with drugs, as well as pushers, manufacturers, and smugglers should know that from now on, their work will not be so easy. Congress and the people are mobilizing to fight them.

Mr. President, we cannot affort to sacrifice a generation of young people to the demon of mind-altering drugs. We cannot waste economic resources in the unproductive business of drug supply. This devastation must stop. I support the legislation that puts us on the right path.

Mr. GORTON. Mr. President, I would like to take this opportunity to share my views on the Senate's bipartisan antidrug abuse legislation. Illegal drug use threatens the health and safety of millions of Americans. Narcotics trafficking and drug abuse have reached epidemic proportions both in this country and abroad. Every city, town, and school district in our Nation has been infected by drug abuse. And the cost of this epidemic, in terms of loss of life and threat to citizens' health and safety, has been enormous. I commend the majority and minority leaders, and Senators of both parties who have responded to this emergency by developing a well-reasoned, comprehensive antidrug package.

The Senate bipartisan antidrug abuse bill greatly enhances almost every aspect of the Federal effort to curb drug abuse. I am particularly pleased that the Senate drug bill would authorize and expand current drug abuse prevention and treatment programs, and create a new program of drug abuse education—both are vitally important elements in our fight to save our children from the ravages of drug abuse. The bill also attacks the drug abuse problem at the source by toughening penalties against drug possession and trafficking, strengthening drug interdiction efforts, and securing greater international cooperation with U.S. efforts to combat drug trafficking. Overall, I think the Senate has developed a responsible, effective weapon with which to fight the war on drugs, and I intend to vote in favor of this bill.

Mr. President, I also would like to record my views on the amendments offered to the antidrug bill, which the Senate voted on while I was necessarily absent. I support Senator DeConcini's amendment, which was adopted by the Senate, relating to Department of Defense support of drug interdiction. In my view, this amendment is an appropriate means of identifying those resources within the Department of Defense which may be applicable to the war on drugs. It would do so without obscuring the difference between national defense, which is and should remain the first priority of the military, and law enforcement. The military simply is not equipped to handle, and should not be tasked, with law enforcement duties. There is a role, however, for the military in assisting to stem the flow of drugs across our borders, and this amendment is a useful first step toward discovering and implementing that role.

I oppose the amendment, offered by Senator Dixon and subsequently tabled by the Senate, which would provide that the President shall deploy equipment and personnel of the Armed Forces to address the unlawful penetration of U.S. borders by aircraft and vessels carrying narcotics. In my view, this would be an imprudent and unwise use of the Armed Forces. The cost to the taxpayer for mobilizing military resources as directed by this amendment would be exorbitant. It also would mean that we would be unable to support our other foreign policy objectives because of the demands upon the military implied by the language of this amendment. It would overturn the view of the Senate, as represented by the 100-year-old posse comitatus law, that the miltiary role in enforcement of civilian laws should be restricted. Senator DeConcini offered a much more measured and cost-effective approach to enlisting military resources in the war against drugs.

Mr. President, one of the most controversial aspects of the debate on this legislation was the question of whether this legislation should contain a provision on the death penalty for drug-related deaths, which was proposed by Senator Mattingly. I support the allowing for the imposition the death penalty for certain heinous crimes such as the assassination of the President, murder for hire, and murder by a Federal prisoner serving a life sentence, as well as murder by an individual who is engaged in a continuing drug enterprise. But I believe the challenge for Congress is to develop legislation that meets the constitutional parameters set forth by the Supreme Court. That is a difficult challenge.

It is made more difficult when we try to legislate in this context. Rather than legislating in a narrow class of cases, as is proposed in this legislation, in my view, we should address this issue through the adoption of a comprehensive death penalty measure. Such a measure would encompass all cases in which the Congress felt the death penalty appropriate, and would have the kind of thoughtful drafting and debate that an issue of this magnitude deserves. Absent a more comprehensive and studied approach, I think it ill advised to address this issue.

Finally, Mr. President, I would like to express my appreciation to my colleagues for adopting my amendment requiring the Environmental Protection Agency to conduct a study of the manufacture, distribution, and public availability of cyanide in order to determine what steps can be taken to prevent the continued wrongful use of this lethal poison against American consumers. This poison, utilized by deranged people, has resulted in over 10 tampering-related deaths since 1982. It is my hope that the end result of this study will be realistic, workable regulations preventing easy access to this substance—a substance which, in the wrong hands, become a "lethal killer."

S. 2878 VETERANS' ADMINISTRATION DRUG AND ALCOHOL TREATMENT

Mr. CRANSTON. Mr. President, as the ranking minority member of the Veterans' Affairs Committee, I am pleased to note that the bipartisan bill includes a provision I authored to transfer to the Administrator of Veterans' Affairs up to $11 million to be used to enhance the Veterans' Administration's already-existing alcohol and drug dependence treatment program. I am grateful to the chairman of our committee, the Senator from Alaska [Mr. Murkowski], for his cooperation and collaboration with me in developing this amendment.

The VA's program in this area is especially notable for the scope of its services as well as for the size of the population it serves. The VA is the largest, centrally managed health care system involved in the treatment of alcohol- and drug-dependent persons, currently maintaining 102 alcohol-dependence treatment units and 51 drug-dependence treatment units which provide detoxification, inpatient, outpatient, and extended care services. These units have a combined total of 3,243 beds for alcohol-dependence treatment and 962 beds for drug-dependence treatment. In fiscal year 1985, inpatient care was provided for 91,417 alcohol-dependent veterans and 20,626 drug-dependent veterans. During this same time, approximately 85,000 veterans received outpatient treatment for alcohol problems, with a total of 495,000 visits. Additionally, 16,127 drug-dependent veterans received outpatient treatment, with a total of 987,832 visits. As far as I am aware, the current cost of VA drug and alcohol treatment outpatient care—$35.42 per day—is very competitive with other alcohol- and drug-dependence treatment programs.

The VA's most recent assessment of this program—"Alcohol and Drug Dependence Treatment Program Evaluation Report," July 1986—provides much useful information about the VA's treatment and rehabilitation program for alcohol- and drug-dependent veterans. Both inpatient and outpatient alcohol and drug treatment services were characterized as providing high-quality care. The evaluation further found that the VA programs are organizationally comparable to non-VA alcohol- and drug-dependence treatment programs, but that the "VA provides a more comprehensive range of services for patients than this comparison group, including vocational rehabilitation and personal adjustment services."

One particularly important point to note is that the VA maintains an extensive network of coordination with other Government and private agencies and health care providers to promote continuing rehabilitative care after completion of VA inpatient substance-abuse treatment and smooth transition back into the community. In a sample of 216 medical records of discharged VA alcohol and drug dependence treatment unit patients, "209 patients (approximately 97 percent) were recommended for continuing care." These patients are referred to either VA outpatient clinics, community halfway houses, or other outside resources such as community health agencies, and, according to the VA evaluation report, VA alcohol- and drug-dependence treatment unit staffs routinely maintain current lists of community resources that are available to provide for effective continuing care.

In addition to providing direct services, the VA, pursuant to a provision which I authored in 1979 which was enacted in Public Law 96-22, and which was extended in Public Law 99-166, operates a contract program with various community-based facilities, including community halfway houses, for the residential care of veterans suffering from alcohol or drug dependence. Under this authority, veterans discharged from VA inpatient care are referred to non-VA community programs for additional rehabilitation services supportive of community reentry. In fiscal year 1985, 5,288 veterans were discharged to this contract program.

The July 1986 evaluation report found that the VA's contract authority with community-based halfway houses was continuing to make a major contribution to veteran-patient treatment and overall VA program efficiency. A March 1984 report to the Congress on the status of this VA contract authority found that "the modest initial cost of [contracted residential care] was demonstrated to quickly improve the patient's health and adjustment, while reducing medical and social costs associated with the patient's treatment and rehabilitation."

For fiscal year 1985, VA-wide statistics indicate increased admissions to VA outpatient clinics for drug-dependence treatment, with a 58.5-percent increase in cocaine abuse cases, an 8.1-percent increase in opiate abuse cases, and a 30.8-percent increase in admissions for abuse of barbiturates and other sedative-hypnotics. According to the VA, this increased admission rate at its outpatient clinics has continued during the first 6 months of fiscal year 1986, with a further 72.7-percent increase in cocaine abuse admissions in comparison with the same 6-month period in fiscal year 1985, and a 4.2-percent increase in opiate abuse cases.

Mr. President, the funds that the new section 1924, to be added to the Public Health Service Act by section 4002 of the bill, would earmark for the VA would be used to augment two particularly successful aspects of the VA's services in this area, and would provide treatment to 6,700 more drug- or alcohol-dependent veterans next year. First, $2.95 million would be provided to enhance VA outpatient treatment. These additional funds would allow the VA to increase the number of veterans it serves through outpatient treatment, rehabilitation, and counseling for alcohol and drug dependence by 4,000 annually—increasing the current total of approximately 101,000 veterans treated annually systemwide through VA medical outpatient services for alcohol and drug dependence, to a new total of 105,000 veterans who could be treated. In order to support this increase in outpatient services, the funding would provide for 93 additional FTEE in staff positions—clinical social workers, clinical psychologists, and alcohol and drug abuse rehabilitation technicians—specifically targeted to provide alcohol- and drug-dependence treatment, rehabilitation, and counseling services.

Second, $8.05 million would be used to increase the VA's ability to contract with community halfway houses to provide transitional care and treatment to drug or alcohol dependent or abusing veterans following discharge from VA inpatient substance abuse treatment. Funding of VA use of community halfway house contract authority has been held constant at $5.4 million for the last 4 years. This program currently provides community outplacements for approximately 5,300 veterans annually, and has been projected to remain at this level in fiscal year 1987—despite the clear evidence that demand for VA drug and alcohol treatment services has been rising in the last couple of years. In fact, the VA's Department of Medicine and Surgery has advised that it has contracts in place and veterans in its institutional programs who need community-based, substance-abuse treatment to enable it readily to serve 2,700 more addicted veterans—a 50-percent increase so that the program would provide a total of 8,000 community outplacements next year. The $37.35 per diem provided for each veteran placed in a community halfway house is a low cost and effective residential option to substitute for far more expensive VA inpatient care.

Mr. President, I think this will be a very productive use of Federal substance-abuse funding and am pleased that provision for expansion of the VA's well-regarded alcohol- and drug-dependence treatment program has been made in the bill.

Finally, I'd like to express my appreciation to the principal sponsors of this bipartisan measure, the two leaders, Mr. BYRD and Mr. DOLE, for their cooperation in incorporating this provision into the bill, and also to the other two major sponsors of the Democratic legislative package, S. 2798, of which I was an original cosponsor, Senator CHILES and Senator BIDEN, for their assistance as well.

ALCOHOL LABELING PROVISIONS INCLUDED IN OMNIBUS DRUG BILL

Mr. THURMOND. Mr. President, as the Senate moves toward final passage of the Omnibus Drug Act, I am especially pleased that provisions, which I authored, concerning health warning labels on alcoholic beverages have been included in this important legislation.

The debate on this bill has primarily focused on illegal drugs. However, the most abused drug in America is alcohol. It costs the economy nearly $120 billion per year, including increased medical expenses and decreased productivity. In 1985, when 643 deaths were linked to cocaine, alcohol accounted for 98,000 fatalities. One out of every three American adults, 56 million people, say that alcohol abuse has brought trouble to his or her family. An estimated 3.3 million teenagers from 14 to 17 are showing signs that they may develop serious alcohol-related problems. Over 12 million American adults have one or more symptoms of alcoholism. This represents an increase in problem drinking of 8.2 percent since 1980. Nearly 5,000 babies per year are born with defects related to fetal alcohol syndrome.

One would think that Americans would be aware of the potential health hazards of alcohol abuse. However, in 1985, only 57 percent of Americans had even heard of fetal alcohol syndrome. A recent National Center for Health Statistics study incidates that Americans know less about the adverse effects of alcohol on health than they do about the harmful effects of smoking.

Mr. President, I believe that it is time for a concerted national effort to educate the American people about some of the serious consequences of alcohol use. For many years, it has been my opinion that health warning labels on alcoholic beverages would assist in this educational process.

The resolution which has been included in this legislation requests the Public Health Service to conduct studies on the most effective ways of providing such education. The Public Health Service is requested to include in their report to Congress findings on the effectiveness of health warning labels on alcoholic beverages and recommendations for specific language for such labels.

This study would be a valuable step in our efforts to educate the American people on the serious health consequences of alcohol abuse. I urge my colleagues who may serve on the conference committee for this legislation to maintain these provisions in the conference report.

RESPONDING TO THE CRISIS OF DRUG ABUSE

Mr. RIEGLE. Mr. President, I rise today to support S. 2878, the Anti-Drug Abuse Act. I am pleased that the Senate was able to craft this bipartisan package which is a critical first step in addressing the critical problem of drug abuse in our Nation.

Drug abuse is a real and growing national tragedy. The economic consequences—ranging from lost productivity to bad decisions, to crimes and accidents—are staggering, costing the U.S. economy at least $60 billion each year. The human costs are beyond measure and can be seen in all age, economic, social, and ethnic groups in our country. No family or neighborhood is safe from the epidemic.

The bill before us is a broad-based approach to address our drug problem. It strengthens penalties and creates new criminal offenses for those who profit from the illicit drug trade in this country. It takes needed steps to stem the flow of illegal drugs into our country by beefing up our interdiction efforts with additional resources for our Coast Guard, Customs Service, and Drug Enforcement Administration. It provides more assistance to our local and State law officials in enforcing State drug laws where much of the burden falls. Most importantly, through education and treatment, it seeks to discourage people, especially our youth, from using and abusing drugs and from becoming chemically dependent. Additional funding is also provided for programs to treat those who have already begun to abuse drugs and who are in need of rehabiliation.

In our eagerness to consider drug legislation, I hope that we have not overlooked the importance of drug abuse education. This bill only partially addresses the need for an increased effort for education and treatment programs. While improved enforcement is necessary, the demand for drugs can only be curtailed through major education, prevention, and treatment efforts. As a former chairman of the Alcoholism and Drug Abuse Subcommittee, I believe that we can continue to make important strides in reducing drug abuse by working together and making it very difficult to obtain drugs and unacceptable to use them.

Mr. BRADLEY. Mr. President, it is important that the Senate has turned its attention to a scourge which has infected every community in our country. The Anti-Drug Abuse Act of 1986 is a bipartisan effort to increase the ante in the war against drugs. Cocaine importation has nearly doubled over the past 2 years, and our young people everywhere are being exposed to drugs. According to some estimates, Americans now spend over $100 billion a year on illicit drugs, with another $100 billion spent on health costs, lost production, and crime related to drug abuse.

Due to the recent death of several well-known Americans, including Len Bias, drug abuse has come to the forefront of public concern. An increasing number of Americans are asking what they and their government can do to combat this problem. It is clear that we as individuals will have to pitch in if we are to get better results on this front. But individual efforts by themselves will not be sufficient. Government must also play a larger role. And the bill before us authorizes new and expanded drug education and treatment programs in schools and clinics, tougher and more expansive interdiction efforts at the borders, more expansive international efforts to try to slow down the production and shipment of drugs and tougher penalties for drug pushing.

I am pleased that the legislation addresses the problem on both fronts—enhanced interdiction and enforcement efforts to reduce the supply of drugs available in this country and expanded education and rehabilitation programs to reduce the demand for drugs in this country. For any effort to be successful, both the supply and demand of drugs must be reduced.

Although this legislation takes some important steps to combat drugs, Americans should not expect miracles. The use and abuse or drugs and alcohol has been part of our culture for some time and will be with us for some time into the future. The steps included in this legislation will clearly help, but there are no cure-alls. Changes in Federal law will help, but attitudes must change if we are ever to see a sizable and dramatic reduction in drug use. I should point out, Mr. President, that I am heartened that Americans are becoming increasingly less tolerant of alcohol and drug abuse; this is reflected in the higher drinking age, tougher drunk driving penalties, and harsher treatment of drug pushers. I believe these changes in values will lead to improvements in the future. But no one should be surprised if America is not a drug-free society in the near future. These changes take time and hard work on all of our parts.

Finally, what is perhaps most disturbing is substance abuse, whether drugs, alcohol—or even smoking—by our young people. Substance abuse can destroy their lives. We need to challenge our children to value themselves and their futures. We as individuals need to set examples for our children. And we as a nation must speak with one voice on drugs, and that voice should say "drugs will harm you." You will never be the very best you can be if you are high on drugs.

Mr. KENNEDY. Drug abuse in our Nation is a menace that threatens the security, health, and productivity of all of our citizens. A comprehensive response by Congress is long overdue. I welcome Senate consideration of a bipartisan package of proposals to increase the effectiveness of law enforcement against narcotics traffickers, improve the education campaign about the dangers of drug use, and expand the availability of vital treatment programs for drug abusers.

I applaud the excellent bipartisan work done on both sides of the aisle and in both Houses of Congress. In particular, I commend the Senate Democratic task force led by Senator BYRD, Senator BIDEN, and Senator CHILES, which produced the far-reaching bill introduced 2 weeks ago with 47 cosponsors.

I strongly support the positive initiatives in the core package now before us to strengthen our arsenal in the war against drugs. The bill introduced last Thursday was a good start, and it has been improved by amendments to limit nondisclosure of information by the Government and provide for fee waivers for reporters and public interest groups seeking access to materials pursuant to the Freedom of Information Act. The Senate has accepted my amendment to include treatment for drug-offenders as part of the drug law enforcement State and local assistance grant program. This is a critically important means to reduce recidivism of drug offenders.

We now have a strong antidrug bill unencumbered by proposals that would seriously undermine civil liberties, such as the death penalty, limitations on the exclusionary rule and the availability of habeas corpus. I urge my colleagues in the Senate to support the bill. I hope the House will accept the Senate bill, so that we can enact a tough antidrug law this year.

We have a responsibility to act now to provide the tools necessary to eradicate narcotics trafficking and drug abuse.

The widespread use of illegal drugs is one of the most pressing problems facing our society. Illegal drugs are killing children and destroying families. Vast profits from the sale of illegal drugs have created a new criminal underworld which promotes violence and feeds on death. The illness, lost productivity, and crime associated with illegal drugs costs society $60 billion a year. But there is no way to put a dollar value on the agony of a family whose dreams have been destroyed by the drug addiction of a child.

Recent events have highlighted the scope and seriousness of the drug problem and dramatized the need for swift and forceful action. Athletes like Len Bias and Don Rogers have lost their lives in the growing epidemic of cocaine abuse. The number of cocaine deaths has tripled in the last few years. The Drug Enforcement Administration estimates that the amount of cocaine entering the United States has risen from 25 to 125 tons per year. The price of cocaine on the street has fallen from $250 a gram to $109 a gram. A new, cheaper—and far more dangerous—form of cocaine, called "crack" or "rock," is easier to transport and use.

Other statistics also highlight the pervasiveness of the drug problem. Half a million Americans are addicted to heroin. A third of high school seniors smoke marijuana at least once a month. Four to five million Americans use cocaine each month. Twenty-six percent of high school seniors have tried cocaine.

And the problem extends far beyond illegal drugs. Twelve million adults exhibit symptoms of alcoholism. One high school student in five is drunk at least once a month. And one American family in three has suffered problems from alcohol abuse. Overall, alcohol abuse costs the American economy in excess of $100 billion a year.

There are three essential elements in an effective program to reduce drug abuse: education, treatment, and prevention. I am hopeful that the legislation we are debating today will make an important contribution in all of these areas.

EDUCATION

The best way for a person to avoid becoming a drug abuser is never to try illegal drugs. There are a number of obvious steps that should be taken to encourage young people not to take drugs—greater focus in schools on the harmful consequences of drug abuse; education in resisting the peer pressure that is such a potent force for adolescents; more open lines of communication between parents and children; and most of all, a change in social attitudes toward drug abuse.

In Massachusetts, pioneering efforts to control drug abuse have been implemented through the Governor's Alliance Against Drugs. State agencies concerned with education, health, and law enforcement have joined forces with the business community and the media to produce a coordinated campaign to stop drug abuse. Effective curricula have been implemented in the schools, and communities and the media have worked to ensure that the message against drugs is heard outside the schools as well. A 5-year plan to expand and improve the alliance have been produced.

Federal programs to fight this growing menace must include all sectors of our society in a similar coordinated, long-term campaign. The bill before us provides substantial additional funds to schools and communities to launch such broad-based education programs.

TREATMENT

No program of education will ever be 100 percent effective. Accordingly, it is essential that treatment and rehabilitation programs be available for those who abuse drugs and wish to stop. In every section of the country, treatment programs are filled to capacity. In the District of Columbia, there are 15,000 drug addicts—but only 1,300 places for treatment. Even where places are available, those who need treatment often lack insurance coverage or resources to cover the cost of care.

Every day, parents face the dilemma of discovering that a child is abusing drugs, convincing the child to accept treatment, and then finding that the treatment programs have no vacancy or the cost is not affordable.

Despite the lip service which the administration has paid to the importance of the drug problem, it has cut back funds for treatment under the alcohol, drug abuse, and mental health block grant. Those funds are the major Federal effort in this area—but today they are half what they were in 1980 after adjustment for inflation. The proposal we are debating today will help restore those unconscionable reductions.

Even more important than direct Federal funds for treatment is the need for health insurance programs to provide coverage for treatment. Such coverage has proven cost-effective in the area of alcoholism, and will be equally effective in drug abuse. It is essential that addicted Americans have access to treatment programs.

PREVENTION

Our law enforcement officials need more effective tools to combat the explosion of drug trafficking and drug abuse. This bill provides many essential weapons in the war against drugs. It enacts enhanced penalties and fines aimed at drug syndicates and drug traffickers. It also updates the Controlled Substances Act to include new and devastating drugs like "crack" and designer drugs.

One of the most critical roles for the Federal Government in the war against drugs is assistance to State and local law enforcement. Most drug offenses are prosecuted at the State or local level. This bill provides assistance to these jurisdictions to repeal the invasion of drugs in our neighborhood streets and homes across the country. In particular, the bill creates demonstration projects for drug offender units in local prosecutors' offices, in order to fasttrack the prosecution of drug offenders. This program is patterned after the extremely successful career criminal units established under the Law Enforcement Assistance Act. The bill, as amended, also provides grants to States for treatment programs for drug offenders. These programs have proven highly effective in reducing street crime by drug offenders.

Finally, this bill increases Federal support for interdiction by the Customs Service, Coast Guard, and Armed Forces when appropriate, and it also adds funds for State Department narcotics control.

In sum, the bill before us gives us the opportunity to adopt a balanced, comprehensive approach to a complex crisis. It is not perfect legislation, but it is an effective start. It contains desperately needed programs that should be implemented immediately. I urge the Senate to approve this measure promptly.

DRUGS: TERRORISM WITHIN OUR BORDERS

Mr. DOMENICI. Mr. President, when terrorists kill Americans abroad, we rightly feel a sense of outrage at the act. We take what steps we can to punish the terrorists.

Yet, faced with a threat that can only be termed terrorist from within our border, we waffle. We avoid the issue, and we fail to confront it head-on.

I am talking about drugs, drugs that undermine our society, threaten our way of life, and kill Americans just as surely as the bombs tossed by terrorists do.

The use of illicit drugs is clearly one of the biggest threats facing our society. It destroys lives. It saps the minds and lives of our young people.

We must meet this threat and eliminate it.

The extent of illicit drug use in this country is terrifying. Sixty-six percent of all young adults 18 to 25 have used illicit drugs at one time or another. Fifty-four percent of high school seniors have tried marijuana. Twenty-six percent have used stimulants. Seventeen percent have used cocaine. Eleven percent have used tranquilizers. Five percent have used PCP. Twenty-five percent of adults over 26 have used illicit drugs. In 1984, Americans smoked 9,200 tons of marijuana, snorted 76 tons of cocaine, and injected 6 tons of heroin into their veins.

We cannot attack this problem piecemeal. We need an all-out assault on drugs in our society. We must attack the problem at both ends: supply and demand. It is impossible to stem the flow of drugs into the United States without also reducing the market for drugs in this country and vice versa.

The effort to eliminate drugs from our society will be costly. But our failure to act will be even more costly. So we must make the sacrifices necessary to implement this program.

However, we should be under no illusion that merely toughening penalties or spending more money will solve the drug problem. We have been spending more money to attack this problem in recent years. In fiscal year 1982, the Federal Government earmarked $1.075 billion in budget authority for drug law enforcement and health-related drug abuse. In fiscal year 1985, Congress authorized $1.704 billion for those programs, that's an increase of 59 percent over fiscal year 1982. Spending in all but 1 of the 15 categories of Federal drug law enforcement and health-related drug abuse programs has risen since fiscal year 1982, and in that one category, spending has remained constant. Likewise, in the past 25 years, Congress has enacted at least 83 laws intended to crack down on the drug trade and drug usage. Yet the drug menace has gotten worse.

Decreasing the supply of illegal drugs in this country and to punishing those involved in illegal drug activity must be a priority. However, I believe our foremost task is to educate our young people about the dangers of drug abuse.

The acceptance of drugs by society, and the widespread use of drugs by famous persons, such as movie stars, rock musicians, and athletes, makes it difficult to curb the demand for drugs. But the dangers of drugs, as graphically demonstrated by the tragic death of basketball star Len Bias, are so great that we must curb the demand. Many drug abusers do not die quite so dramatically or quite so fast. Many take a slower road to self-destruction, but the result is the same: a national loss in terms of potential and productivity.

The drug plague will not be eradicated until there is a fundamental change in attitudes in this country toward drugs. Until it is no longer socially acceptable to smoke marijuana or snort cocaine, the drug problem will remain with us.

The drunk driving experience serves as a good example of the way attitudes can be changed. Drunk driving has been a major social problem for many years. In recent years, however, we have made progress toward coming to grips with the problem. Attitudes have changed. It is no longer socially acceptable to drive while intoxicated. The catalyst for this change was not a government program, but rather was a populace, in the form of mothers against drunk drivers and other groups, enraged by the consequences of drunk driving that opened society's eyes to the problem and began to change its attitudes.

A similar change in attitude is needed in order for drug eradication efforts to succeed. When adults stop viewing drug use as a matter of personal choice, when teenagers stop viewing drug use as fashionable, when prosecutors stop viewing drug cases as a low priority, and when judges stop viewing the possession of small amounts of drugs as a "victimless crime," then we will be achieving a fundamental change in attitudes that will lead to a decrease in drug usage. We must dispell the seductive myths surrounding drug use.

Essential to changing attitudes is an educated public. We must ensure that the public, especially our young people, are aware of the dangers of drug use. Let us make sure that our young people realize that drugs are a one-way ticket to nowhere.

The most efficient way to communicate information today is through the mass media. By working with broadcasters, publishers, the advertising industry, and companies that advertise, we can help create advertisements and programs which portray the problem of drug use accurately and thus help change attitudes.

Therefore, earlier I proposed and this body endorsed the creation of a President's Media Commission on Drug Abuse to coordinate efforts in the mass media to prevent drug abuse and to monitor the effectiveness of this effort. This Commission will be composed of broadcasters, representatives of the advertising industry, advertisers, and drug abuse professionals.

Specifically, the Commission will:

First, examine the antidrug efforts of radio, television, motion pictures, magazines, the advertising industry, and advertisers;

Second, coordinate the resources of the electronic and print media, the advertising industry, and advertisers to implement new programs and strategies for disseminating antidrug messages;

Third, create antidrug public service announcements and advertisements for broadcast and publication;

Fourth, monitor the effectiveness of its program; and

Fifth, report annually to Congress on its efforts.

Additionally, I believe that those who are in a position to influence the public, and in particular, our young people, must set a good example. One of the most influential groups in today's society are those persons involved with the entertainment industry. In many ways, television, movies, radio, and records shape our society's values. Therefore, I propose that we enlist the entertainment industry's support for the war against drugs. Therefore, I submitted an amendment to this measure that requests the entertainment industry voluntarily to refrain from producing films, TV programs, records, and the like which glamorize drug use. It also encourages the entertainment industry to develop films, programs, records, and the like which reject illegal drug use. I am pleased that the Senate adopted this amendment.

By these efforts we can help change attitudes toward drugs and begin to decrease the demand for drugs.

But decreasing the demand for drugs is only half of the equation. As I have said, we must attack both demand and supply.

The supply of drugs coming into this country through Mexico, for example, has shown a frightening increase in recent years. The majority of marijuana and heroin that comes into this country is now smuggled in through Mexico. Over one-third of the cocaine in this country comes through Mexico.

But I think we should beware of criticizing our good neighbor to the south about this problem. Not only is this turn of events dangerous for the United States, it is also dangerous for Mexico. It has led to corruption; it has undermined the Mexican Government; and it has strained relations between our two nations. We must remember that Mexico is confronted with this problem because of the demand for drugs in the United States.

The problem is that an effective border doesn't even exist at points. The Southwest border is isolated and poorly patrolled. In one stretch of the border in New Mexico, the fence was found to have been cut at 47 spots in a mile and a half. A recent study of the Southwest border found 760 areas where persons had crossed illegally.

It also identified 132 drug warehouses north and south of the border and 472 clandestine air strips used in drug trafficking. Air smugglers find the border to present no obstacle, as radar coverage is nonexistent at points. This is of particular concern, as 60 percent of the drugs coming over the border are flown in.

We must prevent drugs from crossing our borders. We need more personnel and more equipment.

I communicated my concerns to the President in a letter with five of my colleagues last April. In that letter, we called for the creation of a Southwest Border task force modeled on the highly successful South Florida drug task force.

I was pleased that the administration heeded our call. They got to work on putting a task force together. At the administration's request, I helped put together a meeting of State and local law enforcement officials to discuss solutions to this problem with Federal officials. This meeting was held in El Paso, TX last June.

As an outgrowth of these efforts, the Attorney General in July announced a new initiative, known as Operation Alliance, along the Southwest border.

Operation Alliance is a coordinated strategy to fight drug smuggling from Mexico. The Federal, State, and local governments will pool their resources and work together to meet this threat. The effort, which will include both air and land interdiction, will be tailored to address the particular situation of each State.

Operation Alliance will send a message to the drug terrorists that the door is closed on their lethal trade. Additional efforts, however, are needed to assure that we defeat the drug threat.

But stopping the drug trade will not be enough. We must provide treatment and rehabilitation for those individuals who have fallen victim to the disease of drug addiction. One way we can help is by providing assistance to the homeless. Perhaps many of my colleagues do not realize that one-third of all homeless men and women are drug and alcohol abusers. It is the homeless drug abuser who is the victim of the drug terrorists. In order to help these individuals who are battling back from drug addiction, I proposed an amendment which will remove the legal barriers which exist in our law that can prohibit a homeless person from receiving the benefits to which he or she should be entitled. It provides that the lack of a fixed address will no longer be a barrier in qualifying the homeless for Job Training, Aid to Families With Dependent Children, Supplemental Security Income, Medicaid, and Veterans' programs. It also allows emergency shelters to redeem food stamps for food for the homeless. This amendment is now part of this bill.

Mr. President, it is clear that the drug problem is out of control and needs to be addressed. Congress needs to take immediate steps to stem both the supply of drugs coming into this country and this country's enormous demand for drugs.

A number of excellent proposals have been put forward in recent days. I support the six goals that President Reagan has announced as part of his national crusade against drugs. They are:

First, drug-free workplaces for all Americans;

Second, drug-free schools from elementary to the university level;

Third, expanded drug abuse treatment and research;

Fourth, improved international cooperation to defeat international drug trafficking;

Fifth, strengthened drug law penalties and enforcement; and

Sixth, increased public awareness and prevention.

We must assure that those individuals who terrorize our society with drugs are removed from the streets and punished accordingly.

We must make clear that we are serious about defeating this threat.

We must increase the penalties for most drug-related offenses, including mandatory jail terms and fines, and establish minimum penalties.

We must provide our law enforcement personnel with the resources, meaning manpower and equipment, necessary to wage the war against drugs.

We must close the loopholes in our current customs laws which allow the drug trade to go unchecked.

We must educate our young people so that they are not tempted to use drugs.

We also must help those who have become addicted to drugs to seek treatment and rehabilitation.

This bill would achieve these goals.

However, although there are many beneficial provisions in this bill, it lacks some provisions which I believe are essential to defeating the drug terrorists. If we are serious about winning the war on drugs, we need to enact these provisions.

The first is a provision establishing a good-faith exception to the exclusionary rule. Too often we hear about someone charged with a drug offense getting off on a technicality because the police, although they thought they were following all the procedures by the book, made a mistake and because of that a guilty person goes free. We must close this loophole in the law and assure that otherwise good evidence is not thrown out of court because of harmless mistakes by the police.

The second much-needed provision that is missing from this bill is the death penalty. Those individuals involved in the drug trade have shown a disregard for human life. There have been gun battles between rival drug rings in our streets and innocent bystanders have been killed. We must permit the death penalty to be imposed for murders committed as part of a continuing drug enterprise. Those who take a human life in order to promote their drug trade must pay the ultimate penalty.

Although this is by no means a perfect bill, I support it and urge its passage.

Mr. President, we in this country have an enormous task before us to rid ourselves of the plague of drugs which terrorize us. We have the opportunity before us to strike decisively at this terrorist threat. In recent days, much attention has been focused on this issue. We must use this increased awareness to wage war on this threat to our Nation's brain trust. Let us not hesitate to act in the strongest manner. Our continued vitality as a Nation demands immediate action against the drug menace.

Mr. HART. Mr. President, we have an opportunity in this debate to perform an act of public service: To help change the moral and social direction of our Nation. We can speak to the despair of the ghetto and the relative peace of the surburbs. We can speak to Wall Street elites and the kids on the street corner—to the athletes who think they have it made and to the addicts who see no future.

Our message is simple. Drug abuse must stop. It is unacceptable as social recreation for the well-to-do. It is a poisonous dead-end for the left behind. The presence of drugs in our society is corroding the family, the criminal justice system, and our schools. If we legislate responsibly, we'll be making an invaluable investment in the future of our Nation.

It is wholly appropriate we are talking about this issue. We must not calm down about drugs, but neither can we panic. We undermine the strength of the statement we are making with this legislation if we throw common sense or civil liberties out the window. We'll need both if we are to make a start in ending chemical dependence and the crime it breeds in our society.

This legislation begins with the premise that government must attack the drug problem by stiffening penalties against the use and sale of narcotics. It should. But we have an obligation to address a deeper problem. President and Mrs. Reagan are right: We need to change our attitudes about drugs.

The recent consensus to stop drugs was formed by the tragedy of cocaine. Cocaine use must stop. From athletes to Wall Street lawyers, cocaine use grew for the past 10 years among any who could afford it. Then along came crack-cocaine—and the high was available to all. So too, however, were the lows: The raging paranoia, the addiction rooted deep in the brain's chemical structure, and worst, the senseless deaths.

The consequences of cocaine use go beyond the devastating effects on the user. People who purchase cocaine must understand an ugly truth that has become all too familiar in certain regions of this country. Drug buyers are supporting a traffic in death and corruption in this country and throughout the world.

As many of us recognize, the dependency crisis doesn't stop with cocaine. In this city, and in others around the country, PCP is ravaging users with its singular violently psychotic high. Heroin addiction remains a source.

Children are using marijuana in junior high schools. Alcohol continues to cause endless death and destruction. In addition to the accidents, there are the lives lost to chronic alcoholism, a phenomena whose chemical intricacies are just now beginning to be understood. Recent studies indicate that the direct costs to society from alcohol abuse dwarf those of all other drugs combined.

Reciting the facts publicly is a good and necessary endeavor. But no political figure can convince people not to use drugs. No police agency can catch every person who tries to smuggle cocaine or smoke a PCP laced cigarette. The problem requires families, friends, and communities to band together and talk, cajole, and convince. We've made progress in convincing people not to drive drunk, but much more needs to be done.

The three bills I have cosponsored, and the measure before the Senate today, recognize this need. The bills would increase penalties for drug violations. They would give us greater ability to cut drug production off at its source. They would strengthen our attempts to stop drugs at our borders. Perhaps most importantly, these proposals will focus national efforts on reducing the demand for drugs.

When we provide children with the truth about drugs, it is less likely they will experiment with them. And these proposals would help make the truth be known, through well-conceived and carefully implemented drug education efforts. We can further cut the demand for drugs by helping users break the choke-hold drugs place on their lives and dreams. Effective and proven treatment programs will be given a chance to expand their essential work.

I am convinced that these efforts will move us in the right direction. But I am equally convinced that it would be tragic to turn our backs on the Constitution in the name of expediency. The experts tell us that losing control about drug abuse is one of the worst ways a parent can deal with a child's drug problem—it won't work any better for us as a Nation. We need to be firm and clear in our opposition to drugs and credible and consistent in our actions. Tolerating violations of the Constitution, however, is no way to demonstrate our intolerance of drug abuse.

CONCLUSION

What we need today is personal and public leadership and commitment. Americans know that individual responsibility informed by public leadership is the start, middle, and end of our national endeavor. There's a reason alcohol consumption overwhelms the Soviet Union.

That is why I am grateful as an individual, as a parent, and as an American, for the President and Mrs. Reagan's efforts to raise this problem to the level it deserves.

And I am similarly grateful to a great number of my colleagues, including the leaders of both sides of the aisle and the distinguished Senators from Delaware and Florida, Mr. BIDEN and Mr. CHILES, for their tireless and extensive efforts to forge a major and effective new offensive in our war against drug abuse.

Mr. DODD. Mr. President, I wish to commend the distinguished minority and majority leaders for their fine efforts in developing a bipartisan package to address the problem of drug and alcohol abuse in this country. Much of this package was first introduced as the "Comprehensive Narcotics Control Act of 1986," the result of the work of the Democratic Task Force on Drug Abuse. As a member of that task force, I wish to commend my distinguished colleagues from Florida and Delaware, Senators CHILES and BIDEN, for their apt leadership as cochairs. This measure includes both short- and long-term strategies to strengthen drug abuse education, prevention, treatment, enforcement, and interdiction efforts in this country. In my remarks, I would like to focus on strategies to prevent and treat alcohol and drug abuse among high risk youth.

In recent days, we have heard a fair bit of criticism about the unrestrained publicity and focus by the media on the problem of illicit drug use. While I would agree that the problem has been distorted and taken out of context, there is still disturbing new evidence about childhood drug and alcohol abuse in this country. The age of first use of cocaine is going down, as is the age of first use of all drugs. In my State of Connecticut, the number of children in treatment for cocaine addiction increased 100 percent from 1983-84. And, between 1984-85, the number of clients in drug and alcoholism treatment programs in my State who started using drugs before the age of 18 had increased by close to 2,500.

The deaths of several well-known athletes have convinced everyone that the consequences of illicit drug use can be fatal or disabling. But it is important to remember that the use of more socially acceptable drugs, such as alcohol, can be equally tragic. In 1984, one out of every four drivers responsible for drunk-driving fatalities were young people between the ages of 16-20. And, one out of every three Connecticut students in grades 10 to 12 has a serious drinking problem, causing them to abuse alcohol on a daily basis.

But childhood alcohol and drug abuse does not occur in a vacuum. You certainly can learn that by speaking to child protection workers who deal with the children who have been victimized by physical or sexual abuse, or to the directors of shelters harboring runaway adolescents, or to the teachers who see latchkey children out on the streets, or to the staff of the boys and girls clubs and other groups working with unemployed school dropouts, or to the adults working with pregnant teens and teenage parents. All these frontline workers say that the chances that the young people they work with will end up abusing drugs or alcohol go way off the charts. Therefore, any package would be incomplete without a special program targeting drug and alcohol prevention and treatment services for high risk young people.

The time to do something about high-risk youth is now. For those that feel drug testing is the answer, I would submit that the youth at highest risk will never even take a drug test at school—because they will have dropped out before schools start testing. Experts in my State assert that if a child who abuses drugs stays in school, there is a 85 percent or better chance of helping him or her to break the habit. Once the youngster drops out, however, the chances of rehabilitation drop to 15 percent.

We need to get concrete help to these youth now by funding solid prevention and treatment programs in the communities where they live. We need to help set up after-school programs in the inner cities, to keep 8- and 10-year-olds from having to make the alleyways where drug pushers stay their playgrounds. We need to provide treatment for the victims of child abuse, so they do not have to resort to drugs and alcohol as a means of shutting off painful memories. And, we need to find long-term solutions for runaways unable to return home, to keep them off the streets, and away from adults who will use drugs to exploit them.

For those young people who have already developed addictions, we must provide community-based treatment and rehabilitation programs. Failure to help prospective teen parents curb drug abuse may result in the addition or serious illness of newborn infants. We will also fail to deter some of the serious crimes committed by adolescents in association with drugs unless we target some effective services to curb their substance abuse.

As part of the Democratic task force package, I introduced S. 2800, the Drug Abuse and Alcohol Abuse Prevention, Treatment, and Rehabilitation Model Projects for High-Risk Youth Act of 1986. By authorizing the Department of Health and Human Services to distribute $25 million for innovative prevention models and $25 million for multidisciplinary treatment and intervention models, this legislation targeted those youth in most need of services. Such model projects were to be carried on by public and private community groups with the best access to children at risk. And, the National Institute of Drug Abuse was authorized to evaluate the community-based projects.

My proposal to target high-risk youth was included in the bipartisan package we consider today under a separate title, "State High-Risk Youth Programs." Of the total amount of funding provided to States under the alcohol, drug abuse, and mental health block grant program and under a new substance abuse authorization of $125 million, 5 percent is to be set aside for model prevention and treatment projects serving children at risk. Thus, a total of $25 million will be available for fiscal year 1987.

Although I would have preferred additional resources to reach these children growing up at risk, the thrust of the State high-risk youth programs is identical to that included in the Drug Abuse and Alcohol Abuse Prevention, Treatment and Rehabilitation Model Projects for High-Risk Youth Act of 1986. States would be required to fund innovative, community-based projects that draw connections between and among childhood substance abuse and child abuse, teen parenthood, dropping out of school, growing up in poverty, and other problems. Such projects are to serve as models in the delivery of multiple, coordinated services.

In closing, Mr. President, I wish to commend the Carnegie Corp. of New York for recently establishing a council on adolescence, focusing on high-risk youth. As the Carnegie Council has so aptly stated, during adolescence a significant number of youth abuse drugs and alcohol; are the victims of physical, sexual or psychological abuse; drop out of school; become pregnant; are economically disadvantaged; commit violent or delinquent acts; experience mental health problems; attempt suicide; or are killed or disabled by injuries. The "State High-Risk Youth Programs" are an attempt to explore the connections between these problems and provide concrete help in the form of model, community-based prevention and treatment programs.

Mr. President, I urge my colleagues to support this legislation.

Mr. BIDEN. I say to Senator MOYNIHAN, as one of the key authors of much of the material covered in title IV, I would like to make an inquiry regarding the availability of funds for certain education and prevention programs.

Mr. MOYNIHAN. I would be happy to provide any clarification for my distinguished colleague from Delaware [Mr. BIDEN].

Mr. BIDEN. It is my understanding that moneys would be available in this bill for education programs sponsored by nonprofit organizations. Is my interpretation correct?

Mr. MOYNIHAN. The answer to your question is yes. Specifically, additional moneys have been authorized for the National Institute of Drug Abuse. NIDA is responsible for providing assistance to not-for-profit groups for drug abuse education, prevention, and treatment programs. Moreover, moneys would also be available through the Secretary of Education for national drug abuse education programs. Funding for not-for-profit programs would be available through both of these agencies, on a discretionary basis.

Mr. BIDEN. I thank the distinguished Senator from New York for his clarification. Throughout the country, nonprofit organizations provide essential services in the areas of drug-abuse prevention and treatment. And recently, a particularly meritorious program has come to my attention. This project, developed by the Scott Newman Center, Families in Action, and Pharmacists Against Drug Abuse would establish a national data base for drug abuse education, prevention and treatment information, which would be accessible for Federal and State drug abuse agencies, law enforcement agencies, parents and community organizations, and other interested groups, in obtaining reliable information on drug abuse.

There is a great need to provide accurate and reliable information on drug abuse throughout the Nation, particularly to local, community based groups who would not normally have access to such information. I commend the groups involved in this project, and I hope that the legislation acted upon today will enhance this and similar efforts to improve our efforts to reduce the demand for drugs in this Nation.

Mr. MATTINGLY. Mr. President, I am pleased that my colleague made that clarification.

Families in Action is headquartered in Decatur, GA. The organization has been involved in important education and prevention programs for some time and regularly provides accurate information about drugs to citizens throughout the country. The national drug prevention computer data base project, which Families in Action has developed in conjunction with the Scott Neuman Center, and others represents a unique resource.

Throughout debate on this bill, we have often referred to the need to provide citizens with access to current, credible and precise information on drugs. I would hope that serious consideration will be given to the Families in Action computer data base project. Again, I thank my colleague for the clarification.

TRIBUTE TO DAVID WINSTON

Mr. WILSON. Mr. President, with the passing of David Winston, our Nation has lost a gifted and tireless public servant. A native of California, Mr. Winston was well known here on Capitol Hill, where he served as the minority staff director for the Committee on Labor and Human Resources, and at the Department of Health and Human Services, where he headed up President Reagan's transition team on health care and later served as special assistant to HHS Secretary Richard S. Schweiker.

A graduate of San Francisco State and the University of California, Santa Barbara, Mr. Winston devoted a lifetime to improving the quality of American health care. At the time of his death, he was the corporate vice president of Voluntary Hospitals of America, responsible for strategic and public policy planning and liaison with Federal and State agencies.

However impressive, no resume can freely demonstrate the quality of a man's professional contributions, nor the standards of personal excellence which are his hallmark. David Winston raised our sights as he raised our standards; his tragic death cannot obscure his triumphant life.

Mr. Winston's family can take pride in his years of long and distinguished service to the State and Nation. His wife Susan, his son and daughter, Heath and Shannon, his mother Dorothy, and his brothers and sisters, William, James, and Diane, will miss him; so will all of us who came to rely upon his wisdom.

While we mourn his untimely passing, we should take this moment to commit ourselves to crafting health care policies in the future that are worthy of David Winston's memory. We should rededicate ourselves to his rare blend of competence and compassion, to personal sensitivity and public selflessness.

Mr. TRIBLE. Mr. President, the legislation before us is the most comprehensive attack on the international drug trade ever launched by the Congress. It is a wide ranging response to an epidemic that threatens our society, and I strongly support its passage.

This sweeping measure attacks the plague of illicit drug trafficking and abuse on many fronts. First, it hits the drug trade at its source by withholding U.S. financial aid from foreign governments that refuse to help eradicate drug crops and prevent drug money laundering. Second, it provides greater resources for seizing drugs before they reach the United States. Third, it enhances the criminal penalties for manufacturing, importing, and distributing illicit drugs. And finally, it strengthens the Federal Government's commitment to drug abuse prevention and education programs aimed at ensuring that young people never get hooked in the first place.

I am especially pleased that this bill contains two proposals I authored to combat the drug trade. The first provides for life imprisonment without parole for major drug traffickers. The second prohibits foreign assistance to countries that refuse to crack down on the laundering of profits from the sale of illicit drugs.

In passing this measure, we will have toughened considerably the criminal punishments for those engaged in the drug trade. We will have strengthened our ability to prevent foreign-grown drugs from reaching our shores. And we will have reshaped our relationship with foreign governments who refuse to help us in the war on drugs.

But this bill is merely a beginning. It is but the opening skirmish in the war on drugs—not the final assault. Recent events have helped create a perception of war as a quick, clean, and easy task. America liberated a country, Grenada, in barely a week. America helped quiet a dictator, Qaddafi, in just a few hours. But America's war on drugs will not be so easily won.

The burden this Nation assumes in combatting the drug trade is an enormous one, for we face a great many adversaries—the peasant who grows poppy and opium in foreign lands; the trafficker who ships these deadly drugs to America; the street dealers who peddles dope to children; the banker who helps launder drug-related profits they sustain a continuing criminal enterprise that threatens the very foundations of our country. The recent surge in illicit drug production and trafficking has upped the ante in the battle against the drug trade. The drugs themselves are more numerous and more lethal. The drugs runner is more willing to use violence to protect his share of the trade. And the handiwork of the drug dealer can be found in cemeteries and hospitals and prisons, in broken families and broken lives throughout this Nation.

It should therefore surprise no one that most Americans see drugs as the most critical problem facing the country. Yet, passage of this bill will be the easiest step in the fight against drug abuse and drug trafficking. The most difficult battles will be those fought in homes, schools, and communities around the country. The efforts most deserving of praise will be those of young Americans who resist the allure of drugs, and those of families and friends in helping to rehabilitate loved one who are drug dependent.

Mr. President, the war on drugs will ultimately be decided by strength of character rather than by force of arms. Force of arms will help, and I strongly support the emphasis on law enforcement and interdiction in this bill. But I also feel that the bill's symbolism is unmistakable—that we in the Congress will no longer tolerate the damage that drugs inflict on America's children, families, schools, and communities.

This bill is a positive step toward repairing that damage. I urge its adoption.

Mr. CHAFEE. Mr. President, drug abuse is one of the most pressing dangers facing our Nation today. Our society is paying a heavy price for the drug abuse epidemic: drug abuse threatens thousands of lives, it jeopardizes the health and future of our children, and it increases the incidence of violent crimes on our streets.

The problem of drug abuse cannot be resolved by a single initiative at the Federal level. But it is clear that national leadership is essential if we are to mount an effective campaign against both the supply of illegal drugs and the demand for such substances. This legislation takes an important first step.

The facts about drug abuse are alarming. Regular drug use is highest among the age group 18 to 25—those most likely to be just entering the work force. There are about 500,000 hardcore heroin users in the United States. These are between 4 and 5 million Americans who use cocaine. From 1975 to 1984, the amount of cocaine smuggled into the United States quadrupled. In 1984, the drug empire brought into the United States 10 tons of heroin, 85 tons of cocaine, and about 15,000 tons of marijuana. This does not include the substantial domestic production of narcotics.

Drug abuse is not a "victimless crime." Everyone's safety is at stake when drugs and excessive alcohol are used by people on the highways, those who transport our citizens, operate industrial equipment, or regulate air traffic. According to the President, drug abuse in the workplace costs Americans at least $60 billion a year.

One of the many startling figures highlighted by the present debate is the almost unbelievable $120 billion that Americans spend annually on illicit drugs, according to the DEA. That is more than Americans spend for food, clothing, and shelter. But these frightening facts cry out for careful, long-term consideration, not the quick political fixes that jeopardize the history of respect for constitutional rights so crucial to our society. Nor is there justification for harassing workers with drug testing that amounts to invasion of their privacy.

In their rush to be recorded on the right side of the drug issue some Members of Congress have taken extraordinary steps. The House voted to suspend civil liberties, waive a century-old prohibition against military involvement in civilian law enforcement, and set a new criminal standard for imposing the death penalty. We considered these same ill-advised, far-reaching measures in the Senate, and I am pleased they are not included in this bill.

There is much of merit in this legislation before us. It rightly provides tougher penalties for drug related activities. For example, this bill stiffens penalties for simple possession of a controlled substance: higher fines and mandatory imprisonment for a second offense. It sets a term of life imprisonment in certain circumstances, for drug kingpins. The bill also allows courts to seize substitute assets of a convicted person when the proceeds from a drug crime are not reachable by the court. It adds penalties for persons who use juveniles in trafficking of drugs, and broadens current law against selling drugs within 1,000 feet of a school. Finally, this drug legislation cracks down on money laundering, the financial sleight-of-hand which enables traffickers to conceal the assets of their nefarious business and to finance further expansion of their operations.

The bill provides stricter penalties for those who traffic in drugs—those who put profit above all else, who tear apart the fabric of our society and destroy lives. These drug traffickers are the most vicious of criminals, whose actions are often violent and put the public, especially innocent children, at risk. Their activities are contemptible, and demand enhanced and stricter penalties.

Yet to focus too much on interdiction of drug trafficking will yield few good results. The United States has gone after drug trafficking in all kinds of ways in the past. One way, of course, has been to try to shut off the flow of drugs into the country from outside, even to the point of going to the source country and trying to shut the growers down. But after 75 years of this, it is most charitable to say that successes have been limited.

From all indications, imports of illicit drugs keep rising. The potential sources are unlimited and the U.S. border is very long relative to the size of the opening needed to smuggle in a shoe box full of heroin worth a fortune. If you cannot interdict supply, the logic of the problems tells you that you must reduce demand. The President's Commission on Organized Crime, in its massive final report on drug-law enforcement, said: "Since reducing demand is the single policy option pursuable entirely within our own borders, it deserves greater attention."

No matter how effective our interdiction efforts, we will never succeed in stopping the flow of illegal drugs as long as the tremendous domestic demand for drugs persists. I cannot overemphasize the need for a balanced, three-pronged attack on drugs: interdiction, education for prevention, and intervention and treatment. We can only help deal with the demand problem if we treat drug addiction like an illness.

When we talk about demand reduction we must ensure that treatment programs are available for current drug abusers. If not, we can fund all the interdiction initiatives we have before us, but we won't eradicate the problem. To fully address the problem, we must do everything possible to help get the current abusers into rehabilitation and treatment programs and off drugs.

It is estimated that out of the 24.5 million individuals who have a drug problem, only 272,042 are receiving treatment. It is also estimated that only 10 percent of those actively seeking treatment are able to enroll in a program. These are frightening statistics, and if we are going to ensure a drug-free society, we have a long way to go in the area of rehabilitation and treatment. The $175 million set-aside in this legislation for rehabilitation and treatment will not be sufficient to make certain every abuser has access to the necessary programs, but it is an important step toward improving the level of treatment which we are providing.

Our greatest potential for success in the battle against drugs is in equipping our young people with the strength and knowledge to resist the temptation to experiment with drugs. There have been many attempts in the area of drug education in recent years, and now we have an opportunity to assess these programs and duplicate the most successful ones in schools throughout the country. While this legislation provides us with the means to do more to wage a battle against this serious problem, I believe more of an emphasis on prevention, through education, is necessary to win the war.

The bill's creation of a new, $150 million drug education program within the Department of Education is a step in the right direction. This program will allow State and local education agencies to hit the drug problem where it begins—in the vulnerable minds of our children. We can pour billions of dollars into a supply-side drug war, into fighting drugs at our borders and abroad, but these efforts will be in vain if we do not teach our children the ABC's of drugs. Although I wish that education programs received greater emphasis in the bill, I am pleased to see some funding for this crucial component of the antidrug campaign. I look forward to the creation of innovative and effective drug education programs in our schools, which will deliver more results dollar for dollar than any of the supply-oriented portions of this bill. Prevention is the best cure for drug abuse, and I would like to see more funds targeted toward prevention programs.

I hope this legislation is only the first step on the long road in our commitment to ensure a drug-free society.

Mr. McCONNELL. Mr. President, as this session of Congress draws to a close, we are faced with a number of decisions to make, on matters as diverse as the level of Government spending, the tenure of a Federal judge, and sanctions against South Africa. On all of these issues, we can presume that the results of our deliberations will have effects both far reaching and of long duration. But in the matter now before us, this bipartisan drug abuse bill, I find that my role as a U.S. Senator, the duties which I undertook to perform when I was sworn into office, merge with the other great responsibility in my life, a job more important to me than even that of Senator—that of a parent.

Throughout our discussion of this bill, we have dealt with a wide range of means for achieving our end. As a Senator, I am concerned with the means employed, that they be efficient and effective as well as limited by our Constitution's safeguards. As a parent, I am concerned primarily with the end, the prevention of drug abuse in our society and the swift punishment of the suppliers and pushers who live by the slow death of those whom they have led to addiction.

Imagine the anguish of a parent whose son or daughter, for no apparent reason, starts failing in school, staying away from home, avoiding conversation with family members—in short, becoming a stranger to those who love him or her most dearly, a stranger spiritually, emotionally, and even physically, often to the point of running away from home. And who then has become the person most important to the child, the person from whom he lives, the person in whose hands the child's future, if he indeed has one at all, rests? The drug pusher.

I have three children, one of them a teenager. I do not want some pusher taking my kids away from me, using them, getting from them as much as he can, for as long as he can. I have no doubt that all of my colleagues who are parents feel the same way. Can any of us doubt that every parent in America feels that way?

Mr. President, I will support S. 2878. It is a comprehensive measure designed to attack this Nation's drug war on several fronts. The new weapons provided by this bill are long overdue. Others have already spoken to those specific administrative and criminal powers this bill would bring to bear in the drug battle. Although I am not in absolute agreement with every facet of these provisions, I nevertheless wholeheartedly support them and passage of this bill as a giant step toward victory.

Mr. CHILES. Mr. President, since August 5, when the Democratic leader created the Democratic Working Group on Drug and Substance Abuse, the Senate has come a long way in developing a comprehensive plan to address every evil inflicted on our people by illegal drugs.

I take pride that the bill we have before us now contains the major components of the Senate Democratic proposal.

In title I, the bill gives our law enforcement the help they so desperately need to combat drugs. The Senate bill contains the Democratic three-tiered penalty system which will impose mandatory sentences and large fines against major drug traffickers and kingpins.

In addition, title I addresses the widespread emergence of crack cocaine in this country. As one who has introduced several bills addressing this lethal drug, I am very pleased that the Senate bill recognizes crack as a distinct and separate drug from cocaine hydrochloride with specified amounts of 5 grams and 50 grams for enhanced penalties. The bill also recognizes crack's insidious impacts on neighborhoods by outlawing crack houses and doubling penalties for those who manufacture drugs within 1,000 feet of our schools.

Title II strengthens the U.S. position in influencing control of narcotics outside our boundaries. In particular, the bill strengthens our hand in promoting regional cooperation with our neighbors to the south.

United States interdiction efforts are substantially enhanced by the Senate bill which improves the interdiction capabilities or our civilian law enforcement. Specifically, the roles for Customs Service, Coast Guard, and DEA are strengthened by providing them with more effective tools to combat the drug trafficker. It is essential that these agencies have the means to combat our enemy who is the drug trafficker. The Senate bill is based on the Democratic proposal and provides necessary communications, intelligence, aircraft, patrol boats, and personnel to compete with our enemies the drug syndicates who today outclass our defenses in these areas.

Lastly, Mr. President, the Senate bill provides for programs in two areas that have been seriously lacking—education and treatment. The legislation proposes a Federal program of assistance for State and local education agencies to train and educate teachers as well as students. In addition, resources for existing regional training centers are increased to assist in developing new prevention strategies for our schools.

Research and treatment efforts under the Alcohol, Drug Abuse, and Mental Health Administration are given added support to meet the demands of drug abuse in our communities. New research initiatives in treatment and prevention are encouraged so that more effective methods of care can be realized.

Mr. President, this Senate bill could not have been realized without the efforts and cooperation of many people.

I want to thank Senator BIDEN who as my cochair on the Democratic Working Group led and cajoled as only he can. We had the capable assistance of Senators CRANSTON, DECONCINI, DODD, LEAHY, MITCHELL, MOYNIHAN, NUNN, ROCKEFELLER, and SASSER, whose efforts are evident throughout this bill.

I owe a special thanks to Senator BYRD who created this working group and influenced our activities from day one. And, all of us owe a special thanks to the majority leader, Senator DOLE and Senator THURMOND for their usual cooperative natures. We could not have come this far without their counsel and efforts.

Mr. President, the American people have demanded a new drug policy. They are fed up with the drug dealers having the upper hand as well as the last say. It is time that we and all of our communities across this country dig in and take the initiative to rid our neighborhoods of drugs. I believe that this bill gives us that impetus.

I thank all of my colleagues for their support and interest in realizing enactment of this new drug policy.

Mr. THURMOND. Mr. President, I want to take this opportunity to express my satisfaction with this bipartisan drug bill. We in the Senate should be proud. Working together we have crafted comprehensive and powerful antidrug legislation that will, among other things:

First, impose harsh penalties on those who choose to involve themselves with drugs;

Second, educate our youth and treat and rehabilitate those addicted to drugs;

Third, provide funding and equipment for use in the war against drugs on both domestic and international fronts;

Fourth, mandate studies for guidance in the future; and,

Fifth, provide assistance for State and local law enforcement agencies.

There are, of course, other provisions I wanted to have included in this bill. I believe inclusion of the death penalty, a limitation on the exclusionary rule and habeas reform would have further improved this fine legislation. I commend Congressmen LUNGREN and GEKAS and those Members in the House who valiantly and successfully struggled to include such provisions in the House bill.

There are many who have put forth substantial efforts to make this drug package a reality. I want to thank the able majority leader for his outstanding leadership and enormous contribution to this legislation. Sheila Burke and Jim Whittinghill of his staff have worked tirelessly to put this package together. I applaud them for their dedication to this achievement.

I express my appreciation to Senator HAWKINS who has long been active in the campaign against drugs. She has made significant contributions to this antidrug package. I thank John Dudinsky and David Shoultz of her staff for their participation.

I wish to acknowledge the contributions of Senator DENTON for his promotion of important provisions of this bill.

I thank Senator RUDMAN and his staff person Santal Manos.

On the other side, I commend the able minority leader for his participation and wish to note the efforts of his staff person Sally Mernissi.

I appreciate Senator BIDEN's diligence in making this bill possible. His staff members Scott Green and John Bentigvolio deserve credit for their contributions.

I thank Senator CHILES for his participation in bringing about this compromise package and commend Debbie Kilmer of his staff for her contributions.

Finally, I recognize Dennis Shedd, Diana Waterman, Terry Wooten, Mike Regan, Cindy Blackburn, Mike Tongour and Diane Morehead of my staff who contributed greatly to the success of this package.

In closing, illicit drugs have ruined untold numbers of lives. The cancer of drug abuse has continued to grow as callous drug dealers profit from the addiction of others. The potency of this bill is that drug dealers who have profited in the past will be those most harshly punished in the future. I believe this powerful legislation will be effective in helping to rid this country of its destructive drug problem.

Mr. BIDEN. Mr. President, I rise today to express my enthusiastic support for the bipartisan drug package that we vote on today. If passed, the Anti-Drug Abuse Act of 1986 will be the most encompassing revision to our approach to drug abuse since the comprehensive Drug Abuse Prevention and Control Act was passed some 16 years ago.

I call attention to the 1970 act because it highlights an important issue that has accompanied our recent efforts on the drug problem. The 1970 act was billed at the time as a virtual solution to drug abuse in America. And while it enacted into law important provisions relating to drug control, it is clear that the legislation passed 16 years ago did not stop drug abuse in this Nation. Drug abuse remains a national problem of overwhelming proportions, and that is why we are here once again, to enlist the Federal Government in an aggressive campaign to decrease this Nation's seemingly insatiable demand for narcotics and other dangerous drugs.

And just as the 1970 act did not solve the drug problem, the legislation we have before us today will not solve the problem either. The Anti-Drug Abuse Act of 1986 takes many positive and long overdue steps to decrease narcotics abuse, but we must avoid the political temptation to overstate our case. America's drug habit will not be cured overnight, or in the next year or even in the next decade. The struggle to move this country toward a drug-free society, will require a consistent and steady change of attitudes about drug use. We must be honest with the American people in these efforts, encouraging them with our victories, and being honest in our defeats. Most of all, we need to act carefully, and reasonably, always mindful of the enormous responsibility we have in responding to the drug epidemic in America.

Before speaking to the merits of this bill I would like to say that I am very proud of the Members of this body who put politics aside, and crafted what is a very good piece of legislation. From the outset, many of us urged this body to act responsibly in crafting a Senate drug bill, to handle "this package with care" as the Washington Post so appropriately put it in a recent editorial.

I must confess, there are certain important initiatives that I support that are not a part of the bill now before us. And there are other Members of this body who would have included additional provisions if the crafting of this bill was left solely to their discretion.

But as is so often the case, when we are dealing with problems that affect this Nation in such a profound, and in this case pernicious way, it is impossible for every Member of this body to agree on every specific provision. Instead, in responding to the threat that drug abuse poses to this Nation's health and the health of our young people, we must leave the larger battles for another day, so that we may move those initiatives upon which we all can agree and which can move us closer to our goal, in this case a drug-free America.

I would like to return to the merits of this legislation. Any effective proposal to decrease drug abuse must involve strategies to reduce both the supply and demand for drugs. This legislation addressed both of these areas.

On the supply side, this package provides for stronger new penalties for most drug related crimes, including mandatory minimum penalties for the king pins of the drug syndicates and for those who sell their poisons to our children. In addition, this package contains provisions aimed at striking at the financial underpinnings of organized crime and drug trafficking syndicates, through the use of forfeiture of substitute assets provisions and a new crime against money laundering, both of which will assist law enforcement agencies in seizing the proceeds of drug traffickers.

Finally, in regards to domestic law enforcement, $115 million is provided to directly assist State and local law enforcement agencies for drug law enforcement. Most of the fight against drug traffickers is waged, not by the Federal Government, but by State and local agencies who are all-too-often out manned and out gunned by the drug dealers and smugglers. These moneys will provide desperately needed funds to such agencies to assist in their efforts.

In addition to combating drug trafficking in the streets of our cities and communities, we must also stem the flow of drugs across our borders. This bill increases by one-third the current level of funding for interdiction at the border, including additional personnel and equipment for the Coast Guard and the Customs Service. Moreover, this bill assigns Coast Guard law enforcement teams to Navy ships to bring the Department of Defense more actively into the fight against drug trafficking.

This legislation also provides for supply reduction efforts on the international side of the drug control equation. Almost $75 million is provided for additional crop eradication and substitution programs, including funds for operations like that conducted recently in Bolivia, where the cocaine processing networks have been significantly disrupted.

In addition, this legislation revamps present law governing foreign assistance, favorable U.S. votes in multilateral development banks, and generalized system of preferences tariff benefits to narcotic producing and narcotic transit countries. Under these provisions, benefits will be denied all major illicit drug producing countries, unless the President certifies each year that the country is cooperating fully with the United States in combating narcotics production, trafficking, and narcotics money laundering. This combination of increased assistance and narcotics related sanctions will provide important new incentives for drug producing countries to cooperate fully with the United States and clearly focus our foreign policy efforts to decrease the supply and distribution of drugs in the international community.

What I believe to be the most important provisions of this bill, however, are those aimed at reducing the demand for drugs in this country. The fact of the matter is that the insatiable demand for drugs fuels the drug trade in America. If there were no demand for drugs, we simply would not have a drug problem. But there is a demand for narcotics and other dangerous drugs, an enormous demand. This bill provides $175 million to State and local drug abuse treatment programs, both public and private, to help provide essential services to drug abusers who need help. Drug addicts prey on innocent victims to finance their uncontrollable habits. Study after study has shown that a large proportion of crimes are drug related. We must provide the resources necessary to wean addicts off of their addiction, so that they may rebuild their ability to gain employment and lead constructive and productive lives.

And finally, we must educate our young about the perils of drug use. Young people are this country's most precious resource. We can ill afford the loss of their talents and abilities to the destructive effects of drug abuse. This legislation would commit the Federal Government, for the first time, to a long-term campaign to educate our young people about the consequences of drug use. Last year, we spent almost $1.4 billion on drug law enforcement in this country, while only $3 million was available for education programs nationwide. This bill provides $150 million in grant money to State and local school districts for drug abuse education. The purpose of this section is to insure that every child in this Nation, in both public and private schools, receives objective and credible information about the consequences and dangers of drug abuse.

And this is why I am heartened to stand before this body, and this Nation, in urging my colleagues to support this legislation. The leadership of this body has come together, in the true spirit of compromise, and has put together the most sweeping revision to our drug control strategy in almost two decades. The Anti-Drug Abuse Act of 1986 is a piece of legislation that every Member of this body can be proud in supporting. All 100 Senators can be proud of this legislation on its merits, and can be proud of the process that led to the bill upon which we will soon vote. Once again, I commend the leadership on both sides of the aisle, for acting swiftly and responsibly on this legislation, and I urge my colleagues to support it.

In closing I'd like to thank Scott Green and John Bentivoglio of my staff and all the staff members of those working on the Senate Democratic Working Group for their hard work in preparing the original Democratic bill, and later with the Republican staff that has contributed to this bipartisan Senate bill.

Mr. **BOREN**. Mr. President, I rise in support of a provision in the omnibus anti-drug bill pertaining to the voluntary rating system of the Motion Picture Association of America. I had intended to offer this provision, together with my distinguished colleague from South Dakota, as a floor amendment to this legislation. After we made known our intentions to offer the amendment, I am pleased to say the floor managers agreed to incorporate it in the committee bill. I appreciate their willingness to work with us in including our proposal in the committee bill, and I urge them to work on its behalf in the conference committee.

Mr. President, there are many things that can, and should, be done in the national effort to address the growing drug abuse problem. Individuals, civic groups, churches, schools, and Government must all join together if we are to succeed. This resolution calls upon the motion picture industry to take a leadership role by virtue of the tremendous influence it has over the development of values among our children and youth.

As every Member of this Senate is keenly aware, the Motion Picture Association has already demonstrated that it takes this responsibility very seriously. Its decision to establish the voluntary movie rating system in 1968 has proven to be a model of private sector initiative at its best. The information provided through the voluntary rating system has proven tremendously helpful to parents in guiding their decisions over the kinds of movies viewed by their children.

Inclusion of a "D" subcategory in the rating system will give parents, and their children, another useful tool in making informed decisions about movie subject matter. We realize that no rating system is perfect, and that any such system is subject to varying opinions as to how it should be designed and what the criteria for film designations should be. Our resolution calls upon the MPAA to promote discussion of this issue among its membership, and then exercise its leadership in developing appropriate standards to identify movies which portray drugs in a glamorous or attractive manner. To those who question the feasibility of determining such standards, our answer must be that the drug abuse problem requires no less determination, judgment, and movie-industry concern than went into establishment of the original voluntary rating system. The MPAA has shown its ability to wrestle with such difficult tasks. Our resolution calls upon it to continue this effort in the fight against drug abuse.

Mr. President, in some countries an aggressive national effort to combat drug abuse might well include increased government regulation, perhaps even censorship, over the contents of such things as films and books. I am proud that in this Nation we guard against such intervention on the part of government. This resolution in no way prevents the motion picture industry from exercising total creative control over the contents of the films it produces. We only ask that movie makers do their part in helping parents guide the viewing habits of children.

Mr. **HATCH**. Mr. President, I want to clarify an issue with regard to title IV, the demand reduction provisions. This legislation will do more than simply assist States in addressing their drug abuse problems. It is the intent of Congress that the additional treatment and prevention money be carefully allocated and targeted in a manner that will permit thorough evaluation of the differential impact of alternative treatment and prevention modalities on specific types of drug/alcohol abusers, and evaluation of the prevention programs established in our schools.

Our intent is that the Secretary of the Department of Health and Human Services would evaluate these programs and activities as an integral part of the treatment and prevention activities established as a result of this bill. In this manner, future decisions regarding the financing and efficacy of alcohol and drug programs can be based upon the sound evidence that result from rigorous evaluation of alternative prevention and treatment modalities, patient screening and matching techniques, and prevention education programs. Thank you, Mr. President.

Mr. **KERRY**. Mr. President, I welcome this effort by the U.S. Senate to finally come to grips with the drug problem in America. I am glad that we are finally taking the problem seriously. Drugs are a continuing crisis in America, one that has not been addressed decisively and forthrightly by this administration in the past 6 years. I hope that will now change.

But the drug problem in America is not going to be solved by a "quick fix." It is not going to be cured by passing a bill, or by rhetoric and tough speeches. Slogans are not an answer to the drug problem in America. And "Just Say No" is just not enough to solve the drug problem.

It is going to take all of us, working together, in a long-term commitment to solve this problem. It is not going to happen overnight.

The drug problem has been with us for many years. It is a many-faceted problem, and there are no simple solutions. I hope that our commitment as a nation to deal with this problem will extend beyond Election Day. I hope that we will commit ourselves not to a long-term, ongoing effort to deal with all aspects of the drug problem—law enforcement, education, treatment, and rehabilitation. And I hope that when the shouting has died down, and the media have moved on to another issue, that we will be able to look back on this legislation and have a product that we can be proud of.

We cannot afford to delay any longer in formulating a comprehensive policy to combat the use of drugs in our society. I would like to commend the bipartisan working group of drugs for their efforts in formulating a comprehensive approach to this problem. The issue is not, who do we blame for the drug problem? The issue is, how we do something about it? That is the issue which they have addressed, and I commend them for doing so in a bipartisan fashion. When this Nation is at war, we unite and leave partisan differences behind us. And when we declare war on drugs, we should do the same.

Mr. President, we are living in an addictive society. That is at the heart of this problem. As former Secretary of HEW, Joseph Califano, has recently pointed out, addiction is America's No. 1 health problem. Deaths, disabilities, and diseases from alcohol, cigarettes, heroin and other opiates, cocaine and crack, marijuana, angel dust, Valium, and other tranquilizers, sedatives, and barbiturates far exceed the mortality and morbidity of any other illness; in fact, of most other illnesses combined.

And, with any addiction, the most important step in curing that addiction is breaking through the wall of denial that refuses to admit that there is a problem. I hope that we have finally reached that point in this country. I hope that we have finally reached the point where we, as a society, can admit that we have a problem with drugs, and that we need to do something about it. If we can do that, then we are on the way to solving this problem.

Let us examine for a moment the magnitude of the addiction problem in America: 50 million Americans are addicted to cigarettes; 13 million Americans are addicted to alcohol or abuse it; one-half million Americans are addicted to heroin; at least 1 million Americans abuse tranquilizers, barbiturates, and other sedative-hypnotic drugs every day; 53 million Americans have used marijuana.

Up to 20 million Americans have tried cocaine or crack at least once. Estimates of the number addicted to these drugs run to upward of 1 million Americans.

The Boston Globe reported this week that cocaine has now become the "drug of choice" in Massachusetts. In urban areas such as Boston, Lowell, and Lawrence, the price of an ounce of cocaine has been cut in half over the last 2 years, from $2,200 to $1,100. The head of the Lawrence Drug Task Force, State Police Staff Sgt. James Jujuga, is quoted as saying, "Marijuana is not trendy, nor discreet. Cocaine is." And this summer, the people of Boston grieved as a star player who had just signed with the Boston Celtics, Len Bias, lost his life to an overdose of cocaine.

So we all know that there is a serious problem with drug addiction in our society. But over the past 5 years of the Reagan administration, from 1980 to 1985, Federal funds for alcohol, drug abuse, and mental health services were slashed from $730 million to $472 million. Over the same period, Federal spending for drug treatment and prevention programs dropped from $199 million to $144 million. Federal spending for alcoholism programs dropped from $135 million to $107 million. That does not indicate a determination to make a serious effort to do something about drug abuse and drug addiction in this country.

We need to spend more money on these problems. I fully recognize that we are in a time of tight budgetary constraints. But look at what our national drug problem is costing us. The high rate of crime in our Nation's cities is largely caused by widespread alcohol and drug abuse. Alcohol is involved in more than two-thirds of this Nation's homicides, half of the Nation's rapes, and up to 70 percent of the assaults committed in this country.

Over an 11-year period in Baltimore, a mere 231 heroin addicts committed over a half million crimes. The Justice Department has found that heroin addicts commit over 100,000 burglaries, robberies, and automobile thefts each day, an amount equal to 20 percent of all property crimes. If we add the crimes committed by cocaine addicts, crack addicts, and other addicts, the true figure is probably double that amount. That is a staggering cost to society.

The level of use and abuse of drugs in our society is equal to, or higher than, those found in any other industrialized country. Every community in this country has felt the impact of drugs. As we have tried in the past to respond to various aspects of the drug problem, the use and abuse of drugs has continued to spread with remarkable speed. We hear of high school, junior high school, and even grade school children using drugs. We hear of drugs being sold openly on the streets of our major cities. We hear of drugs infiltrating even into the small towns and rural communities of America. And we see drugs affecting our coworkers, our friends, and even our own families.

Let me cite a few statistics to indicate the extent of this problem. In my home State of Massachusetts, Governor Dukakis surveyed 5,000 high school students in 1984. He found that 60 percent admitted having used illegal drugs at age 12 or younger; 28 percent reported using illegal drugs at age 12 or younger. That is the problem that we are up against. That is why we need to take action now to educate our young people about the dangers of drug abuse—because they are our future.

The Governor's Alliance Against Drugs in Massachusetts has successfully enlisted more than 200 communities in the Commonwealth in a unified and comprehensive effort to combat substance abuse by young people. We need to extend those efforts to the Federal level, and nationwide.

Organizing prevention programs, treatment programs, drug education programs, and curtailing trafficking in narcotics will not be achieved through any single effort. It will only be achieved by an initiative which responds to the complexity of the drug problem.

I believe that this legislation, the Anti-Drug Abuse Act of 1986, offers such an approach. It enhances our enforcement network by making needed changes at the intelligence level through information-sharing with State and local law enforcement agencies; at the personnel level by providing additional funds and equipment; and at the judicial level by strengthening criminal penalties for drug trafficking, money-laundering, and designer drugs.

The bill also makes long-overdue changes allowing for greater use of the Department of Defense and Coast Guard personnel for interdiction of drugs. It adds funds, which have been cut over the past 6 years by this administration, for those vital activities. It begins to tackle the subtle complexities of international narcotics control through the use of tools such as tariffs, visas, and extradition treaties, and it strengthens our antidrug activities in international organizations.

And this legislation also seriously focuses on the problems of drug education, treatment, and rehabilitation. It provides increased funding for drug education at the State and local level, and provides new money for expanding regional training centers. It increases Federal funding for State and local treatment programs, and provides for programs for "at risk" youth, the adolescents who are most vulnerable to drug abuse. These programs will deal with the human side of the drug problem—the tremendous impact that drug abuse has on individual lives and families. The drug education and rehabilitation programs are especially crucial, because they serve to alleviate the impact on the real victims of drug use, the drug users themselves and their families. Drug education programs must begin with the very young if demand is to be reduced, while the rehabilitation and treatment programs continue to help victims of drugs to seek a better future.

I am also pleased that this legislation includes a proposal which I introduced early last month to make Federal forfeiture funds available for drug abuse education and prevention programs. Our law enforcement authorities seize over $1 billion in drug traffickers' assets each year—cash, stocks, bonds, and real estate—but the money is not going to help reduce demand for drugs. I believe that it makes a great deal of sense to use drug pushers' profits in our attempt to meet the challenges before us. This proposal is an integral part of the effort to get serious about the drug problem.

But I am also concerned that, in our haste to pass comprehensive drug legislation, we may also include many provisions which have nothing to do with combating drugs, and which may in fact be detrimental to that effort. I am referring in particular to provisions in the President's proposals, and in the House bill, which would mandate the death penalty for certain offenses, create exceptions to the exclusionary rules, expand the use of the military, and create a program of widespread drug-testing.

I would emphasize that I know that there are circumstances where some of these measures may be necessary. I was a prosecutor in Massachusetts, and I handled many drug cases. I know the frustrations of having to live with the exclusionary rule. I know that there have been situations when I wished that it did not apply. I also know of the strong emotional appeal of the death penalty, and I sympathize with those who support it.

I also feel that there are occasions when drug testing may be a useful and necessary tool when dealing with workers in sensitive occupations, such as air traffic controllers. And I feel that there are circumstances where the use of the military in drug enforcement is warranted, particularly in interdiction efforts on our borders.

But I also believe that some of the provisions which have been suggested are unnecessary, are unrelated to the effort to combat drugs, and in many cases are unworkable as written. I believe that there are serious constitutional and procedural flaws with the death penalty provisions of the House bill. These flaws would simply result in more cases being thrown out of court, and making it hard to obtain convictions against drug dealers. The way to get drug dealers off the streets is by imprisonment, for life if necessary. As a former prosecutor, I know that indictments and convictions in death penalty cases are very hard to obtain. I will have more to say about these provisions when they are offered, but let me say that this is not the way to get serious about combating drug sellers.

The same is true of the provisions which would create a "good faith" exception to the exclusionary rule required by the fourth amendment. I am one who believes that the Constitution should not be easily changed or amended. It does not need to be continually amended and eroded by "exceptions" and modifications to our constitutional protections. The proposals made in the House bill are of questionable constitutionality as written. They would make the standard the "subjective" good faith of the officer, rather than the reasonable person standard which has been upheld by the Supreme Court. They would extend this provision to warrantless searches, which is beyond the scope of the case law and the fourth amendment. And this amendment would apply not only to drug cases, but to all Federal crimes.

No hearings have been held on these drastic changes in constitutional law. These changes are not necessary to apprehend the drug sellers. In fact, the exclusionary rule often has little effect on law enforcement. In a study done by the University of Illinois and the Chicago Tribune, it was found that fewer than 1 percent of Chicago defendants accused of violent crimes have their cases thrown out of court because the evidence against them was illegally obtained. So this is not a provision which is needed to combat crime, or to combat drugs.

The same is true of the use of the military. I am not opposed to the use of the military in policing our borders. We need to step up our enforcement efforts on our borders, and the military can play an important role in that effort. The borders of this country are like a sieve, and drugs are flooding through the coastline and borders of this country. Meanwhile, this administration has been cutting funds for the DEA, for Customs, for the INS, and for law enforcement efforts on our borders. We need to get serious about drug enforcement on our borders. But to have the military involved in drug enforcement efforts within this country as an internal police force simply would not work. Military personnel are not trained for law enforcement work. We have a strong tradition in this country, dating back to the Revolutionary War, of keeping the military free from intrusion into civilian affairs. This is not the time to change that tradition. Using the military to make arrests of civilians, again, would simply result in improper arrest procedures, violation of constitutional rights, and more cases being thrown out of court. That is not the way to fight drugs.

And with regard to drug testing, the same considerations apply. Drug testing on a mass scale is unnecessary. It would cost a huge amount of money, which could be better spent on law enforcement, education, and treatment. It would result in widespread infringements of rights of privacy. And it would not be reliable in its results. I am not opposed to selective drug testing, for those in truly sensitive positions. I believe that it may be necessary and useful. It may even have a deterrent effect on drug use. But I do not believe that widespread drug testing of all Federal employees, or all teenagers, is necessary or desirable.

Mr. President, I welcome the attention that is being paid, belatedly, to the drug problem in America. I welcome the efforts of the House, the Senate, and the President to pass legislation to deal with these problems. I am glad that the national media have focused attention on drugs and what they are doing to our society. But I hope that we will not succumb to the "quick-fix" mentality. I hope that we will not pass a bill in the waning hours before we go into recess, and then rush home and tell the American people that we have dealt with this problem.

The drug problem is too important to become just another political football. Drugs are not a Republican issue, or a Democratic issue. Drugs affect all of us—white, black, men, women, rich, and poor alike. Drugs are an "equal opportunity destroyer." They do not respect the bounds of race, class, or income level. They affect every American family, and all of us need to join together to defeat the drug problem in America.

Mr. DOLE. Mr. President, a few short weeks ago, the Senate began an all-out effort to put together a sensible and effective drug abuse package.

The basis for the package already existed. During 1985 and 1986, the Senate passed a number of bills designed to combat drug abuse. During the course of the past 2 years, hearings were held, and a number of initiatives—from both sides of the aisle—introduced, all in an effort to confront and combat the frightening drug problem this Nation faces.

The product we will shortly vote on is only the first step. I sincerely hope that during the coming year, Congress will hold oversight hearings on existing drug-related programs, so that, in the event that further legislation is required, we will be prepared to act.

This package does provide some long overdue and necessary tools for law enforcement agencies to apprehend drug traffickers and pushers, as well as those who possess illicit drugs. It also contains funds for education and rehabilitation programs, as well as prison construction. We have included a number of provisions relating to efforts to stem the flow of illegal drugs from foreign nations. Finally, the package includes those drug-related bills the Senate had adopted during the last 2 years.

Unfortunately, the package does not contain certain measures that I strongly support and which were part of the Senate Republican proposal—the death penalty, exclusionary rule, and habeas corpus reform. The first two are included in the House-passed version. I hope the Senate conferees will accept these provisions in conference.

Mr. President, I want to thank all my colleagues on the Republican side of the aisle—every one of them has contributed in one way or another to this initiative. We had the cooperation of the committee chairmen and their staff. In particular, I want to thank Senator THURMOND and his staff—especially Diana Waterman and Terry Wooten.

I also want to thank my Democratic colleagues and their staff for working so diligently to put together this consensus, bipartisan package.

This is not the last word on drug-abuse legislation. But it is a thoughtful and responsible starting point.

Mr. BUMPERS. Mr. President, I rise today in support of comprehensive drug control legislation offered by a bipartisan task force of Senators attempting to eradicate the drug abuse problem in this country. I especially commend Senators CHILES, BIDEN, and others, as well as the majority and minority leaders, who have all spent long hours working on this comprehensive package, which will provide for both new and additional drug abuse education, prevention, and treatment programs on the State and Federal level, as well as create severe penalties for drug traffickers and will increase drug control efforts at our borders, across which tons of illegal drugs flow every year.

Illicit narcotics are victimizing our children and drug use is prevalent in every social and economic level. Marijuana use increased by 5 percent in 1983, heroin use 4 percent, and cocaine use—perhaps the most dangerous of the three because of its addictive potential—increased by 12 percent nationwide. The recent introduction of "crack" cocaine, an even more potent and dangerous substance, into the drug market has allowed that percentage to spiral upward. It is estimated that there are 4 to 5 million cocaine users in the country and 1 out of every 6 high school seniors has tried cocaine at least once. The majority of cocaine users is turning to this new, more potent form of cocaine, which is now widely available in at least 17 of this country's largest cities.

The 1983 high school survey prepared by the National Institute on Drug Abuse underscores the seriousness and scope of the drug problem in America. It revealed that 87 percent of high school students used alcohol, 42 percent had used marijuana, 25 percent had used stimulants, and 11 percent had used cocaine. That final figure has undoubtedly risen due to the availability of crack.

In my own State, a recent study of Arkansas high school students revealed a definite connection between drug and alcohol use and high school dropouts and dismissals. The study showed that dropouts and dismissed students used drugs and alcohol at least twice a month in the following percentages: 60 percent used alcohol, 52 percent used marijuana, 19 percent used stimulants, and 6 percent used cocaine. The study also revealed that over 65 percent of the sample group who had tried marijuana or amphetamines first used the drug sometime between the ages of 14 and 16.

Mr. President, all of these alarming statistics prove that we need a significant, far-reaching drug education and treatment program geared toward warning our children of the devastating effects of drugs and alcohol use. S. 2878 provides for essential drug education, treatment, and rehabilitation programs to be conducted on the State and local level. At the same time it provides for a national program designed to enhance State and local efforts to achieve and maintain drug-free school environments. Mr. President, I strongly support those programs, but would encourage States to integrate their individual treatment and rehabilitation programs to ensure coordinated and efficient action within the State.

All of this will cost money but it is money that needs to be raised and spent. When it comes time to pay the bill, we cannot "just say no." The administration's proposal is simply to raise $1 billion by taking it from other domestic spending, mostly health programs. Senator WEICKER has called the President's drug bill not a war on drugs, but a war on the mentally ill, a war on alcoholics and the poor and those with cancer and other horrible diseases which require continuing Federal research. I, for one, Mr. President, believe that drug eradication programs are like national defense—we have to have them and we are irresponsible if we do not pay for them.

I also remain a strong supporter of provisions in the bill which enhance penalties required for drug traffickers and other violators of the Controlled Substance Act, especially those penalties authorized for drug dealers who manufacture and sell illicit narcotics near our schools and who use children to help them make and sell these drugs. I am a cosponsor of Senator CHILES' bill which initially proposed these penalties, and I am pleased to see that they are included in this bill.

Several other important proposals in the package include tough penalties for money laundering and criminal forfeiture provisions for drug-trafficking kingpins who seek to hide the vast proceeds of their drug sales in the United States, reduced tariff supports and other U.S. assistance for drug-producing countries, and the adding of so-called designer drugs to the list of controlled substances. In addition, the bill provides for increased funding to go to drug control efforts at our borders, including appropriations for the Drug Enforcement Agency, the U.S. attorneys and marshalls, the Federal prison system, the Coast Guard and the U.S. Customs Service, which all work together within our criminal justice system to stop the influx of drugs into the country. Mr. President, I encourage all of these agencies to continue to work together to provide maximum control over drug importers, manufacturers and distributors.

On the individual State level, DEA and other agency officials work closely with State and local law enforcement officers as well as U.S. Forest Service officials to provide aerial and ground surveillance of our national forest lands in search of illicit drug crop production, especially marijuana. In Arkansas, which is considered to be the second largest marijuana-producing State next to California, State police officers and local county sheriffs and deputies work closely with drug enforcement officials often under life-threatening conditions, to locate and destroy these illegal crops. These very activities resulted in an unfortunate accident this July, when three Arkansas law enforcement officials lost their lives, and two others were severely injured, while training with DEA agents for an aerial surveillance mission. Mr. President, I would like to include the names of these officers for the RECORD. Those killed were: James Avant, a Pulaski County Sheriff's Office investigator; Charles Michael Bassing, an Arkansas State Police investigator; and Kevin Brosch, a Jefferson County Sheriff's Office deputy. Those injured were Larry Carver, a DEA agent, and Donovan Briley, the pilot. I commend these officers and their coworkers, as well as Forest Service personnel working in the Ozark National Forest in Arkansas, for their valiant efforts which have helped to effectively reduce the marijuana production level in our State. I want this bill to stand as a testimonial to our guarantee that these men shall not have died in vain or without our acknowledgement here in the Senate.

Finally, I would like to point out the provision in the bill for enhanced drug interdiction activities on the part of these agencies and the Department of Defense. Under title III of the bill, additional appropriations will be made available for the procurement of aircraft and surveillance equipment to be used by the Coast Guard and law enforcement agencies to provide a constant watch over our borders. The Department of Defense will, as in the past, provide the equipment and support needed by these law enforcement agencies. I would urge my Senate colleagues to be watchful in their efforts to increase the interdiction powers of the military beyond those authorized under the posse commitatus law, which has prevented the military from becoming involved in civilian legal affairs for over a hundred years. I think it would be unwise and unnecessary to call the military away from its vital duties in Europe and the Mideast to camp out on our borders which are already patrolled by civilian law enforcement agencies. Moreover, the military is not trained to enforce our criminal laws, and I fear that ordering them to do so might result in great damage to our system of justice.

Mr. President, I want to reiterate my strong support for this bipartisan package, which contains many badly needed weapons to be used in the war on drugs. It is time to begin this fight, to end the drug epidemic which is sweeping the country before it is too late for our children and ourselves.

Mr. LONG. Mr. President, I am pleased to support H.R. 5484, the Anti-Drug Abuse Act of 1986. This legislation is the result of a bipartisan effort and it is only in that spirit that a truly successful war on drugs can be waged.

There is no more pressing problem facing this Nation today than that of drug abuse. The magazine U.S. News & World Report states that "Americans now consume 60 percent of the world's production of illegal drugs. An estimated 20 million are regular users of marijuana, 4 million to 8 million more are cocaine abusers, and 500,000 are heroin addicts."

The drug problem faced by this country is in many ways a more direct threat than that resulting from a hostile foreign nation, for it is one which ordinary Americans face in their homes and in their neighborhoods every day.

My home State is facing what one Louisiana Department of Public Safety official has characterized as a "cocaine epidemic." Approximately 140 pounds of cocaine has been confiscated in street arrests in the last 30 days there. This year, 75 percent of all State narcotics related cases involve cocaine—contrasted with 30 to 40 percent in previous years. It is reported that in the last 3 years authorities have intercepted over 11,000 pounds of coke, including 5,000 pounds in the last 10 months.

Estimates indicate that approximately 10 percent of all illegal drugs coming in through Louisiana are seized by officials, giving the State one of the best interdiction success rates in the country. Yet, if that estimate is correct, illegal narcotics trafficking constitutes a business worth an annual $1.2 billion in Louisiana alone. If Federal and State law enforcement officials are our first line of defense against this seige, then the line has been broken and the problem is now in our back yard.

The legislation before us, Mr. President, represents not a solution but a beginning. The dimensions of the crisis which confronts us are too huge and its grasp is too strong for it to vanish completely as the result of the action which we are now considering. To rid ourselves of the drug problem will require a concerted and sustained effort, one requiring perserverance, will, and patience. Let us hope that we as a nation possess those attributes, for only in the context can this legislation have its desired effect.

I urge passage of H.R. 5484.

Mr. EXON. Mr. President, I congratulate the Senate leadership for their efforts to put forward responsible and meaningful drug control legislation. The Senate is pursuing an appropriate course. We must put partisanship aside and work together as Americans to fight the scourge of illegal drugs.

The Senate package takes a balanced approach. It goes to the source of illegal drugs, by making drug control an important foreign policy objective; it tightens the U.S. border to prevent drugs from entering our Nation; it gets tough on the criminals who distribute drugs and lure our citizens into the trap of drug addiction; it offers treatment to free citizens from drug dependence; and boosts education so that our children will say no to drugs early in their lives.

The Federal, State and local governments must do everything possible to crush the illegal drug trade. The victim of illegal drugs is not only the adult or child addicted to illegal substances or the individual who has been robbed or assaulted by an addict in search of cash to support an expensive habit, the victim is our society.

The story of substance abuse is one of broken lives, lost opportunity, unrealized genius, and sad tragic waste.

I strongly support this bipartisan war on drugs as I have supported many wars on drugs as the Governor of the Great State of Nebraska and as a U.S. Senator.

Mr. President, as the Senate embarks on this newest assault, I hope that we will take a moment to reflect on the drug problem in its most basic form. The drug problem is really not a substance problem, it is a people problem; it is a spiritual problem.

I hope that we will not kid ourselves into thinking that the passage of legislation alone can end the Nation's illegal drug habit. Legislation can treat our drug abuse symptoms, but it cannot cure our deeper disease.

Our society should look at itself and reflect on some troubling questions. What is wrong with our families that our children prefer to turn to drugs, rather than their parents? What is wrong with our Nation's inner cities and employment opportunities that makes drug dealing the quickest route to prosperity? What is wrong with our Government that brings such a mass cynicism of our laws? And what is wrong with our lives that causes people to seek the thrills induced by illegal drugs? We must realize that when we talk about substance abuse, we are talking about our friends, our neighbors, our family, and perhaps ourselves. Basically, we will not solve the problem until we find the underlying causes of drug abuse.

In our competitive society, with all of its pressures, I hope that we have not lost our ability to care about each other. I hope that we have not lost the sense of community and common purpose that made our Nation strong. The drug problem is in our towns, on our blocks, in our homes, and sadly in our hearts.

Mr. President, I do not intend to throw cold water on the macho proclamations regarding the latest war on drugs. Our Government can and must take every reasonable step to eliminate the drug trade. But our great Nation cannot liberate itself from the criminal forces which serve our Nation's vices until we look inside, and address, as individuals, the alienation which creates our Nation's appetite for illegal drugs.

Thank you Mr. President.

Mrs. KASSEBAUM. Mr. President, there is no doubt about the devastation drugs can do. Lives are rendered meaningless as individuals drift through their days seeking only their next high. Drug dealers amass enormous fortunes as they operate openly on the streets of our larger cities. In some areas, ordinary citizens walk down the street, picking their way among discarded hypodermic needles and praying they won't be mugged in broad daylight. Indeed, crime rates stand as somber testimony to the desperation of users to support increasingly expensive habits.

Our children are being introduced to drugs at ever-younger ages, and even elementary students have been recruited to push this deadly poison among their playmates. Drugs are cropping up in all of our schools—urban and rural, large and small. Parents, and indeed everyone, worry about the pervasiveness of drugs and the pressures to use them.

In the early 1970's, I devoted a great deal of time to a drug counseling and shelter program because I felt so strongly about the need to address this problem. I saw firsthand the disruption and tragedy that drug abuse brings to individuals and those around them.

The national focus on the drug problem is welcome and has long been needed. We owe a debt of gratitude to President and Mrs. Reagan for bringing this issue to the forefront.

The bill now before the Senate offers a serious, focused approach to combatting drug abuse through strengthened interdiction, enforcement, and treatment initiatives. The Senate has wisely scaled down the dimensions of original drug package proposals. Earlier in the process, I had feared that election year politics and panic would rush us into enactment of legislation we would later come to regret.

I believe we can have an effective drug abuse effort without setting aside individual rights and vastly expanding military involvement in civilian law enforcement in the process. In my view, there are some occupational categories for which drug testing is appropriate, and there is a role for the military in drug interdiction efforts. However, we need to draw clear lines in taking such steps, and that is not something that can be done in a day or two.

I believe we can have an effective drug abuse effort without completely breaking the bank. Given the short time in which we had to develop a comprehensive drug bill, it makes sense to beef up ongoing programs with proven records before creating expensive new ones.

Although I believe we could have developed an even better bill had there been more time in which to do so, I feel this measure demonstrates our determination to act. This bill offers a solid foundation upon which to build. It has always seemed to me that one of the greatest needs in combatting drug abuse is greater coordination of efforts. This is an area which I think is deserving of particular attention when we revisit this issue in the 100th Congress.

Mr. QUAYLE. Mr. President, I am casting my vote in favor of this bill. While I have reservations about aspects of this proposal and the rapid process used to develop it, I believe it represents an improvement over the House-passed proposal and responds to the outcry we have heard from the American people about the need for stricter law enforcement and a stronger treatment and prevention effort.

However, I must caution my colleagues and the American people, that neither this legislation nor the dollars we will spend to implement it over the years are going to make a significant inroad in eradicating the drug habits of millions of Americans until our society decides that drug use in any form will no longer be tolerated. As I have stated before, societal tolerance of the drug culture is the most significant hurdle we must overcome if we are going to do anything meaningful about drug abuse. While the Federal Government is a powerful force in our society, it cannot solve a problem that society itself is unwilling to address.

Finally, I would like to take this opportunity to commend my distinguished colleagues, Mr. LEAHY and Mr. HATCH, for developing a compromise amendment which resolved concerns about a provision in the drug abuse bill which could have led to inappropriate restrictions on the press under the Freedom of Information Act.

This provision would have amended the Freedom of Information Act by giving the Attorney General complete discretion to withhold all files relating to organized crime under FOIA for a minimum period of 5 years. The intent of this provision was to prevent targets of organized crime investigations from using the disclosure provisions of FOIA to find out if they were under investigation and to protect the identity of informants. While I wholeheartedly agreed with this goal, there was concern that the original language might virtually terminate public knowledge of government activities relating to organized crime. Clearly, one important rationale for the first amendment is to allow the public the opportunity to monitor the activities of its government. I appreciate Mr. HATCH's sensitivity to this concern and his willingness to address it.

Mr. LEAHY. Mr. President, I rise to express my strongest support for this major new piece of legislation to fight drugs. I am especially proud to have been appointed to the task force that drafted major portions of this bill. It is a truly remarkable achievement, and I want to thank and congratulate Senators BIDEN and CHILES who coordinated the effort on this side of the aisle, and the leaders of both parties for producing this bipartisan package.

I believe this is the most comprehensive, hard-hitting antidrug bill ever written. Its 250 pages and $1.4 billion price tag reflect the magnitude of the problem we face. The fact that we are going to pass a bill of this size is a tribute to Congress' ability to respond to the heightened public awareness of the drug problem, and to the new momentum to combat it. This bill takes a full swing at the drug problem from every angle—at the source, at the border, in enforcement, education, treatment, and rehabilitation.

Drug trafficking and drug and alcohol abuse have infected this country. Drug abuse among young people has reached epidemic proportions. More and more children from families of all income levels, from rural as well as urban communities, are smoking marijuana, using cocaine and experimenting with other dangerous drugs.

There are half a million heroin addicts in this country.

Between 4 and 5 million Americans regularly use cocaine. Seventeen percent of high school seniors have tried cocaine. Requests for treatment for cocaine use have increased 600 percent in the past 3 years.

My own State of Vermont is not immune from this plague.

Last year, the Vermont State Police investigated over 400 cases involving the sale or manufacture of illegal drugs. There were another 838 investigations of the possession of regulated drugs. Many of the crimes involving young people in Vermont, including burglaries, robberies, and assaults are directly related to drugs and alcohol.

Illegal drugs is a growth industry. Its price is addiction, misery, ruined lives, and death.

Drug merchants are now pushing a new craze that is sweeping the Nation. Crack is available to the young, and it will be in the schools this fall. I have heard stories of children as young as nine who are already crack users. The sellers also use these children as lookouts and as workers in houses that manufacture crack. One hit costs just $10. Users say addiction can begin after only the second use of crack.

As a member of the Judiciary Committee I have supported bills to address specific aspects of the drug problem. Two years ago we strengthened the bail law to permit pretrial detention of drug traffickers. We amended the forfeiture statutes to deprive them of the profits of their crimes.

Despite these efforts, the drug problem has gotten worse.

This year I supported bills to combat money laundering and new designer drugs, which have been incorporated into this package. But these address very specific problems. We desperately need a comprehensive strategy that attacks drugs from their source to their youngest victims.

That is what this bill does.

I will not take the time to describe the many provisions of this bill. Other Senators have already done a fine job of that. I will limit myself to mentioning the sections which I am especially pleased about.

The first is the new section on forfeiture. Fighting drugs is expensive. The forfeiture amendments we passed 2 years ago provide for the seizure and forfeiture of the profits of the drug trade and property used in connection with it—businesses, airplanes, and so forth. But under those laws, no more than $20 million of forfeited assets can be used to fund antidrug programs.

This bill removes that cap, and requires that all money remaining in the Customs and Justice Departments' forfeiture funds after paying administrative costs, be used to fund Federal and State drug programs—for law enforcement, education, treatment, and rehabilitation. This program is expected to net $150 million in 1986, to help pay the cost of this bill.

The bill also closes a loophole in the current law, by permitting the seizure and forfeiture of substitute assets if a drug trafficker has transferred his profits to a third party or placed them beyond the jurisdiction of the court.

Another important section of this bill squarely addresses the need to stop production of drugs at the source. It cuts off all foreign aid to countries that have not taken significant steps to stop illegal drug production and prosecute drug traffickers.

A major part of this bill involves deterrence. Of special importance to a former State prosecutor like myself is a $115 million matching grant program for State and local law enforcement for each of the next 3 years. These grants will be available to States that have developed their own strategies for prosecuting, punishing, and treating drug offenders.

Two years ago I supported the Armed Career Criminal Act which provided for enhanced penalties for dangerous repeat offenders. This bill expands the scope of that act to include a mandatory 15 year minimum sentence for drug offenders who have three prior convictions for crimes of violence.

It also includes mandatory sentences of 20 years to life for major drug traffickers.

It creates a new offense with enhanced penalties for using children to traffic drugs, and for manufacturing illegal drugs within 1,000 feet of a school.

These penalties are appropriately aimed at the drug kingpins. They will deter any would-be trafficker who is capable of being deterred.

I want to make special mention of the other parts of this legislation that deal with education, treatment, and rehabilitation.

We need to stop the demand for drugs, as well as the supply.

The Administrator of DEA has called prevention the long-term solution to the Nation's drug problem. I agree. I support longer jail sentences for traffickers and better equipment to catch them, but for too long we have neglected what I believe should be the cornerstone of our fight against drug abuse—education of our children about the dangers of alcohol and drugs, and treatment for those who are hooked.

This bill attacks these monumental tasks head on. It establishes a new $150 million State-administered grant program to establish drug free schools and communities. That is fifty times what we are currently spending. Eighty percent of these funds would be divided among the States to teach children about the dangers of drugs and alcohol, and to train parents, teachers, and law enforcement officials to take an active part in that process.

It also provides for model programs for young people who are particularly at risk of becoming drug or alcohol abusers—including school dropouts, pregnant teenagers, and the children of drug abusers.

Education is vital—parents, teachers, and school administrators have to intervene between children and drugs. We need to act before the drug problem begins. The do drugs message school children receive from their peers, and the easy access to drugs in our society, must be stopped. We need to send a stronger message to our children—drugs kill.

One thing we can expect from this crackdown on drugs is a wave of new customers for drug treatment programs. Thousands of drug addicts are on waiting lists because of this administration's cuts in funding for drug treatment and rehabilitation. Everywhere I go I hear stories of children on drugs who are waiting to get help, whose families cannot afford the high cost of treatment. The American public wants treatment, and this bill reauthorizes the Alcohol, Drug Abuse and Mental Health Services Block Grant Program at higher funding levels of $675 million. Eighty percent will be used for alcohol and drug treatment and rehabilitation services.

Mr. President, Americans consume 60 percent of the world's illegal drugs. Cheaper drugs of greater purity have boosted rates of addiction and death. Sophisticated drug rings will reap profits of $100 billion from the sale of illegal drugs this year.

If we are going to win this war we have to fight it on every front.

Turning this country off of drugs will take a massive effort. Not just by government, but also by the private sector, the medical community, religious institutions, by teachers and school administrators, and most importantly, by parents. We have launched that effort with this bill, and I am very pleased to have played a part in writing it.

Mr. President, I would also like to discuss two amendments of mine which were adopted on Saturday night.

I am very pleased that the Senate adopted the Leahy-Mathias communications privacy legislation as an amendment to the Anti-Drug Abuse Act of 1986.

This legislation is good for law enforcement. It strengthens the Federal wiretap statute and sets clear standards for law enforcement agencies to obtain access to electronic communications and an electronic communications system's records.

It is good for American businesses because business people need to know their proprietary and other business communications are secure.

It is good for private citizens who are using new technology like cellular telephones and computer links every day.

It is good for America's high technology industry because it will encourage continued technological innovation.

That is why this legislation is supported by a broad coalition which includes everyone from the Justice Department to the ACLU to America's leading telecommunications and computer companies.

This legislation is needed because right now the laws designed to protect the security and privacy of business and personal communications do not cover data transmissions, computer-to-computer links, and a wide variety of other new forms of telecommunications and computer transmissions.

Let me just pose a few examples to illustrate my point. In the first example, two business people are discussing their company's financial data over the telephone. They do not know it, but a member of a competitor company is listening in on their conversation by means of a phone tap. Across town, a drug enforcement agent has a hunch that Jane Doe is involved in drug trafficking. He goes to the Post Office and tells postal officials that he wants to open and read Ms. Doe's mail and then have it resealed and delivered. In the third, two reporters are working together on a fast-breaking story. One picks up the telephone and calls the other with some new information. That call is intercepted by means of a wiretap.

I think all of my colleagues would agree that in each example, the eavesdropper's conduct is wrong. It is also illegal.

Now let me change my examples just a little bit to bring them into the 1980's.

In the first case, instead of discussing financial matters over the telephone, the two business people use a video teleconference system which displays their proprietary data on their video screens. Again, their competitor picks up that data. In the second case, the drug enforcement officer goes to an electronic mail company. Ms. Doe, is a user of that electronic mail system, and the drug enforcement officer asks to see all of her messages. In the third case, rather than speaking on the telephone, the reporter uses a computer keyboard to type a message to his colleague who picks it up on his terminal screen. Again, that message is intercepted.

In each case, the eavesdropper's conduct is still wrong. However, it is not clear that it is also illegal. The Leahy-Mathias Electronic Communications Privacy Act, which is now a part of the Senate drug package, updates the Federal wiretap statute to bring it into the computer age and address these new communications media.

It is designed to provide a reasonable level of Federal privacy protection to new forms of telecommunications and computer technology like electronic mail, computer-to-computer data transmissions, remote computing services, and private video teleconferencing. At the same time, it protects legitimate law enforcement needs. The Justice Department wants it because it will be particularly helpful in our fight against drug trafficking and drug abuse.

Let me point out that a summary of the Leahy-Mathias communications privacy amendment has been printed in the CONGRESSIONAL RECORD for Saturday, September 27. The relevant legislative history is the Senate Judiciary Committee's report on S. 2575.

Finally, let me discuss the provisions concerning the Freedom of Information Act in the bill, and the Leahy-Hatch-Denton amendment to that section of the bill.

Section 1801 of the bill amends paragraph (b)(7) of the FOIA to modify the scope of the exemption for law enforcement records, codify certain explanatory case law, and clarify congressional intent with respect to the agency's burden in demonstrating the probability of harm from disclosure.

The language of these amendments is identical to that proposed in section 10 of S. 774, proposed FOIA reform legislation which passed the Senate, but was not acted upon in the House, during the 98th Congress. The meaning and intended effect of the amendments was carefully explained in the report of the Senate Judiciary Committee on S. 774: Senate Report 98-221. This report sets out the legislative history which should be consulted to determine the scope of the section we are adopting in this bill.

The Congressional Research Service of the Library of Congress recently analyzed the proposed amendments regarding the substitution of "could reasonably be expected to" for "would" in several of the subparagraphs in (b)(7), as well as the change in language to include State, local, and foreign agencies and private institutions within the meaning of "confidential source" under subparagraphs (b)(7)(D). Its conclusions were that in both instances the proposed changes in statutory language substantially reflect current judicial interpretations and would not appreciably alter the meaning of the affected provisions in their practical application. What the amendment does is to give the agencies and courts some commonsense direction in applying the provisions of the exemptions. I ask unanimous consent that the CRS memorandums be included in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection it is so ordered.

(See exhibit 1.)

Section 1802 of H.R. 5484 amends the FOIA so that criminal law enforcement agencies, in certain circumstances, are not required to acknowledge the existence of records concerning an ongoing and undisclosed criminal investigation; informant records maintained under an informant's name or personal identifier; or, classified records of the FBI pertaining to foreign intelligence, counterintelligence, or international terrorism investigations, in response to a FOIA request.

This provision permits criminal law enforcement authorities in limited circumstances to avoid confirming the investigatory status of specific individuals or incidents in responding to FOIA requests. It is a narrow and specific statutory authority for criminal law enforcement agencies to act on the principle that "an agency may refuse to confirm or deny the existence of records where to answer the FOIA inquiry would cause harm cognizable under an FOIA exemption." *Gardels* v. *CIA*, 689 F.2d 1100, a1103 (D.C. Cir. 1982), citing *Phillippi* v. *CIA*, 546 F.2d 1009, 1012 (D.C. Cir. 1976).

Although Federal courts have generally recognized that the FOIA exemption scheme permits an agency to withhold the fact of the existence or nonexistence of specific records when disclosure of that fact would itself cause the harm that a specific exemption is intended to avoid, the Director of the FBI, William Webster, requested specific statutory authority to exercise this right so that there would be no ambiguity regarding its propriety.

Subsection (a) of section 1802 sets forth the criteria for three specific circumstances in which criminal law enforcement agencies would not be required to acknowledge the existence of agency records in response to an FOIA request.

The first circumstance, provided under paragraph (1) of subsection (a), permits agencies to refuse to acknowledge the existence of records when their disclosure would interfere with a criminal law enforcement proceeding under exemption (b)(7)(A), and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency. While the agency is thus able to prevent a tipoff of investigatory activity to someone using the FOIA to find out if such activity is underway, its authority to do so is narrowly drawn and closely circumscribed. It cannot, for example refuse to acknowledge requested records under this authority unless the records concern a criminal, rather than civil, law enforcement proceeding and would already be exempt from disclosure by virtue of exemption (b)(7)(A). Moreover, its authority to refuse to acknowledge such records under this provision exists only so long as there is reason to believe that the subject of the proceeding is not aware of its existence. Thus the provision gives agencies no new substantive withholding authority, since it does not apply to records that are not already exempt from disclosure, and it would not be available to an agency when there is reason to believe that the subject of an investigation or proceeding is aware of its pendency.

The second circumstance where an agency is not required to acknowledge the existence of specific requested documents concerns FOIA requests for informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier. The authority provided under subsection 1802(a)(2), however, is limited to those instances in which the request for such informant records is from a third party who specifically requests them by the informant's name or personal identifier. Moreover an agency must acknowledge the existence or nonexistence of such records when the informant's status as an informant has been officially confirmed.

In referring to a similar provision in S. 774, the Senate Judiciary Committee noted the obvious limitations of the exclusion authority thus permitted:

> Where the requester is the informant himself, or a third party who describes the responsive records without reference to the informant's name or personal identifier, the records are subject to ordinary consideration under the provisions of the FOIA. (S. Rpt. 98-221 at 25)

The third provision under section 1802 applies to classified FBI records pertaining to foreign intelligence or counterintelligence—as defined in Executive order 12333—or international terrorism—as defined in the Foreign Intelligence Surveillance Act—but only to the extent that the fact of the existence of such records itself remains properly classified information. Like the first part of this section, subparagraph (a)(3) permits nonconfirmation of the investigatory status of specific individuals or incidents in the context of activities regarding foreign intelligence, counterintelligence, or international terrorism. But it gives the FBI no new substantive withholding authority since it applies only to FBI records that are properly classified as national security information and, therefore, already exempt from disclosure pursuant to exemption (b)(1) of the FOIA.

Agency actions pursuant to these provisions, like agency determinations to withhold acknowledged records pursuant to subsection (b) of the FOIA, are subject to de novo judicial review. The manner in which the Federal courts will review agency refusals to acknowledge or deny the existence of records has already been well established in *Gardels* v. *CIA*, 689 F.2d 1100 (D.C. Cir. 1982) and *Phillipi* v. *CIA*, 546 F.2d 1009 (D.C. Cir. 1976). In applying these new provisions, the Federal courts should follow the proceedings outlined in Gardels and Phillipi.

It is important to note that the provisions in section 1802 regarding law enforcement records were derived from a draft bill which was the subject of negotiations between the Department of Justice and the House Government Operations Subcommittee on Government Information, Justice and Agriculture earlier this year. During the course of these negotiations, the Department agreed that their implementation, as now provided by section 1802, would require that a notice of the authority to refuse to confirm the existence of requested records be included in every FOIA response by agencies permitted to exercise such authority. The Senate adopted the provision with the explicit understanding of the amendment's sponsors that such notice would be required.

The bill revises the rules governing fees and fee waivers under the FOIA. Each agency is requested to promulgate regulations specifying the schedule of fees and establishing procedures and guidelines for determining when such fees should be waived or reduced. Agency fee schedules must conform to guidelines promulgated by the Office of Management and Budget.

There are three categories of requesters for purposes of assessing fees. First, when records are requested for commercial use, fees shall be limited to reasonable standard charges for document search, duplication, and review. This provision allows the charging of review costs for the first time, but review costs may only be charged to commercial users. A commercial user is one who seeks information solely for a private, profit making purpose. Except for requests that are described in the second category, requests from a corporation may be presumed to be for commercial use unless the requester can demonstrate that it qualifies for a different fee schedule. A request from an individual or a public interest group may not be presumed to be for commercial use unless the nature of the request suggests otherwise. The resale of documents obtained from the Government is not a commercial use.

Review costs include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed. Review costs are not intended to include any costs incurred in resolving issues of law and policy that may be raised in the course of processing a request.

Second, when records are not sought for commercial use and are requested by (a) an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, or (b) a representative of the news media, fees shall be limited to reasonable standard charges for document duplication. A request made by a professor or other member of the professional staff of an educational or noncommercial scientific institution should be presumed to have been made by the institution. A request by a reporter or other person affiliated with a newspaper, magazine, television or radio station, or other entity that is in the business of publishing or otherwise disseminating information to the public qualifies under this provision.

The bill provides the most favorable fee provision for those in the information dissemination business because the use of the FOIA for public dissemination of information in Government files is in the public interest. The fact that a newspaper or a publisher seeks to make a profit through publication does not affect the public interest nature of the information dissemination. It is critical that the phrase "representative of the news media" be broadly interpreted if the act is to work as expected. As new technologies expand, there are new methods of communications which disseminate information to people through media other than traditional print or broadcast media, and these entities should be considered as "representatives of the news media." In addition, some organizations publish magazines or periodicals in addition to carrying out other functions. Certainly, American Legion magazine, Common Cause magazine or Consumer Reports are "representatives of the news media," even though their parent organizations engage in activities other than publishing magazines. In fact, any person or organization which regularly publishes or disseminates information to the public, whether in print or electronically, should qualify for waivers as a "representative of the news media."

Third, for all other requesters, fees are limited to reasonable standard charges for document search and duplication. This is current law.

All of the fees chargeable to any requester may be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. This is a change in the current fee waiver language and is specifically intended to overturn the January 1983 Justice Department fee waiver guidelines.

It is important to reaffirm that fee waivers play a substantial role in the effective use of the FOIA, and they should be liberally granted to all requesters other than those who are commercial users.

A major problem identified during our earlier Judiciary Committee hearings on FOIA legislation was the fact that the 1983 Department of Justice guidelines construing the "primarily benefiting the general public" language took an unduly restrictive approach to the legislation. This approach was criticized by the Senate Judiciary Committee when it reported out S. 774 in the last Congress, and it has also been criticized by the House Government Operations Committee in its report on H.R. 4862, which recently passed the House. By making a change in the statutory standard for fee waivers, our intention is to repudiate the 1983 Department of Justice guidelines on fee waivers and to enact a broader and more precise standard which will make it easier for noncommercial requests to get waivers.

The requirement that the disclosure be "likely to contribute significantly to public understanding of the operations or activities of the Government" is to be liberally construed in favor of waivers for noncommercial requesters. We do not mean that waviers are appropriate only for items of compelling public interest at a given time, such as articles that are being prominently covered in the news media. Nor are we saying that the information sought must, standing alone, provide a complete and thorough understanding of the issue. Rather, we intend that agencies will grant fee waivers when they receive requests for many categories of information that contribute to public understanding in any meaningful way, even if the requester is seeking only a limited amount of information and even if the request covers only one facet of an issue. As one court put it, "a single document can substantially enrich the public domain." *Eudey* v. *CIA*, 478 F. Supp. 1175, 1178 (D.D.C. 1978).

Nor do we mean that a waiver is appropriate only if the requester intends to disseminate the requested information widely to the public. Our democracy depends on a knowledgeable citizenry, and public understanding of the operations or activities of Government is greatly enhanced every time that a single citizen uses the FOIA to obtain records which help that person understand what Government is doing on an issue of concern to that person.

It is important for agencies to administer this new statutory standard in an objective manner and should not rely on their own, subjective view as to the value of the information requested to the public. A good example is the case of *Better Government Association* v. *Department of State,* 780 F.2d 86 (D.C. Cir. 1986), where the requester sought information about how U.S. Embassies are spending money and using personnel to entertain visiting dignitaries. That is the sort of information which should qualify for a fee waiver under the current standard and should continue to qualify under this bill.

Along the same line, the phrase "operations and activities of the government" should be broadly construed. Agencies deal with private entities on a range of regulatory, enforcement, procurement and other activities, and records which cast light on those relationships should be routinely made available with a waiver. It is impossible to understand the "operations and activities" of the Food and Drug Administration, for example, without ready access to records filed by the companies which the FDA regulates.

In addition, there is a legitimate public interest in being able to obtain a fee waiver in order to learn about Government inaction, as well as Government action. If, for example, a requestor is seeking records because it wishes to learn if an agency has been less than vigorous in working to protect public health and safety or to see how effectively procurement dollars are being spent, a waiver should be granted. Indeed, experience suggests that agencies are most resistant to granting fee waivers when they suspect that the information sought may cast them in a less than flattering light or may lead to proposals to reform their practices. Yet that is precisely the type of information which the FOIA is supposed to disclose, and agencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information to learn about what Government is not doing, as well as what it is doing.

A request can qualify for a fee waiver even if the issue is not of interest to the public-at-large. Public understanding is enhanced when information is disclosed to the subset of the public most interested, concerned, or affected by a particular action or matter.

The bill includes several general limitations on the imposition of fees by agencies. First, fee schedules can only provide for the recovery of direct costs of search, duplication, or review. Second, no fee may be charged if the costs of routine collecting and processing the fee allowable under the FOIA are likely to equal or exceed the amount of the fee.

Third, except for requests for commercial use that are subject to review charges, an agency may not charge any requester for the first 2 hours of search time or for the first 100 pages of duplication. A requestor may not file multiple requests at the same time each seeking portions of a large document solely in order to avoid payment of all fees. However, if requests are made more than 30 days apart, each request must be treated separately.

Fourth, no agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion or unless the agency has determined that the fee will exceed $250. This to prevent agencies from attempting to use fees to harass or discourage requesters.

The fee schedules in the FOIA do not supersede fees chargeable under a statute that specifically provides for setting of a level of fees for particular types of records. This provision does not change current law.

Finally, in any action brought by a requester regarding the waiver of fees, the court shall determine the matter de novo, except that the court's review of the matter shall be limited to the record before the agency. The purpose of this provision is to allow the courts to exercise independent judgment on the issue of whether a requester is entitled to a fee waiver.

In closing, I should like to thank Senator HATCH, the distinguished chairman of the Subcommittee on the Constitution, for working with me to fashion a balanced amendment which meets the needs of law enforcement and improves the fee and fee waiver provisions of the act for the news media and public interest users of FOIA. We have done that while preserving all of the essential features of the act. I compliment him and his staff for their tireless work on this issue.

EXHIBIT 1

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC., March 10, 1986.

To: House Government Operations Subcommittee on Government Information, Justice, and Agriculture, attention: Robert Gellman.

From: American Law Division.

Subject: Protection of Institutional Confidential Sources Under Proposed Amendments to the Freedom of Information Act.

The Freedom of Information Act (FOIA) exempts from mandatory disclosure "investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would . . . (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source." 5 U.S.C. 552(b)(7)(D)(1982). a proposed amendment to this provision would add a parenthetical phrase after "confidential source" providing that the term is to include "a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis."

The proposed amendment to Exemption 7(D) of the FOIA reflects the current weight of judicial authority on this question. Some early District Court cases confined the scope of the term "confidential source" to persons, pointing to references in the legislative history of the provision to individuals as sources. See, *Ferguson* v. *Kelley,* 448 F.Supp. 919 (N.D.Ill. 1977) on rehearing, 455 F.Supp. 324 (N.D.Ill. 1978; *Katz* v. *Department of Justice,* 498 S.Supp. 177 (S.D.N.Y. 1979) (state and local law enforcement agencies may be confidential sources but not private institutions). However, these cases have been rejected by the majority of courts, including Courts of Appeals and District Courts in the district in which the cases arose. The Seventh Circuit, which embraces the Northern District of Illinois, noted the courts have applied Exemption 7(D) to commercial institutions and non-federal law enforcement agencies without citing *Ferguson. Terkel* v. *Kelly,* 599 F.2d 214, 216 (7th Cir. 1979). District Courts in New York have also held that the exempting protects institutional confidential sources, including commercial entities such as banks and credit bureaus. *Biberman* v. *Federal Bureau of Investigation,* 528 F.Supp. 1140, (S.D.N.Y. 1982); *Malizia* v. *Department of Justice,* 519 F.Supp. 338, 350 (S.D.N.Y. 1981).

Courts have pointed to the rationale for the protection of confidential sources and the non-restrictive plain meaning of the term "source" in holding that the exemption encompasses both individual and institutional sources, public and private. See, *Johnson* v. *Department of Justice,* 739 F.2d 1514 (10th Cir. 1984) (local law enforcement agencies); *Lesar* v. *Department of Justice,* 636 F.2d 472 (D.C.Cir. 1980) (state and local law enforcement agencies); *Baez* v. *Department of Justice,* 647 F.2d 1328 (D.C.Cir. 1980) (foreign agency source); *Founding Church of Scientology* v. *Regan,* 670 F.2d 1158 (D.C.Cir. 1981)(same); *Keeney* v. *Federal Bureau of Investigation,* 630 F.2d 114 (2d Cir. 1980)(local law enforcement agency); *Liverman* v. *Department of Justice,* 597 F.Supp. 84, 88 (E.D.Pa. 1984)(financial institution); *Founding Church of Scientology* v. *Levi,* 679 F.Supp. 1060, 1063 (local law enforcement agency and commercial institution); *Fiumara* v. *Higgins,* 572 F.Supp. 1093, 1110 (D.N.H. 1983)(local law enforcement agency). See also, Anno., 59 A.L.R.Fed. 550, 555-557 (1982).

Thus, the inclusion of language indicating that "confidential source" is to include state, local and foreign agencies as well as private institutions that supply confidential information to a federal law enforcement agency would reflect the interpretation given the exemption by most courts.

RICHARD EHLKE,
Specialist in American Public Law.

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, February 28, 1986.

To: House Government Operations Committee, Subcommittee on Government Information, Justice, and Agriculture, attention: Bob Gellman.

From: American Law Division.

Subject: Proposed Amendment to Exemption 7 of the Freedom of Information Act.

Exemption 7 of the Freedom of Information Act provides that the disclosure mandate of the Act does not apply to investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, (B) deprive a person of a right to a fair trial or an impartial adjudication, (C) constitute an unwarranted invasion of personal privacy, (D) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (E) disclose investigative techniques and procedures, or (F) endanger the life or physical safety of law enforcement personnel. 5 U.S.C. 552(b)(7)(1982).

A proposed amendment to the exemption would change the phraseology of subsections (A), (D) and (F), by substituting "could reasonably be expected to" for "would." The provision would then permit exemption if, inter alia, production of a record "could reasonably be expected to" interfere with enforcement proceedings, disclose the identity of a confidential source or endanger the life or safety of any individual. This memorandum briefly analyzes the relationship of this proposed amendment to current judicial interpretation of the exemption.

The proposed amendment is similar to that contained in the Freedom of Information Reform Act, S. 774, reported by the Senate Judiciary Committee in the 98th Congress. The Senate bill, however, would have also amended subsection (C) (personal privacy) by substituting the "could reasonably be expected to" language for "would" in that subsection. S. Rept. No. 98-221, 98th Cong., 1st Sess. 23 (1983). The amendment, according te the Senate Report, was intended to clarify the degree of risk of harm from disclosure which must be shown to justify withholding records under any of these subparagraphs [of Exemption 7]. The FBI and other law enforcement agencies have testified that the current "would" language in the exemption places undue strictures on agency attempts to protect against the harms specified in Exemption 7's subparts.

This burden of proof is troubling to some agencies in the context of showing that a particular disclosure "would" interfere with an enforcement proceeding. Moreover, as the FBI has testified, it is particularly vexing with respect to whether production of requested records "would" disclose the identity of a confidential source, substantially contributing to the asserted "perception" problem of sources doubting the FBI's ability to protect their identities from disclosure through FOIA. S. Rept. No. 98-221 at 23.4.

The effort to "clarify the degree of risk of harm from disclosure which must be shown to justify withholding records" pursuant to Exemption 7 has been a consistent part of reform proposals over the years. These proposals have focused on the confidential source subsection and would have substituted the phrase "would . . . disclose the identity of a confidential source" with "would tend to disclose . . ." See, Hearings on Freedom of Information Act Before the Subcomm. on the Constitution of the Senate Judiciary Comm., 97th Cong., 1st Sess. 690 (1981); FBI Proposals to Amend the Freedom of Information Act 31 (June 19, 1979).

The proposed amendment does not appear to be prompted by any particular case or line of cases that have enunciated a contrary standard of the degree of risk of harm that must be shown to justify assertion of Exemption 7 (A), (D) or (F). In fact, the earlier proposals (those that employed the "tend to" phraseology) were portrayed as being reflective of judicial interpretation. See, Hearings, supra at 690. The current proposed formulation ("could reasonably be expected to") would also seem to be consistent with both the case law and the legislative history of the provision.

Exemption 7 was overhauled as part of the 1974 amendments to the Act. With respect to the protection of confidential sources, the sponsor of the provision, Senator Hart, stated at the time of its introduction that "[i]t protects both the identity of informers and information which might reasonably be found to lead to such disclosure." 120 Cong. Rec. 17034 (1974). The Attorney General's Memorandum on the 1974 Amendments to the Freedom of Information Act echoed this construction of the provision:

> The general policy underlying the seventh exemption is maximum public access to requested records, consistent with the legitimate interests of law enforcement agencies and affected persons. (See, e.g., 120 Cong. Rec. S 9330 (May 30, 1974).) A central issue which must be faced in every case is the type of showing needed to establish that disclosure "would" lead to one of the consequences enumerated in clauses (A) through (F). The President and some opponents of the bill voiced concern that "would" connoted a degree of certainty which in most cases it would be impossible to establish. (See Weekly Compilation of Presidential Documents 1318 (1974); 120 Cong. Rec. S 19814 (Nov. 21, 1974) (Senator Hruska); 120 Cong. Rec. S 19818 (Nov. 21, 1974) (Senator Thurmond).) The bill's proponents, including the sponsor of the amendment, did not accept the interpretation that would result in such a strict standard. (See, e.g., 120 Cong. Rec. H 10865 (Nov. 20, 1974) (Congressman Moorhead); 120 Cong. Rec. S 19812 (Nov. 21, 1974) (Senator Hart).) This legislative history suggests that denial can be based upon a reasonable possibility, in view of the circumstances, that one of the six enumerated consequences would result from disclosure. Attorney General's Memorandum at 12-13, reprinted in Freedom of Information Act and Amendments of 1974 Sourcebook, Joint Committee Print, House Government Operations Comm. and Senate Judiciary Comm., 94th Cong., 1st Sess. 522-3 (1975).

The courts have not appeared to have focused on the precise standard to be used in evaluating the degree of risk of disclosure under Exemption 7. The statements in the few cases that have been found, however, suggest a standard that would seem to be consistent with either the "tend to" or "could reasonably be expected to" formulation. For instance, in *Yeager* v. *Drug Enforcment Administration*, 678 F.2d 315 (D.C.Cir. 1982), the court held to be the proper standard the District Court's holding that disclosure "could reasonably be expected to lead to the identification of subjects." 678 F.2d at 323. Similarly, the court in *Radowich* v. *U.S. Attorney, Dist. of Maryland*, 658 F.2d 957, 961 (4th Cir. 1981) was of the view that Congress intended to protect "all information reasonably likely to disclose the identity of a confidential source." 658 F.2d at 961. The court elsewhere described the degree of protection provided by Exemption 7(D):

> The protection afforded by the first clause of 7(D) extends expressly to all information furnished by the informant which *might dislcose* or *point to* his identity. Of course this particular clause does not extend to information which does not provide any clue to the informant's identity. But the clause does offer protection to any statement of the informant *which gives a clue to his identity* . . . 658 F.2d at 961(emphasis added).

See also, *Wightman* v. *Bureau of Alcohol, Tobacco & Firearms*, 755 F.2d 979, 982 (1st Cir. 1985)("could lead to"); *Pollard* v. *F.B.I.*, 705 F.2d 1151, 1155 (9th Cir. 1983) ("would tend to reveal").

Courts have given a similar flexible interpretation of the degree of risk of harm that must be shown under Exemption 7(A). The court in *Moorefield* v. *United States Secret Service*, 611 F.2d 1021 (5th Cir. 1980), cert. den. 449 U.S. 909 (1981) upheld on the basis of Exemption 7(A) the withholding of records relating to an active Secret Service investigation of the plaintiff. It stated that "disclosure . . . could tend generally to inform targets of Service investigations of the means the Service employs to keep abreast of them, and, specifically, to enable Moorefield to elude the scrutiny of the Service." 611 F.2d at 1026. Similarly, in *Antonelli* v. *Drug Enforcement Administration*, 739 F.2d 302, 304 (7th Cir. 1984), the court found that "[i]t is quite likely, indeed, that the requested information would jeopardize the identity of several individuals and the existence of ongoing DEA investigations."

The use of the phrase "could reasonably be expected to" in place of "would" in Exemption 7 would, therefore, not seem to materially alter the construction that the courts have already given to the provision. The amendment would also seem consistent with the legislative history of the exemption. Finally, from a linguistic point of view, "would" is often used interchangeably with "reasonably expected" and conveys what is probable or might be expected. See, Black's Law Dictionary (5th ed. 1979); *Correll* v. *Costello*, 404 N.Y.S.2d 836, 838 (Sup. Ct. 1978); *Taylor* v. *Metropolitan St. Ry. Co., Inc.*, 165 S.W. 327, 332 (Mo. 1914).

RICHARD EHLKE,
Specialist in American Public Law.

BIPARTISAN DRUG BILL

Mr. BYRD. Mr. President, I am proud to have joined the distinguished majority leader in offering the bipartisan drug control package. The package as introduced reflected our best efforts to negotiate a compromise between two bills which, in many places, were quite divergent in approach as well as in substance. But come together we did, because of the strong interest and commitment which exists on both sides of the aisle in this body to address the drug abuse epidemic ravaging our country.

I want to give credit where credit is due to the very excellent, committed, and diligent work of the two cochairs of the Democratic Working Group on Drug Abuse in this effort. I will state emphatically that we would not be at this point today—about to pass a bipartisan bill—if it were not for Senators CHILES and BIDEN—and, of course, the other members of the working group—Senators CRANSTON, DECONCINI, DODD, LEAHY, NUNN, SASSER, ROCKEFELLER, MITCHELL, and MOYNIHAN. Also contributing directly to our efforts to produce this bipartisan bill were Senators KENNEDY, PELL, and METZENBAUM and their staffs.

Mr. President, our bipartisan bill is a compromise between the Democratic bill we introduced September 9, and the bill the Republicans introduced early last week. As a compromise, it does not read precisely as we would wish in all sections—not surprisingly, we would certainly have preferred our own Democratic bill—but this proposal is strong, it is comprehensive, and, I believe, it deserves our support.

Mr. President, we are beginning to see stories in the press and on the electronic media suggesting that there may be an over-reaction to the drug abuse situation in our country. They suggest that there may be a "media hype" situation occurring which is blowing the story out of realistic proportions. Well, Mr. President, I agree that drug stories are the "rage" in the media right now. And I agree that these stories may be scaring some people who otherwise would ignore the drug crisis.

But, Mr. President, I most emphatically do not agree to any suggestion or implication that we in Congress should refrain from action in the expectation that the public's enthusiasm for drug control measures will wane. We have reports from reliable experts from around the country documenting the extent of the drug crisis—and the numbers are truly frightening. I maintain that if there is only one child who is led into the pernicious world of drug abuse, that is one child too many, and we in Congress should take every step necessary and proper to try to keep that from happening. So, too, in the case of the boatload of illegal drugs reaching our shores, and one adult life ruined due to the ravages of cocaine abuse.

We must state unequivocally that we will not tolerate drug abuse and the illegal drug industry in our country, and then we must back up that statement with concrete, comprehensive, and effective actions. I believe the bipartisan bill which we are about to pass today makes that statement and prescribes those actions.

It will provide new and urgently needed funds for our interdiction efforts, so that more illegal drugs will be stopped before they ever reach our borders. It provides funds for our international efforts directed at eradication and other programs to decrease the production of drugs in foreign countries. It levies enhanced penalties and stronger sanctions on those who would import illegal drugs.

The bill provides for enhanced education, prevention, and treatment programs, including funding directed specifically to at-risk youth, and to veterans' treatment programs.

The bill also will direct more funds to State and local governments and agencies to augment and strengthen their enforcement efforts directed at the illegal drug industry.

These provisions, and others I have not mentioned here, Mr. President, are worthy, and deserve the support of this body.

I would like to focus for a moment, Mr. President, on a specific portion of this bill which I believe to be especially critical.

The bipartisan bill contains all the tough, new law enforcement provisions that were contained in the Democratic package which we introduced on September 9, 1986. Those provisions are contained in the title which I sponsored, and they appear in the bipartisan package which is before us as part of title I.

I am pleased that our colleagues on the other side of the aisle agreed with the stringent penalty approach which I had included in our Democratic bill.

The most significant of the strict penalties which I proposed—and which are now contained in this bipartisan package—are based upon a very simple principle—a principle, I might add, which is really just a matter of common sense. The principle is that if we really believe in the punishment of criminals in our society, if we really believe that the most effective punishment will serve as a deterrent to the commission of crime, and if we believe that the most effective punishment to accomplish that end is lengthy incarceration in the penitentiary, then we must make sure that our laws are written in such a way that we will accomplish the result we are seeking.

To accomplish that result, we have to make sure that the would-be criminal knows that if he commits a crime and gets caught, his punishment will be sure and certain. He must know that there will be no escape hatch through which he can avoid a term of years in the penitentiary. He must know in advance exactly how lengthy that prison term is going to be. He must know that no matter how good a lawyer he gets, how experienced, how expensive, how well-known, and how clever and sharp, that lawyer will not be able to keep him out of jail once he has been found guilty in a court of law. And that will be because the laws we pass will henceforth make it abundantly clear that a jail term must be imposed and a jail term must be served.

Under this approach, there will be no more revolving-door justice; the criminals we are talking about will not be back on the street right away to commit the same crimes all over again against the same law-abiding citizens who were victimized the first time around. For it is that same citizenry who sent us here, who elected us to represent them, who elected us to come to this Chamber to, among other responsibilities, take appropriate steps in the enactment of laws to protect their lives, their property, their families, and their safety. We have that responsibility, we have been charged with that responsibility. That charge is a sacred trust; we cannot let those people down on the subject which is now before us. Therefore, the language I originally proposed has been included in the penalty section of this bipartisan bill which will require that for certain crimes involving drugs, the convicted defendant must—I repeat must—be sentenced to the penitentiary. He must serve jail time. He will know that in advance because it will be the law. It will not be a matter of the judge's discretion for these types of crimes. It will be a requirement imposed by law on the sentencing judge.

Now, not only will the fact that the convicted criminal must be sentenced to time in the penitentiary be a legal requirement, but the law also will make it clear exactly the minimum number of years he must stay there. So these would-be criminals will know that in advance, as well.

And finally, with respect to these mandatory prison provisions, the law will state clearly and unequivocally that the prisoner will not be entitled to parole. For these kinds of people, parole is abolished, over, done with. Such an offender cannot get out of jail until he serves the minimum time which the law requires. We also allow the judge, if he believes the circumstances warrant, to sentence these criminals to even longer prison terms without possibility of parole.

So that is how we have addressed this revolving-door problem. We have declared, simply, that we will put these criminals in jail, lock the door, and for a lengthy period of time refuse to permit anyone to use the key to let them out. Indeed, there will be no key until, at a minimum the required jail time has been served.

This approach will be applied to all the major drug dealers who are preying upon our society—upon our cities and towns, in both urban and rural areas, on folks from all walks of life, all age groups, and all income strata. We divide these major drug dealers into two groups for purposes of fixing what their required jail terms shall be:

For the kingpins—the masterminds who are really running these operations—and they can be identified by the amount of drugs with which they are involved—we require a jail term upon conviction. If it is their first conviction, the minimum term is 10 years. If it is their second conviction, the minimum term is 20 years. Again, let us remember, they would have to serve that amount of time, at a minimum, without any chance of parole. This new law would also provide that the judge, if he felt the circumstances warranted, could sentence them to a lot more time than that. In fact, the judge could see to it that they were locked up for life.

Our proposal would also provide mandatory minimum penalties for the middle-level dealers as well. Those criminals would also have to serve time in jail. The minimum sentences would be slightly less than those for the kingpins, but they nevertheless would have to go to jail—a minimum of 5 years for the first offense and 10 years for the second. As is the case for the kingpins, those 5- and 10-year terms are only the mandatory minimums; the judge could, if he believes the circumstances dictate, sentence the middle-level drug dealer to 40 years for a first offense and life imprisonment for a second offense. In no event would such offenders ever become eligible for parole.

Mr. President, there are many tough, new penalty provisions in this legislation. There are many other punishment provisions and descriptions of newly-defined drug-related crimes, which were in the Democratic anti-drug bill we introduced over 3 weeks ago, and all of these other provisions are contained in this bipartisan consensus bill. They are forceful, imaginative, and I believe they will be effective. I am speaking of the measures which deal with, or increase penalties for, the use of children to sell drugs, the marketing of drugs near our schools, the new plague called crack which has invaded our streets, and the menace of so-called designer drugs which clever criminals have been making and marketing in an effort to evade the drug laws which are already on the books. The original Democratic package, which now is a part of this bipartisan bill, includes novel approaches to find and halt the schemes these drug dealers use to cleanse or launder the huge amounts of money they make in their hope that no one will trace those funds.

Mr. President, I salute my colleagues for the inclusion of all of these tough new measures. And I am pleased that all of our proposals of this type have been included in this bipartisan bill.

Mr. President, I must say at this point that I am encouraged—in general terms and specifically for the likelihood that this important legislation actually will become law this year—that it has been possible to work together on a bipartisan basis to produce the bill that is before us. It is an amalgamation of the comprehensive bill that, as I noted earlier, Senate Democrats introduced over 3 weeks ago after over a month of intensive study and effort by a Democratic working group chaired by Senators CHILES and BIDEN, and the bill introduced by Senate Republicans early last week.

As is the case with any compromise legislation, Mr. President, the bill is not precisely what Democrats would have desired, nor precisely what most Republicans would have desired. But I believe the negotiations were conducted in good faith by both sides, and I am persuaded this bill covers the most important aspects of the drug problem which are amendable to legislative remedy, and does so in a responsible manner.

I have already complimented those Democratic Senators who have been most deeply involved in drafting the Democratic bill and in arriving at this bipartisan legislation. Compliments also are in order for the distinguished majority leader and the Senators from his side of the aisle who were involved in this effort.

The drug problem knows no partisan bounds, Mr. President. No solution to it can be wholly Democratic or wholly Republican. If we are to whip this scourge, and those who are visiting it upon our land and our people, we will do it only if we approach the task as a united people. This bill is an encouraging beginning point in that effort.

So, I want to congratulate my colleagues on both sides of the aisle for the serious and earnest manner in which they considered our bill.

Mr. President, press releases will not solve the drug problem in this country. Television spots will not solve the drug problem.

The bill now before the Senate can go a long way to eradicate this misery and spare the lives of those who otherwise will be consumed by it. But neither can it, alone solve the problem.

What will solve it is the coming together of all segments in our society—the lawmakers, the religious leaders, the educators, the coaches, the entertainment field, the media, parents, and the youth of America—to agree to solve the problem.

Today we in the Senate are offering our contribution to this necessary collective effort. It is a good contribution, one of which we can be proud.

I urge all my colleagues to support its passage.

The PRESIDING OFFICER. Are there further amendments? If there be no further amendments to be proposed, the question is on the engrossment of the amendments and the third reading of the bill.

The amendment was ordered to be engrossed for a third reading and the bill to be read a third time.

H.R. 5484

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti Drug Abuse Act of 1986".

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SEC. 3. COMPLIANCE WITH BUDGET ACT.

Notwithstanding any other provision of this Act, any spending authority and any credit authority provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts. For purposes of this Act, the term "spending authority" has the meaning provided in section 401(c)(2) of the Congressional Budget Act of 1974 and the term "credit authority" has the meaning provided in section 3(10) of the Congressional Budget Act of 1974.

TITLE I—ANTI-DRUG ENFORCEMENT

Subtitle A—Drug Penalties Enhancement Act of 1986

SEC. 1001. SHORT TITLE.

This part may be cited as the "Drug Penalties Enhancement Act of 1986".

SEC. 1002. CONTROLLED SUBSTANCES ACT PENALTIES.

Section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by striking out subparagraphs (A) and (B) and inserting the following in lieu thereof:

"(1)(A) In the case of a violation of subsection (a) of this section involving—

"(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);

"(iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 400 grams or more of a mixture or substance containing a detectable amount of fentanyl or 100 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a special parole term of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph nor shall the term of imprisonment imposed under this subparagraph run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law. No person sentenced under this subparagraph shall be eligible for parole during their term of imprisonment imposed therein.

"(B) In the case of a violation of subsection (a) of this section involving—

"(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

"(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(IV) any compound, mixture, or preparation which contains any quantity of any of the substance referred to in subclauses (I) through (III);

"(iii) 5 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

"(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(vi) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl or 10 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a special parole term of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph nor shall the term of imprisonment imposed under this subparagraph run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law. No person sentenced under this subparagraph shall be eligible for parole during their term of imprisonment.

"(C) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this title or title III or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall such a term of imprisonment run concurrently with any other term of imprisonment under this subparagraph or under any other provision of law, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

SEC. 1003. OTHER AMENDMENTS TO THE CONTROLLED SUBSTANCES ACT.

(a) Section 401 of the Controlled Substances Act (21 U.S.C. 841) is further amended as follows:

(1) In subsection (b), paragraph (1)(D), as redesignated, is amended by—

(A) striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual";

(B) striking out "a fine of not more than $100,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual"; and

(C) inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana," the first place it appears.

(2) In subsection (b), paragraph (2) is amended by striking out "a fine of not more than $25,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if

the defendant is an individual or $1,000,000 if the defendant is other than an individual", and by striking out "a fine of not more than $50,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual".

(3) In subsection (b), paragraph (3) is amended by striking out "a fine of not more than $10,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual", and by striking out "a fine of not more than $20,000" and inserting in lieu thereof "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual".

(4) In subsection (b), paragraph (4) is amended by striking out "1(C)" and inserting "1(D)" in lieu thereof.

(5) In subsection (b), paragraph (5) is amended to read as follows:

"(5) Any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

"(A) the amount authorized in accordance with this section;

"(B) the amount authorized in accordance with the provisions of title 18, United States Code;

"(C) $500,000 if the defendant is an individual; or

"(D) $1,000,000 if the defendant is other than an individual;

or both.".

(6) Subsection (d) is amended by striking out "a fine of not more than $15,000" and inserting in lieu thereof "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual".

(b) Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) by inserting the following new paragraph after paragraph (24):

"(25) The term 'serious bodily injury' means bodily injury which involves—

"(A) a substantial risk of death;

"(B) protracted and obvious disfigurement; or

"(C) protracted loss or impairment of the function of a bodily member, organ, or mental faculty."; and

(2) by renumbering the following paragraphs accordingly.

SEC. 1004. AMENDMENT TO TITLE 18 OF THE UNITED STATES CODE.

(a) Section 3553 of title 18, United States Code, is amended by adding the following at the end thereof:

"(e) Limited Authority To Impose a Sentence Below a Statutory Minimum.—Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.".

(b) The amendment made by this section shall take effect on the date of the taking effect of section 3553 of title 18, United States Code.

SEC. 1005. AMENDMENT TO TITLE 28 OF THE UNITED STATES CODE.

Section 994 of title 28 of the United States Code is amended by—

(1) inserting the following after subsection (m):

"(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense."; and

(2) redesignating subsections (n), (o), (p), (q), (r), (s), (t), (u), (v), and (w) as subsections (o), (p), (q), (r), (s), (t), (u), (v), (w), and (x), respectively.

SEC. 1006. AMENDMENT TO THE FEDERAL RULES OF CRIMINAL PROCEDURE.

(a) Rule 35(b) of the Federal Rules of Criminal Procedure is amended by striking out "to the extent" and all that follows through the end and inserting in lieu thereof the following: "in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code. The court's authority to lower a sentence under this subdivision includes the authority to lower such sentence to a level below that established by statute as a minimum sentence.".

(b) The amendment made by this section shall take effect on the date of the taking effect of rule 35(b) of the Federal Rules of Criminal Procedure, as amended by section 215(b) of the Comprehensive Crime Control Act of 1984.

SEC. 1007. ELIMINATION OF SPECIAL PAROLE TERMS.

(a) The Controlled Substances Act and the Controlled Substances Import and Export Act are amended by striking out "special parole term" wherever it appears and inserting "term of supervised release" in lieu thereof.

(b) The amendments made by this section shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

SEC. 1008. AMENDMENT TO THE COMPREHENSIVE CRIME CONTROL ACT OF 1984.

(a) Subsection (a) of section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by inserting "and" after the semicolon in paragraph (4); and

(2) by striking out paragraphs (1), (2), (3), and (5) and redesignating the other paragraphs accordingly.

(b) Section 224 of the Comprehensive Crime Control Act of 1984 is amended—

(1) by striking out subsection (b); and

(2) by redesignating subsection (c) as subsection (b).

(c) Section 225 of the Comprehensive Crime Control Act of 1984 is amended to read as follows:

"Sec. 225. Section 1515 of the Controlled Substances Import and Export Act (21 U.S.C. 960) is amended by repealing subsection (c).".

SEC. 1009. MISCELLANEOUS TECHNICAL AMENDMENTS.

(a)(1) Subsection (a) of section 3583 of title 18, United States Code, is amended by inserting ", except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute" after "imprisonment" the second place it appears.

(2) Subsection (b) of section 3583 of title 18, United States Code, is amended by striking out "The" and inserting in lieu thereof "Except as otherwise provided, the".

(3) Subsection (c) of section 3583 of title 18, United States Code, is amended—

(A) so that the catchline reads as follows: "Modification of conditions or revocation.";

(B) in paragraph (2) by striking out "or" after the semicolon;

(C) in paragraph (3) by striking out "title," and inserting "title; or" in lieu thereof; and

(D) by inserting the following new paragraph after paragraph (3):

"(4) revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release, pursuant to the provisions of rule 32.1 of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission.".

(4) The amendments made by this subsection shall take effect on the date of the taking effect of section 3583 of title 18, United States Code.

(b) Paragraph (3) of section 994(a) of title 28, United States Code, is amended by inserting "and revocation of supervised release" after "supervised release".

(c) Section 511 of title II of the Comprehensive Drug Abuse Prevention Act of 1978 (21 U.S.C. 881) is amended—

(1) in subsection (f) by inserting "or II" after "I" each place it appears;

(2) by redesignating subsection (f) as subsection (f)(1); and

(3) by inserting the following new paragraph after subsection (f)(1) as so redesignated:

"(2) The Attorney General may direct the destruction of all controlled substances in schedule I or II seized for violation of this title under such circumstances as the Attorney General may deem necessary.".

Subtitle B—Drug Possession Penalty Act of 1986

SEC. 1051. SHORT TITLE.

This subtitle may be cited as the "Drug Possession Penalty Act of 1986".

SEC. 1052. PENALTY FOR SIMPLE POSSESSION.

Section 404 of the Controlled Substances Act (21 U.S.C. 844) is amended to read as follows:

"PENALTY FOR SIMPLE POSSESSION

"Sec. 404. (a) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this title or title III. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of $1,000 but not more than $5,000, or both, except that if he commits such offense after a prior conviction under this title or title III, or a prior conviction for any drug or narcotic offense chargeable under the law *of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of $2,500 but not more than $10,000, except, further, that if he commits such offense after two or more prior convictions under this title or title III, or two or more prior convictions for any drug or narcotic offense chargeable under the law of any State, or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of $5,000 but not more than $25,000. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of title 28, United States Code, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provision of title 18 that the defendant lacks the ability to pay.*

"(b)(1) If any person who has not previously been convicted of violating subsection (a) of this section, any other provision of this subchapter or subchapter II of this chapter, or any other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, is found guilty of a violation of subsection (a) of this section after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of his probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under this part for second or subsequent convictions) or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

"(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person, if he was not over twenty-one years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained by the Department of Justice under paragraph (1)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over twenty-one years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

"(c) As used in this section, the term 'drug or narcotic offense' means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this title.".

Subtitle C—Juvenile Drug Trafficking Act of 1986

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the "Juvenile Drug Trafficking Act of 1986".

SEC. 1102. OFFENSE.

Part D of the Controlled Substances Act is amended by adding after section 405A a new section as follows:

"EMPLOYMENT OR USE OF PERSONS UNDER TWENTY-ONE YEARS OF AGE IN DRUG OPERATIONS

"SEC. 405B. (a) It shall be unlawful for any person at least eighteen years of age to knowingly and intentionally—

"(1) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to violate any provision of this title or title III; or

"(2) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to assist in avoiding detection or apprehension for any offense of this title or title III by any Federal, State, or local law enforcement official.

"(b) Any person who violates subsection (a) is punishable by a term of imprisonment up to twice that otherwise authorized, or up to twice the fine otherwise authorized, or both, and at least twice any special parole term otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

"(c) Any person who violates subsection (a) after a prior conviction or convictions under subsection (a) of this section have become final, is punishable by a term of imprisonment up to three times that otherwise authorized, or up to three times the fine otherwise authorized, or both, and at least three times any special parole term otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

"(d) Any person who violates section 405B(a) (1) or (2)—

"(1) by knowingly providing or distributing a controlled substance or a controlled substance analog to any person under eighteen years of age; or

"(2) if the person employed, hired, or used is fourteen years of age or younger,

shall be subject to a term of imprisonment for not more than five years or a fine of not more than $50,000, or both, in addition to any other punishment authorized by this section.

"(e) In any case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is applicable shall not be eligible for parole under section 4202 of title 18, United States Code, until the individual has served the mandatory term of imprisonment required by section 401(b) as enhanced by this section.

"(f) Except as authorized by this title, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this title. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e).".

SEC. 1103. TECHNICAL AMENDMENTS.

(a) Section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) is amended by striking out the phrase "or 405A" and inserting in lieu thereof ", 405A, or 405B".

(b) Section 401(c) of the Controlled Substances Act (21 U.S.C. 841(c)) is amended by striking out "405A" each place it appears and inserting in lieu thereof ", 405A, or 405B".

(c) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by inserting after the item relating to section 405A the following:

"405B. Employment of minors in controlled substance trafficking.".

SEC. 1104. MANUFACTURING A CONTROLLED SUBSTANCE WITHIN 1000 FEET OF A COLLEGE.

(a) Section 405A of the Controlled Substances Act (21 U.S.C. 845a) is amended by inserting "or manufacturing" after "distributing" wherever it appears and by striking out "a public or private elementary or secondary school" wherever it appears and inserting in lieu thereof "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university".

(b) Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by striking out "involving the same controlled substance and schedule".

(c) Section 405A(b) of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by striking out "(1) by" and all that follows through the end and inserting the following in lieu thereof:

"(1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) a term of imprisonment of up to three times that authorized by section 401(b) of this title for a first offense, or a fine up to three times that authorized by section 401(b) of this title for a first offense, or both, and (2) at least three times any special parole term authorized by section 401(b) of this title for a first offense.".

SEC. 1105. IMPRISONMENT.

(a) Section 405(a) of the Controlled Substances Act (21 U.S.C. 845(a)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall not be less than one year.".

(b) Section 405(b) of the Controlled Substances Act (21 U.S.C. 845(b)) is amended by adding the following at the end thereof:

"Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall not be less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving five grams or less of marihuana.".

(c) Section 405(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by adding the following at the end thereof: "Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall not be less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving five grams or less of marihuana.".

Subtitle D—Assets Forfeiture Amendments Act of 1986

SEC. 1151. SHORT TITLE.

This subtitle may be cited as the "Asset Forfeiture Amendments Act of 1986".

SEC. 1152. ASSET FORFEITURE FUNDS.

(a) Department of Justice Assets Forfeiture Fund.—Subsection (c) of section 524 of title 28, United States Code, is amended—

(1) by inserting at the end of paragraph (A) the following:

"such payments may also include those, made pursuant to regulations promulgated by the Attorney General, that are necessary and direct program-related expenses for the purchase or lease of automatic data processing equipment (not less than ninety percent of which use will be program-related), training, printing, contracting for services directly related to the processing of and accounting for forfeitures, and the storage, protection, and destruction of controlled substances;";

(2) by inserting after subparagraph (A) of paragraph (1) the following new subparagraph and renumbering the subsequent subparagraphs appropriately:

"(B) the payment of awards for information or assistance directly relating to violations of the criminal drug laws of the United States.".

(3) by amending newly designated subparagraph (F) of paragraph (1) to read as follows:

"(F) for equipping for drug law enforcement functions any Government owned or leased vessels, vehicles, and aircraft available for official use by the Drug Enforcement Administration, the Federal Bureau of Investigation, the Immigration and Naturalization Service, or the United States Marshals Service; and";

(4) by striking out paragraph (8); and

(5) by adding at the end of the subsection the following new paragraph:

"(9)(A) If any funds deposited into the Department of Justice Assets Forfeiture Fund or the Customs Forfeiture Fund (19 U.S.C. 1613a, 1613b) are not expended or obligated prior to thirty days after the end of the fiscal year, ninety percent of such funds shall be transferred into a Special Forfeiture Fund.

"(B) The funds in the Special Forfeiture Fund shall be disbursed, in such amounts as are specified in appropriation Acts, during the fiscal year in which they are transferred into the Special Fund, by the Attorney General, through the Office of Justice Programs, after consultation with the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Education, to enhance the following efforts:

"(i) Federal drug law enforcement agencies and programs;

"(ii) Federal drug abuse agencies and programs relating to drug abuse education, prevention, treatment, rehabilitation, and research;

"(iii) State, local, and nonprofit agencies with drug abuse responsibilities; and

"(iv) State and local law enforcement agencies for drug law enforcement efforts.

"(C) Funds disbursed from the Special Forfeiture Fund shall not be used to supplement existing funds, but shall be used to supplement the amount of funds that would be otherwise available.

"(D) The Attorney General shall report annually to the Congress on all disbursements under the authority of clause (B).".

(b) Customs Forfeiture Fund.—

(1) Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613a) as added by Public Law 98–473, is amended—

(A) by amending paragraph (3) of subsection (a) to read as follows:

"(3) for equipping for law enforcement functions any Government owned or leased vessels, vehicles, and aircraft available for official use by the United States Customs Service; and"; and

(B) by striking out subsection (h).

(2) Section 613a of the Tariff Act of 1930 (19 U.S.C. 1613b) as added by Public Law 98–573, is repealed.

SEC. 1153. SUBSTITUTE ASSETS.

(a) Section 1963 of title 18 is amended by adding at the end thereof a new subsection, as follows:

"(n) If any of the property described in subsection (a), as a result of any act of omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

(b) Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1975 is amended—

(1) by redesignating subsection "(p)" as subsection "(q)"; and

(2) by adding a new subsection (p) as follows:

"(p) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

"(1) cannot be located upon the exercise of due diligence;

"(2) has been transferred or sold to, or deposited with, a third party;

"(3) has been placed beyond the jurisdiction of the court;

"(4) has been substantially diminished in value; or

"(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).".

Subtitle E—Controlled Substance Analogs' Enforcement Act of 1986

SEC. 1201. SHORT TITLE.

This subtitle may be cited as the "Controlled Substance Analogs' Enforcement Act of 1986".

SEC. 1202. OFFENSE.

Part D of the Controlled Substances Act is amended by adding after section 403 the following new section 403A (21 U.S.C. 843):

"§ 403A. Prohibited acts D

"Any person who knowingly or intentionally manufactures with intent to distribute, possesses with intent to distribute, or distributes a controlled substance analog all or part of which substance is intended for human consumption shall be fined not more than the greater of that authorized in accordance with the provisions of title 18, United States Code, or $500,000, or imprisoned not more than twenty years, or both, and $2,000,000 for a person other than an individual. Any person who knowingly or intentionally possesses a controlled substance analog all or part of which substance is intended for human consumption shall be fined not more than the greater of that authorized in accordance with the provisions of title 18, United States Code, or $25,000, or imprisoned not more than one year, or both. This section does not apply to a person who manufactures, possesses, or distributes a substance in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355). For purposes of this section, section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) shall be applicable to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.".

SEC. 1203. DEFINITION.

Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended by adding at the end thereof the following new paragraphs:

"(31) The term 'controlled substance analog' as used in section 403A means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in schedule I or II or that was specifically designed to produce an effect substantially similar to that of a controlled substance in schedule I or II. Examples of chemical classes in which controlled substance analogs are found include, but are not limited to, the following: phenethylamines, N-substituted piperidines, morphinans, ecogonines, quinazolinones, substituted indoles, and arylcycloalkylamines.

"(32) The term 'human consumption' includes application, injection, inhalation, or ingestion.".

SEC. 1204. TECHNICAL AND CONFORMING AMENDMENTS.

(1) The analysis of part D of the Controlled Substances Act is amended by inserting after the item relating to section 403 the following:

"403A. Prohibited acts D.".

(2) Title 18 of the United States Code is amended as follows:

(a) Section 1791 is amended—

(1) in subsection (a)(1) by—

(A) redesignating subparagraphs (E) and (F) as (F) and (G), respectively; and

(B) inserting the following new subparagraph after subparagraph (D):

"(E) a controlled substance analog as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);" and

(2) in subsection (b)(3) by—

(A) striking out "or" the second place it appears and inserting in lieu thereof a comma; and

(B) inserting ", or (1)(F)" after "(1)(E)".

(b) Section 1952(b)(1) is amended by—

(1) striking out "or" the first place it appears and inserting a comma in lieu thereof;

(2) inserting ", or controlled substance analogs" after "substances"; and

(3) striking out "(6)".

(c) Section 2118 is amended—

(1) in subsection (a) by inserting ", or controlled substance analog all or part of which controlled substance analog is intended for human consumption," after "substance";

(2) in subsection (b) by—

(A) inserting "or controlled substance analog all or part of which controlled substance analog is intended for human consumption" after "substance" the first place it appears; and

(B) inserting "or controlled substance analog" after "substance" the second place it appears; and

(3) in subsection (e)(1) to read as follows:

"(1) the terms 'controlled substance', 'controlled substance analog', and 'human consumption' have the meaning prescribed for those terms by section 102 of the Controlled Substances Act (21 U.S.C. 802);".

(d) Section 3142(c)(2)(I) is amended by inserting "or controlled substance analog" after "substance".

(e)(1) Section 3563(b)(8), as enacted by section 212(a) of the Comprehensive Crime Control Act of 1984, is amended by inserting "or controlled substance analog" after "substance".

(2) The amendment made by this subsection shall take effect on the date of the taking effect of such section 3563(b)(8).

(f)(1) Section 3607 is amended—

(A) in subsection (a) by inserting "a simple possession offense described in section 403A of the Controlled Substances Act (21 U.S.C. 843) or" after "of" the first place it appears;

(B) in subsection (a)(1) by inserting "or controlled substance analog" after "substances"; and

(C) in subsection (c) by inserting "a simple possession offense described in section 403A of the Controlled Substances Act (21 U.S.C. § 843A) or" after "of" the first place it appears.

(2) The amendments made by this subsection shall take effect on the date of the taking effect of section 3607.

(g) Sections 924(c)(2) and 929(a)(2) are amended by inserting "or controlled substance analog" after "controlled substance".

(3) The Controlled Substances Act (21 U.S.C. 801 et seq.) is amended as follows:

(a) Section 102(11) (21 U.S.C. 802(11)) is amended by inserting "or a controlled substance analog" after "substance" each place it appears.

(b) Section 307(f) (21 U.S.C. 827(f)) is amended by inserting "and controlled substance analogs" after "substances".

(c) Subsections (a) and (b) of section 405 (21 U.S.C. 845) are amended by—

(1) inserting "or section 403A" after "401(a)(1)";

(2) inserting "or a controlled substance analog" after "substance" the first place it appears; and

(3) inserting "in the case of a controlled substance or section 403A in the case of a controlled substance analog" after "section 401(b)" the first place it appears.

(d) Section 405A (21 U.S.C. 845A) is amended—

(1) in subsection (a) by—

(A) inserting "or section 403A" after "401(a)(1)";

(B) inserting "or a controlled substance analog" after "substance" the first place it appears; and

(C) striking out "841(b) of this title" and inserting in lieu thereof "401(b) in the case of a controlled substance or section 403A in the case of a controlled substance analog"; and

(2) in subsection (b) by—

(A) inserting "or section 403A" after "401(a)(1)"; and

(B) inserting "or a controlled substance analog" after "substance" the first place it appears.

(e) Section 501(c) (21 U.S.C. 871(c)) is amended by inserting "or controlled substance analogs" after "substances".

(f) Section 503 (21 U.S.C. 873) is amended—

(1) in subsection (a) by—

(A) inserting "and controlled substance analogs" after "substances" each place it appears; and

(B) inserting "and controlled substance analog" after "substance" each place it appears; and

(2) in subsection (d)(1)(A) by inserting "and controlled substance analogs" after "substances".

(g) Section 504 (21 U.S.C. 874) is amended by inserting "and controlled substance analogs" after "substances".

(h) Section 506(a) (21 U.S.C. 876(a)) is amended by inserting "or controlled substance analogs" after "substances".

(i) Section 509 (21 U.S.C. 879) is amended by inserting "or controlled substance analogs" after "substances".

(j) Section 511 (21 U.S.C. 881) is amended—

(1) in subsection (a) by—

(A) inserting "or controlled substance analogs" after "substances" each place it appears; and

(B) inserting "or controlled substance analog" after "substance" each place it appears;

(2) in subsection (f) by inserting "and all controlled substance analogs" after "schedule I" each place it appears; and

(3) in subsection (g)(1) by inserting "or controlled substance analogs" after "II".

(k) Section 515 (21 U.S.C. 885) is amended—

(1) in subsection (c) by inserting "or controlled substance analogs" after "schedule I"; and

(2) in subsection (d) by inserting "or controlled substance analogs" after "substances".

(l) Section 516(b) (21 U.S.C. 886(b)) is amended by inserting "or controlled substance analogs" after "substances".

(4) Section 1 of the Act of September 15, 1980 (21 U.S.C. 955a) is amended as follows:

(a) Subsections (a), (b), and (c) are amended by inserting "or a controlled substance analog all or part of which controlled substance analog is intended for human consumption" after "substance".

(b) Subsection (e) is amended by inserting "or controlled substance analog" after "substance" each place it appears.

(c) Subsection (g) is amended—

(1) in paragraph (1) by inserting "involving a controlled substance" after "section";

(2) in paragraph (2) by inserting "involving a controlled substance" after "Act"; and

(3) by adding the following new paragraph after paragraph (2):

"(3) Any person who commits an offense defined in subsection (a), (b), or (c) of this section involving a controlled substance analog shall be fined not more than $250,000, or imprisoned not more than fifteen years, or both.".

(5) Section 280E of the Internal Revenue Code of 1954 (26 U.S.C. 280E) is amended by inserting "or controlled substance analogs (within the meaning of section 102 of the Controlled Substances Act (21 U.S.C. 802)" after "Act)".

(6) Section 994 of title 28 of the United States Code is amended as follows:

(a) Paragraphs (1)(B) and (2)(B) of subsection (h) are amended by—

(1) striking out "section" the first place it appears and inserting in lieu thereof "sections";

(2) inserting "and 403A" after "401"; and

(3) inserting "and 843A" after "841".

(b) Paragraph (5) of subsection (i) is amended by—

(1) inserting ", 403A," after "401";

(2) inserting ", 843A," after "841"; and

(3) inserting "or controlled substance analog" after "substance".

(7) Section 902q of the Federal Aviation Act of 1958 (49 U.S.C. 1472q) is amended by—

(a) inserting "or controlled substance analog" after "substance" each place it appears; and

(b) striking out the second sentence and inserting in lieu thereof: "For purposes of this subsection, the terms 'controlled substance' and 'controlled substance analog' have the meaning given such terms by section 102 of the Controlled Substances Act (21 U.S.C. 802).".

Subtitle F—Continuing Drug Enterprise Act of 1986

SEC. 1251. SHORT TITLE.

This subtitle may be cited as the "Continuing Drug Enterprises Act of 1986".

SEC. 1252. INCREASED PENALTIES.

Subsection 408(a) of the Controlled Substances Act (21 U.S.C. 848(a)) is amended as follows:

(1) by striking out the phrase "to a fine of not more than $100,000," and inserting in lieu thereof "to a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual,"; and

(2) by striking out the phrase "to a fine of not more than $200,000," and inserting in lieu thereof "to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual".

SEC. 1253. CONTINUING CRIMINAL ENTERPRISE ENHANCED PENALTIES.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is further amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively; and

(2) by inserting the following new subsections after subsection (a):

"(b) Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a), if—

"(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

"(2)(A) the violation referred to in subsection (d)(1) involved at least 300 times the *quantity of a substance described in subsection 401(b)(1)(B) of this Act, or*

"(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received $10 million in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a substance described in section 401(b)(1)(B) of this Act."

Subtitle G—Controlled Substances Import and Export Act Penalties Enhancement Act of 1986

SEC. 1301. SHORT TITLE.

This subtitle may be cited as the "Controlled Substances Import and Export Penalties Enhancement Act of 1986.".

SEC. 1302. ENHANCED PENALTIES.

(a) Section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by striking out paragraphs (1) and (2) and inserting the following in lieu thereof:

"(1) In the case of a violation of subsection (a) of this section involving—

"(A) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

"(B) 5 kilograms or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 50 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 400 grams or more of a mixture or substance containing a detectable amount of fentanyl or 100 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(G) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 10 years and not more than life and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than 20 years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. Any sentence under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph nor shall the term of imprisonment imposed under this paragraph run concurrently with any other term of imprisonment under this paragraph or under any other provision of law. No person sentenced under this paragraph shall be eligible for parole during their term of imprisonment.

"(2) In the case of a violation of subsection (a) of this section involving—

"(A) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

"(B) 500 grams or more of a mixture or substance containing a detectable amount of—

"(i) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

"(ii) cocaine, its salts, optical and geometric isomers, and salts of isomers;

"(iii) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

"(iv) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in clauses (i) through (iii);

"(C) 5 grams or more of a mixture or substance described in subparagraph (B) which contains cocaine base;

"(D) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

"(E) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

"(F) 40 grams or more of a mixture or substance containing a detectable amount of fentanyl or 10 grams or more of a mixture or substance containing a detectable amount of any analog of fentanyl; or

"(G) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana;

the person committing such violation shall be sentenced to a term of imprisonment of not less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposed under this paragraph shall, in the absence of such a prior conviction, include a special parole term of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a special parole term of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this paragraph nor shall the term of imprisonment imposed under this paragraph run concurrently with any other term of imprisonment under this paragraph or under any other provision of law. No person sentenced under this paragraph shall be eligible for parole during the term of imprisonment.

"(3) In the case of a violation under subsection (a) of this section involving a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1), (2), and (4), be sentenced to a term of imprisonment of not more than 20 years if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years and not more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after one or more prior convictions for an offense punishable under this subsection, or for a felony under any other provision of this title or title II or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment. Notwithstanding the prior sentence, and notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this paragraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall such a term of imprisonment run concur-

rently with any other term of imprisonment under this paragraph or under any other provision of law, nor shall a person so sentenced be eligible for parole during the term of such a sentence.".

(b) Section 1010(b)(4) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(4)), as redesignated, is amended—

(1) by striking out ", except as provided in paragraph (4)";

(2) by striking out the phrase "fined not more than $50,000" and inserting in lieu thereof "fined not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual"; and

(3) by inserting "except in the case of 100 or more marihuana plants regardless of weight," after "marihuana,".

Subtitle H—Money Laundering Crimes Act of 1986

SEC. 1351. SHORT TITLE.

This subtitle may be cited as the "Money Laundering Crimes Act of 1986".

SEC. 1352. NEW OFFENSE FOR LAUNDERING OF MONETARY INSTRUMENTS.

(a) Chapter 95 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 1956. Laundering of monetary instruments

"(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

"(A) with the intent to facilitate the carrying on of specified unlawful activity; or

"(B) knowing that the transaction is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $250,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(2) Whoever transports or attempts to transport a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

"(A) with the intent to facilitate the carrying on of specified unlawful activity; or

"(B) knowing that the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and knowing that such transportation is designed in whole or in part—

"(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

"(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of $250,000 or twice the value of the monetary instrument or funds involved in the transportation, whichever is greater, or imprisonment for not more than twenty years, or both.

"(3) Whoever conducts or attempts to conduct a financial transaction that in whole or in part involves the proceeds of specified unlawful activity with intent to violate or facilitate a violation of section 7201 or 7206 of the Internal Revenue Code of 1954 shall be sentenced to a fine of not more than $250,000 or twice the value of the monetary instrument or funds involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

"(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1), (a)(3), or a transportation described in subsection (a)(2) is liable to the United States for a civil penalty of not more than the greater of—

"(1) the value of the property, funds, or monetary instruments involved in the transaction; or

"(2) $10,000.

"(c) As used in this section—

"(1) the phrase 'knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity' means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State or Federal law, regardless of whether or not such activity is specified in paragraph (7);

"(2) the term 'conducts' includes but is not limited to initiating, concluding, or participating in initiating, or concluding a transaction;

"(3) the term 'transaction' includes but is not limited to a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes but is not limited to a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

"(4) the term 'financial transaction' means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects interstate or foreign commerce, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

"(5) the term 'monetary instruments' means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery;

"(6) the term 'financial institution' has the definition given that term in section 5312(a)(2) of title 31, United States Code, and the regulations promulgated thereunder;

"(7) the term 'specified unlawful activity' means—

"(A) any act or activity occurring in whole or in part in, or directed at, the United States, and constituting an offense listed in section 1961(1) of this title except an act which is indictable under the Currency and Foreign Transactions Reporting Act;

"(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

"(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848); or

"(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), sections 500 through 503 (relating to certain counterfeiting offenses), section 511 (relating to securities of States and private entities), section 543 (relating to smuggling goods into the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1344 (relating to bank fraud), or section 2113 or 2114 (relating to bank and postal robbery and theft) of this title, section 38 of the Arms Export Control Act (22 U.S.C. 2778), the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.), the International Emergency Economic Powers Act (50 U.S.C. 1702 et seq.), and the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.).

"(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

"(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate.

"(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if—

"(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

"(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.".

(b) The table of sections at the beginning of chapter 95 of title 18 is amended by adding at the end the following new item:

"1956. Laundering of monetary instruments".

SEC. 1353. AMENDMENT TO THE RIGHT TO FINANCIAL PRIVACY ACT.

(a) Subsection 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following: "Such information may include only the name or names of and other identifying information concerning the individuals and accounts involved in and the nature of the suspected illegal activity. Such information may be disclosed notwithstanding any constitution, law, or regulation of any State or political subdivision thereof to the contrary. Any financial institution, or officer, employee, or agent thereof, making a disclosure of information pursuant to this subsection, shall not be liable to the customer under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the customer of such disclosure.".

(b) Section 1113(i) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(i)) is amended by inserting immediately before

the period at the end thereof a comma and the following: "except that a court shall have authority to order a financial institution, on which a grand jury subpoena for customer records has been served, not to notify the customer of the existence of the subpoena or information that has been furnished to the grand jury, under the circumstances and for the period specified and pursuant to the procedures established in section 1109 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3409)".

SEC. 1354. COMPLIANCE, EXEMPTIONS, AND SUMMONS AUTHORITY.

(a) Section 5318 of title 31, United States Code, is amended to read as follows:

"§ 5318. Compliance, exemptions, and summons authority

"(a) The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

"(1) delegate duties and powers under this subchapter to an appropriate supervising agency, except as provided in subsection (e);

"(2) require a class of domestic financial institutions to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter;

"(3) examine any books, papers, records, or other data of domestic financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

"(4) summon a financial institution or an officer or employee of a financial institution, or a former officer or employee, or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (c); and

"(5) prescribe an appropriate exemption from a requirement under this subchapter and regulations prescribed under this subchapter. The Secretary may revoke an exemption by actually or constructively notifying the parties affected. A revocation is effective during judicial review.

"(b) The purposes for which the Secretary of the Treasury may take any action described in paragraph (3) of subsection (a) include the purpose of civil and criminal enforcement of the provisions of this subchapter, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), section 411 of the National Housing Act (12 U.S.C. 1730d), or chapter 2 of Public Law 91-508.

"(c) The purpose for which the Secretary of the Treasury may take any action described in paragraph (4) of subsection (a) is limited to investigating violations of this subchapter, violations of section 21 of the Federal Insurance Act (12 U.S.C. 1829b), violations of section 411 of the National Housing Act (12 U.S.C. 1730d), or violations of chapter 2 of Public Law 91-508 for the purpose solely of civil enforcement of these provisions or any regulation issued thereunder. A summons may be issued under paragraph (4) of subsection (a) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury .

"(d) A summons pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than five hundred miles distant from any place where the financial institution operates or conducts business in the United States. Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States. The United States shall not be liable for any other expenses incurred in connection with the production of books, papers, records, or other data pursuant to the provisions of this section.

"(e) Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may provide by regulation.

"(f) In the case of contumacy by or refusal to obey a summons issued to any person under this section, the Secretary shall refer the matter to the Attorney General. The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation which gave rise to the summons is being or has been carried on or of which the person summoned is an inhabitant, or in which he carries on business or may be found, to compel compliance with the summons. The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding. Any failure to obey the order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in any judicial district in which such person may be found.

(b)(1) Paragraph (1) of subsection (a) of section 5321 of title 31, United States Code, is amended to read as follows:

"(1) A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, willfully violating this subchapter or a regulation prescribed under this subchapter (except sections 5314 and 5315 of this title or a regulation prescribed under sections 5314 and 5315) is liable to the United States Government for a civil penalty of not more than the amount of the transaction (but not more than $1,000,000) or $25,000, whichever is greater. For a willful violation of section 5318(a)(2) of this title, or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at such office, branch, or place of business at which a violation occurs or continues.".

(2) Subsection (a) of section 5321 of title 31, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(4) A person willfully violating the provisions of section 5314 of this title or of a regulation prescribed under section 5314 is liable to the United States Government for a civil penalty of not more than—

"(A) where the violation involves a transaction, the amount of the transaction or $25,000, whichever is greater, or

"(B) where the violation involves the failure to report the existence of an account or any required identifying data pertaining to the account, the amount of the account (but not more than $250,000) or $25,000, whichever is greater.

"(5) Any financial institution negligently violating any provision of this subchapter or a regulation prescribed under this subchapter is liable to the United States for a civil penalty of not more than $500.

"(6) A civil penalty assessed pursuant to this section is in addition to any criminal penalty under section 5322 of this title based on the same transaction.

"(7) The Secretary may impose a civil penalty on a person or persons (excluding a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission) willfully violating section 5324 of this subchapter. A civil penalty under this paragraph may not be more than the amount of the United States coins and currency (or other monetary instruments the Secretary may prescribe) involved in the violation of section 5324 of this subchapter. A civil penalty under this paragraph is reduced by any amount forfeited under subsection 981(a)(1)(C) of title 18.".

(c) Subsection (b) of section 5321 of title 31, United States Code, is amended to read as follows:

"(b) The Secretary may assess a civil penalty under this section within six years from the date of the transaction in which the penalty is based. The Secretary may bring a civil action to recover a civil penalty under this section within two years from the date of a penalty assessment or the conclusion of a criminal action under section 5322 of this title based on the same transaction, whichever is later.".

(d) Subsection (c) of section 5321 of title 31 is amended to read as follows:

"(c) The Secretary of the Treasury may remit any part of a forfeiture under subsection 5317(c) of this title or under subsection 981(a)(1)(C) of title 18 or may mitigate any civil penalty under subsection (a) of this section.".

(e) Subsection (b) of section 5322 of title 31, United States Code, is amended by striking out "pattern of illegal activity involving transactions of more than $100,000" and inserting in lieu thereof "pattern of any illegal activity involving more than $100,000", and by striking out "5" and inserting in lieu thereof "10".

(f) Section 5312(a)(5) of title 31, United States Code, is amended to read as follows:

"(5) 'United States' means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, or a military or diplomatic establishment.".

(g) Subchapter II of chapter 53 of title 31, United States Code is amended by adding at the end thereof the following new section:

"§ 5324. Structuring transactions to evade reporting requirements.

"No person shall, for the purpose of evading the reporting requirements of subsection 5313(a)—

"(1) cause or attempt to cause a domestic financial institution to fail to file a report required by subsection 5313(a);

"(2) cause or attempt to cause a domestic financial institution to file a report required by subsection 5313(a) that contains a material omission or misstatement of fact; or

"(3) structure or attempt to structure or assist in structuring a transaction.".

(h) The table of sections for chapter 53 of title 31, United States Code is amended by adding at the end thereof the following new item:

"5324. Structuring transactions to evade reporting requirements".

(i) Subsection 5317(c) of title 31, United States Code, is amended to read as follows:

"(c) A monetary instrument being transported, or which has been transported, or any interest in any property, including any deposit in a financial institution, traceable to such instrument, may be seized and forfeited to the United States Government when a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement.".

(j) The table of sections at the beginning of chapter 53, subchapter II, of title 31, is amended by striking "5318. Compliance and exemption." and inserting in lieu thereof "5318. Compliance, exemptions and summons authority."

(k) Subsection (c) of section 5322 of title 31, United States Code is amended by striking out "5318(2)" each time it appears and inserting in lieu thereof "5318(a)(2)".

"(l) Subsection (b) of section 5317 of title 31, United States Code is amended by striking subsection (b) and inserting in lieu thereof "(b) To ensure compliance with section 5316 of this title, a customs officer may stop and search, at the border, without a search warrant, a vehicle, vessel, aircraft, or other conveyance, envelope or other container, or person entering or departing from the United States.".

SEC. 1355. PREDICATED OFFENSES.

(a) Subsection (b) of section 1952 of title 18, United States Code, is amended by striking out "or" before "(2)", and by striking out the period at the end thereof and inserting in lieu thereof the following: ", or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 of this title.".

(b) Subsection (l) of section 1961 of title 18, United States Code, is amended by inserting "section 1956 (relating to the laundering of monetary instruments)," after "section 1955 (relating to the prohibition of illegal gambling businesses),".

(c) Subsection (l) of section 2516 of title 18, United States Code, is amended in paragraph (c) by inserting "section 1956 (laundering of monetary instruments)," after "section 1955 (prohibition of business enterprises of gambling),".

SEC. 1356. FORFEITURE.

(a) Title 18 of the United States Code is amended by adding after chapter 45 a new chapter 46 as follows:

"CHAPTER 46—FORFEITURE

"Sec.
"981. Civil Forfeiture.
"982. Criminal Forfeiture.

"§ 981. Civil forfeiture

"(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

"(A) Any property, real or personal, which represents the gross receipts a person obtains, directly or indirectly, as a result of a violation of section 1956 of this title, or which is traceable to such gross receipts.

"(B) Any property within the jurisdiction of the United States, which represents the proceeds of an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense or activity would be punishable by death or imprisonment for a term exceeding one year and which would be punishable by imprisonment for a term exceeding one year if such act or activity had occurred within the jurisdiction of the United States.

"(C) Any coin and currency (or other monetary instrument as the Secretary of the Treasury may prescribe) or any interest in other property, including any deposit in a financial institution, traceable to such coin or currency involved in a transaction or attempted transaction in violation of section 5313(a) or 5324 of title 31 may be seized and forfeited to the United States Government. No property or interest in property shall be seized or forfeited if the violation is by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, officer or employee thereof."

"(2) No property shall be forfeited under this section to the extent of the interest of an owner or lienholder by reason of any act or emission established by that owner or lienholder to have been committed without the knowledge of that owner or lienholder.

"(b) Any property subject to forfeiture to the United States under subsection (a)(1)(A) or (a)(1)(B) of this section may be seized by the Attorney General or, with respect to property involved in a violation of section 1956 of this title investigated by the Secretary of the Treasury, may be seized by the Secretary of the Treasury, and any property subject to forfeiture under subsection (a)(1)(C) of this section may be seized by the Secretary of the Treasury, in each case upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

"(1) the seizure is pursuant to a lawful arrest or search; or

"(2) the Attorney General or the Secretary of the Treasury, as the case may be, has obtained a warrant for such seizure pursuant to the Federal Rules of Criminal Procedure, in which event proceedings under subsection (d) of this section shall be instituted promptly.

"(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General or the Secretary of the Treasury, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General or the Secretary of the Treasury, as the case may be, may—

"(1) place the property under seal;

"(2) remove the property to a place designated by him; or

"(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

"(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of this section, the remission or mitigation of such forfeitures, and the compromise of claims (19 U.S.C. 1602 et seq.), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General or the Secretary of the Treasury, as the case may be.

"(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General or the Secretary of the Treasury, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine to—

"(1) any other Federal agency; or

"(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.

The Attorney General or the Secretary of the Treasury, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General or the Secretary of the Treasury pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General or the Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.

"(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

"(g) The filing of an indictment or information alleging a violation of law which is also related to a forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the forfeiture proceeding.

"(h) In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the ju-

dicial district in which the criminal prosecution is brought.

"(i) In the case of property subject to forfeiture under subsection (a)(1)(B), the following additional provisions shall apply:

"(1) Notwithstanding any other provision of law, except section 3 of the Anti Drug Abuse Act of 1986, whenever property is civilly or criminally forfeited under the Controlled Substances Act, the Attorney General may equitably transfer any conveyance, currency, and any other type of personal property which the Attorney General may designate by regulation for equitable transfer, or any amounts realized by the United States from the sale of any real or personal property forfeited under the Controlled Substances Act to an appropriate foreign country to reflect generally the contribution of any such foreign country participating directly or indirectly in any acts which led to the seizure or forfeiture of such property. Such property when forfeited pursuant to subsection (a)(1)(B) of this section may also be transferred to a foreign country pursuant to a treaty providing for the transfer of forfeited property to such foreign country. A decision by the Attorney General pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subchapter, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General may, in his discretion, set.

"(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including, but not limited to, property which is sought as evidence of a crime committed in the foreign country.

"(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section, and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

"(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

"(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

"(j) For purposes of this section—

"(1) the term 'Attorney General' means the Attorney General or his delegate; and

"(2) the term 'Secretary of the Treasury' means the Secretary of the Treasury or his delegate.

"§ 982. Criminal forfeiture

"(a) The court, in imposing sentence on a person convicted of an offense under section 1956 of this title shall order that the person forfeit to the United States any property, real or personal, which represents the gross receipts the person obtained, directly or indirectly, as a result of such offense, or which is traceable to such gross receipts.

"(b) The provisions of subsections 413 (c) and (e) through (o) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853 (c) and (e)-(o)) shall apply to property subject to forfeiture under this section, to any seizure or disposition thereof, and to any administrative or judicial proceeding in relation thereto, if not inconsistent with this section.".

(b) The chapter analysis of part I of title 18, United States Code, is amended by inserting after the item for chapter 45 the following:

"46. Forfeiture.. 961".

SEC. 1357. SEVERABILITY CLAUSE.

If any provision of this subtitle or any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the provisions of every other part, and their application, shall not be affected thereby.

Subtitle I—Armed Career Criminals

SEC. 1401. SERIOUS DRUG OFFENSES.

(a) The second sentence of subsection (a) of section 1202 of title VII of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. App. 1202(a)) is amended by striking out "for robbery or burglary, or both," and inserting in lieu thereof "for a crime of violence or a serious drug offense, or both,".

(b) Subsection (c) of section 1202 of title VII of such Act is amended by striking out paragraphs (8) and (9) and inserting in lieu thereof:

"(8) 'serious drug offense' means—

"(i) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a et. seq.); and

"(ii) an offense under State law, involving manufacturing, distributing, possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law; and

"(9) 'crime of violence' means any offense punishable by imprisonment for a term exceeding one year that—

"(A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or

"(B) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.".

Subtitle J—Authorization of Appropriation for Drug Law Enforcement

SEC. 1451. AUTHORIZATION OF APPROPRIATIONS.

(a) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Drug Enforcement Administration $11,000,000; except, that notwithstanding section 1345 of title 31, United States Code, funds made available to the Department of Justice for the Drug Enforcement Administration in any fiscal year may be used for travel, transportation, and subsistence expenses of State, county, and local officers attending conferences, meetings, and training courses at the FBI Academy, Quantico, Virginia.

(b) The Drug Enforcement Administration of the Department of Justice is hereby authorized to plan, construct, renovate, maintain, remodel and repair buildings and purchase equipment incident thereto for an All Source Intelligence Center: Provided further, That of the funds authorized to be appropriated under this section, $7,000,000 shall be for the procurement of secure voice radios for the Drug Enforcement Administration.

(c) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Federal Prison System, $78,000,000, of which $50,000,000 shall be for the construction of Federal penal and correctional institutions and $28,000,000 shall be for salaries and expenses.

(d) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Defender Services, $18,000,000.

(e) There is authorized to be appropriated for fiscal year 1987 for the Judiciary for Fees and Expenses of Jurors and Commissioners, $7,500,000.

(f) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Office of Justice Assistance, $2,000,000 to carry out a pilot prison capacity program.

(g) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for support of United States prisoners in non-Federal Institutions, $2,000,000.

(h) There is authorized to be appropriated for fiscal year 1987 for the Department of Justice for the Offices of the United States Attorneys, $6,000,000.

(i) Authorizations of appropriations for fiscal year 1987 contained in this section are in addition to those amounts contained in H.R. 5161, as reported to the Senate by the Committee on Appropriations on September 3, 1986.

(j) In addition to any other amounts that may be authorized to be appropriated for fiscal year 1987, the following sums are authorized to be appropriated to procure secure voice radios:

Federal Bureau of Investigation........................	$4,000,000
Secret Service....................	$5,000,000.

Subtitle L—State and Local Narcotics Control Assistance

SEC. 1551. SHORT TITLE.

This subtitle may be cited as the "State and Local Law Enforcement Assistance Act of 1986".

SEC. 1552. OFFICE OF JUSTICE ASSISTANCE DRUG GRANT PROGRAM.

(a) Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712 et seq.) is amended—

(1) by redesignating part M as part N,

(2) by redesignating section 1301 as section 1401, and

(3) by inserting after part L the following new part:

"Part M—Grants for Drug Law Enforcement Programs

"FUNCTION OF THE ATTORNEY GENERAL

"SEC. 1301. The Attorney General shall provide funds to eligible States and units of local government pursuant to this part.

"DESCRIPTION OF DRUG LAW ENFORCEMENT GRANT PROGRAM

"SEC. 1302. The Attorney General, through the Bureau of Justice Assistance, is authorized to make grants under this part to States for the purpose of enforcing State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 et seq.), and to—

"(1) provide additional personnel, equipment, facilities, personnel training, and supplies for more widespread apprehension of persons, who violate State laws relating to the production, possession, and transfer of controlled substances and to pay operating expenses (including the purchase of evidence and information) incurred as a result of apprehending such persons,

"(2) provide additional personnel, equipment, facilities (including upgraded and additional law enforcement crime labs), personnel training, and supplies for more widespread prosecution of persons accused of violating such State laws and to pay operating expenses in connection with such prosecution,

"(3) provide additional personnel (including judges), equipment, personnel training, and supplies for more widespread adjudication of cases involving persons accused of violating such State laws, to pay operating expenses in connection with such adjudication, and to provide quickly temporary facilities in which to conduct adjudications of such cases,

"(4) provide additional correctional facilities (including the expansion of existing prisons) for the detention of persons convicted of violating State laws relating to the production, possession, or transfer of controlled substances, and to establish and improve treatment and rehabilitative counseling provided to drug dependent persons convicted of violating State laws,

"(5) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted,

"(6) to conduct demonstration programs, in conjunction with local law enforcement officials, in areas in which there is a high incidence of drug abuse and drug trafficking to expedite the prosecution of major drug offenders by providing additional resources, such as investigators and prosecutors, to identify major drug offenders and move these offenders expeditiously through the judicial system; and

"(7) provide grants for programs which identify and meet the needs of drug-dependent offenders for treatment as provided in section 403(a)(8).

This program shall be administered by the Bureau of Justice Assistance pursuant to Part D of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741-3745), except that the minimum allotment under Part M of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, shall be $500,000.

"APPLICATIONS TO RECEIVE GRANTS

"SEC. 1303. To request a grant under section 1302, the chief executive officer of a State shall submit to the Attorney General an application at such time and in such form as the Attorney General may require. Such application shall include a statewide strategy for the enforcement of State laws relating to the production, possession, and transfer of controlled substances. Such strategy shall be prepared after consultation with State and local officials whose duty it is to enforce such laws. Such strategy shall include an assurance that following the first fiscal year covered by an application and each fiscal year thereafter, the applicant shall submit to the Bureau or to the State, as the case may be, a performance report concerning the activities carried out pursuant to section 1302 of this title.

"REPORTS

"SEC. 1304. (a) Each State which receives a grant under section 1302 shall submit to the Attorney General, for each year in which any part of such grant is expended by a State or local government entity, a report which contains—

"(1) a summary of the activities carried out with such grant and an assessment of the impact of such activities on meeting the needs identified in the State strategy submitted under section 1303, and

"(2) such other information as the Attorney General may require by rule.

Such report shall be submitted in such form and by such time as the Attorney General may require by rule.

"(b) Not later than ninety days after the end of each fiscal year for which grants are made under section 1302, the Attorney General shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report that includes with respect to each State—

"(1) the aggregate amount of such grants made to such State for such fiscal year,

"(2) the amount of such grants expended for each of the five general purposes specified in section 1302, and

"(3) a summary of the information provided in compliance with subsection (a)(1).

"EXPENDITURE OF GRANTS; RECORDS

"SEC. 1305. (a) A grant made under section 1302 may not be expended for more than 75 per centum of the cost of the identified uses, in the aggregate, for which such grant is received to carry out any one of the five general purposes specified in section 1302. The non-Federal portion of the expenditures for such uses shall be paid in cash.

"(b) Not more than 10 per centum of a grant made under section 1302 may be used for costs incurred to administer such grant.

"(c)(1) Each State which receives a grant under section 1302 shall keep, and shall require units of local government which receive any part of such grant to keep, such records as the Attorney General may require by rule to facilitate an effective audit.

"(2) The Attorney General and the Comptroller General of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of States which receive grants, and of State and local government entities which receive any part of a grant, made under section 1302 if, in the opinion of the Attorney General or the Comptroller General, such books, documents, and records are related to the receipt or use of any such grant.

"STATE OFFICE

"SEC. 1306. (a) The chief executive of each participating State shall designate a State office for purposes of—

"(1) preparing an application to obtain funds under section 1302 of this title; and

"(2) administering funds received under such section from the Bureau, including receipt, review, processing, monitoring, progress and financial report review, technical assistance, grant adjustments, accounting, auditing, and fund disbursements.

"(b) An office or agency performing other functions within the executive branch of a State may be designated to carry out the functions specified in subsection (a).".

(b)(1) Subsections (a) and (b) of section 401 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741) are each amended by striking out "part E" and inserting in lieu thereof "parts E and M".

(2) Section 801(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3782(b)) is amended—

(A) by striking out "parts D and E" and inserting in lieu thereof "parts D, E, and M", and

(B) by striking out "part D" each place it appears and inserting in lieu thereof "parts D and M".

(3) Section 802(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3783(b)) is amended by inserting "or M" after "part D".

(4) Section 808 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789) is amended by inserting "or 1306, as the case may be," after "section 408".

(5) The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking out the items relating to part M and section 1301, and inserting in lieu thereof the following new items:

"PART M—GRANTS FOR DRUG LAW ENFORCEMENT PROGRAMS

"Sec. 1301. Function of the Attorney General.

"Sec. 1302. Description of drug law enforcement grant program.

"Sec. 1303. Applications to receive grants.

"Sec. 1304. Reports.

"Sec. 1305. Expenditure of grants; records.

"Sec. 1306. State office.

"PART N—TRANSITION—EFFECTIVE DATE—REPEALER

"Sec. 1401. Continuation of rules, authorities, and proceedings.".

(c) Section 1001 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) in subsection (a)—

(A) in paragraph (3) by striking out "and L" and inserting in lieu thereof "L, and M",

(B) by redesignating paragraph (6) as paragraph (7), and

(C) by inserting after paragraph (5) the following new paragraph:

"(6) There are authorized to be appropriated $115,000,000 for fiscal year 1987, $115,000,000 for fiscal year 1988, and $115,000,000 for fiscal year 1989, to carry out the programs under part M of this title.", and

(2) in subsection (b) by striking out "and E" and inserting in lieu thereof ", E, and M".

Subtitle M—Study on the Use of Existing Federal Buildings as Prisons

SEC. 1601. STUDY REQUIRED.

(a) Within 90 days of the date of enactment of this Act, the Secretary of Defense shall provide to the Attorney General—

(1) a list of all sites under the jurisdiction of the Department of Defense including facilities beyond the excess and surplus property inventories whose facilities or a portion

thereof could be used, or are being used, as detention facilities for felons, especially those who are a Federal responsibility such as illegal alien felons and major narcotics traffickers;

(2) a statement of fact on how such facilities could be used as detention facilities with detailed descriptions on their actual daily percentage of use; their capacities or rated capacities; the time periods they could be utilized as detention facilities; the cost of converting such facilities to detention facilities; the cost of maintaining them as such; and

(3) in consultation with the Attorney General, a statement showing how the Department of Defense and the Department of Justice would administer and provide staffing responsibilities to convert and maintain such detention facilities.

(b) Copies of the report and analysis required by subsection (a) shall be provided to the Congress.

Subtitle N—Drug Law Enforcement Cooperation Study

SEC. 1651. DRUG LAW ENFORCEMENT COOPERATION STUDY.

(a) The National Drug Enforcement Policy Board, in consultation with the National Narcotics Border Interdiction System and State and local law enforcement officials, shall study Federal drug law enforcement efforts and make recommendations as provided in subsection (b). The Board shall report to Congress within 180 days of enactment of this subtitle on its findings and conclusions.

(b) The report of the Board shall include recommendations on—

(1) the means of improving the Nation's drug interdiction programs;

(2) the relative effectiveness and efficiency of various law enforcement strategies, including interdiction;

(3) ways to maximize coordination and cooperation among Federal, State, local drug law enforcement agencies; and

(4) ways to maximize coordination and cooperation between the several Federal agencies involved with drug interdiction, along with a recommendation on the transfer of mission from one agency to another.

Subtitle P—Narcotics Traffickers Deportation Act

SEC. 1751. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

(a) Section 212(a)(23) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(23)) is amended—

(1) by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))"; and

(2) by striking out "any of the aforementioned drugs" and inserting in lieu thereof "any such controlled substance".

(b) Section 241(a)(11) of such Act (8 U.S.C. 1251(a)(11)) is amended by striking out "any law or regulation relating to" and all that follows through "addiction-sustaining opiate" and inserting in lieu thereof "any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))".

(c) The amendments made by this section shall apply to convictions occurring before, on, or after the date of the enactment of this part, and the amendments made by subsection (a) shall apply to aliens entering the United States after the date of the enactment of this part.

Subtitle Q—Federal Drug Law Enforcement Agent Protection Act of 1986

SEC. 1771. SHORT TITLE.

This subtitle may be cited as the "Federal Drug Law Enforcement Agent Protection Act of 1986".

SEC. 1772. AMENDMENT TO THE CONTROLLED SUBSTANCES ACT.

Subsection (e) of section 511 of the Controlled Substances Act (21 U.S.C. 881(e)) is amended by—

(1) inserting after "(e)" the following: "(1)";

(2) redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively; and

(3) striking out the matter following subparagraph (D), as redesignated, and inserting in lieu thereof the following:

"(2)(A) The proceeds from any sale under subparagraph (B) of paragraph (1) and any moneys forfeited under this title shall, to the extent provided in appropriations Acts, be used to pay—

"(i) all property expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs; and

"(ii) awards of up to $100,000 to any individual who provides original information which leads to the arrest and conviction of a person who kills or kidnaps a Federal drug law enforcement agent.

Any award paid for information concerning the killing or kidnaping of a Federal drug law enforcement agent, as provided in clause (ii), shall be paid at the discretion of the Attorney General.

"(B) The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28, United States Code, any amounts of such moneys and proceeds remaining after payment of the expenses provided in subparagraph (A).".

Subtitle R—Common Carrier Operation Under the Influence of Alcohol or Drugs

SEC. 1791. OFFENSE.

(a) Part I of title 18, United States Code, is amended by inserting after chapter 17 the following:

"CHAPTER 17A—COMMON CARRIER OPERATION UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

"Sec.
"341. Definitions.
"342. Operation of a common carrier under the influence of alcohol or drugs.
"343. Presumptions.

"§ 341. Definitions

"As used in this chapter, the term 'common carrier' means a rail carrier, a sleeping car carrier, a bus transporting passengers in interstate commerce, a water common carrier, and an air common carrier.

"§ 342. Operation of a common carrier under the influence of alcohol or drugs

"Whoever operates or directs the operation of a common carrier while under the influence of alcohol or drugs, shall be imprisoned not more than five years or fined not more than $10,000, or both.

"§ 343. Presumptions

"For purposes of this chapter—

"(1) an individual with a blood alcohol content of .10 or more shall be conclusively presumed to be under the influence of alcohol; and

"(2) an individual shall be conclusively presumed to be under the influence of drugs if the quantity of the drug in the system of the individual would be sufficient to impair the perception, mental processes, or motor functions of the average individual.".

(b) The table of chapters for part I of title 18, United States Code, is amended by adding after the item for chapter 17 the following:

"17A. Common Carrier Operation Under the Influence of Alcohol or Drugs........ 341".

Subtitle S—Freedom of Information Act

SEC. 1801. LAW ENFORCEMENT.

Section 552(b)(7) of title 5, United States Code, is amended to read as follows:

"(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any natural person;".

SEC. 1802. CRIMINAL ORGANIZATIONS, FEES AND FEE WAIVERS.

(a) Section 552 of title 5, United States Code, is amended by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively, and by inserting after subsection (b) the following new subsection:

"(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

"(A) the investigation or proceeding involves a possible violation of criminal law; and

"(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

"(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

"(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence [(as defined in Executive Order 12333)], or international terrorism [(as defined in the Foreign Intelligence Surveillance Act)], and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.".

(b) Paragraph (4)(A) of section 552(a) of title 5, United States Code, is amended to read as follows:

"(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

"(ii) Such agency regulations shall provide that—

"(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

"(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

"(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

"(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

"(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. No fee may be charged by any agency under this section—

"(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

"(II) for any request described in clause (i) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

"(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

"(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

"(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.".

Subtitle T—Prohibition on the Interstate Sale and Transportation of Drug Paraphernalia

SEC. 1821. SHORT TITLE.

This subtitle may be cited as the "Mail Order Drug Paraphernalia Control Act".

SEC. 1822. OFFENSE.

(a) It is unlawful for any person—

(1) to make use of the services of the Postal Service or other interstate conveyance as part of a scheme to sell drug paraphernalia;

(2) to offer for sale and transportation in interstate or foreign commerce drug paraphernalia; or

(3) to import or export drug paraphernalia.

(b) Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined not more than $100,000.

(c) Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

(d) The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of the Controlled Substances Act (title II of Public Law 91-513). It includes, but is not limited to, items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body, such as:

(1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(2) water pipes;

(3) carburetion tubes and devices;

(4) smoking and carburetion masks;

(5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(6) miniature spoons with level capacities of one-tenth cubic centimeter or less;

(7) chamber pipes;

(8) carburetor pipes;

(9) electric pipes;

(10) air-driven pipes;

(11) chillums;

(12) bongs;

(13) ice pipes or chillers;

(14) wired cigarette papers; or

(15) cocaine freebase kits.

(e) In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

(1) instructions, oral or written, provided with the item concerning its use;

(2) descriptive materials accompanying the item which explain or depict its use;

(3) national and local advertising concerning its use;

(4) the manner in which the item is displayed for sale;

(5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;

(7) the existence and scope of legitimate uses of the item in the community; and

(8) expert testimony concerning its use.

(f) This subtitle shall not apply to—

(1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or

(2) any person or entity that, in the normal lawful course of business, imports, exports, transports, or sells through the mail or by any other means any pipe, paper, or accessory primarily intended for use with tobacco products.

SEC. 1823. EFFECTIVE DATE.

This subtitle shall become effective ninety days after the date of enactment of this subtitle.

Subtitle U—Manufacturing Operations

SEC. 1841. MANUFACTURING OPERATION.

(a) Part D of the Controlled Substances Act is amended by adding at the end thereof the following new section:

"ESTABLISHMENT OF MANUFACTURING OPERATIONS

"SEC. 416. (a) Except as authorized by this title, it shall be unlawful to—

"(1) knowingly open or maintain any place for the purpose of manufacturing, distributing, or using any controlled substance;

"(2) manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

"(b) Any person who violates subsection (a) of this section shall be sentenced to a term of imprisonment of not more than 20 years or a fine of not more than $500,000, or both, or a fine of $2,000,000 for a person other than an individual.".

(b) Section 405A of the Controlled Substances Act is amended—

(1) in subsection (a) by inserting after "section 401(a)(1)" the following: "or section 416"; and

(2) in subsection (b) by inserting after "section 401(a)(1)" the following: "or section 416".

Subtitle V—Controlled Substances Technical Amendments

SEC. 1861. Subsection (a) of section 212 of the Comprehensive Crime Control Act of 1984 is amended in section 3672 (formerly section 3656) of title 18 of the United States Code by adding at the end thereof:

"He shall have the authority to contract, subject to appropriations, with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an addict or a drug-dependent person within the meaning of section 2 of the Public Health Service Act (42 U.S.C. 201). This authority shall include, but not be limited to, providing equipment and supplies; testing; medical, educational, social, psychological, and vocational services; corrective and preventive guidance and training; and other rehabilitative services designed to protect the public and benefit the addict by eliminating his dependence on addicting drugs, or by controlling his dependence and his susceptibility to addiction. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

"He shall pay for presentence studies and reports by qualified consultants and presentence examinations and reports by psychiatric or psychological examiners ordered by the court under section 3552 (b) or (c) except *for studies conducted by the Bureau of Prisons.".*

SEC. 1862. Section 608 of the Tariff Act of 1930 (19 U.S.C. 1608) is amended in the sentence beginning "Upon the filing", by striking out "$2,500" and inserting in lieu thereof "$5,000".

SEC. 1863. (a) Subsection (c) of section 616 of the Tariff Act of 1930 (19 U.S.C. 1616(c)) as enacted by Public Law 98-573 is amended by inserting "any other Federal agency or to" after "property forfeited under this Act to".

(b) Section 616 of the Tariff Act of 1930 (19 U.S.C. 1616) as enacted by Public Law 98-473 is repealed.

SEC. 1864. Section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 853) is amended—

(1) in subsection (c) by striking out "(o)" and inserting in lieu thereof "(n)";

(2) in subsection (f) by striking out "subsection (f)" and inserting in lieu thereof "subsection (e)"; and

(3) in subsection (k) by striking out "(o)" and inserting in lieu thereof "(n)".

SEC. 1865. (a) Subsection (b) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(b)) is amended—

(1) by striking out "or criminal" after "Any property subject to civil";

(2) in paragraph (4) by striking out "or criminal" after "is subject to civil"; and

(3) by adding the following at the end thereof:

"The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure.".

(b) Subsection (i) of section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(i)) is amended by inserting ", or a violation of State or local law that could have been charged under this title or title III," after "title III".

SEC. 1866. (a) Subparagraph (E) of section 524(c)(1) of title 28 of the United States Code is amended by inserting "the Federal Bureau of Investigation, the United States Marshals Service," after the words "for official use by", and by inserting a comma before the word "or".

(b) Paragraph (4) of section 524(c) of title 28 of the United States Code is amended by striking out "remaining after the payment of expenses for forfeiture and sale authorized by law" and inserting in lieu thereof ", except all proceeds of forfeitures available for use by the Secretary of the Treasury or the Secretary of the Interior pursuant to section 11(d) of the Endangered Species Act (16 U.S.C. 1540(d)) or section 6(d) of the Lacey Act Amendments of 1981 (16 U.S.C. 3375(d))".

DRUG ENFORCEMENT AMENDMENTS (CHAPTER V)

SEC. 1867. Paragraph (14) of section 102 of the Controlled Substances Act (21 U.S.C. 802(14)) is amended in the second and third sentences by striking out the word "the" after the words "the term 'isomer' means" and inserting in lieu thereof "any".

SEC. 1868. Paragraph (4) of subsection (a) of schedule II of the Controlled Substances Act (21 U.S.C. 812) is amended to read as follows:

"(4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.".

SEC. 1869. Subsection (b) of section 405A of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by inserting "parole" after "(2) at least three times any special".

SEC. 1870. Section 503(a) of the Controlled Substances Act (21 U.S.C. 873(a)) is amended by—

(1) striking out "and" at the end of paragraph (5);

(2) striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(3) adding at the end thereof the following:

"(7) notwithstanding any other provision of law, enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this Act.".

SEC. 1871. Section 508 of the Controlled Substances Act (21 U.S.C. 878) is amended by—

(1) inserting "(a)" before "Any officer or employee";

(2) inserting after "Drug Enforcement Administration" the following: "or any State or local law enforcement officer"; and

(3) adding at the end thereof the following new subsection:

"(b) State and local law enforcement officers performing functions under this section shall not be deemed Federal employees and shall not be subject to provisions of law relating to Federal employees; except that such officers shall be subject to section 3374(c) of title 5, United States Code.".

SEC. 1872. Paragraph (2) of section 5316(a) of title 31 of the United States Code is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

SEC. 1873. Subsection (a) of section 929 of title 18 of the United States Code is amended by—

(1) adding after the words "during and in relation to the commission of a" the words "felony described in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 855a), or a";

(2) adding after the words "in addition to the punishment provided for the commission of such" the words "felony or"; and

(3) adding after the words "term of imprisonment including that imposed for the felony" the words "or crime of violence".

Subtitle W—Precursor and Essential Chemical Review

SEC. 1901. PRECURSOR AND ESSENTIAL CHEMICAL REVIEW.

(a) STUDY AND REPORT.—The Attorney General shall—

(1) conduct a study of the need for legislation, regulation, or alternative methods to control the diversion of legitimate precursor and essential chemicals to the illegal production of drugs of abuse; and

(2) report all findings of such study to Congress not later than the end of the 90th day after the date of enactment of this part.

(b) CONSIDERATIONS.—In conducting such study the Attorney General shall take into consideration that—

(1) clandestine manufacture continues to be a major source of narcotic and dangerous drugs on the illegal drug market;

(2) these drugs are produced using a variety of chemicals which are found in commercial channels and which are diverted to illegal uses;

(3) steps have been taken to deny drug traffickers access to key precursor chemicals, including that—

(A) P2P, a precursor chemical used in the production of amphetamines and methamphetamines was administratively controlled in schedule II of the Controlled Substances Act by the Drug Enforcement Administration;

(B) a variety of controls were placed on piperidine, the precursor for phencyclidine, by the Psychotropic Substance Act of 1978; and

(C) the Drug Enforcement Administration has maintained a voluntary system in cooperation with chemical industry to report suspicious purchases of precursors and essential chemicals; and

(4) despite the formal and voluntary systems that currently exist, clandestine production of synthetic narcotics and dangerous drugs continue to contribute to drug trafficking and abuse problems in the United States.

Subtitle X—Improved Drug Crime Reporting

SEC. 1921. IMPROVED DRUG CRIME REPORTING.

(a) The Congress—

(1) finds that—

(A) the Bureau of Justice Statistics currently conducts one of the largest public opinion survey programs in the world, the National Crime Survey;

(B) this survey, conducted by the Census Bureau, involves detailed field surveys of 60,000 households and more than 100,000 individuals who are interviewed twice a year to measure the amount of crime actually occurring (crime victimization), as opposed to that reported to police through the uniform crime reporting system;

(C) currently the National Crime Report does not gather data involving drug abuse or victimization;

(D) further, the Bureau of Justice Statistics does not act as a clearinghouse for the gathering of data generated by Federal, State, local enforcement and together criminal justice agencies on their drug enforcement activities; and

(E) to obtain a comprehensive understanding of the dimensions of our crime problems and enforcement activities, one must sift through the annual reports of numerous agencies; and

(2) based on findings in paragraph (1) the purpose of this Act is to create a comprehensive and timely data base of the dynamics of the drug crisis.

(b)(1) The Bureau of Justice Statistics, in cooperation with the Federal Bureau of Investigation and other Federal enforcement agencies as well as other Federal, State, and local statistics gathering groups, shall compile and publish comprehensive data on drug trafficking and abuse.

(2) For purposes of carrying out the provisions of paragraph (1), the authorization for the Bureau of Justice Statistics for fiscal year 1987 is increased by $3,000,000.

Subtitle Y—White House Conference on Drug Abuse and Control

SEC. 1931. SHORT TITLE.

This subtitle may be cited as the "White House Conference on Drug Abuse and Control Act".

SEC. 1932. ESTABLISHMENT OF THE CONFERENCE.

There is established a conference to be known as "The White House Conference on Drug Abuse and Control". The members of the Conference shall be appointed by the President.

SEC. 1933. PURPOSE.

The purposes of the Conference are:

(a) to share information and experiences in order to vigorously and directly attack drug abuse at all levels, local, State, Federal, and international;

(b) to bring public attention to those approaches to drug abuse education and prevention which have been successful in curbing drug abuse and those methods of treatment which have enabled drug abusers to become drug free;

(c) to highlight the dimensions of the drug abuse crisis. to examine the progress made in dealing with such crisis, and to assist in formulating a national strategy to thwart sale and solicitation of illicit drugs and to prevent and treat drug abuse.

(d) to examine the essential role of parents and family members in preventing the basis causes of drug abuse and in successful treatment efforts.

SEC. 1934. RESPONSIBILITIES OF THE CONFERENCE.

The Conference shall specifically review—

(a) the effectiveness of law enforcement at the local, State, and Federal levels to prevent the sale and solicitation of illicit drugs and the need to provide greater coordination among such programs;

(b) the impact of drug abuse upon American education and the effectiveness of drug education programs in our schools, with particular attention to those schools, both public and private, which have maintained a drug free learning environment;

(c) the extent to which Federal, State, and local programs of drug abuse education, prevention, and treatment require reorganization or reform in order to better use available resources and to ensure greater coordination among such programs; and

(d) the impact of current laws on efforts to control international and domestic trafficking of illicit drugs.

SEC. 1935. CONFERENCE PARTICIPANTS.

In order to carry out the purposes and responsibilities specified in sections 1933 and 1934, the Conference shall bring together individuals concerned with issues relating to drug abuse education, prevention, and treatment, and the production, trafficking, and distribution of illicit drugs. The President shall—

(a) ensure the active participation in the Conference of the heads of appropriate executive and military departments, and agencies, including the Attorney General, the Secretary of Education, the Secretary of Health and Human Services, Secretary of Transportation, and the Director of ACTION;

(b) provide for the involvement in the Conference of other appropriate public officials, including Members of Congress, Governors of States, and mayors of cities;

(c) provide for the involvement in the Conference of private entities, especially parents' organizations, which have been active in the fight against drug abuse; and

(d) provide for the involvement in the Conference of individuals distinguished in medicine, law, drug abuse treatment and prevention, education and law enforcement.

SEC. 1936. ADMINISTRATIVE PROVISIONS.

(a) All Federal departments, agencies, and instrumentalities shall provide such support and assistance as may be necessary to facilitate the planning and administration of the Conference.

(b) The President is authorized to appoint and compensate an executive director and such other directors and personnel for the Conference as the President may consider advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 52 of such title relating to classification and General Schedule pay rates.

(c) Upon request by the executive director, the heads of the executive and military departments are authorized to detail employees to work with the executive director in planning and administering the Conference without regard to the provisions of section 3341 of title 5, United States Code.

(d) Each participant in the Conference shall be responsible for the expenses of such participant in attending the Conference, and shall not be reimbursed for such expenses from amounts appropriated to carry out this subtitle.

SEC. 1937. FINAL REPORT.

No later than six months after the effective date of this Act, the Conference shall prepare and transmit a final report to the President and to Congress, pursuant to sections 1933 and 1934. The report shall include the findings and recommendations of the Conference as well as proposals for any legislative action necessary to implement such recommendations.

SEC. 1938. AVAILABILITY OF FUNDS.

No more than $2,000,000 shall be appropriated to carry out this subtitle. Amounts appropriated under this section shall remain available until expended.

SEC. 1939. EFFECTIVE DATE.

This section shall become effective upon enactment of this Act.

TITLE II—INTERNATIONAL NARCOTICS CONTROL

Subtitle A—Strengthening United States Narcotics Control Overseas

SEC. 2001. ADDITIONAL FUNDING FOR INTERNATIONAL NARCOTICS CONTROL ASSISTANCE AND REGIONAL COOPERATION.

Section 482(a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291a(a)(1); authorizing appropriations for assistance for international narcotics control) is amended—

(1) by striking out "$57,529,000 for the fiscal year 1987" and inserting in lieu thereof "$75,445,000 for the fiscal year 1987"; and

(2) by adding at the end the following: "In addition to the amounts authorized by the preceding sentence, there are authorized to be appropriated to the President $45,000,000 for the fiscal year 1987 to carry out the purposes of section 481, except that funds may be appropriated pursuant to this additional authorization only if the President has submitted to the Congress a detailed plan for the expenditure of those funds, including a description of how regional cooperation on narcotics control matters would be promoted by the use of those funds. Of the funds authorized to be appropriated by the preceding sentence, not less than $10,000,000 shall be available only to provide helicopters or other aircraft to countries receiving assistance for fiscal year 1987 under chapter 8 of part I of this Act (22 U.S.C. 2291 et seq.; relating to international narcotics control). These aircraft shall be used solely for narcotics control, eradication, and interdiction efforts and shall be available primarily for use in Latin America.".

SEC. 2002. RESTRICTIONS ON THE PROVISION OF UNITED STATES ASSISTANCE.

(a) Section 481(h) of the Foreign Assistance Act of 1961 is amended to read as follows:

"(h)(1) Subject to paragraph (2), for every major illicit drug producing country or major drug-transit country—

"(A) 50 percent of United States assistance allocated for such country notified to Congress in the report required under section 653(a) of this Act shall be withheld from obligation and expenditure;

"(B) on or after March 1, 1987, and on March 1 of each succeeding year, the Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development, the United States Executive Director of the International Development Association, the United States Executive Director of the Inter-American Development Bank, and the United States Executive Director of the Asian Development Bank to vote against any loan or other utilization of the funds of their respective institution to or for such country; and

"(C) on or after March 1, 1987, and March 1 of each succeeding year, the President shall deny to all products of such country tariff treatment under title V of the Trade Act of 1974 (the Generalized System of Preferences), the Caribbean Basin Economic Recovery Act, or any other law providing preferential tariff treatment.

"(2)(A) The assistance withheld by paragraph (1)(A) may be obligated and expended and the provisions of clauses (A) and (B) of paragraph (1) shall not apply if the President determines, and so certifies to the Congress, at the time of the submission of the report required by subsection (e), that—

"(i) during the previous year the country has cooperated fully with the United States, or has taken adequate steps on its own, in preventing narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being transported, directly or indirectly, into the United States and in preventing and punishing the laundering in that country of drug-related profits or drug-related monies; or

"(ii) for a country that would not otherwise qualify for certification under subclause (i), the vital national interests of the United States require the provision of such assistance, financing, or preferential treatment to such country.

"(B) If the President makes a certification pursuant to clause (A)(ii), he shall include in such certification—

"(i) a full and complete description of the vital national interests placed at risk should assistance, financing, or preferential tariff treatment not be provided such country; and

"(ii) a statement weighing the risk described in subclause (i) against the risks posed to the vital national interests of the United States by the failure of such country to cooperate fully with the United States in combating narcotics or to take adequate steps to combat narcotics on its own.

"(3) In making the certification required by paragraph (2) of this subsection, the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to subsection (e)(4). The President shall also consider whether such government—

"(A) has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of il-

licit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States; and

"(B) has taken the legal and law enforcement steps necessary to eliminate, to the maximum extent possible, the laundering in that country of drug-related profits or drug-related monies, as evidenced by—

"(i) the enactment and enforcement of laws prohibiting such conduct, and

"(ii) the willingness of such government to enter into mutual legal assistance agreements with the United States governing (but not limited to) money laundering, and

"(iii) the degree to which such government otherwise cooperates with United States law enforcement authorities on anti-money laundering efforts.

"(4)(A) The provisions of paragraph (1) shall apply without regard to paragraph (2) if the Congress enacts, within 30 days of continuous session after receipt of a certification under paragraph (2), a joint resolution disapproving the determination of the President contained in such certification.

"(B)(i) Any such joint resolution shall be considered in the Senate in accordance with the provisions of section 601(b) of the International Security Assistance and Arms Export Control Act of 1976.

"(ii) For the purpose of expediting the consideration and enactment of joint resolution under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(5) Any country for which the President has not made a certification under paragraph (2) or with respect to which the Congress has enacted a joint resolution disapproving such certification may not receive United States assistance as defined by subsection (i)(4) of this section, the financing described in (1)(B) of this subsection and the preferential tariff treatment described in (1)(C) of this subsection unless—

"(A) the President makes a certification under paragraph (2) and the Congress does not enact a joint resolution of disapproval; or

"(B) the President submits at any other time a certification of the matters described in paragraph (2) with respect to such country and the Congress enacts, in accordance with the procedures of paragraph (4), a joint resolution approving such certification.".

(b) Section 481(e) of such Act is amended by striking out "February" and inserting in lieu thereof "March".

(c) Section 481(i) of such Act is amended—

(1) by striking out "and" at the end of paragraph (3);

(2) by striking out the period at the end of paragraph (4) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) the term 'major drug-transit country' means a country—

"(A) that is a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States;

"(B) through which are transported such drugs or substances; or

"(C) through which significant sums of drug-related profits or monies are laundered with the knowledge or complicity of the government.".

(d) The amendments made by this section shall take effect October 1, 1986.

SEC. 2003. RETENTION OF TITLE TO AIRCRAFT PROVIDED TO FOREIGN COUNTRIES FOR NARCOTICS CONTROL PURPOSES.

(a) Chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to the international narcotics control assistance program) is amended by adding at the end the following new section:

"SEC. 484. RETENTION OF TITLE TO AIRCRAFT.

"Any aircraft made available to a foreign country under this chapter at any time after the date of enactment of this section (including aircraft made available pursuant to section 102 of the International Narcotics Control Act of 1986) shall be provided, to the maximum extent practicable, on a lease or loan basis.".

(b) The Congress finds that the aircraft provided Mexico under assistance made available by section 481 of the Foreign Assistance Act of 1961 have not been used efficiently and that the fleet of aircraft provided Mexico is plagued by rapidly rising maintenance costs.

SEC. 2004. RECORDS OF AIRCRAFT USE.

Chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to the international narcotics control assistance program), as amended by the preceding section of this subtitle, is further amended by adding at the end the following new section:

"SEC. 485. RECORDS OF AIRCRAFT USE.

"(a) Requirement To Maintain Records.—The Secretary of State shall maintain detailed records on the use of any aircraft made available to Mexico under this chapter, including aircraft made available pursuant to section 102 of the International Narcotics Control Act of 1986 and aircraft made available under this chapter before the enactment of this section.

"(b) Congressional Access to Records.—The Secretary of State shall make the records maintained pursuant to subsection (a) available to the Congress upon a request of the Chairman of the Committee on Foreign Affairs of the House of Representatives or the Chairman of the Committee on Foreign Relations of the Senate.".

SEC. 2005. DEVELOPMENT OF HERBICIDES FOR AERIAL COCA ERADICATION.

The Secretary of State shall use not less than $1,000,000 of the funds made available for fiscal year 1987 to carry out chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control) to finance research on and the development and testing of safe and effective herbicides for use in the aerial eradication of coca.

SEC. 2006. REVIEW OF EFFECTIVENESS OF INTERNATIONAL NARCOTICS CONTROL ASSISTANCE PROGRAM.

(a) Requirement for Investigation.—The Comptroller General shall conduct a thorough and complete investigation to determine the effectiveness of the assistance provided pursuant to chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.; relating to international narcotics control).

(b) Reports to Congress.—

(1) Periodic reports.—The Comptroller General shall report to the Congress periodically as the various portions of the investigation conducted pursuant to subsection (a) are completed.

(2) Final report.—Not later than 12 months after the date of enactment of this Act, the Comptroller General shall submit a final report to the Congress on the results of the investigation. This report shall include such recommendations for administrative or legislative action as the Comptroller General finds appropriate based on the investigation.

SEC. 2007. EXTRADITION TO THE UNITED STATES FOR NARCOTICS-RELATED OFFENSES.

Section 481(e)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(e)(3); relating to the annual international narcotics control report) is amended by inserting after subparagraph (C) the following new subparagraph:

"(D) A discussion of the extent to which such country has cooperated with the United States narcotics control efforts through the extradition or prosecution of drug traffickers, and, where appropriate, a description of the status of negotiations with such country to negotiate a new or updated extradition treaty relating to narcotics offenses.".

SEC. 2008. FOREIGN POLICE ARREST ACTIONS.

Section 481(c) of the Foreign Assistance Act of 1961 is amended—

(1) in paragraph (1), by striking out in the first sentence "engage or participate in any direct police arrest action in any foreign country" and inserting in lieu thereof "directly make an arrest in any foreign country as part of any foreign police action";

(2) by amending paragraph (2) to read as follows:

"(2) Nothing in paragraph (1) prevents such employee or officer—

"(A) from being present at the scene of an arrest or otherwise assisting foreign officers in making an arrest; or

"(B) from taking direct action to protect life or safety if exigent circumstances arise in the course of an arrest which are unanticipated and which pose an immediate threat to United States or foreign officers or to members of the public."; and

(3) by adding at the end thereof the following new paragraphs:

"(3) The provisions of this subsection shall apply to all countries, unless the President certifies to the Congress a specific country or countries for which it would be against the national interests of the United States to do so.

"(4) With the agreement of a foreign country, paragraph (1) shall not apply to maritime law enforcement operations in the territorial sea of such country.".

SEC. 2009. INFORMATION-SHARING SO THAT VISAS ARE DENIED TO DRUG TRAFFICKERS.

(a) Need for Comprehensive Information System.—The Congress is concerned that the executive branch has not established a comprehensive information system on all drug arrests of foreign nationals in the United States so that information may be communicated to the appropriate United States embassies, even though the establishment of such a system is required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987.

(b) Establishment of System.—The executive branch shall act expeditiously to establish the comprehensive information system required by section 132 of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, and submit to the Congress a report that the system has been established.

SEC. 2010. ASSESSMENT OF NARCOTICS TRAFFICKING FROM AFRICA.

The President shall direct that an updated threat assessment of narcotics trafficking from Africa be prepared. If it is determined that an increased threat exists, the assessment shall examine the need for the United States to provide increased narcotics control training for African countries.

SEC. 2011. CONDITIONS ON ASSISTANCE FOR BOLIVIA.

(a)(1) It is the sense of the Congress that—

(A) the Government of Bolivia's recent drug interdiction operations in cooperation with the United States (Operation Blast Furnace) evinced a determination to combat the growing power of the narcotics trade and narcotics traffickers;

(B) the operation has had a dramatic effect on the coca trade in that country by dropping the price of coca below the cost of production;

(C) as a result of this operation the coca trade has in the short term been sharply constricted;

(D) the restoration of non-coca dependent economic growth in Bolivia is crucial to the achievement of long-term progress in controlling illicit narcotics production; and

(E) control of illicit drug production is crucial to the survival of democratic institutions and democratic government in Bolivia.

(2) The Congress, therefore, applauds the demonstrated willingness of the Paz Estenssoro government, despite the risks of severe domestic criticism and disruptive economic consequences, to cooperate with the United States in Operation Blast Furnace.

(b) Section 611(2) of the International Security and Development Cooperation Act of 1985 is amended to read as follows:

"(2) For fiscal year 1987—

"(A) up to 50 percent of the aggregate amount of such assistance allocated for Bolivia may be provided at any time after the President certifies to the Congress that Bolivia has engaged in narcotics interdiction operations which have significantly disrupted the illicit coca industry in Bolivia or has cooperated with the United States in such operations; and

"(B) the remaining amount of such assistance may be provided at any time after the President certifies to the Congress that Bolivia has either met in calendar year 1986 the eradication targets for the calendar year 1985 contained in its 1983 narcotics agreements with the United States or has adopted a plan to eliminate illicit narcotics cultivation, production, and trafficking countrywide, and has entered into an agreement of cooperation with the United States for implementing that plan for 1987 and beyond, and is making substantial progress towards the plan's objectives, including substantial eradication of illicit coca crops and effective use of United States assistance.

(c) In the certification required by subsection (b) of this section, the President shall explain why the 1983 agreement's terms proved unattainable and the reasons why a new agreement was necessary.

(d) Nothing in this section or the amendment made by this section shall be construed as waiving any provision of section 481 of the Foreign Assistance Act of 1961.

SEC. 2012. COMBATING NARCOTERRORISM.

(a) FINDING.—The Congress finds that the increased cooperation and collaboration between narcotics traffickers and terrorist groups constitutes a serious threat to United States national security interests and to the political stability of numerous other countries, particularly in Latin America.

(b) IMPROVED CAPABILITY FOR RESPONDING TO NARCOTERRORISM.—The President shall take concrete steps to improve the capability of the executive branch—

(1) to collect information concerning the links between narcotics traffickers and acts of terrorism abroad, and

(2) to develop an effective and coordinated means for responding to the threat which those links pose.

Not later than 90 days after the date of enactment of this subtitle, the President shall report to the Congress on the steps taken pursuant to this subsection.

SEC. 2013. INTERDICTION PROCEDURES FOR VESSELS OF FOREIGN REGISTRY.

(a) FINDINGS.—The Congress finds that—

(1) the interdiction by the United States Coast Guard of vessels suspected of carrying illicit narcotics can be a difficult procedure when the vessel is of foreign registry and is located beyond the customs waters of the United States;

(2) before boarding and inspecting such a vessel, the Coast Guard must obtain consent from either the master of the vessel or the country of registry; and

(3) this process, and obtaining the consent of the country of registry to further law enforcement action, may delay the interdiction of the vessel by 3 or 4 days.

(b) NEGOTIATIONS CONCERNING INTERDICTION PROCEDURES.—

(1) The Congress urges the Secretary of State, in consultation with the Secretary of the department in which the Coast Guard is operating, to increase efforts to negotiate with relevant countries procedures which will facilitate interdiction of vessels suspected of carrying illicit narcotics.

(2) If a country refuses to negotiate with respect to interdiction procedures, the President shall take appropriate actions directed against that country, which may include the denial of access to United States ports to vessels registered in that country.

(3) The Secretary of State shall submit reports to the Congress semiannually identifying those countries which have failed to negotiate with respect to interdiction procedures.

SEC. 2014. DEPARTMENT OF DEFENSE ASSISTANCE FOR LAW ENFORCEMENT ACTIVITIES OUTSIDE THE UNITED STATES.

Section 374(c)(1) of title 10, United States Code, is amended—

(1) by inserting "or foreign" after "Federal"; and

(2) in subparagraph (B) by striking out "and the Attorney General" and insert in lieu thereof ", the Attorney General, and the Secretary of State".

SEC. 2015. INTELLIGENCE SUPPORT TO COMBATING THE DRUG PROBLEM.

(a) It is the sense of the Congress that the Intelligence Community can play a key role in United States efforts to prevent the importation of illegal drugs into the United States. It is also the sense of the Congress that the drug problem is sufficiently important that monitoring the production of illegal drugs and providing support to efforts to halt the trafficking in illegal drugs should be a high priority for the United States intelligence program.

(b) In order to improve the strategic international narcotics control program of the United States and to assist the reporting requirements of section 481(e) of the Foreign Assistance Act of 1961, the Congress directs the Director of Central Intelligence to improve the collection and analysis of foreign drug production sufficiently to produce highly reliable data on drug cultivation, harvest, and yields for each major illicit drug producing country (as defined by section 481(i) of the Foreign Assistance Act of 1961).

(c) The Congress also directs the Director of Central Intelligence (hereafter in this paragraph referred to as the "DCI") to make support to anti-drug efforts a Level One Priority in his National Foreign Intelligence Strategy and to reflect this priority in the National Foreign Intelligence Program. The Congress understands that—

(1) a copy of the DCI's National Foreign Intelligence Strategy will be provided to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, with the DCI's budget request for fiscal year 1988; and

(2) the DCI will address Intelligence Community support to anti-drug efforts and the coordination of these efforts within the Intelligence Community in his presentation of the National Foreign Intelligence Strategy to the Committees.

SEC. 2016. REPORT ON CERTAIN COUNTRIES; RESTRICTIONS ON ASSISTANCE.

(a) Not later than 6 months after the date of enactment of this Act, and every 6 months thereafter, the President shall prepare and transmit to the Congress a report—

(1) listing each country—

(A) which, as a matter of government policy, encourages or facilitates the production or distribution of illegal drugs;

(B) in which any senior official of the government of such country engages in, encourages, or facilitates the production or distribution of illegal drugs;

(C) in which any member of an agency of the United States Government engaged in drug enforcement activities since January 1, 1985, has suffered or been threatened with violence, inflicted by or with the complicity of any law enforcement or other officer of such country or any political subdivision thereof; or

(D) which, having been requested to do so by the United States Government, fails to provide reasonable cooperation to lawful activities of United States drug enforcement agents, including the refusal of permission to such agents engaged in interdiction of aerial smuggling into the United States to pursue suspected aerial smugglers a reasonable distance into the airspace of the requested country; and

(2) describing for each country listed under paragraph (1) the activities and identities of officials whose activities caused such country to be so listed.

(b) No United States assistance may be furnished to any country listed under subsection (a)(1), and the United States representative to any multilateral development bank shall vote to oppose any loan or other use of the funds of such bank for the benefit of any country listed under subsection (a)(1), unless the President certifies to the Congress that—

(1) overriding vital national interests require the provision of such assistance;

(2) such assistance would improve the prospects for cooperation with such country in halting the flow of illegal drugs; and

(3) the government of such country has made bona fide efforts to investigate and prosecute appropriate charges for any crime described in subsection (a)(1)(C) which may have been committed in such country.

(c) For purposes of this section, the term "United States assistance" has the same meaning as is given to such term by section 481(i)(4) of the Foreign Assistance Act of 1961.

SEC. 2017. POLICY TOWARD MULTILATERAL DEVELOPMENT BANKS.

Section 481(a) of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by inserting after paragraph (2) the following:

"(3) In order to promote international cooperation in combating international trafficking in illicit narcotics, it shall be the policy of the United States to use its voice and vote in multilateral development banks to promote the development and implementation in the major illicit drug producing countries of programs for the reduction and eventual eradication of narcotic drugs and other controlled substances, including appropriate assistance in conjunction with effective programs of illicit crop eradication.".

Subtitle B—Strengthening International Narcotics Control and International Drug Education

SEC. 2021. DECLARATION; POLICY.

The Congress hereby declares that drugs are a national security problem and urges the President to explore the possibility of engaging such essentially security-oriented organizations as the North Atlantic Treaty Organization (NATO) in cooperative drug programs.

SEC. 2022. FINDINGS.

The Congress finds that—

(1) in response to the growing narcotics threat to the international community—

(A) the Single Convention on Narcotic Drugs, 1961, the 1972 Protocol amending that Convention, and the Convention on Psychotropic Substances were adopted under United Nations auspices, and

(B) the United Nations has created various entities to deal with drug abuse control and prevention; and

(2) a greater international effort is required to address this threat, such as additional or increased contributions by other countries to the United Nations Fund for Drug Abuse and Control and greater coordination of enforcement and eradication efforts.

SEC. 2023. INTERNATIONAL CONFERENCE ON DRUG ABUSE AND ILLICIT TRAFFICKING.

(a) CONGRESSIONAL SUPPORT.—The Congress hereby declares its support for United Nations General Assembly Resolution 40/122 adopted on December 13, 1985, in which the General Assembly decided to convene in 1987 an International Conference on Drug Abuse and Illicit Trafficking in order to generate universal action to combat the drug problem in all its forms at the national, regional, and international levels, and to adopt a comprehensive outline of future activities.

(b) UNITED STATES PARTICIPATION.—With respect to United States participation in the International Conference on Drug Abuse and Illicit Trafficking, the Congress calls on the President—

(1) to appoint the head of the United States delegation well in advance of the conference; and

(2) to ensure that necessary resources are available for United States preparation and participation.

(c) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress on the status of United States preparations for the International Conference on Drug Abuse and Illicit Trafficking, including the status of naming the delegation, the issues expected to arise, and United States policy initiatives to be taken at the conference.

SEC. 2024. EFFECTIVENESS OF INTERNATIONAL DRUG PREVENTION AND CONTROL SYSTEM.

(a) STUDY.—The United States should seek to improve the program and budget effectiveness of United Nations entities related to narcotics prevention and control by studying the capability of existing United Nations drug-related declarations, conventions, and entities to heighten international awareness and promote the necessary strategies for international action, to strengthen international cooperation, and to make effective use of available United Nations funds.

(b) REPORT TO CONGRESS.—Not later than April 30, 1987, the President shall report to the Congress any recommendations that may result from this study.

SEC. 2025. NARCOTICS CONTROL CONVENTIONS.

The Congress—

(1) urges that the United Nations Commission on Narcotic Drugs complete work as quickly as possible, consistent with the objective of obtaining an effective agreement, on a new draft convention against illicit traffic in narcotic drugs and psychotropic substances, in accordance with the mandate given the Commission by United Nations General Assembly Resolution 39/141; and

(2) calls for more effective implementation of existing conventions relating to narcotics.

SEC. 2026. MEXICO-UNITED STATES INTERGOVERNMENTAL COMMISSION.

(a) NEGOTIATIONS TO ESTABLISH.—In accordance with the resolution adopted by the 26th Mexico-United States Interparliamentary Conference which recommended that the Government of Mexico and the Government of the United States establish a Mexico-United States Intergovernmental Commission on Narcotics and Psychotropic Drug Abuse and Control, the President should direct the Secretary of State, in conjunction with the National Drug Enforcement Policy Board, to enter into negotiations with the Government of Mexico to create such a joint intergovernmental commission.

(b) MEMBERSHIP.—The commission, which should meet semiannually, should include members of the Mexican Senate and Chamber of Deputies and the United States House of Representatives and Senate, together with members of the executive departments of each government responsible for drug abuse, education, prevention, treatment, and law enforcement.

(c) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this subtitle, the Secretary of State shall report to the Congress on the progress being made in establishing a commission in accordance with subsection (a).

SEC. 2027. OPIUM PRODUCTION IN PAKISTAN.

(a) FINDINGS.—The Congress finds that—

(1) the production of opium in Pakistan is expected to more than double in the 1985-1986 growing season, posing an increased threat to the health and welfare of the people of Pakistan and the people of the United States; and

(2) despite past achievements, the current eradication program in Pakistan, which employs manual eradication of opium poppies, has proven inadequate to meet this new challenge.

(b) NEED FOR MORE EFFECTIVE DRUG CONTROL PROGRAM.—The Congress urges that the Government of Pakistan adopt and implement a comprehensive narcotics control program which would provide for more effective prosecution of drug traffickers, increased interdiction, and eradication of opium poppies.

(c) REPORT TO CONGRESS.—The Secretary of State shall report to the Congress not later than 60 days after the date of enactment of this subtitle with respect to the adoption and implementation by the Government of Pakistan of a comprehensive narcotics control program in accordance with subsection (b).

SEC. 2028. OPIUM PRODUCTION IN IRAN, AFGHANISTAN, AND LAOS.

The Congress calls on the President to instruct the United States Ambassador to the United Nations to request that the United Nations Secretary General raise with delegations to the International Conference on Drug Abuse and Illicit Trafficking the problem of illicit drug production in Iran, Afghanistan, and Laos, the largest opium poppy producing countries which do not have narcotics control programs.

SEC. 2029. INCREASED FUNDING FOR USIA DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there is authorized to be appropriated for the United States Information Agency for fiscal year 1987 $2,000,000 which shall be available only for increasing drug education programs abroad. These programs may include—

(1) the distribution of films and publications which demonstrate the impact of drugs on crime and health; and

(2) exchange of persons, programs and international visitor programs involving students, educators, and scientists.

SEC. 2030. INCREASED FUNDING FOR AID DRUG EDUCATION PROGRAMS.

In addition to amounts otherwise authorized to be appropriated, there are authorized to be appropriated to the President for fiscal year 1987 $3,000,000 to carry out chapter 1 of part I of the Foreign Assistance Act of 1961, which amount shall be used pursuant to section 126(b)(2) of that Act for additional activities aimed at increasing awareness of the effects of production and trafficking of illicit narcotics on source and transit countries.

SEC. 2031. REPORTS TO CONGRESS ON DRUG EDUCATION PROGRAMS ABROAD.

The Director of the United States Information Agency and the Administrator of the Agency for International Development shall include in their annual reports to the Congress a description of the drug education programs carried out by their respective agencies.

TITLE III—INTERDICTION

Subtitle A—National Drug Interdiction Improvement

SEC. 3001. SHORT TITLE.

This subtitle may be cited as the "National Drug Interdiction Improvement Act of 1986".

SEC. 3002. FINDINGS.

The Congress hereby finds that—

(1) a balanced, coordinated, multifaceted strategy for combating the growing drug abuse and drug trafficking problem in the United States is essential in order to stop the flow and abuse of drugs within our borders;

(2) a balanced, coordinated, multifaceted strategy for combating the narcotics drug abuse and trafficking in the United States should include—

(A) increased investigations of large networks of drug smuggler organizations;

(B) source country drug eradication;

(C) increased emphasis on stopping narcotics traffickers in countries through which drugs are transshipped;

(D) increased emphasis on drug education programs in the schools and workplace;

(E) increased Federal Government assistance to State and local agencies, civic groups, school systems, and officials in their efforts to combat the drug abuse and trafficking problem at the local level; and

(F) increased emphasis on the interdiction of drugs and drug smugglers at the borders of the United States, in the air, at sea, and on the land;

(3) funds to support the interdiction of narcotics smugglers who threaten the transport of drugs through the air, on the sea, and across the land borders of the United States should be emphasized in the Federal Government budget process to the same extent as the other elements of a comprehensive antidrug effort are emphasized;

(4) the Department of Defense and the use of its resources should be an integral part of a comprehensive, national drug interdiction program;

(5) the Federal Government civilian agencies engaged in drug interdiction, particularly the United States Customs Service and the Coast Guard, currently lack the aircraft, ships, radar, command, control, communications, and intelligence (C3I) systems, and manpower resources necessary to mount a comprehensive attack on the narcotics traffickers who threaten the United States;

(6) the civilian drug interdiction agencies of the United States are currently interdicting only a small percentage of the illegal, drug smuggler penetrations in the United States every year;

(7) the budgets for our civilian drug interdiction agencies, primarily the United States Customs Service and the Coast Guard, have not kept pace with those of the traditional investigative law enforcement agencies of the Department of Justice; and

(8) since the amendment of the Posse Comitatus Act (18 U.S.C. 1385) in 1981, the Department of Defense has assisted in the effort to interdict drugs, but they can do more.

SEC. 3003. PURPOSES.

It is the purpose of this subtitle—

(1) to increase the level of funding and resources available to civilian drug interdiction agencies of the Federal Government;

(2) to increase the level of support from the Department of Defense as consistent with the Posse Comitatus Act, for interdiction of the narcotics traffickers before such traffickers penetrate the borders of the United States; and

(3) to improve other drug interdiction programs of the Federal Government.

SEC. 3004. DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE.

(a) AUTHORIZATION OF APPROPRIATIONS FOR ENHANCED DRUG INTERDICTION ACTIVITIES.—Funds are hereby authorized to be appropriated to the Department of Defense for fiscal year 1987 for enhancement of drug interdiction assistance activities of the Department as follows:

(1) For procurement of aircraft for the Navy, $138,000,000 to be available for refurbishment and upgrading of four existing E2C Hawkeye surveillance aircraft for drug interdiction purposes, and the procurement of four replacement E2C Hawkeye aircraft and related spares for the Navy.

(2) For procurement for the Air Force, $49,500,000, to be available for procurement of 3 aerostat radar systems, 3 aerostat radar spares for such system, and 1 aerostat radar spare for an aerostat radar system authorized and funded for location in the Bahamas by section 5(b) of the Urgent Supplemental Appropriations Act, 1986 (Public Law 99-349; 100 Stat. 723).

(3) For operation and maintenance for the Air Force, $12,615,000 to be available for the transfer of 6 Air Force helicopters to Davis-Monthan Air Force Base for use in carrying out drug interdiction missions.

(4) For the Secretary of Defense, $12,000,000 for enhanced intelligence collection activities concerning illegal importation into the United States of drugs originating in South America.

(5) For procurement of twin engine pursuit helicopters and procurement of four aerostat radar systems, $90,000,000. The location of the aerostat radar systems shall be established at the highest drug threat sites, as agreed to by the Commissioner of Customs and the Commandant of the Coast Guard.

(b) LOANS TO THE UNITED STATES CUSTOMS SERVICE.—The Secretary of Defense shall make available the refurbished, upgraded, and modified aircraft; and the twin engine pursuit helicopters, using funds appropriated pursuant to authorizations in subsections (a)(1) and (a)(5) to the United States Customs Service in accordance with chapter 18 of title 10, United States Code, except that the four replacement E2C Hawkeye aircraft procured using funds appropriated pursuant to authorizations in subsection (a)(1) shall be delivered to the Navy.

(c) RESPONSIBILITIES OF THE UNITED STATES CUSTOMS SERVICE.—

(1) The United States Customs Service shall have the responsibility for operation and maintenance costs attributable to the aircraft refurbished, upgraded, or modified and the twin engine pursuit helicopters using funds appropriated pursuant to authorizations in subsections (a)(1) and (a)(5) and the aerostat radar systems using funds appropriated pursuant to authorizations in subsections (a)(2) and (a)(5) except that responsibility for the operation and maintenance costs by the United States Customs Service shall commence upon receipt of the modified, refurbished, and upgraded aircraft, and helicopters authorized in subsections (a)(1) and (a)(5) and upon completion of the installation of the aerostat radar systems authorized in subsections (a)(2) and (a)(5).

(2) Upon enactment of this Act, the Commissioner of Customs shall immediately commence consultations with the Commandant of the United States Coast Guard regarding coordination of the deployment of the aircraft authorized in subsection (a)(1) and on loan to the United States Customs Service under subsection (b) in order to maximize the detection, surveillance, and intelligence gathering capabilities of the drug surveillance aircraft on loan to the United States Customs Service. The Commissioner of Customs shall make quarterly reports to the Committees on Appropriations and the Committees on Armed Services of the Senate and the House of Representatives regarding drug interdiction plans developed under this paragraph.

(d) AMOUNTS IN ADDITION TO OTHER AMOUNTS.—The amounts authorized by subsection (a) are in addition to any other amounts authorized to be appropriated to the Department of Defense for fiscal year 1987.

(e) FUNDING OF COAST GUARD DRUG-INTERDICTION ACTIVITIES.—

(1) USE OF DEPARTMENT OF DEFENSE FUNDS FOR THE COAST GUARD.—(A) In addition to any other amounts authorized to be appropriated to the Department of Defense in fiscal year 1987, $45,000,000 shall be authorized to be appropriated for the installation of 360-degree radar systems on Coast Guard long-range surveillance aircraft: Provided, That no funds may be expended to modify any existing aircraft for air surveillance purposes unless the proposed modifications comply with validated requirements and specifications developed by the Coast Guard.

(B) There are hereby authorized to be appropriated to the Department of Defense in fiscal year 1987, $15,000,000 to be available for transfer to the Secretary of Transportation and shall be used only for the program described in section 379 of title 10, United States Code.

(2) ENHANCED DRUG-INTERDICTION ASSISTANCE.—(A) Chapter 18 of title 10, United States Code, is amended by adding after section 378 the following new section:

"§ 379. Assignment of Coast Guard personnel to naval vessels for drug enforcement purposes

"(a) The Secretary of Defense and the Secretary of Transportation may, by agreement, provide for the assignment to duty on board surface naval vessels at sea in a drug-interdiction area members of the Coast Guard who are trained in law enforcement and are empowered to arrest, search, and seize property and persons suspected of violations of law.

"(b) Members of the Coast Guard assigned to duty on board naval vessels under this section shall perform such law enforcement functions (including drug-interdiction functions)—

"(1) as may be agreed upon by the Secretary of Defense and the Secretary of Transportation; and

"(2) as are otherwise within the jurisdiction of the Coast Guard.

"(c) No fewer than 500 active duty personnel of the Coast Guard shall be assigned each fiscal year to duty as provided in subsection (a) or for other high priority drug interdiction activities.

"(d) In this section, the term 'drug-interdiction area' means an area outside the land area of the United States in which the Secretary of Defense (in consultation with the Attorney General) determines that activities involving smuggling of drugs into the United States are ongoing.".

(B) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 378 the following new item:

"379. Assignment of Coast Guard personnel to naval vessels for drug enforcement purposes.".

SEC. 3005. COAST GUARD DRUG INTERDICTION ENHANCEMENT.

(a) ADDITIONAL AUTHORIZATIONS FOR THE COAST GUARD.—

(1) There is authorized to be appropriated for Acquisition, Construction, and Improvements of the Coast Guard, $114,000,000.

(2) There is hereby authorized to be appropriated for Operating Expenses of the Coast Guard, $39,000,000: Provided, That this amount shall be used to increase the full-time equivalent strength level for the Coast Guard for active Duty personnel for fiscal year 1987 to 39,220.

(3) AMOUNTS IN ADDITION TO OTHER AMOUNTS.—The amounts authorized to be appropriated for the Coast Guard by this section are in addition to any amounts otherwise authorized by law.

SEC. 3006. UNITED STATES CUSTOMS SERVICE DRUG INTERDICTION ENHANCEMENT.

(a) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS FOR THE UNITED STATES CUSTOMS SERVICE.—In addition to any other funds authorized to be appropriated to the United States Customs Service for fiscal year 1987, *there are authorized to be appropriated the following sums:*

(1) For an additional amount for Salaries and Expenses, $65,900,000.

(2) For an additional amount for Operation and Maintenance, Air Interdiction Program, $50,000,000.

SEC. 3007. ESTABLISHMENT OF COMMAND, CONTROL, COMMUNICATIONS, AND INTELLIGENCE CENTERS (C-3I).

There are authorized to be appropriated $25,000,000 for the establishment of command, control, communications, and intelligence (C-3I) centers, including sector operations centers and a national command, control, communications, and intelligence (C-3I) center, in locations within the United States. The coordination of the establishment and location of such C-3I centers shall be conducted among the Commissioner of Customs; the Commandant of the Coast Guard; the Attorney General of the United States; and the National Narcotics Border Interdiction System (NNBIS).

SEC. 3008. ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) ESTABLISHMENT OF A UNITED STATES-BAHAMAS DRUG INTERDICTION TASK FORCE.—(A) There is authorized to be established a United States-Bahamas Drug Interdiction Task Force to be operated jointly by the United States Government and the Government of the Bahamas.

(B) The Secretary of State, the Commandant of the Coast Guard, the Commissioner of Customs, the Attorney General, and the head of the National Narcotics Border Interdiction System (NNBIS), shall upon enactment of this Act, immediately commence negotiations with the Government of the Bahamas to enter into a detailed agreement for the establishment and operation of a new drug interdiction task force, including plans for (i) the joint operation and maintenance of any drug interdiction assets authorized for the task force in this section and section 3006, and (ii) any training and personnel enhancements authorized in this section and section 3006.

(C) The Attorney General shall report to the appropriate committees of Congress on a quarterly basis regarding the progress of the United States-Bahamas Drug Interdiction Task Force.

(2) AMOUNTS AUTHORIZED.—There are authorized to be appropriated, in addition to any other amounts authorized to be appropriated in this subtitle, $10,000,000 for the following:

(A) $9,000,000 for 3 twin engine drug interdiction pursuit helicopters for use primarily for operations of the United States-Bahamas Drug Interdiction Task Force established under this section; and

(B) $1,000,000 to enhance communications capabilities for the operation of a United States-Bahamas Drug Interdiction Task Force established under this section.

(3) COAST GUARD-BAHAMAS DRUG INTERDICTION DOCKING FACILITY.—(A) There is authorized to be appropriated for acquisition, construction, and improvements for the Coast Guard for fiscal year 1987, $5,000,000, to be used for initial design engineering, and other activities for construction of a drug interdiction docking facility in the Bahamas to facilitate Coast Guard and Bahamian drug interdiction operations in and through the Bahama Islands. Of the amounts authorized to be appropriated in this subsection, such sums as may be necessary shall be available for necessary communication and air support.

(B) The Commandant of the Coast Guard shall use such amounts appropriated pursuant to the authorization in this subsection as may be necessary to establish a repair, maintenance, and boat lift facility to provide repair and maintenance services for both Coast Guard and Bahamian marine drug interdiction equipment, vessels, and related assets.

SEC. 3009. ADDITIONAL FUNDS FOR THE DEPARTMENT OF JUSTICE.

There are authorized to be appropriated to the Department of Justice for fiscal year 1987, in addition to any other amounts authorized to be appropriated to the Department for such fiscal year, $7,000,000 for twin engine helicopters with forward looking infrared radiation detection devices for drug interdiction operations in Hawaii.

SEC. 3010. CIVIL AIR PATROL.

(a) SENSE OF CONGRESS.—It is the sense of Congress (1) that the Civil Air Patrol, the all volunteer auxiliary of the Air Force, can increase its participation in and make significant contributions to the drug interdiction efforts of the Federal Government, and (2) that the Secretary of the Air Force should fully support that participation.

(b) AUTHORIZATION.—From within any unobligated and uncommitted balances of appropriations for the Department of Defense for fiscal year 1986, carrying forward into fiscal year 1987, there are authorized to be appropriated for the Civil Air Patrol, in addition to any other amounts appropriated for the Civil Air Patrol for fiscal year 1987, $7,000,000 for the acquisition of the major items of equipment needed by the Civil Air Patrol for drug interdiction surveillance and reporting missions.

(c) REPORTS.—(1) The Secretary of the Air Force shall make quarterly reports to the Committees on Appropriations and on Armed Services of the Senate and House of Representatives on the use of such unobligated funds made available pursuant to the authorization contained in subsection (b).

(2) Each report under paragraph (1) shall include a detailed description of the activities of the Civil Air Patrol in support of the Federal Government's drug interdiction program.

(3) The first report under paragraph (1) shall be submitted on the last day of the first quarter ending not less than 90 days after the date of the enactment of this Act.

Subtitle B—Customs Enforcement

SEC. 3101. SHORT TITLE.

This subtitle may be cited as the "Customs Enforcement Act of 1986".

PART I—TARIFF ACT AMENDMENTS

SEC. 3111. CONTROLLED SUBSTANCES DEFINED.

Section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) is amended—

(1) by striking out the period in subsection (c) and inserting in lieu thereof "and monetary instruments as defined in section 5312 of title 31, United States Code.",

(2) by striking out the following: "For the purposes of sections 432, 433, 434, 448, 585, and 586 of this Act, any vessel which has visited any hovering vessel shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.",

(3) by striking out "The term" in subsection (k) and inserting in lieu thereof "(1) The term",

(4) by adding at the end of subsection (k) the following new paragraph:

"(2) For the purposes of sections 432, 433, 434, 448, 585, and 586, any vessel which—

"(A) has visited any hovering vessel,

"(B) has received merchandise while in the customs waters beyond the territorial sea, or

"(C) has received merchandise on the high seas,

shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.", and

(5) by adding at the end thereof the following:

"(m) CONTROLLED SUBSTANCE.—The term 'controlled substance' has the meaning given to such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)). For purposes of this Act, any controlled substance is merchandise the importation of which into the United States is prohibited, unless the importation is authorized under—

"(1) an appropriate license or permit; or

"(2) the Controlled Substances Import and Export Act.".

SEC. 3112. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

Section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) is amended to read as follows:

"SEC. 433. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

"(a) VESSEL ARRIVAL.—

"(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

"(A) any vessel from a foreign port or place;

"(B) any foreign vessel from a domestic port; or

"(C) any vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made; the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

"(2) The Secretary may by regulation—

"(A) prescribe the manner in which arrivals are to be reported under paragraph (1); and

"(B) extend the time in which reports of arrival must be made, but not beyond 24 hours after arrival.

"(b) VEHICLE ARRIVAL.—

"(1) Vehicles may arrive in the United States only at border crossing points designated by the Secretary.

"(2) Except as otherwise authorized by the Secretary, immediately upon the arrival of any vehicle in the United States at a border crossing point, the person in charge of the vehicle shall—

"(A) report the arrival; and

"(B) present the vehicle, and all persons and merchandise (including baggage) on board, for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(c) AIRCRAFT ARRIVAL.—The pilot of any aircraft arriving in the United States from any foreign airport or place shall comply with such advance notification, arrival reporting, and landing requirements as the Secretary may by regulation prescribe.

"(d) PRESENTATION OF DOCUMENTATION.—The master, person in charge of a vehicle, or aircraft pilot shall, present to customs officers such documents, papers, or manifests as the Secretary may by regulation prescribe.

"(e) PROHIBITION ON DEPARTURES AND DISCHARGE.—Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands—

"(1) depart from the port, airport, or place of arrival, or

"(2) discharge any passenger or merchandise, including baggage,

only in accordance with regulations prescribed by the Secretary.".

SEC. 3113. PENALTIES FOR ARRIVAL, REPORTING, ENTRY, AND DEPARTURE VIOLATIONS.

(a) Section 436 of the Tariff Act of 1930 (19 U.S.C. 1436) is amended to read as follows:

"SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, AND ENTRY REQUIREMENTS.

"(a) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with the provisions of section 433;

"(2) to present any forged, altered, or false document or paper to a customs officer under section 433(d) without revealing the facts;

"(3) to fail to make entry as required by section 434, 435, or 644 of this Act or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509);

"(4) to violate section 433(e); or

"(5) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of the preceding paragraphs.

"(b) CIVIL PENALTY.—Any master, person in charge of a vehicle, or aircraft pilot who violates any provision of subsection (a) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

"(c) CRIMINAL PENALTY.—Any master, person in charge of a vehicle, or aircraft pilot who willfully commits any violation enumerated in subsection (a) shall be liable for an additional fine of not more than $2,000 or imprisonment for not more than 1 year, or both, and if the conveyance has, or is discovered to have had, on board—

"(1) any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, or

"(2) any controlled substances, spirits, wines, or other alcoholic liquors,

such person shall be liable for an additional fine of not more than $10,000 and imprisonment for not more than 5 years, or both.

"(d) ADDITIONAL CIVIL PENALTY.—If any merchandise is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for an additional penalty equal to the value of the merchandise and the merchandise shall be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of the controlled substances listed in section 584 of this Act, the master, person in charge of a vehicle, or pilot shall be liable for the penalties prescribed in that section.".

(b) Section 585 of the Tariff Act of 1930 (19 U.S.C. 1585) is amended—

(1) by striking out "shall be liable to a penalty of $5,000," after "vessel"; and

(2) by striking out "$500" and inserting in lieu thereof "$5,000 for the first violation, and $10,000 for each subsequent violation,".

SEC. 3114. PENALTY FOR UNLOADING OF PASSENGERS.

Section 454 of the Tariff Act of 1930 (19 U.S.C. 1454) is amended by striking out "$500 for each" and inserting in lieu thereof "$1,000 for the first passenger and $500 for each additional".

SEC. 3115. REPORTING REQUIREMENTS FOR INDIVIDUALS.

(a) Section 459 of the Tariff Act of 1930 (19 U.S.C. 1459) is amended to read as follows:

"SEC. 459. REPORTING REQUIREMENTS FOR INDIVIDUALS.

"(a) INDIVIDUALS ARRIVING OTHER THAN BY CONVEYANCE.—Except as otherwise authorized by the Secretary, individuals arriving in the United States other than by vessel, vehicle, or aircraft shall—

"(1) enter the United States only at a border crossing point designated by the Secretary; and

"(2) immediately—

"(A) report the arrival, and

"(B) present themselves, and all articles accompanying them, for inspection;

to the customs officer at the customs facility designated for that crossing point.

"(b) INDIVIDUALS ARRIVING BY REPORTED CONVEYANCE.—Except as otherwise authorized by the Secretary, passengers and crew members aboard a conveyance the arrival in the United States of which was made or reported in accordance with section 433 or 644 of this Act or section 1109 of the Federal Aviation Act of 1958, or in accordance with applicable regulations, shall remain aboard the conveyance until authorized to depart the conveyance by the appropriate customs officer. Upon departing the conveyance, the passengers and crew members shall immediately report to the designated customs facility with all articles accompanying them.

"(c) INDIVIDUALS ARRIVING BY UNREPORTED CONVEYANCE.—Individuals aboard a conveyance the arrival in the United States of which was not made or reported in accordance with the laws or regulations referred to in subsection (b) shall immediately notify a customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, and present their property for customs examination and inspection.

"(d) DEPARTURE FROM DESIGNATED CUSTOMS FACILITIES.—Any person required to report to a designated customs facility under subsection (a), (b), or (c) may not depart that facility until authorized to do so by the appropriate customs officer.

"(e) UNLAWFUL ACTS.—It is unlawful—

"(1) to fail to comply with subsection (a), (b), or (c);

"(2) to present any forged, altered, or false documents or paper to a customs officer under subsection (a), (b), or (c) without revealing the facts;

"(3) to violate subsection (d); or

"(4) to fail to comply with, or violate, any regulation prescribed to carry out subsection (a), (b), (c), or (d).

"(f) CIVIL PENALTY.—Any individual who violates any provision of subsection (e) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation.

"(g) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (f), any individual who intentionally commits any violation described in subsection (e) is, upon conviction, liable for a fine of not more than $5,000, or imprisonment for not more than 1 year, or both.".

(b) Section 460 of the Tariff Act of 1930 (19 U.S.C. 1460) is repealed.

SEC. 3116. PENALTY FOR FAILURE TO DECLARE.

Section 497 of the Tariff Act of 1930 (19 U.S.C. 1497) is amended to read as follows:

"SEC. 497. PENALTIES FOR FAILURE TO DECLARE.

"(a) IN GENERAL.—

"(1) Any article which—

"(A) is not included in the declaration and entry as made, and

"(B) is not mentioned before examination of the baggage begins—

"(i) in writing by such person, if written declaration and entry was required, or

"(ii) orally, if written declaration and entry was not required,

shall be subject to forfeiture and such person shall be liable for a penalty determined under paragraph (2) with respect to such article.

"(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

"(A) if the article is a controlled substance, 200 percent of the value of the article, and

"(B) if the article is not a controlled substance, the value of the article.

"(b) VALUE OF CONTROLLED SUBSTANCES.—

"(1) Notwithstanding any other provision of this Act, the value of any controlled substance shall, for purposes of this section, be equal to the amount determined by the Secretary, in consultation with the Attorney General of the United States, to be equal to the price at which such controlled substance is likely to be illegally sold to the consumer of such controlled substance.

"(2) The Secretary and the Attorney General of the United States shall establish a method of determining the price at which each controlled substance is likely to be illegally sold to the consumer of such controlled substance.".

SEC. 3117. FALSE MANIFESTS; LACK OF MANIFESTS.

Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended—

(1) by striking out "$500" each place it appears and inserting in lieu thereof "$1,000",

(2) by striking out "$50" in subsection (a)(2) and inserting in lieu thereof "$1,000",

(3) by striking out "$25" in subsection (a)(2) and inserting in lieu thereof "$500", and

(4) by striking out "$10" in subsection (a)(2) and inserting in lieu thereof "$200".

SEC. 3118. UNLAWFUL UNLOADING OF MERCHANDISE.

Section 586 of the Tariff Act of 1930 (19 U.S.C. 1586) is amended—

(1) by striking out "$1,000" each place it appears and inserting in lieu thereof "$10,000",

(2) by striking out "two years" in subsection (e) and inserting in lieu thereof "15 years", and

(3) by striking out "within one league of the coast" in subsection (e) and inserting in lieu thereof "within customs waters".

SEC. 3119. AVIATION SMUGGLING.

(a) The Tariff Act of 1930 is amended by inserting after section 589 the following new section:

"SEC. 590. AVIATION SMUGGLING.

"(a) IN GENERAL.—It shall be unlawful for the pilot of any aircraft to transport, or for any person on board any aircraft to possess, merchandise knowing or intending that the merchandise will be introduced into the United States unlawfully.

"(b) SEA TRANSFERS.—It shall be unlawful for any person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States if such person has not been authorized by the Secretary to make such transfer and—

"(1) either—

"(A) the aircraft is owned by a citizen of the United States or is registered in the United States, or

"(B) the vessel is a vessel of the United States (within the meaning of section 3(b) of the Anti-Smuggling Act (19 U.S.C. 1703(b)) and the merchandise consists of controlled substances, spirits, wines, or other alcoholic liquors or merchandise, the importation of which into the United States is prohibited or is restricted, or

"(2) regardless of the nationality of the vessel or aircraft, such transfer is made under circumstances indicating the intent to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully.

"(c) PENALTIES.—

"(1) Any person who violates any provision of this section shall be civilly liable for a fine equal to twice the value of the merchandise involved but not less than $10,000 and, in addition to such civil penalty shall be liable for a fine of not more than $10,000 and imprisonment for a period of not more than 5 years or both if the merchandise involved was not a controlled substance and a fine of $250,000 or imprisonment for a period of 20 years or both if it is a controlled substance.

"(2) For purposes of this subsection, the value of any controlled substance shall be determined in accordance with section 497(b).

"(d) SEIZURE AND FORFEITURE.—Any vessel or aircraft used in connection with, or in aiding or facilitating, any of the unlawful acts described in this section (whether or not any person is charged in connection with such acts) shall be seized and civilly forfeited in accordance with the customs laws.

"(e) INTENT OF TRANSFER OF CONTROLLED SUBSTANCES.—For purposes of imposing civil penalties under this section of this Act, any one of the following acts, when performed within 250 miles of the territorial sea of the United States shall be prima facie evidence that the transportation or possession of merchandise was unlawful and shall be presumed to constitute circumstances indicating that the purpose of the transfer is to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully, and for purposes of subsection (d) or section 596, shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate, a violation of this section:

"(1) the operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law;

"(2) the presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law;

"(3) the failure to correctly identify—

"(A) the vessel by name and the country of registration, or

"(B) the aircraft by registration number and country of registration,

when requested to do so by a customs officer or other government authority;

"(4) the external display of false registration numbers, false country of registration, or, in the case of a vessel, false name;

"(5) the presence on board of unmanifested merchandise, the importation of which is prohibited or restricted;

"(6) the presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under the Single Convention on Narcotic Drugs or any other international treaty;

"(7) the presence of any compartment or equipment which is built or fitted out for smuggling; or

"(8) the failure of a vessel to stop when hailed by a customs officer or other government authority.".

(b) For purposes of section 590, merchandise shall consist of controlled substances, spirits, wines, or other alcoholic liquors or other merchandise, the importation of which into the United States is prohibited or restricted.

SEC. 3120. SEIZURE OF CONVEYANCES.

Section 594 of the Tariff Act of 1930 (19 U.S.C. 1594) is amended to read as follows:

"SEC. 594. SEIZURE OF CONVEYANCES.

"(a) IN GENERAL.—Whenever—

"(1) any vessel, vehicle, or aircraft, or

"(2) the owner or operator, or the master, pilot, conductor, driver, or other person in charge of a vessel, vehicle, or aircraft,

is subject to a penalty for violation of the customs laws, the conveyance involved shall be held for the payment of such penalty and may be seized and forfeited and sold in accordance with the customs laws. The proceeds of sale, if any, in excess of the assessed penalty and expenses of seizing, maintaining, and selling the property shall be held for the account of any interested party.

"(b) EXCEPTIONS.—No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to seizure or forfeiture under the customs laws for violations relating to merchandise contained—

"(1) in baggage belonging to and accompanying a passenger being lawfully transported on such conveyance; or

"(2) in the cargo of the conveyance if the cargo is listed on the manifest and marks, numbers, weights and quantities of the outer packages or containers agree with the manifest;

unless the owner or operator, or the master, pilot, conductor, driver or other person in charge participated in, or had knowledge of, the violation, or was grossly negligent in preventing or discovering the violation.

"(c) CONTROLLED SUBSTANCES ON CONVEYANCE.—If any controlled substances are found to be, or to have been—

"(1) on board a conveyance used as a common carrier in the transaction of business as a common carrier in one or more packages or containers—

"(A) that are not manifested (or not shown on bills of lading or airway bills); or

"(B) whose marks, numbers, weight or quantities disagree with the manifest (or with the bills of lading or airway bills); or

"(2) concealed in or on such a conveyance, but not in the cargo;

the conveyance may be seized, and after investigation, forfeited unless it appears to the satisfaction of the Secretary that neither the owner or operator, master, pilot, nor any other employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or by the exercise of the highest degree of care and diligence could have known, that such controlled substances were on board.

"(d) DEFINITIONS.—For purposes of this section—

"(1) The term 'owner or operator' includes—

"(A) a lessee or person operating a conveyance under a rental agreement or charter party;

"(B) the officers and directors of a corporation;

"(C) station managers and similar supervisory ground personnel employed by airlines;

"(D) one or more partners of a partnership;

"(E) representatives of the owner or operator in charge of the passenger or cargo operations at a particular location; and

"(F) any other persons with similar responsibilities.

"(2) The term 'master' and similar terms relating to the person in charge of a conveyance includes the purser or other person on the conveyance who is responsible for maintaining records relating to the cargo transported in the conveyance.".

SEC. 3121. SEARCHES AND SEIZURES.

Subsection (a) of section 595 of the Tariff Act of 1930 (19 U.S.C. 1595) is amended to read as follows:

"(a)(1) If any officer or person authorized to make searches and seizures shall have probable cause to believe the presence of—

"(A) any merchandise upon which the duties have not been paid or which has been otherwise brought into the United States contrary to law,

"(B) any property which is subject to forfeiture under any provision of law enforced or administered by the United States Customs Service, or

"(C) any documents, containers, wrappings, or other articles which are evidence of violations of section 592 involving fraud or of any other law enforced or administered by the United States Customs Service,

in any dwelling house, store, or other building or place, such officer or person may apply, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any Federal magistrate for a warrant and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other building or place at night or by day, and to search for and seize such merchandise or other article named in such warrant.

"(2) If any house, store, or other building or place is located upon or within ten feet of the boundary line between the United States and a foreign country and any merchandise or other article subject to forfeiture is found in such house, store, or other building or place, the portion of such house, store, or other building or place that is within the United States may be taken down or removed.".

SEC. 3122. FORFEITURES.

Section 596 of the Tariff Act of 1930 (19 U.S.C. 1595a) is amended—

(1) by striking out "in the proviso to section 594" and inserting in lieu thereof "in subsection (b) or (c) of section 594",

(2) by adding at the end thereof the following new subsection:

"(c) Any merchandise that is or has been introduced, or attempted to be introduced, into the United States contrary to law (other than in violation of section 592) shall be seized and forfeited.".

SEC. 3123. PROCEEDS OF FORFEITED PROPERTY.

Section 613 of the Tariff Act of 1930 (19 U.S.C. 1613) is amended by adding at the end thereof the following new subsections:

"(c) TREATMENT OF DEPOSITS.—If property is seized by the Secretary under a law enforced or administered by the United States Customs Service, or otherwise acquired under section 605 of this Act, and relief from the forfeiture is granted by the Secretary upon terms requiring the deposit or retention of a monetary amount in lieu of the forfeiture, the amount recovered shall be treated in the same manner as the proceeds of sale of a forfeited item.

"(d) EXPENSES.—In any judicial or administrative proceeding to forfeit property under any law enforced or administered by the United States Customs Service or the Coast Guard, the seizure, storage, and other expenses related to the forfeiture that are incurred by the United States Customs Service or the Coast Guard after the seizure, but before the institution of, or during, the proceedings, shall be a priority claim in the same manner as the court costs and the expenses of the Federal marshal.".

SEC. 3124. COMPENSATION TO INFORMERS.

Section 619 of the Tariff Act of 1930 (19 U.S.C. 1619) is amended to read as follows:

"SEC. 619. AWARD OF COMPENSATION TO INFORMERS.

"(a) In General.—

"(1) If any person who is not an employee or officer of the United States—

"(A) detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws and reports such detection and seizure to a customs officer, or

"(B) furnishes to a United States attorney, the Secretary of the Treasury, or any customs officer original information concerning—

"(i) any fraud upon the customs revenue, or

"(ii) any violation of the customs laws or the navigation laws which is being, or has been, perpetrated or contemplated by any other person, and

"(2) such detection and seizure or such information leads to a recovery of—

"(A) any duties withheld, or

"(B) any fine, penalty, or forfeiture of property incurred,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the net amount so recovered.

"(b) Forfeited Property Not Sold.—If—

"(1) any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States and is thereafter, in lieu of sale—

"(A) destroyed under the customs or navigation laws, or

"(B) delivered to any governmental agency for official use, and

"(2) any person would be eligible to receive an award under subsection (a) but for the lack of sale of such forfeited property,

the Secretary may award and pay such person an amount that does not exceed 25 percent of the appraised value of such forfeited property.

"(c) Dollar Limitation.—The amount awarded and paid to any person under this section shall not exceed $250,000 for any case.

"(d) Source of Payment.—Any amount paid under this section shall be paid out of appropriations available for the collection of the customs revenue.

"(e) Recovery of Bail Bond.—For purposes of this section, an amount recovered under a bail bond shall be deemed a recovery of a fine incurred.".

SEC. 3125. FOREIGN LANDING CERTIFICATES.

Section 622 of the Tariff Act of 1930 (19 U.S.C. 1622) is amended by striking out the period at the end thereof and inserting in lieu thereof the following: ", or to comply with international obligations.".

SEC. 3126. EXCHANGE OF INFORMATION.

The Tariff Act of 1930 is amended by inserting after section 627 the following new section:

"SEC. 628. EXCHANGE OF INFORMATION.

"The Secretary of the Treasury may prescribe regulations authorizing customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Secretary reasonably believes the exchange of information is necessary to—

"(1) insure compliance with any law related to controlled substances that is enforced or administered by the United States Customs Service;

"(2) administer or enforce multilateral or bilateral agreements to which the United States is a party;

"(3) assist in investigative, judicial and quasi-judicial proceedings in the United States; or

"(4) assist a foreign customs or law enforcement agency in taking any action comparable to any of those described in paragraph (1), (2), or (3), or in relation to any proceeding in a foreign country.".

SEC. 3127. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

Part V of title IV of the Tariff Act of 1930 is amended by adding at the end thereof the following new section:

"SEC. 629. INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.

"(a) In General.—When authorized by treaty or executive agreement, the Secretary may station customs officers in foreign countries for the purpose of examining persons and merchandise prior to their arrival in the United States.

"(b) Functions and Duties.—Customs officers stationed in a foreign country under subsection (a) may exercise such functions and perform such duties (including inspections, searches, seizures and arrests) as may be permitted by the treaty, agreement or law of the country in which they are stationed.

"(c) Compliance.—The Secretary may by regulation require compliance with the customs laws of the United States in a foreign country and, in such a case the customs laws and other civil and criminal laws of the United States relating to the importation of merchandise, filing of false statements, and the unlawful removal of merchandise from customs custody shall apply in the same manner as if the foreign station were a port of entry within the customs territory of the United States.

"(d) Seizures.—When authorized by treaty, agreement or foreign law, merchandise which is subject to seizure or forfeiture under United States law may be seized in a foreign country and transported under customs custody to the customs territory of the United States to be proceeded against under the customs laws.

"(e) Stationing of Foreign Customs Officers in the United States.—The Secretary of State, in coordination with the Secretary, may enter into agreements with any foreign country authorizing the stationing in the United States of customs officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of insuring that persons and merchandise going directly to that country from the United States comply with the customs and other laws of that country governing the importation of merchandise. Any foreign customs official stationed in the United States under this subsection may exercise such functions and perform such duties as United States officials may be authorized to perform in that foreign country under reciprocal agreement.

"(f) Application of Certain Laws.—When customs officials of a foreign country are stationed in the United States in accordance with subsection (e), and if similar provisions are applied to United States officials stationed in that country—

"(1) the provisions of sections 111 and 1114 of title 18, United States Code, shall apply as if the foreign officials were designated in those sections;

"(2) any person who in any matter before a foreign customs official stationed in the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be liable for a fine of not more than $10,000, or imprisonment for not more than 5 years, or both.".

SEC. 3128. COMMERCIAL COVER.

Part V of title IV of the Tariff Act of 1930 is amended by adding at the end thereof the following new section:

"SEC. 630. AUTHORITY TO CONDUCT COMMERCIAL COVER.

"(a) In General.—The Commissioner of Customs may establish and conduct commercial entities such as corporations, partnerships, sole proprietaries, and other business entities as commercial covers to support investigative activities of the United States Customs Service. Such commercial entities may be established only upon written certification by the Commissioner of Customs or a delegate of the Commissioner of Customs that commercial cover is necessary to conduct authorized investigative activities.

"(b) Establishment and Operation.—The establishment and operation of commercial entities pursuant to this section shall be in accordance with prevailing commercial practices so long as such practices are not inconsistent with the purposes of commercial cover. Laws applicable to Federal appropriations, Federal property management, Federal acquisitions, Federal employment and Government corporations shall not apply to the establishment and operation of commercial covers upon the written certification by the Commissioner of Customs, or any delegate of the Commissioner of Customs, that the application of such laws would compromise a commercial cover.

"(c) Withdrawal and Deposit of Funds.—The Commissioner of Customs, or any delegate of the Commissioner of Customs, is authorized to deposit and withdraw in banks and other financial institutions—

"(1) funds appropriated for the United States Customs Service that are used to conduct commercial cover, and

"(2) funds generated by the business entities authorized by this section.

"(d) Use of Funds Generated by Commercial Cover.—

"(1) Funds generated by any business entities authorized by this section may be used to offset necessary and reasonable expenses incurred by the commercial cover. As soon as practicable, funds generated by a commercial cover that are no longer necessary for the conduct of that commercial cover shall be deposited in the Treasury of the United States as miscellaneous receipts.

"(2) Upon the liquidation, dissolution, sale, or other final disposition of a commercial cover established and conducted under this section and after the payment of all obligations incurred with respect to such commercial cover, any remaining funds described in paragraph (1) or (2) of subsection (c) shall be deposited in the Treasury of the United States as miscellaneous receipts.".

PART II—MISCELLANEOUS PROVISIONS

SEC. 3131. RECREATIONAL VESSELS.

Subsection (b) of section 12109 of title 46, United States Code, is amended by adding at the end thereof the following new sentence: "Such vessel must, however, comply with all customs requirements for reporting *arrival pursuant to section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons aboard such vessel shall be subject to all applicable customs regulations.".*

SEC. 3132. PROVISION OF ASSISTANCE TO CUSTOMS OFFICERS.

Section 3071 of the Revised Statutes (19 U.S.C. 507) is amended to read as follows:

"(a) Every customs officer shall—

"(1) upon being questioned at the time of executing any of the powers conferred upon him, make known his character as an officer of the Federal Government, and

"(2) have the authority to demand the assistance of any person in making any arrest, search, or seizure authorized by any law enforced or administered by customs officers, if such assistance may be necessary.

If such person shall, without reasonable excuse, neglect or refuse to assist the customs officer upon proper demand, such person shall be guilty of a misdemeanor and subject to a fine of not more than $1,000.

"(b) Any person other than an officer or employee of the United States who renders assistance in good faith upon the request of a customs officer shall not be held liable for any civil damages as a result of the rendering of such assistance if the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.".

SEC. 3133. REPORTS ON EXPORTS AND IMPORTS OF MONETARY INSTRUMENTS.

Section 5316(a)(2) of title 31, United States Code is amended by striking out "$5,000" and inserting in lieu thereof "$10,000".

SEC. 3134. SMUGGLING INVESTIGATIONS.

Section 3 of the Act of August 11, 1955 (69 Stat. 684; 21 U.S.C. 969), is amended by (A) deleting the words "of Controlled Substances" from the heading of Section 1; (B) by redesignating sections (1), (2) and (3) as subsections (a), (b), and (c); (C) by striking "Section 545 of title 15 (relating to . . . 21 U.S.C." and substituting "any law relating to the reporting of monetary instrument transactions & transportation (pursuant to Chap. 53, title 31, United States Code) or to the Bank Secrecy Act (Public Law 91-508)", and inserting "and pay the costs of the proceeding" after "investigation" in the second sentence.

PART III—AMENDMENTS TO THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT

SEC. 3141. UNLAWFUL IMPORTATION.

(a) Section 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 959) is amended—

(1) by inserting "Possession," in the heading,

(2) by striking out "It shall" and inserting in lieu thereof "(a) It shall",

(3) by striking out "This section" and inserting in lieu thereof "(c) This section",

(4) by inserting "or into waters within a distance of 12 miles of the coast of the United States" after "United States" each place it appears in subsection (a), and

(5) by inserting after subsection (a) the following new subsection:

"(b) It shall be unlawful for any United States citizen on board any aircraft, or any person on board an aircraft owned by a United States citizen or registered in the United States to—

"(1) manufacture or distribute a controlled substance, or

"(2) possess a controlled substance with intent to distribute.".

(b) The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 is amended by striking out "Manufacture" in the item relating to section 1009 and inserting in lieu thereof "Possession, manufacture".

PART IV—AMENDMENTS TO THE CRIMINAL CODE

SEC. 3151. OPERATION OF AIRCRAFT; WITH ILLEGAL FUEL TANK INSTALLATIONS.

(a) Chapter 2 of title 18, United States Code, is amended by adding at the end thereof the following new section:

"§ 36. Illegal fuel installations aboard aircraft

"(a) It shall be unlawful for any person to knowingly make a fuel tank or fuel system installation aboard an aircraft, or to operate any aircraft with a fuel tank or fuel system installation aboard, unless such tank or installation is in accordance with all applicable rules, regulations or requirements of the Administrator of the Federal Aviation Administration, including inspection and approval. Any person violating this section shall be subject to a fine of not more than $5,000 or imprisonment not exceeding two years, or both. Unless exempted by the Administrator of the Federal Aviation Administration, by regulation, authorization from the Federal Aviation Administration to have an auxiliary fuel tank or system installation or modification shall be aboard the aircraft whenever it is operated and such authorization must be shown to any Federal, State, or local law enforcement officer upon request. Failure to have such authorization aboard shall create a presumption that the installation is unlawful.

"(b) Any unlawful fuel tank or fuel system installation and the aircraft in which it is installed shall be subject to seizure and civil forfeiture. The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof: Provided, That such duties as are imposed upon customs officers or any other person with respect to the seizure and forfeiture of property under the customs law may also be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.".

(b) The table of sections for chapter 2 of title 18 of the United States Code is amended by adding at the end thereof the following:

"36. Illegal fuel installation aboard aircraft.".

Subtitle C—Maritime Drug Law Enforcement Prosecution Improvements Act of 1986

SEC. 3201. SHORT TITLE.

This part may be cited as the "Maritime Drug Law Enforcement Prosecution Improvements Act of 1986".

SEC. 3202. IMPROVEMENT OF PUBLIC LAW 96–350.

The Act entitled "An Act to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances, and for other purposes", approved September 15, 1980 (Public Law 96–350; 94 Stat. 1159) is amended by striking everything immediately after the enacting clause and inserting in lieu thereof the following:

"That this Act may be cited as the 'Maritime Drug Law Enforcement Act'.

"SEC. 2. The Congress finds and declares that trafficking in controlled substances aboard vessels is a serious international problem and is universally condemned. Moreover, such trafficking presents a specific threat to the security and societal well-being of the United States.

"SEC. 3. (a) It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.

"(b) For purposes of this section, a 'vessel of the United States' means—

"(1) a vessel documented under chapter 121 of title 46, United States Code, or a vessel numbered as provided in chapter 123 of that title;

"(2) a vessel owned in whole or part by—

"(A) the United States or a territory, commonwealth, or possession of the United States;

"(B) a State or political subdivision thereof;

"(C) a citizen or national of the United States; or

"(D) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States;

unless the vessel has been granted the nationality of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas; and

"(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

"(c)(1) For purposes of this section, a 'vessel subject to the jurisdiction of the United States' includes—

"(A) a vessel without nationality;

"(B) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas;

"(C) a vessel registered in a foreign nation where the flag nation has consented or waived objection to the enforcement of United States law by the United States;

"(D) a vessel located within the customs waters of the United States; and

"(E) a vessel located in the territorial waters of another nation, where the nation consents to the enforcement of United States law by the United States.

Consent or waiver of objection by a flag nation to the enforcement of United States law by the United States under paragraph (C) or (E) of this paragraph may be obtained by radio, telephone, or similar oral or electronic means, and may be proved by certification of the Secretary of State or the Secretary's designee.

"(2) For purposes of this section, a 'vessel without nationality' includes—

"(A) a vessel aboard which the master or person in charge makes a claim of registry, which claim is denied by the flag nation whose registry is claimed; and

"(B) any vessel aboard which the master or person in charge fails, upon request of an officer of the United States empowered to

enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel.

A claim of registry under subparagraph (A) may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of such claim of registry by the claimed flag nation may be proved by certification of the Secretary of State or the Secretary's designee.

"(3) For purposes of this section, a claim of nationality or registry only includes:

"(A) possession on board the vessel and production of documents evidencing the vessel's nationality in accordance with article 5 of the 1958 Convention on the High Seas;

"(B) flying its flag nation's ensign or flag; or

"(C) a verbal claim of nationality or registry by the master or person in charge of the vessel.

"(d) A claim of failure to comply with international law in the enforcement of this Act may be invoked solely by a foreign state, and a failure to comply with international law shall not divest a court of jurisdiction or otherwise constitute a defense to any proceeding under this Act.

"(e) This section does not apply to a common or contract carrier, or an employee thereof, who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business or to a public vessel of the United States, or any person on board such a vessel who possesses or distributes a controlled substance in the lawful course of such person's duties, if the controlled substance is a part of the cargo entered in the vessel's manifest and is intended to be lawfully imported into the country of destination for scientific, medical, or other legitimate purposes. It shall not be necessary for the United States to negative the exception set forth in this subsection in any complaint, information, indictment, or other pleading or in any trial or other proceeding. The burden of going forward with the evidence with respect to this exception is upon the person claiming its benefit.

"(f) Any person who violates this section shall be tried in the United States district court at the point of entry where that person enters the United States, or in the United States District Court of the District of Columbia.

"(g)(1) Any person who commits an offense defined in this section shall be punished in accordance with the penalties set forth in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960).

"(2) Notwithstanding paragraph (1) of this subsection, any person convicted of an offense under this Act shall be punished in accordance with the penalties set forth in section 1012 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 962) if such offense is a second or subsequent offense as defined in section 1012(b) of that Act.

"(h) This section is intended to reach acts of possession, manufacture, or distribution committed outside the territorial jurisdiction of the United States.

"(i) The definitions in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) apply to terms used in this Act.

"(j) Any person who attempts or conspires to commit any offense defined in this Act is punishable by imprisonment or fine, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

"SEC. 3. Any property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under this Act shall be subject to seizure and forfeiture in the same manner as similar property seized or forfeited under section 511 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881).".

Subtitle D—Reports on Department of Defense Drug Control Activities

SEC. 3251. REPORTS ON DEPARTMENT OF DEFENSE DRUG CONTROL ACTIVITIES.

(a) Not later than March 1, 1987, the National Drug Enforcement Policy Board shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives on the manner and the extent to which the Department of Defense should be involved in United States law enforcement activities relating to the control and reduction of drug abuse. The Board shall include in such report—

(1) its recommendation for a 5-year funding plan for the participation of the Department of Defense in United States drug law enforcement activities; and

(2) a description of the functions which members of the Armed Forces, including the National Guard, the Reserves, and the Civil Air Patrol, under the jurisdiction of the Secretary of Defense may appropriately perform in the national effort to control and reduce drug abuse, including the interdiction of illegal drugs.

(b) Not later than December 1, 1986, the Secretary of Defense, in consultation with the National Drug Enforcement Policy Board and the Department of Education, shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a discussion of (1) the extent to which youth enrolled in schools operated by the Department of Defense for dependent members of the Armed Forces are receiving education on drug and substance abuse, (2) the types of drug education programs that are currently being provided in such schools, (3) whether additional drug education programs are needed in such schools, and (4) the extent to which drug education programs for youth in grades K through 12 include or should include preventative peer counseling classes.

Subtitle E—Driving While Impaired by Drug Intoxication To Be Punishable Under the Uniform Code of Military Justice

SEC. 3301. DRIVING WHILE IMPAIRED.

Section 911 of title 10, United States Code, is amended by striking out "drunk," and inserting in lieu thereof "drunk or while impaired by a substance described in section 912a(b) of this title (article 112a(b)),".

Subtitle F—Drug Interdiction Assistance to Civilian Law Enforcement Officials

SEC. 3351. ASSISTANCE TO CIVILIAN LAW ENFORCEMENT.

Section 374(a) of title 10, United States Code, is amended by striking out the period at the end and inserting in lieu thereof "or with respect to assistance that such agency is authorized to furnish to any foreign government which is involved in the enforcement of similar laws.".

Subtitle G—Air Safety

SEC. 3401. AIR SAFETY.

(a)(1) Section 902(b) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(b)) is amended by adding at the end thereof the following:

"(3)(A) Nothing in this subsection or in any other provision of this Act shall preclude a State from establishing criminal penalties, including providing for forfeiture or seizure of aircraft, for a person who in connection with an act described in subparagraph (B) and with knowledge of such act—

"(i) knowingly and willfully forges, counterfeits, alters, or falsely makes an aircraft registration certificate;

"(ii) knowingly sells, uses, attempts to use, or possesses with intent to use a fraudulent aircraft registration certificate;

"(iii) knowingly and willfully displays or causes to be displayed on any aircraft any marks that are false or misleading as to the nationality or registration of the aircraft; or

"(iv) obtains an aircraft registration certificate from the Administrator by knowingly and willfully falsifying, concealing, or covering up a material fact, or making a false, fictitious, or fraudulent statement or representation, or making or using any false writing or document knowing the writing or document to contain any false, fictitious, or fraudulent statement or entry.

"(B) The Act referred to in subparagraph (A) is the transportation by aircraft of any controlled substance, or the aiding or facilitation of a controlled substance offense, where such act is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance (other than a law relating to simple possession of a controlled substance).".

(2) Section 501 of the Federal Aviation Act of 1958 (49 U.S.C. 1401) is amended by adding at the end thereof the following:

"INSPECTION BY LAW ENFORCEMENT OFFICERS

"(g) The operator of an aircraft shall make available for inspection an aircraft's certificate or registration upon request by a Federal, State, or local law enforcement officer.".

(3) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 501. Registration of aircraft nationality." is amended by adding at the end thereof the following:

"(g) Inspection by law enforcement officers.".

(b)(1) Subsection (q) of section 902 of the Federal Aviation Act of 1958 (49 U.S.C. 1472(q)) is amended to read as follows:

"VIOLATIONS IN CONNECTION WITH TRANSPORTATION OF CONTROLLED SUBSTANCES

"(q)(1) It shall be unlawful, in connection with an act described in paragraph (2) and with knowledge of such act, for any person—

"(A) who is the owner of an aircraft eligible for registration under section 501, to knowingly and willfully operate, attempt to operate, or permit any other person to operate such aircraft if the aircraft is not registered under section 501 or the certificate of registration of the aircraft is suspended or revoked, or if such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(B) to operate or attempt to operate an aircraft eligible for registration under section 501 knowing that such aircraft is not registered under section 501, that the certificate of registration is suspended or revoked, or that such person does not have proper authorization to operate or navigate the aircraft without registration for a period of time after transfer of ownership;

"(C) to knowingly and willfully serve, or attempt to serve, in any capacity as an

airman without a valid airman certificate authorizing such person to serve in such a capacity;

"(D) to knowingly and willfully employ for service or utilize any airman who does not possess a valid airman certificate authorizing such person to serve in such capacity; and

"(E) to knowingly and willfully operate an aircraft in violation of any rule, regulation, or requirement issued by the Administrator of the Federal Aviation Administration with respect to the display of navigation or anticollision lights.

"(2) The act referred to in paragraph (1) is the transportation by aircraft of any controlled substance or aiding or facilitating a controlled substance offense where such act is punishable by death or imprisonment for a term exceeding one year under a State or Federal law or is provided in connection with any act that is punishable by death or imprisonment for a term exceeding one year under a State or Federal law relating to a controlled substance or controlled substance analog (other than a law relating to simple possession of a controlled substance or controlled substance analog).

"(3) A person violating this subsection shall be subject to a fine not exceeding $25,000, or imprisonment not exceeding 5 years, or both.

"(4) For purposes of this subsection, the terms 'controlled substance' and 'controlled substance analog' have the meaning given to such terms by section 102 of the Controlled Substances Act (21 U.S.C. 802).".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 902. Criminal penalties." is amended after the item relating to subsection (q) to read as follows:

"(q) Violations in connection with transportation of controlled substances.".

(c) Section 904(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1474(a)) is amended—

(1) by striking "$500" wherever it appears and by inserting in lieu thereof "$5,000";

(2) by inserting immediately after the second sentence the following: "In addition to any other penalty, if any controlled substance described in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is found on board of, or to have been unladen from, an aircraft subject to section 1109 (b) and (c) of this Act, the owner or person in charge of such aircraft shall be subject to the penalties provided for in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584), unless such owner or person is able to demonstrate, by a preponderance of the evidence, that such owner or person did not know, and could not, by the exercise of the highest degree of care and diligence, have known, that any such controlled substance was on board."; and

(3) by amending the third sentence to read as follows: "In case the violation is by the owner, operator, or person in command of the aircraft, any penalty imposed by this section shall be a lien against the aircraft.".

(d)(1) Section 1109 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1509) is amended by adding at the end thereof the following:

"REPORTING TRANSFER OF OWNERSHIP

"(f) Any person having an ownership interest in any aircraft for which a certificate of registration has been issued under this Act shall, upon the sale, conditional sale, transfer or conveyance of such ownership interest, file within 15 days such notice as the Secretary of the Treasury may by regulation require. The filing of a notice under this subsection shall not relieve any person from the filing requirements of section 501 or 503 of this Act.".

(2) That portion of the table of contents of the Federal Aviation Act of 1958 which appears under the side heading "Sec. 1109. Application of existing laws relating to foreign commerce." is amended by adding at the end thereof the following:

"(f) Reporting transfer of ownership.".

Subtitle H—Communications

SEC. 3451. COMMUNICATIONS.

The Federal Communications Commission shall revoke any license issued to any person under the Communications Act of 1934 (47 U.S.C. 151 et seq.) who is found to have used said license for the purpose of using or distributing any controlled substance in violation of any provision of Federal law. In addition, the Federal Communications Commission shall, upon the request of an appropriate Federal law enforcement agency, assist in the enforcement of Federal law prohibiting the use or distribution of any controlled substance where communications equipment within the jurisdiction of the Federal Communications Commission under the Communications Act of 1934 is being used for purposes of using or distributing any such substance.

Subtitle I—Drug Law Enforcement Cooperation Study

SEC. 3551. DRUG LAW ENFORCEMENT COOPERATION STUDY.

(a) The National Drug Enforcement Policy Board, in consultation with the National Narcotics Border Interdiction System and State and local law enforcement officials, shall study Federal drug law enforcement efforts and make recommendations as provided in subsection (b). The Board shall report to Congress within 180 days of enactment of this subtitle on its findings and conclusions.

(b) The report of the Board shall include recommendations on—

(1) the means of improving the Nation's drug interdiction programs;

(2) the relative effectiveness and efficiency of various law enforcement strategies, including interdiction;

(3) ways to maximize coordination and cooperation among Federal, State, and local drug law enforcement agencies; and

(4) ways to maximize coordination and cooperation between the several Federal agencies involved with drug interdiction, along with a recommendation on the transfer of mission from one agency to another.

Subtitle J—Drug Interdiction

SEC. 3601. EMERGENCY ASSISTANCE BY DEPARTMENT OF DEFENSE PERSONNEL.

Subsection (c) of section 374 of title 10, United States Code, is amended to read as follows:

"(c)(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used as a base of operations outside the land area of the United States (or any territory or possession of the United States) by Federal law enforcement officials—

"(A) to facilitate the enforcement of a law listed in subsection (a); and

"(B) to transport such law enforcement officials in connection with such operations, including to transport such officials into the land area of the United States (or any territory or possession of the United States) in cases involving the hot pursuit of vessels or aircraft when such pursuit began outside such land area,

if the Secretary of Defense and the Attorney General jointly, in consultation with the Secretary of State, determine that an emergency circumstance exists.

"(2)(A) Subject to subparagraph (B), equipment operated by or with the assistance of personnel assigned under subsection (a) may not be used to interdict or interrupt the passage of vessels and aircraft.

"(B) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used to intercept vessels and aircraft outside the land area of the United States (or any territory or possession of the United States) for the purpose of—

"(i) identifying such vessels and aircraft; and

"(ii) monitoring and communicating the location and movement of such vessels and aircraft until Federal, State, and local law enforcement officials can assume such responsibilities,

if the Secretary of Defense and the Attorney General jointly, in consultation with the Secretary of State, determine that an emergency circumstance exists and that enforcement of a law listed in subsection (a) would be seriously impaired if such use of equipment were not permitted.

"(3) For purposes of this subsection, an emergency circumstance exists when—

"(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and

"(B) the assistance described in this subsection would significantly enhance the enforcement of a law listed in subsection (a).".

SEC. 3602. UNITED STATES CUSTOMS SERVICE.

(a) RECRUITMENT AND TRAINING OF VOLUNTEERS FOR THE UNITED STATES CUSTOMS SERVICE.—The Commissioner of Customs, acting under the direction of the Secretary of the Treasury (hereinafter referred to as "the Commissioner") is authorized to recruit, train, and accept without regard to the civil service classification laws, rules, or regulations the services of individuals without compensation as volunteers to aid the United States Customs Service in the performance of its responsibilities. In accepting such services of individuals or volunteers, the Commissioner shall not permit the use of volunteers in policymaking processes, or to displace any employee. The Commissioner shall not permit the use of volunteers in hazardous duty or law enforcement work unless the Commissioner determines that they are skilled in performing such hazardous activities or are trained in law enforcement work.

(b) ESTABLISHMENT OF UNITED STATES CUSTOMS RESERVE.—The United States Customs Reserve (hereinafter "Reserve") is an organization of volunteers administered by the Commissioner of Customs under the direction of the Secretary.

(c) PURPOSE.—The purpose of the Reserve is to assist United States Customs Service:

(1) to foster a wider knowledge of, and better compliance with, the laws, rules, and regulations enforced or administered by the United States Customs Service; and

(2) to facilitate the operations of the United States Customs Service.

(d) ELIGIBILITY, ENROLLMENTS AND DISENROLLMENT.—The Reserve shall be composed of citizens of the United States and its territories and possessions, who by reason of their interests, special training or experience are deemed by the Commissioner to be qualified for duty in the Reserve and who *may be enrolled therein pursuant to applicable regulations. Members of the Reserve may be disenrolled pursuant to applicable regulations.*

(e) MEMBERSHIP IN OTHER ORGANIZATIONS.—Membership in the Reserve shall not be a bar to membership in or employment in any civilian or military organization of the United States Government.

(f) USE OF VOLUNTEERS FACILITIES.—The Customs Service may utilize for any purpose incident to carrying out its functions and duties as authorized by the Secretary any property placed at its disposition for any of such purposes by any individual, corporation, partnership, or association, or by any State or political subdivision thereof.

(g) VESSEL, VEHICLE, OR AIRCRAFT DEEMED PUBLIC VESSEL OR PUBLIC AIRCRAFT.—Any vessel, vehicle or aircraft while assigned to authorized Customs Service duty shall be deemed to be a public vessel, public vehicle or public aircraft of the United States, and shall be deemed to be a vessel, vehicle or aircraft of the Customs Service, but shall not be counted against any limits expressed in authorization Acts.

(h) AVAILABILITY OF APPROPRIATIONS.—Appropriations of the Customs Service shall be available for the payment of incidental expenses, such as uniforms and necessary traveling expense and subsistence, or per diem in lieu of subsistence, of volunteers and members of the Reserve assigned to authorized specific duties and for actual necessary expenses of operation of any vessel, vehicle, aircraft, or radio station or other special equipment when assigned to Customs Service duty, but shall not be available for the payment of compensation for personal services, incident to such operation. The term "actual necessary expenses of operation," as used in this section, shall include payment for fuel, oil, power, water, supplies, provisions, replacement or repair of equipment, repair of any damaged vessel, vehicle, aircraft, or radio station where it is determined, under applicable regulations, that responsibility for the loss or damage necessitating such replacement or repair of equipment, or for the damage or loss, constructive or actual, of such vessel, aircraft, or radio station rests with the Customs Service.

(i) ASSIGNMENT AND PERFORMANCE OF DUTIES.—No volunteer or member of the Reserve solely by reason of such volunteer status or membership, shall be vested with, or exercise, any right, privilege, power, or duty vested in or imposed upon the personnel of the Customs Service except that any such member may, under applicable regulations, be assigned specific duties, which after appropriate training and examination, he has been found competent to perform, to effectuate the missions of the Customs Service. No volunteer or member of the Reserve shall be placed in charge of a vessel, vehicle, aircraft, or radio station assigned to Customs duty unless he has been specifically designated by authority of the Commissioner or his designee to perform such duty. Volunteers and members of the Reserve, when assigned to specific duties as herein authorized shall, unless otherwise limited by the Commissioner, be vested with the same power and authority, in the execution of such duties, as members of the regular Customs Service assigned to similar duty. When any volunteer or member of the Reserve is assigned to such duty he may, pursuant to regulations issued by the Secretary, be paid actual necessary traveling expenses, including a per diem allowance in conformity with standardized Government travel regulations in lieu of subsistence, while traveling and while on duty away from his home. No per diem shall be paid for any period during which quarters and subsistence in kind are furnished by the Government.

(j) FEDERAL EMPLOYEE STATUS FOR VOLUNTEERS.—

(1) EMPLOYMENT STATUS OF VOLUNTEERS.—Except as otherwise provided in this section, a volunteer or member of the Reserve shall not be deemed a Federal employee and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

(2) TORT CLAIMS AND LITIGATION.—For the purpose of the tort claim provisions of title 28 of the United States Code, and litigation against individuals when performing official business, a volunteer under this Act and a member of the Reserve on duty shall be considered a Federal employee and entitled to official representation by the Department of Justice.

(3) CIVIL EMPLOYEES.—For the purposes of subchapter I of chapter 81 of title 5 of the United States Code relating to compensation to Federal employees for work injuries, volunteers and members of the Reserve when performing authorized activities under this Act shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply. When any volunteer or member of the Reserve is physically injured or dies as a result of physical injury incurred while performing any specific duty to which he has been assigned by competent Customs authority, such member or his beneficiary shall be the performance of a specific duty as the term is used in this section includes time engaged in traveling back and forth between the place of assigned duty and the permanent residence of a volunteer or member of the Reserve.

(4) A volunteer shall be considered an employee of the Customs Service for purposes of—

(A) section 552a of title 5 (relating to disclosure of information);

(B) section 1905 of title 18 (relating to confidential business and trade secrets);

(C) any other law governing access to records;

except that such information shall be made available to volunteers only to the extent that the Commissioner determines that the duties assigned to such volunteers so require.

SEC. 3603. ADDITIONAL DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE.

(a) GENERAL REQUIREMENT.—(1) Within 90 days after the date of the enactment of this Act, the Secretary of Defense shall prepare and submit to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives—

(A) a detailed list of all forms of assistance that shall be made available to civilian drug law enforcement and drug interdiction agencies, including the United States Customs Service, the Coast Guard, the Drug Enforcement Administration, and the Immigration and Naturalization Service, and

(B) a detailed plan for promptly lending equipment and rendering drug interdiction-related assistance included on such list.

(2) The list required by paragraph (1)(A) shall include, but not be limited to, the following matters:

(A) Surveillance equipment suitable for detecting air, land, and marine drug transportation activities.

(B) Communications equipment, including secure communications.

(C) Support available from the reserve components of the Armed Forces for drug interdiction operations of civilian drug law enforcement agencies.

(D) Intelligence on the growing, processing, and transshipment of drugs in drug source countries and the transshipment of drugs between such countries and the United States.

(E) Support from the Southern Command and other unified and specified commands that is available to assist in drug interdiction.

(F) Aircraft suitable for use in air-to-air detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(G) Marine vessels suitable for use in maritime detection, interception, tracking, and seizure by civilian drug interdiction agencies, including the Customs Service and the Coast Guard.

(H) Such land vehicles as may be appropriate for support activities relating to drug interdiction operations by civilian drug law enforcement agencies, including the Customs Service, the Immigration and Naturalization Service, and other Federal agencies having drug interdiction or drug eradication responsibilities, as authorized by law.

(b) COMMITTEE APPROVAL AND FINAL IMPLEMENTATION.—Within 30 days after the date on which the Committees referred to in subsection (a) receive the list and plan submitted under such subsection, the Committees shall submit their approval or disapproval of such list and plan to the Secretary. The Secretary of Defense shall then immediately convene a conference of the heads of the Federal Government agencies having jurisdiction over drug law enforcement, including the Customs Service, the Coast Guard, and the Drug Enforcement Administration, to determine the appropriate distribution of the assets, items of support, or and other assistance made available by the Department of Defense to such agencies. Not later than 60 days after the date on which such conference convenes, the Secretary of Defense and the heads of such agencies shall enter into appropriate memoranda of agreement specifying the distribution of such matters.

(c) APPLICATION TO OTHER DEPARTMENT OF DEFENSE NARCOTICS ENFORCEMENT ASSISTANCE IN THIS ACT.—Subsections (a) and (b) shall not apply to any assets, equipment, items of support, or other assistance provided or authorized in any other provision of this title.

(d) REVIEW OF DEPARTMENT OF DEFENSE COMPLIANCE BY THE GENERAL ACCOUNTING OFFICE.—The Comptroller General of the United States shall monitor the compliance of the Department of Defense with subsections (a) and (b) and, not later than 90 days after the date on which the conference is convened under subsection (b), transmit to the Congress a written report containing the Comptroller General's findings regarding the compliance of the Department of Defense with such subsections. The report shall include a review of the memoranda of agreement entered into under subsection (b).

SEC. 3604. DEPARTMENT OF DEFENSE TASK FORCE ON DRUG ENFORCEMENT.

Effective October 1, 1986 and ending September 30, 1987 the number of officers of the Marine Corps authorized under section

525(b)(1) of title 10, United States Code, to be on active duty in the grade of lieutenant general is increased by one. This authorization of lieutenant general is contingent on a Marine Corps lieutenant general serving as Director of the Department of Defense Task Force on Drug Enforcement.

Subtitle K—National Forest System Drug Control

SEC. 3611. SHORT TITLE.

This subtitle may be cited as the "National Forest System Drug Control Act of 1986".

SEC. 3612. PURPOSE.

(a) The purpose of this subtitle is to authorize the Secretary of Agriculture (hereinafter in this subtitle referred to as the "Secretary") to take actions necessary, in connection with the administration and use of the National Forest System, to prevent the manufacture, distribution, or dispensing of marihuana and other controlled substances.

(b) Nothing in this subtitle shall diminish in any way the law enforcement authority of the Forest Service.

(c) As used in this subtitle, the terms "manufacture", "dispense", and "distribute" shall have the same meaning given such terms in section 102 of the Controlled Substances Act (21 U.S.C. 802).

SEC. 3613. POWERS.

For the purposes of this subtitle, if specifically designated by the Secretary and specially trained, not to exceed 500 officers and employees of the Forest Service when in the performance of their duties shall have authority within the boundaries of the National Forest System to—

(1) carry firearms;

(2) conduct investigations of violations of and enforce section 401 of the Controlled Substances Act (21 U.S.C. 841) and other criminal violations relating to marihuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(3) make arrests with a warrant or process for misdemeanor violations, or without a warrant or process for violations of such misdemeanors that any such officer or employee has reasonable grounds to believe are being committed in his presence or view, or for a felony with or without a warrant if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony;

(4) serve warrants and other process issued by a court or officer of competent jurisdiction;

(5) search without warrant or process any person, place, or conveyance according to Federal law or rule of law; and

(6) seize without warrant or process any evidentiary item according to Federal law or rule of law.

SEC. 3614. COOPERATION.

For the purposes of this subtitle, in exercising the authority provided by section 3613—

(1) the Forest Service shall cooperate with any other Federal law enforcement agency having primary investigative jurisdiction over the offense committed; and

(2) the Secretary may authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision in the investigation of violations of and enforcement of section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marihuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

SEC. 3615. PENALTY.

Section 401 of the Controlled Substances Act (21 U.S.C. 841) is amended by adding at the end thereof the following subsection:

"(e)(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years and shall be fined not more than $10,000.

"(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years and shall be fined not more than $20,000.

"(3) For the purposes of this subsection, the term 'boobytrap' means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.".

SEC. 3616. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $20,000,000 for each fiscal year to carry out this subtitle.

SEC. 3617. APPROVAL OF SECRETARY OF AGRICULTURE AND ATTORNEY GENERAL.

The authorities conferred herein shall be exercised pursuant to an agreement approved by the Secretary of Agriculture and the Attorney General.

TITLE IV—DEMAND REDUCTION

Subtitle A—Treatment and Rehabilitation

SEC. 4001. SHORT TITLE; REFERENCE.

(a) This subtitle may be cited as the "Alcohol and Drug Abuse Amendments of 1986".

(b) Except as otherwise specifically provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be a reference to a section or other provision of the Public Health Service Act.

SEC. 4002. EXTENSION OF ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH BLOCK GRANT.

(a) Section 1911 is amended—

((1) by striking out "the purpose of grants and allotments under section 1913" and inserting in lieu thereof "purposes of carrying out this part";

(2) by striking out "$576,000,000" and inserting in lieu thereof "$736,000,000"; and

(3) by adding at the end thereof the following new sentence: "If the total amount appropriated under the preceding sentence for fiscal year 1987 exceeds $500,000,000, 27 percent of the amount of such excess shall be added to and included with the amounts otherwise available under this part for allotments to States under section 1913 for such fiscal year, 67 percent of the amount of such excess shall be available for allotments to States under section 1921 for such fiscal year, and 6 percent of the amount of such excess shall be available for transfer to the Administrator of Veterans' Affairs under section 1923.".

(b) Title XIX is amended by inserting after section 1920A the following new sections:

"SPECIAL ALLOTMENTS TO STATES FOR ALCOHOL ABUSE AND DRUG ABUSE TREATMENT AND REHABILITATION PROGRAMS

"SEC. 1921. (a)(1) The allotment of a State under this section for a fiscal year shall be the sum of the amounts allotted to such State under paragraphs (2) and (3).

"(2) Twenty-five percent of the amount available for allotment under this section for a fiscal year shall be allotted in accordance with this subsection. The allotment of a State under this subsection for a fiscal year shall be an amount which bears the same ratio to the total amount required pursuant to the preceding sentence to be allotted under this subsection for such fiscal year as the population of such State bears to the population of all States.

"(3) Seventy-five percent of the amount available for allotment under this section for a fiscal year shall be allotted by the Secretary to States on the basis of the need of each State for amounts for programs and activities for the treatment and rehabilitation of the alcohol abuse and drug abuse. In determining such need for each State under this subsection, the Secretary shall consider—

"(A) the nature and extent, in the State and in particular areas of the State, of the demand for effective programs and activities for the treatment and rehabilitation of alcohol abuse and drug abuse;

"(B) the number of individuals in the State who abuse alcohol or drugs and the capacity of the State to provide treatment and rehabilitation for such individuals (as determined by the Secretary on the basis of the number of individuals who requested treatment for alcohol abuse and drug abuse in the State during the most recent calendar year ending prior to the date on which a statement is submitted by the State under subsection (c);

"(C) the commitment of the State to the provision of services for the treatment and rehabilitation of alcohol abuse and drug abuse (as determined by the Secretary after an evaluation of the expenditures of the State for such services during the calendar year described in subparagraph (B) and of the ability of the State to meet the need for such services);

"(D) the availability in the State of Federal, State, and local resources to satisfy the needs in such State for services described in subparagraph (C); and

"(E) the number of low-income individuals in the State who need treatment and rehabilitation for alcohol abuse and drug abuse and who do not have insurance to pay the costs of such treatment and rehabilitation or who are not eligible to receive services for such treatment and rehabilitation under the State plan approved under title XIX of the Social Security Act.

"(b)(1) For each fiscal year, the Secretary shall make payments, as provided by section 6503 of title 31, United States Code, to each State from its allotment under subsection (a) from amounts appropriated for that fiscal year.

"(2) Any amount paid to a State under paragraph (1) for a fiscal year and remaining unobligated at the end of such fiscal year shall remain available to such State for the purposes for which it was made for the next fiscal year.

"(c) In order to receive an allotment for a fiscal year under subsection (a), each State shall include with the application submitted to the Secretary under section 1916 a separate statement requesting an allotment under this section. Each such statement shall contain—

"(1) such information as the Secretary may prescribe, including information necessary for the Secretary to consider the matters specified in subparagraphs (A) through (F) of subsection (a)(3);

"(2) a description of the manner in which programs and activities conducted with payments under subsection (b) will be coordinated with other public and private programs and activities directed toward individuals who abuse alcohol and drugs;

"(3) assurances that, in the preparation of any application under this section, the State will consult with local governments and public and private entities, including community based organizations, involved in the provision of services for the treatment and rehabilitation of alcohol abuse and drug abuse;

"(4) a description of the manner in which the State will evaluate programs and activities conducted with payments made to the State under subsection (b) and assurances that the State will report periodically to the Secretary on the results of such evaluations; and

"(5) assurances that payments made to the State under subsection (b) will supplement and not supplant any State or local expenditures for the treatment and rehabilitation of alcohol abuse and drug abuse that would have been made in the absence of such payments.

"(d) Except as provided in subsections (e), (f), and (i), amounts paid to a State under subsection (b) may be used by the State for alcohol abuse and drug abuse treatment and rehabilitation programs and activities, including—

"(1) activities to increase the availability and outreach of programs provided by major treatment centers and regional branches of such centers which provide services in a State in order to reach the greatest number of people;

"(2) activities to expand the capacity of alcohol abuse and drug abuse treatment and rehabilitation programs and facilities to provide treatment and rehabilitation services for alcohol abusers and drug abusers who have been refused treatment due to lack of facilities or personnel; and

"(3) activities to provide access to vocational training, job counseling, and education equivalency programs to alcohol abusers and drug abusers in need of such services in order to enable such abusers to become productive members of society.

"(e) A state shall use 5 percent of the total amount paid to a State under subsection (b) for a fiscal year to carry out the programs described in section 1922.

"(f) Of the total amount paid to any State under subsection (b) for a fiscal year, not more than 2 percent may be used for administering the funds made available under such subsection. The State will pay from non-Federal sources the remaining costs of administering such funds.

"(g) The Secretary may provide training and technical assistance to States in planning and operating activities to be carried out under this section.

"(h) The Secretary may conduct data collection activities to enable the Secretary to carry out this section.

"(i) The provisions of subsections (a) and (d) and paragraphs (1) through (5) of subsection (b) of section 1917 and the provisions of sections 1914(b), 1915(b), 1918, 1919, and 1920 shall apply to this section in the same manner as such provisions apply to payments made under section 1914 from allotments made under section 1913.

"STATE PROGRAMS FOR HIGH RISK YOUTH

"SEC. 1922. A State shall use the amounts required by sections 1916(c)(8) and 1921(e) to be used under this section for model, innovative, community based programs to provide multiple coordinated services for alcohol abuse and drug abuse prevention, treatment, and rehabilitation directed toward high risk youth. For purposes of this paragraph, the term 'high risk youth' means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

"(1) is identified as a child of a substance abuser;

"(2) is a victim of physical, sexual, or psychological abuse;

"(3) has dropped out of school;

"(4) has become pregnant;

"(5) is economically disadvantaged;

"(6) has committed a violent or delinquent act;

"(7) has experienced mental health problems;

"(8) has attempted suicide; or

"(9) is disabled by injuries.

"TRANSFER TO THE ADMINISTRATOR OF VETERANS' AFFAIRS

"SEC. 1923. The Secretary shall transfer to the Administrator of Veterans' Affairs the amount which, under the second section of section 1911, is available for such transfer. The amount transferred pursuant to the preceding sentence shall be used for outpatient treatment, rehabilitation, and counseling under section 612 of title 38, United States Code, of veterans for their alcohol or drug abuse dependence or abuse disabilities and for contract care and services under section 620A of such title for veterans for such disabilities.".

SEC. 4003. REVISION OF ALLOTMENT PROCEDURES APPLICABLE TO INDIAN TRIBES.

(a) Section 1902(d)(1) is amended to read as follows:

"(d)(1) If the Secretary receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under subsection (a) be provided directly by the Secretary to such tribe or organization, the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for a fiscal year the amount determined under paragraph (2).".

(b) Section 1913(b)(1) is amended to read as follows:

"(b)(1) If the Secretary receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under subsection (a) be provided directly by the Secretary to such tribe or organization, the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for a fiscal year the amount determined under paragraph (2).".

SEC. 4004. REVISION OF CERTAIN BLOCK GRANT EARMARKS.

(a) Section 1916(c) is amended—

(1) by striking out "35" each place it appears in subparagraphs (A) and (B) of paragraph (7) and inserting in lieu thereof "25";

(2) by striking out paragraph (8) and inserting in lieu thereof the following:

"(8) Of the amount to be used in any fiscal year for alcohol abuse and drug abuse activities, the State agrees to use not less than 80 percent of such amount for treatment and rehabilitation programs for individuals who abuse alcohol or drugs."; and

(3) by adding at the end thereof the following new paragraph:

"(16) Of the amount to be used in any fiscal year for alcohol abuse and drug abuse activities, the State agrees to use not less than 5 percent of such amount for programs described in section 1922.".

SEC. 4005. SENSE OF THE SENATE WITH RESPECT TO POSSESSION OR DISTRIBUTION OF DRUGS UNDER STATE LAW.

It is the sense of the Senate that, if the possession or distribution of a drug is an offense under the Controlled Substances Act, the laws of the States should not be amended or revised to provide that the possession or distribution, respectively, of such drug is not a criminal offense.

SEC. 4006. ADVISORY COUNCILS.

(a) Part A of title V is amended by redesignating sections 505 and 506 as sections 506 and 507, respectively, and by inserting after section 504 the following new section:

"ADVISORY COUNCILS

"SEC. 505. (a)(1) The Secretary shall appoint an advisory council for the National Institute on Alcohol Abuse and Alcoholism, for the National Institute on Drug Abuse, and for the National Institute of Mental Health. Each such advisory council shall advise, consult with, and make recommendations to the Secretary and the Director of the national research institute for which it was appointed on—

"(A) matters relating to the activities carried out by and through the institute and the policies respecting such activities; and

"(B) matters relating to activities carried out by the Secretary and the National Institutes respecting the disease, disorder, or other aspect of human health with which the advisory council is concerned.

"(2) Each advisory council for a national research institute may recommend to the Secretary acceptance, in accordance with section 2101, of conditional gifts for—

"(A) study, investigation, or research respecting the diseases, disorders, or other aspect of human health with respect to which the institute was established;

"(B) the acquisition of grounds for the institute; or

"(C) the construction, equipping, or maintenance of facilities for the institute.

"(3) Each advisory council for a national research institute—

"(A)(i) may on the basis of the materials provided under section 507(d)(2) respecting research conducted at the institute, make recommendations to the Director of the institute respecting such research;

"(ii) shall review applications for grants and cooperative agreements for research or training and for which advisory council approval is required under section 507(e)(2), and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge; and

"(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the institute;

"(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspect of human health with respect to which the national research institute was established and with the approval of the Director of the institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

"(C) may appoint subcommittees and convene workshops and conferences.

"(b)(1) Each advisory council shall consist of ex officio members and not more than 12 members appointed by the Secretary.

"(2) The ex officio members of an advisory council shall consist of—

"(A) the Secretary, the Administrator, the Director of the national research institute for which the advisory council is established, the Chief Medical Director of the Veterans' Administration, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

"(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

"(3) The members of an advisory council who are not ex officio members shall be appointed as follows:

"(A) Nine of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the national research institute for which the advisory council is established.

"(B) Three of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, public relations, law, health policy, economics, and management.

"(4) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day (including traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule.

"(c) The term of office of an appointed member of an advisory council is 4 years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of 4 years may not be reappointed to an advisory council before 2 years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

"(d) The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the national research institute for which the advisory council is established to be the chairman of the advisory council. The term of office of chairman shall be 2 years.

"(e) The advisory council shall meet at the call of the chairman or upon the request of the Director of the national research institute for which it was established, but at least 3 times each fiscal year. The location of the meetings of each advisory council is subject to the approval of the Director of the national research institute for which the advisory council was established.

"(f) The Director of the national research institute for which an advisory council is established shall designate a member of the staff of the institute to serve as the executive secretary of the advisory council. The Director of such institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of such institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.".

(b) Section 217 is amended—

(1) by striking out subsections (a), (b), (c), and (d);

(2) by striking out "(e)(1)" and inserting in lieu thereof "(a)";

(3) by striking out "(2)" and inserting in lieu thereof "(b)";

(4) by striking out "(3)" and inserting in lieu thereof "(c)";

(5) by striking out "(4)" and inserting in lieu thereof "(d)"; and

(6) by redesignating clauses (A) and (B) of subsection (c) (as redesignated by the amendment made by paragraph (4) of this subsection) as clauses (1) and (2), respectively.

SEC. 4007. PUBLIC HEALTH EMERGENCIES.

Part A of title V (as amended by section 4006 of this Act) is further amended by adding at the end thereof the following:

"RESEARCH ON PUBLIC HEALTH EMERGENCIES

"SEC. 508. (a) If the Secretary determines, after consultation with the Administrator, the Commissioner of Food and Drugs, or the Director of the Centers for Disease Control, that a disease or disorder within the jurisdiction of a national research institute constitutes a public health emergency, the Secretary, acting through the Administrator—

"(1) shall expedite the review by advisory councils and by peer review groups of applications for grants for research on such disease or disorder or proposals for contracts for such research;

"(2) shall exercise the authority in section 3709 of the Revised Statutes (41 U.S.C. 5) respecting public exigencies to waive the advertising requirements of such section in the case of proposals for contracts for such research;

"(3) may provide administrative supplemental increases in existing grants and contracts to support new research relevant to such disease or disorder; and

"(4) shall disseminate, to health professionals and the public, information on the cause, prevention, and treatment of such disease or disorder that has been developed in research assisted under this section.

The amount of an increase in a grant or contract provided under paragraph (3) may not exceed one-half the original amount of the grant or contract.

"(b) Not later than 90 days after the end of a fiscal year, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on actions taken under subsection (a) in such fiscal year.".

SEC. 4008. RESEARCH AUTHORIZATION.

(a) Section 513 is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 513. There are authorized to be appropriated to carry out this subpart $69,000,000 for fiscal year 1987.".

(b) Section 517 is amended to read as follows:

"AUTHORIZATIONS OF APPROPRIATIONS

"SEC. 517. There are authorized to be appropriated to carry out this subpart $129,000,000 for fiscal year 1987.".

SEC. 4009. STUDIES ON THE HEALTH EFFECTS OF ALCOHOL CONSUMPTION.

(a) The Congress finds that—

(1) the most abused drug in America is alcohol;

(2) alcohol use costs the American economy nearly $120,000,000,000 per year, including increased medical expenses and decreased productivity;

(3) in 1984, 53 percent of the traffic fatalities in the United States, accounting for more than 23,500 deaths, were related to the consumption of alcohol;

(4) over 12,000,000 American adults have one or more symptoms of alcoholism, and this represents an 8.2 percent increase in problem drinking since 1980;

(5) in 1984, almost 3,300,000 individuals between the ages of 14 and 17 experienced serious problems at home, in school, or with the law because of alcohol consumption;

(6) fetal alcohol syndrome is the third leading cause of birth defects, and is the only preventable cause of birth defects among the top three causes;

(7) nearly 5,000 babies per year are born with birth defects related to fetal alcohol syndrome;

(8) the statistics cited in the preceding paragraphs of this subsection indicate that many Americans are not aware of the adverse effects that the consumption of alcoholic beverages may have on health;

(9) it is necessary to undertake a serious national effort to educate the American people of the serious consequences of the consumption of alcoholic beverages; and

(10) carefully drafted warning labels on the containers of alcoholic beverages concerning the effects on health resulting from the consumption of such beverages would assist in providing such education.

(b) Therefore, it is the sense of the Senate that—

(1) the Public Health Service should focus attention on the problem of educating the American people on the effects on health resulting from alcoholic beverage consumption;

(2) the Public Health Service should conduct studies on the most effective means of providing such education, including studies on the effectiveness of warning labels on the containers of alcoholic beverages concerning the effects on health resulting from the consumption of such beverages; and

(3) the Public Health Service should transmit a report to the Congress within 6 months after the date of enactment of this Act concerning any studies described in paragraph (2) which have been conducted, and should include in such report recommendations concerning the effectiveness of the labels described in such paragraph and recommendations for specific language for such labels.

SEC. 4010. SUICIDE.

Section 501 is amended by adding at the end thereof the following new subsection:

"(i)(1) The Secretary shall—

"(A) develop and publish information respecting the causes of suicide among individuals under the age of 21 and the means of preventing suicide among such individuals, and

"(B) make such information generally available to the public and health professionals.

"(2) By January 1, 1988, and every 3 years thereafter, the Secretary shall report to the Congress on the activities undertaken under paragraph (1) during the period reported on and shall include in each such report an as-

sessment of the effectiveness of such activities.".

SEC. 4011. PREPARATION OF PUBLIC SERVICE ANNOUNCEMENTS.

(a) The Secretary of Health and Human Services shall increase and expand activities conducted under paragraphs (1) and (4) of section 503(d) of the Public Health Service Act.

(b) Section 503(d)(4) is amended—

(1) by inserting "and documentary films" after "television"; and

(2) by inserting "and films" before the period.

SEC. 4012. NATIONAL PLAN TO COMBAT DRUG ABUSE.

By October 1, 1988, the Secretary of Health and Human Services shall prepare and transmit to the Congress a report which sets forth a comprehensive national plan to combat drug abuse. The report shall include—

(1) a description of a model program for activities to be conducted by the States to combat drug abuse;

(2) an analysis of the social and economic costs of drug abuse to the Nation, including amounts expended by public agencies and private organizations—

(A) for the treatment of individuals for drug abuse, including a division of such amounts among the types of settings in which such treatment is provided;

(B) for treatment of individuals for health problems resulting from drug abuse; and

(C) to meet other costs resulting from drug abuse, such as costs resulting from lost employee productivity;

(3) an assessment of current treatment and rehabilitation needs and the current integration and financing of drug treatment and rehabilitation into the Nation's health care system;

(4) recommendations for the National Institute on Drug Abuse for research on, and plans for the development of, chemical antidotes and narcotic antagonists for use in the treatment of cocaine and heroin addiction;

(5) an assessment of personnel needs in the fields of research, treatment, rehabilitation, and prevention;

(6) a statement of specific goals and objectives to meet the Nation's current treatment, rehabilitation, and personnel needs in the area of drug abuse;

(7) estimates of public and private resources needed to accomplish the goals and objectives referred to in paragraph (6) and estimates of savings in resources that can be anticipated from the achievement of such goals and objectives.

SEC. 4013. CLEARINGHOUSE.

(a) The Secretary of Health and Human Services, through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, shall establish a clearinghouse for alcohol and drug abuse information to assure the widespread dissemination of such information to States, political subdivisions, educational agencies and institutions, health and drug treatment and rehabilitation networks, and the general public. The clearinghouse shall—

(1) disseminate publications by the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the Department of Education concerning alcohol abuse and drug abuse;

(2) disseminate accurate information concerning the health effects of alcohol abuse and drug abuse;

(3) collect and disseminate information concerning successful alcohol abuse and drug abuse education and prevention curricula; and

(4) collect and disseminate information on effective and ineffective school-based alcohol abuse and drug abuse education and prevention programs, particularly effective programs which stress that the use of illegal drugs and the abuse of alcohol is wrong and harmful.

(b) The Secretary of Health and Human Services shall ensure that the clearinghouse established under subsection (a) coordinates its activities with similar activities conducted by the Secretary of Education.

SEC. 4014. EXPANSION OF DRUG ABUSE RESEARCH.

Section 515(a)(5) is amended to read as follows:

"(5) effective methods of drug abuse prevention, treatment, and rehabilitation, particularly methods of intervention to treat abuse of specific drugs.".

SEC. 4015. STUDY ON ALKYL AND BUTYL NITRITES.

The Secretary of Health and Human Services, through the Commissioner of Food and Drugs, should conduct a study on alkyl and butyl nitrites and report to the appropriate committees of the Congress recommendations concerning whether alkyl and butyl nitrites should be treated as a drug under the Food, Drug, and Cosmetic Act.

SEC. 4016. ADMINISTRATION.

The Secretary of Health and Human Services shall not establish any new administrative unit in the Department of Health and Human Services to administer alcohol abuse and drug abuse programs, and shall carry out such programs through the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration.

SEC. 4017. PRIORITY RESEARCH.

The Alcohol, Drug Abuse, and Mental Health Administration shall include as a top priority research on neuronal receptors.

SEC. 4018. EFFORTS OF THE ENTERTAINMENT INDUSTRY.

It is the sense of Congress that, whereas illegal drug consumption and alcohol consumption and the trafficking in those legal and illegal drugs is a major problem in the United States; whereas the problem of alcoholism is particularly prevalent among and harmful to the Nation's young people; and whereas the values and mores portrayed in various forms of commercially produced entertainment have a profound effect on the attitudes of young people in this country, the entertainment and written media industry should voluntarily refrain from producing material meant for general entertainment which in any way glamorizes or encourages the use of illegal drugs and alcohol and the entertainment industry and written media further is encouraged to develop films, television programs, records, and videos and advertising which encourage the rejection of illegal drug usage and alcohol use.

Subtitle B—Drug-Free Schools and Communities Act of 1986

SEC. 4101. SHORT TITLE.

This subtitle may be cited as the "Drug-Free Schools and Communities Act of 1986".

SEC. 4102. FINDINGS.

The Congress finds that:

(1) Drug use and alcohol abuse is widespread among American students, not only in secondary schools, but increasingly in elementary schools as well.

(2) The use of drugs and the abuse of alcohol by students constitutes a grave threat to their physical and mental well-being and significantly impedes the learning process.

(3) The tragic consequences of drug use and alcohol abuse by students are felt not only by students and their families, but also by their communities and their Nation, which can ill afford to lose their skills, talents, and vitality.

(4) In communities, schools and local organizations have a special responsibility to work together to combat the scourge of drug use and alcohol abuse.

(5) Prompt action by our Nation's schools, families, and communities can bring us significantly closer to the goal of a drug-free generation and a drug free society.

SEC. 4103. PURPOSE.

The purpose of this subtitle is to assist States in their efforts to educate concerning, and to prevent, drug use and alcohol abuse through school and community based programs.

SEC. 4104. AUTHORIZATION OF APPROPRIATIONS.

For the purpose of carrying out this subtitle, there are authorized to be appropriated $150,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.

SEC. 4105. RESERVATIONS AND ALLOTMENTS.

(a) The Secretary shall reserve $20,000,000 of the amounts appropriated under section 4104 for any fiscal year for national programs under section 4109.

(b)(1) From the remainder of the amount appropriated to carry out this subtitle for each fiscal year after amounts are reserved under subsection (a) for such fiscal year, the Secretary may reserve up to 1 percent for allotments to Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) The Secretary shall allot the amounts reserved under paragraph (1) among Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, on the basis of need for amounts to carry out the activities described in section 4107.

(c)(1) From the remainder of the amount appropriated to carry out this subtitle for each fiscal year after amounts are reserved under subsections (a) and (b) for such fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to such remainder as the number of children aged five to seventeen, inclusive, in the State bears to the total number of such children in all States, except that the allotment of each State under this subsection shall not be less than $650,000. For purposes of this subsection, the number of children aged five to seventeen, inclusive, in a State and in all the States shall be determined by the Secretary on the basis of the most recently available data satisfactory to the Secretary.

(2)(A) The Secretary may reallot all or a portion of the State's allotment under paragraph (1) for any fiscal year if the State does not submit a State application under section 4106, or otherwise indicates to the Secretary that it does not need or cannot use the full amount of its allotment for that fiscal year. The Secretary may fix one or more dates during a fiscal year upon which to make reallotments.

(B) The Secretary may reallot amounts available under subparagraph (A) for a fiscal year on a competitive basis to one or more States that demonstrate a need for additional amounts to carry out the activities described in section 4107. Any funds reallotted to a State under this subparagraph shall be deemed to be part of its allotment under this subtitle for the fiscal year in which the funds are reallotted.

(3) For purposes of this subsection, the term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 4106. PAYMENTS UNDER ALLOTMENTS TO STATES.

(a) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotment under section 1205 from amounts appropriated for that fiscal year.

(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

SEC. 4107. USE AND DISTRIBUTION OF FUNDS.

(a) At least 62 percent of the total amount paid to a State under section 4106 for a fiscal year from its allotment under section 4105 for such fiscal year shall be used by the State educational agency in accordance with subsection (c).

(b)(1) After the application of subsection (a), the remainder of the total amount paid to a State under section 4106 for a fiscal year from its allotment under section 4105 for a fiscal year shall be used by the chief executive officer of a State for drug abuse and alcohol abuse prevention and education activities, and to ensure the coordination of local drug abuse and alcohol abuse prevention and education activities. Activities by the chief executive officer of a State under this subsection may include:

(A) Grants to local governments or other public and nonprofit private entities, including parent groups, and community action agencies, in the State for the improvement of programs and activities such as—

(i) local broad based programs for drug abuse and alcohol abuse prevention, early intervention, rehabilitation referral, and education directed toward all age groups, and

(ii) training programs for teachers and other school personnel, parents, local law enforcement officials, and judges.

(B) The development and distribution of educational and informational materials, including curricula, and public information, including media campaigns, aimed at a drug-free America.

(C) Activities to increase drug abuse and alcohol abuse education and prevention efforts targeted at children and youth in kindergarten through the twelfth grade.

(2) In carrying out paragraph (1), the chief executive officer of a State shall ensure that model, innovative, community based programs of multiple coordinated services for high risk youth are given the highest priority. For purposes of this paragraph, the term "high risk youth" means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

(A) is the child of a substance abuser;

(B) is a victim of physical, sexual, or psychological abuse;

(C) has dropped out of school;

(D) has become pregnant;

(E) is economically disadvantaged;

(F) has committed a violent or delinquent act;

(G) has experienced mental health problems;

(H) has attempted suicide; or

(I) is disabled by injuries.

(c)(1) The State educational agency of a State shall use 90 percent of the amounts available to such agency under subsection (a) for grants to, and contracts with, local educational agencies in the State, pursuant to subsection (d), provided that in fiscal years 1989 and 1990 the State educational agency shall allot to each local educational agency an amount which bears the same ratio to such remainder as the number of children aged five to seventeen, inclusive, in the local school district bears to the total number of such children in the State.

(2) Any amounts available to a State educational agency after the application of paragraph (1) may be used by such agency for drug abuse and alcohol abuse prevention and education activities primarily directed toward elementary, secondary, and postsecondary schools. Such activities may include—

(A) programs for drug abuse and alcohol abuse prevention, early intervention, rehabilitation referral, and education which will be conducted in elementary, secondary, and postsecondary schools;

(B) training and technical assistance programs for local educational agencies, including teachers, administrators, athletic directors, and other school personnel, parents, local law enforcement officials, and judges;

(C) the development, dissemination, implementation, and evaluation of drug abuse education curricula and teaching materials in elementary and secondary schools throughout the State; and

(D) demonstration projects in drug abuse education.

(3) The State educational agency shall submit to the chief executive officer of the State a plan which—

(A) describes how the State will coordinate its efforts with appropriate State health, law enforcement, and drug abuse prevention agencies, in particular, the State authority which administers the Alcohol, Drug Abuse, and Mental Health block grant;

(B) describes how funds will be allocated among local educational agencies in fiscal years 1987 and 1988;

(C) provides for an annual evaluation of the effectiveness of programs assisted under this subtitle;

(D) provides that the State educational agency will keep such records and provide such information to the chief executive officer of the State as may be required for fiscal audit and program evaluation; and

(E) contains assurances that there is compliance with the specific requirements of this subtitle.

(d)(1) Any amounts made available to a local educational agency pursuant to a grant or contract under paragraph (1) may be used by such agency for drug abuse and alcohol abuse prevention and education activities primarily directed toward elementary, secondary, and postsecondary schools. Such activities may include—

(A) the development and implementation of drug abuse and alcohol abuse education curricula for elementary and secondary schools;

(B) drug abuse and alcohol abuse prevention counseling programs including peer and professional counseling;

(C) programs of drug abuse and alcohol abuse treatment referral;

(D) programs of in-service and pre-service training in drug abuse and alcohol abuse prevention for teachers, counselors, athletic directors, and other educational personnel, public service personnel (including law enforcement officials), and community leaders, including cooperative programs with higher education institutions;

(E) programs in primary prevention and early intervention, such as the interdisciplinary school-team approach developed by the Department of Education;

(F) community education programs and other activities to involve parents and communities in the fight against drug abuse and alcohol abuse;

(G) public education programs on drug abuse and alcohol abuse, including programs utilizing professionals, and former drug abusers and alcohol abusers and drug dependent and alcohol dependent individuals;

(H) on-site efforts in schools to enhance identification and discipline of such drug abusers and alcohol users, and to enable law officials to take necessary action in cases of drug possession and of drug and alcohol supplying to the student population;

(I) special programs and activities to prevent drug and alcohol abuse among student athletes, involving their parents and family in such drug and alcohol abuse prevention efforts and using athletic programs and personnel in preventing drug and alcohol abuse among all students; or

(J) other programs of drug abuse and alcohol abuse education and prevention consistent with the purposes of this subtitle.

(2) A local educational agency may receive its allocation of funds under this subtitle for any fiscal year for which its application to the State educational agency has been certified to meet the requirements of this subsection. The State educational agency shall certify any such application if such application—

(A) provides assurances of compliance with the provisions of this subtitle;

(B) describes how drug and alcohol abuse prevention curricula will be implemented in each elementary and secondary school from the early elementary level through grade twelve, including a description of provisions to target education efforts to students most at risk of drug abuse and to schools with the greatest need of drug abuse prevention programs;

(C) provides assurances that the applicant's drug and alcohol education and prevention programs will involve school administrators, teachers, athletic staff, and other school personnel, as well as parents, law enforcement officials, medical professionals, and other groups with interest and expertise in drug abuse and alcohol abuse prevention;

(D) provides assurances that the applicant will coordinate its efforts with appropriate State and local drug abuse and alcohol abuse, health, and law enforcement agencies, in order to effectively conduct drug and alcohol abuse education, intervention, and referral for treatment and rehabilitation for the student population;

(E) provides for an annual evaluation of the effectiveness of programs assisted under this subtitle; and

(F) agrees to keep such records and provide such information to the State educational agency as reasonably may be required for fiscal audit and program evaluation, consistent with the responsibilities of the State agency under this subtitle.

(e) Any program supported with amounts paid to a State under section 4106 shall, where appropriate, provide information to individuals about local drug abuse and alcohol abuse treatment and rehabilitation programs.

(f) Any materials produced or distributed with amounts paid to a State under section 4106 shall reflect the message that the use of

illegal drugs and the abuse of alcohol is wrong and harmful. The Secretary shall not review curricula and shall not promulgate regulations to carry out this subsection.

SEC. 4108. STATE APPLICATIONS.

(a) In order to receive an allotment under subsection (b) or (c) of section 4105 for a fiscal year, a State shall submit an application to the Secretary. As part of such application, the chief executive officer of the State shall agree to use the amounts paid to the State under section 4106 in accordance with the requirements of this subtitle.

(b) Each application submitted under subsection (a) shall—

(1) cover a period of three fiscal years;

(2) be submitted at a time, in such manner, and contain such information, as the Secretary may require;

(3) contains assurances that no more than 2 per cent of the total amount paid to a State under section 4106 for a fiscal year will be used by the State, and 2 per cent by the State educational agency, to pay the costs of administering programs under this subtitle;

(4) contain assurances that the Federal funds made available under this subtitle for any period will be so used as to supplement and increase the level of State, local, and non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under this subtitle and will in no event supplant such State, local, and other non-Federal funds; and

(5) designate the State educational agency as the agency responsible for the administration and supervision of programs assisted under subsections (c) and (d) of section 4107 includes the plan for use of funds under subsection (c)(3) of such section.

SEC. 4109. NATIONAL PROGRAMS.

(a) The Secretary shall use—

(1) $10,000,000 of the amount reserved under section 4105(a) for a fiscal year to maintain the regional centers authorized by subsection (c);

(2) $8,000,000 of such reserved amount for a fiscal year to carry out the national programs described in subsection (b); and

(3) $2,000,000 of such reserved amount for the grants described in subsection (d).

(b)(1) The Secretary shall use the amount described in subsection (a)(2) for a fiscal year for national programs described in paragraph (2). Such programs shall be designed to achieve and maintain a drug-free environment that is conducive to learning in elementary and secondary schools. The Secretary may carry out such programs directly, or through grants, contracts, or cooperative agreements with State or local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions. The Secretary shall, when appropriate, coordinate activities under this subsection with activities conducted by the Secretary of Health and Human Services, the Secretary of Labor, the Director of ACTION, and the heads of other appropriate agencies.

(2) The Secretary shall use amounts available under this subsection to—

(A) collect and disseminate information about drug use and alcohol abuse among students in elementary and secondary schools;

(B) develop curricula for schools which warn against the use of drugs and the abuse of alcohol;

(C) provide training or technical assistance to States consistent with the purposes of this subtitle;

(D) coordinate drug abuse and alcohol abuse education and prevention efforts with similar efforts by other Federal agencies; and

(E) collect data concerning, and evaluate, programs that reduce drug abuse and alcohol abuse among students.

(3) The Secretary shall coordinate activities conducted under this subsection with similar activities conducted by the Secretary of Health and Human Services, particularly the clearinghouse established under section 4013.

(c) The Secretary shall use the amount described in subsection (a)(1) for a fiscal year to maintain at least 5 regional centers to—

(1) train school teams to access the scope and nature of their drug abuse and alcohol abuse problems, mobilize the community to address such problems, design appropriate curricula, identify students at highest risk and refer them to appropriate treatment, and institutionalize long term effective drug and alcohol abuse programs, including long range technical assistance, evaluation, and followup on such training;

(2) assist State educational agencies in coordinating and strengthening drug abuse and alcohol abuse education and prevention programs;

(3) assist local educational agencies and higher education institutions in developing appropriate preservice and inservice training programs for educational personnel; and

(4) evaluate and disseminate information on effective drug abuse and alcohol abuse education and prevention programs and strategies.

(d)(1) From the amounts described in subsection (a)(3) for a fiscal year, the Secretary shall reserve—

(A) $1,700,000 for grants to Indian tribes and tribal organizations, and

(B) $300,000 for grants to Hawaiian natives.

(2) From the funds reserved pursuant to paragraph (1)(A), the Secretary shall make grants to Indian tribes and tribal organizations to plan, conduct, and administer programs, or portions thereof, which are authorized and consistent with the provisions of this subtitle for the benefit of tribal members.

(3) From the funds reserved pursuant to paragraph (1)(B), the Secretary shall enter into contracts with organizations primarily serving and representing Hawaiian natives which are recognized by the Governor of the State of Hawaii to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the provisions of this subtitle for the benefit of Hawaiian natives.

(4) For the purposes of this subsection, the terms—

(A) "Indian tribe" and "tribal organization" have the same meaning given such terms in sections 4(b) and 4(c) of the Indian Self-Determination and Education Assistance Act, and

(B) "Hawaiian native" means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

SEC. 4110. INTERAGENCY COORDINATION.

The Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, and the Director of ACTION shall each designate an officer or employee of the Departments of Education, Health and Human Services, and Labor, and ACTION, respectively, to coordinate interagency drug abuse activities.

SEC. 4111. TRAINING, TECHNICAL ASSISTANCE, AND DATA COLLECTION.

(a) The Secretary of Health and Human Services and the Secretary of Education shall provide training and technical assistance to States and public and nonprofit private entities in planning and operating activities to be carried out under this subtitle.

(b) The Secretary of Health and Human Services and the Secretary of Education may conduct data collection activities to enable the Secretary to carry out this subtitle.

SEC. 4112. REPORT.

Within 6 months after the date of enactment of this Act, the Secretary of Education and the Secretary of Health and Human Services shall prepare and transmit to the appropriate committees of the Congress a report on the implementation of this subtitle. The report shall include a description of the manner in which activities conducted under this subtitle are being coordinated with activities conducted under subtitle A.

SEC. 4113. CONFORMING AMENDMENTS.

Section 583(b) of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3851(b)) is amended by—

(1) inserting "and" at the end of paragraph (2);

(2) striking out paragraph (3); and

(3) redesignating paragraph (4) as paragraph (3).

SEC. 4114. DEFINITIONS.

The definitions of terms contained in section 595 of the Education Consolidation and Improvement Act of 1981 shall apply to this subtitle.

SEC. 4115. PRIVATE SCHOOLS.

The provisions of section 557 of the Education Consolidation and Improvement Act of 1981 shall apply to this subtitle.

SEC. 4116. SENSE OF THE SENATE URGING THE MOTION PICTURE ASSOCIATION TO LABEL PRO-DRUG FILMS.

(a) The Senate finds that—

(1) the abuse of alcohol and the use of drugs has become a societal problem of epidemic proportions;

(2) it is in the interest of all citizens to contribute to the reduction of alcohol abuse and drug use, particularly among youth;

(3) the entertainment industry, particularly the motion picture industry's production of youth-oriented films, often depicts alcohol abuse and drug use in a benign, even glamorous way;

(4) the motion picture industry has a profound impact on societal norms and is a powerful medium which exerts great influence on the values of youth; and

(5) the motion picture industry has recognized the need to inform parents about the content of movies regarding violence, theme, sex, language, and nudity; and therefore currently employs a voluntary rating system.

(b) It is the sense of the Senate that the Motion Picture Association of America should incorporate a subcategory in its voluntary movie rating system to identify clearly films which depict alcohol abuse and drug use in a benign or favorable light, and give a special rating to movies that so depict alcohol abuse and drug use, in order that parents can make an informed choice about the movies their children attend.

Subtitle C—Indians and Alaska Natives

SEC. 4201. SHORT TITLE.

This subtitle may be cited as the "Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986".

PART I—GENERAL PROVISIONS

SEC. 4202. FINDINGS.

The Congress finds and declares that—

(1) the Federal Government has a historical relationship and unique legal and moral responsibility to Indian tribes and their members,

(2) included in this responsibility is the treaty, statutory, and historical obligation to assist the Indian tribes in meeting the health and social needs of their members,

(3) alcoholism and alcohol and substance abuse is the most severe health and social problem facing Indian tribes and people today and nothing is more costly to Indian people than the consequences of alcohol and substance abuse measured in physical, mental, social, and economic terms,

(4) alcohol and substance abuse is the leading generic risk factor among Indians and Indians die from alcoholism at over 4 times the age-adjusted rates for the United States population and alcohol and substance misuse results in a rate of years of potential life lost nearly 5 times that of the United States,

(5) 4 of the top 10 causes of death among Indians are alcohol and drug related injuries (18 percent of all deaths), chronic liver disease and cirrhosis (5 percent), suicide (3 percent), and homicide (3 percent),

(6) primarily because deaths from unintentional injuries and violence occur disproportionately among young people, the age-specific death rate for Indians is approximately double the United States rate for the 15 to 45 age group,

(7) Indians between the ages of 15 and 24 years of age are more than 2 times as likely to commit suicide as the general population and approximately 80 percent of those suicides are alcohol-related,

(8) Indians between the ages of 15 and 24 years of age are twice as likely as the general population to die in automobile accidents, 75 percent of which are alcohol-related,

(9) the Indian Health Service, which is charged with treatment and rehabilitation efforts, has directed only 1 percent of its budget for alcohol and substance abuse problems,

(10) the Bureau of Indian Affairs, which has responsibility for programs in education, social services, law enforcement, and other areas, has assumed little responsibility for coordinating its various efforts to focus on the epidemic of alcohol and substance abuse among Indian people,

(11) this lack of emphasis and priority continues despite the fact that Bureau of Indian Affairs and Indian Health Service officials publicly acknowledge that alcohol and substance abuse among Indians is the most serious health and social problem facing the Indian people, and

(12) the Indian tribes have the primary responsibility for protecting and ensuring the well-being of their members and the resources made available under this subtitle will assist Indian tribes in meeting that responsibility.

SEC. 4203. PURPOSE.

It is the purpose of this subtitle to—

(1) authorize and develop a comprehensive, coordinated attack upon the illegal narcotics traffic in Indian country and the deleterious impact of alcohol and substance abuse upon Indian tribes and their members,

(2) provide needed direction and guidance to those Federal agencies responsible for Indian programs to identify and focus existing programs and resources, including those made available by this subtitle, upon this problem,

(3) provide authority and opportunities for Indian tribes to develop and implement a coordinated program for the prevention and treatment of alcohol and substance abuse at the local level, and

(4) to modify or supplement existing programs and authorities in the areas of education, family and social services, law enforcement and judicial services, and health services to further the purposes of this subtitle.

SEC. 4204. DEFINITIONS.

For purposes of this subtitle—

(1) The term "agency" means the local administrative entity of the Bureau of Indian Affairs serving one or more Indian tribes within a defined geographic area.

(2) The term "youth" shall have the meaning given it in any particular Tribal Action Plan adopted pursuant to section 4205, except that, for purposes of statistical reporting under this subtitle, it shall mean a person who is 19 years or younger or who is in attendance at a secondary school.

(3) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)) which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(4) The term "prevention and treatment" includes, as appropriate—

(A) efforts to identify, and the identification of, Indians who are at risk with respect to, or who are abusers of, alcohol or controlled substances,

(B) intervention into cases of on-going alcohol and substance abuse to halt a further progression of such abuse,

(C) prevention through education and the provision of alternative activities,

(D) treatment for alcohol and substance abusers to help abstain from, and alleviate the effects of, abuse,

(E) rehabilitation to provide on-going assistance, either on an inpatient or outpatient basis, to help Indians reform or abstain from alcohol or substance abuse,

(F) follow-up or after-care to provide the appropriate counseling and assistance on an outpatient basis, and

(G) referral to other sources of assistance or resources.

(5) The term "service unit" means an administrative entity within the Indian Health Service or a tribe or tribal organization operating health care programs or facilities with funds from the Indian Health Service under the Indian Self-Determination Act through which the services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.

PART II—COORDINATION OF RESOURCES AND PROGRAMS

SEC. 4205. INTER-DEPARTMENTAL MEMORANDUM OF AGREEMENT.

(a) In General.—The Secretary of the Interior and the Secretary of Health and Human Services shall develop and enter into a Memorandum of Agreement which shall, among other things—

(1) determine and define the scope of the problem of alcohol and substance abuse for Indian tribes and their members and its financial and human costs, and specifically identify such problems affecting Indian youth,

(2) identify—

(A) the resources and programs of the Bureau of Indian Affairs and Indian Health Service, and

(B) other Federal, tribal, State and local, and private resources and programs,

which would be relevant to a coordinated effort to combat alcohol and substance abuse among Indian people, including those programs and resources made available by this subtitle,

(3) develop and establish appropriate minimum standards for each agency's program responsibilities under the Memorandum of Agreement which may be—

(A) the existing Federal or State standards in effect, or

(B) in the absence of such standards, new standards which will be developed and established in consultation with Indian tribes,

(4) coordinate the Bureau of Indian Affairs and Indian Health Service alcohol and substance abuse programs existing on the date of the enactment of this subtitle with programs or efforts established by this subtitle,

(5) delineate the responsibilities of the Bureau of Indian Affairs and the Indian Health Service to coordinate alcohol and substance abuse-related services at the central, area, agency, and service unit levels,

(6) direct Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit directors to cooperate fully with tribal requests made pursuant to section 4206, and

(7) provide for an annual review of such agreements by the Secretary of the Interior and the Secretary of Health and Human Services.

(b) Character of Activities.—To the extent that there are new activities undertaken pursuant to this subtitle, those activities shall supplement, not supplant, activities, programs, and local actions that are ongoing on the date of the enactment of this subtitle. Such activities shall be undertaken in the manner least disruptive to tribal control, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), and local control, in accordance with section 1130 of the Education Amendments of 1978 (25 U.S.C. 2010).

(c) Consultation.—The Secretary of the Interior and the Secretary of Health and Human Services shall, in developing the Memorandum of Agreement under subsection (a), consult with and solicit the comments of—

(1) interested Indian tribes,

(2) Indian individuals,

(3) Indian organizations, and

(4) professionals in the treatment of alcohol and substance abuse.

(d) Publication.—The Memorandum of Agreement under subsection (a) shall be submitted to Congress and published in the Federal Register not later than 90 days after the date of enactment of this subtitle. At the same time as publication in the Federal Register, the Secretary of the Interior shall provide a copy of this subtitle and the Memorandum of Agreement under subsection (a) to each Indian tribe.

SEC. 4206. TRIBAL ACTION PLANS.

(a) In General.—The governing body of any Indian tribe may, at its discretion, adopt a resolution for the establishment of a Tribal Action Plan to coordinate available resources and programs, including programs and resources made available by this subtitle, in an effort to combat alcohol and substance abuse among its members. Such reso-

lution shall be the basis for the implementation of this subtitle and of the Memorandum of Agreement under section 4205.

(b) COOPERATION.—At the request of any Indian tribe pursuant to a resolution adopted under subsection (a), the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director providing services to such tribe shall cooperate with the tribe in the development of a Tribal Action Plan to coordinate resources and programs relevant to alcohol and substance abuse prevention and treatment. Upon the development of such a plan, such superintendents and director, as directed by the Memorandum of Agreement established under section 4205, shall enter into an agreement with the tribe for the implementation of the Tribal Action Plan under subsection (a).

(c) PROVISIONS.—

(1) Any Tribal Action Plan entered into under subsection (b) shall provide for—

(A) the establishment of a Tribal Coordinating Committee which shall—

(i) at a minimum, have as members a tribal representative who shall serve as Chairman and the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director, or their representatives,

(ii) have primary responsibility for the implementation of the Tribal Action Plan,

(iii) have the responsibility for on-going review and evaluation of, and the making of recommendations to the tribe relating to, the Tribal Action Plan, and

(iv) have the responsibility for scheduling Federal, tribal or other personnel for training in the prevention and treatment of alcohol and substance abuse among Indians as provided under section 4228, and

(B) the incorporation of the minimum standards for those programs and services which it encompasses which shall be—

(i) the Federal or State standards as provided in section 4205(a)(3), or

(ii) applicable tribal standards, if such standards are no less stringent than the Federal or State standards.

(2) Any Tribal Action Plan may, among other things, provide for—

(A) an assessment of the scope of the problem of alcohol and substance abuse for the Indian tribe which adopted the resolution for the Plan,

(B) the identification and coordination of available resources and programs relevant to a program of alcohol and substance abuse prevention and treatment,

(C) the establishment and prioritization of goals and the efforts needed to meet those goals, and

(D) the identification of the community and family roles in any of the efforts undertaken as part of the Tribal Action Plan.

(d) GRANTS.—The Secretary of the Interior may make grants to Indian tribes adopting a resolution pursuant to subsection (a) to provide technical assistance in the development of a Tribal Action Plan. The Secretary shall allocate funds based on need. There is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989 for grants under this subsection.

(e) FEDERAL ACTION.—If any Indian tribe does not adopt a resolution as provided in subsection (a) within 90 days after the publication of the Memorandum of Agreement in the Federal Register as provided in section 4205, the Secretary of the Interior and the Secretary of Health and Human Services shall require the Bureau of Indian Affairs agency and education superintendents, where appropriate, and the Indian Health Service service unit director serving such tribe to enter into an agreement to identify and coordinate available programs and resources to carry out the purposes of this subtitle for such tribe. After such an agreement has been entered into for a tribe such tribe may adopt a resolution under subsection (a).

SEC. 4207. DEPARTMENTAL RESPONSIBILITY.

(a) IMPLEMENTATION.—The Secretary of the Interior, acting through the Bureau of Indian Affairs, and the Secretary of Health and Human Services, acting through the Indian Health Service, shall bear equal responsibility for the implementation of this subtitle in cooperation with Indian tribes.

(b) OFFICE OF ALCOHOL AND SUBSTANCE ABUSE.—

(1) In order to better coordinate the various programs of the Bureau of Indian Affairs in carrying out this subtitle, there is established within the Office of the Assistant Secretary of Indian Affairs an Office of Alcohol and Substance Abuse. The director of such office shall be appointed by the Assistant Secretary on a permanent basis at no less than a grade GS-15 of the General Schedule.

(2) In addition to other responsibilities which may be assigned to such Office, it shall be responsible for—

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of this subtitle and the Memorandum of Agreement entered into under section 4205, and

(B) serving as a point of contact within the Bureau of Indian Affairs for Indian tribes and the Tribal Coordinating Committees regarding the implementation of this subtitle, the Memorandum of Agreement, and any Tribal Action Plan established under section 4206.

(c) INDIAN YOUTH PROGRAMS OFFICER.—

(1) There is established in the Office of Alcohol and Substance Abuse the position to be known as the Indian Youth Programs Officer.

(2) The position of Indian Youth Programs Officer shall be established on a permanent basis at no less than the grade of GS-14 of the General Schedule.

(3) In addition to other responsibilities which may be assigned to the Indian Youth Programs Officer relating to Indian youth, such Officer shall be responsible for—

(A) monitoring the performance and compliance of programs of the Bureau of Indian Affairs in meeting the goals and purposes of this subtitle and the Memorandum of Agreement entered into under section 4205 as they relate to Indian youth efforts, and

(B) providing advice and recommendations, including recommendations submitted by Indian tribes and Tribal Coordinating Committees, to the Director of the Office of Alcohol and Substance Abuse as they relate to Indian youth.

SEC. 4208. CONGRESSIONAL INTENT.

It is the intent of Congress that—

(1) specific Federal laws, and administrative regulations promulgated thereunder, establishing programs of the Bureau of Indian Affairs, the Indian Health Service, and other Federal agencies, and

(2) general Federal laws, including laws limiting augmentation of Federal appropriations or encouraging joint or cooperative funding,

shall be liberally construed and administered to achieve the purposes of this subtitle.

SEC. 4209. FEDERAL FACILITIES, PROPERTY, AND EQUIPMENT.

(a) FACILITY AVAILABILITY.—In the furtherance of the purposes and goals of this subtitle, the Secretary of the Interior and the Secretary of Health and Human Services shall make available for community use, to the extent permitted by law and as may be provided in a Tribal Action Plan, local Federal facilities, property, and equipment, including school facilities. Such facility availability shall include school facilities under the Secretary of the Interior's jurisdiction: Provided, That the use of any school facilities shall be conditioned upon approval of the local school board with jurisdiction over such school.

(b) COSTS.—Any additional cost associated with the use of Federal facilities, property, or equipment under subsection (a) may be borne by the Secretary of the Interior and the Secretary of Health and Human Services out of available Federal, tribal, State, local, or private funds, if not otherwise prohibited by law. This subsection does not require the Secretary of the Interior nor the Secretary of Health and Human Services to expend additional funds to meet the additional costs which may be associated with the provision of such facilities, property, or equipment for community use. Where the use of Federal facilities, property, or equipment under subsection (a) furthers the purposes and goals of this subtitle, the use of funds other than those funds appropriated to the Department of the Interior or the Department of Health and Human Services to meet the additional costs associated with such use shall not constitute an augmentation of Federal appropriations.

SEC. 4210. NEWSLETTER.

The Secretary of the Interior shall, not later than 120 days after the date of the enactment of this subtitle, publish an alcohol and substance abuse newsletter in cooperation with the Secretary of Health and Human Services and the Secretary of Education to report on Indian alcohol and substance abuse projects and programs. The newsletter shall—

(1) be published once in each calendar quarter,

(2) include reviews of programs determined by the Secretary of the Interior to be exemplary and provide sufficient information to enable interested persons to obtain further information about such programs, and

(3) be circulated without charge to—

(A) schools,

(B) tribal offices,

(C) Bureau of Indian Affairs' agency and area offices,

(D) Indian Health Service area and service unit offices,

(E) Indian Health Service alcohol programs, and

(F) other entities providing alcohol and substance abuse related services or resources to Indian people.

PART III—INDIAN YOUTH PROGRAMS

SEC. 4211. REVIEW OF PROGRAMS.

(a) REVIEW.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Secretary of Education shall review and consider—

(1) Federal programs providing education services or benefits to Indian children,

(2) tribal, State, local, and private educational resources and programs,

(3) Federal programs providing family and social services and benefits for Indian families and children,

(4) Federal programs relating to youth employment, recreation, cultural, and community activities, and

(5) tribal, State, local, and private resources for programs similar to those cited in paragraphs (3) and (4),

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) Publication.—The results of the review conducted under subsection (a) shall be provided to each Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan under section 4206.

SEC. 4212. INDIAN EDUCATION PROGRAMS.

(a) Pilot Programs.—The Assistant Secretary of Indian Affairs shall develop and implement pilot programs in selected schools to determine the effectiveness of summer youth programs in furthering the purposes and goals of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986. For the pilot programs there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989.

(b) Use of Funds.—Federal financial assistance made available to public or private schools because of the enrollment of Indian children pursuant to—

(1) the Act of April 16, 1934, as amended by the Indian Education Assistance Act (25 U.S.C. 452 et seq.),

(2) the Indian Elementary and Secondary School Assistance Act (20 U.S.C. 241aa et seq.), and

(3) the Indian Education Act (20 U.S.C. 3385),

may be used to support a program of instruction relating to alcohol and substance abuse prevention and treatment.

SEC. 4213. EMERGENCY SHELTERS.

(a) In General.—A Tribal Action Plan adopted pursuant to section 4206 may make such provisions as may be necessary and practical for the establishment, funding, licensing, and operation of emergency shelters or half-way houses for Indian youth who are alcohol or substance abusers, including youth who have been arrested for offenses directly or indirectly related to alcohol or substance abuse.

(b) Referrals.—

(1) In any case where an Indian youth is arrested or detained by the Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to alcohol or substance abuse, other than for a status offense as defined by the Juvenile Justice and Delinquency Prevention Act of 1974, under circumstances where such youth may not be immediately restored to the custody of his parents or guardians and where there is space available in an appropriately licensed and supervised emergency shelter or half-way house, such youth shall be referred to such facility in lieu of incarceration in a secured facility unless such youth is deemed a danger to himself or to other persons.

(2) In any case where there is a space available in an appropriately licensed and supervised emergency shelter or half-way house, the Bureau of Indian Affairs and tribal courts are encouraged to refer Indian youth convicted of offenses directly or indirectly related to alcohol and substance abuse to such facilities in lieu of sentencing to incarceration in a secured juvenile facility.

(c) Direction to States.—In the case of any State that exercises criminal jurisdiction over any part of Indian country under section 1162 of title 18 of the United States Code or section 401 of the Act of April 11, 1968 (25 U.S.C. 1321), such State is urged to require its law enforcement officers to—

(1) place any Indian youth arrested for any offense related to alcohol or substance abuse in a temporary emergency shelter described in subsection (d) or a community-based alcohol or substance abuse treatment facility in lieu of incarceration to the extent such facilities are available, and

(2) observe the standards promulgated under subsection (d).

(d) Standards.—The Assistant Secretary of Indian Affairs shall, as part of the development of the Memorandum of Agreement set out in section 4205, promulgate standards by which the emergency shelters established under a program pursuant to subsection (a) shall be established and operated.

(e) Authorization.—For the planning and design, construction, and renovation, of emergency shelters or half-way houses to provide emergency care for Indian youth, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1987, 1988, and 1989. For the operation of emergency shelters or half-way houses there is authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, and 1989. The Secretary of the Interior shall allocate funds appropriated pursuant to this subsection on the basis of priority of need of the various Indian tribes and such funds, when allocated, shall be subject to contracting pursuant to the Indian Self-Determination Act.

SEC. 4214. SOCIAL SERVICES REPORTS.

(a) Data.—The Secretary of the Interior, with respect to the administration of any family or social services program by the Bureau of Indian Affairs directly or through contracts under the Indian Self-Determination Act, shall require the compilation of data relating to the number and types of child abuse and neglect cases seen and the type of assistance provided. Additionally, such data should also be categorized to reflect those cases that involve, or appear to involve, alcohol and substance abuse, those cases which are recurring, and those cases which involve other minor siblings.

(b) Referral of Data.—The data compiled pursuant to subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan and shall also be submitted to the Indian Health Service service unit director who will have responsibility for compiling a tribal comprehensive report as provided in section 4230.

(c) Confidentiality.—In carrying out the requirements of subsections (a) and (b), the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals.

PART IV—LAW ENFORCEMENT AND JUDICIAL SERVICES

SEC. 4215. REVIEW OF PROGRAMS.

(a) Law Enforcement and Judicial Services.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services, in cooperation with the Attorney General of the United States, shall review and consider—

(1) the various programs established by Federal law providing law enforcement or judicial services for Indian tribes, and

(2) tribal and State and local law enforcement and judicial programs and systems to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) Dissemination of Review.—The results of the review conducted pursuant to subsection (a) shall be made available to every Indian tribe as soon as possible for their consideration and use in the development and modification of a Tribal Action Plan.

SEC. 4216. ILLEGAL NARCOTICS TRAFFIC ON THE PAPAGO RESERVATION.

(a) Investigation and Control.—The Secretary of the Interior shall provide assistance to the Papago Indian Tribe (Tohono O'odham) of Arizona for the investigation and control of illegal narcotics traffic on the Papago Reservation along the border with Mexico. The Secretary shall ensure that tribal efforts are coordinated with appropriate Federal law enforcement agencies, including the United States Customs Service.

(b) Authorizations.—For the purpose of providing the assistance required by subsection (a), there is authorized to be appropriated $500,000 for each of the fiscal years 1987, 1988, and 1989.

PART V—BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT

SEC. 4217. TRIBAL COURTS, SENTENCING AND FINES.

To enhance the ability of tribal governments to prevent and penalize the traffic of illegal narcotics on Indian reservations, paragraph (7) of section 202 of the Act of April 11, 1969 (25 U.S.C. 1302) is amended by striking out "for a term of six months and a fine of $500, or both" and inserting in lieu thereof "for a term of one year and a fine of $5,000, or both".

SEC. 4218. LAW ENFORCEMENT SERVICES.

(a) For the purpose of maintaining law and order and of protecting persons and property within Indian country as defined in section 1151 of title 18, United States Code, the Secretary of the Interior (hereinafter referred to as the "Secretary") may charge any officer or employee of the Department of the Interior with law enforcement responsibilities and authorize such officer or employee to exercise such of the following authorities as the Secretary may deem appropriate:

(1) Carry firearms within Indian country and while transporting prisoners or on other official duties outside Indian country.

(2) Secure and execute or serve within Indian country any order, warrant, subpoena, or other process which is issued under the authority of the United States or of an Indian tribe.

(3) Make an arrest without a warrant—

(A) for any offense committed within Indian country against the United States committed in the presence of the officer or employee;

(B) for any offense committed within Indian country against the United States constituting a felony if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; or

(C) for any offense committed within Indian country against an Indian tribe that has commissioned the officer or employee to enforce its laws if the officer or employee has reasonable grounds to believe that the person to be arrested is committing the offense in the officer's or employee's presence or view.

(4) Offer and pay a reward for services or information assisting in the detection or in-

vestigation of the commission of an offense committed within Indian country or in the apprehension of an offender.

(5) Make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is material or relevant to the enforcement within Indian country of the laws of the United States or of any Indian tribe that has commissioned the officer to enforce its laws.

(6) Perform any other law enforcement duty that the Secretary may designate.

(7) Upon request, assist (with or without reimbursement) any Federal, tribal, State, or local law enforcement agency in the enforcement of the laws, ordinances, or regulations which they administer or enforce, but no Indian tribe, State, or political subdivision shall be deprived, by this section or by any such request, of any civil or criminal jurisdiction it may have.

(b)(1) The Secretary may utilize by agreements, with or without reimbursement, the personnel services and facilities of any Federal, tribal, State, or local government agency to the extent he deems is necessary and appropriate for effective enforcement of any Federal or tribal laws or regulations in Indian country. The Secretary may commission law enforcement personnel of such agencies to exercise such of the authorities set out in subsection (a) of this section as the Secretary deems appropriate. Appropriate representatives of Federal agencies are hereby authorized to enter into and carry out such agreements with the Secretary or with duly authorized tribal officials.

(2) While acting in the capacity of a person commissioned by the Secretary pursuant to this section, any person who is not otherwise a Federal employee, shall be deemed a Federal employee for purposes of—

(A) section 3374(c)(2) of title 5, United States Code, and

(B) sections 111 and 1114 of title 18, United States Code.

(3) For purposes of subchapter III of chapter 81 of title 5, United States Code, an employee of a tribal, State, or local governmental agency shall be considered an eligible officer while acting in the capacity of an officer commissioned pursuant to this subsection.

(4) An agreement under this subsection for the enforcement of Federal laws shall be in accordance with an agreement entered into between the Secretary and the Attorney General of the United States.

(c) After consultation with the Attorney General of the United States, the Secretary of the Interior may make and publish such rules and regulations as the Secretary deems necessary or proper for officers or employees of the Department of the Interior charged with law enforcement responsibilities and for employees of any Federal, tribal, State, or local governmental agency whose services are being utilized pursuant to subsection (b).

(d)(1) Nothing in this section shall be construed to invalidate any delegations of authority or law enforcement commissions issued by the Secretary, or the Secretary's designates, prior to the date of enactment of this Act.

(2) The authorities provided by this section are in addition to, and not in derogation of, any existing authorities. Nothing in this section shall be construed to alter in any way the law enforcement, or investigative, or judicial authorities of any Indian tribe, State, or political subdivision thereof, or of any department, agency, court, or official of the United States other than the Department of the Interior and agencies or officials thereof.

(e) Notwithstanding section 5901(a) of title 5, United States Code, the uniform allowance for Bureau of Indian Affairs law enforcement officers shall not exceed $400 annually.

SEC. 4219. BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT AND JUDICIAL TRAINING.

(a) In General.—The Secretary of the Interior shall ensure, through the establishment of a new training program or through the supplement of existing training programs, that all Bureau of Indian Affairs and tribal law enforcement and judicial personnel shall have available training in the investigation and prosecution of offenses relating to illegal narcotics and in alcohol and substance abuse prevention and treatment. Any training provided to Bureau of Indian Affairs and tribal law enforcement and judicial personnel as provided in subsection (a) shall specifically include training in the problems of youth alcohol and substance abuse prevention and treatment. Such training shall be coordinated with the Indian Health Service in the carrying out of its responsibilities under section 787.

(b) Authorization.—For the purpose of providing the training required by subsection (a), there are authorized to be appropriated $3,000,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4220. MEDICAL ASSESSMENT AND TREATMENT OF JUVENILE OFFENDERS.

The Memorandum of Agreement entered into pursuant to section 4205 shall include a specific provision for the development and implementation at each Bureau of Indian Affairs agency and Indian Health Service unit of a procedure for the emergency medical assessment and treatment of every Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for an offense relating to or involving alcohol or substance abuse. The medical assessment required by this subsection—

(1) shall be conducted to determine the mental or physical state of the individual assessed so that appropriate steps can be taken to protect the individual's health and well-being,

(2) shall occur as soon as possible after the arrest or detention of an Indian youth, and

(3) shall be provided by the Indian Health Service, either through its direct or contract health service.

SEC. 4221. JUVENILE DETENTION CENTERS.

(a) Plan.—The Secretary of the Interior shall construct and renovate juvenile detention centers and shall ensure that the construction of the centers is consistent with the Juvenile Justice and Delinquency Prevention Act of 1974.

(b) Authorization.—For the purpose of subsection (a), there are authorized to be appropriated $10,000,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4222. MODEL INDIAN JUVENILE CODE.

The Secretary of the Interior, either directly or by contract, shall provide for the development of a Model Indian Juvenile Code which shall be consistent with the Juvenile Justice and Delinquency Prevention Act of 1974 and which shall include provisions relating to the disposition of cases involving Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for alcohol or drug related offenses. The development of such model code shall be accomplished in cooperation with Indian organizations having an expertise or knowledge in the field of law enforcement and judicial procedure and in consultation with Indian tribes. Upon completion of the Model Code, the Secretary shall make copies available to each Indian tribe.

SEC. 4223. LAW ENFORCEMENT AND JUDICIAL REPORT.

(a) Compilation of Law Enforcement Data.—The Secretary of the Interior, with respect to the administration of any law enforcement or judicial services program by the Bureau of Indian Affairs, either directly or through contracts under the Indian Self-Determination Act, shall require the compilation of data relating to calls and encounters, arrests and detentions, and disposition of cases by Bureau of Indian Affairs or tribal law enforcement or judicial personnel involving Indians where it is determined that alcohol or substance abuse is a contributing factor.

(b) Referral of Data.—The data compiled pursuant to subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan and shall also be submitted to the Indian Health Service unit director who will have the responsibility for compiling a tribal comprehensive report as provided in section 4230.

(c) Confidentiality.—In carrying out this section, the Secretary shall insure that the data is compiled and reported in a manner which will preserve the confidentiality of the families and individuals involved.

PART VI—INDIAN ALCOHOL AND SUBSTANCE ABUSE TREATMENT AND REHABILITATION

SEC. 4224. REVIEW OF PROGRAMS.

(a) In General.—In the development of the Memorandum of Agreement required by section 4205, the Secretary of the Interior and the Secretary of Health and Human Services shall review and consider—

(1) the various programs established by Federal law providing health services and benefits to Indian tribes, including those relating to mental health and alcohol and substance abuse prevention and treatment, and

(2) tribal, State and local, and private health resources and programs,

(3) where facilities to provide such treatment are or should be located, and

(4) the effectiveness of public and private alcohol and substance abuse treatment programs in operation on the date of the enactment of this subtitle,

to determine their applicability and relevance in carrying out the purposes of this subtitle.

(b) Dissemination.—The results of the review conducted under subsection (a) shall be provided to every Indian tribe as soon as possible for their consideration and use in the development or modification of a Tribal Action Plan.

SEC. 4225. INDIAN HEALTH SERVICE RESPONSIBILITIES.

The Memorandum of Agreement entered into pursuant to section 4205 shall include specific provisions pursuant to which the Indian Health Service shall assume responsibility for—

(1) the determination for the scope of the problem of alcohol and substance abuse among Indian people, including the number of Indians within the jurisdiction of the Indian Health Service who are directly or indirectly affected by alcohol and substance abuse and the financial and human cost,

(2) an assessment of the existing and needed resources necessary for the preven-

tion of alcohol and substance abuse and the treatment of Indians affected by alcohol and substance abuse, and

(3) an estimate of the funding necessary to adequately support a program of prevention of alcohol and substance abuse and treatment of Indians affected by alcohol and substance abuse.

SEC. 4226. INDIAN HEALTH SERVICE PROGRAM.

The Secretary of Health and Human Services, acting through the Indian Health Service, shall provide a program of comprehensive alcohol and substance abuse prevention and treatment which shall include—

(1) prevention, through educational intervention, in Indian communities,

(2) acute detoxification and treatment,

(3) community-based rehabilitation, and

(4) community education and involvement, including extensive training of health care, educational, and community-based personnel.

The target population of such a program shall be the members of Indian tribes. Additionally, efforts to train and educate key members of the Indian community shall target employees of health, education, judicial, law enforcement, legal, and social service programs.

SEC. 4227. INDIAN HEALTH SERVICE YOUTH PROGRAM.

(a) Detoxification and Rehabilitation.—The Secretary shall develop and implement a program for acute detoxification and treatment for Indian youth who are alcohol and substance abusers. The program shall include regional treatment centers designed to include detoxification and rehabilitation for both sexes on a referral basis. These regional centers shall be integrated with the intake and rehabilitation programs based in the referring Indian community.

(b) Centers.—The Secretary shall construct or renovate a youth regional treatment center in each area under the jurisdiction of an Indian Health Service area office. For purposes of the preceding sentence, the area offices of the Indian Health Service in Tucson and Phoenix, Arizona, shall be considered one area office. The regional treatment centers shall be appropriately staffed with health professionals. There are authorized to be appropriated $6,000,000 for the construction and renovation of the regional youth treatment centers, and $3,000,000 for the staffing of such centers, for each of the fiscal years 1987, 1988, and 1989.

(c) Federally Owned Structures.—

(1) The Secretary of Health and Human Services, acting through the Indian Health Service, shall, in consultation with Indian tribes—

(A) identify and use, where appropriate, federally owned structures, suitable as local residential or regional alcohol and substance abuse treatment centers for Indian youth, and

(B) establish guidelines for determining the suitability of any such federally owned structure to be used as a local residential or regional alcohol and substance abuse treatment center for Indian youth.

(2) Any structure described in paragraph (1) may be used under such terms and conditions as may be agreed upon by the Secretary of Health and Human Services and the agency having responsibility for the structure.

(3) There are authorized to be appropriated $3,000,000 for each of the fiscal years 1987, 1988, and 1989.

(d) Rehabilitation and Follow-Up Services.—

(1) The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each Indian Health Service service unit community-based rehabilitation and follow-up services for Indian youth who are alcohol or substance abusers which are designed to integrate long-term treatment and to monitor and support the Indian youth after their return to their home community.

(2) Services under paragraph (1) shall be administered within each service unit by trained staff within the community who can assist the Indian youth in continuing development of self-image, positive problem-solving skills, and nonalcohol or substance abusing behaviors. Such staff shall include alcohol and substance abuse counselors, mental health professionals, and other health professionals and paraprofessionals, including community health representatives.

(3) For the purpose of providing the services authorized by paragraph (1), there are authorized to be appropriated $9,000,000 for each of the fiscal years 1987, 1988, and 1989.

SEC. 4228. TRAINING AND COMMUNITY EDUCATION.

(a) Community Education.—The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement within each service unit a program of community education and involvement which shall be designed to provide concise and timely information to the community leadership of each tribal community. Such program shall include education in alcohol and substance abuse to the critical core of each tribal community, including political leaders, tribal judges, law enforcement personnel, members of tribal health and education boards, and other critical parties.

(b) Training.—The Secretary of Health and Human Services shall, either directly or through contract, provide instruction in the area of alcohol and substance abuse, including instruction in crisis intervention and family relations in the context of alcohol and substance abuse, youth alcohol and substance abuse, and the causes and effects of fetal alcohol syndrome to appropriate employees of the Bureau of Indian Affairs and the Indian Health Service, and personnel in schools or programs operated under any contract with the Bureau of Indian Affairs or the Indian Health Services, including supervisors of emergency shelters and half-way houses described in section 4213.

(c)(1) Demonstration Program.—The Secretary of Health and Human Services shall establish at least one demonstration project to determine the most effective and cost-efficient means of—

(A) providing health promotion and disease prevention services,

(B) encouraging Indians to adopt good health habits,

(C) reducing health risks to Indians, particularly the risks of heart disease, cancer, stroke, diabetes, anxiety, depression, and lifestyle-related accidents,

(D) reducing medical expenses of Indians through health promotion and disease prevention activities,

(E) establishing a program—

(i) which trains Indians in the provision of health promotion and disease prevention services to members of their tribe, and

(ii) under which such Indians are available on a contract basis to provide such services to other tribes, and

(F) providing training and continuing education to employees of the Service, and to paraprofessionals participating in the Community Health Representative Program, in the delivery of health promotion and disease prevention services.

(2) The demonstration project described in paragraph (1) shall include an analysis of the cost effectiveness of organizational structures and of social and educational programs that may be useful in achieving the objectives described in paragraph (1).

(3)(A) The demonstration project described in paragraph (1) shall be conducted in association with at least one—

(i) health profession school,

(ii) allied health profession or nurse training institution, or

(iii) public or private entity that provides health care.

(B) The Secretary is authorized to enter into contracts with, or make grants to, any school of medicine or school of osteopathy for the purpose of carrying out the demonstration project described in paragraph (1).

(C) For purposes of this paragraph, the term "school of medicine" and "school of osteopathy" have the respective meaning given to such terms by section 701(4) of the Public Health Service Act (42 U.S.C. 292a(4)).

(4) The Secretary shall submit to Congress a final report on the demonstration project described in paragraph (1) within 60 days after the termination of such project.

(5) For purposes of this paragraph, the term "health promotion" shall include:

(A) reduction in the misuse of alcohol and drugs,

(B) cessation of tobacco smoking,

(C) improvement of nutrition,

(D) improvement in physical fitness,

(E) family planning, and

(F) control of stress.

(6) For purposes of this paragraph, the term "disease prevention" shall include:

(A) immunizations,

(B) control of high blood pressure,

(C) control of sexually transmittable diseases,

(D) prevention and control of diabetes,

(E) pregnancy and infant care (including prevention of fetal alcohol syndrome),

(F) control of toxic agents,

(G) occupational safety and health,

(H) accident prevention,

(I) fluoridation of water, and

(J) control of infectious agents.

(d) Authorization.—There are authorized to be appropriated $4,000,000 for the fiscal year 1987 and such sums as are necessary to carry out the purposes of this section for the fiscal years 1988 and 1989: Provided, That $500,000 shall be made available for activities described under section 4228(c)(1).

SEC. 4229. NAVAJO ALCOHOL REHABILITATION DEMONSTRATION PROGRAM.

(a) Demonstration Program.—The Secretary of Health and Human Services shall make grants to the Navajo tribe to establish a demonstration program in the city of Gallup, New Mexico, to rehabilitate adult Navajo Indians suffering from alcoholism or alcohol abuse.

(b) Evaluation and Report.—The Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, shall evaluate the program established under subsection (a) and submit a report on such evaluation to the appropriate Committees of Congress by January 1, 1990.

(c) Authorization.—There are authorized to be appropriated for the purposes of grants under subsection (a) $200,000 for each of the fiscal years 1988, 1989, and 1990. Not more than 10 percent of the funds appropriated for any fiscal year may be used for administrative purposes.

SEC. 4230. INDIAN HEALTH SERVICE REPORTS.

(a) COMPILATION OF DATA.—The Secretary of Health and Human Services, with respect to the administration of any health program by an Indian Health Service service unit, directly or through contract, including a contract under the Indian Self-Determination Act, shall require the compilation of data relating to the number of cases or incidents which any of the Indian Health Service personnel or services were involved and which were related, either directly or indirectly, to alcohol or substance abuse. Such report shall include the type of assistance provided and the disposition of these cases.

(b) REFERRAL OF DATA.—The data compiled under subsection (a) shall be provided annually to the affected Indian tribe and Tribal Coordinating Committee to assist them in developing or modifying a Tribal Action Plan.

(c) COMPREHENSIVE REPORT.—Each Indian Health Service service unit director shall be responsible for assembling the data compiled under this section and section 4204 into an annual tribal comprehensive report which shall be provided to the affected tribe and to the Director of the Indian Health Service who shall develop and publish a biennial national report on such tribal comprehensive reports.

Subtitle D—Action Grants

SEC. 4301. ACTION GRANTS.

The Domestic Volunteer Service Act of 1973 is amended—

(1) in title I by adding after section 123 the following new section:

"SPECIAL INITIATIVES

"SEC. 124. The Director is authorized to engage in activities that mobilize and initiate private sector efforts to increase voluntarism in preventing drug abuse through public awareness and education (such as, but not limited to, grants, contracts, conferences, public service announcements, speakers bureau, public-private partnerships and technical assistance to nonprofit and for-profit organizations). In fulfilling the authority of this section, the Director is authorized to (1) coordinate the agency efforts with the White House and other Federal agencies, and (2) accept in the name of the ACTION agency funds received through solicitation of profit and nonprofit entities.";

(2) by amending subsection (c) of section 501 to read as follows:

"(c) There is to be authorized to be appropriated to carry out programs under part C of title I of this Act $4,484,000 for the fiscal year 1987 (of which $2,500,000 shall be available for drug abuse prevention), $1,984,000 for fiscal year 1988, and $1,984,000 for fiscal year 1989."; and

(3) by amending section 504 to read as follows:

"ADMINISTRATION AND COORDINATION

"SEC. 504. There is authorized to be appropriated for the Administration of this Act, as authorized in title IV of this Act, $25,812,000 for fiscal year 1987 (of which $500,000 shall be available for support of drug abuse prevention), $25,312,000 for fiscal year 1988, and $25,312,000 for fiscal year 1989.".

SEC. 4302. INFANT FORMULA.

Section 412 of the Federal Food, Drug, and Cosmetic Act is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively;

(2) by striking out the last sentence of paragraph (1) of subsection (f) (as redesignated by clause (1) of this section) and inserting in lieu thereof the following new sentence: "Such records shall be retained for at least one year after the expiration of the shelf life of the infant formula.";

(3) by striking out "(a) and (b)" in the first sentence of subsection (g)(1) (as redesignated by clause (1) of this section) and insert in lieu thereof "(a), (b), and (c)";

(4) by striking out "(c)(1)" in the second sentence of such subsection and inserting in lieu thereof "(d)(1)";

(5) by striking out "(c)(1)(B)" in such sentence and inserting in lieu thereof "(d)(1)(B)";

(6) by striking out "(a) and (b)" in subsection (g)(2) (as redesignated by clause (1) of this section) and inserting in lieu thereof "(a), (b), and (c)";

(7) by striking out "subsection (a)(2)" in subsection (h) (as redesignated by clause (1) of this section) and inserting in lieu thereof "subsection (a)(3)"; and

(8) by striking out subsections (a) through (d) and inserting in lieu thereof the following:

"(a)(1) An infant formula, including an infant formula powder, shall be deemed to be adulterated if—

"(A) such infant formula does not provide nutrients as required by subsection (h);

"(B) such infant formula does not meet the quality factor requirements prescribed by the Secretary under this section; or

"(C) the processing of such infant formula is not in compliance with the good manufacturing practices and the quality control procedures prescribed by the Secretary under this section.

"(2)(A) The Secretary shall by regulation establish requirements for quality factors for infant formulas to the extent possible consistent with current scientific knowledge, including quality factor requirements for the nutrients required by subsection (h).

"(B) The Secretary shall by regulation establish—

"(i) good manufacturing practices for infant formulas, including quality control procedures; and

"(ii) requirements respecting the retention of records,

that the Secretary determines are necessary to assure that an infant formula provides nutrients in accordance with this section and is manufactured in a manner designed to prevent the infant formula from being adulterated because such infant formula contains any poisonous or deleterious substance which may render such infant formula injurious to health, except that in the case of any substance which is not an added substance, an infant formula shall not be considered adulterated for purposes of this clause if the quantity of such substance in such infant formula does not render such infant formula injurious to health.

"(C) The good manufacturing practices and quality control procedures prescribed by the Secretary under subparagraph (B)(i) shall include requirements for—

"(i) the testing, by the manufacturer of an infant formula or an agent of such manufacturer, of each batch of infant formula for each nutrient required pursuant to subsection (h) prior to the distribution of such batch in accordance with the provisions of subparagraph (D);

"(ii) regularly scheduled testing, by the manufacturer of an infant formula or an agent of such manufacturer, of samples of infant formulas during the shelf life of such formulas in order to ensure that such formulas are in compliance with this section;

"(iii) in-process controls including, where necessary, testing required by good manufacturing practices designed to prevent adulteration of each batch of infant formula by any poisonous or deleterious substance which may render such infant formula injurious to health, except that in the case of any substance which is not an added substance, an infant formula shall not be considered adulterated for purposes of this clause if the quantity of such substance in such infant formula does not render such infant formula injurious to health; and

"(iv) the conduct by the manufacturer of an infant formula of regularly scheduled audits to determine that such manufacturer has complied with the regulations prescribed under subparagraph (B)(i).

"(D)(i) At the final product stage, each batch of infant formula shall be tested for Vitamin A, Vitamin B1, Vitamin C, and Vitamin E to ensure that such infant formula is in compliance with the requirements of this section relating to such vitamins.

"(ii) Each nutrient premix used in the manufacture of an infant formula shall be tested for each relied upon nutrient required pursuant to this section contained in such premix to ensure that such premix is in compliance with its specifications or certifications by a premix supplier.

"(iii) During the manufacturing process or at the final product stage and before distribution of an infant formula, an infant formula shall be tested for all nutrients required to be included in such formula pursuant to subsection (h) for which testing has not been conducted pursuant to clause (i) or (ii). Testing under the preceding sentence shall be conducted in order to—

"(I) ensure that each batch of such infant formula is in compliance with the requirements of this section relating to such nutrients; and

"(II) confirm that nutrients contained in any nutrient premix used in such infant formula are present in each batch of such infant formula in the proper concentration.

"(iv) For purposes of this section, the term 'final product stage' means the point in the manufacturing process, before distribution of an infant formula, at which an infant formula is homogenous and is not subject to further degradation.

"(E) The record retention requirements prescribed by the Secretary under clause (ii) of subparagraph (B) shall include requirements for—

"(i) the retention of all records necessary to demonstrate compliance with the good manufacturing practices and quality control procedures prescribed by the Secretary under clause (i) of such subparagraph, including records containing the results of all testing required under subparagraph (C);

"(ii) the retention of all certifications or guarantees of analysis by premix suppliers;

"(iii) the retention by a premix supplier of all records necessary to confirm the accuracy of all premix certifications and guarantees of analysis;

"(iv) the retention of—

"(I) all records pertaining to the microbiological quality and purity of raw materials used in infant formula powder and in finished infant formula; and

"(II) all records pertaining to food packaging materials which show that such materials do not cause an infant formula to be adulterated within the meaning of section 402(a)(2)(C);

"(v) the retention of all records of the results of regularly scheduled audits conducted pursuant to the requirements prescribed by the Secretary under subparagraph (C)(iv); and *"(vi) the retention of all complaints and the maintenance of files with respect to, and the review of, complaints concerning infant formulas.*

"(F)(i) Records required under subparagraphs (B)(ii) and (E) with respect to an infant formula shall be retained for at least one year after the expiration of the shelf life of such infant formula. Except as provided in clause (ii) of this subparagraph, such records shall be made available to the Secretary for review and duplication upon request of the Secretary, including records and files maintained under clauses (i) through (v) of subparagraph (E) which may reveal the possible existence of a hazard to health.

"(ii) A manufacturer need only provide written assurances to the Secretary that the regularly scheduled audits required by subparagraph (C)(iv) are being conducted by the manufacturer, and need not make available to the Secretary the actual written reports of such audits.

"(G) In prescribing requirements for audits under subparagraph (C)(iv), the Secretary shall provide that such audits be conducted by appropriately trained individuals who do not have any direct responsibility for the manufacture or production of infant formula.

"(3) The Secretary may by regulation—

"(A) revise the list of nutrients in the table in subsection (h); and

"(B) revise the required level for any nutrient required by subsection (h).

"(4) If pursuant to paragraph (3), the Secretary adds a nutrient to the list of nutrients in the table in subsection (h), the Secretary shall by regulation require that the manufacturer of an infant formula test each batch of such formula for such new nutrient in accordance with clause (i), (ii) or (iii) of paragraph (2)(D).

"(b)(1)(A) No person shall introduce or deliver for introduction into interstate commerce any new infant formula unless—

"(i) such person has, prior to introducing such new infant formula, or delivering such new infant formula for introduction, into interstate commerce, registered with the Secretary the name of such person, the place of business of such person, and all establishments at which such person intends to manufacture such new infant formula; and

"(ii) such person has at least 90 days prior to marketing such new infant formula, made the submission to the Secretary required by subsection (c)(1).

"(B) For purposes of this section, the term 'new infant formula' includes—

"(i) an infant formula manufactured by a person which has not previously manufactured an infant formula; and

"(ii) an infant formula manufactured by a person which has previously manufactured infant formula and in which there is a major change, in processing or formulation, from a current or any previous formulation produced by such manufacturer.

For purposes of this subparagraph, the term 'major change' has the meaning given to such term in section 106.30(c)(2) of title 21, Code of Federal Regulations (as in effect on August 1, 1986), and guidelines issued thereunder.

"(2) If the manufacturer of an infant formula for commercial or charitable distribution for human consumption determines that a change in the formulation of the formula or a change in the processing of the formula may affect whether the formula is adulterated under subsection (a), the manufacturer shall, prior to the first processing of such formula, make the submission to the Secretary required by subsection (c)(1).

"(c)(1) A person shall, with respect to any infant formula subject to subsection (b), make a submission to the Secretary. Each such submission shall include—

"(A) the quantitative formulation of the infant formula;

"(B) a description of any reformulation of the formula or change in processing of the infant formula;

"(C) assurances that the infant formula will not be marketed unless it meets the requirements of subsections (a)(2)(A) and (h), as demonstrated by the testing required under subsection (a)(2)(C); and

"(D) assurances that the processing of the infant formula complies with subsection (a)(2)(B)(i).

"(2) After the first production of an infant formula subject to subsection (b)(1), and before the introduction into interstate commerce of such formula, the manufacturer of such formula shall submit to the Secretary, in such form as may be prescribed by the Secretary, a written verification which summarizes test results and records demonstrating that such formula complies with the requirements of subsections (a)(2)(A), (a)(2)(B)(i), (a)(2)(C)(i), (a)(2)(C)(iii), and (h).

"(d)(1) If the manufacturer of an infant formula has knowledge which reasonably supports the conclusion that an infant formula which has been processed by the manufacturer and which has left an establishment subject to the control of the manufacturer—

"(A) may not provide the nutrients required by subsection (h); or

"(B) may be otherwise adulterated or misbranded,

the manufacturer shall promptly notify the Secretary of such knowledge. If the Secretary determines that the infant formula presents a risk to human health, the manufacturer shall immediately take all actions necessary to recall shipments of such infant formula from all wholesale and retail establishments, consistent with recall regulations and guidelines issued by the Secretary.

"(2) For purposes of paragraph (1), the term 'knowledge' as applied to a manufacturer means (A) the actual knowledge that the manufacturer had, or (B) the knowledge which a reasonable person would have had under like circumstances or which would have been obtained upon the exercise of due care.

"(e)(1) If a recall of infant formula is begun by a manufacturer, the recall shall be carried out in accordance with such requirements as the Secretary shall prescribe under paragraph (2), and—

"(A) the Secretary shall, not later than the 15th day after the beginning of such recall and at least once every 15 days thereafter until the recall is terminated, review the actions taken under the recall to determine whether the recall meets the requirements prescribed under paragraph (2); and

"(B) the manufacturer shall, not later than the 14th day after the beginning of such recall and at least once every 14 days thereafter until the recall is terminated, report to the Secretary the actions taken to implement the recall.

"(2) The Secretary shall by regulation prescribe the scope and extent of recalls of infant formulas necessary and appropriate for the degree of risk to human health presented by the formula subject to the recall.

"(3) The Secretary shall by regulation require each manufacturer of an infant formula who begins a recall of such formula because of a risk to human health to request each retail establishment at which such formula is sold or available for sale to post at the point of purchase of such formula a notice of such recall at such establishment for such time that the Secretary determines necessary to inform the public of such recall.".

SEC. 4303. DIAL-A-PORN OPERATIONS.

Section 223(b) of the Communications Act of 1934 is amended—

(1) in paragraph (1)(A), by striking out "under eighteen years of age or to any other person without that person's consent";

(2) by striking out paragraph (2);

(3) in paragraph (4), by striking out "paragraphs (1) and (3)" and inserting in lieu thereof "paragraphs (1) and (2)"; and

(4) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

TITLE V—ANTI-DRUG TRUST FUND

SEC. 5001. DESIGNATION OF TAX OVERPAYMENTS AND CONTRIBUTIONS TO ANTI-DRUG TRUST FUND.

(a) Subchapter A of chapter 61 of the Internal Revenue Code of 1954 (relating to returns and records) is amended by adding at the end thereof the following new part:

"DESIGNATION OF TAX OVERPAYMENTS AND CONTRIBUTIONS TO ANTI-DRUG TRUST FUND

"Sec. 6097. Designation by individuals.

"SEC. 6097. DESIGNATION BY INDIVIDUALS.

"(a) In General.—With respect to each taxpayer's return for the taxable year of the tax imposed by chapter 1, such taxpayer may designate that—

"(1) any amount of an overpayment of such tax for such taxable year, or

"(2) in the absence of any overpayment of such tax, any contribution which the taxpayer includes with such return,

be paid over to the Anti-Drug Trust Fund.

"(b) Manner and Time of Designation.—A designation under subsection (a) may be made with respect to any taxable year only at the time of filing the return of the tax imposed by chapter 1 for such taxable year. Such designation shall be made either on the 1st page of the return or on the page bearing the taxpayer's signature.

"(c) Designated Amounts Not Deductible.—No amount designated pursuant to subsection (a) shall be allowed as a deduction under section 170 or any other section for any taxable year.

"(d) Overpayments Treated as Refunded.—For purposes of this title, any overpayment of tax designated under subsection (a) shall be treated as being refunded to the taxpayer as of the last date prescribed for filing the return of tax imposed by chapter 1 (determined without regard to extensions) or, if late, the date the return is filed.".

(b) Subchapter A of chapter 98 of the Internal Revenue Code of 1954 (relating to Trust Fund Code) is amended by adding at the end thereof the following new section:

"SEC. 9505. ANTI-DRUG TRUST FUND.

"(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the 'Anti-Drug Trust Fund', consisting of such amounts as may be appropriated or credited to the Anti-Drug Trust Fund as provided in this section and section 9602(b) (relating to crediting of interest, etc.).

"(b) Transfers to Anti-Drug Trust Fund.—There are hereby appropriated to the Drug Addiction Prevention Trust Fund amounts equivalent to the amounts desig-

nated under section 6097 and received in the Treasury.

"(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Anti-Drug Trust Fund shall be available as provided by appropriation Acts, for making expenditures to carry out the purposes of the Drug Enforcement Act of 1986.".

(c)(1) The table of parts for subchapter A of chapter 61 of the Internal Revenue Code of 1954 is amended by adding at the end thereof the following new item:

"PART IX. Designation of overpayments and contributions for Anti-Drug Trust Fund.".

(2) The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end thereof the following new item:

"Sec. 9505. Anti-Drug Trust Fund.".

(d) The amendments made by this section shall take effect on January 1, 1987.

TITLE VI—FEDERAL EMPLOYEE SUBSTANCE ABUSE EDUCATION AND TREATMENT

SEC. 6001. SHORT TITLE.

This title may be cited as the "Federal Employee Substance Abuse Education and Treatment Act of 1986".

SEC. 6002. PROGRAMS TO PROVIDE PREVENTION, TREATMENT, AND REHABILITATION SERVICES TO FEDERAL EMPLOYEES WITH RESPECT TO DRUG AND ALCOHOL ABUSE.

(a) IN GENERAL.—(1) Chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"Subchapter VI—Drug Abuse, Alcohol Abuse, and Alcoholism

"§ 7361. Drug abuse

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the President, with the Secretary of Health and Human Services (acting through the National Institute on Drug Abuse), and with other agencies, and in accordance with applicable provisions of this subchapter, appropriate prevention, treatment, and rehabilitation programs and services for drug abuse among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of employees and to employees who have family members who are drug abusers. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 527 of the Public Health Service Act (42 U.S.C. 290ee-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7362. Alcohol abuse and alcoholism

"(a) The Office of Personnel Management shall be responsible for developing, in cooperation with the Secretary of Health and Human Services and with other agencies, and in accordance with applicable provisions of this subpart, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among employees. Such agencies are encouraged to extend, to the extent feasible, such programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such programs and services shall make optimal use of existing governmental facilities, services, and skills.

"(b) Section 523 of the Public Health Service Act (42 U.S.C. 290dd-3), relating to confidentiality of records, and any regulations prescribed thereunder, shall apply with respect to records maintained for the purpose of carrying out this section.

"(c) Each agency shall, with respect to any programs or services provided by such agency, submit such written reports as the Office may require in connection with any report required under section 7363 of this title.

"(d) For the purpose of this section, the term 'agency' means an Executive agency.

"§ 7363. Reports to Congress

"(a) The Office of Personnel Management shall, within 6 months after the date of the enactment of the Federal Employee Substance Abuse Education and Treatment Act of 1986 and annually thereafter, submit to each House of Congress a report containing the matters described in subsection (b).

"(b) Each report under this section shall include—

"(1) a description of any programs or services provided under section 7361 or 7362 of this title, including the costs associated with each such program or service and the source and adequacy of any funding such program or service;

"(2) a description of the levels of participation in each program and service provided under section 7361 or 7362 of this title, and the effectiveness of such programs and services;

"(3) a description of the training and qualifications required of the personnel providing any program or service under section 7361 or 7362 of this title;

"(4) a description of the training given to supervisory personnel in connection with recognizing the symptoms of drug or alcohol abuse and the procedures (including those relating to confidentiality) under which individuals are referred for treatment, rehabilitation, or other assistance;

"(5) any recommendations for legislation considered appropriate by the Office and any proposed administrative actions; and

"(6) information describing any other related activities under section 7904 of this title, and any other matter which the Office considers appropriate.".

(2) The analysis for chapter 73 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VI—DRUG ABUSE, ALCOHOL ABUSE, AND ALCOHOLISM

"Sec.
"7361. Drug abuse.
"7362. Alcohol abuse and alcoholism.
"7363. Reports to Congress.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The Public Health Service Act is amended—

(1) in section 521 (42 U.S.C. 290dd-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively; and

(2) in section 525 (42 U.S.C. 290ee-1)—

(A) by striking out subsection (a);

(B) by striking out "similar" in subsection (b)(1); and

(C) by redesignating subsections (b), (c), and (d) as subsections (a), (b), and (c), respectively.

SEC. 6003. EDUCATIONAL PROGRAM FOR FEDERAL EMPLOYEES RELATING TO DRUG AND ALCOHOL ABUSE.

(a) ESTABLISHMENT.—The Director of the Office of Personnel Management shall, in consultation with the Secretary of Health and Human Services, establish a Government-wide education program, using seminars and such other methods as the Director considers appropriate, to carry out the purposes prescribed in subsection (b).

(b) PURPOSES.—The program established under this section shall be designed to provide information to Federal Government employees with respect to—

(1) the short-term and long-term health hazards associated with alcohol abuse and drug abuse;

(2) the symptoms of alcohol abuse and drug abuse;

(3) the availability of any prevention, treatment, or rehabilitation programs or services relating to alcohol abuse or drug abuse, whether provided by the Federal Government or otherwise;

(4) confidentiality protections afforded in connection with any prevention, treatment, or rehabilitation programs or services;

(5) any penalties provided under law or regulation, and any administrative action (permissive or mandatory), relating to the use of alcohol or drugs by a Federal Government employee or the failure to seek or receive appropriate treatment or rehabilitation services; and

(6) any other matter which the Director considers appropriate.

SEC. 6004. EMPLOYEE ASSISTANCE PROGRAMS RELATING TO DRUG ABUSE AND ALCOHOL ABUSE.

(a) IN GENERAL.—Chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"§ 7904. Employee assistance programs relating to drug abuse and alcohol abuse

"(a) The head of each Executive agency shall, in a manner consistent with guidelines prescribed under subsection (b) of this section and applicable provisions of law, establish appropriate prevention, treatment, and rehabilitation programs and services for drug abuse and alcohol abuse for employees in or under such agency.

"(b) The Office of Personnel Management shall, after such consultations as the Office considers appropriate, prescribe guidelines for programs and services under this section.

"(c) The Secretary of Health and Human Services, on request of the head of an Executive agency, shall review any program or service provided under this section and shall submit comments and recommendations to the head of the agency concerned.".

(b) CONFORMING AMENDMENT.—The analysis for chapter 79 of title 5, United States Code, is amended by adding at the end the following:

"7904. Employee assistance programs relating to drug abuse and alcohol abuse.".

SEC. 6005. SUBSTANCE ABUSE COVERAGE STUDY.

(a) STUDY.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academy of Sciences to conduct a study of (1) the extent to which the cost of drug and alcohol abuse treatment is covered by private insurance, public programs, and other sources of payment, and (2) the adequacy of such coverage for the rehabilitation of drug and alcohol abusers.

(b) Report.—Not later than one year after the date of the enactment of this Act the Secretary of Health and Human Services shall transmit to the Congress a report of the results of the study conducted under subsection (a). The report shall include recommendations of means to meet the needs identified in such study.

SEC. 6006. HEALTH INSURANCE COVERAGE FOR DRUG AND ALCOHOL TREATMENT.

(a) Findings.—The Congress finds that—

(1) drug and alcohol abuse are problems of grave concern and consequence in American society;

(2) over 500,000 individuals are known heroin addicts; 5 million individuals use cocaine; and at least 7 million individuals regularly use prescription drugs, mostly addictive ones, without medical supervision;

(3) 10 million adults and 3 million children and adolescents abuse alcohol, and an additional 30 to 40 million people are adversely affected because of close family ties to alcoholics;

(4) the total cost of drug abuse to the Nation in 1983 was over $60,000,000,000; and

(5) the vast majority of health benefits plans provide only limited coverage for treatment of drug and alcohol addiction, which is a fact that can discourage the abuser from seeking treatment or, if the abuser does seek treatment, can cause the abuser to face significant out of pocket expenses for the treatment.

(b) Sense of Congress.—It is the sense of Congress that—

(1) all employers providing health insurance policies should ensure that the policies provide adequate coverage for treatment of drug and alcohol addiction in recognition that the health consequences and costs for individuals and society can be as formidable as those resulting from other diseases and illnesses for which insurance coverage is much more adequate; and

(2) State insurance commissioners should encourage employers providing health benefits plans to ensure that the policies provide more adequate coverage for treatment of drug and alcohol addiction.

TITLE VIII—NICHOLAS DANILOFF

Sec. 7001. (a) The Senate finds that—

(1) On August 30, 1986, Nicholas Daniloff was arrested, apparently in response to the arrest of the Soviet spy Gennadi F. Zakharov;

(2) On September 5, 1986, President Reagan sent a message to Soviet General Secretary Gorbachev offering the President's personal assurances that Mr. Daniloff was not a spy;

(3) Despite the President's assurances, the Soviet Union indicted Mr. Daniloff on September 7, 1986;

(4) The Soviet Union demonstrated an unprecedented disregard for the word of a United States President, while continuing to blatantly distort and conceal the facts surrounding the detention of Mr. Daniloff;

(5) Such mendacity jeopardizes the furtherance of any constructive relationship between the United States and the Soviet Union; and

(6) Hundreds of Soviet espionage agents operate at the United Nations, under cover of the Soviet mission to the United Nations and as members of the Secretariat of the United Nations.

(b) The Senate hereby—

(1) Declares that the Soviet action in imprisoning and falsely charging Mr. Daniloff reflects once again the failure of the Soviet Union to observe internationally recognized standards of human rights and civil conduct and raises profound doubts about Soviet willingness to live up to their responsibilities and commitments under any international or bilateral agreement.

(2) Urges the President to continue his forthright demands for the immediate and unconditional release of Mr. Daniloff.

(3) Calls on the President to condition his agreement to a summit meeting with Secretary Gorbachev on the prompt return of Mr. Daniloff from the Soviet Union.

(4) Expresses opposition to any new economic or commercial agreement with the Soviet Union, or any new transactions under existing economic or commercial agreements with the Soviet Union until Mr. Daniloff has been granted unconditional permission to depart the Soviet Union.

(5) Calls on the President to demand that the Soviet Union remove its spies from its United Nations mission and from the United Nations Secretariat and to take all measures necessary to bring an end to such direct Soviet violations of article 100, section 2, of the United Nations Charter.

TITLE VIII—PRESIDENT'S MEDIA COMMISSION ON DRUG ABUSE

SEC. 8001. SHORT TITLE.

This title may be cited as the "President's Media Commission on Drug Abuse".

SEC. 8002. ESTABLISHMENT.

There is established a commission to be known as the President's Media Commission on Drug Abuse (hereinafter in this title referred to as the "Commission").

SEC. 8003. DUTIES OF COMMISSION.

The Commission shall—

(1) examine public education programs in effect on the date of the enactment of this title which are—

(A) implemented through various segments of mass media; and

(B) intended to prevent narcotic and psychotropic drug abuse;

(2) act as an administrative and coordinating body for the voluntary combination of resources of—

(A) television, radio, motion picture, and print media;

(B) the advertising industry; and

(C) the corporate sector of the United States;

in order to assist the implementation of new programs and national strategies for dissemination of information intended to prevent narcotic and psychotropic drug abuse;

(3) produce and disseminate through the mass media public service announcements and advertisements aimed at preventing narcotic and psychotropic drug abuse;

(4) monitor the effectiveness and assist in the update of programs and national strategies formulated with the assistance of the Commission.

SEC. 8004. MEMBERSHIP.

(a) Number and Appointment.—The Commission shall be composed of 12 members appointed by the President within 30 days after the date of the enactment of this title, and should include representatives of—

(1) advertising agencies;

(2) motion picture, television, radio, and print media;

(3) the recording industry;

(4) other segments of the corporate sector of the United States; and

(5) experts in the prevention of narcotic and psychotropic drug abuse.

(b) Terms.—(1) Except as provided in paragraphs (2), (3), and (4), members shall be appointed for terms of 3 years.

(2) Of the members first appointed—

(A) 4 shall be appointed for terms of 1 year;

(B) 4 shall be appointed for terms of 2 years; and

(C) 4 shall be appointed for terms of 3 years;

as designated by the President at the time of appointment.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(4) A member may serve after the expiration of his term until his successor has taken office.

(c) Basic Pay and Expenses.—(1) Except as provided in paragraph (2), members of the Commission shall serve without pay.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons serving intermittently in the Government service are allowed travel expenses under section 5703 of title 5, United States Code.

SEC. 8005. MEETINGS.

(a) In General.—(1) The Commission shall meet at the call of the Moderator.

(2) The Moderator shall convene the 1st meeting of the Commission within 30 days after the date of the completion of appointments under section 4(a).

(b) Moderator.—One member of the Commission shall be designated by the President to serve as Moderator of the Commission.

(c) Quorum and Procedure.—The Commission shall adopt rules regarding quorum requirements and meeting procedures as the Commission deems appropriate at the 1st meeting of the Commission.

(d) Voting.—Decisions and official acts of the Commission shall be according to the vote of a majority of members at a properly called meeting.

SEC. 8006. DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.

(a) Director and Staff.—(1) Subject to paragraph (2), the Moderator, with the approval of the Commission, may employ and set the rate of pay for a Director and such staff as the Moderator deems necessary.

(2) Rates of pay set under paragraph (1) shall be less than the rate of basic pay payable under section 5316 of title 5, United States Code.

(b) Experts and Consultants.—The Moderator, with the approval of the Commission, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(c) Staff of Federal Agencies.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this title.

SEC. 8007. POWERS OF COMMISSION.

(a) Hearings and Sessions.—The Commission may, for the purpose of carrying out this title, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(b) Powers of Members and Agents.—Any member or agent of the Commission may, if so authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) OBTAINING OFFICIAL DATA.—Upon the request of the Moderator of the Commission, the Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of sevices or property.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

SEC. 8008. REPORT.

The Commission shall transmit to the President and to each House of Congress a report not later than July 31 of each year which contains a detailed statement of the activities of the Commission during the preceding year, including a summary of the number of public service announcements produced by the Commission and published or broadcast.

TITLE IX—SUGAR QUOTA ELIMINATION

SEC. 9001. QUOTA ELIMINATION.

(a) Notwithstanding any other provision of law:

(1) The President may not allocate any limitation imposed on the quantity of sugar to—

(A) any country which has a government involved in the trade of illicit narcotics or is failing to cooperate with the United States in narcotics enforcement activities as defined in section 2002, or

(B) any foreign country that imports sugar produced in Cuba, determined by the President.

(2) The President shall—

(A) use all authorities available to the President as is necessary to enable the Secretary of Agriculture to operate the sugar program established under section 201 of the Agricultural Act of 1949 (7 U.S.C. 1446) at no cost to the Federal Government by preventing the accumulation of sugar acquired by the Commodity Credit Corporation; and

(B) subject to paragraph 1, and to the extent possible, subject to subparagraph (A), allocate any limitation imposed on the quantity of sugar entered during calendar year 1987 among foreign countries in a manner that ensures that the total quantity of sugar allocated under such limitation to each beneficiary country for calendar 1987 is not less than the total quantity of sugar entered during quota year 1986 that are products of such beneficiary country.

(b) For purposes of this section—

(1) The term "beneficiary country"—

(A) has the meaning given to such term by section 212(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)); and

(B) includes the Republic of the Philippines and the Republic of Ecuador.

(2) The term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

(3) The term "customs territory of the United States" means the States, the District of Columbia, and Puerto Rico.

SEC. 9002. PHILIPPINES SUGAR.

Congress finds that the Philippines—

(1) have been a reliable supplier of sugar to the United States since 1796 when the first shipment of their sugar arrived at Boston Harbor;

(2) have a special historical relationship with the United States and has been one of this Nation's most constant and dependable allies;

(3) rely on the exportation of sugar to generate needed capital;

(4) have not been afforded fair and adequate access to the United States sugar market since import quotas were imposed on sugar in 1982; and

(5) should be given access to the United States sugar market on terms at least as favorable as those provided to any other country.

SEC. 9003. SUGAR, SYRUPS, AND MOLASSES IMPORTS.

Notwithstanding any other provision of law—

(a) beginning with the first calendar quarter of 1987, the total base quota amount of sugars, syrups, and molasses permitted to be imported into the United States under headnote 3, subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States shall be allocated on such basis that the quota allocated to the Republic of the Philippines shall not be less than the quota allocated to any other country;

(b) during any calendar year in which sugars, syrups, and molasses from any country are not subject to any rate of duty provided for in subpart A of part 10 of schedule 1 of the Tariff Schedules of the United States and are permitted to enter the United States duty-free, sugar, syrups, and molasses from the Republic of the Philippines shall be permitted, to the same extent, to enter duty-free; and

(c) unless specifically authorized by statute, no agency or instrumentality of the United States shall provide, in any rule, regulation, shipping schedule, or otherwise, for the entry into the United States of sugars, syrups, and molasses from any country under terms or conditions more favorable than those applicable to the entry of sugars, syrups, and molasses from the Republic of the Philippines.

TITLE X—BALLISTIC KNIFE PROHIBITION

SEC. 10001. SHORT TITLE.

This Act may be cited as the "Ballistic Knife Prohibition Act of 1986".

(a) PROHIBITION OF POSSESSION, MANUFACTURE, SALE, AND IMPORTATION OF BALLISTIC KNIVES.—

The Act entitled "An Act to prohibit the introduction, or manufacture for introduction, into interstate commerce of switchblade knives, and for other purposes" (15 U.S.C. 1232 et seq.) is amended by adding at the end the following:

"SEC. 7. (a) Whoever knowingly possesses, manufactures, sells, or imports a ballistic knife shall be fined as provided in title 18, United States Code, or imprisoned not more than ten years, or both.

"(b) Whoever possesses or uses a ballistic knife in the commission of a Federal or State crime of violence shall be fined as provided in title 18, United States Code, or imprisoned not less than five years and not more than ten years, or both.

"(c) The exceptions provided in paragraphs (1), (2), and (3) of section 4 with respect to switchblade knives shall apply to ballistic knives under subsection (a) of this section.

"(d) As used in this section, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechanism.".

(b) NONMAILABILITY OF BALLISTIC KNIVES.—

Section 1716 of title 18, United States Code, is amended by inserting after subsection (h) and before the first undesignated paragraph after such subsection the following:

"(i)(1) Any ballistic knife shall be subject to the same restrictions and penalties provided under subsection (g) for knives described in the first sentence of that subsection.

"(2) As used in this subsection, the term 'ballistic knife' means a knife with a detachable blade that is propelled by a spring-operated mechanism.".

TITLE XI—HOMELESS ELIGIBILITY CLARIFICATION ACT

SEC. 11001. SHORT TITLE.

This title may be cited as the "Homeless Eligibility Clarification Act".

Subtitle A—Emergency Food for the Homeless

SEC. 11002. SHELTER MEALS.

(a) DEFINITION OF FOOD.—Section 3(g)(8) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)(8)) is amended by striking out "women and children temporarily residing in public or private nonprofit shelters for battered women and children" and inserting in lieu thereof "individuals temporarily residing in emergency shelters".

(b) DEFINITION OF HOUSEHOLD.—The last sentence of section 3(i) of such Act is amended by striking out "public or private nonprofit shelters for battered women and children" and inserting in lieu thereof "emergency shelters".

(c) PRICES CHARGED.—Section 7(b) of such Act (7 U.S.C. 2016(b)) is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding sentence, an emergency shelter may not charge prices for meals served to eligible households temporarily residing in such shelters that are higher than prices served to other individuals temporarily residing in such shelters.".

(d) REDEMPTION OF COUPONS.—The first sentence of section 10 of such Act (7 U.S.C. 2019) is amended by striking out "public and private nonprofit shelters that prepare and serve meals for battered women and children" and inserting in lieu thereof "emergency shelters that prepare and serve meals for individuals".

SEC. 11003. PREPARED MEALS.

Section 3(g) of the Food Stamp Act of 1977 (7 U.S.C. 2012(g)) is amended—

(1) by striking out "and" at the end of clause (7); and

(2) by inserting before the period at the end thereof the following: ", and (9) in the case of individuals that do not reside in permanent dwellings or who do not have fixed mailing addresses, meals prepared by and served in public or private nonprofit establishments (eating or otherwise) that feed such individuals or in private establishments that contract with the appropriate agency of the State to serve meals to such individuals at concessional prices".

Subtitle B—Job Training for the Homeless

SEC. 11004. JOB TRAINING FOR THE HOMELESS.

(a) ECONOMICALLY DISADVANTAGED TO INCLUDE HOMELESS.—Section 4(8) of the Job Training Partnership Act (29 U.S.C. 1503(8)) is amended—

(1) by striking out "or" at the end of subparagraph (D);

(2) by striking out the period at the end of subparagraph (E) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof "(F) an individual who is homeless and whose total income is not in excess of the income levels described in subparagraph (B).".

(b) JOB TRAINING PLAN.—Section 104(b)(2) of the Job Training Partnership Act (29 U.S.C. 1514(b)) is amended by inserting before the semicolon a comma and the following: "and a description of how the program will be established in locations providing services to the homeless".

(c) BARRIERS TO EMPLOYMENT RULE.—Section 203(a)(2) of the Job Training Partnership Act (29 U.S.C. 1603(a)(2)) is amended by striking out "or addicts" and inserting in lieu thereof "addicts, or homeless".

Subtitle C—Entitlements Eligibility

SEC. 11005. TREATMENT OF HOMELESS INDIVIDUALS ELIGIBLE UNDER AFDC, SSI, AND MEDICAID PROGRAMS.

(a) AFDC.—Section 402(a) of the Social Security Act (42 U.S.C. 602(a)) is amended—

(1) by striking "and" at the end of paragraph (38),

(2) by striking the period at the end of paragrph (39) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(40) provide a method of verifying the eligibility of, and making aid available with respect to, a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(b) SSI PROGRAM.—Section 1631(e) of such Act (42 U.S.C. 1383(e)) is amended by adding at the end the following new paragraph:

"(3) The Secretary shall provide a method of verifying the eligibility of, and making payments under this title to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(c) MEDICAID PROGRAM.—Section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (45),

(2) by striking the period at the end of paragraph (46) and inserting in lieu thereof "; and", and

(3) by adding at the end the following new paragraph:

"(47) provide a method of verifying the eligibility of, and making medical assistance available to, an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.".

(d) EFFECTIVE DATE.—

(1) Except as provided in paragraph (2), the amendments made by this section shall become effective October 1, 1986.

(2) If a State agency administering a plan approved under part A of title IV of the Social Security Act or under title XIX of such Act demonstrates, to the satisfication of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by subsection (a) or (c) of this section, respectively, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or after October 1, 1986. For purposes of the preceding sentence, the term "session of a State's legislature" includes any regular, special, budget, or other session of a State legislature.

SEC. 11006. SINGLE APPLICATION FOR SSI AND FOOD STAMP BENEFITS BY SSI PRE-RELEASE INDIVIDUALS.

Section 11 of the Food Stamp Act of 1977 (7 U.S.C. 2020) is amended by adding at the end thereof the following new subsection:

"(p) The Secretary and the Secretary of Health and Human Services shall develop a system under which an individual applying for supplemental security income benefits under title XVI of the Social Security Act (42 U.S.C. 1381 et seq.) prior to the discharge or release of the individual from a public institution under the pre-release program established under section 1635 of such act shall also be permitted to apply for participation in the food stamp program by executing a single application.".

SEC. 11007. DELIVERY OF VETERANS' BENEFITS PAYMENTS.

(a) IN GENERAL.—(1) Section 3003 of title 38, United States Code, is amended by adding at the end thereof the following new subsection:

"(c) Benefits under laws administered by the Veterans' Administration may not be denied an applicant on the basis that the applicant does not have a mailing address.".

(2) Section 3020 of title 38, United States Code, is amending by adding at the end thereof the following new subsection:

"(f)(1) In the case of a payee who does not have a mailing address, payments of monetary benefits under laws administered by the Veterans' Administration shall be delivered under an appropriate method prescribed pursuant to paragraph (2) of this subsection.

"(2) The Administrator shall prescribe an appropriate method or methods for the delivery of payments of monetary benefits under laws administered by the Veterans' Administration in cases described in paragraph (1) of this subsection. To the maximum extent practicable, such method or methods shall be designed to ensure the delivery of payments in such cases.".

(b) EFFECTIVE DATE.—(1) The amendment made by subsection (a)(1) shall take effect on the date of enactment of this Act.

(2) The amendment made by subsection (a)(2) shall take effect with respect to payments made on or after October 1, 1986.

TITLE XII—COMMERCIAL MOTOR VEHICLE SAFETY

SEC. 12001. SHORT TITLE.

This title may be cited as the "Commercial Motor Vehicle Safety Act of 1986".

SEC. 12002. PURPOSE.

The purpose of this title is to enhance the safe operation of commercial motor vehicles on the Nation's highways by developing national uniform standards for the testing, licensing, and qualification of commercial motor vehicle operators, and by increasing inspections of commercial motor vehicle operators and the equipment they operate.

SEC. 12003. DEFINITIONS.

As used in this title, the term—

(1) "commerce" means—

(A) trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State (including a place outside of the United States); or

(B) trade, traffic, or transporatation in the United States which affects any trade, traffic, or transportation described in subparagraph (A);

(2) "commercial motor vehicle" means any self-propelled or towed vehicle used on highways in commerce to transport passengers or property if—

(A) such vehicle has a gross vehicle weight rating of twenty-six thousand and one or more pounds, or such lower weight rating (not less than ten thousand pounds) as the Secretary considers appropriate;

(B) such vehicle is designed to transport more than fifteen passengers, including the driver; or

(C) such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.);

(3) "controlled substance" shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6));

(4) "employee" means an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety;

(5) "employer" means any person engaged in a business in commerce who owns or leases a commercial motor vehicle in connection with such business, or assigns employees to operate such vehicle;

(6) "Secretary" means the Secretary of Transportation; and

(7) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or the Commonwealth of the Northern Marianas.

SEC. 12004. NATIONAL UNIFORM COMMERCIAL MOTOR VEHICLE OPERATORS LICENSE.

(a)(1) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which establish minimum Federal standards for the licensing, testing, qualifications and classification of operators of commercial motor vehicles. Such regulations shall, at a minimum—

(A) prohibit any person who operates a commercial motor vehicle in commerce from possessing more than one license to operate a commercial motor vehicle;

(B) establish minimum Federal standards for written tests and driving tests of persons who operate such vehicles;

(C) require a driving test of each person who operates or will operate a commercial motor vehicle in commerce in the type of vehicle such person operates or will operate, except that the Secretary may, by regulation, permit any State to waive such test in the case of any such person who applies for renewal of a license to operate a commercial motor vehicle;

(D) establish minimum scores for passing such tests;

(E) ensure that each person taking such tests is qualified to operate a commercial motor vehicle in commerce under regulations promulgated under this section, regulations contained in subpart E of part 391 of title 49 of the Code of Federal Regulations, and such other Federal Motor Carrier Safety Regulations contained in title 49 of the Code of Federal Regulations as the Secretary considers appropriate;

(F) establish a schedule of offenses and corresponding suspensions, revocations and cancellations for cause of licenses to operate commercial motor vehicles, which shall include requirements for the prompt suspension, for a period of not less than one year, of the operator's license of any individual who is determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit to such a test or who is found to be operating a commercial motor vehicle while under the influence of a controlled substance or who refuses to submit to such a test, and for the immediate revocation of the operator's license of any individ-

ual who has been twice determined to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who has twice refused to submit to such a test, or who has been twice determined to have operated a commercial motor vehicle while under the influence of a controlled substance or who has twice refused to submit to such a test;

(G) establish a system of classification for licensing that provides different minimum Federal testing standards for operation of different classes of commercial motor vehicles; and

(H) provide that each license to operate a commercial motor vehicle shall contain, at a minimum—

(i) the legal name, date of birth (including day, month and year), sex, and a physical description of the person to whom such license is issued;

(ii) other identifying information which the Secretary considers necessary or appropriate;

(iii) the type of commercial motor vehicle which such person is authorized to operate under such license;

(iv) the name of the State which issued such license; and

(v) the dates between which such license is valid.

(2) Not later than March 1, 1988, the Secretary shall, in accordance with section 553 of title 5, United States Code, promulgate regulations which shall be in addition to regulations promulgated under paragraph (1) of this subsection and which shall establish minimum Federal standards for the licensing, testing, qualifications and classification of any person who operates or will operate a commercial motor vehicle carrying a hazardous material (as defined in section 103(2) of the Hazardous Materials Transportation Act (49 App. U.S.C. 1802(2)). Such regulations shall—

(A) ensure that such person is qualified to operate a commercial motor vehicle in accordance with all regulations pertaining to motor vehicle transportation of such hazardous material issued by the Secretary under the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.);

(B) establish minimum Federal standards for, and scores for passing, written tests which ensure that such person is knowledgeable regarding (i) all such regulations, (ii) the basic properties and handling of such hazardous material, and (iii) the appropriate response to emergencies arising out of the transportation of such hazardous material; and

(C) establish minimum Federal standards for driving tests which ensure that such person is knowledgeable regarding the type of vehicle that such person operates or will operate and regarding the safety system of such vehicle.

The Secretary may exempt any such person from any requirement of this title if the material to be transported is a hazardous material listed pursuant to section 306(a) of the Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Department of Transportation, or if the material to be transported is a consumer commodity or limited quantity hazardous material, as defined in section 171.8 of title 49 of the Code of Federal Regulations.

(3)(A) Section 521(b) of title 49, United States Code, is amended—

(i) by redesignating paragraphs (12) and (13) as paragraphs (13) and (14), respectively; and

(ii) by inserting immediately after paragraph (11) the following:

"(12) the provisions of this subsection shall apply to any violation of the Commercial Motor Vehicle Safety Act of 1986, except that—

"(A) the amount to be assessed under this subsection for any such violation shall not exceed $5,000 for each such violation; and

"(B) the exceptions regarding employees in paragraphs (2) and (6) of this subsection shall not apply to any violation of the Commercial Motor Vehicle Safety Act of 1986, but (i) in the case of paragraph (2) of this subsection, the amount to be assessed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation, and (ii) in the case of paragraph (6) of this subsection, the penalty to be imposed for a violation of the Commercial Motor Vehicle Safety Act of 1986 by an employee shall not exceed $5,000 for each such violation or imprisonment for a term not to exceed one year, or both.".

(B) The Secretary shall establish guidelines for civil and criminal penalties to be imposed by the States for a violation of this subsection. Such penalties shall not exceed $5,000 for each such violation, and shall not provide for imprisonment of more than one year.

(b)(1) No person may operate a commercial motor vehicle in commerce unless such person—

(A) complies with all requirements imposed by regulations promulgated under subsection (a) of this section; and

(B) has a blood alcohol content level of less than 0.04 percent while operating a commercial motor vehicle.

(2)(A) Except as provided in subparagraph (B) of this paragraph, paragraph (1) of this subsection shall become applicable with respect to any person who operates or will operate a commercial motor vehicle in commerce on the date on which the State in which such person is domiciled adopts a classified licensing program under subsection (c)(1) of this section or September 1, 1989, whichever is earlier, except that, with respect to a person to whom a license to operate a commercial motor vehicle has been issued on or before such applicable date, who has not been found to have violated a State or local law relating to motor vehicle traffic control (other than a parking violation) in the three-year period ending on such date, and who has not been disqualified by the Secretary pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle in commerce or has had a license to operate a commercial motor vehicle suspended, revoked or cancelled for cause at any time during such three-year period, paragraph (1) of this subsection shall only take effect on the date after such date on which—

(i) such license is required to be renewed under State law,

(ii) such person is found to have violated such a State or local law, or

(iii) such person is disqualified pursuant to title 49 of the Code of Federal Regulations by the Secretary from operating a commercial motor vehicle in commerce and has had such person's license suspended, revoked or cancelled for cause by a State,

whichever is earliest.

(B) If any such peson is not domiciled in a State that has adopted such a classified licensing program, the Secretary may, in accordance with regulations to be prescribed by the Secretary, permit such person to obtain a license to operate a commercial motor vehicle from any State that has adopted such a program.

(C) On or before September 1, 1989, each State shall, at a minimum—

(1) adopt and administer a classified licensing program for the issuance of licenses to operate commercial motor vehicles that includes testing and qualification standards for persons who operate commercial motor vehicles in commerce in accordance with all of the minimum Federal standards established by the Secretary under subsection (a) of this section, which program (A) may include standards for its domiciliaries that are more stringent than the minimum Federal standards established by the Secretary under subsection (a) of this section; and (B) shall provide that such State shall recognize any license issued by another State if such license meets all of the Federal minimum standards established by the Secretary under subsection (a) of this section;

(2) not issue a license to operate a commercial motor vehicle to a person unless such person passes a written test and driving test for the operation of a commercial motor vehicle which complies with such minimum standards and complies with all requirements imposed by regulations promulgated under subsection (a) of this section;

(3) ensure that each classified license to operate a commercial motor vehicle contains the information described in subsection (a)(1)(H) of this section;

(4) until the information system established under section 12005 of this title provides a means of rapid communication of the information specified in such section, (A) notify the Secretary, before the issuance of a classified license to operate a commercial motor vehicle, of the proposed issuance of such license and such other information as the Secretary may require to ensure identification of the person applying for such license; (B) within 30 days after issuance of a classified license to operate a commercial motor vehicle, notify the Secretary of the issuance of such a license; and (C) maintain information regarding and, upon the request of another State, transmit to such State or, upon the request of an employer or prospective employer, transmit at such State's option to such employer or prospective employer, to the extent permitted by law, information regarding (i) any suspension, revocation or cancellation for cause of such a license and any disqualification pursuant to title 49 of the Code of Federal Regulations of the holder of such a classified license from operating a commercial motor vehicle for a period of 60 days or more, (ii) a decision to deny for cause a license to a person applying for such a license, or (iii) the conviction of the holder of such a classified license of any of the offenses specified in section 12005(b)(2) of this title;

(5) when the information system established under section 12005 of this title allows for the rapid communication of information, comply with the requirements of all regulations within such time periods as the Secretary establishes under section 12005(d) of this title, including a requirement that the State shall respond to all requests for information from employers;

(6) before issuance of a classified license to operate a commercial motor vehicle, contact any other State which has issued to such persons such a license to determine the driving record of such person and, if the State determines as a result of such contact that such person has been disqualified pur-

suant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle by the Secretary, or has had a license suspended, revoked or cancelled for cause for violation of an offense pursuant to subsection (a)(1)(F) of this section, within three years before application has been made for such a classified license, not issue such a classified license to such person;

(7) not issue a classified license to operate a commercial motor vehicle to any person to whom such a license has been issued by any other State unless such person first returns such license issued by such other State;

(8) prior to issuing a classified license to operate a commercial motor vehicle to any person, consult the National Driver Register established pursuant to the National Driver Register Act of 1982 (23 U.S.C. 401, note) (after such Register is determined by the Secretary to be operational) to determine whether such person has either been disqualified from operating a motor vehicle other than a commercial motor vehicle, or has had a license other than a license to operate a commercial motor vehicle suspended, revoked or cancelled for cause, within three years before application has been made for such a classified license, or has been convicted of any of the offenses specified in section 205(a) of the National Driver Register Act of 1982 and, if the State is informed that such person has been so disqualified or convicted or such license has been suspended, revoked or cancelled for cause, not issue a classified license to operate a commercial motor vehicle to such person;

(9) impose such penalties for a violation of subsection (a) of this section as the State determines appropriate, if such penalties are the same as or more stringent than the guidelines established by the Secretary in subsection (b)(3)(B) of this section; and

(10) suspend, revoke or cancel, in accordance with subsection (a)(1)(F) of this section, a license to operate a commercial motor vehicle.

(d)(1) The Secretary may make a grant to a State in a fiscal year if the State enters into an agreement with the Secretary to comply with all provisions of subsection (c) of this section.

(2) The amount of a grant under this subsection to any State shall not be less than $100,000 in any fiscal year.

(3) The Secretary may not make a grant to any State under this subsection unless such State agrees that the aggregate expenditure of funds of the State, exclusive of Federal funds, for testing and licensing of operators of commercial motor vehicles will be maintained at a level which does not fall below the average level of such expenditure for the last two fiscal years preceding the date of enactment of this Act.

(4) A State which receives a grant under this subsection may use the funds provided under such grant only for testing and licensing of operators of commercial motor vehicles.

(5) A grant made under this subsection shall be for a period of 1 year.

(6) Funds made available to carry out this subsection shall remain available for obligation by the Secretary for the fiscal year in which such funds are made available and the three fiscal years after such fiscal year.

(7) There shall be available to the Secretary to carry out this subsection—

(A) $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) for each of fiscal years 1987, 1988, 1989, 1990, and 1991; and

(B) after deducting the amount permitted under section 402(c) of title 23, United States Code, $3,000,000 from funds made available to carry out section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration, for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

(e)(1) The Secretary shall withhold highway funds from any State that is not in compliance with this section after September 30, 1992.

(2) The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c) of this section (other than a requirement of subsection (c)(10) of this section).

(3) The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second fiscal year beginning after September 30, 1992, and the first day of each fiscal year thereafter, in which the State does not comply with any requirement of subsection (c) of this section (other than a requirement of subsection (c)(10) of this section).

(4)(A) The Secretary shall withhold 2 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(B) The Secretary shall withhold not less than 2 percent nor more than 5 percent, as the Secretary determines to be appropriate, of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the second through fifth fiscal years beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(C) The Secretary shall withhold not less than 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of the sixth fiscal year, and each fiscal year thereafter, beginning after September 30, 1992, in which the State does not comply with any requirement of subsection (c)(10) of this section.

(5)(A) Any funds withheld under this subsection from apportionment to any State after September 30, 1992, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(A) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(5)(B) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(iii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of title 23, United States Code, but for this subsection, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) If, before the last day of the period for which funds withheld under this subsection from apportionment are to remain available for apportionment to a State under subparagraph (A) of this paragraph, the State complies with the provisions of this section, the Secretary shall, on the day following the date on which such State complies, apportion to such State the withheld funds remaining available for apportionment to such State.

(C) Any funds apportioned pursuant to subparagraph (B) of this paragraph shall remain available for expenditure as follows:

(i) Funds apportioned under section 104(b)(5)(A) of title 23, United States Code, shall remain available until the end of the fiscal year succeeding the fiscal year in which such funds are so apportioned.

(ii) Funds apportioned under section 104(b)(1), 104(b)(2), 104(b)(5)(B), or 104(b)(6) of title 23, United States Code, shall remain available until the end of the third fiscal year succeeding the fiscal year in which such funds are so apportioned.

Sums not obligated at the end of such period shall lapse.

(D) If, at the end of the period for which funds withheld under this subsection from apportionment are available for apportionment to a State under subparagraph (A) of this paragraph, the State has not complied with the provisions of this section, such funds shall lapse.

SEC. 12005. COMMERCIAL DRIVER'S LICENSE INFORMATION SYSTEM.

(a) Not later than January 1, 1989, the Secretary after consultation with the States, shall cause to be in operation an information system pertaining to the driving status and licensing of operators of commercial motor vehicles. The information system shall serve as a clearinghouse by which the States may communicate rapidly concerning the licensing, identification and driving records of operators of commercial motor vehicles.

(b) The information system established under this section shall—

(1) provide for a depository of information that will, at a minimum, include (with respect to each operator of a commercial motor vehicle)—

(A) the birth date and physical description of such operator, and any other information which the Secretary considers necessary or appropriate to identify specifically such operator;

(B) the address of such operator; and

(C) all States in which such operator currently has a license to operate a commercial motor vehicle; and

(2) provide a system of communication among States that, at a minimum, shall provide exchange of information specified in paragraph (1) of this subsection and information regarding whether such operator has been denied a license to operate a commercial motor vehicle, has been disqualified by the Secretary pursuant to title 49 of the Code of Federal Regulations from operating a commercial motor vehicle, has had a license suspended, revoked or cancelled for cause, or has been convicted under the laws of any State for (A) operating a commercial motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; (B) violating a traffic rule or ordinance arising in connection with a fatal

traffic accident, reckless driving, or racing on the highways and involving a commercial motor vehicle; (C) failing to render aid or provide identification when involved in an accident involving a commercial motor vehicle which resulted in a fatality or personal injury; or (D) committing perjury or knowingly making a false affidavit or statement to officials in connection with activities governed by a law or regulation relating to the operation of a commercial motor vehicle.

(c)(1) Upon request of a State, the Secretary or a State, as appropriate, shall make available to the requesting State information in the information system established under this section. Upon request of an employer or prospective employer of an employee, the Secretary or a State, as appropriate, shall, to the extent otherwise permitted by law, make available to such employer or prospective employer information in such system relating to such employee.

(2) Any prospective employer of a person as an operator of a commercial motor vehicle shall consult the information system established under this section to determine, prior to employing such person, whether a license to operate a commercial motor vehicle issued to such person has been suspended, revoked or cancelled for cause. If such prospective employer determines, as a result of such consultation, that such person's license has been suspended, revoked or cancelled for cause, the prospective employer shall not employ such person as an operator of a commercial motor vehicle.

(d) When the information system required by this section has become available, the Secretary shall issue regulations establishing appropriate time periods for transmission of information, as provided in section 12004(c) (4) and (5) of this title.

(e) The Secretary shall establish and the Secretary or a State, as appropriate, shall collect fees for utilization of the information system established under this section. The amount of fees collected by the Secretary or a State under this subsection in any fiscal year shall as nearly as possible equal the costs of operating the information system in such fiscal year. The Secretary shall deposit fees collected by the Secretary under this subsection in the general fund of the Treasury.

(f) There shall be available for fiscal year 1987 to the Secretary for purposes of establishing the information system under this section not to exceed $2,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304). Such sums shall remain available until expended.

SEC. 12006. FREQUENT INSPECTIONS.

(a) Section 402(b)(1) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)(1)) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by striking the period in subparagraph (G) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following:

"(H) with respect to any fiscal year beginning with fiscal year 1989, provides for the adoption and implementation of an effective program to conduct inspections of commercial motor vehicles, which program shall provide—

"(i) that commercial motor vehicles are inspected frequently (as determined by the Secretary), and that such inspections are conducted at roadside;

"(ii) for the administration of observations or tests, or both, to determine the blood alcohol content level of the operator of a commercial motor vehicle; and

"(iii) for the prompt suspension, for a period of not less than one year, of the operator's license of any individual who is determined, as a result of an observation or test administered under clause (ii) of this subparagraph, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who refuses to submit to such a test, and for the immediate revocation of the operator's license of any individual who has been twice determined, as a result of such an observation or test, to have a blood alcohol content level of 0.04 percent or more while operating a commercial motor vehicle or who has twice refused to submit to such a test.".

(b) Section 402(b) of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2302(b)) is amended by adding at the end thereof the following:

"(3)(A) As part of a grant made under this subsection, the Secretary may also provide funds to encourage the States to adopt and implement programs providing for the administration of tests to determine whether the operator of a commercial motor vehicle is under the influence of a controlled substance while operating such motor vehicle.

"(B) For purposes of this subsection, the term 'controlled substance' shall have the meaning given to such term in section 102(6) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802(6)).".

SEC. 12007. AUTHORIZATIONS OF APPROPRIATIONS.

(a) Section 404 of the Surface Transportation Assistance Act of 1982 (49 App. U.S.C. 2304) is amended—

(1) by striking "$40,000,000" and inserting in lieu thereof "$50,000,000";

(2) by striking "and" after "1987,";

(3) by striking "$50,000,000" and inserting in lieu thereof "$60,000,000"; and

(4) by striking "1988." and inserting in lieu thereof "1988; not to exceed $70,000,000 in the fiscal year ending September 30, 1989; and not to exceed $80,000,000 in the fiscal year ending September 30, 1990.".

(b) Any activity of the Secretary under this title shall only be undertaken to the extent that appropriations have been made available in advance for such activity.

SEC. 12008. STUDY BY THE DEPARTMENT OF TRANSPORTATION.

The Secretary of Transportation shall, not later than October 1, 1988, submit to the Congress a study regarding the manner in which the requirement of section 12004 (a)(1)(F) regarding blood alcohol content level impacts on operators of commercial motor vehicles who are required by their employers to be available to operate such commercial motor vehicles on short notice.

TITLE XIII—ELECTRONIC COMMUNICATIONS PRIVACY ACT OF 1986

SEC. 13001. SHORT TITLE.

This title may be cited as the "Electronic Communications Privacy Act of 1986".

Subtitle A—Interception of Communications and Related Matters

SEC. 13011. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.

(a) DEFINITIONS.—(1) Section 2510(1) of title 18, United States Code, is amended—

(A) by striking out "any communication" and inserting "any aural transfer" in lieu thereof;

(B) by inserting "(including the use of such connection in a switching station)" after "reception".

(C) by striking out "as a common carrier" and

(D) by inserting before the semicolon at the end the following: "or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit".

(2) Section 2510(2) of title 18, United States Code, is amended by inserting before the semicolon at the end the following: ", but such term does not include any electronic communication".

(3) Section 2510(4) of title 18, United States Code, is amended—

(A) by inserting "or other" after "aural"; and

(B) by inserting ", electronic," after "wire".

(4) Section 2510(5) of title 18, United States Code, is amended in clause (a)(i) by inserting before the semicolon the following: "or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business".

(5) Section 2510(8) of title 18, United States Code, is amended by striking out "identity of the parties to such communication or the existence,".

(6) Section 2510 of title 18, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (10);

(B) by striking out the period at the end of paragraph (11) and inserting a semicolon in lieu thereof; and

(C) by adding at the end the following:

"(12) 'electronic communication' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

"(A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

"(B) any wire or oral communication;

"(C) any communication made through a tone-only paging device; or

"(D) any communication from a tracking device (as defined in section 3117 of this title);

"(13) 'user' means any person or entity who—

"(A) uses an electronic communication service; and

"(B) is duly authorized by the provider of such service to engage in such use;

"(14) 'electronic communications system' means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"(15) 'electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications;

"(16) 'readily accessible to the general public' means, with respect to a radio communication, that such communication is not—

"(A) scrambled or encrypted;

"(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

"(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

"(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

"(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

"(17) 'electronic storage' means—

"(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

"(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

"(18) 'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.".

(b) Exceptions With Respect to Electronic Communications.—

(1) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof" and inserting in lieu thereof "such disclosure";

(B) by striking out "the carrier" and inserting in lieu thereof "such person"; and

(C) by striking out "an order or certification under this subparagraph" and inserting in lieu thereof "a court order or certification under this chapter".

(2) Section 2511(2)(d) of title 18, United States Code, is amended by striking out "or for the purpose of committing any other injurious act".

(3) Section 2511(2)(f) of title 18, United States Code, is amended—

(A) by inserting "or chapter 121" after "this chapter"; and

(B) by striking out "by" the second place it appears and inserting in lieu thereof ", or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing".

(4) Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

"(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

"(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

"(ii) to intercept any radio communication which is transmitted—

"(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

"(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

"(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

"(IV) by any marine or aeronautical communications system;

"(iii) to engage in any conduct which—

"(I) is prohibited by section 633 of the Communications Act of 1934; or

"(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

"(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

"(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

"(h) It shall not be unlawful under this chapter—

"(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

"(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.".

(c) Technical and Conforming Amendments.—(1) Chapter 119 of title 18, United States Code, is amended—

(A) in each of sections 2510(5), 2510(8), 2510(9)(b), 2510(11), and 2511 through 2519 (except sections 2515, 2516(1) and 2518(10)), by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof; and

(B) in section 2511(2)(b), by inserting "or electronic" after "wire".

(2) The heading of chapter 119 of title 18, United States Code, is amended by inserting "AND ELECTRONIC COMMUNICATIONS" after "WIRE".

(3) The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United States Code is amended by inserting "and electronic communications" after "Wire".

(4) Section 2510(5)(a) of title 18, United States Code, is amended by striking out "communications common carrier" and inserting "provider of wire or electronic communication service" in lieu thereof.

(5) Section 2511(2)(a)(i) of title 18, United States Code, is amended—

(A) by striking out "any communication common carrier" and inserting "a provider of wire or electronic communication service" in lieu thereof;

(B) by striking out "of the carrier of such communication" and inserting "of the provider of that service" in lieu thereof; and

(C) by striking out ": Provided, That said communication common carriers" and inserting ", except that a provider of wire communication service to the public" in lieu thereof.

(6) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "communication common carriers" and inserting "providers of wire or electronic communication service" in lieu thereof;

(B) by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(C) by striking out "if the common carrier" and inserting "if such provider" in lieu thereof.

(7) Section 2512(2)(a) of title 18, United States Code, is amended—

(A) by striking out "a communications common carrier" the first place it appears and inserting "a provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "a communications common carrier" the second place it appears and inserting "such a provider" in lieu thereof; and

(C) by striking out "communications common carrier's business" and inserting "business of providing that wire or electronic communication service" in lieu thereof.

(8) Section 2518(4) of title 18, United States Code, is amended—

(A) by striking out "communication common carrier" in both places it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "carrier" and inserting in lieu thereof "service provider".

(d) Penalties Modification.—(1) Section 2511(1) of title 18, United States Code, is amended by striking out "shall be" and all that follows through "or both" and inserting in lieu thereof "shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5)".

(2) Section 2511 of title 18, United States Code, is amended by adding after the material added by section 102 the following:

"(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

"(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then—

"(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

"(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than $500.

"(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

"(i) to a broadcasting station for purposes of retransmission to the general public; or

"(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

"(5)(a)(i) If the communication is—

"(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

"(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

"(ii) In an action under this subsection—

"(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

"(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

"(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.".

(e) EXCLUSIVITY OF REMEDIES WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—Section 2518(10) of title 18, United States Code, is amended by adding at the end the following:

"(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.".

(f) STATE OF MIND.—Paragraphs (a), (b), (c), and (d) of subsection (1) of section 2511 of title 18, United States Code, are amended by striking out "willfully" and inserting in lieu thereof "intentionally".

(2) Subsection (1) of section 2512 of title 18, United States Code, is amended in the matter before paragraph (a) by striking out "willfully" and inserting in lieu thereof "intentionally".

SEC. 13012. REQUIREMENTS FOR CERTAIN DISCLOSURES.

Section 2511 of title 18, United States Code, is amended by adding at the end the following:

"(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

"(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

"(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

"(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

"(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

"(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.".

SEC. 13013. RECOVERY OF CIVIL DAMAGES.

Section 2520 of title 18, United States Code, is amended to read as follows:

"§ 2520. Recovery of civil damages authorized

"(a) IN GENERAL.—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In an action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) COMPUTATION OF DAMAGES.—(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

"(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5)(a)(i) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500.

"(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5)(a)(i) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1,000.

"(2) In any other action under this section, the court may assess as damages whichever is the greater of—

"(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.".

SEC. 13014. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.

Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division".

SEC. 13015. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.

(a) WIRE AND ORAL INTERCEPTIONS.—Section 2516(1) of title 18 of the United States Code is amended—

(1) in paragraph (c)—

(A) by inserting "section 751 (relating to escape)," after "wagering information),";

(B) by striking out "2314" and inserting "2312, 2313, 2314," in lieu thereof;

(C) by inserting "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),";

(D) by inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," after "1952 (interstate and foreign travel or transportation in aid of racketeering enterprises),";

(E) by inserting ", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organizations)"; and

(F) by—

(i) striking out "or" before "section 351" and inserting in lieu thereof a comma; and

(ii) inserting before the semicolon at the end thereof the following: ", section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)";

(2) by striking out "or" at the end of paragraph (g);

(3) by inserting after paragraph (g) the following:

"(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

"(i) any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code;

"(j) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act); or";

"(k) the location of any fugitive from justice from an offense described in this section;

(4) by redesignating paragraph (h) as paragraph (l); and

(5) in paragraph (a) by—

(A) inserting after "Atomic Energy Act of 1954)," the following: "section 2284 of title

42 of the United States Code (relating to sabotage of nuclear facilities or fuel),";

(B) striking out "or" after "(relating to treason),"; and

(C) inserting before the semicolon at the end thereof the following: "chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)".

(b) INTERCEPTION OF ELECTRONIC COMMUNICATIONS.—Section 2516 of title 18 of the United States Code is amended by adding at the end the following:

"(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.".

SEC. 13016. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF ORDERS.

(a) PLACE OF AUTHORIZED INTERCEPTION.—Section 2518(3) of title 18 of the United States Code is amended by inserting "(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)" after "within the territorial jurisdiction of the court in which the judge is sitting".

(b) REIMBURSEMENT FOR ASSISTANCE.—Section 2518(4) of title 18 of the United States Code is amended by striking out "at the prevailing rates" and inserting in lieu thereof "for reasonable expenses incurred in providing such facilities or assistance".

(c) COMMENCEMENT OF THIRTY-DAY PERIOD AND POSTPONEMENT OF MINIMIZATION.—Section 2518(5) of title 18 of the United States Code is amended—

(1) by inserting after the first sentence the following: "Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered."; and

(2) by adding at the end the following: "In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.".

(d) ALTERNATIVE TO DESIGNATING SPECIFIC FACILITIES FROM WHICH COMMUNICATIONS ARE TO BE INTERCEPTED.—(1) Section 2518(1)(b)(ii) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "a particular description".

(2) Section 2518(3)(d) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "there is".

(3) Section 2518 of title 18 of the United States Code is amended by adding at the end the following:

"(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

"(a) in the case of an application with respect to the interception of an oral communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

"(iii) the judge finds that such specification is not practical; and

"(b) in the case of an application with respect to a wire or electronic communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

"(iii) the judge finds that such purpose has been adequately shown.

"(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.".

(4) Section 2519(1)(b) of title 18, United States Code, is amended by inserting "(including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title)" after "applied for".

SEC. 13017. INTELLIGENCE ACTIVITIES.

(a) IN GENERAL.—Nothing in this title or the amendments made by this title constitutes authority for the conduct of any intelligence activity.

(b) CERTAIN ACTIVITIES UNDER PROCEDURES APPROVED BY THE ATTORNEY GENERAL.—Nothing in chapter 119 or chapter 121 of title 18, United States Code, shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to—

(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978; or

(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978.

SEC. 13018. MOBILE TRACKING DEVICES.

(a) IN GENERAL.—Chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"§ 3117. Mobile tracking devices

"(a) IN GENERAL.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

"(b) DEFINITION.—As used in this section, the term 'tracking device' means an electronic or mechanical device which permits the tracking of the movement of a person or object.".

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"3117. Mobile tracking devices.".

SEC. 13019. WARNING SUBJECT OF SURVEILLANCE.

Section 2232 of title 18, United States Code, is amended—

(1) by inserting "(a) PHYSICAL INTERFERENCE WITH SEARCH.—" before "Whoever" the first place it appears;

(2) by inserting "(b) NOTICE OF SEARCH.—" before "Whoever" the second place it appears; and

(3) by adding at the end the following:

"(c) NOTICE OF CERTAIN ELECTRONIC SURVEILLANCE.—Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

"Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.".

SEC. 13020. INJUNCTIVE REMEDY.

(a) IN GENERAL.—Chapter 119 of title 18, United States Code, is amended by adding at the end the following:

"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by adding at the end thereof the following:

"2521. Injunction against illegal interception.".

SEC. 13021. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b) or (c), this subtitle and the amendments made by this subtitle shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any interception pursuant to section 2516(2) of title 18 of the United States Code which would be valid and lawful without regard to the amendments made by this subtitle shall be valid and lawful notwithstanding such amendments if such interception occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of State law conforming the applicable State statute with chapter 119 of title 18, United States Code, as so amended; or

(2) the date two years after the date of the enactment of this title.

(c) EFFECTIVE DATE FOR CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.—Section 13014 of this title shall take effect on the date of enactment of this title.

Subtitle B—Stored Wire and Electronic Communications and Transactional Records Access

SEC. 13031. TITLE 18 AMENDMENT.

Title 18, United States Code, is amended by inserting after chapter 119 the following:

"CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

"Sec.
"2701. Unlawful access to stored communications.
"2702. Disclosure of contents.
"2703. Requirements for governmental access.
"2704. Backup preservation.
"2705. Delayed notice.
"2706. Cost reimbursement.
"2707. Civil action.
"2708. Exclusivity of remedies.
"2709. Counterintelligence access to telephone toll and transactional records.
"2710. Definitions.

"§ 2701. Unlawful access to stored communications

"(a) OFFENSE.—Except as provided in subsection (c) of this section whoever—

"(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

"(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

"(b) PUNISHMENT.—The punishment for an offense under subsection (a) of this section is—

"(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain—

"(A) a fine of not more than $250,000 or imprisonment for not more than one year, or both, in the case of a first offense under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than two years, or both, for any subsequent offense under this subparagraph; and

"(2) a fine of not more than $5,000 or imprisonment for not more than six months, or both, in any other case.

"(c) EXCEPTIONS.—Subsection (a) of this section does not apply with respect to conduct authorized—

"(1) by the person or entity providing a wire or electronic communications service;

"(2) by a user of that service with respect to a communication of or intended for that user; or

"(3) in section 2703, 2704, or 2518 of this title.

"§ 2702. Disclosure of contents

"(a) PROHIBITIONS.—Except as provided in subsection (b)—

"(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

"(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(b) EXCEPTIONS.—A person or entity may divulge the contents of a communication—

"(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

"(2) as otherwise authorized in section 2516, 2511(2)(a), or 2703 of this title;

"(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

"(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

"(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

"(6) to a law enforcement agency, if such contents—

"(A) were inadvertently obtained by the service provider; and

"(B) appear to pertain to the commission of a crime.

"§ 2703. Requirements for governmental access

"(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

"(b) CONTENTS OF ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

"(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

"(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena; or

"(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

"(2) Paragraph (1) is applicable with respect to any electronic communication that is held or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(c) RECORDS CONCERNING ELECTRONIC COMMUNICATION SERVICE OR REMOTE COMPUTING SERVICE.—(1)(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury subpoena;

"(ii) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

"(iii) obtains a court order for such disclosure under subsection (d) of this section; or

"(iv) has the consent of the subscriber or customer to such disclosure.

"(2) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

"(d) REQUIREMENTS FOR COURT ORDER.—A court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

"(e) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

"§ 2704. Backup preservation

"(a) BACKUP PRESERVATION.—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

"(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

"(3) The service provider shall not destroy such backup copy until the later of—

"(A) the delivery of the information; or

"(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

"(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

"(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

"(B) has not initiated proceedings to challenge the request of the governmental entity.

"(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

"(b) CUSTOMER CHALLENGES.—(1) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate United States district court or State court. Such motion or application shall contain an affidavit or sworn statement—

"(A) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

"(B) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

"(2) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, the term 'delivery' has the meaning given that term in the Federal Rules of Civil Procedure.

"(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

"(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

"(5) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

"§ 2705. Delayed notice

"(a) DELAY OF NOTIFICATION.—(1) A governmental entity acting under section 2703(b) of this title may—

"(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

"(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

"(2) An adverse result for the purposes of paragraph (1) of this subsection is—

"(A) endangering the life or physical safety of an individual;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

"(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

"(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

"(A) states with reasonable specificity the nature of the law enforcement inquiry; and

"(B) informs such customer or subscriber—

"(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

"(ii) that notification of such customer or subscriber was delayed;

"(iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and

"(iv) which provision of this chapter allowed such delay.

"(6) As used in this subsection, the term 'supervisory official' means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

"(b) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

"(1) endangering the life or physical safety of an individual;

"(2) flight from prosecution;

"(3) destruction of or tampering with evidence;

"(4) intimidation of potential witnesses; or

"(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"§ 2706. Cost reimbursement

"(a) PAYMENT.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

"(b) AMOUNT.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

"(c) The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (a) if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

"§ 2707. Civil action

"(a) CAUSE OF ACTION.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In a civil action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c); and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) DAMAGES.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense to any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

"§ 2708. Exclusivity of remedies

"The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

"§ 2709. Counterintelligence access to telephone toll and transactional records

"(a) DUTY TO PROVIDE.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(c) PROHIBITION OF CERTAIN DISCLOSURE.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

"(d) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made under subsection (b) of this section.

"§ 2710. Definitions for chapter

"As used in this chapter—

"(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section; and

"(2) the term 'remote computing service' means the provision to the public of computer storage or processing services by means of an electronic communications system.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by adding at the end the following:

"121. Stored Wire and Electronic Communications and Transactional Records Access .... 2701".

SEC. 13032. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect ninety days after the date of the enactment of this title and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

Subtitle C—Pen Registers and Trap and Trace Devices

SEC. 13041. TITLE 18 AMENDMENT.

(a) IN GENERAL.—Title 18 of the United States Code is amended by inserting after chapter 205 the following new chapter:

"CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

"Sec.

"3121. General prohibition on pen register and trap and trace device use; exception.

"3122. Application for an order for a pen register or a trap and trace device.

"3123. Issuance of an order for a pen register or a trap or trace device.

"3124. Assistance in installation and use of a pen register or a trap and trace device.

"3125. Reports concerning pen registers and trap and trace devices.

"3126. Definitions for chapter.

"§ 3121. General prohibition on pen register and trap and trace device use; exception

"(a) IN GENERAL.—Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

"(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

"(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

"(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or

"(3) where the consent of the user of that service has been obtained.

"(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

"§ 3122. Application for an order for a pen register or a trap and trace device

"(a) APPLICATION.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent af-

firmation, to a court of competent jurisdiction.

"(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

"(b) Contents of Application.—An application under subsection (a) of this section shall include—

"(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

"§ 3123. Issuance of an order for a pen register or a trap and trace device

"(a) In General.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

"(b) Contents of Order.—An order issued under this section—

"(1) shall specify—

"(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

"(B) the identity, if known, of the person who is the subject of the criminal investigation;

"(C) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

"(D) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

"(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.

"(c) Time Period and Extensions.—(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

"(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed sixty days.

"(d) Nondisclosure of Existence of Pen Register or a Trap and Trace Device.—An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that—

"(1) the order be sealed until otherwise ordered by the court; and

"(2) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

"§ 3124. Assistance in installation and use of a pen register or a trap and trace device

"(a) Pen Registers.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 3123(b)(2) of this title.

"(b) Trap and Trace Device.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in section 3123(b)(2) of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order.

"(c) Compensation.—A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

"(d) No Cause of Action Against a Provider Disclosing Information Under This Chapter.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

"(e) Defense.—A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

"§ 3125. Reports concerning pen registers and trap and trace devices

"The Attorney General shall annually report to Congress on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the Department of Justice.

"§ 3126. Definitions for chapter

"As used in this chapter—

"(1) the terms 'wire communication', 'electronic communication', and 'electronic communication service' have the meanings set forth for such terms in section 2510 of this title;

"(2) the term 'court of competent jurisdiction' means—

"(A) a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals; or

"(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device;

"(3) the term 'pen register' means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

"(4) the term 'trap and trace device' means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted;

"(5) the term 'attorney for the Government' has the meaning given such term for the purposes of the Federal Rules of Criminal Procedure; and

"(6) the term 'State' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.".

(b) Clerical Amendment.—The table of chapters for part II of title 18 of the United States Code is amended by inserting after the item relating to chapter 205 the following new item:

"206. Pen Registers and Trap and Trace Devices .... 3121".

SEC. 13042. EFFECTIVE DATE.

(a) In General.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect ninety days after the date of the enactment of this title and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this subtitle takes effect.

(b) Special Rule for State Authorizations of Interceptions.—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under Federal law as amended by this subtitle; or

(2) the date two years after the date of the enactment of this title.

SEC. 13043. INTERFERENCE WITH THE OPERATION OF A SATELLITE.

(a) Offense.—Chapter 65 of title 18, United States Code, is amended by inserting at the end the following:

"§ 1367. Interference with the operation of a satellite

"(a) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both.

"(b) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States."

(b) Conforming Amendment.—The table of sections for chapter 65 of title 18, United States Code, is amended by adding at the end the following new item:

"1367. Interference with the operation of a satellite.".

TITLE XII—RECOVERY OF COSTS INCURRED BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

Sec. 14001. (a) In General.—Subchapter B of chapter 78 of the Internal Revenue Code of 1954 (relating to general powers and duties) is amended by adding at the end thereof the following new section:

Sec. 7624. REIMBURSEMENT TO STATE AND LOCAL LAW ENFORCEMENT AGENCIES.

(a) Authorization of Reimbursement.—Whenever a State or local law enforcement agency provides information to the internal Revenue Service, that substantially contributes to the recovery of Federal taxes, such agency shall be reimbursed by the Internal Revenue Service for costs incurred in the investigation (including but not limited to reasonable expenses, per diem, salary and overtime) not to exceed 10 percent of the sum ultimately recovered. The Internal Revenue Service shall maintain records reflecting the receipt of information from the contributing agency, and shall notify the agency when a recovery has been effected. Following such notification, the agency shall submit a statement detailing the investigative costs incurred. Where more than 1 State or local agency has given information that substantially contributes to the recovery of Federal taxes, the Internal Revenue Service shall equitably distribute the costs reimbursements among those agencies up to an aggregate sum of 10 percent of the taxes recovered.

"(b) Establishment of a Fund.—The Commissioner of the Internal Revenue Service shall establish a fund for recovering that portion of recovered Federal taxes authorized under subsection (a) and intended as reimbursements for state and local law enforcement agencies. In conjunction with the fund, The Commissioner shall develop guidelines on the procedures and timetables for reimbursing those law enforcement agencies which have contributed to the recoupment of Federal taxes.

"(c) Reimbursement.—Reimbursements under section (a) shall be made directly from the fund under subsection (b) prior to the deposit of such funds into the United States Treasury.

"(d) Clerical Amendment.—The table of sections for such subchapter B is amended by adding at the end thereof the following new item:

"'Sec. 7624. Reimbursement to State and local law enforcement agencies.'".

TITLE XV—CYANIDE WRONGFUL USE

Sec. 15001. (a) The Administrator of the Environmental Protection Agency shall conduct a study of the manufacturing and distribution process of cyanide with a view to determining methods, procedures, or other actions which might be taken, employed, or otherwise carried out in connection with such manufacturing and distribution in order to safeguard the public from the wrongful use of cyanide.

(b) Such study shall include, among other matters, the following:

(1) a determination of the sources of cyanide, including the name and location of each manufacturer thereof;

(2) an evaluation of the means and methods utilized by the manufacturer and others in the distribution of cyanide, including the name and location of each such distributor;

(3) an evaluation of the procedures employed in connection with the selling, at the wholesale and retail level, of cyanide, including a determination as to whether or not persons selling cyanide require the intended purchaser to identify himself or herself;

(4) a determination as to the extent to which recordkeeping requirements are imposed on, or carried out by, manufacturers of cyanide with respect to the specifications of each lot of cyanide produced by such manufacturer;

(5) a determination as to the feasibility and desirability of establishing a central registry of all lot specifications of cyanide for the purpose of providing quick access to investigative and law enforcement agencies;

(6) a consideration and review of all aspects of the matter of interstate versus intrastate to the extent that it involves the manufacturing, distribution, or use of cyanide;

(7) a determination as to the feasibility and desirability of requiring manufacturers of cyanide to color all such cyanide with a distinctive color so that the consuming public can more readily identify products laced with cyanide;

(8) a determination as to the feasibility and desirability of requiring limited-access storage for cyanide at universities, laboratories, and other institutions that use cyanide for research or other purposes;

(9) a determination as to the feasibility and desirability of issuing regulations to require any person who sells or otherwise transfers, at a retail level, any cyanide to record such sale or transfer, including the identity of the person purchasing or otherwise receiving such cyanide, the address of such person, and the intended use of such cyanide. Such records shall be available for such use, and retained for such period, as the aforementioned Administrator shall by regulation require.

(b) On or before the expiration of the 180-day period following the date of the enactment of this section, the Administrator of the Environmental Protection Agency shall report the results of such study to the Congress, together with his or her recommendations with respect thereto.

(c) As used in this section, the term—

(1) "person" means any individual, corporation, partnership, or other entity; and

(2) "cyanide" means sodium cyanide, potassium cyanide or any other topic cyanide compound.

(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

TITLE XVI—STRENGTHENING LAWS AGAINST ILLEGAL DRUGS, FUNDING

Sec. 16001. (a) The Senate finds that—

(1) there is an urgent critical need for funds to carry out the programs and activities authorized by the preceding provisions of this Act in order to ensure a drug free America;

(2) this Act is the result of a bipartisan effort to combat our national drug abuse problem; and

(3) only the exceptional nature of the drug abuse problem warrants the expenditure of funds in excess of otherwise applicable budget limitations.

(b) Therefore, it is the sense of the Senate that—

(1) amounts authorized to carry out the preceding provisions of this act should be provided as new budget authority for fiscal year 1987 in H.J. Res. 738 (99th Congress, 2d Session);

(2) such amounts should not be provided through transfers from, or reductions in, any amount appropriated by such joint resolution for any other program, project, or activity for such fiscal year.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall it pass?

Mr. DOLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. LEAHY. Does that mean all time for debate has ended?

The PRESIDING OFFICER. There was no time for debate.

Mr. LEAHY. I thank the Chair.

The PRESIDING OFFICER. The question is, shall the bill pass?

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. Garn] is necessarily absent.

I further announce that, if present and voting, the Senator from Utah [Mr. Garn] would vote "yea."

The PRESIDING OFFICER (Mr. McConnell). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 97, nays 2 as follows:

[Rollcall Vote No. 302 Leg.]

YEAS—97

Abdnor
Andrews
Armstrong
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Broyhill
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Dixon
Dodd
Dole
Domenici
Durenberger
Eagleton
Evans
Exon
Ford
Glenn
Goldwater
Gore
Gorton
Gramm
Grassley
Harkin
Hart
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Laxalt
Leahy
Levin
Long
Lugar
Mathias
Matsunaga
Mattingly
McClure
McConnell
Metzenbaum

Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Quayle
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Zorinsky

NAYS—2

Humphrey
Melcher

NOT VOTING—1

Garn

So the bill (H.R. 5484), as amended, was passed.

□ 1650

Mr. EXON. I move to reconsider the vote by which the bill was passed.

Mr. DOLE. I move to lay that motion on the table

The motion to lay on the table was agreed to.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I ask unanimous consent that we indefinitely postpone S. 2878—that is the Senate bill—since we have entered our bill into the House bill, which is H.R. 5484.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I move that the Senate insist on its amendment, request a conference with the House——

The PRESIDING OFFICER. Will the Senator suspend.

The Senate is not in order. Will those who are conversing please take their conversations to the cloakroom.

Mr. THURMOND. I move the Senate insist on its amendment, request a conference with the House, and that the Chair be authorized to appoint conferees.

The motion was agreed to; and the Chair (Mr. McConnell) appointed Mrs. Hawkins, Mr. Hatch, Mr. Danforth, Mr. D'Amato, Mr. Mattingly, Mr. Lugar, Mr. Warner, Mr. Dole, Mr. Thurmond, Mr. Biden, Mr. Chiles, Mr. DeConcini, Mr. Rockefeller, Mr. Nunn, Mr. Dodd, and Mr. Byrd conferees on the part of the Senate.

□ 1700

Mr. DOLE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. THURMOND. Mr. President, I thought it might be of interest to know that we have spent 4 days on this bill—September 25, 26, 27, and 30. Time consumed as of 5:02 p.m., when the vote was announced, was about 18 hours and 7 minutes. Rollcall votes, four. Amendments and motions considered, 47. We agreed to 42, tabled 1, withdrew 3, and did not act on 1.

Mr. DOLE. Mr. President, let me indicate that we have had a number of urgent calls from the Embassies of Canada, Australia, and Thailand. They are greatly concerned about the reallocation of sugar quotas proposed on Saturday and incorporated in the drug bill by voice vote. USTR has indicated its strong concern as well.

Because the quota for the Philippines is increased, and the existing quotas for the Caribbean states and Equador are retained, other countries fear they will be squeezed out of what share of the overall quota remains.

My staff has explained to the embassies that there is not much we can do about it at this point, but I believe it opens up the same question we have had before, and maybe something can be done about it in conference.

EXPORT-IMPORT BANK ACT AMENDMENTS

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 5548.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendment of the Senate to the bill (H.R. 5548) entitled "An Act to amend the Export-Import Bank Act of 1945", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That the following are appointed as conferees: Mr. St Germain, Mr. Neal, Mr. LaFalce, Mr. Fauntroy, Mr. Kleczka, Mr. Frank, Mr. Manton, Mr. Wylie, Mr. Leach of Iowa, Mr. Shumway, and Mr. Parris.

As additional conferees, solely for consideration of section 23 of the Senate amendment and modifications committed to conference: Mr. Lundine, Mr. Levin of Michigan, Mr. Torres, Mr. Bereuter, Mrs. Roukema, and Mr. McCandless.

As additional conferees, solely for consideration of section 21 of the Senate amendment and modifications committed to conference: Mr. Bonker, Mr. Wolpe, and Mr. Siljander.

Mr. DOLE. Mr. President, I move that the Senate insist upon its amendment, agree to the conference requested by the House, and that the Chairman be authorized to appoint conferees on the part of the Senate.

The motion was agreed to; and the Chair appointed the following conferees: Senators Garn, Heinz, and Proxmire; and as additional conferees for the consideration of section 23 only, Senator Helms, Mathias, and Pell.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. WILSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

The Senate continued with the consideration of House Joint Resolution 738.

Mr. HATFIELD. Mr. President, what is the pending question?

The PRESIDING OFFICER. The committee amendment is pending.

Mr. HATFIELD. Mr. President, the matter pending before us has been oversimplified by the label handed to it, but there is a complexity relating to the structure of this amendment within the CR.

Mr. METZENBAUM. Mr. President, may we have order, so that the manager of the bill can be heard?

The PRESIDING OFFICER. The Senate will be in order.

Mr. HATFIELD. Basically, the committee amendment is so intertwined with the reference to the entire Treasury-Post Office appropriation that it is impossible at this time to extrapolate the amendment and to identify it for a separate vote standing on its own.

I am now going to take action to try to bring this matter at least to an immediate vote, which will then at least clarify somewhat the situation as to where we go from here to resolve the problem.

I have discussed this matter with the leaders of the two sides—the Senator from Arizona [Mr. DeConcini] and the Senator from Ohio [Mr. Metzenbaum] and others on our side.

□ 1710

So, Mr. President, what I am about to do is to offer an amendment to the committee amendment which would in effect retain the current antitrust provisions of the law as it relates to the beer industry.

Then I will move to table that amendment and ask for a rollcall on the tabling motion.

This would give then the body an opportunity to demonstrate its views on one side or the other.

Then we will have to see how that vote turns out in order to take the next action on strategy of how to resolve the issue.

This is the only way we can get to a vote at this particular moment.

AMENDMENT NO. 3094

(Purpose: To provide that certain antitrust provisions of H.R. 5294 not apply)

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oregon [Mr. Hatfield] proposes an amendment numbered 3094.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment read as follows:

At the end of the pending amendment, add the following:

Sec. . Notwithstanding any other provision of this resolution, the provisions of section 621 of H.R. 5294, the Treasury, Postal Service, and General Government Appropriations Act, 1987, as reported by the Senate on August 14, 1986, and as incorporated in this Act, shall have no application or effect.

Mr. **HATFIELD.** Mr. President, the amendment is as I have outlined it prior to my offering the amendment.

I now move to table the amendment just offered and I ask for the yeas and nays.

The **PRESIDING OFFICER.** Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. **WILSON.** Mr. President, on the pending amendment, which would establish a special antitrust rule for the beer industry, I shall vote "present." I will do so because my wife owns stock in a company that has a significant share of the beer market, and this amendment would solely and directly affect the operation of this market.

The **PRESIDING OFFICER.** The question is on agreeing to the motion to lay on the table the amendment of the Senator from Oregon.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

Mr. **SIMPSON.** I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

Mr. **CRANSTON.** I announce that the Senator from Texas [Mr. BENTSEN] is necessarily absent.

Mr. **WILSON** (when his name was called). Present.

The **PRESIDING OFFICER.** Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 56, nays 41, as follows:

[Rollcall Vote No. 303 Leg.]

YEAS—56

Abdnor
Andrews
Baucus
Biden
Boren
Boschwitz
Broyhill
Bumpers
Burdick
Chiles
Cohen
Cranston
Danforth
DeConcini
Dixon
Dole
Domenici
Eagleton
Exon
Ford
Gore
Gramm
Grassley
Hatch
Hawkins
Hecht
Heflin
Hollings
Inouye
Johnston
Kasten
Kerry
Laxalt
Leahy
Levin
Long
Mathias
Mattingly
McClure
McConnell
Melcher
Mitchell
Nickles
Nunn
Pressler
Proxmire
Pryor
Riegle
Rudman
Sarbanes
Sasser
Simon
Simpson
Stevens
Wallop
Zorinsky

NAYS—41

Armstrong
Bingaman
Bradley
Byrd
Chafee
Cochran
D'Amato
Denton
Dodd
Durenberger
Evans
Glenn
Goldwater
Gorton
Harkin
Hart
Hatfield
Heinz
Helms
Humphrey
Kassebaum
Kennedy
Lautenberg
Lugar
Matsunaga
Metzenbaum
Moynihan
Murkowski
Packwood
Pell
Quayle
Rockefeller
Roth
Specter
Stafford
Stennis
Symms
Thurmond
Trible
Warner
Weicker

ANSWERED "PRESENT"—1

Wilson

NOT VOTING—2

Bentsen
Garn

So the motion to lay on the table was agreed to.

Mr. **THURMOND.** Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. **DECONCINI.** I move to lay that motion on the table.

The motion to lay on the table is agreed to.

Mr. **HARKIN** addressed the Chair.

The **PRESIDING OFFICER.** The Senator from Iowa.

Mr. **HARKIN.** Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER.** The clerk will call the roll.

The bill clerk proceeded to call the roll.

☐ 1750

Mr. **HARKIN.** Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

Mr. **HARKIN.** Mr. President, the last rollcall vote was a very close vote on an issue that I think needs to be talked about more, an issue that really needs to be dealt with in the appropriate authorizing committee of the Senate. This is not the place, on the appropriations bill, to have a piece of legislation that changes very drastically the antitrust laws of the United States. I do not believe this issue really has been thoroughly enough debated in the authorizing committee to see what its impact would be on our country, in our society. Yet it was slipped into this bill in the Appropriations Committee, in the subcommittee. There was not a vote taken on it in the full committee of the Appropriations Committee. Now it is part of the Treasury-Postal appropriations measure that is before us.

Quite frankly, the bill, as I said, is a provision that was added in the subcommittee. What it really does in essence is grant an exemption from the antitrust law for beer wholesaler monopolies. This provision is, in essence, similar to a bill, S. 412, the Malt Beverage Brand Competition Act, also known as the "beer bill." I think the beer bill has been universally condemned as a flagrant special-interest anticonsumer piece of legislation—I might also add, a very antismall-business piece of legislation, also.

Obviously, we have had in the past and will continue to have in the future legislation on appropriations bills, but I suggest that this latest example of legislating on an appropriations bill really crosses the line of respectable legislative maneuvering. We all know that we put these bills on appropriations for certain maneuvering purposes. I understand that. To a certain degree, it not only ought to be allowed but is commendable in certain circumstances.

But a major antitrust bill such as this, granting an exemption from the antitrust laws to beer wholesalers, simply should not be slipped into an unrelated appropriations bill without discussion, without having it be thoroughly debated, amended, and modified in the Judiciary Committee.

I know—I do not want to speak for the distinguished chairman of the Committee on the Judiciary, but I know he feels strongly that the Judiciary Committee ought to be able to look at this bill, also. I think if we allow this so-called beer bill to stay in here, I think it will bring disrepute to the Senate and to my esteemed colleagues who, I think, have let their enthusiasm for the bill get the better of their good judgment.

This beer bill is opposed by perhaps the broadest spectrum of groups I have ever seen, not only the Small Business Association, and I shall list a whole bunch, but the National Association of Attorneys General, the Justice Department, the Federal Trade Commission, the American Bar Association, the National Small Business Association, Congress Watch, and all the major national associations representing drugstores, convenience stores, grocery stores, and our neighborhood tavern owners.

Who supports the bill? Well, you have two groups supporting the bill, the beer wholesalers and the brewers. They support it because it grants them an exemption from the antitrust laws for their exclusive territories or monopolies. It protects them from competition and assures them of higher prices and profits. So, of course they support it.

Why should any Senator support such a conspicuously anticonsumer bill, one which, any way you cut it, is going to increase prices to consumers? I am going to have more to say about that in just a minute.

Let me remind my colleagues what monopolies mean. This is what we are, in essence, doing, creating monopolies. Suppose you wanted to buy a car. Suppose even further you wanted to buy a Chevrolet. But you could only go to one designated Chevy dealer. Do you think you would wind up paying more for the car? Of course you would.

Suppose you could shop only at one designated grocery store. At the checkout counter, they would ask you where you live and if you live in the neighborhood designated for that store. If you do not, they would stop you and say, "I am sorry, you can't shop here, you have to go to the designated store in this area." Do you think you would wind up paying more for groceries in that situation? Of course you would.

It is just that kind of monopoly this bill creates for beer wholesalers. Retailers can buy only from the designated wholesaler. Prices would be higher. Simple common sense tells us this would be so. Indeed, that is what our antitrust laws are all about—trying to prevent monopolies.

Let me respond briefly to what I consider to be totally specious arguments advanced as to why we should put this "demon rum" amendment in the appropriations bills.

It is said the bill has been around for 5 years and therefore is aged enough to become law. I think that is a ridiculous argument. It has been around for 5 years without being enacted because it is a bad bill, a ridiculously bad bill.

It has been said the bill originally had 68 cosponsors, indicating broad support. The reality is that in the 97th Congress, the bill had 68 cosponsors. Today it has 24. That means that over 40 Senators have realized that perhaps this is not the bill they wanted to cosponsor after all.

□ 1800

Mr. President, I have nothing against the beer industry. It is a big industry in this country. I do have some strong feelings about alcohol and drinking, as I enunciated in a speech I gave here the other day. But I do believe that the beer industry, like all other industries, ought to play by the same rules as a matter of law and as a matter of process. Quite frankly, this provision would exempt them from the law and let them go ahead and play by rules that do not apply to anyone else. The beer industry would be covered by their own more permissive legal standard which would make it easier for them to avoid competition and raise prices.

Let me point out that the standard contained in the bill is where interbrand competition exists. That is the standard for getting out from underneath the antitrust provisions. However, the fact that competition between different brands may exist does not make up for the loss of intrabrand or same brand competition. But, again, I get back to my example of the Chevrolet car. If you had the same kind of situation that we were going to pass here for the beer wholesalers and we did it for the automobile dealers, what it means is that a Chevy dealer would be exempt from the antitrust laws if there was a Ford dealer nearby or a Buick dealer or a Chrysler dealer, an Oldsmobile dealer but not if there was a Chevy dealer.

Well, there you go, that means if I wanted to buy a Chevy, I would have to buy it from that dealer; I could not go buy it from someone else. So you might have interbrand competition among different makes of cars but if I wanted to buy a Chevy, I would have to buy it from one designated dealer and no one else.

That is what they are trying to do here with the beer wholesalers. If you happen to consume one brand of beer and like it, that means it would all come from one wholesaler in your whole area and through advertising, through pricing mechanisms, they would boost the price up so that that brand would actually cost you more money.

Territorial monopolies or exclusive territories exist when beer brewers grant the sole right to sell their brand of beer in a specified geographic area to one distributor and those in that area who want to buy that particular brand of beer, like a grocery store or restaurant, will be able to do so only from one distributor. Again, that means the consumers will have to choose between paying the price or not buying that brand at all. Under current law, manufacturers' limitations in the territories in which their distributors may sell are not automatically illegal under the antitrust laws. Rather, they are evaluated by a rule of reason analysis which takes into account relevant economic considerations. This rule of reason applies also in the beer industry and there is no reason that the beer industry should be governed by a more permissive standard than the rule of reason that we already have. So we really should not try to give that kind of exemption.

Now, it has been said that the beer distributors need this because of certain court rulings that disturb their business. Now, this is where it differs from the soft drink industry. Back in 1978 there was a court case that disrupted the normal pattern of doing business for the soft drink industry, and it was incumbent upon us to do something about it at that time, and the Congress did respond and passed the Soft Drink Act. But no such thing happens here. There has been nothing done, either legally, a law passed by Congress, or any court decision, that renders the normal practice that we are undergoing right now in any danger.

Now, the current treatment of exclusive distributorships and exclusive territories is governed by the Supreme Court's 1977 decision in Continental TV, Inc. versus GTE-Sylvania, Inc. In that case the Court held that exclusive territories and other nonprice vertical restraints again are to be judged by the rule of reason, which I just mentioned. They are not per se illegal. These contractual arrangements are presumed to be lawful until proven unlawful, and they are unlawful only if their adverse effects outweigh the competitive benefits that they produce.

Now, we have heard testimony that exclusive territories for beer distributors will lead to higher prices. I find that persuasive. I also find persuasive the FCT's warning that the beer distribution market is a bad one in which to make the antitrust standard more lenient. The reason is that the brewing industry is highly concentrated, that the beer wholesaling markets in each State are highly concentrated, and there are State legal barriers to the creation of new beer distributorships. This market structure with the barriers to new entry into the distribution level makes the danger of consumer injury from exclusive territories greater in this industry than in some other industries.

Mr. President, I ask unanimous consent that I may yield for 1 minute to the distinguished Senator from Arkansas without losing my right to the floor.

The PRESIDING OFFICER (Mr. BROYHILL). Without objection, the Senator from Arkansas will be recognized for 1 minute and the Senator from Iowa retains the floor.

Mr. BUMPERS. Mr. President, on the last vote I was recorded as "no." It was my intention to vote "yea." Changing my vote would not affect the final outcome of the vote, and I ask unanimous consent that my vote be changed from "no" to "yea."

The PRESIDING OFFICER. Is there objection to the request of the Senator from Arkansas? Without objection, the correction will be made. The Senator from Iowa is now recognized.

Mr. HARKIN. Thank you, Mr. President.

So as I said, the way beer distributorships are set up, being highly concentrated, there are State legal barriers to the entry of new distributorships, which means that if we grant this exemption it really will monopolize the whole industry.

I wanted to also talk about the distinguishing characteristics between this situation and what happened with the soft drink bottlers. As I said, several years ago we did pass legislation that in many ways exempted the soft drink bottlers and distributors from the antitrust laws. First of all, the soft drink industry's use of exclusive territories was being jeopardized by an FTC case, as I mentioned earlier, whereas here there is no threat to the present beer distribution system.

Second, in the soft drink industry, the bottlers participated in the manufacturing process. In other words, the bottlers did not just distribute; they actually bottled and they owned their bottling plants. There was an argument that they needed to be tightly controlled by the manufacturers because obviously you have to make sure they use the right formula and the right mix and you want to make sure that the product they are putting out conforms to the standards set by the manufacturers. But that is not true for beer distributors. Beer distributors do not make the beer. In distributing a certain brand of beer, they have no way of adding to or changing the quality of that beer whatsoever. They may have to keep it cooled down a little bit and keep it out of the hot sun and stuff like that, but they have no way of really changing the quality of that beer as did the soft drink bottlers.

☐ 1810

Third, the legal standard governing the restraints changed in 1977, and they needed clarification in the soft drink case, whereas now the law is very clear governing beer distributorships. So we do not have to clarify everything. It is very clear. We know what the standard is.

Last, and as I have said repeatedly, the beer industry is much more concentrated at both the manufacturing and wholesale levels than the soft drink industry, which I think argues for much greater caution on our part in proceeding down this lane of giving them these exclusive rights and exempting them from the antitrust laws.

Again I want to restate for the record the arguments made by those who are supporting this change and try to respond to them in a way which I think puts to rest a couple of arguments.

First of all, we are told that the bill is necessary to clarify the law governing exclusive distributorships. As I pointed out, no clarification of the law governing exclusive distributorships is needed; and even if it were, this bill does not serve that purpose.

The common standard applied to test the legality of territorial monopolies was formulated in 1918 and has been applied repeatedly since then. The law simply requires a court to identify the benefits and the anticompetitive effects of the exclusive distributorships. If the benefits predominate, the distributorship passes scrutiny, and it can have exclusive right. If the anticompetitive effects are overriding, the distributorship is ruled illegal, or we have what is called the rule of reason.

Again, if we assume, which I do not, that the current law is in need of clarification, the substantial and effective competitive test in the beer bill is not a clarification. Courts will have to work out definitions on "substantial" and "effective" and apply them to the facts of the cases before them. Unlike the common standard, the substantial and effective competition test does not have the benefit of years of refinement and application. We have almost 70 years of refinement and clarification of the rule of reason.

I might add, parenthetically, that a lot of people say things that old need to be changed. I say that not all old things are bad. The antitrust laws that were passed around the turn of the century are still good laws. They need to be refined once in a while, to be sure. But the rule of reason as applying to territorial monopolies has withstood the test of time, and we ought not cavalierly throw it overboard, as we want to do here, by legislating on an appropriations bill.

The second argument made, which I hear a lot about, is that the beer bill is necessary to make sure that stale beer is not sold to consumers. Well, quite frankly, I think these claims are exaggerated.

First of all, if someone buys stale beer, they are not going to buy that beer any longer. They will take it to the grocery store, or wherever they bought it, and want it replaced. Claims about the perishability of beer are exaggerated. Beer has an unrefrigerated shelf life of between 75 to 120 days, much longer than a lot of perishable items such as fruits, vegetables, dairy products, and bakery goods.

So, if it were true that beer is a perishable product, then I submit that competition among the distributors of beer would be the best way to assure customers that they will never buy stale beer. Under a competitive system, distributors will have to deliver fresh beer or suffer loss of business. Without competition, this important check on the control and sale of beer is lost.

Ask yourself: When you go out and buy an item, an item that may not be very competitive, maybe there is only one manufacturer. Those cases abound all over. For some reason, others have not entered the market, or if they have, the product might not be available in one area. If you have a problem with that item, if you try to get something done with it, forget it, because they know they have you. They know you cannot travel 300 or 400 miles to buy another one.

The same is true here. If you allow this kind of monopoly situation to exist and if you do not like the kind of beer, they would say, "Tough." That is the way it goes.

I suppose a lot of people would say: "Now, look, they wouldn't do that; because if you didn't buy that brand of beer, that brand would go down in the market, and you would buy another one."

What is going to happen with this beer bill, with this exemption from the antitrust laws, is that you are going to have three or four distributorships in a whole area and they are going to distribute all the beer. One distributor will have two or three brands, another will have three or four brands, another will have three or four brands. There will be about four distributors over a big area, and they are going to sit down and talk to one another.

You say that will not happen; it is against the law. We know what collusion takes place when you get a small group of monopolies that exist. They go out on the golf course and play a few rounds of golf, and who knows what is talked about out there? The best way to keep that kind of collusion from happening is to promote competition, not do away with it.

For the life of me, I do not understand: People who are always preaching competition, that we have to have a free marketplace, now vote to have exclusive territorial rights for distributors, monopolies that choke off the competition.

I submit that if we are going to do that for beer, let us do it for automobiles, too. Let us do it for clothes. Since some people think beer is perishable, we might as well do it for fruits, vegetables, dairy products, and bakery goods, too. How long a shelf life does a loaf of bread have? A lot shorter than beer. If that is the case, we do not want people eating stale bread, so we might as well have one bakery serve one territory and no other bakeries allowed to distribute any of that bread.

I think people can see the fallacy of that argument, and the argument that if you buy stale beer, you will move to another brand. If that is stale, what are you going to do? Pretty soon you have gone through three or four brands, and you have no relief in sight because there is no competition left in the marketplace.

Mr. President, we have a rule of reason, and that rule should continue. This is nongermane to the appropriations process. As I said, there is a lot of legislation on appropriations that takes place, but I think this goes beyond the bounds of what we do here when we legislate on an appropriations bill to maneuver.

This is a very controversial bill. I do not think it will ever pass muster in conference. Then we will get tied up in conference. If we want the CR to go ahead, the best thing we can do is to get this special amendment off. It sets a dangerous precedent. What other industry will come in after this?

We made it very clear when we passed the soft drink bill that it was a certain situation, that here had been a case that disrupted the normal pattern of doing business, and we passed that bill. If you look at the legislative history surrounding that, you will see that the author of that bill and other Senators argued that this does not set a precedent, that in no way does it apply to any other industry.

Here we go—here is the beer industry. They want exclusive territorial rights. Who will be waiting in the wings 3 or 4 years from now to say they, too, need a special exemption from the antitrust laws?

Mr. President, I was standing in the well when the vote was going on, and I heard Senators who came in talk about how a vote in favor of this beer bill, to give these distributors exclusive rights, is really a vote in favor of small business.

□ 1820

That is about the most specious argument I have heard yet in favor of what small businesses? I dare say it is not in favor of the small grocery store owners or the restaurants or the convenience stores nor, as I said, the neighborhood tavern. Those are all small businesses, are they not, and they are the ones going to be hurt by this.

They made the argument but they said, well, the small distributors, the small beer distributors will get helped by this. Baloney. They will not get helped by it and if there are some small beer distributors who think they are going to get helped by this, they have been sold a bill of goods by the big boys, by the brewers, and by some of the larger distributors.

Now, I know of cases of small distributors that I believe will be hurt by this bill. They will be hurt because they are the ones that may be serve in the smaller stores and the smaller outlets.

The bigger ones will come in there and they will get an exclusive territory. They are the ones. You think some small guy, some small person who has a small distributorship is going to get an exclusive territory? Forget it. It is going to be the big ones, the big distributors around your big metropolitan areas, the ones that have the great economic power, the ones that are just like this with the brewers. They are the ones that are going to get the exclusive territories, not the small one.

And that small person, that small distributor, that maybe has three or four or five trucks, serves the mom-and-pop stores, maybe the corner tavern, maybe some convenience stores—it is a family-run business—do you think that family-run business is going to get an exclusive territory? Forget it. It is going to be the big ones, the big distributors and they are going to squeeze that small person out. And then they squeeze the small person out and then the local grocery stores, the small neighborhood grocery store, the neighborhood tavern, the drug stores, the convenience stores, they have to buy from that one distributor. They have to buy from him and they do not get a competitive price, and that is when the prices go up.

So I think that this bill is not in favor of the small business. It is a threat. Small business flourishes best where there is competition. The more competition we can put into this industry, the better off small business is going to be. You cut off small business, you cut off competition and you cut down on small business, and I think that is a truth that does not even need to be elaborated on.

The mom-and-pop grocer or corner grocer, for instance, wants that option, buying the beer from the distributor offering the lowest price. If this comes through, forget it. They have to buy it from one distributor and they have to pay what the traffic will bear to that distributor.

So really I think this is an anti-small-business bill.

I would hope that Senators would contact some of their constituents and talk to them about this—the grocery owners, the grocery stores and the convenience stores, drugstores, and others—and see what would happen. They might also want to contact their consumers.

Whenever an antitrust exemption is granted without a legal or economic justification, consumers are guaranteed to be the victims of higher prices. This bill will result in higher prices to consumers.

I understand that as a result of exclusive territory contracts in New York since 1983, the price of beer has risen 30 percent, while under the soft drink bill, soft drink prices only rose 4 percent.

There is a study that has been done by Consumer Federation of America that estimated that this bill could cost consumers over $1 billion per year.

Now, I gave a talk on the Senate floor the other day about the fact that we ought to do what we can to discourage the consumption of alcohol, that we ought not to glamorize alcohol as much as we do. I think that is the No. 1 drug problem in America and I hold to that.

Someone might give a rejoinder and say, "Senator Harkin, why won't you be in favor of prices going up for beer? The people would buy less of it if the prices went up."

If you want to make that argument, then I submit what we probably ought to do is keep the prices low and put a tax on it if you want to do that, if that is your goal—not my goal—if your goal is to increase the prices, then we might as well at least have the taxes coming in to the Government. We can use that money to help pay for some of the damage that drunk drivers do in this country, that people who drink a lot, that go out and rob stores, shoot people, get in the car and drive their car drunk and take innocent lives.

Maybe that is what we ought to do if that is your goal, but do not just increase the price so that the brewers and these big distributors get more profits. That does not make any sense to me at all. You hurt the consumers. You enrich, you give unconscionable profits to the distributors, the exclusive distributors and the brewers, and yet we still have not done anything to solve the problem of drinking in this country.

So before someone gives me that rejoinder, I thought I might just lay that to rest.

Mr. President, this really is irrelevant and unnecessary. We should stay with the rule of reason.

During the last Congress, an attempt was made to attach this language to the continuing resolution. It lost in the germaneness vote of 67 to 28.

In the heat of the moment, in terms of the extra-strong lobbying effort that has been done by the beer industry, I think that perhaps Senators will be better off if this bill were put over and let the Judiciary Committee take a look at it in the future and let it come under the normal procedures of the Senate and not as an amendment to the appropriations bill.

Mr. President, there has been a lot said and written about the advisability of us creating these exclusive territorial rights.

One that really caught my eye was an editorial that appeared in the Des Moines Register of January 7, 1986. It says, "Beer Bill Un-American."

And again it makes the point that if you could only buy your groceries at one designated supermarket or one particular make of car at one dealer, "This isn't American," you would declare. "Where's my freedom of choice? Why isn't there competition?"

The writer of the editorial went on:

> But, strange as it may be, there is a movement in Congress to kill the freedom of retailers to make their own choice of which beer wholesalers they deal with—

It cites here a portion of the testimony by an official of the Federal Trade Commission in 1983 before the Senate Judiciary Committee:

> We are unaware of any evidence or principled argument that might justify the bill, and we believe that enactment of such unjustified special exemptions has the detrimental effect of undercutting the ability of antitrust enforcement to preserve the nation's free-market economy.

Mr. President, I ask unanimous consent to have printed in the RECORD this editorial.

There being no objection, the material was ordered to be printed in the RECORD as follows:

[From the Des Moines Register, Jan. 7, 1986]

"BEER BILL" UN-AMERICAN

(By Robert O. Aders)

Suppose that you could buy your groceries at only one designated supermarket.

Or, that you could buy a particular make of car at only one designated dealer.

"This isn't America!" you would declare.

"Where's my freedom of choice? Why isn't there competition?"

You're right! Limiting freedom of choice and competition is not America or American.

But, strange as it may be, there is a movement in Congress to kill the freedom of retailers to make their own choice of which beer wholesalers they deal with, by permitting wholesalers to establish territorial monopolies and exempting them from the antitrust laws.

After five years of intense pressure by beer wholesalers, the Senate Judiciary Committee has sent the "Malt Beverage Interbrand Competition Act" to the Senate floor. It gives an antitrust exemption for the beer industry so that beer wholesalers can have exclusive distribution territories.

That means retailers in a given brand's territory can only get that particular brand of beer from the designated wholesaler. The retailer can't shop for the best price and service, as he can for the other items in his store.

More than 20 organizations—ranging from the Consumer Federation of American and the National Consumers League to the Department of Justice and the National Association of Attorneys General—strongly oppose this legislation.

Together, we say that removing beer distributors from the applications of the antitrust laws will trigger severe, negative effects.

First, the beer bill will cause higher beer prices for the consumer, guaranteed profits for wholesalers and worse service for retailers.

Second, the "beer bill" will create a dangerous legal precedent. The Department of Justice has warned that its enactment will encourage other industries to seek privileged antitrust treatment, to the detriment of American business and the consumer.

We ask: Why should this industry, or any industry, deserve special treatment under the antitrust laws?

The alarm about the possible enactment of the legislation is widespread. Here is a portion of the testimony by an official of the Federal Trade Committee:

"We are unaware of any evidence or principled argument that might justify the bill, and we believe that enactment of such unjustified special exemptions has the detrimental effect of undercutting the ability of antitrust enforcement to preserve the nation's free-market economy."

What's the position of thousands of independent owners of taverns and restaurants?

Here is a portion of the testimony, in 1982, of the president of the National Licensed Beverage Association before the House Judiciary Committee:

"Let's not forget that antitrust laws were enacted for the protection of the small-business men and the consuming public. In this case, special exemptions to these laws can only take away that protection and lay open the small-business men and consuming public to the whims of what we call 'beer barons' who would have exclusive rights to sell their brand of beer to retailers within the boundaries of their kingdoms.

"As in any feudal economy, this one too would be supported on the backs of the 'peasants'—in this case, the consumers."

If we bow to the demands of the "beer barons," what other "barons" are waiting to impose their will upon us?

Is freedom of choice and America's free-enterprise system slipping away from us?

"Exclusive rights" given to special interests are knife thrusts into our nation's free-market economy.

(Robert O. Aders is president of the Free Marketing Institute.)

Mr. President, I think it is important to see just who opposes the beer bill. The Consumer Federation of America, the Consumers Union, the National Consumers League, the Community Nutrition Institute, the National Association of Attorneys General, the Federal Trade Commission, the Department of Justices, the Independent Beverage Distributors Alliance, the National Small Business Association, the American Retail Federation, Food Marketing Institute, the National Growers Association, the National Association of Chain Drugstores, the National Association of Convenience Stores, the New York City Consumers Affairs Office, the American Bar Association, the Office of Special Adviser to the President for Consumer Affairs, and the Small Business Administration.

Who is in favor of it? I guess who is in favor of it are some of the big beer distributors and some of the beer brewers in this country.

Mr. President, as I said, a lot has been written about this bill. I also refer to another editorial that appeared in the Des Moines Register dated September 21, 1986. The title is "Creating Beer Monopolies."

□ 1830

The writer of the editorial made the point that if beer drinkers were as organized, or were even organized as well as the beer distributors and the beer brewers, this bill would not see the light of day any time soon.

The editorial went on to say that:

> Brewers and distributors can establish exclusive territorial deals among themselves under present law, but the deals can be challenged when they appear to stifle competition.

That is true under the rule of reason.

> The provision that the wholesalers got attached to the appropriations bill would preclude such challenges.
>
> The measure is indefensible.

Mr. President, I ask unanimous consent that the editiorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Des Moines Register, Sept. 21, 1986]

CREATING BEER MONOPOLIES

The price of beer could take a significant jump if the U.S. Senate doesn't strip the Treasury and Postal Service appropriations bill of a provision that exempts beer wholesalers from antitrust laws. It would allow the wholesalers to carve up territories and establish monopolies with impunity.

As the president of the Food Marketing Institute said, beer wholesalers are "attempting to place themselves above all the antitrust laws that apply to all other businesses." The attempt has drawn complaints from the American Bar Association, American Retail Federation, the Department of Justice and other marketing and consumer groups. (If beer drinkers were organized, their outfit would be hopping mad, too.)

Brewers and distributors can establish exclusive territorial deals among themselves under present law, but the deals can be challenged when they appear to stifle competition. The provision that the wholesalers got attached to the appropriations bill would preclude such challenges.

The measure is indefensible.

Mr. HARKIN. Mr. President, the beer industry is here trying to do an end run because they know that, under the discerning examination of the Senate Judiciary Committee or the House Judiciary Committee, this bill just will not pass muster. It is anticompetitive. It is promonopoly. It is anti-small-business. It is not in the best interest of promoting competition in our country, but is, in fact, in the best interest of stifling competition.

So I hope, Mr. President, that cooler heads might prevail. I have a number of editorials here. I do not intend to put them all in the RECORD, but suffice it to say that I believe that it is quite clear that the consumers of America and the vast majority of small business people would all be opposed to this measure now before us.

We always give lip service to competition and how much competition is good for our country. But here is a case where we can do something to help competition, to get rid of this beer bill and send it back to the Judiciary Committee where it belongs. Let them take a look at it. If this passes muster there, then they can bring it out to the floor under the normal rules of procedure here in the Senate. But this is not the place, nor is this the time for it.

I am hopeful that we can move on with the important business of the continuing resolution, get it passed, get it to conference, and get it down to the President so we can all go home. But I daresay that those of us who feel very strongly about competition in the marketplace and about doing something to protect consumers and the grocery store owners and the convenience store owners, feel very strongly that this bill ought to be put off for another time and another place and that it really ought to be taken up by the Judiciary Committee.

Mr. President, there should not be a rush to pass something this meaningful and to do away with the antitrust law that now covers—and I think covers quite adequately, with a good rule of reason—the situation covering beer distributors now.

So I am hopeful, Mr. President, that those who are in favor, for whatever reason, who are trying to give a monopoly power to the beer distributors, would see the inadvisability of putting this on an appropriation bill and we could go ahead and take the normal course of having it go through the Judiciary Committee and perhaps bring it up next year in the next Congress.

Mr. SIMPSON. Mr. President, I support section 621 of the Treasury-Postal Service appropriations bill which is similar to a measure recently passed favorably by the Judiciary Committee—the Malt Beverage Interbrand Competition Act—which I cosponsor. I feel this legislation will have procompetitive effects and will ultimately benefit consumers.

The language of section 621 is essentially the heart of the Interbrand Act which has been the subject of several hearings and which has been thoroughly reviewed by the Judiciary Committee. This provision would ensure that agreements between brewers and distributors of beer—which give the distributors the exclusive right to sell a particular brand of beer in a certain territory—are not unlawful if there is "substantial and effective" competition with other brands of beer. As a result, retailers located within that territory would be required to buy that brand only from that distributor.

I believe that territorial agreements may be necessary for distributors to risk a substantial capital investment, to advertise and promote the beer, to guarantee quality control and to meet the commitment to serve all retailers.

Currently, 22 States actually require by law that brewers assign exclusive territories to wholesale distributors within the State. Those States do find that such requirements promote competition and are effective for regulating the sale of alcohol and collecting State excise taxes on beer sales. All other States permit these types of agreements except Indiana.

I feel that it is important for Congress to clarify the Federal position on exclusive territories at this time in order to ensure that State laws are not challenged or overturned by Federal courts. Such suits would be an unnecessary burden for small business, as well as the judicial system. In addition, this would run counter to the express will of the 21st amendment which gives States the right to regulate the manufacture, distribution, sale, and consumption of alcoholic beverages.

It is my belief that section 621 of the Treasury-Postal Service appropriations measure will encourage fair competition in the beer industry and will serve the American consumer. I recommend this legislation to my colleagues.

Mr. HECHT. Mr. President, I support the language in the continuing resolution embodying the provisions of Senate bill 412, the Malt Beverage Interbrand Competition Act. This language would preserve the existing wholesale distribution system for beer in the United States by establishing that where there is "substantial and effective competition" among manufacturers and wholesalers of malt beverages, defined geographical territories for the wholesale distribution of beer are permissible under the antitrust laws.

Mr. President, this language seeks the same objective as the Soft Drink Interbrand Competition Act which passed this Chamber overwhelmingly and was subsequently enacted in 1980. This language will not create monopolies for beer wholesalers. The territorial system of malt beverage distribution recognized by the bill is already mandated by law or regulation in 49 out of 50 States. In an industry where vigorous interbrand competiton exists—such as the beer industry—reason dictates that monopolies do not exist.

Mr. President, the territorial distribution system for malt beverages is highly competitive. The efficiencies gained through territorial agreements stimulate cost competitiveness, product promotion, and customer service. More important, the territorial system ensures responsible and orderly market practices consistent with State laws and regulations.

The beer bill will have no effect on beer prices. It merely preserves the system used by the overwhelming majority of States for the past 50 years. No wholesalers would be eliminated. Thus, there is no basis for the dire predictions of price increases that opponents have spoken of.

Mr. President, passage of this legislation would not only preserve the customary distribution system for beer in the United States, it would reinforce States' rights under the 21st amendment to the Constitution. Section 2 of the 21st amendment grants power to the States to regulate the manufacture, distribution, sale, and consumption of malt beverages. This important State authority coexists with Federal antitrust laws. Twenty-two States currently mandate exclusive territorial franchises for malt beverages by law, while only one State prohibits such arrangements by administrative ruling.

Mr. President, it is important for Congress to clarify the Federal position on exclusive territories. Without such a clarification, State laws that either permit or require exclusive territorial agreements in the brewing industry could be challenged or overturned by Federal courts. This would obviously run counter to the express will of the 21st amendment. By stating that territorial agreements are not per se violations of Federal law, Congress would provide the States with maximum freedom and security in deciding the type of system best suited to local needs and regulatory systems.

Mr. President, as Senator DeConcini has noted, the National Conference of State Liquor Administrators endorsed the Malt Beverage Interbrand Competition Act. In a resolution passed June 23, 1983, the conference said strong forces are at work in the marketplace to break down their regulatory powers, which were granted by the laws of their respective States. The act, the conference stated, "will greatly strengthen the ability of State liquor administrators to effectively discharge their responsibilities for controlling malt beverages and promote more effective collection of malt beverage excise taxes."

Mr. President, clearly the legislators who framed the 21st amendment to repeal prohibition believed that alcoholic beverages should be controlled by the States. Under State control, exclusive territorial arrangements have flourished because they proved reliable in furthering the dual aims of efficiency and competition in a strictly regulated environment. The Malt Beverage Interbrand Competition Act language in the continuing resolution ensures the continued viability of this proven system, and I therefore urge my colleagues to support it.

Mr. MOYNIHAN. Mr. President, I oppose the inclusion of the Malt Beverage Interbrand Competition Act in the Treasury/Postal Services appropriation bill incorporated in the continuing resolution.

The Malt Beverage Interbrand Competition Act is nothing more than a frontal assault on the consumers of America. This special antitrust exemption would allow beer brewers the right to award exclusive franchises to wholesalers who in turn, could set one price for a region, thereby preventing secondary distributors from selling beer at a lower price.

According to a study recently released by the Consumer Federation of America, this exemption could cost consumers over $1 billion a year. In my own State of New York, beer prices have risen by as much as 21 percent after beer brewers instituted territorial monopolies. I applaud my esteemed friend, New York State Attorney General Robert Abrams, for his ceaseless efforts to put an end to these activities as violations of State antitrust law. I also commend the New York State Legislature for defeating bills—on eight separate occasions—which would mandate exclusive territories for beer distribution.

But now, since the Malt Beverage Interbrand Competition Act was included in the Treasury/Postal Service appropriations bill and was subsequently annexed to the continuing resolution, there is a very real possibility that this unjustified exemption for beer wholesalers from our antitrust laws will soon become the law of the land. The Senate is on the verge of legitimizing these dangerous practices which hurt both consumers and small businesses. In New York State alone, there are over 500 discount beverage centers with 10,000 employees who could be out of work if we legalize beer monopolies.

Opposition to this measure is very strong, as well it should be. The Reagan administration, the chairman of the House and Senate Judiciary Committees, States' attorneys general, the Small Business Administration, and consumer groups count among the bill's many opponents. In fact, beer wholesalers and a handful of Senators may well be its only supporters.

I urge my colleagues to take a hard look at this exemption and decide for themselves whether they can justify imposing a burden on consumers and small businesses in order to accord special treatment to the beer industry.

Mr. BINGAMAN. Mr. President, I support the amendment of the distinguished Senator from Ohio, Mr. METZENBAUM, to strike the provision of House Joint Resolution 738, the Continuing Appropriation Act, which contains a broader, more harmful version of S. 412, the Malt Beverage Interbrand Competition Act.

This bill intended to clarify the circumstances under which territorial provisions in licenses to distribute and sell trademarked malt beverage products are lawful under the antitrust laws. Specifically the bill declares that no antitrust law shall prohibit territorial provisions in agreement for distribution and sale of trademarked malt beverages provided other brands of beverages offer effective competition.

The exemption from the antitrust laws for beer wholesalers included in this bill is far broader and much more dangerous than the exemption provided for in the bill reported by the Judiciary Committee. Key limiting provisions of the earlier bill relating price fixing agreements and the invalidation of State laws are omitted. As a result this provision as now drafted actually exempts price fixing and group boycotts for the antitrust laws and preempts State antitrust laws on State alcoholic beverage laws, an area properly left to the States.

I am opposed to this bill and this provision for a number of reasons. Supporters of the bill argue that it would simply set a clear and concise standard for determining the legality of exclusive territorial agreements for malt beverage distribution, and that it would facilitate tax collection and State control over distribution, as well as to ensure the widest possible selection of products. Despite these arguments, this bill would actually legalize territorial monopolies in the beer industry.

However, I personally believe in strong enforcement of our antitrust laws, and, in my view, exceptions should not be carved out unless there is a compelling show of the need to do so. From all of the materials I have reviewed, there do not appear to be such serious problems in the current system so as to warrant a new antitrust exemption for exclusive distributorships. As a result this exclusion is neither warranted nor is in the public interest. I also question the appropriateness and germaneness of this provision as a part of the continuing resolution. The original bill, S. 412 although it was favorably reported by the Senate Judiciary Committee is still pending on the calendar. This provision has now been adopted by the Appropriations Subcommittee on the Treasury, Postal Service and General Government and inserted in the continuing appropriations resolution. I believe this new antitrust exemption is neither warranted nor germane to this appropriations bill. In fact, it is clear authorizing on our appropriation bill and as a result should be rejected.

Let me give some additional reasons why I oppose this bill. In addition to believing it in unnecessary and not in the public interest, as well as procedurally incorrect as a provision to this bill, I feel the bill constitutes Federal legislation in our area that I, as a former attorney general of the State of New Mexico, feel is more appropriately left to the States and one that is left to the States under the 21st amendment to the Constitution, governing the regulation of intoxicating liquors. In addition, it is clear to me and others I am sure that this bill is designed to benefit one particular industry, the brewers and distributors of malt beverages and beer, and I do not see the justification of the special treatment provided by this legislation. As a result this legislation is unfair to consumers. If this bill is passed it will open the door to additional unwarranted requests for antitrust exemptions.

Exclusive territories that are procompetitive are already legal in the beer business as in other businesses. This bill, in attempting to "codify" this practice actually creates a new more lenient standard. The Supreme Court, in its 1947 decision Continental TV, Inc. versus GTE Sylvania, Inc., held that nonprice vertical restraints—including exclusive terrritories are to be held unreasonable only if their anticompetitive impact is not outweighed by procompetitive justifications. They are to be judged on a case-by-case basis using the rule-of-reason analysis. Under this approach, all relevant economic factors are examined and a determination is made whether a challenged restraint would on balance injure competition. However, this bill makes no mention of the rule-of-reason. Instead it creates a new legal, more lenient standard that says exclusive beer territories are procompetitive as long as there is "substantial and effective interbrand competition."

Finally, I think it is important to note that this bill is opposed by the Federal Trade Commission, the Department of Justice, the American Bar Association and many others.

I urge my colleagues to oppose this measure.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the committee amendment be temporarily laid aside.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

CONTINUING APPROPRIATIONS UNTIL OCTOBER 8, 1986

Mr. HATFIELD. Mr. President, this has been cleared on both sides of the aisle, by the way. I ask unanimous consent that the Senate now turn to the consideration of House Joint Resolution 743, the so-called short-term continuing resolution just received from the House.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

> A joint resolution (H.J. Res. 743) making continuing appropriations for fiscal year 1987, and for other purposes.

The Senate proceeded to the immediate consideration of the joint resolution.

Mr. HATFIELD. Mr. President, this is basically what its title would imply. It is a short-term continuing resolution that would extend the Government's operation beyond midnight tonight until October 8. It includes the level of services that shall be rendered by each agency that will be covered by an appropriation bill.

I move its adoption.

The PRESIDING OFFICER. Is there further debate on the resolution?

Mr. HATFIELD. Mr. President, I would like to yield to the Senator from Mississippi for any remarks he may wish to make.

Mr. STENNIS. I have no remarks, Mr. President, except I favor passage of the bill. This has been cleared on this side of the aisle. It is agreeable.

The PRESIDING OFFICER. The joint resolution is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 743) was ordered to a third reading, was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum.

The **PRESIDING OFFICER.** The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

AMENDMENT NO. 3095

(Purpose: To provide that certain antitrust provisions of H.R. 5294 not apply)

Mr. HATFIELD. Mr. President, in order to get this issue now before the body, I want to submit an amendment to the committee amendment, and then that will be a debatable question, or at least we can then engage in a colloquy to indicate the agreement that has been reached between the proponents and the opponents of the committee amendment.

So at this time I send the amendment to the desk, and ask for its immediate consideration.

The **PRESIDING OFFICER.** The clerk will report.

The bill clerk read as follows:

The Senator from Oregon [Mr. HATFIELD] proposes an amendment numbered 3095.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

At the end of the pending amendment, add the following:

SEC. . Notwithstanding any other provision of this resolution, the provisions of section 621 of H.R. 5294, the Treasury, Postal Service, and General Government Appropriations Act, 1987, as reported by the Senate on August 14, 1986, and as incorporated in this Act, shall have no application or effect.

Mr. HATFIELD. Mr. President, basically this amendment achieves a status quo. In effect, it brings down the committee amendment that had exempted the beer industry from the current antitrust provisions of law.

□ 1850

The Senator from Arizona, who is the proponent of this amendment, and who, in effect won a vote, a numerical vote, which was taken on the amendment a short time ago, has very graciously entered into a gentleman's agreement that will be pursued by all of those who participated.

Let me briefly outline it as I best understand it, and then it will be subject to any clarification.

This, by the way, has been cleared, in a sense cleared in that they have agreed to participate in this strategy, by the current majority leader and the current minority leader, by the chairman of the Judiciary Committee [Mr. THURMOND], by the Senator from Ohio [Mr. METZENBAUM], by the Senator from Iowa [Mr. HARKIN], and by the Senator from South Dakota [Mr. ABDNOR].

Basically, what we are agreeing is that we will revisit this issue, using our best efforts in our respective roles, which I as chairman of the Appropriations Committee or as the ranking minority member whatever the case may be, in the new Congress, the 100th Congress. We will pursue the strategy to revisit this issue. We have not been able to define every little aspect of it, but this is the general broad provision:

That if the Judiciary Committee should report a bill relating to this subject matter to the body of the Senate, to the floor of the Senate, that the leadership will use its best efforts to bring that vehicle, that bill, before the body within 60 days, and that there would occur in that effort, or there would be expected, a vote on that issue, on that vehicle.

Mr. METZENBAUM. If the Senator will yield, I do not mean to interrupt——

Mr. HATFIELD. I was getting ready to amend my statement.

That there would be a vote. It was not defined as to whether it would be up or down, a tabling motion, a cloture vote or whatever. There would be a vote. We did not find it possible to precisely define the form of that vote, but a vote.

Let me say, Mr. President, that with this kind of strategy the proponents have narrowed their position down rather signficantly for in the initial discussions it was sort of an open-end affair. It could have been an amendment as a rider; it could have been raised at any point in time by the proponents. Now the proponents are saying they will predicate their expectation for a vote upon a vehicle, a specific vehicle, that would be created by the Judiciary Committee.

As chairman of the Appropriations Committee I know how vulnerable an appropriations bill is for abortion questions, school prayer questions, many other questions that could be raised by any Member.

In this case the Senator from Arizona was most cooperative, as was the Senator from Iowa, the Senator from Ohio, the Senator from South Carolina and the Senator from South Dakota and reasonable by saying that a vote, without defining particularly what form it would take, on a specific vehicle. I am very happy about that because it is not a vehicle that is going to come out of my committee, which is where we are now. Therefore, it would at least be one less possible stumbling block to the appropriations process.

Mr. President, I think this is eminently fair. The Senator from Arizona, the Senator from South Dakota, the Senator from Iowa, and the Senator from Ohio each realize that one may have won a numerical vote today but there are not enough votes there to stop a filibuster. Therefore, a filibuster is still an option here unless we get this kind of an agreement.

We realize that one Congress cannot bind a future Congress, but we are gentlemen, we are men of our word, and I am sure that that is the basis upon which much of this body functions anyway. Again, I think it is an excellent demonstration of people with strong feelings on both sides of this issue recognizing that there is a greater issue at stake here, which is to continue the appropriations process to some kind of culmination.

I must say again I am indicating this strategy from my perspective or my understanding. I am subject to questioning for clarification.

Mr. METZENBAUM. If the Senator from Oregon would be good enough to yield——

Mr. HATFIELD. I am happy to yield the floor.

The **PRESIDING OFFICER.** The Senator from Ohio is recognized.

Mr. METZENBAUM. The Senator from Oregon was doing that which he always does on the floor of the Senate and that is to describe very accurately the situation as it is and state the facts. However, I think there is one clarification that needs to be made, and I think there is no misunderstanding between the Senator from Arizona, the Senator from Iowa, the Senator from South Carolina, the Senator from Oregon, and myself. The comment concerning attempting to bring this to the floor in 60 days from the Judiciary Committee is clear with our understanding. Also, with respect to the motion to proceed, we have indicated we would not take issue with that.

However, once the bill is on the floor, no holds are barred at that point. Once it is on the floor, we can filibuster, we can amend, we can move to send back to committee, and the Senator from Arizona or whoever will be handling the bill at that time has the right to file a cloture motion. In that manner, he would get a vote. But beyond that there is no understanding as to whether there would or would not be a vote.

It is only fair to point out that those of us who oppose the bill would in all probability attempt to keep it from coming to a vote. As the Senator from Arizona well knows, and he and I have agreed, he certainly would have no difficulty in obtaining 20 signatures for a cloture motion.

We are not in any way agreeing to a vote and we are in no way in a position to preclude his having a vote on the cloture question. After cloture, if and when it is invoked, there is no understanding either as to filibuster by post cloture.

Mr. HATFIELD. If the Senator will yield, I will be happy to respond.

As the Senator will recall, in describing this I used the phraseology as to have a vote on the issue. That triggered the Senator from Ohio right out of his chair and I quickly amended that to say a vote. Then I indicated we did not define whether it would be a vote up or down, a vote to table, or a cloture vote, or any other vote. I have just asked the Senator from Arizona to affirm that that is accurate as the Senator from Ohio has just described it. No holds barred but ultimately we would expect there would be some kind of a vote, but that would depend, again, upon the proponents and the opponents and the circumstance of the parliamentary situation.

Mr. DECONCINI. Will the Senator yield?

Mr. HATFIELD. I yield.

Mr. DECONCINI. The Senator from Oregon announced it correctly with the clarification of the Senator from Ohio. The best efforts would be made to bring the matter to the floor within 60 days after reported by the Judiciary Committee and these principals here would not object to it being considered by this body. Once it is considered, assuming that it is, then the Senator from Ohio is correct, that there would be whatever the procedures are from that time on, whether or not it passed or filibustered or cloture was imposed or was not. I thank the Senator for his arrangement and I thank the Senator from Ohio and the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I will not take long. I just want to add my thanks to the distinguished chairman of the committee for getting us through this mine field and safely home on this issue. It has been a great job in bringing us together and reaching this agreement.

I also want to pay my respects to the Senator from Arizona who is a great friend of mine, for whom I have profound admiration and friendship. He has fought hard on this issue for a long time. He feels very strongly about it, as do most on the other side. I believe this agreement was reached in a fashion that really speaks well for the Senate and those of us who give our word that we will follow this kind of a direction the distinguished chairman of the Appropriations Committee has outlined in his remarks.

Also, I want to thank my colleague from Ohio, and especially my colleague from South Carolina for their grit and their staying power and for making sure that the consumers and others are heard on this issue and making sure that we have a full hearing on this next year sometime.

I just wanted to thank the distinguished Senator from South Carolina.

Mr. METZENBAUM. Mr. President, I want to say just a word of commendation to the chairman of the Committee on Appropriations, who has borne with those of us who have been contenders on this issue because he tried all day long to get this matter resolved and reconciled so we could go on with the business at hand. I think he very ably handled that.

I also would like to say one other word. That is that although the Senator from Arizona and the Senator from South Dakota felt very deeply about this issue, the Senator from South Carolina, the Senator from Iowa, and the Senator from Ohio also felt very deeply about it. We addressed ourselves to the issue at length and there was a great deal of time consumed, but I think it is rather reassuring that all of those involved in the matter started out being good friends and are still good friends.

The Senator from Arizona is one of my best friends around here. I think it is a good way of putting the issue to bed so we can all go home.

Mr. DECONCINI. Mr. President, I thank my friend from Ohio and concur with what he said, certainly about the friendship in the body. I also thank the distinguished chairman of the committee, Mr. HATFIELD.

I would say we had some fun here as to the price of beer and some things that were said here. But I can sincerely say they were said from my position and I know from opponents of this bill, from a position of what they earnestly feel and the Senate spoke, at least not to take it out. So we will visit this effort another time.

I thank the Senator from Oregon for his patience. He is close to Job, I can assure him, in this Senator's opinion.

Mr. THURMOND. Mr. President, the able chairman of the Committee on Appropriations is not only a man of high ideals and character, but I have decided he is a great negotiator. I wish to express my appreciation to him for working this arrangement out. I was very pleased to cooperate with him.

I also thank the distinguished Senator and able legislator from Arizona [Mr. DECONCINI], a good friend of mine—we have worked together on the Judiciary Committee on so many matters—for agreeing to work this arrangement out. I also express my appreciation to Senator METZENBAUM and the distinguished Senator from Iowa [Mr. HARKIN] for their working with the distinguished chairman here and bringing this matter to a conclusion. I think it has now ended on a good note, we have saved time, and we shall proceed. I am sure now we can go ahead with this bill.

Mr. HATFIELD. Mr. President, I thank my colleagues, the Senator from Arizona, the Senator from Ohio, the Senator from Iowa, the Senator from South Dakota, and the Senator from South Carolina, and all other participants for resolving this issue in amicable fashion. I have found again as so often in the past that when gentlemen and ladies of good faith work together to resolve an issue, there is hardly any issue that is not resolvable. I am very grateful for having reached this point.

Mr. President, I now move the adoption of the amendment to the committee amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3095) was agreed to.

Mr. HATFIELD. I move to reconsider the vote by which the amendment was agreed to.

Mr. HARKIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I move to adopt the committee amendment as amended.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment, as amended.

The committee amendment, as amended, was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment to the amendment was agreed to.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, we have now cleared the continuing resolution of all committee amendments. Let me put the Senate on notice that, first of all, we do not plan to take up any more amendments tonight on this continuing resolution, but tomorrow, we should expect a full day and perhaps late into the night of floor action on this continuing resolution.

Let me remind the body that we have been interrupted here frequently on the continuing resolution and we have operated on this bill so far in bits and pieces of time; we have not been able to develop any kind of momentum or sustained effort to conclude this. Tomorrow is that day. So I urge Senators who have amendments to be considered to be on deck early, at whatever time the leadership has determined we shall reconvene in the morning, and I want to put every Senator on notice, too, that we will oppose all amendments as the managers of the bill. We will oppose them and we will attempt to keep this continuing resolution clean and hope to get to conference very shortly.

Mr. President, none of us could function in this operation without the stalwart support of all parties and all leaders. I certainly must say to the body again that my colleague, the ranking member of the full committee [Mr. STENNIS] has been such a stalwart in the process.

Let me add, just before I yield to the Senator from Mississippi, that we hope and expect to pass this bill tomorrow night. That is our objective: push through. Finish the business. Get it to the conference with the House. Unfortunately, in my opinion, they gave us too many days on the short-term resolution—until October 8. Let no one feel that we are going to have this continuing resolution on the floor on October 7. I hope and expect to complete it tomorrow, on October 1.

Bear in mind that tonight at midnight is when the continuing resolution, the short-term, takes effect because we have not acted on this continuing resolution for the annual appropriations.

I yield at this time to my distinguished colleague [Mr. STENNIS].

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. Mr. President, I have never seen a more effective afternoon of work of this type on this floor—on a major bill with a great number of amendments involving a great many people. I commend the chairman of the committee and all those who had their amendments proposed and took part in the debate. It is encouraging to see a fine attitude like this manifested by nearly all the Members. I commend the chairman greatly for his plans for tomorrow. It is striking. I agree with it. I think most of the membership will agree and will cooperate.

When we have a master craftsman stroke in some way to hit those things, things go to happening.

□ 1910

But it is a very difficult thing also in handling a bill with a multitude of amendments. So I think, too, maybe we might have been a little better off if we had not had so many extra days given to us. I will certainly be here early tomorrow and stay late.

I yield the floor.

HIGH-LEVEL NUCLEAR WASTE

Mr. BENTSEN. Mr. President, I am pleased that the continuing resolution includes very limited funding for the Department of Energy's high-level waste program. The bill before us includes the $380 million appropriations for fiscal year 1987 approved earlier this year by the Appropriations Committee.

This figure is dramatically less than the President's request and is less than that provided by the House. There are compelling reasons for this reduction. First, the DOE has demonstrated it is incapable of moving forward with the high-level waste program in a manner that builds confidence. States affected by the high-level waste program have been ignored, rebuffed, and left to guess what it is DOE is doing. In Texas, DOE has been developing a small but increasing presence in the area near the Deaf Smith County site under consideration. Yet DOE continues to deny they are planning on undertaking any specific actions. Questions to the agency are deflected with vague statements.

In preparation of the environmental impact statement, DOE could not even accurately count the number of drinking water wells in place on the site, clearly demonstrating that DOE had not even bothered to physically inspect the land it was interested in condemning. DOE stated that it would stack football fields of salt on top of the ground, but neglected to note that the windy conditions of the panhandle could spread that salt all over the prime agricultural land of the region, thus ruining crops.

Mistakes such as those do not engender confidence. Instead, they promote suspicion and fear. I have repeatedly exhorted DOE to take the State's and citizens' concerns seriously and to be more forthcoming about their activities. But DOE prefers the bulldozer to the negotiating table.

The Nuclear Waste Policy Act, however, anticipated that there would be hard feelings about developing a high-level nuclear waste repository. For these reasons, Congress required DOE to negotiate with States to develop a mutually agreeable approach to the issue. Funds were to be provided to assist States in developing their own program to monitor DOE activities. In short, Congress required DOE to use the negotiating table but DOE has repeatedly turned its back on those affected by the agency's actions.

Rather than discuss issues with affected States, DOE is engaged in litigation about such basic issues as siting guidelines. What is this litigation about? The siting guidelines are DOE guidelines establishing the basis on which sites will be selected for a repository. Despite the fact that the legitimacy of these basic guidelines is in question, DOE forges ahead with its program, possibly moving to select sites that are not suited for a high-level waste repository.

The latest flouting of the Nuclear Waste Policy Act was the agency's May 28, 1986, decision to suspend its search for the second high-level waste repository. The act is indisputably clear that DOE must provide the President with three possible sites for a second repository by 1989. DOE is equally clear that it intends to violate this requirement of the act.

Concerned about DOE's actions, I asked the Comptroller General for an opinion as to the legality of the May 28 decision. GAO's opinion is as clear as the statute itself: DOE's decision to abandon the second site is illegal.

What actions can Congress take with an agency so enhanced with its own power that it defies such a clear congressional mandate? One of the actions we can take is the one included in the continuing resolution. We are dramatically reducing DOE's funds for the high-level waste program so that DOE will be unable to conduct any site-specific work on either the first or the second round or the monitored retrievable storage facility. This means that no matter what DOE does or does not tell us about their work in Deaf Smith County, there will be insufficient funds to conduct any site-specific work in Texas. This is clearly the intent of the Appropriations Committee, as stated in their report:

> The Committee believes that the surest course for the Department lies in the careful implementation of the Nuclear Waste Policy Act in close consultation with the affected parties, in particular, the affected States. * * * It seems obvious that a restoration of consensus is required before significant progress can be made * * *. The important task is the resolution of the numerous controversies in which the program is now embroiled and the restoration of confidence in the program. Only if such a restoration is forthcoming will the Committee consider any request to make additional resources available for elements of the program.

Such an unambiguous statement from the Appropriations Committee leaves no doubt that this is not simply a matter of parochial interest but that we are facing a serious problem with an agency that cannot control itself.

Both the funding level and this report language make it unequivocally clear that no site characterization activity can be undertaken in Texas during the next fiscal year. The ban on site characterization activities that is effected by this reduction in funding is a logical result from DOE's previous activities and its May 28 decision. Clearly, if DOE refuses to continue its search for a second site, the agency must be barred from continuing its search for the first site. Any other course would constitute tacit approval by Congress of DOE's arbitrary refusal to comply with the act.

It is equally clear that more than one high-level waste repository is necessary, based on DOE's own estimates. To move forward with only one site under the Nuclear Waste Policy Act is to abandon all pretense of developing adequate storage capacity under the act.

We are faced with the situation where, on the one hand, the DOE forges ahead without regard to those affected by its actions, and, on the other, the agency's inability to meet any of the statutory deadlines and its refusal to seek amendments to those deadlines. Earlier this year I introduced legislation, S. 2201, extending the deadlines in the Nuclear Waste Policy Act by 10 years. DOE has not sought these changes nor does it endorse them. Instead, the agency simply refuses to comply with the law.

Mr. President, I have been a Member of this body for many years and on many occasions agencies have had trouble complying with our laws. But the actions of the Department of Energy go beyond simple inability to comply with the law and approach an unwillingness to attempt to comply. For these reasons, I strongly endorse the actions taken by the Appropriations Committee and I applaud the dramatically reduced funding level for the high-level waste program at the Department of Energy that will prevent the agency from undertaking or continuing any site-specific work.

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll to ascertain the presence of a quorum.

The legislative clerk proceeded to call the roll.

☐ 1940

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. TRIBLE). Without objection, it is so ordered.

Mr. DOLE. Mr. President, what is the pending business? Is it still the CR?

The PRESIDING OFFICER. I am advised the continuing resolution is still the pending business before the Senate.

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business not to extend beyond the hour of 8 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

FAMILY REUNIFICATION; SOVIET JEWS AND ETHNIC GERMANS

Mr. DECONCINI. Mr. President, as part of a coordinated initiative undertaken by the International Parliamentary Group for Human Rights in the Soviet Union [IPG], I rise to address the issue of family reunification for Soviet Jews and ethnic Germans. My IPG colleagues in the Parliaments of Canada, France, the United States, Italy, the Federal Republic of Germany, the United Kingdom, Austria, and other countries will be addressing major issues in Soviet human rights performance prior to the Vienna Review Conference of the Conference on Security and Cooperation in Europe [CSCE], which opens November 4, 1986.

The Vienna CSCE Review Conference will review compliance with all aspects of the Helsinki Final Act by the 35 signatory states; that is, the United States, Canada, the Soviet Union, and all of Eastern and Western Europe with the exception of Albania. Further, the Vienna Review Conference will consider possible new commitments the signatory states may wish to undertake.

The right of family reunification for Soviet Jews and ethnic Germans is based on the Universal Declaration of Human Rights, 1947; the International Convention on Civil and Political Rights, 1966; and Basket III of the Helsinki Final Act, 1975. Under the provisions of the Helsinki Final Act, the Soviet Union has pledged to "deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family."

Contrary to these obligations, the Soviet Government severely restricts family reunification. For example, in order to apply for an exit visa, Soviet Jews and ethnic Germans must have an invitation—vizov—from a relative in Israel or the Federal Republic of Germany. However, the Soviet authorities, in many cases, will not accept these invitations unless they are sent by immediate family members.

Soviet Jewry: There are approximately 2.5 million Jews in the U.S.S.R. Since 1968, nearly 700,000 vizovs have been sent to Soviet Jews from Israel; however, only 260,000 Jews have actually emigrated from the Soviet Union. Thus, at least 400,000 are still waiting to emigrate.

Jewish emigration has sharply declined, from a peak of 51,000 Jews in 1979 to 1,140 in 1985. In the first 8 months of 1986, only 505 Jews emigrated. These fluctuations appear to vary with East-West relations, rising when the Soviets anticipate benefits from the West, and declining when relations cool. At the same time, anti-Semitism has increased, and the number of trials and imprisonments of Jewish activists has continued unabated. Jews regularly face discrimination in education and employment and have little opportunity for cultural and religious expression and communal activities.

Ethnic Germans: There are nearly 2 million people in the Soviet Union who list German as their ethnic group; 57 percent consider German their native language. The majority of the ethnic Germans are descendants of settlers invited by the czars to live and work in Russia in the 18th and 19th centuries.

Approximately 95,000 ethnic Germans have emigrated from the U.S.S.R. since 1955. Like Jewish emigration, the annual figures have varied greatly, depending on East-West relations. Emigration peaked in 1976 with a total of 9,704 exit visas granted; in 1985, 485 emigrated. According to the German Red Cross, over 100,000 ethnic Germans are still waiting to emigrate from the Soviet Union.

The ethnic Germans are denied their national autonomy, and are unable to establish their own German schools and cultural life, including the religious education of their children.

My colleagues in IPG and I believe that family reunification and other issues in Soviet human rights performance must remain squarely on the agenda at the Vienna Review Conference. The democratic signatories to the Helsinki Final Act must strenthen their support for human rights in the Soviet Union. Further, the democracies must insist that there be balanced progress in all areas of the Final Act if East-West relations are to improve. Thus, any new agreements in the areas of military, security, and economic relations reached in Vienna must be accompanied by similar accords in human rights, and by guarantees of performance under existing agreements.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, and a treaty which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 10:32 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 5480) to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such act.

The message also announced that the House agrees to the amendment of the Senate to the title of the bill (H.R. 4378) to provide standards for placement of commemorative works on lands administered by the National Park Service in the District of Columbia, and for other purposes, and that the House agrees to the amendment of the Senate to the text of the bill, with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the bill (S. 2000) to clarify the exemptive authority of the Securities and Exchange Commission; with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House of Representatives having proceeded to reconsider the bill (H.R. 4868) entitled "An Act to prohibit loans to, other investments in, and certain other activities with respect to, South Africa, and for other purposes", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was

Resolved, That the said bill pass, two-thirds of the House of Representatives agreeing to pass the same.

The message also announced that the House has passed the following bills and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 4917. An act to improve the quality of examinations of depository institutions, and for other purposes;

H.R. 5508. An act to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, and to preserve over 30,000 acres of pristine natural treasures in the Bankhead National Forest for the aesthetic and recreational benefit of future generations of Alabamians, and for other purposes;

H.R. 5560. An act to amend title 18 of the United States Code to ban the production and use of advertisements for child pornography or solicitations for child pornography, and for other purposes;

H.R. 5564. An act to amend the National Housing Act to provide for the eligibility of certain property for single family mortgage insurance;

H.J. Res. 210. Joint resolution designating the Study Center for Trauma and Emergency Medical Systems at the Maryland Institute for Emergency Medical Services Systems at the University of Maryland as the "Charles McC. Mathias, Jr. National Study Center for Trauma and Emergency Medical Systems"; and

H.J. Res. 626. Joint resolution to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 1542. An act to amend the National Trails Act by designating the Nez Perce (Nee-Me-Poo) Trail as a component of the National Trails System;

S. 1766. An act to designate the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park in honor of J. Glenn Beall, Sr.;

H.R. 5506. An act to amend the International Claims Settlement Act of 1949 to provide that the value of claims be based on the fair market value of the property taken;

S.J. Res. 263. Joint resolution to designate September 1986 as "National Independent Retail Grocer Month";

S.J. Res. 405. Joint resolution to designate September 11, 1987, as "9-1-1 Emergency Number Day";

H.J. Res. 547. Joint resolution to designate October 1986 as "Polish American Heritage Month";

H.J. Res. 611. Joint resolution to designate the period of December 1, 1986, through December 7, 1986, as "National Aplastic Anemia Awareness Week";

H.J. Res. 710. Joint resolution to designate the week beginning October 12, 1986, as "National Children's Television Awareness Week"; and

H.J. Res. 721. Joint resolution to designate the week of October 12, 1986, through October 18, 1986, as "National Job Skills Week".

The enrolled bills and joint resolutions were subsequently signed by the President pro tempore [Mr. THURMOND].

ENROLLED BILL SIGNED

At 12:20 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 2888. An Act to temporarily delay the repeal of the United States Trustee System.

The enrolled bill was subsequently signed by the President pro tempore [Mr. THURMOND].

ENROLLED JOINT RESOLUTION SIGNED

At 2:39 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolution:

S.J. Res. 353. Joint resolution to provide for the extension of certain programs relating to housing and community development, and for other purposes.

The enrolled joint resolution was subsequently signed by the President pro tempore [Mr. THURMOND].

At 3:53 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

S.J. Res. 353. Joint resolution to provide for the extension of certain programs relating to housing and community development, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 5548) to amend the Export-Import Bank Act of 1945; it asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House: Mr. ST GERMAIN, Mr. NEAL, Mr. LAFALCE, Mr. FAUNTROY, Mr. KLECZKA, Mr. FRANK, Mr. MANTON, Mr. WYLIE, Mr. LEACH of Iowa, Mr. SHUMWAY, and Mr. PARRIS.

As additional conferees, solely for consideration of section 23 of the Senate amendment and modifications committed to conference: Mr. LUNDINE, Mr. LEVIN of Michigan, Mr. TORRES, Mr. BEREUTER, Mrs. ROUKEMA, and Mr. MCCANDLESS.

As additional conferees, solely for consideration of section 21 of the Senate amendment and modifications committed to conference: Mr. BONKER, Mr. WOLPE, and Mr. SILJANDER.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5595. An act to amend title XVI of the Social Security Act to make necessary improvements in the SSI Program with the objective of assuring that such program (including the work incentive provisions in section 1619 of such Act) will more realistically and more equitably reflect the needs and circumstances of applicants and recipients thereunder.

At 6:26 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, without amendment:

S. Con. Res. 143. Concurrent resolution expressing the sense of the Congress on the resumption of the United Nations High Commissioner for Refugees Orderly Departure Program for Vietnam.

The message also announced that the House has passed the bill (S. 1124) to amend title 49, United States Code, to reduce regulation of surface freight forwarders, and for other purposes, with an amendment, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the bill (S. 565) to direct the Secretary of Agriculture to convey, without consideration to the town of Payson, AZ, approximately 30.96 acres of Forest Service lands, with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 2484. An act to amend title 28, United States Code, relating to quiet title actions against the United States, with respect to actions brought by States;

H.R. 3352. An act to transfer certain real property to the City of Mesquite, Nevada;

H.R. 4712. An act to provide for the restoration of the fishery resources in the Klamath River Basin, and for other purposes;

H.R. 4961. An act to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1987, 1988, 1989, and for other purposes;

H.R. 5020. An act to expand the United States Secret Service Uniformed Division protective jurisdiction;

H.R. 5389. An act to withdraw certain public lands in the State of Alaska for military purposes, and for other purposes;

H.R. 5459. An act to direct the release, on behalf of the United States, of certain conditions and reservations contained in a conveyance of land to the State of Utah, and for other purposes;

H.R. 5488. An act to prohibit implementation of certain regulations of the Federal Emergency Management Agency relating to the declaration process, eligibility for assistance, and non-Federal responsibility for major disasters under the Disaster Relief Act of 1974, and for other purposes;

H.R. 5496. An act to designate certain National Forest System lands in the State of Georgia to the National Wilderness Preservation System, and for other purposes;

H.R. 5568. An act to establish uniform standards for testing and licensing of operators of commercial motor vehicles; and

H.J. Res. 743. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 332. Concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups;

H. Con. Res. 384. Concurrent resolution expressing the sense of the Congress concerning the Soviet Union's continued interference with postal communications between the United States and the Soviet Union; and

H. Con. Res. 391. Concurrent resolution calling on the governments of the Soviet Union, Poland, and Czechoslovakia to cease activities causing harmful interference to the broadcasts of Voice of America and RFE/RL, Incorporated.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

At 7:08 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 5521. An act to extend until October 13, 1986, the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository Institutions Act of 1982; and

S.J. Res. 202. Joint resolution designating October 1986 as "American Liver Foundation National Liver Awareness Month".

The enrolled bill and joint resolution were subsequently signed by the President pro tempore (Mr. Thurmond).

MEASURES PLACED ON THE CALENDAR

The following bills and joint resolutions were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 5495. An act to authorize appropriations to the National Aeronautics and Space Administration, and for other purposes;

H.R. 5568. An act to establish uniform standards for testing and licensing of operators of commercial motor vehicles;

H.J. Res. 210. Joint resolution designating the Study Center for Trauma and Emergency Medical Systems at the Maryland Institute for Emergency Medical Services Systems at the University of Maryland as the "Charles McC. Mathias, Jr. National Study Center for Trauma and Emergency Medical Systems"; and

H.J. Res. 626. Joint resolution to approve the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes.

MEASURES HELD AT THE DESK

Pursuant to the order of the Senate of September 24, 1986, the following concurrent resolution was ordered held at the desk pending further disposition:

H. Con. Res. 391. Concurrent resolution calling on the governments of the Soviet Union, Poland, and Czechoslovakia to cease activities causing harmful interference to the broadcasts of Voice of America and RFE/RL, Incorporated.

ENROLLED BILLS AND JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, September 30, 1986, she had presented to the President of the United States the following enrolled bills and joint resolutions:

S. 1542. An act to amend the National Trails Act by designating the Nez Perce (Nee Me Poo) Trail as a component of the National Trails System:

S. 1766. An act to designate the Cumberland terminus of the Chesapeake and Ohio Canal National Historical Park in honor of J. Glenn Beall, Sr.;

S. 2888. An act to temporarily delay the repeal of the United States Trustee System;

S.J. Res. 263. Joint resolution to designate September 1986, as "National Independent Retail Grocer Month"; and

S.J. Res. 353. Joint resolution to provide for the extensions of certain programs relating to housing and community development, and for other purposes;

S.J. Res. 405. Joint resolution to designate September 11, 1987, as "911 Emergency Number Day".

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-869. A joint resolution adopted by the Legislature of the State of California; to the Committee on Agriculture, Nutrition, and Forestry.

"Senate Joint Resolution No. 58

"Whereas, The research on the consumption of irradiated foods and food components contains examples of serious and adverse effects on health; and

"Whereas, Research results on the health effects of consumption of irradiated foods and food components are inconsistent, ambigious, and therefore unreliable; and

"Whereas, Irradiation of foods can affect vitamin content and nutrient profile and can create potentially harmful chemical compounds not found originally in the unirradiated foods; and

"Whereas, Irradiation facilities contain significant quantities of radioactive materials and would be located in and around food producing and processing areas and close to population centers; and

"Whereas, Extensive and regular transport of great quantities of highly radioactive material over the State's roads and highways would greatly increase the risks and likelihood of nuclear accidents and exposure to radioactivity from spills, accidents, and leaks; and

"Whereas, Individuals employed in facilities in which irradiation is conducted may risk adverse health effects due to exposure to radiation; and

"Whereas, These facilities should have emergency medical plans for radiation accidents or emergencies, safety requirements in effect in the facilities, and employee training in safe irradiation procedures; and

"Whereas, There should be proven and reliable technology for cleaning the facilities in the case of an accidental release within the facility, methods for the evacuation of those areas in the case of a release, emergency response systems and an identification of persons responsible for cleaning the facilities, and personal liability for accidental releases; and

"Whereas, The federal government has issued regulations which permit the irradiation of pork and other foods; and

"Whereas, The people of California deserve an exhaustive study of the potential dangers of irradiation to health and the environment before permitting the irradiation of food and the expansion of this nuclear industry; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California requests the Secretary of Health and Human Services to arrange for an extensive study of the risk to human health and the environment presented by the irradiation of food; and be further

"Resolved, That the Legislature requests that no new regulations be proposed for promulgation which have the same legal effect as existing regulations related to irradiation of food until the Congress and the people have had an opportunity to review results of an extensive study of the potential dangers of irradiation of food and the development of a food irradiation industry; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Secretary of Health and Human Services, to the Speaker of the House of Representatives, and to each Senator and Representatives from California in the Congress of the United States."

POM-870. A joint resolution adopted by the Legislature of the State of California; to the Committee on Agriculture, Nutrition, and Forestry:

Senate Joint Resolution No. 55

"Whereas, States and local governments are burdened by the presence of national forest lands which generate development pressures which, in turn, cause increased demands for transportation, education, police and fire protection, and other public services; and

"Whereas, Since 1908, Congress has provided counties containing national forests with 25 percent of the funds derived from national forest timber production and user fees for schools and roads as partial compensation for public service burdens and tax immunity associated with national forest lands; and

"Whereas, Counties currently receive a 25 percent share of gross national forest revenues, with credits provided to timber purchasers for road construction and reforestation deducted only from the federal government's portion of the revenues; and

"Whereas, In the 1984 federal fiscal year, California counties received $44.1 million of national forest revenues, in the 1985 federal fiscal year, California counties received $35.6 million of national forest revenues, and it is projected that California counties will receive $30 million in national forest revenues in th 1986 federal fiscal year; and

"Whereas, California contains over 19 million acres of national forests, and many of the State's timber counties depend heavily on their due share of national forest service revenues to provide adequate education and transportation services; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President of the United States, the Secretary of Agriculture, and the Chief of the Forest Service to consider the economic impact on the forest products industry and northern California by expanding acreage set aside for spotted owl habitat or by designating additional roadless areas; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Secretary of Agriculture, to the Chief of the Forest Service, and to each Senator and Representative from California in the Congress of the United States."

POM-871. A joint resolution adopted by the legislature of the State of California; to the Committee on Appropriations:

"Whereas, Studies conducted in 1980 showed that the San Fernando Valley groundwater basin suffers from toxic contamination, resulting in the closure of 20 wells; and

"Whereas, Water from 40 other wells in the San Fernando Valley groundwater basin must be blended with unpolluted water to bring the solvent levels within the state's health standards; and

"Whereas, As a result of this contamination, the Environmental Protection Agency has placed the San Fernando Valley groundwater basin on the "National Priorities List," thus making the San Fernando Valley groundwater basin eligible for federal cleanup funds under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq), which is otherwise known as the federal Superfund; and

"Whereas, Although the site is eligible for funding, no funds have yet been appropriated for this cleanup; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to enact legislation appropriating sufficient funds to conduct a removal and remedial action to the San Fernando Valley groundwater basin to remove the solvents from the water; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and vice President of the United States, to the Administrator of the Environmental Protection Agency, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States"

POM-872. A joint resolution adopted by the Legislature of the State of California; to the Committee on Banking, Housing, and Urban Affairs:

"SENATE JOINT RESOLUTION NO. 50

"Whereas, California is the intellectual center of the nation's biotechnology industry; and

"Whereas, Approximately 35 percent of the nation's biotechnology companies, including the leading companies, are headquartered in California; and

"Whereas, California companies have already developed many pharmaceutical products, such as human insulin and proinsulin, human growth hormone, and interferon, which have the potential to alleviate human suffering and illness; and

"Whereas, The United States Patent and Trademark Office has received in recent years nearly one thousand patent applications based on biotechnological research; and

"Whereas, The biotechnology field is growing more competitive, particularly with respect to Pacific Rim and European countries where, according to the Congressional Office of Technology Assessment, private and public companies sometimes benefit from government subsidies; and

"Whereas, Current federal law forces American pharmaceutical biotechnology companies to export new technologies, jobs, and economic development opportunities to other developed countries because of an error in federal law which does not allow distribution of new drugs in certain foreign countries if our own government has not approved the distribution; and

"Whereas, These countries, such as Japan, Germany, Switzerland, France, Sweden, and Great Britain have at least as sophisticated and rigorous a testing program prior to the distribution of new drugs as does the United States; and

"Whereas, It is these countries which offer the stiffest competition to American biotechnology companies, often with the direct assistance of their government; and

"Whereas, American companies, in order to compete in these other markets, must export the production of new drugs to the countries which approve distribution and, thus, take that technology and employment abroad; and

"Whereas, Congress is considering corrective legislation to eliminate this error in the Federal Food, Drug and Cosmetic Act, which governs the exportation of pharmaceuticals; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the State of California views the biotechnology industry in California as one which represents new economic growth, new jobs, new research opportunities, and new means to better the health of both individuals and the state, and as an industry fully deserves the encouragement of the state whenever and however possible; and be it further

"Resolved, That the State of California memorializes the Congress of the United States and the federal government to enact remedial legislation designed to permit the exportation of new drug products that, while pending final Food and Drug Administration approval in this country, have fully complied with the health and safety laws, standards, and regulations of the country to which the products are being exported; and be it further

"Resolved, That the State of California memorializes the Congress of the United States to take every precaution to ensure that countries without a testing program as sophisticated and rigorous as the testing programs that exist in the United States be fully protected from unsafe or nonefficacious products; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-873. A joint resolution adopted by the Legislature of the State of California; to the Committee on Energy and Natural Resources:

"SENATE JOINT RESOLUTION NO. 49

"Whereas, States and local governments are burdened by the presence of national forest lands which generate development pressures which, in turn, cause increased demands for transportation, education, police and fire protection, and other public services; and

"Whereas, Since 1908, Congress has provided counties containing national forests with 25 percent of the funds derived from national forest timber production and user fees for schools and roads as partial compensation for public service burdens and tax immunity associated with national forest lands; and

"Whereas, Counties currently receive a 25 percent share of gross national forest revenues, with credits provided to timber purchasers for road construction and reforestation deducted only from the federal government's portion of the revenues; and

"Whereas, In the 1984 federal fiscal year, California received $44.1 million of national forest revenues, in the 1985 federal fiscal year, California received $35.6 million of national forest revenues, and it is projected that California will receive $30 million in national forest revenues in the 1986 federal fiscal year; and

"Whereas, California contains over 19 million acres of national forests, and many of the state's timber counties depend heavily on their due share of national forest service revenues to provide adequate education and transportation services; now, therefore, be it

"Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress of the United States not to take any legislative actions which would reduce the national forest revenues due to the states, including, but not limited to, legislation that causes credits for timber purchasers for road construction and reforestation to be deducted from the gross national forest revenues rather than from only the federal government's share; and be it further

"Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Secretary of Agriculture, to the Chief of the Forest Service, and to each Senator and Representative from California in the Congress of the United States."

POM-874. A joint resolution adopted by the Legislature of the State of California; to the Committee on Environment and Public Works:

"SENATE JOINT RESOLUTION NO. 54

"Whereas, Congress enacted the Price-Anderson Act with the dual purposes of protecting the public and encouraging the development of the atomic energy industry; and

"Whereas, the dual purposes of the Price-Anderson Act were to be accomplished by limiting the liability of nuclear facility operators for damage to the public from a nuclear accident and by providing federal government indemnification for additional amounts of liability; and

"Whereas, a federal court decision stated that a major accident involving a core melt at a nuclear power reactor "can reasonably be expected to produce hundreds or thousands of fatalities, numerous illnesses, genetic effects of unpredictable degree and nature for succeeding generations, thyroid ailments and cancers in numerous people, damage to other life and widespread damage to property," and might contaminate and require evacuation of areas as large as several thousand square miles; and

"Whereas, the California Energy Resources Conservation and Development Commission's study of the need for undergrounding of nuclear powerplants estimated that the consequences of a core melt accident at realistic reactor locations in California could include tens to hundereds of immediate deaths, thousands of latent cancer deaths, hundreds of early illnesses, and thousands of long-term thyroid cancers under average meteorological conditions and which would be multiplied many times over for worst-case conditions, and that economic consequences could range from several hundred million dollars to $35 billion depending on meteorological conditions; and

"Whereas, Even under the Federal Reactor Safety Study, the potential consequences of the study's worst case meltdown could include 3,300 fatalities and 45,000 radiation injuries within 1 year, 45,000 delayed cancer fatalities, 240,000 delayed thyroid injuries, 5,100 inherited disorders in offspring of the irradiated population, and damage to property amounting to $14 billion; and

"Whereas, The Price-Anderson Act currently limits the aggregate liability for any nuclear incident to an arbitrary amount of $650 million which is unrelated to the actual harm to public health and safety and damage to property that might result from a nuclear incident; and

"Whereas, The reasonable value of the personal injuries and property damage of a major nuclear facility incident would vastly exceed the arbitrary limits established by the Price-Anderson Act; and

"Whereas, The arbitrary limit on the aggregate liability in the event of a nuclear facility incident takes no account of the effect of inflation on the value of the economic losses that might result from such an incident; and

"Whereas, The United States Supreme Court upheld the constitutionality of the Price-Anderson Act's liability limitations, based partly on assurances from Congress and the Nuclear Regulatory Commission that the risks to public health, safety, and property from a potential nuclear facility incident are vanishingly small; and

"Whereas, On January 18, 1979, the Nuclear Regulatory Commission, after extensive review of its Reactor Safety Study stated that it does not regard as reliable the Reactor Safety Study's numerical estimate of the overall risks to the public of a reactor accident; and

"Whereas, The actual experience with the nuclear reactor accident in the Soviet Union confirms the unreliability of previous assurances about the risks to the public from nuclear incidents; and

"Whereas, The financial burdens of compensating victims of a nuclear accident would be divided unequitably between ratepayers, taxpayers, and shareholders; and

"Whereas, The Price-Anderson Act has failed in one of its primary purposes which was to provide assurances of protection to the public from harm to their health, safety, and property that might result from a nuclear incident; and

"Whereas, The Congress has an overriding responsibility to guarantee that personal and property damages that may be suffered by the public as a result of a major nuclear facility incident will be fully and adequately compensated; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress of the United States to replace the existing liability limits of the Price-Anderson Act, as they relate to activities of nuclear facilities licensed by the Nuclear Regulatory Commission, with more realistic provisions and, to the extent liability limits are imposed, require the federal government to assume all residual liability above those limits; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President of the Senate, Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-875. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance:

Senate Joint Resolution No. 60

"Whereas, Congress is currently considering a tax reform bill which could have a profound effect on the lives and pocketbooks of millions of Americans; and

"Whereas, As part of its deliberations on this tax reform bill, the Congress is weighing various proposals regarding the treatment of individual retirement accounts (IRA's) under the federal Internal Revenue Code; and

"Whereas, According to a recent study, 28 million American families are currently taking advantage of the deduction for IRA contributions and the deferral of taxation on interest earned by IRA's, which are available to them pursuant to existing law; and

"Whereas, Statistics indicate that approximately 65% of the households with IRA's have annual incomes of $40,000 or less; and

"Whereas, Another recent study indicates that IRA contributions have significantly increased the amount of savings deposited in financial institutions, and a higher rate of savings helps to stimulate the economy by keeping money in productive circulation; and

"Whereas, The current treatment of IRA's under the federal tax laws has proved to be beneficial both for a large number of individual taxpayers and for the economy as a whole; now, therefore, be it

"*Resolved by the Senate and Assemby of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress and President of the United States to maintain the current availability of the deduction for individual retirement accounts in any tax reform statute which they may enact; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker and the Chairperson of the Committee on Ways and Means of the United States House of Representatives, the Chairperson of the Committee on Finance of the United States Senate, and each Senator and Representative from California in the Congress of the United States."

POM-876. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance:

"Senate Joint Resolution No. 68

"Whereas, The 1967 decision of the United States Supreme Court in National Bellas Hess v. Illinois Department of Revenue, 18 L. ed. 2d 505, restricted the ability of states to require the collection and remission of use taxes by out-of-state mail-order sellers on sales made to customers within their states unless the sellers had an adequate nexus with the taxing state; and

"Whereas, This decision has resulted in a substantial loss of potential sales and use tax revenues to many states and local governments; and

"Whereas, The advisory Commission on Intergovernmental Relations has estimated that these uncollected revenues amount to approximately $1.5 billion annually; and

"Whereas, The significance of this loss of potential tax revenues will be increased if certain current federal tax reform proposals which would also adversely affect state tax systems are adopted, including the reduction or elimination of federal income tax deductions for state taxes and the revision of federal income tax treatment of tax-exempt financing; and

"Whereas, Two bills, H.R. 5021 and S. 1510, have been introduced in Congress to allow states to collect properly due sales and use taxes that result from out-of-state mail-order purchases; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California endorses the concept embodied in H.R. 5021 and S. 1510 and urges the Congress of the United States to enact legislation expanding the ability of states to collect sales and use taxes on out-of-state mail-order sales to customers within their jurisdictions; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-877. A joint resolution adopted by the Legislature on the State of California; to the Committee on Finance:

"Senate Joint Resolution No. 33

"Whereas, The federal Medicare Prospective Payment System reimburses hospitals for services rendered to Medicare beneficiaries according to rates which are currently established in a manner reflecting hospital-specific and regional economic factors that affect the cost of providing hospital services; and

"Whereas, After October 1, 1987, hospitals will be reimbursed using a single, national rate which will be calculated without regard to the profound economic differences among hospitals and the various regions of the country, but will merely adjust for differences between "urban" and "rural" hospital wage factors; and

"Whereas, The adoption of a national rate under the Medicare Prospective Payment System will not necessarily result in a reduction of total federal spending for Medicare, but will impose a severe and unjust economic burden on the State of California by transferring millions of Medicare dollars currently being received for patient care in California to other states; and

"Whereas, Because the citizens of California pay 25 percent more federal income tax per capital than the citizens of less industrialized states that will benefit from the adoption of a national Medicare Prospective Payment System rate, California will, in fact, be subsidizing these other states for their Medicare expenditures; and

"Whereas, The adoption of a national rate will create an inequitable shift of federal tax dollars to other states since the cost to hospitals of caring for Medicare beneficiaries in California and the rest of the West and Midwest will significantly exceed the national reimbursement rate, while the cost of providing the same care in the Southern states will fall well below the national rate, resulting in a substantial loss in federal funds from California each year under the national rate; and

"Whereas, This loss of federal support will seriously affect California hospitals' efforts to adapt and survive in a pro-competitive environment such as that prescribed by the Medi-Cal contracting program and the private sector's price competitive markets; and

"Whereas, California hospitals, especially those serving a disproportionate number of the poor, the near poor, and the aged, are already staggering under an ever increasing financial burden of uncompensated care; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California urges the Congress of the United States and the United States Department of Health and Human Services, when formulating the cost of providing hospital care to Medicare recipients, to establish hospital reimbursement rates, under the Medicare Prospective Payment System, that will fairly and equitably reflect the unique economic conditions which affect the cost of providing hospital care to Medicare recipients in higher-cost states such as California, Illinois, and Massachusetts, and regions such as the West, Midwest, and Northeast; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States, and to the Secretary of Health and Human Services."

POM-878. A resolution adopted by the Senate of the State of California; to the Committee on Foreign Relations:

"SENATE RESOLUTION NO. 47

"Whereas, The Legislature, in Resolution Chapter 120 of the Statutes of 1983 (Senate Concurrent Resolution No. 40-Montoya) extended to Taiwan, the Republic of China, an invitation to join the State of California as a sister state; now, therefore, be it

"*Resolved by the Senate of the State of California,* That, effective on the adoption of this measure, the Taiwan Sister State Senate Task Force shall be established, consisting of 11 members, and this task force shall be composed of diverse ethnic backgrounds reflecting the population of the State of California; and be it further

"*Resolved,* That the Taiwan Sister State Senate Task Force shall include nine members of the public, to be appointed by the Senate Committee on Rules. These nine public members shall include persons involved in promoting the sister-state relationship between the people of Taiwan and the people of California, and two of these nine public members shall have scholarly or academic ties with the culture and people of Taiwan. The remaining two members of the task force shall be the President pro Tempore of the Senate and the Author of the resolution establishing the sister-state relationship, or their designees; and be it further

"*Resolved,* That the Taiwan Sister State Senate Task Force shall study ways of conducting mutually beneficial social, economic, educational, and cultural programs, in order to strengthen international understanding and good will, and shall report its findings and recommendations to the Senate; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the Provincial Legislature of Taiwan, the President of the Legislature of the Republic of China, the Governor of the State of California, and each Senator and Representative from California in the Congress of the United States."

POM-879. A joint resolution adopted by the legislature of the State of California; to the Committee on the Judiciary:

"SENATE JOINT RESOLUTION NO. 46

"Whereas, House Resolution No. 604 and Senate Bill No. 1174 of the 99th Congress would provide states with assistance to establish or expand clearinghouses to locate missing children; and

"Whereas, House Resolution 604 and Senate Bill No. 1174 would provide matching funds to state law enforcement departments to establish state clearinghouses for missing children; and

"Whereas, Passage of this legislation is especially important due to the need to establish a link between all levels of government; and

"Whereas, In order to meet demands created whenever cases involving missing children arise, local law enforcement agencies require trained experts capable of handling these crises in addition to proper telecommunications systems and trained personnel; and

"Whereas, State clearinghouses are capable of working closely with private organizations, public agencies, and parents to develop a comprehensive and uniform educational program designed to instruct parents and children of possible dangers related to child abduction; and

"Whereas, State clearinghouses are vital in combating the problem of missing children and should be implemented in each state; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the Congress of the United States to enact House Resolution No. 604 and Senate Bill No. 1174 of the 99th Congress; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-880. A joint resolution adopted by the legislature of the State of California; to the Committee on the Judiciary:

"SENATE JOINT RESOLUTION NO. 43

"Whereas, California is recognized as the entertainment capital of the world through its motion picture, television, and recording industries; and

"Whereas, These entertainment industries are a vital part of California's cultural, social, and economic vitality; and

"Whereas, California, through its economic development policies, continues to possess the largest economy based on creative intellectual property generated by the entertainment industry; and

"Whereas, Protection of these artistic creations is afforded through federal copyright laws; and

"Whereas, Copyright protection is based on the proposition that the welfare of the public will be served and progress of science and useful arts will be promoted by securing to the creators the exclusive rights to their creations; and

"Whereas, The business environment and industry in California are adversely affected by unauthorized reproduction of copyrighted "sound recordings," with recording industry estimates of lost revenue at 1.5 billion dollars per year due to this practice; and

"Whereas, The United States Congress is currently considering legislation to remedy this situation by amending the Copyright Act with H.R. 2911 and S. 1739, known as the 'Home Audio Recording Act'; and

"Whereas, These bipartisan bills would exempt home taping from copyright infringement liability and require manufacturers and importers of blank audio tape and taping equipment to pay a reasonable royalty fee to compensate the rights owners and creators of the music that is taped; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California hereby respectfully memorializes the Congress and President of the United States to enact H.R. 2911 and S. 1739 in a form which would justly compensate artists and rights owners for the unauthorized rerecording of their creations; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-881. A joint resolution adopted by the legislature of the State of California; to the Committee on the Judiciary:

"SENATE JOINT RESOLUTION NO. 70

"Whereas, Certain Philippine nationals served in the United States armed forces during World War II with great distinction; and

"Whereas, The prospect of United States citizenship was held out to these Filipino veterans who served the United States so ably; and

"Whereas, Due to mistakes and misunderstandings, some of these veterans did not file their petitions for naturalization before January 1, 1947, thereby rendering their applications invalid by this technicality; and

"Whereas, These veterans are, in all other respects, deserving of the United States citizenship thus denied them, and this injustice has continued for nearly 40 years; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly,* That the President and Congress of the United States are hereby respectfully memorialized to support and enact legislation extending United States citizenship to those Filipino veterans of World War II who failed to make application therefor before January 1, 1947; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-882. A joint resolution adopted by the legislature of the State of California; to the Committee on Labor and Human Resources:

"Senate Joint Resolution No. 69

"Whereas, A major accident occurred at the nuclear power facility in Chernobyl, U.S.S.R., on April 26, 1986; and

"Whereas, Twenty-seven people have died as a direct consequence of the accident and an estimated 100,000 to 200,000 individuals have received a substantial dose of radiation that may be of long-term health concern; and

"Whereas, Individuals from the United States have provided leadership for international medical efforts aimed at people exposed to radiation at Chernobyl, including development of new techniques for measuring and monitoring the human health effects of radiation exposure; and

"Whereas, Analysis of medical and scientific data from the Chernobyl accident would provide valuable information on the human health effects of radiation resulting from a nuclear powerplant accident; and

"Whereas, The United States has 100 commercially operating nuclear power sites, four of them in California; now, therefore, be it

"*Resolved by the Senate and Assembly of the State of California, jointly,* That the Legislature of the State of California respectfully memorializes the President of the United States to work with the National Academy of Sciences, Institute of Medicine, the National Institutes of Health, the International Atomic Energy Agency, and other appropriate national and international scientific and medical institutions, for the purpose of collecting and analyzing data on the long-term health status of the individuals living or working in the Chernobyl area who received substantial doses of radiation as a result of the April 26, 1986, accident; and be it further

"*Resolved,* That the medical information derived from this data analysis be communicated to the Director of the California Department of Health Services to permit the department to assist the California Office of Emergency Services in reviewing its Nuclear Power Plant Emergency Response Plan; and be it further

"*Resolved,* That the medical information communicated to the California Department of Health Services also be communicated to other like agencies in other states so that those agencies may participate in reviewing their state's nuclear powerplant emergency response plans; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Director of the National Academy of Sciences, to the Director of the National Institutes of Health, and to the Secretary General of the International Atomic Energy Agency."

POM-883. A resolution adopted by the Senate of the State of California; to the Committee on Veterans' Affairs:

"Senate Resolution No. 53

"Whereas, For 17 years, the Mission Hills Little League, Inc., and the Veterans' Administration have carried out a cooperative agreement which allows the league to use perimeter areas of the Sepulveda Veterans' Hospital facility to maintain playing fields for which, in exchange, the league administers, operates, and maintains the fields as well as a nine-hole golf course located on the same grounds for use by convalescing patients and the public; and

"Whereas, Under recent federal legislation mandating reductions in government expenditures, the Veterans' Administration has decided to dispose of what is referred to as "excess land," and this action will eliminate the use by Mission Hills Little League, Inc., of the property where these playing fields are situated; and

"Whereas, In response to Senate Joint Resolution No. 42 of the 1985-86 Regular Session, the Acting Chief Medical Director of the Veterans' Administration states that "once excessed, the community can work with the General Services Administration to determine if the Mission Hills Little League site could be donated to or purchased by the community for continued use by the Little League team"; and

"Whereas, Mission Hills Little League, Inc., has been operating quality programs for youth since 1957, the backbone of which are involved with these playing fields operated under the agreement with the Veterans' Administration; and

"Whereas, The program operated by Mission Hills Little League, Inc., is financially self-sustaining through donations, fund raising activities, local business sponsors, and snackbar revenues with administration and operation of the league accomplished entirely by volunteers; and

"Whereas, All girls and boys ages six to 15 are eligible to play little league ball since no one is ever turned away by Mission Hills Little League, Inc., because of inability to pay; and

"Whereas, There is no feasible alternative site for these playing fields in the densely-populated Mission Hills area, so that this popular program which is so important and constructive for the development and well-being of our young people is threatened with curtailment if these fields are no longer available for use; now, therefore, be it

"*Resolved by the Senate of the State of California,* That the Veterans' Administration is urgently requested to donate this land, which is excess to the needs of the administration but is vital to the needs of Mission Hills Little League, Inc., to the City of Los Angeles or to Mission Hills Little League, Inc., so that it may be retained for the uses and purposes to which it has been put by the league over the past 17 years; and be it further

"*Resolved,* That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the United States Veterans' Administration."

POM-884. A resolution adopted by the General Court of the Commonwealth of Massachusetts; to the Committee on Environment and Public Works:

"Resolution

"Whereas, the wild turkey and the ruffed grouse were once indigenous to Barnstable County in the Commonwealth of Massachusetts; and

"Whereas, the hunting of wildlife was a traditional activity within the area out of which the Cape Cod National Seashore was established in Barnstable County; and

"Whereas, it is appropriate that Congress review the management of our national parks by the Department of the Interior and to request that the Department undertake certain programs; therefore be it

"*Resolved,* That the Massachusetts General Court urge the Congress of the United States to direct the Department of the Interior to establish a Wildlife Management Program toward restoring the ruffed grouse and the wild turkey to the wooded areas within the Cape Cod National Seashore; and be it further

"*Resolved,* That a copy of these resolutions be forwarded by the Clerk of the House of Representatives to the presiding officer of each branch of the Congress and to the Members thereof from this Commonwealth."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROTH, from the Committee on Governmental Affairs, with amendments:

S. 786. A bill to establish an Information Age Commission (Rept. No. 505).

S. 1209. A bill to establish the National Commission to Prevent Infant Mortality (Rept. No. 506).

By Mr. LUGAR, from the Committee on Foreign Relations, without amendment:

H.R. 5522. A bill to authorize the release to museums in the United States of certain objects owned by the United States Information Agency.

By Mr. LUGAR, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 454. Resolution urging the full restoration in Eastern Europe of the Byzantine Rite Catholic Church and of freedom of religion for the people of all Captive Nations, and for other purposes.

By Mr. THURMOND, from the Committee on the Judiciary, with amendments:

S. 1581. A bill to amend section 3006A of title 18, United States Code, to improve the delivery of legal services in the criminal justice system to those persons financially unable to obtain adequate representation, and for other purposes.

By Mr. BOSCHWITZ, from the Committee on Foreign Relations, without amendment and with a preamble:

S.J. Res. 422. An original joint resolution commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion.

By Mr. LUGAR, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Con. Res. 154. Concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. HELMS, from the Committee on Agriculture, Nutrition, and Forestry:

Jim R. Billington, of Oklahoma, to be a Member of the Farm Credit Administration Board, Farm Credit Administration, for a term of two years.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. LUGAR, from the Committee on Foreign Relations:

L. Paul Bremer III, of Connecticut, a Career Member of the Senior Foreign Service, Class of Career Minister, to be Ambassador at Large for Counter-Terrorism.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: L. Paul Bremer III.

Post: Ambassador at Large, Counter Terrorism.

Contributions, amount, date, and donee:

1. Self, none.
2. Spouse, none.
3. Children and spouses names, none.
4. Parents names, mother, Nina Bremer, $100; 1983 New Canaan Town Selectman, campaign—P. Rutherford. Father, deceased.
5. Grandparents, deceased.
6. Brothers and spouses names, Duncan S. Bremer, $500, 1986 Colorado Republican Fund-raising dinner. Michael Bremer, none.
7. Sisters and spouses names, Lynetter Bremer, $10, 1985 New Canaan Republican Party. Meg Bremer, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

David C. Fields, of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Central African Republic.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: David C. Fields.

Post: Central African Republic.

Contributions, amount, date, and donee:

1. Self, none.
2. Spouse, $15, May 1984, $20, January 1985, and $20, December 1985, to Realtors Political Action Committee.
3. Children and spouses names, Scott and Stacy, none.
4. Parents names, Claudia Fields, none. Father, deceased.
5. Grandparents names, N/A.
6. Brothers and spouses names, N/A.
7. Sisters and spouses names, Patricia Groves, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Alexander Fletcher Watson, of Maryland, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Peru.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Alexander Fletcher Watson.

Post: Ambassador to Peru.

Contributions, amount, date, and donee:

1. Self, Alexander F. Watson, none.
2. Spouse, Judith T. Watson, none.
3. Children and spouses names, David F. Watson, none; Caitlin H. Watson, none.
4. Parents names, Fletcher and Alice Watson, none.
5. Grandparents, none.
6. Brothers and spouses names, Jonathan G. Watson, none. Stephen C. Watson, $75, 1983, David Scondras. Christopher R. Watson, none.
7. Sisters and spouses names, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Charles J. Pilliod, Jr., of Ohio, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mexico.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Charles J. Pilliod, Jr.

Post: U.S. Ambassador to Mexico. Nominated

Contributions, amount, date, and donee:

1. Self:

1986 POLITICAL CONTRIBUTIONS

Check number, date, payable to, and amount:

154, 1/8, Ohio Republican Party, $1,000.

222, 3/17, Roy Ray for State Senate, $50.

224, 3/17, Judge George for State Supreme Court, $1,000.

273, 4/29, Republican Senatorial Inner Circle, $1,500.

274, 4/29, Republican National Committee, $1,000.

275, 4/29, Republican Congressional Leadership Council, $2,500.

1985 POLITICAL CONTRIBUTIONS

Check number, date, payable to, and amount:

1972, 1/2, Ohio Republican Party, $1,000.

2043, 2/12, John R Morgan Campaign Committee, $50.

2055, 2/18, Republican National Committee, $250.

215, 4/23, Republican National Committee, $500.

285, 6/6, Summit County Republican Party, $250.

312, 7/3, Ohio Republican Finance Committee, $1,000.

315, 7/3, Republican National Committee, $2,500.

461, 9/24, Summit County Republican Party, $150.

103, 10/18, Danforth for Senate Committee, $500.

116, 11/15, Republican Presidential Task Force, $120.

1984 POLITICAL CONTRIBUTIONS

Check No., date, payable to; and amount:

1625, 1/18, University of Akron College Republicans, $150.

1668, 2/20, Reagan-Bush 1984, $1,000.

1670, 2/20, John Glenn Campaign Fund, $1,000.

1671, 2/21, State Republican Committee, $1,000.

1669, 2/20, Republican Senate Campaign Committee, $500.

1768, 5/4, Republican Senatorial Inner Circle, $2,500.

1769, 5/4, Republican Presidential Task Force, $120.

1763, 5/4, Helms for Senate, $200.

1792, 5/30, Summit County Republican Party, $250.

1794, 5/31, Citizens for the President, $5,000.

1855, 8/23, John R Morgan Campaign Committee, $50.

1860, 9/4, Helms for Senate, $100.

1865, 9/4, Committee to return Ron Mottl to the Ohio Senate, $200.

1887, 9/27, Summit County Republican Party, $50.

1902, 10/9, John R Morgan Campaign Committee, $100.

1903, 10/9, Summit County Republican Party, $100.

1926, 11/1, Committee to Elect Tom Watkins, $100.

1945, 11/27, 1984 GOP Victory Fund, $1,000.

1959, 12/13, Helms for Senate Committee, $50.

1983 POLITICAL CONTRIBUTIONS

Date, payable to, and amount:

2/4, Congressional Policy Institute, $100.

2/4, Ohio Republican Party, $1,000.

2/9, John Glenn Presidential Committee, $500.

2/23, Goodpac, $500.

4/6, Republican Senatorial Inner Circle, $1,000.

4/25, RM Mottl for Seventh Ward, $100.

4/28, GOP Victory Fund, $400.

6/15, Mayor Roy Ray Committee, $500.

6/17, Summit County Republican Party, $250.

6/17, Republican Presidential Task Force, $120.

7/12, The Frank Re-election Committee, $100.

7/12, GOP Victory Fund, $700.

8/12, John Glenn Presidential Committee, $1,000.

10/5, Summit County Republican Party, $100.

10/25, Roy Ray Re-election Committee, $2,000.

11/1, Republican Presidential Task Force, $120.

11/21, John Morgan Campaign Committee, $50.

11/28, GOP Victory Fund, $500.

12/1, Fund for Conservative Majority, $25.

12/29, Inaugural Committee—Tom Sawyer, $500.

1982 POLITICAL CONTRIBUTIONS (NATIONAL CITY BANK)

Date, payable to, check No., and amount:

1/8, Ohio Republican Party—Early Birds, #699, $1,000.00.

1/26, Tim Davis for County Treasurer, #711, $250.00.

1/26, Tower Senate Club, #712, $25.00.

2/10, Goldwater for Senate, #722, $100.00.

2/11, Summit County Republican Party, #725, $8.00.

2/26, Republican Senatorial Inner Circle, #745, $1,000.00.

2/26, GOP 1982 Victory Fund, #747, $350.00.

2/26, Republican Presidential Task Force, #748, $120.00.

3/23, Friends of Prescott Bush, #759, $250.00.

3/26, Clarence J Brown for Governor, #761, $2,000.00.

5/26, Clarence J Brown for Governor, #815, $1,000.00.

6/8, Summit County Republican, #828, $250.00.

7/20, Ohio Republican Party, #860, $1,000.00.

9/8, Calabrese for Auditor, #1042, $100.00.

9/8, Calabrese for Auditor, #1043, $100.00.

9/14, Prescott Bush, #1049, $250.00.

10/1, Paul Pfeifer for Senate, #1067, $50.00.

10/1, Dana Rinehart for State Treasurer, #1068, $50.00.

10/4, Clarence J Brown for Governor, #1081, $2,500.00.

10/6, Summit County Republican Party, #1086, $100.00.

10/7, Citizens for School Tax Levy, #1093, $250.00.

11/8, Jack Schmitt for Senate, #1128, $100.00.

2. Spouse, none.

3. Children and spouses names, none.

4. Parents names, deceased.

5. Grandparents names, deceased.

6. Brothers and spouses names, Mr. and Mrs. Alva Lee Joseph Pilliod, none, Retired Deputy Commissioner, Immigration and Naturalization; Mr. and Mrs. Dallas Andrew Pilliod, none, retired colonel.

7. Sisters and spouses names, deceased.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

James Daniel Phillips, of Kansas, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Burundi.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: James Daniel Phillips.

Post: Ambassador to Burundi.

Contributions, amount, date, and donee:

1. Self, James D. Phillips, none.

2. Spouse, Lucie C. Phillips, none.

3. Children and spouses names, Michael, Madolyn, Catherine, Charles, David, all unmarried, none.

4. Parents names, James Daniel Phillips, deceased; Eilah H. Phillips, deceased.

5. Grandparents names, James Hardy, deceased; Rose Hardy, deceased; Charles Phillips, deceased; Elizabeth Keefe Phillips, deceased.

6. Brothers and spouses names, no brothers.

7. Sisters and spouses names, Rosemary & Loren Partridge, none. Patricia & James Daniels—

Contributions 1982:

January 27, Republican National Committee $35, January 30, Republican Presidential Task Force, $120, January 30, GOP Victory Fund, $50, February 17, National Tax Eval. Committee, $25, February 20, Goldwater For Senator, $25, July 19, Gillis For Congress,[1] $50, July 23, IADC-PAC, $250, July 27, Powell For Representative,[1] $25, July 27, CERPAC, $100, September 11, CERPAC (Nat'l Pol. Action Comm.), $100, December 11, Republican National Committee, $25, Total, $805.

Contributions 1983:

March 3, College Republican Nat'l Committee, $25, March 21, Kansas For Kassebaum, $500, April 11, IADC-PAC, $40, May 27, Nat'l Cons. Political Action Comm., $25, June 29, Reagan In 1984, $50, August 5, The Conservative Cauces, Inc., $20, September 1, Republican National Committee, $25, September 1, Republican Presidential Task Force, $10, Total, $695.

Contributions 1984:

January 12, Nat'l Representative Senatorial Comm., $132, March 21, Republican Presidential Task Force, $120, April 13, IADC-PAC, $1,000, April 20, Schultz For Congress, [1] $100, September 7, IADC-PAC, $100, October 19, Kansas For Kassebaum, $100, December 10, IADC-Pac, $45, Total, $1,597.

Contributions 1985:

May 13, Funds For Cons. Majority, $25, June 10, Nat'l Republican Senatorial Comm., $132, August 9, IADC-PAC, $200, November 8, Pat Roberts For Congress, $100, Total, $457.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Peter O. Murphy, of the District of Columbia, for the rank of Ambassador during the tenure of his service as Special Negotiator for United States-Canada Trade and Investment Issues.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Peter O. Murphy.

Post: Rank of Ambassador as Special Negotiator for U.S.-Canada Trade Negotiations.

Contributions, amount, date, and donee:

1. Self, none.

2. Spouse, none.

3. Children and spouses' names: Brigid, none; Caitlin, none.

4. Parents' names: William T. and Martha O. Murphy, none; MaryLove and John Lang Maloney.

5. Grandparents' names: Mr. and Mrs. John F. Murphy (deceased); Mr. and Mrs. Peter Otto (deceased).

6. Brothers and spouses' names: William and Cindy Murphy, Jr., none; John and Cindy Murphy, none; Patrick Maloney, none.

7. Sisters and spouses' names: Jane and Dan Sargent, none; Sarah Murphy, none; Sean Maloney, none; Cathy Maloney, none; Megan Maloney, none; MaryLove and David Lee, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

James Roderick Lilley, of Maryland, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Korea.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: James R. Lilley.

Post: Korea, Ambassador.

Nominated: May 19, 1986.

Contributions, amount, date, and donee:

1. Self, $20, January 6, 1985, Republican Party Victory Fund.

2. Spouse, $25, November 15, 1985, Republican Party Victory Fund. $25, May 11, 1986, Republican Party Victory Fund.

3. Children and spouses' names: None.

4. Parents' names: None.

5. Grandparents' names: None.

6. Brothers' and spouses' names: None.

7. Sisters' and spouses' names: None.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Ronald DeWayne Palmer, of the District of Columbia, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mauritius.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Ronald D. Palmer.

Post: Mauritius.

Contributions, amount, date, and donee:

1. Self, Ronald Palmer, none.

2. Spouse, Euna S. Palmer, none.

3. Children and spouses' names: Derek R. Palmer (unmarried), none; Alyson C. Palmer (unmarried), none.

4. Parents' names: Wilbur F. Palmer (deceased), Ethel R.P. Sims, none.

5. Grandparents' names: deceased.

6. Brothers and spouses' names: No brothers or sisters.

7. Sisters' and spouses' names: No sisters or brothers.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

David A. Korn, of the District of Columbia, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Togo.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

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[1] Not sure a national election, may be State.

Nominee: David A. Korn.

Post: Togo.

Contributions, amount, date, and donee:

1. Self, David A. Korn, none.

2. Spouse, Roberta Cohen Korn, none.

3. Children and spouses' names: Marie Korn and spouse Rick Holl, none; David S. Korn, none; Elizabeth and Glen Weigl, none; Philip Korn, none; Stephen Korn, none.

4. Parents' name Thomas Korn, none; Iris Korn (deceased), none.

5. Grandparents' names: Adolph and Marie Korn (deceased); Ewing and Ella Dobson (deceased).

6. Brothers' and spouses' names: Nick and Peggy Korn, none.

7. Sisters' and spouses' names: Kathy Korn and spouse Roger Pergorsch, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

James Wilson Rawlings, of Connecticut, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Zimbabwe.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee, James Wilson Rawlings.

Post, Ambassador to Zimbabwe.

Contributions, and amount:

1. Self None.

2. Spouse. None

3. Children and spouses' names: Stephen C. Rawlings, none; spouse, Deborah Cibelli, none; Suzanne C. Rawlings, none; spouse, Richard V. Day, none; Diane I. Shellum, none; spouse, Brian B. Shellum, none; Scott D. Rawlings, unmarried, none; David B. Rawlings, unmarried, none.

4. Parents: Arnold E. Rawlings (deceased), Corinne W. Rawlings (deceased).

5. Grandparents: William M. Wilson (deceased), Lillis W. Wilson (deceased), George B. Rawlings (deceased), Kate G. Rawlings (deceased).

6. Brothers and spouses: G. Barney Rawlings, none; spouse, Hazel P. Rawlings, none.

7. Sisters and spouses: none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Everett E. Bierman, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Papua New Guinea, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to Solomon Islands.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Everett E. Bierman.

Post: Papua New Guina.

Contributions amount, date, and donee:

1. Self, $50, 1982, Trible for Senate; $50, 1984, Republican Party of Virginia; $25 1984, Warner for Senate; $25, 1985, Durrette for Governor; $10, 1985, Fairfax County Repl. Cmte.; and $25, 1986, Loefler for Governor.

2. Spouse, none.

3. Children and spouses names, James, Karen, Robert, and Marta, none.

4. Parents names, Herbert and Lulu Alma Bierman, deceased.

5. Grandparents names, Harm and Trentje Bierman/Gustav and Eva Custis Girard, deceased.

6. Brothers and spouses names, Russell Bierman (brother), $50 1982, Lechner for Congress; $25, 1983, Lechner for Congress; $20, 1983, Senior PAC.

7. Sisters and spouses names, N/A.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Everett Ellis Briggs, of New Hampshire, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Honduras.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Everett Ellis Briggs.

Post: Ambassador to Honduras.

Contributions, amount, date, and donee:

1. Self, $5, October 1984, Republican Committee of Hanover, NH.

2. Spouse, none.

3. Children and spouses names, Everett (son), none; Catherine (daughter), none; Collis Townsend (son-in-law), none; Allen (son), none; Lucy (daughter), none; George Bassert (son-in-law), none; Church (son), none.

4. Parents names, Lucy B. Briggs, not disclosed during past 4 years, Republican Party (mother preferred not to tell me the amount). (Ellis O. Briggs (deceased)).

5. Grandparents names, deceased.

6. Brothers and spouses names, none.

7. Sisters and spouses names, Lucy T. Briggs, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Theodore E. Gildred, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Argentina.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Theodore E. Gildred.

Post: Embassy—Argentina.

Contributions, amount, date, and donee:

1. Self, [see attachment A].

2. Spouse, [see attachment A].

3. Children and spouses names, [see attachment A].

4. Parents names, deceased.

5. Grandparents names, deceased.

6. Brothers and spouses names, none.

7. Sisters and spouses names, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

[Attachment A]

Contribution, amount, date, and donee:

Self, $1,000, January 30, 1982, Pete Wilson for U.S. Senate, primary 1982; $1,000, February 23, 1982, Pete Wilson for U.S. Senate, general 1982.

Spouse, $1,000, January 30, 1982, Pete Wilson for U.S. Senate, primary 1982; $500, April 26, 1982, Pete Wilson for U.S. Senate general, 1982; $500, September 23, 1982, Pete Wilson for U.S. Senate, general 1982.

Self, $200, June 4, 1982, Citizens to Re-Elect Bill Lowery; $200, September 21, 1982, Citizens to Re-Elect Bill Lowery; $500, September 28, 1982, Write-in for Ron Packard; $200, October 15, 1982, Duncan Hunter for Congress; $200, December 15, 1982, Packard for Congress; $200, March 3, 1983, Committee to Re-Elect Duncan Hunter; $200, June 7, 1983, Friends of Ron Packard Committee; $2,000, June 15, 1983, California Republican Party; and $1,000 June 15, 1983, Citizens to re-elect Cong. Lowery.

Spouse, $250, June 15, 1983, Citizens to Re-Elect Cong. Lowery.

Self, $500, August 15, 1983, McClure for Senator; $500, August 8, 1983, Friends of Max Baucus; $250, September 12, 1983, Friends of Ron Packard; $250, September 14, 1983, Committee to Re-Elect Duncan Hunter; and $1,000, December 12, 1983, Reagan/Bush 1984.

Spouse, $125, January 26, 1984, Citizens to Re-Elect Cong. Lowery.

Self $200, January 20, 1984, Committee to Re-Elect Cong. Hunter; $1,000, June 21, 1984, The Lowery Leadership Council, general 1984; $2,000, October 2, 1984, Victory 1984; $125, October 16, 1984, Friends of Ron Packard; $10,000, October 10, 1984, The California Republican Party—Hispanic Team; $1,000, October 1984, Craven Senatorial Committee; $1,000, November 1984, California Republician Party—Hispanic Team; $1,000 March 15, 1985, The Lowery Leadership Council, primary 1986; $150, April 4, 1985, Citizens to Re-Elect Cong. Lower; $1,000, April 4, 1985, Committee to Re-Elect Cong. D. Hunter; $500, April 15, 1985, Californians for Sen. Pete Wilson, primary 1988; $500 August 23, 1985, Californians for Sen. Pete Wilson, primary 1988; $1,000, August 23, 1985, Californians for Sen. Pete Wilson, general 1988; and $1,000, March 28, 1986, California Unity Fund.

Spouse, $200, March 31, 1983, Committee to Re-Elect Cong. Hunter.

Sons, Theodore E., $1,000, January 27, 1984, Reagan-Bush 1984. Edward A., $1,000, January 27, 1984, Reagan-Bush 1984. Daughter, Jennifer L., $1,000, January 27, 1984, Reagan-Bush 1984. Son, John T., $1,000, January 27, 1984, Reagan-Bush 1984.

Parents, deceased.

Grandparents, deceased.

Brother, Stuart C. Gildred, $1,000, 1982, Firestone Committee; $500, 1983, Reagan-Bush; $400, 1984, Reagan-Bush; $850, 1985, President's Club; and, $250, 1985, Republican National Committee.

Sisters, Lynne Gildred, none; Helen Gildred, none.

Former spouse, Suzanne Gildred, $50, May 1982, Mauro for Congress.

Paul A. Russo, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Barbados, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Commonwealth of Dominca, Ambassador Extraordinary and Plenipotentiary of the United States of America to Saint Lucia, Ambassador Extraordinary and Plenipotentiary of the United States of America to Saint Vincent and the Grenadines, Ambassador Extraordinary and Plenipotentiary of the United States of America to Antigua and Barbuda, and Ambassador Extraordinary and Plenipotentiary of the United States of America to St. Christopher and Nevis.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Paul A. Russo.

Post: Ambassador to Barbados.

Contributions, amount, date and donee:

1. Self, none.
2. Spouse, Kathie Regan Russo, none.
3. Children and Spouses, names, none.
4. Parents, Names, Michael Russo, none, Marie Russo, none.
5. Grandparents names, Anthony and Domenica Caruso, Alexander and Cherubina Russo, deceased, not applicable.
6. Brothers and Spouses Names, none.
7. Sisters and Spouses, Names, Jean, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Frank Shakespeare, of Connecticut, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Holy See.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Frank Shakespeare.

Post: Ambassador to Holy See.

Contributions, amount, date, and donee:

Self, 1982—Fascell, October, $100; Lou Lehrman, August, $250; Hatch, May, $150; President Bush, March, $100; Blackburn, March $100; Buckley, September, $50; 1983—none. 1984—Fascell, October $100; 1985—none. 1986—Herschensonn, $300, April for Senate, California.

2. Spouse, none.
3. Children and Spouses' Names, none.
4. Parents Names, none—deceased.
5. Grandparent Names, none—deceased.
6. Brothers and Spouses Names, none.
7. Sisters and Spouses Names, none.

I have listed above the names of each member of my immediate family including their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.

Herbert Schmertz, of New York, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring April 6, 1988.

Edwin J. Fuelner, Jr., of Virginia, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 1988.

E. Robert Wallach, of California, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 1988.

Richard M. Scaife, of Pennsylvania, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 1988.

Thomas R. Blank, of Delaware, to be an Assistant Administrator of the Agency for International Development.

Richard E. Bissell, of Virginia, to be an Assistant Administrator of the Agency for International Development.

The following-named persons to be the Representative and Alternate Representatives of the United States of America to the Special Session and the Thirtieth Session of the General Conference of the International Atomic Energy Agency:

Representative:

John S. Herrington, of California.

Alternate Representatives:

Richard T. Kennedy, of the District of Columbia.

Bruce Chapman, of Washington.

Lee M. Thomas, of South Carolina.

Lando W. Zech, Jr., of Virginia.

Joan Clark, of California, to be an Alternate Representative of the United States of America to the Forty-first Session of the General Assembly of the United Nations.

The following-named persons to be Representatives and Alternate Representatives of the United States of America to the Forty-first Session of the General Assembly of the United Nations:

Representatives:

Vernon A. Walters, of Florida.

Herbert Stuart Okun, of the District of Columbia.

Thomas F. Eagleton, United States Senator from the State of Missouri.

Larry Pressler, United States Senator from the State of South Dakota

Alternate Representatives:

Patricia Mary Byrne, of Ohio.

Hugh Montgomery, of Virginia.

Joseph Verner Reed, of New York.

John Kerry, United States Senator from the State of Massachusetts.

Paul S. Trible, Jr., United States Senator from the State of Virginia.

Hershey Gold, of California, to be a Member of the United States Commission on Public Diplomacy for a term expiring July 1, 1987.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. LUGAR. Mr. President, as in executive session, I also report favorably from the Committee on Foreign Relations, a nomination list in the Foreign Service which appeared in the CONGRESSIONAL RECORD of September 11, 1986, and, to save the expense of reprinting them on the Executive Calendar, I ask unanimous consent that they may lie on the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SPECTER:

S. 2892. A bill to amend title II of the Social Security Act to protect the benefit levels of individuals becoming eligible for benefits in or after 1979; to the Committee on Finance.

By Mr. COCHRAN (by request):

S. 2893. A bill to amend title 5, United States Code, to change the position of the Director of the Census Bureau to level IV from level V in the Executive Schedule; to the Committee on Governmental Affairs.

By Mr. SYMMS (for himself and Mr. McCLURE):

S. 2894. A bill to ratify the agreement between the State of Idaho and the Idaho Power Co. dated October 25, 1984; to the Committee on Energy and Natural Resources.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 2895. A bill to require the Secretary of Commerce to review certain antidumping agreements with Canadian producers of potassium chloride; to the Committee on Finance.

By Mr. INOUYE (for himself, Mr. ANDREWS, Mr. MELCHER, and Mr. MATSUNAGA):

S. 2896. A bill to provide financial assistance to community colleges and to Kamehameha Schools/Bishop Estate for demonstration grants designed to address the special needs of gifted and talented elementary and secondary school students who are Indian or native Hawaiian, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. D'AMATO:

S. 2897. A bill to permit the State of New York to modify its agreement under section 218 of the Social Security Act to provide social security coverage for certain additional employees of Monroe County; to the Committee on Finance.

By Mr. DOMENICI (for himself and Mr. SIMON):

S. 2898. A bill to amend title 38, United States Code, to provide veterans' disability compensation, and to amend title 38, United States Code, to provide for civil actions by veterans who have been exposed to certain ionizing radiation; to the Committee on Veterans' Affairs.

By Mr. BOSCHWITZ from the Committee on Foreign Relations:

S.J. Res. 422. An original joint resolution commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion; placed on the calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 2892. A bill to amend title II of the Social Security Act to protect the benefits levels of individuals becomming eligible for benefits in or after 1979; to the Committee on Finance.

SOCIAL SECURITY BENEFIT EQUITY

● Mr. SPECTER. Mr. President, I am introducing legislation today to amend title II of the Social Security Act, to restore benefit equity to those members of our society born between 1917 and 1921, the so-called notch babies.

On September 18, 1986, I delivered the welcoming address to the attendees of the National Convention of the Gray Panthers, at the 4H Center in Chevy Chase, MD. In responding to those issues of key concern to the organization, I reported that Congress recognizes and responds to the needs of the Nation's elderly, at least in part, because of the diligence and perseverence of senior citizens groups like the members of the Gray Panthers, the American Association of Retired Persons and others.

America is witnessing a "call to action" and the mobilization of senior citizens to protect and preserve their benefits from the budget ax and to recoup those Social Security benefits lost due to a gross error in the automatic benefit increase provision enacted in 1972.

The bill I am introducing today is designed to eliminate the disparity resulting from changes made in 1977 in the benefit computation formula.

In 1977, Congress approved a plan designed to eliminate a perceived overadjustment for inflation which the then-existing plan was said to contain. They provided a new benefit formula for workers born after 1916. To protect people from an abrupt change in benefits, a transition formula was included in the new plan. This transition formula was to provide for a smooth changeover by dividing Social Security beneficiaries into three categories: those born before 1917, those born between 1917 and 1921—the "notch" years—and those born after 1921.

The transition formula failed. Supporters of the plan knew benefits under the new plan would be lower—that was the idea—but they grossly underestimated the disparity they would be creating for the "notch babies." Under the formula, benefits were supposed to be 5 to 7 percent less than those projected under the 1972 law. Instead, workers with the same earnings record, retiring at the age of 65, and born only a few days apart, one in 1916 and one in 1917, experienced up to $1,300 a year difference in benefits.

Mr. President I ask unanimous consent that the text of the Social Security benefit table be printed in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

COMPARISON OF INITIAL SOCIAL SECURITY BENEFIT AMOUNTS FOR VARIOUS RETIRED WORKERS IN IDENTICAL CIRCUMSTANCES EXCEPT DATE OF BIRTH

	Born in Dec. 1916 (subject to old rules)	Born in Jan. 1917 (subject to new rules) [5]	Difference
Workers retiring at age 62 in January 1979:			
Minimum wage [1]	$206.70	$203.50	−$3.20
Average wage [2]	312.80	306.50	−6.30
Maximum wage [3]	395.70	388.90	−6.80
Workers retiring at age 63 in January 1980:			
Minimum wage	254.00	242.30	−11.70
Average wage	388.90	365.00	−23.90
Maximum wage	493.50	463.10	−30.40
Workers retiring at age 64 in January 1981:			
Minimum wage	324.60	298.20	−26.40
Average wage	500.30	449.40	−50.90
Maximum wage	635.70	570.10	−65.60
Workers retiring at age 65 in January 1982:			
Minimum wage	400.10	355.30	−44.80
Average wage	623.70	535.40	−88.30
Maximum wage	789.90	679.30	−110.60
Workers retiring at age 66 in January 1983:			
Minimum wage	449.00	392.00	−57.00
Average wage [4]	716.00	592.00	−124.00
Maximum wage	900.00	755.00	−145.00
Workers retiring at age 67 in January 1984:			
Minimum wage	486.00	421.00	−65.00
Average wage [4]	773.00	637.00	−136.00
Maximum wage	990.00	826.00	−164.00

[1] Worker had earnings equal to 2,080 times the hourly Federal Minimum Wage in each year.

[2] Worker had earnings in each year equal to the annual average wage figure used for indexing Social Security benefits.

[3] Workers had earnings equal to the Social Security contribution and benefit base in each year.

[4] Average wages for 1982 and 1983 are based on the alternative II–B intermediate economic assumptions in the 1983 Social Security Trustees Report.

[5] Assumes date of birth of January 2 so worker is eligible for benefits in January.

Source: Social Security Administration, Office of Legislative and Regulatory Policy, September 15, 1983.

Mr. SPECTER. Mr. President, the Social Security Administration reports that of the 21 million Americans currently eligible for retirement benefits, approximately 7.9 million are and will be affected by the notch disparity.

In addition the Agency predicts that for each year after 1986, 1.5 million persons eligible for these benefits will be affected.

The failure of the transition guarantee to protect those born in the notch years is due primarily to two provisions of the formula. The first is that post-age 62 earnings of people born after 1916 are excluded when calculating the benefits for these workers. The second change was that benefit increases occurring before the year a worker reached age 62 would not be factored into his or her initial benefits, as they would have under the old rules.

Two bills currently pending in the Senate address these two limitations in an effort to correct the "notch baby" inequity. However, no bill addresses both limitations in one piece of legislation. The bill I am introducing today incorporates the best provisions of each of these two bills and attempts to address the notch problem in a comprehensive, rather than piecemeal, fashion. It removes the restriction on including post-61 earnings in the computation of benefits, like Senator GRASSLEY's bill, and it also effectively negates the provision denying notch babies the same benefit increases other retirees enjoy and provides for a luup-sum retroactive payment for those who have not been allowed to factor in benefit increases since 1979, like Senator D'AMATO's bill.

Mr. President, it has been a priority of mine in the Senate to work to abolish such ills as discrimination, dishonesty and disparity. The hour has arrived for us to restore equity and send a strong message to senior citizens that this body is working hard and standing strong to preserve and protect all benefits which they so richly deserve.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2892

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) Section 215(a)(4) of the Social Security Act is amended—

(1) by striking out "who had wages or self-employment income credited for one or more years prior to 1979" in subparagraph (B) and inserting in lieu thereof "who has 27 or more quarters of coverage based on wages and self-employment income credited for years prior to 1979";

(2) by striking out "prior to 1984" in clause (i) of subparagraph (B) and inserting in lieu thereof "after December 1978";

(3) by inserting "as in effect in December 1984" after "section 215(d)" in clause (ii) of subparagraph (B); and

(4) by striking out the last sentence.

(b) The first sentence of section 215(a)(5) of such Act is amended—

(1) by striking out "(other than an individual described in paragraph (4)(B))";

(2) by striking out "except that," and inserting in lieu thereof "except that (A)"; and

(3) by inserting before the period at the end thereof the following: ", and (B) in the case of an individual described in paragraph (4)(B), such individual's average monthly wage shall be computed as provided by subsection (b)(4)".

SEC. 2. Section 215(b)(4) of the Social Security Act is amended by striking out all that follows "shall remain in effect" and inserting in lieu thereof a period.

SEC. 3. Section 215(f)(7) of the Social Security Act is amended by striking out "For purposes of recomputing a primary insurance amount determined under subsection (a) or (d) (as so in effect) in the case of an individual to whom those subsections apply by reason of subsection (a)(4)(B)" and insertng in lieu thereof the following: "For purposes of recomputing a primary insurance amount determined under subsection (a) (as so in effect) in the case of an individual to whom that subsection applies by reason of subsection (a)(4)(B)(i) as in effect after December 1978, the average monthly wage shall be determined as provided by subsection (b)(4). For purposes of recomputing a primary insurance amount determined under subsection (d) (as so in effect) in the case of an individual to whom that subsection applies by reason of subsection (a)(4)(B)(ii)".

SEC. 4. Section 215(i)(4) of the Social Security Act is amended by striking out "(but the application" and all that follows down through "paragraph (4) of that subsection)".

SEC. 5. (a) Section 215(a)(7)(A) of the Social Security Act is amended by inserting "or (by reason of paragraph (4)(B)(i)) under section 215(a) as in effect in December 1978" after "under paragraph (1) of this subsection" in the matter preceding clause (i).

(b)(1) Section 215(a)(7)(B)(i) of such Act is amended by striking out the first sentence and inserting in lieu thereof the following: "In applying subparagraph (A) in the determination of an individual's primary insurance amount, there shall first be computed (I) in the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection, an amount which is equal to the individual's primary insurance amount under that paragraph, reduced by substituting (for purposes of this computation) the applicable percent specified in clause (ii) of this subparagraph for the percentage of the individual's average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1), or (II) in the case of an individual whose primary insurance amount would be computed under section 215(a) as in effect in December 1978 by reason of paragraph (4)(B)(i) of this subsection, an amount which is equal to the individual's primary insurance amount under that section, reduced by a percentage equivalent to the percentage reduction which (as determined under regulations prescribed by the Secretary) would occur under subclause (I) if such primary insurance amount were a primary insurance amount under paragraph (1) of this subsection.".

(2) The second sentence of section 215(a)(7)(B)(i) of such Act is amended by inserting "or (by reason of paragraph (4)(B)(i)) under section 215(a) as in effect in December 1978" and "under paragraph (1) of this subsection".

(3) The third sentence of section 215(a)(7)(B)(i) of such Act is amended by inserting ", or (by reason of paragraph (4)(B)(i)) under section 215(a) as in effect in December 1978," after "under paragraph (1) of this subsection".

SEC. 6. (a) Except as provided in subsection (b), the amendments made by this Act shall become effective on the date of enactment of this Act.

(b) Where an individual is entitled on the date of the enactment of this Act to old-age insurance benefits under title II of the Social Security Act which were computed—

(1) under section 215 of that Act as in effect (by reason of the Social Security Amendments of 1977) after December 1978, or

(2) under section 215 of that Act as in effect prior to January 1979 by reason of subsection (a)(4)(B) of such section (as amended by the Social Security Amendments of 1977),

the Secretary of Health and Human Services (notwithstanding section 215(f)(1) of the Social Security Act) shall, with respect to monthly benefits payable for months after December 1984, recompute such individual's primary insurance amount so as to take into account the amendments made by this Act, and shall pay to such individual in a lump sum any additional amount to which such individual is entitled (for the period beginning with the first month for which such individual was entitled to such benefits and ending with the month preceding the first month with respect to which such recomputation is effective) by reason of such amendments.●

By Mr. COCHRAN (by request):

S. 2893. A bill to amend title 5, United States Code, to change the position of the Director of the Census Bureau to level IV from level V in the Executive Schedule; to the Committee on Governmental Affairs.

RAISING THE POSITION OF DIRECTOR OF THE CENSUS BUREAU

● Mr. COCHRAN. Mr. President, today I am introducing, by request, legislation to raise the position of the Director of the U.S. Bureau of the Census from a level V to a level IV in the Executive Schedule in title 5, United States Code, section 5315.

The Director of the Census Bureau is appointed by the President, by and with the advice and consent of the Senate, and he is responsible for the collection and dissemination of vital national statistics, such as the decennial census of the population used to apportion our House of Representatives and the economic, agriculture, and governments censuses conducted every 5 years. These statistics are essential for public and private planning purposes.

The role of the Census Bureau, however, is not reflected in the level accorded to the position of its Director. A comparative analysis of the duties and responsibilities of other Federal officials, conducted by the Census Bureau, suggests that the Census Director's responsibilities are commensurate with those of other level IV positions in the Department of Commerce and elsewhere in the Federal Government.

For example, the Director of the Bureau of Justice Statistics and the Administrator of the Energy Information Administration are both level IV positions. Within the Department of Commerce, the Director of the National Bureau of Standards and the Commissioner of Patents and Trademarks have responsibility for operating units of comparable size in terms of staff and budget—in noncensus years. Both of these positions are level IV.

While it is late in the session, introduction of this bill now will serve to notify Congress of the Bureau's interest in the bill and ensure that there is ample opportunity for discussion and consideration of its merits when the 100th Congress convenes in January.●

By Mr. SYMMS (for himself and Mr. McClure):

S. 2894. A bill to ratify an agreement between the State of Idaho and the Idaho Power Co. dated October 25, 1984; to the Committee on Energy and Natural Resources.

RATIFICATION OF AN AGREEMENT BETWEEN THE STATE OF IDAHO AND THE IDAHO POWER CO.

● Mr. SYMMS. Mr. President, I am introducing a bill to complete a long and difficult process in my State. This process has fairly and equitably adjudicated the waters of the Snake River between power generation irrigation and other purposes. I commend the parties to this agreement for their efforts and their sincere desire to reach a beneficial settlement of this problem.

Mr. President, the legislation before you, which my distinguished colleague, Senator McClure, is cosponsoring formally ratifies an agreement between the Idaho Power Co. and the State of Idaho and notifies the Federal Energy Regulatory Commission that the agreement conforms with the requirements of the Federal Power Act. This bill will have no Federal budgetary impact nor will it adversely affect Federal interests in Idaho.

I hope this body will take expeditious action in support of this bill.●

By Mr. DOMENICI (for himself and Mr. Bingaman):

S. 2895. A bill to require the Secretary of Commerce to review certain antidumping agreements with Canadian producers of potassium chloride; to the Committee on Finance.

REVIEW OF POTASSIUM CHLORIDE DUMPING STANDARDS

● Mr. DOMENICI. Mr. President, the bill that Senator Bingaman and I are introducing today is designed to help the potash industry in New Mexico. The bill would reactivate the 1969 dumping case under which the Canadians, French, and West Germans were found to be dumping. As a condition of settlement, the Canadians gave assurances that they would not sell in the future for less than fair market value. In return the order was revoked as it applied to them.

The bill instructs the Commerce Department to begin a review of all assurances given in the previous potash cases. If, in the course of their review, they find that Canadian producers have been selling potash at less than the fair market value, it would instruct the Commerce Department to impose dumping duties.

The problem with the old assurance system is that once these assurances were given, there seldom was any followup. This was partially because Congress changed the dumping law but never addressed the issue of the old assurances. Therefore, there was no requirement to make sure these foreign companies were living up to their agreement.

My bill would clarify the status of the assurances given in the 1969 potash case by specifically reinvigorating them and requiring the Commerce

Department to impose duties on dumped potash.

This issue has been an ongoing concern of mine and Secretary of Commerce Mac Baldrige has been very helpful in making the resources of his staff available to ascertain the Canadian marketing practices going on in the potash market. Likewise the Bureau of Mines has provided excellent information. I also feel that Trade Ambassador Murphy has been helpful in his role as chief negotiator for the United States-Canada Free Trade Agreement.

However, I felt that it was also necessary to start the legislative process regarding the assurances especially since the Finance Committee is considering trade legislation in these final days of the 99th Congress. This bill is a reaffirmation of my commitment to the potash industry in my State and I intend to be as helpful to them as I possibly can. If necessary, I will reintroduce this bill again next Congress.

I think that in 1969, when Canadian companies entered into assurances they were in essence put on notice. In view of the previous case and the assurances, I feel that it is fair and appropriate that the assurances be reactivated.●

● Mr. BINGAMAN. Mr. President, I am pleased to join with my colleague from New Mexico in introducing legislation to clarify antidumping review procedures involving potassium chloride from Canada. This legislation provides badly needed assistance to the U.S. potash industry and it deserves the immediate attention of my colleagues.

Our domestic potash industry has been seriously harmed through unfair foreign trade practices. Carlsbad, NM, is the center of the domestic potash industry and has accounted for more than 80 percent of domestic potash. Today, the industry is in deep trouble. Employment has dropped by one-third and production has dropped significantly.

One of the most serious causes of injury to the industry has been the subsidized and dumped potash entering the declining American market from foreign competitors. A large amount of our imports came from so-called nonmarket economies, which subsidize their government-owned industries, including the Soviet Union and East Germany.

I introduced a bill last year which would permit potash producers a stronger hand in determining whether or not they are being hurt by foreign imports. The legislation, S. 1592, would amend the Tariff Act of 1930 to require that petitioners for relief from unfair foreign dumping practices may elect whether price or constructed value is used in setting the foreign market value of merchandise imported from state controlled economies. I am disappointed that action has not occurred on this bill and, in fact, disappointed that no real action has taken place on the very real trade problems we are experiencing.

Unfortunately, the potash industry is not unique, virtually all of our domestic industries have been hurt by foreign competition, much of it unfair. Also in New Mexico, copper and uranium, as well as oil and gas, and even new high technology industries, like semiconductors have been injured.

The potash industry, in particular, has been harmed by unfair trade practices. Even one of our closest allies and neighbors, the Canadian Government appears to have engaged in an effort to gain higher domestic United States market shares through unfair practices. Recently the price of Canadian potash produced from a government-owned company dropped significantly, further undercutting domestic United States prices and further threatening domestic production. The price drop is believed to be unwarranted, resulting from subsidization.

The bill we are introducing today gives the Secretary of Commerce the authority to initiate a review of potash agreements with Canadian producers and to make a determination of whether dumping occured. The review would take place during an expedited time period. If dumping is found, the Secretary would issue an order imposing additional duty to equal the foreign market value for potash.

Mr. President, this legislation is needed to protect our industry from unfair foreign practices and as a result would reestablish fair trade practices. It is unfortunate that fair trade has not been established through negotiation and the administration has refused to enforce fair trade laws. While this step is drastic it is aimed at a problem we can no longer be complacement about. The protection of U.S. jobs from unfair trade has to be a priority.●

By Mr. INOUYE (for himself, Mr. Andrews, Mr. Melcher, and Mr. Matsunaga):

S. 2896. A bill to provide financial assistance to community colleges and to Kamehameha Schools/Bishop Estate for demonstration grants designed to address the special needs of gifted and talented elementary and secondary school students who are Indian or native Hawaiian, and for other purposes; to the Select Committee on Indian Affairs.

NATIVE AMERICAN GIFTED AND TALENTED EDUCATIONAL ASSISTANCE ACT

● Mr. INOUYE. Mr. President I am introducing legislation today, on behalf of myself and Senators Andrews, Melcher, and Matsunaga, which would authorize a special demonstration program targeted toward the unique needs of American Indian and native Hawaiian gifted and talented elementary and secondary school students.

Earlier this session, the Senate Select Committee on Indian Affairs received testimony from Dr. Keith Mielke, vice president for research, Children's Television Workshop, describing the extent to which it might be possible for them to develop creative programs targeted toward the needs of these native American peoples once this proposal becomes public law.

Mr. President, the House of Representatives recently passed legislation entitled the Gifted and Talented Children's and Youth Education Act of 1986, which envisions a Federal "capacity building" effort to identify and educate gifted and talented children. Further, that legislation, which authorizes $10 million for the first year, would also establish a national center for research and development in the education of gifted and talented children and youth.

As our colleagues in the House of Representatives pointed out, the U.S. Department of Education's own report "A Nation at Risk" highlighted the pressing needs of gifted and talented children. The measure which we are introducing today would provide a special focus on the truly unique needs of native American gifted and talented individuals.

Mr. President, I request unanimous consent that the text of Dr. Mielke's testimony and the bill be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

S. 2896

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Native American Gifted and Talented Educational Assistance Act of 1985".

STATEMENT OF PURPOSE

Sec. 2. It is the purpose of this Act to make demonstrated grants designed to address the special educational needs of elementary and secondary school students who are Indian or Native Hawaiian.

DEFINITIONS

Sec. 3. For the purpose of this Act—

(1) the term "elementary school" has the same meaning given that term under section 198(a)(10) of the Elementary and Secondary Education Act of 1965;

(2) the term "local educational agency" has the same meaning given that term under section 198(a)(10) of the Elementary and Secondary Education Act of 1965;

(3) the term "Indian" has the same meaning given that term under section 453 of the Indian Education Act;

(4) the term "junior or community college" has the same meaning given that term under section 322(a)(4) of the Higher Education Act of 1965;

(5) the term "Native Hawaiian" means any individual whose ancestors were natives

of the area which consisted of the Hawaiian Islands prior to 1778;

(6) the term "secondary school" has the same meaning given that term under section 198(a)(7) of the Elementary and Secondary Education Act of 1965;

(7) the term "Secretary" means the Secretary of Education;

(8) the term "State" has the same meaning given that term by section 198(a)(16) of the Elementary and Secondary Education Act of 1965; and

(9) the term "tribally controlled community college" has the same meaning given that term by section 2(4) of the Tribally Controlled Community College Assistance Act of 1978.

DEMONSTRATION GRANTS FOR GIFTED AND TALENTED ELEMENTARY AND SECONDARY INDIAN SCHOOL STUDENTS

SEC. 4. The Secretary is authorized to make grants to, and to enter into contracts with, junior or community colleges, including tribally controlled community colleges, for demonstration projects designed to address the special needs of elementary and secondary school students who are Indians.

DEMONSTRATED GRANTS FOR GIFTED AND TALENTED ELEMENTARY AND SECONDARY HAWAIIAN NATIVE SCHOOL STUDENTS

SEC. 5. The Secretary is authorized to make grants to, and to enter into contracts with, junior or community colleges, and/or Kamehameha Schools/Bishop Estate, for demonstration projects designed to address the special needs of elementary and secondary school students who are Hawaiian Natives.

PROJECT ACTIVITIES AND CONDITIONS

SEC. 6. (a) Demonstration projects assisted under this Act may include—

(1) the identification of the special educational needs of gifted and talented children who are eligible for assistance under this Act,

(2) the conduct of educational activities which hold reasonable promise of making substantial progress toward meeting the educational needs of such gifted and talented children;

(3) the use of public television in meeting the special educational needs of such gifted and talented children, such as utilizing the expertise of the Children's Television Workshop;

(4) leadership programs designed to replicate programs for such children throughout the appropriate area, including the dissemination of information on the demonstration projects conducted with assistance under this Act; and

(5) appropriate research, evaluation and related activities pertaining to the special needs of such gifted and talented children.

(b)(1) No grant may be made and no contract may be entered into under this section unless an application is submitted to the Secretary in such form, in such manner and containing or accompanied by such information as the Secretary determines necessary to carry out the provisions of this section.

(2) Each such application shall be accompanied by the comments of each local educational agency which has students who are enrolled in the schools of such agency and who will participate in the project for which assistance is sought.

AUTHORIZATION OF APPROPRIATIONS

SEC. 7. (a) There are authorized to be appropriated $5,000,000 for the fiscal year 1986 and each of the three succeeding fiscal years.

(b) Of the sums available for each fiscal year $4,000,000 shall be available for grants benefiting elementary and secondary school students who are Indians under section 4, and $1,000,000 shall be available for grants benefiting elementary and secondary school students who are Hawaiian Natives under section 5.

TESTIMONY BY KEITH W. MIELKE, PH.D., VICE PRESIDENT FOR RESEARCH, CHILDREN'S TELEVISION WORKSHOP

EDUCATIONAL ASSISTANCE FOR GIFTED AND TALENTED CHILDREN

I am Keith Mielke, Vice President for Research at the Children's Television Workshop in New York. I am here to speak in support of the concept of special programs for gifted and talented children. In particular, our experience is most relevant to the area where such programs might utilize educational television materials. Such special programs are described in the proposed legislation cited as the "Native American Gifted and Talented Educational Assistance Act of 1985."

I should state at the outset that I am not a specific expert either in the special needs of the gifted and talented or in the special needs of Indians or Native Hawaiians. The perspective that I do bring draws upon the unique experience of the Children's Television Workshop, which has been addressing special needs of children for almost two decades now. The hope and the belief is that this general experience may be helpful in this specific case. It is not anticipated that CTW would produce any television materials that might result from the proposed legislation, but we would be willing then, as we are now, to share knowledge and experiences which could be helpful.

CTW designs and produces educational materials that use mass media such as television. The first educational television series for children produced at CTW was "Sesame Street," which premiered in 1969. "Sesame Street" is designed to help preschool children get ready for classroom experience. This was followed by "The Electric Company," which was basic reading instruction aimed at children 7-10 years of age. Then CTW produced a science series for 8-12's called "3-2-1 Contact," and our most recent series, which is about mathematics, will premiere next January. These four series comprise a considerable body of experience in the design, production, and evaluation of educational materials for children. As stated before, if this experience can be of any assistance in the planning of programs for the gifted and talented, then we are delighted to share it with you.

There are several comments now I'd like to make about the proposed legislation. One form of demonstration project that would qualify for funding would be the use of public television in meeting the special educational needs of gifted and talented children. CTW is honored to have been cited as exemplifying the use of television in meeting special needs of children.

In my opinion, certain media options are true opportunities to be explored and certain other media options do not appear to be feasible given the nature of television and the budget levels being considered.

Let's look first at the constraints. The funding available for mass media programming is typically tied to the number of people being served. Specialized needs of any subgroup, even important needs like those of the gifted and talented, tend not to generate adequate funding for original, exclusive, specialized programming on mass media such as broadcast television. "Sesame Street", for example, is expensive in absolute numbers—about $10 million per year—but is quite inexpensive in its delivered cost per viewer—less than a penny per child per program. It is the attraction of very large audiences that makes possible that economy of scale where high production and pedagogical values can be justified. Within these general audience programs we do include segments for children with special needs, such as hearing impaired, mental retardation, physically handicapped, and so forth, but the overall show retains its appeal to all children, and that is critical to its level of funding.

A very promising option in addressing the special needs of the gifted and talented at much lower costs would be to select media materials already available and tailor them with special utilization materials. For example, if an adult program such as "Nova" might be appealing to a gifted and talented child if only certain bridging concepts could be mastered, then a special utilization kit could be designed for that purpose, and special training could be developed for adult leaders to guide the children through the process. Conceivably, these adult leaders could be teachers, paraprofessionals, or parents. This same approach of tailoring existing programs for the gifted and talented might also be made for very young children using our CTW programs in science and mathematics. I note in the Hawaii Public Television Guide that an enormous number of programs are broadcast that are potentially useful in this manner, but they would need to be tailored through special utilization materials.

The procedures we use at CTW to design and produce educational materials should also apply to utilization packages for the gifted and talented. My function at CTW, for example, is to oversee our in-house research, which is involved at all stages of a project. This includes needs assessments and goal-setting at the very beginning of a project. It includes representing the children's viewpoint when materials are designed. It goes on to the testing of prototype materials for appeal and comprehension with target-age children, and it culminates in the evaluations of completed programs. These same steps and issues will be encountered in the proposed programs for the gifted and talented. All of these procedures can be shared with whichever institutions and groups eventually put the materials together for the gifted and talented.

If the needs assessment could first identify who has what set of needs in the gifted and talented category, and if this would then be followed by designing a responsive protocol or set of procedures that involved both media materials and a guide for adult leaders, then the possibility exists to reach great efficiencies with a reproducible model that is very effective. That is my fundamental suggestion, and there is reason to be optimistic about its outcomes. At CTW, for example, we have a community outreach division called Community Education Services, or CES. One of many special utilization efforts by CES has been to design special materials on fire safety along just the lines I am proposing here: they combine television materials on videotape, along with a carefully constructed guide for a local group leader. Other subject areas addressed by Community Education Services at CTW include the special needs of children whose fathers are in prison, special life-saving messages appropriate for children in the areas of lead poisioning and natural hazards. I base the argument that this model would be useful here for the gifted and talented, not on specific experience with gifted and talented, but on the field-tested procedures we have successfully employed in so many different subject-matter areas.

Once prototype materials are produced, it is inevitable that they can be improved through evaluations under field conditions. Again, the particular materials for the gifted and talented may be new, but the issues are not.

I have been speaking so far only about CTW experiences with preschool children and children up to twelve years of age, because that's where our series are aimed. There are also needs and opportunities in high schools that are coming to the attention of the in-school television community. Because of budget pressures, some high schools have had to cut back on specialized courses such as Chinese language studies that were previously made available for gifted and talented students. The schools now conclude that the only way they can afford these services is to spread the expense more broadly by televised courses or the use of other technologies. Futhermore, small schools in rural areas perceive that the only way they would ever be able to offer some of these specialized courses, in good economic times or bad, is by way of technology such as television. For younger and older children, therefore, educational television has something worthwhile to consider.

In summary, the Children's Television Workshop supports the concept of special efforts, materials and activities to meet the needs of gifted and talented children. We have a wide variety of experience at the Children's Television Workshop in designing, producing and utilizing educational materials that are targeted to special audiences, and we would be delighted to share this expertise with you in any way that you would find helpful.

I would also be happy to respond to any questions you might have for me at this time. Thank you.●

By Mr. D'AMATO:

S. 2897. A bill to permit the State of New York to modify its agreement under section 218 of the Social Security Act to provide Social Security coverage for certain additional employees of Monroe County; to the Committee on Finance.

SOCIAL SECURITY COVERAGE FOR CERTAIN EMPLOYEES OF MONROE COUNTY , NY

● Mr. D'AMATO. Mr. President, I rise today to introduce legislation to remedy an unfortunate situation affecting a group of Monroe County employees who stand to lose credit for their participation in the Social Security Program during the years 1982 through 1985.

The predicament faced by these county employees stems from a 1957 agreement between New York State and the Federal Government. The agreement stipulated that employees who are eligible for membership in the New York State Retirement System, but who, like the group of Monroe County employees, have elected not to join the system, cannot be covered by Social Security.

At the time the agreement was made, there were few or no employees of the county who elected not to participate in the New York State Retirement System. As a result, all county employees were correctly enrolled in the Social Security System.

However, as the retirement system rules changed to permit a larger number of county employees to participate, the county continued its established practice of enrolling all its employees in the Social Security System, including those choosing not to join the retirement system.

It was not until an audit was conducted in 1985 that it became apparent that the enrollment of certain employees in the Social Security System was incorrect. Because of this discovery, the Social Security credits of these employees will be eliminated and their contributions refunded for the years 1982-85.

The legislation I am introducing today would permit the modification of the agreement between New York State and the Federal Government. Under the modified agreement, the affected county employees could regain lost Social Security credits by returning to the Social Security Administration their refunded employee contributions.

Mr. President, this legislation affords a group of deserving public servants the opportunity to retain the retirement security they worked and planned for in good faith. I encourage my colleagues to join me in supporting this legislation, and I ask unanimous consent that the full text of this bill be printed in the Record at the conclusion of my remarks.●

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2897

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any provision to the contrary in section 218(d) of the Social Security Act, the agreement with the State of New York entered into pursuant to section 218 of that Act may be modified at any time within 2 years after the date of the enactment of this Act so as to apply to services (1) which were performed by employees of Monroe County who were eligible for membership in the New York State Retirement System but who did not elect to become members of that system, and (2) for which remuneration was paid after 1981 and before 1985.

By Mr. DOMENICI (for himself and Mr. Simon):

S. 2898. A bill to amend title 38, United States Code, to provide veterans' disability compensation, and to amend title 28, United States Code, to provide for civil actions by veterans who have been exposed to certain ionizing radiation; to the Committee on Veterans' Affairs.

ATOMIC VETERANS RELIEF ACT OF 1986

● Mr. DOMENICI. Mr. President, between 1946 and 1962, the U.S. Government conducted approximately 235 atmospheric tests of nuclear weapons. An estimated 220,000 military personnel participated in these tests and significantly contributed to the safety and security of the Nation. As a result of their participation, however, some of them may have been exposed to low-level ionizing radiation. Additional military personnel may have received low-level ionizing radiation during the occupation of Hiroshima and Nagasaki following the atomic bombings there during World War II.

The individuals, who are collectively known as "atomic veterans," have complained of a variety of illnesses, including various types of cancers, which they attribute to radiation exposure. The Federal Government has an obligation to compensate individuals who have suffered injuries as a result of their participation in the Nuclear Testing Program or the occupation of Hiroshima and Nagasaki.

Over the past few years, Congress has passed various bills which attempt to give the atomic veterans the relief that they deserve. Chief among these is the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, which attempted to ensure that veterans who suffer from radiation-related disabilities as a result of their service in the Armed Forces receive the disability compensation to which they are entitled. Unfortunately, it is clear that this bill has not worked as intended, as atomic veterans are not receiving compensation.

Because of the failure of the Veterans' Administration to provide adequate relief to atomic veterans, a number of proposals have surfaced in Congress to provide alternative avenues of relief. For instance, one of these proposals would allow the atomic veterans to sue the Federal laboratories which assisted the Federal Government in carrying out the Atomic Weapons Testing Program over their participation in the program.

I believe that this is a misguided approach for a number of reasons. First, it is the Federal Government, and not the Federal laboratories, which bears responsibility for the Atomic Weapons Testing Program. The Federal Government must own up to its responsibility. Second, the courts are an unpredictable, costly, time-consuming, and inefficient avenue of relief.

Even if Congress were to abandon the longstanding policy that the Federal laboratories were not responsible for the conduct of the Atomic Weapons Testing Program and allow atomic veterans to sue the laboratories, it is doubtful that injured parties would ever be able to obtain a judgment based on a radiation-related claim. It would not be right for Congress to deceive the atomic veterans into thinking that by granting them a cause of action in the courts that they are getting the relief which they seek and to which the are entitled.

In order to meet its responsibility to the atomic veterans, Congress must ensure that there exists within the Veterans' Administration a fair, predictable, efficient, and systematic program for compensating veterans with radiation-related claims. The bill which I am introducing today would do that. The measure also includes a provision which would allow the atomic veterans to sue the Federal Government directly for their radiation-related injuries.

While I remain convinced that the courts are not the best place for atomic veterans to seek the relief which they deserve, many atomic veterans have expressed to me their very strong desire to be able to present their cases to a court of law. Therefore, I have included the provision to allow lawsuits against the Federal Government, although I believe that most atomic veterans will choose to pursue disability compensation through the Veterans' Administration.

Specifically, the bill establishes that veterans who are entitled to receive hospital and nursing home care under current law for radiation-related diseases are also entitled to receive disability compensation for those diseases. The bill lists the specific radiogenic diseases which will entitle an individual to compensation and also provides that compensation will be provided unless the Veterans' Administration can demonstrate that the disability is not related to the atomic veteran's exposure to radiation.

The disability compensation provision is based on existing law which provides hospital and nursing home care for atomic veterans. In addition, the diseases for which an atomic veteran can receive disability compensation are those diseases which the Veterans' Administration has already determined are radiation related.

As an alternative to compensation through the Veterans' Administration, the bill allows an atomic veteran or his survivors to bring a suit against the Federal Government for the acts or omissions of the Federal contractors in carrying out the Atomic Weapons Testing Program. The Federal Government shall be liable to the same extent as the contractor would be liable and shall be able to assert only those defenses which the contractor could assert if the contractor could be sued. In essence, this amounts to a limited exception of the Feres Doctrine, which prohibits suits by members of the armed services against the Federal Government for military service-related injuries, for atomic veterans, and their survivors.

Finally, the bill gives an atomic veteran the choice of opting for such disability compensation or of suing the Federal Government. Election of one option precludes recovery under the other.

A preliminary, nonofficial cost estimate by the Congressional Budget Office indicates that the disability compensation component of this bill would cost between $100 and $150 million a year.

I would like to acknowledge the invaluable assistance of many atomic veterans in putting this legislation together. Without their help, it would not have been possible. I hope that Congress can speedily enact this legislation and give the atomic veterans the relief which they deserve.●

● Mr. SIMON. Mr. President, I would like to support Senator DOMENICI's efforts to resolve some of the injustices incurred on veterans involved in the Nuclear Testing Program. I recognize, at this date, that this legislation is not likely to move out of Congress this session. We must, however, continue to work to highlight the needs of the atomic veterans.

I have been interested and concerned about the issue of providing some assistance to atomic veterans for several years. I introduced legislation, S. 707, the Atomic Veterans Relief Act, which would have provided veterans' benefits.

The legislation Senator DOMENICI is introducing also attempts to begin to redress some of the injuries suffered by the veterans during nuclear testing. Thousands of ailing veterans have been denied help by not being eligible for benefits. The GAO, at the request of Senator CRANSTON, conducted a case study to determine if the Defense Nuclear Agency is correct in claiming that dose reconstructions of many of these service people indicate they were not harmfully exposed to ionizing radiation from the atomic tests. The GAO report indicates an overreliance on imprecise radiation film badge readings; ignoring internal radiation exposure of service personnel caused by breathing, eating, or drinking contaminated particles; neglecting evidence about safety violations; and dismissing ample evidence showing incomplete decontamination procedures during the nuclear test.

We have had the results of the GAO report for almost a year. The Veterans' Affairs Committee this year amended subchapter II of chapter 11 of title 38, United States Code, to include a new section on eligibility resulting from exposure to ionizing radiation. This new section means a veteran, by reason of an exposure to ionizing radiation, would become eligible to receive hospital or nursing home care. Providing health benefits to these veterans is a good first step. Senator DOMENICI's bill is the necessary second step. These same veterans would also become eligible for disability benefits.

Medical science indicates a relationship between low-level ionizing radiation and later health effects, particularly several kinds of cancer. It is only fair, when exposed veterans are struck with radiogenic cancers, that we presume a relationship.

This legislation, however, is only one step in the process of redressing a wrong. I also recognize the needs of the dependents of the atomic veterans. It is important to obtain benefits for the survivors of these veterans. I pledge to continue to work to obtain relief for the widows and children of the atomic veterans.

I commend the work of Senator DOMENICI and also my colleagues on the Veterans' Affairs Committee who recognize the injustice dealt these veterans and who have been willing to attempt to rectify some of the wrong.●

ADDITIONAL COSPONSORS

S. 1456

At the request of Mr. LAUTENBERG, the names of the Senator from South Dakota [Mr. ABDNOR], the Senator from Florida [Mr. CHILES], the Senator from Iowa [Mr. GRASSLEY], the Senator from Oregon [Mr. HATFIELD], and the Senator from Oklahoma [Mr. NICKLES] were added as cosponsors of S. 1456, a bill to recognize the Army and Navy Union of the United States of America.

S. 1640

At the request of Mr. D'AMATO, his name was added as a cosponsor of S. 1640, a bill to amend title XVIII of the Social Security Act to provide for coverage under the Medicare Program of services performed by a physician assistant.

S. 2098

At the request of Mr. BENTSEN, the name of the Senator from Alabama [Mr. HEFLIN] was added as cosponsor of S. 2098, a bill to establish a National Space Grant College Program.

S. 2422

At the request of Mr. MURKOWSKI, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of S. 2422, a bill to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans and the rates of dependency and indemnity compensation for surviving spouses and children to veterans; to improve the Veterans' Administration Home Loan Guaranty Program; to authorize certain debt collections; to authorize the Administrator of Veterans' Affairs to require additional information from certain fiduciary agents of veterans; to revise the authority of the Administrator of Veterans' Affairs to construct, alter, acquire, operate, and maintain parking facilities at Veterans' Administration medical facilities; and to authorize an administrative reorganization in the Veterans' Administration.

S. 2454

At the request of Mr. MURKOWSKI, the names of the Senator from Montana [Mr. MELCHER], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 2454, a bill to repeal section 1631 of the Department of Defense Authorization Act, 1985, relating to the liability of Government contractors for injuries or losses of property arising out of certain atomic weapons testing programs, and for other purposes.

S. 2545

At the request of Mr. CRANSTON, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of S. 2545, a bill to place a moratorium on the relocation of Navajo and Hopi Indians under Public Law 93-531, and for other purposes.

S. 2781

At the request of Mr. EVANS, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of S. 2781, a bill to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances.

S. 2845

At the request of Mrs. KASSEBAUM, the names of the Senator from Nebraska [Mr. ZORINSKY], and the Senator from Arizona [Mr. GOLDWATER] were added as cosponsors of S. 2845, a bill to designate the Santa Fe Trail as an Historic Trail under the National Trails System Act.

SENATE JOINT RESOLUTION 403

At the request of Mr. ROTH, the names of the Senator from Michigan [Mr. RIEGLE], and the Senator from Indiana [Mr. LUGAR], the Senator from Maryland [Mr. SARBANES], the Senator from California [Mr. WILSON], and the Senator from North Dakota [Mr. ANDREWS] were added as cosponsors of Senate Joint Resolution 403, a joint resolution to designate 1988 as the "National Year of Friendship with Finland."

SENATE JOINT RESOLUTION 407

At the request of Mr. CHILES, the names of the Senator from Rhode Island [Mr. PELL], and the Senator from North Carolina [Mr. BROYHILL] were added as cosponors of Senate Joint Resolution 407, a joint resolution designating November 12, 1986, as "Salute to School Volunteers Day."

SENATE JOINT RESOLUTION 408

At the request of Mr. DOLE, the names of the Senator from Mississippi [Mr. COCHRAN], the Senator from Minnesota [Mr. BOSCHWITZ], and the Senator from Minnesota [Mr. DURENBERGER] were added as cosponsors of Senate Joint Resolution 408, a joint resolution designating "American Physiologists Week."

SENATE JOINT RESOLUTION 417

At the request of Mr. NUNN, the names of the Senator from Michigan [Mr. RIEGLE], the Senator from Kentucky [Mr. FORD], and the Senator from Missouri [Mr. EAGLETON] were added as cosponsors of Senate Joint Resolution 417, a joint resolution designating the week of January 25 through January 31, 1987, as "National Productivity Improvement Week."

SENATE JOINT RESOLUTION 420

At the request of Mr. GOLDWATER, the name of the Senator from Texas [Mr. GRAMM] was added as a cosponsor of Senate Joint Resolution 420, a joint resolution relating to the commemoration of January 28, 1987, as a "National Day of Excellence."

SENATE CONCURRENT RESOLUTION 130

At the request of Mr. HOLLINGS, the names of the Senator from Oregon [Mr. HATFIELD], the Senator from Utah [Mr. GARN], and the Senator from Alabama [Mr. DENTON] were added as cosponsors of Senate Concurrent Resolution 130, a concurrent resolution to recognize the visit by the descendants of the original settlers of Purrysburg, SC, to Neufchatel, Switzerland, in October 1986 as an international gesture of good will.

SENATE CONCURRENT RESOLUTION 136

At the request of Mr. GRASSLEY, the name of the Senator from Nevada [Mr. HECHT] was added as a cosponsor of Senate Concurrent Resolution 136, a concurrent resolution entitled "Volunteers are the Importance of Volunteerism."

SENATE CONCURRENT RESOLUTION 154

At the request of Mr. D'AMATO, the names of the Senator from Georgia [Mr. MATTINGLY], the Senator from Washington [Mr. GORTON], the Senator from Idaho [Mr. MCCLURE], the Senator from Idaho [Mr. SYMMS], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of Senate Concurrent Resolution 154, a concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

SENATE CONCURRENT RESOLUTION 163

At the request of Mr. DECONCINI, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of Senate Concurrent Resolution 163, a concurrent resolution expressing the sense of the Congress that the total number of Soviet diplomatic agents and consular officers in Washington, DC, and San Francisco should be reduced to equal the total number of American diplomatic agents and consular officers in Moscow and Leningrad.

SENATE RESOLUTION 435

At the request of Mr. D'AMATO, his name was added as a cosponsor of Senate Resolution 435, a resolution to recognize Mr. Eugene Lang for his contributions to the education and the lives of disadvantaged young people.

AMENDMENT NO. 3034

At the request of Mr. DOLE, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of amendment No. 3034 proposed to H.R. 5484, a bill to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.

AMENDMENTS SUBMITTED

DRUG ENFORCEMENT, EDUCATION, AND CONTROL ACT

HATFIELD (AND STENNIS) AMENDMENT NO. 3091

Mr. HATFIELD (for himself and Mr. STENNIS) proposed an amendment to the bill (H.R. 5484) to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes; as follows:

At the end of the bill, add the following:

SEC. . (a) The Senate finds that—

(1) there is an urgent critical need for funds to carry out the programs and activities authorized by the preceding provisions of this Act in order to ensure a drug free America,

(2) this Act is the result of a bipartisan effort to combat our national drug abuse problem; and

(3) only the exceptional nature of the drug abuse problem warrants the expenditure of funds in excess of otherwise applicable budget limitations.

(b) Therefore, it is the sense of the Senate that—

(1) amounts authorized to carry out the preceding provisions of this Act should be provided as new budget authority for fiscal year 1987 in H.J. Res. 738, (99th Congress, 2d Session);

(2) such amounts should not be provided through transfers from, or reductions in, any amount appropriated by such joint resolution for any other program, project, or activity for such fiscal year.

BIDEN (AND THURMOND) AMENDMENT NO. 3092

Mr. BIDEN (for himself and Mr. THURMOND) proposed an amendment to the bill H.R. 5484, supra; as follows:

Amendments to title I:

SECTION 1. Section 1009(b) is amended—

(1) on page 16, line 11, by striking out "Subsection" and inserting "Paragraph" in lieu thereof; and

(2) on page 16, line 13, by striking out the period before the quotation mark and adding a period after the quotation mark.

SEC. 2. Section 1051 is amended—

(1) on page 17, line 19, by striking out "subsection" and inserting in lieu thereof "title or title III";

(2) on page 17, lines 20 and 21, by striking out "this title or title III or under";

(3) on page 17, line 24, by striking out "or" and inserting in lieu thereof "of";

(4) on page 18, line 1, by striking out "subsection" and inserting in lieu thereof "title or title III"; and

(5) on page 18, line 3, by inserting a comma after "State".

SEC. 3. Section 1102 is amended—

(1) on page 19, line 10, by striking out "Except as authorized by this title, it" and inserting in lieu thereof "It";

(2) on page 19, line 15, by inserting "or title III" after "title";

(3) on page 19, line 19, by inserting "or title III" after "title";

(4) on page 19, line 21, by striking out "at least eighteen years of age";

(5) on page 19, line 22, by striking out "section 405B(a)(1) or (2) of this title" and inserting in lieu thereof "subsection (a)";

(6) on page 20, line 2, by striking out "at least eighteen years of age";

(7) on page 20, line 3, by striking out "section 405B(a)(1) or (2) of this title" and inserting in lieu thereof "subsection (a)";

(8) on page 20, line 13, by inserting "a controlled substance or a controlled substance analog" after "distributing"; and

(9) on page 20, lines 24 and 25, by striking out "set out in section 401(b) of this title" and inserting in lieu thereof "applicable".

SEC. 4. Section 1103 is amended on page 21, line 6, by striking out "amended strike" and inserting in lieu thereof "amended by striking".

SEC. 5. Section 1104 is amended—

(1) on page 21, line 16, by inserting "(a)" before "Section 405A";

(2) on page 21, line 17, by striking out ", in subsection (a),";

(3) on page 21, line 18, by inserting "wherever it appears" after " 'distributing' ";

(4) on page 21, line 19, by inserting "wherever it appears" after "secondary school' "; and

(5) on page 21, by inserting the following after line 22:

"(b) Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by striking out 'involving the same controlled substance and schedule'.

"(c) Section 405A(b) of the Controlled Substances Act (21 U.S.C. 845a(b)) is amended by striking out '(1) by' and all that follows through the end and inserting the following in lieu thereof:

'(1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) a term of imprisonment of up to three times that authorized by section 401(b) of this title for a first offense, or a fine up to three times that authorized by section 401(b) of this title for a first offense, or both, and (2) at least three times any special parole term authorized by section 401(b) of this title for a first offense.' ".

SEC. 6. Section 1202 is amended—

(1) on page 32, line 14, by striking out "internationally" and inserting in lieu thereof "intentionally"; and

(2) on page 32, lines 18 and 22, by inserting "the greater of that authorized in accordance with the provisions of title 18, United States Code, or" after "fined not more than".

SEC. 7. Section 1204(2) is amended by inserting the following at the end thereof, on page 36:

"(g) Sections 924(c)(2) and 929(a)(2) are amended by inserting 'or controlled substance analog' after 'controlled substance'.".

SEC. 8. Section 1751(b) is amended on page 92, line 19, by striking out "or" and inserting in lieu thereof "of".

SEC. 9. Title I is amended by striking out section 1872.

SEC. 10. Title I is amended by striking out section 1874.

SEC. 11. Section 1102 is further amended—

(1) on page 19, line 14, by striking out "twenty-one" and inserting in lieu thereof "eighteen";

(2) on page 19, line 17, by striking out "twenty-one" and inserting in lieu thereof "eighteen"; and

(3) on page 20, line 14, by striking out "twenty-one" and inserting in lieu thereof "eighteen".

SEC. 12. Section 1152(a)(6) is amended by amending proposed paragraph (9)(B) of section 524(c) of title 28, United States Code, by inserting "through the Office of Justice Programs," after "Attorney General,".

SEC. 13. Section 1552 is amended—

(1) on page 82, line 2, by inserting ", through the Bureau of Justice Assistance," after "Attorney General"; and

(2) on page 83, by inserting the following after line 19: "This program shall be administered by the Bureau of Justice Assistance pursuant to Part D of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3741-3745), except that the minimum allotment under Part M of the Omnibus Crime Control and Safe Streets Act of 1986, as amended, shall be $500,000.".

SEC. 14. Section 1801 is amended by deleting subsection 1801(b) which appears on lines 4 through 12 of page 98 of the bill as introduced.

Amendments to title III:

SEC. 15. Section 3401(b)(1) is amended—

(1) on page 56, lines 20 and 25, by inserting "or controlled substance analog" after "controlled substance";

(2) on page 57, line 2, by inserting "or controlled substance analog" after "controlled substance";

(3) on page 57, line 6, by striking out "term" and inserting "terms" in lieu thereof;

(4) on page 57, line 7, by striking out "has the meaning given to such term" and inserting in lieu thereof "and 'controlled substance analog' have the meaning given to such terms";

(5) on page 57, line 8, by striking out "(5)"; and

(6) on page 57, line 9, by striking out "(6)".

Amendments to amendments previously adopted:

SEC. 16. Amendment No. 3076 is further amended on page 3, line 24, by striking out ", both" and "and outside".

SEC. 17. Amendment No. 3077 is further amended—

(1) on page 1, by striking out the material between the quotation marks on lines 4 through 9 and inserting in lieu thereof the following: "a term of imprisonment up to twice that otherwise authorized, or up to twice the fine otherwise authorized, or both, and at least twice any special parole term otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.";

(2) on page 1, by striking out the material between the quotation marks on lines 13 through 18 and inserting in lieu thereof the following: "a term of imprisonment up to three times that otherwise authorized, or up to three times the fine otherwise authorized, or both, and at least three times any special parole term otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.";

(3) by striking out "section 405" on page 1, line 20, and all that follows through "both" on page 2, line 3 and inserting in lieu thereof the following: "Section 405(a) of the Controlled Substances Act (21 U.S.C. 845(a)) is amended by adding the following at the end thereof: 'Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall not be less than one year.' ";

(4) by striking out "Section 405" on page 2, line 5 and all that follows through "both" on page 2, line 10, and inserting in lieu thereof the following: "Section 405(b) of the Controlled Substances Act (21 U.S.C. 845(b)) is amended by adding the following at the end thereof: 'Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall not be less than one year.' "; and

(5) by striking out "Section 405A" on page 2, line 12, and all that follows through "and schedule" on page 2, line 20, and inserting in lieu thereof the following: "Section 405A(a) of the Controlled Substances Act (21 U.S.C. 845a(a)) is amended by adding the following at the end thereof: 'Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall not be less than one year.' ".

SEC. 18. Amendment No. 3066 is further amended by deleting on page 5, lines 1 and 2 after the word "requester" the following: "; or (II) a requester is indigent and can demonstrate a Purpose: to make technical corrections in the section relating to restrictions on the provision of United States assistance in S. 2878 or H.R. 5484 as the case may be."

Amend section 2002:

Referring to Sec. 481(h)(1)(A) to read as follows:

"(A) 50 percent of United States assistance allocated for such country notified to Congress in the report required under section 653(a) of this Act shall be withheld from obligation and expenditure;";

Referring to (h)(2)(A)(ii) to read as follows:

"(ii) for a country that would not otherwise qualify for certification under subclause (i), the vital national interests of the United States require the provision of such assistance, financing, or preferential treatment to such country.";

Referring to the introductory clause of (h)(5) to read as follows:

"Any country for which the President has not made a certification under paragraph

(2) or with respect to which the Congress has enacted a joint resolution disapproving such certification may not receive United States assistance as defined by subsection (i)(4) of this section, the financing described in (1)(B) of this subsection and the preferential tariff treatment described in (1)(C) of this subsection unless—";

DOLE AMENDMENT NO. 3093

Mr. DOLE proposed an amendment to the bill H.R. 5484, supra, as follows:

Amend section 4218(b) to read as follows:

"(b)(1) the Secretary may utilize by agreements, with or without reimbursement, the personnel services and facilities of any Federal, tribal, State, or local government agency to the extent he deems is necessary and appropriate for effective enforcement of any Federal or tribal laws or regulations in Indian country. The Secretary may commission law enforcement personnel of such agencies to exercise such of the authorities set out in subsection (a) of this section as the Secretary deems appropriate. Appropriate representatives of Federal agencies are hereby authorized to enter into and carry out such agreements with the Secretary or with duly authorized tribal officials.

(2) While acting in the capacity of a person commissioned by the Secretary pursuant to this section, any person who is not otherwise a Federal employee, shall be deemed a Federal employee for purposes of—(A) section 3374(c)(2) of title 5, United States Code, and (B) sections 111 and 1114 of title 18, United States Code.

(3) For purposes of subchapter III of chapter 81 of title 5, United States Code, an employee of a tribal, State, or local governmental agency shall be considered an eligible officer while acting in the capacity of an officer commissioned pursuant to this subsection.

(4) An agreement under this subsection for the enforcement of Federal laws shall be in accordance with an agreement entered into between the Secretary and the Attorney General of the United States."

Amend subsection (c) of section 4281 by deleting "The" and inserting in lieu thereof "After consultation with the Attorney General of the United States, the".

CONTINUING APPROPRIATIONS, 1987

HATFIELD AMENDMENT NO. 3094

Mr. HATFIELD proposed an amendment to the excepted committee amendment to the joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes, as follows:

At the end of the pending amendment, add the following:

Sec. . Notwithstanding any other provision of this resolution, the provisions of section 621 of H.R. 5294, the Treasury, Postal Service, and General Government Appropriations Act, 1987, as reported by the Senate on August 14, 1986, and as incorporated in this Act, shall have no application or effect.

HATFIELD AMENDMENT NO. 3095

Mr. HATFIELD proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the pending amendment, add the following:

Sec. . Notwithstanding any other provision of this resolution, the provisions of section 621 of H.R. 5294, the Treasury, Postal Service, and General Government Appropriations Act, 1987, as reported by the Senate on August 14, 1986, and as incorporated in this Act, shall have no application or effect.

SPECTER AMENDMENT NO. 3096

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to the joint resolution (H.J. Res. 738), supra; as follows:

"Any judicial official, as defined by paragraphs (A) and (B) of section 376(a)(1) of title 28, United States Code, serving in office after June 19, 1986, or the surviving spouse of any such official, may elect, at any time after June 19, 1986, and before April 1, 1987, to participate in the survivors' annuities program authorized by section 376 of title 28, United States Code, as amended by the Judicial Improvements Act of 1985. Any such election shall be made by filing such election with the Director of the Administrative Office of the United States Courts. Such election shall be effective when made and shall entitle the judicial officer, and any survivors, to participate in all the obligations and benefits of the program, as such program, as amended, is to be administered, without regard to section 2(f) of such Act. The election authorized by this Act shall be in addition to any other election authorized by section 376 of title 28, United States Code."

OFFICIAL PAPERS OF JOSEPH W. MARTIN, JR.

DOLE AMENDMENT NO. 3097

Mr. DOLE proposed an amendment to the bill (H.R. 4244) to authorize funds to preserve the official papers of Joseph W. Martin, Jr.; as follows:

At the end of the bill, add the following new section:

AUTHORIZATION OF KANSAS EDUCATIONAL SATELLITE VIDEO COMMUNICATIONS CENTER

Sec. . (a) The Secretary is authorized to provide financial assistance, in accordance with the provisions of this section, to pay the Federal share of the cost of construction, and related expenses, for the Kansas Educational Satellite Video Communications Center at the Kansas State University located in Manhattan, Kansas, to enable the Kansas State University to establish the Kansas Educational Satellite Video Communications Center in order to produce and disseminate television programming in subject areas of local, regional, national, and international importance.

(b) No financial assistance may be made under this section except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

(c) There are authorized to be appropriated such sums, not to exceed $6,000,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

AUTHORITY OF THE SUPREME COURT POLICE

DOLE AMENDMENT NO. 3098

Mr. DOLE proposed an amendment to the bill (H.R. 5362) to extend the authority of the Supreme Court Police to provide protective services for Justices and Court personnel; as follows:

At the end of the bill, insert the following new section:

Sec. . (a) Section 105(a) of the Legislative Branch Appropriations Act, 1979 (2 U.S.C. 72a note), as reenacted by section 115 of the joint resolution entitled "Joint resolution making continuing appropriations for the fiscal year 1982, and for other purposes", approved October 1, 1981 (95 Stat. 963), is amended by striking out "September 30, 1986," and inserting in lieu thereof "February 28, 1987,".

(b) The amendment made by subsection (a) shall take effect on October 1, 1986.

OMNIBUS VETERANS BENEFITS ACT

MURKOWSKI (AND CRANSTON) AMENDMENT NO. 3099

Mr. DOLE (for Mr. Murkowski, for himself and Mr. Cranston) proposed an amendment to the bill (S. 2422) to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans and the rates of dependency and indemnity compensation for surviving spouses and children of veterans; to improve the Veterans' Administration Home Loan Guaranty Program; to authorize certain debt collections; to authorize the Administrator of Veterans' Affairs to require additional information for certain fiduciary agents of veterans; to revise the authority of the Administrator of Veterans' Affairs to construct, alter, acquire, operate, and maintain parking facilities at Veterans' Administration medical facilities; and to authorize an administrative reorganization in the Veterans' Administration; as follows:

On page 18, below line 6, amend the table of contents by inserting after the item relating to section 209 the following new item:

Sec. 210. Vietnam-era veterans' readjustment counseling program.

On page 19, above line 1, amend the table of contents by inserting after the item relating to section 215 the following new items:

Sec. 216. Authority for part-time and temporary appointments.

Sec. 217. Report on a national drug file.

On page 19, above line 1, further amend the table of contents by inserting after the item relating to section 301 the following new item:

Sec. 302. Contract authority subject to appropriations.

On page 21, line 18, insert "and" after the semicolon.

On page 21, strike out all on line 19.

On page 21, line 20, redesignate clause (3) as clause (2).

On page 21, line 21, strike out "clause" and insert in lieu thereof "clauses".

On page 21, line 25, strike out the quotation mark and period and insert "or" in lieu thereof.

On page 21, below line 25, insert the following:

"(12) post-traumatic osteoarthritis, or

"(13) irritable bowel syndrome if the veteran is suffering from a psychiatric disability which is service connected and compensable in degree,".

On page 44, below line 21, insert the following new section:

SEC. 210. VIETNAM-ERA VETERANS READJUSTMENT COUNSELING PROGRAM.

(a) EXTENSION OF PROGRAM TRANSITION.—Section 612A(g) is amended—

(1) in paragraph (1)—

(A) by striking out "twelve-month" and inserting in lieu thereof "24-month";

(B) by striking out "September 30, 1988" and inserting in lieu thereof "September 30, 1989"; and

(C) in clause (A), by striking out "orderly transition by October 1, 1988" and inserting in lieu thereof "orderly and gradual transition by October 1, 1989";

(2) in paragraph (2)—

(A) in subparagraph (A), by inserting "(or, if the study is not completed, whatever information from it is then available)" after "1983";

(B) in subparagraph (B)—

(i) by striking out "and" at the end of clause (i);

(ii) by striking out the period at the end of clause (ii) and inserting in lieu thereof a semicolon and "and"; and

(iii) by adding at the end, the following new clause:

"(iii) the Administrator's analysis and findings as to whether or not veterans who served on active duty during World War II or the Korean conflict (with particular emphasis on those who served in combat) could benefit from services provided under this section and, if so, the Administrator's recommendations on the most desirable means by which such services could be furnished.";

(3) in paragraph (3), by adding at the end the following new sentence: "Such report shall be prepared taking into consideration the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983 (or, if the study is not completed, whatever information from it is then available)."; and

(4) by adding at the end the following new paragraph:

"(4) Not later than February 1, 1989, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Administrator's evaluation of the experience under as much of the transition as was carried out pursuant to paragraph (1) of this subsection prior to September 30, 1988, and, based on that evaluation, the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983 (or, if the study is not completed, whatever information from it is then available), and other pertinent information regarding the readjustment counseling program, the Administrator's opinion as to the extent to which the provision of readjustment counseling services under this section in a program providing such services through facilities situated apart from Veterans' Administration health-care facilities is needed to meet the readjustment needs of veterans who served on active duty during the Vietnam era.".

(b) STUDY OF VIETNAM-ERA VETERANS' PSYCHOLOGICAL PROBLEMS.—Section 102 of the Veterans' Health Care Amendments of 1983 (Public Law 98-160; 97 Stat. 994) is amended—

(1) in subsection (b) by striking out "October 1, 1986" and inserting in lieu thereof "October 1, 1987"; and

(2) by adding at the end the following new subsection:

"(d) In order to promote the participation in the study required by subsection (a) of a number of study subjects sufficient to yield scientifically valid results from such study, the Administrator shall pay an appropriate stipend to each individual participating in the study as a subject. In determining the amount of such stipend, the Administrator shall take into account (1) the amount of time that the individual is expected to devote to participation in the study, (2) the extent to which the individual's normal routine is disrupted as a result of such participation, (3) any travel by the individual in connection with such participation, and (4) such other factors as the Administrator considers appropriate."

On page 53, between lines 15 and 16, insert the following new sections:

SEC. 216. AUTHORITY FOR PART-TIME AND TEMPORARY APPOINTMENTS.

Section 4114(a) is amended—

(1) in paragraph (1)—

(A) in clause (A), by inserting after "dental auxiliaries" a comma and "certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses"; and

(B) in clause (B), by inserting after "dental auxiliaries" a comma and "certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses";

(2) in paragraph (2), by striking out "paragraph (1) of section 4104" and inserting in lieu thereof "paragraphs (1) and (3) of section 4104"; and

(3) in paragraph (3)—

(A) in subparagraph (A), by striking out "paragraph (1) of section 4104" and inserting in lieu thereof "paragraphs (1) and (3) of section 4104"

(B) in subparagraph (B), by inserting "and except as authorized in subparagraph (D) of this paragraph" after "programs"; and

(C) by adding at the end the following new subparagraph:

"(D) During any period during which the Administrator is exercising the authority of only section 4106(a) and (g)(1) of this title for the appointment of personnel in the category of certified or registered respiratory therapists, licensed physical therapists, or licensed practical or vocational nurses—

"(i) the Administrator may make temporary full-time appointments of personnel in such category for periods exceeding 90 days if the Chief Medical Director finds that circumstances render it impractical to obtain the necessary services through appointments under paragraph (3) of section 4104 of this title; and

"(ii) part-time appointments of personnel in such category may be for periods of more than 1 year.".

SEC. 217. REPORT ON A NATIONAL DRUG FILE.

Not later than 90 days after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the plans of the Department of Medicine and Surgery for the development, establishment, and administration of a national drug file, including an agency-wide reclassification and inventory system for all drugs utilized by the Veterans' Administration. The report shall also include—

(1) any timetable for the establishment of such a drug file;

(2) an estimate (and the underlying criteria therefor) of the number of employees, all computer equipment (including any additional computer equipment), and total expenditures necessary to develop, establish, and administer such a drug file; and

(3) any other matters the Administrator considers appropriate to include in the report.

On page 65, below 11, insert the following new section:

SEC. 302. CONTRACT AUTHORITIES SUBJECT TO APPROPRIATIONS.

All authorities provided in this Act to enter into contracts are effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Agriculture be authorized to meet during the session of the Senate today, Tuesday, September 30, immediately following the first rollcall vote, in order to consider reporting the nomination of Jim R. Billinton, to be a member of the Farm Credit Administration Board, Farm Credit Administration.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS

Mr. DOLE. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs of the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Tuesday, September 30, 1986, in order to conduct a hearing on foreign driftnet fishing and marine mammal, bird, and salmon management.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I ask unanimous consent that the Subcommittee on East Asian and Pacific Affairs, of the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Tuesday, September 30, 1986, in order to conduct a hearing on United States trade relations, with Taiwan and Korea.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. ABDNOR. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, September 30, in order to consider the following nominations:

James Edward Nolan, Jr., to be Director of the Office of Foreign Missions;

Donald K. Petterson, to be Ambassador Extraordinary and Plenipotentiary to the Republic of Tanzania; and

Walter Edward Stadtler, to be Ambassador Extraordinary and Plenipotentiary to the Republic of Benin.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, September 30, 1986, in order to conduct a hearing on United States-Icelandic Treaty on the Carriage of Military Cargo.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. THURMOND. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Tuesday, September 30, to conduct a hearing on S. 2203, acid rain.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

U.S. NUCLEAR TESTING IN THE HOUSE DEFENSE BILL

● Mr. GOLDWATER. Mr. President, the House of Representatives has attached a series of arms control provisions to its version of the fiscal year 1987 defense authorization bill. I strongly oppose these provisions, which would undermine U.S. national security by imposing unilateral restrictions on our defense programs. By adopting these provisions, the House has undermined the ability of the executive branch to conduct arms control negotiations and it has intruded into the constitutional domain of the Senate in the area of treaty making.

One provision which I find particularly objectionable imposes a ban on all U.S. nuclear tests above 1 kiloton. Continued nuclear testing is essential to our national security for a number of valid reasons. These reasons are addressed in two documents that I will insert in the RECORD.

The first insert is a letter that I received last week from Secretary of Defense Weinberger. In this well argued and informative letter, Secretary Weinberger articulates the relationship between continued nuclear testing and our national security. The second insert is an editorial that appeared in the New York Times on Sunday. While I am not the biggest fan of that newspaper, I must admit that this is a very thoughtful and well-informed editorial. I ask unanimous consent that these two items be included in the RECORD.

Mr. President, conferees from the Senate and House Armed Services Committees are continuing to try to resolve the differences between our two defense bills. This already difficult task has been made even more difficult this year by the House leadership, which has added a large number of outside conferees to our conference. In fact, of 77 House conferees for the defense bill, less than one-half—or 31—are members of the House Armed Services Committee.

Despite these encumbrances, the conferees from the Senate are working diligently to see if reasonable outcomes can be negotiated. While we will continue this work, I can assure you that the Senate conferees will not agree to adopt any arms control provisions that undermine our national security. President Reagan has indicated that he will veto any bill which contains these provisions, and he would be absolutely right in doing so.

The documents follows:

THE SECRETARY OF DEFENSE,
Washington, DC, September 24, 1986.

Hon. BARRY GOLDWATER,
U.S. Senate,
Washington, DC.

DEAR BARRY: You will soon be considering final action on an issue of direct and profound importance to the national security of the U.S. and our allies: the maintenance of a credible nuclear deterrent. As you know, the President yesterday called specific attention to the serious damage that the proposal recently adopted by the House to ban all U.S. nuclear testing above 1 kiloton, particularly when taken together with several other House-passed amendments to the Department of Defense Authorization Bill, would do to the credibility of our deterrent and to our priority effort to achieve deep, equitable, and effectively verifiable reductions in Soviet and American nuclear arsenals. Like the President, I believe that the need for continued nuclear testing is compelling, and for this reason I have decided to write you personally to express my deep concern that the House proposals are incompatible with our national security.

The maintenance of a strong nuclear deterrent has for four decades ensured the security of the Free World. While we are actively investigating technologies that could one day make us less dependent on offensive nuclear arms for our security, the U.S. and our allies must rely for the foreseeable future on nuclear weapons to deter Soviet aggression. As long as that reliance continues, nuclear testing will be required.

Let me assure you that the U.S. exercises all prudent restraint in the testing program, testing neither more frequently nor at yields higher than absolutely necessary to meet our national security requirements. But the irreducible fact is that nuclear testing is essential to providing for the safety and security of our warheads and weapons systems. It also is essential if we are to maintain their reliability. This is not a matter of conjecture, but a lesson learned through hard experience. For example, in the case of one nuclear system—the warhead for the Polaris submarine-launched ballistic missile—testing allowed us to fix defects that were suddenly discovered. Until corrected, these defects could have rendered the vast majority of weapons in our sea-based deterrent completely inoperable. Moreover, testing has allowed us to deploy systems that are more survivable—so that we can reduce any Soviet incentive to attack in the first place—and to ensure that we will not be surprised by any Soviet breakthroughs that might alter the strategic balance.

Congress has insisted forcefully—as have I—on the need for the highest performance and safety standards as well as the most stringent testing for non-nuclear defense systems. It is sadly ironic that many in Congress, nontheless, are prepared to consider banning effective testing of defense systems which we depend on most critically for deterrence and which rely on the most complex technologies—our nuclear weapons.

Let me outline for you some of the specific and, in my view, dire consequences to be expected should the House amendment on testing be enacted:

The introduction of modern safety and security devices into the two-thirds of our stockpiled weapons that do not yet have them would be halted.

Stockpile testing, such as that which uncovered and fixed the Polaris problem, would be precluded.

The small ICBM program would become highly problematical, since we could not develop the new warhead required for this missile. For example, we could not validate necessary modifications to existing warheads, including the installation of appropriate security devices, nor do the necessary proof and survivability testing.

We would be forced to forego nuclear effects tests, which are necessary to determine the survivability and effectiveness of existing and programmed nuclear and conventional forces, as well as their supporting command, control, communications, and intelligence systems.

The exploration of advanced nuclear concepts needed to avoid technological surprise would be precluded.

Finally, while our technical base and expertise would atrophy (as was the case during the 1958–1961 moratorium that was broken by the Soviets), the Soviets could keep their massive nuclear weapon establishment intact.

While House advocates of a U.S. testing cut-off claim that this would somehow slow the "arms race", I must remind you that it would not eliminate a single existing weapon. In fact, it is in no small measure, thanks to nuclear testing, that we have been able to introduce newer, safer, and more effective systems while actually reducing the number of weapons in our nuclear arsenal by one-third from what we had twenty years ago. We have, moreover, been able to reduce the explosive power of our arsenal to one-quarter of the level fielded by the U.S. two decades ago.

Finally, while the House measure would appear to acknowledge the importance of verifying Soviet compliance with agreements on testing limitations—a point made repeatedly by this Administration for the past several years—its provisions in fact would not provide for effective verification.

This Administration long has had a constructive and practical agenda in the area of limitations on nuclear testing. Briefing put, we would like to bring the Soviets into compliance with existing agreements and introduce effective verification mechanisms where necessary, specifically for the Threshold Test Ban Treaty and Peaceful Nuclear Explosions Treaty. Thanks to a recent initiative by President Reagan, U.S. and Soviet experts have conducted two rounds of technical discussions in Geneva on a broad range of issues related to nuclear testing. And while it is too early to judge what progress might be made when these discussions resume in November, there is at least a hope now that the Soviets finally may be ready seriously to consider our proposals to fix existing nuclear testing agreements in a way that would enhance the security and confidence of both sides.

The choice before you and your colleagues is clear: you can demonstrate to the Soviets that the U.S. remains committed to a defense posture strong enough to deter aggression while we seek to negotiate real arms reductions; or, you can send an unmistakable message to the Soviets that Congress is willing to settle for an inequitable, unsafe, and unverifiable testing moratorium or comprehensive test ban. The latter choice unquestionably would undermine the President's ability to achieve progress on arms reductions and verification improvements to existing nuclear testing agreements. Consequently, I would be compelled to recommend that the President veto any legislation containing such restrictions on our vital nuclear testing program as, indeed, he indicated that he would do.

I trust that keeping these points in mind, you will support the Administration's continuing efforts to keep America strong and the President's position on nuclear testing.

Sincerely,

CASPAR WEINBERGER.

[From the New York Times, Sept. 28, 1986]

THE ARMS RACE HAS NO QUICK FIX

Congress threatens to impose on the White House the constraint Mikhail Gorbachev has long sought—a moratorium on testing nuclear weapons. Its motives are wholly different but the result would be the same: a severe weakening of the President's bargaining power and of national security.

What Mr. Gorbachev seeks in a test ban is a halt in the modernization of American strategic weapons, and a free ride to hamstringing the President's "Star Wars" missile defense. Nuclear tests are necessary for development of the nuclear-pumped X-ray laser, one of Star Wars' most promising components.

Even those who consider countrywide missile defense unworkable should not want to undercut the President's bargaining position in the now-promising Soviet negotiations. A test ban would also freeze the quality of America's strategic deterrent and thus award the Kremlin its two mostly ardently sought objectives for nothing in return.

How could Congress even contemplate such willful self-damage? The House, in all good will, seeks simply to end the arms race by freezing innovation in nuclear weaponry. It has voted for a one-year moratorium on nuclear tests of more than one kiloton. Les Aspin, the embattled chairman of the Armed Services Committee, is under strenuous pressure from liberal colleagues to make this position prevail in conference with the Senate.

But those who twist Mr. Aspin's arm are demanding two contradictory things. Many also support the single-warhead Midgetman missile—a less tempting, far costlier target—as an alternative to the vulnerable 10-warhead MX. How could Midgetman be made reliable if there's a test ban? As its sponsors well know, a one-year moratorium is likely to become a permanent injunction. That would also prevent reliability testing of the D5 warhead for the accurate Trident II missile and disrupt programs to protect command and control facilities from the effects of nuclear weapons.

Midgetman's design is not final but even if it uses the Mark 21 warhead approved for the MX, that must be adapted to withstand the stress of housing the missile in mobile trucks instead of silos. Failure to test the new design, or any other new weapon, would be pure folly.

That points to a deeper flaw in the House's vision: the simplistic belief that the arms race is driven only by technology and can be halted by stifling innovation. The arms race is driven primarily by mistrust, and not all changes in nuclear weaponry are bad. Warhead size reduction, stable basing and improved security contribute greatly to a safer world.

For too long, the Administration opposed a test ban on the ground that it could not be verified. Just because that argument was a smokescreen does not mean there are no valid reasons to test. A quota on tests, which some propose in place of a ban, has the logic of neither position. Further limits on testing are highly desirable, but only after the arms race itself has been constrained. Until then, Congress had better now throw away the key to the technology that assures America's nuclear shield and provides our greatest leverage in negotiating genuine controls.●

FANTASY IN CONGRESS

● Mr. MOYNIHAN. Mr. President, I rise to commend to the Senate the lead editorial in the September 26 edition of the New York Times.

The title: "Fraud and Fantasy in Congress."

The topics: Gramm-Rudman-Hollings, the appropriations process, reconciliation, and raising the debt ceiling.

On five occasions during the last 2 weeks I have made statements which set forth the following basic proposition. During the final weeks of the 99th Congress, the Senate will promise the American public that the deficit will not exceed $154 billion for fiscal year 1987; however, to do so will be to misrepresent the facts, for we know now the deficit will be much higher. This is not a trivial matter. If, as a result, the public loses confidence in Congress as an institution, we shall have much to answer for.

Few colleagues paid much attention to these warnings. The New York Times notices such things.

The reconciliation bill, which was approved by the Senate just 1 week ago, was described by many of those who voted for it as "smoke and mirrors." It included accounting games, such as advancing the final $680 million payment for general revenue sharing to September 30, thus "reducing the deficit" in fiscal year 1987 while increasing it in fiscal year 1986. The reconciliation bill also included provisions which, it is claimed, will decrease the deficit some $3.4 billion through increased penalties and tax compliance.

The Gramm-Rudman-Hollings law will not do what its proponents promised a year ago. It has instead caused the Senate to conceal its actions in the new terminology of "maximum deficit amounts," "Gradison baselines," and "sequesters." It will not do what many have said it would do. The deficit will not be $144 billion or even $154 billion in fiscal year 1987; and prospects for actually reaching the Gramm-Rudman-Hollings deficit target of $108 billion in fiscal year 1988 are dim indeed.

The vote on the reconciliation bill was revealing: five of the seven who voted against the bill are members of the Senate Budget Committee. Enough said.

I ask that a copy of the above mentioned editorial from the September 26 edition of the New York Times be printed in the RECORD.

The editorial follows:

FRAUD AND FANTASY IN CONGRESS

Truly, triply fantastic: that's about the only way to describe the way the 99th Congress is coming up to the finish line. With adjournment only days away, it has not yet passed the fiscal measures needed to run the Government.

Votes are imminent on three fundamental bills. All are muddled, unsound, fantastic. And it's too late to do anything about it for the 1987 budget. The only hope is that if voters understand the fraud and fantasy, they will be sufficiently disgusted to compel the next Congress to sweep out the stable.

The starting point was painful action to cut the immense Reagan budget deficits. But a year ago, Congress came under the spell of Senator Phil Gramm's fantasy—a device to balance the budget automatically. Congress gladly adopted the bill he fashioned, with Senators Rudman and Hollings, to eliminate the deficit in five annual steps. The Supreme Court then invalidated the automatic mechanism, so it fell to Congress again to make difficult choices. Congress ducked, leaving three rings of fantasy and fraud.

MISAPPROPRIATION

Fiscal 1987 starts Wednesday, Oct. 1. But not one of the 13 bills appropriating funds for various agencies will have cleared both houses by then. What's Congress's plan? To wrap all 13 into a single $567 billion monster. No President should be forced to swallow all that at once. Such irresponsible packaging only reinforces the case for line-item veto power, a bad idea Presidents tend to favor.

So gigantic a package masks dispute over the contents. The President wants more money for defense and less for social programs. Will he veto this mega-appropriation? Will the Government have to shut down Wednesday for lack of funds while the package is refashioned? If so, do the members of Congress care if they are starting to look like frauds, or fools?

MISREPRESENTATION

Because many programs have permanent authorization rather than yearly appropriations, their legislative charters must be reconciled with overall budget targets—for example, by adjusting the rules for Medicare or by imposing new fees and taxes. This year's reconciliation requires finding $15 billion. Members of both parties admit they're doing so with "blue smoke and mirrors." The ruses include misrepresenting the figures for 1987 by reassigning some 1988 revenues and by spending some 1987 funds quickly, so they'll count against 1986. Not one penny will be saved.

Outside budget analysts estimate that the whole exercise rests on deceptive calculations. Congress pretends that it will hold the deficit to $154 billion. When fiscal 1987 ends, the analysts say, it may be at least $20 billion larger. And that doesn't count what Congress may add during the year.

POSTURING, AND WORSE

In the third big piece of fiscal legislation still unpassed, Congress must once again raise the ceiling on the $2 trillion national debt. This is an annual charade. The members rattle and thunder about all that Treasury borrowing—which they have made necessary with the deficit they have authorized.

The only purpose is posturing, but this time Senator Gramm would make the debt ceiling bill even worse, with an amendment to get around the Supreme Court's ruling. His new scheme, approved by the Senate but sensibly blocked in the House surrenders final say over spending cuts to meet deficit targets to the President's Budget Director. That would create another device for Congress to duck its responsibility.

The primary blame for this irresponsibility belongs to President Reagan. It was he who piped the Government into one $200 billion deficit after another. It is he who stubbornly refuses to consider the only effective remedies—reducing the defense buildup, trimming Social Security and other entitlement programs and increasing taxes.

But the blame for playing games belongs to Congress. With two years left, the President will go away long before the deficits do. The taxpayer will be left to shoulder the burden. With all its present fantasy and fraud, Congress makes it even heavier.●

BIOLOGICAL DIVERSITY

● Mr. ROTH. Mr. President, in October of last year I introduced S. 1747 and S. 1748, two bills which were designed to stop the rampant clearing of tropical forests and the loss of some of the world's most biologically diverse habitats. The bills have been the subject of an extensive hearing in the Foreign Relations Committee under the able guidance of my friend from Washington, Senator EVANS.

Mr. President, over the last decade scientists from around the world have been discussing and sounding the alarm about this problem. Just last week the National Academy of Sciences and the Smithsonian Institution sponsored a 3-day national forum on biodiversity which was attended by several hundred specialists. Several other conferences are scheduled around the country to address this important environmental issue.

Mr. President, the Senate will take action on my bills shortly, and because the House of Representatives has already passed similar legislation I urge my colleagues to act favorably upon this initiative. Meanwhile, I wish my colleagues to read an article that was published in the Washington Post on September 29, 1986. The author, Boyce Rensberger has done a masterful job of placing this most important environmental concern that confronts us today in the proper perspective. Mr. President, I ask that his entire article be placed in the RECORD.

The article follows:

SCIENTISTS SEE SIGNS OF MASS EXTINCTION—SPECIES VANISHING AS FORESTS CLEARED

(By Boyce Rensberger)

Life on Earth is being ravaged by a mass extinction that is killing off 17,500 species of plants and animals each year, according to estimates that alarmed biologists say are conservative.

The number of vanishing species is several times the official total listed as endangered by governments and conservation groups because the list is dominated by species that are unknown to science but that biologists have reason to believe are out there, especially in tropical rain forests, which are little studied.

Rain forests, such as in the Amazon basin, Indonesia and central Africa, are the world's most biologically diverse habitats and, although they occupy only 7 percent of the planet's land area, they contain perhaps half of all living species.

A 25-acre forest in Borneo, for example, has been found to contain about 700 tree species, as many as in all of North America. The Amazon basin as a whole has some 50,000 known tree species. A single river in Brazil is home to more kinds of fish than all the rivers of the United States. One wildlife preserve in Peru harbors more bird species than does the whole United States.

Many scientists say that if nothing is done to slow the rampant clearing of these lands, all tropical forests will probably disappear in the next 50 to 75 years, taking with them many species that almost certainly could have provided new drugs, new food sources and many other opportunities for economic exploitation. Recently discovered, for example, is a species of wild coffee that has no caffeine.

Although alarms about mass extinction were sounded by a few biologists in the heat of the 1970s environmentalist movement, mainstream scientists tended to dismiss them as unfounded extremism.

In the last two or three years, however, new research has led the mainstream biologists to raise their estimates of how many species are on Earth—estimates vary between 5 million and 30 million, far more than the 1.7 million already known—and how fast the habitats of those species are being destroyed. As a result, the mainstreamers are now largely convinced that the current rates of extinction are, if anything, higher than was forecast years ago.

Peter Raven, head of the Missouri Botanical Garden in St. Louis, where about 100 new species of plant are discovered every year, estimates that more than 29,000 square miles of tropical forest, an area larger than West Virginia or Costa Rica, are being cut down each year.

With new urgency, biologists are reviving the campaign to save Earth's vanishing wildlife. Last week, for example, several hundred specialists met here for a three-day National Forum on Biodiversity under sponsorship of the National Academy of Sciences and the Smithsonian Institution.

Several other major conferences are scheduled around the country, as much to rally wider support as to present data and discuss the issues. One new organization, called the Tropical Forest Action Committee, is meeting this week in Washington and plans a march and rally to protest World Bank development projects that are destroying the forests.

At last week's forum, nine of biology's most respected leaders, calling themselves the Club of Earth, issued a statement ranking the extinction crisis "a threat to civilization second only to the threat of thermonuclear war."

The signers included Edward O. Wilson, the Harvard expert on social insects best known for establishing the field of sociobiology; Ernst Mayr, the patriarch of American evolutionary biology, also at Harvard, and Thomas Eisner, a Cornell specialist in insect behavior, as well as Stanford ecologist Paul Ehrlich, one of the early prophets crying about the wilderness.

"While a majority of the species threatened with extinction are still completely unknown, the results of their loss could be an unprecedented human tragedy," the group's statement said.

"Loss of species usually decreases the ability of natural ecosystems to supply humanity with essential services upon which it depends. Those services include recycling of nutrients, generation of soils, maintenance of the quality of the atmosphere and of fresh waters, flood control, provision of food from the sea and the control of the vast majority of potential pests of crops and carriers of disease. If extinctions cause substantial interruptions of ecosystems services, that could result in a dramatic rise in the human death rate."

The new movement is significantly different from the old one.

in the past, many conservationists focused heavily on a few, popularly appealing endangered species such as bald eagles and leopards. By contrast, the new movement looks instead at whole ecosystems, noting that soil bacteria and insects usually are more ecologically important than the showier species. Plants are now given as much importance as animals. And, at its most fundamental level, the movement now sees its mission as preserving life's genetic diversity.

In this view, a 100-acre patch of tropical forest, with its many species, can be of greater value than, say, 1,000 square miles of Maine woods, with its relatively few species. It is the rule in biology that the more northerly the latitude, the fewer species there are. But each of those northerly species exists in great profusion. As one moves south, the number of species soars, but each is represented by comparatively few individuals.

As this "biodiversity" increases, so does the diversity of genes, the microscopic molecules that carry the genetic code that commands a single, nondescript cell to develop into a fungus or a fern or a frog. Each gene is a blueprint that guides cells in synthesizing one kind of molecular with specialized chemical abilities.

A bacterium has about 1,000 different genes. A mouse cell has around 100,000, about the same as a human cell. Many plants have 400,000 or more. The important differences are not in quantity but in the exact message encoded in each gene.

Because each species is the product of thousands or millions of years of evolution as a separate species, it contains many one-of-a-kind genes—codes for making biologically useful molecules that exist nowhere else. Every species that disappears takes with it a wealth of genes that might have been useful in medicine, especially in this day of genetic engineering when genes can be plucked out, copied many times over in the laboratory and put to work in common organisms.

Just recently, for example, Hugh Iltis of the University of Wisconsin, found a rare species of tropical grass in Mexico, called teocinte, that is believed to be the wild ancestor from which the Indians bred corn thousands of years ago. The grass, with a seed head bearing barely half a dozen kernels, is of little economic importance, but it does contain genes that give it natural resistance to drought and to many diseases that attack corn. Plant breeders are now crossing teocinte with corn to make hybrids that combine the best genes of both.

Iltis and others in the movement argue that a world that gets 80 percent of its food from fewer than two dozen species of plants and animals—and the bulk of that from wheat, rice and corn—has little safety margin in the event of droughts, crop diseases or climate change.

Several thousand other wild tropical plant species are known to be edible and many are more nutritious than the traditional food sources. As growing populations demand more food, especially in the tropics, biologists say it is unwise to exterminate tropic-adapted species that could someday be domesticated as food sources.

Many scientists also stress the potential of unknown plants to contribute medically useful chemicals. About one-quarter of modern medicine's drugs are plant extracts, but it is likely that many more useful drugs wait inside plant species as yet unknown to Western medicine. Many, however, may already be known to the medicine men in primitive societies and Mark Plotkin, an ethnobotanist with the World Wildlife Fund, urges greater effort to learn from traditional healers before their endangered cultures disappear.

"Each time an Amazon medicine man dies," Plotkin told last week's conference, "it's as if a library burns down."

The new conservation movement differs in another significant way. It recognizes that the chief causes of extinction are not hunters or poachers, not the demand for fur coats or exotic pets. The current mass extinction, the new movement asserts, is mainly the result of the world's developing countries working hard to produce more food for their expanding populations. The bulldozers of large corporations and the axes of peasants are clearing forests to grow crops and graze livestock.

The newly won soils are typically good enough to raise food such as rice for two or three years. But the relatively poor soils are quickly depleted and the land is converted to pasture for cattle.

Other threats to tropical forests include the rising demand for firewood from growing peasant populations and from timber-cutting to supply the rich and poor worlds with tropical hardwood lumber for building and ornamental uses.

Remedies proposed for the extinction crisis usually take two forms. One is to launch a major, sustained effort to explore tropical forests to identify new species, concentrating on those likely to have economic potential. This is beginning to happen on a small scale but, as most specialists agree, major sources of funding for such an effort—the Federal government and business—have not yet recognized the crisis.

The other approach is to attack the chief cause of deforestation, the demand for food.

The need, according to Nyle Brady, a pioneer in the "green revolution" breeding of higher yielding varieties of rice and other crops and now an official at the U.S. Agency for International Development, is for tropical countries to develop more intensive agricultural methods, getting more food out of existing acreage and thus reducing the need to clear new lands. Also needed, many in the movement say, is a need to reduce population growth.

Privately, many biologists are pessimistic about the chances of averting a mass extinction of major proportion, comparable to those of the geologic past.

"The current reduction of diversity," Wilson told last week's conference, "seems destined to approach that of the great natural catastrophes at the end of the Paleozoic and Mesozoic eras. In other words, the most extreme for 65 million years."

In one sense, Wilson argues, it could be even worse. The prehistoric mass extinctions were largely confined to animals. Plant species survived and provided the ecological foundation for new explosions of evolution that reestablished biological diversity. This time the plants are going as fast as the animals.●

TENTH ANNIVERSARY OF THE JEWISH COMMUNITY RELATIONS COUNCIL

● Mr. MOYNIHAN. Mr. President, seven distinguished Americans will be honored in New York City tonight at a decade of achievement gala celebrating the 10th anniversary of the Jewish Community Relations Council of New York. This council is the coordinating and resource body for 61 major Jewish organizations in the New York City area, and service the world's largest Jewish population.

The Jewish Community Relations Council of New York has, in 10 brief years, earned a well-deserved reputation as a major contributor to the pluralistic civic community that so properly characterizes American communal life. The JCRC has provided leadership and example in a wide range of public issues while working with Americans from all ethnic, social, and religious groups. The agenda of the JCRC is, in fact, nothing less than the full catalog of activities, issues, and programs that reflect the concerns, needs, and aspirations of 2 million Jews.

Mr. President, New York City's Jewish community is the oldest in North America. It was founded in 1654 and yet until 10 years ago lacked a single united voice on communal and social issues. It was only in 1976 that three far-sighted Jewish leaders convinced the leadership of the United Jewish Appeal and the Federation of Jewish Philanthropies to provide requisite funding to create the Jewish Community Relations Council of New York. It is most appropriate that these three leaders will be honored at tonight's dinner. They are: George Klein, the president of Park Tower Realty and cochairman of the New York City Holocaust Memorial Commission; Rabbi Israel Miller, senior vice president of Yeshiva University, past chairman of the Conference of Presidents of Major American Jewish Organizations and founding president of the American Zionist Federation; and Daniel Shapiro, founding partner of the New York City law firm of Schulte, Roth Zabel, vice president of the Council of Jewish Federations and past president of the Federation of Jewish Philanthropies.

The JCRC has been most fortunate to have been led during its formative years by three dynamic Jewish communal leaders. I believe that the members of the Senate are familiar with their considerable contributions to other aspects of New York City and American civic and business affairs. They are being saluted tonight, however, for the selfless leadership and direction they have provided as presidents of the Jewish Community Relations Council during the past decade. These three devoted communal leaders are: Richard Ravitch, chairman of the Bowery Savings Bank and past chairman of the Metropolitan Transit Authority; Laurence A. Tisch, acting executive officer of the Columbia Broadcasting System, chairman of the board of Loews Corp., and past president of the United Jewish Appeal of Greater New York; and Peggy Tishman, the first president of the newly-United Jewish Appeal-Federation of Jewish Philanthropies and a director of the Jewish Theological Seminary.

The seventh award presented at tonight's dinner will be the inaugural Jack D. Weiler Prize for Jewish Community Service which has been created to annually recognize a dedicated Jewish professional leader who has made a unique contribution to the betterment of Jewish communal life and intergroup relations. This award was made possible by the generosity of Jack D. Weiler, a prominent Jewish community leader and philanthropist.

Mr. President, there could have been no more appropriate recipient for this award than Malcolm Hoenlein who has served as the JCRC's executive director since its founding in 1976. Malcolm Hoenlein, who earlier served as the founding director of the Greater New York Conference on Soviet Jewry, will be leaving the JCRC at the end of this month to become the second executive director of the Conference of Presidents of major American Jewish organizations. Mr. Hoenlein has long enjoyed a reputation for exceptional integrity, ability, and intelligence. He deserves much of the credit for the ongoing record of excellence that has so characterized the Jewish Community Relations Council of New York throughout the past decade.

Tonight's dinner is cochaired by Nina Rosenwald, Howard Rubenstein, Larry Silverstein, and Jay Zises. I am sure, Mr. President, that the entire Senate joins me in congratulating the Jewish Communal Relations Council of New York on this auspicious anniversary and in extending best wishes to tonight's honories.●

BANGOR'S UNSUNG POWER BROKER

● Mr. COHEN. Mr. President, the current edition of Down East magazine contains an excellent profile of Richard J. Warren, editor, and publisher of the Bangor Daily News, the largest daily newspaper in Maine.

I have had the pleasure of knowing Rick and his family for many years, both personally and professionally. This article chronicles some but not all of his tireless activity in behalf of his newspaper, his community, and the entire State of Maine. He is clearly one of the emerging leaders of my State.

I ask that the article "Bangor's Unsung Power Broker" be printed in the RECORD for the benefit of my colleagues.

The article follows:

BANGOR'S UNSUNG POWER BROKER

(By Norah Deakin Davis)

Six nights a week, at 10:30 p.m. sharp, the high-speed presses of the *Bangor Daily News* begin spewing out thousands of copies of the state's largest daily newspaper. By 3:10 the next morning, the final edition is folded, bundled, and loaded on the delivery trucks. Moments later, the *News* is on its way to the breakfast tables of nearly 80,000 readers in northern, eastern, and central Maine.

Known for its thorough treatment of state news and well-edited, if sometimes sparse, coverage of national and international stories, the *Bangor Daily News* today enjoys a virtual monopoly as the only daily in two-thirds of the state, and takes a penetrating interest in the problems besetting its territory, an area often referred to as "the other Maine."

With its weekday circulation of 78,816 easily beating out its nearest competitor, the *Portland Press Herald* (59,848), the *Bangor Daily News'* influence is arguably the greatest in the state. The man behind all this—Editor and Publisher Richard J. Warren—is a publicity-shy workaholic who is carrying on a century-old tradition. Although he wields immense power as head of the *News* and has taken on the role of spokesman for northern and eastern Maine, he remains relatively unknown to the public.

Representing the sixth generation of his family to live in Bangor and the fourth to run the *News,* Rick Warren took over the paper's reins in March, 1984, after a long apprenticeship under his father. Today, at forty-one, now comfortably settled into the publisher's chair, Warren admits that occasionally he is still subject to the feeling that not only his father, but the ghosts of his grandfather and great-grandfather are peering over his shoulder. "And Grandmother, too—in the flesh," he adds, referring to Mrs. Lillis Jordan, who also ran the paper in her day and who, at ninety-three, is now chairman of the board. "She still comes in and looks over my shoulder."

With a style that is cautious but effective, Warren has already demonstrated that he has a vision, a dream of an economic renaissance for northern and eastern Maine. Probably few would go so far as to describe the *Bangor Daily News* as a crusading paper. But, Warren doesn't mince any words in stating the aim of his paper. "We want to awaken eastern Maine from its dormant condition," he declares.

Friends characterize Rick Warren as the kind of person who can be counted on to take an activist's role once he is committed to a project. As president of Bangor's Action Committee of Fifty, for instance, he has already played a key role in bringing more than 200 jobs to the city. "Rick is low-key and quiet," says Ted Rogers, the Action Committee's executive director, "but he gets things done."

Back at the *News,* what he has done, first, is to replace retired personnel with a nucleus of top editorial and business people who are young and aggressive. With their help, Warren's *Bangor Daily News* is on the march. The new publisher has initiated a drive to increase circulation by pushing into southern Maine, starting with Augusta. In challenging Augusta's *Kennebec Journal,* he is encroaching on the fiefdom of the powerful Guy Gannet publishing empire (which includes the *Maine Sunday Telegram, Portland Press Herald, Evening Express, Kennebec Journal,* and the Waterville *Morning Sentinel*).

One of Rick Warrens's first moves as publisher was to beef up the *News* Saturday paper to resemble a conventional Sunday paper, something the *News* has never published. Adding a new, statewide edition, Warren changed the name on the flag to *Maine Weekend,* on a color panel, with *Bangor Daily News* underneath in smaller type. The new weekend package is being promoted in Augusta with extensive television advertising.

In keeping with his low-key approach, Warren plays down this gambit, but his decisions have stoked the fires of competition among his staff. "The long-range goal," asserts Paul Reynolds, the *News* managing editor, "is to become *the* stateside weekend paper." The battle cry sounded by one member of Warren's management team is: All the way to Kittery. In effect, the *Bangor Daily News'* publisher has thrown down the gauntlet to the *Maine Sunday Telegram,* flagship of the Guy Gannett empire. Admittedly, Warren's new weekend edition has a lot of catching up to do, both editorially and in terms of circulation. The *Maine Weekend's* 92,000 copies lag behind the *Telegram's* 131,000. And, Warren cautions, "Changing people's reading habits will take time." Kenneth MacMannis, the paper's marketing director; admits, "We're not bothering Portland yet, but we're scaring hell out of Augusta."

Newspaper wars are not new to Maine. The *Bangor Daily News* and the *Portland Press Herald* have skirmished intermittently at such sites as Rockland and Skowhegan. At times, the *News* has run head on into the *Lewiston Daily Sun* in inland counties, and recently the Bangor paper opened a news bureau in Pittsfield to protect its flank against the *Waterville Sentinel.*

The current frontal attack on Augusta's daily could work, says Brooks Hamilton, retired journalism professor and long time observer of the Maine newspaper scene. "the *News* doesn't tell half enough about what's going on in the rest of the world," says Hamilton, who was once labeled a curmudgeon in a *Bangor Daily News* headline, "but they don't miss much in Maine."

As part of the southern offensive, Warren has declared his intention to expand his Augusta bureau, a move he admits has a hidden agenda—that of helping awaken policymakers to the plight of northern Maine. Actually, the spokesman role is nothing new for Warren. Through the paper's editorial page, he has thrown his support behind a number of projects he deems critical to the future of northern Maine, such as the Sears Island cargo port and a research and development park in Orono. Now his voice will be heard, so to speak, in the lawmakers' own halls.

"What I object to," he says, "is a feeling in Augusta that what's good for Portland is good for the rest of the state. It's sort of a trickle-down theory in reverse, a trickle-up theory, and it has not worked too well." He believes that industry and population, already sprawling up from Boston to Portland, will inevitably creep farther north. "But the state ought to be encouraging it. So far, Augusta's allocation of resources has not been entirely fair." Managing Editor Reynolds, buttressing his boss' argument, cites sparse appropriations to northern Maine for industrial development loans and the relatively poor maintenance of roads, both common complaints among northerners, as prime examples of State House neglect.

Warren's words call to mind the two-Maine concept in which a prosperous southern Maine is contrasted with a stagnant north, a thesis hotly debated ever since it first appeared in a report by the State Planning Office a couple of years ago. Warren considers the concept an oversimplification. "In reality," he notes, "there are more than two Maines. There's coastal fishing Maine, agricultural Maine, recreational tourists Maine, and so on. But the differences are real."

Warren suggests that the state's chief executive, with his statewide perspective, is in the best position to help overcome polarizations. By serving as a role model reminding us that Maine is a state to be proud of as a total entity, the governor could be the glue that puts the state back together.

Gubernatorial candidates, or course, are carefully scrutinized in the pages of the *Bangor Daily News.* When elections draw near, the *News* invites each major candidate to meet with the paper's three-man editorial board, which consists of Publisher Rick Warren, Editorial Page Editor Mark Woodward, and Woodward's assistant, Wayne Reilly. (The paper also asks both sides in on major issues, such as the recent pornography referendum or the Big A dam.)

At one of the candidate meetings, preceding the June 10 primary, Attorney General

James E. Tierney spoke of the governor's function as a role model. The *News* ended up endorsing Tierney for the Democratic nomination, and Congressman John R. McKernan, a hometown boy, for the Republicans. As for the upcoming November contest, the *News* has a long tradition of Republican endorsements, but Warren hastens to point out that the record was broken twelve years ago when the paper went for Independent candidate James Longley.

Behind Warren's championship of northern and eastern Maine is an instinctive love for the region. Like most northern Mainers, Warren is an avid hunter and fisherman. On one wall of his office hang five antique Thomas rods ("works of art," he calls them). Early mornings and lunch hours, during the Atlantic salmon season, outdoorsman Warren tries his luck on the nearby Penobscot, often accompanied by Tom Hennessey, the newspaper's outdoor writer and illustrator. Several times a year Warren goes salmon fishing in New Brunswick and, as a member of the Megantic Fish and Game Club, trout fishing in western Maine. "Slogging up a stream," he says, "is good for putting things in perspective."

Warren, the publisher, works long hours, arriving at the *News* by 6:45 a.m. and staying until 5:30 p.m. His day starts with a quota of daily papers: the *New York Times*, the *Wall Street Journal*, and, on a rotating basis, one or two of the competing Maine dailies. The rest of the workday is devoted to overseeing the budget, keeping the stockholders informed, mediating the people problems that come with the territory when you have 334 employees, and initiating long-range planning. "Because of the nature of this business," he says, "and the pressure to get the immediate job done, the future tends to take a back burner."

As with his love for Maine, Warren's commitment to the *Bangor Daily News* comes naturally—from growing up with it. In 1955, when the *News* was moved to its present Main Street location, ten-year-old Rick was chosen to push the button that started the presses rolling. Flashbulbs popped, but no pressure to go into the family business ensued. In fact, when Rick asked for a paper route, his parents refused on the grounds that he would deprive someone else.

After secondary school at Deerfield Academy in Massachusetts, Warren attended Trinity College in Hartford, Connecticut. In his senior year at Trinity, he answered an advertisement for a part-time job as a reporter for the *Hartford Courant*, which at that time had a circulation of 137,000. "I worked three nights a week," Warren recalls, "and I had a ball. At first I didn't tell anyone up here in Bangor."

After graduation, he stayed on for three years, gaining experience in various editorial jobs, including running the paper's news bureau in western Connecticut, and a brief stint in the circulation department. Says Rick, speaking of his father, "I was following in R.K.'s footsteps." Richard K. Warren (Rick is Richard J., not a junior) had worked for the *Hartford Times*, once the *Courant's* rival.

In 1971 young Warren returned to Bangor to become assistant publisher at the *News*. His first responsibility was overseeing the newspaper's subsidiary, Northeast Publishing Company, which owns four of the nine weeklies in Aroostook and Piscataquis counties. "The papers all operate autonomously," says Warren. "For example, when Bill Hathaway was running against Margaret Chase Smith, the *News* endorsed Hathaway, but the *Somerset Reporter*, which we owned at that time, endorsed Smith."

Over the next fifteen years, Warren gradually took on more responsibilities. Early on, he began pushing for a computerized news operation. In 1972 the *News* had installed computers for its business operations—payroll, circulation, and advertising—but in 1978 the *Bangor Daily News* became one of the first papers in the country to install an electronic newsroom using inexpensive, off-the-shelf microcomputers. Terminals installed at the copy desk were linked by modems to the paper's district news bureaus.

To cover its vast territory, the *News* maintains bureaus in Madawaska, Presque Isle, Machias, Ellsworth, Rockland, Pittsfield, and Augusta. In the old days, the regional correspondents dictated hot stories over the phone, sending other copy by whatever means were handy. "The bureau chiefs were innovative," says Robert Stairs, the *News'* computer services manager. "They used whoever was going this way. Trains, bread trucks, even the state police would deliver stories. We still send pictures that way."

Publishers who participate in crafting their paper's editorial policy, particularly on a daily basis, are relatively uncommon, but at the *Bangor Daily News* they are a tradition. Rick's father took that same active role during the twenty-nine years that he held the helm. Paul Reynolds, editorial page editor for eleven of those years, is in a good position to contrast the philosophies of father and son. "Politically, Rick is more moderate than his dad—and me," says Reynolds. Rick disagrees, holding that the newspaper's trend toward the center is long-standing. Most observers, however have tended to characterize the *Bangor Daily News* as being well to the right—until recently.

Current Editorial Page Editor Mark Woodward, who describes himself as a moderate Republican, is happy with the middle-of-the road trend. Today, he adds, the *News'* editorials are less predictable. "We are more aggressive," he says, "in arguing for strong positions." He cites the newspaper's support of the Equal Rights Amendment: "A couple of women called to say that they practically wept when they saw the *News* come out in favor of the ERA." The new flexibility, he feels, gives the paper more credibility.

The paper's stands, Warren insists, are determined on an issue-by-issue basis. The *News* opposed Dickey-Lincoln, for example, but supported the Big A dam because of the jobs promised in the paper industry. As an outdoorsman, Warren finds jobs-versus-environment conflicts hit close to home. Despite the *News'* stand on the Big A, editor Woodward notes, "We nettled people in the paper industry who felt we opened the door to Amory Lovins and his debate over the energy efficiency of the paper companies."

Besides serving as the voice of northern Maine through the paper's editorial pages, Warren also champions it in his civic activities. Devoting one-quarter of his time to the community, Warren serves on the board of directors of eleven companies and organizations.

William C. Bullock, Jr., president of Merrill Trust and a longtime friend, notes that Warren was instrumental in helping organize a recent series of tours for state legislators through northern and eastern Maine, designed to help increase the lawmakers' awareness of the region's strengths and problems. Since 1980 Warren has also served on the board of directors and, more recently, as president, of the Action Committee of Fifty, a group of Bangor leaders devoted to bringing the public and private sectors together to develop the area economically. Warren and the other directors, says Bullock, took an active stand in promoting the University of Maine's name change and funding increases. Bullock also credits Warren with playing a major role this spring in convincing Lemforder, a German auto parts company, to expand its Brewer operation. Lemforder was considering several attractive alternative proposals from other cities, including Chicago. Quick action was needed to convince company officials that Maine could provide an adequate pool of trained workers.

In March, 1986, Warren proposed that he and other members of the Bangor business community take Maine's case to Germany in person. Meetings with Governor Brennan and the House and Senate leadership ensued, with the publisher of the *Bangor Daily News* serving as the group's spokesman. By the time Warren left for Germany, he had convinced the state to chip in 50 percent of the funds needed for worker training. One month later, Lemforder officials paid a return visit to work out a final agreement. The details of Lemforder's $22 million investment in Maine was hammered out in a conference room at the *Bangor Daily News*. "That way," laughs Warren, "we were sure to be the first to break the story!"

Active in five trade associations and a number of clubs, Warren travels frequently. Fortunately for his family, home is only a five-minute drive from the newspaper's offices. The large Victorian dwelling where Rick grew up now makes a comfortable and spacious home for his wife, Beth, and the Warrens' two children—George, 8, and Anne, 6—and Rick's daughter, Courtney, 15, from a previous marriage.

Elizabeth Carter Warren is the daugther of a prominent businessman in the Aroostook County town of Caribou, near the Canadian border, and her feelings about Maine have always been strong, she says like her husband's. "Our commitment to this part of the state," she adds, "is a very big bond between us." Active in a number of civic organizations and on the board of trustees of Portland's Westbrook College, Beth Warren has made a conscious decision to disassociate herself from the newspaper, but she admits to acting as Rick's sounding board. "If I disagree with an editorial," she asserts, "I make my feelings known."

And so do readers. Faithful subscribers bend Warren's ear at parties, phone him at the office, or pen him their opinions in his position as editor. The *News* receives 3,500 letters to the editor a year and sometimes dedicates the entire op-ed page to clearing the backlog. Readers' concern run the gamut, says Warren, from the uncertain future of downtown Bangor to the iffy, changeable fortunes of Maine's natural-resource-based industries—agriculture, lumber, paper, fishing, shoes.

"The unfavorable balance of trade," Warren says, "the high value of the dollar compared to other currencies, has hit eastern Maine particularly hard." Citing the paper industry, he notes that the currency exchange rate works in favor of Canadian paper mills. The *Bangor Daily News*, which uses one ton of paper for every page printed, buys over half its newsprint from Great Northern Paper Company in Millinocket. "To avoid putting all our eggs in one basket, though, we also deal with four or five Canadian suppliers," Warren admits.

"Right now," he adds, "the forest products industry is evolving, examining its traditional ways of doing business and modernizing its mills to make them energy efficient. I see S.D. Warren's expansion in Hinkley and the mills in Madison and Jay as hopeful signs." Warren emphatically does not share the view that Great Northern will close down. The company is trying to streamline, he says, but they are here to stay. "The industry is not in decline," he concludes, "just changing."

Change is exactly what Warren wants to see in northern and eastern Maine. Insisting on the region's need for a strong industrial base, with solid companies like Lemforder, Richard J. Warren is helping nudge this part of Maine along the path to an economic upturn—much as he guided the *Bangor Daily News* into the computer age.

BANGOR'S PUBLISHING DYNASTY

Hot off the press, the first issue of the *Bangor Daily News* appeared on June 18, 1889. The *News* got its start when Thomas J. Stewart, a shipping magnate running for Congress, failed to wrangle an endorsement from either of the two papers that served the City of Bangor at the time. After five years, the would-be politician sold the fledgling paper to a local wholesale grain merchant, J. Norman Towle—maternal great-grandfather of the present publisher.

For more than two decades, J. Norman Towle co-owned the *News* with a partner, but Towle became the sole owner in 1922 when the partner died. In the meantime, the *News* had merged with one of its competitors, and some years later, in 1956, the other rival went under after a prolonged news battle, making Bangor a one-newspaper city.

In 1918, J. Norman Towle's daughter, Lillis, married a local banker, Fred Jordan. Eleven years later, Towle gave control of the paper to his son-in-law, and Jordan remained at the helm until his death in 1947. Under Jordan's leadership, the *News'* circulation grew to 60,000.

Upon her husband's death, Mrs. Lillis Jordan took over as publisher. Today, as an officer of the company she still goes into her office on occasion. Across the room from her desk is an antique, two-sided desk Mrs. Jordan remembers seeing her father, J. Norman Towle, sitting opposite her grandfather, Josiah C. Towle, working on the family's grain business, which the elder Towle had founded in 1823.

Fred and Lillis Jordan produced a daughter, Joanne, who married Richard K. Warren in 1943. Warren, a Yale graduate, had planned a career in chemistry, but instead joined the *Bangor Daily News*, succeeding Mrs. Jordan as publisher in 1955. He continues to serve as one of the company's vice-presidents, with Joanne as the president. During his tenure, the *News* gradually shifted from using hundreds of stringers (part-time local correspondents who filed stories on fires and baked bean suppers) to well-trained regional reporters phoning in columns of hard news.

Firmly in the hands of one family for nearly a century, the *Bangor Daily News* of today could be vulnerable to being swallowed up by a newspaper chain. Rick Warren, as the current steward of this family institution, is quite conscious of the threat. Managing Editor Paul Reynolds shows no concern, however. "Rick has newspapers in his bones. For him to sell, the *News* would have to be floundering." Rick agrees that a problem would only be likely to arise once the next generation of Warrens comes of age, when a chain takeover could follow an intrafamily dispute or could become necessary to generate cash for inheritance taxes. In addition to Rick Warren's three children, his sister, Carolyn Warren Mowers, has two. Chances are, however, that the next generation of Warrens, like the present one, will have newspapering in their bones.●

ADULT LITERACY AWARENESS MONTH

● Mr. RIEGLE. Mr. President, I wish today to voice my concern about the increasingly large number of illiterate adults in America. This national problem warrants our immediate attention and I am pleased that Congress has designated September 1986 as "Adult Literacy Awareness Month. "

There are varying degrees of literacy. A commonly used definition is "functional illiteracy" which refers to those who lack the reading, writing, comprehension, and simple math skills considered necessary to function beyond a minimal level in a modern society.

I am very alarmed by studies which show that as many as 23 million adults are functionally illiterate and 35 million are sem-illiterate. The Department of Education has estimated that 2.3 million persons join this pool of functional illiterates each year.

While there is greater incidence of illiteracy among economically disadvantaged populations, members of other economic levels are not immune to this plight. Illiteracy knows no geographic, ethnic, or racial bounds, and directly claims a broad spectrum of our society.

The cost of illiteracy in America is predicted to be in the billions. These estimates are based on such direct costs as prisons, welfare payments, crime, lost taxes, and remedial education programs. Indirect costs such as unrealized earnings forfeited by those who lack basic learning skills may be even greater but are more difficult to calculate.

I hope that by designating September as "Adult Literacy Month," we are helping to stimulate debate and interest in this issue. Providing national attention to this problem is only a beginning though. We must rise as a nation and face the challenge of alleviating illiteracy in our Nation.●

TRUE TAX REFORM, NOT MERE TAX REVISION

● Mr. BOSCHWITZ. Mr. President, for the benefit of my colleagues, I wish to have printed in the RECORD a very fine editorial on the tax bill which appeared in the Thursday, September 18, 1986, edition of the Minneapolis Star and Tribune. I had intended to insert this editorial into the RECORD during my speech on the tax bill on Saturday, but was not able to do so because of time limitations.

The editorial follows:

[From the Minneapolis Star and Tribune, Sept. 18, 1986]

TRUE TAX REFORM, NOT MERE TAX REVISION

In the month since its approval by committee, the income-tax bill before Congress has come in for expert criticism and skeptical popular evaluation. The combination has tempered the near euphoric praise that welled up nationwide when the bill's enactment first seemed to become certain. The bill remains a monumental proposal for income-tax reform. But the political steamroller for such reform has hit some bumps.

Good. Steamrollers and euphoria make bad politics. They lead later to voter resentment when unrealistic expectations are disappointing. The tax-reform bill is too important to be damaged by misleading praise. Congress should pass the new law, and President Reagan should sign it, but voters should not imagine that reform works like magic.

One magic result reform cannot produce is an overall tax cut in a "revenue-neutral" tax revision. Tax burdens can be shifted, but the total collected must stay the same. So a sensible public seems to have discounted the meaningless boast that by 1988 individuals on average will pay 6 percent less in income taxes. Few taxpayers are average. All can understand that if revenue-neutral tax reform takes 6 million poor people off the tax rolls, tax payments by the nonpoor have to increase. The bill before Congress proposes such a shift. And not all of the burden removed from the poor can be laid on the shoulders of the super-rich. There are not enough of them. Even after reform, the bulk of income taxes must still be paid by the bulk of the population—the middle class.

Most middle-class taxpayers probably see also that reducing individual taxes by increasing income taxes on business does not reduce individuals' tax burdens. The reform bill's large business-tax increase must be paid by individual customers in higher prices, by individual workers in lower wages and by individual owners in lower dividends. There is no magic here for the middle class either.

Indeed, there may be some negative effects from an overall jump in business income taxes. Economists who criticize the tax-reform bill point to ways it might discourage business investment for increased productivity, thereby hindering economic growth and U.S. ability to compete in world trade. Some also fear a tilt against investment and saving; the bill would tax capital gains like one-year income without adjustment for inflation and would narrow the deduction for individual retirement accounts. Perhaps, say critics, the bill wrongly favors short-term consumption at the expense of long-term saving.

We doubt it. The underlying principle of this tax bill is to treat taxation as a means of raising needed revenue, not as a tool for prompting or blocking particular economic activities. That principle leads to abolishing dozens of tax credits and deductions for businesses and individuals alike. By reducing the importance of tax favors and tax penalties, tax reform would increase the importance of productivity and new wealth creation throughout the economy. A more neutral tax system—not lower taxes or a squeeze on business instead of on individuals—is the governing goal of the bill before Congress. That goal makes the bill true tax reform, not mere tax revision. Even without euphoria, Congress should pass it proudly.●

WHY MILITARY TRANSPORT AIRCRAFT SHOULD BE EQUIPPED WITH STATE OF THE ART GROUND PROXIMITY WARNING SYSTEM TECHNOLOGY

● Mr. GORTON. Mr. President, Senator EVANS and I would like to direct the Senate's attention to an aircraft safety device which has not received an appropriation from the Senate Appropriations Committee. The ground proximity warning system [GPWS], which the House has authorized and appropriated for our military transportation aircraft, is strongly supported by the Senate Armed Services Committee. That committee urges the use of the GPWS to improve military aviation safety and directs the services to include in future budget requests funds for this program. The committee directed the services to use prior year funds to begin the program. The Defense Appropriations Subcommittee, however, did not appropriate the necessary funds.

Since the action by the Senate Armed Services Committee, the Air Force has updated its safety analysis for the kind of aircraft accident which the GPWS is designed to prevent. The Air Force data indicate that the accident rate for aircraft without this equipment was nearly double that of the equipped aircraft. The Air Force concluded that installation of the GPWS on C-130 and KC-135 aircraft would prevent 50 accidents over the life of these aircraft.

Mr. President, there is no doubt that we will save the lives of passengers and crews when we complete the task of installing the GPWS on our military transport fleet. And we will be saving expensive airplanes as well. The commercial industry has long ago learned the advantages offered by the GPWS and has been mandated to install it in all commercial transport aircraft. Dramatic improvements in safety were immediately achieved.

Mr. President, we can no longer postpone the program for military utilization of state of the art GPWS. I ask the assurance of the distinguished Senator from Alaska that he will look favorably upon the language contained in the House appropriations bill supporting the addition of funds for installation of GPWS technology in the special mission fleet of the military services.●

● Mr. EVANS. Mr. President, I am in full agreement with the senior Senator from Washington, and I commend him for continuing to bring this issue to the attention of the Senate. I believe that we should make our position clear and unequivocal: Congress expects that the Department of Defense will provide the same degree of safety for military transport aircraft that is required for commercial aircraft. Moreover, we want to make it clear that Congress is willing to provide the money for this cost-effective investment. The military has identified its special mission fleet as the appropriate place to begin a program for equipping all military transport aircraft with the GPWS. Few Members of this body are aware of the fact that not all of our special mission aircraft, the planes which carry our Nation's most important political and military leaders, have been equipped with the most current version of the GPWS. I believe that we should do what is necessary to protect those aircraft and passengers as soon as possible.

Mr. President, all of us support programs for the military which can increase our national security without needless expenditure of tax dollars. The Department of Defense has continually asserted the need to improve the safety record of its transport aircraft. Yet each year, cost-effective programs designed for transport aircraft fail to receive the budgetary priority they deserve. We have the opportunity before us now to remedy this situation. The GPWS has been shown to save lives and aircraft. When we save aircraft and aircrews, we save defense dollars. We simply cannot wait any longer to move forward with this program. I join my colleague from Washington in asking the distinguished chairman of the Defense Appropriations Subcommittee to give the House position on the GPWS his most serious consideration in conference.●

● Mr. STEVENS. I thank the Senators from Washington for reminding me and the other Members of the Senate of the need to address the safety of military transport aircraft. I am aware of the achievements of the GPWS in commercial aviation and believe there could also be savings in military aviation.

The GPWS was not requested in the President's budget and no funds were authorized in the Senate. However, the House has recommended that funds for the program be authorized and appropriated.

Let me assure the Senators from Washington that I will give this matter close attention in our upcoming conference.●

U.S.S. "LAWE"

● Mr. STEVENS. Mr. President, an issue has come to our attention since the Appropriations Committee completed its deliberation of the Department of Defense Appropriations Act for 1987, S. 2827.

The State of Michigan and specifically the city of Muskegon, MI, have been working with the Navy to secure the delivery and berthing of the retired Navy destroyer, U.S.S. *Lawe*.

The people and community leaders of western Michigan are working hard to become a Midwest home for the U.S. Navy. The city has hosted two active Navy destroyers, and berthing of the decommissioned U.S.S. *Lawe* will make this former naval vessel the centerpiece in the development of an attractive and viable Lake Michigan waterfront in the city of Muskegon. To facilitate relocation of the vessel, the city has expended hundreds of thousands of dollars in purchasing land, adequate docking facilities, and the construction of a naval museum.

Given the substantial expenditure the community already has made, the recurring maintenance costs that it will absorb, and the benefits that will accrue to the U.S. Navy by creation of a naval museum, it is appropriate for the U.S. Navy to share in the cost of this worthwhile project. Accordingly, I intend to raise this issue in conference and seek language to direct the Navy to provide assistance to the State of Michigan and city of Muskegon in relocating the U.S.S. *Lawe* from its present location in Portsmouth, VA, to a berthing site adjacent to the municipally owned Hartshorn Marina near downtown Muskegon, MI. This could be accomplished from existing funds. I am advised that the Navy is fully agreeable on this matter. The towing of the retired destroyer should be accomplished expeditiously under an agreement acceptable to the community and the Navy.●

ABORTION AND INFORMED CONSENT: INDIANA

● Mr. HUMPHREY. Mr. President, I draw the attention of my colleagues to this letter from Pat in Indiana. She gives us another tragic example of a woman who was not given enough information before she elected to abort her child.

I hope my colleagues will join me in protecting women like Pat and the scores of others who have written to my office about the devastation abortion has wrought in their lives. All they request is that women be informed so that their consent is not meaningless. I urge my colleagues to cosponsor S. 2791.

The letter follows:

MAY 30, 1986.

DEAR SENATOR: I am writing to encourage you and support your efforts for legislation requiring informing women about both sides of the abortion procedure.

I speak from experience, as I had an abortion over 12 years ago. It was an extremely difficult time in my life, and even though I was married, there seemed to be no other choice. The organization called Planned Parenthood was consulted and, after examining me and confirming the fact that I was pregnant, they encouraged me by all means to terminate the pregnancy. They eagerly made all the arrangements to send me to Indianapolis, Indiana where the procedure was to be done. The physicians there led me to believe that it would be a very simple procedure of merely cleaning out the blob of tissue in my womb. He also explained the sterilization procedure that would prevent this from ever happening again. My most significant remembrance of the event was waking up in the recovery room to the uncontrollable screaming of other women who had experienced abortion as I had.

For these 12 years, I have paid an extremely high price for the decision I made because I was ignorant. When I first learned that the tissue removed by the physician was a perfectly formed baby, and not merely a blob of tissue, my heart broke and I wanted to die. After learning about the process of abortion and seeing films showing abortions just like mine, where the baby was torn to shreds, I knew the truth at last.

It's time others are told everything so that they can make an informed decision. I have shared with many other women the truth about abortion, and have watched them change their minds about the seemingly popular alternative. The results of sharing have been extremely rewarding. I have witnessed many women choose to provide life to the "blob" in their wombs. They will never feel the pain and suffer as I did.

Thank you very much for your concern for others. People do have a right to know the truth. It is the truth that sets us free, lies only camouflage for a while. Again, I support legislation that would require that total information be provided to women about abortion and its aftereffects.

Respectfully,

PAT HATCHER.●

TRIBUTE TO EUGENE LANG

● Mr. D'AMATO. Mr. President, I would like to focus the attention of my Senate colleagues for just a moment on a philanthropic saga which has been unfolding since 1981 and which likely will continue far beyond our own lifetimes. It began rather spontaneously with one individual, and since has developed into an organized, workable blueprint that will affect the lives of countless young Americans.

Five years ago, a well respected New York industrialist, Eugene Lang, was asked to deliver the commencement address to the graduating sixth-grade class of P.S. 121, the very same school Mr. Lang attended as a young boy growing up in East Harlem, NY. Mr. Lang agreed. He prepared some remarks ahead of time, but when he stood before the packed auditorium crowded with 50 eager graduates, all handsome in their caps and gowns, he found himself at a loss for words. "What am I going to say to these kids?" he wondered to himself. "What can I say that isn't patronizing?"

He eventually came up with something to say that was not at all condescending. In fact, what he said came from his heart. "Stay in school," Mr. Lang told the students, who lived in a community where the dropout rate before high school approaches 90 percent, "and I'll help pay the college tuitions for each and every one of you!" The room exploded. Only a minute before, a college education was an impossible dream for these 12-year-old students and their families: blacks, Hispanics, and Asian-Americans who were scraping by on what little money they had. Suddenly, a real opportunity for a better life was theirs for the taking.

Not surprisingly, Mr. President, the students have more than met Mr. Lang's challenge. Of the 50 members of the 1981 graduating class, 44 have stayed in school. Considering the fact that at least one of every two East Harlem students drops out before finishing high school, this is an outstanding accomplishment. Many will be the first in their families to go to college. These students are determined to make good on Mr. Lang's promise; they are determined to fulfill what once was a distant dream.

Mr. Lang has been working hard, ever since that fateful day in 1981, to show others that dreams can come true. Already Mr. Lang has commitments from six other philanthropists who have mirrored his efforts in New York City. Additionally, a dozen other citizens have programs of their own in the works, and Mr. Lang is establishing the "I Have a Dream Foundation" to guide and assist anyone who wishes to set up a similar program.

Mr. President, Eugene Lang deserves the respect of the American people and of this Congress. I am proud, therefore, to lend my full support to legislation, Senate Resolution 435, introduced by my colleague Senator MOYNIHAN, which commends Mr. Lang for his actions and encourages other Americans to follow his lead.●

FARM CREDIT SYSTEM INTEREST REDUCTION ACT OF 1986

● Mr. GRASSLEY. Mr. President, I am cosponsoring the Farm Credit System Interest Reduction Act of 1986 because I feel it is important for us to help the stockholders of the System through their present difficulties. This legislation establishes a mechanism for farmers to gain interest rate relief through the use of a $2 billion loan to the System. This loan would be used to restructure nonaccrual loans and to help rid the System of high-cost bonds, thereby, lowering the System's operating expenses and its cost of funds so it can free up badly needed capital for the lowering interest rates.

This bill takes one more very important step by ensuring that any interest rate reductions as a result of this act will be applied equally to all System borrowers. We must be very careful to not pass legislation in this body which puts "a stake to the heart" of already troubled Farm Credit System districts and stockholders. We cannot allow some districts, which happen to be in good financial condition today, to ignore the needs of their fellow stockholders who through no fault of their own need assistance. This national Farm Credit System was created to help farmers and ranchers through the last depression and we cannot allow some districts to just walk away from that responsibility during the present agricultural crisis.

A number of important stockholders' rights issues are also addressed in this act. These provisions are the result of extensive hearings I have held on the Farm Credit System in Des Moines, IA. The first hearing was held September 6, 1985, and lasted for 9 long hours. The second was held on September 3 of this year. During both hearings testimony was heard from all levels of the System and several stockholders' rights and local control issues were repeatedly stressed. In order for the System to ever recover and become a viable financial institution it must first regain the confidence of its borrowers. This bill attempts to regain that stockholder confidence by addressing some of these important issues:

First, farmers will be given full access to documents in their loan file. Under present policies many farmers are being threatened by court action and they can't even find out what is in their loan file. Unfortunately, the System has been stonewalling these farmer's attempts for discovery which in turn has caused both that farmer and his fellow stockholders to look at the System as the enemy. This act would at least give a troubled farmer equal footing with the System when that farmer is forced to defend himself in court. Any System case against a farmer must stand on its own merits, and not on access to information sheltered from the borrower who should have a right to that information, both as the owner of that loan and as a stockholder in the System.

Second, this bill guarantees stockholders the right to a list of their fellow stockholders with the only requirement being that they "sign a statement certifying that the list will be used only in connection with the business of the institution." It should be very clear that it is Congress' intention to consider gaining a list of stockholders for the purpose of calling a meeting of fellow stockholders is legitimate "business of the institution."

Third, the act provides assurances to stockholders that they will be given the right to vote on any proposed merger of a System bank with another System bank. All a stockholder needs to do to require such a vote is get a petition signed by 50 of his fellow stockholders. Presently, farmer/stockholders have a right to vote on any proposed mergers between associations but not banks, which are on the district level. In other words, I can vote on mergers of my local association with another association but it is not required that I vote on mergers between my district bank and another district bank. It should be obvious to everyone that stockholders, who after all own the System, should have a right to vote on any proposed merger of any System institution.

Fourth, the bill also provides farmers with a right to vote on district board members. Again, all a stockholder would need to do is get 50 of his fellow stockholders to sign a petition asking for such a vote. Under present policies, stockholders have no right to demand such a vote and that has made many farmers feel like the district leaders are out of reach. This is not to say that such votes are always necessary, or even necessary now, but farmers should have that right.

Fifth, full financial disclosure of top FCA and FCS officials is required under this act. Again, in order for stockholders to have confidence in the System they must know that the people running their System have no conflicts of interest.

Finally the bill requires the General Accounting Office to conduct a study of the cost effectiveneess of returning local control to the System. In addition, the GAO is required to outline the steps necessary to implement such a policy.

One signal came through loud and clear during my hearings: Farmers feel like they have lost control of their System. Decisions are being made on the district and national levels leaving local board members and stockholders out of the process. The personnel turnover rate in local PCA's and FLB's is way too high. One reason is because people are leaving the System due to frustration with the upper levels of the System. Another reason for turnover, is that they are being transferred by district officials out of one area and into another completely new area. This hurts the credibility of the local association with farmers and also ruins any morale that may have existed in that FLB or PCA office. Some stockholders honestly believe that it is the policy of the System to move people around in order to prevent staffers from feeling too close to local associations and their stockholders.

The intention of Congress when creating this System was to establish a locally owned and controlled Farm Credit System to serve the needs of farmers and ranchers. We cannot let the System continue to drift away from this mission.

I can see of no reason why we cannot have locally controlled FLB's and PCA's that are responsible for themselves and make decisions for themselves. Even if it may cost a little more to reestablish such a System, I believe that it will serve the long-term interest of the System to do this. A locally controlled system would not only serve the purpose of fulfilling the mission of the System but also in returning it to a level of confidence among borrowers that will ensure its long-term survival. Sure these FCS institutions will need to be regulated, just like all other financial institutions in this great country of ours need to be, and that will be the role of the Farm Credit Administration. A locally controlled, owned and operated system is possible and should be part of any short- or long-term plan for the System.

I realize that there is very little time left in this session to get this legislation passed. But that does not diminish my support for this bill or its importance. We all know that the System is going to need financial assistance eventually, estimates range from as soon as 4 months to as long as a year or more. If we cannot get this legislation passed now it will still serve an important role in shaping the debate on this issue in the future and help in ensuring that farmers don't get neglected in attempts to just save this financial institution we call the Farm Credit System. I want to be clear that I believe we should pass this bill now because it is going to cost us a lot more in the long run to wait and our farmers need interest relief now. We in this body must recognize once and for all that the System's only role is to serve the needs of farmers and ranchers. Once the System loses sight of that mission it no longer serves any purpose.

I believe this bill holds the System to its mission and deserves the support of all my colleagues.●

PROMPT PAYMENTS ACT AMENDMENTS OF 1986

● Mr. HECHT. Mr. President, I am delighted to support my colleague Senator TRIBLE's bill S. 2479, the Prompt Payment Act Amendments of 1986. This bill strengthens current provisions of the Prompt Payment Act of 1982, which requires Government agencies to pay their bills on time.

As a former businessman, I recognize the fundamental need for businesses, especially small businesses, to be paid on time for goods delivered and services rendered. How can any business stay in business for long with invoices outstanding for 30, 60, and even 90 to 150 days after submission? Very few, indeed. Yet, historically, the late payment practices of many Federal agencies have forced Government contractors to do just that.

Passage of the Prompt Payment Act in 1982 was a significant step toward eliminating, or at least reducing, the late payment problem at the Federal agencies. A General Accounting Office [GAO] report in 1978 indicated that only 61 percent of the Federal Government's bills were paid within 30 days. A 1981 followup report found no improvement in the Government's bill paying practices.

Congressional intervention with passage of the Prompt Payment Act in 1982 has significantly improved the situation. In testimony before the House Government Operations Committee on July 29, 1986, Frederick D. Wolf of the GAO reported that Governmentwide, agencies paid 75 percent of their commercial invoices within 30 days in 1985. Furthermore, many of the late payments were made within 5 days of the 30-day due date—that is, within the first 5 days of the 15-day grace period.

On the other hand, there is evidence that some agencies have used bureaucratic techniques to evade the requirements of the act. These include: First, delays in receiving, accepting, and certification, which stops the beginning of the 30-day payment period; second, failure to notify vendors of problems with invoices; third, failure to automatically include interest penalties in the payment, which requires the vendor to rebill the Government; fourth, payment of invoices on the 45th day after submission, which delays payment for the maximum amount of time without incurring interest penalties; and fifth, taking discounts for early payment after the discount period has expired.

All of these agency-caused problems with payment of invoices have been well documented by the Coalition for Prompt Pay, which represents over 24 trade associations united to fight government slow-pay practices at the Federal, State and local levels. Kenton Pattie, director of the Coalition for Prompt Pay, has summarized his group's findings and offered proposed solutions to the problems identified in excellent testimony before the Senate Small Business Committee (see Norfolk, VA, hearing of December 2, 1985, and the Washington, DC hearing of June 19, 1986).

I am pleased to note that many of the Coalition for Prompt Pay's fine suggestions for improving the act were included by Senator TRIBLE in S. 2479.

Let me summarize, Mr. President, by commending all of those members of the business community, and my colleague Senator TRIBLE, for their efforts to make known the problems of overdue bills owed by Federal agencies. Their efforts, as reflected in S. 2479, deserve full support.●

MEDICARE COVERAGE OF PHYSICIAN ASSISTANT SERVICES

● Mr. D'AMATO. Mr. President, I rise today on behalf of a worthy cause affecting medical services for the elderly of this country. I commend my colleague, Mr. GRASSLEY, for his support and promotion of this legislation.

S. 1640 is legislation which provides for Medicare part B coverage of physician assistant services. This legislation is the result of extensive study and evaluation of the services provided by physician assistants. The Federal Government has supported the development of the physician assistant profession since 1971 by providing funds for physician assistant education programs. The Government also has supported research projects to investigate the practicality and wisdom of this investment. The studies overwhelmingly affirm the success of physician assistant programs in producing graduates who provide services in a manner which is cost effective and which improves the quality of health care and access to health care in this country.

The bill introduced by Mr. GRASSLEY builds upon the results of these findings. Medicare coverage of physician assistant services would insure high-quality care at a low cost to the taxpayers. The Congressional Budget Office has estimated that covering services provided by physician assistants to Medicare beneficiaries at a rate somewhat lower than the rate paid to physicians would not increase Federal Medicare expenditures. In addition, CBO indicates that encouraging the use of physician assistants could lead to long-term savings for the Medicare Program.

All of these factors indicate the value and importance of physician assistant services to the Medicare Program. This provision has been incorporated into the Senate budget reconciliation bill, legislation which has been overwhelmingly endorsed by the full Senate. I am pleased that my colleagues have recognized the value of high-quality, cost-effective health care.●

OFFICIAL PAPERS OF JOSEPH W. MARTIN, JR.

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to Calendar Order No. 950, H.R. 4244, to preserve the official papers of Joseph W. Martin, Jr.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4244) to authorize funds to preserve the official papers of Joseph W. Martin, Jr.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas [Mr. DOLE]?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3097

(Purpose: To authorize the Kansas Educational Satellite Video Communications Center)

Mr. DOLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 3097.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the end of the bill, add the following new section:

AUTHORIZATION OF KANSAS EDUCATIONAL SATELLITE VIDEO COMMUNICATIONS CENTER

SEC. . (a) The Secretary is authorized to provide financial assistance, in accordance with the provisions of this section, to pay the Federal share of the cost of construction, and related expenses, for the Kansas Educational Satellite Video Communications Center at the Kansas State University located in Manhattan, Kansas, to enable the Kansas State University to establish the Kansas Educational Satellite Video Communications Center in order to produce and disseminate television programming in subject areas of local, regional, national, and international importance.

(b) No financial assistance may be made under this section except upon an application at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require.

(c) There are authorized to be appropriated such sums, not to exceed $6,000,000, as may be necessary to carry out the provisions of this section. Funds appropriated pursuant to this section shall remain available until expended.

Mr. DOLE. Mr. President, this amendment would authorize an Educational Satellite Video Communications Center at Kansas State University, in Manhattan, KS. The total cost of this project is $9 million, but the university is setting a good cost-sharing example, and this authorization is for $6 million of that amount.

NATIONAL EDUCATIONAL RESOURCE

Mr. President, university instructional programs must keep pace with the diversity of knowledge confronting us today by utilizing new technologies in their teaching methods. Television and video technology offer special educational opportunities because of the growing popularity of video recorders, the proliferation of satellite receiving dishes, and the availability of television receivers in virtually every household in this country.

Kansas State University is uniquely qualified to produce and disseminate television programming in several subject areas of local, regional, national, and international importance. For example, at a time when there is tremendous hardship in the Farm Belt, this type of center would provide easy access to job retraining for farmers who must seek a livelihood off the farm.

SPECIAL KSU EXPERTISE

KSU possesses special expertise for which the satellite video communications facility will be well utilized. I might mention just a few of these important areas. Several of their programs have been established to enhance our trade capabilities, especially with regard to agricultural exports.

International food marketing. K-State conducts world-renowned training courses in grain handling, milling, and bakery science through its department of grain science and industry—the only such department in the Western World. In the last 3 years, KSU trained more than 3,800 persons from more than 70 countries—all current or potential customers of American food products—helping to open and maintain markets throughout the World. Video transmission of these training courses will vastly increase their impact.

International Marketing Research Center. This center, which is affiliated with KSU's College of Business Administration, conducts research on issues critical to the development and evaluation of strategic trade alternatives by decisionmakers in business and government. One goal is to increase interaction among business executives, academic researchers, and government officials. Video conferencing can be an important tool in accomplishing this objective, and in facilitating the ongoing research programs of the center.

Veterinary medicine. The Kansas/Nebraska Regional Veterinary College serves a tremendous concentration of veterinarians working with food and companion animals. The need for veterinary continuing education is great. Low population density makes video transmission an important tool in presenting new veterinary technologies to practitioners—speeding implementation by years. Kansas and Nebraska rank second and third in production of cattle, so this type of educational programming can be invaluable.

Cooperative extension. Video communications can greatly enhance the ability of the Kansas Cooperative Extension Service to provide cost-effective services to residents of the State—especially in rural areas. In this area, Kansas can serve as a national model for the delivery of these critical information services through video transmission.

Food Technology Degree/Credit Program. KSU has a unique food technology program, and 27 States have requested affiliation with this program. In addition, the Defense Department would like to the able to train its personnel around the world. Satellite video communication can make this resource available to all those who need it.

Mr. President, Kansas State University is willing to share its resources with other States and universities, and the K-State Educational Satellite Video Communications Center will be able to adapt to changing programming needs. This communications center will benefit States other than Kansas, and provide a valuable national, as well as international, resource.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas [Mr. DOLE].

The amendment (No. 3097) was agreed to.

THE SPEAKER JOSEPH W. MARTIN INSTITUTE AT STONEHILL COLLEGE IN MASSACHUSETTS

Mr. KENNEDY. Mr. President, I am proud to urge the Senate to support this bill to authorize funds to construct an institute to preserve the papers of former Speaker of the House Joseph W. Martin at Stonehill College in Massachusetts.

The Joseph W. Martin Institute for Law and Society at Stonehill College will honor the distinguished career of one of Massachusetts' greatest public servants. It will serve as a regional and national academic center of scholarship in the development of both domestic and foreign policy.

Joe Martin was born and raised in North Attleboro, MA. He served in the State legislature before being elected to the House of Representatives in 1924. As a Member of Congress, his brilliant public career spanned 42 years, including service as minority leader of the House of Representatives for 16 years, chairman of the Republican National Committee, and Speaker of the House for two terms. In fact, Joe Martin was Speaker of the House in 1947, when my brother Jack first took his own seat in the Congress.

Joe Martin was widely acclaimed as one of the finest statesmen of his time, and Massachusetts was fortunate to have had him as Congressman and Speaker in his long and extraordinary career.

Now, through this legislation, Members of the Senate and the House are paying tribute to a leader who dedicated his life to the Congress and the Nation. The Joseph W. Martin Institute for Law and Society will enable others to learn from his vast experience and writings, as we seek in our own time to carry on his high ideals and his enduring commitment to public service.

Mr. President, I commend my colleague in the House, SIL CONTE, for his leadership in sponsoring this legislation, and I urge the Senate to approve it.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read a third time, the question is, Shall it pass?

So the bill (H.R. 4244), as amended, was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BOREN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE CALENDAR

Mr. DOLE. Mr. President, I inquire of the distinguished acting minority leader if he is in a position to pass the following calendar items: Calendar Order No. 942 and Calendar Order No. 973.

Mr. BOREN. Mr. President, both of those items have been cleared on this side.

Mr. DOLE. I thank the distinguished Senator from Oklahoma.

Mr. President, I ask unanimous consent that the calendar items just identified be considered en bloc and passed en bloc and all committee-reported amendments be agreed to en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

GREAT BASIN NATIONAL PARK

The Senate proceeded to consider the bill (S. 2506) to establish a Great Basin National Park in the State of Nevada, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike out all after the enacting clause, and insert the following:

SHORT TITLE

SECTION 1. This Act may be known as the "Great Basin National Park Act of 1986".

ESTABLISHMENT

SEC. 2. (a) In order to preserve for the benefit and inspiration of the people a representative segment of the Great Basin of the Western United States possessing outstanding resources and significant geological and scenic values, there is hereby established the Great Basin National Park (hereinafter in this Act referred to as the "park").

(b) The park shall consist of approximately forty-four thousand acres, as generally depicted on the map entitled "Boundary Map, Great Basin National Park, Nevada," numbered NA-GB 20,016, and dated April 1986. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior, and the Office of the Superintendent, Great Basin National Park, Nevada.

(c) Within 6 months after the enactment of this Act, the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall file a legal description of the park designated under this section with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to in subsection (a). The legal description shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

(d)(1) The Lehman Caves National Monument, designated on January 24, 1922, by Presidential proclamation under the authority contained in the Act of June 8, 1906 (34 Stat. 255) is hereby abolished and the lands incorporated within the Great Basin National Park. Any reference in any law, map, regulation, document, record, or other paper of the United States to such national monument shall be deemed to be a reference to Great Basin National Park.

(2) Any funds available for purposes of the national monument shall be available for purposes of the park.

ADMINISTRATION

SEC. 3. (a) The Secretary shall administer the park in accordance with this Act and with the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes," approved August 26, 1916 (39 Stat. 535; 16 U.S.C. 1-4). The Secretary shall protect, manage, and administer the park in such manner as to conserve and protect the scenery, the natural, geologic, historic, and archaeological resources of the park, including fish and wildlife and to provide for the public use and enjoyment of the same in such a manner as to perpetuate these qualities for future generations.

(b) The Secretary shall permit fishing on lands and waters under his jurisdiction within the park in accordance with the applicable laws of the United States and the State of Nevada, except that he may designate zones where, and periods when, no fishing may be permitted for reasons of public safety. Except in emergencies, any regulations prescribing such restrictions relating to fishing, shall be put into effect only after consultation with the appropriate State agency having jurisdiction over fishing activities.

(c) After notice and opportunity for public hearing, the Secretary shall prepare a management plan for the park. The secretary shall submit such plan to the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate within three years after the enactment of this Act. Such plan may be amended from time to time. The plan shall include, but not be limited to, provisions related to grazing within the park to the extent permitted under subsection (e) and provisions providing for the appropriate management of fish and wildlife and fishing within the park in accordance with subsection (b). Such provisions shall be adopted only after consultation with the appropriate State agency having jurisdiction over fish and wildlife.

(d) Subject to valid existing rights, Federal lands and interests therein, within the park, are withdrawn from disposition under the public lands laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from operation of the Geothermal Steam Act of 1970, as amended.

(e) Subject to such limitations, conditions, or regulations as he may prescribe, the Secretary shall permit grazing on lands within the park to the same extent as was permitted on such lands as of July 1, 1985. Grazing within the park shall be administered by the National Park Service.

(f) At the request of the permittee, or at the initiative of the Secretary, negotiations may take place at any time with holders of valid existing grazing permits on land within the park, for an exchange of all or part of their grazing allotments for allotments outside the park. No such exchange shall take place if, in the opinion of the affected Federal land management agency, the exchange would result in overgrazing of Federal lands.

(g) Existing water-related range improvements inside the park may be maintained by the Secretary or the persons benefitting from them, subject to reasonable regulation by the Secretary.

(h) Nothing in this Act shall be construed to establish a new express or implied reservation of the United States of any water or water-related right with respect to the land described in section 2 of this Act: *Provided*, That the United States shall be entitled to only that express or implied reserved water right which may have been associated with the initial establishment and withdrawal of Humboldt National Forest and the Lehman Caves National Monument from the public domain with respect to the land described in section 2 of this Act. No provision of this Act shall be construed as authorizing the appropriation of water, except in accordance with the substantive and procedural law of the State of Nevada.

(i) In order to encourage unified and cost-effective interpretation of the Great Basin physiographic region, the Secretary is authorized and encouraged to enter into cooperative agreements with other Federal, State, and local public departments and agencies providing for the interpretation of the Great Basin physiographic region. Such agreements shall include, but not be limited to, authority for the Secretary to develop and operate interpretive facilities and programs on lands and waters outside of the boundaries of such park, with the concurrence of the owner or administrator thereof.

ACQUISITION OF LAND

SEC. 4. (a) The Secretary may acquire land or interests in land within the boundaries of the park by donation, purchase with donated or appropriated funds, or exchange, but no such lands or interests therein may be acquired without the consent of the owner thereof. Lands owned by the State of Nevada or any political subdivision thereof may be acquired only by donation or exchange.

(b) Lands and waters, and interests therein, within the boundaries of the park which were administered by the Forest Service, United States Department of Agriculture prior to the date of enactment of this Act are hereby transferred to the administrative jurisdiction of the Secretary to be administered in accordance with this Act. The boundaries of the Humboldt National Forest shall be adjusted accordingly.

AUTHORIZATION OF APPROPRIATIONS

SEC. 5. (a) Not more than $800,000 are authorized to be appropriated for development of the park.

(b) Not more than $200,000 are authorized to be appropriated for acquisition of lands and interests in land within the park.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

PROTECTION OF RAINFORESTS IN DEVELOPING COUNTRIES

The Senate proceeded to consider the bill (H.R. 2957) to amend the Foreign Assistance Act of 1961 to protect tropical forests in developing countries, which had been reported from the Committee on Foreign Relations, with an amendment.

On page 2, line 21, strike "decertification", and insert "desertification".

So as to make the bill read:

H.R. 2957

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 1 of part I of the Foreign Assistance Act of 1961 is amended—

(1) by redesignating section 118 (22 U.S.C. 2151p) as section 117;

(2) by striking out subsection (d) of that section; and

(3) by inserting after that section the following new section 118:

"SEC. 118. TROPICAL FORESTS.

"(a) IMPORTANCE OF FORESTS AND TREE COVER.—In enacting section 103(b)(3) of this Act the Congress recognized the importance of forests and tree cover to the developing countries. The Congress is particularly concerned about the continuing and accelerating alteration, destruction, and loss of tropical forests in developing countries, which pose a serious threat to development and the environment. Tropical forest destruction and loss—

"(1) result in shortages of wood, especially wood for fuel; loss of biologically productive wetlands; siltation of lakes, reservoirs, and irrigation systems; floods; destruction of indigenous peoples; extinction of plant and animal species; reduced capacity for food production; and loss of genetic resources; and

"(2) can result in desertification and destabilization of the earth's climate.

Properly managed tropical forests provide a sustained flow of resources essential to the economic growth of developing countries, as well as genetic resources of value to developed and developing countries alike.

"(b) PRIORITIES.—The concerns expressed in subseciton (a) and the recommendations of the United States Interagency Task Force on Tropical Forests shall be given high priority by the President—

"(1) in formulating and carrying out programs and policies with respect to developing countries, including those relating to bilateral and multilateral assistance and those relating to private sector activities; and

"(2) in seeking opportunities to coordinate public and private development and investment activities which affect forests in developing countries.

"(c) ASSISTANCE TO DEVELOPING COUNTRIES.—In providing assistance to developing countries, the President shall do the following:

"(1) Place a high priority on conservation and sustainable management of tropical forests.

"(2) To the fullest extent feasible, engage in dialogues and exchanges of information with recipient countries—

"(A) which stress the importance of conserving and sustainably managing forest resources for the long-term economic benefit of those countries, as well as the irreversible losses associated with forest destruction, and

"(B) which identify and focus on policies of those countries which directly or indirectly contribute to deforestation.

"(3) To the fullest extent feasible, support projects and activities—

"(A) which offer employment and income alternatives to those who otherwise would cause destruction and loss of forests, and

"(B) which help developing countries identify and implement alternatives to colonizing forested areas.

"(4) To the fullest extent feasible, support training programs, educational efforts, and the establishment or strengthening of institutions which increase the capacity of developing countries to formulate forest policies, engage in relevant land-use planning, and otherwise improve the management of their forests.

"(5) To the fullest extent feasible, help end destructive slash-and-burn agriculture by supporting stable and productive farming practices in areas already cleared or degraded and on lands which inevitably will be settled, with special emphasis on demonstrating the feasibility of agroforestry and other techniques which use technologies and methods suited to the local environment and traditional agricultural techniques and feature close consultation with and involvement of local people.

"(6) To the fullest extent feasible, help conserve forests which have not yet been degraded, by helping to increase production on lands already cleared or degraded through support of reforestation, fuelwood, and other sustainable forestry projects and practices, making sure that local people are involved at all stages of project design and implementation.

"(7) To the fullest extent feasible, support projects and other activities to conserve forested watersheds and rehabilitate those which have been deforested, making sure that local people are involved at all stages of project design and implementation.

"(8) To the fullest extent feasible, support training, research, and other actions which lead to sustainable and more environmentally sound practices for timber harvesting, removal, and processing, including reforestation, soil conservation, and other activities to rehabilitate degraded forest lands.

"(9) To the fullest extent feasible, support research to expand knowledge of tropical forests and identify alternatives which will prevent forest destruction, loss, or degradation, including research in agroforestry, sustainable management of natural forests, small-scale farms and gardens, small-scale animal husbandry, wider application of adopted traditional practices, and suitable crops and crop combinations.

"(10) To the fullest extent feasible, conserve biological diversity in forest areas by—

"(A) supporting and cooperating with United States Government agencies, other donors (both bilateral and multilateral), and other appropriated governmental, intergovernmental, and nongovernmental organizations in efforts to identify, establish, and maintain a respresentative network of protected tropical forest ecosystems on a worldwide basis;

"(B) whenever appropriate, making the establishment of protected areas a condition of support for activities involving forest clearance or degradation; and

"(C) helping developing countries identify tropical forest ecosystems and species in need of protection and establish and maintain appropriate protected areas.

"(11) To the fullest extent feasible, engage in efforts to increase the awareness of United States Government agencies and other donors, both bilateral and multilateral, of the immediate and long-term value of tropical forests.

"(12) To the fullest extent feasible, utilize the resources and abilities of all relevant United States Government agencies.

"(13) Require that any program or project under this chapter significantly affecting tropical forests (including projects involving the planting of exotic plant species)—

"(A) be based upon careful analysis of the alternatives available to achieve the best sustainable use of the land, and

"(B) take full account of the environmental impacts of the proposed activities on biological diversity,

as provided for in the environmental procedures of the Agency for International Development.

"(14) Deny assistance under this chapter for—

"(A) the procurement or use of logging equipment, unless an environmental assessment indicates that all timber harvesting operations involved will be conducted in an environmentally sound manner which minimizes forest destruction and that the proposed activity will produce positive economic benefits and sustainable forest management systems; and

"(B) actions which significantly degrade national parks or similar protected areas which contain tropical forests or introduce exotic plants or animals into such areas.

"(15) Deny assistance under this chapter for the following activities unless an environmental assessment indicates that the proposed activity will contribute significantly and directly to improving the livelihood of the rural poor and will be conducted in an environmentally sound manner which supports sustainable development:

"(A) Activities which would result in the conversion of forest lands to the rearing of livestock.

"(B) The construction, upgrading, or maintenance of roads (including temporary haul roads for logging or other extractive industries) which pass through relatively undegraded forest lands.

"(C) The colonization of forest lands.

"(D) The construction of dams or other water control structures which flood relatively undegraded forest lands.

"(d) PVOs and Other Nongovernmental Organizations.—

Whenever feasible, the President shall accomplish the objectives of this section through projects managed by private and voluntary organizations or international, regional, or national nongovernmental organizations which are active in the region or country where the project is located.

"(e) COUNTRY ANALYSIS REQUIREMENTS.—Each country development strategy statement or other country plan prepared by the Agency for International Development shall include an analysis of—

"(1) the actions necessary in that country to achieve conservation and sustainable management of tropical forests, and

"(2) the extent to which the actions proposed for support by the Agency meet the needs thus identified.

"(f) ANNUAL REPORT.—Each annual report required by section 634(a) of this Act shall include a report on the implementation of this section.".

The amendment was agreed to

The amendment was ordered to be engrossed, the bill was read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the two calendar items, as amended, were passed.

Mr. BOREN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AUTHORITY OF THE SUPREME COURT POLICE

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to H.R. 5362, the Supreme Court Police.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5362) to extend the authority of the Supreme Court Police to provide for protective services for Justices and Court personnel.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Kansas?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 3098

(Purpose: To amend the Legislative Branch Appropriations Act, 1979, as reenacted, to extend the duration of the Office of Classified National Security Information within the Office of the Secretary of the Senate, and for other purposes)

Mr. DOLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposed an amendment numbered 3098.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the end of the bill, insert the following new section:

SEC. . (a) Section 105(a) of the Legislative Branch Appropriations Act, 1979 (2 U.S.C. 72a note), as reenacted by section 115 of the joint resolution entitled "Joint resolution making continuing appropriations for the fiscal year 1982, and for other purposes", approved October 1, 1981 (95 Stat. 963), is amended by striking out "September 30, 1986," and inserting in lieu thereof "February 28, 1987,".

(b) The amendment made by subsection (a) shall take effect on October 1, 1986.

Mr. DOLE. Mr. President, today the term of the Office of Classified National Security Information in the Office of the Secretary of the Senate expires. Based on concerns raised by a number of Senators about the safeguarding of classified information within the Senate, the expiration of this Office's term presents the Senate with the opportunity to enhance security by reconstituting this Office with an eye toward upgrading all aspects of its intelligence collection and control.

Members of the Senate Rules Committee, Governmental Affairs Committee, Intelligence Committee, Appropriations Committee and the Senate leadership have discussed the need to have a central repository within the Senate for classified information and records of the individuals authorized access to such information. These offices are currently formulating proposals for upgrading this Office in accordance with this requirement, and expect to reach agreement on its composition early in the next Congress.

For the time being, however, I believe it essential that we maintain the continuity of the current Office of Classified National Security Information, and this amendment provides for a simple extension of the current Office until the end of February 1987.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Kansas [Mr. DOLE].

The amendment (No. 3098) was agreed to.

Mr. THURMOND. Mr. President, I rise today in support of H.R. 5362, a bill to extend the authority of the Supreme Court Police to provide protective services for Justices and Court personnel. This bill would extend the authority of the Supreme Court Police until December 29, 1990.

In 1982, Congress formally recognized the authority of the Supreme Court Police, and statutorily provided for off of Court premises protection for Justices and Court personnel until December 29, 1985. Last year, this authority was extended until December 26, 1986.

The increased need for off-premises protection of Justices and staff, the efficient manner in which the police have handled security over the last 4 years, and the relatively low administrative cost of such protection indicate that this service should continue. Enactment of this bill will help ensure the continued safe and efficient administration of the Supreme Court.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5362), as amended, was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BOREN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTIONS TO OMNIBUS DRUG ENFORCEMENT, EDUCATION AND CONTROL ACT

Mr. DOLE. Mr. President, I would like to read the following statement on behalf of Senator HATCH.

Mr. HATCH. Mr. President, it has come to my attention that H.R. 5484 as passed this afternoon contains a typographical error of some significance. The provision relating to a study by the Food and Drug Administration to "alkyl and butyl nitrates" was intended to refer instead to "alkyl and butyl nitrites". It is my understanding that nitrates and nitrites are different chemical entities, and that the effect of this typographical error may be to ensure that the chemicals we intend to be studying will instead not be studied. Therefore I ask unanimous consent that the appropriate citation be changed to "nitrites" before the bill is transmitted to the House of Representatives.

Mr. BOREN. Mr. President, that request has been cleared on this side of the aisle, and there is no objection to it.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS VETERANS' BENEFITS IMPROVEMENT AND HEALTH CARE AUTHORIZATION ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate turn to the consideration of Calendar No. 915, the Omnibus Veterans' Benefits Improvement and Health Care Authorization Act.

The PRESIDING OFFICER. Without objection it is so ordered.

The Senate proceeded to consider the bill (S. 2422) to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans and the rates of dependency and indemnity compensation for surviving spouses and children of veterans; to improve the Veterans' Administration Home Loan Guaranty Program; to authorize certain debt collection; to authorize the Administrator of Veterans' Affairs to require additional information for certain fiduciary agents of veterans; to revise the authority of the Administrator of Veterans' Affairs to construct, alter, acquire, operate, and maintain parking facilities at Veterans' Administration medical facilities; and to authorize an administrative reorganization in the Veterans' Administration, which had been reported from the Committee on Veterans' Affairs, with an amendment to strike out all after the enacting clause, and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS

(a) SHORT TITLE.—This Act may be cited as the "Omnibus Veterans' Benefits Improvement and Health Care Authorization Act of 1986".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—COMPENSATION AND OTHER BENEFIT PROGRAMS

PART A—BENEFITS

Sec. 101. Disability compensation and dependency and indemnity compensation rate increases.
Sec. 102. Presumptions relating to certain diseases and disabilities of former prisoners of war.
Sec. 103. Extension of pilot program of independent living services and assistance.
Sec. 104. Extension of veterans readjustment appointments authority.

PART B—BENEFIT PROGRAM ADMINISTRATION

Sec. 111. Veterans' Administration acquisition of foreclosed properties.
Sec. 112. Bar to duplication of educational assistance benefits.
Sec. 113. Membership of the Administrator's Advisory Committee on Education.
Sec. 114. Disclosure of financial information by fiduciaries.
Sec. 115. Waiver of congressional notice and waiting period for administrative reorganization of certain Veterans' Administration activities.
Sec. 116. Administrative debt collection by offset of benefits.

TITLE II—HEALTH CARE

PART A—HEALTH-CARE PROGRAMS

Sec. 201. Definition of home health services.
Sec. 202. Treatment and rehabilitation for chronically mentally ill veterans.
Sec. 203. Respite care pilot program.
Sec. 204. Pilot program of noninstitutional alternatives to institutional care.
Sec. 205. Services to overcome service-connected disability affecting procreation.
Sec. 206. Continuation of certain counseling services for a deceased veteran's family members.
Sec. 207. Eligibility for domiciliary care.
Sec. 208. Contracts and grants for medical care for United States veterans in the Republic of the Philippines.
Sec. 209. Medicaid treatment of per diem payments to State veterans' homes.

PART B—HEALTH-CARE ADMINISTRATION

Sec. 211. Enforcement of State and local traffic laws by Veterans' Administration police officers.
Sec. 212. Ionizing radiation registry.
Sec. 213. Authority to waive licensure and internship requirements for research psychologists.
Sec. 214. Requirement for medicare hospitals to participate in Veterans' Administration contract health-care program.
Sec. 215. Organization of the Department of Medicine and Surgery.

PART C—MEDICAL FACILITY CONSTRUCTION AND PLANNING

Sec. 221. Parking facilities.
Sec. 222. Consideration of sharing Department of Defense facilities.
Sec. 223. State home grants.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Modifications of certain reporting requirements.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMPENSATION AND OTHER BENEFIT PROGRAMS

PART A—BENEFITS

SEC. 101. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES

(a) IN GENERAL.—(1) The Administrator of Veterans' Affairs shall provide for increases in the rates of and limitations on Veterans' Administration disability compensation and dependency and indemnity compensation in accordance with this subsection.

(2)(A) In the case of each of the rates and limitations in sections 314, 315(1), 362, 411, 413, and 414 of title 38, United States Code, as increased by sections 101(a), 102, 103, 104, 105, and 106 of the Veterans' Compensation Rate Increase and Job Training Amendments of 1985 (Public Law 99-238), the Administrator shall further increase such rates and limitations by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1986, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(B) In the computation of increased rates and limitations pursuant to paragraph (1), amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount.

(b) SPECIAL RULE.—The Administrator may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons—

(1) to whom the provisions of section 10 of the Act entitled "An Act to consolidate into one Act all of the laws administered by the Veterans' Administration, and for other purposes.", approved September 2, 1958 (Public Law 85-857; 72 Stat. 1263) are applicable; and

(2) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) PUBLICATION REQUIREMENT.—At the same time as the matters required by section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are published by reason of a determination made under section 215(i) of such Act during fiscal year 1987, the Administrator shall publish in the Feder-

al Register the rates and limitations being increased under this section and the rates and limitations as so increased.

(d) Effective Date.—The provisions of this section shall take effect on December 1, 1986.

SEC. 102. PRESUMPTIONS RELATING TO CERTAIN DISEASES AND DISABILITIES OF FORMER PRISONERS OF WAR

Section 312(b) is amended—

(1) by striking out "or" at the end of clause (9);

(2) by inserting "or" at the end of clause 10; and

(3) by inserting after clause (10) the following new clause:

"(11) organic residuals of frostbite, if the Administrator determines that the veteran was interned in climatic conditions consistent with the occurrence of frostbite,".

SEC. 103. EXTENSION OF PILOT PROGRAM OF INDEPENDENT LIVING SERVICES AND ASSISTANCE

(a) Extension of Authority and Clarifying Amendment.—(1) Section 1520(a) is amended—

(A) in paragraphs (1), (5), and (6), by striking out "1985" each place it appears and inserting in lieu thereof "1989"; and

(B) in paragraph (2), by inserting "currently" after "goal".

(b) Conforming Amendments.—(1) Paragraphs (6)(B) and (9)(A)(i) of section 1501 are amended by inserting "currently" after "be".

(2) Section 1503(d) is amended by inserting "currently" after "goal".

(3) Section 1505 is amended—

(A) in subsection (a), by inserting "currently" after "whether it";

(B) in subsection (b), by inserting "current" after "of the"; and

(C) in subsection (d), by inserting "currently" after "goal".

(4) Section 1506 is amended—

(A) in subsection (a)(2)(B), by inserting "currently" after "goal";

(B) in subsection (b), by inserting "currently" after "goal";

(C) in subsection (c), by inserting "currently" after "goal" the first place it appears; and

(D) in subsection (d)—

(i) in the first sentence, by inserting "currently" after "veteran"; and

(ii) in the third sentence, by inserting "currently" after "goal" and after "achievement" the second place it appears.

(5) Section 1509 is amended by inserting "currently" after "veteran" the first place it appears.

(c) Report.—Section 1520 is amended by striking out subsection (b) and inserting in lieu thereof the following new subsection:

"(b) Not later than February 1, 1989, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives statistical data regarding veterans' participation in the pilot program conducted under subsection (a) of this section during fiscal years 1987 and 1988 and any recommendations of the Administrator for administrative or legislative action or both regarding the program.".

SEC. 104. EXTENSION OF VETERANS READJUSTMENT APPOINTMENTS AUTHORITY

Section 2014(b)(2) is amended by striking out "1986" and inserting in lieu thereof "1988".

Part B—Benefit Program Administration

SEC. 111. VETERANS' ADMINISTRATION ACQUISITION OF FORECLOSED PROPERTIES

Section 1816(c) is amended—

(1) in paragraph (5), by striking out "In" and inserting in lieu thereof "Except as provided in paragraph (10) of this subsection, in";

(2) in paragraph (7), by striking out "In" and inserting in lieu thereof "Except as provided in paragraph (10) of this subsection, in"; and

(3) by adding at the end the following new paragraph:

"(10)(A) The holder of a defaulted loan shall not have the option of conveying the property securing the loan to the United States under paragraph (5) of this subsection and the Administrator may not accept conveyance of such property under paragraph (7) of this subsection unless the Administrator determines, on the basis of the considerations specified in subparagraph (B) of this paragraph, that the Administrator is likely to be able, within 1 year after the date of the liquidation sale of the property, to sell the property for a price which would make it economically advantageous to the United States for the Administrator to acquire and dispose of the property.

"(B) In making a determination with respect to a particular property for the purpose of subparagraph (A) of this paragraph, the Administrator shall consider—

"(i) the size of the inventory of the properties held by the Veterans' Administration (after acquisition under this section) which are located in the same general real estate market area as such property;

"(ii) the current and projected conditions of the real estate market in such area; and

"(iii) the current and projected general economic conditions in such area.".

SEC. 112. BAR TO DUPLICATION OF EDUCATIONAL ASSISTANCE BENEFITS

Section 1433(a)(1) is amended by striking out "chapter 31" and all that follows through "both programs" and inserting in lieu thereof "chapter 31, 32, or 35 of this title, under chapter 106 or 107 of title 10, or under the Hostage Relief Act of 1980 (Public Law 96-449; 5 U.S.C. 5561 note) may not receive assistance under two or more of such programs".

SEC. 113. MEMBERSHIP OF THE ADMINISTRATOR'S ADVISORY COMMITTEE ON EDUCATION

Section 1792(a) is amended by striking out "World War II, the Korean conflict era,".

SEC. 114. DISCLOSURE OF FINANCIAL INFORMATION BY FIDUCIARIES

The second sentence of section 3202(b) is amended by striking out "beneficiary," and inserting in lieu thereof "beneficiary and any additional information about the beneficiary's financial circumstances required by the Administrator (unless unknown by the fiduciary),".

SEC. 115. WAIVER OF CONGRESSIONAL NOTICE AND WAITING PERIOD FOR ADMINISTRATIVE REORGANIZATION OF CERTAIN VETERANS' ADMINISTRATION ACTIVITIES

(a) Waiver.—The Administrator of Veterans' Affairs may undertake the administrative reorganization described in subsection (b) without regard to the requirements of section 210(b)(2) of title 38, United States Code.

(b) Covered Administrative Reorganization.—The administrative reorganization referred to in subsection (a) is a reorganization that—

(1) involves the transfer of certain functions from the Office of Administration of the Veterans' Administration to the Department of Veterans' Benefits and to the Office of the Associate Deputy Administrator of Veterans' Affairs for Public and Consumer Affairs; and

(2) is described in letters dated February 5, 1986, that were submitted by the Acting Administrator of Veterans' Affairs to the President of the Senate and the Speaker of the House of Representatives.

SEC. 116. ADMINISTRATIVE DEBT COLLECTION BY OFFSET OF BENEFITS

Section 3101 is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new subsection (c):

"(c)(1) Notwithstanding any other provision of this section, the Administrator may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws administered by the Veterans' Administration the uncollected portion of (A) the amount of any overpayments of retired or retainer pay (for service in a uniformed service named in section 101(3) of title 37) made to the veteran, and (B) the amount of any indebtedness associated with the veteran's participation in a plan prescribed in subchapter I or II of chapter 73 of title 10.

"(2) If the Secretary concerned (as defined in section 101(5) of title 37) has tried under section 3711(a) of title 31 to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by the Secretary to the veteran or that the veteran is not receiving any payment from the Secretary, the Secretary may request the Administrator to make collections in the case of such veteran as authorized in paragraph (1) of this subsection.

"(3)(A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections made after attempts to collect claims under section 3711(a) of such title.

"(B) For the purpose of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31—

"(i) the term 'records of the agency' shall be considered to refer to the records of the department of the Secretary concerned; and

"(ii) the term 'agency' in clauses (3) and (4) shall be considered to refer to such department.

"(4) Funds collected under this subsection shall be credited to the Department of Defense military retirement fund.".

TITLE II—HEALTH CARE

Part A—Health-Care Programs

SEC. 201. DEFINITION OF HOME HEALTH SERVICES

(a) Section 601 is amended by adding at the end the following new paragraph:

"(10) The term 'home health services', in the case of services furnished to a veteran in other than a Veterans' Administration facility or the veteran's home, includes services furnished to a veteran in any setting in which the veteran is residing at the time such services are furnished but does not include any structural improvements or alterations.".

(b) As provided in sections 601(6) and (as added by subsection (a)) 601(10), 603, and 612 of title 38, United States Code, when Veterans' Administration facilities are not capable of furnishing economical home health services because of geographical inaccessibility or are not capable of furnishing the home health services required for a veteran, the Administrator of Veterans' Affairs may contract with non-Veterans' Administration facilities in order to furnish such home health services.

SEC. 202. TREATMENT AND REHABILITATION FOR CHRONICALLY MENTALLY ILL VETERANS

(a) AUTHORITY TO CONTRACT FOR COMMUNITY-BASED PSYCHIATRIC RESIDENTIAL TREATMENT.—Subchapter II of chapter 17 is amended by adding at the end the following new section:

"§ 620B. Community-based psychiatric residential treatment for chronically mentally ill veterans

"(a) For the purposes of this section—

"(1) The term 'case management' includes the coordination and facilitation of all services furnished to a veteran by the Veterans' Administration, either directly or through a contract, including, but not limited to, screening, assessment of needs, planning, referral (including referral for services to be furnished by either the Veterans' Administration or another entity), monitoring, reassessment, and followup.

"(2) The term 'contract facility' means any facility which has been awarded a contract under subsection (b)(1) of this section.

"(3) The term 'eligible veteran' means a veteran who, at the time of referral to a contract facility—

"(i) is being furnished hospital, domiciliary, or nursing home care by the Administrator for a chronic mental illness disability, or

"(ii) is a veteran described in section 612(a)(1)(B) of this title who has a chronic mental illness disability.

"(b)(1) The Administrator, in furnishing hospital, nursing home, and domiciliary care and medical and rehabilitative services under this chapter, may contract for care and treatment and rehabilitative services in halfway houses, therapeutic communities, psychiatric residential treatment centers, and other community-based treatment facilities for eligible veterans suffering from chronic mental illness disabilities.

"(2) Before furnishing such care and services to any veteran through a contract facility, the Administrator shall approve (in accordance with criteria which the Administrator shall prescribe by regulation) the quality and effectiveness of the program operated by such facility for the purpose for which such veteran is to be furnished such care and services.

"(c) In the case of each eligible veteran provided care and services under this section, the Administrator shall designate a Veterans' Administration health-care employee to provide case management services.

"(d) In furnishing care and services under this section, the Administrator shall accord priority for such care and services in the following order:

"(1) To any veteran for a service-connected chronic mental illness disability.

"(2) To any veteran with a disability rated as service-connected.

"(3) To any veteran for a non-service-connected disability, if the veteran is unable to defray the expenses of necessary care as determined under section 622(a)(1) of this title.

"(e) The Administrator may provide in-kind assistance (through the services of Veterans' Administration employees and the sharing of other Veterans' Administration resources) to a contract facility under this section. Any such in-kind assistance shall be provided under a contract between the Veterans' Administration and the contract facility. The Administrator may provide such assistance only for use solely in the furnishing of appropriate services under this section and only if, under such contract, the Veterans' Administration receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Veterans' Administration facility that provided the assistance.

"(f) Not later than 3 years after the date of the enactment of the Omnibus Veterans' Benefits Improvement and Health Care Authorization Act of 1986, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the experience under this section. The report shall include the Administrator's evaluation and findings regarding—

"(1) the quality of care furnished to participating veterans through contract facilities;

"(2) any health advantages that may result from furnishing such care and services to such veterans in such contract facilities rather than in inpatient facilities over which the Administrator has direct jurisdiction;

"(3) the effectiveness of the use of contract facilities under this section in enabling the participating veterans to live outside of Veterans' Administration inpatient facilities and to achieve independence in living and functioning in their communities;

"(4) the cost-effectiveness of furnishing such care through contract facilities under this section, including the effect on the average daily census in Veterans' Administration hospital, nursing home, and domiciliary facilities participating in the program (taking into account whether the beds previously occupied by the participating veterans were subsequently occupied by other eligible veterans or remained unoccupied) and the effect on the numbers of Veterans' Administration staff employed at such facilities; and

"(5) any plans for administrative action, and any recommendations for legislation, that the Administration considers appropriate to include in such report.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 620A the following new item:

"620B. Community-based psychiatric residential treatment for chronically mentally ill veterans.".

SEC. 203. RESPITE CARE PILOT PROGRAM

(a) AUTHORITY FOR PILOT PROGRAM.—(1) Subchapter II of chapter 17 is further amended by adding at the end the following new section:

"§ 620C. Respite care; pilot program

"(a) During the period beginning on October 1, 1986, and ending on September 30, 1990, the Administrator may conduct a pilot program to furnish respite care services, and to evaluate the furnishing of such services, to any veteran who has a service-connected disability which is compensable in degree and who is receiving services under this chapter.

"(b) For the purposes of this section, the term 'respite care' means hospital or nursing home care which (1) is of limited duration, (2) is furnished in a Veterans' Administration facility on an intermittent basis to a veteran who is suffering from a chronic illness and who resides primarily at home, (3) is furnished for the purpose of helping the veteran to continue residing primarily at home, and (4) does not (as determined by the head of the facility furnishing the care) adversely affect the range of services, the quality of care, or the established priorities for care furnished to other veterans seeking care at such facility.".

(2) The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 620B (as added by section 202 of this Act) the following new item:

"620C. Respite care; pilot program."

(b) REPORT ON EXPERIENCE UNDER PILOT PROGRAM.—If the Administrator of Veterans' Affairs furnishes respite care under section 620C of title 38, United States Code (as added by subsection (a))—

(1) the Administrator shall conduct an evaluation of the health efficacy and cost-effectiveness of furnishing such care; and

(2) not later than February 1, 1990, shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

(A) the results of any such evaluation; and

(B) any plans for administrative action, and any recommendations for legislation, that the Administrator considers appropriate to include in the report.

SEC. 204. PILOT PROGRAM OF NONINSTITUTIONAL ALTERNATIVES TO INSTITUTIONAL CARE

(a) ESTABLISHMENT OF PILOT PROGRAM.—Subchapter II of chapter 17 is further amended by adding at the end the following new section:

"§ 620D. Noninstitutional alternatives to institutional care; pilot program

"(a)(1) The Administrator, during the period beginning January 1, 1987, and ending December 31, 1990, and subject to subsection (c) of this section, shall conduct a pilot program under which veterans eligible under this chapter for and otherwise in need of hospital, nursing home, or domiciliary care will be furnished medical, rehabilitative, and health-related services in noninstitutional settings at not less than five nor more than ten demonstration project sites.

"(2) In selecting veterans for participation in the program, the Administrator shall accord priority to veterans who have service-connected disabilities, to veterans who are 65 years of age or older, to veterans who are totally and permanently disabled, to veterans who, by reason of blindness in both eyes, have only light perception or are in need of regular aid and attendance, and to veterans who are suffering from Alzheimer's disease or other forms of dementia.

"(b)(1) In the conduct of the program, the Administrator shall (A) furnish appropriate health-related services solely through contracts with appropriate public and private agencies that provide such services, and (B) in the case of each veteran furnished services under the program, appoint a Veterans' Administration health-care employee to furnish case management services (as defined in section 620B(a)(1) of this title).

"(2) In order to evaluate the cost-effectiveness of utilizing certain health services of agencies other than the Veterans' Administration in cases in which no Veterans' Administration facility in the vicinity of a demonstration project provides such services, the Administrator, in not more than two of the demonstration projects, may utilize appropriate health services of appropriate public and private agencies that furnish such services.

"(3) The Administrator may provide in-kind assistance (through the services of Veterans' Administration employees and the sharing of other Veterans' Administration resources) to a facility furnishing services to veterans under paragraph (1)(A) of this subsection. Any such in-kind assistance shall be provided under a contract between the Veterans' Administration and the facility concerned. The Administrator may provide such assistance only for use solely in the furnishing of appropriate services under this section and only if, under such contract, the Veterans' Administration receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Veterans' Administration facility that provided the assistance.

"(c) The total cost of conducting the pilot program under this section shall not exceed 60 percent of the cost that would have been incurred by the Veterans' Administration during the period of the pilot program if the veterans being furnished services under the pilot program had been furnished, instead, nursing home care under section 610 of this title. In any fiscal year, the cost of carrying out the pilot program shall not exceed 65 percent of the cost that would have been so incurred for such year under such section 610.

"(d) Not later than April 1, 1990, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report setting forth the Administrator's evaluation, findings, and conclusions regarding the pilot program, and its results for the participating veterans, during its first 36 months. The report shall include a description of the conduct of the program (including a description of the veterans furnished services and of the services furnished under the pilot program), and any plans for administrative action, and any recommendations for legislation, that the Administrator considers appropriate to include in the report.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 620C (as added by section 203 of this Act) the following new item:

"620D. Noninstitutional alternatives to institutional care; pilot program.".

SEC. 205. SERVICES TO OVERCOME SERVICE-CONNECTED DISABILITY AFFECTING PROCREATION

(a) IN GENERAL.—Clause (A) of section 601(6) is amended to read as follows:

"(A)(i) surgical services, (ii) (in the case of a veteran who applies for such services prior to October 1, 1989) services to achieve pregnancy in a veteran or a veteran's spouse where such services are necessary because of a service-connected disability which causes the veteran's inability to procreate, (iii) dental services and appliances as described in sections 610 and 612 of this title, (iv) optometric and podiatric services, (v) (in the case of a person otherwise receiving care or services under this chapter) preventive health-care services as defined in section 662 of this title, (vi) (except under the conditions described in section 612(f)(1)(A)(i) of this title) wheelchairs, artificial limbs, trusses, and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as the Administrator determines to be reasonable and necessary, and (vii) travel and incidental expenses pursuant to the provisions of section 111 of this title; and".

(b) REPORT.—Not later than February 1, 1989, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report setting forth the experience under the authority in section 601(6)(A)(ii) of title 38, United States Code (as added by subsection (a)) prior to October 1, 1988, and any plans for administrative action, and any recommendations for legislation, that the Administrator considers appropriate to include in the report.

SEC. 206. CONTINUATION OF CERTAIN COUNSELING SERVICES FOR A DECEASED VETERAN'S FAMILY MEMBERS

Clause (B) of section 601(6) is amended to read as follows:

"(B)(i) such consultation, professional counseling, training, and mental health services as are necessary in connection with the treatment—

"(I) of the service-connected disability of a veteran pursuant to section 612(a) of this title, and

"(II) in the discretion of the Administrator, of the non-service-connected disability of a veteran eligible for treatment under section 612(f)(1)(A)(ii) of this title where such services were initiated during the veteran's hospitalization and the provision of such services on an outpatient basis is essential to permit the discharge of the veteran from the hospital,

for the members of the immediate family or legal guardian of a veteran, or the individual in whose household such veteran certifies an intention to live, as may be essential to the effective treatment and rehabilitation of the veteran (including, under the terms and conditions set forth in section 111 of this title, travel and incidental expenses of such family member or individual in the case of a veteran who is receiving care for a service-connected disability, or in the case of a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of this title); and

"(ii) in the case of an individual who was a recipient of services under subclause (i) of this clause at the time of (I) the unexpected death of the veteran, or (II) the death of the veteran while the veteran was participating in a hospice program conducted by the Administrator, such counseling services, for a period of not to exceed 6 months, as the Administrator determines to be reasonable and necessary to assist such individual with the emotional and psychological stress accompanying the veteran's death.

For the purposes of this paragraph, a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of this title shall be eligible for the same medical services as a veteran.".

SEC. 207. ELIGIBILITY FOR DOMICILIARY CARE

(a) IN GENERAL.—Subsection (b) of section 610 is amended to read as follows:

"(b) The Administrator, through Veterans' Administration facilities, may furnish such domiciliary care as the Administrator determines is needed by a veteran for the purpose of receiving treatment or rehabilitation if the Administrator finds, pursuant to regulations which the Administrator shall prescribe, that the veteran—

(1) has a service-connected disability, or

(2) is incapacitated from earning a living and has no adequate means of support.".

(b) CONFORMING AMENDMENT.—Section 622(g) is amended by striking out "sections 610(b)(2) and" and inserting in lieu thereof "section".

SEC. 208. CONTRACTS AND GRANTS FOR MEDICAL CARE FOR UNITED STATES VETERANS IN THE REPUBLIC OF THE PHILIPPINES

(a) EXTENSIONS OF AUTHORITIES; IMPROVEMENT OF GRANT AUTHORITY.—Section 632 is amended—

(1) in subsection (a), by striking out "September 30, 1986" and inserting in lieu thereof "September 30, 1989"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking out "September 30, 1986" and inserting in lieu thereof "September 30, 1989"; and

(B) by adding at the end the following new paragraph:

"(4)(A) Grants under this subsection for any fiscal year shall be made on a biannual basis, with no more than one-half of the amount of the grant being paid during the first half of such fiscal year and with no more than one-half of such amount being paid during the second half of such fiscal year.

"(B) No payment of such a grant may be made unless the Administrator has first submitted to the appropriate committees of the Congress a report setting forth the amount of the preceding biannual payment and a detailed accounting showing the uses made of such payment by the Veterans Memorial Medical Center.".

(b) EFFECTIVE DATES OF GRANT-AUTHORITY IMPROVEMENTS.—(1) Subparagraph (A) of paragraph (4) of section 632(b) of title 38, United States Code, as added by subsection (a)(2)(B), shall take effect on October 1, 1986.

(2) Subparagraph (B) of such paragraph, as so added, shall take effect on April 1, 1987.

SEC. 209. MEDICAID TREATMENT OF PER DIEM PAYMENTS TO STATE VETERANS' HOMES

Section 641 is amended by adding at the end thereof the following new subsection:

"(d) Payments made to States pursuant to this section—

"(1) shall not be considered to be a third-party liability for any purpose under section 1902(a)(25) of title XIX of the Social Security Act (42 U.S.C. 1396a(25)); and

"(2) shall, for purposes of determining under title XIX of the Social Security Act the reasonable costs of services provided by a State home, not be deducted directly or indirectly from the operating or other costs of such State home.".

PART B—HEALTH-CARE ADMINISTRATION

SEC. 211. ENFORCEMENT OF STATE AND LOCAL TRAFFIC LAWS BY VETERANS' ADMINISTRATION POLICE OFFICERS

Paragraph (1) of section 218(b) is amended to read as follows:

"(1) Veterans' Administration employees who are Veterans' Administration police officers shall enforce, with respect to acts occurring on Veterans' Administration property—

"(A) Federal laws;

"(B) the rules prescribed under subsection (a)(2)(A) of this section; and

"(C) traffic and motor vehicle laws of a State or local government within the jurisdiction of which such Veterans' Administration property is located, pursuant to an express grant of authority under State or local law to enforce such laws, by issuing citations for violations thereof.

Subject to regulations prescribed under paragraph (2) of this subsection, a Veterans' Administration police officer may make an arrest on Veterans' Administration property for a violation of any Federal law or any such rule.".

SEC. 212. IONIZING RADIATION REGISTRY

(a) ESTABLISHMENT OF REGISTRY.—Not later than 180 days after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall establish, and shall thereafter maintain, a special record to be known as the "Ionizing Radiation Registry" (hereafter in this section referred to as the "Registry").

(b) CONTENT OF REGISTRY.—The Registry shall include the following information:

(1) Subject to subsection (c), a list containing the name of each veteran who was exposed to ionizing radiation under the conditions described in section 610(e)(1)(B) of title 38, United States Code, and—

(A) who has applied for hospital or nursing home care from the Veterans' Administration under such title; or

(B) who has filed a claim for compensation under chapter 11 of such title on the basis of a disability which may be associated with the exposure to ionizing radiation; or

(C) who has died and is survived by a spouse, child, or parent who has filed a claim for dependency and indemnity compensation under chapter 13 of such title on the basis of the exposure of such veteran to ionizing radiation.

(2) Medical data relating to each veteran listed in the Registry under paragraph (1), including the veteran's medical history and health status recorded by the Veterans' Administration including the results of physical examinations by the Veterans' Administration, and a statement describing birth defects, if any, in the natural children of the veteran.

(3) Data on claims for the benefits referred to in paragraph (1), including decisions and determinations of the Veterans' Administration relating to such claims.

(4) An estimate of the dose of radiation to which each veteran listed in the Registry under paragraph (1) was exposed under the conditions described in section 610(e)(1)(B) of such title.

(c) NAMES NOT REQUIRED TO BE INCLUDED.—The Administrator is not required to include in the Registry the name of a veteran described in subsection (b)(1) if the request or claim referred to in subsection (b)(1) which relates to such veteran was filed before the date of the enactment of this Act and such veteran or the survivor filing the claim (in the case of a claim referred to in clause (C) of subsection (b)(1)) does not request the Veterans' Administration to include the veteran's name in the Registry.

(d) CONSOLIDATION OF EXISTING INFORMATION.—For the purpose of establishing and maintaining the Registry, the Administrator of Veterans' Affairs shall compile and consolidate relevant information maintained by the Department of Veterans' Benefits, the Department of Medicine and Surgery, and the Board of Veterans' Appeals of the Veterans' Administration, relevant information maintained by the Defense Nuclear Agency of the Department of Defense, and relevant information maintained by any other subdivision of the Veterans' Administration or the Department of Defense.

(e) DEPARTMENT OF DEFENSE INFORMATION.—The Secretary of Defense shall furnish the Administrator such information maintained by any agency of the Department of Defense as the Administrator considers necessary to establish and maintain the Registry.

(f) DEFINITION.—For the purpose of this section, the term "veteran" shall have the meaning provided in section 101(2) of title 38, United States Code, and shall also include a person who died in the active military, naval, or air service.

SEC. 213. AUTHORITY TO WAIVE LICENSURE AND INTERNSHIP REQUIREMENTS FOR RESEARCH PSYCHOLOGISTS

Clause (8) of section 4105(a) is amended by striking out "may" and all that follows through "and" at the end of such clause and inserting in lieu thereof the following: "may, on a case-by-case basis—

"(A) waive the requirement of licensure or certification for a psychologist for a period not to exceed 2 years on the condition that such psychologist provide patient care only under the direct supervision of a psychologist who is so licensed or certified; and

"(B) waive the requirements of internship and of licensure or certification for a psychologist who is to be employed to conduct research and is to have no responsibility for furnishing direct patient-care services; and".

SEC. 214. REQUIREMENT FOR MEDICARE HOSPITALS TO PARTICIPATE IN VETERANS' ADMINISTRATION CONTRACT HEALTH-CARE PROGRAM

(a) IN GENERAL.—Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1) is amended—

(1) by striking out "and" at the end of subparagraph (I);

(2) by striking out the period at the end of subparagraph (J) and inserting in lieu thereof a comma and "and"; and

(3) by inserting after subparagraph (J) the following new subparagraph:

"(K) in the case of hospitals which provide inpatient hospital services for which payment may be made under this title, to be a participating provider of medical care under section 603 of title 38, United States Code, in accordance with such admission practices, and such payment methodology and amounts, as are prescribed under joint regulations issued by the Secretary and by the Administrator of Veterans' Affairs in implementation of such section.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to inpatient hospital services provided pursuant to admissions to hospitals occurring on or after January 1, 1987.

(c) REPORT.—(1) The Secretary of Health and Human Services shall report to the Congress periodically on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act as a result of the additional conditions imposed under the amendments made by subsection (a).

(2) Not later than April 1, 1987, the Administrator of Veterans' Affairs shall report to the Committees on Veterans' Affairs of the Senate and the House of Representatives regarding implementation of this section and shall thereafter notify such committees in the event that any hospital terminates or fails to renew an agreement described in paragraph (1) for the reasons therein described.

SEC. 215. ORGANIZATION OF THE DEPARTMENT OF MEDICINE AND SURGERY

(a) OFFICE OF THE CHIEF MEDICAL DIRECTOR.—Section 4103(a) is amended—

(1) by inserting "persons, each of whom shall be qualified in the administration of health services" after "following";

(2) in clause (3)—

(A) by striking out "The" and inserting in lieu thereof "Two";

(B) by striking out "Director" the first place it appears and inserting in lieu thereof "Directors";

(C) by striking out "an assistant" and inserting in lieu thereof "assistants";

(D) by striking out "shall be a qualified doctor of medicine" and inserting in lieu thereof "both shall be persons with specified qualifications"; and

(E) by adding at the end the following new sentence: "Not more than one Associate Deputy Chief Medical Director may be a person who is a person with specified qualifications solely by reason of clause (ii) of the last sentence of this subsection.";

(3) in clause (4)—

(A) by striking out "shall be" the first place it appears and inserting in lieu thereof "all shall be persons with specified qualifications,";

(B) by striking out "qualified in the administration of health services who are not doctors of medicine, dental surgery, or dental medicines" and inserting in lieu thereof "who are persons with specified qualifications solely by reason of clause (ii) of the last sentence of this subsection"; and

(C) by striking out "qualified physician" and inserting in lieu thereof "person with specified qualifications";

(4) in clause (5)—

(A) by inserting a comma and "all of whom shall be persons with specified qualifications," after "Directors";

(B) by striking out the comma after "Administrator" and "Director", respectively; and

(C) by striking out the second sentence;

(5) in clause (6), by inserting "upon the recommendation of the Chief Medical Director" after "Administrator";

(6) in clause (7)—

(A) by inserting a comma and "each of whom shall be licensed in the appropriate service field" after "Optometric Service"; and

(B) by inserting "upon the recommendation of the Chief Medical Director" after "Administrator"; and

(7) by adding at the end the following new sentence:

"For the purpose of this subsection, the term 'person with specified qualifications' means (i) a person meeting the requirements set forth in clause (1), (2), (3), (5), (6), (7), or (8) of subsection (a) of section 4105 of this title, or (ii) a person who meets or has met the requirements set forth in clause (4) of such subsection.".

(b) TECHNICAL AMENDMENT.—Clause (3) of section 4103(b) is amended by inserting a comma after "reappointed" and after "extended", respectively, and by striking out the comma after "reappointment".

PART C—MEDICAL FACILITY CONSTRUCTION AND PLANNING

SEC. 221. PARKING FACILITIES

(a) REVISION OF AUTHORITIES.—(1) Section 5009 of title 38, United States Code, is amended to read as follows:

"§ 5009. Parking facilities

"(a) For the purpose of this section—

"(1) the term 'garage' means a structure (or part of a structure) in which vehicles may be parked;

"(2) the term 'parking facility' includes a surface parking lot and a garage; and

"(3) the term 'eligible person' means an individual to whom the Administrator is au-

thorized to furnish medical examination or treatment.

"(b) In order to accommodate the vehicles of employees of medical facilities, vehicles used to transport veterans to or from such facilities for the purpose of examination or treatment, and the vehicles of visitors and other individuals having business at such facilities, the Administrator—

"(1) may construct or alter parking facilities, and may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, such land or interests in land as the Administrator considers necessary for use as the site for any such construction or alteration;

"(2) may acquire, by purchase, lease, condemnation, donation, exchange, or otherwise, any facility that the Administrator considers necessary for use as a parking facility; and

"(3) may operate and maintain parking facilities.

"(c)(1) Except as provided in paragraph (2) of this subsection, each employee, visitor, and other individual having business at a medical facility for which parking fees have been established under subsection (d) or (e) of this section shall be charged the applicable parking fee for the use of a parking facility at such medical facility.

"(2) A parking fee shall not be charged under this subsection for the accommodation of any vehicle used to transport to or from a medical facility (A) a veteran or eligible person in connection with such veteran or eligible person seeking examination or treatment, or (B) a volunteer worker (as determined in accordance with regulations which the Administrator shall prescribe) in connection with such worker performing services for the benefit of veterans receiving care at a medical facility.

"(3) The Administrator shall collect (or provide for the collection of) parking fees charged under this subsection.

"(d)(1) For each medical facility where—

"(A) a garage constructed or acquired by the Veterans' Administration at a cost exceeding $500,000 (or, in the case of acquisition by lease, $100,000 per year), is first opened for use after September 30, 1986; or

"(B) a project for the alteration of a garage at a cost exceeding $500,000 is completed after September 30, 1986,

the Administrator shall prescribe a schedule of parking fees to be charged at all parking facilities used in connection with such medical facility.

"(2) The parking fee schedule prescribed for a medical facility referred to in paragraph (1) of this subsection shall be designed to establish fees which the Administrator determines are reasonable under the circumstances and, at a minimum, will provide revenue sufficient to recover the costs of operating and maintaining all parking facilities at such medical facility.

"(e) The Administrator may prescribe a schedule of parking fees for the parking facilities at any medical facility not referred to in subsection (d) of this section. Any such schedule shall be designed to establish fees which the Administrator determines to be reasonable under the circumstances and shall cover all parking facilities used in connection with such medical facility. The Administrator may consider the costs of operating and maintaining such parking facilities in prescribing any such fee schedule.

"(f) The Administrator may contract, by lease or otherwise, with persons, firms, or corporations for the operation of parking facilities at medical facilities under such terms and conditions as the Administrator shall prescribe and may do so without regard to laws requiring full and open competition.

"(g) Subject to subsections (h) and (i) of this section, there are authorized to be appropriated such amounts as are necessary to finance (in whole or in part)—

"(1) the construction, alteration, and acquisition (including site acquisition) of parking facilities at medical facilities; and

"(2) the operation and maintenance of parking facilities at medical facilities.

"(h)(1) Amounts appropriated pursuant to subsection (g) of this section and parking fees collected under subsection (c) of this section shall be administered as a revolving fund and shall be available without fiscal year limitation.

"(2)(A) Except as provided in subparagraph (B) of this paragraph, the revolving fund shall be deposited in a checking account with the Treasurer of the United States.

"(B) The Administrator may deposit in depositories selected by the Administrator such amounts as the Administrator determines necessary to establish and maintain accounts for the purposes of the operation and maintenance of parking facilities.

"(3)(A) Except as provided in subparagraph (B) of this paragraph, no funds other than funds from the revolving fund may be expended for the construction, alteration, or acquisition (including site acquisition) of a garage at a medical facility after September 30, 1986.

"(B) Subparagraph (A) of this paragraph does not apply to the use of funds for investigations and studies, surveys, designs, plans, working drawings, specifications, and similar actions not directly involved in the physical construction of a structure.

"(i)(1) The expenditure of funds from the revolving fund may be made only for the construction, alteration, acquisition (including site acquisition), operation, and maintenance of parking facilities at medical facilities and may be made only as provided for in appropriation Acts.

"(2) For the purpose of section 5004(a)(2) of this title, a bill, resolution, or amendment which provides that funds in the revolving fund (including any funds proposed in such bill, resolution, or amendment to be appropriated to the revolving fund) may be expended for a project involving a total expenditure of more than $2,000,000 for the construction, alteration, or acquisition (including site acquisition) of a parking facility or facilities at a medical facility shall be considered to be a bill, resolution, or amendment making an appropriation which may be expended for a major medical facility project.

"(j) Nothing in this section shall preclude funds appropriated to the Veterans' Administration medical care account from being used for the operation and maintenance of parking facilities at medical facilities.".

(2) The table of sections at the beginning of chapter 81 of such title is amended by striking out the item relating to section 5009 and inserting in lieu thereof the following:

"5009. Parking facilities.".

(b) Effective Dates.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2)(A)(i) The amendments made by this section shall not abrogate the provisions of a collective bargaining agreement which, on the date of the enactment of this Act, is in effect and includes a provision which specifies a termination date for such agreement.

(ii) In the case of a collective bargaining agreement which on such date of enactment is in effect but has no provision which specifies a termination date, the authorities and requirements in section 5009 of title 38, United States Code, as amended by subsection (a)(1) of this section, to establish and collect parking fees shall take effect on January 1, 1988.

(iii) After the date of the enactment of this Act, if a collective bargaining agreement described in division (i) is modified, extended, or renewed, division (i) shall no longer, as of the date of the modification, extension, or renewal, apply to such agreement.

(B) Subsection (h)(3) of section 5009 of title 38, United States Code, as such section is amended by subsection (a)(1) of this section, shall not apply to the expenditure of funds appropriated for a fiscal year prior to fiscal year 1987 for the construction, alteration, or acquisition (including site acquisition) of a parking facility at a Veterans' Administration medical facility.

SEC. 222. CONSIDERATION OF SHARING DEPARTMENT OF DEFENSE FACILITIES

Section 5004(b)(1) is amended by inserting "and to the sharing of health-care resources with the Department of Defense under section 5011 of this title" after "purchase".

SEC. 223. STATE HOME GRANTS

(a) Deletion of Authority for Grants for the Expansion of State Home Hospital Facilities.—(1) Section 5031(c) is amended to read as follows:

"(c) The term 'construction' means—

"(1) the construction of new domiciliary or nursing home buildings;

"(2) the expansion of existing buildings for the provision of domiciliary or nursing home care in State homes;

"(3) the remodeling or alteration of existing buildings for the provision of domiciliary, nursing home, or hospital care in State homes; and

"(4) the provision of initial equipment for any such buildings.".

(2) Section 5032 is amended to read as follows:

"§ 5032. Declaration of purpose

"The purpose of this subchapter is to assist the several States (1) to construct State home facilities (or to acquire facilities to be used as State home facilities) for furnishing domiciliary or nursing home care to veterans, (2) to expand existing buildings for furnishing domiciliary or nursing home care to veterans in State homes, and (3) to remodel or alter existing buildings for furnishing domiciliary, nursing home, or hospital care to veterans in State homes.".

(b) Extension of Authorization of Appropriations.—Section 5033 is amended by striking out "five" and inserting in lieu thereof "8".

(c) Establishment of Priority of Projects.—(1)(A) Subchapter III of chapter 81 is amended by adding at the end the following new section:

"§ 5038. Priority of projects

"(a) Sums available for grants under this subchapter shall be allocated among State home facilities construction projects in accordance with the priority established for such projects pursuant to subsection (b) of this section.

"(b) The Administrator shall prescribe regulations to establish criteria and procedures for determining the priority to be accorded to State home facilities construction

projects with respect to which applications have been approved under section 5035 of this title.".

(B) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 5037 the following new item:

"5038. Priority of projects.".

(2)(A) The Administrator of Veterans' Affairs shall develop the regulations required by section 5038(b) of title 38, United States Code (as added by paragraph (1)), and any amendments to those regulations, through a public review and comment process in accordance with the provisions of section 553 of title 5, United States Code. The period for public review and comment shall be completed not later than 60 days after the proposed regulations or proposed amendments are published in the Federal Register in accordance with subparagraph (B).

(B) Not later than 180 days after the date of the enactment of this Act, the Administrator shall develop and publish in the Federal Register a proposed version of the regulations required to be prescribed by such section 5038(b).

(C) Not later than 270 days after the date of the enactment of this Act, the Administrator shall publish in the Federal Register the final regulations required to be prescribed by such section 5038(b).

(3)(A) Except as provided in subparagraph (B), the amendments made by paragraphs (1) and (2) shall take effect with respect to applications submitted to the Administrator of Veterans' Affairs under section 5035 of title 38, United States Code, on or after October 1, 1986.

(B) The amendments made by paragraphs (1) and (2) shall not apply with respect to an application referred to in subparagraph (A) if, before October 1, 1986, the applicant furnished any preliminary information to the Veterans' Administration relating to such application in accordance with procedures established by the Veterans' Administration and then in effect in connection with the administration of subchapter III of chapter 81 of title 38, United States Code.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. MODIFICATIONS OF CERTAIN REPORTING REQUIREMENTS

(a) REPEAL OF ANNUAL REPORTS ON EQUITABLE RELIEF.—Section 210(c)(3) is amended by striking out "(A)" and clause (B).

(b) CONDITIONAL ELIMINATION OF REQUIREMENT FOR REPORT ON CONTRACT DENTAL CARE.—Paragraph (4) of section 612(b) is amended—

(1) by striking out "In" after "(4)" and inserting in lieu thereof "(A) Except as provided in subparagraph (B) of this paragraph, in"; and

(2) by adding at the end the following new subparagraph:

"(B) No report under subparagraph (A) of this paragraph with respect to a fiscal year is required if, in the documents submitted by the Administrator to the Congress in justification for the amounts included for Veterans' Administration programs in the President's Budget, the Administrator specifies with respect to contract dental care described in such subparagraph—

"(i) the actual level of expenditures for such care in the fiscal year preceding the fiscal year in which such Budget is submitted;

"(ii) a current estimate of the level of expenditures for such care in the fiscal year in which such Budget is submitted; and

"(iii) the amount included in such Budget for such care.".

(c) EXTENSION OF PERIOD FOR REPORT ON SPECIAL PAY FOR PHYSICIANS AND DENTISTS.—Section 4118(g)(2)(C) is amended by striking out "once every two years" and inserting in lieu thereof "December 31, 1984, and once every 3 years".

(d) REPEAL OF REQUIREMENT FOR REPORT ON EXCHANGE OF MEDICAL INFORMATION PROGRAM.—(1) Section 5053 is amended by adding at the end the following new subsection:

"(e) The Administrator shall submit to the Congress not more than 60 days after the end of each fiscal year a report on the activities carried out under this section. Each report shall include (1) an appraisal on the effectiveness of the activities authorized in this section and the degree of cooperation from other sources, financial and otherwise, and (2) recommendations for the improvement or more effective administration of such activities.".

(2) Section 5057 is repealed.

(3) The table of sections at the beginning of chapter 81 is amended by striking out the item relating to section 5057.

Amend the title so as to read: "A bill to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans and the rates of dependency and indemnity compensation for surviving spouses and children of veterans; to improve the Veterans' Administration home loan guaranty program; to provide the Veterans' Administration with authority to contract for psychiatric residential treatment for certain chronically mentally ill veterans and to conduct pilot programs to provide respite care for certain veterans and to contract for health-related services for certain veterans; to extend certain expiring authorities; to revise the authority of the Veterans' Administration to construct and operate parking facilities at its medical facilities; and to require the Veterans' Administration to establish an Ionizing Radiation Registry; and for other purposes.".

AMENDMENT NO. 3099

(Purpose: To establish presumptions of service connection for certain disabilities of former prisoners of war, to modify the transition of the Vietnam-era veterans' readjustment counseling program, and for other purposes)

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senators MURKOWSKI and CRANSTON and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for Mr. MURKOWSKI (for himself and Mr. CRANSTON) proposes an amendment numbered 3099.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 18, below line 6, amend the table of contents by inserting after the item relating to section 209 the following new item:

Sec. 210. Vietnam-era veterans' readjustment counseling program.

On page 19, above line 1, amend the table of contents by inserting after the item relating to section 215 the following new items:

Sec. 216. Authority for part-time and temporary appointments.

Sec. 217. Report on a national drug file.

On page 19, above line 1, further amend the table of contents by inserting after the item relating to section 301 the following new item:

Sec. 302. Contract authority subject to appropriations.

On page 21, line 18, insert "and" after the semicolon.

On page 21, strike out all on line 19.

On page 21, line 20, redesignate clause (3) as clause (2).

On page 21, line 21, strike out "clause" and insert in lieu thereof "clauses".

On page 21, line 25, strike out the quotation mark and period and insert "or" in lieu thereof.

On page 21, below line 25, insert the following:

"(12) post-traumatic osteroarthritis, or

"(13) irritable bowel syndrome if the veteran is suffering from a psychiatric disability which is service connected and compensable in degree,".

On page 44, below line 21, insert the following new section:

SEC. 210. VIETNAM-ERA VETERANS READJUSTMENT COUNSELING PROGRAM.

(a) EXTENSION OF PROGRAM TRANSITION.—Section 612A(g) is amended—

(1) in paragraph (1)—

(A) by striking out "twelve-month" and inserting in lieu thereof "24-month";

(B) by striking out "September 30, 1988" and inserting in lieu thereof "September 30, 1989"; and

(C) in clause (A), by striking out "orderly transition by October 1, 1988" and inserting in lieu thereof "orderly and gradual transition by October 1, 1989";

(2) in paragraph (2)—

(A) in subparagraph (A), by inserting "(or, if the study is not completed, whatever information from it is then available)" after "1983";

(B) in subparagraph (B)—

(i) by striking out "and" at the end of clause (i);

(ii) by striking out the period at the end of clause (ii) and inserting in lieu thereof a semicolon and "and"; and

(iii) by adding at the end, the following new clause:

"(iii) the Administrator's analysis and findings as to whether or not veterans who served on active duty during World War II or the Korean conflict (with particular emphasis on those who served in combat) could benefit from services provided under this section and, if so, the Administrator's recommendations on the most desirable means by which such services could be furnished.";

(3) in paragraph (3), by adding at the end the following new sentence: "Such report shall be prepared taking into consideration the results of the study required by section 102 of the Veterans' Health Care Amendents of 1983 (or, if the study is not completed, whatever information from it is then available)."; and

(4) by adding at the end the following new paragraph:

"(4) Not later than February 1, 1989, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the Administrator's evaluation of the experience under as much of the transition as was carried out pursuant to paragraph (1) of this subsection prior to September 30, 1988, and, based on that evaluation, the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983 (or, if the study is not completed, whatever information from it is then available), and other pertinent information regarding the readjustment counseling program, the Administrator's opinion as to the extent to which the provision of readjustment counseling services under this section in a program providing such services through facilities situated apart from Veterans' Administration health-care facilities is needed to meet the readjustment needs of veterans who served on active duty during the Vietnam era.".

(b) STUDY OF VIETNAM-ERA VETERANS' PSYCHOLOGICAL PROBLEMS.—Section 102 of the Veterans' Health Care Amendments of 1983 (Public Law 98-160; 97 Stat. 994) is amended—

(1) in subsection (b) by striking out "October 1, 1986" and inserting in lieu thereof "October 1, 1987"; and

(2) by adding at the end the following new subsection:

"(d) In order to promote the participation in the study required by subsection (a) of a number of study subjects sufficient to yield scientifically valid results from such study, the Administrator shall pay an appropriate stipend to each individual participating in the study as a subject. In determining the amount of such stipend, the Administrator shall take into account (1) the amount of time that the individual is expected to devote to participation in the study, (2) the extent to which the individual's normal routine is disrupted as a result of such participation, (3) any travel by the individual in connection with such participation, and (4) such other factors as the Administrator considers appropriate."

On page 53, between lines 15 and 16, insert the following new sections:

SEC. 216. AUTHORITY FOR PART-TIME AND TEMPORARY APPOINTMENTS.

Section 4114(a) is amended—

(1) in paragraph (1)—

(A) in clause (A), by inserting after "dental auxiliaries" a comma and "certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses"; and

(B) in clause (B), by inserting after "dental auxiliaries" a comma and "certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses";

(2) in paragraph (2), by striking out "paragraph (1) of section 4104" and inserting in lieu thereof "paragraphs (1) and (3) of section 4104"; and

(3) in paragraph (3)—

(A) in subparagraph (A), by striking out "paragraph (1) of section 4104" and inserting in lieu thereof "paragraphs (1) and (3) of section 4104"

(B) in subparagraph (B), by inserting "and except as authorized in subparagraph (D) of this paragraph" after "programs"; and

(C) by adding at the end the following new subparagraph:

"(D) During any period during which the Administrator is exercising the authority of only section 4106(a) and (g)(1) of this title for the appointment of personnel in the category of certified or registered respiratory therapists, licensed physical therapists, or licensed practical or vocational nurses—

"(i) the Administrator may make temporary full-time appointments of personnel in such category for periods exceeding 90 days if the Chief Medical Director finds that circumstances render it impractical to obtain the necessary services through appointments under paragraph (3) of section 4104 of this title; and

"(ii) part-time appointments of personnel in such category may be for periods of more than 1 year.".

SEC. 217. REPORT ON A NATIONAL DRUG FILE.

Not later than 90 days after the date of the enactment of this Act, the Administrator of Veterans' Affairs shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the plans of the Department of Medicine and Surgery for the development, establishment, and administration of a national drug file, including an agency-wide reclassification and inventory system for all drugs utilized by the Veterans' Administration. The report shall also include—

(1) any timetable for the establishment of such a drug file;

(2) an estimate (and the underlying criteria therefor) of the number of employees, all computer equipment (including any additional computer equipment), and total expenditures necessary to develop, establish, and administer such a drug file; and

(3) any other matters the Administrator considers appropriate to include in the report.

On page 65, below 11, insert the following new section:

SEC. 302. CONTRACT AUTHORITIES SUBJECT TO APPROPRIATIONS.

All authorities provided in this Act to enter into contracts are effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

Mr. MURKOWSKI. Mr. President, I rise to ask my colleagues to join with me and my distinguished colleague Senator CRANSTON, the ranking minority member of the Committee on Veterans' Affairs, in supporting S. 2422. This bill, the "Omnibus Veterans' Benefits Improvements and Health-Care Authorization Act of 1986" would continue the long and honorable tradition established by the Congress in meeting the needs of the Nation's veterans.

This tradition began in 1636 when the Plymouth colony is said to have made a commitment that "if any man shall go forth on behalf of the colony and be maimed, he shall be competently maintained by the colony." The benefit programs of today far exceed that commitment. Today, over 2.2 million veterans receive compensation for the residual effects of any disability or illness incurred or aggravated while they were on active duty. There is no requirement that the disease or disability be related to the performance of duty.

Today, approximately 100,000 veterans receive inpatient medical care each day. The Veterans' Administration [VA] expects to provide over 18 million outpatient visits in fiscal year 1987. Today, over 12 million veterans have purchased homes through the VA Loan Guaranty Program. Over 18 million veterans enjoy the advantage of an education obtained using veterans' education benefits.

We see the fruits of these programs when we view the statistics describing the education and income of veterans. Veterans are shown to have less unemployment, more education, higher income and a higher rate of home ownership than their nonveteran peers. America is proud of our veterans, and we should be; veterans gained our respect the old fashioned way, they earned it. Americans can also be proud of the benefit programs the Congress has created to serve those who served us. These programs are both generous and effective.

S. 2422, if enacted, would continue the Congress' proud record of response to the needs of America's veterans. Title I would improve benefits for veterans with service-connected disabilities and other important VA benefits programs. First, it would improve or extend benefits providing for compensation for service-connected disability, employment, education and rehabilitation, and housing for America's veterans. Second, it would improve the administration of these programs.

Section 101 would provide a cost-of-living adjustment [COLA] to their compensation checks and to the payments made to the dependents and survivors of those who died on active duty or as a result of their service-connected disability. Veterans' service organizations have repeatedly told the Congress they would accept a COLA equal to that received by the beneficiaries of other Federal programs. S. 2422, as reported by the committee, would provide a COLA equal to that of other programs by directing the VA to compute and pay benefit rates increased by the same percentage as that provided to Social Security recipients. A lesser COLA would be unfair to our veterans, a greater COLA would divert to increased benefit rates funds which might better serve veterans if applied to other programs.

S. 2422 would address the needs of former POW's by expanding in section 102 the list of disabilities which may be presumed to have their origin while the former POW was incarcerated. The bill would add frostbite to the list of diseases presumed service-connected for those former POW's who were captured or held under conditions which could have resulted in frostbite. When the committee considered the bill the medical and scientific linkage between the POW experience and irritable bowel syndrome was unclear. The feasibility of distinguishing between current arthritis which is the result of past trauma and other forms of naturally occurring arthritis was also unclear. The committee has received additional information since considering the bill last June and these conditions are now addressed in the committee amendment to the bill.

S. 2422 would address the needs of veterans with very serious service-connected disabilities by extending, in section 103, the Independent Living Services Pilot Program for an additional 3 years. The pilot program allows the VA's Vocational Rehabilitation Service to provide assistance to veterans so disabled as to make vocational training currently infeasible. Using this program the VA can assist those veterans in developing the skills and techniques necessary to live independently of institutional support. The number of veterans affected by this program is not large; but for these veterans, all of whom have very serious service-connected disabilities, the program can make an important positive difference in their day-to-day lives.

S. 2422, in section 104, would address the concerns of Vietnam veterans who are seeking Federal employment while suffering a service-connected disability or without the advantages of higher education by extending the Veterans Readjustment Appointments [VRA] hiring authority for 2 years.

Under current law, the VRA does not provide authority to hire veterans with more than 14 years education unless the veteran has a service-connected disability. Some veterans have asked the Senate to eliminate the 14-year education ceiling. If the 14-year ceiling is eliminated, agencies would be able to use the VRA to hire nondisabled and highly educated veterans and pass over veterans who are disabled and less well educated. This would defeat the purpose of the VRA by removing the incentive for hiring disabled and educationally disadvantaged veterans. S. 2422 leaves unchanged the 14-year education ceiling which has been in effect since VRA was first established by Executive order in 1970. It is important for my colleagues to remember that veterans who are not eligible for a VRA appointment have the benefit of veterans' preference when pursuing Federal employment through normal civil service procedures.

Mr. President, when the Senate passed S. 1887 last year, we took an important step toward reforming the Veterans' Home Loan Guaranty Program without reducing the value of the benefit to veterans. S. 2422 includes a provision which would further protect the integrity of this vital program without reducing benefits to veterans. Under current law, if a veteran home buyer defaults on a VA-guaranteed loan, the VA will make good on a lender's loss up to 60 percent of the value of the loan with a maximum guaranty of $27,500. Rather than pay this guaranty to the lender the VA can pay off the loan and all costs and take title to the property. This practice can be very costly to the Government with the VA losing approximately $15,000 on each property taken back. The Congress has had to appropriate over $500 million to the loan guaranty revolving fund since fiscal year 1984 to cover such losses. The VA currently has an inventory of over 20,000 homes, 22 percent of them in the VA's hands for over a year. The longer the VA holds a home the greater the loss to the VA and the taxpayer.

Section 111 of S. 2422 would address this problem by directing the VA to assess local real estate market conditions and take title to foreclosed homes only if the VA determines they could resell the house at an advantageous price within 1 year. I emphasize to my colleagues that this provision does not reduce or retract the VA's obligation to either the veteran or the lending institution. The VA will still have and honor the same obligation to make good on its guaranty. This provision will, however, protect the taxpayer by reducing the instances where the VA, by acquiring a foreclosed property, goes beyond its obligation to the lender to the detriment of the taxpayers who must ultimately bear the loss. This provision will benefit veterans by reducing the amount of money diverted from the veterans' benefits budget to cover these losses.

TITLE II

Title II of S. 2422 would make improvements in three major areas of the VA's health-care delivery system. First, it would provide the VA with additional authorities, and therefore increased flexibility, to provide new and innovative health-care services. Second, it would provide for improvements in the administration of certain VA health care programs. Third, it would encourage significant changes in the future direction of the VA's Medical Facility Construction Program.

During the 98th and 99th Congresses, the Senate has taken a strong leadership role in passing legislation designed to foster the development of new modalities of health-care services to meet the needs of specific veteran patient populations. The Senate has been especially concerned about the aging veteran population expected to reach 7.2 million veterans by 1990 and 9 million veterans by the year 2000. In 1983, Public Law 98-160 authorized the VA to provide adult day health-care services as a noninstitutional, alternative form of care. In 1984, Public Law 98-528 made permanent the VA's Geriatric Research, Education, and Clinical Centers [GRECC's] and also required the VA to report to Congress on its programs for terminally ill veterans. Last year, Public Law 99-166 authorized the expansion of the GRECC's Program.

S. 2422 contains three provisions which would add to the initiatives of the past several years and address the continuing needs of elderly veterans. Section 201 would authorize the VA to provide home health services, including hospital-based home care services, in any setting in which the veteran is residing, including community residential care facilities. Section 203, would authorize the VA to provide, until September 30, 1990, respite care services to certain veterans who are chronically ill and who are residing primarily at home. Section 204 would require the VA to conduct a pilot program until December 31, 1990, to provide health-related services to certain veterans at 5 to 10 demonstration sites. It is the committee's intent that health-related sevices would include assistance for activities of daily living—including bathing, feeding, toileting, ambulation, and transferring—nutrition services, and transportation.

Section 204 would also require the Administrator to report to Congress on his evaluation, findings, and conclusions regarding the pilot program. I believe this evaluation will document the usefulness of health related services as preventive health-care interventions to avert or obviate the need for institutionalization. Disease prevention attempts to avert disease altogether, improve the outcome of the development of a disease, or arrest further deterioration in individuals who already suffer from disease. Similarly, the systematic targeting of appropriate health-related services to veterans at risk of being institutionalized may prevent, delay, or avert institutionalization and help these veterans remain independent as long as it is medically possible. The VA already provides health-related services at VA medical facilities for certain patients, such as veterans suffering from spinal cord injuries to help them make the maximum use of their physical capabilities and aid them in their adjustment to their disabilities. The pilot program required by section 204 is intended to provide similar assistance to certain veterans with a priority accorded to service-connected veterans, elderly veterans, totally and permanently disabled veterans, blinded veterans, and veterans with dementia, including Alzheimer's disease.

All these authorities would provide the VA with additional flexibility to target the most appropriate kind and level of services to veterans so that they may continue to reside independently at home or in the community as long as possible. These programs would serve as valuable additions to the VA's comprehensive continum of care. Most importantly, these authories would provide the VA with options for care which are humane and targeted to the specific needs of certain veterans. Without these options, certain veterans undoubtedly would be institutionalized.

S. 2422 would make certain improvements in the administration of VA health-care programs with an emphasis on three major areas of concern: Increasing data collection and exchange of information between the Department of Medicine and Surgery [DM&S] and the Department of Veterans' Benefits [DVB], improving financial arrangements between the VA and the private sector, and enhancing the organizational structure of the Department of Medicine and Surgery.

The committee has been most interested in the efforts by DM&S, the VA's medical department and by DVB, the VA's benefits department, to improve the coordination of information collected and services provided by these two major VA departments. Most recently, Public Law 99-166, enacted last year, required the VA to conduct a pilot program to provide and coordinate the provision of certain DM&S and DVB services by the VA's Readjustment Counseling Program. To continue this emphasis on DM&S-DVB information and services sharing and coordination, section 212 would require the Administrator to establish and maintain an ionizing radiation registry to contain medical, service-connected disability claim, and dose estimate information concerning certain veterans who were exposed to ionizing radiation during military service. The committee believes it is important for the VA to have a data base of DM&S and DVB information about veterans who may have been exposed to ionizing radiation during their service which is readily available, comprehensive, and useful for administrative and policy purposes.

S. 2422 would continue efforts begun last year by the Congress to strengthen the VA's management role in its financial arrangements with private sector health-care providers. Last year's reconciliation legislation—COBRA, Public Law 99-272—authorized the VA to seek reimbursement from third-party payers for the cost of care provided by the VA to veterans with private health insurance, thereby allowing the VA to recover the costs of certain care and services. Along the lines of allowing the VA to monitor more closely its contractual arrangements with the private sector, section 214 of S. 2422 would require the Administrator, along with the Secretary of HHS to establish, by joint regulations, a fee schedule for non-Federal hospitals which receive payment from the VA for care provided on a fee-basis to veterans. This is intended to promote increased accountability on the part of the private sector health care providers who provide, under contract arrangements, care to veterans at private sector facilities.

Because of the complexity and importance to the delivery of patient care services, the organizational structure of DM&S and the personnel qualifications of DM&S administrators and clinicians traditionally has been a matter of concern to the Congress. Numerous laws have been enacted to promote the recruitment and retention of high quality VA physicians, nurses, and other health-care professionals. Section 215 of S. 2422 would authorize the Administrator to appoint certain nonphysician health-care professionals to various positions in the Chief Medical Director's [CMD] office and would require that all persons appointed to positions in the CMD's office must be qualified in health services administration. The committee believes both of these initiatives will improve the CMD's ability to recruit and retain highly qualified health-care professionals to these important positions and to manage the VA's complex and extensive medical programs more effectively.

The third important area related to the provision of VA medical care services is the VA's major medical facility construction program. Over the past 3½ years, the committee has conducted an intensive investigation, including four hearings, of the VA's policies and procedures related to the VA's construction planning process and program. Approximately 50 percent of VA medical facilities are over 30 years old and in need of modernization. It is no longer feasible for the VA's construction program to keep pace with the needs for improvements. Last year, Public Law 99-166 made certain modifications to the VA's construction program, including requiring the Administrator to consider purchasing and leasing options prior to a decision to construct a new or replacement medical facility. Sections 221, 222, and 223 of S. 2422 would further encourage the VA to make maximum use of its valuable and limited construction dollars. Section 221 would establish a revolving fund for the construction of parking facilities at VA medical centers. Section 222 would require the VA to report to Congress on its consideration of sharing agreements with Department of Defense medical facilities. Section 223 would require the VA to establish a prioritization methodology for providing grant funds to States for the construction of State veterans home hospitals, nursing homes, or domiciliaries.

I would like to focus on section 221. Section 221 would reauthorize the construction of parking facilities at VA medical facilities, and would require the VA to implement a paid parking system for the use of parking facilities at VA medical facilities at which substantial new parking facility construction occurs. It would also require the establishment of a revolving fund into which parking fees collected would be deposited and from which funds for the construction and acquisition of parking garages would be expended.

Section 221 is intended to alleviate the critical need for parking at certain VA medical facilities by requiring the VA to establish a fee-based cost-recovery system for parking, which in the report accompanying the Senate's fiscal year 1986 HUD appropriations bill, the Appropriations Committee directed the VA to develop, before the Appropriations Committee would appropriate any additional funds for VA parking facilities.

The provision is consistent with the direction set by the Appropriations Committee and would establish a reasonable parking garage construction cost-recovery system which would not be onerous on any individual who uses the parking facilities and which will allow the VA to resume construction of needed parking facilities. The Senate Appropriations Committee has recommended an appropriation of $30 million into a VA parking garage revolving fund, $26 million of which would be new funds and $4 million of which would be a transfer from the major construction appropriation account.

There are other important provisions in S. 2422 related to the provision of VA health care services most notably section 202. This provision would authorize the Administrator to contract for community-based psychiatric residential treatment for chronically mentally ill veterans. This authority would serve to advance the development of a coordinated and comprehensive national health care system of community-based care for individuals who suffer from chronic mental illness disabilities but who do not require institutionalization. The VA is developing a pilot program to test such a program on a limited basis. This authority would serve to support the VA's efforts in this regard and demonstrate congressional support for increased efforts to provide a rehabilitative network of programs to meet, in a responsible way, the needs of chronically mentally ill individuals.

Mr. President, Senator CRANSTON and I have prepared a committee amendment to be considered concurrently with S. 2422. The provisions included in this amendment have been worked out and agreed to by Senator CRANSTON and myself.

The committee amendment would amend section 102 of S. 2422 as reported by the committee to add to the disabilities which may be presumed to be service connected in the case of former prisoners of war who were detained or interned for at least 30 days. Under the committee amendment, the list of presumptive disabilities would be expanded to include posttraumatic osteoarthritis and, in the case of those former POW's with a compensable service-connected psychiatric disability, irritable bowel syndrome. The VA has testified that presumptions of service connection for these disabilities would have little effect since most former POW's with these conditions have been granted service connection under normal procedures.

Nonetheless, representatives of former POW's believe that service connection has been denied for some of their members on the grounds that they are unable to document the occurrence or aggravation of these disabilities during their captivity. The lack of documentation of the mistreatment and malnutrition of ex-POW's held by our enemies is well known. I wish to make clear that the committee recognizes the extraordinary circumstances endured by former POW's. When the occurrence of certain disabilities in former POW's can be correlated to their service by medical and scientific information, the committee does not intend that a claim for such a disability be denied because of the lack of documentation inherent in the prisoner of war experience. Since the committee's June 26, 1986 markup, the VA has provided additional information regarding the ability to diagnose traumatic osteoarthritis and irritable bowel syndrome. The committee amendment reflects changes in the committee bill based on this additional information.

The committee amendment, section 210, pertains to the VA's Readjustment Counseling Program for Vietnam-era veterans. The committee amendment would make a number of changes to various due dates and reporting requirements concerning this program. First, the amendment would extend the date, by 1 year, by when the Administrator is required to complete the transition of the Vet Center Program for a program providing services primarily through storefront counseling centers to a program located primarily in VA medical centers. Under current law, the transition completion date is October 1, 1988. Section 210 of the committee amendment would extend that date until October 1, 1989, and would add the requirement that the transition be gradual as well as orderly.

Second, under current law, the Administrator is required to submit a report to Congress on the effectiveness of the Vet Center Program. That report, due to the committees on April 1, 1987, is required to give particular attention to the results of the study on posttraumatic stress disorder [PTSD] which is being conducted under contract by the Research Triangle Institute. The PTSD study is not expected to be completed in time for consideration of its final results prior to the submission of the Vet Center report. Therefore, the Administrator would be allowed, under the committee amendment, to consider whatever information from the PTSD study is then available if the PTSD study is not completed by the time the Vet Center report is submitted.

Third, section 210 of the committee amendment would also modify the Vet Center report to require the Administrator to make recommendations as to whether or not veterans of World War II or the Korean conflict have needs that would be met by this program and to make a recommendation as to whether eligibility for these services should be extended to them.

Fourth, the committee amendment, section 210, would require that the VA's transition plan, due to the Congress on July 1, 1987, be prepared in light of the PTSD study or whatever information is then available from it.

Fifth, the committee amendment, section 210, would also require the Administrator to submit, on February 1, 1989, a report to Congress 16 months after the transition period begins on the first year's transition experience and require the Administrator to advise the committees in the report of his opinion, based on that experience, as to whether the requirement to achieve a program primarily provided within VA medical centers by the October 1, 1989, transition completion date should be altered in the best interests of the veterans served by the program and by other VA programs. The PTSD study information would also be required to be taken into account in the preparation of this report.

Sixth, with respect to the conduct of the PTSD study, the committee amendment would extend the PTSD study report due date from October 1, 1986 until October 1, 1987.

And seventh, the committee amendment would require the Administrator to pay in appropriate stipend to the study participants. Because of the time involved, the disruption in their normal routine, the very personal nature of parts of the questionnaire relating to combat service, and any travel required, the committee believes that a stipend would promote participation in the study.

The committee amendment, section 216, would provide the VA with the authority to hire, on a temporary or part-time appointment basis, certified or registered respiratory therapists, licensed physical therapists, and licensed practical or vocational nurses for periods of more than 1 year at a time.

Mr. President, also included in the committee amendment, section 217, is a provision which would require the VA to report to Congress on its plan to establish and maintain a national drug file. The national drug file would increase the VA's ability to monitor the distribution and usage of drugs within the VA medical care system. It would also allow the VA to examine the quality and cost effectiveness of its drug distribution methods. I believe that such a system can be a model for both the Department of Defense and Medicare/Medicaid Programs.

The national drug file is currently being developed at certain VA medical centers. This project is of particular priority to the committee and thus I strongly encourage the VA to continue progress on this system.

Mr. President, in concluding I wish to thank my friend, the distinguished ranking minority member from California, Senator ALAN CRANSTON. As always, I appreciate the admirable working relationship which exists between the majority and minority on this committee, and which has resulted in the development of such a fine product. I wish to recognize the fine work of my most dedicated staff including my chief counsel and staff director, Anthony Principi, Julie Susman, Cathy McTighe, Chris Yoder, Brian Bonnett, Cindy Alpert, Lisa Moore, Becky Hucks, Daphne Howard, Anne Patterson, Judy Boertlein, Jody Sanders, and our printer, Roy Smith who all worked so diligently to make this effort a reality. I further wish to acknowledge the hard work of the entire minority staff, headed by Jon Steinberg, minority chief counsel, and including Ed Scott, Bill Brew, Babette Polzer, Nancy Billica, Ingrid Post, and Charlotte Hughes.

Mr. President, I believe the committee has reported a bill which meets the needs of our Nation's veterans, ensures high quality health care services, and improves health care services delivery. On behalf of the entire committee, I urge the Senate's favorable consideration of this bill. Thank you, Mr. President.

Mr. CRANSTON. Mr. President, the committee amendment includes a provision which the chairman and I are proposing to expand the provisions of the committee bill as reported dealing with certain presumptions applicable to the disabilities of veterans who were prisoners of war. Specially, the amendment would, in the case of a former POW who was interned for more than 30 days, add two disabilities to the list of disabilities presumed to be service connected if they become 10 percent or more disabling for the purpose of VA disability compensation. These disabilities are posttraumatic osteoarthritis and, in the case of a former POW with a service-connected, compensable neuropsychiatric condition, irritable bowel syndrome. These terms are the acceptable medical terms for arthritis resulting from trauma and for spastic colon, respectively.

I'm delighted that we were able to reach agreement on this issue and that we are incorporating this provision to assist those brave individuals who suffered so greatly in service to our Nation.

VIETNAM VETERANS READJUSTMENT COUNSELING ISSUES

Mr. President, the Murkowski-Cranston amendment includes provisions which I authored and urge be included relating to the VA's readjustment counseling program for Vietnam veterans. I am grateful to Chairman MURKOWSKI for his agreeing to accept these provisions.

As the author of the legislation that initially established the VA's Readjustment Counseling Program—Public Law 96-22, enacted in 1979—and various extensions of that program, I have been deeply interested in this program since its inception and have been very gratified over the years as the program has achieved such great success, helping so many veterans—over 500,000 thus far—and others. At present, there are 189 Vet centers—store front facilities located apart from other VA health-care facilities—across the Nation providing counseling and other assistance to eligible Vietnam-era veterans and their families.

Currently, there are a number of milestones in current law, as amended in 1983 by Public Law 98-160, which are related to a process whereby the existing Readjustment Counseling Program would, beginning on October 1, 1987, and ending on September 30, 1988, undergo a 1-year transition from a program providing services primarily throughout the Vet health care facilities, such as VA medical centers and outpatient clinics. The primarily criterion is generally construed to require that by the end of the transition period a majority of readjustment counseling programs must be operated at traditional VA facilities.

The first of these milestones is October 1 of this year, the date by which the Administrator of Veterans' Affairs is mandated to submit a report to the Veterans' Affairs Committee on the results of a comprehensive study of the prevalence and incidence among Vietnam veterans of posttraumatic stress disorder—PTSD—and other postwar psychological problems in readjusting after their service. Following that report, and taking the results of the study into consideration, the Administrator is required under current law to submit two additional reports. The first of these is due on April 1, 1987, and would be required to set forth the Administrator's evaluation of the VA's effectiveness in meeting the readjustment needs of Vietnam-era veterans and his opinion on whether the VA should go forward with the transition effort as in current law or whether there should be some modification to that mandate. The second report would be due on July 1, 1987, and would set forth the Administrator's plan for accomplishing the transition away from the Vet center approach during fiscal year 1988.

This approach of a comprehensive study together with staggered reports was designed to enable the Congress, during 1987-88, to make informed decisions about the future of the Readjustment Counseling Program, including the nature and timing of its integration into other VA health-care facilities. However, in a May 22, 1986, letter transmitting proposed legislation to the Congress, the Veterans' Administration noted that the private contractors who are carrying out the study for the VA "have experienced delays in the study's design and initiation." In view of those delays, the VA proposed moving the due date for the report on the study back 1 year, to October 1, 1987.

At the time of our markup on the underlying legislation, it was not clear that the contractor problems would be so severe as to delay the study for a full year. Shortly after the markup, however, it became apparent that the study timetable would become seriously disrupted.

In July, committee staff met with representatives of the VA and the study contractor, Research Triangle Institute, Inc., of North Carolina to review various problems and allegations that had arisen about the scope and conduct of the study. Thereafter, the chairmen and ranking minority members of both the House and Senate Committees on Veterans' Affairs wrote to the Office of Technology Assessment asking OTA to convene a panel to review the situation and make recommendations. OTA did that and on September 5 issued a report to the committees recommending some major alterations in the study personnel and VA supervisory relationship. The committees are awaiting the VA's response to the OTA recommendations at this time. But it is our firm conviction that the VA must act expeditiously to put the study back on track and to complete it swiftly and surely.

I continue to believe that this study is vital and must be considered in the course of any Vet center transition effort. I also am concerned that the 1-year transition process mandated in the original plan is much too short and would inevitably lead to arbitrary decisions to close down or transfer to VA medical centers large numbers of Vet centers. Because of my concerns on these two accounts, I am proposing in the pending amendment to extend the transition period over 2 years, from October 1, 1987, to September 30, 1989, and to require that it be carried out only gradually, on a phased basis, over the full 2-year period. In addition, I am proposing that the two report requirements that I just described be modified so that, if the results of the PTSD study are not available at the time the reports are due, the reports are to be submitted taking into consideration whatever information from the study is then available.

The amendment would also add a new required report from the Administrator to the committees. This report, which would be due by February 1, 1989, 16 months after the transition period begins, would set forth the Administrator's evaluation of the experience under the first year of the transition, together with any recommendations for change to the requirement that the program become one carried out primarily within VA facilities by the end of the new 2-year transition period. This report, which would also be required to take into account information from the PTSD study, will, I believe, be particularly important to the Congress in our ongoing efforts to review, assess, and plan for the future of the VA's Readjustment Counseling Program.

The amendment would also change the due date of the PTSD study report. As recommended by the VA, the amendment would delay the due date 1 year, to October 1, 1987. I realize that many of the problems that led to the delay of the study could not have been anticipated or avoided. However, in proposing this extension to the study due date, I want to stress my very strong view that the study must be completed by next October. Any further delay beyond that point will have the very unfortunate effect of substantially reducing the extent to which the study results will be able to be taken into account in a meaningful way during the ongoing discussions on the future of the Readjustment Counseling Program.

With further reference to the PTSD study, I note that under current law, section 102(b) of Public Law 98-160, the Administrator, in preparing the report on the study, is required to provide information to the two Veterans' Affairs Committees regarding the capacity of the VA to provide treatment to the number of veterans identified in the study to be suffering from postwar psychological problems. This reporting requirement clearly contemplates a discussion of the capacity and projected capacity of the Readjustment Counseling Program, including the extent to which the agency should maintain a substantial Vet center capacity. Thus, it is expected that the Administrator, in preparing this report, would review the April and July 1987 reports on the future of the readjustment counseling program and the transition requirement and the transition plan and provide the committees with any changes to the contents of those reports based on the final outcome of the PTSD study.

AUTHORITY FOR PART-TIME AND TEMPORARY APPOINTMENTS

The Murkowski-Cranston amendment also includes provisions that would make various amendments to section 4114 of title 38, relating to the Administrator's authority to appoint individuals to certain positions within the VA health-care system on a temporary full-time basis or on a part-time basis. The provision in the amendment would authorize the Administrator to utilize those authorities to appoint individuals in certain health-care occupations—certified or registered respiratory therapists, licensed physical therapists, and licensed practical or vocational nurses.

Mr. President, these provisions are derived from S. 1649, a measure introduced by Chairman MURKOWSKI on September 17, 1985, at the request of the Administration. As was explained in the letter from then-VA Administrator Walters transmitting the proposed legislation, the VA was given optional special appointment authorities with respect to these three occupations in Public Law 98-160. However, those authorities were only provided with reference to appointments on a full-time, permanent basis, resulting in the anomaly in current law which permits the VA to take specific steps when hiring such personnel on one basis but not on the other. The provision in the amendment is designed to correct that anomaly.

I urge adoption of our amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Alaska.

The amendment (No. 3099) was agreed to.

OMNIBUS VETERANS' ADMINISTRATION PROGRAMS IMPROVEMENT OF 1986

Mr. CRANSTON. Mr. President, as the ranking minority member of the Committee on Veterans' Affairs, I am pleased to rise in support of the pending measure, S. 2422, as reported by the committee, the proposed "Omnibus Veterans' Administration Programs Improvement Act of 1986." There are an extraordinary number of provisions in this measure, and I would like at this time to comment on several of them.

COMPENSATION COST-OF-LIVING INCREASE

First, Mr. President, I am pleased that title I of the committee bill would, as did the original measure which I joined with the distinguished chairman of the committee, Mr. MURKOWSKI, in introducing on May 8, provide for a cost-of-living increase in the rates of disability compensation for veterans who suffer from service-connected disabilities and the rates of dependency and indemnity compensation [DIC] for the survivors of veterans who have died from service-connected causes. The VA's service-connected compensation program is at the very heart of our system of veterans' benefits. The committee has consistently attached the highest priority to the needs of service-connected disabled veterans and the survivors of those who have made the ultimate sacrifice. The more than 2.2 million veterans who suffer from disabilities resulting from their service and the 340,000 survivors of those who died from service-connected disabilities are and will remain my No. 1 priority. I'm delighted that the legislation the Senate is considering today would provide for a compensation and DIC cost-of-living adjustment [COLA] equal to the COLA percentage to be provided for Social Security and VA pension benefits, effective December 1, 1986.

INDEPENDENT LIVING SERVICES PROGRAM

In addition, I am delighted that section 103 of the committee bill embodies an agreement which the committee reached on an extension of the VA's pilot program for independent living services for severely disabled veterans receiving assistance under chapter 31. The committee bill would extend the authority for this important and valuable program for 3 fiscal years in lieu of making the program permanent as I had proposed in section 12 of S. 2388, the proposed "Veterans' Administration Health-Care Programs Extension and Improvements Act of 1986," which I introduced on April 30, 1986.

Mr. President, this program has been carried out pursuant to provisions I authored in 1980—in section 1520 of title 38 as added by Public Law 96-466—authorizing the VA to conduct such a program on a pilot basis for a period of 4 fiscal years, fiscal years 1982 through 1985, to provide assistance to such veterans in order to enable them to achieve maximum independence in daily living. Under this authority, the Administrator may contract with public or nonprofit agencies that have a demonstrated capacity to conduct independent living services programs for handicapped persons, including the VA's Department of Medicine and Surgery, for the provision of services and assistance. This program was modeled after the program of services and assistance provided under section 702 of the Rehabilitation Act of 1973, as added by the Rehabilitation Act Amendments of 1978, Public Law 95-602, of which I was the principal Senate author. Not more than 500 veterans a year were to be afforded an opportunity to initiate a program of independent living services. Experience under the pilot program demonstrates that the utilization of the program did not approach the magnitude originally envisioned, but that for those veterans who participated the services and assistance provided were very beneficial.

This program has an important role to play in the lives of seriously disabled veterans in terms of assisting them in achieving maximum independence, and I am pleased that, as a result of the provisions in the committee bill, the Administrator will continue to be able to provide this type of service and assistance to veterans.

VETERANS READJUSTMENT APPOINTMENT AUTHORITY

Mr. President, section 104 of the committee bill contains a provision derived from my bill, S. 2304, which I introduced on April 15, to extend for 2 additional years the authority set forth in section 2014(b) of title 38, United States Code, for veterans readjustment appointments—VRA's. Joining as cosponsors of S. 2304 are Senators MATSUNAGA, DECONCINI, MITCHELL, ROCKEFELLER, and HOLLINGS.

The VRA authority, which is scheduled to expire on September 30, 1986, permits certain disabled Vietnam-era veterans and educationally disadvantaged Vietnam-era veterans to be given excepted appointments in the Federal civil service. The purpose of the VRA authority is to assist these veterans by making it possible for them to be hired noncompetitively into the Federal civil service and to develop additional skills through a program combining education and training with the opportunity for a regular career appointment. At the end of their 2-year VRA appointment, they are automatically eligible for conversion to a regular civil service job. The program was initially established in 1970 under Executive Order No. 11521, which established a special civil service appointment authority for certain veterans and disabled veterans of the Vietnam era who were discharged after April 8, 1969. I authored legislation enacted in 1973 to give the program a legislative basis and on several occasions thereafter to extend and expand the program.

Since the inception of this very successful program in 1970, VRA's have provided employment opportunities for over one-quarter of a million veterans. In fiscal year 1984, more than 20,000 appointments were made; in fiscal year 1985, more than 17,000. Overall, minority group veterans have received an average of 38 percent of the total appointments, service-connected disabled veterans, 10 percent, and women veterans, 9 percent. It should be stressed that the VRA program does not provide for the creation of additional Government jobs. All VRA positions are regular civil service positions that count against an agency's staffing ceilings. Historically, about 80 percent of VRA appointees have acquired competitive status.

TITLE II—HEALTH CARE

Mr. President, I would now like to discuss some of the provisions of title II of the committee bill—health care. Title II incorporates the provisions of a variety of measures including S. 2388, which I introduced on April 30, 1986; S. 2445, which was introduced by the chairman on May 13 and cosponsored by Senators SIMPSON and THURMOND; S. 2172 and S. 2174, introduced on March 11 by the chairman at the request of the administration; and S. 1536, introduced by committee member MITCHELL with Senator COHEN's cosponsorship on July 31, 1985. I am particularly pleased that virtually all of the provisions of S. 2388 are included in this bill. If enacted, this measure will help to maintain and improve the quality and efficiency of health care services provided by the Veterans' Administration to eligible veterans.

Because the various provisions of title II are described in detail in the committee's report, Senate Report 99-444, accompanying this measure, I will at this time just highlight certain of the provisions.

RESPITE CARE PILOT PROGRAM

Section 203 of the committee bill, which is derived from section 7 of S. 2388, would authorize the VA to carry out, in fiscal years 1987 through 1989, a 3-year pilot program of respite care under which the VA would furnish hospital or nursing home care for short, intermittent periods to compensably service-connected disabled veterans otherwise receiving care at home. In addition, if the VA were to utilize this authority, there would be a requirement that the agency carry out a study of the medical efficacy and cost effectiveness of furnishing such care and report to the two Committees on Veterans' Affairs on the results of that study.

Mr. President, the ultimate goal of respite care, which is a relatively new form of care, is to help maintain an individual in his or her home as long as possible before having to resort to institutional care. It is widely agreed at this point that, where medically feasible, maintaining a person at home is not only better for the person's overall health status, but is also a far more efficient and cost-effective way to meet certain individuals' health care needs. The theory of respite care is that, by providing scheduled relief for the primary personal care giver—who is most often the spouse or child of the person who is receiving care—it will be possible to maintain the person in need of care at home for a longer period of time.

I note that the proposal in the committee bill had its origins in legislation that the VA submitted to the Congress last year. The House Committee on Veterans' Affairs reported and the House last year passed similar legislation in H.R. 505, but we were unable to reach an agreement on that proposal in the final compromise on that measure which was enacted as Public Law 99-166. The principal differences between the Senate measure, both as I introduced it and as it has now been argreed to by the committee, and the House provision are, first, the emphasis in the committee bill on veterans with compensable service-connected disabilities—that is, those rated at 10 percent or more disabling—and, second, the inclusion in the committee bill of an express limitation permitting respite care only in situations where providing such care would not, as determined by the head of the VA facility concerned, "adversely affect the range of services, the quality of care, or the established priorities for care furnished to other veterans seeking care" at that VA facility. This limitation is designed to ensure that the pilot program test of this type of care does not substantially disrupt the conduct of other programs.

Mr. President, I am very pleased that my colleagues on the committee agreed to the need for such a program, and I look forward to working with our counterparts in the House to see if we can develop an agreed-upon approach to authorizing the VA to become more actively involved with this important form of care.

PILOT PROGRAM OF NONINSTITUTIONAL ALTERNATIVES TO INSTITUTIONAL CARE

Mr. President, section 204 of the committee bill, which is derived from section 8 of S. 2388, would require the VA to conduct, from January 1, 1987, through December 31, 1990, a 4-year pilot program at not less than 5 nor more than 10 demonstration project sites to evaluate noninstitutional alternatives to institutional care. Through this pilot program, the VA would provide certain veterans with medical, rehabilitative, and other health services and, by contract with non-VA entities, with health-related services.

These health and health-related services would be provided in noninstitutional settings—such as the veteran's home or a board-and-care home—with the goal of being able to avoid institutional care, such as in a hospital, nursing home, or domiciliary facility, for the participants in the program.

Participation in the program would be limited to veterans eligible for and otherwise in need of VA hospital, nursing home, or domiciliary care. Priority for care and services through the pilot program would be accorded to veterans in five categories: Those with service-connected disabilities; those who are 65 or older; those who are totally and permanently disabled; those who, by reason of blindness in both eyes, have only light perception and are in need of regular aid and attendance; and those who are suffering from Alzheimer's disease or another form of dementia.

Mr. President, section 204 of the bill is very similar to section 103 of S. 876 as reported by our committee last July. That provision—which was derived from section 9 of S. 6, legislation I introduced on January 3, 1985, and from section 2 of S. 876 as introduced by Chairman MURKOWSKI on April 3—was considered and passed by the Senate as part of an amendment to H.R. 505 on July 30, 1985. Unfortunately, we were unable to gain House agreement on this pilot program and the provision was not included in the measure that was ultimately enacted as Public Law 99-166.

Our committee is again acting on this provision at this time because we remain convinced that, in light of current developments in health services which enable more individuals to receive needed care without being institutionalized and of the rapid increase in the number of veterans age 65 and older who may be seeking care from the VA in the near future, the VA must take steps to develop new approaches to addressing the health care needs of veteran patients. By 1990, there will be 7.2 million veterans in this age group, and there will be 9 million veterans age 65 or older by the year 2000. The kinds of new VA approaches this legislation envisions, particularly an emphasis on increased interaction with community entities that provide health and health-related services, would enable the VA to get the maximum health care benefit out of every dollar spent. There also must be a greater emphasis on reducing the need for institutional care for veterans. In my view, this proposed pilot program is an appropriate response to these concerns.

With specific reference to the goal of avoiding institutional care and of providing services in an individual's home, I note that the VA, in its 1984 report, "Caring for the Older Veterans," set forth a number of objectives that were central to the Agency's strategies for meeting the needs of the older veteran and that the first of these was:

> To sustain older individuals' independence, comfort, and contentment in their own home environment for as long as possible, providing supportive services to do so.

Clearly, this proposed pilot program would contribute to the achievement of the goal as would the respite care pilot project authority that I have just discussed.

On the issue of increased VA-community interaction and cooperation, which this pilot program is also designed to address, I am convinced that the VA must make greater use of community resources which help to maintain individuals in their homes—such as homemaker, personal care, communal, or at-home nutrition, and transportation assistance services—in order for the agency to respond in a reasonably adequate way to the growing demand for care that it is facing and will continue to face as the veteran population ages so rapidly between now and the end of the century.

CONTINUATION OF CERTAIN COUNSELING SERVICES FOR A DECEASED VETERAN'S FAMILY MEMBERS

Mr. President, under current law, the VA provides mental health counseling and certain other services to the family members of a veteran when doing so is necessary for the effective treatment of the veteran. This authority, which I authored in 1976, is relied on most often in connection with veterans receiving general mental health services, veterans receiving readjustment counseling through the VA's Vet Center Program, veterans receiving care and training in VA Blind Rehabilitation Centers, and various VA programs which provide care to terminally ill veterans. All indications that I have received are that providing family counseling in cases like these has been of great importance in the Agency's efforts to assist the veterans who are receiving care.

Unfortunately, under current law, family members lose their eligibility for further counseling at the time of the veteran's death, the very time when they may be in the greatest need of assistance from a professional who knew the veteran, is familiar with the family members' relationships with the veteran, and has established rapport and trust with them. To correct this situation so that family members can receive bereavement counseling from someone with whom they have already developed a supportive relationship, section 206 of the committee bill, which is derived from section 4 of S. 2388, would authorize the VA to continue to furnish, for up to 6 months following the veteran's death, appropriate mental health assistance, in the form of such counseling, to family members who were receiving it before the death of the veteran when the veteran's death was unexpected or when the veteran died while participating in a VA hospice program.

SERVICES TO OVERCOME SERVICE-CONNECTED DISABILITY AFFECTING PROCREATION

Mr. President, section 205 of the committee bill, which is derived from section 3 of S. 2388, would authorize the VA, in the case of veterans who request such services after September 30, 1986, and prior to October 1, 1989, to furnish services to help a veteran or a veteran's spouse achieve pregnancy in cases in which the veteran's service-connected disability causes the veteran's inability to procreate. The VA would be required to submit a report, not later than February 1, 1989, on the experience under this authority during the first 2 years after its enactment so that the Congress would have the opportunity to consider extending the authority prior to its termination date.

Mr. President, I am delighted that this provision is in the committee bill. If this provision is enacted, it will correct what I believe is a significant misinterpretation of current law by the VA. As a result of my work on behalf of a woman veteran who had a service-connected disability which prevented her from becoming pregnant, I became aware of the fact that the VA does not believe that it has legal authority under current law to provide services to help overcome such a disability. In that case, the veteran was seeking an in vitro fertilization procedure.

I have also been working for many months with representatives of Paralyzed Veterans of America who have expressed the strong interest of their membership in having such services available for male veterans suffering from spinal cord injuries.

Although I do not believe that the VA's legal interpretation of its existing authority is correct, and did my utmost to convince the VA that the authority to furnish medical services and rehabilitation services to eligible veterans would allow the agency to provide appropriate services to help veterans overcome their service-connected disabilities that leave them unable to procreate, I was not successful. Hence, I proposed that the Congress enact this provision in order to remove any doubts that may exist on this issue.

Mr. President, because this authority would be limited to cases in which a veteran's service-connected condition is impairing procreative ability, its use would be targeted on those veterans as to whom the VA has always had the greatest responsibility—those disabled during their service. Because of this targeted focus, I anticipate that there will be a relatively limited number of veterans who would be eligible to be furnished these new services and an even smaller number who will wish to receive them. Thus, I do not foresee significant new costs associated with this proposed change in the law and believe that the CBO estimate of such costs—$6 million over the 4-year authorization period—may be high.

In any event, whatever new costs are associated with this new authority, they would be absorbed through a shift of funds from lower priority expenditures under the VA's medical care account, which is $9.1 billion in fiscal year 1986, and that, as a result, no new appropriations would be provided in connection with the new authority. The end result of such a shift in resources would be an increase in services available to service-connected disabled veterans to help overcome these disabilities.

TREATMENT AND REHABILITATION FOR CHRONICALLY MENTALLY ILL VETERANS

Mr. President, section 202 of the committee bill contains authority to help the VA to meet the health care needs of certain veterans suffering from chronic mental illness disabilities by treating them in other than traditional institutional settings.

This provision is derived from section 4 of S. 2445, the legislation introduced by the chairman, which in turn was derived from section 102 of S. 876 as reported by our committee last year and passed by the Senate as an amendment to H.R. 505. That provision, which I was pleased to work with the chairman in developing last year and again this year, was modeled on legislation I authored in 1979 which authorizes the VA to provide care and treatment to veterans suffering from alcohol or drug abuse or dependence disabilities in certain community-based facilities.

The provision in the committee bill is designed to give the VA the authority, across the VA health-care system, to provide certain veterans who are suffering from chronic mental illness disabilities—those who are currently being furnished VA institutional care for such disabilities or those who have service-connected disabilities rated at 50 percent or more disabling who are also suffering from a chronic mental illness disability—with assistance through community-based facilities, such as halfway houses, therapeutic communities, and psychiatric residential treatment centers. The bill requires that priority in furnishing this community-based contract treatment be given, first, to veterans with service-connected, chronic mental illness disabilities, and second, to any other veteran with a service-connected disability.

Mr. President, I feel that it is long overdue that we give the VA the ability to provide veterans suffering from chronic mental illness disabilities with an additional, necessary option for care which is not now but clearly should be provided by the agency. I have enjoyed very much working with the chairman on the development of this important, new approach to improving VA mental health programs.

PARKING FACILITIES AT VA MEDICAL CENTERS

With respect to the provisions of section 221 of the committee bill that relate to parking facilities at VA medical centers, I want to note that these provisions are already well on the way to contributing to producing a satisfactory solution to a very difficult situation at a number of VA facilities. Since the time when Congress appropriated the funding, in July 1983, for construction of a 120-bed nursing home care unit and parking structure at the VA's medical center in San Francisco, construction of that project has been stymied by an impasse over VA parking structures that has developed in the appropriation process. This has prevented a dreadful parking problem at that facility from being resolved through the construction of an adequate parking garage. In addition, much-needed parking facilities proposed by the VA for VA medical centers in Durham, NC; Syracuse, NY; and Philadelphia, PA—for which the VA sought funding in fiscal year 1986—were denied by the Appropriations Committees last year.

The approach proposed in the committee bill represents our efforts to resolve this very complex and controversial problem in an equitable and effective fashion. Specifically, the bill would provide that future funding for the construction, operation, and maintenance of parking facilities would be drawn from a revolving fund, which has been authorized by law since 1979, in which fees that would be required to be collected at medical centers with new parking garages, and other parking fees, would be deposited. As is the case under current law, no fees would be permitted to be charged for a vehicle being used for the transportation of a veteran-patient and no fees would be charged for vehicles transporting volunteers who work at VA facilities.

Mr. President, in this regard, I am delighted to note that in H.R. 5313, the HUD-Independent Agencies Appropriation Act, 1987, the Appropriations Committees in both the House and the Senate have recommended, and the House passed on September 12, 1986, an appropriation of $26 million for the revolving fund. That appropriation, combined with a provision in both the House measure and the Senate Committee version for transferring from the VA's major construction account to the revolving fund the $4 million previously appropriated, for fiscal year 1984, for the construction of a parking facility in San Francisco, will give the VA a $30 million fund from which to draw to begin constructing parking garages designed to ease intolerable parking situations at various medical centers.

Both the House and Senate Appropriations Committees included in their committee reports a statement of their expectation that the San Francisco parking garage will be constructed from the new parking facility revolving fund. This construction project should be able to begin in fiscal year 1987. I will be urging that sufficient funds be allocated for the project—either directly or by transfer from the construction accounts—to enable the VA to proceed with the urgently needed four-deck structure rather than the two-deck structure that the VA foolishly settled for in its initial proposal in 1983.

EXCESSING OF VA PROPERTIES IN SOUTHERN CALIFORNIA

Mr. President, I deeply regret the omission from the committee bill of one provision in particular. When the committee marked up this legislation on June 26, I proposed an amendment dealing with the administration's very ill-advised proposal to excess certain lands at two VA medical centers in southern California—Sepulveda and west Los Angeles. My amendment was derived from the measure I introduced on March 5 with Senators MATSUNAGA, DECONCINI, MITCHELL, and ROCKEFELLER, S. 2141. It would have prohibited the Administrator from taking any action to declare as excess to the needs of the VA, to transfer to another Federal agency, or otherwise to relinquish any VA interest in, any portion of those parcels of land. My amendment failed in committee on a 5 to 5 vote.

As my Senate colleagues may recall, in February, despite internal VA objections, the VA was forced by OMB to propose to declare various parcels of land at these two southern California VA Medical Centers to be "no longer needed by the Veterans' Administration in carrying out its functions". If declared excess by the VA, this property would then be disposed of by the General Services Administration under governmentwide disposal guidelines. On June 6, the new Administrator of Veterans' Affairs, Thomas K. Turnage, submitted a modification of the proposal that the VA had submitted on February 5, 1986. In each case, he reduced the amount of acreage to be excessed—in west Los Angeles from 109 to 80 acres and in Sepulveda from 46 to 32 acres.

However, in my view, the VA has failed to refute a number of arguments against excessing these lands that continue to be valid and to me compelling.

The parcels provide important buffer zones between the facilities and the surrounding communities. Moreover, I strongly believe that not all lands should be developed; open space is a valuable commodity, especially in highly congested areas such as west Los Angeles.

Retention of these lands also ensures latitude for possible expansion in the future. Possible uses mentioned in a VA task force report could include a possible new State veterans' home, recreation, and joint venture projects with UCLA or others. I now understand that the State of California Department of Veterans' Affairs will actively pursue the possibility of constructing a new State nursing home on the west Los Angeles property.

In addition, a major portion of the land in question at west Los Angeles is either part of a deep ravine or separated from the facility by the ravine. Without massive landfill, this land is unattractive and difficult to utilize and would not have the commercial value OMB has attributed to it. In addition, the VA has used the ravine for waste disposal, including remnants of an old VA hospital that once stood on an adjacent site. This compounds problems for any developer since the contaminated soil would need to be removed and the substructure of the land shored up before landfilling is begun. Additionally, the parcel includes an area where the VA once disposed of radioactive waste, and digging in the area could be hazardous.

Other conditions exist that suppress the market value of the property, including in the case of west Los Angeles, a county moratorium on new access cuts into Wilshire Boulevard. Also, the zoning for the VA land is open space, and no development could be undertaken without a zoning variance—which is highly unlikely given the opposition of both the county board of supervisors and Los Angeles City officials. An August 15 letter prepared by the county counsel of Los Angeles County raises serious questions about the zoning applicable to the property and specifically the status of "the restrictive open space regulations" under the county general plan.

Mr. President, the major veterans organizations—both nationally and in the State—have expressed and continue to express vigorous opposition to any excessing of this land.

The surrounding communities in both west Los Angeles and Sepulveda strongly oppose the additional major construction activity and the resultant development that would occur, as well as the disruption of a number of existing leases and agreements with the VA regarding the use of some of the land proposed for excessing.

In short, I have not been able to identify any significant gain to be achieved by supporting the administration's proposal beyond it resulting, at some distant point in time, in possibly increased revenues to the Federal Government. And it seems clear that the proceeds of any sales—especially in the case of west Los Angeles, where tremendous barriers to development exist—would be far, far less than the administration has projected. This possibility of revenue is far outweighed by the community and veteran organization opposition, the depressed value and condition of the land, its current open space zoning, and the fact that the administration has not demonstrated convincingly that the land could not be used for such purposes as sharing with medical schools, veterans' recreation, cemetery expansion, or a State nursing home.

Mr. President, despite the committee's failure to approve my amendment regarding this land excessing proposal, I note that on August 6, the

House approved H.R. 4623, the proposed Veterans' Health Care Amendments of 1986, by a vote of 418-0. That measure includes a provision, section 13, that would prohibit this land excessing and sale from occurring. Thus, this House action has ensured that the issue will be addressed in negotiations on this legislation. After extensive discussions about this issue with the chairman of the Veterans' Affairs Committee in the other body [Mr. Montgomery] who authored the House-passed prohibition, and our committee chairman in the Senate [Mr. Murkowski], I am very hopeful that a compromise is within reach to prohibit the VA from proceeding with its plan to dispose of these lands. I have, therefore, decided not to offer a floor amendment to the pending legislation to prohibit the excessing legislatively.

At this time, however, Mr. President, I ask unanimous consent that there be printed in the Record at the conclusion of my remarks the August 15 letter to which I previously referred and a number of newspaper accounts of the opposition within the community to this proposal, together with an August 19, 1986, editorial from the Los Angeles Times, entitled "Dumb Policy."

MELLO-ROOS AND VA GUARANTEED HOME LOANS

Finally, Mr. President, I want to make mention of another issue to which, had we not been successful in resolving it administratively, I had planned to offer a legislation solution. Earlier this year, we were alerted to a serious problem in California regarding the VA's policy with respect to guaranteeing home loans for properties located in what are known as community facilities districts or Mello-Roos communities. Briefly, the problem centered on the VA's concerns regarding the special tax assessment status of these homes and the notice and disclosure of the levy created in these communities.

Since the problem had the potential for affecting many thousands of California veterans seeking to use their VA entitlements, I worked closely with interested parties in California, the chairman of the committee, and VA officials in seeking a resolution to the issues. On September 11, we received a letter from the VA notifying us that it had been determined that loans for properties in Mello-Roos districts could qualify as eligible for VA loan guaranties.

Thus, I am delighted that the VA has acted, as I urged, to resolve questions favorably involving VA-guaranteed home loans for properties in Mello-Roos assessment districts. Had the VA not done so, I was prepared to proceed with a legislative solution, and I had every reason to believe that we would have succeeded in enacting such legislation. As a result of the administrative ruling we have obtained from the VA, many veterans will not be forced to forego opportunities to use their VA home loan entitlements in California.

Mr. President, I ask unanimous consent that a copy of the VA's September 11 letter, together with guidelines adopted by the VA regarding this issue, be printed in the Record at the conclusion of my remarks.

CONCLUSION

Mr. President, in closing I want to express my thanks and deep appreciation to the distinguished chairman of the committee [Mr. Murkowski] for the cooperation and courtesies that he and the majority staff, particularly Cindy Alpert, Chris Yoder, Brian Bonnet, Lisa Moore, Julie Susman, and Tony Principi have extended to me and the minority staff throughout the development of this measure—as well as for their fine work in developing Senator Murkowski's provisions in the committee bill. I also wish to express my gratitude to Bill Brew, Nancy Billica, Babette Polzer, Ed Scott, and Jon Steinberg on the minority staff for their excellent work on this bill. I also want to express my thanks to the committee's printer, Roy Smith, who contributed so ably to the production of the committee's report and the reported bill. I am deeply grateful to him for his help.

Mr. President, I am delighted that we have been able, once again, to develop a truly bipartisan measure that will fulfill our commitment to ensure that compensation and DIC benefit for this Nation's service-connected-disabled veterans and the survivors of those who have died from service-connected causes are protected from the effects of inflation, that will help to maintain and improve the quality and efficiency of health-care services provided to eligible veterans, and that will provide needed safeguards for and improvements in VA programs.

Mr. President, I urge the Senate to approve unanimously the pending legislation.

[From the Los Angeles Times, Aug. 19, 1986]

DUMB POLICY

The proposed sale of 112 acres of Veterans Administration land at two Los Angeles locations is shortsighted and misguided. The idea is to help pay off the federal government's debts, but the sale would not dent the deficit. What it would do is further crowd a densely populated area and come at the expense of the area's veterans.

The Reagan Administration has pushed the sale of 80 acres at the VA's 442-acre hospital facility in Westwood and 32 acres at its 164-acre property in Sepulveda. It considers the land, owned by taxpayers and intended to serve veterans, to be in excess of VA needs. But the Administration has not justified reneging on its commitment to veterans.

Selling federal land to reduce the debt is dumb public policy. The Los Angeles land, some of the most valuable that the government owns, is valued at $360 million. That wouldn't pay a day's interest on the deficit, which will top $230 billion this year. To make a real dent in this year's debt, Washington would have to sell a good chunk of the country.

The VA land is not, as the government contends, either idle or surplus to government needs. The Wadsworth and Sepulveda VA hospitals, to which the land is connected, serve 1.5 million veterans, a third of whom are over 65. For veterans over 65 who are indigent or have service-related injuries, VA care is automatic. Both hospitals now operate about two-thirds capacity, and may have to expand to meet the growing population of elderly veterans. The VA predicts that the percentage of veterans 65 and older will double by the year 2000. It is already considering using the two areas for a number of purposes, including a state veterans' home and a cemetery. If the land was sold, the VA would have to try to buy it back at a higher price or look elsewhere, far from the hospitals.

There are aesthetic reasons for keeping the land as well. The office buildings or shopping centers that would be built on the land would clog the already congested roads and pave over the area's last bit of real earth. Finally, the land is used extensively by Westwood and Sepulveda residents for recreation.

If the Reagan Administration took a referendum on the proposed sale, it would surely fail. Almost everyone but the Administration opposes it: VA officials and doctors, neighbors and local and state government officials. The House of Representatives has voted to block the sale, and Alan Cranston and Pete Wilson are trying to get the Senate to do the same. Trying to reduce the budget deficit by selling assets—relatively puny assets, at that—makes little sense. The veterans need the land, and the area hardly needs less open space. This is no way for government to pay off its debts.

County of Los Angeles,
Los Angeles, CA,
August 15, 1986.

Hon. Edmund D. Edelman,
Supervisor, Third District, Hall of Administration, Los Angeles, CA.

Re: Compliance with Land Use Laws.

Dear Supervisor Edelman: This letter confirms our previous opinion about the land use regulations for certain federal property situated in Westwood. The Veterans Administration recently revealed its plans to sell approximately eighty acres at its Westwood complex, consisting of park and recreational uses.

The property is depicted both within an obsolete multiple unit residential category on the zoning maps and a much more restrictive open space category on the general plan maps. Land within the open space category of the general plan may be developed primarily for recreational, public or semipublic activities and services.

Zoning laws are subordinate to the general plan. Los Angeles County Code section 22.12.090 provides that notwithstanding the current zone classification applicable to any parcel, development can only occur if it is authorized by both the zone and the general plan. Only the recreational, public or semipublic facilities which are described for this parcel in the general plan could be developed after any proposed sale, without regard to the obsolete zoning.

The general plan is the primary local government law regulating land use. *Neighbor-*

hood Action Group v. *County of Calaveras* (1984) 156 Cal. App. 3d 1176. It has been analogized to a constitution for all future developments. See *O'Loane* v. *O'Rourke* (1965) 231 Cal. App. 2d 774. The legislature has endorsed this view in finding that decisions involving the growth of the state should be guided by an effective planning process based upon the general plan. See Government Code secton 65030.1.

Zoning laws must conform to the adopted general plan. See Government Code section 65860 and *Resource Defense Fund* v. *County of Santa Cruz* (1982) 133 Cal. App. 3d 800. These enactments provide the authority and the criteria for the regulation of land uses. See Government Code section 65850, 65851 and 65860.

In view of the obsolete zoning affecting the property, we recommend that you ask the federal government to consult our planning director in order to ascertain the details of the restrictive open space regulations.

We are prepared to assist you in taking all appropriate measures in order to protect the public and the land use process concerning this significiant open space property.

Very truly yours,
De Witt W. Clinton,
County Counsel.
(By Charles J. Moore, Principal Deputy, Public Works Division.)

[From the West Los Angeles Independent, July 17, 1986]

Sale of V.A. Land Is Still Undecided

(By Kathy Rethlake)

Congressman Anthony Beilenson has given Westside residents concerned about the proposed sale of 80 acres of Veterans Administration land in their community some good news and some bad news.

First came the good. Chances that the House of Representatives will pass a bill by mid-August blocking the sale look promising, he said.

Then came the bad. Senate passage of the bill was less certain. "The prospects are very mixed," the Westside congressman told a group of about 20 residents gathered at a Barrington Recreation Center softball diamond last week.

Senate passage might succeed, he said, if the legislation was included in a larger bill dealing with veterans' concerns. "The president might overlook the part prohibiting the sale."

If things do go well, by mid-October the legislation "will be in some bill that goes to the president," Beilenson said.

This update on the status of congressional efforts to block the sale left many residents geared for action, and as they left the meeting they talked of sending petitions and telegrams to the White House and to Republican Sen. Pete Wilson, who has not actively entered the fray.

The White House is backing the sale of the 80 acres, located on the northern portion of the VA's 442-acre West Los Angeles complex, to help reduce the federal deficit.

But Beilenson, D-Beverly Hills, Malibu, told the group meeting on the softball diamond last week, "The surplusing of these particular lands would make such a small dent in the deficit problem, it's foolish to talk about."

Dr. Robert Hamilton, a Santa Monica pediatrician who identified himself as a Republican, said at the gathering that using the land to reduce the deficit is "like putting a Band-Aid on a cancer.

The land proposed for sale includes 12 acres belonging to the Barrington Recreation Center that residents and city officials worked for seven years to put together. The city, which is leasing the center's property from the VA, has spent more than $1 million on recreational improvements.

The sale has been simmering since February, when the VA revealed its plans to sell 109 acres of excess land at the site and another 40-plus acres at its complex in the Sepulveda area of the San Fernando Valley.

In March, the General Services Administration said the two sites would bring in about $360 million if sold for commercial use. The savings is reflected in the president's 1987 budget proposal.

However, last month the VA's new administrator, Thomas K. Turnage, announced the VA was paring down the number of acres it planned to sell—from 109 to 80 in West Los Angeles and from 40 to 31.8 in the Sepulveda area.

Residents have objected to the sale, fearing the land, now zoned for open space, would be developed and bring added congestion to the area.

One Brentwood resident noted. "The traffic would be unbelievable. Its unbelievable now. It would be terrible if there were more density in this area."

Linda Trope, another Brentwood resident, lamented the city's lack of open space and said, "This is not a planned city. There are no parks, no squares. If they keep building and building, its going to look like New York."

As for the money the sale would bring in, she said, "Those funds are going to be gone tomorrow."

Opponents of the sale have also contended the land should be held for future veterans' needs. VA land has been sold as surplus in the past, Beilenson said, "and we have discovered later that we needed the land and have had to buy it back at greater cost."

[From the Los Angeles Times, July 17, 1986]

Neighbors Try to Save Park by Blocking VA Land Sale

(By Tracey Kaplan)

Soccer enthusiast Suzanne Eisler wrote a letter eight years ago that sparked a small miracle: It helped persuade the Veterans Administration to lease 12 acres of its Westwood complex for the expansion of Barrington Park.

Now that park expansion is part of an 80-acre parcel that the government plans to sell to help reduce the federal deficit. Neighbors, who don't want to lose the park's playing fields and fear the effect of further development on their neighborhoods, and veterans groups that say the land is needed, met last week in the park to discuss a campaign to fight the sale.

"Because people on the Westside are affluent, everyone takes for granted that we have everything," said Eisler, who is regional director of a children's soccer organization and plays soccer herself in the park. "But until we got the VA land—and it wasn't easy—there was no place for all our kids to play soccer or baseball."

Before the Veterans Administration leased the 12 acres on the east side of Barrington Avenue to the city of Los Angeles, the park consisted of less than 5 acres on the west side of Barrington and contained only a small gym and one under-sized softball field.

After signing a three-year renewable lease with the VA in 1980, the city put more than $1 million into leveling the VA acreage and creating fields suitable for team sports and jogging.

"It took us years to get that park, and it's absurd to think we'd give it up," said Claire Rogger, an aide to Councilman Marvin Braude, who was instrumental in helping Eisler and others work out a deal with the Veterans Administration.

LETTER-WRITING EFFORT

Eisler and other concerned members of various local homeowner associations have launched a letter-writing campaign in support of a bill co-sponsored by Rep. Anthony C. Beilenson (D-Los Angeles) that would block the proposed sale. They hope their letters will be as effective as Eisler's letter was eight years ago.

"The jungle drums are beating loudly," said Susan Young, a member of the Brentwood Homeowners Assn., which represents 3,000 homeowners. "We're networking with every group in the area to get that bill passed."

Beilenson said he is fairly confident the House will pass the bill by its Aug. 15 recess, but said he is not sure of its reception in the Senate because one version sponsored by Sen. Alan Cranston (D-California) died in a Senate committee.

Central to the bill's fate in the Senate is the support of Sen. Pete Wilson (R-California), who is on the Senate Armed Services Committee, Beilenson said.

Wilson's legislative aide, Todd Thakar, said Wilson opposes the sale of the land and will support the bill when it comes to the Senate as part of a veterans' health care package.

"The Senator is not convinced that the veterans won't need that land down the line," Thakar said. "There is a shortage of veterans' land in Southern California . . . to replace the land later when the need arises would be prohibitively expensive."

Carlos Venegas, chairman of the Los Angeles County Veterans' Advisory Commission, said the commission also is opposed to the sale and will organize a campaign involving "the 450,000 vets in the L.A. area to save the land for future use."

However, VA spokesman Karl Edgerton said the Veterans Administration has no foreseeable use for land. He said a recent General Services Administration survey that scaled back the amount of land to be sold from 109 acres to 80 acres took into account the potential expension of VA facilities.

CEMETERY IS CLOSED

Edgerton said the GSA survey took into consideration the possibility of expanding the nearby veterans cemetery, which is now closed except for cremations and next-of-kin burials; relocating the regional VA office and the district council office, and building a state soldiers' home on the site.

The 80 acres in question are near Barrington Avenue and Sunset Boulevard in the northwest corner of the 442-acre VA complex, which is one of the largest open spaces in the Westside. The VA complex straddles the San Diego Freeway in the vicinity of Wilshire Boulevard.

Much of the opposition to the sale comes from neighbors who regard the land as a precious public resource.

"We wouldn't think of selling the Grand Canyon even if it would wipe out the deficit altogether—would it really be worth it?" Eisler said at a recent meeting with Beilenson in Barrington Park.

Others expressed concern over the potential increase in traffic on Wilshire Boulevard and its side streets if the land were to be developed.

Peggy Gould, a Brentwood resident whose property on Terryhill Place borders some of the land proposed for sale, said she has to fight traffic daily to get out of her cul-de-sac onto Barrington Avenue.

Any development of the VA land would have a negative effect on the already heavy traffic along the Wilshire Boulevard east-west corridor, according to Daniel Scott, a Westwood city planner.

"There are just too many cars on Wilshire Boulevard as it is," Scott said. "Any more development would just make a bad situation worse."

Bob Masuda, a Caltrans associate transportation engineer, said the section of the San Diego Freeway that runs through the VA land is the third most heavily traveled piece of freeway in the Los Angeles basin.

"We would project that if the VA land was densely developed, more people would use the freeway as a result," Masuda said.

The VA land north of Wilshire Boulevard that includes Barrington Park is designated as open space in the county's general plan, said Jim Gilson, an aide to Supervisor Edmund D. Edelman. If the VA land sale proceeds as planned, the buyer would have to request a zone change, which would involve at least two public hearings, Gilson said.

[From the Evening Outlook, Aug. 1, 1986]

RESIDENTS, VETERANS, LEGISLATORS MOBILIZE TO BAR VA LAND SALE

(By Kathy Rethlake)

Westside residents, alarmed about the possible sale and development of a large swath of open land in West Los Angeles, may have to wait until September before learning whether Congress will take the property off the auction block.

In the meantime, residents and veterans' groups are lobbying Congress and the White House with a barrage of letters, telegrams and phone calls, urging that the sale of the 80-acre parcel, part of the Veterans Administration complex, be dropped. They are also opposing the sale of another 31.8 acres of VA land in the Sepulveda area of the San Fernando Valley.

The 80 acres is on the northwest portion of the 442-acre VA complex and includes 12 acres leased to the Barrington Recreation Center.

The White House is pushing disposal of both properties so that sale revenues can be used to reduce the ballooning federal deficit.

However, if the residents' most feared scenario takes place and the sale goes forth, other federal agencies will have first crack at buying the land. Then state, county and city, in that order, will have an opportunity to vie for the property before it is offered to private developers.

Estimates of how much the land would bring have been as high as $360 million if sold for commercial use. However, a letter delivered this week from Veterans Administration officials to the House Committee on Veterans Affairs put the figure at $200 million.

Sue Young, a director of the Brentwood Homeowners Association who has helped orchestrate the campaign to save the land, said of the community effort, "I can't tell you the fever."

Young said she recently went door-to-door in her Brentwood neighborhood and raised $600 for the cause in two hours. A full-page newspaper ad opposing the sale brought 550 replies in a day and a half, she said.

Attempts are also being made to get Westside friends of the Reagans to personally contact the White House.

Joining the campaign are a variety of veteran groups. The American Legion, Military Order of the Purple Heart, Paralyzed Veterans of America, and Veterans of Foreign Wars have all gone on record opposing the sale.

Tom Mayfield of the Los Angeles County Council of the American Legion noted, "Your veteran population, age 65 and over, is about to double by the year 2000, so that we are going to have to start looking at addressing the problems of the elderly.

"We don't know what the needs will be. If you sell the land and find later you need to buy it back, you might not be able to afford it or get it."

Wayne Capson, a past national president of Paralyzed Veterans of America, said, "It seems kind of ridiculous to balance the budget by selling the VA property. We're going to run out of property, then what do we do?"

Efforts to bring down the deficit should focus on spending cuts, not the selling of VA land, he said.

The House, with Westside Congressmen Anthony Beilenson and Mel Levine leading the charge, is siding with the residents and veterans. The House veterans committee approved a bill this week that would stop the sale and passage in the full House looks good.

Pat Ryan, assistant counsel on the House Committee, said, "We're going full speed. We're frantically trying to get the bill to the House floor so the bill will be dealt with before the recess."

Congress recesses Aug. 16 and comes back Sept. 8.

But on the Senate side, the legislation has had a rougher go.

The Senate's Committee on Veterans Affairs defeated legislation by Sen. Alan Cranston that would have blocked the sale, so now residents and veterans are moving on several fronts.

They want Republican Sen. Pete Wilson, who has stayed on the sidelines, to join the fray.

A Republican, they reason may have more success in dealing with a Republican administration and with Sen. Frank Murkowski, the Repblican from Alaska who chairs the Senate's Committee on Veterans Affairs.

Although a Wilson staff member says the senator opposes the sale. Wilson has made no public statement on the matter.

The conference committee will thrash out the differences between the House and Senate veterans' health care bills. The House legislation that would stop the sale is in the form of an amendment to the House health care bill.

A Cranston aide noted, "The issue will be determined in conference and it is very much an open question at this point, but Sen. Cranston is committed to doing everything he possibly can to convince his fellow committee members to accept the House provision."

He added, "There will be a lot of staff discussions over the August recess."

But the earliest that action is expected on a final bill is September, because "it is virtually impossible that the Senate would take it up before the recess," Ryan said.

As yet there are no signs the administration is softening.

Although the deadline by which Congress, according to VA regulations, must act to stop the sale is a little hazy—some say Aug. 5, others Aug. 7—in reality any legislation passed after that date would effectively prohibit disposal of the land.

VETERANS' ADMINISTRATION,
OFFICE OF GENERAL COUNSEL,
Washington, DC. September 11, 1986.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Veterans' Affairs, U.S. Senate, Washington, DC.

Hon. ALAN CRANSTON,
Ranking Minority Member, Committee on Veterans's Affairs, U.S. Senate, Washington, DC.

DEAR SENATORS MURKOWSKI AND CRANSTON: This office, in conjunction with the Loan Guaranty Service, has reviewed California State Senate Bill 1115 which, among other things, would require that public notice be given when Mello-Roos Community Facilities Districts are created.

The current lack of a notice requirement is a major impediment to VA approval of guaranteed loans for homes located within Mello-Roos Districts. Enactment of S.B. 1115 would remove this objection. Should this or a substantially similar bill become law, VA would be able to approve financing for homes in Mello-Roos areas.

Anticipating such enactment, VA is now drafting guidelines to be used by our California offices in processing Mello-Roos developments. When these guidelines are issued, we will provide you with a copy.

We greatly appreciate the help you and the members of your staffs provided us in resolving this issue.

Sincerely yours,

DONALD L. IVERS,
General Counsel.

VETERANS' ADMINISTRATION,
DEPARTMENT OF VETERANS' BENEFITS,
Washington, DC, September 11, 1986.

DIRECTOR (00/26),
VA Regional Office, Los Angeles, CA.

Subject: Communities Facility Districts (Mello-Roos Community Facilities Act of 1982).

1. We have been provided with the proposed amendment to the Mello-Roos Community Facilities Act of 1982 (Senate Bill 1115), a copy of which is enclosed. This letter supplements our letter dated April 23, 1986.

2. The changes to various sections of California codes, when effective, should mitigate our concerns noted in previous correspondence relative to Mello-Roos "special taxes" and title 38 U.S.C. 1803(d)(3) and VA Regulation 36.4352. A Community Facilities District established subsequent to the effective date of the amendment, if enacted substantially in this form, should be considered in compliance with the lien requirements of the aforementioned section of VA regulations.

3. An established Community Facilities District which is now in substantial compliance with the notice requirements, whether by recording or otherwise, may be considered acceptable, and you are authorized to process housing units within the confines of those Community Facilities Districts. Those Community Facilities Districts which do not substantially comply with the recording requirements, as described in the proposed bill, will continue to be unacceptable for VA loan guaranty purposes.

4. Under the provisions of Senate Bill 1115, information on the facilities financed and the tax levied must be adequately disclosed in a formal notice. This information,

as it relates to the subject property, must be provided by the requester with the Request for Determination of Reasonable Value (VA Form 26-1805) by completing block #30 or with an adequate attachment to the Request for Determination for Reasonable Value. The fee appraiser must consider and report any effect the tax levy in a Community Facilities District may have on the value estimate contained in the appraisal report. The basis of an adjustment for a Community Facilities District tax may be adequately explained.

5. Please keep this office (262) advised of any problems relating to this matter.

Raymond H. Avent,
Deputy Chief Benefits Director, for Field Operations.

Mr. MITCHELL. Mr. President, I rise today to join with the distinguished chairman and the ranking member of the Veterans' Affairs Committee in support of S. 2422, the Omnibus Veterans' Benefits Improvement and Health Care Authorization Act of 1986.

This legislation contains a number of provisions affecting a wide range of Veterans' Administration health care programs that deserve the praise and endorsement of the members of the U.S. Senate.

The statements of floor managers, Senator Murkowski and Senator Cranston, have explained most, if not all, of those provisions already, so that I have no wish to prolong the debate by repeating them here.

I would briefly say that, along with the health care program changes, I also strongly support the provisions in this legislation that would require an increase, equal to the percentage increase made to Social Security and VA pension benefits, in the rates of disability compensation for disabled veterans and indemnity compensation for surviving spouses and children effective December 1, 1986.

I will limit my remarks today to section 209 of S. 2422, which changes the present treatment of the VA's per diem payments to State veterans' homes under Medicaid. While only a small number of homes are affected by this change, correcting the status quo is extremely important to the affected homes.

A "State Home" is a facility established by a State for veterans disabled by age, disease, or otherwise, who, by reason of such disability, are incapable of earning a living. The term also includes a home which furnishes nursing home care for veterans. The establishment, control, and administration of a State home is the responsibility of the State which it serves.

The VA promotes the care and treatment of veterans in State veterans' homes as one means of developing and maintaining the highest possible quality of care for this Nation's elderly veterans. Congress has established two programs under which the VA provides assistance to State homes.

The first is a grant program authorized by Title 38, U.S.C. 5031-5037. Grants under this program go to construct new homes or to expand, remodel, or alter existing facilities and may not exceed 65 percent of the cost of construction.

The second is a per diem payment program authorized by Title 38, U.S.C. 641-643. Under this program, the VA contributes funds directly to help meet the cost of care for eligible veterans in the homes. The payments are made for domiciliary care, nursing home, and hospital care at set rates, but may not exceed one-half the cost of the veterans' care in the home.

Generally, States fund their share of the homes' operation through direct appropriation. But several States fund their homes' operation through the Medicaid program. Under such an arrangement, the homes' operating revenues essentially consist of Medicaid and VA per diem payments.

In determining the extent of medical assistance Medicaid may provide for an individual applicant or recipient, States must consider whether there exists any "third party" liability for the individual's care and services that arises out of injury, disease, or disability.

Under Medicaid statutes, 42 U.S.C. 1396a(25) third-party liability is to be considered "* * * as a resource of the individual on whose behalf the care and services are made available."

If a State discovers that a third party is in fact liable for some portion of a Medicaid applicant's or recipient's care, the State must reduce its Medicaid payments to the extent of such third-party liability.

The Office of General Counsel in the Department of Health and Human Services has ruled that VA per diem payments to State homes must be treated as a third-party liability for purposes of Medicaid. As a result, State agencies which administer Medicaid are forced to reduce the Medicaid payments to homes by an amount equal to the VA per diem payments made on behalf of the Medicaid-eligible veterans residing in the home.

Veterans in my State have repeatedly and strongly voiced their objection to the present arrangement. They argue that it makes no sense for the Congress to authorize the Veterans' Administration to make payments to State veterans' homes on behalf of veterans only to have those funds used by State agencies to replace State and Federal Medicaid dollars, with no benefit to the veteran.

They also argue that the VA per diem should not be considered a resource of the individual because the VA makes the payment to the home, not the individual veteran.

Mr. President, this question first came to my attention in late 1983. It is a question which has taken a great deal of my time since then as the debate on this question has raged in my State. In the proceeding months, the board of directors of the Maine Veterans' Home has worked many, many hours in trying to get the present situation reversed.

After a number of meetings with veterans in Maine, last year, I introduced legislation, S. 1536, with my colleague Senator Cohen, that would preclude payments made to State veteran homes under section 641 of title 38 from being considered third-party liability under Medicaid.

I am pleased that the committee, after examining this question, has voted to make the language of S. 1536 part of the omnibus veterans' benefits package we are debating today.

Passage of this legislation today by the Senate stands as a testimony to the dedication of the Maine veterans' community, especially the board directors of the Maine Veterans' Home, toward Maine's elderly veterans and their spouses. The home's board has persevered. For 3 years they have argued their case convincingly to me and the other members of the Maine congressional delegation.

Before yielding the floor, I want to again express my appreciation for the cooperation of the distinguished chairman in scheduling my legislation for hearing before the Veterans' Affairs Committee and for making it possible for Bill Carney, the administrator of Maine's Veterans' Home, to appear before the committee and testify on my original legislation, S. 1536.

I urge the Senate to approve this important legislation. I thank the distinguished floor managers.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading, and was read the third time.

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to Calendar No. 776, H.R. 5299, the House companion bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Clerk will report.

The legislative clerk read as follows:

A bill (H.R. 5299) to amend title 38, United States Code, to provide a 2-percent increase in the rates of compensation and of dependency and indemnity compensation [DIC] paid by the Veterans' Administration, and for other purposes.

The Senate proceeded to the consideration of the bill.

Mr. DOLE. Mr. President, I move to strike all after the enacting clause, and insert the text of S. 2422, as amended.

The motion was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (H.R. 5299), as amended, was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BOREN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I send a title amendment to the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> Amend the title so as to read: "An Act to amend title 38, United States Code, to increase the rates of disability compensation for disabled veterans and the rates of dependency and indemnity compensation for surviving spouses and children of veterans; to improve the Veterans' Administration home loan guaranty program; to revise the authority of the Veterans' Administration to construct and operate parking facilities at its medical facilities; to provide the Veterans' Administration with authority to contract for psychiatric residential treatment for certain chronically mentally ill veterans, to conduct pilot programs to provide respite care for certain veterans, and to contract for health-related services for certain veterans; to extend certain expiring authorities to require the Veterans' Administration to establish an Ionizing Radiation Registry; and for other purposes."

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 1950

Mr. DOLE. Mr. President, I ask unanimous consent that S. 2422 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR WEDNESDAY

RECESS UNTIL 9:30 A.M.

Mr. DOLE. Mr. President, I ask unanimous consent that once the Senate completes its business today, it stand in recess until the hour of 9:30 a.m., October 1, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR THE RECOGNITION OF CERTAIN SENATORS

Mr. DOLE. Mr. President, I further ask unanimous consent that following the two leaders under the standing order, there be special orders in favor of the following Senators for not to exceed 5 minutes each: Senators HAWKINS, PROXMIRE, CHAFEE, LAUTENBERG, WILSON, BENTSEN, GORTON, and BAUCUS.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. DOLE. Following the execution of the special orders just identified, I ask unanimous consent that there be a period for the transaction of routine morning business, not to extend beyond the hour of 10:30 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESUME CONSIDERATION OF HOUSE JOINT RESOLUTION 738

Mr. DOLE. Mr. President, at 10:30 a.m., the Senate will resume consideration of House Joint Resolution 738, the continuing resolution. Votes can be expected throughout the day and the Senate can be expected to remain in session late, late into the evening tomorrow in the hopes the Senate can complete action on House Joint Resolution 738.

I will also indicate that we will be confronted in the morning with whether or not we can reach an agreement on the veto message to accompany the South Africa bill. We are in the process now of trying to clear an agreement. I understand it has been cleared on the Democratic side. Apparently, we cannot clear it on this side tonight. We will renew that request early in the morning.

Mr. BOREN. Mr. President, I understand it has been cleared on this side. We are hopeful that there can be an agreement reached in the morning.

Mr. DOLE. We are suggesting that we have 6 hours of total debate and have a vote at 4 o'clock on Thursday. If we can reach that agreement, it would be my hope we could do that. Otherwise, we are going to be spending an hour here on the floor talking to each other tomorrow morning and take another hour from the continuing resolution.

Mr. President, I hope those who have an objection will let us know between 9:30 and 10:30 in the morning so we can work it out and hopefully have the agreement.

I thank the distinguished acting minority leader, the Senator from Oklahoma, Senator BOREN.

RECESS UNTIL TOMORROW AT 9:30 A.M.

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I move the Senate stand in recess until the hour of 9:30 a.m., Wednesday, October 1, 1986.

The motion was agreed to, and the Senate, at 7:54 p.m. recessed until Wednesday, October 1, 1986, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 30, 1986:

IN THE ARMY

The following-named officer for permanent promotion in the U.S. Army in accordance with the appropriate provisions of title 10, United States Code, sections 624 and 628:

VETERINARY CORPS

To be Major

Thomas G. Tecec, [redacted].

DEPARTMENT OF STATE

Edward Joseph Perkins, of Oregon, a career member of the Senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of South Africa.

DEPARTMENT OF JUSTICE

J. William Roberts, of Illinois, to be U.S. attorney for the central district of Illinois for the term of 4 years vice Gerald D. Fines, term expired.

DEPARTMENT OF ENERGY

Raymond G. Massie, of New Jersey, to be Director of the Office of Minority Economic Impact, vice Rosslee Green Douglas.

HOUSE OF REPRESENTATIVES—*Tuesday, September 30, 1986*

The House met at 12 noon.

Rev. William E. Swift, All Saints Episcopal Church, Atlanta, GA, offered the following prayer:

Heavenly Father, in whom we live and move and have our being:

We beseech Thee to guide, bless and govern the Representatives of our land here assembled. May they know the abiding presence of Your law and Your love, so they may enact laws that promote justice and peace in all corners of this world—laws that respect and promote the dignity of every human being. Sustain them with Thy Spirit; give them inquiring and discerning hearts, the courage to will and to persevere, a spirit to know and love You, and the gift of joy and wonder in all Your work. Make Your power and presence known to them that they may let the whole world see that things which were cast down are being raised up, and things which had grown old are being made new, and that all things are being brought to their perfection through You, by whom all things were made.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested bills of the House of the following titles:

H.R. 2722. An act to amend title 13, United States Code, to eliminate the requirement relating to decennial censuses of drainage, and

H.R. 2958. An act to amend the Foreign Assistance Act of 1961 to protect biological diversity in developing countries.

The message also announced that the Senate agrees to the amendments of the House to the bill (S. 2069) "An act to amend the Job Training Partnership Act," with an amendment.

The message also announced that the Senate had passed a bill, joint resolution, and concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 2452. An act to designate the U.S. Post Office to be constructed in Barnwell, South Carolina, as the "Solomon Blatt, Sr., Post Office Building";

S.J. Res. 385. Joint resolution to designate October 23, 1986, as "National Hungarian Freedom Fighters Day"; and

S. Con. Res. 145. Concurrent resolution to encourage State and local governments and local educational agencies to require quality daily physical education programs for all children from kindergarten through grade 12.

WELCOME TO REV. WILLIAM E. SWIFT

(Mr. RAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.

Mr. RAY. Mr. Speaker, I would like to take this opportunity to welcome to the House of Representatives Rev. William E. Swift of Atlanta, GA, who has given the opening prayer today. On behalf of my distinguished colleague Mr. FOWLER I hope that all of my colleagues will join me in welcoming him to Washington.

Reverend Swift has made valuable contributions to his church, the city of Atlanta, and the great State of Georgia. Having served at All Saints Episcopal Church in Atlanta for the past 12 years, Reverend Swift has shown tremendous concern for his fellow man.

Born in New York to missionary parents, Reverend Swift went on to obtain an impressive educational background. He has developed a long history of involvement with the urban community. With the help of Reverend Swift, All Saints Episcopal Church has established an ongoing program to help the urban poor. His church has an overnight shelter for homeless men and an emergency financial fund to assist people with rent, eviction, and other problems.

I welcome Reverend Swift to Washington, thank him for his efforts, and wish him the best in all his endeavors.

DEPOSITOR CONFIDENCE IN THE FSLIC TOO IMPORTANT TO BECOME A POLITICAL FOOTBALL

(Mr. PARRIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. PARRIS. Mr. Speaker H.R. 5576, the Housing Improvement and Consumer Protection Act of 1986, which contains emergency titles for our Federal Deposit Insurance funds, and the FDIC and FSLIC, was removed from the Suspension Calendar yesterday apparently because our distinguished majority leader is concerned about the independent regulatory actions taken by the Bank Board in his home State of Texas. I regret he is unable to be present this morning.

Let me share with this body the problems FSLIC regulators face in Texas. Countless Texas S&L's have been ravaged by a slumping economy, a glut of see-through buildings, which has caused severe real estate deflation and saddled these S&L's with nonperforming loans, and just plain bad management. Experts don't see much improvement in the next year. I can understand his concern about the thrift industry in his home State, because it is in chaos.

Last year, Texas thrifts reported net income, after prior period adjustments, of $221 million. During the first quarter of 1986, these thrifts lost $118 million; during the second quarter, in just 3 months, they lost another $694 million. The result: 8 of the 40 S&L's taken over and being managed by the FSLIC are in Texas. These institutions have over $5 billion in troubled assets, and are both insolvent and unprofitable. According to the Bank Board they "are among the very highest rate payers for funds in order to maintain their deposit bases." This group of 40 institutions, which are being kept afloat because FSLIC doesn't have the resources to close them, are losing $2.8 billion on an annual basis.

Last week Chairman Gray issued an unprecedented warning for a Federal Insurance Fund Chairman. He said in his letters to us that "should the Congress fail to take action on the FSLIC legislation, now pending, and go home in October without having resolved the issues, depositor perceptions could be further weakened, possibly exacerbating the risk of a crisis of confidence in the thrift deposit insurance system. One need only recall the situations which developed in Ohio and Maryland."

Mr. Speaker, this crucial legislation was reported favorably by the Banking Committee last week on a 47-to-1 vote. This legislation is no panacea for FSLIC because it doesn't provide enough money to do the job. But it is the best plan available, and a reasonable start. It deserves our prompt consideration. Let it not be said of this Congress that we have put off till tomorrow that which we should have done yesterday. I would hope the lead-

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

ership would reschedule this legislation at the earliest possible time.

ANNUAL SUMMIT MEETINGS—MORE ESSENTIAL NOW THAN EVER

(Mr. LANTOS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LANTOS. Mr. Speaker, nothing would be easier than to criticize and nitpick the administration's handling of the convoluted Daniloff affair and the President's decision to meet with General Secretary Gorbachev in Iceland in early October.

While criticism is easy and may be politically tempting to many, we must not lose sight of the overriding issue facing our planet. In an age of nuclear confrontation between the superpowers, regularly scheduled summit meetings between our President and the Soviet leaders are mandatory.

That is why a long time ago I introduced a congressional resolution calling for annual summit meetings between our President and the Soviet leaders—a policy the wisdom of which these recent events have made all the more obvious.

I wish the President success at his Icelandic nonsummit summit meeting and I ask all of my colleagues to join me in calling for regularly scheduled annual summit meetings as an avenue of rational dialog on this irrational planet.

SOVIETS TO RELEASE MARK LEVIN AND TAMARA TRETYAKOVA

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, the Soviets have announced their intention to release Mark Levin and Tamara Tretyakova. Their release is certainly the result of the relentless efforts of Simon Levin, Tamara's husband and Mark's father. We thank God that Simon and Tamara will be together after 8 long years and that Simon will see his son for the first time.

I have worked with Simon Levin, who now lives in my congressional district, over the last 4 years as he has attempted to reunite his family. During this time he has learned a great deal about the workings of our Government and the way it interacts with the Soviet Government. He has used his expertise not only for his family, but for those in similar situations. As a leader among divided spouses, he has helped to keep their plight in the global spotlight.

Mr. Speaker, we are grateful that the Soviets are resolving the case of Simon Levin and Tamara Tretyakova. At the same time we remind them that there are more divided spouses, and there are more caring community members and Members of this body who will continue to press for their freedom, even as we rejoice for the Levin family.

THE FISCAL NEW YEAR'S EVE CELEBRATION

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute, and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, I would like to wish everybody a happy "Fiscal New Year's Eve." Once again, here we are on fiscal New Year's Eve, but before we get out the hats and horns, I feel a little bit like the Grinch who stole adjournment, because I think there are a few things that we have to ponder as we enter these fiscal follies that we seem to go through each time.

We are eagerly awaiting the continuing resolution, and I understand that all sorts of goodies are being attached to it. Well, the Grinch wants to say several things:

First, there is no such thing as a fiscal fairy; and we have got to pay for these things, and that is getting more sobering by the hour.

Second, as the President threatens to shutdown the entire government—because he likes to do that every year; it is kind of macho—I have to remind the body that we have just finished a study showing that it will cost $55 million of your money to shut this Government down for 1 day.

□ 1210

And if he opts to do it for a week, in order to one-up what he has done before, that will cost a quarter of a billion dollars.

So let us hope we do not get into the fiscal follies this year. Let us hope people are much more educated and start realizing what all this high theater costs and that we get on to keeping the Government running and keeping it efficient rather than closing it down and spending more and getting less.

APPOINTMENT OF CONFEREES ON H.R. 5548, EXPORT-IMPORT BANK ACT AMENDMENTS OF 1986

Mr. NEAL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5548) to amend the Export-Import Bank Act of 1945, with a Senate amendment thereto, disagree to the Senate amendment, and request a conference with the Senate thereon.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from North Carolina? The Chair hears none, and appoints the following conferees: Messrs. St Germain, Neal, LaFalce, Fauntroy, Kleczka, Frank, Manton, Wylie, Leach of Iowa, Shumway, and Parris.

As additional conferees, solely for consideration of section 23 of the Senate amendment and modifications committed to conference: Messrs. Lundine, Levin of Michigan, Torres, and Bereuter, Mrs. Roukema, and Mr. McCandless.

As additional conferees, solely for consideration of section 21 of the Senate amendment and modifications committed to conference: Messrs. Bonker, Wolpe, and Siljander.

UNFAIR RULE ON IMMIGRATION LEGISLATION

(Mr. LUNGREN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LUNGREN. Mr. Speaker, last week unfortunately the Rules Committee decided to bring before us an unfair rule dealing with the immigration bill. Because it was unfair, the majority in the House, both Democrats and Republicans, voted the rule down. Some have said therefore the immigration bill is dead.

It does not need to be dead, Mr. Speaker. It is apparent we are going to be around here for a few more days. There is no reason why the Rules Committee cannot go back into session, report a rule out that is fair, not in my judgment but in the judgment of a majority of the Members of the House and Senate. To those who say the immigration bill is dead, I would request that they might take a look at the editorial that appears in today's Washington Post. There it articulates very well why the membership of the House, both Democrat and Republican, voted last week's rule down. But it also goes on to suggest why we need immigration reform now.

We do not need to wait until next year, we cannot wait until next year.

Mr. Speaker, I hope you will work with the Rules Committee to bring a fair rule out so that we may have a vote up or down on the important issue of immigration reform.

LET'S GET DOWN TO SERIOUS ARMS CONTROL BUSINESS

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, the announcement of a summit meeting between President Reagan and Secretary Gorbachev is welcome news. But once again it appears that we are getting caught up in a war of words and game playing. Is it a summit or is it a preparatory meeting?

Now that the Daniloff affair is behind us, let us get down to serious arms control business.

Mr. Speaker, let us have a concrete agenda that bears concrete results: reduction in offensive missiles, nuclear testing, in ASAT, star wars, human rights. Let us put everything on the table.

Let us not get caught up in political rhetoric and election year politics. The get-acquainted session between the President and Mr. Gorbachev in Geneva already took place.

Let the hardliners in the administration drop their swords and get out their plowshares. Let us get down to the serious business of negotiations for peace.

LET US BE CONSISTENT IN OUR HUMAN RIGHTS EFFORTS THROUGHOUT THE WORLD

(Mr. WALKER asked and was given permission to address the House for 1 minute.)

Mr. WALKER. Mr. Speaker, yesterday this House took a significant foreign policy action in overriding the veto of the President of the United States regarding South Africa. We did so, I think, in large part because I think this House believes that we have to have a policy on human rights that is consistent. It is important now that we look beyond South Africa as we begin the process of looking at human rights. There are a couple of other nations in the world that we ought to focus some attention on. Let us focus some attention on Ethiopia, where there is a massive genocide taking place and practically nothing being said in this body about it. We ought to take a look at Romania, Romania where human rights are depreciated to the point that slave labor is used. We have a major automobile company in this country that is looking at perhaps converting that slave labor into automobiles that will be sold in this country.

I think we ought to begin to look at some of those kinds of things, and we ought to focus our attention on real human rights concerns in some of those other nations.

I voted for the override yesterday. I am also going to vote to have human rights actions taken against Ethiopia and Romania.

AN UPDATE ON THE PLIGHT OF THE RHINOCEROS SPECIES

(Mr. SCHEUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHEUER. Mr. Speaker, late last week the Science and Technology Committee's Subcommittee on Natural Resources, Agriculture Research and Environment, which I chair, held a hearing on the plight of the rhinoceros, a noble beast virtually at the edge of extinction. The five species of rhinos found in Asia and Africa have dwindled to the danger point, mostly because poachers have been illegally killing these great beasts to obtain their horns which are worth twice their weight in gold. One rhino horn is worth far more than the average worker in Africa can earn in a year. In North Yemen the horns are used to make highly treasured dagger handles, while in the Far East the shavings are prized, erroneously, as a cure for fever.

Mr. Speaker, Singapore, which serves as a trading center and a transit point for these horns, is a truly civilized developing country led by one of the most able and astute chiefs of state in the world. It is fast becoming a banking and finance center of Asia. This is a country that sells the United States $4 billion in merchandise annually, compared to the $3.4 billion they purchase from us, thus enjoying a $600 million trade surplus.

Despite our pleas and the pleas of civilized countries the world over, Singapore refuses to abide by the Convention on International Trade in Endangered Species. Its role in the rhino horn trade contributes greatly to the demise of the rhino.

Such a shabby role ill-behooves Singapore's dignity.

Mr. Speaker, I am happy to report that there have been some positive developments in the past few days concerning protection of the rhino. On Thursday, the same day as the hearing, the Department of the Interior's Fish and Wildlife Service announced that the United States will prohibit future imports of wildlife from Singapore.

Following the hearing, State Department officials assured me that they are developing an action plan aimed at protecting the rhino.

These are hopeful signs and I commend the efforts of the State Department and the Interior Department.

We must send a clear signal to the Government of Singapore that its deplorable role as a transit country and trade marketplace for rhino horns is totally inappropriate for a nation that is fast becoming an economic, political and social role model for the entire developing world.

Let's hope Singapore gets the message.

The rhino is the second largest mammal on Earth and has survived for 60 million years with no known predator except man.

Are we to see the rhino wiped out during our watch?

LET US NOT FORGET THE OTHER HOSTAGES

(Mr. COBLE asked and was goven permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COBLE. Mr. Speaker, I rise today in support of the administration's actions to gain the release of American journalist Nicholas Daniloff. While we celebrate the return of Nicholas Daniloff, we must remember that Americans are still being held hostage in the Middle East. I believe the Daniloff ordeal is similar to the plight of our remaining hostages. It appears Nicholas Daniloff was wrongfully apprehended in retaliation for United States actions against a Soviet spy while the American hostages in Lebanon are the innocent victims of the ongoing conflict in the Middle East. We were led to believe there would be no trade of Mr. Daniloff for the Soviet charged with spying. Nevertheless, a complex compromise was negotiated for Mr. Daniloff's release following days of intense negotiations between the United States and Soviet officials. I believe the administration should now turn its attention to negotiating the release of the Americans in Lebanon with the same determination exhibited in the Daniloff case.

If trades are to be cut, the Americans held in Lebanon should survive the cuts as well.

MORE RED INK AND LOST JOBS FOR AMERICA

(Ms. KAPTUR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, today the foreign trade statistics were released by the Commerce Department. They have more red ink and lost jobs for America.

Mr. Speaker, 4 months ago, this House passed the most comprehensive and far-reaching trade legislation in decades to address America's devastating deficit with our trading partners around the world. Even before the ink was dry, the administration bashed the bill and offered only more of the status quo—more foreign imports, less U.S. exports, more lost jobs and closed factories and bankrupt farmers. It is apparent now, that the other body has bought the administration's line. They have decided to do nothing this year, while American families businesses and communities, suffer. There have been some voices of reason and concern over there. But they have been drowned out by the "do-nothing" voices of indecision and inflexibility.

To borrow from a recent New York Times article, "The Free Trade Myth Is Ruining Us." As more good American jobs go overseas, America's industrial capacity and standard of living decline. Mr. Speaker, we in the House have done our best. For 2 years we have tried to move the administration and the other body on this vital economic issue. The 99th Congress is almost history. But America's industrial workers and farmers will not forget who abandoned them in their time of need.

POW'S ALIVE IN VIETNAM

(Mr. HENDON asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous material.)

Mr. HENDON. Mr. Speaker, I would like to share with my colleagues a very important story that appeared in the final edition of today's New York Times, but it did not make the edition that is delivered to our offices. The headline: "POW's Alive in Vietnam, Report Concludes." It goes on, "Washington. A Pentagon panel after a 5-month review of intelligence files has concluded that American prisoners of war are still alive in southeast Asia." Government officials have estimated, according to this report, the number could be at least 100 men. The review panel included Lyman Kirkpatrick, former inspector general of the CIA, Gen. Russell Dougherty of the Air Force, former head of the Strategic Air Command, Gen. Bob Kingston of the Army, who is a former commander of the U.S. Central Command, Brig. Gen. Robinson Risner of the Air Force, who was a prisoner of war in Vietnam, and Lt. Gen. John Peter Flynn of the Air Force, head of the United States POW's in Vietnam.

Again, the headline: "POW's Alive in Vietnam." It goes on: "A Pentagon panel after a 5-month review of intelligence files has concluded that," just today, "American prisoners of war are still alive in Southeast Asia."

SUPERFUND WITHOUT FUNDING

(Mr. ECKART of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks).

Mr. ECKART of Ohio. Mr. Speaker, happy anniversary. Yes, welcome to the first anniversary of the expiration of funding for Superfund. Ever since September 30, 1985, we have been engaged in a seemingly endless debate over what the new Superfund Program would look like and who would pay for it.

Finally, on July 31 of this year, the five substantive committees dealing with the program reached agreement, and the House and Senate conferees signed the paperwork. But all that is left is to figure out how to pay for it, and still we wait. It has been 2 long months since Lee Thomas informed the Congress that the entire Superfund infrastructure is in danger of disintegration. But still we wait. It has been 3 long months since contractors told us they will step away from cleanups and lose a whole winter construction season, and still we wait.

It has now been 3 long months that citizens have not had the right to sue, that citizens have not had the right to have a health assessment, and still we wait.

Mr. Speaker, if we go home for the November elections without a new Superfund Program, there will not be any left when we come back. And that is a national disgrace.

It is time to get off the dime, it is time to stop waiting, and it is time to start cleaning up.

THE IMMIGRATION RULE

(Mr. LOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. LOTT. Mr. Speaker, I was a little shocked to read last Saturday that the chairman of the House Judiciary Committee was blaming the defeat of the immigration rule on the lack of bipartisanship. To blame Republicans for the defeat of immigration reform is a little like blaming baby seals for the market in seal-skin coats.

Let's face it, Mr. Speaker, we got clubbed by an unfair rule that shutout one of the most important policy alternatives—the Lungren amendment on agricultural workers. And the perpetrators of this unfair and undemocratic tactic got caught redhanded, with the clubs still in their hands.

Even the Washington Post, in an editorial this morning, agrees that the Democrats did themselves in by their own clever rule. To quote from that editorial: "It was all just too much for House Members to swallow without debate and the separate votes barred by the rule." I would suggest to the Judiciary chairman that if he wants bipartisan immigration reform, he request a bipartisan rule next time.

At this point in the Record, I include the following editorial:

[From the Washington Post, Sept. 30, 1986]

* * * And a Failure on Immigration

What killed immigration reform? Was it public indifference to the flood of illegal aliens coming across the border at an estimated rate of 2 million a year? No. There is general agreement that immigration must be regularized and that employer sanctions are a reasonable way to do it.

Was there overwhelming opposition in Congress to granting an amnesty to illegal aliens who have been here for some years? Not at all. In the past both houses have passed measures granting amnesty to long-term residents, and it is widely understood that this concession was necessary to construct a balanced bill. This balance was complicated by agriculture interests, which claim they need a supply of undocumented workers to harvest crops. But both houses have, at different times, authorized temporary and limited guest-worker programs to meet this problem. While we opposed this provision, there is no doubt that it had broad support in both houses.

The bill that was presented to the House for a rule last week, though, was not a balanced compromise, and the rule that was proposed for the debate would have locked in a series of controversial amendments. A number of hotly contested provisions that were not in the Senate-passed bill were in the measure before the House.

Deportations of Central Americans who are here without papers, for example, would have been suspended. Employers would have been prohibited from hiring citizens over aliens, and a whole new bureaucracy created in the Justice Department to adjudicate discrimination claims. Searches of open fileds would have required warrants not needed under current law. Regulations limiting the extension of assorted public assistance programs to aliens would have been changed. And finally, the Schumer amendment, sold as a "compromise" on the farm worker question, would have granted permanent residence and eventually citizenship with all its benefits to anyone who had worked 60 days in agriculture in a single year. It was all just too much for House members to swallow without debate and the separate votes barred by the rule.

Some in the House leadership are now claiming that the Republicans killed the immigration bill by refusing to accept a controversial package without change. That's not fair, for many who voted against the rule would have supported a bill after debate and a series of votes. Others say that if the president had made a few more phone calls the outcome would have been different. Hardly. The bill should have been on the floor months ago, not days before adjournment, and the spirit of balance and compromise should have been sustained. The opportunity to make all this right is not likely to come soon again.

LET OUR NEGOTIATORS NEGOTIATE

(Mr. HYDE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, the successful termination of the Daniloff affair and the impending pre-summit summit where the President and Secretary Gorbachev will meet in Iceland underscores the essential foolishness of Congress legislating details of arms control proposals instead of letting our negotiators negotiate concerning the terms of arms control and getting something for the negotiation. Instead, we unilaterally intervene, hobble our negotiators, take away bargaining chips from them and get nothing for it. We may strike a blow for détente, but it is foolish, it is unwise and it hobbles our negotiators in Geneva.

If we are serious about arms control, let us let the negotiators negotiate and let us not give away the store by legislation.

□ 1225

ECONOMIC SANCTIONS TO ROMANIA

(Mr. WOLF asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLF. Mr. Speaker, yesterday I joined the overwhelming majority of my House of colleagues in voting to override the President's veto so that the United States can send a strong message through economic sanctions to the Government of South Africa in protest of its apartheid policies.

I want to urge my colleagues who have joined in making this statement on human rights in South Africa to join me in making the same kind of statement to the Government of Romania. To Romania we must say: We will impose economic sanctions against your repressive regime by temporarily suspending most-favored-nation economic trade agreements with your Communist country in protest of the religious persecution and human rights abuses against Romanian citizens.

The abuses against the Romanian people include the July 21 destruction of the only Spanish Synagogue in Bucharest, the August 6 demolition of a Seventh-day Adventist Church in Romania, turning Bibles into toilet paper, imprisonment, harassment, torture and assassinations of layleaders—all atrocities which have been conducted under the direction of the Romania Government for the past decade. Their record on human rights in the area of religious freedom is abominable.

And unlike South Africa, Romania is not an ally and yet we have a 4.79 to 1 trade deficit with Romania—a trade deficit comprised of petroleum products, textiles, steel, and shoes flooding our market.

Clearly, MFN is not providing the kind of leverage toward human rights improvements in Romania that its proponents espouse. We must take action. We must use our economic leverage in Romania as we voted to do yesterday in South Africa.

COME TO THE MIDWEST, MR. PRESIDENT

(Mr. DURBIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DURBIN. Mr. Speaker, the figures have just been released here in Washington on the trade deficit facing the United States. It is information which has some encouraging sign to it, but not nearly enough.

We have seen that the trade deficit for the month of August shrank to $13.32 billion, 26 percent below the record imbalance of the previous month.

But despite this apparently good information, the United States is facing the largest trade deficit in the history of this Nation; and unless we come to grips with this problem, we cannot hope to reclaim the jobs which we have lost in the manufacturing sector nor the farm income that has been lost for lack of agricultural exports.

There is good news, of course, for the farm sector that, for the first time in 4 months, we have found that our agricultural sales overseas have increased and that we are in fact exporting more than we are importing. But for the 3 previous months, the United States of America with its rich and bountiful harvest was importing more food than it was exporting.

The House of Representatives passed trade legislation in May. The other body has not had the time or inclination to address it since then. The President says it is not necessary.

Come to the Midwest, Mr. President. Come see the farmers who are struggling to survive and the people from jobs in factories who are looking for work. You will find that the need for trade legislation is imminent, and that this Congress and in Washington, D.C. we should be addressing this issue immediately.

WORLD PEACE THROUGH TRUST AND UNDERSTANDING

(Mr. ARMEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ARMEY. Mr. Speaker, for years now the Soviet Union and some of its satellite states have been employing electronic interference against several Western radio broadcasters. The Voice of America, the BBC, Radio Free Europe, Radio Liberty, and several other stations have been continuously jammed, in some cases for as long as three decades.

Needless to say, this practice does not further the cause of world peace. The free flow of information across national frontiers is essential if we are to remedy the mistrust and misunderstanding that divide the world's people. Only open communication can allay the suspicion which feeds international conflict and pave the way for the eventual reconciliation of national adversaries.

This House will be voting later today on a resolution urging the administration address this matter in its discussions with the Soviet leadership. This is something that several of my colleagues and I have been working on for some months now. Over 90 of us have signed a letter I drafted to USIA Director Charles Wick pointing out the importance of this issue, and 40 Members have cosponsored an earlier version of this resolution that I introduced in August.

It is our hope that after the recent tensions surrounding the Daniloff affair and other incidents, Soviet leaders will seize this opportunity to improve relations between the superpowers and demonstrate to the West their willingness to pursue serious negotiations.

I ask all my colleagues to lend their support to this effort to secure free flow of information across national borders. Only through trust and understanding can true progress toward a lasting world peace be achieved. And that trust and understanding can come from us having as much access to their people as an audience as they have to ours.

CHANGING HOUSE PROCEDURES ERODE OUR ABILITY TO REPRESENT THE AMERICAN PEOPLE

(Mr. YOUNG of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. YOUNG of Florida. Mr. Speaker, The Constitution of the United States is the foundation for our Government, which is truly the most democratic and representative the world has ever known.

A cornerstone of our democracy is the work of this body, the House of Representatives. This is the people's body. We were elected by the people to represent their views. Under our constitutional system, we are to be their voice in debating, amending and either approving or rejecting legislation.

This system has served our Nation well for nearly 200 years. But, as we approach the convening of the historic 100th Congress next year, we must be aware of and concerned about changes in the procedures of the House which have departed from the plan of representation created when America was in its infancy and which have eroded the ability of Members to best represent the views of the people they were elected to serve.

In particular, the House, with increasing regularity, has been considering legislation under rules which severely restrict debate and preclude offering amendments. This has created, in effect, different classes of Members—those who can participate in debate and offer amendments and those who cannot.

Mr. Speaker, This is not what the drafters of our Constitution intended for us. In fact, this is in part what they were trying to protect against.

During this time period for the remainder of the session. I plan to discuss in more detail my concerns about these changing procedures and my suggestions for rules the 100th Congress should adopt to ensure that all Members can participate fully in the legislative process, so that their constituents can all be represented in the major decisions made by this House of Representatives.

THE TAX REFORM BILL OF 1986

(Mr. BILIRAKIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BILIRAKIS. Mr. Speaker, last week we passed legislation of historic proportions—the tax reform bill of 1986.

The good news is that 700,000 elderly will be removed from the tax rolls altogether. In a time when expenses grow at a rate out of all proportion to fixed income, it is essential to honor a commitment to our citizens who have given a lifetime of service to their community and their country.

No legislation, including the tax bill, is perfect however. The tax bill, for example, raises the deduction threshold for unreimbursed medical expenses from 5 to 7.5 percent, exposing a greater amount of gross income to taxation. In order to minimize any negative impact to our seniors, I am introducing legislation to maintain the deductibility threshhold at 5 percent, as set in the current Tax Code. If the purpose of the tax reform effort is to provide a more equitable distribution of the tax burden, let us then be consistent, and afford those with limited resources continued protection against unreimbursed medical costs.

THIS ADMINISTRATION'S BARK WAS A LOT WORSE THAN ITS BITE

(Mr. RITTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RITTER. Mr. Speaker, I am very happy for Nicholas Daniloff and his wife. I am very happy for the three dissidents who supposedly will be released.

But I want my colleagues to think about what Mr. Gorbachev thinks about the resolve of this administration; first deny any exchange of an accused spy for a hostage journalist and then to discuss exchange, then to deny exchange, and then finally, to exchange.

What does this mean about the safety of Americans in the Soviet Union? What does this mean about the treatment of Soviet spies caught in the future in the United States? Is this a precedent for an equation: One accused Soviet spy equals one hostage American newsman plus three dissidents? We're giving them a license to spy—all they have to do is grab an American and hold him hostage.

There are plenty of newsmen to be taken hostage. There are thousands of dissidents.

I'm sorry to say this, but on the Daniloff affair, this administration's bark was a lot worse than its bite.

PRESIDENT'S LEADERSHIP ON DANILOFF, GORBACHEV MEETING DESERVES PRAISE

(Mr. COUGHLIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COUGHLIN. Mr. Speaker, I know I join all Members of the House today in congratulating President Reagan, Secretary of State Shultz, and especially Mr. and Mrs. Nicholas Daniloff for the positive conclusion of the Daniloff affair and for the President's decision to meet with Soviet Communist Party Secretary Gorbachev on October 11 and 12.

It is now clear that Mr. Daniloff has been released unconditionally, without even having to enter a plea in Soviet court. Meanwhile, Soviet spy Gennadi Zakharov, whom the Soviets sought to swap for Mr. Daniloff, has pleaded "nolo contendere" to espionage charges pending against him in a U.S. court.

This difference is crucial. Mr. Daniloff has left the U.S.S.R. as an innocent man, but Zakharov's no contest plea is a virtual admission of guilt. The U.S. court ruling on the Zakharov affair, in fact, has found him guilty and has ordered him to leave the United States forthwith. In addition, the Soviets apparently have agreed to release Soviet dissident Yuri Orlov and his wife, who have been punished for their immensely courageous human rights activities, as well as other so-far unnamed dissidents.

Mr. Speaker, the administration has maintained the right position throughout the negotiations on the Daniloff affair and the Reagan-Gorbachev meeting. The President has correctly refused to link the situation facing Mr. Daniloff with that of Gennadi Zakharov, and has properly rejected plans to meet with Mr. Gorbachev until this matter was resolved.

Despite the conclusion of the Daniloff case in a manner which confirms Mr. Daniloff's innocence, as well as the positive step the President has taken to meet with General Secretary Gorbachev in Reykjavik, it is not unlikely that the Soviets will maintain the farce that Mr. Daniloff was a U.S. spy. In fact, there may even be some cynical or gullible Americans who believe this is the case. To help make sure the facts on this matter are set straight, I would like to reprint in the Record an editorial by Donald Kimelman which appeared earlier this month in the Philadelphia Inquirer. I think it outlines quite clearly the way the Soviets treat those who seek to expose certain truths about their system, and can serve as an important guide in seeking agreements with the Soviets on a vast array of issues, including arms control. When we pursue such agreements, we must be sure that they are in our mutual interests and that they can be verified.

Mr. Speaker, I again express my heartiest congratulations to the President and Secretary of State and ask unanimous consent that the Kimelman editorial be reprinted in the Record at this point.

[From the Philadelphia Inquirer, Sept. 12, 1986]

To Know the Daniloff Case, Know the KGB

(By Donald Kimelman)

A new Lou Harris poll finds that a bare majority of the American public believes that Nick Daniloff of U.S. News & World Report is not a spy, while roughly a third of the people are firmly convinced that he is. President Reagan's personal assurances to the contrary, a sizable portion of his countrymen refuse to believe that Daniloff, who has spent the past two weeks in Moscow's Lefortovo prison, was framed by the KGB.

Yet if you put the same question to a far more selective sample of Americans who have worked as correspondents in Moscow, the response might well be unanimous. Among those who have been there, only a crank would doubt Daniloff's innocence. The matter does not hinge solely on belief in Daniloff himself or the integrity of the profession, but in often-bitter knowledge of how the KGB operates.

While less brutal and more sophisticated than in Stalin's time, the KGB is bound by no legal or moral code. Concocting lies and planting false evidence are simply tools of the trade, part of a large arsenal of means that can be applied to the overall goal of defending the state from its perceived enemies. During the 3½ years I lived in Moscow I came to know this first through the experiences of dissidents I dealt with and finally through an effort to discredit me. Nothing about my experience was remarkable.

For any Western correspondent in Moscow, the KGB is largely an unseen but much-felt presence. We assume that our apartments, offices and telephones are bugged—occasionally someone actually digs out a microphone—and so all of us quickly learn how to monitor and censor our thoughts. No sentence is uttered aloud until the internal censor has done a quick scan to make sure that it is devoid of any material that could prove useful to the KGB.

The fear is not that we will get ourselves into trouble—shouting anti-Soviet epithets at the ceiling is a standard form of therapy—but that we will cause problems for Soviet friends and contacts. The general rule is that all sensitive conversations—particularly with people who were not well known to the authorities—should take place in public places.

Just as Daniloff met his Misha in the Lenin Hills, I usually would meet my contacts under the clock tower of the Kiev railroad station and wander randomly through the back streets of the surrounding district.

Occasionally, like Daniloff, I would accept a packet of information from a trusted source, usually a sheaf of typed papers cataloguing dissidents' travails that were too familiar and predictable to qualify as news. I never doubted that the KGB knew what I was up to, but I assumed that it picked its shots carefully and did not see any great threat in what I was doing.

The general feeling among the correspondents was that so long as we avoided the obvious schemes to entrap or compromise us, we were safe from harm. In my case that meant refusing to help a man who asked to be put in touch with embassy experts on Soviet radar installations or, in a more painful scene, refusing to offer any encouragement to an acquaintance who wanted help to defect.

Once, as I was preparing to take an overnight train to Vilnius, I complained jokingly to my Soviet staff that I hoped the KGB would provide me with a beautiful traveling companion instead of the standard drunk with smelly feet. Lo and behold, a beautiful girl did appear to share my compartment, complaining bitterly as we rode through the night that her husband no longer loved her.

While I had a few minor brushes with the authorities, most of my experience of KGB ruthlessness came second-hand through Soviet contacts. The list of abuses would over-flow this page, but several examples are appropriate to the Daniloff case.

In the course of my time there, three Hebrew teachers were arrested and jailed after the authorities "discovered" incriminating evidence while searching their apartments or belongings. Two were accused of possessing narcotics, the third of owning a pistol. All three insisted they were framed, two of them speaking eloquently on the subject at trials that were closed to all except immediate family. I can't prove they were innocent, just as I can't prove Daniloff is innocent, but every instinct made me believe them.

Another arrested activist was turned by the KGB and forced to make a televised confession of his sins. Reading from a script undoubtedly authored by his jailers, he told of his nefarious contacts with two Western correspondents who, upon being told of the accusations, both laughingly insisted that they had never even met him.

My turn came last April, when one of the major Soviet dailies ran a half-page attack on me that mixed biographical data and actual incidents with numerous vicious, if almost comically outrageous, lies. These articles, authored by the KGB and containing information that can only come from KGB reports, appear periodically to discourage ordinary Soviets from having any contact with Western, and particularly American, correspondents.

In addition to accusing me of being a drunk, a boor, a plagiarist, a Jewish justifier of Nazi genocide and a possible spy, the article told of how I had carelessly misplaced a notebook containing a list of my contacts—described collectively as "renegades and criminals"—and then offered the readers a half dozen examples. I only knew one of the people mentioned and had never lost such a notebook.

I was denounced by a series of anonymous callers in the days after the article appeared, but no stronger action was taken.

No shortage of Daniloff's colleagues have risen to his defense, but it is not really necessary to know a lot about Daniloff to dismiss the case against him. It is necessary only to know a little about his accusers.

□ 1235

BY ANY MEASURE, ETHIOPIA HAS THE WORST HUMAN RIGHTS RECORD

(Mr. ROTH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROTH. Mr. Speaker, of all the nations in the world, which nation has the worst human rights record? It is Ethiopia. By any measure, Ethiopia has the worst human rights violations in the world. Over 100,000 people were killed in Ethiopia last year because of their resettlement program.

This House, in response to that, added an amendment to a piece of legislation which caught the attention of Chairman Mengistu. They stopped the resettlement program. Last week was the anniversary of that Marxist government's coming to power and Mengistu, in his speech, again said that in short order, they are going to start the resettlement program again.

They take hundreds of people, many times rip them from their families, and take them 500 or 600 miles south to the southern part of Ethiopia. Thousands die in these resettlement programs. I think that we, in this House, who are always concerned about human rights violations, have an obligation and a duty to mankind to speak out. I hope that the Members of this House will do that.

STAND BEHIND OUR ELECTED FOREIGN POLICY SPOKESMAN, THE PRESIDENT OF THE UNITED STATES

(Mr. DAUB asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DAUB. Mr. Speaker, Americans can be thankful for the release of Nick Daniloff from the trumped up charges engineered by the KGB. Americans can also take comfort that we have sent packing 25 spies who used the United Nations as the command center for stealing America's state secrets.

Finally the release of, among the three, Yuri Orloff from the clutches of his Russian tormentors is indeed good news. The meeting between the President and Soviet leader Gorbachev could lead to an arms agreement and perhaps progress on human rights and Soviet involvement in hot spots like Afghanistan.

But there should be no illusion about the nature of the Soviet regime and the need for a strong negotiating position. The Soviets, as in the Daniloff affair, demonstrated that they deal brutally with the weak and the vulnerable.

There has been plenty of partisanship in this House on dealing with the Soviets. This is the most dangerous game. I would urge all Members of the House to refrain from attempting to impose his or her own particular view on how these negotiations should be handled and stand behind our elected foreign policy spokesman, the President of the United States.

AN UNBELIEVABLE TRAGEDY FOR THE COUNTRY

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Speaker, the Los Angeles Times is predicting that we are going to have a major issue before us next year and in the years to come that really has not been discussed in depth here this year, except for one, brief, tumultuous moment. That is the spread of this always-fatal plague, AIDS—a breakdown of the immune system. Over 1½ million of our citizens now have the possibility of falling victim to this disease.

I sponsored a lunch a year ago this week to find out what was really happening. Since then, the Department of Health and Human Services has sent me a little statistical extract of three pages every week on Monday. As of the close of business at HHS on September 15, there has been 283 new cases that week and 115 deaths.

I have just looked at the extract for the last week ending Monday the 22d, and there were 636 new cases in the 7 days ending Monday, and 408 deaths last week alone. We have now surpassed that death toll of 1968 in the Vietnam war. Four hundred and eight dead last week.

Is this a blip? An anomaly? Or is it now going to stay at double the week before for the weeks to come? When we get down to serious business here after we have reorganized next February and March, we are going to have 5 more months of death statistics to look at. This is an unbelievable tragedy for this country.

A PUBLIC RELATIONS ATTEMPT TO COVER THE CONTINUATION OF THE ARMS RACE

(Mr. MARKEY asked and was given permission to address the House for 1 minute.)

Mr. MARKEY. Mr. Speaker, the administration is announcing today a hurry-up summit with the Soviet Union in the next 10 days. What is the purpose of this summit? I can tell you right now. It is to create a public relations smoke screen to prevent the House of Representatives, now meeting with the Senate in conference, from holding tough to the nuclear testing amendments, SALT II amendments, SDI amendments, chemical weapon amendments that we passed in this body.

It is the October surprise, meant, one, to kill those tough amendments putting restrictions upon nuclear testing that have passed the House of Representatives, and second, to send out that smoke screen for November that give every indication to the American public that this administration is interested in arms control.

That is the October surprise; that is what this summit is all about. But it is interesting that simultaneously, coinciding with this announcement, an obscure event is taking place in the Nevada desert. As I speak, window washers in Las Vegas were told to stay home for the day. There is going to be a nuclear explosion in the Nevada desert today that rocks and sways the tall buildings.

That is what this is all about: A public relations attempt to cover over a continuation of the arms race while at the same time saying the right things and trying to pretend that they are doing the right things at a summit in Geneva.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. KILDEE). Pursuant to the provisions of clause 5, rule I, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken after debate has been concluded on all motions to suspend the rules.

SSI IMPROVEMENT AMENDMENTS OF 1986

Mr. ROSTENKOWSKI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5595) to amend title XVI of the Social Security Act to make necessary improvements in the SSI program with the objective of assuring that such program (including the work incentive provisions in section 1619 of such act) will more realistically and more equitably reflect the needs and circumstances of applicants and recipients thereunder.

The Clerk read as follows:

H.R. 5595

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "SSI Improvement Amendments of 1986".

(b) TABLE OF CONTENTS.—

TITLE I—GENERAL SSI AMENDMENTS

Subtitle A—Treatment of Income and Resources

Sec. 101. Exclusion of certain temporary income in retrospective accounting.
Sec. 102. Exclusion of certain real and personal property from income.
Sec. 103. Modification of penalties where assets are transferred at less than fair market value.

Subtitle B—Provisions Relating to Eligibility

Sec. 111. Payment of benefits due deceased recipients.
Sec. 112. Loss of SSI benefits upon entitlement to early widow's or widower's insurance benefits.
Sec. 113. Eligibility of alien for SSI when sponsor is an agency or organization.
Sec. 114. Treatment of certain couples in medical institutions.

Subtitle C—Provisions Relating to Emergency Assistance

Sec. 121. Modification of interim assistance reimbursement program.
Sec. 122. Increased emergency advance payments for presumptively eligible individuals.

Subtitle D—Provisions Relating to Group Living Facility Standards

Sec. 131. Repeal of penalty against recipient where group living facility fails to meet applicable standards.
Sec. 132. Study of alternative methods of promoting the establishment and effective enforcement of standards for group living facilities.

Subtitle E—Provisions Relating to the Blind

Sec. 141. Special notice to blind SSI recipients.
Sec. 142. Technical amendments relating to rehabilitation services for the blind.

Subtitle F—General Provisions

Sec. 151. Effective date.

TITLE II—EMPLOYMENT OPPORTUNITIES FOR DISABLED AMERICANS

Sec. 201. Permanent authorization of program of benefits under section 1619.
Sec. 202. Eligibility of certain disabled individuals for benefits during initial two months in certain institution.
Sec. 203. Improvements to section 1619 program.
Sec. 204. Notifications to applicants and recipients.
Sec. 205. Loss of SSI upon entitlement to child's insurance benefits based on disability.
Sec. 206. Medicaid eligibility for certain recipients of cash benefits under section 1619.
Sec. 207. Effective dates.

TITLE I—GENERAL SSI AMENDMENTS

Subtitle A—Treatment of Income and Resources

SEC. 101. EXCLUSION OF CERTAIN TEMPORARY INCOME IN RETROSPECTIVE ACCOUNTING.

Section 1611(c)(2) of the Social Security Act is amended by adding at the end thereof (after and below subparagraph (B)) the following new sentence:

"Any income which is received by an individual in the month in which such individual's application for benefits under this title becomes effective (or, if the Secretary so determines, in such month and the following month) or in any month immediately following a month of such individual's ineligibility for such benefits (or, if the Secretary so determines, in such month and the following month), and which constitutes income in an amount which such individual does not continue to receive in subsequent months, shall be taken into account in determining the amount of the benefit of such individual (and his eligible spouse if any) only for that month and shall not be taken into account in determining the amount of the benefit for any subsequent month.".

SEC. 102. EXCLUSION OF CERTAIN REAL AND PERSONAL PROPERTY FROM INCOME.

Section 1612(b) of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (12);

(2) by striking out the period at the end of paragraph (13) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(14) unearned income, within such limit or limits as the Secretary may by regulation prescribe, received in kind in the form of real or personal property which is not converted into cash in the month of receipt if (A) any part of its value qualifies for exclusion from the resources of such individual (and spouse if any), or (B) section 1613(b) will be applicable to such property after such month of receipt.".

SEC. 103. MODIFICATION OF PENALTIES WHERE ASSETS ARE TRANSFERRED AT LESS THAN FAIR MARKET VALUE.

Section 1613(c) of the Social Security Act is amended—

(1) by inserting immediately after "the exclusions under subsection (a)" in paragraph (1) the following: ", and subject to paragraph (4) of this subsection";

(2) by inserting "(A)" after "within the preceding 24 months if" in paragraph (1);

(3) by inserting before the period at the end of paragraph (1) the following: ", and (B) the fair market value of such resource or interest at the time it was given away or sold (plus the fair market value of any other resources or interests therein which were owned by such individual or eligible spouse within the same 24 months and were given away or sold for that purpose) exceeds the compensation received for such resource or interest (plus the compensation received for all of the other resources and interests so given away or sold) by more than $3,000"; and

(4) by adding at the end thereof the following new paragraph:

"(4) The Secretary may by regulation provide for suspending the application of paragraph (1) to the extent (in any instance) that the Secretary determines that such suspension is necessary to avoid undue hardship.".

Subtitle B—Provisions Relating to Eligibility

SEC. 111. PAYMENT OF BENEFITS DUE DECEASED RECIPIENTS.

(a) IN GENERAL.—Section 1631(b)(1) of the Social Security Act is amended—

(1) by inserting "(A)" after "(1)";

(2) by striking out "by recovery from" where it first appears in the first sentence and all that follows down through "The Secretary (A) shall make" and inserting in lieu thereof the following:

"by recovery from such individual or his eligible spouse (or from the estate of either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment—

"(i) to any surviving spouse of such individual, whether or not the individual's eligible spouse, if (within the meaning of the first sentence of section 202(i)) such surviving husband or wife was living in the same household with the individual at the time of his death or within the 6 months immediately preceding the month of such death, or

"(ii) if such individual was a disabled or blind child who was living with his parent or parents at the time of his death or within the 6 months immediately preceding the month of such death, to such parent or parents.

"(B) The Secretary (i) shall make";

(3) by striking out "and (B) shall in any event" and inserting in lieu thereof "and (ii) shall in any event";

(4) by striking out "(i) the amount" and "(ii) an amount" and inserting in lieu thereof "(I) the amount" and "(II) an amount", respectively; and

(5) by striking out "clause (B)" and "clause (A)" in the last sentence and inserting in lieu thereof "clause (ii)" and "clause (i)", respectively.

(b) Effective Date.—The amendments made by subsection (a) shall apply with respect to benefits payable for months after May 1986.

SEC. 112. LOSS OF SSI BENEFITS UPON ENTITLEMENT TO EARLY WIDOW'S OR WIDOWER'S INSURANCE BENEFITS.

(a) In General.—Section 1611(e)(2) of the Social Security Act is amended—

(1) by inserting "(A)" before "No person"; and

(2) by adding at the end thereof the following new subparagraph:

"(B) If any person—

"(i) applies for and obtains benefits under subsection (e) or (f) of section 202 (or under any other subsection of section 202 if such person is also eligible for benefits under such subsection (e) or (f)) as required by subparagraph (A) of this paragraph, being then at least 60 years of age but not entitled to hospital insurance benefits under part A of title XVIII, and

"(ii) is determined to be ineligible (by reason of the receipt of such benefits under section 202) for supplemental security income benefits under this title or for State supplementary payments of the type described in section 1616(a),

such person shall nevertheless be deemed to be a recipient of supplemental security income benefits under this title for purposes of title XIX, so long as he or she (I) would be eligible for such supplemental security income benefits, or such State supplementary payments, in the absence of such benefits under section 202, and (II) is not entitled to hospital insurance benefits under part A of title XVIII.".

(b) Effective Date.—The amendments made by subsection (a) shall apply with respect to any individual without regard to whether the determination of his or her ineligibility for supplemental security income benefits by reason of the receipt of benefits under section 202 of the Social Security (as described in section 1611(e)(2)(B)(ii) of such Act) occurred before, on, or after the date of the enactment of this Act; but no individual shall be eligible for assistance under title XIX of such Act by reason of such amendments for any period before October 1, 1987.

SEC. 113. ELIGIBILITY OF ALIEN FOR SSI WHEN SPONSOR IS AN AGENCY OR ORGANIZATION.

Section 1621 of the Social Security Act is amended—

(1) by inserting "(1)" before "For purposes of determining" in subsection (a), and adding at the end of such subsection the following new paragraph:

"(2) Notwithstanding paragraph (1), if the person who executed the affidavit of support or similar agreement referred to in such paragraph is an agency or other organization, subsection (f) shall apply instead of subsection (b) or (c) or paragraph (1) of this subsection."; and

(2) by redesignating subsection (f) as subsection (g), and inserting after subsection (e) the following new subsection:

"(f) In the case of an individual who is an alien and with respect to whom an agency or organization executed an affidavit of support or similar agreement (as a sponsor of such individual's entry into the United States), such individual shall, for a period of three years after his entry into the United States, be ineligible for benefits under this title unless the Secretary has determined that such sponsoring agency or organization is no longer in existence, or that such agency or organization has been adjudged bankrupt by a court of competent jurisdiction. The determinations referred to in the preceding sentence shall be made by the Secretary based upon such documentary evidence as he may require.".

SEC. 114. TREATMENT OF CERTAIN COUPLES IN MEDICAL INSTITUTIONS.

(a) In General.—Section 1611(e) of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(5) Notwithstanding anything to the contrary in the criteria being used by the Secretary in determining when a husband and wife are to be considered two eligible individuals for purposes of this title and when they are to be considered an eligible individual with an eligible spouse, the State agency administering or supervising the administration of a State plan under any other program under this Act may (in the administration of such plan) treat a husband and wife sharing a room or comparable accommodation in a hospital, home, or facility described in paragraph (1)(B) as though they were an eligible individual with his or her eligible spouse for purposes of this title (rather than two eligible individuals), after they have continuously shared such a room or accommodation for 6 months, if treating such husband and wife as two eligible individuals would prevent either of them from receiving benefits or assistance under such plan or reduce the amount thereof.".

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

Subtitle C—Provisions Relating to Emergency Assistance

SEC. 121. MODIFICATION OF INTERIM ASSISTANCE REIMBURSEMENT PROGRAM.

(a) In General.—The first sentence of section 1631(g)(2) of the Social Security Act is amended by striking out "at the time the Secretary makes the first payment of benefits" and inserting in lieu thereof "(i) at the time the Secretary makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3), or (ii) (under regulations prescribed by the Secretary in consultation with the Secretary of the Treasury) as a replacement for a benefit check which has been lost or stolen as described in clause (C) of such paragraph".

(b) Definition of Interim Assistance.—Section 1631(g)(3) of such Act is amended—

(1) by inserting "(A)" after "basic needs"; and

(2) by inserting before the period at the end thereof the following: ", (B) during the period beginning with the first month for which the individual's benefits (as defined in paragraph (2)) have been terminated or suspended if the individual was subsequently found to have been eligible for such benefits, or (C) during any period for which a benefit check has been issued if such check was lost or stolen before being negotiated by the individual".

SEC. 122. INCREASED EMERGENCY ADVANCE PAYMENTS FOR PRESUMPTIVELY ELIGIBLE INDIVIDUALS.

Section 1631(a)(4)(A) of the Social Security Act is amended by striking out "a cash advance against such benefits in an amount not exceeding $100" and inserting in lieu thereof "a cash advance against such benefits in an amount not exceeding the amount of the monthly benefit, including any federally-administered State supplementary payments, that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility".

Subtitle D—Provisions Relating to Group Living Facility Standards

SEC. 131. REPEAL OF PENALTY AGAINST RECIPIENT WHERE GROUP LIVING FACILITY FAILS TO MEET APPLICABLE STANDARDS.

(a) In General.—Section 1616(e) of the Social Security Act is amended by striking out paragraph (4).

(b) Effective Date.—Subsection (a) shall be effective on the date of the enactment of this Act.

SEC. 132. STUDY OF ALTERNATIVE METHODS OF PROMOTING THE EFFECTIVE ENFORCEMENT OF STANDARDS FOR GROUP LIVING FACILITIES.

The Secretary of Health and Human Services and the Comptroller General of the United States shall each study and analyze alternative methods which might be adopted—

(1) to promote the enforcement of appropriate State standards (governing such matters as admission policies, safety, sanitation, and protection of civil rights) by institutions, foster homes, and group living arrangements in which significant numbers of SSI recipients are residing or are likely to reside, and

(2) to carry out more effectively the objectives of section 1616(e) of the Social Security Act.

The Secretary and the Comptroller General shall each submit to the Congress, no later than January 1, 1988, a full and complete report of the results of his study and analysis under this section together with such recommendations as may be deemed appropriate.

Subtitle E—Provisions Relating to the Blind

SEC. 141. SPECIAL NOTICE TO BLIND RECIPIENTS.

(a) In General.—(1) Section 1631 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"Special Notice to Blind Individuals with Respect to Hearings and Other Official Actions

"(j)(1) In any case where an individual who is applying for or receiving benefits under this title on the basis of blindness is entitled (under subsection (c) or otherwise) to receive notice from the Secretary of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this title, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, or (B) to receive the initial notice in the form of a certified letter.

"(2) The elections described in paragraph (1) may be made at any time; but an opportunity to make such an election shall in any event be given (A) to every individual who is an applicant for benefits under this title on the basis of blindness, at the time of his or her application, and (B) to every individual who is a recipient of such benefits on the basis of blindness, at the time of each redetermination of his or her eligibility. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this title until such time as it is revoked or changed.".

(2) The amendment made by paragraph (1) shall take effect on April 1, 1987; and the Secretary of Health and Human Services shall take appropriate steps, no later than October 1, 1987, to ensure that every individual already receiving benefits under title XVI of the Social Security Act on the basis of blindness is given an early opportunity to make the election provided for in section 1631(j) of such Act (as added by such amendment).

(b) STUDY.—The Secretary of Health and Human Services shall study the desirability and feasibility of extending special or supplementary notification rights of the type conferred upon blind individuals by section 1631(j) of the Social Security Act (as added by subsection (a) of this section) to other individuals who may lack the ability to read and comprehend regular written notices, and shall report the results of such study to the Congress, along with such recommendations as may appear appropriate, within 6 months after the date of the enactment of this Act.

SEC. 142. TECHNICAL AMENDMENTS RELATING TO REHABILITATION SERVICES FOR THE BLIND.

(a) Section 1631(a)(6) of the Social Security Act is amended—

(1) by inserting "blindness (as determined under section 1614(a)(2)) or" before "disability (as determined under section 1614(a)(3))";

(2) by inserting "blindness or other" before "physical or mental impairment"; and

(3) by inserting "blindness and" before "disability benefit rolls" in subparagraph (B).

Subtitle F—General Provisions

SEC. 151. EFFECTIVE DATE.

Except as otherwise specifically provided, this title and the amendments made by this title shall become effective April 1, 1987.

TITLE II—EMPLOYMENT OPPORTUNITIES FOR DISABLED AMERICANS

SEC. 201. PERMANENT AUTHORIZATION OF PROGRAM OF BENEFITS UNDER SECTION 1619.

Section 201(d) of the Social Security Disability Amendments of 1980 (42 U.S.C. 1382h note) is amended by striking out ", but shall remain in effect only through June 30, 1987".

SEC. 202. ELIGIBILITY OF CERTAIN DISABLED OR BLIND INDIVIDUALS FOR BENEFITS DURING INITIAL TWO MONTHS IN CERTAIN INSTITUTIONS.

Section 1611(e)(1) of the Social Security Act (42 U.S.C. 1382(e)(1)) is amended—

(1) in subparagraph (A) by striking out "and (D)" and inserting in lieu thereof "(D), and (E)"; and

(2) in subparagraph (B) by inserting "(subject to subparagraph (E))" after "shall be payable"; and

(3) by adding at the end thereof the following new subparagraphs:

"(E) Notwithstanding subparagraphs (A) and (B), any individual who—

"(i)(I) is an inmate of a public institution, the primary purpose of which is the provision of medical or psychiatric care, throughout any month as described in subparagraph (A), or

"(II) is in a hospital, extended care facility, nursing home, or intermediate care facility throughout any month as described in subparagraph (B),

"(ii) was eligible under section 1619(a) or (b) for the month preceding such month, and

"(iii) under an agreement of the public institution or the hospital, extended care facility, nursing home, or intermediate care facility is permitted to retain any benefit payable by reason of this subparagraph,

may be an eligible individual or eligible spouse for purposes of this title (and entitled to a benefit determined on the basis of the rate applicable under subsection (b)) for the month referred to in subclause (I) or (II) of clause (i) and, if such subclause still applies, for the succeeding month.

"(F) An individual who is an eligible individual or an eligible spouse for a month by reason of subparagraph (E) shall not be treated as being eligible under section 1619(a) or (b) for such month for purposes of clause (ii) of such subparagraph.".

SEC. 203. IMPROVEMENTS TO SECTION 1619 PROGRAM.

(a) CASH BENEFITS.—Section 1619(a) of the Social Security Act (42 U.S.C. 1382h(a)) is amended to read as follows:

"(a)(1) Any individual who was determined to be an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1611 (or a federally administered State supplementary payment) for a month and whose earnings in a subsequent month exceed the amount designated by the Secretary ordinarily to represent substantial gainful activity shall qualify for a monthly benefit under this subsection for such subsequent month (which shall be in lieu of any benefit under section 1611) equal to an amount determined under section 1611(b)(1) (or, in the case of an individual who has an eligible spouse, under section 1611(b)(2)), and for purposes of title XIX shall be considered to be receiving supplemental security income benefits under this title, for so long as—

"(A) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability; and

"(B) the income of such individual, other than income excluded pursuant to section 1612(b), is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1611 and such individual meets all other non-disability-related requirements for eligibility for benefits under this title.

"(2) The Secretary shall make a determination under paragraph (1)(A) with respect to an individual not later than 12 months after the first month for which the individual qualifies for a benefit under this subsection.".

(b) CONTINUING BENEFITS UNDER TITLE XIX.—Section 1619(b) of such Act is amended—

(1) in paragraph (1) by striking out "continues to meet" and inserting in lieu thereof "meets",

(2) in paragraph (4) by striking out "benefits under this title and title XIX" and inserting in lieu thereof "benefits under this title (including any federally administered State supplementary payments), benefits under title XIX, and publicly funded attendant care services (including personal care assistance),".

(3) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively,

(4) by striking out the matter preceding subparagraph (A) (as redesignated by paragraph (3) of this subsection) and inserting in lieu thereof the following:

"(b)(1) For purposes of title XIX, any individual under age 65 who was determined to be a blind or disabled individual eligible to receive a benefit under section 1611 or any federally administered State supplementary payment for a month and who in a subsequent month is ineligible for benefits under this title (and for any federally administered State supplementary payments) because of his or her income shall, nevertheless, be considered to be receiving supplemental security income benefits for such subsequent month provided that the Secretary determines under regulations that—", and

(5) by adding at the end thereof (after and below subparagraph (D), as so redesignated) the following new paragraph:

"(2)(A) Determinations made under paragraph (1)(D) shall be based on information and data updated no less frequently than annually.

"(B) In determining an individual's earnings for purposes of paragraph (1)(D), there shall be excluded from such earnings an amount equal to the sum of any amounts which are or would be excluded under clauses (ii) and (iv) of section 1612(b)(4)(B) (or under clauses (ii) and (iii) of section 1612(b)(4)(A)) in determining his or her income.".

(c) REVIEW PROCESS FOR CERTAIN INDIVIDUALS.—

(1) Section 1631 of such Act (42 U.S.C. 1383) is amended—

(A) in subsection (e)(1)(A) by striking out "subparagraph (B)" and inserting in lieu thereof "subparagraph (B) and subsection (k)", and

(B) by adding at the end thereof (after the new subsection added by section 141(a) of this Act) the following new subsection:

"Application and Review Requirements for Certain Individuals

"(k)(1) Notwithstanding any provision of section 1611 or 1619, any individual who—

"(A) was an eligible individual (or eligible spouse) under section 1611 or was eligible for benefits under or pursuant to section 1619, and

"(B) who, after such eligibility, is ineligible for benefits under or pursuant to both such sections for a period of 12 consecutive months,

may not thereafter become eligible for benefits under or pursuant to either such section until the individual has reapplied for benefits under section 1611 and been determined to be eligible for benefits under such section.

"(2)(A) Notwithstanding any provision of section 1611 or section 1619, any individual who was eligible for benefits pursuant to section 1619(b), and who—

"(i)(I) on the basis of the same impairment on which his or her eligibility under such section 1619(b) was based becomes eligible for benefits under section 1611 or 1619(a) for a month that follows a period during which the individual was ineligible for benefits under sections 1611 and 1619(a), and

"(II) has earned income (other than income excluded pursuant to section 1612(b)) for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1611(b) for that month (if he or she were otherwise eligible for such payments); or

"(ii)(I) on the basis of the same impairment on which his or her eligibility under such section 1619(b) was based becomes eligible under section 1619(b) for a month that follows a period during which the individual was ineligible under section 1611 and section 1619, and

"(II) has earned income (other than income excluded pursuant to section 1612(b)) for such month or for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1611(b) for that month (if he or she were otherwise eligible for such payments);

shall, upon becoming eligible (as described in clause (i)(I) or (ii)(I)), be subject to a prompt review of the type described in section 1614(a)(5).

"(B) If the Secretary determines pursuant to a review required by subparagraph (A) that the impairment upon which the eligibility of an individual is based has ceased, does not exist, or is not disabling, such individual may not thereafter become eligible for a benefit under or pursuant to section 1611 or section 1619 until the individual has reapplied for benefits under section 1611 and been determined to be eligible for benefits under such section.".

(2) Section 1619 of such Act (as amended by subsections (a) and (b) of this section) is further amended—

(A) in subsection (a) by striking out "Any individual" and inserting in lieu thereof "Except as provided in section 1631(k), any individual", and

(B) in subsection (b) by striking out "For purposes of" and inserting in lieu thereof "Except as provided in section 1631(k), for purposes of".

(3) Section 1611 of such Act (42 U.S.C. 1382) is amended by adding at the end thereof the following new subsection:

"Application and Review Requirements for Certain Individuals

"(i) For application and review requirements affecting the eligibility of certain individuals, see section 1631(k).".

(d) Conforming Amendments.—

(1) Section 1611(e) of such Act (42 U.S.C. 1382(e)) is amended by striking out paragraph (4), and by redesignating paragraph (5) (as added by section 114 of this Act) as paragraph (4).

(2) Section 1614(a)(3) of such Act (42 U.S.C. 1382c(a)(3)) is amended—

(A) in subparagraph (D) by striking out ", except for purposes of subparagraph (F) or paragraph (4),", and

(B) by striking out subparagraph (F), and by redesignating subparagraphs (G) and (H) as subparagraphs (F) and (G), respectively.

(3)(A) Section 1614(a) of such Act (as amended by paragraph (2) of this subsection) is further amended by striking out paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(B) Section 1631(k)(2)(A) of such Act (as added by subsection (c) of this section) is amended by striking out "section 1614(a)(5)" and inserting in lieu thereof "section 1614(a)(4)".

SEC. 204. NOTIFICATIONS TO APPLICANTS AND RECIPIENTS.

Section 1631 of the Social Security Act (42 U.S.C. 1383) (as amended by sections 141(a) and section 203(c) of this Act) is further amended by adding at the end thereof the following new subsection:

"Notifications to Applicants and Recipients

"(l) The Secretary shall notify an individual receiving benefits under section 1611 on the basis of disability or blindness of his or her potential eligibility for benefits under or pursuant to section 1619—

"(1) at the time of the initial award of benefits to the individual under section 1611 (if the individual has attained the age of 18 at the time of such initial award), and

"(2) at the earliest time after an initial award of benefits to an individual under section 1611 that the individual's earned income for a month (other than income excluded pursuant to section 1612(b)) is $200 or more, and periodically thereafter so long as such individual has earned income (other than income so excluded) of $200 or more per month.".

SEC. 205. LOSS OF SSI BENEFITS UPON ENTITLEMENT TO CHILD'S INSURANCE BENEFITS BASED ON DISABILITY.

(a) In General.—Section 1634 of the Social Security Act (42 U.S.C. 1383c) is amended by adding at the end thereof the following new subsection:

"(c) If any individual who has attained the age of 18 and is receiving benefits under this title on the basis of blindness or a disability which began before he or she attained the age of 22—

"(1) becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under section 202(d) on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and

"(2) ceases to be eligible for benefits under this title because of such child's insurance benefits or because of the increase in such child's insurance benefits,

such individual shall be treated for purposes of title XIX as receiving benefits under this title so long as he or she would be eligible for benefits under this title in the absence of such child's insurance benefits or such increase.".

(b) State Determinations.—Any determination required under section 1634(c) of the Social Security Act with respect to whether an individual would be eligible for benefits under title XVI of such Act in the absence of children's benefits (or an increase thereof) shall be made by the appropriate State agency.

SEC. 206. MEDICAID ELIGIBILITY FOR CERTAIN RECIPIENTS OF CASH BENEFITS UNDER SECTION 1619.

Section 1619(b) of the Social Security Act (42 U.S.C. 1382h(b)) (as amended by section 203(b) of this Act) is further amended by adding at the end thereof the following new paragraph:

"(3) In the case of a State that exercises the option under section 1902(f), any individual who—

"(A)(i) qualifies for a benefit under subsection (a), or

"(ii) meets the requirements of paragraph (1); and

"(B) was eligible for medical assistance under the State plan approved under title XIX in the month immediately preceding the first month in which the individual qualified for a benefit under such subsection or met such requirements,

shall remain eligible for medical assistance under such plan for so long as the individual qualifies for a benefit under such subsection or meets such requirements.".

SEC. 207. EFFECTIVE DATES.

(a) Permanent Authorization.—The amendment made by section 201 shall become effective on the date of the enactment of this Act.

(b) Program Modifications.—The amendments made by sections 202, 203, 204, 205, and 206 shall become effective on July 1, 1987.

The **SPEAKER** pro tempore. Is a second demanded?

Mr. **DUNCAN**. Mr. Speaker, I demand a second.

The **SPEAKER** pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The **SPEAKER** pro tempore. The gentleman from Illinois [Mr. Rostenkowski] will be recognized for 20 minutes and the gentleman from Tennessee [Mr. Duncan] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Illinois [Mr. Rostenkowski].

GENERAL LEAVE

Mr. **ROSTENKOWSKI**. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill presently under consideration.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. **ROSTENKOWSKI**. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill was reported by the Committee on Ways and Means by voice vote and enjoys bipartisan support. Title I of the bill makes a number of minor but very important changes in the SSI Program that make the program more responsive to the needs of the aged, blind, and disabled poor. Title II of the bill makes section 1619 of the Social Security Act permanent. Under this section, disabled individuals who are able to work, despite their severe impairments, can do so without fear of losing their SSI benefits and their Medicaid coverage. Over 55,000 disabled individuals have benefited from section 1619 since it was enacted in 1981.

I want to thank Mr. Ford, the chairman of the Public Assistance Subcommittee, and Mr. STARK the ranking member, for their work in developing this bill. They have brought to the floor a proposal that not only improves the SSI Program, but will also save $4 million over the next 3 fiscal years.

I now yield to Mr. FORD, chairman of the Public Assistance Subcommittee, for a more detailed explanation of the bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from Tennessee [Mr. FORD].

Mr. FORD of Tennessee. I thank the gentleman for yielding me this time.

Mr. Speaker, H.R. 5595, the SSI Improvement Amendments of 1986, is important legislation to the over 4 million aged, blind, and disabled individuals who rely on SSI for a minimum level of income to meet their daily living needs.

Title I of the bill makes a number of improvements in the SSI Program. These include:

The payment of retroactive benefits on behalf of a deceased recipient to his spouse or, in the case of a disabled child, to his parents;

Continued Medicaid coverage for widows or widowers who lose health care coverage when they are required to take Social Security benefits at age 60;

The modification of penalties when small amounts of assets are given away;

Improved emergency assistance programs for SSI recipients; and

A requirement of special notices to blind recipients.

I want to note Mr. ANTHONY's role in addressing the problem of payment of retroactive benefits to the spouse or parents of a deceased recipient.

Title II of the bill makes section 1619 of the Social Security Act permanent. This section allows disabled individuals who are able to work, despite their impairments, to continue to receive SSI and/or Medicaid benefits. Section 1619 is due to expire on June 30, 1987. A recent report of the Department of Health and Human Services has confirmed what advocates for the disabled have been telling us for years—the 1619 program is a valuable incentive for those disabled individuals who want to try and work and it is a very complicated program. It is time to make it permanent and simpler.

I want to commend my colleague from California, Mr. STARK, for his efforts in getting this bill to the floor. He, along with our colleague from Texas, Mr. BARTLETT, introduced legislation at the beginning of this Congress that became the basis of the bill we are considering today.

Mr. Speaker, this bill deserves the support of all Members of the House and I urge its adoption.

Mr. Speaker, I reserve the balance of my time.

□ 1245

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this legislation, but without a great deal of enthusiasm. It is, I think, a great example. It has many good things in it. It is a good idea, I guess, by packaging some good ideas with some bad ideas, like ink and water.

Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. LAGOMARSINO].

Mr. LAGOMARSINO. Mr. Speaker, I rise in support of H.R. 5595, the SSI improvement amendments. The fact that section 1619 is not permanently authorized inhibits many persons with disabilities from utilizing its benefits. They fear that the program will be terminated.

We all know of disabled persons who want to work and become independent, taxpaying citizens, but who are afraid to accept a job or earn more than they are currently earning for fear of losing their SSI health care benefits. We should be promoting employment among the disabled—certainly not discouraging it with this disincentive to work. It is important that the disabled be able to work when they can without losing their benefits, for often their work record is very short lived. Furthermore, in the case of the mentally ill, the ability to work and be employed is a real self-confidence builder which can have a positive influence on the individual's overall mental health.

I have had several truly moving letters from parents of SSI beneficiaries who are able to work despite their impairments but who do not because of the temporary nature of section 1619. We have before us now a means to change that situation. We should take advantage of the opportunity.

Mr. FORD of Tennessee. Mr. Speaker, I yield 3 minutes to the gentleman from Arkansas [Mr. ANTHONY].

Mr. ANTHONY. Mr. Speaker, I rise in support of H.R. 5595, the SSI Improvement Amendments of 1986.

While I support the bill in its entirety I specifically would like to address section 111, provisions related to eligibility.

Recently, a situation in my district brought the inequities of the supplemental security income system to my attention and I feel that H.R. 5595, is necessary to make this program fairer and more responsive to those people in need of its benefits.

I would like to share this story with you. On June 9, Mr. Billy Joe Yarbrough applied for supplemental security income benefits due to a heart ailment. The benefits were denied on July 21, due to the administration's belief that Mr. Yarbrough's heart condition was not severe enough to keep him from working.

Mr. Yarbrough appealed this decision and on August 20, he was approved for disability and SSI. On August 24, Mr. Yarbrough died enroute to a Texas hospital to receive a heart transplant.

In early September, Mrs. Yarbrough received her husband's check for $1,102 for the months of June, July, August, and September. When Mrs. Yarbrough went to cash her deceased husband's check, the Social Security office would not allow her to do so.

The Social Security Administrator said the agency was only abiding by the laws established by Congress. The Administrator was correct. Under present law a person is not entitled to cash a deceased spouse's SSI check unless the survivor is also disabled.

Because Mr. Yarbrough died an untimely death, his wife, who is not an eligible recipient of supplemental security income benefits, could not cash his check.

Section 111 of H.R. 5595 would amend the law to correct what I consider to be this grave injustice. This provision would provide for payment of benefits on behalf of a deceased recipient to the ineligible spouse and the parent of a disabled or blind child. It is my understanding that the cost associated with this provision is negligible.

I would like to thank the subcommittee for agreeing to a retroactive effective date so as to insure that Mrs. Yarbrough will receive the checks that her husband would have been entitled if he had lived.

Mr. Speaker, Congressman FORD and Congressman STARK should be commended for the fine work they have done on this bill and I urge my colleagues to support this needed and worthy legislation so that cases such as Mrs. Yarbrough's will never occur again.

Mr. DUNCAN. Mr. Speaker, I yield 3 minutes to the gentleman from Michigan [Mr. HENRY].

Mr. HENRY. Mr. Speaker, I rise in strong support of H.R. 5595, which makes a number of important changes in our SSI program.

First, I am pleased that this legislation has incorporated the provisions of my colleague, Mr. BARTLETT's bill, H.R. 4450, and would extend and make permanent in the law the provisions of section 1619 of the Social Security Act. Section 1619 is an important program in allowing and encouraging disabled persons to move into gainful and self-supporting employment. Without this extension, section 1619 expires on June 30, 1987, and it is critical that we not only extend it, but give assurance that it will remain available by making it a permanent part of the Social Security law.

In addition H.R. 5595 makes a number of changes which will assure greater utilization of section 1619. The bill requires each SSI recipient be notified of section 1619, and each Social Security office have at least one section 1619 specialist. The bill also makes improvements by making it easier for recipients to move from regular SSI to section 1619(a) or (b), as their earnings and circumstances change.

I am proud to have been involved, along with the disability community, in the initiation of a "personal care attendant" grant program in my own State of Michigan. These programs have tremendous potential for enabling the disabled to move into gainful employment. One of the disincentives, however, has been that the expenses of such attendant services have not been included in determining the "reasonable equivalent" of benefits for Medicaid eligibility under section 1619(b). I am pleased that this bill would correct that problem, and would require that "reasonable equivalent" be based on current information and data.

Finally, let me mention one thing that is not part of this bill, but I hope will be the subject of further consideration and action both here in the Congress and within the Social Security Administration. Under current law, disabled SSI recipients are allowed to retain their grant while working, so long as their earnings do not exceed a level known as SGA, or "substantial gainful activity." In the case of disabled recipients, unlike other categories, the level set for SGA has not been adjusted since 1980, and thus the value of this incentive to work has been eroded by inflation. The adjustment of the SGA level does not require legislation, but current law also does not require the Department to annually adjust the SGA in order to account for inflation. I understand that the Department and the Disability Advisory Council is looking into this matter, both in terms of raising SGA and also considering whether the concept of SGA is the appropriate and best way of encouraging disabled persons to enter and remain part of the work force. I want to encourage those efforts, and emphasize the need to either increase the SGA or do away with it entirely, if we are to deal with the entire picture of work disincentives for the disabled community.

Mr. FORD of Tennessee. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. WAXMAN].

□ 1255

Mr. WAXMAN. Mr. Speaker, I rise in strong support of this legislation, which contains Medicaid provisions of critical importance to low-income working disabled people.

I should note at the outset that the Energy and Commerce Committee, which has sole jurisdiction over the Medicaid Program, shares jurisdiction over this legislation. However, because of the short time remaining in this Congress and the committee's desire to see this legislation enacted, the committee has decided not to exercise its jurisdiction at this time.

I would also note that in July the Energy and Commerce Committee reported a similar Medicaid provision that was included as section 4604 of H.R. 5300, the Omnibus Budget Reconciliation Act of 1986.

Mr. Speaker, one of the basic objectives of the Medicaid Program is to enable and encourage people to return to work. In the case of those with severe, continuing, physical or mental impairments, the services that Medicaid pays for cannot totally restore an individual's health; instead, these services enable an individual to function to his or her maximum potential.

From the standpoint of the disabled, the problem with the current structure of Medicaid is that eligibility for the program is tied into the definition of disability that governs cash assistance benefits under the SSI Program. That definition, in turn, results in a loss of cash benefits if a disabled person returns to work and earns more than a specified amount. The person still has the same impairment, but finds that by earning modest amounts of money he has disqualified himself from both cash assistance and Medicaid.

This obviously creates a severe disincentive for the disabled to return to work. Most of these individuals need medical coverage, but the jobs they are likely to hold tend not to offer group insurance coverage and tend not to pay enough to enable them to buy adequate insurance coverage—assuming they can find any at all. Without assurance that their daily medical care needs will be met, many disabled people simply cannot return to work. Both they and society have lost an opportunity.

Over the past 6 years, we have learned that making Medicaid benefits available to the disabled even though they earn more than allowed under the SSI cash assistance program: First, encourages the disabled to work; second, helps them to attain their personal potential; and third, saves program dollars. The provision in current law which authorizes continuing Medicaid coverage to the working disabled—section 1619(b) of the Social Security Act—expires on June 30, 1987. The bill before the House today would revise that authority and make it permanent.

I urge my colleagues to vote to suspend the rules and pass H.R. 5595.

Mr. DUNCAN. Mr. Speaker, I yield 2 minutes to the gentleman from Texas [Mr. ARMEY].

Mr. ARMEY. Mr. Speaker, I rise in support of this bill and in particular in support of a special provision within this bill.

Mr. Speaker, we have here one for the books. I want to tell very quickly the story of Alton and Irene Marlowe, both in their seventies. Throughout all their married life and their working life they treated their income as joint income. They filed joint tax returns and they paid their taxes as a couple. Upon retirement, they moved into a nursing home together and so long as their income from Social Security was treated as joint income, they were allowed to stay together in their retirement home, sharing their room together, sharing their time together, playing bridge late in the evening or reading and talking and visiting, as we would expect we would do as we retire together.

Then lightening struck. Somebody clarified the rules and decided it would be better that now in their seventies that they should treat their income as separate income. That meant that Irene Marlowe could remain in the nursing home, but for $78.80 a month excessive income, Alton had to leave. He had nowhere to go. He did not know what to do, could not stay in Texas, and moved then into a home to be near his unemployed son in Colorado.

The Marlowes contacted my office and we worked to find a solution to their problem and found impasse after impasse after impasse, redtape, explanations, all too often ending, "It is better this way."

Well, it was not better for the Marlowes and now in this bill today we see the opportunity to bring them back together, as they should be.

Mr. Speaker, I urge my colleagues to vote for this bill to correct all the problems we have discovered and offered corrections for in this bill, but for the Marlowes and for all the Marlowes, please vote for this bill.

Mr. Speaker, the SSI Amendments of 1986 contain a provision which will correct one of the most heart-rending bureaucratic glitches that I have come across in my many years of studying the strange ways of our Federal Government. It involves the case of Irene and Alton Marlowe, residents of Lewisville, TX, and happily married until they were involuntarily separated by the regulations of the Medicaid system.

Irene and Alton both require care in a nursing home. Being married, their caretakers saw to it that they were put in the same room, and they spent their quiet days playing bridge, talking with their friends, and watching television. Then Government officials did an audit.

It turned out that while Irene was eligible for Medicaid help, Alton was not. That's because Alton was exactly $78.80 over the Medicaid eligibility line. This had never been a problem before since in most cases Medicaid considers a married couple's income jointly. Due to a recent "clarification" of the regulations, however, the Government decided to treat them as if they were strangers and counted their incomes separately. This in effect bounced Alton out of the nursing home and forced him to move to another State where he could be near his son.

Now I realize that all of this has a certain cold logic to it in the eyes of the Medicaid administrators. After all, they told me, it cost the nursing home the same amount to care for each of them so it made sense that their assets be considered separately. And besides, they said, this usually works out for the best.

Well, it didn't for Alton and Irene. After 17 years of marriage, they found themselves permanently separated by hundreds of miles. None of us who care about our elderly or any of those on public assistance ever intended that anything like this should ever happen.

That's why I'm delighted that today we are able to pass a corrective piece of legislation that will allow Texas officials to again recognize the Marlowes as a married couple and bring them back together to spend the rest of their lives in each others' company. I urge all of my colleagues to support this fine legislation.

Mr. DUNCAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. Mr. Speaker, because I believe this bill is a very appropriate refinement of the current law, I think it is a positive addition to our current law, and because I think it saves money over the long term, I rise in support.

Mr. DUNCAN. Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. BARTLETT], who has worked as hard on this legislation as any Member of the Congress.

Mr. BARTLETT. Mr. Speaker, I rise in strong support of H.R. 5595, the SSI Improvement Amendments of 1986.

This legislation has required the efforts of a large number of Members of this Congress over the last 2 years. I would particularly commend the chairman of the Subcommittee on Public Assistance, the gentleman from Tennessee [Mr. FORD] for his diligence and his leadership and his vision in this, and the ranking majority and minority members of the subcommittee, the gentleman from California [Mr. STARK] and the gentleman from South Carolina [Mr. CAMPBELL], as well as the ranking member of the full committee, the gentleman from Tennessee [Mr. DUNCAN], who has displayed a great deal of leadership in the effort to bring this legislation to the floor.

This legislation, Mr. Speaker, is essentially a commonsense piece of legislation. It does not add new Federal programs. In fact, it removes Federal disincentives or disincentives for employment opportunities that are currently in the law. It is a series of amendments that would remove catch-22's that are in the law that keep people from working and prevent people who otherwise want to get a job from obtaining employment.

This legislation benefits two groups of people; first, the disabled persons themselves on SSI, and second, the taxpayers, because the legislation will prove to be a significant costsaver and a savings of much more than I think is officially estimated, because the legislation will permit people who otherwise would be forced by Federal law to stay unemployed, will permit them to become employed and to save in that way.

It is estimated that if only 10,000 new participants enroll in section 619, those 10,000 would save the Nation's taxpayers $44 million a year in cash benefit savings alone, and that 10,000 could be chosen out of a universe of a total of 1.7 million eligible participants.

The basis of title II of this bill, and I support both titles, but the basis of title II is contained in the concept of what is known as section 1619 of the Social Security Program. Section 1619 was created to determine if the substantial gainful activity level was a disincentive to employment for persons with disabilities receiving SSI benefits. The program does this by allowing reduced SSI payments up to the break even point, which is approximately $735 in most States, and thereby extending Medicaid eligibility, so that the person who is unemployed and disabled and is eligible therefore for Medicaid can become employed and disabled and be assured that he or she will not lose their health insurance.

Unfortunately, the temporary nature of the 1619 program has presented a dilemma to potential program participants, and has led to significant underutilization of the program. Fear that the program would expire, and that fear is not ill-founded, the program was allowed to expire for 9 months in 1983, has proven to be a major disincentive. It is a testimony, it seems to me, to the will-to-work of persons with disabilities that some 55,000 of them have participated in 1619 since 1981, for the risk they face in a temporary program is one which many able-bodied persons would not willingly confront.

Under a temporary 1619 program, individuals have to chose between not working with health coverage, or working with the risk of loss of health coverage. Given these options, the surprising statistic to me is not how many individuals have chosen not to work, but rather that so many would risk the loss of health care in order to be employed.

Every day thousands of disabled Americans get up 2 hours earlier than their nonhandicapped peers, because it takes them that much longer to get ready for work, to navigate a public transportation system that can be unaccommodating, and deal with the awkward attitudes of an unfamiliar public. They overcome tools that do not fit their grips and written instructions that are beyond their ability to read and understand. In order to be employed, these disabled Americans deal with and overcome a host of problems that nondisabled Americans do not have to consider. Those who choose to make these heroic efforts deserve any effort that we can make to remove disincentives to that employment.

Mr. Speaker, I urge a yes vote on this legislation. Similar legislation has been passed in the other body and I urge expedited consideration and passage of this legislation to remove these disincentives from Federal law to save the taxpayers money and to provide those employment and quality of life opportunities for disabled persons around this country.

Mr. Speaker, I thank the gentleman for the time.

Mr. DUNCAN. Mr. Speaker, I yield the balance of my time to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Speaker, when this bill went through the Public Assistance Subcommittee, it was my understanding that the bill was going to save us money. The bill does save us money in 1987 and in 1988 fiscal years. In the 3 outyears beyond that for which the CBO has computations, it costs extra money. The net is a $13 million increase.

Title II to which the gentleman from Texas referred in glowing terms is a consensus title. I do not know anybody who does not think it is a good idea to put 1619 into permanent law, nor is there anyone who believes that the other portions of that title are not good, either.

The problem is with title I, and again I do not disagree with the gentleman from Arkansas who described a particular case which is treated in title I. I cannot complain about the items in title I.

What bothers me about the bill, however, having decided that we would put 1619 into permanent law and having achieved some savings, we went about spending up those savings in the first couple years, resulting in a little bit of a net saving, and in the outyears resulting in a new expenditure.

I guess I do not think that is the way the committee should work. I do not think that is the way the House of Representatives should work.

I do not know what the Senate is going to do with this bill. I understand that it may have add-ons or whatever, but all I can say is this bill costs more money than many of us thought it would.

Title II is an unvarnished blessing. Title I has good provisions. It is a question of whether there is money to provide for those provisions at this time.

Mr. ROYBAL. Mr. Speaker, I rise in support of H.R. 5595, the SSI Improvement Amendments of 1986. Ths bill provides needed changes in the SSI Program, and I commend the chairman of the Committee on Ways and Means, Mr. ROSTENKOWSKI, for bringing this legislation to the floor.

There are several important provisions in this bill including the continuation of Medicaid coverage for disabled widows/widowers; the improvement of emergency assistance programs for SSI recipients, and the payment of retroactive benefits on behalf of a deceased SSI recipient to the spouse or to the parents of a disabled child who has died.

There is one provision of this bill in particular which I would like to stress as a benefit to the disabled and blind. Title II of the bill makes permanent the section 1619 program. This program was established in 1981 as a work incentive demonstration project designed to motivate potential workers to find successful work situations. Although only a small proportion of SSI recipients have countable income, we need to remove barriers to their becoming as productive as they are able. Since its inception, section 1619 has aided over 55,000 individuals, half of whom are mentally disabled, in this goal. It is important for us to make this program permanent since according to the Michigan Interagency Task Force on Disability, "advocates, knowledgeable parents and service providers remain cautious about encouraging persons with disabilities to work while 1619 (a) and (b) remain temporary measures." Only with a permanent program will disabled SSI recipients have a chance to become productive citizens.

Section 1619 provides for continued benefits for blind and disabled SSI recipients who, although severely disabled, receive enough earning to demonstrate substantial gainful activity. Special benefit status is given to these individuals entitling them to cash benefits equivalent to those provided under the regular SSI program. Persons receiving these special benefits are eligible for Medicaid and social services on the same basis as regular SSI recipients.

We need to go further in reforming the SSI program for all individuals. These reforms include the elimination of the one-third reduction of benefits due to an individual living in the home of another, increasing earnings limitation, and raising the Federal benefit standard to the poverty level with annual increases tied to increases in the poverty level. This legislation, H.R. 5595, is a step towards improving the program, and I am proud to support its passage.

Mr. DAUB. Mr. Speaker, I am pleased to offer my strong support for H.R. 5595, "the SSI improvement amendments of 1986." I commend Mr. FORD, chairman of the Ways and Means Public Assistance Subcommittee and his ranking member, Mr. CAMPBELL, for their diligent efforts in bringing this measure before us for complete consideration.

Among the most important provisions of the legislation are those sections pertaining to income and eligibility requirements. H.R. 5595 makes many important modifications of current law in order to remove the most onerous restrictions that SSI beneficiaries now face. One provision in particular addresses a situation which I experienced in attempting to assist one of my constituents.

Due to her limited and fixed income, this woman had been receiving SSI benefits. For her birthday, her son and daughter gave her an electric broom—an item that approximated $50 in value. As required under the law, my constituent reported her gift, but to her distress found that 1 month later, her SSI benefit check had been reduced by $50. She was informed that current regulations required the Social Security Administration to count as income either real or personal property she received.

Obviously, it is not the intent of Congress to juxtapose the value of property received with the value of a cash benefit. Present law creates a great disincentive within the SSI Program against honestly reporting such changes in income because, as I have indicated, this practice often brings harsh results. I especially appreciate the inclusion of this provision in H.R. 5595, and, again, encourage my colleagues' support of the bill.

Mr. McGRATH. Mr. Speaker, I want to express my sincere appreciation to you and the Members of the House for acting on the section 1619 initiative. H.R. 5595 replaces an incentive to employment that was inadvertently removed when section 1619 was given temporary status.

The Section 1619 Program reduces supplemental security income [SSI] payments, up to the break-even point, and extends Medicaid eligibility for disabled or needy persons. The enactment of this program encourages individuals to work and strive for self-support. The temporary nature of the 1619 program, however, has discouraged individuals from seeking employment. If they work they risk losing health coverage. This option is far more expensive than not working and retaining health coverage.

Under the bill, individuals requiring temporary institutionalization to maintain their daily schedules are entitled, one time in a 2-year period, to full benefits for up to 2 months. With this provision, these persons will be able to fulfill their financial commitments more easily, and maintain their employment and community status.

The bill also produces a Federal cost savings. Every person who participates in the section 1619 program would have otherwise received a full SSI benefits. Consequently, the Government is retaining over $4,000 per person, per year.

Passage of this bill benefits participants by eliminating the risk of employment while simplifying the administration of the 1619 program. Most importantly this legislation rekindles an individual's incentive to work.

I appreciate the opportunity to voice my strong support for H.R. 5595 which amends the 1619 work incentive provisions of the Social Security Act.

Mrs. LLOYD. Mr. Speaker, I am pleased to support H.R. 5595, which makes some needed improvements in a program that provides the margin of survival for over 4 million aged, blind, and disabled individuals.

This bill offers a good example of representative government at its best. It identifies and responds to problems that each of us has encountered in our constituent service work—the disabled widow who has lost Medicaid coverage when she becomes eligible for Social Security benefits; the severely disabled person whose attempts to work have been rewarded by the termination of SSI and/or Medicaid benefits; the disabled person who because of new or increased Social Security benefits loses Medicaid coverage. This bill recognizes and responds to these and other difficulties that are faced by the aged, blind, and disabled people whose quality of life is determined by laws and regulations that often have a harsh, if not cruel, effect that was neither anticipated nor intended by Congress.

It is not often that we can make improvements in programs and still come up with net savings. This is made possible by the permanent extension of the section 1619 Work Incentive Program, which, according to an HHS study, will save over $10 million a year in reduced SSI costs.

This is a good bill that balances human need with fiscal responsibility, and I urge all of my colleagues to join me in supporting its passage by the House.

Mrs. KENNELLY. Mr. Speaker, I rise in strong support of the Supplemental Security Income Improvements, H.R. 5595. This is a very good bill. It makes relatively minor technical adjustments in the law to strip away some of the bureaucratic rigidities which have unnecessarily caused suffering and misfortune for aged, blind, and disabled SSI recipients and applicants.

The bill will make permanent a provision of the law—section 1619—that allows SSI and Medicaid benefits to continue for certain individuals with disabling impairments who are able to work. This will encourage disabled individuals to enter the workplace with a sense of security that their health coverage will continue if they need it. We talk a lot about welfare reform to encourage work. This bill means action on this issue.

Another important provision of the bill will provide desperately needed health care coverage to a certain group of needy, disabled SSI recipients who are caught between the provisions of SSI and Social Security. These SSI recipients, most often women, are forced to apply for a Social Security nondisability benefit at age 60. This benefit, if more than $20 greater than the SSI benefit, causes the widow to lose not only her SSI benefit but also her Medicaid coverage.

Even though SSI has already determined that this woman is disabled, and even though she is by definition totally without assets to fall back on, she must cope with her high medical costs on her own until she receives Medicare at age 65. This is extremely distressing for these particularly vulnerable women in our society. Their increased cash benefit does not cover their loss of Medicaid, they often become more sick and are forced to choose between food and medication. H.R. 5595 will deem these particular individuals eligible for Medicaid even when forced to receive the somewhat higher Social Security benefit.

In short, H.R. 5595 is a compassionate bill which makes sensible changes in the SSI Program. I urge my colleagues to support it.

Mr. DUNCAN. Mr. Speaker, I yield back the balance of my time.

Mr. FORD of Tennessee. Mr. Speaker, I have no additional requests for time and I yield back the balance of my time.

The SPEAKER pro tempore. (Mr. KILDEE). The question is on the motion offered by the gentleman from Illinois [Mr. ROSTENKOWSKI] that the House suspend the rules and pass the bill, H.R. 5595.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

RELATING TO TARIFF ON CHOCOLATE

Mr. MATSUI. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 556) relating to the tariff on chocolate.

The Clerk read as follows:

H. RES. 556

Whereas, the United States confectionery industry is a major industrial consumer of domestically grown sugar, milk, peanuts and other United States agricultural commodities; and

Whereas, the expansion of overseas markets for United States chocolate and confectionery exports will directly benefit supplier industries including sugar and milk producers, and growers of peanuts, almonds, raisins, corn and wheat; and

Whereas increased United States exports of chocolate enhances demand for cocoa beans and cocoa by products from developing nations whose economies depend on cocoa for export earnings; and

Whereas the United States includes among its trade policy objectives reciprocity in confectionery trade with Japan and other nations; and

Whereas, the United States confectionery market is open and tariffs are among the lowest in the world; and

Whereas, Japan has restricted competitive United States exports of chocolate by maintaining tariffs that are among the highest of any industrialized nation: Now, therefore, be it

Resolved, That the President should use all appropriate powers of his office to secure from Japan a reduction of that nation's tariff on chocolate to a level at parity with the United States by April 1987.

The SPEAKER pro tempore. Is a second demanded?

Mr. DUNCAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. MATSUI] will be recognized for 20 minutes and the gentleman from Tennessee [Mr. DUNCAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MATSUI].

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GENERAL LEAVE

Mr. MATSUI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the resolution presently under consideration.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MATSUI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the identical language of House Resolution 567 calling on the President to negotiate a reduction in Japan's tariff on United States exports of chocolate passed the Senate last month under the sponsorship of Majority Leader DOLE and 41 other Senators. The point was made in the Senate, and I believe it is the overwhelming sentiment in the House as well, that at issue here is not just chocolate but every competitive United States export that cannot gain fair and reciprocal access to the Japanese market because of deliberate tariff and nontariff barriers.

Chocolate symbolizes the lack of fair and just treatment for United States exports that is one of the root causes of our $50 billion trade deficit with Japan. The U.S. market is open to confectionary imports of all nations, including some $20 million from Japan last year. United States duties on these products range from zero to 7 percent while duties are 20 to 39 percent in Japan. Yet Japan has refused the requests of Congress and the administration to reduce its 20 percent tariff on chocolate to the United States rate of 7 percent—no more, no less.

Each Member of Congress has a similar story of United States exports deliberately blocked by government policies in Japan and elsewhere. Meanwhile, we are all subject to hard lobbying by representatives of these same nations to resist protectionist legislation that would close the U.S. market to their exports. What Congress expects from Japan and others is the identical opportunity for chocolate, and all United States exports, as imports have here. Until these nations are willing to reciprocate with fair and equal market access, they bring the risk of a closed U.S. market upon themselves.

Mr. DUNCAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today to urge unanimous approval of House Resolution 567, which calls on the President to obtain a reduction in the Japanese tariff on chocolate.

For some time, Members of this body and administration, officials have been asking the Government of Japan—and Prime Minister Nakasone directly—to reduce Japan's high tariff on United States exports of chocolate confectionery. Japan's duty is 20 percent while the United States duty is 7 percent. The U.S. Trade Representative has asked Japan to meet the U.S. duty rate as a step toward full reciprocity in confectionery trade between our nations.

The immediate issue here is $12 million in United States chocolate exports to Japan. But the long-standing refusal by the Japanese to lower their tariff on chocolate has become symbolic of their overall reluctance to open their markets to U.S. exports.

In some sectors, it might be argued that we have not made adequate efforts to compete. U.S. producers of chocolate, however, have shown themselves to be efficient, competitive and energetic suppliers. The inexcusably high Japanese tariff is a major impediment to penetration of the Japanese market.

Mr. Speaker, Japan enjoys a $50 billion bilateral trade surplus with the United States. Therefore, it should be in Japan's interest as well as our own for Japan to treat U.S. confectionary exports, as well as any other export, fairly.

I urge my colleagues to join the other body in unanimously urging the immediate removal by Japan of all barriers to the importation of exports of U.S. chocolate.

Mr. Speaker, I yield the remainder of my time to the gentleman from Minnesota [Mr. FRENZEL].

Mr. FRENZEL. Mr. Speaker, for a number of years, Members of Congress have been asking Japan for better opportunities for United States chocolate makers in its market. There is the tariff differential previously described—20 percent for chocolate in Japan, and 7 percent in the United States.

These tariffs are not illegal. They have been negotiated and they have been bound, and so under normal conditions, the United States has no reason to expect that Japan will lower its chocolate duties unless the United States is willing to lower some of its tariffs in a comparable way. That is what we call across-the-board reciprocity.

However, these are not normal times. Japan has, over the years, made some unilateral tariff concessions. Now, in the campaign of Prime Minister Nakasone to increase buying of imports, especially from the United States, unilateral duty reductions could be an important and especially visible element. Japan has a strong enough chocolate industry. If the Prime Minister and the people of Japan are serious about welcoming foreign products and driving down their huge trade surplus, the lowering of chocolate tariffs is one way to move the program along.

We are not going to wipe out our deficit with Japan with bonbons, but the willingness of Japan to give voluntarily a great tariff advantage in chocolate would be an important signal that it is serious about buying foreign goods under competitive circumstances.

For these reasons, Mr. Speaker, I urge the passage of the House resolution.

Mr. MATSUI. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania [Mr. YATRON].

Mr. YATRON. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I want to commend the gentleman from California [Mr. MATSUI] for his leadership on this resolution.

Ludens and Palmer Candy, which are based in my congressional district, and export their goods, have been hard hit by unfair Japanese tariffs. The tariffs called for in this resolution should induce the Japanese to allow Ludens and Palmer Candy, and Hershey Chocolates to compete fairly in their markets.

Mr. Speaker, I urge the passage of this resolution.

Mr. GUARINI. Mr. Speaker, I rise in support of House Resolution 567 calling on the President to negotiate a reduction in Japan's 20 percent tariff on imported United States chocolate products. This resolution is identical to a bipartisan measure sponsored by the Senate majority leader and passed by the Senate on August 11, 1986. With its passage, both Houses of Congress will have expressed their support and intention that the way be cleared for exports of chocolate to Japan.

There is no justification for this blatant tariff barrier to American chocolate. The confectionery industries in Japan and the United States are comparable. They are both mature, diverse industries composed of companies ranging from multinational corporations to small family enterprises. Even manufacturing costs are similar due to high sugar and dairy costs resulting from domestic price support programs.

The critical difference between the two industries is that U.S. companies do not demand high tariffs to protect their domestic market or compensate it for increased raw material costs. Rather, United States tariffs are among the lowest in the world and the United States market is open to imports of all confectionery, a fact well known to Japanese exporters.

In contrast, high tariffs in Japan have been used to restrict imports to an average 3 percent share of the Japanese market for chocolate. Few exporters can sustain a 20-percent tariff in addition to a costly distribution system and the intensive advertising campaign and custom packaging necessary for success in Japan.

American chocolate exports have met the challenge of the Japanese market and won consumer acceptance. The major remaining obstacle between our chocolate and the Japanese consumer is the 20-percent ad valorem tariff imposed by the Japanese Government.

Mr. Speaker, both Houses of Congress are calling on the President to act. We urge the Government of Japan to respond by ending their inequitable treatment of United States chocolate exports to their country.

Mr. ROSTENKOWSKI. Mr. Speaker, American chocolate is the internationally popular and competitive export of an industry which is a major consumer of this Nation's sugar, dairy, and peanut production. Exports to Japan, the largest potential export market, are $12 million but could be much greater in the absence of Japan's high tariff. Japan's tariff rates of 20 to 35 percent on chocolate and confectionary products are the highest of any industrialized nation and rival those of many developing countries. U.S. duties on similar products range from zero to 7 percent.

What we are seeking through this resolution is a reduction in Japan's tariff on chocolate and chocolate products to a level equal to those of the United States by April 1987. I fully recognize that tariff parity between the United States and Japan on these products will have only a modest effect on the overall United States trade imbalance. However, the importance of this issue transcends the numbers themselves. It is entirely inappropriate for Japan, a nation with a trade surplus approaching $60 billion, to maintain a highly protective tariff on an item such as chocolate, in which the United States has proven its competitiveness in market after market around the world. The issue is symbolic of Japan's unwillingness to take steps to improve access of competitive exports from the United States and other countries. I urge my colleagues to support the adoption of the resolution before us today in an effort to secure fair and equitable treatment by Japan of one United States export. We are asking no more of Japan than we in this country are now providing through our low tariffs on Japanese exports of chocolate and confectionary products.

Mr. GOODLING. Mr. Speaker, I join with my colleagues in the House, and the Senate, in calling on the President to secure a reduction in the Japanese tariff on chocolate by April 1987.

Japan's restrictive tariff on United States chocolate exports has come to symbolize the many inequities that remain in our bilateral trading relationship. Despite Japan's commitment to open its markets to United States goods, we continue to engage the Japanese in protracted and often fruitless negotiations to gain fair access for our exports. Meanwhile, our trade deficit increases by billions of dollars a year.

The case of chocolate is particularly unfair because, while the United States market is completely open, Japan protects its five giant domestic producers with tariffs that are among the highest in the world. Last year Japan exported $20 million in chocolate, sugar, and rice confectionery to the United States. Duties on these products ranged from 0.4 percent for $11 million in rice confectionery and biscuits, to 7 percent for Japanese sugar and chocolate confectionery exports valued at $6 million. Comparable United States confectionery exports to Japan were burdened with duties ranging from 20 to 35 percent. These high confectionery tariffs have limited imports to just 3 percent of the total Japanese market.

This lack of reciprocity has also come to symbolize Japanese hypocrisy when its Government officials contend that Japan really is an open market and that the problem lies with inadequate selling efforts by United States manufacturers. Members of Congress have been made aware of the intensive marketing efforts in Japan by United States confectionery companies. They have packaged their products especially for Japan and done their homework with regard to advertising and distribution. The last remaining hurdle between American chocolate and enthusiastic Japanese consumers is the unreasonable 20-percent tariff imposed by the Japanese Government.

I sincerely hope this unmistakable expression of Congress will result in Japan finally doing away with tariff barriers to competitive United States confectionery exports.

Mr. MATSUI. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. MATSUI] that the House suspend the rules and agree to the resolution, House Resolution 567.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

EXTENSION OF CERTAIN HOUSING AND COMMUNITY DEVELOPMENT PROGRAMS

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate joint resolution (S.J. Res. 353) to provide for the extension of certain programs relating to housing and community development, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 353

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That each provision of law amended by Public Law 99-345 is amended by striking out "September 30, 1986" wherever it appears and inserting in lieu thereof "September 30, 1987".

Passed the Senate September 27 (legislative day, September 24), 1986.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

CONCERNING SOVIET UNION'S PERSECUTION OF MEMBERS OF HELSINKI MONITORING GROUPS

Mr. YATRON. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 332) concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups, as amended.

The Clerk read as follows:

H. CON. RES. 332

Whereas on August 1, 1975, the Final Act of the Conference on Security and Cooperation in Europe was signed at Helsinki, Finland, by 33 European states, together with Canada and the United States;

Whereas the signatories of the Helsinki Final Act committed themselves under Principle VII to "respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion;

Whereas Principle VII specifically confirms the "right of the individual to know and act upon his rights and duties" in the field of human rights, and Principle IX of the Final Act confirms the relevant and positive role organizations and persons can play in contributing toward the achievement of cooperation among nations;

Whereas the signing of the Final Act raised the expectations of the peoples of the Soviet Union for greater observance by the Soviet Union of human rights, and engendered the formation of the Moscow, Lithuanian, Georgian, Armenian, and Ukrainian citizens' monitoring groups to inform the peoples of the Soviet Union and the world with regard to the Soviet Government's compliance with the Final Act;

Whereas affiliated groups—the Psychiatric Abuse Commission, the Christian Committee, the Adventists Rights Group, the Catholic Committee, the Ukrainian Catholic Initiative Committee, and the Disabled Rights Group—later were established by citizens to address areas of specific concern;

Whereas four members of Helsinki Monitoring Groups, Oleksiy Tykhy, Yuri Lytvyn, and Vasyl Stus of the Ukrainian Group and Eduard Arutunyan of the Armenian Group, died after years of inhumane treatment in Soviet labor camps;

Whereas November 9, 1986, marks the tenth anniversary of the establishment of the largest such citizens group, the Ukrainian Public Group to Promote the Implementation of the Helsinki Accords;

Whereas the establishment of this group coincides with the opening on November 4, 1986, of the Vienna Review Meeting of the Conference on Security and Cooperation in Europe;

Whereas the Ukrainian Helsinki Monitoring Group opened a new phase in the Ukrainian struggle for human and national rights, providing impetus for human rights activists to demand not only that the Soviet Government uphold the human rights guaranteed by the Soviet Constitution, the Helsinki Final Act, and other international human rights declarations and covenants, but also to assert that the Western democracies have a solemn responsibility to support the struggle for achievement of human rights of Ukrainians and other peoples living under Soviet domination;

Whereas the Soviet Union continues to violate the human rights provisions of the Helsinki Final Act and other international human rights declarations and covenants by denying to the citizens of Ukraine and other Soviet Republics rights of national identity and basic human rights through intensified russification, ethnocide, repression, and imprisonment of the citizens of Ukraine and other Soviet Republics who lawfully engage in calling the Soviet Government to account for violations of human, national, and religious rights as well as the rights of family reunification and emigration; and

Whereas the blatant disregard by the Soviet Union of the humanitarian provisions of the Helsinki Final Act and other international human rights declarations and covenants, in particular its persecution of the members of Ukrainian and other public Helsinki Monitoring Groups, contribute to tensions between East and West and give rise to doubts about Soviet commitments to their international obligations: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring),

SECTION 1. DISCUSSIONS WITH THE SOVIET UNION CONCERNING THE UKRAINIAN AND OTHER PUBLIC HELSINKI MONITORING GROUPS.

It is the sense of Congress that the President and the Secretary of State should firmly insist at the Vienna Review Meeting of the Conference on Security and Cooperation in Europe, and at all other appropriate opportunities for discussions with the leadership of the Communist Party and Government of the Soviet Union, that—

(1) imprisoned and exiled members of the Ukrainian and other public Helsinki Monitoring Groups in the Soviet Union be released from their incarceration in the spirit of the Final Act of the Conference on Security and Cooperation in Europe; and

(2) members of the Ukrainian and other public Helsinki Monitoring Groups be allowed to emigrate to the countries of their choice.

SEC. 2. INFORMATION ON HUMAN RIGHTS VIOLATIONS IN THE UKRAINIAN REPUBLIC.

It is the sense of the Congress that—

(1) the Secretary of State should ensure that the United States consulate in Kiev reports on Soviet human rights violations in the Ukrainian Republic, and

(2) information provided by that consulate on those violations should be included in the semi-annual reports on compliance with the Helsinki Final Act which are submitted by the President to the Commission on Security and Cooperation in Europe pursuant to Public Law 94-304.

SEC. 3. TRANSMITTAL OF RESOLUTION TO PRESIDENT AND SECRETARY OF STATE.

The Clerk of the House of Representatives shall transmit copies of this resolution to the President and Secretary of State.

The SPEAKER pro tempore. Is a second demanded?

Mr. BROOMFIELD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

The gentleman from Pennsylvania [Mr. YATRON] will be recognized for 20 minutes and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. YATRON].

Mr. YATRON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, on May 6, 1986, I, along with my good friend and committee colleague, the gentleman from Michigan, Mr. BILL BROOMFIELD, introduced House Concurrent Resolution 332, concerning the persecution of members of the Ukrainian and other public Helsinki monitoring groups.

The signing of the Helsinki Final Act engendered the formation of citizens' monitoring groups to inform the world how East-bloc governments are complying with these important accords. The monitors have contributed much to the cause of Helsinki and human rights and have been harassed, tortured, imprisoned, and subjected to other brutal forms of abuse. Some have even died of inhumane treatment in labor prisons.

November 9, 1956, marks the 10th anniversary of the establishment of the largest such citizens group, the Ukrainian Public Group to promote the implementation of the Helsinki accords. This group has been instrumental in the struggle to press the Soviet Union to uphold basic human rights guaranteed by the Soviet Constitution, the Helsinki Final Act, and other international human rights declarations and covenants, and have been persecuted severely for their brave actions.

House Concurrent Resolution 332 calls on the President to press Soviet leaders to release all imprisoned and exiled Helsinki monitors, and to allow the monitors to emigrate to the countries of their choice. The measure also calls on the administration to ensure that Soviet human rights abuses in the Ukrainian Republic are actively reported.

One need only look at the Daniloff case to see that the Soviet Union continues to blatantly violate the most fundamental human rights provisions of international law. The Helsinki process remains an important component of East-West relations, and the work of the Helsinki monitors, especially in the Soviet Union, is vital to the human rights dimension of the treaty. The resolution acknowledges and recognizes the importance of all Soviet mointors while calling particular attention to the contribution of the Ukrainian group at their 10th anniversary.

The resolution is noncontroversial and has been cosponsored by approximately 150 House Members of both parties. Companion legislation has been introduced in the Senate. I strongly urge the members of this committee to adopt House Concurrent Resolution 332.

I want to commend Congressman BROOMFIELD for his outstanding leadership and assistance on this measure. I also want to acknowledge the tremendous efforts of Congressman MICA regarding the human rights of the Ukrainian people.

Mr. Speaker, the passage of this resolution takes on a very special meaning given today's announcement that the Soviets are releasing Yuri Orlov. Mr. Orlov is the founder and first chairman of the first Moscow Helsinki Monitoring Group. His release offers hope to those monitors still incarcerated in Soviet gulags because of their commitment to human rights.

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Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am happy to be a sponsor along with the gentleman from Pennsylvania [Mr. YATRON], of this concurrent resolution concerning the Soviet Union's persecution of members of the Helsinki Monitoring Group and other similar groups.

I have often spoken of the need for actions and not mere words in relations with foreign nations. The persecution of the members of the Ukrainian and other Helsinki monitoring groups is proof of the lack of basic honesty on the part of the Kremlin.

As we all know, the Helsinki final act pledges its signatories to respect human rights. True to form, the Soviet Union singled out those Ukrainians and others who attempted to monitor Soviet compliance with that important accord.

Of the 36 members of the Ukrainian group formed in 1976 to monitor Soviet compliance with the accords, all but two have, at one time or another, been imprisoned or banished to internal exile. Some have been confined to psychiatric hospitals. Some have committed suicide. A few have died in labor camps within the past few years.

How can America trust a government that mocks such high-level international agreements? This to me is the great tragedy of the monitoring groups. The Soviet Union never intended to comply with the spirit of Helsinki. Now is the time for the Soviets to free those innocent human beings.

As a cosponsor of this legislation, I urge my colleagues to join me in support of this resolution.

Mr. YATRON. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Florida [Mr. FASCELL], chairman of the Committee on Foreign Affairs.

Mr. FASCELL. Mr. Speaker, I rise in strong support of this resolution. The announcement this morning of the imminent release and emigration of the founder of the Helsinki monitoring movement in the Soviet Union is a very welcome development. Professor Yuri Orlov was the chairman of the Moscow Helsinki Monitors, the first public group to promote observance of the Helsinki accords in the U.S.S.R. The formation of the Moscow group was followed by the founding of monitoring groups in Ukraine, Georgia, Armenia, and Lithuania. For his leadership and commitment to human rights, Professor Orlov paid a very high price. He has been imprisoned or in remote Siberian exile since 1977. His health has deteriorated greatly. We are relieved that his ordeal, and that of his courageous wife, Irina, has finally ended. But we cannot forget the many other Helsinki monitors who still languish in Soviet prisons, labor camps and internal exile.

House Concurrent Resolution 332 expresses the sense of the Congress that: First, the President and Secretary of State should insist at the Vienna review meeting of the conference on security and cooperation in Europe that imprisoned and exiled members of the Ukrainian and other public Helsinki monitoring groups in the Soviet Union be released and be allowed to emigrate to the countries of their choice; and second, the Secretary of State should ensure that the U.S. consulate in Kiev report on Soviet human rights violations in the Ukrainian Republic and that information on those violations be included in the semi-annual reports on compliance with the Helsinki Final Act that the President submits to the Helsinki Commission.

The Helsinki Final Act of the conference on security and cooperation in Europe was adopted in August 1975, by 32 European nations, the Soviet Union, the United States, and Canada. It contains provisions for East-West cooperation in human rights, security affairs, economic and trade issues, treatment of foreign journalists and the free flow of people and ideas. The Vienna Conference, set to begin on November 4, 1986, is the third in the followup conferences and is tasked with reviewing compliance of all the signatory states with their Helsinki obligations.

As my colleagues are aware, the overall Soviet record on human rights is very poor. The arrest of United States Journalist Nick Daniloff on trumped up charges was but the latest example of the blatant Soviet disregard for its Helsinki commitments. The continued exile of Dr. Andrei Sakharov, the many divided spouses and separated families, the denial of emigration rights to Soviet Jews and others are all in violation of the Helsinki agreement. The continued imprisonment of those courageous men and women in Moscow, Kiev, Armenia, Georgia, and Lithuania who sought to monitor Soviet compliance is among the most egregious abuses of the final act. The mistreatment of these individuals and groups needs to be emphasized by the U.S. delegation at the Vienna Conference. I commend my colleagues, Mr. YATRON and Mr. BROOMFIELD for initiating this resolution and urge its unanimous adoption.

Mr. HOYER. Mr. Speaker, as cochairman of the U.S.—Helsinki—Commission on Security and Cooperation in Europe, I rise in strong support of House Concurrent Resolution 332 on the Soviet Government persecution of the Ukrainian and other Helsinki monitoring groups. I wish to congratulate my colleagues GUS YATRON and BILL BROOMFIELD, the sponsors of this resolution, for their outstanding leadership on this and other human rights issues.

This resolution is particularly timely in light of the upcoming November Vienna CSCE Review Meeting. Indeed, it calls upon the President and Secretary of State to insist at Vienna and other appropriate forums that "imprisoned and exiled members of the Ukrainian and other public Helsinki monitoring groups in the Soviet Union be released from their incarceration." It will be my privilege, along with Senator ALFONSE D'AMATO, chairman of the Helsinki Commission, to serve as vice-chairman of the U.S. delegation to the Vienna meeting. I pledge to do all that I can to ensure that this issue, which goes to the very heart of the Helsinki process, is thoroughly discussed at Vienna. The Soviet Government's repression of the Helsinki monitoring groups, which were formed as a direct result of the signing of the Helsinki Final Act, call into grave doubt the Soviet commitment to the Helsinki process. On the eve of the Vienna meeting, 42 members of these groups languish in forced labor camps or in internal exile for daring to take seriously the promises of Helsinki.

Mr. Speaker, November 9, 1986, marks the 10th anniversary of the largest and most repressed of the Soviet Helsinki groups. The Ukrainian group produced extensive documentation on Soviet repressions in Ukraine, addressing such issues as the persecution of individual dissidents; russification and the suppression of the Ukrainian language and national traditions; the destruction of cultural monuments and historical artifacts; and religious persecution.

The Ukrainian group was determined to see that the promises of Helsinki were extended to the people of Ukraine, the largest non-Russian republic.

The Soviet Government, however, was equally determined not to give this group any public voice. Of the 37 members of the Ukrainian group, all but one has been imprisoned or exiled. Since May 1984, three members of the Ukrainian-Helsinki group have died while serving lengthy labor camp terms in the notorious Perm labor camp No. 36. All three men had been in poor health. All three men had been outspoken advocates of increased individual human rights and of the enhanced Ukrainian cultural and national identity. Their premature deaths, resulting from brutual labor camp conditions, must be seen as the direct outcome of government policy.

The harsh treatment meted to members of the Helsinki monitoring groups is particularly apparent in the case of 47-year-old Vasyl Stus, who died 1 year ago this month. This leading Ukrainian poet was forced to work despite his very poor health. For an entire year before his death, he was held in an isolation cell on reducted rations, despite stomach ulcers and a heart ailment. Shortly before his death, Stus described some of his experiences in the labor camp, concluding that "Moscow has given the camp authorities complete power, and anyone harboring the illusion that our relations with the camp administration are regulated by some sort of law is sadly mistaken. The law of total lawlessness—this is the sole regulation of our so-called relations * * *. We have lost all rights to belong to ourselves. They say that when God wants to punish someone he takes away his mind. This cannot go on for so long; such adversity is possible only before one perishes." This, indeed, is the Soviet-imposed fate of one man who chose to "know and act upon his rights and duties" in the human rights field as guaranteed by the Helsinki Final Act.

Among many other Helsinki prisoners who are threatened with Stus's fate are Ukrainian Monitors Lev Lukyanenko, Mykola Horbal, and Mart Niklus and Moscow Helsinki Monitors Tanya Osipova and Anatoly Marchenko. As long as the Helsinki Monitors and numerous other human rights activists are persecuted for their beliefs, the Helsinki process cannot come to fruition. This is one message that we must convey to the Soviet Government both bilaterally and at multilateral forums such as Vienna.

Mr. BROOMFIELD. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I want to note my strong support for this resolution.

The Soviet Union has been savage in its suppression of the Helsinki monitoring groups; and has been most savage in its treatment of the Ukrainian-Helsinki group.

Ukrainians have been particularly active in human rights work in the Soviet Union because they perceive their ethnic, religious, and cultural survival at stake in the struggle for a more open, pluralist system within the Union of Soviet Socialist Republics. It is estimated that as many as 40 percent of all imprisoned political prisoners in the Soviet Union are of Ukrainian nationality. Let us salute the spirit of those prisoners by passing this resolution.

I am certain that the Ukrainian-American community, which has been so closely involved in the struggle for the rights of all who are oppressed around the world, including all those deprived of their rights in the Soviet Union, will be most gratified by the passage of this resolution, which is, in a sense a salute to them as well.

Mr. Speaker, I want to salute the efforts of the gentleman from Pennsylvania [Mr. YATRON], who introduced this resolution and has guided it to passage today as well as my colleague, the gentleman from Michigan [Mr. BROOMFIELD]. I am proud to be a cosponsor of this resolution, and I urge my colleagues to support it today.

Mr. PORTER. Mr. Speaker, as cochairman of the Congressional Human Rights Caucus, a Helsinki Commission member and a cosponsor of this legislation I would like to express my support in favor of House Concurrent Resolution 332 concerning the Soviet Unions' persecution of Helsinki monitoring groups. I would like to thank Mr. YATRON and Mr. BROOMFIELD for bringing this resolution before us.

This resolution calls on U.S. officials to address Soviet persecution of members of human rights monitoring groups and insist on their freedom. By signing the Helsinki Final Act the Union of Soviet Socialist Republics committed itself to respect certain human rights and fundamental freedoms.

Soon after the signing of the 1975 Helsinki Final Act groups were formed in Moscow, Lithuania, Georgia, and the Ukraine. Human rights monitors wished to contribute to the betterment of their society by monitoring progress. Instead the Soviets have targeted members of monitoring groups for persecution. Today Elena Bonner is the only original Moscow Helsinki group member still in the Soviet Union who is not in prison. Instead, she is in exile.

Mr. Speaker, I rise today in favor of this bill and urge our Government to increase its efforts to end the persecution of Soviet Helsinki monitors. Before any new agreements can be made with the Soviets, they must first prove that they are willing and able to uphold the agreements they have already entered into.

Mr. YOUNG of Florida. Mr. Speaker, I rise in support of House Concurrent Resolution 332, a concurrent resolution concerning the Soviet Union's continued persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

On August 1, 1975, 33 European states, the United States, and Canada signed the Final Act of the Conference on Security and Cooperation in Europe at Helsinki, Finland. Unfortunately, the Soviet Union has continued to flagrantly violate the human rights provisions of the Helsinki Final Act, as well as other international human rights agreements. Members of the citizens' monitoring groups created to inform the world how the Soviet Union and its East bloc allies are complying with the accords have been harassed, tortured, imprisoned, and subjected to other brutal forms of abuse. Three members of the Ukrainian groups died after years of inhumane treatment in Soviet labor camps.

Because I share my colleagues' concern about this situation, I am a cosponsor of House Concurrent Resolution 332. This measure calls on the President to press Soviet leaders to release all imprisoned and exiled Helsinki monitors, and to allow the monitors to emigrate to the countries of their choice. The measure also urges the administration to ensure that the consulate in Kiev reports on Soviet human rights abuses in the Ukrainian Republic.

The United States has both the right and the responsibility to support the struggle for achievement of human rights in Latvia, Lithuania, Estonia, and the Ukraine. By focusing attention on the Ukrainian Monitoring Group, we remind the Soviet Union of our continued resolve and dedication to basic human rights for all the people of these Captive Nations.

I urge my colleagues to support his measure and call upon Members of the Senate to express their approval for this important resolution.

Mr. BIAGGI. Mr. Speaker, I rise as a cosponsor and strong supporter of House Congressional Resolution 332, which expresses congressional concern about the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

The Soviet Union's human rights record is an international disgrace. They consistently deny their citizens—particularly their Jewish citizens—even the most basic of human rights, including the right to emigrate and the right to freely practice their religious and cultural beliefs. They do this in clear violation of the 1975 Helsinki accords, which they signed.

That is a tragedy in and of itself. It is an abomination that they have gone even further by persecuting and imprisoning Ukrainian and other human rights activists for their work toward observance of the accords. In fact, some of those imprisoned have even died as a result of inhumane treatment.

The Ukrainian people are among the world's most courageous and committed freedom fighters. Despite the constant threat of Soviet persecution and imprisonment these brave and determined people refuse to be deterred from their quest for basic freedoms—freedoms that we Americans all too often take for granted. As leaders of the free world, we have an absolute duty to intervene on bahalf of the oppressed people of the Ukraine and other freedom lovers around the world. Today we have such an opportunity.

This resolution calls on the United States to insist at the upcoming November meeting of the Conference on Security and Cooperation in Europe that the Soviet Union release imprisoned and exiled members of the Ukrainian and other public Helsinki monitoring groups and permit them to emigrate to countries of their choice. This resolution also calls on the State Department to ensure that the United States consulate in Kiev reports on Soviet human rights abuses in the Ukrainian Republic, and that information on these abuses should be included in the semiannual reports on compliance with the Helsinki accords.

Mr. Chairman, the Ukrainian resolve for freedom of expression and other basic human rights is limitless, not only on their own behalf but also for other oppressed people throughout the world. Our resolve should be no less and that requires a unanimous vote in support of House Concurrent Resolution 332.

Mr. MCGRATH. Mr. Speaker, today the House of Representatives is considering House Concurrent Resolution 332. This measure expresses the sense of the Congress that the United States should insist at the upcoming November meeting of the Conference on Security and Cooperation, that the Soviet Union release imprisoned and exiled members of the Ukrainian, and other public Helsinki monitoring groups. The resolution also states that the U.S.S.R. permit these individuals to emigrate to the country of their choice.

In addition, the bill calls on the State Department to ensure that the United States consulate in Kiev reports on Soviet human rights violations in the Ukraine. Also the measure provides that any information on these violations should be included in the semiannual reports on compliance with the Helsinki accords.

Shortly after declaring an independent nation in 1918, the Ukrainian state found itself in the midst of survival against aggressive nations on two of its borders. Substantially outmanned, Ukraine was forced to abandon its valiant 3-year struggle and was incorporated by an ever-expanding Soviet Union.

Over the six decades that have elapsed, the Soviet Union has employed large scale campaigns of repression and persecution in an attempt to blot out the nationalistic yearning of the Ukrainian people and to destroy their sense of history and culture. In their latest attempt to oppress the people of the Ukraine, the Soviets have imprisoned those there who have long activated the basic human rights that are provided in the 1975 Helsinki accords. There is even evidence that many of those who have been sent behind bars have died as a result of inhumane treatment.

On this day, as always, our thoughts turn to the promise of tomorrow when we hope that the 50 million Ukrainians who are captive in their own land will be able to celebrate basic human rights. As a cosponsor of House Concurrent Resolution 332, I not only ask my colleagues to support this measure, but to support the ever brave Ukrainians who continue to stand up for the human rights that all people are entitled.

Mr. BROOMFIELD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. YATRON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. (Mr. KILDEE). The question is on the motion offered by the gentleman from Pennsylvania [Mr. YATRON] that the House suspend the rules and agree to the concurrent resolution, House Concurrent Resolution 332, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution, as amended, was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YATRON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the concurrent resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

SENSE OF CONGRESS REGARDING SOVIET UNION'S INTERFERENCE WITH POSTAL COMMUNICATIONS

Mr. YATRON. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 384) expressing the sense of the Congress concerning the Soviet Union's continued interference with postal communications between the United States and the Soviet Union.

The Clerk read as follows:

H. CON. RES. 384

Whereas normal postal relations between the residents of the United States and the Soviet Union serve an important and useful purpose toward mutual understanding between both nations, thereby furthering the cause of peace in the world;

Whereas the integrity of the mail service between the United States and the Soviet Union is being called into question by mailers in the United States who assert that postal items are systematically not being delivered to various addresses and addressees in the Soviet Union;

Whereas the nondelivery of mail which is deliverable as addressed and which does not contain prohibited articles is a violation by the Soviet Union of international recognized human rights guaranteed to all persons by Article 12 of the Universal Declaration of Human Rights, and is also a violation by the Soviet Union of the provisions of the Helsinki Final Act calling for the freer flow of information between signatory states;

Whereas such nondelivery also violates the Acts of the Universal Postal Union;

Whereas the Congress of the United States has on several occasions addressed this issue and has collected voluminous evidence of Soviet postal malfeasance, and Members of Congress continue to receive complaints of such malfeasance to the present time.

Whereas none of the letters sent in a special mailing to Dr. Andrei Sakharov by our colleagues Senators Boren, Bradley, Cohen, D'Amato, and Denton, and Representatives Biaggi, Courter, Frank, Gilman, Lagomarsino, Lowery were delivered by Soviet postal employees;

Whereas postal service serves as a lifeline for individuals living within Soviet Bloc nations; and

Whereas the Universal Postal Union Congress in Hamburg, Germany, adopted 5 resolutions in July 1984 in response to Soviet postal malfeasance: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress—

(1) that the President—

(A) through the Secretary of State, should express to the Government of the Soviet Union the disapproval of the American people regarding innumerable instances of Soviet violations of the above-mentioned international agreements;

(B) should raise the issue of Soviet noncompliance with the above-mentioned agreements at the upcoming summit meeting; and

(C) should, through the Secretary of State, raise the issue of Soviet violation of the Helsinki Final Act at the follow-up meeting of the Conference on Security and Cooperation in Europe scheduled to convene in Vienna in November 1986; and

(2) that the United States Postal Service—

(A) should increase its efforts in combatting Soviet postal malfeasance; and

(B) should undertake a full investigation with regard to the undelivered letters sent to Dr. Andrei Sakharov by 11 Members of Congress, and inform the Congress, as well as the Universal Postal Union, of its findings.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Pennsylvania [Mr. YATRON] will be recognized for 20 minutes, and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. YATRON].

Mr. YATRON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Concurrent Resolution 384, legislation expressing the sense of Congress concerning the Soviet Union's interference with postal communications. This resolution asks the President, through the Secretary of State, to indicate the American disdain of postal malfeasance, to raise this issue at any upcoming summit meetings, and to point out this blatant violation of the Helsinki Final Act at the Vienna meeting of the Conference on Security and Cooperation in Europe.

The Soviet Union is not only engaging in mental and spiritual genocide as evidenced by its dismal human rights record, it is also adding mail tampering to its array of atrocities. The Subcommittee on Human Rights, which I chair, together with the Subcommittee on Investigations of the House Post Office and Civil Service Committee held a hearing in March of this year to address this problem as if pertained to Dr. Andrei Sakharov. This pattern of gross interference by the Soviet Union with mail to and from its citizens is of critical concern both as a postal issue and as an issue of basic human rights.

Ignoring this serious problem will only further endanger the already unbreakable plight of many Soviet citizens whose only support for their bravery comes in the form of communications from the outside world. For this reason, it is incumbent upon us to challenge the Soviet authorities' hyprocrisy once again by demanding that they stop their flagrant abuse of the International Postal Service. It is my hope that this resolution focuses worldwide attention on this shameful practice.

I would like to commend the gentleman from New York [Mr. BEN GILMAN] and the gentleman from Massachusetts, Mr. FRANK, for their dedication and outstanding leadership, in bringing this vital issue before the Congress.

□ 1330

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to offer my support for this resolution condemning Soviet interference in postal communications between our two countries.

The Soviet Government, in direct violation of the Helsinki Final Act, continues to interfere with the free flow of information between signatory states. They withhold mail arriving from the United States in order to discourage unrestrained contact between their people and the West. This systematic harassment not only affects their own citizens, it also removes the only means of contact for many in the West who are concerned about family and friends not allowed to leave the Soviet Union.

The Soviet Government indiscriminately wields the instruments of internal repression, while at the same time it is attempting to negotiate increased exchange between East and West. How can the United States be expected to approach such meetings in good faith? The Soviet Government must start living up to the international agreements which they have signed.

I urge my colleagues to join me in support of this resolution. We must voice our disapproval of such police state tactics, and pressure the Soviet Government to cease their postal malfeasance.

Mr. Speaker, I yield 3 minutes to one of the sponsors of this resolution, the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I rise in support of House Concurrent Resolution 384, legislation expressing the sense of Congress concerning the Soviet Union's continued interference with postal communications between the United States and the Soviet Union.

The bill among other things states that it is the sense of Congress that the President should raise the issue of Soviet noncompliance with provisions of the Helsinki Final Act during the upcoming summit meeting. Likewise, the Secretary of State should also discuss it in Vienna next November during the followup meeting of the Conference on Security and Cooperation in Europe.

Since 1977, our Foreign Affairs and Post Office and Civil Service Committees have been holding hearings on the Soviet interception of international mail. To date the Postal Committee has accumulated over 2,700 exhibits which document the fact that the Soviets are interfering with the international mails in a cold and calculated manner.

Soviet authorities are cutting the life-line of communication between those living behind the Iron Curtain and their friends and family members on the outside. One letter we received documented the fact that a daughter did not know that her father had been dead for 7 years until the Soviet authorities allowed the information to get out of the country.

Recently the Human Rights Subcommittee heard testimony from Alexi Semenoff, Alena Bonner's son, on the issue of KGB interception and forgery of correspondence from Ms. Bonner to her family in Boston. A special technical officer from the FBI was also there to discuss detailed photographs of exhibits of the tampered correspondence. It seems the Soviets will go to any length to cover up their misdeeds. The issue is an emotional one with most ethnic and religious groups not only in the Soviet Union but also here in America.

Accordingly, I urge my colleagues to support House Concurrent Resolution 384.

Mr. YATRON. Mr. Speaker, I yield 2 minutes to the distinguished chairman of the Committee on Foreign Affairs, the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Speaker, I rise in strong support of this resolution.

First, I would like to commend my friend from New York [Mr. GILMAN], for his continued attention to and concern over the important issue.

House Concurrent Resolution 384 expresses the sense of the Congress that the President, through the Secretary of State should: First, express to the Government of the Soviet Union the disapproval of the American people regarding innumerable instances of postal malfeasance; second, raise the issue of Soviet malfeasance at any upcoming summit meetings; and third, raise the issue of Soviet violations of the Helsinki Final Act at the followup meeting of the Conference on Security and Cooperation in Europe. In addition, the resolution stresses that the United States Postal Service should increase its efforts to combat Soviet postal malfeasance.

Mr. Speaker, there are continuing allegations that the Soviet Union systematically engages in disruption of the flow of mail from the United States to citizens of the Soviet Union. Not only is this a violation of the Helsinki Final Act and the acts of the Universal Postal Union, but it is a violation of internationally recognized human rights.

The Congress has addressed this issue over a number of years and we have collected proof that the Soviets are not delivering mail to various groups in the U.S.S.R. Perhaps the most blatant example of postal malfeasance by the Soviet Union is the fact that none of the letters sent by Members of the House and the other body to Dr. Andrei Sakharov ever reached him. The persecution of dissidents by cutting off what is usually their only contact with the world outside the Soviet Union is an abomination and an affront to their personal dignity.

Mr. Speaker, I urge my colleagues to adopt this resolution.

Mr. HOYER. Mr. Speaker, it is a pleasure and an honor for me to rise in support of House Concurrent Resolution 384, concerning the Soviet Union's continued interference with mail between the United States and the Soviet Union. I especially want to commend my very respected colleague, Congressman BEN GILMAN, this resolution's principle sponsor, for his leadership and initiative on this issue, and the fine work he has done to alert the Congress and the American people to the continuing practice by the Soviet Government of interfering with normal postal relations between Soviet citizens and citizens in the West. As Cochairman of the Helsinki Commission, I know that Congressman GILMAN's work in the area of Soviet postal interferences has proven an invaluable source of material for the Commission's monitoring of Soviet violations of the "free flow of information" provisions of the Helsinki accords.

Since 1968, over 250,000 persons left the Soviet Union to resettle in the West. They left behind them loved ones and friends, with whom they still wish to keep in touch. In addition, there are thousands of persons in the Soviet Union and the West who have never met but just wish to correspond with one another, to break down barriers of misunderstanding, to learn more about each other's cultures. In fact, I recently learned of a Russian man whose father served in the Soviet Navy during World War II; This Russian sailor met some American sailors who gave him some magazines from the United States. To this very day, the family keeps those magazines, indeed, treasures those magazines for the view that it gives them of a world they may never see.

When one reads the hearing reports of the Subcommittee on the Post Office and Civil Service containing volumes of evidence that the committee has gathered on Soviet postal abuse, once again the reader is astounded by the Soviet Government's callous disregard for the norms of civilized communication between the nations of the world. Letters are not delivered to addresses, packages are returned to senders without valid reason and delivery receipts are forged, to name just a few of the major transgressions of internationally accepted postal regulations. Congressman GILMAN mentioned to me recently that the Post Office and Civil Service Committee now has over 3,000 pieces of evidence of Soviet postal malfeasance. And I would emphasize here that in the vast majority of cases, we are talking about mail and packages that conform to Soviet postal regulations, items that the senders carefully check against international postal regulations and Soviet requirements before sending them.

It's obvious that we are not faced here with simple bureaucratic foul-ups, but a clear pattern of abuse, sanctioned and organized by the Soviet Government. When a priest in Lithuania is not allowed to receive a National Geographic publication with photographs of famous architectural monuments because the item is allegedly "not permitted for entry into the Soviet Union," something is definitely wrong. When Soviet mailmen can't seem to find the apartment of Dr. Andrei Sakharov in Gorky to deliver messages from his friends and admirers in the West, it's not just a case of Dr. Sakharov's name being illegible on the mailbox.

Former KGB agent Stanislav Levchenko has stated that the KGB is in charge of intercepting mail to persons whom the government decides should not be getting letters and packages from abroad; in fact, Levchenko says that when they get overloaded with too much mail and not enough censors, they just throw out the mail.

Mr. Speaker, in 1874 the Universal Postal Union was founded to provide standards for international mail service, and has since become an agency of the United Nations. Soviet postal violation of UPU regulations has become an issue within that agency, and I note that Congressman GILMAN and the United States delegation raised the issue of Soviet postal malfeasance at the last UPU Congress in Hamburg, Germany in 1984. Also Congressman GILMAN and the United States delegation raised the issue at the Madrid followup meeting of the Helsinki accords. The resolution before the House today calls upon the United States to raise the issue of Soviet interference with international mail at the Vienna followup meeting of the Helsinki accords and at the U.S.-U.S.S.R. summit meeting, assuming one takes place. The resolution also calls upon the United States Postal Service to increase its efforts in combatting Soviet postal malfeasance.

As Cochairman of the Helsinki Commission, I have frequent occasion to hear representatives of the Soviet Government criticize the citizens of the United States for their lack of understanding of the Soviet Union. We are accused of being insular, indifferent to world affairs, ignorant of the progress that has allegedly been made in the Soviet Union since the revolution. Now I certainly believe there is a great deal of that we Americans can learn about the world. But there is even more that the Soviet people can and want to learn about Americans. The "free flow of information" provisions of the Helsinki accords were designed to alleviate misunderstandings that can arise between nations and their citizens. I call upon the Soviet Union to live up to those provisions in the area of postal communications, and I call upon the United States Government to raise the issue at every appropriate opportunity. I hope my colleagues will support this resolution, which should contribute to resolving some of these problems.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to close by thanking our chairman of the full committee, the gentleman from Florida [Mr. FASCELL] for all the cooperation he has given on all these resolutions, but particularly the ones we have just discussed.

Mr. PORTER. Mr. Speaker, as cochairman of the Congressional Human Rights Caucus and a Helsinki Commission member I am in strong support of House Concurrent Resolution 384 regarding the Soviet Union's interference with postal communications. I would like to thank Mr. GILMAN and Mr. FRANK for introducing this resolution.

There are thousands of examples of systematic interference and nondelivery by the Soviets, including over 2,000 pieces which have been accumulated as exhibits by the Committee on Post Office and Civil Service. The United States and the Soviet Union are both members of the Universal Postal Union, the international body which oversees mail delivery. The Universal Postal Union has passed five resolutions in response to Soviet interference with mail. In addition the Helsinki Final Act committed signatories to free flow of information.

Many of the letters interfered with are between family members. Other letters are between people sharing cultural or religious bonds. As cochairman of the Congressional Human Rights Caucus, I have found that our own mail from the caucus to prisoners of conscience and refusniks in the Soviet Union has been tampered with. This mail is vital. It provides great moral support to individuals who are being kept in the Soviet Union against their will and international law. Through conversations with those who have visited the Soviet Union, we know that an alarming number of our letters and letters sent by other members never reach the addressee or are tampered with prior to arrival.

In particular, the Soviet postal service interfered with 11 letters sent to Dr. Sakharov by Representatives and Senators. Such interference in private mails is not an internal matter as the Soviets like to suggest. It is an abrogation to international laws and an unconscionable violation of the privacy of thousands of citizens, inside and out of the Soviet Union.

Mr. Speaker, in light of these offenses to Soviet citizens and their correspondents in the West, I join my colleagues in urging that the President raise this issue at the upcoming summit and the United States Postal Service increase its efforts to combat Soviet postal interference.

Mr. BIAGGI. Mr. Speaker, I rise in full support of House Concurrent Resolution 384, which expresses serious congressional concern about the Soviet Government's interference with the delivery of mail from the United States.

> Of all the countries of the world with which the United States Postal Service exchanges mail (some 167 countries in all), none has created more problems for United States mailers than the Soviet Union.

Mr. Speaker, those are not my words. Those are the words of the U.S. Postal Service as printed in a booklet they published in September 1985.

The publication goes on to say that:

> Repeatedly, mailers report that their letters and parcels to persons in the Soviet Union never arrive, or are returned or seized for apparently specious reasons. The cause of these difficulties appears to lie in the Soviet way of government and rarely in the kind of innocent postal or mailer mistake which can occur anywhere. In fact, U.S. congressional investigations have concluded that Soviet authorities systematically interfere with mail to certain addresses and groups for political reasons * * * The U.S. Postal Service wishes it could solve this problem in its entirety through postal channel; unfortunately it cannot.

No, Mr. Speaker, it appears that no matter how much United States postal authorities protest, nor how carefully United States citizens address and package mail to the Soviet Union, there will continue to be problems. That is, unless the issue can also be addressed at higher levels. That is precisely what this resolution proposes.

Specifically, the resolution calls on the Secretary of State to express United States disapproval of Soviet mail interference directly to high-ranking Soviet authorities. It also points out that this interference is in direct violation with international agreements, including the Helsinki human rights accords, and calls on the Secretary of State to raise the issue of the Helsinki Final Act violations at the November 1986 Vienna meeting of the Helsinki accords. In addition, the resolution calls on the United States Postal Service to increase its efforts to combat Soviet mail interference and undertake a full investigation of the undelivered letters sent to Dr. Andrei Sakharov by 11 Members of Congress.

Mr. Speaker, central to this entire issue is the importance of United States mail to the Soviet Union. Many Soviet citizens, particularly their Jewish citizens, rely heavily on letters from the United States for moral support, and parcels of food and clothing for physical support. In fact, it is precisely those Soviet citizens who depend on United States postal support the most that are the prime targets of Soviet Government interference.

With this in mind, we must do whatever we can to encourage continued and increased postal deliveries to the Soviet Union. That is why I authored a bill (H.R. 1019) earlier this Congress to cut the price of postage in half on parcels of food, clothing, and medicine sent from the United States to the Soviet Union and Poland. This legislation seeks to encourage much-needed personal assistance from Americans to persons in the Soviet Union and Poland. H.R. 1019 offers us yet another rare opportunity to put into action the strong feelings we have for the millions of repressed people living in the Soviet Union and Poland.

According to the United States Postal Service, 167,480 parcels were sent from the United States to the Soviet Union in fiscal year 1984, with another 127,371 parcels going to Poland. The average weight of those parcels was 2.2 pounds. It costs approximately $22.50 to send a 2.2-pound package by air mail from the United States to the Soviet Union, and $15.90 to send the same package to Poland. Under my proposal, those costs would be cut in half.

Mr. Speaker, I am confident that this legislation combined with the important measures called for under House Concurrent Resolution 384 will result in increased and improved mail service from the United States to the Soviet Union. That is a very worthwhile objective and I am hopeful that both of these proposals will receive our favorable consideration.

Mr. BROOMFIELD. Mr. Speaker, I yield back the balance of my time.

Mr. YATRON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania [Mr. YATRON] that the House suspend the rules and agree to the concurrent resolution, House Concurrent Resolution 384.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YATRON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H. Con. Res. 384, the concurrent resolution just agreed to.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

PRESIDENTIAL SUMMIT AGAINST INTERNATIONAL TERRORISM

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 547) expressing the sense of the House of Representatives that the President should convene a summit meeting of world leaders to adopt a unified, effective program against international terrorism.

The Clerk read as follows:

H. RES. 547

Whereas international terrorism respects no borders, is a scourge on societies throughout the world, and has wreaked havoc on the lives of countless innocent persons;

Whereas, since January 1, 1980, international terrorism has resulted in the deaths of over three thousand and fifty persons (including three hundred and forty-five Americans);

Whereas terrorism is never justified as a means to reach any political end;

Whereas the United Nations General Assembly has, by unanimous vote, condemned the use of terrorism for any purpose whatever;

Whereas world religious, government, and social leaders have condemned the senseless, barbaric loss of life caused by terrorists;

Whereas the Congress has passed and the President has signed into law Public Law 99-399, the Omnibus Diplomatic Security and Antiterrorism Act of 1986, which directs the President to continue to seek the establishment of an International Antiterrorism Committee; and

Whereas there is an urgent need for responsible world leaders to formulate a comprehensive international strategy to combat terrorism: Now therefore, be it

Resolved, That it is the sense of the House of Representatives that the President should convene a summit meeting of world leaders to adopt a unified, effective program against international terrorism.

The **SPEAKER** pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Florida [Mr. FASCELL] will be recognized for 20 minutes, and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Resolution 547, expressing the sense of the House of Representatives that the President should convene a summit meeting of world leaders to adopt a unified program against international terrorism.

I would like to commend the gentleman from New York, Mr. GILMAN, the sponsor of the resolution for his leadership on this important matter and would like the Members of the House to know that the resolution enjoys complete bipartisan support and was reported unanimously from the committee.

House Resolution 547 is a constructive resolution and builds on the important foundation of the recently passed Omnibus Diplomatic Security and Antiterrorism legislation. Specifically, the resolution calls on the President to convene a summit on international terrorism. Given the tragic events of recent weeks, that is the Pan Am 73 hijacking in Karachi, the bombing of the synagogue in Istanbul, and the rash of terrorist incidents in France, now is the time to take concrete steps to coordinate the efforts of civilized nations to combat the growing menace to international terrorism.

I urge the adoption of the resolution.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the resolution before us expresses the sense of the House that the President should convene a summit meeting of world leaders to adopt a unified program against international terrorism. I commend Congressman GILMAN for his leadership in this legislative effort.

In recent months, the world has again been shocked by another wave of horrible terrorism. The bloody hijacking of the Pan Am aircraft in Karachi and the senseless massacre of Jewish worshipers in a synagogue in Istanbul are part of a long series of terrible attacks.

Last year's terrorist attacks on the airports in Vienna and Rome claimed the lives of many innocent human beings. They were of all ages and nationalities. Terrorism has begun to strike out in a blind and mindless way in many countries of the world. It has indeed become an international problem.

Only through expanded international cooperation can we begin to confront the menace of terrorism. Much progress has been made in building international cooperation against this growing problem.

Just this week, our European allies agreed to increase their level of cooperation in this area. While this decision is a step in the right direction, more needs to be done. I urge the administration to seriously consider this proposal. The time for expanded cooperation against terrorism is now. Convening a summit meeting of world leaders is the way to begin.

I urge my colleagues to join me in supporting this resolution.

□ 1340

Mr. Speaker, I yield such time as he may consume to the principal sponsor of this resolution, the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. I thank the gentleman for yielding time to me.

Mr. Speaker, I want to thank our ranking minority member, the gentleman from Michigan [Mr. BROOMFIELD] and the distinguished chairman of our committee, the gentleman from Florida [Mr. FASCELL] for arranging for this expeditious consideration of this highly important issue.

Mr. Speaker, I rise in support of the resolution, House Resolution 547, which has been cosponsored by the leadership of the Committee on Foreign Affairs, and by dozens more of my colleagues, calling on the President to convene a world summit to decide on effective, united means to combat international terrorism.

In the past weeks the world has been shocked by a tremendous upsurge in international terrorism, after a respite of some months following America's action against Libya. The hijacking of Pan Am flight 73 in which 3 Americans and 17 others were killed, and the massacre at the Neve Shalom synagogue in Istanbul, in which 21 Jews were killed at prayer are just the most prominent examples. There have also been attacks in Western Europe, and another American, Frank Reed, was kidnaped in Beirut.

The administration has been reacting properly in response to these outrages. We have sent a most persuasive emissary, Ambassador to the United Nations Vernon Walters, to Europe in an attempt to rally support for additional pressure against Libya, but the reaction to our request was disappointing. The Congress has recently called on the President to work for the establishment of an international coordinating committee on terrorism.

The continuing inability of the most strenuous efforts at coordination to result in the establishment of a unified, effective policy on terrorism means that there are differences which need to be worked out at the highest level. Accordingly, we are calling on the President to convene a summit meeting on terrorism to achieve that coordination and that effective policy.

The agenda for such a meeting should include taking steps to end the misuse of diplomatic facilities, such as pouches and embassies, in support of terrorism; expelling diplomats representing states supporting terrorism; applying economic sanctions against countries harboring or training terrorists; establishing standards for better airport and seaport security; establishing terms for the exchange of information on terrorist activities; providing stricter visa and immigration requirements for nationals of states supporting terrorism; and, finally, agreeing upon mechanisms for coordination and cooperation in the use of force, when necessary and appropriate, against terrorist targets.

Mr. Speaker, I realize that carrying off a summit of the nature I have described will be a difficult undertaking; that it will consume significant resources, and may not reach the conclusions we desire. It may be that convening such a summit will have to await a moment in the future when there is more unity on the part of the nations of the world. We have seen, however, that in some cases a renewed commitment to fight terrorism comes, tragically, only after a terrorist outrage occurs. We should not wait for further events to occur throughout the world; rather, we should exert every possible effort to bring about a unified worldwide effort by persuasion.

At the close of the Second World War, the democracies of the West united in a defensive alliance against threatened aggression. Responsible leaders of the world must now come together and decide to fight the new menace of international terrorism which threatens to engulf us all.

Accordingly, Mr. Speaker, I ask that all my colleagues join in support of this resolution.

Mr. FASCELL. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Florida [Mr. Mica] who is chairman of the Subcommittee on International Operations of the Committee on Foreign Affairs, and served on the Presidential panel, the so-called Inman panel, which reviewed the status of overseas diplomatic security. The recommendations of the Inman panel were incorporated into the omnibus diplomatic and antiterrorism legislation which this body adopted by an overwhelming margin and which has already been signed into law by the President.

Mr. MICA. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support of this resolution and say that the time is now, the need to face up to terrorism is now.

In our hearings over the last 2 years, we have had continued reports that the balance of the 1980's and the 1990's will see a massive increase in terrorism worldwide.

Coincidentally, since the Libyan raid, our intelligence community has picked up more and more evidence of planning for what we think will be terrorist activities during the balance of this year and next year.

So we need a summit, we need coordination, we need action.

The time is now, the need is now.

Mr. Speaker, I commend the gentleman for taking this action at this time.

Mr. FASCELL. I thank the gentleman for his statement.

Mr. BROOMFIELD. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. Lagomarsino].

Mr. LAGOMARSINO. I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of this resolution. I commend my colleague [Mr. Gilman] for introducing it, the gentleman from Florida [Mr. Fascell] and the gentleman from Michigan [Mr. Broomfield] and the gentleman from Florida [Mr. Mica] for their strong support. It seems to me the time is long past when there should be an international conference on terrorism. The President did make a very good start in Japan, I think for the first time many of those nations were forced to deal with the issue.

Now is the time to expand that, now is the time for everyone in the world to know that there is a united opposition to terrorism.

It is interesting to note that since this decade began, more than 3,000 lives have been lost to terrorism. The total is probably even more than that.

Certainly that figure indicates that this is indeed a very, very serious problem with the potential of becoming even more serious. It cannot be solved by us alone. We do need international cooperation.

Mr. PORTER. Mr. Speaker, as cochairman of the congressional human rights caucus and a member of the Helsinki Commission, I would like to express my strong support for House Resolution 547, a resolution I cosponsored under the leadership of my colleague from New York, Mr. Gilman.

Mr. Speaker, there is no greater violation of human rights than terrorism. It is random and senseless, striking innocent people where they live and work by shadowy groups no one has heard of for causes most of us have had little involvement.

A few weeks ago, 21 Turkish Jews were murdered in Istanbul's main synagogue in a totally barbaric act, similar to the Nazi atrocities of 40 years ago. Their deaths were added to over 3,000 others who have been murdered by terrorists since 1980. Over 340 of the victims were Americans.

The resolution calls on the establishment of an international commission to formulate and implement measures to eliminate terrorism. Such a commission would highlight these issues and expose those nations who did not provide regular cooperation in the fight against terrorism.

In order to win the battle against terrorism, we have got to be able to sustain our actions on an international front for as long as it takes. An international commission would help in this cause.

I commend the gentleman from New York and urge adoption of the resolution.

Mr. BROOMFIELD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FASCELL. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. (Mr. Kildee). The question is on the motion offered by the gentleman from Florida [Mr. Fascell] that the House suspend the rules and agree to the resolution, House Resolution 547.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. FASCELL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

CALLING ON SOVIET UNION TO CEASE INTERFERENCE WITH VOICE OF AMERICA

Mr. MICA. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 391) calling on the Governments of the Soviet Union, Poland, and Czechoslovakia to cease activities causing harmful interference to the broadcasts of Voice of America and RFE/RL, Incorporated.

The clerk read as follows:

H. Con. Res. 391

Whereas the free flow of information across national boundaries and the free access by all to that information is in the interest of the people of the world and is crucial to any real and meaningful prospect for peace;

Whereas the Voice of America, a radio service of the United States Government, is bound by its charter to uphold the highest standards of accuracy, objectivity, and reliability in its presentations to the peoples of the world of American society, institutions, thought, and policies;

Whereas the radio broadcasts of RFE/RL, Incorporated, a service supported by the United States Government, are intended to encourage a closer and more constructive dialogue with the peoples of Eastern Europe and the Soviet Union by improving their access to information and their knowledge of events in their own communities as well as in the world at large;

Whereas for many years in the post war era, the broadcasts of the Voice of America, Radio Free Europe, Radio Liberty, and other western radios (including the BBC, Deutsche Welle, and Kol Israel) have suffered from intentional harmful interference caused by the Soviet Union;

Whereas, by engaging in activities causing harmful interference with broadcasts of radio services of other nations, the Soviet Union repudiates its own commitments to, and fails to meet its obligations under, international agreements (such as the International Telecommunications Convention of 1973 and the Final Act of the Conference on Security and Cooperation in Europe) and United Nations resolutions (such as the Universal Declaration of Human Rights);

Whereas jamming prevents millions of people in Eastern Europe and the Soviet Union from receiving information essential to their health and well-being, which was illustrated by the recent disaster at Chernobyl during which the Western radios presented vital information for the preservation of life and property;

Whereas the effects of jamming, which cannot be limited only to the targeted frequencies, results in interference with the broadcasts on adjacent frequencies and has caused substantially aggravated congestion in the high frequency band used in domestic shortwave broadcasts; and

Whereas the International Frequency Registration Board, pursuant to a resolution passed by the International Telecommunications Union during the 1984 first session of the World Administrative Radio Conference on International Broadcasting, has issued a report finding that the Soviet Union, Poland, and Czechoslovakia engage in activities causing harmful interference to the broadcasts of the Voice of America and RFE/RL, Incorporated: Now, therefore, be it.

Resolved by the House of Representatives (the Senate concurring), That the Congress, recognizing the importance of improving the open and free flow of information among the peoples of the world, calls upon the Governments of the Soviet Union, Poland, and Czechoslovakia to cease activities causing harmful interference to the broadcasts of the Voice of America and RFE/RL, Incorporated.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Florida [Mr. Mica] will be recognized for 20 minutes, and the gentleman from Michigan [Mr. Broomfield] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. Mica].

Mr. MICA. Mr. Speaker, I yield myself such time as I may require.

Mr. Speaker, I rise in support of House Concurrent Resolution 319 which deals with an issue that is all too familiar to the Members of this House: Jamming of American radio broadcasts in the Soviet Union and in Eastern Europe.

While the reality of jamming is not new, what is new and prompted this resolution is the recent acknowledgement by an international body of the validity of U.S. complaints. For the first time ever, the International Frequency Registration Board issued a report confirming specific complaints made by the United States concerning instances of harmful interference with the broadcasts of Voice of America and Radio Free Europe/Radio Liberty Inc. The international report held the governments of the Soviet Union, Czechoslovakia, and Poland responsible for the jamming.

Therefore, my resolution calls on these governments to stop all activities causing harmful interference to the broadcasts of the Voice of America [VOA] and Radio Free Europe/Radio Liberty [RFE/RL], as well as those of other Western radios.

Ambassador Leonard Marks, who heads the U.S. delegation to the World Conference on International Broadcasting was the successful instigator of the ITU resolution that paved the way for the International Frequency Registration Board's report that confirmed the existence of Eastern bloc jamming of U.S. international broadcasts. He welcomes this timely congressional call for the cessation of jamming activities by the Soviet Union, Czechoslovakia, and Poland.

Mr. Speaker, I urge the adoption of this resolution.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to pay tribute to the gentleman from Florida Mr. Dan Mica and the gentlewoman from Maine, Ms. Olympia Snowe, for their sponsorship of this resolution.

Mr. Speaker, I would like to offer my support for this resolution calling for the Soviet Union, Poland, and Czechoslovakia to cease interference in international radio broadcasts.

It is truly pitiful that the Government of the Soviet Union does not allow its citizens the free exchange of information and opinion that we in the West recognize as a basic right of mankind. The Soviet, Polish, and Czech Governments prefer to use their news services more as an instrument of disinformation, than as a tool for enlightenment.

A free exchange of information between East and West would surely lead to a more stable international relationship. In recognition of this fact, the United States has established Voice of America and Radio Free Europe/Radio Liberty to broadcast accurate and objective information to people around the world. The Soviet Union, in direct violation of its commitment to numerous international agreements, continues to interfere with broadcasts into Eastern Europe.

In Moscow, the unwarranted seizure and expulsion of journalists is commonplace, and broadcast services are essentially mouthpieces of the Communist Party. In that closed society, this sort of interference with international radio broadcasts can be viewed without consternation. However, we in the United States must not let these violations persist. We must speak for the millions of people in Eastern Europe and the Soviet Union who are subjected to such indignity.

I urge my colleagues to join me in support of this resolution. The Soviet Union, Poland, and Czechoslovakia must cease interference with the broadcasts of Voice of America and Radio Free Europe/Radio Liberty.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from Maine [Ms. Snowe].

Ms. SNOWE. I thank the gentleman for yielding time to me.

Mr. Speaker, I thank the chairman of the subcommittee, Mr. Fascell for offering this resolution.

Mr. Speaker, I rise in support of this resolution.

The timing of this resolution condemning the Soviet jamming of Western broadcasting is important, because in January the International Telecommunications Union will hold a new round of negotiations in Geneva on international broadcasting. These negotiations will be significant, in view of the recent detailed study released by the ITU on Soviet jamming which concludes that such practices are widespread and contrary to international broadcasting agreements.

The ITU negotiations offer the opportunity to build international support for ending Soviet jamming of broadcasts such as Voice of America, Radio Free Europe, and Radio Liberty. Many nations share our opposition to Soviet jamming, as such jamming interferes with national and international broadcasts in wide areas of Asia, Europe, and the Middle East.

Mr. Speaker, we must do all we can to continue providing the Soviet people a window not only to the world, but to events in their own closed society as well. For this reason, I urge support for this resolution.

Mr. MICA. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. Fascell], the chairman of the Committee on Foreign Affairs, who incidentally has been chairman of the subcommittee which has overseen this problem for some years and has the greatest knowledge, I think, of any Member in the House, if not on Capitol Hill, on this particular subject.

Mr. FASCELL. Mr. Speaker, I rise in strong support of this resolution. And I rise particularly to commend the chairman of the Subcommittee on International Operations, the gentleman from Florida [Mr. Mica] and his ranking member, the gentlewoman from Maine [Ms. Snowe] for their dedication and arduous work which they have done in pursuing all of the international communications activities. I think it escapes many of us how vital and important international communications is, not only to the success of our international policy but to our very existence as a democracy. I cannot understand why the Soviets and some of their satellites take the attitude which they do, that they must do everything to stop the flow of information, the truth, from getting to their people. I guess they are concerned that if the people get the facts and the truth, it in some way will inhibit or diminish the power that the leadership has over the Soviet bloc.

□ 1355

It is absolutely essential, therefore, for the Congress to go on record saying that we must do everything we can to preserve the free flow of information to all countries.

Mr. Speaker, I rise in strong support of this resolution.

I would like to commend my good friend and colleague, the chairman of the Subcommittee on International Operations, Mr. Mica, the ranking member, the gentlewoman from Maine, Olympia Snowe, and all the members of the subcommittee for their extensive and assiduous oversight of international telecommunications issues.

House Concurrent Resolution 391 recognizes the importance of improving the open and free flow of information among the peoples of the world and calls upon the governments of the Soviet Union, Poland, and Czechoslovakia to cease interference to the broadcasts of the Voice of America and Radio Free Europe/Radio Liberty.

The broadcasts of Radio Free Europe/Radio Liberty are intended to encourage a closer and more constructive dialog with the peoples of Eastern Europe and the Soviet Union by improving their access to information. These broadcasts have suffered in the postwar years from intentional interference caused by the Soviet Union, which, by doing so, violates its obligations under various international agreements and resolutions such as the International Telecommunications Convention of 1973, the final act of the Conference on Security and Cooperation in Europe, and the Universal Declaration of Human Rights.

Mr. Speaker, this resolution enjoys full bipartisan support, as well as the support of the administration, and I urge its unanimous adoption.

Mr. HOYER. Mr. Speaker, I rise in support of House Concurrent Resolution 391, and I wish to commend the principal sponsor, Mr. Mica, for his initiative in this area. This resolution calls upon the governments of the Soviet Union, Poland, and Czechoslovakia to cease activities causing harmful interference, that is jamming, to Voice of America and Radio Free Europe/Radio Liberty broadcasting. This issue is of particular interest to me as cochairman of the Helsinki Commission, because dissemination of information broadcast by radio is encouraged through the provisions of the Helsinki accords. It states specifically:

> The participating States note the expansion in the dissemination of information broadcast by radio, and express the hope for the continuation of this process, so as to meet the interest of mutual understanding among peoples and the aims set forth by this Conference.

In addition, article 19 of the U.N. Universal Declaration of Human Rights establishes the right to—

> . . . seek, receive, and impart information and ideas through any media regardless of frontiers.

And article 35 of the 1973 International Telecommunications Convention states that—

> All stations, whatever their purpose, must be established and operated in such a manner as not to cause harmful interference to the radio services or communications of other Members of other duly authorized operating agencies which carry on radio services, and which operate in accordance with the provisions of the Radio Regulations.

Despite these international agreements, to which the Soviet Union, Poland, and Czechoslovakia are signatories, these nations continue to jam the Voice of America and Radio Free Europe/Radio Liberty. In fact, in response to a request by the United States Government, the International Frequency registration Board of the International Telecommunications Union issued a report in September 1986 identifying the U.S.S.R., Poland, and Czechoslovakia as nations engaged in jamming the shortwave radio broadcasts of the Voice of America and Radio Free Europe/Radio Liberty. The IFRB concluded its study by recommending:

> The Board recommends to the Administrations of Czechoslovakia, Poland, and the U.S.S.R. that they take the appropriate action to ensure that in future their stations operate in the bands allocated exclusively to the broadcasting service between 5,950 kHz and 26,100 kHz.

In other words, "stop jamming."

The Soviet Union, Poland, and Czechoslovakia claim that foreign radio broadcasts are "hostile propaganda," "radio aggression." In fact, in 1982, the Soviet Government finally got around to ratifying a League of Nations Convention of 1936 that prohibits "war propaganda" or information "prejudicial to good international understanding." This was about the same time that the Soviet delegation at the Madrid followup conference was strenuously resisting any efforts to insert antijamming provisions into Madrid concluding document. In addition, the Soviets have tightened controls over access to shortwave receivers and parts in an effort to limit public access to foreign shortwave broadcasts. It is my understanding that the Soviet Union spends three times as much to jam foreign broadcasts as the United States does to produce them.

Mr. Speaker, the Soviet Government and those of its East bloc allies are constantly proclaiming their desire for peace. The free flow of information and the free access to that information is crucial to any real and meaningful prospect for peace. General-Secretary Gorbachev has called for more openness within Soviet society, and there is no reason why this openness should not extend beyond the borders of the Soviet Union and its East bloc allies. Indeed, we have seen a shift toward openness between East and West in the area of military information as a result of the agreement reached recently at Stockholm. I call upon the governments of the Soviet Union, Poland, and Czechoslovakia to extend this openness to the field of "civilian information" if you will, and I hope my colleagues will support this resolution to that end.

Mr. BROOMFIELD. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. Gilman].

Mr. GILMAN. Mr. Speaker, I rise in support of the pending measure.

The Voice of American and Radio Free Europe/Radio Liberty are literally a lifeline for people living behind the Iron Curtain. However, the Soviet, Polish, and Czechoslovakian Governments, just as they interfere in the free flow of mail, also interfere in the free flow of information through the airwaves, in direct contravention of their obligations under international law.

We in the West often fail to understand how important news about the outside world, or, more importantly, news about events in one's own backyard, is to people deprived of free communications by their own governments. The American radios, together with the BBC, Radio Deutche Welle, and Kol Israel, fill a real need.

We need to support the American radios not just today, by adopting a resolution calling upon the several Communist governments named to cease jamming, but also by providing adequate funding to the radios. By providing adequate funding, we can improve quality of programming, but can also construct modern transmitting facilities capable of overwhelming efforts to jam these broadcasts. In this connection, I would like to point out that the principal sponsors of this legislation, the gentleman from Florida [Mr. Mica] and the gentlewoman from Maine [Ms. Snowe], the chairman and ranking member, respectively, of the Subcommittee on International Operations, have also, and perhaps even more importantly been leaders in the effort to maintain responsible funding levels at the radios, and have been supportive of the radios in a variety of other ways over the past several years.

Accordingly, Mr. Speaker, I urge my colleagues to support the pending resolution.

Mr. MICA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in closing, I urge adoption of this resolution. I might just note that some feel that Radio Free Europe/Radio Liberty and the Voice of America only hve political content and objectives. However, they are concerned not only with the politics of the world, but also certainly the health and well-being of the people all over the world.

As we prepare to approve this resolution, I would just say that the Chernobyl situation was a perfect example of the way these radios worked to inform and assist the citizens of those countries who had no other way to find out that their health and their well-being was in danger, let alone that a catastrophic accident had occurred right in their midst. Their own radios, their own television, their own media had no reports on it of any substance or accuracy.

Mr. PORTER. Mr. Speaker, I am in strong support for House Concurrent Resolution 391, calling on the Soviet Union to cease interference with Voice of America broadcasts.

I thank my colleagues Mr. MICA and Ms. SNOWE for introducing this resolution which specifically calls on the Soviet, Polish, and Czechoslavakian Governments to end their electronic interference of transmissions by the Voice of America, Radio Free Europe, and Radio Liberty.

The Voice of America was established after World War II to ensure a free flow of information to those living behind the Iron Curtain. Since its origin, the VOA has become one of the main sources of information, providing news, opinion, and other information to combat Communist propaganda, disinformation, and misinformation.

The need for uncensored information in the Soviet Union has never been greater. The Voice of America broadcasts forced the Soviets to tell their own public about the dangers of their runaway nuclear reactor.

As long as the Soviets and their allies continue this Orwellian practice of public information, the popularity of the VOA broadcasts will grow. While there are no Nielson ratings for these broadcasts, a recent event in Bulgaria tells the story. An art exhibit in the American Embassy was swamped with visitors for an event advertised solely on Radio Free Europe.

For every dollar we spend on broadcasts to the Soviet Union and Eastern bloc, they spend three trying to jam it. While the Soviets often claim their interference is solely an internal matter, the world community recognizes it as a violation of the International Telecommunication Convention and the provisions guaranteeing the free-flow of information in the Helsinki Final Act.

Mr. Speaker, these transmissions are a lifeline for many of the people forced to live there against their will, in violation of international law. It is a breath of fresh air to many others, fed a starvation diet of misinformation by their official news services. I strongly support this resolution and urge its adoption.

Mr. ARMEY. I would first of all like to commend Mr. MICA and the members of the committee for taking swift action on this important resolution. For some months now, many of our colleagues and I have been active in urging the administration to seek an end to the harmful Soviet jamming of Western radio broadcasts. Over 90 of us have signed a letter I drafted to USIA Director Charles Wick recommending that he make this issue the centerpiece of his discussions with Soviet officials, and 40 Members cosponsored an earlier version of this resolution which I introduced in August. All of us are delighted to see these efforts come to early fruition.

Mr. Speaker, the free flow of information across borders is essential to world peace and international understanding. No nation that wishes to promote justice has anything to fear from the uninhibited transfer of ideas between peoples, and all nations stand to benefit from the increased knowledge that such communication produces. This is especially true of communication between the West and the Soviet bloc, which can reduce the possibility of armed conflict and prepare the way for a reconciliation between our opposing systems.

But on a more fundamental level, Mr. Speaker, the open flow of information is a basic human right which no government may properly transgress. The very dignity of the individual requires that all people be allowed to receive information from any source they wish—a principle that has been recognized in our own Bill of Rights, the U.N. Declaration of Human Rights, and most recently, the Helsinki accords.

It is for these reasons that we regret the current Soviet practice of interfering with the broadcasts of the Voice of America, the BBC, Radio Free Europe, Radio Liberty, and other international programmers. This jamming has been taking place for years, and the time is long overdue for this Congress to demand its immediate cessation.

I am confident that the bipartisan support for this resolution will give the administration the backing it needs to encourage the Soviets to commit themselves to the free flow of information across national frontiers. The approaching summit conference and the need to repair the damage caused by recent international incidents makes it essential that the Soviets make such a commitment at the earliest possible date. Only through trust and understanding can progress toward a lasting peace be achieved.

Mr. MICA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOMFIELD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. KILDEE). The question is on the motion offered by the gentleman from Florida [Mr. MICA] that the House suspend the rules and agree to the concurrent resolution, House Concurrent Resolution 391.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MICA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the concurrent resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

RESUMPTION OF U.N. COMMISSIONER FOR VIETNAM REFUGEES' ORDERLY DEPARTURE PROGRAM

Mr. SOLARZ. Mr. Speaker, I move to suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 143) expressing the sense of the Congress on the resumption of the United Nations High Commissioner for Refugees Orderly Departure Program for Vietnam.

The Clerk read as follows:

S. CON. RES. 143

Expressing the sense of the Congress on the resumption of the United Nations High Commissioner for Refugees Orderly Departure Program for Vietnam.

Whereas the United Nations Orderly Departure Program for Vietnam has enabled more than 100,000 persons to leave Vietnam without facing the hazards of departure by sea, which has exposed thousands of Vietnamese to the risks of weather, unseaworthy vessels, and the depredations of pirates;

Whereas the international community, the United States Government, and the American people have expressed their support for the agreement reached between the United Nations High Commissioner for Refugees and the Vietnamese authorities in 1979 to establish the Orderly Departure Program for Vietnam (hereafter in this preamble referred to as the "Departure Program");

Whereas that agreement provides for both "family reunion and humanitarian cases" to depart Vietnam through the Departure Program and for the Government of Vietnam to provide the United Nations High Commissioner for Refugees and the receiving countries with every facility to implement the Departure Program;

Whereas the President, in consultation with the Congress, proposed in September 1984, and reaffirmed in September 1985, that the United States was prepared to receive (1) persons of special humanitarian concern from Vietnam, in particular the "reeducation camp" prisoners, thousands of whom remain imprisoned because of their past associations with United States programs and policies in the region or with the former Government of the Republic of Vietnam; and (2) the Amerasian children and their mothers and other close relatives remaining in Vietmam;

Whereas the United States and other concerned governments have earnestly sought improvements in the operation of the Departure Program at meetings organized by the United Nations High Commissioner for Refugees with representatives of the Socialist Republic of Vietnam, and

Whereas the authorities of the Socialist Republic of Vietnam on January 1, 1986, suspended the interviewing and processing of all applicants in Vietnam for resettlement in the United States, thus threatening to interrupt the flow of departures from Vietnam by those found eligible for admission to the United States as refugees or immigrants: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That the Congress hereby calls upon the Government of the Socialist Republic of Vietnam—

(1) to permit the immediate resumption of interviewing and processing of applicants in Vietnam who have received preliminary ap-

proval from the United States Government for resettlement in the United States under the United Nations High Commissioner for Refugees Orderly Departure Program for Vietnam; and

(2) to permit the orderly departure of "reeducation camp" prisoners, Amerasian children, and other persons of special humanitarian concern to the United States.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from New York [Mr. SOLARZ] will be recognized for 20 minutes, and the gentleman from Michigan [Mr. BROOMFIELD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from New York [Mr. SOLARZ].

Mr. SOLARZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, while all Americans rejoiced at the end of our long national nightmare in Vietnam, I think it only fair to say that the consequences of the conflicts in Southeast Asia continue to the present day, particularly for the people of Vietnam who have suffered greatly from the consequences of Communist tyranny.

We all know about the terrible fate which has befallen the boat people from Vietnam, so many of whom have been attacked and victimized by pirates as they sought to flee their homeland.

There are today in Vietnam thousands and thousands of people who long to leave their own country, because they cannot accept the restrictions on their freedom which have been imposed on them by the Communist regime in Hanoi.

Shortly after the attention of the world focused on Vietnam following the mass exodus of the boat people in 1978 and 1979, an Orderly Departure Program was established under the direction of the U.N. High Commissioner for Refugees in cooperation with the Vietnamese authorities. Vietnamese who were legitimately entitled to emigrate to other countries were permitted to leave the country under the auspices of the UNHCR. Since the establishment of that program, over 110,000 Vietnamese have been permitted to legally leave their own land. Thousands of others unable to obtain exit visas and desperate to escape have continued to flee by sea, risking their lives and their safety for freedom in other countries.

But insofar as the Orderly Departure Program has been in existence, it has given not only a legal and legitimate avenue of departure to those Vietnamese who seek to leave, but a safe one as well.

We clearly have an overriding humanitarian interest in the continuation of this very desirable program. The administration has proposed admitting 8,500 Vietnamese refugees under this program in 1986 and in 1987. Unfortunately, last January Vietnamese authorities, for reasons that remain somewhat obscure, ceased interviewing those of their own citizens who were applying for departure under the ODP program. And while more Vietnamese have continued to depart from Vietnam within the framework of this program, the backlog of processed applications, particularly for Amerasians, is rapidly diminishing. And unless Vietnam soon resumes interviewing those who would like to leave, the entire program may come to an end. At that point, the only way to get out of the country will be by sea, or for those who can manage it by land, across dangerous borders at great risk to themselves and those who accompany them.

So this resolution, which has already passed the other body, simply expresses the sense of the Congress that the Government of Vietnam should resume its interviewing of those Vietnamese citizens who wish to leave under the orderly departure program, so this essential humanitarian undertaking can be continued.

The resolution also makes it clear that the United States welcomes in its midst the Amerasian children that are perhaps the most dramatic manifestation of the American presence in Vietnam, and for whom in an ethnically homogeneous society, not without its own forms of racism, their lives are exceedingly difficult and who therefore would like to leave.

□ 1405

Last, Mr. Speaker, the resolution also calls upon the Vietnamese authorities to release the thousands of people who remain in Vietnamese reeducation camps, more than a decade after the end of the war in horrible and tragic circumstances and under the most difficult conditions.

We have offered the Vietnamese the opportunity to send all of the people in the reeducation camps who can qualify for admission to the United States over here, but in spite of some previous indications that they would be willing to do that, when the offer was put on the table, in 1984 and each year since they have flatly rejected it. That, I think was really most tragic.

In summation, I call upon my colleagues to support this resolution and to put the House as well as the other body on record in favor of continuing the ODP program and calling upon Vietnam to resume its cooperation with the UNHCR.

Mr. FASCELL. Mr. Speaker, will the gentleman yield?

Mr. SOLARZ. I yield to the gentleman from Florida.

Mr. FASCELL. I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of this resolution. I want to commend the gentleman from New York [Mr. SOLARZ], as chairman of the Asian and Pacific Subcommittee, who has followed this very, very carefully. I also wish to thank and commend my colleague from Florida [Mr. BILIRAKIS] who is an original sponsor of this resolution.

It seems inconceivable that a government would undertake to eliminate this program for orderly departure, considering the suffering that exists, to do something to eliminate that suffering of divided families and other problems that those people have.

As the gentleman from New York says, we have the highest humanitarian interests in seeing to it. We have strong bipartisan support in the Congress for this program. Both appropriations committees in both Houses have always funded this program, this resolution will be another effort on behalf of the Congress to indicate our concern and interest.

Senate Concurrent Resolution 143 calls upon the Government of the Socialist Republic of Vietnam to permit the immediate resumption of the U.S. High Commissioner for Refugees Orderly Departure Program for Vietnam and to permit the orderly departure of "Reeducation camp" prisoners, Amerasian children and other persons of special humanitarian concern to the United States.

From 1979 to January 1, 1986, the Orderly Departure Program has enabled more than 100,000 persons to leave Vietnam without facing the numerous hazards of departure by sea. The decision by the Socialist Republic of Vietnam to suspend the interviewing and processing of all applicants in Vietnam for resettlement in the United States has threatened to interupt the flow of departures from Vietnam by those eligible for admission to the United States as refugees or immigrants and should be widely condemned by all nations.

Each week, my office receives dozens of requests for assistance in reuniting families tragically separated at the end of the Vietnam war. Children call wanting to aid their parents, now elderly, ill and alone in Vietnam, who long to see their grandchildren before they die. Wives ask for the release of their husbands from reeducation camps after being punished for over 11 years for the crime of supporting the previous government; parents want to be reunited with their sons and daughters, now teenagers and in need of the supervision and support of their families.

Surely the pain and suffering of these separated families should move any reasonable government to at least allow the reunification of these families and the reopening of the screening and interviewing of those persons whom the United States and other responsible governments have indicated they are willing to accept for resettlement under various immigration or refugee programs.

Mr. Speaker, there is strong bipartisan support for the Orderly Departure Program for Vietnam in the Congress. Both the Senate and the House Appropriations and Foreign Affairs Committees have recognized the important humanitarian nature of this program and have strongly supported adequate funding for this program despite the severe budget constraints we are now experiencing. I urge the unanimous adoption of this resolution.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the concurrent resolution before us calls for the resumption of the U.N.'s High Commissioner for Refugees Orderly Departure Program for Vietnam.

All of us must do all that we can to eliminate human suffering and misery here on this planet. The Refugees Orderly Departure Program for Vietnam answers a definite need. Now is the time to resume this important program.

When it was in operation, the departure program enabled over 100,000 persons to leave Vietnam in a safe and secure way. Without this program, other Vietnamese who want to leave that country may risk their lives to seek a new life in another land. America is willing to take those Vietnamese who want to become citizens of this country. Now is the time for the Government of the Republic of Vietnam to resume this important program. Positive action on this issue by the Government of Vietnam would help to relieve a serious humanitarian problem.

I urge my colleagues to join me in approving this important resolution.

Mr. Speaker, I yield 3 minutes to the gentleman from Florida [Mr. Bilirakis].

Mr. BILIRAKIS. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of Senate Concurrent Resolution 143, which expresses the strong support of the American Congress for the United Nations High Commissioner for Refugees' Orderly Departure Program.

I am proud to be the sponsor of the House companion bill to this measure, House Concurrent Resolution 348. My colleague from Ohio, Congressman Bob McEwen, joined me as an original cosponsor. Senators DeConcini and Murkowski are the sponsors of the Senate resolution before us today.

Our interest in this program stems from a trip the two Senators and I and Congressman McEwen made to Southeast Asia in January of this year on behalf of American POW's and MIA's. While in Vietnam, staff members attached to our delegation visited the Phanat Nikhom refugee camp in Thailand and saw firsthand the need for this program to continue in full force.

Unfortunately, the SRV suspended UNHCR interviewing and processing of applicants for departure to the United States on January 1, 1986. The breakdown of this important program threatens to prevent long-awaited family reunions from taking place and to prolong the imprisonment of many Vietnamese who had ties with the United States or the former government of the Republic of Vietnam.

As many of us know, the Orderly Departure Program was negotiated in 1979 in response to the flood of boat people who fled Vietnam in 1978 and 1979. Desperate to leave the country, many took to sea on unsafe vessels and lost their lives as a result of storms and pirate attacks. The Orderly Departure Program has provided a humane and orderly process by which refugees can resettle in countries willing to accept them. Under this program 105,000 people have safely left Vietnam since 1979.

Senate Concurrent Resolution 143 is intended to impress on the SRV the importance Congress places on continuation of this humanitarian program and the concern with which we view their suspension of refugee interviewing and processing. I urge my colleagues to join me in demonstrating your support for the Orderly Departure Program by voting in favor of Senate Concurrent Resolution 143. By approving this measure, we will be affirming that the legislative as well as the executive branch stands squarely behind this humanitarian effort.

Mr. SOLARZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I simply want to insert in the Record a letter from the distinguished chairman of the Subcommittee on Immigration, Refugees and International Law, the gentleman from Kentucky [Mr. Mazzoli].

The gentleman indicates that while his subcommittee would have the right to assert jurisdiction over this legislation, in the interests of facilitating its expeditious consideration by the House, he was prepared to waive it in this instance. It certainly does not constitute any permanent waiver of jurisdiction on his part.

Committee on the Judiciary,
Washington, DC, September 29, 1986.

Hon. Stephen Solarz,
Chairman, Subcommittee on Asian and Pacific Affairs, House of Representatives, Washington, DC.

Dear Mr. Chairman: I am writing to inform you that I have not requested the Chairman of the Judiciary Committee to seek sequential referral of S. Con. Res. 143, which is scheduled for Floor consideration tomorrow.

This Resolution requests the Government of the Socialist Republic of Vietnam to reinstitute interviewing under the Orderly Departure Program when such applicants have received "preliminary approval" from the U.S. Government for resettlement in the United States.

As such, the provisions of the Resolution fall within the shared jurisdiction that the Foreign Affairs Committee and the Judiciary Committee have over the refugee program in general.

In addition, it involves the jurisdiction of the Judiciary Committee over the admission of refugees under the terms of the Refugee Act of 1980.

Nevertheless, because of the importance of this legislation and the need to reinstitute the Orderly Department Program, I will not request the Chairman to assert Jurisdiction over the Resolution with the understanding that this does not prejudice my Subcommittee's jurisdiction over the Refugee Admissions Program.

Sincerely,

Romano L. Mazzoli,
Chairman, Subcommittee on Immigration, Refugeees, and International Law.

Mr. BROOMFIELD. Mr. Speaker, I yield the balance of my time to the gentleman from New York [Mr. Gilman].

Mr. GILMAN. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in support of Senate Concurrent Resolution 143, expressing the sense of Congress that the Socialist Republic of Vietnam should permit the immediate resumption of the Orderly Departure Program for Vietnam and should permit the orderly departure of reeducation camp prisoners, Amerasian children, and other persons of special humanitarian concern to the United States.

Mr. Speaker, I have made a number of visits to Vietnam in the course of our committee work seeking to achieve a full accounting for those of America's MIA's and POW's who may still be in that country. Although that work has consumed most of the time I have spent in Vietnam, I have also followed with special interest the other humanitarian issues between our Nation and Vietnam.

The plight of those Vietnamese people who have been trying to leave Vietnam has been brought before the American people on many occasions. The flow of boat people of the past years has been, thankfully, reduced, in large part because of the existence of the Orderly Departure Program. The collapse of the program will surely lead to more boat people, and more of their unspeakable suffering.

The Vietnamese have engaged us in difficult negotiations about the recommencement of the program. They would like to unload people of their choice on us. On the other hand, we have different priorities, such as Amerasian children, and the former reeducation camp inmates—who wound up there because they were on our side in the war.

Mr. Speaker, there has been a significant amount of interest in this matter on both sides of the aisle. I would like to note the word and concern of the gentleman from New York [Mr. Solarz], the gentleman from Florida [Mr. Bilirakis] and the gentleman from New Jersey [Mr. Smith].

Accordingly, I urge my colleagues to support this resolution.

Mr. SOLARZ. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOMFIELD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York [Mr. Solarz] that the House suspend the rules and concur in the Senate concurrent resolution, Senate Concurrent Resolution 143.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SOLARZ. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate concurrent resolution just concurred in.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

GEORGIA WILDERNESS ACT OF 1986

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5496) to designate certain National Forest System lands in the State of Georgia to the National Wilderness Preservation System, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5496

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Georgia Wilderness Act of 1986".

Sec. 2. In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131), the following lands in the State of Georgia are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System—

(1) certain lands in the Chattahoochee National Forest, Georgia, which comprise approximately 8,562 acres, as generally depicted on a map entitled "Raven Cliffs Wilderness—Proposed," dated September 1986, and which shall be known as the Raven Cliffs Wilderness;

(2) certain lands in the Chattahoochee National Forest, Georgia, which comprise approximately 11,405 acres, as generally depicted on a map entitled "Brasstown Wilderness—Proposed," dated September 1986, and which shall be known as the Brasstown Wilderness;

(3) certain lands in the Chattahoochee National Forest, Georgia, which comprise approximately 9,702 acres, generally depicted on a map entitled "Tray Mountain Wilderness—Proposed," dated September 1986, and which shall be known as the Tray Mountain Wilderness;

(4) certain lands in the Chattahoochee National Forest, Georgia, which comprise approximately 9,649 acres, generally depicted on a map entitled "Rich Mountain Wilderness—Proposed," dated September 1986, and which shall be known as the Rich Mountain Wilderness; and

(5) certain lands in the Chattahoochee National Forest, Georgia, which comprise approximately 2,940 acres, as generally depicted on a map entitled "Cohutta Wilderness addition—Proposed," dated September 1986, and which is hereby incorporated in and shall be part of the Cohutta Wilderness as designated by Public Law 93-622.

Sec. 3. As soon as practicable after enactment of this Act, the Secretary of Agriculture shall file a map and a legal description of each wilderness area designated by this Act with the Committee on Interior and Insular Affairs and the Committee on Agriculture of the United States House of Representatives and with the Committee on Agriculture, Nutrition, and Forestry of the United States Senate. Each such map and description shall have the same force and effect as if included in this Act: Provided, however, That correction of clerical and typographical errors in such maps and legal descriptions may be made. A copy of each such map and description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, and in the Office of the Supervisor of the Chattahoochee National Forest.

Sec. 4. Subject to valid existing rights each wilderness area designated by this Act shall be administered by the Secretary of Agriculture in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Ohio [Mr. Seiberling] will be recognized for 20 minutes and the gentleman from Colorado [Mr. Strang] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. Seiberling].

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill would designate five wilderness areas in the Chattahoochee National Forest, totaling approximately 42,000 acres. These areas lie in the congressional district of the bill's sponsor, our colleague Ed Jenkins of Georgia. The Department of Agriculture recommended these additions to the Nation's wilderness system as a result of its recently completed land use plan for this forest.

In bringing this bill to the floor, I want especially to thank Representative Jenkins for his initiative and hard work on this bill. I am familiar with the beautiful mountains of north Georgia. They will be welcome and valuable additions to the National Wilderness Preservation System. I urge my colleagues to support this bill to protect these areas as wilderness.

Mr. Speaker, I reserve the balance of my time.

□ 1415

Mr. STRANG. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5496, the Georgia wilderness bill.

The bill will designate four new wilderness areas and one wilderness addition totaling 42,258 acres bringing the total national forest wilderness in Georgia to 74,746 acres.

The designations are consistent with the final forest plan for the Chattahoochee National Forest, and therefore has the full support of the Forest Service, as well as bipartisan support in the Georgia delegation.

I wish to recognize the hard work of the gentleman from Georgia [Mr. Jenkins], the sponsor of the bill in whose district the areas are located, as well as the gentleman from Georgia [Mr. Darden] who is a very able member of our committee. It should be noted that this bill was only introduced on September 10. However, the delegation has persuaded the committee and this Member that the bill is noncontroversial and deserving of this prompt action.

I urge my colleagues to support the bill.

Mr. Speaker, I yield back the balance of my time.

Mr. DARDEN. Mr. Speaker, I ask permission to revise and extend my remarks. I am pleased to be a cosponsor of this legislation which was introduced by my colleague and friend, Mr. Jenkins. The land to be designated as wilderness is completely within the district which Mr. Jenkins represents and is adjacent to the Seventh District which I represent.

This bill designates 5 areas, 42,258 acres, presently within the Chattahoochee National Forest, as wilderness. This translates to preserving 12 percent of the Chattahoochee National Forest with roadless designations. These areas, each unique in their beauty, will be enjoyed for generations to come. The Appalachian Trail traverses two of the designated areas, Raven Cliffs and Tray Mountain. The highest peak in Georgia, Brasstown Bald is contained in the bill.

The bill has evolved over 20 years as a result of hard work by Georgia wilderness advocates, among them dedicated members of the Georgia Conservancy, Sierra Club, and the Wilderness Society. The cooperative effort maintained Pat Thomas, supervisor of the Chattahoochee-Oconee National Forest, has enabled all of these groups to unite with the Georgia delegation and offer you this bill for consideration today.

During the evaluation of the Forest Service land and resource management plan for the Chattahoochee National Forests, the No. 1

issue, as indicated by public comment, was the designation of wilderness areas. It is a pleasure to support a bill that the public strongly advocated and that also enjoys the endorsement of the Forest Service.

Through this legislation the exceptional areas of Raven Cliffs, Brasstown, Tray Mountain, Rich Mountain, and Cohutta will be preserved for all citizens to continue to appreciate. I regret that the roadless area of Blood Mountain, approximately 10,000 acres in Union and Lumpkin Counties, will not be included in this bill. However, in the interest of compromise, it is my hope that this 4,460-foot peak containing endangered plant species, pioneer homesites, and waterfalls, will be considered again at a later date.

I ask that my colleagues support this bipartisan legislation offered by the Georgia delegation, and pass H.R. 5496 under suspension of the rules.

Mr. JENKINS. Mr. Speaker, I rise today to urge my colleagues to join me in support of H.R. 5496, the Georgia Wilderness Act of 1986. I am proud to say that all of the 42,258 acres proposed for inclusion in the National Wilderness System in this bill lie within the boundaries of the Ninth Congressional District, which I represent.

My family and I have lived all of our lives in these mountains at the lower end of the Appalachian Mountain chain. I was born at the foot of Brasstown Bald Mountain, which will be surrounded by wilderness areas when this bill becomes law.

This act incorporates six tracts of U.S. Forest Service lands in the Chattahoochee National Forest, forming four wilderness areas and adding a tract to an existing wilderness area. Georgia's most rugged peaks, its highest point of elevation, and some of its most scenic natural beauty in rock outcrops, waterfalls, and vegetation reside here with the white-tail deer, the black bear, and the wild turkey. Five threatened or endangered plant species can be found in one of the areas. The headwaters for three rivers form in these areas.

The addition of these areas to the National Wilderness System doubles the wilderness designated lands in Georgia. All of these areas have been found by environmentalists, Forest Service personnel, and local residents to fit into the natural primitive definition of wilderness. It is with their approval that I bring this bill to you.

I would like to commend the Interior Committee for its work on this bill and for the expeditious manner in which it has acted in bringing the bill to the floor. I also would like to thank my colleagues from Georgia, especially Congressman DARDEN, a member of the Interior Committee, for their support of this bill.

I now ask the remainder of my colleagues in the House to join us in preserving these areas not just for this generation but for all future generations.

Mr. SEIBERLING. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio [Mr. SEIBERLING] that the House suspend the rules and pass the bill, H.R. 5496, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

PROPERTY TRANSFER TO CITY OF MESQUITE, NV

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3352) to transfer certain real property to the city of Mesquite, NV, as amended.

The Clerk read as follows:

H.R. 3352

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DEFINITIONS AND MAPS.

(a) DEFINITIONS.—As used in this Act:

(1) The term "public lands" has the same meaning as such term has in the Federal Land Policy and Management Act of 1976.

(2) The term "city limits" means the corporate limits of the City of Mesquite, in Clark County, Nevada, as such limits were established on September 15, 1986.

(3) The term "the Secretary" means the Secretary of the Interior.

(4) The term "the map" means the map entitled "Mesquite, Nevada Lands Transfer Plan" dated September 1986.

(b) MAPS.—All maps referred to in this Act shall be on file with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and also on file and available for inspection in the offices of the Director and Nevada State Director of the Bureau of Land Management.

SEC. 2. WITHDRAWAL.

Subject to valid existing rights, all public lands within the city limits are hereby withdrawn from all forms of entry and appropriation under the public land laws, including the mining laws, and from operation of the mineral leasing and geothermal leasing laws. This withdrawal will terminate on the date ten years after the date of enactment of this Act, except with regard to those lands identified on the map as "Public Lands Retention Area". The withdrawal of the lands so indentified shall continue in effect until otherwise provided by law.

SEC. 3. NOTIFICATION AND SALE PERIODS.

(a) FIRST AREA.—(1) No later than 180 days after the date of enactment of this Act, the City of Mesquite shall notify the Secretary as to which if any of the public lands within the area specified in paragraph (2) of this subsection the city wishes to purchase.

(2) For the period of one year after the date of enactment of this Act, the City shall have the exclusive right to purchase public lands within the area identified on the map as "Area One".

(b) SECOND AREA.—(1) No later than three years after the date of enactment of this Act, the City of Mesquite shall notify the Secretary as to which if any of the public lands within the area specified in paragraph (2) of this subsection the city wishes to purchase.

(2) For a period of four years after the date of enactment of this Act, the city shall have the exclusive right to purchase public lands within the area identified on the map as "Area Two".

(c) THIRD AREA.—(1) No later than five years after the date of enactment of this Act, the City of Mesquite shall notify the Secretary as to which if any of the public lands within the area specified in paragraph (2) of this subsection the city wishes to purchase.

(2) For a period of six years after the date of enactment of this Act, the city shall have the exclusive right to purchase public lands within the area identified on the map as "Area Three".

SEC. 4. TERMS AND CONDITIONS OF SALES.

(a) The City of Mesquite shall seek lands in compact and contiguous parcels and shall be subject to a determination by the Secretary that disposition of the lands sought is compatible with proper management by the Bureau of Land Management of public lands within the city limits which will remain in Federal ownership. Subject to such determination, and to the provisions of this Act, the Secretary shall provide to the city the opportunity to purchase public lands within the city limits.

(b) After the expiration of the time of the exclusive right provided for in section 3, the Secretary may offer the public lands within the city limits (except within the Public Lands Retention Area) for sale under appropriate provisions of the Federal Land Policy and Management Act of 1976. The City of Mesquite will be given an opportunity to meet the high bid. If the City of Mesquite matches the highest bid at the sale, it shall be declared the high bidder and allowed to purchase the property.

(c) The Secretary shall retain in Federal ownership the public lands in the Public Lands Retention Area, and is authorized to retain such other public lands within the city limits as which the Secretary determines it would best serve the public interest to retain in Federal ownership.

(d) The Secretary is hereby authorized to attach such conditions to any sale under this Act and patent issued pursuant to it, as the Secretary of the Interior determines to be reasonable and appropriate.

(e) All disposals of public lands within the city limits shall be subject to valid existing rights and for fair market value.

The SPEAKER pro tempore. Is a second demanded?

Mr. STRANG. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. SEIBERLING] will be recognized for 20 minutes, and the gentleman from Colorado [Mr. STRANG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. SEIBERLING].

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3352 is a bill dealing with the transfer of certain public lands to the city of Mesquite, NV.

The bill as reported was developed in close consultation with the author of the bill, the gentleman from Nevada [Mr. REID] and with the administration. Thanks to his leadership, we have been able to accommodate the views of the administration in a way that I understand is acceptable both to the administration and to the city of Mesquite.

In brief, the bill would establish an orderly procedure for the city of Mesquite to purchase public lands located within the Mesquite city limits.

The city wishes to have such a program in order to be able to deflect some of the pressures of growth away from agricultural and low-density areas and toward less-sensitive lands.

Any purchases made by the city would be for fair market value as determined by the Secretary of the Interior. Areas along the Virgin River which the administration testified should be retained in Federal ownership would not be eligible for sale, and the BLM would be able to also hold off the market any other areas that should be retained.

Mr. Speaker, this bill has been carefully worked out. It is not controversial and was reported from our committee without dissent, and I urge its speedy approval by the House.

Mr. Speaker, I reserve the balance of my time.

Mr. STRANG. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3352 is a creative solution to a difficult, but not entirely unique, problem. The bill authorizes the sale, at fair market value, of approximately 5,000 acres of public lands within the city of Mesquite, NV.

We were told the city wishes to purchase these lands to allow for additional house sites, and recreational development such as a golf course. Current development is taking place on the limited privately owned agricultural lands within the city limits. The city wishes to retain these agricultural lands in their current state to maintain the agricultural base and character of the town.

The dilemma facing Mesquite is not unique. As my colleagues know, many of our towns in the West are surrounded by public lands or national forest lands. They are landlocked unless they can purchase Federal lands.

Authorities exist for purchases such as the Federal Land Policy and Management Act, the Townsite Act, or the Recreation and Public Purposes Act, but the process can be very slow.

In the case of Mesquite, a new resource management plan identifying the lands for sale could take 10 years or more. The solution crafted by the subcommittee chairman, Mr. SEIBERLING, authorizes the sale in three segments over a 6-year timeframe. Therefore, the city is given enough time to come up with the necessary funds and is given the sole right of purchase over a 6-year period which is faster than could be done administratively.

It is my understanding that the bill has been discussed with the BLM and most of their suggested admendments have been incorporated into the bill. I am told they do not oppose the bill.

I urge my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. VUCANOVICH. Mr. Speaker, I rise in support of H.R. 3352, a bill that withdraws approximately 6,800 acres from public land in and around Mesquite, NV, and transfers that land to the city of Mesquite for fair market value.

As is very common for small towns in Nevada, the city of Mesquite is surrounded by public lands and it has been unable to expand. The inability to grow threatens the agricultural business which best represents the city's economic base. This bill will allow the city to purchase numerous tracts of Federal land and develop them for housing and public facilities pursuant to a master plan the city has prepared.

Today rural America is depressed and its economy on the decline. For most small towns economic development is only a dream. We have an opportunity with H.R. 3352 to give a small, rural town in Nevada a shot in the arm and our vote of confidence in Mesquite's ability to make economic development a reality.

H.R. 3352 is a noncontroversial bill and is supported by the whole Nevada delegation and the city of Mesquite. It will provide a small, growing city the land it needs to expand and the Federal Government will receive fair market value for the land. I urge a "yea" vote on H.R. 3352.

Mr. REID. Mr. Speaker, I rise in support of H.R. 3352, a bill which would allow the city of Mesquite, NV, to purchase real property from the Bureau of Land Management for market value.

Mesquite is an incorporated city approximately 80 miles northeast of Las Vegas, near the Arizona/Utah borders. Like many communities in the West, the city is completely landlocked by federally owned land. In Nevada 87 percent of the land is federally owned. Mesquite is a growing community with a traditional agricultural base. In recent years, a hotel/casino has located in Mesquite which created 700 new jobs. Sixty percent of the work force in Mesquite now commutes to work, a large portion of whom would live in Mesquite if there were land available to build more housing. Without additional land, the only option for development of any kind is to use the precious farmland in the valley, and that is neither economically nor environmentally sound.

The city leaders of Mesquite have tried to obtain the land from the BLM using nonlegislative avenues. However, due to administrative restrictions concerning payment and certain time limitations, they have found it prohibitive.

During the July 15, House Public Lands Subcommittee hearing, the BLM raised several concerns having to do with receiving fair market value for the land, permittee access to grazing allotments, and protection of two endangered fish species in the Virgin River. Since the hearing, we have arrived at a compromise that is satisfactory to all parties concerned.

There is simply no reason that this land should sit idle when the city could use it for recreation and productive growth for airport facilities and housing. Mesquite is literally bursting at the seams, and further development is sure to follow if only the city has a place to expand. I consider acquisition of this land imperative to the future of Mesquite; and therefore, urge your support for passage of this bill.

Mr. SEIBERLING. Mr. Speaker, I have no other requests for time, and I yield back the balance of my time.

Mr. STRANG. Mr. Speaker, I have no other requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio [Mr. SEIBERLING] that the House suspend the rules and pass the bill, H.R. 3352, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

CONVEYANCE OF LAND TO TOWN OF PAYSON, AZ

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 565) to direct the Secretary of Agriculture to convey, without consideration, to the town of Payson, AZ, approximately 30.96 acres of Forest Service lands, as amended.

The Clerk read as follows:

S. 565

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, the Secretary of Agriculture is authorized and directed to convey, without consideration except for administrative costs associated with the preparation of title and legal description, to the Town of Payson, Arizona, a parcel of land comprising approximately 30.96 acres, known as North Rumsey Park, in the Town of Payson, County of Gila, Arizona.

Sec. 2. Title to any real property acquired by the Town of Payson pursuant to this Act shall revert to the United States if the town attempts to convey or otherwise transfer ownership of any portion of such property to any other party or attempts to encumber such title, or if the town permits the use of any portion of such property for any purpose incompatible with the purposes specified in section 3 of this Act.

Sec. 3. Real property conveyed to the Town of Payson pursuant to this Act be used for public open space, park and recreational purposes.

Sec. 4. (a) Notwithstanding any other provision of law or regulation, the Secretary of the Interior, acting through the Bureau of Land Management, is authorized and directed to transfer title to certain land in Arizona in accordance with the terms of the Memorandum of Agreement Regarding the Disposal of Federal Lands at Lake Havasu City among the U.S. Department of the Interior, Bureau of Land Management, the Arizona State Land Department, the Arizona State Parks Board and Lake Havasu City, dated November 25, 1985. The transfer of title to land along the shoreline of Lake Havasu shall be to elevation 450 feet above sea level, *Provided*, That, the United States shall reserve unto itself the right to maintain the shoreline and to flood up to elevation 455 feet above sea level.

(b) The Secretary of the Interior is hereby authorized and directed to process an application by the County of Santa Cruz, Arizona, pursuant to the Recreation and Public Purposes Act for the following described lands, *Provided* That, the processing shall be in accordance with the Memorandum of Understanding among the U.S. Forest Service, the Bureau of Land Management and Santa Cruz County, dated September 17, 1986: S½/2NW¼ Section 5, and Lots 10 and 11, Section 6, T. 24 S., R. 14 E., G&SM. Executive Order No. 1398, dated August 15, 1911, which temporarily withdrew the above described land for use by the U.S. Forest Service for administrative purposes, is hereby revoked in its entirety, effective on the date of patent of the above described lands pursuant to the Recreation and Public Purposes Act to the County of Santa Cruz, Arizona.

The SPEAKER pro tempore. Is a second demanded?

Mr. STRANG. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. SEIBERLING] will be recognized for 20 minutes, and the gentleman from Colorado [Mr. STRANG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. SEIBERLING].

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill is intended to facilitate the transfer of certain Federal lands in Arizona to the State and to one county and one town in that State.

The lands affected by this bill as reported are in three different parcels.

The first parcel is a tract of approximately 31 acres in the town of Payson. This tract, known as North Rumsey Park, consists of National Forest lands being managed by Payson for park and recreational purposes under a permit from the Forest Service. According to the Forest Service, the town has placed improvements on the land which are worth about $100,000. According to the administration, there are no mineral values in the tract.

The town of Payson wishes to obtain title to the tract, and the bill would direct the Secretary of Agriculture to convey the lands to the town. The town would have to pay only the administrative costs, but the title to the lands would be subject to a reversionary clause. That clause will provide that if the town attempts to transfer or encumber its ownership of the land, or if the town permits the land to be used in a way incompatible with public open space, park, and recreational purposes, title will revert to the United States.

The second parcel of lands dealt with by the bill consists of approximately 1,100 acres of BLM lands at Pittsburg Point, near Lake Havasu City, AZ. These lands are currently under long-term lease to the State. The bill would make it possible for BLM to proceed with its part of an agreed land exchange by transferring these lands to the State. The transfer would be to repay the State for lands used in connection with the Central Arizona Project.

The third parcel of lands dealt with by the bill is in Santa Cruz County, AZ. It consists of about 80 acres of BLM lands where the county wishes to construct a new courthouse and to develop a county park.

The bill would clear away a Forest Service administrative site withdrawal. This will facilitate consideration of a request by the county for transfer of these lands by BLM.

The existing Santa Cruz County courthouse is some 80 years old and has been condemned. There are no other suitable lands available in this public-land-dominated county. In an agreement worked out between the county and the Forest Service, the county has agreed to compensate the Forest Service for the loss of its administrative site by constructing at its own expense a new warehouse and other facilities needed by the Federal agency. The county's receipt of the lands would be under the Recreation and Public Purposes Act, which means that they would be transferred subject to a reversionary clause that would ensure that the interests of the United States are protected.

Mr. Speaker, I believe this is a good bill. It is not controversial. I urge its passage.

☐ 1425

Mr. STRANG. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 565, a bill to convey approximately 31 acres of national forest land to the city of Payson, AZ, for use as a community park.

The sponsor of the companion bill is the gentleman from Arizona [Mr. RUDD] in whose district Payson is located. I commend him for his efforts in pressing for prompt action on this meritorious proposal.

There are some who will argue that the town should be required to purchase the land. However, I believe strong arguments were made in favor of conveying the land without compensation. First, the town is landlocked, which greatly limits their tax base and expansion capabilities of the town. And, second, the town has spent over $100,000 on park improvements. The Forest Service testified that there is no national forest use for the land which they currently allow the city to use under a special use permit.

Two additional provisions were added to the bill in committee by our distinguished chairman [Mr. UDALL]. One, to allow BLM to transfer some lands in Arizona to the State as partial compensation for a debt owed as a result of construction of the central Arizona project; and, second, to convey approximately 80 acres in Santa Cruz County for a courthouse and community park. Congressional action is needed because of the National Wildlife Federation lawsuit which is holding up hundreds of equally meritorious exchanges or conveyances. I would hope the chairman would assist in future efforts to undo the damage done by this disruptive and counterproductive lawsuit.

I urge my colleagues to support S. 565, as amended.

Mr. RUDD. Mr. Speaker, I support the bill, S. 565, which is before you today for authorization of the conveyance of 31 acres of national forest land to the picturesque town of Payson, AZ, which lies just below the Mogollon Rim. This piece of land is presently being leased by this town, whose citizens embody the pioneer spirit by which our Nation was built, as a public park. Should this bill pass today, the land will continue to be used as a recreation center for the community.

First, allow me to point out that I join with my colleagues in being very slow to convey public lands. There are, however, several factors which should be carefully reviewed in the particular care of Payson.

It is important to note that the town of Payson is tightly surrounded by the Tonto National Forest. As a result of this extremely limited amount of private land available for development, the town has a very small revenue base from which to draw.

The citizens of Payson, while laboring diligently, making good-faith efforts to pay market value for the land by purchasing several small parcels within this same tract of land, are unable to go beyond their means and purchase this final 31 acres, which would unite the plots previously purchased.

In accordance with the town's valiant efforts to assume the responsibility of the recreational needs of the members of the community and of the surrounding area, it has prudently invested funds in the land by developing public facilities, such as a swimming pool, several multiplaying fields, a volley ball court, and an exercise trail. The citizens of Payson hope to further improve their park by covering the swimming pool to allow its use year round, and by adding additional ball fields. As I am sure each one of us can appreciate, the citizens in this town are reluctant to continue costly investments in this piece of property until they hold the title.

Let me underscore the scarcity of available private lands to Payson and the town's patriotic and hard-working spirit, evidenced by their good-faith effort to improve and purchase as much of this tract of land as their means would allow in order to provide suitable recreation for the community. It is in this light, that I request my colleagues' support of this bill.

Mr. STRANG. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SEIBERLING. Mr. Speaker, I have no additional requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Kildee). The question is on the motion offered by the gentleman from Ohio [Mr. Seiberling] that the House suspend the rules and pass the Senate bill, S. 565, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

The title of the Senate bill was amended so as to read: "An Act to provide for the transfer of certain lands in the State of Arizona, and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

RELEASE OF CERTAIN CONDITIONS AND RESERVATIONS CONTAINED IN CONVEYANCE OF LAND TO THE STATE OF UTAH

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5459) to direct the Secretary of the Interior to release, on behalf of the United States, certain conditions and reservations contained in a conveyance of land to the State of Utah, as amended.

The Clerk read as follows:

H.R. 5459

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RELEASE OF CONDITIONS AND RESERVATIONS.

(a) Subject to subsection (b), the United States hereby releases all conditions and reservations, except those which reserve all oil, gas, geothermal and other mineral rights to the United States, which apply to the lands generally depicted on a map entitled "Utah Land Exchange—Proposed", dated September 1986 comprising approximately 150 acres, to the extent such conditions and reservations are enforceable by the United States.

(b) The release under subsection (a) shall be effective upon determination by the Administrator of General Services that all necessary steps have been taken to complete—

(1) acquisition by the State of Utah, through an exchange of the lands specified in subsection (a), of the surface estate in other lands with a monetary value equal to the value of the surface estate of the lands specified in subsection (a) and each portion of which the Secretary of the Interior has determined to have value for wildlife, and which in the aggregate have at least equal value for wildlife (including habitat) as does the surface estate in the lands described in subsection (a); and

(2) the attachment to the title of the lands so acquired by the State of Utah of the condition and reservation that such land be used only as and for wildlife conservation purposes and that in the event such land or any part thereof is no longer used for such purposes, the title and immediate right to possession of the surface estate of such land shall pass to the United States.

SEC. 2. DOCUMENTATION.

The United States shall provide to the State of Utah, and shall require the State of Utah to provide to the United States, such documents as may be required to adequately record the implementation of section 1 of this Act. The lands referred to in section one are approximately 150 acres in Salt Lake County, Utah, which comprise a portion of approximately 1,280 acres of land conveyed by the United States to the State of Utah by quitclaim deed dated July 26, 1950, and recorded on August 1, 1950 in book 786, page 48, of the official land records of Salt Lake County, Utah.

SEC. 3. ACCEPTANCE AUTHORITY.

If all right, title, and interest in and to the lands designated as 'Cuyahoga Valley Line' on the map numbered 644-80,054 and dated July, 1986 is offered to the Secretary of the Interior, the Secretary shall accept such lands. Upon such acceptance of such lands, the Secretary shall pay an amount which, as determined by the Secretary, reflects the value of the right, title, and interest accepted by the Secretary.

The SPEAKER pro tempore. Is a second demanded?

Mr. STRANG. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. Seiberling] will be recognized for 20 minutes, and the gentleman from Colorado [Mr. Strang] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. Seiberling].

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5459 is a bill dealing with the release of a reversionary clause from certain lands in Utah and with possible acquisition by the United States of certain lands in Ohio.

The Utah lands in question are about 150 acres near Salt Lake City. The United States owns the minerals, and the bill would not change that. The State of Utah owns the surface estate in the lands, but holds that estate subject to a reversionary clause which provides that if the lands are transferred or used for any purpose but wildlife conservation, ownership will revert to the United States.

The State of Utah wishes to exchange its interests in the lands with a private company, and to receive in return the surface estate in a considerably larger acreage of lands with much higher wildlife values. So long as the reversionary clause is in place, that cannot occur.

The bill would facilitate the exchange by releasing the reversionary clause. But to protect the interests of the United States, the bill provides that the release cannot occur until it is determined that the State has made an equal-value exchange, that the lands the State has received are at least as good in terms of wildlife habitat, and that the lands the State has received are subject to the same reversionary clause in favor of the United States as now is attached to the 150 acres.

As to the portion of the bill addressing lands in Ohio, the effect would be to assist in the purchase of certain lands in the Cuyahoga Valley National Recreation Area known as the Cuyahoga Valley Line. These were formerly used by the Chessie System for rail service between Cleveland and Akron, and are quite important in the plans for the recreation area.

The land protection plan calls for their acquisition and the transportation plan calls for their continued use by a historic rail line and, eventually, for other types of mass transit by rail.

However, some questions evidently have been raised at the Department of the Interior about the precise nature of title to some of the lands and the apparent inability of the Department to purchase these lands without going through lengthy legal procedures which might jeopardize the transaction.

The bill would provide for the Secretary of the Interior to accept an offer by the railroad to transfer the lands without the need for using any condemnation or declaration-of-taking procedures, and would empower the Secretary to pay only what the Secretary determines to be a proper price for the title acquired.

It is my understanding, and the Congressional Budget Office's report agrees, that no new appropriation will be required. I understand that the Secretary may obligate full funding for the lands, up to the total appraised amount, from whatever year's appropriation is applicable, in advance of an offer by the owner.

Mr. Speaker, H.R. 5459 was reported unanimously by the Interior Committee. It is a modest but important measure and not controversial so far as I am aware. I urge its passage.

Mr. Speaker, in connection with the Interior Committee's consideration of H.R. 5459, we consulted with the Committee on Government Operations and have made a number of changes in the bill as originally considered in our committee so as to respond to the concerns of the Government Operations Committee.

Mr. STRANG. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 5459, a bill to release certain restrictions on approximately 150 acres of land in Utah to enable the State of Utah to exchange the parcel for approximately 3,500 acres of lands elsewhere in Utah.

The bill is sponsored by my friend and colleague on the Interior Committee [Mr. HANSEN] and I believe he will explain the need for the legislation in more detail.

Let me just say that the Department of the Interior supports the removal of the restrictions and the exchange because a great deal of critical wildlife habitat will be gained in the exchange. At the same time, the bill does not affect the ownership of any mineral rights on the State lands or the private lands.

Members should be aware that the chairman of the Public Lands Subcommittee [Mr. SEIBERLING] amended the bill in committee to add a separate provision directing the Secretary to accept title to an historic railroad line which runs through and near the Cuyahoga National Recreation Area. There was no opposition in committee to this amendment. I have been told the Park Service would like to purchase this right-of-way; however, the railroad has been unable to produce a clear title to all portions of the line. The amendment allows the Secretary to purchase it based on whatever title the railroad can come up with. This leaves the Park Service in the position of having to clear the remaining title problems themselves which may involve some additional administrative costs. However, we are told this is minor and I am also told that funds are available and earmarked already to purchase these lands.

Therefore, I urge my colleagues to support the bill. I believe it is meritorious and relatively noncontroversial.

Mr. Speaker, I yield such time as he may consume to the author of this bill, the gentleman from Utah [Mr. HANSEN].

Mr. HANSEN. Mr. Speaker, I rise in strong support of H.R. 5459, a bill which I introduced in close cooperation with my colleague from Utah [Mr. MONSON].

In the way of background let me first say that the reason for this legislation is that Upland Industries Corp. wants to acquire a 150-acre tract from the State of Utah. To do so, the United States must first remove its conditions and reservations on the land. Upland plans to add the land to its existing nearby commercial site. In exchange for the land Upland is willing to deed to the State the surface estate on 3,500 acres or more of prime wetland habitat they currently own.

Acquisition of these new lands is very important to the State of Utah as we have lost a great deal of wildlife habitat due to the rising level of the Great Salt Lake.

The United States will receive a comparable reservation on the 3,500 acres requiring that it be used for wildlife habitat and, if not, the surface estate will revert to U.S. ownership.

Our bill requires, before the reservations are lifted, that a determination be made that the exchange has taken place and that the surface values are certified by the State for full market value and are at least of equal value in terms of wildlife, including habitat; and that the new reservation is attached to the surface estate of the lands acquired by the State.

The bill does not change the ownership of the minerals at all. In other words, the United States retains their minerals on the 150 acres and Upland retains theirs on the 3,500 acres.

I believe the bill is highly meritorious and I thank the subcommittee chairman, Mr. SEIBERLING, for helping us move this proposal along. I know of no opposition to the provision which was added by the chairman addressing a situation he has in the Cuyahoga National Recreation Area and I don't object to our combining the two proposals. I feel it would be beneficial to both Utah and Ohio.

Mr. STRANG. Mr. Speaker, I yield such time as he may consume to the sponsor of similar legislation, the gentleman from Utah [Mr. MONSON].

Mr. MONSON. Mr. Speaker, I am very pleased that this legislation has been brought before the House at this time. The goal of this bill is essentially identical to that of legislation I introduced earlier this year, and I fully support the effort of my colleague from Utah to win this measure's passage. Scheduling priorities prevented my legislation from moving forward and I am very encouraged that the Interior Committee has promptly and favorably reported this legislation for floor consideration. Prompt completion of this bill will allow final passage of the measure in the short time left in this Congress.

This legislation will allow the State of Utah to effect an exchange of land that will benefit the citizens of Utah. The Federal Government deeded the land in question to the State of Utah in 1952 for the purpose of establishing a wildlife refuge area. Unfortunately, the land is not suitable to be used for that purpose. The idea of an exchange of lands that would give Utah suitable refuge lands was suggested, but a problem was discovered. The original land grant deed contained a reverter clause that required the land to be used for wildlife purposes or it would revert to Federal ownership. This bill will remove the reverter clause from the deed and allow the State to arrange a trade.

The exchange that has been negotiated will trade 150 acres of the mentioned unsuitable wildlife land for approximately 3,500 acres of very suitable wetlands. It is the intention of the State of Utah to designate those 3,500 acres as a wetlands wildlife refuge. This has become more important recently because the flooding Great Salt Lake has destroyed large areas of wetlands habitat and new habitat is badly needed. The reverter clause which had applied to the original parcel will now apply to the 3,500-acre parcel.

In addition to the positive wildlife aspects of the trade, there will also be economic benefits gained in the Salt Lake City area. The Union Pacific Co. plan to commercially develop the 150 acres they obtain through the trade. This will provide needed growth and increased employment in the western sections of Salt Lake County. The proposed exchange has the full endorsement of the Utah congressional delegation, the Governor, and the wildlife and conservation groups in Utah. I urge my colleagues to support passage of H.R. 5459.

Mr. STRANG. Mr. Speaker, I urge speedy approval of this legislation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. SEIBERLING. Mr. Speaker, I yield back the balance of my time.

The SPEAKER. pro tempore. The question is on the motion offered by the gentleman from Ohio [Mr. SEIBERLING] that the House suspend the rules and pass the bill, H.R. 5459, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "An act to direct the release, on behalf of the United States, of certain conditions and reservations contained in a conveyance of land to the State of Utah, and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

□ 1440

ALASKA MILITARY LANDS WITHDRAWAL ACT

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5389) to withdraw certain public lands in the State of Alaska for military purposes, and for other purposes, as amended.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the "Alaska Military Lands Withdrawal Act".

SEC. 2. WITHDRAWALS.

(a) FORT WAINWRIGHT MANEUVER AREA.—(1) Subject to valid existing rights, the public lands described in paragraph (2) are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws but not the mineral or geothermal leasing laws), under an Act entitled "An Act to provide for the admission of the State of Alaska into the Union", approved July 7, 1958 (48 U.S.C. not prec. 21), and under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). Such lands are reserved for use by the Secretary of the Army for—

(A) military maneuvering,

(B) training for artillery firing, aerial gunnery, and infantry tactics, and

(C) other defense-related purposes consistent with the purposes specified in this paragraph, and subject to the requirements of section 4(g) of this Act.

(2) The lands referred to in paragraph (1) are the lands comprising approximately 247,951.67 acres of land in the Fourth Judicial District, Alaska, as generally depicted on the map entitled "Fort Wainwright Maneuver Area Withdrawal—Proposed", dated January 1985, and filed in accordance with section 3(a)(2).

(b) FORT GREELY MANEUVER AREA AND FORT GREELY AIR DROP ZONE.—(1) Subject to valid existing rights, the lands described in paragraph (2) are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws but not the mineral or geothermal leasing laws), under an Act entitled "An Act to provide for the admission of the State of Alaska into the Union," approved July 7, 1958 (48 U.S.C. note prec. 21), and under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). Such lands are reserved for use by the Secretary of the Army for—

(A) military maneuvering, training, and equipment development and testing, and

(B) other defense-related purposes consistent with the purposes specified in this paragraph, and subject to the requirements of section 4(a) of this Act.

(2) The lands referred to in paragraph (1) are—

(A) the lands comprising approximately 571,995 acres in the Big Delta Area, Alaska, as generally depicted on the map entitled "For Greely Maneuver Area Withdrawal—Proposed", dated January 1985, and filed in accordance with section 3(a)(2); and

(B) the lands comprising approximately 51,590 acres in the Granite Creek Area, Alaska, as generally depicted on the map entitled "Fort Greely, Air Drop Zone Withdrawal—Proposed", dated January 1985, and filed in accordance with section 3(a)(2).

SEC. 3. MAP AND LEGAL DESCRIPTION.

(a) PUBLICATION AND LEGAL DESCRIPTION.—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall—

(1) publish in the Federal Register a notice of the legal description of each area withdrawn under section 2; and

(2) file a map and the legal description of each area withdrawn under section 2 with the Congress.

(b) PUBLIC INSPECTION.—Each such map and legal description shall be available for public inspection—

(1) in the Office of the Director of the Bureau of Land Management of the Department of the Interior;

(2) in the Office of the State Director of the Bureau of Land Management for the State of Alaska; and

(3) in the office of the installation commander of Fort Richardson, Alaska.

(c) EFFECT OF MAP AND LEGAL DESCRIPTION.—Each such map and legal description shall have the same force and effect as if included in this Act, except that the Secretary of the Interior may correct any clerical or typographical error in any such map or legal description.

(d) COSTS.—The Secretary of Defense shall reimburse the Secretary of the Interior for the cost of implementing subsection (a) of this section.

SEC. 4. MANAGEMENT OF WITHDRAWN LANDS.

(a) MANAGEMENT BY THE SECRETARY OF THE INTERIOR.—(1) During the period of the withdrawal, the Secretary of the Interior shall manage the lands withdrawn under section 2 pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, including this Act.

(2) The uses for which such lands may be managed include grazing, wildlife habitat, control of predatory animals, and the prevention and suppression of brush and range fires resulting from nonmilitary activities.

(3)(A) All nonmilitary use of such lands shall be subject to such conditions and restrictions as may be necessary to permit the military use of such lands for the purposes specified in or authorized pursuant to this Act.

(B) The Secretary of the Interior may issue any lease, easement, right-of-way, or other authorization with regard to the use of such lands only with the concurrence of the Secretary of the Army.

(b) CLOSURE TO PUBLIC.—(1) If the Secretary of the Army determines that military operations, public safety, or national security require the closure to public use of any road, trail, or other portion of the lands withdrawn by this Act, the Secretary may take such action as the Secretary determines necessary or desirable to effect and maintain such closure.

(2) Any such closure shall be limited to the minimum areas and periods which the Secretary determines are required for the purposes specified in this subsection.

(3) During such a closure the Secretary shall—

(A) keep appropriate warning notices posted, and

(B) take appropriate steps to notify the public concerning such closures.

(c) MANAGEMENT PLAN.—(1) The Secretary of the Interior (after consultation with the Secretary of the Army) shall develop a management plan for each area withdrawn under section 2. Each such plan shall include a fire management plan which considers habitat improvement and other resource values. Each such plan shall be—

(A) subject to the restrictions under subsection (a)(3), and

(B) developed not later than one year after the date of enactment of this Act.

(2) In developing the management plan, the Secretary of the Interior shall consult with other Federal agencies and the State of Alaska.

(3) Not later than one year after the date of enactment of this Act, the Secretary of the Interior, the Secretary of the Army, and the State of Alaska shall develop an agreement for the management, conservation, and enhancement of fish and wildlife resources on the lands withdrawn under section 2. Such agreement shall be in accordance with the Act entitled "An Act to promote effectual planning, development, maintenance, and coordination of wildlife, fish, and game conservation and rehabilitation in military reservations", approved September 15, 1960 (16 U.S.C. 670a-670f).

(4) The Secretary of the Army shall allow public access to and use of the lands withdrawn under section 2 for purposes of recreation, hunting, fishing, and trapping to the fullest extent compatible with the essential military requirements relating to such lands as determined by the Secretary.

(d) BRUSH AND RANGE FIRES.—(1) The Secretary of the Army shall take necessary precautions to prevent, and shall suppress, brush and range fires occurring within and outside of the lands withdrawn under section 2 as a result of the military use of such lands.

(2) The Secretary may request assistance from the Director of the Bureau of Land Management in suppressing such fires. The Secretary shall reimburse the Bureau of Land Management for expenses incurred in providing such assistance out of funds appropriated for fiscal years beginning after the date of enactment of this Act.

(e) MEMORANDUM OF UNDERSTANDING.—(1) The Secretary of the Interior and the Secretary of the Army shall (with respect to each land withdrawal under section 2) enter into a memorandum of understanding to implement the management plan developed under subsection (c). Any such memorandum of understanding shall provide that the Director of the Bureau of Land Management shall provide assistance in the suppression of fires resulting from the military use of the lands withdrawn under section 2 when or if requested by the Secretary of the Army.

(2) The duration of any such memorandum shall be the same as the duration of the withdrawal with respect to the lands withdrawn under section 2.

(f) HUNTING, FISHING, AND TRAPPING.—Subject to the restrictions under subsection (a)(3), any hunting, fishing, or trapping on the lands withdrawn under section 2 shall be conducted subject to section 2671 of title 10, United States Code (relating to hunting, fishing, and trapping on military reservations and facilities).

(g) The Secretary of Defense shall promptly notify the Secretary of the Interior in the event that the lands withdrawn by this Act will be used for defense-related purposes other than those specified in section 2. Such notification shall indicate the additional use or uses involved, the proposed duration of such uses, and the extent to which such additional military uses of the withdrawn lands will require that additional or more stringent conditions or restrictions be imposed on otherwise-permitted nonmilitary uses of the withdrawn land or portions thereof.

SEC. 5. WATER RIGHTS.

(a) RESERVATION.—(1) The amounts of water described in paragraph (2) located on, under, over, or appurtenant to the lands withdrawn under section 2 which—

(A) have not been appropriated as of the date of enactment of this Act; and

(B) are required for future military purposes, are hereby reserved for such use by the Secretary of the Army.

(2) The amounts of water referred to in paragraph (1) which are reserved under this section are—

(A) 5,000,000 gallons of water per day with respect to the lands described in section 2(a) (Fort Wainwright Maneuver Area); and

(B) 1,500,000 gallons of water per day with respect to the lands described in section 2(b) (Fort Greely Maneuver Area and Fort Greely Air Drop Zone).

(3) The Secretary of the Army shall consult with the State of Alaska before the actual future taking of water.

(b) ACQUISITION OF ADDITIONAL WATER RIGHTS.—If the Secretary of the Army determines that it is necessary to acquire additional water (in excess of the quantity identified in this section), the Secretary—

(1) may acquire the rights to such additional water in accordance with applicable State law relating to the control, appropriation, use, and distribution of water resources in such State; or

(2) shall request a specific reservation of additional Federal water rights through an Act of Congress.

(c) PRIOR ACQUISITION OF WATER RIGHTS.—This section shall not be construed to affect water rights acquired by the United States before the date of enactment of this Act.

SEC. 6. DURATION OF WITHDRAWAL.

(a) GENERAL RULE.—Except as otherwise provided in this section, any withdrawal of land under section 2 shall terminate 10 years after the date of enactment of this Act.

(b) NOTIFICATION AND APPLICATION.—(1) At least three years before the termination of any withdrawal under subsection (a), the Secretary of the Army shall—

(A) determine whether the Secretary has a continuing need for any or all of the lands withdrawn under section 2;

(B) notify the Secretary of the Interior of that determination; and

(C) if there is a continuing military need for any or all of such lands, file an application for extension of the withdrawals of such lands with the Secretary of the Interior.

(2) The withdrawals established by this Act may not be extended or renewed by an Act or joint resolution.

SEC. 7. RELINQUISHMENT AND DECONTAMINATION.

(a) NOTICE.—If, at any time prior to the termination of the withdrawals established by this Act, the Secretary of Defense concludes that there is no military need for all or any of the lands withdrawn and reserved by this Act, during the period of withdrawal and reservation, the Secretary of Defense shall transmit to the Secretary of the Interior a notice of intention to relinquish such lands.

(b) CONTAMINATION.—(1) Before transmitting a notice of intention to relinquish to subsection (a), the Secretary of Defense, acting through the military department concerned, shall prepare a written determination concerning whether and to what extent the lands that are to be relinquished are contaminated with explosive, toxic, or other hazardous materials.

(2) A copy of such determination shall be transmitted with the notice of intention to relinquish.

(3) Copies of both the notice of intention to relinquish and the determination concerning the contaminated state of lands shall be published in the Federal Register by the Secretary of the Interior.

(c) DECONTAMINATION.—If any land which is the subject of a notice of intention to relinquish pursuant to subsection (a) is contaminated, and the Secretary of the Interior, in consultation with the Secretary of the military department concerned, determines that decontamination is practicable and economically feasible (taking into consideration the potential future use and value of the land) and that upon decontamination, the land could be opened to operation of some or all of the public land laws, including the mining laws, the Secretary of the military department concerned shall decontaminate the land to the extent that funds are appropriated for such purpose.

(d) ALTERNATIVES.—If the Secretary of the Interior after consultation with the Secretary of the military department concerned, concludes that decontamination of any land which is the subject of a notice of intention to relinquish pursuant to subsection (a) is not practicable or economically feasible, or that the land cannot be decontaminated sufficiently to be opened to operation of some or all of the public land laws, or if Congress does not appropriate a sufficient amount of funds for the decontamination of the land, the Secretary of the Interior shall not be required to accept the land proposed for relinquishment.

(e) REVOCATION AUTHORITY.—Nothwithstanding any other provision of this Act, the Secretary of the Interior, upon deciding that it is in the public interest to agree to a relinquishment pursuant to this section and to accept full jurisdiction over any or all of the lands withdrawn and reserved by this Act which were the subject of a notice of intention to relinquish, may revoke the withdrawal and reservation established by this Act, as it applies to such lands. If the Secretary of the Interior decides to revoke the withdrawal, such Secretary shall publish in the Federal Register an appropriate order which shall terminate the withdrawal and reservation, constitute official acceptance of full jurisdiction over the lands by such Secretary, and state the date upon which the lands will be opened to the operation of some or all of the public land laws, including the mining laws.

SEC. 8. MILITARY WITHDRAWAL REPORTS.

(a) TO CONGRESS.—(1) No later than 180 days after the date of enactment of this Act the Secretary of Defense and the Secretary of the Interior shall prepare and transmit to the Committees on Interior and Insular Affairs and Armed Services of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate a report on present and potential withdrawals of public lands in Alaska for military purposes and on other lands in Alaska which are used for such purposes, with an explanation of the manner in which such uses on such other lands are permitted. Such report shall identify—

(A) the public lands in Alaska which as of the date of the report (or the date of revisions thereof pursuant to subsection (c)) are withdrawn for military purposes, and the date of termination of each such withdrawal; and

(B) the public lands in Alaska which as of such date are the subject of a request for withdrawal for military purposes, together with the status of each such request and (with respect to each such request involving 5,000 acres or more of public lands) the date on which such request is expected to be transmitted for consideration by the Congress.

(2) On the date that the report described in paragraph (1) of this subsection is transmitted, the Secretary of Defense shall transmit to the Congress a report identifying existing and proposed restrictions, established for defense purposes, on use of airspace over lands in Alaska by nonmilitary aircraft.

(b) TO GOVERNOR.—The Secretary of Defense and the Secretary of the Interior shall provide a copy of the reports described in subsection (a) to the Governor of Alaska on the date that such reports are transmitted to the specified Committees of the Congress, and the Secretary of the Interior shall maintain copies of the reports in appropriate offices of the Bureau of Land Management in Alaska, for public inspection.

(c) REVISIONS.—(1) From time to time (but at least every two years after the date of the transmittal of the reports to the specified Committees of the Congress), the Secretary of Defense and the Secretary of the Interior shall—

(A) revise the reports described in subsection (a) of this section;

(B) provide such revised reports to the Committees of the Congress specified in subsection (a) and to the Governor of Alaska; and

(C) make such revised reports available for public inspection in Alaska.

(2) Before transmitting each of the revised reports to the Committees and the Governor, the Secretaries shall give appropriate notice concerning the preparation of such revised reports and shall consult with the public and with agencies of the State of

Alaska concerning the information to be included in such revised reports.

(d) DEFINITION.—For purposes of this section, the term "public lands" has the same meaning as such term has in the Federal Land Policy and Management Act of 1976.

SEC. 9. DELEGABILITY.

(a) DEFENSE.—The functions of the Secretary of Defense or of a military department under this Act may be delegated.

(b) INTERIOR.—The functions of the Secretary of the Interior under this Act may be delegated, except that an order described in section 7(e) may be approved or signed only by the Secretary of the Interior, the Undersecretary of the Interior, or an Assistant Secretary of the Department of the Interior.

SEC. 10. SAVINGS CLAUSE.

Nothing in this Act shall be construed as enlarging or diminishing the applicability of the National Environmental Policy Act of 1969, the Alaska National Interest Lands Conservation Act, or any other applicable provision of law to any action taken after the date of enactment of this Act by any officer or agent of the United States with regard to possible extension or renewal of the withdrawals made by this Act.

The SPEAKER pro tempore (Mr. KILDEE). Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. SEIBERLING] will be recognized for 20 minutes, and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. SEIBERLING].

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5389 is a bill which would withdraw certain public lands in Alaska for military purposes.

Under the Engle Act of 1958, such peacetime withdrawals of areas of 5,000 acres or more must be done by act of Congress.

The areas which would be affected by this bill are the Fort Wainwright Maneuver Area, the Fort Greely Maneuver Area, and the Fort Greely Air Drop Zone. Together they total about 871,000 acres. These are areas which the Defense Department has used in the past but for which prior withdrawals have expired. The effect of the bill would be to renew these withdrawals and thus to put these defense uses on a sound legal footing.

Mr. Speaker, let me commend the gentleman from California [Mr. DELLUMS] for his cooperation and consideration in working on this bill that was jointly referred to the Committee on Interior and Insular Affairs and to the Committee on Armed Services. Mr. DELLUMS chairs the Subcommittee on Armed Services with responsibility for this and other military withdrawal legislation, and I have greatly enjoyed working with him on this and other matters of interest to our two committees.

I also want to commend our colleague from Maryland [Mrs. BYRON]. It was very largely thanks to her dedication, hard work, and perseverance that the two committees were able to work so closely together. As a member of both committees, she took a leadership role on this issue and deserves most of the credit for the work we have been able to complete in this area.

Mr. Speaker, H.R. 5389 was reported from the Interior Committee without dissent. It would withdraw the lands involved for a period of 10 years.

In my opinion, a full decade's withdrawal is adequate for any reasonable need for the military to be able to make plans for continued use of the affected lands, while retaining the important principle of the Engle Act that allocation of public lands to military uses is to be subject to periodic reviews by the Congress. I do understand the natural desire of the Defense Department for an even longer withdrawal, but 10 years strikes me as a reasonable period for the duration of these withdrawals.

Mr. Speaker, I believe the bill is balanced and reasonable. I urge its passage.

Mr. YOUNG. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill would authorize the withdrawal of lands by the Secretary of Interior to further the purposes of the mission of the Defense Department in Alaska. As America and the world looks increasingly toward the Pacific, Alaska attains greater importance to America's desire to promote peace through a strong defense presence in Alaska. This bill would give the military the lands necessary to train in an Arctic environment, and Alaskans have traditionally been good hosts to those men and women who sacrifice so that we may remain free.

I thank Chairman SEIBERLING for his willingness to move this legislation. A special thanks should also go to Mrs. BYRON, who has spent a good deal of time on this matter due to her interest in an adequate and capable national defense. She and her staff have labored long and hard to understand Alaskan issues regarding this withdrawal, and she took time from her busy schedule this summer to lead a delegation to Alaska to see these withdrawals first hand.

I ask that the Members support this legislation.

Mr. DELLUMS. Mr. Speaker, I rise in support of the substitute offered to H.R. 5389 by my colleague Mr. SEIBERLING.

H.R. 5389, the Alaska Military Lands Withdrawal Act was jointly referred to the Committees on Interior and Insular Affairs and Armed Services. Unfortunately it was assigned to my subcommittee at a time when the membership was involved first with the passage of the Defense authorization bill on the House floor and are now in conference with the Senate. These events have made it impossible to hold the hearings we would normally have held on this matter. However, several members of the committee have visited these sites personally and have received extensive briefing as to the continued need for these ranges.

It is my understanding that the bill as being reported by the Committee on Interior and Insular Affairs is generally satisfactory to the members of the House Armed Services Committee with one exception. That involves the length of the withdrawal. The Army would prefer 25 years as was in the bill as introduced, while the Interior and Insular Affairs Committee substitute provides for only 10 years. However, since the Senate version of this legislation also provides for the withdrawal for 25 years, it is the feeling of the House Armed Services Committee that this matter can be successfully negotiated during conference with the Senate.

It is for this reason that the House Armed Services Committee has no objection to the passage of this legislation and urges my colleagues to support this measure so that we can expeditiously move to a resolution with the Senate.

Mr. SEIBERLING. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio [Mr. SEIBERLING] that the House suspend the rules and pass the bill, H.R. 5389, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

HAIDA LAND EXCHANGE ACT OF 1986

Mr. SEIBERLING. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5353) to provide for a land exchange in the State of Alaska, as amended.

The Clerk read as follows:

H.R. 5353

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND PURPOSE.

(a) Short Title.—This Act may be cited as the "Haida Land Exchange Act of 1986."

(b) Purpose.—The purpose of this Act is to provide an offer for the owners thereof to relinquish and convey voluntarily to the United States certain lands and interests therein as described below and receive in lieu thereof certain Federal lands and other things of value. Congress finds and declares that it is in the public interest to implement the land exchanges and acquisitions set forth herein, in order to carry out the purposes of the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act.

SECTION 2. DEFINITIONS AND MAPS.

(a) General Definitions.—As used in this Act:

(1) The "Alaska Native Claims Settlement Act" means Public Law 92-203, 85 Stat. 688 (December 18, 1971), as amended.

(2) The "Alaska National Interest Lands Conservation Act" means Public Law 96-487, 94 Stat. 2371 (December 2, 1980), as amended.

(3) The term "Secretary" means the Secretary of Agriculture, unless otherwise specified.

(4) The term "Haida Corporation" means the Alaska Native Village Corporation for Hydaburg, Alaska, which was organized pursuant to section 8 of the Alaska Native Claims Settlement Act.

(5) The term "Sealaska" means Sealaska Corporation, a Regional Corporation (as such term is defined in section 3(g) of the Alaska Native Claims Settlement Act) existing under the laws of the State of Alaska.

(6) The term "Haida Exchange Lands" means those lands and interests therein generally depicted on a map entitled "Haida Exchange Lands" dated August 1986, the surface estate of which was conveyed, subject to valid existing rights and the provisions of the Alaska Native Claims Settlement Act, to Haida Corporation in partial fulfillment of its entitlement under section 16(b) of the Alaska Native Claims Settlement Act.

(7) The term "Haida Traditional Use Sites" means those lands and interests therein generally depicted on a map entitled "Haida Traditional Use Sites" dated August 1986, which are presently owned by the United States.

(8) The terms "Goat Island" and "South Pass Islands" mean those lands and interests therein depicted on a map entitled "Goat Island and South Pass Islands Acquisitions" dated September 1986, the surface estate of which was conveyed, subject to valid existing rights and the provisions of the Alaska Native Claims Settlement Act, to Haida Corporation in partial fulfillment of its entitlement under section 16(b) of the Alaska Natives Claims Settlement Act, and the subsurface estate to which was conveyed to Sealaska pursuant to the Alaska Native Claims Settlement Act.

(9) The term "selection rights" means the combination of Haida Corporation selection rights under section 16 of the Alaska Native Claims Settlement Act which have not been exercised as of January 1, 1955 plus such acreage of the Haida Exchange Lands owned by Haida Corporation on January 1, 1955.

(10) The term "Hetta Exchange Lands" means the surface estate of approximately 4,672 acres of lands generally depicted on a map entitled "Hetta Exchange Lands" dated September 1986.

(11) The term "subsurface estate" shall have the same meaning as such term has when used in the Alaska Native Claims Settlement Act.

(12) The term "conservation system unit" has been the same meaning as such term has when used in the Alaska National Interest Lands Conservation Act.

(13) The term "cooperative information and education branch site" means a tract of land of not to exceed 10 acres as shall be identified, through mutual agreement of the Secretary and Haida Corporation, for location of an affiliated branch of the center described in section 11 of this Act.

(b) Maps.—The maps referred to in this Act shall be on file in the Office of the Chief, United States Forest Service and in the office of the Secretary of the Interior, Washington, District of Columbia. The acreage cited in this Act is approximate, and in the event of discrepancies between cited acreage and the lands depicted on the referenced maps, the maps shall control, but such maps shall not be construed as an attempt by the United States to convey State or private lands, or as an attempt by Haida Corporation or Sealaska to convey to the United States lands not owned by Haida Corporation or Sealaska.

SECTION 3. OFFER TO HAIDA

(a) Offer.—For and in consideration of the relinquishment and conveyance to the United States of all of Haida Corporation's right, title, and interest in Goat Island, South Pass Islands, the cooperative information and education branch site, and 4,222 acres of the Hiada Exchange Lands as specified by the Secretary, there are hereby offered to Haida Corporation the following lands, interests in lands, and other valuable consideration:

(1) Conveyance by the United States subject to valid existing rights, of all right, title and interest of the United States in the surface estate of the Haida Traditional Use Sites. This conveyance shall be subject to such perpetual easements as identified by the Secretary no later than 120 days after the date of enactment of this Act, and the title to lands conveyed to Haida Corporation shall be acceptable to the Secretary.

(2) The sum of $9,000,000 subject to the provisions of section 8, provided that Sealaska also accepts the offer made by section 4(a) of this Act. Any payment pursuant to this paragraph shall be made no later than 90 days after such agreement by Sealaska or after a decision by Haida Corporation to accept an alternative pursuant to section 5(a), whichever is sooner.

(b) Haida Deadline.—Haida Corporation shall have one year from the date of enactment of this Act within which to accept the offer provided in this section by providing to the Secretary a properly executed and certified corporate resolution binding upon the corporation with respect to the relinquishment and conveyance of all of the corporation's right, title and interest in the lands specified in subsection (a) of this section. At the Secretary's discretion, the Secretary may require that any such resolution be accompanied by an opinion of counsel to Haida Corporation stating that the resolution comports with all requirements of Federal and State law and the rules and bylaws of the Haida Corporation.

SECTION 4. OFFERS TO SEALASKA.

(a) Island Areas.—For and in consideration of the relinquishment to the United States of all of Sealaska's right, title, and interest in Goat Island and South Pass Islands, and in the cooperative information and education branch site there is hereby offered to Sealaska, subject to valid existing rights, all right title and interest of the United States in the Hetta Exchange Lands.

(b) Other Areas.—If no later than one year after the date of enactment of this Act Sealaska notifies the Secretary and the Secretary of the Interior of Sealaska's desire to make an exchange, the Secretary of the Interior shall convey to Sealaska the subsurface estate in lands conveyed to Haida Corporation pursuant to this Act in exchange for an equal acreage of subsurface estate in lands other than Goat Island and South Pass Islands conveyed to the United States by Haida Corporation pursuant to this Act.

(c) Deadline.—Sealaska shall have 180 days from the date of enactment of this Act within which to accept the offer made by subsection (a) by providing to the Secretary a properly executed and certified corporate resolution binding upon Sealaska with respect to the relinquishment and conveyance of all Sealaska's interest in Goat Island and South Pass Islands and in the cooperative information and education branch site. At the Secretary's discretion, the Secretary may require that any such resolution be accompanied by an opinion of counsel to Haida Corporation and Sealaska stating that the resolutions comport with all requirements of Federal and State law and the rules and bylaws of the corporations.

SECTION 5. ALTERNATIVES AND MANAGEMENT.

(a) Alternatives.—(1) In the event that Haida Corporation makes a timely acceptance of the offer made by section 3, but Sealaska does not make such an acceptance of the offer made by section 4(a), the Secretary shall afford to Haida Corporation an opportunity to either—

(A) agree to accept the sum of $10 million (rather than $12 million) pursuant to section (a)(2) or

(B) agree to relinquish and convey to the United States Haida Corporation's interests in such other lands (in addition to the lands specified in section 3(a)) as may be mutually agreed by Haida Corporation and the Secretary.

(2) In the event that Haida Corporation does not make a timely acceptance of the offer made by subsection 3(a), any acceptance by Sealaska shall be ineffective and the United States shall not be bound to acquire any of Sealaska's interests in Goat Island and South Pass Islands.

(b) Management.—If they are acquired by the United States pursuant to this Act, Goat Island and South Pass Islands shall be included within the Tongass National Forest, and shall be managed in accordance with laws applicable to the National Forest System and other applicable law. Subject to valid existing rights, Goat Island and South Pass Islands are hereby withdrawn from State selection under the Alaska Statehood Act and from native selection under the Alaska Native Claims Settlement Act, and the South Pass Islands are withdrawn from all forms of entry or appropriation or disposal under the public land laws, including entry, location, and patent under United States mining laws, disposition under the mineral leasing laws, and the operation of the geothermal leasing laws. The Secretary shall manage the South Pass Islands primarily for recreational purposes and for the protection of fish and wildlife values, and the sale or harvesting of timber shall not be permitted except as may be necessary in the control of fire, insects, and disease. The provisions of section 1307(b) of the Alaska National Interest Lands Conservation Act shall apply to Goat Island and South Pass Islands notwithstanding the fact that such areas are not conservation system units.

SECTION 6. STATUS OF OFFERS AND CONDITIONS OF CONVEYANCE.

(a) Severability.—The offers made in separate sections of this Act to Haida Corporation and to Sealaska respectively are separate, and acceptance of an offer made in one such section does not bind a corporation to accept any offer made in any other section.

(b) Terms and Conditions.—Subject to valid existing rights and any other interests in land protected under federal law as of the date of interim conveyance of the relevant lands to Haida Corporation pursuant to the Alaska Native Claims Settlement Act where such conveyance accrued prior to the date of enactment of this Act, the conveyance of all lands and interests therein conveyed to the United States from Haida Corporation pursuant to this Act shall be free and clear of the claims of all creditors. No encumbrances on such lands and interests therein created after such interim conveyance which are not subject to the jurisdiction of a United States court as of the date of Haida Corporation's relinquishment and conveyance of lands to the United States pursuant to this Act shall be effective unless such encumbrances are acceptable to the Secretary. The Secretary shall require Sealaska to provide such title as is acceptable to the Secretary with regard to all lands conveyed to the United States by Sealaska.

SECTION 7. STATUS OF LANDS CONVEYED.

(a) To Corporations.—All lands conveyed to Haida Corporation or Sealaska pursuant to this Act shall be considered as lands conveyed pursuant to the Alaska Native Claims Settlement Act. For purposes of section 21(c) of such Act, receipt by Haida Corporation or Sealaska of lands or other things of value pursuant to this Act shall constitute receipt of an interest in land.

(b) To United States.—All lands conveyed to the United States pursuant to this Act shall be included in the Tongass National Forest and shall be subject to the laws, rules, and regulations applicable thereto. Lands and interests therein conveyed to the United States pursuant to this Act shall not be subject to any levy, foreclosure, or any other action which would encumber or divest the United States of any right, title, or interest in such lands. No action may be brought by any party in any United States district court pursuant to title 28, United States Court, section 2409a, to quiet title to such lands.

SECTION 8. WITHDRAWALS AND INTERIM MANAGEMENT.

(a) Withdrawals.—Subject to valid existing rights, all lands identified in this Act as available for conveyance to Haida Corporation or Sealaska are withdrawn from all forms of location, entry, and selection under the mining and public land laws of the United States, from leasing under the mineral and geothermal leasing laws, and against issuance of preliminary permits and licenses pursuant to the Federal Power Act. This withdrawal shall expire eighteen months after the date of enactment of this Act.

(b) Interim Management.—Subject to valid existing rights, during acceptance periods provided in this Act, the Secretary and the Secretary of the Interior shall manage the lands available for conveyance under sections 3 and 4 of this Act so as to maintain their existing character and resources until conveyed. In the event that Haida Corporation or Sealaska does not maintain the character of the lands proposed for conveyance to the United States pursuant to section 3 or section 4, respectively, pending conveyance of such lands, the United States shall not be obliged to acquire any such lands from a corporation which has not so maintained the character of such lands.

(c) Savings Provisions.—Nothing in this Act shall be deemed as a cloud of title of lands or interests therein owned on the date of enactment of this Act by Haida Corporation or Sealaska. Nothing in this Act shall be construed in any way as affecting the existing ownership or as limiting the use of lands owned by the respective Corporations on the date of enactment of this Act. Nothing in this Act shall be construed to limit the authority of the Secretary to enter into land exchanges pursuant to existing exchange authorities. No action of the Secretary or the Secretary of the Interior in effecting any conveyance of lands or interests therein authorized under this Act shall be deemed a major federal action for purposes of the National Environmental Policy Act of 1969, nor shall any determination pursuant to section 810 of the Alaska National Interest Lands Conservation Act be required prior to implementation of any provision of this Act.

SECTION 9. FUNDING.

Payments to Haida Corporation required by section 4 of this Act shall be defrayed from receipts from timber and other resources from National Forest System lands, notwithstanding any other law providing for the distribution of such receipts. All funds required for these purposes are authorized and shall be made available without appropriation to the secretary by the Secretary of the Treasury and these funds shall not be subject to deferral, rescission or any reduction under the Congressional Budget and Impoundment Control Act of 1974 or any other authority. This section shall not affect payments to States and counties as provided by the Act of May 23, 1908, and section 13 of the Act of March 11, 1911 (16 U.S.C. 500).

SECTION 10. FUTURE SELECTIONS.

(a) Withdrawals.—(1) On and after the effective date of this section, the Secretary of the Interior, after consultation with the Secretary, the Governor of Alaska, the Haida Corporation, and Sealaska is authorized and directed to withdraw from all forms of entry and appropriation under the public land laws, including the mining, mineral leasing, and geothermal leasing laws, Federal lands in Alaska outside any conservation system unit for selection by Haida Corporation pursuant to this section.

(2) Withdrawals pursuant to this subsection shall be in an aggregate amount equal to twice the acreage of Haida Corporation's selection rights.

(3) Lands withdrawn pursuant to this subsection shall be, to the maximum extent possible, lands accessible from the coast which are of like kind and character to those traditionally used and occupied by the shareholders of Haida Corporation and shall be, to the maximum extent possible, capable of utilization for economic return to Haida Corporation. No lands within the National Forest System shall be withdrawn under this subsection without the concurrence of the Secretary.

(b) Selections.—For one year after the completion of withdrawals pursuant to subsection (a) of this section, Haida Corporation shall be entitled but not required to select for conveyance to such corporation from lands withdrawn pursuant to subsection (a) lands not to exceed an amount equal in acreage to Haida Corporation selection rights which as of the date of selection had not been exercised or disposed of by Haida Corporation. Haida Corporation shall notify the Secretary of the Interior which, if any, of the lands so withdrawn Haida Corporation wishes to select and which such selection rights Haida Corporation intends to relinquish in return for its selections. After their selection, the surface estate in lands selected by Haida Corporation pursuant to this subsection shall be conveyed to Haida Corporation and the subsurface estate in such lands shall be conveyed to Sealaska in partial fulfillment of such corporations' entitlements under the Alaska Native Claims Settlement Act and pursuant to the provisions of that Act.

(c) Duration.—All withdrawals made pursuant to subsection (a) and all withdrawals in aid of Haida Corporation selections made pursuant to the Alaska Native Claims Settlement Act prior to the date of enactment of this Act of land not selected by Haida Corporation shall terminate two years after the last withdrawal is made pursuant to subsection (a).

(d) Effective Date.—This section shall take effect on January 1, 1995.

SECTION 11. COOPERATIVE INFORMATION AND EDUCATION CENTER.

(a) Authorization.—There is hereby authorized to be appropriated $250,000 to be used by the Secretary of Agriculture to conduct surveys, develop designs, and carry out other preliminary work related to the establishment of an Information and Education Center provided for in section 1305 of Public Law 96-487.

(b) Purposes.—The purposes of the Center authorized by subsection (a) shall be:

(1) to collect and disseminate to visitors to and residents of Alaska information about the natural, recreational, cultural, historical, archeological, multiple use, and other resources and values of Alaska, with special emphasis on the Tongass National Forest and Southeast Alaska and its people.

(2) to publicly display temporary and permanent exhibits illustrating and interpreting these resources and values;

(3) to foster educational programs relating to the heritage resources of Alaska including those pertaining to Alaska Native peoples with particular emphasis on the Haida, Tshimshian, and Tglingit peoples of Southeast Alaska.

(c) Design.—Design of the center in subsection (a) shall be developed in consultation with other appropriate Federal agencies, the Alaska Division of Tourism and other appropriate agencies of the State of Alaska, the local government of the city in which such center is to be located, and southeast Alaska Native organizations.

(d) Consultation.—In establishing, operating and maintaining the center (and any affiliated branches), the Secretary of Agriculture shall consult with, in addition to those listed in subsection (c), Alaska colleges and universities the National Historic Association of Alaska, the Alaska Federation of Natives, and appropriate individuals and other organizations concerned with the diverse heritage resources of Alaska.

(e) Cooperative Agreements.—The Secretary of Agriculture is authorized to enter into cooperative agreements with those individuals and organizations listed in subsections (c) and (d) to facilitate carrying out the purposes of the Center.

(f) DEVELOPMENT PLAN.—Within one year after the date of enactment of this Act, and after consultation with the individuals and organizations listed in subsections (c) and (d), the Secretary of Agriculture shall submit to Congress a development plan for the Center along with an estimate of the cost.

The SPEAKER pro tempore. Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Ohio [Mr. SEIBERLING] will be recognized for 20 minutes, and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Ohio [Mr. SEIBERLING].

GENERAL LEAVE

Mr. SEIBERLING. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to extend their remarks on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill deals with certain lands in southeast Alaska now held by the Haida Corp., and Sealaska Corp.

Both Haida and Sealaska are Native corporations formed under the Alaska Native Claims Settlement Act. Because of a somewhat unusual combination of geography, the location of survey lines, and other circumstances, Haida Corp.'s flexibility in selecting lands under that Settlement Act was much less than that of other village corporations, in southeast Alaska and elsewhere in the State.

Further, once Haida did select its lands, there was a considerable delay before they received them. As it happens, that delay meant that the timber on those lands—and timber is the chief economic resource there—suffered a disastrous decline in value when the timber market collapsed in recent years.

Haida had a number of other problems as well. Some of them reflected bad judgment and inexperience, factors to which the various village corporations formed pursuant to the Alaska Native Claims Settlement Act have been exposed all too often.

It was only this combination of adversities that led Haida to consider whether the United States might be interested in having some of Haida's lands. In fact, after negotiations with the Forest Service, Haida did construct a proposal which was referred to in our committee after it was introduced in bill form by the gentleman from Alaska, the ranking Republican member of the Committee on Interior and Insular Affairs.

The committee, working on a bipartisan basis, has reworked and reshaped the Haida bill and now has reported it unanimously, with the recommendation that it be approved by the entire House.

The essence of the bill is that it extends separate offers to Haida and Sealaska. Sealaska is involved because under the Alaska Claims Settlement Act, that regional corporation became the owner to the subsurface estate in Haida's lands.

To Haida, the bill offers an opportunity to transfer to the United States a considerable amount of Haida's best lands, which the Forest Service says would be good to acquire, in exchange for certain other lands traditionally used by Haida's shareholders and for money. To Sealaska, the bill offers the opportunity to exchange its subsurface holdings in any lands Haida conveys to the United States under the bill, for other interests in lands, primarily other subsurface interests in lands whose surface belongs to Haida.

Further, the bill would provide Haida a limited opportunity, in the future, to fulfill its land entitlement under the Settlement Act by choosing lands in Alaska outside the unusually-stringent restrictions that were imposed on Haida alone in the first instance.

Finally, the bill would authorize—but not fund—the initial steps to establish a cooperative information and development center in southeast Alaska. This sort of center was specifically envisioned in the Alaska Lands Act originally put forward by the distinguished chairman of our committee, Mr. UDALL, and I understand that the State of Alaska and the city of Ketchikan—where it is likely to be located—enthusiastically support its coming into being.

Mr. Speaker, this is a somewhat complicated bill, but a good one for southeastern Alaska and for the United States. I urge its swift approval by the House.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to thank the gentleman from Ohio, and the chairman of the committee, for the work they and their staffs have done to produce this legislation. This legislation is the product of many hours of meetings and negotiations by our respective staffs and the interested parties, including the U.S. Forest Service, so that a small Alaska Native village corporation, the Haida Corp., can survive.

Mr. Speaker, I rise in strong support of H.R. 5353. In order to obtain legislation for the Haidas this year, we have made every attempt to eliminate meaningful controversy from the legislation. We have addressed the concerns of the timber industry, the environmental groups, and the State of Alaska. We have withdrawn from the bill the land exchange the Forest Service objected to. What remains will keep the Haidas from their pending bankruptcy liquidation in December of this year, by allowing them to sell some of their land. It also allows them to get some scattered traditional sites the Haidas used as summer camps for hunting and fishing. The legislation leaves for another day what lands of economic value the Haidas could receive to give them and their children a future.

Because it was impossible to find the Haidas lands of worth at this time that the timber industry, the State, or the environmentalists don't also want, this legislation provides that the Haidas now will wait to finish their selections until after the Forest Service completes a new management plan and after the State completes all its land selections in the National Forest. When the bill was introduced, we had included a land exchange which would provide the Haidas with timberlands of value. Those lands were just a small part of what had traditionally been Haida territory in the first place. But those lands proved too controversial for the Forest Service and others. So, in light of the pressing need to get these people legislation, the exchange was dropped.

The Haidas stand today on the brink of complete liquidation. What this legislation does is allow them to survive. It was only at the prospect of losing all their land, the Haidas decided they would have part with some of it through legislation.

There is still some difference between the Forest Service and us over the value of the lands to be sold, and this is where we still differ with the administration. But those values are de minimus in my opinion.

It should be remembered that historcially these people had claim to the richest timberland in the entire State. But due to technicalities in ANCSA and the fact the Government moved these people from their traditional villages to a new site, their traditional timber rich lands were not available to them. The richest of those lands eventually were given to another native corporation as part of a land exchange, and those lands which were once Haida territory have made that corporation the richest village corporation in the State.

The bill also attempts to encourage tourism in this beautiful area and the hiring of local residents. Their local economy is in a poor state. They were hard hit first by the decline in the fishing industry, and then by the timber market.

These people have had a long difficult relationship with the Federal Government in the past, and some of those problems and issues may still remain. But this legislation will give them a shot at a future.

I again want to thank everyone involved for cooperating to produce legislation which will let these people survive as an ANCSA corporation. I urge support for this legislation.

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Mr. SEIBERLING. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Maryland [Mrs. Byron].

Mrs. BYRON. Mr. Speaker, I appreciate the gentleman's yielding me this time, and I apologize that I was in my office with constituents when the Alaska Military Land Withdrawal Act was brought up, and which has now been passed.

Mr. Speaker, let me begin by saying that I see a great need for this legislation and I want to commend Congressman Seiberling for his efforts to bring it to the House floor prior to the end of the 99th Congress. The withdrawal of both Fort Greely and Fort Wainwright are included in an omnibus withdrawal bill I introduced which also contains four other military ranges in the lower 48.

Last July, I led an 11-member delegation to Alaska in order to thoroughly inspect the Fort Greely and Fort Wainwright ranges. After spending some time at this task, I can say that the preparedness and flexibility of our troops is enhanced by the Army's operations at Greely and Wainwright. Alaska's severe winter weather makes these maneuver areas ideal for a variety of winter training exercises which cover everything from winter survival techniques to military skiing to glacier climbing. In addition, these ranges offer excellent cold weather testing conditions for U.S. weaponry and supplies.

While there are some differences between this legislation and my original bill, I feel that it is, in general, acceptable. Nevertheless, I am quite disappointed that this bill contains only a 10-year land withdrawal, particularly in light of the fact that the withdrawals on these ranges have now been expired for at least 10 years. The Army has been extremely responsible with its management of these ranges and has been quite sensitive to local, State, and Federal concerns. However, I do believe that this bill is certainly better than no bill at all. Therefore, I support the passage of this legislation and hope that this issue can be more appropriately worked out in conference with the Senate.

Mr. YOUNG of Alaska. Mr. Speaker, will the gentlewoman yield?

Mrs. BYRON. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Speaker, I again compliment the gentlewoman for not only leading the expedition to Alaska, but her leadership on the Armed Services Committee in recognizing the frontier of Alaska and the important role it plays in our national defense. We issue you a welcome back at any time you wish to return on any other mission you would like to set forth into Alaska.

Mrs. BYRON. The next time I will come in January.

Mr. YOUNG of Alaska. That will be fine too.

Mr. SEIBERLING. Mr. Speaker, will the gentlewoman yield?

Mrs. BYRON. I yield to the gentleman from Ohio.

Mr. SEIBERLING. Mr. Speaker, I want to compliment the gentlewoman from Maryland again, not only for her leadership on this legislation, but for going to the extent of taking a subcommittee delegation to Alaska last summer to inspect these areas so that they could get a firsthand sense of the nature of the area and the importance of it to the military. That is one reason that we are able to do this job as well as we have done.

Mrs. BYRON. Mr. Speaker, I think the consensus is that we have seen it in the summer, and we will be back now in the winter to see its other side.

Mr. SEIBERLING. I will be retiring from Congress, so I will not have to hazard that particular trip. I commend the gentlewoman for her fortitude as well as her leadership.

Mrs. BYRON. Mr. Speaker, I thank the gentleman.

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume in order to engage in a colloquy with the gentleman from Alaska [Mr. Young].

Mr. Speaker, I understand the gentleman from Alaska has an additional amendment at the desk amending this bill further. I wonder if the gentleman would care to give us briefly a statement as to that amendment and the necessity for it?

Mr. YOUNG of Alaska. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Speaker, as I mentioned in my opening statement, the negotiations have continued with the Forest Service. It was apparent because of some concern of the Forest Service's part, although they have been deeply involved in this legislation from its conception, that we had to alter the bill as reported out of the committee to have a cash settlement of $9 million instead of $12 million, and to have the selling of lands to equal $12 million at appraised value. That is basically the amendment. The rest of the bill stays intact, and the Forest Service has agreed to that and have told me if this amendment is adopted they would support the legislation in the other body, request the removal from the desk in the other body, and pass it on to the President.

Mr. SEIBERLING. I take it that that has been discussed with the Haida representatives?

Mr. YOUNG of Alaska. The Haida representatives were involved directly with the Forest Service. My office staff were included, and this was a decision made to make sure that there was passage of this legislation this year because of the December 31, deadline.

I am not particularly pleased, if the gentleman will continue to yield, but this is the art of reality. The reality was the passage without this addition would be without fruition, and the passage with it would be the accomplishment of what we are seeking, and that is to keep the area from being liquidated.

Mr. SEIBERLING. Mr. Speaker, I will accept the explanation of the gentleman and his amendment. I ask unanimous consent that the additional amendment at the desk be included in the portion to suspend the rules and pass H.R. 5353, as amended.

The SPEAKER pro tempore (Mr. Kildee). Is there objection to the request of the gentleman from Ohio?

There was no objection.

The text of H.R. 5353, as further amended, is as follows:

H.R. 5353

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND PURPOSE.

(a) Short Title.—This Act may be cited as the "Haida Land Exchange Act of 1986."

(b) Purpose.—The purpose of this Act is to provide an offer for the owners thereof to relinquish and convey voluntarily to the United States certain lands and interests therein as described below and receive in lieu thereof certain Federal lands and other things of value. Congress finds and declares that it is in the public interest to implement the land exchanges and acquisitions set forth herein, in order to carry out the purposes of the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act.

SEC. 2. DEFINITIONS AND MAPS.

(a) General Definitions.—As used in this Act:

(1) The "Alaska Native Claims Settlement Act" means Public Law 92-203, 85 Stat. 688 (December 18, 1971), as amended.

(2) The "Alaska National Interest Lands Conservation Act" means Public Law 96-487, 94 Stat. 2371 (December 2, 1980), as amended.

(3) The term "Secretary" means the Secretary of Agriculture, unless otherwise specified.

(4) The term "Haida Corporation" means the Alaska Native Village Corporation for Hydaburg, Alaska, which was organized pursuant to section 8 of the Alaska Native Claims Settlement Act.

(5) The term "Sealaska" means Sealaska Corporation, a Regional Corporation (as such term is defined in section 3(g) of the Alaska Native Claims Settlement Act) existing under the laws of the State of Alaska.

(6) The term "Haida Exchange Lands" means those lands and interests therein generally depicted on a map entitled "Haida Exchange Lands" dated August 1986, the surface estate of which was conveyed, subject to valid existing rights and the provisions of the Alaska Native Claims Settlement Act, to Haida Corporation in partial fulfillment of its entitlement under section 16(b) of the Alaska Native Claims Settlement Act.

(7) The term "Haida Traditional Use Sites" means those lands and interests therein generally depicted on a map entitled "Haida Traditional Use Sites" dated August 1986, which are presently owned by the United States.

(8) The terms "Goat Island" and "South Pass Islands" mean those lands and interests therein generally depicted on a map entitled "Goat Island and South Pass Islands Acquisitions" dated September 1986, the surface estate of which was conveyed, subject to valid existing rights and the provisions of the Alaska Native Claims Settlement Act, to Haida Corporation in partial fulfillment of its entitlement under section 16(b) of the Alaska Natives Claims Settlement Act, and the subsurface estate to which was conveyed to Sealaska pursuant to the Alaska Native Claims Settlement Act.

(9) The term "selection rights" means the combination of Haida Corporation's selection rights under section 16 of the Alaska Native Claims Settlement Act which have not been exercised as of January 1, 1995 plus such acreage of the Haida Exchange Lands owned by Haida Corporation on January 1, 1995.

(10) The term "Hetta Exchange Lands" means the surface estate of approximately 4,672 acres of lands generally depicted on a map entitled "Hetta Exchange Lands" dated September 1986.

(11) The term "subsurface estate" shall have the same meaning as such term has when used in the Alaska Native Claims Settlement Act.

(12) The term "conservation system unit" has been the same meaning as such term has when used in the Alaska National Interest Lands Conservation Act.

(13) The term "cooperative information and education branch site" means a tract of land of not to exceed 10 acres as shall be identified, through mutual agreement of the Secretary and Haida Corporation, for location of an affiliated branch of the center described in section 11 of this Act.

(b) MAPS.—The maps referred to in this Act shall be on file in the Office of the Chief, United States Forest Service and in the office of the Secretary of the Interior, Washington, District of Columbia. The acreage cited in this Act is approximate, and in the event of discrepancies between cited acreage and the lands depicted on the referenced maps, the maps shall control, but such maps shall not be construed as an attempt by the United States to convey State or private lands, or as an attempt by Haida Corporation or Sealaska to convey to the United States lands not owned by Haida Corporation or Sealaska.

SEC. 3. OFFER TO HAIDA

(a) OFFER.—For and in consideration of the relinquishment and conveyance to the United States of all of Haida Corporation's right, title, and interest in Goat Island, South Pass Islands, the cooperative information and education branch site, and 4,222 acres of the Haida Exchange Lands as specified by the Secretary, there are hereby offered to Haida Corporation the following lands, interests in lands, and other valuable consideration:

(1) Conveyance by the United States subject to valid existing rights, of all right, title and interest of the United States in the surface estate of the Haida Traditional Use Sites. This conveyance shall be subject to such perpetual easements as identified by the Secretary no later than 120 days after the date of enactment of this Act, and the title to lands conveyed to Haida Corporation shall be acceptable to the Secretary.

(2) The sum of $9,000,000 subject to the provisions of section 8. Any payment pursuant to this paragraph shall be made no later than 90 days after such agreement by Sealaska or after a decision by Haida Corporation to accept an alternative pursuant to section 5(a), whichever is sooner.

(b) Offer for and in consideration to the United States of up to 1,000 acres of the Haida Exchange Lands as specified by the Secretary, there is hereby offer $3,000 per acre.

(c) HAIDA DEADLINE.—Haida Corporation shall have one year from the date of enactment of this Act within which to accept the offer provided in this section by providing to the Secretary a properly executed and certified corporate resolution binding upon the corporation with respect to the relinquishment and conveyance of all of the corporation's right, title and interest in the lands specified in subsection (a) of this section. At the Secretary's discretion, the Secretary may require that any such resolution be accompanied by an opinion of counsel to Haida Corporation stating that the resolution comports with all requirements of Federal and State law and the rules and bylaws of the Haida Corporation.

SEC. 4. OFFERS TO SEALASKA.

(a) ISLAND AREA.—For and in consideration of the relinquishment to the United States of all of Sealaska's right, title, and interest in Goat Island and South Pass Islands, and in the cooperative information and education branch site there is hereby offered to Sealaska, an exchange of equal value on an equal value, equal acre basis, all right title and interest of the United States in the Hetta Exchange Lands.

(b) OTHER AREAS.—If not later than one year after the date of enactment of this Act Sealaska notifies the Secretary and the Secretary of the Interior of Sealaska's desire to make an exchange, the Secretary of the Interior shall convey to Sealaska the subsurface estate in lands conveyed to Haida Corporation pursuant to this Act in exchange for an equal acreage of subsurface estate in lands other than Goat Island and South Pass Islands conveyed to the United States by Haida Corporation pursuant to this Act.

(c) DEADLINE.—Sealaska shall have 180 days from the date of enactment of this Act within which to accept the offer made by subsection (a) by providing to the Secretary a properly executed and certified corporate resolution binding upon Sealaska with respect to the relinquishment and conveyance of all Sealaska's interest in Goat Island and South Pass Islands and in the cooperative information and education branch site. At the Secretary's discretion, the Secretary may require that any such resolution be accompanied by an opinion of counsel to Haida Corporation and Sealaska stating that the resolutions comport with all requirements of Federal and State law and the rules and bylaws of the corporations.

SECTION 5. CONTINGENCIES AND MANAGEMENT.

(a) CONTINGENCY.—In the event that Haida Corporation does not make a timely acceptance of the offer made by subsection 3(a), any acceptance by Sealaska shall be ineffective and the United States shall not be bound to acquire any of Sealaska's interests in Goat Island of South Pass Islands.

(b) MANAGEMENT.—If they are acquired by the United States pursuant to this Act, Goat Island and South Pass Islands shall be included within the Tongass National Forest, and shall be managed in accordance with laws applicable to the National Forest System and other applicable law. Subject to valid existing rights, Goat Island and South Pass Islands are hereby withdrawn from State selection under the Alaska Statehood Act and from native selection under the Alaska Native Claims Settlement Act, and the South Pass Islands are withdrawn from all forms of entry or appropriation or disposal under the public land laws, including entry, location, and patent under United States mining laws, disposition under the mineral leasing laws, and the operation of the geothermal leasing laws. The Secretary shall manage the South Pass Islands primarily for recreational purposes and for the protection of fish and wildlife values, and the sale or harvesting of timber shall not be permitted except as may be necessary in the control of fire, insects, and disease. The provisons of section 1307(b) of the Alaska National Interest Lands Conservation Act shall apply to Goat Island and South Pass Islands notwithstanding the fact that such areas are not conservation system units.

SEC. 6. STATUS OF OFFERS AND CONDITIONS OF CONVEYANCE.

(a) SEVERABILITY.—The offers made in separate sections of this Act to Haida Corporation and to Sealaska respectively are separate, and acceptance of an offer made in one such section does not bind a corporation to accept any offer made in any other section.

(b) TERMS AND CONDITIONS.—Subject to valid existing rights and any other interests in land protected under federal law as of the date of interim conveyance of the relevant lands to Haida Corporation pursuant to the Alaska Native Claims Settlement Act where such conveyance accrued prior to the date of enactment of this Act, the conveyance of all lands and interests therein conveyed to the United States from Haida Corporation pursuant to this Act shall be free and clear of the claims of all creditors. No encumbrances on such lands and interests therein created after such interim conveyance which are not subject to the jurisdiction of a United States court as of the date of Haida Corporation's relinquishment and conveyance of lands to the United States pursuant to this Act shall be effective unless such encumbrances are acceptable to the Secretary. The Secretary shall require Sealaska to provide such title as is acceptable to the Secretary with regard to all lands conveyed to the United States by Sealaska.

SEC. 7. STATUS OF LANDS CONVEYED.

(a) TO CORPORATIONS.—All lands conveyed to Haida Corporation or Sealaska pursuant to this Act shall be considered as lands conveyed pursuant to the Alaska Native Claims Settlement Act. For purposes of section

21(c) of such Act, receipt by Haida Corporation or Sealaska of lands or other things of value pursuant to this Act shall constitute receipt of an interest in land.

(b) To United States.—All lands conveyed to the United States pursuant to this Act shall be included in the Tongass National Forest and shall be subject to the laws, rules and regulations applicable thereto. Lands and interests therein conveyed to the United States pursuant to this Act shall not be subject to any levy, foreclosure, or any other action which would encumber or divest the United States of any right, title, or interest in such lands. No action may be brought by any party in any United States district court pursuant to title 28, United States Code, section 2409a, to quiet title to such lands.

SEC. 8. WITHDRAWALS AND INTERIM MANAGEMENT.

(a) Withdrawals.—Subject to valid existing rights, all lands identified in this Act as available for conveyance to Haida Corporation or Sealaska are withdrawn from all forms of location, entry, and selection under the mining and public land laws of the United States, from leasing under the mineral and geothermal leasing laws, and against issuance of preliminary permits and licenses pursuant to the Federal Power Act. This withdrawal shall expire eighteen months after the date of enactment of this Act.

(b) Interim Management.—Subject to valid existing rights, during acceptance periods provided in this Act, the Secretary and the Secretary of the Interior shall manage the lands available for conveyance under sections 3 and 4 of this Act so as to maintain their existing character and resources until conveyed. In the event that Haida Corporation or Sealaska does not maintain the character of the lands proposed for conveyance to the United States pursuant to section 3 or section 4, respectively, pending conveyance of such lands, the United States shall not be obliged to acquire any such lands from a corporation which has not so maintained the character of such lands.

(c) Savings Provisions.—Nothing in this Act shall be deemed as a cloud of title of lands or interests therein owned on the date of enactment of this Act by Haida Corporation or Sealaska. Nothing in this Act shall be construed in any way as affecting the existing ownership or as limiting the use of lands owned by the respective Corporations on the date of enactment of this Act. Nothing in this Act shall be construed to limit the authority of the Secretary to enter into land exchanges pursuant to existing exchange authorities. No action of the Secretary or the Secretary of the Interior in effecting any conveyance of lands or interests therein authorized under this Act shall be deemed a major federal action for purposes of the National Environmental Policy Act of 1969, nor shall any determination pursuant to section 810 of the Alaska National Interest Lands Conservation Act be required prior to implementation of any provision of this Act.

SEC. 9. FUNDING.

Payments to Haida Corporation required by section 4 of this Act shall be defrayed from receipts from timber and other resources from National Forest System lands, notwithstanding any other law providing for the distribution of such receipts. All funds required for these purposes are authorized and shall be made available without appropriation to the Secretary by the Secretary of Treasury and these funds shall not be subject to deferral, rescission or any reduction under the Congressional Budget and Impoundment Control Act of 1974 or any other authority. This section shall not affect payments to States and counties as provided by the Act of May 23, 1908, and section 13 of the Act of March 11, 1911 (16 U.S.C. 500).

SEC. 10. FUTURE SELECTIONS.

(a) Withdrawals.—(1) On and after the effective date of this section, the Secretary of the Interior, after consultation with the Secretary, the Governor of Alaska, the Haida Corporation, and Sealaska is authorized and directed to withdraw from all forms of entry and appropriation under the public land laws, including the mining, mineral leasing, and geothermal leasing laws, Federal lands in Alaska outside any conservation system unit for selection by Haida Corporation pursuant to this section.

(2) Withdrawals pursuant to this subsection shall be in an aggregate amount equal to twice the acreage of Haida Corporation's selection rights.

(3) Lands withdrawn pursuant to this subsection shall be, to the maximum extent possible, lands accessible from the coast which are of like kind and character to those traditionally used and occupied by the shareholders of Haida Corporation and shall be, to the maximum extent possible, capable of utilization for economic return to Haida Corporation. No lands within the National Forest System shall be withdrawn under this subsection without the concurrence of the Secretary.

(b) Selections.—For one year after the completion of withdrawals pursuant to subsection (a) of this section, Haida Corporation shall be entitled but not required to select for conveyance to such corporation from lands withdrawn pursuant to subsection (a) lands not to exceed an amount equal in acreage to Haida Corporation selection rights which as of the date of selection had not been exercised or disposed of by Haida Corporation. Haida Corporation shall notify the Secretary of the Interior which, if any, of the lands so withdrawn Haida Corporation wishes to select and which such selection rights Haida Corporation intends to relinquish in return for its selections. After their selection, the surface estate in lands selected by Haida Corporation pursuant to this subsection shall be conveyed to Haida Corporation and the subsurface estate in such lands shall be conveyed to Sealaska in partial fulfillment of such corporations' entitlements under the Alaska Native Claims Settlement Act and pursuant to the provisions of that Act.

(c) Duration.—All withdrawals made pursuant to subsection (a) and all withdrawals in aid of Haida Corporation selections made pursuant to the Alaska Native Claims Settlement Act prior to the date of enactment of this Act of land not selected by Haida Corporation shall terminate two years after the last withdrawal is made pursuant to subsection (a).

(d) Effective Date.—This section shall take effect on January 1, 1995.

SEC. 11. COOPERATIVE INFORMATION AND EDUCATION CENTER.

(a) Authorization.—There is hereby authorized to be appropriated $250,000 to be used by the Secretary of Agriculture on conduct surveys, develop designs, and carry out other preliminary work related to the establishment of an Information and Education Center provided for in section 1305 of Public Law 96-487.

(b) Purposes.—The purposes of the Center authorized by subsection (a) shall be:

(1) to collect and disseminate to visitors and residents of Alaska information about the natural, recreational, cultural, historical, archeological, multiple use, and other resources and values of Alaska, with special emphasis on the Tongass National Forest and Southeast Alaska and its people.

(2) to publicly display temporary and permanent exhibits illustrating and interpreting these resources and values;

(3) to foster educational programs relating to the heritage resources of Alaska including those pertaining to Alaska Native peoples with particular emphasis on the Haida, Tshimshian, and Tglingit peoples of Southeast Alaska.

(c) Design.—Design of the center in subsection (a) shall be developed in consultation with other appropriate Federal agencies, the Alaska Division of Tourism and other appropriate agencies of the State of Alaska, the local government of the city in which such center is to be located, and southeast Alaska Native organizations.

(d) Consultation.—In establishing, operating and maintaining the center (and any affiliated branches), the Secretary of Agriculture shall consult with, in addition to those listed in subsection (c), Alaska colleges and universities, the National Historic Association of Alaska, the Alaska Federation of Natives, and appropriate individuals and other organizations concerned with the diverse heritage resources of Alaska.

(e) Cooperative Agreements.—The Secretary of Agriculture is authorized to enter into cooperative agreements with those individuals and organizations listed in subsections (c) and (d) to facilitate carrying out the purpose of the Center.

(f) Development Plan.—Within one year after the date of enactment of this Act, and after consultation with the individuals and organizations listed in subsections (c) and (d), the Secretary of Agriculture shall submit to Congress a development plan for the Center along with an estimate of the cost.

Mr. SEIBERLING. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would ask the gentleman from Alaska to agree with me that since we have not had a chance on this side to study this as thoroughly as we ought to, that when this gets to the other body we would reserve the right to ask the other body to make any additional changes that might be necessary in order to protect the interests of the people of Haida and the corporation so as to make sure they are adequately taken care of.

Mr. YOUNG of Alaska. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Speaker, as chairman of the committee, the gentleman has the prerogative of all of his legislative power. But I would suggest respectfully that when the gentleman studies the amendments that he will be in total agreement because it does everything we can possibly do. If the gentleman finds an objection, of course, I would support the gentleman's position.

Mr. SEIBERLING. I am not suggesting that the amendments are not suitable. But we might wish to make some further amendments that appear as we study the matter and cannot say in advance whether there would be any.

Mr. YOUNG of Alaska. I understand the gentleman's concern, and I have an equal concern.

Mr. SEIBERLING. I thank the gentleman.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio [Mr. SEIBERLING] that the House suspend the rules and pass the bill, H.R. 5353, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

KLAMATH AND TRINITY RIVER BASINS RESTORATION

Mr. BOSCO. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4712) to provide for the restoration of the fish and wildlife in the Klamath and Trinity River basins, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4712

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

The Congress finds that—

(1) the Klamath and Trinity Rivers have been placed under the California and National Wild and Scenic Rivers Systems to protect their outstanding anadromous fishery values;

(2) the Klamath and Trinity Rivers provide fishery resources necessary for Indian subsistence and ceremonial purposes, ocean commercial harvest, recreational fishing, and the economic health of many local communities;

(3) floods, the construction and operation of dams, diversions and hydroelectric projects, past mining, timber harvest practices, and roadbuilding have all contributed to sedimentation, reduced flows, and degraded water quality which has significantly reduced the anadromous fish habitat in the Klamath-Trinity River System;

(4) overlapping Federal, State, and local jurisdictions, inadequate enforcement of fishery harvest regulations, and ineffective fishery management have historically hampered fishery conservation efforts and prevented the Federal Government and the State of California from fulfilling their responsibilities to protect the rivers' anadromous fishery values;

(5) the Klamath-Trinity fall chinook salmon populations have declined by 80 percent from historic levels and steelhead trout have also undergone significant reductions;

(6) Klamath River Basin Fisheries Resource Plan has been developed by the Secretary acting through the Bureau of Indian Affairs;

(7) the Klamath Salmon Management Group, a group of agencies with fishery management responsibility, has established, in cooperation with the users of the Klamath-Trinity River Basin fishery resources, a sound framework for the future coordination of fishery harvest management;

(8) a new Klamath-Trinity River Basin Management authority, composed of the Klamath Salmon Management Group and representatives of users of the fishery resources of the Klamath-Trinity River Basin, is needed to ensure more effective long-term coordination of the Klamath-Trinity River fisheries under sound conservation and management principles that ensure adequate spawning escapement; and

(9) the Secretary has the authority to implement a restoration program only in the Trinity River Basin and needs additonal authority to implement a restoration program in cooperation with State and local governments to restore anadromous fish populations to optimum levels in both the Klamath and Trinity River Basins;

SEC. 2. KLAMATH RIVER BASIN CONSERVATION AREA; FISHERY RESOURCES RESTORATION PROGRAM.

(a) ESTABLISHMENT OF KLAMATH RIVER BASIN CONSERVATION AREA.—The Secretary shall designate the anadromous fish habitats and resources of the Klamath River basin as the Klamath River Basin Conservation Area (hereafter in this Act referred to as the "Area").

(b) KLAMATH RIVER BASIN CONSERVATION AREA RESTORATION PROGRAM.—

(1) ESTABLISHMENT.—The Secretary shall, in consultation with the task force established under section 4, formulate, establish, and implement a 20-year program to restore the anadromous fish populations of the Area to optimum levels and to maintain such levels. The program shall be based on the Klamath River Basin Fisheries Resource Plan referred to in section 1(6) and shall be known as the Klamath River Basin Conservation Area Restoration Program.

(2) PROGRAM ACTIVITIES.—In carrying out the objectives of the program, the Secretary, in cooperation with the task force established under section 4, shall—

(A) monitor and coordinate research evaluating the Area anadromous fish populations and administer and evaluate the success of activities described in subparagraph (B); and

(B) take such actions as are necessary to—

(i) improve and restore Area habitats, and to promote access to blocked Area habitats, to support increased run sizes;

(ii) rehabilitate problem watersheds in the Area to reduce negative impacts on fish and fish habitats;

(iii) improve existing Area hatcheries and rearing ponds to assist in rebuilding the natural populations;

(iv) implement an intensive, short-term stocking program to rebuild run sizes while maintaining the genetic integrity and diversity of Area subbasin stocks; and

(v) improve upstream and downstream migration by removal of obstacles to fish passage and the provision of facilities for avoiding obstacles.

(3) RESTORATION WORK.—To the extent practicable, any restoration work performed under paragraph (2)(B) shall be performed by unemployed—

(A) commercial fishermen;

(B) Indians; and

(C) other persons whose livelihood depends upon Area fishery resources.

(4) MEMORANDUM OF AGREEMENT.—In order to facilitate the implementation of any activity described in paragraph (2) over which the Secretary does not have jurisdiction, the Secretary shall enter into a memorandum of agreement with the Federal, State, and local agencies having jurisdiction over such activities, and the Area Indian tribes. The memorandum of agreement shall specify the program activities for which the respective signatories to the agreement are responsible and shall contain such provisions as are necessary to ensure the coordinated implementation of the program.

SEC. 3. KLAMATH FISHERY MANAGEMENT COUNCIL.

(a) ESTABLISHMENT.—There is established a Klamath Fishery Management Council (hereafter in this Act referred to as the "Council").

(b) FUNCTIONS.—

(1) The Council shall—

(A) establish a comprehensive long-term plan and policy, that must be consistent with the goals of the program, for the management of the in-river and ocean harvesting that affects or may affect Klamath and Trinity River basin anadromous fish populations;

(B) make recommendations, that must be consistent with the plan and policy established under subparagraph (A) and with the standards in paragraph (2)—

(i) to the California Fish and Game Commission regarding in-river and offshore recreational harvesting regulations,

(ii) to the Oregon Department of Fish and Wildlife regarding offshore recreational harvesting regulations,

(iii) to the Pacific Fishery Management Council regarding ocean harvesting regulations,

(iv) to the Bureau of Indian Affairs regarding regulations for harvesting in the Area by non-Hoopa Indians, and

(v) to the Hoopa Valley Business Council regarding regulations for harvesting in the Area by members of the Hoopa Indian Tribe; and

(C) conduct public hearings on any regulation referred to in subparagraph (B)(i) through (v).

(2) Any recommendation made by the Council under paragraph (1)(B) regarding harvesting regulations shall—

(A) be based upon the best scientific information available;

(B) minimize costs where practicable, and avoid unnecessary duplication of regulations;

(C) take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches; and

(D) be designed to achieve an escapement that preserves and strengthens the viability of the Area's natural anadromous fish populations.

(c) MEMBERSHIP AND APPOINTMENT.—The Council is composed of 11 members as follows:

(1) A representative, who shall be appointed by the the Governor of California, of each of the following:

(A) The commercial salmon fishing industry.

(B) The in-river sportfishing community.

(C) The offshore recreational fishing industry.

(D) The California Department of Fish and Game.

(2) A representative of the Hoopa Indian Tribe who shall be appointed by Hoopa Valley Business Council.

(3) A representative, who shall be appointed by the Secretary, of each of the following:

(A) The non-Hoopa Indians residing in the Area.

(B) The Department of the Interior.

(4) A representative, who shall be appointed by the Secretary of Commerce, of each of the following—

(A) The National Marine Fisheries Service.

(B) The Pacific Fishery Management Council.

(5) A representative, who shall be appointed by the Governor of Oregon, of each of the following:

(A) The commercial salmon fishing industry.

(B) The Oregon Department of Fish and Wildlife.

(d) Consultation Requirement.—The appointments required under subsection (c) shall be made in consultation with the appropriate users of Area anadromous fish resources.

(e) Qualifications.—Council members shall be individuals who are knowledgable and experienced in the management and conservation, or the recreational or commercial harvest, of the anadromous fish resources in Northern California.

(f) Terms.—

(1) In general.—The term of a member is 4 years.

(2) Service.—Members of the Council serve at the pleasure of the appointing authority.

(3) Vacancies.—Any vacancy on the Council shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(g) Transaction of Business.—

(1) Decisions of council.—All decisions of the Council must be by unanimous vote of all of the members.

(2) Chairman.—The Council shall elect a Chairman from among its members.

(3) Meetings.—The Council shall meet at the call of the Chairman or upon the request of a majority of its members.

(h) Staff and Administration.—

(1) Administrative support.—The Secretary and the Director of the California Department of Fish and Game shall provide the Council with such administrative and technical support services as are necessary for the effective functioning of the Council.

(2) Information.—The Secretary and the Director of the California Department of Fish and Game shall furnish the Council with relevant information concerning the Area.

(3) Organization.—The Council shall determine its organization, and prescribe the practices and procedures for carrying out its functions under subsection (b).

(i) Federal or State Employees.—Any Council member who is an officer or employee of the United States or the State of California at the time of appointment to the Council shall cease to be a Council member within 14 days after the date on which he ceases to be so employed.

(j) Expenses.—

(1) Travel expenses.—While away from their homes or regular places of business in the performance of services for the Council, Council members shall be allowed travel expenses, including a per diem allowance in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed travel expenses under section 5703 of title 5 of the United States. Code.

(2) Limitation on spending authority.—No money authorized to be appropriated under section 6 may be used to reimburse any agency or governmental unit (whose employees are Council members) for time spent by any such employee performing Council duties.

SEC. 4. KLAMATH RIVER BASIN FISHERIES TASK FORCE.

(a) Establishment.—There is established a Klamath River Basin Fisheries Task Force (hereafter in this Act referred to as the "Task Force").

(b) Functions.—The Task Force—

(1) shall assist the Secretary in the formulation, coordination, and implementation of the program;

(2) shall assist, and coordinate its activities with, Federal, State and local governmental or private anadromous fish restoration projects within the Area;

(3) shall conduct any other activity that is necessary to accomplish the objectives of the program; and

(4) may act as an advisor to the Council.

(c) Membership and Appointment.—The Task Force is composed of 12 members as follows:

(1) A representative, who shall be appointed by the Governor of California, of each of the following:

(A) The commercial salmon fishing industry.

(B) The in-river sport fishing community.

(C) The California Department of Fish and Game.

(2) A representative of the Hoopa Indian Tribe who shall be appointed by the Hoopa Valley Business Council.

(3) A representative of the Department of the Interior who shall be appointed by the Secretary.

(4) A representative of the National Marine Fisheries Service who shall be appointed by the Secretary of Commerce.

(5) A representative of the Department of Agriculture who shall be appointed by the Secretary of Agriculture.

(6) A representative of the Oregon Department of Fish and Wildlife who shall be appointed by the Governor of Oregon.

(7) One individual who shall be appointed by the Board of Supervisors of Del Norte County, California.

(8) One individual who shall be appointed by the Board of Supervisors of Siskiyou County, California.

(9) One individual who shall be appointed by the Board of Supervisors of Humboldt County, California.

(10) One individual who shall be appointed by the Board of Supervisors of Trinity County, California.

(d) Council Membership Not a Bar to Task Force Appointment.—An individual who is a member of the Council is not ineligible for appointment as a member of the Task Force.

(e) Terms.—

(1) In general.—The term of a member of the Task Force is 4 years.

(2) Service.—Members of the Task Force serve at the pleasure of the appointing authorities.

(3) Vacancies.—Any vacancy on the Task Force shall be filled in the manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(f) Transaction of Business.—

(1) Decisions of task force.—All decisions of the Task Force must be by unanimous vote of all the members.

(2) Chairman.—The members of the Task Force shall select a Chairman from among its members.

(3) Meetings.—The Task Force shall meet at the call of the Chairman or upon the request of a majority of its members.

(g) Staff and Administration.—

(1) Administrative support.—The Secretary and the Director of the California Department of Fish and Game shall provide the Task Force with the administrative and technical support services necessary for the effective functioning of the Task Force.

(2) Information.—The Secretary and the Director of the California Department of Fish and Game shall furnish the members of the Task Force with relevant information concerning the Area.

(3) Organization.—The Task Force shall determine its organization, and prescribe the practices and procedures for carrying out its functions under subsection (b).

(h) Members Who Are Federal or State Employees.—Any Task Force member who is an officer or employee of the United States or the State of California at the time of appointment to the Task Force shall cease to be a member of the Task Force within 14 days of the date on which he ceases to be so employed.

(i) Limitation on spending authority.—No money authorized to be appropriated under section 6 may be used to reimburse any Task Force member or agency or governmental unit (whose employees are Task Force members) for time spent by any such employee preforming Task Force duties.

SEC. 5. ENFORCEMENT.

(a) Memorandum of Agreement.—In order to strengthen and facilitate the enforcement of Area fishery harvesting regulations, the Secretary shall enter into a memorandum of agreement with the California Department of Fish and Game. Such agreement shall specify the enforcement activities within the Area for which the respective agencies of the Department of Interior and the California Department of Fish and Game are responsible and shall contain such provisions as are necessary to ensure the coordinated implementation of Federal and State enforcement activities.

SEC. 6. APPROPRIATIONS.

(a) Authorization.—There are authorized to be appropriated to the Department of the Interior during the period beginning October 1, 1986, and ending on September 30, 2006, $21,000,000 for the design, construction, operation, and maintenance of the program. Monies appropriated under this subsection shall remain available until expended or October 1, 2006, whichever first occurs.

(b) Cost-sharing.—

(1) 50 percent of the cost of the development and implementation of the program must be provided by one or more non-Federal sources on a basis considered by the Secretary to be timely and appropriate. For purposes of this subsection, the term "non-Federal source" includes a State or local government, any private entity, and any individual.

(2) In addition to cash outlays, the Secretary shall consider as financial contributions by a non-Federal source the value of inkind contributions and real and personal

property provided by the source for purposes of implementing the program. Valuations made by the Secretary under this paragraph are final and not subject to judicial review.

(3) For purposes of paragraph (2), inkind contributions may be in the form of, but are not limited to, personal services rendered by volunteers in carrying out surveys, censuses, and other scientific studies.

(4) The Secretary shall by regulation establish—

(A) the training, experience, and other qualifications which such volunteers must have in order for their services to be considered as inkind contributions; and

(B) the standards under which the Secretary will determine the value of inkind contributions and real and personal property for purposes of paragraph (2).

(5) The Secretary may not consider the expenditure, either directly or indirectly, with respect to the program of Federal moneys received by a State or local government to be a finanical contribution by a non-Federal source to carry out the program.

SEC. 7. DEFINITIONS.

As used in this Act—

(1) The term "program" means the Klamath River Basin Conservation Area Restoration Program established under section 2(b).

(2) The term "Secretary" means the Secretary of the Interior.

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The SPEAKER pro tempore. Is a second demanded?

Mr. YOUNG of Alaska. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. BOSCO] will be recognized for 20 minutes, and the gentleman from Alaska [Mr. YOUNG] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. BOSCO].

GENERAL LEAVE

Mr. BOSCO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4712, the legislation presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. BOSCO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like first to express my appreciation to Chairman WALTER JONES of the Committee on Merchant Marine and Fisheries, Chairman JOHN BREAUX of the fisheries subcommittee, the subcommittee's ranking minority member, DON YOUNG, and my colleague from northern California, NORMAN SHUMWAY, for all their fine work in developing this legislation.

Their efforts, as embodied in H.R. 4712, represent an important step forward in the continuing effort to restore the invaluable salmon and steelhead resources of the Klamath River system in northern California. This resource has traditionally been one of the foundations of the regional economy, supporting a substantial sport and commercial fishing industry as well as Indian subsistence, and ceremonial fishing. Over the past few decades, however, the fisheries have declined nearly 80 percent due to environmental damage and overfishing.

Two years ago, the 97th Congress passed and President Reagan signed legislation authorizing a 10-year program to restore salmon and steelhead populations destroyed by construction of a Federal dam on the Trinity River, the Klamath's biggest tributary. However, similar work will have to be done in the rest of the Klamath basin to restore this once great resource to full health.

Like the Trinity River legislation, H.R. 4712 authorizes a joint Federal-State program to restore degraded fish habitat and rebuild salmon and steelhead populations. The total cost is $42 million over 20 years, with half of the funds coming from the State and other non-Federal agencies. Unlike the Trinity bill, this legislation also contains provisions dealing with harvest management to ensure that necessary conservation measures are both equitable and effective, with representation for all affected user groups.

Years of debate and controversy over the problems on the Klamath River have finally begun to produce a consensus on what needs to be done to reverse the decline of the basin's fisheries. What is lacking now is a formal commitment to the task and the means to accomplish it. H.R. 4712 provides both, and I believe it deserves our strong support.

Mr. Speaker, I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4712, providing for the restoration of fish and wildlife in the Klamath River basin of northern California.

As a young man growing up in that area, I have spent considerable time fishing on the Klamath River and know firsthand that along with its major tributary, the Trinity River, they form one of the most significant Pacific salmon and steelhead production areas in northern California, supporting important commercial, recreational, and Indian tribal fisheries. Recent and dramatic declines in salmon and steelhead populations in the Klamath-Trinity basin are in many instances a result of over Federal development in the area. Correspondingly, this legislation calls for the Federal Government to lead in the implementation of a comprehensive basinwide management and restoration plan in concert with local and State agencies to promote proper resource management and restoration.

I would like to point out the fine work of our colleagues, Congressman Bosco and Congressman SHUMWAY, in bringing this legislation to this point.

I would urge my colleagues to adopt this bill.

Mr. Speaker, at this time I would like to engage the gentleman from California [Mr. Bosco] in a colloquy on behalf of the gentleman from Arizona [Mr. UDALL].

Mr. Speaker, as you know, H.R. 4712 was sequentially referred to the Committee on Interior and Insular Affairs. The Committee on the Interior has jurisdiction over matters affecting Indian tribes and there are a few matters relating to this bill that I would like to clear up. Is it the gentleman's understanding that nothing in this bill impairs, or is intended to impair, in any way the fishing rights of Indian tribes in the Klamath-Trinity River basin?

Mr. BOSCO. If the gentleman will yield, I would say to the gentleman that this bill is not intended or designed to affect existing Indian fishing rights and it is my understanding that it does not affect these rights.

Mr. YOUNG of Alaska. Paragraph (2) of section 1 discusses the fishing needs of the Indians for subsistence and ceremonial purposes. It does not mention commercial fishing. Federal court decisions have held that Indians in this area have reserved fishing rights for subsistence, ceremonial, and commercial purposes. Does the gentleman agree that the failure of section 1 to include commercial fishing does not, in any way, imply that these tribes do not have a commercial fishing right?

Mr. BOSCO. If the gentleman will yield further, this bill is not intended to make any determination whatsoever as to Indian fishing rights, be they ceremonial, subsistence, or commercial. Whatever rights the tribes have in this regard are not affected by the bill.

Mr. YOUNG of Alaska. Indian tribes, as governments, have the authority to manage and regulate their fishing rights and the fishery resources within their reservations. Because of the uncertainties of tribal government of the Hoopla and Yurok tribes created by the Federal court decision in the so-called short case, the BIA is now regulating the reservation fishery. However, these current circumstances do not impair the underlying right of these tribes to ultimately exercise their right of management and regulation. Is it the gentleman's understanding that nothing in this bill in any way impairs or is intended to impair any such right?

Mr. BOSCO. That is my understanding.

Mr. YOUNG of Alaska. I thank the gentleman for his cooperation and understanding.

Mr. Speaker, I yield back the balance of my time.

Mr. BOSCO. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. Bosco] that the House suspend the rules and pass the bill, H.R. 4712, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to provide for the restoration of the fishery resources in the Klamath River basin, and for other purposes.".

A motion to reconsider was laid on the table.

INDEPENDENT SAFETY BOARD ACT AMENDMENTS OF 1986

Mr. MINETA. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4961) to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1987, 1988, 1989, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4961

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Independent Safety Board Act Amendments of 1986".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) General Authorization.—Section 309 of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1907) is amended by adding at the end the following: "There are authorized to be appropriated for the purposes of this Act not to exceed $24,000,000 for the fiscal year ending September 30, 1987; $25,400,000 for the fiscal year ending September 30, 1988; and $27,000,000 for the fiscal year ending September 30, 1989, such sums to remain available until expended.".

(b) Establishment of Emergency Fund.—Section 309 of such Act is further amended by inserting "(a)" after "309." and by adding at the end the following new subsection:

"(b) An emergency fund of $1,000,000 is authorized for expenditure by the Board to be available for necessary expenses, not otherwise provided for, of the Board for accident investigations. There is authorized to be appropriated such sums as may be necessary to establish the emergency fund under the preceding sentence and to replenish the fund annually. Such sums are authorized to remain available until expended.".

SEC. 3. ELIMINATION OF CERTAIN NOTICE REQUIREMENTS.

(a) Reports.—Section 304(a)(2) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1903(a)(2)) is amended by striking "and to cause notice of the issuance and availability of such reports to be published in the Federal Register."

(b) Safety Recommendations.—The last sentence of section 307(a) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1906(a)) is amended to read as follows: "The Board shall make copies of each such recommendation and response thereto available to the public at reasonable cost.".

SEC. 4. TRAINING SCHOOLS.

Section 304(b) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1903(b)) is amended by redesignating paragraph (10) as paragraph (11) and by inserting after paragraph (9) the following new paragraph:

"(10) The Board may conduct a school or schools for the purpose of training employees of the Board in those subjects necessary for the proper performance of all authorized functions of the Board. The Board may also authorize attendance at courses given in such school or schools of other govermental personnel, and personnel of foreign governments, and personnel from the transportation industry. If the attendance of such persons increases the cost of operation of the school or schools, the Board may require the payment or transfer of sufficient funds or other appropriate consideration to offset the additional costs. In providing training to employees of the Board or of other agencies of the Federal Government, the Board shall be subject to chapter 41 of title 5, United States Code (relating to training of employees). Funds received by the Board under this section shall be credited (A) to appropriations current at the time the expenditures are to be or have been paid, (B) to appropriations current at the time such funds are received, or (C) in part as provided under clause (A) and in part as provided under clause (B).".

SEC. 5. PAYMENT FOR GOODS AND SERVICES.

Section 3049(b)(6) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1903(b)(6)) is amended by striking "and" before "(G)" and by striking the period at the end and inserting the following: "; and (H) require payment or other appropriate consideration from Federal agencies, and State, local, and foreign governments for the reasonable cost of goods and services supplied by the Board and to apply the funds received to the Board's appropriations.".

SEC. 6. REPORTING OF ACCIDENTS AND INCIDENTS INVOLVING CERTAIN PUBLIC AIRCRAFT.

Section 304(a)(6) of the Independent Safety Board Act of 1974 (49 U.S.C. App. 1903(a)(6)) is amended to read as follows:

"(6) establish by regulation requirements binding on persons reporting (A) accidents and aviation incidents subject to the Board's investigatory jurisdiction under this subsection; and (B) accidents and aviation incidents involving public aircraft other than aircraft of the Armed Forces.".

The SPEAKER pro tempore. Is a second demanded?

Mr. HAMMERSCHMIDT. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. Mineta] will be recognized for 20 minutes, and the gentleman from Arkansas [Mr. Hammerschmidt] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Mineta].

Mr. MINETA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the legislation before us would reauthorize the National Transportation Safety Board for 3 years, fiscal years 1987, 1988, and 1989. The bill would permit the Board to have a staff of 347, a staffing level which the congressional committees with jurisdiction over the Board have found is the minimum needed for the Board to carry out its important safety mission.

The NTSB plays a critical role in the safety of all modes of transportation. The Board makes an independent and objective investigation of the causes of major transportation accidents. On the basis of its investigations the Board makes recommendations to Government agencies and private parties of steps which can be taken to improve safety. Most of these recommendations are accepted and over the years they have saved many lives.

Regrettably, in recent years the Board's importance has not always been recognized. Budget cuts have forced the Board to cut its staff and have made it extremely difficult for the Board to carry out its important safety responsibilities. The authorizations in the bill now before us will permit the Board to increase its staff to the minimum level needed for the Board to function effectively. Those of us who are interested in transportation safety should support these authorizations and should work in the appropriations processes to see that the authorizations are fully funded.

The bill also authorizes continuation of an emergency fund of $1 million for the Board. This fund, which was first made available to the Board through the appropriations process in fiscal year 1982, is designed to enable the Board to investigate an unexpected series of major accidents which all occur at the same time. During the 4 years in which the fund has been available, the Board has used it on only one occasion, indicating that the Board has used the fund to cover urgent, truly unexpected needs. We are confident that the Board will continue to be responsible in using the fund. If the Board finds it necessary to spend any amounts from the emergency fund, we expect the Board to notify the appropriate committees of the Congress and to explain why the Board's regular funding was inadequate.

Other provisions of the bill are designed to enable the Board to improve its efficiency or obtain small amounts of additional funding. A final provision in the bill would allow the NTSB to obtain information about accidents involving public aircraft, which are aircraft operated by Federal, State, and local governments or aircraft leased by these governments. Under current law, NTSB has no authority to investigate accidents involving public aircraft and no authority to obtain information about these accidents. There will be safety benefits from allowing NTSB to obtain information about public aircraft accidents, since Government agencies frequently operate the same types of aircraft as private persons.

Mr. Speaker, the bill now before us would better enable the NTSB to fulfill its important safety mission. I urge my colleagues to support this legislation.

Mr. Speaker, I reserve the balance of my time.

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Mr. HAMMERSCHMIDT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4961, a bill that would reauthorize the National Transportation Safety board [NTSB]. I am pleased that we are taking up this bill here today.

The NTSB plays a crucial role in transportation safety generally and in aviation safety in particular. It is responsible for investigating accidents, determining their cause, and making recommendations to prevent such tragedies from occurring again.

Although some may not realize it, the record shows that the airline accident rate has declined since airline deregulation became law in 1978. In no small measure, this is due to the vigilance of the NTSB, both its staff and its members. This is all the more remarkable since the staff of the Agency has steadily declined. In 1980, it had a staff of about 400. This dropped to slightly more than 300 in 1982 and 1983. It has since come back into the 320 to 330 range.

This bill is designed to allow the Board to maintain its staff at 347 positions. The previous cutbacks had caused a reduction in the number of nonaviation accident reports that the NTSB issued. The cutbacks also led to delays in the issuance of all accident reports. This bill will ensure that the Board continues to have the ability to fully carry out its mission in a timely manner.

Another element that is critical to safety is the independence of the NTSB. The Board, under its fine Chairman Jim Burnett, has not hesitated to criticize or make recommendations to other Government agencies when it believed that was necessary. This bill will continue the NTSB as a strong independent body. It, therefore, ensures that this agency can continue to carry out its important watchdog role.

In sum, I believe this is a good bill that reauthorizes a small but important agency. I urge my colleagues to support it.

Mr. DINGELL. Mr. Speaker, I rise for the purpose of placing on the record the understandings between the Committee on Public Works and the Committee on Energy and Commerce with respect to floor consideration of this legislation today.

H.R. 4961 was jointly referred to those two committees and while it has been reported by the Committee on Public Works and Transportation, the Committee on Energy and Commerce has taken no action on the bill. In a letter dated September 19, 1986, Chairman Howard requested that the Committee on Energy and Commerce, nevertheless, permit floor consideration of the bill.

In a letter of the same date, I replied that, recognizing the jurisdiction of the Committee on Energy and Commerce, we would not object to consideration of the bill in the House given the urgency of time prior to adjournment. In addition, I indicated that the Energy and Commerce Committee would have the right to participate in any conference with the Senate over those matters on which we share jurisdiction with Public Works if we deem it appropriate.

I am including in the Record the exchange of letters between our two committees on this matter, together with a letter from Chairman Howard to the Speaker in which the Committee on Public Works acknowledges the jurisdiction of the Committee on Energy and Commerce on this bill.

Committee on Energy and Commerce,
Rayburn House Office Building,
Washington, DC, September 19, 1986.

Hon. James J. Howard,
Chairman Committee on Public Works and Transportation, Rayburn House Office Building, U.S. House of Representatives, Washington, DC.

Dear Jim: Thank you for your letter of September 19, 1986, seeking our agreement to permit floor consideration of H.R. 4961, a bill to reauthorize the National Transportation Safety Board for Fiscal Years 1987 through 1989, which was jointly referred to the Committee on Public Works and Transportation and the Committee on Energy and Commerce.

In view of the urgency of time prior to adjournment, the Committee on Energy and Commerce will not object to consideration of the bill in the House, subject to a brief colloquy on the floor at the time of consideration recognizing our Committee's jurisdiction. This agreement, of course, is without prejudice to our Committee's right to participate in any conference with the Senate over those matters on which we share jurisdiction if we deem it appropriate.

I am pleased to cooperate with you in processing this legislation and will appreciate your keeping us informed of future actions on the bill.

Sincerely,

John D. Dingell,
Chairman.

Committee on Public Works and Transportation, U.S. House of Representatives, Rayburn House Office Building,
Washington, DC, September 22, 1986.

Hon. Thomas P. O'Neill,
The Speaker, House of Representatives, The Capitol, Washington, DC.

Dear Mr. Speaker: The Committee on Public Works and Transportation has reported H.R. 4961, to amend the Independent Safety Board Act Amendments of 1986, amended. The bill was also jointly referred to the Committee on Energy and Commerce.

It is hereby requested that H.R. 4961 be placed on suspension for consideration on Monday, September 29, 1986. The Committee on Public Works and Transportation has been advised by the Chairman of the Committee on Energy and Commerce that they would not oppose consideration of the bill in the House. For your information, a copy of this letter is attached.

The reported bill and report thereon (H. Rept. 99-835, Pt. 1) will be furnished as soon as available.

Sincerely,

James J. Howard,
Chairman.

Committee on Public Works and Transportation, U.S. House of Representatives, Rayburn House Office Building,
Washington, DC, September 19, 1986.

Hon. John D. Dingell,
Chairman, Committee on Energy and Commerce, House of Representatives, Rayburn House Office Building, Washington, DC.

Dear Mr. Chairman: H.R. 4961, a bill to reauthorize the National Transportation Safety Board for Fiscal Years 1987 through 1989, has been jointly referred to the Committee on Public Works and Transportation and the Committee on Energy and Commerce. Public Works and Transportation reported the bill to the House on September 18.

We would like to pass this bill before the end of the session and to make this possible we would greatly appreciate it if the Committee on Energy and Commerce would waive its jurisdiction over the bill. The bill deals primarily with the aviation responsibilities of NTSB which are within the jurisdiction of our Committee and there are no provisions in the bill which deal exclusively with areas within the jurisdiction of the Committee on Energy and Commerce.

You may be assured that we will keep your Committee advised of future actions on the bill.

Thank you for your cooperation.

Every best wish,

Sincerely,

James J. Howard,
Chairman.

Mr. HAMMERSCHMIDT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MINETA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HOWARD. Mr. Speaker, I rise in strong support of H.R. 4961, a bill to authorize the National Transportation Safety Board for fiscal years 1987, 1988, and 1989. The bill would authorize $24 million, $25.4 million, and $27 million in each of those years respectively. These funds would provide for 347 positions, the minimum level required for the NTSB to meet its statutory responsibilities.

The NTSB, though a relatively small Federal agency, has a very important safety mission. The Board investigates transportation accidents, analyzes them, determines their causes, and makes recommendations to Government and private entities for safety improvements so that the chances of future accidents are reduced. Without the level of funding provided by this legislation, the Board will simply have to quit doing some types of accident investigations.

The staff and budget of NTSB were cut drastically during the early years of the Reagan administration. Since then we have provided funding to restore the staff to adequate levels. Unfortunately with the fiscal year 1986 Gramm-Rudman-Hollings sequestration we have again reached the point where reductions are impairing the capability of the Board. In the long run, this will mean a less safe transportation system. With this legislation we can reverse this trend.

Mr. Speaker, I urge my colleagues to pass this bill.

The SPEAKER pro tempore (Mr. Kildee). The question is on the motion offered by the gentleman from California [Mr. Mineta] that the House suspend the rules and pass the bill, H.R. 4961, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read "A bill to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1987, 1988, and 1989, and for other purposes.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MINETA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

EXPANSION OF WHITE HOUSE SECURITY PERIMETER

Mr. YOUNG of Missouri. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5020) to expand the United States Secret Service Uniformed Division protective jurisdiction, as amended.

The Clerk read as follows:

H.R. 5020

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXPANSION OF WHITE HOUSE SECURITY PERIMETER TO INCLUDE THE TREASURY BUILDING AND GROUNDS.

The second sentence of section 202 of title 3, United States Code, is amended—

(1) by striking out "and" at the end of clause (7);

(2) by striking out the period at the end and inserting in lieu thereof "; and"; and

(3) by adding at the end the following: "(9) the Treasury Building, Annex, and grounds.".

SEC. 2. TECHNICAL AMENDMENT.

Clause (6) of the second sentence of section 202 of title 3, United States Code, is amended by striking out "immediately" and inserting in lieu thereof "immediate".

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Missouri [Mr. Young] will be recognized for 20 minutes, and the gentlewoman from Maryland [Mrs. Bentley] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Missouri [Mr. Young].

Mr. YOUNG of Missouri. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5020 provides for the consolidation of protective measures around the White House by adding the Treasury Building, annex, and grounds to those areas secured by the Secret Service Uniformed Division. Enactment of this legislation would allow the Secret Service Uniformed Division to serve a dual purpose, namely, to provide security functions for the Department of the Treasury and to create a security buffer on the east side of the White House analogous to that provided by West Executive Avenue and the Old Executive Office Building on the west side.

Mr. Speaker, the Old Executive Office Building, located in close proximity to the west side of the White House, is secured by the Secret Service Uniformed Division, the same security force which guards the White House. The Secret Service Uniformed Division provides security at the Old Executive Office Building under the provisions of chapter 3 of title 3, United States Code, which empowers the Secret Service Uniformed Division to perform duties prescribed in connection with the protection of, among other things, the White House and any building in which Presidential offices are located.

Mr. Speaker, while the Old Executive Office Building and the White House are secured by one security force, the Treasury Building located on the east side of the White House is protected by the Treasury Police Force, an entirely different security force. The performance of these protective functions by two separate forces is undesirable from the standpoint of efficient management and organization. Passage of H.R. 5020 would consolidate in the Secret Service Uniformed Division the function of protecting the entire White House area including the Treasury Building Annex, and grounds. This approach will promote management efficiencies and better coordination within the overall security system for the area surrounding the White House.

To conclude, since 1975, the incidents of political terrorism have increased along with demands for a more complete security system. Consolidating the existing dual security systems involving the east and west sides of the White House, so as to create a stronger, more efficient, single unit, will aid in fulfilling a strong national need for assuring the safety of the President and the White House.

Mr. Speaker, I urge enactment of H.R. 5020 which was sponsored by the distinguished gentlewoman from Maryland, a member of the House Committee on Public Works and Transportation, the Honorable Helen Bentley.

Mr. Speaker, I reserve the balance of my time.

Mrs. BENTLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, at the request of the White House Secret Service I introduced H.R. 5020. The bill before us is an antiterrorism bill. This legislation will afford the White House complex additional security while allowing the Secret Service to manage its resources in a more cost-efficient and effective manner.

The purpose of this legislation is to consolidate protective measures around the White House by adding the Treasury Building, annex, and grounds to those areas secured by the Secret Service Uniformed Division. This action would allow the Secret Service to serve a dual purpose—to provide security functions for the Department of the Treasury and to create a security buffer on the east side of the White House.

Since 1975, the incidents of political terrorism have increased along with demands for a more complete security system. Consolidating the existing dual security systems involving the the east and west sides of the White House, so as to create a stronger, more efficient, single unit, will aid in fulfilling a strong national need for assuring the safety of the President and the White House.

Enactment of the bill will merely clarify the statute and thus delineate the legal authority for the Uniformed Division to protect the main Treasury Building and grounds and the Treasury Annex. Both the President and Congress have been forced to develop a more combative policy in dealing with the acts of terrorists. According to White House Secret Service, this bill is necessary to ensure that the White House complex is not vulnerable to attacks by terrorists.

I am pleased to have bipartisan support for H.R. 5020, Mr. Snyder, Mr. Shaw, Mr. Petri, Mr. Hyde, Mr. Stangeland, Mr. Gray, and Mr. Conte are all original cosponsors. With enactment of this legislation, security measures necessary for the White House will be implemented at no additional costs to the taxpayer. H.R. 5020 provides no cost to the Government.

The Subcommittee on Public Buildings and Grounds and the Committee on Public Works and Transportation unanimously voted by voice vote to report H.R. 5020 for House passage. Members of the committee joined me in acknowledging the need to ensure that our Federal buildings have the necessary security by voting to pass H.R. 5020.

Mr. Speaker, I urge passage of H.R. 5020.

Mr. SHAW. Mr. Speaker, I rise in support of this legislation which would expand the jurisdiction of the Uniformed Secret Service to include the Treasury Building, Annex and grounds.

Presently, the U.S. Secret Service Uniformed Division is responsible for protecting the White House and the Old Executive Office Building.

The Treasury Department, on the other hand, has its own security force of approximately 50 officers who are responsible solely for the protection of the Treasury Building, Annex, and grounds.

This force was established under the regulatory authority of the Treasury Secretary at the time the Treasury Department was established.

This is a small and independent security force among the many other U.S. Government protective security forces operating here in Washington.

There are several reasons for this legislation. First, it would improve the management efficiency of the administrative activities of the Treasury Police Force and the Uniformed Division.

Both forces are part of the Treasury Department but their administrative activities must be duplicated since they have both been established under separate authorities.

Under this bill, these two separate forces would be merged and become one which should result in more efficient management and organization.

Second, enactment would consolidate within the Secret Service Uniformed Division the responsibility for protecting the entire White House area including the Treasury Building, Annex, and grounds.

This approach will promote management efficiencies and better coordination within the overall security system for the area surrounding the White House.

A first step toward improving security in this area will be to assign an additional 37 Secret Service Uniformed Division officers to protective duty at the Treasury Building.

Let me quickly point out, too, that no jobs will be lost since existing Treasury Police officers will be transferred to the Uniformed Division.

Mr. Speaker, this legislation is supported by the administration and it was by their request that this legislation is being considered.

This is good legislation, and I would urge my colleague to support the passage of the bill.

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 5020 and at this time I would like to commend the chairman of the Subcommittee on Public Buildings and Grounds, the distinguished gentleman from Missouri, Hon. Robert A. Young, and the gentlewoman from Maryland, Hon. Helen Bentley, for their fine work in bringing this legislation before the House today.

Mr. Speaker, enactment of this legislation will provide that the existing Treasury Police Force, of the U.S. Secret Service, be absorbed and amalgamated into the existing Uniformed Division of the U.S. Secret Service, thus, the White House security perimeter would be incorporated under one uniformed force of the Secret Service. This legislation would clearly delineate the legal authority for the U.S. Secret Service Uniformed Division to protect the main Treasury Building, annex, and grounds. The extension of this security perimeter will afford the White House complex enhanced security and at the same time, allow the Secret Service to manage its resources in a more cost-efficient and effective manner.

Mr. Speaker, I urge enactment of H.R. 5020.

Mrs. BENTLEY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. YOUNG of Missouri. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Missouri [Mr. Young] that the House suspend the rules and pass the bill, H.R. 5020, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. YOUNG of Missouri. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous matter, on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

PROHIBITING IMPLEMENTATION OF CERTAIN REGULATIONS OF FEDERAL EMERGENCY MANAGEMENT AGENCY

Mr. OBERSTAR. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5488) to prohibit implementation of certain regulations of the Federal Emergency Management Agency relating to the declaration process, eligibility for assistance, and non-Federal responsibility for major disasters under the Disaster Relief Act of 1974, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5488

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROHIBITION ON IMPLEMENTATION.

(a) Proposed Rule.—The rule proposed by the Federal Emergency Management Agency on April 18, 1986, relating to the declaration process, eligibility for assistance, and non-Federal responsibility for major disasters under the Disaster Relief Act of 1974 (51 Fed. Reg. 13332-13373), shall not take effect as a final rule. If such rule has taken effect as a final rule before the date of the enactment of this Act, such rule shall have no effect after the date of the enactment of this Act.

(b) Limitation on Authority to Issue New Rule.—During the 18-month period beginning on the date of the enactment of this Act, the President and the Federal Emergency Management Agency may not issue or implement a rule or take any other action that changes any regulation or policy relating to declarations of major disasters, eligibility of special purpose governmental districts for assistance, or non-Federal responsibility under the Disaster Relief Act of 1974, as such regulation or policy was in effect on April 15, 1986, or that is contrary to the cost sharing requirements established by section 420 of the Disaster Relief Act of 1974.

SEC. 2. STUDY OF EFFECT ON STATE AND LOCAL GOVERNMENTS.

The Comptroller General shall study the effect that the proposed rule referred to in section 1(a) would have, if implemented, on the ability of State and local governments to respond to major disasters. The Comptroller General shall transmit a report on such study to Congress not later than 6 months after the date of the enactment of this Act.

SEC. 3. ESTABLISHMENT OF COST SHARING FORMULA.

Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.) is amended by adding at the end the following new section:

"FEDERAL SHARE OF ASSISTANCE

"Sec. 420. (a)(1) The Federal share of assistance under sections 402 and 403 of this Act—

"(A) shall be at least 75 percent of the actual cost of providing assistance described in such sections, and

"(B) shall be made only on condition that the remaining portion of such cost is paid from funds made available by a State or local government.

"(2) If a State or local government is unable immediately to pay its share, the President is authorized to advance to such government such State or local share. Any such advance shall be repaid to the United States.

"(b) The Federal share of assistance under sections 404, 407, and 413 shall be 100 percent of the actual cost of providing assistance described in such sections.".

The SPEAKER pro tempore. Under the rule, a second is not required on this motion.

The gentleman from Minnesota [Mr. OBERSTAR] will be recognized for 20 minutes, and the gentleman from Pennsylvania [Mr. CLINGER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. OBERSTAR].

Mr. OBERSTAR. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, on behalf of and by direction of the Committee on Public Works and Transportation, I am honored to call up H.R. 5488 to prohibit the Federal Emergency Management Agency from implementing certain proposed regulations and establishing also a cost-sharing floor on Federal disaster relief assistance programs.

The bill is a response to a nationwide outcry against FEMA's proposed regulations that were published in the Federal Register on April 18, 1986, which would dramatically change the way in which the Federal Government responds to disaster assistance.

The proposed regulations would increase the cost sharing for State and local governments and reduce the Federal role in disaster declarations.

The agency, in its proposed rulemaking process, received some 200 official comments to their docket, and only one of those was favorable to the proposed FEMA rulemaking.

Virtually every local jurisdiction, every State government that has a disaster assistance agency responded negatively to the proposed FEMA rulemaking.

The Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation held a hearing July 23, 1986, in response to that widespread nationwide concern, and concern expressed by numerous colleagues about the proposed rulemaking.

We heard from colleagues PANETTA, LAGOMARSINO, FAZIO, LEVINE, ROGERS, RIDGE, LOTT, BOGGS, and MCDADE who submitted testimony both for the RECORD and personally.

We heard from State and local government agencies in response to those proposed regulations, and we heard from the Federal Emergency Management Agency itself.

The testimony demonstrated that if the cost-sharing change proposed by FEMA had been in effect in the past, 61 of the last 111 national disasters would have been declared ineligible for Federal disaster assistance.

□ 1525

They would have taken one out of every two Federal disasters and said, sorry, you are not eligible for help.

This legislation tells FEMA, you cannot implement those proposed rules for at least 18 months. It directs the Comptroller General, GAO, to study the effect the proposed regulations would have on the ability of State and local governments to respond to major disasters, and directs a report be transmitted to Congress no later than 6 months from the date of enactment.

The legislation was introduced by the chairman of the full Committee on Public Works and Transporation, the gentleman from New Jersey [Mr. HOWARD], with a long list of cosponsors, members of the committee and others who do not serve on the Public Works Committee. This legislation is on a bipartisan basis expressing the clear sense of Congress that whatever direction FEMA wants to go in updating or changing rules, these proposed rules are not the right direction, that they would be inimical to the total historical direction of Federal response in disaster assistance.

The Congress clearly means that the Federal Government should maintain a role in disaster assistance, and wants time as proposed by this legislation to change in some ways that are proper and that are needed to be done in the Federal Disaster Assistance Program.

This legislation will give the Committee on Public Works and Transportation that opportunity to make whatever changes are responsible and necessary, and to do so in a timely fashion.

On August 18, the Associate Director of FEMA for State and Local Programs wrote to the subcommittee notifying the subcommittee that, "Currently these proposals are being held in abeyance until such time as FEMA resolves the various points in question."

In short, the Agency has responded to the hearings and to the public outcry with a delay in implementation of those regulations. So at least in part, our objective has been attained, but we need this legislation to make sure that nothing moves while the Congress is not in session and before we get into action in the next Congress.

Mr. Speaker, I reserve the balance of my time.

Mr. CLINGER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 5488, amending the Disaster Relief Act of 1974, and I urge all Members to likewise support this legislation.

The bill is very simple and does not establish new regulatory guidelines. In fact, it can be argued that this legislation has the opposite effect; it prohibits the Federal Emergency Management Agency from initiating sweeping changes in their program.

H.R. 5488 imposes three requirements on the Federal Emergency Management Agency. First, it prohibits FEMA from implementing any new rules or regulations that change the disaster declaration process; second, it requires the Comptroller General to study the effect of an April 18 proposed rulemaking, published by FEMA in the Federal Register and 42 pages in length, and report his findings to Congress; and third, it sets in statute the current level of Federal participation at 75 percent.

We would not be here this afternoon debating such a bill were it not for actions taken by FEMA on April 18. As alluded to previously, on that date FEMA published proposed rules in the Federal Register that would literally emasculate our Federal Government's ability to assist large and small communities recovering from natural disasters. You've heard or read about the net effect their proposals would have had in our disaster assistance process were they in force a year ago; 61 of the last 111 disasters would not have been eligible for Federal assistance.

But to give you a clearer idea of what their proposal means, allow me to cite a personal example.

In the spring of 1985, a severe storm front containing a large number of tornadoes moved through northwest Pennsylvania leaving a trail of incredible destruction. A couple of communities were literally flattened, and in the final tally, 65 people were killed and roughly $250 million damage occurred.

Had FEMA's proposed rules been in effect on the day these tornadoes struck, not one of our communities would have been eligible for assistance.

Pennsylvania has been the site of three Presidentially declared natural disasters in the past year and a half, including the tornadoes. Had all three events occurred simultaneously, we would still have not qualified for assistance based on FEMA's proposed rules.

Thus the legislation before us does not seek to change our Federal Disaster Response Program; rather, it seeks to preserve it. Finally, I wish to point out that this bill provides no new budget authority.

Next year the Public Works Committee intends to reauthorize the Disaster Relief Act, and at that time it will carefully consider improving the program's operation. But for the time being, Congress must act to prohibit the agency from knowingly shooting itself in the foot.

I applaud Chairman HOWARD and Chairman BOB ROE for moving this legislation so quickly. And I also want to thank our oversight and investigations chairman, JIM OBERSTAR, and its ranking member NEWT GINGRICH, for holding a very long day of hearings on FEMA's proposal. Finally, I want to acknowledge the hard work Representative TOM RIDGE has devoted in this area. I think it fair to say that had he not elevated this issue before the House, we would not be here today debating H.R. 5488.

It's a good bill; it's a necessary bill, and I encourage all Members to support it.

Mr. Speaker, I yield 7 minutes to the gentleman from Pennsylvania [Mr. RIDGE].

Mr. RIDGE. Mr. Speaker, it's my pleasure today to rise in strong support of H.R. 5488, which prohibits the Federal Emergency Management Agency from implementing its proposed changes to emergency declarations and Federal assistance programs by placing an 18-month moratorium on any changes in FEMA disaster assistance and emergency declaration policy. In addition, the bill would for the first time specifically define FEMA's role in providing disaster assistance by legislatively mandating that the Federal Government be responsible for at least 75 percent of the costs associated with public disaster assistance and 100 percent of such individual assistance programs as temporary housing, disaster unemployment compensation and crisis counseling. I might add that the cost-sharing responsibilities I've just referred to are already accepted although unwritten policies at FEMA.

For the last year Congressman CLINGER and I have been fighting to improve the Federal Government's response to the victims of natural disasters. I'll be the first to admit that about 1½ years ago, the topic of emergency preparedness and response was not something I thought much about. But suddenly, on May 31, 1985, when tornadoes devastated the countryside in both my own and Congressman CLINGER's districts, I began to think about it a great deal as I saw the tragic effects on the towns and the people I know so well. Specifically, I witnessed the most powerful series of tornadoes in Pennsylvania's history cause 65 deaths and an estimated $250 million in damage. To date, FEMA has provided $7 million to help Pennsylvania's communities and nonprofit institutions recover from this tragedy and, in addition, millions more has been made available to individual victims in the form of temporary housing assistance, individual and family grants, disaster unemployment compensation. and low-interest loans from the Small Business Administration. This help has been vital. There is no conceivable way that the communities and residents of my district could have even started the recovery process without a considerable amount of support from all levels of government and the private sector.

I along with Congressman CLINGER and other public officials set to work the next day to begin the recovery process. I'm pleased to report that today 16 months later that northwestern Pennsylvania is on its way toward rebuilding its devastated communities.

So, although most of the individual casework with the Federal Government from our disaster is finished, Congressman CLINGER and I have chosen to pursue some initiatives for reform based on our experience in northwestern Pennsylvania. That experience has led us to one unavoidable conclusion: The Federal Government has a responsibility to the victims of natural disasters.

H.R. 5488 will assure that that responsibility will continued to be met. The bill itself is a response to a set of irresponsible regulations offered last April by FEMA. As one who had just experienced first hand the vital importance that FEMA played in our recovery, I quickly realized that these new proposals were the first step in a concerted but indirect effort by the Agency and OMB to relieve the Federal Government of its congressionally mandated responsibility to provide meaningful peacetime disaster assistance. Specifically, the proposed changes would have eliminated the majority of public assistance offered by the Federal Government to disaster devastated communities.

A few facts based upon a study of disaster declarations for public assistance between October 1980 and December 1985 tell the story; 61 of the last 111 declared public disasters, including the tornadoes that caused $250 million damage in northwestern Pennsylvania, would be ineligible for any Federal public assistance. No money would have been forthcoming from the Federal Government; 37 of the remaining 50 disasters that would have been declared eligible would have received substantially fewer Federal dollars; the percent of the total eligible reimbursement which today FEMA approved 75 percent would fall to an average 44 percent; and State and local governments which already must bear an estimated 75 to 85 percent of all costs associated with peacetime disaster preparedness and assistance would be forced to finance an even larger share of their own recovery.

Quite obviously, there are no winners.

There is, in my opinion, absolutely no substantive justification for FEMA's use of the regulatory process to drastically curtail public disaster assistance. Thankfully, the Public Works and Transportation Committee led by Chairman HOWARD and Congressmen ROE, OBERSTAR, and CLINGER have offered us H.R. 5488 which as I have mentioned would both prevent these regulations from taking effect and as importantly, mandate a role for the Federal Government in providing this vital assistance.

I urge my colleagues to support H.R. 5488. By doing so, you'll be helping to assuse that Congress will not retreat from its responsibility to the victims of natural disasters.

Mr. OBERSTAR. Mr. Speaker, I yield myself 1½ minutes.

□ 1535

Mr. Speaker, I thank the gentleman from Pennsylvania for those kind remarks. I wish to thank both gentlemen from Pennsylvania. I do want to express appreciation to the subcommittee too. Also the chairman of the full committee, Mr. HOWARD, and the chairman of the Subcommittee on Water Resources, Mr. ROE, for acting so promptly following the subcommittee's hearings, introducing the legislation, holding the legislative hearings and reporting a bill out in such swift response to an urgent need.

FEMA, in changing the mechanics of the way that the Disaster Assistance Program works, really went much further; they changed policy. That is a role for the Congress to carry out. Not for an executive branch agency. The proposed rules violate congressional intent. The Disaster Assistance Program actually is a self-screening process in which the applicants weed themselves out as they go through the thinking through of response to a disaster.

In fact, although FEMA wanted to reduce the Federal share to 50 percent from the current law of 75 percent, the actual Federal share historically over the last decade of financial assistance in a local disaster ranges around 8 to 10 percent.

The proposed rules would have literally wiped out a Federal financial role. In addition, FEMA concocted a very complicated reimbursement formula that to figure it out you would need a couple of calculators, and by the time you got through calculating how much assistance an area was eligible for, the disaster would have long gone through, and people would be trying, futilely and vainly, to clean up.

So the formula would actually slow down the recovery process, and while a uniform and predictable method for declaring disasters and providing Federal financial assistance is important and will be helpful in the future, the one FEMA proposed is too drastic, is not responsive to historical experience, and in any event, should be designed by Congress and not by an executive branch agency.

Mr. Speaker, I yield 3 minutes to the gentleman from West Virginia [Mr. WISE

Mr. WISE. I thank the gentleman for yielding me this time.

Mr. Speaker, I want to thank the gentleman from Pennsylvania [Mr. RIDGE] who has been very, very active in pushing this legislation. I might say that a year later, when West Virginia had its own tragedy, it was Congressman RIDGE's office who called us and helped us to benefit from some of their experiences and so helped us deal with our own tragic situation.

Mr. Speaker, I too, rise in strong support of this legislation. The fact of the matter is that the proposed FEMA regulations would not have permitted West Virginia to have recovered as quickly as it did from the floods that swept our State last November. Indeed, 29 counties were in the flood-torn area and were virtually decimated.

Had these regulations been in effect, they would not have been able to get the assistance that they needed. These proposed rule changes would have meant far less assistance for the State of West Virginia and, I might add, for the State of Virginia and the State of Pennsylvania in that tragedy.

So I want to say that this is legislation badly needed, and what it does is to provide a floor for Federal assistance. It says that Federal assistance will not be less than 75 percent in dealing with these flood- and disaster-torn areas.

I also want to thank the gentleman from Pennsylvania [Mr. Clinger] for accepting my amendment in committee that guarantee that this was a 75-percent Federal share floor, but also gave FEMA some flexibility to deal with States such as West Virginia which could never have met even the 25-percent share. It provides some flexibility that is needed in areas that are so badly hit as was our State in November.

I think this is a positive change; I think it is a message that needs to be sent to FEMA and certainly to those who, unfortunately, will have to suffer from disasters in the future, and to those of us who are still cleaning up, it guarantees that FEMA will be there and be there in the same way that it has been in the past.

I thank very much both gentlemen from Pennsylvania and, of course, our subcommittee chairman for the efforts that they have made to assist West Virginia, to assist their own States, and most importantly, to assist those who live in flood- and disaster-torn areas.

Mr. CLINGER. Mr. Speaker, I yield 3 minutes to the gentleman from Kentucky [Mr. Rogers].

Mr. ROGERS. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of this bill, and commend the distinguished chairman of the Public Works Committee, Mr. Howard, for introducing and moving this legislation. I also wish to pay respect to the two gentlemen from Pennsylvania, Mr. Ridge and Mr. Clinger, for their good work and leadership on this issue.

Mr. Speaker, let me just say that the rules FEMA has advanced for our disaster aid programs constitute a drastic package, a gutting proposal which, if not addressed by this Congress, would leave many, many people without vital assistance during their time of greatest need.

In Kentucky, only three of the nine major disaster declarations made over the years would have qualified for Federal aid under the proposed formulas and dollar thresholds. And those eligible for money would have received significantly smaller amounts under these rules. Areas in my district where floods have rendered poverty stricken families homeless, destroyed roads and facilities, and set communities backward would have been left helpless, unable to cope on their own. Every penny these areas have received in the past has been vital.

I think it's clear to those Members who have dealt with FEMA that its programs need improvement. We ought to encourage agencies looking to better their programs, searching for ways to get a bigger bang out of each Federal dollar. But these proposals make the program worse. The only thing they improve is the bottom line, and I think we owe a lot more than that to the poor and ravaged communities which would be attempting, in vain, to make up the difference.

Mr. Speaker, we would be shirking our responsibility if we were to not reject this attempt to completely change the intent of our disaster aid laws. When our constituents suffer a disaster, they need help, immediately, and affordably. This bill is a responsible move toward ensuring that help.

I urge its support and yield back the balance of my time.

☐ 1545

Mr. CLINGER. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. Lagomarsino].

Mr. LAGOMARSINO. Mr. Speaker, I rise in support of H.R. 5488, Federal Emergency Management Agency amendments, and to thank the committee and the chairman, Mr. Howard, Mr. Oberstar, Mr. Clinger, Mr. Ridge, and many others for bringing this bill to the floor.

Two months ago, I testified before the committee that the new regulations being proposed by FEMA would effectively eliminate Federal disaster assistance in many cases—as many as 80 percent of the disasters experienced in California since 1982. Using the 1983 floods as an example, Ventura County, CA, which sustained $13.5 million in damages, was reimbursed for only $5.5 million under existing regulations; under the new regulations, the county would receive only $4.4 million, or 33 percent of the damages sustained. In the same flood, Santa Barbara County, which was reimbursed for only 33 percent of the damages it sustained under the existing rules, would have been totally ineligible for assistance under the new regulations.

H.R. 5488, which is before the House today, would block FEMA from implementing these new regulations, and require that the current 75-25 cost-sharing formula now in effect be retained. When a disaster occurs, it is difficult enough to qualify under existing regulations; the new regulations, I am convinced, would be even more difficult, time consuming, and frustrating to follow, and I urge all my colleagues who have ever had a disaster in their districts, or expect they might have one in the future, to vote for this bill.

Mr. CLINGER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. OBERSTAR. Mr. Speaker, I yield myself 2½ minutes.

Mr. Speaker, I would like, in conclusion, to express my great appreciation to the ranking member on our subcommittee, the gentleman from Georgia [Mr. Gingrich], who devoted a great deal of time and effort to the hearings that we held; to the staff on both sides who devoted enormous time and effort to developing the factual information, meeting with Members of Congress from throughout the country, and bringing together what, obviously, has been described already by our colleagues as a very successful and effective hearing.

The rulemaking procedure began innocently and well intentioned enough, but it turned sour along the way as the Agency, directed by another entity within the executive branch, exceeded the authority of an executive branch agency in trying to attain uniformity, consistency, timeliness, and fairness in the disaster assistance process.

The Committee on Public Works, by direction of the chairman, the gentleman from New Jersey [Mr. Howard], and the Subcommittee on Water Resources, with legislative jurisdiction over this issue, has announced that it will proceed in a legislative fashion to achieve those goals and will do so as soon as the new Congress is reorganized next year.

Meanwhile, we are not waiting. We are underway with the job already.

On Thursday of this week, the members of the Subcommittee on Investigations and Oversight will meet with other Members of Congress, the Defense Department, and FEMA officials to begin the process of thinking through the goals to be followed in future rulemaking for disaster assistance programs.

We will continue to meet on a regular basis until we receive the information we have requested from the General Accounting Office and we will consult extensively with our colleagues in the Congress who have testified, and others who have concerns, and with State and local government officials, to shape a very sound and re-

sponsible and effective Disaster Assistance Program that will meet the goals we have already discussed.

For that reason, I ask my colleagues for a resounding vote of confidence in approving this legislation.

Mr. PANETTA. Mr. Speaker, I rise in support of H.R. 5488, which prohibits the implementation of regulations, proposed in April by the Federal Emergency Management Agency [FEMA], that would bring sharp cuts in Federal disaster assistance to State and local governments. I commend the Committee on Public Works and Transportation for their swift action to bar the implementation of these regulations. Clearly, changes of this magnitude must not be treated lightly.

The bill before us today would ensure that the Federal Government retains a meaningful role in providing emergency disaster assistance. It would bar the implementation of FEMA's proposed regulations, and limit FEMA's authority to make any other changes for an 18-month period, and ensure that Federal disaster assistance would be no less than the current 75 percent of relief costs. It would also require the Comptroller General to conduct a comprehensive study of the ability of State and local governments to respond to major disasters if such regulations were implemented.

As I stated in testimony before the Subcommittee on Investigations and Oversight on July 23, I am firmly opposed to these proposed regulations. These changes would drastically reduce the amount of Federal assistance available to communities devastated by natural disasters and would significantly increase the share of costs that State and local governments must bear following a disaster. Many communities would be unable to respond adequately to severe damage caused by such unanticipated natural disasters. The changes proposed by FEMA are so drastic that of the 111 nationwide disasters that were declared eligible for Federal assistance over the past 5 years, only 61 would have qualified under the proposed rules.

Under current policy, FEMA finances 75 percent of eligible disaster expenses for uninsured public losses. During the last 5 years, the Federal cost-share rate has gone from 100 percent to 75 percent. But, in practice, once eligibility and audit criteria are applied, the Federal cost sharing in California counties struck by disasters in 1982 and 1983 averaged 42 percent of actual costs, according to the County Supervisors Association of California and the County Engineers Association of California. FEMA's proposed rule changes would effectively reduce the Federal contribution from 75 percent to 50 percent or less, which in practice could result in less than a 20-percent Federal contribution.

In addition to the reduction in Federal cost sharing, FEMA would require States to expend a "threshold" amount before the Federal Government would contribute any funds. A State's threshold expenditure would be determined by a formula that would take into account its population and per capita income. Under these rules, California alone would have to contribute an exorbitant $30 million—$1 per resident—before FEMA funds would be available. A Presidential disaster declaration for the State as a whole could not be obtained unless this new threshold was met. Thus no Federal disaster assistance would be available for individual local communities hit by disasters. If the State met the threshold requirement, then each county would again be required to contribute a threshold amount based on a similar formula—$2.50 per resident.

These proposed rules would make it extremely difficult to obtain a Presidential disaster declaration and would, at the same time, sharply reduce the amount of Federal reimbursement in each case.

This year, heavy rains in California caused serious mudslides and flooding which resulted in the loss of a number of lives and many more injured, left thousands of families homeless, and millions of dollars in damage to residential, commercial, and public property. Since 1976, 20 of the 38 states of emergency in California caused by storms, fires, floods, earthquakes, and other natural calamities received Presidential disaster declarations. In these 20 cases, Federal aid of $289 million assisted communities throughout the State respond to these emergencies, which caused $775 million in total damages.

These proposed regulations would severely limit the ability of individual counties to obtain Federal disaster assistance. Because of the new threshold requirement, California as a whole would have to incur a multitude in damages before localities would be considered for this Federal assistance. In Santa Cruz County alone, FEMA covered 71 percent of the total damages incurred in 1982, 50 percent in 1983, and 38 percent in 1986. If these new regulations had been ineffect, the State would have been required to expend approximately $30 million, before local governments would have been eligible for Federal assistance. If this hurdle was met and the county qualified for FEMA assistance, Santa Cruz County would have been reimbursed for 74 percent of the total damages incurred in 1982, 37 percent in 1983, and only 8 percent in 1986. Clearly, the severity and magnitude of these disasters affecting Santa Cruz County were beyond the financial capabilities of the State and affected local governments. FEMA's disaster assistance is intended to respond to these types of emergency conditions. The effect of these proposed regulations would be to undermine the intent and effectiveness of this program.

I recognize the budget constraints faced by all agencies as we work to reduce the Federal deficit. However, Federal expenditures must be controlled in an equitable manner and not by slashing vital programs that have a proven track record. State and local governments are already under increased financial stress as a result of reductions in a variety of Federal programs. Our communities cannot afford any further reductions in disaster relief programs. The changes proposed by FEMA clearly run contrary to congressional intent, as expressed in the Disaster Relief Act of 1974.

I urge your support for H.R. 5488, which will prevent the implementation of FEMA regulations that would arbitrarily slash Federal assistance provided under disaster relief programs.

Mr. HOWARD. Mr. Speaker, I am pleased to bring to the floor H.R. 5488, which I introduced and which was reported without objection by the Committee on Public Works and Transportation.

I want to thank my colleague from New Jersey, Mr. ROE, for his work on this bill as chairman of the Subcommittee on Water Resources. I would also like to acknowledge the contributions of the gentleman from Pennsylvania, Mr. CLINGER, who has assisted greatly on this bill which is of special importance to his district.

H.R. 5488 is an important piece of legislation to ensure that the intent of Congress is followed in the Nation's Disaster Relief Program. The question involved with this bill is whether an agency should be permitted to make program changes through the regulation process that are in direct contradiction to the will of Congress.

The bill would prohibit the Federal Emergency Management Agency from implementing the regulations that were proposed on April 18, 1986, concerning the disaster declaration process, eligibility for assistance and the non-Federal responsibility for major disasters.

The proposed rule would sharply reduce the Federal participation in the Nation's Disaster Relief Program. Instead, State and local governments, those most affected by the disasters, would be forced to bear a larger share of the costs.

First, the Federal share of the costs would be reduced from the current 75 percent to 50 percent. Second, a formula for establishing a threshold for eligibility would be imposed that would unfairly discriminate against densely populated States. It would establish much higher thresholds for States with higher populations. Under this formula, 61 of the last 111 national disaster areas would have been ineligible for Federal disaster assistance.

My bill would prohibit the implementation of these regulations. It would also bar FEMA from issuing or implementing any rule for an 18-month period that would change any regulation or policy concerning the declaration of major disasters, the eligibility of special purpose governmental districts for disaster relief or the non-Federal responsibility for major disaster relief.

The bill would change existing law to require that the Federal share be at least 75 percent. It also directs advance payments to local governments that cannot provide their 25 percent matching share up front.

I believe this is important legislation. It will prevent the implementation of regulations that will shift the burden of the costs of disaster relief to those local communities that are already hard-pressed by the disaster itself. In hearings before the Subcommittee on Investigations and Oversight, it was determined that these regulations were a response to a budget directive. They did not have any relation to the Disaster Relief Program itself.

I urge my colleagues to support this legislation to maintain a strong Federal Disaster Relief Program and to guarantee that policy changes are enacted by Congress—not by the Federal agency through regulation.

Mr. MOODY. Mr. Speaker, during the last couple of months, the Federal Emergency Management Agency [FEMA] has launched a two-pronged attack on the disaster preparation and relief program of my State, Wisconsin. It has become distressingly clear just how short-sighted FEMA's new policies are.

In April the Reagan administration announced new regulations that would make it much harder for States and counties to qualify at all for Federal disaster relief. Under FEMA's new regulations, Wisconsin would have to suffer 4.4 million dollars' worth of damage to public structures alone before the State could qualify for any Federal relief. In addition, the proposed FEMA rules would require counties to have to bear a much heavier new burden: Milwaukee County would have to provide $2.5 million in relief before it could qualify for any Federal relief.

This new proposal hits Wisconsin and other farm States in the storm-prone Midwest at a time when we can ill afford to make up the loss of FEMA funds. Under FEMA's new rules, communities hit by natural disasters will simply receive less help—or worse, no help.

This has not been FEMA's only attack on Wisconsin's disaster planning and relief programs. FEMA recently notified Wisconsin and other States that we would no longer receive Federal civil defense and disaster funds unless we begin to prepare for nuclear war. With tight budgets, our dilemma is this: If Wisconsin prepares for nuclear war, we will have to sacrifice funds and resources used to prepare for natural and other disasters. If we do not meet FEMA's new rigid requirements, which include regular nuclear defense drills in every county, Wisconsin could lose as much as 58 percent of its $3.3 million emergency preparation budget.

This makes no sense. The assumption that civil defense measures and drills will enable us to survive a nuclear exchange belies the absolute horrors of nuclear war. It also reduces the public's demand for meaningful United States-Soviet arms control agreements. The requirement that we prepare for nuclear war will ultimately reduce the preparations and resources needed to counter real-life disasters caused by nature, by hazardous waste spills, and by accidental toxic emissions from factories, rail accidents, et cetera. FEMA would have our tax money go for bomb shelters instead of storm shelters, postattack exercises instead of tornado drills, and radiation detectors instead of flood levees—a senseless ordering of important priorities.

Many Wisconsinites will remember the civil defense public service announcements on TV in the 1950's. One memorable spot, called "Duck and Cover," had a nifty jingle telling us we could protect children in a nuclear attack by having them duck under school desks.

We've learned a lot since then—about the devastation of nuclear war and the futility of ducking. Unfortunately, FEMA is reviving the old myths of nuclear survivability, and their ignorance will cost Wisconsin money—and possibly even lives—as preparations for real catastrophes—like Wednesday's flood—are slighted.

Governor Earl and other State officials have rightly complained that both FEMA's misguided emphasis on nuclear war and its new restrictive rules for relief aid will severely hamper our ability to deal with the natural and man-made disasters that really happen. In both the Eau Claire ice storm of 1980 and last year's Barneveld tornado, for example, FEMA provided 75 percent of the aid to restore and replace public structures and 75 percent of the "last resort" grants to individuals and families with no insurance. Had proposed FEMA policies been in effect earlier, Wisconsin would have received no disaster relief from FEMA in either of these tragedies. Nor would Wisconsin have afforded its important effort to test, improve, and expand its new tornado warning system.

Under the leadership of Representative OBERSTAR of Minnesota, legislation to require FEMA to stick with more sensible policies is now at hand.

Mr. OBERSTAR. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. KILDEE). The question is on the motion offered by the gentleman from Minnesota [Mr. OBERSTAR] that the House suspend the rules and pass the bill, H.R. 5488, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. OBERSTAR. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

PERMISSION TO FILE CONFERENCE REPORT ON S. 426, ELECTRIC CONSUMERS PROTECTION ACT OF 1985

Mr. SHELBY. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the Senate bill (S. 426) to amend the Federal Power Act to provide for more protection to electric consumers.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Alabama?

There was no objection.

RELATING TO QUIET TITLE ACTIONS AGAINST THE UNITED STATES

Mr. GLICKMAN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2484) to amend title 28, United States Code, to exempt States from the statute of limitations applicable to quiet title actions against the United States, as amended.

The Clerk read as follows:

H.R. 2484

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 2409a of title 28, United States Code, is amended—

(1) by redesignating subsection (g) as subsection (n);

(2) by redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (f), and (g), respectively;

(3) by inserting after subsection (b) the following new subsection:

"(c) No preliminary injunction shall issue in any action brought under this section.";

(4) in subsection (g), as redesignated by paragraph (2), by inserting ", except for an action brought by a State," after "this section"; and

(5) by inserting after subsection (g), as so redesignated, the following:

"(h) No civil action may be maintained under this section by a State with respect to defense facilities (including land) of the United States so long as the lands at issue are being used or required by the United States for national defense purposes as determined by the head of the Federal agency with jurisdiction over the lands involved, if it is determined that the State action was brought more than 12 years after the State knew or should have known of the claims of the United States. Upon cessation of such use or requirement, the State may dispute title to such lands pursuant to the provisions of this section. The decision of the head of the Federal agency is not subject to judicial review.

"(i) Any civil action brought by a State under this section with respect to lands, other than tide or submerged lands, on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments or on which the United States has conducted substantial activities pursuant to a management plan such as range improvement, timber harvest, tree planting, mineral activities, farming, wildlife habitat improvement, or other similar activities, shall be barred unless the action is commenced within 12 years after the date the State received notice of the Federal claims to the lands.

"(j) If a final determination in an action brought by a State under this section involving submerged or tide lands on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments is adverse to the United States and it is determined that the State's action was brought more than twelve years after the State received notice of the Federal claim to the lands, the State shall take title to the lands subject to any existing lease, easement, or right-of-way. Any compensation due with respect to such lease, easement, or right-of-way shall be determined under existing law.

"(k) Notice for the purposes of the accrual of an action brought by a State under this section shall be—

"(1) by public communications with respect to the claimed lands which are sufficiently specific as to be reasonably calculated to put the claimant on notice of the Federal claim to the lands, or

"(2) by the use, occupancy, or improvement of the claimed lands which, in the circumstances, is open and notorious.

"(l) For purposes of this section, the term 'tide or submerged lands' means 'lands beneath navigable waters' as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301).

"(m) Not less than 180 days before bringing any action under this section, a State shall notify the head of the Federal agency with jurisdiction over the lands in question of the State's intention to file suit, the basis therefor, and a description of the lands included in the suit.".

The SPEAKER pro tempore. Is a second demanded?

Mr. BROWN of Colorado. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Kansas [Mr. GLICKMAN] will be recognized for 20 minutes and the gentleman from Colorado [Mr. BROWN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 2484 would amend section 2409a of title 28 to exempt States from the 12-year statute of limitations which applies to quiet title actions against the United States.

In 1972, when the Quiet Title Act became law, a 12-year limitation on quiet title actions against the United States was added as subsection (f) of section 2409(a).

In 1983, the Supreme Court ruled in *Block* v. *North Dakota*, 461 U.S. 273 (1983) that Congress intended, among other things, that this statute of limitations be applied to actions by the States and that a dismissal pursuant to the limitations provision does not quiet title to the disputed land but instead leaves the dispute unresolved.

Since the Block decision in 1983, the States have indicated that they believe that a 12-year statute of limitation is inappropriate as to their claims, as opposed to the claims of individuals.

The States believe that because potential Federal and State land claims can be extensive, especially in Western States, they are often dormant and unrecognized. For this reason, it is often not practical for the States to identify all possible conflicting claims within a 12-year period.

H.R. 2484 would simply modify the application to the States of the statute of limitations applicable to quiet title actions against the United States. There would be no statute of limitations as to submerged or tide lands, the lands over which a dispute is most likely to arise. Other lands would be subject to a 12-year statute of limitations from the date the State received notice of the Federal claim. Since section 2409a does not provide jurisdiction to adjudicate title to trust or restricted Indian lands, the bill would not change the law as to the applicability of the section to such lands.

H.R. 2484 is supported by the administration and the States. I urge its adoption.

Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. BERMAN], the prime sponsor of the bill.

SPEECH OF

Mr. BERMAN. Mr. Speaker, H.R. 2484, making amendments to the Quiet Title Act, is supported by the administration, and by the National Association of Attorneys General, the National and Western Governors Associations, and other national and regional associations of public officials.

IMPACT

CURRENT LAW

Current law is a catch 22 for the States.

Under the 1983 Block versus North Dakota Supreme Court decision States cannot sue the Federal Government to settle title disputes if they knew or should have known about the problem for 12 years.

The Federal Government has asserted that this 12-year period may start when a State entered the Union, even though it was not possible to sue the Federal Government for this purpose until the Quiet Title Act passed in 1972.

Even if State suits are barred, their claims remain valid and in limbo, frustrating both Federal and State land managers.

PROPOSED AMENDMENT

This amendment permits the resolution on the merits of legitimate Federal-State controversies, while minimizing the possible disruption of Federal programs.

First, it permits suit as to tide and submerged lands while protecting the rights of long established Federal lessees.

Second, it retains the 12-year period for uplands as to which substantial investments, improvements or Federal activities have been carried on.

Third, provides more clarity as to what constitutes notice to States of a Federal claim.

It does not change current law, which allows the Federal Government to retain possession even if the State has a valid claim. The same options of compensation or land exchanges would still exist.

PROVISIONS

First, exempts State claims from the 12-year statute of limitations entirely with respect to tide and submerged lands.

Second, exempts State claims with respect to uplands as well unless:

There has been substantial investment or improvement by the Federal Government or its lessees or right or way or easement grantees or,

The Federal Government has conducted substantial activities pursuant to a Federal management plan.

Third, requires a successful State claimant of tide and submerged lands to take land subject to existing leases or easements, if the State's action would otherwise have been barred by the statute.

Fourth, bars the maintenance of actions against defense facilities used or required for national defense purposes, if the 12-year statute would otherwise have barred such suits.

Fifth, provides more specific standards for notice of a Federal claim or of Federal activities.

ADVANTAGES OVER CURRENT LAW

It minimizes impact on Federal activities by prohibiting injunctions during litigation.

It gives the Federal Government ample notice of intent to sue—180 days.

It protects defense facilities being used for defense purposes.

It takes into account substantial investments and improvements by the Federal Government or its lessees.

It improves notice of Federal activities.

It allows State land managers to reach a final determination on land ownership on the merits.

□ 1555

Mr. BROWN of Colorado. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this legislation. As the original cosponsor, I have worked with the gentleman from California [Mr. BERMAN], in fashioning a compromise that will both serve the needs of the States and the Federal Government. I would also like to pay special thanks to the gentleman from Kansas [Mr. GLICKMAN], who was instrumental in moving this legislation forward as well as my own State land officials, Colorado Attorney General Duane Woodward, and Colorado Lands Commissioner Rowena Rogers. Without all their help, Mr. Speaker, we would not be here today.

Mr. Speaker, this legislation will help resolve a 14-year dispute involving State-Federal land claims. The problem has arisen within the context of the 1972 Federal Quiet Title Act. At that time, it was hoped that the Quiet Title Act would help clarify State-Federal title disputes. Under the terms of the statute, the United States waives sovereign immunity and consents—subject to certain exceptions—to be sued in the U.S. district courts for the purpose of resolving real property title disputes where the United States claims to have an ownership interest. These civil actions are required to be commenced within 12 years from the date "the plaintiff or his predecessor in interst knew or should have known of the claim of the United States." 28 U.S.C. 2409(f).

The statute made no distinction between private plaintiffs and the 50 sovereign States with respect to the applicability of the 12-year statute of limitations. This led to a great deal of confusion as States found themselves unable to resolve disputes more than 12 years old. A 1983 Supreme Court decision, which many hoped would clarify the problem, held that Congress intended the Quiet Title Act to be the exclusive means by which both public and private claimants could challenge U.S. title to real property. (*Block* v. *North Dakota*, 75 L.Ed.2d 840; 103 S.Ct. 1811 (1983).) The 12-year statute of limitations was construed to apply to the States as well and private parties since the Court found no express language in the statute dealing with such civil actions when brought by the States.

As a result, States have found that the operation of the statute did not remove the cloud over disputed title, but merely prevented its judicial resolution. This has been compounded by the fact that the ruling does not prevent States and Federal claimants from issuing leases, granting easements, or otherwise attempting to assert ownership interests.

Thus, Mr. Speaker, under the current law as outlined in the Block decision, there has been uncertainty as to land title in many Western States where both States and the Federal Government claim an interest. This legislation we are considering today will clarify and correct this situation.

It should be noted that the legislation we have before us today is not the original legislation introduced by Mr. BERMAN and me. Rather, this legislation reflects the compromise reached recently between the administration and the attorneys general on this subject. There were countless hours of painstaking negotiation involved in this bill and it reflects their valuable contributions.

While preserving the rights of States to quiet title, the new compromise bill also contains several additional safeguards important to the Federal Government. For example, the bill provides that no civil action may be maintained by a State with respect to a defense facility of the United States so long as the lands at issue are being used or required by the United States for national defense purposes. Upon cessation of such use, the State may dispute title to the lands as otherwise provided in the bill.

In sum, Mr. Speaker, this legislation is both fair and effective. It will be of great assistance to several States in better managing their lands.

Mr. GLICKMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just want to compliment the two authors of this bill, the gentleman from California [Mr. BERMAN], the prime author, and the gentleman from Colorado [Mr. BROWN] for their work on this; also I want to compliment the gentleman from Ohio [Mr. KINDNESS]. He has been a pleasure to work with as the ranking member. This may the last time the subcommittee is bringing a bill to the floor. Whatever the gentleman from Ohio [Mr. KINDNESS] is doing next year, I know that he can look back to an extraordinarily successful career in Congress. He has been an extremely helpful force to me personally, both as a Member of Congress and as an attorney, so I wish the gentleman well in whatever lies ahead for him.

Mr. BROWN of Colorado. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GLICKMAN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. KILDEE). The question is on the motion offered by the gentleman from Kansas [Mr. GLICKMAN] that the House suspend the rules and pass the bill, H.R. 2484, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to amend title 28, United States Code, relating to quiet title actions against the United States, with respect to actions brought by States.".

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

COMMERCIAL MOTOR VEHICLE SAFETY ACT OF 1986

Mr. ANDERSON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5568) to establish uniform standards for testing and licensing of operators of commercial motor vehicles, as amended.

The Clerk read as follows:

H.R. 5568

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Commercial Motor Vehicle Safety Act of 1986".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Limitation on number of driver's licenses.
Sec. 3. Notification requirements.
Sec. 4. Employer responsibilities.
Sec. 5. Testing of operators.
Sec. 6. Classified driver's license.
Sec. 7. Classified driver's license information system.
Sec. 8. Federal disqualifications.
Sec. 9. Requirements for State participation.
Sec. 10. Grant program.
Sec. 11. Withholding of highway funds for State noncompliance.
Sec. 12. Penalties.
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SEC. 2. LIMITATION ON NUMBER OF DRIVER'S LICENSES.

Effective July 1, 1987, no person who operates a commercial motor vehicle shall at any time have more than one driver's license, except during the 10-day period beginning on the date such person is issued a driver's license and except whenever a State law enacted on or before June 1, 1986, requires such person to have more than one driver's license. The second exception in the preceding sentence shall not be effective after December 31, 1989.

SEC. 3. NOTIFICATION REQUIREMENTS.

(a) NOTIFICATION OF VIOLATIONS.—

(1) TO STATES.—Effective July 1, 1987, each person who operates a commercial vehicle, who has a driver's license issued by a State, and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) in any other State shall notify a State official designated by the State which issued such license of such violation, within 30 days after the date such person is found to have committed such violation.

(2) TO EMPLOYERS.—Effective July 1, 1987, each person who operates a commercial vehicle, who has a driver's license issued by a State, and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) shall notify his or her employer of such violation, within 30 days after the date such person is found to have committed such violation.

(b) NOTIFICATION OF SUSPENSIONS.—Effective July 1, 1987, each employee who has a driver's license suspended, revoked, or cancelled by a State, who loses the right to operate a commercial motor vehicle in a State for any period, or who is disqualified from operating a commercial motor vehicle for any period shall notify his or her employer of such suspension, revocation, cancellation, lost right, or disqualification, within 30 days after the date of such suspension, revocation, cancellation, lost right, or disqualification.

(c) NOTIFICATION OF PREVIOUS EMPLOYMENT.—

(1) GENERAL RULE.—Effective July 1, 1987, subject to paragraph (2) of this subsection, each person who operates a commercial motor vehicle and applies for employment as an operator of a commercial motor vehicle with an employer shall notify at the time of such application the employer of his or her previous employment as an operator of a commercial motor vehicle.

(2) PERIOD OF PREVIOUS EMPLOYMENT.—The Secretary shall establish by regulation the period for which previous employment must be notified under paragraph (1), except that such period shall not be less than a 10-year

period ending on the date of application for employment.

SEC. 4. EMPLOYER RESPONSIBILITIES.

Effective July 1, 1987, no employer shall knowingly allow, permit, or authorize an employee to operate a commercial motor vehicle in the United States during any period—

(1) in which such employee has a driver's license suspended, revoked, or cancelled by a State, has lost the right to operate a commercial motor vehicle in a State, or has been disqualified from operating a commercial motor vehicle; or

(2) in which such employee has more than 1 driver's license, except during the 10-day period beginning on the date such employee is issued a driver's license and except whenever a State law enacted on or before June 1, 1986, requires such employee to have more than one driver's license.

The second exception in paragraph (2) shall not be effective after December 31, 1989.

SEC. 5. TESTING OF OPERATORS.

(a) Establishment of Minimum Federal Standards.—Not later than January 1, 1989, the Secretary shall issue regulations to establish minimum Federal standards for testing and ensuring the fitness of persons who operate commercial motor vehicles. Such regulations—

(1) shall establish minimum Federal standards for written tests and driving tests of persons who operate such vehicles;

(2) shall require a driving test of each person who operates or will operate a commercial motor vehicle in a vehicle which is representative of the type of vehicle such person operates or will operate;

(3) shall establish minimum Federal testing standards for operation of commercial motor vehicles and, if the Secretary considers appropriate to carry out the objectives of this Act, may establish different minimum testing standards for different classes of commercial motor vehicles;

(4) shall ensure that each person taking such tests has a working knowledge of regulations pertaining to safe operation of a commercial motor vehicle issued by the Secretary and contained in title 49 of the Code of Federal Regulations;

(5) in the case of a person who operates or will operate a commercial motor vehicle carrying a hazardous material, shall ensure—

(A) that such person is qualified to operate a commercial motor vehicle in accordance with all regulations pertaining to motor vehicle transportation of such material issued by the Secretary under the Hazardous Materials Transportation Act; and

(B) that such person has a working knowledge of—

(i) such regulations,

(ii) handling of such material,

(iii) the operation of emergency equipment used in response to emergencies arising out of the transportation of such material, and

(iv) appropriate response procedures to be followed in such emergencies;

(6) shall establish minimum scores for passing such tests;

(7) shall ensure that each person taking such tests is qualified to operate a commercial motor vehicle under the regulations issued by the Secretary and contained in title 49 of the Code of Federal Regulations to the extent such regulations are applicable to such person; and

(8) may require—

(A) issuance of a certification of fitness to operate a commercial motor vehicle to each person who passes such tests; and

(B) such person to have a copy of such certification in his or her possession whenever such person is operating a commercial motor vehicle.

(b) Requirement for Operation of CMV.—

(1) General rule.—Except as provided under paragraph (2), no person may operate a commercial motor vehicle unless such person has taken and passed a written and driving test to operate such vehicle which meets the minimum Federal standards established by the Secretary under subsection (a).

(2) Exception.—The Secretary may issue regulations which provide that a person—

(A) who passes a driving test for operation of a commercial motor vehicle in accordance with the minimum standards established under subsection (a), and

(B) who has a driver's license which is not suspended, revoked, or cancelled,

may operate such a vehicle for a period not to exceed 90 days.

(3) Effective date.—Paragraph (1) shall take effect on such date as the Secretary shall establish by regulation. Such date shall be as soon as practicable after the date of the enactment of this Act but not later than October 1, 1994.

(c) Basic Grant Program.—

(1) Eligibility for fiscal years 1987, 1988, and 1989.—The Secretary may make a grant to a State in any of fiscal years 1987, 1988, and 1989—

(A) if the State enters into an agreement with the Secretary to develop a program for testing and ensuring the fitness of persons who operate commercial motor vehicles; and

(B) if the State has in effect and enforces in such fiscal year a law which provides that any person with a blood alcohol concentration of 0.10 percent or greater when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol.

(2) Eligibility after fiscal year 1989.—The Secretary may make a grant to a State in a fiscal year beginning after September 30, 1989—

(A) if the State enters into an agreement with the Secretary—

(i) to adopt and administer in such fiscal year a program for testing and ensuring the fitness of persons who operate commercial motor vehicles in accordance with all of the minimum Federal standards established by the Secretary under subsection (a); and

(ii) to require that operators of commercial motor vehicles have passed written and driving tests which comply with such minimum standards; and

(B) if the State has in effect and enforces in such fiscal year a law which provides that any person with a blood alcohol concentration of 0.10 percent or greater when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol.

(3) Administration of driving test.—A State—

(A) may administer driving tests referred to in paragraph (2) and section 9(a); or

(B) may enter into an agreement, approved by the Secretary, to administer such tests with a person (including a department, agency or instrumentality of a local government) which meets such minimum standards as the Secretary shall establish by regulation—

(i) if the agreement allows the Secretary and the State each to conduct random examinations, inspections, and audits of such testing without prior notification; and

(ii) if the State conducts at least annually one onsite inspection of such testing.

(4) Minimum amount of grant.—The Secretary shall determine the amount of grants in a fiscal year to be made under this subsection to a State eligible to receive such grants in the fiscal year; except that—

(A) such State shall not be granted less than $100,000 under this subsection in the fiscal year; and

(B) to the extent that any States are granted more than $100,000 per State in the fiscal year under this subsection, the Secretary shall ensure that such States are treated equitably.

(5) Limitation on use of funds.—

(A) In fiscal years 1987, 1988, and 1989.—A State receiving a grant under this subsection in fiscal year 1987, 1988, or 1989 may only use the funds provided under such grant for developing a program for testing and ensuring the fitness of persons who operate commercial motor vehicles.

(B) Thereafter.—A State receiving a grant under this subsection in any fiscal year beginning after September 30, 1989, may only use the funds provided under such grant for testing operators of commercial motor vehicles.

(6) Development of testing program described.—For purposes of this subsection and subsection (d), development of a program for testing and ensuring the fitness of persons who operate commercial motor vehicles includes but is not limited to studies of the number of vehicles which will need to be tested under such program in a calendar year, studies of facilities at which testing of such persons could be conducted, and studies of additional resources (including personnel) which will be necessary to conduct such testing.

(7) Funding.—There shall be available to the Secretary to carry out this subsection $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

(d) Supplemental Grant Program.—

(1) Eligibility and purposes.—The Secretary may make in a fiscal year grants to States eligible to receive grants under subsection (c) in such fiscal year. A grant made under this subsection in fiscal year 1987, 1988, or 1989 shall be used for developing a program for testing and ensuring the fitness of persons who operate commercial motor vehicles. A grant made under this subsection in any fiscal year beginning after September 30, 1989, shall be used for testing operators of commercial motor vehicles.

(2) Distribution.—Funds granted under this subsection in a fiscal year beginning after September 30, 1989, shall be distributed among the States eligible to receive grants under subsection (c) in such fiscal year on the basis of the number of written and driving tests administered, and the number of drivers' licenses for operation of commercial motor vehicles, issued in the preceding fiscal year.

(3) Funding.—There shall be available to the Secretary to carry out this subsection $3,000,000 from funds made available to carry out section 402 of title 23, United States Code, by the National Highway Traffic Safety Administration for each of fiscal years 1987, 1988, 1989, 1990, and 1991.

(e) Limitations on Grant Programs.—

(1) Maintenance of effort.—The Secretary may not make a grant to any State under this section unless such State agrees that the aggregate expenditure of funds of the State and political subdivisions thereof,

exclusive of Federal funds, for testing of operators of commercial motor vehicles will be maintained at a level which does not fall below the average level of such expenditure for its last two fiscal years preceding the date of the enactment of this Act.

(2) Period of availability.—Funds made available to carry out this subsection shall remain available for obligation by the State for the fiscal year for which such funds are made available. Any of such funds not obligated before the last day of such period shall no longer be available for obligation by such State and shall be available to the Secretary for carrying out the purposes of this Act. Funds made available pursuant to this section shall remain available until expended.

(3) Contract authority.—Notwithstanding any other provision of law, approval by the Secretary of a grant to a State under this section shall be deemed to be a contractual obligation of the United States for payment of the amount of the grant.

SEC. 6. CLASSIFIED DRIVER'S LICENSE.

Not later than January 1, 1989, the Secretary, after consultation with the States, shall issue regulations establishing minimum uniform standards for the issuance of classified drivers' licenses by the States and for information to be contained on such licenses. Such standards shall, at a minimum, require that—

(1) each person who is issued a classified driver's license passes a written and driving test for the operation of a commercial motor vehicle which complies with the minimum Federal standards established by the Secretary under section 5(a);

(2) the classified drivers' licenses are, to the maximum extent practicable, tamper proof; and

(3) each classified driver's license contain the following information:

(A) the name and address of the person to whom such license is issued and a physical description of such person;

(B) the social security number or such other number or information as the Secretary determines appropriate to identify such person;

(C) the class or type of commercial motor vehicle or vehicles which such person is authorized to operate under such license;

(D) the name of the State which issued such license; and

(E) the dates between which such license is valid.

SEC. 7. CLASSIFIED DRIVER'S LICENSE INFORMATION SYSTEM.

(a) Deadline.—Not later than January 1, 1989, the Secretary shall either enter into an agreement under subsection (b) for operation of, or establish under subsection (c), an information system which will serve as a clearinghouse and depository of information pertaining to the licensing and identification of operators of commercial motor vehicles and the disqualification of such operators from operating commercial motor vehicles. In carrying out this section, the Secretary consult the States.

(b) Agreement for Use of Non-Federal System.—

(1) Review.—Not later than January 1, 1988, the Secretary shall conduct a review of information systems utilized by 1 or more States pertaining to the driving status of operators of motor vehicles and other State-operated information systems for the purpose of determining whether or not any of such systems could be utilized to carry out this section.

(2) Agreement.—If the Secretary determines that one of the information systems reviewed under paragraph (1) could be utilized to carry out this section and the State or States utilizing such system agree to the use of such system for carrying out this section, the Secretary may enter into an agreement with such State or States for the use of such system in accordance with the provisions of this section and section 9(c).

(3) Terms of agreement.—Any agreement entered into under this subsection shall contain such terms and conditions as the Secretary considers necessary to carry out the objectives of this Act.

(c) Establishment.—If the Secretary does not enter into an agreement under subsection (b), the Secretary shall establish an information system pertaining to the driving status and licensing of operators of commercial motor vehicles in accordance with the provisions of this section.

(d) Minimum Information.—The information system under this section shall, at a minimum, include the following information concerning each operator of a commercial motor vehicle:

(1) Such information as the Secretary considers appropriate to ensure identification of such operator.

(2) The name and address of such operator and a physical description of such operator.

(3) The social security number of such operator or such other number or information as the Secretary determines appropriate to identify such operator.

(4) The name of the State which issued the driver's license to such operator.

(5) The dates between which such license is valid.

(6) Whether or not such operator has or has had a driver's license which authorized such person to operate a commercial motor vehicle suspended, revoked, or cancelled by a State, has lost the right to operate a commercial motor vehicle in a State for any period, or has been disqualified from operating a commercial motor vehicle.

(e) Availability of Information.—

(1) To state.—Upon request of a State, the Secretary or the operator of the information system, as the case may be, may make available to such State information in the information system under this section.

(2) To the employee.—Upon request of an employee, the Secretary or the operator of the information system, as the case may be, may make available to such employee information in the information system relating to such employee.

(3) To employer.—Upon request of an employer or prospective employer of an employee and after notification of such employee, the Secretary or the operator of the information system, as the case may be, may make available to such employer or prospective employer information in the information system relating to such employee.

(4) To the secretary.—Upon the request of the Secretary, the operator of the information system shall make available to the Secretary such information pertaining to the driving status and licensing of operators of commercial motor vehicles (including the information required by subsection (d)) as the Secretary may request.

(f) Collection of Fees.—If the Secretary establishes an information system under this section, the Secretary shall establish a fee system for utilization of the information system. The amount of fees collected pursuant to this subsection in any fiscal year shall as nearly as possible equal the costs of operating the information system in such fiscal year. The Secretary shall deposit fees collected under this subsection in the Highway Trust Fund (other than the Mass Transit Account).

(g) Funding.—There shall be available to the Secretary to carry out this section not to exceed $2,000,000 from funds made available to carry out section 402 of title 23, United States Code, by the National Highway Safety Traffic Administration for each of fiscal years 1987, 1988, and 1989. Such funds shall remain available until expended.

SEC. 8. FEDERAL DISQUALIFICATIONS.

(a) Drunk Driving; Leaving the Scene of an Accident; Felonies.—

(1) First offense.—

(A) General rule.—Except as provided in subparagraph (B) and paragraph (2), the Secretary shall disqualify from operating a commercial motor vehicle for a period of not less than 1 year each person—

(i) who is found to have committed a first violation—

(I) of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance, or

(II) of leaving the scene of an accident involving a commercial motor vehicle operated by such person; or

(ii) who uses a commercial motor vehicle in the commission of a felony (other than a felony described in subsection (b)).

(B) Special rule.—If the vehicle operated or used in connection with the violation or the commission of the felony referred to in subparagraph (A) is transporting a hazardous material required by the Secretary to be placarded under section 105 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804), the Secretary shall disqualify the person for a period of not less than 3 years.

(2) Second offense.—

(A) General rule.—Subject to subparagraph (B), the Secretary shall disqualify from operating a commercial motor vehicle for life each person—

(i) who is found to have committed more than one violation of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance;

(ii) who is found to have committed more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by such person;

(iii) who uses a commercial motor vehicle in the commission of more than one felony arising out of different criminal episodes; or

(iv)(I) who is found to have committed a violation described in clause (i) or (ii), and

(II) who is found to have committed a violation described in the other of such clauses or uses a commercial motor vehicle in the commission of a felony.

(B) Special rule.—The Secretary may issue regulations which establish guidelines (including conditions) under which a disqualification for life under subparagraph (A) may be reduced to a period of not less than 10 years.

(b) Controlled Substance Felonies.—The Secretary shall disqualify from operating a commercial motor vehicle for life each person who uses a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(c) Serious Traffic Violations.—

(1) Second violation.—The Secretary shall disqualify from operating a commer-

cial motor vehicle for a period of not less than 60 days each person who, in a 3-year period, is found to have committed 2 serious traffic violations involving a commercial motor vehicle operated by such person.

(2) THIRD VIOLATION.—The Secretary shall disqualify from operating a commercial motor vehicle for a period of not less than 120 days each person who, in a 3-year period, is found to have committed 3 serious traffic violations involving a commercial motor vehicle operated by such person.

(d) LIMITATION ON APPLICABILITY.—

(1) GENERAL RULE.—Notwithstanding any requirement of subsections (a), (b), and (c) of this section, the Secretary does not have to disqualify from operating a commercial motor vehicle any person who has been disqualified from operating a commercial motor vehicle in accordance with such requirement by the State which issued the driver's license which authorized such person to operate such vehicle.

(2) SATISFACTION OF STATE DISQUALIFICATION.—For purposes of paragraph (1), suspension, revocation, or cancellation of a driver's license which authorizes a person to operate a commercial motor vehicle by a State shall be treated as disqualification of such person from operating such vehicle.

SEC. 9. REQUIREMENTS FOR STATE PARTICIPATION.

(a) IN GENERAL.—In order not to have funds withheld under section 11 from apportionment, each State shall comply with the following requirements:

(1) TESTING PROGRAM.—The State shall adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with all of the minimum Federal standards established by the Secretary under section 5(a).

(2) TEST STANDARDS.—The State shall not issue a classified driver's license to a person unless such person passes a written and driving test for the operation of a commercial motor vehicle which complies with such minimum standards.

(3) DRIVING WHILE UNDER THE INFLUENCE—The State shall have in effect and enforce a law described in section 5(c)(1)(B), relating to blood alcohol concentration level for driving while under the influence.

(4) CDL ISSUANCE AND INFORMATION.—The State shall authorize a person to operate a commercial motor vehicle only by issuance of a classified driver's license which contains the information described in section 6(a)(3).

(5) ADVANCE NOTIFICATION OF LICENSING.—At least 60 days before issuance of a classified driver's license or such shorter period as the Secretary may establish by regulation, the State shall notify the Secretary or the operator of the information system under section 7, as the case may be, of the proposed issuance of such license and such other information as the Secretary may require to ensure identification of the person applying for such license.

(6) INFORMATION REQUEST.—Before issuance of a classified driver's license to a person, the State shall request from any other State which has issued a classified driver's license to such person all information pertaining to the driving record of such person.

(7) NOTIFICATION OF LICENSING.—Within 30 days after issuance of a classified driver's license, the State shall notify the Secretary or the operator of the information system under section 7, as the case may be, of the issuance.

(8) NOTIFICATION OF DISQUALIFICATIONS.—Within 10 days after disqualification of the holder of a classified driver's license from operating a commercial motor vehicle (or after suspension, revocation, or cancellation of such license) for a period of 60 days or more, the State shall notify—

(A) the Secretary or the operator of the information system under section 7, as the case may be, and

(B) the State which issued the license,

of such disqualification, suspension, revocation, or cancellation.

(9) NOTIFICATION OF TRAFFIC VIOLATIONS.—Within 10 days after a person who operates a commercial motor vehicle, who has a driver's license issued by any other State, and who violates a State or local law relating to motor vehicle traffic control (other than a parking violation) in the State, shall notify a State official designated by the State which issued such license of such violation, within 10 days after the date such person is found to have committed such violation.

(10) LIMITATION ON LICENSING.—The State shall not issue a classified driver's license to a person during a period in which such person is disqualified from operating a commercial motor vehicle or the driver's license of such person is suspended, revoked, or cancelled.

(11) RETURN OF OLD LICENSES.—The State shall not issue a classified driver's license to a person who has a classified driver's license issued by any other State unless such person first returns the driver's license issued by such other State.

(12) DOMICILE REQUIREMENT.—The State shall issue classified drivers' licenses only to those persons who operate or will operate commercial motor vehicles and are domiciled in the State; except that the State, in accordance with such regulations as the Secretary shall issue, may issue a classified driver's license to a person who operates or will operate a commercial motor vehicle and who is not domiciled in a State which does issue classified drivers' licenses.

(13) PENALTY APPROVAL.—The State shall impose such penalties as the State determines appropriate and the Secretary approves for operating a commercial motor vehicle while not having a classified driver's license, while having a driver's license suspended, revoked, or cancelled, or while being disqualified from operating a commercial motor vehicle.

(14) RECIPROCITY.—The States shall allow any person—

(A) who has a classified driver's license—

(i) which is issued by any other State in accordance with the minimum Federal standards for the issuance of such licenses, and

(ii) which is not suspended, revoked, or cancelled; and

(B) who is not disqualified from operating a commercial motor vehicle;

to operate a commercial motor vehicle in the State.

(15) FIRST OFFENSES.—The State shall disqualify from operating a commercial motor vehicle for a period of not less than 1 year each person—

(A) who is found to have committed a first violation—

(i) of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance, or

(ii) of leaving the scene of an accident involving a commercial motor vehicle operated by such person; or

(B) who uses a commercial motor vehicle in the commission of a felony (other than a felony described in paragraph (17));

except that if the vehicle being operated or used in connection with such violation or the commission of such felony is transporting a hazardous material required by the Secretary to be placarded under section 105 of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804), the State shall disqualify such person from operating a commercial motor vehicle for a period of not less than 3 years.

(16) SECOND OFFENSES.—

(A) GENERAL RULE.—Subject to subparagraph (B), the State shall disqualify from operating a commercial motor vehicle for life each person—

(i) who is found to have committed more than one violation of driving a commercial motor vehicle while under the influence of alcohol or a controlled substance;

(ii) who is found to have committed more than one violation of leaving the scene of an accident involving a commercial motor vehicle operated by such person;

(iii) who uses a commercial motor vehicle in the commission of more than one felony arising out of different criminal episodes; or

(iv)(I) who is found to have committed a violation described in clause (i) or (ii), and

(II) who is found to have committed a violation described in the other of such clauses or uses a commercial motor vehicle in the commission of a felony.

(B) SPECIAL RULE.—The State, in accordance with such guidelines (including conditions) as the Secretary may establish by regulation, may reduce a disqualification for life in accordance with subparagraph (A) to a period of not less than 10 years.

(17) DRUG OFFENSES.—The State shall disqualify from operating a commercial motor vehicle for life each person who uses a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(18) SECOND SERIOUS TRAFFIC VIOLATION.—The State shall disqualify from operating a commercial motor vehicle for a period of not less than 60 days each person who, in a 3-year period, is found to have committed 2 serious traffic violations involving a commercial motor vehicle operated by such person.

(19) THIRD SERIOUS TRAFFIC VIOLATION.—The State shall disqualify from operating a commercial motor vehicle for a period of not less than 120 days each person who, in a 3-year period, is found to have committed 3 serious traffic violations involving a commercial motor vehicle operated by such person.

(20) NATIONAL DRIVER REGISTER INFORMATION.—Before issuing a classified driver's license to operate a commercial motor vehicle to any person, the State shall request the Secretary for information from the National Driver Register established pursuant to the National Driver Register Act of 1982 (23 U.S.C. 401 note) (after such Register is determined by the Secretary to be operational)—

(A) on whether such person has been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) on whether such person has had a license (other than a license authorizing such person to operate a commercial motor vehicle) suspended, revoked, or cancelled for cause in the 3-year period ending on the date of application for such classified driver's license; and

(C) on whether such person has been convicted of any of the offenses specified in section 205(a)(3) of such Act.

The State shall give full weight and consideration to such information in deciding whether to issue a classified driver's license to such person.

(b) Satisfaction of State Disqualification Requirement.—A State may satisfy the requirements of subsection (a) that the State disqualify a person who operates a commercial motor vehicle if the State suspends, revokes, or cancels the driver's license issued to such person in accordance with the requirements of such subsection.

(c) Notification.—Not later than 30 days after being notified by a State of the proposed issuance of a classified driver's license to any person, the Secretary or the operator of the information system under section 7, as the case may be, shall notify such State of whether or not such person has a classified driver's license issued by any other State or has been disqualified from operating a commercial motor vehicle by any other State or the Secretary.

SEC. 10. GRANT PROGRAM.

(a) Establishment.—The Secretary may make a grant to a State in a fiscal year if the State enters into an agreement with the Secretary to participate in such fiscal year in the classified driver's license program established by this Act and the information system required by this Act and to comply with the requirements of section 9.

(b) Minimum Amount of Grant.—The Secretary shall determine the amount of grants in a fiscal year to be made under this section to a State eligible to receive such grants in the fiscal year; except that—

(1) such State shall not be granted less than $100,000 under this section in the fiscal year; and

(2) to the extent that any States are granted more than $100,000 per State in the fiscal year under this section, the Secretary shall ensure that such States are treated equitably.

(c) Limitation on Use of Funds.—A State receiving a grant under this section may only use the funds provided under such grant for issuing classified driver's licenses and complying with the requirements of section 9.

(d) Contract Authority.—Notwithstanding any other provision of law, approval by the Secretary of a grant to a State under this section shall be deemed to be a contractual obligation of the United States for payment of the amount of the grant.

(e) Period of Availability.—Funds made available to carry out this section shall remain available for obligation by the State for the fiscal year for which such funds are made available. Any of such funds not obligated before the last day of such period shall no longer be available to such State and shall be available to the Secretary for carrying out the purposes of this Act. Funds made available pursuant to this section shall remain available until expended.

(f) Funding.—There shall be available to the Secretary to carry out this section $5,000,000 from funds made available to carry out section 404 of the Surface Transportation Assistance Act of 1982 for each of fiscal years 1989, 1990, and 1991.

SEC. 11. WITHHOLDING OF HIGHWAY FUNDS FOR STATE NONCOMPLIANCE.

(a) First Year.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of title 23, United States Code, on the first day of the fiscal year succeeding the first fiscal year beginning after September 30, 1994, throughout which the State does not substantially comply with any requirement of section 9(a) of this Act.

(b) After the First Year.—The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of such title on the first day of each fiscal year after the second fiscal year beginning after September 30, 1994, throughout which the State does not substantially comply with any requirement of section 9(a) of this Act.

(c) Period of Availability; Effect of Compliance and Noncompliance.—

(1) Funds withheld on or before September 30, 1997.—

(A) Period of availability.—Any funds withheld under this section from apportionment to any State on or before September 30, 1997, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under section 104(b)(5)(B) of such title but for this section, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under section 104(b)(1), 104(b)(2), or 104(b)(6) of such title but for this section, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(B) Funds withheld after September 30, 1997.—No funds withheld under this subsection from apportionment to any State after September 30, 1997, shall be available for apportionment to such State.

(2) Apportionment of withheld funds after compliance.—If, before the last day of the period for which funds withheld under this section from apportionment are to remain available for apportionment to a State under paragraph (1), the State substantially complies with all of the requirements of section 9(a) of this Act for a period of 365 days, the Secretary shall on the day following the last day of such period apportion to such State the withheld funds remaining available for apportionment to such State.

(3) Period of availability of subsequently apportioned funds.—Any funds apportioned pursuant to paragraph (2) shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which such funds are apportioned. Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under section 104(b)(5) of such title, shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of such title.

(4) Effect of noncompliance.—If, at the end of the period for which funds withheld under this section from apportionment are available for apportionment to a State under paragraph (1), the State has not substantially complied with all of the requirements of section 9(a) of this Act for a 365-day period, such funds shall lapse or, in the case of funds withheld from apportionment under section 104(b)(5) of such title, such funds shall lapse and be made available by the Secretary for projects in accordance with section 118(b) of such title.

SEC. 12. PENALTIES.

(a) Notice of Violation.—Paragraph (1) of section 521(b) of title 49, United States Code, is amended by inserting "or section 2, 3, 4, or 5(b) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of 1984" and by striking out "section" the second place it appears and inserting in lieu thereof "sections".

(b) Civil Penalties.—Paragraph (2) of such section is amended, by inserting "(A) In general.—" before "Except as", by inserting "(other than subparagraph (B))" before ", except for recordkeeping violations", and by striking out the last two sentences and inserting in lieu thereof the following:

"(B) Violations pertaining to CDLs.—Any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of section 2, 3, 4, or 5(b) of the Commercial Motor Vehicle Safety Act of 1986 shall be liable to the United States for a civil penalty not to exceed $2,500 for each offense.

"(C) Determination of amount.—The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.".

(c) Posting of Notice.—Paragraph (3) of such section is amended by inserting "or section 2, 3, 4, or 5(b) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of 1984".

(d) Out of Service Orders.—Paragraph (5)(A) of such section is amended by inserting "or section 2, 3, 4, or 5(b) of the Commercial Motor Vehicle Safety Act of 1986" after "the Motor Carrier Safety Act of 1984" and by striking out "section" the second place it appears and inserting in lieu thereof "sections".

(e) Criminal Penalties.—Paragraph (6) of such section is amended by inserting "(A) In general.—" before "Any person" and by adding at the end thereof the following:

"(B) Violations pertaining to CDLs.—Any person who knowingly and willfully violates—

"(i) any provision of section 2, 3(b), 3(c), 4, or 5(b) of the Commercial Motor Vehicle Safety Act of 1986 or a regulation issued under such section, or

"(ii) with respect to notification of a serious traffic violation as defined under section 19 of such Act, any provision of section 3(a) of such Act or a regulation issued under such section 3(a),

shall, upon conviction, be subject for each offense to a fine not to exceed $5,000 or imprisonment for a term not to exceed 90 days, or both.".

(f) Conforming Amendments.—(1) Paragraph (2) of such section is amended by inserting "Civil Penalty.—" after "(2)", by indenting subparagraph (A), as designated by subsection (b) of this section, and aligning such subparagraph with subparagraph (B), as added by such subsection (b).

(2) Paragraph (6) of such section is amended by inserting "Criminal Penalties.—" after "(6)" and by indenting subparagraph (A), as designated by subsection

(e) of this section, and aligning such subparagraph with subparagraph (B), as added by such subsection (e).

(g) Technical Amendments.—(1) Paragraph (6) of such section is further amended by striking out "for a fine" and inserting in lieu thereof "to a fine".

(2) Paragraph (13) of such section is amended by striking out "section 4" and inserting in lieu thereof "section 204".

SEC. 13. WAIVER AUTHORITY.

Notwithstanding any other provision of this Act, after notice and an opportunity for comment, the Secretary may waive, in whole or in part, application of any provision of this Act or any regulation issued under this Act with respect to class of persons or class of commercial motor vehicles if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles. Any waiver under this section shall be published in the Federal Register, together with reasons for such waiver.

SEC. 14. REVIEW OF COMMERCIAL MOTOR VEHICLE ALCOHOL REGULATIONS.

Not later than January 1, 1989, the Secretary shall complete a review of the regulations the Secretary issued pertaining to the use of alcohol by operators of commercial motor vehicles under the Motor Carrier Safety Act of 1984. The purpose of such review shall be to determine—

(1) whether or not such regulations should be applied uniformly throughout the United States, and

(2) whether or not such regulations should establish uniformly throughout the United States a blood alcohol concentration percentage above which an operator of a commercial motor vehicle should be prohibited from operating such vehicle.

SEC. 15. TRUCK BRAKE REGULATIONS.

Not later than the 90th day after the date of the enactment of this Act, the Secretary shall revise the regulations of the Administrator of the Federal Highway Administration contained in section 393.42 of title 49 of the Code of Federal Regulations to require trucks and truck tractors manufactured after July 24, 1980, to have brakes operating on all wheels. The Secretary may provide for a delayed effective date (not exceeding 1 year) for trucks and truck tractors manufactured after July 24, 1980, and before such date of enactment.

SEC. 16. RADAR DEMONSTRATION PROJECT.

(a) Project Description.—Notwithstanding any other provision of law, the Secretary, in cooperation with State and local law enforcement officials, shall conduct a demonstration project to assess the benefits of continuous use of unmanned radar equipment on highway safety on a section of highway with a high rate of motor vehicle accidents. Such project shall be conducted in northern Kentucky on a hilly section of Interstate Route I-75 between Fort Mitchell and the Brent Spence Bridge over the Ohio River during the 24-month period beginning on the date of the enactment of this Act.

(b) Reports.—

(1) Interim report.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall transmit to Congress an interim report on the results of the demonstration project conducted under subsection (a), together with any recommendations on whether or not to extend the duration of such demonstration project and whether or not to expand the scope of such project.

(2) Final report.—Not later than 60 days after completion of the demonstration project conducted under subsection (a), the Secretary shall transmit to Congress a final report on the results of such project, together with any such recommendations.

SEC. 17. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this Act shall be construed to diminish, limit, or otherwise affect the authority of the Secretary to regulate commercial motor vehicle safety involving motor vehicles with a gross vehicle weight rating of less than 26,000 pounds or such lesser gross vehicle weight rating as determined appropriate by the Secretary under section 19(5)(A) of this Act.

SEC. 18. REGULATIONS.

(a) Authority To Issue.—The Secretary may issue such regulations as may be necessary to carry out this Act.

(b) Compliance With Title 5.—All regulations under this Act shall be issued in accordance with section 553 of title 5, United States Code (without regard to sections 556 and 557 of such title).

SEC. 19. DEFINITIONS.

For purposes of this Act—

(1) Alcohol.—The term "alcohol" has the meaning the term alcoholic beverage has under section 158(c) of title 23, United States Code.

(2) Driver's license.—The term "driver's license" means a license issued by a State to an individual which authorizes the individual to operate a motor vehicle on highways.

(3) Classified driver's license.—The term "classified driver's license" means a license issued by a State to an individual which authorizes the individual to operate a class of commercial motor vehicle.

(4) Motor vehicle.—The term "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used and on highways, except that such term does not include a vehicle, machine, tractor, trailer, semitrailer operated exclusively on a rail.

(5) Commercial motor vehicle.—The term "commercial motor vehicle" means a motor vehicle used in interstate or intrastate commerce to transport passengers or property—

(A) if the vehicle has a gross vehicle weight rating of 26,000 or more pounds or such a lesser gross vehicle weight rating as the Secretary determines appropriate by regulation but not less than a gross vehicle weight rating of 10,000 pounds;

(B) if the vehicle is designed to transport more than 15 passengers, including the driver; or

(C) if such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act.

A motor vehicle which is used in the transportation of hazardous materials and which has a gross vehicle weight rating of less than 26,000 pounds (or such gross vehicle weight rating as determined appropriate by the Secretary under subparagraph (A)) shall not be included as a commercial motor vehicle pursuant to subparagraph (C) if such hazardous material is listed as hazardous pursuant to section 306(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9656(a)) and is not otherwise regulated by the Department of Transportation or if such hazardous material is a consumer commodity or limited quantity hazardous material as defined under section 171.8 of title 49 of the Code of Federal Regulations. The Secretary may waive the application of the preceding sentence to any motor vehicle or class of motor vehicles if the Secretary determines that such waiver is in the interest of safety.

(6) Controlled substance.—The term "controlled substance" has the meaning such term has under section 102 of the Controlled Substances Act (21 U.S.C. 802).

(7) Employee.—The term "employee" means an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) who is employed by an employer.

(8) Employer.—The term "employer" means any person (including the United States, a State, or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns employees to operate such a vehicle.

(9) Felony.—The term "felony" means an offense under State or Federal law that is punishable by death or imprisonment for a term exceeding 1 year.

(10) Hazardous material.—The term "hazardous material" has the meaning such term has under section 103 of the Hazardous Materials Transportation Act.

(11) Serious traffic violation.—The term "serious traffic violation" means—

(A) excessive speeding, as defined by the Secretary by regulation;

(B) reckless driving, as defined under State or local law;

(C) a violation of a State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal traffic accident; and

(D) any other similar violation of a State or local law relating to motor vehicle traffic control (other than a parking violation) which the Secretary determines by regulation is serious.

(12) Secretary.—The term "Secretary" means the Secretary of Transportation.

(13) State.—The term "State" means a State of the United States and the District of Columbia.

(14) United states.—The term "United States" means the 50 States and the District of Columbia.

The SPEAKER pro tempore. Is a second demanded?

Mr. SHUSTER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. Anderson] will be recognized for 20 minutes, and the gentleman from Pennsylvania [Mr. Shuster] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Anderson].

Mr. ANDERSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5568 as amended, is a critically needed piece of legislation that, without costing an additional nickel may, over time, save literally thousands of lives. This bill, the Commercial Motor Vehicle Safety Act of 1986, will make the Nation's highways safer by making certain that problem commercial drivers, truck and bus drivers, are kept off the roads.

There are, in this country, about 2½ million truck drivers. Most of these are honest, conscientious, hard-working people. But, as in any field, there are among them dishonest, unscrupulous, or simply unsafe individuals. H.R. 5568 will try and get these drivers off the road.

A study by the National Transportation Safety Board of 44 recent accidents, involving tractor-trailers revealed that the drivers had between them 98 previous suspensions, were involved in 104 earlier accidents, and had 456 traffic convictions.

H.R. 5568 addresses this problem by requiring that States disqualify for 60 days drivers who commit two serious violations in a 3-year period, and for not less than 120 days those who commit three serious violations in 3 years. For a first conviction of driving while under the influence of alcohol or illegal drugs, or leaving the scene of an accident, a driver will be suspended for a year, with a life-time suspension for a subsequent conviction except that the Secretary may reduce that suspension to 10 years, at her discretion.

Of course right now, a State may never know of violations accrued by drivers it has registered. Drivers may be licensed in 10 different States, get 10 violations and spread those violations among his various licenses, so that no single State ever knows it has a problem driver on its hands. To address this, H.R. 5568 establishes the requirement for a classified driver's license. Such license will be issued by the States after consultation with a clearinghouse information system to be operated either by the Secretary or contracted out at her direction. This system will control the multiple licensing problem and with notification requirements contained therein will assure that a State knows of all suspensions or serious violations of any drivers it has licensed. Funds for operating the system will come from user fees generated when the clearinghouse is queried for information. States may also opt for their costs to come from user fees.

When this system is in effect, tragedies such as the bus accident that occurred earlier this year near Walker, CA, might be prevented. The driver of that bus had received four violations in the 16 months leading up to the accident, and because of his record there existed outstanding warrants for his arrest in the States of Nevada and Washington. In applying for employment, the driver lied and said his license had never been suspended or revoked. Under this bill, the truth of this driver's record would have been known, he would have been recognized as a problem driver, and so he would not have had a license, and so would not have been behind the wheel to lose control of his bus on May 30 at the speed of 66 miles an hour. Twenty-one senior citizens from Los Angeles, killed in that accident, would be alive today.

Finally, Mr. Speaker, this legislation will screen out not only drivers with a history of problems, but will make sure that new drivers are competent. As incredible as it may sound, in 19 States a driver may now be licensed to drive an 18-wheeler after taking a road test in his compact car. And of course once he is licensed, he may drive his truck in any State of this country, jeopardizing the lives of any of our constituents. H.R. 5568 will require that a driver be road-tested in equipment representative of that in which he is being licensed.

Mr. Speaker, H.R. 5568 as amended, is a sound bill. It is supported, incidentally, by both the American Trucking Association and the Teamsters. That support indicates their genuine concern for safe highways and safe highway drivers. I know that our colleagues feel the same, and so I urge their support of this important legislation.

Mr. SHUSTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to stand here today in support of H.R. 5568, the Commercial Motor Vehicle Safety Act of 1986.

The Committee on Public Works and Transportation took a giant step toward making our Nation's highways a safer place to operate a motor vehicle when on September 24, we passed out this important legislation for the full House's review.

This measure will provide for a uniform minimum standard for testing and licensing operators of commercial motor vehicles. It is consistent with the committee's initiatives in motor carrier safety by establishing uniformity in States testing and licensing programs. A major aspect of this legislation is prohibiting the operator of a commercial motor vehicle from holding more than one drivers license at any given time, thus providing for the full implementation of the "one license, one record concept" which is endorsed by driver licensing authorities.

The bill recognizes that driver licensing has traditionally been a State responsibility; therefore, it establishes an incentive grant program to encourage the States to participate. However, if States do not comply by 1994, highway funds will be withheld.

To assure adequate enforcement of the provisions in this legislation, civil and criminal penalties are specified for failure to meet the requirements. The bill also establishes a series of violations for which a driver will be disqualified from operating a commercial motor vehicle for a specified period of time.

With the increasing number of accidents caused by drivers with duplicate licenses and records, the time is now, to begin the process where our highways will be safe to drive. I strongly support the objectives of this legislation, and I urge my colleagues to act expeditiously and pass this measure.

Mr. Speaker, I yield 1 minute to my distinguished friend, the gentleman from Arkansas [Mr. HAMMERSCHMIDT].

Mr. HAMMERSCHMIDT. Mr. Speaker, I rise in support of H.R. 5568, the Commercial Motor Vehicle Safety Act of 1986. This is safety legislation at its best and I wholeheartedly support it. I was made aware of the safety concerns relating to "special activity" buses by an article published in the October 20, 1985, Arkansas Democrat entitled "Blind Faith: America's Aging Buses." The authors of this excellent piece of investigative journalism, Mike Masterson and Max Parker, graphically detail case after case of the safety concerns involving these type buses. After reading this article, it did not surprise me to hear at the truck and bus safety hearings the next year that some trucks and buses have serious safety deficiencies which the States are almost powerless to correct. Because of the Motor Carrier Safety Act of 1984 the States are beginning to find and put out of service unsafe equipment. But in March 1986 at hearings discussing the impact of that legislation, we heard that the unqualified and problem driver remained beyond the reach of the States. The committee was advised that an estimated 80 to 90 percent of all accidents involving commercial motor vehicles were due to driver error. Further, the States were unable to identify, let alone control, these drivers because of their practice of holding multiple licenses. When asked why more States do not require testing of commercial drivers, it was pointed out that unless all States tested their drivers in a standardized manner, the unqualified interstate driver could elect to be licensed in a nontesting State.

This legislation corrects those problems. First, the legislation will eliminate the unqualified driver by requiring a set of uniform testing criteria. This will not only allow the States to test their drivers, but will allow the States once the commercial motor vehicle drivers license is in place, to protect its citizenry by prohibiting untested operators from driving within its boundaries.

As for the problem driver, this legislation establishes a clearinghouse that will keep track of commercial motor vehicle operators. By having a universal information system, drivers will find it increasingly difficult to have multiple licenses. Also, the States will be able to query the system and discover the status of a drivers license and thereby identify problem drivers.

I believe this legislation is landmark legislation and I wish to thank Mr. Mike Masterson and his assistant, Ms. Max Parker for their outstanding work and for bringing this matter to my attention.

Mr. ANDERSON. Mr. Speaker, I yield such time as he may consume to the gentleman from New Jersey (Mr. HOWARD).

Mr. HOWARD. Mr. Speaker, I rise in support of H.R. 5568, the Commercial Motor Vehicle Safety Act of 1986. This bill represents another effort by the Committee on Public Works and Transportation to improve truck and bus safety on our Nation's highways.

The bill addresses the problems created by truck and bus drivers holding more than one driver's license by making it illegal for those operators to hold more than one license. In addition, it provides for establishment of a uniform classified driver's license and a clearinghouse for enforcing the one-license concept and for ridding the highways of unsafe truck and bus drivers.

Another aspect of the bill is aimed at improving the testing of truck and bus drivers. In order to achieve that goal, the bill creates a mechanism for a joint effort to administer the testing by both the Federal Government and the States.

The bill provides for the new program to be in effect by 1994. This leadtime is necessary for the States and Federal enforcement officials to get the testing and uniform licensing requirements in place. Until that time, the States and Federal Government should pursue current enforcement strategies in order to achieve the goals of this bill.

The method for assuring compliance with the new safety requirements is highway sanctions. These sanctions are not applied until fiscal year 1996. Quite frankly, the decision not to impose sanctions before that time was not easily reached, but the committee believes that these timeframes are required to assure that the system will be implemented effectively and completely.

The sanctions are set forth in section 11, and they provide some discretion to the Secretary in enforcing the sanctions. Because there are some time limits set forth in the bill which must be complied with by the States and which may not be met in every instance, the Secretary is given narrow discretion not to impose sanctions for noncompliance by the States where the noncompliance is not serious.

H.R. 5568 also imposes new and longer driver disqualification requirements. The purpose of this is to get the bad drivers off the road.

Finally, I would like to point out that many, many truck and bus drivers are extremely well-qualified and are responsible in every way. This bill is aimed at those drivers who are neither of these; and who continue to escape the enforcement efforts of the Federal and State safety officials.

The program instituted by this bill is meant to help those safety officials enforce driver safety. I realize that carrying out these programs may be difficult, but I would like to point out that no one disagrees with the goals of the bill and that I intend to monitor this new program very closely and to make any changes in it that are necessary to reach the goals the bill envisions.

In that context, I will continue to work with Federal and State officials to make any modifications that are required to improve safety.

Finally, I would also like to note that the committee is interested in the apparent safety benefits of truck reflectivity and looks forward to the National Highway Traffic Safety Administration's report describing its research and recommendations in this area.

Mr. Speaker, I ask my colleagues to join with me in supporting H.R. 5568, so that it may be enacted this year.

Mr. ANDERSON. Mr. Speaker, I yield 2 minutes to the gentleman from Minnesota [Mr. OBERSTAR].

Mr. OBERSTAR. Mr. Speaker, I thank the chairman of the subcommittee for yielding this time.

Mr. Speaker, I rise in support of H.R. 5568, the Commercial Motor Vehicle Safety Act of 1986, and urge my colleagues to give it their wholehearted approval. As author of the National Driver Register Act of 1982, and one who has devoted many years to protecting human lives on our highways and in the air, I commend all those who worked on the bill, to bring it to the House floor today. A single classified driver's license will be an important adjunct to our overall highway safety program, and is a logical follow-on to the NDR.

I am pleased that H.R. 5568 contains my provision, adopted in the full Public Works and Transportation Committee, requiring States, when they consider applications for classified driver's licenses, to consult the National Driver Register as well as the information system under this bill. The NDR now provides a means for States to determine, before they approve drivers license applications, whether a driver has committed certain offenses while holding one or more licenses from other States. The purpose is to prevent drivers who had had their licenses revoked or suspended by one State from simply going to a neighboring State and getting another license. Under the National Driver Register Act of 1982 that system is now being computerized and should be fully operational by the end of this decade. I believe that this information, as well as that in the system under this bill, should be available to the states as they review applications for classified drivers licenses.

Under this bill, the States would be required to consult the NDR prior to issuing a classified driver's license, and to give full weight and consideration to the information it provides.

At the same time, I do have concerns with specific provisions of the bill, which I raised during committee deliberations and in the report accompanying the bill, and which I would like to restate here.

I am concerned about inadequate protections for the employees affected by this bill: the truck and bus drivers. As applicants and holders of the classified driver's licenses, they are the subject of this bill. They are solely responsible for the safety and conduct of their rigs on the road, but are not necessarily in full control of all the conditions under which they drive. I believe that requirements on employers and shippers should be further spelled out, to assure that employers are held responsible for their acts, for instance, for setting impossible schedules for drivers to meet. Equally, shippers should come under scrutiny when they drive rates so low as to jeopardize safety standards.

The bill spells out, and mandates, specific license suspension periods for certain offenses, including permanent loss of the license. I fully agree that drunk or drugged driving, leaving the scene of an accident, or using the vehicle in commission of a felony, are grave offenses, and should be punished to the full extent of the law. However, I believe that the final form of the National Driver License Program should give some consideration to responsible procedures for drivers to rehabilitate themselves over a period of time, and once they have repaid their debt to society under other laws, rather than losing permanently what may be their only means of earning a living.

Further, while penalties are very clear, "serious traffic violations" are left for the Secretary of Transportation to define. It would seem fair, for instance, to distinguish between a driver caught going 56 miles per hour in a speedtrap zone, and one clocked at 80 or 90 miles per hour. I would hope that the Secretary would carefully draw the line, covering the degree of offense as well as the category, and limit violations to those which are clearly serious, and commensurate with the magnitude of the penalties.

This bill also overrides certain terms of existing collective-bargaining agreements, hard won over years of collective bargaining. I question whether this is appropriate in Federal legislation.

I intend to vote for this bill, and enthusiastically support the establishment of a classified driver's license system. I raise these concerns, however, with the objective of addressing them where possible before the bill becomes law, and in the subsequent rulemaking process, should it be enacted, as I hope it will.

Mr. WIRTH. Mr. Speaker, I rise in support of H.R. 5568, the Commercial Motor Vehicle Safety Act of 1986. This legislation requires increased testing and qualifications for drivers of commercial motor vehicles, including those that carry hazardous materials, and requires that brakes on large trucks are connected and working. I introduced legislation earlier this year with similar provisions, and I am very pleased that the Public Works Committee reported, and now the House of Representatives is considering this bill.

I began to examine our hazardous materials transportation safety laws after a truckload of Navy torpedoes overturned on the busiest, most accident-prone intersection in the State of Colorado in August 1984. The city of Denver was tied up for nearly an entire day and many citizens feared for their health and welfare—because it was many hours before anyone knew whether or not the torpedoes would explode. Although Denver is a sophisticated city with comparatively well-trained emergency response capabilities, it could not get reliable information about the cargo, or the initial actions to be taken. What ensued was bureaucratic gridlock that, with a more volatile cargo, could have been a disaster.

The National Transportation Safety Board [NTSB] concluded that driver inexperience was the cause of this accident, and pinpointed the problem as "the failure of the Department of Defense and the Bureau of Motor Carrier Safety to establish adequate driver qualification and experience standards for drivers transporting hazardous materials." Unbelievably, NTSB also concluded that the driver's training had met minimum Federal standards.

Most experts agree that human error is a major cause of hazardous materials incidents. The Congressional Research Service, in a report to my subcommittee estimates that 64 percent of hazardous material accidents are due to human error; a recent Department of Transportation study reports that professional driver failures are the prime cause in 94.5 percent of all preventable accidents.

Yet, current Federal requirements for drivers of trucks carrying hazardous materials would be laughable if this were not so serious a problem. Driving a truck with hazardous cargo is a skilled occupation and has serious ramifications for public health and safety. But the only qualifications a driver must have are to be 21 years of age, speak English sufficiently to understand traffic signs, have a valid license in effect, and take—but not necessarily pass—a 66-question open book test with just a couple of questions on hazardous materials.

H.R. 5568 corrects these deficiencies by requiring minimum Federal standards for written tests and driving tests for all drivers of heavy trucks and increased qualifications for drivers of hazardous cargo. At a minimum, hazardous materials drivers are required to have knowledge of applicable safety regulations, how to handle such materials, and to know emergency response procedures. These individuals also have to pass written tests, and procedures are established to ensure that drivers have only one driver's license. These provisions for hazardous materials drivers were part of my bill, and I am pleased that the Public Works Committee has included them in this legislation.

H.R. 5568 also includes a provision that abolishes a regulation allowing front brakes on trucks to be disconnected. While the National Highway Traffic Safety Administration [NHTSA] requires all trucks sold to be equipped with front brakes, the Bureau of Motor Carrier Safety [BMCS] allows them to be disconnected. In the past, truckdrivers have believed that the most desirable braking situation is with no front brakes so that the vehicle can be better steered. However, the development of new technologies makes that concern no longer valid.

Vehicle handling tests conducted by NHTSA further demonstrate that this view has no foundation. Tests conducted in 1975 by NHTSA concluded that removal of front brakes increases stopping distances by 20 to 35 percent. More recent data indicates that with front brakes disconnected, stopping distances of loaded vehicles increased from 33 to 73 percent. Thus, the need to have front brakes is evident.

While I am pleased that the Public Works bill's provision nullifies the current regulation allowing disconnection, the language does not go far enough in requiring all brakes—not just those on trucks built after 1980—to be connected. Fifty percent of the trucks on the road today were manufactured prior to 1980, and if they have front brakes, I believe they must be connected. The American Trucking Association has testified that they agree with this position, and I hope that the provision can be strengthened to ensure that all trucks that have front brakes have them connected and working.

Mr. Speaker, this bill is a good first step toward increasing truck safety. Over 1.5 billion tons of hazardous materials are transported each year in this country; 250,000 shipments are transported each day. The Department of Transportation estimates that there will be double that amount—500,000 shipments per day—by the end of the decade. Beefing up driver qualifications and requiring working brakes on trucks will certainly improve safety.

In July of this year, the Subcommittee on Telecommunications, Consumer Protection and Finance held a joint hearing with the Subcommittee on Commerce, Transportation and Tourism and the Government Operations' Subcommittee on Government Activities and Transportation on H.R. 4612. To its credit, the trucking industry, led by the American Trucking Association, and others testified that they supported increased testing, experience, and training for truck drivers. The Department of Transportation also testified that increased qualifications for drivers are necessary, but legislation was not needed in this area. However, in the Department's case, 15 years of rulemaking still has not yielded driver qualifications stringent enough to protect the public. Absent legislation requiring increased qualifications, I fear that DOT will not act to substantially strengthen our safety laws.

That is why we need this bill and I urge that my colleagues adopt it. It is a good start at increasing safety.

However, more can be done for safety, and a comprehensive approach, which includes the other provisions in H.R. 4612, should be enacted as soon as possible. This legislation provides a focal point in DOT for truck safety and hazardous materials transportation. Coordination at DOT on these issues is sorely lacking. The bill also provides a process and technical help to States and localities for designating safe routes and safe havens; provides matching grants to police and firefighters to help train them to respond to accidents; and requires DOT to register hazardous materials shippers and transporters—a commonsense provision designed to help DOT know who and what they are regulating. These provisions are pending in Mr. FLORIO's Subcommittee on Commerce, Transportation, and Tourism and in the Public Works Committee, and I urge my colleages to support their immediate enactment.

Mr. SHUSTER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. ANDERSON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. ANDERSON] that the House suspend the rules and pass the bill, H.R. 5568, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ANDERSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

SURFACE FREIGHT FORWARDER DEREGULATION ACT OF 1985

Mr. ANDERSON. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1124) to amend title 49, United States Code, to reduce regulation of surface freight forwarders, and for other purposes, as amended.

The Clerk read as follows:

S. 1124

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Surface Freight Forwarder Deregulation Act of 1986".

SEC. 2. PURPOSE.

This Act is part of the continuing effort by Congress to reduce burdensome and unnecessary government regulations and to ensure the competitiveness and efficacy of transportation services of surface freight forwarders in the United States.

SEC. 3. FINDINGS.

The Congress finds that—

(1) a safe, sound, and competitive surface freight forwarder industry is important to the national transportation system;

(2) the statutes governing Federal regulation of the freight forwarder industry are outdated and must be revised to reflect present and future transportation needs and realities;

(3) protective regulation has resulted in anticompetitive pricing and has restricted the range of price and service options available to shippers;

(4) in order to reduce the uncertainty experienced by the Nation's transportation industries, the Interstate Commerce Commission's remaining responsibilities for the regulation of surface freight forwarders should be eliminated in accordance with this Act; and

(5) legislative and resulting changes should be implemented with the least amount of disruption consistent with achieving the reforms enacted.

SEC. 4. DEFINITIONS.

Section 10102 of title 49, United States Code, is amended as follows:

(1) COMMON CARRIER.—In paragraph (4), insert "household goods" before "freight forwarder".

(2) FREIGHT FORWARDER.—In paragraph (9), after and below subparagraph (C), insert the following new sentence: "Such term does not include a person using transportation of an air carrier subject to the Federal Aviation Act of 1958.".

(3) HOUSEHOLD GOODS FREIGHT FORWARDER.—Redesignate paragraphs (12) through (30), and any references thereto, as paragraphs (13) through (31), respectively, and insert after paragraph (11) the following new paragraph:

"(12) 'household goods freight forwarder' means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.".

SEC. 5. INTERSTATE COMMERCE COMMISSION ADMINISTRATION.

(a) NOTICE OF REMOVAL OF OPERATING RESTRICTIONS.—Section 10328(b)(2) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(b) SERVICE OF NOTICE IN COMMISSION PROCEEDINGS.—Section 10329 of title 49, United States Code, is amended—

(1) in subsection (a)(2) by inserting "household goods" before "freight forwarder";

(2) in subsection (c)(3) by inserting "household goods" before "freight forwarder" each place it appears; and

(3) in subsection (d) by inserting "household goods" before "freight forwarder".

SEC. 6. JURISDICTION.

(a) LIMITATION ON JURISDICTION OVER PROCUREMENT OF MOTOR VEHICLE TRANSPORTATION.—Section 10521(a) of title 49, United States Code, is amended by inserting after "transportation" the second place it appears ", except by a freight forwarder (other than a household goods freight forwarder),".

(b) EXEMPT MOTOR VEHICLE TRANSPORTATION.—Section 10523 of title 49, United States Code, is amended—

(1) in subsection (a)(1)(B)(iii) by inserting "household goods" before "freight forwarder";

(2) in subsection (a)(1)(C) by inserting "household goods" before "freight forwarder";

(3) in subsection (a)(2) by inserting "household goods" before "freight forwarder";

(4) in subsection (b)(1)(B)(iv) by inserting "household goods" before "freight forwarder"; and

(5) in subsection (b)(2) by inserting "household goods" before "freight forwarder" each place it appears.

(c) LIMITATION ON GENERAL JURISDICTION OVER FREIGHT FORWARDERS.—Section 10561 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(d) EXEMPT FREIGHT FORWARDER SERVICE.—(1) Section 10562 of title 49, United States Code, is repealed.

(2) The section analysis of chapter 105 of title 49, United States Code, is amended by striking "10562. Exempt freight forwarder service." and inserting in lieu thereof "10562. Repealed.".

SEC. 7. RATES, TARIFFS, AND VALUATIONS.

(a) AUTHORITY TO ENTER INTO CONTRACTS WITH CERTAIN CARRIERS.—Section 10703(a)(4)(E) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(b) AUTHORITY OF COMMISSION.—Section 10704 of title 49, United States Code, is amended—

(1) in subsection (b)(1)(C) by inserting "household goods" before forwarder";

(2) in subsection (b)(3) by inserting "household goods" before "freight forwarder"; and

(3) in subsection (b)(4) by inserting "household goods" before "freight forwarder" and "freight forwarding, respectively".

(c) RATE AGREEMENTS; ANTI-TRUST LAWS.—Section 10706 of title 49, United States Code, is amended—

(1) in subsection (a)(2)(A) by striking "(c)(1)(B)-(E)" and inserting in lieu thereof "(d)(1)(B)-(E)"; and

(2) in subsection (d)(1)(E) by striking "Freight" and inserting in lieu thereof "Household goods freight".

(d) INVESTIGATION AND SUSPENSION OF RATES.—Section 10708 of title 49, United States Code, is amended—

(1) in subsection (d)(1) by inserting "household goods" before "freight forwarder"; and

(2) in subsection (d)(2) by inserting "household goods" before "freight forwarders" each place if appears.

(e) SPECIAL PASSENGER RATES.—Section 10722(d)(2) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(f) SPECIAL RATES.—Section 10725 of title 49, United States Code, is amended—

(1) in subsection (b) by inserting "household goods" before "freight forwarders"; and

(2) in subsection (c) by inserting "household goods" before "freight forwarder".

(g) RATES AND LIABILITY BASED ON VALUE.—Section 10730 of title 49, United States Code, is amended—

(1) in the last sentence of subsection (a) by inserting "by a household goods freight forwarder" after "Commission" the first place it appears; and

(2) in subsection (b)—

(A) by inserting "or a freight forwarder" after "title" the first place it appears,

(B) by inserting ", with respect to a motor carrier," after "including", and

(C) by inserting "or freight forwarder" after "carrier" the last 5 places it appears.

(h) PROHIBITION AGAINST DISCRIMINATION.—Section 10741(c) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(i) PAYMENT OF RATES.—Section 10743(b)(2) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(j) LIMITATION ON USE OF COMMON CARRIERS.—(1) Section 10749(b) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(2) The heading of section 10749 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(3) The item relating to section 10749 in the section analysis of chapter 107 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(k) GENERAL TARIFF REQUIREMENTS.—Section 10762(a)(2) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(l) TRAFFIC AGREEMENTS.—

(1) HOUSEHOLD GOODS FREIGHT FORWARDERS.—Section 10766 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(2) CONTINUING AUTHORITY OF DEREGULATED FREIGHT FORWARDERS TO CONTRACT.—Section 10766 of title 49, United States Code, is further amended by redesignating subsection (c), and any reference thereto, as subsection (d) and by inserting after subsection (b) the following new subsection:

"(c) AUTHORITY OF FREIGHT FORWARDERS TO ENTER INTO CONTRACTS.—A freight forwarder (other than a household goods freight forwarder) providing service which, on the day before the date of the enactment of the Surface Freight Forwarder Deregulation Act of 1986, would have been service subject to the jurisdiction of the Commission under subchapter IV of chapter 105 of this title may contract with—

"(1) a rail carrier,

"(2) a water common carrier providing transportation subject to the Shipping Act, 1916 (46 U.S.C. App. 801-842) or the Intercoastal Shipping Act, 1933 (46 U.S.C. App. 843-848),

"(3) a motor common carrier providing transportation subject to the jurisdiction of the Commission under subchapter II of such chapter,

"(4) a motor contract carrier of property providing transportation subject to the jurisdiction of the Commission under such subchapter II, and

"(5) a shipper.".

SEC. 8. LICENSING.

(a) PERMITS.—(1) Section 10923 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(2) The heading of section 10923 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(3) The item relating to section 10923 in the section analysis of chapter 109 of title

49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(b) Effective Period of Permits.—Section 10925 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(c) Transfers of Permits.—Section 10926 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(d) Security.—(1) Section 10927(c)(1) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(2) Section 10927(c)(2) of title 49, United States Code, is amended—

(A) by inserting "household goods" before "freight forwarder" the first place it appears,

(B) by inserting "or a freight forwarder" after "permit", and

(C) by striking "under this subtitle".

(e) Limitations on Permits.—Section 10930(b) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(f) Authorizing Abandonment of Service.—(1) Section 10933 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(2) The heading of section 10933 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(3) The item relating to section 10933 in the section analysis of chapter 109 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

SEC. 9. OPERATIONS OF CARRIERS.

(a) Providing Transportation and Service.—Section 11101(b) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(b) Service.—(1) Section 11127 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" and "freight forwarders" each place they appear.

(2) The heading of section 11127 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(3) The item relating to section 11127 in the section analysis of chapter 111 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(c) Reports and Records.—Section 11141(1) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

SEC. 10. FINANCE.

(a) Limitation on Ownership of Other Carriers.—Section 11323 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(b) Conforming Amendments.—(1) The heading of section 11323 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

(2) The item relating to section 11323 in the section analysis of chapter 113 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarders".

SEC. 11. FEDERAL-STATE RELATIONS.

(a) ICC Authority Over Interstate Transportation.—Section 11501 of title 49, United States Code, is amended—

(1) in subsection (a) by striking "carrier" and inserting in lieu thereof "household goods freight forwarder"; and

(2) by adding at the end thereof the following new subsection:

"(g) Preemption of State Regulation of Freight Forwarders.—

"(1) General rule.—Subject to paragraph (2) of this subsection, no State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to interstate rates, interstate routes, or interstate services of any freight forwarder.

"(2) Continuation of Hawaii's authority.—Nothing in this subsection and the amendments made by the Surface Freight Forwarder Deregulation Act of 1986 shall be construed to affect the authority of the State of Hawaii to continue to regulate a motor carrier operating within the State of Hawaii.".

(b) State Authority To Enjoin Abandonments.—Section 11505(b) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

SEC. 12. ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES.

(a) General Authority.—(1) Section 11701(a) of title 49, United States Code, is amended by striking "or broker" each place it appears and inserting in lieu thereof ", broker or freight forwarder".

(2) Section 11701(b) of title 49, United States Code, is amended by inserting ", or freight forwarder" before the period at the end of the first sentence.

(b) Rights and Remedies of Injured Persons.—Section 11705 of title 49, United States Code, is amended—

(1) in subsection (a) by inserting "or a freight forwarder" after "title";

(2) in subsection (b)(1)—

(A) by inserting "or a freight forwarder" after "title" the first place it appears, and

(B) by inserting "or the applicable frieght forwarder rate, as the case may be" after "title" the second place it appears; and

(3) in subsection (b)(3) by inserting "or a freight forwarder" after "title".

(c) Limitation on Court Actions.—Section 11706(a) of title 49, United States Code, is amended—

(1) by inserting "or a freight forwarder" after "title"; and

(2) by inserting "or freight forwarder" after "carrier" the second place it appears.

(d) Liability Under Receipts and Bills of Lading.—Section 11707(a) of title 49, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting "and a freight forwarder" after "title" the first place it appears.

(B) by inserting "or freight forwarder" after "carrier" the first place it appears in the second sentence,

(C) by inserting ", except in the case of a freight forwarder," after "and" in the third sentence, and

(D) by inserting "or freight forwarder" after "carrier" in the fourth sentence; and

(2) in paragraph (2) by striking "subject to this subtitle".

(e) Private Enforcement of Licenses.—(1) Section 11708(a) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(2) The heading of section 11708 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(3) The item relating to section 11708 in the section analysis of chapter 117 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

SEC. 13. CIVIL AND CRIMINAL PENALTIES.

(a) Additional Rate and Discrimination Violations.—Section 11904(d)(1) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(b) Abandonment of Service.—(1) Section 11908 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(2) The heading of section 11908 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(3) The item relating to section 11908 in the section analysis of chapter 119 of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder".

(c) Recordkeeping and Reporting Violations.—Section 11909(d) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

(d) Unlawful Disclosure of Information.—Section 11910(a)(4) of title 49, United States Code, is amended by inserting "household goods" before "freight forwarder" each place it appears.

SEC. 14. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this Act (including any amendment made by this Act) shall be construed to limit or otherwise affect the authority of the Secretary of Transportation to regulate a freight forwarder and the transportation the freight forwarder uses (whether or not such transportation is provided by a carrier subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of title 49, United States Code).

SEC. 15. EFFECTIVE DATE.

This Act shall take effect 60 days after the date of the enactment of this Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. SHUSTER. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. Anderson] will be recognized for 20 minutes, and the gentleman from Pennsylvania [Mr. Shuster] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. Anderson].

□ 1610

Mr. ANDERSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 1124 as amended by the House is substantially the same bill as was passed by the Senate. The

House version makes several minor amendments which are basically technical and clarifying in nature.

There is no controversy surrounding this legislation. The Subcommittee on Surface Transportation held hearings on June 18, 1986, and there was genuine and broad support for enactment of S. 1124. The administration, the Interstate Commerce Commission, and the freight forwarder industry unanimously endorse this legislation and seek its enactment.

S. 1124, as amended, will deregulate large segments of the surface freight forwarding industry in the United States. Freight forwarders are defined in title 49, United States Code 10102(9). Generally, they assemble and consolidate less-than-truckload shipments of freight into truckload shipments at point of origin. They then utilize line haul carriers such as trucking companies to move the shipment to the destination point where the freight forwarder performs break bulk and distribution operations.

Currently, there are approximately 600 surface freight forwarders operating in the United States. Included in this number are about 70 household goods freight forwarders. Many of these are small operators. The amendment retains and clarifies regulatory controls over the household goods freight forwarders industry. The prinicpal reason for retaining controls for the household goods segment of the industry is that they utilize the services of the household goods trucking industry which is still regulated. In order to maintain the competitive balance between houshold goods freight forwarders and household goods trucking companies, the committee decided not to change the current regulatory scheme until it has had an opportunity to review and possibly change the regulatory controls applicable to the household goods trucking industry.

In contrast, the other freight forwarders engaging in general commodity services utilize services of other carriers which are largely not regulated by the Interstate Commerce Commission because of the method in which they operate and, thus, deregulation here will help to restore the competitive balance. This continues past congressional policy which recognizes the distinction between the general commodities carriers and household goods carriers. The distinction is based upon the differences in those industries and the fact that the household goods industry deals directly with individual consumers who are unfamiliar with the legal aspects of transportation and require more Government oversight for their protection.

Following my statement is a section-by-section analysis of the House amendments. It differs from the Senate bill in several aspects. They are:

First, the House amendment contains a specific provision preserving the ability of freight forwarders to enter into contracts as a forwarder with other carriers and with shippers, section 7.

Second, the House amendment retains the discretionary ability of the ICC to impose insurance requirements for bodily injury and property damage upon household goods freight forwarders, section 8(d).

Third, the House amendments clarify that the Department of Transportation's regulatory authority, especially in the area of safety, is retained over all freight forwarders, section 14.

Fourth, the House amendments clarify that the ICC general powers with respect to investigations and compliance are still applicable for enforcing any provision still applicable to freight forwarders, section 12.

Mr. Speaker, I urge my colleagues to join with me in supporting swift enactment of S. 1124.

Section-by-Section Analysis—House Amendment to S. 1124

SECTION 1.—SHORT TITLE

The first section states the short title of the bill, the "Surface Freight Forwarder Deregulation Act of 1986".

SECTION 2.—PURPOSE OF THE ACT

This section states that the purpose of the act is to reduce burdensome and unnecessary government regulations and to ensure the competitiveness and efficacy of transportation services of surface freight forwarders in the United States.

SECTION 3.—CONGRESSIONAL FINDINGS

This section notes the following findings: (1) that a safe, sound, and competitive surface freight forwarder industry is important to the national transportation system; (2) that the Federal statutes regulating freight forwarders are outdated and must be revised to reflect transportation needs and realities; (3) that protective regulation has resulted in anticompetitive pricing and has restricted the range of price and service options available to shippers; (4) that the Interstate Commerce Commission's (ICC) remaining freight forwarder regulatory responsibilities should be legislatively eliminated; and (5) that legislative and resulting changes should be implemented with the least amount of disruption consistent with achieving the reforms enacted.

SECTION 4.—DEFINITIONS AMENDS SECTION 10102 OF TITLE 49, UNITED STATES CODE AS FOLLOWS

Paragraph (1) amends the definition of "common carrier" to only include a "household goods freight forwarder" in 10102 (4).

Paragraph (2) amends the definition of "freight forwarder" to exclude air freight forwarders from ICC regulation in accordance with the Federal Aviation Act of 1958. Under the definitions, the freight forwarder definition is retained so as to identify clearly what entity is being deregulated. It is not meant to imply that a freight forwarder that utilizes some service that is not regulated is somehow then regulated. Freight forwarders are deregulated, except those falling under the new definition of household goods freight forwarders—and except for that part of regulation which is retained for loss and damage claims. If they operate as a regulated motor carrier subject to Title 49, then, of course, they must comply with the applicable requirements of Title 49.

Paragraph (3) makes technical changes and adds a new paragraph (12) to section 10102 to define a "household goods freight forwarder". A household goods freight forwarder is a freight forwarder of one or more of the following items: household goods, unaccompanied baggage or used automobiles.

SECTION 5.—INTERSTATE COMMERCE COMMISSION ADMINISTRATION

Section 5(a) amends section 10328(b)(2) of title 49, United States Code to eliminate the ICC's authority to provide special notice procedures regarding general commodities freight forwarder operating authority applications. This provision is no longer required, since general commodities freight forwarders would not be required, under the provisions of S. 1124, to file operating authority applications. Household goods freight forwarders, however, remain subject to the provisions of this Section.

Subsection (b) amends section 10329 of title 49, United States Code, to delete the requirement that general commodities freight forwarders designate agents on whom service of notice is a proceeding before, and of actions of, the ICC may be made. Household goods freight forwarders remain subject to this requirement.

SECTION 6.—JURISDICTION

Section 6(a) amends section 10521(a) of title 49, United States Code, to eliminate ICC jurisdiction over the procurement of motor carrier transportation by general commodities freight forwarders. The intent is that freight forwarders have maximum flexibility in the procurement of freight transportation service. Plainly, this legislation does not deregulate the operations of motor carriers, common or contract, who provide service to or for freight forwarders. Section 6 of S. 1124, which excepts from the ICC's general jurisdiction the procurement of motor carrier transportation by a freight forwarder, is intended only to eliminate the ICC's jurisdiction over the freight forwarder. The rates and services of the motor carrier providing the procured service are still subject to the same scope and degree of regulation by the ICC as they were prior to the amendments and revisions provided in S. 1124.

In addition, household goods freight forwarders remain subject to the provisions of current law with respect to the procurement of motor carrier transportation.

Subsection (b) amends section 10523 of title 49, United States Code, to eliminate the exemption from ICC jurisdiction for motor vehicle transportation in a terminal area provided by a general commodities freight forwarder, by a person as an agent or under other arrangement for a freight forwarder, or as incidental to the service provided by a freight forwarder. This exemption is no longer needed because all transportation by general commodities forwarders will be deregulated. Transportation provided by a household goods freight forwarder, or its agents, or as incidental to the service provided by the forwarder, or its agents, or as incidental to the service provided by the forwarder, will continue to have a specific exemption from ICC regulations.

Subsection (c) amends section 10561 of title 49, United States Code, to eliminate ICC jurisdiction over interstate and foreign general commodities freight forwarder service. This subsection retains ICC jurisdiction over interstate or foreign service undertaken by, authorized for, or required of a household goods freight forwarder. This subsection also retains the current exemption from ICC regulation for service undertaken by a household goods freight forwarder using transportation of an air carrier subject to chapter 20 of title 49, United States Code, or incidental-to-air transportation of property of passengers.

Subsection (d)(1) repeals section 10562 of title 49, United States Code, which provides exemptions from ICC regulations for four types of freight forwarder service: (1) service provided by, or under the direction of, a cooperative association or by a federation of cooperative associations; (2) service subject to jurisdiction which is provided with respect to only one of the following categories—ordinary livestock, fish, agricultural or horticultural commodities, or used household goods; (3) service of a shipper or group of shippers in consolidating or distributing freight on a nonprofit basis for the shipper or members of the group; or (4) service of an agent of a shipper in consolidating or distributing pool cars when the service is provided for the shipper only in a terminal area in which the service is performed. All freight forwarder service will be deregulated. Subsection (d)(2) amends the analysis of chapter 105 of title 49, United States Code, to reflect the fact that section 10562 has been repealed.

SECTION 7.—RATES, TARIFFS, AND VALUATIONS

Subsection (a) amends section 10703(a)(4)(E) of title 49, United States Code, to make that provision apply to household goods freight forwarders. Here, it should be noted that this Act preserves all contracting rights of freight forwarders so as to eliminate any doubt as to their ability to enter into transportation contracts as a freight forwarder with any carrier or shipper.

Subsection (b) amends section 10704 of title 49, United States Code, to eliminate the ICC's authority to prescribe rates, classifications, rules, or practices to be followed by general commodities freight forwarders. The ICC retains this authority with respect to household goods freight forwarders.

Subsection (c) amends section 10706 of title 49, United States Code. Subsection (c)(1) makes a technical change. Subsection (c)(2) eliminates antitrust immunity for the collective ratemaking activities of general commodities freight forwarders. Household goods freight forwarders retain this antitrust immunity.

Subsection (d) amends section 10708 of title 49, United States Code, to remove general commodities freight forwarders from the zone of rate freedom provisions included under the Motor Carrier Act of 1980. Household goods freight forwarders will continue to be able to set rates independently within the zone without ICC interference.

Subsection (e) amends section 10722(d)(2) to eliminate the provision allowing freight forwarders to provide services related to the movement of property without charge for officers and employees (and their families) of motor, water, and rail carriers, or a telegraph, telephone, or cable company. This provision will still apply to household goods freight forwarders.

Subsection (f) amends section 10725 of title 49, United States Code, to delete general commodities freight forwarders from provisions regarding special freight forwarder rates. These rates apply to transportation of less-than-carload or less-than-truckload shipments to a place for further movement as part of a carload or truckload shipment and transportation of less-than-carload or less-than-truckload shipments moving from a place to which those shipments have moved as part of a carload or truckload shipment. Household goods freight forwarders remain subject to these provisions.

Subsection (g) amends section 10730 of title 49, United States Code. Subsection (g)(1) clarifies that tariff filing requirements for freight forwarders will now pertain only to household goods freight forwarders. Subsection (g)(2) provides that a general commodities freight forwarder may establish rates for the transportation of property under which the liability of the carrier for such property is limited to a value established by written declaration of the shipper or by written agreement between the carrier and shipper if that value would be reasonable under the circumstances surrounding the transportation. The importance to the shipping community of clearly-established carrier liability of shipments is clearly understood.

Subsection (h) amends section 10741(c) of title 49, United States Code, to eliminate the requirement that motor, rail, or water common carriers not subject a freight forwarder to unreasonable discrimination. This provision remains in effect with respect to househould goods freight forwarders.

Subsection (i) amends section 10743(b)(2) of title 49, United States Code, to delete the provision that a motor common carrier being used by a freight forwarder may extend credit for transporting property for the U.S. Government, a State, a territory or possession of the United States, or a political subdivision of any of them. This provision remains in effect for household goods freight forwarders.

Subsection (j) amends section 10749 of title 49, United States Code. Subsection (j)(1) deletes the stipulation that freight forwarders may use only the following types of transportation outside of terminal areas: (1) a rail, express, motor, or water common carrier or motor contract carrier of property providing transportation subject to ICC jurisdiction; or (2) an air carrier. These restrictions continue to apply to household goods freight forwarders. Paragraphs (2) and (3) of subsection (j) make corresponding changes in the heading of section 10749 and the section analysis of chapter 107 of title 49, United States Code.

Subsection (k) amends section 10762 of title 49, United States Code, to eliminate the requirement that general commodities freight forwarders file tariffs with the ICC. These freight forwarders now will be able to set their rates competitively and immediately; this should enhance greatly the efficiency of freight forwarder operations and enable them to compete more effectively with other transportation modes. Household good freight forwarders will continue to be required to file tariffs and meet the statutory notice requirements.

Subsection (l)(1) amends section 10766 of title 49, United States Code, to delete provisions pertaining to general commodities freight forwarder traffic agreements with respect to joint loading of traffic and contracts between freight forwarders and motor common and contract carriers. These provisions continue to apply to household goods freight forwarders.

While this amendment deletes provisions allowing general commodities freight forwarders to contract with motor common carriers and motor contract carriers, the intent is that freight forwarders will continue to be able to enter into such contracts, as well as contracts with other transportation modes. Plainly, the language of new subsection 10766(c) preserves the authority of freight forwarders to enter into contracts to provide transportation for the forwarder. It continues existing policy and law. The ability to contract with shippers set forth in paragraph (5) is to make it absolutely clear that the freight forwarder may also have transportation contracts with shippers. These contracts provided for in new subsection 10766(c), however, no longer will be subject to ICC jurisdiction and the general commodities freight forwarders will not be required to file tariffs with the ICC as part of these contracts.

Paragraphs (2) and (3) of subsection (l), respectively, provide conforming changes to the heading of section 10766 and the analysis of chapter 107 of title 49, United States Code.

SECTION 8.—LICENSING

Subsection (a)(1) amends section 10923 of title 49, United States Code, to eliminate the requirement that a general commodities freight forwarder obtain an operating permit from the ICC. Household goods freight forwarders will continue to be required to obtain such authority from the ICC and show that they are fit, willing, and able to perform the service to be authorized by the permit and to comply with subtitle IV of title 29, United States Code, and regulations of the Commission. The ICC also must continue to find that the service proposed by a household goods freight forwarder is, or will be, consistent with the public interest and the national transportation policy. Paragraphs (2) and (3) of subsection (a) amend the heading of section 10923 and the item relating to section 10923 in the section analysis of chapter 109 of title 49, United States Code, respectively, to show that the provisions of section 10923 now will apply only to household goods freight forwarders.

Subsection (b) amends section 10925 of title 49, United States Code, to remove general commodities freight forwarders from provisions pertaining to the effective periods of freight forwarder operating permits. Household goods freight forwarders will remain subject to the provisions of this section, which allow the Commission to suspend, amend, or revoke all or part of a freight forwarder operating permit under certain specified conditions.

Subsection (c) amends section 10926 of title 49, United States Code, to remove general commodities freight forwarders from provisions setting out conditions under which freight forwarder operating authority may be transferred. Household goods freight forwarders will continue subject to the provisions of this section.

Subsection (d) amends section 10927(c)(1) of title 49, United States Code, so as to limit the provisions of that section to household goods freight forwarders; thus, only household goods freight forwarders may be required to comply with the security filing requirements. Section 10927(c)(2) is also amended. This section deals with securities filed with the ICC to cover loss of or damage to cargo. This section continues to authorize the ICC to require all freight forwarders to file with the Commission a bond, insurance policy, or other type of security approved by the Commission, as in the case under current law. The provision applies to general commodity freight forwarders and to household goods freight forwarders.

Subsection (e) amends section 10930(b) of title 49, United States Code, to remove the restriction against a person operating as a general commodities freight forwarder if that person is a rail, motor or water common carrier providing transportation subject to ICC jurisdiction. This subsection also removes permit restrictions against a general commodities freight forwarder conducting direct rail, water, or motor carrier transportation subject to ICC jurisdiction because permits will no longer be required by general commodity freight forwarders. This subsection also eliminates prohibitions against a person operating as a general commodities freight forwarder if: (1) the principal business of the person is manufacturing and selling and/or buying and selling articles and commodities, and the service of a freight forwarder (or similar assembling, consolidating, and shipping service is provided by the person for its own business) is commonly used to transport the articles or commodities; or (2) the person controls, is controlled by, or is under common control with such a person. Household goods freight forwarders remain subject to the restrictions contained in section 10930.

Subsection (f)(1) amends section 10933 of title 49, United States Code, to delete references to general commodities freight forwarders with respect to conditions under which freight forwarder service may be abandoned. As amended, section 10933 refers only to household goods freight forwarders. Paragraph (2) and (3) of subsection (f) amend the heading of section 10933 and the item relating to section 10933 in the section analysis of chapter 109 of title 49, United States Code respectively, to reflect this fact.

SECTION 9.—OPERATIONS OF CARRIERS

Subsection (a) amends section 11101(b) of title 49, United States Code, to eliminate the ICC's ability to prescribe requirements for continuous and adequate service provided by general commodities freight forwarders. As amended, the section authorizes the ICC to prescribe such requirements only for motor common carriers and household goods freight forwarders.

Subsection (b)(1) amends section 11127 of title 49, United States Code, to delete references to general commodities freight forwarders with respect to the conduct of their services in emergency situations. The provisions of this section continue to apply to household goods freight forwarders. Paragraphs (2) and (3) of subsection (b) amend the heading of section 11127 and the item relating to section 11127 in the section analysis of chapter 111 of title 49, United States Codes respectively, to reflect this fact.

Subsection (c) amends section 11141(l) of title 49, United States Code, to delete the reference to general commodities freight forwarders in the definition of "carrier" contained in section 11141, pertaining to ICC reports and records. Section 11141, as amended, continues to reference household goods freight forwarders.

SECTION 10.—FINANCE

Subsection (a) amends section 11323 of title 49, United States Code, to remove the prohibition against a general commodities freight forwarder owning or controlling a motor, rail, or water carrier. This prohibition will continue to apply to household goods freight forwarders.

Subsection (b)(1) amends the heading of section 11323 of title 49, United States Code, to clarify that the limitation on ownership of other carriers pertains only to household goods freight forwarders. Subsection (b)(2) amends the item relating to section 11323 in the section analysis of chapter 113 of title 49, United States Code, to reflect this fact.

SECTION 11.—FEDERAL-STATE RELATIONS

Subsection (a) amends section 11501 of title 49, United States Code. Subsection (a)(1) amends section 11501(a) to limit the provisions of that subsection to household goods freight forwarders; as amended, section 11501(a) requires the ICC to prescribe the rate, classification, rule, or practice for transportation or service provided by a household goods freight forwarder when the ICC finds that a rate, classification, rule, or practice of a State causes unreasonable discrimination against those persons or localities in interstate or foreign commerce, as opposed to persons in intrastate commerce, or causes unreasonable discrimination against or imposes an unreasonable burden on interstate or foreign commerce.

Subsection (a)(2) adds a new subsection (g) to section 11501. This new subsection provides that no State or political subdivision thereof and no interstate agency or other political agency of two or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to interstate rates, routes or services of any freight forwarder. The intent is that States and other local governments not be allowed to exercise regulatory authority over the interstate operations of general commodities freight forwarders that are being vacated by the ICC under this legislation. The State of Hawaii, however, will retain its historical authority to regulate motor carrier operations occurring solely in that State.

Subsection (b) amends section 11505(b) of title 49, United States Code, to delete the reference to general commodities freight forwarders with respect to the authority of a State to bring a civil action to enjoin the abandonment of freight forwarder service. As amended, this provision applies only to household goods freight forwarders.

SECTION 12.—ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

Subsection (a) amends section 11701 (a) and (b) so as to clarify that the ICC has general authority to investigate on its own or upon complaint matters relative to its remaining authority over freight forwarders.

Subsection (b) amends section 11705 of title 49, United States Code, to include specifically general commodities freight forwarders under the provisions concerning rights and remedies of persons injured by carriers with respect to liability for damages.

Subsection (c) amends section 11706(a) of title 49, United States Code, to include that general commodities freight forwarders will continue to be subject to the 3 years statute of limitations for the commencement of legal action by persons seeking to recover charges for transportation, service or overcharges.

Subsection (d) amends section 11707(a) of title 49, United States Code, to continue to subject general commodities freight forwarders to the liability provisions of the Carmack amendment.

Subsection (e)(1) amends section 11708(a) of title 49, United States Code, to delete the reference to general commodities freight forwarders with respect to civil actions to be brought against freight forwarder service in violation of sections 10921-10924, 10927, 10930-10931, and 11323 of title 49, United States Code. Such civil actions now apply only with respect to motor carriers and household goods freight forwarders.

Paragraphs (2) and (3) of subsection (e) amend the heading of section 11707 and the item relating to section 11708 in the section analysis of chapter 117 of title 49, United States Code, respectively, to show that the private enforcement provisions of this section apply only to motor carrier and household goods freight forwarder licensing.

SECTION 13.—CIVIL AND CRIMINAL PENALTIES

Subsection (a) amends section 11904(d)(1) of title 49, United States Code, to delete the applicability of the provisions of this subsection to general commodities freight forwarders. The fines provided in this subsection, as amended, for rate and discrimination violations apply only to household goods freight forwarders.

Subsection (b)(1) amends section 11908 of title 49, United States Code, to delete the applicability of the provisions of this section to general commodities freight forwarders. As amended, this section provides for fines only for abandonment of service violations by household goods freight forwarders. Paragraphs (2) and (3) of subsection (b) amend the heading of section 11908 and the item relating to section 11908 in the section analysis of chapter 119 of title 49, United States Code, respectively, to reflect this fact.

Subsection (c) amends section 11909(d) of title 49, United States Code, to make the fines for record keeping and reporting violations applicable only to household goods freight forwarders. Subsection (c) deletes reference to general commodities freight forwarders.

Subsection (d) amends section 11910(a)(4) of title 49, United States Code, to delete reference to general commodities freight forwarders from the provision providing fines for unlawful disclosure of information. The provisions of section 11910(a)(4) will continue to apply to household goods freight forwarders.

SECTION 14.—LIMITATION ON STATUTORY CONSTRUCTION

This section makes it clear that the existing regulatory authority of the Department of Transportation, such as its safety authority, continues to apply to all freight forwarders whether they are or are not regulated by the ICC. The provision does not in any way expand the authority of the Department to cover matters not now under its jurisdiction.

Plainly, it does not give any authority to the Department of Transportation to regulate any economic aspects of freight forwarder operations that are deregulated by S. 1124.

SECTION 15.—EFFECTIVE DATES

Subsection (a) provides that this act shall become effective 60 days after date of enactment.

Mr. SHUSTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today to support the amendment to S. 1124, the Surface Freight Forwarder Deregulation Act of 1985, offered by the gentleman from California Mr. [ANDERSON].

On June 18, 1986, our subcommittee held hearings on this legislation. We found two things. One, this legislation is widely supported; and two, it is badly needed.

This bill will enable the freight forwarders who deal with general commodities to compete more effectively with other transportation services.

In 1942, the surface freight forwarder industry fell under ICC regulation. Since that time, these regulations have not noticeably changed, whereas most other modes of transportation have become deregulated.

Freight forwarders are currently regulated in five areas: Entry, ratemaking, securities liability, limitations on ownership, and Federal-State regulations. At present, the current regulatory burdens imposed on freight forwarders have created a situation in which freight forwarders are unable to coordinate their service with their unregulated underlying carriers, which makes it impossible for freight forwarders to respond to changes in the rates and services charged by the carriers.

Freight forwarders are competitors as well as users of motor and rail carriers. As a result, they are at a competitive disadvantage with motor/rail carriers in the area of pricing. Unregulated motor/rail carriers can quote a rate at any time, while the regulated freight forwarder must publish and file its rates which can be a 2- to 5-day process. Second, as the freight forwarder is an intermodal carrier and relies upon its underlying motor/rail carriers, the freight forwarder can find it is basing its contracts on motor/rail carrier rates that have changed and yet the freight forwarder cannot change its rates until it has revised the tariff.

This legislation will extend the same deregulated environment motor and rail carriers enjoy to the surface freight forwarder industry. In testimony, members of this industry stated this legislation will not guarantee the success of freight forwarders. Without it, there will be no freight forwarders industry.

The other body has passed similar legislation by a voice vote. In the name of equity, I urge my colleagues to support this legislation.

Mr. ANDERSON. Mr. Speaker, I have no requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. KILDEE). The question is on the motion offered by the gentleman from California [Mr. ANDERSON] that the House suspend the rules and pass the Senate bill, S. 1124, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ANDERSON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include extraneous matter on the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

CONTINUING APPROPRIATIONS, 1987

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations be discharged from further consideration of the joint resolution (H.J. Res. 743) making continuing appropriations for the fiscal year 1987, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. CONTE. Reserving the right to object, Mr. Speaker, I want first of all to ask if the gentleman from Mississippi [Mr. WHITTEN] would explain the resolution.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Mississippi.

Mr. WHITTEN. Mr. Speaker, this resolution, as the gentleman knows, has been discussed with his staff and with him, as I understand it.

As the gentleman knows, we have been following the course of events on the Senate side with reference to the continuing resolution. My information is that they have pending at least 124 amendments. They took 4 hours yesterday on one amendment, so you can see the situation that we face. Today, very little progress has been made due to interruptions.

On this side, as the gentleman knows, we have had six bills which have passed the Senate, five of which await conference, and we have had to try to determine what period of time we would have to extend this resolution in order to hope to be able to get together with the Senate.

This provision that we have before us provides that we will extend the time through October 8, which is next Wednesday.

The rate of operations, for the five remaining bills that have passed the House and Senate is the lower of the House or Senate bill rates. Provision is made for any bill that concludes conference to automatically be adjusted to the conference rate. Those bills are the District of Columbia, Interior, Labor-HHS-Education, Military Construction, and Transportation.

The seven bills that have not passed the Senate are carried at the lower of the rate of either the bill as passed by the House of Representatives or the current rate. Included in this group are Agriculture, Commerce-Justice-State, Defense, Energy and Water, Foreign Operations, HUD-Independent Agencies, and Treasury-Postal Service.

One bill is provided for at the conference agreement rate. That is the legislative branch appropriations bill.

This short-term bill, as I have stated, is for 1 week, and expires on October 8, 1986. I may say that for the drug initiatives no funding is provided through this short term of a week, in view of the fact that the bill has not yet passed the Senate. It will be covered when the full continuing resolution is taken up.

I might also call attention to the fact that the limitations that are carried in the existing law will be continued here, such as the prohibition of funds for abortion.

May I say that what this represents is 8 days to carry it at the lower of the various figures, taking the last action that has been taken by the House of Representatives or the Senate, and for those which have been agreed to in conference, taking the conference rate.

May I say further that in order to expedite the matter of conferences between the House and the Senate, we provide that once a conference is agreed to and filed, it would take over and take preference. That is so that we might proceed, as the gentleman knows, the conferees that we will be recommending are the members of each subcommittee. By going ahead with it in this bill we hope to expedite the meetings between us and the Senate for conference.

Mr. CONTE. Mr. Speaker, I wonder if the gentleman could let me know whether he has any assurance from the Senate that they will not amend this resolution so that then we can go to work on the resolution that they are considering right now, and try to get that cleaned up.

Mr. WHITTEN. Mr. Speaker, let me say to the gentleman that that is true.

Mr. CONTE. It is true that they give us some assurance that they will not amend this one?

Mr. WHITTEN. Well, the only thing that I can say is that I have talked to the chairman of the Appropriations Committee on that side. I have advised him of what we were doing. He is in agreement.

The gentleman is as aware of the other side as much as I am, but we all know that the authority of most of the Government to operate ends tonight. So I would trust and hope that we may have quick action on the other side. The chairman of the full committee over there has the same feeling. Insofar as guaranteeing it, I cannot, but it is to be hoped that it will be done. Otherwise, the business would come to a close at midnight tonight.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I understand what we are doing here, and I think that, given the juncture that we are at, it is the only thing that is available to us.

I am somewhat concerned about the date of October 8, largely because that basically takes us to the middle of next week before there is any resolution needed on the continuing resolution that is now under debate in the other body. What that seems to me to indicate is that we could very well not only extend the session of Congress into next week, but could go into the next week as well, particularly if the President would veto that continuing resolution that is finally worked out.

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We are creating a dilemma for ourselves and not putting any pressure on the other body at all to come forward with a resolution.

I would think we would be far better off in this particular resolution having a date that was somewhat tighter in timeframe in order to put more pressure on the other body to get us a bill that we can go to conference on. At this rate, they are going to take up all 180 amendments.

Mr. WHITTEN. May I say to my colleague that we too regret to put it this far ahead. But may I point out that under our proceedings we will recommend that the Speaker appoint conferees for each chapter of this bill from those members of the subcommittee, which means there will be a series of conferences. That is from our viewpoint.

From the viewpoint of the other body, as I said, they have 124 amendments and had one amendment yesterday that took 4 hours.

So, anyone who would hope that we could get through this in 2 or 3 days is not fully aware of the time they take in the other body. I say again, we have done our business on the House side and we have had to wait on the other side. We will have to wait again.

But insofar as he could, Senator HATFIELD has assured me that he will cooperate himself, and his committee will do so. This seems to be the shortest period that we could hope to get through.

Mr. WALKER. If the gentleman will yield further, we have helped to create this problem by putting a lot of policy issues into the bill that we passed here, and that has simply encouraged the irresponsibility to continue in the further consideration of the bill. I do not doubt what the gentleman says. The Members of the other body have the ability to debate internally.

But my point is that we simply do not bring the process to any kind of conclusion by suggesting to them that we are giving them more than a week in order to wind up their deliberations, and that is my real concern. I think that we are up against a dilemma.

We ought to pass a continuing resolution. I am somewhat concerned about giving them more than a week to pass the bill that everybody agrees is necessary at this point.

Mr. WHITTEN. May I say the Government will come to a close tonight. We had to estimate what we could do, and this is our best estimation. I would not want to take credit for having the Government come to an end because we would not give them adequate time.

Mr. WALKER. If the gentleman will yield further, let me just understand one more thing about the procedure we are using here. As I understand, the procedure the gentleman has asked for is for consideration only, that we will have a period of debate, and that we will, under the process that is being proposed by the gentleman from Mississippi, be entitled to a vote on the measure once we have completed that debate?

Mr. WHITTEN. The gentleman is correct.

Mr. CONTE. The gentleman is absolutely right.

Mr. MYERS of Indiana. Mr. Speaker, will the gentleman yield?

Mr. CONTE. I yield to the gentleman from Indiana.

Mr. MYERS of Indiana. Mr. Speaker, I think we all agree with what the gentleman from Pennsylvania is trying to accomplish here, but more time just really is needed.

We have done this in the past. We have had short continuing resolutions for 3- or 4-day periods, and invariably the other body changes that date. I do not think we will ultimately wind up with the 8th as the date. They always want to make some little change. So the gentleman is likely to get his way, but it will not really help put pressure on anybody except ourselves, and particularly the Appropriations Committee. As the chairman has indicated, there are so many amendments, and once we get into this process we are only putting pressure on ourselves as well.

Also, there is other legislation around here that should be taken up in these closing hours, possibly closing days. So really the 8 days is more realistic. But we would like to accomplish what the gentleman is saying, but I suspect the other body will change the date. They will make some changes, and that is what the gentleman from Massachusetts is asking here, do we have an agreement with the other body, and obviously we do not.

Mr. CONTE. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 743

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organization units of the Government for the fiscal year 1987, and for other purposes, namely:

SEC. 101. (a)(1) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities, not otherwise specifically provided for in this joint resolution, for which appropriations, funds, or other authority would be available in the following appropriation Acts:

District of Columbia Appropriations Act, 1987, H.R. 5175 as passed by the House on July 24, 1986 and as passed by the Senate on September 16, 1986;

Department of the Interior and Related Agencies Appropriations Act, 1987, H.R. 5234 as passed by the House on July 31, 1986 and as passed by the Senate on September 16, 1986;

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1987, H.R. 5233 as passed by the House on July 31, 1986 and as passed by the Senate on September 10, 1986;

Military Construction Appropriations Act, 1987, H.R. 5052 as passed by the House on June 25, 1986 and as passed by the Senate on August 13, 1986; and

Department of Transportation and Related Agencies Appropriations Act, 1987, H.R. 5205 as passed by the House on July 30, 1986 and as passed by the Senate on September 17, 1986.

(2) Appropriations made by this subsection shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

(3) Whenever the amount which would be made available or the authority which would be granted under an Act listed in this subsection as passed by the House is different from that which would be available or granted under such Act as passed by the Senate, the pertinent program, project, or activity shall be continued under the lesser amount or the more restrictive authority: *Provided,* That where an item is included in only one version of an Act as passed by both Houses as of October 1, 1986, the pertinent program, project, or activity shall be continued under the appropriation, fund, or authority granted by the one House, but at a rate for operations not exceeding the current rate or the rate permitted by the action of the one House, whichever is lower, and under the authority and conditions provided in applicable appropriation Acts for the fiscal year 1986.

(4) No provision which is included in an appropriations Act enumerated in this subsection but which was not included in the applicable appropriations Act of 1986, and which by its terms is applicable to more than one appropriation, fund, or authority shall be applicable to any appropriation,

fund, or authority provided in the joint resolution unless such provision shall have been included in identical form in such bill as enacted by both the House and the Senate.

(5) No appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1986.

(6) Whenever a conference report and joint explanatory statement of the committee of conference on any appropriations bill listed in this subsection is filed in the House, such amounts as may be necessary are hereby appropriated and shall become available in lieu of the rates specified in this subsection at a rate of operations for activities and under the terms and conditions provided for in such conference report and accompanying joint explanatory statement of the committee of conference.

(b)(1) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities, not otherwise specifically provided for in this joint resolution, for which appropriations, funds, or other authority would be available in the following appropriations acts:

Agriculture, Rural Development, and Related Agencies Appropriations Act, 1987, H.R. 5177 as passed by the House on July 24, 1986;

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1987, H.R. 5161 as passed by the House on July 17, 1986;

Department of Defense Appropriations Act, 1987, H.R. 5438 as provided for in section 101(c) of H.J. Res. 738 which passed the House on September 25, 1986, and such Act shall be deemed to have passed the House for purposes of this joint resolution;

Energy and Water Development Appropriations Act, 1987, H.R. 5162 as passed by the House on July 23, 1986;

Foreign Assistance and Related Programs Appropriations Act, 1987, H.R. 5339 as provided for in section 101(f) of H.J. Res. 738 which passed the House on September 25, 1986, and such Act shall be deemed to have passed the House for purposes of this joint resolution;

Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1987, H.R. 5313 as passed by the House on September 12, 1986; and

Treasury, Postal Service, and General Government Appropriations Act, 1987, H.R. 5294 as passed by the House on August 6, 1986.

(2) Appropriations made by this subsection shall be available to the extent and in the manner which would be provided by the pertinent Appropriations Act.

(3) Whenever an Act listed in this subsection has been passed by only the House as of October 1, 1986, the pertinent program, project, or activity shall be continued under the appropriation, fund, or authority granted by the House, at a rate for operations not exceeding the current rate or the rate permitted by the action of the House whichever is lower, and under the authority and conditions provided in applicable appropriations Acts for the fiscal year 1986.

(4) No appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1986.

(c) Such amounts as may be necessary are hereby appropriated for programs, projects, or activities provided for in H.R. 5203, the Legislative Branch Appropriations Act, 1987, to the extent and in the manner provided for in the conference report and joint explanatory statement of the committee of conference (House Report 99-805) as filed in the House of Representatives on August 15, 1986, as if enacted into law.

(d) Such amounts as may be necessary for continuing the following activities, not otherwise provided for in this joint resolution, which were conducted in the fiscal year 1986, under the terms and conditions provided in applicable appropriations Act for the fiscal year 1986, at the current rate or as otherwise provided herein: *Provided*, That no appropriation or fund made available or authority granted pursuant to this subsection shall be used to initiate or resume any project or activity for which appropriations, funds, or authority were not available during fiscal year 1986 unless otherwise provided for herein:

Refugee and entrant assistance activities authorized by title IV of the Immigration and Nationality Act, part B of title III of the Refugee Act of 1980, and section 501 of the Refugee Education Assistance Act of 1980 except that no activity authorized by such Acts shall be funded beyond September 30, 1987; and

Activities authorized by the Follow Through Act.

SEC. 102. Unless otherwise provided for in this joint resolution or in the applicable appropriations act, appropriations and funds made available and authority granted pursuant to this joint resolution shall be available from October 1, 1986, and shall remain available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) enactment of the applicable appropriations act by both Houses without any provision for such project or activity, or (c) October 8, 1986, whichever first occurs.

SEC. 103. Appropriations made and authority granted pursuant to this joint resolution shall cover all obligations or expenditures incurred for any project or activity during the period for which funds or authority for such project or activity are available under this joint resolution.

SEC. 104. Expenditures made pursuant to this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 105. No provision in any appropriations act for the fiscal year 1987 referred to in section 101 of this joint resolution that makes the availability of any appropriation provided therein dependent upon the enactment of additional authorizing or other legislation shall be effective before the date set forth in section 102(c) of this joint resolution.

SEC. 106. Appropriations and funds made available or authority granted pursuant to this joint resolution may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

The SPEAKER pro tempore. The gentleman from Mississippi [Mr. WHITTEN] is recognized for 1 hour.

Mr. WHITTEN. Mr. Speaker, I yield 30 minutes to the gentleman from Massachusetts [Mr. CONTE] for purposes of debate only, pending which I yield myself such time as I may require.

Mr. WHITTEN. Mr. Speaker, I do not know of anything I can add except that a few days ago we listened to talk all day about the deplorable and terrible situation we have. I repeat, it has not been the fault of the House and it has not been the fault of the Appropriations Committee.

We were delayed somewhat because the Budget Committee did not agree to a conference agreement until June 26, 2 months later than they were supposed to. But primarily, there again we were unable to get to conference with our colleagues on the other side of the Capitol.

I say again, the fiscal year will come to an end tonight, and the authority to operate the Government will come to an end. We will hope for the best on the other side, but we can certainly do our part to see that it is not our responsibility. I do not care to take any more time, because it has been covered rather thoroughly the other day, and again we have taken the latest action that was available, and tied it to that. In case of conference agreement, the conference agreement will prevail once it is taken and filed with the House of Representatives.

I hope at this time that we may proceed with this, get it through the other body as a early as possible, and I hope, they willl act on it today.

I reserve the balance of my time.

Mr. CONTE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I hope that this continuing resolution passes. Last week we had the rule on the other continuing resolution and I spoke on that bill. I think some of my words are worth repeating.

The system is not working. Since we passed the Budget and Impoundment Control Act in 1974, the system has broken down. We are at the eve of the fiscal year and we do not have one appropriation bill to the President of the United States.

Gramm-Rudman-Hollings, which I voted against and spoke against on this floor, has broken down. It has not worked, and we have to do something about it.

Maybe tomorrow when the debt ceiling comes up I will offer an amendment to repeal Gramm-Rudman-Hollings and the Budget Act of 1974. We have created a monster here that has not worked.

Here we are on the eve of the end of the fiscal year and we have not passed one major appropriation bill.

Let me tell my colleagues something I found out this afternoon. We were over in conference with the other body on the Health, Human Services, Education and Labor bill. The chairman of that committee said, "Let's recess for a few moments."

Do you know why? Because he had to go to the Senate floor to talk to the chairman of the Budget Committee to see whether he could get a waiver of Gramm-Rudman-Hollings, which was born over there in that body on the debt ceiling last year. A waiver.

I hope they do not get a waiver. There is only one way to end this, and there is only one way to straighten out this mess for the 100th Congress, and that is to repeal both of those acts because they do not work.

This is a disgrace. As we are getting ready to end the fiscal year, New Year's Eve tonight, we do not have one appropriation bill signed. I wonder what the public is thinking out there. We cannot legislate. We are in a morass, we are in a barrel of molasses. We cannot move.

We cannot make the Federal employees of this country suffer. We cannot make the Navy, the Army, the Marine Corps, and the Air Force suffer. We cannot make all those programs out there suffer because the system is broken down.

□ 1630

That is why we need an extension of this continuing resolution.

Why the 8th? We have to leave here Friday early; it is a religious holiday, so we cannot be doing much on that day. They are still debating the continuing resolution in the other body. They are putting on amendment after amendment—and they gave birth to Gramm-Rudman-Hollings!

The SPEAKER pro tempore. The gentleman should avoid improper references to the Senate.

Mr. CONTE. I yield to my good friend, the gentleman from Indiana [Mr. Myers].

Mr. MYERS of Indiana. On the serious side——

Mr. CONTE. This is serious. I am very serious, about this whole thing.

Mr. MYERS of Indiana. I know the gentleman is; I have served with him for 20 years, and I know he is always serious. He will always be admired for that seriousness, too, in his candor.

Mr. Speaker, it is very clear about the spending rates on the various bills that are pending here; and that really is not the major issue as I understand it.

How about the other provisions in some of the appropriations bills that have passed this body and the other body, those various provisions particularly in the defense appropriation bills. Where do they stand in this 8 day continuation? They are silent here. It does cite the House-passed bill, the Senate-passed bill, as far as spending levels; but what about the other limitations and the prohibitions in some of the language in those passed appropriation bills?

Mr. CONTE. Defense is under the 1986 terms and conditions, so those limitations do not apply to this short, 8-day continuing resolution.

Again, Mr. Speaker, I plead with my colleagues to vote for the continuing resolution, as bad as it is, as bad as this system has broken down. Give us an opportunity to go to conference, to try to clean up the continuing resolution that they are working on. We will get a veto; I predicted for weeks that we will get a veto. Maybe everyone will come to their senses by the end of next week or the week after and we can pass another continuing resolution.

Everyone here knows that I am an avid sportsman and a hunter, and the last thing I want to do is see a lame duck around here.

Mr. WHITTEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to call attention to one fact: The operations under this continuing resolution will be under the authority and conditions provided in the applicable appropriations act for the fiscal year 1986. So we have retained all those prohibitions and other provisions.

Mr. Speaker, I have no further requests for time.

Mr. CONTE. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia [Mr. Parris].

Mr. PARRIS. Mr. Speaker, I will certainly rely on the leadership's suggestion in regard to this matter. They are much more versed, the gentlemen from Mississippi [Mr. Whitten] and from Massachusetts [Mr. Conte], than I, but I take this time to suggest that it is absolutely imperative that we adopt whatever is most likely to be adopted by both of the legislative bodies here in this Capitol for one specific reason:

I think it is imperative that we do not disrupt the orderly administration of the Government of the United States by failing to agree on whatever the extension period is. It has been stated here, earlier this morning, that it costs $55 million a day for Federal employees to come to work and then get furloughed, if you will, for that day whether they are ultimately compensated or not is not really the point.

Mr. Speaker, it is our responsibility to administer and manage functions of the Government; and if we furlough employees and do not pay them because of our inability to reach some conclusion in regard to this matter, I think we will have very badly served our responsibilities.

I thank the gentlemen for what they are doing.

Mr. CONTE. Mr. Speaker, I yield such time as he may consume to the gentleman from Mississippi [Mr. Lott].

Mr. LOTT. Mr. Speaker, if I could I would like to begin by addressing some questions to the distinguished chairman, to clarify once and for all for Members that the portions of the continuing resolution in the bill that passed last week, unauthorized programs like the so-called double-breasting bill; things like the Peace Institute; as well as those portions on the defense part of the bill: SALT II, Comprehensive Test Ban, chemical weapons—none of those issues would be included in this short-term, so-called clean continuing resolution. Is that correct?

Mr. WHITTEN. If the gentleman will yield, Mr. Speaker, those conditions are not carried in this 8-day extension.

Mr. LOTT. So what we have is the funding at the 1986 level and with the laws that are applicable to the 1986 bill. Is that correct?

Mr. WHITTEN. That is right.

Mr. CONTE. The terms and conditions of fiscal 1986.

Mr. LOTT. Terms and conditions of the 1986 level. Is that correct?

Mr. CONTE. If the gentleman will yield, that is absolutely right.

Mr. LOTT. And, Mr. Speaker, in each case we are also going with the lowest of the two levels that would be applicable?

Mr. CONTE. That is right.

Mr. LOTT. All right. I thank the Chair.

Mr. WHITTEN. Mr. Speaker, if the gentleman will yield, there is one thing I should add.

In the case the subcommittees get together and the conference report is agreed upon, and filed with the House, then those figures would take over. That is a come-on to try to get us to go ahead.

I would also like to announce that upon advising Senator Hatfield of our course, he made an announcement to the Senate which I heard; he is cooperating fully, trying to get this behind us.

Mr. LOTT. Mr. Speaker, just a few brief comments, as to why we are doing this and why the leadership is not objecting to it going forward at this point. I see our leader here, and he may have something more to say about it.

As a matter of fact the other body has not completed action on the continuing resolution. They have, as I understand it, as many as 180 amendments pending They have a number of other very urgent issues they are dealing with. It does not look to be like there is any way the other body could complete action on the continuing resolution before tomorrow, speaking very optimistically probably later; then we have to go to a conference which I assume would be a complicated conference that would take, I would assume, at least a day or two; and then we do have intervening this weekend the holiday that the House and Senate will observe; so there is no physical way, even with the best of intentions, that this issue could be completed to get it to the President before Monday or Tuesday of next week; and for during all of that time for the Government to be in limbo and for the Members to be marking time I think would not be the responsible thing to do.

So, Mr. Speaker, I think we should look at voting for the continuing resolution to take it over until sometime next week or perhaps the 8th, as is suggested in the resolution, or 8 days.

I would like to emphasize that it bothers me that we are driving this thing off, and that now we are acknowledging for all intents and purposes that we are going to be here next Wednesday and probably next Thursday; and the longer we stay, the greater the possibility looms that we will have somebody come in here and start talking about a lame duck session, heaven forbid.

So I would want to emphasize at this point that while I think this is the right thing to do now, I do not think that another short continuing resolution should be passed next Wednesday. At that point we ought put up or shut up, and I hope that that will also be conveyed to the other body.

Mr. CONTE. Mr. Speaker, I yield such time as he may consume to the minority leader, the gentleman from Illinois, [Mr. MICHEL].

Mr. MICHEL. Mr. Speaker, I certainly support what the distinguished whip has said with respect to the position I think we are going to have to take on our side of the aisle, after talking the issue over.

I would be remiss, however, if I did not make mention of my having just talked with the distinguished chairman of the appropriations committee in the other body, the senior Senator from Oregon, who made one last minute plea that we not extend for a total of 8 days and then make it all the more hard for him to have a terminal point for the consideration in the other body.

I recognize his problem. I think there are currently 184 amendments pending, and the more time you give, the more other things that come off the wall, and get dreamed up by those, particularly running in a election year like this.

By the same token, Mr. Speaker, I do not know that we in this body can take all the chestnuts out of the fire of those Members having problems over in the other body, even to the extent of the leadership having a problem having terminal points of discussion on this thing.

I advanced the point, "Well, so we give you 3 days, and then we're right up against it again and we've kept all our Members around and then you find you still can't come to a resolution."

So I would surely hope that some Members of the other body who would be inclined to drag this thing out would consider the consequences of a veto, which is sure to come I think in any respect.

□ 1640

Then the time required to recraft this thing after a veto and still get out of here by the end of next week.

Mr. CONTE. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Massachusetts.

Mr. CONTE. I thank the gentleman for yielding.

Mr. Speaker, I would stand up here and fight the longer period of time, the eighth, if I had any hope at all that we could finish it by the eighth.

The other body has not finished the continuing resolution yet. They were on the drug bill earlier today.

And you have the debt limit yet to take care of sometime tomorrow. We have to adjourn here early Friday, so that knocks out Friday, Saturday, and Sunday. Assuming we could come back here Monday with that massive bill, and it is a massive bill since it left here, you could never get the thing done by Tuesday. So it is being very realistic to have it on the eighth. It is a real Christmas tree right now. We will be very, very fortunate if we can get through by midnight of the eighth, and then in all likelihood you are still going to have a veto.

Mr. MICHEL. In all fairness to the other body, I might make the observation, however, they concluded action on a debt ceiling bill I think August 9 and have asked for a conference.

Now, there has been no move on the part of the majority in this body to get to conference on the debt ceiling, which frankly could also give us some leverage in this whole thing. But that is languishing. It is absolutely imperative that we extend the debt ceiling and increase it to keep the Government running.

Mr. CONTE. If the gentleman will continue to yield.

Mr. MICHEL. I yield to the gentleman.

Mr. CONTE. The gentleman makes a good point because that would clear the deck of one more problem.

Mr. MICHEL. And we need this whole process.

Mr. WHITTEN. Mr. Speaker, will the gentleman yield to me?

Mr. MICHEL. I yield to the gentleman from Mississippi.

Mr. WHITTEN. I thank the gentleman for yielding.

I would like to say again that we on the Appropriations Committee get looked at critically sometime because we have to handle this bill. And you have to handle it as is.

So I join in the objection to the delay that we have seen on the other side.

The gentleman from Illinois is correct, we have the debt ceiling and we understand they added a whole lot of amendments on the other side, all sorts of things.

One of the reasons we are in this situation is that the Committee on Appropriations on the other side of the Capitol has been unable to get the floor because of other matters, confirmation, and a whole lot of other business. I concede that. But we can complain all we please, but it is not our fault, either on the gentleman's side or our side. We have been out front. Some of our authorizing committees were a little slow and delayed us somewhat, but we made use of the rules and have taken care of that. So I just hope we can get it over there so there will be no delay.

Mr. MICHEL. I want to say that there is plenty of blame to go around here. We send over an impeachment resolution, then the other body is obliged under the Constitution to act. I am not altogether sure when that will be finally disposed of, but that is surely going to have to take a couple more days probably on the part of the other body's time as distinguished from what we do not have to consider on that score.

But I would have to come back to the issue on the debt ceiling, however. That thing came over here with a request for a conference on August 9. There could very well have been a conference committee meeting on the debt ceiling. If we would have resolved that issue, I would suspect and be willing to wager that this continuing resolution problem could have been minimized if we had simply moved ahead on resolving the debt ceiling problem.

Mr. CONTE. If the gentleman will yield further.

Mr. MICHEL. I yield to the gentleman from Massachusetts.

Mr. CONTE. Let me just say one other thing here: The reason why the other body did not take up these appropriations bills was because they did not have a 302(a) or 302(b) allocation from the budget resolution. That delayed them in coming out. That is another reason why both of these laws ought to be repealed, the Budget Act and Gramm-Rudman-Hollings.

Mr. WHITTEN. Mr. Speaker, I move the previous question on the joint resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. KILDEE). The question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the joint resolution.

The question was taken, and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 315, nays 101, not voting 16 as follows:

[Roll No. 426]

YEAS—315

Abercrombie
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barnard
Barnes
Bartlett
Bateman
Bedell
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Brooks
Brown (CA)
Bryant
Bustamante
Carney
Carper
Carr
Chapman
Chappell
Clay
Clinger
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conte
Conyers
Cooper
Coughlin
Coyne
Crockett
Daniel
Darden
Daub
Davis
de la Garza
Dellums
Derrick
Dickinson
Dicks
Dingell
DioGuardi
Dixon

Donnelly
Dorgan (ND)
Dowdy
Downey
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Edwards (CA)
Emerson
English
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Franklin
Frost
Fuqua
Gallo
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Glickman
Goodling
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Guarini
Hamilton
Hammerschmidt
Hawkins
Hayes
Hefner
Hendon
Hillis
Horton
Howard
Hoyer
Huckaby
Hughes
Hutto
Hyde
Ireland
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kastenmeier
Kemp

Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
LaFalce
Lagomarsino
Lantos
Latta
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lipinski
Livingston
Lloyd
Loeffler
Long
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
MacKay
Madigan
Manton
Markey
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCollum
McCurdy
McDade
McGrath
McHugh
McKinney
McMillan
Meyers
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Mitchell
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal
Nelson

Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Panetta
Parris
Pashayan
Pease
Pepper
Perkins
Pickle
Price
Pursell
Quillen
Rahall
Rangel
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roukema
Rowland (CT)
Rowland (GA)
Roybal

Russo
Sabo
Savage
Saxton
Scheuer
Schneider
Schuette
Schumer
Seiberling
Sharp
Shaw
Sikorski
Sisisky
Skeen
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Snyder
Solarz
Spratt
St Germain
Staggers
Stark
Stokes
Stratton
Studds
Sundquist
Swift
Synar
Tallon
Tauzin
Taylor

Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Waldon
Walgren
Watkins
Waxman
Weaver
Weiss
Wheat
Whitley
Whitten
Williams
Wilson
Wirth
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)

NAYS—101

Ackerman
Archer
Armey
Badham
Barton
Bates
Boulter
Broomfield
Brown (CO)
Bruce
Burton (IN)
Byron
Callahan
Chandler
Chappie
Cheney
Coats
Cobey
Combest
Courter
Craig
Crane
Dannemeyer
Daschle
DeLay
DeWine
Dornan (CA)
Dreier
Eckart (OH)
Eckert (NY)
Edwards (OK)
Evans (IA)
Fawell
Fiedler
Fields

Frenzel
Gekas
Gingrich
Gonzalez
Gregg
Gunderson
Hall (OH)
Hall, Ralph
Hansen
Henry
Hertel
Hiler
Hopkins
Hubbard
Hunter
Jacobs
Kasich
Kramer
Leach (IA)
Lightfoot
Lungren
Mack
Marlenee
McCain
McCandless
McEwen
McKernan
Molinari
Monson
Moorhead
Nielson
Oxley
Packard
Penny
Petri

Porter
Ray
Roberts
Roemer
Roth
Schaefer
Schroeder
Schulze
Sensenbrenner
Shelby
Shumway
Shuster
Siljander
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solomon
Spence
Stallings
Stenholm
Strang
Stump
Sweeney
Swindall
Tauke
Thomas (CA)
Walker
Weber
Whittaker
Zschau

NOT VOTING—16

Breaux
Burton (CA)
Campbell
Edgar
Fowler
Grotberg

Hartnett
Hatcher
Holt
Kindness
Lewis (FL)
Moore

Rudd
Stangeland
Whitehurst
Wright

□ 1455

The Clerk announced the following pair:

On this vote:

Mr. Wright for, with Mr. Kindness against.

So the joint resolution was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1705

GENERAL LEAVE

Mr. BOLAND. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Joint Resolution 743, and that the chairman of the Appropriations Committee may include tabular and extraneous material.

The SPEAKER pro tempore (Mr. KILDEE). Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

A CONGRESSIONAL SALUTE TO MAJ. GEN. JAMES R. MONTGOMERY

(Mr. DANIEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANIEL. Mr. Speaker, I rise to pay tribute to Maj. Gen. James R. Montgomery.

On October 11, 1986, Major General Montgomery will be honored at a change of command ceremony at Fort Belvoir, VA, on the occasion of his retirement after 34 years of distinguished and dedicated service to the Nation as an Active and Reserve officer.

General Montgomery will relinquish command of the 310th Theater Army Area Command [Taacom], a high priority Army Reserve logistic unit which commands 37 logistic units in peacetime, including three major subordinate headquarters—the 55th Support Center, 300th Area Support Group, and the 510th Theater Army Support Group.

The 310th command structure is comprised of some 4,600 officers and enlisted personnel located in 18 U.S. Army Reserve centers. In addition, the 310th exercises command and control of over 300 subordinate units in its wartime mission responsibilities, and in that capacity vigorously pursues a demanding Capstone Program with these subordinate units. It continuously revises and updates the numerous applicable plans in preparation for their postmobilization mission, and utilizes many of its Capstone units in applicable U.S. and overseas training exercises.

The command participates in readiness-related exercises such as Able Archer, Crested Eagle, Golden Saber, Support Victory, Gallant Eagle, Logex, Reforger, Transex, and Wintex. In recent years, the 310th Taacom has played a key role in planning and developing major logistic exercises such as Logex, Cornerstone 84, Support Victory, and Mosby Returns I and II.

As commander of the 310th since October of 1982, General Montgomery has provided the leadership which recently resulted in the selection of the 310th by the Senior Army Reserve Commanders Association to receive the coveted Gen. Walter T. Kerwin, Jr. Award as the most outstanding general officer command in the U.S. Army Reserve. The command also received the first U.S. Army Training Award for 1985.

General Montgomery was born in Knoxville, TE, on April 12, 1930 and was commissioned as a second lieutenant on June 9, 1952. He served on active duty as a platoon leader and transportation supply officer from September 1952 to September 1954. His major reserve assignments include duty as a U.S. Army Reserve School instructor; Director of Field Operations, 80th Division; Commander, 2174th U.S. Army Garrison; Deputy Chief of Staff, Comptroller; Chief of Staff; Deputy Commander; and Commander of the 310th Taacom.

His decorations include the Meritorious Service Medal, National Defense Service Medal, Army Reserve Components Achievement Medal with Oak Leaf Cluster, Armed Forces Reserve Medal with Hourglass, Army Service Ribbon, Overseas Service Ribbon, and Army Reserve Components Overseas Training Ribbon (7 tours).

His civilian education includes a bachelors and masters degree in history from the University of Tennessee and a doctorate in administration from Columbia University.

In civilian life, General Montgomery is director of planning analysis at Virginia Polytechnic Institute and State University. General Montgomery resides in Blacksburg, VA, with his wife Mary, and they have three grown children—April, Charles, and James.

As a member of the House Armed Services Committee, keenly interested in a strong Army Reserve, it gives me great pleasure to commend General Montgomery for a job well done. I know my colleagues will want to join me in wishing General Montgomery and his wife Mary great success, health and happiness in their future activities.

HOUR OF MEETING ON TOMORROW

Mr. DONNELLY. Mr. Speaker, I ask unanimous consent that when the House adjourns today it adjourn to meet tomorrow, Wednesday, October 1, 1986, at 11 a.m.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

Mr. WALKER. Mr. speaker, reserving the right to object, I would ask the gentleman if there is a particular reason for changing the time.

I yield to the gentleman from Massachusetts for his response.

Mr. DONNELLY. I thank the gentleman.

Mr. Speaker, the reason for this request is because there is a Democratic caucus at 9 a.m. tomorrow.

Mr. WALKER. Mr. Speaker, I thank the gentleman for his explanation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

DOCTOR JOHN P. McDADE HONORED

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia [Mr. PARRIS] is recognized for 5 minutes.

Mr. PARRIS. Mr. Speaker, I would like to pay tribute to Dr. John McDade, chief of the department of emergency medicine at Alexandria Hospital. Dr. McDade, who served the residents of Northern Virginia for the past 25 years, is this year's recipient of the highest honor conferred by the American College of Emergency Physicians (ACEP), the John P. Wiegenstein Leadership Award.

This award is presented annually by the American College of Emergency Physicians, which today numbers over 11,000 physicians nationwide, in recognition of outstanding contributions to the college. Dr. McDade, a charter member of the college since its founding in 1968, has held a variety of leadership positions in ACEP and served as its president from 1979-80. His tenure as president was marked by the distinctive recognition of emergency medicine as a medical specialty in 1979.

All of us realize that emergency medical care is one of the most demanding of professions. Emergency physicians, on call 24 hours a day, 7 days a week, are specially trained to immediately recognize and deal with a wide range of life-threatening or disabling conditions, often under stress conditions. Last year, 78 million Americans received emergency medical treatment.

Dr. McDade has been actively involved in emergency medicine since 1961, when he helped organize the emergency department at Alexandria Hospital. His advocacy and efforts on behalf of the field have been recognized throughout the State of Virginia, as attested to by the annual award by the Virginia chapter of ACEP of the "John P. McDade, M.D. Award," presented to the resident in emergency medicine in Virginia who has produced the best research in the field. With his receipt of the Wiegenstein Award, it is clear that Dr. McDade is recognized nationwide by his peers as an innovative and tireless leader. As stated in his nomination for the award, "his involvement and commitment have not waned one iota over the 25 years he has practiced medicine."

Mr. Speaker, I invite you and all our colleagues to join me in saluting Dr. John McDade. The residents of Northern Virginia are surely fortunate to have such a dedicated professional looking after their health and well-being.

THERE IS GREAT NEED FOR REFORM OF OUR IMMIGRATION CODE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts [Mr. DONNELLY] is recognized for 5 minutes.

Mr. DONNELLY. Mr. Speaker, once again Congress is preparing to adjourn without enacting any significant reform of our Immigration Code.

The last major change in the immigration law took place 21 years ago, and the evidence is overwhelming that it is not working properly.

There are between 3 and 12 million illegal aliens in the United States, it is impossible to estimate the exact number;

Our Border Patrol has arrested 1.7 million trying to cross our borders illegally this year, and at least that many have made it across without getting caught;

While illegal aliens stream across our borders, the door to legal immigration is slammed shut on those nations that enjoy long historic and family ties with our country.

The immigration reform of 1965 was intended to correct the apparent discrimination against residents of some countries, such as those of southern and eastern Europe. It eliminated country-by-country quotas in favor of a single, worldwide quota of 270,000.

The legislation was crafted to reunite separated family members and to allow those with special professional or labor skills to obtain a preference in applying for a visa.

Postwar prosperity in Europe slowed the demand for immigrant visas from that continent, and many expected the new worldwide quota would accommodate virtually anyone who wanted to come to the United States.

No one foresaw the massive wave of immigration from Asia. Attorney General Robert Kennedy told Chairman RODINO's immigration subcommittee in 1964 that, under the reform bill, immigration "for the Asia-Pacific triangle . . . would be approximately 5,000."

The experience of the last 20 years has been vastly different from what the Attorney General predicted. Immigration from the Asia-Pacific triangle last year was not 5,000, but 121,000. It accounted for 46 percent of the worldwide quota, not the 2 percent that Robert Kennedy foresaw.

What's more, the huge numbers of immigrants qualifying for preference visas now outstrip the worldwide quota, so there is now a lengthy waiting list even for those who are supposed to be at the front of the line.

Would-be immigrants who do not qualify for a preference visa have not been admitted since 1978.

The goal of the 1965 reform was noble to end discrimination against immigrants because of their nationality. Unfortunately, the events of the last 20 years have conspired to increase the problem of discrimination, not to eliminate it. Asians had long been discriminated against. Now, their large numbers are squeezing European immigrants out of the mix. The southern and eastern Europeans who expected to benefit from the 1965 law are now effectively excluded from the immigrant pool on an equal basis with residents of northern and western Europe.

The cumulative effect of the policy of the last 20 years has been to discriminate against many of the peoples that built our Nation.

In the 1950's, more than half of our Nation's new arrivals came from Europe. In the 1970's, that declined to less than 18 percent. Last year, fewer than 8.3 percent of the immigrant visas granted under the worldwide quota went to immigrants from Europe.

Italy, for example, accounted for more than 7 percent of the immigrant stock in the 1950's, but less than one-half of 1 percent last year. Ireland provided 2 percent of the immigrants in the 1950's, nearly 5,000 per year. Last year, only 515 Irish obtained visas under the preference system, less than two-tenths of 1 percent. France accounted for 2 percent of the immigrants who arrived in the 1950's, but only three-tenths of 1 percent last year.

For Germany, Greece, Austria, Norway, the Netherlands, and more than a dozen other countries, the story is the same—the route to legal immigration is closed to almost all traffic.

The result is hardly surprising. Laws that make legal entry impossible make illegal immigration inevitable. There are now tens of thousands, and perhaps hundreds of thousands, of illegal European immigrants in the United States.

If this House had considered immigration reform this year. I was prepared to offer an amendment that would have restored some balance to our immigration law.

My amendment would have authorized a relatively small number of new visas reserved specifically for immigrants from countries that have historically contributed to our immigrant stock but have suffered a sharp drop in admissions in recent years.

This Congress has failed to face up to its responsibility to enact fair and enforceable immigration legislation.

When the new Congress convenes in January, it must take up that challenge. We can never hope to keep illegal immigrants from coming into our country through the back door if we keep the front door locked tight.

□ 1715

OVERRIDING THE SOUTH AFRICAN SANCTIONS VETO

The SPEAKER pro tempore (Mr. KILDEE). Under a previous order of the House, the gentleman from Connecticut, Mr. McKINNEY, is recognized for 5 minutes.

Mr. McKINNEY. Mr. Speaker, I rise today to commend those of my colleagues in the House who exercised great courage and leadership last night in voting to override the Presidential veto of H.R. 4868, the South Africa sanctions bill.

Many of us in the House wanted an even stronger bill than what was approved last night. But I am pleased that H.R. 4868, which now awaits Senate action, has a very good chance of becoming the law of the land.

Mr. Speaker, it is redundant to say that apartheid is repugnant, defenseless and evil. Apartheid is synonomous with these words. To argue otherwise suggests that one either is uninformed, or worse, finds racial segration acceptable. The question in the debate, then, is not if apartheid is repugnant, but how to go about using our influence to bring about its end.

In my view, the package of sanctions included in H.R. 4868 will send a strong message to South Africa that a continued refusal to make changes in its system of government will prompt the United States to sever its ties with Pretoria. The bill would: One, prohibit new U.S. business investment in South Africa; two, terminate landing rights in the United States for South African aircraft; and three, prohibit U.S import of South African uranium, coal, steel, textiles, military vehicles, agricultural products, and food.

It is unfortunate that the President has vetoed this measure. I submit that it would be more effective for our Nation to speak with one voice on such a significant foreign policy matter as our relationship with South Africa. The veto, however, makes this goal unattainable. The House has taken bold, decisive action on the issue of sanctions. I urge the other body to follow this lead and override the Presidential veto of H.R. 4868.

Eventually, the majority of South African residents will have full rights and be recognized as citizens in their homeland. Our Nation must act now to speed that day.

SISTER MARY CHARLENE ENDECAVAGE TO BECOME THIRD PRESIDENT OF FELICIAN COLLEGE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, I rise to call to the attention of my colleagues that Sister Mary Charlene Endecavage will be inaugurated on October 19, 1986, as the third president of Felician College in Chicago, located in the 11th Congressional District of Illinois which I am privileged to represent. She will be succeeding Sister Mary Bonita Willow, who retired on July 31, after 23 years of dedicated service to this educational institution.

Sister Charlene is the first graduate of Felician College to become president of the college. She has received degrees from Mundelein College and Northeastern Illinois University, and is a student in the doctoral program at Loyola University.

She currently celebrated her silver jubilee as a Felician Sister in 1986. Sister Charlene is completing a book on the history of the Chicago Province of the Felician Sisters. Before coming to Felician College, she served as the assistant to the president of Villa Maria College in Buffalo, NY, a sister college to Felician College.

Felician College is a 2-year private Catholic college for men and women, chartered by the State of Illinois in 1926, which offers a liberal arts and career-oriented education. Originally intended as an educational institution for members of the Felician Order, the college has been open to lay students since 1967 and has been coeducational since 1974.

Mr. Speaker, I congratulate Sister Mary Charlene Endecavage on her inauguration as president of Felician College, and I extend to her my best wishes for every success as she assumes the responsibilities of her office. Under her leadership, I look forward to Felician College enhancing its well-deserved reputation as an outstanding educational institution, devoted to the highest standards of excellence in the academic, social, and spiritual development of each student.

THE 25TH ANNIVERSARY OF NATIONAL DRIVER REGISTER

(Mr. OBERSTAR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OBERSTAR. Mr. Speaker, I rise to call to the attention of my colleagues that this is the 25th anniversary of the National Driver Register.

The NDR is the only interstate mechanism to detect and monitor drunk drivers and other chronic traffic offenders, giving State motor vehicle licensing agencies an effective tool for keeping such offenders off our highways.

This is also the 10th anniversary of Citizens for Safe Drivers [CSD], a national, nonprofit citizens organization devoted to preventing highway deaths and injuries by improving the

National Driver Register and other driver licensing systems.

I became determined to improve the National Driver Register after the tragic highway death of Kamy Loren Nathanson, daughter of my Bethesda, MD, neighbors, Fran and Ken Nathanson. Kamy was killed in Rhode Island by a tractor trailer driven by a problem driver who was under suspension for the seventh time from his home State of New Jersey and was driving on a license from Arizona. This driver was on the road because the NDR was still operating with an antiquated, slow, and cumbersome mail system which delayed responses to State inquiries from 10 days to 2 weeks or more.

When the Nathansons were told that if the NDR had been working as Congress originally intended, their daughter might still be alive, they founded Citizens for Safe Drivers Against Drunk Drivers and Chronic Offenders, the oldest grassroots anti-drunk-driving organization. They worked closely with me to bring the NDR into the computer age. Beginning in 1977, I introduced various successively improved versions into legislation to strengthen the NDR. At last, in October 1982, Congress unanimously passed this landmark NDR bill.

It is especially appropriate to honor the NDR after 25 years of operation, initiated, I would like to point out, by our former colleague, John Rhodes of Arizona, the former minority leader. The NDR is now dramatically accelerating its progress under the 1982 act. Currently there are 20 States that receive overnight response to their inquiries and Delaware recently became the first State to adopt the new rapid response system [RRS] that assures a 5- to 7-second response from the NDR. Four pilot States have been selected to test the operation of the full problem driver pointer System [PDPS]. There are now over 11 million problem drivers in the NDR file; during the first 8 months of 1986 the NDR received over 11 million State inquiries and over 2.7 million reports from the States and sent back over 220,000 matches.

It is also fitting that we mark the 10th anniversary of Citizens for Safe Drivers. CSD not only inspired the legislation to speed and strengthen the NDR but played a major role in saving the NDR in 1981 when the new Administrator of the National Highway Traffic Safety Administration asked the Congress to terminate this vital program. CSD has alerted and mobilized the public, the media, and the entire safety community whenever the NDR has been threatened. CSD's continued citizen oversight helps ensure that the NDR will fulfill its lifesaving mission.

LEGAL RIGHTS OF MIGRANT FARMWORKERS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina [Mr. VALENTINE] is recognized for 60 minutes.

Mr. VALENTINE. Mr. Speaker, let me say first that I do not intend to use the full time. I know that will come as some relief to you and members of the staff who are here, if not to Members.

I do want to take sufficient time, Mr. Speaker, to bring to the attention of the House a matter which is of great concern to me and to many of my constituents and a question that we have not been able to focus much attention on.

Consequently, I have elected to seek this forum and to take this opportunity. I want to say to those who can hear me out in the country and see an image of this Member of Congress, that this is what the institution calls special orders. The regular business of the session has ended, and it should come as no surprise when the camera pans the Chamber, that you will find empty seats.

With that in mind, let me get on with what I have to say.

I have requested, Mr. Speaker, this special order today so that I and others can address a matter that is becoming an increasingly difficult problem with many of us who represent agricultural districts in this country.

The problem of which I speak involves the questionable practices of a group funded by the Legal Services Corporation and which represents legal interests of migrant farm workers. In my State, the group is known as Farm Workers' Legal Services of North Carolina, or FLSNC.

Mr. Speaker, I want to emphasize close to the beginning of my remarks that I have no philosophical or other problems with the proposition that those people who are at the lowest rung of the economic ladder are entitled to be placed on a par with anybody in society when it comes to litigation.

I believe that I and most Members of the Congress support the use of tax dollars in this matter. We support the rights of the disadvantaged in our society to receive adequate legal representation.

So my fight here today, Mr. Speaker, is not with the concept. It is not even with the Farm Workers' Legal Services of North Carolina. It is with certain practices which are carried on by those who hold themselves out as attorneys or attorneys' assistants in my State and how they seek to deal with farmers and how they seek to represent, or, I suggest, misrepresent, some of these migrant workers.

I cannot ignore the complaints of farmers in our district who have received telephone calls and letters from representatives of Farm Workers' Legal Services of North Carolina, alleging grievances against migrant workers by farm operators. In most instances, the FLSNC representatives have refused, as a matter of policy, first of all, to disclose the names of the persons whom they represented, to disclose the names of their clients.

□ 1725

How can a farmer, how can a producer who is accused of mistreating a migrant farm worker or any other person who works for him respond to allegations if he has no idea who the farm worker is?

Second, in the absence of specific details, charges against farmers have been so broad that the farmer is handicapped, if not confronted with an impossibility, to see whether he should respond to the letter or if he should ignore it; charges like writing to John Doe, a farmer in Nash or Edgecombe County in the Second Congressional District of North Carolina and say, "Mr. Doe, I represent a person, I can't tell you who he is, but I will tell you that you have violated without justification working arrangements with him to pay Social Security taxes and unemployment taxes on wages which he earned and which you paid."

How can a farmer who receives a letter with such an accusation determine the validity of the claim without having at the very least the name of the farm worker making the claim?

How can a farmer respond, Mr. Speaker, to such a charge without knowing when the alleged violation occurred?

Numerous farmers in my district have received what can only be described as farm letters from the Farm Workers Legal Services of North Carolina. Except for the names of the farmers, the crew leaders and the locations of the farms, the contents of the letters are startlingly similar. The letters list vague charges being brought against these farmers and they request sums of money in full settlement of a particular case and they say, and I am going to come to the specifics in just a minute or two, they say, "If you don't pay us this amount of money, make any reasonable offer for less than that amount."

I do not use this word lightly, but to me such letters approach the boundaries of extortion. It strains the imagination to believe that several farmers would commit exactly the same nine violations on different farms at different locations, but at the same time. Common sense indicates that different farmers are more likely to have committed different violations, at least a slightly different number of violations.

The evidence seems to suggest, Mr. Speaker, at least on the surface, that the same form letters are used to demand payments from farmers regardless of the actual circumstances.

Two examples of which I am personally aware underscore my concerns about the practices of the Farm Workers Legal Services of North Carolina. Rather than go to the trouble and expense of defending himself against a threatened lawsuit, one farmer in my district paid a sum of money to the FLSNC only to find out later that the whereabouts of the farm worker was unknown. Therefore, there was no way of dispersing the money. I suppose this reposes somewhere now in somebody's trust account.

On another occasion a farmer received a call from someone identifying himself as a representative of the Farm Workers Legal Services of North Carolina, who accused the farmer of failing to pay a farm worker the minimum wage when the worker gathered cucumbers on this man's farm. When the producer informed the caller that he had not grown any cucumbers for 5 years or more, the person on the telephone made some kind of apologetic response and hung up the receiver.

While I have met with representatives of the Farm Workers Legal Services of North Carolina to discuss the ongoing problem, they still, Mr. Speaker, in many instances refuse to provide the farmers with enough specific information for these producers to judge whether or not a violation of a farm worker's rights has occurred and whether that particular farmer is liable.

Now, I want to say again that I have no problem, philosophically or otherwise, with this business of the use of appropriations or dispersement of Federal tax dollars and dollars from the States to support this program. I voted against the appropriation the last time because I was frustrated about our inability to get any kind of redress of this problem.

I hold in my hand, Mr. Speaker—I have blanked out the name of my constituent who received these three letters. I want to read the pertinent parts from all of them.

The first one is a letter dated July 31, 1985.

The second one is a letter dated August 27, 1985.

The third is a letter dated January 23, 1986.

They all are on the stationery of the Farm Workers Legal Services of North Carolina.

The first letter of July 31, 1985, this letter is written to a constituent of mine in the Second Congressional District. It says: "This office has been retained by a migrant farm worker"—without giving the name of the worker, and it says, "while working with you in North Carolina, his rights under the Migrant and Seasonal Agricultural Worker Protection Act were violated."

He lists, the people who wrote this letter, and it is signed by a person by the name of Beth A. Zacovic, staff associate, and by a man by the name of Robert J. Willis who says he is an attorney at law.

They have written to this constituent and they say, "Some unknown person, some unnamed person who we represent, we can't tell you who it is, but you have wronged him, Mr. Doe, and we say that you have wronged him in nine different broad categories."

This is one of the form letters I have been talking about.

Second, it says, "You have failed to maintain pay records indicating all the information required by Federal law, including all the deductions made from my client's pay."

Now, Mr. Speaker, in all fairness, how can anybody make a decision, how can that farmer or farm owner or producer make a decision whether or not he has failed to maintain pay records on somebody whose name he does not know?

Now, the next paragraph, paragraph 3, these people who say they are representing the Farm Workers Legal Services of North Carolina: "You failed to provide him with an itemized pay statement indicating all the information required by law."

Well, how on earth do they expect my constituent to supply this information if he does not know who they are talking about?

Then they say in the letter: "We request that you pay our client $5,000 in full settlement of his case against you under MSAWPA and FLSA."

In the next sentence he says, "I will consider any reasonable offer for less than that amount."

Then they go on down and they talk about prelitigation and they say in effect that if you do not settle the case, we are going to sue you in Federal court.

Of course, Mr. Speaker, when you are sued in Federal court, you are entitled to have the charges against you. First of all, you have got to have a plaintiff and they have got to name him. They have got to come out who they say is the aggrieved person. Then you can get the particular information after you pay lawyers large sums of money and you go into discovery and you file interrogatories and take depositions.

But under the threat of going into Federal court they say, "Send us $5,000 for somebody whose name we can't tell you. You have just done all these things about his payroll."

No way in the world that the farmer can make any judgment; so this constituent wrote back and said in effect, "Let me have more particulars as to what you are talking about, please. Give me the name of this individual."

Now, I know what they say, "We can't disclose the name. Some harm will come to that person. He will be discharged," and so on.

I think there are enough civil rights statutes on the books of this country to protect the worker from that sort of thing.

Here comes the second letter on August 23.

Now, I hope those who are interested will listen to this. They say to my constituent, the farmer, they say, "It is our policy to refrain from disclosing such information,"—that is, the name and the specifics of what they say was done wrong—"until we are assured that the farmer or farm labor contractor involved is completely serious about wanting to resolve the claims under the Migrant and Seasonal Agricultural Worker Protection Act without litigation."

All right, they say, "We can't tell you what the charge is. We can't tell you the name of our client until we are sure that you are serious about wanting to settle without litigation."

Now, the next sentence: "Normally we have no such assurance until a definite monetary settlement has been agreed to by all parties."

So they say, "We will tell you who the client is and we will tell you what the charge is after you agree to pay us the $5,000."

Now, I suggest to you that is extortion. I do not care whether it is done by this group or whether it is done by somebody else. It is unethical conduct and nobody should be exposed to it.

Suppose—well, let me come back to my "suppose" later on.

He writes back again, this is August 27, and he says, he asks them again, "Please tell me the name of the person or persons that you say I have mistreated so I can go and look at my books and do some checking, so in the first place we can see if they really worked here during that period of time."

So the third letter comes on January 23, which incidentally was the first time in the correspondence that they said all this, whatever they said was done wrong was done during the spring of 1985. That is the first time they ever even mentioned a time of the year or a season or a month.

In that letter they refuse again to disclose any information, but said, "If you don't make arrangements to pay us, we are going to take you to Federal court," it says in effect.

Now, this thing has bothered me a great deal. I have confronted the representatives of the Farm Workers Legal Services. I have met with them in my office with representatives of that group. I have met with them in the offices of another colleague from North Carolina. I have attended a hearing in Goldsboro, NC, in the district of Congressman CHARLIE WHITLEY on this matter, and to this date we have not been able to get any change in this policy, Mr. Speaker.

So money that we vote in this Congress which is intended to go for a good purpose to put folks like this, poor people, in a par with landowners, is being used in these instances to extort money from good and honorable people.

I say, I charge that it is despicable conduct. Unless they change these policies, I for one am going to do what I can in my small way with my colleagues to see if we cannot get some congressional action.

There was some suggestion by some folks involved that, well, we will take this matter up before the Ethics Committee of the North Carolina State Bar and let them see if anythig unethical is taking place.

Why does one lawyer, Mr. Speaker, have to ask somebody else whether it is unethical to try to get a settlement out of some person by not telling them who you represent and by not telling them the specifics of the charge?

□ 1740

In my State, and I am sure in most States of the Union, the person who has a claim asserted against him has no protection. He might pay it out two or three times. If the claimant is under age, either a court-authorized settlement, a court-approved settlement is necessary, or a parent's or guardian's release. And if the plaintiff is incompetent, then you need a court-approved settlement. So nobody can know whether you have any protection. You might have to pay a claim out two or three times unless you know the name of the person in whose name the claim is asserted. And you certainly do not have any way to form a basis as to whether or not a settlement should be forthcoming unless you know the particulars of the claim.

I was hoping, and if that is the case, I will be glad—I am almost at the end of my road here—to yield for questions. I was hoping that maybe someone would come here who is interested from the point of view of the farmworkers, so that I could assure them maybe of what I have said about my interest in this program and my hope that they will use their good offices to try to get this problem straightened out.

Any lawyer, or I think any lay person, who sees this image, who is here or sees this on television or hears it, I think ought maybe to understand the enormity of this problem if I drew this analogy. What these people are attempting to do to my constituents in North Carolina is just the same sort of thing as if you or you or your return trip to Washington, whenever you came back, whether it was Sunday or Monday, you were driving an automobile, and you were for one reason or another in a four-car accident on the interstate highway. You receive a letter from a lawyer saying, "I represent a person who was involved in an automobile accident with you." He gives the date. "I want you to send me $10,000."

It is the very same thing, Mr. Speaker. "If you do not send me $10,000, I am going to take you to court, to Federal court."

Let us be completely frank and fair and honest. To go to Federal court means endless delays. I am not talking about Federal judges. I might have to practice before them again sometime. But it means endless delays, and it means all kinds of discovery—in State court, too. It means expenses. It means lawyers' fees. It just means a tough time. The whole purpose, or one of the purposes, of the legal profession is to keep people out of court, not run them into court.

What they are doing is the same thing as when you get that letter and you say, "Well, I am going to take it down to my lawyer." You take the letter to the lawyer.

If any lawyer advised the person to pay that claim, he should be disbarred. He would say, "Well, you know, we have to know a lot more about this. We want to know first of all the name of the man's client, so we can see if indeed he was involved with either one of those automobiles, if he was a driver, if he was a passenger. And certainly it is important to know whether he was a driver or a passenger. We need to know also how bad he was hurt. Did he sustain a whiplash? Did he sustain brain damage? Was there permanent injury? What were his medical expenses? What were his loss of earnings?"

So what this group of people have been doing to some of my constituents in the Second Congressional District of North Carolina is the very same thing that I have just explained about this imaginary accident out on the interstate. It is wrong, it is a shame, and it is unethical. I say shame on all of them that have had anything to do with it, and those who have sponsored and supported them. I say also that unless you make some change in this policy, regardless of what somebody else's opinion as to ethics might be, this Member of Congress is going to spend a lot of time in the next few months and years trying to see that the situation is corrected by the U.S. Congress.

Mr. Speaker, I yield back the balance of my time.

THE WEAKENED GIANT

The SPEAKER pro tempore (Mr. Stallings). Under a previous order of the House, the gentlewoman from Maryland [Mrs. Bentley] is recognized for 60 minutes.

Mrs. BENTLEY. Mr. Speaker, in the furor last week created by Premier Nakasone's racist remarks about America, it seems to me that something very important was not commented upon—the reason for the analysis by the leader of Japan on what is wrong with the United States.

As reprehensible as I found his remarks about minorities and women to be—and as the daughter of immigrant parents, the content of his speech made me very angry. Upon reflection, I am equally disturbed by the impact of his perception that this country has lost something important in its performance as a world power.

No wonder we have been unable to successfully negotiate with the Japanese on the many trade issues which have affected our economy so much. The Japanese obviously do not view us as equals. They obviously think of us as not so competent, not so strong as they—and as Congressman Parren Mitchell of our Maryland delegation so eloquently pointed out last week—as inferiors.

And I, for one, think that that is the most shocking thing that any world leader could say about another country. Especially a country to whom the Japanese owe so much.

The modern technological miracle of Japan was built by the United States and United States parents are the basis of every machine which is imported into this country from Japan. As innovators, as mechanical geniuses at adaptation, there is no nation that surpasses Japan.

As investors, as creative genius goes, there has never been a nation which surpassed the United States in sheer numbers of patents and inventions. But, somewhere along the line, we decided that we had so much we could share; we could give away the goose that laid the golden eggs.

I believe this happened as a direct outgrowth of our involvement in the Vietnam conflict. At the time I was covering the AID shipments abroad for the Baltimore Sun. It was during those years that for the first time cash grants to foreign countries were allowed to be spent for needed goods in countries other than the United States.

Remember Mr. Speaker? The original intent of the AID Program was not only to do well by other countries, but to create export markets for our own products. I recall very well when the change began to occur and I remember that it was the Japanese who were pushing even then—the mid-1960's—to get a share of our markets. And, we acquiesced.

Twenty years later and a balance of payments deficit which is eating our domestic industries alive—it becomes very evident that the caving in on the part of our Government to those foreign demands in the Vietnam era was only the beginning of demands for greater access to our world market share.

I believe the massive guilt we took on ourselves as a nation over the Vietnam action cast us in the role of supplicants to world opinion and approval to the point that our governmental policy shifted to literally trying to curry favor abroad by being seen as generous and openhanded in our dealings with foreign nations.

Were we cast as the bad guys in Vietnam; well, if we became easy going and nice in our business affairs and if we shared our wealth, the perception of our national image would change. We would become the good guys again.

The war in Vietnam is long over. The judgment of history is not yet in on whether our national interests were best served by our being involved in that far-off nation. Yet, the fear that sucked us in—the spread of Communist power into that area of the world—has proved to be well founded.

Russian submarines are now being fueled from bases which we built and lost during those awful years. The Russians have gained a powerful strategic port by which the oil tankers moving from the Middle East to the manufacturing centers of Asia must pass.

The handling of that war by our Government will be disputed by the experts for years to come. I was there for 6 months and I am personally aware of actions which I saw and questioned. But, I believe among thinking people, there can be no dispute—we came out of that war a much weaker nation. And, I am beginning to think that the weakness may much more concern psychological damage done to ourselves than to financial loss or loss of face among the nations of the world.

We painted ourselves ugly and we believed it much too long. President Reagan has rightfully been given credit—by many political commentators—for making the country proud to be American again. For recognizing the contributions of the many Vietnam veterans who answered the call of their country under the most difficult of circumstances. And he instilled pride in those brave men and women by his action.

Mr. Speaker, I think it is time to take the idea of "standing up for America" into our Government offices, into our bureaucracy and certainly into our treaty making with other nations.

I have been shocked time and again since I've come to Washington to find the bureaucracy much more concerned about the rights of foreign countries over the good of America even when the law upheld American interests.

I am told that in trading matters foreign nations demand shares of our American markets. Shares which only 20 years ago they did not have nor did they even aspire to. Negotiators tell me they view entry into the American market place as their right.

If we have not allowed ourselves to be browbeaten psychologically, then how is it that we listen to such demands on their part and do nothing when we are shut out of their markets by such thinly veiled tariffs as the addition of a foreign value added tax to our own products the minute they are off loaded at the dock on the other side. How can a foreign nation add a tax to U.S. produced products and still get away with the pose of practicing free trade?

The value added was not done abroad. The value was added in the United States by American workers and the product carries the weight of taxes legally paid to the U.S. Government.

I welcome the new round of GATT talks underway in Uruguay, but I would hope that we would drop our worn out tattered mantle of guilt for being a wealthy Nation and a successful Nation. We owe no apology for having created great markets and we should owe no one a share of those markets. Those markets should belong to American products and American workers and the wealth of those markets should stay in this country for new products, new jobs.

Our economy is showing all signs of being stagnant. Falling interest rates have not been a stimulus and there are sounds in the economic community of shock at the lack of response. Why the surprise? The lower interest rates no longer show a quick response in our industrial base because so much of the credit created is flowing abroad.

Before the advent of free trade, our economic system operated much like a radiator with the recycling of wealth throughout the economy as water is recycled throughout an auto engine. An addition of greater credit would build up pressure inside the economy. But the opening up of our economic engine—foreign products in/money flow out—has been tantamount to the system springing a leak.

It also presupposes a loss of control over our own economy. No longer can we heat it up or cool it down. Foreign nations have more control over our economy than we do.

From having been the most powerful nation in the world in the 1950's, after the Vietnam experience in the 1960's, it seems that we are being perceived by the world, and by Premier Nakasone—in particular—as a weakened giant.

And we are being treated accordingly.

A recent story in Business Week magazine reports that we are negotiating with the Japanese to have them come aboard the strategic defense initiative—star wars. The proposed agreement, as it stands right now, is that U.S. Government money will be used by Japanese firms for the research and development. And, that the Japanese firms will retain all civilian applications of the products developed and will keep all proprietary information gained during the research activity.

Heads we lose, tails they win. The story is getting old.

Another story that has surfaced this summer is that we are giving our stealth technology to the Japanese.

We are running out of golden geese to give away. Our internal deficit—the money we owe ourselves is staggering—around $2 trillion. The money we owe the world for our spending orgy on imports is estimated to break $170 billion this year.

We are awash in a sea of red ink and yet we are trading off technology—actually paying a competing nation to develop it and then take the next generation of new products away from us.

It is time for the leadership of this country to stand up for America at the bargaining tables of the world. We must stop shrinking from economic confrontations with foreign nations. We must fight, as they do, for markets and jobs for our people.

Japan has shown herself to be loath to take up the burden of world leader. When it is time to pledge help to Third World nations or to assume the burden of her own defense, she has been painfully shy.

We must always be aware and the world must take note that our leadership position in the world has been in direct proportion to our wealth and our willingness to spend that wealth to aid faltering nations. When we are no longer wealthy and with no wealth to spare, who will lift the burden of the world then? Certainly not the Japanese.

It is a time to consider not only what is happening to this Nation, but to also consider what will happen to the world if we are really in the condition Premier Nakasone perceives—an inferior nation.

It's a scary thought for the future of the world—but if true, Mr. Speaker, it should be discussed in this House with great urgency. All signs from our eroding industrial base suggests that the hour is late.

□ 1750

THE HIGH RISK OCCUPATIONAL DISEASE NOTIFICATION AND PREVENTION ACT OF 1986.

The SPEAKER pro tempore (Mr. STALLINGS). Under a previous order of the House, the gentleman from Minnesota [Mr. PENNY] is recognized for 30 minutes.

Mr. PENNY. Mr. Speaker, I take this special order time to discuss with our colleagues, H.R. 1309, the High Risk Occupational Disease Notification and Prevention Act of 1986.

Let me say, Mr. Speaker, that I support this bill and that I urge passage when it is considered by the House. I do have reservations about H.R. 1309, however, and I want to bring them to the attention of the Members.

H.R. 1309 requires the Department of Health and Human Services [HHS] upon recommendation of a "risk assessment board" to notify employees who have been found "at risk" of exposure to hazardous substances in the workplace. The bill defines employee populations "at risk" solely in terms of magnitude of risk: when the incidence of disease is found to occur at a level 30 percent above the normal background rate of disease in the general population. This 30-percent trigger is arbitrary and not appropriate as the sole consideration for deciding which employee groups to notify. I plan to offer an amendment when this bill is before the House that would require that accepted scientific principles of causation be considered in making determinations under the act and that the risk assessment board be given flexibility in weighing and balancing the seriousness of the disease and notification once the 30-percent threshold is reached.

The consequences of notification are so much more widespread and serious—both in terms of costs and impacts on employees—that the 30-percent trigger is not appropriate. For example, as the bill requires, the board would be obligated to consider all exposure disease associations causing an increased risk of 30 percent greater than expected. However, a 30-percent increased risk of the common cold may not be as important as a 30-percent increased risk of cancer. In short something more is needed besides the 30-percent trigger. The amendment I will offer would add the necessary scientific principles and flexibility to the 30-percent trigger.

In addition, I will offer an amendment that will allow for an independent third opinion where a dispute has arisen between a medical representative of a company and the affected worker's personal physician concerning needed medical treatment. This "third party" would be selected by both parties and would be paid for by the employer.

Finally, the bill does not require consideration of actual workplace exposure in identifying populations at risk. I will offer an amendment that will redefine the term "hazardous occupational exposure" to mean a history of potentially hazardous use of any harmful chemical, physical, or biological agent found in the workplace. This amendment would not penalize affected workers, but will instead insure that the history of potentially hazardous materials use be the criterion for scientific evaluation subsequent to worker notification.

Mr. Speaker I commend to our colleagues a statement concerning H.R. 1309 from Dr. L.T. Kurland, chairman and professor, Department of Medical Statistics and Epidemiology, Mayo Clinic. Dr. Kurland is an expert on occupational health, having authored several books and over 250 articles on the subjects of occupational disease and epidemiology.

Mr. Speaker, this legislation is needed, and I commend Chairman Joseph Gaydos, of the Health and Safety Subcommittee, for his diligent efforts on behalf of workers. With the changes I propose we will have an even better bill. A bill that will protect affected workers and not penalize employers.

The statement follows:

Statement of L.T. Kurland, Professor and Chairman, Department of Medical Statistics and Epidemiology, Mayo Clinic

I have had the chance to review the letters in support of H.R. 1309 from Professor Selikoff and Professor William Nickelson from Mt. Sinai Medical Center. I differ with their appraisal of this bill on several items. First, the emphasis on environmental agents is well-intended but ignores the importance of other factors, including underlying genetic factors; naturally occurring environmental exposures, such as sunlight, background radiation and naturally occurring carcinogens; and many of the exotic foods that we encounter. Selikoff also completely ignores the most critical environmental carcinogen in this country has ever faced, namely tobacco smoke which will directly account for hundreds of thousands of deaths annually in the years to come. We cannot ignore smoking and other personal habits which may very well complement the effects of some of these agents. For example, we know that there is a complementary effect with asbestos. Asbestos alone can account for some lung cancer and some tumors called Mesothielomas. These are, however, in the absence of smoking really relatively uncommon.

Dr. Selikoff also makes a reference to abdominal cancer from asbestos. The data in this area, in my opinion, are quite weak. In fact, the ongoing study that has been underway for perhaps 15 years on abdominal cancer incidence in Duluth and Superior, Wisconsin has shown no significant difference to date. Taconite tailings containing some asbestos were dumped in Lake Superior or from which Duluth draws its water supply. The water supply for Superior, Wisconsin, as I understand it, has come from deep wells, which are free of this form of asbestos. We have participated in the comparison of these two cities, and no difference in the death rates from various abdominal cancers has been found.

Dr. Selikoff also refers to higher death rates of stomach cancer in Japan as an example of environmental exposure. Based on my lengthy experience in Japan, I believe the Japanese data is influenced by reporting error and social acceptance of certain causes of death in Japan. A big problem in Japan is relatively poor reporting, poor diagnostic work-up and a very, very low rate of autopsy confirmation. So how many of these so-called stomach cancers are really colon or pancreatic cancers, I think is open to question. If the rate in stomach cancer is so much higher, I think the most likely explanation is going to be dietary and not industrial exposure, because it's high among women as well as men.

Dr. Selikoff talks about colon cancer in the United States and Romania. That data is based on very different quality information in the two countries. Again, we have to consider that the rate is about the same in both men and women, in spite of the fact that men may have all kinds of industrial exposure. All of these examples point out the difficulties of making a determination as to whether risk of disease does actually exist.

I agree that several known carcinogens have been identified in industry and certainly the ones that have been identified, to my knowledge, are usually under rigid control by the industry itself as well as by industrial hygienists at the state and at the OSHA level. I am strongly in favor of notifying workers if they are exposed to any safety hazard.

In addition, I disagree with Professor Nickelson's statement in his letter that "the 30 percent trigger is a very conservative one." This refers to the bill's requirement that the Board find that an employee population is at risk when a disease occurs at a rate 30 percent above background rates. This is too simplistic an approach to take to such a serious issue. For example, we might expect 10 cases of some disease in 1,000 workers in a given period of time. If we saw 13 or 14 cases, the trigger of 30 percent increase would be met. However, if the review body failed to take additional steps to evaluate the data, for example, to obtain confirmatory results, to ensure that the diagnoses were correct in those cases, to try to get independent confirmation, to obtain animal studies that would support this condition, etc., industry might be forced to unnecessarily notify its workers that they were at risk and create a whole new situation of hysteria. Even an inexperienced statistician would recognize the difference between 13 cases and 10 could easily be due to chance or extraneous factors that have nothing to do with industrial exposure.

The Board is to make its assessments on the basis of the best available scientific evidence. There is often a problem concerning the quality of that evidence.

For example, a young physician, Dr. Greenwald (now with the National Center Institute) who was interested in cancer reviewed all the medical records for a very large workforce at Eastman Kodak company. He found a rate of incidence of primary brain tumors that was much higher than it should have been. He was using as his basis for comparison national death rates and some data from the Connecticut Tumor Registry, which we have found in some respects is very good and some respects not good at all. He decided to find out what chemicals were involved and carried out a very extensive case control study to try to see if they could isolate any particular chemical that could account for what was presumed to be an excess of brain tumors. They found essentially a negative result. The chemical exposure of those that had these brain tumors was no different from the people who did not die of these brain tumors.

And then they found a Mayo Clinic study I started some 20 years ago, giving the incidence rates of various types of cancer for Rochester, Minnesota. Rochester, Minnesota is a clean air community. We have no heavy industrial exposure or pollution. What he found was that the rates of primary brain tumors that we reported as the everyday experience of our population in Rochester over the previous thirty years were just what he was finding as the rate in Eastman Kodak workers. So there was really nothing to indicate an excess of cancer in his workers.

What had happened was that he had a very poor baseline for comparison. Getting that kind of baseline for comparsion involves a high level of clinical expertise, the availability of laboratory material, the availability of pathology, etc., to be sure that you're dealing with the correct disease and not something else. Dr. Greenwald's conclusion was that you should look very hard for the best baseline statistics, find a good goal standard and compare it with that. If you don't, you're going to have what is an apparently high frequency when no such high frequency exists.

Another example concerns a proportional mortality study done recently in the petroleum industry. This kind of study is considered a fishing expedition, a very poor quality of study mechanism, but one which is frequently used in industry. The study reported that there appeared to be a higher and increased proportional mortality among the petroleum workers of primary brain tumors. And yet, as I have pointed out, the highest incidence reported anywhere in the world today is Rochester, Minnesota. Not because we really have more cases than elsewhere, but because of the intensive coverage of our population, the very high autopsy rate, the discovery of previously undiagnosed cases and the fact that we really apply a very high level of medical care. The rate would have to be shown to be higher than what we have in this clean air community for me to be convinced that someone is really dealing with an additional risk factor. So, I want to make it clear that matters of diagnosis are really of extreme importance and yet, in study after study, this is an area that's been neglected.

Another area in which the 30% trigger is too simplistic is in comparing results in animal studies to humans. For example, a recent study, not published, found that testicular cancer appeared to have occurred among some workers in aircraft repair who were working for the military. These were civilian workers, for the most part, working for the military services and servicing phantom jets. The authors found in one repair facility what was clearly regarded as an excess of this type of cancer. They compared them with Rochester, Minnesota and they were still excess. They compared them with other sources and it was clear that they had an excess. They then went to another facility where they service the same kind of aircraft, traced the men, got this information and found that the incidence was high in this group too. It was statistically significant, it was in excess, and what they finally discovered was a practice that has since been stopped, where they were using something called a de-potting agent. An epoxy mixture holds the wires in a certain place in the wing, and when those have to be repaired the expoxy has to be removed and they use a certain solvent to do it. We don't know for sure what the problem was, but it appears that this particular solvent may have some carcinogenic qualities, in spite of the fact that animal studies have not shown anything.

Sometimes the animal studies are good in one area and then misleading in another. In the Agent Orange situation, we know that in certain animals it is carcinogenic and in other species it may cause malformation, but we really haven't seen either problem arising in humans. One has to be very careful about jumping from the animal world to humans in terms of any assurance that this same mechanism is involved. In addition, the long latency period that we see in cancer cases has to be taken into consideration and may not be taken into consideration adequately in this bill. Some industrial hazards may take 20 years before they're manifested and the agent may have long since been substituted by something else for reasons that had nothing to do with the health factor. Tracing the workers and tracing of the extent of exposure, all these things can be very tough to identify and to work out.

I can tell you that even with established eqidemiological, clinical and laboratory studies, it is not easy to define and indentify specific worker populations at risk of contracting occupational diseases. It is known for very few, and for others I think it is difficult or impossible to make that kind of identification readily.

I would also like to point out that there is a large down-side to making notificiations that later turn out to be unnecessary. Our experience with the media coverage given to the Agency Orange issue is relevant.

Agent Orange contains small quantities varying from 1 part per million to perhaps 20 parts per million of a contaminant called TCDD. This substance behaves as a carcinogen in some animal species and as a teratogenic agent in others. On the basis of various health complaints by veterans who claimed exposure, the courts have ordered industry to compensate the veterans to the extent of over $180 million, yet there's not a single proven death in man from TCDD. The most reliable information available on this issue is the "Ranch-Hand" study. That was the code name for the 1,200 men involved in the preparation and spraying of Agent Orange over Vietnam. Intensive follow-up of the group, and also comparison of them with air cargo who were not exposed, have shown no significant difference between the two groups in mortality or disease incidence and no difference in any significant malformations in their childern. I am familiar with the study since I am on the committee reviewing this. I am convinced, on the basis of the scientific data available, that the publicity related to Agent Orange caused far more psychosomatic illness and hysteria than any exposure of our troops to Agent Orange in Vietnam. The actual exposure of troops to Agent Orange was minimal.

Another example of over-reaction to poorly documented information, in my opinion, is that of the swine flu vaccine incident of 1976. I took part in the decision made by the Assistant Secretary of Health, to stop the immunization program in December 1976, after 45 million people had already been immunized. The swine flu epidemic did not appear. That was the main reason we decided it could be stopped. In addition, cases of what is ordinarily a rare disease, called Guillan-Barre Syndrome, were believed to have increased as a result of exposure to the vaccine. Unfortunately, it was immediately picked up by the media and what finally came out were some 4,000 claims for more than $3 billion against the U.S. Government. The government has already paid out, I would estimate, over $500 million in compensation.

After that had all happened, I was appointed as a member of the Armed Forces Epidemiology Board. Because I was already having some concern about all these claims, I requested and obtained information on the experience of the military services, among whom 80 percent of nearly 200 million active duty people had received the vaccine. Among this group, whose diagnosis were based on high quality hospital reports collected in a uniform manner and subject to careful review, there was absolutely no increase in Guillan-Barre Syndrome. I have recently brought this to the attention of the Director of the Centers for Disease Control (which performed the original epidemiology studies), pointing out the possibility that there was in fact very poor quality control on the part of CDC in carrying out the study and raising the question as to whether the entire matter may not have been artifact and not really a vaccine reaction. And yet, the medical profession is generally convinced that the original study was correct and the courts have already awarded hundreds of millions of dollars. I think the impact on the nation's liability, medical insurance and what may often be unwarranted hysteria in the workplace can be highly detrimental to our industrial capacity and at the same time provide little or no meaningful protection to the worker.

Lastly, I would like to explain some of the considerations I feel are necessary in a bill of this sort. Most importantly, I would want to be sure of a causal connection between a chemical and disease. First, is there evidence from proper experiments in humans? Is it possible to do what we call "randomized controlled trial?" Is it possible to carry out a cohort study, where a specified group is followed for a known period of time and the outcome in that group is determined? Is it possible to do a case control study, where you start with people who are now ill, and you compare them in terms of their exposure with the people who are not ill, such as was done in the Kodak study I mentioned. Basic to all this is the kind of thing we do here in Rochester, the descriptive study that provides the best possible incidence rates which, in my opinion, are the most important thing that we need to determine whether we really are faced with an increase. Death rates are subject to the lots of errors in death certification. The incidence rates based on careful medical documentation is really the way to do it. Unfortunately Rochester, Minnesota is one of the few places where this can be done on a large scale. The second point is the degree of association. What is the relative risk or the odds ratio? If it is just a little bit more than 1, then that's not very convincing. If you get up to a high relative risk of 5, 10, or 15, you have a lot more to go on.

The third point, is the association consistent from study to study? Can you go from one industrial group to another group exposed to the same substance and show that the abnormalities are occurring there? Next, is the temporal, or the timely relationship correct. Can you show that the exposure precedes the onset of whatever undesirable outcome you're concerned with? Next, is there a dose response relationship? Can we show that the higher the exposure the more likely the undesired outcome in terms of illness? Next, does it make epidemiologic sense? Does it really fit in with current understandings of what we know about the causes of illness and the outcome of exposure? Next, does the association make biological sense? What about what we know with respect to the response of cell tissue cultures, organs and animals experiments? Is the association specific? Do we see one type of exposure with a specific type of outcome? That is not always essential. Sometime one kind of exposure can cause several different types of outcome, but at least we would like to know that there is some degree of conformance to that concept. And then, do we have anything analogous in this kind of an association to previously proven causal associations? Do we have anything that we can go back to show that there is in fact this kind of exposure-outcome association, which is helpful in deciding that there really was a risk factor.

Finally, one needs the collection of good scientific information, the presentation of this to peer review groups, the acceptance of those reports by the editorial group in appropriate journals, the confirmation from independent sources to establish that this is more than just a chance happening or that the person in a whole series of studies who reports it is the only one that may come up with a positive answer and all those who came up with negatives have failed to report. We really have to be very careful about how we jump from some suggestion that something may be toxic to the action of notification that has such serious consequences attached to it.

A TRIBUTE TO OUR MAINE MAN: REPRESENTATIVE JOHN R. McKERNAN, JR.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. BOEHLERT] is recognized for 60 minutes.

GENERAL LEAVE

Mr. BOEHLERT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks on the subject of this special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. BOEHLERT. Mr. Speaker, soon, when the 99th Congress completes its work, one of America's truly outstanding young political leaders, Representative JOHN R. MCKERNAN, JR., of Maine's First Congressional District, will be leaving us to pursue a new challenge.

To say he will be missed is an understatement, for in his two terms among us, "JOCK" MCKERNAN has made an indelible mark, both professionally and personally. In short, he is effective and he is liked and that's a winning combination.

☐ 1800

When I reflect upon the brief stint in the House of my colleague and friend, I am reminded of a famous quote from George Bernard Shaw who once so eloquently said:

> Some men see things as they are and ask why. I dream things that never were and ask, why not?

Shaw's words describe the MCKERNAN modus operandi perfectly. So many times when I have been privileged to be in Representative MCKERNAN'S company as important matters were being discussed, he would be an articulate advocate for positive change.

Not change just for the sake of doing something differently, but change in the interest of improvement. Often his thinking elicited responses like, "We can't do it that way," or "It won't work," or "That will never fly."

He would persist; always probing, always searching, always in pursuit of a better way, and more often than not his convincing arguments and farsightedness would win the day.

Although knowledgeable in so many areas, Congressman MCKERNAN never played the role of expert on everything. Instead, he concentrated much of his energy in what might be referred to as the three E's: economic development, the environment, and education.

These are important issues for Maine and her people; they are equally important for the Nation and all Americans.

Mr. Speaker, before I proceed with this personal tribute to a truly outstanding friend and colleague, I would like to recognize my distinguished colleague from the State of California [Mr. LEVINE].

Mr. LEVINE of California. Mr. Speaker, I would like to commend the gentleman for taking the time to call a special order tonight on behalf of a gentleman who does deserve bipartisan tribute for the time that he has spent here in the House.

When I heard that the gentleman from New York [Mr. BOEHLERT] was calling this special order, I wanted to participate for just a few moments to make a couple of personal comments.

First, I think that this institution acts best when it acts on a bipartisan basis. Second, I think that we do not do well enough what we would be able to do if Members on both sides of the aisle knew each other better, spent a little more time with each other, explored each other's ideas in more depth and thereby became more sensitized to the views of Members on the other side of the aisle.

Frankly, I think that in the time that I have been here, one of the people who has been easiest for me to talk to, one of the people whose attitudes, views and ideals have always appeared to me to be of the highest order is the gentleman from Maine that we are saluting this evening.

So I compliment the gentleman from New York for taking this special order out on behalf of a very fine Member, somebody who will be missed on both sides of the aisle.

On an additional personal note, I would like to mention that there are a small band of us on the Democratic side of the aisle who will have some mixed feelings about the gentleman from Maine's departure. As one might detect from his nickname, there are rumors to the effect that the gentleman from Maine plays an athletic role in or near this legislative body.

I believe that some of that was an item in some dispute once per year, when the annual congressional baseball game was played; but in all fairness, the dispute was resolved annually, with those of us on this side of the aisle wishing that the gentleman from Maine had spent his time in Maine during the week of the congressional baseball game rather than spending his time in Washington, DC.

This year, the minority party finally discovered that they had a young, strong pitcher in the form of the gentleman from Maine; but to the relief of those of us on this side of the aisle, that was only discovered when there were 2 innings left in his legislative career.

I think one of the great sorrows of one of the more senior Members of this body, the gentleman from Massachusetts who, after 25 years will no longer be managing the Republican team, will be that that gentleman only discovered the extraordinary pitching skills of the gentleman from Maine when that gentleman was 2 innings away from the end of this legislative career.

So, Mr. Speaker, we will wish him in a number of respects. We will miss his personality; we will miss his ability to work with Members on both sides of the aisle, and even those of us who have done combat with him on the athletic field on an annual basis will miss his skills, as he moves from a body of 435 people into a smaller arena but one in which he will play on a larger personal stage.

I thank the gentleman from New York for yielding me this time; I salute the gentleman from Maine [Mr. MCKERNAN]; he has been one of the finest Members with whom I have served. I am pleased to call him a friend, and I am sorry that he will be leaving this House.

Mr. BOEHLERT. Mr. Speaker, I thank my collegue from California [Mr. LEVINE] for his comments, particularly because he has addressed both the personal side of the relationship and the professional side of the relationship.

If I may take them one by one, on the personal side I would observe that there were many on the gentleman's side of the aisle who already missed him. That is when he was pitching and they struck out. He did an outstanding job for our side of the aisle in that annual baseball game.

I would also like to observe that our distinguished colleague is one of the few Members of this body who had visited Cooperstown, NY, which is in my congressional district, that was sort of a prelude; we are introducing him to the Baseball Hall of Fame.

We will lose him on the Republican baseball team in the House of Representatives, but the Governors association on our side of the aisle will have a strong arm.

On the professional side, I am so pleased that you emphasized bipartisanship, because you know and I know, and all of us know in this institution that the greatest achievements in the history of this great republic have come when Republicans and Democrats have worked together.

Congressman MCKERNAN is the type of guy who would say he is not a Republican first, he is an American first, and I am so very proud to be associated with him because of that attitude, and I would like to thank my colleague from California [Mr. LEVINE] for his contribution.

Mr. Speaker, I now yield to the distinguished gentlewoman from the State of Connecticut [Mrs. JOHNSON].

Mrs. JOHNSON. Mr. Speaker, I am pleased to have the opportunity to recognize the distinguished service of Jock McKernan in the House of Representatives of the U.S. Congress.

His contribution here has indeed been strong and unique. He has been an advocate for me that has reflected that State's deeply held convictions, strong sense of principles, dedication to rugged individualism and the importance of the environment, of education, of opportunity.

Jock has served here with us and been a part of a process that depends on honest, strong, articulate spokesmen. He is a man who has demonstrated great regard for the individual and the important of that individual's education, opportunity, and freedom. He has demonstrated a real sensitivity to those with special needs in our work on the Select Committee on Children, Youth, and Families.

He has, day in and day out, represented one of those members with an abiding respect for the environment and for the importance of a strong economy to a vital democracy and a free nation.

It has been a privilege and a pleasure to serve with Jock; he is a fine individual, a man of honesty and integrity, a person of leadership and vision, and one who is able to build consensus here on the floor of the House amongst the interests of all those throughout the Nation to accomplish things of importance to people—to the people of Maine, to the people of the Nation—in improving the quality of their lives and demonstrating the value of democracy to the world.

I will miss him; we all will miss him, and we thank him for his fine service as a U.S. Congressman and wish him well as the next Governor of the State of Maine.

Mr. BOEHLERT. Mr. Speaker, I thank my colleague. We are privileged to be in the same class with Congressman McKernan. We were first elected in 1982, and we thought, collectively, that we had a special mandate to come to Washington and be concerned not so much about programs but about people.

The gentlewoman has so eloquently stated that that is one of Congressman McKernan's greatest concerns. He has done the State of Maine proud with his work here.

Mr. Speaker, I now yield to the distinguished gentlewoman and colleague of Mr. McKernan, from Maine, Ms. Snowe.

Ms. SNOWE. Mr. Speaker, I am pleased to join with so many of my colleagues to salute the gentleman from the First District of Maine, Congressman John R. McKernan, Jr.

As a fellow Mainer, I've been able to follow Jock's public service career, from our tenure together in the State Legislature to these years in Congress, both back home and here in Washington. His is a record, I believe, that shows an awareness of the needs and problems of his district and our State; and one that reflects an understanding of and participation in the significant issues that have come before this Congress in recent years. I'd like to take just a moment to touch on some of the highlights of this record, since it is one in which I think he can take justifiable pride.

I would point, for example, to Jock's leadership on one of the most difficult issues our State faced in recent years: high level nuclear waste disposal. Early on in the Department of Energy's process, he was pressing DOE officials, attempting to ensure that the people of Maine have sufficient opportunity to air their concerns with the Department, and help develop and introduce legislation eliminating the Nuclear Waste Policy Act's requirement for a second repository. So far, his efforts, and those of the Maine delegation and the people of our State, have met with initial success.

Congressman McKernan has also met with success in helping to bring to an end the divisive dispute surrounding the Maine Central Railroad. He quickly saw the potential havoc that continuation of the dispute could wreak on the lives of the railworkers, and on the people and economy of Maine, so he moved to advocate evenhanded measures to reconcile the two parties.

And, when the collective bargaining process ground to a halt, he again helped draft and introduce effective legislation, first to extend the cooling-off period and create a congressional advisory board, and, later, to implement the recommendations of that board. The soundness of these legislative efforts is shown in the swift congressional and Presidential approval they received. Again, Jock McKernan took an approach based on creating the greatest possible stability with the least possible Government intervention.

Where the Government must play a role, Representative McKernan has fought to see that it moves quickly and appropriately. For example, when Farmers Home Administration regulations didn't have the necessary flexibility to provide funding for low-income people, Representative McKernan held a hearing in Maine that helped lead to the eventual release of these funds through a streamlining in the FmHA loan procedures.

Jock's commitment to Government effectiveness is typified by his successful advocacy of a program to award whistleblowers within the Federal Government, thus encouraging the proper and most efficient use of taxpayer dollars.

He has also been particularly active in the area of higher education, and has played an integral role this year in the reauthorization of the Higher Education Act. In particular, Jock helped address the difficult problem of inclusion of rental subsidies to low-income students when applying for student loans.

When we consider the environment, so critical to our State of Maine, Jock again has taken on—successfully—some of the toughest issues we faced. He fought in the Merchant Marine and Fisheries Committee and on the floor of the House to ensure that States, such as Maine, which had the foresight to establish stringent oil spill laws, would not find those laws preempted by weaker Federal provisions.

Also, Jock took steps early on to address the emerging problem of underground petroleum tanks, and the impact of leaks into our ground water and resources. In fact, he held a special hearing in Maine to explore not just the problem, but the current capacity of both Federal and State governments to respond in an effective fashion to the situation.

Jock McKernan's record is also one that reflects the day-to-day concerns of his constituents and families around the Nation. That's why he introduced and has been signed into law "National Child Care Awareness Day," both in 1984 and 1986. This legislation helps create a greater understanding of the problems faced by latch key children, and by mothers with children seeking to enter the workplace.

Viewed in its composite form, Jock McKernan's 4-year record as a Member of Congress is one filled with achievement and accomplishments, of an unflagging effort on behalf of the State and the Nation.

More importantly, however, his record in the House of Representatives is evidence of an understanding of the proper relationship between the people and their Government; of the limits on Government and the possibilities of Government. Combined with his true concern for the people of his district and the entire State, this sensibility and understanding have produced an outstanding Member of Congress. And, I might say, they will hold him in good stead when he continues his public service as the Governor of the State of Maine.

☐ 1810

I thank the gentleman for yielding this time.

Mr. BOEHLERT. I thank the gentlewoman for her participation.

Mr. Speaker, I yield to the gentleman from Washington [Mr. Chandler].

Mr. CHANDLER. I want to thank the gentleman from New York also for organizing this special order in behalf of our friend from Maine, Jock McKernan.

As I was sitting here listening to the words of the gentleman and the gentlewoman, it occurred to me that as a body, as a Congress very often we do not look awfully good. I think probably we have a reputation at home that is less than what it should be. But when you examine individuals, get past the body and look at the individuals, we rate pretty well.

When I came here in 1982 along with Jock and the gentleman from New York [Mr. Boehlert], I was ready, with the same cynical attitude that people at home have, to be disappointed with the quality of people in the U.S. Congress. I got here and I found myself among some very, very good people.

Now, you may be across the room from somebody who is arguing the point of view that you just hate, but you have to concede that the gentleman or gentlewoman has done a pretty good job on their homework and may actually win.

Well, among those people, among those fine people that I have discovered to be among the best I have ever been around, I think one of the best and certainly a friend that I admire whose friendship that I cherish, is that of Jock McKernan.

It is too bad he has to leave here after only 4 years. It is great that he goes home to Maine to lead his State.

If he stayed, I think it is clear that he would be a leader here. He has all that potential.

He is one of those guys you read his biography, and you want to hate him but he is just too nice a guy to hate. He is good at everything he does.

He was good in sports, he was good in business. He was a young man who was left without a father at a young age. He helped his mother. He worked hard. I mean, he is just a fine guy.

That is not why we all like him. When "Mel" Levine, the gentleman from California, talked about the sports, that is one place that you really get to know a guy, when you play on a team with him. Well, I played on that team, too.

I would go down and play in the gym with a group of us who played basketball as often as we could. I will tell you, I am in my midforties and not as quick as I used to be, but old Jock would just turn you inside out, he is such a good athlete. And yet he is the kind of a gentleman that even when he whips you in sports or he whips you in the legislative body, he is the kind of person that you can come back and you admire him, you like him.

You know, at home an old boy told me one time, "You know, whenever you are in a tiff, if you win it, be sure to leave the other guy a horse to ride away on."

Jock McKernan, whether he ever learned that lesson or not, certainly practices it. He is just a decent fine guy and I like him. There are people who could come here and they become flame-throwers, they lob grenades, they raise all kinds of Cain. As near as I can tell, they do not get a thing done. Jock came here and in 4 years made friends here and on the other side of the aisle, and because of that he was effective. I think because of that he will be the Governor of Maine, and because of that he will be a very good one.

So I just wanted to say I am going to miss him. One of the first guests that he is going to have is the Chandler family when we go up to Maine and visit him in the mansion. He has promised us a lunch. I am going to take him up on it.

I thank the gentleman.

Mr. BOEHLERT. I thank my colleague from Washington particularly for focusing on the personal aspects of our colleague whom we honor today. He is indeed one of the best and the brightest. But more than that, he is such a personable individual. That is one of the reasons why he has been so effective in engendering support from people of all political persuasions for those causes he believes in so deeply.

I would be pleased at this time to yield to another classmate of ours, the distinguished colleague from Ohio [Mr. DeWine].

Mr. DeWINE. I want to thank my colleague from New York and thank him for having this special order for a friend of ours and a fellow classmate. This is one of the pleasurable moments in the House but also a moment of mixed emotion, a sad moment when we say goodbye to one of our colleagues. But if you have to leave this body, as we all eventually do, I guess of all the alternatives this is probably the best way to leave it, as Jock is doing.

We look forward to seeing him in the Governor's mansion in Maine within a few months. Jock is a quality individual. I do not know how else to describe him. My colleagues have described him in many different ways, but that is the way I would describe him, just a quality person. The type of person who when I walk on the floor and have a question about a vote or if I want to know the best way to vote on it or if I want to just discuss it with somebody, many times I would talk over to Jock and we would kick the vote around. He was someone whom you could rely on, someone whom you could trust, someone particularly when you are dealing in the area of education or in the area of the environment, someone who is well respected in both areas and someone who has a deep commitment to the education of our children and a deep commitment to the environment as well.

I remember, as I am sure my colleague does from New York, we were here after being elected in the November election, when we were here in that December and Guy Vander Jagt was greeting all of us. We were getting to know each other. Guy gave a speech as only Guy could give a speech. One of the things he said as he looked out at the group, he told us what a special moment he knew it was for all of us, and it certainly was. He said, "I can look out at this group and can say this is a very special moment. But I know I can also say that I am looking out not only at Members of the U.S. Congress or future Members of the U.S. Congress, but I suspect that within this group there are a few Senators and a few Governors and maybe even a President, of the United States."

Well, it looks like Jock is going to be the first of our group to meet that goal and the goal he has set to be Governor of the State of Maine.

As my colleague "Rod" was mentioning, I think Jock is going to have a lot of company out in Maine. The DeWine family intends to go out there and visit him as well. That is a big order. He will have to bring in a lot of food for that occasion.

Last summer when we were planning our vacation and were going camping, I told Jock that we were going to visit Maine and we were going to camp. A couple of days later, I got about a 6-page letter from Jock outlining my whole itinerary through the State of Maine.

So I do not think he is going to have to hire a tourist director or someone to promote tourism when he goes to Maine. He can probably do that himself.

We followed Jock's directions all throughout the State of Maine, camped in the national park up there and really enjoyed it.

So, Jock, if you are watching this or if you read a copy of this, get ready, the DeWine family is going to come visit you again next summer.

Thank you.

Mr. BOEHLERT. I thank the gentleman for his comments.

Mr. Speaker, I yield to our distinguished colleague from the State of Vermont, who is a neighbor of our colleague being honored today, Mr. Jeffords.

Mr. JEFFORDS. I thank the gentleman for yielding.

Mr. SPEAKER, I want to first reassure Jock that I will not be stopping by to stay with him. So he can view that with relief. That is not because I would not want to, but I happen to have a sister who lives in Maine and also with her family. So I unload on them.

But I say that also because I have a special interest in Maine. They are represented by the most able Representative, Congresswoman Snowe, a tremendous Member of this House. But I have a special interest in Maine, as I know it, I have traveled all through it, and so I take a special interest in JOCK MCKERNAN and look forward to him as he progresses on to greater things as the Governor of Maine.

I have noted for more reasons than one the success and the activities in the House of Representatives of JOCK. First of all, coming from New England, we all look out for each other's interests. His special interests in the things that are good not only for Maine but for New England have certainly led me to have a great deal of admiration for him. But probably even more importantly is what he has done for Maine and for education. When he had an opportunity to, which was just this past Congress, he sought, with much competition and you do not realize it until you are from a small State how tough it is to get on a committee of your choice; big States kind of overwhelm us and you are lucky if you get on the committee of your choice. JOCK wanted very much to get on the Committee on Education and Labor because of his deep interest in the field of education. He worked on several subcommittees but one which I particularly noted his efforts on was on the Subcommittee on Postsecondary Education. He was one of the first Members at the time who recognized, as very few did, that times have changed and where we lived through a high interest period during the late 1970's, that interest rates were coming down and we were sticking a lot of people with residual high interest rates and we ought to look at market-sensitive interest rates.

□ 1825

He and I and others on the committee did a lot of work and, as a success, we have revised in many of the areas, not the least of which are the so-called parent loans and student loans.

The result of JOCK's work will be savings of not only millions, but hundreds of millions of dollars to those parents who have those loans, because we will be enabling them to reduce interest rates from 12 to 9 percent as time goes forward.

Further, he also took a great interest in some of the other problems we had. I will not go through them all, but on deferrals and other areas, and was successful in amendments in these areas to try to bring some of the problems of our higher education under control.

He also worked very hard for Maine. Maine had a little problem, as is not unusual, shall we say. Sometimes States like Maine and Vermont, problems are different than any other part of the country. They had a little special problem with respect to a special allowance reduction in their guarantee agencies for student loans, and he was able to get a little special amendment in there for Maine, which was totally fair and appropriate, but obviously is very helpful to them.

Also he had amendments which were assisting with the dropout problem. Many people think that the dropout problem is a problem with the big cities. But there are tremendous and difficult problems with dropouts in rural areas, especially in a very rural State like Maine, and a State that has a very low average per capita income. JOCK was able to get changes in that law to accommodate the problems in the rural areas of dropouts.

He took a leadership position on the recently passed drug bill. I do not need to tell anyone how difficult and serious that problem is. But he also was successful in getting an amendment in an area which was needed, in the area of research and curriculum development money and education.

So I am here today as the ranking Republican on the Education and Labor Committee to let the people of Maine know and to refresh our colleagues' minds of the great work that he did in a very short length of time that he has been here in this Congress in the very critical and important areas of education.

I just wish him well. I will be dropping by, but not to stay, but just to say hello at the mansion.

Mr. BOEHLERT. Mr. Speaker, I thank the gentleman.

Mr. Speaker, at this point, I would like to yield to the president of our class, our distinguished, the gentleman from the great State, the Commonwealth of Virginia [Mr. BATEMAN].

Mr. BATEMAN. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, a number of my colleagues said to me it really was not necessary to wear black on occasion of these remarks on the departure soon of our colleague, JOCK MCKERNAN. That is an aberration of other schedules. But I would not possibly miss the opportunity to be here to add some comments on the quality of the service of JOCK MCKERNAN in the House of Representatives these two terms that I have been privileged to serve with him.

We did come here together along with the gentleman in the well, the distinguished Representative from New York [Mr. BOELHERT], and it has been one of the most pleasant associations of my life to be involved with those people who came here in the class of 1982 who entered the 98th Congress together.

JOCK MCKERNAN is a person whom one enjoys being with. By dint of personality, you would have to like him. I know of no one in the Congress who does not like him. I know lots of Members who were not liked by all of the Members. They may be respected. JOCK MCKERNAN is liked by all the Members. Beyond being liked, JOCK MCKERNAN is respected by all Members of the Congress, because he has earned and he has deserved their respect.

It is my privilege to have served with JOCK since he came here as a member of the Merchant Marine and Fisheries Committee, a committee on which he has shown a great amount of leadership. He has not just gone through rhetorical motions in support of American merchant marine, the American shipbuilding industry, the American fisheries industry; he has been genuinely concerned and involved, constructive, innovative, and has come up with ideas and pressed forward ideas that are positive to help those American industries. And certainly our American merchant marine is an industry that needs all the help and support that it can get within the Congress. The American fishing industry, the American shipbuilding industry, these are concerns where JOCK MCKERNAN has had an impact. We are going to miss him here because of the impact he has had on issues such as that.

I recommend him. I commend him. I appreciate him. We are going to miss him here in the House. The people of Maine selected well when they sent him here, and I certainly wish him well in all his future endeavors.

Thank you very much for having the foresight and taking the leadership to make sure this special order was conducted.

Mr. BOELHERT. Mr. Speaker, I thank my colleague.

Mr. Speaker, I now yield to our dynamic Representative from America's dairyland, the gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. Mr. Speaker, I appreciate the gentleman from New York yielding and for giving all of us this opportunity to say goodbye and good luck to one of our special friends.

The gentleman suggested I am from the dairyland, so to speak, and I could not help but think as I was listening to these comments about our colleague from Maine, I think it is very important as we think about him that we understand, No. 1, he is not Midwest in any sense of the word. He is very New England in the way he dresses. He is very New England in the way he talks. He is very New England in the way he has been educated. And I think he is very New England in the way he represents his work here in the Congress, because he has not forgotten where home is. He has not forgotten the people who sent him here. He has not forgotten that mission. It certainly is a dual mission, but it is always focused and prioritized by the people we represent.

As I think about JOCK MCKERNAN, there are two thoughts that come to my mind. Many others have suggested that he is successful in every aspect. I would suggest that when you look at him from a governmental perspective, there are really two requirements that most people in the public want from an elected official. No. 1 would be a vision of the future, and No. 2 would be the ability to carry that out. I cannot think of anybody among our colleagues who better meets those criteria than the gentleman from Maine. Certainly having the privilege to have served and worked with him on the Education Labor Committee, I have seen that commitment to the future. It is a commitment to the future based on the belief in education, believing that education is an investment. I have seen it most evident in his work in the Higher Education Subcommittee on the reauthorization of the Higher Education Act with the Flexible interest rates, one of his initiatives. I have seen it also in his work on behalf of libraries throughout this country. I have seen it in his work in the Job Training Partnership Act. I have seen it in his work in sensitivity to the working woman, to the single parent, head-of-household woman through his efforts in the day care area.

But second, you can have all this vision for the future you want and, if you do not have the ability to accomplish your goals, you really have not accomplished anything at all. Good ideas by themselves are not dreams come true.

I think when you reflect back on Jock McKernan, you reflect back almost on that TV commercial, "When E.F. Hutton talks, everybody listens."

Really I think that is the unique ability that he has, to first study the issue; second, gain the credibility of his colleagues, not to be one of those who tries to set a record for the number of times he speaks, but rather when he speaks to speak dynamically and forcefully and articulately and persuasively on behalf of his cause, whatever it might be.

I, too, am going to miss him on our committee. I am going to miss him here in the full House. At least I hope I am going to miss him by virtue of the fact that those of us who say we are going to miss him are going to be back. But above and beyond that, I think what I really want to do is tell him and tell the people of Maine that you have shared him with us for two terms. We appreciate that. Our loss will now be the home State's gain.

Mr. BOEHLERT. I thank the gentleman from the great State of Wisconsin for his contribution.

Mr. Speaker, I yield to the distinguished gentlewoman from Kansas [Mrs. Meyers].

Mrs. MEYERS of Kansas. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I would like to say how much I have enjoyed knowing Jock McKernan. when you come here as a freshman, which I did 2 years ago, to this great body with 435 people, you really remember those people who first call you by name. Jock is one of those, the friendly kind of person who tries to get to know you, who reaches out. The freshmen have commented on that among themselves.

He is a person who evaluates issues on their merits. He is a very definite person. You do not have any trouble knowing exactly where he stands. He is incisive, he is thoughtful, and I have learned from him.

He has made an enormous contribution to this body in the area of trade, environment and education. He has been a very, very effective advocate for his district and for his State.

So, to say farewell, to Jock McKernan I have written a poem.

There once was a young man from Maine,
Effective and smart and urbane.
We give him our love,
Send him home to be Gov',
Our loss is surely Maine's gain.

□ 1835

Mr. BOEHLERT. I thank my distinguished colleague.

Mr. Speaker, I yield to the gentleman from Indiana [Mr. Burton].

Mr. BURTON of Indiana. I thank the gentleman for yielding to me.

Mr. Speaker, I do not know whether anyone has suggested it, but I think the gentleman in the well should make sure his "Dear Colleague" letter is put in the Congressional Record. I have been reading it, and it took me quite a while to understand it, but it is very well done.

When I was first elected and took my place in the 98th Congress, I ran for freshman class whip. When I ran for freshman class whip we had to give campaign speeches, and I remember my speech. I said that one of my mentors in politics told me that if I were fortunate I would get to know in the State legislature people who would become Governor, maybe a U.S. Senator, and maybe a Congressman.

Likewise, now that I have become a Congressman, I said that being freshman class whip would afford me the honor to get to know each of you better and maybe one of you would become a Senator or a Governor or maybe even President of the United States.

I did not know that was going to happen quite so fast as it has. John McCain is probably going to be a U.S. Senator from Arizona, Ed Zschau a Senator from California, and our great friend, Jock McKernan is going to be the Governor of Maine. I guess I was a little prophetic when I made that speech, although I was not aware of it at the time.

I was impressed with the quality of the 98th Congress freshman class. I think that we had one of the finest groups of men and women to come to this body in the history of this body. One of the people who was outstanding from the start was Jock McKernan. I think everybody who is going to talk here tonight would agree that Jock is not only a very intelligent man, a very articulate man, a very hard-working man, but he is a super-nice guy.

Everybody likes him with the possible exception of those who play tennis against him. I have talked to a number of those people and they are going to be happy to see Jock leave. I do not think he has lost one set since he has been in the Congress. Although he has not had much time to play, when we do have those outings, Jock always excels.

As a matter of fact, he has excelled so much that he has almost given up tennis and taken up golf. My advice to Jock is to go back to tennis.

Although we have had some philosophical differences, Jock and me, I want you to know that there is nobody I respect more, nobody I think is a better man than Jock McKernan. To those people in Maine who might be watching tonight, you could not do better than having Jock McKernan as your Governor, and I hope you will elect him in November.

Mr. BOEHLERT. I thank my colleague from Indiana.

Mr. Speaker, I yield to the gentleman from Iowa, who happens to be the cochairman of the 92 Group, Mr. Tauke. I would hope perhaps you might in your remarks make reference to that band of progressive Republicans.

Mr. TAUKE. I thank the gentleman for yielding to me.

Mr. Speaker, I want to also thank the gentleman for taking this special order. All of us are grateful to the gentleman from New York for giving an opportunity to take a few moments to share thoughts about one of our colleagues who is going on to bigger and better things.

You know, it is a little sad sometimes that during the time that we are here in the House of Representatives we have so little opportunity to spend time just getting to know other Members of the Congress. The fact is that we get so busy and so tied up with the issues of the moment or the hour of the day that we do not oftentimes get an opportunity to really sit down and talk about people concerns and things.

But we still have an opportunity, despite that, to make some very good friends. I think for many of us Jock McKernan is a very good friend.

I do not come here tonight because he is a good friend. I come here tonight to pay tribute to him because he is such an outstanding public servant.

One of the things that has struck me as I have watched JOCK perform his good deeds in the House of Representatives is that he has a personality, he has a character that is so perfectly suited for public service. His personality I think is marked in large part by a very pleasant demeanor, a very even temperament. He is judicious in the way he approaches questions and issues. He is thoughtful; not easily ruffled; steady as she goes. All of those things I think make him a very good decisionmaker. Somebody who approaches the issues in a quiet, thoughtful way and not in an emotional or abrupt manner.

Second, he is the kind of individual who practices the politics of coalition-building rather than the politics of division. There are some in public life who I believe, unfortunately, try to pit one group against another in the course of their public service. But JOHN does not do that. He never pits one against the other. Instead, he tries to pull people together and get the best out of them.

Third, he is a sensitive and caring person. When we have worked together on a variety of issues, particularly in the Education and Labor Committee, his really deep concern about what happens, to especially the less fortunate in our society, the most vulnerable in our country, is very evident.

All those qualities have made him an outstanding public servant.

As the gentleman indicated in his introduction of me, Mr. BOEHLERT, JOCK McKERNAN has also been a member of an organization to which we both belong, the 92 Group. Through our work in that organization I have become very much aware of the fact that JOHN is just as committed as I believe I am to controlling the spending at the Federal level and trying to limit, to some extent, the explosion of Government here in Washington.

He wants Government to be an act of force for good in our society. But at the same time, he recognizes that you have got to pay for what you buy. That you can only do what you can afford. That kind of attitude is most welcome here.

He also has been, I have found, a very articulate leader on environmental issues. It is another area where we share concern. Earlier this year when the gentleman in the well initiated a major effort on acid rain, JOCK McKERNAN was right there in the forefront, helping put together the coalition, again, coalition-building, helping to put together the coalition that would back an acid rain bill.

Although one of his regrets, I am sure, as he leaves this institution is that we have not seen that work to fruition. He certainly has been in the forefront of laying the foundation so that work can go forward in the next Congress.

I noticed as I reviewed his record that his environmental concerns date back to his days in the Maine Legislature when he pushed the Maine Legislature a bottle bill or a soft drink container bill which I also did in the Iowa Legislature.

In another environmental area, the Superfund we had the opportunity to work together in order to try to bring a very strong Superfund Program before this Congress, and we hope we can get it finalized before we go home.

The third area where we have shared interest is in higher education. I have sat with JOCK on the Education and Labor Committee and most recently on the conference committee on the Higher Education Act. What a commitment he has demonstrated to the students of America, the students of his State, as he has fought to ensure that the Federal Government is making a proper investment in higher education. He sees education as a way in which we can improve the productivity of our society, give everybody a better opportunity to expand their own potential, realize their own potential, and he has just been a champion in the higher education area. In that area, especially, I will miss him.

I suppose that we can all say that we will miss JOCK McKERNAN, but I have to say that while I say that I will miss him and I, in a sense, feel sadness because of that, I also feel a certain joy because in a sense I think JOCK will be released when he retires from this institution and goes back home to Maine. I know Maine is his first love; that is pretty apparent when you talk to him.

Second, there is a little frustration that comes with serving with 434 other people in the House of Representatives. You cannot set your own agenda sometimes. Some of those issues that you really want to champion, you cannot move forward. But as Governor of the State of Maine, JOCK McKERNAN is going to be setting the agenda and moving some of these issues forward. If I were not living in Iowa, and if I were not so committed to the people of my own State, I would love to spend a few months up in Maine and watch him go to work.

So, JOCK, I say to you, wherever you are tonight, that we wish you Godspeed and the best of luck, and we hope that you will never fail to give us your best advice from a State perspective once you become chief executive of Maine.

□ 1845

Mr. BOEHLERT. Mr. Speaker, I yield to the gentleman from Pennsylvania [Mr. RIDGE].

Mr. RIDGE. Mr. Speaker, first of all, I do want to thank my friend and colleague, the gentleman from New York [Mr. BOEHLERT], for arranging this very special order for someone that, obviously, many of us consider to be a very special public servant and a very special friend.

His legislative achievements and his efforts as a Congressman have been chronicled by many others this evening, and rightly so, because they are many and varied.

His personal popularity and his leadership skills have been noted and recognized. The tributes are well deserved because he has demonstrated during his 4 years here considerable skills in areas that have also been well chronicled by my colleagues.

I thought I might be able to contribute this evening by sharing a few personal thoughts and observations explaining why someone like JOCK McKERNAN has enjoyed so much personal popularity, as well as legislative success in such a brief period of time.

Those of us who have had the opportunity to know and work with the gentleman from Maine appreciate the long-held belief he has in the basic dignity and decency of human beings. We understand his commitment and desire to expand whenever possible, their economic and social opportunities; to improve their quality of life.

This commitment and belief is probably best reflected in the legislative areas and issues he has chosen to address as Congressman and to serve as advocate; issues involving the environment and education.

One of the most unique and important tributes that JOCK received came as the result of a conversation I had earlier this evening with a gentleman who works as the elevator operator in the Longworth House Office Building. The gentleman from Maine [Mr. McKERNAN] and I often ride the elevator. We have gotten to know the man who has served there longer than we have probably served collectively in Congress.

His name is Jim. I think my colleague from New York knows him as well. I told Jim I was coming to the floor to say a few words in tribute to a good friend and outstanding public servant. I asked Jim "What do you think about Congressman McKERNAN?"

He said, "Well, Congressman, I want to tell you, JOCK McKERNAN treats me like he treats his colleagues. I am a little man and you are big people. The fact that he treats me as well as he does the other people," he said, "Makes me feel good. I respect that; I appreciate it; I think he is my friend, too."

There is something to be said for those who take the time, not only to treat people well, but to be genuinely interested in their problems as individuals, as JOCK McKERNAN has done in his career as a legislator, both in Maine, as well as in Washington, DC.

It also provides some insight about his success and his popularity. Jim's observations reflect one of the fundamental components of Jock's value system. He genuinely cares about people. He is concerned about their problems. He empathizes with and sympathizes with people, and, instead of pointing the finger of responsibility or blame, prefers to practice the politics of consensus building and compromise to find solutions.

Jock represents and reflects the values of Maine, probably as well as anyone in the history of the State. I recall an old political saying, "As Maine goes, so goes the Nation." It is pretty apparent to me that Jock aggressively and impressively represents all of those people, and what is important to them, and for that reason, I could say that the Nation would do well to follow his kind of leadership, his value system and his ideals.

I will go out on the limb and make a prediction. Occasionally in this Chamber we discuss the networks projecting winners of Presidential campaigns shortly after the polls close on the east coast. Many are concerned that these predictions influence the voting in communities on the western coast. I'll venture to predict that because Jock has so well reflected and affirmed by his leadership and advocacy the values of the people he has served, and his continuing commitment to them, the voters of Maine will give to him the opportunity and responsibility to use the skills he had demonstrated as a Congressman in an executive capacity. It is a genuine pleasure and privilege for me tonight to pay special tribute to my friend and colleague the next Governor of Maine.

I again want to reiterate my thanks to the gentleman from New York [Mr. Boehlert] for his initiative in arranging this special order.

Mr. Speaker, I include as a part of this special order the clever letter from the gentleman from New York reminding our colleagues of his special order.

Mr. BOEHLERT. Mr. Speaker, I yield to the gentleman from Mississippi [Mr. Franklin].

Mr. FRANKLIN. Mr. Speaker, I thank the gentleman from New York for yielding to me.

As the gentleman stated, I am from Mississippi. I came to this Congress in that class that included Jock McKernan, the gentleman from New York, and others. I guess I am about as far south as one can come from in the United States, and Jock McKernan comes from a place about as far North as you can come from in these United States.

When I came to this Congress, I think I can truthfully say that Jock McKernan was the first living, breathing human being that I had ever met from the State of Maine. I did not know what to think about that kind of a person, coming from Mississippi. But over these 4 years, I can say truthfully that I do not have a better friend in this Congress and there is certainly no one in this Congress who is better able to represent the people of his district than Jock McKernan has in these 4 years.

I have had the real pleasurable occasion of spending 4 years with Jock on the Committee on Merchant Marine and Fisheries in the U.S. Congress. We sit next to each other and we have been for 4 years. I have gotten to know him very well.

I know that the time is running a little short here and I will not go into all the great detail of the fine works that he has done for this country and his State on that committee that has such a broad jurisdiction, but has such a specific interest in the people that he represents in Maine, not only the Bath Ironworks and the shipbuilding interests there, but also the great fisheries that are off of his coastline. He has always taken the interest of the commercial fishermen and he has coupled the interests of those fishermen and the economic benefit of those fisheries with the environmental issues that always crop up, and has used the good sense to come out with a workable solution so that that fishery could remain intact, and yet the economic interests of his constituents could still be met at the same time.

That is a very delicate balance, and Jock McKernan is one who has met it well through these years that I have known him.

I also represent a State that has a pretty good shipbuilding interest, particularly in military construction with the Ingalls Shipyard in Pascagoula, MS. I could also say about my good friend, Jock McKernan, do not let anybody tell you that he is not competitive, because on many instances, particularly one just recently where a pretty substantial contract was awarded to his home Bath Ironworks; that was a contract that the people of Pascagoula, MS, lost because of the good efforts of Jock McKernan to his constituents in Maine.

I know that he is competitive, not only in representing the people that have sent here to the United States Congress, but also competitive, as others have mentioned, on the athletic fields, in baseball, tennis, and now golf, I understand.

I would go on, but I have been told that we only have a few minutes left. I know that there are others here waiting to speak.

I think one of the greatest tributes that has been paid to Jock McKernan tonight is the sheer number of colleagues who have taken their time to come here and tell, for this Record, how much we do appreciate his service in this Congress; how much we will miss his input as a leader to many of us who have gotten to know him, but yet at the same time, we look forward to wishing him well in his future endeavors in his home State of Maine.

I thank the gentleman from New York [Mr. Boehlert] for taking out this special order and allowing me the honor to participate in it in honoring Jock McKernan.

Mr. BOEHLERT. Mr. Speaker, I yield to the gentleman from New York [Mr. Green].

Mr. GREEN. Mr. Speaker, let me start by thanking my colleague from New York, Mr. Boehlert, for arranging this special order today.

I rise today as part of this special order to pay tribute to our distinguished colleague, John R. "Jock" McKernan, Jr., Representative of the First District of the State of Maine. That State has produced many extraordinary public figures such as Senator Bill Cohen and former Senator and Secretary of State Ed Muskie. John McKernan has continued, through words and deeds, this tradition of excellence. He has brought to the Congress, as did his predecessors, the native Mainer's appreciation of the outdoors, the ocean, and a way of life much different from the district I represent. That is an important perspective for this body, and one that we shall miss. Now, unfortunately for us, after two terms as a Congressman, Jock is leaving our ranks to run for the position of Governor of his beloved State.

The gentleman from Maine has a long history of working for the betterment of the State of Maine. He began on the local level in his hometown of Bangor where he was instrumental in helping his widowed mother operate their small town newspaper, the Penobscot Times. After being graduated from high school, Jock attended Dartmouth College, where he distinguished himself both athletically and academically.

After being graduated from college in 1970, John enrolled at the University of Maine School of Law. One year later, he successfully ran as an at-large representative from Bangor to the Maine House of Representatives. He served at the State House for a total of two terms in which his most notable accomplishment was the sponsorship and later approval of the "Bottle Bill." After his service in the legislature, John continued to work on behalf of his State through community service and political action.

In 1982, John chose to run and was elected as a Congressman for Maine's First District. He was reelected in 1984. During his tenure as a Member of Congress, the gentleman from Maine incessantly championed the needs of his State. He pressed for better trade policies in relation to Maine's major industries of shoes, shipbuilding, fishing, potatoes, and lumber. Moreover, he was active in expressing the environmental concerns that affected his State, such as nuclear waste dumping and acid rain.

Mr. Speaker, we in the Congress will certainly miss Jock's youth, intelligence, and vigor. However, I feel I can optimistically say that our loss will be the State of Maine's gain. I know I join all my colleagues here today in wishing Jock well in his upcoming election and in his future endeavors, as Governor of Maine.

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Mr. BOEHLERT. Mr. Speaker, I thank my colleague from New York.

I yield to the gentleman from Texas [Mr. Bartlett].

Mr. BARTLETT. Mr. Speaker, I very much thank the gentleman for yielding this time.

I join with all the others here in thanking the gentleman from New York for taking out this time on this special order.

Jock McKernan whom we speak of tonight is and has been for 4 years one of the real premier faces and one of the premier leaders in the 98th class elected in 1982, leaders from a class elected on both sides of the aisle. I know I have been proud as a Member from Texas to call Jock McKernan of Maine a friend and a colleague.

A couple characteristics come to mind about Jock as he launches into his new career, his new way of serving the people of Maine. The first is that he is an effective leader, an effective legislator, and an effective public official. He does not wait to have things happen. He goes out and tries to make things happen. It is not enough for Jock McKernan just to talk about problems, but he goes out to try to solve them.

The shipbuilding industry, during his first term, the shipbuilding industry is a major industry in the State of Maine, employs a large number of people, and Jock McKernan rolled up his sleeves, created, drafted, and steered legislation through the Congress as a freshman to make certain that the shipbuilding industry in his State stayed strong. That legislation served the entirety of the country.

Jock McKernan is also a problem-solver. He is someone who does not let ideology stand in the way of helping human beings, whether they are in Maine or in the rest of the country. He will roll up his sleeves and set out to solve problems that occur to very real people.

Jock McKernan, perhaps the one thing that comes to my mind more than anything else, is that Jock is a consensus builder. Whether it is reaching across the aisle between the Republicans and the Democrats, the conservatives and the moderates, the liberals, Jock listens to what the problem is, identifies the problem, and then sets out in a way to try to build a coalition to get that key consensus to resolve it.

Those traits have served this Congress well. They have served the State of Maine well, as Jock has represented them in the Congress.

I believe as he takes on the mission of Governor of the State of Maine, it will serve him well, those traits will serve him well in that role also.

I do appreciate the opportunity to be a part of this and I appreciate what the gentleman from New York has done.

We are all going to miss Jock McKernan as a Member of the U.S. Congress, but we do believe that he will be serving the State of Maine and his country very well in his new position.

Mr. BOEHLERT. Mr. Speaker, I thank the gentleman for his participation.

I think it is a measure of the man that we are approaching the end of this hour and we do not have sufficient time for all those who wish to participate.

I yield to my colleague from the other side of the aisle, the gentleman from Wisconsin [Mr. Moody].

Mr. MOODY. Mr. Speaker, I thank the gentleman for yielding. I will be very brief, because time is short, but I want to add my words of praise and admiration for the career here in the House of Jock McKernan. We will all miss him very much.

He was in the class of 98 as I was, and while I think it is a fine class on both sides of the aisle, it would be very hard to find a Member who was finer than Jock is in our class. We all admire him and we all wish him well in his new career, be he a House Member or Governor, be he Republican or Democrat, we recognize him as a fine human being and we certainly wish him well.

I only want to say in conclusion that we on the Democratic baseball team, while we hate to see him go personally, he will give us a chance to perhaps win another ball game or two while we are all still in the House, those of us who remain behind.

So I pay tribute to the gentleman for calling this special order and certainly add my words of appreciation for Mr. McKernan's career and best wishes to him.

Mr. BOEHLERT. Mr. Speaker, I thank my colleague from Wisconsin.

I think it is evident for this past hour we have been talking about an individual with both style and substance.

Just let me conclude by saying, Jock, old friend, you do yourself, your beloved State, this fine institution and our great Nation proud by your brand of public service. We are the richer for our association with you.

Mr. LOWERY of California. Mr. Speaker, our colleague from Maine, Mr. John R. McKernan, seeks the governorship of his State. Having witnessed his skill as a legislator, the citizens of the Pine Tree State have claimed him as a potential leader. While the State may gain, the Congress most certainly will feel a loss.

During his two terms in the House, "Jock" has distinguished himself on both the Education and Labor and Merchant Marine and Fisheries Committees. As an advocate for his State, he has traveled to both Canada and Japan where he pressed officials to reduce barriers against United States goods to help the beleaguered fishing, potato, and lumber industries.

Many of my colleagues will elaborate on Jock's accomplishments. I did not serve on the same committees, but I have a special affinity for the man we honor this evening. You see, Mr. Speaker, we both lost our fathers at a very early age—I was 9 and Jock was 15. Faced with the responsibilities of adulthood during childhood, both of us learned to pull our weight long before most of our peers, and certainly before we were ready. Jock pitched in to help his mother operate their small, family owned newspaper and to care for a younger brother.

I count Jock as one of my personal friends and wish him continued success as he returns to his boyhood home and sets his sights on the statehouse.

Mrs. ROUKEMA. Mr. Speaker, our colleague, the gentleman from Maine, is retiring from this body, and all of us will miss him. But this is not a sad time, because one of the most promising young leaders our country has to offer is moving on to other challenges. The good people of Maine are fortunate that they are not losing Jock McKernan and that he is offering himself for additional public service.

He is an articulate voice of fiscal conservatism. He is a pragmatic public servant in the best Yankee tradition. He demonstrates a fierce dedication to the needs of his constituents. In the same way that I put "New Jersey first," he puts the people of Maine first and always.

The gentleman from Maine and I serve together on the Education and Labor Committee, where he has worked diligently for the interests of education in the United States. As a member of the Postsecondary Education Subcommittee, he worked with me in a successful effort to improve the sensitivity of student loan rates to current market rates. He thus made the program more reasonable, helped the taxpayer, and targeted the program more directly to those who need it most.

Mr. McKernan is known throughout the Capitol as a vigorous champion for fairness for American businesses and for the working man. He is one of our most effective advocates for reducing trade barriers abroad. Those across the country, but particularly in the fishing, potato, and lumber industries, know Jock McKernan as an influential Member who is on their side and who is working for their interests.

I have been privileged to count JOCK as a personal friend since his election to the House in 1982. We do not say "goodbye" to him because we will hear much from this man in the years to come. He has much to offer and a great future awaits him.

Good luck and Godspeed.

Mr. LAGOMARSINO. Mr. Speaker, this January, our colleague JOCK MCKERNAN of the great State of Maine will return home to serve as Maine's next Governor. JOCK has served distinguishedly in the House of Representatives for two terms and has been an asset to the Merchant Marine and Fisheries Committee, the Education and Labor Committee, the Republican Party, the people of southern Maine, and the Nation.

While I understand that JOCK is excited about becoming Governor, I had to ask myself why he would want to leave Washington for Augusta. Aside from the fact that he would be serving the entire State as the chief executive, I realized that Augusta is only an hour and a half drive from his hometown of Cumberland rather than the 12-hour drive from Washington. The air and water in central Maine are a lot cleaner, too. However, I figured the real reason he is returning to Maine is because like all true New Englanders, JOCK likes his chowder and while the House food service tries its best on Fridays to imitate that special New England treat, it just can't top the real thing made with big chunks of fresh quahaugs only found up north in the frigid Atlantic waters.

While there are many jokes about the folks from Maine—like how the great excitement in the summer is watching the grass grow and how every sentence seems to be delivered very slowly and ends with the mandatory "aayuh," JOCK has done a very commendable job in Congress serving his constituents, State, and Nation with pride. I wish JOCK MCKERNAN the best of success in his race for the Maine statehouse and if his record in Congress serves as an indicator, he will be one of Maine's best Governors.

Mr. HORTON. Mr. Speaker, many of our colleagues are approaching their last days as Members of this House. Some, like my good friend BERK BEDELL, have decided to spend their afternoons beside a creek fishing rather than beside a podium "preaching." Some, like Maine's own JOCK MCKERNAN, are aiming for other public office. I want to join the many Members wishing great success for Jock, both in the political arena and in his personal life.

JOCK has been an invaluable Member of Congress. His dedication to detail and his love for this institution have given me much inspiration. JOCK and I served together on the Government Operations Committee during the 98th Congress. His diligence and continuing quest for answers as a member of that committee earned my admiration.

JOCK appears heavily favored to become the next Governor of the State of Maine; his gubernatorial predecessor will probably be replacing him in this body. Maine should be admired not only for its pristine landscape, but for its political foresight to place JOCK MCKERNAN at the State's helm.

JOCK and I have worked toward many similar goals in the past few years. In particular, we have been active in eliminating both tariff and nontariff trade barriers put up by our trading partners. His efforts on behalf of the farming, fishing, and timber industries have set him apart as a leader in efforts to ensure fair trade.

JOCK has also been a leader of environmental concerns. Foremost among those has been his perseverance for a strong Superfund cleanup fund and for a reponsible approach toward our Nation's acid rain dilemma.

Earlier this month, JOCK was presented with what may be the most prestigious award offered in Maine—the Big M Award. He was cited for his key role in blocking proposals for a possible high-level nuclear waste repository in his State.

Mr. Speaker, I know that many of my colleagues here will agree that the House of Representatives has lost a friend and a statesman. The State of Maine will be fortunate to have him as its political leader. My wife Nancy and I join in wishing JOCK and his family all the best. He'll be sorely missed.

Mr. GILMAN. Mr. Speaker, I want to thank and commend my colleague from New York [Mr. BOEHLERT] for taking this time so that some of Mr. JOHN R. "JOCK" MCKERNAN'S colleagues could pay tribute to the fine work he has done here in his two terms as a Congressman. As a fellow member of the 92 Group, I have worked closely with JOCK on several matters of mutual concern, and I have no doubt that he would truly be an even greater asset to Maine as its Governor.

JOCK and I have had a mutual interest in bringing about fairer trade policies for our beleaguered vegetable and lumber industries, which unfairly suffer from the unfair trading practices of Canada and Japan. JOCK has been a leader in pressing for action on these matters, and has traveled to both Canada and Japan where he eloquently expressed the concerns of these important industries.

JOCK and I also share a strong commitment to preserving our environment. As a State legislator, JOCK was instrumental in enacting the "bottle bill," an environmentally sound measure later adopted by my own State, New York. JOCK has strongly pushed for sufficient funding of Superfund, the Federal program to clean up hazardous waste which I also strongly endorse. We also share a common interest in curbing acid rain, an environmental problem of particular concern to those of us from the Northeast. Both JOCK and I worked in conjunction with Mr. BOEHLERT and others from the 92 Group, and we were able to produce the first acid rain bill to clear a House subcommittee, H.R. 4567.

Congressman MCKERNAN has also been a leading spokesman for issues vital to Maine, and untiringly fought plans to locate a high-level nuclear waste dump in Maine. While this may seem to be of interest only to Maine residents, I received a number of letters from my own constituents who have summer homes in Maine who were also opposed to this proposed dump. I was happy to inform them that Maine was ably represented in this effort by both Mr. MCKERNAN and Ms. OLYMPIA SNOWE, who have introduced legislation that effectively makes Maine off-limits for any nuclear waste sites. In fact, JOCK has recently received the Maine State Society's "Big M" award for the leadership he provided in blocking these proposals. The Big M award is given annually to those who have provided dedicated service and outstanding leadership to the State of Maine. I can assure you that JOCK MCKERNAN was a logical and worthy choice.

We will miss the enthusiasm and expertise that JOCK brought with him to the House of Representatives. However, I realize that JOCK is moving on only to better represent the people of Maine, and I join my colleagues in wishing him the best of luck in his endeavors. I can only hope that his replacement in the next Congress will be as dedicated and hardworking as JOCK, for there are few legislators as competent.

Mr. FISH. Mr. Speaker, I rise this evening to pay tribute to JOHN MCKERNAN, the distinguished Representative of the First District in Maine. I have worked with JOCK on a number of issues affecting the Northeast including such pressing environmental issues as acid rain deposition control and Superfund. In addition, we have worked on alternative Republican budgets with an emphasis on keeping responsible levels of spending for social programs.

I have sought out JOCK'S counsel on many occasions knowing that I would always receive a fair and knowledgeable response.

JOCK began his career in the Maine House of Representatives in 1972 and in 1982 he won his seat in Congress. After 4 years, he leaves us to run for the governorship of Maine. As JOCK leaves, I wish him many happy years in public service. He's the kind of public servant we need.

THE ANTI-AEROTERRORISM AND TERRORIST BOUNTY ACT OF 1986

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arkansas [Mr. ALEXANDER] is recognized for 60 minutes.

Mr. ALEXANDER. Mr. Speaker, I rise today to call the attention of the House to the Anti-Aeroterrorism and Terrorist Bounty Act of 1986, which I have introduced today. There is not enough time remaining in the 99th Congress. Thus, I was introducing the bill for the purposes of discussions to prepare for action in the 100th Congress.

Far too often, this Congress is a reactive body. More frequently than we would like to admit, we must react to events outside this body rather than plan ahead in anticipation of them. Too many times we must seek cures for problems, rather than prevention.

Today, I offer legislation designed to prevent terrorism instead of retaliate for it.

My bill would do three things. First, it would establish a nonprofit Government corporation to provide security for American air carriers at their terminals in foreign airports. Second, it would establish a Presidential Commission to plan a comprehensive, well-thought out national terrorism prevention policy. Finally, it would increase the Secretary of State's authority to offer bounties for the capture of terrorists from the current $500,000 to $50 million.

The existence of a strong international presence by U.S. air carriers is essential to America's economic health and national security. Apart from providing military airlift capability through the Civil Reserve Air Fleet, our international carriers give us a network of communication and trade unsurpassed anywhere in the world.

But this vital element of our national security is fragile and highly vulnerable. Terrorists don't attack American air carriers because they are upset with the airlines. They attack American carriers because they don't like U.S. foreign policy. Therefore, it follows that our Government has the obligation to help prevent terrorism before it happens.

U.S. flag air carriers must now provide for the security of their own facilities in foreign airports. They must screen their passengers. Currently they have no coordinated means of sharing antiterrorist intelligence. In short, in the cutthroat competition of today's commercial aviation industry, American carriers cannot afford the expense of the antiterrorism job that needs to be done.

The legislation I introduce today would establish a Government corporation with the expertise and resources needed to cut aeroterrorism off at the gates of U.S. carriers overseas.

This function would not cost the taxpayers a dime. All of the Foreign Airport Security Corporation's operating money would come from a $1 fee to be collected from all passengers entering the United States on foreign-flag air carriers. This would provide the corporation about $36 million a year, which, according to international air security expert Tom Ashwood of the Air Line Pilots Association, would be a good start toward getting the job done.

In a larger sense, Mr. Speaker, we need an overall comprehensive national policy to deal with terrorism. We have not been successful in dealing with terrorism because we do not understand it. The terrorist's actions are, by our more civilized values, so barbarous as to defy comprehension. We have faced monstrous enemies before, and we have defeated them. But we were able to do so in great armed struggles because we adhered to a principal rule of warfare: "Know your enemy."

In the struggle against terrorism, though, we do not know our enemy. As a comparatively young republic, we are ill equipped to deal with conflicts that have their roots in hatreds and animosities that predate Moses.

In addition, we are not militarily or tactically equipped to deal with a situation which, in the words of a joint Army-Air Force study obtained this week by the Associated Press, is "neither war, nor peace."

The study contains some very telling points. Our own military researchers warn us that

> A comprehensive civil-military strategy must be developed to defend our interests threatened by the series of low-intensity conflicts around the globe . . . it must be crafted in comprehensive terms, not focused on a single conflict or a single department. It must integrate all the national resources at our disposal, military and nonmilitary, lethal and nonlethal.

I believe my legislation would help us come up with just that sort of strategy.

My bill establishes a Presidential Commission on International Terrorism, which is charged with conducting an ongoing evaluation of International Terrorism and the Federal Government's response to it and making periodic recommendations to the President about how best to deal with international terrorism.

The Commission would help the President formulate a coherent, cohesive policy toward terrorism and would coordinate the now uncoordinated responses of those parts of the Government that must deal with it.

Finally, Mr. Speaker, while our first goal must be the prevention of terrorism, we must recognize that terrorist depredations will continue and that we must be prepared to punish them.

We can and should take action, when justified, against states which sponsor terrorism. But it is my firm belief that the best way to punish terrorism is to catch the terrorist and punish him.

Obviously, we can't rely solely on American agents to pursue terrorists. If we did, our people would be able to spend precious little time on other missions.

But we can find others to do this work for us, others who are motivated by the prospect of personal gain.

My legislation would change current law to require the Secretary to offer bounties for the apprehension and bringing to justice of known terrorists. Presently, this power is discretionary. Additionally, it would raise the amount the Secretary may offer for a successful apprehension from the current $500,000 to $50 million.

This may seem like an enormous figure at first blush. But is $50 million too high a price to pay for punishing terrorists? The administration seems to think not, as this year's Libyan raid was estimated to have cost $50 million. Higher bounties will, I feel sure, yield results in the war we now fight—which, I emphasize, is against terrorists as much as it is against terrorism.

This part of my legislation is preventive as well as punitive. Fugitives with prices on their heads have no place to hide, no safe haven from which to lash out. Big bounties for the capture of terrorists may make the terrorists more concerned with saving himself than with harming others.

In conclusion, Mr. Speaker, while time constraints prohibit swift action by this Congress on my bill, I urge Members who share my concern for the need to find a terrorism policy to cosponsor it. I intend to offer similar legislation in the 100th Congress, and I hope Members will study this issue carefully between now and the end of the year.

Prevention is the essence of our fight against terror. Let us work together to put this Government on a path toward a policy that will get the job done.

CONFERENCE REPORT ON S. 426

Mr. DINGELL submitted the following conference report and statement on the bill (S. 426) to amend the Federal Power Act to provide for more protection to electric consumers:

CONFERENCE REPORT (H. REPT. 99-934)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 426) to amend the Federal Power Act to provide for more protection to electric consumers, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Electric Consumers Protection Act of 1986".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.
Sec. 2. Amendments to section 7 of Federal Power Act.
Sec. 3. Environmental consideration in licensing.
Sec. 4. Relicensing procedures.
Sec. 5. License term on relicensing.
Sec. 6. Unauthorized activities.
Sec. 7. Amendments to section 30 of Federal Power Act.
Sec. 8. Amendments concerning certain small power production facilities subject to PURPA benefits.
Sec. 9. Fees and charges for use of dams and structures.
Sec. 10. Election and negotiations concerning contested projects subject to litigation.
Sec. 11. Merwin Dam project.
Sec. 12. Additional Commission enforcement authority.
Sec. 13. Antitrust laws.
Sec. 14. Landowner notification.
Sec. 15. Miscellaneous provisions.
Sec. 16. Provision of information to Congress.
Sec. 17. Savings provisions.
Sec. 18. Effective date.

SEC. 2. AMENDMENTS TO SECTION 7 OF FEDERAL POWER ACT.

Section 7(a) of the Federal Power Act (16 U.S.C. 791(a) et seq.) is amended as follows:

(1) Insert "original" after "hereunder or".

(2) Strike out "and in issuing licenses to new licensees under section 15 hereof" and substitute a comma.

SEC. 3. ENVIRONMENTAL CONSIDERATION IN LICENSING.

(a) PURPOSES OF LICENSE.—Section 4(e) of the Federal Power Act is amended by adding the following at the end thereof: "In deciding whether to issue any license under this Part for any project, the Commission, in addition to the power and development purposes for which licenses are issued, shall give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.".

(b) AMENDMENTS TO SECTION 10(a).—Section 10(a) of such Act is amended as follows:

(1) After "waterpower development," insert "for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat),".

(2) After "including", insert "irrigation, flood control, water supply, and".

(3) Strike "purposes; and" and insert after "recreational" the following: "and other purposes referred to in section 4(e)".

(4) insert "(1)" after "(a)" and insert the following new paragraphs at the end thereof:

"(2) In order to ensure that the project adopted will be best adapted to the comprehensive plan described in paragraph (1), the Commission shall consider each of the following:

"(A) The extent to which the project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by—

"(i) an agency established pursuant to Federal law that has the authority to prepare such a plan; or

"(ii) the State in which the facility is or will be located.

"(B) The recommendations of Federal and State agencies exercising administration over flood control, navigation, irrigation, recreation, cultural and other relevant resources of the State in which the project is located, and the recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project.

"(C) In the case of a State or municipal applicant, or an applicant which is primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities), the electricity consumption efficiency improvement program of the applicant, including its plans, performance and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of relevant State regulatory authorities applicable to such applicant.

"(3) Upon receipt of an application for a license, the Commission shall solicit recommendations from the agencies and Indian tribes identified in subparagraphs (A) and (B) of paragraph (2) for proposed terms and conditions for the Commission's consideration for inclusion in the license.".

(c) Fish and Wildlife Protection, Mitigation, and Enhancement.—Section 10 of the Federal Power Act is amended by adding the following at the end:

"(j)(1) That in order to adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project, each license issued under this Part shall include conditions for such protection, mitigation, and enhancement. Subject to paragraph (2), such conditions shall be based on recommendations received pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 661 et. seq.) from the National Marine Fisheries Service, the United States Fish and Wildlife Service, and State fish and wildlife agencies.

"(2) Whenever the Commission believes that any recommendation referred to in paragraph (1) may be inconsistent with the purposes and requirements of this Part or other applicable law, the Commission and the agencies referred to in paragraph (1) shall attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If, after such attempt, the Commission does not adopt in whole or in part a recommendation of any such agency, the Commission shall publish each of the following findings (together with a statement of the basis for each of the findings):

"(A) A finding that adoption of such recommendation is inconsistent with the purposes and requirements of this Part or with other applicable provisions of law.

"(B) A finding that the conditions selected by the Commission comply with the requirements of paragraph (1).

Subsection (i) shall not apply to the conditions required under this subsection.".

SEC. 4. RELICENSING PROCEDURES.

(a) Relicensing Process.—Section 15 of the Federal Power Act is amended by inserting "(1)" after "(a)", by redesignating subsection (b) as subsection (f), and by adding the following at the end of subsection (a):

"(2) Any new license issued under this section shall be issued to the applicant having the final proposal which the Commission determines is best adapted to serve the public interest, except that in making this determination the Commission shall ensure that insignificant differences with regard to subparagraphs (A) through (G) of this paragraph between competing applications are not determinative and shall not result in the transfer of a project. In making a determination under this section (whether or not more than one application is submitted for the project), the Commission shall, in addition to the requirements of section 10 of this Part, consider (and explain such consideration in writing) each of the following:

"(A) The plans and abilities of the applicant to comply with (i) the articles, terms, and conditions of any license issued to it and (ii) other applicable provisions of this Part.

"(B) The plans of the applicant to manage, operate, and maintain the project safely.

"(C) The plans and abilities of the applicant to operate and maintain the project in a manner most likely to provide efficient and reliable electric service.

"(D) The need of the applicant over the short and long term for the electricity generated by the project or projects to serve its customers, including, among other relevant considerations, the reasonable costs and reasonable availability of alternative sources of power, taking into consideration conservation and other relevant factors and taking into consideration the effect on the provider (including its customers) of the alternative source of power, the effect on the applicant's operating and load characteristics, the effect on communities served or to be served by the project, and in the case of an applicant using power for the applicant's own industrial facility and related operations, the effect on the operation and efficiency of such facility or related operations, its workers, and the related community. In the case of an applicant that is an Indian tribe applying for a license for a project located on the tribal reservation, a statement of the need of such tribe for electricity generated by the project to foster the purposes of the reservation may be included.

"(E) The existing and planned transmission services of the applicant, taking into consideration system reliability, costs, and other applicable economic and technical factors.

"(F) Whether the plans of the applicant will be achieved, to the greatest extent possible, in a cost effective manner.

"(G) Such other factors as the Commission may deem relevant, except that the terms and conditions in the license for the protection, mitigation, or enhancement of fish and wildlife resources affected by the development, operation, and management of the project shall be determined in accordance with section 10, and the plans of an applicant concerning fish and wildlife shall not be subject to a comparative evaluation under this subsection.

"(3) In the case of an application by the existing licensee, the Commission shall also take into consideration each of the following:

"(A) The existing licensee's record of compliance with the terms and conditions of the existing license.

"(B) The actions taken by the existing licensee related to the project which affect the public.

"(b)(1) Each existing licensee shall notify the Commission whether the licensee intends to file an application for a new license or not. Such notice shall be submitted at least 5 years before the expiration of the existing license.

"(2) At the time notice is provided under paragraph (1), the existing licensee shall make each of the following reasonably available to the public for inspection at the offices of such licensee: current maps, drawings, data, and such other information as the Commission shall, by rule, require regarding the construction and operation of the licensed project. Such information shall include, to the greatest extent practicable pertinent energy conservation, recreation, fish and wildlife, and other environmental information. Copies of the information shall be made available at reasonable costs of reproduction. Within 180 days after the enactment of the Electric Consumers Protection Act of 1986, the Commission shall promulgate regulations regarding the information to be provided under this paragraph.

"(3) Promptly following receipt of notice under paragraph (1), the Commission shall provide public notice of whether an existing licensee intends to file or not to file an application for a new license. The Commission shall also promptly notify the National Marine Fisheries Service and the United States Fish and Wildlife Service, and the appropriate State fish and wildlife agencies.

"(4) The Commission shall require the applicant to identify any Federal or Indian lands included in the project boundary, together with a statement of the annual fees paid as required by this Part for such lands, and to provide such additional information as the Commission deems appropriate to carry out the Commission's responsibilities under this section.

"(c)(1) Each application for a new license pursuant to this section shall be filed with the Commission at least 24 months before the expiration of the term of the existing license. Each applicant shall consult with the fish and wildlife agencies referred to in subsection (b) and, as appropriate, conduct studies with such agencies. Within 60 days after the statutory deadline for the submission of applications, the Commission shall issue a notice establishing expeditious procedures for relicensing and a deadline for submission of final amendments, if any, to the application.

"(2) The time periods specified in this subsection and in subsection (b) shall be adjusted, in a manner that achieves the objectives of this section, by the Commission by rule or order with respect to existing licensees who, by reason of the expiration dates of their licenses, are unable to comply with a specified time period.

"(d)(1) In evaluating applications for new licenses pursuant to this section, the Commission shall not consider whether an applicant has adequate transmission facilities with regard to the project.

"(2) When the Commission issues a new license (pursuant to this section) to an applicant which is not the existing licensee of the project and finds that it is not feasible for

the new licensee to utilize the energy from such project without provision by the existing licensee of reasonable services, including transmission services, the Commission shall give notice to the existing licensee and the new licensee to immediately enter into negotiations for such services and the costs demonstrated by the existing licensee as being related to the provision of such services. It is the intent of the Congress that such negotiations be carried out in good faith and that a timely agreement be reached between the parties in order to facilitate the transfer of the license by the date established when the Commission issued the new license. If such parties do not notify the Commission that within the time established by the Commission in such notice (and if appropriate, in the judgment of the Commission, one 45-day extension thereof), a mutually satisfactory arrangement for such services that is consistent with the provisions of this Act has been executed, the Commission shall order the existing licensee to file (pursuant to section 205 of this Act) with the Commission a tariff, subject to refund, ensuring such services beginning on the date of transfer of the project and including just and reasonable rates and reasonable terms and conditions. After notice and opportunity for a hearing, the Commission shall issue a final order adopting or modifying such tariff for such services at just and reasonable rates in accordance with section 205 of this Act and in accordance with reasonable terms and conditions. The Commission, in issuing such order, shall ensure the services necessary for the full and efficient utilization and benefits for the license term of the electric energy from the project by the new licensee in accordance with the license and this Part, except that in issuing such order the Commission—

"(A) shall not compel the existing licensee to enlarge generating facilities, transmit electric energy other than to the distribution system (providing service to customers) of the new licensee identified as of the date one day preceding the date of license award, or require the acquisition of new facilities, including the upgrading of existing facilities other than any reasonable enhancement or improvement of existing facilities controlled by the existing licensee (including any acquisition related to such enhancement or improvement) necessary to carry out the purposes of this paragraph;

"(B) shall not adversely affect the continuity and reliability of service to the customers of the existing licensee;

"(C) shall not adversely affect the operational integrity of the transmission and electric systems of the existing licensee;

"(D) shall not cause any reasonably quantifiable increase in the jurisdictional rates of the existing licensee; and

"(E) shall not order any entity other than the existing licensee to provide transmission or other services.

Such order shall be for such period as the Commission deems appropriate, not to exceed the term of the license. At any time, the Commission, upon its own motion or upon a petition by the existing or new licensee and after notice and opportunity for a hearing, may modify, extend, or terminate such order.".

(b) CONFORMING AMENDMENTS.—(1) Section 15(a) of the Federal Power Act is amended by striking out "original" each place it appears and substituting "existing".

(2) Section 14(b) of such Act is amended by striking out the first sentence.

(c) COMMISSION REVIEW.—In order to ensure that the provisions of Part I of the Federal Power Act, as amended by this Act, are fully, fairly, and efficiently implemented, that other governmental agencies identified in such Part I are able to carry out their responsibilities, and that the increased workload of the Federal Energy Regulatory Commission and other agencies is facilitated, the Commission shall, consistent with the provisions of section 309 of the Federal Power Act, review all provisions of that Act requiring an action within a 30-day period and, as the Commission deems appropriate, amend its regulations to interpret such period as meaning "working days", rather than "calendar days" unless calendar days is specified in such Act for such action.

SEC. 5. LICENSE TERM ON RELICENSING.

Section 15 of the Federal Power Act is amended by adding the following after subsection (d) (as added by section 4 of this Act):

"(e) Except for an annual license, any license issued by the Commission under this section shall be for a term which the Commission determines to be in the public interest but not less than 30 years, nor more than 50 years, from the date on which the license is issued.".

SEC. 6. UNAUTHORIZED ACTIVITIES.

Section 23(b) of the Federal Power Act is amended by inserting "(1)" after "(b)" and by adding the following at the end thereof:

"(2) No person may commence any significant modification of any project licensed under, or exempted from, this Act unless such modification is authorized in accordance with terms and conditions of such license or exemption and the applicable requirements of this Part. As used in this paragraph, the term 'commence' refers to the beginning of physical on-site activity other than surveys or testing.".

SEC. 7. AMENDMENTS TO SECTION 30 OF FEDERAL POWER ACT.

(a) STATE OR LOCAL CONDUITS.—Section 30(b) of the Federal Power Act is amended by inserting after "15 megawatts" the following: "(40 megawatts in the case of a facility constructed, operated, and maintained by an agency or instrumentality of a State or local government solely for water supply for municipal purposes)".

(b) NMFS.—Section 30(c) of the Federal Power Act is amended by inserting "National Marine Fisheries Service" after "the Fish and Wildlife Service" in both places such term appears.

(c) FEES FOR STUDIES.—Section 30 of the Federal Power Act is amended by adding the following new subsection at the end thereof:

"(e) The Commission, in addition to the requirements of section 10(e), shall establish fees which shall be paid by an applicant for a license or exemption for a project that is required to meet terms and conditions set by fish and wildlife agencies under subsection (c). Such fees shall be adequate to reimburse the fish and wildlife agencies referred to in subsection (c) for any reasonable costs incurred in connection with any studies or other reviews carried out by such agencies for purposes of compliance with this section. The fees shall, subject to annual appropriations Acts, be transferred to such agencies by the Commission for use solely for purposes of carrying out such studies and shall remain available until expended.".

SEC. 8. AMENDMENTS CONCERNING CERTAIN SMALL POWER PRODUCTION FACILITIES SUBJECT TO PURPA BENEFITS.

(a) NEW DAMS AND DIVERSIONS SEEKING PURPA BENEFITS.—Section 210 of the Public Utility Regulatory Policies Act of 1978 is amended by inserting the following new subsections after subsection (i) and by redesignating subsection (j) as subsection (l):

"(j) NEW DAMS AND DIVERSIONS.—Except for a hydroelectric project located at a Government dam (as defined in section 3(10) of the Federal Power Act) at which non-Federal hydroelectric development is permissible, this section shall not apply to any hydroelectric project which impounds or diverts the water of a natural watercourse by means of a new dam or diversion unless the project meets each of the following requirements:

"(1) NO SUBSTANTIAL ADVERSE EFFECTS.—At the time of issuance of the license or exemption for the project, the Commission finds that the project will not have substantial adverse effects on the environment, including recreation and water quality. Such finding shall be made by the Commission after taking into consideration terms and conditions imposed under either paragraph (3) of this subsection or section 10 of the Federal Power Act (whichever is appropriate as required by that Act or the Electric Consumers Protection Act of 1986) and compliance with other environmental requirements applicable to the project.

"(2) PROTECTED RIVERS.—At the time the application for a license or exemption for the project is accepted by the Commission (in accordance with the Commission's regulations and procedures in effect on January 1, 1986, including those relating to environmental consultation), such project is not located on either of the following:

"(A) Any segment of a natural watercourse which is included in (or designated for potential inclusion in) a State or national wild and scenic river system.

"(B) Any segment of a natural watercourse which the State has determined, in accordance with applicable State law, to possess unique natural, recreational, cultural, or scenic attributes which would be adversely affected by hydroelectric development.

"(3) FISH AND WILDLIFE TERMS AND CONDITIONS.—The project meets the terms and conditions set by fish and wildlife agencies under the same procedures as provided for under section 30(c) of the Federal Power Act.

"(k) DEFINITION OF NEW DAM OR DIVERSION.—For purposes of this section, the term 'new dam or diversion' means a dam or diversion which requires, for purposes of installing any hydroelectric power project, any construction, or enlargement of any impoundment or diversion structure (other than repairs or reconstruction or the addition of flashboards or similar adjustable devices)".

(b) EFFECTIVE DATE.—(1) Subsection (j) of section 210 of the Public Utility Regulatory Policies Act of 1978 (as amended by subsection (a) of this section) shall apply to any project for which benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 are sought and for which a license or exemption is issued by the Federal Energy Regulatory Commission after the enactment of this Act, except as otherwise provided in paragraph (2), (3) or (4) of this subsection.

(2) Subsection (j) shall not apply to the project if the application for license or exemption for the project was filed, and accepted for filing by the Commission, before the enactment of this Act.

(3) Paragraphs (1) and (3) of such subsection (j) shall not apply if the application for the license or exemption for the project was filed before the enactment of this Act and accepted for filing by the Commission (in accordance with the Commission's regulations and procedures in effect on January 1, 1986, including those relating to the requirement

for environmental consultation) within 3 years after such enactment.

(4)(A) Paragraph (3) of subsection (j) shall not apply for projects where the license or exemption application was filed after enactment of this Act if, based on a petition filed by the applicant for such project within 18 months after such enactment, the Commission determines (after public notice and opportunity for public comment of at least 45 days) that the applicant has demonstrated that he had committed (prior to the enactment of this Act) substantial monetary resources directly related to the development of the project and to the diligent and timely completion of all requirements of the Commission for filing an acceptable application for license or exemption. Such petition shall be publicly available and shall be filed in such form as the Commission shall require by rule issued within 120 days after the enactment of this Act. The public notice required under this subparagraph shall include written notice by the petitioner to affected Federal and State agencies.

(B) In the case of any petition referred to in subparagraph (A), if the applicant had a preliminary permit and had completed environmental consultations (required by Commission regulations and procedures in effect on January 1, 1986) prior to enactment, there shall be a rebuttable presumption that such applicant had committed substantial monetary resources prior to enactment.

(C) The applicant for a license or exemption for a project described in subparagraph (A) may petition the Commission for an initial determination under paragraph (1) of section 210(j) of the Public Utility Regulatory Policies Act of 1978 prior to the time the license or exemption is issued. If the Commission initially finds that the project will have substantial adverse effects on the environment within the meaning of such paragraph (1), prior to making a final finding under that paragraph the Commission shall afford the applicant a reasonable opportunity to provide for mitigation of such adverse effects. The Commission shall make a final finding under such paragraph (1) at the time the license or exemption is issued. If the Federal Energy Regulatory Commission has notified the State of its initial finding and the State has not taken any action described in paragraph (2) of section 210(j) before such final finding, the failure to take such action shall be the basis for a rebuttable presumption that there is not a substantial adverse effect on the environment related to natural, recreational, cultural, or scenic attributes for purposes of such finding.

(D) If a petition under subparagraph (A) is denied, all provisions of section 210(j) of the Public Utility Regulatory Policies Act of 1978 shall apply to the project regardless of when the license or exemption is issued.

(c) APPLICATION OF SECTION 30(C).—Nothing in this Act shall affect the application of section 30(c) of the Federal Power Act to any exemption issued after the enactment of this Act.

(d) STUDY.—(1) The Commission shall conduct a study (in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969) of whether the benefits of section 210 of the Public Utility Regulatory Policies Act of 1978 and section 210 of the Federal Power Act should be applied to hydroelectric power facilities utilizing new dams or diversions (within the meaning of section 210(k) of the Public Utility Regulatory Policies Act of 1978).

(2) The study under this subsection shall take into consideration the need for such new dams or diversions for power purposes, the environmental impacts of such new dams and diversions (both with and without the application of the amendments made by this Act to sections 4, 10, and 30 of the Federal Power Act and section 210 of the Public Utility Regulatory Policies Act of 1978), the environmental effects of such facilities alone and in combination with other existing or proposed dams or diversions on the same waterway, the intent of Congress to encourage and give priority to the application of section 210 of Public Utility Regulatory Policies Act of 1978 to existing dams and diversions rather than such new dams or diversions, and the impact of such section 210 on the rates paid by electric power consumers.

(3) The study under this subsection shall be initiated within 3 months after enactment of this Act and completed as promptly as practicable.

(4) A report containing the results of the study conducted under this subsection shall be submitted to the Committee on Energy and Commerce of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate while both Houses are in session.

(5) The report submitted under paragraph (4) shall include a determination (and the basis thereof) by the Commission, based on the study and a public hearing and subject to review under section 313(b) of the Federal Power Act, whether any of the benefits referred to in paragraph (1) should be available for such facilities and whether applications for preliminary permits (or licenses where no preliminary permit has been issued) for such small power production facilities utilizing new dams or diversions should be accepted by the Commission after the moratorium period specified in subsection (e). The report shall include such other administrative and legislative recommendations as the Commission deems appropriate.

(6) If the study under this subsection has not been completed within 18 months after its initiation, the Commission shall notify the Committees referred to in paragraph (4) of the reasons for the delay and specify a date when it will be completed and a report submitted.

(e) MORATORIUM ON APPLICATION OF PURPA TO NEW DAMS.—Notwithstanding the amendments made by subsection (a) of this section, in the case of a project for which a license or exemption is issued after the enactment of this Act, section 210 of the Public Utility Regulatory Policies Act of 1978 shall not apply during the moratorium period if the project utilizes a new dam or diversion (as defined in section 210(k) of such Act) unless the project is either—

(1) a project located at a Government dam (as defined in section 3(10) of the Federal Power Act) at which non-Federal hydroelectric development is permissible, or

(2) a project described in paragraphs (2), (3), or (4) of subsection (b).

For purposes of this subsection, the term "moratorium period" means the period beginning on the date of the enactment of this Act and ending at the expiration of the first full session of Congress after the session during which the report under subsection (d) has been submitted to the Congress.

SEC. 9. FEES AND CHARGES FOR USE OF DAMS AND STRUCTURES.

(a) FEES AND CHARGES.—Section 10(e) of the Federal Power Act is amended as follows:

(1) Insert "(1)" after "(e)".

(2) Add the following at the end thereof:

"(2) In the case of licenses involving the use of Government dams or other structures owned by the United States, the charges fixed (or readjusted) by the Commission under paragraph (1) for the use of such dams or structures shall not exceed 1 mill per kilowatt-hour for the first 40 gigawatt-hours of energy a project produces in any year, 1 1/2 mills per kilowatt-hour for over 40 up to and including 80 gigawatt-hours in any year, and 2 mills per kilowatt-hour for any energy the project produces over 80 gigawatt-hours in any year. Except as provided in subsection (f), such charge shall be the only charge assessed by any agency of the United States for the use of such dams or structures.

"(3) The provisions of paragraph (2) shall apply with respect to—

"(A) all licenses issued after the date of the enactment of this paragraph; and

"(B) all licenses issued before such date which—

"(i) did not fix a specific charge for the use of the Government dam or structure involved; and

"(ii) did not specify that no charge would be fixed for the use of such dam or structure.

"(4) Every 5 years, the Commission shall review the appropriateness of the annual charge limitations provided for in this subsection and report to Congress concerning its recommendations thereon.".

(b) SAVINGS PROVISIONS.—Nothing in this Act shall affect any annual charge to be paid pursuant to section 10(e) of the Federal Power Act to Indian tribes for the use of their lands within Indian reservations.

SEC. 10. ELECTION AND NEGOTIATIONS CONCERNING CONTESTED PROJECTS SUBJECT TO LITIGATION.

(a) APPLICATION OF SECTION.—This section applies to any relicensing proceeding initiated prior to October 1983 at the Federal Energy Regulatory Commission involving the following projects: Mokelumne (No. 137), California; Phoenix (No. 1061), California; Rock Creek/Cresta (No. 1962), California; Haas-King (No. 1988), California; Poole (No. 1388), California; Olmsted (No. 596), Utah; Weber (No. 1744), Utah; Rush Creek (No. 1389), California; and Shawano (No. 710), Wisconsin. The numbers in this subsection refer to Federal Energy Regulatory Commission project identification numbers for the existing licensee. This subsection shall also apply to any subsequent relicensing proceeding for any such project involving the same parties which results from the rejection, without prejudice, of an application in any of the proceedings specified in this subsection.

(b) PROVISIONS NOT APPLICABLE IF ELECTION MADE.—In the case of each project named in subsection (a), if the existing licensee fails to make an election under subsection (c) within 90 days after the enactment of this Act for negotiations under subsection (e)—

(1) the provisions of the Federal Power Act in effect one day prior to enactment of this Act; and

(2) the amendments made by sections 3, 6, and 12 of this Act to the Federal Power Act shall apply to the relicensing proceeding referred to in subsection (a).

(c) ELECTION PROCEDURES.—An existing licensee for any project named in subsection (a) may file an election with the Commission under this subsection. The election shall be filed in the manner required by the Commission. The election, subject to subsection (d), shall consist of an agreement that, in the case of the project concerned, the licensee will—

(1) enter into good faith negotiations under subsection (e) with each person (or group of persons) who filed a competing application for a new license for the project before October 7, 1983; and

(2) be subject to the provisions of this section.

Notice of the election to negotiate or the refusal thereof shall be filed with the Commission within the 90-day period.

(d) ACCEPTANCE OR REFUSAL TO ACCEPT ELECTION.—Within 45 days after receiving notice from the Commission of an election to negotiate made by the existing licensee under subsection (c) for an applicable project, each competing license applicant (or group of applicants) referred to in subsection (a) may—

(1) accept the election, withdraw the competing application, enter into good faith negotiations in accordance with this section, and agree to be subject to the provisions of this section; or

(2) refuse to accept such election.

If the election to negotiate is not accepted by the competing applicant (or group) within the 45-day period, the relicensing proceeding for such project shall be continued and a new license issued solely in accordance with the Federal Power Act, as amended by this Act (including the amendments made by this Act to section 7 of the Federal Power Act). Notice of an election to negotiate or refusal must be filed with the Commission within the 45-day period.

(e) NEGOTIATIONS.—If an election to negotiate is made pursuant to subsections (c) and (d) for any project, the existing licensee and the competing applicant shall commence negotiations for each of the following:

(1) Compensation to be provided by the existing licensee for the reasonable costs incurred by the competing applicant which are related to pursuing—

(A) the application in the applicable relicensing proceeding, including the costs of preparing, filing, and maintaining such application for the period ending December 31, 1985; and

(B) the litigation in the courts involving the application of section 7 of the Federal Power Act to the applicable relicensing proceeding.

(2) Compensation in an additional sum (which may be in money or electric power or both) representing a reasonable percentage (but not to exceed 100 percent) of the net investment of the existing licensee in the project, as of October 22, 1985 (as determined by the Commission, prior to the initiation of such negotiations, in accordance with section 14(a) of the Federal Power Act). In making the determination of net investment, the Commission shall utilize all relevant records and data (which the existing licensee shall provide to the Commission) applicable to the project for the term of the existing license through October 22, 1985.

The parties to the negotiations shall establish the method, period, and manner of providing all such compensation.

(f) COMMISSION ORDER.—If an election is made and accepted but negotiations under subsection (e) are not commenced by the parties within the time established by the Commission (or, if appropriate, in the judgment of the Commission, one 45-day extension thereof) or if a mutually satisfactory compensation arrangement that is consistent with the provisions of the Federal Power Act has not been executed within such time, the Commission, after notice and opportunity for a hearing, shall issue an order establishing compensation in accordance with paragraphs (1) and (2) of subsection (e). In determining the amount of compensation, the Commission may accept any stipulations agreed to by the parties as a result of the negotiations. The Commission shall also take into consideration all of the following:

(1) The quality of the relicensing proposals of the existing licensee and the competing applicant.

(2) The net benefits to both parties and their customers of obtaining the new license.

(3) The extent to which the applications filed by both parties were actively pursued (subject to the effect thereon of any action by the Commission or the applicable litigation) and filed with the Commission in good faith.

(4) The extent of reliance by the competing applicant on the provisions of the Federal Power Act in effect prior to enactment of this Act and the detrimental impact of such reliance on the operations and on the service area of the applicant.

(g) COMPENSATION.—The order of the Commission under this section shall establish the method, period, and manner of providing compensation under subsection (f), and such other reasonable terms and conditions concerning such compensation, consistent with the Federal Power Act, as the Commission deems appropriate. Any payment over a period of time shall include interest compounded at a rate based upon outstanding obligations of the United States of comparable maturity. The payment period shall not exceed one-third of the new license term for the project. The order shall state the basis for the Commission's determination. The provisions of section 313 of the Federal Power Act shall apply to such order and determinations. The order (or any agreement reached by the parties by negotiation) shall be a condition of any annual license or new license (depending when the order is issued or agreement reached) issued to the existing licensee for this project. Nothing in this section shall be construed to affect the treatment, by a State regulatory authority for ratemaking purposes, of any compensation paid under this section.

(h) COMMISSION PROCEEDINGS.—Upon mutual request of the parties to any negotiation under this section, the Commission may defer any determination of net investment for the applicable project until whenever it is required to issue an order under this section for such project. No new license shall be issued under the Federal Power Act for the projects referenced in this section until there is full compliance, to the extent applicable, with this section. The Commission shall ensure that negotiations and any determinations and orders required by this section shall be conducted, made, and issued expeditiously and shall ensure that the parties do not delay.

SEC. 11. MERWIN DAM PROJECT.

The amendments made by this Act, except for the amendments made by sections 6 and 12 shall not apply to the Federal Energy Regulatory Commission proceeding involving FERC Project Number 935 (FERC Project Number 2791), relating to the Merwin Dam in Washington State.

SEC. 12. ADDITIONAL COMMISSION ENFORCEMENT AUTHORITY.

Part I of the Federal Power Act is amended by adding the following new section at the end thereof:

"SEC. 31. ENFORCEMENT.

"(a) MONITORING AND INVESTIGATION.—The Commission shall monitor and investigate compliance with each license and permit issued under this Part and with each exemption granted from any requirement of this Part. The Commission shall conduct such investigations as may be necessary and proper in accordance with this Act. After notice and opportunity for public hearing, the Commission may issue such orders as necessary to require compliance with the terms and conditions of licenses and permits issued under this Part and with the terms and conditions of exemptions granted from any requirement of this Part.

"(b) REVOCATION ORDERS.—After notice and opportunity for an evidentiary hearing, the Commission may also issue an order revoking any license issued under this Part or any exemption granted from any requirement of this Part where any licensee or exemptee is found by the Commission:

"(1) to have knowingly violated a final order issued under subsection (a) after completion of judicial review (or the opportunity for judicial review); and

"(2) to have been given reasonable time to comply fully with such order prior to commencing any revocation proceeding.

In any such proceeding, the order issued under subsection (a) shall be subject to de novo review by the Commission. No order shall be issued under this subsection until after the Commission has taken into consideration the nature and seriousness of the violation and the efforts of the licensee to remedy the violation.

"(c) CIVIL PENALTY.—Any licensee, permittee, or exemptee who violates or fails or refuses to comply with any rule or regulation under this Part, any term, or condition of a license, permit, or exemption under this Part, or any order issued under subsection (a) shall be subject to a civil penalty in an amount not to exceed $10,000 for each day that such violation or failure or refusal continues. Such penalty shall be assessed by the Commission after notice and opportunity for public hearing. In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation, failure, or refusal and the efforts of the licensee to remedy the violation, failure, or refusal in a timely manner. No civil penalty shall be assessed where revocation is ordered.

"(d) ASSESSMENT.—(1) Before issuing an order assessing a civil penalty against any person under this section, the Commission shall provide to such person notice of the proposed penalty. Such notice shall, except in the case of a violation of a final order issued under subsection (a), inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

"(2)(A) In the case of the violation of a final order issued under subsection (a), or unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Commission shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

"(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Commission assessing such pen-

alty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in Part, the order of the Commission, or the court may remand the proceeding to the Commission for such further action as the court may direct.

"(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Commission shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

"(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Commission shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in Part, such assessment.

"(C) Any election to have this paragraph apply may not be revoked except with the consent of the Commission.

"(4) The Commission may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection, taking into consideration the nature and seriousness of the violation and the efforts of the licensee to remedy the violation in a timely manner at any time prior to a final decision by the court of appeals under paragraph (2) or by the district court under paragraph (3).

"(5) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Commission under paragraph (3), the Commission shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

"(6)(A) Notwithstanding the provisions of title 28, United States Code, or of this Act, the Commission may be represented by the general counsel of the Commission (or any attorney or attorneys within the Commission designated by the Chairman) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (5)) in a court of the United States or in any other court, except the Supreme Court. However, the Commission or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

"(B) The Commission shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph."

SEC. 13. ANTITRUST LAWS.

Section 10(h) of the Federal Power Act is amended by inserting "(1)" after "(h)" and by adding the following new paragraph at the end thereof:

"(2) That conduct under the license that: (A) results in the contravention of the policies expressed in the antitrust laws; and (B) is not otherwise justified by the public interest considering regulatory policies expressed in other applicable law (including but not limited to those contained in part II of this Act) shall be prevented or adequately minimized by means of conditions included in the license prior to its issuance. In the event it is impossible to prevent or adequately minimize the contravention, the Commission shall refuse to issue any license to the applicant for the project and, in the case of an existing project, shall take appropriate action to provide thereafter for the operation and maintenance of the affected project and for the issuing of a new license in accordance with section 15 of this Part.".

SEC. 14. LANDOWNER NOTIFICATION.

Section 9 of the Federal Power Act is amended by inserting "(a)" after "9", by redesignating existing subsections (a) and (b) as paragraphs (1) and (2), and by adding the following at the end thereof:

"(b) Upon the filing of any application for a license (other than a license under section 15) the applicant shall make a good faith effort to notify each of the following by certified mail:

"(1) Any person who is an owner of record of any interest in the property within the bounds of the project.

"(2) Any Federal, State, municipal or other local governmental agency likely to be interested in or affected by such application.".

SEC. 15. APPLICATIONS FOR CERTAIN ORDERS UNDER FEDERAL POWER ACT.

Section 211(c)(2)(B) of the Federal Power Act is amended by adding the following before the period: ": Provided, That nothing in this subparagraph shall prevent an application for an order hereunder to be filed prior to termination of modification of an existing rate schedule: Provided, That such order shall not become effective until termination of such rate schedule or the modification becomes effective".

SEC. 15. MISCELLANEOUS PROVISIONS.

(a) LAKE TUSCALOOSA.—In the case of any hydroelectric power project located or proposed to be located at Lake Tuscaloosa, in Tuscaloosa County, Alabama, the provisions of the Federal Power Act shall continue to apply, except that the Federal Energy Regulatory Commission shall not issue any permit, license, or exemption under that Act or under any other provision of law administered by the Commission to any person or public or private entity for such project or for any transmission or other facilities used in connection with, or appurtenant to, such project unless authorized by law enacted after the enactment of this Act.

(b) TIME LIMITATIONS FOR CERTAIN PROJECTS.—Notwithstanding the time limitations of section 13 of the Federal Power Act, the Federal Energy Regulatory Commission upon the request of the licensee for FERC Projects Nos. 3033, 3034, and 3044 (and after reasonable notice) is authorized, in accordance with the good faith, due diligence, and public interest requirements of such section 13 and the Commission's procedures under such section, to extend:

(1) the time required for commencement of construction of Projects Nos. 3033, 3034, and 3044 for up to a maximum of 3 consecutive 2-year periods for each such project,

(2) the time required for completion of construction of such projects for a reasonable period not to exceed 5 years after commencement of construction of each project, and

(3) the time required for the licensee to acquire the real property required for such projects for a period of up to 5 years from the date of enactment of the Act.

The authorization for issuing extensions under paragraphs (2) and (3) of this subsection shall terminate 3 years after enactment of this Act. The Commission to facilitate requests under this subsection may consolidate such requests.

(c) HENRY'S FORK.—(1) In the case of any project proposed to be sited on, or adjacent to, that portion of Henry's Fork of the Snake River, Idaho (including that segment originating at Big Springs), or its tributaries within one-half mile of their confluence with Henry's Fork of the Snake River, from its point of origin at Henry's Lake, Idaho to the point of its confluence with the backwaters of Ashton Reservoir, Idaho, the provisions of the Federal Power Act shall continue to apply, except that the Federal Energy Regulatory Commission shall not issue any permit, license, or exemption under that Act or under any other provision of law administered by the Commission to any person or public or private entity for such project or for any transmission or other facilities used in connection with, or appurtenant to, such project unless authorized by law enacted after the enactment of this Act. The prohibition in the preceding sentence shall not apply to the application for a license under Part I of the Federal Power Act, as amended by this Act, to the Island Park Dam Hydropower Project (FERC Project No. 2973), except that in addition to the requirements of that Act, the Commission may issue such license only if the Commission determines that significant and permanent alternation of streamflow, habitat, water temperature, and quality will not occur as a result of the project. Nothing in this subsection shall be construed to affect the authority of this Commission to relicense, in accordance with the provisions of the Federal Power Act, as amended by this Act, the Ponds Lodge Hydropower Project (FERC Project No. 1413).

(2) Except as expressly provided in paragraph (1), nothing in this subsection shall affect the validity of any existing license, permit, or certificate issued by any Federal agency pursuant to any other Federal law.

(3) The provisions of this subsection shall supersede the provisions of title VII (relating to the Henry's Fork of the Snake River, Idaho) of the Act entitled "An Act to amend the Wild and Scenic Rivers Act, and for other purposes" enacted during the 99th Congress, second session.

SEC. 16. PROVISION OF INFORMATION TO CONGRESS.

The Federal Energy Regulatory Commission shall keep the Committee on Energy and Commerce of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate fully and currently informed regarding actions of the Commission with respect to the provisions of Part 1 of the Federal Power Act.

SEC. 17. SAVINGS PROVISIONS.

(a) IN GENERAL.—Nothing in this Act shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual. Nor shall any provision of this Act—

(1) affect the rights or jurisdiction of the United States, the States, Indian tribes, or other entities over waters of any river or stream or over any ground water resource;

(2) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States;

(3) alter or establish the respective rights of States, the United States, Indian tribes, or any person with respect to any water or water-related right;

(4) affect, expand, or create rights to use transmission facilities owned by the Federal Government;

(5) alter, amend, repeal, interpret, modify, or be in conflict with, the Treaty rights or other rights of any Indian tribe;

(6) permit the filing of any competing application in any relicensing proceeding where the time for filing a competing application expired before the enactment of this Act; or

(7) modify, supersede, or affect the Pacific Northwest Electric Power Planning and Conservation Act.

SEC. 18. EFFECTIVE DATE.

Except as otherwise provided in this Act, the amendments made by this Act shall take effect with respect to each license, permit, or exemption issued under the Federal Power Act after the enactment of this Act. The amendments made by sections 6 and 12 of this Act shall apply to licenses, permits, and exemptions without regard to when issued.

And the House agree to the same.

John D. Dingell,
Ed Markey,
Al Swift,
John Bryant,
Richard C. Shelby,
Ron Wyden,
Norman F. Lent,
Carlos J. Moorhead,
Michael G. Oxley,
Howard C. Nielson,
Managers on the Part of the House.

James A. McClure,
Mark O. Hatfield,
Malcolm Wallop,
Frank H. Murkowski,
Daniel J. Evans,
J. Bennett Johnston,
Wendell H. Ford,
Howard M. Metzenbaum,
John Melcher,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 426) to amend the Federal Power Act to provide for more protection to electric consumers submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The principal differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, technical, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

ENVIRONMENTAL CONSIDERATIONS IN LICENSING

The conference agreement melds together the House and Senate amendments to sections 4(e) and 10 of the Fedeal Power Act relating to environmental concerns. The provisions are adopted with a view of not merely codifying existing practice at the Federal Energy Regulatory Commission (FERC) under these sections, but to change and improve it. There is no intention in any way to change the holdings in relevant cases, such as *Udall* v. *FPC*, which the conferees intend will continue to apply to FERC's hydroelectric program.

The conferees believe that as a Nation we have come a considerable distance in recognizing the importance of our heritage. This legislation extends that "distance" a bit more. The amendments expressly identify fish and wildlife protection, mitigation, and enhancement, recreational opportunities, and energy conservation as nondevelopmental values that must be adequately considered by FERC when it decides whether and under what condition to issue a hydroelectric license for a project. We agree that there are instances in which careful and thoughtful consideration of the impact of a proposed project would and should lead to the conclusion that an original license ought not to be issued.

Amended section 4(e) requires FERC, in deciding whether to issue an original license, in the case of a new project, or to issue a new license for an existing project, the give "equal consideration" to the purposes of energy conservation and environmental values, including fish and wildlife and recreation, in deciding whether to issue the license for power and developmental purposes. Such consideration is important because it is intended that FERC give these nondevelopmental values the same level of reflection as it does to power and other developmental objectives. In other words, it requires the thorough evaluation of these values before FERC makes its licensing decision. Consequently, equal consideration must be viewed as a standard, both procedural and substantive, that cannot be satisfied by mere consultation or by deferring consideration and imposition of environmental conditions until after licensing. Protection, mitigation, and enhancement of fish and wildlife, energy conservation, and the protection of recreational opportunities are a potential cost of doing business for hydropower projects.

In exercising its responsibilities in relicensing, the conferees expect FERC to take into account existing structures and facilities in providing for these nonpower and nondevelopmental values. No one expects FERC to require an applicant to tear down an existing project. But neither does anyone expect "business as usual." Projects licensed years earlier must undergo the scrutiny of today's values as provided in this law and other environmental laws applicable to such projects. if nonpower values cannot be adequately protected, FERC should exercise its authority to restrict or, particularly in the case of original licenses, even deny a license on a waterway. The goal of amended section 4 is to assure a true multiple use of water resources.

The amendments to section 10(a) of the Federal Power Act update the comprehensive planning provision of existing law by requiring that such planning encompass the adequate protection, mitigation, and enhancement of fish and wildlife and other beneficial uses, including, but not limited to, irrigation, flood control, water supply, recreation, and other purposes referred to in amended section 4(e). In essence, the law will now specifically recognize these waterway values and require, where they compete, that FERC resolve these issues in a manner that takes them into account, but does not necessarily result in their equal treatment.

The agreement includes additional revisions to section 10. It incorporates a new section 10(a)(2), expressly requiring FERC to consider comprehensive plans developed by other entities pursuant to State or Federal law, as well as recommendations of Federal and State agencies and Indian tribes with expertise on aspects of the public interest. It is not an exclusive list of values FERC must evaluate and address in order to satisfy its comprehensive planning responsibilities. However, it highlights the steps the Commission must take to inform itself regarding the needs and uses of the river in question. Other steps the Commission would have to take, depending on particular circumstances, include addressing fish and wildlife management and restoration plans for the river drainage and accomodating the views of other interested parties.

As noted, this provision requires FERC to consider the recommendations of Indian tribes affected by the project, including tribal recommendations intended to protect, mitigate the damages to, and enhance fish and wildilfe (including related spawning grounds and habitat). This was added in recognition that Indian tribes often have a high degree of concern and unique interests in hydroelectric licensing proceedings and can make important contributions.

The conferees accepted the House provisions regarding the consideration of energy conservation as an amendment to section 10 applicable to the issuance of all licenses.

The new section 10(j), which stems from the House amendment to S. 426, clearly and unmistakably upgrades the status of recommendations of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and the State fish and wildlife agencies made pursuant to the Fish and Wildlife Coordination Act. The amendment does not change that law or the present duties of FERC under sections 4, 10(a), and 18 of the Federal Power Act, nor diminish the importance of those provisions in providing fish and wildlife benefits both downstream and upstream of a project. It also does not change existing procedures at FERC for carrying out the provisions of the Fish and Wildlife Coordination Act. It is in the public interest, particularly in the case of existing projects, for these agencies to work with the applicants. Indeed, the amendments to section 15 of the Federal Power Act encourage that approach.

Under section 10(j), the fish and wildlife conditions FERC imposes for each project must be based, as required under present law, on recommendations made by these fish and wildlife agencies. To address concerns that the input from these agencies could be ignored, watered down, or undervalued, the Commission may only reject, in part or whole, a recommendation of any of these agencies concerning any specific project after attempting to resolve the difference with the agencies and after publishing a finding (and reasons therefor) that such recommendation is inconsistent with the purposes and requirements of the Federal Power Act and that the conditions selected by FERC meet the statutory standard in section 10(j)(1). Such findings would be subject to judicial challenge with the standard for review being the statutory language and the arbitrary and capricious standard. The provision is intended to stress the expertise of these agencies and the need for FERC to rely on them. Section 10(j) does not give such agencies a veto, nor does it give them mandatory authority, such as is provided in section 30(c) of the Federal Power Act.

Under new section 10(j), FERC is empowered to decide license terms and conditions, but there is a guarantee that the recommendations of the agencies cannot be lightly dismissed. FERC is not required to adopt recommendations that are inconsistent with any other purpose of the Federal Power Act as expressed in section 4(e). Where FERC has disagreements, the amendment instructs FERC and the appropriate fish and wildlife agencies to try to resolve any inconsistencies with the purposes and requirements of the Federal Power Act. This dispute resolution mechanism was included in the House amendment and accepted by the conferees because we believe it will obviate, in most cases, the need for FERC to make more formal findings. In this process, FERC must give due weight to the expertise of these agencies. The conferees believe that this provision does not require formal proceedings to resolve disagreements between FERC and an agency. It is expected that the process could include the applicant and other interested persons.

Although section 10(j) establishes a process for State and Federal fish and wildlife agencies to make recommendations for license terms and conditions, the section is not intended to change FERC's existing obligations to consider tribal fish and wildlife recommendations. FERC is expected to continue to obtain tribal views and accord them due weight.

The conferees understand that there are areas in Alaska where there are no fish and have never been any. It is not the intent of the conferees that the amendments made by this Act require the Federal Energy Regulatory Commission to condition licenses so as to introduce new and exotic species in such areas.

The conferees are aware of a concern expressed by Members from Nebraska about the possible impact of the new provisions of section 10 on two licensed projects (FERC Nos. 1835 and 1417) in Nebraska that are located on the Platte River. The conferees understand that the projects which are now subject to a pending relicensing at FERC are particularly important to irrigation needs of the area. In addition to the power generated by these projects, they provide a main source of irrigation water to south-central Nebraska from Lake McConaughy and other project reservoirs, cooling water for Gerald Gentleman Station (the State's largest thermal power generating plant), recreational opportunities, and flood control. These existing projects date back several decades.

The area in question also provides habitat for several endangered species, namely, the Whooping Crane, the Bald Eagle, and the Least Tern. Other migratory birds apparently also frequent the area. The conferees understand that protection of these species reportedly could require measures to protect, mitigate damage to, and enhance the habitat. Such measures may include changes in minimum flows without creating an irrigation shortage and could be required under existing law without regard to this legislation.

The conferees understand that the fish and wildlife agencies have not yet made recommendations under the Fish and Wildlife Coordination Act concerning the pending license applications and much of the needed data is apparently still lacking. So no conclusions are now possible. The affected publicly-owned utilities have expressed concern that when these recommendations are made under the new provisions of section 10(j), FERC may, if the matter reaches the section 10(j)(2) finding stage, reach a conclusion that could be very detrimental to the projects. The conferees believe that the new section 10(j) process should not have that result, although it is possible that some changes in any new license could be required even if this law is not enacted.

First, this bill does not change FERC procedural rules concerning hearings and related matters. We understand that under those procedures a difference concerning a genuine issue of material fact will be the basis for a hearing and an opportunity to build a record in support of, and in opposition to, the recommendations. In such a case, it is expected that a decision will be based on a full and studied review of the entire hearing as developed under current FERC practice.

Second, the amendments explicitly include irrigation as a factor under section 10(a) of the Federal Power Act in order to ensure that irrigation as a development purpose is fully considered along with flood control, fish and wildlife, and other elements of the public interest.

Third, while new section 10(j) certainly upgrades statutorily the importance and status of fish and wildlife recommendations under the Fish and Wildlife Coordination Act, they are still recognized as "recommendations," not mandatory requirements as provided in section 30(c) of the Federal Power Act for exemptions under the Act. We intend that FERC will provide the same careful and thoughtful consideration to fish and wildlife values that it gives to other purposes. While the conferees emphasize that the amendments do not dictate a particular result nor predetermine FERC's ultimate judgment concerning the public interest, they ensure that fish and wildlife considerations are not ignored, especially in cases where demands for irrigation or other purposes are essential, as in Nebraska. Recommendations for terms and conditions regarding fish and wildlife can only be rejected if they are inconsistent with the purposes for which the license is issued considered as a whole. This does not mean, however, that an agency fish and wildlife recommendation is consistent with the purposes for which licenses are issued merely because the recommendation would protect fish and wildlife.

The conferees fully expect that in most cases environmental consultations will serve to identify options which will be agreeable to the fish and wildlife agencies and which will adequately and equitably protect, mitigate, and enhance fish and wildlife consistent with the other project purposes.

If the matter actually reaches the section 10(j)(2) finding stage because FERC has not adopted the applicable "recommendations", FERC must find they are "inconsistent with the purposes and requirements" of Part I of the Federal Power Act or other applicable law and also find that the conditions "selected" by FERC, in lieu of those recommendations by the fish and wildlife agencies, comply with the statutory requirements regarding fish and wildlife. The recommendations for these Nebraska projects are expected by the conferees to be of a kind that will not significantly impair any of the existing projects' principal developmental purposes. The bill does not change FERC's present responsibility to resolve competing demands in the public interest. In this respect, FERC might find inconsistency if a fish and wildlife recommendation could have so harmful an impact on any of these projects that the fish and wildlife protection, mitigation, and enhancement resulting from the recommendation could not support the inclusion of that recommendation in the license. But, at the same time, we recognize that some changes in project operations may be required to meet the statutory requirements for fish and wildlife. Some reduction of power to meet environmental needs does not necessarily mean that such requirements should be found to be inconsistent with the statutory purposes.

The conferees expect, without knowing or deciding what the appropriate resolution will be for those projects, that the process and requirements of this Act will result in a resolution of these potentially competing values so that fish and wildlife and the projects' developmental purposes will be compatible, in the context of the public interest.

RELICENSING PROCEDURES

The conference agreement adopts the House language requiring the Commission to award a new license under section 15 to the applicant having the final proposal which is "best adapted" to serve the public interest. It does not include an incumbent preference. Instead, the agreement adds to the House provision explicit language imposing an obligation on the commission to ensure that insignificant differences between applications with regard to the relicensing criteria specified in section 15 are not determinative and shall not result in the transfer of a project. With this explicit language, we will have avoided an incumbent preference while at the same time ensuring that projects will not change hands as the result of insignificant differences.

The conference agreement also consolidates the relicensing criteria that are to serve as the basis for awarding licenses under section 15, even in cases not involving competing applications. The Commission is to explain, in writing, its consideration of each of these factors.

Several of the criteria were common to both the Senate and House bills. These provisions were refined further and are included in the conference agreement. There were also several provisions specific to either the Senate or the House bill. These provisions, with the exception of the economic impact provisions, are also part of the conference agreement. These provisions include such factors as the applicant's ability to use the project in a manner most likely to provide efficient and reliable electric service; the applicant's existing and planned transmission services; the applicant's plans to achieve its plans for the project in a cost effective manner; and the existing licensee's past record of operating the project.

With regard to this last factor, the Commission is expected to review the existing licensee's past record of compliance with the existing license terms and conditions and actions related to the project that have affected the public. Both the positive and negative aspects of a licensee's operating history are to be considered. A dismal track record weighs heavily against awarding a new license to an existing licensee just as a good track record should result in the existing licensee being favored.

Criteria in both bills that were duplicative of section 10 were dropped because the conference agreement modifies section 15 to make clear that requirements of section 10 apply and are considered in relicensing proceedings under section 15. For example, in relicensing proceedings, the Commission may evaluate the section 10 criterion concerning the applicant's plans for the improvement and utilization of the power development potential of the waterway. To the extent that elements of section 10 serve as factors for the comparative evaluation of applications, the Commission shall enumerate its consideration of those factors under section 15(a)(2)(G). However, the conferees agreed that the protection, mitigation, and enhancement of fish and wildlife resources proposed by an applicant, and the requirements of section 10(h) are not to serve as part of the basis for the comparative evaluation of competing applications under section 15.

It should be noted that the Commission must take into account existing structures and facilities in imposing section 10 terms and conditions in relicensing proceedings under section 15. The Senate bill contained language to this effect. The conference agreement does not include this language because the conferees feel it is already required by section 10.

The Senate provisions on "economic impact" were not adopted. Instead, the conference agreement includes a "need for power" criterion that is much broader than in either the Senate or House bill. The conference agreement would require the Commission to evaluate the relative need of each applicant for the project to serve its customers over the short and long term, including consideration of the reasonable costs and the reasonable availability of alternative sources of power (taking into account conservation and other relevant factors), the effect on the applicant's operating and load characteristics, and the effect on the communities served by the project. By applicants, the conferees mean both the existing licensees and their utility and nonutility challengers.

Customers are to be defined broadly, and are to include both existing and future customers. In a case where an existing licensee is in competition for the project with one of its customers, the existing licensee is not to be permitted to include that customer in its demand projections to the extent that the customer will no longer be served by the existing licensee. Similarly, where an existing licensee is in competition with an independent power producer, the Commission must recognize the possibility that the small power producer may sell the electricity from the project back to the existing licensee.

In many cases, applicants may not be able to directly use all of the power from the project. This will not disqualify an applicant. The conference agreement is not intended to alter current law which permits need to be based, in part, upon sales of power in excess of the applicant's direct consumption. This would, of course, have to take into account the benefits to those purchasing the power, such as a reduction in rates, and would have to be tempered by common sense and our intent that licenses ought to be given to applicants who, among other things, actually need the projects.

The need for power is consistent with the Commission's expansive interpretation of "need for power" in *South Fork II, Inc.*, 31 FERC section 61,097 (April 25, 1985), and accommodates many of the concerns that led the Senate to include "economic impact" in the section 15 criteria, and with the concerns which caused the House not to adopt any economic impact test. However, it is not the conferees' intention for this provision to be used to reward utilities for inefficient management.

This provision also addresses the situation confronted by both existing licensees and competing applicants regarding the availability and cost of replacement or alternative power. This includes consideration of increased fuel and capital costs, such as the expense of building needed new generating capacity, for an applicant's customers due to its failure to obtain the project, as well as the costs of replacement power that has to be purchased from other sources. The conference agreement requires the Commission to take into consideration the effect of the transfer of a project on the direct providers (and their immediate customers) of alternative or replacement power. For instance, the Commission will have to evaluate whether an applicant's purchase of alternative or replacement power will legally require the provider of such power to obtain additional power, such as building new generating capacity.

It is important to recognize that under the conference agreement, FERC, in evaluating need, must limit its consideration regarding cost and availability of replacement or alternative power to the reasonable costs and reasonable availability of replacement and alternative sources of power. If an applicant's needs can be satisfied over the term of the license with a lower cost option and with comparable reliability of supply (for example, through energy conservation, the purchase of power in the bulk power market, or by returning previously retired capacity into service), then it would be improper for need to be based upon the cost of building new, more expensive generating capacity.

It is also important to note that the reasonable availability and cost of replacement or alternative power is only one of several factors to be weighted in evaluating need. Need can be based upon an applicant's operating and load characteristics, for example, where the project will provide the applicant with necessary peaking power capability. Need could also be based on the effect a project could have on the communities served or to be served by the project. The conferees do not intend the Commission to count the numer of communities served or to be served by the project, but to assess the positive and negative effects on such communities. For example, the Commission must consider the consequences of the loss of a project for an industrial facility or customer that is highly electricity intensive and cannot profitably survive significant rate increases. It is not intended that the term "industrial" exclude domestic uses by the licensee. Conversely, the Commission must consider the positive effects of a project in fostering economic development and the growth of a community. This same idea is extended to Indian tribes, for a tribe's need for a project can be based on how the project will foster the purposes of the reservation, including obtaining revenue to provide tribal services. The amendment relating to Indian tribes is consistent with Indian tribes having the opportunity to acquire licenses for projects located on their reservations.

The conference agreement includes the House provisions adding subsections (b) and (c) to section 15 of the Federal Power Act. These provisions establish timetables and procedures to be utilized by the Commission in section 15 proceedings.

The conference agreement also includes the House provision adding subsection (d) to section 15. A technical amendment was made to paragraph 15(d)(1) to clarify that in evaluating applications under section 15, the Commission shall not consider whether an applicant has adequate transmission facilities with regard to the hydroelectric project.

The conference agreement made three changes to House provision 15(d)(2). First, the word "acquisition" was substituted for "construction" in section 15(d)(2)(A). The phrase "controlled by the existing licensee (including any acquisition related to such enhancement or improvement)" was also added. The purpose of these changes was to make clear that the Commission, in ordering the existing licensee to provide transmission or other services, cannot compel the existing licensee to acquire by either construction or purchase, new facilities, including upgrades, unless the acquisition constitutes a reasonable enhancement or improvement of existing facilities controlled by the existing licensee. The conferees agreed with the example provided in the House Report as to what constitutes a reasonable enhancement or improvement.

The second change was to 15(d)(2)(D), where the phrase "any reasonably quantifiable increase" was substituted for the words "an increase (other than a de minimus increase)." This modification is not intended to limit the provision of transmission services to cases in which such services can be provided at no quantifiable cost. Rather, this modification was made to clarify that the existing licensee is expected to be reimbursed by the new licensee sufficient to prevent any reasonably quantifiable increase in jurisdictional rates. If the cost can be quantified, the existing licensee must be reimbursed. On the other hand, if the cost cannot be measured, the expense cannot serve as legitimate grounds for denying the new licensee transmission service.

Third, the conference agreement adds a new subsection (E) to the House provision section 15(d)(2). This provision was added to make it perfectly clear that the Commission's new authority under section 15(d)(2) to order coordination services, including transmission, is limited to existing licensees with respect to the contested projects. Section 15(d)(2) does not expand, however, or otherwise alter the Commission's authority under other law, including section 211 and 212 of the Federal Power Act.

The conference agreement retains current law concerning the amount of compensation to be paid an existing licensee in the event the license for the hydroelectric project is transferred. Should such a transfer ever occur, the existing license (whether publicly or privately owned) will receive its net investment in the project plus severance damages.

LICENSE TERMS

The Senate bill contained provisions which would have altered existing law with respect to the period of time for which an original license, a new license issued under section 15 or an exemption could be issued. The House bill had no comparable provisions. The conferees agreed to accept the House position retaining existing law for original licenses and exemptions, but adopted a modification of the Senate provision for new licenses issued under section 15. Such licenses must be issued for a term of not less than 30 years, but no more than fifty years as the Commission determines to be in the public interest. Whatever term the license is issued for, the conferees intend the term to begin when the license is issued. No deductions from the license period are to be made for the period the project operated pursuant to annual licenses.

UNAUTHORIZED CONSTRUCTION ACTIVITIES

The conference agreement adopts a modified version of the House language prohibiting significant modification activities at projects subject to the Federal Power Act and licensed or exempted unless the modification is in accordance with license or exemption requirements. This is intended as a specific reinforcement of a requirement of existing law.

AMENDMENTS TO SECTION 30

The House bill included a provision amending section 30(c) of the Federal Power Act to include the National Marine Fisheries Service. The Senate bill contained no comparable provision. The conferees accepted the House provision.

The conference agreement adopts the House provision of State and local conduits. This provision modifies section 30(b) of the Federal Power Act to expand the exemption for turbines on manmade conduits from Part I licensing requirements to those with an installed capacity not greater than 40 megawatts, provided the conduit is used solely for municipal water supply.

The agreement includes the House provision concerning fees for fish and wildlife studies under section 30, including those required as a result of section 210 of PURPA, as amended by the conference agreement.

AMENDMENTS CONCERNING CERTAIN SMALL POWER PRODUCTION FACILITIES SUBJECT TO PURPA BENEFITS

The conferees agreed to accept, with certain modifications based on the Senate bill, the provision in the House bill concerning the eligibility of a hydroelectric project located at a new dam or diversion for benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The provision was redrafted as an amendment to section 210 of PURPA for purposes of clarity.

The conferees understand that under certain circumstances there may be an ambiguity in the definition of the term "new dams or diversions" with regard to reconstruction and in connection with existing dams. The ambiguity is whether a new dam at the site of an existing dam should be construed to be a new dam under the provisions added to the law by the conference agreement. This problem, if real, cannot be resolved on a generic basis by the conferees. It will have to be examined on a case-by-case basis. We note that in some cases, it may be appropriate and reasonable to build, for environmental and safety reasons, a new dam upstream and adjacent to an existing dam that will not expand the impoundment. The conferees presume that before FERC determines whether such dam is a new or existing dam, it will obtain the views of the various Federal and State environmental agencies, and all other interested parties to ensure that, in fact, the particular proposal can qualify as "reconstruction" under the definition.

The conferees modified the House provision to delete the requirement that in making a determination whether a proposed project will have "substantial adverse effects on the environment, including water quality and recreation," FERC consider the impact of the proposed project in "combination with other facilities on the same water course." The conferees believe that such "cumulative impacts analysis" has been determined to be required, as a generic rule, under existing law, regulations, and FERC practice. FERC must comply with the determination and, therefore, incorporation of such a requirement in this provision would be redundant.

The "State protected waterway" provision (section 210(j)(2) of PURPA as amended by this Act) was amended by the conferees to address two concerns. First, the provision was modified by the conferees to authorize a State to take action to protect a waterway until the date a license or exemption application for the project is accepted for filing by FERC. The House bill provided that the State could act until the issuance of the license or exemption. Second, the conferees added the words "which would be adversely affected by hydroelectric development" to the determination by a State that a water course possesses "unique, natural, recreational, cultural, or scenic attributes." These words were added to clarify that a State has the authority to protect a waterway from projects built with PURPA incentives if, in the State's determination, the waterway would be adversely impacted by such development.

The effective dates of the various requirements of the provision were modified by the conferees to establish three categories of projects which would not be subject to some or all of the new provisions. The first category is limited to projects for which a license or exemption application was filed and accepted by FERC for filing before the enactment date. As in the House bill, projects in this category would not be subject to any of the provisions of this section, including the moratorium provisions.

The second category consists of those projects for which applications were filed prior to the dates of enactment and subsequently accepted within three years after enactment (under the Commissions's rules and practices for accepting applications in effect on January 1, 1986). Projects in this category would not be subject to the mandatory conditions of the agencies, the finding by FERC that the project does not have substantial adverse effects on the environment and the moratorium provisions. Such projects, however, would be subject to the State protected waterway provision until the application for a license or exemption is accepted by FERC for filing.

The third category is comprised of projects to which substantial monetary resources directly related to the development of the project and to the diligent and timely completion of all requirements for filing an acceptable license or exemption application were committed by the applicant prior to the date of enactment. These projects will not be subject to the mandatory conditions of the agencies or the moratorium provisions. Such projects, however, to be eligible to receive benefits under section 210 of PURPA, must not have "substantial adverse effects on the environment," as provided in section 210(j)(1), as added by this Act, and must not be located on a waterway protected by a State under section 210(j)(2), as added by this Act. A project developer whose project falls into this category must file a petition at FERC, within 18 months of enactment, demonstrating that the petitioner committed substantial monetary resources to the project prior to the date of enactment. The provision establishes procedures for public notice and consideration by FERC of the petition. If such petition is not filed within 18 months, or is denied, all of the provisions of this section will apply to the project.

If the petitioner can show that a preliminary permit had been issued for the project and that environmental consultations (as defined in the Commission's regulations in effect on January 1, 1986) had been completed prior to enactment, then a rebuttable presumption shall exist that the petitioner had committed substantial monetary resources prior to enactment. Completion of environmental consultations prior to enactment is not to be considered the benchmark for the interpretation of the term "substantial."

The procedures allow a developer, whose project falls into the third category, to petition FERC to issue a preliminary finding prior to the issuance of the license or exemption concerning whether the project will have substantial adverse impacts on the environment, including water quality and recreation. If FERC issues a preliminary finding that the project would result in such adverse effects, the developer would be provided a reasonable opportunity to mitigate such effects. It is expected that FERC would notify the State of this finding. In making a final determination, FERC is required to consider these mitigation efforts and, if the State has not exercised its authority under section 210(j)(2) of PURPA, as added by this Act, by the time of the final finding, then there shall be a rebuttable presumption that the project will not have substantial adverse effects on the environment related to any natural, cultural, recreational, or scenic attributes of the waterway for purposes of the finding under section 210(j)(1).

Section 10 of the Federal Power Act, as amended by this Act, shall apply to all projects described in this section for which a license is issued after the date of enactment of this Act, except that section 10(j) will not apply if section 210(j)(3) of PURPA, as added by the conference agreement, applies to the project. In the case of exemptions, section 30(c) would apply whether or not PURPA benefits are obtained.

The study provisions of the House bill were modified to impose the moratorium period on all projects not described in the three categories established in the effective data provision. In addition, the moratorium period was modified to continue until the expiration of the first full session after the report required under the section has been submitted by FERC to the Congress. This amendment is intended to provide the Congress with a complete session to consider the report. For example, if the report is submitted at any time during the last session of a Congress, the moratorium period will not expire until after the completion of the first session of the next Congress.

FEES AND CHARGES

The House bill contained a provision concerning charges under section 10(e) for the use of Government dams or other structures owned by the United States. The Senate bill contained no comparable provision. The conferees accepted the House provision.

ELECTION AND NEGOTIATION CONCERNING CONTESTED PROJECTS

The House bill contained a provision concerning currently contested applications for existing projects. The Senate bill contained no comparable provision. The conferees accepted the House provision with a clarifying amendment limiting the additional amount of compensation which may be ordered by the Commission to a "reasonable percentage (but not to exceed 100 percent) of the net investment of the existing licensee . . .".

ANTITRUST

The Senate bill contained a provision regarding the application of Federal antitrust laws. The House bill contained no comparable provision. The conferees accepted the Senate provision, with a technical modification.

SAVINGS CLAUSES

The Senate bill had savings clauses to cover several specific concerns. The House bill had no comparable provisions. The conferees agreed to include the Senate savings clauses with some additional provisions. The conferees added a savings provision regarding the Northwest Electric Power Planning and Conservation Act in lieu of the House provision adding a new paragraph 10(j)(2) to the Federal Power Act. The conferees also added savings provisions regarding transmission facilities owned by the Federal Government, Indian treaty and other rights, and the reopening of relicensing proceedings where the time for filing competing applications has expired.

With respect to the saving clause for federal transmission facilities, the language leaves unaffected the authority of the federal power marketing administrations to regulate access to transmission facilities owned by the Federal Government. It is not the intent of this legislation to alter or diminish that authority in any fashion. Hence, this provision clarifies that an applicant does not receive any priority to the use of federally owned and operated transmission facilities by virtue of this licensing process.

The conferees understand that the Federal Energy Regulatory Commission has previously ruled that the Metlakatla Indian Community is not required to be licensed pursuant to the Federal Power Act to use the lands within the Annette Island Indian Reservation, Alaska, for hydroelectric power development. Based on this understanding, it is the intent of the conferees that nothing in this Act alters or affects that ruling.

With respect to Indian rights, this legislation does not affect or modify any treaty or other right of an Indian tribe. Additionally, nothing in this legislation is intended to affect or modify any existing protections afforded Indian tribes under sections 4(e) and 10 (e) of this Act.

With respect to reopening relicensing proceedings, the current FERC regulations for the issuance of a public notice for a license expiration and a relicensing proceeding should be followed for those licenses expiring prior to the date of enactment in which no competing application has been filed. The language in section 15(c) that requires any applicant to file an application 24 months prior to license expiration should cover this situation in prospective situations. Section 17 of the conference report provides that no provision of this Act shall permit the filing of any competing application in any relicensing proceeding where the time for filing a competing application expires before the enactment of this Act.

With respect to the clause concerning the Pacific Northwest Electric Power Planning and Conservation Act, the conferees included this provision to ensure that this measure is in no way to modify or supersede the requirements of that Act nor is it intended in any way as an interpretation of that Act's provisions.

AMENDMENT OF SECTION 211 OF THE FEDERAL POWER ACT

The Senate bill contained a provision amending section 211 of the Federal Power Act. The House bill contained no comparable provision. The conferees accepted the Senate provision.

MISCELLANEOUS

The conferees included a provision which would prevent the development of new hydroelectric facilities, with two specified exceptions, on an approximately 60.9 mile reach of the Henry's Fork of the Snake River in Idaho. The provision is substantially similar to the text of S. 2635 with technical modifications which were added to the Senate-passed version of H.R. 4350. The savings provisions of S. 2635, including those related to water, were deleted from the body of this subsection because they are included as general savings provision for this Act.

EFFECTIVE DATE

Section 18 provides that, except for sections 6 and 12 and as otherwise specifically provided in other sections of this Act, the amendments made by this Act will only apply to licenses, permits and exemptions issued after enactment of this Act. In cases in which the Federal Energy Regulatory Commission had issued an order granting a license, permit or exemption, but the order had not become effective before enactment of this Act, the conferees intend that the amendments made by this Act (with the exception of sections 6 and 12 and as otherwise specifically provided in other provisions of this Act) shall not apply to the project which is the subject of that order, provided the order issuing the license, permit or exemption becomes effective subsequent to enactment of this Act.

ENFORCEMENT

The conferees agreed to language incorporating the substance of House and Senate versions of S. 426.

JOHN D. DINGELL,
ED MARKEY,
AL SWIFT,
JOHN BRYANT,
RICHARD C. SHELBY,
RON WYDEN,
NORMAN F. LENT,
CARLOS J. MOORHEAD,
MICHAEL G. OXLEY,
HOWARD C. NIELSON,
Managers on the Part of the House.

JAMES A. MCCLURE,
MARK O. HATFIELD,
MALCOLM WALLOP,
FRANK H. MURKOWSKI,
DANIEL J. EVANS,
J. BENNETT JOHNSTON,
WENDELL H. FORD,
HOWARD M. METZENBAUM,
JOHN MELCHER,
Managers on the Part of the Senate.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. COBEY) to revise and extend their remarks and include extraneous material:)

Mr. SUNDQUIST, for 60 minutes, on October 2 and 3.

Mr. PARRIS, for 5 minutes, on October 1 and 2.

Mr. MCKINNEY, for 5 minutes, today.

(The following Members (at the request of Mr. DONNELLY) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. KLECZKA, for 5 minutes, today.

Mr. PENNY, for 15 minutes, on October 1.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. COBEY) and to include extraneous matter:)

Mr. LENT.
Mr. BROOMFIELD.
Mr. SCHNEIDER.
Mr. CONTE.
Mr. KEMP.
Mr. HENRY.
Mr. COUGHLIN.
Mrs. ROUKEMA.
Mr. MCMILLAN.
Mr. DANNEMEYER.
Mr. SHUMWAY in two instances.
Mr. FISH.
Mr. MCEWEN.
Mr. COLEMAN of Missouri.
Mr. LAGOMARSINO.
Mrs. JOHNSON.
Mr. CRANE.
Mr. FRENZEL.
Mr. GILMAN.

(The following Members (at the request of Mr. DONNELLY) and to include extraneous matter:)

Mrs. SCHROEDER.
Mr. MRAZEK.
Mr. ANTHONY.
Mr. RODINO.
Mr. GUARINI.
Mr. SMITH of Florida.
Mr. HAYES.
Mrs. BURTON of California.
Mr. SOLARZ in two instances.
Mrs. BOXER.
Mr. GARCIA.
Mr. FOLEY.
Mr. MAZZOLI.
Mr. DORGAN of North Dakota.
Mr. ACKERMAN.
Mr. HAMILTON in two instances.

SENATE JOINT RESOLUTION AND CONCURRENT RESOLUTION REFERRED

A joint resolution and concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S.J. Res. 385. Joint resolution to designate October 23, 1986, as "National Hungarian Freedom Fighters Day"; to the Committee on Post Office and Civil Service.

S. Con. Res. 145. Concurrent resolution to encourage State and local governments and local educational agencies to require quality daily physical education programs for all children from kindergarten through grade 12; to the Committee on Education and Labor.

ENROLLED BILL SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 5521. An act to extend until October 13, 1986, the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository Institutions Act of 1982.

SENATE ENROLLED BILL AND JOINT RESOLUTIONS SIGNED

The SPEAKER announced his signature to an enrolled bill and joint resolutions of the Senate of the following title:

S. 2888. An act to temporarily delay the repeal of the U.S. Trustee System;

S.J. Res. 202. Joint resolution designating October 1986 as "American Liver Foundation National Liver Awareness Month"; and

S.J. Res. 353. Joint resolution to provide for the extension of certain programs relating to housing and community development, and for other purposes.

ADJOURNMENT

Mr. MOODY. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 1 minute p.m.), under its previous order the House adjourned until tomorrow, Wednesday, October 1, 1986, at 11 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4273. A communication from the President of the United States, transmitting a request for consideration of amended fiscal year 1987 appropriations language for the Department of Defense-Military and the Veterans Administration and an amendment reducing the request for fiscal year 1987 appropriations for the Department of Energy by $58,900,000, pursuant to 31 U.S.C. 1107 (H. Doc. No. 99-275); to the Committee on Appropriations and ordered to be printed.

4274. A letter from the Deputy Assistant Secretary of Defense, transmitting notification of the Navy's intent to exercise the provision for exclusion of the clause concerning examination of records by the Comptroller General from a proposed contract as the result of an International Agreement between the Governments of the United States and Morocco in the form of a "Memorandum of Understanding" for operations and maintenance of a new oil terminal and pier and related facilities at Mohammedia Port, pursuant to 10 U.S.C. 2313(c); to the Committee on Armed Services.

4275. A letter from the Chairman, Federal Deposit Insurance Corporation, transmitting the Corporation's Annual Report for the calendar year 1985, pursuant to 12 U.S.C. 1827(a); to the Committee on Banking, Finance and Urban Affairs.

4276. A letter from the Auditor, District of Columbia, transmitting a copy of his report entitled, "Auditor's Survey of Employment Contracts and Severance Agreements Among University Presidents," pursuant to D.C. Code Section 47-117(d); to the Committee on the District of Columbia.

4277. A letter from the Secretary of Labor, transmitting a draft of proposed legislation to authorize the Secretary of Labor to accept and utilize gifts, and for other purposes; to the Committee on Education and Labor.

4278. A letter from the Secretary, Interstate Commerce Commission, transmitting notification that in I & S Docket No. 9265, "Classification Ratings on Chemicals, Conrail, April 30, 1986," the Commission has extended the time period for serving a final decision by an additional 3 months to December 30, 1986, pursuant to 49 U.S.C. 10327(k)(2); to the Committee on Energy and Commerce.

4279. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a report of political contributions by Frank Shakespeare, of Connecticut, Ambassador Extraordinary and Plenipotentiary-designate of the United States to the Holy See, and members of his family, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

4280. A letter from the Deputy Associate Director for Royalty Management, Department of the Interior, transmitting notification of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

4281. A letter from the Deputy Associate Director for Royalty Management, Department of the Interior, transmitting notification of proposed refunds of excess royalty payments in OCS areas, pursuant to 43 U.S.C. 1339(b); to the Committee on Interior and Insular Affairs.

4282. A letter from the Administrator, Federal Aviation Administration, transmitting a copy of the revised national airspace system plan, which is the fourth updated edition of the original version published in December 1981, pursuant to Public Law 97-248, section 504(b)(1); to the Committee on Public Works and Transportation.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BROOKS: Committee on Government Operations. Report on Prompt Payment Act implementation improvements needed (Rept. 99-927). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report on duplicative radar jammer programs waste millions (Rept. 99-928). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report on Rural Electrification Administration: Operating by "Hip-pocket rules" (Rept. 99-929). Referred to the Committee of the Whole House on the State of the Union.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5353. A bill to provide for a land exchange in the State of Alaska; with an amendment (Rept. 99-930). Referred to the Committee of the Whole House on the State of the Union.

Mr. DINGELL: Committee on Energy and Commerce. H.R. 5501. A bill to amend the Railroad Unemployment Insurance Act to assure sufficient resources to pay benefits under that Act, to increase the maximum daily benefit provided under that Act, and for other purposes, with an amendment (Rept. 99-931, Pt. 1). Ordered to be printed.

Mr. BROOKS: Committee on Government Operations. H.R. 5420. A bill to amend section 3726 of title 31, United States Code, relating to payment for transportation, to permit prepayment audits for selected transportation bills, to permanently authorize payment of transportation audit contractors from carrier overpayments collected, and to authorize net overpayments collected to be transferred to the Treasury; with amendments (Rept. 99-932). Referred to the Committee of the Whole House on the State of the Union.

Mr. DIXON: Committee on Standards of Official Conduct. Report on investigation of financial transactions of Representative JAMES WEAVER with his campaign organization (Rept. 99-933). Referred to the House Calendar.

Mr. DINGELL: Committee of conference. Conference report on S. 426 (Rept. 99-934). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. VENTO (for himself, Mr. FRENZEL, Mr. OBERSTAR, Mr. PENNY, Mr. SABO, Mr. SIKORSKI, Mr. STANGELAND, and Mr. WEBER):

H.R. 5617. A bill to designate the Federal Building and U.S. Courthouse at 316 North Robert Street, St. Paul, MN, as the "Warren E. Burger Federal Building and United States Courthouse;" to the Committee on Public Works and Transportation.

By Mr. ALEXANDER (for himself and Mr. BRYANT):

H.R. 5618. A bill to establish the Foreign Airport Security Corporation for the purpose of providing security for United States air carriers at airports in foreign countries; to provide for the establishment of a Presidential commission to conduct an ongoing evaluation of international terrorism, monitor the activities of the Federal agencies relating to international terrorism, and recommend specific steps the United States and its allies can take to combat the spread of international terrorism; and for other purposes; jointly, to the Committees on Foreign Affairs, and Public Works and Transportation.

By Mr. DUNCAN:

H.R. 5619. A bill to require the Administrator of General Services to transfer certain land and improvements to the city of

Knoxville, TN; to the Committee on Government Operations.

By Mrs. KENNELLY:

H.R. 5620. A bill to repeal the provision of the Tax Reform Act of 1986 which eliminates the deduction for State and local sales taxes; to the Committee on Ways and Means.

By Mr. MORRISON of Connecticut (for himself, Mrs. Kennelly, and Mr. Gejdenson):

H.R. 5621. A bill to improve the safe operation of commercial motor vehicles, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. OBERSTAR:

H.R. 5622. A bill to amend the National Apprenticeship Act to prevent age discrimination, to require minimum funding for certain outreach recruitment and training programs, to restore a national information collection system, to limit the authority to conduct reductions in force within the Bureau of Apprenticeship and Training of the Department of Labor, and for other purposes; to the Committee on Education and Labor.

By Mr. DASCHLE (for himself, Mr. Dorgan of North Dakota, and Mr. Stangeland):

H.R. 5623. A bill to amend the Agricultural Act of 1949 to provide storage payments for producers of wheat and feed grains to encourage their participation in the producer storage program; to the Committee on Agriculture.

By Mr. WHITTEN:

H.J. Res. 743. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes; to the Committee on Appropriations.

By Mr. GUARINI (for himself and Mr. Pepper):

H. Con. Res. 399. Concurrent resolution to give special recognition to America's centenarians on the 100th anniversary of the dedication of the Statue of Liberty; to the Committee on Post Office and Civil Service.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

Mr. FOWLER introduced a bill (H.R. 5624) for the relief of certain individuals; which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1213: Mr. Panetta.

H.R. 2700: Mr. Waxman.

H.R. 3024: Mr. AuCoin and Mr. Conte.

H.R. 3260: Mr. Downey of New York, Mr. Gallo, Mr. Murtha, and Mr. Valentine.

H.R. 3415: Mr. Coleman of Missouri, Mr. Darden, Mr. Lehman of Florida, and Mr. Young of Florida.

H.R. 3842: Mr. Garcia, Mr. Whitten, Mr. Traxler, Mr. Montgomery, Mr. Foley, Mr. Livingston, Mr. Petri, Mr. Mica, Mr. Kildee, Mr. Gray of Pennsylvania, and Mr. Shuster.

H.R. 4413: Mr. Brown of California.

H.R. 4523: Mr. Nielson of Utah, Mr. Garcia, Mr. McCurdy, Mr. Robert F. Smith, Mr. Pickle, Mr. Bryant, Mr. de la Garza, Mr. Andrews, Mr. Roberts, and Mr. Chapman.

H.R. 4639: Mr. Guarini.

H.R. 4741: Mr. Jeffords, Mr. Frank, and Mr. Atkins.

H.R. 4871: Mr. Foglietta and Mr. Lipinski.

H.R. 4929: Mr. Matsui.

H.R. 4953: Mr. Whitehurst and Mr. Coleman of Missouri.

H.R. 5156: Mr. Kildee.

H.R. 5209: Mr. Bustamante.

H.R. 5328: Mr. Bliley.

H.R. 5350: Mr. Williams, Mr. Hatcher, Mr. Gekas, Mr. Evans of Illinois, and Mr. Roth.

H.R. 5396: Mr. Wolpe, Mr. Sensenbrenner, Mr. Kolter, Mr. Fish, Mr. Bevill, and Mr. Atkins.

H.R. 5477: Mr. Zschau.

H.R. 5532: Mr. Wortley, Mr. Whitehurst, and Mr. Dwyer of New Jersey.

H.R. 5583: Mr. Miller of Washington, and Mr. Dicks.

H.R. 5599: Mr. Akaka, Mr. Ackerman, Mr. Kramer, Mr. Lagomarsino, Mr. Coleman of Texas, Mr. Frank, and Mr. Fields.

H.J. Res. 2: Mr. Barnes, Mr. Bates, Mr. Bedell, Mr. Boehlert, Mr. Bonior of Michigan, Mr. Boucher, Mr. Brown of Colorado, Mr. Bosco, Mr. Carper, Mr. Chandler, Mr. Crockett, Mr. Dicks, Mr. Dorgan of North Dakota, Mr. Edgar, Mr. Evans of Illinois, Mr. Edwards of California, Mr. Gilman, Mr. Gonzalez, Mr. Green Mr. Guarini, Mr. Gunderson, Mr. Lowry of Washington, Mr. McKernan, Mrs. Myers of Kansas, Mr. Miller of Washington, Ms. Oakar, Mr. Pepper, Mr. Penny, Mr. Pickle, Mrs. Smith of Nebraska, Ms. Snowe, Mr. Synar, Mr. St Germain, Mr. Torricelli, Mr. Visclosky, Mr. Wirth, Mr. Wise, and Mr. Yates.

H.J. Res. 10: Mr. Courter, Mr. Dymally, Mr. Foglietta, Mr. Green, Mr. Luken, Mr. Owens, and Mr. Stangeland.

H.J. Res. 49: Mr. Rowland of Connecticut.

H.J. Res. 167: Mr. Packard, Mr. Mitchell, Mr. Hopkins, Mr. Lewis of California, Mr. Smith of New Jersey, and Mr. Howard.

H.J. Res. 417: Mr. St Germain.

H.J. Res. 514: Mr. Roberts, Mr. Nichols, and Mr. Wheat.

H.J. Res. 535: Mr. Stangeland and Mr. Ford of Michigan.

H.J. Res. 550: Mr. Torricelli, Mr. Hendon, Mr. Swindall, Mr. Strang, Mr. Natcher, Mr. Vander Jagt, Mr. Hall of Ohio, and Mrs. Roukema.

H.J. Res. 552: Mr. Dellums, Mr. Smith of Iowa, and Mr. English.

H.J. Res. 555: Mr. Weiss, Mr. Hoyer, Mr. Carper, Mr. Clay, Mrs. Schroeder, Mr. Coyne, Mr. Scheuer, Mr. Erdreich, Mr. Ford of Tennessee, Mr. Lundine, Mr. Hertel of Michigan, Mr. Nielson of Utah, Mr. Vento, Mr. Lewis of Florida, Mr. Derrick, Mr. Ackerman, Mr. Sabo, Mr. Abercrombie, Mr. Staggers, Mr. Smith of Florida, Mr. Denny Smith, Mr. Swindall, Mr. Gordon, Mr. Fields, Mr. DioGuardi, Mr. Chandler, Mr. Lujan, Mr. Kolbe, Mr. Gekas, Mr. Spence, Mr. Waldon, Mr. Gray of Illinois, Mr. Kindness, Mr. Frenzel, Mr. Bates, Mr. Annunzio, Mr. Latta, Mrs. Meyers of Kansas, Mr. Campbell, and Mr. Schuette.

H.J. Res. 584: Mr. Breaux, Mr. Burton of Indiana, Mr. Conyers, Mr. Crockett, Mr. DeWine, Mr. Frenzel, Mr. Frost, Mr. Gallo, Mr. Gilman, Mr. Hammerschmidt, Mr. Hartnett, Mr. Hatcher, Mr. Kastenmeier, Mr. Kolter, Mr. McCloskey, Mr. McEwen, Mr. Mack, Mr. Dowdy of Mississippi, Mr. Florio, Mr. Moore, Mr. Neal, Mr. Goodling, Mr. Lehman of California, Ms. Mikulski, Mr. Stump, Mr. Shelby, Mr. Carr, Mr. Spratt, Mr. Traxler, Mr. Wyden, Mr. McKernan, and Mr. Bennett.

H.J. Res. 655: Mr. Coleman of Missouri, Mr. McGrath, and Mr. Stenholm.

H.J. Res. 656: Mr. Franklin, and Mr. Erdreich.

H.J. Res. 709: Mr. Brooks, Mr. Blaz, Mr. Gordon, Mr. Lagomarsino, Mr. Cobey, Mr. English, Mr. Jeffords, Mr. Coleman of Missouri, Mr. Wolf, Mr. Bateman, Mr. Borski, Mr. Gejdenson, Mr. Rahall, Mr. Stokes, Mr. Hyde, Mr. Hartnett, and Mr. Evans of Illinois.

H.J. Res. 716: Mr. Weiss, Mr. Campbell, Mr. Morrison of Connecticut, Mr. Darden, Mr. Hughes, Mr. Wolf, Mr. Coelho, and Mr. Atkins.

H.J. Res. 733: Mr. Kildee, Mr. Stenholm, Ms. Snowe, Mr. Young of Alaska, Mr. Weber, Mr. Nichols, Mr. Frenzel, Mr. Hartnett, and Mr. Kasich.

H.J. Res. 735: Mr. Biaggi.

H.J. Res. 739: Mr. Horton, Mr. Lagomarsino, Mrs. Holt, and Mr. Bustamante.

H. Con. Res. 344: Mrs. Burton of California, Mr. Wolf, Mr. Cheney, Mr. Howard, Mr. Wyden, Mr. Hammerschmidt, Mr. Hubbard, Mr. Owens, Mr. Wilson, Mr. Crockett, Mr. Solarz, Mr. Dymally, Mr. Gejdenson, Mr. Perkins, Mrs. Kennelly, Mr. Torres, Mr. Dyson, Mr. Boucher, Mr. Huckaby, Mr. Anthony, Mr. Gregg, Mr. Daschle, Mr. Bruce, Mr. Bliley, Mr. Daniel, Mr. Fazio, Mr. Hartnett, Ms. Mikulski, and Mr. Abercrombie.

H. Con. Res. 388: Mr. Mrazek.

H. Con. Res. 398: Mr. Pursell.

H. Res. 260: Mr. Schuette.

H. Res. 469: Mr. Abercrombie, Mr. Levin of Michigan, Mr. Lowery of California, Mr. Porter, and Mr. Stenholm.

H. Res. 550: Mr. McCollum.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

485. The SPEAKER presented a petition of the county legislature, county of Suffolk, Hauppauge, NY; relative to strong sanctions against South Africa; which was referred to the Committee on Foreign Affairs.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 1309

By Mr. PENNY:

—Page 6, strike out lines 3 through 7 and insert in lieu thereof the following:

(4) the term "population at risk" means an employee population exposed to hazardous occupational exposures which are associated with a rate of disease, as contrasted to comparable populations not exposed to the hazardous occupational exposure, that is (A) increased by a significant amount, and (B) not less than 30 percent greater than in such comparable population;

Page 9, after line 4, insert the following new paragraphs (and redesignate the succeeding paragraph accordingly):

(3) In identifying such populations, the Board shall consider medical and epidemiological principles, including the following: consistency of the association, specificity of the association, strength of the association, dose-response relationship, biologic plausibility, temporal relationship, and statistical significance. The Board shall also take into account the extent and seriousness of the

risk and the consequences of notifying or failing to notify (including the implications of erroneous notification).

—Page 6, strike out line 8 through 16 and insert in lieu thereof the following:

(5) the term "hazardous occupational exposure" means—

(A) a history of actual use of a potentially hazardous or harmful chemical, physical, or biological agent found in the workplace; or

(B) a history of exposure to any hazardous industrial or commercial process or activity in the workplace; that results in an exposure of sufficient duration or sufficient intensity, or both, to be associated with a risk for occupational disease.

—Page 9, line 3, insert "and intensities" after "durations".

—Page 11, line 4, strike out "unless" and insert in lieu thereof "if".

Page 11, line 6, insert the following as a new subsection (A) and change (A) to (B), and (B) to (C), respectively.

(A) There is substantial evidence in the record of the Board's proceedings to support its recommendation;

Page 11, line 7, strike "not".

Page 11, line 8, insert "not" after "endanger".

—Page 20, line 20, after the period insert the following: "In the event of a disagreement between the employee's personal physician and the medical representative of the employer, an independent medical consultant shall be retained at the employer's expense to make a final determination with respect to the necessity for such a temporary or permanent transfer.".

EXTENSIONS OF REMARKS

TONGASS TIMBER REFORM ACT OF 1986

HON. ROBERT J. MRAZEK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. MRAZEK. Mr. Speaker, you may recall that I have written to my colleagues in the House about the unprofitable timber industry in the Tongass National Forest in southeast Alaska. To rectify this situation, I have introduced the Tongass Timber Reform Act of 1986 (H.R. 5291), which I believe will remedy the unfortunate situation in our Nation's largest national forest.

The following is an article that appears in the October issue of Reader's Digest entitled "Time To Ax This Timber Boondoggle." This article succinctly explains many problems the timber industry is having in the Tongass and the enormous yearly cost to the taxpayer. In addition, I have included an editorial that appeared in the New York Times and an article from the Anchorage Times.

I hope these articles will convince you to join me in rectifying the problems in the Tongass.

[From the Reader's Digest, October 1986]

TIME TO AX THIS TIMBER BOONDOGGLE

(By Bennett H. Beach)

Some 4000 miles from Washington, D.C., deep in an ancient Alaskan rain forest, the federal government is running a business that loses 98 cents on every taxpayer dollar it spends. Losses are more than $50 million a year. Meanwhile this logging operation, under U.S. Forest Service supervision, is destroying the only largely intact rain forest left in the world's temperate zones. The government's purpose is to create a timber industry in southeast Alaska, and that is failing as well.

This particular boondoggle started innocently enough. Southeast Alaska is a 500-mile panhandle running along the Pacific Ocean. Eighty percent of it lies in the Tongass National Forest, at 16.8 million acres the largest of our 155 national forests. Ever since the early 1900s, the Federal Government has seen timbering as an ideal way to attract warm bodies to this cold, wet, isolated piece of America.

Early efforts were a bust. Finally, in the 1950s, the Forest Service persuaded two large pulp companies to set up shop there. Among the inducements were 50-year contracts and bargain-basement timber prices, so that they could compete against mills in Washington State.

The market for the forest's output was Japan, with small percentages going to other Pacific-rim countries. The pulp-grade timber, about 60 percent of the average Tongass clear-cutting, ultimately was turned into rayon and cellophane. The rest was shipped as logs to be milled overseas and used for housing construction and special items such as pianos.

Though at the outset demand was reasonably strong, the government still lost money in this job-creating venture. An average mile of road built to reach the trees costs $150,000. To make the undertaking profitable for the companies, the government had to provide a large subsidy.

In 1980 the Alaska National Interest Lands Conservation Act (ANILCA) sought to preserve 5.4 million acres of the Tongass as permanent wilderness. Alaska timber interests, led by Sen. Ted Stevens (R., Alaska), manuevered to change the legislation. The result was Section 705 of ANILCA, which set a goal of selling 4.5 billion board feet from the Tongass per decade, roughly one percent of the nation's total output. To cover the costs of building roads, surveying and overhead, the section provides a minimum $40-milion *permanent* annual appropriation, "or as much as the Secretary of Agriculture finds is necessary," to meet the goal.

Meanwhile, modern technology had found synthetic substitutes to be cheaper than pulp for making sandwich wrappers and rayon shirts. Countries such as South Africa, where trees grow more quickly and are cheaper to harvest, underbid Alaska for the remaining demand.

Timber jobs in southeast Alaska began to dry up. Since passage of ANILCA six years ago, they have declined by 40 percent, to fewer than 1800. In 1984 the demand for board feet was slightly over half of the 450 million feet per year contemplated by Section 705. Undeterred, the Forest Service squandered $11 million on roads and other preparatory steps for timber sales that no company would bid on. For each job still maintained by the Tongass program, U.S. taxpayers are kicking in $36,000 a year. The two prime beneficiaries of this largess are the Ketchikan Pulp Co. and the Japanese-owned Alaska Pulp Corp.

Even in southeast Alaska, the Forest Service's enthusiasm for timber cutting is not universally appreciated. Commercial fishermen told Congress that the logging and road-building cause erosion damaging to world-famous salmon-spawning beds. Log-transfer facilities along the shore have forced out some fishing fleets. The area's fishing industry provides more jobs than the timber industry does—without federal subsidy. The logging also threatens tourism, the region's fastest-growing industry, now creating more jobs all the time.

Then there is the matter of a magnificent natural wonder being destroyed. The Tongass features thousands of lakes, islands and streams. There are alpine meadows and fjords against a backdrop of snowcapped mountains. Sitka spruce that were seedlings when King John signed the Magna Charta soar 250 feet. And this rare rain forest contain's the world's largest concentrations of bald eagles and grizzly bears.

The Forest Service stubbornly insists on believing that the timber program is good for the local economy. That has been its premise for 75 years, and such long-held views are hard to change. Since the advent of the post-World War II housing boom, national forests have supplied about 20 percent of this country's timber. The Forest Service, a 38,000-employee bureaucracy, has staffed up with surveyors, road engineers and others who move up the ranks by putting lots of board feet on the scoreboard. Convincing them that it makes no economic sense is nearly impossible.

This is a problem not only in Alaska. Two years ago, studies by the General Accounting Office, the Congressional Research Service and the Wilderness Society revealed that timber programs in many national forests are costing taxpayers more than what timber companies are paying for the wood. The losses in the last fiscal year alone amounted to hundreds of millions of dollars. The Forest Service conceded that 37 percent of its timber is being sold below cost.

But the Tongass is the only forest with a money-losing timber program written into law. Fortunately Section 705 calls for a review of the program after five years. The House Interior and Insular Affairs Committee has now completed oversight hearings. This review of the Tongass timber program gives us a chance to save money, save nature, and save face—if Congress has the fortitude to stop this boondoggle.

[From the New York Times, May 17, 1986]

THE LAST GREAT RAIN FOREST

The Tongass National Forest, the last great rain forest in the United States, is being destroyed, pointlessly, by the Government that professes to care about preserving the nation's environment. Why?

The forest, which covers most of the southern panhandle of Alaska, is bigger than the state of West Virginia. The value of this land of centuries-old spruce is aesthetic and ecological rather than economic. Access is hampered by harsh weather, difficult terrain and distance to market.

During the development mania of the 1960's, however, two timber companies were induced to build pulp mills in the area by guaranteeing them the right to log the forest at a profit for 50 years. Then, in 1980, when Congress was debating the status of Alaska's public lands, Senator Ted Stevens fought successfully to lock in their deal.

A provision of the new land law set a goal of harvesting 4.5 billion board feet of timber each decade, roughly 1 percent of all U.S. production. The Forest Service was authorized to spend whatever was necessary to meet the goal. Since then, world prices for timber have fallen sharply and are likely to remain low for decades. That has made Tongass lumber almost worthless, even with the heavy subsidies.

Yet the pulp companies, which have made substantial investments in the region, see no reason to let Uncle Sam off the hook. And in spite of the inevitable environmental damage, the Forest Service seems happy to oblige.

Between 1982 and 1985 Washington spent $253 million to build roads through ancient forests populated by the continent's heaviest concentration of bald eagles and grizzly bears. One-third of the timber land opened drew no bids at all. The rest sold for peanuts—less than $10 million in total.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

The pulp companies and Alaska's Congressional delegation justify continuing Federal outlays as a means of saving some 1,500 logging jobs in the region. It would be cheaper just to pay each logger $36,000 a year—and it would protect the environment besides. In the end, moreover, the subsidy may cost more jobs than it saves. Soil runoff caused by lumbering threatens the river breeding grounds of salmon, the largest source of income in the panhandle.

The House Interior Committee is working to scrap the permanent subsidy for Tongass, and halve the current $50 million annual expenditure. That would be far preferable to logging as usual. A better—and ultimately cheaper—reform would be to suspend logging indefinitely and other compensation to the workers and businesses affected.

There might come a day when the forest's value for wood, minerals or recreation exceeds the intangible benefits from preserving the wilderness. But that day is a long time off. To cut Tongass now, and at a loss underwritten by the taxpayer, amounts to theft of the national heritage.

[From the Anchorage Times, Apr. 28, 1986]

CONSERVATIONISTS' REPORT URGES TONGASS REVISIONS

WASHINGTON.—Congress ought to end the special status of the Tongass National Forest in southeastern Alaska, the Wilderness Society said today.

The administration should renegotiate the unique 50-year timber contracts with two companies to require short-term sales by competitive bidding that ultimately would be required to recover costs incurred by the Forest Service, the society said.

A report from the society also called on the Forest Service to accept state recommendations for a moratorium on roadbuilding and logging in 72 watersheds of the forest considered critical for bears, salmon, Sitka blacktailed deer and bald eagles, at least until the land use plan for the forest is revised.

The Tongass contains some of the last major virgin rain forest stands in the northern hemisphere, the society said. Its report was timed to precede the first of a series of every-other-year reports to Congress by the Forest Service on the Tongass.

The Forest Service report is due "shortly," the society said. Gary Morison of the Forest Service did not immediately return a telephone call.

A special section of the 1980 Alaska National Interest Lands Conservation Act provides at least $40 million a year to make available 4.5 billion board feet of timber per decade. That section also exempts the forest from other laws designed to identify unsuitable timber lands.

"Large-scale timber on the Tongass is indefensible by any economic measure," the report said.

Pulp markets in southeast Alaska have declined and sales from the Tongass brought in only $3.8 million in 1984 while costing $54 million, the Wilderness Society said.

DR. WILLIAM L. ROPER HONORED AS HEALTH PIONEER

HON. BEN ERDREICH

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. ERDREICH. Mr. Speaker, I am proud to take part in a special ceremony on Tuesday, September 30, along with Alabama Senators HOWELL HEFLIN and JEREMIAH DENTON and the Lloyd Noland Hospital and Health Centers of Fairfield, AL, to honor a native of Birmingham, AL, who has made outstanding contributions in the field of public health care.

Dr. William L. Rober has been a public health leader for many years, having served for several years as county health officer for the Jefferson County, Alabama Department of Health. I was privileged to have had the opportunity to work directly with Bill Roper during this time, when I served as Jefferson County commissioner in charge of public health and welfare. Dr. Roper also served a year as a White House fellow assigned to the White House's Office of Policy Development, and then as special assistant to President Reagan for health policy.

He holds both an M.D. degree from the University of Alabama School of Medicine, and a master of public health degree from the University of Alabama at Birmingham School of Public Health. He is certified by both the American Board of Pediatrics and the American Board of Preventive Medicine. In his undergraduate years at the University of Alabama, he was named distinguished scholar in the College of Arts and Sciences and also named to Phi Beta Kappa. In medical school, he was named to the distinguished honorary Alpha Omega Alpha. While with the Jefferson County Department of Health, he received the Guy M. Tate Award of the Alabama Public Health Association.

Most recently, Dr. Roper assumed the important office of Administrator of the Health Care Financing Administration [HCFA] in the U.S. Department of Health and Human Services.

And now, in addition to his many other outstanding accomplishments and achievements, Dr. Roper has been selected to receive the first Lloyd Noland Health Pioneer Award, given annually to a recipient selected as being outstanding in one of the areas in which Dr. Lloyd Noland excelled, which include public health, industrial medicine, health education, wellness and preventive medicine, outpatient care, health maintenance organizations, surgery and diagnosis.

One must first know of the distinguished career of Dr. Lloyd Noland to know the significance of being tapped to be the first recipient of an award named for this medical giant. As told in the newly-published two-volume set of books by Anita Smith, "The Lloyd Noland Story," Dr. Lloyd Noland fought tropical diseases in the Panama Canal Zone, and helped establish sanitation systems and utilized surgical procedures that saved workers' lives, helping the canal project to succeed despite epidemics of yellow fever and malaria. Following his return to the United States, he became head of the Tennessee Coal, Iron and Railroad Co. [TCI] Health Department in Fairfield, AL, and with the support of U.S. Steel Corporation, which owned TCI, Noland organized a progressive public health system and founded TCI Hospital, known today as Lloyd Noland Hospital. Lloyd Noland Hospital today is a 319-bed hospital facility, which continues to be a focal point for the community through Family Care Centers, ElderCare Services, and leadership by its administrators and staff in both State and national medical associations.

With his outstanding contributions in the field of public health, Dr. William Roper has followed in the footsteps of Dr. Lloyd Noland, and, as Administrator of the Health Care Financing Administration, will continue to work to formulate sound policy regarding issues such as adequate access to health care and health care financing.

Dr. William Roper's outstanding contributions to public health and his tireless work to provide quality and cost-effective health care to the residents of Alabama and the Nation make him most deserving of this honor. All of us in Alabama are proud that he has been selected as the first recipient of the Lloyd Noland Health Pioneer Award. Following is an editorial that appeared in the Wednesday, September 24, edition of the Birmingham News commending Dr. Roper on this latest honor:

RECOGNIZING ROPER

Dr. William L. Roper of Birmingham continues to reflect credit upon himself and the community he served as health officer.

Roper, now administrator of the federal Health Care Financing Administration, will receive the first Lloyd Noland Health Pioneer Award at a Capitol Hill ceremony next week.

The award is named for the late Dr. Lloyd Noland, the public health and industrial medicine pioneer who founded the hospital in Fairfield that bears his name.

Birmingham native Roper, 38, was health officer for the Jefferson County Health Department before going to Washington as a White House Fellow and special assistant to President Reagan for health policy.

In May, he was named to head the federal agency that runs the nation's Medicare and Medicaid programs.

We are proud of Roper's success and we congratulate him on this latest honor. We are sure there will be much more recognition to come for this talented and public-spirited young man.

DEMOCRATIZATION ON TAIWAN

HON. JIM LEACH

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. LEACH of Iowa. Mr. Speaker, this last weekend marked a seminal event in the history of Taiwan. For 37 years, there has been martial law on the island. It has yet to be lifted, yet courageously, an important group of island political leaders took the bold step this past week of forming an alternative democratic political party to the Kuomintang.

It is normally inappropriate for American legislators to identify with any particular foreign political party. However, it is always appropriate for those who believe in democratic values to support the principle of multiparty democracy. It is the American experience that a free flow of ideas, which is the centerpiece of democratic institution building, can best be advanced in a multiparty setting.

In this context the American Congress welcomes the founding of the Progressive Democratic Party, under provisional convenor, Legislator Fei Hsi-ping.

Many of us have believed for a long time that martial law should be lifted on Taiwan. Its continued maintenance is a distinction of dubious character for any government which maintains a pretext of commitment to democracy and the philosophical values of the free world. While there may have been a case for instituting martial law 37 years ago when peace and stability in the Taiwan area seemed so precarious, today such nationalization represents a thin reed.

While much is made of Taiwan's impressive economic and material success, economic progress is no substitute for civil liberty and participatory democracy.

It is my strong conviction that the pace of democratic change in Taiwan is crucial to the future of that island. Opening up the electoral process to a much broader base, as the formation of the new Progressive Democratic Party implies, would do much to enhance the political stability and security of the island. Governments which lack the support of their own people cannot long defend themselves. The people of Taiwan—both those of Taiwanese heritage as well as those from the mainland—cannot afford to be divided in facing the enormous challenges ahead. The people of Taiwan desire what peoples everywhere desire—peace and the opportunity to determine their own future. The period of democratic tutelage defined by Sun Yat-sen as a necessary step toward democracy should be brought to an end. Few people have greater potential for self-government.

The American people are looking today for more than lipservice to democratic principles in Taiwan. The test of democracy is the respect which is guaranteed to the civil and political rights of a people. The formation of the new Progressive Democratic Party in Taiwan presents such a test of the Government's willingness to tolerate dissenting political views.

Recognizing the political and security constraints currently existing in Taiwan, it is impossible to be anything but deeply respectful of the courage of those democratic political leaders who have banded together in opposition to a single-party state and have set aside their own individual differences to make a point of principle.

It is not easy in the repressive climate of martial law to take such action. But the fact that these courageous men and women have done so is a measure of the intense desire of the people of Taiwan to control their own and their children's destiny.

TRIBUTE TO HARRY RENFRO

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. BURTON of Indiana. Mr. Speaker, on August 3 of this year, a very good friend of mine, Harry Renfro of Noblesville, IN, passed away. He was a very fine individual; one who really cared about his fellow man as well as his community and country.

Harry grew up and spent most of his life in Indianapolis, IN. He was married 27 years to Maxine Dennis Renfro; had three sons: Dan Renfro, Indianapolis; Todd Renfro, Castleton; Kenvin Renfro, who is still at home; and a stepson, Mark Kaley, Salt Lake City, UT. He also had three grandchildren: Alyssa and Emily Kaley and Cory Renfro. His father, O.N. Renfro, and a brother preceded him in death. Other survivors are his mother, Margaret Rusher Renfro of Indianapolis, three sisters, and one brother. He lived the last 23 years in Noblesville, IN.

Harry was owner and producer of the Indianapolis Boat, Sport, and Travel Show, Inc., for the past 23 years. He was an avid golfer and fisherman. Harry received many awards and recognitions for his work with fishing organizations and promoted "Fishing for Kids." He participated in many benefits for arthritis, varsity clubs, boys' clubs, and leukemia. He was a supporter of the Special Olympics for Handicapped Children and many other civic organizations.

He was a member of the Hoosier Outdoor Writers' Association, the Indianapolis Chamber of Commerce, Indianapolis Convention and Visitors' Bureau, the Indianapolis Bass Federation, the Fraternal Order of Police, and the American Legion Post in Fishers, IN.

Harry was an Army Air Force veteran of World War II, an honorary Marion County Sheriff's Department special deputy, a Kentucky Colonel and Sagamore of the Wabash and Tennessee Country Gentlemen.

Mr. Speaker, Harry was a truly fine man, one who will be missed by all who knew him, including me and my family.

INTRODUCTION OF SURPLUS CROPS LEGISLATION

HON. BERKLEY BEDELL

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. BEDELL. Mr. Speaker, along with more than 25 other Members of the House from both parties and all regions of the country, I am today introducing legislation to prevent new Federal irrigation subsidies for surplus crops.

The bill would address two of the biggest problems facing Congress—the budget deficit and the glut of many farm products. Clearly, the farm bill that Congress enacted last year will cost much more than expected even though it will do little to help farmers in many parts of the country. Comprehensive solutions to the farm problem will not be found or implemented easily. But the bill we are introducing today would be one step in the right direction toward sound budget, agricultural, irrigation and environmental policies.

Very simply, the bill would require farmers who receive new or expanded irrigation benefits to repay the full cost to the taxpayers of providing them any water they choose to use to grow more crops that the Government is already paying farmers not to grow. The bill would apply only to new or amended irrigation contracts, so it would not impact current beneficiaries unfairly.

During all of the time I have been in Congress, I have never heard a good reason why taxpayers should subsidize water so that farmers can grow more of certain crops when we are already paying farmers not to grow the very same crops. The long history of my efforts on this issue has previously been detailed in the CONGRESSIONAL RECORD of September 10, 1986 (see page 22739). Suffice it to say that, in my opinion, there are no grounds to question whether this is the right thing to do, or to insist that we need more study of the issue. It is gratifying to me that there is now a broad realization in the House that we can no longer afford this wasteful conflict between irrigation and agricultural policies.

By introducing this bill today, we intend to send a signal that we must stop the increase in irrigation subsidies for surplus crops that benefit nobody. While there is limited time remaining in this session, the broad support this bill has received shows that this is an idea whose time has come and which must be considered in any farm or irrigation legislation.

WELCOME TO OUR NEWLY NATURALIZED CITIZENS

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. GILMAN. Mr. Speaker, it is with sincere pleasure that I congratulate the residents of New York's 22d Congressional District who have recently chosen to become citizens of the United States with all of the privileges, freedoms, and responsibilities that American citizenship entails.

Our beautiful Hudson Valley region in New York State, is proud of its newest citizens, and I invite my colleagues to join with me in welcoming the following newly naturalized Americans and extending to them our best wishes for a happy and prosperous life in their new homeland:

Ibrahim Wadih Abbound, Lourdes Abreu, Anjum Ali Ahmed, Mr. Giancarlo Angelo Aiello, Mr. Anthony Tactaquin Alconis, Ms. Rosalina Ramos Alconis, Prosper Alexis, Ms. Janet Elain Allen, Mr. David M. Alunkal, and Indu Anilesh.

Ms. Josephine Annunziata, Amelita Aban Antonio, Leticia Ramos Antonio, Mr. Renato R. Antonio, Mr. Abraham Askal, Mr. Fred Atienza, Ms. Linda Atisme, Ms. Alice Ayzikovich, Mr. Leonid Ayzikovich, Mr. Souheil Georges Badro, Vasiliki Bakogiannis, and Mr. Steve O. Barnoy.

Mr. Manuel Quano Bascon, Jose Basa, Ms. Lynette Denise Bass, Mr. Hubert Batten, Caitlin Rose Bell, Ms. Margarita Rueda Beluang, Mr. Remedios Ceasico Benedicto, Patrice Benjamin, Ms. Josefa Berger, Laura Jean Bircham, Ms. Esther Blum, and Mr. Tzipura Feige Blumenfeld.

Mr. Carlos Eduardo Bowen, Mr. Zlata Braun, Ms. Cecilia Viloria Bregaudit, Mr. Reynaldo Adrales Bregaudit, Mr. Alberto Adrales Bregaudit, Jr., Colin Roy Lutman Broadbridge, Ms. Yolanda Broda, Mr. Joseph Emilio Brunache, Ms. Carmilla Brutus, Ms. Jane Buddenhagen, and Juana Maria Bueno.

Mr. Luke Bang Bui, Ms. Lorna Marie Bushay, Ms. Pearl Adina Bushay, Miss Emily Rackoff Bushkin, Ms. Marita Arletta Byer, Mr. George Cacchiani, Mr. Joseph Carmel Cadet, Ms. Christina Elizabeth Campbell, Mr. Mark Antonio Campbell, Mr. Oscar Rene Campos, and Noemi Julia Caraballo.

Mr. Michael Angel Cardenas, Mr. John Cadenss Carter, Nam Sook Lee Casseday, Ms. Angelica Castillo, Ms. Clementina Catizone, Ms. Clementina Catizone, Mrs. Emilla Catizone, Esterina Ceci, Mr. Francisco Ferraz Cerqueira, Mithilesh Chandra, and Ms. Elsie Charles.

Ms. Marie Lourdes Charles, Mr. Wen-Ping Chen, Ms. Amanda Hyun Chenard, Mrs. Yuk C. Cheng, Mr. Roland Joseph Chery, Ninon Chevry, Mr. and Mrs. Oswald C. Chin, Huyn Taik Cho, Titus Ho Choi, Zorka Metodija Christoff, and Mr. David Hing-Yui Chu.

Han Myun Chung, Italia Ciliberto, Ms. Jeanette Goldie Cohen, Mr. Leon Nessim Choen, Mr. Sean Jonathan Cohen, Mrs. Maria Colandrea, Edvirge Colas, Michele Colas, Mr. Edmonde Colin, Mr. Hubert Colin, and Serge Colin.

Mr. Reynaldo Barcelona Concepcion, Alferdo Manoel Santiago Constantino, Mr. Benjamin Leonel Cruz, Ms. Maria Luisa Cruz-Bran, Ms. Lilia Cuevas, Miss Megan Elizabeth Curry, Eugenia De la Cruz, Ms. Divina Abordo DeLeon, Mr. Hector Supen DeLeon, Miss Nicole Alexandra Deleonardis, Ms. Marie Yvonne Huguette Del Ponte, and Mr. Yves Michel Desroches.

Mr. Pierre Abel Desrosiers, Mr. Jacques William Destrade, Ms. Norma Eyda Desvernine, Mrs. Golda Deutsch, Mr. Mike Deutsch, Ms. Celia Ruth Devons, Ixleine Difrene, Mr. Gary Dorante, Mr. Roland Joseph Dorcean, Ms. Eve Suzanne Dorvill, and Mr. Roger Shelley Doughlin.

Ludovina Duarte, Ms. Linda Duarte da Silva, Mr. Paul A. Duffy, Berthilde Dufrene, Mrs. Sanween Duggal, Ms. Jean Dure, Ms. Marie Vilia Dure, Felmin Atherton Earle, Mr. Rafael Ekstein, Ms. Marie Jacqueline Elor, and Ms. Maria Elena Engel.

Ms. Hannelore Enghard, Arthur Frederic Savile Evans, Mr. Gilbert Falceso Fajiculay, Ms. Julia Fegan, Mr. Leon Andrew Feigenbaum, Mr. Samuel Y. Felberbaum, Mr. Adam Feldman, Aurelia Chan Ferrer, Mr. Edmond Raphino Fils, Carmen Flores, and Ms. Melanie Freda Forman.

Mr. Robert Forman, Mr. Pedro Mariano Francisco, Mrs. Yachet Freund, Ms. Nina Fridman, Mr. Vladimir Fridman, Shlomo Friedman, Mr. Rodrigo Roque Funtanilla, Ms. Marie Josephe Gachette, Mr. Hector Garcia, Ms. Maria Garcia, and Mr. Francisco Alberto Garcia-Quezada.

Ms. Marie Josette Gaspard, Mr. Samuel Geffen, Ms. Nancy Jane Gersfeld, Maconnen Ghebrenegus, Mr. Benjamin Gilad, Tomar Gilad, Ms. Lillian Gillman, Mr. Antonio Giorgio, Mr. Sam Giorgio, Claire-Lily Marie Girardot, Clemsford Glasgow, and Ms. Nina Ae-Ran Glickman.

Ms. Nora Glickman, Anelsia Gonzalez, Ms. Edith Leonor Gomez Gonzalez, Marianela Gonzalez, Mr. Nelson Rafael Gonzalez, Mr. Rafael Gonzalez, Jr., Mr. John Gordon, Mrs. Magdalena Gracia, Mr. Pedro Gracia, Mr. Aron Grinshpun, and Ms. Rosa Grinshpun.

Mr. and Mrs. Marty Gross, Mrs. Rosaleen Guihan, Sydonie Gloria Hamnilton, Eunice Yoonsook Han, In Hyung Han, Mr. Raheela Nasim Hassan, Mr. Moishe Heilbrun, Mr. David Heler, Ms. Hinda Heler, Ms. Julia Henriquez, Lesbia Martina Henriquez, and Mr. Rockfeler Peter Herisse.

Tomas Hernandez, Mr. Farid S. Hesari, Garcenia Gulle Hidalgo, Mr. Nelson Diaz Hidalgo, Ms. Irene Elisabeth Higinio, Sung Chan Hong, Mr. Aharon Horn, Nechama Horn, Mrs. Margaret P. Hughes, Ms. Muriel Rodgers Hull, and Mr. Francisco Javier Imperial.

Idilio Calanog Irineo, Ms. Josephine Jabonete, Ms. Jeanne Nicole Jabouin, Janaksinh Takhtsinh Jadeja, Mohamedtaki Jaffer, Nessim Gabriel Jarufe, Phuong Tuyet Ngo Jean, Ms. Marie Rose Laure Jean-Charles, Mr. Rogeste Jean-Charles, Mr. Clifford Jean-Louis, Ms. Parion Patricia Jean-Louis, and Mr. Nak Eun Jeong.

Mr. Ray Fernando Jimenez, Ms. Marva Luisa Johnson, Mr. Augustin Aleus Joseph, Ms. Elsie Joseph, Ms. Jacqueline Joseph, Ms. Marie Judith Joseph, Ms. Marie Lourdes Milagroza Joseph, Michael Hector Juarez, Mr. Henry John Julien, Ms. Sarah Esther Jungreis, Mr. Boris Kaplan, and Priya Kapoor.

Mr. Michael J. Katelas, Mr. Salil Kathpalia, Ms. Irina Katsizna, Mr. Izzy Katsizna, Ms Irene Debra Katz-Feigenbaum, Yona Kenig, Mr. George Donald Kent, Ms. Joanna Kent, Mr. Farid Kerendian, Mr. Mohammad Haleem Khan, and Ms. Edwina Sia Kho.

Inocencio Chua Kho, Farhad Khosrowshahi, Inhee Kim, Mr. Michael Jungae Kim, Suk Yeon Kim, Mr. Winston Clyde Kingston, Mr. Israel Klein, Mr. Moshe David Klein, Ms. Sarah Klein, Rela Knopfler, and Ms. Esther Kohn.

Mr. Bill Korines, Ms. Eva Kramer, Mr. Mhill Krasniqi, Lynette Frank Kretzmer, Mr. Dharm V. Kumar, Taw Sung Kwon, Mr. Young Ju Kwon, Hong Qui La, Ms. Annie Labbe, Ms. Ellen Rose Lally, and Mr. James Cyril Lally.

Mr. Trung Thu Lam, Kao Sung Lane, Mr. Jehoshua Langsam, Ms. Marie Maude Lartigue, Mr. and Mrs. Errol G. Latibeaudiere, Mr. Emmanuel Jacob Lauture, Ms. Marie Rose Lauture, Philomene Lazare, Mr. Hubert H. Lee, Mr. Sung Woo Lee, and Ms. Leah Leifer.

Mr. Rudolf P. Lenz, Mr. Vladimir B. Lesokhin, Mrs. Yeva Lesokhin, Master Kieran M. Lettrich, Benjamin Levitan, Irina Levitan, Mr. Arthur John Lewis, Ms. Cynthia Frances Lewis, Mr. Claudio Alberto Lichtenthal, Ms. Beatriz Long, and Rudiger Siegfried Loose.

Ms. Edna Louis, Ms. Ruth Lubelski, Mr. Henry Lucas, Mrs. Brigitte Luceri, Mr. Julio Lujan, Albertine Lunan, Mr. Thomas Luong, Ms. Nancy N.T. Ly, Mr. Quoc V. Ly, Celeste Toral Maikoksoog, and Sushil Mulkraj Malhotra.

Ms. Leah Mandel, Mr. Basil George Mangaroo, Dana Annabelee Mannor, Mr. Caesar Octavio Martinez, Kennida Antonia Martinez, Lurline Mason, Mr. Marc Gerard Mathelier, Carlyn Faith Mayer, Lothar Leopold Mayer, Nicolette Dionne Mayer, Mr. John Augustine McDonagh, Malachi Clarke McFarlane, Ms. Regina McPolyle, and Gino Mecarini.

Lina Medvetsky, Ms. Teresa Melo, Nandakumar Chelur Menon, Lyonel Metayer, Miss Niecia G. Meyer, Ms. Marianne Mhedbi, Grazia Mineo, Marcella Escobar Minotta, Mrs. Margarita Mishiyev, Ms. Rosa Mogollon, Mr. Konstantinos Molfetas, and Mr. Jesus C. Montes.

Loreley Soto Montgomery, Kavita Christina Moschera, Misha Caroline Moschera, Saskia Virginie Mossel-Hammer, Ms. Marie Louise Narcisse, Mrs. Tamkanath Naseeruddin, Alice Lain-Lain Ong Ngan, Dragoljub Nikolajevic, Mila Nikolajevic, Ariel Ramos Norfleet, Ms. Barbara Ramos Norfleet, and Danilo Pore Norfleet.

Ms. Marybeth Ramos Norfleet, Klara Nosonov, Nyoma Nosonov, Soeurette Occena, Mr. and Mrs. Gabriel C. Oppenheim, Mr. Enrico Paglia, Mr. Devin Carl Palladino, Mr. John Jung Park, Kyung Soon Park, Sung Soo Park, and Mr. and Mrs. Carlos Patarroyo.

Mr. Juan C. Patarroyo, Ms. Sandra P. Patarroyo, Arvind Apabbai Patel, Alba Doris Patino, Ms. Nuket Y. Pere, Ms. France L.E. Persaud, Mr. Harinaraine Persaud, Mrs. Lucinda Persaud, Mr. Stephan A. Persaud, Mr. Murali Arthur Perumal, Muriel Phipps, and Yolene Pierre.

Ms. Simone Pierre-Antoine, Viera Pilipchuk, Ms. Angelina Pineda, Romeo Santiago Pineda, Mr. Matthew Alexander Plenge, Mr. Jorge Poladian, Ms. Victoria Diana Poladian, Mr. Daniel Polasak, Mrs. Zipora Polasak, Mr. John Portanova, and Alby Amilta Loarca Portillo.

Ms. Maria Antonia Posse, Mr. Patrick J. Power, Ms. Mary Burns Prauda, Mr. William Preciado, Mr. Luigi Prestimonaco, Mr. Kin K. Pun, Ms. Maria S. Pupo, Natividad Retuya Ramirez, Mr. Elder Raphino, Ms. Dora Fischer Reese, and Mr. Gerard Michel Remolus.

Ms. Jean Vital Rene, Ms. Marie Rita Rene, Fritz Renelus, Mr. Antonio Riccio, Ms. Mythili P. Richards, Master Douglas L. Ridley, Luisa Fidanza Rinaldi, Teresita Marin Robb, Veceleine Dufrene Robinson, Ms. Berta Rojas, and Mr. Juan Ovidio Rojas.

Miss Melanie Jean Ryan, Mr. Maurice Sabogal, Mr. Marcos Saieg, Maria Salvi, Maria Grazia Giovanna Salvi, Edner Sam, Mr. Antonio Jose Sampaio, Mr. John Antero Sampaio, Mr. Michael Sanchez, Ms. Rachel Sandel, Deanna Sanderson, and Mr. Manuel Dos Santos.

Mr. Moises Antonio Santos-Guerrero, Shyamal Kanti Sarkar, Catena Scaffidi, Ms. Rita Scaffidi, Mrs. Adele Schirripa, Mrs. Gisela M. Schulze, Mr. Joseph Schwartz, Ms. Teresa Norma Scopino, Krupa Shanthamma Selvaraj, Mr. Fernando Domenico Seminelli, and Ms. Lilly Micheline Shaffsick.

Michiko Shaland, Mr. Boris Shapiro, Miss Carolyn J.S. Sherman, Jasgeet Shikh, Ms. Abbey Shilleh, Mr. and Mrs. Moshe Shor, Miss Kassandra Jude Shoreland, Hilde Silbert-Quambusch, Mr. Aurelian Silea, Ms. Christina L. Silea, and Mrs. Viorica Silea.

Ms. Maria Amelia Simao, Mr. John Simonsen, Mr. George Leon Siodmak, Ms. Helen Siodmak, Yuda Sivak, Petronilo Somera, Rogelio Balamga Somera, Mr. Michael Spielberger, Shih-Yu Springer, Florino Luigi Squillace, and Ms. Marie Adeline St. Fleur.

Mr. Andrew Anthony Stephens, Leslie Mary Stolfi, Min Jong Strom, Mr. Daivd Suarez, Mr. Rafael Suarez, Annick Jeanne Legroux Sullivan, Mr. Samuel Sundel, Ms. Ada Svechin, Mr. Alexander Svechin, Fedor Svechin, and Mr. Pierre Richard Sylvain.

Ms. Sophia Szarwark, Ms. Angela Yeung Szeto, Mr. Harry Elias Talbot, Mr. Chun-Hsiao Tam, Ms. Sau-Wan Tam, Adilia Tamir, Moshe Tamir, Ms. Norma Jean Tate, Mr. Fahd Tawil, Ms. Enid Bernice Taylor, and Mr. Do Hung Thai.

Mr. Quang Do Thai, Ms. Margaret Tham, Mr. Philip Tham, Ms. Alexandra Elisabeth Thannhaeuser, Ms. Caroline Margrit Tannhaeuser, Mr. Christopher Frederik Thannaeuer, Mr. Daniel Thibault, Mr. Richard Michael Thompson, Ms. Lucy Tong, Ms. Adele Quilang Toral, and Ms. Miriam Lucia Torres.

Mr. Thomas Magella Tracey, Ms. Minh Ha Thi Trinh, Ms. Lilia Cheng Tycangco, Mrs. Rachel Tyrnauer, Ms. Claire Rene Cherimond Valery, Mr. Jose Antonio Vargas, Eugenia Vasquez, Fermin Isla Vasquez, Celenia Saborio Vazquez, Miss Joanna Marie Vellucci, and Mr. Jose M. Vendrell.

Mr. Jose Veras, Marianna Vigliotti, Mr. Neal Edward Viltz, Ms. Lucie Christine Vippolis, Mrs. Chanah Weinstock, Mr. Salamon Wertzberger, Nahid Westwood, Florena Whyte, Mr. Henry Linton Wiseman, Mr. Benzion Jacob Wosner, and Tso-Tseng Wu.

Yen Sia Wu, Meir Yaniv, Shoshana Yaniv, Mr. and Mrs. Houshang Yazdani, Mr. Vladimir Zakrzewski, Mercedes Carias Zawislewski, Mr. Joseph Zoccali, Mr. Adolf Zueger, Mr. Naftali Zwiebel, Arie Angsam, Firmo Frederich de la Cruz, Elenita de Rivera, and Mr. Carlos Leonidas Ueva.

BISHOP VEGA SPEAKS OUT AGAINST SANDINISTA REGIME

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. LAGOMARSINO. Mr. Speaker, the exiling in June of Nicaraguan Bishop Pablo Antonio Vega brought harsh criticism against the Sandinista regime in Nicaragua. In spite of the efforts by the Sandinistas to discredit him, Bishop Vega has continued to speak out against the campaign of repression and persecution being carried out by the Nicaraguan regime. In a recent report, the Nicaraguan Bishop said that "Nicaragua is experiencing a worse situation than the one that existed during Anastasio Somoza's dictatorship."

The full text of the report on Nicaraguan Bishop Vega's statements follows:

Bishop Vega Speaks Out Against Sandinist Regime

Bogota, September 19.—Today, Nicaraguan Bishop Msgr Pablo Antonio Vega said in Bogota that civil war has reached his country, and that the people are defending themselves with their hands.

Vega, who was condemned by the Sandinist regime, said that the Nicaraguan people have a right to defend themselves from the totalitarian regime of Managua, but he pointed out that the church is not promoting the conflict.

Vega accused the regime of resorting to priests who have abandoned the pastoral ministry, as in the case of Father Ernesto Cardenal; or to foreign churches to influence [incriminar] the people, and to impose its Marxist will.

Vega said that Nicaragua is experiencing a worse situation than the one that existed during Anascasio Somoza's dictatorship, because today it is a totalitarian regime in which one has no right to give an opinion, since that right is obtained only through participation in, or the acceptance of the government.

Vega criticized the false image of the revolution, and he said that the commanders and members of the current administration have more power and wealth than those under Somoza's regime, because we are now dealing with a political, prepotent class.

Vega added that the people are taking to arms in self-defence, in defense from the aggression, but that they remain mute.

Vega said that silence is the only opinion in Nicaragua, and he asserted that Sandinism no longer has the people's sympathy, and that there is a total distrust in the government's elite because of its attacks on human rights.

THE ADMINISTRATIVE NATURALIZATION BILL

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. GARCIA. Mr. Speaker, today the House passed H.R. 5558, the administrative bill. While the bill helps streamline the naturalization process, concerns have been expressed about the bill by some national Hispanic organizations. I would like to share with my colleagues a statement from the National Association of Latino and Appointed Officials [NALEO]:

NALEO is concerned with Section 2 of H.R. 5558, which confers exclusive jurisdiction to naturalize upon the Attorney General. Reports from NALEO's national network of citizenship service providers and from our Citizenship Hotline callers (some 45,000), point to the need for more not fewer checks on INS' already broad discretion in the naturalization process. By stripping the courts of authority to naturalize, H.R. 5558 sacrifices important protections against INS' misuse/abuse of discretions. Access to a final hearing before a judge is crucial in a significant number of naturalization cases, including:

Continued cases—in which INS delays a decision for unjustifiably long periods of time (sometimes years). While INS does not report data summarizing the number or length of continuances, a considerably body of evidence details the extent of this pressing problem.

Non-filed cases—those 15 percent of applicants (more than 78,000) who INS turns away but does not officially deny (data summarized in attached chart). Concern about this practice, which has no statutory or regulatory basis and, since not an official denial, is not subject to judicial scrutiny, prompted the Senate Appropriations Committee to mandate an INS study of "nonfiles".

"Effective denials"—cases in which INS takes irregular action amounting to a denial. For example, INS officers in New York City have administered impromptu "English exams" to persons actually waiting to be sworn-in, sent home those who "failed" these "exams," and subsequently recommended denial based on these applicants' "failure to prosecute their petitions."

Denials—cases in which INS officially finds the applicant ineligible for naturalization; under H.R. 5558, such a determination will constitute a final rejection of that application (unless the applicant pursues administrative appeal).

The above determinations are made entirely at the discretion of individual INS examiners, and, unfortunately, often reflect inconsistent, subjective or arbitrary decisionmaking. Naturalization practices, e.g. the number and difficulty of exam questions asked, and the standards used to judge eligibility, vary widely among and within INS District offices. Many cases are continued or denied when immigration officers substitute their personal judgment of "good moral character," "public charge," or "English proficiency" in lieu of Congressional intent. While such inconsistencies more often reflect a lack of uniform procedure rather than an intentional abuse of discretion, the outcome for the naturalization applicant is the same—a denial of U.S. citizenship that appears arbitrary or capricious.

PROTECTIONS AFFORDED UNDER EXISTING LAW; ELIMINATED IN H.R. 5558

Under present law, applicants whose cases are continued, "nonfiled" or otherwise not granted, can compel INS to make a decision by filing a "motion to calendar" their case for a final hearing in court. H.R. 5558 provides no recourse for such applicants.

Similarly, the present naturalization process provides applicants denied by INS the opportunity to present their cases anew before the district court judge. H.R. 5558 does not allow denied applicants the right to an evidentiary hearing; it provides only for an administrative review of the decision, and not the evidence or merits of the case. Such a review would overturn a denial only if the applicant could prove that INS had acted unreasonably or wrongfully in making its decision, even if the applicant were clearly eligible for naturalization. (Proving unreasonableness is often impossible since there is no record of the encounter between INS examiner and the applicant). Filing an original lawsuit before the Board of Immigration Appeals (BIA) would entail a sophisticated, costly and time-consuming process far beyond the means of a majority of naturalization applicants. Nor would such cases be resolved in a timely fashion; the BIA presently is calendaring cases for dates three years from now.

In short, the administrative review outlined in H.R. 5558 does not appear to be a meaningful recourse for persons seeking to become U.S. citizens. While NALEO supports the intent of H.R. 5558 to streamline the naturalization process, we are concerned that the bill achieves such efficiencies at the expense of protections that are critical to many would-be citizens. Accordingly, we propose the amendments below as needed safeguards against delayed or unreasonable action in the naturalization process. NALEO urges Judiciary Committee members to support these or other suitable amendments to proposed naturalization legislation which offer needed protections to legal immigrants who wish to become U.S. citizens.

We greatly appreciate your support in ensuring that naturalization be a fair and efficient process for those legal immigrants who seek to embrace the rights and responsibilities of U.S. citizenship.

IMMIGRATION BILL—WHY IT WAS NECESSARY TO DEFEAT THE RULE

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. BEREUTER. Mr. Speaker, this Member, along with a majority of his colleagues voted to defeat the rule on the much-needed immigration reform bill. That rule failed to make in order the amendment from the gentleman from California [Mr. LUNGREN] which would have removed the "instant citizen" proposal crafted by the gentlemen from California [Mr. BERMAN and Mr. PANETTA] and the gentleman from New York [Mr. SCHUMER]. This Member considers himself a moderate on most issues and is willing to listen to all sides of an argument. This gentleman listened—as carefully as he possibly could—and remained astounded that the gentlemen from New York and California insisted on offering a proposal such as this one.

The distinguished chairman of the Immigration Subcommittee of the Judiciary Committee probably knows this Member's strong feelings in favor or immigration reform, a commitment and set of views that was reflected in votes during the last congressional session. However, this Member suspects and warns his friend and distinguished, effective, and hard-working colleague, the gentleman from Kentucky [Mr. MAZZOLI], that because of the rule this Member, along with many other Members of this body, was forced to vote against an immigration reform bill. This is not a position or situation that this gentleman from Nebraska relishes. Indeed, this Member correctly feared that this "gag rule," particularly failing to make in order an amendment by the gentleman from California [Mr. LUNGREN] would apparently doom immigration reform for yet 1 more year.

Arguments were abounding that the bill under this rule should pass in order for a bill to go to conference. There—the argument goes on to say—the so-called Berman/Panetta/Schumer provisions will be removed. That is too big a risk to take. This is one Member who cannot envision taking that type of risk on such an important issue and legislation.

STEEL QUOTA LEGISLATION

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. VISCLOSKY. Mr. Speaker, I join with the gentleman from Pennsylvania, Mr. MURTHA, and other of my colleagues in support of H.R. 5591 legislation which would impose limits on all steel imports from Canada, Sweden, and Taiwan.

As we have seen during the past 2 years, the President's steel initiative with countries included in the Voluntary Restraint Agreement [VRA] Program has been minimally effective. In 1984 steel imports totaled 26 million tons. In 1985 steel imports totaled 24 million tons. Despite this decline, the import problem is not declining rapidly enough.

The purpose of this legislation is to place a quantitative limit on imports from Canada, Sweden, and Taiwan. None are covered by the VRA Program. The bill is balanced. It would allow 90 days for the United States to enter into VRA's with these countries. Failure to do so, however, would result in the country's steel imports being limited to 70 percent of the level of imports entering the United States from October 1, 1983, to October 1, 1984.

The program is clear and has been recognized by the Special Trade Representative, who requested direct consultations with the countries involved.

This legislation provides an opportunity for the Congress to take corrective action toward these countries. Additionally, I strongly support it.

It is important to note that while steel imports continue to plague us, we must expand our debate to encompass other issues of concern to steel. The U.S. steel industry faces many challenges. Our Nation's steel capacity is overwhelming to domestic demand. How do we restructure? How can new employment opportunities be provided to our people without forcing them to move across the continent? Equalization of domestic and foreign tax policy, research and development, and pension policy must also be thoroughly reviewed.

I would only hope that as Congress considers this legislation, we keep in mind the continuing broad challenges that the industry and its workers face in the future.

DENGO ELABORATES ON "DESTABILIZATION PLOT"

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. LAGOMARSINO. Mr. Speaker, since the beginning of the Sandinista revolution in Nicaragua, reports of efforts by the Sandinistas to destabilize their neighbors have been denied, discounted or downplayed by those not wishing to face the reality of the Nicaraguan Government's "revolution without borders." The latest report comes from Costa Rica last week where First Vice President Jorge Manuel Dengo charged Nicaragua with organizing "a full destabiliation plot" against Costa Rica. The details of that report follow:

DENGO ELABORATES ON "DESTABILIZATION PLOT"

Yesterday, First Vice President Jorge Manuel Dengo reported the existence of "a full destabilization plot" against Costa Rica by Nicaragua.

He reported that Costa Ricans are being trained in guerrilla warfare in Nicaragua and that many of them are said to have returned to the country already.

The official, who only gave a few details to the press so as not to hamper an ongoing investigation, said: "There is a brigade in Nicaragua called 'Mora-Canas' led by officers from Cuba and other countries. This brigade trains Costa Ricans." The Security Council is aware of this situation.

He said, however, that the country is preparing to cope with this "destabilization plot." The vice president approved the Rural Police's training for this reason and added that Costa Ricans should understand that the police organizations—without their becoming an army—must be trained to maintain public order.

Dengo said that this destabilization plot bears no relationship to the incidents on Central Avenue in San Jose Wednesday afternoon, when a group of Atlantic area peasants, led by extremists, confronted the Civil Police after erecting obstacles in some streets of the capital.

Dengo, who refused to reveal details of the investigation underway about Costa Ricans being trained in Nicaragua, said he does not know whether the movements of these nationals are being tracked after they enter national territory.

"On Costa Rica's horizon, there are black clouds of enemies who lie in wait to catch democracy whenever it slips." Dengo declined to give any further details.

In August, two Costa Ricans who had been trained in terrorist activities in Libya were discovered in the Security Ministry. The two men managed to work undetected for a month.

Reports about nationals trained in Nicaragua were published at the time, but not enough information was given to the press.

BUG OFF, MR. GORBACHEV! KEEP YOUR LISTENING DEVICES OUT OF OUR EMBASSY

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. BROOMFIELD. Mr. Speaker, today I am introducing a concurrent resolution which prohibits any Russians from occupying their new embassy in Washington until the technical problems associated with the U.S. Embassy in Moscow are resolved. Now is the time for Congress to get tough with the Soviet buggers. Enough is enough.

I am deeply disturbed about recent reports that the new U.S. chancery in Moscow is bugged. This is clearly the time for our Government to make it perfectly clear to the Russians that they will not occupy their new chancery in Washington until reports about the technical problems at our chancery in the U.S.S.R. are resolved.

According to recent accounts, U.S. Department of State technicians found electronic devices planted in the precast pillars, floors, and walls of the U.S. chancery in Moscow. As construction of the new building continues, listening devices are regularly discovered implanted in walls, steel beams, and other equipment.

Soviet workers did the initial building of the shell of the building and were then banned from the site. At that point, U.S. technicians checked the building before a U.S. construction team finishes the construction work.

The magnitude of the sophisticated bugging operation may result in our Government having to demolish the building before it is completed.

Under an existing agreement with the Soviets, some Russian families have moved into a few buildings at the new Soviet Embassy complex here in Washington. U.S. Marines assigned to our present Embassy in Moscow have also occupied the Marine quarters in the new American Embassy compound.

By agreement, Soviet diplomats cannot occupy offices here until work is finished on the U.S. facility in Moscow. Should the extensive bugging operation of our new chancery result in the demolition of that building, I recommend that the Soviets, who already occupy certain parts of their vast complex in Washington, be moved off the property. I am certain that they would vacate their choice Washington site with heavy heart given the fact that the Embassy complex occupies one of the highest points in the city. That prime location gives them the best point in town from which to intercept U.S. communications.

Since our diplomatic facilities in Moscow are the prime target of Soviet surveillance, I urge our Government to ensure that our new structure is absolutely secure before moving into it. In the meantime, Soviet diplomats must continue to be banned from their chancery here in the United States. It's time to play hard ball with Mr. Gorbachev and company.

MANDATING BENEFITS OF EMPLOYEES

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. CRANE. Mr. Speaker, H.R. 4300, the Parental and Medical Leave Act of 1986, is expected to be considered by the House of Representatives before the close of the 99th Congress. H.R. 4300 mandates that businesses provide parental and disability leave. In its present form it grants 18 weeks of unpaid leave for new mothers and fathers within any 2-year period, upon the birth, adoptive or foster placement, or serious illness of a child or parent. Another provision of the bill would grant 26 weeks of unpaid disability leave, within any 1-year period, for a serious health problem.

I commend any employer who offers his or her employees parental and medical leave. However, I do not favor passage of this bill, because Congress should not mandate these benefits. Doing so is contrary to the voluntary, flexible, and comprehensive benefit system that the private sector has developed. Employers and employees are the ones who should decide the nature of employee benefit packages. If such leaves are forced upon employers it is likely that they will have to reduce some other form of employee benefit. Furthermore, small businesses need a flexible and competitive environment that encourages economic growth.

I am also concerned about the precedent that H.R. 4300 creates. It seems to me that this bill is an effort on the part of some to force a social agenda down the throats of private enterprise in this country. Parental leave legislation is being brought to the American free enterprise system by the same folks who brought $2 trillion of Federal debt to the American taxpayer. The authors of legislation which created Federal program after Federal program designed to alleviate all the social ills of this country, with no regard for the costs, have found the troughs dry. The taxpayer will no longer pay for any more wasteful and unnecessary Federal boondoggles. Now, the leaders of new social order have found a new way of furthering their social agenda. They have decided to impose it directly on American business.

Last year, Congress enacted a law (Public Law 99-272) which requires employers to continue health insurance for up to 18 months for employees they dismiss and for up to 36 months for widows, spouses, and dependents of terminated employees. Although that law requires employees to pay the health care premiums, legislation is now pending to require employers to pick up that cost. Other items on the social agenda are comparable worth evaluations, high risk occupational disease notification, and national catastrophic health insurance.

It is essential that management have the ability to make workplace and economic decisions, without burdensome and unwarranted Government interference. The Federal Government's involvement in these fundamental business decisions represents an increase in Federal regulation at a time when more flexibility and less regulation is needed.

As ranking minority member of the Ways and Means Trade Subcommittee, I also oppose H.R. 4300 because of the serious trade implications that could result with its passage. This bill could hamper our international competitiveness and should not be used as a tradeoff between social program expectations and a healthy economic base for the country.

One of the reasons advanced by proponents of the bill is that all other industrialized countries have mandated very similar social responsibilities upon employers. Rather than convincing me that I should support H.R. 4300 for this reason, such an argument tells me that I should seek to keep U.S. businesses free from these responsibilities. Our industries are facing enough problems competing with other countries who produce products at a lower cost. We do not need another regulation that could further hamper the competitiveness of American businesses. Imposing mandatory benefits translates into higher labor costs for businesses. Furthermore, while the United States may be the only industrialized nation without mandatory leave, it is also the only industrialized nation producing jobs at a rate of 600,000 annually and bringing increasing numbers of women into the job market.

Mandating benefits is a dangerous trend. If we continue to dictate to business what must be given to workers as the cost of employment, we will eventually find ourselves with a host of wonderful, statutory benefits and no jobs available to American workers. Just as the American taxpayers could not afford the generous social agenda in past years, American businesses cannot afford today's social agenda.

INVOCATION OF FATHER MARTIN JENCO TO HOUSE OF REPRESENTATIVES

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. DORNAN of California. Mr. Speaker, I rise today to submit to the RECORD the invocation to the House of Representatives by Father Martin Jenco on September 10, 1986. The brief moments of his invocation were very special to me because I feel deeply his continuing concern for the remaining American hostages in Lebanon: Terry Anderson, Thomas Sutherland, David Jacobsen, Frank Reed, William Buckley, and Joseph Cicipio.

I submit his remarks as a brief, but hopefully powerful reminder to my colleagues that we still have American hostages who are in desperate need of our help in Lebanon. You can help make a difference by becoming involved. Please, those Members who have not yet signed a letter to President Assad of Syria requesting his help in securing their safe release, contact my office and sign this second letter. Hopefully we can all contribute to their freedom.

Let us pray:

We thank you, God our Father, for your loving trust in man, woman, child.

In creation, you first clothed us with dignity called us not things, but sons and daughters and said that we were very good.

You did not hesitate, even then, to offer what was most intimate to yourself, a share in your creative power.

Thus, from the beginning, it has been our vocation to fashion this world and ourselves in the image of your love.

Since today, as never before, your work is in our heads.

We, the whole of creation, in all our frailty and mystery, with all our races and peoples join hands in doubt, in love, in risk, in hope and offer you thanks in a new way, but by daring to be what we truly are—the work of your loving hands God touched and frail, yet possessing a dignity beautiful beyond belief, we find courage to stand and say

Lead us from death to Life
  from falsehood to truth
Lead us from despair to hope
  from fear to trust
Lead us from hate to love
  from war to peace
Let Peace fill our hearts
  our world
  our universe.
Amen.

TRIBUTE TO FRANK SALAZAR

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. LAGOMARSINO. Mr. Speaker, I rise to bring to the attention of the House the retirement of a gentleman who has devoted more than 30 years of his life to law enforcement in Santa Maria, CA.

On October 16, 1986, Frank Salazar will end a career that has seen him rise through the ranks from patrol officer, to detective, promoted to detective sergeant in 1969, and finally assigned to head the Santa Maria police detective bureau as lieutenant in 1982.

Frank Salazar is a man who has dedicated his life to law enforcement and to the city of Santa Maria. He has been involved in every major crime investigation over the past 30 years. Yet during his more than 30 years of service, he has never fired his weapon and only drawn it a few times, instead relying on persuasion to disarm individuals.

Honored for his efforts and service to the Santa Maria Police Department, Lt. Frank Salazar has also been recognized as officer of the year by local service organizations. His service goes beyond the uniform and the badge. Frank Salazar annually donates countless hours to civic organizations including the Santa Maria Black and White Ball that benefits the local boy's and girl's clubs.

I know that my colleagues join me in thanking Frank Salazar for more than 30 years of hard work in law enforcement. Perhaps one of Frank's comments sums it up best, "Basically, the people who break the laws should be more strictly sentenced. It is a proven fact that strict, quick and tough punishment is the best deterrent to crime."

NATIONAL SECURITY STUDIES

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. RICHARDSON. Mr. Speaker, I would like to bring to the attention of my colleagues a paper presented by Louis Rosen at a June 26 Trinity Conference. In his former capacity as director of the Los Alamos National Laboratory Meson Physics Facility, Louis Rosen has played a significant role in the development of scientific thought regarding nuclear physics. Most recently, as a fellow at the lab and as a member of Los Alamos' Center for national security studies, Rosen has focused his intellectual powers on serious consideration of the role of the scientific community in national security. His views are compelling and thought-provoking. I am enclosing, for the RECORD, a copy of a paper by Louis Rosen entitled "The Responsibility of the Scientific Community in Matters of National Security." I encourage all of my colleagues to read this paper. The thoughts expressed by Rosen are of much significance to scientists, politicians and members of the general public.

THE RESPONSIBILITY OF THE SCIENTIFIC COMMUNITY IN MATTERS OF NATIONAL SECURITY

(By Louis Rosen)

I. INTRODUCTION

We first should identify the different faces of national security. They include the following:

1. Environmental Security.
2. Agricultural Security.
3. Economic Security.
4. Military Security.

Any one aspect of these four securities, if achieved at the expense of one or more of the others, could be self-defeating. Japan has been able to emphasize economic security at the expense of military security, but only because it can look to the United States for military protection. The United States, as a world leader, can look to no one for any of the four securities mentioned. They are therefore strongly coupled.

I shall address my remarks to the issue of military security, although most of what I say will apply to the other securities as well.

Historically, attempts to achieve military security have involved killing off opponents or adopting a deterrence posture or compromise or some combination of all three. I assume that the first option is no longer feasible. So what are the responsibilities of the scientific community in achieving compromise and/or a deterrence posture.

The scientific community is not a coherent, well-organized, and well-disciplined entity. It is a collection of people with diverse views, interests, backgrounds, and philosophies. I wish, therefore, to address the issue of the responsibilities of scientists in the realm of national security.

The basic responsibilities of a scientist are to acquire and disseminate knowledge. These are essential components of national security in the broadest sense. Most scientists equate knowledge with truth and believe that knowledge is an absolute good. It provides humanity with intellectual stimulation and practical options; but these options can lead to good or to evil. It is for society to determine which options to pursue.

To use my time as efficiently as possible, I ask your indulgence as I quote from three authors.

1. In front of the National Academy of Science there is a bronze bust of Albert Einstein. Engraved on the marble base is the following quotation: "The right to search for truth implies also a duty. One must not conceal any part of what one has recognized to be true." That admonition is as profound as it is simple. Classified information must, of course, be an exception to the above injunction, and this can present real dilemmas. In this regard, I agree with Edward Teller that we are, today, impeding national security as well as science by too much classification.

2. Dr. Vannevar Bush, Director of Scientific Manpower under President Roosevelt, authored "Science, The Endless Frontier." In the book he quotes as follows from the closing paragraph of his report to President Roosevelt: "On the wisdom with which we bring science to bear against problems of the coming years depends in large measure our future as a nation."

The above, I believe, is still true. I would only add, "and the future of our civilization." How we use science and the derivative technologies is a political decision. But scientists, in my opinion, have a responsibility to explain the physical, economic, and social risks and benefits of that use.

3. For my third quotation, I go to a 1971 issue of science and to my favorite author:[1]

"There was a time, not long ago, when science and motherhood were beyond reproach. Today, both are under attack. Much of the basis for this attack is emotional, even irrational. It is born of ignorance on the one hand and frustration on the other. However, not all of the troubles of science can be blamed on unreasoning critics. A substantial part of our misery is self-inflicted. We have not taken seriously that part of our responsibility to society which dictates that we explain and interpret and justify our activities, in language understandable to the nonspecialist. We and we alone can do that. We and we alone can provide the best advice on meaningful priorities based on the intellectual and practical worth of our pursuits. We and we alone can provide the best assessment of the probability that a given development will have utilitarian purpose at an acceptable cost. We and we alone can develop the sophisticated phenomenological models that have some chance of predicting the interaction of technology, industry, education, society, and our environment."

History suggests, and our common sense argues, that by and large the evolution of science has stimulated, and has been a by-product of, the advance of civilization. But not everyone agrees with this thesis; there are those who would invoke time reversal. By misuse of our advanced technology, it may indeed be conceivable to faithfully recreate the physical conditions of the Middle Ages, but not the social and mental climate that made those conditions tolerable.

We are admonished from many quarters, from the President on down, to ask "not what our society can do for science, but what science can do for our society." And we should do that.

One of the most valuable contributions of scientists to a free society is the pedagogical one. Especially in a democracy is it essential that the citizens be literate in matters scientific. Otherwise, they will not choose the options that are in their best interest. In fact, they may well choose options that threaten their physical and economic security, and even their survival.

Scientists, in my opinion, also have the responsibility to scrupulously avoid an overconcentration of political decision-making, within and by the scientific community. Although, President Eisenhower's farewell address is best remembered for his warnings about the dangers inherent in our military-industrial complex, he also had something to say about too much dependence on science and technology:

"There is a recurring temptation to feel that some spectacular and costly action could become the miraculous solution to all current difficulties."

As examples of such an action, he cited "a huge increase in the new elements of our defense" or a "dramatic expansion in basic and applied research." About the latter he added, "In holding scientific research and discovery in respect, as we should, we must also be alert to the equal and opposite danger that public policy could itself become the captive of a scientific-technological elite."

The point is that "power corrupts," and absolute power corrupts absolutely, whether in the hands of politicans, physicians, scientists, or religious groups. I feel obliged to present President Eisenhower's view, even though I am conviced that, today, we are threatened by not enough science, especially basic science. Without adquate science and technology there is no hope of reducing, substantially, the misery of most of the people on this earth and hence the political instability in the world.

II. PROBLEMS OF HUMANITY

There are two basic problems that face humanity: (1) How to live in harmony with nature and (2) How to live in harmony with itself.

To live in harmony with nature, one must understand nature, and that is what science is all about. But science can also help humanity live in harmony with itself by working to overcome severe problems such as hunger, disease, poverty, and hopelessness.

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[1] L. Rosen, "Relevance of Particle Accelerator to National Goals," Science 173, 490-497 (1971).

In days gone by it was possible to have islands of prosperity in a sea of despair without also having unacceptable instability. However, the same technological miracles that have improved the quality of life for so many have also made it impossible to ignore the much larger group who barely survive from one day to the next. Science and scientists have helped mightily to improve the quality of life. But a lot more remains to be done.

III. THE UNIQUENESS OF SCIENCE

In science, overriding attention is given to the detection of error. First, the researcher seeks mistakes in his own work; second, in the work of others. This is in contrast to the situation in most other human endeavors, such as law, politics, marketing, and even the repair of appliances. The scientist's training heavily emphasizes the detection of error. This characteristic is badly needed in the debates on arms-control issues (to choose a random example).

IV. THE OBLIGATION OF THE SCIENTIST

The scientist has an obligation, in my opinion, to make understandable to the nonspecialist not only the meaning of his or her work, but also to show how that work may serve the intellectual and practical needs of society and also to show how necessary it is to protect present and future society from adverse effects of the use and possible misuse of the derivative technologies. This last obligation could be particularly crucial in bioengineering, for example, as well as in the production of energy and in the development of weaponary. It goes without saying that the scientific community, as well as the individual scientist, has a heavy obligation to help provide for the national defense.

V. INTERNATIONAL STABILITY AND THE AVOIDANCE OF MAJOR INTERNATIONAL CONFLICT

Today, for the first time in history, humanity has at hand the means of total self-destruction. At the moment this capability resides in nuclear weaponry, but in another ten years it may also reside in chemical and biological weapons, which require far less resources to produce and which are much easier to conceal. Scientists have the duty not only to make understandable the devastation that these weapons of mass destruction can impose, but also to help bring about a political environment less subject to violent instability. I see a narrowing window of opportunity, during the next decade, for the following reasons:

1. Decline in numbers of witnesses to the horrors of World War II.

2. Increase in complacency about nuclear war. The horrors of Hiroshima and Nagasaki recede from memory more and more as the survivors become less and less numerous.

3. Gradual disappearance of those among us who have seen and heard and felt the effects of a nuclear detonation in the atmosphere.

4. Proliferation of nuclear weapons.

Immediate problems are exacerbated by the following:

1. None of the present world leaders has seen a nuclear weapon detonated.

2. Each side is racing the other to prepare for a war that, if fought, will result in mutual annihilation. We call this phenomenon Mutually Assured Destruction.

3. "Technical fixes," by themselves, are not likely to bring about an adequate level of international stability and could conceivably escalate the dash to oblivion.

VI. NONTECHNICAL CONTRIBUTIONS SCIENTISTS CAN MAKE

Communication and collaboration among the world community of scientists is one way to build trust and increase understanding.

1. My experience with USSR colleagues gives me some encouragement.

2. My experience in the Peoples Republic of China and with colleagues from that country gives me much hope.

VII. FINDING THE PROPER COURSE

Scientists must involve themselves, as must all other citizens, in a sustained search for the proper course of action.

Scientists are trained to interrogate nature and to understand the results of this interrogation. This is at once challenging and fascinating. But it entails heavy responsibilities, expecially in areas involving the environment and weapons of mass destruction. For in these areas we face not only nature but also human behavior and human frailties. Nonetheless, we have an obligation to bring physical insights, comprehension and seasoned judgment to the issues of what science can and cannot do. We do have some competence in the identification and evaluation of technological fixes, but the job is now much more difficult than it has been in the past.

I well remember that during World War II an air defense was successful if it could bring down 10 percent of the attacking force. This kind of defense saved England; the absence of this kind of defense demolished Germany. The elimination of 10 percent of an attacking force is no longer adequate, by about a factor of 10. That really complicates the problem of defense, to say the least.

So far I have given you mostly the bad news. The good news is that there is growing determination among ordinary people, in many countries, to involve themselves in matters of national security policy. If this trend continues, it will do more than anything else to avert the ultimate catastrophe. In that connection, I am much encouraged by the establishment of centers, at many universities and recently at Los Alamos, for studying issues related to international stability and arms control.

VIII. SUMMARY

Scientists must provide more and better leadership in the debate over how to avoid catastrophe, whether it be through war, or starvation, or plague, or envionmental degradation. Scientists should be vigilant about challenging false perceptions and defending the truth. They should alert our citizenry to major dangers—such as those brought about by weapons of great destructive potential—whether they be nuclear, biological, chemical, or even psychological.

The scientific community needs to provide accurate and understandable analyses of these issues. It is their duty to develop and disseminate factual information by engaging in research, teaching, public outreach, and even lobbying. The scientific community has an obligation to identify and challenge muddled thinking. It is absolutely essential that the quality of public debate be raised well above where it now resides. Some years ago, the American Physical Society created a Panel on Public Affairs. It has sponsored in-depth studies on critical national concerns such as energy and the environment. In this connection, I quote from a letter to the membership from Sid Drell, President of the APS:

"As a result of the great impact of technology on our conditions of life and especially the threat of nuclear holocaust, there has never been a greater need for scientists, and physicists in particular, to be involved with public policy. The society can and should play a constructive and instructive role in informing its members and in supporting and presenting appropriate studies to members of government and to the public. The council and officers of the society have an important trust in protecting a high standard for such studies. The APS directed-energy weapons study stands out as the most pressing item on the society's agenda this year. I hope that by this coming summer the council will be able to release a report which will contribute significantly to the national debate on the strategic defense initiative."

When that report is made public, scientists have an obligation to understand what it says and then make it understandable to the public.

HANDCUFFED BY THE HOUSE

HON. NORMAN D. SHUMWAY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. SHUMWAY. Mr. Speaker, today's Washington Post carried a guest editorial written by John Tower, former chairman of the Senate Armed Services Committee and U.S. Ambassador to the strategic arms reduction talks until earlier this year. The article, "Handcuffed by the House," points out that this body is seriously impeding the effort to secure mutual, equitable and verifiable strategic arms reduction. As the article makes clear, the House has "upset the carefull balance" so necessary to the establishment of foreign policy. I, too, am gravely concerned that we are undermining negotiating efforts, and are also putting our own national security at risk. I commend the article to my colleagues attention.

[The article follows:]

HANDCUFFED BY THE HOUSE

As the U.S. ambassador to the Strategic Arms Reduction Talks, I spent several months engaged in the lengthy and difficult task of trying to secure Soviet agreement to the equitable and verifiable reduction in strategic nuclear arms that the United States seeks. Congress, which appears to be in agreement with the objective, can make this difficult task easier and improve the prospects for success by supporting those programs that enhance our negotiating posture. Or it can make this already difficult task virtually impossible by directly intervening in the process to the extent that the U.S. negotiating posture is seriously undermined.

It is in this light that I found the recent actions of the House of Representatives, which imposed a sweeping series of arms control-related restrictions on U.S. defense programs, deeply disturbing. By imposing these limitations on the United States, the House not only impeded activities that are vital to our national security, but it has seriously undermined the efforts of the U.S. negotiating team.

The House would unilaterally grant to the Soviet Union concessions that the Soviets could not have won at the negotiating table without giving something in return. The Soviets pay close attention to the actions of Congress, and Soviet seriousness in arms control negotiations is directly influenced by the degree of congressional support for the security policy of the administration. The recent actions of the House—rather than expediting progress toward an agreement—will encourage the Soviets to delay and exploit congressional impatience with the slowness of the negotiating process. Predictably, the Soviets will become more adamant in their positions and more strident in their demands.

There are several provisions in the House bill that are particularly disturbing. For instance, the House voted to prohibit the expenditure of any funds to conduct nuclear tests with yields in excess of one kiloton. This provision would virtually eliminate the nuclear testing required to maintain confidence in our nuclear stockpile, to incorporate the most modern safety and security features into our weapons, and to ensure that our military systems—such as satellites—are survivable.

In addition to these adverse military implications, the House provision undercuts U.S. arms control policy regarding nuclear testing at a critical juncture. Our efforts to resolve nuclear testing verification problems took a positive turn recently when the Soviets agreed to participate in a meeting with U.S. technical experts in Geneva to discuss nuclear testing issues. By imposing a unilateral test-ban regime on the United States, the House has reduced any incentive the Soviets might have to approach these discussions in a serious manner.

The House also voted to prohibit the expenditure of any funds in a manner that would cause the United States to exceed the numerical sublimits of the unratified SALT II agreement, while ignoring those provisions that the Soviets are violating. The Reagan administration deserves a great deal of credit for the restraint it exhibited by going the "extra mile" and abiding by the SALT II treaty despite clear Soviet violations. The Soviet Union had ample opportunity to reverse its violations and refused to do so. If the integrity of the arms control process was to be preserved, the administration had little alternative but to halt its voluntary unilateral adherence to SALT II.

In another action the House voted to reduce funding for the president's Strategic Defense Initiative by $850 million below the level contained in the Senate defense bill. In my judgment, the reduction made by the Senate is already too large. Reductions of this magnitude would delay the development of options to improve stability and deterrence in introducing strategic defenses into our deterrent posture, and would undermine U.S. efforts to negotiate reductions in offensive nuclear weapons as we engage in this transition.

The House also adopted a moratorium on testing of the U.S. antisatellite system against objects in space, thus legislating one of the principal Soviet negotiating objectives without creating a framework for mutual and verifiable limitations. Finally, the House voted to reverse the decision of Congress last year to modernize our aging and increasingly ineffective chemical deterrent with binary chemical munitions. This actions eliminates the very incentive that led to the first indications of Soviet seriousness in the decade-long U.S. effort to negotiate a global chemical weapons ban.

Constitutionally, the principal responsibility for the conduct of foreign policy lies with the executive branch. Congress has a legitimate role to play, and in the case of treaty-making the Senate has an explicit responsibility to "advise and consent." However, in its recent actions the House of Representatives has upset the careful balance established in the Constitution. The House has undermined the executive branch's ability to pursue effectively successful arms control outcomes. Congress by its nature is incapable of formulating and implementing a comprehensive, cohesive and consistent long-term arms control policy of its own.

President Reagan has made it clear that he will veto any bill that contains these provisions, as he indeed should. However, eliminating all of these provisions does not solve the underlying problem. If Congress is this divided on fundamental matters of arms control policy, the Soviets will have little reason to agree to any mutual and verifiable arms limitations Instead, they will conduct an intensive public diplomacy campaign aimed at influencing Congress to mandate administration acceptance of Soviet proposals. U.S. defense programs will continue to be unilaterally delayed or constrained, and no price will have to be paid by the Soviets. This situation has grave implications for U.S. arms conrol policy and overall national security, and militates against our efforts to secure ratifiable agreements.—The writer, former chairman of the Senate Armed Services Committee, served as the U.S. ambassador to the Strategic Arms Reduction Talks until resigning this spring.

LUTHERAN MEDICAL CENTER: AWARD WINNING HEALTH CARE

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. SOLARZ. Mr. Speaker, I would like to pay tribute to the Lutheran Medical Center for winning the first Foster G. McGaw Prize for hospital excellence in community service.

For over 100 years, in times of prosperity and despair, Lutheran Medical Center has served the Brooklyn waterfront community. I have witnessed with pride the initiative LMC has shown in recognizing and solving community problems. The McGaw Prize is an affirmation of the hospital's exemplary performance in community service and health care.

While the Sunset Park community LMC services was suffering from effects of a severe decline in shipping and waterfront industry after World War II, LMC took the lead in revitalizing a declining neighborhood and providing services to previously underserved low-income residents. Not content with merely providing excellent health care, they have reached out to a diverse, growing community and addressed the needs of its residents as few public institutions have done.

By establishing the Sunset Park Family Health Center, LMC was able to provide comprehensive care to people unable to gain adequate services elsewhere. The center now serves more than 50,000 active registered patients, and offers programs in mental health, crisis intervention, dental care, and special services for the elderly. The center's efforts do not stop at the hospital door, however. Their community directed programs range from adult education, consumer awareness and CPR training to prenatal care, adolescent health and senior citizen nutrition.

LMC has long held the philosophy that community service is as vital to the community as health care. By sponsoring the Sunset Park Redevelopment Committee, a coalition of 40 neighborhood groups, they spearheaded the drive for neighborhood revitalization and renewal. One of SPRC's major achievements was the rehabilitation of more than 500 once-abandoned housing units, providing modern living space for low- to moderate-income families and individuals. In an age when the push for high priced cooperative and rental units is becoming increasingly severe, LMC has breathed new life into efforts toward affordable housing where it is needed most.

Amid all of their major contributions to the waterfront community, it is through the establishment of their own new facility that LMC's pioneering spirit is most evident. In 1977 they converted an abandoned factory building in one of Sunset Park's most depressed areas into a new facility for the hospital. The new building proved to be a catalyst for improving the entire surrounding area. On the site of the former medical center now stands 168 units of housing for the elderly.

The awarding of the McGaw prize is confirmation that the hospital's efforts have made a significant and enduring impact on the Sunset Park community. It is a mandate for the center to continue its innovative approach to health care and community service. I am proud to be one of the two nominators of Lutheran Medical Center for this award.

Lutheran Medical Center stands as a model of successful and effective health care management and community service. LMC's practice of extending the use of hospital resources for the general well-being of the neighborhood benefits every member of the vital and dynamic community it serves.

OUR OTHER SALVADORAN POLICY

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. GARCIA. Mr. Speaker, our colleague JOE MOAKLEY wrote an article for the Washington Post on the plight of Salvadoran refugees recently. In addition, Post columnist Mary McGrory also wrote an essay in today's paper on this same subject. I am inserting both articles in the RECORD for my colleague's perusal.

Because both articles speak for themselves, I would only add that JOE has my complete support on this issue. I would also. once again, like to commend him for the find job he has been doing on behalf of Central America's refugees.

[From the Washington Post, Sept. 27, 1986]

LET THE SALVADORANS STAY—AND LIVE

It is disturbing and tragic that the plight of Salvadoran refugees has become so politicized that the debate is plagued by half-truth and twisted logic.

A recent Post article ["El Salvador's Economic Refugees," Sept 9] presents a report by the Intergovernmental Committee for Migration that, the State Department argues, proves deportees face no harm if returned to El Salvador. This assertion ignores ICM's own description of its program and the sad reality of violence, which both Salvadoran President Jose Napoleon Duarte and Catholic Archbishop Arturo Rivera y Damas have publicly acknowledged.

ICM is a nonpolitical international organization whose function in El Salvador is that of a reception and counseling service—nothing more. ICM is not a protection or human-rights monitoring organization. To make ICM's report the major reason for its decision to oppose temporary safety for Salvadorans, as the administration has done, is to misrepresent ICM's function and needlessly to politicize an important and worthwhile program.

To make any significant conclusions from the ICM study is absurd. All contacts between ICM and Salvadoran returnees are voluntary on the part of returnees. If a deportee has been threatened or harmed by, for example, a member of the Salvadoran armed forces, is it reasonable to assume that he or she will report these circumstances to ICM—together with a correct name and address knowing that ICM works in cooperation with the government responsible? I do not mean to imply that ICM shares its information with the Salvadoran government; it does not. However, keeping in mind the current state of affairs in El Salvador and the recent history of that country, it is difficult for me to imagine that the average returnee could be anything but suspect of the ICM program.

Furthermore, as ICM's statistics point out, roughly 57 percent of the returnees live in so-clled conflictive zones, where the civil war rages with intensity. It is impossible for ICM or anyone else adequately to assess the ultimate fates of people who return to these areas.

What we do know, however, is that the armed forces and guerrillas still violate the human rights of significant numbers of Salvadoran civilians. Salvadorans still need protection. President Duarte has recently endorsed an ICM program that would resettle displaced Salvadoran in Argentina, Salvadorans who, in Duarte's words, were "victims of the irrational violence which has been imposed upon our people." And in an extraordinary epistle to Congress, the archbishop Rivera y Damas urged members to "redouble your efforts against the deportation of Salvadoran refugees," and specifically endorsed legislation introduced by Sen. Dennis DeConcini and me—that would temporarily halt deportations.

The administration, however, has argued that conditions in El Salvador have calmed and that the clear majority of Salvadorans in the United States are economic migrants. Yet, Census Bureau officials have testified before Congress that the clear majority of Salvadorans "began fleeing their country en masse in April 1980 as the conflict between government troops and opposition forces escalated after the assassination of Catholic Archbishop Oscar Romero." Thus, a correlation can be made between increased Salvadoran migration to the United States and the violence in El Salvador.

For several years, many of us in Congress have urged the Reagan administration to grant Salvadorans extended voluntary departure—which is merely a temporary stay of deportation. This status has been granted to 15 different nationalities in the past 25 years. It currently applies to Poles, Afghans, Ethiopians and Ugandans. The status was extended to these nationalities because of the "violence," "human-rights violations" and "extreme civil strife" that existed in their homelands.

It was not a precondition, for example, that Poles or Afghans produce death lists of returnees who were killed upon arrival to their home countries in order to be granted extended voluntary departure. Yet, the administration has added on this new criterion for Salvadorans, knowing full well that it is virtually impossible to track deportees in a scientific and reliable manner. Why the double standard?

Perhaps the administration has misread the intentions of many of us in Congress—Democrat and Republican alike—who have long been fighting against continued Salvadoran deportations. Our efforts should not be construed as a verdict on U.S. foreign policy toward El Salvador. That is an entirely different debate on which many of us have differing views. Rather, we are simply trying to protect lives.

[From the Washington Post, Sept. 30, 1986]

SANCTUARY ON THE HILL

(By Mary McGrory)

Rep. Joe Moakley (D-Mass.) is, he says, "a bread-and-butter Boston politican who just wants to see that my district is doing well." He is, nonetheless, the author of a controversial bill that would prevent deportation of Central-American refugees "until things calm down in their country."

His move to provide "extended voluntary departure," which would have provided a temporary delay in deportation to refugees from Guatemala, El Salvador and Nicaragua, went down with the immigration bill last week. But he'll be back next year, to try again to "save 500,000 lives."

His one venture into foreign policy came about through a district visit to the Jamaica Plain Post Office. Some locals brought him a group of Salvadorans—"real people who were afraid to go home because they would be killed, incarcerate, maimed, tortured or whatever." He started introducing a bill for their relief three years ago. He has 175 cosponsors, including 20 Republicans.

He has encountered stiff resistance from the administration, which views the refugees as "economic refugees." That's what they said about the Haitian boat people who flooded our shores before the fall of "Baby Doc Duvalier," whose records proved how well-founded were their fears of persecution.

The State Department takes special umbrage because the official line about El Salvador is that it is a democracy reborn where citizens have nothing to fear from death squads. The State Department and Republican think-alikes in Congress believe Moakley is just trying to embarrass them on a policy they have proclaimed a victory.

"Just a fiction," Assistant Secretary of State Elliott Abrams said of accounts that Moakley continues to hear of assassination, disappearances and repression under the regime of President Jose Napoleon Duarte. Of the 2,373 Salvadorans who applied for asylum in 1985, 74 received it.

"They don't want to admit there's anything wrong down there," said Moakley.

An organization called the Intergovernmental Committee for Migration (ICM) published a study that claims a "large majority" of deportees went to the United States because of their "poor economic situation." The report was commissioned and financed by the State Department.

"They paid $250,000 for it," said Moakley, "and it's treated like it was a weather report from Logan Airport. ICM doesn't have the resources to check out the deportees."

Moakley claims the obvious application of the double standard to refugees seeking political asylum. Poles, Afghans, and Ethiopians are not required to document the atrocities in their communist countries. They are automatically admitted and given extended voluntary stays.

Sanctuary Movement members, who gathered over the weekend for their first convention, or as they call it, a "celebration," failed to note the defeat of Moakley's proposal.

What do they have to celebrate? No change in Central-American policy is remotely likely in the next two years. And we are on the point of firing up a conflict in Nicaragua that will produce a new crop of refugees—who will probably be dealt with according to whether they say that the contras or the Sandinistas drove them into exile.

The Reagan administration, nettled by church people who formed their own immigration service, has recently cracked down on the movement, putting members on trial in Texas and Arizona.

Eight of 11 defendants in the Arizona trial were convicted of "criminal conspiracy" after being forbidden to speak at the trial of their religious motivation or of conditions in Central America. They got suspended sentences.

One of them, Sister Darlene Nicgorski of the order of the School Sisters of St. Francis, was here for the Sanctuary Movement gathering and, like the others, rejoiced that the trial had "backfired." When it began, there were about 300 churches and synagogues that proclaimed "sanctuary" for refugees. Today there are 350, and all sorts of respectable, middle-class people are hardily engaged in defying their government and risking jail to care for Central American refugees. They also write stiff letters to the congressmen, which may account for the presence of 20 Republicans, mostly from the, Midwest, on Moakley's bill.

Moakley admires the Sanctuary Movement, but steers clear of it for fear of alienating congressional supporters who are made nervous by civil disobedience.

Sister Darlene, 41, put her first foot on the path that led to court when she went to start a preschool in Guatemala. She fled when her pastor was killed. She says conditions have not improved under a civilian government. She is unrepentant. She has told her probation officer she will continue her ministry.

A TRIBUTE TO THE FOUNDER OF THE HAMBURG SUN: RICHARD C. ALLEN

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. KEMP. Mr. Speaker, I rise today to pay tribute to a good friend, the founder and editor of my hometown paper, the Hamburg Sun, Richard C. Allen. On November 1, Dick will retire after 41 illustrious and productive years at the helm of our Hamburg Sun. His strong leadership, objectivity, and sincerity will be sorely missed, but his lifelong work will continue to flourish. Anyone who has had the pleasure of meeting Dick cannot help but be impressed by his compassion, optimism, and strong sense of commitment to our community and our Nation.

It has been easy to see Dick Allen's guiding hand in every article written and every editorial printed in the Sun. He and the Sun have endeared themselves to thousands of western New Yorkers by writing and caring about the people of western New York. Dick wasn't satisfied with just the facts; although he always made accuracy the rule, he got to know the person he was writing about. His sense of optimism and ebullient hope for the future came through in every editorial.

Having known him for years, I am sure that he is somewhat embarrassed by all this hoopla and excitement but no one is more deserving of recognition and praise than Dick Allen. He has selflessly devoted his life to his work and community, turning down what some might consider greater glory and richer rewards, to remain in the village he loves so very, very much. His words and wisdom will be missed but his work and hopes will carry on. Dick's hard work and quiet strength are an inspiration to all who work in public service.

I urge my colleagues in the House to read the following article from the Sun, detailing his efforts, achievements and comments of highly respected leaders.

As a Congressman from Hamburg, NY, I'm proud to say that while we will miss Dick Allen, we know his legacy and leadership will live on.

[From the Sun (Hamburg, NY), Sept. 18, 1986]

COMMITMENT TO QUALITY HIGHLIGHTS 41-YEAR CAREER FOR SUN EDITOR

PLANS RETIREMENT EFFECTIVE NOVEMBER 1

Some 41 years ago, when Richard Allen decided to start a newspaper in Hamburg, his first priority was naturally picking a name.

He settled on The Sun. Not because he knew he would be a guiding light in the South Towns for all these years. Not because it was a traditional or classic newspaper name. No, it became The Sun for one reason. "It was short," Dick Allen will tell you.

His tenure in Hamburg, spawned October 11, 1945, was not. It was long, illustrious, the kind few people ever enjoy. The kind few people, perhaps, ever deserve. Dick Allen deserved it.

It will come to an end November 1. Richard C. Allen, the founder and only editor The Sun has ever known, has announced his retirement effective that date. Also helping found the paper were his late wife, Helen Faux Allen, and her sister, Anna Faux White.

A retirement in physical stature only. The long standing philosophies of sound community journalism—the dedication, commitment to quality, the concern for South Towners everywhere—will remain with the paper forever. It is his wish. It is the paper's intent.

About the last 41 years? "It's been fun," he says.

That statement is very reflective. Reflective of the man behind the typewriter, of the man whose steadying influence has been behind each and every story The Sun has ever published.

It is a sincere, from-the-heart reaction. Those are the principles on which The Sun's foundation have been built. They have never changed.

"What stands out the most about Dick Allen: he was always checking to see if things were right. he's more accurate than anyone I have ever dealt with.

"He always gave good balance coverage. His stories were always thoughtful and entirely above board. He's a professional.

"He always took time to find out. He'd call up and ask what something was all about and why we did it."—Leo Fallon Former Hamburg Supervision.

It's people that have always mattered to Dick Allen. There were always meetings, society events, sports events to be covered each week. But he always remembers that it is people who make up these events.

Never too busy for a friendly chat, even on deadline day, Dick Allen is known for his compassion, thoughtfulness, and perhaps most important of all, his insight into human nature.

"It's a vanity publication," Dick would often say about The Sun. He knew that people would buy his product if their names or picture might be in it.

But they were never just names or faces on the page. Dick Allen often took time to get to know the person behind the story. It was that personal touch which made the paper special. It is his love of the area and its people which make him special.

"Dick Allen has been heard to say on occasion that The Sun is neutral and supports no particular religion, but over the years his Easter editorials have been splendid examples of testimonies expressing man's hope, his excitement about life and its beauty.

This optimism expressed in his writing and in other editorial actions of his are reasons why Dick Allen has been a booster of so many groups.

"Churches, fraternal organizations, charities, service clubs and associations, recreational leagues, educational institutions (public and private) have had a determined friend in Mr. Allen."—Dr. Carmen A. Notaro, Executive Vice President, Hilbert College.

Dick Allen, believe it or not, never intended to run a newspaper. It wasn't until after a variety of public relations jobs, and some serious thought to a self-professed "dream-job," that Dick decided the Hamburg Sun should be born.

A Western New York native, Dick Allen was born in Williamsville before finally ending up in Hamburg where he attended high school. His local roots were implanted early.

He went from high school to accept a working public relations scholarship to Hobart College, before moving on to become publicity director at Juniata College in Huntington, Pa.

During World War II, he served as an Army Air Corps newspaper editor at Jefferson Barracks, Missouri.

Dick Allen went on to serve as the Albany press aide to former State Senator John H. Cooke. He has also served as director of publicity for the Buffalo and Erie County United War Fund, and spent 18 years as director of public relations for the Erie County Fair.

A charter member of the Sigma Delta Chi journalism fraternity, Mr. Allen has been a member of the Hamburg Rotary, Hamburg American Legion, Hamburg Elks and a former vestryman of the Trinity Episcopal Church.

He was a member of the Erie County Charter Review Commission, a member of the Media Review Board for Erie Community College, been honored with dozens of awards including proclamations from both Hamburg Village and Town governments.

He was honored with the Hilbert College Founders Medal, the highest award given by the local institution, and just this year was nominated by both the Frontier and Hamburg school districts for a statewide excellence in education reporting award.

Ironically, his decision to start The Sun came "not more than a half hour," before his phone rang back in 1945, offering Dick a position as national public relations director for a prestigious medical organization.

Acceptance of that job, his "dream job," would mean a move to Chicago. That was not acceptable. His heart was in Hamburg.

"The very first thing that comes right to mind is Dick Allen and his service. I believe his first love is his community.

"All politicians come and go, but Dick Allen was always there for the betterment of Hamburg as his priority. He talks about it as our community.

"If we (government) didn't have an objective voice like his, our efforts would be in vain. We would all be in trouble."—Jack Quinn, Hamburg Town Supervisor.

His commitment to Hamburg has never been a mystery. "We believe that every typical American town should have a newspaper that reports the activities of the community, one's neighbors, one's friends," he wrote on October 1, 1945 in a letter sent to Hamburg residents introducing The Sun.

"Hamburg is newsworthy, Hamburg people are vital, active, people," he wrote on Oct. 11, 1945 in the Sun's Stewardship published prominently on Vol. 1, No. 1 of The Sun. "They are sound businessmen, sound homemakers, sound families. Telling of their activities is a privilege."

It has been Hamburg's privilege to have a man like Richard Allen. By all those individuals, groups and organizations he touched, he will be missed.

Every Thursday is Sun Day is the paper's slogan. The Sun shines brightly as a beacon in the South Towns sky, thanks to Dick Allen.

"He has become an institution in Hamburg. I define that as someone who has a lasting impact on the community, who is well thought of and respected. I can't think of anyone else right now that fits that category other than Dick.

"I cherish my weekly meetings with him. You leave a little of yourself with everyone you meet. Dick has left a lot with me.

"I value my friendship with him. He is a super guy. Dick Allen will never be replaced."—Richard Hansen, Hamburg Village Mayor.

REPRESENTATIVE FLORIO: A NATIONAL LEADER ON ENVIRONMENTAL POLICY

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. RODINO. Mr. Speaker, I commend to my colleagues an excellent article from the Newark Star-Ledger about my good friend from New Jersey, [Mr. FLORIO].

Recognized as one of the key formulators of environmental legislation in the House of Representatives, Mr. FLORIO heads the task force on the environment for the Democratic Policy Commission. He recently issued a report of great significance for our Nation's environmental policy.

The Star-Ledger article, which summarizes the Florio task force report, follows:

[From The Newark (NJ) Star-Ledger, Aug. 15, 1986]

Florio Task Force Sees Environmental Laxity

(By J. Scott Orr)

Washington.—A special Democratic task force on the environment yesterday released a report charging the Reagan Administration with ignoring wideespread public interest in strong environmental laws and enforcement.

The report was formally presented to the Democratic Policy Commission by Rep. James Florio (D-1st Dist.), the task force's chairman. Joining in unveiling the report was Carl Van Horn, a professor with the Eagleton Institute of Politics at Rutgers University.

"We differ with this Administration," Florio said, "in that we do not accept the philosophy that government should not and cannot guarantee that our environment will be available to our children."

"There has been a history of neglect (of the environment) over the last six years of the Reagan Administration," Van Horn added during a morning Capitol Hill news conference.

Sen. George Mitchell (D-Maine), another member of the task force, added, "In five-and-a-half years the President has failed to enforce our laws . . . and has tried repeatedly, in fact, to undermine and repeal these laws."

Mitchell maintained that the Administration, and not the Democratic Policy Commission, is responsible for politicizing the environment—"until Ronald Reagan became President the environment was not a partisan issue," he said.

The report itself was equally harsh on the Administration.

"The current Administration challenges the need for environmental action by propagating the false notion that our society must choose between economic development and preservation of the environment—that we are unable to have both," the report said.

"We are asked (by the Administration) to believe that we cannot afford to eliminate carcinogens from our gross national product, that we cannot afford to clean up asbestos in our schools, that we cannot afford to maintain our national parks—all because as the richest nation on earth the 'costs' of these actions are too high," it continued.

Florio and Van Horn pointed to the report as an indication of the Democratic party's desire to identify itself as the party of the environment.

"There is no issue where there is as great a differentiation between the Republicans and the Democrats as the environment," Florio said.

The report, which amounts to a recitation of the charges made repeatedly against the Administration by environmentalists inside and outside of Congress, contains a list of areas in need of immediate action.

It calls for action to rid schools of asbestos and the cleaning up of hundreds of hazardous waste sites identified for action under the Environmental Protection Agency's (EPA) superfund cleanup program.

It urges action to force cities to comply with the air quality standards contained in the Clean Air Act and further steps to protect the nation's water resources.

In addition, the report cites the need for community right-to-know legislation to make local officials aware of what chemicals are being used and produced within their communities.

The report also calls for the use of new technologies to treat hazardous chemical wastes, protection of groundwater, regulation of pesticides by the EPA, elimination of sources of acid rain, preservation of wetlands and protection of public lands and wilderness.

Van Horn said the report represents a consensus among divergent Democratic factions, including members of Congress, state officials environmentalists and businessmen.

"We reached agreement on a consensus and that was a little surprising when you consider that this task force was made up of everyone from the Sierra Club to big business," Van Horn said.

THE TAX BILL: PLUSES AND MINUSES

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. HAMILTON. Mr. Speaker, I am inserting my Washington report for Wednesday, October 1, 1986, into the CONGRESSIONAL RECORD:

The Tax Bill: Pluses and Minuses

Last week, the House of Representatives approved the conference agreement on the most comprehensive tax reform package ever. The 925-page bill contains hundreds of significant tax changes affecting both individuals and businesses. No amendments were allowed on the floor, and there was no opportunity to vote on specific provisions. Plainly such a huge bill with its variety and mix of issues as the wrong way to legislate, but it may be the only way in this period of divided government. I voted in favor of the bill, which must now be approved by the Senate and signed by the President before it becomes law.

It is clear that the tax code has run into major problems in recent years. Millionaires and corporations have avoided paying taxes, while the burden on middle- and lower-income taxpayers has increased; people with identical incomes can pay vastly different amounts in taxes; tax cheating has increased sharply; and billions have been funneled into unproductive tax shelters. Reform of the tax code, which President Carter called a "disgrace to the human race", is long overdue. It is easy to find specific objections to any bill as comprehensive as this, but in my view, the bill's many good points outweigh its shortcomings.

The bill has some stunning achievements. Its major accomplishment is bringing more fairness to the federal tax code. Fairness is what started this bill and what sustained it through two years of legislative struggles. The bill ends most of the major tax loopholes and shelters, and lessens the future value of tax-avoidance schemes because of the lower maximum tax rates and a stronger minimum tax. It reduces irrational disparities between the tax treatment of various industries and investments, and should prompt investors to focus more on productivity and returns in the marketplace than on the tax code. The bill raises corporate taxes by $120 billion and lowers individual taxes by the same amount, reversing the shift of the tax burden in recent years from corporations to individuals. By ending opportunities for legalized tax avoidance and increasing tax fairness, the bill should enhance public confidence in the income tax system.

The bill provides a tax cut to more than 80 percent of all taxpayers. It reduces tax rates to their lowest levels in decades and nearly doubles the personal exemption. At the same time, the bill retains tax benefits important to average taxpayers, including the tax credit for child care, and deductions for mortgage interest, charitable contributions (for itemizers), and state and local property and income taxes. The deduction for Individual Retirement Accounts, though restricted, survives. The bill achieves modest tax simplification by limiting minor tax deductions and increasing the standard deduction. Perhaps most importantly, the bill removes about 6 million of the working poor from the tax rolls.

On the other hand, there are major objections to the tax reform package. One is its impact on the economy. In the long run the tax bill should help boost economic growth, by cutting tax rates and reducing tax code distortions of investment decisions. Yet in the near term, it could have a negative impact, with the increase in overall business taxation, the cutbacks in the investment tax credit and accelerated depreciation, and the uncertainties of the transition to a new tax code.

Another concern is the tax relief it provides for upper-income taxpayers. Although the bill cuts the top tax rate from 50 percent to 28 percent, few wealthy individuals have had effective tax rates near 50 percent because of their use of various tax preferences. The new system curbs tax avoidance by the rich, and will actually be more progressive than the tax system it replaces. The share of taxes paid by those with incomes over $75,000 increases from 42 percent to 44 percent. Moreover, in percentage terms the average tax cut is larger at middle-income levels than for the wealthy. On the other hand, in dollar terms the reduction is larger for higher-income groups. For example, a 22 percent tax cut going to those making $10,000-20,000 means an average tax savings of $210, while a 2.2 percent cut going to those with incomes $100,000-200,000 means an average savings of $590. Moreover, some moderate-income persons who use several of the deductions targeted for repeal may actually see their tax payments going up.

There are other drawbacks to the package: By being "revenue neutral" it does nothing to reduce the huge federal deficit. Businesses and individuals will have difficulty adjusting to the sheer volume of changes made. Specific sectors could be hit by the cumulative effect of several changes. For example, reduced incentives for charitable contributions will hurt universities as will limits on private-purpose tax-exempt bonds. In exchange for the lower individual tax rates, taxpayers will lose the two-earner "marriage penalty" deduction and the deduction for sales tax and consumer interest, and face sharp limits on deductions for medical expenses and work-related costs. Tax credits for individual contributions to political campaigns—designed to balance the power of special interest PACs—will be repealed. Some changes are unfairly retroactive, such as the repeal of the recovery rules for public employee pensions effective July 1, 1986. Other objections are that oil and gas tax shelters and business entertainment deductions are not cut back enough, and that generous "transition rules" give tax breaks to specific companies as political favors.

Yet despite my misgivings about various aspects of the tax bill, overall I felt that its pluses outweighed its minuses. It helps ensure that everyone pays their fair share of taxes, eliminates income taxes for many of the working poor, simplifies tax returns for most taxpayers, closes numerous tax loopholes, reduces the role of tax planning in the conduct of business and personal affairs, and encourages investment on the basis of productivity instead of tax shelter.

The basic features of the bill must be evaluated as trade-offs. No Member was happy with every provision. Yet the floor procedures that prevented Members from revising unpopular provisions also prevented special interests from unravelling the entire package. The proper basis of comparison is between the bill and present law. The overall tax package may not be ideal, but it will be better tax policy than we now have.

CHANGES IN TODAY'S WORKPLACE

HON. PATRICIA SCHROEDER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mrs. SCHROEDER. Mr. Speaker, I would like to share with my colleagues an article about the tremendous changes taking place in today's workplace and what a few pacesetting companies are doing to help families manage both work and family. Unfortunately, these companies are the exception to the rule: most families today are the victims of ad hoc programs and policies that produce uneven opportunities for parents needing to take leave to care for their children.

Mr. Clay and I introduced legislation, the Family and Medical Leave Act, that would provide a minimum amount of protection for all working parents. This article underscores the need for a national policy now.

Business Starts Tailoring Itself To Suit Working Women

A few years ago, when the number of women at Merck & Co. approached one-third of all employees, the company decided to update its personnel policies. In 1980 the drug maker helped to open a child-care center near its Rahway (N.J.) headquarters. In 1981 it began letting employees start work at any point from 7 a.m. to 9:30 a.m.—to give parents more flexibility. Two years later it started allowing some parents to work part-time or at home after maternity leave. In 1984, Merck funded a major study on how employees balance work and family life. And last year it created workshops and a counseling program to help parents cope with the double strain of job and family.

"Merck has recognized that lifestyles and family patterns have changed significantly over recent years," says Arthur F. Strohmer, executive director for human resources. "We believe the corporation can benefit from helping employees balance the demands of the family and the demands of the workplace."

PACESETTERS

It's a nascent movement, but the feminization of the work force is starting to transform the way employers treat employees. Companies are realizing that nearly half of all workers today are women, up from 33% only 20 years ago. It's also obvious that these female employees—80% of whom earn less than $19,000 a year mainly in service jobs—have different needs than do male workers. Pacesetting companies such as American Telephone & Telegraph Co. and BankAmerica Corp. are tackling day-care shortages, putting in new or extended maternity and parental leave, and revamping fringe benefits. New promotion systems make it easier for women to raise children without ruining their careers. More companies pay women the same as men for so-called comparable jobs. Others are twisting the 40-hour workweek into multiple configurations. Nearly every change affects men, too, both husbands and fellow workers.

Like most major social changes, the reorientation of the workplace to women's needs is happening with distressing slowness: It may take decades for the majority of employers to change their view of women as second-class workers. But the explanations companies give for the newest experiments indicate that, ultimately, most employers will have little choice but to adapt. Adding to pressures from unions and women's groups is the primary motivation: self-interest. Two-thirds of the 15 million new entrants into the job market through 1995 will be women, according to the Bureau of Labor Statistics (charts), and in terms of sheer numbers, they will have more influence than ever before.

If labor shortages occur in the 1990s, as some economists predict, women will be in high demand, and only companies with the best policies will get the best workers. 'What's driving companies is competition in the labor market," says Robert L. Shaughnessy, vice-president for personnel at AT&T. "As companies sell themselves to prospective employees, women will look at employers in a better light if they meet their needs."

Perhaps the most pressing problem for women workers is the acute shortage of day care (page 52). Experts say that most parents who work must piece together two or three separate arrangements for child care. Although companies have barely touched the overall situation, they're beginning to try. The Conference Board estimates that 2,500 companies provided some form of child-care aid in 1985, up from 600 in 1982. About 150 have on-site centers.

Campbell Soup Co. started an on-site center at its Camden (N.J.) headquarters in 1983. "It's convenient and includes breakfast, so I don't have to cook in the morning," says Lisa A. Mooney, a credit specialist in Campbell's accounts-receivable department, who has a three year-old girl and a two-year-old boy. "As much as I'd rather be home with them myself I didn't have much choice. If we wanted to eat, I had to keep working." The center cost only about $40 a week per child. But there's room for only 130 kids, and 80 more are waiting to get in.

TRIAL RUN

Because on-site centers are costly and raise questions about a company's legal liability, most employers think it's better to stimulate the community supply of day care. In 1984, BofA put up $100,000 and gathered 23 participants, including other employers and foundations, that spent $700,000 on a pilot program in California to create 1,000 new day-care slots by recruiting and training individuals to be child-care providers. BofA expects the project to continue in 1987 on a $1.1 million budget. Similarly, AT&T says it will start several experiments this year, from on-site centers to giving employees a building in which they can start their own facility.

International Business Machines Corp. went even further. In 1984 it spent $1 million to set up what may be the first nationwide corporate service for referring employees to community child care. With a budget estimated by outsiders to be $2 million a year, the service has referred 16,000 children. IBM also has given money to a nonprofit group that has trained 5,000 new providers to care for 13,000 children. "The [rising] number of women among our employees is leading us to consider things that didn't seem important before," says Jack Carter, IBM's director of employee services.

Employers also are starting to look at problems that day care doesn't always handle. In 1985 companies such as Dayton Hudson Corp. and First Bank System Inc. in Minneapolis began contributing to a company called Chicken Soup, which cares for ill children so that their parents can work rather than stay at home. A nurse and a teacher are on duty from 6 a.m. to 6 p.m. In 1983, 3M Co. gave money to a Minneapolis YMCA so it could expand the hours of a summer center for school children. Says Cheryl Ann Smith, a secretary at 3M: "I dropped off my 11-year-old daughter in the morning. My husband picked her up at five, and we didn't have to worry all day. It made life so much easier and cost half the price of private day care."

Maternity leave is another issue where some movement is visible. No more than 40% of working women have any form of maternity leave—including those who use sick and vacation leave. Although most large corporations provide some sort of leave, many don't guarantee that a woman will get her job back if she's off more than six to eight weeks. But according to Catalyst, a New York women's organization, about 35% of 400 major companies it surveyed have increased the length of paid maternity leave in the past five years.

DEMOGRAPHICS

There's no common approach. Lotus Development Corp. in 1985 began offering up to four weeks of paid time off to adoptive parents—men or women. Three years ago, BofA began to reimburse some adoption expenses up to $2,000. In 1981, Hewlett-Packard Co. said employees could combine sick leave and annual leave and use it for maternity leave. "I left July 1 on the regular maternity leave," says Gorete Araujo, a production worker in HP's Cupertino (Calif.) plant. "After that was used up, I took about two more weeks of sick leave and vacation leave I had saved."

Business is fighting proposed federal legislation requiring up to 18 weeks of unpaid maternity leave for both men and women, but blue-ribbon panels supported by big companies are calling for even better benefits. One group, which includes top executives from International Paper Co. and Warner Communications Inc., is proposing six months of unpaid leave. The pressure is demographics: By 1995, 80% of women aged 25 to 44 will be working, up from 50% in 1970. And 90% of them will be mothers.

Besides trying to make life easier for women workers, companies are concerned with the productivity lost when employees deal with family problems at work. A recent study by John P. Fernandez, a manager of personnel services at AT&T, found that 77% of women and 73% of men handle family issues on the job. One tactic for preventing this is to give parents more flexibility. A 1979 pilot program that let federal workers vary their hours was made permanent last year. Employees can pick their starting and quitting times within a range of two hours. Or they can work longer hours one day and shorter hours the next. Up to 500,000 employees do this each year.

Companies have been trying similar experiments: Smith Kline Beckman Corp. and Transamerica Occidental Life Insurance Co. have had flexible work schedules since the mid-1970s. IBM and Merck started programs in 1981 that require employees to be at work during core business hours—usually 10 a.m. to 3 p.m.—but permit flexibility during the rest of the day.

In 1983, Shaklee Corp. began to let employees negotiate with their supervisor to reduce their workweek—with a commensurate cut in pay—while retaining seniority status and most benefits. A written agreement spells out how many hours per week the employee will work and how long the arrangement will last. In recent years, Control Data, Merck, and Continental Illinois National Bank have put computer terminals in some employees' homes so they can work while caring for their kids. This year, First Bank in Minneapolis began letting some employees use sick leave to stay home with an ill child.

But flexibility is often granted grudgingly—and there are usually drawbacks. Flexible work provisions in a new contract reached in July between the state of Massachusetts and the Service Employees International Union let Rhonda L. Black, a state social worker in Boston, share her job with another mother. "I wanted to spend time at home with my daughter after she was born," Black says. But she adds: "I'm only getting $11,000, and we [she and the other worker] share medical and dental benefits. They also made it clear they were going out of their way for me."

Because maternity leave often disrupts women's careers, some employers are beginning to change seniority and promotion systems. Most career ladders are designed for people who don't take time off, so women who leave to bear children lose their places in the promotion track and lose seniority needed for advancement. This often makes it tough to move up from pink-collar jobs.

PROTECTING INVESTMENT

Around 1980, when BofA saw that too few women were being promoted from teller, it took a close look at the roadblocks between entry-level and mid-level positions. After this review, the company began to base seniority on cumulative service rather than consecutive employment. This means that women, who comprise 72% of the bank's work force, can have children and still advance. "We invest so much in training, and we wanted to reduce the turnover of women to protect our investment," says Robert N. Beck, BofA's executive vice-president for human resources. In 1980, 7.2% of the bank's vice-presidents were women; today 22% of them are.

But even the most active employers have only scratched the surface: Most new female employees still land jobs such as secretary, teacher, nurse, or clerk. Although some have scored highly visible advances in law and medicine, this movement has been limited primarily to higher-paid professions that are out of reach for most female workers. Almost half of all women still work on job categories that are 80% or more female. And 70% of all men still hold jobs in fields that at least 80% male.

Many women's groups believe that it is as important to raise the pay of traditionally female jobs as it is to get women into "male" jobs. This is beginning to happen: Northwestern Bell Telepone Co. recently devised a job evaluation system with the Communications Workers of America that reflects comparable worth—the idea that women should be paid the same as men for comparable jobs as well as for the same jobs (BW—Apr. 28). Control Data and IBM have quietly been raising the pay of some women who in statistical studies looked as if they were earning less than company norms. And in the past several years a few cities and 12 states have begun to implement comparable worth programs.

FLEXIBILITY

But it's unclear when women as a group will start to make real progress on pay. Although the average female worker has 12.65 years of schooling, while males have 12.57, women's pay for full-time work averages only $15,600 a year—compared with $24,200 for men. Many economists believe labor shortages will force companies to push up women's wages faster than men's. But some predict the wage spread will actually increase: "More low-paid women entering the economy will keep the gap from closing in the next 10 years," says George P. Sape of Organization Resources Counselors, a management consultant firm. "It may even widen in the next five."

In the meantime, employers are tailoring health, life, and retirement insurance to the changing work force. Instead of offering the same benefits to everybody, an increasing number of companies are offering flexible packages that let employees choose what they need. A single mother might pick child care and high medical coverage, while an older man might choose to rely on his spouse's medical plan and boost his take-home pay. More than 500 companies have such plans, compared with less than 100 in 1983. New England Medical Center's new system permits workers to pick a mix of benefits. They can even take extra health insurance as wages.

For all that's beginning to happen, it may be years before women enjoy a role equal to that of men in the economy. Overcoming the tradition that a woman's primary place is at home with the kids is made more complicated by the cost and extra effort employers must exert to do it. But leading companies have started the process—and the work place may never be the same.

ACTION NEEDED TO SAVE REVENUE SHARING

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. MAZZOLI. Mr. Speaker, last week the House had the opportunity to renew an efficient, vital, and effective program that is slated for expiration this week: the General Revenue Sharing Program [GRS].

I was disappointed that the House Rules Committee removed the $3.4 billion 1-year extension for GRS included in the continuing resolution by the House Appropriations Committee, and that we were denied the opportunity to vote on this important issue on the floor of the House.

I am equally dismayed that the House does not appear to have sufficient time left in the session to vote on H.R. 1400, legislation which I have cosponsored and which has been reported by the Government Operations Committee, which would extend GRS for 3 years.

GRS is an efficient, cost-effective, and flexible program which should be reauthorized and funded. Less than 2 percent of revenue sharing costs go for administration of the program. It carries no bloated, top-heavy bureaucracy. It is lean and trim and delivers dollars to local officials with the least possible overhead and with the maximum possible flexibility and latitude in meeting local needs.

Mr. Speaker, 2 weeks ago the House approved a massive antidrug initiative which included a much-needed package of assistance to State and local governments to aid in the fight against the distribution and use of illegal drugs.

And, yet at the same time we are eliminating an important—and efficient—Federal program which has provided assistance to local governments, much of which has been used for law enforcement efforts as well as fire protection, sanitation, mass transit, and other appropriate and necessary public services.

Revenue sharing is a strong combination of an equitable revenue base and an efficient delivery system. This is a no-frills, plain-pipe-rack kind of program. And, parenthetically, that has hurt it when compared to other Federal programs which provide photo opportunities, ribbon cuttings, and brass bands.

Last week's action may have been our last shot this session to save revenue sharing. I hope not, although it is already too late for our local jurisdictions to be able to plan adequately in their budgeting. Undoubtedly the loss of these important funds is already being felt in the 39,000 large and small localities around the Nation which receive revenue-sharing funding.

I intend to continue the fight for revenue sharing in the remaining weeks that are left to us and urge my colleagues to act quickly to extend this vital and necessary program.

TOURO COLLEGE—JACOB D. FUCHSBERG LAW CENTER

HON. ROBERT J. MRAZEK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. MRAZEK. Mr. Speaker, I rise to commend the Touro College Jacob D. Fuchsberg Law Center for beginning its fifth year of classes at its campus in Huntington, NY—a community I'm privileged to represent in Congress. Under the distinguished leadership of Judge Jacob Fuchsberg, President Bernard Lander, and Dean Howard Glickstein, I know that the Touro Law Center will soon become a most important center for the study of law in our country.

The Touro School of Law admitted its first entering class in the fall of 1980 at the principal campus of the college in Manhattan. Because of the need for more space for the expanding classes and rapidly developing library, a branch campus in Huntington was established in 1982. Today, all classes in the J.D. program are located in Huntington. In establishing the school of law, the trustees of Touro College directed that it be guided by two fundamental principles. First, it should be a relatively small school at the highest intellectual level. Second, the work of the students should be rigorous and jurisprudential in nature. The latter emphasizes the essential need for a grounding in the theory of law, if one is to be a professional rather than a reciter of dated rules.

Today, as the Touro Law Center begins its fifth year on Long Island, it is one of the fastest growing law schools in America; and one of only two law schools under Jewish communal auspices in the United States.

Mr. Speaker, I am especially pleased to congratulate Judge Jacob D. Fuchsberg, to whom the Touro Law Center is dedicated. Judge Fuchsberg received national acclaim for the judgments and opinions he rendered while on the New York State Court of Appeals.

Judge Fuchsberg is a former president of both the Association of Trial Lawyers of America and the New York State Trial Lawyers Association. He is a founder of the National Institute of Trial Advocacy, as well. Throughout his busy career, Judge Fuchsberg has devoted himself to a wide range of diverse interests including the American Jewish Congress, New York State Knights of Pythias, UJA-Federation, St. Agnes Hospital, National Council of Crime and Delinquency, 92d Street "Y" and so many others.

The remarkable progress that the Touro College and its school of law have made in recent years is due in large measure to the guidance, counsel and spirit of Judge Jacob D. Fuchsberg. The administrators, faculty, alumni and students of the law center have made vital contributions to the advancement of the law center. I am privileged, therefore, to represent the Touro College Jacob D. Fuchsberg Law Center in the House of Representatives; and I wish the entire Touro Law Center community well as it continues to achieve new heights of prestige, importance and growth.

CHILD SURVIVAL FUND

HON. SALA BURTON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mrs. BURTON of California. Mr. Speaker, I am submitting for our colleagues examination a recent editorial from the San Francisco Examiner urging Congress to provide adequate funding for the Child Survival Fund. This fund is devoted to the primary health care needs of children in developing nations. I urge my colleagues to read the editorial and learn how we may save the lives of millions of children.

The article follows:

[From the San Francisco Examiner, Sept. 9, 1986]

WE CAN SAVE THOSE CHILDREN

Third world nations have made an impressive start toward meeting the World Health Organization's ambitious goal of immunizing all the world's children against six major diseases by 1990. The United States has contributed generously to the immunization effort; and it will have the chance to do even better when Congress considers augmenting the Child Survival Fund.

The fund was created in 1985 to help provide medical aid in the form of oral rehydration therapy, immunization and health education programs in the countries where they are needed most. The monies, administered by the U.S. Agency for International Development, are given to UNICEF and private aid organizations, and distributed bilaterally through the agency itself.

The aim of the fund is to help meet the most elementary health needs of the world's children. The World Health Organization estimates that 3.5 million children die annually from six diseases that can be prevented by vaccination (measles, tetanus, whooping cough, polio, diphtheria and tuberculosis). The complete cost of a full course of immunizations is $5 per child, so the goal is not impossible—if the money can be found.

Both houses of Congress have voted to continue support for the Child Survival Fund, authorizing (though not yet appropriating) a level of $75 million. House committee action would create a $50 million fund; Rep. Tony Hall, D-Ohio, has said he intends to introduce an amendment to the foreign aid bill to transfer about $25 million more from the Export-Import Bank to bring the fund up to the authorized level.

Gramm-Rudman is forcing many difficult budgetary choices, but it ought not to persuade Congress to eliminate life-saving charitable donations. The Child Survival Fund can perform sweeping good works for a relatively small amount of money. Increasing the fund should be a top congressional priority.

FARM CRISIS CURE

HON. NORMAN D. SHUMWAY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. SHUMWAY. Mr. Speaker, the 99th Congress has spent much time and effort attending to the major problems affecting American agriculture. In my view, an overbearing amount of this energy has been spent dealing with the symptomatic versus the causative aspects of the deep rooted ailments in agriculture today.

For the benefit of my colleagues, I would like to bring to their attention an editorial published in the September 15, 1986, issue of Business Week. The editorial correctly outlines the enormous costs of our present symptom-oriented policy approach to agriculture's health problems and the potential dangers of not finding a long-term cure for the disease that will bleed taxpayers to death.

THE ONLY CURE FOR THE FARM CRISIS

It's easy to tell when the more or less permanent crisis of U.S. farming turns really serious: when it threatens Farm Belt politicians just before an election. That's the situation now, and it explains Ronald Reagan's incredible decision to subsidize grain sales to "the evil empire," the Soviet Union. It also explains why Senator Bob Dole is pushing hard to expand export subsidies. Finally, it explains why the federal government is not likely to take the one step necessary to cure farming's fundamental problems.

That one step, as practically everybody knows, is to start dismantling what a Heritage Foundation study calls the "ineffective, contradictory, and costly federal agricultural policies" that "have long assumed that farm prices and production must be controlled by the federal government rather than the normal forces of supply and demand." Payments aimed at keeping farmers' income high, for example, encourage individuals to enter or remain in farming and produce more commodities, furthering lowering prices and increasing the need for more federal payments. The farm bill passed last December cut commodity price supports, which was useful, but it also guaranteed farm income through direct-income subsidies. Estimates of the bill's cost to American taxpayers from now to 1990 have risen from $59 billion to as much as $100 billion.

Supports also price U.S. farm products out of world markets and are one reason why exports have plummeted, exacerbating both farm problems and the trade deficit. So what is Congress' answer? An export subsidy to counteract the support subsidy. This has infuriated such grain producers as Canada and Australia and threatened an agricultural trade war with the European Community, which, it must be said, could teach even the U.S. about farm subsidies.

As farming's problems worsen, the pressure steps up to protect it even more. Meantime, farm surpluses pile up, and the costs of a demonstrably failed farm program mount. With budget and trade deficits soaring, the one hope is that millions of taxpayers outside the Farm Belt may decide that enough is enough.

CAMILLE LaCASCIO: A GOOD LIFE, A GREAT LOSS

HON. STEPHEN J. SOLARZ

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. SOLARZ. Mr. Speaker, I would like to pay tribute to Camille LaCascio, a member of my district staff in Brooklyn from May 1985 until her most untimely and unfortunate death in July 1986.

During the time we worked together, I came to have the greatest respect and affection for Camille. Her character and competence shone through every activity she undertook and she was, by far, the most effective secretary my district office ever had.

Camille was extraordinarily compassionate in both her personal and professional interactions with people. She always went the extra mile for her coworkers and for constituents. She had a razor-sharp intelligence, a keen intuition and extraordinary perceptiveness. These qualities enabled her to make an enormous contribution not only to the work of my office but to the people of New York's 13th Congressional District.

In addition to her accomplishments at work, Camille achieved much as a person. She succeeded as a single parent long before sociologists and journalists even coined the term. By age 42, she had already raised three bright, hard-working and devoted daughters, and she was actively involved in planning the weddings of the two oldest ones.

I spoke with Camille a few weeks before her death, and found her genuinely determined to conquer her illness. She was looking forward to her daughter Carolyn's wedding in October and to returning to work on at least a part-time basis.

As fate would have it, she was not able to overcome the disease. But even if she can no longer be with us in person, she will always be with us in spirit. She has left a legacy of pride for her children Carolyn, Joanne and Barbara, for her father Charles, and for her close friend and associate Joe Fratantoni.

IN RECOGNITION OF THE ASIAN AMERICAN VOTERS COALITION

HON. ROBERT GARCIA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. GARCIA. Mr. Speaker, the 1986 National Asian American Leadership Conference will be held this weekend in Dallas. The conference is sponsored by the Asian American Voters Coalition and the Asian American Fund. Over 300 delegates will be attending from all parts of the country.

I am inserting in the RECORD a brief description of the coalition, as well as a statement from outgoing coalition chairperson, Dr. Jane H. Hu. Dr. Hu, who has been the chairperson for the past 3 years, has done an excellent job and should be commended for her hard work. I would also like to wish my friends at the coalition well, and I hope they have an enjoyable and productive conference.

STATEMENT OF DR. JANE H. HU

The Asian American Voters Coalition will be three years old by October 1, 1986. The seed of thought of an Asian American Voters Coalition was planted amid doubts at its early inception. However, the first Asian American Leadership Conference held in Washington, D.C. dispelled any misgivings. It was well attended. Conferees came from all over the United States. It was a resounding success. The conference was the "seed" that has grown to a vigorous tree that will provide timbers of ideas needed by the Asian Pacific communities to build a path to mainstream America.

The strengths of the Asian Pacific American community are our work ethics, family values, and self-reliance. We are doing better in education, business, science, and technology than the average American. Our economic power will continue to grow. Asian Pacific Americans can play a key role in the development of international trade between the United States and Asian Pacific countries. The relationship between the United States and Asian Pacific countries will significantly influence the future of this world.

The weaknesses of Asian Pacific Americans are our lack of experiences and connections in American politics. Many of us are simply not interested. The number of Asian Pacific American voters is low; this is our true weakness. To strengthen ourselves and to promote equal rights of Asian Pacific Americans in this country, we have to participate. Therefore, voter registration and political education become the most urgent and important work for those who care about Asian Pacific American community.

After three years of work, I shall complete my term as National Chairperson. I am glad to step down to support others who are capable and dedicated to carry on this demanding responsibility. I shall always remain an active member of the Coalition because my heart belongs to all those Asian Pacific Americans who are still suffering the "pangs" of discrimination, and struggling for a living in a country where they have very little input in the policy-making processes which affect their daily lives. I know there are many, many talented Asian Pacific Americans who are capable to continue and to accomplish the goals of the Asian American Voters Coalition.

ABOUT THE COALITION

1983 marked the awakening of Asian Americans to political awareness. As a result, the Asian American Voters Coalition was formed. The Coalition represents major national Asian American organizations including Chinese, Filipino, Japanese, Korean, Indian, Vietnamese, and Guamanian organizations. The objective of the Coalition is to promote active participation of Asian Americans in local and national elections through voter registration and political education.

The Coalition is non-partisan and does not support or oppose any candidate or political party. However, Coalition members evaluate issues and policies affecting Asian Pacific American interests and declare the position of the Coalition. The Coalition sponsors educational programs and community activities which encourage every Asian American to be a constructive American who will participate actively in the democratic process of this country.

The Asian American community is no longer the silent minority, but is emerging as a unified group with this coalition of national organizations and well-organized regional coalitions in Illinois, California, New York, Texas, Michigan, Florida, and Georgia. Asian Americans are identified as the fastest-growing ethnic group, growing from 3.7 million in 1980 to 5.2 million in 1986. At present, Asian Americans are emerging as a political force in the major metropolitan areas in this country.

Asian Pacific voters could make the difference and swing the election results in many important states. Asian Amerians have combined their forces and united their voices to express their concerns and to protect their interests. Through the united efforts of the Coalition, they will participate actively in local and national affairs of this great country of our choice.

BUFFALO LIFE UNDERWRITERS ASSOCIATION

HON. JACK F. KEMP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. KEMP. Mr. Speaker, I rise today to recognize the efforts of the Buffalo Life Underwriters Association. On November 9, 1886, a group of life insurance sales people formed an association to work with our Government to develop laws and attitudes relating to the sale and distribution of life and health insurance products. On November 1, 1986, the Buffalo Underwriters will be commemorating that event in Buffalo. For 100 years the Buffalo Life Underwriters have been working diligently for the people of western New York and in this, the centennial year of their founding, I would like to recognize their accomplishments and wish them even more success as they begin their next 100 years of service. I would also request that the following resolution, proposed and adopted by the Buffalo Life Underwriters Association, be inserted into the CONGRESSIONAL RECORD.

PROPOSED RESOLUTION

Whereas, the Buffalo Life Underwriters has and will continue to provide professional, financial services to the great citizenry of Western New York, and

Whereas, the Buffalo Life Underwriters as a professional orgnization of life underwriters is celebrating its 100th Anniversity on November 1, 1986, and

Whereas, the Buffalo Life Underwriters is the oldest life underwriter organization in the State of New York being established on November 9, 1886;

Now therefore, be it resolved that the Congress of the United States of America recognizes and congratulates the Buffalo Life Underwriters on their Centennial Celebration, and wishes them continued success toward their second 100 years.

DIA CELEBRATES SILVER ANNIVERSARY

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. HAMILTON. Mr. Speaker, I would like to take this opportunity to honor the Defense Intelligence Agency [DIA] as it celebrates its silver anniversary today.

As you can well appreciate, the U.S. foreign intelligence effort is critically important to the Nation in that it provides vital information to policymakers and military forces concerning the capabilities and intentions of other nations. Moreover, accurate and timely intelligence is essential to the formulation and implementation of national security policy and the conduct of foreign affairs. An integral part of the U.S. intelligence community, the DIA is the primary U.S. producer of foreign military intelligence. It serves as a central defense intelligence manager, and supports the Secretary of Defense and the Joint Chiefs of Staff [JCS]—as well as other policymakers and the military departments.

Its origins can be traced to the late 1940's. At that time, each service produced its own intelligence, often resulting in duplication of effort and disparity in product. By the late 1950's, the launch of Sputnik, mushrooming technological advances—particularly in communications and information availability, missile gap theories, and increasing world tensions underscored the need for a system that would provide reliable intelligence as well as meet the increased intelligence requirements of the Unified and Specified [U&S] Commands, the JCS, and the Office of the Secretary of Defense. The findings of the Joint Study Group, appointed by President Eisenhower in May 1960 to examine military ingelligence shortcomings, convinced Secretary of Defense McNamara that the DIA concept had merit and the DIA became operational on October 1, 1961.

The Agency was charged with improving the effectiveness and responsiveness of defense intelligence and bringing about efficiencies and economies in utilization of intelligence resources. Shortly after its inception, the DIA faced two of the great issues of our times—the prospect of nuclear war over the placement of Soviet missiles in Cuba, and the widening United States involvement in Vietnam. The DIA has continued to provide this critical support in every crisis confronting the Nation.

The early 1970's represented transitional years for the Agency in that its focus shifted from internal consolidation and defining its role within the Department of Defense to establishing the Agency as a credible producer of national intelligence. As DIA entered the 1980's, a greater role in tactical as well as national intelligence emerged.

Mr. Speaker, I would like to congratulate the DIA on 25 years of outstanding service and to extend our best wishes to its current director, Lt. Gen. Leonard H. Perroots, USAF, as he leads the DIA into the next quarter century of service.

JAPANESE FIRMS ARE SURE TO TALK YOUR LANGUAGE

HON. NORMAN F. LENT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. LENT. Mr. Speaker, I would like to bring to the attention of my colleagues an interesting and enlightening article, entitled "Japanese Firms Are Sure To Talk Your Language," featured in Newsday, September 25, 1986. The piece was written by Mr. Robert McMillan, a distinguished Long Island businessman and lawyer, who has visited Japan frequently on business.

Mr. McMillan makes some very smart observations about what Americans can learn from the Japanese to better compete in international trade markets. All of my colleagues concerned with the Nation's trade deficit should find this interesting reading. Mr. Speaker, I respectfully submit this article to be reprinted in the CONGRESSIONAL RECORD along with my remarks.

JAPANESE FIRMS ARE SURE TO TALK YOUR LANGUAGE

(By Robert R. McMillan)

It is 8:30 a.m. in the dining room of Tokyo's new Otani Hotel and almost half of those having breakfast are Americans. The waiters all speak English and the menus are in both English and Japanese. Twelve hours earlier, the Plaza Hotel in New York had probably seen almost half of its restaurant filled with Japanese, and the menus are only in English.

This contrast is symbolic and real as to why the Japanese have done so well in the economic penetration of the United States. They even know how to market us when we are in Japan.

The trade gap continues to widen and protectionist sentiments increase. American business people complain about the "uneven playing field" and call for "free trade" so long as all players are "fair." But we completely overlook doing our homework to be more effective in the market place.

No Japanese company would ever consider entering the United States without exhaustive marketing and economic analyses. On the other hand, many of our companies go to Japan having done very little research.

An American company marketing snow blowers in this country would no more think of advertising them in Florida than in the Sahara Desert. Yet many of our companies have gone into Japan without understanding cultural differences, unique features of their distribution system and, most importantly, the excellence of product quality demanded in Japan.

We are not competing in many parts of the world, and particularly in Japan, because we have become too lazy and complacent. Where we have technical superiority such as in computers and aircraft, we, to some extent, only have to take orders. However, in other areas, particularly consumer products, we are not effectively competing.

Why? There are many reasons, but let me deal with two. First, we do not really take the time to learn about the people and the culture of a country like Japan. When our business people are transferred to Japan, they are given very little help in understanding the new country; they send their children to the American School, and very often they live in the "American" section of Tokyo. This type of sheltered existence makes the job of fitting into the Japanese culture very difficult.

On the other hand, when Japanese business persons come to live here, they normally join an American community, and their children attend public or private American schools. Japanese culture and education is provided by supplemental Japanese schools.

Second, very few of us ever go to Japan with a knowledge of the language. The reasons are familiar: "Everyone speaks English" or "It is too difficult to learn." We fail to understand that the ability to speak to someone in his or her own language helps create a closer comfort zone.

The Japanese understand that principle. When was the last time a Japanese person tried to sell you something in other than your native language? Most Americans go to Japan and sell in English. Just think what a shock it would be for an American to show up one day and sell in Japanese.

We must work harder to compete in international markets and particularly in Japan. There are some inequities—but we haven't even tried to level the playing field in many areas where it is totally up to us. We can start by doing a better job from grade school to our colleges and universities.

We also can do a better job in our business organizations by preparing executives more effectively for their international roles. If we do not, the consequences of protectionism are just over the horizon.

H.R. 5520

HON. CHARLES A. HAYES

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. HAYES. Mr. Speaker, I rise in support of the report to accompany H.R. 5520, Education of the Handicapped Act Amendments of 1986.

In the report there is a statement made regarding "qualified personnel," namely "This list is not meant to be exhaustive. Thus, for example, physicians would be considered qualified personnel with respect to the performance of assessments and diagnoses."

I would like to emphasize that physicians would be considered qualified personnel when needed to provide the early intervention services required by the act, such as performance for assessments and diagnoses or provision of health services necessary to enable the infant or toddler to benefit from the other early intervention services.

OMNIBUS BUDGET RECONCILIATION ACT OF 1986

HON. JAMES M. JEFFORDS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. JEFFORDS. Mr. Speaker, I rise in reluctant support of this budget reconciliation bill. I am disappointed that I find myself forced to vote for a seriously flawed reconciliation bill in order to avoid throwing this Congress into budgetary chaos.

The shortsighted approach taken by the Budget Committee in bringing this bill before the House virtually insures that Congress will have extreme difficulty meeting the fiscal year 1988 deficit target of $108 billion. This bill purports to reduce the deficit by some $15 billion, yet the bill achieves only a scant $1 billion savings in discretionary expenditures in the next fiscal year.

How are the other $14 billion savings to be achieved? Over half, some $7.7 billion, will come from the sale of loans held by the Farmers Home Administration, the Small Business Administration, the Rural Electrification Administration, and the Export-Import Bank. The sale of these loan portfolios will actually hurt our efforts to meet stringent budget targets in the next several years, since the Government will be deprived of future revenues in the form of interest payments.

There is also an Energy and Commerce Committee provision that will raise $2.1 billion through a public offering of common stock in Conrail. While I can support this provision with some misgivings, I want to remind my colleagues that the sale will deprive the Federal Government of some $200 million a year in revenue in the outyears, when we will be scrambling to save every cent we can.

However, there is one gimmick in this bill that is the topper. The committee proposes to shift the third quarter revenue sharing payment from October 1 to September 30, magically reducing the fiscal year 1987 deficit by some $680 million. We seem to forget that add ons in this fiscal year will only increase interest on the debt and make it more difficult to meet Gramm-Rudman targets in the coming years.

On the revenue side, the bill's sponsors suggest that by hiring more IRS inspectors that we can instantly raise $2.4 billion in fiscal year 1987. I suggest that we are probably overestimating the revenue impact, particularly in the first year after increasing IRS enforcement efforts. I support efforts to increase compliance with our tax laws by hiring more IRS personnel. However, I think we should be honest about the revenue impact. The phantom savings in this provision will only increase the difficulty in meeting the targets in the coming years.

The three bills considered by the House this week—reconciliation, tax reform, and the CR—leave me with a great deal of concern about the prospects for deficit reduction next year. The passage of the income tax bill will probably preclude the use of that means to raise revenues. More disturbing, the tax bill will create a $16.5 billion revenue shortfall in 1988 as compared to the 1986 baseline. In addition to the $36 billion in deficit reduction that will be required by Gramm-Rudman in 1988, we will also need to overcome the $16.5 billion revenue shortfall and the $15 billion in phantom reconciliation savings. This all adds up to about $70 billion in spending cuts and/or revenues that will be necessary to live up to our commitment under Gramm-Rudman.

All the smoke and mirrors used to get reconciliation savings in this bill have obscured the real problem facing this institution—the complete breakdown of the budget process and the failure of the Budget Act of 1974. I supported Gramm-Rudman because of my fear that this breakdown could do serious long-term damage to our economy. I believed that Gramm-Rudman would bring home to the President and each and every Member of Congress the need for a consensus approach to reducing these structural deficits. The inclusion of both defense and domestic spending in the sequestration provisions was designed to force Congress and the President to seek a responsible middle ground. However, it is clear from what we're doing this week—first this reconciliation bill, then the tax bill, and lastly the largest continuing resolution in history—that the leadership and consensus required for deficit reduction have not yet emerged.

I am voting for this bill because I'm a realist. The alternative is a $20 billion sequestration order that the President would veto for national security reasons, that the Senate has already rejected, and that the House would probably reject as well. The Supreme Court nullified the automatic sequestration mechanism of Gramm-Rudman, but it kept in place the deficit reduction targets contained in the law. If Congress were to reject this reconciliation bill and then reject a sequestration order, we would in effect nullify Gramm-Rudman's deficit targets and abandon the cause of deficit reduction. With the passage of this bill, we are at least keeping alive on paper the commitment to reach the $108 billion deficit target. I hope next year we'll have the courage to make that commitment a reality.

IN MEMORY OF JAMES F. EGAN

HON. SILVIO O. CONTE

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. CONTE. Mr. Speaker, I rise today to honor a fine man who passed away September 21, James F. Egan of Longmeadow, MA. James Egan led a rich life of service to his God, Nation, community, and family. Prior to graduating from Harvard Law School in 1924, he served in the Navy during World War I. Shortly after graduation he became a member of the Hampden County Bar Association, and later founded the law firm of Egan, Flanagan & Egan. Among other clients, his firm represented the Newhouse family, owners of the Springfield Newspapers, and the Roman Catholic Archdiocese of Springfield.

As a member of the Springfield Board of Aldermen and Fire Commission James Egan served his community. He was also a trustee emeritus of the Springfield Library & Museum Association.

In recognition of his outstanding service to the Roman Catholic Church, Pope Pius XII granted Egan membership into the Master Knights of the Sovereign Military Order of Malta, one of the most prestigious organizations in the church. When Egan was admitted in 1957, there were fewer than 500 members in the United States.

James Egan now joins his wife, Mary, who died in 1983. He leaves three sons, Dr. James F.X., attorney John J., and attorney Richard T. He also leaves two daughters, Eileen E. Burke and Mary E. Boland, wife of our distinguished colleague, and my good friend, EDWARD P. BOLAND. James Egan was a devoted father, and I know that his life had a tremendous influence on EDDIE and Mary BOLAND.

While it is sad that James F. Egan has left this world, all of those who knew him can rejoice in his memory, and many of us can learn a great deal from the way he lived his life.

ARMS CONTROL AND THE HOUSE DEFENSE AUTHORIZATION

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. LAGOMARSINO. Mr. Speaker, I would like to bring the recent article by Senator John Tower regarding the negative impact of the House defense authorization on our arms control negotiations to the attention of my colleagues. Senator Tower the distinguished chairman of the Senate Armed Services Committee and, most recently, served as the U.S. Ambassador to the Strategic Arms Reduction Talks with the Soviets.

Senator Tower clearly states why the measures adopted by the House are detrimental to arms control and will not bring about the agreements or changes the United States seeks. I urge my colleagues to seriously consider the wise analysis provided by Senator Tower.

[From the Washington Post, Sept. 29, 1986]

HANDCUFFED BY THE HOUSE

As the U.S. ambassador to the Strategic Arms Reduction Talks, I spent several months engaged in the lengthy and difficult task of trying to secure Soviet agreement to the equitable and verifiable reductions in strategic nuclear arms that the United States seeks. Congress, which appears to be in agreement with the objective, can make this difficult task easier and improve the prospects for success by supporting those programs that enhance our negotiating posture. Or it can make this already difficult task virtually impossible by directly intervening in the process to the extent that the U.S. negotiating posture is seriously undermined.

It is in this light I found the recent actions of the House of Representatives, which imposed a sweeping series of arms control-related restrictions on U.S. defense programs, deeply disturbing. By imposing these limitations on the United States the House not only impeded activities that are vital to our national security, but it has seriously undermined the efforts of the U.S. negotiating team.

The House would unilaterally grant to the Soviet Union concessions that the Soviets could not have won at the negotiating table without giving something in return. The Soviets pay close attention to the actions of Congress, and Soviet seriousness in arms control negotiations is directly influenced by the degree of congressional support for the security policy of the administration. The recent actions of the House—rather than expediting progress toward an agreement—will encourage the Soviets to delay and exploit congressional impatience with the slowness of the negotiating process. Predictably, the Soviets will become more adamant in their positions and more strident in their demands.

There are several provisions in the House bill that are particularly disturbing. For instance, the House voted to prohibit the expenditure of any funds to conduct nuclear tests with yields in excess of one kiloton. This provision would virtually eliminate the nuclear testing required to maintain confidence in our nuclear stockpile, to incorporate the most modern safety and security features into our weapons, and to ensure that our military systems—such as satellites—are survivable.

In addition to these adverse military implications, the House provision undercuts U.S. arms control policy regarding nuclear testing at a critical juncture. Our efforts to resolve nuclear testing verification problems took a positive turn recently when the Soviets agreed to participate in a meeting with U.S. technical experts in Geneva to discuss nuclear testing issues. By imposing a unilateral test-ban regime on the United States, the House had reduced any incentive the Soviets might have to approach these discussions in a serious manner.

The House also voted to prohibit the expenditure of any funds in a manner that would cause the United States to exceed the numerical sublimits of the unratified SALT II agreement, while ignoring those provisions that the Soviets are violating. The Reagan administration deserves a great deal of credit for the restraint it exhibited by going the "extra mile" and abiding by the SALT II treaty despite clear Soviet violations. The Soviet Union had ample opportunity to reverse its violations and refused to do so. If the integrity of the arms control process was to be preserved, the administration had little alternative but to halt its voluntary unilateral adherence to SALT II.

In another action the House voted to reduce funding for the president's Strategic Defense Initiative by $850 million below the level contained in the Senate defense bill. In my judgment, the reduction made by the Senate is already too large. Reductions of this magnitude would delay the development of options to improve stability and deterrence by introducing strategic defenses into our deterrent posture, and would undermine U.S. efforts to negotiate reductions in offensive nuclear weapons as we engage in this transition.

The House also adopted a moratorium on testing of the U.S. antisatellite system against objects in space, thus legislating one of the principal Soviet negotiating objectives without creating a framework of mutual and verifiable limitations. Finally, the House voted to reverse the decision of Congress last year to modernize our aging and increaingly ineffective chemical deterrent with binary chemical munitions. This action eliminates the very incentive that led to the first indications of Soviet seriousness in the decade-long U.S. effort to negotiate a global chemical weapon ban.

Constitutionally, the principal responsibility for the conduct of foreign policy lies with the executive branch. Congress has a legitimate role to play, and in the case of treaty-making the Senate has an explicit responsibility to "advise and consent." However, in its recent actions the House of Representatives has upset the careful balance established in the Constitution. The House has undermined the executive branch's ability to pursue effectively successful arms control outcomes. Congress by its nature is incapable of formulating and implementing a comprehensive, cohesive and consistent long-tem arms control policy of its own.

President Reagan has made it clear that he will veto any bill that contains these provisions, as he indeed should. However, eliminating all of these provisions does not solve the underlying problem. If Congress is this divided on fundamental matters of arms control policy, the Soviets will have little reason to agree to any mutual and verifiable arms limitations. Instead, they will conduct an intensive public diplomacy campaign aimed at influencing Congress to mandate administration acceptance of Soviet proposals. U.S. defense programs will continue to be unilaterally delayed or constrained, and no price will have to be paid by the Soviets. This situation has grave implications for U.S. arms control policy and overall national security, and militates against our efforts to secure ratifiable agreements.

IMMIGRATION REFORM

HON. GERALD D. KLECZKA

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. KLECZKA. Mr. Speaker, with some reluctance I voted to oppose the rule on the immigration bill. I have no doubt that this country needs immigration reform, and I support the major principles of this legislation. Employer sanctions, when implemented with measures to prevent employment discrimination, seem to me to be the most effective way to reduce illegal immigration. I also believe that legalizing undocumented workers who have resided in this country for several years is both reasonable and just.

However, I have major reservations about the Schumer farmworker proposal. Indeed, this is the most controversial part of the bill; but remarkably, the rule neither permitted a vote on the proposal nor did it allow the proposal to be amended. Allowing undocumented farmworkers who worked for just 60 days in agriculture to gain resident status and allowing large numbers of replenishment workers to replace them goes too far and is simply not in the best interests of our country.

The Schumer proposal would greatly increase the cost of social service programs and would create added competition for jobs at a time when many American workers still cannot find work. We know what the main objection to the bill is and how to correct it. Let's not let one rule stand between us and effective immigration reform. I would like to urge my colleagues on the Rules Committee to adopt a fairer rule for consideration of this urgently needed legislation.

WILLIAM LANGER'S 100TH ANNIVERSARY

HON. BYRON L. DORGAN

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. DORGAN of North Dakota. Mr. Speaker, 100 years ago today North Dakota saw the birth of its premier champion of family farmers. William Langer, State attorney general, Governor, and U.S. Senator was born to parents of German stock on September 30, 1886 in the rural town of Casselton, ND.

Fifty years later, Langer had earned the reputation of the "fighting Governor," as a result of his struggle on behalf of family farmers during the Great Depression. Langer had stretched his authority as Governor to the very limits by imposing an embargo on out-State sales of wheat, by issuing a moratorium on farm foreclosures, and by directing the National Guard to halt sheriff's sales of beleaguered farmers.

These unusual moves generated controversy galore. But they also gave North Dakotans a needed shot-in-the-arm of hope and confidence. It is precisely the prescription, if not the policy, that North Dakota and the Farm Belt need another 50 years later.

As my colleagues work to craft urgently needed improvements to our current farm program, I would encourage them to remember the courage and creativity of William Langer in boldly tackling the problems of family farmers. In his memory, I call your attention to today's editorial in the Fargo Forum.

The editorial follows:

LANGER BORN 100 YEARS AGO TODAY

Today is the 100th anniversary of the birth of William Langer, the maverick North Dakota politician whose life and times fill so many chapters of state history.

He is the state's most famous political name, and the most controversial.

Langer was born at Casselton, N.D., on Sept. 30, 1886. His father, Frank, served in the state's first legislature.

Young William Langer was precocious, graduating from the University of North Dakota Law School at the age of 20. Too young to practice law, he enrolled at Columbia University to get an additional B.A. degree and was president and valedictorian of his graduating class four years later.

Langer was to become attorney general of North Dakota, then governor, and finally a U.S. Senator for 19 years until his death in 1959. He was succeeded by Democrat Sen. Quentin Burdick, who still holds the office.

Like his centennial year 1986, years ending in the letter six pop up often in recounting the life of Langer. In 1916 he was elected to his first state office, attorney general. In 1936 he eas elected governor for the second time after being removed from office following his first election.

He had been found guilty of levying political assessments against employees of the federal government in the state. His conviction was reversed and he was acquitted in a second trial in time to be elected governor in 1936.

In 1956, he severed his ties for the last time with the Nonpartisan League after that group divorced itself from the Republican Party and merged with the Democrats. Langer stayed with the Republicans. His allegiance to party had always been tenuous. He repeatedly engaged in battles with both main political parties and the NPL, whose "nonpartisan" label had been a means usually of running candidates for the Republican nomination against GOP-endorsed candidates.

Langer's name has come up recently in the North Dakota recession, as farmers and politicians speculate over a possible moratorium on farm foreclosures.

As governor during the Great Depression in 1933, Langer declared a bank holiday and a moratorium on all debts. He soon had to modify the moratorium to exempt foreclosures by the federal government and its agencies.

Elwyn B. Robinson, in his definitive "History of North Dakota," wrote, "The moratorium helped morale in a time of great anxiety. North Dakotans were encouraged because they felt that the state government was doing everything in its power to help them.

"Most states tried some form or moratorium in the 1930s, but none took as broad or as effective action as North Dakota."

North Dakota celebrates its centennial in 1989. During the centennal celebration the Langer name will undoubtedly become more familiar with residents as state history is recounted.

A poll taken last year showed that only 47 percent of state residents knew of Langer.

Perhaps this shows that our schools are not doing a very good job of teaching North Dakota history.

Whether or not one agrees with the political style and philosophy of Langer, his colorful story and his North Dakota legacy should not be forgotten.

175TH ANNIVERSARY OF ADAMS UNITED METHODIST CHURCH

HON. WAYNE DOWDY

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. DOWDY of Mississippi. Mr. Speaker, I would like to ask my colleagues here in Congress to join me in offering congratulations to the Adams United Methodist Church on the distinguished occasion of their 175th anniversary.

The church was founded in 1811 in the community of Auburn, MS. It is the fifth oldest Methodist Church in our State.

The 350 members of the congregation will gather this Sunday, October 5, for a special anniversary service. The program will include recognition of guests and a special appearance by Rev. Wallace Roberts of the Methodist Hour, which is broadcast on both television and radio. The service on Sunday will be televised and shown throughout the State.

Let us extend our very best wishes to the pastor of the Adams United Methodist Church, Rev. Howard Herring; to the lay leader, Chas. S. Carruth, and to all the members of the congregation on this very special occasion, their 175th anniversary.

TRIBUTE TO DON FUQUA

HON. JOHN F. SEIBERLING

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. SEIBERLING. Mr. Speaker, I am delighted to join in this tribute to our colleague, DON FUQUA, who will be ending a quarter century in the House of Representatives at the end of the 99th Congress.

I first became acquainted with DON in 1971 when I was assigned membership on the Committee on Science and Astronautics as a freshman member. DON was already a senior member of the committee, and I was not surprised when he became chairman of the committee, now the Committee on Science and Technology, in 1979, when then-chairman Olin Teague retired. His fairness, as well as his mastery of subjects before the committee, were impressive.

DON's leadership has been of instrumental importance to the U.S. space program, which he has enthusiastically championed from his very first days in the Congress.

As chairman of the House committee most directly concerned with Federal civilian R&D, and with the beneficial applications of those funds to the U.S. economy and to U.S. competitiveness, DON FUQUA has also understood how crucial civilian R&D is to the economic strength and future of the United States. He has done an outstanding job in pushing the Congress, and the Nation, to take the lead in promoting automobile fuel efficiency, adequate funding of alternative energy research, and in learning how to apply the exciting developments of his beloved space programs to the benefit of the Nation. At a time when many of us are convinced that we are devoting far too much of our precious R&D resources to military applications, DON FUQUA has worked tirelessly to ensure that we do not shortchange the civilian side of R&D.

Mr. Speaker, DON FUQUA's committee is, in many ways, the most forward-looking of our committees in the House, being concerned as it is with the development and promotion of exciting new technologies which will help keep the United States at the forefront of industrialized nations. We owe DON a debt of thanks for his fine leadership, and I want to wish him the very best. He will be sorely missed.

EXTENDING OPERATING AUTHORITY OF FHA

HON. ALFRED A. (AL) McCANDLESS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. McCANDLESS. Mr. Speaker, as an original cosponsor of similar legislation in the House, I rise in strong support for Senate Joint Resolution 353, to extend the operating authority of the FHA through the end of fiscal year 1987.

Because of the popularity of the FHA loan program, it has become a "legislative hostage." The FHA program is being used as leverage in an effort to push other legislation through Congress. The net result of this policy, however, is to victimize hundreds of thousands of innocent would-be homebuyers. Everyday FHA is out of business an estimated 10,000 potential homeowners are impacted. There is also a rippling effect that is set into motion when FHA is disrupted. Lenders, realtors, title insurance companies, movers, and many other innocent third parties are all caught in the turmoil that exists because Congress has not provided the necessary stability required for mortgage financing. Since the start of this fiscal year, FHA has been out of business for a total of 49 days. That is inexcusable.

Tomorrow begins a new fiscal year. We must not repeat the sorry history of this year with uncertain and disruptive short-term extensions. We should pass Senate Joint Resolution 353, and extend the FHA insuring authority for a full year, until September 30, 1987. Well over half the Members of the House of Representatives have cosponsored similar legislation introduced by the gentleman from Ohio [Mr. WYLIE]. That demonstrates that there is strong support to provide for a long-term FHA authorization so that the home mortgage market has some stability.

Therefore, I urge my colleagues to support Senate Joint Resolution 353.

ROUKEMA NOTES CENTENNIAL OF WALDWICK DEPOT

HON. MARGE ROUKEMA

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mrs. ROUKEMA. Mr. Speaker, October 25 marks the 100th anniversary of a historic railroad depot in Waldwick, NJ, in my congressional district. This is one of the last remaining original depots in Bergen County, and it has special significance to Waldwick and to the surrounding boroughs.

Waldwick began as a railroad town, and this depot was key to its development. As people and commerce traveled out from New York City, it was the railroad which carried them to Waldwick and helped the borough grow.

The Erie-Lackawanna Line, which is run by the State of New Jersey, still operates on the Waldwick rails and provides an important link for commuters in northwest Bergen County who have business in the city.

Today we should pay a special tribute to the Waldwick Historical Society. Without its dedication to our area's rich heritage, we would not be celebrating the 100th birthday of this special building. In 1977, it was the Waldwick Historical Society which was principally responsible for saving the structure from demolition.

This railroad depot is listed on both the State and National Registers of Historic Places, it is a symbol of a region rich in historical significance, I am proud it is in my congressional district, and we all take pleasure in wishing this building a hearty happy birthday! As we do so, we look forward to the day when it will be completely restored and open to the public for all to enjoy.

TRIBUTE TO DON FUQUA

HON. ANDY IRELAND

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. IRELAND. Mr. Speaker, my colleague and friend, DON FUQUA, is rapidly approaching the end of 24 illustrious years in the House of Representatives.

As chairman of the House Science and Technology Committee he has overseen many of our greatest advances in space and science technology. In addition, the importance of the committee's decisions to our national security cannot in any way be diminished. Under DON's leadership the fields of science and technology have taken priority in our national life—a priority necessary if we are to maintain our industrial edge into the 21st century.

Even thought DON has been at the forefront of these preeminent national issues, he has always had the best interests of his State and community at heart. The people of the Second District will suffer a great loss at DON's retirement, but can look back on 24 years of exceptional representation and service.

Beyond his professional life, Don has always taken time to help others. When I was a new Member of Congress in 1977, Don was one of the first to offer his assistance to me in learning the ropes. I'll never forget his kindness to me as a freshman Congressman and I am proud to have had the honor of serving with him during the past 10 years. My family and I wish him the best in his new endeavors.

THE HIGH COSTS OF FEELING GOOD

HON. WILLIAM E. DANNEMEYER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. DANNEMEYER. Mr. Speaker, amid the rhetoric and rancor in the wake of the vote on South African sanctions, I came across one sagacious article which acutely describes the context in which this debate has taken place. The so-called "moral high ground" staked out by proponents of sanctions is, upon closer observation, vacuous and self-serving. Wesley Pruden, writing in the Washington Times of September 29, is most perceptive in his analysis:

The High Cost of Feeling Good

The South African sanctions veto is Ronald Reagan at his most courageous. This is letting "Reagan be Reagan" with a vengeance.

The president discarded the advice of most of his advisers including some of his friends, to shun the notion that the West might have to destroy South Africa to save it.

Nobody disputes the prospect that a lot of little black children will go to bed hungry once sanctions take grim effect, but that's a risk fat white politicians in Washington are cheerfully willing to take.

Nor does anyone imagine that sanctions will stamp out racial injustice in South Africa, that peace will fall over the land, that the lame and the halt will be made whole—or that the politics of equality will arrive in Pretoria on the morning train.

But what the fat white politicians of Washington do imagine is that they can launch their feel-good offensive on the backs of the helpless blacks of South Africa, and that the blacks of America won't know any better than to thank them for it. This is the kind of racism that would make Bilbo blush.

The moment in the arena belongs to the Kennedys and the Weickers and the O'Neills and their claque of poseurs on the reactionary left, the men who are constantly trying to cast their profile this way and that, forever seeking the no-lose proposition for domestic consumption.

There are men in the Senate who have no illusions about what sanctions will mean—for U.S. interests as well—but who cannot summon the strength to stand up to the calumny of the claque.

Some of them in the days ahead will pray for Mr. Reagan to find a way to get the votes in the Senate to sustain his veto. They desperately want to have their strut down the runway of public opinion, but they don't necessarily want those least able to pay anything pay the whole cost of the performance.

The President yesterday sent out Don Regan to talk sense about what's at stake. He warned that a sanctions bill might sever all commercial ties with South Africa, and if this happens, the congressional preening could hurt America, too.

"I'm not saying they'd break diplomatic relations, but they'd certainly break commercial relations with us," Mr. Regan said. "That history of sanctions is always retaliation."

Sen. Richard Lugar of Indiana, the Republican chairman of the Senate Foreign Relations Committee, is one of the men who ought to know better, but doesn't. He intends to lead the fight to override Mr. Reagan's veto.

Mr. Lugar is a friend of the president, but a senator enjoys a luxury that a president does not. He's free to prescribe nostrums freely, and if they don't work, well, he's always got another nostrum for another problem.

A president, on the other hand, is charged with the responsibility—not just with the rhetoric—for conducting the nation's affairs with the rest of the world. If bashing P.W. Botha could solve the enduring puzzle of what to do about South Africa, the president might be tempted to join in the fun.

Anyone, including a popular president, who suggests that P.W. Botha is not the worst thing that could happen to South Africa risks being called all manner of awful things, but Mr. Reagan knows that worse, much worse, could replace him. The right-wing parties, whose members think Mr. Botha is a bit of a wimp, have a clear majority in the latest public opinion polls.

The president must deal with real prospects. Feel-good offensives have led to disaster before. We didn't like the Thieu regime in South Vietnam, so it had to give way to North Vietnamese gulags. Delicate liberal sensibilities were offended by a Cambodian dictator who was willing to be friendly toward the United States, so we had to give way to the killing fields. Since anything was better than a shah, we had to step aside for an ayatollah.

Feel-good offensives are outings for congressmen. Presidents, like other grown-ups, just aren't allowed.

RECOGNITION OF AMERICAN CENTENARIANS

HON. FRANK J. GUARINI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. GUARINI. Mr. Speaker, today I join with my distinguished colleague, Mr. Pepper, in introducing a resolution to give special recognition to America's centenarians on the 100th anniversary of the dedication of the Statue of Liberty on October 28, 1986. Approximately 35,000 men and women living in the United States whose birthdays precede the date of the dedication of the Statue of Liberty will witness the rededication of the Statue of Liberty on October 28, 1986. Many of these older Americans were immigrants who sailed past the Statue of Liberty into the United States as refugees from impoverishment and hardship in search of the freedom, opportunity, and justice that the United States provides.

These centenarians, who have witnessed the growth and progress of the United States, who represented their country through both war and peace, and who have lived through prosperity and depression, deserve to be recognized for their contributions to the greatness of our Nation. These older Americans have participated in the growth and progress of the United States by raising families, building soaring bridges, ribbons of highways, and endless miles of railroads throughout America, farming the land, and running the factories. These special citizens should be honored as we mark a milestone in the history of the United States, the 100th anniversary of the dedication of the Statue of Liberty. In conjuction with the celebration of the 100th anniversary of the Statue of Liberty, I urge your support for this resolution.

A TRIBUTE TO AN OHIO PIONEER

HON. BOB McEWEN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. McEWEN. Mr. Speaker, I want to take this opportunity to recognize the leadership of Charles E. Wycoff of Piketon, OH.

More than half a century ago, Mr. Wycoff organizes one of the first electric cooperatives in the Nation, known as the Ohio 29 Pike Electric Cooperative. His motivation and foresight led to a merger with the South Central Power Co., which is one of the largest electric distribution cooperatives in the country.

Mr. Wycoff was recently honored with the Cooperative Foundation's Ellerbe Merit Award by the Ohio Rural Electric Cooperatives. His colleagues laud him as "a pioneer organizer, leader, motivator, and public servant."

The following article details Mr. Wycoff's contributions:

[From Country Living, September 1986]

Foundation Honors Wyckoff

Charles E. Wyckoff, a pioneer in cooperative leadership from Piketon, was honored Aug. 11 for his more than half century of work in bringing rural electrification to Ohio and the nation.

Wyckoff received the Cooperative Foundation's Ellerbe Merit Award at the 45th annual meeting of Ohio Rural Electric Cooperatives, Inc. organization of the state's 28 rural electric Cooperatives.

A check for $3,000 was included with the award, which recognized Wyckoff as one of the nation's outstanding Cooperative leaders.

In 1985 Wyckoff was inducted into the Ohio Agricultural Hall of Fame, partly on the basis of his five-decade career as a rural electric Cooperative leader.

Making the presentation was Robert W. Nelson, a trustee of the Foundation and director of Public and Association Affairs of the National Rural Electric Cooperative Assn. (NRECA), Washington, D.C. The Cooperative Foundation is head-quartered in St. Paul, MN.

Wyckoff's work in rural electrification began nearly 52 years ago, when, as a young man not yet old enough to vote, he banded together with a small group of farmers to organize and incorporate one of the first electric Cooperatives in the United States, first known as Ohio 29 Pike Electric Cooperative.

Only 18 percent of Ohio's farmers had central station electric service at the time. Through a merger, the Cooperative eventually became part of South Central Power Company, headquartered at Lancaster, the largest electric distribution Cooperative in Ohio and one of the largest in the nation.

The Cooperative Foundation's Ellerbe Merit Award was presented to Wyckoff in "recognition of his untiring and devoted dedication to rural electric Cooperatives as a pioneer organizer, leader, motivator and public servant."

Wyckoff, a retired farmer, gained state and national recognition during his career as a rural electric Cooperative leader.

He is former chairman of the board of trustees of Ohio Rural Electric Cooperatives, Inc., former chairman of Buckeye Power, Inc. and past president of the board of South Central Power Company, from which he retired Aug. 21.

In 1962, he was elected as Ohio's representative on the National Rural Electric Cooperative Assn.'s board of directors, a post to which he was elected each succeeding year by Ohio's electric Cooperatives until his decision to retire in 1986. Wyckoff served successively as secretary treasurer, vice president and in 1973-1974 as president of NRECA. Wyckoff also has been active in dairy and livestock cooperatives and the Ohio Farm Bureau Federation.

NRECA is the national association of nearly 1,000 rural electric systems in 46 states, which provide electric service to more than 25 million consumers. Clyde Ellis, general manager of NRECA from 1974 until 1966, was given the Ellerbe Merit Award in 1978.

The Cooperative Foundation was started in 1946 with a financial base provided by Thomas F. Ellerbe, Sr., architect and longtime supporter of cooperatives. Its basic purpose is to advance research, information and education for cooperative businesses. Murray D. Lincoln, well-known cooperative leader from Ohio in years past, served on the foundation's first board of trustees.

SALUTE TO DON FUQUA

HON. RONNIE G. FLIPPO

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. FLIPPO. Mr. Speaker, I am very pleased to join with my colleagues today in paying tribute to my good friend Congressman DON FUQUA, who is retiring after 24 years of distinguished service in the Congress.

Congressman FUQUA's outstanding record of service to his district, the State of Florida, and to this Nation will not soon be forgotten.

His tenure as one of the chief architects of America's endeavors in space exploration and the space sciences brought us from a fledgling program in the early 1960's, striving to meet the Soviet challenge of sputnik, to the first man on the Moon, to the development of one of the most outstanding examples of man's technological achievement, the space shuttle.

This was a period in which the rapid advance of technology became the overriding force in the interpretation of America's history. The Space Program provided the stage for advances in computer science, advances in the medical sciences, and advances in man's understanding of our universe and our relationship to it. And, of course, the practical applications of what we have learned in the Space Program have made a tremendous contribution to every American's quality of life.

DON FUQUA will rightly be credited by historians as a leader and a catalyst in this renaissance of science and technology, the benefits of which will be with us for generations to come.

TRIBUTE TO DON FUQUA

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. BILIRAKIS. Mr. Speaker, I would like to pay tribute to my colleague, Congressman DON FUQUA, who has ably served the Second Congressional District of Florida and the Nation for 12 consecutive terms.

This year DON FUQUA will retire, and this body will sorely miss his wisdom, foresight, and good counsel.

Mr. Speaker, I am honored to have served my years here in the House of Representatives with a man as highly respected as my friend from Florida.

As chairman of the Subcommittee on Space Science and Applications, the gentleman enabled the people of this Nation to link hands with the stars—and his place in history will be marked in the heavens for it.

Through his leadership, the Space Shuttle Program was guided through the Congress. America moved forward from the first exploratory steps of the Apollo missions to the reality of a versatile space transportation system combining aeronautical and spacecraft abilities.

This alone could be marked as the achievement of a lifetime, but to remember DON FUQUA only for this would be to do him a great injustice. Indeed, the Space Shuttle Program is but the crowning achievement among his many works.

Long before the first shuttle flight, he was hard at work here in the Congress, not only laying the groundwork for the space shuttle but in other areas as well. For instance, his legislation in the realm of space commercialization captured the imagination of American industry.

This legislation pointed the way to the almost limitless possibilities that lay ahead. In fact, the entire Space Shuttle Program is a dramatic indication of the potential benefits outer space holds for mankind.

In 1979, when my colleague assumed the chairmanship of the full Science and Technology Committee, he extended his tireless efforts to the broader scientific and technological needs of the Nation.

He has been a leader in improving the math and science education of our young people, thus ensuring America's contribution to these fields throughout the future.

He richly deserves the many honors that have been bestowed upon him. We in the Florida delegation and throughout our State are intensely proud of what DON FUQUA has done for the causes of science and space exploration.

The American people owe him a tremendous debt of gratitude.

TRIBUTE TO SISTER MARIE MICHAEL JACOBS

HON. PAUL B. HENRY

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. HENRY. Mr. Speaker, I rise to pay tribute to Sister Marie Michael Jacobs who will be honored by the U.S. Department of Education and the National Association of Elementary School Principals as a "National Distinguished Principal" in a special ceremony on October 17, 1986, in Washington, DC. She is one of three chosen from the Nation's private schools.

As principal of St. Andrew's School in Grand Rapids, MI, Sister Marie Jacobs would seem to be a long way from her original goal of missionary nurse. Sister Marie Jacobs' primary interest in missionary nursing changed to teaching after she worked in an inner-city school in Saginaw. For the past 18 years, her mission has been to provide quality education to the students of St. Andrew's. As principal of the kindergarten through eighth grade inner-city school, she is firmly dedicated to the belief that the parents of the students must be involved in the academic instruction process of the young people to minimize discipline problems and to build the student's self-esteem. This emphasis on parent involvement with the formal teaching has paid off as evidenced by the fact that the third and eighth grade students scored in the 90th percentile on the 1985-86 Stanford achievement tests.

The leadership role and personal example that Sister Marie Jacobs has provided to the students, parents, and teachers of St. Andrew's not only benefits them, but the wider Grand Rapids community as well. Sincere congratulations upon receiving this well-deserved recognition—National Distinguished Principal.

THE INVALUABLE ROLE OF FLIGHT ATTENDANTS

HON. BARBARA BOXER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mrs. BOXER. Mr. Speaker, I believe that the role of flight attendants in assisting the public in matters of safety, evacuation and medical emergencies has been truly underestimated. Such an oversight works both to the detriment of dedicated, experienced cabin attendents and to the detriment of the flying public. It is worth remembering the importance of the pilots in emergency situations and also emphasizing the distinct importance of flight attendants, especially as we continue to face terrorist acts involving airline travel.

On September 5, 1986, you will recall that terrorists aboard Pan Am Flight 73 opened fire and exploded grenades, killing 21 persons and seriously injuring many other innocent people. In a hijacking situation, it is now recommended that the crew members in the cockpit should try to immobilize the aircraft by exiting. When the crew members evacuate in such a situation, this leaves the flight attendants in charge and responsible for the lives of the passengers and the equipment. The Pan Am episode dramatically underscores the importance of cabin attendants on board and the real degree to which they are agents of safety.

I say this because I sense that there still remains a reluctance to recognize flight attendants as the professional agents of safety that they are. Many people still cling to the outdated image of the flight attendants as a "flying waitress", a "stewardess", a "hostess." It has taken decades, but we have come a long, long way from there. Some 50,000 American flight attendants in 1986 should be considered career professionals, who are highly trained and have major responsibilities. Flight attendance must act as buffers between terrorists and their victims, putting their lives at risk on behalf of those in their charge, and often as victims themselves. They must also monitor aircraft safety, handle medical emergencies and execute evacuations within seconds.

The most glaring example of how the role of flight attendants, both male and female, has been underestimated is the story at Trans World Airlines.

TWA flight attendants, some of whom were honored in 1985 for the commendable manner in which they handled the hijacked TWA Flight 847, are for the most part still prevented from returning to their jobs by TWA management. Nearly 5,000 flight attendants, who offered to return to work on May 17, 1986 on an unconditional basis, have not been able to go back to their jobs. In their stead are much less experienced attendants, averaging nowhere near the 15 years of flying that the locked out attendants show.

The current ongoing dispute between the TWA flight attendants and TWA management jeopardizes public safety and raises new questions about whether corporations can eliminate experienced workforce for corporate economic gain. I strongly believe that the public interest is at stake here, and that this protracted dispute urgently needs a resolution.

Flight attendants, indeed, are vitally important to the safety of air travelers. What impacts any group of them can also affect public confidence in airline travel. We value especially those flight attendants who are well-trained and experienced, and I think that our actions, as a society, and our policies in Government should reflect this.

THE HOUSE VOTE TO OVERRIDE THE PRESIDENT'S VETO OF LEGISLATION FOR ECONOMIC SANCTIONS AGAINST SOUTH AFRICA

HON. BERYL ANTHONY, JR.

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. ANTHONY. Mr. Speaker, with respect to the House vote to override the President's veto of legislation that would impose new economic sanctions against South Africa, I regret I was unable to be present for this important vote due to prior commitments in my district. I wish the Record to reflect that had I been present I would have voted to override the President's veto.

For quite some time now world attention has focused on United States foreign policy toward South Africa and the increasingly tense situation in this complex and diverse society embroiled in a state of transition.

South Africa has reached a critical turning point. In the last 20 months, over 1,500 people have been killed and over 36,000 arrested in growing antiapartheid protests. The daily death rate has nearly doubled in the last 3 months. Bishop Desmond Tutu recently wrote:

> Our land is burning and bleeding and so I call on the international community to apply punitive sanctions against this government to help us establish a new South Africa—nonracial, democratic, participatory and just. I have no hope of real change from this government unless they are forced.

While I believe it is essential to maintain good relations with the South African Government in the interests of our own national defense, it is equally imperative to bring about change in a constructive, not destructive, way. Therefore, I will continue to support initiatives for economic sanctions in an effort to force reforms in the policies of the South African regime.

FREEDOM, OUR MOST PRECIOUS HERITAGE

HON. HAMILTON FISH, JR.

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. FISH. Mr. Speaker, I wish to include in the Record today a copy of a stirring essay by my constituent, Tara McBennett of New Windsor, NY. Tara is a student at the Cornwell Central High School. This essay won first place in a contest sponsored by the New Windsor-Cornwall Optimist Club on the subject of, "Freedom, Our Most Precious Heritage." The contest serves as "a reminder of the courage and sacrifice displayed by so many public-spirited citizens through the course of many centuries to achieve our most precious heritage of freedom," and, "serves to renew a dedication toward the value of human freedom."

This was the New Windsor-Cornwall club's first year of sponsoring the contest at the local level and Tara's winning essay also went on to win first prize for New York State. The essay is written from the perspective of the Statue of Liberty, which recently celebrated its 100th birthday.

The essay follows:

Freedom, Our Most Precious Heritage

Over the years, I have been a silent sentinel, towering over Liberty Island in the New York harbor. I embody the flesh and blood of our great nation, its spirit and its soul. All that I am, and all that I represent, can be summed up in one word—freedom. As I stand guard over the Manhattan skyline, I survive the grandeur around me and reflect upon our nation and the origin of our freedom that is an integral part of it. My outstretched arms welcome the downtrodden who long to escape from the yoke of tyranny, injustice, persecution and poverty. I implore them to cast aside their chains and to rise up, free men, unburdened and proud, to share in the bounty of our freedom.

Since the first pilgrims landed on Plymouth Rock, our nation has been a haven for those escaping from tyranny and persecution. While our country was an English colony, however, we too were fettered by the shackles of oppression. Under risk of death, patriots met secretly to lay the foundations of our nation's freedom. In 1776, our founding fathers embodied their conceptions of freedom in the Declaration of Independence. The American Revolution was fought to preserve these democratic ideals. In 1783, a new nation emerged, and the seed of freedom, took root.

Our nation flowered, but the road to freedom was thorny. Many times we were forced to fight in defense of our freedom. During the tragic Civil War, the freedom of our nation was endangered by the denial of freedom to a part of the population. In World War I, we fought in defense of the freedom of our allies. In World War II, we fought against Hitler, who was a threat to the freedom of mankind.

Some of our struggles against oppression didn't occur on foreign soil. Women's struggle for equality made little progress until 1920 when women won the right to vote. Minorities, especially blacks, have fought for social and political freedom. They have advanced in their right for freedom and equality.

For over two centuries immigrants have journeyed from distant lands to our shores. They are drawn to our nation by my beacon of freedom that radiates a warm light of hope across the sea of despair. Our nation offers the promise of a better life to the persecuted, the oppressed and the poverty-stricken of the world. We welcome those who are foresaken by all others. We embrace them and invite them to partake in the freedom that we, the fortunate, enjoy. We offer them hope and, most importantly, a chance to improve their lives. Our nation is truly the land of opportunity.

Over the decades I have witnessed many changes in our nation. However, our democratic government, freedom of speech, the press and religion remain constant. Maybe someday, my torch will cast its light over a world in which oppression is a thing of the past, and freedom, our most precious heritage, will reign supreme throughout the world.

PARK VIEW ELEMENTARY SCHOOL, MOORESVILLE, NC

HON. J. ALEX McMILLAN

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. McMILLAN. Mr. Speaker, I am pleased to call to the attention of my colleagues the Park View Elementary School of Mooresville, NC, which recently received the National Elementary School Recognition Award from the Department of Education.

Park View was one of 212 schools chosen nationwide for this prestigious award. The school was nominated by the State superintendent of education and completed a detailed application for the Department of Education in Washington, DC. Education officials conducted an onsite visit during which they interviewed parents and administrators.

Park View Elementary School's well-balanced approach to education pushes students to reach their full potential. The combination of a tough academic curriculum with standards 20 percent tougher than State standards, and excellent teachers ensures that no student attending this school will be deprived of a true learning experience. Park View's commitment to basic academic excellence and encouragement earned them this fine distinction.

All recipients of the National Elementary School Recognition Award should serve as examples of what compassion, commitment, and innovation can accomplish in our Nation's schools. I am very proud of Park View and their principal, Dr. Jane Carrigan. In praise of this school's achievement I call on my colleagues to join me in congratulating its teachers, administrators, and students for their fine achievement.

NICK DANILOFF IS FREE!

HON. WM. S. BROOMFIELD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. BROOMFIELD. Mr. Speaker, I was delighted to learn that Nick Daniloff has left the Soviet Union and is now in the United States. I commend the President and the Secretary of State for their determined efforts to win Mr. Daniloff's freedom.

The release of Nick Daniloff shows that the Soviets have seen the folly of their recent action. Snatching an innocent reporter off the streets of Moscow is primitive behavior at best. Even in that closed society, kidnaping an innocent man smacks of the darkest days of the Soviet Union. Perhaps that is why Mr. Daniloff, who knows the Russian people well, said that he was leaving that country "more in sorrow than in anger."

Taking an innocent man from the streets of Moscow flies in the face of Mr. Gorbachev's latest public relations blitz. Interrogating an innocent man for hours is clearly a nonstarter if the Soviet leader is trying to build a new image for his country.

My best wishes go to Nick Daniloff and his family. I am certain that they are pleased to have him home again with his loved ones. As you said, Nick, "The individual is a precious thing." Welcome home, Nick!

SALUTE TO CONGRESSMAN DON FUQUA

HON. LAWRENCE J. SMITH

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. SMITH of Florida. Mr. Speaker, I rise to honor the long and fruitful political career of my colleague, Don Fuqua. With his retirement from public office this year, Congressman Fuqua leaves behind him more than a quarter century of public service to the people of Florida—and to the citizens of the United States. His leadership and commitment will be missed by all who knew and worked with him.

As the chairman of the Science and Technology Committee, Congressman Fuqua worked to reignite the Space Program and promote private investment in space exploration. He initiated the first review of our Nation's science policy in the last 50 years and has been an opponent of those who would cut funding for important research projects.

But more importantly, my fellow Floridian has worked tirelessly to protect the interests of his constituents. From the farming community along the State line to the business and university communities in Tallahassee, Don Fuqua has made the people of the Second Congressional District his highest priority.

A compassionate and understanding man, Congressman Fuqua has won the respect of all his colleagues and constituents. He is a pillar of the House and an inspiration to those who will follow in his footsteps. We honor this man's longstanding dedication to public service, his wisdom, and his leadership. Both Sheila and I wish Don and his wife Nancy much luck in the future.

TRIBUTE TO DON FUQUA

HON. FRANK HORTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. HORTON. Mr. Speaker, as we count down the final days of the 99th Congress, one of our more difficult tasks is to bid farewell to many good friends leaving the House of Representatives. One such colleague is Don Fuqua, the esteemed Member from Florida.

Don and I came to this Chamber back in 1962 as Members of the 88th Congress. We have had the pleasure of serving during a dynamic time in our Nation's history. From the days of John F. Kennedy, the restless Vietnam years, and the landing of man on the Moon, I look back with many fond memories of Don.

Though we come from different political parties, Don and I, through our service as members of the Government Operations Committee, have worked together often. It is always a pleasure to work with intelligent, friendly, and knowledgeable Members such as the gentleman from Florida.

Don will always be remembered in the House as a diligent worker with steadfast integrity. He had long been a champion of the U.S. space program. Through the good times and the bad with NASA, Don has led a continuing fight to improve the quality and efficiency of our space program.

One of Don's latest projects was his authoring of H.R. 4183, legislation to create an Air and Space Museum Annex on the grounds of Dulles International Airport. Passage of this worthy bill is still a possibility for this Congress, and I would like to strongly urge the House and Senate leadership to quickly reconcile any differences of opinion on this legislation. I can think of no finer tribute to our good friend from Florida than a permanent Air and Space Museum Annex near our Nation's Capital.

For nearly one-quarter of a century, Don Fuqua has served the people of northern Florida and the country with dignity, dedication, and honor. My wife, Nancy, and I will always consider Don and his wife, Nancy, to be true friends.

Although Don will be leaving his seat in the House. I am sure we will all have the opportunity to see him during the 100th Congress, as he will remain in Washington as the president and general manager of Aerospace Industries, Inc., a fitting position for one of our Nation's foremost experts on air and space travel.

PERSONAL EXPLANATION

HON. CLAUDINE SCHNEIDER

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Miss SCHNEIDER. Mr. Speaker, because of pressing commitments in my district, I was unavoidably absent on Friday, September 26 and Monday, September 29. Had I been present, I would have voted as follows:

Rollcall No. 419: Ordering the previous question on House Resolution 559 thereby closing off all debate on the rule for immigration reform legislation—"no."

Rollcall No. 420: House Resolution 559, rule providing for consideration of immigration reform legislation—"no."

Rollcall No. 421: H.R. 5559, Immigration and Nationality Law Administration—"nay."

Rollcall No. 422: H.R. 5560, Child Sexual Abuse and Pornograph—"yea".

Rollcall No. 423: H.R. 5564, Seneca Indian Mortgage Insurance—"aye".

Rollcall No. 424: H.R. 4917, Depository Institution Examination Improvement—"yea."

Rollcall No. 425: Override Presidential veto of H.R. 4868, Anti-Apartheid Act—"yea."

IWO JIMA—BUT ONE EXAMPLE OF THE BRAVERY OF OUR ARMED FORCES

HON. LAWRENCE COUGHLIN

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. COUGHLIN. Mr. Speaker, Veterans Day is yet 1 month away, but given that this Congress may soon be adjourning sine die, I wanted to take this opportunity to note the unselfish contributions the members of our Armed Forces have made to the perpetuation of America's liberty.

There may be few better ways to do this than to recall the battle of Iwo Jima in World War II. While the campaign was primarily fought by the Marine Corps, victory would have been impossible without the support of American naval and air power.

A recently published book titled "Iwo Jima: Legacy of Valor" recounts in graphic detail how and why the battle was planned, fought, and won. It was written by Bill D. Ross, then a 23-year-old Third Marine Division sergeant, who was there.

Mr. Speaker, let me quote from the book.

> For 36 days during the spring of 1945, nearly 75,000 United States Marines were locked in epic struggle with 22,000 Japanese troops defending to the last man a seemingly impregnable flyspeck Pacific island called Iwo Jima.
>
> Newspaper headlines and radio broadcasts trumpeted the story as it unfolded. An historic flag-raising photograph made atop Mount Suribachi was to etch the monumental combat into American history alongside Antietam and Gettysburg, and make it perhaps the best-known battle of World War II—certainly of the Pacific conflict.
>
> In the passage of years, in the birth and maturing of new generations, and the emergence of other events crucial to civilization's present and future, the conquest of Iwo Jima has become a diminishing footnote to history, largely remembered by military history buffs and a vanishing legion of aging Marines and other men who did battle there.
>
> But the fact remains: Iwo Jima was a landmark of mass courage and individual valor. It was a battle the likes of which mankind most probably will not witness again.

Mr. Speaker, in the 1,364 days from the attack on Pearl Harbor to V-J Day, with millions of Americans fighting on global battlefronts, 353 men received the Congressional Medal of Honor, the Nation's highest decoration for valor "above and beyond the call of duty." Twenty-seven were for actions at Iwo Jima, 13 posthumous.

Casualities can perhaps best be described by numbers—in only 36 days, 25,851 Americans, most in their teens or early twenties, were killed, died of wounds, or were missing in action. Of the 20,000-plus Japanese garrison on the 5½-square-mile chunk of volcanic ash and stone, 1,083 were taken prisoner and survived.

Was victory worth the price? For the answer, Mr. Speaker, I quote again from "Iwo Jima: Legacy of Valor":

> Iwo Jima in American hands meant that 24,751 Army Air Corps crewmen would be saved from ditching disabled aircraft in the icy waters of the north Pacific with an almost certain loss of most of them. By war's end, 2,251 emergency landings had been made on the island by B-29 Superfort bombers.
>
> And Iwo gave the United States a forward airbase at the front door of the Japanese homeland, a bastion that cleared the way and made feasible the dropping of atomic bombs on Hiroshima and Nagasaki to win the war.

Mr. Speaker, Iwo Jima is but one of the many places where Americans have laid down their lives for freedom and justice. While the campaign there is especially noted for its ferocity and valor, these characteristics are not unique to Iwo Jima. America's service men and women have never forgotten that the price of freedom can be high, and that they may be called upon to meet it.

As we approach Veterans Day this year, let us remember the contributions of all Americans who have served our Nation, and join together to pray that all mankind can find a way to live in peace with the full joys of freedom and liberty.

CONGRESSMAN BILL FRENZEL WELCOMES YURI ORLOV TO THE UNITED STATES

HON. BILL FRENZEL

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. FRENZEL. Mr. Speaker, I am pleased to learn of the impending release of prominent Soviet dissident Yuri Orlov and his wife Irina from the Soviet Union.

Orlov's release is part of a series of events that took place following the Soviet Union's release of American journalist Nicholas Daniloff. Soviet spy Gennadiy Zakharov will be allowed to return to his homeland as well.

People concerned about human rights the world over will be happy to see the release of one of the world's premier human rights activists. Yuri Orlov has been imprisoned in a labor camp since 1978. His crime was accusing the Soviets of repeated violations of a pledge made in the 1975 Helsinki agreement of better treatment to Soviet citizens.

Orlov has been in poor health. I understand that he will be able to leave for the United States with his wife before October 7, just 4 days before the recently announced Iceland meeting between President Reagan and General Secretary Gorbachev.

The impending release of Yuri Orlov is a true celebration. I believe, however, that it is important to remember that a dark cloud still hangs over the Soviet Union with regards to human rights. There are hundreds of dissidents remaining in the Soviet Union. Allowing one to leave is a step in the right direction. It is not, however, standard procedure. Mr. Gorbachev has yet to prove that he respects the right of the dissidents to leave the Soviet Union.

TRIBUTE TO YASUO "PAUL" SONE

HON. THOMAS S. FOLEY

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. FOLEY. Mr. Speaker, I rise today in tribute to Yasuo "Paul" Sone, a good friend of mine and of the United States, who retired earlier this year after more than 25 years of dedicated service to the United States wheat industry. As those of us familiar with it know, Paul Sone has, from the beginning, been a key player in the history of United States wheat promotion in Japan. Indeed, it is difficult to imagine that the program would have achieved the enormous success it has without him.

Paul Sone first undertook what was to become a long and illustrious career as a representative of American wheat producers and advocate for the use of United States wheat in Japan in 1960. During those earliest days of market promotion, Paul went to work for Western Wheat Associates, USA, which was attempting to educate Japanese consumers on the possibilities for improving their diet and health with foods made from wheat. Adapting new American business techniques to the long-established patterns of Japanese society and culture, Paul embarked on such activities as kitchen car demonstrations, school lunch expansion projects, baker training courses, and public information programs that were both innovative and enormously effective. The success of his efforts can be measured by the fact that the United States went from having a negligible share of the Japanese market in 1960 to now supplying more than half of its wheat imports.

Having earned their trust and respect through his service to Western Wheat, Paul quickly became the link and liaison between the United States wheat industry and the Japanese Government's food agency as well as with the Japanese flour milling industry, an unofficial position that was to prove very beneficial. In 1968 when the Japanese Government suspended all imports of United States wheat following the detection of sprout damage in some cargoes, and again in 1971 when a longshoremen's strike nearly ended wheat exports from this country, it was Paul Sone, through his tireless efforts, who helped convince Japanese officials tempted to turn to other producers of the United States determination to remain a reliable supplier of wheat to that market.

Given Japan's dependence on foreign sources, chiefly the United States, for about half its food and the serious political repercussions that could result from any interruption or restriction of imports, that was no small accomplishment. Nor is the fact that Paul is one of very few Japanese citizens having spent their careers representing a foreign organization to be honored with an official certificate of commendation from his country's Ministry of Agriculture, Forestry and Fishery recognizing his contributions. Both, however, are a testament to the unique diplomatic skills, knowledge of his subject and personal integrity that have enabled Paul Sone to represent both Japanese and American interests in the complex and delicate deliberations carried on by the Governments and trade and industry officials of our two countries. The bridge of understanding he has helped to construct across the Pacific will continue to benefit both for years to come.

Mr. Speaker, I know that I speak not only for myself but for the entire U.S. wheat industry is offering deep appreciation for his years of service, heart-felt congratulations on his retirement, and warmest wishes for continued health and happiness in the many more productive years to come.

HONORING DON FUQUA

HON. C.W. BILL YOUNG

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. YOUNG of Florida. Mr. Speaker, I commend the dean of our Florida delegation, Mr. BENNETT, for requesting this time today to honor the distinguished service of my friend and colleague DON FUQUA.

DON and I first served together as members of the Florida State Legislature. He earned a reputation for his hard work and strong leadership and was awarded the Most Valuable Legislator Award in 1961, a distinct Florida honor.

Soon after his election to Congress in 1962, DON reaffirmed his leadership ability as a Member of the U.S. House of Representatives. Now in his 24th year of service, DON is one of the most respected and trusted Members of this body.

No American has had a greater influence on our Nation's scientific advancements, especially in the area of space exploration. It was during DON's steadfast oversight of the Space Program that we launched some of our most successful and far reaching missions.

One of DON's greatest contributions to our Nation is the emphasis of his committee on expanding and improving upon our Nation's scientific education programs. These programs, that teach and interest our children in the study of science and math, will keep the United States at the forefront of world technological development.

Even with his role as a national leader, DON still placed a priorty on his work for the people of Florida. An indication of DON's dedication to his work is the vigor that he put into representing the people of the more than 20 counties encompassed by the Second Congressional District.

We will greatly miss DON's dedicated work, leadership, and friendship when he retires at the end of this Congress. We owe it to ourselves and the American people to carry on the work started by DON to maintain our Nation's scientific and technological preeminence.

Again Mr. Speaker, it is an honor to salute the 24 years of distinguished service of my good friend and colleague DON FUQUA, and I want to wish him and his wife Nancy the very best in all of their future endeavors.

GILMAN ANNOUNCES WINNERS OF 22D CONGRESSIONAL DISTRICT DRUG ESSAY CONTEST

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. GILMAN. Mr. Speaker, last spring many Members of Congress enlisted the participation of their school districts in a drug essay contest. This contest focused particularly on the attitudes and reactions of sixth graders throughout the Nation when asked the questions, "What I Would Do If Offered Drugs" and "As a Good Citizen, How I Can Help My Community". I am pleased to inform my colleagues that my 22d Congressional District has emerged with five winners, and that honorable mention has been proposed to 13 individuals and one entire class. The latter turned the essay contest into a group project, fostering even additional consensus on this most important issue of preventing drug abuse.

Our young people will only be able to turn back the rising tide of drug abuse if they are armed with the necessary information to "just say no". The essays printed below are clear indicators that these youngsters are well on the road to becoming drug-resistant.

Mr. Speaker, at this point, I would like to insert into the CONGRESSIONAL RECORD the five winning essays, including the school and teacher involved. I would also like to take this opportunity to commend all the children in my district who participated in this essay contest, and to congratulate the five winners and those receiving honorable mention:

HEALTHY MIND—HEALTHY BODY—NO DRUGS

(First Place Winner: Aubrey de Bordenare, George Grant Mason Elementary School, Tuxedo, New York, Teacher: Ms. Ruth Nardella)

What I would do if offered drugs: One day if some friends asked me if I wanted to take drugs I would tell them no. If they called me a "chicken," I would tell them why I wouldn't take drugs. The first thing I would tell them is they're only risking their lives. Why should I risk my life to be a "cool" person. They may think they're not. The cool person would be me for not taking drugs.

As a good citizen, how I can help my community: One thing I could do to help my community is make posters saying "Do Not Take Drugs." I would put little pamphlets on the poster and a phone number to call in case one of your friends are on drugs so I could help them. Remember to tell your friends, "it's their life and the only one they've got. So treat your body right and don't use drugs.

HEALTHY MIND—HEALTHY BODY—NO DRUGS

(Second Place Winner: Debra Kennedy, Little Britain Elementary School, New Windsor, New York, Teacher: Mr. Paff)

What I would do if offered drugs: If anyone offered me drugs I'd say no and walk away. I wouldn't accept drugs because I don't want to ruin my body; it's the only one I'll ever have. I don't want to take a chance and destroy necessary body parts. To accept drugs might mean destroying my life.

As a good citizen, how I can help my community: I am proud to be a help to my community by volunteering my time to help teach younger children many things. I try to be a good role model by getting good grades, not cursing and taking drugs. Hopefully others will follow my example.

HEALTHY MIND—HEALTHY BODY—NO DRUGS

(Third Place Winner: Alexandra Diane Greenberg, Virginia Road, Elementary School, North White Plains, NY, Teacher: Miss Centi)

What I would do if offered drugs: If I were offered drugs I would say no because it is bad for my health and can kill me. If the dealer is forcing me to buy the drugs I would run away and tell someone. I wouldn't want to hang around a person who is stupid enough to step down to drugs, use them, and try to persuade others to try them.

As a good citizen, how I can help my community: One of my community's biggest problems is drugs. Many people become drug abusers and offer them to others. I can help by avoiding drug addicts or turning them into the police. Others should do this, too. Drug abusers are hurting themselves and the ones they love.

HEALTHY MIND—HEALTHY BODY—NO DRUGS

(Fourth Place Winner: Jeanne Moroney, Pocantico Hills Central School, North Tarrytown, NY, Teacher: Ms. Kathleen Giordano)

What I would do if offered drugs: When offered drugs, I would say, "No! Drugs can ruin my life!" I would explain to them about the dangers of drugs. Drugs can kill. No matter how bad life is, it's not worth it to use drugs.

As a good citizen, how I can help my community: To help people in my community, I would get some kids together and do a play. In the play, we could show people the bad things drugs can do to you. The play would be called "Doing Something Besides Drugs, and Liking It."

HEALTHY MIND—HEALTHY BODY—NO DRUGS

(Fifth Place Winner: Alyce Chazan, Laurel Plains School, New City, NY, Teacher: Mrs. Kaplan

What I would do if offered drugs: If I were offered drugs I would say "NO"! After hearing, in school, what drugs can do, I realized I would never touch them.

As a good citizen, how I can help my community: As a citizen I could help my community by trying to form a group of students and parents to fight drugs.

I think I would also try to gather together people who can help others to stop taking drugs.

HONORABLE MENTION

Jacqueline Atoa, Farley Middle School, Stoney Point, New York.

David Chester, Virginia Road Elementary School, North White Plains, New York

Alyssa Cobb, Washington Irving School, Tarrytown, New York.

Jennifer Erland, Virginia Road Elementary School, North White Plains, New York.

Laura Kojomanian, Haverstraw Middle School, Haverstraw, New York.

Trisha Kraack, Narrowsburg Central School, Narrowsburg, New York.

Robert Lennon, A. MacArthur Barr Middle School, Nanuet, New York.

Tammy Park, Pearl River Middle School, Pearl River, New York.

Marc Salvati, Virginia Road Elementary School, North White Plains, New York.

Rich Todaro, Virginia Road Elementary School, North White Plains, New York.

Karen Weber, Narrowsburg Central School, Narrowsburg, New York.

Leeanne Villani, Crispell Middle School, Pine Bush, New York.

Jabari Latif Young, Virginia Road Elementary School, North White Plains, New York.

Language Arts Class, Liberty School, Liberty, New York.

PHYLLIS AND THE FOUNDATION ON YOUTH SUICIDE: THE HIGH PRICE OF SILENCE

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. ACKERMAN. Mr. Speaker, earlier this year, Representatives LANTOS, DIOGUARDI, and I introduced H.R. 4650, the Youth Suicide Prevention Act. This bill, which passed the House unanimously, is a responsible and necessary beginning to answer the silent cries for help from our youngsters. Recently, however, the Heritage Foundation has circulated an executive memorandum in opposition to this legislation. In addition, Phyllis Schlafly has appeared on a network broadcast to protest the passage of this bill.

This breakthrough legislation, introduced on behalf of families who have lost their children to suicide, would create a small grant program within the Department of Education. The Secretary of Education would select proposals from local education agencies, and nonprofit private entities to design and operate suicide-prevention programs. It is an altogether appropriate and measured step to combat a growing national problem.

In its quest to kill the Youth Suicide Prevention Act, the Heritage Foundation and Ms. Schlafly are guilty of furthering the centuries-old misconception that teenage suicide ought to be kept a big secret—that not talking about suicide will somehow make it go away. The silence that the foundation and Ms. Schlafly advocate is both deafening and deadly. For over three decades we have followed their prescription for death—to keep quiet and do nothing—and the rate of youth suicide has tripled. Last year, approximately 6,000 young people took their own tender lives. And this year we can expect 6,000 more youngsters to be included in the same tragic statistic.

Sadly, Mr. Speaker, our Nation has for too long been following the prescription of the Heritage Foundation and Ms. Schlafly. We have treated youth suicide as an unspeakable taboo, often refusing to even acknowledge that it exists. While America remains silent, thousands of adolescents continue to be cut down each year by their own hand. Despite the Heritage Foundation and Ms. Schlafly's seeming unwillingness to offer any constructive recommendations to stem the tide of the No. 3 killer of this Nation's youngsters, we are experiencing a national crisis which cries out for national leadership.

The only leadership which these revisionist social engineers offer is that suicide prevention programs "should be run from the Justice Department to make it clear that suicide violates the law." If this recommendation was not so obscene, insensitive to the anxiety and pain suffered by thousands of families, and just plain wrong it would be laughable. Suicide is not illegal in any of the 50 States. Do they now want to throw suicidal youngsters in jail?

Phyllis and the foundation intend to turn the clock of western civilization back over 200 years. Legislating against suicide is nothing new—medieval society strongly believed that suicide could be controlled by punishing the act. As Phyllis and the foundation now propose, suicide was declared a crime and subject to punishment by law. But the effect of these statutes was not suicide prevention. Instead, the Dark Age decrees added to the pain already suffered by those experiencing self-destructive feelings. Suicidal persons were forced into secrecy and isolation. Barriers were placed between those who needed help and those willing to offer it.

At one time, English common law punished the crime of suicide by requiring burial of the remains of the deceased at a crossroads with a stake impaling the body, a stone placed over the face, and the amputation of the hand that committed the act. It was not until 1961 that the English Parliament finally abolished the crime of suicide, realizing that penalties do no more than isolate and stigmatize survivors, and drive at-risk individuals away from seeking the help they so desperately need.

American colonial law reflected the same English common law philosophy. Phyllis and the foundation still maintain this obsolete, irrational and uncivilized tradition.

Individuals and organizations supposedly concerned about family values ought to realize that the first and most sacred value is life. And anything that the Federal Government, or anyone else, can do to promote this goal ought to be pursued. Phyllis and the foundation say we should study the problem, and yet at the same time, they fervently advocate slashing the money from programs authorized to accomplish that mission.

Charlotte Ross of the Youth Suicide National Center, the leading organization fighting this scourge of our youngsters recently declared, "Youth suicide poses so great a threat to an entire generation of young Americans that it must be addressed openly by families, young people, religious groups, schools and the media." Information is needed that will help youngsters, and education and health-care professionals gain understanding about this national epidemic. In a recently released survey sponsored by "Who's Who Among High School Students," 71 percent of the teenagers polled said teenage suicide can most effectively be prevented through educational programs for teens and their parents.

During the 98th and 99th Congresses, the House Committee on Education and Labor, the House Select Committee on Children, Youth and Families, and the Senate Judiciary Committee have all conducted hearings on youth suicide. They have all come to the same conclusion—youth suicide is widespread and preventable, and the Federal Government should be active in combating this national tragedy. H.R. 4650 is the congressional response. The Heritage Foundation and Phyllis Schlafly, who advocate silence, have chosen the wrong time to make noise.

MIHAILOVICH IN HISTORICAL PERSPECTIVE

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 30, 1986

Mr. CRANE. Mr. Speaker, 40 years ago, General Draza Mihailovich was executed by General Tito and his Communist forces in Yugoslavia for alleged collaboration with the Germans during World War II. Even on the surface this charge is questionable, especially in light of the fact that he was considered one of the earliest leaders of the European Resistance Movement, and was personally responsible for saving the lives of some 500 American airmen shot down over Axis-controlled Yugoslavia. Furthermore, the testimony of American airmen, coupled with recently declassified intelligence documents, conclusively proves that these charges were indeed trumped-up to falsely indict General Mihailovich. Despite the evidence that supports the General, some individuals still believe the Communist rhetoric that was used to cover-up the murder of an American ally.

On October 1, I have reserved time for a special order to pay tribute to this patriot for his part in saving the lives of some 500 American servicemen, and for his part in aiding the allied cause in the war. All Members are invited to participate, but for those who still question General Mihailovich's patriotism, I would urge them to read the attached article by Alex Dragnich. It should provide insight as to why I feel so strongly about honoring General Mihailovich. The article follows.

MIHAILOVICH IN HISTORICAL PERSPECTIVE

(By Alex Dragnich)

Some persons actively seek positions of national leadership. Ronald Reagan for example—and when they experience troubles, we sometimes say that we do not feel sorry for them because they wanted to be in those positions. But what about persons thrown into positions of national leadership, usually in times of national emergency, without seeking them? Should we feel differently toward them, especially when they meet the terrible fate of death while seeking to carry out responsibilities that were thrust upon them? In any event, such was the case of Drazha Mihailovich.

Mihailovich was a colonel in the Yugoslav army when it collapsed under the Nazi onslaught in April 1941. Finding themselves in a more remote region of the country (in the mountains of Serbia), he and the men around him were not inclined to go to the valleys below to surrender to the Germans. Before long, Mihalovich and his men found other like-minded soldiers (mostly Serbs), who were determined that resistance to the Germans should be continued. Thus was born the first guerrilla movement against the Nazis, with Colonel Mihailovich as its leader. They became known as the Chetniks, after the Serbian guerrillas of the First World War.

Mihailovich soon discovered that the Germans were executing Serbian hostages at the rate of 100 for every German killed by the Chetniks, which in the long run would mean annihilation of the Serbian population. Consequently, Mihailovich decided to follow the advice of the Western Allies, who were telling all resistance groups in Europe to lie low and husband their resources, and to wait for the signal of their impending invasion of the continent.

Unfortunately for Mihailovich, another guerrilla group, calling themselves Partisans (led by the Communist Tito), was not deterred by the Nazi reprisals against the helpless populace. On the basis of Churchill's assertion that the Partisans were killing more Germans, British aid was increased to them, while aid to Mihailovich ceased by the end of 1943.

In the meantime, Tito tried to paint Mihailovich as a collaborator of the Nazis. This was mainly through radio broadcasts allegedly coming out of Yugoslavia, but in actuality out of the Soviet Union.

Ironically, when Mihailovich took certain specific actions against the Germans (mainly in 1943), in direct response to British requests, news of these actions were never forwarded from Cairo, where the head of British special intelligence was a Communist. To make matters worse, some of Mihailovich's actions were attributed to the Partisans in British radio broadcasts.

In the end, with the help of the Red Army, which liberated Belgrade in 1944 and turned the capital of the country over to the Partisans, Tito emerged as the victor in the civil war, and proceeded to establish a Soviet-type Communist regime in Yugoslavia.

In 1946, the Tito forces captured Mihailovich and executed him as a traitor, even though in private discussions with his comrades, Tito admitted that it was a political trial.

Mihailovich's "crime," in the eyes of the Communists, was that he very early spotted their aims and plans, which he did not see as in the interest of either Yugoslavia or the West.

It is interesting that Yugoslav Communist historians now admit that in the struggle to gain power, the Communist-led Partisans had to paint Mihailovich as a traitor, which they now say was not true. Mihailovich was their bitter enemy, they say, but not a traitor.

To the extent that Mihailovich's Chetniks were guilty of any killings, they were either in the civil war against the Partisans or in acitons against the occupiers, or in reprisal for the wanton massacre of helpless Serbian men, women, and children by allies of the occupiers.

Ironically, certain persons and groups in this country, who purport to be anti-Communist, are still spouting the Titoist line about Mihailovich's "crimes." They just cannot stand to see a Serb national guerrilla leader get the recognition that he deserves.

And some American Politicians, afraid of their shadows, permit the anti-Mihailovich elements (including Communist diplomats and certain other anti-Serb groups) to push them into a cowardly silence and thus avoid taking a stand.

There is not a shred of evidence that Mihailovich ever had any sympathies for the Axis powers. All the evidence points to his being a true patriot and a loyal ally of the United States and Britain. History will vindicate him.

HOUSE OF REPRESENTATIVES—*Wednesday, October 1, 1986*

The House met at 11 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We are appreciative, O God, of people who serve You by serving the common good. We are conscious of leaders who use their gifts and talents in ways that do justice and give aid and hope to those in need.

On this day, Almighty God, we offer this prayer of thanksgiving for the Speaker of this House of Representatives—for his gracious spirit, for his love of this Nation and this institution, for his heart of concern for the unfortunate, and for his devotion to his family.

We are grateful for his service and his commitment and we pray that Your blessing will be with him and his family now and in the years to come.

May the road rise to meet you.
May the wind be always at your back.
May the Sun shine warm upon your face.
May the rain fall soft upon your fields.
And, until we meet again, may God hold
you in the palm of His hand.

Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. LUNGREN. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. LUNGREN. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 284, nays 115, not voting 33, as follows:

[Roll No. 427]

YEAS—284

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Archer
Aspin
Atkins
AuCoin
Barnard
Barnes
Bartlett
Bateman
Bates
Bedell
Beilenson
Bennett
Berman
Bevill
Biaggi
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Brooks
Broomfield
Brown (CA)
Bruce
Bryant
Bustamante
Byron
Callahan
Carper
Carr
Chapman
Chappell
Clinger
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conyers
Cooper
Coyne
Crockett
Daniel
Darden
Daschle
Davis
de la Garza
Dicks
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Edwards (CA)
Edwards (OK)
English
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Franklin
Frost
Fuqua
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Glickman
Gonzalez
Gordon
Gradison
Gray (IL)
Green
Guarini
Hall (OH)
Hall, Ralph
Hamilton
Hammerschmidt
Hatcher
Hayes
Hefner
Hertel
Hillis
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Hyde
Jeffords
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lipinski
Long
Lott
Lowry (WA)
Lujan
Luken
Lundine
MacKay
Madigan
Manton
Marlenee
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCloskey
McCurdy
McDade
McEwen
McHugh
McKinney
McMillan
Mica
Michel
Miller (CA)
Miller (WA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Morrison (WA)
Murphy
Murtha
Myers
Natcher
Neal
Nelson
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Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Panetta
Parris
Pashayan
Pease
Pepper
Perkins
Pickle
Price
Pursell
Quillen
Rahall
Ray
Regula
Reid
Richardson
Rinaldo
Robinson
Rodino
Roe
Roemer
Rose
Rostenkowski
Rowland (GA)
Roybal
Rudd
Russo
Sabo
Savage
Scheuer
Schneider
Schulze
Schumer
Seiberling
Sharp
Shelby
Shumway
Sisisky
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Snyder
Solarz
Spence
Spratt
St Germain
Staggers
Stallings
Stenholm
Stokes
Stratton
Studds
Sweeney
Swift
Synar
Tallon
Tauzin
Taylor
Thomas (GA)
Torres
Torricelli
Traficant
Traxler
Udall
Valentine
Vento
Visclosky
Volkmer
Waldon
Walgren
Watkins
Waxman
Weaver
Weiss
Wheat
Whitley
Whitten
Wilson
Wirth
Wise
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (FL)
Young (MO)

NAYS—115

Armey
Badham
Barton
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Boulter
Brown (CO)
Burton (IN)
Carney
Chandler
Chappie
Cheney
Clay
Coats
Cobey
Coble
Coughlin
Courter
Craig
Crane
Dannemeyer
Daub
DeLay
DeWine
Dickinson
Dornan (CA)
Dreier
Edgar
Emerson
Evans (IA)
Fawell
Fields
Frenzel
Gallo
Gekas
Goodling
Gregg
Gunderson
Hansen
Hawkins
Henry
Hiler
Holt
Hopkins
Hunter
Ireland
Jacobs
Kindness
Kolbe
Kramer
Lagomarsino
Latta
Leach (IA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Loeffler
Lowery (CA)
Lungren
Mack
Martin (IL)
McCandless
McCollum
McGrath
McKernan
Meyers
Miller (OH)
Mitchell
Molinari
Monson
Moorhead
Oxley
Packard
Penny
Petri
Porter
Roberts
Rogers
Roth
Roukema
Rowland (CT)
Saxton
Schaefer
Schroeder
Schuette
Sensenbrenner
Shaw
Shuster
Sikorski
Skeen
Slaughter
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solomon
Strang
Stump
Sundquist
Swindall
Tauke
Thomas (CA)
Vander Jagt
Walker
Weber
Whitehurst
Whittaker
Wolf
Young (AK)
Zschau

NOT VOTING—33

Applegate
Breaux
Burton (CA)
Campbell
Conte
Dellums
Derrick
Dingell
Eckert (NY)
Fiedler
Fowler
Gingrich
Gray (PA)
Grotberg
Hartnett
Hendon
Jenkins
Lloyd
Markey
Mikulski
Moore
Mrazek
Nichols
Rangel
Ridge
Ritter
Siljander
Stangeland
Stark
Towns
Vucanovich
Williams
Wright

□ 1115

So the Journal was approved.

The result of the vote was announced as above recorded.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 2957. An act to amend the Foreign Assistance Act of 1961 to protect tropical forests in developing countries;

H.R. 4244. An act to authorize funds to preserve the official papers of Joseph W. Martin, Jr.;

□ This symbol represents the time of day during the House proceedings, e.g., □ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

H.R. 5299. An act to amend title 38, United States Code, to provide a 2.0 percent increase in the rates of compensation and of dependency and indemnity compensation (DIC) paid by the Veterans' Administration, and for other purposes;

H.R. 5362. An act to extend the authority of the Supreme Court Police to provide protective services for Justices and Court personnel; and

H.R. 5548. An act to amend the Export-Import Bank Act of 1945.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 5548) "An act to amend the Export-Import Bank Act of 1945," disagreed to by the House, agrees to the conference asked by the House on the disagreeing votes of the two Houses thereon, and appoints Mr. GARN, Mr. HEINZ, and Mr. PROXMIRE; for section 23 only, Mr. HELMS, Mr. MATHIAS and Mr. PELL; to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill of the following title, in which the concurrence of the House is requested:

S. 2506. An act to establish a Great Basin National Park in the State of Nevada, and for other purposes.

□ 1125

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, DC,
October 1, 1986.

Hon. THOMAS P. O'NEILL, Jr.,
The Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 5, Rule III of the Rules of the U.S. House of Representatives, the Clerk received at 7:16 p.m. on Tuesday, September 30, 1986, the following message from the Secretary of the Senate: That the Senate passed, without amendment, H.J. Res. 743.

With kind regards, I am,
Sincerely,
BENJAMIN J. GUTHRIE,
Clerk, House of Representatives.

A SUMMIT IS NOT A ZERO-SUM GAME

(Mr. LANTOS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LANTOS. Mr. Speaker, a summit meeting must not be a zero-sum game. I am appalled by the speculation of pundits and politicians as to who lost, who won, who scored, and by how much in reaching agreement to hold the next summit in Rejkavik, Iceland.

A summit meeting is not a basketball game with numbers flashed on the scoreboard, with a winner and a loser when the final whistle blows.

In an age when superpowers have the capacity to assure the destruction of each other, both our nations must be winners or both will surely lose.

Of course, a poorly prepared or clumsily handled summit could well be a loss for one or for both sides. But properly approached, a summit is not a zero-sum game. Both sides can win—as can indeed the entire world—if summits take us toward a more stable and less dangerous living together on this tiny planet.

A summit, Mr. Speaker, must not be a zero-sum game.

IS THERE JUSTICE IN YUGOSLAVIA?

(Mr. BROOMFIELD asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROOMFIELD. Mr. Speaker, if you are searching for justice, steer clear of Yugoslavia. An innocent man is in jail there and the Government of that country isn't doing anything. U.S. consular officials are being denied access to that man. Why doesn't our Government do more to get him out of prison?

A naturalized U.S. citizen from Michigan has been jailed in that country on charges of having participated in political demonstrations in Washington, DC. How can the Government of Yugoslavia get away with this obvious violation of the rights of that human being?

Since July, Mr. Pjeter Ivezaj has been in prison. There are reports he may have been beaten while in jail. Did he commit a crime while in Yugoslavia? No. He is being detained for having participated in demonstrations against the Yugoslavian Government—peaceful demonstrations that were held here 5 years ago.

Did he break a U.S. law? Absolutely not. He was exercising his rights as an American citizen. Why are the Yugoslavs holding him? They say that he was arrested for expressions of political beliefs while in the United States. That is a crime in Yugoslavia and that Government insists that he is still a Yugoslavian citizen.

Where are the humanitarian concerns of the authorities in that country? Does our Government really want to improve our relations and economic ties with such a country? Now is the time to stop this nonsense! It is time to free Mr. Ivezaj!

AMERICANS HELD HOSTAGE

(Mr. MAVROULES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAVROULES. Mr. Speaker, in recent years, the United States has been continually confronted with the uneasy task of attempting to secure the release of Americans held captive abroad. Just yesterday, our Nation rejoiced in the newly won freedom of Nicholas Daniloff, an American reporter unjustly accused of spying. And while the Soviets made every effort to equate the situations of Nick Daniloff and Mr. Zakharov, President Reagan held firm, loudly proclaiming Mr. Daniloff's innocence.

The President knew, as we all do, that the Daniloff abduction and the Zakharov case are unrelated. Nonetheless, to ensure the safety of an American citizen, the President made a deal, and the two men were released. And I commend the President for his handling of this delicate situation.

I wish to point out, however, that we Americans sometimes have short memories. While we should be thankful for the release of Mr. Daniloff, we must not in our bliss forget those Americans in Lebanon who are still held captive. Family and friends still await news concerning their love ones, hoping that they are safe—praying that someday they, like Nick Daniloff, will come home.

Mr. President, all Americans breathed a sigh of relief with the news of Mr. Daniloff's freedom. I urge you today to intensify United States efforts to release those still held in Lebanon, those whose names may escape most Americans, but whose continued captivity is just as reprehensible to the American spirit. Let us work just as hard to secure their release as we did for our friend and fellow American Nicholas Daniloff.

CELEBRITY RELEASES ARE NOT ENOUGH

(Mr. PORTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTER. Mr. Speaker, yesterday we were all surprised to hear that the President has agreed to a presummit in Iceland. What do we have to talk about? Arms control, certainly, regional conflicts, certainly, and, I would hope, human rights.

In case you have not noticed, the Soviets have slightly modified their stance on human rights. They are now releasing the celebrity refusniks, one-by-one, for maximum press. But make no mistake about it, the numbers of Jews leaving the Soviet Union remains far lower than in the 1970's. It is as if the entire population of California were locked up except for a few Hollywood stars to be released one-by-one.

We thank God, Mr. Speaker, for the release of Natan Shcharansky, and now for Dr. Yuri Orlov, for Tamara Tretyakova and her son Mark, but celebrities are not enough, Mr. Speaker. The message must be loud and clear at

Reykjavik, "We want people, and lots of them."

CONGRESSMAN DON BONKER SPEAKS OUT ON TRADE

(Mr. BONKER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BONKER. Mr. Speaker, the trade figures are out for last month and the good news is that the deficit is not as bad as July. The bad news is that we are still on course to record trade deficits for 1986. Indeed, the August figures are 25 percent higher than the figures for August 1985.

While exports have not improved with the August figures, at least agricultural trade improved enough to edge back into the surplus side of the ledger. Mr. Speaker, it is obvious that the dollar decline will not solve our trade problems. Much more needs to be done if we are to restore America's competitive position.

In May, this House passed by a large margin a comprehensive trade bill that is languishing in the Senate. Once again, I call upon the Senate to pass a trade bill in this session of Congress. As the trade deficit worsens, we cannot ignore this impending crisis any longer.

□ 1135

THE KING OF THE WORLD'S CURRENCIES

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, we may read in the Bible the Fable of the Trees (Judges 9, 7-15). The trees assembled to anoint a king. The olive tree did not want to abandon the care of her oil; the fig tree did not want to forsake her figs; nor did the vine want to exchange the care of her wine for the glories of the office. The trees turned to the thorn-bush: "Will you then be king over us?" And the thornbush said to the trees: "If you really want to anoint me as your king, then come under the protection of my shadow; if not, fire shall come out of my thorns and will burn up the cedars of Lebanon." And historians are still debating, to this very day, whether or not the trees have had the benefit of free election.

Voltaire in his philosophical Dictionary used this allegory to demonstrate the absurdity of the monarchial form of government: It is the most ruthless and unscruplulous man who is likely to become king, and there is no hope of ever dethroning him.

Mr. Speaker, the Bibical allegory has a lesson for our republican form of government, too. Having dethroned gold, the world's currencies assembled to elect a new king. The Swiss franc did not want to betray the trust of the Swiss. The German mark refuse to abandon the care of Germans. And the Japanese yen declined to forsake the interest of the Japanese. Alone among the currencies, the American dollar could not resist the temptation to become the world's reserve currency.

And the American people are going to pay a dear price for this exercise of vainglory.

WHEN IS A DEAL NOT A DEAL?

(Mr. FRANK asked and was given permission to address the House for 1 minute.)

Mr. FRANK. Mr. Speaker, I have a riddle. When is a deal not a deal? The answer is when Ronald Reagan makes one and does not want to get caught at it.

I do not criticize the President for making what looked to me like a trade in this case. Given the lack of respect for human rights that the Russians have, I think he did what he had to do.

But it contradicts the whole political premises on which Ronald Reagan based his career. We have been told that if you just looked and talked and acted tough, the Russians would cave in. But when that did not happen, he had to make a deal by letting a spy go free to get Nick Daniloff back and they threw in something called a presummit later.

We now have nondeal deals and nonsummit summits to go with nonbank banks.

I do not want to say that the President was not telling the truth, and if he says this was not a deal, that we just happened to let Zakharov go and they just happened to let Daniloff go, then it must not be a deal.

But I do want to be the one who submits that to the "Guinness Book of World Record of Coincidences."

COURTER WARNS ON UNVERIFIABLE ARMS CONTROL TREATY

(Mr. COURTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COURTER. Mr. Speaker, in the euphoric atmosphere surrounding the release of Nicholas Daniloff, I am concerned that we may throw caution to the winds and enter into arms reduction agreements which may not be in our national interest. Specifically, it is my understanding that the United States and the Soviet Union may be close to an agreement on intermediate range nuclear forces—Pershing II's and ground launched cruise missiles for the United States and SS-20's for the Soviet Union. The reported terms of the agreement may include a limit of 100 INF warheads in Europe, as well as some limitation on INF warheads in Asia.

Any such agreement would still include at least 100 warheads more than the "zero-zero" option originally proposed by President Reagan and rejected by the Soviet Union. In addition, such an agreement would be patently unverifiable. Unfortunately, the State Department reportedly is prepared to accept the familiar Soviet negotiating formula of ratification first, verification second. An agreement reached under such terms would be worse than no agreement at all.

The Reagan administration has been unfairly excoriated for its refreshing concern about the verifiability of arms control agreements. But the critics should be able to understand that it is much easier to verify the total absence of a particular class of weapons system than it is to count specific numbers of weapons systems. The Soviet SS-20 is a completely mobile system that the Soviets do their level best to keep closely shrouded. It reportedly took the United States 3 years of broad area search to discover the enormous Krasnoyarsk radar in Siberia. One can only imagine the difficulty involved in determining if a particular SS-20 missile is "permitted missile No. 99" or "illegal missile No. 101." This is what makes arms control verification a uniquely Western problem, and it explains Soviet impatience with matters that simply do not concern them.

If there is to be an INF agreement, and if the Soviets will not accept "zero-zero," then the State Department must insist upon extremely strict verification provisions as integral parts of any agreement and not as mere afterthoughts or protocols. Such an INF agreement should impose at least a 100-warhead limit worldwide, so that our allies in the Middle East and Asia can rest easier. Soviet INF systems in excess of the permitted limit should be openly destroyed and subject to confirmation by United States or neutral observers. Permitted INF systems should be deployed only in prescribed deployment areas. Missiles outside these areas would constitute fundamental violations and would be grounds for U.S. withdrawal from the agreement.

These and other similar verification provisions have been proposed and studied ad nauseum within the Reagan administration, only to be blocked by those State Department and ACDA career officials who place the "arms control process" above all else. The administration should be forewarned that an unverifiable arms control agreement will fare no better in the Senate in 1987 than the SALT II agreement did in 1980. If anything, the intervening years have hardened our determination to hold the Soviet Union accountable for past violations and to ensure that the mistakes of the past are not repeated with tragic consequences.

EVEN THE SUMMIT CAN BE MANIPULATED

(Mr. LEVIN of Michigan asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVIN of Michigan. Mr. Speaker, the administration urges that the departure of Daniloff from the Soviet Union and Zakharov from the United States on the same day does not constitute a swap.

Many will not find this convincing but at least the merits of any such "swap" are defensible. Daniloff and Orlov are free and a major obstacle to a summit is cleared away.

But there is another attempted swap going on in Washington that is not defensible—that in return for a minisummit in Iceland, Members of the other body should change their position on South Africa and vote against override.

This ploy demeans the United States position both on summit negotiations and justice in South Africa.

It makes it appear that, for an administration already up to its ears in bargaining chips, even the summit can be manipulated as a bargaining chip. It says a moral issue such as South Africa can easily be placed on ice.

Doubletalk is perhaps a necessary part of diplomacy; double standards of morality are not. Going to Reykjavik may be a good idea; the other body turning its back on its bill for action against apartheid in South Africa is not.

CONGRESSIONAL SOAP OPERA

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker, the Congress of the United States has its own soap opera. It is called the continuing resolution, to be continued, to be continued, to be continued.

"A Search for Tomorrow" that never brings a resolution to the budget situation. Must we spend "All the Days of Our Lives," "As the World Turns," watching a continuing resolution? It is an escape from the responsibilities of the House of Representatives and the other body to do what it is elected to do, to prepare a budget year after year.

I say to you that we need "A Guiding Light" in order to escape this great difficulty. What we ought to do is to adopt two pieces of legislation, at least, to the continuing resolution that I have before me. One would apply the line-item veto exclusively to the continuing resolution or, instead of that, to have a separate enrollment of each item in a continuing resolution.

In this way, we, who are "Young and Restless" about this entire stinking situation, can at least bring about something for "All My Children" and all of yours, too.

This is the Capital and we have only "One Life to Live." Let us do what we can to solve the budget problem.

DISASSOCIATION FROM CONGRESSIONAL HISPANIC CAUCUS

(Mr. GONZALEZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GONZALEZ. Mr. Speaker, the other day, there was quite a bit of furor when the Japanese leader, Nakasone, made some scurrilous remarks about American minorities, including what we label today the Hispanic.

I have been through the metamorphosis of name changing and designation over a period of 50 years. It started out with Latin American; then in my section of the country, it was Mexican-American; now it is Hispanic.

So that yesterday, the Congressional Hispanic Caucus issued a statement that I wish to disassociate from because they are accepting the apology of Nakasone which came, in my opinion, kind of late.

I believe always in actions, rather than words. If Mr. Nakasone's industrial penetration of the United States would show no prejudice, I would like to see more Japanese franchises to the American minority businessmen of the United States.

Then maybe I might consider an apology. In the meanwhile, I wish to disassociate myself from my fellow congressional caucus members.

After all, I am really not a Hispanic; I am a Mexican.

CHANGES IN PROCEDURES HAMPER MEMBERS IN CONSIDERATION OF LEGISLATION

(Mr. YOUNG of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. YOUNG of Florida. Mr. Speaker, during this time yesterday, I expressed concern about changes in House procedures which have eroded the ability of Members to best represent the American people.

Of great concern to me, is the increasing number of rules, under which we consider legislation, that deny Members the opportunity to offer amendments. Major decisions have been made during this Congress on tax reform, budget reconciliation and a $500 billion continuing resolution under closed rules that precluded all but a few Members from offering amendments to the legislation.

In other cases, amendments have been prohibited unless they were submitted for prior consideration by the Rules Committee or preprinted in the CONGRESSIONAL RECORD. This severely limits the ability of Members to offer perfecting or substitute amendments.

Last week alone, the House considered, under closed rules, budget reconciliation, age discrimination legislation, and the continuing resolution. By Friday, Members of both sides of the aisle indicated dissatisfaction with these types of procedures by rejecting still another closed rule, this for immigration reform legislation, because it would have prevented the offering of an important amendment.

The amendment process is the only real avenue available for those Members not privileged to serve on the committee with jurisdiction or who serve in the minority—to raise important issues and alternatives to legislation pending before the House. Restricting that process through the imposition of closed rules seriously erodes the ability of Members to actively participate in the shaping of legislation.

Mr. Speaker, during my time tomorrow, I'm going to discuss further restrictions imposed on Members which limit the amount of debate on key issues and further diminish the opportunity for Members of Congress to present alternative views, a very important part of our legislative process.

☐ 1145

PETITION TO RELEASE DAVID GOLDFARB

(Mr. ACKERMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ACKERMAN. Mr. Speaker, Daniloff is out, and for that we can all be greatful.

But the man who stood by Daniloff, the man who refused to take part in the sham that led to Nick's imprisonment, now needs our help more than ever.

David Goldfarb was a friend of Nick Daniloff in the Soviet Union. Because the reporter trusted him, and because Goldfarb was about to receive an exit visa, the KGB assumed that he could be used in their clumsy attempts to frame and seize the journalist.

The KGB never counted on David Goldfarb's extraordinary courage.

David Goldfarb refused to follow orders. Now, desperately ill, he languishes in a Moscow hosptial, his exit visa snatched from him at the last moment. He has submitted to an excruciating interrogation, searches of his home, and constant scrutiny of his every move.

David Goldfarb was a Russian patriot who lost a leg fighting the nazis at Stalingrad. Today, he has refused to accept the tyranny of the KGB. If he is to receive the health care he needs, and the comfort of his son and friends in New York, this heroic man must be freed.

David Goldfarb knows that just following orders is no excuse. I have with me on the floor today an urgent petition to Secretary-General Gorbachev for the release of this authentic 20th-century hero. I ask every Member of Congress to please join in signing this letter.

FLOODS RAVAGE MICHIGAN

(Mr. HENRY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HENRY. Mr. Speaker, it is with a sense of sadness and regret that I feel compelled to advise the House of a tragedy of massive proportion which is gradually enveloping my State of Michigan. While we are all familiar with the serious draught of the farmers in the American Southeast earlier this year—and to which my Michigan farmers volunteered hay and other philanthropic assistance—the Nation is only gradually becoming aware of the serious flooding taking place in my State.

Already, 26 of the States 83 counties have been declared disaster areas by the Governor and by the Federal Emergency Management Agency. Estimates of crop loss mount so quickly that it is hard to keep an accurate running tab as to the magnitude of the tragedy.

As of the yesterday morning, it was estimated that the flooding has caused crop losses in excess of $223 million. That estimate did not include the losses now being felt in our fruit orchards, where roughly half of some of the varietal apples have now dropped into the mud and muck left behind by the flooding.

The National Weather Service indicates that the rains are the most severe since records have been kept—roughly 1,500 percent normal rainfall for the month of September. Analysis of tree rings and other analytical techniques indicate that this is perhaps the most severe rainfall total in over 400 years in the State of Michigan.

Michigan State University's department of agricultural economics estimates that without disaster relief, 22 percent of the farms in the flood-ravaged area will not be in a financial position to farm in 1987. Further, since most of the crops involved in the crop losses are nonprogram crops, the equity position of these farmers is much more severe than that of the American Southeast.

As tragic as the draught has been for the American farmers in the Southeast, flooding is even more tragic. It involves the loss of homes, barns, and storage facilities, agricultural machinery—in addition to crop loss. It destroys the economic infrastructure of public roads, drain ditches, and dams.

Because of the immediacy with which this situation has developed, and because of the extent of this tragedy, I wish to advise my colleagues that a serious effort is now underway to address the problem of the flood-ravaged Michigan farmer in conjunction with the draught relief bill which passed the House several weeks ago, and is now under consideration in the other body. The Michigan delegation is firmly united behind this effort to see that our farmers and our communities are treated equitably in response to the disaster they have experienced.

I ask my colleagues to extend the same hand to our Michigan farmers as was so generously extended to those farmers in the Southeast. Surely, the magnitude of loss—both economic and in terms of human tragedy and suffering—is just as severe, if not more so, than that which occurred earlier this year in that region.

THE SOAP OPERA OF "BUY AMERICAN"

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, we have been discussing soap operas here today on the House floor. I think there is a message that perhaps the American people should understand where a great soap opera is taking place in Washington and it is in the other body.

This House passed the buy American amendment to the defense authorization bill and the word that I have coming back is that it is dead on arrival in the other body.

The American people should understand that the European Community nations and Japan are all lobbying Washington, DC, to throw out the buy American amendment. That is not unusual. We are trying to give American industry who hires American workers, who pay American taxes, to keep Washington going, an opportunity to get some of the Government work, especially the big ticket items of defense. If this Capitol lets the foreign nations continue to rape the taxpayers' dollars, we will have performed the greatest disservice in history to our own people.

They also have before them a bill to help retirees with LTV. They should act to bring that bill out and stand and win one for the home team.

I am hoping that Congress will contact the other body to get them to vote for the measure and try to keep that amendment in the Defense authorization bill.

A HISTORICAL DAY FOR AMERICAN FINANCIAL INSTITUTIONS

(Mr. KOLBE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KOLBE. Mr. Speaker, today marks an important day in the history of American financial institutions in America. Today, October 1, 1986, is the first time a State will adopt fully reciprocal, unrestricted, interstate banking.

Mr. Speaker, I bring this to the attention of the House of Representatives and to the citizens of the country as a whole because I believe that this action by my State of Arizona will prove to be a major, precedent-setting, development in the American financial marketplace.

This initial adoption of full interstate banking is a very large first step toward what will inevitably become the standard of banking and financial practice in this country.

Technological advances and changing demographics have revolutionized the capacities and demands being made upon the financial services industries. Today, it is possible for a person to regularly be on both coasts of the continent, as well as points in between, within the space of a single day. Indeed, this scenario is lived out week to week by Members of this body. In such an environment, there are financial demands being made upon individuals which transcend State boundaries with the same regularity as their personal travel. It is illogical to assume that regulation adopted against the backdrop of a postdepression economy can suffice in a world of very different economic conditions.

Arizona is proud to lead the way into the next century of financial services. We are also happy to welcome the new entrants into our marketplace. Chase Manhattan and Citibank of New York, Security Pacific and Union Bancorp of California, and Zions Bank of Utah are all new players today in the Arizona financial arena.

I have repeatedly stated my support for interstate banking and expanded powers for banks. As a member of the House Banking, Housing, and Urban Affairs Committee, it gives me great pleasure to be able to say that my home State is the pioneer in this direction.

SERIOUS ARMS CONTROL DILEMMA THAT FACES OUR COUNTRY

(Mr. DICKS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DICKS. Mr. Speaker, I rise today concerning the serious arms control dilemma that faces our country.

On December 22 the United States will deploy the 131st cruise missile carrying bomber. That deployment will carry the United States beyond the subceilings of the SALT II agreement.

For 5½ years, the Reagan administration as a matter of policy exercised interim restraint, a no undercut policy regarding SALT II.

I believe today an impasse exists between the United States and the Soviet Union regarding a new arms control agreement dealing with strategic weapons and the SDI. That impasse makes it even more vital for the Congress to insist on continuing the Reagan policy of no undercut. If we do not continue that policy, we may have lost our last chance to restrain the offensive arms race.

Mr. Speaker, I hope that the impasse is broken, but let us not give up on SALT II limits until we get a new agreement.

TESTING FEDERAL EMPLOYEES FOR DRUGS

(Mrs. BENTLEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BENTLEY. Mr. Speaker, the battle against the use of narcotics is serious and requires a maximum effort by everyone in our society. I introduced bills aimed at this menace before it became fashionable to do so.

But in fighting this war, let us be sure that our traditions, culture, and legal system are not the first casualties. Since coming to Congress, I have found myself fighting against the habit so prevalent in this body of using our Federal employees to balance our budgets and cut our expenses. Now, these same Federal employees are to be singled out for drug testing.

Our Federal workers are not suspect of having committed any crimes. They are just a handy target. Well, if they are to be tested for drugs, let us remember that they are entitled to the maximum we can provide to protect their civil rights and their dignity.

Any tests given to Federal workers must be accurate, responsible, and must protect the worker from invasion of his or her privacy to the extent possible. These people give us their service and their integrity. We must give them our protection from the abuse of a testing program, however desirable.

We are already receiving complaints about the unreliability and indignity of these tests. Let's get this corrected before we further damage the morale of our own work force.

THE ADMINISTRATION IS SADLY ISOLATED ON SOUTH AFRICAN ISSUE

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, the administration is now linking the sanctions in South Africa vote in the Senate to the summit. The argument goes like this: "Don't roll the President on the South Africa issue, because he'll appear handcuffed and weak with the Soviets."

How absurd. What is next? Are they going to ask us now to link the budget issue, debt ceiling, immigration, a tactic that also includes, regrettably, casting disloyalty aspersions on the chairman of the Foreign Relations Committee in the other body? This is regrettable.

Mr. Speaker, the administration is sadly isolated on the South Africa issue. The demise of this senseless policy should be rapid, should take place as expeditiously as possible and should stand on its own.

The summit is too important to let unpopular issues like this tag along. Let the Senate override the President's veto on South Africa.

On the summit, the President has done a good job in putting it together. Let that summit be concrete on issues, but let it not be tagged along with political tactics that are not going to work.

THE BEARING INDUSTRY CAUCUS

(Mrs. JOHNSON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. JOHNSON. Mr. Speaker, I invite my colleagues to join me in founding a bearing industry caucus to coordinate congressional efforts aimed at preserving this key industry, a key element in the U.S. industrial base.

Recently the Pentagon released a Joint Logistics Commanders' Study that documents the serious decline of the U.S. ball and roller bearing industry, a decline so serious that the flow of domestic bearings to American defense contractors is indeed in jeopardy, and for the first time an agency of this administration is recommending not only a Buy American policy for bearings, but a series of administrative policies that when coupled with private sector actions will over a period of a few short years restore the health of this critical and vital industry.

At this time it is imperative that we in the Congress form a bearing caucus to give us the oversight ability to be certain that the interagency council set up by this study will carry through on adopting public policies that will preserve our national interest in a strong, healthy, bearing industry and that at the same time puts pressure on the private sector to make those investments to take their share of responsibility to address this problem.

The challenge is for once coordinated policy actions, private sector actions, to meet the challenge of assuring a healthy industrial base in America for our own defense and that of the free world.

DRUG WAR SHOULD BE EVERYONE'S CONCERN

(Mr. STRANG asked and was given permission to addresss the House for 1 minute and to revise and extend his remarks and include extraneous matter.)

Mr. STRANG. Mr. Speaker, one of the most cogent pieces I've read on the national drug abuse problem was written recently by our Secretary of Health and Human Services, Dr. Otis R. Bowen.

It was reprinted on the op-ed page of the largest newspaper in my district, in the September 7, 1986, edition of the Pueblo Chieftain, and I am submitting a copy for the Record.

Dr. Bowen outlines the problem of cocaine abuse for all Americans, whether they are direct victims who suffer the harmful consequences, or the indirect victims who suffer from family problems or in the workplace, yet tolerate its flagrant use in society.

It is an undeclared drug war that Congress has formally recognized in our omnibus antidrug bill, yet it is one that, as the author strongly suggests, will only be won in the trenches. The drug war should be, as Dr. Bowen says, everyone's concern.

The full text follows:

[From the Pueblo (CO) Chieftain, Sept. 7, 1986]

Drug War Should be Everyone's Concern

(By Otis R. Bowen)

Our nation faces a crisis that literally is a personal disaster for many of us. Cocaine use and the use of crack is growing in our schools, in the workplace, and in our homes. Commentators have called it a plague, a snowstorm, an avalanche and a flood. But whatever metaphor you choose the picture is always the same—millions of users, billions in wasted resources, and innumerable stories of pain and despair.

A cocaine-free America will require a massive effort. We must dry up the demand at our home as we squeeze supplies abroad. We must help the heavy user find appropriate treatment. We must also stop the occasional user from continuing down a road which will lead to a world of dependence.

But money and programs are not the most important factor here. Individual action, fueled by knowledge and compassion, is the critical variable. We must not make excuses, shrug our shoulders and turn away. Instead, we must directly, methodically and completely confront cocaine use, and stand up against it.

The best way to start is to expose the lies surrounding cocaine. Misinformation, misunderstanding and ignorance are the breeding ground for cocaine's infestation. But facts pierce the mythology that surrounds cocaine, leaving an ugly picture which must be viewed and understood by adults, teenagers and children.

Lie number one: Cocaine is not harmful or addictive.

Some people rationalize that addiction and death can't happen to them. They reason that others become addicted or die because of misuse, overuse, weakness or stupidity. We tell ourselves: "it can't happen to me," or, "I'm smarter than that."

But the truth is more brutal than that. Any use is misuse. Clinical studies demonstrate that cocaine is addictive and dangerous. When snorted it can cause nasal congestion and nosebleeds, sexual dysfunction, cardiac arrythmia, convulsions, coma, respiratory collapse, agitated or paranoid behavior, and death.

When used as crack it is even more addictive and dangerous. Crack use allows cocaine to reach the brain within seconds. It rapidly produces extreme highs which quickly result in deep lows. The highs create additional strains on the cardiovascular and respiratory systems, and the lows demand an instant "fix."

The lie spreads when non-users are led to believe that casual, moderate use is controllable. But study after study proves that casual use may open the gate to more dangerous substances and increased intake.

The facts can set us free, if we let them.

Lie number two: Cocaine is a victimless crime.

A victimless crime, by definition, has no victim. But, in the bizarre and terrifying world of cocaine victims are found at every step—in hospitals, treatment centers, halfway houses, private clinics and the morgue.

Clearly, the user is a victim, allowing a market for the seller. In turn, sellers are victims who grow richer, bolder and more dependent on the preservation of the cocaine pipeline. The supply of drugs grows as a result.

Users and sellers aren't the only victims. The user's family members also become victims as cocaine use enters into their homes. Eventually, all of us become victims when poor work performance, crime or death enter our lives.

We have found the victims, and they are us.

Lie number three: Cocaine use is acceptable in America.

Most Americans are tired of cocaine and its stepchildren: crime, poverty and family breakups. We are no longer willing to ignore the pusher who deals to kids at schools or on street corners. We find it hard to overlook the addict sitting next to us in the workplace or the casual weekend user.

The time has come to make a clear-cut choice. We cannot ignore cocaine use any longer. Silence equals consent. Cocaine use must become unacceptable, unfashionable and illegitimate.

Recently, the Ad Council, in conjunction with my department, aired public service announcements exposing the lie of cocaine. In these spots ex-users give first-hand accounts of cocaine's harmful and addictive nature. These people are cocaine's direct victims. They are speaking out to urge Americans to end acceptance of this drug.

These victims' stories illustrate the crisis we must confront. They have heard the lies. They once believed. Now they know the truth, and so should we.

Knowledge demands action. We must actively oppose cocaine use, and spread the word. We must make drug use intolerable in this country. As students, parents, grandparents and civic leaders I am calling upon each of you to join the president's "war against drugs."

□ 1200

ALZHEIMER'S DISEASE

(Mr. BILIRAKIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.

Mr. BILIRAKIS. Mr. Speaker, I would like to take a moment to, again discuss a very special group of 2.5 million Americans who have led normal, productive lives and then find themselves afflicted with a devastating and debilitating brain disorder known as Alzheimer's disease.

In an effort to assist these victims and their families, I introduced legislation last year known as H.R. 66—to provide family support groups to provide emotional and practical support for those who are affected by this illness, and H.R. 67—to provide for a series of demonstration projects to determine the feasibility of providing Medicare assistance to Alzheimer's victims.

I am pleased that my support groups concept became law as part of the Protection and Advocacy for Mentally Ill Individuals Act earlier this year and am hopeful that the Congress will soon approve the Energy and Commerce Committee's budget reconciliation package provision calling for five, 3-year Medicare demonstration projects.

Once completed, these projects will leave us in a much better position to draft comprehensive legislation to assist Alzheimer's victims on a permanent basis. I urge all my colleagues to support this provision and thereby help provide the much needed financial assistance to these most unfortunate victims.

MISSING CHILDREN

(Mr. CRAIG asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CRAIG. Mr. Speaker, often, issues emerge, inflame the public imagination and slowly sputter out.

That cannot be allowed to happen with this issue: the problem of missing children.

Conflicting estimates exist on the number of children who vanish each year. Some say it is hundreds. Some say it is thousands. Some say it is tens of thousands.

I say it is irrelevant.

As long as our children are being abducted, as long as our children are vanishing, as long as we have one child who walked out a front door and never reentered, we must be vigilant.

It is easy to say that children are our most precious possession. It is impossible to imagine losing such a treasure. It is tempting to put it out of our minds until it's brought home to us.

National Child Identification and Safety Information Day is important because it brings the issue back home. It reminds us that the threat exists and that we must do all we can to protect our families, to protect our children.

We must do all we can to keep the flame of vigilance alive.

IMMIGRATION PROBLEM MUST BE TACKLED

(Mr. SHAW asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHAW. Mr. Speaker, as we get into the final days of the 99th Congress, we find that we started out at a very slow rate, and it seemed that this was going to be a Congress that could be identified perhaps with a big yarn. However, in the closing weeks and the closing months of the 99th Congress, we find that we have a Congress that could go down as a truly historic Congress.

We have seen tax reform become a reality. We see that we have a drug bill that is going to be of historic proportions and could have a historic impact upon the whole drug problem across this country. But one thing that we have languishing as unfinished business is the immigration bill, the immigration bill that we have tried to get up on this floor on many, many occasions.

Mr. Speaker, do not let the O'Neill years of Congress go by without tackling this important question. Many Members of Congress were unhappy with the rule—the majority of the Members of Congress were unhappy with the rule that was presented to this House, and therefore rightfully struck down this rule. Now we are asking to be able to take the will of the majority of the Members of this Congress and to craft a fair rule that will give us an opportunity to have the whole question heard.

This is a most important question, Mr. Speaker. It is a question that must be addressed by this Congress, and it is perhaps an issue that will linger as a blight or as a dark mark on the 99th Congress unless we do take this issue up.

PROVIDING FOR CONSIDERATION OF H.R. 2348, DEPARTMENT OF JUSTICE AUTHORIZATION ACT, FISCAL YEAR 1986

Mr. LOTT. Mr. Speaker, pursuant to House rule XI, clause 4(c), I call up House Resolution 215 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 215

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2348) to authorize appropriations to carry out the activities of the Department of Justice for fiscal year 1986, and for other purposes, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, each section of said substitute shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of clause 5(a) of rule XXI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. RICHARDSON). The gentleman from Mississippi [Mr. LOTT] is recognized for 1 hour.

Mr. LOTT. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to a majority member of the Committee on Rules, pending which I yield myself such time as I may consume.

Mr. Speaker, the intended purpose here in calling up House Resolution 215 is to provide us an opportunity to consider again a fair rule on immigration reform, to give this House an opportunity to consider immigration reform both today and tomorrow, hopefully giving us enough time to complete action to get it in conference and to be able to complete final action on immigration reform this year.

This issue has been debated passionately, has been amended, has been improved, going over a period now of 5 years. We should not leave it dead on the floor of the House of Representatives. We should give our Members an opportunity under a fair rule to debate this issue, to offer amendments, to vote on those amendments, and to vote on its final passage.

If we were going to complete our legislative session this week, in the next 2 or 3 days, I guess that it would not be possible to move it on through. But we are not. We will be here next week, probably all week, and we are in effect marking time here in the House of Representatives today and this week, and will be much of next week. So how can we not allow a major issue like this to be brought up under a fair rule, debated, and voted upon one way or the other?

Under the process that we use here under this rule XI, clause 4(c), a member of the Rules Committee can call up any resolution that has been reported by the Rules Committee and is pending here for action. In this case it is House Resolution 215, which was the rule that was reported over a year ago, going back to I think July 9, 1985, for the Justice Department authorization.

Our intention here by calling up this rule is to have the full hour for debate, in which we will explain exactly what we are trying to do on the immigration reform rule, and after that 1 hour of debate we would urge our colleagues to defeat the previous question, defeat the previous question, at which point a rule would be offered allowing for immigration reform to be considered, a fair rule, that would make in order the bill that was reported by the Committee on the Judiciary, the rule that was reported by the Committee on Rules, but with some very crucial changes in that rule, that would be a bipartisan change in the rule, so that we can get this issue up.

I wish that we did not have to do it this way, but it appears that it is the only way that it can be done, because after the vote on the rule last week there have been no indications that the Rules Committee will meet again, and yet the Rules Committee could, and I know that the chairman of the Rules Committee could and would call a Rules Committee meeting. We could grant it a rule, we could have it back on the floor that same day or certainly by the next day.

The Rules Committee met yesterday morning on a relatively—well, I will not call it insignificant—but on an issue, and did not report out a rule, but we did not take up immigration reform. It is apparent to me that there is no intention at this time from the Rules Committee, or from the leadership on the other side, to bring up another rule. I think that that is a mistake.

Therefore, we are left only with this opportunity, this unusual procedure, if you will, but certainly one that is not unprecedented—it has been used before—to bring up this most important issue, this time bomb that is waiting out there, that is having a tremendous impact on our country, on a number of States, on the economy of this country.

The Judiciary Committee has put a lot of work into it and has done a good job, and we have this one remaining relatively small issue that is holding up this whole effort to get an immigration reform. So that is why we are doing this, to give us an opportunity to get up this very important issue.

□ 1210

Specifically, my substitute rule would make in order a new part II to the Justice Department bill. Part II would consist of the text of H.R. 3810, the immigration reform bill, as reported by the Committee on the Judiciary. Six categories of amendments would be made in order to part II. First, the amendments reported by other committees to the immigration bill, now printed in that bill. Second, the amendments made in order by the Rules Committee under the previous rule and printed in the Rules Committee print of September 24. Third, the Lungren amendment on farm workers. Fourth, a Mazzoli amendment to the Schumer farm-worker provision.

The gentleman from Kentucky has spent so much time working on this issue, certainly he is entitled to an opportunity to offer an amendment to one of the crucial provisions in the bill, the Schumer amendment.

Fifth, the Hughes amendment, a member of the Committee on the Judiciary, establishing a commission on legalization. He should not be counted out on the rule. He should be given an opportunity, and yet he was not under the previous rule.

Sixth, motions to strike any sections of the original text made in order as part II by the substitute rule. The amendments would not be subject to further amendments or to a division of the question, and debate times are specified in the rule for each category of amendments.

Finally, the rule provides for one motion to recommit, with or without instructions, and for a hookup with the Senate-passed immigration bill for the purpose of going to conference.

Mr. Speaker, the substitute rule I am proposing is nearly identical to the combined provisions of the Justice and immigration rules previously reported by the Rules Committee, but with several important exceptions. First, 3 hours of general debate are provided to permit ample discussion of the immigration issue. Second, the immigration bill reported by the Judiciary Committee is made in order as the base for amendment rather than the Rules Committee substitute.

This has been done for two reasons. First, the Rules Committee print on its substitute is not yet available from GPO due to some printing errors and problems. And second, the Judiciary Committee substitute is not only printed and available, and thus easier to track, but reports are available on it and the amendment of other committees. The Rules Committee has printed no separate report explaining its substitute.

The proposed substitute rule also requires separate debate and votes on the amendments of other committees whereas the Rules Committee's original rule would have precluded this.

The substitute rule does make in order those amendments previously made in order by the Rules Committee to the immigration bill, because the Rules Committee spent a lot of time going over this rule, and with one or two exceptions came up with a good rule. But it makes in order the Lungren and Mazzoli amendments on farmworkers, the Hughes amendment on the commission on legalization, and the motions to strike.

Finally, the substitute rule differs from the earlier rule in that it preserves the minority's traditional prerogative to offer a motion to recommit with instructions.

Mr. Speaker, I think Members would agree on reflection that it was most unfortunate that procedural blind spots in the last immigration rule blocked consideration of that important bill. The proposed substitute rule lifts these scales from those eyes and sheds new light on the issue, providing a more open, fair, and bipartisan approach to immigration reform.

We have in this procedure a rare opportunity here today to salvage all of the important work that has gone on in this bill and put this 99th Congress in the history books as the Congress that finally faced this most difficult problem, one that has been voted on in the other body and passed in two different Congresses, and again they are waiting for us to complete action here in the House.

Let us not blow this opportunity again. Vote down the previous question and for my substitute rule.

I would urge the leadership on the other side of the aisle, give us this opportunity. It is a fair rule. We were so close to having this rule set up in a fair way that will allow this to be brought up and debated. All Members know what the issues are. We are prepared to debate it and vote, and then I think we will get a good bill that we can all live with.

Mr. Speaker, I regret that it is necessary to invoke this special House procedure to call up a rule, but I do so because the problem of illegal immigration is bigger and more critical than any procedural niceties. It cannot be put off until a future Congress. We must seize this moment and this procedure to defuse this ticking time bomb now. And yet, the chairman of the Judiciary Committee refuses to seek a new rule in order to bring this matter up in this session; and the Rules Committee has shown no willingness to take the initiative. So, we have no recourse but to resort to this unusual procedure.

Mr. Speaker, the rule I have called up under this special procedure is House Resolution 215, a 1-hour open rule providing for the consideration of the bill H.R. 2345, the Justice Department authorization for fiscal year 1986. What I am proposing is that we defeat the previous question and so that I can offer a substitute rule that would make in order the subject of immigration reform.

Specifically, my substitute rule would make in order a new part II to the Justice Department bill. Part II would consist of the text of H.R. 3810, the immigration reform bill, as reported by the Committee on the Judiciary. Six categories of amendments would be made in order to part II. First, the amendments reported by other committees to the immigration bill, now printed in that bill. Second, the amendments made in order by the Rules Committee under the previous rule and printed in the Rules Committee print of September 24. Third, the Lungren amendment on farmworkers. Fourth, a Mazzoli amendment to the Schumer farm worker provision. Fifth, the Hughes amendment establishing a commission on legalization. And sixth, motions to strike any sections of the original text made in order as part II by the substitute rule. The amendments would not be subject to further amendments or to a division of the question, and debate times are specified in the rule for each category of amendments. Finally, the rule provides for one motion to recommit, with or without instructions, and for a hook up with the Senate-passed immigration bill for the purpose of going to conference.

Mr. Speaker, the substitute rule I am proposing is nearly identical to the combined provisions of the Justice and immigration rules previously reported by the Rules Committee, but with several important exceptions. First, 3 hours of general debate are provided to permit ample discussion of the immigration issue. Second, the immigration bill reported by the Judiciary Committee is made in order as the base for amendment rather than the Rules Committee substitute.

This has been done for two reasons. First, the Rules Committee print on its substitute is not yet available from GPO due to some printing errors and problems. And second, the Judiciary Committee substitute is not only printed and available, and thus easier to track, but reports are available on it and the amendment of other committees. The Rules Committee has printed no separate report explaining its substitute.

The proposed substitute rule also requires separate debate and votes on the amendments of other committees whereas the Rules Committee's original rule would have precluded this.

The substitute rule does make in order those amendments previous made in order by the Rules Committee to the immigration bill, but also makes in order the Lungren and Mazzoli amendments on farmworkers, the Hughes amendment on a commission on legalization, and motions to strike.

Finally, the substitute rule differs from the earlier rule in that it preserves the minority's traditional prerogative to offer a motion to recommit with instructions, something which the Rules Committee would have denied us.

Mr. Speaker, I think Members would agree on reflection that it was most unfortunate that procedural blind spots in the last immigration rule blocked consideration of that important bill. The proposed substitute rule lifts the scales from those eyes and sheds new light on the issue, providing a more open, fair, and bipartisan approach to immigration reform.

We have a rare opportunity here today to salvage all the important work that has gone into this bill and put this 99th Congress in the history books as the Congress that faced up to the problem and took decisive action. Let's not blow this opportunity again. Vote down the previous question and for my substitute rule.

Mr. PANETTA. Mr. Speaker, will the gentlemen yield?

Mr. LOTT. I yield to the gentleman from California.

Mr. GONZALEZ. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. Gray of Illinois). Does the gentleman from Mississippi [Mr. Lott] yield to the gentleman from Texas for that purpose?

Mr. LOTT. Mr. Speaker, I will yield to the gentleman from California [Mr. Panetta] first, and then I will yield to the gentleman from Texas.

The SPEAKER pro tempore. The gentleman from Texas [Mr. Gonzalez] will state his parliamentary inquiry.

Mr. WALKER. Regular order, Mr. Speaker.

The SPEAKER pro tempore. Did the gentleman from Mississippi [Mr. Lott] yield to the gentleman from Texas [Mr. Gonzalez] for a parliamentary inquiry?

Mr. LOTT. Mr. Speaker, let me go ahead and yield to the gentleman from California.

The SPEAKER pro tempore. The gentleman from California [Mr. Panetta] is recognized.

Mr. PANETTA. Mr. Speaker, I thank the gentleman for yielding. I must admit that I find this effort somewhat disingenuous just because of the fact that the minority led the charge against the rule last week.

Mr. LOTT. Because the rule was so unfair.

Mr. PANETTA. Let me just complete my statement.

Mr. LOTT. Because the key issue was not going to be allowed to be debated on the floor. I will yield further.

Mr. PANETTA. If the gentleman will continue to yield, if there is indeed a seriousness here——

Mr. LOTT. This is serious.

Mr. PANETTA. To try to deal with a rule on immigration reform, then certainly there should have been some outreach on the part of the minority Members to try to resolve some of these differences. We can do it, but you cannot do it this way.

Mr. LOTT. Let me emphasize to the gentleman that there was outreach in the Rules Committee. There was a serious effort on both sides in the Rules Committee to try to work this thing out. But in the end it failed because the crucial amendments, plus a couple of others that should have been considered, were excluded from the process.

When we came to the floor we would have still liked to have brought this thing up under a fair process. Immediately after the rule was defeated, Members on both sides of the aisle started asking can the Rules Committee bring this back up with a fair rule? We would. You know this very day I have called the chairman of the Rules Committee and said, Mr. Chairman, is there any chance that the Rules Committee would meet and act on this.

We will be glad to reach out. We do not want to exclude anybody. We want the issue to be fairly and objectively debated on the substance and for the House to act. So we are making a serious effort now, and we will work with anybody that will give this issue a fair opportunity to be brought up.

Mr. PANETTA. Mr. Speaker, will the gentleman yield further?

Mr. LOTT. If I could, Mr. Speaker, at this time I would like to retain the balance of my time because the distinguished chairman of the Rules Committee is entitled to his 30 minutes.

The SPEAKER pro tempore. Does the gentleman from Mississippi [Mr. LOTT] yield 30 minutes to the gentleman from Florida [Mr. PEPPER]?

Mr. LOTT. Yes, Mr. Speaker, for purposes of debate only.

Mr. Speaker, in view of the proceedings and the way that this was handled, I yield to the gentleman from Texas [Mr. GONZALEZ] at this point, for debate purposes only.

PARLIAMENTARY INQUIRY

The SPEAKER pro tempore. The gentleman from Texas will state his parliamentary inquiry.

Mr. GONZALEZ. Mr. Speaker, now I have two inquiries.

The first, by virtue of what rule does a Member speaking, on the basis of a point of inquiry as to proprietary of legislative procedure, have to ask consent of any but the Speaker's decision? If a Member rises for a parliamentary inquiry, my understanding of the rules is that the Speaker and the Speaker alone will answer to that request.

The SPEAKER pro tempore. The Chair would state to the distinguished gentleman from Texas that he is absolutely correct where the Member making the inquiry controls the time, or no Member controls the time. But in the consideration of a rule where there is only 1 hour, equally divided 30 minutes on each side, the time is strictly controlled and a Member must be yielded to to propound an inquiry. At certain other times the gentleman would be absolutely correct in propounding a parliamentary inquiry as a matter of right.

POINT OF ORDER

Mr. GONZALEZ. The second parliamentary inquiry had to do with what I think is the essence of the matter, and that is that I consider this to be irregular and out of order and contrary to rule 57 of the Jefferson Rules, inasmuch as it is improper under these circumstances to bring a request for a rule under these circumstances as obscure as the rule that the gentleman from Mississippi is resorting to, to bring this up in extremis. I plead that it is out of order and make a point of order that it is out of order.

Mr. LOTT. Mr. Speaker, I reserve the balance of my time because I understand this is coming out of my time.

The SPEAKER pro tempore. Does the gentleman from Mississippi [Mr. LOTT] wish to be heard on the point of order of the gentleman from Texas?

Mr. LOTT. Mr. Speaker, I would like for the Chair to rule, not taking it out of my time, and let us proceed with the debate.

The SPEAKER pro tempore. The Chair would state that under clause 4(c), rule XI, the Committee on Rules shall present to the House reports concerning rules, joint rules and order of business within 3 legislative days of the time when the bill or resolution involved is ordered reported by the committee. If any such rule or order is not considered immediately, it shall be referred to the calendar and if not called up by the member making the report within 7 legislative days thereafter, any member of the Rules Committee may call it up as a question of privilege, and the Speaker shall recognize any member of the Rules Committee seeking recognition for that purpose.

Mr. LOTT. Mr. Speaker, I reserve the balance of my time, and yield, for debate purposes only, 30 minutes to the distinguished gentleman from Florida [Mr. PEPPER], chairman of the Rules Committee.

□ 1220

The SPEAKER pro tempore. The gentleman from Mississippi [Mr. LOTT] has consumed 13 minutes.

The Chair recognizes the gentleman from Florida [Mr. PEPPER].

Mr. GONZALEZ. Mr. Speaker, I did not hear the Chair's ruling on my point of order.

The SPEAKER pro tempore. The Chair overruled the point of order of the distinguished gentleman from Texas [Mr. GONZALEZ] on the grounds that the rules of the House provide for the motion that is now under consideration.

PARLIAMENTARY INQUIRY

Mr. GONZALEZ. Mr. Speaker, I have further parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. GONZALEZ. Is it not also true, under this same privilege reserved in this particular rule, that notice must be given on the intent to ask for this particular privilege of any member of the Rules Committee where the Rules Committee itself has not given notification of holding in reserve.

The SPEAKER pro tempore. The Chair will state that this time is not coming out of the gentleman from Mississippi's time; and the Chair would further state that it does not require, under the rules, any advance notice.

So the Chair will overrule the point of order of the gentleman from Texas [Mr. GONZALEZ].

The Chair now recognizes the gentleman from Florida [Mr. PEPPER] for 30 minutes.

Mr. GONZALEZ. I thank the Chair.

Mr. PEPPER. Mr. Speaker, I yield such time as he may consume to the chairman of the Committee on the Judiciary, the gentleman from New Jersey [Mr. RODINO].

Mr. RODINO. Mr. Speaker, I am taken completely by surprise, and I would like to state unequivocally that I am confounded by the proposal that is being made by the minority at this time.

A member of the Judiciary Committee interested in this legislation only yesterday asked me whether or not I would consider an alternative approach to this problem. The discussion centered in part on a proposal that I had offered some time before.

I advised the gentleman, and I shall refer to him, the gentleman from California [Mr. LUNGREN], only yesterday that I would not say no to his suggestion. Since our discussion I have been considering whether or not we could go further with the immigration bill.

As a matter of fact, only a few minutes ago I conferred outside these

Chambers with the ranking minority member of the Judiciary Committee, Mr. Fish, the chairman of the Immigration Subcommittee [Mr. Mazzoli], to discuss the proposal that had been made to me by the gentleman from California [Mr. Lungren] and to determine whether or not we might reach an accommodation on his proposal.

For this rule now to come up in this manner certainly is not in keeping with what I consider to be real comity and subverts the negotiations and discussions that were underway and entered into in good faith. We are now taken by surprise, without having been consulted on this matter, at the same time we are working together privately to find a way to move forward with the immigration bill. This is certainly surprising to me and I hardly think that it is the appropriate thing to do.

Mr. LUNGREN. Mr. Speaker, will the gentleman yield, since he referred to me?

Mr. PEPPER. I yield to the gentleman from California.

Mr. LUNGREN. Mr. Speaker, I would say to the gentleman from New Jersey [Mr. Rodino] it is true that you and I have had discussions over the last several days. It is also true that we have not at this point or any point come to any agreement, nor can we bind other members of our parties.

It is also true that before we can get anything up to the floor, we need a rule, and in consulting with members of the Rules Committee on my side of the aisle, we had received very little indication that the Rules Committee was about ready to consider any rule to be bringing it up.

Just yesterday on the floor of the House there was discussion, right over here, where Members of the leadership of the Democratic side came over to the Republican side, and in that discussion it was indicated we have very little substantive legislation before us on the floor.

In light of that, there was some question as to how we were going to fill our days for the rest of this week. Yet, while that is happening on the one hand, on the other hand we are getting every indication from the Rules Committee that we were not about to have any rule whatsoever.

So, Mr. Speaker, we are supposed to wait until next week when the clock will tick even further down to do anything. In the meantime, Members on the other side of the aisle have been saying that "Republicans have killed immigration." We are having to answer questions all over the place about why we intended to kill immigration when at the same time we are working, talking with Members on your side of the aisle about how to resurrect it, other Members on your side of the aisle are going out and saying that we have no intention of resurrecting it.

You put us into a pincer movement and then complain about the question of comity. We asked for comity last week as far as a fair rule is concerned, and I indicated that I did not "want my way." All I wanted was an opportunity for the membership to vote on an important question here. That is all we are asking for.

Mr. RODINO. Mr. Speaker, let me make it perfectly clear, though; and I am going to ask the gentleman from California [Mr. Lungren] whether or not yesterday he did not have a discussion with me and at the close of that discussion he had asked me, "Please don't say no." I said yes; and that was where we were at.

There was never any other discussion following that, and I assume that the gentleman recognized that in keeping with our previous conversation that I would report back to him. I had not reported back to him. As a matter of fact, in good faith, I have been carrying on discussions with others including the ranking minority member of the Judiciary Committee, the gentleman from New York [Mr. Fish] about the possibility of some other type of proposal that we might consider in conjunction with this immigration bill.

Now, the gentleman knows that.

I would like to ask the gentleman whether or not we had that discussion.

Mr. SCHUMER. Mr. Speaker, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from New York.

Mr. LUNGREN. Mr. Speaker, if the gentleman will recall the conversation we had yesterday, the gentleman will recall him saying to me that it looked like we were at the end of the time here; that it was apparent that we probably could not get a bill through this late in the session; most likely we would have to start early next time.

At that point I discussed with the chairman about not giving up and not saying no absolutely; and the chairman said fine. We did not reach any agreement as to what it was we would finally resolve.

So I would say to the gentleman, the gentleman indicated to me the difficulties in getting any movement here in the House, not only because we have already been through it once, but because the time was running out, trying to get a rule to get it to the floor.

I did ask the chairman not to say no. I am still asking the chairman not to say no, but I want to know if we are going to get anything done. You and I can have all the discussions we want; we get no action whatsoever, and in the meantime we see things suggesting that immigration is absolutely dead.

Mr. PEPPER. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. Schumer].

Mr. SCHUMER. Mr. Speaker, I would say to my colleagues on both sides of the aisle first that there are active negotiations going on all over the place on trying to revive this bill. Every one of the negotiations that I am aware of has been a bipartisan negotiation, whether it be with the gentleman from California and the chairman of the Committee on the Judiciary, the gentleman from New Jersey [Mr. Rodino], whether it be my visits to the Senator from Wyoming.

There is a genuine and sincere effort on the part of the gentleman from California [Mr. Lungren], the gentleman from Mississippi [Mr. Lott], the chairman from New Jersey [Mr. Rodino], myself, my colleagues, to revive this bill because we have put too much time into this to let it go under now.

I think one thing is clear, if anything is clear and that is that to get a bill through both Houses, signed by the administration, you need good faith and bipartisan cooperation.

The question, ladies and gentlemen, is not really a question of time. It is a question of finding a way to pass a bill, a bill that has a majority consensus in this House, in the other House, and in the White House.

□ 1230

We do not have that right now. If this rule comes up today we would sure subject lots of Members to all sorts of difficult and scorching votes and the odds are very, very strong that we will emerge with no bill because the solution that the gentleman from Mississippi has proposed, that is the so-called Wilson amendment, will bring down the bill. The gentleman from California knows it, the gentleman from New York knows it, the gentleman from New Jersey knows it, and quite frankly the gentleman in the other body from Wyoming knows it, that if Wilson passes on the floor of this House, which it indeed may, there is no bill. So what I would urge very simply is this: this previous question, in my opinion, is simply a tactical device. It is a device of shifting, trying to shift blame from one place to the other. We do not need that right now. I do not care about blame at all. History will judge blame.

Little editorials will not determine blame, speeches on the floor today will not determine blame, history will determine blame. History may blame nobody, it may blame me, it may blame you, it may blame anybody.

But that is not what we should be doing today. We are here trying to get some kind of compromise together that meets the concerns of everyone in this body and pass the bill. And simply one side of the aisle pulling a surprise motion to bring a rule to the floor that we know will result in 2 days of anguished debate and no bill, no law, does not accomplish that goal.

So I would ask the gentleman from Mississippi respectfully to withdraw his motion because I think it poisons the atmosphere for future negotiations. But if he does not, I urge Members of this body to vote "yes" on the previous question, allow the negotiations to continue and for everyone's sake, for America's sake, let us stop playing games and try to get an immigration bill passed once and for all.

Mr. Speaker, I yield myself such time as I may consume.

May I say to the Members, while technically permissible, this is a most extraordinary proceeding. Ordinarily the way a bill is motivated in the Rules Committee is for the chairman of the committee having jurisdiction over the legislation to write a letter to the chairman of the Committee on Rules and ask for consideration of a rule upon that bill. The House voted down our rule to bring up the immigration bill the other day. Until this morning just before I left the chairman's office upstairs, I had a telephone call from my friend, the distinguished gentleman from Mississippi. He said, "Have you had any requests to bring up the immigration bill?" I said, "I have heard nothing further of the principals regarding the matter." Nobody has asked us to bring the matter up again before the Rules Committee, because obviously there has not yet been an agreement worked out between the parties that were in such strong disagreement over the Schumer amendment.

So now, my friends, I came rushing down here from the chairman of the Rules Committee's office because I saw on television that Mr. LOTT was trying to bring up a rule for the immigration bill. So it is an extraordinary procedure.

Now let me say about the technicalities of it: The rule that the gentleman has used to make his motion here today is a rule from the Rules Committee authorizing consideration of an appropriation bill for the Department of Justice. It has nothing to do with immigration.

Now, that he has called it up for consideration, he will attempt to offer an amendment to it to provide for the consideration of the immigration bill. That would not be relevant or germane. In order for the gentleman to be able to provide for consideration of the immigration bill through this rule, it would have to be germane.

I do not think the objective the gentleman has in mind can be achieved. This is a backdoor way of trying to assume the leadership of the House, contrary to the established leadership chosen by the membership. It is certainly an abdication of the usual precedents that we follow.

I have had no requests from the chairman of the Committee on the Judiciary to bring this up. We will have a meeting this afternoon if the chairman of the Judiciary Committee or Members, for that matter, request us to have a meeting of the Rules Committee. But to bring it up this way, try to bring a nongermane, irrelevant subject into a rule that is for an entirely different subject seems to me to be a clear effort to pervert the rules and the precedents of this House. The previous question should be ordered as soon as an opportunity is available to offer the previous question.

PARLIAMENTARY INQUIRY

Mr. PEPPER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. (Mr. GRAY of Illinois). The gentleman will state it.

Mr. PEPPER. Mr. Speaker, would I be able to offer a motion for the previous question now?

The SPEAKER pro tempore. At the end of the debate, the previous question may be moved.

Mr. PEPPER. Well, I hope the gentleman would allow me the authority to move for the previous question or else I hope the gentleman from Mississippi will move the previous question himself.

Mr. SCHUMER. Mr. Speaker, will the gentleman yield?

Mr. PEPPER. I yield to the gentleman from New York.

Mr. SCHUMER. I thank the gentleman for yielding.

I would just ask an inquiry: Is it not true, I might ask the chairman of the committee, that we actually had a vote on the previous question which we all knew would have allowed this exact motion or a very similar motion to come into play in the House last Friday, and that motion on the previous question was voted positively 196 to 189 and we would just be repeating the exercise, for what sake, one does not know.

Mr. PEPPER. The motion for the previous question prevailed by the vote of this House.

The SPEAKER pro tempore. The Chair would state to the distinguished gentleman from Florida that the gentleman from Mississippi, under the precedents, will have the first opportunity of moving the previous question. In the absence of that, the gentleman from Florida can be recognized to move it.

Mr. LOTT. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. Mr. Speaker, this is an extraordinary attempt being made by the gentleman from Mississippi [Mr. LOTT], but it is because we are in extraordinary circumstances. I do not know of a single issue that has been more talked about on both Republican and Democratic sides over the last week than on the question of immigration. I do not know where I have had more Members on both sides of the aisle come up to me in the last few days saying, "Can't we do something about it? Isn't there going to be something done about it? What is it we can do? We need to move immigration." And when you try to talk to everybody that you can and yet still see that there is no movement, that there is no Rules Committee meeting scheduled, there is no rule out there when a member of your leadership——

Mr. Speaker, if the gentleman wishes to speak, he should get his own time. I wish we would have just a modicum of comity and courtesy on the other side when others are speaking.

If the gentleman has something to offer the House, he might ask the gentleman from Florida to give him time instead of making snide remarks. If the gentleman wants to engage in intelligent debate, I am sure he can get some time.

The point of the matter is this, Mr. Speaker: This issue was never partisian, never partisan until we had a partisan vote in the Rules Committee 2 weeks ago to bring a rule that was absolutely predestined to be defeated here on the floor.

Members who have voted for this bill in the past, Members who have voted for immigration reform in the past when we passed it by a 5-vote margin voted against the rule and voted down the previous question, or voted against the previous question last week not because they were against immigration reform but because they would not be given an opportunity to debate wholly and fully certain of the issues involved in the immigration reform package. There is a difference between the vote that takes place today and the one that took place last week. One of them in EVD, extended voluntary departure, is excluded from this particular consideration because we take the Judiciary Committee bill. We do not tack on something that had not passed out and had not been on the floor, that is extended voluntary departure for Salvadorans and Nicaraguans.

I can say the gentleman from Kentucky and I both opposed that provision or that bill but made sure that we did not stop it in subcommittee because we thought it ought to be given an airing in the full committee. And it has received that airing but it ought not be tacked onto this bill. In fact, it is a death to this bill because the President has indicated he would veto EVD for Salvadorans.

So we have taken that out. That is different than before.

One amendment that I disagree with very strongly, the Hughes amendment to say that legalization ought to be put off until after we have secured our borders and have proof of that, if allowed under this rule, not because I support it, not because most Members on my side of the aisle support it, but because a distinguished member of the Judiciary Committtee had brought up an amendment that absolutely needs to be discussed because some Members do believe that is the right thing to do. We have tried to fashion a bipartisan rule.

Now to say that we are taking partisan advantage is beyond me when we have offered a rule that has elements of it that we disagree with but which would be allowed to be debated and voted on here on the floor. The point we would like to make is this: There is a lot of talk behind the scenes about what we are going to do at the very same time that people are saying we do not have enough time to do anything.

Senator SIMPSON thought he was going to be able to put this on the other side of the Capitol. There was an objection by one member on the other side of the Capitol, on the other side of the aisle, to allowing it to be brought forward. We seem to be cut off from that.

Now we have a question of when we are ever going to bring up an immigration bill.

This rule does not make the Wilson amendment a fait accompli; it only allows the membership to vote on it. I do not understand why Members continue to say it is going to kill the bill if it happens to be the majority will in the House of Representatives. What is killing the bill is a reluctance on the part of some people to allow the House to work its will, to allow the House to work its will. I do not understand why that is wrong. That is considered killing the bill, that is considered wrong.

It is considered democracy where I come from. It is considered the right of the people where I come from, to have a right to vote on it.

The gentleman from New York says the Wilson amendment kills the bill. The Wilson amendment was adopted in a slightly different form 2 years ago by about a 50-vote margin in this House. The Wilson amendment has been adopted in the Senate, the other body this time around.

So you have both sides agreeing on what they want to do, and we are told it would kill the bill if we are allowed to vote on it. I am not afraid to vote on it. If I lose, I lose; I will support the bill; we will go to conference.

Give us a chance. What is wrong with that? Do the big "D" and little "d" in democracy mean something different? It seems to me if you are committed to democracy, you are committed to that.

Mr. PEPPER. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. I thank the gentleman for yielding.

My question of the gentleman from California: the gentleman has said that the rule he and the gentleman from Mississippi have now crafted is a bipartisan amendment. I would ask the gentleman, has any Member of the majority been consulted on that amendment? Did any Member of the majority know it was going to come up before the gentleman from Mississippi brought it up?

Mr. LUNGREN. Well, if the gentleman wants a direct answer to the question, no. Unfortunately, the rule that was drafted that was presented here was over all the objections of the minority side, but that seemed to make no difference. But I will tell the gentleman if he does not know what the vote is in the Rules Committee, it was 9 to 4.

Mr. SCHUMER. Reclaiming my time, if I might.

Mr. LUNGREN. Nine to four, Democrats and Republicans.

Mr. SCHUMER. Reclaiming my time, I would just let the record show that the gentleman answered no, not a single Member of the majority had been consulted on this bipartisan amendment.

Mr. PEPPER. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. I thank the chairman for yielding me this time.

I find it somewhat amusing that the gentleman from California, with a straight face, would talk about a rule that was predestined to go down as if somehow the rule that the gentleman from California led the opposition to last week, the vote that killed for at least the moment the immigration bill, was ordained from above and was not a calculated decision by the gentleman from California utilizing the partisan issues within his own caucus to bring down that particular rule because he did not like the way that rule was crafted.

Let us review a little bit of history. The rule came out of the Rules Committee. It was scheduled for debate last week with Monday and Tuesday of this week reserved for taking up that bill so it could move to the conference committee in plenty of time to return that piece of legislation to the floor for adoption and sending to the President.

The Senator from Wyoming, and there is no one who is more committed to passing immigration reform than the Senator from Wyoming, urged the members of his party in this House to adopt that rule, move that bill and let it go to a conference committee where the two alternative proposals, the Wilson amendment that the gentleman from California likes so much, and the Schumer proposal that was approved by the Judiciary Committee, the Education and Labor Committee, the House Agriculture Committee, the Energy and Commerce Committee in this House, all of those committees had approved. The Attorney General, urging action on the immigration bill before the session concluded, indicating his own opposition and the administration's opposition to the Schumer proposal, when asked what should the House do if the Schumer proposal is part of the bill? Send it on to the conference committee, let us work out, let us not lose immigration reform over differences on this particular issue.

□ 1245

This is all the background on which a mistaken decision by the leadership of the other party in this House was made to destroy the rule.

Now if you want immigration reform in this session, there are two ways to do it. The way the gentleman from Mississippi is proposing is certainly not the way to do it. That is part of a debate on who is to blame.

The way to pass an immigration reform bill in this House is either to reconsider the decision that the minority made last week with respect to the rule that came out of the Rules Committee or to negotiate in good faith a provision that brings the different elements and factors in this very complicated process together on a proposal that in a very short period of time can be approved.

The way not to do it is to utilize in an almost unprecedented fashion a maneuver which still in no way can be called a fair rule. There are no amendments allowed to the Wilson proposal under the rule the gentleman from Mississippi is proposing.

I urge, as the chairman of the Rules Committee has, as the chairman of the Judiciary Committee has, that we move the previous question.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. MCCOLLUM].

Mr. McCOLLUM. Mr. Speaker, we have had a lot of emotion out here about this in the last few minutes, but I think we should reason for a few moments about what this is really all about and put it into the terms that we are going to vote on here in a few minutes.

What this is is a reconsideration in effect. It is a reconsideration of an imprudent decision that was made last Friday on an effort to defeat the previous question on a rule so a fair rule could be brought up here. The rule that was brought out here was a choke rule or a gag rule.

What we are going to be given the opportunity in a few moments to do is to reconsider the effort to get a fair rule out here that was defeated by the very narrowest of 7 votes out here last Friday. Only four Members needed to change their votes, and I think many did not realize what the significance of that vote was last Friday when they made that vote and would like this opportunity to reconsider. And when they come here on the floor in a few minutes to cast their vote knowing that, they will vote down the previous question, which is what the vote is all about, and give us a chance to bring up the fair rule, alternative rule, that would have been out here on the floor last Friday had that vote gone a different way. That was the close vote last week. There were some Members absent on that vote, as a matter of fact.

So I think those who are concerned about getting the immigration bill up have to look at this very objectively. This is the vote. This is the opportunity to bring up the immigration bill under a fair rule that gives everybody a chance to have their say. All the amendments are preserved that were in the other rule. All of the opportunities to have votes that were in the other rule are preserved. But we also give the opportunity to offer those amendments in the controversial area of a substitute, the so-called Wilson amendment. We give an opportunity for the House to work its will.

If that defeats this bill, so be it. But let us have the opportunity. Let us vote down the previous question in a moment or two. Let us present the rule the way it should have been in the first place presented, and let us reconsider favorably what we failed to consider properly last Friday.

Again I urge my colleagues for a fair opportunity to consider the immigration bill. Vote down the previous question when it is offered in just a few moments.

Mr. PEPPER. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I would just like to reiterate two points. One of them was made by the chairman of the committee that he was negotiating in good faith with the gentleman from California and others, that I was negotiating in good faith with the Senator from Wyoming and others, to try to revitalize this bill, and that this motion, while those negotiations were going on, was pulled in a surprise stunt by the gentleman from Mississippi, the gentleman from California and the minority.

The second point I would make is this. Remember what the gentleman from California [Mr. BERMAN] said in the well, which I can confirm, that the good Senator from Wyoming, whose desire for an immigration bill and whose bipartisanship is above reproach, called the ranking member of the committee [Mr. FISH] and asked him to vote for the rule last Friday, which he did. He called the gentleman from California and asked him to vote for that rule last Friday, but he did not. The Senator from Wyoming called many Members on the minority of the Judiciary Committee and urged them to vote for the rule because he believes the problems they had with the Schumer amendment could have been fixed in conference, and he urged them not to vote down the rule and risk killing the bill.

Ladies and gentlemen, if we let this rule be recrafted, we will have 2 days of debate, we will have all the emotions that flare, and we will, as sure as I am standing here, have no bill. Let us not waste our time on these kinds of exercises. Let us rather continue our negotiations and try in good bipartisan faith to pass an immigration bill.

Mr. PEPPER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I think the Rules Committee has been fair in the consideration of this measure. In our Democratic caucus, we invited the distinguished gentleman from Mississippi and the other minority members of the Rules Committee into the chairman's office, and we together, Democrats and Republicans, debated what kind of a rule we should vote out. There was a difference of opinion in the final analysis as to what rule it should be, but there is a difference of opinion in the House also upon this measure. We tried to give a fair rule according to our best ability at the request of the chairman of the Judiciary Committee.

Now today, without any previous notice—I just happened to look on the TV upstairs in the chairman's office of the Rules Committee, and there was the distinguished gentleman from Mississippi bringing up this rule. I rushed down here to see what was being done on the floor. I do not think it is quite fair to the Rules Committee not to give us a chance to consider this matter in due course in the same bipartisan way that we considered it originally.

Furthermore, the minority is trying to write the rule on the immigration bill. They had a chance to do that the other day when the rule was up, but they lost on the vote for the previous question. If they had won the previous question, they could have written the rule, but they lost on the floor of this House by the vote of this House.

Now today, by sort of a back-door method, they come in here and they pick up a rule voted out some time ago by the Rules Committee dealing with funds for the Department of Justice, and they want to put on an amendment dealing with a rule on immigration as an amendment for that, which I think at the proper time would be subject to a point of order. So this is an irregular proceeding.

The Rules Committee will give any Members fair consideration of this matter when a proper request is made to the Rules Committee, and the minority will be considered as they have been in the past in the formulation of that rule.

So I hope that the gentleman will either permit me to move the previous question or the gentleman will offer the previous question and we may have done with this matter brought up in this way today.

□ 1255

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first I would like to respond to a couple of things the distinguished chairman said. This is a different rule. It is a fair rule. It has what the Rules Committee did plus some, and I think now the burden is on the leadership on the other side of the aisle. Are you going to allow this issue to go forward or are you going to stop immigration reform?

We enjoyed the amenities in the chairman's office. We appreciate the efforts to always try to find a way to work out a bipartisan agreement. But when it was evident that the Schumer proposal was not going to even be allowed to have an amendment offered to it, I warned the Rules Committee that this is fundamentally unfair; the rule will go down. They knew that was what was coming, but they went ahead with it anyway.

Since the gentleman from New York has had two bites of the apple, I thought that the gentleman from California should have an opportunity to respond to some of the comments that he made.

Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. I thank the gentleman for yielding me this time.

Mr. Speaker, I might just say, to back up what the gentleman from Mississippi has said, 95 percent of the rule we are presenting is from the Rules Committee. Ninety-five percent is the product of the Rules Committee. We are only adding those parts that I was told you were not going to allow. Why? Because you feared they would pass on the floor. That was the reason given to me by Members of your side of the aisle on the Rules Committee as to why the other amendments to Schumer were not going to be allowed.

Second, I believe that you recognize now locking in EVD was a mistake. Not even the sponsor of the EVD legislation wanted it to be locked in. We are taking that out.

The next thing I would say to the gentleman from New York is he said, "Look these various committees came up with the Schumer amendment." It passed from the Judiciary Committee;

it passed from the Ways and Means Committee; it passed from the Energy and Commerce Committee. If that is so, then let it be voted on. If that is the will of the House, and I would kind of understand that is what you are trying to suggest, then the House is going to vote it down. Do not be afraid of it.

If what you are suggesting to me that the various committees put something out that is not the will of the House, we ought not to be muzzled by that process.

Finally, I would just say this: You can run, but you cannot hide. If you want to have an immigration bill, you have got to come up with a rule at some time. We have waited since last week for any indication that a rule was going to come up. We have made inquiries. There have been discussions in the background, but that is what they have been, in the background. Nothing has come up to this point. We need immigration reform.

If the chairman of the Rules Committee would tell us that we would have a rule out from the Rules Committee which give us fair consideration of these particular items, I say we would probably call this all off because you would be giving us a commitment and we would have a chance for this. We have not received such a commitment.

Again, I thank the courtesy on that side of the aisle. When you do not have the votes I guess you yell and scream. When you do not have the votes you use the rules. I think it is unfortunate, and I think it is a travesty and a tragedy for the country to see this sort of thing.

Mr. PEPPER. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. Roybal].

Mr. ROYBAL. I thank the gentleman for yielding me this time.

Mr. Speaker, I have been sitting here in great amazement listening to this debate wondering how far the House will go in trying to revive a dead horse.

This piece of legislation was killed by the House. It was killed because of the Schumer amendment. There is no two ways about that; we know that. Nobody was going to vote for the Schumer amendment. Had we actually been able to yield and go to the other side and place the Wilson amendment, the Wilson amendment would also have killed that piece of legislation.

The truth of the matter is that this bill died because it is not immigration reform. Far from it. This is a bill that is designed to provide a steady flow of cheap labor to the farmers and the growers of the United States. To boot, a bill that would make available instant legal residents of those who work in the groves or on the farm for 60 days.

Stop to consider the consequences of such an amendment. The truth of the matter is that a great deal more has to be done about immigration reform; we agree with that. There is not a single Hispanic organization in the United States that does not. There is not a single Hispanic organization nationwide that does not oppose the bill as it is now written. At the same time, there is not a single organization that is not in favor of immigration reform and when that bill is written, it will not favor the farmers or the growers. It will not give them an instant supply of cheap labor. That should be set aside and be brought in in separate legislation.

Let this House and this Congress deal with immigration reform. Reform that Department of Immigration that has long needed reform. Give them what they need to do the job. Give them what they need to get back to the status that they once had. They once were called "Immigration Service," but for years, the service part has been forgotten and neglected and no service has been made available by that Department. That is definitely the most discourteous Department of any Department in the bureaucracy.

Mr. GONZALEZ. Mr. Speaker, will the gentleman yield?

Mr. ROYBAL. I yield to the gentleman from Texas.

Mr. GONZALEZ. I thank the gentleman.

Mr. Speaker, I rise to join the gentleman in his message and to point out that he is saying precisely the way the facts are. That, on the one hand, what the right wants, the Wilson amendment, would provide "rent-a-slave"; you lease a slave.

The Schumer amendment would indenture servants. We would go back to 100 years ago and have indentured servitude. We know that. Everybody out in the boondocks knows that. It is clouding the whole issue.

The gentleman will agree that Rambo-type of legislation is not going to solve anything.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. Shaw].

Mr. SHAW. I thank the gentleman for yielding me this time.

Mr. Speaker, I would hope that those that have spoken against the proposition of bringing immigration back up would look at yourselves and look at what you are really saying.

The gentleman from New York I think very eloquently set forth the position that if the House was allowed to really work its will on what has become known as the Schumer amendment that the whole bill may die.

Look at what we are saying. Look at what you are telling this Chamber. You are saying if the democratic process goes forward, that the bill will be killed. If that is the case, and if the democratic process is so irresponsible a process, then you had crafted the perfect rule. But I do not believe so. I said before and I will say again: I believe that the democratic process and preservation of the democratic process is far more important than any bill that will ever come before this Congress. So do not try to muzzle it.

The rule that has been crafted for consideration by this body allows in order all of the amendments that were set forth by the Rules Committee and then all it simply does is expand the democratic process. That is the case that is before you; that is the question that you have got to ask yourself; Are you for narrowing the democratic process or expanding it?

If we are irresponsible by voting, then God help this Nation. Those who talk about another chance at immigration, if you think another train is leaving this station, you are sadly mistaken. We are going into the last days of this Congress. There is no way that we are going to be able to fairly debate an immigration bill here in the 99th Congress, pass it, and take it to conference unless this rule is passed.

Vote down the previous question and then vote for the rule that is a fair rule, an equitable rule, and an expanded, democratic rule.

Mr. PEPPER. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. Garcia].

Mr. GARCIA. I thank the gentleman for yielding me this time.

Mr. Speaker, I just want to make it very clear in a very calm manner if I can that what we are doing here is nothing but pure politics. Pure and simple. Let us call it the way it is. We are dealing here with a party that last week was beaten up editorially by defeating an immigration bill. They have found through the legislative process to come back and now throw the ball into our court. People are not going to be fooled.

The problem with this is and what damages it, as far as I am concerned, is the relationship between leaders here when they talk in good faith and when they act deceptively. There is no question that the chairman of the Judiciary Committee has tried valiantly to do what he had to do with the Republican leadership. They had said under no set of circumstances and they decided to do what they had to do.

But I am going to tell the American public do not be fooled because this is not immigration reform; this is a political ploy.

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Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. Packard].

Mr. PACKARD. Mr. Speaker, I thank the gentleman for yielding me this time.

The most important bill in my district for this entire Congress is the immigration reform bill. I serve a portion of San Diego County, and we are impacted more than anywhere that I know of.

I voted in favor of the previous question, much to the consternation of many on my side. I voted in favor of the rule for one specific reason. That was because I was convinced that it was the only way to get immigration reform to the Senate-House conference committee.

I do not favor the Schumer amendment, but I knew that the Wilson amendment would be in conference. I knew we had to get the bill to conference if we were going to have it successfully signed into law.

I was interested in not allowing it to die.

After the rule was defeated, my concerns were confirmed by the chairman of the Committee on the Judiciary. He publicly said, "The bill is dead." So I was convinced that the only way to keep the bill alive was to vote in favor of the previous question and a new rule. Through this procedure today.

We have been frustrated, and I must vote now against the previous question and for the new rule for the very same reason, to get it to conference and salvage the bill.

Many Members on the other side of the aisle will do the same thing because they had no intention of killing the bill last week.

Mr. COLEMAN of Texas. Mr. Speaker, will the gentleman yield?

Mr. PACKARD. I yield to the gentleman from Texas.

Mr. COLEMAN of Texas. Mr. Speaker, I voted as the gentleman did last week. I voted identically to the gentleman because, like the gentleman, immigration is an important issue in my district.

On the border, in El Paso, many citizens are very, very concerned, as they are in the gentleman's district. I voted the same way as the gentleman did last week.

My problem with voting this way for this particular process is that I am not convinced that what the Committee on Rules did, even though I voted for the rule, was as encompassing as I think it should have been in terms of guaranteeing Members the right to offer amendments.

I was still willing to try to get it done.

Mr. PACKARD. Mr. Speaker, I would like to reclaim my time just to conclude my 2 minutes.

I think now we are at a position where the bill is gone unless we defeat the previous question and come up with a new rule.

That is our only hope, to finish this bill this year. I beg my colleagues on both sides of the aisle to vote to keep immigration reform alive.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The gentleman from Florida [Mr. PEPPER] has 1 minute remaining, and the gentleman from Mississippi [Mr. LOTT] has 3 minutes remaining.

Mr. PEPPER. Mr. Speaker, I yield 1 minute to the gentleman from Kentucky [Mr. MAZZOLI].

Mr. MAZZOLI. Mr. Speaker, I rise in opposition to the effort made by my friend, the gentleman from Mississippi [Mr. LOTT]. I hope that the House will vote up the previous question so that we can get on to our business.

I think the point has been made here, and made very clearly, that the gentleman from New Jersey [Mr. RODINO], the distinguished chairman of the Subcommittee on Monopolies and Commercial Law, had, as recently as 45 minutes ago, conversations with the gentleman from Kentucky [Mr. MAZZOLI], who is now speaking, and others, with respect to trying to find some way out of this incredible morass in which we have fallen, some other compromise, not using the Schumer proposal, because I do think the Schumer proposal was itself not on solid ground and does not really help the bill achieve passage, but on some other kind of a compromise in the agricultural area that will allow the House to work its will, go to conference and come out with an immigration reform bill that the President would sign.

Because of the nature of where we are, I understand fully the frustration of my friend, the gentleman from California [Mr. PACKARD], my friend, the gentleman from Florida [Mr. PEPPER], and others who have worked on this bill. I just do not think the process is correct, particularly coming now when there is effort afoot, there is indication to the gentleman from Kentucky that we may be able to, despite being at the 11½ hour of the 99th Congress, come out with some kind of an agreement that will do justice to both sides and achieve immigration reform.

Once again, I hope we can go through the orderly process and vote the previous question up and then go on with our business today so we can further these negotiations.

Mr. LOTT. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin [Mr. SENSENBRENNER].

Mr. SENSENBRENNER. Mr. Speaker, as distasteful as this procedure may be, it is our last chance to bring up an immigration bill in the closing hours of this Congress.

Let us face it; we do not have very much to do around here until the conferees come up with a continuing resolution report. We might as well use that time to allow the House to work its will on immigration, which is an issue of critical importance around the country.

I believe that the lesson of last Friday's defeat of the rule was simply this: That the House will not allow the farm labor provisions of immigration to be written behind closed doors in brokered rooms. The House membership wants to have a vote on this subject, and to be able to change the subject and to work its will.

The rule that is proposed by the gentleman from Mississippi [Mr. LOTT] does do that, and I think we should not let this opportunity go by, lest this Congress adjourn sine die without even a vote taking place on the House floor on immigration reform.

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to remind my colleagues in closing exactly what has been the timetable on this legislation. The other body passed immigration reform in September 1985. The subcommittee of the Committee on the Judiciary passed an immigration reform bill in November 1985.

The full committee reported it in July of 1986, and yet the Committee on the Rules did not give it a rule until September 1986, and it did not get to the floor until either the last or next-to-the-last week of this session.

Now we are down to the final days. This is our last opportunity to move this issue.

As far as trying to get another rule considered, this gentleman certainly tried, and I know others have. I went to Members on the other side of the aisle right after the vote last week and asked when we could get this up. In fact, I asked the distinguished majority leader last week: "Is it anticipated that there will be an emergency meeting of the Committee on Rules, either later on today or possibly Monday, with further reference to the rule for immigration reform?" The distinguished leader, the gentleman from Texas [Mr. WRIGHT], responded that "There is no plan to ask the Rules Committee to do anything further today. As for Monday, I think the evil of the day will be sufficient. Let us wait until Monday and discover what problems we have then."

So we have made an effort, but it is obvious that the chairman of the Committee on the Judiciary does not intend to ask the Committee on Rules to act. In fact, he has publicly so stated. It is recorded in the Congressional Quarterly on page 2267 that "there was no way politically to resurrect the bill." That is the gentleman's quote.

As far as the issue of editorials, listen to what the Washington Post had to say this very week on this issue. "The bill that was presented to the House for a rule last week was not a balanced compromise, and the rule that was proposed for the debate would have locked in a series of controversial amendments. A number of hotly contested provisions that were not in the Senate-passed bill were in the measure before the House.

"It was all just too much for House Members to swallow without debate and the separate votes barred by the rule."

Mr. Speaker, I urge the Members to vote no on the previous question in an effort to save immigration reform. This is the last opportunity we will have.

Mr. LOTT. Mr. Speaker, I move the previous question on the resolution.

The **SPEAKER** pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. PEPPER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 235, nays 177, not voting 20, as follows:

[Roll No. 428]

YEAS—235

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Aspin
Atkins
AuCoin
Barnard
Barnes
Barton
Bates
Beilenson
Bennett
Berman
Bevill
Biaggi
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Brooks
Bruce
Bryant
Bustamante
Carper
Carr
Chapman
Chappell
Clay
Coelho
Coleman (TX)
Collins
Conyers
Cooper
Coyne
Crockett
Daniel
Darden
Daschle
de la Garza
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Edgar
Edwards (CA)
English
Evans (IL)
Fascell
Fazio
Feighan
Fields
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Garcia
Gaydos
Gejdenson
Gephardt
Gibbons
Glickman
Gonzalez
Gordon
Gray (IL)
Gray (PA)
Guarini
Hall (OH)
Hamilton
Hatcher
Hawkins
Hayes
Hefner
Hertel
Hillis
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Jacobs
Jenkins
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kastenmeier
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lipinski
Loeffler
Long
Lowry (WA)
Luken
Lundine
MacKay
Manton
Markey
Martinez
Mavroules
Mazzoli
McCloskey
McCurdy
McHugh
Mica
Miller (CA)
Mineta
Mitchell
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Murphy
Murtha
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Panetta
Pease
Penny
Pepper
Perkins
Pickle
Price
Rahall
Rangel
Reid
Richardson
Robinson
Rodino
Roe
Rose
Rostenkowski
Rowland (GA)
Roybal
Russo
Sabo
Savage
Scheuer
Schroeder
Schumer
Seiberling
Sharp
Sikorski
Sisisky
Skelton
Slattery
Smith (FL)
Smith (IA)
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stratton
Studds
Sweeney
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Udall
Valentine
Vento
Visclosky
Volkmer
Waldon
Walgren
Watkins
Waxman
Weaver
Weiss
Wheat
Whitten
Williams
Wilson
Wirth
Wise
Wolpe
Wyden
Yates
Yatron
Young (MO)

NAYS—177

Applegate
Archer
Armey
Badham
Bartlett
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Boulter
Broomfield
Brown (CO)
Burton (IN)
Byron
Carney
Chandler
Chappie
Cheney
Clinger
Coats
Cobey
Coble
Coleman (MO)
Combest
Conte
Coughlin
Courter
Craig
Crane
Dannemeyer
Daub
DeLay
DeWine
Dickinson
DioGuardi
Dornan (CA)
Dreier
Duncan
Eckert (NY)
Edwards (OK)
Emerson
Erdreich
Evans (IA)
Fawell
Fiedler
Fish
Franklin
Frenzel
Gallo
Gekas
Gilman
Gingrich
Goodling
Gradison
Green
Gregg
Gunderson
Hall, Ralph
Hammerschmidt
Hansen
Hendon
Henry
Hiler
Holt
Hopkins
Horton
Hunter
Hyde
Ireland
Jeffords
Johnson
Kasich
Kemp
Kindness
Kolbe
Kramer
Lagomarsino
Latta
Leach (IA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Lloyd
Lott
Lowery (CA)
Lujan
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCain
McCandless
McCollum
McDade
McEwen
McGrath
McKernan
McKinney
McMillan
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Monson
Moorhead
Morrison (WA)
Nielson
Oxley
Packard
Parris
Pashayan
Petri
Porter
Pursell
Quillen
Ray
Regula
Ridge
Rinaldo
Ritter
Roberts
Roemer
Rogers
Roth
Roukema
Rowland (CT)
Rudd
Saxton
Schaefer
Schneider
Schuette
Schulze
Sensenbrenner
Shaw
Shelby
Shumway
Shuster
Siljander
Skeen
Slaughter
Smith (NE)
Smith (NJ)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Solomon
Spence
Stangeland
Stenholm
Strang
Stump
Sundquist
Swindall
Tauke
Taylor
Thomas (CA)
Traxler
Vander Jagt
Vucanovich
Walker
Weber
Whitehurst
Whittaker
Wolf
Wylie
Young (AK)
Young (FL)
Zschau

NOT VOTING—20

Bedell
Breaux
Brown (CA)
Burton (CA)
Callahan
Campbell
Davis
Fowler
Fuqua
Grotberg
Hartnett
Matsui
Mikulski
Moore
Mrazek
Myers
Stokes
Whitley
Wortley
Wright

☐ 1330

Messrs. **LUJAN, RALPH M. HALL,** and **McDADE** changed their votes from "yea" to "nay."

Mr. **BARTON** of Texas changed his vote from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The **SPEAKER** pro tempore (Mr. GRAY of Illinois). The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

BICENTENNIAL OF THE CONSTITUTION COINS AND MEDALS ACT

Mr. ANNUNZIO. Mr. Speaker, I ask unanimous consent that the Committee on Banking, Finance and Urban Affairs be discharged from further consideration of the bill (H.R. 3415) to authorize the minting of coins and the striking of medals in commemoration of the bicentennial of the United States Constitution, and ask for its immediate consideration.

The Clerk read the title of the bill.

The **SPEAKER** pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Illinois?

There was no objection.

The Clerk read the bill, as follows:

H.R. 3415

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Bicentennial of the Constitution Coins and Medals Act".

DEFINITIONS

SEC. 2. For purposes of this Act—

(1) the term "Commission" means the Commission on the Bicentennial of the United States Constitution; and

(2) the term "Secretary" means the Secretary of the Treasury.

TITLE I—BICENTENNIAL OF THE UNITED STATES CONSTITUTION COMMEMORATIVE COINS

COIN SPECIFICATIONS

SEC. 101. (a)(1) The Secretary shall issue not more than 1,000,000 five dollar coins which shall weigh 8.359 grams, have a diameter of 0.850 inches, and shall contain 90 percent gold and 10 percent alloy.

(2) The design of such five dollar coins shall be emblematic of the bicentennial of the United States Constitution. On each such five dollar coin there shall be a designation of the value of the coin, an inscription of the year "1987", and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(b)(1) The Secretary shall issue not more than 10,000,000 one dollar coins which shall weigh 26.73 grams, have a diameter of 1.500 inches, and shall contain 90 percent silver and 10 percent copper.

(2) The design of such dollar coins shall be emblematic of the bicentennial of the United States Constitution. On each such dollar coin there shall be a designation of the value of the coin, an inscription of the year "1987", and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(c) The coins issued under this title shall be legal tender as provided in section 5103 of title 31, United States Code.

(d) For purposes of section 5132(a)(1) of title 31, United States Code, all coins minted under this title shall be considered to be numismatic items.

SOURCES OF BULLION

SEC. 102. (a) The Secretary shall obtain gold for the coins minted under this title pursuant to the authority of the Secretary under existing law.

(b) The Secretary shall obtain silver for the coins minted under this title only from stockpiles established under the Strategic and Critical Minerals Stock Piling Act (50 U.S.C. 98 et seq.).

DESIGN OF THE COINS

SEC. 103. The design for each coin authorized by this title shall be selected by the Secretary after consultation with the Commission and the Commission of Fine Arts.

SALE OF THE COINS

SEC. 104. (a) Notwithstanding any other provision of law, the coins issued under this title shall be sold by the Secretary at a price equal to the face value, plus the cost of designing and issuing such coins (including labor, materials, dies, use of machinery, and overhead expenses).

(b) The Secretary shall make bulk sales at a reasonable discount to reflect the lower costs of such sales.

(c) The Secretary shall accept prepaid orders for the coins prior to the issuance of such coins. Sales under this subsection shall be at a reasonable discount to reflect the benefit of prepayment.

(d) All sales shall include a surcharge of $35 per coin for the five dollars coins and $7 per coin for the one dollar coins.

ISSUANCE OF COINS

SEC. 105. (a) The gold coins authorized under this title shall be issued in uncirculated and proof qualities and shall be struck at no more than one facility of the United States Mint.

(b) The silver coins authorized under this title may be issued in uncirculated and proof qualities, except that not more than one facility of the United States Mint may be used to strike each such quality.

(c) The Secretary may issue the coins minted under this title beginning January 1, 1987.

(d) No coins shall be minted under this title after December 31, 1987.

FINANCIAL ASSURANCES

SEC. 106. (a) The Secretary shall take all actions necessary to ensure that the issuance of the coins authorized by this title shall result in no net cost to the United States Government.

(b) No coin shall be issued under this title unless the Secretary has received—

(1) full payment therefor;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration Board.

NATIONAL DEBT EDUCATION

SEC. 107. An amount equal to the amount of all surcharges which are received by the Secretary from the sale of coins issued under this title shall be deposited in the general fund of the Treasury and shall be used for the sole purpose of reducing the national debt.

TITLE II—BICENTENNIAL OF THE UNITED STATES CONSTITUTION COMMEMORATIVE MEDALS

MEDALS

SEC. 201. (a) In commemoration of the bicentennial of the United States Constitution and the historic events preceding and associated with the drafting and ratification of the Constitution, the Secretary shall strike and deliver to the Commission not more than 750,000 medals with suitable emblems, devices, and inscriptions to be determined by the Secretary after consultation with the Commission and the Commission of Fine Arts.

(b) The medals, which may be disposed of by the Commission at a premium, may be delivered at such times as may be required by the Commission in quantities of not less than 2,000, except that no medals shall be struck by the Secretary after December 31, 1987.

COSTS

SEC. 202. (a) The Secretary shall cause such medals to be struck and delivered at not less than the cost of manufacturing such medals (including labor, materials, dies, use of machinery, and overhead expenses) plus a surcharge equal to 10 percent of such cost of manufacturing.

(b) Security satisfactory to the Secretary shall be furnished to indemnify the United States for full payment of any expense incurred by the Commission in carrying out any provision of this title.

METAL CONTENT

SEC. 203. The Medals authorized to be struck and delivered under this title shall be struck in gold, silver, and bronze and in such size or sizes as shall be determined by the Secretary in consultation with the Commission.

NATIONAL MEDALS

SEC. 204. The medals provided for in this title are national medals for purposes of chapter 51 of title 31, United States Code.

EXAMINATION OF RECORDS

SEC. 205. The Comptroller General of the United States shall have the right to examine all books, documents, and other records of the Commission which are related to the medals authorized under this title, including all books, documents and records regarding the marketing of such medals.

The SPEAKER pro tempore. The gentleman from Illinois [Mr. ANNUNZIO] is recognized for 1 hour.

Mr. ANNUNZIO. Mr. Speaker, next year marks the 200th anniversary of the U.S. Constitution. To commemorate this important bicentennial, the gentlelady from Louisiana [Mrs. BOGGS] and the gentleman from Illinois [Mr. CRANE], and I introduced H.R. 3415, which authorizes the minting of U.S. coins to commemorate the occasion.

Not only does this legislation call for the minting of commemorative coins, but the coins will carry a surcharge that will be used solely to reduce the national debt. If all the coins are sold, $105 million will be raised for that purpose. At a time when we all are looking for ways to reduce the deficit, this can be an important source of revenue.

The bill calls for the minting of up to 1 million gold coins and 10 million silver dollars, minted to traditional specifications. Given the great demand for the Statue of Liberty commemorative coins issued this year, I anticipate an equally enthusiastic reception for Constitution bicentennial coins.

I think the Founding Fathers would be proud of this bill. Not only does it commemorate the longevity and success of the Constitution they wrote, but because of the fiscally responsible use of the proceeds. In restricting the proceeds to debt reduction, the bill returns to a tradition set in the first 60 years of the U.S. Constitution, when the Government had a surplus of $70 million instead of annual deficits.

I urge passage of the bill.

Mr. CRANE. Mr. Speaker, I would like to congratulate my colleague from Illinois, the distinguished chairman of the Banking Subcommittee on Consumer Affairs and Coinage, for guiding H.R. 3415 through the legislative process. His efforts, in conjunction with those of Chairman ST GERMAIN, and Representatives WYLIE and HILER, ensured that this legislation passed in the House of Representatives on October 1, 1986, without objection.

H.R. 3415, as amended, would authorize the minting of coins in commemoration of the bicentennial of the U.S. Constitution. Its purpose is not only to provide souvenirs to celebrate the bicentennial, but the proceeds from the sale of the coins will go toward the worthwhile cause of reducing our Federal debt.

As a member of the Commission on the Bicentennial of the U.S. Constitution, and as an original cosponsor of H.R. 3415, I am particularly pleased that the 200th anniversary of our Constitution will include commemorative coins to mark this historic occasion. The celebration would have been incomplete without collectors coins from the U.S. Mint.

Once again, I applaud the efforts of the distinguished gentleman from Illinois.

AMENDMENTS OFFERED BY MR. ANNUNZIO

Mr. ANNUNZIO. Mr. Speaker, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. ANNUNZIO: Page 1, line 5, strike "and Medals".

Page 4, line 14, strike "no more than one facility of the United States Mint" and insert "the United States Bullion Depository at West Point".

Page 5, after line 19, strike "TITLE II" and all that follows through page 7, line 10.

Mr. ANNUNZIO (during the reading). Mr. Speaker, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The SPEAKER pro tempore. The question is on the amendments offered by the gentleman from Illinois [Mr. ANNUNZIO].

The amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title of the bill was amended so as to read: "A bill to authorize the minting of coins in commemoration of the bicentennial of the United States Constitution."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ANNUNZIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

AUTHORIZING THE SPEAKER TO DECLARE RECESSES DURING BALANCE OF LEGISLATIVE DAY

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that it may be in order for the Speaker to declare recesses during the balance of the legislative day.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

Mr. LOTT. Reserving the right to object, Mr. Speaker, I do not intend to object, but I would like to yield under my reservation to the distinguished majority whip for a further explanation of exactly what he is requesting.

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Washington.

Mr. FOLEY. We are asking for recess authority for today only, and I would say to the gentleman that we have no further business after the conclusion of the conference report on job training, which is pending, and we assume that the minority does not intend to call up any other legislation, either.

Mr. LOTT. Not at this time, although we reserve the right to consider that maybe tomorrow.

I would like to clarify something that I understood the distinguished whip to say. There will not be any further legislative business today other than this one unanimous-consent request pending; is that correct?

Mr. FOLEY. There will be two unanimous-consent requests and commemoratives, but there will be no legislative business other than unanimous-consent requests.

Mr. LOTT. Is it anticipated that there will be any further votes today?

Mr. FOLEY. It is not anticipated that there will be any votes after the conference report.

Mr. LOTT. No further votes today at all, of any kind.

Mr. FOLEY. We have no plans to call any rollcall votes. There is the possibility of a rollcall vote on the conference report which is now pending, but other than that, unanimous-consent request only, and we do not have any anticipation that there will be any rollcall votes. The gentleman knows that to some extent procedural rollcall votes can be demanded by the minority, and I hope that he will give us the assurance that they have no plans for such.

Mr. LOTT. We do not have any such plans.

Mr. Speaker, further reserving the right to object, is there going to be a recorded call of the House late this afternoon?

Mr. FOLEY. Yes; at approximately 6:45 p.m. there will be a call of the House to notify Members of the proceedings at 7 o'clock tonight on the floor.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. LOTT. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I would hope that maybe if we are going to have that kind of a process that we could change the time for that call of the House to some extent. There are a number of Members on this side that have previously made plans for dinner downtown, and that kind of call of the House would bring about a problem for many Members on our side of the aisle.

Mr. FOLEY. If the gentleman will yield further, we do not intend to have a rollcall. We will signal the Members with 15 minutes' notice prior to the proceedings at 7 o'clock.

Mr. LOTT. So you do not intend to have a rollcall at that point?

Mr. FOLEY. No.

Mr. LOTT. Mr. Speaker, further reserving the right to object, just one further point. Does the whip have any additional information that he could give the Members as far as the schedule for Thursday and/or Friday of this week? Does the gentleman have any information with regard to Friday in particular?

Mr. FOLEY. The possibility of the appointment of conferees on the continuing resolution acted upon by the Senate is present, and there is an assumption here that that might be subject to a motion to instruct.

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Mr. LOTT. That would come tomorrow?

Mr. FOLEY. Accordingly, there could be a rollcall vote on that motion.

Mr. LOTT. And when would that be anticipated?

Mr. FOLEY. Sometime between 10 and 3.

Mr. LOTT. On tomorrow?

Mr. FOLEY. On Friday. The gentleman asked me about Friday, and I am telling the gentleman that it is possible for the announcement of conferees and a motion to instruct conferees could take place on Friday. I would be able to advise the gentleman more accurately on that tomorrow.

Mr. LOTT. I thank the gentleman very much.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Washington?

Mr. COATS. Mr. Speaker, reserving the right to object, I would like to just clarify the situation as I understand it, and that is that when the House finishes work on these two conference reports and goes into special orders, there will be no other recorded votes this evening? A number of Members have separate plans and were unable to attend the Speaker's reception at 9 o'clock or whatever time.

Mr. FOLEY. Seven o'clock.

Mr. COATS. Seven o'clock, and we need to clarify those plans so that we will not get caught with a recorded vote or a live quorum.

Mr. FOLEY. We have a conference report pending and a unanimous-consent request to accept some Senate amendments. We do not anticipate rollcall votes on any matter after the conclusion of the adoption of the conference report on the Job Training Partnership Act. I repeat, we have no plans for such a vote. The gentleman should again check with his own leadership to determine that they have no such plans, because I can only speak for our side with respect to that. But we have no plans to call such a rollcall vote, and we expect that we will notify the Members by 15 minutes notice, without a rollcall or a quorum call prior to the 7 o'clock proceedings on the floor.

Mr. COATS. Mr. Speaker, I thank the gentleman and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

JOB TRAINING PARTNERSHIP ACT AMENDMENTS OF 1986

Mr. HAWKINS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2069) to amend the Job Training Partnership Act, with a Senate amendment to the House amendments thereto, and concur in the Senate amendment to the House amendments.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendment to the House amendments as follows:

In lieu of the matter proposed to be inserted to the text of the bill, insert:

SHORT TITLE

SECTION 1. This Act may be cited as the "Job Training Partnership Act Amendments of 1986".

DESIGNATION OF SERVICE DELIVERY AREAS BASED ON LABOR MARKET AREAS

SEC. 2. Section 101(a)(4)(A)(ii) of the Job Training Partnership Act (hereinafter in this Act referred to as the "Act") is amended by striking out "a labor market area" and inserting in lieu thereof "one or more labor market areas".

LITERACY AND DROPOUT PREVENTION PROGRAMS

SEC. 3. Section 123 of the Act is amended—

(1) in subsection (a)—

(A) by striking out "and" at the end of paragraph (1);

(B) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(C) by inserting at the end of such subsection the following new paragraph:

"(3) to provide—

"(A) literacy training to youth and adults;

"(B) dropout prevention and reenrollment services to youth, giving priority to youth who are at risk of becoming dropouts;

"(C) a State-wide school-to-work transition program operated in a manner consistent with section 205(e); or

"(D) any combination of the activities described in subparagraphs (A), (B), and (C) of this paragraph."; and

(2) in subsection (c)—

(A) by striking out the first sentence of paragraph (2)(B) and inserting in lieu thereof the following: "Funds available under this section shall be used for clause (3) of the Federal share of the cost of carrying out activities described in such clause."; and

(B) by striking out "clause (1)" in paragraph (3) and inserting in lieu thereof "clauses (1) and (3)".

PRESIDENTIAL AWARDS FOR OUTSTANDING PRIVATE SECTOR INVOLVEMENT IN JOB TRAINING PROGRAMS

SEC. 4. Part D of title I of the Act is amended by adding at the end thereof the following new section:

"PRESIDENTIAL AWARDS FOR OUTSTANDING PRIVATE SECTOR INVOLVEMENT IN JOB TRAINING PROGRAMS

"SEC. 172. (a)(1)(A) The President is authorized to make Presidential awards for outstanding achievements by the private sector in the job training partnership program authorized by this Act. The President is authorized to make such awards to individuals who, and organizations which, have demonstrated outstanding achievements in planning and administering job training partnership programs or in contributing to the success of the job training partnership program.

"(B) In making the awards pursuant to subparagraph (A) of this paragraph, the President shall consider the effectiveness of the program for which the award is made.

"(2) The President is authorized to make Presidential awards for model programs in the job training partnership program authorized by this Act which demonstrate effectiveness in addressing the job training needs of groups of individuals with multiple barriers to employment.

"(b)(1) Each year the President is authorized to make such awards under subsection (a) of this section as the President determines will carry out the objectives of this Act.

"(2) The President shall establish such selection procedures, after consultation with the Secretary and the Governors of the States, as may be necessary.".

INTRASTATE HOLD HARMLESS ALLOCATION REQUIREMENT

SEC. 5. Section 202(a) of the Act is amended—

(1) in paragraph (2), by striking out "Of" and inserting in lieu thereof "Subject to the provisions of paragraph (3), of ";

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) For fiscal years beginning after September 30, 1986, no service delivery area within any State shall be allocated an amount equal to less than 90 percent of the average of its allocation percentage for the two preceding fiscal years preceding the fiscal year for which the determination is made. The allocation percentage for a service delivery area is the percentage which the service delivery area received of the total amount allocated pursuant to this subsection to all service delivery areas within the State for each such preceding fiscal year. If the amounts appropriated pursuant to section 3(a) and (b) are not sufficient to provide an amount equal to at least 90 percent of such allocation percentages to each such area, the amounts allocated to each area shall be ratably reduced.".

(b) Section 251(b) of the Act is amended by striking out "section 202(a)(2) and (3)" and inserting in lieu thereof "section 202(a)(2), (3), and (4)".

USE OF INCENTIVE GRANT FUNDS

SEC. 6. Section 202(b)(3)(B) of the Act is amended—

(1) by striking out "which do not qualify for incentive grants under this subparagraph"; and

(2) by adding at the end thereof the following: "Funds available under this subparagraph may, without regard to section 108(a), be used by the Governor or a service delivery area during not more than two program years to develop and implement a data collection system to track the postprogram experience of participants under this part.".

SERVICES TO YOUTH

SEC. 7. Section 203(b)(1) of the Act is amended by adding at the end thereof the following new sentence: "For the purpose of the preceding sentence, the term 'eligible youth' includes individuals who are 14 and 15 years of age and enrolled in pre-employment skills training.".

SUMMER YOUTH EMPLOYMENT ASSESSMENT AND GOALS

SEC. 8. (a) Part B of title II of the Act is amended by—

(1) redesignating sections 251 through 254, and all references thereto, as sections 252 through 255, respectively; and

(2) inserting after the part heading the following new section:

"PURPOSE

"SEC. 251. The purpose of programs assisted under this part is to—

"(1) enhance the basic educational skills of youth;

"(2) encourage school completion, or enrollment in supplementary or alternative school programs; and

"(3) provide eligible youth with exposure to the world of work.".

(b) Section 253 of the Act (as redesignated by subsection (a)(1) of this section) is amended by—

(1) inserting "(a)" before "Funds"; and

(2) adding at the end thereof the following new subsection:

"(b) A service delivery area shall assess the reading and mathematics skill levels of eligible participants in programs funded by this part and shall expend funds (from this Act or otherwise available to the service delivery area, or both) for basic and remedial education as described in the job training plan under section 104.".

(c) Section 255 of the Act (as redesignated by subsection (a)(1) of this section) is amended by—

(1) inserting "(a)" before "private"; and

(2) adding at the end thereof the following new subsection:

"(b) In accordance with the provisions of subsection (a), each service delivery area shall establish written program goals and objectives which shall be used for evaluating the effectiveness of programs conducted under this part. Such goals and objectives may include—

"(1) improvement in school retention and completion;

"(2) improvement in academic performance, including mathematics and reading comprehension;

"(3) improvement in employability skills; and

"(4) demonstrated coordination with other community service organizations such as local educational agencies, law enforcement agencies, and drug and alcohol prevention and treatment programs.".

(d) The table of contents of the Act relating to part B of title II is amended to read as follows:

PART B—SUMMER YOUTH EMPLOYMENT AND TRAINING PROGRAMS

"Sec. 251. Purposes.
"Sec. 252. Authorization of appropriations; allotment and allocation.
"Sec. 253. Use of funds.
"Sec. 254. Limitations.
"Sec. 255. Applicable provisions.".

AVAILABILITY OF SUMMER YOUTH PROGRAMS DURING NONSUMMER MONTHS

SEC. 9. Section 254(a) of the Act (as redesignated by section 8(a)(1) of this Act) is amended by inserting before the period at the end thereof the following: ", except that a service delivery area may, within the jurisdiction of any local educational agency that operates its schools on a year-round, full-time basis, offer the programs under this part to participants during a vacation period treated as the equivalent of a summer vacation".

PROHIBITION OF MATCHING ON GRANTS FROM SECRETARY'S DISCRETIONARY FUNDS UNDER TITLE III

SEC. 10. Section 301(c) of the Act is amended by adding at the end thereof the following new sentence: "Such criteria shall not include any requirement that, in order to receive assistance under this subsection, the State shall provide a matching amount with funds available from one or more other sources.".

IDENTIFICATION OF DISLOCATED WORKERS

SEC. 11. (a) Section 302(a) of the Act is amended—

(1) by striking out "or" at the end of clause (2);

(2) by striking out the period at the end of clause (3) and inserting in lieu thereof a semicolon and the word "or"; and

(3) by inserting at the end thereof the following:

"(4) were self-employed (including farmers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters subject to the next sentence.

The Secretary shall establish categories of self-employed individuals and of economic conditions and natural disasters to which clause (4) of the preceding sentence applies.".

(b) Section 302(c) of the Act is amended by adding at the end thereof the following new paragraph:

"(3) A State may serve any eligible individual under this part without regard to the residence of such individual.".

TAXATION OF JOB CORPS OPERATIONS PROHIBITED

SEC. 12. Section 437(c) of the Act is amended to read as follows:

"(c) Transactions conducted by a private for-profit contractor or a nonprofit contractor in connection with the contractor's operation of a Job Corps Center, program, or activity shall not be considered as generating gross receipts. Such contractors shall not be liable, directly or indirectly, to any State or subdivision thereof (nor to any person acting on behalf thereof) for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes imposed on, or measured by, gross receipts in connection with any payments made to or by such contractor for operating a Job Corps Center, program, or activity. Such contractors shall not be liable to any State or subdivision thereof to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such contractors of any property, service, or other item in connection with the operation of a Jobs Corp Center, program, or activity.".

ADDITIONAL EXPERIMENTAL AND DEVELOPMENTAL PROJECTS AUTHORIZED

SEC. 13. Section 453(a) of the Act is amended—

(1) by inserting "(1)" after the subsection designation, and

(2) by adding at the end thereof the following new paragraph:

"(2) From funds made available under this part, the Secretary may provide financial assistance for pilot projects for the training of individuals who are threatened with loss of their jobs due to technological changes, international economic policies, or general economic conditions.".

PROJECTS FOR SPECIAL POPULATIONS

SEC. 14. (a) Part D of title IV of the Act is amended by adding at the end thereof the following new section:

"PROJECTS FOR SPECIAL POPULATIONS

"SEC. 456. In carrying out this part, the Secretary shall include projects designed to serve populations with multiple barriers to employment, such as individuals listed in section 203(a)(2) and individuals not otherwise targeted for assistance under this Act, with special consideration for displaced homemakers and the handicapped.".

(b)(1) Section 4 of the Act is amended by inserting at the end thereof the following new paragraph:

"(29) The term 'displaced homemaker' means an individual who—

"(A) was a full-time homemaker for a substantial number of years; and

"(B) derived the substantial share of his or her support from—

"(i) a spouse and no longer receives such support due to the death, divorce, permanent disability of, or permanent separation from the spouse; or

"(ii) public assistance on account of dependents in the home and no longer receives such support.".

(2) The table of contents of the Act is amended by adding after item "Sec. 455." the following new item: "Sec. 456. Projects for special populations.".

VETERANS AMENDMENTS

SEC. 15. (a)(1) Section 4(5) of the Act is amended by inserting after "handicapped" a comma and the following: "including disabled veterans".

(2) Section 4(27) of the Act is amended by adding at the end thereof the following new subparagraph:

"(C) The term 'recently separated veteran' means any veteran who applies for participation under any title of this Act within 48 months of the discharge or release from active military, naval, or air service.

"(D) The term 'Vietnam era veteran' means a veteran any part of whose active military service occurred between August 5, 1964, and May 7, 1975.".

(b) Section 106(d)(3) of the Act is amended by striking out "and offenders" and inserting in lieu thereof "disabled and Vietnam era veterans, including veterans who served in the Indochina Theater between August 5, 1964, and May 7, 1975, and offenders".

(c) Section 108(c)(2)(B)(ii) of the Act is amended by inserting after "handicapped individuals" a comma and the following: "including disabled veterans".

(d) Section 121(c)(10) of the Act is amended by adding before the period at the end thereof a comma and the following: "including Veterans' Administration programs".

(e) Section 123(c)(1) of the Act is amended by inserting after "offenders" a comma and the following: "veterans,".

(f) Section 124(b) of the Act is amended by inserting after "nonprofit private organizations" a comma and the following: "including veterans organizations".

FARMER AND RANCHER DISLOCATION REPORT

SEC. 16. Within 12 months after the date of enactment of this Act, the Secretary of Labor shall submit a report to the Congress which—

(1) uses data sources within the Departments of Labor, Agriculture, Commerce, and other Federal agencies to describe the dislocation of farmers and ranchers resulting from farm and ranch failures;

(2) identifies and utilizes data sources and on-going studies conducted at the State and local levels, both within the public and private sectors, identifying and outlining the problem of farmer and rancher dislocation; and

(3) examines the feasibility of establishing a national statistical data collection program for permanently dislocated farmers and ranchers.

Mr. HAWKINS (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment to the House amendments be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. JEFFORDS. Mr. Speaker, reserving the right to object, under my reservation of objection I yield to the gentleman from Wisconsin [Mr. GUNDERSON].

Mr. GUNDERSON. Mr. Speaker, I rise in strong support of the Job Training Partnership Amendments of 1986, and I urge my colleagues in the House to join in support of this legislation. These amendments which have been carefully worked out and agreed to by members of both the House Education and Labor Committee and the Senate Labor and Human Resources Committee represent a strong, bipartisan effort to update and perfect America's job training programs.

Since its enactment in 1982, JTPA has served as the cornerstone of the Federal Government's efforts to provide employment and training assistance to economically disadvantaged youth and adults and to workers dislocated from their jobs. While the act's programs are working well throughout the country, due in large part to the partnership that was established under the act between Federal, State, and local governments and the private sector, there are still a number of problems within JTPA for which "fine-tuning" and "updating" changes are in order. I feel that the amendments we are considering here today make these necessary modifications, and most importantly, they do so without making any unnecessary, substantive changes in the act that could weaken its effectiveness.

The bill that we are considering today provides an assurance to local service delivery areas of more consistent funding for their basic grant programs serving disadvantaged youth and adults and for their summer youth programs. It increases emphasis within JTPA on the provision of remedial education under the Summer Youth Employment Program. It further reinforces importance of targeting literacy, dropout prevention, and school to work transition programs to "high risk" youth under the 8-percent education set aside. Finally, the bill incorporates several changes into the act to make programs under JTPA more responsive to the employment and training needs of the dislocated farmer.

In closing, I want to thank my colleagues on the Education and Labor Committee, particularly the chairman and ranking Republican member of the committee, as well as the chairman of the Employment Opportunities Subcommittee for the spirit of cooperation under which we have developed these amendments that strenghten the Federal Government's job training efforts. Again, I urge the support of my colleagues for this important legislation.

Mr. JEFFORDS. Mr. Speaker, under my reservation of objection, I yield to the gentleman from California [Mr. HAWKINS] for the purpose of explaining what it is we are discussing here.

Mr. HAWKINS. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, the purpose of these amendments is to clarify or perfect some aspects of the Job Training Partnership Act [JTPA].

Almost 4 years have passed since this act was signed into law. Since that time, the Committee on Education and Labor has conducted extensive oversight on the implementation of the law. Through this oversight process, concerns regarding the effectiveness and implementation of the new law surfaced.

As my colleague Mr. JEFFORDS is well aware, both the House and the Senate have been reluctant to propose changes in this law because we did not want to undermine the stability of the system. However, in response to the requests for clarifying or perfecting changes in the law, earlier this year, both Houses of Congress fashioned amendments which were intended to effect only a few essential changes in the law. I was pleased to join with Mr. JEFFORDS, the ranking Republican; Mr. MARTINEZ, chairman of the Subcommittee on Employment Opportunities; Mr. GUNDERSON, ranking Republican on the Subcommittee on Employment Opportunities; and Mr. WILLIAMS, to develop a bipartisan bill which addresses these concerns.

The amendments under consideration today represent the compromise that was developed by the House and the Senate after each body had passed its respective bill. These amendments are noncontroversial and enjoy broad bipartisan support. Earlier this week, under unanimous consent, the Senate passed S. 2069 as amended.

Mr. Speaker, I ask unanimous consent that a joint explanatory statement on S. 2069 be inserted in the RECORD at this point. This statement has been agreed to by the members of the Committee on Education and Labor and the members of the Senate Committee on Labor and Human Resources. In order to establish the legislative history, this identical statement was made part of the Senate proceedings on September 29.

SUMMARY AND EXPLANATION OF S. 2069

DESIGNATION OF SERVICE DELIVERY AREAS BASED ON LABOR MARKET AREAS

SEC. 2: This bill permits local governments to join together to apply for service delivery area (SDA) designation to serve one or more labor market areas rather than a single labor market. This change is necessary to clarify the original intent of Congress.

LITERACY AND DROPOUT PREVENTION PROGRAMS

SEC. 3: The bill strengthens the education coordination and grants section of JTPA by mandating that the funds be expended on three high priority areas without being prescriptive on programmatic details. First, in response to concerns about the increasing rate of illiteracy among youth and adults and the increase in the number of school dropouts, the bill mandates that funds under Section 123 of the Act be used to respond to these national problems.

The bill also addresses the barriers confronted by disadvantaged youth who do not plan to pursue additional education beyond high school by authorizing statewide school-to-work transition programs under Section 123 of the Act. High school students served under these programs must continue to meet the eligibility requirements under the Act.

Funds expended under the new authority in Section 123 of the Act can be spent for any one type of program, or any combination thereof. Further, programs operated under this new authority are not exempt from meeting the cooperative agreement requirements under current law.

The Committees are supportive of the recent decision by the Department of Labor to require reporting on the use of the eight percent set-aside.

PRESIDENTIAL AWARDS

SEC. 4: The bill authorizes the President to make awards for outstanding private sector achievement in job training programs and for model programs serving individuals with multiple barriers to employment.

INTRASTATE HOLD HARMLESS ALLOCATION REQUIREMENT

SEC. 5: The legislation mandates a 90% substate hold harmless for all SDAs within a state for titles II-A and B of the Act applied to the average of the relative shares of funds each SDA received in the previous two program years. This requirement shall be satisfied after meeting the requirements at 201(b)(2) of the Act.

USE OF INCENTIVE GRANT FUNDS

SEC. 6: The bill expands the use of funds available for technical assistance under Section 202(b)(3) of the Act to permit technical assistance to be provided to all service delivery areas. Current law provides for such assistance to be provided only to service delivery areas which fail to meet performance standards. The rationale for this change is to enable States to anticipate program deficiencies and take corrective action prior to such failure.

The Committees want to clarify that technical assistance means activities directly related to program performance, including preventive technical assistance.

A second change to Section 202(b)(3) of the Act permits the use of technical assistance funds for the cost of post program data collection, for up to two years. Either States or service delivery areas may use the funds available for the cost of post program follow up; however, the Committee intends that those performing such data collection receive funds for this purpose.

The Committees intend that these amendments be effective retroactive to program year 1986.

SERVICES TO YOUTH

SEC. 7: The bill requires that the cost of providing pre-employment skills training to 14 and 15 year olds under Title II-A be counted toward meeting the requirement in Section 203(b) (1) of the Act.

SUMMER YOUTH EMPLOYMENT ASSESSMENT AND GOALS

SEC. 8: The Committees expressed their strong concern about the alarming problem of youth illiteracy. The Committees agree that the deficit of basic educational skills among the targeted population of youth is so acute that a mandate to provide remedial education programs in the Summer Youth Employment and Training Program (SYEP) is justified. The provision requires that service delivery areas, as part of their planning process, assess the reading and math abilities of eligible youth and provide basic and remedial education programs in their summer programs. The provision does not require service delivery areas to conduct new tests or tests separate from local education agencies in order to assess the basic educational skills of eligible youth. Existing data and information may be used.

The Committees want to clarify their intent on three points. First, neither the Governor of a state, nor the Secretary of Labor, may require a specific service level or percentage expenditure of funds to satisfy this mandate. The Committees defer to the judgment of the private industry councils and local elected officials to expend appropriate resources to address this problem.

Second, the Committees reiterate the importance of Section 141(b) of the Job Training Partnership Act, and do not wish to supplant resources contributed for basic and remedial education programs by other sources.

Third, the Committees have included a provision requiring service delivery areas to develop written goals and objectives for the summer components. Two of the suggested evaluation criteria require explanation. The goal of "improvement in academic performance, including mathematics and reading comprehension" does not necessarily mean students must show an increase in test scores. Second, the goal of "improvement in employability skills," means that a youth has performed satisfactorily on a job, that he or she has been instilled with work habits, skills, and attitudes sought by employers. The Committees agree that, while a youth participant earns a wage the real benefit to the participant is learning real-world labor market skills which will be of long-term benefit.

The Committees have underscored these beliefs by including a statement of purpose for the Title II-B program as a whole.

AVAILABILITY OF SUMMER YOUTH PROGRAMS DURING NONSUMMER MONTHS

SEC. 9: The bill provides that SDAs may offer the programs under Title II-B (summer youth) to participants during a vacation period treated as the equivalent of a summer vacation if the local education agency operates on a year-round calendar.

PROHIBITION OF MATCHING ON GRANTS FROM SECRETARY'S DISCRETIONARY FUNDS UNDER TITLE III

SEC. 10: The legislation reaffirms the intent of Congress prohibiting a matching requirement for the Secretary's discretionary funds under Title III of the Act.

IDENTIFICATION OF DISLOCATED WORKERS

SEC. 11: In order to address the problems associated with determining eligibility for dislocated farmers and self-employed individuals under the Dislocated Workers Program, the bill includes a provision clarifying that self-employed individuals, including farmers, are eligible for participation under Title III, if they have been displaced due to economic conditions or natural disasters.

The Committees in no way intend for this language to be interpreted as being more restrictive than that already provided for under current law.

This legislation adds language to the definition of dislocated workers at Section 302(c)(3) of the Act to clarify that eligible individuals may be served without regard to their residence.

TAXATION OF JOB CORPS OPERATIONS PROHIBITED

SEC. 12: The bill amends section 437(c) to ensure that all Job Corps activities and transactions authorized under Part B of Title IV of the Act which are carried out pursuant to contracts with the Secretary by either for-profit or non-profit Job Corps contractors are exempted from all State gross receipts, excise, sales, use, business privilege, or similar taxes (such as occupational taxes) measured by gross receipts. This language is fully consistent with the original Congressional intent of the Act, and is supported by the Department of Labor.

ADDITIONAL EXPERIMENTAL AND DEVELOPMENTAL PROJECTS AUTHORIZED

SEC. 13: The bill authorizes the Secretary to conduct pilot projects to retrain individuals threatened with the loss of their jobs due to technological changes, international economic policies, or general economic conditions. The Committees hope that the pilot projects authorized will provide an opportunity to demonstrate the effectiveness of preventive training programs.

PROJECTS FOR SPECIAL POPULATIONS

SEC. 14: The bill contains a provision mandating the Secretary of Labor to expend a portion of the discretionary funds for research, demonstration and pilot projects under Title IV of the Act for programs to assist groups of individuals who are not otherwise targeted with federal, state, or service delivery area set-asides. Special consideration should be given to displaced homemakers and the handicapped.

VETERANS AMENDMENTS

SEC. 15: Throughout the Act there are examples of potential groups of eligible recipients. These examples are illustrative and are not intended to be exclusive. Groups such as the handicapped and high school dropouts are examples of individuals who have an unusually great need for JTPA services. The bill amends some of these illustrative lists to highlight the fact that, in developing their job training plans, service delivery areas should also give consideration to the needs of veterans, particularly disabled and Vietnam era veterans who have disproportionately high rates of unemployment or low labor force participation.

FARMER AND RANCHER DISLOCATION REPORT

SEC. 16: In order to adequately identify those dislocated farmers and ranchers who would qualify for assistance under the Act, the Committees agree that more information needs to be gathered at the Federal, State, and local levels to determine the true extent of the farmer dislocation problem and to determine how this lack of information affects National employment statistics.

To address these concerns, the bill amends Title IV of the Act, the Cooperative Labor Market Information Program, to require the Secretary of Labor to make a special report which uses existing data within the Departments of Labor, Agriculture, Commerce, and other appropriate Federal agencies, to describe the dislocation of farmers and ranchers resulting from farm and ranch failures. The Secretary is also directed to identify and utilize existing data sources and on-going studies conducted at the State and local levels which examine the problem of farm and ranch dislocation. Based on this information, the Secretary will examine the feasibility of establishing a National, ongoing statistical data collection program to identify permanently dislocated farmers and ranchers, and will make recommendations to the Committees on such a program within one year from the date of enactment.

OTHER ISSUES

Older workers

The Committees acknowledge the need for coordination between the Older Worker program under the Act and the Senior Community Services Employment program, Title V of the Older Americans Act. Although we approve of and encourage coordination between the two programs, we recognize the important differences in the goals of these programs. The program operated under the Act is designed to provide training for placement in unsubsidized employment, not to place participants in community service jobs.

Because both programs are under the jurisdiction of the Department of Labor, we believe that the Department should take steps to improve coordination and keep the respective Congressional Committees apprised of its efforts in this regard.

Job Corps coordination efforts

Section 424(a) of the Act requires the Secretary to prescribe specific standards and procedures for the screening and selection of Job Corps applicants to insure that the program serves the most severely disadvantaged and hard-to-serve young men and women. The Secretary is obliged, through arrangements with a wide variety of agencies and entities, including service delivery areas, to insure that the selection process identifies those youth and adults in need of such intensive and comprehensive services who cannot be adequately served in their home communities.

The Committees are not satisfied that the purposes of Section 424(a) of the Act are being adequately met and thus request that the Secretary undertake a study of the screening and selection process for Job Corps enrollees. Findings should be reported to the authorizing Committees by June 30, 1987, on the steps taken to achieve this goal.

Definition of economically disadvantaged

The Committees concur that data are lacking in this area, and rather than take an action that might reduce overall participation, request that the General Accounting Office undertake a study to determine the overall impact of changing from an annualized six-month income figure to a twelve-month income figure.

Committee reports

The Committees reaffirm the directives contained in House Report 99-754 and Senate Report 99-317 while acknowledging that the Department of Labor has begun to comply with some of these requests.

Mr. JEFFORDS. Mr. Speaker, I thank the gentleman for his explanation.

I would like to let Members know exactly what is being done through this action. The House passed a similar bill in August which contained technical amendments to JTPA. That bill went over to the other body, and they have now returned it to us with some further amendments. In essence both bodies have passed a set of amendments, and we are now acting on the Senate amendment to the House amendments.

I would like to say also that it is a tribute to the gentleman from California and all of us who worked on the Job Training Partnership Act which, as you know, is supported by the administration as the finest piece of domestic legislation in the past 4 years, that we have had only these technical amendments that have appeared to be necessary. In fact, some of them are improvements to areas that were not in the original bill.

Issues that we addressed in this bill include an intrastate hold harmless, remedial education in the Summer Youth Employment Program, preventative technical assistance and services to dislocated workers.

I want to commend, for instance, the gentleman from New York [Mr. FISH], for his raising the suggestion that we should provide a remedial education component in the Summer Youth Program. I would further like to commend the gentleman from Wisconsin [Mr. GUNDERSON] for his amendments in the area of self-employed farmers who are suffering in the Midwest so that they have an opportunity to take advantage of the program under the act.

In addition, I would like to thank the chairman, Mr. HAWKINS, for his leadership during the consideration of these amendments. I also want to express my appreciation to the other members of the committee, Mr. MARTINEZ, Mr. GUNDERSON, and Mr. WILLIAMS, whose efforts have strengthened the provisions of this bill. In addition, I would like to recognize the cooperation of the Members of the other body in reaching a quick resolution of the points of differences between our two bills.

As with JTPA, these amendments enjoy strong bipartisan support. They reflect several needed changes, but retain the intent and integrity of the law. I am pleased to have had the opportunity to participate in their development, and believe that they deserve the support of my colleagues.

Mr. PEASE. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I am happy to yield to the gentleman from Ohio.

Mr. PEASE. Mr. Speaker, I thank the gentleman for yielding and would like to make an inquiry of the chairman of the committee, if I might.

Mr. Speaker, I appreciate that the Job Training Partnership Act is a permanent authorization, and does not require reauthorization.

I also appreciate the fact, at least the assertion on the part of the administration, that this program is operating well and efficiently. We frequently hear pep talks by the administration about the program, and I must say that in my area it seems to be operating reasonably well.

However, there are questions that are raised about the program, especially in comparison with another job training program with which I am associated; namely, Trade Adjustment Assistance. One of the comparisons which is drawn between these two programs involves the fact that under the Trade Adjustment Assistance there is a monthly or weekly stipend so that the person in training can pay the rent and put bread and butter on the table while undergoing training, whereas under JPTA that is not the case.

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I have heard examples in my own area where individuals eligible for training, who wanted training had to drop out of training for lack of that kind of sustenance. It just occurs to me that no program, no matter how good it might have been in the beginning, ought to go unexamined.

So my question, I guess, to the chairman of the committee is whether he and his committee have any plans for the next session of Congress to conduct any extensive oversight hearings into the JTPA Program.

Mr. HAWKINS. If the gentleman will yield, Mr. Speaker, let me assure the gentleman from Ohio [Mr. PEASE] that already rather extensive oversight hearings have been held by the Subcommittee on Employment Opportunities on which both the gentleman from Vermont [Mr. JEFFORDS] and I do serve.

Some 9 days of hearings were held this session. It is my understanding that the subcommittee will continue those oversight hearings. There are some aspects of the Job Training Partnership Act that I believe should be critically examined. I personally have some reservations about the operation of the act in reference to youth, and also dislocated workers.

I can assure the gentleman, and I think that Mr. JEFFORDS can concur in this if he so desires, that these hearings will continue and that if any substantial request is made to us during the next session of Congress by any of the Members as to the experience in their particular districts, we will definitely conduct a critical session in terms of possible amendments to the act.

At this time, however, we had agreed to maintain the stability of this program that we would not at this time open it up for any extensive amendments. That will not apply to the next session, and we can assure the gentleman from Ohio [Mr. PEASE] that these hearings will continue and that we will entertain amendments to the act.

Mr. JEFFORDS. Mr. Speaker, I want to concur in the remarks of the gentleman from California [Mr. HAWKINS]. We felt it was most critical that during the first 4 years of this act that we not enact any significant changes. There had been so many changes in the previous Employment and Training Program, CETA and such a significant change was made by enacting the Job Training Partnership Act, that we thought it was in the best interests of the country and all the people who are being served by these programs to have stability during this time.

I would concur that it may now be time, perhaps, to take a look at some of the problems the gentleman has raised, and see if we can improve it in the next session.

This bill constitutes the only amendments to JTPA that have been considered, and agreed to, by both bodies. These amendments address oversights in the original law, clarify original intent, and respond to concerns that were not evident at the time JTPA was enacted. There has been no call for significant change to the act. To the contrary, there continues to be strong support for its basic principles. Through these amendments we have not instituted wide-sweeping changes. Instead, these modest amendments should be considered as technical and fine-tuning in scope.

Mr. PEASE. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman.

Mr. PEASE. Mr. Speaker, first let me say that I am grateful for the assurances of the chairman and of the gentleman from Vermont [Mr. JEFFORDS] in this regard, and I will look forward to the opportunity of submitting suggestions to the chairman for hearings in the next session.

If I might just go on for another 30 seconds, in addition to the question of sustenance for the worker's family, I am aware in my area of shortcomings in the program as it relates to dislocated workers in particular.

The local JTPA's in my area simply do not operate any programs for dislocated workers. They are essentially funded off from the State level and workers, where those programs are available, find that they must take whatever group instruction is offered; they do not have the opportunity to select individualized instruction.

So on the assurance that the committee will look into those matters, I would like to thank both the gentlemen for their attention and cooperation.

Mr. HAWKINS. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman.

Mr. HAWKINS. Mr. Speaker, let me assure the gentleman that is the subject of some of the current hearings that have been held.

I would like to call to his attention that section 302 of the act does provide that each State is authorized to establish procedures to identify substantial groups of eligible individuals, and it goes on to indicate they can be served on a statewide basis in each State, which I would certainly submit to him that that perhaps is already included in a broad way in the act and that if any further implementation of that provision is needed, that could very well be the subject of some of the oversight hearings.

Mr. JEFFORDS. Mr. Speaker, I agree with the gentleman from California [Mr. HAWKINS] and would further point out that that may be a matter which he would like to take up with his State officials, as they have considerable flexibility with respect to these programs.

The Secretary of Labor also has a discretionary fund under the Dislocated Workers Program to provide additional funds for utilization in the States. I suggest that you ask your State people to pursue these additional funds.

Mr. PEASE. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman.

Mr. PEASE. Mr. Speaker, there is no reason to extend this discussion except to say that I have no doubt that the law provides that the States can provide this sort of training to dislocated workers.

The question that I would hope the committee would investigate is whether in fact the States are doing that; whether the opportunities are reaching down into local service areas, because the evidence in my own State is that that is not the case; and indeed, I think all of the money which has been earmarked for dislocated worker training under JTPA has not been used, and the administration has asked that some of those funds be rescinded.

All of those things can be determined during your oversight hearings, and I look forward, as I say, to working with the gentleman in that regard.

Mr. BIAGGI. Mr. Speaker, I rise to express my strong support for this bill, S. 2069, to make clarifying and technical changes in the Job Training Partnership Act.

Four years ago, I was proud to cosponsor and speak out in support of the Job Training Partnership Act. At that time, I stated that the act would "provide us with a comprehensive program designed to meet the employment and training needs of all our Nation's citizens who can and want to work. At a time when unemployment is peaking at its highest levels since World War II, this bill, the replacement to the expiring CETA Program, provides an important basis upon which to begin to meet that demand."

Mr. Speaker, as a member of the House Education and Labor Committee which has held numerous oversight hearings on JTPA programs since its enactment, I am impressed by the fact that JTPA has met our original expectations. Simply put, JTPA is working and this bill will only make it better.

Highlights of the bill include:

Providing a substate hold harmless provision for the basic training grant for adults and youth to help prevent dramatic fluctuations in funding levels, which undermine program stability;

Encouraging the delivery of JTPA services to dislocated farmers and ranchers; and

Targeting a position of the 8-percent education set-aside for dropout prevention, literacy training for youth and adults, and statewide school-to-work transition programs.

Mr. Speaker, the JTPA Program deserves our strong and continuing support for a number of reasons. It targets funds to unemployed and hard-to-train youth. It provides Federal funds to States with chronically high unemployment, and requires those funds to be matched with State and local funds—either from the public or private sectors. It places a special focus on employment training for veterans, and on encouraging employers to hire older workers, which was the result of an amendment I offered to the bill in 1982. Finally, it fosters a unique working relationship between the public and private sectors in providing job training assistance.

The amendments before us today would not substantively change the JTPA Program. In fact, the Education and Labor Committee has specifically avoided making dramatic changes in the program at this early stage because we feel that constant program changes are what got CETA in trouble. The changes before us today are merely perfecting changes designed to fine tune the program, while promoting continuity.

This is an issue that will be revisited during the next Congress by the Education and Labor Committee. More oversight hearings will be held and, perhaps, some changes of a more substantive nature may be contemplated. For now, however, this legislation makes the adjustments that are necessary to ensure that JTPA remains the efficient and productive program that it is today. This body passed a very similar measure (H.R. 5185) on August 11 and I urge that we act in the same supportive fashion here today.

Mr. SCHUETTE. Mr. Speaker, I commend my colleagues on the Education and Labor Committee for improving on an extremely important and successful program.

The Job Training Partnership Act is an historic act, for it demonstrates congressional commitment to provide opportunity and employment to dislocated workers and disadvantaged young people. This act is truly a partnership between business and Government. It is a commitment providing the training needed to make workers marketable in a changing world.

As you know, my State, Michigan, has many dislocated workers as the result of the increasing trade deficit. Many Michigan residents have been trained or retrained through JTPA, and I am pleased to lend my support to this measure, which will make this tremendously important program even better.

Mr. JEFFORDS. Mr. Speaker, I withdraw by reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from California?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HAWKINS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 2069, the legislation just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

ASBESTOS HAZARD EMERGENCY RESPONSE ACT OF 1986

Mr. FLORIO. Mr. Speaker, I ask unanimous consent to take from the speaker's table the bill (H.R. 5073) to amend the Toxic Substances Control Act to require the Environmental Protection Agency to promulgate regulations requiring inspection for asbestos-containing material in the Nation's schools, development of asbestos management plans for such schools, response actions with respect to friable asbestos-containing material in such schools, and for other purposes with a Senate amendment thereto, and concur in the Senate amendment with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment and the House amendment to the Senate amendment, as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Asbestos Hazard Emergency Response Act of 1986".

SEC. 2. AMENDMENT TO TOXIC SUBSTANCES CONTROL ACT.

The Toxic Substances Control Act is amended by adding at the end the following:

"TITLE II—ASBESTOS HAZARD EMERGENCY RESPONSE

"SEC. 201. CONGRESSIONAL FINDINGS AND PURPOSE.

"(a) FINDINGS.—The Congress finds the following:

"(1) The Environmental Protection Agency's rule on inspection and notification of asbestos hazards has neither standards for the proper identification of asbestos and abatement of friable asbestos-containing material, nor a requirement that friable asbestos-containing material be abated in a safe and complete manner once it is discovered.

"(2) There is no uniform program for accrediting persons involved in asbestos identification and abatement, nor are local education agencies required to use accredited contractors for asbestos work.

"(3) As a result, some schools have taken no action at all to abate hazardous asbestos while others have undertaken expensive abatement projects with no regulatory guidance from the Environmental Protection Agency as to whether the actions are necessary, adequate, or safe. Thus, the danger of exposure to asbestos continues to exist in many schools, and some exposure actually may have increased due to the lack of Federal standards for asbestos abatement and the lack of requirements that competent contractors be used to perform asbestos abatement.

"(b) PURPOSES.—The purposes of this title are—

"(1) to provide for the establishment of Federal regulations which require inspection for asbestos and the abatement of hazardous asbestos-containing material in the Nation's schools in a safe and complete manner;

"(2) to establish standards for the development of operation and maintenance plans to prevent exposure to asbestos remaining in a school building after abatement; and

"(3) to mandate safe and complete periodic reinspection of school buildings following abatement.

"SEC. 202. DEFINITION OF ASBESTOS; ABATEMENT; AND GUIDANCE DOCUMENT.

"(a) IN GENERAL.—For purposes of this title, the term—

"(1) 'asbestos' means asbestiform varieties of—

"(A) chrysotile (serpentine),

"(B) crocidolite (riebeckite),

"(C) amosite (cummingtonite-grunerite),

"(D) anthophyllite,

"(E) tremolite, or

"(F) actinolite;

"(2) 'asbestos-containing material' means any material which contains more than 1 percent asbestos by weight;

"(3) 'friable asbestos-containing material' means any asbestos-containing material applied on ceilings, walls, structural members, piping, duct work, or any other part of a building which when dry may be crumbled, pulverized, or reduced to powder by hand pressure;

"(4) 'abatement' means enclosure, encapsulation, repair or removal of asbestos-containing material; and

"(5) 'accredited asbestos contractor' means a person, accredited pursuant to the provisions of section 203, who inspects for asbestos-containing material, develops asbestos management plans, or performs asbestos abatement activities.

"(b) EPA REGULATIONS ON IDENTIFICATION AND ABATEMENT OF ASBESTOS.—Within 12 calendar months after the date of the enactment of this title, the Administrator shall promulgate the following:

"(1) Regulations which prescribe procedures, including the use of trained personnel, for determining whether asbestos-containing materials are present in a school building.

"(2) Regulations which prescribe standards for the circumstances under which the presence of asbestos-containing material in a school building shall be considered hazardous, describing different types of abatement, and defining the circumstances under which different types of abatement are required, including the extent of abatement necessary. In any standard under this paragraph, asbestos-containing material shall be considered hazardous if, at a minimum, it is friable and is—

"(A) damaged, deteriorated or delaminated; or

"(B) readily accessible to building occupants including service and maintenance personnel, in the course of their normal activities;

in circumstances that present a reasonable likelihood of exposure to asbestos fibers.

"(3) Regulations which mandate abatement, in accordance with standards prescribed under paragraph (4), of hazardous asbestos-containing material found in any school building, as determined in accordance with standards prescribed under paragraphs (1) and (2).

"(4) Regulations which prescribe standards for performance of asbestos abatement activities in school buildings and for determination of when the hazard has been abated. Such regulations shall include standards for protection for both workers

and building occupants, for the following phases of abatement activity:

"(A) Inspection.

"(B) Abatement.

"(C) Post-abatement, including any long term operation and maintenance activity.

"(5) Regulations which prescribe standards for the development and execution of an operation and maintenance plan with respect to asbestos-containing material which is not removed from a school building. Such plan shall include—

"(A) an identification of the location of asbestos-containing material in the school building;

"(B) provisions for surveillance and periodic reinspection of such asbestos-containing material;

"(C) provisions for education of school employees, including school service and maintenance personnel, about the location of and safety procedures with respect to such asbestos-containing material; and

"(D) provisions for identifying with a warning label any friable asbestos-containing material that is located in areas not normally frequented by students and which might be damaged by the activities of persons in such areas. The warning label shall read, in print which is readily visible because of large size or bright color, as follows: ***'CAUTION: ASBESTOS-CONTAINING MATERIAL. BREATHING ASBESTOS DUST MAY CAUSE CANCER. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT'*** *(or words to that effect).*

"(6) Regulations which prescribe such standards for transportation and disposal of waste asbestos-containing material as may be necessary to protect human health and the environment. Such regulations shall include such provisions related to the manner in which transportation vehicles are loaded and unloaded as will assure the physical integrity of containers of asbestos-containing waste materials.

"(c) Hazardous Asbestos Standard if EPA Fails To Promulgate Regulations.—If the Administrator fails to promulgate regulations under subsections (b) (1) and (2) within the prescribed period, any asbestos-containing material which exists in the school building shall be considered hazardous if the asbestos-containing material is visibly damaged, with portions of the material dislodged, missing, cracked, deteriorated, showing evidence of water damage, or flaking, in any area in the school building where there is a potential for human exposure, including an air plenum. Such standards shall be effective until such time as the Administrator promulgates different standards under regulations under subsections (b) (1) and (2).

"(d) Abatement if EPA Fails To Promulgate Regulations.—If the Administrator fails to promulgate regulations under subsections (b) (3) and (4) within the prescribed period, and asbestos-containing material which is hazardous under the standard described in subsection (c) exists in a school building, the local educational agency with jurisdiction over the school building shall abate such asbestos-containing material in accordance with the most recent version of the Environmental Protection Agency's 'Guidance for Controlling Asbestos-Containing Materials in Buildings' (or any successor to such document). The ambient interior concentration of asbestos fibers after the completion of abatement shall not exceed the ambient exterior concentration, discounting any contribution from any local stationary source. In the absence of reliable measurements, the exterior ambient concentration shall be deemed to be less than 0.003 fibers per cubic centimeter if a scanning electron microscope is used to determine whether the standard has been met, and less than .005 fibers per cubic centimeter if a transmission electron microscope is used to determine whether the standard has been met.

"(e) Transportation and Disposal Standards if EPA Fails to Promulgate Regulations.—If the Administrator fails to promulgate regulations under subsection (b)(6) within the prescribed period, any asbestos which is abated within a local educational agency shall be transported and disposed of in accordance with the most recent version of the Environmental Protection Agency's 'Asbestos Waste Management Guidance' (or any successor to such document).

"SEC. 203. MODEL CONTRACTOR ACCREDITATION PLAN.

"(a) Model Plan.—

"(1) Persons to be accredited.—Within 12 calendar months after the date of the enactment of this title, the Administrator shall develop a model accreditation plan for States to give accreditation to persons in the following 3 categories:

"(A) Persons who inspect for asbestos in schools within a covered local educational agency.

"(B) Persons who prepare management plans for such schools.

"(C) Persons who carry out abatement of asbestos in such schools.

"(2) Plan requirements.—The plan shall include a requirement that any person in the categories listed in the preceding sentence achieve a passing grade on an examination and participate in continuing education to stay informed about current asbestos inspection and abatement technology. The examination shall demonstrate the knowledge of the person in areas that the Administrator prescribes in regulations as necessary and appropriate in each of the categories. Such regulations may include requirements for knowledge in the following areas:

"(A) Recognition of asbestos and its physical characteristics.

"(B) Health hazards of asbestos and the relationship between asbestos exposure and disease.

"(C) Assessing the risk of asbestos exposure through a knowledge of percentage weight of asbestos, friability, age, deterioration, location and accessibility of materials, and advantages and disadvantages of dry and wet methods of abatement.

"(D) Respirators and their use, care, selection, degree of protection afforded, fitting, testing, and maintenance and cleaning procedures.

"(E) Appropriate work practices and control methods, including the use of high efficiency particle absolute vacuums, use of amended water and removal encapsulants, and principles of negative air pressure equipment use and procedures.

"(F) Preparing a work area for asbestos work, including isolating work areas to prevent bystander or public exposure, decontamination procedures, and procedures for dismantling work areas after completion of work.

"(G) Establishing emergency procedures to respond to sudden releases.

"(H) Air monitoring requirements and procedures.

"(I) Medical surveillance program requirements.

"(J) Proper job-specific work practices, including work area preparation, decontamination, emergency procedures, and waste disposal procedures.

"(K) Housekeeping and personal hygiene practices, including the necessity of showers, and procedures to prevent asbestos exposure to an employee's family.

"(b) State Adoption of Plan.—Following the development by the Administrator of a model contractor accreditation plan under subsection (a), each State shall adopt a contractor accreditation plan at least as stringent as that model. In the case of schools operated, pursuant to section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress) relating to impact aid for children of members of the Armed Forces, the Secretary of Defense shall adopt a contractor accreditation plan at least as stringent as that model.

"(c) Contractor in State Which Has Not Adopted a Plan.—Any person described in subsection (a)(1)—

"(1) who plans to carry out any activities described in subsection (a)(1),

"(2) more than 180 days after the Administrator has developed a model contractor accreditation plan under subsection (a),

"(3) in a State which has not adopted a plan under subsection (b),

must be accredited by another State which has adopted such a plan under subsection (b) before carrying out any of the activities described in subsection (a)(1).

"(d) Training Courses.—The Administrator may designate training courses in asbestos inspection and abatement and the development of asbestos management plans that the Administrator determines are equivalent to the contractor accreditation program under subsection (a). A person who has completed and achieved a passing grade from one of such training courses shall be considered accredited for the purposes of this title until a date that is one year after the date on which the State in which such person is employed establishes an accreditation program pursuant to subsection (b).

"(e) Financial Assistance Contingent on Use of Accredited Persons.—A school which is an applicant for financial assistance under section 505 of the Asbestos School Hazard Abatement Act of 1984 is not eligible for such assistance if the school uses any person described in subsection (a)(1) who has not been accredited under a plan based on the model plan developed under subsection (a). This subsection shall apply to any financial assistance provided under the Asbestos School Hazard Abatement Act of 1984 more than 12 calendar months after the date of the enactment of this title.

"SEC. 204. STATE GOVERNOR ASBESTOS REVIEW.

"Within 180 days after the date of the enactment of this title, the Governor of each State shall establish administrative procedures for carrying out certain provisions described in sections 205 and 206. In establishing such procedures, the Governor shall designate, to carry out the provisions, those State officials who are responsible for implementing environmental protection or other public health programs in the State.

"SEC. 205. CERTIFICATION OF SCHOOL INSPECTION AND ABATEMENT.

"(a) Certification Requirement.—Within 12 calendar months after the date of the enactment of this title, each local educational agency shall conduct a certification to determine the status of asbestos inspection and abatement carried out prior to the date of the enactment of this title in each school under its authority. A certification shall consist of submitting to the State Governor

a written statement, signed by the highest ranking responsible official of the local educational agency, which contains each of the following items:

"(1) For each school building, a statement on whether an inspection was conducted to ascertain the presence of any asbestos-containing material in the building, including a specific reference to whether an inspection was conducted in the boiler room of the building. If such an inspection was conducted, the following items of information shall be included in the statement:

"(A) The dates of inspection.

"(B) The name, address, and qualifications of each inspector.

"(C) A description of the specific areas inspected.

"(D) The name, address, and qualifications of each laboratory used for analyzing bulk samples or air samples of asbestos.

"(E) The results of the inspection.

"(2) For each school building, a statement on whether any actions to abate any hazardous asbestos-containing material found to be present were taken, including a specific reference to whether any actions were taken in the boiler room of the building. If any such abatement action was taken, the following items of information shall be included in the statement:

"(A) The location or locations at which the abatement action was taken.

"(B) Whether the method of abatement was repair, removal, enclosure, or encapsulation.

"(C) The name, address, and qualifications of the persons who conducted the abatement action.

"(b) PUBLIC AVAILABILITY OF CERTIFICATION.—A copy of the certification required under subsection (a) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents.

"SEC. 206. INSPECTION; ASBESTOS MANAGEMENT PLANS.

"(a) INSPECTION.—Within 180 days after the Administrator promulgates regulations under section 202, or, if the Administrator fails to promulgate the regulations within the prescribed period under section 202, within 180 days after the end of such prescribed period, each covered local educational agency shall conduct an inspection for asbestos-containing material in all areas of each school under its authority that were not certified under section 205 to have been inspected previously and found to contain no asbestos-containing material. Each inspection shall comply with the regulations promulgated under section 202(b)(1).

"(b) MANAGEMENT PLAN.—

"(1) GENERAL REQUIREMENT.—Within 12 calendar months after the Administrator promulgates regulations under section 202, or, if the Administrator fails to promulgate the regulations within the prescribed period under section 202, within 12 calendar months after the end of such prescribed period, each covered local educational agency shall prepare and submit to the State Governor a management plan for abating hazardous asbestos-containing material in school buildings under its authority. Each plan shall provide for timely notification to the appropriate parents of children and employees affected by such plan of the existence of such plan, and of their right to comment to the Governor with respect to such plan. Such plan shall further provide for compliance with the regulations prescribed by the Administrator under sections 202(b) (2), (3), (4), (5), and (6) (or if there are no regulations, the standards in subsections (c), (d), and (e) of section 202) and shall include the following:

"(A) A description of the results of the inspection conducted under subsection (a), including the dates of inspection; the names, addresses, and qualifications of inspectors; and a description of the specific areas inspected.

"(B) A detailed description of measures to be taken to abate any hazardous asbestos-containing material, including the location or locations at which an abatement action will be taken and the method or methods of abatement to be used.

"(C) An evaluation of resources needed to successfully complete abatement and carry out operation and maintenance.

"(D)(i) A detailed description of criteria and procedures which were followed in selecting the persons who inspected for asbestos-containing material and who analyzed the asbestos-containing material in laboratories, and which will be followed in selecting persons to abate the hazardous asbestos-containing material, or

"(ii) if the State has adopted a contractor accreditation plan similar to the model contractor accreditation plan developed under section 203, a statement that the local educational agency followed (or will follow) its plan in selecting such persons.

"(E) The names of the consultants who contributed to the plan, along with a description of their credentials.

"(F) A detailed description of any asbestos-containing material found in the school building which was found not to be hazardous under the regulations prescribed under subsection 202(b) (or the standard in subsection 202(c)).

"(G) An operation and maintenance plan developed in accordance with standards prescribed under section 202(b)(5).

"(2) EXCEPTION FOR CERTAIN SCHOOLS.—If a covered local educational agency determines that a school under its authority—

"(A) conducted an inspection for asbestos which complied with the regulations promulgated under section 202(b)(1),

"(B) found asbestos-containing material, and

"(C) removed all the asbestos-containing material existing in that school,

the local educational agency may omit that school from the management plan but must include a statement in the plan explaining how that school identified the asbestos-containing material and removed all the asbestos-containing material from the school.

"(3) PLAN MAY BE SUBMITTED IN STAGES.—A covered local educational agency may submit a management plan in stages, with each submission of the agency covering only a portion of the school buildings under the agency's authority, if the agency determines that such action would expedite the identification and abatement of hazardous asbestos-containing material in the school buildings under the authority of the agency.

"(4) MANAGEMENT PLAN ACCREDITATION.—Each such management plan shall contain a statement signed by an accredited asbestos contractor that such contractor has prepared or assisted in the preparation of such plan, or has reviewed such plan, and that such plan is in compliance with the applicable regulations and standards promulgated or adopted pursuant to section 202(b) of this title, and other applicable provisions of law.

"(c) STATE ACTION.—The State Governor may disapprove a management plan submitted under this section within 60 days after the date of receipt of the plan. Disapproval shall be based on—

"(1) a determination that the plan is not suited to the problem identified;

"(2) its failure to assure that contractors accredited pursuant to this title will be used to carry out such plan;

"(3) its failure to conform to regulations under section 202(a) on asbestos inspection and abatement (or with the standards in sections 202 (b) and (c) if there are no regulations); and

"(4) the unreasonableness and untimeliness of the abatement schedule, taking into account circumstances relevant to the speed at which the hazardous asbestos-containing material should be abated, including public exposure to the hazard while the asbestos-containing material remains unabated.

If the State Governor disapproves a plan, the State Governor shall explain in writing to the covered local educational agency the reasons why the plan was rejected and the changes that need to be made in the plan. Within 30 days after the date on which notice is received of rejection of its plan, a covered local educational agency shall revise the plan to conform with the State Governor's required changes.

"(d) LOCAL EDUCATIONAL AGENCY IMPLEMENTATION OF MANAGEMENT PLANS; CERTIFICATION.—If a management plan submitted under this section is not disapproved by the State Governor within such 60-day period, a covered local educational agency shall implement the plan. Within 12 calendar months after submission of its plan, each covered local educational agency—

"(1) shall implement the plan, and

"(2) shall certify to the State Governor that the plan has been implemented, by submitting a statement in writing detailing the implementation.

"(e) PUBLIC AVAILABILITY OF MANAGEMENT PLAN.—A copy of the management plan required under subsection (b) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents.

"(f) The Administrator, upon request by a Governor and after notice and comment and opportunity for a public hearing in the affected State, may waive some or all of the requirements of this section and section 204 with respect to such State if it has established and is implementing a program of asbestos inspection and management that contains requirements that are substantially equivalent to the requirements of this section and section 204.

"SEC. 207. ENVIRONMENTAL PROTECTION AGENCY RESPONSE AUTHORITY.

"(a) IN GENERAL.—Whenever—

"(1) the presence of asbestos-containing material in a school building may present an imminent and substantial endangerment to human health, and

"(2) the local educational agency is not taking sufficient action consistent with standards prescribed under this title (as determined by the Administrator or Governor) to abate or arrange for the abatement of the asbestos,

the Administrator or the Governor of a State is authorized to act, consistent with standards prescribed under this title, to abate or arrange for the abatement of the hazard, or to take any other response measure which the Administrator or the Governor deems necessary to protect human health.

"(b) COST RECOVERY.—The Administrator may seek reimbursement from a local educa-

tional agency or any other potentially responsible party in a court of the United States for all costs of abatement action under this section incurred by the United States Government. Nothing in this section creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

"(c) Venue.—In any case in which the Administrator seeks reimbursement from a local educational agency pursuant to subsection (b), such action shall be filed in the judicial district in which the abatement action occurred.

"SEC. 208. ABATEMENT ACTION.

"When the Administrator or the Governor of a State determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the presence of asbestos in a school building, the Administrator may request the Attorney General of the United States, or the Governor may act, to secure such relief as may be necessary to abate such danger. The district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief, including injunctive relief, as the public interest and the equities of the case may require.

"SEC. 209. PUBLIC PROTECTION.

"(a) Public Protection.—No State or local educational agency may discriminate against a person in any way, including firing a person who is an employee, because the person provided information relating to a potential violation of this title to any other person, including a State or to the Federal Government.

"(b) Labor Department Review.—Any public or private employee or representative of employees who believes he or she has been fired or otherwise discriminated against in violation of subsection (a) may within 90 days after the alleged violation occurs apply to the Secretary of Labor for a review of the firing or alleged discrimination. The review shall be conducted in accordance with section 11(c) of the Occupational Safety and Health Act.

"SEC. 210. POLLUTION INSURANCE.

"(a) Definitions.—As used in this section—

"(1) Insurance.—The term 'insurance' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

"(2) Pollution liability.—The term 'pollution liability' means liability for injuries arising from the release of asbestos.

"(3) Risk retention group.—The term 'risk retention group' means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

"(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

"(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

"(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

"(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

"(4) Purchasing group.—The term 'purchasing group' means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

"(b) State Laws.—Nothing in this section shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this section, including recognition or qualification of risk retention groups of purchasing groups.

"(c) Risk Retention Groups.—

"(1) Exemption.—Except as provided in this subsection, a risk retention group shall be exempt from the following:

"(A) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

"(B) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

"(C) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

"(D) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

"(2) Exceptions.—

"(A) State laws generally applicable.—Nothing in paragraph (1) shall be construed to affect the applicability of State laws generally applicable to persons or corporations. The State in which a risk retention group is chartered may regulate the formation and operation of the group.

"(B) State regulations not subject to exemption.—Paragraph (1) shall not apply to any State law which requires a risk retention group to do any of the following:

"(i) Comply with the unfair claim settlement practices law of the State.

"(ii) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

"(iii) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

"(iv) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

"(v) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

"(vi) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

"(vii) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

"(I) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

"(II) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

"(viii) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under clause (vii).

"(3) Application of exemptions.—The exemptions specified in paragraph (1) apply to—

"(A) pollution liability insurance coverage provided by a risk retention group for—

"(i) such group; or

"(ii) any person who is a member of such group;

"(B) the sale of pollution liability insurance coverage for a risk retention group; and

"(C) the provision of insurance related services or management services for a risk retention group or any member of such a group.

"(4) Agents or brokers.—A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"(d) Purchasing Groups.—

"(1) Exemption.—Except as provided in this section, a purchasing group is exempt from the following:

"(A) A State law, rule, or order which prohibits the establishment of a purchasing group.

"(B) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

"(C) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group described in subparagraph (B) of this paragraph.

"(D) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

"(E) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

"(F) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

"(G) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

"(H) A State law, rule, or order which otherwise discriminates against a purchasing group or any of its members.

"(2) Application of exemptions.—The exemptions specified in paragraph (1) apply to the following:

"(A) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

"(i) a purchasing group; or

"(ii) any person who is a member of a purchasing group.

"(B) The sale of any one of the following to a purchasing group or a member of the group:

"(i) Pollution liability insurance and comprehensive general liability coverage.

"(ii) Insurance related services.

"(iii) Management services.

"(3) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"(e) APPLICABILITY OF SECURITIES LAWS.—

"(1) OWNERSHIP INTERESTS.—The ownership interests of members of a risk retention group shall be considered to be—

"(A) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

"(B) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

"(2) INVESTMENT COMPANY ACT.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

"(3) BLUE SKY LAW.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

"SEC. 211. ENFORCEMENT CONSIDERATIONS.

"In determining the amount of a civil penalty to be assessed under section 16 of this Act against a local education agency for failure to comply with a requirement of this title or a rule or regulation issued under this title, the Administrator shall consider—

"(1) the significance of the violation;

"(2) the culpability of the violator, including any history of previous violations under this Act;

"(3) the ability of the violator to pay the penalty; and

"(4) the ability of the violator to continue to provide educational services to the community.

"SEC. 212. PREEMPTION.

"(a) Nothing in this title shall be construed or interpreted as preempting any State from imposing any additional liability or requirements with respect to asbestos or asbestos-containing material, including the abatement thereof, in school buildings within such State.

"(b) Nothing in this title or any standard, regulation or requirement promulgated pursuant to this title shall be construed or interpreted to preclude any court from awarding costs and damages associated with the abatement, including the removal, of asbestos-containing material, or a portion of such costs, at any time prior to the actual date on which such material is removed.

"SEC. 213. DEFINITIONS.

"For purposes of this title—

"(1) the term 'Administrator' means the Administrator of the Environmental Protection Agency;

"(2) the term 'local educational agency' means—

"(A) any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381);

"(B) the owner of any non-profit elementary or secondary school building; and

"(C) the governing authority of any school operated, pursuant to section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress) relating to impact aid for children of members of the Armed Forces.

"(3) the term 'covered local educational agency' means any local educational agency which has under its authority, after conducting certification under section 205—

"(A) any school in which there was no inspection for asbestos-containing material or in which the local education agency is not able to certify, pursuant to section 205(a)(1), that all areas of each school building, including boiler rooms, were inspected for asbestos containing material;

"(B) any school which conducted an inspection for asbestos-containing material, found asbestos-containing material, and did not abate the asbestos-containing material; or

"(C) any school which conducted an inspection for asbestos-containing material, found asbestos-containing material, and abated the asbestos-containing material by a method other than removal.

"(4) the term 'non-profit elementary or secondary school' means any elementary or secondary school (as defined in section 198 of the Elementary and Secondary Education Act of 1965) owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

"(5) the term 'school building' means—

"(A) structures suitable for use as classrooms, including school facilities such as laboratories, libraries, school eating facilities, or facilities used for the preparation of food;

"(B) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

"(C) other facilities used for the instruction of students or for the administration of educational or research programs; and

"(D) maintenance, storage, or utility facilities essential to the operation of the facilities described in subparagraphs (A), (B), and (C); and

"(6) the term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

"SEC. 214. SECRETARY OF DEFENSE TO ACT IN LIEU OF STATE GOVERNOR.

"In the administration of this title, including sections 204, 205, 206, 207, and 208, any function, duty, or other responsibility imposed on a Governor of a State shall, in the case of a school operated pursuant to section 6 of the Act of September 30, 1950 (Public Law 874, 81st Congress), for children of members of the Armed Forces, be construed as having been imposed on the Secretary of Defense.

"SEC. 215. OVERSEAS SCHOOLS OF DEPARTMENT OF DEFENSE.

"(a) REGULATIONS.—The Secretary of Defense, in cooperation with the Administrator, shall, to the extent feasible and consistent with the national security, take such action as may be necessary to provide for the identification, inspection, and management (including abatement) of asbestos in any building used by the Department of Defense as an overseas school for dependents of the Department of Defense. Such identification, inspection, and management (including abatement) shall, subject to the preceding sentence, be carried out in a manner comparable to that provided for a local educational agency and a school building under this title.

"(b) The Secretary of Defense and the Administrator shall issue such regulations as may be necessary to carry out the provisions of this section.".

SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.

(a) CONFORMING AMENDMENTS TO ASBESTOS SCHOOL HAZARD ABATEMENT ACT.—(1) Section 505(g) of the Asbestos School Hazard Abatement Act of 1984 is amended by adding at the end the following new paragraph:

"(4) No financial assistance may be provided under this section to any school which uses any person described in section 203(a)(1) (to carry out any activities described in such section) of the Toxic Substances Control Act who has not been accredited under a plan based on the model plan developed under section 203(a) of that Act. This paragraph shall apply to any financial assistance provided under this section more than 240 days after the date of the enactment of the Asbestos Hazard Emergency Response Act of 1986.".

(b) CONFORMING AMENDMENT TO TOXIC SUBSTANCES CONTROL ACT.—Section 15 of the Toxic Substances Control Act is amended in paragraph (1)—

(1) by striking out "or" before "(C)",

(2) by striking out the semicolon and inserting in lieu thereof a comma, and

(3) by adding at the end thereof the following "or (D) any requirement established by title II or any rule promulgated or order issued under title II;".

(c) TECHNICAL AMENDMENTS.—The Toxic Substances Control Act is amended—

(1) by inserting immediately before section 1 the following:

"TITLE I—CONTROL OF TOXIC SUBSTANCES";

(2) by inserting in the table of contents in section 1, immediately before the item relating to section 1, the following:

"TITLE I—CONTROL OF TOXIC SUBSTANCES";

and

(3) by adding at the end of the table of contents in section 1 the following:

"TITLE II—ASBESTOS HAZARD EMERGENCY RESPONSE

"Sec. 201. Congressional findings and purpose.
"Sec. 202. Definition of asbestos, abatement, and guidance.
"Sec. 203. Model contractor accreditation plan.
"Sec. 204. State Governor asbestos review.
"Sec. 205. Certification of school inspection and abatement.
"Sec. 206. Inspection; asbestos management plans.
"Sec. 207. Environmental Protection Agency response authority.
"Sec. 208. Abatement action.
"Sec. 209. Public protection.
"Sec. 210. Pollution insurance.
"Sec. 211. Enforcement considerations.
"Sec. 212. Preemption.
"Sec. 213. Definitions.".

SEC. 4. AUTHORIZATION.

Section 512 of the Asbestos School Hazard Abatement Act of 1984 is amended by adding at the end the following: "In addition, for such purposes there are authorized to be appropriated out of the Asbestos Trust Fund established by section 5 of the Asbestos Hazard Emergency Response Act of 1986 $25,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.".

SEC. 5. ASBESTOS TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Asbestos Trust Fund", consisting of such amounts as may be transferred or credited to such Trust Fund as provided in this section.

(b) TRANSFERS TO TRUST FUND.—

(1) TRANSFER.—There are hereby transferred to the Asbestos Trust Fund amounts equivalent to (A) amounts received in the Treasury on or after January 1, 1987, as repayments of loans made under section 505 of the Asbestos School Hazard Abatement Act of 1984 as in effect on the date of the enactment of this Act and (B) amounts recovered pursuant to section 207(b) of this title.

(2) MONTHLY TRANSFERS.—The amounts transferred by paragraph (1) shall be transferred at least monthly from the general fund of the Treasury to the Asbestos Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such paragraph. Adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were more or less than the amounts required to be transferred.

(c) MANAGEMENT OF TRUST FUND.—

(1) INVESTMENT.—

(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Asbestos Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States and may be acquired—

(i) on original issue at the issue price, or

(ii) by purchase of outstanding obligations at the market price.

(B) SALE OF OBLIGATIONS.—Any obligation acquired by the Asbestos Trust Fund may be sold by the Secretary of the Treasury at the market price.

(C) INTEREST ON CERTAIN PROCEEDS.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Asbestos Trust Fund shall be credited to and form a part of the Trust Fund.

(2) REPORT.—It shall be the duty of the Secretary of the Treasury to hold the Asbestos Trust Fund and (after consultation with any other trustees of the Trust Fund) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(d) EXPENDITURES FROM ASBESTOS TRUST FUND.—Amounts in the Trust Fund shall be available, as provided by appropriation Acts, only for purposes of carrying out the Asbestos Hazards Abatement Assistance Program under section 505 of the Asbestos School Hazard Abatement Act of 1984 as in effect on the date of the enactment of this Act.

(e) AUTHORITY TO BORROW.—

(1) IN GENERAL.—There are authorized to be appropriated to the Asbestos Trust Fund, as repayable advances, $25,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.

(2) REPAYMENT OF ADVANCES.—

(A) IN GENERAL.—Advances made under this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Asbestos Trust Fund.

(B) RATE OF INTEREST.—Interest on advances made under this subsection shall be at a rate determined by the Secretary (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1987.

SEC. 6. RESERVATION OF LOAN FUNDS.

Section 512 of the Asbestos School Hazardous Abatement Act of 1984 is amended by adding at the end thereof the following subsection:

"(c) Of the sums appropriated for the implementation of this title ten (10) percent or $10,000,000, whichever is less, shall be reserved during each of the fiscal years ending September 30, 1987 and 1988 for grants to States or local educational agencies to carry out the provisions of sections 205 and 206 of the Asbestos Hazard Emergency Response Act of 1986. Appropriated funds used to carry out this subsection shall be taken from funds that would otherwise be used to provide loans under this Act.".

House amendment to the Senate amendment:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Asbestos Hazard Emergency Response Act of 1986".

SEC. 2. AMENDMENT TO TOXIC SUBSTANCES CONTROL ACT.

The Toxic Substances Control Act is amended by adding at the end the following new title:

"TITLE II—ASBESTOS HAZARD EMERGENCY RESPONSE

"SEC. 201. CONGRESSIONAL FINDINGS AND PURPOSE.

"(a) FINDINGS.—The Congress finds the following:

"(1) The Environmental Protection Agency's rule on local educational agency inspection for, and notification of, the presence of friable asbestos-containing material in school buildings includes neither standards for the proper identification of asbestos-containing material and appropriate response actions with respect to friable asbestos-containing material, nor a requirement that response actions with respect to friable asbestos-containing material be carried out in a safe and complete manner once actions are found to be necessary. As a result of the lack of regulatory guidance from the Environmental Protection Agency, some schools have not undertaken response action while many others have undertaken expensive projects without knowing if their action is necessary, adequate, or safe. Thus, the danger of exposure to asbestos continues to exist in schools, and some exposure actually may have increased due to the lack of Federal standards and improper response action.

"(2) There is no uniform program for accrediting persons involved in asbestos identification and abatement, nor are local educational agencies required to use accredited contractors for asbestos work.

"(3) The guidance provided by the Enviromental Protection Agency in its 'Guidance for Controlling Asbestos-Containing Material in Buildings' is insufficient in detail to ensure adequate responses. Such guidance is intended to be used only until the regulations required by this title become effective.

"(4) Because there are no Federal standards whatsoever regulating daily exposure to asbestos in other public and commercial buildings, persons in addition to those comprising the Nation's school population may be exposed daily to asbestos.

"(b) PURPOSE.—The purpose of this title is—

"(1) to provide for the establishment of Federal regulations which require inspection for asbestos-containing material and implementation of appropriate response actions with respect to asbestos-containing material in the Nation's schools in a safe and complete manner;

"(2) to mandate safe and complete periodic reinspection of school buildings following response actions, where appropriate; and

"(3) to require the Administrator to conduct a study to find out the extent of the danger to human health posed by asbestos in public and commercial buildings and the means to respond to any such danger.

"SEC. 202. DEFINITIONS.

"For purposes of this title—

"(1) ACCREDITED ASBESTOS CONTRACTOR.—The term 'accredited asbestos contractor' means a person accredited pursuant to the provisions of section 206.

"(2) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(3) ASBESTOS.—The term 'asbestos' means asbestiform varieties of—

"(A) chrysotile (serpentine),

"(B) crocidolite (riebeckite),

"(C) amosite (cummingtonite-grunerite),

"(D) anthophyllite,

"(E) tremolite, or

"(F) actinolite.

"(4) ASBESTOS-CONTAINING MATERIAL.—The term 'asbestos-containing material' means any material which contains more than 1 percent asbestos by weight.

"(5) EPA GUIDANCE DOCUMENT.—The term 'Guidance for Controlling Asbestos-Containing Material in Buildings', means the Environmental Protection Agency document with such title as in effect on March 31, 1986.

"(6) FRIABLE ASBESTOS-CONTAINING MATERIAL.—The term 'friable asbestos-containing material' means any asbestos-containing material applied on ceilings, walls, structural members, piping, duct work, or any other part of a building which when dry may be crumbled, pulverized, or reduced to powder by hand pressure. The term includes non-friable asbestos-containing material after such previously non-friable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"(7) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' means—

"(A) any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381),

"(B) the owner of any private, nonprofit elementary or secondary school building, and

"(C) the governing authority of any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

"(8) MOST CURRENT GUIDANCE DOCUMENT.—The term 'most current guidance document' means the Environmental Protection Agency's 'Guidance for Controlling Asbestos-

Containing Material in Buildings' as modified by the Environmental Protection Agency after March 31, 1986.

"(9) NON-PROFIT ELEMENTARY OR SECONDARY SCHOOL.—The term 'non-profit elementary or secondary school' means any elementary or secondary school (as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854)) owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"(10) PUBLIC AND COMMERCIAL BUILDING.—The term 'public and commercial building' means any building which is not a school building, except that the term does not include any residential apartment building of fewer than 10 units.

"(11) RESPONSE ACTION.—The term 'response action' means methods that protect human health and the environment from asbestos-containing material. Such methods include methods described in chapters 3 and 5 of the Environmental Protection Agency's 'Guidance for Controlling Asbestos-Containing Materials in Buildings'.

"(12) SCHOOL.—The term 'school' means any elementary or secondary school as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854).

"(13) SCHOOL BUILDING.—The term 'school building' means—

"(A) any structure suitable for use as a classroom, including a school facility such as a laboratory, library, school eating facility, or facility used for the preparation of food,

"(B) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education,

"(C) any other facility used for the instruction of students or for the administration of educational or research programs, and

"(D) any maintenance, storage, or utility facility, including any hallway, essential to the operation of any facility described in subparagraphs (A), (B), or (C).

"(14) STATE.—The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.

"SEC. 203. EPA REGULATIONS.

"(a) IN GENERAL.—Within 360 days after the date of the enactment of this title, the Administrator shall promulgate regulations as described in subsections (b) through (i). With respect to regulations described in subsections (b), (c), (d), (e), (f), (g), and (i), the Administrator shall issue an advanced notice of proposed rulemaking within 60 days after the date of the enactment of this title, and shall propose regulations within 180 days after such date. Any regulation promulgated under this section must protect human health and the environment.

"(b) INSPECTION.—The Administrator shall promulgate regulations which prescribe procedures, including the use of personnel accredited under section 206(b) or 206(c) and laboratories accredited under section 206(d), for determining whether asbestos-containing material is present in a school building under the authority of a local educational agency. The regulations shall provide for the exclusion of any school building, or portion of a school building, if (1) an inspection of such school building (or portion) was completed before the effective date of the regulations, and (2) the inspection meets the procedures and other requirements of the regulations under this title or of the 'Guidance for Controlling Asbestos-Containing Materials in Buildings' (unless the Administrator determines that an inspection in accordance with the guidance document is inadequate). The regulations shall require inspection of any school building (or portion of a school building) that is not excluded by the preceding sentence.

"(c) CIRCUMSTANCES REQUIRING RESPONSE ACTIONS.—(1) The Administrator shall promulgate regulations which define the appropriate response action in a school building under the authority of a local educational agency in at least the following circumstances:

"(A) DAMAGE.—Circumstances in which friable asbestos-containing material or its covering is damaged, deteriorated, or delaminated.

"(B) SIGNIFICANT DAMAGE.—Circumstances in which friable asbestos-containing material or its covering is significantly damaged, deteriorated, or delaminated.

"(C) POTENTIAL DAMAGE.—Circumstances in which—

"(i) friable asbestos-containing material is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities, and

"(ii) there is a reasonable likelihood that the material or its covering will become damaged, deteriorated, or delaminated.

"(D) POTENTIAL SIGNIFICANT DAMAGE.—Circumstances in which—

"(i) friable asbestos-containing material is in an area regularly used by building occupants, including maintenance personnel, in the course of their normal activities, and

"(ii) there is a reasonable likelihood that the material or its covering will become significantly damaged, deteriorated, or delaminated.

"(2) In promulgating such regulations, the Administrator shall consider and assess the value of various technologies intended to improve the decisionmaking process regarding response actions and the quality of any work that is deemed necessary, including air monitoring and chemical encapsulants.

"(d) RESPONSE ACTIONS.—

"(1) IN GENERAL.—The Administrator shall promulgate regulations describing a response action in a school building under the authority of a local educational agency, using the least burdensome methods which protect human health and the environment. In determining the least burdensome methods, the Administrator shall take into account local circumstances, including occupancy and use patterns within the school building and short- and long-term costs.

"(2) RESPONSE ACTION FOR DAMAGED ASBESTOS.—In the case of a response action for the circumstances described in subsection (c)(1)(A), methods for responding shall include methods identified in chapters 3 and 5 of the 'Guidance for Controlling Asbestos-Containing Material in Buildings'.

"(3) RESPONSE ACTION FOR SIGNIFICANTLY DAMAGED ASBESTOS.—In the case of a response action for the circumstances described in subsection (c)(1)(B), methods for responding shall include methods identified in chapter 5 of the 'Guidance for Controlling Asbestos-Containing Material in Buildings'.

"(4) RESPONSE ACTION FOR POTENTIALLY DAMAGED ASBESTOS.—In the case of a response action for the circumstances described in subsection (c)(1)(C), methods for responding shall include methods identified in chapters 3 and 5 of the 'Guidance for Controlling Asbestos-Containing Material in Buildings', unless preventive measures will eliminate the reasonable likelihood that the asbestos-containing material will become damaged, deteriorated, or delaminated.

"(5) RESPONSE ACTION FOR POTENTIALLY SIGNIFICANTLY DAMAGED ASBESTOS.—In the case of a response action for the circumstances described in subsection (c)(1)(D), methods for responding shall include methods identified in chapter 5 of the 'Guidance for Controlling Asbestos-Containing Material in Buildings', unless preventive measures will eliminate the reasonable likelihood that the asbestos-containing material will become significantly damaged, deteriorated, or delaminated.

"(6) PREVENTIVE MEASURES DEFINED.—For purposes of this section, the term 'preventive measures' means actions which eliminate the reasonable likelihood of asbestos-containing material becoming damaged, deteriorated, or delaminated, or significantly damaged deteriorated, or delaminated (as the case may be) or which protect human health and the environment.

"(e) IMPLEMENTATION.—The Administrator shall promulgate regulations requiring the implementation of response actions in school buildings under the authority of a local educational agency and, where appropriate, for the determination of when a response action is completed. Such regulations shall include standards for the education and protection of both workers and building occupants for the following phases of activity:

"(1) Inspection.

"(2) Response Action.

"(3) Post-response action, including any periodic reinspection of asbestos-containing material and long-term surveillance activity.

"(f) OPERATIONS AND MAINTENANCE.—The Administrator shall promulgate regulations to require implementation of an operations and maintenance and repair program as described in chapter 3 of the 'Guidance for Controlling Asbestos-Containing Materials in Buildings' for all friable asbestos-containing material in a school building under the authority of a local educational agency.

"(g) PERIODIC SURVEILLANCE.—The Administrator shall promulgate regulations to require the following:

"(1) An identification of the location of friable and non-friable asbestos in a school building under the authority of a local educational agency.

"(2) Provisions for surveillance and periodic reinspection of such friable and non-friable asbestos.

"(3) Provisions for education of school employees, including school service and maintenance personnel, about the location of and safety procedures with respect to such friable and non-friable asbestos.

"(h) TRANSPORTATION AND DISPOSAL.—The Administrator shall promulgate regulations which prescribe standards for transportation and disposal of asbestos-containing waste material to protect human health and the environment. Such regulations shall include such provisions related to the manner in which transportation vehicles are loaded and unloaded as will assure the physical integrity of containers of asbestos-containing waste material.

"(i) MANAGEMENT PLANS.—

"(1) IN GENERAL.—The Administrator shall promulgate regulations which require each local educational agency to develop an asbestos management plan for school buildings under its authority, to begin implementation of such plan within 990 days after the date of the enactment of this title, and to complete implementation of such plan in a timely fashion. The regulations shall require that each plan include the following elements, wherever relevant to the school building:

"(A) An inspection statement describing inspection and response action activities carried out before the date of the enactment of this title.

"(B) A description of the results of the inspection conducted pursuant to regulations under subsection (b), including a description of the specific areas inspected.

"(C) A detailed description of measures to be taken to respond to any friable asbestos-containing material pursuant to the regulations promulgated under subsections (c), (d), and (e), including the location or locations at which a response action will be taken, the method or methods of response action to be used, and a schedule for beginning and completing response actions.

"(D) A detailed description of any asbestos-containing material which remains in the school building once response actions are undertaken pursuant to the regulations promulgated under subsections (c), (d), and (e).

"(E) A plan for periodic reinspection and long-term surveillance activities developed pursuant to regulations promulgated under subsection (g), and a plan for operations and maintenance activities developed pursuant to regulations promulgated under subsection (f).

"(F) With respect to the person or persons who inspected for asbestos-containing material and who will design or carry out response actions with respect to the friable asbestos-containing material, one of the following statements:

"(i) If the State has adopted a contractor accreditation plan under section 206(b), a statement that the person (or persons) is accredited under such plan.

"(ii) A statement that the local educational agency used (or will use) persons who have been accredited by another State which has adopted a contractor accreditation plan under section 206(b) or is accredited pursuant to an Administrator-approved course under section 206(c).

"(G) A list of the laboratories that analyzed any bulk samples of asbestos-containing material found in the school building or air samples taken to detect asbestos in the school building and a statement that each laboratory has been accredited pursuant to the accreditation program under section 206(d).

"(H) With respect to each consultant who contributed to the management plan, the name of the consultant and one of the following statements:

"(i) If the State has adopted a contractor accreditation plan under section 206(b), a statement that the consultant is accredited under such plan.

"(ii) A statement that the contractor is accredited by another State which has adopted a contractor accreditation plan under section 206(b) or is accredited pursuant to an Administrator-approved course under section 206(c).

"(I) An evaluation of resources needed to successfully complete response actions and carry out reinspection, surveillance, and operation and maintenance activities.

"(2) Statement by contractor.—A local educational agency may require each management plan to contain a statement signed by an accredited asbestos contractor that such contractor has prepared or assisted in the preparation of such plan, or has reviewed such plan, and that such plan is in compliance with the applicable regulations and standards promulgated or adopted pursuant to this section and other applicable provisions of law. Such a statement may not be signed by a contractor who, in addition to preparing or assisting in preparing the management plan, also implements (or will implement) the management plan.

"(3) Warning labels.—(A) The regulations shall require that each local educational agency which has inspected for and discovered any asbestos-containing material with respect to a school building shall attach a warning label to any asbestos-containing material still in routine maintenance areas (such as boiler rooms) of the school building, including—

"(i) friable asbestos-containing material which was responded to by a means other than removal, and

"(ii) asbestos-containing material for which no response action was carried out.

"(B) The warning label shall read, in print which is readily visible because of large size or bright color, as follows: 'CAUTION: ASBESTOS. HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT.'

"(4) Plan may be submitted in stages.—A local educational agency may submit a management plan in stages, with each submission of the agency covering only a portion of the school buildings under the agency's authority, if the agency determines that such action would expedite the identification and abatement of hazardous asbestos-containing material in the school buildings under the authority of the agency.

"(5) Public availability.—A copy of the management plan developed under the regulations shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such plan.

"(6) Submission to state governor.—Each plan developed under this subsection shall be submitted to the State Governor under section 205.

"(j) Changes in Regulations.—Changes may be made in the regulations promulgated under this section only by rule in accordance with section 553 of title 5, United States Code. Any such change must protect human health and the environment.

"(k) Changes in Guidance Document.—Any change made in the 'Guidance for Controlling Asbestos-Containing Material in Buildings' shall be made only by rule in accordance with section 553 of title 5, United States Code, unless a regulation described in this section dealing with the same subject matter is in effect. Any such change must protect human health and the environment.

"(l) Treatment of Department of Defense Schools.—

"(1) Secretary to act in lieu of governor.—In the administration of this title, any function, duty, or other responsibility imposed on a Governor of a State shall be carried out by the Secretary of Defense with respect to any school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.).

"(2) Regulations.—The Secretary of Defense, in cooperation with the Administrator, shall, to the extent feasible and consistent with the national security, take such action as may be necessary to provide for the identification, inspection, and management (including abatement) of asbestos in any building used by the Department of Defense as an overseas school for dependents of members of the Armed Forces. Such identification, inspection, and management (including abatement) shall, subject to the preceding sentence, be carried out in a manner comparable to the manner in which a local educational agency is required to carry out such activities with respect to a school building under this title.

"(m) Waiver.—The Administrator, upon request by a Governor and after notice and comment and opportunity for a public hearing in the affected State, may waive some or all of the requirements of this section and section 204 with respect to such State if it has established and is implementing a program of asbestos inspection and management that contains requirements that are at least as stringent as the requirements of this section and section 204.

"SEC. 204. REQUIREMENTS IF EPA FAILS TO PROMULGATE REGULATIONS.

"(a) In General.—

"(1) Failure to promulgate.—If the Administrator fails to promulgate within the prescribed period—

"(A) regulations described in section 203(b) (relating to inspection);

"(B) regulations described in section 203(c), (d), (e), (f), (g), and (i) (relating to responding to asbestos); or

"(C) regulations described in section 203(h) (relating to transportation and disposal);

each local educational agency shall carry out the requirements described in this section in subsection (b); subsections (c), (d), and (e); or subsection (f); respectively, in accordance with the Environmental Protection Agency's most current guidance document.

"(2) Stay by court.— If the Administrator has promulgated regulations described in paragraph (1)(A), (B), or (C) within the prescribed period, but the effective date of such regulations has been stayed by a court for a period of more than 30 days, a local educational agency shall carry out the pertinent requirements described in this subsection in accordance with the Environmental Protection Agency's most current guidance document.

"(3) Effective period.—The requirements of this section shall be in effect until such time as the Administrator promulgates the pertinent regulations or until the stay is lifted (as the case may be).

"(b) Inspection.—(1) Except as provided in paragraph (2), the local educational agency, within 540 days after the date of the enactment of this title, shall conduct an inspection for asbestos-containing material, using personnel accredited under section 206(b) or 206(c) and laboratories accredited under section 206(d), in each school building under its authority.

"(2) The local educational agency may exclude from the inspection requirement in paragraph (1) any school building, or portion of a school building, if (A) an inspection of such school building (or portion) was completed before the date on which this section goes into effect, and (B) the inspection meets the inspection requirements of this section.

"(c) Operation and Maintenance.—The local educational agency shall, within 720 days after the date of the enactment of this title, develop and begin implementation of an operation and maintenance plan with respect to friable asbestos-containing material in a school building under its authority. Such plan shall provide for the education of school service and maintenance personnel about safety procedures with respect to asbestos-containing material, including friable asbestos-containing material.

"(d) Management Plan.—

"(1) In general.—The local educational agency shall—

"(A) develop a management plan for responding to asbestos-containing material in each school building under its authority and submit such plan to the Governor under section 205 within 810 days after the date of the enactment of this title,

"(B) begin implementation of such plan within 990 days after the date of the enactment of this title, and

"(C) complete implementation of such plan in a timely fashion.

"(2) Plan requirements.—The management plan shall—

"(A) include the elements listed in section 203(i)(1), including an inspection statement as described in paragraph (3) of this section,

"(B) provide for the attachment of warning labels as described in section 203(i)(3),

"(C) be prepared in accordance with the most current guidance document,

"(D) meet the standard described in paragraph (4) for actions described in that paragraph, and

"(E) be submitted to the State Governor under section 205.

"(3) Inspection statement.—The local educational agency shall complete an inspection statement, covering activities carried out before the date of the enactment of this title, which meets the following requirements:

"(A) The statement shall include the following information:

"(i) The dates of inspection.

"(ii) The name, address, and qualifications of each inspector.

"(iii) A description of the specific areas inspected.

"(iv) A list of the laboratories that analyzed any bulk samples of asbestos-containing material or air samples of asbestos found in any school building and a statement describing the qualifications of each laboratory.

"(v) The results of the inspection.

"(B) The statement shall state whether any actions were taken with respect to any asbestos-containing material found to be present, including a specific reference to whether any actions were taken in the boiler room of the building. If any such action was taken, the following items of information shall be included in the statement:

"(i) The location or locations at which the action was taken.

"(ii) A description of the method of action.

"(iii) The qualifications of the persons who conducted the action.

"(4) Standard.—The ambient interior concentration of asbestos after the completion of actions described in the most current guidance document, other than the type of action described in sections 203(f) and subsection (c) of this section, shall not exceed the ambient exterior concentration, discounting any contribution from any local stationary source. Either a scanning electron microscope or a transmission electron microscope shall be used to determine the ambient interior concentration. In the absence of reliable measurements, the ambient exterior concentration shall be deemed to be—

"(A) less than 0.003 fibers per cubic centimeter if a scanning electron microscope is used, and

"(B) less than 0.005 fibers per cubic centimeter if a transmission electron microscope is used.

"(5) Public availability.—A copy of the management plan shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such plan.

"(e) Building Occupant Protection.—The local educational agency shall provide for the protection of building occupants during each phase of activity described in this section.

"(f) Transportation and Disposal.—The local educational agency shall provide for the transportation and disposal of asbestos in accordance with the most recent version of the Environmental Protection Agency's 'Asbestos Waste Management Guidance' (or any successor to such document).

"SEC. 205. SUBMISSION TO STATE GOVERNOR.

"(a) Submission.—Within 720 days after the date of the enactment of this title (or within 810 days if there are no regulations under section 203(i)), a local educational agency shall submit a management plan developed pursuant to regulations promulgated under section 203(i) (or under section 204(d) if there are no regulations) to the Governor of the State in which the local educational agency is located.

"(b) Governor Requirements.—Within 360 days after the date of the enactment of this title, the Governor of each State—

"(1) shall notify local educational agencies in the State of where to submit their management plans under this section, and

"(2) may establish administrative procedures for reviewing management plans submitted under this section.

If the Governor establishes procedures under paragraph (2), the Governor shall designate to carry out the reviews those State officials who are responsible for implementing environmental protection or other public health programs, or with authority over asbestos programs, in the State.

"(c) Management Plan Review.—

"(1) Review of plan.—The Governor may disapprove a management plan within 90 days after the date of receipt of the plan if the plan—

"(A) does not conform with the regulations under section 203(i) (or with section 204(d) if there are no regulations),

"(B) does not assure that contractors who are accredited pursuant to this title will be used to carry out the plan, or

"(C) does not contain a response action schedule which is reasonable and timely, taking into account circumstances relevant to the speed at which the friable asbestos-containing material in the school buildings under the local educational agency's authority should be responded to, including human exposure to the asbestos while the friable asbestos-containing material remains in the school building, and the ability of the local educational agency to continue to provide educational services to the community.

"(2) Revision of plan.—If the State Governor disapproves a plan, the State Governor shall explain in writing to the local educational agency the reasons why the plan was disapproved and the changes that need to be made in the plan. Within 30 days after the date on which notice is received of disapproval of its plan, the local educational agency shall revise the plan to conform with the State Governor's suggested changes. The Governor may extend the 30-day period for not more than 90 days.

"SEC. 206. CONTRACTOR AND LABORATORY ACCREDITATION.

"(a) Contractor Accreditation.—A person may not—

"(1) inspect for asbestos-containing material in a school building under the authority of a local educational agency,

"(2) prepare a management plan for such a school, or

"(3) design or conduct response actions, other than the type of action described in sections 203(f) and 204(c), with respect to friable asbestos-containing material in such a school,

unless such person is accredited by a State under subsection (b) or is accredited pursuant to an Administrator-approved course under subsection (c).

"(b) Accreditation by State.—

"(1) Model plan.—

"(A) Persons to be accredited.—Within 180 days after the date of the enactment of this title, the Administrator, in consultation with affected organizations, shall develop a model contractor accreditation plan for States to give accreditation to persons in the following categories:

"(i) Persons who inspect for asbestos-containing material in school buildings under the authority of a local educational agency.

"(ii) Persons who prepare management plans for such schools.

"(iii) Persons who design or carry out response actions, other than the type of action described in sections 203(f) and 204(c), with respect to friable asbestos-containing material in such schools.

"(B) Plan requirements.—The plan shall include a requirement that any person in a category listed in paragraph (1) achieve a passing grade on an examination and participate in continuing education to stay informed about current asbestos inspection and response action technology. The examination shall demonstrate the knowledge of the person in areas that the Administrator prescribes as necessary and appropriate in each of the categories. Such examinations may include requirements for knowledge in the following areas:

"(i) Recognition of asbestos-containing material and its physical characteristics.

"(ii) Health hazards of asbestos and the relationship between asbestos exposure and disease.

"(iii) Assessing the risk of asbestos exposure through a knowledge of percentage weight of asbestos-containing material, friability, age, deterioration, location and accessibility of materials, and advantages and disadvantages of dry and wet response action methods.

"(iv) Respirators and their use, care, selection, degree of protection afforded, fitting, testing, and maintenance and cleaning procedures.

"(v) Appropriate work practices and control methods, including the use of high efficiency particle absolute vacuums, the use of amended water, and principles of negative air pressure equipment use and procedures.

"(vi) Preparing a work area for response action work, including isolating work areas to prevent bystander or public exposure to asbestos, decontamination procedures, and procedures for dismantling work areas after completion of work.

"(vii) Establishing emergency procedures to respond to sudden releases.

"(viii) Air monitoring requirements and procedures.

"(ix) Medical surveillance program requirements.

"(x) Proper asbestos waste transportation and disposal procedures.

"(xi) Housekeeping and personal hygiene practices, including the necessity of showers, and procedures to prevent asbestos exposure to an employee's family.

"(2) State adoption of plan.—Each State shall adopt a contractor accreditation plan at least as stringent as the model plan developed by the Administrator under paragraph (1), within 180 days after the commencement of the first regular session of the legislature of such State which is convened following the date on which the Administrator completes development of the model plan.

In the case of a school operated under the defense dependents' education system provided for under the Defense Dependents' Education Act of 1978 (20 U.S.C. 921 et seq.), the Secretary of Defense shall adopt a contractor accreditation plan at least as stringent as that model.

"(c) Accreditation by Administrator-Approved Course.—

"(1) Course approval.—Within 180 days after the date of the enactment of this title, the Administrator shall ensure that any Environmental Protection Agency-approved asbestos training course is consistent with the model plan (including testing requirements) developed under subsection (b). A contractor may be accredited by taking and passing such a course.

"(2) Treatment of persons with previous EPA asbestos training.—A person who—

"(A) completed an Environmental Protection Agency-approved asbestos training course before the date of the enactment of this title, and

"(B) passed (or passes) an asbestos test either before or after the date of the enactment of this title,

may be accredited under paragraph (1) if the Administrator determines that the course and test are equivalent to the requirements of the model plan developed under subsection (b). If the Administrator so determines, the person shall be considered accredited for the purposes of this title until a date that is one year after the date on which the State in which such person is employed establishes an accreditation program pursuant to subsection (b).

"(3) Lists of courses.—The Administrator, in consultation with affected organizations, shall publish (and revise as necessary)—

"(A) a list of asbestos courses and tests in effect before the date of the enactment of this title which qualify for equivalency treatment under paragraph (2), and

"(B) a list of asbestos courses and tests which the Administrator determines under paragraph (1) are consistent with the model plan and which will qualify a contractor for accreditation under such paragraph.

"(d) Laboratory Accreditation.—(1) The Administrator shall provide for the development of an accreditation program for laboratories by the National Bureau of Standards in accordance with paragraph (2). The Administrator shall transfer such funds as are necessary to the National Bureau of Standards to carry out such program.

"(2) The National Bureau of Standards, upon request by the Administrator, shall, in consultation with affected organizations—

"(A) within 360 days after the date of the enactment of this title, develop an accreditation program for laboratories which conduct qualitative and semi-quantitative analyses of bulk samples of asbestos-containing material, and

"(B) within 720 days after the date of the enactment of this title, develop an accreditation program for laboratories which conduct analyses of air samples of asbestos from school buildings under the authority of a local educational agency.

"(3) A laboratory which plans to carry out any such analysis shall comply with the requirements of the accreditation program.

"(e) Financial Assistance Contingent on Use of Accredited Persons.—(1) A school which is an applicant for financial assistance under section 505 of the Asbestos School Hazard Abatement Act of 1984 (Public Law 98-377; 20 U.S.C 4011 et seq.) is not eligible for such assistance unless the school, in carrying out the requirements of this title—

"(A) uses a person (or persons)—

"(i) who is accredited by a State which has adopted an accreditation plan based on the model plan developed under subsection (b), or

"(ii) who is accredited pursuant to an Administrator-approved course under subsection (c), and

"(B) uses a laboratory (or laboratories) which is accredited under the program developed under subsection (d).

"(2) This subsection shall apply to any financial assistance provided under the Asbestos School Hazard Abatement Act of 1984 for activities performed after the following dates:

"(A) In the case of activities performed by persons, after the date which is one year after the date of the enactment of this title.

"(B) In the case of activities performed by laboratories, after the date which is 180 days after the date on which a laboratory accreditation program is completed under subsection (d).

"SEC. 207. ENFORCEMENT.

"(a) Penalties.—Any local educational agency—

"(1) which fails to conduct an inspection pursuant to regulations under section 203(b) or under section 204(b),

"(2) which knowingly submits false information to the Governor regarding any inspection pursuant to regulations under section 203(i) or knowingly includes false information in any inspection statement under section 204(d)(3), or

"(3) which fails to develop a management plan pursuant to regulations under section 203(i) or under section 204(d),

is liable for a civil penalty of not more than $5,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section 16. For purposes of this subsection, a 'violation' means a failure to comply with respect to a single school building. The court shall order that any civil penalty collected under this subsection be used by the local educational agency for purposes of complying with this title. Any portion of a civil penalty remaining unspent after compliance by a local educational agency is completed shall be deposited into the Asbestos Trust Fund established by section 5 of the Asbestos Hazard Emergency Response Act of 1986.

"(b) Relationship to Title I.—A local educational agency is not liable for any civil penalty under title I of this Act for failing or refusing to comply with any rule promulgated or order issued under this title.

"(c) Enforcement Considerations.—

"(1) In determining the amount of a civil penalty to be assessed under subsection (a) against a local educational agency, the Administrator shall consider—

"(A) the significance of the violation;

"(B) the culpability of the violator, including any history of previous violations under this Act;

"(C) the ability of the violator to pay the penalty; and

"(D) the ability of the violator to continue to provide educational services to the community.

"(2) Any action ordered by a court in fashioning relief under section 20 shall be consistent with regulations promulgated under section 203 (or with the requirements of section 204 if there are no regulations).

"(d) Citizen Complaints.—Any person may file a complaint with the Administrator or with the Governor of the State in which the school building is located with respect to asbestos-containing material in a school building. If the Administrator or Governor receives a complaint under this subsection containing allegations which provide a reasonable basis to believe that a violation of this Act has occurred, the Administrator or Governor shall investigate and respond (including taking enforcement action where appropriate) to the complaint within a reasonable period of time.

"(e) Citizen Petitions.—(1) Any person may petition the Administrator to initiate a proceeding for the issuance, amendment, or repeal of a regulation or order under this title.

"(2) Such petition shall be filed in the principal office of the Administrator and shall set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a regulation or order under this title.

"(3) The Administrator may hold a public hearing or may conduct such investigation or proceeding as the Administrator deems appropriate in order to determine whether or not such petition should be granted.

"(4) Within 90 days after filing of a petition described in paragraph (1), the Administrator shall either grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly commence an appropriate proceeding in accordance with this title. If the Administrator denies such petition, the Administrator shall publish in the Federal Register the Administrator's reasons for such denial. The granting or denial of a petition under this subsection shall not affect any deadline or other requirement of this title.

"(f) Citizen Civil Actions With Respect To EPA Regulations.—(1) Any person may commence a civil action without prior notice against the Administrator to compel the Administrator to meet the deadlines in section 203 for issuing advanced notices of proposed rulemaking, proposing regulations, and promulgating regulations. Any such action shall be brought in the district court of the United States for the District of Columbia.

"(2) In any action brought under paragraph (1) in which the court finds the Administrator to be in violation of any deadline in section 203, the court shall set forth a schedule for promulgating the regulations required by section 203 and shall order the Administrator to comply with such schedule. The court may extend any deadline (which has not already occurred) in section 204(b), 204(c), or 204(d) for a period of not more than 6 months, if the court-ordered schedule will result in final promulgation of the pertinent regulations within the extended period. Such deadline extensions may not be granted by the court beginning 720 days after the date of enactment of this title.

"(3) Section 20 of this Act shall apply to civil actions described in this subsection, except to the extent inconsistent with this subsection.

"SEC. 208. EMERGENCY AUTHORITY.

"(a) EMERGENCY ACTION.—

"(1) AUTHORITY.—Whenever—

"(A) the presence of airborne asbestos or the condition of friable asbestos-containing material in a school building governed by a local educational agency poses an imminent and substantial endangerment to human health or the environment, and

"(B) the local educational agency is not taking sufficient action (as determined by the Administrator or the Governor) to respond to the airborne asbestos or friable asbestos-containing material,

the Administrator or the Governor of a State is authorized to act to protect human health or the environment.

"(2) LIMITATIONS ON GOVERNOR ACTION.—The Governor of a State shall notify the Administrator within a reasonable period of time before the Governor plans to take an emergency action under this subsection. After such notification, if the Administrator takes an emergency action with respect to the same hazard, the Governor may not carry out (or continue to carry out, if the action has been started) the emergency action.

"(3) NOTIFICATION.—The following notification shall be provided before an emergency action is taken under this subsection:

"(A) In the case of a Governor taking the action, the Governor shall notify the local educational agency concerned.

"(B) In the case of the Administrator taking the action, the Administrator shall notify both the local educational agency concerned and the Governor of the State in which such agency is located.

"(4) COST RECOVERY.—The Administrator or the Governor of a State may seek reimbursement for all costs of an emergency action taken under this subsection in the United States District Court for the District of Columbia or for the district in which the emergency action occurred. In any action seeking reimbursement from a local educational agency, the action shall be brought in the United States District Court for the district in which the local educational agency is located.

"(b) INJUNCTIVE RELIEF.—Upon receipt of evidence that the presence of airborne asbestos or the condition of friable asbestos-containing material in a school building governed by a local educational agency poses an imminent and substantial endangerment to human health or the environment—

"(1) the Administrator may request the Attorney General to bring suit, or

"(2) the Governor of a State may bring suit,

to secure such relief as may be necessary to respond to the hazard. The district court of the United States in the district in which the response will be carried out shall have jurisdiction to grant such relief, including injunctive relief.

"SEC. 209. STATE AND FEDERAL LAW.

"(a) NO PREEMPTION.—Nothing in this title shall be construed, interpreted, or applied to preempt, displace, or supplant any other State or Federal law, whether statutory or common.

"(b) COST AND DAMAGE AWARDS.—Nothing in this title or any standard, regulation, or requirement promulgated pursuant to this title shall be construed or interpreted to preclude any court from awarding costs and damages associated with the abatement, including the removal, of asbestos-containing material, or a portion of such costs, at any time prior to the actual date on which such material is removed.

"(c) STATE MAY ESTABLISH MORE REQUIREMENTS.—Nothing in this title shall be construed or interpreted as preempting a State from establishing any additional liability or more stringent requirements with respect to asbestos in school buildings within such State.

"(d) NO FEDERAL CAUSE OF ACTION.—Nothing in this title creates a cause of action or in any other way increases or diminishes the liability of any person under any other law.

"(e) INTENT OF CONGRESS.—It is not the intent of Congress that this title or rules, regulations, or orders issued pursuant to this title be interpreted as influencing, in either the plaintiff's or defendant's favor, the disposition of any civil action for damages relating to asbestos. This subsection does not affect the authority of any court to make a determination in an adjudicatory proceeding under applicable State law with respect to the admission into evidence or any other use of this title or rules, regulations, or orders issued pursuant to this title.

"SEC. 210. ASBESTOS CONTRACTORS AND LOCAL EDUCATIONAL AGENCIES.

"(a) STUDY.—

(1) GENERAL REQUIREMENT.—The Administrator shall conduct a study on the availability of liability insurance and other forms of assurance against financial loss which are available to local educational agencies and asbestos contractors with respect to actions required under this title. Such study shall examine the following:

"(A) The extent to which liability insurance and other forms of assurance against financial loss are available to local educational agencies and asbestos contractors.

"(B) The extent to which the cost of insurance or other forms of assurance against financial loss has increased and the extent to which coverage has become less complete.

"(C) The extent to which any limitation in the availability of insurance or other forms of assurance against financial loss is the result of factors other than standards of liability in applicable law.

"(D) The extent to which the existence of the regulations required by subsections (c) and (d) of section 203 and the accreditation of contractors under section 206 has affected the availability or cost of insurance or other forms of assurance against financial loss.

"(E) The extent to which any limitation on the availability of insurance or other forms of assurance against financial loss is inhibiting inspections for asbestos-containing material or the development or implementation of management plans under this title.

"(F) Identification of any other impediments to the timely completion of inspections or the development and implementation of management plans under this title.

(2) INTERIM REPORT.—Not later than April 1, 1988, the Administrator shall submit to the Congress an interim report on the progress of the study required by this subsection, along with preliminary findings based on information collected to that date.

(3) FINAL REPORT.—Not later than October 1, 1990, the Administrator shall submit to the Congress a final report on the study required by this subsection, including final findings based on the information collected.

"(b) STATE ACTION.—On the basis of the interim report or the final report of the study required by subsection (a), a State may enact or amend State law to establish or modify a standard of liability for local educational agencies or asbestos contractors with respect to actions required under this title.

"SEC. 211. PUBLIC PROTECTION.

"(a) PUBLIC PROTECTION.—No State or local educational agency may discriminate against a person in any way, including firing a person who is an employee, because the person provided information relating to a potential violation of this title to any other person, including a State or the Federal Government.

"(b) LABOR DEPARTMENT REVIEW.—Any public or private employee or representative of employees who believes he or she has been fired or otherwise discriminated against in violation of subsection (a) may within 90 days after the alleged violation occurs apply to the Secretary of Labor for a review of the firing or alleged discrimination. The review shall be conducted in accordance with section 11(c) of the Occupational Safety and Health Act.

"SEC. 212. ASBESTOS OMBUDSMAN.

"(a) APPOINTMENT.—The Administrator shall appoint an Asbestos Ombudsman, who shall carry out the duties described in subsection (b).

"(b) DUTIES.—The duties of the Asbestos Ombudsman are—

"(1) to receive complaints, grievances, and requests for information submitted by any person with respect to any aspect of this title,

"(2) to render assistance with respect to the complaints, grievances, and requests received, and

"(3) to make such recommendations to the Administrator as the Ombudsman considers appropriate.

"SEC. 213. EPA STUDY OF ASBESTOS-CONTAINING MATERIAL IN PUBLIC BUILDINGS.

"Within 360 days after the date of the enactment of this title, the Administrator shall conduct and submit to the Congress the results of a study which shall—

"(1) assess the extent to which asbestos-containing materials are present in public and commercial buildings;

"(2) assess the condition of asbestos-containing material in commercial buildings and the likelihood that persons occupying such buildings, including service and maintenance personnel, are, or may be, exposed to asbestos fibers;

"(3) consider and report on whether public and commercial buildings should be subject to the same inspection and response action requirements that apply to school buildings;

"(4) assess whether existing Federal regulations adequately protect the general public, particularly abatement personnel, from exposure to asbestos during renovation and demolition of such buildings; and

"(5) include recommendations that explicitly address whether there is a need to establish standards for, and regulate asbestos exposure in, public and commercial buildings.

"SEC. 214. TRANSITION RULES.

"Any regulation of the Environmental Protection Agency under title I which is inconsistent with this title shall not be in effect after the date of the enactment of this title. Any advanced notice of proposed rulemaking, any proposed rule, and any regulation of the Environmental Protection Agency in effect before the date of the enactment of this title which is consistent with the regulations required under section 203 shall remain in effect and may be used to meet the requirements of section 203, except that any such regulation shall be enforced under this Act.".

SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Conforming Amendment to Asbestos School Hazard Abatement Act.—Section 505(g) of the Asbestos School Hazard Abatement Act of 1984 (Public Law 98-377; 20 U.S.C. 4011 et seq.) is amended by adding at the end the following new paragraph:

"(4)(A) No financial assistance may be provided under this section to any school—

"(i) which uses any person who has not been accredited pursuant to section 206(b) or 206(c) of the Toxic Substances Control Act, to carry out activities described in section 206(a) of that Act, or

"(ii) which uses any laboratory which has not been accredited pursuant to section 206(d) of the Toxic Substances Control Act, to carry out activities described in such section.

"(B) This paragraph shall apply to any financial assistance provided under this section after the date of the enactment of the Asbestos Hazard Emergency Response Act of 1986, for activities performed after the following dates:

"(i) In the case of activities performed by persons, after the date which is one year after the date of the enactment of this title.

"(ii) In the case of activities performed by laboratories, after the date which is 180 days after the date on which a laboratory accreditation program is completed under subsection (d).".

(b) Conforming Amendments to Toxic Substances Control Act.—

(1) Section 15 of the Toxic Substances Control Act (15 U.S.C 2614) is amended in paragraph (1)—

(A) by striking out "or" before "(C)",

(B) by striking out the semicolon and inserting in lieu thereof a comma, and

(C) by adding at the end of such paragraph the following: "or (D) any requirement of title II or any rule promulgated or order issued under title II;".

(2) Section 19 of such Act (15 U.S.C. 2618) is amended in subsection (a)(1)(A) by inserting after "or 8," the following: "or under title II,".

(3) Section 20 of such Act (15 U.S.C. 2619) is amended in subsection (a)(1) by striking out "4, 5, or 6 or order issued under section 5" and inserting in lieu thereof the following: "4, 5, or 6, or title II, or order issued under section 5 or title II".

(c) Technical Amendments.—The Toxic Substances Control Act (15 U.S.C. 2601 et seq.) is amended—

(1) by inserting immediately before section 1 the following:

"TITLE I—CONTROL OF TOXIC SUBSTANCES";

(2) by inserting in the table of contents in section 1, immediately before the item relating to section 1, the following:

"TITLE I—CONTROL OF TOXIC SUBSTANCES"; and

(3) by adding at the end of the table of contents in section 1 the following:

"TITLE II—ASBESTOS HAZARD EMERGENCY RESPONSE

"Sec. 201. Congressional findings and purpose.
"Sec. 202. Definitions.
"Sec. 203. EPA Regulations.
"Sec. 204. Requirements if EPA fails to promulgate regulations.
"Sec. 205. Submission to State Governor.
"Sec. 206. Contractor and laboratory accreditation.
"Sec. 207. Enforcement.
"Sec. 208. Emergency authority.
"Sec. 209. State and Federal law.
"Sec. 210. Asbestos contractors and local educational agencies.
"Sec. 211. Public protection.
"Sec. 212. Asbestos ombudsman.
"Sec. 213. EPA study of asbestos-containing material in public buildings.
"Sec. 214. Transition rules.".

SEC. 4. AUTHORIZATION.

(a) Section 512 of the Asbestos School Hazard Abatement Act of 1984 (Public Law 98-377; 20 U.S.C. 4011 et seq.) is amended by adding at the end the following: "In addition, for such purposes there are authorized to be appropriated out of the Asbestos Trust Fund established by section 5 of the Asbestos Hazard Emergency Response Act of 1986 $25,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.".

(b)(1) Notwithstanding section 505(c) of the Asbestos School Hazard Abatement Act of 1984, for fiscal years 1988 and 1989 the Administrator shall provide financial assistance under section 505 of such Act in the form of grants to States or local educational agencies to carry out inspections for asbestos-containing material in school buildings and preparation of management plans for school buildings under this title.

(2) Not more than 2 percent of any grant awarded to a State pursuant to paragraph (1) may be used by the State for administrative purposes. For purposes of the preceding sentence, administrative purposes do not include salaries of persons who inspect for asbestos-containing material or assist in the preparation of management plans.

(3) In determining which local educational agencies to approve grants for, the Administrator shall take into account the financial need of the agency. Of the amount available under the Asbestos School Hazard Abatement Act of 1984 for fiscal years 1988 and 1989, not more than 10 percent may be obligated for the purposes described in this subsection.

SEC. 5. ASBESTOS TRUST FUND.

(a) Creation of Trust Fund.—There is established in the Treasury of the United States a trust fund to be known as the "Asbestos Trust Fund", consisting of such amounts as may be transferred or credited to such Trust Fund as provided in this section.

(b) Transfers to Trust Fund.—

(1) Transfer.—There are hereby transferred to the Asbestos Trust Fund amounts equivalent to—

(A) amounts received in the Treasury on or after January 1, 1987, as repayments of loans made under section 505 of the Asbestos School Hazard Abatement Act of 1984 (Public Law 98-377; 20 U.S.C. 4011 et seq.) as in effect on the date of the enactment of this Act, and

(B) amounts received as deposits from local educational agencies under section 207(a) of the Toxic Substances Control Act (as added by section 2 of this Act).

(2) Monthly transfers.—The amounts transferred by paragraph (1) shall be transferred at least monthly from the general fund of the Treasury to the Asbestos Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such paragraph. Adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were more or less than the amounts required to be transferred.

(c) Management of Trust Fund.—

(1) Investment.—

(A) In general.—The Secretary of the Treasury shall invest such portion of the Asbestos Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States and may be acquired—

(i) on original issue at the issue price, or

(ii) by purchase of outstanding obligations at the market price.

(B) Sale of obligations.—Any obligation acquired by the Asbestos Trust Fund may be sold by the Secretary of the Treasury at the market price.

(C) Interest on certain proceeds.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Asbestos Trust Fund shall be credited to and form a part of the Trust Fund.

(2) Report.—It shall be the duty of the Secretary of the Treasury to hold the Asbestos Trust Fund and to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next 5 fiscal years.

(d) Expenditures From Asbestos Trust Fund.—Amounts in the Asbestos Trust Fund shall be available, as provided by appropriation Acts, only for purposes of carrying out the Asbestos Hazards Abatement Assistance Program under section 505 of the Asbestos School Hazard Abatement Act of 1984 as in effect on the date of the enactment of this Act.

(e) Authority To Borrow.—

(1) In general.—There are authorized to be appropriated to the Asbestos Trust Fund, as repayable advances, $25,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.

(2) Repayment of advances.—

(A) In general.—Advances made under this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Asbestos Trust Fund.

(B) Rate of interest.—Interest on advances made under this subsection shall be at a rate determined by the Secretary (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

(f) Effective Date.—The amendments made by this section shall take effect on January 1, 1986.

Mr. FLORIO (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment and the House amendment to the Senate

amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from New Jersey?

Mr. LENT. Mr. Speaker, I reserve the right to object.

Mr. Speaker, I would ask the gentleman from New Jersey [Mr. FLORIO] if he would explain some of the provisions of this legislation.

Mr. Speaker, I yield to the gentleman from New Jersey.

Mr. FLORIO. Mr. Speaker, the House is now considering H.R. 5073, the Asbestos Hazard Emergency Response Act of 1986. The legislation was first passed by the House under suspension of the rules in August. The Senate then substituted its language for the House language when it passed the bill 3 weeks ago.

However, I am pleased to note that we have reached a compromise with the other body regarding the bill and it is on that language which we will vote today.

H.R. 5073 will protect the 15 million schoolchildren—almost one-third of the Nation's school population—who are currently exposed to potentially deadly asbestos in their school buildings.

Asbestos is a known human carcinogen which can cause lung cancer, mesothelioma, and asbestosis when airborne fibers of the mineral are inhaled. Since children breathe five times faster than adults, they are particularly susceptible to the effects of asbestos inhalation. For this reason, asbestos-containing material in school buildings is such a potentially disastrous problem.

The Environmental Protection Agency's [EPA] current asbestos-in-schools program is woefully inadequate. School officials are not told how to conduct a proper inspection, what to do with the asbestos that is found and who to hire to cleanup the asbestos. Sadly, these officials are left at the mercy of disreputable contractors, or "rip and skip pirates" as they are called.

Left without regulatory guidance, asbestos cleanup in schools has been awful. EPA estimates that 75 percent of all school cleanup work is being done improperly. Improper cleanup work is worse than no work at all because more fibers are released into the air to be inhaled by children during the course of shoddy cleanups than if the asbestos-containing material was left untouched.

We cannot allow schoolchildren and employees to continue to be exposed to asbestos. H.R. 5073 is a comprehensive response to the asbestos-in-schools problem. The bill requires EPA to prescribe proper inspection procedures, define the circumstances when asbestos must be cleaned up, and set standards for the proper transport and disposal of asbestos wastes. EPA must also establish a contractor accreditation program that the States must adopt, while the National Bureau of Standards is directed to create a laboratory accreditation program to ensure that only properly trained contractors and laboratories are used by school officials. The bill mandates that schools must complete an inspection according to the EPA standards, develop a management plan describing the manner in which any asbestos will be responded to, and clean up any potentially hazardous asbestos.

I would like to explain the changes in H.R. 5073 that are contained in this compromise.

The legislation requires the Administrator to promulgate regulations which define what "response actions" must be taken in school buildings, using the least burdensome methods which protect human health and the environment.

The statutory standard of "protection of human health and the environment" is the same standard that applies under the Resource Conservation and Recovery Act [RCRA] and is different from the "unreasonable risk" standard applicable under section 6 of the Toxic Substance Control Act [TSCA]. The protection of human health and the environment standard requires the agency to determine what actions will protect human health and the environment from actual or potential asbestos hazards. Such hazards include actual or potential exposure to releases of asbestos that may cause adverse effects on human health or the environment.

The protect human health and the environment standard does not require EPA to establish a quantitative relationship between the physical characteristics of the asbestos-containing materials; for example, their condition or location, and the health risks which may be posed by exposure to airborne asbestos fibers. The legislation does not intend that the agency be either required to or prohibited from using such technologies as air monitoring in meeting the standard. It does not require or prohibit the agency, from developing a model relating physical characteristics of the material to ambient fiber levels. The legislation also does not require or prohibit the agency from conducting a quantitative risk assessment relating ambient fiber levels to a particular amount of actual or potential health risks.

The requirement that EPA use the least burdensome methods in defining appropriate response actions does not in any way affect the overriding health standard that applies to the regulations—that is, protection of human health and the environment. Any method, or response action, selected by the agency must meet this overriding health standard. Once EPA determines the set of response actions that will meet the standard, the agency should make a separate determination of what constitutes the least burdensome approach.

The legislation recognizes that local circumstances—including how a specific population of a specific school uses the building at issue, and the long- and short-term costs posed by the various options in the context of the local situation—could affect EPA's selection of the least burdensome methods. The legislation does not in any way affect the prerogative of local educational agencies to go further, or do more work, than the least burdensome methods selected by the EPA regulations.

The legislation establishes four categories of circumstances in which EPA must prescribe, by regulation, appropriate response action for friable asbestos-containing material. The four circumstances are: First, situations where friable asbestos-containing material is damaged, deteriorated, or delaminated; second, situations where friable asbestos-containing is significantly damaged, deteriorated or delaminated; third, situations where there is a potential; that is, reasonable likelihood, that the material will become damaged, deteriorated, or delaminated in specified areas of the school; and fourth, situations where there is a potential that the material will become significantly damaged, deteriorated, or delaminated in such areas.

The Administrator must describe appropriate response actions in at least these four circumstances. This language means that, at a minimum, the EPA regulations must cover these circumstances by requiring implementation of response actions described for each of these circumstances. This language is derived from the Senate bill (S. 2083) which required prescription of response action, at a minimum in such circumstances. The at least language in the final legislation carries out the same statutory intent.

For the first circumstance, where the asbestos has already become damaged, deteriorated or delaminated, response actions include methods identified in Chapters 3 and 5 of the EPA Guidance Document. In the second circumstance, where the asbestos has already become significantly damaged, deteriorated or delaminated, the only options for response actions include methods identified in chapter 5 of the EPA Guidance Document. Chapter 3 sets forth operations and maintenance methods, including minor repair. Chapter 5 includes enclosure, encapsulation, removal, and relatively major repairs. Chapter 3 methods can never be used when asbestos has become significantly damaged, deteriorated, or delaminated, although such methods remain an option when the asbestos is only damaged, deteriorated, or delaminated.

The legislation contemplates that new technologies may be developed that will expand the universe of methods contained in both chapters 3 and 5. If such technologies do become available, EPA should include them in its regulations, so long as the new technologies—or methods—protect human health and the environment. By referencing chapters 3 and 5, the legislation establishes a floor of appropriate response actions but does not freeze the development of new, more protective and more cost-effective technologies to accomplish the overall goal of meeting the health standard in the legislation.

For the third and fourth circumstances, where asbestos has not yet become damaged, deteriorated, or delaminated, but where there is a reasonable likelihood it will become damaged, deteriorated, or delaminated, the legislation requires that EPA prescribe preventive measures that will either prevent the likelihood of damaged, deterioration, and delamination or will otherwise protect human health and the environment.

For example, a school gymnasium used for basketball practice contains a ceiling composed of friable asbestos-containing material. The ceiling is not yet damaged, deteriorated, or delaminated, but there is a reasonable likelihood it will become so as the school year progresses and basketballs are constantly thrown against it. The school could prevent damage by a variety of methods, including covering the ceiling with a net to prevent balls from striking it or using another facility for basketball practice. The EPA regulations should develop such preventive methods fully and prescribe them for all potential damage situations.

Once again, preventive measures can include either methods to prevent damage or methods, such as closing the room, which will prevent adverse health effects as a result of exposure to airborne asbestos fibers. If damage, deterioration, or delamination is prevented, the minimal circumstances established by the legislation are never created. If damage, deterioration, or delamination cannot be prevented, but other measures will protect human health and the environment, such methods would meet the statutory standard.

Section 204 contains a standard following the completion of response actions other than operation and maintenance activities which must be met before areas that have undergone response actions can be reoccupied. The section mandates that only electron microscopy can be used to analyze air samples to ensure that the standard has been met. The section establishes that phase contrast microscopy should not be used because it is an inadequate tool in that it cannot distinguish asbestos from other materials nor can it detect the most microscopic fibers.

The Congress recognizes that transmission electron microscopy is superior to scanning electron microscopy. However, at this point, transmission microscopy is expensive and not readily available. But these problems with transmission microscopy will likely be eased as the market responds to the needs of contractors who must use electron microscopy to meet the reoccupancy standard.

The new title II of TSCA is subject to the provisions of sections 15, 16, 19, and 20 of TSCA, except where title II specifically provides otherwise. These exceptions include reduced civil penalty limits for certain infractions by local education agencies, requirements for channeling certain penalty payments back to local education agencies, specific factors to be used in determining the amount of a civil penalty against local education agencies, and deletion of the 60-day notice requirement with respect to citizens' civil actions against the Administrator for failure to meet a statutory deadline in section 203. Except as specifically provided in title II, the usual TSCA provisions related to administrative civil penalties, maximum penalties and citizens' suits remain unchanged and may be used with regard to actions required by title II.

This bill creates a workable mechanism to do what we all know is important—provide for the safety of the Nation's schoolchildren. This is a good bill. I join with my colleagues Chairman DINGELL, Mr. LENT, and Mr. WHITTAKER in urging its support.

Mr. LENT. Under my reservation, Mr. Speaker, I stand in strong support of the House amendment to the Senate amendment of H.R. 5073, the Asbestos Hazard Emergency Response Act of 1986. Throughout the progress of this legislation in the House, the minority has worked closely with the majority in shaping the bill's provisions. I am happy to report that this bipartisan cooperation continued in our negotiations with the Senate. The final product has been fully agreed to by both bodies of this Congress. It represents sound environmental legislation for which we all should feel proud.

I would particularly like to commend the Chairman of the Subcommittee on Commerce, Transportation, and Tourism, Mr. FLORIO, for his role in bringing about the passage of this legislation. It is important to note that there was an earnest attempt to work with all the outside groups interested in this legislation. I believe the H.R. 5073 has benefited greatly from this cooperative spirit.

In reaching this final compromise, it is important to recognize that much of this legislation is patterned after the House bill. This includes the fundamental requirement that any response action selected by EPA must protect the public health and the environment. In negotiating with the Senate, the House did agree to modify a provision limiting the liability of asbesto cleanup contractors. This agreement was made largely out of concerns over States' rights in this area and not because we believe that strict liability is an appropriate concept when applied to asbestos cleanup contractors. It is my earnest hope that States will respond individually if insurance for asbestos cleanup contractors continues to become more expensive or, in the worst case, unavailable. It is important that we not sacrifice the education of our children in order to finance the cleanup.

Mr. Speaker, I would like to engage my colleague the gentleman from New Jersey [Mr. FLORIO] in a colloquy on one point in this bill.

As I mentioned, I have some strong concerns about the decision to modify section 210 of the bill governing contractor liability. The legislation which originally passed the House would have held an asbestos contractor liable only if their actions were negligent or if they failed to comply with the standards promulgated by EPA.

It is my understanding that the decision to replace this provision with a study of the problem was motivated out of a desire not to infringe upon the prerogatives of a State. It does not constitute a policy denunciation of the principles surrounding this section of the bill.

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Mr. FLORIO. Mr. Speaker, will the gentleman yield?

Mr. LENT. I yield to the gentleman from New Jersey.

Mr. FLORIO. I thank the gentleman for yielding.

Mr. Speaker, the gentleman from New York is correct in his assertions. I share his concern about the need for standards governing contractors liability and felt that the principle embodied in section 210 of our original bill was essential to making asbestos abatement activities insurable. I still feel that this is the case. Pending the outcome of the study that is called for in this section, States could consider adopting liability standards governing contractors that are in accordance with our original bill.

Mr. LENT. I thank the distinguished subcommittee chairman for his views. He and I believe very strongly that we must accelerate our efforts in reducing the asbestos menace in our schools.

Qualified contractors who do the job correctly must be ensured that they will not be held liable for an injury which did not result from their actions. If treated as the classical deep pocket defendant, contractors will decide not to participate in this activity. The work will not get done and the health and safety of schoolchildren and school employees will remain imperiled for that much longer. I join him in urging State officials to adopt the principles embodied in the original version of our bill.

Mr. Speaker, I know of no Member opposed to this legislation. I fully support the motion of my colleague from New Jersey.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the initial request of the gentleman from New Jersey?

There was no objection.

A motion to reconsider was laid on the table.

FAIR LABOR STANDARDS ACT OF 1938 AMENDMENTS RELATING TO PAYMENT OF WAGES TO HANDICAPPED WORKERS

Mr. MURPHY. Mr. Speaker, I ask unanimous consent that the Committee on Education and Labor be discharged from further consideration of the bill (H.R. 5614) to amend the Fair Labor Standards Act of 1938 to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

Mr. PETRI. Reserving the right to object, Mr. Speaker, I yield to the gentleman from Pennsylvania for an explanation of this measure.

Mr. MURPHY. Mr. Speaker, I am pleased to offer legislation that seeks to improve the employment opportunities of handicapped persons, including the most severely disabled. The bill before us, H.R. 5614, will greatly reduce the amount of bureaucratic redtape involved in certifying sheltered workshops and at the same time offer greater protection to the disabled employee that he or she will be paid a proper wage.

It is important to note that this legislation has the support of both employer groups such as Goodwill Industries and worker representatives such as the Federation of the Blind. In addition, identical legislation recently passed the other body with bipartisan support and involvement.

H.R. 5614 was necessitated because the present system for regulating sheltered workshops has not worked. When the 1966 amendments to FLSA were passed, it was presumed that the multiple certification procedure outlined in section 14(c) of the act was necessary to ensure that proper wages were paid to all handicapped employees. It has been reported in subcommittee hearings that in practice these procedures are cumbersome and costly and may be detrimental to the employment opportunities of the disabled.

Moreover, the current floor of 50 percent of the minimum wage for workers in sheltered workshops was designed to protect the majority of handicapped workers. Today, more than 87 percent of handicapped workers are working under exceptions to this standard, either in work activities centers or under individual certificates. The requirement that these various certificates be separately administered has resulted in increased operating costs and reduced employment opportunities for the handicapped.

Since we are granting employers greater flexibility to manage their handicapped enterprises, it is absolutely essential that we preserve protections for handicapped workers which guarantees wages commensurate with their productivity. Thus, H.R. 5614 provides a necessary procedural due process safeguard for handicapped workers who are paid under special minimum wage rate certificates. In short, an employee who wishes to challenge his wage determination is given a right to a prompt and impartial decision from an administrative law judge. The burden of proof will be on the employer to justify the wage rate being paid.

This due process protection is an essential element in the compromise legislation before us and will hopefully insure against exploitation of this vulnerable sector of our work force.

Mr. Speaker, H.R. 5614 will improve the wage guarantees afforded to workers with disabilities employed by sheltered workshops and enable these facilities to operate more efficiently. I encourage all Members of the House to endorse the position of the Association for Retarded Citizens, the National Association of Rehabilitation Facilities, Goodwill Industries of America. The National Federation of the Blind, the United Cerebral Palsy Association, the National Easter Seal Society, the Association for Persons with Severe Handicaps and support passage of H.R. 5614.

Mr. JEFFORDS. Mr. Speaker, will the gentleman yield under his reservation?

Mr. PETRI. I yield to my distinguished colleague, the gentleman from Vermont.

Mr. JEFFORDS. Mr. Speaker, I rise in support of the bill before us, H.R. 5614, which would revise the procedures for the employment of handicapped individuals under the Fair Labor Standards Act.

This bill makes sensible changes in the law that should benefit both handicapped workers and their employers. Other speakers have gone into detail on what the bill does, so I will not repeat their remarks.

I do want to note briefly how this bill reached us. To be sure, it was due to a tremendous degree of cooperation from Members of the other body and Chairmen HAWKINS and MURPHY. But in my opinion, the real credit must go to my colleague, TOM PETRI.

Without his good sense and a touch of stubbornness, this bill might not be before us today. In the 97th, 98th, and earlier in this Congress, he introduced legislation to address this very issue in much the same way as this bill would. Despite the ambivalence of some, he continued to press for changes in the law, changes which we are making today.

I think he is to be commended for his work, and congratulated on his success. Mr. Speaker, I urge my colleagues to support this legislation.

Mr. PETRI. Mr. Speaker, I wish to commend the gentleman from Pennsylvania [Mr. MURPHY] for bringing this bill to the floor today. It is not a controversial bill, but it is extremely important nonetheless for the shelterd workshops of this country and for their handicapped clients. I am sure that Chairman MURPHY's leadership on this issue will be deeply appreciated.

The intent of the bill is to rationalize and simplify the administration of sheltered workshops, not to lower or change what anyone is paid. The current system of multiple certificates has been called an administrative nightmare. It creates a tremendous paperwork burden, and there no longer appears to be much purpose to it, given the dramatic changes in the population being served that have taken place over the past 20 years. By making these improvements, I hope we can free both the Labor Department and the workshops to spend more of their time on improving services to clients, which is what everyone wants to do.

The Fair Labor Standards Act has always provided special provisions to pay physically and mentally handicapped persons special minimum wages based on their individual productivity. These provisions allow employment opportunities for handicapped persons who would not be able to compete for jobs in the regular labor marketplace if the regular minimum wage had to be paid.

While many handicapped persons are now able to work competitively and earn wages and salaries equal to those of nonhandicapped persons, there are still large numbers of handicapped persons whose disabling conditions are so severe as to substantially reduce their ability to work when compared with nonhandicapped persons. Many of these severely handicapped persons work in sheltered workshops where jobs within the limitations of the handicapping conditions, as well as many supportive services, can be provided, which enable these persons to live and work outside of institutional settings.

The last major change in the special minimum wage provisions, section 14(c) of the Fair Labor Standards Act, came in 1966 when a floor of 50 percent of the minimum wage was set for handicapped workers. There was a recognition that there would be circumstances when that level could not be met by the productivity of a handicapped person. Thus, there were exceptions for persons engaged in evaluation or training programs, persons certified by the State vocational rehabilitation agency as being too severely handicapped to meet the 50-percent level, and for persons in work activities centers where the work is primarily for therapeutic reasons. The Department of Labor issues special certificates for the basic program and for each of the four exceptions to the 50-percent floor. As of last year, there were 4,814 workshops holding 8,222 program certificates. Seventy-five percent of the certificates were for exceptions to the 50-percent floor.

Since 1966, there has been a dramatic turnaround in the nature of persons served in sheltered workshops. Where once there were predominantly physically handicapped persons, now persons with mental or developmental disabilities predominate. These more severely handicapped persons need more extensive assistance and tend to be less able to produce at a level equal to or greater than the 50-percent level and must work under one of the exceptions to that general rule.

A study of sheltered workshops by the General Accounting Office published in 1981 concluded that the 50-percent floor was not having the intended effect. Because of the high intake of much more severely handicapped persons, only 17 percent of the persons served or employed in sheltered workshops benefited from the 50-percent floor—by 1984, this figure was down to 13 percent. GAO recommended elimination of the 50-percent floor. Workshops would be required to pay each handicapped worker based on his or her individual productivity. This would greatly simplify the process for certification and would allow sheltered workshops and the Department of Labor to focus their efforts on substantive compliance reviews rather than paperwork and technical compliance. Another major study prepared for the Department of Health and Human Services found that the 1966 amendments to the Fair Labor Standards Act were complex and implemented by even more complex regulations and produced an administrative nightmare. This 1980 study also recommended elimination of the 50-percent floor and use of a single certificate.

The bill before us is based in part on language recommended by the General Accounting Office. It eliminates multiple certificates and guarantees that each handicapped worker will be paid according to his or her individual productivity. It allows workshops either to maintain separate work activities centers or to integrate work activities center clients with other workers. It provides for periodic review of wages by employers, protects employees against reduction in wages for 2 years, and establishes a mechanism whereby employees can petition the Secretary of Labor for a review of their wage rates. It is supported by every organization I know of that represents workshops or their clients.

Mr. Speaker, I would like to ask the gentleman from Pennsylvania [Mr. MURPHY] if he would engage in a colloquy with me.

Mr. MURPHY. Mr. Speaker, I would be happy to do so.

Mr. PETRI. Mr. Speaker, as the gentleman knows, the Secretary of Labor may grant a certificate when necessary to prevent the curtailment of employment opportunities of disabled individuals. Wages received under such certificates are based on an individual's productivity. This is current law, and is reiterated in this legislation.

The bill before us would permit the petitioning and review by an administrative law judge of both the need for a certificate and the manner in which the wage was determined.

My question for the gentleman is this: Although the standards for review by the administrative law judge are spelled out in slightly more detail than the standards to be met by the Secretary, do the standards for the issuance of a certificate and its review vary?

Mr. MURPHY. Mr. Speaker, if the gentleman will yield, my answer to the gentleman is no, they do not vary. The language of section (c)(5)(D) sets forth in slightly greater detail the standard that is expected of the Secretary in sections (c)(1)(B) and (c)(1)(C), and thus does not establish a different standard for review from that of issuance. I would add that I have inquired of the sponsors of this legislation in the other body, Senator NICKLES and Senator METZENBAUM, and that this is their intent as well.

I would also point out that the other body has addressed this issue. In remarks attributed to Senator HATCH in the daily CONGRESSIONAL RECORD of September 26, it is noted that:

> This standard is the same standard that is to be applied by the Secretary when providing for the issuance of special minimum wage certificates.

Mr. PETRI. I thank the gentleman for his remarks. I have looked at the statement to which he refers, and believe that it accurately reflects our intent behind this legislation, both on this issue and in general.

Mr. STAGGERS. Mr. Speaker, I rise in strong support of H.R. 5614, which will improve employment opportunities for handicapped persons.

Mr. Speaker, we have an opportunity today to take a giant step forward for all handicapped Americans. Our bill will reduce overly burdensome, bureaucratic redtape that inhibits certification of sheltered workshops for the handicapped and, at the same time, ensures that he or she will receive a fair wage.

Current law forces Sheltered Workshops to fill out form after form after form in order to gain certification. The requirement that these various certificate programs be administered separately is not only overly burdensome but it has resulted in increased operating costs and reduced employment opportunities for handicapped workers.

Our bill requires that only one certificate be obtained from the Department of Labor and calls for wage determinations for handicapped workers to be based on each worker's productivity. In addition, this bill sets forth a procedure whereby the handicapped employee or his guardian can appeal wage determinations in a fair and prompt manner.

This bill will be a major accomplishment for both employee and employer, and it is supported by all affected parties.

Mr. Speaker, the Sheltered Workshops in West Virginia and across America play a vital role and serve a vital function in our society. Let's take this opportunity to help those who toil so long and hard to help themselves.

I strongly support this bill and I urge its immediate adoption.

Mr. PETRI. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the bill, as follows:

H.R. 5614

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended to read as follows:

"(c)(1) The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individual's employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are—

"(A) lower than the minimum wage applicable under section 6,

"(B) commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and

"(C) related to the individual's productivity.

"(2) The Secretary shall not issue a certificate under paragraph (1) unless the employer provides written assurances to the Secretary that—

"(A) in the case of individuals paid on an hourly rate basis, wages paid in accordance with paragraph (1) will be reviewed by the employer at periodic intervals at least once every 6 months, and

"(B) wages paid in accordance with paragraph (1) will be adjusted by the employer at periodic intervals, at least once every year, to reflect changes in the prevailing wage paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.

"(3) Notwithstanding paragraph (1), no employer shall be permitted to reduce the hourly wage rate prescribed by certificate under this subsection in effect on June 1, 1986, of any handicapped individual for a period of 2 years from such date without prior authorization of the Secretary.

"(4) Nothing in this subsection shall be construed to prohibit an employer from maintaining or establishing work activities centers to provide therapeutic activities for handicapped clients.

"(5)(A) Notwithstanding any other provision of this subsection, any employee receiving a special minimum wage at a rate specified pursuant to this subsection or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. An employee or the employee's parent or guardian may file such a petition for and in behalf of the employee or in behalf of the employee and other employees similiarly situated. No employee may be a party to any such action unless the employee or the employee's parent or guardian gives consent in writing to become such a party and such consent is filed with the Secretary.

"(B) Upon receipt of a petition filed in accordance with subparagraph (A), the Secretary within 10 days shall assign the petition to an administrative law judge appointed pursuant to section 3105 of title 5, United States Code. The administrative law judge shall conduct a hearing on the record in accordance with section 554 of title 5, United States Code, with respect to such petition within 30 days after assignment.

"(C) In any such proceeding, the employer shall have the burden of demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

"(D) In determining whether any special minimum wage rate is justified pursuant to subparagraph (C), the administrative law judge shall consider—

"(i) the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured; and

"(ii) the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity.

"(E) The administrative law judge shall issue a decision within 30 days after the hearing provided for in subparagraph (B). Such action shall be deemed to be a final agency action unless within 30 days the Secretary grants a request to review the decision of the administrative law judge. Either the petitioner or the employer may request review by the Secretary within 15 days of the date of issuance of the decision by the administrative law judge.

"(F) The Secretary, within 30 days after receiving a request for review, shall review the record and either adopt the decision of the administrative law judge or issue exceptions. The decision of the administrative law judge, together with any exceptions, shall be deemed to be a final agency action.

"(G) A final agency action shall be subject to judicial review pursuant to chapter 7 of title 5, United States Code. An action seeking such review shall be brought within 30 days of a final agency action described in subparagraph (F).

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MURPHY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. MURPHY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2884) to amend the Fair Labor Standards Act of 1938 to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor, an identical bill passed by the other body, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2884

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (c) of section 14 of the Fair Labor Standards Act of 1938 (29 U.S.C. 214) is amended to read as follows:

"(c)(1) The Secretary, to the extent necessary to prevent curtailment of opportunities for employment, shall by regulation or order provide for the employment, under special certificates, of individuals (including individuals employed in agriculture) whose earning or productive capacity is impaired by age, physical or mental deficiency, or injury, at wages which are—

"(A) lower than the minimum wage applicable under section 6,

"(B) commensurate with those paid to nonhandicapped workers, employed in the vicinity in which the individuals under the certificates are employed, for essentially the same type, quality, and quantity of work, and

"(C) related to the individual's productivity.

"(2) The Secretary shall not issue a certificate under paragraph (1) unless the employer provides written assurances to the Secretary that—

"(A) in the case of individuals paid on an hourly rate basis, wages paid in accordance with paragraph (1) will be reviewed by the employer at periodic intervals at least once every 6 months, and

"(B) wages paid in accordance with paragraph (1) will be adjusted by the employer at periodic intervals, at least once each year, to reflect changes in the prevailing wage paid to experienced nonhandicapped individuals employed in the locality for essentially the same type of work.

"(3) Notwithstanding paragraph (1), no employer shall be permitted to reduce the hourly wage rate prescribed by certificate under this subsection in effect on June 1, 1986, of any handicapped individual for a period of two years from such date without prior authorization of the Secretary.

"(4) Nothing in this subsection shall be construed to prohibit an employer from maintaining or establishing work activities centers to provide therapeutic activities for handicapped clients.

"(5)(A) Notwithstanding any other provision of this subsection, any employee receiving a special minimum wage at a rate specified pursuant to this subsection or the parent or guardian of such an employee may petition the Secretary to obtain a review of such special minimum wage rate. An employee or the employee's parent or guardian may file such a petition for and in behalf of the employee or in behalf of the employee and other similarly situated. No employee may be a party to any such action unless the employee or the employee's parent or guardian gives consent in writing to become such a party and such consent is filed with the Secretary.

"(B) Upon receipt of a petition filed in accordance with subparagraph (A), the Secretary within 10 days shall assign the petition to an administrative law judge appointed pursuant to section 3105 of title 5, United States Code. The administrative law judge shall conduct a hearing on the record in accordance with section 554 of title 5, United States Code, with respect to such petition within 30 days after assignment.

"(C) In any such proceeding, the employer shall have the burden of demonstrating that the special minimum wage rate is justified as necessary in order to prevent curtailment of opportunities for employment.

"(D) In determining whether any special minimum wage rate is justified pursuant to subparagraph (C), the administrative law judge shall consider—

"(i) the productivity of the employee or employees identified in the petition and the conditions under which such productivity was measured; and

"(ii) the productivity of other employees performing work of essentially the same type and quality for other employers in the same vicinity.

"(E) The administrative law judge shall issue a decision within 30 days after the hearing provided for in subparagraph (B). Such action shall be deemed to be a final agency action unless within 30 days the Secretary grants a request to review the decision of the administrative law judge. Either the petitioner or the employer may request review by the Secretary within 15 days of the date of issuance of the decision by the administrative law judge.

"(F) The Secretary, within 30 days after receiving a request for review, shall review the record and either adopt the decision of the administrative law judge or issue exceptions. The decision of the administrative law judge, together with any exceptions, shall be deemed to be a final agency action.

"(G) A final agency action shall be subject to judicial review pursuant to chapter 7 of title 5, United States Code. An action seeking such review shall be brought within 30 days of a final agency action described in subparagraph (F).

Mr. MURPHY (during the reading). Mr. Speaker, I ask unanimous consent that the Senate bill be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar bill (H.R. 5614) was laid on the table.

PERMISSION FOR COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION TO FILE REPORTS ON SUNDRY BILLS

Mr. BOSCO. Mr. Speaker, I ask unanimous consent that the Committee on Public Works and Transportation have until midnight tonight, October 1, 1986, to file reports on the following bills:

S. 2880, to provide a temporary extension of the interstate transfer deadline for H-3, amended;

H.R. 5617, to designate the Federal building and U.S. courthouse at 316 North Robert Street, St. Paul, MN, as the "Warren E. Burger Federal Building and United States Courthouse," amended; and

H.R. 5602, to amend the Public Buildings Act of 1959 to authorize the Administrator of General Services to issue obligations to finance the acquisition and construction of public buildings, amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection

NATIONAL CHILD IDENTIFICATION AND SAFETY INFORMATION DAY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 438) to designate October 31, 1986, as "National Child Identification and Safety Information Day," and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, under my reservation, I yield to the gentleman from Arizona [Mr. McCAIN] who is one of the sponsors of House Joint Resolution 438, National Child Identification and Safety Information Day.

Mr. McCAIN. I thank the gentleman for yielding.

Mr. Speaker, on March 7, 1986, I became one of the original cosponsors of House Joint Resolution 438, legislation to designate Halloween as the National Identification and Safety Information Day.

It is estimated that 1.8 million children are reported missing each year. Some 50,000 of these children will not be found. These alarming numbers call on us to do all we can to address this problem.

There is no need to protect those who would steal our children from us. It is time to deal with this activity in a manner which fits its nature. We must protect our children, for if not us, who will? It is for this compelling reason that last year I introduced H.R. 605, legislation mandating a life sentence without parole for any nonparent who kidnaps a minor. If a homicide results from a kidnaping, this legislation then calls for a mandatory life sentence or the death penalty, depending upon the courts determination.

We must remove these individuals from society on a permanent basis, so that no other children will be lost to them. It is not too harsh to say that one who kidnaps a child has forfeited his right to freedom.

Child kidnaping and exploitation lead to child pornography, which has become a rampant industry. Therefore I have also introduced H.R. 2539, the Children's Protection Act, which would amend title 18, United States Code, the Racketeer Influenced and Corrupt Organizations [RICO] provisions, with respect to offenses relating to the sexual exploitation of children. I felt then as I do now that we as Members of Congress must provide a deterrent to combat the mistreatment of our children. The bill would allow:

Criminal penalties of up to 20 years imprisonment, forfeiture of property acquired as part of a pornography enterprise, and a fine of up to $25,000 for those involved in child pornography;

The right of victims to issue injunctions against those engaged in child pornography related offenses; and the Child's Protection Act would also:

Make advertisement of child pornography a Federal crime;

Increase penalties for offenses involving the transportation of minors for the purpose of sexual exploitation.

As legislators and parents we have a duty to enact responsible measures that will help end the pornographic exploitation of our Nation's children.

Child safety days are an important step against this dilemma plaguing our Nation. The popularity of such events in my State have been overwhelming. For example, in 1984 the mayors of my congressional district and I proclaimed June 22 as Protect Our Children Day. At shopping centers throughout the area, special packets of information were available for parents and their children, teaching them how to prevent the tragedy of a missing child.

With the invaluable assistance of local police and fire departments, children were fingerprinted and had other physical characteristics recorded. Local photographic stores took photos of each child, and area dentists and dental hygienists charted their teeth.

As with so many other problems, education and dissemination of information is the key. We must become aware of the problem and divert these crimes from occurring. Yet we also need legislation to back these education and prevention efforts up. No more visible day than Halloween exists to highlight the importance of our children's safety. I urge you to vote for the passage of House Joint Resolution 438 so that our children may grow up in a safe and secure society.

Mr. LUNGREN. Mr. Speaker, I rise today in support of House Joint Resolution 438, which would make October 31 of this year National Child Identification and Safety Information Day. I chose October 31 as National Child Identification and Safety Information Day because Halloween is probably the one night each year when parents are most acutely aware of the potential dangers facing their children.

This bill has a twofold purpose: First, to emphasize the need to provide our children with intensive preventive education. Parents need to take the time to carefully explain to their children how to be cautious and how to handle potentially dangerous situations. Second, this bill is intended to challenge parents to compile an identification file on each of their children. Each file should include finger prints, current photographs, video tapes, or dental records.

While this resolution may not grab the front page headlines, it is an appropriate action given the epidemic proportions of missing children in the United States each year. By supporting this measure, Members of this body will be sending a definite signal to their constituents that we in Congress believe missing children to be a serious yet controllable problem given the proper precautions—teaching children safety information.

Therefore, Mr. Speaker I urge my colleagues to vote yes on House Joint Resolution 438.

Mr. BRYANT. Mr. Speaker, because Halloween is a holiday celebrated primarily by children, it is a time when they are especially vulnerable to attack or abduction. Halloween is also the day on which parents often realize the full spectrum of potential dangers facing their children. For this reason, October 31, Halloween, was chosen as National Child Identification and Safety Information Day.

Thousands of children are kidnaped each year. The public is slowly, but increasingly, becoming aware of the abduction and exploitation of our children. To find these children, law enforcement officials must be able to accurately identify them. This is why it is important that they have access to a current photograph, a video tape, fingerprints, and/or the dental records of the missing child.

I support this legislation because I want parents to realize, before a tragedy occurs, the importance of having available the most complete means of identifying their children. Parents should be encouraged to keep identification files.

This day should remind the public of child identification techniques and child safety measures. This observance will assist organizations which are dedicated to teaching safety measures to children by encouraging preventive education and it will assure them of our interest in their endeavors.

I hope you will support this legislation, House Joint Resolution 438, as I believe it is a worthy measure.

Mr. YOUNG of Missouri. Mr. Speaker, I rise in support of House Joint Resolution 438 and would like to commend the gentleman from California [Mr. LUNGREN] and the subcommittee chairman, Mr. GARCIA, for their work on this resolution.

As a father and grandfather, I have experienced the worry and concern that goes along with being a parent. I have been fortunate that my family has not been touched by the tragedy of a missing child; however, I want to be sure that we are prepared should we ever face that situation. Several of my grandchildren have had identification files created for them, and we plan to have the others completed by Halloween.

Halloween is the one day when every parent's concern about child safety is peaked, which makes October 31 an appropriate day for National Child Identification and Safety Information Day.

To protect our children, we cannot underestimate the importance of having identification files on each of them. These files must include fingerprints, photographs and dental records. Identification files would provide critical assistance to the authorities, should a child ever be lost. In addition, we must talk openly with our children about safety and encourage education on this issue.

The problems and tragic consequences surrounding the plight of missing children have gained national attention. Congress has laid the foundation for a national system to assist in the search for missing children, but for now each parent must take the steps necessary to protect their own children.

I urge my colleagues, and all parents, to have America's children fingerprinted and photographed by Halloween.

Mr. BIAGGI. Mr. Speaker, I rise in support of House Joint Resolution 438, which seeks to designate October 31, 1986 as National Child Identification and Safety Information Day. This legislation is designed to keep our Nation's attention focused on the epidemic problem of missing children and on educating both parents and children on preventing this problem from growing.

As a senior member of the Education and Labor Committee, I strongly believe that we must remain committed to educating our children on safety. Our parents and our schools must continue in their efforts to caution their children of possible dangers in the school year, the playground, and most importantly, on the path from home to school. We must equip our children with the skills and knowledge to protect themselves against would-be kidnapers.

Missing children are our Nation's most tragic problem—both for the parent and the child. This is a problem we have begun to address. I am heartened to see the television and media attention to curing this problem—the commercials showing children how to react when approached by a stranger, the advertisements picturing missing children, and the television programs devoted to this menace to our society. We commend those involved in and responsible for these positive actions and urge the continuation of support and interest in the problem of missing children.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. Res. 438

Whereas the American people are becoming increasingly aware of the high incidence of abduction and exploitation of the children of the United States;

Whereas it is estimated that more than 50,000 children will be kidnaped during 1985;

Whereas many organizations have dedicated themselves to teaching safety measures to children;

Whereas to further protect the children of the United States, parents should maintain fingerprint and other identification records that will aid in locating missing children;

Whereas the evening of October 31, which is known as Halloween, is a night when children are especially vulnerable to abduction or attack;

Whereas there is a need on Halloween for parents to take extra precautions to ensure the safety of their children; and

Whereas October 31, 1986, is an appropriate day on which to commemorate the need for educating the public regarding child identification techniques and other child safety measures: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 31, 1986, is designated as "National Child Identification and Safety Information Day", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GREEK INDEPENDENCE DAY: A NATIONAL DAY OF CELEBRATION OF GREEK AND AMERICAN DEMOCRACY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 308) designating March 25, 1986, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy," and ask for its immediate consideration in the House.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, under my reservation I yield to the gentleman from North Carolina [Mr. NEAL], the chief sponsor of Senate Joint Resolution 308 designating March 25, 1986, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy."

Mr. NEAL. Mr. Speaker, I rise in support of my resolution to designate March 25, 1987 as Greek Independence Day, A National Day of Celebration of Greek and American Democracy.

Mr. Speaker, it was on March 25, 1821, that Greek patriot, Alexander Ypsilanti, began a successful revolt against 400 years of subjugation by the Ottoman Empire. The revolution marked not only the dawn of modern Greece, Mr. Speaker, but also the rebirth of a long dormant democratic tradition. As we learned in high school civics, the concept of democracy—rule by the people—is the legacy of the ancient Greek civilization. The ancient Greeks, as we know, flourished under a democratic form of government in which the supreme power to govern was vested in the people.

In framing our representative democracy, our Founding Fathers drew heavily upon the example of the ancient Greeks. While, of course, there are many differences between modern American and ancient Greek democracy, many of the underlying principles are strikingly similar.

The high value we place upon individual freedoms and equal justice—and the constitutional right to the trial by jury—can be traced, for example, to ancient Greece. And aside from law, our lives are touched daily by the influence of Greek philosophy, art, architecture, medicine, and language.

Mr. Speaker, I believe that our common experience with democracy has forged an unbreakable bond between the Greek and American peoples. It would, indeed, be fitting to use the occasion of Greek Independence Day to join with the Greek people in celebrating one of mankind's greatest achievements: democratic government.

Also, Mr. Speaker, the State Department has indicated that this resolution would do much to further amicable and fruitful relations between the Governments of Greece and the United States. An expression of this sentiment is contained in a letter I received from George Papoulias, the Greek Ambassador to the United States. I am submitting for the record the text of the Ambassador's letter.

The text follows:

EMBASSY OF GREECE,
Washington, DC, March 18, 1986.

Hon. STEPHEN NEAL,
House Office Building, Washington, DC,

DEAR CONGRESSMAN NEAL: I was very touched and pleased to hear of your Resolution marking the commemoration of March 25th as the Day for Democracy, on the occasion of the National Day of Greek Independence.

Your initiative in this regard is yet another contribution made by you towards the strengthening of the traditional ties of friendship between the United States and Greece, and I am personally deeply grateful for your interest and dedication to our common ideals.

Please accept my warmest thanks and best wishes to you for your continued success.

Yours sincerely,
GEORGE PAPOULIAS,
Ambassador.

Let us remember, Mr. Speaker, that Greece is one of our important NATO allies. Our two nations were close allies in World War II and in Korea, and recently we have witnessed a strengthening of ties in our traditional relationship. This week we are honored to welcome to the United States Greece's National Economics Minister, Mr. Constantine Simitis, and that nation's Foreign Minister, Mr. Karolos Papoulias. Certainly we would welcome, Mr. Speaker, the continued improvement in Greco-American relations.

I would be remiss, indeed, Mr. Speaker, if I failed to thank the many people who have worked hard to gain support for this initiative. Particularly, I would like to mention Mr. John Chamis of Winston-Salem, NC, and Mr. Andy Manatos, the former Assistant Secretary of Commerce for Congressional Relations. But additionally, Mr. Speaker, I need to thank all 224 of my colleagues who cosponsored this measure.

Again, Mr. Speaker, I believe that this commemoration of Greek Independence affords Americans an excellent opportunity to acknowledge and celebrate the bonds that link the Greek and American cultures, as well as to give thanks for our great fortune in being able to live in a democratic society.

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Mr. HANSEN. Mr. Speaker, further reserving the right to object, I yield to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I join my colleagues in support of Senate Joint Resolution 308, designating March 25, 1987, as "Greek Independence Day: A Celebration of Greek and American Democracy." As a cosponsor of the House companion bill, House Joint Resolution 381, I am pleased that we are able to consider this measure prior to adjournment, thereby assuring that Americans of all ethnic persuasions will be able to participate in the events marking the close ties between our two nations. I want to thank the gentleman from North Carolina [Mr. NEAL] for introducing this measure.

The concept of democracy, an ideal which permeates every corner of American life, was born in Greece over 2,000 years ago. Indeed it was upon that ancient Greek civilization that the founders of our great Nation drew when they fashioned our Declaration of Independence and later our United States Constitution. As we stand on the House floor today, let us not forget that it was the Greeks that gave us the representative form of government that has served our Nation so well for more than 200 years.

Each year millions of Greeks throughout the world celebrate March 25, as Greek Independence Day. It was on that day in 1821 that Alexander Ypsilanti proclaimed Greece independent from the Ottoman Empire and began a fight for freedom that was to last almost 10 years. By designating March 25, 1987, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy," we will be reaffirming our strong allegiance to the principles of Democracy which gave birth to our two great nations. As a member of the Committee on Foreign Affairs, I feel strongly that this designation will only serve to improve relations between our Nation and the Papandreou government.

Accordingly I urge my colleagues to give their strong support to Senate Joint Resolution 308, and to join in the many festivities and celebrations recognizing March 25, 1987, as Greek Independence Day.

Mr. YATRON. Mr. Speaker, I rise in support of House Joint Resolution 381, legislation designating March 25, 1986, and every March 25 thereafter, as "Greek Independence Day." On March 25, 1821, after four centuries of Ottoman rule, Greeks rose up in arms, fought valiantly, and finally achieved a dream centuries old—liberation from the Turkish yoke.

At the time, the Greek revolution was looked at in askance by revolutionary forces prevailing in Europe in the aftermath of the Napoleonic wars. Outnumbered and outgunned, thousands fought and died singing the poem of Rigos Feros that began, "Better that I live for 1 hour as a free man instead of living 40 years as a slave."

The struggle of the Greek people and their cry for freedom was heard throughout the world and captured the imagination of freedom-loving people everywhere. According to newspaper reports of the period, hundreds of volunteers from Europe and America flocked to Greece and joined the ranks of the revolutionaries.

In commemorating the Hellenic revolution, Americans of Greek descent once again celebrate their heritage and their love for liberty, values their ancestors gladly fought and died for.

I would like to commend the gentleman from North Carolina [Mr. NEAL] for sponsoring this very worthwhile resolution.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 308

Whereas the ancient Greeks developed the concept of democracy, in which the supreme power to govern was vested in the people;

Whereas the Founding Fathers of the United States of America drew heavily upon the political and philosophical experience of ancient Greece in forming our representative democracy;

Whereas March 25, 1986, makes the one hundred and sixty-fifth anniversary of the beginning of the revolution which freed the Greek people from the Ottoman Empire;

Whereas these and other ideals have forged a close bond between our two nations and their peoples; and

Whereas it is proper and desirable to celebrate with the Greek people, and to reaffirm the democratic principles from which our two great nations sprang: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That March 25, 1986, is designated "Greek Independence Day: A National Day of Celebration of Greek and American Democracy", and that the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe the designated day with appropriate ceremonies and activities.

AMENDMENT OFFERED BY MR. GARCIA

Mr. GARCIA. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. GARCIA: Page 2, line 3, strike "March 25, 1986, is designated" and insert "March 25, 1987, is designated as".

The SPEAKER pro tempore. The question is on the amendment offered by the gentleman from New York [Mr. GARCIA].

The amendment was agreed to.

AMENDMENT TO THE PREAMBLE OFFERED BY MR. GARCIA

Mr. GARCIA. Mr. Speaker, I offer an amendment to the preamble.

The Clerk read as follows:

Amendment to the preamble, offered by Mr. GARCIA: In the third paragraph of the preamble, strike "March 25, 1986, makes the one hundred and sixty-fifth" and insert "March 25, 1987, marks the 166th".

The SPEAKER pro tempore. The question is on the amendment to the preamble offered by the gentleman from New York [Mr. GARCIA].

The amendment to the preamble was agreed to.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed.

TITLE AMENDMENT OFFERED BY MR. GARCIA

Mr. GARCIA. Mr. Speaker, I offer an amendment to the title.

The Clerk read as follows:

Title amendment offered by Mr. GARCIA: Amend the title so as to read "Joint Resolution to designate March 25, 1987, as 'Greek Independence Day: A National Day of Celebration of Greek and American Democracy'.".

The title amendment was agreed to.

A motion to reconsider was laid on the table.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 4759, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1987

Mr. HAMILTON. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight to file a conference report on the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the U.S. Government, the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

NATIONAL HUNGARIAN FREEDOM FIGHTERS DAY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 385) to designate October 23, 1986, as "National Hungarian Freedom Fighters Day," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, under my reservation of objection, I yield to the gentleman from New York [Mr. HORTON], who is the chief sponsor of House Joint Resolution 657.

Mr. HORTON. Mr. Speaker, I rise in support of Senate Joint Resolution 385, which designates October 23, 1986, as "National Hungarian Freedom Fighters Day."

October 23 of this year holds a special significance in the lives of those who fought so bravely against the Soviet aggressors. For it was on that day, 30 years ago, that the Soviet troops rolled into their country. For days, they fought—literally—with pitchforks against tanks and flamethrowers, in an ultimately futile attempt to gain freedom for themselves and their country.

As chairman of the Committee to Commemorate the Hungarian Revolution of 1956, this resolution serves as a fitting tribute to the noble principles, the gallant efforts, and the historical impact of the Hungarian freedom fighters efforts.

Mr. Speaker, it was three decades ago when the Hungarians' valiant attempt to gain freedom was crushed, but Hungarians and Hungarian-Americans still recall with pride the events of the Uprising.

Too often the world sees the country of Hungary as a "part" of the Soviet Union. This resolution helps us to remember that it is only a "part" in the sense that it remains chained to its oppressor.

The continued oppression of the Hungarian peoples by the Government of the Soviet Union is a clear and direct violation of the principles set forth in the Yalta Agreement of 1945, the Universal Declaration of Human Rights, and the Helsinki Act. We cannot forget the sacrifices made during those fateful days 30 years ago. For the sake of freedom in Eastern Europe, we must not forget.

Mr. Speaker, I would like to especially thank the many people who have been helpful in passing this resolution. Members of the Committee to Commemorate the Hungarian Revolution include Vice President GEORGE BUSH; Speaker O'NEILL, Majority Leader WRIGHT, Minority Leader MICHEL, DANTE FASCELL, BILL BROOMFIELD, JACK KEMP, and STENY HOYER in the House; BOB DOLE, ROBERT BYRD, DICK LUGAR, AL D'AMATO and CLAIBORNE PELL in the Senate; and Governors Mario Cuomo and George Deukmejian. Without their continued support, this commemoration would never have been given the full publicity it deserves.

I would also like to extend great thanks to DON RIEGLE, the Senator from Michigan, who introduced the resolution in the Senate that we are discussing today.

Finally, thanks to Steve Gereben, the executive secretary of the Coordinating Committee of Hungarian Organizations in North America, and Laszlo Pasztor, the honorary chairman of the National Republican Heritage Groups Council. Steve and Laszlo have devoted scores of hours to this commemoration. Their continued dedication to Hungary and to the cause of freedom for their fellow countrymen should be publicly noted and congratulated.

Mr. HANSEN. Mr. Speaker, further reserving the right to object, I yield to the gentleman from New York [Mr. GILMAN].

Mr. GILMAN. Mr. Speaker, I rise in strong support of House Joint Resolution 657, a resolution proclaiming October 23, 1986, as "National Hungarian Freedom Fighters Day," and wish to thank and commend my colleague, the distinguished gentleman from New York [Mr. HORTON], for bringing this important measure before us today.

As the ranking minority member of the Subcommittee on Europe and the Middle East of the Foreign Affairs Committee, I am fully aware of the courageous history of Hungarians in general, and in particular, the heroic actions of thousands of Hungarians who fought 30 years ago to free themselves of Soviet domination. Those Hungarians fought a formidable Soviet force with little or no arms. They faced Soviet tanks with nothing but buckets of gasoline, which they hurled on the engines to immobilize the tanks. Although the overwhelming force of the Soviet Army was able to suppress the ill-equipped but courageous Hungarian freedom fighters, I believe their defiance of oppression should be remembered and remains an inspiration for those who still long for freedom.

On October 23, Americans from all walks of life will be able to commemorate the valor of these Hungarian freedom fighters under the leadership of the Committee To Commemorate the 1956 Hungarian Revolution. Mr. HORTON is the chairman of that committee, and I am confident that the remembrances organized by the committee will help the American people recall that the message the Hungarian people sent the Soviet Union is still relevant today: that the Hungarian people recall with pride their heroic attempt to free themselves from the burden of oppression, and that the spirit of freedom still resides in the Hungarian people. A congressional tribute to the 30th anniversary of the Hungarian uprising and the brave freedom fighters who fought the Soviets despite the overwhelming odds is an appropriate honor for the Hungarian people and their efforts in the past and their hopes for the future. Accordingly, I urge my colleagues to support House Joint Resolution 657, commemorating October 23, 1986, as "National Hungarian Freedom Fighters Day."

□ 1425

Mr. HANSEN. Mr. Speaker, further reserving the right to object, I yield to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. I thank the gentleman for yielding to me.

Mr. Speaker, I wanted to associate myself with the remarks of both gentlemen from New York. As an individual who represents Cleveland, OH, which has more Hungarians than the city of Budapest. I want to congratulate you gentlemen on this resolution.

I went to school with many young people at that time, in the 1950's, who came from Hungary as a result of their efforts to retain or maintain or at least overthrow the government which is so totalitarian and vindictive. What was Hungary's loss was our gain. It is very important to remember on this anniversary year their efforts.

Mr. HANSEN. Mr. Speaker, further reserving the right to object, I yield to the gentleman from California [Mr. LUNGREN].

Mr. LUNGREN. I thank the gentleman for yielding to me.

Mr. Speaker, I rise in support of the bill before us. As one who was merely 10 years old and in grade school at the time this happened and watched it on the television screens unfolding before our eyes, and then had the opportunity to meet a number of the people who fled Hungary at that time and became outstanding citizens of our community, members of our church, members of our southern California area, I stand in strong support of this. I commend the committee for bringing it forward.

Mr. RITTER. Mr. Speaker, as a cosponsor of this legislation, I am pleased to rise in support of "National Hungarian Freedom Fighters Day." The Hungarian revolution of 1956 stands in history as a day when proud people, took courage in hand, and struck out for a new way, a way that embodied true peace, that is peace with freedom.

On October 23, 1986, we will mark the anniversary of the failed attempt by the Hungarian people to free themselves from Soviet imperialism. On that date, three decades ago, university students in Budapest, organized to express their solidarity with striking workers in Poland, and to vent their frustration with the intransigence of the Hungarian dictatorship headed by Matyas Rakosi. They marched to the radio building to express their dissatisfaction through a broadcast. Within minutes dozens of them lay dying from wounds inflicted by the bullets of the Hungarian police.

The following day, the Hungarian Politburo consented to the students' demands and elected Imre Nagy to the premiership. He proceeded to announce Hungary's neutrality, its withdrawal from the Warsaw Pact, and the intention to hold free multiparty elections.

Within hours, what began as a humble movement, initiated by a number of disenchanted students and supported by Imre Nagy, had gained the support of a vast number of Hungarian citizens, united in their desire to be liberated from Soviet oppression.

Two days after Hungary was declared an independent state, the military forces of the Soviet Union moved into Budapest and crushed the brave attempt by the freedom fighters to regain their sovereignty.

Their effort, against massive odds, against Soviet tanks, proved that the flame of freedom was very bright indeed. Until this day, that flame of freedom burns within Hungary and within Hungarian people all over the world as well.

This flame is alive in the hearts of thousands of Hungarian-American's living in the Lehigh Valley of Pennsylvania. Looking forward to this year's 30th anniversary "Commemoration and Celebration" of the 1956 events on October 26, I think back on past "Commemorations and Celebrations" in particular, the 25th anniversary in 1981, and others since. We have cherished the memory of 1956 and are dedicated to seeing the events of that attempt at peace with freedom, live forever.

It is important that we in the United States continue to recognize the Hungarian freedom fighters on a day such as National Hungarian Freedom Fighters Day.

It is important because, not only do we recognize the bravery, the courage against great odds of the Hungarian people, but we recognize that they understood what we, too, must understand.

That is, that peace must encompass freedom, that the peace of submission is not real peace. It is no peace at all.

They understand, by opposing their oppressors, that there was a greater peace, a peace involving freedom, the freedom to express, the freedom to dissent, the freedom to assemble, the freedom to publish, and the freedom to worship their own God, not the gods of the state.

Peace and freedom were supported in those days of the Hungarian revolution in 1956. Peace and freedom are great issues for all of mankind these days and by recognizing the valiant efforts of the Hungarian people in 1956, we recognize today the importance of peace and freedom and their contribution to it.

Mr. DINGELL. Mr. Speaker, I rise today in support of Senate Joint Resolution 385, a joint resolution to designate October 23, 1986, as "National Hungarian Freedom Fighters Day," which was passed by the Senate on September 29. I would like to note that I am a cosponsor of the House version of this resolution, House Joint Resolution 657, which is identical to the resolution being considered today. The year 1956 marks a turbulent time in the history of the Hungarian nation; a time when brave Hungarian freedom fighters fought for independence from oppressive Soviet political and military control. I rise in salute of these honorable and noble fighters whose cause remains a legend 30 years later in 1986.

Nearly 25 years ago, on October 23, enormous crowds welled up on the streets of Budapest to protest Russian presence in Hungary. These brave and ambitious people worked to establish a free, independent, and socialist Hungary. Russians, fearful of Polish and Yugoslavian sympathy for Hungarian causes, retaliated to reestablish control a few days later putting an abrupt end to the young revolution. Nevertheless, efforts of these Hungarians will forever be honored in American memories as courageous and admirable.

Americans share a uniquely common bond with countries which have struggled for independence. As we annually commemorate the bravery of American fighters in 1776, so must we recognize efforts of the similarly brave Hungarians of 1956. Let relatives and loved ones of the Hungarian freedom fighters know with certainty that these efforts were not in vain. Rather, their ideals and visions live with us today as a continual reminder of these people and their greatness.

Hungarian-Americans remain proud of their heritage and of the valor, foresight and courage of these fighters. I share that respect and strongly urge my colleagues to join with me in commemorating October 23 as "National Hungarian Freedom Fighters Day."

Mr. CRANE. Mr. Speaker, I would like to rise in support of House Joint Resolution 657, legislation introduced by my colleague, Representative HORTON, to commemorate the 30th anniversary of the Hungarian patriots' heroic, but tragic, attempt to free their great nation from Soviet domination. For more than 40 years, the Soviet Union has continued to occupy Hungary and the other Eastern European countries it colonized at the end of the Second World War. The legislation before us today will allow those 5 days of freedom earned by the thousands of brave Hungarian patriots in late October 1956 to be officially remembered.

Many brave Hungarian men and women, including students, politicians, workers, and writers, gave their lives during and shortly after the brief uprising of 1956. Many thousands more were tortured, imprisoned or exiled. A few were fortunate enough to escape through Austria, leaving behind a freedomless hell, a nation still kept captive by the Soviet Union and its puppet regime. And yet, in Hungary, as in many parts of the world, this historic and inspiring event is rarely mentioned, and those who bravely gave their lives while trying to obtain liberty and the right of self-determination for their country lie in unmarked mass graves, unkempt and unremembered by younger generations.

I would hope that the generations of Hungary could view the Hungarian freedom fighter as I do, as being synonymous with bravery. History will record him as a composite. He had many faces. He was an 11-year-old boy throwing benzine flashes, or Molotov cocktails, at a 40-ton Soviet tank. He was a 45-year-old woman shot while defying the secret police. He was a 25-year-old factory worker or farmer seizing control of the Communist operated Radio Budapest. He was one of the hundreds of Hungarian youths brutally hung by their Soviet captors and left hanging for weeks from the bridges of Budapest so that their fate would not be forgotten by the witnesses of the revolt. He was all of them and more. His actions were marked by a relentlessness and determination born of desperation. He was from all walks of life—intellectual, student, farmer, and storekeeper. United against the enemy by an overpowering common impulse, spirit, and emotion—impulse born out of the feeling that the moment was right—spirit born of Hungarian history and tradition—emotion born of shared suffering under the Soviet police state.

But the lesson of the event stands. The torch the Hungarian freedom fighters held in their revolt against Soviet communism was picked up again—in Czechoslovakia in 1968, in Afghanistan in 1979, and Poland in 1980. Those attempts to regain deprived freedom mirror the determination of the oppressed to be free and independent. The ideals fought for by the Hungarian freedom fighter, the same ideals fought for by the father of our own American Revolution, are not dead. They will never die. The Almighty imbued man with certain inalienable rights and as long as man can breathe, he will seek life, liberty, and the pursuit of happiness.

House Joint Resolution 657 gives us an opportunity, however, to remember and recognize these brave patriots, and to remind all Americans of the fragility of our freedoms. Thomas Jefferson, one of the architects of our Republic, once made a statement that bears repeating as we honor the brave patriots of Hungary. He declared that, "I have sworn upon the altar of God, eternal hostility against every form of tyranny over the mind of man." It is now our privilege to demonstrate our "eternal hostility against every form of tyranny over the mind of man" by cosponsoring House Joint Resolution 657. I urge my colleagues to support this resolution.

Elijen A. Szabadsag—long live freedom.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. Res. 385

Whereas the antidemocratic Government of Hungary was installed and is supported by the Government of the Soviet Union;

Whereas, on October 23, 1956, freedom fighters in Hungary attempted to establish a coalition government and free the people of Hungary from oppression by ending the political and economic domination of the people of Hungary by the Government of the Soviet Union;

Whereas the continued oppression of the people of Hungary by the Government of the Soviet Union is a violation of the principles set forth in the Yalta Agreement of 1945, the Universal Declaration of Human Rights, and the Helsinki Final Act of the Conference on Security and Cooperation in Europe, of which the Government of the Soviet Union is a signatory or under which such Government is otherwise obligated;

Whereas the Congress supports the efforts of the people of all nations to assert the right of self-determination; and

Whereas October 23, 1986, is the thirtieth anniversary of the uprising of the people of Hungary against the antidemocratic Government of Hungary: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 23, 1986, is designated "National Hungarian Freedom Fighters Day", and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

YEAR OF THE READER

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 671) designating 1987 as the "Year of the Reader," and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object but would simply like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, under my reservation I yield to the gentlewoman from Ohio [Ms. OAKAR].

Ms. OAKAR. I thank the gentleman for yielding to me.

Mr. Speaker, I want to applaud the efforts of the gentleman from Utah on behalf of the minority side, and, of course, my distinguished chairman and majority leader of the committee, Mr. GARCIA.

The joint resolution would designate 1987 as the "Year of the Reader." I am sure everyone is aware of the focus on the illiteracy crisis affecting the American people and we know that we have seen special reports by networks and daily articles in our most prominent newspapers suggesting this widespread illiteracy among adults who may not be able to read.

The truth of it is, while that is a very, very critical problem, the truth of it is that with our high-technology world and our multimedia kind of world, most people do not read as much as they should. Most people who are able to read, unfortunately, spend much more time having things kind of placed out in front for them as we see in the movies or in television and so forth, than they would having their imaginations rekindled and the imagery of what their minds have to produce based on the language that they are reading.

I think it is important that we say by way of resolution that we are committed to excellence in the area of reading and in the area of understanding our own language. I am, frankly, still on a leave of absence from one of the colleges in Cleveland where I taught English literature and some of the dynamics related to communication arts, and I must say that I miss doing that. But I hope that as a country we are just totally committed to two things: One, removing the illiteracy problem which gives people a sense of hopelessness if they really do not have basic abilities to read.

The second thing is that I hope that we, by this resolution and our commitment to education, which hopefully will be a priority in this country, will reemphasize reading. Most of us had parents who sometimes, mothers especially, who sometimes would read to us as little children. We do not see that as much any more. I think it does start when you are a youngster. I hope that we realize the value of reading and works that we can partake in and be enriched by.

We know that we will be much more imaginative as a society and as a people if we have a commitment to reading. I especially want to thank the gentleman for bringing up this resolution so expeditiously.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. Res. 671

Whereas the ability and opportunity to read are of fundamental importance to everyone;

Whereas this Nation's democratic, individualistic tradition depends on a literate, informed citizenry;

Whereas the National Commission on Reading, the Librarian of Congress, and others have recently reported that an alarmingly large number of Americans are not able or motivated to read;

Whereas the Center for the Book in the Library of Congress has concluded that there is an urgent need to focus national attention on the importance of reading and to strengthen national and local efforts to combat illiteracy; and

Whereas this Nation, built on ideas expressed through books and the printed word, will celebrate the Bicentennial of the Constitution in 1987: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That 1987 is designated the "Year of the Reader" and the President is authorized and requested to issue a proclamation encouraging parents, teachers, librarians, government officials, members of the book and business communities, and the people of the United States to observe such year with appropriate programs, ceremonies, and activities aimed at restoring reading to a place of preeminence in our personal lives and in the life of our Nation.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL YEAR OF THE TEACHER AND NATIONAL TEACHER APPRECIATION DAY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 635) to designate the school year of September 1986 through May 1987 as "National Year of the Teacher," and January 28, 1987, as "National Teacher Appreciation Day," and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I do not object but would simply like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, under my reservation of objection, I yield to the gentleman from Florida [Mr. Shaw].

Mr. SHAW. I thank the gentleman for yielding to me.

Mr. Speaker, I believe this resolution is an appropriate way to give teachers the respect, honor, and appreciation they deserve for their commitment to the goal of educating a nation.

It has been an honor to work on this resolution with my colleagues Mr. Ford, Mr. Ackerman, and Mr. Edwards of Oklahoma.

Our aim is to publicly recognize the tremendous contributions made by our Nation's teachers to the lives of our children by designating the school year of September 1986 through May 1987 as National Year of the Teacher.

In addition, as a tribute to the unique contributions that Christa McAuliffe made as a teacher, a special day within the National Year of the Teacher, January 28, 1987, will be designated as National Teacher Appreciation Day.

The positive influence that teachers have on their students is priceless. Day in and day out teachers enrich the minds and lives of students, therefore I urge my colleagues to support this bill.

Mr. BIAGGI. Mr. Speaker, I rise in support of House Joint Resolution 635, which designates the 1986-87 school year as the Year of the Teacher and sets aside January 28, 1987, as Teacher Appreciation Day. As a senior member of the House Education and Labor Committee, I strongly believe this legislation, of which I am a cosponsor, reaffirms our national commitment to providing our youth with quality education.

Over 20 years ago, President Lyndon B. Johnson said of education,

> Nothing matters more to the future of our country; not our military preparedness, for armed might is worthless if we lack the brain power to build a world of peace; not our productive economy, for we cannot sustain growth without trained manpower; not our democratic system of government, for freedom is fragile if citizens are ignorant.

The education of our youth is in the hands of our teachers. Our teachers should be counted among our Nation's greatest national resources.

Much has been said lately about the quality of education in our schools and about the ever-increasing problems of teacher recruitment and retention. Many vital pieces of legislation have been passed by the 99th Congress, legislation designed to increase the flow of teachers into the math and science disciplines, legislation to promote retraining and skills development of teachers, legislation to recruit teachers from other careers, and my own legislation designed to recruit new teachers by providing a 3-year guaranteed student loan deferment for those students entering teaching in areas of shortage. These are all very important measures aimed at addressing the growing teacher shortage our Nation is facing. Let us not, however, forget the millions of excellent teachers our Nation already has. House Joint Resolution 635 seeks to pay tribute to them.

I have heard an ignorant saying—"if you can't do, teach." Those who use this saying are ignorant of the work a teacher does and the knowledge and skills he or she must possess. Picture for a minute, an elementary school teacher. Their classroom is full of youngsters, from as many backgrounds as you can imagine, with a variety of strengths and weaknesses, and various levels of skill. The teacher must mold these children into a group, teaching them how to interact with each other, teaching them social skills, as well as teaching our youth the reading, writing, mathematics, science, social studies, art, and music foundations necessary to continue their education. This teacher must be competent in all of these subject areas. He or she must integrate the background of the students and recognize the special problems and learning disabilities that surface in the first years of school. He or she must remediate the slower student as well as motivate the gifted student. Often, besides a variety of economic and family backgrounds a teacher's classroom is filled with a variety of social, culture, and often language backgrounds.

Picture the high school teacher, who must be a master of his or her subject area. This teacher must be a role model during adolescence, the time when a student is rejecting authority. This teacher tries to instill into the student the love for poetry, geometry, American history, French, chemistry, or photography that he or she possesses. In high school classrooms, the talents of the students emerge, and the teachers must recognize and cultivate them. Or picture a postsecondary teacher who prepares the student for his or her chosen career, instilling in the student the level of excellence necessary to master the introductory level positions, and the skills vital to moving up the career level. If these people can't "do", I don't know who can. A teacher must be an instructor, a counselor, a parent, and a friend.

Our classrooms are filled with excellent teachers. They open the world to our children, teaching them to read, to write, to communiciate, to compute, to analyze, to imagine and to dream. They prepare our children for the future—their future and our future. As much as we have a vested interest in our future, we have a vested interest in our teachers.

During this Year of the Teacher, let us not only address the problems with our education system, let us appreciate the excellence we can now find in our schools. While we recruit new teachers, let us be grateful for those we have. And let us show that appreciation, not only with words of thanks, but also with our respect and hopefully with assistance—financial, educational, and manpower assistance. In this Year of the Teacher, let us commit ourselves as a nation to put the teacher as our national priority. We are thereby putting our children, our illiterate, our uneducated, and our job force as our national priorities.

□ 1435

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. (Mr. Gray of Illinois). Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. Res. 635

Whereas the education of our Nation's youth is the foundation of America's strength in the future;

Whereas teachers are entrusted not only with imparting knowledge, but also with instilling our youth with basic human values during the most formative and impressionable years of their lives;

Whereas teachers play an integral role in the development of civil responsibility among our Nation's youth;

Whereas teachers deserve the respect of their students and the entire community for their selfless dedication, wisdom, sacrifice, community service, and many other intangible contributions to society;

Whereas teachers deserve credit for the continuing education and training of many citizens through a variety of traditional and non-traditional educational programs;

Whereas the dedication of teachers should be celebrated often to heighten public awareness and help maintain respect and discipline in our classrooms; and

Whereas Sharon Christa McAuliffe made a unique contribution to the teaching profession, and January 28, 1987, is an appropriate day on which, and the school year of 1986-1987 is an appropriate period during which, to commemorate Sharon Christa McAuliffe and all other teachers: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the school year of September 1986 through May 1987 is designated "National Year of the Teacher", and January 28, 1987, is designated "National Teacher Appreciation Day". The President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe such year and day with appropriate ceremonies and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

AMERICAN INDIAN WEEK

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 390) to authorize and request the President to proclaim the week of November 23, 1986, to November 30, 1986, as "American Indian Week," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I will not object, but simply want to inform the House that the minority has no objection to the legislation now being considered.

Mr. GARCIA. Mr. Speaker, will the gentleman yield?

Mr. HANSEN. I yield to the gentleman from New York.

Mr. GARCIA. Mr. Speaker, I just want to say that our colleague, the gentlewoman from California [Mrs. BURTON], is the prime sponsor of this legislation here in the House. I just want to say that the gentlewoman has worked very hard and tirelessly on this effort.

I want to make sure that the RECORD so indicates that the gentlewoman's leadership was very instrumental in bringing this to the floor.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution as follows:

S.J. RES. 390

Whereas American Indians were the original inhabitants of the lands that now constitute the United States;

Whereas American Indians have made a unique and essential contribution to the United States;

Whereas the people of the United States should be reminded of the assistance American Indians provided to the Founding Fathers of our Nation;

Whereas the people of the United States should consider the present relationship between American Indians and the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to proclaim the week of November 23, 1986, to November 30, 1986, as "American Indian Week" and to call upon Federal, State, and local governments, interested groups and organizations, and the people of the United States to observe such week with appropriate programs, ceremonies, and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL SEEK AND COLLEGE DISCOVERY DAY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 735) to designate December 11, 1986, as "National SEEK and College Discovery Day," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I will not object, but would simply like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, under my reservation, I yield to the gentleman from New York [Mr. GARCIA], who is the chief sponsor of House Joint Resolution 735.

Mr. GARCIA. Mr. Speaker, the City University of New York has implemented two programs College Discovery, for community college students and SEEK [Search for Elevation, Education, and Knowledge] for senior college students, for which higher educational opportunity among members of minority groups, the economically disadvantaged, and the educationally underprepared can be attained. These programs have served as a forerunner and model for college remedial programs across the country. The purpose of this resolution is to recognize this program and encourage other such programs.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. RES. 735

Whereas the development of effective means to foster higher educational opportunity and attainment among members of minority groups, the economically disadvantaged, and the educationally underprepared is a matter of great national concern;

Whereas the City University of New York has implemented two programs—College Discovery for community college students, and SEEK (Search for Elevation, Education, and Knowledge) for senior college students—which provide specialized counseling, remedial instruction, and tutorial services enabling nearly 14,000 disadvantaged students a year to receive the benefits of a college education;

Whereas almost 100,000 students have participated in the SEEK and College Discovery programs since their inception 20 years ago, which the City University of New York is celebrating in a special ceremony December 11, 1986; and

Whereas the concept and innovative educational techniques employed by the SEEK and College Discovery programs have served as a forerunner and model for college remedial programs across the country, and for the federal TRIO program under title IV of the Higher Education Act of 1965: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That December 11, 1986, is designated as "National SEEK and College Discovery Day", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such day with appropriate ceremonies and activites.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL SPINA BIFIDA MONTH

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 368) to designate the month of October 1986, as "National Spina Bifida Month," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I will not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 368

Whereas spina bifida is a birth defect in the spinal column which occurs in one of every one thousand births in the United States;

Whereas spina bifida is the most common crippler of newborns, resulting when one or more bones in the back (vertebrae) fail to close completely during prenatal development;

Whereas while the cause of spina bifida is not known, it appears to be the result of multiple environmental and genetic factors;

Whereas although most of the March of Dimes and Easter Seal poster children have spina bifida, many people have not heard of the defect;

Whereas only a few cities in the United States have proper care centers and specialized professionals that can provide the most effective, aggressive treatment for children and adults with spina bifida; and

Whereas an increase in the national awareness of the problem of spina bifida may stimulate the interest and concern of the American people, which may lead, in turn, to increased research and eventually to the discovery of a cure for spina bifida; Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of October 1986, is designated "National Spina Bifida Month" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such month with appropriate ceremonies and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL EPIDERMOLYSIS BULLOSA AWARENESS WEEK

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 245) designating "National Epidermolysis Bullosa Awareness Week," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I will not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 245

Whereas the incidence and prevalence of epidermolysis bullosa presents a significant health problem in the United States;

Whereas epidermolysis bullosa is an inherited disorder showing widespread blistering and skin erosions which result in pain, scarring, deformity, contractures, malnutrition, anemia, gastrointestinal problems, dental problems, and carcinoma;

Whereas an estimated ten to fifteen thousand Americans of both sexes are afflicted with the disease, and another twenty to thirty thousand Americans may be carriers of this disease;

Whereas the Nation faces a continuing need to support innovative research into the causes, treatment, and cure of epidermolysis bullosa; and

Whereas it is appropriate to focus the Nation's attention upon the plight of epidermolysis bullosa sufferers and upon the continuing peril epidermolysis bullosa poses to humanity: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week of December 1, 1986, through December 7, 1986, is designated "National Epidermolysis Bullosa Awareness Week", and the President of the United States is authorized and requested to issue a proclamation calling upon the citizens of the United States to observe the week with appropriate programs, ceremonies, and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL DIABETES MONTH

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 318) designating November 1986 as "National Diabetes Month," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I will not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. HOYER. Mr. Speaker, I greatly appreciate the prompt action by the Committee on the Post Office and Civil Service on Senate Joint Resolution 318, which designates November 1986, as "National Diabetes Month." On behalf of Congressman ALAN B. MOLLOHAN of West Virginia, and the 226 Members of the House of Representatives who joined us in sponsoring the House version of this legislation, House Joint Resolution 602, I would like to thank Cognressman ROBERT GARCIA of New York, the chairman of the Subcommittee on Census and Population, and Congressman JAMES V. HANSEN of Utah, the ranking minority member of the subcommittee.

I am particularly pleased to have sponsored this legislation for the fourth consecutive year. By designating November 1986 as "National Diabetes Month," this Congress has called attention to the human and economic costs of diabetes. This helps to promote greater understanding of the challenges we face in mitigating the impact of the disease. This provides a forum for seminars, speeches, workshops, and other educational and informational activities designed to help educate the public in diagnosing, treating, and dealing with diabetes. Finally, this commemoration underscores the urgent need for continued funding of biomedical research.

Almost 1 in every 20 Americans has diabetes. However, despite the fact that this disease is the third leading cause of death in this country, nearly half of these victims are not even aware that they are diabetic. This year, 600,000 Americans will learn that they suffer from diabetes, and over $14 billion will be expended as a result of diabetes on health care, disability payments, and premature mortality costs. My colleagues may also be interested in knowing that diabetes is particularly prevalent among black Americans, Hispanic Americans, native Americans, and women. Indeed, women are twice as often victims as men and blacks are twice as often victims as whites.

The 1986 annual report of the National Diabetes Advisory Board, which advises the Congress and the Secretary of Health and Human Services on the implementation of the long-range plan to combat diabetes, is a combination of good and bad news. On the distressing side, the report notes:

Diabetes is the leading cause of new blindness in adults between the ages of 20 and 74 and is responsible for higher rates of cataracts and glaucoma in people with diabetes;

Diabetes accounts for 25 percent of all new cases of end-stage renal disease;

After 20 years of diabetes, 45 percent of people with the disease have peripheral vascular disease a rate 4 to 7 times higher than in the general population;

People with diabetes are twice as likely as the general population to die of heart disease;

The incidence of strokes is 2 to 6 times higher in people with diabetes;

The perinatal death rate in infants of diabetic mothers is 2 to 4 times higher than in nondiabetic pregnancies;

Diabetic ketoacidosis, an acute complication of uncontrolled diabetes, contributes to 10 percent of diabetes-related deaths each year.

However, the National Diabetes Advisory Board adds, "Despite these rather bleak statistics, the future for people with diabetes appears promising. Major advances in biomedical research have greatly expanded our understanding of the pathogenesis of diabetes. Our ability to treat the disease and to prevent or reduce the severity of some of its complications has improved markedly."

Thus, the passage of Senate Joint Resolution 318 is especially important. This legislation contributes to a greater understanding and awareness of diabetes and encourages enhanced efforts at treating and defeating it.

Once again, I would like to thank my colleagues in the House for cosponsoring House Joint Resolution 602. I know that the millions of Americans who suffer from diabetes are grateful for our efforts.

Mr. MOLLOHAN. Today, Mr. Speaker, an estimated 12 million Americans suffer from diabetes, 1.5 million of these victims are children. Five million of those who have diabetes don't know it. If left untreated, life-threatening complications can result. With its complications, diabetes kills more Americans than all other diseases except heart disease and cancer. Diabetes reduces the life expectancy of its victims by approximately 30 percent. While the 1921 discovery of insulin therapy led to effective control of the short-term disease symptoms, it has thus far been ineffective in mitigating the long-term disabling disease complications such as heart disease, kidney disease, blindness, stroke, and nerve damage.

A few years ago I sat in one of my district offices and listened as a young man suffering from diabetes discussed with me his plans to undergo an extremely experimental procedure in hopes of winning his personal battle against diabetes. This young man, like so many other victims of diabetes, found himself in a foot race with his disease. He saw his choices as either living with the disease and possibly developing a number of its debilitating side effects or undergoing the risky and experimental pancreatic transplant surgery. In the end, he chose surgery because he knew even if he did not survive, his contribution to diabetes research would be worth the sacrifice. This young man, a husband and a father, died, another victim of this dreaded disease.

Mr. Speaker, I am pleased to join my good friend and colleague, the gentleman from Maryland, Congressman HOYER, in supporting House Joint Resolution 602 designating November 1986 as "National Diabetes Month". I want to commend the gentleman from Maryland for introducing this resolution and I want to applaud him for his efforts over the years to increase public awareness about the debilitating effects of this disease and the need for continued research into the causes, treatments and potential cures of diabetes. I urge my colleagues to support this important resolution.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 318

Whereas diabetes with its complications kills more than any other disease except cancer and cardiovascular diseases;

Whereas diabetes afflicts eleven million Americans and five million of these americans are not aware of their illness;

Whereas more than $14,000,000,000 annually is used for health care costs, disability payments, and premature mortality costs due to diabetes;

Whereas up to 85 per centum of all cases of noninsulin dependent diabetes may be preventable through greater public understanding, awareness, and education;

Whereas diabetes is particularly prevalent among black Americans, Hispanic Americans, Native Americans, and women; and

Whereas diabetes is a leading cause of blindness, kidney disease, heart disease, stroke, birth defects, and lower life expectancy, which complications may be reduced through greater patient and public understanding, awareness, and education: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of November 1986 is designated as "National Diabetes Month" and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe that month with appropriate programs, ceremonies, and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL ALZHEIMER'S DISEASE MONTH

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 280) designating the month of November 1986 as "National Alzheimer's Disease Month," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Mr. Speaker, reserving the right to object, I will not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, under my reservation of objection, I yield to the gentleman from California [Mr. LOWERY], who is the chief sponsor of House Joint Resolution 514.

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Mr. LOWERY of California. Mr. Speaker, Alzheimer's disease is a debilitating neurological disorder that affects 2.5 million middle-aged and elderly Americans. It is characterized by a deterioration of basic cognitive functions such as memory, thought, language and judgment. The course of the disease is progressive and irreversible, beginning with simple forgetfulness followed gradually by noticeable and increasingly severe changes in memory and personality. Eventually the Alzheimer's victim cannot care for himself, and life expectancy is reduced. This disease first destroys the mind and then robs its victims of dignity and finally, of life.

It is estimated that more than $34 billion is spent annually on the costs of caring for Alzheimer's disease victims, both in nursing homes and at home. About 150,000 deaths are attributed to the ravages of this disorder each year.

And, tragically, within the next 10 years, one out of every three families will be touched by Alzheimer's disease.

Yet, the cause of Alzheimer's remains unknown, as does a cure or even a treatment to retard the unrelenting process of deterioration.

In the last few years, progress has been made in the battle against Alzheimer's, but still there is much to learn. Science has made many miracles happen in the field of medicine, helping mankind to deal with and eradicate scores of diseases and afflictions. Let us hope that Alzheimer's disease will someday be listed as one of those victories.

Recognition of this disease is a first but critical step on the road to its prevention and cure. By declaring November "National Alzheimer's Disease Month" we are calling attention to this disease, to the anguish and pain it inflicts on its victims and their families, and to the vital need for research.

Ten years ago, funding for research on Alzheimer's disease totaled a mere $3.8 million. By 1983, after years of double-digit inflation, that figure had crept up to $22 million. However, following the first congressional declaration of National Alzheimer's Disease Month in 1983, research funding jumped nearly $22 million in 1984 alone to $43.8 million. Since then, appropriations earmarked for Alzheimer's research have grown commensurate with heightened public and congressional awareness of this tragic disorder.

As contained in House Joint Resolution 780, the continuing resolution, Congress will designate approximately $68 million for Alzheimer's research in 1987. In addition, H.R. 5300, the fiscal year 1987 budget reconciliation bill, would authorize expenditure of $40 million to conduct five demonstration projects in which Medicare would cover all costs associated with the long-term care of Alzheimer's disease.

We have come a long way in our battle against Alzheimer's disease, but the war remains to be won. Let us raise the banner of compassion and continue our fight against this tragic disorder. For the victims and the families, let us vote today to declare November 1986 as "National Alzheimer's Disease Month."

Following is an article from the May 1986 issue of Provider, the monthly magazine published by the American Health Care Association, which provides some excellent background on Alzheimer's disease and describes many of the difficulties confronting victims, families, and public policymakers.

THE GROWING TOLL OF ALZHEIMER'S DISEASE

(By Carl Eisdorfer)

Alzheimer's disease, once a diagnosis recognized by relatively few professionals and hardly any laymen, has now become a widely talked about condition. Indeed, it is probably now known to many millions of Americans as well as to the political leadership of this country. Most know that it is a progressive brain disorder in which the victim shows a loss of memory that is ultimately devastating.

ALZHEIMER'S CHARACTERISTICS

This deteriorating disease of the central nervous system is characterized in the victim by progessive loss of cognitive and intellectual capacity. As the disorder proceeds, the patient loses the ability to know current time such as day, date or season and will become confused about where he or she is and how to go from place to place.

Eventually the person with Alzheimer's disease fails to recognize anyone. His or her emotional control becomes quite fragile with outbursts of temper, laughter or tears for little apparent reason and of short-lived duration. In the end, Alzheimer's disease victims lose their capacity to communicate verbally; useful vocabulary is reduced to a minimum, often consisting of meaningless phrases repeated again and again. In addition, recognition of even the closest of friends and relatives is impaired, and loss of control of such basic functions as urination or bowel movements becomes a distressing management problem.

Progressive agitation with ceaseless pacing, short sleep cycles and wandering behavior are also frequently symptoms. In fact, the disease has aptly been described as the "loss of self."

BACKGROUND

For millennia, we have recognized that aging may bring with it a deterioration in the mental functioning of a number of older persons. This loss of capacity was labeled senility by poets, historians and most laymen. Physicians often blamed such loss on hardening of the arteries and poor brain circulation in advancing age.

Only a little more than a decade or so ago, however, a group of psychiatrists and neuropathologists in Great Britian found that the cognitive disorder observed in many elderly was not a normal part of aging, but that the brain changes accompanying that disorder were indistinguishable from those described in 1906 by Alois Alzheimer.

Dr. Alzheimer described a woman in her 50s with a profound loss of memory and cognition which he identified as a "pre-senile dementia," since the symptoms occurred well before age 65. He went on to describe autopsy findings of her brain which had lost neurons (the basic cellular building blocks of the brain) and on microscopic examination showed certain characteristic findings including so-called senile plaques and neurofibrillary tangles of neurons.

The cause of the disease leading to this accelerated loss of brain tissue was then and is still unknown. We do know now that the disease often affects one or two specific centers of the brain. We do know that a specific neurotransmitter, acetylcholine, a chemical messenger that sends information from one neuron to the other, is implicated in the disease.

Acetylcholine (ACH), one of the most important neurotransmitters, is deficient in key areas of the Alzheimer's brain. Whether this alone tells the story we cannot be sure; certainly, efforts to enhance brain ACH through medication have been unsuccessful so far. Other brain changes may be involved, and some researchers even feel that more than one form of the disease may exist.

Indeed, the genetics of early and late onset disease seem to be different. Patients with early onset of the disease are more likely to have relations with Alzheimer's disease or Down's syndrome in their immediate family. Early onset disease refers to occurrence before age 65, and these patients seem to have much more widespread involvement of the disorder.

Recent studies have also implicated other neurotransmitters, but the significance of these findings is unclear. The role of the immune system and the close similarity of Alzheimer's brains to those seen in Down's patients after age 35 have all become areas of investigational interest. The possibility that specific immune susceptibility and virus-like infection play a role in causing the disease is now under investigation.

We still lack precise data on the epidemiology of this dread disease which appears to double in prevalence with five-year intervals past age 65, leveling off by the middle of the ninth decade of life.

It is conservatively estimated that about 10 percent of our aged population are diagnosible as having dementia—and that the majority are Alzheimer's victims. That would equate to about 2½ million persons with dementia. But many more millions of family members and others are involved in the care of these patients.

Therefore, as many as 10 to 15 million Americans are directly impacted by the disease which takes a toll far beyond the number of patients involved.

ALZHEIMER'S TOLL

This devastating disorder creates a management problem of substantial magnitude and the challenge of caring falls, in the main, on the family who is often totally unprepared for the burden of the illness.

Medical and social management problems are intertwined. Alzheimer's patients lose the capacity to manage money, since first their memory, then their higher order judgement becomes impaired. Finally, it is clear that caring for the Alzheimer's disease patient is expensive to the family in time, energy, resources, lost opportunity and emotional toll. Indeed, this disease is a major public health problem for the entire country.

One indication of the economic cost of the disease—perhaps only the tip of the iceberg—is the cost of long term care. For many patients, long term care becomes a reality, either due to the lack of a supportive family or of community resources, or because of an eventual family crisis brought about by caregiving responsibilities.

We now have over 1.25 million nursing home patients in the United States, about half of whom are suffering with dementia. The cost of this latter component of care alone exceeds $20 billion per year and is rising steadily. The actual economic impact of the disease on other services and lost productivity, wages and community resources cannot now be fathomed.

As Alzheimer's disease progresses, the deterioration becomes more profound, and the ability of the patient to manage without full-time support becomes lost entirely. The family becomes more and more responsible for care, and, indeed, it is families in the United States who provide most of the care, probably about 80 percent.

This creates a major secondary problem. In recent studies we found that in about 50 percent of the cases of Alzheimer's patients living at home under the care of a principal caregiver, that principal caregiver—usually a spouse—suffered from a clinical depression.

The burden of care on family members often becomes too great, and many lose the capacity for providing the ongoing care needed. Sickness, housing, economic problems or the specific pattern of a victim's behavior may force the family to give up. Indeed, it is almost a cliche that when the family goes, so does the patient. In many instances too, there is no family available. Thus the nursing home or other long term care facility becomes a primary provider of care for these patients.

THE NEED FOR POLICY

Unfortunately, we in the United States do not have yet a clear policy for the provision of long term care. Medicare, when structured in 1965, was designed to provide resources for the acute medical and surgical care of persons over age 65. Medicaid, its companion, was designed to provide health care coverage for the poor.

At that time, it was never envisioned that 20 years later there would be well over 1.2 million nursing home beds in the United States and that half of those beds would be involved in the very long term care of patients—about half of whom have Alzheimer's disease or one of the other dementing disorders.

Since Medicare was designed for acute care, it pays for very little (one to two percent) of long term care costs. In addition, it was never envisioned that Medicaid, originally designed for the range of health care for the poor, including pregnant women and children, would be spending 40 percent of its funds on custodial care of elders otherwise unable to afford institutional care.

As a rule, patients needing long term care must pay for it "out-of-pocket" until the patient (and family) become medically indigent. This creates another devastating blow to a family already in crisis because the cost of out-of-pocket alone is in the tens of billions of dollars, and this does not account for the cost of outpatient care or money lost through caring for these patients at home.

The burden of Alzheimer's disease is a heavy one; its personal tragedies make it a source of sadness and stress for patient, for family and for health care provider alike. Today, no community is without its burden of caring for the Alzheimer's patient

The need for new strategies of caring, for a community support system for both family and patient, and for basic and clinical research into the cause(s), prevention and cure of Alzheimer's disease, is necessary to making a sound investment in the nation's health. Equally important for its future health is support of the family's ability to manage the Alzheimer's patient, and to provide adequate care in or out of an institution.

Mr. HANSEN. Further reserving the right to object, Mr. Speaker, I yield to the gentleman from New York [Mr. GARCIA].

Mr. GARCIA. Mr. Speaker, I appreciate my colleague yielding.

I would just like to say to my colleague, the gentleman from California, that I could not agree with him more. As one whose father-in-law has suffered from this disease and I have watched how he has just absolutely deteriorated from where he was to where he is, a person who was dynamic, who had worldwide responsibilities with one of the major companies in America, to see him go from that type of leadership to where he is nothing but a child is something that really breaks our hearts. We have watched this over the last 3 or 4 years. The thing that troubles me is that as far back as 10 or 15 years ago they understood he had the possibility of having Alzheimer's disease when he was still somewhat pretty much in control of himself.

It just seems to me that we have not done enough, especially in this Congress, to do the necessary research to provide the funding and the moneys that are absolutely essential. The private sector is not going to do it.

I just feel that based on this resolution—we pass so many of these resolutions and I know as the chairman and my colleague from Utah knows, both of us stand here and pass any number of resolutions on this floor. Some of them have tremendous consequences and others are resolutions to satisfy a specific area of the country; but Alzheimer's disease is something that is not only nationally here, but worldwide and not enough is being done on behalf of those victims.

It just seems to me that as far as I am concerned, we should take the leadership role in that.

I just would like to compliment my colleague, the gentleman from California, because this is an issue I think that we have to really go after.

Mr. LOWERY of California. Mr. Speaker, will the gentleman yield?

Mr. HANSEN. I am happy to yield to the gentleman from California.

Mr. LOWERY of California. Mr. Speaker, I appreciate those very kind words.

Just 5 years ago I do not think many of us knew that Alzheimer's disease even existed. The progress that we have made in just a 5-year period—in 1980 and 1981 we were spending about $2½ million as a nation on research on Alzheimer's disease. Today that figure is over $65 million a year and growing. We are very close to making some major breakthroughs which will be very important, not only in the treatment but in the cure for Alzheimer's disease.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. RES. 280

Whereas more than two and a half million Americans are affected by Alzheimer's disease, which is a surprisingly common disorder that destroys certain vital cells of the brain;

Whereas Alzheimer's disease is the fourth leading cause of death among older Americans;

Whereas Alzheimer's disease is responsible for 50 per centum of all nursing home admissions, at an annual cost of more than $25,000,000,000;

Whereas in one-third of all American families one parent will succumb to this disease;

Whereas Alzheimer's disease is not a normal consequence of aging; and

Whereas an increase in the national awareness of the problem of Alzheimer's disease may stimulate the interest and concern of the American people, which may lead, in turn, to increased research and eventually to the discovery of a cure for Alzheimer's disease: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of November 1986 is designated as "National Alzhemier's Disease Month". The President is requested to issue a proclamation calling upon the people of the United States to observe such month with appropriate ceremonies and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL CIVIL RIGHTS DAY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the joint resolution (H.J. Res. 686) to designate August 12, 1986, as "National Civil Rights Day," with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the joint resolution.

The Clerk read the Senate amendments, as follows:

Page, 2, line 3, strike out "1986" and insert "1987"

Page 2, in the fourth unnumbered line of the preamble strike out "1986" and insert "1987".

Amend the title so as to read: "Joint resolution to designate August 12, 1987, as 'National Civil Rights Day'.".

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Reserving the right to object, Mr. Speaker, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, under my reservation, I yield to the gentleman from Indiana [Mr. VISCLOSKY] who is the chief sponsor of House Joint Resolution 686.

Mr. VISCLOSKY. Mr. Speaker, I want to thank the gentleman from Utah for yielding to me.

I would first like to begin by thanking the original cosponsors who joined with me in introducing this legislation, the gentleman from California [Mr. DYMALLY], the gentleman from Texas [Mr. LELAND], the gentleman from California [Mr. MARTINEZ], the gentleman from Illinois [Mr. SAVAGE], and the gentleman from New York [Mr. GARCIA].

I also want to thank all the Members who joined as cosponsors for their bipartisan support of this resolution. It will declare August 12, 1987, as National Civil Rights Day. It will serve to commemorate the strides that we have made in the civil rights movement.

It will also remind us that much work remains to be done, and finally, will serve to compliment the efforts of all the people of Gary to construct a national civil rights hall of fame for all the people of the United States and worldwide.

It is fitting as we stand here on the first day of the new fiscal year that we pass a resolution which is beyond value.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

A motion to reconsider was laid on the table.

DEVELOPMENTAL DISABILITIES AWARENESS MONTH

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 741) to designate March 1987, as "Developmental Disabilities Awareness Month," and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Reserving the right to object, Mr. Speaker, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, I rise in support of the joint resolution calling for the recognition of the month of March 1987 as the "Developmental Disabilities Awareness Month."

Developmental Disabilities affect nearly 4 million children and adults in the United States. These disabilities result in lifelong substantial limitations of major activities such as self-care, mobility, self-direction, the capacity for independent living, and economic self-sufficiency. Developmental disabilities are attributed to chronic mental and/or physical impairments manifested before the age of 22.

Persons with developmental disabilities require a combination and sequence of special interdisciplinary or generic services and treatment for their entire lives. Due to the severity of their disabilities, developmentally disabled persons need to have individually planned and coordinated services.

It is my hope that this resolution will educate the general public about the potential and special needs of persons with developmental disabilities. In addition, professional personnel, parents, and concerned citizens deserve to be recognized for their contribution in serving this population. It is our hope that commemoration of a "Developmental Disabilities Month" will serve as a vehicle to achieve both goals.

Mr. Speaker, I ask my colleagues to join with me in support of this resolution.

Mr. Speaker, I withdraw my reservation of objection.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. Res. 741

Whereas there are 3,900,000 children and adults with developmental disabilities in the United States;

Whereas such persons have severe chronic disabilities attributed to mental or physical impairment which begin early in life and result in substantial limitations in major life activities such as self care, mobility, language, learning, and self direction;

Whereas persons with developmental disabilities need interdisciplinary or generic service and treatment for extended periods of their lives;

Whereas persons with developmental disabilities have the capability to become more independent and economically self sufficient;

Whereas the services and expertise provided by professional personnel, parents, and concerned citizens enable persons with developmental disabilities to participate more freely in education, employment and community living;

Whereas increasingly more persons with developmental disabilities are living in the community enabling them to live less restricted lives; and

Whereas through increased national awareness of such programs, the public will better understand the potential and needs of persons with developmental disabilities; Now, therefore, be it:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That March 1987 is designated as the "Developmental Disabilities Awareness Month", and the President is authorized and requested to issue a proclamation calling upon the people of the United States and all Federal, State, and local government officials to observe the month with appropriate programs and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL OUTREACH TO THE RURAL DISABLED DAY

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the Senate joint resolution (S.J. Res. 406) to designate October 4, 1986, as "National Outreach to the Rural Disabled Day," and ask for its immediate consideration.

The Clerk read the title of the Senate joint resolution.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Reserving the right to object, Mr. Speaker, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, I withdraw my reservation of objection.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate joint resolution, as follows:

S.J. Res. 406

Whereas there are approximately eight million five hundred thousand disabled persons in rural America;

Whereas, in 1984, farm residents suffered approximately two hundred and ninety thousand disabling injuries and approximately five hundred and sixty thousand agricultural workers were hindered in their farming operations because of permanent disabilities;

Whereas disability is proportionately more prevalent in rural areas than in urban areas and the rural disabled are more disadvantaged than their urban counterparts;

Whereas little attention has been given to the unique problems faced by the rural disabled in the United States; and

Whereas there is a need to focus attention on the unmet needs of the rural disabled, to underscore their potential, and to encourage outreach programs by rural communities to their disabled members: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 4, 1986, is hereby designated "National Outreach to the Rural Disabled Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe this day with appropriate ceremonies and activities.

The Senate joint resolution was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

NATIONAL FAMILY CAREGIVERS WEEK

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that the Committee on Post Office and Civil Service be discharged from further consideration of the joint resolution (H.J. Res. 555) to designate the week beginning November 24, 1986, as "National Family Caregivers Week" and ask for its immediate consideration.

The Clerk read the title of the joint resolution.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from New York?

Mr. HANSEN. Reserving the right to object, Mr. Speaker, I do not object, but simply would like to inform the House that the minority has no objection to the legislation now being considered.

Mr. Speaker, under my reservation, I yield to the gentlewoman from Maine [Ms. Snowe], who is the chief sponsor of House Joint Resolution 555.

Ms. SNOWE. Mr. Speaker, I want to thank Mr. Garcia, chairman of the Subcommittee on Census and Population, and the ranking minority member of the committee, Mr. Hansen, for bringing this resolution which designates "National Family Caregivers Week" to the floor.

As the author of House Joint Resolution 555, I am pleased that today we are considering legislation which will designate the week of November 24 through November 30 as "National Family Caregivers Week." By passing this bill we have the opportunity to send an important message of support to those who care for frail or disabled family members.

We know that the family is crucial in providing between 80 and 90 percent of the care needed by older family members. The myth the family has abrogated its responsibility to the elderly is just that—a myth. Most of these caregivers find their role of family caregiver a rewarding one, but one that is not undertaken without sacrifice, both financially and emotionally. The sad fact is that their contribution has not been fully recognized nor adequately appreciated.

This bill, House Resolution 555, is a small gesture of appreciation to family caregivers—to those who enabled family members to remain in the home rather than in an institution and who assure support and continuity among generations. For all these reasons, I am pleased that during the celebration of the week of thanksgiving, we can underline the contribution of the family caregivers who care for the disabled or frail and through whose efforts our responsibility and commitment to the family is embodied.

Mr. HANSEN. Mr. Speaker, I withdraw my reservation of objection.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the joint resolution, as follows:

H.J. Res. 555

Whereas the number of Americans who are sixty-five or older is growing, with an unprecedented increase in the number of persons eighty-five or older;

Whereas the incidences of frailty and disability increase among persons of advanced age;

Whereas approximately 5.2 million older persons who reside in the community have disabilities that leave them in need of help with such daily tasks as food preparation, dressing, and bathing;

Whereas families provide older persons help with such tasks, in addition to between 80 and 90 percent of the medical care, household maintenance, transportation, and shopping needed by older persons;

Whereas families who give care to older persons face many additional expenses due to home modifications, equipment rental, and higher heating bills;

Whereas 80 percent of the disabled elderly receive care from family members, most of whom are wives, daughters, and daughters-in-law, who often must sacrifice employment opportunities to provide such care;

Whereas the role of the aged spouse as a principal caregiver has generally been understated;

Whereas family caregivers are often physically and emotionally exhausted from the time and stress involved in caregiving activities;

Whereas family caregivers need information about available community resources;

Whereas family caregivers need respite from the strains of their caregiving roles;

Whereas the contribution of family caregivers helps maintain strong family ties and assures support among generations; and

Whereas there is a need for greater public awareness of and support for the care that family caregivers are providing: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the week beginning November 24, 1986, is designated "National Family Caregivers Week". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate ceremonies and activities.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GARCIA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the various pieces of legislation just considered and adopted.

The SPEAKER pro tempore. Is there objections to the request of the gentleman from New York?

There was no objection.

□ 1500

AUTHORIZING ESTABLISHMENT OF THE JIMMY CARTER NATIONAL HISTORIC SITE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from further consideration of the bill (H.R. 235) to authorize the establishment of the Jimmy Carter National Historic Site in the State of Georgia, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

Mr. WALKER. Reserving the right to object, Mr. Speaker, I do so for a couple of reasons. We are trying to check with one member of the minority who we are not certain had signed off on the bill, and we may get word back from him in a moment, although I do understand that the committee has signed off. I take the time to allow the gentleman to explain the bill, as well.

Mr. VENTO. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Minnesota.

Mr. VENTO. I thank the gentleman for yielding.

Mr. Speaker, this bill, H.R. 235, would serve to preserve and interpret a person, the President of the United States, James Earl Carter, and the years in our history not represented in the National Park System.

The Subcommittee on National Parks and Recreation held both a field hearing and a hearing here in Washington, DC, on this measure. Witnesses testified that establishing the historic site would preserve and protect resources that would otherwise be lost to the American people. We need to be sure that the proposed additions to the National Park System meet standards of national significance and add a unique resource to our national heritage. This bill clearly does meet that standard.

Mr. Speaker, in the opportunity that we had—and I think that we should give credit here to Congressman Richard Ray, who has worked so diligently over the past term in Congress in trying to bring this bill to fruition—he of course hosted the subcommittee's presence in his district, along with a member of the committee, the gentleman from Georgia, Mr. Buddy Darden, and did really a remarkable job in terms of assembling the witnesses and presenting his case for in fact the designation of this particular site.

Mr. Speaker, we have all read and heard a lot about what Plains, GA, was like, but believe me, until I had the opportunity to visit that site and to experience the environment and the historic significance of it, I had not an adequate idea of what really was all entailed here.

In fact, in this particular instance the reason that we should act, and I think act promptly, on this measure, is because changes are occurring in this area. There has been of course a great deal of tourism that has occurred with respect to the visits to Plains, GA, and really there are not appropriate facilities to accommodate that or to provide for interpretation or to answer the many questions that visitors might have about the life at that time.

Really what is being looked at here is kind of a social history in terms of the sort of grassroots populism that gave rise to the Presidency and to the type of person that Jimmy Carter represented as President of this great Nation.

In fact, in doing so, this bill will provide for continued historic preservation of the main street in Georgia. It will provide for the donation of the railway station in Georgia, which is being donated by, in fact, a railroad corporation in that area.

It provides for a number of different lodgings that he had, a number of different sites; one is near an orchard on the outside of town. It provides of course for the presentation of the existing home that the President resided in both as Governor and as President of our Nation, and which he now resides in. As a matter of fact, in a magnanimous gesture, President Carter has indicated his intent to in fact donate his home, which is of course worth a significant amount of value.

It gives us an opportunity to permit the National Park Service to step in to do the job at a time and to do it, I might say, with minimal cost to the National Government in terms of preserving this.

Mr. Speaker, I thank the gentleman for yielding and giving me this opportunity, and I would hope that my colleagues would support this measure.

Mr. WALKER. Mr. Speaker, I thank the gentleman, and I am familiar with the work that the gentleman from Georgia [Mr. Ray] has done on this particular bill. He has discussed it with this gentleman, and I know a number of other people on our side, and we are convinced that the bill is in fact a bill which moves us in the right direction with regard to maintaining this unique natural resource.

Mr. Speaker, I know of no objection on our side. We have checked with people, and I know of no objection on this side.

Mr. RAY. Mr. Speaker, as the sponsor of H.R. 235, I rise to urge my colleagues in the House to support this legislation to authorize establishment of the Jimmy Carter National Historic Site in Plains, GA. I, along with the entire Georgia delegation, introduced this bill on the very first day of the 99th Congress. An identical bill was introduced by our two Georgia colleagues in the other body.

I want to commend the chairman of the Subcommittee on National Parks and Recreation for bringing this bill before us today. I appreciate the work that he and his fine staff have put into this legislation. I am also grateful to the chairman of the full Interior Committee for his cooperation in making this action possible, and I also want to thank Members on both sides of the aisle for the support they have given us in bringing this bill before the House today.

Shortly after leaving office in 1981, President and Mrs. Carter met with National Park Service officials to discuss development of a historic site in Plains to include some of the properties in the area that have a significant historical association with the life of our 39th President. The National Park Service conducted a study subsequent to this meeting and suggested four different alternative proposals for the historic site. This legislation incorporates the most comprehensive of these proposals. It would authorize the acquisition of a number of properties in the Plains area, including the present Carter home, the boyhood home west of Plains near the community of Archery, the Plains High School and surrounding grounds, and the Plains railroad depot which served as President Carter's campaign headquarters. It would also authorize acquisition of a small strip of land along Woodland Drive across from the present Carter home and the exterior facades of the Wise Hospital, where President Carter was born, and the old Stewart place, where the Carters lived for a short period before moving into their present home.

I believe it is important that this legislation be enacted so that we can preserve this area that has such significance to the life of our 39th President. The homes of other prominent national figures have been saved and preserved for the benefit and education of the public, and today there are about 30 sites within the National Park Service which are dedicated to former Presidents. It is particularly significant that this former President still resides in Plains and has, throughout his life, regarded Plains as his home.

James Earl Carter, Jr., was born in 1923 in the Wise Hospital in Plains and grew up on a farm west of town near the small community of Archery. He attended both elementary school and high school in Plains and attended Georgia Southwestern College in nearby Americus before going on to the Georgia Institute of Technology in Atlanta and the U.S. Naval Academy.

Jimmy Carter married Rosalynn Smith in the Plains United Methodist Church shortly after his graduation from the Naval Academy and, after his father's death in 1953, returned to Plains with his family to manage the family business. The Carters were very successful in their business and, in 1961, moved into their new home on Woodland Drive. This home has been their permanent address throughout a political career in the State senate, the Governor's Office, and the White House.

Although the Carters have traveled extensively since leaving Washington, they still spend a majority of their time in Plains.

President Carter has testified that he draws his strength from Plains and is quoted as saying, "I can be so tired that I don't think I can go another step. I may be depressed a little if things haven't gone too well, and when I get home * * * it's like I'm a completely new man. I sleep better, I eat better, I think better—my whole perspective on the world is improved just by being there."

Plains is probably more closely tied to a President than the hometown of any other recent President. In addition, President and Mrs. Carter are personally interested in preserving their family history and the memorabilia associated with their past. They want to maintain the character of their hometown, so that future generations can get an accurate, detailed picture of the background and roots of this President. Their active help in preserving Plains will make the town an historic site perhaps more authentic than any other like it.

We should act now before this precious history is lost in the passage of time. We should preserve this important part of our cultural heritage.

After introducing this legislation, I formed a task force of local community leaders in Plains and Sumter County to assist in determining the most cost-effective way to create this fitting tribute to President Carter. Through the efforts of this task force and the Plains Historic Preservation Trust, we have already eliminated almost all of the acquisition costs. President and Mrs. Carter have announced that their residence and the land across Woodland Drive will be donated to the National Park Service. The city of Plains has agreed to turn over the Plains High School to the Federal Government. The Seaboard Coast Line Railroad, which owned the depot, has given the deed to the depot to the Plains Historic Preservation Trust, which will donate the depot to the National Park Service upon enactment of this legislation. The members of the trust are currently working to acquire the boyhood home, so that it can be donated to the Government also.

In conclusion, let me say that there are several reasons why I urge swift approval of this measure. First, Americans are still interested in the Carter hometown. Approximately 76,000 people visited Plains in 1984. While that number may have dropped some in the meantime, Plains still has many visitors curious to see those places of importance in the life of President Carter. Second, we, of this generation, have a responsibility to our children, grandchildren, and the generations that succeed them to preserve an historic site that is known around the world because of its association with President Carter. Finally, it is important for future generations to be able to see how a young farm boy grew up to be a State senator, Governor, and President of the United States.

Mr. Speaker, I urge that Members support this bill.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The Clerk read the bill, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in order to preserve for the benefit, inspiration, and education of the public certain properties having a significant historical association with the life of Jimmy Carter, thirty-ninth President of the United States, the Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to acquire by donation, purchase with donated or appropriated funds, or exchange, the following generally described lands, interests in lands, and improvements for establishment as the Jimmy Carter National Historic Site:

(1) the home of former President Carter on Woodland Drive in Plains, Georgia, consisting of the residence and approximately 9.26 acres;

(2) not to exceed 5 acres across Woodland Drive from the Home of former President Carter;

(3) the Plains High School and grounds of approximately 12 acres;

(4) the Plains Railroad Depot, adjacent to the Seaboard Coast Line Railroad, which served as former President Carter's campaign headquarters;

(5) the boyhood home of former President Carter, consisting of the residence and not to exceed 15 acres located west of Plains near the community of Archery, Georgia;

(6) sufficient interests in not to exceed 85 acres of road frontage in the vicinity of the boyhood home, in order to preserve its undeveloped and historic character; and

(7) sufficient interests in the exterior facade of the property formerly known as the Wise Hospital in Plains, and the exterior facade of the property located west of Plains known as the Old Stewart Place, in order to preserve their historic character and appearance.

(b)(1) The properties identified in paragraphs (1) and (3) of subsection (a) may be acquired only by donation. Any owner of improved residential property which is acquired by the Secretary under this Act may, as a condition of such acquisition, retain for himself and his spouse a right of use and occupancy of such property for noncommercial residential purposes for—

(A) a definite term of not more than twenty-five years from the date of acquisition, or

(B) a term ending at the death of the owner or his spouse, whichever is later.

The owner shall elect the term to be reserved, except that if the owner is a corporation, the term shall not exceed twenty-five years. Except for properties acquired by donation, the Secretary shall pay to any owner reserving a right of use and occupancy under this subsection the fair market value of the property on the date of its acquisition, less the fair market value on that date of the right retained by the owner. For purposes of applying the preceding provisions, ownership shall be determined as of the date of acquisition, except that in applying subparagraph (B) ownership shall be determined as of January 1, 1984.

(2)(A) A right retained by the owner pursuant to this subsection shall be subject to termination by the Secretary upon his determination that it is being exercised in a manner inconsistent with the purposes of this Act, and it shall terminate by operation of law upon notification by the Secretary to the holder of the right of such determination and tendering to him the amount equal to the fair market value of that portion which remains unexpired.

(B) When an owner of property within the site desires to take an action with respect to his property, he may request, in writing, a prompt written determination from the Secretary as to the likelihood of such action provoking a determination by the Secretary under subparagraph (A). The Secretary is thereupon directed to promptly issue such owner a certificate of exemption for such actions proposed by the owner which the Secretary determines to be consistent with the purposes of this Act.

(3) As used in this subsection, the term "improved residential property" means a single-family dwelling, the construction of which began before January 1, 1984, together with such land on which the dwelling and appurtenant buildings are located as is in the same ownership as such dwelling and as the Secretary designates is reasonably necessary for the owner's continued use and occupancy of the dwelling.

Sec. 2. When the Secretary determines that properties identified in the first section of this Act have been acquired in an amount sufficient to constitute an administrable unit for the purposes of this Act, he shall by publication of a notice in the Federal Register establish the same and any properties acquired thereafter under this Act as the Jimmy Carter National Historic Site. Pending such establishment and thereafter, the Secretary shall administer and protect the lands, improvements, and interests acquired pursuant to this Act in accordance with the provisions of law generally applicable to units of the national park system, including the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1-4), and the Act approved August 21, 1935 (49 Stat. 666; 16 U.S.C. 461-467).

Sec. 3. For fiscal years beginning after September 30, 1984, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 235, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

HIGH HOLIDAYS 5747

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. Annunzio] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, for Jews all over the world, the new year will begin on the evening of October 3, the first day in the autumn month of Tishri, 5747, under the Jewish calendar, with the celebration of Rosh Hashana, the Day of Judgment.

On Rosh Hashana, God remembers all his creatures and judges humankind. Their destinies are inscribed in the Book of Life, Sefer Hayim, and it is a joyous, but solemn time for prayer, self-reflection, and penitence. The highlight of the Rosh Hashana service in the synagogue is the blowing of the shofar, or ram's horn, whose sound is meant to awaken man's conscience, to renew his faith, to return him to God, and to summon all Jews to self-examination and repentence.

The ram's horn is a reminder of the ram offered by Abraham instead of his son Isaac, and according to Jewish tradition, the blowing of this curved ram's horn can be traced back to the time when the Ten Commandments were given on Mount Sinai accompanied by blasts of the shofar, and when the Prophets called people to prayer with similar blasts. This year, because the first day of Rosh Hashana also falls on the Jewish Sabbath, a day of rest, the shofar cannot be blown until the very end of the day.

During the 10-day period of penitence, the Days of Awe, between Rosh Hashana and Yom Kippur, Jews search their souls and repent for their sins, and ask forgiveness. Their deeds and fate are then weighed in the balance of God on the last day. This final day, the 10th of Tishri, Yom Kippur, the holiest day of the year, is the culmination of the entire holiday period. It is marked by fasting and all other physical abstinence, in order for Jews to concentrate to the utmost on spiritual elements. Most of the day is spent in the synagogue, praying and repenting for past sins. The day ends with the loud and long shofar blast which marks the final sealing of the Heavenly gates, the renewal of the spirit, and a final cleansing of the heart. Jews return to their homes for a large and joyous break the fast meal.

During these holiest of days, as Congressman from the 11th Congressional District of Illinois, I extend my greetings and best wishes for a happy new year to my many constituents and friends of the Jewish faith, as well as to all Jews throughout the world, especially those who must daily live a dismal existence under the tyranny and oppression of Communist rule. This year we have seen the joyous release of "Natan ben Sharon" Shcharansky and the other members of the family, and we pray that the new year 5747 will bring with it a relaxation of restrictions so that hundreds and thousands of Jews will be allowed to emigrate to Israel so that they, too, may celebrate these high holidays in freedom.

"May you be inscribed in the Book of Life for a good year, L' Shannah Tovah Tikatevu," and let us also hope and pray that the coming year brings us closer to a lasting peace in the Middle East, and a new life for Soviet Jews free from the oppression of Communists "next year in Jerusalem."

THE 40TH ANNIVERSARY OF DEATH OF DRAZA MIHAILOVICH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. Crane] is recognized for 60 minutes.

GENERAL LEAVE

Mr. CRANE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on my special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. CRANE. Mr. Speaker, I rise in support of a recognition of the 40th anniversary of the death of Gen. Draza Mihailovich, a great patriot who fought in World War II, and I know that there are other colleagues who are hopeful of participating, either in person or at least submitting statements for the Record.

Mr. CRANE. Mr. Speaker, when Yugoslavia was occupied by the Nazis in April 1941, a Yugoslav career officer, Col. Draza Mihailovich, immediately raised the flag of resistance and called upon his people to fight back against the German occupation. For almost 2 years Mihailovich was regarded as the No. 1 hero of the entire European resistance movement. But then, for obscure reasons, Churchill decided to abandon Mihailovich and switch British support to Tito, who was the leader of the Communist forces in Yugoslavia. Despite some misgivings, the United States went along with the decision.

The recent release of previously classified documents from the top-secret World War II Office of Strategic Services [OSS], coupled with startling revelations from abroad, cast new light on one of the Soviet Union's earliest and most successful disinformation campaigns. Information contained in these documents now makes it clear that General Mihailovich was the victim of an active campaign of subversion conducted by James Klugman, a highly placed Communist agent in British intelligence and close associate of master spy Kim Philby. Working for British intelligence out of Cairo during the war, Klugman skewed intelligence reports from Yugoslavia and submitted these to Allied command.

Even after he had been abandoned by the Western Allies, General Mihailovich and his forces were responsible for saving the lives of over 500 American airmen who were shot down or forced down over Yugoslavia on their way back from raids on Axis oil and communication installations in Romania. Picked up, clothed, fed, medically cared for, and protected by Mihailovich's Chetnik forces throughout Yugoslavia, these airmen became eyewitnesses to the bitter battles between Nazi and Chetnik forces, and reported absolutely no incidents of collaboration.

Spearheaded by Capt. George Musulin, an OSS rescue mission code-named "Operation Halyard" evacuated 250 of the American airmen on August 9, 1944, from a makeshift airfield only 80 miles from Belgrade. It was probably the largest and most daring operation of its kind conducted anywhere in Axis-occupied Europe during the whole of World War II. Through subsequent evacuations from secret airfields in the heart of Axis-controlled Yugoslavia, the Halyard mission brought its total of rescued airmen evacuated and returned to combat duty to 432. Choosing to remain behind and continue his struggle to liberate Yugoslavia, General Mihailovich was eventually caught, imprisoned, and executed by Tito for alleged collaboration with the Nazis, a charge which had been fabricated by Tito's mole in Cairo.

On March 29, 1948, President Harry S. Truman, on the recommendation of Gen. Dwight D. Eisenhower, awarded the Legion of Merit in the Degree of Chief Commander to General Mihailovich in recognition of his services to the Allied cause. Among other things, President Truman's citation said of General Mihailovich:

> Through the undaunted efforts of his troops, many United States airmen were rescued and returned safely to friendly control.

As Governor of the State of California, Ronald Reagan had the occasion to praise General Mihailovich. In a September 8, 1979, letter to the California Citizens' Committee to Commemorate Gen. Draja Mihailovich, Governor Reagan referred to General Mihailovich as:

> A symbol of resistance to all those across the world who have had to fight a similar heroic and lonely struggle against totalitarianism.

The Governor went on to say:

> No western nation, including the United States, can hope to win its own battle for freedom and survival by sacrificing brave comrades to the politics of international expediency.

It is high time that we in Congress recognize this, and what better way to do so than to provide the airmen who were rescued by General Mihailovich a means by which they can honor their savior.

For over 40 years, the Committee of American Airmen Rescued by General Mihailovich has been trying to clear the general's name and recognize him for saving their lives. Beginning in 1974, and for each successive Congress since that time, this group of American veterans has petitioned Congress for permission to repay their debt to the general by erecting a memorial in his honor. This permission has twice been granted in legislation that passed the U.S. Senate in 1976 and 1977. To date, the House of Representatives has failed to pass identical legislation.

H.R. 77, which has 66 cosponsors at this time, would authorize the National Committee of American Airmen Rescued by General Mihailovich to establish a monument to Gen. Draza Mihailovich in Washington, District of Columbia, or its environs, in recognition of the role he played in saving the lives of more than 500 United States airmen in Yugoslavia during World War II. The Committee of Airmen will finance the project in its entirety, including construction and any subsequent maintenance costs. The design and location of the memorial would be subject to approval by the National Capitol Planning Commission, the Fine Arts Commission, and the Secretary of the Interior.

After 40 years of delays and inaction, the least we can do is provide these remaining rescued airmen with an adequate means to express their appreciation. With the overwhelming evidence confirming that General Mihailovich was a victim of Communist subversion and propaganda, how can any American deny these U.S. airmen their one wish to honor their savior in a reasonable and acceptable manner?

In conclusion, I would like to pay tribute to a few of the many people who have worked so hard and long to clear the name of General Mihailovich, and recognize him for his valor in saving the lives of American servicemen. Acknowledgements are in order for Maj. Richard Felman, Lt. Col. Charles Davis, and Gen. Donald Smith, representatives of the 500 and some American airmen rescued by General Mihailovich, who have been struggling for over 40 years to adequately pay tribute to their rescuer. A special acknowledgement for his bravery and his resolve in ensuring that "Operation Halyard" became a reality is due to Lt. Col. George Musulin, leader of the OSS rescue team. Although thanks are in order for numerous others whom I have omitted by name, my final tribute is to David Martin, Milton Copulos, Thomas Kirk Ford, and the other historians who have succeeded in bringing out the truth about General Mihailovich.

□ 1510

Mr. PACKARD. Mr. Speaker, will the gentleman yield?

Mr. CRANE. I yield to my distinguished colleague from California.

Mr. PACKARD. Mr. Speaker, I appreciate my colleague from Illinois yielding to me on this issue. I have cosponsored the bill that he has introduced to honor General Mihailovich, and certainly I am proud to do so.

World War II was an interesting time when brave people all over the world came forward and assisted people for humanitarian reasons, not necessarily because they took sides on one side or the other.

Few people in this House I am sure are aware that my father was a worker on Wake Island before the war broke out. Of course, Wake Island fell as one of the early casualties of our Pacific. He was taken prisoner, and while he was 5 years or almost 5 years in the prison camp, there were times when little Japanese ladies, just outside of his prison camp, would slip through some pieces of raw potato and other raw vegetables that would keep some of the men alive. Those are unsung heroes, I think, of the war, that are not even recognized and many times not even known, they are not known by their name or their identity. But certainly for humanitarian reasons they helped protect and preserve the lives of another human being.

When we can identify someone that has done something like that, and particularly in this case where a man of stature went out of his way to protect and to preserve the lives of literally hundreds of American airmen, when we can identify those acts of valor we ought to certainly honor them. I support and commend my colleague for his gesture in honoring this great man who above and beyond anything that was expected of him put himself out and even jeopardized his own life and safety in an effort to preserve and protect these men which did so much for this country.

I want to thank the gentleman for not only yielding but for his efforts in this area.

Mr. Speaker, the National Committee of American Airmen rescued by General Mihailovich have been, for nearly 40 years, desperately attempting to properly honor the man who was responsible for their survival of the Second World War. The persistence of these men who have carried on their quest for proper recognition of their savior is commendable and, when taking into account the horrifying conditions they were rescued from, understandable.

The situation in Eastern Europe during the middle of the Second World War was among the worst of all time with regard to the chances of survival. Although they were of great magnitude in their own right, the casualties of the Western front paled in comparison to those of the East. In most instances, the conditions in these areas were so bad that only through extreme faith and conviction were the men able to maintain any degree of faith in humanity. It was into these conditions that some 500 American airmen found themselves thrown when they were shot down over Yugoslavia during the latter days of the war.

If these airmen had been left to provide for their own survival they undoubtedly would have lasted only a very short period of time in a Nazi occupied territory. Fortunately, however, this was not to be the case. Gen. Draza Mihailovich, who had recently been abandoned by the Allies in favor of Marshal Tito, took these Americans into the ranks of his Chetnik forces and saw to their survival. This man, who had absolutely no compelling political reason to aid any Americans, not only fed, clothed, and saw to the comfort of these men, but also aided and in many ways made possible their rescue out of occupied enemy territory.

Initially, it may be difficult to understand the persistence on the part of the National Committee of American Airmen rescued by General Mihailovich. However, when we are reminded of the situation from which these airmen were rescued by Draza Mihailovich, their conviction and dedication toward him is brought into a much different light. To them, the cost of this tribute and its subsequent maintenance is a small tribute relative to the debt they feel toward him, as well as his memory.

Mr. CRANE. I thank my distinguished colleague for his participation in honoring this, the 40th anniversary of the dreadful murder of a man who was a great patriot, a man, who as one of his soldiers described to me, a fellow who has since migrated to the United States, fought valiantly and in the vanguard against the first Nazi invasion of Yugoslavia. And as this gentleman explained to me, he hated red Nazis as much as he hated black Nazis, and so he was prepared to turn his guns equally upon the Communists that were subverting his own country, and his desire for freedom, and he ultimately became the victim of that Communist subversion of Yugoslavia. And the most bizarre part of it was the accusation that was made against him by the Communist rulers who took control of that country was that he was a Nazi collaborator.

Mr. HYDE. Mr. Speaker, the right of an individual to fight back against an aggressor that is attempting to infringe upon their freedom is one of the oldest and most revered principles to this Nation and its people. Needless to say, many times during the course of this century alone has this Nation gone to war in order to combat this very type of occurrence, and I might add, with no regrets. Surely we all must be able to sympathize with, as well as applaud, the predicament and subsequent reaction of Gen. Draza Mihailovich at the onset of the Nazi occupation of his native Yugoslavia in 1941.

Here is one of the few individuals who had the courage and conviction to stand up to, and oppose the expansion of Hitler's forces in Eastern Europe during this time. At incredible risk to his own life, General Mihailovich proceeded to become the major figure in the European resistance movement for almost 2 years. However, when for no clearly defined reasons, the British abandoned their support of General Mihailovich in favor of Marshal Tito and his forces, the United States went along and did the same. Although he was totally cut off from any form of allied aid or assistance, General Mihailovich proceeded to continue lending support to the United States Troops in Yugoslavia. In fact, on August 9, 1944, the rescue operation code named "Operation Halyhard" was successful in retrieving some 500 American airmen who had been shot down over Yugoslavia.

These men had been picked up by the forces of General Mihailovich and cared for until the rescue was attempted. It is these airmen who are desperately searching for the means to honor their savior. Unfortunately, although they are completely willing to bear the total expense of their tribute, as well as its maintainence, their only need for governmental support has failed to pass through this Chamber. What these men desire is the approval to honor their deceased savior with a monument on Federal land. Anyone remotely familiar with the true horror of this period of time in Eastern Europe will certainly appreciate the degree of gratitutde these men feel toward General Mihailovich, as well as the tremendous responsibility that they feel toward seeing that his name, and heroic actions, are properly remembered.

Mr. RUDD. Mr. Speaker, I applaud the gentleman from Illinois; [Mr. CRANE] for taking this special order to preserve the memory of the services to our Nation by Draza Mihailovich.

Mr. Speaker, on March 29, 1948, President Harry S. Truman conferred the decoration, "Legion of Merit in the Degree of Chief Commander" to Gen. Draza Mihailovich. The award was given in recognition of his role in the rescue of some 500 American airmen during the latter days of the Second World War. This award is among the highest honor that can be bestowed upon a foreign individual by the Government of the United States, and it, along with the accompanying citation, is ample proof of the gratitude then felt by this Nation toward Draza Mihailovich.

The motivation behind the presentation of this posthumous award, as well as that behind the movement to erect a monument in honor of General Mihailovich's sacrifice, is perhaps best expressed in the text of the citation which accompanied the award. The citation reads as follows:

> Gen. Dragoljub Mihailovich distinguished himself in an outstanding manner as commander-in-chief of the Yugoslavian Armed Forces and later as Minister of War by organizing and leading important resistance forces against the enemy which occupied Yugoslavia, from December 1941 to December 1944. Through the undaunted efforts of his troops, many U.S. airmen were rescued and returned safely to friendly control. General Mihailovich and his forces, although lacking adequate supplies, and fighting under extreme hardships, contributed materially to the allied cause, and were instrumental in obtaining a final allied victory.

The National Committee of American Airmen Rescued by General Mihailovich simply wish to keep alive the spirit in which their savior was remembered following the war. They ask for no funding and no assistance in the erecting of their monument. All that is required of this body is the granting of permission to construct this tribute.

Gen. Draza Mihailovich was, both during his life and after, an example of courage and principle. He alone lead the opposition against the occupying forces, as well as attempting to hold back the forces of communism threatening to, and eventually succeeding in, gaining control of his native land. The National Committee of American Airmen Rescued by General Mihailovich have not forgotten the man who was so honored at the end of the war. We, as a nation, should follow their example.

Mr. DORNAN of California. Mr. Speaker, the fight for a monument in honor of Gen. Draza Mihailovich is one which has been going on far longer than necessary. While the administration's objections to this harmless request are not altogether surprising, they are nonetheless, without merit. The days are long past that any credence can be given to the claims that Draza Mihailovich was, in any way, a traitor or Nazi collaborater.

In 1980 there was a book written by David Martin that explained how intelligence reports during the war were altered in order to give the allies a more favorable impression of Marshal Tito at the expense of General Mihailovich. On January 14, 1985, the Tuscon Citizen printed an article containing a quote by Richard L. Felman, president of the National Committee on American Airmen Rescued by General Mihailovich, which states that:

> All information our government received about Yugoslavia during World War II came through the office of British intelligence in Cario. That office was run by an Englishman named Klugman, who was also a secretary of the Communist party in London. Whenever a bulletin came through about Mihailovich, Klugman would cross out Mihailovich's name and write in Tito. He also filed fake reports to make it look like Mihailovich was collaborating with the enemy.

If this information was speculative, then perhaps we should follow the administration's example in exersizing caution with regard to this legislation. However, there is overwhelming evidence in support of this position in the form of eyewitness reports of the airmen, declassified OSS Intelligence reports, and the previously mentioned book by David Martin entitled, "Patriot or Traitor: The Case of General Mihailovich."

The controversy over the erecting of a monument in honor of Draza Mihailovich has gone on long enough. There is absolutely no valid reason why we should fail to pass this piece of legislation that has been proposed by Mr. CRANE, and allow the National Committee on American Airmen Rescued by General Mihailovich to pay tribute to their savior as they have been fighting to do for so long.

Mr. STUMP. Mr. Speaker, the importance of friendly relations with foreign nations cannot be overstated. This becomes particularly true when dealing with a nation that does not have a long history of amiable relations with the United States. In the current world political situation there are a number of nations that, while seemingly falling under the Communist umbrella of the Soviet Union, are still open to diplomatic reciprocation with this country. Unfortunately for the proponents of this legislation, as well as the National Committee on American Airmen Rescued by General Mihailovich, Yugoslavia is such a nation.

According to the Department of State, the reason behind their opposition to the erecting of a monument in the Washington DC, area honoring General Draza Mihailovich stems solely from the fact that they feel it would be interpreted as a direct criticism by the current Government of Yugoslavia. In a letter written to Mr. CRANE on July 26, Secretary of State Shultz stated that:

> Draza Mihailovich's wartime role remains an extremely divisive and emotional issue both within Yugoslavia and among those of Yugoslav origin within United States. For the U.S. Government to take a position on the merits of the case would inflame the debate and inevitably damage relations with a country that occupies a geopolitically stategic position on NATO's southern flank, that has sucessfully resisted Soviet efforts to control it, and whose independence we are committed to support.

While this position on the part of the State Department is understandable it is, in simplest terms, a way of making a major issue out of a minor one. Additional, Secretary Shultz also brought up in the letter the problem of a possible second monument honoring Marshal Tito due to the belief that many Americans were also aided by his forces. In response to that one can only say that until a similar request is made by any individual desiring to honor Tito in a fashion such as this, we should not concern ourselves with the potentiality of such a situation. However, if such an unlikely occurence ever does come to pass, it would be necessary to examine the request from an objective standpoint, and thus discover its merit.

The National Committee on American Airmen Rescued by General Mihailovich simply wish to honor the man to whom they owe their lives. We as a nation should also feel compelled to display some token of gratitude to an individual who provided for the safe return of so many of our courageous fighting men.

Mr. STANGELAND. Mr. Speaker, when examining the issue we are currently dealing with from an objective standpoint, it is easy to succumb to the State Departments' arguments opposing the erecting of a monument in honor of Gen. Draza Mihailovich on Federal land. The maintaining of relations with foreign nations that are not traditionally on friendly terms with this Nation should be, without a doubt, one of the major concerns of this Chamber. However, contrary to the position of the Department of State, it is not by any means the major priority of this Nation as a whole. What is far important than the pacification of every concieveable foreign nation is the serving of the citizens of this Nation.

There are nearly 500 American airmen, both current and former, that make up the membership of the National Committee of American Airmen Rescued by General Mihailovich. This Chamber must put into proper perspective the weight of their request relative to the objection of the State Department.

One of the major arguments put forth by the Department of State is related to the former belief that General Mihailovich was a Nazi collaborater. What must be stressed here is that these allegations are no longer considered valid after having been refuted by declassified reports from the top-secret Office of Strategic Services, Heritage News Forum, May 30, 1985. Additionally, as stated in the Heritage News Forum on May 30, 1985:

> These documents, along with others now available overseas, make it clear that the rumors were the product of a disinformation campaign operated by a high level Communist mole in the British Intelligence system named James Klugman. He systematically altered intelligence coming out of Yugoslavia to make it appear that Mihailovich was at best incompetent, and possibly collaborating with the Nazi's.

It's obvious that the State Department seems to feel that this is not enough proof of the false nature of the charges against General Mihailovich, however, that does not mean that we should follow their example of closing their eyes to the truth.

Gen. Draza Mihailovich was a patriot, and a hero in every sense of the word. Whether or not the opposition to this legislation chooses to continue heeding the trumped-up charges leveled by Communist spies or the proof put before them by their own country is their business, but it should not have an effect on the good judgment of the Members of this Chamber. We should look upon the erecting of this monument in honor of Draza Mihailovich as a proper tribute to a man who helped save so many of this country's loyal fighting men.

Mr. KEMP. Mr. Speaker, I would like to thank my good friend and colleague, the genteman from Illinois, for taking the time to focus attention on the bravery of a leader in the Yugoslavian struggle against Nazism who saved the lives of hundreds of American airmen during World War II.

On behalf of the parishioners of St. Stephen's Serbian Orthodox Church, the Serbian National Federation and the memory of Draza Mihailovich, I would like to take a moment to address this great individual's contribution to the cause of freedom.

It was 40 years ago that the great Gen. Draza Mihailovich was killed in Yugoslavia. I want to speak out in his honor, for it was General Mihailovich and his "Chetnik" forces who were responsible for saving the lives of 500 American airmen who had been shot down behind Nazi lines in World War II.

Our airmen were hid and cared for by Mihailovich's forces until they could be rescued. Later, they were dramatically rescued from Yugoslavia through a rescue mission named "Operation Halyard."

During the time our airmen were under the protection of General Mihailovich's men, they had a chance to witness some of the battles between the Chetnik forces and the Nazi foes. During this time, the general was regarded as the most outstanding hero in the entire European struggle against Nazi occupation.

President Harry Truman later awarded General Mihailovich the Legion of Merit in the Degree of Chief Commander, praising his contribution to the Allied cause and recognizing the key role played by the general and his troops in saving the approximately 500 U.S. airmen who had been shot down behind enemy lines over Yugoslavia.

Mr. Speaker, the surviving airmen that were thus rescued want to honor their savior by erecting a memorial to him at their own expense. They have formed the Committee of American Airmen Rescued by General Mihailovich, and have petitioned for permission to erect such a memorial on public lands, either in the District of Columbia or its environs. The actual site selection would be done by the Secretary of the Interior, in consultation with the Commission of Fine Arts and the National Capital Planning Commission.

There has been a bill introduced which would authorize these airmen to establish the monument. It is H.R. 77, and it has 66 cosponsors already. Similar legislation has been passed by the Senate in the past, but never in the House. Frankly, I think it is high time we permitted this project to go forward. It is the least we can do to show that we support the desire of this group of rescued airmen to honor the patriot who saved their lives.

Mr. CRANE. Mr. Speaker, I yield back the balance of my time.

TRIBUTE TO THE HONORABLE ELWOOD "BUD" HILLIS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana [Mr. MYERS] is recognized for 60 minutes.

Mr. MYERS of Indiana. Mr. Speaker, each 2 years as we approach the ending days of that congressional session, the reality that some of our colleagues have chosen not to seek reelection and will not be in the next session of the Congress sets in upon us. This is what has happened today with one of our colleagues from Indiana.

It is with sorrow today that I take this hour to thank BUD HILLIS for his years of service here in the House of Representatives.

BUD HILLIS, a native Hoosier, born in Kokomo, IN, was educated in the public schools of Kokomo. He was a graduate of Culver Military Academy, a short distance from Kokomo, and then went into World War II as an infantryman, served in Europe, came back and attended Indiana University where he received his undergraduate degree. He went on to get his degree in law.

He was a practicing attorney in his home county of Howard County, IN, and served in the Indiana State House of Representatives for two terms where he was at the time of his selection to be a candidate for Congress in 1970. It was Richard Roudebush who was the incumbent Congressman from the Fifth Congressional District of Indiana who was selected by the Indiana Republican State Convention to be their nominee for the U.S. Senate in 1970 that left a vacancy on the ballot. After a great many ballots by the selection committee, BUD HILLIS was selected by that committee to be their candidate. He was elected on November 3, 1970, and became a Member of the 92d Congress where he has served ever since that time, and has served most admirably.

I personally will certainly be sorry to see BUD leave, and we will miss him, assuming that we are back in the 100th Congress. I have had the honor to serve with BUD in the 16 years that he has honored us with his service.

In one of those years, 1974, he and I were the lone Republican survivors to survive in Indiana because of the onslaught that took out five other Republicans, and it was a unique experience for the two of us to be the only sole Republicans to survive.

□ 1520

We have worked together on a great many things, which is beneficial not only to our country but to our constituencies in Indiana.

So it is a sorrow today that we do take this occasion to bid BUD farewell in a sense, but I suspect that we will see a lot of BUD, because the talent that he has displayed in his 16 years here, the talent, the ability, cannot be denied.

He is uncertain, he tells us, of what he is going to be doing except go back home again, to Indiana; but I imagine he will be a frequent visitor to the Chamber here, to give us counsel through the experience that he has had, and give us advice; and that we always seek.

At this time, Mr. Speaker, I yield to the gentleman from the First District of Indiana [Mr. VISCLOSKY].

Mr. VISCLOSKY. Mr. Speaker, I appreciate time being yielded to me by the dean of the Republican delegation from Indiana [Mr. MYERS]. I will try to begin holding up the other end of our delegation, at the freshman end of the Democratic Party.

I would want to comment originally, not knowing that you and BUD were the two Republicans in 1974, that they certainly saved the best, and I congratulate you on that.

Mr. MYERS of Indiana. We thank you.

Mr. VISCLOSKY. I have had the distinction of knowing BUD HILLIS from two perspectives. One, as a person on a staff for another Indiana Member, the late Adam Benjamin, from 1977 to 1982, and as a member of that staff, I was treated with unfailing courtesy by a Member of Congress, and that is BUD HILLIS.

It did not matter whether you were a Member or whether you were a clerk on a staff; he was a gentleman at all times.

More recently, I have had the privilege of knowing BUD HILLIS as a Member. He has continued to treat me as a gentleman; giving me advice from time to time because essentially he represents more of my major two counties than I do, geographically; although our population base is somewhat north.

We have also worked in a bipartisan fashion on a number of concerns that are of mutual interest to us: keeping Amtrak service in line for the people that we represent; ensuring that a veterans' clinic is named after one of our former colleagues.

Perhaps most importantly from my perspective, being a moving force in the Congressional Steel Caucus. As vice president of the executive committee, BUD has been out in front; and as the record will show, during debate in 1984 on the trade bill, it was BUD HILLIS who took to the floor and reminded this body that we cannot let workers be thrown away.

I think that he has let his actions be governed by those thoughts. I will miss him greatly and if I could paraphrase Dickens, who does a much better job at things like this, I would say that BUD HILLIS is as good a master, as good a man, and as good a friend as his district, as the State of Indiana, or this country will ever know.

I will miss BUD very much and hope that the winds of life will be gentle with he and his family in his years after the House.

Mr. MYERS of Indiana. I thank the gentleman for his remarks.

Mr. Speaker, I yield to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I would like to join with the Members of the Indiana delegation in congratulating BUD HILLIS on his years of service in the House. I have gotten to know BUD over the years that I have been here, and he is an absolutely distinguished Member with a great record on a lot of different issues.

The gentleman from Indiana just mentioned the issues that he works on on behalf of his district and how successful he is because he is so well regarded by the Members in this body, but also he has done a lot for the Nation because of his expertise in military matters and in matters that confront the future of this country.

So I think that we are going to suffer a great loss as BUD moves on to other endeavors, but his work has had a lasting impact here. I know in working with him on some questions that we have had as fellow Presbyterians about some foreign policy directions in which our church has been moving. BUD has counseled with me on some things of that nature, and it has been very, very useful to have someone of his stature involved in the process of trying to work out positions that we think would have a broad base of interest within the church.

I know that it is a great loss; it is a great loss for the State of Indiana to lose someone of his seniority and his ability, but while we reflect in sorrow, we also should reflect in gladness that we have had him for 16 years, serving the Nation so well.

Mr. MYERS of Indiana. I thank the gentleman for his comments.

Mr. Speaker, I now yield to the gentleman from Mississippi [Mr. MONTGOMERY], who has had the opportunity to serve with BUD not only in the House but on two committees, who happened to be a classmate with the two of us. We are still survivors, SONNY.

Mr. MONTGOMERY. Mr. Speaker, I want to compliment the gentleman, who is a classmate, as he mentioned, he and I had the privilege of coming here 20 years ago to this wonderful House; and BUD HILLIS came 4 years later, I believe, from Indiana.

Mr. Speaker, I want to thank our colleagues from the great State of Indiana for taking this time today to pay tribute to our friend, BUD HILLIS. I have been fortunate to have had the chance to serve with BUD on both the Veterans' Affairs Committee and the Armed Services Committee. BUD is one of the most capable and hard-working Members in this Chamber. We will miss his leadership on military and veterans issues.

As third ranking minority member of the Veterans' Affairs Committee, BUD has had a hand in making sure we are taking care of the veterans of this country. He has been a great asset to all of us on the Veterans' Affairs Committee.

I appreciate the help and the leadership BUD provided as ranking member of the Armed Services Personnel and Compensation Subcommittee. He was one of the people out front in support of the GI education bill and with his assistance and leadership, the GI bill was passed and is a great success today. I also have worked closely with BUD on issues pertaining to the National Guard and Reserve. He has authored countless amendments and led the way to secure more equipment and better benefits for our Reserve components.

BUD and Carol have been great friends over the years. I will greatly miss them here in Washington, and I wish them every success in their next career.

Mr. MYERS of Indiana. Mr. Speaker, I thank the gentleman for his remarks and, those 20 years have gone fast, have they not?

Mr. MONTGOMERY. Yes.

Mr. MYERS of Indiana. Mr. Speaker, I yield to the gentleman from Arizona [Mr. RUDD] who, like BUD, has chosen not to seek reelection this year, will not be returning to the 100th Congress; and like BUD, we are certainly going to miss his service. I will particularly, because serving on the Appropriations Committee and on the Subcommittee on Energy and Water Development he has been a very valuable member of that committee.

So at this time I yield to the gentleman from Arizona.

Mr. RUDD. Mr. Speaker, I thank the gentleman who is my ranking member and good and valued friend, ranking member on the Appropriations Subcommittee on Energy and Water Development for yielding to me.

I would also like to commend the gentleman from Indiana [Mr. MYERS] for taking out this special order to give us a chance to sort of say goodbye to BUD HILLIS, a great American, like my colleague in the well.

He is a fellow Hoosier, of my colleague in the well, but I must also say that he is a sort of a fellow Hoosier for the rest of us here, to respect the Hoosier-ism that the Indianans have brought to Congress.

It is my privilege to participate in this special order today for BUD HILLIS to pay special tribute to him because he is one of the outstanding Members of the House of Representatives here; he has been my friend, colleague. I admire him and I do like him as a friend should like another friend.

I will tell you that the country is a better place, a stronger place, a more secure place as a result of BUD's presence here in the House of Representatives and his representation on the

Armed Services Committee during the course of his tenure here.

He has worked very diligently in all matters which relate to the work of the House of Representatives, on behalf of the Government, for his State and for our Nation to revitalize our Nation's defenses, to play a key role in the vital issues such as the MX and chemical weapons development, military draft and enlistment bonuses; all of them common sense, good, workable pieces of legislation which he supported.

The Nation has benefited also from his expertise in the Committee on Veterans' Affairs, and I was delighted to see the great chairman of that committee make the laudatory statements which he made with regard to Bud Hillis' service on that committee.

His keen understanding of the needs of the dedicated men and women who have served in the Armed Forces gave him an opportunity to serve on that committee better, and also provide the services that people who have worn the uniform of the military services of our country deserve.

☐ 1530

Bud and I have not always agreed on a lot of issues such as—well, there is no need to enumerate any of those. There are so few that they would not matter anyway.

But without question, he has been unyielding in his loyalty to the United States of America, to his district in Indiana, to the State of Indiana, to the country that has benefited from his representation here in Congress.

I think that the country is better because he was here. I extend my best wishes to Bud and to his wife, Carol, for continued success throughout his life. I am sorry to see him leave. I hope that I do not lose contact with him. I am sure that he will not lose contact with the great men and women of this most auspicious body here in the House of Representatives or with his friends here.

So I do thank the gentleman from Indiana [Mr. Myers] for yielding this time to me and for having this special order.

Mr. MYERS of Indiana. I thank the gentleman from Arizona for his remarks. We are going to miss Bud but we are going to miss the gentleman's, Mr. Rudd, services, too. We wish the gentleman well.

I yield to the gentleman from Indiana who has had the honor to serve with Bud for the last several years, the gentleman from Indiana [Mr. Hiler].

Mr. HILER. I thank the gentleman for yielding. I want to also thank him for holding this special order in Bud Hillis' honor.

Mr. Speaker, I have had the opportunity to know Bud for 6 years since I have been in the House of Representatives, and occasionally we can look around this body and someone will pass through here and we can say, "You know, that person is a real gentleman." In the business that we are in, which sometimes fosters big egos and the business that we are in which sometimes fosters people to have hard feelings or maybe to say things about our colleagues or other people in our profession that maybe we wish we would not, in 6 years I never heard Bud Hillis say a bad thing about anybody. Bud was certainly a gentleman in the way he is so deeply respected by the people in his district.

Many people have looked at Bud Hillis' seat and said, "Gosh, that is a congressional district that is an overwhelmingly Republican seat and that is one of the reasons why Bud has always enjoyed such a strong majority in his vote." But the fact is, as the gentleman knows, that seat is not an overwhelmingly Republican seat but in fact Bud Hillis made it a seat that was loyal to him.

I think the reason he was able to garner a lot of votes from people across the political spectrum was because people had such a great respect for the way he conducted his office and the way he represented those people not only in the votes here in Washington but he represented them whether it was casework back home or other matters there. He not only represented the people in that district, he represented the people in the surrounding district. AM General, which is a major defense contractor in my district, I know that Bud Hillis played an invaluable role in helping AM General over the years when they had bids to submit to the military, in helping to ensure that AM General got a fair look and a fair shot.

I think that is the kind of gentleman Bud is, someone who not only understands his own district but truly was interested in the State of Indiana. I guess that is because of the Hillises' long tradition in the State of Indiana. The Hillis name is a very prominent name in the State. It has been one involved in politics for many, many, many years, and I hope Bud's retirement from this body does not represent a retirement of that name from Indiana politics. I would hope that Bud would continue to be involved in some way, possibly there might be other Hillises along the way who would continue his fine tradition.

I am fortunate in having Bud Hillis reside part time in my district. He has a summer cottage that I know he and Carol enjoy going to on occasion. They have not been able to go to it nearly as much probably as they would like while he has been in office here. But hopefully upon his retirement he will spend a lot more time in Culver, IN, and that we will get a chance to see him down at his lake cottage.

The gentleman from Mississippi, the chairman of the Committee on Veterans' Affairs, Mr. Montgomery, mentioned Bud Hillis' distinguished work on behalf of the armed services of our country. Nowhere is that more clear than in Bud's work for Grissom Air Force Base, which we had an opportunity as the Indiana delegation to tour under Bud's leadership a year or so ago.

The strides that have been made in upgrading Grissom Air Force Base to make that an integral part of our Nation's defenses are due in no small part to Bud Hillis' efforts. I think we in the State owe him a great deal of thanks for that.

I guess I would close by reiterating one point, that I think the thing that most impresses me about Bud is that he just never has a bad thing to say about anyone, will always offer his advice if asked. He is never pushy about offering advice. If you are not looking for advice, he recognizes that we are all individuals, and he tries to be helpful where he can be. He is not pushy, he is not shovey. He is a true gentleman.

I would hope that when I would retire from this body either voluntarily or involuntarily that if there was a special order taken in my behalf I would hope that I would conduct myself in the same way. I think no finer words can be said about a Member of Congress than that he conducted himself as a real gentleman or she a real gentlewoman. Bud Hillis has certainly met that test.

Once again I want to thank the gentleman for taking this special order to give us a chance, not only those from Indiana but others in this body to pay our respects to this fine gentleman.

Mr. MYERS of Indiana. I thank the gentleman for his remarks. The remarks the gentleman has made about the character of Bud are very accurate. He is a very gentle person yet firm. You always knew where Bud stood. If he believed he was right, he was always ready to hang in there and fight to the last. It was kind of hard to have both, a gentle person yet a very firm person, but that is Bud.

I yield to our colleague, also a Hoosier, the gentleman from Indiana [Mr. Coats].

Mr. COATS. I thank the gentleman for yielding. I appreciate the efforts of the gentleman from Indiana [Mr. Myers] for arranging this special order for our colleague Bud Hillis.

I have had the privilege of serving, as has Congressman Hiler, serving with Bud, for 6 of his 16 years here. I wish I could have served all 16, for Bud is truly a class fellow, someone who has just been a joy to serve with. Bud has had the privilege of representing a fair amount of northern Indiana through the redistricting of the legislature when his seat, his district changed considerably. Bud has seen his district change considerably since 1982. Yet when we saw Bud, none of us was surprised, those of us who served with him, at his success in the new part of Indiana being the same as his success in the previous part that he represented. That is a tribute to Bud, the kind of person that he is.

He has represented both the auto workers that have made up a substantial part of the old district and the farmers that make up a substantial part of his new district with equal amount of dedication and an equal amount of hard work. His work on the Armed Services Committee, which has already been alluded to here, has been distinguished. He made a great contribution to this country.

Bud picked up in redistricting the county that I formerly represented, Wabash.

While I was sorry to see it leave the fold as part of the Fourth District, I was happy to see it went into Bud's hands.

He has provided great service to the people of Wabash County. I know in talking to many of them how happy they have been to have Bud as their Representative.

I want to mention a few things about Bud's involvement in our Members' prayer breakfast group, which the gentleman from Indiana [Mr. Myers] is also a faithful supporter of.

As the gentleman knows, Bud has been a faithful member of that group, I think, since he first arrived here, as the gentleman from Indiana [Mr. Myers] did and served as president of the group for 1 year and as such headed up the Nation Prayer Breakfast as chairman of that group.

All of those who participated in that Thursday morning prayer breakfast here in the Capitol know of Bud's contributions over the years to that group. In fact, just last Thursday we honored the five members of that group who are retiring this year: Congressman Rudd, who spoke here just a few moments ago; Charlie Whitley from North Carolina; Berkley Bedell from Iowa; and Margie Holt from Maryland. Together with Bud, they presented to us little reminiscences of their involvement with the prayer group during their years here in the House, told about some of their plans for the future and reiterated what that group meant to them. It was a memorable time and a great moment of sharing for all of us there.

We thank Bud for his contributions to that group.

I know his wife, Carol, will be pleased to have Bud at home on a regular basis and at a little bit slower pace of life, and less commuting, which will be great for both of them.

We will miss him. We hope he comes back to visit us frequently.

Bud, we wish you all the best and thank you for 16 years of service to this body.

I thank again the gentleman from Indiana [Mr. Myers] for convening this special order in Bud's honor.

Mr. MYERS of Indiana. I thank the gentleman for his comments.

Mr. Speaker, while we keep no records of our prayer breakfast group, Bud has been a very faithful Member for these last 16 years that he has been here. I can attest to all 16 years.

Mr. Speaker, I apologize to our friends here. I went to the State of Indiana for two speakers in a row. I yield at this time to Mr. Darden of Georgia and apologize to him for taking the time to recognize the Hoosiers. I also apologize to the other Hoosiers for bypassing them at this point.

I yield to the gentleman.

Mr. DARDEN. I thank the gentleman for yielding.

I also want to thank him for taking this time to give a special order to honor a very special person, of course, our good friend, Bud Hillis, who is retiring from Congress.

Bud is going to retire, but those of us on the Democratic side as well as the Republican side are going to miss him very much, too.

I have known Bud since I came to Congress in 1983 in a special election.

And as the gentleman in the chair at this time, Mr. Abercrombie, knows, it is a very frustrating thing to come in in the middle of a term. You know no one. Bud was kind enough to come to me and tell me who he was and let me know that he wanted to help me out and help me become acclimated to this Congress. It was certainly made easier, my coming here, by Bud Hillis' friendship and his willingness to let me know a little bit about what was going on in this very diverse and sometimes confusing body.

I also had the opportunity to serve with him on the Committee on Armed Services later on. That has been a real pleasure because, as you know, you get to know someone so much better when you sit with him day by day in committee and you sit there and talk with him about the problems you have in your district and the problems in Bud's district.

While he certainly looks after his district, I think it goes without saying that Bud's real interest was the national interest. While the people of the Fifth District of Indiana have been fortunate enough to have him as their Congressman, I think the population of this great Nation has been fortunate to have Bud here representing them.

I had an opportunity to go with Bud on a trip with the Committee on Armed Services last year, and we went on a mission to talk with leaders in New Zealand and Australia about the ANZUS treaty.

We took a side trip to Antarctica. Bud and I and several others went down to look at our naval and Coast Guard facilities in Antarctica, and also we decided to go to the geographical South Pole.

Bud, you would think he was much younger the way he turned explorer on us, went down to the geographical pole and we planted a flag right there on the bottom of the world.

When you have had an experience like that, traveling and getting to know someone, in the back of a cargo plane for 5 or 6 hours together, it gives you a new insight as to what kind of a person he is. I believe we will always be close friends as a result.

Even though Bud and I do represent different constituencies in different States, I am a Democrat, he is a Republican, he speaks with a Midwest accent, I do not; still I believe we have a lot more in common than we do not in common.

I am just pleased to have the opportunity to join this group of Hoosiers and people from all over the country in honoring a great man.

I would like to also point out that my wife, Lillian, joins me in sending our best wishes to Bud and Carol, and we hope to see them a whole lot here in Washington.

Mr. MYERS of Indiana. From one Bud to another Bud.

I thank the gentleman from Georgia for his comments.

The gentleman's references to the newest Member of the House of Representatives, now occupying the Speaker's chair, Mr. Abercrombie, I might add that I have been here 20 years and I have not sat in that chair yet. Here he is less than 1 week, and he is in it already.

Well, hope springs eternal, for some of us Republicans anyway.

Mr. Speaker, I yield to the gentleman from Florida [Mr. Hutto].

Mr. HUTTO. I thank the gentleman for yielding.

Mr. Speaker, I appreciate very much the Indiana delegation taking this special order so that we might honor our good friend, Bud Hillis, who is retiring at the end of the 99th Congress.

It has been a pleasure for me to serve on the Armed Services Committee with Bud for the last several years, and we all are going to miss him very much when he departs the legislative scene here in Washington. Since Bud is very high in seniority on the Republican side of our committee, I had assumed that all of his 16 years in the House of Representatives had been spent on the committee, but now I understand that he has been there for only 11 years. However, during this time, Bud has contributed significantly to the Armed Services Committee and has been in the forefront of providing our Armed Forces with the resources they need in order to maintain the deterrence which we have with the Soviet Union and the Warsaw Pact nations. BUD has been a good friend of all the armed services, and I, for one, greatly appreciate the stand that he has taken on the issues that pertain to the defense of our country.

I can only say that I wish BUD and his family the very best in the future. I join my many other colleagues in hoping that although he will be returning to Kokomo, IN, his hometown, that BUD will drop by occasionally to visit us here in the Congress. So it is my pleasure to participate in this tribute to a good friend, BUD HILLIS, and wish him Godspeed.

Mr. BURTON of Indiana. Mr. Speaker, I thank the gentleman for yielding to me. I really appreciate the gentleman taking this special order.

I did have the pleasure of serving with BUD HILLIS in the Indiana General Assembly back in 1967. As a matter of fact, BUD sat right in front of me. It was unfortunate for him that he had to sit that close to me, because we disagreed on a number of pieces of legislation and, every time he made a mistake, I would hit him on the head or reach up and touch him. I think that BUD probably does not remember that with relish, but he was a great legislator in the Indiana General Assembly. Everybody liked BUD and they admired him and respected him. And when he came to Congress, we were all very pleased because we thought the people had made a very good choice in putting BUD into the Congress.

When I ran for Congress the last time in 1982 and was successful, I had the privilege of representing an area that BUD had represented for a good many years, in Madison County and several other counties in the now Sixth District. And every place I went, they told me what a great Congressman they had had in BUD HILLIS and how they told me I had big shoes to fill. I am not sure that anybody could adequately fill those shoes because BUD did such a fine job.

I served with BUD since I came to Congress on the Veterans' Affairs Committee, and I found that not only was he a great Representative from the Sixth District, but he helped an awful lot of veterans as well. All the veterans' groups, the Veterans of Foreign Wars, the American Legion, the Paralyzed American Veterans, all of them, really appreciate what BUD has done for them in the past, and I know they are going to miss him.

I am going to miss sitting beside him on the committee. I want you to know that I have learned a great deal from BUD since I have been here.

All of the members of the Veterans' Affairs Committee will miss BUD, particularly Mr. HAMMERSCHMIDT, our ranking Republican, and SONNY MONTGOMERY, our great chairman.

I think I would be remiss if I did not say in conclusion that the people of Indiana are going to lose a great Representative. He served our State and our Nation well.

BUD, we all love you and we wish you the best in the future, and we are going to miss you a great deal.

Mr. MYERS of Indiana. I thank the gentleman for his very nice remarks. We will all miss him.

Mr. Speaker, at this time, I yield to another Hoosier and Member of the House, a great and outstanding Member, who has had the opportunity and privilege of serving with BUD for the past 6 years, Mr. JACOBS.

Mr. JACOBS. Mr. Speaker, not only that, but I give my personal permission to the gentleman in the well to take the chair, if he would like to. The gentleman might have to clear it with a few other people, but it is OK by me.

Mr. MYERS of Indiana. A few other districts throughout the country have to do something about that, though, before we could do that.

Mr. JACOBS. I think the gentleman in the well probably has a secret way to get up there, because I understand that Tony Randall, the movie actor, is a Democrat, and I suppose you have to be one to sit in that chair, and since the gentleman in the well could easily pass for Tony Randall, we could at least try it.

Mr. MYERS of Indiana. Our differences start right there, and end right there, too, with the physical characteristics.

Mr. JACOBS. Mr. Speaker, I thank the gentleman for yielding, and I thank the gentleman for being thoughtful enough to arrange this special order.

I stand here thinking how can I possibly express my great admiration and affection for BUD HILLIS, my friend, my brother; not my fellow Republican and not my fellow Democrat, but my fellow Hoosier and, above all—perhaps not above everything, but above most other things—my fellow American. He was even more than that, he is a fellow child of God. He surely has lived up to the expectations of his Creator, as few others ever have. BUD, I am sure you are watching someplace, and you are truly one of God's noblemen.

I got into a little trouble a few years ago. The gentleman in the well might recall that during a television broadcast on the eve of one of the elections, I was saying a kind word for a number of my fellow Democrats on the ticket out in Indiana. And while I was at it, I thought, should I, and I said, why not. I said, "To tell you the truth, if I were a citizen of the district immediately north of Indianapolis, I have no doubt in my mind I would cast my sacred vote for the Honorable ELWOOD HILLIS. I heard about that from some of my fellow Democrats. But a lot of my fellow Democrats in that district have supported BUD HILLIS because above party they have found a very unusual human being who cares.

BUD, as we all know, is a soft-spoken person. But behind the soft words, he has not a hard heart nor a mean spirit. It is almost what you might call a combination of steel and velvet. He has the heart of a lion and also the heart of a very generous and caring person. I hope that God wills that he will live and labor longer for decades to come in a well-deserved retirement.

He is one of the youngest looking senior Members of the U.S. Congress, and he is one of the youngest in spirit, too. I think he is going to have a lot of fun. I think we are going to hear from him from time to time and, if we do not, I think we will be diminished as an institution.

I thank the gentleman in the well. I thank you, BUD, for your friendship, as every Member of this body thanks you for your friendship and your help and your counsel and your wise advice.

He is like Sara Lee cakes: "Nobody doesn't like BUD HILLIS."

Mr. MYERS of Indiana. Mr. Speaker, I thank the gentleman for his very nice remarks.

Hoosiers, I think, are independent thinkers and we are certainly independent voters. Just as BUD gets Democrat votes, ANDY gets Republican votes in Indianapolis. We are kind of independent and free thinkers.

Mr. Speaker, I now yield to the gentleman from New York [Mr. MARTIN].

Mr. MARTIN of New York. Mr. Speaker, I thank the gentleman for yielding and also for his taking out this special order.

Not only being a Member from New York, but being an honorary Hoosier, I do understand there is a difference because the for-real Hoosiers have the opportunity to say all the great things about our dear friend, BUD HILLIS, and it gets down to us New Yorkers and honorary Hoosiers, and, God only knows, the gentleman from Illinois, an awful lot of the accolades have been made.

I have had the privilege of serving with BUD for the last 4 years on the Armed Services Committee. Indeed I remember my first few days in that committee. We deal with an awful lot of issues, and it is a long learning process. BUD HILLIS is one of those people who takes the time with the new members that come aboard the committee to explain to them where to go in the sense of getting the answers and how to get things done.

You know, the Republican Party is losing six members of the Armed Services Committee this year, so it is particularly difficult when you lose someone of the stature of BUD HILLIS. He is not only a great Hoosier, but a great

American in every respect and we are going to miss him.

As a matter of fact, Bud can be sure that from time to time, he is going to be hearing from me by telephone or whatever, by letter, to get advice because he is one of the very thoughtful members of the Armed Services Committee, and he is someone we are going to miss.

I thank the gentleman in the well for taking the time for this special order.

Mr. MYERS of Indiana. I thank the gentleman, who is one of the several honorary Hoosiers serving in the House of Representatives.

Mr. Speaker, I now yield to a gentleman who misses being a Hoosier by not too many miles, the gentleman from Illinois [Mr. Hyde].

Mr. HYDE. Mr. Speaker, I thank the gentleman for yielding, and my commendations to the gentleman for taking this special order.

Bud Hillis is perhaps the nicest person I ever met in Congress, let us say, present company excluded.

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He is a gentleman in every definition of the term. Gentle, sensitive, kind, generous, patriotic. When I think of his generosity there are many things that I am sure would embarrass Bud to be mentioned and so I shall not. He is one of that rare breed of person who, if he is your friend, and he is everybody's friend, he will bend over backward to be of help to you.

Bud Hillis is retiring from this Chamber and wisely so in the sense that he will be free to do some other things in his life, in his still young life, that he wants to do while he still has some energy and vigor. He will be missed in many, many ways. I hope that he will remember me for as long as I will continue to remember him because he is one of the real diamonds in a sea of zircons. I wish him health and happiness and long life, and I just hope some of the essential goodness of him has rubbed off on some of us because we will be the better for it.

Mr. MYERS of Indiana. Thank you Henry, for your very nice remarks.

Mr. WYLIE. Mr. Speaker, Bud Hillis is retiring from Congress. He is a good friend of mine. He has been an outstanding Member of this body. Those of us on the Veterans' Affairs Committee are especially sorry to see him leave. I know him best as a valuable member of the Veterans' Affairs Committee.

Bud currently serves as the third ranking member on the full committee and as the ranking member of the Subcommittee on Oversight Investigations. He would be the ranking member of the full committee if he were in the 100th Congress.

He is also on the Hospitals and Health Care Subcommittee serving as the third ranking member.

Bud Hillis served in World War II in the European theater leaving the service as a first lieutenant. We sit beside each other on the full committee and we talk. Bud enlisted in World War II at the ripe old age of 18 right out of high school and served for 27 months in the European theater. He served in the Reserves and came out as a captain. After his active duty in World War II, he went through law school and served as the chairman of the County Bar Association in his home county.

He served also for two terms in the State legislature before coming to Congress. Bud is considered by Members on both sides of the aisle on our committee as one of our most valuable Members, and was a leading proponent of the All-Volunteer GI bill, working closely with the chairman of the VA Committee, the Honorable Sonny Montgomery, as both Bud and the chairman jointly serve on the Veterans' Affairs Committee and the Armed Services Committee.

Bud was always very attentive and diligent at committee meetings and we depended on his keen lawyer's mind and quiet demeanor to ask probing questions of the witnesses who appeared before us without ever appearing to be offensive. He is certainly one of our most thoughtful members on the committee and is well respected by his colleagues on both sides of the aisle.

Bud has been the personal confidant of several committee chairmen on the Veterans' Affairs Committee including Olin Teague, Ray Roberts, William Jennings Byran-Dorn, and Chairman Montgomery. Big steps will need to be filled on the committee with Bud Hillis retiring, but he has told me over breakfast that he liked Congress and liked serving here. He enjoyed his job but simply wanted to be home to spend more time with his family. Majorie and I wish for Bud and Carol and their three sons happiness in their future endeavors.

Mr. MYERS of Indiana. Mr. Speaker, through the years I have had the privilege and opportunity to participate in farewells like this on a great many occasions; more than we would really like to see, because parting is sometimes very sweet sorrow. This is the case today. We are sorry to see Bud leave, but we wish him well, of course.

On those occasions when I have had the opportunity to speak before on behalf of Members leaving, I have always wished to be first or very early in the rotation because I was afraid everything that could be said about a Member would be said and leave nothing for me when it came my turn.

Today, that is not the occasion, even though the nice things that have been said about Bud, the most appropriate and honest things that have been said about not only Bud the person, but by his service here in this House of Representatives during these 16 years, there are many more things that could be said.

One, of course, Bud has represented a great portion of Indiana because in Indiana, we redistrict rather frequently. Bud has been a victim and a beneficiary in some cases of those redistricting. The opportunity to serve a larger congressional district.

His present congressional district, the Fifth District, sprawls from just north of Indianapolis to within just a few miles of the southern tip of Lake Michigan. The people of that district are certainly fortunate to have the opportunity to have Bud be their Congressman here in the House of Representatives.

In his own words, when we asked Bud, "Why are you quitting?" It came as somewhat of a shock last year. He said that he wanted to spend more time with his wife, Carol, and their three sons, and their grandchildren, two grandchildren who live now in Colorado with their parents.

We will miss Bud here in the House, both Republicans and Democrats alike. We will miss his advice and his counsel not only in military affairs or veterans' affairs but on other affairs that affect our Nation, when he is always participating.

He continues to be fiercely loyal even though he is leaving us. I am sure he will be loyal to those in uniform presently and those who have served in the past as has been said about his service in the Veterans' Committee.

He has never forgotten where he came from. Bud used to fly himself back home every weekend. Then he decided that it took too much time; he did not have enough time with his family or enough time to serve his constituency, so he started flying like the rest of us, commercially back and forth. But the important thing is for 16 years he has gone home just about every weekend to listen to his constituents and to have an opportunity to spend some time with his family.

His Hoosier ties here in Washington have been extensive. He has been an active member for 16 years of the Indiana Society of Washington which is made up of Hoosiers who are on temporary leave doing missionary work here in Washington; serving in Government or other capacities or just living in the Washington area. He has served as the Indiana Society of Washington's president in 1981 and 1982.

There are so many other activities, some of which have been mentioned here. He led the advocacy here for the Chrysler loan a few years ago that bailed out Chrysler from impending bankruptcy. He was a founder of the Congressional Automotive Task Force and was its first cochairman of that automotive task force. He is author of legislation which required the military to purchase American-made trucks and vehicles. He is a special adviser to the U.S. negotiating team at the Geneva strategic arms limitation talks, SALT.

He is a member of the Speaker's Select Task Force investing the reasons for the invasion of Grenada. He was a leading advocate for the development and deployment of the Army's M-1 tank. He was a sponsor of a resolution urging Japan to continue, voluntarily, quotas on vehicle imports into the United States which was very important to his auto accessory manufacturing in his congressional district.

As a member of the Armed Services Committee, he used his influence to see that Grissom Air Force Base, which was mentioned earlier, near Peru, IN, remained an active military installation. In the next few years, it will become even more active as more dollars are destined to be spent on Grissom Air Force Base, particularly because BUD HILLIS served here and was concerned.

He successfully persuaded the Veterans' Administration to construct an outpatient clinic in northwest Indiana and make access to veterans in need of service much more available at Crown Point where the clinic is now located and will be open in 1987.

He is a member of the West Point Board of Visitors, the congressional committee which oversees the operation of the U.S. military force. Back last year when BUD announced that he would not be seeking election to the 100th Congress, many people asked and BUD'S most frequent remark was that there are three ways to leave Congress, two of which are not very desirable. BUD has chosen to leave the House of his own decision with his health and his soundness of mind. I agree with BUD that the first two are not for me, and I hope I am as wise as BUD and some of the rest of us make the same wish to know just when.

BUD, we will miss you. As I said earlier, I am sure we are going to hear from you; that you will be a frequent visitor. We wish Carol and you many years of happiness. Your three sons, of whom I know you are so proud, we wish all of your family much success and much happiness. We hope you will come back to Capitol Hill frequently to help steer us in the right direction.

Thanks for the opportunity to serve with you these 16 years.

Mr. BROOMFIELD. Mr. Speaker, since January 3, 1971, when he took his seat as a Member of this body, the House of Representatives has been privileged to have the services and the dedication of our good friend and colleague, Elwood "BUD" HILLIS.

For the past 6 years, BUD HILLIS has most ably served the people of Indiana's Fifth Congressional District. His care and his concern for the welfare of those fine people is well known. He has brought real meaning to the ideal of public service.

But BUD'S mark goes far beyond the Fifth District. Those of us who come from areas where the auto industry is very important are very appreciative of the active leadership that BUD took in assisting the auto industry when it was in serious trouble. He was one of the early leaders of the congressional auto task force that helped to bring the problems of the auto industry and the directions that needed to be taken to the attention of the Congress.

As a member of the House Veterans' Affairs Committee and for the past 11 years as a member of the House Armed Services Committee, BUD'S concerns have also extended to the veterans and the servicemen of our country, and to the principle of maintaining a strong defense capability. BUD has been in the forefront of providing the necessary resources to our maintaining a strong defense and a high caliber military.

BUD'S accomplishments on behalf of the people of the Fifth District, and for all Americans are numerous and give evidence to the proud record he has established. When BUD leaves this body, we will be poorer for his absence.

However, Mr. Speaker, I too join my colleagues in wishing BUD and his lovely wife, Carol, a rich and fulfilling life beyond this Chamber, and I look forward to the next time we meet. It has been an honor and a privilege to serve with BUD over these past 16 years.

Mr. BEVILL. Mr. Speaker, I rise today to pay tribute to my good friend and colleague, ELWOOD "BUD" HILLIS, who is retiring after serving 16 years in the U.S. Congress. BUD and I sat together for many years at our prayer breakfasts and I will miss him.

BUD has been an outstanding Member of Congress and he is admired and respected on both sides of the aisle.

BUD has done an excellent job as a member of the House Armed Services Committee, as well as the Veterans' Affairs Committee. He is dedicated to providing our Nation with a strong defense. As a veteran himself, BUD has shown great concern for those who serve our country in the military.

At the same time BUD has served the interests of our Nation, he has done an outstanding job representing the people of Indiana's Fifth District. I know that his talents and hard work will be missed.

I have enjoyed working with BUD and I have enjoyed his friendship. We will not forget the mark he has made here in the Congress.

Mr. HAMMERSCHMIDT. Mr. Speaker, ELWOOD "BUD" HILLIS is leaving the Congress with an enviable record of public service.

Congressman HILLIS and I have served together on the House Veterans' Affairs Committee since he was first elected in 1970. He succeeded another distinguished Member of this body, Richard L. Roudebush, who was later to become the Administrator of Veterans' Affairs. Currently he serves as the third ranking member of our full committee and is ranking member of the Subcommittee on Oversight and Investigations and second ranking on the Subcommittee on Hospitals and Health Care.

During our time together in the Congress BUD and I have not only been professionally associated, but we have been close friends. I am going to miss that friendship very much just as I will miss his wise counsel and advice as a Member of this body.

Mr. Speaker, BUD HILLIS has the keen mind of the well-trained lawyer. He has done his homework in the Congress. At our committee hearings on the great issues affecting veterans of our country, he has demonstrated an insight into veterans' matters that has earned for him a well-deserved reputation as a born leader.

His probing questions have materially assisted in perfecting legislation. His quiet reasoning has had a marked impact on veterans programs all acorss the land.

BUD HILLIS has also served with distinction on the Committee on Armed Services where he is fourth ranking for the minority membership, and ranking on the important Subcommittee on Military Personnel and Compensation. On that committee, too, he has brought diligence and leadership, and our Nation's Armed Forces are the better for it. And so, too, is our country.

Mr. Speaker, BUD HILLIS was destined for greater roles of leadership in the Congress but he has chosen to go another route. It is a route of family and home in his beloved Indiana. As he takes up new pursuits and as he leaves this House of the people that he has served so well, he can reflect upon solid accomplishments covering two decades of service to our Nation.

BUD HILLIS is a patriot who has served his country in uniform in World War II and later he served his State with distinction in its legislature. He has been a model Representative for his Indiana constituents, and he has served them extremely well. He is a loving husband and a proud father. He is my very good friend, and I join with all of his other friends in the Congress in wishing for him the very best kind of future.

Thank you, Mr. Speaker.

Mr. APPLEGATE. Mr. Speaker, I want to join with my many colleagues in the House in extending special recognition to one of the really special Members of this Chamber, someone who has contributed immensely to the U.S. Congress for 16 years and who will be leaving us at the end of this year—my friend and colleague from the Midwest, Representative ELWOOD "BUD" HILLIS.

BUD HILLIS has always been supportive and cooperative of every attempt I've made in Congress on behalf of America's veterans, on behalf of American workers and businesses suffering from foreign trade competition, and on behalf of all American servicemen and women who have benefited from his unyielding dedication in defense of our Nation and the free world.

I have had the distinguished opportunity of working closely with BUD in our activities on the House Veterans' Affairs Committee, a committee upon which he has served since he first came to Congress in January 1971. In all of these many years, BUD has provided the very support and leadership qualities that are essential and have often made the difference in assuring that America's veterans receive the level of care and assistance that they fully deserve.

On the very important issue of our America's trade problem, BUD has always been an active participant in the frequent meetings of the congressional steel caucus, having had served during the 99th Congress as the vice chairman of the caucus' executive board. BUD has always understood that, along with providing our Nation with the very best in a military defense, the economic defense of American industry and the preservation of American jobs are also major components of keeping the peace and providing the needed backbone for our national defense.

I've enjoyed working for the past decade with a colleague who understands the important problems facing our country and who always strives to do something to solve them. Coming, as I do from the Midwest of America, BUD knows that we have to go that extra mile to achieve what is best for our constituents. While it has always been a battle, I've been fortunate, as have all other Members of this Chamber, in having a colleague like BUD HILLIS alongside during the fight to protect and preserve what is right and what is needed for our Nation.

Mr. LENT. Mr. Speaker, I would like to thank my distinguished colleagues representing the Indiana congressional delegation for calling this special order honoring our good friend BUD HILLIS. I've known BUD since we both came to Congress back in 1971, where as freshmen, we learned the ropes together.

Over the years, BUD has earned the respect and admiration of his colleagues on both sides of the aisle. He is a dedicated public servant and an outstanding American, and he has served his Indiana constituents to the very best of his ability.

As a member of the Armed Services and Veterans' Affairs Committees, BUD concentrated his efforts to improving our Nation's defenses and ensuring that the men and women of our Armed Forces received the best this Nation can offer. BUD HILLIS has made significant contributions to the betterment of our country, and as Americans, we should be truly grateful for all he has done.

I'd like to offer BUD and his family my best wishes for happiness and success in the years ahead.

Mr. GAYDOS. Mr. Speaker, I rise here today to join with a number of my colleagues in paying a well-deserved tribute to the gentleman from Indiana, ELWOOD "BUD" HILLIS, a friend and colleague who has decided to move on to other and better things after 16 years in this body.

Some people might think it odd that I, a Democrat from another State, would stand here to say nice things about a Republican, but if you know BUD and the way he operates, then you know that my being here isn't as odd as it might be.

Let me cite just one example. BUD HILLIS and I have been members of the congressional steel caucus for several years. In fact, while I serve as chairman of the executive committee of the steel caucus, BUD serves as the vice chairman.

That in itself should give you some idea of how we get along. BUD HILLIS is concerned about the people in his district. He is concerned that we continue to have a viable steel industry in this country. He believes that our basic industries, especially steel and automotive, must continue to operate strongly.

And his concern is expressed in the kinds of things he does. To me, as a founder of the congressional steel caucus, BUD's commitment to the steel caucus and his activity regarding the congressional automotive caucus, as a cofounder and member, confirm his interest in preserving the kinds of manufacturing jobs this country needs to keep it economically healthy and militarily strong.

I could read from BUD's biography, listing the dates of importance in his life, but to me, the important date is the date he first came to Congress. BUD's 16 years in Congress, I am sure, haven't been perfect ones. There has been some frustration, especially when a pet bill or cause fails, but I know there has been extreme satisfaction also.

In conclusion, I want to thank BUD for his service to the Congress and the American people as well as to the people in his congressional district for the past 16 years and I want to wish BUD well in whatever he chooses to do for the rest of his life.

Godspeed, BUD HILLIS. We will remember you.

Mr. HORTON. Mr. Speaker, it is with personal regret that I bid a fond goodbye to a man I considered to be a personal friend and an outstanding legislator, ELWOOD H. "BUD" HILLIS.

BUD and I have served together in the House for the last 16 years. And in those 16 years, I can look to no one with a better record of support for a strong military than BUD. Neither can I find a better friend of military personnel than the gentleman from Indiana.

Serving on both the Veterans' Affairs and the Armed Services Committees, BUD has long been a stalwart in protecting our Nation and those who serve it. Even in the period immediately following the Vietnam war, BUD recognized the need to maintain the credibility of American forces here and abroad. He was in the minority for a number of years following that uneasy time in American history; but his efforts during that time were invaluable.

This body sorely needs legislators like BUD. That makes his departure even more difficult. His continued dedication to detail, to looking at the long-range ramifications of legislation instead of the short-term political gains, are rare and admirable traits.

The gentleman from Kokomo, IN, should be proud of his 16-year legislative record. We who have had the honor and the pleasure of working with him during this time certainly are.

Mr. Speaker, my wife Nancy and I want to wish BUD and his family the best of everything. And to the State of Indiana, where Mr. HILLIS will be returning, I say, "this BUD's for you." Take care of our good friend. We will miss his friendship and leadership in the House.

Mr. DANIEL. Mr. Speaker, when the gavel comes down to adjourn the 99th Congress, we will lose a valuable and valued Member. ELWOOD "BUD" HILLIS will retire after 16 years in this body.

Much more than the presence of one Member will be lost to us, important though that Member be. For in BUD HILLIS we will be losing an impressive store of knowledge regarding the Military Establishment and military policy. His intelligent and dedicated approach to the readiness of our Armed Forces will be difficult to replace.

Unpretentiousness is a word not generally associated with people in our profession. Yet it is a word which suits BUD. Quietly, and with a minimum of extraneous activity, BUD has effected some important progress in our national defense.

BUD will be missed in a hundred different ways, but nowhere will his absence be greater felt than in the military readiness area.

Mr. SHARP. Mr. Speaker, I would like to take this opportunity to join my colleagues from Indiana in wishing farewell to BUD HILLIS.

He has served his district and Indiana with dedication, integrity and distinction, and we will miss his presence here in the House. The Nation has benefited from his service on the Veterans' Affairs Committee and his important work on the House Armed Services Committee. BUD brought a thoughtful and careful approach to management of the Nation's defense as well as to a host of other problems, such as international trade. His contributions to Indiana and the Nation will be remembered.

I certainly wish him, Carol, and his family the very best in the years ahead.

Mr. QUILLEN. Mr. Speaker, my friend, Congressman ELWOOD "BUD" HILLIS of Indiana, is retiring at the end of this Congress. It is a pleasure serving in this body with BUD HILLIS and has been since he was sworn in as a freshman Member in 1971. I will certainly miss BUD, and I want to join my colleagues in expressing my appreciation to him for the years of association and friendship.

BUD HILLIS is an outstanding representative for his constituents in Indiana's Fifth Congressional District. He serves with distinction on the Armed Services Committee, and also has served with the Veterans' Affairs Committee with equal distinction.

To BUD HILLIS, I wish good luck in the future and express my thanks for our friendship over the years.

Mr. SCHULZE. Mr. Speaker, I am pleased to participate in this tribute to one of my colleagues and friends, BUD HILLIS.

When I first came to Congress in 1974, I served on the Armed Services Committee with BUD. I was a freshman Congressman who had a lot to learn and BUD, although not the most senior member on the committee, had a wealth of knowledge and experience to impart. This elected representative, lawyer and Army veteran had a wisdom beyond his years, and all I had to do was listen to his words and watch his actions.

That was 12 years ago and I have been watching and learning from BUD HILLIS all the way. He is a strong advocate of America's servicemen and women and her veterans. He knows America's strength comes from a strong defense base and he has worked hard over the years to ensure that strength. And lest one think that his motives are not pure, reflect on the fact that there are no major military bases in Indiana's Fifth District, nor in the entire State for that matter. He simply believes that we must provide for the common defense and he is a man of his convictions.

BUD HILLIS is from America's heartland and exemplifies the ideals and ethics of middle America—faith in the Almighty, self-reliance, honesty, and hard work. He abides by those principles and is guided by them in representing the citizens of his district. They have been well represented over the past 16 years and I, and my colleagues, have been greatly enriched by his presence in this body.

I salute you, my friend, and wish you and Carol all the best as you strike out on another path in search of new challenges.

GENERAL LEAVE

Mr. MYERS of Indiana. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the subject of my special order.

The SPEAKER pro temopre. Is there objection to the request of the gentleman from Indiana?

There was no objection.

A PLEDGE TO OPPOSE ANY EFFORT TO RAISE TAX RATES AND A PLEDGE TO ELIMINATE DEDUCTIONS WITHOUT LOWERING RATES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georiga [Mr. GINGRICH] is recognized for 60 minutes.

Mr. GINGRICH. Mr. Speaker, I am going to talk this afternoon on a pledge which is, I think, going to be historic: A pledge to oppose any effort to raise the tax rates and to oppose any effort to eliminate any of the deductions without lowering the rates.

I think we are at a great turning point in American history in terms of budgets, deficits, and taxes. The turning point really began on a historic date in 1984. On July 19, when former Vice President Walter Mondale accepted the Democratic Presidential nomination in San Francisco and said:

> Whoever is inaugurated in January, the American people will have to pay Mr. Reagan's bills. The budget will be squeezed, taxes will go up, and anyone who says they won't is not telling the truth to the American people. I mean business. By the end of my first term, I will reduce the Reagan budget deficit by two-thirds. Let us tell the truth. It must be done, it must be done. Mr. Reagan will raise taxes and so will I. He won't tell you; I just did.

□ 1605

The thing that I find fascinating is that when Vice President Mondale, the Democratic nominee, promised to raise taxes because that was the only solution he could find to the deficit, he set the stage for a fundamental debate on American life, about how to solve the deficit problem.

The debate is very simple. It is a question of which budget you want to control. Conservatives argue that we should control the Federal budget, that $1 trillion is probably enough to spend in Washington. Liberals argue that the Federal budget is uncontrollable, that we have to spend more and more, that $1 trillion is not enough, and therefore, liberals argue, we have to control your family budget.

We are going to control your family budget by raising taxes so that you have less available to spend. See, I have no choice.

The question is very simple, and it is one that the American people, I thought, began to send a clear signal on in 1984. Vice President Mondale, a good liberal Democrat, said, "I will control your family budget. I will raise taxes. I will make sure you have to sit around the table and scrimp and save because we know it is impossible for the U.S. Congress to scrimp and save on that modest $1 trillion budget."

The American people looked at that opportunity and said to themselves, "Do I want the liberal Democrats to spend all they want in Washington and raise my taxes so I can't spend what I want back home?" They decided by 49 States to 1 that maybe that promise was sincere, but not wise.

In fact, I would point out to my friends on the left, the truth is that Walter Mondale was wrong. He said, and I think it is important to go back to that speech of July 19, 1984, in San Francisco, at the Democratic National Convention, he said, "Taxes will go up." He was wrong. For 2 years now, thanks to an effort by a number of conservative Republicans and thanks to the President of the United States, Ronald Reagan, taxes have not gone up.

In fact, we just passed the most dramatic rate-reduction bill in taxes for individuals in the last 30 years. Mondale was wrong. He was wrong because, in 49 States, the American people—and I must say to the good people of Minnesota, we understand pride in having a favorite son, and it was a close margin, and even in Minnesota, 48, almost 49 percent said, "Let's not raise taxes."

So the fact is that the American people said pretty dramatically in 1984, "We like Reagan and controlling Federal spending; we don't like Mondale and raising taxes."

What do we have now today? A distinguished Democratic leader in the House said recently, "Everyone knows we will eventually need a tax increase. The increase in revenues should come through higher progressive rates in income."

This was a statement made on September 4, at the very time we were debating lower tax rates. But once a liberal Democrat, always a liberal Democrat.

As Congressman JACK KEMP said, "How disappointing to have the possibility of higher rates raised when we have just won such a major battle to lower the rates."

Consider some of the recent statements by leading Democrats. A Democratic leader of the House says, "Should we pay through the nose by taxation? The answer is yes."

I want to repeat that one because it is so wonderful and tells you so clearly that some liberal Democrats, in the tradition of Walter Mondale, are willing to be honest to the American people.

"Should we pay through the nose by taxation? The answer is 'yes'." That was a major Democratic leader in the House.

Mr. BURTON of Indiana. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Indiana.

Mr. BURTON of Indiana. Mr. Speaker, I am very curious. Would the gentleman please give the Representative's name? I would like to know.

Mr. GINGRICH. I do not think it would be appropriate since they are not here to defend themselves, to name individuals.

Mr. BURTON of Indiana. But if the gentleman is giving a direct quote——

Mr. GINGRICH. I would be glad to share with you who it was. Let me just say that it is a member of the leadership of the Democratic Party in the House.

The citation is from the Baltimore Sun of October 17, 1985.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, will the gentleman from Georgia [Mr. GINGRICH] repeat that phrase once again? I think it is very important for the American people to focus on exactly what it is the Democratic leadership around here is saying about higher taxes.

Mr. GINGRICH. One of the major Democratic leaders of the House said, and I quote: "Should we pay through the nose by taxation? The answer is yes."

Mr. HYDE. Would the gentleman just give us the initials of who said that?

Mr. GINGRICH. I do not think that is fair to the very distinguished Member of the Democratic leadership who said that. I think they should be given a chance. If you want, I will tell the gentleman later who said it, and if you want to invite them to come and defend it, I will be glad at that time to talk publicly about who did it.

Mr. HYDE. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Speaker, I dislike interrupting the tempo of the gentleman's remarks because they are splendid, and I hope the gentleman will be able to resume after my interruption, but I would ask the gentleman to comment on a quandary that I have heard.

The Democrats will not get elected unless things get worse, but things will not get worse unless the Democrats get elected. Do you have any views on that quandary?

Mr. GINGRICH. I think it depends. If you are a passionate believer in the importance of the family budget and in the notion that the American people should be allowed to spend most of the money they earn, then clearly voting for the Democrats guarantees that things will get worse.

I think that from the standpoint of the Democrats, I can appreciate how upset they are by good economic news, low inflation, low gasoline prices, lowering taxes, higher job rate, because, after all, if you are a Democrat running for reelection, if things are not bad enough, no one will vote for you.

I think in a sense you have raised exactly the difference in the two parties. Republicans would like things to be good back home so we are not all that important. Democrats need for things to be bad enough back home that we are important.

We get elected, in a sense, because people decide that the Democrats have made things so bad back home, as they did under Jimmy Carter, with 13 percent inflation and 22-percent interest rates and higher taxes every year and employment going to pieces, and the fact, of course, that, as you will remember, I was a freshman then, and the gentleman was already a distinguished and wise Member of this Congress, but I remember fully well the fact that at that point in time, we were debating whether or not to have gas stamps. If you remember, the liberal Democrats were promising us $5-a-gallon gasoline because that is what their liberal economics would lead to. The only way working Americans would get to work with $5-a-gallon gasoline was if they gave us all our gas stamps on the way to getting our food stamps in order to try to get our job if we were not unemployed.

Mr. HYDE. If the gentleman will yield, I think what you are saying is, put in biblical terms, the philosophy of the Democratic Party is that the Federal Government giveth and the Federal Government shall taketh away.

Mr. GINGRICH. Except normally Democrats, I think, like to campaign on the opposite basis. I am about to read a list of people saying we are going to taketh away. In a sense, you are right. Maybe, in the tradition of a lot of talk this year about religion and politics, the debate this fall is between a party that wants to taketh away and a party that wants to leaveth it in your pocket.

Mr. HYDE. Mr. Speaker, I thanketh the gentleman.

Mr. BURTON of Indiana. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Indiana.

Mr. BURTON of Indiana. Mr. Speaker, I think I will paraphrase my colleague by saying that the Democrats giveth a little and taketh a lot.

Mr. GINGRICH. That is not a bad phrase.

Let me quote some leading Democrats in the House, though, if I might.

"I have long been a strong proponent of tax increases to shrink the deficit." That is in February 1986, a Democratic leader in the House, proposing tax increases to shrink the deficit.

"We all know that we are going to raise taxes." That is not a quote from Walter Mondale; that is a quote from a House Democrat in October 1985.

"Everyone knows you will eventually need a tax increase." Again, a leading House Democrat.

A quote from the New York Times: "The chairman of the House Budget Committee suggested today the Congress pass either a $5-a-barrel tariff on imported oil or a 1-cent-a-gallon in the Federal gasoline tax or a national sales tax." December 10, 1985.

"He would prefer to raise income taxes," the Washington Post in January 1986, reporting on a Member of the House Democratic leadership and a man who apparently intends to be a candidate for President.

Now in that setting, let me suggest, there is the continuing theme from Walter Mondale in July 1984 up to as recently as September 1986 of leading Democrats saying that they cannot control the Federal budget; therefore, they are going to force you to control your family budget because they are going to take the money away so you have no choice.

□ 1615

Since you are not going to have the money because the IRS will have taken it and you are going to have less take-home pay, you have to control the family budget in your personal budget committee. The folks sitting around on a Sunday afternoon trying to solve how you are going to pay for the groceries and the rent and the car payment and the kids' clothing, your personal budget committee is going to have to do a tougher job because the Budget Committee of the U.S. House is incapable of managing what is after all a trillion dollar Federal budget.

Now, I experienced this myself. I have a Democratic opponent, a fine man back home who is campaigning. His entire theme is that I should have voted for more spending, except, of course, he is also for balancing the budget.

Now, in this context, in an effort to be bipartisan, there is a serious effort underway asking that Members of Congress before they seek reelection pledge not to raise taxes.

I want to quote first of all from the President of the United States. On September 16, 1986, Ronald Reagan said:

> There has been some talk that once our tax reform is in place the rates will be raised to pay for more spending. That would be an intolerable breach in faith with the American people. We did not achieve this historic tax reform to have it undermined by the big taxers. I pledge today to oppose any effort to raise the tax rates and negate the hard fought progress we have made. In addition, I call on all Members to take the same pledge, ask them to take my pledge on tax rates, 15 and 28, and for corporations, 34.

In other words, President Reagan on September 16, 1986, once again drew the line clearly between the tax increase liberal Democrats, who are already talking about how next year they will raise taxes, and where President Reagan would go in blocking any tax increase.

Now, it is worth looking at in the context of serveral newspapers that have commented on this pledge. The Evansville Press, September 9, 1986, in an editorial entitled, "Plans to Hike Taxes," said the following:

> The Democratic leadership of the House of Respresentatives is making it increasingly clear that it prefers tax increases to tax reform. Under pressure from the White House and the Senate, House tax writers accepted a bill that will slash individual income tax rates to their lowest levels in 56 years, but House leaders already are talking about pushing the rates back up again after this historic measure passes. Representative Dan Rostenkowski of Illinois. Chairman of the House Ways and Means Committee which initiates tax measures, now says he favors an increase in revenue through higher progressive rates in income. Mr. Rostenkowski hints at a new bracket above the reform bill's top marginal rate of 28 percent. Echoing the favorite theme of Speaker Tip O' Neill, Democrat of Massachusetts, he urges President Reagan to reverse his longstanding opposition to this or any other tax hike. The Chairman and the Speaker clearly hope to give their high tax, high spending constituencies, the best of both worlds. Having accepted a balanced package that both expands the tax base and lower rates, they now want to keep the former, but forget the latter. They seem less interested in fairness and efficiency than in grabbing more for government. Ironically, a rate hike would probably fail to do even that. The steep income tax cuts of the 1960's and the early 1980's prove that moderate tax rates actually bring in more revenue from the wealthy than confiscatory ones. Before President Reagan's first term tax cut, Americans earning more than $1 million a year paid only 1.7 percent of all federal tax revenues, afterward, 3.6 percent. The best way for Washington to collect more from rich people is to avoid strangling their incentives

> to invest, produce and profit. Higher rates would more likely widen the federal deficit than to narrow it, especially since Congress would use any tax hike as an excuse to increase federal spending, already growing faster in the private sector. House Democrats know they have almost no chance of getting their tax increases as long as President Reagan is in office, but they are looking to the future. Voters of both parties should do likewise by insisting that President Reagan's would-be successors and this Fall's congressional candidates take the pledge against raising tax rates.

Mr. GRAY of Illinois. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am happy to yield to my friend, the gentleman from Illinois.

Mr. GRAY of Illinois. Mr. Speaker, I thank my friend for yielding.

I do not want to be argumentative. I am certainly not advocating a tax increase; but some of the gentleman's comments are very interesting.

Does the gentleman not think it is really better to tax and spend than it is to borrow and spend?

The Treasury Department this year figured out that just the interest on the national debt this year in thousand dollar bills stacked vertically would go 165 miles into the air. That is about $175 billion that will not buy a school. It will not buy a child a good warm meal. It will not buy anthing. It is lost and a lot of that is being loaned to us, I might say, by the Japanese and other people that are coming over taking our money and then loaning it back to us.

I just thought I would ask the gentleman if he does not believe it is better to tax and spend than it is to borrow and spend.

Mr. GINGRICH. I would say to my friend from Illinois that in 1982 a tax increase was passed in this Congress on a promise that for every dollar we raised taxes, we would cut spending $3. The President signed the bill. I think this is one reason, frankly, that Ronald Reagan is so against tax increases. The President signed the bill. Congress promptly cheated and instead of getting a $3 cut in spending for every dollar of rate increase, we got a dollar additional spending for every dollar, which is why, if I can quote the Evansville Press again to my friend, and then ask his reaction, the Evansville Press said:

> Higher rates would be more likely to widen the federal deficit than to narrow it, especially since Congress would use any tax hike as an excuse to accelerate federal spending, already growing faster than the private sector.

Is it not true that last week, and I thought it was interestingly on the same day, we passed the tax reform bill and we passed the largest spending bill in the history of the United States. In fact, I believe, as the gentleman from Pennsylvania pointed out last week, it was the largest spending bill in the history of the world.

Mr. GRAY of Illinois. Mr. Speaker, will the gentleman yield on that point?

Mr. GINGRICH. I yield to the gentleman from Illinois.

Mr. GRAY of Illinois. I agree with the gentleman. When I left here 12 years ago, the entire Federal budget, including Social Security and other benefits, was only $300 billion.

I have been back 2 years now, it is now 10 years, and that had catapulted up to over $900 billion.

I agree we are spending too much, but I think if there is any philosophical difference between the gentleman's position and this gentleman's position, it is that we have our priorities misplaced. I do not think we need a $300 billion defense budget and I do not think we need to give away $13 to $15 billion to foreign governments. If we would reorder our priorities and take about $30 billion out of unnecessary defense spending, put that into people programs, apply $10 to $20 billion on the deficit. I think what the gentleman and what this gentleman would like to see, that is eventually a balanced budget, we could attain that as the economy grows; but you cannot continue to spend on defense up and up.

That defense budget again when I quit 12 years ago was $90 billion. Now it has catapulted to $300 billion; so I think if you want to lay any blame, it goes back to the 1981 tax cut and the tremendous proliferation of defense spending.

Mr. GINGRICH. Let me make two quick points to my friend, if I might.

First of all, on the continuing appropriation bill of $561 billion, 186 Democrats voted "yes," only 43 voted "no"; 15 Republicans voted "yes," 157 voted "no" and it passed by 201 to 200, the largest spending bill in human history.

In fact, I might say to my good friend, a considerable number of Illinois Democrats voted for that bill.

Now, the question I would ask my friend is, we are going to propose and we are going to sign a bipartisan pledge not to raise taxes, created by the Americans for Tax Reform. We are going to urge every Democrat to join us. The pledge is very, very simple. It is a pledge to say that we would oppose any effort to increase marginal tax rates from the 15- and 28-percent rates for individuals and the 34-percent top rate for corporations and we would insist that any further reductions or eliminations of deductions or credits be matched dollar for dollar by reducing tax rates.

We think that pledge, which I believe relates to a New Hampshire pledge of similar style, will set the tone for Congress to control spending.

I would say to my good friend from Illinois, we would hope that the gentleman will join us in pledging not to raise taxes in the 100th Congress on a bipartisan basis.

We would hope that those Democrats who are unhappy with the liberal democratic tax increase leadership of Mondale and some of the democratic leaders in the House would feel comfortable coming forward and saying to their constituents, "I will protect your family budget. I will sign the pledge not to raise taxes."

Mr. GRAY of Illinois. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am glad to yield to the gentleman from Illinois.

Mr. GRAY of Illinois. Well, let me say to my friend, I to would be glad to sign that document if the gentleman could get the gentleman down at 1600 Pennsylvania Avenue to stop his request for continued increases in defense spending and foreign aid. You cannot have it both ways.

Mr. GINGRICH. If I may claim back my time for a second, let me say to the gentleman, the continuing appropriation is $6 billion less than last year in defense. The increase in spending under the liberal Democrats is not in foreign aid. That is an isolationist attack of discouraging irresponsibility on the part of Democrats who have lost all sense of bipartisanship on foreign policy. The budget this year is not higher on defense spending. It is $6 billion lower. All of the increase is in domestic pork barrel on behalf of various Democratic constituencies.

Mr. GRAY of Illinois. Mr. Speaker, will the gentleman yield further?

Mr. GINGRICH. I am glad to yield to the gentleman from Illinois.

Mr. GRAY of Illinois. On that point, since 1981 the ongoing authorized programs in 1981 when Mr. Reagan took office in domestic spending have been reduced an aggregate of $161 billion.

What the gentleman is not taking into account is this country is growing. We have a million more people this year than we had last year. The gentleman wants to operate off a 6-year old budget with more people coming into the work force, more people coming into the various entitlement programs. It would be nice if you could keep having kids and use the budget when you were first married. It is not hardly that way.

Mr. GINGRICH. Well, let me say to my friend, and then I will yield to our colleague from Pennsylvania, in short given the current circumstances, given the current realities, the bottom line is you would not sign a pledge not to vote for a tax increase.

Mr. GRAY of Illinois. Mr. Speaker, will the gentleman yield further?

Mr. GINGRICH. I will yield further to the gentleman from Illinois.

Mr. GRAY of Illinois. If we could stop——

Mr. GINGRICH. No, no.

Mr. GRAY of Illinois. Well, you cannot have it both ways. Now, my opponent is using that same old line. He is saying over here with pamphlets that the only way to get industrial development is to reduce taxes. Then over here he says, "I support the President's military budget," which is $320 billion and he does not say anything about the $220 billion deficit in between.

I made the statement publicly that if he can cut taxes, increase defense spending and get rid of a $220 billion deficit, I will vote for him myself.

Mr. GINGRICH. I vote for BOB WALKER—the gentleman got me so excited, I started to vote for BOB WALKER.

I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I thank the gentleman.

It just occurrd to me that there are a number of points spinning around here that we probably ought to clarify.

I think all of us agree that borrowing and spending is a bad idea, but I think what we feel is that you ought not to spend what you have to borrow and you ought not raise taxes in order to increase spending. That is not what we ought to be doing around here and that is what is happening. Democrats want to increase spending, so they also want to increase taxes.

The fact is that they increase taxes and then also increase borrowing.

If social spending had increased over the last 25 years at the rate of defense spending, in other words, if we had the same rate of increase in social spending as we have had in defense spending over the last 25 years, we would today have a $250 billion surplus in our Government.

So in fact if you take a 25-year trend, you will find that social spending has been the one that has increased to the point of denying us a budget surplus.

Our point is simply that you cannot go on with these kinds of spending increases.

The gentleman is absolutely right and the gentleman also points out, I think very interestingly, the fact that the budget bill that we passed the other day, the continuing resolution or the Omnibus Spending Act, was in fact passed by 1 vote in this Chamber, 201 to 200. That particular spending bill included defense and foreign aid. Everybody who voted for that bill voted for defense spending and for foreign aid spending; so that in fact you cannot say that you are against spending in those areas when you voted for that bill. They were included in that bill. That is the problem. That bill when all added up became the largest single spending measure in the entire recorded history of mankind. That is what people voted for out here. That is what is causing the deficits.

Now the gentleman quotes a whole realm of Democratic leaders here who say their solution to this problem is to raise taxes. It is not a secret, there is no secret plan to raise taxes. They have a very specific plan to raise taxes and that is what we are suggesting that the American people should hear about and what we ought to get from each Member of Congress is a pledge not to raise taxes, because that is the direction that this House wants to go.

I thank the gentleman for yielding.

Mr. GRAY of Illinois. Mr. Speaker, will the gentleman yield to me for a comment on that point?

Mr. GINGRICH. I just have to add to what the gentleman just said.

James K. Galbraith, an economist at the Lyndon Johnson School of Public Affairs at the University of Texas, who was associated with the Democratic Party has made this observation: "This bill is a bill you can put a surtax on."

It is interesting, when you show a Democrat a tax bill, their first thought is, "Can I get more?"

Mr. GRAY of Illinois. Mr. Speaker, will the gentleman yield further?

Mr. GINGRICH. I am glad to yield briefly to my friend, the gentleman from Illinois.

Mr. GRAY of Illinois. I thank my friend for yielding.

I just would like to answer my dear friend from Pennsylvania in his observation about those who voted for the continuing resolution. We were sort of like the lady who got her light bill. It was too high and she said, "You know, if it wasn't for doing without those lights, I would just tell them to take it and stick it."

The fact remains the other body did not handle the appropriation bills and if we want to be here until Christmas Eve we could dissect that continuing resolution and try to cut down on foreign aid and all these other expenditures, but we did not have that choice. It was an up or down vote. It was "yes" or "no," and a "no" vote meant that we stop the Government at a screeching halt and I do not think anybody wants that.

□ 1640

Mr. GINGRICH. But I say, before I yield to my friend from Florida, I think the gentleman just put it exactly right. If the choice in this building is for us to stay here until Christmas and do our job so that the American people do not have to pay higher taxes, I am for Congress staying here. If the choice is to say, "I'm going to raise your taxes back home in Illinois or in Florida or in Pennsylvania or in Georgia, because I don't want to stay here and do my job, so you're going to have to have a harder job back home because you aren't willing to elect a Congressman who pledges not to raise your taxes," I think that that is the choice.

Mr. MACK. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Florida.

Mr. MACK. I thank the gentleman for yielding.

Mr. Speaker, I certainly do not mean to be picking on our friend, who has courageously gotten involved in this debate, but there have been two issues that have been raised. One is signing the tax pledge, and the other was the vote on the continuing resolution.

The first question posed was, "Would you sign the tax pledge along with the rest of us?" The response was kind of a "Yes, but—" Yes, if we could only get the fellow down there in the White House to quit sending down requests to increase defense spending.

One of the things that we continually see around here is trying to shift the blame. The President can request all he wants. It is up to us to decide what those spending levels are going to be. So I would say to my colleague that again he has the opportunity under the continuing resolution, which did include the defense expenditure, if he thought that that was too high, I would have encouraged him to have voted against it. Again, what we said was, "Well, vote against the continuing resolution," and what we got was a "Yes, but—" again. "Yes, I had to do that because there was no other choice. it was the only thing before me."

I think that what we are saying is that the American people are tired of the answers of "Yes, but—" We are saying that we ought to sign the pledge and say that there are going to be no tax increases, no rate increases. Why are we doing it? Because we have heard from the gentleman's side continuously the comments like, "Listen, we ought to all be real serious about this, we all know that there is not really any way to solve this problem except to raise taxes."

My friend from Pennsylvania suggested that there was not a secret plan. I would raise the question that maybe there is a secret plan, because all we hear is, "We ought to raise taxes. We all know that that is the only way to solve the problem."

"How are you going to do it?" is the question that I would raise. "Are you going to raise taxes on corporations? Are you going to raise taxes on individuals? Are we going to pass a minimum corporate tax? Are we going to pass a minimum tax on individuals?"

Mr. GRAY of Illinois. Mr. Speaker, would the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Illinois.

Mr. GRAY of Illinois. Mr. Speaker, I might say that I am outnumbered here about 5 to 1. I feel like Custer.

I agree. This gentleman is not for raising taxes; only as a last resort. Again I reiterate what I said. I think that we need to reorder our priorities. I certainly, had I had a choice, would not have voted for $15 billion for foreign aid. I think that the American people are getting turned off with foreign aid. I voted against that $200 million for Mrs. Aquino the other day. I voted for Gramm-Rudman.

I think that we need to bring some sanity, and I would sign such a pledge, but I think that it ought to be across the board. I do not think that you can continue to ask people on Social Security and Medicare and people who need housing all to bear the brunt of our big spending up here, and it is big spending. It has gone from $300 billion 12 years ago when I retired up to a trillion dollars now. We have to get a handle on it, I agree with the gentleman, but I think that we ought to reorder our priorities in a lot of different areas, and I think that the House ought to face up to that fact, and as one Member, I certainly am willing to do it.

Mr. GINGRICH. Mr. Speaker, before I yield to the gentleman from Indiana, let me ask the gentleman again, would he, in the real world of here and now, with all the confusion and all the uncertainty in the real world, essentially the key is, and what we are going to focus on, is getting a pledge signed by people who commit themselves to oppose any effort to increase marginal tax rates and to insist that any further reductions or eliminations of deductions or credits be matched dollar for dollar by reducing tax rates.

In other words, we accept that the world is uncertain and that we do not have control of everything in the world, but we are saying that we owe the American people a pledge before this election that the 100th Congress will not raise taxes.

Mr. GRAY of Illinois. Mr. Speaker, I would go for a sense of Congress resolution, but I do not think when you ask individual Members to sign on a line—that is just like saying, "I am against sin." We are against increased spending, but what if you have a deep recession, you have a $300 to $400 billion deficit, then it is inevitable that you would have to raise taxes. I do not think that anybody wants to go on the line and sign that kind of a document and then maybe 2 years later have to help raise taxes.

Mr. MACK. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Florida.

Mr. MACK. Mr. Speaker, I would propose, and I think someone is preparing a resolution that might in fact include this and give you the opportunity, but it seems to me that what we ought to do here is to offer two resolutions or two pledges. There ought to be the pledge that the gentleman from Georgia is talking about, but there ought to be a pledge for those Members who refuse to sign our pledge, a pledge to tell the truth. We might call that the "Mondale pledge."

If they are not going to sign the pledge that says that they are not going to raise taxes, they ought to sign the pledge that says, "I am going to tell the truth, and here's what I'm going to do; here is what my tax plan is; here's how I am going to raise the revenue."

So I would suggest that maybe we might have two pledges, one for those of us who believe that we ought to sign and say that we are not going to raise tax rates, and the other for those individuals who believe that they want to tell the truth to the American people and how they are going to raise those taxes.

Mr. BURTON of Indiana. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Indiana.

Mr. BURTON of Indiana. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I see our colleague from Illinois has reinforcements coming, so I am sure that he will not feel quite so alone in debating this issue. I will just say to my colleague in the well that I have signed the pledge not to vote for a tax increase next year, and I would urge my colleagues to do likewise. We should come down on the side of cutting spending, and I appreciate my colleague taking this special order.

I would just like to make one point to the gentleman from Illinois, if I can get his attention.

Mr. GRAY of Illinois. I give the gentleman from Indiana my undivided attention.

Mr. BURTON of Indiana. Mr. Speaker, I admire the gentleman's standing in the breech there all by himself, but now he has some reinforcements.

When John F. Kennedy was President, it is my understanding that the military budget constituted approximately 48.8 percent of the total spending of the United States. The military spending as I understand it in the current budget is about 26 or 27 percent. So over the past 25 years the percent of the total budget that is allocated for military spending has been cut by probably 20 percent or more. So when my colleagues on the other side of the aisle keep laying the blame for excessive spending on the back of the Defense Department, I think that they are in error.

Sure, we want to cut waste and fraud and abuse out of all areas of spending, particularly in the area of defense, but you cannot load the entire burden on defense when the figures just do not bear that out. The social spending in this country at the hands of the liberal Democrats has been the cause of this deficit, and there is no way to hide from it. I urge my colleagues to reevaluate their position and go along with the gentleman in the well and the gentleman from Pennsylvania [Mr. WALKER] and others in signing a no-tax-increase agreement for next year.

Mr. PARRIS. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Virginia.

Mr. PARRIS. I thank the gentleman for yielding.

Mr. Speaker, I just have two very quick points to make. I have very much enjoyed the opportunity here because of the rather sparse agenda in terms of the legislative business of the House to engage in this debate, which I have found fascinating. I think that it is fundamental to the political process of our Nation. I just want to make two quick points.

First of all, those of our colleagues who did in fact vote for the continuing resolution of earlier this week—and I was not among them—somebody, if you take the figures this way—that measure passed by one vote—somebody in this Chamber individually spent two-thirds of a trillion dollars all by him or herself. Somebody just spent two-thirds of a trillion dollars. Now that is kind of an awesome responsibility, but it is a very large number. It is simple mathematics, but it is a fascinating and rather frightening commentary on political life in the Congress of the United States.

Second, I wanted to say to my friend, the gentleman from Georgia [Mr. GINGRICH], I listened with fascination at some of the quotas of some of the Members whom he was gracious enough not to identify. I am going to identify one Member who was quoted recently in a newspaper, at least where I read it, I assume it is true, and I do not mean this in a critical way. In about an hour from now, in this Chamber, we will have a recognition of a lifetime of service, of distinguished service, by the Speaker of this House, and I congratulate him for the sacrifices of public life in which he has spent 40 years or more as a Member of this body.

His statement that was attributed to him in a recent quote indicates a fundamental disagreement with the philosophy that I hold, and that is that the Speaker's comments were that it is unfortunate in these times of reduced budgets and high deficits and that sort of thing that we must, because of the reduction in revenues, cut back on many of the domestic programs, and this is almost a direct quote from the Speaker, which have made this Nation great.

Well, my belief, I would say to my friend from Georgia, is that this is the most magnificent nation on this planet. It is the greatest experiment in individual political freedom that this planet has ever known, not because of the programs of the Government of the United States and the agencies that it administers, but because the form of government that we enjoy which we so greatly cherish permits the individual citizens of this United States to do these wonderful things for themselves.

□ 1640

That is a fundamental difference in philosophy represented I think by the distinguished Speaker of this House, who is certainly sincere in his beliefs, and those of us, largely in another political party, who fundamentally believe that if the Government does not shackle the individual initiative and the opportunities of this magnificent country that we will do better than if we, in fact, lay on the bureaucracy and the agencies the requirements and the restrictions and the limitations of Government. That I submit to my colleagues is a fundamental difference in approach of the governing of this magnificent Nation.

Mr. GINGRICH. Let me say to my friend I think you have put your finger on it. The question is who has choices.

If we raise taxes, as liberal Democrats want us to, then the family does not have any choices because they don't have the take-home pay, they do not have the budget at home.

On the other hand, if we control Federal spending by making choices up here rather than in the take-home pay, then the American family does have choices.

Mr. GRAY of Illinois. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am happy to yield to the gentleman from Illinois.

Mr. GRAY of Illinois. I thank my friend for yielding. I just want to make two very brief points as it relates to the continuing resolution, because it was alluded to as to how much money was in that continuing resolution. I agree, it is exorbitant.

There are two points that I would like to make very quickly to get the whole picture. One is that the gentleman from Wisconsin [Mr. OBEY] chairman of the Subcommittee on Foreign Operations of the Appropriations Committee tells me that he has a letter, signed by Mr. Miller, Director of the Office of Management and Budget, asking for $3 billion more in foreign aid over and above what we approved in that continuing resolution. The letter goes on to say that he will recommend that the President veto the bill if he does not get the additional $3 billion.

I would also point out if we had not voted on the continuing resolution, and it had been opened back up, the President asked for $9 billion more in defense. So we would be talking about, if we had not approved that continuing resolution, we would be talking about $12 billion more in spending on those two items.

Mr. GINGRICH. I might comment to my friend I noticed that very few of the Democrats seem to be nearly as worried about the pay raise which was buried in the resolution, which comes to several thousand dollars apiece, as they were about whatever the President might or might not have done. I think just at a time when we are going to have a pay cut for working Americans, because the liberal Democrat leadership has said they want to raise taxes, it is a little bit much then to put in a $560 billion continuing resolution a pay raise for Congressmen who cannot balance the budget. My understanding is that there was a pay raise for Congressmen in that continuing resolution, so you were voting for that.

Mr. GRAY of Illinois. If the gentleman will yield, I feel like the old maid that was kissed in the dark and did not know where it came from, but she liked it. I will tell you, the gentleman is telling me something that I did not know. How much is it?

Mr. GINGRICH. My understanding is that it is about $2,100 per Member.

Mr. GRAY of Illinois. And what is that percentagewise, is it like 3 percent?

Mr. GINGRICH. Three percent.

Mr. GRAY of Illinois. Was not the cost of living this year a little more than 3 percent?

Mr. GINGRICH. All I am suggesting is that when leaders within the Democratic leadership suggest that they are going to raise taxes, which means workers will have pay cuts in terms of take-home pay, it is a little much for those same liberal Democrats to bury in the continuing resolution, the largest spending bill in history, a modest pay raise.

Mr. GRAY of Illinois. Did we not give Social Security recipients a 3-percent increase this year? Does the gentleman not think a Member of Congress, working 24 hours a day, is entitled to the same amount as a Social Security recipient that is retired? Is that what the gentleman is saying?

Mr. GINGRICH. I am saying to my distinguished friend that we have a responsibility to protect the take-home pay of working Americans, and that when your Democratic leadership promises to raise taxes on them which will cut their pay, it is a little bit much to then hide in a $560 billion continuing resolution a pay increase for Congressmen while suggesting a pay cut for working Americans.

Mr. GRAY of Illinois. The gentleman is trying to equate $560 billion with a 3-percent pay raise.

Mr. GINGRICH. No. I am saying we bury in that a pay raise.

Mr. GRAY of Illinois. The gentleman does not point out that $560 billion is to run this Government.

Mr. GINGRICH. Let me just suggest to the gentleman that we are not retired. We are supposed to be here working, and one of the jobs the American people voted on in 1984 was that we in the Congress should control spending. By your own statement a while ago you said if we had voted against the continuing resolution we would be here until Christmas. Well, probably the American people think that we get paid enough money that we ought to be here until Christmas, if that is what it takes. But instead the Democratic leadership is suggesting let us get a pay raise and let us go home, and then let us raise taxes on the American people so that they can pay for all of the programs that we cannot control.

Mr. TRAFICANT. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the distinguished gentleman from Ohio.

Mr. TRAFICANT. Mr. Speaker, I am glad to have the opportunity, and would like to say even though we may disagree on issues, the gentleman from Georgia is not only articulate, he understands the problems, although we particularly have differences in philosophy on how these problems arise.

But I think for us to try to get the American people to suspect that this big spending bill was contingent upon Members of Congress getting a raise would certainly be the last thing that could be referred to as being the truth. The gentleman had quoted Senator Mondale, Vice President Mondale and his position when he ran for the Presidency. He said he would tell the truth, that he would raise taxes and the President would as well.

I would like to say the first tax cut of the President cost this country $125 billion each year in deficits, which added on a half a trillion in addition to the national debt. There are Democrats that do not want to raise taxes, but I think we should talk about one specific issue.

If you made $25,000, and you were a family of four in 1981, with the tax cut that the President has given your tax cut was about as much as you could take your spouse and your two children to a nice restaurant for a fine meal. Now if you made a quarter of a million dollars you could go out and buy a brandnew Mercedes Benz, cash, and take your family and spouse out to eat in that brandnew car.

I think that we are all looking at one point here that cannot be overlooked. We have massive budget deficits, massive trade deficits, and we cannot separate them from our national debt problems. This President and his administration have been absolutely abject failures in attempting to develop a national industrial policy. We are continuing to export jobs. We are tearing down the industrial infrastructure of this country, and there will be very few consumers because there will be very few people working.

At somewhere along the line I know the gentleman wants his time back, but somewhere along the line you just cannot give everybody two cars in every garage, two chickens in every pot and give them a free lunch and cut their taxes. At some point you are going to have to take a look at revenues, at national policies and have a combination of both. And there are Democrats here, and it would be very unfair of the gentleman in the well, who is not only capable but very well respected in this country, trying to get the American people to believe that Democrats want to raise taxes. That is not true. But Democrats are saying that we need an administration that is going to look at trade policies and administrative policies, that are going to put people back to work.

If you want to cut down these domestic escalations of costs, then there are only two ways to do it. You are going to continue to worry about unemployment compensation, food stamps, welfare, or you are going to work at a policy that is going to keep Americans and American labor working, and we are not doing that, sir.

Mr. GINGRICH. Let me ask my good friend from Ohio a question because he was not here earlier. I am going to read three quotes from three Democrats. These are all Democrats in the House.

"Should we pay through the nose by taxation? The answer is yes." October 16, 1985.

"I have long been a strong proponent of tax increases to shrink the deficit." February 25, 1986.

"He would prefer to raise income taxes." The Wasington Post, January 21, 1986. All three cases you have leading Democrats in the leadership saying they want to raise taxes.

So I would say to my friend from Ohio, we are talking here about a very interesting concept by Americans for tax reform, that we should sign a pledge this year that we would oppose any increase in tax rates and that we would insist on tax cuts to offset any changes in the deductions and the Tax Code. So I say to my friend, would you be willing to sign a pledge opposing any increase in tax rates?

Mr. TRAFICANT. Will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Ohio.

Mr. TRAFICANT. I will sign that pledge now if the minority Members will sign a pledge to stop the foreign subsidiary escalation overseas whereby American corporations are developing industrial plants overseas, shipping the same manufactured products back to our country, and if they take the profits overseas do not even pay taxes on them.

□ 1650

If you are willing to help stop that loophole of American industry moving overseas, I will sign a pledge here today, because that is not against my philosophy.

Mr. GINGRICH. Wait a second. In the real world—I mean, your colleague from Illinois had a slightly different condition, but I like what our colleague from Florida said. Maybe we need two charts up here tomorrow.

One chart is the pledge not to raise taxes, and the other chart we will call the Walter Mondale honesty chart because Mondale said, on September 19, 1984, that "Let's tell the truth. It must be done, it must be done. Mr. Reagan will raise taxes and so will I. He won't tell you."

Let me just say, maybe there ought to be a Mondale honesty pledge over here. We can quote Mondale; and then those Democrats who are now willing to sign the pledge that they won't raise taxes could sign a pledge that in fact they will tell the truth.

Mr. TRAFICANT. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am glad to yield.

Mr. TRAFICANT. Mr. Mondale said this country is going to have to raise revenue. We both have to raise revenue and reduce spending; there is no doubt about that.

I am willing to take that pledge not to raise those taxes, but remember, this administration, since they have come in has raised taxes as well; in ways maybe that do not look as dramatic. Now maybe Mr. Mondale did not use the right type of political rhetoric, but the bottom line is he tried to tell the American people that "You can't have your cake and eat it, too." Somebody has to pay for these particular programs.

So I think it is very unfair to indict former Vice President Mondale on the particular statement that he made. One other thing, we have raised taxes in this country. We continue to have escalating unemployment; we have absolutely very few national industrial trade policies, and we are in a worse situation than we were 6 years ago.

This administration is hiding behind drug legislation, Nicaragua, Qadhafi—I am now going to quote the President, he said:

> I can't blame Mr. Carter for Iran, but what his greatest cardinal sin was, was his $400-billion-plus of budget deficits.

That was his statement.

Now, look at this administration and its deficits, and I want to know what program he cut out? What Government program did this administration cut out?

Mr. GINGRICH. Well, Mr. Speaker, the President proposed in his most recent budget to cut 40 programs out, which the Democrats in the House refused to cut.

Let me ask my friend, I did not quite hear him. I understand the problems of the Mahoning Valley, as you know, and I am very concerned about the Mahoning Valley.

Mr. TRAFICANT. I appreciate it.

Mr. GINGRICH. But considering the country as a whole, considering Jimmy Carter's 13-percent inflation, 22-percent interest rates, 8 million unemployed; are you really seriously going to argue that for America as a whole, that today things are worse off than they were when the Democrats were in the White House in 1980?

Mr. TRAFICANT. They are in my district, if the gentleman will yield, and the future absolutely looks much bleaker, if you want to know the truth.

Mr. GINGRICH. Let me first yield to the gentleman from Illinois, if I might and then I will yield to the other—we have several gentlemen from Illinois.

Mr. CRANE. Mr. Speaker, I thank my distinguished colleague for yielding and I applaud him for this special order.

Let me make a couple points quickly. One with regard to the Mahoning Valley, as my distinguished colleague from Youngstown knows, that occurred before the Reagan administration came into office, the failure of Youngstown Sheet & Tube, and I was there and visited the desolation, and I predicted at the time that an excess of Government regulation, which was one of the faults that the union leadership blamed for the closing of that plant, coupled with a variety of misguided policies by both management and I think the unions were prepared to accept some of the blame, too, contributed to what is a tragic situation there.

Let me get back to an earlier point made about defense. If you measure the growth of defense spending, 1964 to 1984 in constant 1964 dollars, defense has gone up 14 percent, and nondefense spending has gone up over 400 percent during that same timeframe.

Second, the question is, Who spends? The general appropriation bills have always, from the beginning of the Republic, originated in this Chamber. The House is the body that originates all general appropriation bills.

So if you want to get more specific about who spends, there is a way of finding the answer to that. The National Taxpayers Union is the only totally objective body rating the Members of the U.S. Congress; and I say the only totally objective body because they take every vote that we cast on behalf of spending and now they are weighted votes so as to guarantee that you are not equating a spending vote on a $10 million item with a $10 billion item; there are 42 Members of Congress, of the House, who participate in judging the weights that should be assigned based upon total spending implications, and that is on a bipartisan basis.

After one looks through the National Taxpayers Union rating of this Congress for the last year, you will find, for example, that the Democratic average and the high score is the most fiscally responsible. The Democratic average is 34 percent and the Republican average is 56 percent.

Amongst freshman Members, the Democratic freshman average is 33 percent; the Republican freshman average is 60 percent.

If you go to the other body, the Democratic average in the other body is 31 percent and the Republican average over there is 58 percent; and I think it is apparent where the spenders are.

You look at the biggest spending, 10 percent Members of this body; they are the ones with the lowest scores, at the bottom of the NTU ratings, you will not find a single Republican down there.

Conversely, if you look at the 10 percent most fiscally responsible, you will not find a single Democrat there.

Now, I challenge anyone to question the methodology of the National Taxpayers Union's ratings. It is a methodology that as I say is with bipartisan congressional input calculated to guarantee that we get fair understandings, and it includes all spending, from weapons to welfare.

Let me just slip in an address for any of those who might seek to contact us; the National Taxpayers Union is at 325 Pennsylvania Avenue SE., Washington, DC.

The reason I mention that is as Alexander Hamilton said: "People get the kind of government they deserve."

If they are sick and tired of the spending, and that is the problem, if they are sick and tired of the spending, then let them render their judgments accordingly on our performance.

Mr. GINGRICH. Mr. Speaker, I think it is very obvious why it will be very hard for a big spending liberal Democrat with a straight face to sign a no tax increase pledge.

As the gentleman pointed out, when all of the large spenders are in the Democratic Party, it is perfectly reasonable for that party to find it very difficult not to raise taxes.

Mr. Speaker, I yield to the gentleman from New Hampshire [Mr. SMITH].

Mr. SMITH of New Hampshire. Mr. Speaker, I am proud to say that I have taken that pledge not to increase taxes, and I think with all due respect to my colleagues on the other side of the aisle, the issue here is the pledge not to take the tax hike.

Let us get that pledge out in the open; let us take the pledge. We are here today asking not for rhetoric; we are asking for action. Take the pledge to the American people not to raise taxes; and then we will sit down in this Chamber and we will battle the priorities of where the money should be spent.

You guys are ducking the issue when you say that you are going to—something else, or the President's responsibility or somebody else's responsibility, as the gentleman from Illinois said, "It's our responsibility." We are the ones that deal with the appropriation matters; we spend every nickel in this country; it is not the President.

I think the bottom line is there is no secret whatsoever to avoiding a tax increase on the American people. It takes 218 votes in this place, and 51 in the other body, and the President of the United States. I think we ought not worry about the other two and we ought to do our job here.

Mr. GINGRICH. Mr. Speaker, let me say I think the Americans for Tax Reform are correct in their pledges.

I will yield to the gentleman from Texas [Mr. BARTON], who has not spoken, and then to my two friends, and then I will come back to you.

Mr. BARTON of Texas. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I thought it might be instructive perhaps at the beginning of the special order that the pledge was read; but I have my pledge.

Mr. GINGRICH. Well, why do you not read the whole pledge.

Mr. BARTON of Texas. It is signed September 18, 1986. This is the Americans for Tax Reform, the tax reform pledge:

> I, JOE BARTON, pledge to the taxpayers of the 6th District of the State of Texas and to the American people that I will (1) oppose any effort to increase marginal tax rates from the 15 and 28 percent rates for individuals and 34 percent top rate for businesses; and (2) oppose any further reduction or elimination of deductions and credits unless matched dollar for dollar by further reducing tax rates.

That is a very simple pledge. Those that want fiscal responsibility, and I am sure that there are Members on the Democratic side that do so, sign this pledge, and then we can work on the problems.

The gentleman from Ohio earlier said that there have not been any programs eliminated under President Reagan. That is not quite true. We are finally going to eliminate general revenue sharing this year. That is one.

The President did submit a budget that suggested the elimination of I believe somewhere in the neighborhood of two dozen or three dozen. I voted for that budget. I was 1 of 12 Members that voted for that budget; so it did not enjoy widespread support.

If you look historically in our Nation's history, we have historically taxed at about an 18-percent rate of GNP. That is where we are today.

Unfortunately today we are spending about 24 percent of GNP. The problem is not taxation. The problem is excessive spending.

The only way to get spending down is to sign this kind of a pledge that says, "I will not vote to raise taxes."

□ 1700

If we can get 146 Members, Republicans and Democrats, there will not be any tax increases because the President whom we have today, President Reagan, has said he is going to veto any tax increase. So if we get 146 Members to sign this pledge, then it is all over but the shouting. I have signed it. I think we have had somewhere in the neighborhood of 40 Members, maybe 50, who have signed it. I am told there are going to be pledges available tomorrow to sign for those Members who want to but who just have not had the time to get around to doing it. I would love before we adjourn this week or next week to have 146, and it would be great if we had 435. But the time has come to stop talking, the time has come to start acting and the first act is to sign the pledge.

Mr. GINGRICH. I yield to the gentleman from Illinois.

Mr. GRAY of Illinois. I thank the gentleman, my friend from Georgia, for yielding.

I would not want this colloquy to close without setting the record straight. I am sure my friend from Georgia did not mean to imply that, since Walter Mondale made that statement at the convention in 19—what year?

Mr. GINGRICH. 1984.

Mr. GRAY of Illinois. 1984, that if he were elected, he would raise taxes. Mr. Reagan has signed three separate and distinct tax increase bills since he has been in the White House. One was billions of dollars from the employer and employee in making the Social Security fund actuarily sound, which is still part of the overall budget and has been since the days of Lyndon Johnson. They raised taxes on liquor and tobacco. The only problem is the President calls it revenue enhancement. He does not refer to them as tax increases.

So I am sure the gentleman would not want to leave the impression that, since Walter Mondale was not elected, there were no tax increases by this

Congress and signed into law by President Reagan.

Mr. GINGRICH. I just want to say something to my friend, and then I will yield to him.

There have been moments when the President has backslid, it is true. In 1982 he was frankly taken in by the Democratic leadership and a few Republicans who had not learned yet, and they sold him a bill of goods.

They said to him raise taxes $1, and we will cut spending $3. I fought that. The President won. They raised taxes $1, and they did not cut spending $3. They raised spending $1. After that the President learned.

So I say to my friend from Illinois and my friend from Ohio the President said on September 16, Ronald Reagan said,

> I pledge today to oppose any effort to raise the tax rates and negate the hard-fought progress that we have made. In addition, I call on all Members of Congress to take the same pledge, ask them to take my pledge on tax rates 15, 28, and for corporations 34.

So I would say to my good friends now that we have got the President absolutely firmly committed, he has made the pledge himself, are you willing to pledge unconditionally that you will not vote for and that you will in fact oppose efforts to raise taxes?

I will be glad to yield to either one of the gentlemen.

Mr. GRAY of Illinois. I thank my friend. But it does fulfill the edict of Mr. Mondale that there was a need to raise taxes and subsequently, hindsight better than foresight, they have been raised to a certain degree.

Mr. GINGRICH. But they were both raised before the Mondale speech. No tax rate has gone through since the Mondale speech.

Mr. GRAY of Illinois. I beg your pardon, I beg your pardon. There have been three since 1984.

Mr. GINGRICH. No; that is not so. Those three were before 1984. Social Security was 1983, the 1982 tax increase and in early 1984 a small tax increase. There has been no tax increase since Walter Mondale promised to raise taxes and 49 States decided they would protect their pocketbooks and their families.

Mr. GRAY of Illinois. The gentleman is referring to income taxes. I am referring to excise taxes.

Mr. GINGRICH. No, no. There have been no tax increases in 1985 or 1986. We won that fight.

The question I ask both my good friends is: Are you willing to sign a pledge not to raise taxes in 1987 and 1988? We have pledge forms.

The SPEAKER pro tempore (Mr. ABERCROMBIE). The time of the gentleman from Georgia has expired.

ORDER OF BUSINESS

Mr. WALKER. Mr. Speaker, I ask unanimous consent that my special order, previously entered, be permitted to follow immediately after that of the gentleman from Georgia [Mr. GINGRICH].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

A PLEDGE TO OPPOSE ANY EFFORT TO RAISE TAX RATES AND A PLEDGE TO ELIMINATE DEDUCTIONS WITHOUT LOWERING RATES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. WALKER] is recognized for 60 minutes.

Mr. WALKER. Before I yield, Mr. Speaker, let me first of all thank the gentleman from Texas [Mr. GONZALEZ] for his generosity. Under the procedures of the House, this special order would really fall immediately after. He and I have worked out an agreement here that I will cut off my special order at 5:30 so that he may proceed ahead.

I will do that. But I really do appreciate him and his courtesy in allowing this dialog to proceed on this very important issue.

I yield to the gentleman from Virginia.

Mr. PARRIS. I thank the gentleman for yielding. I want to respond very quickly to the comment made by the gentleman from Ohio [Mr. TRAFICANT] earlier in this debate in our dialog this afternoon. I wrote it down. He said, and I am delighted he is still here, and this is the way I wrote it at least, though I am not a clerk, I think this is exactly correct: "Americans know somebody has to pay for these Government programs."

Now, that begs, I submit to the gentleman, it begs the question. The issue is, Can we afford these Government programs? Do we need these Government programs? Is it impossible for this Congress to reduce or eliminate, to cut back some of these programs? Why can we not limit the spending around here rather than somehow say that we are locked in in some mysterious way to the programs that exist and it is impossible for us to realistically consider an alternative? That is my fundamental difference with the position stated by the gentleman from Ohio.

Mr. WALKER. I yield to the gentleman from Ohio.

Mr. TRAFICANT. Let us talk about that briefly. One of the programs the gentleman from Texas mentioned is that finally the President was successful in counting out general revenue sharing. Now, where does revenue sharing really help this country? In the large metropolitan centers where they do not have the type of tax revenue to provide a decent standard of living. It is basically a very small program when you look at the tremendous expenses of this Government to try to help the American taxpayers who foot our bills.

Now, this President wants $9 billion to $11 billion more for defense. He came in at 146, we are at $300 billion and, by God, we are talking about $3.5 billion revenue sharing program as if it was busting the bank.

Now, here is the position I think many Democrats are taking here: when you talk about increasing taxes, that is misleading to the American people. We may have to increase revenue, but we do not necessarily have to put it on the backs of the average taxpayer. There are loopholes that have not been addressed in this tax bill.

Members like myself who want to see these foreign subsidiaries continue to be run out of the country, we want that practice stopped. We have not been able to be heard either. But we are never going to move forward if you have fine Members like Mr. GINGRICH and Mr. WALKER and fine Members on this side of the aisle like Mr. GRAY, Mr. WRIGHT, Democrats who are not going to work together. If we keep saying you did it or you did it or you did it, there will be no resolve.

Now, we come from different areas with different philosophies, but the bottom line is the people are paying for this, the American taxpayer, and there has been no resolve yet in Washington. I am new here and I have to laugh when I hear that AT&T closes down its Shreveport, LA, facility where they manufacture residential telephones. They lay off 1,200 people. Then they announce the next week they are going to invest $30 million in Singapore, hire 1,500 people in Singapore at 25 percent of the labor cost and, folks listen to this, they will ship that same telephone back to us. We cannot get into any other market.

The profits they make on us, if they take the profits and reinvest it in Singapore, they do not even have to pay taxes in this country. Now enough is enough. We can raise revenue without stifling the family and their budget. But this is where we are. Someone is going to have to pay the bill. What we are doing here is we are putting that bill off on our children and their children.

It is either borrow and spend or tax and spend; both of them are wrong, I will make that concession.

I am willing to work with the minority Members, and I think most of the Democrats are, and I think not everybody is right on the issue.

But to take a simplistic approach and to lay blame is the reason why Congress is now wallowing without putting 1 of its 13 appropriations bills out. That is where we are.

Mr. WALKER. I just point out to the gentleman that the issue here that we are talking about is whether or not we are going to raise taxes on the American people. Our suspicion is, based upon the on-the-record statements of the Democratic leadership, that they intend to raise taxes. We want to make certain that everybody who is elected to the 100th Congress, if we have anything to say about it, everybody who is elected to the 100th Congress takes a pledge not to raise taxes. We would hope that this is the kind of thing.

Let me move over here and yield to the gentleman from Virginia, and I will come back to you.

Mr. PARRIS. I appreciate the gentleman responding to my question. I just want to add to this discussion. The gentleman said we come from different places, and that is true. But I submit to the gentleman, as different as the congressional districts are, obviously, I want to suggest to the gentleman we come from a different direction as well. The issue here is how do we solve this problem? I submit, as has been clearly demonstrated in this discussion this afternoon, the gentleman's political party comes from the standpoint that we must increase the revenues and maintain the current activities and programs.

Essentially that is the fundamental platform of the Democratic Party. Those of us who depend on our political fortunes, if you will, with the Republican Party come at you from a very different place. That is, can we, and why do we not, reduce the expenditures of the Federal Government, which would not require a tax increase? And we can do so if we have the discipline to prioritize what is important in this Nation to preserve.

Mr. WALKER. I think the gentleman makes a very good point, because those of us who run as Republicans who do have a record around here of voting against spending bills, find that we are being attacked in the political process by the liberal Democratic opponents for the spending that we vote against.

Therefore, it is pretty clear that is the party position; that when we vote against spending they criticize us for it.

I always explain to my folks back home the reason I vote against spending is so we can keep down deficits, so we can keep the taxes lower, and they have been good enough over a period of years to return me to this Congress on that basis.

But the fact is that the Democratic Party when they attack Republican conservatives who are trying to break down spending consistently attack us for the things that we have voted against in terms of spending. I think it is therefore legitimate for us to raise the issue that if in fact their party position is in favor of spending, then where are they going to get the money to continue to spend? We have to believe them and we also have to believe them when they say they are willing to raise taxes. That is exactly what we are trying to do, put out on the table here what you are going to do. We say what you are going to do is pledge not to raise taxes so we can get around the business of reducing spending, and we think the American people are with us on that issue.

The American people want us to deal with the deficit by reducing spending, not by raising taxes.

I yield to the gentleman.

Mr. TRAFICANT. I am very glad to hear that.

Mr. Speaker, Members on this side of the aisle are willing to reduce spending. How can you divorce the defense budget from part of that whole phenomenon?

Mr. WALKER. Reclaiming my time, maybe the gentleman was not here when I pointed out that, if we had increased Social Security spending at the same rate as defense spending over the last 25 years, we would have a $250 billion surplus in the budget right now.

The fact is that we have defense spending as a part of the problem, but it is only a part of the problem.

Your side of the aisle wants to take everything out of defense when in fact you have been on a spending spree in social welfare spending that boggles the mind.

Over the last 5 years of the Reagan administration when defense spending has gone up by $1.5 trillion, that is a lot of money, and you have every right to complain about it, complain about the waste; but I also would remind you that social welfare spending has gone up by $2.9 trillion during that same period of time. And we have not dealt with the $2.9 trillion. That is exactly what we have got to do around here. We have got to deal with spending across the board.

I would say to the gentleman that this gentleman will show you his record. I have voted against spending of all kinds, including defense spending along the way. And that is what we have to do.

Mr. TRAFICANT. I am not questioning the gentleman in the well's position. It has been uniform and has been good in regard to spending and I think a model for the other side. I think the gentleman is one Member who has taken a look at defense as well, and I commend the gentleman for that personally.

Mr. WALKER. I thank the gentleman.

Mr. TRAFICANT. But one thing we have to look at is when you have areas that are completely devastated and have nothing but people in hardship positions, my God, you have no ultimate hand in this matter unless you are attempting to help them which ever way you can, if you cannot create jobs you are more or less in the dilemma of trying to look at whatever policies exist to remediate some of their problems.

One other thing is very important. I think you are willing to raise revenue. From what I know of you, you are willing to raise revenue, not individual taxes but from what I know of BOB WALKER, he is willing to cut off this escalation of foreign subsidiaries' activities and letting these corporations go running free, moving overseas and not paying taxes on the profits they take out of this country. But the problem is we have not been able to come in with some sort of a consensus overall, with a policy that can help us. I think we are continuing to debate issues, and I think the Members over here want to hold down spending. There is no way we are going to reduce this deficit, this national debt without doing both. But I think when we talk about raising revenue, we are not necessarily talking about increasing individual taxes.

Mr. WALKER. Let me say to the gentleman that this gentleman is for economic growth, and if as a result of a growing economy you have more revenues come into the Federal Government, that is fine with this gentleman. But my problem is that this Congress has taken the growth revenues of the last several years and spent them all away.

Last year, for example, we got $65 billion of additional revenue into the Federal Government.

Part of that was as a result of the Social Security tax increase, but part of it was as a result of economic growth. Do you know what we did with that revenue? Did we apply it against the deficit? No. We spent away every dime plus $40 or $50 billion.

□ 1715

Now the problem is that those new revenues, those growth revenues, were not applied against the deficit.

What this gentleman contends is if you are going to bring down deficits, we ought to be taking growth revenues and applying them against the deficit. That is specifically what this House does not do. This House starts all appropriation bills. Spending starts here.

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from Texas.

Mr. ARMEY. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I would like to take a few minutes on this. Of course, I am very much interested in this whole subject area and, quite frankly, quite frustrated about it, because the fact of the matter is it is politics.

Let us start off by making one clear and obvious observation. The business of this body is defined by, determined by, scheduled by, allowed by the Democratic majority. They control every decisionmaking apparatus in this House from who will be the chairman of the committee to how many people will be on the committee to what bills will be taken up by the committee to when business will take place on the floor of this body, and they do it to their advantage. Their agenda is clear and it goes way back.

I want to take you back in 1962. In 1962, under the Kennedy administration, we cut the tax revenue, the tax rate, and in the ensuing years we spurred growth in the economy and we spurred increase from that growth in the total tax revenues accrued to the National Treasury. And we used those revenues to finance the origination of Great Society programs through the sixties.

I want to tell you I have offered many, many amendments to cut spending in this past year, and time after time after time, the amendment to cut spending was on a program that had its origination in 1965, that was installed in this Congress to solve a temporary problem and had been funded all too often ever since through continuing resolutions. We institutionalized the problem and built an independent society.

In 1981, again we cut taxes. We cut the rate and the economy spurred. We whipped inflation. The energy of the 1981 tax cuts was spent primarily in whipping inflation, which we had not been able to do since the sixties. Keep it in mind, if you will, that it worked. But we had already created a special new measure in the economy called the "Misery Index," which was created during Jimmy Carter's reign as President. That "Misery Index" was out of control and that was whipped by those tax cuts, but it spent its energy there. Nevertheless, we created 6 million new jobs as a consequence of those tax cuts.

When you cut tax rates, you increase tax revenue, you spur the economy, and the rich pay a higher share of the tax burden relative to the poor. It happens every time. It happens when Kennedy does it in 1962. It happens when Reagan does it in 1981. It will happen now.

I voted for the tax bill last week. I did not like the tax bill. There were a lot of things in it I did not like. There were a lot of things I did like.

What I did not like was the treatment of business. We have in that bill a minimum corporate tax to get rid of the unfair treatment of business. We had an elimination of the investment tax credit. We had an increase in the investment tax rate. But we did indeed shift a big burden, 125 billion dollars' worth of burden, from individuals to business.

Why did I vote "yes" on that? I did not like it. I voted "yes" because every time we have tried to cut spending in this House, it has been met by the Democratic majority who defined the business of this House, and make no mistake about that, it has been met with the contention that there is no need to cut spending on our programs of the sixties, irrespective of their enormous failure ratio, the fact they have done this Nation no good and squandered the taxpayers' money. There is no reason to cut that until we make business pay its fair share. Now we bit the bullet and we did that.

Now today, what is the argument I am hearing from the gentleman from Ohio? The gentleman does not want to sign a pledge to pledge against no further tax increases. The gentleman does not want to cut spending. The gentleman wants this body to again put business' tax-paying feet in the fire. We did that. We took that argument away.

The argument goes back to defense spending. The No. 1 responsibility of a Federal Government in any nation in the world as long as we have a hostile world, as we have, is to defend that nation. We have let that go in order to sustain these programs of the sixties, the Great Society programs.

Is it Ronald Reagan's deficit? I say no. There is a deficit that we face year in and year out, and that will only be dealt with by the cutting, reduction, elimination, and reforming of spending programs. That deficit is the bill for the Great Society programs, and let us not make a mistake about it. And until we recognize that we got involved with the whole concept of government that said the government can cure ills, solve problems and fix things, put your faith in the government and do not put your faith in the people because the people support the government on the pretentious idea that somehow in return the government can support the people is a ridiculous idea that has been bankrupting the Nation.

Our choice is very clear now. We have gotten all the demagoguery out of the way. We put tax-paying businesses' feet in the fire. Now the time has come to put those arguments aside and face the question: Are you going to cut spending on failed programs and reduce the deficit, or are you going to continue to rob hard-working tax-paying citizens in America to transfer that money over to others for programs that we do not need and will not be effective?

I say sign the pledge and cut spending. It is time we do that.

Mr. WALKER. Let me just clarify here, the gentleman is willing to sign the pledge not to raise taxes?

Mr. ARMEY. I have signed the pledge.

Mr. WALKER. And the gentleman is also willing to sign the resolution that I am about to introduce that would have the 99th Congress ask the 100th Congress not to raise taxes.

Mr. ARMEY. I have signed the resolution and, I might add, with no requirement of any provision.

Mr. WALKER. I thank the gentleman.

Mr. Speaker, I yield to the gentleman from Ohio since the gentleman's name was mentioned by the gentleman from Texas.

Mr. TRAFICANT. Mr. Speaker, No. 1, I take exception to some of the remarks personally, because, No. 1, on my record I have never voted to raise taxes, and I have offered legislation that would not only close loopholes from the loss of manufacturing jobs through foreign subsidiaries, but to apply that revenue gained toward the deficit. I have never voted once to raise taxes. I am talking about raising revenue and I think we have to talk about it.

Let us just take 1 minute here. The gentleman said the President is not responsible for the deficit, and the Democratic leaders in the House basically set the agenda and they are responsible for the demise of this national budget calamity.

Here is what I am saying. It takes three to dance, the House, the other body, and the President. Two of those three parts are on your side of the aisle and you could shut this House down and keep this 99th Congress ad infinitum without ever going home if you wanted to.

And if you look at Gramm-Rudman, when it came to the Supreme Court, your President's Solicitor General was arguing to strike it down, and he lobbied this House to pass it.

What I am saying is if you are giving Mr. O'NEILL and JIM WRIGHT the credit of being to overwhelm the two Republican entities, the other body, and the President, then you are sadly misleading the American people. If this President and the other body wanted what you are talking about, we would have it here or we would not go home at all.

Mr. WALKER. What I am saying to the gentleman, I might say, is that the President has pledged not to raise taxes and we are prepared to pledge not to raise taxes, and both Mr. O'NEILL and Mr. WRIGHT have indicated that they think that tax increases are necessary to bring down the deficit. That is the issue here, and that is the question that we have posed, and we are simply trying to get Members of Congress to pledge not to raise the taxes of the American people.

Mr. DORGAN of North Dakota. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I yield to the gentleman from North Dakota.

Mr. DORGAN of North Dakota. Mr. Speaker, I have been watching this debate, and it is fascinating that people can debate this subject without their faces turning red.

Look, in 1980 we had an election that represented a political watershed, according to some. Probably the most conservative President of this century, at least close to that, came to town and said, "I am going to balance the budget."

It turns out that having been here almost 6 years, this President has proposed more spending than any President in the history of the country. Now I am not talking about what Congress has done. I am talking about what this President has proposed on the spending side of the ledger.

Most notably on that spending, he has said, "I want to increase the defense budget," double it, $150 billion to nearly $300 billion. But nowhere did I hear the President say, "But I am going to have the guts to tell the American people they are going to have to pay for it."

What he did was he believed Arthur Laffer, who says if you cut taxes you will really collect more revenue. The fact is we cut taxes, we increased the defense spending, and we ended up with a deficit of incredible proportions.

Now the gentleman stands in the well saying let us all sign pledges never to increase revenue. It is nuts, absolutely nuts.

□ 1725

Mr. WALKER. I appreciate that the gentleman may regard the idea that we should not raise taxes on the American people as nuts, but I think maybe he defines perfectly what we have been saying about his party's agenda here in the House.

Mr. Speaker, I yield to the gentleman from Georgia [Mr. GINGRICH].

Mr. GINGRICH. Let me make one comment here and I know that the distinguished gentleman knows the difference. Revenues have gone up. There are more jobs under Reagan, there are more people at work, they are therefore paying more taxes. Revenues have gone up. In fact, if we had held spending constant since 1980, we would have a balanced budget with a large surplus.

The difference is we are arguing that we should control spending. I think our record on this side of the aisle is pretty good on voting to control spending and in particular, we should control domestic spending. We are willing to sign a pledge that we will not vote to raise taxes and to put the pressure on the Budget Committee to come in with a budget which controls spending rather than raises taxes.

Mr. WALKER. Mr. Speaker, I yield to the gentleman from North Dakota [Mr. DORGAN].

Mr. DORGAN of North Dakota. I just do not want the gentleman to mischaracterize the comment "nuts." I am talking about a fiscal policy that results in a deficit that all of us on this floor would now say is catastrophic. What you seem to be saying is this: You can solve the problem on the spending side alone. I do not know that that is the case. In fact, my best guess is that it is not the case. But despite that, I am saying that even if revenue has grown, I am saying this President, had we adopted all of his spending recommendations would have led us to exactly the same point we find ourselves at now, and that is a very significant Federal deficit unparalleled in its proportion in the history of America.

Mr. WALKER. I think we would tell the gentleman that if we do not think you can do it with spending alone, we think that that is an important part of it, but that economic growth plus cuts in spending would in fact bring us to a balanced budget. That is what we are arguing, but that you cannot have economic growth while you are raising taxes, and you are not going to get this Congress to focus on spending until you make them understand that they are not going to get it with additional taxes. What we are doing is quoting the leadership on your side of the aisle who is telling us over and over again that what they want to do in terms of lowering the deficit is raise revenues, raise taxes. That we do not think is the route to go.

Mr. Speaker, I yield to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. I thank the gentleman.

Mr. Speaker, I think the concern that the American people have, and I think it is a legitimate concern, is now that we have cut out a number of deductions and we have these fairly standardized rates in this tax bill, that next year we are going to come back and we are going to raise taxes, and you are not going to have those deductions available.

I think the problem with some of the statements that have emanated from some of the Democratic leadership, and I understand that Mr. ROSTENKOWSKI, and tell me if I am wrong, but I understand Mr. ROSTENKOWSKI has said that we will have to raise taxes this next year. I think that is what concerns people because they have left the measure that defends their lower rate of taxes, they have eliminated that and they feel that now that they are naked or defenseless, so to speak, to tax raises, those raises will be forthcoming.

Mr. WALKER. Mr. Speaker, I yield to the gentleman from North Dakota [Mr. DORGAN].

Mr. DORGAN of North Dakota. I thank the gentleman.

Mr. Speaker, let me try and demonstrate what I think is the error of your position. I would have preferred, and I argued vehemently to take this tax bill that drives down tax rates, and in the process of closing loopholes, instead of using all of the revenue to drive down tax rates, that we instead use half of the revenue to drive down the deficit; that is, revenue from closing loopholes, that is people who are freeloaders; big corporations that are making lots of money and paying nothing; rich folks making money and paying nothing. Use half of the revenue you get from closing those loopholes to drive down the deficit, the other half to drive down the tax rates.

I think that would have been a far better solution. It would have given us some progress on the deficit; it would have done the right thing. Why did we not do it? I will tell you why, because the President, with his Clint Eastwood admonition, took out his pen and said, "Make my day." Meaning if you pass any bill that increases revenues, I intend to veto it. Even if a tax bill that closed loopholes designated one-half of the revenue you gain from that to drive down the deficit, this President would have vetoed it.

That is wrong in my judgment.

Mr. WALKER. I must reclaim my time here.

Mr. Speaker, Let me just say in conclusion that I think the gentleman has defined the difference between the President's position and his own and probably his own and ours. Because we think we do sincerely believe that if you are going to raise taxes on corporate America and that by closing loopholes that that was a plus for this economy. We ought to do that.

When we take those revenues that we ought to use to drive down the tax bill for the average, individual family and we ought not to do it in a way that encourages this Congress to go on spending. So we agree with the President that that was the way to go. That the American people ought to be the beneficiaries. This Congress and its big spending practices ought not be the beneficiaries.

With that, Mr. Speaker, I yield back the balance of my time.

REPORT ON RESOLUTION WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 4116, DOMESTIC VOLUNTEER SERVICE ACT AMENDMENTS OF 1986, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 99-947) on the resolution (H. Res. 568) waiving certain points of order against the conference report on the bill (H.R. 4116) to extend and improve the Domestic Volunteer Service Act of 1973, and against the consideration of such conference report, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 4021, REHABILITATION ACT AMENDMENTS OF 1986, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 99-948) on the resolution (H. Res. 569) waiving certain points of order against the conference report on the bill (H.R. 4021) to extend and improve the Rehabilitation Act of 1973, and against the consideration of such conference report, which was referred to the House Calendar and ordered to be printed.

MY ADVICE TO THE PRIVILEGED ORDERS AND THE CRIME KING CONTINUES TO BE KING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, I yield to the gentleman from Ohio [Mr. TRAFICANT].

□ 1735

Mr. TRAFICANT. Mr. Speaker, I would like to say that the gentleman from Texas [Mr. GONZALEZ] has very important items that he wants to discuss, and it is absolutely gentlemanly of him to give me a couple minutes to respond to some critical matters that I felt were placed before us earlier in the special orders.

I think that one of the problems that we have is that everybody is blaming everybody. There was a comment made earlier that we have created 6 million jobs. I would just like to put on the record here in the House that the jobs that we have created average $3.50 to $5.50 an hour, with no benefits.

The jobs that we have lost have been $9 to $12 an hour, with full benefits. I am not so sure we have created all these jobs, as much as we have reduced numbers in manufacturing and created some service jobs.

Second of all, I think our hats should be taken off to our budget chairman, BILL GRAY and the Committee on the Budget, who came in here with a budget this year that was far greater in deficit reduction than the President's own proposal.

So my point is very clear, and I think the American people should understand it. You have three parts of this puzzle. You have the Presidency, the other body, and this House. One of them is controlled by the Democrats; two of them are controlled by the other side, the Republicans.

If all of this crying makes any sense, I want to know why they have not effected the changes they talked about. I am not going to make deep cuts in areas that I represent that will further break the backs of the American people who need help the most.

But I do not think Democrats in this House want to raise taxes, and I think we have got to stop blaming each other, move forward, work together in this House. I am just hoping, and here is what I am asking of not only the chairman, but the gentleman who has preceded me, that they would favorably endorse and cosponsor the Foreign Subsidiary Tax Equity Act I offer to the House, that would close off this foreign subsidiary escalation and stop the tax loopholes that go out of this country and take American jobs.

Mr. GONZALEZ. Mr. Speaker, speaking for myself, I say to the gentleman from Ohio [Mr. TRAFICANT] on his proposal there on the tax situation, I think I have joined him in sponsoring. But as he knows, this is a matter that must be referred to the Committee on Ways and Means, of which I am not a member, and, therefore, we have to defer to the Committee on Ways and Means on those matters.

Mr. DORGAN of North Dakota. Mr. Speaker, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from North Dakota.

Mr. DORGAN of North Dakota. Mr. Speaker, I want to follow up just very briefly on some discussion we had previously. I hope that maybe tomorrow we can proceed on the same tact.

The issue seems to be that the other side stands up and says, "Liberal Democrats want higher taxes and more spending and we want lower taxes and less spending and we believe that we will substantially solve the deficit problem by cutting spending and praying for economic growth."

Now, we see a chance for economic growth. At the start of the budget year, we predict 5-percent or 4-percent or a 6-percent economic growth, whatever happens to suit the fancy of those who are submitting the budget reports so that they will look good, and then, at the middle of the year, the end of the year, we discover the economic growth figures do not match that, and therefore, the deficit is going to be much higher than we expected. We come in with 2 percent actual growth or 2½ or 3 percent with a softer economy than was expected.

Then those folks who were kneeling and praying for economic growth discover that, in fact, the economic growth they predicted did not happen and the deficit is much higher.

The second side of the dimension is that they say, "Let us cut spending. Democrats do not want to cut spending."

Look, the biggest spender in the history of America, in the history of civilization, perhaps, is the current President. He is the one who sends the budgets down here.

The gentleman from Ohio [Mr. TRAFICANT] recently said there are three steps. One is: The President sends a budget to Congress. That is the first step.

Second, Congress decides to do something with that budget and develops appropriations bills. They appropriate money.

Third, the President either signs it or vetoes it. Two of the three steps are the President's.

This President has proposed, as I said, the largest budgets in history. Why, also, the largest deficits? Because the President has taken the position that I want to spend money, but I do not want to pay for it.

I am going to give you the biggest bargain in the history of Government. You spend a dollar, you raise revenue for 80 cents and charge 20 cents to the kids. When I say it is nuts, I just mean that the fiscal policy that leads us to that position is so bizarre that it is just hard for me or anybody else to describe.

One of the gentlemen in the well said, "In the tax bill, of course, it was our position that we want to decrease taxes for middle-income folks and so on and so forth and then that will lead to economic growth."

I meet a lot of middle-income folks; most of them, I am sure, feel they are overtaxed, but I do not know of anybody who took a reasonable arithmetic book and read it for any length of time who would believe that when you have a substantial Federal deficit of the type we have, that they would expect a tax cut out of it all. I think most of them would have preferred that when we cut out tax loopholes for those who are freeloading on the tax system and not paying, that you take some of that money and drive down the Federal deficit.

I think that would have been the position most of the American people would have preferred. But most importantly, what I would love to do, and perhaps I will have the time tomorrow to come to the floor and visit with the gentleman, I would like to find out precisely where. Tell me where.

A $1-trillion budget in round figures has $300 billion for defense; $200 billion for Social Security, which is fully funded, in fact, including a surplus at the moment; $150 billion, almost, for interest on the debt that you cannot do much about except pay; $100 billion for Medicare and Medicaid.

Now, when you take those out, Social Security, military, interest on the debt, Medicaid and Medicare, you have got $250 billion left with the $230 billion Federal deficit and the other $250 billion space for everything else there is in this country in the public sector.

So the question is where? Do you want to cut defense? Do you want to cut Social Security? Do you want to cut Medicare and Medicaid in half? You cannot do anything about the interest on the debt.

So I am hoping that when we have one of these discussions very soon, we will get to the question and get some answers to it, where do we expect to cut spending? I support restraint in spending. I am tired of $800 toilet seats and $600 ashtrays and $1,100 cotter keys.

I am for cutting in some of those areas, but I am not sure that those who say the answer is on the expenditure side can stand in the well of this House and demonstrate to us you can solve this deficit problem that way. I do not think they are prepared to vote for the sort of things that they tell us about publicly that will solve it on the expenditure side.

I appreciate the gentleman offering the time, and I just wanted to follow-up on that general discussion about fiscal policy and hope maybe, in a day or two, when we have a special order, we can get to the bottom of precisely what the position is of these folks who say you can solve this budget problem with a couple of the pieces missing. This is like a puzzle, but somebody else has 2 pieces in his pocket. I am talking about the President.

Maybe we will have a more enlightening discussion on that tomorrow.

Mr. GONZALEZ. Mr. Speaker, I thank the gentleman and I was delighted to be in a position to present the opportunity to enlarge on what he was not able to because of the limitations.

I do not know if the gentleman who preceded me feels that he is entitled to a rebuttal since I opened the gate to that subject matter preceding me, but in a sense of fair play, I certainly will be glad to yield to him.

Mr. WALKER. Mr. Speaker, if the gentleman will yield, I think we are going to probably visit this subject again on future days and so I will leave my rebuttal to one of those future days and allow the gentleman to proceed ahead with the special order that the gentleman had previously planned.

I thank the gentleman very much for his courtesy.

Mr. GONZALEZ. Mr. Speaker, I thank the gentleman for his consideration.

Mr. Speaker, it certainly is not my proposition, my intention, to utilize the 1 hour that I have been privileged to be recognized on in this procedure and privilege, I consider it, that the House has seen fit to allow a Member of a numerous body, such as the House of Representatives of the United States, an opportunity to extend his views and his ideas and his suggestions on the flow of legislation which he otherwise would be limited to participate on during regular consideration of the House because of the limitations of time.

It happens that I had the great, great honor and privilege of having served in my home State of Texas in the State senate, where we have the birthplace of the unlimited debate rule. The Texas Senate is the birthplace of what we have called the filibuster, not the U.S. Senate. Even today, the U.S. Senate recognizes closure. The Texas Senate, at least at the time I left, did not.

I was able to participate as a brand-new newcomer who had broken through a wall, so to speak, that existed at that time in the State and confronted the most trying emotional and passionate issues of the day, and in particular, in my State, which was 1 of the 11 Confederate States, the issue of segregation before Martin Luther King.

□ 1745

I say it was another world. It was not easy, but I am still here in an elective capacity, when I had been warned that I had committed suicide, political suicide, first on the city council when alone and singlehandedly I resisted the imposition of segregatory ordinances that the municipality of San Antonio since 1839 had not seen fit to adopt, but which had depended on tradition and also State Jim Crow or statutory provisions and constitutional prohibitions based on race.

I will say that the test was first in my very first year of service in the city council of the city of San Antonio.

The fact remains that even though then it was considered political suicide, that I looked upon it as a matter of prime responsibility under the oath of office that I took then, and then of course subsequently the oath of office that I took in the State senate and, of course, now the oath of office that we from the beginning have taken as Members of the House of Representatives of the United States. That is the only oath, that is the only pledge I take.

I know that prior discussions had to do with pledges. I do not believe in such any more than the fundamental pledges that one takes in life, such as the betrothal pledge, and I will say there that as difficult as that may be, after 46 years of marriage and thanks mostly to a wife who has been faithfully loyal and self-sacrificing, I have been enabled to survive. Outside of those, I think other pledges, like other participations in other political organizations, other than the basic party one subscribes to, are not wise or prudent, at least for myself.

It is the same way with labeling, the question of whether one labels another as a rightwinger, extreme conservative or reactionary. I would prefer to use the word Tory, because I think even in the tradition of our country in the beginning that was what separated the boys from the men in the American Revolutionary effort.

Then you have radical-liberal, or liberal or leftist. These can be pejorative terms.

I also had to face that when I first broke through in 1956 and was elected to the Texas State Senate, actually without any real economic resources or any particular social or political position, and that has been true to this day.

I probably am the poorest fundraiser in this whole assemblage. I probably have had and continue to have the least so-called political funds for campaign purposes.

My contention has been all along that if one does not know the difference between, as they used to say in Latin, the mean and tuum; that is, what is mine and what is not, then nothing is going to bring about that differentiation through any kind of code of ethics of any pledge or any resolution. We all know about New Year's resolutions.

When it comes to labeling of individuals, I think we are on very tenuous grounds. I remember when I was on the city council having one of the most prominent columnists, who still is a columnist in one of our daily newspapers in San Antonio, staying up until 4 o'clock in the morning demanding to know what I labeled myself.

I said, "Look, my mind doesn't work that way. I'm not that smart."

I would never be able to cope with a dialectician, whether it was a dialectician in the Marxist-Leninist tradition or any other, because that is involved.

I studied engineering before I studied law, and so mentally I do not work along some of the convolutions that I see so many writers and authors and speculative philosophers writing about. I do not have that capacity.

My contention to this columnist was, "Look, I'm on the city council and if I were to look at an issue that I had to vote on as to whether this was going to be liberal or whether it was going to be conservative, I would never be able to cast a vote.

I look upon it as to whether or not is this vote I am casting the right vote from the standpoint of the greatest interest of the greatest number. If I can determine that, I have no problem.

I am not worried about if somebody is going to call me liberal. In fact, I had probably what was described in San Antonio at the time the harshest, the bitterest, the most arduous and meanest campaigns directed against me when I ran for the Senate. Through a tremendous, considered then, a remarkable achievement, I won the nomination at a time when the State was still considered a one-party State and was the only Democratic candidate on the ballot that had a Republican opponent at a time when the Republican Party did not even have to have a primary.

So five people who were thoroughly shocked by my nomination decided that it had been a fluke, because after three recounts they finally declared me the winner by 309 votes; so that in November I was the only one that faced on the ballot a so-called Republican. All of the office holders in the county courthouse were the ones who ran on a party basis, because through tradition in municipal elections, they are not on a party-line basis. Every one of them were supporting what they called a conservative, because I was labeled a "liberal."

The antagonist raised the issue that I was a union supporter, that I had better not be elected because I would be a tool of the union leaders.

Well, San Antonio traditionally has been an antiunion town. For that matter, I do not think the union card-carrying members have increased by 1,500 since 1956. At that time, I do not know how many there were around. All I know is that I had to stand up and ask myself this question: Am I for or against labor union? I had never been a member of one. There was not that much union activity in the city of San Antonio, but it was considered synonymous with being a liberal. At that time that was considered synonymous with being a Communist.

So the deal was that if I could be labeled that way; so what I told this columnist was, "Look, if you've got to insist on a label, then call me a consiberal."

He said, "What do you mean by that?"

I said, "Well, that means sort of a half-baked liberal and a half-baked conservative."

The truth of the matter is that I would say if you insist on liberal or conservative, then I am a true conservative, because I believe in conserving the traditional historical American liberal approach to things.

You know, throughout the world we are looked upon, or had been until the last two or three decades, as a leading liberal revolutionary kind of country, but we have lost that image.

I say that we lose so much time on labeling that I make these remarks only out of sadness because I saw so much of the time taken here recently in going into accusations on something that would try to pin the responsibility on a partisan basis.

Actually, the point I have been making throughout my career is that economics, finances, fiscal matters, monetary matters, like engineering and mathematical formulas, are not partisan. They are not Democratic, they are not Republican.

This country is facing a tremendous challenge like never in its 200 years. For one, these are the facts, no matter who is to blame. The facts are that for the first time since 1914 our country is a debtor nation. We are the biggest debtor-owing country in the world.

Fact two. For the first time in the last year and a half we import more food than we export.

Fact three. The basic reflected result is the most monstrous trade deficit or international deficit in the history of any combination of nations. It is estimated, and there is no question that it will not be less than $175 billion.

As I have said time and time again, the tragedy there is that for every $10 billion of that $175 billion, that means we have lost forever some 150,000, to 200,000 jobs, mostly in that sector that had made us a producing nation, which we no longer are. We are now a nonproducing nation. We are an importing nation, which means that ironically our country is back where it was at the time of the Revolution suffering under sort of a reverse mercantile system. It is going to take the ingenuity, the good will and the know-how, the wit, the will of every one of us, no matter what our party is, in order even if we were to work without friction to resolve, so that if we get lost in trying to label and therefore blame, we are going to end nowhere.

Mr. Speaker, it brings me to the basic thrust of what motivated me to rise and speak on this occasion.

I wish to entitle this one not only "My Advice to the Privileged Orders," as I have been doing now for almost 2 years, but also "The Crime King Continues to be King."

First, I said awhile ago that we face these tremendous almost for the present insurmountable problems. This is an election year. We can hardly expect while so many Members of this House who have to be renewed every 2 years and are facing a steady drumbeat of opposition back home to be here calm and dispassionate and say that we are going to consider seriously anything that will call for sacrifice and pain, sweat, blood, and tears, in the words of Churchill, until after the election. Those are the facts and the reality of life and we must understand that, because it should be understood.

□ 1800

This House, unlike the other body, must seek renewal or reelection every 2 years, and every 2 years it has to start from scratch, as it did in 1789 in the beginning of the first Congress.

The news today was that there will be a summit meeting in Iceland, very quickly, very soon—next week—between our President and the leader of the Union of Soviet Socialist Republics.

There were other stories that accompanied that announcement. One was that the Russians were still turning deaf ears on our intense desire on the part of the President to sell our wheat to the Russians—that is, that the Russians extend their agreement, entered into several years ago, on the purchase of wheat.

Obviously, this is the main impelling reason for President Reagan's meeting next week or agreeing to the Russian leader's insistent request for the past 6 months. I think that it is tragic that we should have succumbed to this, and the fact that the President would say, "Well, now, wait awhile, this isn't because I made a deal."

Actually it is like today's discussion: Who is to blame for the mess that we are in? The American people, as I understand it, in my comings and goings and talking to people as a chairman of the subcommittee of which I am chairman—in the last 5 years alone I have gone into 33 States, 65 communities, the most rural to the most urban—and everywhere I go, I do not think that I am treated as, "Oh, you're a Democrat," or "You're a liberal." They want to know, "What are you guys doing about this problem? What are you guys telling me, that you have controlled inflation? I am not paying less for my groceries. I am not paying less for my rent? I am not paying less for the vital items of utilities that are necessary to life in American society today. So what we want to know is what is being done. We don't want to know who's to blame. We're tired of that," It is the same thing here.

The real fact is that the President boxed himself in because of his tough ideological blinders that he has had over the course of years. You know, it used to be, and I think it was just about a year or two ago that this was suspended, that every Washington's Birthday, on that given Monday at that time, we would meet here only to have Washington's Farewell Address read to us. I guess that people have gotten away and Americans have forgotten exactly what it was that was motivating those great patriots who at the sacrifice of treasure and life fought for independence.

One of the things that has been in that farewell last address of President Washington was something that I have felt all along has been true and apt for us to be mindful of, but which I think we have forgotten and our leaders have either been unmindful of, do not even know of such utterances, or, if so, have not heeded them.

He said,

> That nation which indulges towards another an habitual hatred or an habitual fondness is in some degree a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest.

The President has called Russia the "Empire of Evil." He has called its leaders very, very, I would consider, insulting phrases. On the other hand, Russia, in its agreement to purchase wheat from the very first, 1967-68, and then in the seventies, in the Nixon years, the substantial agreements entered into, kept its word. It bought as it committed itself to. But then the President, the Secretary of Defense, the Secretary of State, in their desires to do something about neutralizing Russia, entered into some secret agreements to which we still are not party, with China, which is just as Socialist, just as Communist, as the Union of Soviet Socialist Republics. We still do not know.

We know that a military deal was made. But one of the things that the Chinese did do, and this was about 3 years ago, when the then Chinese Minister visited our country, was to announçe a purchase agreement of American grain. It was the year before last that we entered the serious, grave farm crisis. The immediate reason was that the Chinese reneged in that year's commitment to purchase 6 million metric tons of that grain. You look and you will see that since then.

Now the President has put America in the position of literally begging the Russians to please keep their commitment, to renew that commitment, to purchase our grain. At what prices? All at subsidized prices. But in order to do what? To keep him in good in a losing area of support, which is our grain and fiber-growing area of our country.

I think that is a very poor way to bargain and lead our country, particularly when we are at the same time accusing this country that we are asking to enter into an agreement of being one that has never kept an agreement. We have accused time after time, that is Members of Congress, Presidents, the Russian leaders of not keeping pledges. Now whether that is true or not depends in most instances on the point of view and on the particular animosity, habitual, as George Washington described it, that has infected our minds, and I believe to our detriment.

I believe nothing should stand in the way of our giving our own internal domestic national interest supreme priority, exclusive priority, nothing else, but this has not happened, and it has not happened in commerce, where we have, as I have said time and time again, been sold out. We have sold out the laborer in the industrial sections of our country. We have sold out the farmer now. The reason is that our financial framework of reference has just not been faithful to the greatest interest of the greatest number of Americans in this country.

I have pointed out time after time since I first came to this Congress, long before there was any such thing as television coverage of these proceedings, exactly the things that were leading to the very dilemma that we confront, and unfortunately and sadly that I have lived to witness, but which I had hoped against hope would not happen, but did warn, and on the record. It is not what I am saying now in retrospect and say, "Well, I said it," when I did not. It is in the RECORD. that is the reason that I take the floor, because I want it to be in the RECORD, because I am gravely concerned, and even though it may be considered a solitary voice, I have had through my experience in elective capacity for 33½ years the great, great redeeming experience of being the beneficiary of the greatness of the average American citizen—no matter what his background, racial, economic, ethnic, religious, I have been the beneficiary of a great, great spirit that I think is still there, the saving sap in this American tree of democracy, and to which I am beholden and never allow myself to forget.

□ 1810

So, it is with the gravest and the saddest of hearts that I rise to say also that I took this floor for 2 years. I was ridiculed, I still am ridiculed, some back home, some up here. For a while, every time I took this floor my staff in my office here would receive very distressing and harassing calls, obviously from some employee with some person here within the confines of the House.

But that does not mean that that in any way has dismayed me, because that has always been the case. It has been the case of every single elected official in our country's history, no matter whether he is nonobscure or not. You have to take a stand sooner or later, and my position is the sooner the better, and that you have to entrust that decision made in good faith and in honest and sober consideration to the good judgment of the serious-minded and responsible citizen in the electorate. And if you cannot depend on that, then my feeling is who wants the job. Why should I have the job? Why should I want it? I asked that question from the beginning.

I took the floor for 2 years and I entitled my little discussions, sometimes little, sometimes long, "King Crime." I pointed out that the crime of the century, that is what I called it and I was ridiculed for calling it that. Some said, well, do you not consider the assassination of President Kennedy, and I said yes, I was there. I was right there when the President was killed, and I certainly would never say that was less than the greatest crime ever.

But for the American democratic participatory Government, the greatest crime was the murder of Federal District Judge John Wood in my hometown, but actually right outside of my district in what we call the affluent section of our country.

Before that I had spoken on the attempted murder of assistant Federal district attorney for the Federal judicial district in Texas of James W. Kerr. I pointed out, and in fact I warned, I sent warning to Judge Wood on the Saturday before he was shot to death that he should call back the marshals that had been given to him for some kind of surveillance and protection ever since the attempt on the life of James Kerr, but which Judge Wood chafed under, and I found the week before he was killed that he had dispensed with these marshals, and he was killed not soon after he had said, "I don't want and I don't need the U.S. marshals around me."

I point out that before that I had gone to the Bexar County grand jury on four occasions to point out the incursion in our area of the most organized portions of organized crime in our country. I took the floor and I said that crime is king, the criminals and those in the top positions who have reached such powerful positions they are beyond the law, they have greater resources than the law enforcement resources we provide, whether on a national, State, or local level.

So the other day I requested the FBI to take a comprehensive look at the local San Antonio Municipal Police Department after one police officer killed another fellow police officer under the most bizarre of circumstances. It also is after the appointed chief of police who had been appointed in 1982, and happened to have been, if that means anything, the first police chief in San Antonio of Hispanic, or whatever you want to call it, descent, before the shooting by this one policeman of another, the policeman who did the killing had a private, secret session with the two highest placed officials in the police department under the chief. One was the deputy chief and the other was an assistant. The chief himself had taken his vacation and was up in the Eastern part of the United States, not too far from here in the State of New Jersey. When the killing occurred, the city manager who had just been under heavy fire for a rather frivolous reason by the mayor and others, immediately made statements to the effect that the chief of police should have been in contact. The chief of police was on vacation. He had not been party to the secret cabala in which it was decided that the district attorney, who has been defeated, would meet with this police officer, and who told these leaders that this other buddy with whom he had been particularly close had made threats on the lives of the two high ranking police officers and the district attorney, and that he was going to kill them.

It was then decided, and the district attorney went out and with his own money bought a small recording device which they gave to this police officer, who immediately went out and sought out his buddy patrolman who was off duty. Both were off duty.

The officer who was shot then said, all right, let's go in my car. While proceeding in the neighborhood of the apartment of the killed policeman, the dead policeman, the police officer who did the shooting says that the officer that he was trying to get some recording, ostensibly to record the threats that he had reported, and was driving the car, demanded he give him his service revolver, which the police officer named Tucker, who did the shooting, said at first was a 357 magnum. And that he then, with Officer Smith, the dead officer driving, obviously had to be with one hand because he was looking straight ahead, had had the gun on Tucker's head and was threatening to kill him. He said I will kill you in a few blocks. But then Tucker reaches into his back, under his coat and his belt and pulls out another revolver he had, a .38, and with that he first said he shot Smith five times. The car went out of control and ended up somewhere on the curb.

However, when the coroner came back with his findings less than 36 hours later, he reported that Smith had to have been shot looking straight ahead while driving, presumably with one hand, and that he had been shot two times in the head, 3 times in the body, and that it was a 357 magnum, not a .38. Then Tucker says, "Oh, in my frenzy, in my excitement, I guess I had it reversed."

Now, that sounds as if "what is going on?" What happens? The city manager and the mayor fire the chief who was the only one who had nothing to do with the cabala. Out he goes.

I became concerned because several months ago, like I did in 1970 and 1971 and 1972 before the shooting of the judge in 1978 and 1979, had information. I had been chief juvenile probation officer of my county after the war. I am proud of what I did then. I had not looked upon that as a likely vocation, but it is the proudest moment of my entire life, what I did, what I accomplished.

□ 1820

As a result, I also became intensely acquainted with the elements in our society that unfortunately we have lost. For a society produces a kind of crime that I guess it deserves.

So through the years I have had the most intimate contact. I consider, for instance, any inmate in a penitentiary or in a jail who happens to be a constituent as a full citizen entitled to constituent services, and through the years many have shown that gratitude.

I have been informed that threats had been made against me by Members who were in the law enforcement section in San Antonio, but that it was a nebulous kind of threat in that it seemed to be directed against the class of officials, elected or otherwise, that I would symbolize with the last name that I bear; that is Hispanic or whatever you want to call it.

I did not pay much attention to it other than that I was also informed that there was within the police department a cadre of officials that were going out and actually having maneuvers with all types of armament on the countryside around San Antonio; that some were affiliated with the vigilantes that have cropped up in Arizona who were going out, taking it upon themselves to arrest people they thought were aliens, and still are.

Others that they were associated with, the Aryan Brotherhood, which as you know from having read in the newspaper, has created quite a bit of dilemma for law enforcement agents in the Middle West.

Whether that is true or not, I did not think it was any of my business in the absence of absolute verifiable information which came after the shooting death, and which I could see that the municipality did not and does not have the resources to really go into a comprehensive review that only such agencies as the Federal Bureau of Investigation have.

So I wrote a letter and called and requested personally of Director Webster, who had been kind enough to call me, after 2 years of speaking on this floor on the Judge Wood case, for which I was ridiculed, criticized, and what not.

He called me at my home in San Antonio one day, a Friday, and said:

> I want you to be the first to know that the first breakthrough in our indictments of what will be people charged with the murder of Judge Wood will be announced, and I wanted you to know first, ahead of time, because we gave you credit, more than any other person, for having enabled us to get the resources to resolve the crime.

What I am saying today, though, is that that crime really has not been fully resolved. Yes, we had five indictments, we had about three or four convictions; but those are not the moving spirits behind it all. We talk about curbing drugs. We are doing less now in curbing this multibillion-dollar exchange of stolen vehicles south of the border, coming back in the form of drugs than we were in 1979.

Judge Wood became a target because they considered him harsh. Harsh. But who were the individuals involved? Were they the top? Well, I am sure they are not, because we have reached the point, as I said for those 2 years, where in our country crime and criminal behavior of the most sophisticated kind is so enmeshed within the political and the business—we have businesses, banks, shopping centers, savings and loans, other big corporations, insurance corporations, that have literally been taken over by the mob; but it is done in late 20th-century fashion.

So well that many of the people involved in the businesses do not even know who really controls it. Even now our own President, I have never heard him come out strong against organized crime. It is now revealed what a lot of us had reason to know, that when he got started in making his $4 million in Hollywood, that it was enabled to be done so because those powerful panjandrums that enabled him to become a millionaire four times over were linked cheek by jowl with the highest, sophisticated, criminal organized element in our country.

Does that mean the President knows it? No. As one very, very famous figure in the so-called stopping of the French connection in the Northeast, meaning the importation of hard drugs, cocaine, said:

> Well, we'll soon see where we will elect a President who will not know that organized crime put him there until he gets the bill to pay.

I hate to say this, but it is true. We have put out law enforcement agents where they cannot buck that kind of combination. They cannot possibly penetrate it.

In my city of San Antonio, which actually should not get that kind of reputation because it never has been a headquarters; at best it has been a way station. When the French connection was stopped, then the brown heroin was open, and it came from Colombia and Bolivia and through Mexico. Then when that, after a lot of us got to yelling about it, it opened up in greater strength in the Caribbean and up through Florida, where it is still unstopped. We can send all the soldiers we want, but until we address the fundamental reason and the cause for the demand in our country, until we can give our law enforcement agents the power to really uproot the main brains behind it, we will continue to have King Crime in full emperor's robes.

Mr. Speaker, I yield back the balance of my time.

CONFERENCE REPORT ON H.R. 4759

Mr. HAMILTON submitted the following conference report and statement on the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes:

CONFERENCE REPORT (H. REPT. 99-952)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, having agreed to so recommend, do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1987".

TITLE I—INTELLIGENCE ACTIVITIES

AUTHORIZATION OF APPROPRIATIONS

Sec. 101 Funds are hereby authorized to be appropriated for fiscal year 1987 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.

(2) The Department of Defense.

(3) The Defense Intelligence Agency.

(4) The National Security Agency.

(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.

(6) The Department of State.

(7) The Department of the Treasury.

(8) The Department of Energy.

(9) The Federal Bureau of Investigation.

(10) The Drug Enforcement Administration.

CLASSIFIED SCHEDULE OF AUTHORIZATIONS

SEC. 102. (a) The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 1987, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared by the Committee of Conference to accompany H.R. 4759 of the Ninety-ninth Congress. That Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

(b) Funds appropriated to the Department of Defense for fiscal year 1987 for intelligence and intelligence-related activities and listed under the heading "ADDITIONAL SPECIFICALLY AUTHORIZED ACTIVITIES" in the Schedule of Authorizations to which subsection (a) refers, shall be considered to be specifically authorized by the Congress for such activities for purposes of section 502 of the National Security Act of 1947, notwithstanding the absence of authorizations of appropriations for such activities in this Act.

PERSONNEL CEILING ADJUSTMENTS

SEC. 103. The Director of Central Intelligence may authorize employment of civilian personnel in excess of the numbers authorized for fiscal year 1987 under sections 102 and 202 of this Act when he determines that such action is necessary to the performance of important intelligence functions, except that such number may not, for any element of the Intelligence Community, exceed 2 per centum of the number of civilian personnel authorized under such sections for such element. The Director of Central Intelligence shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever he exercises the authority granted by this section.

AUTHORITY FOR THE CONDUCT OF INTELLIGENCE ACTIVITIES

SEC. 104. The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

INCREASES IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW

SEC. 105. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

RESTRICTION ON SUPPORT FOR MILITARY OR PARAMILITARY OPERATIONS IN NICARAGUA

SEC. 106. Funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities may be obligated and expended during fiscal year 1987 to provide funds, materiel, or other assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua only as authorized in section 101 and as specified in the classified Schedule of Authorizations referred to in section 102, or pursuant to section 502 of the National Security Act of 1947, or pursuant to any provision of law specifically providing such funds, materiel, or assistance.

RESTRICTION ON INTELLIGENCE AGENCY COOPERATION WITH SOUTH AFRICA

SEC. 107. No agency or entity of the United States involved in intelligence activities may engage in any form of cooperation, direct or indirect, with the Government of South Africa, except activities which are reasonably designed to facilitate the collection of necessary intelligence. It is the policy of the United States that no agency or entity of the United States involved in intelligence activities may provide any intelligence information to the Government of South Africa which pertains to a South African internal opposition group, movement, organization, or individual. Any change in such policy, or the provision of intelligence information contrary to such policy, shall be considered a significant anticipated intelligence activity for purposes of section 501 of the National Security Act of 1947.

TITLE II—INTELLIGENCE COMMUNITY STAFF

AUTHORIZATION OF APPROPRIATIONS

SEC. 201. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1987 the sum of $22,000,000.

AUTHORIZATION OF PERSONNEL END-STRENGTH

SEC. 202. (a) The Intelligence Community Staff is authorized two hundred thirty seven full-time personnel as of September 30, 1987. Such personnel of the Intelligence Community Staff may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1987, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence and intelligence-related activities.

(c) During fiscal year 1987, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a nonreimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

INTELLIGENCE COMMUNITY STAFF ADMINISTERED IN SAME MANNER AS CENTRAL INTELLIGENCE AGENCY

SEC. 203. During fiscal year 1987, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 401 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND RELATED MATTERS

AUTHORIZATION OF APPROPRIATIONS

SEC. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1987 the sum of $125,800,000.

SURVIVOR BENEFITS FOR CERTAIN FORMER SPOUSES OF CIA EMPLOYEES

SEC. 302. (a) Part C of title II of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees is amended by adding at the end thereof the following new section:

"SURVIVOR BENEFITS FOR CERTAIN OTHER FORMER SPOUSES

SEC. 224. (a)(1) Any individual who was a former spouse of a participant or former participant on November 15, 1982, shall be entitled, to the extent of available appropriations, and except to the extent such former spouse is disqualified under subsection (b), to a survivor annuity equal to 55 per centum of the greater of—

"(A) the full amount of the participant's or former participant's annuity, as computed under section 221(a); or

"(B) the full amount of what such annuity as so computed would be if the participant or former participant had not withdrawn a lump-sum portion of contributions made with respect to such annuity.

"(2) A survivor annuity payable under this section shall be reduced by an amount equal to the amount of retirement benefits, not including benefits under title II of the Social

Security Act, received by the former spouse which are attributable to previous employment of such former spouse by the United States.

"(b) A former spouse shall not be entitled to a survivor annuity under this section if—

"(1) an election has been made with respect to such former spouse under section 223;

"(2) the former spouse remarries before age fifty-five; or

"(3) the former spouse is less than fifty years of age.

"(c)(1) The entitlement of a former spouse to a survivor annuity under this section—

"(A) shall commence—

"(i) in the case of a former spouse of a participant or former participant who is deceased as of the effective date of this section, beginning on the later of—

"(I) The sixtieth day after such date; or

"(II) the date such former spouse reaches age fifty; and

"(ii) in the case of any other former spouse, beginning on the latest of—

"(I) the date that the participant or former participant to whom the former spouse was married dies;

"(II) the sixtieth day after the effective date of this section; or

"(III) the date such former spouse reaches age fifty; and

"(B) shall terminate on the last day of the month before the former spouse's death or remarriage before attaining age fifty-five.

"(2)(A) A survivor annuity under this section shall not be payable unless appropriate written application is provided to the Director, complete with any supporting documentation which the Director may by regulation require, within thirty months after the effective date of this section.

"(B) Upon approval of an application provided under subparagraph (A), the appropriate survivor annuity shall be payable to the former spouse with respect to all periods before such approval during which the former spouse was entitled to such annuity under this section, but in no event shall a survivor annuity be payable under this section with respect to any period before the effective date of this section.

"(d) The Director shall—

"(1) as soon as possible, but not later than sixty days after the effective date of this section, issue such regulations as may be necessary to carry out this section; and

"(2) to the maximum extent practicable, and as soon as possible, inform each individual who was a former spouse of a participant or former participant on November 15, 1982, of any rights which such individual may have under this section.".

(b) Section 14(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403n(a)) is amended by inserting "224," after "222, 223,".

(c) For fiscal year 1987, not to exceed $500,000 shall be available from amounts appropriated under the authority of section 101(1) of this Act for survivor annuities under section 224 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees and under the amendment made by subsection (b) of this section.

(b) The amendments made by this section shall take effect on October 1, 1986.

HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES OF CENTRAL INTELLIGENCE AGENCY EMPLOYEES

SEC. 303. (a) The Central Intelligence Agency Act of 1949 is amended by adding at the end a new section as follows:

"HEALTH BENEFITS FOR CERTAIN FORMER SPOUSES OF CENTRAL INTELLIGENCE AGENCY EMPLOYEES

"SEC. 16. (a) Except as provided in subsection (c)(1), any individual—

"(1) formerly married to an employee or former employee of the Agency, whose marriage was dissolved by divorce or annulment before May 7, 1985;

"(2) who, at any time during the eighteen-month period before the divorce or annulment became final, was covered under a health benefits plan as a member of the family of such employee or former employee; and

"(3) who was married to such employee for not less than ten years during periods of service by such employee with the Agency, at least five years of which were spent outside the United States by both the employee and the former spouse,

is eligible for coverage under a health benefits plan in accordance with the provisions of this section.

"(b)(1) Any individual eligible for coverage under subsection (a) may enroll in a health benefits plan for self alone or for self and family if, before the expiration of the six-month period beginning on the effective date of this section, and in accordance with such procedures as the Director of the Office of Personnel Management shall be regulation prescribe, such individual—

"(A) files an election for such enrollment; and

"(B) arranges to pay currently into the Employees Health Benefits Fund under section 8909 of title 5, United States Code, an amount equal to the sum of the employee and agency contributions payable in the case of an employee enrolled under chapter 89 of such title in the same health benefits plan and with the same level of benefits.

"(2) The Director of Central Intelligence shall, as soon as possible, take all steps practicable—

"(A) to determine the identity and current address of each former spouse eligible for coverage under subsection (a); and

"(B) to notify each such former spouse of that individual's rights under this section.

"(3) The Director of the Office of Personnel Management, upon notification by the Director of Central Intelligence, shall waive the six-month limitation set forth in paragraph (1) in any case in which the Director of Central Intelligence determines that the circumstances so warrant.

"(c)(1) Any former spouse who remarries before age fifty-five is not eligible to make an election under subsection (b)(1).

"(2) Any former spouse enrolled in a health benefits plan pursuant to an election under subsection (b)(1) may continue the enrollment under the conditions of eligibility which the Director of the Office of Personnel Management shall by regulation prescribe, except that any former spouse who remarries before age fifty-five shall not be eligible for continued enrollment under this section after the end of the thirty-one-day period beginning on the date of remarriage.

"(d) No individual may be covered by a health benefits plan under this section during any period in which such individual is enrolled in a health benefits plan under any other authority, nor may any individual be covered under more than one enrollment under this section.

"(e) For purposes of this section the term 'health benefits plan' means an approved health benefits plan under chapter 89 of title 5, United States Code.".

(b) The amendment made by this section shall take effect on October 1, 1986.

TITLE IV—COUNTERINTELLIGENCE AND SECURITY

COUNTERINTELLIGENCE OFFICIAL VISITOR EXCHANGES

SEC. 401. (a) Chapter 33 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 539. Counterintelligence official reception and representation expenses

"The Director of the Federal Bureau of Investigation may use funds available to the Federal Bureau of Investigation for counterintelligence programs to pay the expenses of hosting foreign officials in the United States under the auspices of the Federal Bureau of Investigation for consultation on counterintelligence matters.".

(b) The table of contents for chapter 33 of title 28, United States Code, is amended by adding at the end thereof the following:

"539. Counterintelligence official reception and representation expenses.".

(c) Chapter 4 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 140a. Counterintelligence official reception and representation expenses

"The Secretary of Defense may use funds available to the Department of Defense for counterintelligence programs to pay the expenses of hosting foreign officials in the United States under the auspices of the Department of Defense for consultation on counterintelligence matters.".

(d) The table of contents for chapter 4 of title 10, United States Code, is amended by adding at the end thereof the following:

"140a. Counterintelligence official reception and representation expenses.".

FBI ACCESS TO STATE AND LOCAL CRIMINAL RECORDS FOR SECURITY CLEARANCES

SEC. 402. (a) Section 9101 of title 5, United States Code, is amended as follows:

(1) in paragraph (1) of subsection (b) by striking "or" after "Office of Personnel Management,", by inserting "or the Federal Bureau of Investigation," after "the Central Intelligence Agency,", and by striking "department, office or agency" and inserting in lieu thereof "department, office, agency or bureau";

(2) in subparagraph (3)(A) of subsection (b) by striking "or" after "Office of Personnel Management," by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency", by striking "department, office, or agency" and inserting in lieu thereof "department, office, agency, or bureau", and by striking "department, office, or agency." and inserting in lieu thereof "department, office, agency, or bureau.";

(3) in subparagraph (3)(A) of subsection (b) by striking "or" after "Office of Personnel Management," by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency"; and

(4) in subsection (c) by striking "or" after "Office of Personnel Management," by inserting ", or the Federal Bureau of Investigation" after "the Central Intelligence Agency".

(b) Section 803(a) of the Intelligence Authorization Act for fiscal year 1986 (Public Law 99-169) is amended by striking "and" after "Office of Personnel Management," and by inserting "and the Federal Bureau of Investigation," after "the Central Intelligence Agency,".

(c) The amendments made by this section shall become effective with respect to any inquiry which begins after the date of enactment of this Act conducted by the Federal Bureau of Investigation for purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code.

PERMANENT EXTENSION OF DOD AUTHORITY TO USE PROCEEDS FROM COUNTERINTELLIGENCE OPERATIONS

SEC. 403. (a) Chapter 4 of title 10, United States Code, as amended by section 401(c) of this Act, is further amended by adding at the end thereof the following new section:

"§ 140b. Authority to use proceeds from counterintelligence operations of the military departments

"(a) The Secretary of Defense may authorize, without regard to the provisions of section 3302 of title 31, United States Code, use of proceeds from counterintelligence operations conducted by components of the military departments to offset necessary and reasonable expenses, not otherwise prohibited by law, incurred in such operations, and to make exceptional performance awards to personnel involved in such operations, if use of appropriated funds to meet such expenses or to make such awards would not be practicable.

"(b) As soon as the net proceeds from such counterintelligence operations are no longer necessary for the conduct of those operations, such proceeds shall be deposited into the Treasury as miscellaneous receipts.

"(c) The Secretary of Defense shall establish policies and procedures to govern acquisition, use, management, and disposition of proceeds from counterintelligence operations conducted by components of the military departments, including effective internal systems of accounting and administrative controls.".

(b) The table of contents for chapter 4 of title 10, United States Code, as amended by Section 401(d) of this Act, is further amended by adding at the end thereof the following.

"140b. Authority to use proceeds from counterintelligence operations of the military departments.".

FEDERAL BUREAU OF INVESTIGATION COUNTERINTELLIGENCE ACCESS TO FINANCIAL RECORDS OF AGENTS OF FOREIGN POWER

SEC. 404. Section 1114(a) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)) is amended by adding at the end thereof the following new paragraph:

"(5)(A) Financial institutions, and officers, employees, and agents thereof, shall comply with a request for a customer's or entity's financial records made pursuant to this subsection by the Federal Bureau of Investigation when the Director of the Federal Bureau of Investigation (or the Director's designee) certifies in writing to the financial institution that such records are sought for foreign counterintelligence purposes and that there are specific and articulable facts giving reason to believe that the customer or entity whose records are sought is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(B) The Federal Bureau of Investigation may disseminate information obtained pursuant to this paragraph only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigation conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(C) On a semiannual basis the Attorney General shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made pursuant to this paragraph.

"(D) No financial institution, or officer, employee, or agent of such institution, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to a customer's or entity's financial records under this paragraph.".

TITLE V—ADMINISTRATIVE AUTHORITIES RELATING TO INTELLIGENCE PERSONNEL

DEFENSE INTELLIGENCE AGENCY CIVILIAN MEDICAL EVACUATION BENEFIT

SEC. 501. Subsection 1605(a) of title 10, United States Code, is amended by inserting ", (5)" after "paragraphs (2), (3), (4)" and after "(22 U.S.C. 4081 (2), (3), (4)".

ONE YEAR EXTENSION DEFENSE INTELLIGENCE AGENCY SPECIAL TERMINATION AUTHORITY

SEC. 502. Paragraph 1604(e)(1) of title 10, United States Code, is amended by striking "fiscal years 1985 and 1986" and inserting in lieu thereof "fiscal years 1986 and 1987".

ACCEPTANCE OF DIRECTOR OF CENTRAL INTELLIGENCE AWARDS BY MILITARY INTELLIGENCE PERSONNEL

SEC. 503. Section 402 of the Intelligence Authorization Act for Fiscal Year 1984 (Public Law 98-215) is amended by adding at the end thereof the following:

"(c) During fiscal year 1987, the Director of Central Intelligence may exercise the authority granted in section 4503(2) of title 5, United States Code, with respect to members of the Armed Forces who are assigned to foreign intelligence duties at the time of the conduct which gives rise to the exercise of such authority.

"(d) An award made by the Director of Central Intelligence to an employee or member of the Armed Forces under the authority of section 4503 of title 5, United States Code, of this section may be paid and accepted notwithstanding—

"(1) section 5536 of title 5, United States Code; and

"(2) the death, separation, or retirement of the employee or the member of the Armed Forces whose conduct gave rise to the award, or the assignment of such member to duties other than foreign intelligence duties.".

MANAGEMENT OF CIVILIAN INTELLIGENCE PERSONNEL OF THE MILITARY DEPARTMENTS

SEC. 504. (a) Chapter 81 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 1590. Management of civilian intelligence personnel of the military departments

"(a) The Secretary of Defense may, without regard to the provisions of any other law relating to the number, classification, or compensation of employees—

"(1) establish such positions for civilian intelligence officers and employees of the military departments as may be necessary to carry out the intelligence functions of such departments;

"(2) appoint individuals to such positions; and

"(3) fix the compensation of such individuals for service in such positions.

"(b) The Secretary of Defense shall, subject to subsection (c), fix the rates of basic pay for positions established under subsection (a) in relation to the rates of basic pay provided in the General Schedule under section 5332 of title 5 for positions subject to such Schedule which have corresponding levels of duties and responsibilities. Except in the case of a civilian intelligence officer or employee of a military department serving as a member of the Senior Executive Service of a military department, no civilian intelligence officer or employee of a military department may be paid basic pay at a rate in excess of the highest rate of basic pay payable under such General Schedule.

"(c) The Secretary of Defense is authorized, consistent with section 5341 of title 5, to adopt such provisions of such title as provide for prevailing rate systems of basic pay and to apply such provisions to positions for civilian intelligence officers or employees in or under which the military departments may employ individuals described by section 5342(a)(2)(A) of such title.

"(d) In addition to the basic pay payable under subsection (b), civilian intelligence officers and employees of the military departments who are citizens or nationals of the United States and who are stationed outside the continental United States or in Alaska may be paid allowances, in accordance with regulations prescribed by the Secretary of Defense, not in excess of an allowance authorized to be paid by section 5941(a) of title 5 for employees whose rates of basic pay are fixed by statute. Such allowances shall be based on—

"(1) living costs substantially higher than in the District of Columbia;

"(2) conditions of environment which differ substantially from conditions of environment in the continental United States and warrant an allowance as a recruitment incentive; or

"(3) both of the factors described in paragraphs (1) and (2).

"(e)(1) Notwithstanding any other provision of law, the Secretary of Defense may, during fiscal year 1987, terminate the employment of any civilian intelligence officer or employee of a military department whenever he considers that action to be in the interests of the United States and he determines that the procedures prescribed in other provisions of law that authorize the termination of the employment of such officer or employee cannot be invoked in a manner consistent with the national security. The decisions of the Secretary under this paragraph are final and may not be appealed or reviewed outside the Department of Defense. The Secretary of Defense shall promptly notify the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever this termination authority is exercised.

"(2) Any termination of employment under this subsection shall not affect the right of the officer or employee involved to seek or accept employment with any other department or agency of the United States if he is declared eligible for such employment by the Director of the Office of Personnel Management.

"(3) The Secretary of Defense may delegate authority under this subsection only to the Deputy Secretary of Defense or the Secretary concerned or both. An action to terminate any civilian intelligence officer or employee of a military department by either such officer shall be appealable to the Secretary of Defense.".

(b) The table of sections at the beginning of chapter 81 of title 10, United States Code is amended by adding at the end thereof the following new item:

"1590. Management of civilian intelligence personnel of the military departments.".

(c) The Secretary of Defense shall conduct a comprehensive review and evaluation of the implementation of Section 1590 of title 10, United States Code and shall report thereon to the Congress no later than March 1, 1989. Such report shall—

(1) describe the extent to which the civilian intelligence personnel management systems established under Section 1590 of title 10 have improved acquisition and retention of civilian intelligence personnel by the military departments;

(2) describe the elements of uniformity among the civilian intelligence personnel management systems established under Section 1590 of title 10;

(3) describe the elements of diversity among the civilian intelligence personnel management systems established under Section 1590 of title 10, and explain the need for such diversity based on differences in the intelligence needs or missions of the military departments;

(4) describe the means for oversight within the Office of the Secretary of Defense and each of the military departments for ensuring consistent application of regulations, directives, and guidelines which implement the authority granted under Section 1590 of title 10;

(5) contain recommendations for any legislative changes the Secretary of Defense may deem appropriate; and

(6) include such other matters as the Secretary of Defense may deem appropriate.

NATIONAL SECURITY AGENCY ACQUISITION OF CRITICAL SKILLS

SEC. 505. The National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by adding at the end thereof the following section:

"SEC. 16. (a) The purpose of this section is to establish an undergraduate training program, which may lead to the baccalaureate degree, to facilitate the recruitment of individuals, particularly minority high school students, with a demonstrated capability to develop skills critical to the mission of the National Security Agency, including mathematics, computer science, engineering, and foreign languages.

"(b) The Secretary of Defense is authorized, in his discretion, to assign civilian employees of the National Security Agency as students at accredited professional, technical, and other institutions of higher learning for training at the undergraduate level in skills critical to effective performance of the mission of the Agency.

"(c) The National Security Agency may pay, directly or by reimbursement to employees, expenses incident to assignments under subsection (b), in any fiscal year only to the extent that appropriated funds are available for such purpose.

"(d)(1) To be eligible for assignment under subsection (b), an employee of the Agency must agree in writing—

"(A) to continue in the service of the Agency for the period of the assignment and to complete the educational course of training for which the employee is assigned;

"(B) to continue in the service of the Agency following completion of the assignment for a period of one-and-a-half years for each year of the assignment or part thereof;

"(C) to reimburse the United States for the total cost of education (excluding the employee's pay and allowances) provided under this section to the employee if, prior to the employee's completing the educational course of training for which the employee is assigned, the assignment or the employee's employment with the Agency is terminated either by the Agency due to misconduct by the employee or by the employee voluntarily; and

"(D) to reimburse the United States if, after completing the educational course of training for which the employee is assigned, the employee's employment with the Agency is terminated either by the Agency due to misconduct by the employee or by the employee voluntarily, prior to the employee's completion of the service obligation period described in subparagraph (B), in an amount that bears the same ratio to the total cost of the education (excluding the employee's pay and allowances) provided to the employee as the unserved portion of the service obligation period described in subparagraph (B) bears to the total period of the service obligation described in subparagraph (B).

"(2) Subject to paragraph (3), the obligation to reimburse the United States under an agreement described in paragraph (1), including interest due on such obligation, is for all purposes a debt owing the United States.

"(3)(A) A discharge in bankruptcy under title 11, United States Code, shall not release a person from an obligation to reimburse the United States required under an agreement described in paragraph (1) if the final decree of the discharge in bankruptcy is issued within five years after the last day of the combined period of service obligation described in subparagraphs (A) and (B) of paragraph (1).

"(B) The Secretary of Defense may release a person, in whole or in part, from the obligation to reimburse the United States under an agreement described in paragraph (1) when, in his discretion, the Secretary determines that equity or the interests of the United States so require.

"(C) The Secretary of Defense shall permit an employee assigned under this section who, prior to commencing a second academic year of such assignment, voluntarily terminates the assignment or the employee's employment with the Agency, to satisfy his obligation under an agreement described in paragraph (1) to reimburse the United States by reimbursement according to a schedule of monthly payments which results in completion of reimbursement by a date five years after the date of termination of the assignment or employment or earlier at the option of the employee.

"(e)(1) When an employee is assigned under this section to an institution, the Agency shall disclose to the institution to which the employee is assigned that the Agency employs the employee and that the Agency funds the employee's education.

(2) Agency efforts to recruit individuals at educational institutions for participation in the undergraduate training program established by this section shall be made openly and according to the common practices of universities and employers recruiting at such institutions.

"(f) Chapter 41 of title 5 and subsections (a) and (b) of section 3324 of title 31, United States Code, shall not apply with respect to this section.

"(g) The Secretary of Defense may issue such regulations as may be necessary to implement this section.".

CENTRAL INTELLIGENCE AGENCY ACQUISITION OF CRITICAL SKILLS

SEC. 506. Pursuant to the authority granted in section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), the Director of Central Intelligence shall establish an undergraduate training program with respect to civilian employees of the Central Intelligence Agency similar in purpose, conditions, content, and administration to the program which the Secretary of Defense is authorized to establish under section 16 of the National Security Act of 1959 (50 U.S.C. 402 note) for civilian employees of the National Security Agency.

REPORT ON INTELLIGENCE PERSONNEL SYSTEMS

SEC. 507. Not later than January 3, 1987, the Secretary of Defense and the Director of Central Intelligence shall submit jointly to the Congress an unclassified report describing the civilian personnel systems for officers and employees of the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency, and the personnel systems for officers and employees established under section 1590 of title 10, United States Code, as added by section 504, for civilian intelligence personnel of the military departments. The report shall include descriptions of—

(1) how each such intelligence personnel system differs from the competitive service and from each other such system;

(2) the specific features of each such personnel system to ensure compliance with the merit system principles set forth in section 2301 of title 5, United States Code;

(3) any features of compensation (including bonuses and awards) unique to such personnel system;

(4) authorities to take actions (including the number of such actions) through employment termination provisions which do not permit appeals outside the agency; and

(5) any recruitment or retention problems existing within such system.

TITLE VI—MISCELLANEOUS

DEFENSE MAPPING AGENCY EXCHANGE AGREEMENTS

SEC. 601. (a) Chapter 167 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2795. Exchange of mapping, charting, and geodetic data with foreign countries and international organizations

"The Secretary of Defense may authorize the Defense Mapping Agency to exchange or furnish mapping, charting, and geodetic data, supplies and services to a foreign country or international organization pursuant to an agreement for the production or exchange of such data.".

(b) The table of contents of chapter 167 of title 10, United States Code, is amended by adding at the end thereof:

"2795. Exchange of mapping, charting, and geodetic data with foreign countries and international organizations.".

NOTICE TO CONGRESS OF CERTAIN TRANSFERS OF DEFENSE ARTICLES AND DEFENSE SERVICES

SEC. 602. (a) Title V of the National Security Act of 1947, relating to accountability for intelligence activities, is amended by adding at the end thereof the following:

"NOTICE TO CONGRESS OF CERTAIN TRANSFERS OF DEFENSE ARTICLES AND DEFENSE SERVICES

"SEC. 503. (a)(1) The transfer of a defense article or defense service exceeding $1,000,000 in value by an intelligence agency to a recipient outside that agency shall be *considered a significant anticipated intelligence activity for the purpose of section 501 of this Act.*

"(2) Paragraph (1) does not apply if—

"(A) the transfer is being made to a department, agency, or other entity of the United States (so long as there will not be a subsequent retransfer of the defense articles or defense services outside the United States Government in conjunction with an intelligence or intelligence-related activity); or

"(B) the transfer—

"(i) is being made pursuant to authorities contained in part II of the Foreign Assistance Act of 1961, the Arms Export Control Act, title 10 of the United States Code (including a law enacted pursuant to section 7307(b)(1) of that title), or the Federal Property and Administrative Services Act of 1949, and

"(ii) is not being made in conjunction with an intelligence or intelligence-related activity.

"(3) An intelligence agency may not transfer any defense articles or defense services outside the agency in conjunction with any intelligence or intelligence-related activity for which funds were denied by the Congress.

"(b) As used in this section—

"(1) the term 'intelligence agency' means any department, agency, or other entity of the United States involved in intelligence or intelligence-related activities:

"(2) the terms 'defense articles' and 'defense services' mean the items on the United States Munitions List pursuant to section 38 of the Arms Export Control Act (22 CFR part 121);

"(3) the term 'transfer' means—

"(A) in the case of defense articles, the transfer of possession of those articles; and

"(B) in the case of defense services, the provision of those services; and

"(4) the term 'value' means—

"(A) in the case of defense articles, the greater of—

"(i) the original acquisition cost to the United States Government, plus the cost of improvements or other modifications made by or on behalf of the Government; or

"(ii) the replacement cost; and

"(B) in the case of defense services, the full cost to the Government of providing the services.".

(b) The table of contents at the end of the first section of such Act is amended by inserting the following after the item relating to section 502:

"503. Notice to Congress of certain transfers of defense articles and defense services.".

COVERT AGENT DISCLOSURE FEDERAL PENSION FORFEITURE

SEC. 603. Section 8312(c)(1)(C) of title 5, United States Code is amended by striking the period at the end thereof and inserting in lieu thereof "or section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to intelligence identities).".

TITLE VII—PROTECTION OF UNITED STATES INTERESTS

FOREIGN MISSIONS ACT AMENDMENT

SEC. 701. Section 202(a)(4) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4302(a)(4)) is amended to read as follows:

"(4) 'foreign mission' means any mission to or agency or entity in the United States which is involved in the diplomatic, consular, or other activities of, or which is substantially owned or effectively controlled by—

"(A) a foreign government, or

"(B) an organization (other than an international organization, as defined in section 209(b) of this title) representing a territory or political entity which has been granted diplomatic or other official privileges and immunities under the laws of the United States or which engages in some aspect of the conduct of the international affairs of such territory or political entity,

including any real property of such a mission and including the personnel of such a mission;".

SOVIET MISSION AT THE UNITED NATIONS

SEC. 702. (a)(1) It is the policy of the Congress that the number of nationals of the Soviet Union admitted to the United States to serve as members of the Soviet mission at the United Nations headquarters shall not substantially exceed the number of United States nationals who serve as members of the United States mission at the United Nations headquarters, unless the President determines that the admission to the United States of additional Soviet nationals to serve as members of the Soviet mission at the United Nations headquarters would be in the interest of the United States.

(2) Beginning six-months after the date of enactment of this section, and every six months thereafter, the Secretary of State shall prepare and transmit to the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and to the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence of the House of Representatives a report setting forth the number of Soviet nationals admitted during the preceding six month period to the United States pursuant to a determination of the President under paragraph (1) and their duties with the Soviet mission at the United Nations headquarters.

(3) Nothing in this subsection may be construed as including any dependent or spouse who is not a member of a mission at the United Nations headquarters in the calculation of the number of members of a mission at the United Nations headquarters.

(b) It is the sense of the Congress that the Secretary of State and the Attorney General should, not later than six months after the date of enactment of this section, prepare and transmit to the Committee on Foreign Relations and the Select Committee on Intelligence of the Senate and to the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives a report setting forth a plan for ensuring that the number of Soviet nationals described in paragraph (a)(1) does not exceed the limitation described in that paragraph.

(c) For purposes of this section—

(1) the term "members of the Soviet mission" and "members of the United States mission" are used within the meaning of the term "members of the mission", as defined by article 1(b) of the Vienna Convention on Diplomatic Relations, done April 18, 1961; and

(2) the term "mission at the United Nations headquarters" of a country includes all the missions of such country to the United Nations in New York City and includes missions in New York City to specialized agencies of the United Nations, as defined in article 57 of the charter of the United Nations.

REGISTRATION OF AGENTS OF CERTAIN FOREIGN GOVERNMENTS

SEC. 703. Section 951 of title 18, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) Notwithstanding paragraph (d)(4), any person engaged in a legal commercial transaction shall be considered to be an agent of a foreign governmnent for purposes of this section if—

"(1) such person agrees to operate within the United States subject to the direction or control of a foreign government or official; and

"(2) such person—

"(A) is an agent of the Soviet Union, the German Democratic Republic, Hungary, Czechoslovakia, Poland, Bulgaria, Romania, or Cuba, unless the Attorney General, after consultation with the Secretary of State, determines and so reports to the Congress that the national security or foreign policy interests of the United States require that the provisions of this section do not apply in specific circumstances to agents of such country; or

"(B) has been convicted of, or has entered a plea of nolo contendere with respect to, any offense under section 792 through 799, 831, or 2381 of this title or under section 11 of the Export Administration Act of 1979, except that the provisions of this subsection shall not apply to a person described in this clause for a period of more than five years beginning on the date of the conviction or the date of entry of the plea of nolo contendere, as the case may be.".

And the Senate agree to the same.

Lee H. Hamilton,
Louis Stokes,
Dave McCurdy,
Anthony C. Beilenson,
Bob Kastenmeier,
Dan Daniel,
Robert A. Roe,
George E. Brown, Jr.,
Matthew F. McHugh,
Bernard J. Dwyer,
Bob Stump,
Andy Ireland,
Henry J. Hyde,
Dick Cheney,
Bob Livingston,
Bob McEwen
(For consideration of matters within the jurisdiction of the Committee on Armed Services under clause 1(c) of Rule X),
Les Aspin,
Samuel S. Stratton,
Wm. Dickinson
(For consideration of matters within the jurisdiction of the Committee on Post Office and Civil Service under clause 1(o) of Rule X),
William D. Ford,
Pat Schroeder,
M.R. Oakar,
Frank Horton,
Don Young,

Managers on the Part of the House.

Dave Durenberger,
Bill Roth,
Bill Cohen,
Orrin Hatch,
Frank H. Murkowski,
Arlen Specter,
Chic Hecht,
Mitch McConnell,
Patrick Leahy,
Lloyd Bentsen,

Sam Nunn,
Tom Eagleton,
Ernest F. Hollings,
David Boren,
Bill Bradley
(For matters within the jurisdiction of the Armed Services Committee),
John Warner,
Gary Hart,
Managers on the Part of the Senate.

Joint Explanatory Statement of the Committee of Conference

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4759) to authorize appropriations for fiscal year 1987 for the intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—INTELLIGENCE ACTIVITIES

Due to the classified nature of intelligence and intelligence-related activities, a classified annex to this joint explanatory statement serves as a guide to the classified Schedule of Authorizations by providing a detailed description of program and budget authority contained therein as reported by the committee of conference.

The actions of the conferees on all matters of difference between the two Houses are shown below or in the classified annex to this joint statement.

A special conference group resolved differences between the two Houses regarding Department of Defense Intelligence Related Activities, referred to as Tactical Intelligence and Related Activities (TIARA). This special conference group was necessitated by the differing committee jurisdictions of the intelligence committees of the House and the Senate. The special conference group consisted of members of the House and Senate Committees on Armed Services and the House Permanent Select Committee on Intelligence.

The amounts listed for TIARA programs represent the funding levels jointly agreed to by the TIARA conferees and the House and Senate conferees for the Department of Defense Authorization Act, 1987 (S. 2638). In addition, the TIARA conferees have agreed on the authorization level, as listed in the classified Schedule of Authorizations, the joint statement, and its classified annex, for TIARA programs which fall into the appropriation categories of Military Pay and Military Construction.

SECTIONS 101 AND 102

Sections 101 and 102 of the conference report authorize appropriations for the intelligence and intelligence-related activities of the United States Government for fiscal year 1987 and establish personnel ceilings applicable to such activities.

SECTION 103

Section 103 of the conference report authorizes the Director of Central Intelligence to make adjustments in personal ceilings in certain circumstances. Section 103 of the conference report is identical to Section 103 of the House bill and Section 103 of the Senate amendment.

SECTION 104

Section 104 of the conference report provides that the authorization of appropriations by the conference report shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States. Section 104 of the conference report is identical to Section 104 of the House bill and Section 701 of the Senate amendment.

SECTION 105

Section 105 of the conference report provides that appropriations authorized by the conference report for salary, pay, retirement, and other beneftis for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law. Section 105 of the conference report is identical to Section 105 of the House bill and Section 702 of the Senate amendment.

SECTION 106

Section 106 of the conference report provides that funds available to the Central Intelligence Agency, the Department of Defense, or any other agency or entity of the United States involved in intelligence activities, may be obligated or expended during FY 1987 to provide funds, material, or other assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua only (1) as authorized in Sections 101 and 102 of the conference report, (2) pursuant to Section 502 of the National Security Act of 1947, or (3) pursuant to any provision of law specifically providing such funds, materiel, or assistance.

Section 106 of the conference report is identical to Section 106 of the House bill. The Senate amendment contained no corresponding provision.

By Section 106, the Congress denies use during fiscal year 1987 of the CIA Reserve for Contingencies to provide assistance to the Nicaraguan democratic resistance to support military or paramilitary operations in Nicaragua. The conferees note that reprogrammings for such a purpose would be subject to the requirements of Section 502 of the National Security Act of 1947 and the procedures normally applicable to such reprogrammings, including approval by the intelligence committees and the appropriations committees of both Houses.

SECTION 107

Section 107 of the conference report provides that no agency or entity of the United States involved in intelligence activities may engage in any form of cooperation, direct or indirect, with the Government of South Africa, except activities which are reasonably designed to facilitate the collection of necessary intelligence. In addition, Section 107 establishes as the policy of the United States that no U.S. intelligence agency or entity may provide any intgelligence information to the Government of South Africa which pertains to a South African internal opposition group, movement, organization, or individual. Finally, Section 107 provides that any change in that policy, or the provision of intelligence information contrary to that policy, shall be considered a significant anticipated intelligence activity for purposes of Section 501 of the National Security Act of 1947. The conferees expect that intelligence information will be provided contrary to that policy only when such information credibly indicates the imminent likelihood of violent action calculated to threaten human life and provision of such information could be expected to contribute to avoidance of that violent action.

Section 107 of the conference report is identical to Section 107 of the House bill. The Senate amendment contained no corresponding provision.

TITLE II—INTELLIGENCE COMMUNITY STAFF

SECTIONS 201, 202, AND 203

Title II of the conference report authorizes appropriations and personnel end-strengths for FY 1987 for the Intelligence Community Staff and provides for administration of the Staff during FY 1987 in the same manner as the Central Intelligence Agency. The House bill authorized $21,700,000 and 235 personnel. The Senate amendment authorized $22,338,000 and 239 personnel. The conference report authorizes $22,000,000 and 237 personnel.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND RELATED MATTERS

SECTION 301

Section 301 of the conference report authorizes appropriation for FY 1987 of the sum of $125,800,000 for the CIA Retirement and Disability Fund. Section 301 of the conference report is identical to Section 301 of the House bill and Section 301 of the Senate amendment.

SECTION 302

Section 302 of the conference report provides survivor benefits for certain former spouses of CIA employees who did not benefit from the CIA Spouses' Retirement Equity Act of 1982 (P.L. 97-269, Title VI) because they were divorced prior to the effective date of that Act (November 15, 1982).

Section 302 of the conference report is identical to Section 302 of the House bill. Section 406 of the Senate amendment contained a substantially similar provision.

SECTION 303

Section 303 of the conference report permits former spouses of CIA employees divorced prior to May 7, 1985 to enroll in federal employee health benefits plans in certain circumstances. Section 303 of the conference report is identical to Section 303 of the House bill. Section 407 of the Senate amendment contained a substantially similar provision.

TITLE IV—COUNTERINTELLIGENCE AND SECURITY

SECTION 401

Section 401 of the conference report authorizes the Director of the Federal Bureau of Investigation and the Secretary of Defense to pay the expenses of hosting foreign official visitors in the United States to consult with FBI and DOD officials on counterintelligence matters. Section 401 of the conference report is identical to Section 401 of the House bill. The Senate amendment contained no corresponding provision.

The conferees direct the Secretary of Defense and the Director of the FBI to submit at the close of fiscal years 1987 and 1988 reports to the intelligence committees of the Congress on the amount of funds expended in those fiscal years under the authority granted by Section 401 of the conference report.

SECTION 402

Section 402 of the conference report amends Section 9101 of title 5 of the United States Code to grant to the FBI the same mandatory access to State and local criminal records for security clearance purposes that the Department of Defense, the Office of Personnel Management, and the Central Intelligence Agency enjoy under Section 9101. Section 402 of the conference report is identical to the Section 402 of the House bill. Section 502 of the Senate amendment contained a corresponding provision which differed only technically from the House bill provision.

SECTION 403

Section 403 of the conference report permits the Secretary of Defense to authorize the use of proceeds from counterintelligence operations conducted by the military departments to offset expenses of such operations not otherwise prohibited by law and to make performance awards to personnel involved in such operations, if use of appropriated funds to meet such expenses or make such awards would not be practicable. Section 403 of the conference report is identical to Section 403 of the House bill, with one modification making clear that the authority to make awards is limited to performance awards. Section 405 of the Senate amendment contained a provision substantially similar to the House bill provision, but which did not provide for use of proceeds from counterintelligence operations for awards.

Under the authority granted by Section 403 of the conference report, performance awards may be appropriate for an exceptional performance or special achievement in counterintelligence operations which contributes significantly to the Department of Defense counterintelligence mission and merits special recognition.

The conferees emphasize that proceeds of counterintelligence operations of the military departments may be used to meet the expenses of such operations and to make awards to personnel involved in such operations only if the use of appropriated funds to meet such expenses or to make such awards would not be practicable.

Under the authority granted by Section 403 of the conference report, proceeds of a counterintelligence operation of a military department may, but need not be, used to meet the expenses of that operation or to make awards to personnel involved in that operation; such proceeds may also be used to meet the expenses of other counterintelligence operations of the military departments and to make awards to personnel involved in such other operations.

SECTION 404

Section 404 of the conference report amends Section 1114(a) of the Right to Financial Privacy Act of 1978 (RFPA) (12 U.S.C. 3414(a)) to grant the FBI mandatory authority to obtain a customer's or entity's records from a financial institution for counterintelligence purposes if the Director of the FBI finds that there are specific and articulable facts giving reason to believe that the customer or entity is a foreign power or an agent of a foreign power as defined in the Foreign Intelligence Surveillance Act of 1978 (FISA) (50 U.S.C. 1801 et seq.). Section 404 of the conference report is identical to Section 404 of the House bill. Section 501 of the Senate amendment contained a substantially similar provision.

After careful consideration, the conferees have concluded that, should the Director of the FBI decide to delegate his authority under Section 404 of the conference report, he should delegate it no further down the FBI chain-of-command than the level of Deputy Assistant Director.

The conferees note that the requirement of "reason to believe" that the customer is a foreign power or an agent of a foreign power is significantly less stringent than the requirement of "probable cause" to believe that the customer is an agent of a foreign power. The conferees intend that the FBI official making the determination required to exercise the authority granted by Section 404 of the conference report will, in applying the "reason to believe" standard, take into account the facts and circumstances that a prudent investigator would consider insofar as they provide an objective, factual basis for the determination.

The conferees expect the FBI to develop and issue guidelines, approved by the Attorney General, for the acquisition, retention, and dissemination of information pursuant to the authority granted by Section 404 of the conference report. These guidelines will, among other things, implement the requirement that information acquired under the authority may be disseminated to other agencies of the United States only if such information is clearly relevant to the authorized responsibilities of such agencies. The guidelines should also be reasonably designed to minimize the acquisition and retention of information concerning U.S. persons, consistent with the need of the United States for foreign counterintelligence information. The conferees request that the FBI submit the guidelines to the intelligence committees of the Congress prior to their taking effect.

The conferees note that the intelligence committees of the Congress have discussed with FBI officials the current practices of the FBI for obtaining access to financial records in counterintelligence investigations under the existing non-mandatory provisions of Section 1114(a)(1) of the RFPA. In large measure, these practices appear to be consistent with the requirements of new Section 1114(a)(5) providing mandatory access to financial records. However, to the extent, if any, that FBI practice under the non-mandatory authority permits access to a customer's or entity's financial records solely on the basis that the customer or entity is a target of a hostile recruitment effort, such practice with respect to the mandatory authority would conflict with the requirements of Section 1114(a)(5).

SECTION 501

Section 501 of the conference report extends to Department of Defense civilian personnel assigned to Defense Attache Offices and DIA Liaison Offices abroad a medical evacuation travel expenses benefit currently available to U.S. Foreign Service personnel, CIA personnel, and certain DOD special cryptologic activities personnel. Section 501 of the conference report is identical to Section 501 of the House bill. Section 404 of the Senate amendment differed only technically from the House bill provision.

SECTION 502

Section 502 of the conference report extends for one more fiscal year the extraordinary authority of the Secretary of Defense to terminate a Defense Intelligence Agency civilian employee without regard to normal federal personnel termination procedures. Section 502 of the conference report is identical to Section 502 of the House bill. Section 402 of the Senate amendment would have extended the authority for two fiscal years rather than a single fiscal year.

The failure of the Department of Defense to issue in a timely fashion regulations and delegations of authority necessary to implement the DIA special termination authority granted for a limited period of time several years ago casts doubt on the real need for such authority. Nevertheless, in an effort to provide an opportunity to assess the need for the authority and its value to the Defense Intelligence Agency mission, the conferees decided to extend the authority for another fiscal year.

SECTION 503

Section 503 of the conference report ensures that, during fiscal year 1987, military personnel of the intelligence components of the military departments may accept Director of Central Intelligence performance awards on the same basis as civilian personnel of intelligence agencies may accept such awards. Section 503 of the conference report is identical to Section 503 of the House bill, except that it applies only during fiscal year 1987. The Senate amendment contained no corresponding provision.

The conferees request that the Director of Central Intelligence submit a report, and the Joint Chiefs of Staff submit a separate report, both by March 1, 1987, expressing their views on whether the authority granted by Section 503 of the conference report should or should not be made permanent law.

SECTION 504

Section 504 of the conference report enacts a new Section 1590 in Title 10 of the United States Code to authorize the Secretary of Defense to provide for management of civilian intelligence personnel of the military departments, notwithstanding certain civil service laws. Section 504 of the conference report is identical to Section 504 of the House bill, except for the addition in the conference report of the evaluation and reporting requirement added as Section 504(c). The Senate amendment contained no corresponding provision.

Subsection 504(c) of the conference report requires the Secretary of Defense to conduct a comprehensive review and evaluation of the implementation of Section 1590 of Title 10 and to report on the review and evaluation to the Congress no later than March 1, 1989. The conferees expect that, if the Secretary of Defense delegates this duty to evaluate and report, he will delegate it only to a senior official within the Office of the Secretary of Defense and will not delegate it to the Secretaries of the Military Departments or their subordinates. The reporting date of March 1, 1989 ensures a sufficiently lengthy period of personnel management experience under Section 1590 to permit a useful evaluation. The report to Congress shall include the items set forth in Subsection 504(c).

The conferees expect the Secretary of Defense and his subordinates to submit to the intelligence committees of the Congress all regulations, directives, and guidelines issued to implement Section 1590 of Title 10, United States Code, before they take effect.

SECTION 505

Section 505 of the conference report amends the National Security Agency Act of 1959 to authorize the Secretary of Defense to send NSA civilian employees to be students at accredited professional, technical and other institutions of higher learning for training at the undergraduate level. The purpose of Section 505 is to establish an undergraduate training program, including training which may lead to a baccalaureate degree, to facilitate recruitment of individuals, particularly minority high school students, with a demonstrated capability to develop skills critical to NSA's mission.

Section 505 of the conference report is identical to Section 505 of the House bill, except for the addition of Section 16(e)(2) of the NSA Act as contained in Section 505 of the conference report. The Senate amendment contained no corresponding provision.

Section 16(e)(2) of the NSA Act as contained in the conference report provides that NSA efforts to recruit individuals at educational institutions for participation in the NSA undergraduate training program established by Section 505 of the conference report shall be made openly and according to the common practices of universities and employers recruiting at educational institutions. The provision would permit NSA to identify interested and qualified students at educational institutions through advertising, contacts arranged through guidance counseling offices or financial aid offices, or through NSA testing programs arranged with officials of the educational institutions. The provision would not permit NSA personnel to identify or assess individuals within educational institutions in any nonpublic fashion, nor would it permit NSA contacts with students in educational institutions without prior agreement of the officials of those institutions.

The conferees expect NSA to work with responsible officials of educational institutions to ensure the proper confidentiality of related records.

The conferees urge the National Security Agency to be aware of the availability of numerous qualified disabled high school students for employment opportunities and request that the Director, National Security Agency report to the intelligence committees of Congress by March 1, 1987 on the benefits that could accrue by applying the program established under the authority granted by Section 505 of the conference report to those individuals.

SECTION 506

Section 506 of the bill requires the Director of Central Intelligence, exercising the authority granted by Section 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j), to establish a program to send CIA civilian employees to be students at accredited professional, technical and other institutions of higher learning for training at the undergraduate level, similar in purpose, conditions, content, and administration to the NSA program established under the authority of Section 506 of the conference report. Section 506 of the conference report is identical to Section 506 of the House bill. The Senate amendment contained no corresponding provision.

The statutory conditions which apply to the NSA is administering its undergraduate training program under Section 16 of the NSA Act of 1959 as enacted by Section 505 of the conference report apply with respect to the CIA undergraduate training program by virtue of Section 506 of the conference report. Thus, Section 16(e)(2) of the NSA Act as contained in Section 505 of the conference report, which provides that NSA efforts to recruit individuals at educational institutions for participation in the NSA undergraduate training program shall be made openly and according to the common practices of universities and employers recruiting at educational institutions, applies equally to CIA efforts to recruit individuals in educational institutions for the CIA undergraduate training program. The provision would permit CIA to identify interested and qualified students through advertising, contacts arranged through guidance counseling offices or financial aid offices, or through CIA testing programs arranged with officials of the educational institutions. The provision would not permit CIA personnel to identify or assess individuals within educational institutions in any nonpublic fashion, nor would it permit CIA contacts with students in educational institutions without prior agreement of the officials of those institutions.

The conferees expect CIA to work with responsible officials of educational institutions to ensure the proper confidentiality of related records.

The conferees urge the Central Intelligence Agency to be aware of the availability of numerous qualified disabled high school students for employment opportunities and request that the Director of Central Intelligence report to the intelligence committees of Congress by March 1, 1987 on the benefits that could accrue by applying the program established under the provisions of Section 506 of the conference report to those individuals.

SECTION 507

Section 507 of the conference report requires the Secretary of Defense and the Director of Central Intelligence jointly to submit an unclassified report to the Congress no later than January 3, 1987 describing the civilian personnel systems for CIA, NSA, DIA, and the intelligence components of the Army, Navy, and Air Force. Section 507 of the conference report is the same as Section 507 of the House bill with the exceptions that the House bill had required submission of the report to specified committees of the two Houses of Congress and had specified a different reporting date. The Senate amendment contained no corresponding provisions.

The Senate conferees note that submission of the report by January 3, 1987 will facilitate the comprehensive review of intelligence personnel systems which the Select Committee on Intelligence of the Senate has in progress.

TITLE VI—MISCELLANEOUS

SECTION 601

Section 601 of the conference report provides clear, permanent authority for the Defense Mapping Agency to engage in the exchange of mapping, charting and geodetic data, supplies, and services with foreign countries and international organizations pursuant to agreements for the production or exchange of such data. Section 601 of the conference report is identical to Section 601 of the House bill. Section 403 of the Senate amendment contained a corresponding provision which differed only in that it explicitly required the Secretary of Defense to comply with the requirements of the Case Act (1 U.S.C. 112b) and its implementing regulations for reporting international agreements to the Congress.

The provisions of Section 112b of title 1 apply of their own force to agreements established under the authority granted in Section 601 of the conference report; explicit reference to Section 112b in Section 601 is not necessary to make the provisions of Section 112b apply.

SECTION 602

Section 602 of the conference report adds a new section 503 to the National Security Act of 1947 to specify that a covert arms transfer involving a single article or service of a value exceeding $1 million is a "significant anticipated intelligence activity" for purposes of section 501 of that Act, thus making explicit the requirement for the executive branch to give prior notice to the intelligence committees of the Congress of such a transfer. Section 602 of the conference report is identical to Section 502 of the House bill. The Senate amendment contained no corresponding provision.

Section 602 places in permanent law the provision enacted for fiscal year 1986 by Section 403 of the Intelligence Authorization Act for fiscal year 1986 (P.L. 99-169).

SECTION 603

Section 603 of the conference report amends Section 8312 of Title 5 of the United States Code to provide that an individual convicted of the offense of disclosing the identities of U.S. covert intelligence agents forfeits federal employee retirement benefits. Section 603 of the conference report is identical to Section 603 of the House bill. The Senate amendment contained no corresponding provision.

TITLE VII—PROTECTION OF UNITED STATES INTERESTS

SECTIONS 701, 702, AND 703

Title VII of the conference report consists of Sections 701 and 702, which are identical to Sections 601 and 602 of the Senate amendment, and Section 703, which is similar to Section 603 of the Senate amendment. The House bill contained no corresponding provision.

Section 701 of the conference report amends the definition of "foreign mission" as used in the Foreign Missions Act (Title II of the State Department Basic Authorities Act of 1956) to make clear that the Secretary of State may subject corporations or other commercial entities controlled by a foreign power to the controls of the Foreign Missions Act.

Section 702 of the conference report establishes as the policy of the Congress that the number of Soviet nationals admitted to the United States to serve as members of the Soviet mission at the United Nations headquarters shall not substantially exceed the number of U.S. nationals who serve as members of the U.S. Mission at the U.N. headquarters unless the President determines that the admission to the U.S. of additional Soviet nationals to so serve would be in the interest of the United States. The provision also includes requirements for reporting the numbers of such Soviet nationals in the United States to the intelligence committees of the Congress and for establishing a plan to implement the policy of parity between U.S. and Soviet U.N. mission sizes established by the Congress.

Section 703 of the conference report amends Section 951 of Title 18 of the United States Code to require registration by those engaged in commercial transactions who agree to operate within the

United States subject to the direction or control of a foreign government or official and who either (1) are agents of the Soviet Union, East Germany, Hungary, Czechoslovakia, Poland, Bulgaria, Romania, or Cuba, or (2) within the past five years, have been convicted of (or pled no contest to) espionage, export control, or nuclear material transactions violations.

PROVISIONS NOT INCLUDED IN THE CONFERENCE REPORT

The House bill and the Senate amendment contained provisions not included in the conference report concerning drug testing of intelligence personnel, CIA and NSA exemption from publication of notice of requests for records destruction approval, establishment of an NSA police force, and requirements for reports concerning a number of subjects, including events in Panama.

Section 701 of the House bill would have required the head of each element of the United States Government involved in intelligence or intelligence-related activities to implement a controlled substances testing program for any employee of such element. The President and the Congress have recently taken action to address the subject of drug abuse by federal personnel on a government-wide basis. The conferees believe that further experience with these new initiatives would be appropriate before Congress considers whether to address legislation specifically requiring controlled substances testing of intelligence personnel. The conferees emphasize that drug abuse by intelligence personnel would be inconsistent with the national interest and note that U.S. intelligence agencies share this view.

Section 104 of the Senate amendment amended the Senate intelligence committee's classified supplement to its committee report through additional directions to the Intelligence Community on a variety of topics. This provision was in the nature of a Senate request for a report from the Director of Central Intelligence and therefore need not be included in the conference report. The Senate conferees have requested a report from the Director of Central Intelligence on the topics covered by Section 104 of the Senate amendment.

Section 401 of the Senate amendment would have amended Section 3303a of title 44, United States Code to make the provisions of subsection 3303a(a) inapplicable with respect to CIA and NSA classified records destruction lists and schedules. Subsection 3303a(a) requires the Archivist of the United States to give notice in the Federal Register and to provide an opportunity for comment upon federal agencies' requests for the Archivist to approve records destruction schedules. According to the submisson to Congress made by Acting Director of Central Intelligence John McMahon with respect to this legislative proposal on March 14, 1986, the Archivist requires that notices under Section 3303a(a) with respect to classified records destruction schedules contain only (1) the identity of the requesting agency, (2) the Archives job number assigned to the schedule, and (3) the reason the schedule is excluded from public disclosure. The conferees concluded that the proposed CIA and NSA exemption legislation was unnecessary because the current requirement for notice and public comment poses no risk of disclosure of classified information and places no administrative burden on CIA and NSA which is any greater than the administrative burden placed on other government agencies generally.

Section 408 of the Senate amendment would have authorized establishment of a National Security Agency police force to provide physical security for NSA installations in the United States similar to the CIA Security Protective Service authorized by Congress by Section 401 of the Intelligence Authorization Act for fiscal year 1985 (P.L. 98-618). As a general matter, the conferees do not favor granting independent statutory authority for U.S. intelligence agency police forces, however limited their authorities and responsibilities. The Congress granted CIA specific, carefully limited statutory authority for its Security Protective Service solely because the CIA could not accept delegation of physical protection authority from the Administrator of General Services without a statute displacing to the necessary small degree the prohibition contained in Section 102(d) of the National Security Act of 1947 on CIA exercising law enforcement powers. No similar statutory restriction on NSA personnel exercising law enforcement powers exists, and consequently NSA can accept delegation of the limited physical security authority it needs from the Administrator of General Services. The conferees expect the Administrator of General Services forthwith to delegate to the Director, NSA the Administrator's authority under the provisions of Sections 318 et seq. of Title 40 and under Section 11 of the National Security Agency Act of 1959 to the extent necessary to permit NSA to provide physical security protection to facilities in the United States owned, occupied, leased or otherwise used by NSA comparable to the physical security protection the CIA Security Protective Service provides to CIA facilities. Once these delegations of authority have occurred and NSA has gained physical security experience under those delegations, the Director, NSA should bring to the attention of the intelligence committees of the Congress physical security deficiencies he discerns, if any, for appropriate legislative consideration.

Section 503 of the Senate amendment provided for FBI access to telephone toll records of foreign powers and agents of foreign powers for counterintelligence purposes in certain circumstances. The conferees support such legislation, but decided not to include it in the conference report since it is expected to become law as part of the Electronic Communications Privacy Act.

Section 604 of the Senate amendment would have required the Director of Central Intelligence to provide a report to the intelligence committees of the Congress by March 1, 1987 concerning whether and to what extent the Defense Forces of the Government of Panama have violated the human rights of the Panamanian people, are involved in international drug trafficking, arms trafficking, or money laundering, or were involved in the death of Dr. Hugo Spadafora. The conferees decided that it was not necessary to include this provision in the conference report, in view of the fact that existing statutory authority requires the Director of Central Intelligence to respond to requests from the intelligence committees of Congress. The conferees expect the Director of Central Intelligence to provide all relevant information on this subject to the intelligence committees.

Lee H. Hamilton,
Louis Stokes,
Dave McCurdy,
Anthony C. Beilenson,
Bob Kastenmeier,
Dan Daniel,
Robert A. Roe,
George E. Brown, Jr.,
Matthew F. McHugh,
Bernard J. Dwyer,
Bob Stump,
Andy Ireland,
Henry J. Hyde,
Dick Cheney,
Bob Livingston,
Bob McEwen
(For consideration of matters within the jurisdiction of the Committee on Armed Services under clause 1(c) of House Rule X),
Les Aspin,
Samuel S. Stratton,
Wm. Dickinson
(For consideration of matters within the jurisdiction of the Committee on Post Office and Civil Service under clause 1(o) of Rule X),
William D. Ford,
Pat Schroeder,
M.R. Oakar,
Frank Horton,
Don Young,
Managers on the Part of the House.
Dave Durenberger,
Bill Roth,
Bill Cohen,
Orrin Hatch,
Frank H. Murkowski,
Arlen Specter,
Chic Hecht,
Mitch McConnell,
Patrick Leahy,
Lloyd Bentsen,
Sam Nunn,
Tom Eagleton,
Ernest F. Hollings,
David Boren,
Bill Bradley
(For matters within the jurisdiction of the Armed Services Committee),
John Warner,
Gary Hart,
Managers on the Part of the Senate.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. Gonzalez, for 60 minutes, today.

(The following Members (at the request of Mr. McKernan) to revise and extend their remarks and include extraneous material:)

Mrs. Bentley, for 60 minutes, on October 7.

Mr. Walker, for 60 minutes, today.

(The following Member (at the request of Mr. Garcia) to revise and extend his remarks and include extraneous material:)

Mr. Annunzio, for 5 minutes, today.

(The following Members (at the request of Mr. Gonzalez) to revise and extend their remarks and include extraneous material:)

Mr. Lundine, for 60 minutes, on October 8 and 9.

Mr. Ray, for 30 minutes, on October 7, 8, and 9.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. Young of Missouri, prior to passage of House Joint Resolution 438, in the House today.

Mr. Ritter, on Senate Joint Resolution 385, today.

(The following Members (at the request of Mr. McKernan) and to include extraneous matter:)

Mr. Crane.

Mr. Schulze.

Mr. Kolbe.

Mr. Gilman in three instances.

Mr. Lagomarsino.

Mr. Vander Jagt in two instances.

Mr. Courter.

Mr. Chappie.

(The following Members (at the request of Mr. Garcia) and to include extraneous matter:)

Mr. LaFalce.

Mr. Lantos.

Mr. Manton.

Mr. Nowak.

Mr. Walgren.

Mr. Miller of California.

Mr. Murtha.

Mr. Brown of California.

Mr. Ford of Michigan.

Mr. Mrazek in two instances.

Mr. Ackerman.

Mr. Applegate.

Mr. Roe.

Mr. Fazio.

Mr. Rodino.

Mr. Wyden.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill and joint resolution of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 1246. An act to establish a federally declared floodway for the Colorado River below Davis Dam, and

H.J. Res. 743. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

ADJOURNMENT

Mr. GONZALEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 28 minutes p.m.), the House adjourned until tomorrow, Thursday, October 2, 1986, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4283. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting a report of political contributions by Edward Joseph Perkins, of Oregon, as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of South Africa, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

4284. A letter from the Chief Immigration Judge, Executive Office for Immigration Review, Department of Justice, transmitting a report on the suspension of deportation of certain aliens of good character and with required residency when deportation causes hardship under section 244(a), Immigration and Nationality Act, pursuant to 8 U.S.C. 1254(c); to the Committee on the Judiciary.

4285. A letter from the Secretary of the Army and the Secretary of Agriculture, transmitting notice of the intention to interchange civil works and Forest Service acquired lands at Patoka Lake, IN, pursuant to 16 U.S.C. 505a; jointly, to the Committees on Agriculture and Public Works and Transportation.

4286. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting certification that it is in the national interest not to transfer funds appropriated for international development (22 U.S.C. 2151 et seq.) to accounts for payment to owners of a seized fishing vessel, pursuant to 22 U.S.C. 1975; jointly, to the Committees on Foreign Affairs and Merchant Marine and Fisheries.

4287. A letter from the Comptroller General of the United States, transmitting a report entitled "ICBM Modernization—Status, Survivable Basing Issues, and Need to Establish a National Consensus" (GAO/NSIAD-86-200); jointly, to the Committees on Government Operations and Armed Services.

4288. A letter from the Secretary of Health and Human Services, transmitting a report on the operation of utilization and quality control peer review organizations, pursuant to SSA section 1161 (96 Stat. 392); jointly, to the Committees on Ways and Means and Energy and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BROOKS: Committee on Government Operations. Report on the proposed divestiture of the Power Marketing Administration: DOE put the cart before the horse (Rept. 99-935). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report on faulty Defense Department policy provides contractors unintended profits (Rept. 99-936). Referred to the Committee of the Whole House on the State of the Union.

Mr. BROOKS: Committee on Government Operations. Report on adequacy of Federal enforcement of Steel Import Program (Rept. 99-937). Referred to the Committee of the Whole House on the State of the Union.

Mr. DERRICK: Committee on Rules. H. Res. 568. Resolution waiving certain points of order against the conference report and against consideration of conference report H.R. 4116, Domestic Volunteer Service Act Amendments of 1986 (Rept. 99-947). Referred to the House Calendar.

Mr. MOAKLEY: Committee on Rules. H. Res. 569. Resolution waiving certain points of order against the conference report and against consideration of conference report H.R. 4021, Rehabilitation Act Amendments of 1986 (Rept. 99-948). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5617. A bill to designate the Federal Building and United States Courthouse at 316 North Robert Street, St. Paul, MN, as the "Warren E. Burger Federal Building and United States Courthouse"; with amendments (Rept. 99-949). Referred to the House Calendar.

Mr. HOWARD: Committee on Public Works and Transportation. S. 2880. A bill to provide a temporary extension of the Interstate Transfer deadline for the H-3; with amendments (Rept. 99-950). Referred to the Committee of the Whole House on the State of the Union.

Mr. HOWARD: Committee on Public Works and Transportation. H.R. 5602. A bill to amend the Public Buildings Act of 1959 to authorize the Administrator of General Services to issue obligations to finance the acquisition and construction of public buildings; with an amendment (Rept. 99-951). Referred to the Committee of the Whole House on the State of the Union.

Mr. HAMILTON: Committee of conference. Conference report on H.R. 4759 (Rept. 99-952). Ordered to be printed.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. GLICKMAN: Committee on the Judiciary. H.R. 1330. A bill for the relief of Marsha D. Christopher (Rept. 99-938). Referred to the Committee of the Whole House.

Mr. GLICKMAN: Committee on the Judiciary. H.R. 3860. A bill for the relief of Joyce G. McFarland (Rept. 99-939). Referred to the Committee of the Whole House.

Mr. GLICKMAN: Committee on the Judiciary. H.R. 1981. A bill for the relief of Lawrence K. Lunt; with an amendment (Rept. 99-940). Referred to the Committee of the Whole House.

Mr. GLICKMAN: Committee on the Judiciary. H.R. 2682. A bill for the relief of Jean DeYoung (Rept. 99-941). Referred to the Committee of the Whole House.

Mr. GLICKMAN: Committee on the Judiciary. H.R. 4706. A bill for the relief of Rick Hangartner, Russell Stewart, and David Walden (Rept. 99-942). Referred to the Committee of the Whole House.

Mr. GLICKMAN: Committee on the Judiciary. H.R. 4779. A bill for the relief of Allen

H. Platnick (Rept. 99-943). Referred to the Committee of the Whole House.

Mr. GLICKMAN: Committee on the Judiciary. H.R. 628. A bill for the relief of John M. Gill; with an amendment (Rept. 99-944). Referred to the Committee of the Whole House.

Mr. GLICKMAN: Committee on the Judiciary. H.R. 1527. A bill for the relief of the Merchants National Bank of Mobile, Alabama (Rept. 99-945). Referred to the Committee of the Whole House.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5151. A bill to provide for the consideration under the Color of Title Act of a certain parcel of land in Waynesboro, Mississippi; with amendments (Rept. 99-946). Referred to the Committee of the Whole House.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. WEAVER (for himself, Mr. AuCoin, Mr. Bonker, Mr. Wyden, Mr. Lowry of Washington, Mr. Miller of Washington, and Mr. Dicks):

H.R. 5625. A bill to protect and provide for the enhancement of the resources of the Columbia River Gorge, and for other purposes; jointly, to the Committees on Interior and Insular Affairs, and Agriculture.

By Mr. FORD of Michigan:

H.R. 5626. A bill to make technical corrections in the Federal Employees' Retirement System Act of 1986, and for other purposes; to the Committee on Post Office and Civil Service.

By Mr. FISH:

H.R. 5627. A bill to provide for adherence with the MacBride Principles by United States persons doing business in Northern Ireland; jointly, to the Committees on Ways and Means, Foreign Affairs, and Rules.

By Mr. GEKAS:

H.R. 5628. A bill to authorize the President to disapprove any item in a bill or joint resolution making continuing appropriations; to the Committee on Government Operations.

H.R. 5629. A bill to provide for the separate enrollment of each item in a bill or joint resolution making continuing appropriations; to the Committee on Rules.

By Mr. McKERNAN:

H.R. 5630. A bill amending title 46, United States Code, to permit vessels owned by certain corporations to be documented under the laws of the United States; to the Committee on Merchant Marine and Fisheries.

By Mr. RINALDO:

H.R. 5631. A bill to amend title 18 of the United States Code to provide procedures for the imposition of the death penalty in criminal cases; to the Committee on the Judiciary.

By Mr. ROBERTS:

H.R. 5632. A bill to amend title 49, United States Code, relating to the abandonment of intrastate bus transportation, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. STRANG:

H.R. 5633. A bill to provide for the accelerated repayment of the Grand Valley Project, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. FUQUA (for himself and Mr. Lujan):

H.J. Res. 744. Joint resolution to extend the congressional review period for the uranium enrichment criteria submitted by the Secretary of Energy pursuant to the Atomic Energy Act of 1954, and to validate the Department of Energy's Utility Services contracts during the extended review period; jointly, to the Committees on Energy and Commerce, Interior and Insular Affairs, and Science and Technology.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

465. By the SPEAKER: Memorial of the legislature of the State of California, relative to establishing and expanding clearinghouses for missing children; to the Committee on Education and Labor.

466. Also, memorial of the legislature of the State of California, relative to exporting new drugs; to the Committee on Energy and Commerce.

467. Also, memorial of the legislature of the State of California, relative to the irradiation of food; to the Committee on Energy and Commerce.

468. Also, memorial of the legislature of the State of California, relative to the San Fernando Valley ground water basin; to the Committee on Energy and Commerce.

469. Also, memorial of the legislature of the State of California, relative to collection and analysis of medical data resulting from the nuclear accident at Chernobyl; to the Committee on Foreign Affairs.

470. Also, memorial of the legislature of the State of California, relative to compensation of artists and rights owners for the unauthorized rerecording of audio recordings; to the Committee on the Judiciary.

471. Also, memorial of the legislature of the State of California, relative to extension of citizenship to certain Filipino veterans of World War II; to the Committee on the Judiciary.

472. Also, memorial of the legislature of the State of California, relative to taxation of out-of-state mail-order sales; to the Committee on the Judiciary.

473. Also, memorial of the legislature of the State of California, relative to the air disaster in Cerritos; to the Committee on Public Works and Transportation.

474. Also, memorial of the Senate of the State of California, relative to the Veterans' Administration; to the Committee on Veterans' Affairs.

475. Also, memorial of the legislature of the State of California, relative to individual retirement accounts; to the Committee on Ways and Means.

476. Also, memorial of the legislature of the State of California, relative to foreign trade; to the Committee on Ways and Means.

477. Also, memorial of the legislature of the State of California, relative to hospital care for Medicare recipients; to the Committee on Ways and Means.

478. Also, memorial of the legislature of the State of California, relative to nuclear facilities liability limitations; jointly, to the Committees on Energy and Commerce and Interior and Insular Affairs.

479. Also, memorial of the legislature of the State of California, relative to timber harvest on National Forest lands; jointly, to the Committees on Interior and Insular Affairs and Agriculture.

480. Also, memorial of the legislature of the State of California, relative to legislative actions that would reduce national forest revenues due States; jointly, to the Committees on Interior and Insular Affairs and Agriculture.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Ms. MIKULSKI:

H.R. 5634. A bill for the relief of Rabbi Reuven Karelenstein; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 1398: Mr. Bustamante.

H.R. 1902: Mr. Ford of Tennessee and Mr. McEwen.

H.R. 1917: Mrs. Smith of Nebraska, Mr. Huckaby, and Mr. Boucher.

H.R. 3415: Mr. Bates and Mr. Wylie.

H.R. 3894: Mr. Dwyer of New Jersey and Mr. Lungren.

H.R. 4206: Mr. Erdreich.

H.R. 4223: Mr. Gilman.

H.R. 4557: Mr. Petri.

H.R. 4711: Mr. Lujan, Mr. Young of Florida, and Mr. Chandler.

H.R. 4738: Mr. Gilman.

H.R. 4762: Mr. Waldon, Mrs. Johnson, Mr. Torricelli, and Mr. Gilman.

H.R. 4783: Mr. Feighan.

H.R. 4820: Mr. Valentine.

H.R. 4889: Mr. McCollum and Mr. Annunzio.

H.R. 4953: Mr. Lowery of California and Mr. Wylie.

H.R. 5099: Mr. Mack and Mr. Byrant.

H.R. 5103: Mr. Traficant.

H.R. 5125: Mr. Mack, Mr. Bryant, Mr. Cobey, and Mr. Henry.

H.R. 5186: Mr. Guarini and Mr. Traficant.

H.R. 5272: Mr. Frost and Mr. Roemer.

H.R. 5327: Mr. Rangel and Mr. Glickman.

H.R. 5477: Mr. Davis.

H.R. 5497: Mr. Smith of New Hampshire and Mr. Strang.

H.R. 5512: Mr. Packard, Mr. Berman, Mr. Frank, Mr. Kolter, Mr. Atkins, Mr. Lewis of Florida, and Mr. Feighan.

H.R. 5529: Mr. Kindness and Mr. Packard.

H.R. 5532: Mr. Brooks and Mr. Hughes.

H.R. 5538: Mr. Coelho and Mrs. Boxer.

H.R. 5599: Mr. Feighan, Ms. Kaptur, Mr. Gejdenson, Mr. Weiss, Ms. Mikulski, Mr. Dowdy of Mississippi, Mr. Hendon, Mr. Barnard and Mr. Franklin.

H.R. 5600: Mr. Abercrombie, Mrs. Byron, Mr. Gejdenson, Mr. Hansen, Mr. Kostmayer, Mr. Daschle, Mr. Reid, Mrs. Holt, Mr. McKernan, Mr. Stratton, Mr. McEwan, Mr. de la Garza, Mr. Sisisky, Mr. Hughes, Mr. Weiss, Mr. Smith of Florida, Mr. Matsui, and Mr. Ray.

H.R. 5613: Mr. Vento.

H.J. Res 133: Mr. Murtha and Mr. Atkins.

H.J. Res. 244: Mr. Jacobs, Mr. Fascell, Mr. Neilson of Utah, Mr. Kramer, Mr. Walgren, and Mr. Duncan.

H.J. Res. 514: Mr. Nowak.

H.J. Res. 524: Mr. Olin, Mr. Nichols, Mr. Luken, Mr. Coats, Mr. Barton of Texas, Mr. Boucher, Mr. Broomfield, Mr. Boland, Mr. Brooks, Mr. Carper, Mr. Chapman, Mr. Bereuter, Mrs. Boxer, Mr. Conte, Mr. Craig, Mr. Combest, Mr. Dorgan of North Dakota, Mr. Crockett, Mr. Davis, Mr. Fields, Mr. Flippo, Mr. Cobey, Mr. Green, Mr. DeLay, Mr. Derrick, Mr. Donnelly, and Mr. Dowdy of Mississippi.

H.J. Res. 555: Mr. Wise, Mr. Gray of Pennsylvania, Mr. Brooks, and Mr. Miller of California.

H.J. Res. 594: Mr. Gaydos, Mr. Brown of California, Mr. Edwards of California, Mr. Hawkins, Mr. Miller of California, Mr. Roybal, Mr. Torres, Mr. Berman, Mr. Bilirakis, Mrs. Byron, Mr. Coleman of Texas, Mr. Dingell, Mr. Florio, Mr. Frenzel, Mr. Gallo, Mr. Gonzalez, Mr. Green, Mr. Huckaby, Mr. Ireland, Ms. Kaptur, Mr. Kasich, Mrs. Kennelly, Mr. McEwen, Mr. Miller of Washington, Mr. Oberstar, Mr. Perkins, Mr. Petri, Mr. Rangel, Mr. Schumer, Mr. Skelton, Mr. Stratton, Mr. Stump, Mrs. Vucanovich, Mr. Whitley, Mr. Blaz, Mr. Carper, Mr. Bruce, Mr. Donnelly, Mr. McCloskey, Mr. McCollum, Mr. Molinari, Mr. Weiss, and Mr. Kleczka.

H.J. Res. 602: Mr. Dowdy of Mississippi and Mr. Shumway.

H.J. Res. 657: Mr. McHugh and Mr. Traficant.

H.J. Res. 706: Ms. Snowe, Mr. Lehman of Florida, Mr. Gibbons, Mr. Smith of Florida, Mr. Brooks, Mr. Fascell, Mr. Olin, Mr. Kildee, Mr. Smith of Iowa, Mr. Berman, Mr. Nelson of Florida, Mr. McKernan, Mr. Panetta, Mr. Bennett, Mr. Oberstar, and Mr. Waxman.

H.J. Res. 709: Mr. Fascell, Mr. Erdreich, Mr. Nichols, Ms. Oakar, Mr. Bates, Mr. Wyden, Mr. Solarz, Mr. Studds, Mr. Bliley, Mr. Kanjorski, Mr. Shumway, Mr. Clay, Mr. Frost, Ms. Kaptur, Mr. Jacobs, Mr. Sweeney, Mr. Valentine, Mr. Coughlin, Mr. Stump, Mr. Edgar, Mr. Gallo, Mr. Swift, Mr. Synar, Mr. Hendon, Mr. Snyder, Mr. Wylie, Mr. Gray of Illinois, Mr. Coleman of Texas, Mr. Franklin, and Mr. Chandler.

H.J. Res. 711: Mr. Bryant, Mr. Nielson of Utah, Mr. McDade, Mr. Crockett, and Mr. Boner of Tennessee.

H.J. Res. 733: Mr. Hendon, Mr. Skeen, Mr. Walgren, Mr. Lewis of California, Mr. Lehman of California, Mr. Barton of Texas, Mr. Wilson, Mr. Price, and Mr. Frost.

H.J. Res. 740: Mr. Manton, Mr. McKinney, Mr. Bryant, Mr. Pursell, Mr. Andrews, Mr. Traxler, Mr. Fish, Mr. Nielson of Utah, Mr. Abercrombie, Mr. Dornan of California, Mr. Weiss, Mrs. Holt, Mr. Mavroules, Mrs. Byron, Mr. Dwyer of New Jersey, Mr. Biaggi, Mr. Frank, Mr. Evans of Illinois, Mr. Wirth, Ms. Oakar, Mr. Levin of Michigan, Mr. Wilson, Mr. Hatcher, Mr. Dyson, Mr. Burton of Indiana, Mr. Boucher, Mr. Lehman of California, Mrs. Johnson, Mr. Lundine, Ms. Fiedler, Mr. Carper, Mr. Donnelly, Mr. Morrison of Washington, Mr. Savage, Mr. Schumer, Mr. Rose, Mr. Sabo, and Mr. Daub.

H. Con. Res. 129: Mr. Aspin, Mr. Jenkins, Mr. Abercrombie, Mr. Kostmayer, Mr. McDade, Mr. Morrison of Washington, Mr. Sweeney, and Mr. Archer.

H. Res. 509: Mr. Levin of Michigan.

H. Res. 522: Mr. Chandler.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

486. By the SPEAKER: Petition of the board of supervisors, Monterey, CA, relative to the testing of nuclear weapons; to the Committee on Armed Services.

487. Also, petition of the board of supervisors, County of Santa Cruz, CA, relative to the testing of nuclear weapons; to the Committee on Armed Services.

488. Also, petition of the International Typographical Union Colorado Springs, CO, relative to labor law reform legislation; to the Committee on Education and Labor.

489. Also, petition of the staff, Cold Storage Combine No. 3, Rostov-na-Donu, U.S.S.R., relative to the arms race; to the Committee on Foreign Affairs.

SENATE—*Wednesday, October 1, 1986*

(Legislative day of Wednesday, September 24, 1986)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. Thurmond].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

I will lift up mine eyes unto the hills, from which cometh my help. My help cometh from the Lord, which made heaven and earth.—Psalm 121:1-2.

*Thus saith the Lord God, the Holy One of Israel * * * "in quietness and in confidence shall be your strength."*—Isaiah 30:15.

But they that wait upon the Lord shall renew their strength; they shall mount up with wings as eagles; they shall run, and not be weary; and they shall walk, and not faint.—Isaiah 40:31.

Loving Lord, in the busy, pragmatic world of politics, it is easy to trust human wisdom and strength exclusively—and capitulate to exhaustion. It is easy to ignore God and spiritual issues as unreal and impractical—and deprive ourselves of the unlimited resources You promise to supply. Thus we weaken ourselves physically, emotionally, and mentally and diminish our decisiveness. In this pressure cooker of last-minute legislation—give us ears to hear Your voice—and wisdom to respond to Your gentle invitation—"come unto me all you who labor and are heavy laden, and I will give you rest." Matthew 11:28. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able and distinguished majority leader, Senator Robert Dole, is recognized.

Mr. DOLE. I thank the distinguished Presiding Officer, the President pro tempore, the Senator from South Carolina [Mr. Thurmond].

SCHEDULE

Mr. DOLE. Under the standing order, the leaders have 10 minutes each. I reserve the time of the distinguished minority leader.

Then there will be special orders not to exceed 5 minutes each in favor of Senators Hawkins, Proxmire, Chafee, Lautenberg, Bentsen, Gorton, and Baucus.

VITIATION OF ORDER FOR SENATOR WILSON

Mr. DOLE. I ask unanimous consent that the special order for Senator Wilson be vitiated.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DOLE. We will conclude morning business at 10:30 following special orders. Up to that time, Senators may be permitted to speak for not more than 5 minutes each. At 10:30, we resume consideration of House Joint Resolution 738, the continuing resolution, if we can get some agreement when we are going to vote on South Africa; otherwise, that will be the pending business. We could be on that throughout the day and until the cloture vote tomorrow.

We are hoping we can obtain an agreement of 6 hours of debate starting tomorrow and vote at 4 o'clock. We almost have it. We still have two Senators who are not yet agreed.

If we are on the continuing resolution today, I am advised by the chairman—just a few moments ago—that it is going to be a long, long day and evening. There are still 182 amendments pending. I hope many of my colleagues will decide not to press their amendments. The chairman hopes to complete action on this bill before morning—that is tomorrow morning.

FAILURE TO PASS IMMIGRATION BILL

Mr. DOLE. Mr. President, last week, the House of Representatives rejected out of hand the opportunity to debate and vote on a much-needed overhaul of the Nation's immigration laws.

This unfortunate decision on the part of the House makes it the third time that the Senate has approved immigration reform only to see it die in the House. That the Senate was able to successfully deal with this very complex and controversial bill is largely due to the leadership and perseverance of the assistant majority leader, Senator Alan Simpson.

As chairman of the Immigration and Refugee Policy Subcommittee, Senator Simpson has guided this bill through the rough waters of subcommittee, committee, floor, and into conference action. His dedication to seeing to it that Congress grapples with this issue—an issue that affects the lives of literally millions of people—is well known. And his frustration at the refusal of the House to even debate the issue is more than understandable.

Although the time is short, I hope the House will reconsider its action. Administration officials have indicated that if this Congress does not adopt immigration legislation, it is highly unlikely it will push for passage of immigration reform in the next Congress.

Mr. President, it would be shameful for Congress to turn its back on a problem that cries out for a remedy. Like so many knotty issues Congress copes with, there is no perfect solution. But the bill approved by the Senate addresses the major problems associated with illegal immigration. It attempts to curb the flow of illegal aliens into the United States by penalizing employers who knowingly hire these individuals. The Senate measure also establishes a program to grant legal status to millions of aliens already in the United States who meet certain requirements.

There has been some indication that the House may yet find a way to act on immigration before we adjourn. It is my sincere hope that this happens. The myriad problems that flow from uncontrolled illegal immigration into the United States will not disappear. And it is Congress' responsibility to find the best possible way to cope with this reality.

Mr. President, I ask unanimous consent that an editorial from the Chicago Tribune of September 30, 1986, entitled "To Rescue the Immigration Bill" be printed in the Record.

There being no objection, the editorial was ordered to be printed in the Record, as follows:

To Rescue the Immigration Bill

The U.S. House resorted to parliamentary maneuvers to deliver a near-fatal blow to the immigration reform bill late last week. It is still theoretically possible to revive the long-needed bill through other legislative strategies before time runs out on this congressional session, but the prognosis for the measure is grim.

Immigration reform bills have been kicking around Congress for six years. Even though the Senate approved a sensible compromise measure almost a year ago, the House has been bickering for months over specific provisions—especially a disastrous amendment proposed by Rep. Charles Schumer (D., N.Y.). Squabbling over the Schumer amendment led the House to send the bill back to committee, where it probably will die.

Where the House and Senate bills differ most is how far to yield to demands by growers for cheap farm labor. The Senate measure provides for 350,000 "guest workers" to come into the country to work on farms for up to nine months. Rep. Schu-

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

mer's amendment to the House bill would grant permanent resident status—with a full range of public benefits—to illegals who did farm work for a minimum of 60 days during the year that ended in May, 1986. Those who left the farm jobs could be replaced, creating an enormous, open-ended amnesty program to lure illegals into the country.

The immigration bill also aims to reduce the lure of jobs in the United States by levying sizable fines against employers who hire undocumented workers. It calls for pilot programs to test call-in identification services (similar to those used to check credit cards) to help employers verify identifications.

To help illegal aliens already in the United States, the legislation would grant temporary resident status to those who have lived here since 1980 (Senate version) or 1982 (House measure). This would open the way for them to become permanent resident aliens in two years and full citizens in five more.

So concerned has the Reagan administration been that Congress would lose its nerve and once more stall on immigration reform that it has been trying to piggyback the issue onto the nation's rising concern about illegal drugs. Both Atty. Gen. Edwin Meese and Immigration and Naturalization Commissioner Alan Nelson have warned that it is almost impossible to halt the flow of drugs into the United States as long as millions of people illegally cross the Mexican border each year.

But drug smuggling by illegal immigrants plays only a very small role in either the drug or the immigration problems that trouble this nation. Fewer than one percent of illegal aliens who are apprehended at the border are carrying illegal drugs. The U.S. Border Patrol estimates it has seized about $150 million worth of drugs in 1,227 incidents in the year just ending—hardly a big haul as drug smuggling goes.

The case for passing the immigration reform bill doesn't need a drug connection to bolster it. The United States has lost control of its borders. Illegal immigration is increasing rapidly; this year, the INS expects to turn back 1.8 million people attempting to enter the country illegally—twice the number in 1980. At least that many more will be successful and join the 3 million to 12 million illegals now living here in legal limbo, vulnerable to economic exploitation and adding to the ranks of the nation's poor.

The long U.S.-Mexican border is impossible to patrol adequately. Economic and population pressures in Mexico and civil upheaval in Central America are swelling the numbers of people willing to risk apprehension to seek work in the United States. That's why an immigration reform bill that reduces the availability of jobs is urgently essential.

A small number of growers—most of them in California—should not be able to set U.S. immigration policy. Nor should Hispanic minorities whose reaction some members of Congress fear. The House is shirking its responsibilities to the nation if it lets six years of work on immigration reform expire for lack of political courage.

It will take extraordinary legislative effort to save the immigration reform bill now. But Congress should pass it—without the Schumer amendment—before this session ends. The bill won't keep all illegals from crossing the borders. But it should reduce their numbers and that should give the INS some better odds of apprehending those who still try.

RECOGNITION OF MINORITY LEADER

The **PRESIDING OFFICER** (Mr. LAXALT). Under the previous order, the Democratic leader is recognized.

RESERVATION OF MINORITY LEADER'S TIME

Mr. **BYRD**. Mr. President, I ask unanimous consent that I may be able to reserve the remainder of my time under the order.

I do this first to thank the distinguished majority leader for his courtesy in reserving my time; second, to explain that I have been with the distinguished Senator from Connecticut [Mr. WEICKER] in an appropriations conference with the House conferees, since he was there probably before 8 o'clock and I was there at 10 minutes after. For that reason, I could not be on the floor at the opening. I thank the distinguished majority leader.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

RESERVATION OF MAJORITY LEADER'S TIME

The **PRESIDING OFFICER**. The majority leader.

Mr. **DOLE**. I reserve the remainder of my time.

RECOGNITION OF SENATOR HAWKINS

The **PRESIDING OFFICER**. Under the previous order, the distinguished Senator from the great State of Florida is recognized for not to exceed 5 minutes.

Mrs. **HAWKINS**. I thank the distinguished Presiding Officer.

DRUGS AND OUR SCHOOLS

Mrs. **HAWKINS**. Mr. President, nowhere is the drug threat more menacing to our society than in our schools. A 17-year-old South Dakota girl discloses that over half of the students in her high school smoke pot. "People always have it," she says. "You have the right connections, and you get it."

Speaking of the right connections, a child is sitting in his classroom in Washington, DC, when his electronic pager goes off. I came along in a simpler time when kids didn't carry beepers to school. The kid either asks to go to the bathroom, or waits until his next break, to answer the beep. This child and his beeper are part of an elaborate communications scheme to keep drug users in touch with drug suppliers. Students are involved in this network as both buyers and sellers.

Then there are the "12 dollars and a half clubs." Kids pool their pocket money in order to finance a drug buy.

In Texas, a 9-year-old boy died as a result of a severe reaction to cocaine. It was not the first time he had used the drug. To those who pooh-pooh the idea of drug testing in our schools, I say: "If that child had been given a drug test, and corrective steps taken, he might be alive today." Ask that child's parents how they feel about drug testing.

In Chicago, an 8-year-old named Victor smoked his first pot. By the time he was 10 he was hooked. He got in trouble at school—he threw a chair at a teacher. Earlier that day he had smoked a couple of joints of marijuana. By the time he was 13, Victor had tried cocaine, heroin, LSD, and PCP. He was a veteran drug user. He paid for the habit by stealing cars and stereos. He and his friends would strip the cars and sell the parts. His luck ran out when he tried to run a police juvenile officer off the road in a stolen car.

However, in a way that was when his luck turned. He was given the choice of serving 3 to 6 years in jail or entering a drug rehabilitation program. He did that and won a new lease on life. Victor is now 16 and is back in school, a special alternative school for older students. And he has new hope for a longer, healthier, more purposeful life.

I shall never forget a hearing conducted by my Subcommittee on Investigations and Oversight on January 27, 1982. One of the witnesses, Terry from Virginia, testified that she first smoked marijuana in the sixth grade. By the time she was 16, Terry was a full-fledged junkie, supporting her habit by stealing. David from Maryland told how he started getting high in the sixth grade, graduating to acid and LSD a year later and ultimately to quaaludes. Penny, a pretty blond girl from Miami, started on drugs at age 12. She got them at school.

By the time she was 18, she had a record of 18 felony charges, including robbery and stabbing people. All of these youngsters have now been rehabilitated, but what a price they, and society, paid so drug dealers could make a few extra bucks.

Every school has its special area where drugs are used. It may be the rest rooms, the boiler rooms, an isolated section of the gym. It could be the parking lot, a nearby park, or behind a hill on the school grounds out of sight of school authorities. That is the place kids go to smoke pot, do a line of coke, or a hit of acid. That is the place where some of the deals are made among student buyers and sellers. All the kids know where the action is—the word gets around.

Mr. President, this is the grim picture at our Nation's schools. Illegal drugs, like other ills of society, have spilled over into our schools. School officials need our sympathy, our understanding and our help to deal with the drug crisis in our Nation's schools.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the distinguished Senator from Wisconsin [Mr. PROXMIRE] is now recognized for a period not to exceed 5 minutes.

Mr. PROXMIRE. Thank you very much, Mr. President.

VERIFICATION—DOES IT WORK? OR IS IT A FRAUD?

Mr. PROXMIRE. Mr. President, opponents of arms control have zeroed in now on one crucial aspect of all arms control agreements with the Soviet Union. It is verification. We live in a world in which the nuclear weapons arms race is madness. We know that an arms race will be immensely expensive to both sides. We know it will increase the danger and devastating capacity of nuclear weapons. We know it accelerates the risk of an accident that could spark a nuclear holocaust. We know neither side can win if either massive arsenal should ever be used. We know both sides would not just lose. We know both sides would be utterly destroyed. We know the people of our country yearn for arms control.

In spite of all this, there is one inviting and easy target for critics of arms control to shoot at. They argue arms control agreements with the Soviet Union are a snare and a delusion. For the nearly 70 years of their iron control of the Russian Government, the Soviet Communist Party has given new meaning to that most morally destructive of all philosophies—that the end justifies the means—any means, however false or deceptive it may be. What does that mean? That means to advance the interest of the Soviet Union the Russians will lie and cheat at every opportunity. So how do we negotiate an agreement to limit any aspect of the arms race with such a country? How do we know such an agreement will not turn out to be the equivalent of unilateral disarmament? We keep the agreement as an honorable nation. They violate it. We limit or reduce our nuclear arsenal. They build theirs up. We do not trust them. They do not trust us. So how do we negotiate an agreement between two adversaries in an atmosphere of no trust? Especially how do we work out such an international agreement where there is no super enforcement authority? If either party violates the agreement, where is the court that can enforce the contract? There isn't any.

Does this mean we throw in the sponge on arms control? Should we forget it? Should we accept as a fact of life the certainty of Soviet violation of any agreement? Should we rely on the arms race as our only salvation? Mr. President, on September 19, in an editorial headlined "The Verification Fraud," the Wall Street Journal concludes that the Soviets do not even want token verification. "They are only interested in appearances. Thus, prospect for a verifiable nuclear weapons pact are as remote as ever." The Journal claims that none of the arms records signed by the Kremlin during the 1970's contained effective compliance provisions and "the Soviets violated every one of them."

What is the answer? Yes, indeed, there have certainly been violations of the arms control treaties by the Soviets. To what effect? In every case where allegations of Soviet cheating have been made, there has been no significant military advantage for the Soviets. In each case the Soviets have denied that they have cheated. We insist they have. Certainly the location of the Krasnoyarsk radar hundreds of miles inside the Soviet border is a prima facie violation of the ABM Treaty that permits such radars on the perimeter of each superpower. Does that radar have any military significance? Not without the deployment of Soviet interceptors. Have the Soviets deployed such interceptors? No. Is that Krasnoyarsk radar our principle violation charge against the U.S.S.R. with respect to the ABM Treaty? It is, indeed.

How about SALT II? What allegations have we made of Soviet violation of the SALT II Treaty? We have charged that the Soviets have encrypted, that is, encoded their telemetry—that is the signals from their missile tests. And we charge that they have built a new missile—the SS-25. We say both violated SALT II. SALT II permits the encryption of telemetry, unless the encryption prevents verification of compliance with SALT II. The Soviets say their encryption does not prevent verification. We charge that it does. They ask us to tell what specific encryption prevents our verification. We refuse to say because such a revelation would tell them more about our intelligence than we want to tell. So what should we do? We should serve notice on the Soviets that we want to reopen SALT II and ban encryption of telemetry period. Of course, the President has announced that SALT II which was never ratified and expired on December 31, 1985, is now dead. But if we revive it, a clear prohibition of all encryption could and should be one of our conditions for renewing it. Meanwhile—once again there has never been any evidence offered by critics of arms control that the encryption has had serious military significance. Our charge that the SS-25 is a new missile and therefore also violates SALT II has been denied by the Soviets. They claim it meets the SALT II Treaty definition of a modification of an old missile—the SS-13. Critics say the Soviets are wrong about this. So do I. Again we should go to the mat with them. Meanwhile what military significant advantage does the SS-25 give the U.S.S.R.? The CIA and the Joint Chiefs of Staff have told us that as a result of SALT II the Soviets have stopped production or killed a series of nuclear weapons, and that SALT II has not significantly limited the United States nuclear arsenal plans at all. The net military effect of SALT II as an arms control treaty has been highly favorable to the United States.

So does the threat of Soviet cheating make arms control a dangerous delusion? Not on the record. First, by and large the Soviets have complied with arms control treaties. Any objective analysis of the arms control treaties to date shows that arms control agreements with the Soviet Union have not only saved this country a bundle in nuclear buildup foregone, but they have significantly slowed the dangerous arms race. This is not because Gorbachev is Mahatma Ghandi or Mother Theresa. It is because it is to the conspicuous self-interest of the Soviet Union as it is to the clear self-interest of the United States to comply with arms control agreements. Compliance saves enormous resources. It also saves each superpower from the total destruction of nuclear war.

MYTH OF THE DAY: REPEAL OF THE 22D AMENDMENT IS A GOOD IDEA

Mr. PROXMIRE. Mr. President, the myth of the day is that repeal of the 22d amendment to the U.S. Constitution—providing for a two-term limitation on the President of the United States—is a good idea.

Here are 10 good reasons why repealing the 22d amendment is not in our Nation's best interests.

First. Prohibiting a President to serve a third term allows him to be a more vigorous and forceful leader. Eliminating the third term also increases the President's political independence by freeing him from political considerations attendant on securing his party's renomination. It increases the nonpartisan character and businesslike efficiency of the Executive Office.

Second. A President should not have the extra burden of running a sustained political campaign and governing the Nation at the same time. The 22d amendment frees the President from pressure of yet again being a candidate and seeking reelection. The possibility of reelection tends to build up a dangerous political machine that interferes with the efficiency of the President as Chief Executive.

Third. Permitting an individual to stay too long in the Presidency stifles the growth of alternative leadership.

Fourth. A third term would endanger democracy and tend to establish a dictatorship by perpetuating one man in office and feeding his ambition for power.

Eight years as President is a sufficient time to effectuate the policy aims which an individual may represent. An additional term would tend to encourage a sense of proprietorship and personal privilege. Personal power rather than public policy would become paramount.

Fifth. A third term violates the tradition and precedent established by such great Presidents as George Washington and Thomas Jefferson.

Sixth. A third term, served by an individual with an exceedingly strong personality, might result in such dependence on his leadership that the people would follow him not with their intellects but with their emotions.

Seventh. No man is indispensable. The American people can be relied upon to produce more than one great leader at a time.

Eighth. The constant infusion of new leadership is the essence of democracy. The doctrine of rotation in office is one of the principal bulwarks of freedom. Proper administration of a democratic government demands that new personnel and fresh viewpoints be injected frequently into the executive branch to prevent the growth of a stagnant bureaucracy.

Ninth. Presidential control of patronage accrues from a long tenure. An excessive length encourages the bureaucratic entrenchment of individuals who are solely dependent upon the President for their position, and who are maintained through adherence to his point of view. Similar abuses might also apply to the judiciary where the President's staunchest supporters, and those of his particular political, social, and economic outlook are rewarded with lifetime judgeships that place them beyond the reach of the electorate.

Tenth. A long Presidential tenure threatens our separation of powers and checks and balances system. A President serving more than two terms could secure a firm control over the enormous and powerful machinery of Federal administration, including the so-called independent agencies, through the political appointments process.

Without the 22d amendment, a President could make the legislature a subservient instrument of his will. Even the independence of the judiciary could be influenced indirectly by the appointment of judges whose attitudes are essentially those of the President. The danger of overconcentration of power in the hands of the President for a long period is much more serious now than in the early years of the Nation because of the increased centralization of powers in the Federal Government.

Mr. President, based on the reasons I have cited, I think I can safely say that the notion that repealing the 22d amendment is a good idea is truly a myth.

REFORM OF THE FEDERAL FINANCIAL MANAGEMENT SYSTEM

Mr. PROXMIRE. Mr. President, the Federal Government's financial management system is proving inadequate to serve the needs of those responsible for Government accounting, auditing, planning, and budgeting. The fact is that the entire U.S. financial management structure is antiquated and out of step with the modern financial management accounting principles followed by virtually every corporation or business firm of any size and by many States and cities.

INADEQUACIES OF THE FEDERAL SYSTEM

The present Federal system does not provide timely, complete, and accurate information about Federal operations. It is difficult, if not impossible, to know, under the present system, the true cost of the programs funded by Congress, Federal assets or liabilities, or the long-term financial consequences of decisions made in Congress.

The principal reason for these inadequacies is that the current Federal financial management system focuses on the amount of cash available for the fiscal year rather than accrued costs. Under the cash system presently followed, we may know how much money has been appropriated for a given program, how much may have been spent, and how much of the appropriation remains. But we do not know, under the present system, the costs of the program or the value of the goods and equipment that may have been purchased from prior appropriations. This means that we normally do not have a complete financial picture of the costs of Government programs and how much needs to be spent for their completion.

We do not really know the true cost of Government programs, except in those few cases where a Government audit has been ordered. For example, when the Defense Department requests funds for a weapon program, it basis its request on the estimated cost of the program. But after Congress appropriates funds for that program, we lose track of the true costs. We only know what has been appropriated in the past, what has been spent, and the amount of any new budget request. In a particular year, 50 percent of funds appropriated for a weapon program may have been spent on only 25 percent of the full cost of that program. Congress would have no way of knowing that. It would only know that 50 percent of funds were spent. Only when it becomes necessary for the Defense Department to request additional appropriations, after it is clear that the program will cost more than the amount that had been originally requested, is it evident that there has been a "cost overrun."

The reason that Federal program costs have gotten out of hand is largely because the financial management system virtually ignores costs. We operate under a cash-based and not a cost-based accounting system. As a result, there has been a lack of attention to cost control. Government program managers and Members of Congress armed with reliable, timely, and consistent cost information would be able to make better decisions than is now possible. Unfortunately, we do not have reliable, timely, and consistent cost information because the financial management system we use does not provide this information.

Another shortcoming of the present system is that it creates confusion about the size of the Federal deficit. There is disagreement among academics and other experts about the real size of the deficit. These disagreements occur partly because of the poor quality of financial information about the Federal Government and the questions raised about basic aspects of Federal Government operations.

VIEWS OF THE COMPTROLLER GENERAL

Earlier this year, I addressed my concerns about the quality of financial management in the Federal Government to the Comptroller General. I asked for an evaluation of the Federal Government's annual deficits, an assessment of the most critical financial management problems facing the Nation, and suggestions for the type of legislation needed to correct our financial management problems. The Comptroller General, Charles A. Bowsher, responded with a very thoughtful, lengthy letter, which I understand has been widely circulated among interested State and local officials who face similar problems. Indeed, many State and local governments have taken steps to correct the problems identified by the Comptroller General.

In his letter, Comptroller General Bowsher recommends comprehensive reform of the Federal financial management structure. As a first step, he urges creation of an independent chief financial officer in the executive branch of Government to coordinate Government-wide improvements to financial management.

The Comptroller General's analysis and suggestions for change should be given the most careful consideration. I believe that our attempts to control

costs and reduce deficits are being hampered by the inadequacies in financial management. In fact, efforts in Congress and in the executive branch to deal with these problems probably will never succeed so long as the present financial management system is followed.

I request unanimous consent that my letter to the Comptroller General, dated February 20, 1986, and the Comptroller General's reply, dated July 17, 1986, be inserted in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

Congress of the United States,
Joint Economic Committee,
Washington, DC, February 20, 1986.

Hon. Charles A. Bowsher,
Comptroller General, U.S. General Accounting Office, Washington, DC.

Dear Mr. Bowsher: I have read with considerable interest comments attributed to you, staff of the General Accounting Office, and others that appeared on the front page of the February 3, 1986, issue of the Wall Street Journal, concerning criticism of the Federal Government's accounting and budgeting systems and the way budget deficits are estimated.

An article in the October 9, 1985, Christian Science Monitor says that three Stanford University economists and a fourth from the University of California have concluded from a study they made that the Federal Government has assets that substantially exceed its liabilities and has a cumulative surplus rather than a deficit. The deficit as of the end of 1985 exceeded $2 trillion, according to the Administration's accountants. Still other articles refer to billions in hidden deficits because of off-budget borrowing, e.g., the Federal Financing Bank has borrowing in the billions that are not included in the annual or cumulative deficits.

Perhaps the most critical statement I have seen about the Federal Government's accounting and budgeting was made by David Stockman, former Director of OMB. In an address to the Board of the New York Stock Exchange, he said: ". . . as the fiscal crisis has worsened and the political conflict intensified, we have increasingly resorted to squaring the circle with accounting gimmicks, evasions, half-truths, and downright dishonesty in our budget numbers, debate, and advocacy. Indeed, if the SEC had jurisdiction over the Executive and Legislative branches, many of us would be in jail. So it is incumbent on both sides to come clean with the numbers, and thereby the true choices."

Several recent reports issued by the General Accounting Office highlight many of the accounting, budgeting, and internal control problems that exist in the government's financial management. Recent congressional enactment of the Gramm-Rudman legislation emphasizes the government's dilemma in trying to cope with annual and cumulative deficits which, in the view of many, may be substantially higher, lower, or nonexistent.

As you know, I recently made a statement on the Floor of the Senate applauding New York City's near miraculous recovery from its fiscal crisis of the 1970's. I suggested that the New York City experience serve as a model for the Federal Government. The success of the city resulted from substantial "belt-tightening," which I understood was made possible in large measure by improved financial systems producing data on which sound management decisions could be made to substantially reduce costs. The situation that existed in New York City appears to me analogous to what we now have in the Federal Government, except that the dollar figures are greater by a factor of about 2,000, i.e., deficits of $1.5 to $2 billion versus in excess of $2 trillion.

You are the leading accountant in the Federal Government. Accordingly, I would like you to provide me with the following:

1. An evaluation of the annual deficits for the past three fiscal years and a projection for the next three years, based on available financial data, compared with the deficit figures published by the Administrator.

2. A brief assessment of the most critical financial management problems facing the Nation.

3. Suggestions for the type of legislation needed to correct the financial management problems of the Federal Government, including those highlighted by the recent passage of the Gramm-Rudman Deficit Reduction Act.

I would like your views on the above-mentioned matters as promptly as possible. Your assistance will be greatly appreciated.

Sincerely,

William Proxmire,
Vice Chairman, Subcommittee on Economic Resources, Competitiveness, and Security Economics.

Comptroller General
of the United States,
Washington DC, July 17, 1986.

B-221498.47

Hon. William Proxmire,
U.S. Senate,
Washington, DC.

Dear Senator Proxmire: You wrote to me expressing your concern about the quality of government financial systems and the way budget deficits are estimated. I share your concern about the serious financial management problems facing the U.S. Government. These problems will continue and may well intensify unless we improve our financial structure, and systems and the quality of financial data. Improvements must be made to provide federal managers and the Congress with more reliable, timely, and consistent data for sound decision-making and better management, which, I believe, can reduce the cost of government.

In your letter, you refer to the New York City recovery from its fiscal crisis and suggest that it might serve as a model for the federal government. I was directly involved in that recovery process and would agree that many of the actions taken, including improved financial management systems, could well help us at the federal level. In fact, partly as a reflection on that New York City experience, I initiated a project in 1983 to identify the major financial management problems facing the federal government, to develop possible solutions, and to propose a strategy for improvement. Our report, entitled "Managing the Cost of Government: Building an Effective Financial Management Structure (GAO/AFMD-85-35 and 35A), is the result of the project. The report was designed to be a catalyst to prompt debate and ultimately agreement on the government's financial management problems and potential solutions.

I believe that the debate on the issues raised in our report has begun to achieve agreement among congressional leaders, the administration, and federal managers that a restructuring and rebuilding of our financial processes and systems is essential, although the specific program for resolution is not yet fully agreed upon. I believe that the new federal financial management structure should encompass.

Strengthened federal accounting, auditing, and reporting;

Improved planning and programming;

A streamlined budget process;

Comprehensive use of cost based reporting;

Systematic measurement of performance; and,

Improved and strengthened internal controls.

Such a structure would not only improve program planning but also help control costs by providing both the Congress and agency management with reliable, timely, consistent financial data to judge how well program decisions are implemented and identify emerging problems so that corrective actions can be taken as necessary.

An improved financial management structure should also expand upon the use of measures of financial performance in the federal government. Currently, attention is focused solely on the obligation and cash information needed to control appropriations and calculate the deficit. This approach serves valid cash management and fiscal needs, but it leaves out important information about the long-term cost of government. Accrual based information would provide the information needed to control costs and manage program and agency performance and would put us in a better position to determine the government's overall financial condition.

Turning to your specific questions, your letter asked for:

(1) An evaluation of the government's annual deficits;

(2) An assessment of the most critical financial management problems facing the Nation; and

(3) Suggestions for the type of legislation needed to correct the financial management problems.

A discussion of each of these points follows.

EVALUATION OF ANNUAL DEFICITS

On the surface, it would seem that answering a question about the amount of the federal deficit would be a relatively simple matter. However, as you point out, numerous differences exist in financial reports concerning the amount of the deficit—whether it is larger than reported, whether it is growing, or whether in fact it exists at all.

Accounting basis influences deficit calculations

Several different measures of federal financial activity are meaningful and interrelated: cash, accrual, obligational, and inflation adjusted information. I will discuss some of these different measures and their interrelationships.

The official deficit for fiscal 1984, as shown in the Department of the Treasury's "Statement of Receipts and Outlays of the United States Government," was $185 billion. This amount was determined using primarily the cash basis of accounting and thus generally represents the excess of cash outlays over cash receipts. However, using the accrual basis of accounting, the deficit was reported by three other sources[1] as being $200 billion, $215 billion, and $333 billion. For the most part, the differences among the three accrual figures stem from assumptions about the treatment of the Social Security trust funds and, less importantly, the valuation of gold reserves.

Your letter requested an evaluation of the deficits for the last 3 and next 3 years. The following table presents both cash basis and accrual basis deficit information for fiscal years 1983 through 1985. We are unable to provide comparable information for fiscal years 1986 through 1988 because there is no currently reliable basis for making projections of accrual based information for those years.

FEDERAL DEFICIT

[Dollars in billions]

	Cash basis[1]	Accrual basis[2]
Fiscal year:		
1983	$208	$232
1984	185	215
1985	212	199

[1] Figures in the cash column were reported in the fiscal year 1987 "Historical Tables, Budget of the United States Government." These figures are the basis for deficit reductions required by the Balanced Budget and Emergency Deficit Control Act of 1985.

[2] The fiscal year 1983 and 1984 accrual figures were reported in the Department of the Treasury "Prototype Consolidated Financial Statements of the United States Government," adjusted to revalue gold to market value. The fiscal year 1985 accrual figure was taken from a draft of the 1985 Prototype Statements, also adjusted for the market value of gold.

Briefly stated, the difference between the cash basis of accounting and the accrual basis of accounting centers on when transactions are recognized in the accounting systems and the resulting reports. The cash basis recognizes transactions only when cash changes hands (budget receipts or outlays). This information is critical for effective cash and debt management. This "checkbook" type of accounting for the deficit does not reflect information about assets, liabilities or future commitments, nor does it disclose actual costs, current and deferred.

As we found in the New York City crisis, not only couldn't we reconcile the cash available in the accounts, we also had no accounting for the significant liabilities which the city had incurred, such as pensions, which were tremendous costs facing the city at that time.

This reliance on cash basis accounting provides users only a single official indicator of government operations—the cash basis deficit—to address their differing needs and questions. Users of federal financial information must make the reported cash deficit figure able to serve their purposes. Unfortunately, users do not have a set of rules or consistent understanding regarding the meaning of various terms, what adjustments to the financial report are appropriate, or how the various indictors interrelate.

The accrual basis of accounting recognizes the financial impact of government transactions, decisions, and activities as they happen—when revenues are earned, when resources are used, and when liabilities and costs are incurred—regardless of when obligations are incurred or when the actual cash is collected or paid. Accrual accounting also provides important information on the financial position of the federal government which is not available under the cash basis of accounting. Unfortunately, accrual information is not readily available in the federal government even though it has been required by law for more than 30 years.

The federal government is a huge enterprise with vast financial resources and enormous assets and future commitments. For example, government accounts and loans receivables total more than $350 billion, but not one dollar of that amount shows up in the cash basis accounts. Over the years, GAO has consistently identified major problems in accounting for, controlling, and collecting these assets; government management of them is tantamount to a national scandal. Taxpayers who paid hard earned dollars to provide funds to make these loans have legitimate complaints over how poorly the government manages these assets or how blithely it ignores its accountability for these funds. The government also has hundreds of billions of dollars invested in inventories. Based on our reviews, I would say that the record of accountability and control in the inventory area is no better than for loans and other receivables.

How have we gotten into this situation? I believe that the government's accounting system, which focuses on cash and obligations and effectively ignores assets and costs, is a fundamental cause of such poor accountability and control. Requiring an accounting, on an annual basis, for these funds and assets entrusted to federal managers and diclosure of the costs incurred would result in better management and control of our assets.

Capital spending is another area where significant differences exist between cash basis and accrual basis accounting. The federal government spends well in excess of $100 billion a year on capital assets and physical infrastructure that will provide benefits for many years. Yet, the current government accounting practice treats those capital outlays as a current cost of operations and includes the entire amount in determining the deficit. Applying that logic to our personal lives would argue that we write off the full cost of building a house in the year you build it. That type of thinking has been recognized as a fallacy for 40 years, but we cling to it as an inviolate concept, even up to today.

While the capital spending issue may appear to be merely an arcane accounting argument, it is, in fact, a significant governmental policy issue. Over the past several years, numerous states have instituted balanced budget requirements in a drive toward better fiscal responsibility and financial management. In almost every instance, the states have recognized the inherent differences between capital and operating expenditures and have used a capital budget to ensure that borrowing is generally restricted to financing long-term assets and that operating budgets are balanced. Balanced budget approaches at the federal level do not distinguish between capital and operating expenditures. Consequently, deficit reduction actions may unrealistically require eliminating all borrowing, including funds for capital assets and infrastructure.

Liability recognition is a third area where enormous differences exist between the current cash basis deficit measure and other measures. Cash basis measures do not include contractual commitments for purchases and programs where future expenditures will be required. In the defense area alone, hundreds of billions of dollars are committed for military hardware under firm contracts which will require future outlays. However, those amounts are not disclosed in our current cash basis deficit reporting.

Technical matters to be resolved

Several significant technical issues must be resolved in constructing an accrual based financial report that includes deficit estimates:

How should Social Security commitments be reported? Is the Social Security program a long-term liability similar to a pension program or more like a pay as you go social safety net?

How should fixed assets be defined and depreciated?

How should we account for inflation?

Should the Federal Reserve operations be included?

Should trust funds and other dedicated monies by excluded from deficit calculations since such monies are not available for use by other government activities?

Effects of inflation and capital spending on deficit calculations

In addition to the variances in the deficit figures that result from the accounting basis used, variances also can result from the manner or the extent to which the effects of inflation are reported. Just as inflation lessens the value of money, it also lessens the value and cost of debt, which can significantly alter the conventional measures of the deficit.

Some economists point out that adjusting data to reflect capital spending and inflation for a year with high and rising inflation, such as 1978, would produce significant changes in the deficit calculation. For example, it is estimated that applying capital basis deficit for 1978 would result in a $33 billion surplus—a $62 billion change.

Some have said that, unless federal accounting methods are changed to show the effects of capital spending and inflation, federal budget calculations may become so misleading that budget-balancing efforts and policy decisions to eliminate the official, nominal (cash) deficit will actually create a substantial surplus while at the same time decimating our infrastructure investments and the ability to effectively manage our government. Such a surplus could, in turn, precipitate serious consequences in the form of a severe economic downturn.

Overall Federal financial reporting—a user's perspective

During a recent joint study by the Office of the Auditor General of Canada and our office, we asked users of federal financial information what definition of "deficit" would be most relevant to their needs. The resulting report, entitled "Federal Government Reporting Study," categorized users as legislators, government planners and managers, citizens, corporations, media, and analysts (such as social policy, economic, and financial market analysts). Depending on their analytical purpose, almost all groups reported a need for more than one measure of the results of government operations. Also, users wanted the various measures distinguished from each other by different terms with explanations and/or reconciliations showing how the measures are related.

I believe that no single measure of the results of the federal government's operations tells the full story or meets all user needs and analytical purposes. Various, types of financial information are important and have a place in the federal management. We must ensure however, that information is consistently defined, reported, and related to other indicators when appropriate. We must also ensure that the federal financial management structure and systems are capable of providing the appropriate information in a such a way that each indicator can be readily reported and related or reconciled with the others and that the data is accurate and reliable.

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[1] The different deficit measures were reported as follows: $200 billion, Department of the Treasury, "Consolidated Financial Statements of the United States Government, Fiscal Year 1984 Prototype;" $215 billion, U.S. General Accounting Office, "Federal Government Reporting Study," March 1986; and $333 billion, Arthur Andersen & Co., "Sound Financial Reporting in the U.S. Government," February 1986.

ASSESSMENT OF FINANCIAL MANAGEMENT PROBLEMS

Let me proceed from the issue of appropriate financial reporting to your second issue—the most critical financial management problems facing the Nation.

Our work over the years has consistently revealed numerous, serious problems with financial management systems, information, controls, and accountability in the federal government. These problems are confirmed by the agencies' own reports under the Federal Managers' Financial Integrity Act, filed with the Congress over the past few years. These reports cite a litany of serious, often long-standing problems with internal control, accounting, and financial management systems. For example, 17 of the 18 departments and major agencies we reviewed for compliance with the Federal Managers' Financial Integrity Act reported financial management as a material weakness in their annual reports filed under the act. The financial management problems have resulted in wasteful spending, sloppy management, and losses involving billions of dollars.

As stated earlier, our report, "Managing the Cost of Government", summarizes the financial management problems, explains their significance, and suggests a strategy for overcoming them. The major problem areas, all of which have been documented numerous times in reports by GAO and others, are:

The lack of cost information;

The lack of reliable cash and accrual information on weapon systems;

Inadequate disclosure of costs and liabilities;

Unstructured planning for capital investment;

Antiquated financial management systems; and

Weak internal controls.

These problems point out the need for improvements in the way the federal financial management process works. As I have said on numerous occasions, our financial management operations are outdated and inadequate to manage the government and to insure accountability to our citizens; the time has come for a major reform. It will be difficult, but it can be done. Over the past several years, state and local governments, often in the face of budgetary constraints, have made enormous strides in this direction. As you well recall, during the early 1970's many state and local governments faced significant financial problems which were compounded by inadequate information and financial management systems. The New York City crisis was, in this regard, a watershed event which precipitated a move by many state and local governments to significantly upgrade their financial operations through—

Development of an overall conceptual framework for reform which was agreed to by all parties;

Use of accrual based financial statements to provide a more comprehensive picture of the government's financial condition;

Use of annual financial audits to ensure data accuracy and to improve internal controls;

Substantial upgrading and modernizing of financial systems with a focus on providing better management and cost information; and

Moves to make budget decisions on more than just outlay information.

Many were doubtful that these moves would succeed, but the record of success has been significant. Such a program is sorely needed at the federal level. Let us hope that a financial crisis at the federal level of a magnitude comparable to New York City will not become the catalyst for federal financial management reform.

FINANCIAL MANAGEMENT LEGISLATIVE PROPOSALS

Finally, you asked for suggestions about the type of legislation needed to facilitate correction of the financial management problems. I agree that legislation is a way to bring about the type of financial management reform we need. The current fragmentation of financial management policy setting authority among a number of central management agencies has resulted in redundant, overlapping, and conflicting responsibilities. Consequently, policies and pronouncements sometimes impose conflicting or redundant requirements on agency managers. Furthermore, without a single authoritative source for federal financial management policy, a vacuum exists for identifying and resolving issues.

An independent chief financial officer (CFO) would provide the needed focus. I believe this new office should not be within the Office of Management and Budget, but, rather within the Executive Office of the President or in a separate office either alone or as a component of the Treasury. Such an office should have the following attributes:

A defined set of responsibilities including the development of a conceptual framework for improving financial management and the preparation of a specific long-range plan for systems improvements;

Adequate funding; and

An appropriate degree of independence and authority to ensure that the CFO's program will be carried out by the operating agencies across successive administrations.

Also, I believe that certain important agency responsibilities, such as the preparation and audit of annual financial statements and the development of a long-range systems improvement plan, must be clearly spelled out in the law.

The chief financial officer should be responsible for designing, developing, implementing, and monitoring the rebuilding of the federal financial management structure. To carry out this responsibility, the CFO should be charged with developing a conceptual design of a system that—

Is consistent with the principles, standards, and requirements prescribed pursuant to law by the Comptroller General;

Identifies and addresses major accounting, financial management information, and performance measurement needs of the government;

Identifies and addresses agency and governmentwide reporting needs and provides for complete disclosure of the financial condition of the government, its departments, and major agencies in conformance with the principles and standards prescribed by the Comptroller General;

Describes and reflects the relationship between planning, budgeting, and accounting;

Provides for integration of government financial management systems to eliminate duplication and encourage agencies to use systems jointly, thereby reducing the number of systems; and

Describes an information system structure comprised of compatible systems that will support a governmentwide financial management system and foster parity and consistency.

The CFO should also develop an implementation plan for the conceptual design.

The Chief Financial Officer should report annually on the financial operations of the government and disclose the overall financial position of the departments and agencies and the government as a whole. This annual report should be based on reports, information, and financial statements prepared by each agency. Agency financial statements should be audited annually to foster discipline in the agency financial management activities and ensure reliability of the data.

Finally, a controller's office should be established within each department and major independent agency. The controllers should be charged with conducting, supervising, and coordinating all financial management activities and operations of the agency and be responsible for preparing the annual agency financial statements.

Several bills have recently been introduced in the Congress which include many of the necessary features: Senator Roth introduced S. 2230, the Federal Management Reorganization and Cost Control Act of 1986; Representative DioGuardi introduced H.R. 4495, the Federal Financial Management Improvement Act; and Representative Shaw introduced H.R. 5092, the Federal Accounting Practices Review Commission Act of 1986.

Prior efforts to improve federal financial management generally have had limited success because the emphasis has been on individual problems and situations rather than on comprehensive reform. I believe that, for reform to be most successful, an integrated approach must be taken for developing a compressive financial management structure. The changes should be governmentwide, serving the needs of both the Congress and the executive branch, and ensuring that consistent financial data are available across agency and department lines. Putting this new structure into place and making it work will require new systems that implement consistent financial management concepts and that take advantage of the latest technology. It will also require able, dedicated, well-trained people and continuity of leadership from skilled executives.

The budget crisis we now face cannot be solved solely by improving the federal financial management structure. However, the government currently makes billion dollar decisions based upon financial data of dubious quality. By applying sound management principles and procedures, proved over time in the private, state, and local sectors, agency managers and the Congress will have timely, reliable data needed to make more effective decisions than are possible with current data.

The federal government has required this type of financial responsibility from the private sector for years and, through the recently enacted single audit legislation, of state and local governments. It is high time that the federal government put its fiscal house in order by imposing the same degree of discipline upon itself.

I would be pleased to work with you on this much needed reform effort.

Sincerely yours,

CHARLES A. BOWSHER,
Comptroller General
of the United States.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BENTSEN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. KASSEBAUM). Without objection, it is so ordered.

RECOGNITION OF SENATOR BENTSEN

The PRESIDING OFFICER. Under the previous order, the Senator from Texas [Mr. BENTSEN] is recognized for not to exceed 5 minutes.

HIGH LEVEL WASTE PROGRAM

Mr. BENTSEN. Madam President, I am pleased that the continuing resolution includes very limited funding for the Department of Energy's high-level waste program. The bill before us includes $380 million in appropriations for fiscal year 1987 approved earlier this year by the Appropriations Committee.

This figure is dramatically less than the President's request and is less than that provided by the House. There are compelling reasons for this reduction.

First, the DOE has demonstrated it is incapable of moving forward with the high-level waste program in a manner that builds confidence. States affected by the high-level waste program have been ignored, rebuffed, and left to guess what it is DOE is doing. In Texas, DOE has been developing a small, but increasing presence in the area near the Deaf Smith County site under consideration. Yet DOE continues to deny they are planning on undertaking any specific actions. Questions to the Agency are deflected with vague statements.

In preparation of the environmental impact statement, DOE could not even accurately count the number of drinking water wells in place on the site, clearly demonstrating that DOE has not even bothered to physically inspect the land it was interested in condemning. DOE stated that it would stack football fields of salt on top of the ground, but neglected to note that the windy conditions of the panhandle could spread that salt all over the prime agricultural land of the region, thus ruining crops.

Mistakes such as these do not engender confidence. Instead, they promote suspicion and fear. I have repeatedly exhorted DOE to take the State's and citizens' concerns seriously and to be more forthcoming about their activities. But DOE prefers the bulldozer to the negotiating table.

The Nuclear Waste Policy Act, however, anticipated that there would be hard feelings about developing a high-level nuclear waste repository. For these reasons, Congress required DOE to negotiate with States to develop a mutually agreeable approach to the issue. Funds were to be provided to assist States in developing their own program to monitor DOE activities. In short, Congress required DOE to use the negotiating table, but DOE has repeatedly turned its back on those affected by the Agency's actions.

Rather than discuss issues with affected States, DOE is engaged in litigation about such basic issues as siting guidelines. What is this litigation about?

The siting guidelines are DOE guidelines establishing the basis on which sites will be selected for a repository. Despite the fact that the legitimacy of these basic guidelines is in question, DOE forges ahead with its program, possibly moving to select sites that are not suited for a high-level waste repository.

The latest flouting of the Nuclear Waste Policy Act was the Agency's May 28, 1986, decision to suspend its search for the second high-level waste repository.

The act is indisputably clear that DOE must provide the President with three possible sites for a second repository by 1989. DOE is equally clear that it intends to violate this requirement of the act.

Concerned about DOE's actions, I asked the Comptroller General for an opinion as to the legality of the May 28 decision. GAO's opinion is as clear as the statute itself: DOE's decision to abandon the search for the second site is illegal.

What actions can Congress take with an agency so entranced with its own power that it defied such a clear congressional mandate: One of the actions we can take is the one included in the continuing resolution. We are dramatically reducing DOE's funds for the high-level waste program so that DOE will be unable to conduct any site-specific work on either the first or the second round or the monitored retrievable storage facility.

This means that no matter what DOE does or does not tell us about their work in Deaf Smith County, there will be insufficient funds to conduct any site-specific work in Texas. This is clearly the intent of the Appropriations Committee, as stated in their report:

> The committee believes that the surest course for the Department lies in the careful implementation of the Nuclear Waste Policy Act in close consultation with the affected parties, in particular, the affected States. It seems obvious that a restoration of consensus is required before significant progress can be made. The important task is the resolution of the numerous controversies in which the program is now embroiled and the restoration of confidence in the program.
>
> Only if such a restoration is forthcoming will the committee consider any request to make additional resources available for elements of the program.

Such an unambiguous statement from the Appropriations Committee leaves no doubt that this is not simply a matter of parochial interest, but that we are facing a serious problem with an agency that cannot control itself.

Both the funding level and this report language make it unequivocally clear that no site characterization activity can be undertaken in Texas during the next fiscal year. The ban on site characterization activities that is affected by the reduction in funding is a logical result from DOE's previous activities and its May 28 decision. Clearly, if DOE refuses to continue its search for a second site, the Agency must be barred from continuing its search for the first site. Any other course would constitute tacit approval by Congress of DOE's arbitrary refusal to comply with the act.

It is equally clear that more than one high-level waste repository is necessary, based on DOE's own estimates. To move forward with only one site under the Nuclear Water Policy Act is to abandon all pretense of developing adequate storage capacity under the act.

We are faced with the situation where, on the one hand, the DOE forges ahead without regard to those affected by its actions, and, on the other, the Agency's inability to meet any of the statutory deadlines and its refusal to seek amendments to those deadlines. Earlier this year, I introduced legislation, S. 2201, extending the deadlines in the Nuclear Waste Policy Act by 10 years. DOE has not sought these changes nor does it endorse them. Instead, the Agency simply refuses to comply with the law.

Mr. President, I have been a Member of this body for many years and on many occasions agencies have had trouble complying with our laws. But the actions of the Department of Energy go beyond simple inability to comply with the law and approach an unwillingness to attempt to comply.

For these reasons, I strongly endorse the actions taken by the Appropriations Committee, and I applaud the dramatically reduced funding level for the high-level waste program at the Department of Energy that will prevent the Agency from undertaking or continuing any site-specific work.

I yield back the balance of my time.

Madam President, I suggest the absence of a quorum.

□ 1010

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Madam President, do I have any time remaining under the leader's time?

The PRESIDING OFFICER. Yes; the majority leader has 4 minutes remaining.

ENCOURAGING NEWS ON TRADE

Mr. DOLE. Madam President, after months of steadily widening trade deficits, a flickering light at the end of the tunnel may at last have come into sight.

The decline in the value of the dollar, engineered in part by the Plaza accord of industrialized nations exactly 1 year ago, appears to have taken some effect.

Our trade deficit contracted, not widened, in August—and it did so by a remarkable $4.7 billion, the largest monthly reduction on record.

And agriculture returned to a surplus position.

I do not mean to overstate the accomplishment here: We are still in a difficult situation, with far greater progress still necessary. And Congress still has an important role.

But our problem in Congress sometimes is that we demand instant results, and overnight solutions.

Yet realities, for their part, are often much more complex.

This has been nowhere more true than with the situation of our trade deficit.

Many in the Congress, impatient to see progress in our battle with worsening trade statistics, have jumped on the bandwagon of demanding draconian trade law reforms.

They have berated the administration for an allegedly do-nothing trade policy.

They have threatened to make trade the great campaign issue of November 1986.

Always the economists tried to bring perspective: wait a bit, they said. There are fundamental adjustments in exchange rates, and rates of relative economic growth among nations, which need time to take place.

But it is sometimes easier to issue quick denunciations than to take the time to understand sophisticated economic explanations.

Now some of this economic wisdom has been borne out.

Our concern about the July deficit, which many in Congress expressed last month, may have been premature.

The news today is a further lesson in rushing to judgment about important national problems. Politicians would be well advised to show a little more willingness to hold their breath—and quell their campaign rhetoric—and see whether the arguments of economists don't actually have some basis, before we administer cures that turn out to be worse than the disease itself.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1020

Mr. GORTON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR GORTON

The PRESIDING OFFICER. Under the previous order, the Senator from Washington [Mr. GORTON], is recognized for not to exceed 5 minutes.

HOMELESS AMENDMENT TO THE CONTINUING RESOLUTION BILL

Mr. GORTON. Madam President, later today the Senate will resume consideration of the continuing resolution. This mammoth bill contains funding for thousands of programs and spends billions of dollars. For the moment, I would like to direct by colleagues attention to a small but important provision of this bill which will provide help to a group of Americans who need it most.

Madam President, over the last several years, most Americans have enjoyed a rising standard of living. We are in our 46th month of economic growth. Inflation has been reduced to a 1.6-percent annual rate. Unemployment continues to trend downward.

There is, however, a growing class of Americans that is in danger of being left behind. The pride created by the thriving prosperity of cities like Seattle in my State is chilled by the sight of people in the streets—Americans huddled over grates and air vents for warmth. When we drive to work in the morning over highway bridges, we too often drive over someone's home. When we throw spoiled food into a dumpster, there are desperate people on the streets who eat it. This state of affairs is a crisis and a shame.

And the situation is getting worse. Emergency shelters in Puget Sound communities report that in King, Snohomish, and Pierce Counties 4,461 homeless people were turned away in 1985, because existing shelters were filled to capacity. Shelter providers in the Seattle area report that their shelters held record numbers of homeless Americans this past summer—a clear indication that there will be an overwhelming demand for shelter space this winter. States and local governments are working tirelessly to address these needs, but it is not enough. The Federal Government must do more to help stem this growing tragedy in our streets.

I am happy, therefore, to have helped to develop legislation to address this pressing issue. The Senate Appropriations Committee adopted an amendment that is modeled after legislation I introduced earlier this Congress and will provide a three-part program for helping homeless Americans. First, it helps the homeless meet their emergency needs by continuing and improving the existing Federal Food and Shelter Program. Second, it provides capital assistance to nonprofit agencies and local governments rehabilitating or converting buildings into shelters. Finally, it establishes a demonstration program for helping homeless Americans get back into traditional housing.

Since 1983, the Federal Emergency Food and Shelter Program has provided assistance to homeless Americans. This program provides grants to local homeless programs to assist in meeting the needs of the homeless in our communities. The program has been an unqualified success, providing needed assistance with a minimum of overhead. Last year, the Emergency Food and Shelter Program provided an estimated 68 million meals at an average cost of 75 cents, and 6.2 million nights of shelter at an average cost of $2.25. The program provided assistance to 6,223 agencies in 1,360 counties and cities.

The Emergency Food and Shelter Program is unique in that it is administered by a collection of national private charities in conjunction with the Federal Government. This National Board of Charities has utilized its expertise to assist service providers in a timely and cost effective manner. The amendment adopted by the Appropriations Committee provides a 1987 appropriation to continue the existing program with some administrative refinements.

The Emergency Food and Shelter Program, however, is designed only to meet short-term, basic care needs. The amendment adopted by the committee supplements the existing program in two important ways. First, there is a need for more shelters. Public and private agencies in my State report they turn away as many people as they can help. This amendment addresses this need by establishing sources of capital for creating new shelters. It provides an Emergency Shelter Grants Program to help meet this desperate need. States, local governments, and local nonprofit charitable organizations would be awarded Federal assistance to rehabilitate or convert existing structures into emergency shelters. This is not a new construction program, and grantees would have to provide matching funds to be eligible for a grant award.

Second, the Emergency Food and Shelter Program is not designed to help homeless Americans return to traditional housing and independent living. The Secretary of Housing and Urban Development needs to explore innovative ways of assisting in this transition process.

The amendment provides for a Transitional Housing Demonstration Program that will give homeless persons capable of making successful transitions a temporary place to stay. This will give homeless individuals an address for purposes of finding work, an environment where they can keep themselves clean, and an opportunity to save money for a deposit on traditional housing. The program is not designed to institutionalize the homeless, but to help the Secretary develop models for assisting the homeless with the transition back to independent living.

Madam President, this country was built on the promise that if you work hard, you can build a better life for yourself and your family. This amendment is faithful to that promise. The amendment reaches out to our friends and neighbors who are down on their luck and helps them back on their feet. It is a disgrace that in such an abundant society we have entire families sleeping in station wagons, or foraging through refuse for a meal. This amendment solidifies programs now in place, and provides for the development of long-term solutions for the problem of homelessness.

I urge my colleagues to support this amendment when the Senate resumes consideration of the continuing resolution.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR BAUCUS

The PRESIDING OFFICER. Under the previous order, the Senator from Montana [Mr. BAUCUS] is recognized for not to exceed 5 minutes.

THE PROPOSED IMPORT SURCHARGE

Mr. BAUCUS. Madam President, the House Ways and Means Committee has slipped us a time bomb and hardly anybody noticed.

A few days ago, the Ways and Means Committee approved a 0.5-percent surcharge on imports.

Granted, they are not calling it an import surcharge, and neither is the administration. They are calling it a "user fee" because the administration likes user fees and hates import surcharges.

But the fact is that the Emperor lost his clothes. We have been presented with an import surcharge pure and simple.

And just as simply, I am opposed.

Current projections indicate that this "user fee" will generate $1.8 billion in revenue during its first year on top of the $200 million generated by the passenger user fee.

This is about twice as much as the Customs Service spends in a year. So the "fee" is obviously not tied to the services Customs provides.

What is more, an editorial in last week's Washington Post points out the real danger of going along with this ploy.

In short, it points out that what the Ways and Means Committee has approved is an across-the-board tariff hike on all imports. And it is GATT-illegal.

Article VIII of the GATT says clearly:

> All fees and charges of whatever character, other than import or export duties, imposed by contracting parties on or in connexion with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

Madam President, the House Ways and Means Committee has done precisely what the GATT says is illegal.

This new tariff will affect products which are supposed to receive duty-free treatment under the Generalized System of Preferences for LDC's.

It will affect products on which we negotiate tariff reductions during earlier rounds of multilateral trade negotiations. Our trading partners will be able to request compensation from us in return because we will have violated those earlier agreements.

More important, it will torpedo the new round of multilateral trade negotiations launched just 10 days ago in Punta del Este and guarantee that the United States-Canada free trade agreement will never see the light of day.

It is a perfect example of this administration's inconsistent trade policy.

It is a bad idea, and I urge the conferees on the reconciliation bill to eliminate it or at the very least limit it to cover no more than the cost of Customs services.

Madam President, I ask unanimous consent that a reprint of the Washington Post editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Sept. 25, 1986]

AND NOW A MINI-TARIFF?

How about just a small tariff—not more than a billion or two dollars a year? You'd hardly notice it. Taxing imports always seems like such a pleasant way to raise revenue for the government. The new tax could be called a Customs Service user fee. Do you think anyone would really object?

Yes, they'd object—and they'd be right. The House Ways and Means Committee has done many decent and useful things this year, but its mini-tariff is not one of them. Rummaging around anxiously for ways to diminish the budget deficit, the committee has voted for a tax on all imports, to be set at 0.5 percent of value for the 10 months beginning in December and dropping to 0.2 percent after that. The administration shares the blame for this idea. President Reagan proposed it last winter in his budget, at a lower rate. But the precise rate is not crucial. It's wrong in principle and would make trouble all out of proportion to any benefits.

As the committee has written the provision, the revenue would be earmarked for the Customs Service. Earmarking is bad practice in taxation, and once this small tax is established there would be constant temptation to expand it. The charge would be assessed on all goods coming into this country, including those supposed to be duty-free—the goods arriving under the free-trade agreement with Israel, for example, and under the exemptions provided by the Caribbean Basin Initiative. All the countries that have negotiated zero-tariff agreements for various kinds of goods would suddenly find that the tariff was not zero but 0.5 percent. The Americans would assure them, with great sincerity, that the Customs user fee was not intended to protect the American market. But foreign shippers, as they paid the fee, might find that hard to believe.

The United States is now leading a worldwide process of persuasion and negotiation to expand trade. That's what the meetings at Punta del Este, Uruguay, were about—and they went well. As the most powerful of the trading nations, the United States, by its actions, sets the atmosphere in which these trade talks will proceed. If it now puts a new tax on its imports, it will dramatically undercut its campaign against protectionism elsewhere. This country has an immense stake in international trade, and to jeopardize it with the mini-tariff would be wanton.

Mr. BAUCUS. Madam President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PRESSLER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE PRESIDENT'S POSITION ON SOUTH AFRICA

Mr. PRESSLER. Madam President, it is my strongest view that the President's position on South Africa should be sustained in the Senate, and it is my strongest feeling that if economic sanctions are imposed it will slow the ending of apartheid because the strongest force against apartheid in South Africa is the business community. If free enterprise and the business community are destroyed, the strongest force for ending apartheid in that country will be destroyed.

It is my deepest conviction that the Senate-passed bill and the House-passed bill are a very serious mistake. I think the President is on the right track.

Unfortunately, this is viewed as a civil rights vote in the United States and I think we are making foreign policy based on a domestic criterion. That is dangerous because the circumstances between the civil rights movement of the 1950's and 1960's in the United States and what is happening in South Africa are not analogous.

Be that as it may, we are currently in a cloture situation in the Senate. It is not this Senator's intention to take any time from the continuing resolution or from other business that is occurring during this last week or 2 weeks of the session. I understand we will be doing the Judge Claiborne matter next week.

But during this last 2 weeks, the leader has been accommodating in that the vote will probably occur Thursday evening, as I understand it, under a proposed unanimous-consent agreement which I have not yet agreed to, and time will be divided. There will be approximately 6 hours of debate on this subject.

If we would have filibustered, we would have had the vote at about the same time. As I understand it, all of the Senate business would have been delayed until that time. We have chosen to allow the time to run against the cloture motion at the same time the continuing resolution is being completed, which will give the President time to contact Senators and give the Senate time to prepare to work its will on this matter.

I would say that I think within the next hour a unanimous-consent request will be propounded and I would expect it will amount to about 6 hours of debate, with a possible rollcall on South Africa about 9 o'clock Thursday night, as I understand it. That has not been proposed formally.

I wanted to say that it is not this Senator's intention to hold up any other matters so long as the time is carried out. It would be this Senator's view that it would be unnecessary for the Senate to have a cloture vote and that we could go directly to a vote. Other Senators may feel differently.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1040

Mr. DOLE. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. DOLE. Madam President, let me indicate to my colleagues that it is now 10 minutes to 11 on Wednesday. We have been on the continuing resolution for 2 days. The managers are here and would like to start the continuing resolution again. There are a number of amendments. I am going to propound a unanimous-consent request on South Africa. I hope that those who have had plenty of time to be around here would show up if they intend to object or to reserve the right to object, because we are not going to complete our work by wasting time.

□ 1050

If we cannot get the agreement, then we will be on South Africa today and tomorrow. If we can reach an agreement, we will vote by unanimous consent about 4 o'clock tomorrow afternoon. But in fairness to the managers of the bill, who have been here for the last 25 or 30 minutes, I would hope that those who wish to object would indicate as much within 5 minutes or I intend to propound the consent agreement.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BYRD. Madam President, do I have some time reserved to me throughout the day remaining from my leader time under the order?

The PRESIDING OFFICER. The Democratic leader has his full 10 minutes remaining.

Mr. BYRD. Madam President, I will exercise my rights under that order at this time. I yield 5 minutes thereof to Mr. KENNEDY.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. I thank the minority leader.

THE VETO OF SOUTH AFRICA SANCTIONS

Mr. KENNEDY. Madam President, President Reagan's decision to veto the South Africa sanctions legislation is an affront to American ideals and to the cause of freedom and justice throughout the world.

This veto is an unfortunate signal to the world that America, which has been a beacon of liberty for two centuries, now has a double standard. When it comes to freedom for those who live under the shadow of communism, America cares—but when it comes to freedom for those who live under the shadow of racism and apartheid, America could care less.

To be true to its high principles, America must stand today for freedom in South Africa. Throughout our history, our citizens have worked and sacrificed to advance America's ideals and to make the dream of liberty a reality. Millions have given their lives—in the American Revolution; in the most tragic war in our history, the Civil War; in two world wars; in Korea; in Vietnam. And in our own society, the ongoing peaceful revolution of civil rights is keeping that faith for millions of citizens seeking justice in their own communities.

The ideals established in this country two centuries ago are not restricted to white Americans or any other race or people. They are universal. They inspire the 26 million citizens of South Africa today as surely as they inspired the American colonists who struggled for their own freedom in 1776. And with or without the support of the United States, their cause will prevail.

It is sad that the President persists in locking himself into a failed and lonely policy that has put America on the side of racism in South Africa. Now, it is up to Congress to override the veto and convince the world that America stands where it belongs—against apartheid and in the forefront of the struggle for a free South Africa.

Apartheid is institutionalized racism. As Congressman BILL GRAY has eloquently put it, sanctions may hurt, but apartheid kills. It deserved no aid or comfort from any nation on Earth, let alone the United States. Apartheid is rooted in the evil theory of the master race. It brings discrimination, and often death, for anyone in South Africa who is not white. It brings arbitrary arrest by government, detention by government, torture by government, and murder by government. It is the most extreme example on Earth of man's inhumanity to man.

America is stooping low today, not standing tall, in our policy on South Africa. The flawed policy of constructive engagement is appeasement of apartheid, and no amount of rhetoric against racism can counteract the reality of the result of this veto.

Yesterday, the Secretary of State urged the Senate to sustain the veto, so that we would not be sending the President to Iceland with a foreign policy defeat. But if the veto is sustained, the real victory will not be President Reagan's, but President Botha's. And America itself will suffer an even more serious defeat, for our ideals will be tarnished with the stain of racism.

The time has come for Congress to change a policy that has failed, that has brought humiliation and disrepute for the United States in our own country and throughout the continent of Africa, and that is false to America's best ideals. There is no middle ground on this issue—we stand for freedom, or we stand for apartheid. I urge the Congress to override this veto.

I yield back to reminder of the time to the minority leader.

Mr. BYRD. Madam President, do I under the previous order still retain the remaining portion of my time that was reserved by the distinguished majority leader?

The PRESIDING OFFICER. Yes, the remaining time is reserved.

Mr. BYRD. I thank the Chair. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1120

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SYMMS. Mr. President, I ask unanimous consent to proceed as if in morning business.

Mr. BYRD. Mr. President, reserving the right to object—I do not think I will object—what is the distinguished Senator seeking to do in morning business?

Mr. SYMMS. I seek to insert an article in the Record about the late Senator East, and to introduce legislation.

Mr. BYRD. The Senator also wishes to speak briefly in morning business?

Mr. SYMMS. Yes. I ask unanimous consent to speak briefly as if in morning business.

Mr. BYRD. For what length of time?

Mr. SYMMS. Five minutes.

Mr. BYRD. Mr. President, I have no objection.

Mr. SYMMS. I thank the distinguished minority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR JOHN EAST: SEMPER FIDELIS

Mr. SYMMS. Mr. President, the Nation recently mourned the passing of a great American, a true patriot, a loyal friend and a powerful inspiration to all of his colleagues in the U.S. Senate: Senator John East.

While in the service of his country as a marine, Senator East contracted the polio that eventually confined him to a wheelchair. In spite of his afflictions and personal struggles with health related problems, Senator East exemplified the full meaning of the motto he served under as a marine: Semper Fidelis—always faithful.

Mr. President, I gave a personal tribute to Senator East some time ago, but today I wish to enter into the Record an outstanding article that very well sums up the feelings of his closest friends. The article is appropriately entitled, "Senator John East: Semper Fidelis."

I ask unanimous consent that the article be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the Conservative Digest, September 1986]

Senator John East

Semper Fidelis

(By Patrick B. McGuigan)

John East grew up in what the media now call "a traditional family." Born in Springfield, Illinois, he was the son of a state employee and was always interested in politics. He attended Earlham College, one of the best of our country's small schools, and played left tackle and was captain on the Quaker college's football team. This led to his first encounters with Priscilla Sherk, later his wife, who was an Earlham cheerleader. A serious scholar even as an undergraduate, East's determination to enforce study hours earned him the affectionate nickname at Earlham: "Iron Chancellor of Bundy Hall."

John East was graduated from Earlham in 1953, and shortly thereafter John and Priscilla, known to her friends as Sis, were married. American men had been dying in Korea, and the patriotic John East met his obligations by joining the U.S. Marine Corps where he served for two years.

Only a few weeks after his discharge from the Marines, John contracted polio. Doctors said the disease originated in the Camp Lejeune swimming pool, where John had worked out regularly. For a time, East was critically ill. A year of therapy—including time at the Warm Springs, Georgia, facility where Franklin Delano Roosevelt had been treated—left him with residual paralysis in both legs and some permanent weakness in his right shoulder. Sis recalled that John was philosophical when he learned that he would never walk again. She told *People* magazine, "He put his arm on my shoulder and said, 'Things will be all right, Sis.' And I knew that they would."

John East, succeeding despite his confinement to a wheelchair, inevitably became a model and a symbol of what it means to deal courageously with adversity. He told Betty Cuniberti of the Los Angeles Times: "I don't play up the [handicap]. I spend 99.9 percent of my time with able-bodied people, and I think that's a contribution. . . . [I]f you get out and perform and work and create and do and succeed, you will do more. Those people do more for the cause than all the screamers and the yellers and the hollerers. When you're around somebody who's constantly playing up their disabilities and their ailments and their hurts and their pains, they're a darn bore." John was never boring.

Almost always reluctant to discuss his physical problems in political terms, East broke that rule only once as he fought to protect the right to life. He told Cuniberti, "It's a little presumptuous, downright egotistical, to say 'I am viable, I go it alone.' The devil you do! You think you do, but you're very dependent on other people in this life and you are from the time of being an unborn child until you die." He now spoke from his own experience: You're "at the peak of your physical capacity, struck down like that (he snapped his finders), totally dependent on little nurses coming in that weigh half as much or a third as much as you do. All of a sudden, you're no longer viable. Now, if viability is the test of livability, of the right to live, should I have been just left to die?"

Soon after turning the corner in his battle with polio, John East enrolled in law school at the University of Illinois, earning his LL.B. in 1959. After trying his hand at private practice, East decided he was more inclined to the life of the mind than that of the storefront lawyer. He studied political science at the University of Florida, earning his M.A. in 1962 and his Ph.D. in 1964.

John East now started on the course that would ultimately place him in the national spotlight. He accepted a position in the department of political science at East Carolina University (E.C.U.) in Greenville, North Carolina. As in most institutions of higher education, the faculty was dominated by liberals. But John was so persuasive and formidable in his arguments that he earned the respect of even his most liberal colleagues over the sixteen years which follwed. Dr. Larry Hough of the East Carolina political-science faculty told the Greenville Daily Reflector: "John and I were both political-philosophy specialists and our views differed, but I found in him a man who could discuss and argue his views very articulately and without malice. He was very popular with the students back in the radical days of the '60s and '70s. He always had full classrooms. And last year, I had him come talk to a legislative class and the room was overflowing, both with political-science students and many others. He was a wonderful lecturer."

Among the close friends he earned in those years was John M. Howell, Chancellor of East Carolina University. Howell described Professor East as a "fascinating lecturer" with a pointed sense of humor. A moderate Democrat, Howell nevertheless made a campaign contribution to East when he ran for political office in the 1960s. John East wrote him a thank-you note, saying: "With enemies like you, who needs friends?"

The skies were cloudy and overcast when the little commuter airplane on which I was a passenger touched down in Greenville, *North Carolina. The flag at the airport was at halfstaff in honor of the town's most prominent citizen, John East, the greatly loved former political science professor at East Carolina University who had gone to Washington to fight for the things most folks in Greenville believe in as a matter of course.*

The woman at the airport car rental knew why I was there, and she couldn't help talking about it. "When I was a little girl, he ran for Congress and didn't make it. My family always liked him. He worked so hard for so long. Then, he won the Senate thing. I just can't believe it."

Invariably, I did what I always do when I have a little spare time in a strange town. I went to the news room of the town newspaper, the Greenville Daily Reflector. *I passed some time there with Stuart Savage, a longtime political reporter. Stuart had kown East for many years, and shared my opinion of the scholarly statesman: "We loved him. I'm gonna miss him."*

John East had also made a lasting impact on several generations of East Carolina University students. One of them, David Harrington, described Professor East as "the most intellectually stimulating professor I ever had." Harrington, who had studied under East as both an undergraduate and a graduate student, told the *Daily Reflector*: "There were mornings when I would get up not wanting to do what I had to do for the day. Then I'd remember that I could count on Dr. East to be in class in his wheelchair, totally enthusiastic and impeccably prepared for that day . . . as if it were a major lecture he was delivering, not just a routine class to teach . . . [*East would*] do this day after day and make . . . philosophers like Plato and Burke and Locke come alive so I never forgot them and what they believed. The way he conducted his classes . . . was so inspiring, not just for me, I know, but for hundreds of students, whether they agreed with his political views or not. He wasn't a pal to his students, but he always knew every one of them by name, even years after they'd been in his class, and was always interested in what they were doing."

David Harrington continued: "I remember just a few years ago, I invited him to make a commencement talk at a school where I was then teaching in Washington, North Carolina. He agreed, invited me to ride with him in his car, made a superb talk, and even refused the honorarium the school offered him, suggesting we use it for what would most benefit the students. He always emphasized the value of the individual human life and spoke against fascism as much as against communism, because he saw in both the danger of putting the value of the state over the value of the individual."

John East's reputation grew, not only as a classroom teacher, but as a distinguished scholar with a deep understanding of the moral and philosophical roots of Western political institutions. The author of a major scholarly book on city government, East eventually produced a wide range of articles published in general-interest magazines and academic journals. He served on the editorial boards of Modern Age and the Political Science Reviewer, remaining active in the American Political Science Association, the Southern Political Science Association, and Phi Beta Kappa. He was until his death a Contributing Editor of Conservative Digest. His thought-provoking essays included such titles as "Conservatism And College Teaching," "The Political Relevance Of St. Augustine," "The American Conservative Movement Of The 1980s." and "The Professor And His Identity Crisis." His work was published in Modern Age, Universitas, Political Science Reviewer, the Wall Street Journal, and elsewhere. He won two "Excellence In Teaching" awards at East Carolina University. And every paragraph of John East's writing and teaching was permeated with his understanding of the transcendent importance of the Judeo-Christian tradition to American institutions.

Amid this flurry of teaching and scholarly research, John and Sis East raised two daughters, Kathryn and Martha. It says something special about this family that both eventually pursued careers as physical therapists for the physically handicapped.

The funeral was held at Jarvis Memorial United Methodist Church, a beautiful church in the city's small downtown area. Suffering the loss of my friend, I went two hours early to sit and to pray.

*The funeral attracted leaders from both political parties and from throughout the conservative movement. Barbara Bush represented her husband, the Vice President. Senate Majority Leader Bob Dole and his wife, Transportation Secretary Elizabeth Dole, led a Washington delegation which included Republican Senators Strom Thurmond, Richard Lugar, Dan Quayle, and Alan Simpson, along with Democrat Senator Howell Heflin. They were joined by T. Kenneth Cribb, representing the Attorney General, and John Bolton, the Assistant Attorney General in the Office of Legislative Affairs. The wives of a number of other Members of the Senate also attended, along with North Carolina Congressmen James Broyhill, Alex McMillan, Billy Hendon, and Howard Coble. Governor James Martin was there, and scattered throughout the church packed with some 800 people were friends from the leadership of the conservative movement. These included Jerry Falwell (Liberty Federation), Richard Viguerie, Ron Godwin (*Insight *magazine), Howard Phillips (Conservative Caucus), and Mildred Webber (Heritage Foundation).*

Pastor Malloy Owen conducted a short and dignified memorial service, beginning with Psalm 121: "I lift up my eyes toward the mountains; whence shall help come to me? My help is from the Lord, who made heaven and earth . . . ." The congregation joined in recital of the Apostle's Creed and singing of "Onward Christian Soldiers." Pastor Owen closed his short eulogy with a powerful rendering of the Prayer of St. Francis of Assisi, asking us: "Who will take up the torch of this brave man?"

It was John East's power as a debater and thinker which had inevitably drawn him to direct political involvement. A Republican in an era when no one but Democrats secured elections in North Carolina, East tried for the U.S. House of Representatives in 1966. Suffering defeat, he ran unsuccessfully for Secretary of State in 1968. But he emerged as a leader in the resurgent Republican Party of North Carolina. John served as a national committeeman in the late 1960's, and as a delegate in 1968 and 1976 to the National Conventions of the Republican Party. At the 1976 Convention he helped craft the conservative G.O.P. platform on which underdog President Gerald Ford nearly recovered from the Watergate scandal before losing narrowly to Georgia Governor Jimmy Carter.

East had by now become a key ally of conservative Senator Jesse Helms, who asked him in 1980 to challenge the moderately liberal Democrat incumbent Senator Robert Morgan. After securing the nomination, Dr. East insisted on an issues-oriented campaign against Morgan, criticizing the incumbent's support for the surrender of the American Canal at Panama, aid to Marxist insurgents in Nicaragua and the federal bailout of New York City. John East also attacked Morgan's opposition to a strong national defense, including the Democrat's leadership in killing the B-1 bomber. In one of the most dramatic results of the pivotal 1980 election, East defeated Morgan by just 7,004 votes. Gracious in victory, he called Morgan "a great friend" of East Carolina University, and "a great public servant."

In the Nation's capital, John East was suddenly part of the Republican majority, unexpectedly in control of the United States Senate. Senator Strom Thurmond (R.-South Carolina), the new Chairman of the Judiciary Committee, asked East to serve as Chairman of the Subcommittee on Separation of Powers, which he did for the next four years, moving on to serve as Chairman of the Subcommittee on Courts.

Lost now in the mists of cliché is the name of the journalistic wag who acidly designated East a "Helms on Wheels" in an effort to dismiss the junior Senator's personal contributions to the conservative renaissance occurring in the nation's capital. Jesse Helms responded to the nickname by saying, "I think that's an insult to him. He's smarter than I am. I appreciate the compliment." John East, whom Paul Weyrich once called the only authentic conservative intellectual in the U.S. Senate, only laughed.

Eventually, East earned what Betty Cuniberti of the Los Angeles Times called "the unofficial title of philosopher of the . . . New Right, a spokesman increasingly called upon for the conservative point of view . . . ." Cuniberti described East in action: "With the self-bestowed carte blanche to rally long-dead philosophers to his side, East can be intimidating if somewhat esoteric. It's often not a fair game. He's sent too many players on the field. He knows that few Senators or witnesses at hearings dare to match wits with him."

East quickly made his mark in the Senate. To the dismay of the Liberal Establishment in the nation's capital, he sponsored the Human Life bill of 1981-1982. The hearings on that legislation were outstanding for the clear trust of the evidence East presented: That unborn children are human beings from the moment of conception.

In the Judiciary Committee, Senator East was a defender of the conservative "strict constructionist" judicial nominees of the Reagan Administration. When liberals on the Committee succeeded in scuttling the nomination of Assistant Attorney General William Bradford Reynolds to move up to the Number Three position in the Department of Justice, East aptly condemned what he called "cannibalism Washington style."

John East continued his scholarly activity while in the Senate. In 1981, he produced "The Case For Withdrawal Of Jurisdiction," an examination of the meaning of Article III, Section 2, of the Constitution which was published in "A Blueprint For Judicial Reform," the book which sparked the modern judicial-reform movement. A few months later, East appeared at the 1982 Conference on Judicial Reform sponsored by the Free Congress Foundation.

Committed to a strong national defense, Senator East was also a supporter of American strength in this hemisphere, frequently criticizing House Democrats for stalling on military assistance to the Freedom Fighters in Nicaragua. One of his most courageous moments in the Senate came in 1982, when he joined Senator Helms in a week-long filibuster against a 25-year extension of the Voting Rights Act, an extension which actually heightened coercive federal powers over the electoral process. He also opposed efforts to increase gasoline and some excise taxes. John East was a conservative's conservative, aggressively defending the vision that the Founding Fathers of the American Republic had held—a vision sometimes betrayed even in a Senate controlled by his fellow Republicans

As just one example, in 1985-1986, Senator East opposed the Inter-Circuit Panel supported by Chief Justice Warren Burger and a majority of the Judiciary Committee's Republicans. The original legislation would have created a new federal court with unlimited jurisdiction. Members of the Panel would have been picked by the present membership of the Supreme Court, assuring a liberal orientation to what would have been, in essence, a national court of appeals. Senator East prevailed on a key amendment designed to limit the new court's jurisdiction solely to conflicts between circuits rather than give it the unlimited jurisdiction envisioned by the Chief Justice and his supporters. Then Senator Dennis DeConcini (D.-Arizona) pushed through an East-influenced amendment removing selection of the Inter-Circuit Panel from the Supreme Court and giving it, instead, directly to the membership of the various circuit courts. Passage of these two amendments lessened the Chief Justice's enthusiasm for the constitutionally suspect proposal. John East's actions on this legislation were the crucial step in forestalling passage of an unwise expansion of judicial power.

Despite this success, 1985 was not a good year for John East. In February he underwent surgery to remove a benign obstruction of his urinary tract. As he was recovering from this setback, he complained of insomnia and fatigue. Tests at Bethesda Naval Hospital in April 1985 revealed East had hypothyroidism, a potentially debilitating illness in which the thyroid is disrupted, affecting the body's metabolism and energy levels. After struggling all summer to overcome the disabilities associated with this, John announced in mid-September that he would not seek reelection in 1986. A month later, he was back in the hospital for tests resulting from discovery of a dangerously low white blood cell count.

Senator East would not reveal publicly his plans beyond November 1986. However, he had been asked by Chancellor John Howell to resume his post on the political-science faculty at East Carolina University. In the meantime, as his strength returned in the spring of 1986, he worked feverishly to complete the editing of a book of his essays on conservative political thought. And John East returned to his Senate duties, pressing for confirmation of the Reagan Administration's increasingly embattled judicial nominees.

Several of the Senator's admirers pushed for his elevation to the U.S. Court of Appeals for the District of Columbia Circuit, either to replace retiring liberal Judge Skelly Wright or, after mid-June, to replace Supreme Court nominee Antonin Scalia. But in a development his friends did not recognize at the time as ominous, in late June, Senator East asked that his name be removed from consideration for the post. Deeply depressed, he did not now feel himself worthy of the federal bench.

Hypothyroidism can cause a hormone deficiency leading to anemia, fatigue, insomnia, intellectual impairment, weight loss . . . and depression. "The Textbook Of Medicine" also indicates it has been known to cause "hallucinations, disorientation, paranoia and attempted suicide." However, John East had regulary received medication designed to counter the problems of this illness.

On Friday, June 27th, John East completed work on the book galleys of his collected essays. He met with Supreme Court nominee Antonin Scalia. Then, commitments met, Senator East drove to Greenville with his aide, John Petree, arriving home about noon on Saturday. Sis was on vacation with her mother for the weekend, but Petree stayed with East until daughter Kathryn arrived for a visit. Kathryn left her father "in good spirits" about midnight that night. Petree returned to East's house on Sunday morning, June 29th. He found the front door ajar. The Senator was dead in his garage, an apparent suicide, a victim of carbon-monoxide poisoning.

The death of John East was a terrible shock to millions of us. President Ronald Reagan declared him a "true patriot" who was "never flamboyant or interested in personal acclaim. . . . He was a quiet and effective legislator, who never wavered in his determination to keep our country strong. He cared about the people of North Carolina in a special way and was immensely proud of being chosen to represent them in Washington. Even in the face of adversity, John East put his duty and his constituents ahead of his colleagues on both sides of the aisle."

Jesse Helms, who had the sad duty of carrying the tragic news to Sis East, was all but desolate. He said, "The Senate has lost a brilliant and effective voice for freedom, and those of us who were privileged to know him and serve with him have lost a dear friend and a constant source of inspiration." Senator Jeremiah Denton (R.-Alabama), who is an authentic expert on the subject, said: "No man I know of lived with more years of courage and achievement against great odds."

Senator East's term in office was marked by many enduring contributions to the nation and to the conservative movement. He steadfastly promoted the right to life for unborn children, and was an articulate defender of the Constitution's central concepts of federalism and separation of powers. John East's gifts as a scholar and orator and warm human being made him one of a rare breed of statesman reminiscent of the Founding Fathers. The courage, fortitude, and sincerity that this great man brought to public life will be missed in the Senate, and always remembered by those of us he inspired.

Mr. SYMMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

☐ 1130

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, I am about to propound a unanimous-consent request on the veto message.

Mr. President, to accommodate those who are handling the continuing resolution, we will permit them to go to about 7 o'clock tonight and then we will have some debate on South Africa. We will come back tomorrow at 2:15 and conclude the debate on South Africa at 4 o'clock. This would permit, I am advised by the chairman of the Appropriations Committee, the Senate to do a lot of work today and to start very early in the morning, being on the CR at 8:30 until 2:15.

After the vote on South Africa, it would be the intention to complete action on the CR tomorrow evening.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now resume consideration of the continuing resolution, and at the hour of 7 p.m. this evening, the Senate lay aside the continuing resolution in order to consider the veto message to accompany the South Africa bill, and the time be divided in the following fashion: 1 hour under the control of the minority leader, or his designee; 1 hour and 15 minutes under the control of the majority leader, or his designee; 1 hour and 45 minutes under the control of Senator PRESSLER.

I further ask unanimous consent that the Senate resume the veto message at 2:15 p.m. on Thursday, October 2, and the time be divided in the following fashion: 45 minutes under the control of the minority leader, or his designee; 45 minutes under the control of the majority leader, or his designee; 15 minutes under the control of Senator PRESSLER.

☐ 1140

I also ask unanimous consent that at 4 p.m., the Senate vote without any intervening action, motion, or debate on the question "Shall the bill pass, the objection of the President to the contrary notwithstanding."

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, and I am sure I will not object, would the distinguished majority leader consider doing two things in order that the time that is being allotted to Senators for debate as it is clearly set forth in the request—that is for debate only and that no motions or other action on the South Africa veto message may be taken; and second, that at the end of the first 4 hours which are allotted for debate, it is made clear that the Senate goes back to the continuing resolution. That is tonight. Otherwise, at the end of those 4 hours, a Senator could get the floor and debate well into the night and talk into the night on this subject.

I respectfully suggest that the majority leader then provide that at the close of the 4 hours this evening or the yielding back of the time, there be no further debate on this subject matter today. Then, on tomorrow, as I indicated earlier, that in both instances during those times that are allotted to Senators for debate, it be made clear that the debate be debate only. Otherwise, it seems a Senator could use quite a bit of time to make a motion.

Mr. DOLE. Mr. President, I think those are good suggestions. I incorporate them into my request.

Mr. BYRD. Mr. President, I withdraw my reservation.

The PRESIDING OFFICER. Without objection, the unanimous-consent agreement is agreed to.

VOTE ON CLOTURE MOTION VITIATED

Mr. DOLE. Mr. President, I ask unanimous consent that the cloture vote scheduled for tomorrow on the veto message be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOLE. Mr. President, I thank my colleagues. I believe this will accommodate the Appropriations Committee chairman and the ranking member [Mr. STENNIS], Senator BURDICK, and others who have to grapple with this matter for the rest of the day.

Mr. KENNEDY. Mr. President, I express support for the agreement.

I wonder if the majority leader would just ask out of order that the yeas and nays be ordered.

Mr. DOLE. They are automatic.

The PRESIDING OFFICER. The yeas and nays are automatic under the Constitution.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business, with statements therein limited to 5 minutes.

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE

Mr. MATHIAS. Mr. President, at this time I submit the report of the committee appointed by the Senate under rule XI for the purposes of taking evidence in the matter of the impeachment of Harry Claiborne, and I herewith submit this report to the Senate. While I am waiting for the page to take it, I might advise all Members the report is here and in their idle hours in the next few days it will provide them with plenty of reading material.

The PRESIDING OFFICER. The report will be received.

Mr. MATHIAS. Mr. President, pursuant to Senate Resolution 481, adopted by the Senate on August 14, 1986, a committee was established to receive evidence and take testimony relating to the Articles of Impeachment against Judge Harry E. Claiborne, which the House of Representatives exhibited to the Senate on August 6, 1986. I was honored to be appointed to this committee by the Vice President, on the recommendation of the distinguished majority leader, and to be elected chairman by my colleagues on the committee. I also was pleased when my fellow Marylander, Senator PAUL SARBANES, was elected vice chairman. It was a privilege to serve with Senator SARBANES and 10 other of my distinguished colleagues in this historic proceeding: Senators HATCH, WARNER, RUDMAN, PRESSLER, MCCONNELL, HEFLIN, DECONCINI, PRYOR, GORE, and BINGAMAN.

The cooperation and diligent contributions of all its members allowed the committee to adhere to a strict schedule of meetings and hearings over 9 long days. The voluminous record produced by the committee reflects the extraordinary amount of work of its members, their designated staff representatives, and the committee staff.

Mr. President, the committee sailed in uncharted waters, and the active participation in this arduous work on the part of every committee member made it possible for us to fulfill our responsibility in an orderly and timely way. The work of this committee has a special value that will be recognized in the years ahead.

Now, Mr. President, in accordance with rule XI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, we "report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee."

Mr. President, I will conclude with three brief matters. The first pertains to the briefs that the House managers and the counsel for Judge Claiborne were directed to file at the conclusion of the committee's evidentiary hearings. Subsequent to that committee order, the Chairman of the House managers, Representative PETER W. RODINO, Jr., objected to the committee's order, by letter of September 26, 1986, to the Vice President. As a result, the Senate leadership responded to Chairman RODINO by letter of September 27, 1986, modifying the committee's briefing order to permit the parties to limit their briefs to the legal issues which are presented by the Articles of Impeachment. These briefs are to be filed no later than Wednesday, October 1, 1986. The consequence of this modification is reflected in the committee's report, which I have just filed. I have also received a telegram from Judge Claiborne's counsel, Oscar Goodman, expressing Mr. Goodman's objection to both Chairman RODINO's letter and the response of the Senate leadership. I ask unanimous consent that these two letters and the telegram be printed at this point in today's RECORD. In response to the suggestion of Judge Claiborne's counsel, I had a conference call yesterday with counsel for both parties. It is my hope that both sides will be filing briefs today which explore all issues that are germane to our deliberations next week.

I ask further that House Resolution 461, which contains the Articles of Impeachment against Harry E. Claiborne, together with Judge Claiborne's answers to the articles, and the reply of the House managers to Judge Claiborne's answers, be printed for the use of the Senate.

Finally, I would congratulate the success of the enormous efforts of the staff of the Government Printing Office in producing over the past weekend the printed report of the Senate Impeachment Trial Committee's evidentiary hearings for use by the Senate in the continuation of these proceedings.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,
Washington, DC, September 26, 1986.

Re: Impeachment of Harry E. Claiborne.

Hon. GEORGE BUSH,
President of the Senate,
U.S. Senate, Washington, DC.

DEAR MR. PRESIDENT: The Senate Impeachment Trial Committee has requested that the parties file with the Senate a post-trial brief arguing the law and summarizing the evidentiary record developed before the Committee. The parties have been asked to file this brief by Tuesday, September 30, 1986.

It is my understanding that the Senate may be considering seriously the receipt of additional evidence before the full Senate. At the outset, the House of Representatives respectfully submits that the Senate should not re-examine witnesses who already have testified before the Senate Impeachment Trial Committee. The spontaneity of testimony on cross-examination can not be recreated. Witnesses will anticipate the examination and more effectively temper their responses. If the Senate wishes to observe the demeanor of the witnesses, it may do so most realistically by examining the videotape of the proceedings. The House of Representatives notes that demeanor is but one element of credibility; the credibility of witnesses also must be judged by the logic and the consistency of their testimony and by the relationship of that testimony to the documentary evidence.

The potential acceptance of further testimony and evidence presents an additional problem. On behalf of the managers of the House of Representatives, I submit that it is not appropriate to file a post-trial brief until the record in fact is closed. To provide Judge Claiborne with the post-trial brief filed by the House of Representatives, which will provide a detailed analysis of the significance of the evidence presented, and then to permit Judge Claiborne or other witnesses to take the stand again would be fundamentally unfair. It is not simply the rights of Judge Claiborne that must be considered in this proceeding. Accordingly, the House of Representatives submits that it must postpone the filing of its post-trial brief until there is some indication from the Senate of its intentions with respect to the rehearing of testimony offered before the Committee or the taking of additional evidence.

The managers of the House of Representatives stand ready to file a post-trial brief as soon as this issue is clarified.

Sincerely,

PETER W. RODINO, Jr.

U.S. SENATE,
Washington, DC, September 27, 1986.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We have received and considered your letter of September 26, 1986, to the President of the Senate in which you state that the House wishes to postpone the filing of its post-trial brief with respect to the Articles of Impeachment it has exhibited against Judge Harry E. Claiborne. We will modify the briefing order to permit the parties to limit their briefs to the legal issues which are presented by the Articles of Impeachment. The parties are directed to file these briefs no later than Wednesday, October 1.

Sincerely,

STROM THURMOND,
President pro tempore,
ROBERT DOLE,
Majority Leader,
ROBERT C. BYRD,
Minority Leader.

[Telegram]

Re: Impeachment of Harry E. Claiborne.
Hon. CHARLES McC. MATHIAS, Jr.,
U.S. Senate,
Washington, DC.

DEAR MR. PRESIDENT: On behalf of the honorable Harry E. Claiborne I respectfully request that I be permitted an immediate opportunity to be heard by the Senate committee chaired by Senator Mathias, since it has full plenary power of the Senate within the narrow confines of Rule XI, in response to the demand of the Honorable Peter Rodino.

It is respectfully submitted that we have acted in good faith on Judge Claiborne's behalf in an attempt to comply with Chairman Mathias's order of September 24, 1986 and have exhausted our energies to satisfy his directives. To modify the same at this time would be disruptive and fundamentally unfair. We recognize the sense of expediency, but we pray that the matter be given careful attention in order to assure a fair presentation of the judge's case. I am available for conference call at your immediate convenience.

Respectively,

OSCAR B. GOODMAN,
Attorney for Judge Claiborne.

DRUG ABUSE

Mr. EAGLETON. Mr. President, I would like to draw my colleagues' attention to a recent opinion article written by the distinguished senior Senator from North Dakota, regarding the current urgency in Congress and across the Nation for action against drug abuse.

Senator BURDICK raises some thoughtful questions about balancing our need to address the drug problem with our duty to protect the personal freedoms and privacy of our people. Senator BURDICK sounds a note of caution well worth heeding. All of us involved in the fight against drug abuse, and all of us who cherish our civil liberties would do well to read his views.

Mr. President, I ask unanimous consent that Senator BURDICK's article be printed in the CONGRESSIONAL RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Grand Forks Herald, Sept. 23, 1986]

CIVIL RIGHTS AT RISK IN DRUG WAR

(By Quentin N. Burdick)

Congress and the country have been gripped in recent weeks with a renewed zeal in the war against drug abuse. It's a worthy cause. The nation's drug habit is slow poison, gradually crippling the lives of the estimated 20 million Americans who use drugs.

I agree that swift and aggressive action is needed. But in rushing to win this war, we must take care not to trample the personal freedoms of our people. As new proposals to stem the tide of drug use have multiplied, some serious threats to our most cherished civil liberties have crept in.

President Reagan recently announced a drug abuse initiative. Some of his ideas are good—improving international efforts against drug trafficking, and stepping up efforts to decrease the demand here at home. Some of his ideas are not so good—drug testing, for instance.

Drug testing is a clear invasion of privacy. Most alarmingly, the test are not reliable. The failure rate for common urinalysis is about 20 percent. Eating a poppy seed roll can result in positive test for opium, a perfectly legitimate drugstore painkiller can test out as marijuana.

Yet the President suggests that a million federal workers submit themselves to such tests. With that failure rate, his proposal would place some 20,000 federal employees in danger of being falsely accused. Even if an employee is later cleared by more detailed testing, the stigma of the accusation will linger. Lives, reputations and careers must not be allowed to rest on such flimsy ground.

The U.S. House has just approved new anti-drug legislation. Among its many provisions, this bill unfortunately would allow limited use of illegally seized evidence. It would permit law enforcement officers operating in "good faith" to enter a private home without a search warrant.

We all know the frustration of seeing a crook get away because of a loophole in the evidence laws. We don't want our police officers' hands tied. Yet the function of these laws is to protect the sanctity of our homes against unreasonable search and seizure. We must not set them aside lightly, even in a pursuit of the greater good.

No matter how urgent our desire to stop the use of illegal drugs, our first responsibility is to protect the innocent. Catching the criminals who use and abuse drugs while ruining the lives of innocent people is unacceptable.

Testing is not the answer to the drug problem; seizing evidence illegally is not the answer. Instead, we must cut off the supply at the source, and decrease the demand for drugs on the streets.

We must work with Bolivia, Columbia and other drug producing countries to wipe out drugs at the source. We must make drug trafficking more risky and less profitable. We must take dealers off the streets and playgrounds and put them into a stronger prison system. We must teach our children that drug-free is better than drug-dependent.

The legislation I've co-sponsored in the Senate allocates serious resources to these goals. Instead of spending millions of dollars on inaccurate, invasive drug tests, the Senate bill directs the funding to the root of the problem. It would strengthen five critical areas: interdiction to plug up the drug supply; enforcement to take criminals off the street; penalties to discourage drug-related crime; rehabilitation for those who want to stop using drugs; and education to teach everyone about the dangers of drugs.

The legislation attacks the drug problems without violating personal freedoms. We don't need to invade the privacy of a million federal workers or ransack homes looking for evidence. The drug problems can be conquered if we concentrate our efforts where they belong; interdiction, enforcement, and education.

S. 2900—PROVIDING A TEMPORARY EXTENSION OF THE INTERSTATE TRANSFER DEADLINE FOR THE H-3 HIGHWAY

Mr. INOUYE. Mr. President, my colleague, Mr. MATSUNAGA, and I have introduced a measure which extends the time for withdrawal of a route from the Federal Highway Act. I ask unanimous consent that the bill be left at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

GREAT BASIN NATIONAL PARK ACT—S. 2506

Mr. HATCH. As the distinguished Senator from Idaho knows, I have been very concerned with aspects of this legislation pertaining to grazing within the proposed national park.

It is my understanding that the bill allows for continued grazing within the park boundaries of the Great Basin National Park. Is this understanding correct?

Mr. McCLURE. Yes, the distinguished Senator from Utah is correct in his understanding.

Mr. HATCH. I thank the distinguished Senator from Idaho. Might I inquire as to whether grazing is to be left to the discretion of the Park Service, or of the Secretary of the Interior?

Mr. McCLURE. Certainly. In order to answer the distinguished Senator from Utah's question, perhaps I should relate the committee report language approved with this bill which indicated it is the committees intent that the Secretary of the Interior shall permit grazing on lands within the park and does not expect that any action restricting a grazing will occur unless it is in the furtherance of sound rangeland management.

Mr. HATCH. I thank the distinguished Senator from Idaho for his explanation.

I raise this point, simply because as a Senator from a state with five national parks, I have become well acquainted with conflicts which can sometimes occur between Federal land managers and ranchers, and believe it is important that the committees intent be clearly recognized.

I have been particularly concerned with the impact that any digression for the Senate language would have on several ranchers with grazing permits located in the parks proposed boundaries, and particularly the impact it may be on the ranching operation of Mr. Owen Gondor from Garrison, UT.

Mr. Gondor is a fifth generation rancher in this area. His great grandfather was one of the first four settlers to settle this valley and homesteaded his ranch in the 1880's. Though Garrison has been settled for sometime, it is a remote area which only received telephone service this summer. If the Senate language is not adopted, Mr. Gondor's operation will become inoperable, as he will lose the ability to grace his cattle on summer range, and as the Forest Service and BLM have indicated, there are no replacement lands available.

I point this out to my colleague not because he is unfamiliar with this situation, but to state the situation in such a way that it will be clearly recognized and understood by conferees on the bill. Any move to curtail grazing in this park will in fact put at least one individual out of the livestock business his family founded over 100 years ago.

Mr. McCLURE. I appreciate and share the concern that the Senator from Utah has related and assure you that it is the intent of the bills sponsors and of the Senate Energy Committee that grazing be allowed to continue in the park under the direction of the Park Service. Grazing will however, be administered in a manner consistent with Forest Service regulations, because of that agency's expertise in grazing management. That intent was clearly expressed in the committee report.

Mr. HATCH. I again thank the distinguished Senator from Idaho, as well as the bill's sponsors, Senators Hecht and Laxalt. I appreciate your interest, as well as theirs in preserving the ability of these ranchers to peacefully coexist with this park and thank you for your attention to this matter.

TAX REFORM ACT OF 1986

Mr. PACKWOOD. Mr. President, on the day the tax bill was passed, Septemer 27, 1986, I entered into the Record a number of colloquies clarifying various provisions of the bill. In one instance, Senator Chafee and I discussed the tax treatment of Blue Cross and Blue Shield. Unfortunately, there is a typographical error contained in the official Record which might lead to confusion over the intent of the legislation. To set the record straight, I ask unanimous consent that a corrected version of the colloquy between Senator Chafee and me be entered into the Record at the conclusion of my remarks. Specifically, the change involves correcting the word "consent" to "constant" in one of my responses to Senator Chafee. The sentence should read: "The committee is fully aware of the dynamic nature of the health benefits industry and recognizes that constant changes in products and benefits are the order of the day."

The PRESIDING OFFICER. Without objection, it is so ordered.

BLUE CROSS AND BLUE SHIELD

Mr. CHAFEE. I understand that Blue Cross and Blue Shield organizations no longer will be tax exempt as social welfare organizations after December 31, 1986.

Mr. PACKWOOD. That is correct, but those organizations will be allowed a special deduction in recognition of their community service activities. The deduction is equal to the excess of 25 percent of the organization's claims and administrative expense for the taxable year over the organization's prior year's surplus.

Mr. CHAFEE. I would appreciate the chairman's clarifying some aspects of that important provision. The bill limits the use of the deduction to existing Blue Cross and Blue Shield organizations which do not materially change their operations after the date of the conference agreement. Does this mean that any change in the organization's operations after that date will cause it to lose the deduction?

Mr. PACKWOOD. Certainly not. The purpose of the limitation is to deny the deduction to the organization only if it makes a change in its operations which is so material that the change has the effect of eliminating coverage for a high risk segment of its business. An example of such a material change would be elimination of coverage for individuals.

Mr. CHAFEE. Would offering a new product, such as a special plan for nonsmoking individuals, or changes in benefits offered to high risk segments of business, constitute a material change?

Mr. PACKWOOD. Not at all. The committee is fully aware of the dynamic nature of the health benefits industry and recognizes that constant changes in products and benefits are the order of the day. We cannot expect the Blue Cross and Blue Shield organizations to freeze their operations and not adapt to their changing environment.

Mr. CHAFEE. Would an increase in the organization's existing premium rate structure to cover anticipated costs of coverage of individual or small group subscribers be a material change in operations?

Mr. PACKWOOD. Not at all. The organizations are not required to lose money on their high risk business.

Mr. CHAFEE. I also have a technical question concerning the calculation of the surplus for purposes of determining the amount of the special deduction. I notice there is a provision concerning weakening of loss reserves after the date of the conferees' action. How does that work?

Mr. PACKWOOD. The conferees wanted to make clear that the organizations' 1986 loss reserves would not be changed artificially to reduce taxable income in 1987. We intend that the incurred-but-not-paid claims reserve at the end of 1986 will be the claims incurred in 1986 and actually paid in 1987. That amount will be used for purposes of both determining both the surplus at December 31, 1986, and the opening loss revenue at January 1, 1987. Use of actual experience to determine those amounts will eliminate potential controversy over the proper amount of the surpluses and reserves for 1987 tax purposes.

Mr. CHAFEE. Thank you, Mr. Chairman. Your clarifications will make it much easier for the Blue Cross and Blue Shield organizations to determine their Federal income tax liability in 1987. We will be monitoring the organizations' experience with the new provisions to determine if revisions are necessary.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

The PRESIDING OFFICER. The clerk will state the pending business.

The legislative clerk read as follows:

> A joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes.

The Senate resumed consideration of the joint resolution.

Mr. HATFIELD. Mr. President, I want again to state the proposition that the committee hopes to press through to completion of the CR by the hour of 7 o'clock tonight. Should we fail in that particular objective, let me assure the Senate that when we reconvene tomorrow morning, on Thursday, we shall begin the CR at an early hour and then continue to work on the CR throughout the day until the unanimous-consent agreement takes place on the veto message on South African sanctions.

Following that vote, if we have not completed the CR by that time, we will press on throughout the remaining period necessary to complete the CR. If that means late at night or if it means all night and all the next day, whatever time is required, we are going to complete the CR, I assure my colleagues, before we are interdicted again with worthy and important issues. It has been very difficult to sustain any effort on the CR when we have had to set it aside for Philippine aid, for drugs, for veto messages, for all the other issues. I do feel that it is important for people to be on notice that we are going to complete this CR, hopefully in the daylight hours.

Mr. President, again let me say that we will resist amendments to the CR. The Senator from Oklahoma is the first out of the box here today on an independent amendment. He already has been alerted to the fact that—not addressing the merits of his amendment but addressing the basic policy of the committee to keep a clean CR—at an appropriate time, we shall probably move to table his very meritorious amendment. But I do want him to understand that this is on the basis of the position of the committee and not derived out of judgment of his amendment or the assessment of his amendment.

Mr. President, I also urge other Members of the Senate to be on deck to have their amendments expeditiously considered before we attempt to dispose of them in one fashion or another. I believe the Senator from Illinois is ready to move on an amendment—in fact, I think he has two amendments—following the disposition of the amendment to be offered by the Senator from Oklahoma.

Mr. BOREN. Mr. President, I thank the distinguished leader.

AMENDMENT NO. 3100

(Purpose: to provide payments to certain cattle producers, interest rate relief on agricultural loans, and drought assistance to farmers and ranchers in the U.S., and for other purposes)

Mr. BOREN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. Boren] for himself and Mr. Bumpers, Mr. Levin, Mr. Pryor, and Mr. Heflin, proposes an amendment numbered 3100.

Mr. BOREN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed later in today's Record under Amendments Submitted.)

Mr. BOREN. I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 3101

(Purpose: to provide payments to certain cattle producers, interest rate relief on agricultural loans, and drought assistance to farmers and ranchers in the United States and for other purposes)

Mr. BOREN. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. Boren] for himself and Mr. Bumpers, Mr. Levin, Mr. Pryor, and Mr. Heflin, proposes an amendment numbered 3101 to amendment numbered 3100.

Mr. BOREN. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed later in today's Record under Amendments Submitted.)

Mr. BOREN. Mr. President, I have sent this amendment to the desk on behalf of myself, Senator Bumpers, Senator Levin, Senator Pryor, and Senator Heflin.

This amendment is a combination of several bills and amendments on which many of us in this Chamber have been diligently working. For some time, now, we have been attempting to gain the adoption of legislation which would improve the situation presently confronting our farmers.

Mr. President, it has been a long time since we discussed the farm crisis on the floor of the U.S. Senate. Some may be under the impression that the crisis has lessened and the situation is now improving. The reality, regretfully, is just the opposite if one looks at all the indicators.

Between 1981 and February 1, 1986, Oklahoma farmland values declined by 31 percent. For the same period, U.S. farmland values declined 29 percent. The national average value of farmland fell from $823 to $679 per acre between April 1, 1982, and April 1, 1985. By 1986, the average value had dropped to $596. This represents a 27.6-percent overall decline since 1982 and a 12.2 percent decline between 1985 and 1986—that 1-year period.

The value of farmland in Oklahoma fell from $566 per acre to $481 per acre between April 1, 1985 and February 1, 1986, representing a 15-percent decline. By the end of 1986, cumulative farm sector equity losses since 1981 are expected to exceed $250 billion, more than a fourth of peak values.

In 1985, farm income fell approximately 20 percent from the record $34.5 billion in 1984 and is expected to fall further in 1986. Net farm income is expected to decline by about 8 percent in 1986, following on those disastrous declines of the prior years, bringing the 1981–86 decline, in inflation-adjusted dollars, to about 33 percent—a 33-percent decline in actual net farm incomes from levels that were already depressed. After adjusting for inflation, net farm income in 1985 was in the $11 billion to $13 billion range. Farmers' gross farm income fell by 4.5 percent in 1985 to $166.6 billion.

While production expenses fell by 4 percent in 1985, the prices farmers received for products declined by approximately 10 percent. And so, Mr. President, the condition of farmers continues to get worse.

U.S. exports in fiscal year 1985 declined in value by 18 percent. Export volume for the same year had fallen by 12 percent and was at its lowest level since fiscal year 1977.

Wheat exports dropped 33 percent in value in fiscal year 1985 and 32 percent in volume. The value of soybean exports dropped 32 percent in fiscal year 1985 and volume dropped 14 percent. The volume of cotton and linters exports was down 13 percent in fiscal year 1985 and the value was off 18 percent. Livestock and livestock product exports dropped 4 percent in value in fiscal year 1985.

The U.S. agricultural trade balance was $11.42 billion in fiscal year 1985, down 40 percent from 1984's $19.12 billion. The 18-percent decrease in exports, coupled with a 4-percent increase in imports, slashed the agricultural trade surplus to its lowest level since fiscal year 1977.

The export situation remains bleak for fiscal year 1986 as well. Exports are forecast to decline by 12 percent in value from the fiscal year 1985 level. The estimate for this year would result in a drop of 37 percent from fiscal year 1981. Export volume for fiscal year 1986 is estimated at 115.5 million tons, 8 percent below fiscal year 1985 and 29 percent below fiscal year 1981.

U.S. agricultural imports for fiscal year 1986 are estimated at $20 billion, 29 percent higher than in fiscal year 1982. And so, Mr. President, the agricultural trade situation is deteriorating very, very rapidly.

U.S. agricultural trade surplus for fiscal year 1986 is estimated at $7.5 billion, 72 percent lower than in fiscal year 1981. This is the lowest agricultural trade surplus in the past 13 years.

At $3.6 billion, the fiscal year 1986 forecast for U.S. wheat and flour exports remains $800 million below fiscal year 1985. Fiscal year 1986 U.S. coarse grain exports are currently forecast at $4.6 billion and 42.2 million tons, the lowest level of coarse grain export volume and value since fiscal year 1975. Fiscal year 1986 cotton exports are estimated at $700 million and 500,000 tons in volume, down $1.3 billion and 800,000 tons from fiscal year 1985.

This has all had a tremendous impact on the financial condition of farmers and ranchers. In fact, in 1985, there were 118,000 fewer farms than in 1984.

Mr. President, we are not talking about statistics on a page, as I cite these figures—18,000 farms that are no longer there. We are talking about a tremendous tragedy and the disruption of lives, of people who have worked hard from sunup to sunset every day, who have worked along side other family members, many of them second, third, and fourth generation of the same family who own these farms who have now lost them, many of them in middle-age or older, not having other skills and training and background, not knowing how in the world they are going to put back together their shattered lives. And so while we are talking about statistics, we are talking also about human tragedy and we must not lose sight of what is going on.

In 1985, 66.4 percent of farm debt was held by operators with debt-to-asset ratios over 40 percent; 16.1 percent was held by operators with debt-to-asset ratios over 100—obviously insolvent. Most 1985 farm debt was held by commercial farms, those having $40,000 or more in sales. Commercial farms accounted for 84.5 percent of the total farm debt. Commercial, family farming operations having sales between $40,000 and $499,999 held 65.9 percent of total farm debt in 1985.

Excluding the Farmers Home Administration, the total nonperforming and/or delinquent loans held by the three non-Federal lenders was $15.1 billion, or 13.9 percent of their outstanding debt, an 8.6-percent increase from 1984. In 1985, nonperforming and/or delinquent farm debt held by the Farm Credit System increased by 59 percent over 1984. According to the Federal Reserve Board, during 1985, the Farm Credit System and commercial banks had net chargeoffs of over $2.2 billion in farm loans as uncollectible, an increase of 75.5 percent over 1984.

Mr. President, I am sorry to say that the alarming predictions made on the floor of this Senate beginning 2 years ago are now, in fact, coming true. I think all of us hoped that we were exaggerating the nature of the crisis, that perhaps something would steer us away from what is happening all across the Farm Belt of this country, but it is occurring. We have not been steered aside. The ship has run aground, and it is rapidly taking on water.

As of December 1, 1985, the Farm Credit System and commercial banks had nonaccrual loans totaling almost $7.1 billion, a 111-percent increase over 1984. Federal land banks, alone, had a 261-percent increase in nonaccrual loans.

In 1985, farm loans foreclosed by life insurance companies increased by 110.5 percent. There were 1,000 foreclosures in 1985, compared to 475 in 1984. Additionally, there were 1,195 loans in the process of foreclosure in 1984 and 1,743 in the process of foreclosure in 1985.

According to testimony heard recently in the Senate Agriculture Committee, the Farm Credit System has 10,000 loans in the process of foreclosure right now.

Just a few days ago, I visited the Oklahoma State Fair and I visited the livestock area of that fair. I talked to farmer after farmer, to wives and children of these families. People have tremendous pride in what they are doing and what they are producing, the excellence of their products, and I would guess that a fourth of all of these with whom I shook hands told me that they were either awaiting a foreclosure notice or had received one or that some legal process was underway.

In 1985, the Farm Credit System had a $2.7 billion net loss in 1985. Property acquired by the Federal land banks and production credit associations during 1985 increased about 125 percent from $532 million in 1984 to $1,196 million in 1985.

Overall, as of the end of 1985, almost 70 percent of the outstanding balance on Farmers Home Administration farmer program loans were delinquent. Of the amount outstanding, almost 67 percent was at least 3 years past due and 85.4 percent of that is more than a year overdue.

According to the FDIC, agricultural banks comprised 25.9 percent of all commercial banks in 1985, but they accounted for 52.5 percent of all bank failures. In 1985, there were 437 agricultural banks on the FDIC problem bank list.

Fifty-two of the sixty-two agricultural banks that failed in 1985 were located in a six-State area including Nebraska, Iowa, Kansas, Oklahoma, Minnesota, and Missouri. In 1982 there were only 7 agricultural banks that failed; in 1983 there were only 7; and in 1984, there were only 25.

Net loan losses have nearly tripled at agricultural banks since 1983; 24 percent of farm banks showed unusually high loan losses, in excess of 2 percent of loans in 1985.

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Under a low-to-medium loss scenario, about 70 agricultural bank failures could be expected in 1986 and 60 in 1987. Under a high loan loss scenario, it is estimated that about 150 farm banks would fail in each of the next 2 years.

Not only have agricultural banks been affected by the condition of the agricultural economy, agricultural businesses have also been hit hard. Since 1979, U.S. farm tractor sales have fallen more than 50 percent. Between 1981 and 1985, 2,287 farm equipment dealers went out of business. Over the past 5 years, there has been a 45.1-percent decrease in employment in farm machinery and equipment. This amounts to a loss of 66,500 jobs. In 1980, employment totaled 147,400; in 1985, employment totaled 80,900.

In 1985, 35.6 percent more agricultural businesses failed than in 1984. According to Dun & Bradstreet, over 2,600 agricultural businesses failed in 1985. The total value of liabilities held by the businesses that failed in 1985 was over $1 billion—a 21-percent increase over the value of liabilities held by 1984 failed agricultural businesses—$843.3 million. For all businesses, it was reported that business failures in 1985 increased 9.6 percent over 1984 failures. Of this total, agricultural business failures accounted for 4.7 percent in 1985; an increase from the 3.8 percent of all business failures in 1984.

The crisis in the agricultural economy has not subsided as these statistics certainly indicate. It is for this reason that I believe it imperative that we consider legislation which would provide some relief to our Nation's ranchers and farmers and related businesses before it is too late, before we inflict untold harm on the rest of our economy. By doing this, we can help the entire agricultural economy, and we can accomplish this while we are saving money.

Mr. President, I want to go into more detail now about the amendment I am offering to address this agricultural problem, and explain that it will not only address the agricultural problem but also will have a net saving to the budget of this country and will help reduce the overall budget deficit as well.

For some time, we have been attempting to gain adoption of legislation which would improve the situation. We have been unable to adopt many of the provisions because of budgetary constraints. The amendment pending at the desk will allow us to adopt meaningful farm legislation and at the same time reduce expenditures by the Federal Government and reduce budget deficits.

According to preliminary estimates by CBO, this amendment will reduce outlays in fiscal year 1987 by almost $4.7 billion. We can save the Federal Government money and at the same time provide for much needed relief to American farmers.

There is no question, Mr. President, that this is a broad amendment. However, all the major provisions in this amendment have been considered by most parties involved in agricultural legislation. There is nothing very new in this amendment.

First, Mr. President, this amendment includes the provisions of S. 2884, the Cattle Restitution Act of 1986 introduced earlier by Senators MELCHER, BAUCUS, HEFLIN, ABDNOR, PRYOR, and myself. This provision will require the Secretary of Agriculture to pay restitution to certain cattle producers for losses incurred in connection with the sale of cattle during the period in which excessive dairy cattle were slaughtered under the Dairy Termination Program, the so-called Whole Herd Buy Out Program. While it is true that the Senate Agriculture Committee has not held hearings on this legislation, the House Agriculture Committee recently did hold hearings.

The Food Security Act of 1985 authorized a program whereby milk producers would discontinue their dairy operations in exchange for payments.

When this proposal was first considered, there was concern about the possible impact the whole herd buy out could have on the cattle market. At the time the program was included in the farm bill, we adopted provisions designed to assure that any adverse effect on the cattle industry would be negligible. First, the act required the Secretary to provide for the orderly and timely flow of cattle which were marketed as a result of the dairy program. Further, the act required the Secretary to purchase 400 million pounds of red meat in addition to those quantities normally purchased and distributed by the Department.

Properly administered, the dairy program could have reduced the production of milk without affecting red meat market prices at the same time.

However, the USDA required two-thirds of the scheduled dairy slaughterings to occur in the first period of the program, instead of spacing them out over the entire life of the program. In fact, in my home State of Oklahoma, 74 percent of the scheduled dairy slaughterings were to occur during the first buy out period.

Not only did the Department of Agriculture fail to carry out the intent of the orderly marketing provisions by front loading cattle, they also failed to implement the red meat purchase plan on a timely basis. Even though, by the Department's own estimates, over 44,000 dairy cattle had been exported and 96,000 slaughtered prior to the program announcement, they did not begin red meat purchases until the week of April 15. At that time, the Department only purchased 5.8 million pounds of red meat, which was approximately equal to less than 6 percent of the dairy cattle slaughtered as of that date.

The effect on beef markets was immediate and disastrous. Market prices dropped by as much as $10 per hundredweight.

For States like Oklahoma which have a substantial cattle feeding industry and a spring wheat cattle marketing program, the decline in prices could not have come at a worse time. The market price fell at exactly the same time that Oklahoma beef producers normally market their cattle. For many producers in Oklahoma and other States with similar marketing patterns, the lower prices represented a reduction in their gross sales of 20 to 25 percent. Here are farmers and ranchers struggling to stay afloat, and our own Government, through the mismanagement of a program, cut revenues to hard-strapped ranchers by 25 percent.

Mr. President, cattle market prices have begun to stabilize following the Department of Agriculture's gross mismanagement of the Whole Herd Buy Out Program this spring, but unfortunately, the damage has already been done to the Nation's farmers and ranchers.

The Nation's cattle producers had to face huge losses due to the gross mismanagement which could easily have been avoided if the Department had followed the intent of Congress. Simply put, Government negligence imposed great hardships on our Nation's ranchers.

Because the Department of Agriculture truly ignored the intent of Congress and completely mismanaged the whole heard buy out, I believe we have an obligation to provide compensation to the cattle producers for the damage directly inflicted upon them by their own Government.

Mr. President, this provision will provide restitution to cattle producers who suffered losses due to the Department's mishandling of the dairy program. It will provide cattle producers who marketed cattle between March 28 and June 30 with a direct payment. The payment would be $6 per hundredweight, based on the live weight of the cattle at the time of the sale. The Secretary would have the discretion of making this payment in cash or with commodities held by the Commodity Credit Corporation.

Regretfully, this provision will not be enacted in time for many Oklahoma cattlemen who suffered severe losses as a result of this program and were forced out of business this year. Perhaps, though, some producers will be able to remain in business if Congress adopts this proposal.

Earlier this year, we appropriated money to provide for the indemnification of dairy producers who were affected by the contamination of milk supplies with heptachlor in Oklahoma, Arkansas, and Missouri. As many will recall, the problem was discovered in mid-March and dairymen as well as livestock producers were caught in a devastating situation through no fault of their own. We have taken care of the dairymen affected by the heptachlor incident, but we have failed to indemnify cattle producers who were affected. Consequently, I have included in this amendment a provision which would require the Secretary of Agriculture to provide indemnity payments to cattle producers affected by this situation. The payments could be made in cash or with commodities held by the Commodity Credit Corporation. The amount of payments would be established at an equitable rate determined by the Secretary.

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This amendment also includes the so-called wheat deficiency payment amendment which was included in the debt limit bill by the Senate. This provision modifies the basis for determination of a portion of wheat deficiency payments for the 1986 wheat crop.

This provision will not cost the taxpayers 1 cent. According to CBO estimates received yesterday afternoon, there is no cost associated with the provision.

The Food Security Act of 1985 included a provision which requires a portion of the deficiency payment to be determined on the basis of the reduced loan rate or the average price received by farmers during the marketing year. In the past, the entire deficiency was based on the loan rate or the average price during the first 5 months of the marketing year. Under previous law, producers could get their entire deficiency payment 5 months after the beginning of the marketing year. For wheat, that meant producers received their deficiency payments in November. Under the farm bill enacted in December, producers can get a portion of their deficiency payments in November but must wait until June or July of the next year to receive the balance.

I think this was an unintended effect, for the 1985 farm bill provides for two deficiency payments, in essence. The regular deficiency payment is based on the difference between the target price and the statutory loan rate or the average market price during the first 5 months of the marketing year, whichever is higher. The Secretary has the authority under the law to reduce the loan rate by up to 20 percent. If the Secretary uses this authority, which he has for the 1986 wheat crop, the producer is then entitled to another deficiency payment. This payment is based on the difference between the statutory loan rate and the new loan rate or the average market price during the entire marketing year.

The 1986 program for wheat provides for a target price of $4.38 per bushel. The statutory loan rate is $3, providing for a maximum deficiency payment of $1.38. The Secretary did use his authority to drop the loan rate to $2.40 thereby providing for a second deficiency payment with a maximum rate of 60 cents. It is this deficiency payment which is determined by using the market price for the entire marketing year. As the law stands now, farmers must wait until June or July of 1987 to receive this second payment on a crop that is harvested, in Oklahoma, for example, in May 1986. And let me mention for wheat harvested in May of 1986, a farmer will not be able to get the second part of the deficiency payment until June or July of 1987, and this is the situation for farmers who are already so hard pressed for cash and for cash-flow. For wheat, the marketing year ends in May the year after the crop is harvested. When this provision was included, obviously little thought was given as to the effect this would have on producer's income and their ability to pay their operating loans or their ability to cash-flow.

As I mentioned, Mr. President, this proposal has already been adopted on the floor of the Senate when we took up the debt limit provision earlier.

American farmers are having a very difficult time generating enough cash to meet their current expenses right now. If they cannot get all of their deficiency payment until the summer of 1987, many will be unable to raise enough cash to put in the 1987 crop due to the fact that they will not be able to produce a financial statement which cash-flows this year. Farmers need to receive their payments in a prompt manner; they cannot afford to wait an entire year to be paid for their crop. Creditors will be hesitant to provide a farmer money for the 1987 crop if the farmer cannot pay off his loan for the 1986 crop.

Mr. President, this problem is very serious. There could be many producers forced out of business simply because of the provision contained in the 1985 act.

It is true, we adopted the same provision in the farm bill for corn. However, corn producers are not faced with the problem encountered by wheat producers. A corn farmer's balance sheet and his ability to cash-flow will not be changed if he receives the balance of his deficiency payments 12 months after the marketing year begins or 5 months after. This is because the marketing year for corn begins on September 1 and ends on August 31. If the payment is based on the first 5 months of the marketing year, they get their payment in February. If the payment is based on the full 12 months of the marketing year, they get the payment 7 months later, in October of the same year. The corn farmer's cash-flow statement remains the same for that calendar year.

Wheat producers, on the other hand, are affected because the wheat marketing year, as I explained, begins on June 1 and ends on May 31. This means that if the payment is based on a 5-month average, the producer gets the money in November of this year. If the payment is based on a 12-month average, on the other hand, the producer will not get the payment until July of the next year. For wheat producers, unlike corn producers, there is a cash-flow problem.

This provision will correct this problem by requiring that all deficiency payments be determined on the basis of the average market price received during the first 5 months of the marketing year instead of the entire marketing year. This modification would only affect the 1986 wheat crop. The amendment does not modify the farm bill with respect to future crops.

This amendment also incorporates S. 2836, a bill introduced by Senators BUMPERS, PRYOR, FORD, and DIXON. This legislation would set the soybean loan rate at not less than $5.02 per bushel for the 1986 crop and would require the Secretary of Agriculture to implement either a marketing loan or loan deficiency payments for the 1986 soybean crop. This would allow soybeans to remain at a competitive price in the export market as well as prevent soybeans from being forfeited to the Government. In addition, by keeping the loan rate at the 1985 $5.02 level, we are able to keep income equal to 1985 for soybean farmers. Because the soybean program does not have a target price, soybean producers will realize a 25-cent drop in their price due to the drop in the loan rate announced by the Secretary of Agriculture.

As many of my colleagues know, there is a direct relationship between the price of soybeans and other oilseed crops, particularly sunflower seeds. If the soybean price falls, the price for these other crops declines. There is no price support for these crops; consequently, when the Government implements a program for soybeans, it has an impact on the price of these other crops. Under the soybean provision in this amendment, the Secretary would be required to take into consideration the impact a marketing loan would have on cottonseed and other oilseeds. I have discussed the possibility of providing a loan program for cottonseed, but at the present time, there appears to be no consensus as to what kind of loan program should be implemented.

However, the sunflower industry does seem united on the need to program for a nonrecourse, marketing loan for that particular commodity. Consequently, I have included a provision which establishes a nonrecourse loan program for sunflowers for the 1986 crop. The loan would be set in accordance with the historical oil content of sunflowers and soybeans and not result in excessive stocks of sunflowers. In no case, could the loan be less than 9 cents per pound. Sunflower producers would be permitted to repay the loans at the lesser of the loan amount or the world market price, whichever is less. The Secretary would prescribe the marketing year for sunflowers.

Of course, this is necessary because of the interrelationships of commodity prices of soybeans and how they affect other oilseed products, including sunflowers. The Secretary would be prohibited from requiring participation in any production adjustment program for sunflowers or any other commodity as a condition of eligibility for the sunflower loan program.

I have also included the House-passed disaster assistance bill so that we can provide much needed assistance to farmers and ranchers who have been affected by the drought in the Southeastern part of the United States. As many of you know, the Senate has already adopted similar legislation. In order to expedite the enactment of this provision, I chose to include the House-passed bill.

The savings generated in this amendment which pays for the various programs is the inclusion of a provision which will allow rural electric co-ops and systems to pay off their loans with the REA without any prepayment penalties. We should reward those rural co-ops and systems that have chosen to seek private financing for their programs. Congress recently passed similar legislation and directed the Secretary of Treasury to write the necessary regulations. Unfortunately, the Secretary followed the "letter" of the law but most certainly not the "spirit" of our intent.

The guidelines as written by Treasury are unduly restrictive, arbitrary, and written in such a manner that few, if any, rural electric co-ops and systems will be able to prepay their Federal financing bank debt. As an example of the unreasonable nature of these guidelines we need to look only at Treasury's requirement that a rural electric co-op or system must be able to reduce their consumer rates by 25 percent if they choose to refinance. Therefore, my constituent, Western Farmers Electric Co-op, would have to save over $45 million to qualify to refinance. Mr. President, Western Farmers does not have $45 million to save! Without this restriction, they could, however, refinance part of their debt and save over $8.5 million, all of which will be passed on to their customers.

That makes absolutely no sense to say that you have to have gigantic savings by dollar volume in order to qualify.

Why in the world are we not allowing these systems to do what they can to save money and, of course, that will indirectly benefit the farmer and rancher customers who will be able to benefit from lower rates.

□ 1220

The system could lower rates by 5 or 10 percent. They should be able to take this step. We have already gone on record, Mr. President, in this body of approving this basic concept.

Recognizing part of the problems with the Treasury regulations, Senator **STEVENS** and I offered an amendment to the budget reconciliation bill last week which would take care of part of the problem. However, only four or five co-ops will be able to take advantage of refinancing even with the adoption of our amendment.

This amendment will allow all those co-ops and systems facing substantial interest payments to refinance at the much lower current rates without having to deal with the unreasonable Treasury guidelines.

This will of course result in large savings, and large net reductions in budgetary outlays over the next 3-year period. As I mentioned, it has a net reduction even after the provisions of this program which I have discussed which have been added back in—a net saving according to the CBO estimate to the Treasury of well over $4 billion this year.

I have also included a provision the distinguished ranking member of the Senate Agriculture Committee, Senator **ZORINSKY**, has suggested concerning an external combustion engine. This provision would require the Commodity Credit Corporation to establish the research and development program on external combustion engines that was authorized by the Food Security Improvements Act of 1986. Under the provision, not less than $10 million worth of surplus agricultural commodities, owned by the Commodity Credit Corporation, would be used during fiscal year 1987 in establishing and carrying out the program. This would finance research and development of external combustion engines using fuel other than that derived from petroleum products. The development of external combustion engines holds great promise for dramatically reducing the costs of power to American farmers. A prototype engine has been designed by a Nebraska company to deliver economical, reliable power to pump irrigation water. Two other companies have expressed interest in this program.

This amendment also includes the provisions of S. 2332, the Farm Credit Assistance Act of 1986, introduced earlier this year by Senator **BOSCHWITZ** and myself. Since its introduction, several other Members have cosponsored this legislation, including Senators **NICKLES**, **ABDNOR**, **GRASSLEY**, **LONG**, **JOHNSTON**, **HARKIN**, **DURENBERGER**, and **KASTEN**.

This legislation establishes an interest rate buy-down program that will help many American farmers by reducing their interest cost. Interest payments, alone, make up approximately 20 percent of farmers' total production cost. The Agricultural Loan Interest Subsidy Program [AGLIS] will reduce the interest rate on agricultural loans by 3 to 5 percent. Two percentage points will be paid by the Federal Government; an optional 1 to 2 percentage points may be paid by the States; and 1 percentage point by the lender. The lender can write off 15 percent of the principal of the loan in lieu of paying 1 percent of the interest.

In addition to establishing an interest rate buy-down program, the Farm Credit Assistance Act requires the Farm Credit System and the Farmers Home Administration to restructure loans instead of foreclosing on them in instances where it is actually cheaper to restructure than to foreclose. I want to point out that this will not mean that everyone who has a Farm Credit System [FCS] or FmHA loan will be able to avoid foreclosure. Restructuring is required only when it is actually cheaper for the FCS or the FmHA. In this way, losses for the FCS and the FmHA will be minimized. For the FCS, this should result in lower interest cost for all borrowers of the system. It should be noted, Mr. President, that the Farm Credit System states that it is presently abiding by this type of policy. This legislation, therefore, merely places this policy into law.

Our legislation also encourages the Farm Credit System to allow borrowers who will be foreclosed on to retain possession and occupancy of the principal residence of the borrower. Presently, the FCS has not been very willing at all to allow a borrower to continue to reside, even on a temporary basis, in the borrower's residence.

At the present time, there are no regulations for the disposition of property acquired by the Farm Credit System. The FCS, in essence, can do about anything with the land. In fact, a current policy of the Wichita farm credit district is to not allow a previous owner of the land to purchase his homestead. Earlier this year, a farmer in Oklahoma was foreclosed on by the Farm Credit System. The Farm Credit System held an auction of the farmer's land. The farmer was able to raise enough money from his friends and neighbors to make a bid to purchase his homestead. While the bid was higher than the actual market value of the land and was the only bid, the Farm Credit System would not permit the farmer to pay cash for the land. I inquired of the officials at the Wichita farm credit banks about this matter. I was informed that the bank had a policy of not permitting a previous owner to purchase the land.

I think it comes as a shock for any Member of the Senate to learn that our own Government agencies charged by the Government are following this kind of policy, this kind of inhumane policy in these stressful times. I was shocked. The legislation we are introducing today will change this policy and will require the Farm Credit System to give special consideration to previous owners in the selling or leasing of land acquired by the system.

Another problem we have encountered in the past couple of years is the Farm Credit System's refusal to provide borrowers copies of the appraisals of the assets of the borrowers. In one case, a farmer was told that the system had cut the value of his assets in half but would not provide him with a copy of the appraisals. It is certainly hard to argue that the appraisals were too low or inaccurate if one does not have a copy of the appraisal. Our legislation requires the Farm Credit System to provide copies of the appraisals to the borrowers.

This legislation also prevents the Farm Credit System from requiring additional collateral or foreclosing on a borrower for failure to provide additional collateral if the borrower is current in the payment of interest or principal. Right now, the Farm Credit System is foreclosing on borrowers who are completely current on their payments. Though it seems ridiculous, the FCS is doing this. Earlier this year, the FCS called an Oklahoma farmer and told him he would have to provide additional collateral for his loan or else the system would initiate foreclosure proceedings. As with many farmers, this particular farmer did not have any additional collateral to give the FCS. Consequently, even though he was completely current on his payments, the FCS foreclosed on him a couple of weeks ago.

This amendment will also prohibit the Farm Credit System from increasing the interest rate on a loan that has been classified. An anomaly of current FCS policy is to increase the interest rate for a borrower the more he has difficulty meeting his payments. A couple of weeks ago, a farmer called my office to report what had happened to him in this regard. First, he was 10 days late in making his payment to the Federal Land Bank. He made his payment, in full, but because he was 10 days late the Federal Land Bank raised his interest rate by 2 percentage points. When the system raised his interest rate, it resulted in a substantial increase in his payment, to the point that the farmer would barely be able to make his next payment. Because he would now be using a larger percentage of his cash-flow for his payment, the system classified his loan as a problem loan and raised his interest rate an additional 2 percent. With the additional 2-percent increase in interest costs, the borrower is completely unable to make full payment and is now being threatened with foreclosure by the system. It does seem illogical and in the extreme, Mr. President, but this is the way the FCS is operating.

This amendment also clarifies a provision enacted as part of the Farm Credit Act Amendments of 1985. Last year, Senators DOMENICI, BINGAMAN, NICKLES, BAUCUS, MCCLURE, and I offered an amendment which would prohibit district banks from charging associations whose stockholders voted against merging with other associations a higher rate of interest or assessment than that charged other like associations. We thought at that time that it was perfectly clear that so-called disapproving associations would not be charged a higher rate; yet, the Farm Credit Administration now proposes to implement a regulation which would allow farm credit banks to charge different rates of interest, prices for services and financial assistance to disapproving associations as long as they could back it up with "financial considerations."

Mr. President, we have always had a system that was run and operated by the stockholders at the grassroots level. I thought we believed in this country in allowing these people to run their own affairs. Now any system that dares to stand up and remain an independent entity is subject to being penalized in terms of charges levied against them while at this same time lip service is being given to the concept of grassroots control of the system.

This regulation would be totally contrary to the intent the sponsors of the amendment had. In this amendment, Mr. President, we clarify the statute so that there can be no question what our intent is. Under this amendment, there will be no opportunity to charge higher rates to disapproving associations. With the adoption of this provision, there will be no circumstance under which the district banks can charge a higher rate to disapproving associations.

Mr. President, to allow local associations to go through an election process, which we had in many farm States this past year, to decide whether or not the associations ought to remain independent and then to tell them, "We are going to charge you such high rates, we will put you out of business if you dare vote for it," makes a mockery of the election process itself.

Many of my colleagues will want to know if we have had hearings on this credit legislation. The answer is no. We have had two hearings in the Agriculture Committee this year. On January 30, the committee held a hearing to consider the Farmers Home Administration loan servicing regulations and a GAO report on the Farmers Home Administration loan portfolio. On September 17, the committee held a hearing to discuss the current financial condition of the Farm Credit System.

We have not had hearings on the credit situation confronting our Nation's farmers and ranchers. I have, on several occassions, requested hearings to discuss this topic. On March 11, I sent a letter to the chairman of the Subcommittee on Agricultural Credit and Rural Electrification, requesting a hearing on the status of farm credit problems. I stated at that time that legislative action might be needed and that a hearing could provide us with the direction we need to take in any legislative proposal.

□ 1230

Finally, Mr. President, the amendment that I am offering includes the conference report on H.R. 7, reauthorizing the child nutrition programs. The distinguished Senator from Iowa, Mr. HARKIN, is to be commended for his tireless efforts in the conference. Without his assistance, the conference report on child nutrition would never have been reported.

The programs included in H.R. 7 are very important programs that especially help those children who would not otherwise have enough to eat. They include the School Lunch Program, the Commodity Distribution Program, WIC, and the Nutrition Education and Training Program.

The conference report contains a provision to raise the maximum tuition level that a private school may charge and be eligible to participate in federally assisted child nutrition programs. I have included this in my amendment only because I realize that it has been discussed and worked out on both sides, and I do not want to undo any of the advancements that have already been made to accommodate everyone that we can with this issue. I do not personally, however, think that this provision is advisable, and I have heard from many parents and others in my State who believe that to raise the maximum level from $1,500 to $2,000 is not in the best interest of children with the greatest need.

Mr. President, I have not struck that provision because I remain faithful to the agreements worked out in the conference committee. There have been many safeguards put in to make sure there is no abuse of this program, safeguards put in place to make sure that only those children with great need for the School Lunch Program will be protected.

Mr. President, unfortunately, the child nutrition budget cut in 1981 was 12 times greater than its share of the Federal budget. The administration's 1987 budget proposals also included unfair burdens to be shouldered by these programs. I was pleased that the Senate Budget Committee did not adopt this package offered by the administration, and that the budget resolution passed by the Senate on May 2 did not include these cuts. I want to continue in this direction by further improving these programs that simply demand our attention.

This amendment also makes several other necessary adjustments to the Special Milk Program and to the Breakfast Program offered in schools, child care and day care homes. All of these provisions will be beneficial to these individual children who we must remember are both the victims and the recipients of our work here in Congress.

Mr. President, since 1983, the House has passed child nutrition legislation four times. In the past 10 months, the Senate has passed child nutrition legislation twice. It is time for us to reauthorize the child nutrition programs and provide for needed improvements to the School Lunch, WIC, and other Child Nutrition Programs.

I am committed to ensuring that children in a country as fortunate as ours are not neglected. While we may debate about the merits of many programs, surely making certain that children get enough to eat should be beyond any controversy.

Mr. President, this amendment is not a major rewrite of the 1985 farm bill. Even the credit provisions, which may seem broad will not change, to any great degree, the claimed policies of the Farm Credit System. When we first introduced the bill, I talked with Frank Naylor, the Chairman of the Farm Credit Administration Board, about the various provisions. As many of you know, until recently, Mr. Naylor was with the Department of Agriculture. He told me that the modifications relating to the Farmers Home Administration were already the policy of the Farmers Home Administration. Further, he stated that he supported the provisions concerning the Farm Credit System, but, like any administrator, he wanted to have the authority to implement the policies without statutory language. Officials from the Farm Credit System tell me they are doing everything now that my amendment will require. No one, consequently, should have any objections to this legislation, unless the reality is that the Farm Credit System is not actually doing what officials claim they are doing.

There being no objection, the section-by-section analysis was ordered to be printed in the RECORD, as follows:

The Section-by-Section describes the amendment in the order in which the amendment was offered.

SECTION-BY-SECTION ANALYSIS OF AMENDMENT

TITLE —PAYMENTS TO CATTLE PRODUCERS

SEC. . RESTITUTION PAYMENT TO CATTLE PRODUCERS. Requires the Secretary of Agriculture to make restitution payments to cattle producers who sold cattle beginning March 28, 1986, and ending June 30, 1986. The payment would be equal to the live weight of the cattle at the time of sale multiplied by $6.00 per hundredweight.

SEC. . PAYMENT OF INDEMNITY FOR CERTAIN LOSSES. Requires the Secretary of Agriculture to make indemnity payments, in cash or with commodities, to cattle producers who suffered economic losses as a result of (1) a quarantine imposed by the Department of Agriculture or (2) slaughter of cattle that were contaminated by heptachlor in the period beginning on January 1, 1986, and ending on March 31, 1986, in the State of Oklahoma, the State of Arkansas, or the State of Missouri.

TITLE —AMENDMENTS TO PRICE SUPPORT PROGRAMS FOR CERTAIN CROPS

SEC. . COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM. Requires that all the deficiency payments for the 1986 wheat crop be determined on the basis of the average market price received during the first five months of the marketing year.

SEC. . LOANS AND PURCHASES FOR THE 1986 CROP OF SUNFLOWERS. Establishes a non-recourse loan program for sunflowers for the 1986 crop. The loan rate would be set by the Secretary but in no case at less than 9 cents per pound. Requires the Secretary of Agriculture to permit producers to repay the loan at the lesser of the loan amount or the world market price, whichever is less.

SEC. . SUPPORT PRICE AND MARKETING LOANS FOR 1986 CROP OF SOYBEANS. Establishes the soybean loan rate for the 1986 crop at no less than $5.02 per bushel. Requires the Secretary of Agriculture to implement a marketing loan for the 1986 crop of soybeans or provide for loan deficiency payments for the 1986 crop of soybeans.

TITLE —NATURAL DISASTERS EMERGENCY ASSISTANCE FOR FARMERS AND RANCHERS

SEC. . EMERGENCY DISASTER ASSISTANCE. Requires the President and the Secretary of Agriculture to make emergency disaster assistance available to farmers and ranchers in natural disaster areas.

SEC. . DEFINITIONS. Defines "natural disaster area" as any area in the United States in which farming and ranching operations have been adversely affected by a drought or excessively hot weather disaster, or a flood disaster, occurring in calendar year 1986, as determined by the Secretary of Agriculture. Defines "livestock" as all classes of beef and dairy cattle, sheep, goats, and swine.

SEC. . EMERGENCY FEED DONATIONS. Requires the Secretary of Agriculture, in emergency cases where there is a critical shortage of feed or forage needed to keep livestock or poultry alive, to donate free supplies from government-owned stocks until the temporary local shortage is relieved.

SEC. . EMERGENCY LIVESTOCK FEED ASSISTANCE. Requires the Department of Agriculture to make payments to eligible livestock and poultry producers to cover part of the cost of emergency purchases of feed. To be eligible, a producer must have suffered a substantial loss of farm-produced feed. Payments, which cannot exceed 50 percent of the cost of emergency purchases, would be made from surplus government commodity stocks. Payments could exceed 50 percent of cost, however, if needed to make sure that drought-stricken producers did not have to pay more for their grain than foreign buyers. Provides that where other assistance programs cannot fully meet a producer's needs for livestock feed, the Secretary of Agriculture would pay 80 percent of the cost of transporting hay supplies from surplus-producing areas into the drought region.

SEC. . DISASTER PAYMENT PROGRAM. Requires the Secretary of Agriculture to make disaster payments, at the request of the producers located in natural disaster areas, on the 1986 crops of wheat, feed grains, upland cotton, rice, soybeans, sugar beets and peanuts. Disaster payments would be made in kind and could not exceed $100,000 in value. The Secretary, in making disaster payments, would not be permitted to take into account whether a farmer is covered by crop insurance and would not be permitted to reduce disaster payments to a farmer who insured himself, provided that the combined value of the disaster payment and crop insurance indemnity did not exceed 100 percent of the producer's normal yield.

SEC. . MILK PROGRAM PRODUCER ASSESSMENTS. Authorizes a delay in payments of dairy program assessments by milk producers located in natural disaster areas. At the option of any producer in a disaster area, the producer would be exempt from assessments to suspend payments for that period would pay an increased rate later to make up for the temporary relief.

SEC. . ASSISTANCE FOR QUOTA AND ALLOTMENT HOLDERS. Requires the Secretary to waive the requirement, with respect to any 1986 peanut farm poundage quota, that a lease of the quota may be entered into during the fall or after the normal planting season only if the quota has been planted on the farm from which the quota is leased if the local A.S.C. committee determines that the owner or operator made a good faith effort to plant and produce the 1986 quota on the farm.

SEC. . COST-SHARING FOR SOIL CONSERVATION MEASURES AND TIMBER STAND RESEEDING EXPENSES. Provides cost-sharing payments, made with government surplus commodities or certificates, to cover at least 50 percent of the cost of conservation measures under the existing Agricultural Conservation Program to prevent expected soil erosion due to loss of vegetative cover or to replant pine trees lost to the drought under the existing Forestry Incentives Program.

SEC. . PAYMENTS. In making in-kind payments under the fourth, fifth, or eighth section in this title, or transportation cost payments as provided in this section, the Secretary of Agriculture would have the authority to acquire and use commodities that have been pledged as security for price support loans and use other commodities owned by the Commodity Credit Corporation. The Secretary would be authorized to make in-kind payments by delivery of the commodity to the producer or the transfer of negotiable warehouse receipts, the issuance of negotiable commodity certificates redeemable by the Commodity Credit Corporation for a commodity, or such other methods as the Secretary determines appropriate. Authorizes the Secretary to make transportation cost payments with surplus stocks of commodities held by the Commodity Credit Corporation or in cash.

SEC. . CREDIT FORBEARANCE. States the sense of Congress that the Secretary of Agriculture use authority in existing law to defer repayments on Farmers Home Administration loans and forego foreclosure on distressed Farmers Home Administration borrowers located in natural disaster areas. Further encourages the Farm Credit System and commercial lenders to adopt lenient policies in disaster areas and to join with government agencies in assistance to distressed borrowers.

SEC. . COORDINATION OF ASSISTANCE EFFORTS. Urges the Secretary of Agriculture to set up an overall coordinating mechanism for federal help and to consult with state officials in natural disaster areas.

TITLE —RURAL ELECTRIFICATION AND TELEPHONE SYSTEMS LOANS

SEC. . PREPAYMENT OF FEDERAL FINANCING BANK LOANS. Allows rural electric cooperatives and systems to repay their Federal Financial Bank notes with the Rural Electrification Administration without a pre-payment penalty and not withstanding any Department of Treasury guidelines.

TITLE —RESEARCH ON EXTERNAL COMBUSTION ENGINES

SEC. . RESEARCH AND DEVELOPMENT OF EXTERNAL COMBUSTION ENGINES. Requires the Commodity Credit Corporation to establish the research and development program on external combustion engines that was authorized by the Food Security Improvements Act of 1986. Under the provision, not more than $10 million worth of surplus agricultural commodities owned by the Commodity Credit Corporation would be used during fiscal year 1987 in establishing and carrying out the program which would provide for the financing of research and development of external combustion engines using fuel other than that derived from petroleum products.

TITLE —AGRICULTURAL LOAN INTEREST SUBSIDY PROGRAM

SEC. . DEFINITIONS. Defines the terms "borrower" and "lender".

SEC. . ESTABLISHMENT OF PROGRAM. Requires the Secretary of Agriculture to establish a Federal-State-Lender cooperative agricultural loan interest subsidy program under which, at the request of a State, borrowers and lenders within the State may participate in an interest subsidy program.

SEC. . ELIGIBILITY FOR ASSISTANCE. Defines eligible borrowers as those who: (1) have an outstanding loan on April 1, 1986; (2)(a) are delinquent in the payment of principal or interest or both, or (b) demonstrate that the borrower will be unable to make payments of principal or interest; (3) had gross agricultural sales in excess of $30,000 for three of the past five years; (4) have derived at least 50 percent of their gross annual income from agriculture in at least 3 of the past 5 taxable years; (5) have debt-to-asset ratios in excess of 40 percent; (6) have repayment ability; and (7) do not produce an agricultural commodity on highly erodible land or converted wetlands in violation of the sodbuster and swampbuster provisions of the Food Security Act of 1985.

Sec. . Interest Subsidies. For eligible borrowers, the interest rate (or principal as the case may be) would be written down for 3 years as follows: (1) 2 percentage points would be paid by the Secretary of Agriculture; (2) 1 to 2 percentage points would be paid by the State if the State elected to make payments; and (3) 1 percentage point or interest or at least 15 percent of the principal by the lender. Assistance under this program would be limited to an aggregate amount of principal of not more than $400,000 in the case of an individual, and $600,000 in the case of a family corporation or family partnership.

Sec. . Payments to States. Requires the Secretary to pay to each State for fiscal years 1987 through 1990, the amount necessary to finance the share of payments provided to borrowers required to be paid by the Secretary of Agriculture and 100 percent of the administrative expenses incurred by the State in carrying out this program. The maximum amount of payments the Secretary would pay to the States for any fiscal year could not exceed $600 million.

Sec. . State Plans. Requires the State electing to participate in the program to submit a plan of the operation of the program to the Secretary of Agriculture and receive the approval of the Secretary. Authorizes the Secretary to deny or withhold payments to States under certain conditions.

Sec. . Review by Secretary and State Agencies. Requires the Secretary of Agriculture to review the manner in which the program is carried out in the State and authorizes the Secretary to provide technical assistance to States. Authorizes the state agency operating the program to monitor the compliance of a lender with the program.

Sec. . Notice and Determination of Assistance. Prohibits a lender in a State participating in the program from taking any action as a result of a borrower defaulting on an outstanding loan made by such lender unless the lender has provided the borrower with the notice of the availability of the program and, in the case of a borrower who has applied for the program, determined that the borrower is ineligible for the benefits of the program.

Sec. . Assistance of Federal and State Agencies. The Secretary is required to use the funds, personnel, and facilities of the Department of Agriculture as the Secretary determines necessary for the implementation of the program. Further requires the Secretary to request other Federal or State agencies to provide such funds, personnel, and facilities as the Secretary considers necessary for the implementation of the program. Any agency that provides such assistance shall be fully reimbursed for such assistance as soon as is practicable from subsequent appropriations.

Sec. . Program Ineligibility for Production on Highly Erodible Land or Converted Wetland. Borrowers who produce on highly erodible land or converted wetlands, in violation of the sodbuster or swampbuster provisions of the Food Security Act of 1985, would be ineligible for benefits under this program.

TITLE — FARM CREDIT SYSTEM INSTITUTION BORROWERS

SUBTITLE A—FARM CREDIT SYSTEM LOAN RESTRUCTURING PROGRAM

Sec. . Definitions. Provides definitions for the terms "borrower", "Capital Corporation", "Chairman", "committee", "cost of foreclosure" and "loan" as used in this title.

Sec. . Eligibility for Assistance. Eligible borrowers are those who: (1) are delinquent in payments of principal or interest during the period beginning on the date of enactment and ending 3 years after such date; (2) demonstrate that the delinquency is beyond the control of the borrower; (3) derived not less than 50 percent of their gross annual income for three of the past five years from agriculture; and (4) had gross agricultural sales in excess of $30,000 for 3 of the past 5 years.

Sec. . Loan Determinations. Before foreclosing on a loan, a Farm Credit institution must determine the cost of foreclosure and the cost of restructuring the loan.

Sec. . Loan Foreclosure and Restructuring. If the costs associated with foreclosure equal or exceed the cost of restructuring a loan in an amount which will enable the borrower to make payments, a Farm Credit System institution will be required to restructure the loan in lieu of foreclosing a loan for eligible borrowers.

Sec. . Additional Collateral. Prohibits a Farm Credit System institution from requiring additional collateral on a loan if the borrower is current in the payment of principal or interest on the loan. Prohibits a Farm Credit System institution from foreclosing on any loan as a result of the failure of a borrower to provide additional collateral if the borrower was current in the payment of principal or interest at the time the additional collateral was required.

Sec. . Appeals. Establishes a procedure whereby a borrower, who is determined to be an ineligible borrower or whose loan is determined to be ineligible for restructuring can appeal the determination. Further establishes a procedure to notify a borrower of his eligibility for loan restructuring.

Sec. . Reimbursement for Principal Reduction. Requires the Capital Corporation to reimburse an institution for the amount of principal due on loans that is reduced by the institution if the Chairman of the Farm Credit Administration determines that such action is necessary to avoid the liquidation or insolvency of the institution.

Sec. . Report. Requires the Chairman of the Farm Credit Administration to submit a report to Congress on the operation of the restructuring program.

SUBTITLE B—FARM CREDIT SYSTEM REFORM

Sec. . Access to Appraisals. Requires the Farm Credit System to provide a borrower with copies of the appraisals of the assets of the borrower.

Sec. . Homestead Protection. Encourages the Farm Credit System to allow borrowers, whose loans will be foreclosed, to retain possession and occupancy of any principal residence of the borrower and a reasonable amount of adjoining land.

Sec. Interest Rates on Classified Loans. Prohibits the Farm Credit System from raising the interest rate on a loan that has been classified.

Sec. . Certification of Need for Financial Assistance. Requires the Farm Credit Administration, within 60 days from the date of enactment and every 90 days thereafter, to determine whether the Farm Credit System is in need of financial assistance.

Sec. . Operating Expenses of Institutions. Limits operating expenses of Farm Credit System institutions to 1 percent above the average cost of bonds issued by the System from the date of enactment until the later of September 30, 1990, or such time as the Secretary of the Treasury no longer holds any obligations issued by the Capital Corporation.

Sec. . Disposition and Leasing of Farmland. Requires the Farm Credit Administration to issue regulations identifying the proper handling of acquired farmland. Requires the Farm Credit System, to the extent practicable, to sell or lease farmland in the following order of priority—(1) sale to operators of not larger than family-size farms, and (2) lease to operators of not larger that family-size farms. Prohibits the selling of farmland if it will have a detrimental effect on the value of farmland in the area. Requires that special consideration in the sale or lease of farmland be given to previous owners if such owner has financial resources, farm management skills and experience sufficient to assure a reasonable prospect of success. Leasing would be based on a competitive bid basis.

Sec. . Stock Purchase Requirement. Before providing a new loan to a borrower or entering into an installment contract for the purchase of farmland acquired by the Farm Credit System, the borrower would be required to purchase stock in the Farm Credit System.

TITLE —FARMERS HOME ADMINISTRATION BORROWERS

Sec. . Definitions. Defines the terms "borrower", "committee", "cost of foreclosure" and "loan".

Sec. . Eligibility for Assistance. Defines eligible borrowers as those who: (1) are delinquent in payments of principal or interest during the period beginning on the date of enactment and ending 3 years after such date; (2) demonstrate that the delinquency is beyond the control of the borrower; (3) derived not less than 50 percent of their gross annual income for three of the past five years from agriculture; and (4) had gross agricultural sales in excess of $30,000 for 3 of the past 5 years.

Sec. . Loan Determinations. Before foreclosing on a loan, the Secretary of Agriculture must determine the cost of foreclosure and the cost of restructuring the loan.

Sec. . Loan Foreclosure and Restructuring. If the costs associated with foreclosure equal or exceed the cost of restructuring a loan in an amount which will enable the borrower to make payments, the Secretary would be required to restructure the loan in lieu of foreclosing a loan for eligible borrowers.

Sec. . Additional Collateral. Prohibits the Secretary from requiring additional collateral on a loan if the borrower is current in the payment of principal or interest on the loan. Prohibits the Secretary from foreclosing on any loan as a result of the failure of a borrower to provide additional collateral if the borrower was current in the payment of principal or interest at the time the additional collateral was required.

Sec. . Appeals. Establishes a procedure whereby a borrower, who is determined to be an ineligible borrower or whose loan is determined to be ineligible for restructuring can appeal the determination. Further establishes a procedure to notify a borrower of his eligibility for loan restructuring.

Sec. . Report. Requires the Secretary to submit a report to Congress on the operation of the restructuring program.

Sec. . Alternative Crop Loan Program. Authorizes the Farmers Home Administration to make loans to farmers and ranchers for the purpose of producing alternative crops. Alternative crops would be defined as those not traditionally produced in the area.

TITLE —MISCELLANEOUS PROVISIONS

Sec. . Inter-Agency Agricultural Task Force. Extablishes an Inter-Agency Agricultural Task Force to assist commercial agricultural banks and the borrowers of the banks to resolve present economic problems and to facilitate commercial bank lending to agriculture in the future.

Sec. . Regulations. Requires regulations necessary for Titles XI through XIV to be issued by the Secretary of Agriculture and the Farm Credit Administration no later than 90 days after the date of enactment.

Sec. . General Definitions. Defines terms used in Titles XI through XIV of this Act.

Sec. . Authorization for Appropriations. Authorizes appropriations as necessary for Titles XI through XIV.

Sec. . Termination Date. Provides that the authority granted by Titles XI through XIV expires 3 years after the date of enactment, except as otherwise provided in this Act.

Sec. . Short Title. Titles XI through XIV of this Act would be cited as the "Farm Credit Assistance Act of 1986".

TITLE —FARM CREDIT SYSTEM

Sec. . Treatment of Certain Farm Credit Associations. Provides clarification for the treatment of an association whose stockholders did not approve a merger with one or more other associations and continues as an independent association. Specifically, the disapproving association would not be: (1) charged any assessment at a higher rate than that charged other like associations; (2) charged a higher rate than other like associations for the provision of any financial service and assistance (including, but not limited to, access to credit and rates of interest on loans and discounts) by a district Farm Credit bank to the associaton and its member-borrowers, and (C) deprived of any such assistance provided to other like associations.

TITLE —SCHOOL LUNCH AND CHILD NUTRITION AMENDMENTS OF 1986

(SUMMARY OF PROVISIONS)

Authorization of Appropriations Under the National School Lunch Act.

(1) Extends the authorization of appropriations for the summer food service program through fiscal year 1989.

(2) Extends the authority for the commodity distribution program through fiscal year 1989.

Authorization of Appropriations Under the Child Nutrition Act of 1966.

(1) Extends the authorization of appropriations for the State administrative expenses (SAE) provision through fiscal year 1989.

(2) Extends the authorization of appropriations for the Special supplemental food program for women, infants, and children (WIC) through fiscal year 1989 at a level of $1.57 billion for fiscal year 1986, such sums as may be necessary for fiscal years 1987 and 1988, and $1.782 billion for fiscal year 1989.

(3) Extends the authorization for the nutrition education and training (NET) program (at $5 million annually) through fiscal year 1989.

Basis for Commodity Assistance.

Changes the dates specified in current law by which the Secretary is to make an estimate of the value of agricultural commodities to be delivered to schools and by which he must provide cash payments for any difference between the estimates of available commodities and the amount of commodity support mandated by law.

Specifically, requires that the Secretary make estimates of the amount of commodity support available by June 1, instead of May 15; and requires the Secretary to make cash payments for the difference between these estimates and the mandated commodity level by July 1, instead of June 14, of each school year.

Inclusion of Whole Milk as a School Lunch Beverage.

Requires that schools participating in the school lunch program offer whole milk as a beverage, along with such other forms of milk as the Secretary might require to meet the nutritional requirements of the program.

Automatic Eligibility for Certain Programs.

Requires that a child who is a member of a household receiving food stamps, or who is a member of an AFDC assistance unit in a State where the income standard of eligibility does not exceed 130 percent of poverty, be served a free lunch and breakfast without further application or eligibility determinations.

A parent or guardian is still required to complete an application, the local school authorities are still required to determine the applicant's eligibility, and the Secretary, States, and local school for authorities may continue to verify the data contained in the application. However, it is the intent that the application procedure under section 109(b)(2)(B) and the eligibility determination and verification procedures under section 109(b)(2)(C) be simplified by substantially reducing the number of type of inquiries made by the applicable agency.

More specifically, indication on the application of receipt of food stamps or AFDC would be sufficient to satisfy the eligibility requirement and proof of receipt of food stamps or AFDC would be sufficient to satisfy the verification requirement.

Limitation of Meal Contracting

Prohibits a school or school food authority participating in the school lunch program from contracting with a food service company to provide a la carte meal service unless such company offers free, reduced-price, and full-price reimbursable meals to all eligible children.

Change in Tuition Limitation for Private Schools

Raises from $1500 to $2000 the maximum tuition that a private school may charge and be eligible to participate in federally-assisted child nutrition programs—effective October 1, 1986. Indexes this limit to inflation by requiring an annual adjustment each July 1, beginning July 1, 1988, to reflect changes in the Consumer Price Index for All Urban Consumers for the most recent 12-month period for which data is available.

Use of School Lunch Facilities for Elderly Programs

Provides for local education agencies to use school lunch program facilities, equipment, and personnel to support a nonprofit nutrition program for the elderly.

Administration of Child Nutrition Programs by Contract or Direct Disbursement

Revises the current requirement for the Secretary of Agriculture to administer directly child nutrition programs in certain schools, institutions, and service institutions by allowing the Secretary to meet this requirement by contracting with an organization to administer such programs in not more than three States on a pilot project basis to test the concept of contracting with private, nonprofit and profit organizations to administer the child nutrition programs currently administered by the Secretary. The direct administration of such programs by either the Secretary, or through a contract between the Secretary and an organization, is applicable to cases where such programs have been directly administered by the Secretary continuously since October 1, 1980, or where a State educational agency is prohibited by law from doing so. Maintains current law authority for States to assume direct administration of programs. Expands current law provisions regarding the appropriate withholding, disbursal and use of program and administrative funds in cases where the Secretary directly administers programs to include situations where the program is administered by a contracting organization.

The Comptroller General should monitor the making and implementation of contracts under the pilot projects and make a report to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Education and Labor concerning the pilot projects.

Department of Defense Overseas Dependents' Schools

Deletes the authorization of appropriations for the higher Federal payment required for free and reduced-price meals served in such schools when the cost of such meals is higher than the amount provided by the regular free and and reduced-price meal reimbursement rates.

Restoration of Certain Kindergartens to Special Milk Program

Extends the eligibility for the special milk program to kindergarten children who do not have access to either the school breakfast or school lunch program.

The provision intends that children attending partial day kindergartens (so-called "split sessions") and not having access to either the school breakfast or school lunch programs currently operating in schools they attend be permitted to participate in the special milk program. Full day kindergartens and other programs where children receive either breakfast or lunch would continue to be ineligible to participate in the special milk program.

Additional Funding to Improve School Breakfast Program Meal Pattern

(1) Provides an additional 3 cents in cash in each reimbursement for each breakfast served in schools or in the child care food program. Additionally, Provides that, subject to availability, the Secretary shall make available at least 3 cents per breakfast in commodities acquired by the Secretary or the Commodity Credit Corporation. These provisions are effective October 1, 1986. The commodities to be made available under this provision are to include only those that the Secretary has acquired for price support and surplus removal reasons, and that are not necessary for other domestic and for-

eign support programs or activities. This provision does not require the Secretary to make purchases for the specific purposes of meeting the needs of breakfast programs. The Secretary is expected to ensure a maintenance of effort by State and local sources so that the additional Federal reimbursements are not used to displace existing levels of support.

The provision would not require eligible institutions to accept any or all of the full value of commodities. In order to minimize reporting and record-keeping burdens, the Department would not require a separate accounting of commodities order for use in breakfasts.

(2) Requires the Secretary of Agriculture to review and revise the nutritional requirements for breakfasts to improve their nutritional quality and to promulgate regulations implementing such revisions within 180 days after enactment of the bill. In reviewing the program requirements, the Secretary is to take into consideration the findings of the National Evaluation of School Nutrition Programs and the need to provide increased flexibility in meal planning to local school food authorities.

Extension of Offer Versus Serve Provision to the School Breakfast Program

Permits local school food authorities to allow students to refuse up to one item in each school breakfast. Any such refusal may not affect the charge to students, or the amount of Federal reimbursement for the breakfast.

State Administrative Expense Staffing Standards

Deletes the requirement that the Secretary of Agriculture develop State staffing standards for the administration of the school lunch, school breakfast, child care food, and special milk programs.

Special Supplemental Food Program for Women, Infants, and Children (WIC)

(1) Costs for nutrition services and administration: Maintains the current definition of the types of costs for which WIC administrative funds are to be used, but changes the term "administrative costs" to "costs for nutrition services and administration" in this definition. Deletes the costs of warehouse facilities from the list of items defining the types of costs for which WIC administrative funds are to be used.

(2) State eligibility for WIC funds: Makes a State ineligible to participate in the WIC program if State or local sales taxes are collected on food purchased under the WIC program. Makes the State sales tax provision applicable to a State beginning with the fiscal year beginning after the end of the first regular session of the State legislature after enactment of the bill.

(3) Participation Report: Requires the Secretary of Agriculture to report biennially to Congress on the income and nutritional risk characteristics of participants; migrant participation in the program; and such other matters relating to participation in the program as the Secretary deems appropriate. Authorizes the Secretary to use WIC evaluation funds to pay for the costs of preparing this report.

(4) Plan of Operation and Administration: Deletes from the current list of State plan requirements the following: (a) a description of how administrative funds are distributed and budgeted; (b) a description of methods for determining nutritional risk; (c) staffing patterns; (d) nutritional education goals; (e) plans for informing persons of eligibility; (f) a copy of the State procedure manual; (g) a list of all areas and special populations in need; and (h) plans to initiate or expand operations in areas most in need. Also adds new requirements that the State plan include a plan to provide program benefits to under-served areas if sufficient funds are available, to provide program benefits to those most in need, and to enroll eligible women in the early months of pregnancy.

Adds a requirement that a State plan describe how both the AFDC and maternal and child health care programs are coordinated with WIC program operations. The amendment also authorizes the Secretary to permit States to submit only those portions of their State plans which differ from previous years.

(5) Public Comment: Deletes specific State requirements for public hearings on the State plan one month prior to submission to the Governor, and replaces this with a general requirement that State agencies establish procedures to assure that the public has an opportunity to comment on the development of the State plan.

(6) Availability of program benefits: Adds a requirement that State and local agencies distribute information in a manner designed to provide such information to potentially eligibile persons most in need of benefits.

(7) Repayment of benefits by recipients: Requires a State agency to recover from a person making an intentional misrepresentation the amount that the State agency determines in equal to the value of the overissued food benefits, unless the state agency determines that the recovery of the benefits would not be cost effective. It is intended that this provision impose no new requirement on the States, and that State agencies would be expected to provide a hearing where necessary, and to provide procedural protections, including proper notice and opportunity to be heard.

(8) Priority funds for the WIC Migrant Program: Requires that not less than nine-tenths of 1 percent of the funds appropriated for the WIC program be first made available for services to eligible migrant populations and that migrant services be provided in a manner consistent with a State's priority system for participation. Provides that to the extent possible, accountability for migrant services be conducted under regulations in effect on the date of enactment of the bill.

(9) Improving State Agency Administrative Systems: Adds the provision of technical assistance to improve State agency administrative systems to the types of activities the Secretary of Agriculture may conduct with WIC evaluation funds.

(10) Paper work reduction: Requires the Secretary of Agriculture to keep to a minimum the documentation that States provide to be exempted from the requirement that no less than one-sixth of their WIC administrative funds be used for nutrition education activities.

(11) Allocation standards: Deletes the requirement that a State agency satisfy allocation guidelines established by the Secretary of Agriculture when distributing administrative funds to local agencies under allocation standards developed by the State agency in cooperation with local agencies. Deletes the requirement that the State allocation standards be included in the required State plan of operation and administration.

(12) Advance payments: Allows, instead of requires, State agencies to forward advance administrative funds to local agencies initiating WIC program operations.

(13) Expenditure of Funds for the Special Supplemental Food Program: allows a State to use up to 1 percent of the amount of funds allocated to the State for supplemental foods in a fiscal year to cover expenses incurred for supplemental foods in the preceding fiscal year, and specifies that this provision is not to apply to appropriations made before enactment of the bill. Further allows a State agency to keep up to 1 percent of the amount of funds allocated to the agency in a fiscal year for use during the subsequent fiscal year, and specifies that use of such funds in a subsequent year may not affect the amount of funds allocated to the State agency for that year. It is not the intent of the provision that States overspend or underspend their allocation year after year. Further, it is the intent of the provision that States should use the provision as a tool to enable the States to spend as close to 100 percent of their respective allocation as possible. Funds available for carryover to the next fiscal year are available for food and administrative expenses, while funds used to cover expenses for previous year costs are only applicable for food costs.

Child Care Food Program

Permits a hearing at the Federal level in cases where the State does not provide such a hearing, and eliminates the requirement that States provide such a hearing.

Nutrition Education and Training Program

Lowers from $75,000 to $50,000 the minimum grant provided to States for the nutrition education and training programs.

Extension of Alternative Means of Assistance

(1) Pilot Projects: References section 1581 of Public Law 99-198 with respect to the ability of school districts that participated in the pilot project on cash or commodity letters of credit in lieu of commodities to continue to receive entitlement commodity support in this alternative form through the school year ending June 30, 1987. (Note.—Section 1581 also provides that such school districts can receive bonus commodities to the same extent as other school districts, but only in the form of commodities (no cash or letter of credit).

(2) Compensation to pilot projects: Requires the Secretary of Agriculture to provide cash compensation, subject to availability of funds, and not to exceed $50,000, to school lunch pilot project school districts for losses they incurred as a result of a change in the methodology used to conduct the study on cash or commodity letters of credit in lieu of commodities during the school year ending June 30, 1983. The Comptroller General is to be consulted with respect to the accounting procedures used to determine such losses, and such sums as may be necesary to carry out this provision are authorized to be appropriated. (Note.—The change in methodology was related to a change in the form of bonus commodity assistance offered to the schools participating in the pilot project during the 1982-83 school year.)

National Commodity Processing System

(1) Extension: References section 1114(a)(2) of the Agriculture and Food Act of 1981, as amended by Public Law 99-198, with respect to processing agreements. (Note.—Section 1114(a)(2) provides that for the period July 1, 1985 through June 30, 1987, whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary of Agriculture, the Secretary must encourage consumption of the commodity

through agreements with private companies under which the commodity is reprocessed into end food products for use by eligible recipient agencies. The expense of the reprocessing would be paid by the eligible agencies.)

(2) Annual settlement of Accounts: References section 1114(a)(2) of the Agriculture and Food Act of 1981, as amended by Public Law 99-198, with respect to annual settlement of accounts. (Note.—Section 1114(a)(2) requires private companies participating in processing agreements to annually settle all accounts with the Secretary and apropriate State agencies regarding commodities processed under such agreements in order to enter into and continue agreements with the Secretary.)

Technical and Conforming Amendments

Makes various technical amendments to the Child Nutrition Act of 1966 and the National School Lunch Act and repeals various obsolete provisions and references.

Mr. BURDICK. Mr. President, will the Senator yield?

Mr. BOREN. I am happy to yield.

Mr. BURDICK. I want to commend the Senator for offering this amendment. The Senator will recall that we endeavored to make a correction on the way loans are handled by permitting prepayment, with considerable savings.

Mr. BOREN. Yes, that is correct.

Mr. BURDICK. We passed an amendment in the Senate and later we were given assurance by the administration that this would be worked out administratively so the amendment ultimately lost. Can the Senator say why we need this amendment?

Mr. BOREN. I would say to my friend and colleague that he has pointed out in his introductory remarks the problem we have been having. The Senate has already gone on record for allowing these electric cooperatives to refinance their debt. It makes great sense. It makes great sense to them. It is just like refinancing your house. If you can refinance at a lower rate, it is prudent to do so.

It is certainly prudent for these hard-pressed electric cooperatives to do that at this point in time, and they will also be able to pass on those savings to their members in the form of lower utility bills.

All of us understand the tremendous financial pressures that are on all of the farmers and ranchers in this country right now. Of course, it makes great sense for the electric cooperatives to be able to do that. It makes sense for them, for their own economic security. It makes great sense as far as their customers are concerned, easing the utility rates.

And it makes great sense for the Government. This administration has time and time again advocated making changes in the loan portfolios to get early payment into the Government. Here is a situation where several billions of dollars will come into the Treasury now as these loans are paid off early.

That is why earlier I know my colleague participated in this, and Senator STEVENS from Alaska participated in this, raising this issue on the floor. The Budget Committee has made this recommendation. But the regulations imposed by the administration completely frustrated our ability to do what it was that we were intending to do.

They said you could not make this change unless you could prove that you could reduce your utility bills by at least 25 percent. If you can reduce them by 10 or 15 percent, surely that is still worth doing. If you can save a dollar, it is worth it to save a dollar.

If the Government can get the payments earlier, we should do it. We will save an immense amount of money according to CBO, several billions of dollars, so that in the first year we can implement all these programs I have discussed—the indemnification in the cattle situation, the soybean program, the interest rate buydown that we have worked on, drought relief for the farmers in the Southeastern part of the United States, and many other provisions.

A minute ago I neglected to talk about the provision included in the amendment that will help take care of the sugar beet producers who have recently been the victims of floods in the State of Michigan.

It makes great sense. It is time for us to do it. It is the way to save the Government billions of dollars now and still be able to take care of these pressing needs in agriculture.

Mr. BURDICK. After we passed the amendment, the Senator will recall that we were given assurance that this matter would be handled administratively. Does the Senator remember that?

Mr. BOREN. Yes.

Mr. BURDICK. Has it been done?

Mr. BOREN. No.

Mr. BURDICK. I commend the Senator for not only this amendment but his entire endeavor.

Mr. BOREN. I thank my colleague very much. I am proud to have his support. I hope others will join with us in taking what is a very commonsense step to help American agriculture at a time when it is indeed in crisis. It will also have a very positive impact on reducing the budget deficit.

As he has pointed out, provisions, for example, dealing with the early payback, the refinancing of the REA loans, are provisions which have been widely discussed on the Senate floor. They have had positive treatment from the body and its committees in the past.

Nearly every other provision included in this particular amendment has been approved either on the House or Senate side, or has been subject to a wide discussion with a full understanding by the Members of this body. But for one reason or another, we have been frustrated in our ability to get final action and get these provisions actually into law or actually implemented by the administration.

I see my good friend from Michigan on the floor.

I mentioned a minute ago they have an emergency situation in his State caused by floods affecting their sugar beet industry. I yield the floor at this time so that the Senator can go into detail in regard to the provisions of this legislation as they affect his State and the disaster which occurred there.

Mr. LEVIN. Mr. President, first, let me commend my friend from Oklahoma for the continuing leadership and sensitivity which he has shown in a critical area, the agricultural sector of this country. The amendment which he authored, which I am proud to cosponsor, addresses some very pressing needs in this country as a result particularly of historic droughts and now historic floods.

☐ 1240

We have a flood in Michigan and a number of other States in the Midwest, but in Michigan in particular, which is unlike any flood in the history of our State. There are no records of any flood that comes close to the flood that we have seen in the last 20 days. Over 20 inches of rain have hit our State. They have wiped out a significant portion of our agriculture, including soybeans and potatoes and a number of other crops.

The Senate responded to the drought in a number of ways. We were right to do so and in the amendment that Senator ABDNOR offered on the debt ceiling, we linked drought relief and flood relief. That was right. So there is precedent for what Senator BOREN is doing here today. His amendment covers floods as well as droughts and it is right that we respond to natural disasters of this scope because their impact is similar. They are devastating on farm families and on the farm economy.

We recently met, Senator RIEGLE and I and a number of other members of the Michigan delegation, to work with the Secretary of Agriculture. I might say to Senator BURDICK, who raised this question, and to Senator BOREN that I am afraid we were disappointed. It is clear that the Secretary of Agriculture is not going to use the authority which he has under law to make disaster payments for crops which are wiped out in nautral disasters. Let it be clear that Congress has given the Secretary of Agriculture this authority. The authority is there. But the decision has been made that the authority is not going to be used to provide these disaster payments to farmers who have been wiped out in these devastaing droughts and floods.

So Congress has to make its will known, make its will felt, make its intention clear that we want the existing authority to make these disaster payments utilized. We have to mandate it now because the existing discretion has not been used. That is one of the purposes of the Boren amendment.

Mr. President, the Boren amendment, as I indicated, covers floods as well as droughts, as it should. It also has added suger beets which is a program commodity, as it should, so that that is covered as well as the other program crops. We have a situation where the same disasters have wiped out a number of nonprogram crops, including potatoes, soybeans—which are some of the major crops of the State of Michigan. Senator RIEGLE and I shall be offering language later which we believe may be acceptable to Senator BOREN—at least we hope it will be—to add a modification to his amendment to provide that nonprogram commodities which have been destroyed or damaged in the same disasters which are covered by this bill can also be the subject of the action by the Secretary of Agriculture to make these disaster payments.

Let me conclude by thanking Senator BOREN and all the other cosponsors again. This is a bipartisan effort. This is not a partisan or a political effort. This is a human effort to respond in the greatest of American traditions to disasters which have affected areas of this country across the geographical span of this country.

Whether it is in the Southeast, devastated by drought, or now in the Northwest, which has had excessive rains, or in the Midwest, which has had unusual flooding, whether it is Mount St. Helens or a disaster in the West or whether it is a tornado, this country responds to disaster. These are disasters unlike any that have ever hit our State.

Let me simply repeat for all of our colleagues, because we are all sensitive to the needs of all of our States, regardless of what States we represent, there has never been flooding like this in the history of our region or of our State. I believe the Senate will respond in the greatest traditions of the Senate. I commend Senator BOREN and the bipartisan leadership on this amendment for proceeding with it. I am proud to be a cosponsor of it.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I am informed by the Budget Committee that this amendment will increase the budget authority for the Agriculture Subcommittee of our Appropriations Committee by $2.9 billion. Under the circumstances, Mr. President, I raise a point of order under section 302(f) of the Budget Act as amended that the amendment provides budget authority in excess of the subcommittee's 302(b) allocation under the fiscal year 1987 concurrent resolution on the budget, and therefore is not in order

Mr. BOREN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. I move to waive section 302 of the Budget Act for the consideration of the amendment in light of the fact that for the CBO estimates in toto, it is a net advantage to the Treasury and will be beneficial in reducing the total deficit. I make that motion.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. Mr. President, will my distinguished colleague from Oklahoma yield for a question?

Mr. BOREN I am happy to yield.

Mr. DIXON. On the basis of what I have seen at the desk, my understanding is that not only will this amendment not adversely affect the budget, but with the $7 billion he shows as anticipated revenue from repayment of loans to the Rural Electrification Administration from around the country, in fact, this has a beneficial impact on the budget of $4 billion. Will the Senator from Oklahoma respond to that, since I feel his amendment in general, particularly what it does for disaster areas such as my State of Illinois, which is suffering a flooding disaster right now, and with respect to what it does for soybeans in connection with the loan program and the marketing loan program, is a very, very good amendment. I hope he can clarify the budget question, because I think many of us would like very much to support the amendment.

Mr. BOREN. Mr. President, I am happy to respond to my friend and colleague from Illinois, who has been one of the authors of some of these provisions, including the soybean provision.

According to CBO preliminary estimates, the REA provision, which will allow early refinancing and early payback of loans that are due to the Government in fiscal year 1987, will save the Government a total of $7,280,000,000. $7,280,000,000.

As we go down through the other elements of this program, we find the child nutrition proposal, H.R. 7, would have a net cost of $34 million; disaster assistance program for the Southeast, $230 million for disaster assistance in drought areas. On the sugar beet proposal, there is a very negligible cost involved. We do not have an exact estimate, but I think it is in the neighborhood—I yield to my colleague from Michigan [Mr. RIEGLE]—of $27 million.

Mr. RIEGLE. It is in that range.

Mr. BOREN. Mr. President, the Soybean Marketing Loan Program, because of the devastation that it caused in the soybean industry which dropped their loan rate—in fact, there is no target price established—$1.4 million. Sunflower loan payments from $85 million; cattle restitution, $750 million; heptachlor contamination and cattle indemnity a very negligible cost, somewhere in the neighborhood of $10 million; wheat deficiency, no cost. Credit provisions is $332,130,000; external combustion engine proposal of Senator ZORINSKY, $10 million.

If we total all those up and the other credit provisions provided for, the nonforeclosure provisions, provisions on the classification loan and all the other provisions have no fiscal impact. So the net savings after we take the REA provisions, refinancing provision, and then examine the cost of all of these other programs, which will be of substantial benefit to agriculture, the net savings to the budget in fiscal 1987 is $4.6 billion.

The actual figure is $4,681,000,000. If we project that out over fiscal 1988 and fiscal 1989 as well as fiscal 1987, according to the CBO, the net savings, which are highest initially, in the first year because of the early prepayment, the 3-year net savings compared to the cost of the programs involved is $2,672,000,000. So I respond to my colleague from Illinois that while we may have problems with certain subtotals within the total budget, certain categories under the technicalities of the Budget Act, overall, we do have total savings.

Mr. STEVENS. Will the Senator yield for a moment?

Just to make clear, the point of order I have raised is a point of order under the Budget Act to the basic amendment, that it is in violation of the Budget Act.

I do not want the Senator to misunderstand my point of order.

Mr. BOREN. Mr. President, I thank my colleague.

My point, of course, in countering that point of order with my motion to waive section 302 of the Budget Act for consideration of the amendment, my motion applies to the point of order as it has been raised by the Senator from Alaska.

☐ 1250

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. RIEGLE. I add my voice to others in commending the Senator from Oklahoma for moving on a host of important issues related to agriculture and to add to the words of my colleague from Michigan with respect to the tremendous problem we are now facing in our State with disastrous flood conditions. We are experiencing flooding now that is the product of rain that has extended almost without interruption for a 20-day period, the highest flooding condition in the State. Our geologists and the weather experts, going back through history, say it has been 435 years since the State of Michigan has experienced flood waters of the kind we are experiencing in mid-Michigan at the present time. We are estimating about $230 million to $240 million worth of agricultural crop losses alone. Those are different kinds of agricultural produce that are in the fields that are being destroyed by these rain waters.

For one item that is covered in this legislation, sugar beets, we are now estimating a $33 million loss in that crop alone, but to that have to be added enormous losses in terms of potatoes, carrots, celery, and other vegetable items of that kind. We also are now having the apple harvest over on the other side of the State affected. We are having enormous losses in dried bean production. We are one of the leading States in the country in bean production. So that we are experiencing a level of devastation in our State that is beyond anything that we have ever experienced in modern history.

So I say to the Senator we are grateful that sugar beets would be included, but we may at a later point have to take up the matter of other crop items that would not be covered.

I commend the Senator and I hope we move forward on this amendment.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DIXON. Mr. President, in support of this amendment by my distinguished colleague from Oklahoma, may I say that I share the concerns of my colleagues from Michigan regarding the disaster areas in our States.

We have a similar disaster problem in northern Illinois due to very heavy rains, the substantial flooding of the Des Plaines River and other problems, particularly in Lake County and McHenry County. To the extent this legislation offered by my colleague from Oklahoma attends to those problems, I think it is significantly important to many, northern Midwestern States at this time.

I would also observe that there is a very significant provision in this amendment regarding soybeans. This amendment maintains the soybean loan rate at $5.02, which the administration desires to reduce to $4.77. It also institutes a marketing loan program for beans. I wish my colleague had added a similar provision for corn. The Midwest faces the year's harvest with an enormous surplus of grain, especially corn, and I hope that we will address this problem.

I should observe to my colleagues, who do not serve on the Agriculture Committee or who are not otherwise involved in this issue, that the marketing loan strategy was part of the 1985 farm bill for cotton and rice. It has worked exceedingly well, particularly with rice, and my colleagues from Arkansas may be coming to the floor to direct our attention to that. The producers, the processors, and others have enjoyed a very prosperous year—unique, I think, in American agriculture this year—as a consequence of what has been done with respect to the marketing loan for cotton and rice.

And then finally may I say, in connection with the objection of my friend from Alaska concerning the Budget Committee, if my friend from Oklahoma correctly represents the facts—and I believe that he does—there is a positive revenue provision in this amendment amounting to over $7 billion, so that there will not be a $2-billion loss as suggested by my colleague from Alaska. If the Senator from Oklahoma correctly represents what the amendment does, I take it there is more than a $4 billion savings—on the positive side from a budgetary standpoint—in connection with the adoption of this amendment. I just want to say in closing—I believe this is factual; my friend from Oklahoma may want to represent otherwise if it is not—I am told the administration supports the concept that my colleague from Oklahoma suggests with respect to the REA and the $7 billion savings from this provision would in fact be a positive revenue source.

If that is the fact, we have a situation in which the administration supports the positive revenue side of this amendment, and we also have something significant for every soybean State. I say again to my colleague from Oklahoma I wish we would do the same for corn. But if we are doing it for beans, that is a step in the right direction. We are addressing a serious disaster problem for northern Midwestern States that have too much water. It is similar to what my friend from Tennessee had done earlier for the drought in the Southeast.

This amendment on balance is a very significant one, and I hope people on both sides, who are concerned about rural America and our agricultural problems and the disaster that faces us in the Northern part of our country, would support this amendment by my distinguished colleague from Oklahoma. I thank him for the introduction of the amendment.

Mr. STEVENS. Mr. President, there have been comments here that somehow or other this bill saves money. This bill increases the budget authority for the Agricultural Subcommittee for 1987 contrary to the budget resolution.

Now, had our subcommittee attempted to do in committee what this amendment suggests the Senate do on the floor, the Agriculture Committee would have eaten us alive. I just cannot understand why this bill suddenly has to become a vehicle for every single change in terms of authorizing legislation that we have passed during this whole session. This is a substantial change to the agricultural program that has already been put into effect. The REA provision that the Senator mentions is in the reconciliation bill. As a matter of fact, I believe the Senator from Oklahoma mentioned it was my amendment and is in conference now on the reconciliation bill. It is not needed here. If there is any change that has to be made, we can make it in the conference committee on the reconciliation bill.

As far as the commodities provision, this provision will increase the budget authority by in excess of $2.6 billion. It has not been to the Agriculture Committee. As I say, the reason for the rule is a wise one. If the authorization committee wants to have this kind of a battle and wants to report out an authorization bill that is $2.6 billion in excess of the budget, it can come here and it can get a waiver to that authorization. Once that battle is over, we would have a different situation on the 302(b) allocation. But this budget resolution is designed to protect the appropriations process, and the Senator's amendment is going to frustrate that process.

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On behalf of the Budget Committee and on behalf of the chairman of the Appropriations Committee, I have raised the point of order, and I hope the Senators will permit us to vote on that point of order. We ought to be considering amendments that address our bill, not address any imagined or real defects in the authorization process, because the authorization committees are still here. This bill can be taken to the authorization committee and fought out where it should be fought out, not here on the floor as an authorization on an appropriations bill.

I serve notice on the Senate that if this motion fails, I shall raise a point of order under rule XVI(4) on germaneness. If that fails, I shall raise the point of order that it is legislation on an appropriations bill.

We are going to vote several times on this, because this is not the right procedure.

As members of the Appropriations Committee, we should not be constantly attacked by members of the authorization committees that we are rewriting their authorization bills on the appropriations bill, and then come here to the floor and find that the very same people who are involved in those authorization committees want to add to this bill changes in their authorization bills that have previously been acted upon by Congress.

I say to my good friend—and he is my good friend, and he is trying, I am sure, to pursue his objectives in any way he can—that this is not the right way. This bill ought to be sent to the conference. It has 13 separate appropriations bills in it now. It should not be piggy-backed, like the shuttle on the 747, on the appropriations bill, with agricultural legislation we have already passed. On top of that, we will have the defense bill, and on top of that we already have the drug bill. How many committees can we carry into conference at one time with the appropriations bill when we have all 13 appropriations bills included in this now?

I plead with the Senate not to do this. We will have to have another extension and come back after the session if we have any more of this authorization language in this bill.

I believe the point of order is well taken. We will have a certification from the Budget Committee.

The amendment of the Senator violates the Budget Act, in that it will increase budget authority for the appropriations process for agriculture by $2.9 billion. I think it is a good point of order.

Mr. President, is it time now for the Chair to rule on my point of order?

The PRESIDING OFFICER (Mr. DENTON). The majority leader is seeking recognition.

Mr. DOLE. Mr. President, I hope we are not going to spend the whole day on this one amendment. I am being pressured by Members on both sides to finish the work this week.

We have been on the continuing resolution 3 days and have had one vote each day. We have not had a vote today, and it is 1 o'clock. We are engaging in the annual "farm fest." That is what this is all about.

I have a bill, too. I think I could pay for it, and I may offer it.

We are not kidding anybody. This is a little political ploy here. Whether somebody wins or loses, we are holding out some false hope to the American farmer.

I share the views expressed by the distinguished Senator from Alaska. We have 181 amendments pending, and about 150 of them do not belong on this bill. We have to complete action on this bill this week. If not, we are going to go into next week, and at this rate, we will be on the continuing resolution until Christmas.

I hope that after everybody has made their political speeches, we can get a vote. There are some things that ought to be addressed in the farm bill. There are a number of things that ought to be addressed in the farm bill. Some of us from the wheat States think we should have a marketing loan. Some from the corn States think we should have a marketing loan. The same with soybeans. There are problems in the South and in Michigan that perhaps we can address. But we cannot do it without paying for it.

I believe that the American farmer is willing to pay for it. If we have to increase the acreage reduction, which is not in this amendment, then we should increase the acreage reduction. If we are going to try to help the farmer, we have to find a way to provide for it. We are spending $56 billion this year for programs; that has more than quadrupled over the last 4½ years.

I hope we can get a time agreement on this amendment. We have to go off the continuing resolution at 7 o'clock. We do not go back to the continuing resolution again until Thursday morning at 8:30. We will be out of here at sundown on Friday because of the religious holiday.

It was our hope to wrap up the legislative session this week, all the legislative action, and have the impeachment trial next week, so that Members, running or not running, would be free to at least have 3½ or 4 weeks to do whatever they wish to do.

I do not quarrel with those who offer the amendment. I may have a better farm bill to offer before it is over, one which does not violate the Budget Act and that has real savings in it.

I hope we can have a vote on this. Can we get an agreement to vote in 30 minutes?

Mr. EXON. Mr. President, reserving the right to object——

Mr. BOREN. Mr. President, I am not offering this amendment for the purpose of being dilatory. This is a serious effort.

Mr. DOLE. There are 180 serious efforts

Mr. BOREN. Several of my colleagues on the floor want an opportunity to speak. I would like to give them an opportunity to speak. I have not had the chance to talk to them about how long they want to speak. I am sure that if we hear from two or three briefly, we will be able to reach a time agreement.

There is no desire on the part of this Senator or those supporting this amendment to use an extended period of time.

So I would like to wait for just a moment to let some of the others speak, and I will be happy to work with the majority leader in a few minutes. But then, it may naturally come to a close. If it does not, I will be happy to have a discussion with them about a time agreement on this matter.

Mr. DOLE. I say to the Senator from Oklahoma that before the continuing resolution ends, we might be able to put together an agreement.

Mr. BOREN. I thank the majority leader.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, while Senators are waiting to speak, I want to take a brief moment before yielding the floor to them.

I find it ironic that several Senators are suddenly concerned about allowing prepayment of REA loans. It is argued that my amendment will cost the Government billions of dollars in the long-term. It is argued that we should not be selling the assets of the Government. This seems very ironic to me, Mr. President, considering the Senate's action just last week on budget reconciliation.

I remind my colleagues, the Domenici-Dole package increased the amount of REA loans to be prepaid by $500 million. My amendment merely expands on this proposal by the distinguished chairman of the Budget Committee and the distinguished majority leader. Their proposal stimulated my thinking on the issue. I have taken the precedent they set in terms of prepaying these REA loans. The Senator from Alaska has been involved in making this proposal.

Not only did the Domenici-Dole package allow for repayment of REA loans, the package also provided for additional sales of rural development insurance fund loans-water and sewer loans—and additional sales of Eximbank loans.

The Domenici-Dole package, the vote on that package, and the subsequent vote on final passage of reconciliation set the precedent for the amendment we are now considering.

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And the Domenici-Dole package raised almost $2 billion in fiscal year 1987 with these provisions. The Senate voted to adopt the package by a vote of 79 to 15.

The Senate adopted the reconciliation bill by a vote of 88 to 7. The reconciliation bill, S. 2706, as passed by the Senate included REA prepayments and loans sales for fiscal year 1987 which reduced outlays by approximately $3.5 billion.

The Senator from Alaska has mentioned that the problem is that that proposal did not go far enough because it put a cap of slightly under $2 billion on the total amount of REA loans that could be affected.

So, Mr. President, with such overwhelming votes in support of reconciliation—and I might have mentioned that had some of them wanted to raise the very same point of order under section 302 to the reconciliation package to the Domenici-Dole package the very same point of order could have been raised. It is exactly the same kind of provision but because it saves money overall, people refrain from offering or from making that point of order at that time.

So the very same issue is a serious matter.

Let me say I think that when we look at what we ought to be spending our time upon and I know there is a press for time, but when we think about what we should be spending our time on, we are going to end this year without doing enough for the budget deficit, without doing enough with the trade deficit, without dealing with the serious crisis in agriculture. What should our priorities be?

We have passed a tax bill that may or may not help the economy of this country. But we have not dealth adequately with the twin deficits that we know are destroying and sapping the vitality of the people. We have not dealt with the agricultural crisis we know is threatening the economic health of this country and causing untold human tragedy. What are our priorities? What should our priorities be?

Mr. President, I do not know of anything that is more important than this right now. I do not know that the rush to get on with other amendments or to get on to some sort of self-imposed deadline is more important than doing something about solving the farm problems of this country. This Senator has requested hearings. This Senator requested hearings of the subcommittee beginning January of this year.

It is not the fault of this Senator that the authorizing committee only held two major hearings this year and did not report out any major legislation that would change the mistakes that were made in the 1985 farm bill. So we should have an opportunity to act on these proposals.

It is not a matter of politics. It is a matter of what ought to be done in a bipartisan way to solve a very critical problem. We ought to deal with the drought victims in the Southeast. We ought to deal with those who suffered in Michigan. We ought to deal with what has been done with the cattle producers in this country who through no fault of their own had their own Government come in with a mismanaged program and depressed the prices, and do something about the suffering of soybean producers that unduly impacted again by the discretionary decision of the Secretary of Agriculture. We ought to do something about farm credit along the lines the distinguished Senator from Minnesota, who arrived on the floor. Mr. Boschwitz and I have been proposing for some time a very workable provision. I think this is a matter we should be taking up. We should be taking it up now.

The reason I am offering it now is I have not had an opportunity to offer it anywhere else. The authorizing committee has not reported out any major legislation. The CFTC bill that was an agricultural authorizing bill on which I wanted to offer this amendment was pulled down. The Federal insecticide bill which again was an agricultural authorizing bill on which I could have offered this amendment has not again been called up on the floor.

I would have offered it on either one of those two bills instead of on the continuing resolution. This Senator has had no opportunity to do that. This Senator feels compelled as he goes home and I know there are many others in this same situation in talks to farmers and ranchers in desperate situation. This Senator feels compelled to do whatever he can to try to give this Senate an opportunity to deal with this crisis.

It is more important than technicalities. It is more important than questions of committee jurisdiction.

Farmers who are being foreclosed upon are not concerned about the technicalities of Senate rules. They are fighting for their economic survival and we should do something to help them.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. BOREN. I am happy to yield.

Mr. STEVENS. Mr. President, I have farmers in my State. I hope that the farmers in the Senator's State from Oklahoma are as responsible as mine. My farmers are concerned about money.

And I think they would believe me if I hope that the Senator from Oklahoma would believe me, Mr. President, when I state the Reconciliation Act already took into account the savings that are in the Senator's amendment.

You cannot save the same money twice. This proposal of the Senator from Oklahoma will increase the cost of the farm program without any savings that we can find.

The Senator from Kansas says he has got another way to try it maybe later today, and I hope he does. I would be happy to support something that would reshuffle the money that is already available for the farm area and make it more effective but that is not this amendment.

This amendment, and I say to my friend I am sure my friend realizes that it is not with any great feeling of pride or anything else that any Senator raises a point of order against another Senator's amendment under this Budget Act. It is our duty to do it. I have been requested by the chairman of the Budget Committee, by the chairman of the Appropriations Committee, to do it, and I think the Senator has misunderstood me. If I hear him correctly, Mr. President, the statement of the Senator from Oklahoma indicates that somehow or other that we should have raised this point of order in the Reconciliation Act. This point of order would not apply to the Reconciliation Act because the Reconciliation Act took into account the savings the Senator wants to use again. You cannot use them twice.

Mr. BOREN. Will the Senator yield a minute on that point for a question?

Mr. STEVENS. I yield.

The PRESIDING OFFICER. The Chair will note that the Senator from Oklahoma has the floor. It is not appropriate to yield to another Senator. The Senator from Tennessee has been seeking recognition and I would say that in deference to him.

The Senator from Oklahoma.

Mr. BOREN. I yield the floor, Mr. President.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Mr. President, I thank the Chair.

Mr. President, I rise in strong support of the amendment offered by the distinguished Senator from Oklahoma. I am pleased to see that my able friend from Oklahoma is addressing several very pressing agricultural problems.

In particular, I am grateful that we are focusing on the continued need for Federal drought assistance for our farmers in the Southeastern United States. The drought has not gone away in the Southeast. Yes, some rain has come, but it has not been enough to alleviate a rainfall deficit 3 years in the making. Nor has it been in time to resuscitate parched hay and corn crops all across the Southeast.

As of yesterday, 691 counties across the Southeastern United States had been declared eligible for emergency drought relief by the Department of Agriculture. Eighty five of those counties are in my native State of Tennessee. That is 90 percent of the counties in Tennessee. Ninety percent of Tennessee has felt the terrible repercussions of the worst growing season of this century.

As my colleagues will recall, we attached a comprehensive drought relief package to the debt limit bill when that measure was on the floor in August. That package had broad bipartisan support. Since then, the House has passed drought assistance legislation nearly identical to the Sasser-Gore amendment that we adopted in August. The House vote, too, was overwhelmingly bipartisan—418 to 0 in favor of a drought package.

I am pleased that this amendment offered by my distinguished friend from Oklahoma includes the drought relief package I offered to the debt limit bill.

Passage of this amendment will ensure prompt, comprehensive relief to our Southeastern farmers.

I might say, Mr. President, that following the adoption of my drought amendment, just prior to adjournment for the August recess, it became clear that the amendment was not going to be acted on fully and enacted into law.

I asked my colleagues at that time what we would tell the farmers in the Southeast who are seeking some measure of drought assistance and drought relief. Would we tell them that we adjourned for the August recess and that they would just have to wait until we get back in session?

Now, the question I ask is: What do we tell them if we do nothing else? If we tell them "You will just have to wait until we get back in session in January. You know we had to adjourn early for the elections coming up in November."

I do not think many of my colleagues want to take that message to the farmers suffering from drought in the Southeast, or farmers needing assistance in other areas of this country.

The amendment of my friend from Oklahoma mandates the use of disaster payments—payments this administration has not indicated its intention to use. And it requires the Secretary of Agriculture to make those payments using surplus commodities—thereby reducing both payment costs and what have been escalating commodity storage costs. It suggests forbearance by the Farmers Home Administration for those farmers unable to make payments due to the drought. It allows a delay in assessments for dairy farmers. And it requires the Secretary to continue the emergency feed program through the winter. I say this sadly, Mr. President. Given this administration's cavalier attitude toward disaster assistance, I am reticent to allow USDA the discretion to terminate this important program before the long winter months are over.

This amendment will augment other initiatives being taken by concerned citizens throughout the Southeastern United States, citizens who know just how critical this situation remains and who are trying by volunteer efforts and banding together to deal with the worst drought of this century.

For example, citizens in Greene County, TN, have been working with the Army Reserve to use Army Reserve vehicles from Kingsport to haul hay all the way from Iowa to Tennessee, hay that Tennessee farmers are able to buy now that the Emergency Feed Program has been implemented.

A recent letter from the Greene County Executive reads, in part, "The need for hay in Greene County is critical. The applications we are now receiving from our farmers are showing that they have no more than 2 weeks supply of hay left at this point." In response, I wrote the commander of the U.S. Army Reserve in Nashville urging his cooperation in this impressive endeavor.

I ask unanimous consent that the letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OFFICE OF THE COUNTY EXECUTIVE,
Greeneville, TN, September 26, 1986.
Attention: AFDK-ACT-OP-Maj. Ralph Stewart.
125th Hdqtrs.,
Army Reserve Command, 443 Donelson Pike, Nashville, TN.

DEAR MAJOR STEWART: In the first letter mailed to you asking for your help in getting hay moved from Iowa to Greene County, I enclosed a list of names, addresses, phone numbers and the amounts of hay from each donor. There was an error made in the computation of the weight and cubic feet column.

Therefore, please find a new list with the correct computations for weight and cubic feet of hay from each donor.

Again, I stress the fact that the need for this hay in Greene County is critical and weather conditions in Iowa will soon make it difficult or impossible to move this hay. The applications we are now receiving from our farmers are showing that they have no more than two (2) weeks supply of hay left at this point.

Thank you for your help so far, and for anything you can help us with in getting this donated hay moved from Iowa to Greene County.

Very truly yours,
JOHN G. HANKINS,
County Executive.

U.S. SENATE,
Washington, DC, September 1, 1986.
Major-General DENNIS R. JONES,
Commander, 125th U.S. Army Reserve Command, Nashville, TN.

DEAR GENERAL JONES: It has recently been brought to my attention that there is considerable interest within the Army Reserve in East Tennessee to assist drought-stricken farmers in transporting hay for their livestock.

As you may know, dairy and livestock farmers in Middle and East Tennessee—faced with parched pastures and decimated hay crops—are being forced to buy hay from any available source. Unfortunately, these farmers are having to look to states as far away as Ohio to find available hay for purchase. However, suitable transportation for such large quantities of hay is either extremely expensive or simply unavailable.

It is my understanding that the Army Reserve in Tennessee has a number of tractor-trailers at its Kingsport and Chattanooga Centers, and that interest has been expressed from both within the Army Reserve and by the agricultural community in East Tennessee in using those tractor-trailers to help with hay transport.

This spirit of volunteerism is to be commended. I would urge you to put into motion the processes necessary for allowing the Tennessee Army Reserve to make its equipment available for this mission of mercy.

I look forward to hearing from you on this matter.

Sincerely,
JIM SASSER,
U.S. Senator.

Mr. SASSER. Mr. President, providing this much-needed assistance will require cooperation from State officials. I have urged swift action on this front. It is my hope that State officials will not turn their back on Tennessee farmers in this time of need.

Swift action is needed on all fronts—at the State government level, at the Federal Government level, and on the volunteer level as well. This has been a year of unprecedented and unrelenting natural disaster. It should also be a year of compassion for those farmers who desperately need help.

I hope we can find this for our beleaguered farmers across the country. And I commend the distinguished Senator from Oklahoma for taking the initiative here today to offer this amendment that I think is so desperately needed.

Mr. BOREN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. Mr. President, I want to thank my colleague from Tennessee and also thank him for his patience in waiting as we discussed other matters to make his remarks.

I want to compliment also his colleague from Tennessee, Senator GORE, for the outstanding work which they did earlier in shepherding through this body legislation to provide assistance to those who suffered so desperately from the drought in the Southeastern part of the United States. Without his efforts and without his insistence on action we would not have had the earlier action on the floor of the Senate. I think it is imperative that we now move ahead to make sure that the momentum of that action will not be lost, and that the help will actually get to those who need that help.

I want to mention briefly in response to the comments made by my good friend from Alaska earlier that I think there is some misunderstanding that developed with regard to the savings which we are generating with the early payment of REA loans which not only pays for the other provisions of my amendment, but also allows for further reduction of the budget deficit because we come up with a net savings of some $4.6 billion in fiscal 1987.

My good friend from Alaska—and he is my good friend; I have great respect for him—I understand in good conscience is raising this point of order, and I certainly do not criticize him or his motivation. Also he has a lot of genuine concern for those that are suffering in the agricultural sector.

So I certainly appreciate his efforts. We have joined together on many, many things in the past. I understand that he is in conscience doing what he thinks is right in terms of the precedent that we are setting.

Mr. STEVENS. Will the Senator yield?

Mr. BOREN. In just 1 minute. I want to raise this point and perhaps the Senator from Alaska will want to respond to it.

We asked the Congressional Budget Office to make an estimate of the savings of this particular amendment. We asked them to make an estimate of the net savings already made in the reconciliation package. The Senator from Alaska is quite correct. There were some savings generated in the reconciliation package from the early payment of REA loans by allowing a certain portion of REA loans to be refinanced at lower rates of interest through the private sector, and then have the government paid early. There were some savings generated already in the reconciliation bill.

But the savings I set forth in my description are savings, that are net additional savings over and above the savings already scored in the reconciliation bill according to CBO. The reason why there are additional savings over and above the savings already generated in the reconciliation is that a cap of $1.9 billion was set on the total amount that could be paid in, in terms of early payment under the refinancing of the REA loans under the terms of the Reconciliation Act.

Had there been no cap, had we allowed the REA's, the electric cooperatives to refinance as much of their debt as they were able to refinance in the private sector and make early payment, then the savings would have been much larger in the reconciliation bill. Indeed, the full $7.2 billion plus the amount already scored in the reconciliation bill would have been saved.

But in addition to the savings we have already made in the reconciliation bill, which placed a cap on the amount of loans that the electric cooperatives would pay early, and because of that cap being removed in this amendment, allowing the REA's to refinance as much of their debt as it makes sense for them to refinance and make early payment, we have an additional net savings.

When this Senator said a while ago that the same kind of point of order could have been raised for exceeding the section 32 limitations under the Budget Act, under the reconciliation bill, I think this Senator was correct; that is, why, when the time agreement was reached on the reconciliation bill, we specifically waived the right to raise the point of order to that package?

So the analogy is exact. The savings were not distributed exactly the same way. But the principle is exactly the same. Savings were made in the reconciliation bill by allowing prepayment of some REA loans with an overall cap.

What I have done is simply take the idea that was included in the Domenici-Dole package—and I was also a coauthor of the earlier amendment offered by the Senator from Alaska on this same subject—we have simply removed the cap, have taken what I believe was a good idea, and allowed it to become even a better idea so that we can get additional moneys in with early payment.

We have covered the costs of these very badly needed agricultural programs with still a generation of net savings in the first year of $4.6 billion, and a net of between $2 billion and $3 billion over the 3-year period as we look ahead.

Of course, at some point in time, you begin as you go into the outyears to look at the question reversing itself. But still I believe in the long run for us to take these savings generated in the first 3 years—that is exactly the same principle as has been supported by the administration in other cases—and use those savings to help shore up the agricultural sector, I think, in the long run, is going to be sound economics in terms of what it is going to do to the total economy of this country.

So I offer that explanation. This Senator has stated his understanding of the economic impact and the scoring of the amendment by the CBO to the best of his own honest knowledge on this subject.

Mr. STEVENS. Mr. President, will the Senator yield for a question?

Mr. BOREN. I yield the floor, Mr. President.

Mr. STEVENS. Mr. President, we do have a disagreement on the question of savings. I would say to my friend from Oklahoma in the Reconciliation Act we did increase the amount from the supplemental appropriations bill from $1.2 billion to about $1.8 billion. This is somewhere around, as I understand it, $7.5 billion in outlays. That is in outlay reductions.

☐ 1330

My point of order is on the budget authority, contrary to either the supplemental or the Reconciliation Act. The amendment of the Senator from Oklahoma would increase the budget authority for agriculture by $2.9 billion. My point of order is made on that basis.

Beyond that, I would say this to my friend: During the adjustments made on the Reconciliation Act, this Senator got a rather deep lessen in finance and what it means to put on the market all of these refinancings for the REA's at the same time we are trying to refinance through the Treasury Department the existing Government debt structure.

Should the amendment of the Senator be adopted, it would mean that all of the refinancing goes out from the REA's at the same time we are refinancing the debt structure, and it is going to result in increasing cost to the Treasury to borrow money. That has not been quantified.

That was the reason that this Senator was willing to compromise at the amount we compromised on in connection with the Reconciliation Act. I would urge the Senator to consider that. I am told that if the Senator's amendment is adopted, the cost to the Government will net about $25 billion in terms of the refinancing cost because of the reduction in the interest revenue that will come to the Federal Government from the existing loans.

At the same time as the Government has that reduced income, it faces increased outlay on borrowing for the Government's Treasury issues because of the competition in the marketplace brought about by the complete refinancing of all existing REA loans.

I am very much a proponent of the refinancing program, but I think we have to accept the discipline involved in both the reconciliation bill and the appropriations bill of putting a limit on the outlay reductions we are taking credit for because the outyear costs must also be taken into account. I thank the Senator from Oklahoma.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I have listened with great interest to the debate on this matter. I hope before we vote on the pending motion of the Senator from Alaska we have a clear understanding about what we are doing fiscally on this matter. From the assurance I have received from my friend from Oklahoma and from what I have heard from my friend from Alaska, there seems to be a significant difference of opinion.

As a member of the Budget Committee, I am concerned about budget authority and about where the money is going to come from to do the things that the Boren amendment proposes to do.

Aside from that, I would like to get into the merits or lack thereof of the amendment offered by my colleague from Oklahoma. I think my colleague from Oklahoma, Senator BOREN, and I have stood on this floor together more often probably than many other Members of this body with regard to farm legislation. I am trying desperately to bring myself to the position where I can support him in this effort. I know full well he is trying desperately to do the right thing, to help the sectors of our country and economy that today are in desperate straits, particularly agriculture and the rural areas of America.

The Drought Disaster Program he has advanced seems to me to be in order if we can find the money to finance it. We do not have a drought in Nebraska this year, but we could have next year. I think my record basically indicates when other people are in trouble, I try to recognize there should be some action on the floor of the Senate under whatever means is necessary to accomplish that.

I tried to seek the floor when the majority leader was here. Unfortunately, he has left now.

I note the majority leader branded this amendment as somewhere along the lines that this is our annual help-the-farmer bill. If it is, maybe we should have more like that because we have not been doing very much realistically to help the farmer, other than to spending up to $30 billion a year on a farm program that is not working.

Having said that, if I can I want to ask questions of my friend from Oklahoma so at least this farm State Senator understands what is being done and what is not.

While the majority leader criticized the effort by my friend and colleague from Oklahoma, at the same time he indicated he had a goody-type farm amendment. I suppose his will be the Republican farm amendment to get the farm vote and maybe he thinks that the amendment offered by the Senator from Oklahoma is a Democratic-sponsored amendment to get the farm vote.

They may both be wrong and they may both be right. I simply say this is not the time to bring partisanship into this discussion because there is a depression in agricultural America today and in rural America. We have to do something about it now or address it head-on when we come back here in January, if we ever get out of this session.

Specifically I would like to make some comments about what I understand is in the amendment of my friend from Oklahoma.

Aside from the question still up in the air, is the money there or is it not there, is the amendment offered by the Senator from Oklahoma using the same funds over again in whole or in part set forth in the reconciliation bill?

I will set that aside for the moment because that is a different situation.

As I take it, there are several billion dollars that the Senator from Oklahoma feels can be used to finance a program that he is suggesting here by the speeded up sale of REA loans over and above what is now being contemplated in the Reconciliation Act.

I ask my friend from Oklahoma that question. I yield to him for the purpose of answering that question.

Mr. BOREN. I thank my colleague. Mr. President, that is correct.

The Senator from Nebraska, of course, is intimately familiar with the action of the Budget Committee earlier this year. In the overall package, the supplemental bill and the reconciliation bill, this same type of proposal was made, to allow some repayment of some REA loans based upon refinancing those loans. It is just like refinancing a house, an electric cooperative can refinance at lower rates of interest in the private sector and make an early payment in bulk to the Government of a front-loaded payment. That brings in additional revenues to the Government that would not otherwise come in. It follows the exact same procedure.

When the earlier reconciliation package passed, a limitation was put on. The overall cap was $1.8 billion in terms of the amount that could be prepaid.

I asked CBO, in addition, if we take the cap off and let the electric cooperatives refinance everything that made sense to them to finance, how much additional savings would be generated to the Government?

They used the assumption, they tell me, that they assumed a 9 percent threshold, that if they had loans out there, they were going to refinance the loans and make early payment. On that basis, they estimated that an additional approximately $7 billion over and above the $1.9 billion already scored would come in.

So we have $7 billion of additional savings generated by this amendment.

This Senator, with several provisions—

Mr. EXON. Let me go into those later.

Mr. BOREN. When we finish with that, the net savings for fiscal 1987 to the Treasury would be approximately $4.6 billion.

Mr. EXON. I thank my friend.

Let me ask another question. Maybe we can move this along a little bit.

Let me ask a question with regard to drought disaster loans.

Is there any limit on the amount that would go to individual claimants on that, or would the regular provisons prevail as in existing law?

Mr. BOREN. Those under existing law would prevail. The disaster provision is exactly the disaster provision we passed on the floor. This amendment simply restates the drought disaster assistance we passed earlier.

Mr. EXON. And funds it, is that correct?

Mr. BOREN. That is correct. It is the same provision we passed earlier.

Mr. EXON. If I understand correctly, there is also a payment which is in order, I think, at least to some extent, regarding the mismanagement of the sellout of the dairy cattle herds that had a tremendously adverse effect, at least for a period of time, on the beef cattle market. I understand that incorporated in the amendment is a provision that compensates in some fashion or from those people who were so injured during that time when the market was down. Is that correct?

□ 1340

Mr. BOREN. The Senator is absolutely correct. That is a very major portion of this proposal. It is one of the larger items in this proposal.

Mr. EXON. What is the estimate of how many millions or billions?

Mr. BOREN. The cost involved is about $600 million.

Let me say to the Senator from Nebraska, because I appreciate his frugality and want to make sure that no money is wasted. We know exactly what happened in the cattle market during that period of time. Through Government mismanagement, cattle prices plunged in some places as much as $10 per hundredweight. What we apply we think is a fair reimbursement. It will not fully make them whole but it will help. It is $6 per hundredweight. They will actually have to show their sales receipts on what they sold during this period of time, approximately 60 days, in which the prices were so terribly depressed.

We know what happened in the market, that it had a $6 minimum, really much more in some cases, $6 per hundredweight decrease. So the payment back to make up for the damage inflicted by the Government will be based upon $6 per hundredweight, with the actual documentation required.

Mr. EXON. Mr. President, the question I am asking my friend from Oklahoma, based on my retaining my right to the floor—I have several other things I want to get clear—is, is there any cap as to what any individual cattle producer that suffered a loss during that time would receive? Let me cite an example.

Supposing I sold a few head of cattle at that time and I may have lost $1,000, let us say. My neighbor across the way sold 1,000 head of cattle during that time. Would he be compensated unlimited amounts with regard to the number of cattle he sold?

Mr. BOREN. I say to my good friend that there is not a cap provision in this proposal. The reason for that is that the feeling was that since the Government inflicted the damage directly—it would be just the same as if the Government went out and destroyed a herd. Our feeling was that if the Government went out and destroyed 10 head of cattle, that rancher should be compensated for 10 head.

If he had 100 head of cattle and the Government went out and, for some reason, destroyed 100 head, he should be compensated on that basis.

In our part of the country, it hit at a time when virtually all of our family farmer ranchers who graze out their wheat were in their market pattern so they had no choice but to go ahead and go to market at that point.

I would agree with the Senator from Nebraska that while we should have some caps on normal income proposals, here we are dealing with something that I think is more akin to a disaster-type situation, where the Government itself, through the mismanagement of the program, directly inflicted the damage. So I think it would be fair under this situation that the rancher become compensated based upon actually how much he sold at that time.

Most of the sales were distress sales. They would have waited until the market recovered if many of them had had any way to wait, but they had to go ahead with that marketing pattern.

Mr. EXON. I would want to look at that a little bit further.

I say to my friend from Oklahoma he makes a very good point, except those of us who foster and promote agricultural programs sooner or later, and perhaps the time is now, are going to have to recognize that we are going to have to put some kind of cap on these programs, however, worthy they are, that we enact on behalf of our farmers and our ranchers.

Let me go to another question. As I understand it, the Senator's proposal includes marketing loans for soybeans.

Mr. BOREN. That is correct.

Mr. EXON. We raise soybeans in Nebraska. We also raise a great deal of a commodity called corn and a great deal of a commodity called wheat. One of the great travesties in the last farm bill—which I voted against, by the way—was that in order to get the votes to pass this, the administration came forth with what was known as marketing loans. But they only distributed that in the South, where they raise some cotton. We do not raise much cotton in Nebraska. It is a Southern crop. We raise practically no rice in Nebraska; that is a Southern crop.

To buy out the votes to get the farm bill passed—in my opinion; that is an editorial comment, likely to be denied on the floor of the U.S. Senate—I think it picked up some Southern votes for that farm bill that should never have been passed in the first instance. Another thing that was done in that regard with some other sweeteners was marketing loans for cotton and marketing loans for rice. Now we are adding, I guess, marketing loans only for soybeans and no marketing loans for two other basic commodities, which we do happen to raise in Nebraska, namely, corn and wheat.

Why? If marketing loans are good, and I shall comment on that in a moment—I am not sure they are. But if marketing loans are good and marketing loans now have become the politicians' way of trying to save the family farmer 30 days before election. If they are good for soybeans and if they are good for cotton and they are good for rice, why are they not good for corn and wheat?

Mr. BOREN. Let me say to my good friend that first of all, this Southern or Southwestern Senator, however I would be described, is not one of those who voted for the 1985 farm bill. I joined the Senator from Nebraska in voting against it.

We do have provisions that will be beneficial, I think, to wheat producers in this package. We have tried to have some balance. As the Senator knows, the early payment of the deficiency payment is provided for in this bill for wheat. We have a situation where we have, given the wheat marketing year, the 60-cent additional deficiency payment caused by the drop in the loan rate will not be paid until the following calendar year.

Mr. EXON. Was that not corrected with an Exon amendment?

Mr. BOREN. It was passed on the floor and put in the debt limit provision and conference has never occurred on that.

Mr. EXON. So the Senator has reintroduced it?

Mr. BOREN. We put that back in the package.

Mr. EXON. It is a good provision.

Mr. BOREN. The soybean situation is this: We had something in the marketing loan section for soybeans but it had an unintended effect. Soybeans do not have a marketing price like other commodities. The concept of a marketing loan is that when the Secretary uses his discretion to drop the price, there is income protection. Just as when we had a 60-cent drop in the loan rate on wheat there is income protection because of the target price.

There is no target price for soybeans, so what happened was when the Secretary went ahead this year and used his discretion to drop the loan rate and therefore the price for soybeans, there was no income protection. So it has caused a very, very severe problem.

I say to my good friend that I wish I could say we have addressed every single problem for every sector in this proposal. We have not. For example, we did not change the prepayment to the deficiency payment on corn as we did on wheat because the marketing area is different.

Mr. EXON. Let me say to my good friend, did not the soybean people during the debate last year, at least the national representatives, tell us they did not want a marketing price?

Mr. BOREN. I think the Senator is correct.

Mr. EXON. Now they have changed their minds.

Mr. BOREN. I think the Senator is correct. I think the situation has developed in a way they did not anticipate. I think the Senator from Nebraska knows that I am very sympathetic to the feelings he has expressed about one sector being played off against another. That happened in the passage of the 1985 farm bill. The bill was a tremendous mistake and should not have been passed. I am in great sympathy with the frustration he is expressing.

But I do feel in terms of trying to deal with the national agriculture problem now, it is appropriate for us to take notice of the fact that we now have these farmers, even if perhaps some of their own advisers led them into a wrong situation, they are now in desperate trouble and many of these people working hard all day long producing soybeans were not the policymakers, so they are suffering. I urge my colleague from Nebraska to take that into account, even though I agree with him and have the same frustrations he has about the way the 1985 bill was passed.

Mr. EXON. Is there any limit on the amount of marketing loans that an individual farmer could apply for and receive under the Senator's proposal, or is there any requirement for acreage cutbacks to try to get the price up?

Mr. BOREN. No, Mr. President, this is a 1-year provision, put in because the Secretary has already used his discretion this year. So we have not. We have made it analogous to the other commodities. There are not caps on the other commodities.

□ 1350

I agree with the Senator from Nebraska that in the future when we go into permanent legislation on this subject, that is something which probably should be considered. I will confess to him that what we have again tried to do is not totally rewrite the farm program but to take into account some of the immediate ad hoc problems, and there are further refinements that still need to be made.

Mr. EXON. Do I take it then if this amendment passes and eventually becomes law, for the 1987 soybean crop year the soybean producer could plant as many soybeans as he wants under the present procedures in effect and that the Government would therefore end up owning most of the soybeans?

Mr. BOREN. Mr. President, I do not believe that would be correct, because we are applying this to this current marketing year, not prospectively to the next marketing year. So I do not think that would be the case.

Mr. EXON. The proposal the Senator has is for the 1987 soybean crop only; is that right?

Mr. BOREN. I want to make certain that that is the case. That was the intent.

Mr. EXON. It would help me if the Senator could clarify it.

Mr. BOREN. We apply it, since the Secretary has used his discretion on the crop year already in progress, to the farmer who is not receiving the income protection. That was our intent.

Mr. EXON. Whether it is for the 1986 crop or whether for next year's crop, there is no cap placed on how much of the soybeans could qualify. I could qualify all the soybeans I raise if it is on the 1986 crop; is that correct?

Mr. BOREN. Mr. President, that is correct. And I did double-check. We do specifically state here for the 1986 crop year. We do not refer to the future, and therefore it would not have any kind of incentive built in for the future. We are dealing with what has already been done for the 1986 crop year and providing, you might say, a retroactive protection because they have suffered in unintended ways.

Mr. EXON. I think that is true, and now that I understand that provision of it, it puts it in a little different perspective than I had thought originally. I would also say at the same time we are losing credibility, those of us who promote farm legislation over and over again. We lost an awful lot of credibility by the stories that appeared in the press, and I assume they were true, that one dairy farmer got $9 million or sold his dairy cows to the Government for $9 million to qualify in the program. I guess what I am saying is—and I think my friend from Oklahoma agrees—somewhere along the line we are going to have to put some reasonable caps on some of these programs or we are going to lose all of them. And if this bill passes, I would suggest—maybe before it passes—at least we ought to have a little discussion to see if we could not put some kind of a cap on this to make these programs beneficial to and in support of true family-sized farmers rather than large corporate soybean farmers. That is the concern I have and I think we should take a look at it. Maybe we can talk about that later.

Let us go to another important proposal that the Senator from Oklahoma has advanced that I think has an awful lot of merit. The Senator basically provides some money in his amendment for a buydown on loans for farmers in difficulty. If I understand it right—and correct me if I am wrong—this would provide, for qualifying farmers, that 2 percent would come out of these funds, 1 percent would be provided by the financing institution and the States themselves could come up with another 2 percent, if they wished, but that is not a requirement. If that would be the case in an individual State, then a farmer who is presently paying, let us say, the 13-percent interest rate a lot of them are paying, if this went into effect that would drop to around 8; is that correct?

Mr. BOREN. The Senator is correct. And of course the Senator from Nebraska has been one of the leaders in this body is trying to bring some credit relief. I would point out that one of the difficulties in the interest rate buydown program has been that currently we require, in order to get a 2-percent buydown by the Government, the financial institution must come up with 2 percent. Many of them are already undercapitalized. under extreme pressure from the regulators and not because they have not wanted to participate; they have simply not been in an economic situation where they couild participate. So these programs have not been very successful in the past because you have just not had the ability to participate.

By changing this to a 1-percent participation along with a 2-percent buydown, it is estimated that many, many more institutions will be able to participate in those States where they have the financial capability. And of course there are a number of States right now that are so hard pressed they may not be able to participate. That is the reason we left it optional. The additional 2 percent by the State is optional—if he could participate—the Senator is right. A 5-percent change or a 3-percent change would leave a tremendous impact on the ability of a lot of farmers to survive and get through this period. It is very important, as the Senator from Nebraska argued, that we get in place something that will work, will get this interest rate reduction help out to the farmers who need it.

Mr. EXON. I thank my friend. One last question and we will move on as far as this Senator is concerned.

There again I assume is no cap then on the amount of troubled loans that could be refinanced in this manner? Example: An awful lot of family-sized farmers today have loans of $100,000 or less, maybe some up to $200,000. Other nonfamily-sized farmers and some family-sized farmers included have loans of $500,000 that would be affected. There is no cap on these loans and the buydown privileges would be the same, as I understand it, whether the individual farmer of farm corporation owed $1 million or $500,000 or $100,000, is that correct?

Mr. BOREN. No; Mr. President, in this situation there is a cap provided in the proposal, a cap of $400,000 of principal is provided. So we are really trying to target this assistance mainly to a family farm kind of operation. So there is a cap in place on this program.

Mr. EXON. So if I understand it right, it would not be fair to say it was $1 million to $500,000. I suggested $500,000. The Senator from Oklahoma said $400,000. But then it is true that a family-sized farm that has $100,000 in obligations would be treated the same as someone with $400,000 in obligation, is that correct?

Mr. BOREN. That is correct. In fact, the way the provision is written, it says $400,000 for an individual farming operation. If it is a family farm, an incorporated family farm—if it meets the definition—it could be up to $600,000 on principal maximum.

Mr. STEVENS. Mr. President, will the Senator yield?

Mr. BOREN. I will be happy to yield. The Senator from Nebraska has the floor.

Mr. EXON. I have the floor. I retain my right to the floor.

Mr. STEVENS. Will this Senator yield to me?

Mr. EXON. I will be happy to yield for a statement.

Mr. STEVENS. For a question. I would like to address a question, Mr. President, to both Senators. We have been on this amendment now for 2 hours and 15 minutes. We have 130-odd amendments that we know of on this bill. I wonder if now we could get a time agreement to vote on this by 2:10, for example.

□ 1400

Mr. BOREN. Mr. President, I am told by the Senator from Arkansas [Mr. Bumpers] that he wishes to speak for approximately 5 minutes. Senator Harkin would like to speak for 5 minutes.

Mr. EXON. When my colleagues has finished his discussion, I will make a brief comment and yield the floor. I would like to do that now. So far as the time agreement is concerned, I leave that up to the Senator from Oklahoma.

Mr. BOREN. Mr. President, if we could be allowed approximately 20 minutes, maximum, on this side, that may exceed the amount of time that would be required. If we can finish more quickly, we will.

This Senator has about 2 minutes. The Senator from Arkansas and the Senator from Iowa would like to speak. That should accommodate it.

I will be happy to agree to a request that on this side we be limited to 20 minutes, from this point forward.

Mr. STEVENS. Mr. President, I ask unanimous consent that we have 20 minutes for the proponents and 5 minutes on this side, a time agreement to vote in 25 minutes, without any quorum calls or any interruptions—that the Senate will vote at 2:25.

Mr. BUMPERS. Mr. President, reserving the right to object, will the Senator restate the request?

Mr. STENNIS. Mr. President, reserving the right to object, will the Senator restate the request? The floor leader on this side is not here.

Mr. STEVENS. The time agreement would be on the Senator's motion to waive the Budget Act for the purpose of avoiding the point of order I have raised under the Budget Act, and the time agreement would be that we would vote on the Senator's motion to waive the Budget Act at 2:25, with 20 minutes under the control of the Senator from Oklahoma and 5 minutes on this side.

Mr. STENNIS. Mr. President, if the Senator will yield to me, Senator BYRD is on his way to the Chamber. Will the Senator defer until he gets here? This is the beginning of a pattern, I imagine, that the Senator has in mind.

Mr. STEVENS. We do have in mind the idea of trying to get time agreements, and I am sure the Senator will agree to that. I am happy to await the arrival of the distinguished minority leader.

The PRESIDING OFFICER (Mr. WALLOP). Is there objection?

Mr. STEVENS. Mr. President, we withdraw the request, pending the arrival of the minority leader.

Mr. EXON. Mr. President, I compliment the Senator from Oklahoma for a very innovative proposal.

I have some questions in my mind that have not been answered fully. I do not know how I will vote when and if this comes to a motion on the suggestion that has been made by the Senator from Alaska as to the financing. That is not clear in my mind. I simply say that my major concern, which all of us from the farm States had better understand is simply this: All the credit in the world, even at reduced prices, all the marketing loans that might be helpful temporarily, all the drought and disaster assistance that is vitally needed at this time—significantly, I say, as I have said many times on this floor—all the credit in the world, even at cheaper interest rates than are now prevailing, will not solve the problem. If there is a serious situation today that I am extremely upset about it is the fact that right now the administration and the Federal Reserve Board are negotiating loans to help Mexico because Mexico cannot afford to pay the interest rate on the national debt, and through the various funding agencies, the IMF and others. We are quick to help out foreign countries that need help, but we are not willing to help farmers. That is a good part of the amendment offered by the Senator from Oklahoma.

Once again, I say to my friend from Oklahoma, my friend from Kansas, and others, that we are not going to loan our farmers out of the difficulties they are in now, regardless of what the interest rate is. I am afraid that marketing loans and all these things we are doing to try to patch this over before the upcoming election are probably going to make the problem worse; because unless we get to addressing the matter of price, getting the price up to some reasonable comparison with parity, we are not going to solve the farm problem.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I renew the unanimous-consent request.

The PRESIDING OFFICER. Is there objection?

Mr. BOREN. Mr. President, reserving the right to object—and I will not object—I have been informed that the minority leader has been informed of this request.

Would it be that we would have 20 minutes on this side and 5 minutes on the other side, from this time forward, which would take us to about 2:30 for the vote? Is that correct?

Mr. DOLE. That is correct.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. BOREN. I yield to the Senator from Arkansas.

The PRESIDING OFFICER. Will the Senator from Oklahoma specify how much time he yields to the Senator from Arkansas?

Mr. BOREN. I yield 7 minutes to the Senator from Arkansas.

Mr. BUMPERS. Mr. President, first, I want to applaud the efforts of my distinguished colleague from Oklahoma for putting together what I think is not only a comprehensive package but also a very sensible package.

Before my colleagues vote on this, I hope they will ask themselves a very simple question: Where are we going in agriculture in this country? I can tell you that if this does not pass or something comparable does not pass, we are going to be effectively practicing agricultural genocide against the farmers of this country.

Today, rice sells for $1.60 a bushel in the international market. You cannot raise rice in this country for less than $3 to $4 a bushel. Nobody can raise it for less than that. You can buy a bushel of rice in Arkansas for less than you can buy a bushel of dirt at Hechinger's.

When it comes to soybeans, which is my most immediate concern in this bill, very few people can raise soybeans for less than the $5.02 loan price that existed in 1985. Just recently, despite the fact that this body accepted a resolution of mine stating that the Secretary of Agriculture should not lower the loan price below $5.02, he thumbed his nose at this body and reduced it to $4.77. Just as certain as the Sun came up this morning, he intends to reduce it to $4.50 for the 1987 crop.

So, what is the effect? It is supposedly to put the farmers in the free marketplace. It will force our farmers not to compete against farmers in other countries but against other governments.

The biggest single item in the Common Market budget is agricultural subsidies.

I am up for reelection this year, and I dare say that every Member of this body, all 34 who are running this year, have heard a lot about family values in their campaigns. You tell me what is more traditional and what is more valuable than the American family farm. Do not talk to me about family values and then show your utter contempt for the family farm.

Some of the most cherished family values in America come from the family farm.

Mr. President, as to these sophisticated arguments about the budget being violated, No. 1, I do not believe that. I think the Senator has come up with a unique method of financing that actually reduces the deficit in 1987 by $4.7 billion.

Yes, we are allowing these people to prepay loans. I want any Member of this body to distinguish for me the difference between what the Senator from Oklahoma is doing and what we did in the budget when we sold the Elk Hills Petroleum Reserve, what we did in the budget and the reconciliation which is about to come before this body—that is, requiring the Small Business Administration to sell their loans at a loss of between $200 million and $300 million, because we are going to be selling them without recourse.

□ 1410

What is the difference? Those items are in the budget.

The Senator from Oklahoma is simply saying that Rural Electrification Administration borrowers may prepay their loans to finance something we all agree is meritorious.

No one says this is a bad amendment. No one says that the farmers and the people of Michigan who experienced so much trauma from the rains of last week should not have help. The Senators from Mississippi, both of them, who occupy the managers' chairs at this very moment, come from that part of the country, Tennessee, Alabama, Georgia, ravaged as never before by drought this summer. No one here suggests that we do not have an obligation to try to help those people.

No one suggests that the Secretary of Agriculture did not bungle the so-called whole herd dairy buyout, causing a precipitous drop in beef prices in this country. No one suggest that farmers can raise soybeans for a dime less than $5 a bushel.

So what happens? Senators who come from nonagricultural States say, "We have this little problem. It violates the budget."

It does not violate the budget. If this violates the budget, our whole budget ought to be torpedoed because there are numerous items in the budget exactly like it.

There are points of order, germaneness, all these legalistic arguments, but not one word has been said here today suggesting for an instant that there is one single nonmeritorious item in this bill.

You can postpone. You can say, well, maybe we can put together a little better package. Maybe that is true.

But I have the feeling that the Senator from Oklahoma and I and the other cosponsors are not going to prevail here. You are going to get the opportunity, those of you who come from farm States, to go home and tell your people, "We are really sorry about the population on the farm dropping from 5.9 million people last year to 5.4 million, dropping another half-million this year; we are really sorry that you are going to be foreclosed on.

I heard someone say last night some farmer told him, "If you will vote a certain way, things will pick up." He said, "They did. They picked up my car, my house, my combine, and now they are going to pick up my land."

The **PRESIDING OFFICER.** The Senator's time has expired.

Mr. **BOREN.** Mr. President, I yield 1 additional minute.

The **PRESIDING OFFICER.** The Senator has 1 additional minute.

Mr. **BUMPERS.** My colleagues, we are these United States. We call ourselves the United States because we are a Union of 50 States. It was intended when we set up this Republic to be concerned about each other.

I voted for the New York City bailout. It did not endear me with my people. I can tell you that. But they were in deep trouble.

I voted for other Senators to help with problems in their States.

When one segment of this country is in trouble we are all in trouble. When one State is in trouble we are all in trouble.

Do you think we would let Mexico invade Texas and stand idly by? Of course not.

When one segment of our economy is in trouble, we have an obligation. You know what is going to happen and I know what is going to happen. The family farm is heading into a precipitous, disastrous condition. There will be no family farms at the rate we are going within 5 years. And who do you think will own the land and who do you think will call the shots on prices?

The **PRESIDING OFFICER.** The Senator's time expired.

Mr. **BUMPERS.** I thank the Senator for yielding to me.

Mr. **BOREN.** Mr. President, I yield myself as much time as I require, and I want to thank my colleague from Arkansas for the very eloquent comments which he has just made.

Indeed during this debate, we have heard technical arguments raised about the budgetary impact. We have not heard criticism of this amendment in terms of its substance and in terms of its merits. We have not heard why it is wrong for the Government of the United States to help indemnify those ranchers who are the victims of governmental mismanagement itself. We have not heard why it is wrong to indemnify people who were hurt because of the actions of their own Government. We have not been told why it is wrong to make it possible for family farmers who are productive, hard-working citizens to be able to borrow money at reasonable rates of interest so that they can stay in business.

We have not been told why it is wrong to place in the statute rules and regulations that will make it impossible for the Federal credit agencies to foreclose upon farmers who are not behind in making payments on their land. We have not heard why it is wrong to write into the law a requirement that if a farmer is dispossessed from a farm that may have been in his family for several generations if he can raise the money to buy back that homestead through other means that he should not be allowed to bid on buying back his own farm or his own homestead. We have not heard any reasons why we should be opposed to this provision.

We have also not heard why it is wrong to not only deal with the agricultural problem but also reduce the Federal budget deficit this year by an additional $4.6 billion.

The point of order that has been raised is a point of order that applies to budget authority under subcategories. It does not apply to actual outlays, the amount of money that the Government will actually spend.

Because of early payment of these loans—through the savings that will be generated to the electric co-ops, they will have an incentive to refinance and prepay early—we are going to have a net savings of some $7 billion into the Federal Treasury.

We have used a portion of those proceeds to take some very badly needed action to help the agricultural sector and we will still have, after all that is done, a net reduction of over $4 billion in the Federal deficit for fiscal year 1987, and according to CBO estimates, a net 3-year savings in fiscal years 1987 through 1989 of $2.672 billion.

Mr. President, I want to make it perfectly clear what we are about to vote upon. First of all, when we vote for the adoption of this amendment, we are voting to save the Federal Government $4.68 billion in fiscal year 1987. We are voting in support of the cattlemen of this country who suffered severe economic hardship as a result of the Department of Agriculture's administration of the whole herd buyout program.

We are voting in support of the farmers and ranchers in the Southeastern part of the United States whose livelihood has been jeopardized as a result of the drought this year. We are voting in support of lower interest rates for farmers and ranchers who have loans with commercial banks or the Farm Credit System. We are voting in favor of requiring the Farm Credit System and the Farmers Home Administration to restructure farmer and rancher loans if restructuring would actually be cheaper than foreclosure.

We are voting in favor of providing all the deficiencies payments to wheat producers so they can increase their cash flow this calendar year without any cost to the Government.

We are voting in favor of supporting a soybean program to allow soybean producers to become competitive in the world market without substantially reducing their income in the short term and emergency situation that exists this year.

We are voting in favor of supporting the reauthorization and providing for much-needed modification in child nutrition programs, such as the School Lunch Program and the School Breakfast Program, in a country where it should be beyond debate that we provide for the nutritional needs of hungry children in the midst of plenty in a country as great as this.

This is a provision of this package, Mr. President; that is what this vote is all about.

If my colleagues vote against this amendment, vote in favor of knocking it down at this point on a technicality as opposed to the actual dollars it will save in the budget, actual dollars of outlays, actual money saved, they are saying they are not for these provisions; they are saying they do not want to decrease budget outlays even if that will in fact help many of the farmers and ranchers of this country; they are saying they are insensitive I believe to the hard times confronting our Nation's farmers and ranchers.

I state all this, Mr. President, because I believe it is critical that the people of this country be made aware of exactly the issue before us as we move to this vote in just a few moments.

I urge all of my colleagues to support those of us who have offered this amendment in this effort. I do not know if we will have any alternatives that will really help do something about farmer income while dealing with the budget deficit at the same time.

I am fearful that other provisions instead of providing lower utility rates for the farmers will instead provide lower total income by reducing what farmers can produce.

So I urge my colleagues, let us not miss this opportunity with an amendment that pays for itself—not only pays for itself but makes a contribution back to reducing the Federal deficit. Let us not wait until next year. Every month that we wait there are more farmers and ranchers who will not be here if and when help ever does arrive.

How can we turn our backs on the ranchers for example who were the victims of our own Government mismanagement? I know many, many ranchers who may well not be able to be in business next year because not of anything they did but because of the mismanagement of the whole herd buyout program by our own Department of Agriculture. In this case it was not something some other country did to us. It was not something done by unfair competition of some group. It was our own Government that did it to ranchers who already are hard pressed.

I hope we will be able to provide. I hope my motion prevails. I know the Senator from Georgia, Senator MATTINGLY, and others have modifications they may want to offer. I think some are very worthy modifications in regard to the disaster program for the Southeast and others.

I urge my colleagues to vote with us on this motion so we might have an opportunity to proceed to refine this proposal further. There are some modifications that this Senator would undoubtedly be willing to accept. Let us not miss this opportunity of proceeding ahead at this point in time by knocking this amendment out of consideration on a technical motion.

Mr. MATTINGLY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. MATTINGLY. Will the Senator from Oklahoma yield to me?

Mr. BOREN. How much time remains to this Senator?

The PRESIDING OFFICER. The Senator has 4 minutes left.

Mr. BOREN. I am happy to yield 2 minutes to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia is recognized for 2 minutes.

Mr. MATTINGLY. Mr. President I support the Boren amendment and urge my colleagues to vote in favor of the amendment. This amendment contains several provisions that have already been adopted by the Senate. Included among those is relief for the drought-stricken farmers of the Southeast. Let me tell my colleagues, that we in the Southeast need this aid in order to save tens of thousands of farm operations throughout our region. There is also language in this amendment to help those farmers in the Midwest who have been devastated by floods this year. I support that provision as well. We should not turn our back on these people who through no fault of their own must have assistance in order to survive.

While I support the Senator for including these provisions, it is my intention after the vote on the budget waiver to offer several modifications to the Boren amendment that I believe will improve the drought aid provisions. I will be glad to discuss these more fully at the proper time with the Senator from Oklahoma. The modifications would include offsets that would clearly make the drought aid provisions budget neutral.

I know there is a debate about the costs of this amendment. I understand the Congressional Budget Office figures indicate this amendment will result in a net savings to the Government. Not a cost but a savings. I will support the Senator from Oklahoma on the upcoming procedural votes. I stand ready to work with him or anyone else here on the floor and in conference to resolve any costs problems.

Whatever needs to be done, I pledge my full effort to see that it will be done.

This is not or should not be a partisan matter. I have introduced drought aid provisions, drafted with the cooperation and advice of Democrats as well as Republicans. That was back in July. I have supported provisions introduced by Democrats and passed by this body in August. Here we are nearly to October and drought aid has yet to be signed into law.

Aid to farmers struck down by natural disasters is too important to let partisanship or pride of authorship get in the way of passage. The farmers just need the help that this amendment provides. They cannot wait until next year. That will be too late for them.

There is much else in this amendment that deserves our support including the provisions dealing with the REA's and with the soybean marketing loan. I support those provisions and congratulate the Senator from Oklahoma on including them.

Therefore, I urge my colleagues not to kill this amendment. It deserves our support.

I urge my colleagues to support the amendment.

Mr. President, one thing we find in this amendment is that from the standpoint of cost it saves money. It is not a cost. It is a savings to the Government. So I think not only from that standpoint we should support the Senator from Oklahoma on this upcoming procedural vote. I stand ready to work with him or anybody else here on the floor, and in conference to resolve any of these cost problems.

This is not a partisan matter. As the Senator from Oklahoma mentioned, we had already brought up drought assistance and aid provisions prior to this, drafted with the cooperation of both Democrats and Republicans on both sides. That was back in July. I have supported the provisions proposed by both sides of the aisle back in August. But here we are in October and drought aid is yet to be signed into law.

So as this amendment progresses, I would hope that I would see partisanship dropped by the wayside, Mr. President. The farmers need help now, not next year. Next year is too late.

I hope this amendment prevails, and the Senator will at that time allow me to make a modification to his amendment to, I think, create an amendment that is probably better. I think he also already agrees with that. I may either want to accept the modification now or later.

Mr. BOREN. addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BOREN. I thank my colleague for his comments.

Mr. HEFLIN. Mr. President, I am pleased to cosponsor this amendment offered by Senator BOREN. It addresses many issues that should have been acted upon by Congress before now. The most favorable consideration of this amendment is the fact that it saves $4.681 billion.

This amendment first allows rural electric coops to prepay their outstanding loans to the Federal Government with money these borrowers obtain from private lenders. This particular issue was supposedly taken care of on the supplemental appropriation that was passed in June of this year. However, the administration's Treasury Department is hampering the repayment efforts of our coops.

A marketing loan for soybeans is also included in this amendment. Last year, I offered an amendment to the farm bill that gave the Secretary of Agriculture the authority to implement a $5.02 per bushel marketing loan and it was accepted. The USDA decided not to exercise this authority, but rather decided to announce a reduced $4.77 per bushel loan rate. This amendment will mandate a $5.02 marketing loan.

The cattle restitution program, that has been the subject of hearings in the House Ag Committee, is also included in this amendment. Our cattle producers have been devastated by the implementation of the whole-herd dairy buy-out program, through no fault of their own. This legislation requires USDA to make payments, of $6 per hundredweight, to cattle producers who sold cattle from March 28, 1986 to June 30, 1986.

A credit provision, introduced earlier this year, will establish a Federal-State-lender cooperative agriculture loan interest "buy-down" program that will be extremely beneficial to our farmers facing a severe credit crunch.

Mr. President, I would also like to bring to the attention of the Senate the urgent need to proceed to final action on the emergency drought assistance legislation that was passed by this body on August 1, and passed by the House of Representatives on August 6. The drought stricken farmers in Alabama don't understand why this legislation, that has passed both Houses of Congress, has not been sent to the President for his signature.

Secretary of Agriculture is going to provide the necessary assistance after the USDA gathers the damage assessment reports. Mr. President, my patience has worn thin. I first contacted the Secretary in May, requesting that he declare Alabama a disaster area and make Federal assistance available. I waited through the month of May but nothing happened. I contacted the Secretary again to ask for some compassion and assistance for the family farmers. I waited through the month of June, but no assistance was provided. I waited through the month of July and by this time anyone could read in any newspaper in Alabama, that the drought damage to the farmers alone exceeded $750 million.

Finally, on August 1, the Secretary announced programs that was supposed to aid our Southeast farmers. The USDA said that $1 billion in assistance was being made available through additional advanced deficiency payments. While this may help some farmers with a summer cash flow problem, this announcement was not disaster assistance. These payments were going to be made to the farmers in February. In addition, Mr. President, only 4 percent of these payments are going to the farmers in the South. Not 50 percent, not 20 percent, not 10 percent, not even 5 percent, Mr. President, of these payments are to be made to farmers suffering from the drought.

Mr. President, the Secretary of Agriculture needs only to look at the crop report released by the Department Tuesday to see that the drought is a reality. Projections for yields in Alabama are down significantly. Livestock reports will show that thousands of cattle have been sold prematurely, to avoid a total loss from starvation. Our poultry producers have already lost thousands and thousands of birds due to the drought. We need assistance now.

Mr. President, this amendment includes the drought package passed by the House of Representatives. Action on this legislation is long past due.

Mr. President, this amendment addresses many issues that have already been before this body. Some of these provisions have already been passed by both Chambers of Congress. I urge my colleagues to support this much needed amendment.

Mr. NICKLES. Mr. President, today, I join with Senator BOREN and many of my farm State colleagues in support of a number of improvements which can benefit farmers, ranchers, and other rural residents.

The package before us covers a number of important issues, including agriculture credit, disaster assistance, Rural Electric Cooperative refinancing, soybean marketing loans, wheat deficiency payments, child nutrition, and restitution for losses suffered by livestock producers due to the mishandling of a Federal program.

Mr. President, as Senator BOREN stated, the provisions of the package have been discussed before.

The credit provisions are a combinations of S. 1906, the Farm Credit Partnership Act introduced by Senator BOSCHWITZ December 5 of last year, and S. 2144, the Landowner Protection Act which I introduced May 5 of this year. These measures were combined and introduced as the Farm Credit Assistance Act on April 17.

The Landowner Protection Act provisions are designed to, one, offer debt restructuring for many farm and ranch borrowers who would otherwise be forced off their land due to circumstances beyond their control; two, stop the rising tide of farm foreclosures; three, ease downward pressure on already depressed land values; four, reassert local control of the Farm Credit System; and five, minimize borrower and lender losses. The Farm Credit System has adopted a new restructuring plan based on the minimum loss concept behind the Landowner Protection Act.

Of importance to Oklahoma wheat producers, the package includes a provision Senator BOREN and I passed through the Senate August 1 which permits wheat producers to receive the remaining 60 cents of their 1986 crop wheat deficiency payments rather than having to wait until July of 1987 as currently scheduled.

Of importance to Oklahoma soybean producers, the package would reinstate the $5.02 loan rate and implement a market loan. The Senate has previously passed a similar resolution. On August 4, I was joined by a number of my colleagues in urging the Secretary of Agriculture to adopt such action.

Of importance to Oklahoma cattlemen, the package provides a method to compensate producers for losses they suffered as a result of the mishandled Dairy Termination Program.

Of importance to Oklahoma rural electric cooperatives and their member-patrons, the package clarifies congressional intent regarding the loan refinancing issue. On June 6, the Senate passed a provision designed to save Oklahoma rural electric cooperative members $7 million. On July 17, I requested a status report on the regulations to implement the refinancing provision which became law July 2. On August 27, I wrote Treasury Secretary James Baker, stating my opposition to the issuance of unduly restrictive regulations. The provision in this package should leave no room for skirting the intent of the original Senate effort.

These issues, along with the disaster assistance and child nutrition provisions, have a history that demonstrates a wide level of support. With this in mind, I urge my colleagues to join with us in support of this package.

Mr. BOREN. We are running out of time now. There are some other modifications that the Senator from Colorado and others will be making that will be acceptable to this Senator. We will hopefully have an opportunity to offer those right after the vote.

I yield the remaining time of this Senator to the Senator from Iowa.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Thank you, Mr. President. I thank my friend from Oklahoma, the distinguished Senator from Oklahoma, for yielding this time.

I want to compliment him for really putting together an excellent package. This is something that has to be done. The Senator from Oklahoma has put together, as I said, a series of provisions that are needed, and needed as soon as we can get this legislation passed, in the rural parts of this country. But I might also add that there is another section of this bill that the distinguished Senator has incorporated. That is the provision of H.R. 7, child nutrition.

I ask my colleagues who are here who are interested in child nutrition, we have had this long battle going on. We have not passed a child nutrition authorization for 5 years. The House has passed it every year. The Senate has not passed it. We tried to get on different legislation this year. It has always gotten tied up in one thing or another. Here is our opportunity to get the child nutrition authorization bill through, and enacted into law. I really want to thank my distinguished colleague from Oklahoma for incorporating the provisions of H.R. 7, and for his kind words on my behalf.

I have been fighting on this for over 1 year now. I hope the Senators will understand the importance of getting this child nutrition bill through.

I also want to say the provision that saves the Government $7.2 billion in the advanced prepayment of the REA loans is more important. It is not costing the Government anything. It is really going to save us some money plus it is going to mean a great deal in terms of lower utility bills for the people who live on farms and in small communities.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARKIN. I want to thank the Senator from Oklahoma for putting this together.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, may I inquire about how much time remains?

The PRESIDING OFFICER. The Senator has 5 minutes. The other side has used its time.

Mr. COCHRAN. Mr. President, I hope Senators will notice that we are being asked to vote in favor of a motion to waive the Budget Act.

The reason that we are having to vote on that is that this amendment would add over $4 billion in spending authority at a time when we are trying to agree in conference on a reconciliation bill to save almost $10 billion to try to keep within the resolutions that have been passed already by the Congress; trying to do something effective to reduce the deficit.

I am in favor of a lot of things that are provided in this amendment. As a matter of fact, some of the things that are included are taken from legislation that has been crafted by some of us on this side of the aisle, working together with those on the other side of the aisle to do something about farm credit problems, to do something about agriculture problems, and nutrition assistance. But the fact of the matter is we have all agreed on a budget resolution. We have to have some degree of restraint in the budget process or we are going to pile up another $1 trillion in debt in a very short period of time. We know what that has done to the appropriations process. We are having to appropriate hundreds of billions of dollars to finance the debt which we already have.

So I hope Senators will look very carefully at the fact that we are voting on whether or not to stay with the budget resolution that we have already agreed to. That is the issue before us, not whether we want to do something for farmers or do something for those who are unable to provide fully for their own nutrition needs or some of the other worthy goals that are identified in this amendment.

Mr. President, I yield to the distinguished majority leader such time as we have remaining.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, let me use most of my time—there is not much left—to indicate we have been on this amendment now about 3 hours. There are 132 amendments pending.

I must say, as I wait for something to happen in this Chamber, it occurred to me it is like the first of the session. Nobody is in a hurry, take all the time you want, we have only 130 amendments left, take 3 hours on this little preelection farm fest, do not worry about the cost, and everybody makes their speech.

I would just suggest if we are going to complete the continuing resolution, and nobody seems very interested in that, but if we are, we have to move quickly. We are only going to be on it until 7 o'clock. Then we start the debate on South Africa. We are back on the continuing resolution tomorrow at about 8:30 in the morning until 2 o'clock. Then we are back on South Africa, then we are back on the continuing resolution after 4:15 or 4:30.

But I hope maybe after disposition of this amendment we could at least have some time agreement on amendments. We understood this was going to take an hour. It has taken 3 hours—a lot of debate, a lot of discussion, and farmers have a problem. It is about the time of year everybody wants to save the farmer. If we can really pay for some of the things we are doing, then I would say all right. We have been trying for a month to find out how we could pay to make some changes in the farm bill. It is not just a one-shot sale of assets in effect, but really making some savings by requiring more acreage to be set aside. There is nothing in this farm bill that I know of for wheat producers or corn producers that I can find out.

□ 1430

It just seems to me that we ought to sustain the point of order.

I yield back the remainder of my time.

SEVERAL SENATORS. Vote! Vote!

The PRESIDING OFFICER. All time has been yielded back. The question is, Shall the Budget Act be waived for consideration of the Boren amendment?

Mr. COCHRAN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Georgia [Mr. NUNN] is necessarily absent.

I further announce that, if present and voting, the Senator from Georgia [Mr. NUNN] would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 45, nays 53, as follows:

[Rollcall Vote No. 304 Leg.]

YEAS—45

Abdnor
Andrews
Baucus
Bentsen
Biden
Boren
Bumpers
Burdick
Byrd
Cranston
Danforth
Denton
Dixon
Durenberger
Eagleton
Exon
Ford
Glenn
Gore
Grassley
Harkin
Hart
Heflin
Hollings
Inouye
Johnston
Kasten
Kennedy
Leahy
Levin
Long
Matsunaga
Mattingly
Melcher
Moynihan
Nickles
Pressler
Pryor
Riegle
Rockefeller
Sarbanes
Sasser
Simon
Specter
Zorinsky

NAYS—53

Armstrong
Bingaman
Boschwitz
Bradley
Broyhill
Chafee
Chiles
Cochran
Cohen
D'Amato
DeConcini
Dodd
Dole
Domenici
Evans
Goldwater
Gorton
Gramm
Hatch
Hatfield
Hawkins
Hecht
Heinz
Helms
Humphrey
Kassebaum
Kerry
Lautenberg
Laxalt
Lugar
Mathias
McClure
McConnell
Metzenbaum
Mitchell
Murkowski
Packwood
Pell
Proxmire
Quayle
Roth
Rudman
Simpson
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson

NOT VOTING—2

Garn
Nunn

So the motion to waive section 302(f) of the Budget Act was rejected.

□ 1450

The PRESIDING OFFICER. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the waiver motion is not agreed to.

Mr. DOLE. I move to reconsider the vote by which the motion was not agreed to.

Mr. COCHRAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HEINZ and Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I want to thank the Members for helping us to at least hold the dam at this point.

The PRESIDING OFFICER. The Chair does have to rule at this point that the amendment would provide new budget authority in excess of the appropriate allocation reported under section 302(b) in connection with the budget resolution for fiscal year 1987. Therefore, the amendment violates section 302(f) of the Budget Act. The point of order is sustained.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I would like to indicate that we are trying to accommodate the Members to take up some of the major controversial amendments early. There will be a moment or two now that different Members would like to have the floor to introduce a bill or to ask for unanimous agreement that may not be related to this particular CONGRESSIONAL

Record. Then Senator Goldwater would like to offer an amendment, and Senator Danforth. Now, we cannot determine who is going to seek recognition, but I just wanted to say that if the membership could kind of cooperate at this point to let us get some of these major amendments out of the way, then we could handle some of the less controversial ones.

Mr. HEINZ. Will the Senator yield?

Mr. President, I just want to assure the Senator that I have an amendment. It is budget neutral. It is not subject to a point of order but it is an important amendment.

Mr. HATFIELD. I understand, and there are probably 85 others that would be in that category that do not violate the Budget Act and are relevant and are germane, and we want to expedite it as quickly as possible. Senator Goldwater has been, since about 11:30 this morning, on the floor seeking recognition and we would like to try to accommodate him.

AMENDMENT NO. 3102

The PRESIDING OFFICER. The Senator from Arizona.

Mr. GOLDWATER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. Goldwater] proposes an amendment numbered 3102.

Mr. GOLDWATER. I ask unanimous consent that it not be read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following: None of the funds appropriated for fiscal year 1987 for the Department of Defense may be obligated or expended for the procurement, modification or research, development, test, and evaluation of T-46 trainer aircraft.

Mr. GOLDWATER. Mr. President, I intend to withdraw this amendment. I merely wanted to make a comment on it because in the report of this committee I find language that accomplishes just what my amendment intends to do.

Mr. President, I rise to offer an amendment that would prohibit any expenditures for the procurement or research and development of the Air Force T-46 trainer aircraft.

Mr. President, the T-46 is an aircraft which was not requested by the administration. Funds to procure the T-46 were added by the House of Representatives but I am happy to report, that in our joint authorization conference agreement, no funds shall be authorized for the procurement of the T-46.

That is, however, not the end of the problem. If for any reason we should not complete the authorization conference, then I wish to ensure that the Senate position on the T-46 is maintained in the conference on the continuing resolution for appropriations.

Mr. President, I will not take up the Senate's time with a lengthy explanation of the background of the T-46 Program and why the Air Force has chosen to terminate it. Let me simply say that this is an aircraft which three Air Force Secretaries and two Chiefs of Staff have said they do not want. Despite this clear statement from the administration, the House has—for purely political reasons—added funds to procure the T-46.

Now, Mr. President, I am struck by the irony of this situation. The same individuals in the House of Representatives who are so quick to criticize the Secretary of Defense for not prioritizing among all the programs in the defense budget, and for not being tougher on defense contractors who do not perform their contract obligations, and for not being able to terminate any defense programs, these very same individuals are screaming the loudest about the termination of the T-46. In my opinion, Mr. President, this is one of the most flagrant examples of attempted pork barrel in the defense budget that I have ever seen—and I am determined to prevent it.

Mr. President, I said at the outset, I am going to withdraw this amendment because I find the same language contained in the report of the bill that I would have amended by my amendment. The Senate voted on the same proposition in an urgent supplemental earlier this year, and it was taken by a vote of 79 to 14.

I withdraw my amendment.

I ask unanimous consent to have printed in the Record and excerpt from the Record of May 15, 1986.

There being no objection, the amendment was withdrawn and the material was ordered to be printed in the Record, as follows:

The Presiding Officer. There being no further debate, the question is on agreeing to the amendment of the Senator from Arizona [Mr. Goldwater]. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. Simpson. I announce that the Senator from Minnesota [Mr. Durenberger], the Senator from Florida [Mrs. Hawkins], the Senator from Maryland [Mr. Mathias], the Senator from Oregon [Mr. Packwood] and the Senator from Wyoming [Mr. Wallop], are necessarily absent.

Mr. Cranston. I announce that the Senator from Florida [Mr. Chiles] and the Senator from Mississippi [Mr. Stennis], are necessarily absent.

The Presiding Officer. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 79, nays 14—as follows:

[Rollcall Vote No. 101 Leg.]

YEAS—79

Abdnor, Andrews, Armstrong, Baucus, Bentsen, Biden, Bingaman, Boren, Boschwitz, Bradley, Bumpers, Burdick, Byrd, Chafee, Cohen, Cranston, Danforth, Denton, Dixon, Dodd, Dole, Domenici, Eagleton, East, Evans, Exon, Ford, Garn, Glenn, Goldwater, Gore, Gorton, Gramm, Grassley, Harkin, Hart, Hatfield, Hecht, Heinz, and Helms.

Hollings, Humphrey, Inouye, Kassebaum, Kasten, Kennedy, Kerry, Lautenberg, Leahy, Levin, Long, Lugar, Matsunaga, Mattingly, McConnell, Melcher, Metzenbaum, Mitchell, Murkowski, Nickles, Nunn, Pell, Pressler, Proxmire, Pryor, Quayle, Riegle, Rockefeller, Roth, Rudman, Simon, Simpson, Stafford, Symms, Thurmond, Trible, Warner, Wilson, and Zorinsky.

NAYS—14

Cochran, D'Amato, DeConcini, Hatch, Heflin, Johnston, Laxalt, McClure, Moynihan, Sarbanes, Sasser, Specter, Stevens, and Weicker.

NOT VOTING—7

Chiles, Durenberger, Hawkins, Mathias, Packwood, Stennis, and Wallop.

So the amendment (No. 1962) was agreed to.

AMENDMENT NO. 3103

(Purpose: To ensure the preservation of employee seniority rights in airline mergers and similar transactions)

Mr. DANFORTH. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. (Mr. Cochran). The amendment will be stated.

The legislative clerk read as follows:

The Senator from Missouri [Mr. Danforth] on behalf of himself, Mrs. Kassebaum, and Mr. Eagleton, proposes an amendment numbered 3103.

Mr. DANFORTH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

Sec. . (a) Section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) is amended by adding at the end the following new subsection:

"EMPLOYEE SENIORITY RIGHTS

"(g)(1) In any case which results in the operational integration or partial operational integration of the affected carriers, the acquiring carrier, and the designated representatives of employees of the acquiring carrier (if any) and the designated representatives of employees of any acquired carriers (if any), shall provide for the development, in a fair and equitable manner, of integrated seniority ranking lists for all affected employee groups.

"(2)(A) If any dispute or controversy arises regarding integration of seniority lists under paragraph (1) of this subsection and such dispute or controversy cannot be resolved by the parties, any party may refer such dispute or controversy to an arbitrator for consideration and determination.

"(B) If a contract which is applicable to such dispute or controversy and which has been entered into between or among any of the parties provides for referral of such dispute or controversy to an arbitrator, such referral shall be in accordance with the terms of such contract.

"(C) If referral of such dispute or controversy to an arbitrator is not provided for by such a contract, the referral of such dispute or controversy to an arbitrator, and the appointment of an arbitrator, shall be made in a manner acceptable to all parties. If the parties are unable to agree on the appointment of an arbitrator, any party which is seeking to make such referral may request assistance from the National Mediation Board. If such a request is made, the National Mediation Board shall furnish to such parties a panel of seven names of individuals with expertise in aviation labor issues. The parties shall select such arbitrator by the deletion of names from such panel in turn until one name remains, and such person shall serve as arbitrator. The arbitrator may conduct hearings regarding such dispute or controversy, but any such hearings shall be conducted in an expedited manner.

"(D) In making a determination under this subsection regarding such a dispute or controversy, the arbitrator shall consider such factors as the arbitrator considers appropriate, including the economic viability of the acquiring carrier and the promotion of any economic efficiencies sought through the transaction. The determination of such arbitrator shall be binding on all such parties.

"(E) The salary and expenses of the arbitrator shall be borne equally by the parties.".

(b) The amendment made by subsection (a) of this section shall apply with respect to any transaction approved by the Secretary of Transportation under section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) on September 12, 1986, and with respect to any transaction for which an original application is filed after the date of enactment of this Act, except that such amendment shall not apply with respect to any transaction in which the parties invoke and are able to satisfy the requirements of the failing company doctrine.

(c) The item in the table of contents of the Federal Aviation Act of 1958 relating to section 408 is amended by adding at the end the following:

"(g) Fair treatment of employees.".

(d) The amendments made by subsections (a) and (c) of this section and the provisions of subsection (b) of this section shall cease to be in effect on January 1, 1989.

Mr. DANFORTH. Mr. President, during budget reconciliation, a similar amendment was offered. It is an airline labor protection amendment. It is cosponsored by Senator KASSEBAUM and Senator EAGLETON and fashioned after a bill that was introduced by Senator KASSEBAUM some months ago.

The issue that is addressed by this amendment concerns the merger of airlines and what happens with respect to the seniority lists of those airlines at the time of the merger. At present, the law imposes no requirements concerning seniority in merged airlines.

At the time this was offered on the reconciliation bill, there was a rollcall vote, and 43 Senators voted for the amendment. Several Senators voted against it, having stated on the floor that they agreed with the underlying principle and would have voted for it, except for the fact that it was offered on reconciliation, and the procedures under reconciliation required a vote of 60 Senators to approve the amendment. Therefore, some Senators—for example Senator METZENBAUM, as I recall, and Senator BYRD—took the position that, while they were in general agreement with the concept of the amendment, they did not want it on reconciliation. So essentially the same amendment is being offered by the same cosponsors in this bill, again dealing with the question of the merger of seniority lists.

The amendment would provide for the integration of airline employees' seniority lists where a merger occurs and the merged companies' operations are integrated. It would require representatives of the acquiring company and all affected employee groups to negotiate a fair and equitable integration of seniority lists. If the acquiring carrier and the employees cannot agree on an integrated seniority list, the dispute would then be submitted to binding arbitration. If the parties already had an agreement that provided for arbitration, then that agreed process would be used to settle the dispute.

This is the primary difference between the amendment that is now offered and the amendment that was offered a week or so ago to reconciliation. In other words, this would provide that the arbitration would be conducted pursuant to contract if there was a contractual arrangement for arbitration. The arbitrator would be directed to include in his or her deliberations the economic viability of the acquiring carrier and the promotion of economic efficiencies sought by the transaction.

The amendment would apply to mergers in which an application is filed at the Department of Transportation after the date of enactment of this legislation, so it would be prospective, with the exception of a single retroactive application, and that is with respect to the TWA-Ozark merger. The amendment would not apply to mergers in which the applicant successfully assert the failing-company doctrine, and the amendment would sunset on the same date as the transportation merger authority now sunsets, which is January 1, 1989.

I emphasize that this amendment would not apply to the People's Express-Frontier transaction. It would not be retroactive to that transaction.

Mr. President, the amendment I propose is similar to S. 2713, introduced by Senator KASSEBAUM. The amendment provides that if a merger between two carriers occurs, and if the operations of the two carriers are integrated, a fair and equitable integration of seniority ranking lists shall take place. The amendment permits representatives of all affected employee groups to have a say in the method of list integration.

If the parties cannot agree to a fair and equitable integration, this amendment provides that the dispute shall be resolved through arbitration. If any of the parties are already, through their contractual agreement, subject to arbitration on the list integration issue, that arbitration process should occur. But if no arbitration procedure is already in place, any party may refer a disputed issue to an arbitrator designated by the National Mediation Board. The arbitrator is directed to take into account the economic viability of the acquiring carrier and the promotion of economic efficiencies sought through the transaction.

The amendment would apply to merger applications filed with the Transportation Department after the date of enactment and it also would apply retroactively to the TWA-Ozark merger. It would not apply to any merger in which the applicants are able to satisfy the requirements of the failing company doctrine.

Mr. President, TWA, the TWA pilots and the Ozark pilots have all informed me that they intend to follow this type of procedure with or without this legislation. Thus, this legislation Prejudices no one, and guarantees the equitable integration of seniority lists which after all, is a matter of fundamental fairness.

Mr. EAGLETON. Mr. President, I wish to echo and underscore the thoughts of my colleague from Missouri.

This matter has been discussed and voted on previously in a somewhat different context than that in which it is presented here today.

This Danforth-Eagleton proposal is, indeed, a targeted—some might use the word "surgical"—approach and applies specifically to the TWA-Ozark situation as Senator DANFORTH has described. It has been very carefully crafted, and I recommend it vigorously to my colleagues.

THE PRESIDING OFFICER. Is there further debate on the amendment?

Mr. HATFIELD. Mr. President, again, let me emphasize that I am acting as a manager of this bill, to expedite the bill, and certainly am not addressing myself at this moment to the merits of the amendment. In fact, I am very sympathetic with respect to the amendment and the content of the amendment.

However, I must make a point of order, under rule XVI, that this amendment is not germane to the joint resolution now pending before the Senate.

Mr. DANFORTH. Mr. President, I raise the question of germaneness, and I ask for the yeas and nays.

The PRESIDING OFFICER. The point of order that has been made is that the amendment is not germane. There is not defense to the point of order. Under rule XVI the question is submitted to the Senate. There is no debate.

Mr. DANFORTH. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Is the amendment germane? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. Garn] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Georgia [Mr. Nunn] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 49, nays 49, as follows:

[Rollcall Vote No. 305 Leg.]

YEAS—49

Andrews
Baucus
Biden
Bingaman
Boren
Bradley
Bumpers
Burdick
Byrd
Chiles
Cohen
Cranston
D'Amato
Danforth
DeConcini
Dixon
Dodd
Eagleton
Exon
Ford
Gore
Grassley
Harkin
Hart
Heflin
Hollings
Inouye
Kassebaum
Kennedy
Kerry
Lautenberg
Leahy
Levin
Matsunaga
Melcher
Metzenbaum
Mitchell
Moynihan
Pell
Pressler
Proxmire
Pryor
Riegle
Rockefeller
Sarbanes
Sasser
Simon
Specter
Zorinsky

NAYS—49

Abdnor
Armstrong
Bentsen
Boschwitz
Broyhill
Chafee
Cochran
Denton
Dole
Domenici
Durenberger
Evans
Glenn
Goldwater
Gorton
Gramm
Hatch
Hatfield
Hawkins
Hecht
Heinz
Helms
Humphrey
Johnston
Kasten
Laxalt
Long
Lugar
Mathias
Mattingly
McClure
McConnell
Murkowski
Nickles
Packwood
Quayle
Roth
Rudman
Simpson
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson

NOT VOTING—2

Garn
Nunn

☐ 1530

The PRESIDING OFFICER. On this vote, the yeas are 49, the nays are 49. The judgment of the Senate is that the amendment is not germane. Therefore, the amendment falls as not germane.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was determined to be not germane.

Mr. DOLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Illinois.

Does the Senator from Illinois yield to the manager of the bill?

Mr. DIXON. I do.

Mr. HATFIELD. Mr. President, I would like to propose a unanimous-consent time agreement that the Senator from Illinois has agreed to enter into at this time on two amendments that he has to offer.

On behalf of the Senator from Illinois and the managers of the bill, I would propose that each of the amendments be limited to 10 minutes equally divided.

Mr. DIXON. Ten minutes to each side, I suggest to the Senator from Oregon, was our understanding.

Mr. HATFIELD. Mr. President, I withdraw the unanimous-consent request.

Mr. DIXON. Mr. President, I asked unanimous consent to yield 30 seconds to my distinguished friend, the Senator from Hawaii, for the purpose of introducing a bill.

The PRESIDING OFFICER. Is there objection? Without objection, it was so ordered.

(Mr. Inouye's remarks are printed later in the Record under Statements on Introduced Bills).

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 3087

(Purpose: To permit tenant management of public housing)

Mr. DIXON. Mr. President, I have at the desk amendment No. 3087. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. Dixon], for himself and Mr. Glenn, proposes an amendment numbered 3087.

Mr. DIXON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution, add the following:

Sec. . The United States Housing Act of 1937 is amended by adding at the end the following new section:

"PUBLIC HOUSING RESIDENT MANAGEMENT

"Sec. 20. (a) Purpose.—The purpose of this section is to encourage increased resident management of public housing projects, as a means of improving existing living conditions in public housing projects, by providing increased flexibility for public housing projects that are managed by residents by—

"(1) permitting the retention, and use for certain purposes, of any revenues exceeding operating and project costs; and

"(2) providing funding, from amounts otherwise available, for technical assistance to promote formation and development of resident management entities.

"(b) Program Requirements.—

"(1) Resident council.—As a condition of entering into a resident management program, the elected resident council of a public housing project shall approve the establishment of a resident management corporation. The resident management corporation and the resident council may be the same organization, if the organization complies with the requirements applicable to both the corporation and council. If there is no elected resident council, a majority of the households of the public housing project shall approve the establishment of a resident council to determine the feasibility of establishing a resident management corporation to manage the project.

"(2) Public housing management specialist.—The resident council of a public housing project, in cooperation with the public housing agency, shall select a qualified public housing management specialist to assist in determining the feasibility of, and to help establish, a resident management corporation and to provide training and other duties agreed to in the daily operations of the project.

"(3) Bonding and insurance.—Before assuming any management responsibility for a public housing project, the resident management corporation shall provide fidelity bonding and insurance, or equivalent protection, in accordance with regulations and requirements of the Secretary and the public housing agency. Such bonding and insurance, or its equivalent, shall be adequate to protect the Secretary and the public housing agency against loss, theft, embezzlement, or fraudulent acts on the part of the resident management corporation or its employees.

"(4) Management responsibilities.—A resident management corporation that qualifies under this section, and that supplies insurance and bonding or equivalent protection sufficient to the Secretary and the public housing agency, shall enter into a contract with the public housing agency establishing the respective management rights and repsonsibilities of the corporation and the public housing agency. Such contract may include specific terms governing management personnel and compensation, access to public housing projects records, submission of an adherence to budgets, rent collection procedures, tenant income verification, tenant eligibility determinations, tenant eviction, the acquisition of supplies and materials, and such other matters as may be appropriate.

"(5) Annual audit.—The books and records of a resident management corporation operating a public housing project shall be audited annually by a certified public accountant. A written report of each audit shall be forwarded to the public housing agency and the Secretary.

"(c) Comprehensive Improvement Assistance.—Public housing projects managed by resident management corporations may be provided with comprehensive improvement assistance under seciton 14 for purposes of renovating such projects in accordance with such section. If such renovation activities (including the planning and architectural design of the rehabilitation) are administered by a resident management corporation, the public housing agency involved may not retain, for any administrative or other reason, any portion of the assistance provided pursuant to this subsection.

"(d) Operating Subsidy and Project Income.—

"(1) Calculation of operating subsidy.—Notwithstanding any provision of section 9 or any regulation under such section, and subject to the exception provided in paragraph (3), the portion of the operating subsidy received by a public housing agency under section 9 that is allocated to a public housing project managed by a resident management corporation shall not be less than the public housing agency per unit monthly amount provided in the previous year as determined in an individual project basis.

"(2) Contract requirements.—Any contract for management of a public housing project entered into by a public housing agency and a resident management corporation shall specify the amount of income expected to be derived from the project itself (from sources such as rents and charges) and the amount of income funds to be provided to the project from the other sources of income of the public housing agency (such as operating subsidy under section 9, interest income, administrative, fees, and rents).

"(3) Calculation of total income.—

"(A) Subject to subparagraph (B), the amount of funds provided by a public housing agency to a public housing project managed by a resident management corporation may not be reduced during the 3-year period beginning on the date of the enactment of the Housing Act of 1986 or on any later date on which a resident management corporation is first established for the project.

"(B) If the total income of a public housing agency (including the operating subsidy provided to the public housing agency under section 9) is reduced or increased, the income provided by the public housing agency to a public housing project managed by a resident management corporation shall be reduced or increased in proportion to the reduction or increase in the total income of the public housing agency, except that any reduction in operating subsidy that occurs as a result of fraud, waste, or mismanagement by the public housing agency shall not affect the funds provided to the resident management corporation.

"(4) Retention of excess revenues.—

"(A) Any income generated by a resident management corporation of a public housing project that exceeds the income estimated for purposes of this subsection shall be excluded in subsequent years in calculating (i) the operating subsidies provided to the public housing agency under section 9; and (ii) the funds provided by the public housing agency to the resident management corporation.

"(B) Any revenues retained by a resident management corporation under subparagraph (A) shall be used for purposes of improving the maintenance and operation of the public housing project, for establishing business enterprises that employ residents of public housing, or for acquiring additional dwelling units for lower income families.

"(e) Resident Management Technical Assistance and Training.—

"(1) Financial assistance.—To the extent budget authority is available for section 14, the Secretary shall provide financial assistance to resident management corporations or resident councils that obtain, by contract or otherwise, technical assistance for the development or resident management entities, including the formation of such entities, the development of the management capability of newly formed or existing entities, the identification of the social support needs of residents of public housing projects, and the securing of such support.

"(2) Limitation on assistance.—The financial assistance provided under this subsection with respect to any public housing project may not exceed $100,000.

"(3) Funding.—Of the amounts available for financial assistance under section 14 for fiscal year 1987, the Secretary may use not more than $1,500,000 to carry out this subsection.".

Mr. DIXON. Mr. President, I ask unanimous consent that Senator Danforth be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DIXON. Mr. President, on behalf of myself, Senator Glenn, and Senator Danforth, I am pleased to offer an amendment to House Joint Resolution 738, the continuing appropriations resolution, which would permit tenant management of public housing.

I offered identical compromise language in the Banking, Housing, and Urban Affairs Committee during consideration of the housing authorization bill, S. 2507. It was thoroughly debated and was approved unanimously. However, S. 2507 is currently pending on the Senate Calendar and seems to be stalled. For that reason, we offer the amendment today.

The Dixon-Glenn-Danforth amendment would provide an alternative to residents of public housing to manage their own living conditions. Additionally, it would provide a valuable return on public housing investments for taxpayers.

On March 26, 1986, Senator Glenn joined with me in introducing S. 2242, the Public Housing Resident Management Act. However, the amendment we offer today contains language which I believe improves S. 2242.

A majority of tenant households in a housing project would be permitted to approve the establishment of a resident council, which would determine the feasibility of establishing a resident management corporation. Under contract with the public housing agency, the management corporation would manage the housing project.

As a protection against loss and theft, a resident management corporation would be required to provide fidelity bonding and insurance. An annual audit of the books and records of each corporation would be required.

In order to increase flexibility for tenant-managed housing projects, management corporations may be provided with comprehensive improvement assistance for project renovations. In addition, management corporations would be permitted to retain profits that are received from improved rent collections.

I believe that tenant management is a good program. It has existed on an experimental basis since the 1970's in at least one public housing project in the cities of Boston, Rochester, St. Louis, Louisville, Jersey City, New Orleans, and Washington, DC.

Additionally, a low-rise public housing development in Chicago, LeClaire Courts, is currently negotiating an agreement with the Chicago Housing Authority to become the first tenant management corporation in Illinois.

However, tenant management is still a new concept to many other public housing projects and to most taxpayers.

The mention of public housing typically generates the thought of impoverished, crime-ridden developments having tenants with few expectations for a better tomorrow.

According to the information that I have received, however, where tenant management exists, services have improved, maintenance costs have been reduced, public assistance caseloads have been reduced, and rent collections have increased. Overall, these public housing communities have become safer and more stable.

Let me stress that the Dixon-Glenn-Danforth amendment does not displace current tenants. It does not provide for tenant ownership. It does not require tenant management of public housing. It does not conflict with the Federal Government's commitment to provide housing assistance to needy families. It is not a viable alternative for every tenant organization or every housing project.

Instead, the amendment would provide flexibility to residents of public housing who meet the requirements and who choose to manage the projects where they live.

Mr. President, I believe that the time has come for the enactment of this legislation. Therefore, I urge my colleagues to join Senators Glenn and Danforth and me in supporting the amendment.

□ 1540

Mr. President, having detailed this legislation in my prepared text, I just want to say that this matter was discussed at length in the Banking, Housing, and Urban Affairs Committee of which I am a member. There was ultimately unanimous support for the amendment as it was offered to this year's housing bill.

People of all political philosophies in the committee like the basic ideas of tenant management. For example, my distinguished colleageue from Colorado [Mr. Armstrong] enthusiastically supports the concept of tenant management, as does this Senator. We might have little differences about provisions in the legislation itself, but I can report as a member of the Banking Committee that every member of that committee, Democrat and Republican, likes the concept. Everyone likes the concept of letting tenants of public housing projects come together and if a majority of them vote for tenant management of their project, let them go forward in that way.

Mr. President, in the city of Chicago, which many of my colleagues have been in many times, there is a low-rise public housing project, LeClaire Courts, on the South Side of Chicago, near O'Hare Airport. Recently, Mr. President, I went there. With their leaders, I had an opportunity to go throughout the housing project and see what the tenant's have done, working together, to take care of their own living conditions.

Mr. President, you would be delighted to see the result. There were some people from Chicago media outlets following me around as I went through the housing project. We looked at one beautiful lawn with a beautiful stand of grass, shrubbery, and everything was in perfect order. Everything was nicely painted and renovated. I commented that there is that low-cost housing project on the South Side of the city of Chicago those tenants, acting in concert, with pride in their own community had fixed up that place so that their lawn looked every bit as beautiful as any fine lawn you would see in Wilmette or Winnetka, in the affluent suburbs of Cook County.

Mr. President, that is the point I want to make. With whatever poor eloquence is at my disposal, I want to say this: You hear so much criticism of how folks treat housing projects all over the country. But every public housing project I have seen where tenant management was involved, where tenants were able to work together, select their own leaders from the project, have a chance to renovate, have a chance to keep the additional rents they obtain, and run their own affairs, those housing projects are altogether different. They are wonderful to see. They have the same components that you see in ownership.

I am not arguing for ownership here; that is another question. But when tenants get together, work together, and make their own determinations about their leadership and how to manage their own project, the results are remarkable.

I appreciate the difficulty that my friend, the manager of this bill, finds himself in connection with this whole question of the continuing resolution. I earnestly solicit him to let me offer this amendment and have an up-or-down rollcall. That will have to rest in his own mind and conscience; I appreciate that fact.

I simply want to say this: I honestly believe that in the whole philosophical sweep of this Chamber, Mr. President, from left to right, anybody who has gone to these housing projects and seen what people can do when they are permitted to run their own affairs, would be proud of them, would be proud of the fact that people care when given their own self-determination in these matters. I earnestly solicit the support of my colleagues on this amendment. It was thoroughly discussed on both sides in the Banking, Housing, and Urban Affairs Committee. As I said, I believe this to be a piece of legislation whose time has come.

I say finally, Mr. President, we always come to the tail of the session and there is no vehicle left. Provisions of this amendment were approved as part of the housing bill. That bill has been on the calendar for weeks. We have never been able to call it up for a variety of reasons.

I know my colleague, the distinguished senior Senator from Oregon [Mr. HATFIELD] wants to bring a clean CONGRESSIONAL RECORD out of here. I ask him to consider whether we could not make an exception or two for really outstanding cases like this one. I truly believe that this is an amendment that would be embraced by everybody in the Chamber. I truly believe that everywhere in America, everyone, even those with a different point of view, would consider this a fine improvement over existing law. I solicit the consideration of my colleagues for this very good amendment, Mr. President.

Mr. GLENN. Mr. President, I rise today to join my distinguished colleague from Illinois, Senator DIXON, in sponsoring the Public Housing Resident Management Act amendment to the continuing resolution. This provision provides an option for tenant management of public housing projects. It has been demonstrated that involvement of tenants in maintenance, improvement and management of public housing has very positive effects on the building, environment and quality of life in such developments.

I believe that we need to provide an opportunity for public housing tenants to take responsibility for managing their own housing conditions. It must be noted that this concept will not work everywhere and in many areas of my State I would not even recommend resident management. Most housing authorities in Ohio are well maintained and managed. However, it does permit a majority of adult public housing tenants, who are committed to the goals of tenant management, to establish a resident council, which, in turn, would determine the feasibility of establishing a resident management corporation. The corporation would provide management for the housing project.

As a protection against loss and theft, the bill would require management corporations to provide fidelity bonding and insurance, or their equivalents. It would also require and annual audit of the books and records of each corporation, with a written report of the audit to go to the public housing agency and the Secretary of Housing and Urban Development.

Tenant management, while it is a relatively new approach, is by now means a cure-all for the problems that exist today in the whole area of public housing. I would like to make it perfectly clear that this legislation provides an option for tenant management. It does not divest the Federal Government of its responsibility and support for housing programs. We need more help from the Federal Government, not less.

I urge my colleagues to join Senator DIXON and myself in granting public housing tenants the flexibility of choosing tenant management.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, again, with great reluctance and with deep respect for my colleague from Illinois, I hold here six pages of the distinguished Senator's amendment. I raise a point of order that it is not germane to the appropriations bill now pending before the body.

Mr. DIXON. Mr. President, I raise the defense of germaneness.

The PRESIDING OFFICER. The point of order that has been raised by the Senator from Oregon is that the amendment is not germane. There is no defense to that point of order. The question is for the Senate to decide. The question is, Is the amendment germane?

Mr. DIXON. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Is the amendment of the Senator from Illinois germane? The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

The PRESIDING OFFICER (Mr. EVANS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 40, nays 58, as follows:

[Rollcall Vote No. 306 Leg.]

YEAS—40

Biden
Bingaman
Bradley
Bumpers
Burdick
Byrd
Cohen
Cranston
DeConcini
Dixon
Dodd
Eagleton
Exon
Ford
Glenn
Gore
Harkin
Hart
Inouye
Johnston
Kasten
Kennedy
Kerry
Lautenberg
Levin
Matsunaga
Melcher
Metzenbaum
Mitchell
Nunn
Pell
Proxmire
Pryor
Riegle
Rockefeller
Sarbanes
Sasser
Simon
Specter
Zorinsky

NAYS—58

Abdnor
Andrews
Armstrong
Baucus
Bentsen
Boren
Boschwitz
Broyhill
Chafee
Chiles
Cochran
D'Amato
Danforth
Denton
Dole
Domenici
Durenberger
Evans
Gorton
Gramm
Grassley
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Kassebaum
Laxalt
Leahy
Long
Lugar
Mathias
Mattingly
McClure
McConnell
Moynihan
Murkowski
Nickles
Packwood
Pressler
Quayle
Roth
Rudman
Simpson
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson

NOT VOTING—2

Garn
Goldwater

□ 1600

The PRESIDING OFFICER. The amendment is declared not germane.

□ 1610

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was declared not germane.

Mr. DOLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3104

Mr. DIXON. Mr. President, I send an amendent to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. DIXON] proposes an amendment numbered 3104.

At the appropriate plce in the Joint Resolution, insert the following new section:

SEC. . For activities authorized by title II, part B of the Job Training Partnership Act, $100,000,000, in addition to amounts otherwise provided for these purposes, to be allocated to states so that each service delivery area receives, as nearly as possible, an amount equal to its program year 1985 allocation for this program, to be available for obligation for the period July 1, 1986, throught June 30, 1987.

Mr. DIXON. Mr. President, my amendment, to provide a partial restoration to the Summer Youth Employment Program for the summer of 1987, will require a waiver of the Budget Act. However, the overall total of the amendment will not increase the outlays on the overall bill. My amendment has an offset from the unassigned budget outlays in the bill which amounts to $100 million.

The Summer Youth Employment Program is title 11-B of the Job Training Partnership Act. It puts disadvantaged youth to work in the summer. The program was cut last summer from $825 million to $725 million. Next summer without a restoration, the program will be cut to $636 million. Little by little, we are cutting the number of jobs available for the poorest kids in our Nation's cities—from 803,000 jobs in 1985 to 785,000 jobs in 1986 to an estimated 635,000 jobs in 1987.

My amendment will not fully restore the program to what it needs in order to provide 785,000 jobs to our Nation's youth next summer. However, it will provide an additional 88,000 jobs, bringing the total to about 723,000. That is fewer than we have had in many years, and I regret that we can't make a full restoration. But I want to propose a fiscally responsible amendment which does not add to the outlays of the overall bill.

Without this restoration, which I have stated is not even a full restoration, every State in the country will receive a cut in summer jobs for underpriviledged kids in our Nation's cities. The biggest losers are California, which it is estimated will lose $9 million; New York, which will lose $6.7 million; my State of Illinois, which will lose about $5.6 million; Pennsylvania, which will lose $5 million; Ohio, which will lose $4.7 million; and Texas, which will lose $4.6 million.

At the completion of my remarks, I would like to include a complete State-by-State breakdown of cuts for next summer.

The distinguished chairman of the Subcommittee on Labor, Health and Human Services, and Education recognized that this shortfall in the Summer Youth Employment Program existed. We discussed it in the Senate June 6, 1986, during consideration of the supplemental appropriation. It was the chairman's intention to try to restore the program but it is my understanding that he was unable to do so because of budget constraints within his subcommittee's allocation. That is why we are here today. I didn't feel it was justified to offset this amendment with funds for cancer and AIDS research; or to take money from the handicapped or other disadvantaged groups for whom the senior Senator from Connecticut is an eloquent and effective advocate.

I would like to commend the distinguished chairman for his efforts to increase funding for the program in the summer of 1988, which is the program year that the fiscal year 1987 appropriation addresses.

I also do not want to add to the overall total of this already tremendous appropriation. Therefore, my only choice was to seek funds outside the Labor-HHS Subcommittee's jurisdiction. It is not the preferred way of taking care of this matter, but it is the only way that this Senator was able to justify.

Frankly, I considered using the economic support fund as an offset, but for the moment will reserve that option, should the Senate fail to support this amendment.

I urge my colleagues to consider this point of order carefully. Although we are requesting a waiver of the Budget Act, this amendment will not add to the overall total of this bill. Although the additional $100 million for the summer youth employment will exceed the 302(b) allocation for the Labor-HHS Subcommittee, there is still room in this bill.

CBO estimates that an additional $100 million for next summer would incur outlays of $85 million. This bill contains $100 million in nonassigned outlays. It is from that amount that I intend the additional funds to be offset.

This amendment has the support of the U.S. Conference of Mayors, the National Governors' Association, the National Alliance of Business, 70,001, National Youth Employment Coalition, National Association of Counties, and many others.

I want to tell my colleagues here that when I go home and discuss this amendment—which I have done at Chamber of Commerce functions, at meetings of business groups, National Association of Manufacturers groups in my State—every one of them said this is a worthwhile thing to do.

Mr. President, these are the teenage kids in America who are wandering the streets of our great cities in the summertime without employment. I cannot think of anything more important than giving these young people job opportunities, their first chance to learn how to seek a job, to work in a job, to be prepared for employment.

Here is a chance for a modest sum of money, and let me stress again I know that my distinguished friend, the chairman of the Appropriations Committee feels he has no alternative, and is going to suggest at the conclusion of my remarks that this violates the Budget Act. He will be technically correct that it does. But it does not violate the Budget Act in the sense it is going to cost any money. The money is already appropriated for it in an undistributed fund. The money is there.

Priorities are what the Senate ought to be deciding here.

□ 1620

On the question of priorities, I ask you what can be more important than taking teenagers in all the metropolitan parts of America, in the hot summer, and putting them in jobs—instead of having them on the streets creating mischief—learning how to work for a living. That is an investment in America that I think is worthwhile.

I want to conclude, Mr. President—I see my warm friend from Illinois here on the floor who wishes to be recognized—by saying this. I realize there are fiscal constraints. I realize there is not enough money to go around for everything. I realize we have to use a degree of selectivity. Here is a program we have cut every year. As I said once or twice, I have been fortunate to get restorations for this program in the push. Each time I have felt strongly that this is one of the better programs, and if you are going to deal in priorities, there has been a $175 million cut. We can restore $100 million by taking it from an undistributed account and put 88,000 more kids to work in America next summer.

I would appreciate your consideration of this.

Mr. President, I ask unanimous consent to have printed in the RECORD a table showing State-by-State cuts if my amendment fails.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

STATE BY STATE CUTS IF DIXON AMENDMENT FAILS

State	Summer 1986 ($724,549,000) [1]	Summer 1987 ($635,976,000) [2]	1987 cut [3]
Alabama	17,000,295	14,954,523	2,045,772
Alaska	1,855,105	1,631,109	223,996
Arizona	8,338,373	7,309,925	1,028,448
Arkansas	8,072,009	7,086,032	985,977
California	76,767,215	67,493,641	9,273,574
Colorado	7,162,222	6,294,837	867,385
Connecticut	8,942,688	7,848,951	1,093,737
Delaware	1,686,338	1,479,832	206,506
Florida	27,641,632	24,284,163	3,357,469
Georgia	14,638,937	12,860,745	1,778,192
Hawaii	2,539,446	2,229,585	309,861
Idaho	3,010,046	2,644,471	365,575
Illinois	45,606,062	39,969,452	5,636,610
Indiana	20,374,617	17,892,836	2,481,781
Iowa	8,086,563	7,112,016	974,547
Kansas	4,916,551	4,346,073	570,478
Kentucky	14,102,112	12,395,742	1,706,370
Louisiana	17,352,599	15,275,632	2,076,967
Maine	3,385,926	2,971,292	414,634
Maryland	12,651,336	11,102,077	1,549,259
Massachusetts	18,606,681	16,337,306	2,269,375
Michigan	37,857,491	33,258,685	4,598,806
Minnesota	10,627,451	8,929,216	1,698,235
Mississippi	10,778,034	9,488,057	1,289,977
Missouri	15,380,278	13,507,308	1,872,970
Montana	2,364,417	2,076,211	288,206
Nebraska	3,246,632	2,849,056	397,576
Nevada	2,579,065	2,270,826	308,239
New Hampshire	2,022,776	1,775,070	247,706
New Jersey	24,149,772	21,199,617	2,950,155
New Mexico	4,833,705	4,252,506	581,199
New York	55,186,992	48,432,324	6,754,668
North Carolina	16,302,743	14,306,341	1,996,402
North Dakota	1,646,188	1,449,442	196,746
Ohio	39,275,663	34,483,206	4,792,457
Oklahoma	8,292,713	7,295,351	997,362
Oregon	10,011,937	8,812,056	1,199,881
Pennsylvania	40,383,487	35,366,670	5,016,817
Rhode Island	3,260,245	2,863,543	396,702
South Carolina	9,032,984	7,926,822	1,106,162
South Dakota	1,646,188	1,449,442	196,746
Tennessee	16,351,478	14,355,652	1,995,826
Texas	38,642,057	33,944,867	4,697,190
Utah	3,613,371	3,175,938	437,433
Vermont	1,646,188	1,449,442	196,746
Virginia	14,136,881	12,437,908	1,698,973
Washington	14,297,852	12,568,488	1,729,364
West Virginia	9,038,456	7,958,217	1,080,239
Wisconsin	14,168,157	12,435,768	1,732,389
Wyoming	1,646,188	1,449,442	196,746

[1] Appropriated amount after G-R-H cut. Actual prior year 1986 allocation also included excess carryover funds.

[2] Appropriated amount. Allocations assume unemployment and other variables are the same as prior year 1986.

[3] Approximate cut in allocation for summer of 1987, assuming unemployment and other variables are the same as the summer of 1986.

Mr. DIXON. Mr. President, I am delighted to yield to my warm friend and colleague from Illinois.

Mr. SIMON. I thank my colleague.

I simply want to commend him and join in support of this.

I would point out we just voted yesterday on an antitrust bill. Show me an area of high unemployment. I will show an area where there is high drug use. We have talked on this floor about teenage pregnancies. You show me an area of high unemployment, I will show you an area where there is high teenage pregnancy rates. When we put people to work we move on a very, very basic problem in our society. We fight crime, we fight drugs, and we fight the various afflictions we have in our society. I commend him.

I hope we will do the commonsense thing and vote for the Dixon amendment.

Mr. DIXON. Mr. President, I want to thank my colleague who is a warm and dear friend of my adult lifetime, and a man with a great heart and a great mind, for those kind remarks.

I want to say this in conclusion. I wish the Members of the Senate could see these kids come in trying to get these jobs each summer. Long lines of kids want to work. They need to work. They stand in these lines by the thousands to get these jobs.

My friends, this extra $100 million would give 88,000 more kids in the inner cities of our great country an opportunity to be employed this next summer. Give them that chance, I ask you.

Give us this $100 million. That is taken from another fund. It will not cost a dime in additional funding. It is not going to in any way affect what we have done in the budget. It does not affect what we have done in our attempts to comply with Gramm-Rudman-Hollings. It does not affect in any way adversely the continuing resolution, reconciliation, or anything else we have done. If you will give us this $100 million, I think you will be doing a great act of compassion and justice for fine young men and women in

America that want summer employment.

I thank the President. I thank the distinguished manager and the ranking member for giving me this opportunity to be heard.

I ask all of you in a compassionate way to examine your hearts, and see whether you cannot find the kindness there to do this decent act to support employment in the major cities of America.

Mr. STENNIS addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. STENNIS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, I would like to respond briefly to my good friend from Illinois.

He refers to the $100 million that is in the so-called unallotted funds of the Appropriations Committee. The Senator is correct. But under the Budget Act of 1974, only the committee itself has been designated with the authority to allocate those funds under the 302(b) program. That is No. 1.

No. 2, there are major differences between the House and the Senate appropriation actions that have thus far occurred. There will have to be adjustments made between the levels of spending on many programs, and worthy programs that I know are high priority to the Senator from Illinois, as well as to myself.

So that $100 million in effect will have to be utilized in making those adjustments between the House levels and Senate levels, in order to stay within the levels of a bill that would be signed by the President.

So I want the Senator to understand that we do not have that $100 million back there sort of in a pot waiting to either not be spent or to throw it out at some lesser worthy program, and to also indicate that it is more than merely a technicality that I at this point feel constrained to raise a point of order under section 302(f) of the Budget Act as amended in that the amendment provides budget authority in excess of the committee's 302(b) allocation under the fiscal year 1987 concurrent resolution on the budget, and is not in order.

Mr. DIXON. Mr. President, I move to waive provisions of the Budget Act.

The PRESIDING OFFICER. The motion is debatable. Is there debate?

Mr. DIXON. I have no further desire for a debate, Mr. President, but I ask for the yeas and nays on that proposition.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Illinois to waive section 302(f) of the Budget Act. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—31 yeas, 67 nays, as follows:

[Rollcall Vote No. 307 Leg.]

YEAS—31

Biden
Boren
Bradley
Bumpers
Burdick
Byrd
Cranston
D'Amato
Dixon
Eagleton
Ford
Glenn
Gore
Harkin
Hart
Inouye
Johnston
Kennedy
Kerry
Lautenberg
Levin
Matsunaga
Metzenbaum
Pell
Pryor
Riegle
Rockefeller
Sarbanes
Sasser
Simon
Specter

NAYS—67

Abdnor
Andrews
Armstrong
Baucus
Bentsen
Bingaman
Boschwitz
Broyhill
Chafee
Chiles
Cochran
Cohen
Danforth
DeConcini
Denton
Dodd
Dole
Domenici
Durenberger
Evans
Exon
Gorton
Gramm
Grassley
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Kassebaum
Kasten
Laxalt
Leahy
Long
Lugar
Mathias
Mattingly
McClure
McConnell
Melcher
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pressler
Proxmire
Quayle
Roth
Rudman
Simpson
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Zorinsky

NOT VOTING—

Garn
Goldwater

So the motion to waive section 302(f) of the Budget Act was rejected.

□ 1640

The PRESIDING OFFICER. It is the ruling of the Chair that the amendment would provide new budget authority in excess of the appropriate allocation reported under section 302(b) in connection with the budget resolution for fiscal year 1987. Therefore, the amendment violates section 302(f) of the Budget Act. The point of order is sustained. The amendment falls.

Mr. MATTINGLY. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. SIMPSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF BUSINESS

Mr. HATFIELD. Mr. President, I believe that the Senator from Illinois is prepared to offer an amendment at this time.

Mr. SIMON. Mr. President, if I may say to my colleague from Oregon, I understand my colleague from Iowa has been waiting for some time to offer an amendment.

The PRESIDING OFFICER. The Chair suggests that someone offer an amendment.

AMENDMENT NO. 3105

(Purpose: To provide additional funds for carrying out the Department of State Soviet-East European Research and Training Act and the United States Information Agency Educational and Cultural Exchanges Programs, and to reduce funds for the Department of State's acquisition and maintenance of buildings abroad)

Mr. SIMON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Illinois [Mr. SIMON], for himself, Mr. PELL, Mr. MOYNIHAN, and Mr. MATSUNAGA, proposes an amendment numbered 3105.

Mr. SIMON. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution, add the following new section:

SEC. . Notwithstanding any other provision of this joint resolution, not more than $248,200,000 may be appropriated for the account entitled "Department of State Acquisition and Maintenance of Buildings Abroad." There is $800,000 appropriated in addition to funds otherwise appropriated in this joint resolution for the purpose of carrying out the Department of State Soviet-East European Research and Training Program. There is $24,000,000 appropriated in addition to funds otherwise appropriated in this joint resolution for the purpose of carrying out the United States Information Agency Educational and Cultural Exchanges Programs, which shall be available only for the purposes of providing expenses of Fulbright, International Visitor, Humphrey Fellowship and Congress-Bundestag Exchange Programs, as authorized by Reorganization Plan No. 2 of 1977 and the Mutual Educational and Cultural Exchange Act, as amended (22 U.S.C. 2451 et seq.).

Mr. SIMON. Mr. President, this is a relatively simple amendment but it is an important amendment. This amendment replaces $24 million that has been taken from the Fulbright fund and restores it to fiscal year 1986 levels. It restores the $800,000 that has been taken from Soviet studies.

In Soviet studies, we have had what everybody acknowledges to be a major deficiency. The chairman of the Foreign Relations Committee, Mr. LUGAR, very appropriately has asked that we appropriate money in that area and we have, for the last couple of years, been doing that.

□ 1650

Under this appropriation bill that would be cut $800,000. Senators who have visited anywhere in the world have run into people in other governments who have a feeling of kinship not only toward the United States but to the whole process of a free democracy at work, and I have experienced it. Many of us have experienced it. This does not increase the total appropriation. We take it from the building fund which has some money that clearly can be used for this purpose. I think this is a very rational amendment.

I might add that my colleagues, Senator PELL, Senator MOYNIHAN, and Senator MATSUNAGA are cosponsors. I believe this amendment makes sense. It is penny wise and pound foolish to cut back on the Fulbright Program, one of the finest investments we have made. I think it is universally acknowledged. If we want to build a world of peace, we are not going to do it only with summit meetings in Iceland and arms control agreements with the Soviets. We are going to have to do it by building understanding between people. That is what this is all about.

I would be happy to answer any questions that anyone may have. I have talked with a few people on both sides of the aisle. I think it makes sense. I urge favorable consideration of the amendment.

I see my colleague from New Hampshire frowning and so he must have a question on his mind. I will be pleased to yield to him.

Mr. RUDMAN. I wonder if the Senator from Illinois will yield for a couple questions and observations.

Mr. SIMON. I am very pleased to yield.

Mr. RUDMAN. As the Senator from Illinois knows, the Senator from New Hampshire chairs the particular subcommittee in the Appropriations Committee that has jurisdiction over the item, and I have a couple of problems with it. I am checking out one of the problems. The problem we have in our subcommittee is that, as with all appropriations subcommittees, we are bound by so-called 302(b) allocations as to outlays. Not all items within this appropriation or any other appropriation outlay at the same rate. The $248,200,000 item for acquisition and maintenance abroad outlays at a particular rate, which I believe is somewhat considerably less than 1 for 1. It is my belief that the amendment offered by the Senator from Illinois would outlay at a nearly 1 to 1 ratio, that all of that $800,000 would outlay precisely dollar authorized/dollar spent. If that is so—and I am not representing it to be so; we are checking it right now—then I would have to consult with the chairman of the full committee because the committee is perilously close to being at its limit of 302(b) outlay authority under the Budget Act. So if the Senator from Illinois would like to carry on a discussion with others while I am checking that, I wish he would and he can come back to the issue, hopefully, in a couple minutes.

Mr. SIMON. If my colleague will yield, we have tried to check to see what those precise figures are, and it is very difficult to check. Now, if to be prudent you would want to reduce that building and construction fund a little further, that would be perfectly acceptable to me. I am not trying to create outlay problems for the committee obviously, but I do not think it is in the interest of the Nation to cut back on the Fulbright Program.

Mr. RUDMAN. I make one comment and then I am going to make a unanimous-consent request. I want to make a comment that the fact that these funds are not obligated at the present time, that the Senator from Illinois is referring to—he is absolutely correct—the fact is we have had a long and intensive discussion with the State Department on what they must do with these funds. And these funds, although currently not obligated, are all pretty much specified for projects at levels greatly below what State had requested. Let us check a couple of facts to see what we might do with this, and I would then ask, with the consent of the Senator from Illinois, unanimous consent, Mr. President, that the pending amendment offered by the Senator from Illinois be laid aside temporarily while we are able to confer on that, and that it be the pending order of business after the disposition of the following amendment.

Will that be acceptable to the Senator?

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Reserving the right to object——

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Reserving the right to object, if the Senator will withhold that unanimous-consent request for a few minutes so we might discuss this amendment, those of us who would like to speak on the substance of it, and then at an appropriate point when we exhaust discussion make the question, that will be satisfactory.

Mr. RUDMAN. I withdraw the request. The reason I made the request is the chairman is interested in saving time. If there is discussion, let us have it now. Maybe, after the discussion is ended, we will have the facts before us and then we can decide to either take the amendment or vote on the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. I congratulate the Senator from Illinois on this amendment. I am very glad to cosponsor it with him. It is particularly needed because the money for the Fulbright Program, the exchange program, have been cut about 20 percent in accordance with the resolution before us. It is interesting that this is the 40th anniversary of the Fulbright Program, that we have now something like 35 current and former heads of Government, 400 Cabinet-level officials who have been through this program. It would seem a very valuable program, indeed, and I submit that it would be better to have Fulbright scholars coming and going back to their own countries with new ideas than it is to have approved buildings.

Mr. DODD. Will the Senator yield.

Mr. PELL. I yield.

Mr. DODD. I join the distinguished ranking member of the Senate Foreign Relations Committee and my colleague from Illinois in support of this amendment. The Senator from Rhode Island has accurately pointed out that there are virtually hundreds of people from one end of this globe to the next who are beneficiaries of this program and as a result have embraced and adopted much of the values and the principles of this country in no small measure because of the influence of the Fulbright Program. I speak with some personal experience in the fact that one of my aunts was a Fulbright scholar as a public high school teacher for 40 years, a teacher of German and French, who studied for 2 years under the Fulbright Program, and my older brother is a senior Fulbright scholar and spent time in Latin America under that particular program. Countless leaders and heads of state around the globe, as the Senator from Rhode Island points out, have served under this program. It is one of the best investments this country makes, one of the best investments we make, to enhance our ideals of democracy around the globe, to invest this relatively small amount of money for an educational program that attracts the brightest and the best people from across the globe. I hope we can work out the problem the Senator from New Hampshire has in terms of the budget process. I know of no other program that returns as much to this country as does this program. The Senator from Illinois is appropriate and proper in raising it and suggesting that we try to fund this program to an adequate level, and I am delighted to be a cosponsor. I thank the Senator for yielding.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island has the floor.

Mr. PELL. I agree wholeheartedly with the Senator form Connecticut. I recall very clearly when I used to be stationed behind the Iron Curtain in the Foreign Service, I never saw a student or scholar go to our country and return more convinced about democracy. As a general rule, when exposed to our kind of thinking, they came back less enthusiastic Communists. The more exchanges we have the better. I would like to see 100,000 young people go back to each other's country. A program of this sort, which is now down to a miniscule amount, certainly should not be cut any further and anything we can do to expand it we should. I think it is interesting that in the Soviet Union they have more people who speak English than we have teachers of Russian in our country.

☐ 1700

Mr. SIMON. Mr. President, if the Senator will yield, I join my colleague from Rhode Island, and I applaud his comments.

The reality is that everywhere we have had these Fulbright scholars, it has created goodwill.

I remember being in the Sudan one time, shortly after they had thrown off Soviet dominance in that area, and met with members of the Cabinet, and one after another had been a Fulbright scholar.

For us to cut back in this area does not make sense.

If I may have the attention of the chairman of the subcommittee, I point out that in addition to the mistake of cutting back ordinarily, the fact is that the dollar is slipping in value; so that even if we were to maintain the 1986 level, as I am suggesting, it still means a substantial cut in the Fulbright program.

So I hope that after my colleague from New Hampshire checks this out, we can work out something and that we can find something that is acceptable to the Senator from New Hampshire.

Mr. RUDMAN. Mr. President, we have been able to check it out, and let me just address the issue.

In the first place, the subcommittee came in with an appropriation this year about 10 percent less than the previous year. The fiscal year 1986 appropriation in this classification is about $134.5 million. We are down to about 10 percent from that. That is precisely what the budget resolution called for. We tracked the budget resolution passed by Congress exactly as it was represented and passed.

So here we are with a very laudable amendment offered by my friend from Illinois. I cannot disagree with what the Senator from Illinois says, nor with what the Senator from Rhode Island says. The fact is that we are in a budgetary crunch where the State-Justice-Commerce Subcommittee is now $44,000—that is not a term we use in this Chamber often—from its 302(b) allocation.

I have been informed by the budget analysts that the acquisition and construction side of our bill spends out at a 25-percent rate—roughly 4 to 1—authority to outlay; whereas, the exchange programs covered by the Senator's amendment spend out at a 50-percent rate.

So the problem we face is twofold.

No. 1, if we are going to adopt the idea proposed by the Senator from Illinois, we will have to cut the construction account even more, because there is no way that the chairman of the full committee is going to allow this subcommittee chairman—and I agree with his position—to exceed the allocations that are binding upon us by the Senate budget resolution. That is the bind we find ourselves in.

In addition, I will say one last thing: The State Department informs us that all the funds that are contained in this bill, although not obligated, are specifically now designated, and a major portion for projects which have been appropriated by this Congress in Honduras, Cyprus, Switzerland, Bahrain, Jordan, and Somalia—those projects which are underway. Even if we take a relatively small amount by the standards of this budget, $8 million, from that, then they will have a problem completing some of those projects within the timeframe. Whether that is fatal or not, I do not know.

That is the dilemma I face right now, and I advise the chairman of the full committee that if we were to adopt this amendment in its present form, it will break out the 302(b) allocations.

I yield the floor.

Mr. SIMON. Mr. President, will the Senator yield?

Mr. RUDMAN. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, first of all, I am in full agreement that we have to reach these targets. I am one of those who supported something called Gramm-Rudman, and the Senator from New Hampshire will recall that passed this body. I serve on the Budget Committee.

The reality is that we have from last year $340 million in unobligated balances. The Senator serves on the Appropriations Committee, and I serve on the Budget Committee. The reality is that there is always some softness in those figures. There is also the ability to slow down certain things.

The question is, should we take advantage of some softness in some figures like that, or should we cause some slowdown in whatever may be under construction in Switzerland or wherever else we may have something? Is it worth it to have the Fulbright program at the level we had last year and Soviet studies at the level we had last year? My strong conclusion is that it is.

I am willing to accommodate the Senator's staff in modifying these figures so that we do not have a problem here.

I ask unanimous consent of this body that we adjust the figures here so that we do not have a problem on that.

Mr. RUDMAN. Mr. President, will the Senator yield for a question and a comment?

Mr. SIMON. I yield.

Mr. RUDMAN. The Senator from Illinois knows that I do not disagree with the thrust of his amendment. No one can deny successfully that the Fulbright grants, the Pell grants, and the Soviet fellowship grants are very good for this country and are important. I do not have that problem.

The problem I have is that having worked through this entire matter for 5 months, I find that every major department—the State Department, the Commerce Department, and even the Justice Department, who I think we treated fairly—is very unhappy with this subcommittee's markup.

In order to accommodate my friend from Illinois, and I would like to accommodate him, I would have to then make some more reductions from this $339 million figure well below what I think the State Department reasonably would wish to accept, and I would like to discuss it with them. On that basis, I am not willing to do that.

If there is some other place in this budget that we could find a spendout that truly was not going to be deleterious to whatever project it was, I would accept that. But this one, we cannot, and the chairman advises me that he does not agree that we should make further reductions at this point that will result in hurting this project, in order to meet the 302(b) obligation.

As we say in New Hampshire, and maybe in Illinois, I am between a rock and a hard place.

I agree with what the Senator from Illinois wants to do. I am not in a position to do it and keep this bill within budgetary allocation.

Mr. SIMON. Mr. President, will the Senator yield?

Mr. COCHRAN. Mr. President, a parliamentary inquiry.

Did I hear the Senator from Illinois correctly, that he asked unanimous consent to make a correction in the bill? If that was his request, I think an objection should be lodged.

The **PRESIDING OFFICER.** The Senator is correct. There was a unanimous-consent request. At this point, there has been discussion, but no objection has been lodged.

Mr. **RUDMAN.** Mr. President, reserving the right to object, if I understood the Senator, he has not asked for the yeas and nays yet on his amendment, and he would have a right to modify his own amendment.

Is the Senator from New Hampshire correct?

The **PRESIDING OFFICER.** That is correct. But the Chair also observes that it is impossible to determine precisely what the Senator has in mind, because we have no way of knowing how to reassign or to reprogram within this budget limitation. If the Senator from Illinois has some specific words or a specific proposal, he should submit it to the desk.

Mr. **RUDMAN.** Mr. President, further reserving the right to object, let me simply state that obviously the Senator from Illinois is free to modify his amendment any way he deems proper, and the Senator from New Hampshire will not object to that. That is not to say I will agree with the amendment.

□ 1710

Mr. **HATFIELD.** Mr. President, I would like to say to the Senator from Illinois that I take the back seat to no one in this body in support for these programs which the Senator is addressing. It is not solely a matter as chairman of the Appropriations Committee that I would be called upon to raise a point of order, but it is under the Gramm-Rudman requirements that each of our bills must be in line with the 302(b) allocation. They stand as 13 separate target figures within the continuing resolution.

We have to do it not only as a matter of law, but I would certainly do it as a matter of Appropriations Committee policy.

I shall pose a unanimous-consent request at this time that we do temporarily lay this amendment aside.

I urge that the sponsor of the amendment and the subcommittee chairman with staff get together and see if there is some way that if we cannot follow that particular procedure at this time, I would have to at this time raise a point of order in that it does violate 302(f) of the Budget Act, and we have checked this with CBO, the Budget Committee analysts, and the Parliamentarian, and I am sure it would be ruled as out of order on that basis.

The Senator would then be privileged to offer a motion to waive the Budget Act which would require 60 votes, and I am sure the Senator does not want to go through that especially if there is a possibility, and I see a glimmer of possibility, from what the chairman of the subcommittee has stated that this might be worked out.

Mr. **SIMON.** Mr. President, I think the suggestion is an excellent one, that this be set aside temporarily and try to get together to see if we cannot work this out.

Mr. **HATFIELD.** Mr. President, I make that unanimous-consent request.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The unanimous-consent agreement sets the amendment aside.

Mr. **SIMON.** Mr. President, I also ask unanimous consent to add Senator HARKIN as a cosponsor of my amendment.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

Mr. **BUMPERS.** Mr. President, a comment before anyone leaves to try to work this out. First of all, I support and will vote for the amendment of the Senator from Illinois. But I do want to serve notice on this body that should efforts to work out an agreement on this amendment not be successful, I will offer a similar amendment that would add $15 million to the Educational and Cultural Exchange Programs. The Senate Appropriations Committee cut the budget for these programs to $120 million.

The Fulbright program accounts for about two-thirds of the spending on exchange programs. Other exchange programs funded by USIA include the Humphrey Program, the International Visitor Program, and the Congress-Bundestag Program. The House has $144 million in its bill. And the Senator from Illinois would bring the Senate to the House figure of $144 million.

I hope we can do that and I will support that. In the event we cannot, I want you to know there will be an alternative. My amendment would add $15 million, which would bring us to $135 million—as opposed to the House figure of $144 million.

That would at least give us a little maneuver room with the House of Representatives. Funding for the exchange program would probably wind up at about $140 million.

My amendment would take $15 million from the National Endowment for Democracy and transfer those funds into the exchange programs. I do not want to debate my amendment now, but I simply want to say that I think the best way in the world to teach citizens of other countries about democracy is bring them here and let them observe it, see it, and experience it.

If you look at the alumni of the Fulbright Program, you will find that the program has been immensely successful. Twelve of Japan's Ambassadors were Fulbright scholars; 39 sitting heads of states were Fulbright scholars.

So I ask you: Do you think it is better to give $15 million a year to the AFL-CIO and the chamber of commerce to build democracy around the world or do you think it is better to bring students here and let them see democracy firsthand and experience democracy firsthand and go back home with a thorough understanding of how it works and try to build on it there?

My amendment does not have the spend-out problem that this amendment has. The National Endowment for Democracy spends out 90 percent next year. The Fulbright Scholarship Program spends out at 50 percent. So actually we get a little bit of outlay savings the first year if we adopt my amendment.

So I am not trying to undercut the Senator's amendment. I will support it, but if it does not work out, my colleagues will have another opportunity to vote on this.

I thank you, Mr. President, and yield the floor.

Mr. **HARKIN.** Mr. President, a parliamentary inquiry.

The **PRESIDING OFFICER** (Mr. COHEN). The Senator will state it.

Mr. **HARKIN.** What is the pending business of the Senate?

The **PRESIDING OFFICER.** The bill is open to amendment.

AMENDMENT NO. 3106

Mr. **HARKIN.** Mr. President, I send an amendment to the desk.

The **PRESIDING OFFICER.** The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself and Mr. GRASSLEY, proposes an amendment numbered 3106.

Mr. **HARKIN.** Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

At the end of the resolution, add the following new title:

TITLE —

SEC. . This title may be cited as the "Agricultural Program Payment Limitation Act of 1986".

SEC. . (a) Effective with respect to each of the 1987 through 1990 crops, section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended—

(1) by striking out paragraphs (1), (2), and (3) and inserting in lieu thereof the following new paragraphs:

"(1) For each of the 1987 through 1990 crops, the total amount of deficiency payments (excluding any deficiency payments described in paragraph (2)(B)(iv) and land diversion payments that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for wheat, feed grains, upland cotton, extra long staple cotton, and rice may not exceed $50,000.

"(2)(A) For each of the 1987 through 1990 crops, the total amount of payments described in subparagraph (B) that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 for wheat, feed grains, upland cotton, extra long staple cotton, rice, honey, and (with respect to clause (iii)(II) of subparagraph (B)) other commodities, when combined with payments for such crop described in paragraph (1), shall not exceed $500,000.

"(B) As used in subparagraph (A), the term 'payments' means—

"(i) any part of any payment that is determined by the Secretary of Agriculture to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

"(ii) any disaster payment under one or more of the annual programs for a commodity established under the Agricultural Act of 1949;

"(iii)(I) any gain realized by a producer from forfeiting or repaying a loan for a crop of wheat, feed grains, upland cotton, rice, or honey at the rate permitted under section 107D(a), 105C(a), 103A(a), 101A(a), or 201(b), respectively, of such Act (7 U.S.C. 1445b-3(a), 1444e(a), 1444-1(a), 1441-1(a), or 1446(b)); or

"(II) any gain realized by a producer from repaying a loan for a crop of any other commodity at a lower level than the original loan level established under such Act;

"(iv) any deficiency payment received for a crop of wheat or feed grains under section 107D(c)(1) or 105C(c)(1), respectively, of such Act as the result of a reduction of the loan level for such crop under section 107D(a)(4) or 105C(a)(3) of such Act;

"(v) any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(b), 105C(b), 103A(b), or 101A(b), respectively, of such Act; and

"(vi) any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(g), 105C(g), 103A(g), or 101A(g), respectively, of such Act.";

(2) by adding at the end of paragraph (5) the following new subparagraph:

"(C) The regulations issued under subparagraph (A) shall provide that the term 'person' shall not include any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers.";

(3) in paragraph (6)—

(A) by striking out "lands owned" and inserting in lieu thereof "lands or animals owned"; and

(B) by inserting ", or animals are husbanded," after "lands are farmed"; and

(4) by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively.

(b) The amendments made by subsection (a) shall not apply with respect to any payment or loan received under any agreement or contract made before the date of enactment of this Act.

(c)(1)(A) The Secretary of Agriculture shall review the regulations in effect on the date of enactment of this Act that define the term "person" under section 1001 of the Food Security Act of 1985 and related regulations in effect on such date otherwise affecting the payment limitations under such section, to determine ways in which such regulations can be revised to better ensure the fair and reasonable application of limitations and eliminate fraud and abuse in the application of such payment limitations.

(B) The Secretary also shall review the amendments to section 1001 of the Food Security Act of 1985 made by this section.

(2) Passed on the reviews conducted under paragraph (1), the Secretary of Agriculture shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives, not later than March 1, 1987, a report on such reviews and—

(A) with respect to the matters reviewed under paragraph (1)(A), proposed regulations or amendments to regulations, to take effect not earlier than October 1, 1987, that will meet the objections with respect to limitations specified in paragraph (1)(A); and

(B) with respect to the matters reviewed under paragraph (1)(B), recommendations on legislative changes to section 1001 of the Food Security Act of 1985 that the Secretary determines are necessary or appropriate.

Mr. **HARKIN**. Mr. President, the amendment that I have sent to the desk addresses the issue of farm program payment limitations and it is similar to a provision that was adopted by the House of Representatives during their consideration of the continuing resolution.

My amendment would place a total payment and a nonrecourse loan limit of $500,000 per farmer on our most costly commodity programs.

Mr. President, I might just note that I offered this amendment in the full committee. It was narrowly defeated by one vote with a number of Senators on the Appropriations Committee having their votes cast by proxy on that occasion. I am hopeful that perhaps they might want to express themselves on this amendment right now in a nonproxy manner.

The need for the amendment, Mr. President, has become clear in recent months. We are reading now more and more stories about the multimillion dollar payments that are going to farmers in various parts of the country. People warned us about this. They said last year when the 1985 farm bill was passed that it was full of loopholes and it was going to come back to haunt us this year. That is absolutely true. That is what is happening.

Let me just quote what Robert Thompson, USDA Assistant Secretary for Economics, said. He has one word for the multimillion dollar payments authorized by Congress in the 1985 Farm Act and I quote the word "obscene."

I am quoting now from the issue of Farm Journal of August 1986. They say, "Some farm groups view payments like Bozwell's"—I get to that in a minute—"as an embarrassment. Congress created loopholes around. They made the $50,000 payment to farms," says, Bob Mullens, the director of National Farmers Union. "It will turn out to be quite a scandal when the public catches on."

Mr. President, it has become a scandal. Here is one. J.G. Bozwell Co., Kings County, CA. In 1983 in the PIK Program they got 3.7 million dollars' worth of PIK wheat. This year they are going to get a cotton payment totaling $8.5 million estimated, $8.5 million, one farm entity under this farm bill.

It is obscene, Mr. President. It is unconscionable and we ought to put a halt to it.

Most people think we had a $50,000 payment limit in the farm bill. That is true. There was a $50,000 payment limitation. But there were a lot of other loopholes that were put into it.

Here are the ways that people get around the $50,000 limit. We have the $50,000 limit on deficiency payments and land diversion payments. There is then a $100,000 limit on disaster payments. But there are six other ways that they get around these limits.

For example, on the Findley payments, and I will talk about that in a second, no limit. Inventory reduction payments, no limit. Gain from marketing loan, no limit. Loan deficiency payment, no limit. Resource adjustment and public access payments, no limit. Nonrecourse loans, no limit.

So these abuses are happening because we have these large number of exemptions to the $50,000 payment limitation contained in the 1985 farm bill.

Couple that with the low market prices which trigger many of these payments and now you get these $8.5 million payments to one farm entity.

First of all, Mr. President, I said we have the Findley payments.

These Findley payments compensate farmers for price decreases when the Secretary reduces the commodity loan rates below the basic loan rates established by law. For example, this year the basic loan rate for corn ws $2.40 a bushel. However, under the new farm bill, the Secretary has the discretionary authority to reduce the basic loan an additional 20 percent.

This authority was exercised by the Secretary and the new reduced loan rate was made at $1.92 per bushel for this year.

□ 1720

Well, because the corn cash prices are far below the loan rate, each corn farmer will receive a 48-cent-per-bushel Findley payment to make up the difference. And there are no limits on that. It can go way above the $50,000, to $100,000, $500,000, $1 million, or, in the case of Boswell and his cotton, it could go up to $8.5 million. So that is one loophole that is in there that allows them to get around the $50,000 limit.

Another major exemption from the $50,000 payment limitation is the gain that farmers realize from the use of marketing loans currently being made available to the cotton, rice, and honey producers. Under this new program, farmers may repay the Commodity Credit Corporation loans at the prevailing loan price rather than the full amount of the loan. Because the size of a given loan is limited only by the amount of commodity harvested, the gain realized by a large farmer under this program can be several million dollars.

So, Mr. President, with exemptions like this, is it any wonder that the farm program costs this year are going to cost probably $30 billion?

But who benefits the most from these massive payment schemes? It is not the family farmer, but the large-scale megafarms that least need the help at all.

So, in an attempt to bring some sanity and some sense of proportion to this situation, I have developed an amendment which terminates the very large payments and the most flagrant abuses. What my amendment basically does, first of all, is it retains the current $50,000 payment limit on deficiency payments. So you have the $50,000 limit. And it places a new aggregate limit on all these other payments and nonrecourse loan forfeitures of $500,000 for the 1987 through 1990 crop years for the following commodities: Wheat, feed grains, upland cotton, extra long staple cotton, rice, and honey.

Now I mentioned the specific payments before that are included in this $500,000 limitation, and let me go through those again: Deficiency payments and land diversion payments, disaster payments, Findley payments, inventory reduction payments, gains from marketing loans, loan deficiency payments, resource adjustment and public access payments, and nonrecourse loans.

The second part of my amendment would clarify the relationship between cooperative associations that market commodities for producers to ensure that this limit is not applied to cooperative associations.

Finally, Mr. President—and one of the most important, I think, parts of the amendment—my amendment would require the Secretary of Agriculture to review the regulations that define "person" and submit a report to the House and Senate Agriculture Committees by March 1987 with recommendations for legislative changes. This would be a first step toward eliminating much of the fraud and abuse that has occurred due to the reconstitution of farms.

Now, we all know, and we have all heard stories, perhaps many of us even know of individual examples, of large farm entities that have been broken up into separate entities. One farm that I personally know of has been broken up into over 27 different entities so that it can get this $50,000 payment on each one of the 27 different entities. Well, that is because we do not really have a good definition of "person" in the farm bill.

And so what this third part of my amendment says to the Secretary of Agriculture is to review the regulations and submit a report to Congress with recommendations on legislative changes so that we can close that loophole, because that loophole has to be closed. My amendment is a first step in that direction by limiting that overall payment of $500,000.

But, again, it does not do anything about these entities that are being broken up, because that is something that is going to have to be done legislatively and very carefully crafted with the cooperation of the Department of Agriculture. But I do believe they ought to report to Congress no later than next March on how we ought to accomplish this.

Now, I am sure that many Senators may be wondering why I am offering a limitation that seems to be so large—$500,000—especially when the House passed a limitation of $250,000. Well, there is one very important difference with my amendment, different from the House. The House has a limit of $250,000, but it does not include nonrecourse loans. My amendment includes nonrecourse loans. Any commodity loan forfeited to the CCC would be counted toward this limitation.

Now, under the 1985 farm bill, any payment limitation that does not include nonrecourse loans will be meaningless. That is why the House amendment has got a loophole big enough to drive a Mack truck through, because it does not even address the problem we are having with the nonrecourse loans.

The reason that it would be meaningless if we do not close that loophole is that the CCC loan program is no longer just a loan program. It is also a payment program.

The marketing loan I discussed earlier is a case in point. Little would be accomplished by placing a limit on the gains realized from the marketing loan program on cotton or rice or any other commodity if any producer could simply forfeit his loan, thus pocketing the entire amount of the loan proceeds. So you could go in and get a $5 million loan from the Commodity Credit Corporation and then, if you wanted to, you would just say, "Well, it is a nonrecourse loan. Keep the grain and I will keep the $5 million." So that loophole also has been closed. And that is why my amendment is so different than what was passed in the House, because it does put a $500,000 aggregate limitation on those nonrecourse loans.

I might just add that the Department, if they wanted to give them recourse loans above that, fine. And I think that is a good point to make. If you get a farm as big as Boswell's—what is it; 83,442 acres—I would submit that that farmer Boswell or the Boswell Co. is big enough that they can go to a local bank or lending institution and get a regular loan. They do not need the nonrecourse loan program of the Federal Government.

Mr. President, who would be affected by this limit? Assuming that a farmer forfeits his entire crop, using average yields, the minimum farm size that would be affected by my amendment in 1987, next year, would be, for wheat, 3,950 acres, based upon 40 bushels per acre. That is the minimum farm that would be affected for wheat.

For corn, it would be 1,800 acres, based upon 110 bushels an acre; cotton would be 1,435 acres; rice, 1,300 acres.

Now, let me just say that those last two commodities, cotton and rice, that under cotton, with the marketing loan provision in effect as it is being administered by the Secretary of Agriculture, that could, in fact, be almost five times as much. It could, in fact, probably go up as high as about 7,000 acres the way the Secretary is administering the program. And for rice, it could go up to about 2,600 acres.

So, what I am saying is that we are not hurting our family farmers. In fact, how many farmers would be affected by this limitation? Well, very few.

Let me use some data that was done by the Senate Budget Committee on the 1982 farm program. The study broke down farm program participation by farm size categories with 2,500 acres and above being the largest category. So, for wheat, only 1.34 percent of the producers farmed more than 2,500 acres. Only 1.34 percent.

On my amendment, as I pointed out, the minimum farm would be 3,950 acres. So for wheat farmers, then it would probably cover less than 1 percent, less than 1 percent of the wheat farmers in America would feel any repercussion from this amendment, and they would be the largest wheat farmers in America.

For corn farmers, only 0.78 percent of the producers farmed more than 2,000 acres. My amendment would cover 1,800 acres. So, again, for corn farmers it would affect probably about 1 percent maybe, again, a little bit less than 1 percent of the largest corn farmers in America.

For cotton, only 3.31 percent of the producers farmed more than 1,500 acres in cotton. As I say, my amendment, the minimum acreage would be 1,435 acres, based upon 600 pounds an acre average yield. And, as I said, the way the Secretary is administering the program for the marketing loan, that would be up to around 7,000 acres. So, again, we are only affecting, for cotton, probably somewhere between 1 and 3 percent. But, at the maximum, 3 percent of the largest cotton farmers in America would be affected.

□ 1730

For rice, only 4.57 percent of the farmers farm more than 1,500 acres. So, again, for the rice farmers we are talking again about 3 to 4 percent of our rice farmers would feel financial repercussions from this limitation.

So the point I am making, Mr. President, is that in all of the commodities that we are talking about, my amendment would not affect probably anywhere over 96 percent of the farmers of America. They would not be affected but it is that top 4 percent in those commodities of wheat, corn, cotton, and rice that are taking the Government for a ride and getting these $8.4 million, $2 million payments. That is what we have to stop. It is a scandal. It is affecting all of our farm programs. It is affecting the way that our urban cousins look at the farm programs, and I think it has to be rectified.

Last, Mr. President, there may be an argument made against us that these megafarms will not participate in this program if you have this limitation. That is simply not true. The price guarantees under the farm program are so good relative to current cash prices that no farmer no matter how big can afford to stay out of these programs. What business person, what farmer would turn his or her back on a $500,000 payment from the Government? I dare say no one would do that.

Finally, I suspect that opponents of this amendment might say that the action is too hasty, too complicated to take at this time, that we should take it up next year, and take it up in the Agriculture Committee in the new Congress.

Mr. President, let me make this point. The signup for the 1987 farm programs are about to begin. If we act now we can curb these giant payments for next year, but if we fail to act, these farmers will enter into contracts for the 1987 crops during the next few months, and then we will be powerless to do anything about the next year. And then we will have to wait another year. So next year we will be faced with more of these $8 million kinds of payments to these big farmers.

Let me repeat. If we do not take this action now, farmers will sign up this fall, and next year if we go into the next spring and say we are now going to put the limit on it, it will not go into effect until next year. So we will have 2 years in a row running of these tremendously large farm payments.

Again, it is a scandal. It is something that we ought to take care of. As I said, the House passed a limitation of $250,000. They left a big loophole by not covering the nonrecourse loans.

So this amendment closes that loophole, raises that payment limitation up to $500,000.

So I know a point of order probably will be raised on germaneness on this amendment. I want to say to Senators if you want to end these big payments—not this year, we cannot end it this year because the contracts are made and we have to honor those contracts—next year I hope you would vote to make sure it is germane now. Because I believe the vote will succeed on the floor of the Senate. But if you want to see these big payments made again next year, then I guess you would have to vote, and say this is not germane.

I sympathize with the distinguished chairman of the committee who has done an outstanding job and who is a dear friend of mine. I have the highest respect and admiration for him. He knows that. I know he does not want the continuing resolution to be loaded down with nongermane amendments. Here is something that is going to save the Government money. It is going to take care of a scandal that is going to blow up in all of our faces this year with these huge payments all over America that are just now being made. You wait until next month or December when we finally get the tally sheet on these payments. Any support those of us who represent rural areas try to get from our urban brethren better start ducking because they will say why should we pay any program that pays one farmer $8.5 million for 83,442 acres in California? So I hope in this one case this would be supported to be germane because it does save the Government money.

Mr. METZENBAUM. Will the Senator be good enough to yield for a question?

Mr. HARKIN. I am delighted to yield for a question without losing my right to the floor.

Mr. METZENBAUM. The Senator is trying to limit the maximum that can be paid under the Farm Security Administration Act? Is that correct?

Mr. HARKIN. I am trying to limit the total amount of money that one farmer, farm entity, could get under the present farm bill that we are operating under right now.

Mr. METZENBAUM. Does the Senator have an estimate as to how much this would save the American taxpayers if his amendment is adopted?

Mr. HARKIN. The point is that this will save nothing in 1987 because the payments will be paid in 1987 on this crop year now. It will be made in 1987. But for the next year after, if we were to pass this now, a rough estimate is about $50 million that this would save, about $50 million in the next year after. If we do not act on this now, we will make the payments next year for this crop year, they will sign up this year to make the contracts this year, and then in 1988 we will have to make the same payments again.

Mr. METZENBAUM. There is nothing in this amendment that will adversely affect the family farmer? This will only affect the corporate farmer?

Mr. HARKIN. I pointed out in all of the commodities that I know of, over 95 percent in every case of the farmers in America will not be affected one bit. But 5 percent will. The biggest 5 percent will.

Mr. METZENBAUM. I commend the Senator from Iowa. I think it is a good amendment. I recognize the parliamentary procedure. But if there is some way we can find to save $50 million next year, I sure hope we can do it.

Mr. SIMON. Will my colleague yield?

Mr. HARKIN. I yield to my distinguished colleague.

Mr. SIMON. I want to commend him. I would go for a lower figure. But I think at the least we ought to accept this. My colleague will remember when Congressman Findley, at one point, tried to make a limitation of $25,000 payments. I voted for that. That is $25,000 which, because of inflation, is in fact worth $50,000 today. But my colleague from Iowa and I and others from farm States share the same problem. People are saying why should we support agricultural programs when somebody in California gets $19, $20 million, and we are just going to get barraged with that thing over and over again.

I think it is a sensible amendment. I hope somehow between the chairman of the committee and the two distinguished Senators from Mississippi, who are on the floor right now, this thing gets worked out. I really think this is an amendment that makes sense.

Mr. HARKIN. I thank my friend from Illinois. Let me point out one other thing.

Representative PANETTA from California pointed up another potential problem. I think this is an interesting point. He has asked the GAO to survey 400 counties where 90 percent of the foreign-owned cropland is concentrated to see how many payments are going to aliens. Preliminary estimates, preliminary results from six California counties alone, show 1.3 million in payments to foreign farmers. We are paying this money to foreigners who are coming in here and overproducing. And our taxpayers are being burdened with that. That is the kind of stuff we have to knock out.

Mr. DeCONCINI. Would the Senator yield for a question without losing his right to the floor?

Mr. HARKIN. Yes.

Mr. DeCONCINI. What if a large recipient, a so-called corporate farmer, was restricted and decided not to go into the program. Then could not that farmer, if he wanted to, go ahead and produce outside the various farm programs. Then he could perhaps flood the market, and not be subject to the restraints of the various programs which normally force farmers to cut back so that the product is not overproduced? Seriously. How does the Senator answer that?

Mr. HARKIN. That is a legitimate question. I would answer it in two ways. No. 1, under the system we have right now of crop acreage reductions we are reducing acreage but what is happening is farmers are producing more. The surpluses are enormous.

Mr. DeCONCINI. They are producing more under the program?

Mr. HARKIN. Oh, yes. We have got more acreage reduction now than we had last year, and yet we have more crops than we had last year. Because what farmers do is they pour on more fertilizer, they farm more intensely and they grow more and whatever they have left. The second answer is, and I mention this in my remarks, there is a $500,000 limit. I do not know of any farmer, I do not care how big he is, that would not go into the program for at least $500,000 guarantee that is sitting there. Even Boswell would do something like that.

□ 1740

Mr. DeCONCINI. If the Senator will yield, if you take out that farmer, the $500,000 or $200,000 farmer, who does not go into the program because he falls outside your limits. So he is not in the program.

Now, what is going to keep him from, instead of producing on perhaps 50 percent of his land, cultivating and producing 100 percent and thereby putting more into the market?

Mr. HARKIN. I would just answer the distinguished Senator from Arizona that the Secretary has the authority to reduce for these larger farmers the amount of acreage they have to set aside.

Mr. DeCONCINI. Do you mean under the program?

Mr. HARKIN. He has the authority to reduce it so they do not have to set aside the normally required amount.

Mr. DeCONCINI. So you limit the amount of money they can collect in the program, and you are assuming that they will still stay in the program and thereby the Secretary can restrict them on how much they can plant?

Mr. HARKIN. No. What the Secretary can do is that the Secretary can adjust or set aside acreage to lessen the impact on these larger farmers of these types of limits.

Mr. DeCONCINI. Yes, if they stay in the program.

Mr. HARKIN. If they stay in the program.

Mr. DeCONCINI. What about the farmers who feel they will be reduced to whatever level you set, and says, "I am going to get out." Then there is no control on that farmer, is that correct, if he elects to go outside the program?

Mr. HARKIN. If he does not elect to go into the program there is no controlling what he will do. He can do whatever he wants to do.

Mr. DeCONCINI. If he is big, will he not produce more and try to make it up on volume?

Mr. HARKIN. If he can do it that way, that is fine. Boswell, on his 83,442 acres, if he does not want to get into the program, if he wants to produce whatever he wants to produce, let him do it. Then he has to take the market price for what he has done.

Here is my point: As I said, in terms of cotton, an estimate I have is that only about 3 percent or maybe less of the farmers would be affected.

Cotton would be about 3 percent or less of the cotton farmers in America who would be affected by this limit. What I am saying is that those 3 percent will not affect the other 97 percent.

Mr. DeCONCINI. Will the Senator yield for one followup question? I do not pretend to have a thorough knowledge of this, but it seems to me that if you restrict that farmer and he decides not to go into the program and then he decides to produce more and he is subject totally to the market, then he will produce a great deal. Or perhaps you have a lot of farmers that start producing a great deal of say cotton, and the market price goes down, then the deficiency payments are going to be greater. Is that correct? Has anybody figured out what the difference might be in putting a limitation on payments as the Senator is proposing, versus the lowered price and the increase in the deficiency payments?

Mr. HARKIN. I think the Senator is making a good point, but I think, again, that it is the argument that these large farmers always use. It is the one that the Boswells and the others always use to try to get us to not have any program. They say, "We will not go into the program. We will raise all these commodities and we will depress the prices. Then the Government will have to make up more to the farmers who are in the program."

Mr. DeCONCINI. The Senator from Iowa says that argument does not hold water?

Mr. HARKIN. I say it is very specious. The reason I say it is specious is because with the $500,000 program they will still go into the program because there are other benefits they will get.

Second, commodity prices right now, the cash price, whether it is cotton, corn, or wheat, is so low that they cannot make money producing at those prices. They will go broke tomorrow if they are not in the program. If Boswell had to take a cash price for his cotton, he is out of business.

Mr. DeCONCINI. I do not know about Boswell but some farmers in my State contract their cotton a number of years ahead for a set price because they are big. It is contracted to go to Korea or somewhere. So they will not be affected if they go outside the program, and some are outside the program anyway. My concern is if they produce a lot, is the price going to go down? You say yes. But I understand the Senator he is saying notwithstanding a $500,000 limitation, most will go in.

Mr. HARKIN. Most will go in. As I mentioned under my amendment, using average yields, for cotton we are talking about 1,435 acres to be the minimum size farm.

Mr. DeCONCINI. I thank the Senator.

Mr. President, just 9 months ago, Congress completed debate on a comprehensive farm policy with passage of the Food Security Act of 1985. During year-long consideration, the members of the Agriculture Committee and the Members of the Senate debated and formulated a policy on payment limitations that were determined to be appropriate in the context of overall agricultural policy.

Today, just a short time after the farm bill has been implemented, we are being asked to approve the imposition of arbitrary limitations on Farm Program benefits without the benefit of an analysis of the impact of the proposal. We are being asked to make decisions on a very complex issue, without knowing what the implications would be on our Nation's overall agricultural policy.

Do we know how this proposal will affect small farms; what will be the impact on our ability to be competitive with subsidized competition; what impact will this have on the volume and mix of commodities produced in this country; will this limitation be applied just to producers or will it be extended to include processors; will the limitation apply to the Export Enhancement Program and other programs designed to help U.S. agriculture compete?

I urge you to resist changing the farm programs at this time because of the instability that will result. Producers are already making decisions on 1987 cropping plans and seeking appropriate financing. Any changes in our farm law would add confusion and thereby worsen an already difficult credit problem for many producers.

There are simply too many questions to be answered and too much uncertainty already exists to make changes in farm policy without the benefit of committee consideration.

Mr. ANDREWS. Would the Senator yield?

Mr. HARKIN. I am delighted to yield to my distinguished colleague.

Mr. ANDREWS. Mr. President, I appreciate the Senator yielding. Let me point out that in relation to what my colleague from Arizona has pointed out, in the past, under farm programs in the past where the loan was kept high, there was a distinct advantage to the farmer who wanted to farm to stay out of the program. The average size farmers took the cuts and really took care of the big guy who stayed out.

As I would point out, under the program we have now, the market rate is low and the support is given through target prices.

Under the amendment my colleague has offered we have a loan that is at a higher price but it is limited to the number of bushels. I am looking at his amendment and there are a good number of good points in it. In fact, it is similar to the Old McNarry program. Then there is a payment for exports, as I understand, for export at the lower level price.

Again, am I not correct, might I ask the Senator from Iowa, under either the amendment we now have or the amendment the distinguished Senator from Iowa has just offered, the incentive for the big guy staying out of the program and making out like a gangster is no longer there?

Mr. HARKIN. The Senator is correct.

The Senator is right on the point.

I also want to recognize my colleague has also worked hard on this amendment in the committee and I want to compliment the good work he has done, also trying to bring some sense of balance or rationality to these payment limitations.

Mr. ANDREWS. If the Senator will yield further, my concern is that farmers need a farm program. They are not the ones who caused the disaster in low prices, the deficits and a lot of other things. We can all grow seven extra fingers on each hand pointing at someone else for the problem.

They have the problem. They have the safety net. But they will lose it if the Eastern press keeps printing multibillion dollar payments to farm X, Y, and Z, even though the Office of Budget tells us that this will not save too many billions of dollars, though it is estimated to save $100 million.

The savings in bad press is so important in keeping a quality farm program that I had introduced, as my colleague knows, the $250,000 limit and my colleague increased it to $500,000. I support the $500,000 level because I think it is a step in the right direction.

I support what my colleague is doing. I think he is right on track. I wanted to make sure that our colleagues know that either under Senator HARKIN's amendment just offered or under the new farm bill that we passed the old gravy train for the big guy who could farm the whole township is gone, it has disappeared. Is that not correct?

Mr. HARKIN. The Senator is exactly correct. I thank him for his contribution.

Mr. KASTEN. Mr. President, I rise in support of the Harkin amendment.

What this amendment does is force us to address a fundamental question: What is our farm policy supposed to accomplish?

The rhetoric that we hear so often around this place would indicate that our farm policy is supposed to help family farmers stay on the land and keep their place as the foundation of the American rural economy. Clearly, our current farm policy has not been successful at fulfilling this purpose, despite the highest farm program outlays in history.

Current farm policy aims at supporting the price that every farmer receives for his crop or his milk. By definition, under current farm programs, the largest farms receive the largest benefits, whether they be in the form of Government checks or indirect income enhancement through price support programs. Simply put, we are trying to help our small to midsized family farmers through programs that direct assistance disproportionately to the largest farms.

I have nothing against large farms. We have some of them in Wisconsin, though they represent a much smaller percentage of all farms than is the case in some other States. The problem with making farm program benefits available based on output is simply that we have only so much money to go around.

The Department of Agriculture estimates that we will spend upwards of $26 billion in farm program costs this year. The signs are growing that the public is not prepared to support payments of hundreds of thousands or even millions of dollars to wealthy farmers, corporations, and even foreigners.

Let me give for a moment a perspective from the Nation's largest dairy State. Dairy farmers in Wisconsin and across the country have endured support price cuts, assessments, and a whole-herd buyout in their effort to bring supply in line with demand. We are not all the way there yet, but progress has been made to the point that USDA estimates that, in fiscal 1987, the dairy price support program, serving our Nation's second biggest farm industry, will cost less than the rice program—$1.1 to $1.25 billion.

I have nothing against growers of rice, but I would remind my colleagues that there simply aren't very many of them. A 1985 study by the Congressional Budget Office, using statistics from the 1982 census of agriculture, found that there are fewer than 4,000 commercial farmers for whom rice is the most important crop. The same study found fewer than 16,000 farmers for whom cotton was the most important crop.

Mr. President, there are about 26,000 commercial dairy farms just in Wisconsin. Why do the much smaller numbers of large producers of rice and other crops deserve more support? More to the point of this amendment, it is obvious that much of the Government spending on some of these commodity programs is coming in the form of enormous payments to individual farmers.

This is the real equity question here. While family farmers who produce milk or corn or soybeans—to say nothing of pork and vegetable growers—struggle to produce for the market, many large farms are producing for Government programs—sometimes more than one at a time. And they are being paid handsomely for it.

Mr. President, this amendment sets an overall limit of $500,000 in farm program payments to any one farmer. I cannot imagine any standard by which $500,000 should be considered too small a measure of support to hold up the income of one single farmer.

Any farmer who needs more than a $500,000 Government check in order to stay in business had better start looking for another line of work.

This amendment is not heartless; it is not inequitable. It represents a recognition of the fact that we have a deficit in this country. We cannot afford to throw money around to benefit a relative handful of wealthy farm operators. If we are going to help farmers—and we should—we should target assistance to the small to midsized operations that derive most of their income from farming.

Mr. President, I urge adoption of the Harkin amendment.

Mr. BUMPERS. Will the Senator yield?

Mr. HARKIN. I just want to conclude by saying that we are really in danger of losing any safety net for farmers. Here is the headline we see, "More Farmers Beating $50,000 Subsidy Cut."

We cannot take it anymore. We will lose the whole thing. Then we will really be in serious trouble.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I raise the point of order that under rule XVI the amendment is not germane to the appropriations bill now before us.

The PRESIDING OFFICER. Under rule XVI the question of germaneness is submitted directly to the Senate without debate. The question before the Senate is, Is the Harkin amendment No. 3106 germane?

Mr. ANDREWS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

The PRESIDING OFFICER (Mr. GORTON). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 47, nays 56—as follows:

[Rollcall Vote No. 308 Leg.]

YEAS—47

Abdnor
Andrews
Baucus
Biden
Bingaman
Boschwitz
Bradley
Broyhill
Burdick
Byrd
Chafee
Cohen
Dixon
Dodd
Durenberger
Eagleton
Ford
Glenn
Grassley
Harkin
Hart
Heinz
Hollings
Humphrey
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Mattingly
Melcher
Metzenbaum
Mitchell
Moynihan
Nickles
Nunn
Pell
Pressler
Proxmire
Riegle
Rockefeller
Roth
Sarbanes
Simon
Specter
Trible

NAYS—52

Armstrong
Bentsen
Boren
Bumpers
Chiles
Cochran
Cranston
D'Amato
Danforth
DeConcini
Denton
Dole
Domenici
Evans
Exon
Goldwater
Gore
Gorton
Gramm
Hatch
Hatfield
Hawkins
Hecht
Heflin
Helms
Inouye
Johnston
Kassebaum
Laxalt
Long
Lugar
Mathias
Matsunaga
McClure
McConnell
Murkowski
Packwood
Pryor
Quayle
Rudman
Sasser
Simpson
Stafford
Stennis
Stevens
Symms
Thurmond
Wallop
Warner
Weicker
Wilson
Zorinsky

NOT VOTING—1

Garn

□ 1800

The PRESIDING OFFICER. The amendment is not germane. Therefore, the amendment falls as not germane.

□ 1810

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was declared not germane.

Mr. COCHRAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I believe we are now ready to go to third reading.

The PRESIDING OFFICER. The Senate will be in order.

The question recurs on the amendment of the Senator from Illinois [Mr. SIMON].

Mr. HATFIELD. Mr. President, an effort is being made at the moment by some committee chairmen and the author of the amendment, Mr. SIMON, to reach some kind of accommodation. I think once that is disposed of, I know of no other amendments that are ready to be offered on my side. I inquire of the Senator from Mississippi, the comanager, if he is aware of any amendment ready to be offered on his side.

He has no knowledge of any amendment to be offered on his side. Therefore, I would say that as soon as we can get this accommodation on the pending amendment, and before 7 o'clock, when we have to set aside this bill for the debate on the veto message we would be ready for third reading.

Mr. BYRD. I am sorry to have to utter a discordant note here, but I thought for a moment that the chairman was serious. [Laughter.]

I understand that there are a hundred or more amendments. I have asked the staff on this side to contact Senators individually as they come in, to see if they would be willing to enter into a time agreement on their amendments or perhaps not offer them.

We will be in a position tomorrow, when the Senate resumes consideration of this matter, to perhaps know what the picture is over here.

Mr. HATFIELD. I say to the Democratic leader that the managers of the bill are ready to accommodate any Senator.

My statement just now was made seriously, recognizing that it might be an encouragement as well as an invitation to Senators to appear with their amendments.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GOLDWATER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate will be in order.

Mr. GOLDWATER. Mr. President, recently I have made comments on the fact that I wholeheartedly favored the budget bill when it first came up for passage. But under the actions of the budget bill and the operations of the Appropriations Committee, I have a strong feeling that the committee system in the Senate is slowly deteriorating. We have had very good evidence and experience of this in the recent and continuing conference with the House on armed service matters.

Mr. President, there was an article in "Defense Report" of the National Journal on September 27, entitled "Chaos on Capitol Hill," and I ask unanimous consent to have it printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows.

[From the National Journal, Sept. 27, 1986]

CHAOS ON CAPITOL HILL

(By David C. Morrison)

Congress, which has done its share of complaining about the way in which the nation's defense business is conducted, is engaging in some uncharacteristic self-criticism of its own contribution to the defense management mess.

Last October's Senate Armed Services Committee staff study on defense organization, like last June's report by the President's Blue Ribbon Commission on Defense Management (the Packard Commission), contained chapters highly critical of the redundancy, legislative delay, turf building, pork barreling and micromanagement that increasingly characterize Congress's defense budgeting and oversight.

Many Members freely concede the accuracy of the criticism. "Bills are needed on Congress as well as [on] the Pentagon," said House Armed Services Committee member Jim Courter, R-N.J. "We're always saying 'Shame on your house.' But we have our own shame here. We can't reform the Pentagon until we've reformed ourselves."

Such self-criticism is a bipartisan excercise. The Democratic Leadership Council, which counts 88 Senators and House Members in its membership, noted in a just-released defense policy report that "legislative oversight is necessary, but if conducted in a meddlesome and indisciplined way will disrupt the environment of stability which military planning and funding require."

Last October, in introducing a defense reorganization bill. Sam Nunn of Georgia, the Senate Armed Services Committee's ranking Democrat, argued that Congress was, in fact, a "major part" of the problem and so must be part of the solution. "We are focusing on the grains of sand on the beach while we should be looking over the broad ocean and then beyond the horizon," Nunn said. "We are not fulfilling our responsiblities to serve as the board of directors for the department of defense. Instead, Congress has become 535 individual program managers that are micromanaging the department at an alarming rate."

Symptoms of these ills are easily quantified. In 1962, for instance, in weighing the fiscal 1963 defense budget request, the Senate and House Armed Services Committees held 27 hearings and published 1,400 pages of testimony. Last year, in deliberating the fiscal 1986 defense budget, the two committees held 80 hearings, publishing 11,246 pages of transcripts. Moreover, the House and Senate Appropriations Subcommittees on Defense conducted their own extensive reviews, holding a combined total of 62 additional hearings and publishing another 10,492 pages of testimony.

This prodigious deployment of people and paper is only one corner of the congressional defense oversight picture.

Over the past four years, according to a February report by the General Accounting Office (GAO), an annual average of 1,306 Pentagon witnesses spent 1,420 hours testifying before 84 committees and subcommittees. The number of witnesses and the time they spend have actually declined over the past 15 years, the GAO found, but the number of subcommittees delving into defense matters has more than tripled. This accelerating diffusion of interest in defense matters beyond the official defense oversight committees has generated no small frustration on the part of both the members of those panels and Defense officials.

The degree of detail in which Congress reviews defense spending requests is also reflected in the number of changes it makes. The House and Senate defense authorization conferees this year must iron out differences on 1,600 separate items in their two bills. A thousand of those are changes made by the Armed Services Committees in the 2,600 line items—each representing an individual weapons system or ammunition program—that the Pentagon submitted in its research and procurement budget requests alone.

This annual tinkering, critics say, costs the taxpayers by encouraging pork barrel deals and creating program instability. Donald A. Hicks, the Defense undersecretary for research and engineering, warned the Senate Appropriations Subcommittee on Defense last March, "If I am going to be responsible to make certain that I have done a good job in trying to prioritize defense systems. I can hardly be held responsible if in one-third of my programs I am told by Congress what to do, not to kill a program or to add this or subtract that."

At Congress's behest, the Defense Department next year will submit a biennial budget for fiscal 1988–89; but few realistically expect Congress to deal with it on a two-year basis.

PERENNIAL TARDINESS

Dragging this ever more fine-toothed comb through the defense budget, understandably, takes a lot more time than the legislative calendar allots. In the 1950's, Congress typically enacted the final defense appropriation bill 32 days after the beginning of the fiscal year, by the mid-1970s, the lag time had dragged out to 165 days. In 1976, Congress bought three extra months for itself by moving the fiscal new year from July 1 to Oct. 1, and for the next two years, it moved the budget out on time. But final action on the defense bill has fallen steadily behind again—last year, by 80 days.

This perennial tardiness has been driven by the fact that the budget comb is wielded three times in each chamber every year: An over-all defense budget ceiling must be set by the House and Senate Budget Committees, after which funds for individual defense programs are authorized by the Armed Services Committees and then appropriated by the Appropriations Committees. All three bills have to be marked up by committees in each chamber, approved on the floor, brought to conference with the other chamber and then again subjected to floor votes.

Floor debate, too, has grown increasingly protracted. Over the past decade, the number of days spent in both chambers debating the defense authorization bill has almost tripled, while the number of amendments has increased more than fivefold. These statistics represent a variety of factors at work: the irresistibility of the huge defense bill as an opportunity to bring home the bacon, the post-Vietnam loss of consensus on defense issues and the activism of Members with enhanced access to independent defense analysis.

Delay in any step in the baroque, three-tiered defense budget process unleashes a domino effect of missed deadlines and legislative gridlock. Last year, the budget resolution was not adopted until Aug. 1, by which time the defense authorizers had already come to conference without knowing what their final budget ceiling would be. This year, the budget resolution was not adopted until June 26, forcing the two Armed Services Committees to go back into markup—the House panel to add money to its bill and the Senate committee to strip funds from its measure. Four out of the past six years, including this one, the defense appropriators have had to mark up their bills before an authorization bill was adopted.

A spreading overlap between the committees responsible for authorizing and appropriating defense funds has only exacerbated the budgetary chaos on Capitol Hill: The Armed Services Committees mark up the defense request at the appropriators' level of line-item detail, while the Defense Appropriations Subcommittees appropriate funds that were never authorized. This functional redundancy is prompting calls for committee consolidation, but there is little hope for a consensus on which committee should be weakened or eliminated.

The new fiscal year typically opens without the defense appropriations bill having been enacted, necessitating a continuing resolution permitting spending for several months as a rate pegged to the previous fiscal year. The final defense appropriations measure, more often than not, is eventually enacted in an end-of-the-year rush as part of a massive omnibus spending bill.

Because of this "spider web of legislative actions necessary for our defense bill," said Senate Defense Appropriations Subcommittee chairman Ted Stevens, R-Alaska. "you're dealing with a government that's run by continuing resolutions."

"What we have here is a three-layer cake, and Congress is just not capable of doing the same thing three times a year," complained Senate Armed Services Committee member Dan Quayle, R-Ind. "You just get stressed out through the budget process. There just aren't that many months in the year.

ANY MEMBER CAN PLAY

Some aspects of Congress's budgetary chaos may actually be the negative side effects of more favorable trends. In the past, Congress was more an ally for the individual services in their internecine battles with Defense Secretaries and White House budget cutters than an independent overseer.

Pentagon witnesses, for instance, once routinely submitted in advance questions for committee members to ask at hearings. "In 1969, however, this practice lost favor," wrote Harvard University professor and former assistant Army secretary J. Ronald Fox in *Arming America: How the U.S. Buys Weapons* (Harvard University Press, 1974). "Some confusion arose during a hearing in that year when a committee member read both the prepared question and its answer."

Today, Members need not rely solely on the defense analysis that Pentagon officials supply. The GAO, the Congressional Research Service, the Congressional Budget Office and the Office of Technology Assessment (OTA)—the first two of which were beefed up and the second two created in the early 1970s—now present Congress with a virtual deluge of defense analyses. Mushrooming congressional staffs have furthered this broadening and deepening of the defense debate.

LES ASPIN: IS HE TRIMMING HIS SAILS?

"There's always a lot of institutional pressure" on the defense budget, said Senate Armed Services Committee member Dan Quayle, R-Ind., gloomily assessing the forthcoming defense authorization conference in a Sept. 15 interview. "But we've got one huge unknown factor that's plugged in this time: the chairmanship of Les Aspin. It makes for a very dicey situation [because] he has to do a lot for a pricklish constituency called the Democratic Caucus."

If the defense budget process has become an indigestible three-layer cake, challenges to House Armed Services Committee chairman Aspin may be only further impeding Congress's attempts to consume it in a budget season already complicated by Balanced Budget Act spending ceilings and a legislative calendar compressed by the national elections.

A campaign to replace Aspin as committee chairman has forced the Wisconsin Democrat to cover his left flank, say critics on the right; they point to his alliance this year with liberal activists to secure favorable votes for strong arms control amendments that are considered tempting veto bait for President Reagan and that could deadlock the conference with the Senate.

If Aspin is, in fact, trimming his legislative sails, it is in response to winds of discontent gusting from the liberal wing of the House Democratic Caucus. In January 1985, he vaulted from seventh in committee seniority to the chairmanship vacated by the just-ousted octogenarian, Melvin Price, D-Ill. By that summer, however, Aspin had already alienated some Democrats by engineering a compromise that secured more MX missiles than its opponents wanted and by bringing back from conference a defense bill that many believed ceded too much ground to the Senate.

Liberal distress came to a head last June, when Aspin voted for aid to the Nicaraguan contras. Often accused of following too closely his own obscure agenda, Aspin contends that his actions have been misunderstood. But that has not staved off the challengers.

The first hat thrown in the ring, unpredictably, belonged to Rep. Marvin Leath, D-Texas, who is 14th in committee seniority and has the third-weakest record in the House of supporting Democratic majority positions. But his willingness to push for defense cuts on the Budget Committee lends his candidacy more life than might otherwise be expected. Leath asserted that his conservatism and lack of senority will not be stumbling blocks when the Democratic Caucus meets next January.

Installing a conservative in the Armed Services Committee chair would lend new credibility to a "party that has been seen as antidefense," Leath argued. And, thanks to Aspin's ground-breaking climb to power via a challenge from the floor, "seniority is a moot question on the committee at this time," he said. "It's like if you told your daughter, 'You can go out and mess around seven times, but if you do it once more, it's a sin.'"

Seniority means much more to second-ranking Armed Services Committee member Charles E. Bennett, D-Fla. Bennett was badly stung last year when, after having been tapped by the Democratic Caucus's Steering and Policy Committee to fill Price's chair, he was beat out, 125–103, by Aspin; he is now making another run. "I have a personal interest in seeing the seniority system retained," acknowledged the 75-year-old Bennett, who pledged that if elected, he would not hold the chair for more than two terms.

Like Leath, who uncharacteristically voted last month for a nuclear test ban, Bennett seems to have been pulling toward the center. While he voted along with Leath and Aspin for contra aid, his voting record this year and last shows him siding more often with the Democratic majority than he did during Reagan's first term. "I haven't changed my voting pattern at all," Bennett contended. "The chairmanship doesn't mean that much. St. Peter will not ask me whether I was a chairman of the Armed Services Committee."

Although monosyllabic on the subject of the challenge to his chairmanship, Aspin denied that he feels pressure from the left. "I was involved in the arms control amendments last year," he said. Rep. Patricia Schroeder, D-Colo., an Aspin supporter who is also one of the most liberal members of the committee, agreed—if somewhat left-handedly. "I think Les has come home to where he was originally," she said, but "others say, 'no, he left us forever.'" If Aspin is unseated next January, the ninth-ranking Schroeder added she would run for chairmanship. Nicholas Mavroules, D-Mass., the 11th-ranking member of the committee, who is considered a moderate, has hinted that he may have similar plans.

"It's not an easy committee to be on," Schroeder said, rapping the party's liberal discontents. "And I resent people who have not gotten on the committee because they don't want their life to be that miserable to sit on the outside and decide who should be chairman."

Given that the leading contenders are a junior-ranking boll weevil and a senior member aleady once rejected, however, many handicapping this race believe that Aspin is likely to continue to be chairman provided he wends his way carefully through the remaining hazardous yards of this year's legislative minefield.

"There are people up there who have a lot more technical background on these [defense] programs than before," said Packard Commission member R. James Woolsey, an attorney with the Washington law firm of Shea & Gardner who served as general counsel to the House Armed Services Committee from 1970-73. "It's improved because of the ancillary organizations like OTA" and better staffing.

Consequently, at a time when defense spending is a hot political issue, "a whole bunch of people who didn't get to play before on defense issues have a whole lot of room to run; the defense oversight committees, those baronies, are no longer the only game in town," said Gordon Adams, director of the Defense Budget Project in Washington. The Military Reform Caucus, only 26 of whose 133 members sit on a defense oversight committee, is a product of this evolution.

"The downside," Adams added, "is that you do get this phenomenon of everybody looking for their issue and having the staff to exploit it: a combination of micromanagement and flagwaving."

Even absent their multitude of aides, however, Members would still descend en masse on the annual defense bill if only because it accounts for almost 70 percent of what the Office of Management and Budget (OMB) considers controllable outlays. "If you want anything for your district, you're not going to get it in housing or any other place." said House Armed Services Committee member Patricia Schroeder, D-Colo. The balanced Budget Act "and the deficits have knocked that out [and so] the only place there is any money at all is the Armed Services Committee bill."

The House's vote last month to provide funds for the Air Force's T-46 jet trainer is a case in point. The Air Force chose not to request continued financing because of poor performance by the contractor, the Fairchild-Republic Co.; but the company provides 3,500 jobs in the Long Island district of Rep. Thomas J. Downey, D-N.Y., and he and the rest of the New York state delegation strove to keep the Air Force from burying the troubled bird.

In an angry statement after the House approved a $285 billion fiscal 1987 defense authorization bill, the Armed Services Committee's ranking Republican, William L. Dickinson of Alabama, charged that "Many of the very people who voted to cut the defense budget Friday led the fight to stuff the T-46 into the budget Monday. The T-46 is a $3 billion program of airborne pork, . . . a program that wasn't even included in the $320 billion budget request these same people call bloated.".

Richard A. Stubbing, a retired 20-year veteran of OMB's national security division, contends in *The Defense Game* (Harper & Row, 1986), that "individual members cannot be blamed for supporting defense programs in their districts." That, after all, is what they are in part elected to do. "The problem, however," he writes, "lies in the cumulative impact of this overriding interest in the economic aspects of defense," which is to subordinate broader national security considerations to narrower parochial interests.

Another reason the defense authorization bill is attracting more debate on the floor, noted Stephen Daggett, a budget analyst with the Committee for National Security in Washington, is that the House Armed Services Committee "has always been really conservative and insulated from the House. That started breaking down in the last couple of years, a real revolt on the part of liberal and mainstream Democrats."

A consequence of this revolt was the unexpected elevation of Les Aspin of Wisconsin, the committee's seventh-ranking Democrat and a moderate on defense issues, to chairman last year. Another was the success last month of moderates in securing House passage of five arms control measures—moratoria on nuclear and antisatellite tests, limitation of "Star Wars" spending to $3.1 billion, forced adherence to the terms of the 1979 Strategic Arms Limitation Treaty and a ban on chemical weapons production—most of which were considered too strong to even bother pressing for in committee. Similarly, a large number of procurement reform amendments that committee members opposed were successfully offered on the floor in recent years.

The defense bill is also an important event for Congress because it is the only major authorization measure that passes through every year. As a result, Aspin said, it "is heavy with action. If you want to do procurement reform, there it is. If you want to do arms control, there it is. If you want to do a lot of foreign policy, there is no sure other vehicle coming through every year. You can word almost anything to be germane to the [defense] authorization bill. That puts us square in the middle, which is fine with me."

TURF WARS

Congress's primary procedural shortcoming in dealing with the defense budget, Woolsey said, "is not the fact that they get into it too deeply, it's the fact that they get into it too often," Indeed, it is hard to find a Member who is happy with today's time-consuming and barely digestible three-layer cake approach to defense budgeting. But it is no less difficult to find Members agreeing on what should be done.

The problem seems so intractable because it is wrapped around the issue of committee jurisdiction. The almost 100 per cent overlap in the functions of the Armed Service Committees and the Defense Appropriations Subcommittees is partly attributable to a steady extension of authorization requirements by the Armed Service Committees over the past quarter-century.

At one time, those panels authorized defense programs only with the broadest brush, a classic example being a 1956 law authorizing 24,000 aircraft for the Air Force, which has never operated more than 9,500. In 1959, however, a law was adopted requiring that the Armed Service Committees annually authorize the Pentagon's requests for aircraft, missile and naval vessel procurement. Twelve other laws, the last of which was enacted in 1983, have imposed similar requirements on virtually all of the remaining defense budget components.

Turf building, obviously, has helped to drive this trend. But, argued House Armed Services Committee aide Warren L. Nelson, each addition to the committee's authorizing powers has also been prompted by some problem. The last major increment, operations and maintenance in 1980, "came out of the hearings and debates of the late 1970s over this institution chopping away too much at readiness," Nelson said. "So it's not just that somebody sits down and says, 'What aren't we authorizing?' and then just gloms on to it."

The resulting line-item review in both the authorizations and appropriations cycles is wastefully redundant and has created tension between authorizers and appropriators. "If they would just concentrate on new policy," Appropriations subcommittee chairman Stevens said of the Armed Services Committees, "we would get along a lot better. They want not only to devise the programs, they want to say how many nuts we have that fit certain kinds of bolts [and dictate] that they only be made in one state."

The authorizers, however, have their own complaints about the appropriators. In 1984, $3 billion was appropriated without prior authorization. Only when it became clear that the Pentagon planned to spend the money despite the Armed Services Committee's objections did those panel retroactively authorize the funds in the spring of 1985. Last December, the Senate appropriators locked in another $6.5 billion in unauthorized defense funds, provoking a monumental clash between Stevens and Senate Armed Services Committee chairman Barry Goldwater, R-Ariz. The waters were not calmed until last June, when Stevens and Goldwater signed a sort of truce. In return for the authorization of all but $952 million of the disputed funds, Stevens pledged not to do it again. They also agreed that the ranking members of the two panels could attend each others' markup deliberations to help forestall future unpleasantness.

Nunn and Goldwater, exercising that right, were sitting in on the defense appropriations markup earlier this month, however, when Stevens added almost $3 billion for a new space shuttle to the Air Force budget, a plan that the Pentagon and the Senate Armed Services Committee objected to. Nunn was able to forestall Stevens's bid to appropriate $4.8 billion for the Star Wars program, for which his Armed Services had authorized $3.6 billion. "I'm cautiously optimistic," Nunn said of relations between the two committees. "Everybody's got the same motive in making more sense out of our process."

Although such disputes are less bitter on the House side, House Defense Appropriations Subcommittee chairman Bill Chappell Jr., D-Fla., last month got an amendment passed to delete a section in the defense authorization bill that, he argued, would have established "an inflexible system requiring subsequent authorizing legislation to be enacted every time an appropriation amount exceeds [the Armed Services Committee's] line-item funding level."

The upshot of such turf disputes, complained deputy Defense Secretary William H. Taft IV, "has been nothing but trouble for the Defense Department as these titans have disagreed as to what our budget is. We've lost money from programs that most people wanted us to have."

Stevens said that because the authorization bill is consistently so late, his subcommittee must act without it. And then, he said, "everybody stands around and says: 'What are you doing? That's not authorized.' It's a tough mother." The bill is often held up, of course, because the budget resolution is late.

Where Members stand on what should be done to reduce this multiplicity of review processes depends, predictably, on where they sit. Stevens, for instance, in 1984 testimony to the Temporary Select Committee to Study the Senate Committee System, proposed that Congress "do away with authorizing committees and they would become the subcommittees of Appropriations." Quayle, who chaired that special committee, recommended in a recent interview that the Appropriations Committees do the work of the Budget Committees and that the Armed Services Committees do both the authorizing and appropriating, an approach that both Nunn and Aspin tended to agree with. Asked about the political feasibility of this route, Nunn laughed. "One thing to remember, politically," he said, "is that there are a lot more [people on the] authorizing committees than on [the] appropriating committees."

Given the unlikelihood that the reigning bull elephants on Capitol Hill will cede an inch of their hard-won territory, however, a remedy is unlikely to be enacted anytime soon. Last January, Courter introduced a resolution that would combine authorizations and appropriations under the aegis of the Armed Services Committee, confining defense oversight to it and the Budget Committee while preventing other committees from stirring the Pentagon pot. Courter's bill secured precisely three co-sponsors and is bottled up in the House Rules Committee, from which it will likely never escape.

Nevertheless, questions about which of the two functions—authorizing or appropriating—has become irrelevant add to the pressure on the defense authorizers to slog through their annual budgetary trek. This year, for instance, arms control measures in the House authorization bill prompted a stern veto threat from President Reagan, which has made for an exceedingly difficult conference with the Senate authorizers. But defense authorizers in both chambers have a strong motivation to struggle toward a compromise because, as a House aide put it, after laboring so long on their bills, they "don't want to commit abortion in the ninth month."

That overriding motive to maintain legislative credibility exists despite the fact that the arms control amendments included in the House's authorization bill were by prearrangement also placed directly into the House defense appropriations bill and so will have to be negotiated eventually with the Senate and the White House, even if the authorizers run into a conference impasse.

A TWO-YEAR BUDGET?

The Packard Commission and others have proposed a solution to Congress's budget snarl that seems, at least superficially, to be more feasible than committee consolidation. "A two-year appropriation for defense," the commission wrote, "would stop the yearlong chaos of budget making that we now have, or, at minimum, allow it to happen only every two years rather than annually."

Next February, pursuant to amendments pressed in the Senate by Nunn and in the House by Dave McCurdy, D-Okla., the Defense Department will submit a two-year budget to Congress. The department annually sends up a five-year defense plan with numbers for the next fiscal year and the following four years. In preparing a two-year budget, said Taft, the Pentagon will carefully go through both years "and really insist on hitting a number in the second year as well as the first year and [be] prepared to defend those proposals at the level of detail that a budget implies."

Congress is under no obligation to deal with the biennial defense budget one way or another; history suggests that it will likely not deal with the second year at all. The 1974 budget law, for instance, directed the Pentagon to submit two-year budgets, which Congress consistently ignored. "It's going to be a real challenge to Congress," Nunn said in an interview. "We're going to have to have much closer coordination between the Budget, Armed Services and Appropriations Committees. We could conceivably have a two-year authorization and appropriate one year at a time. But it would be better to have a two-year authorization and appropriation and use the off-year to do a supplemental."

As last year's Senate staff study noted, timing is of the essence. A two-year budget adopted in odd-numbered years would compel Members to run for reelection on the basis of compromises made a year earlier. Biennial budgets adopted in even years would force newly elected presidents to wait three years before making their imprint on policy. "Since either situation would likely be unacceptable, supplemental budgets would be necessary and could quickly evolve into an annual budget review," the study said, "negating the purpose of the shift to a biennial budget."

Congress, observed the Defense Budget Protect's Adams, "wants and demands the flexibility to spend on a year-to-year basis. Budgets are power, and you don't voluntarily give up a year of your power—especially to the executive branch."

Similar institutional roadblocks would await milestone financing, whereby weapons systems would be debated and given funds only at two or three significant milestones in their evolution, rather than annually. This was one of the Packard Commission's central recommendations, said Woolsey, and was likely a precondition for a successful transition to biennial budgeting.

Milestone financing, of course, would require Congress to give up its line-item review of major big-ticket portions of the defense budget. That would be very difficult, Aspin said. "People are driven into this process by the fact that the defense budget has to be cut. So you look at the budget in line-item ways, cutting the number of F-16s from 300 to 200 or something. That's how you reduce the budget, that's where this place really lives, that's what Congress is all about."

Because there is no "Super Congress" standing over this one to legislate reform of its practices in the way that Congress can mandate Pentagon reorganization, any mending of its defense budgeting ways is likely to be halting, spurred on only by mounting desperation over what every year becomes a more unmanageable and all-consuming process.

"I always hesitate to predict what Congress will do; there's too many possibilities," Taft said. "But I do sense some frustration up there with the instability of the program. And that is promising, because we certainly have that down here."

Congressional defense budgeting reform, Quayle said, will have to be accomplished "salami style, one slice at a time." It is, he said, "a very sticky, sensitive question. How are you going to balance jurisdiction, ego and personalities? God only knows how it's going to come out."

ATTRACTING LOTS OF FLIES

"As legislative gridlock developed during the latter half of the 1970s and through the early 1980s, annual defense bills have become a primary means for advancing legislative proposals that probably would not otherwise get over all the legislative hurdles," noted a Senate Armed Services Committee staff study on defense organization released last October. Because these bills are guaranteed action in Congress and are considered veto-proof, the study added, "they become vehicles for a host of amendments, many of which are only remotely germane to the primary legislation."

Or, as stated more succinctly by House Armed Services Committee member Jim Courter, R-N.J., "By the nature of the bill, it's going to attract a lot of flies."

Two striking indices of Congress's growing preoccupation with an all-consuming defense budget process are the time it spends debating the annual defense authorization bill and the number of amendments it considers. As the table shows, the average number of days spent in both chambers debating the authorization bill almost tripled between the first and second halves of the past decade, while the average number of amendments has more than quintupled.

Calendar year	House		Senate	
	Days debated	Amendments	Days debated	Amendments
1977	3	0	2	6
1978	3	0	2	18
1979	5	33	3	11
1980	4	17	3	18
1981	8	49	3	16
1982	8	78	7	61
1983	12	64	13	72
1984	6	52	10	107
1985	9	140	9	107
1986	9	116	7	83

SELF-PROTECTION

(By David C. Morrison)

FORT LEE, VA.—Chemical warfare is "a big unknown," acknowledged Capt. David Clement, chemical officer for the unit training directorate of the Army Logistics Center, headquartered here at Fort Lee in Petersburg, Va. "I myself have reached into a glove and seen GD [nerve agent] coming down my arm. It's an extremely frightening circumstance. But when you're familiar with it and you know that protection works, then it becomes less frightening."

In one of those programmatic swings so characteristic of U.S. military affairs, the services are now striving to renew their familiarity with the exigencies of chemical warfare. While a new General Accouunting Office (GAO) report found that after a half-decade of sustained effort, "the chemical warfare readiness of U.S. troops is in doubt," chemical training and preparedness have nonetheless progressed a quantum leap ahead of where they were a decade ago.

At its 1960 peak, Army chemical expert Lt. Col. Hugh L. Stringer noted in *Deterring Chemical Warfare: U.S. Policy Options for the 1990s* (Institute for Foreign Policy Analysis, 1986), "the U.S. chemical establishment included two nerve agent production facilities, a supporting network of arsenals and depots for stockpiling and maintenance of both chemical weapons and defensive material, a research establishment and a substantial troop complement." At the end of the decade, however, prompted by the accidental 1968 nerve gasing of thousands of sheep in Utah and by President Nixon's 1969 ban on the production of new chemical agents, the huge chemical establishment entered a long decline. By the mid-1970s, the U.S. Army Chemical School at Fort McClellan, Ala., had closed its doors, and the number of special chemical defense troops had dwindled to 2,000.

Then, in 1980, arguing that "Soviet forces appear to be prepared to fight in a [chemical] environment and show willingness to do so if it is advantageous to them," then-Defense Secretary Harold Brown called for a revitalization of U.S. chemical capabilities. One component of the Brown initiative—which like so many Carter-era military programs was adopted and expanded by the Reagan Administration—was a plan to build new "binary" weapons, in which two relatively nontoxic chemicals are mixed to produce deadly nerve agents. That $2.5 billion program has consistently been a bone in Congress's throat; last month, the House voted once again against putting the binary weapons into production.

Congress has looked far more favorably, however, on chemical defenses. In 1978, the entire chemical warfare budget was only $111 million; this year, almost $1 billion will be spent on the defensive program alone. This fiscal emphasis is also reflected in the field. The Chemical School, reopened in 1980, will inaugurate early next year a unique indoor training facility where live nerve agents can be released in a controlled environment. The U.S. Army-Europe, according to the GAO report, "generates interest in nuclear, biological and chemical [NBC] defense training by holding annual 'NBC Days' [which] are conducted like the Olympics or a fair."

Increasingly, the services stage large-scale training exercise in full protective gear, prominent examples being the Army's continuing Combined Arms in the Chemical and Nuclear Environment (CANE) exercises and the Air Force's 1985 SALTY DEMO European airbase survivability exercise.

The degradation caused by soldiering in hot and cumbersome gas masks, charcoal-impregnated overgarments and rubber gloves is usually cited as 30-50 percent of normal performance. But, Clement observed, "Necessity is the mother of invention. It was not until recently that the Army came out with requirements to train in [protective] gear. . . . As these things are happening, the ability to operate this equipment is growing rapidly."

This rededication to learning how to sustain combat on a chemical battlefield has been accompanied by several doctrinal shifts that somewhat simplify the task.

One is a loosening of the traditional insistence on 100 percent protection. "Commanders who would never accept a debilitating defensive posture against conventional high-explosive weapons," Stringer wrote, "are inexplicably willing to accept a virtually incapacitating defensive posture in anticipation of the mere threat of chemical attack." Consequently, doctrine now being written stresses "contamination avoidance," or averting chemical degradation through mobility, deception and protective coverings.

And, even though the Army Chemical Corps has more than quardrupled from its 1975 nadir to 9,000 troops, another doctrinal change is shifting chemical defense and decontamination duties onto the individual soldier. "They have to be responsible for their own actions in an NBC environment," argued Maj. Nyle Hedin, chemical officer for the Army Logistics Center's concepts and doctrine directorate. "Given the force structure that's available, there aren't going to be enough chemical units to do it. And the chemical units that are available are not going to be able to . . . make everything magically clean again."

For all of the thought, energy and dollars that have gone into the program in recent years, the GAO still found numerous chemical preparedness shortcomings: delays in getting new equipment into the field, shortfalls in specialized chemical troops and often unrealistic training. But, as a Pentagon official noted, "you could pour literally billions of dollars into chemical defenses every year and never get to the level that you would want to achieve." In large part, that is simply because chemical warfare poses operational problems of a nastiness rivaled only by nuclear weaponary.

Just how nasty is vividly illustrated by instructions on graves registration found in an Army draft manual on logistics support in a chemical environment that Maj. Hedin has written. Chemically "contaminated remains are interred at an interim site as close to the site of death as possible," the manual recommends. "The entire site is marked with the standard NATO NBC marker and may become a toxic waste site."

AGRICULTURE APPROPRIATIONS

Mr. GORTON. Mr. President, I would like to take a moment to address a number of provisions in the agriculture appropriations portion of the continuing resolution for 1987, which are fundamentally important to the farmers of Washington State.

First and foremost, the bill contains $2 million under the Research Facilities Act (sec. 1411) for startup building expenses for the new Food—Human Nutrition Center at Washington State University in Pullman, WA. Already, the State of Washington has committed $13.898 million toward the cost of this $24 million facility and it is my well-founded hope that this appropriation will serve as the beginning of the $10.5 million Federal commitment necessary to complete the center.

As envisioned, the Food—Human Nutrition Center will provide the Nation and the Northwest with invaluable research in the areas of animal and plant biotechnology, food quality, food marketing, and food processing. The facility will also house the Western Wheat Quality Lab located at the university.

The research carried out at the center will be critical to the wheat and feed grain industries as they work to establish new markets around the world, and to reestablish markets we have lost to subsidized foreign competition. If American agriculture hopes to return as a competitive supplier of foodstuffs to the world, facilities such as the WSU Center are required. The center has support throughout the Pacific Northwest: the Washington Association of Wheat Growers, the Washington Barley Commission, the Washington Wheat Commission, the University of Idaho and Oregon State University have all lent their support to this effort.

Mr. President, I would like to express my deep appreciation to Senator COCHRAN for his willingness to work with me and Senator EVANS to ensure that adequate funding was made available in the bill for the center. I recognize and understand the severe budget restraints under which he and the rest of the subcommittee must operate. The Food—Human Nutrition Center is a valuable addition to the agriculture industry of the Northwest and will serve as a spring-board to new wheat varieties, better yields and enhanced exports. I would also like to thank Senator HATFIELD for his support of this effort—he has worked with me for 2 years toward this important appropriation. I look forward to working with each Senator to ensure adequate funding for the facility in the years ahead.

Mr. President, the Senate bill also contains $4 million to carry out the program authorized by section 1475 of the National Agriculture Research, Extension, and Teaching Policy Act of 1977, as amended. As the committee report states, section 1475(d) authorizes four centers for aquaculture research development, and demonstration. The centers shall be established, one each to serve the southern, north central, northeastern and western regions. The University of Washington is the leadership school for the consortium of institutions that will serve the western region. Together with the other member institutions of its consortium, the University of Idaho, the University of California at Davis, the University of Alaska, and Oregon State University, the University of Washington will carry out research on shellfish, silver salmon, trout, catfish, striped bass and sturgeon. Research done by these universities will help relieve America's growing dependence on imported seafood products and improve our overexploited fisheries and shellfish resources. I commend the committee for its foresight in including funding for these regional centers and encourage members of the conference committee to work to maintain the Senate appropriations, which is double that included in the House passed bill.

The committee has also included report language which is vitally important to the fruit growers of Washington and the Northwest. It recommends that the Agriculture Research Service [ARS] commit $97,000 to help fill needed positions for a pathologist and post-harvest physiologist at the USDA fruit research lab in Wenatchee. Also, the committee instructs the Department of Agriculture to begin a search for a new site for the Yakima insect biology and pest management lab. This frontline USDA lab is currently overcrowded and dilapidated. This situation is exacerbated by the fact that the lease for the present facility expires in September 1987. I applaud the committee's requirement that the Department report back to Congress with its findings on or before March 30, 1987.

Finally, Mr. President, I am pleased that the Senate bill maintains a responsible budget for the Cooperative Extension Service. Extension is the farmer's partner in progress and agriculture education. From a young age when future farmers develop leadership skills and take on personal responsibility as members of 4-H clubs, Extension is an integral part of life in virtually every rural community. As my colleagues know, the President sought to cut the Extension Service budget to the bone in fiscal year 1987. As a member of the Budget Committee, I am proud that we were able to produce a budget blueprint for 1987 that restored Extension funding to the proper level. The Appropriations Committee has followed through on this commitment and I commend the members for their effort in this regard. The farm families of Washington and across America need Extension, and we have properly lived up to our responsibility to keep it a viable program.

Mr. DIXON. Mr. President, I rise to discuss an issue of particular importance to my home State of Illinois. There is widespread agreement throughout this country, and among our colleagues on both sides of the aisle, that new uses of agricultural commodities would help alleviate the problem of our Nation's agricultural surpluses.

I am pleased to say that a project initiated by the private sector, in Illinois, offers an opportunity to tap the creativity of private enterprise and the insights of leading scientists in cooperative research. This research would seek to create new products and open new markets based on technologies developed in our country's agricultural laboratories.

This innovative research project is a cooperative research and development initiative among the Agricultural Research and Development Center, the Biotechnology Center at the University of Illinois, and at least 15 private companies interested in investing in agricultural research. The $2 million grant as recommended by the House of Representatives would be leveraged and matched, if not exceeded, by financial support from the State of Illinois and private companies.

Mr. COCHRAN. I am aware of this project and its possible importance in the development and improvement of products, processes, applications, and uses of agricultural commodities and resources. The gentleman from Illinois can be assured that I will give this project every consideration during our efforts to work out the differences between the House and Senate versions of the continuing resolution.

Mr. DIXON. Mr. President, I ask the distinguished chairman of the Appropriations Subcommittee on Agriculture Rural Development and Related Agencies, the Senator from Mississippi [Mr. COCHRAN] if he would engage in a colloquy with me on a project of considerable importance not only to the State of Illinois, but to the future of U.S. agriculture as well?

Mr. COCHRAN. I am pleased to respond to my distinguished colleague, the Senator from Illinois.

Mr. DIXON. I thank the Senator. In fiscal year 1986, Congress provided $3 million for the planning costs associated with the construction of a Plant and Animal Sciences Research Center at the University of Illinois. This new facility will be an integral part of a new advanced research complex to which the State of Illinois has committed more than $75 million. State funds have been pledged to totally equip and operate the center, which will provide laboratory space for agricultural biotechnology research directed toward reduced production costs and expanded use of U.S. agricultural products.

The chairman has amply demonstrated his long-standing commitment of both of these objectives, and to the need for continuing support and intensification of U.S. agricultural research in this direction at a time when our efficient producers and bountiful harvests are blessing this land with the problems of plenty. This kind of research is critical to our efforts to help bring agricultural supply and demand into better balance, and to lessen the financial burdens of surplus on beleaguered producers as well as on U.S. taxpayers.

Mr. COCHRAN. The Senator is correct with respect to my support for research aimed at reducing the costs of production and expanded uses of our agricultural products.

Mr. DIXON. I would just like to add this emphasis. Time and again in the past, appropriate agricultural research has shown us new ways of handling problems—innovative solutions that we would not have dreamed possible. I am not holding it up as a panacea, Mr. Chairman, but you and I know from experience that a small investment in well-directed, tightly focused research can yield dividends worth many, many times the original cost.

That is why, Mr. Chairman, I believe that the Plant and Animal Sciences Research Center should be funded in fiscal year 1987. The House of Representatives has recommended the amount necessary to do this—$27 million. I know the chairman shares my views on the need and importance of this item, and I am certain that as you resolve the differences between the House and the Senate on this bill, he will do his utmost to find a way to accommodate this small investment in the future.

Mr. COCHRAN. Mr. President, I thank the Senator from Illinois for bringing this matter to the attention of the Senate, and I can assure him that, within the constraints of the subcommittee's 302(b) allocation, every consideration will be given to including this item in the bill as it is debated in the conference on the continuing resolution.

Mr. DIXON. I would like to focus the attention of the Senate on a research program which is critically important to the coal industry and the agricultural economy of the Illinois coal basin, which includes Illinois, Indiana, and western Kentucky.

In 1977, Congress passed the Surface Mining Control and Reclamation Act to establish a national program to protect our environment from the adverse effects of surface coal mining operations. Special provisions were included in this law to protect one of our Nation's most vital resources, our prime farmland.

I know that my good friend, the chairman of the Appropriations Subcommittee on Agriculture, Rural Development and Related Agencies, would agree that we must protect our prime farmland.

Mr. COCHRAN. The Senator from Illinois is correct. During debate on the 1985 farm bill, we both supported a strong conservation title which would protect our natural resources.

Mr. DIXON. I thank the Senator. A recent study by the congressional Office of Technology Assessment [OTA] concluded, however, that the coal industry still faces problems meeting the stringent requirements of the Surface Mining Control and Reclamation Act. Although promising alternatives have been developed, the industry lacks the capability to predict with sufficient certainty which procedures will be effective.

In response to the problem, the Illinois Coal Association and the Illinois Farm Bureau have proposed a 5-year Prime Farmland Research Program to be supported jointly by the Federal Government through the Cooperative States Research Service and the coal industry. The program would fund two research centers and smaller specific research projects to develop the technology required to reclaim prime farmland and other high-quality cropland to premine levels of productivity.

An appropriation of $3 million for this project was included in the House appropriation bill for agriculture. This research project is critically important to the agricultural economy and the coal industry of the Midwest.

I ask my friend to give this project his every consideration when the House and Senate meet in conference on this legislation.

Mr. COCHRAN. I should like to assure the Senator that I will keep this project very much in mind when we meet with the House to work out the differences between the two versions of this bill.

Mr. CHILES. Mr. President, on Friday September 26 at the full committee markup of the continuing resolution in the spirit of comity, I withdrew report language which would have directed the Air Force to look for offsets in order to restore full funding to the C-17 air transport. I believe the Air Force needs to look at its priorities and work with the Defense Subcommittee to insure this program is adequately funded. It was my understanding the chairman of the Defense Subcommittee was willing to accept this report language. I would like to ask the chairman if that was his understanding?

Mr. STEVENS. Yes, it was.

Mr. CHILES. It is also my understanding the Air Force is anxious to assist the chairman as he moves to conference with the House. I believe the C-17 is one of the services highest priorities. At this time I would like included in the record the balance of my statement, the letter I referred to earlier along with a letter to Chairman Chappell from the Chiefs of Staff of the Army and Air Force and the Commandant of the Marine Corps reiterating their support for the C-17. It is my understanding that the Senate Subcommittee on Defense has received a similar letter.

Mr. STEVENS. That is correct. We did receive the letter and the services have expressed much support for the C-17.

Mr. CHILES. Mr. President, on September 26, 1986, I sent a letter to the distinguished chairman and ranking member of the Appropriations Committee signed by a bipartisan group of fourteen other senators and myself concerning the funding status of the C-17 air transport. The letter set forth the reasons we support funding of this aircraft and urged support for any reasonable effort to restore funding to the system.

Mr. President, Gen. F.K. Mahaffey, the commander in chief of the Readiness Command, in testimony before the Senate Armed Services Committee this year put it succinctly, "Further delays in the development and procurement of the C-17 will severely limit our ability to reinforce and sustain our forces on a global scale." Furthermore, he stressed, "The key to victory in any future battle will lie in our ability to project power to the battlefield, where it is needed and when. In my opinion, the C-17 is vital if we are to be able to project that power."

This is where the constituency for the C-17 lies, in the field, with commanders who have to be ready to fight. To them the key element of deterrence is logistics—the ability to resupply with beans, bullets and bandaids. So, unlike some of its predecessors, the C-17 was designed with combat and the troops in mind.

First, the C-17 has "long legs" or excellent range payload capabilities in the critical intercontinental distances of 2,400 to 3,200 nautical miles. Second, unique design characteristics permit the C-17 to land at forward locations with shorter runways. Third, and perhaps most importantly the design of the aircraft maximizes maneuverability and rapid offload. These factors greatly contribute to the C-17's greatest single contribution which is significant increases in what the operators refer to as "through-put." This translates into three times as much cargo as its closest competitor and minimum exposure to hostile fire.

In summary, Mr. President the C-17 is a superb aircraft which fulfills a vital if unglamorous role. It embodies the experience we have gained from previous aircraft, the best of technology and most importantly the input of the services who will use it and the pilots who will fly it. The C-17 enjoys the complete support of our men in the field. I will work hard to see that funding is restored in conference.

The letter follows:

Department of the Air Force,
Office of the Chief of Staff,
U.S. Air Force,
Washington, DC, September 26, 1986.

Hon. Bill Chappell, Jr.,
Chairman, Subcommittee on Defense, Committee on Appropriations, House of Representatives, Washington, DC.

Dear Mr. Chairman: We are very concerned about recent congressional action that threatens to delay or possibly cancel the production of the badly needed C-17 aircraft. Further delays will severely limit our ability to deploy, employ, and sustain our forces on a global scale.

We have examined the airlift modernization issue from every angle and are convinced that the C-17 is the solution. It is not only the most cost effective solution, but gives us the greatest capability—a capability that we must have if we are to meet our country's airlift requirements.

The C-17 has been jointly supported from the ground up and is crucial to the rapid deployment of our combat forces. The key to victory in any future conflict lies in our ability to project our power into the battlefield. The C-17 is vital to projecting this power.

We strongly urge your support for production of the C-17 now—an aircraft that is critical to our national interests.

Sincerely,

John A. Wickham,
General, USA, Chief of Staff.
Larry D. Welch,
General, USAF, Chief of Staff.
Paul X. Kelley,
General, USMC, Commandant.

U.S. Senate,
Committee on Appropriations,
Washington, DC, September 26, 1986.

Hon. Mark Hatfield,
Chairman,
Hon. John Stennis,
Ranking Minority Member,
Committee on Appropriations, U.S. Senate, Washington, DC.

Dear Mark and John: We are writing to express our concerns over the appropriations actions taken this year on the C-17 transport. While we recognize the difficulty of the choices before the Committee, we believe it would be ill-advised to further delay production of this vital addition to our strategic mobility.

The mobility shortfall has been a continuing problem through repeated administrations. This problem persists because mobility and its companion logistics are poorly represented among the constituencies which compete for defense resources, and are therefore priorities which are consistently deferred until we face a crisis.

The current rationale for delay is contraints on the defense budget. Some critics cite the erosion of the defense consensus as the reason for this. This is particularly unfortunate in the case of C-17 because it has been a model program since its inception. Combining the best of defense industry and interservice cooperation, it has become the classic operator's system.

As such, the C-17's greatest constituency is in the field with the soldiers and marines who will rely on it for resupply in combat and with the pilots and the airmen who will fly it. Unlike some previous systems, the C-17 has been designed with the troops in mind. Therefore, maximum attention has been paid to rapid ingress, minimum time over the target, and rapid egress in order to get in and get out quickly, minimizing its exposure to the threat. Furthermore, redundancy, hardening, provisions for armor, defensive systems and self-sealing fuel lines are all part of the aircraft design.

General Bernard W. Rogers, in testimony before the Senate Armed Services Committee, said it best. "With respect to our national commitment to reinforce NATO . . . the earliest possible fielding of the C-17 is crucial. Without early reinforcment in the face of a large conventional attack, we will face fairly quickly the choice between escalation to the use of nuclear weapons or capitulation."

It is important to note that historically the Defense Subcommittee has provided strong and consistent support for the C-17. In the coming years, we will face many difficult funding choices as we review the defense budget. In addition, the Defense Subcommitte has demonstrated great skill, integrity and originality in meeting the budget authority and outlay targets set forth in the budget resolution. It is also clear that DoD will need to show similar capabilities if additional funds are to be made available. Our purpose is clear. We consider full funding of the C-17 one of the highest conventional priorities and we fully support any reasonable effort to restore funding to the system.

Sincerely,

DALE BUMPERS.
ALAN CRANSTON.
DENNIS DECONCINI.
PATRICK LEAHY.
THAD COCHRAN.
J. BENNETT JOHNSTON.
JIM SASSER.
LAWTON CHILES.
PETE DOMINICI.
FRANK N. LAUTENBERG.
TOM HARKIN.
DANIEL INOUYE.
PHIL GRAMM.
ARLEN SPECTER.
PAUL LAXALT.

INJURY PREVENTION RESEARCH PROGRAM

Mr. GORTON. Mr. President, I rise today to discuss an issue that has the potential of affecting each one of us in this Chamber, either directly or indirectly. The issue is trauma. Every day, hundreds of people across the country are directly affected by trauma. My State, Mr. President, is privileged to have a superior trauma unit. In fact, Mr. President, Harborview Hospital in Seattle, together with the Seattle Fire Department, pioneered the Medic I program. Emergency medical response teams, such as Medic I, now operate out of fire departments in many of our Nation's largest cities. The units have contributed greatly to the ability of our health care system to save the lives of many injured people.

Mr. President, the development of programs such as Medic I require extensive research in the development stage. The Center for Disease Control administers a grant program in the research of trauma prevention. At this time, many hospitals and medical schools across the country have submitted grant proposals to CDC for research projects in the field of trauma prevention. Such proposals include: The development of new and more effective ways of identifying prehospital factors and responses which are detrimental to injury recovery and the development of new techniques which will prove more effective in the resuscitation of injured patients, the identification of factors which contribute to the long term disability of patients, and the development of an educational program to rigorously prepare new investigators in the field of injury research.

As I hope you can see, Mr. President, research such as this has the potential to reap incredible benefits—benefits that may at some point benefit every person in this country.

The House, in marking up the Department of Transportation authorization bill included $10 million for the CDC Injury Prevention Research Program, the Senate did not include any funds for this program. I would like to ask that the distinguished chairman keep my concerns and these points in mind when the two bodies meet in conference. I believe the $10 million this program costs, is a relatively small amount when one weighs the effect that it will have on our ability to save lives.

Mr. ANDREWS. Mr. President, I agree with the distinguished Senator from Washington that the CDC Injury Prevention Research Program has much merit. The House funding level of $10 million covers the second year of a 3-year project, which initially began in fiscal year 1986. This funding does compete with a number of projects and programs administered by the National Highway Traffic Administration. This funding level will be an issue for conference, and I will keep the concerns of the Senator from Washington in mind.

RED RIVER ARMY DEPOT COLLOQUY

Mr. BUMPERS. Mr. President, I would like to bring to the attention of my colleagues, especially those who serve with me on the Appropriations Committee, some important language which the House added to its report accompanying the continuing appropriations resolution concerning the central distribution center project at the Red River Army Depot in Texarkana, TX.

The central distribution center project is very important to both Texas and Arkansas, whose border Texarkana straddles, and the Army. Since 1974, the workload at the depot has more than doubled, with line items received and shipped increasing from 750,000 in 1974 to 1,930,000 in 1985. This increased workload has necessitated multishift operations, the use of outdated equipment, and fragmented operations, with little flexibility to respond to emergency or mobilization requirements.

The central distribution center at Red River is the logical response to this problem. It is the last of the three major projects that the Department of the Army has begun to modernize its worldwide logistical support to our fighting troops. The first two, at Sharpe Army Depot in California and New Cumberland Army Depot in Pennsylvania, are already underway.

The House language concerning Red River calls for the initiation during fiscal year 1988 of phase I site work and phase II construction of the central distribution center at the Red River Army Depot in Texarkana, TX, subject to certain very reasonable conditions.

Those conditions are that the Army shall utilize the existing Government request for proposal [RFP] for phase I and Phase II, that the RFP shall be issued by January 1, 1987, with the requirement that the bidder finance phases I and II as part of their proposal, and that the Army shall award the contract in fiscal year 1988 provided, of course, that the funds are authorized and appropriated by the Congress.

The issue of third-party testing, which has been raised in the past in connection with this project, is directed to be tested via the commercial activities review after the construction of the central distribution center.

This language seems quite reasonable to me, and I would very much like to see it adopted in the conference report on the continuing resolution.

I would like to ask my good friend, the Senator from Georgia and chairman of the Military Construction Subcommittee of the Appropriations Committee, if he shares my views about the importance of this project and the desirability of the House langauge.

Mr. MATTINGLY. Mr. President, I am pleased to say to my good friend from Arkansas that I do support the modernization of the Red River Army Depot and that the central distribution center project is essential to ensure that the depot can continue to fulfill its role in providing timely and responsive logistical support to the Army.

The language contained in the House report, however, highlights some problems. The Army has indicated to me that they may not be able to meet all the deadlines that the report cites and have suggested some alternate dates, some as much as a year later than indicated in the House language. I am aware of the slow pace of the Army on reviewing of third-party construction and operation. I would hope this pace can be quickened, and therefore the dates suggested to me by the Army moved forward.

It is my intention to review this matter further between now and the conference and to include language in the conference report, making only such changes in the current House language as necessary to move the process along as quickly as possible. I would propose a date of July 1, 1987, for completion of the entire study.

Mr. BUMPERS. Mr. President, I am pleased to hear of the subcommittee chairman's support for the project, and like him I am concerned about the slow pace of the Army on this project. I urge the Army to expedite its handling of the study to allow construction to begin as soon as possible.

DEFENSE ACCESS ROAD FUNDING FOR U.S. 85 BETWEEN CHEYENNE AND TORRINGTON, WY

Mr. SIMPSON. Mr. President, there is an important matter on which I would request clarification. It concerns defense access road funding for a portion of U.S. Highway 85 in my home State of Wyoming. Would the distinguished Senator from Georgia [Mr. MATTINGLY], be willing to respond to some questions of a clarifying nature?

Mr. MATTINGLY. I would be happy to respond to the Senator.

Mr. SIMPSON. I thank the Senator. It is my understanding that defense access road funding is intended to be used either to upgrade roads which are inadequate for defense needs or to pay for repairs to roads damaged by unusual defense impacts. Is my understanding correct?

Mr. MATTINGLY. The Senator from Wyoming is correct. The Nation's highway system is, of course, intended to be used for defense purposes as well as for private and commercial traffic, but any damage that is attributable to extraordinary or unusual traffic demands resulting from construction or operation of defense-related projects is the responsibility of the Military Traffic Management Command under the Defense Access Roads Program—and should be repaired and paid for out of those funds.

Mr. SIMPSON. That was also my firm understanding. There has been such an unusual impact on U.S. Highway 85 between Torrington and Cheyenne, WY, as a result of construction related to the Peacekeeper (MX) missile project. An immediate need for resurfacing approximately 20.4 miles of that highway, beginning at Torrington, has arisen because of construction traffic related to the Peacekeeper project. Overweight traffic is being generated by both construction contractors and the Air Force, and such traffic is far beyond the usual or ordinary defense use to which that highway would ordinarily be subjected. Is the present construction-related damage to this highway the type of damage that is eligible for funding under the Defense Access Roads Program?

Mr. MATTINGLY. That is correct. It is.

Mr. SIMPSON. How would these funds for the repair work then be made immediately available?

Mr. MATTINGLY. I would expect the Air Force, Department of Defense, and the Military Traffic Management Command to work cooperatively with the Wyoming Highway Department and the Federal Highway Administration to determine just how much damage is actually proven to be attributable to Peacekeeper-related construction and to then make available such funds as may be needed for repair and resurfacing necessitated by Peacekeeper-related damage through the Defense Access Roads Program, but only when that damage has been thoroughly identified and documented by the Wyoming Highway Department and other authorities.

Mr. SIMPSON. That was exactly my understanding. I very much thank the distinguished Senator from Georgia.

WALLA WALLA VETERANS ADMINISTRATION MEDICAL CENTER

● Mr. GORTON. Mr. President, I rise to express my concern over a proposal generated by the Veterans' Administration which calls for the elimination of the inpatient services currently provided at the Walla Walla Veterans Administration Medical Center.

Currently, an estimated 75,000 veterans residing in the largely rural areas of southeast Washington, northeastern Oregon, and central Idaho—54,000 of whom are from the State of Washington—rely upon the Walla Walla Veterans Medical Center to meet their health care needs. If the current 150 inpatient beds are eliminated, these veterans and their families will be forced to travel great distances in order to receive inpatient care. For many of these veterans who rely on the Walla Walla Veterans Medical Center for inpatient care—those with serious service connected disorders and countless destitute and older veterans—the elimination of the Medical Center's acute beds will effectively keep them from securing critically needed medical attention.

Mr. President, also of significance is the profound impact that this mission change will have on the economy of Walla Walla—one which is already feeling the effect of a depressed farm economy. With an annual budget of $12 billion, and a workforce of more than 300 medical and auxiliary staff, the Walla Walla Veterans Medical Center is the third largest employer in the community. In addition to its $9 million annual payroll, the Medical Center holds extensive contracts with the community for services, supplies and construction. These contracts are worth several million dollars per year to the businesses of Walla Walla. If the proposed mission change were to be implemented the result would be a loss of 40 to 50 employees and a budget reduction of more than $89 million—certainly a disastrous loss for any small community.

I first learned of the Veterans' Administration's proposal last December. Most disturbing to me is the fact that the Veterans' Administration, up to this date, has shown a great lack of consideration toward a community which is understandably distressed by the prospect of such a change in the mission of the Medical Center. Since the proposal first surfaced, community leaders and representatives of the veterans organizations have attempted to understand the Veterans' Administration's argument that budget constraints prevent continued full operation of the Walla Walla Veterans Medical Center and have attempted to work with Veterans' Administration officials to reach some accommodation that would keep the inpatient facility intact by substituting nursing home beds or other alternative services for a portion of the present inpatient beds. To date, the Veterans' Administration has largely ignored the local community's plans to be drawn into the planning process and has repeatedly refused to share pertinent data that might justify such a major change of mission.

Finally, there is a great deal of dispute over whether this proposed mission change would actually save the Veterans' Administration money. At a minimum, many of those employees who will likely be dismissed will have to be paid severance pay, the Veterans' Administration will certainly incur substantial shutdown costs and some added costs by transferring the Walla Walla Veterans Medical Center inpatient load to either local hospitals—on a contract basis—or other Veterans' Administration facilities.

I hope the distinguished chairman will consider this situation as the conferees discuss the language that was included by the House in its version of the report on the continuing resolution.

● Mr. EVANS. Mr. President, I share the views of the distinguished senior Senator from the State of Washington. I, too, have been involved in this situation for quite some time and am frustrated at the fact the Veterans' Administration has not adequately involved the community and those veterans served by the Medical Center in the planning process that resulted in this proposal.●

I join my colleague in urging that the distinguished subcommittee chairman consider inclusion of the House language in the final version of the report.

● Mr. GARN. I appreciate the fact that the Senators from the State of Washington have brought this issue to my attention. I am sympathetic with respect to the situation faced by the veterans and community of Walla Walla and will certainly keep this issue in mind as we go to conference with the House.●

ROCAP

Mr. LEAHY. Mr. President, in January 1984 the National Bipartisan Commission on Central America recommended that the United States expand its regional economic assistance programs. In response, AID requested 1984 supplemental funds and 1985 and 1986 funds totaling $378 million for programs administered by its Regional Office for Central America and Panama (ROCAP).

Because those amounts represented such a dramatic increase over the $15 million fiscal year 1984 regional program, I requested the General Accounting Office to review how these funds were being used, how ROCAP evolved, how its projects compliment AID's bilateral programs, and whether a regional approach for AID programs was feasible given existing political and economic conditions in Central America.

The GAO published its report earlier this month, and the Subcommittee on Foreign Operations, on which I sit, has reviewed it. The subcommittee has also had an opportunity to review a report of a recent audit of ROCAP's programs by the AID regional inspector general.

While I believe other members of the subcommittee agree with me that the United States should encourage regional economic cooperation in Central America, both reports identify serious problems in the way ROCAP's funds have been administered and raise profound questions about the future role of ROCAP. Accordingly, I have prepared report language on ROCAP containing recommendations to address these problems, which I understand the subcommittee is prepared to accept.

Mr. KASTEN. If the Senator would yield, I want to thank him for his initiative in requesting the excellent report by GAO, and for bringing it and the AID inspector general's audit report on ROCAP to the attention of the subcommittee. The Senator from Vermont has once again lived up to his reputation as a tight-fisted Yankee who leaves no stone unturned in tracking down how U.S. tax dollars are spent on foreign aid.

Mr. President, ROCAP was established in 1962 to provide U.S. economic aid to support regional integration in Central America. ROCAP's activities in the 1960's supported the Central American Common Market, through which regional organizations were established to address a broad range of regional development problems, including agricultural development, management training, and the improvement of regional transportation and communication links.

Unfortunately, efforts toward regional economic integration broke down in the 1970's on account of growing imbalances in the region's economies, slowing of progress in the industrial sector, and increasing political tensions throughout Central America.

AID's emphasis on regional programs has undergone frequent questioning, reassessment and change. ROCAP's funding and staffing levels have fluctuated accordingly. In the early 1980's, AID began to place greater priority on bilateral assistance programs and in 1983 decided to phase down its regional programs, reducing its staff from 14 to 9 and allocating no funds for new regional projects in fiscal year 1984. Senator Leahy has already explained that AID's reversal of this decision in 1984 caused him to request the GAO study.

The GAO report indicates that AID obligated $79 million for ROCAP-administered projects in fiscal year 1985, less than half of the $162 million actually obligated in that year for regional programs. The balance was obligated for projects administered by AID/Washington. The report also reveals a lack of coordination between ROCAP projects and projects administered by the bilateral missions.

The AID inspector general's audit report, which Senator Leahy mentioned, also describes a number of serious problems and deficiencies with respect to administrative procedures, fiscal procedures and systems, internal control systems, organization, and compliance with applicable laws and regulations by ROCAP's grantees. These problems have resulted in $454,197 in questioned costs, and raise doubts about the long-term viability of certain regional institutions which are major recipients of ROCAP funds.

The subcommittee is deeply concerned about these problems, and accordingly is prepared to accept the report language which Senator Leahy has requested. I will have this language included in the statement of managers in the continuing resolution conference report. I will also convey the subcommittee's concerns in a letter to AID Administrator Peter McPherson. I ask that the ROCAP report language be printed in the Record at this point.

Report Language on ROCAP

The Committee has reviewed the AID Regional Inspector General's recent report of its audit of Regional Office for Central America and Panama (ROCAP) Institutional Grantees' Economy, Efficiency and Compliance. The Report identifies a number of serious problems and deficiencies with respect to administrative procedures, fiscal procedures and systems, internal control systems, organization, and compliance with applicable laws and regulations by ROCAP's grantees. These problems have resulted in $454,197 in questioned costs, and raise doubts about the long-term viability of certain regional institutions which are major recipients of ROCAP funds. It is the Committee's recommendation that no additional funds be obligated to ROCAP until the recommendations of the Inspector General contained in the audit report are fully complied with.

The Committee has also reviewed GAO's report entitled "Questions on the Central American Regional Program Need to Be Resolved." This Report, dated September 1986, cites the ineffectiveness of some prior regional programs and raises profound questions about the role of regionalism in Central America and the need for ROCAP. While the Committee believes the United States should encourage regional economic cooperation in Central America, the GAO report reveals that half of AID regional programs are administered by AID/Washington. Accordingly, the Committee recommends that AID submit to the Congress within 90 days a report analyzing the prospects and utility of regional programs, and the management and control of these programs with AID.

Mr. President, current political and economic conditions in Central America make the successful implementation of regional programs difficult. However, as Senator Leahy has said, the subcommittee strongly believes the United States should continue to encourage economic cooperation in that region. We urge AID to take our recommendations seriously, so that its Central America regional program will become the fiscally responsible and effective program the American people rightfully expect.

Mr. LEAHY. If the chairman would yield, I want to thank him for his kind words and for his fine leadership during a difficult year. The subcommittee was faced with the exceedingly difficult task of applying Gramm/Rudman to the foreign aid budget, without abandoning our commitment to the security of allies or our commitment to encouraging economic growth in the developing nations. I believe we have done that, and it is mostly due to the tireless work of Chairman Kasten and the Ranking Member Senator Inouye.

I also would like to reiterate one point Senator Kasten made. It is not the subcommittee's purpose to eliminate ROCAP. ROCAP's goals are ones we share. But it's results have been disappointing, and in these times of severe budget cuts we want to know that ROCAP's 1987 funds will be managed wisely, and that ROCAP is the right organization to be administering these regional projects in the future.

Mr. INOUYE: If the distinguished Senator from Vermont would yield, I want to join with Chairman Kasten in congratulating him for his efforts to see that our foreign aid dollars are fully accounted for and accomplish the purposes intended by Congress. By obtaining this GAO report, Senator Leahy has brought to the subcommittee's attention a number of serious problems in the Central American regional program, and I fully endorse the comments of the chairman and the subcommittee's report language on ROCAP.

Mr. LEAHY: I thank the distinguished Senator from Hawaii, and appreciate his support and the support of Chairman Kasten for including this important langauge in the continuing resolution conference report.

Mr. GORTON. Mr. President, I would like to engage the Chairman in a colloquy on three programs of great importance to the State of Washington.

First, I am concerned with the funding level for Space and Defense Power Systems, which includes space reactor development for the SP-100. The House bill contains $58.7 million for space and related defense power systems. The Senate bill cuts this program to $37.7 million, a reduction of $21 million.

The SP-100 operating account provides the design, development and supporting technologies for compact, high performance nuclear power systems. A key element of this activity is the tri-agency—Department of Energy [DOE], Department of Defense, and NASA—SP-100 program. This program will provide hundreds of kilowatts of electric power for national security missions, such as radar and communications as well as civil missions, such as advanced space station and outer planet exploration.

The SP-100 concept selection was made in August of 1985 after 4 years of technology development, and is now entering the system design, engineering development, and ground demonstration test phase. The Hanford Engineering Development Laboratory [HEDL] at Hanford, WA, was selected by DOE as the site for the ground demonstration test. The purpose of this test is to demonstrate the safe performance of a full scale prototypic assembly for SP-100. Additional activities in the area of space power technology also are being done at Hanford. These activities primarily focus on prototypic fuel elements and material testing. It would be unfortunate if important civilian space missions are jeopardized because we failed to adequately fund the development of the technology necessary to provide sufficient electricity for space programs.

Can the chairman [Mr. HATFIELD] give assurances that he will support funding for SP-100, as close as possible to the request levels, in order to maintain the anticipated pace of this developmental program?

Mr. HATFIELD. Yes, I can assure the Senator from Washington that, while supporting the Senate level for space nuclear activities, I will make every effort to fund the SP-100 at the highest possible level to support important civilian space missions.

Mr. GORTON. Second, I would like to address funding for the Fast Flux Test Facility, referred to as FFTF. The report accompanying your Energy and Water Appropriations bill adds $6 million for facilities at the Hanford Engineering Development Laboratory and the Argonne National Laboratory West. The House report for Energy and Water adds $6 million just for the FFTF.

The full $6 million increase for FFTF is critical to sustain a meaningful technology program at the laboratory, and to avoid additional lay-offs. FFTS is a world-class civilian test facility that continues to break records and now sets the standard of reliability by which other facilities are measured. Even with the additional $6 million, the operating budget for FFTF would be $10 million below this year's level.

Given the importance of FFTF to our civilian research and development capability, will the chairman assure me that he supports the funding increase?

Mr. HATFIELD. Yes, I can assure you that I will work with other conferees, including the Senator form Idaho, Senator MCCLURE, who has an interest in this matter, to secure the highest possible funding level for the Fast Flux Test Facility. I agree with the Senator from Washington that this facility should continue operating in fiscal year 1987.

Mr. GORTON. Lastly, I would like to discuss the proposed feasibility assessment of a cogeneration facility for the Fast Flux Test Facility. The House report for Energy and Water Appropriations earmarks $5.5 million of previously appropriated Clinch River Breeder Reactor moneys to study the feasibility of a privately financed cogeneration facility at the FFTF.

The House report states that this feasibility study "should proceed promptly." The Senate report language from your subcommittee appears to support the House authorization for the study with additional conditions.

This cogeneration facility represents a wise investment, and I urge the chairman to support the project in conference. The nonnuclear cogeneration facility will be privately financed and operated by three public utilities. If found feasible, all study costs will be reimbursed to the Federal Government. This facility will generate low-cost electric power and revenues that will help offset the Federal operating funds for FFTF. The project capitalizes on our Federal investment in steam generators and other Clinch River Breeder Reactor components currently wasting away in storage. There are also substantial prospects for international cooperation for both the reactor and the cogeneration facility.

On balance, this project benefits all parties: the ratepayers, the Federal Treasury, and our valuable research and development infrastructure. The up-front study costs, which will be paid back if the project is found feasible, are an entirely appropriate use of prior funds set aside for Clinch River termination.

Accordingly, I ask the chairman if he supports DOE funding the feasibility study costs for this cogeneration project within current, unobligated moneys set-aside for Clinch River Breeder Reactor termination?

Mr. HATFIELD. As the Senator indicates, there were unobligated funds in the nuclear energy area which the committee used to offset other activities within the energy supply research and development account. The committee, however, does provide funds for additional detailed design activities for the proposed cogeneration project at FFTF under certain conditions outlined in the committee report.

This additional work should provide the department with information to determine more accurately the cost-effectiveness of the proposed cogeneration facility. After getting a firmer cost estimate and with the continued operation of FFTF, the facilities revenues should return enough funds to repay the Federal design costs.

As you know, there is a long-term surplus of power in the Northwest, particularly on the public power side. Although the committee supports moving ahead with the design, under certain conditions, we also should get a better indication from the Bonneville Power Administration on the need for this additional power and some assurance from the Department of Energy on the future operation of FFTF before further obligation of funds on the cogeneration facility. I can assure my colleague from Washington that I will give due consideration to the funding of the FFTF cogeneration project.

Mr. GORTON. I thank the chairman for his assurances and help on these matters of importance to the State of Washington.

MLRS

Mr. BUMPERS. Mr. President, I was concerned to see in the Defense appropriations bill that $34.4 million was cut out of the multiple launch rocket system [MLRS] for 20 self-propelled launcher/loaders, which were authorized by the Senate. The launcher/loaders are the heavy duty vehicles that transport and fire the MSLR rockets, our most potent nonnuclear weapon against enemy troops and their equipment massing for attack.

The MLRS is one of the biggest success stories in the Defense Department. The Army is getting a critically important battlefield weapon on schedule and within budget under a fixed-price agreement. MLRS plays a crucial role in our nonnuclear defense posture in Europe and Korea. By threatening the accurate delivery of massive firepower against troop concentrations, it will deter our adversaries from massing for attack—or make them pay a very heavy price if they do.

The reduction of 20 MLRS launcher/loaders—from 44 down to 24—would cut directly into the muscle of our fighting forces. it would delay the fielding of MLRS units in Europe and Korea and would slow down the introduction of MLRS into the National Guard. In addition, the slower production rate would result in a 10-percent increase in the price we will pay for the launcher/loaders. Accordingly, the Army has identified this MLRS cut as one of only 13 procurement cuts that it is appealing to the committee.

I recognize the major fiscal constraints under which we must operate, but we must not allow them to mislead us into making cuts that directly weaken the cutting edge of our fighting forces. Accordingly, I intend to offer an amendment to the continuing resolution to restore this important item.

Before doing so, however, I want to inquire of my good friend and chairman of the Defense Appropriations Subcommittee how he intends to deal with this matter in conference with the House.

Mr. STEVENS. I thank the Senator for raising this issue. As my colleague is well aware, the House has cut defense even more than the Senate has. There will be a good bit of negotiations with them during which I will keep the Senator's interest in the MLRS in mind.

Mr. BUMPERS. Mr. President, I understand the circumstances of which my good friend from Alaska speaks and I would urge him to recede to the House position on this issue.

In view of this, Mr. President, I will not pursue my amendment on MLRS, and I thank the subcommittee chairman.

Mr. DIXON. Mr. President, I would like to thank the Senate Appropriations Committee for including authorizing language for the Emergency Food and Shelter Program which originated in 1983 as part of the emergency jobs bill, as well as an emergency shelter grants program and a transitional living demonstration program.

It is significant that the committee took the initiative of approving $70 million for the emergency program and $30 million for the demonstration programs. Because of the committee action, we are at the point for the first time in 3 years where a floor amendment for funds has not been necessary. This is really a step in the right direction. The most basic food and shelter needs of the homeless have been partially addressed by the Federal Government through five separate appropriations totaling $250 million since 1983. In that time, we have not had authorizing legislation beyond the immediate appropriation period. The program, operated by the Federal Emergency Management Agency and the Emergency Food and Shelter National Board, has distributed grants to 9,000 agencies in 1,500 communities. They have provided over 200 million meals at an average cost of 75 cents and over 45 million nights of shelter at an average cost of $2.25. They have turned away many of the homeless and the hungry because their resources were depleted.

The one thing that continued to surface during our discussions with the national board in drafting this measure was the great need for continuity. The Emergency Food and Shelter Program has operated for 3 years without an authorization. Those who provide the services to the homeless have depended on the Board for answers. Until now, they haven't been able to tell these service providers what would happen to future funding because the Congress has acted in the course of appropriation bills at the 11th hour when funds were exhausted.

This bill contains a 2-year authorization which I sponsored in the Banking Committee as a separate amendment. This approach will provide the continuity and ability to plan that is so greatly needed.

The homeless have needs which are greater than a bowl of soup and a night's sleep on a cot. If we are to in any way stop this vicious cycle of poverty, we must begin to address the root causes of homelessness and help to provide assistance to these people which will help them to find employment, education, permanent housing, health care, and other services designed to lead to their independence and stability. The transitional living component of the bill will begin to address the long-term needs of the homeless. The shelter grants portion of the bill will also provide some of that assistance to shelters which have been limited to addressing basic, immediate needs of the homeless. These demonstration programs will seek to establish some future directions which can be replicated across the country and finally lead to the elimination of this national tragedy.

The authorization expands the Board to include participation by the Department of Housing and Urban Development, the Department of Agriculture, the Department of Health and Human Services and an additional person who has worked to alleviate homelessness and hunger. It is my hope that this will assist the original Board participants, so capably led by the Federal Emergency Management Agency, in involving these other agencies in services to the needy.

This measure was crafted with the cooperation of several members of the Senate Banking, Housing, and Urban Affairs Committee in consultation with those who have had the experience in running the program for the past 3 years. We believe it addresses the major concerns of everyone involved.

Hunger and homelessness are the responsibility of each segment of society. The private sector, and State and local governments are already actively involved in providing services to the homeless. The Federal Government has been a reluctant participant. By authorizing a program of this sort, we have established that the Federal Government, although not solely responsible, is equally responsible for helping to alleviate the suffering of millions of Americans.

I want to thank the distinguished chairman of the HUD-independent agencies Subcommittee on Appropriations, Senator GARN, who also serves as chairman of the Banking Committee, for his cooperation in moving this legislation this year. We have had many discussions on the Senate floor during consideration of several of my appropriation amendments for the Emergency Food and Shelter Program about the need for an authorization. We both agreed the need was there, but at long last we have gotten it to the floor.

I would be remiss if I did not mention the other principal participants in developing the bill which was included in S. 2507, the Senate housing authorization bill, Senator GORTON and Senator HEINZ have both been tireless advocates for this program.

In addition, we are grateful to representatives of two national board agencies, Ellen Witman of the Council of Jewish Federations and Jack Moskowitz and Ike Fields of United Way, who have worked diligently to make sure that this legislation is enacted into law.

Finally, I would like to urge our collegues in the House of Representatives to accept this language in lieu of that which they have proposed. This program has been carefully crafted and enjoys the full support of those who are most directly involved in providing these services. Without the cooperation of the House, we will be back again next year without an authorization, and the cycle will have to be repeated. A unified approach will keep us on track and moving ahead.

AMENDMENT 3102

● Mr. MOYNIHAN. Mr. President, earlier the attention of the Senate was directed to the T-46 Trainer Program. The Air Force awarded the contract for its next generation trainer to Fairchild Republic in 1982, and the first T-46 flew last October. The program is now threatened with cancellation, a fate which would deal serious harm to the training of Air Force pilots and eliminate a long-time defense contractor as well.

The trainers being used at Air Training Command are 25 years old, older than many trainees. They are near the end of their service life. Their age and inherent limitations are resulting in too few training hours for our pilots. No one disputes that the Air Force needs new trainers soon. That is why it began the process in 1980.

Two prototypes are flying. The commander of Edwards Air Force Base described the T-46 as "a good little airplane. I'm enthusiastic about the airplane and its future as a trainer," he said. The projected fuel and maintenance costs are remarkably low and will save the taxpayers much.

But the Air Force now says it does not want the T-46, even though $400 million have been spent in development and testing. It wants to rebuild 25-year-old trainers so they will last a few more years while it holds a new competition, at a total cost of $900 million. Fairchild is free to again compete for the contract it won fair and square, but it will not win. The company will not survive if its present contract is cancelled.

Why should it be cancelled? Fairchild did have production problems 2 years ago, but the commander of the Air Force Contracts Management Division says there has been a remarkable turnaround at the plant. The Air Force budget has been cut, but the cuts must not exacerbate the problem of inadequate pilot training by delaying the procurement of adequate trainers.

With Fairchild poised to manufacture the first lot of trainers, we must not squander scarce defense funds on 25-year-old aircraft so that the Air Force will have time to award the trainer contract somewhere else. Our pilots deserve the T-46 and Fairchild deserves the contract. Let them get what they deserve.●

Mr. GOLDWATER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

☐ 1820

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, if we could have order, I will make an announcement.

The PRESIDING OFFICER. The Senate will be in order.

The majority leader is recognized.

☐ 1830

Mr. DOLE. Mr. President, I am advised by the manager, the distinguished chairman of the Appropriations Committee, that there is an amendment pending which needs to be looked at by other Members on each side who are not present. There is probably not much possibility to complete that by 7 o'clock.

I would suggest that we start now on South Africa—there are no other amendments, as I understand, to be offered on the continuing resolution this evening—and we could use up some of the time.

So there will be no more votes tonight. I guess that is the announcement people are interested in.

If you want to be heard on South Africa, tonight is a good night. We will have at least 2½ hours, maybe a little more, of debate time. If it is not all used, we will not use it, of course.

I am advised by the Senator from South Dakota, Senator PRESSLER, that he would like to be the leadoff speaker. If he would come to the floor, we would be very happy to accommodate him.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. I would try to get our Senators ready.

Mr. President, I designate Mr. PELL to control the time on this side, which, under the order, would be under the control of the minority leader. Whenever Senators are available over here, we would begin.

I believe, under the order, at the conclusion of the utilization of the time for this evening, the Senate was not to debate further. I assume the majority leader would want to get an order putting the Senate out at that time. I do not intend to be here that long this evening myself.

As a word of caution at this time, I would point out that if we begin time running now, it is not supposed to begin running until under the order, the majority leader might wish to change that and also to make sure that once that amount of time has run that the Senate will go over until tomorrow.

The Senator may be here at that time, I do not know. If he is, that will be taken care of.

Mr. DOLE. I thank the distinguished minority leader.

If there is no objection, I ask unanimous consent that the time on the South African debate begin now rather than at 7 p.m.

The PRESIDING OFFICER. Is there objection? Without objection it is so ordered.

Mr. DOLE. Mr. President, let me visit with the distinguished minority leader privately on what happens when the debate ends and then I will make an announcement later.

Mr. THURMOND. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

☐ 1840

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I ask unanimous consent that the time used for the wrap-up business would not be charged against South Africa time.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CALENDAR

Mr. DOLE. Mr. President, I would like to inquire of the distinguished minority leader if he is in a position to pass or indefinitely postpone any of the following calendar items: Calendar No. 1013, Calendar No. 1022, Calendar No. 1023, Calendar No. 1024, Calendar No. 1025, and Calendar No. 1026?

Mr. BYRD. Mr. President, all of the items specified by the distinguished majority leader have been cleared by all Members on this side. We are ready to proceed.

Mr. DOLE. I thank the distinguished minority leader.

I ask unanimous consent that the calendar items just identified be considered en bloc and passed or indefinitely postponed en bloc, and that all committee-reported amendments and preambles be considered agreed to.

The PRESIDING OFFICER. Without objection, it is so ordered.

ESTABLISHMENT OF A CHILDREN'S CHALLENGE CENTER FOR SPACE SCIENCE

The joint resolution (S.J. Res. 336) to express the sense of Congress on recognition of the contributions of the seven *Challenger* astronauts by supporting establishment of a Children's Challenge Center for Space Science, was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 336

Whereas the crew of the space shuttle Challenger was dedicated to stimulating the interest of American children in space flight and science generally;

Whereas the members of that crew gave their lives trying to benefit the education of American children;

Whereas a fitting tribute to that effort and to the sacrifice of the Challenger crew and their families is needed; and

Whereas an appropriate form for such tribute would be to expand educational opportunities in science by the creation of a center that will offer children and teachers activities and information derived from American space research: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the sense of Congress that—

(1) a Children's Challenge Center for Space Science should be established in conjunction with NASA at the Johnson Space Center as a living memorial to the seven Challenger astronauts who died serving their country and to other individuals who gave their lives in exploration of the space frontier; and

(2) the Federal Government should, along with public and private organizations and persons, cooperate in the establishment of such a Center.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMEMORATING THE 100TH ANNIVERSARY OF THE BIRTH OF DAVID BEN-GURION

The joint resolution (S.J. Res. 422) commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion, was considered, ordered to be engrossed for a third reading, read the third time, and passed.

The preamble was agreed to.

The joint resolution, and the preamble, are as follows:

S.J. RES. 422

Whereas David Ben-Gurion is a man of great historical importance, not only to the Jewish people but also to all people striving for freedom;

Whereas his leadership made realizable in-gathering of the exiles that brought millions of homeless Jews scattered throughout the world to Israel where they were united both with each other and with their ancient homeland;

Whereas the Declaration of Independence of the State of Israel, a milestone in the life of David Ben-Gurion, echoes the American Declaration of Independence in its recognition of the universal equality of man;

Whereas as Israel's first Prime Minister and Minister of Defense, Ben-Gurion led the newly formed state through its most difficult period, directing the desperate efforts to secure Israel's survival and independence;

Whereas his pragmatic solutions to Israel's overwhelming problems, paralleled with his desire to create a society based on justice and peace, guided the fledging state and formed the values on which Israel rests today and the basis for what Israel strives for in the future;

Whereas Ben-Gurion's vision of the Greening of the Desert through the application of science and technology continues to be an important aspect of Israel, as well as a factor that can help solve food production problems in arid regions all over the world;

Whereas 1986 marks the hundredth anniversary of the birth of David Ben-Gurion, leader of his people for two generations; and

Whereas the United States and Israel share many of the same fundamental values of democracy and freedom, and a common history of accepting immigrants from all over the globe: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Congress, in this the centennial of David Ben-Gurion's birth joins in the celebration of this great statesman, urges all Americans to take note of this commemoration, and applauds the David Ben-Gurion Centennial Committee of the United States of America in its work promoting the yearlong national celebration of David Ben-Gurion and his achievements.

(b) The President is authorized and requested to issue a proclamation in honor of this celebration.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RESTORATION OF THE BYZANTINE RITE CATHOLIC CHURCH IN EASTERN EUROPE

The resolution (S. Res. 454) urging the full restoration of in Eastern Europe of the Byzantine Rite Catholic Church and of freedom of religion for the people of all captive nations, and for other purposes, was considered, and agreed to.

The preamble was agreed to.

The resolution, and the preamble, are as follows:

S. RES. 454

Whereas the Soviet Union, Romania, Czechoslovakia, and virtually all other Soviet-bloc Eastern European countries are parties to the Final Act of the Conference on Security and Cooperation in Europe and the Universal Declaration of Human Rights;

Whereas the Soviet Constitution provides that religious freedom is guaranteed to all and that anyone is free to adhere or not to adhere to a religious creed and that freedom of worship is guaranteed;

Whereas the Romanian Constitution provides for freedom of conscience and freedom of religion, and Romanian law guarantees full religious freedom to all citizens and states that no one may be persecuted for religious beliefs;

Whereas more than four million Ukrainians, 1,200,000 Romanians, and millions of other Eastern Europeans belong to the Byzantine Rite "Uniate" Catholic Church and cherish the principles of religious freedom;

Whereas the Government of Romania (through Decree 358 of December 1, 1948) and the Government of the Soviet Union suppressed the Byzantine Rite Catholic Church by forcing a merger with the Orthodox Church and imprisoned (1) Ukrainian Archbishop Metropolitan (Cardinal) Josyf Slipyi and all members of the Byzantine Catholic hierarchy, (2) Czechoslovakian Bishop Paul Goydych and all members of the Byzantine Catholic hierarchy, and (3) Romanian Cardinal Julius Hossu and all bishops, and members of the Byzantine Catholic hierarchy;

Whereas the Byzantine Rite Catholic Church is unique and is tied by Church law to the Pope in Rome who is recognized as head of the Church;

Whereas the Communist-controlled governments of the Soviet Union, Romania, and other Warsaw Pact nations have systematically sought to annihilate organized religions, especially the Byzantine Rite Catholic Church, by every possible means, including the imprisonment and or death of the Church hierarchy—the only Church leaders with authority to make decisions for the faithful;

Whereas no ecclesiastical document with canonical value exists calling for the dissolution of the Byzantine Rite Church, and no bishops have endorsed or agreed to any merger with the Orthodox Church, choosing instead intense suffering, persecution, and death at the hands of their captors;

Whereas even after brutal torture, intimidation, imprisonment, and threats against their families less than 40 of the considerably more than 2,000 priests in Romania submitted to the pressure of the Government of Romania and even so continue to practice their faith;

Whereas 142 Byzantine Rite Catholic monasteries and convents, 4,119 churches and chapels in Ukraine, and countless other such facilities and Church properties were seized throughout Eastern Europe, including the Romanian Catholic cathedral at Blaj;

Whereas the Byzantine Rite and Latin Rite Catholic faithful in Ukraine, Romania, Czechoslovakia, and throughout Eastern Europe continue to profess and practice their faith despite a history of persecution which includes torture, imprisonment, harassment, and threats;

Whereas Byzantine Rite Catholic bishops and priests continue to be ordained and to serve the spiritual needs of the faithful in catacomb-like secrecy;

Whereas although the Soviet Union and its satellites wish the world to think that there are no Byzantine Rite Catholics within their borders, millions remain faithful to the Holy See and are conscientious, practicing Catholics and have asked their brethren in the West to plead for their religious freedom and the restoration of their Churches; and

Whereas the Government of the Soviet Union and the governments of other Soviet-bloc Eastern European countries refuse to allow the restoration of the Byzantine Rite Catholic Church on an equal basis with other recognized religions and refuse to restore all confiscated property of the Byzantine Rite Catholic Churches: Now, therefore, be it

Resolved, That (a) the Senate hereby recognizes the continuing right of the people of Ukraine, Lithuania, Romania, Czechoslovakia, and all other Soviet-bloc Eastern European countries to have freedom of religion.

(b) The Senate hereby deplores the refusal of the Soviet Union and Romania to officially recognize the Byzantine Rite Catholic Church and the refusal of the Soviet Union, Romania, and Czechoslovakia (which allowed the restoration of the Byzantine Rite Church in 1968) to restore all Church properties and possessions.

(c) It is the sense of the Senate that the President should instruct the United States delegation of the Review Meeting of the Conference on Security and Cooperation in Europe, scheduled for November 4, 1986, to press for the full restoration of the Byzantine Rite Catholic Church and freedom of religion for the people of all the Captive Nations before the world community.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the President.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

RELEASE TO MUSEUMS OF CERTAIN OBJECTS OF THE UNITED STATES INFORMATION AGENCY

The bill (H.R. 5522) to authorize the release to museums in the United States of certain objects owned by the United States Information Agency, was considered, ordered to a third reading, read the third time, and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CONCERNING THE SOVIET PERSECUTION OF MEMBERS OF THE UKRAINIAN AND OTHER PUBLIC HELSINKI MONITORING GROUPS

The concurrent resolution (S. Con. Res. 154) concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups, was indefinitely postponed.

CONCERNING SOVIET PERSECUTION OF MEMBERS OF THE UKRAINIAN AND OTHER HELSINKI MONITORING GROUPS

The concurrent resolution (H. Con. Res. 332) concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups, was considered, and agreed to.

The preamble was agreed to.

Mr. DOLE. Mr. President, I move to consider the vote by which the concurrent resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1850

ELECTRONIC COMMUNICATIONS PRIVACY ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to Calendar No. 700, H.R. 4952, dealing with electronic communcations.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4952) to amend title 18, United States Code, with respect to the interception of certain communications other forms of surveillance, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

AMENDMENT NO. 3107

(Purpose: To insert a substitute amendment)

Mr. BYRD. Mr. President, on behalf of Senators LEAHY, MATHIAS, and THURMOND, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for Mr. LEAHY (for himself and Mr. MATHIAS, and Mr. THURMOND), proposes an amendment numbered 3107, in the nature of a substitute.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Electronic Communications Privacy Act of 1986".

TITLE I—INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.

(a) DEFINITIONS.—(1) Section 2510(1) of title 18, United States Code, is amended—

(A) by striking out "any communication" and inserting "any aural transfer" in lieu thereof;

(B) by inserting "(including the use of such connection in a switching station)" after "reception".

(C) by striking out "as a common carrier" and

(D) by inserting before the semicolon at the end the following: "or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit".

(2) Section 2510(2) of title 18, United States Code, is amended by inserting before the semicolon at the end the following: ", but such term does not include any electronic communication".

(3) Section 2510(4) of title 18, United States Code, is amended—

(A) by inserting "or other" after "aural"; and

(B) by inserting ", electronic," after "wire".

(4) Section 2510(5) of title 18, United States Code, is amended in clause (a)(i) by inserting before the semicolon the following: "or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business".

(5) Section 2510(8) of title 18, United States Code, is amended by striking out "identity of the parties to such communication or the existence,".

(6) Section 2510 of title 18, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (10);

(B) by striking out the period at the end of paragraph (11) and inserting a semicolon in lieu thereof; and

(C) by adding at the end the following:

"(12) 'electronic communication' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

"(A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

"(B) any wire or oral communication;

"(C) any communication made through a tone-only paging device; or

"(D) any communication from a tracking device (as defined in section 3117 of this title);

"(13) 'user' means any person or entity who—

"(A) uses an electronic communication service; and

"(B) is duly authorized by the provider of such service to engage in such use;

"(14) 'electronic communications system' means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"(15) 'electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications;

"(16) 'readily accessible to the general public' means, with respect to a radio communication, that such communication is not—

"(A) scrambled or encrypted;

"(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

"(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

"(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

"(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

"(17) 'electronic storage' means—

"(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

"(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

"(18) 'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.".

(b) EXCEPTIONS WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—

(1) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof" and inserting in lieu thereof "such disclosure";

(B) by striking out "the carrier" and inserting in lieu thereof "such person"; and

(C) by striking out "an order or certification under this subparagraph" and inserting in lieu thereof "a court order or certification under this chapter".

(2) Section 2511(2)(d) of title 18, United States Code, is amended by striking out "or for the purpose of committing any other injurious act".

(3) Section 2511(2)(f) of title 18, United States Code, is amended—

(A) by inserting "or chapter 121" after "this chapter"; and

(B) by striking out "by" the second place it appears and inserting in lieu thereof ", or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing".

(4) Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

"(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

"(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

"(ii) to intercept any radio communication which is transmitted—

"(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

"(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

"(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

"(IV) by any marine or aeronautical communications system;

"(iii) to engage in any conduct which—

"(I) is prohibited by section 633 of the Communications Act of 1934; or

"(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

"(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

"(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

"(h) It shall not be unlawful under this chapter—

"(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

"(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Chapter 119 of title 18, United States Code, is amended—

(A) in each of sections 2510(5), 2510(8), 2510(9)(b), 2510(11), and 2511 through 2519 (except sections 2515, 2516(1) and 2518(10)), by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof; and

(B) in section 2511(2)(b), by inserting "or electronic" after "wire".

(2) The heading of chapter 119 of title 18, United States Code, is amended by inserting "and electronic communications" after "wire".

(3) The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United States Code is amended by inserting "and electronic communications" after "Wire".

(4) Section 2510(5)(a) of title 18, United States Code, is amended by striking out "communications common carrier" and inserting "provider of wire or electronic communication service" in lieu thereof.

(5) Section 2511(2)(a)(i) of title 18, United States Code, is amended—

(A) by striking out "any communication common carrier" and inserting "a provider of wire or electronic communication service" in lieu thereof;

(B) by striking out "of the carrier of such communication" and inserting "of the provider of that service" in lieu thereof; and

(C) by striking out ": *Provided*, That said communication common carriers" and inserting ", except that a provider of wire communication service to the public" in lieu thereof.

(6) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "communication common carriers" and inserting "providers of wire or electronic communication service" in lieu thereof;

(B) by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(C) by striking out "if the common carrier" and inserting "if such provider" in lieu thereof.

(7) Section 2512(2)(a) of title 18, United States Code, is amended—

(A) by striking out "a communications common carrier" the first place it appears and inserting "a provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "a communications common carrier" the second place it appears and inserting "such a provider" in lieu thereof; and

(C) by striking out "communications common carrier's business" and inserting "business of providing that wire or electronic communication service" in lieu thereof.

(8) Section 2518(4) of title 18, United States Code, is amended—

(A) by striking out "communication common carrier" in both places it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "carrier" and inserting in lieu thereof "service provider".

(d) PENALTIES MODIFICATION.—(1) Section 2511(1) of title 18, United States Code, is amended by striking out "shall be" and all that follows through "or both" and inserting in lieu thereof "shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5)".

(2) Section 2511 of title 18, United States Code, is amended by adding after the material added by section 102 the following:

"(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

"(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then—

"(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

"(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than $500.

"(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

"(i) to a broadcasting station for purposes of retransmission to the general public; or

"(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

"(5)(a)(i) If the communication is—

"(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

"(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

"(ii) In an action under this subsection—

"(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

"(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

"(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.".

(e) EXCLUSIVITY OF REMEDIES WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—Section 2518(10) of title 18, United States Code, is amended by adding at the end the following:

"(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.".

(f) STATE OF MIND.—Paragraphs (a), (b), (c), and (d) of subsection (1) of section 2511 of title 18, United States Code, are amended by striking out "willfully" and inserting in lieu thereof "intentionally".

(2) Subsection (1) of section 2512 of title 18, United States Code, is amended in the matter before paragraph (a) by striking out "willfully" and inserting in lieu thereof "intentionally".

SEC. 102. REQUIREMENTS FOR CERTAIN DISCLOSURES.

Section 2511 of title 18, United States Code, is amended by adding at the end the following:

"(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

"(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

"(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

"(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

"(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

"(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.".

SEC. 103. RECOVERY OF CIVIL DAMAGES.

Section 2520 of title 18, United States Code, is amended to read as follows:

"§ 2520. Recovery of civil damages authorized

"(a) IN GENERAL.—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In an action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) COMPUTATION OF DAMAGES.—(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

"(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5)(a)(i) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500.

"(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5)(a)(i) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1000.

"(2) In any other action under this section, the court may assess as damages whichever is the greater of—

"(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.".

SEC. 104. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.

Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division".

SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.

(a) WIRE AND ORAL INTERCEPTIONS.—Section 2516(1) of title 18 of the United States Code is amended—

(1) in paragraph (c)—

(A) by inserting "section 751 (relating to escape)," after "wagering information),";

(B) by striking out "2314" and inserting "2312, 2313, 2314," in lieu thereof;

(C) by inserting "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),";

(D) by inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," after "1952 (interstate and foreign travel or transportation in aid of racketeering enterprises),";

(E) by inserting ", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organizations)"; and

(F) by—

(i) striking out "or" before "section 351" and inserting in lieu thereof a comma; and

(ii) inserting before the semicolon at the end thereof the following: ", section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)";

(2) by striking out "or" at the end of paragraph (g);

(3) by inserting after paragraph (g) the following:

"(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

"(i) any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code;

"(j) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act); or";

"(k) the location of any fugitive from justice from an offense described in this section;

(4) by redesignating paragraph (h) as paragraph (l); and

(5) in paragraph (a) by—

(A) inserting after "Atomic Energy Act of 1954)," the following: "section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel),";

(B) striking out "or" after "(relating to treason),"; and

(C) inserting before the semicolon at the end thereof the following: "chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)".

(b) INTERCEPTION OF ELECTRONIC COMMUNICATIONS.—Section 2516 of title 18 of the United States Code is amended by adding at the end the following:

"(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.".

SEC. 106. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF ORDERS.

(a) PLACE OF AUTHORIZED INTERCEPTION.—Section 2518(3) of title 18 of the United States Code is amended by inserting "(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)" after "within the territorial jurisdiction of the court in which the judge is sitting".

(b) Reimbursement for Assistance.—Section 2518(4) of title 18 of the United States Code is amended by striking out "at the prevailing rates" and inserting in lieu thereof "for reasonable expenses incurred in providing such facilities or assistance".

(c) Commencement of Thirty-Day Period and Postponement of Minimization.—Section 2518(5) of title 18 of the United States Code is amended—

(1) by inserting after the first sentence the following: "Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered."; and

(2) by adding at the end the following: "In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.".

(d) Alternative to Designating Specific Facilities From Which Communications Are To Be Intercepted.—(1) Section 2518(1)(b)(ii) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "a particular description".

(2) Section 2518(3)(d) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "there is".

(3) Section 2518 of title 18 of the United States Code is amended by adding at the end the following:

"(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

"(a) in the case of an application with respect to the interception of an oral communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

"(iii) the judge finds that such specification is not practical; and

"(b) in the case of an application with respect to a wire or electronic communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

"(iii) the judge finds that such purpose has been adequately shown.

"(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.".

(4) Section 2519(1)(b) of title 18, United States Code, is amended by inserting "(including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title)" after "applied for".

SEC. 107. INTELLIGENCE ACTIVITIES.

(a) In General.—Nothing in this Act or the amendments made by this Act constitutes authority for the conduct of any intelligence activity.

(b) Certain Activities Under Procedures Approved by the Attorney General.—Nothing in chapter 119 or chapter 121 of title 18, United States Code, shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to—

(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978; or

(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978.

SEC. 108. MOBILE TRACKING DEVICES.

(a) In General.—Chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"§ 3117. Mobile tracking devices

"(a) In General.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

"(b) Definition.—As used in this section, the term 'tracking device' means an electronic or mechanical device which permits the tracking of the movement of a person or object.".

(b) Clerical Amendment.—The table of contents at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"3117. Mobile tracking devices.".

SEC. 109. WARNING SUBJECT OF SURVEILLANCE.

Section 2232 of title 18, United States Code, is amended—

(1) by inserting "(a) Physical Interference With Search.—" before "Whoever" the first place it appears;

(2) by inserting "(b) Notice of Search.—" before "Whoever" the second place it appears; and

(3) by adding at the end the following:

"(c) Notice of Certain Electronic Surveillance.—Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

"Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.".

SEC. 110. INJUNCTIVE REMEDY.

(a) In General.—Chapter 119 of title 18, United States Code, is amended by adding at the end the following:

"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.".

(b) Clerical Amendment.—The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by adding at the end thereof the following:

"2521. Injunction against illegal interception.".

SEC. 111. EFFECTIVE DATE.

(a) In General.—Except as provided in subsection (b) or (c), this title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) Special Rule for State Authorizations of Interceptions.—Any interception pursuant to section 2516(2) of title 18 of the United States Code which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such interception occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of State law conforming the applicable State statute with chapter 119 of title 18, United States Code, as so amended; or

(2) the date two years after the date of the enactment of this Act.

(c) Effective Date for Certain Approvals by Justice Department Officials.—Section 104 of this Act shall take effect on the date of enactment of this Act.

TITLE II—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

SEC. 201. TITLE 18 AMENDMENT.

Title 18, United States Code, is amended by inserting after chapter 119 the following:

"CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

"Sec.
"2701. Unlawful access to stored communications.
"2702. Disclosure of contents.
"2703. Requirements for governmental access.
"2704. Backup preservation.
"2705. Delayed notice.
"2706. Cost reimbursement.
"2707. Civil action.
"2708. Exclusivity of remedies.
"2709. Counterintelligence access to telephone toll and transactional records.
"2710. Definitions.

"§ 2701. Unlawful access to stored communications

"(a) Offense.—Except as provided in subsection (c) of this section whoever—

"(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

"(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

"(b) Punishment.—The punishment for an offense under subsection (a) of this section is—

"(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain—

"(A) a fine of not more than $250,000 or imprisonment for not more than one year, or both, in the case of a first offense under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than two years, or both, for any subsequent offense under this subparagraph; and

"(2) a fine of not more than $5,000 or imprisonment for not more than six months, or both, in any other case.

"(c) Exceptions.—Subsection (a) of this section does not apply with respect to conduct authorized—

"(1) by the person or entity providing a wire or electronic communications service;

"(2) by a user of that service with respect to a communication of or intended for that user; or

"(3) in section 2703, 2704 or 2518 of this title.

"§ 2702. Disclosure of contents

"(a) Prohibitions.—Except as provided in subsection (b)—

"(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

"(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(b) Exceptions.—A person or entity may divulge the contents of a communication—

"(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

"(2) as otherwise authorized in section 2516, 2511(2)(a), or 2703 of this title;

"(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

"(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

"(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

"(6) to a law enforcement agency, if such contents—

"(A) were inadvertently obtained by the service provider; and

"(B) appear to pertain to the commission of a crime.

"§ 2703. Requirements for governmental access

"(a) Contents of Electronic Communications in Electronic Storage.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

"(b) Contents of Electronic Communications in a Remote Computing Service.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

"(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

"(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena; or

"(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

"(2) Paragraph (1) is applicable with respect to any electronic communication that is held or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(c) Records Concerning Electronic Communication Service or Remote Computing Service.—(1)(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury subpoena;

"(ii) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

"(iii) obtains a court order for such disclosure under subsection (d) of this section; or

"(iv) has the consent of the subscriber or customer to such disclosure.

"(2) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

"(d) Requirements for Court Order.—A court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

"(e) No Cause of Action Against a Provider Disclosing Information Under This Chapter.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

"§ 2704. Backup preservation

"(a) Backup Preservation.—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

"(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

"(3) The service provider shall not destroy such backup copy until the later of—

"(A) the delivery of the information; or

"(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

"(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

"(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

"(B) has not initiated proceedings to challenge the request of the governmental entity.

"(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

"(b) Customer Challenges.—(1) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate United States district court or State court. Such motion or application shall contain an affidavit or sworn statement—

"(A) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

"(B) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

"(2) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, the term 'delivery' has the meaning given that term in the Federal Rules of Civil Procedure.

"(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

"(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

"(5) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

"§ 2705. Delayed notice

"(a) Delay of Notification.—(1) A governmental entity acting under section 2703(b) of this title may—

"(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

"(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

"(2) An adverse result for the purposes of paragraph (1) of this subsection is—

"(A) endangering the life or physical safety of an individual;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

"(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

"(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

"(A) states with reasonable specificity the nature of the law enforcement inquiry; and

"(B) informs such customer or subscriber—

"(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

"(ii) that notification of such customer or subscriber was delayed;

"(iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and

"(iv) which provision of this chapter allowed such delay.

"(6) As used in this subsection, the term 'supervisory official' means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

"(b) Preclusion of Notice to Subject of Governmental Access.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

"(1) endangering the life or physical safety of an individual;

"(2) flight from prosecution;

"(3 destruction of or tampering with evidence;

"(4) intimidation of potential witnesses; or

"(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"§ 2706. Cost reimbursement

"(a) Payment.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

"(b) AMOUNT.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

"(c) The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (a) if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

"§ 2707. Civil action

"(a) CAUSE OF ACTION.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In a civil action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c); and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) DAMAGES.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense to any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

"§ 2708. Exclusivity of remedies

"The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

"§ 2709. Counterintelligence access to telephone toll and transactional records

"(a) DUTY TO PROVIDE.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(c) PROHIBITION OF CERTAIN DISCLOSURE.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

"(d) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made under subsection (b) of this section.

"§ 2710. Definitions for chapter

"As used in this chapter—

"(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section; and

"(2) the term 'remote computing service' means the provision to the public of computer storage or processing services by means of an electronic communications system.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by adding at the end the following:

"121. Stored Wire and Electronic Communications and Transactional Records Access 2701".

SEC. 202. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect ninety days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

TITLE III—PEN REGISTERS AND TRAP AND TRACE DEVICES

SEC. 301. TITLE 18 AMENDMENT.

(a) IN GENERAL.—Title 18 of the United States Code is amended by inserting after chapter 205 the following new chapter:

"CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

"Sec.
"3121. General prohibition on pen register and trap and trace device use; exception.
"3122. Application for an order for a pen register or a trap and trace device.
"3123. Issuance of an order for a pen register or a trap or trace device.
"3124. Assistance in installation and use of a pen register or a trap and trace device.
"3125. Reports concerning pen registers and trap and trace devices.
"3126. Definitions for chapter.

"§ 3121. General prohibition on pen register and trap and trace device use; exception

"(a) IN GENERAL.—Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

"(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

"(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

"(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service, or with the consent of the user of that service.

"(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

"§ 3122. Application for an order for a pen register or a trap and trace device

"(a) APPLICATION.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

"(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

"(b) CONTENTS OF APPLICATION.—An application under subsection (a) of this section shall include—

"(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

"§ 3123. Issuance of an order for a pen register or a trap and trace device

"(a) IN GENERAL.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

"(b) CONTENTS OF ORDER.—An order issued under this section—

"(1) shall specify—

"(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

"(B) the identity, if known, of the person who is the subject of the criminal investigation;

"(C) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

"(D) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

"(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.

"(c) TIME PERIOD AND EXTENSIONS.—(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

"(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed sixty days.

"(d) NONDISCLOSURE OF EXISTENCE OF PEN REGISTER OR A TRAP AND TRACE DEVICE.—An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that—

"(1) the order be sealed until otherwise ordered by the court; and

"(2) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

"§ 3124. Assistance in installation and use of a pen register or a trap and trace device

"(a) PEN REGISTERS.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 3123(b)(2) of this title.

"(b) TRAP AND TRACE DEVICE.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in section 3123(b)(2) of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order.

"(c) COMPENSATION.—A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

"(d) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

"(e) DEFENSE.—A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

"§ 3125. Reports concerning pen registers and trap and trace devices

"The Attorney General shall annually report to Congress on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the Department of Justice.

"§ 3126. Definitions for chapter

"As used in this chapter—

"(1) the terms 'wire communication', 'electronic communication', and 'electronic communication service' have the meanings set forth for such terms in section 2510 of this title;

"(2) the term 'court of competent jurisdiction' means—

"(A) a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals; or

"(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device;

"(3) the term 'pen register' means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

"(4) the term 'trap and trace device' means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted;

"(5) the term 'attorney for the Government' has the meaning given such term for the purposes of the Federal Rules of Criminal Procedure; and

"(6) the term 'State' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.".

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18 of the United States Code is amended by inserting after the item relating to chapter 205 the following new item:

"206. Pen Registers and Trap and Trace Devices .... 3121".

SEC. 302. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect ninety days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under Federal law as amended by this title; or

(2) the date two years after the date of the enactment of this Act.

SEC. 303. INTERFERENCE WITH THE OPERATION OF A SATELLITE.

(a) OFFENSE.—Chapter 65 of title 18, United States Code, is amended by inserting at the end the following:

"§ 1367. Interference with the operation of a satellite

"(a) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both.

"(b) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States."

(b) CONFORMING AMENDMENT.—The table of sections for chapter 65 of title 18, United

States Code, is amended by adding at the end the following new item:

"1367. Interference with the operation of a satellite.".

Mr. LEAHY. Mr. President, not long ago, a message was transmitted by first class mail, by wire, or by some form of wireless communications link. Each had its advantages and vulnerabilities. Each was regulated by separate legislation that provided a legal framework of appropriate privacy protection of the user. It was a neat and tidy world, in which private users, common carriers, and Government knew their rights and limits.

Today, Americans have at their fingertips a broad array or telecommunications and computer technology, including electronic mail, voice mail, electronic bulletin boards, computer storage, cellular telephones, video teleconferencing, and computer-to-computer links. These technological advances are wonderful. They make the lives of individual citizens easier and they promote American business.

Unfortunately, most people who use these new forms of technology are not aware that the law regarding the privacy and security of such communications is in tatters.

The primary law in this area is the Federal wiretap statute, title III of the Omnibus Crime Control and Safe Streets Act of 1968. When title III was written 18 years ago, Congress could barely contemplate forms of telecomunications and computer technology we are starting to take for granted today. Congress could not envision the dramatic changes in the telephone industry which we have witnessed in the last few years. Today, a phone call can be carried by wire, microwave, or fiber optics. Even a local call may follow an interstate path. And an ordinary phone call can be transmitted in different forms—digitized voice, data or video. In addition, since the divestiture of AT&T and deregulation, many different companies, not just common carriers, offer a wide variety of telephone and other communications services.

In short, technology and the structure of the communications industry have outstripped existing law.

Senate bill 2575, the Electronic Communications Privacy Act of 1986 which I introduced with Senator MATHIAS and which Senators THURMOND, STAFFORD, ANDREWS and DECONCINI have cosponsored, is designed to update title III of the Omnibus Crime Control and Safe Streets Act to provide a reasonable level of Federal privacy protection to these new forms of communication.

The substitute amendment Senators MATHIAS, THURMOND, and I are offering today to the House version of the Electronic Communications Privacy Act, H.R. 4952, is the culmination of 2 years of hard work with Congressmen KASTENMEIER and MOORHEAD and their staffs on the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice. We have also worked with the Department of Justice, the American Civil Liberties Union, representatives of the computer and telecommunications industry, the Federal Communications Commission, representatives of the satellite dish industry, and satellite dish owners, radio hobbyists, and technology and privacy groups. I want to thank all those people who have worked with me, with Senator MATHIAS and our staffs to make the Electronic Communications Privacy Act a better bill.

Let me describe the Electronic Communications Privacy Act briefly. It provides standards by which law enforcement agencies may obtain access to both electronic communications and the records of an electronic communications system. These provisions are designed to protect legitimate law enforcement needs while minimizing intrusions on the privacy of system users as well as the business needs of electronic communications system providers.

At the request of the Justice Department, we strengthened the current wiretap law from a law enforcement perspective. Specifically, we expanded the list of felonies for which a voice wiretap order may be issued and the list of Justice Department officials who may apply for a court order to place a wiretap. We also added a provision making it easier for law enforcement officials to deal with a target who repeatedly changes telephones to thwart interception of his communications, and created criminal penalties for those who notify a target of a wiretap in order to obstruct it.

The legislation creates a statutory framework for the authorization and issuance of orders for pen registers and trap and trace devices. It also creates civil penalties for the users of electronic communications services whose rights under the bill are violated. Finally, it preserves the careful balance governing electronic surveillance for foreign intelligence and counterintelligence purposes embodied in the Foreign Intelligence Surveillance Act of 1978. And it provides a clear procedure for access to telephone toll records in counterintelligence investigations.

Since we introduced S. 2575 in June, Senator MATHIAS and I have continued to improve this legislation, and the substitute we are offering today to H.R. 4952, the House-passed version of the Electronic Communications Act includes several important changes.

In order to address the recent Captain Midnight incident, at the request of the FCC, we added a provision to increase the penalties for the intentional or malicious interference with a satellite transmission.

We wanted to underscore that the inadvertent reception of a protected communication is not a crime. In order to do that, we changed the state of mind requirement under title III of the Omnibus Crime Control and Safe Streets Act from "willful" to "intentional."

Mr. President, as the Subcommittee on Patents, Copyrights and Trademarks prepared to markup S. 2575, Senators LAXALT, GRASSLEY, DECONCINI, GORE and SIMPSON expressed concerns about the bill's penalty structure for the interception of certain satellite transmissions by home viewers. In order to address those concerns we have completely restructured the penalty provisions of the bill for such conduct.

That restructuring is accomplished through Senator GRASSLEY's proposal which eliminates from the Electronic Communications Privacy Act, criminal penalties for the home viewing of private satellite video communications. Senators LAXALT, MCCONNELL, SIMPSON, and DENTON are cosponsors of the Grassley amendment.

The amendment is incorporated in the substitute we are offering today, and I would like to describe it briefly. The criminal penalties and civil liability provisions of chapter 119 of title 18 of the United States Code have been modified so that there is a two-track, tiered penalty structure for home viewing of private satellite transmissions when that conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

On the public side, a first offender would be subject to a suit by the Government for injunctive relief. If injunctive relief is granted, one who violates the injunction would be subject to the full panoply of enforcement mechanisms within the court's existing authority, including criminal and civil contempt. Second and subsequent offenses carry a mandatory $500 civil fine for each violation. The term "violation" in this context refers to each viewing of a private video communication.

On the private side, a person harmed by the private viewing of such a satellite communication may sue for damages in a civil action. If the defendant has not previously been enjoined in a Government action as described above, and has not previously been found liable in a civil suit, the plaintiff may recover the greater of his actual damages or statutory damages of $50 to $500. A second offender—one who has been found liable in a prior private civil action or one who has been enjoined in a government suit—is subject to liability for the greater of actual damages or statutory damages of $100 to $1,000. Third and subsequent offenders are subject to the bill's full civil penalties.

It also takes outside the penalty provisions of the Electronic Communications Privacy Act, the interception of a satellite transmission via audio subcarrier if the transmission is intended for redistribution to facilities open to the public, provided that the conduct is not for the purpose of direct or indirect commercial advantage or private financial gain. Audio subcarriers intended for redistribution to the public include those for redistribution by broadcast stations and cable and like facilities. They also include those for redistribution to buildings open to the public like hospitals and office buildings that pump in music which has been transmitted via subcarrier. As specified in the substitute, this audio subcarrier exclusion does not apply to data transmissions or to telephone calls.

The private viewing of satellite cable programming, network feeds, and certain audio subcarriers will continue to be governed exclusively by section 705 of the Communications Act, as amended, and not by chapter 119 of title 18 of the United States Code.

Mr. President, this is a very good compromise. Those Senators who originally brought these concerns to our attention, are happy with it. So are the representatives of the satellite dish owners and manufacturers.

Senator Simon expressed concerns that the Electronic Communications Privacy Act's penalties were too severe for the first offender who, without an unlawful or financial purpose, intercepts a cellular telephone call or certain radio communications related to news-gathering. Senator Mathias and I have accepted Senator Simon's amendment, and it is incorporated in the substitute. The Simon amendment reduces the penalty for such an interception of an unencrypted, unscrambled cellular telephone call to a $500 criminal fine. Unencrypted, unscrambled radio communications transmitted on frequencies allocated under subpart D of part 74 of the FCC rules are treated like private satellite video communications are under Senator Grassley's amendment.

Because we have been able to reach agreement on the Grassley and Simon amendments, there are no outstanding issues to be resolved.

I would like to thank all those who have worked with us to bring the Electronic Communications Privacy Act to the point of Senate passage. First, let me thank my principal cosponsor, Senator Mathias and his staff, Steve Metalitz and Ken Mannella. Senator Thurmond and his staff, Dennis Shedd and Cindy Blackburn have been very helpful.

I also would like to thank Congressmen Kastenmeier and Moorhead and the staff of the House Subcommittee on Courts, Civil Liberties and the Administration of Justice, David Beier, Deborah Leavy, and Joe Wolfe. Finally, I would like to thank my own staff, John Podesta, Ann Harkins and Tom Hodson.

Mr. President, let me just remind my colleagues in closing, that since the beginning of our national history, first class mail has preserved privacy while promoting commerce. Today a wide variety of new technology is used in American businesses and American homes side-by-side with first class mail. It is high time we updated our laws to bring them in line with that technology.

Mr. LEAHY. Mr. President, I ask unanimous consent that a summary of the Electronic Communications Privacy Act be printed in the Record at this point. This summary was prepared by the staff of the Senate Judiciary Committee's Subcommittee on Patents, Copyrights and Trademarks. Of course, the relevant legislative history is the Senate Judiciary Committee's report on S. 2575.

There being no objection, the summary was ordered to be printed in the Record, as follows:

A Summary of the Electronic Communications Privacy Act

The Electronic Communications Privacy Act amends Title III of the Omnibus Crime Control and Safe Streets Act of 1968—the federal wiretap law—to protect against the unauthorized interception of electronic communications. The bill amends the 1968 law to update and clarify federal privacy protections and standards in light of dramatic changes in new computer and telecommunication technologies. Originally introduced in the Senate as S. 1667 by Senators Leahy and Mathias, and H.R. 3378 by Congressmen Kastenmeier and Moorhead, the bill has gone through a substantial revision as a result of negotiations with interested Senators and their staffs, various industry and privacy groups and the Department of Justice.

On June 11, the House Judiciary Committee unanimously reported H.R. 4952. On June 19, Senators Leahy and Mathias introduced that bill as S. 2575. On June 23, the House passed H.R. 4952. On August 12, the Subcommittee on Patents, Copyrights and Trademarks of the Senate Judiciary Committee reported S. 2575. During Subcommittee consideration some Senators expressed concern that the penalties for private viewing of certain satellite transmissions were too severe. Their concerns have been addressed by a reduction of the private and public penalties for home viewing. The bill also addresses the recent Captain Midnight incident by increasing penalties for interference with satellite transmissions.

The Justice Department strongly supports this bill. The Judiciary Committee reported S. 2575 on September 19.

Highlights of the Leahy-Mathias substitute to amend the Electronic Communications Privacy Act of 1986 follow.

Currently, Title III covers only voice communications. The bill expands coverage to include video and data communications.

Currently, Title III covers only common carrier communications. The bill eliminates that restriction since private carriers and common carriers perform so many of the same functions today that the distinction no longer serves to justify a different privacy standard.

At the request of the Justice Department, the bill continues to distinguish between electronic communications (data and video) and wire or oral communications (voice) for purposes of some of the procedural restrictions currently contained in Title III. For example, court authorization for the interception of a wire or oral communication may only be issued to investigate certain crimes specified in Title III. An interception of an electronic communication pursuant to court order may be utilized during the investigation of any federal felony.

Wire communications in storage, like voice mail, remain wire communications.

To underscore that the inadvertent reception of a protected communication is not a crime, the bill changes the state of mind requirement under Title III from "willful" to "intentional."

Certain electronic communications are exempted from the coverage of the bill including—

The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

Tone-only paging devices;

Amateur radio operators and general mobile radio services;

Marine and aeronautical communications systems;

Police, fire, civil defense and other public safety radio communications systems;

Specific transmissions via audio subcarrier;

The satellite transmission of network feeds;

The satellite transmission of satellite cable programming as defined in Section 705 of the Communications Act of 1934;

Any other radio communication which is made through an electronic communications system that is configured so that such communication is "readily accessible to the general public," a defined term in the bill.

The term readily accessible to the general public does not include communications made by cellular radio telephone systems; therefore, the bill continues current restrictions contained in Title III against the interception of telephone calls made on cellular telephone systems. However, the criminal penalty for an unlawful interception of cellular phone call and similar communications is reduced from the current five-year felony.

Under the Simon amendment that criminal penalty is reduced to a $500 fine.

The bill expands the list of felonies for which a voice wiretap order may be issued. It also expands the list of Justice Department officials who may apply for a court order to place a wiretap.

The bill creates a limited exception to the requirement that a wiretap order designate a specific telephone to be intercepted where the Justice Department makes a showing that the target of the wiretap is changing telephones to thwart interception of his or her communications.

A telephone company may move to quash an order for such a "roving tap" if compliance would be unduly burdensome.

The bill makes it a crime for a person who has knowledge of a court authorized wiretap to notify any person of the possible interception in order to obstruct, impede or prevent such interception.

Title II of the bill creates parallel privacy protection for the unauthorized access to the computers of an electronic communications system, if information is obtained or altered. It does little good to prohibit the unauthorized interception of information while it is being transmitted, if similar protection is not afforded to the information while it is being stored for later forwarding.

The bill establishes criminal penalties for any person who intentionally accesses without authorization a computer through which an electronic communication service is provided and obtains, alters or prevents authorized access to a stored electronic communication. The offense is punished as a felony if committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain; otherwise it is punished as a petty offense.

Providers of electronic communication services to the public and providers of remote computing services to the public are prohibited from intentionally divulging the contents of communications contained in their systems except under circumstances specified in the bill.

The contents of messages contained in electronic storage of electronic communications systems which have been in storage for 180 days or less may be obtained by a government entity from the provider of the system only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent state warrant.

The content of messages stored more than 180 days and the contents of certain records stored by providers of remote computer processing services may be obtained from the provider of the service without notice to the subscriber if the government obtains a warrant under the Federal Rules of Criminal Procedure or with notice to the customer pursuant to an administrative subpoena, a grand jury subpoena, or a court order based on a showing that there is reason to believe that the contents of the communication are relevant to a legitimate law enforcement inquiry. Provisions for delay in notice are also included.

An electronic communications or remote computing service provider may disclose to a non-governmental entity customer information like mailing lists, but not the contents of the communication. Disclosure of such information to the government is required, but only when the government obtains a court order, warrant, subpoena, or customer consent.

At the FCC's request, a section was added to the bill to address problems highlighted by the recent Captain Midnight incident. The bill increases penalties for the intentional or malicious interference with satellite transmissions.

The bill clarifies that telephone companies and other service providers are not civilly or criminally liable for good faith assistance to law enforcement agencies.

Civil penalties are created for users of electronic communications services whose rights under the bill are violated.

The Grassley amendment, which the sponsors have accepted, sets up a reduced penalty structure for the private home viewer whose reception of specified satellite transmissions is not for commercial gain.

The Simon amendment, which the sponsors have accepted sets up the same penalty structure for the interception of radio communications transmitted on frequencies allocated under subpart D of part 74 of the FCC rules.

The penalty structure under the Grassley and Simon amendments is:

A first offender will be subject to a suit by the federal government for injunctive relief. If injunctive relief is granted, the court may use whatever means in its authority, including civil and criminal contempt, to enforce that injunction. It must impose a $500 civil fine. In addition, the penalty for second and subsequent offenses is a $500 fine in a suit brought by the government.

Under the private civil damages provisions of the bill, the first offender may be sued for the greater of actual damages or statutory damages of $50 to $500. The second offender is subject to suit for the greater of actual damages or statutory damages of $100 to $1000. Third and subsequent offenders are subject to full civil damages under the bill.

The bill creates a statutory framework for the authorization and issuance of an order for a pen register or a trap and trace device based on a finding that such installation and use is relevant to an on-going criminal investigation.

Mr. President, just very, very briefly, this Electronic Communications Privacy Act takes into consideration the fact that communications no longer are transmitted simply by wire. Now come communications are transmitted by computer, others in digitized form, and so forth.

This amendment is designed to bring the law concerning communications not only into the 20th century, but well into the 21st century.

Mr. President, I yield to the distinguished Senator from Maryland, the chairman of our subcommittee and a cosponsor with me on this amendment.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. Mr. President, today the Senate considers an important bill to enhance the privacy of Americans and update the provisions the 1968 wiretap act. The Electronic Communications Privacy Act of 1986, H.R. 4952, passed the House Judiciary Committee by a vote of 34 to 0. That bill was approved by the House by a voice vote on June 24.

The Subcommittee on Patents, Copyrights and Trademarks held hearings last fall on an earlier version of this legislation. In essence, the Electronic Communications Privacy Act responds to new developments in computer and communications technology by amending title III of the Omnibus Crime Control and Safe Streets Act of 1968—the Federal wiretap law—to protect against the unauthorized interception of electronic communications. Currently, title III covers only voice communications. The bill expands coverage of the wiretap act to include data and video communications on nearly the same basis as conventional telephone technology. In addition, the bill eliminates the distinction between common carrier communications and private carrier communications. S. 2575 extends privacy protection to new forms of electronic communications, but is careful to exempt media in which privacy is not expected, such as tone only paging devices; amateur radio services; police, fire, and other public safety radio communications systems; and many satellite transmissions, including network feeds destined for rebroadcast, and satellite cable programming as defined in section 705 of the Communications Act of 1934.

Since Senator Leahy and I introduced the first version of this bill, S. 1667, the legislation has been substantially revised and improved. S. 2575, the companion bill to H.R. 4952, was reported by the Subcommittee on Patents Copyrights and Trademarks to the full Senate Judiciary Committee on August 12. Both the Senate and House versions of this important legislation enjoy the full support of the Justice Department, as well as major communications and computer industry groups and the American Civil Liberties Union.

Today, Senator Leahy and I introduce an amendment to H.R. 4952 that incorporates the improvements in the bill made by the Subcommittee on Patents, Copyrights and Trademarks. This substitute amendment makes several minor and technical changes in the bill. Senator Leahy has already placed a summary of this amendment in the Record. But I want to call the attention of my colleagues to the most important differences between the Senate and House versions of this important legislation.

First, the Federal Communications Commission has brought to our attention the problem they have encountered in a recent highly publicized case of "jamming" of satellite cable programming. The FCC has suggested a new provision to clarify and strengthen legal protection against deliberate or malicious interference with satellite transmissions. Senator Thurmond has suggested that this bill may be an appropriate vehicle for this important but noncontroversial change, and the subcommittee has agreed.

Second, a recurring concern throughout the consideration of this legislation has been the fear for inadvertent overhearing of electronic communications. The changes made by the House have gone a long way toward allaying this fear, but to drive the point home, this amendment provides that only intentional acts of interception—those meeting the highest standard of specific intent—can be published criminally.

Third, the Judiciary Committee has wrestled with another problem that was considered at length on the House side: Criminal liability for unencrypted radio signals, particular private satellite video transmissions.

The problem is to strike the right balance between privacy policy and the realities of physics. Individuals and businesses surely expect privacy when they participate in a private video-teleconference or, in the case of a television network, when they transmit raw news footage via satellite by a "backhaul feed." Certainly the law ought to enforce that expectation of privacy. At the same time, the engineers tell us that home satellite dishes may be able to receive some of this material, and that for truly private communications, encryption is a viable alternative.

This amendment contains substantial barriers to imposing liability on satellite dish owners: the exemption for cable programming and network feeds, for example, and the requirement of an intentional interception. But, at the urging of Senator LAXALT, Senator GRASSLEY, and others, we have reexamined this issue. The amendment before the Senate provides a remedy for intentional interception of private video transmissions via satellite; but in a proceeding brought by the Government it would reduce that sanction to the lowest possible level—injunctive relief. It also provides for lower statutory damages in private suits involving interception of video transmissions via satellite than those imposed for other types of violations. We believe this strikes the right balance: It defines these interceptions as wrongful, but takes into account the equities on the other side of the issue. This is particularly true since these interceptions are already covered by section 705 of the Communications Act. The provisions in this legislation are in addition to any remedies that may be available to the Government or to a private party under the Communications Act.

Finally, the substitute amendment now before the Senate incorporates important changes suggested by Senator SIMON. One of those changes is the elimination of the 6-month jail term, included in the House-passed bill, for first offenders whose conduct is the interception of the cellular portion of a telephone call, when the offender has committed no act beyond listening to the contents of the call.

Many Senators have contributed to the development of this comprehensive privacy legislation. I have mentioned a few earlier in my remarks; however, I would like to take this opportunity to commend particularly the efforts of the Senator from Vermont [Mr. LEAHY] who has worked tirelessly on this proposal from its origination through its successful conclusion. In the other body, the chairman and ranking minority member of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Representatives ROBERT KASTENMEIER and CARLOS MOORHEAD, have shown exemplary leadership on this issue, and I am confident that through their continued efforts, this important and innovative bill will soon arrive on the President's desk for signature.

Mr. THURMOND. Mr. President, today, I rise in support of the amendment to H.R. 4952, the Electronic Communications Privacy Act of 1986. The Leahy, Mathias, Thurmond substitute amendment is S. 2575, the Senate companion, which has been reported by the Judiciary Committee.

As a cosponsor of S. 2575, the Senate bill, I commend Senator PATRICK J. LEAHY and Senator CHARLES McC. MATHIAS, JR., for introducing this much-needed legislation. The bill is the product of over a year's worth of negotiations and is now strongly supported by business groups as well as the Justice Department.

This legislation updates present wiretap law which currently provides privacy protection only for voice communications that are transmitted in whole or part by wire by adding new protection for certain voice communications, regardless of how they are transmitted, as well as data communications and electronic mail.

This legislation is necessary due to the changes that have occurred in communications technology since the current law was enacted in 1968. Along with providing privacy protection for new forms of technology, this bill also clarifies the procedures that law enforcement officers must follow when they seek permission for a wiretap.

When S. 2575, was first introduced and referred to the committee, it contained a provision that would make it a criminal offense to intercept satellite communications—known as backhauls—which are transmissions between a television affiliate and the network, as well as video conferences transmitted by satellite. Concern has been expressed in the committee that such a provision may unfairly subject unknowing satellite dish owners to criminal liability. This amendment responds to this concern by providing that a person must intentionally intercept such communications to be subject to penalties, and those penalties will be civil only. This amendment also contains other changes which serve to strengthen this bill.

I believe that this amendment strikes a reasonable balance between legitimate privacy concerns and the importance of Federal officials using electronic surveillance as an effective and valuable law enforcement tool. Because this needed legislation is supported by all members of the Judiciary Committee, and because I have been informed that the essence of this Senate amendment will be maintained through conference, I am willing to support this expedited process. I urge each one of my colleagues to vote for this amendment, and support the amended bill.

Mr. President, the House has passed this legislation. The Senate Judiciary Committee considered it carefully. We approved it, and the report is here now in the Senate.

Mr. GRASSLEY. Mr. President, I am very pleased with the agreements we were able to reach concerning the provisions in this bill which relate to home dish users. First, we have affirmed the right of dish users to listen to all unencrypted audio subcarriers that are redistributed by facilities open to the public. This includes subcarriers meant for redistribution by broadcast stations, cable systems, and like facilities and those subcarriers made available in office buildings and other public places. Further, we have decriminalized the private noncommercial viewing of unscrambled satellite video programming that would have previously resulted in the imposition of criminal sanctions on people who simply view television in the privacy of their own homes.

Anyone who has actually viewed programming from a satellite Earth station will find that many channels are indistinguishable from one another in terms of network, nonnetwork, backhaul, or affiliate feeds. With dozens of sporting events, for example, it is difficult to tell whether one is watching a so-called affiliate feed or a backhaul feed. Similarly, with teleconferences, there is often little difference in screen format from own own hearing or Senate floor coverage.

Finally, by decriminalizing the private viewing of most satellite televisions signals, we avoid the problem of potentially invading the privacy of these people who watch television in their own homes.

The new sections regarding home dish viewing of private unencrypted satellite video transmissions provide for injunctive relief in the case of intentional viewing of such signals. Intentional viewing means that the Earth station owner must know that he is viewing a prohibited signal and that that type of viewing is not permited under the act.

So, in this case, the applicable remedy would be injunctive relief and, upon a second occurrence, a $500 civil penalty. This would give networks and other programmers the ability to claim protection under the act without scrambling their signals. These claims would largely be a fiction under any set of circumstances; however, I cannot see imposing criminal sanctions on an innocent viewing public for the benefit of those who could scramble but choose not to.

The new satellite dish provisions would affect 1.5 to 2 million American families nationwide who receive their television programming via satellite. Satellite dish technology is especially important to rural Americans who do not have the same access to a multiplicity of television programming as do their urban counterparts.

I wish to thank my colleagues, Senators LEAHY and MATHIAS, and their competent staffs for their diligent work on resolving the satellite dish issues.

Mr. DANFORTH. This legislation covers some conduct that also is prohibited under section 705 of the Communications Act of 1934. Do I understand correctly that the sanctions contained in this legislation would be imposed in addition to, and not instead of, those contained in section 705 of the Communications Act?

Mr. MATHIAS. That is correct. This legislation is not intended to substitute for any liabilities for conduct that also is covered by section 705 of the Communications Act. Similarly, it is not intended to authorize any conduct which otherwise would be prohibited by section 705. The penalties provided for in the Electronic Communications Privacy Act are in addition to those which are provided by section 705 of the Communications Act.

As a general rule, conduct which is illegal under section 705 of the Communications Act would also be illegal under this bill. These supplemental sanctions are particularly important where an unauthorized interception is made for direct or indirect financial gain. This bill is designed to help put an end to such conduct.

The exception to the general rule is that we do not provide liability for the noncommercial private viewing of unscrambled network feeds to affiliated stations by the owners of home satellite dishes. Accountability for that conduct will be determined solely under section 705 of the Communications Act. The private viewing of any other video transmissions not otherwise excepted by section 705(b) could be subject to action under both the Communications Act and this legislation.

Mr. DANFORTH. So although the proposed legislation which amends title 18 of the United States Code replaces, for specified conduct, the penalty structure of the Electronic Communications Privacy Act as introduced, and substitutes a scheme of public and private remedies under title 18, am I correct that conduct prohibited by the Communications Act will continue to be governed by that Act?

Mr. MATHIAS. That is correct. Conduct which is not prohibited by the Electronic Communications Privacy Act, but which is prohibited by the Communications Act, still will be subject to the full range of remedies and penalties under the Communications Act.

Mr. DANFORTH. I thank the distinguished Senator for this clarification.

Mr. DOLE. Mr. President, has the Leahy substitute been adopted?

The PRESIDING OFFICER. No, it has not. Is there further debate?

If not the question is on agreeing to the amendment.

The amendment (No. 3107) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed for a third reading and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 4952), as amended, was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. MATHIAS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REFERRAL OF S. 2575

Mr. DOLE. Mr. President, I ask unanimous consent that once the Judiciary Committee reports S. 2575, Electronic Communication Privacy Act, it be referred to the Commerce Committee for a period of 24 hours and at the end of that time, the committee be discharged, and the bill be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I further ask unanimous consent that if a conference on S. 2575, or the companion, H.R. 4952, is necessary, that two members of the Commerce Committee be included as Senate appointed conferees, for consideration of those matters that fall under the Commerce Committee jurisdiction.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMPUTER FRAUD AND ABUSE ACT

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar 883, S. 2281, the Computer Fraud and Abuse Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2281) to amend title XVIII, United States Code, to provide additional penalties for fraud and related activities in connection with access devices and computers and further purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary with amendments as follows:

(The parts of the bill intended to be stricken are shown in bold-faced brackets, and the parts of the bill intended to be inserted are shown in italics.)

S. 2281

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Computer Fraud and Abuse Act of 1986".

SEC. 2. SECTION 1030 AMENDMENTS.

(a) MODIFICATION OF DEFINITION OF FINANCIAL INSTITUTION.—Section 1030(a)(2) of title 18, United States Code, is amended—

(1) by striking out "knowingly" and inserting "intentionally" in lieu thereof; and

(2) by striking out "as such terms are defined in the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.),".

(b) MODIFICATION OF EXISTING GOVERNMENT COMPUTERS OFFENSE.—Section 1030(a)(3) of title 18, United States Code, is amended *to read as follows—*

[(1) by striking out "knowingly" and inserting "intentionally" in lieu thereof;

[(2) by striking out ", or having accessed" and all that follows through "prevents authorized use of, such computer";

[(3) by striking out "It is not an offense" and all that follows through "use of the computer."; and

[(4) by striking out "if such computer is operated for or on behalf of the Government of the United States and such conduct affects such operation" and inserting in lieu thereof "if such computer is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, if such computer is used by or for the Government of the United States and such conduct affects such use".**]**

"(3) intentionally, without authorization to access any computer of a department or agency of the United States, accesses such a computer of that department or agency that is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects the use of the Government's operation of such computer;".

(c) MODIFICATION OF AUTHORIZED ACCESS ASPECT OF OFFENSES.—Paragraphs (1) and (2) of section 1030(a) of title 18, United States Code, are each amended by striking out ", or having accessed" and all that follows through "does not extend" and inserting "or exceeds authorized access" in lieu thereof.

(d) NEW OFFENSES.—Section 1030(a) of title 18, United States Code, is amended by inserting after paragraph (3) the following:

"(4) knowingly and with intent to defraud, accesses a Federal interest computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer;

[“(5) intentionally accesses a Federal interest computer without authorization, and by means of one or more instances of such conduct alters information in that computer, or prevents authorized use of that computer, and thereby causes loss to another of a value aggregating $1,000 or more during any one year period; or]

“(5) intentionally accesses a Federal interest computer without authorization, and by means of one or more instances of such conduct alters, damages, or destroys information in any such Federal interest computer, or prevents authorized use of any such computer or information, and thereby—

“(A) causes loss to one or more others of a value aggregating $1,000 or more during any one year period; or

“(B) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or

“(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

“(A) such trafficking affects interstate or foreign commerce; or

“(B) such computer is used by or for the Government of the United States;”.

(e) Elimination of Section Specific Conspiracy Offense.—Section 1030(b) of title 18, United States Code, is amended—

(1) by striking out “(1)”; and

(2) by striking out paragraph (2).

(f) Penalty Amendments.—Section 1030 of title 18, United States Code, is amended—

(1) by striking out “of not more than the greater of $10,000” and all that follows through “obtained by the offense” in subsection (c)(1)(A) and inserting “under this title” in lieu thereof;

(2) by striking out “of not more than the greater of $100,000” and all that follows through “obtained by the offense” in subsection (c)(1)(B) and inserting “under this title” in lieu thereof;

(3) by striking out “or (a)(3)” each place it appears in subsection (c)(2) and inserting “, (a)(3) or (a)(6)” in lieu thereof;

(4) by striking out “of not more than the greater of $5,000” and all that follows through “created by the offense” in subsection (c)(2)(A) and inserting “under this title” in lieu thereof;

(5) by striking out “of not more than the greater of $10,000” and all that follows through “created by the offense” in subsection (c)(2)(B) and inserting “under this title” in lieu thereof;

(6) by striking out “not than” in subsection (c)(2)(B) and inserting “not more than” in lieu thereof;

(7) by striking out the period at the end of subsection (c)(2)(B) and inserting “; and” in lieu thereof; and

(8) by adding at the end of subsection (c) the following:

“(3)(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which does not occur after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

“(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph.”.

(g) Conforming Amendments to Definitions Provision.—Section 1030(e) of title 18, United States Code, is amended—

(1) by striking out the comma after “As used in this section” and inserting a one-em dash in lieu thereof;

(2) by aligning the remaining portion of the subsection so that it is cut in two ems and begins as an indented paragraph, and inserting “(1)” before “the term”;

(3) by striking out the period at the end and inserting a semicolon in lieu thereof; and

(4) by adding at the end thereof the following:

“(2) the term ‘Federal interest computer’ means a computer—

“(A) exclusively for the use of a financial institution or the United States Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States Government and the conduct constituting the offense affects [such use] *the use of the financial institution's operation or the Government's operation of such computer*; or

“(B) which is one of two or more computers used in committing the offense, not all of which are located in the same State;

“(3) the term ‘State’ includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States;

“(4) the term ‘financial institution’ means—

“(A) a bank with deposits insured by the Federal Deposit Insurance Corporation;

“(B) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;

“(C) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;

“(D) a credit union with accounts insured by the National Credit Union Administration;

“(E) a member of the Federal home loan bank system and any home loan bank; and

“(F) any institution of the Farm Credit System under the Farm Credit Act of 1971;

“(5) the term ‘financial record’ means information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution; [and]

“(6) the term ‘exceeds authorized access’ means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or [alter.”.] *alter; and*

“(7) the term ‘department of the United States’ means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5.”.

(h) Law Enforcement and Intelligence Activity Exception.—Section 1030 of title 18, United States Code, is amended by adding at the end the following new subsection:

“(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.”.

Mr. DOLE. Mr. President, I move the committee amendments be agreed to en bloc.

The PRESIDING OFFICER. Is there objection to agreeing to the committee amendments en bloc? Without objection, it is so ordered.

The committee amendments were considered and agreed to en bloc.

AMENDMENT NO. 3108

Mr. DOLE. Mr. President, I send an amendment to the desk on behalf of Senators Trible and Laxalt and ask for its immediate consideration.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. Dole], for Mr. Trible and Mr. Laxalt, proposes an amendment numbered 3108.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

S. 2281 is amended—

1. In Section 2(b), by adding the term “(1)” before the words “to read as follows”; and

In Section 2(b), by adding at the end thereof the following new paragraph:

“(2) by striking out the flush language after section 1030(a)(3) of title 18, United States Code, beginning with “It is not an offense” and all that follows through “use of the computer.”;

2. In Section 2(a), by adding at the end thereof the following new paragraph:

“(3) by striking out the term “or” where it appears at the end of section 1030(a)(2) of title 18.”

3. In Section 2(f), by adding at the end thereof the following new paragraph:

“(9) by deleting the term “(b)(1)” where it appears in the first line of section 1030(c) of title 18 and inserting in lieu thereof the term “(b)”.”

4. In Section 2(g), by adding to the list of terms to be defined as “financial institutions” the following:

“(G) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934;

“(H) the Securities Investor Protection Corporation.”

5. In Section 2(a), by deleting the period at the end of paragraph (2) and inserting in lieu thereof a semicolon.

In Section 2(a), by adding at the end thereof the following new paragraph:

“(3) by adding after the term “financial institution” the following: “or of a card issuer as defined in section 1602(n) of Title 15,”.

Mr. TRIBLE. Mr. President, I want to offer a small package of amendments to S. 2281, on behalf of myself and Senator Laxalt.

This amendment will make several minor changes in the bill. The first three changes are technical in nature and do not affect the substance of the legislation. The fourth change enlarges slightly the types of financial institutions whose computers will be protected by S. 2281, and I would like to explain this change briefly.

First, the amendment will extend the protections afforded by S. 2281 to computers belonging to broker-dealers who are registered with the Securities and Exchange Commission. A similar change has already been made by the House of Representatives in passing its computer crime bill, and this simply makes an identical change.

Second, the amendment affords protection to the securities investor protection corporation. The SIPC is charged with insuring certain securities transactions. It does for securities what the FDIC and the FSLIC do for banking transactions. I am told by the Securities and Exchange Commission that the SIPC has a liability level of roughly $1 billion. Given the Federal Government's ultimate responsibility for that debt, I believe that the computers of the SIPC should be protected. I recognize that the SIPC is not traditionally recognized as a financial institution, and I want to make clear that it will be so defined only for purposes of including it within the ambit of S. 2281.'

The fifth and last amendment will protect the computers of card issuers as defined in section 1602(n) of title 15. These entities are covered under the existing computer crime statute, 18 U.S.C. 1030(a)(2). They were inadvertently omitted from coverage because of a definitonal change made by S. 2281, and the Trible-Laxalt amendment simply restores their coverage under 18 U.S.C. 1030(a)(2).

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3108) was agreed to.

Mr. THURMOND. Mr. President, I am pleased that the Senate has turned its attention to S. 2281, the Computer Fraud and Abuse Act sponsored by Senator TRIBLE.

This legislation is needed to address the real and growing danger of computer crime. Although Congress enacted a computer crime statute in 1984, that law was quite limited in scope. It provided criminal penalties only for stealing national security-related data, for trespassing onto Government computers, or for stealing computerized information on individuals' credit histories.

Because the 1984 statute was quite limited, there remains a great deal of computerized information that is wholly unprotected against computer crime. For the past 2 years, the Senate Judiciary Committee has tried to reach a consensus on how far to expand Federal jurisdiction over computer crime. The Subcommittee on Criminal Law held a hearing in October 1985, on two computer crime measures: S. 440, sponsored by Senator TRIBLE, and S. 1678, which I sponsored at the request of the administration. In April of this year, the full Judiciary Committee held a hearing on S. 2281, a revised computer crime bill sponsored by Senator TRIBLE and Senator LAXALT. S. 2281 was reported unanimously by the Judiciary Committee on June 12, 1986.

This bill will clarify the 1984 statute to make clear that acts of simple trespass by unauthorized users of Government computers are punishable. It will also proscribe acts of fraud via computer or intentional destruction of computer data. Both fraud and destruction of property will be covered by S. 2281 when they are committed against computers belonging to the Federal Government or to federally insured financial institutions. The same offenses will be covered when the crime itself is interstate in nature. Finally, S. 2281 will permit prosecution of those who traffic in computer passwords belonging to others.

Mr. President, I believe the Senate must act quickly to give Federal prosecutors the tools they need to respond to computer-related crimes. S. 2281 will accomplish that goal, and I urge its adoption by the Senate.

Mr. DENTON. Mr. President, I rise today to express my strong support for S. 2281, the Computer Fraud and Abuse Act of 1986. I am pleased to be an original cosponsor of the bill, which was introduced by my distinguished colleague from Virginia, Senator TRIBLE, whom I congratulate and commend for his leadership on this issue.

Mr. President, the explosive growth and development of computer technology in recent years has left Government and many businesses vulnerable to new and highly sophisticated forms of criminal activities. Such crimes involve the use of computers to steal from, defraud, and vandalize government agencies, banks, and other businesses, schools, and other entities whose operations depend heavily upon the use of computers.

As an American Bar Association survey revealed last year, nearly one-half of American businesses and government agencies had been the victims of computer crime during the previous 12-month period. Such crimes resulted in known financial losses as high as $730 million, a figure which does not include crimes which go unreported either because they are not detected or because companies are reluctant to disclose the vulnerabilities of their computer systems.

Especially ominous is the threat which computer crime poses to financial institutions and sensitive Government operations. Today, electronic transfers of funds among banks is routine, and computer fraud, trespass, and theft could wreak havoc in this process. Furthermore, a computer criminal who gains access to classified Government information could thereby jeopardize the national security.

The rapid evolution of computer technology has required us on several occasions to reassess the adequacy of our existing criminal statutes to deal with the novel patterns of criminal activity made possible by the widespread use of computers. For instance, in June 1985, as chairman of the Senate Judiciary Subcommittee on Security and Terrorism, I chaired a hearing on the use of computers to transmit material that incites crime and constitutes interstate transmission of implicitly obscene matter. That hearing yielded abundant evidence of various courses of criminal conduct which were difficult or impossible to prosecute under existing law because the conduct occurs, in whole or in part, through computer transmissions.

The legislation before us today, S. 2281, is intended to ensure that our criminal justice system will be equal to the task of combating these new patterns of criminal activity. The bill is designed specifically to deal with crimes spawned by the computer age.

S. 2281 clarifies and strengthens existing Federal protections against computer crime. The bill makes it clear that unauthorized access to a Government computer is a trespass offense, as surely as if the offender had entered a restricted Government compound without proper authorization. The bill also broadens Federal privacy protections for data relating to individuals' credit histories to include the computerized records of all customers—individual and corporate—of federally insured financial institutions.

The bill creates new offenses to deal with certain acts which are not now crimes under Federal law, such as theft by computer with the intent to defraud and the intentional destruction of computer property, when those offenses are committed on an interstate basis or involve the computers of federally insured financial institutions.

S. 2281 addresses computer crimes which are properly matters of Federal concern. The legislation is needed to keep our Criminal Code relevant to such criminal activities, which are made possible by the continually developing technology in the computer field. I urge my colleagues to vote for passage of this timely and much-needed legislation.

Thank you, Mr. President.

Mr. LAXALT. Mr. President, I enthusiastically support S. 2281, the Computer Fraud and Abuse Act of 1986. This bill is the result of more than 2 years of careful deliberation and review by members of both the House and the Senate Committees on the Judiciary. In this Chamber, my good friend from Virginia, PAUL TRIBLE, took the lead in seeking the best possible means for addressing the problems posed in this country by computer crime. S. 2281 is largely his handiwork, and I am pleased to be a cosponsor of the bill.

The bill primarily does two things: First, it carefully extends Federal criminal jurisdiction to several types of conduct not presently covered by Federal law; and, second, the bill amends and adjusts several provisions of current law in order to respond to the suggestions of experts in the field and of the attorneys in the Department of Justice. S. 2281 does not represent the furthest possible reach of Federal jurisdiction in this area: it is not intended to. It is the general belief of the sponsors of this bill and of the Department of Justice that in this rapidly changing area of computer technology, the best legislative approach is to proceed cautiously, to address effectively known evils of computer misuse, and not to attempt to enact comprehensive or exhaustive computer crime legislation at this time. I fully expect Congress to continue to review the problems caused by computer fraud and abuse and to respond to them with appropriate remedies.

In this legislation, Senator TRIBLE and we on the Judiciary Committee attempted to respond to the suggestions and the advice of as many computer and legal experts as possible. We believed that computer crime legislation should be devised to deter the misuse of three sets of computers: computers owned or operated by or for the Federal Government, computers owned or operated by the Nation's financial institutions, and computer systems operating in two or more States where the law enforcement resources of State and local governments may be inadequate to address the multistate scope of the misconduct.

These three sets of computers are not treated identically. We attempted to deter misuse of Government computers as completely as possible. In the other two sets of computers, we attempted to address the most serious forms of abuse. Clearly, Congress will be open to further adjustment of the law covering these latter two sets just as Congress was willing to amend the 1984 statute in light of its practical effect.

I would like to make just one more point, Mr. President. We have tried to establish the most complete legislative history possible to provide information about the intended meaning of the legislative language before us today. The committee reports of the Senate and the House Committees on the Judiciary and the floor statements and section-by-section analyses that accompanied the introduction of S. 2281 on April 10, 1986, provide an excellent background for the new statutes. Because of the complexity of the subject matter, we wanted to be as certain as we could that the limits and the intended scope of this bill be clear to prosecutors and computer users alike. I believe that we accomplished that goal, and I thank my colleague from Virginia, Senator TRIBLE, and also the excellent chairman of the Committee on the Judiciary, Senator THURMOND, for their efforts in this regard.

In sum, I strongly support this legislation, and I urge my colleagues to do so here today. This legislation is timely and it is necessary. Senator TRIBLE and Representative BILL HUGHES should be commended for their excellent work.

Mr. TRIBLE. Mr. President, I am pleased that the Senate has turned its attention to S. 2281, a bill I have sponsored to enact new criminal penalties for computer-related crimes.

This legislation culminates several years of effort by the Congress to prevent the Nation's criminal laws from becoming obsolete, and to ensure that our criminal justice system is capable of addressing the types of offenses that have accompanied the rise of new technologies.

For some time, our criminal laws lagged behind technological innovation, specifically innovations in computer technology. Prosecutors at both the Federal and State levels have had difficulty adapting older criminal statutes—many of which were written before the advent of computer technology—to computer crimes. As a consequence, the vast array of computer data relied upon by government, businesses, and individuals has been largely unprotected against criminal misconduct.

During the past decade, many States have tackled this problem. Roughly 35 States now have some form of computer crime law on the books, including my own State of Virginia. The Federal Government, too, now penalizes some types of computer crime. Under legislation approved by the Congress in 1984, it is a Federal offense to steal national security-related data via computer, to trespass onto Government computers without authorization, or to steal data relating to individuals' credit histories.

These State and Federal actions are welcome. Yet, there remains an enormous amount of computerized data wholly unprotected against acts of theft, vandalism, and trespass. In the Government's race to protect this computer data against crime, the hour is late. Quite simply, the criminals have the technological edge.

Mr. President, it is time to dispel the notion that computer crime is a game, or a challenge to be overcome. The fact is, the computer criminal is a lawbreaker just like any other, and deserves to be treated as such.

To that end, I introduced legislation early in 1985 to strengthen Federal penalties for computer-related crime. That bill, S. 440, was the subject of hearings before the Senate Subcommittee on Criminal Law last October. Since then, I have worked closely with the Chairman of that subcommittee, Senator LAXALT, to reach a consensus on the proper scope of Federal jurisdiction over computer crime. The bill before us, S. 2281, embodies that consensus and was reported unanimously by the Senate Judiciary Committee in June.

This bill will assert Federal jurisdiction over computer crimes only in those cases in which there is a compelling Federal interest. This reflects my belief and the Judiciary Committee's belief that the States can and should handle most such crimes, and that Federal jurisdiction in this area should be asserted narrowly. To accomplish that, S. 2281 will increase the protections currently afforded computers belonging to the Federal Government, it will provide similar protections to computers belonging to federally insured financial institutions, and it will proscribe certain crimes that are$interstate in nature.

Mr. President, for the past two decadew, the United States has experienced a technological revolution.$Widespread computer use has brought a great many benefits to American business and to all of our lives. But it has also$created a new type of criminal—one who uses computers to steal,$to defraud, and to abuse the property of others.

I believe it is time for the Congress to give Federal prosecutors the tools to respond to computer crime. S. 2281 will do so, and I urge my colleagues to join me in supporting this bill.

I also want to extend my special thanks to Senator LAXALT. He has been most helpful in fashioning this legislation and in guiding it through the Judiciary Committee, and I deeply appreciate his leadership. In addition, I want to thank the other cosponsors of S. 2281 for their valuable help—Senators DENTON, ARMSTRONG, STEVENS, ABDNOR, GLENN, and DIXON.

The PRESIDING OFFICER. The bill is before the Senate and open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2281

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Computer Fraud and Abuse Act of 1986".

SEC. 2. SECTION 1030 AMENDMENTS.

(a) MODIFICATION OF DEFINITION OF FINANCIAL INSTITUTION.—Section 1030(a)(2) of title 18, United States Code, is amended—

(1) by striking out "knowingly" and inserting "intentionally" in lieu thereof;

(2) by striking out "as such terms are defined in the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.),";

(3) by striking out the term "or" where it appears at the end of section 1030(a)(2) of title 18; and

(4) by adding after the term "financial institution" the following: "or of a card issuer as defined in section 1602(n) of Title 15,".

(b) Modification of Existing Government Computers Offense.—Section 1030(a)(3) of title 18, United States Code, is amended

(1) to read as follows—

"(3) intentionally, without authorization to access any computer of a department or agency of the United States, accesses such a computer of that department or agency that is exclusively for the use of the Government of the United States or, in the case of a computer not exclusively for such use, is used by or for the Government of the United States and such conduct affects the use of the Government's operation of such computer;".

(2) by striking out the flush language after section 1030(a)(3) of title 18, United States Code, beginning with "It is not an offense" and all that follows through "use of the computer.";

(c) Modification of Authorized Access Aspect of Offenses.—Paragraphs (1) and (2) of section 1030(a) of title 18, United States Code, are each amended by striking out ", or having accessed" and all that follows through "does not extend" and inserting "or exceeds authorized access" in lieu thereof.

(d) New Offenses.—Section 1030(a) of title 18, United States Code, is amended by inserting after paragraph (3) the following:

"(4) knowingly and with intent to defraud, accesses a Federal interest computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer;

"(5) intentionally accesses a Federal interest computer without authorization, and by means of one or more instances of such conduct alters, damages, or destroys information in any such Federal interest computer, or prevents authorized use of any such computer or information, and thereby—

"(A) causes loss to one or more others of a value aggregating $1,000 or more during any one year period; or

"(B) modifies or impairs, or potentially modifies or impairs, the medical examination, medical diagnosis, medical treatment, or medical care of one or more individuals; or

"(6) knowingly and with intent to defraud traffics (as defined in section 1029) in any password or similar information through which a computer may be accessed without authorization, if—

"(A) such trafficking affects interstate or foreign commerce; or

"(B) such computer is used by or for the Government of the United States;".

(e) Elimination of Section Specific Conspiracy Offense.—Section 1030(b) of title 18, United States Code, is amended—

(1) by striking out "(1)"; and

(2) by striking out paragraph (2).

(f) Penalty Amendments.—Section 1030 of title 18, United States Code, is amended—

(1) by striking out "of not more than the greater of $10,000" and all that follows through "obtained by the offense" in subsection (c)(1)(A) and inserting "under this title" in lieu thereof;

(2) by striking out "of not more than the greater of $100,000" and all that follows through "obtained by the offense" in subsection (c)(1)(B) and inserting "under this title" in lieu thereof;

(3) by striking out "or (a)(3)" each place it appears in subsection (c)(2) and inserting ", (a)(3) or (a)(6)" in lieu thereof;

(4) by striking out "of not more than the greater of $5,000" and all that follows through "created by the offense" in subsection (c)(2)(A) and inserting "under this title" in lieu thereof;

(5) by striking out "of not more than the greater of $10,000" and all that follows through "created by the offense" in subsection (c)(2)(B) and inserting "under this title" in lieu thereof;

(6) by striking out "not than" in subsection (c)(2)(B) and inserting "not more than" in lieu thereof;

(7) by striking out the period at the end of subsection (c)(2)(B) and inserting "; and" in lieu thereof; and

(8) by adding at the end of subsection (c) the following:

"(3)(A) a fine under this title or imprisonment for not more than five years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which does not occur after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(4) or (a)(5) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph.".

(9) by deleting the term "(b)(1)" where it appears in the first line of section 1030(c) of title 18 and inserting in lieu thereof the term "(b)".

(g) Conforming Amendments to Definitions Provision.—Section 1030(e) of title 18, United States Code, is amended—

(1) by striking out the comma after "As used in this section" and inserting a one-em dash in lieu thereof;

(2) by aligning the remaining portion of the subsection so that it is cut in two ems and begins as an indented paragraph, and inserting "(1)" before "the term";

(3) by striking out the period at the end and inserting a semicolon in lieu thereof; and

(4) by adding at the end thereof the following:

"(2) the term 'Federal interest computer' means a computer—

"(A) exclusively for the use of a financial institution or the United States Government, or, in the case of a computer not exclusively for such use, used by or for a financial institution or the United States Government and the conduct constituting the offense affects the use of the financial institution's operation or the Government's operation of such computer; or

"(B) which is one of two or more computers used in committing the offense, not all of which are located in the same State;

"(3) the term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States;

"(4) the term 'financial institution' means—

"(A) a bank with deposits insured by the Federal Deposit Insurance Corporation;

"(B) the Federal Reserve or a member of the Federal Reserve including any Federal Reserve Bank;

"(C) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;

"(D) a credit union with accounts insured by the National Credit Union Administration;

"(E) a member of the Federal home loan bank system and any home loan bank;

"(F) any institution of the Farm Credit System under the Farm Credit Act of 1971;

"(G) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934; and

"(H) the Securities Investor Protection Corporation.

"(5) the term 'financial record' means information derived from any record held by a financial institution pertaining to a customer's relationship with the financial institution;

"(6) the term 'exceeds authorized access' means to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter; and

"(7) the term 'department of the United States' means the legislative or judicial branch of the Government or one of the executive departments enumerated in section 101 of title 5.".

(h) Law Enforcement and Intelligence Activity Exception.—Section 1030 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.".

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PROVIDING FOR THE REPLACEMENT OF CERTAIN LANDS WITHIN THE GILA BEND INDIAN RESERVATION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to consideration of H.R. 4216, dealing with settlement of the Papago Tribe, now being held at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 4216) to provide for the replacement of certain lands within the Gila Bend Indian Reservation and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. DECONCINI. Mr. President, I am a cosponsor of legislation introduced by my distinguished colleague, Mr. GOLDWATER, S. 2105, the Gila Bend Indian water settlement legislation. The companion legislation in the House, H.R. 4216, sponsored by Congressman UDALL and Congressman MCCAIN, passed the House on September 16, 1986. That legislation is being held at the desk in the Senate and like my colleague from Arizona, Mr. GOLDWATER, I ask that the House bill, H.R. 4216, be considered and passed by this body in lieu of S. 2105.

The Gila Bend Indian water settlement will settle all claims of the Tohono O'Odam Nation against the Federal Government for the harm caused to the Gila Bend Reservation as a result of the operation of Painted Rock Dam, a Corps of Engineers structure. Repeated flooding of the Gila Bend Reservation from the operation of the Painted Rock Dam has literally rendered the tribal lands within the reservation useless for agricultural purposes. Additionally, there has been a very high incidence of disease such as hypertension and kidney disorders because of the high salt content in the drinking water. Many believe this is attributable to flooding of lands in the entire Gila Bend area.

The Tohono O'Odam Nation has suffered both economically and psychologically because of the failure of the Federal Government to take action which could remedy this situation. As the trustee for Indian lands and people, the Secretary of the Interior has a responsibility to see that those residing in Indian country do not continue to suffer. This legislation will remedy the longstanding problems associated with the construction of the Painted Rock Dam.

The Gila Bend Reservation was established by President Chester Arthur in 1882 for the Papago Indians—currently known as the Tohono O'Odams—living in the Gila Bend area. Presently there are about 800 tribal members living in an area of approximately 10,297 acres. In 1949, the Secretary of the Interior approved an economic development plan for the Tohono O'Odam Nation which included the irrigation of 1,200 acres of farmland on the Gila Bend Reservation. About 3 months after the Papago Development Program was published, the Secretary of the Interior approved a request by the U.S. Army Corps of Engineers to construct a flood control dam on the Gila River 10 miles downstream of the Gila Bend Reservation. Before construction of the dam could take place, the corps had to obtain a flowage easement of 7,700 acres of reservation land from the Papago Tribe. However, prior to the tribe agreeing to the taking of its reservation land for a flowage easement, the corps went ahead with the construction of the Painted Rock Dam and completed the structure in 1960. At that time, the corps and the BIA indicated that there would be infrequent flooding of the reservation lands that would not impair the tribe's ability to farm the land within the flowage easement.

Three years later, the U.S. Geological Survey, after conducting an investigation of water supply and irrigation potential in the Gila Bend area, concluded that full operation of the Painted Rock Dam would inundate the entire Gila Bend Reservation. Consequently, the first major flooding of the reservation occurred in 1978–79 and reoccurred in 1981, 1983, and 1984. Each time the extent and duration of the flooding was much greater than anticipated when the dam was authorized. Eventually, the reservation became unusable for economic purposes. Dense salt cedar from the flooding grew larger, and the reservation lost all productive capacity.

Recognizing the economic difficulties facing the Tohono O'Odam Tribe because of the flooding, the Congress, when it enacted the Southern Arizona Water Rights Settlement Act of 1982, authorized the Bureau of Indian Affairs to conduct a study of the reservation and directed the Secretary of the Interior to find suitable lands for a tribal reservation. The BIA completed its study in October 1983 and found that because of repeated flooding, silt deposition and salt cedar infestation, the Gila Bend Reservation has become unusable. The Secretary's search to find suitable Federal lands to replace the reservation lands from within a 100-mile radius of the reservation proved unsuccessful. After many discussions with the Department of the Interior and attempts at negotiations for a settlement, the tribe came to Congress with a proposed legislative settlement. That settlement, although subtantially modified from the earlier proposals, is now embodied in the provisions of H.R. 4216.

The Gila Bend settlement will allow the Tohono O'Odam Nation to locate and develop 9,880 acres of replacement land to be held in trust by the Secretary of the Interior. The Federal Government will provide the tribe with $30 million plus interest for the purpose of obtaining replacement lands, $10 million will be made available to the tribe each year over a 3-year period. The replacement lands will be found in Arizona by the tribe but must be outside the corporate limits of any city or town and outside the boundaries of the counties of Maricopa, Pinal, and Pima. In exchange, the tribe will assign all rights to the 9,880 acres of land comprising the Gila Bend Reservation to the United States and waive all claims against the Federal Government for harm suffered by the tribe and its members. If private lands are acquired by the tribe, the Secretary of the Interior shall pay in-lieu taxes to the local governments.

While this may seem a large amount of money in these times of spiraling deficits, I am convinced that it will save the taxpayers millions of dollars in the long-run in litigation and lengthy court time. It will allow the Tohono O'Odam Nation to find suitable replacement lands and develop those lands for the economic well-being of its tribal members. It will also release the Government from any tribal claims to water from the Gila River. It is a fair and just settlement that has been hammered out by the tribe, Mr. UDALL and Mr. MCCAIN, and one which I feel is in the best interest of the tribe and the Federal Government.

I support H.R. 4216 in its present form and urge its adoption by the full Senate. Over 3 years of work have gone into this settlement and Congressman UDALL and Congressman MCCAIN have contributed substantially to bringing about this settlement. Additionally, Mr. Michael Jackson, professional staff of the House Interior Committee, as well as other staffs, have spent a great deal of time on trying to develop a fair and reasonable settlement. I want to thank my colleagues and the staffs involved for forging a compromise which is acceptable to this Senator.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 4126) was ordered to a third reading, was read the third time and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

PROVIDING FOR THE SETTLEMENT OF CERTAIN CLAIMS OF THE PAPAGO TRIBE OF ARIZONA ARISING FROM THE CONSTRUCTION OF THE TAT MOMOLIKOT DAM

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of H.R. 4217, dealing with certain claims of the Papago Tribe being held at the desk.

The PRESIDING OFFICER. The clerk will report the bill.

The assistant legislative clerk read as follows:

A bill (H.R. 4217) to provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolikot Dam, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and is open to amendment. If there be no amendment to be offered, the question is on the third reading and passage of the bill.

The bill (H.R. 4217) was ordered to a third reading, was read the third time and passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT AMENDMENTS

Mr. DOLE. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 3773.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendments of the Senate to the bill (H.R. 3773) entitled "An Act to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Science Foundation, and for other purposes", and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Fuqua, Mr. Walgren, Mr. Lundine, Mr. Lujan, and Mr. Boehlert be the managers of the conference on the part of the House.

Mr. DOLE. Mr. President, I move that the Senate insist on its amendments and agree to the conference requested by the House and that the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer appointed Mr. DANFORTH, Mr. GORTON, Mr. PRESSLER, Mr. HOLLINGS, and Mr. RIEGLE conferees on the part of the Senate.

PROVIDING FOR A TEMPORARY EXTENSION OF THE INTERSTATE TRANSFER DEADLINE FOR THE H-3 HIGHWAY

Mr. BYRD. Mr. President, on behalf of Mr. INOUYE, I ask unanimous consent that S. 2900, which is at the desk, be called up and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2900) to provide a temporary extension of the interstate transfer deadline for the H-3 highway

The PRESIDING OFFICER. Without objection the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 2900) was ordered to be engrossed for a third time, was read the third time, and passed as follows:

S. 2900

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Subsection 103(e)(4) of title 23, United States Code, is amended by inserting the following new sentence after the third sentence: "With respect to any route which on the date of enactment of the Federal-Aid Highway Act of 1978 was under judicial injunction prohibiting its construction, the Secretary may approve the withdrawal of such route only until ten days after the final legislative day of the 99th Congress of the United States."

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. DOLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

BILL HELD AT THE DESK—H.R. 5554

Mr. DOLE. Mr. President, I ask unanimous consent that once the Senate receives from the House, H.R. 5554, a bill dealing with credit unions, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

BILL HELD AT THE DESK—H.R. 5564

Mr. DOLE. Mr. President, I ask unanimous consent that once the Senate receives from the House, H.R. 5564, to amend the National Housing Act, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

BILL HELD AT THE DESK—H.R. 5488

Mr. DOLE. Mr. President, I ask unanimous consent that once the Senate receives from the House, 5488, to prohibit implementation of certain regulations of the Federal Emergency Management Agency relating to the declaration process, eligibility for assistance, and non-Federal responsibility for major disasters under the Disaster Relief Act of 1974, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

BILL HELD AT THE DESK—H.R. 4917

Mr. DOLE. Mr. President, I ask unanimous consent that once the Senate receives from the House, H.R. 4917, Depository Institutional Examination Improvement Act, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 1900

BILL HELD AT DESK—H.R. 4823

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate receives from the House H.R. 4823, dealing with immigration and nationality, it be held at the desk pending further consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

BILL HELD AT DESK—H.R. 5558

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate receives from the House H.R. 5558, to amend the Immigration and Naturalization Act, it be held at the desk pending further disposition.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE CALENDAR

Mr. DOLE. Mr. President, I inquire of the distinguished minority leader if he is in a position to consider either or both of the following nominations on the Executive Calendar: Calendar No. 1049, William R. Graham, and Calendar No. 1050, Dale D. Myers.

Mr. BYRD. Mr. President, there is no objection on this side to the consideration of either of the two nominations referred to by the majority leader.

Mr. DOLE. I thank the minority leader.

EXECUTIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the two nominations referred to.

There being no objection, the Senate proceeded to the consideration of executive business.

The PRESIDING OFFICER. The nominations will be stated.

Mr. DOLE. Mr. President, I ask unanimous consent that the two nominations be considered en bloc and confirmed en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations are considered and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

EXECUTIVE OFFICE OF THE PRESIDENT

William R. Graham of California, to be Director of the Office of Science and Technology Policy, vice George A. Keyworth II, resigned.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Dale D. Myers, of California, to be Deputy Administrator of the National Aeronautics and Space Administration, vice William Robert Graham.

Mr. DOLE. Mr. President, I ask unanimous consent that the President be immediatley notified that the Senate has given its consent to these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I move to reconsider the vote by which the nominations were confirmed en bloc.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate return to legislative business.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR TOMORROW

RECESS UNTIL 8:30 A.M.

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 8:30 a.m. on Thursday, October 2, 1986.

The PRESIDING OFFICER (Mr. HELMS). Is there objection? Without objection, it is so ordered.

PERIOD FOR ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that, following the recognition of the two leaders under the standing order, there be a period for the transaction of routine morning business not to extend beyond the hour of 9 a.m., with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

At 9 a.m., the Senate will resume consideration of House Joint Resolution 738, the continuing resolution.

By a previous unanimous-consent agreement, at 2:15 p.m., the Senate will resume debate on the veto message to accompany the South Africa bill. At 4 p.m., a vote will occur on the question "Shall the bill pass, the objections of the President to the contrary notwithstanding?"

Following the vote on the veto message, the Senate will resume consideration of the continuing resolution. I am advised by the distinguished chairman [Mr. HATFIELD] that votes will occur throughout the session on Thursday and a late night is expected.

□ 1910

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, earlier I had asked unanimous consent that the debate on South Africa start at 6:30. I would amend that request, that it start at 7:10, so that none of that time between 6:30 and 7:10 will be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. And then I would ask unanimous consent that at the hour of no later than 11:15 p.m., after the debate on the South African veto, and debate only, the Senate stand in recess until 8:30 a.m. on Thursday, October 2, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I just want to make doubly sure. Under the orders this time is to be allocated for the purpose only of debate, and even if the time were to run out and there were 5 or 10 minutes somewhere loose, no motion could be made this evening; am I correct?

Mr. DOLE. That is correct.

Mr. BYRD. No motion, nothing but debate.

Mr. DOLE. Debate. And I would also indicate, if we conclude debate by 9:30, we could leave at 9:30.

Mr. BYRD. What was the hour, the latest hour?

Mr. DOLE. 11:15.

Mr. BYRD. 11.15. I thank the majority leader.

COMPREHENSIVE ANTI-APARTHEID ACT OF 1986—VETO MESSAGE

The PRESIDING OFFICER. The Senator from South Dakota [Mr. PRESSLER] is recognized under the previous order.

Mr. PRESSLER. Mr. President, I open this debate on the South African question with the strongest feeling that the President of the United States is right. I know this vote that we will be taking tomorrow is viewed by many as a civil rights vote domestically, and that is unfortunate, because we must submit the South African question to the rigorous analysis of a foreign policy vote and not have it be interpreted merely as a domestic civil rights vote.

Certainly, we are all very interested in civil rights. We all want to see apartheid ended, and I know that the President of the United States wants to see apartheid ended. It is a matter of how to accomplish that end.

It is my personal feeling that economic sanctions will prolong apartheid. I am supported in this belief by Mrs. Helen Suzman, one of the harshest critics of apartheid in South Africa over the last few decades. I refer you to her excellent article in the Sunday New York Times Magazine in August. In this debate there are some who have taken a rather sanctimonious approach and have said that apartheid is so bad; therefore, let us have economic sanctions. It is bad, and it should be changed, and let me make it very clear that I have never suggested that apartheid should not be ended. I am convinced that this country should send as many signals as it can to end apartheid in South Africa, but it is my strongest conviction that economic sanctions will not accomplish that. It is also my strongest feeling—and I agree with Margaret Thatcher—that economic sanctions could certainly be counterproductive in this particular area of the world.

Mr. KENNEDY. Will the Senator yield for a question?

Mr. PRESSLER. I would rather give my presentation. I have a statement regarding the Executive order, but if the Senator's question is a brief question——

Mr. KENNEDY. I do not want to interrupt the Senator's presentation. I would hope, listening to him at the outset talk about the questions of sanctions, perhaps the Senator would distinguish his own position in opposing sanctions in South Africa and his supporting this President on sanctions in Nicaragua or supporting economic sanctions against Libya or against countries in Eastern Europe such as Poland. If the Senator has supported economic sanctions in those circumstances, I would hope——

Mr. PRESSLER. I appreciate very much——

Mr. KENNEDY. As he expressed his view, I think it would be valuable for those of us who take a different position if he would be able to spell out the reasons and the justifications for it.

Mr. PRESSLER. I shall be happy to do so. In fact, ironically enough, I have opposed sanctions in many cases including the grain embargo and in many other areas, but I will be getting into that later in my speech. I am going to present the material that I have and I will be delighted to engage in debate, but I do want to read from the President's Executive order. I do want to state my case and I will be listening to my colleagues later and I very much appreciate their interest.

MORALITY REQUIRES REFLECTION—NOT IMPULSE

The greatest religious and social philosophers over the past 2,000 years have emphasized that theme on every major issue requiring rigorous thought. I hope we can give equal care to this major foreign and domestic issue currently facing the United States: South African sanctions.

It seems to me that morality—true morality—requires reflection, not impulse.

There is nothing inherently just in provoking unemployment, confrontation, and bloodshed in South Africa, yet we would surely do all these things by passing this legislation.

By the same token, there is nothing moral in punishing those we seek to help. This bill does this in dozens of ways.

Morality in our Western tradition is not rooted in pious preaching. It is based on reason and vindicated by example. If we truly care about the plight of South Africa, then we must exercise reason and act compassionately. Let us not be like the hypocrites of Biblical times. Let us, then, do what is right and not what is simply pious and expedient.

I know that there is ample pressure to take quick and forceful action and that an easy answer might be to acquiesce to that pressure. I do not believe, however, that precipitous action in the Senate to override the President's veto is in the best interests of the United States, of South Africa, or of the region.

There are three basic assumptions that we have been operating under that are wrong in terms of the way the media has reported the South African issues and in terms of the way that the issues have been framed by those who support economic sanctions.

First of all, there is an assumption that economic sanctions will force the Botha government to move to the left. Based on my visit to South Africa and based on my participation in hearings, it is my feeling that the Botha government would in fact, move to the right. The main political threat to the Botha government comes from the right, not the left. I think that the South African Government would become more repressive and that apartheid would be ended in a much slower manner if we had harsh, punitive economic sanctions.

A second assumption that is thrown about in our media and in our discussions is that the civil rights movement in the United States in the 1950's and 1960's is analogous to what is going on in South Africa. There are some analogies, but there are many differences. For example, there is a great deal of difference in the philosophy of the Oliver Tambos of South Africa and of Martin Luther King. The African National Congress is engaged in the "necklacing" of people; that is, putting a tire around their necks, filling it with gasoline and lighting it as a means of execution of those, usually other blacks, who do not agree with them. Moderate blacks are being executed by the blacks of the African National Congress. That is quite a different philosophy. The African National Congress is not interested in democracy and free elections. When it comes to power, if ever it does, we will see a totalitarian Communist state. We should realize what we are dealing with and take a very careful look at the African National Congress.

A third assumption we are operating with is that it is believed by many that the conflict in South Africa is the whites versus the blacks.

It is much more complicated than that—I have a map of South Africa here that I hope to refer to later in this debate—in South Africa there are many competing groups: The Afrikaners, the whites of Dutch descent; those of English descent, so-called coloreds; those of Asian descent; and upwards of a dozen separate black groups.

Mr. DOLE. Mr. President, I wonder if the Senator from South Dakota will yield for a question.

Mr. PRESSLER. Yes, I yield to the majority leader.

Mr. DOLE. I have heard reports the last several days, reliable reports that the South Africans were about to announce that they would, if sanctions are imposed, which I think is one of the consequences we ought to consider, immediately stop buying American grain, wheat, and corn. I assume that is a matter that everyone will consider tomorrow when they vote on whether or not to sustain the President's veto. But they have bought in the past substantial quantities of wheat and corn from the United States.

□ 1920

I am not suggesting that that in itself should make the difference, but I do believe it makes the point that if we are going to impose sanctions in excess of what the President suggests, there may be some consequences that people in our States, farmers, will have to deal with.

Mr. PRESSLER. I appreciate the majority leader's statement. I certainly would not vote with the President solely for that reason.

Mr. DOLE. No.

Mr. PRESSLER. That point leads to another point, and that is that if the economy of South Africa is destroyed, it would not be able to buy anything from the United States or from our allies. They pay cash for corn and wheat. They also affect the economic stability of Mozambique and all the other surrounding States in the region. Most of the commerce for the entire region moves in and out of South Africa. Oddly enough, with all the problems that South Africa has, people want to emigrate from those countries into South Africa, where there is a higher standard of living, higher medical care, and much better wages—not to mention hundreds of thousands of jobs that the region cannot produce or sustain.

In my visit to South Africa, it seemed to me that the groups most against apartheid were the businessmen. They have a constructive impact on the government. Yet, with this sanctions bill, the businessmen groups would be destroyed. Such damage to the business sector would be extremely serious, for they provide key services to the people, and they buy and sell and provide the highest standard of living in Southern Africa, if not in Africa.

We should think about that, because if the South African economy is destroyed it will be exactly what the African National Congress wants. They want chaos in South Africa, and we will be forced to mount a massive aid program to feed people in that region of the world—if these sanctions are carried out to the fullest extent. South Africa will not be able to buy anything, if the full wishes of those on the other side, those who advocate these sanctions, are carried out.

Mr. DOLE. I certainly share the views expressed, for the most part, by the Senator from South Dakota. I agree that this would not be enough in itself. I think we should be alert that things will go forward from what we do. Maybe it should make no difference. Maybe we have made a judgment that no matter what happens, this will not wreck the American farm economy. No one will believe that. But I believe we should be fully aware of that when we make the judgment that we are going to go beyond what the President of the United States may recommend; and I must say that I think his letter outlines a rather stiff policy so far as South Africa is concerned and so far as apartheid and the Botha government are concerned.

When we start going beyond that—and they do not care for what the President has done, either—then we may be asking for some problems that we are not aware of.

Mr. PRESSLER. I say to the majority leader that I do have the President's letter to the majority leader, and I shall be reading the President's proposed steps, which I think send a clear signal that they will not destroy the economy of that country in such a fashion that would just lead to chaos—as this bill clearly would.

(Mr. WALLOP assumed the chair.)

Mr. HELMS. Mr. President, will the distinguished Senator from South Dakota yield to me briefly?

Mr. PRESSLER. I yield for a question.

Mr. HELMS. I am not sure I can handle it with a question. I suggest that the Senator ask unanimous consent that he yield for a further comment about the distinguished majority leader's comments.

Mr. KENNEDY. Mr. President, reserving the right to object—and I do not want to object to exchanges——

Mr. HELMS. I will ask the Senator a question, rather than engage in a discussion with the Senator from Massachusetts.

Mr. PRESSLER. I yield.

Mr. HELMS. Is the Senator from South Dakota familiar with the history of purchases of United States wheat and feed grains by South Africa?

Mr. PRESSLER. I am generally aware, but I would appreciate it if the chairman of the Agriculture Committee would insert that.

Mr. HELMS. Is the Senator aware that in 1982 and 1983, for example, it was about 200,000 tons of corn; in 1983 and 1984, 2,700,000 tons of corn; 900,000 tons of corn in 1984 and 1985; 300,000 tons of wheat in 1985 and 1986; and that South Africa had contemplated going even higher than that in 1987 and thereafter?

As a matter of fact, is the able Senator from South Dakota aware of the article in Wednesday, September 17, 1986, Journal of Commerce, headed "S. Africa Likely to Become Major Mart for U.S. Wheat"?

It is a very enlightening analysis of what some in Congress and elsewhere are doing to shoot the U.S. farmers in the foot, people who so selectively raise their indignation. Many of the people who are so piously indignant about South Africa, seldom have a mumbling word to say about Communist countries. As a matter of fact, they object to sanctions against Nicaragua, for example, but insist on sanctions certain to create chaos in South Africa.

I have heard Libya mentioned on this floor this evening, about Libya, a non sequitur if ever one was ever uttered in this Chamber.

If the Senator will yield further for a question, is he aware of this paragraph in the article published by the Journal of Commerce? It reports that South Africa will need to import between 19 million and 37 million bushels of wheat in 1987, and that if South Africa were to buy the 37 million bushels from the United States, it would become the fifth or sixth largest customer for wheat produced by United States farmers?

I say to the Senator from South Dakota that the Foreign Minister of South Africa this afternoon called me, and several other Senators, including the distinguished ranking minority member of the Agriculture Committee, Mr. ZORINSKY. The Foreign Minister said that until this point, his Government had been able to reason with the farmers of South Africa, who are indignant about the actions of the United States Congress with respect to sanctions. They resent this intrusion into the affairs of their country. Therefore, they were able to proceed with the purchase of U.S. grain. But he said to me: "Senator, I can't hold them off any longer. We'll have to announce that we must cease to purchase U.S. grain from the United States if the President's veto is overridden."

I thank the Senator for yielding.

Mr. PRESSLER. I thank the Senator.

Mr. KENNEDY. Let me——

Mr. PRESSLER. I will not yield further at this time.

Mr. KENNEDY. I understand that you yield to certain ones and not to others, even on this issue. I am trying to find out whether we are going to debate tonight.

Mr. PRESSLER. I do not yield.

The PRESIDING OFFICER. The Senator from South Dakota has the floor.

Mr. PRESSLER. Mr. President, let me continue by saying that another assumption about South Africa is that if there were a civil war there, it would be strictly blacks against whites. The situation is much more complex. There is a colored minority. There is an Asian minority. There is Chief Buthelezis, tribal group, the Zulus. He is the leader of the largest black political party in South Africa, and he is opposed to sanctions, and he is a black leader elected by the largest black political party in South Africa: InKatha.

□ 1930

We do not hear much about this in our news media, and I think that the Senate of the United States should be aware of it.

Also, Mrs. Sussman, who is a liberal Member of Parliament and a strong opponent of apartheid, has written an indepth article stating our oppositions to sanctions. It argues persuasively that sanctions will probably cause apartheid to last longer.

There is also an assumption that the current Government of South Africa will cut and run, so to speak. That is not my judgment at all. In fact, under the kind of pressure that people are talking about, I think it would become more repressive. I should mention again that I am not a supporter of that Government. I think that there is a need for reform and improvement in that country as there is in many other countries.

(Mr. HELMS addressed the Chair.)

Mr. PRESSLER. So, I urge my colleagues to listen to the eight reasons why I will support the President in sustaining his veto. I find these arguments extemely convincing, and I suspect my colleagues will also. Let me add that there has been much discussion today since the President is going to Iceland to meet the Soviet leader, and that he should be given a victory here to show he is in charge of foreign policy. That is certainly true. But that is not the underlying reason that I take the position that I am taking.

Also, there is talk that South Africa will buy more wheat from us, and so forth. That is important and we need to consider that, I come from a farm State; but, that is not the basic reason why I am supporting the position that I am today.

I am supporting the President because I believe he is right in this case. It was the same position that I took in the Foreign Relations Committee and the same position I took on the Senate floor long ago.

Let me summarize for you the eight reasons I have for supporting the President.

Let me say, first, that I very much admire the grace with which Senator DOLE has approached this very difficult situation. I thank him for the attention and consideration he has given to all on both sides of this issue and I think he has done an excellent job.

I would also say that I have the greatest respect for my esteemed colleague, Senator LUGAR, and I value the contributions he has made as our chairman, but I find myself in disagreement with him on this particular issue.

I have been a persistent opponent of apartheid throughout my entire career in Congress, and I remain a strong opponent of apartheid.

However, we must consider that if we do not sustain this veto I am convinced that the legislation will harm America's interests and will cause great suffering for nonwhites in South Africa. This legislation is also likely to wreak havoc with the economies of South Africa's neighbors. Similarly, while we are struggling for the most sensible and useful policy, I hope that we will not take steps that would undermine our constitutional powers and the time-honored relationship between the President and Congress.

Specifically, there are eight serious problems that I see with this legislation.

1. PUBLIC OPINION HAS BEEN MISREPRESENTED

First, pubic opinion has been misrepresented. No matter how great our concern, Congress cannot micromanage foreign policy. I know that there is ample pressure to take quick and forceful action and that an easy answer might be to acquiesce to that pressure. However, I also know that public pressure is not overwhelming. As I mentioned, 70 percent or more of the American public has consistently stated in opinion polls that they do not support punitive economic sanctions that would damage the South African economy and take away nonwhite jobs. Similarly, opinion polls taken of South African blacks consistently show that they do not support sanctions if sanctions mean that they will suffer economic hardships.

If the American public has not pressured Congress for punitive economic sanctions, and punitive economic sanctions are not wanted by the poor blacks in South Africa who would suffer, what right do we have to destroy that economy and throw those blacks out of jobs?

2. FURTHER SANCTIONS WON'T BRING DEMOCRACY

Second, further sanctions will not bring democracy. My second reason for supporting the President's veto concerns the logic and morality issues that I spoke about earlier. Proponents of sanctions assume that further economic sanctions will force the Pretoria government to cede power. I am convinced that that is a dangerous assumption, one that is simply not borne out by the facts.

Anyone who really knows the Botha government and has seen the massive South African military machine and its all-pervasive secret police knows that the South African Government will not be economically pressured into ceding power. More likely, in fact, another scenario: inflation in South Africa would rise, unemployment becomes crushing for nonwhites, security is tightened, repression is enhanced, and violence is heightened. That is what I think would happen. Mrs. Sussman, by the way, takes a similar view.

I cannot be responsible for such an immoral fiasco of a pious policy. Anyone who charges that harsh punitive actions are the only moral course of action open to America is dead wrong. Indeed, the President of the United States has proposed an alternative course, which I think is much better.

The truly moral action is a far harder one to undertake, because it means permanent engagement of an active sort. It means devising positive inducements, harsh diplomacy, and active negotiations, not simply washing one's hands and doing economic murder from 10,000 miles away. The United States should not and must not induce more violence in South Africa.

3. SANCTIONS WILL ELIMINATE BLACK JOBS

Third, sanctions will eliminate black jobs.

The third reason why I will support the President is a very basic one. Frankly, I am worried about putting more nonwhites out of work, and the resulting violence that is bred among hungry people with no jobs. Thousands have already lost their jobs over the last 18 months as the South African economy has suffered blow after blow: Bans on major bank lending, Western sanctions, and a crisis in the investment climate.

I am also worried that those who assert that new sanctions will not hurt many blacks are deceiving themselves.

Let me set the problem up as a logical argument: If sanctions will not hurt, why impose them? If they will cause great damage, then we must detail the cost: in jobs loss, educational expenditures cut, and more people starving. Very few of those who support sanctions have ever bothered to vigorously count the consequences of their actions.

Where is their moral accountability to match their moral fervor? I think that that is something we need to think about very much.

Everybody says we have to do something; let us put sanctions on. But, have we vigorously analyzed what the results will be? Have we really carefully looked at the impact that this will have on the poorest people in that country, the people whom we would like to help out?

4. SANCTIONS WILL HEAVILY DAMAGE SOUTH AFRICA'S NEIGHBORS

Fourth, sanctions will heavily damage South Africa's neighbors. Look at the map here. I think that the countries that would be most hurt will be Zimbabwe, Mozambique, Botswana, Swaziland and Lesotho among others throughout the southern African region.

I predict that if we do go along this path of putting economic sanctions on, the time will come when the United States will be called upon for a massive aid program. It will be our fault, so to speak, because the region will not have a viable transportation system, the people will not have food or medical supplies. These harsh economic realities we will be creating, and imposing on people, are something that should be considered in a vigorous analysis of the results of economic sanctions.

The fourth reason why I support the President is as I mentioned, the fact that sanctions will heavily damage the whole region in terms of its economic ability to take care of its people.

This is another terrible cost to these sanctions that most of those who wish to impose sanctions discount. These sanctions will cause long-term structural damage throughout southern Africa.

Southern Africa is the most closely interrelated economic system in the world. South Africa's 10 immediate neighbors and its 90 million people are directly dependent upon South Africa for telecommunications, passenger and export rail transport, many key road transport systems, legal or illegal employment of approximately 1.5 million people, food shipments, agricultural assistance, health care, and animal disease control.

I might add that when I was in Zimbabwe, it was pointed out to me that the only place one can fix a jet aircraft engine in the region is in South Africa. This is just an illustration, but if that economy is destroyed, what effect will it have on medicine, food supply, and telecommunications?

In addition, South Africa coordinates the customs systems of three states in the region and is directly or indirectly responsible for more than 50 percent of the GNP of five neighboring states. We should think very carefully about that. It is directly or indirectly responsible for more than 50 percent of the GNP of five neighboring African states.

During the sanctions debate in the Foreign Relations Committee, I indicated that the direct or indirect costs of sanctions on South Africa's neighbors could be a billion United States dollars or more. Calls have already come from the administration and from Congress to introduce legislation costing at least $500 million to help South Africa's neighbors. The taxpayers of this country should be aware of that.

Already it has been estimated that if the sanctions were to go into effect, as some of my good-intentioned friends suggest, are carried out, we would have to produce at least $500 million in aid to sustain South Africa's neighbors. Yet, only the other day we were unable to produce $200 million for our ally the Philippines. Thus, I think we need to look very carefully at what we are doing to some of our friends in that part of the world, and consider the fact that we probably won't have the means to put "humpty-dumpty" back again once we've pushed him off the wall.

Is it wise for Congress to unilaterally take a step with a price tag of at least $500 million without looking at every possible alternative.

Similarly, if aid is not provided to the region, and it may not be, given Gramm-Rudman and the budgetary deficit we have, who will feed and care for those 120 million people?

No one introducing this or other sanctions legislation can quantify that. We have not heard the rigorous analysis from our friends of that question, and I would hope that we will before any American votes to impose them.

It is clearly not the intention of this body or the drafters to subject South Africa's neighbors to hardship as a result of South Africa's racial policies, but I bring this issue up because I think that we have to consider the whole region of southern Africa. Frequently this particular debate is framed in a domestic civil rights context, and not in the context of the impact of sanctions on poor blacks, colored, Asians, and the whites of not only South Africa but also of the region.

□ 1940

So, I hope that Senators will rigorously analyze the entire picture. This question too often comes up as a throwaway domestic civil rights vote, very frankly, without any downslide to it. And one can prove how much they are for civil rights by voting for sanctions against South Africa. Logically, however, one does not follow the other, if the issue is rigorously analyzed, particularly if we assess what the economic sanctions will do.

Given the massive difference in per capita income between South Africa and its neighbors, and given the recent and extended drought in the region that has caused massive starvation, it is both prudent and moral to consider that food shortages might be the result.

We have a moral obligation to consider that food shortages in that region will result. South Africa is already importing its food, and South Africa's neighbors are starving. This is certainly a moral question.

The food situation in South Africa could become more precarious in the near future.

The drought has ended in most regions, but plentiful rainfall has brought a new curse—the worst locust and grasshopper infestation in 60 years. The United Nations lists six countries in Africa as still facing famine emergencies, and three of these are in southern Africa: Angola, Botswana, and Mozambique. A single swarm of the four African locusts now hatching have been known to devour as much as 80,000 metric tons of cereal crops a day—or enough food to feed 480,000 people for a year at emergency ration levels. The locust danger swarming out of Botswana when the rains come in October could last 3 to 4 years—this is the region that I am speaking of, just north of South Africa, in Botswana. It is expected to severely threaten crops in Botswana, Zimbabwe, Zambia, Namibia, and Angola.

Do we really want to put 120 million people in jeopardy by leaving them open to South African retaliation? Although retaliation might be too harsh a word. South Africa may not be able to provide the services it traditionally offers that area, because it will lack the economic wherewithal to do so if sanctions are imposed.

Do we really want to deprive the South African economy—which feeds the region—from the wherewithal it needs?

5. EUROPE HAS BACKTRACKED SIGNIFICANTLY

A fifth reason that I support the President in this area and oppose economic sanctions relates to what Europe has said on the issue. I do not feel that I am led around by Europe, but I think the opinion there should be considered. For example, Margaret Thatcher has been very courageous in pointing out that economic sanctions will not achieve the goal of mending apartheid; indeed, the result may be just the opposite.

There is a major misperception of public pressure from abroad. In August, the Congress was pressured to move quickly with harsh punitive sanctions because, it was argued, "Our European allies were taking the lead." Wait a minute. Are they really? It was argued that Europe was for sanctions, yet, over the last 6 weeks, it has become clear that the debate over sanctions in Europe primarily turns on protectionist concerns, a stand that the free-trading United States cannot and must not support.

What has happened in Europe most recently? The European Economic Community has dropped the controversial coal sanction—because they stand to lose too much—and they have left iron and steel in because they buy so little from South Africa. Similarly, they are adamantly against restrictive landing rights, from which they benefit so much. Indeed, the argument for sanctions has been led by the small European Economic Community states, ones with no experience or relationship with South Africa and with no trading ties. It is fairly easy to be for sanctions in that situation.

Not only have cooler heads prevailed in Europe and the pressure for punitive sanctions is abating, but many sanctions supporters are revealed for what they are: Protectionists first, moralists second. This is hardly a justification for the U.S. Senate to use as an example. Rather, we should face up to the realities of the situation, and not use European "pressure" as a cloak for precipitous and dangerous actions. Similarly, we cannot cloak "protectionist" actions taken against South Africa with "morality."

6. THE SPECTER OF RETALIATION

A sixth reason that I support the President of the United States in this veto debate concerns the specter of retaliation. I would hope that South Africa would not retaliate against its neighbors or against the United States, if the United States imposes harsh and punitive economic sanctions. And let me say that I hope that if Pic Botha has called Members of the Senate today, I would question the effectiveness of that tactic. And if I were asked my opinion, I would encourage against it. However, if he has called and said that South Africa will not buy any further grain at some point, I hope and trust that his remarks are couched in language that indicates that it is unable to buy grain, because of economic difficulties and not as a threat. Because I am uncomfortable with the specter of retaliation.

Although I do not advocate it, it is my judgment that the Afrikaner determination would cause them to retaliate, rightly or wrongly. But they are a very determined people and they are not going to cut and run, because they have no place to cut and run to.

Maybe the Anglo South Africans can go back to England, but the Afrikaners are there to stay, and the only way they will leave is to die. They are ingrained there; it is their home. There would be much bloodshed before anything of that sort were to happen.

Thus, it is my judgment that the Government of South Africa will probably retaliate if there are sanctions. I should stress that I am not advocating that, but my judgment of their government is that they would.

Countless states in the past have taken similar actions, and a state pushed against the wall will often forgo diplomatic niceties for a tough response.

What could South Africa do to the United States? First and foremost, it could retaliate against us using our strategic minerals dependence on South Africa.

Would they use such a form of retaliation? It is quite likely, as strategic minerals only account for 4 percent of their foreign exchange earnings, while the United States and the West in general is highly dependent.

Let me refer you to a new report issued by the Department of Interior called "South Africa and Critical Minerals." It is a report that should be read by Members of this body. I introduced it during the debate in the Foreign Relations Committee. It was issued in July 1986. It is my strong feeling that it should be included in our analysis tonight.

It quantifies, for the first time in an unclassified source, the costs to the U.S. economy of a disruption in southern Africa supplies of strategic minerals in the following areas: Direct costs to U.S. consumers by mineral losses in U.S. gross national product, and the decrease in U.S. jobs associated with gross national product losses. Data on Japanese and EEC losses if also provided.

Why is this relevant in the current debate?

Serious strategic mineral supply disruptions are well within the immediate realm of possibility, and their consequences for the American, European and Japanese economies should be considered rigorously.

South African supply disruptions could occur as a result of any of the following:

Retaliation as a byproduct of Western sanctions; labor unrest/strikes; guerrilla attack (the ANC has recently announced that such installations will not longer be eschewed; major unrest, with a breakdown in infrastructure; and a successor regime less inclined to sell to the United States and its allies.

My greatest fear now is retaliation. If they would only lose 5 percent of their foreign exchange, they might do it.

U.S. capabilities to respond to a strategic mineral supply disruption are far less than most Members of Congress and policymakers know. Why?

First. Admit it or not, the United States, Europe, and Japan are heavily dependent upon southern Africa in certain of these strategic areas.

Second. Strategic stockpiles not available short of war. The U.S. strategic reserves cannot be used, except in a national emergency (generally interpreted to mean a "war") and on the President's order. The law specifically states that they are not intended to be used to respond to economic disruptions.

Third. Stockpiles are grossly inadequate. With the exception of platinum-group metals [PGM's], U.S. supplies of chromium, manganese and cobalt "wouldn't make much good road fill," in the words of a senior Bureau of Mines official. That is a very serious matter. Citing poor quality control, years of degradation, and excessive past sales, the "only strategic stock worth its name is $70 million worth of cobalt bought 3 years ago.

From that point of view, we should think very carefully about our country's strategic supplies in rigorously analyzing what economic sanctions may do. Yet, what we usually hear is something quite different: a highly emotional moralistic equating of the 1960's civil rights movement to the current situation in South Africa.

I want the Senate to rigorously analyze what is really going to happen if these sanctions are put on, if they are carried out to the nth degree. It will be just the opposite of what some of my moralistic friends hope.

Fourth. Virtually all stocks are slated to be sold. Under the President's proposal to "modernize" the national defense stockpile, announced in July 8, 1985, U.S. strategic stocks will be drawn down from approximately 16 billion dollars' worth of key commodities to approximately $700,000. Another "supplemental stockpile" of $5 billion has been suggested, but is not provided for in any law and is not part of the official plan. Implementation studies are proceeding.

Fifth. Insufficient legal and regulatory authority to exploit domestic reserves. The Department of Interior lacks legislative authority to develop ocean floor deposits off of U.S. territories. Thus, it cannot exploit Johnson's Island, the only U.S. ocean site of current interest for major offshore mineral development. Also, Interior lacks the regulatory authority to develop hard mineral capabilities. Without legislation and regulatory authority, which it has been seeking over the past 3 years, the United States would be greatly delayed it it had to shift to domestic exploitation of mineral reserves.

Sixth. The United States is rapidly losing ferroalloy processing capabilities. The United States is rapidly losing its ability to process strategic minerals, even if it uses its stockpiles or is able to buy from abroad. Over two-thirds of U.S. ferroalloys are currently purchased or processed aboard. Most of our major ferroalloy plants have been moved offshore, including Union Carbide's plant to South Africa. A disruption of supplies from South Africa would cause immediate shortages in ferrochromium, ferromanganese, silicon metal, and ferrosilicon. Europe and Japan have an even more limited capacity, with processing restricted to three plants—one in Japan, one in Germany, and one in Norway.

A complete cutoff of chromium from South Africa lasting 3 years—assuming a 90-percent cutoff from Zimbabwe due to its ore transport on South African railways. The direct cost to U.S. domestic consumers has been estimated by the Bureau of Mines in July 1986 at $3.6 billion. Assuming maximum conservation and substitution, the shortfall of chromium would reduce both intermediate and final product production during the 3-year period. The estimated impact on U.S. GNP resulting from the constraint imposed on domestic production would be $8.7 billion in the first year with over 296,000 jobs lost; during the second year, the GNP loss would be $4.6 billion and about 100,000 jobs; during the third year, GNP losses would be approximately $1.9 billion with about 41,000 jobs lost. A 3-year loss would cost $18.8 billion and 437,000 jobs.

A complete cutoff of manganese from South Africa: Direct costs to U.S. consumers of a cutoff of South African manganese would be approximately $1 billion. There would be little or no effect upon GNP or employment.

A complete cutoff of the platinum group metals and cobalt would be extremely serious, although dollar value estimates are not yet available. In fact, many GAO and Bureau of Mines estimates view the cutoff of these materials as more serious than the loss of chrome, as there are no U.S. domestic supplies of the platinum-group metals.

The Department of Interior has just released a major study on this issue and the consequences are shocking.

If we lost South Africa chromium alone, the cost to the United States economy over a 3-year period would be $18.8 billion and 435,000 jobs. Of course, this is only one of many strategic minerals that the United States imports from South Africa.

So to conclude that point, on strategic materials, I hope that this Senate makes a rigorous analysis of the impact of what sanctions would do to the region. Some optimists believe that simply by destroying the economy of South Africa, we would suddenly see all sorts of wonderful things. I believe, however, that many bad things would happen to the United States and to South Africa, not to mention to other countries.

Before leaving that point I might add there was in the original sanctions bill a provision to urge the President to sell our gold, and by so doing, to destroy the world's gold market. It was intended to hurt South Africa. I offered an amendment to delete that provision. I think that the Senate was very wise in taking that section out because, upon analysis, it was found that the United States gold mines and those of our other allies, such as the Philippines, would be badly hurt. The United States produces gold at a much more expensive level, and it would thus, be damaged by such a move. We would be hurting ourselves by putting people in our country out of work, putting people out of work in our allies' countries, and probably not hurting the South Africans much at all. Fiascos such as this make it clear that this whole sanctions bill has not been rigorously analyzed. We really must do so.

7. GREAT PROGRESS HAS BEEN MADE THAT WE MUST NOT FORGET

Not one of the so-called pillars of apartheid has been left untouched by the Botha reform program. Over the past 7 years, great progress has been made in virtually every aspect of nonwhite life. The formerly all-white Parliament has been integrated through the creation of separate chambers for "colored" and Asian citizens, and the next session of Parliament will continue the process by calling for all members of Parliament—white, colored, and Asian—to debate all measures together. The pass laws have been abolished, with 19 million blacks allowed free movement throughout the Republic. Blacks have been given the right to freehold tenure in the formally white areas, and there has been a sevenfold increase in expenditures on black education.

I might add, as a former Rhodes scholar that I am serving on the board of directors of a group of former Rhodes scholars from throughout the world who are trying to improve education in southern Africa. In an earlier bill we passed increased expenditures on black education, and I viewed this as the sort of constructive impact we can have on South Africa. All American actions can not be punitive—more of them really should be positive.

The prohibition of the Immorality and Mixed Marriages Acts have been repealed. In addition, Botha has recently established a "statutory council" whereby blacks and whites can "advise" the Government on further constitutional reforms.

Given the fact that apartheid took nearly 20 years to put into effect, and encompasses some 4,000 regulations, I do not think 5 years to dismantle its most egregious provisions is too much.

Progress is being made. I wish it were being made faster. But we must recognize that it is being made.

I also believe that the South African Government deserves time to make further improvements. Let me remind my colleagues that our own country was not made over in a day, and that we have had and still have problems in the area of race relations. I also believe that they deserve time to make further improvements.

Serious unrest, sparked at least in part by the economic downturn of 1984, has further exacerbated the economic crisis in South Africa. Black unemployment in many urban areas is estimated at 50 percent, and even white unemployment is rising. Some foreign companies have already shut down their operations in South Africa.

South Africa has a total foreign debt of $24 billion, and felt forced to declare a unilateral moratorium on debt repayment, largely due to the severe effect of a decision by major United States banking houses to cut off further loans.

☐ 1000

Western sanctions have further eroded investor confidence in South Africa, and contributed to a precipitate fall in the value of the rand over the last 18 months.

Great damage has already been done to a budget that had scheduled massive increases in spending for nonwhites. For the last 2 years, the South African Government has been spending more on black education than it has on its national defense.

Mr. President, let me repeat that, because I think it is very important. For the last 2 years, the South African Government has been spending more on black education than it has on its national defense.

Thus, we must surely encourage Botha's government to continue these major reforms. Yet, with greatly increased pressure on the economy, many of these expenditures are in doubt.

Indeed, as we toy with imposing severe economic sanctions, few of us realize that we would doom massive South African expenditures for nonwhite education, health care, and job training.

My last reason for supporting the President, and there are many, and I have one more, is No. 8.

8. IMPLICATIONS FAR BEYOND APARTHEID

Of equal importance are the profound, but unintended, consequences of this act. I would have to vote against it for this reason alone, because the consequences are so serious.

Many provisions of this bill have implications far beyond what was ever intended by the drafters. There are several examples that I could point to, but perhaps most importantly, is the recourse to section 301 of the Trade Act of 1974 for retaliation against our allies if they do not match our sanctions; such action could initiate a vicious round of trade wars against our NATO allies. Is this intended? I certainly hope not; yet, it would be the consequence of this rash act.

Similarly, the ambiguity in the ban on parastatals could affect more than 3,000 entities in South Africa, including cooperative efforts by black businesses and Western states. Do the authors of this bill really want to wipe out over 40 years of success rebuilding black businesses, black foundations, black self-help plans? Well, they will. The bill could also wipe out 48 percent of South Africa's hard currency exports and perhaps millions of jobs. Was the ambiguity in the bill deliberate? Even if it were not intended, the consequences would be disastrous.

Likewise, upping the ante to sanctions on strategic minerals seems almost inevitable with this legislation, with tragic consequences for business and employment in the United States, economic development in southern Africa, and for the international monetary and trading system.

If we are against this bill, we are not without influence. I will aggressively work toward more constructive alternatives that pressure the white government to reform, but do not have the negative consequences that this bill entails. I value the President's instincts on this matter.

I wish to call the attention of the Senate to the letter which the President wrote to Senator Dole regarding South Africa. He commits himself to a system of steps that I think is a much better and considerately more positive alternative than the sanctions that are imposed in this bill.

The President says, in this letter to all Senators, that he understands and shares the very strong feelings and sense of frustration in the Congress and in our Nation about apartheid, an unconscionable system that we all reject. The ongoing tragedy in South Africa tests our resolve as well as our patience. None of us wants to aggravate that tragedy.

The President goes on to trace some of the history of the situation. Then, he turns to say that he is prepared to sign an expanded Executive order that:

> Strongly signals our rejection of apartheid and our desire to actively promote rapid positive change in South Africa. I am prepared to expand the range of restrictions and other measures that will characterize our relations with South Africa. There would be strong sanctions in my new order, sanctions that I earnestly wish were unnecessary. These sanctions, directed at the enforcers not the victims of apartheid, encompass measures recently adopted by many of our Allies, as well as many elements of the original Senate Committee version of the bill. They are incontestably necessary in today's circumstances. My intention is to make it plain to South Africa's leaders that we cannot conduct business-as-usual with a government that mistakes the silence of racial repression for the consent of the governed.
>
> My new Executive order will, therefore, reaffirm and incorporate the measures I imposed last year (i.e., bans on loans to the South African Government and its agencies, all exports of computers to apartheid-enforcing entities and the military and police, all nuclear exports except those related to health, safety, and IAEA programs, imports of South African weapons, the import of Krugerrands, and a requirement for all U.S. firms to apply fair labor standards based on the Sullivan principles).

That is a very important statement. The Executive order will also add:

> A ban on new investments other than those in black-owned firms or companies applying the fair labor standards of the Sullivan principles;
>
> A ban of the import from South Africa of iron and steel;
>
> A ban on bank accounts for the South African Government and its agenices;
>
> A requirement to identify countries taking unfair advantage of U.S. measures against South Africa with a view to restricting their exports to the United States by the amount necessary to compensate for the loss to U.S. companies;
>
> A requirement to report and make recommendations on means of reducing U.S. dependence on strategic minerals from southern Africa;
>
> A requirement to provide at least $25 million in assistance for scholarships, education, community development, and legal aid to disadvantaged South Africans with a prohibition on such assistance to any group or individual who has been engaged in gross violation of internationally recognized human rights;

That, I think, is also very important. While I was in South Africa, I visited one of the colored universities and was in touch with business leaders from the black, colored, Asian, and white sectors. All of them talked about the importance of education, which now is pretty much at a standstill in South Africa, mainly because of the terrorism bred by the African National Congress.

The President also speaks of:

> The imposition of severe criminal and civil penalties under several statutes for violation of the provisions of my Executive order;
>
> A requirement to consult with Allies in order to coordinate policies and programs toward South Africa;
>
> A requirement to report on whether any of these prohibitions has had the effect of increasing U.S. or allied dependence on the Soviet bloc for strategic or other critical ma-

terials, with a view to appropriate modifications of U.S. measures under my Executive order should such dependency have been increased;

And a clear statement that the Executive order constitutes a complete and comprehensive statement of U.S. policy toward South Africa, with the intent of preempting inconsistent State and local laws which under our Constitution may be preempted.

The President goes on to state his opposition to apartheid. I ask unanimous consent that the President's letter be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

The White House,
Washington, DC, September 29, 1986.
Hon. Robert Dole,
Majority Leader, U.S. Senate,
Washington, DC.

Dear Bob: I understand and share the very strong feelings and sense of frustration in the Congress and in our Nation about apartheid, an unconscionable system that we all reject. The ongoing tragedy in South Africa tests our resolve as well as our patience. None of us wants to aggravate that tragedy.

In the last several months, the South African Government, instead of moving further down the once promising path of reform and dialogue, has turned to internal repression. We all know that South Africa's real problem traces to the perpetuation of apartheid. And we know that the solution to this problem can only be found in lifting the present State of Emergency, repealing all racially discriminatory laws, releasing political prisons, and unbanning political parties—necessary steps opening the way for negotiations aimed at creating a new, democratic order for all South Africans. The South African Government holds the key to the opening of such negotiations. Emerging from discussion among South Africans, we want to see a democratic system in which the rights of majorities, minorities, and individuals are protected by a bill of rights and firm constitutional guarantees. We will be actively pursuing diplomatic opportunities and approaches in an effort to start a movement toward negotiations in South Africa.

I outlined in my message to the House of Representatives on Friday my reasons for vetoing the Comprehensive Anti-Apartheid Act of 1986, principally my opposition to punitive sanctions that harm the victims of apartheid and my desire to work in concert with our Allies. I also indicated in that message that I am prepared to sign an expanded Executive order that strongly signals our rejection of apartheid and our desire to actively promote rapid positive change in South Africa. I am prepared to expand the range of restrictions and other measures that will characterize our relations with South Africa. There would be strong sanctions in my new order, sanctions that I earnestly wish were unnecessary. These sanctions, directed at the enforcers not the victims of apartheid, encompass measures recently adopted by many of our Allies, as well as many elements of the original Senate Committee version of the bill. They are incontestably necessary in today's circumstances. My intention is to make it plain to South Africa's leaders that we cannot conduct business-as-usual with a government that mistakes the silence of racial repression for the consent of the governed.

My new Executive order will, therefore, reaffirm and incorporate the measures I imposed last year (i.e., bans on loans to the South African Government and its agencies, all exports of computers to apartheid-enforcing entities and the military and police, all nuclear exports except those related to health, safety, and IAEA programs, imports of South African weapons, the import of Krugerrands, and a requirement for all U.S. firms to apply fair labor standards based on the Sullivan principles). The Executive order will also add:

A ban on new investments other than those in black-owned firms or companies applying the fair labor standards of the Sullivan principles;

A ban on the import from South Africa of iron and steel;

A ban on bank accounts for the South African Government and its agencies;

A requirement to identify countries taking unfair advantage of U.S. measures against South Africa with a view to restricting their exports to the United States by the amount necessary to compensate for the loss to U.S. companies;

A requirement to report and make recommendations on means of reducing U.S. dependence on strategic minerals from southern Africa;

A requirement to provide at least $25 million in assistance for scholarships, education, community development, and legal aid to disadvantaged South Africans with a prohibition on such assistance to any group or individual who has been engaged in gross violation of internationally recognized human rights;

The imposition of severe criminal and civil penalties under several statutes for violation of the provisions of my Executive order;

A requirement to consult with Allies in order to coordinate policies and programs toward South Africa;

A requirement to report on whether any of these prohibitions has had the effect of increasing U.S. or allied dependence on the Soviet bloc for strategic or other critical materials, with a view to appropriate modifications of U.S. measures under my Executive order should such dependency have been increased;

And a clear statement that the Executive order constitutes a complete and comprehensive statement of U.S. policy toward South Africa, with the intent of preempting inconsistent State and local laws which under our Constitution may be preempted.

Sanctions, in and of themselves, do not add up to a policy for South Africa and the southern Africa region. Positive steps as well as negative signals are necessary. This unusually complex and interrelated part of the world is one that cries out for better understanding and sympathy on our part. We must consider what we can do to contribute to development of healthy economies and democratic institutions throughout the region and to help those who are the victims of apartheid.

Following the Congress' lead and building on existing programs, I plan to expand our assistance to those suffering the cost of apartheid and to help blacks as they prepare to play their full role in a free South Africa. We spent $20 million in FY 86 and have requested $25 million in FY 87. We will do more, much of it along the lines incorporated in the South Africa bill.

I am also committed to present to the next Congress a comprehensive multi-year program designed to promote economic reform and development in the black-ruled states of southern Africa. We intend to seek the close collaboration of Japan and our European allies in this constructive effort. Our goal is to create a sound basis for a post-apartheid region—a southern Africa where democracy and respect for fundamental human rights can flourish.

I believe the United States can assist responsibly in resolving southern Africa's tragic dilemma. Many observers in and outside South Africa regard present trends with despair, seeing in them a bloody inevitability as positions harden over the central question of political power. This is a grim scenario that allows no free choice and offers a racial civil war as the only solution. It need not be so if wisdom and imagination prevail.

South Africans continue to search for solutions. Their true friends should help in this search. As I have said before, our humanitarian concerns and our other national interests converge in South Africa as in few other countries. With the actions I propose today, I believe it is clear that my Administration's intentions and those of the Congress are identical. May we unite so that U.S. foreign policy can be effective in bringing people of good will and imagination in South Africa together to rebuild a better, just, and democratic tomorrow.

Sincerely,

Ronald Reagan.

(Mr. HUMPHREY assumed the chair.)

Mr. PRESSLER. Mr. President, I think what we see here is a very strange set of circumstances developing. The very thing that we wish to achieve—helping South Africa move in an orderly process toward ending apartheid—would be hampered by the bill that is before us. I should remind my colleagues that some people do not recognize that certain South African black leaders are against sanctions in South Africa.

In the Washington Post, 2 or 3 days ago, an article appeared entitled "Buthelezi Defiant at Zulu Ceremony." Mr. Buthelezi is clearly against sanctions. He heads the largest black political party and he is a moderate. He is a critic of the Government, but his group has over a million dues-paying members. That is almost more than certain political parties have in this country. He is a very significant tribal leader from Qua Zulu, a hereditary chief, but he is also elected. He has the largest black political organization in South Africa. His body, Inkatha, is opposed to the African National Congress. They had a large rally just recently and he repeated his opposition to sanctions.

Chief Buthelezi also was critical of the South African white government.

The point that I would like to make is that in our news media, we do not hear that the leader of the largest black political party in South Africa is against sanctions. How many people have heard that in our news media? I do not think very many. I compliment the Washington Post, which I rarely do, for including it.

I think it is a very significant argument that Buthelezi has reiterated his opposition to sanctions, in the midst—of this acrimonious debate, and at a certain threat to his life.

Before concluding, Mr. President, I also wish to call the attention of my colleagues to an article I have already placed in the RECORD entitled "What America Should Do About South Africa. A South African Liberal Tells Why."

□ 2010

It is a New York Times magazine article by Helen Suzman; she was first elected to the South African Parliament in 1953. She is an opposition member, and has been an outspoken critic of apartheid. Mrs. Suzman is probably the most celebrated critic of the Government in South Africa. She wrote a very passionate article in the Sunday New York Times magazine that argued that sanctions would probably be the worst thing the United States could do if we wanted to end apartheid. I know that there are speeches given on this floor about how terrible apartheid is, and I agree. I could give such a speech. We could give them all night. But, as I have tried to illustrate, that is not the complete issue. It is the issue in the sense that we want to end apartheid, but the manner in which we pursue that end must be rigorously analyzed. Sanctions are the issue we are discussing in this bill. Passage of this bill will not end apartheid. It will impose economic sanctions on South Africa, but there will be terrible effects. These sanctions would undo much of the development in the region that has been put into place over the past 80 years. It will cause great damage to the poor blacks living in South Africa, in effect, depriving them of their futures, and their children's futures. The same will happen in the other countries of the region—Botswana, Zimbabwe, Mozambique, Lesotho, Swaziland, et cetera. I also fear that retaliation toward the United States might be the result, in terms of our supply of strategic materials. Before we go forward with this bill, let us think very carefully.

I know it is said that the President is 3 or 4 votes short of the 34 needed to sustain his position, so I hope Senators will carefully consider the foreign policy implications and the economic implications of this legislation. I am much afraid that this vote will be viewed solely as a civil rights vote in the minds of the media and in the minds of many who have framed it. People come up to me and say, "My word, why are you defending that awful South African Government?" I am not. I would love to see them change. But the bill before us will not do it, it cannot do it. I am very much afraid that it will push South Africa away from reform. Thus, I urge the Senate to sustain the President of the United States tomorrow as we vote.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DIXON. Mr. President, as I stated last Saturday, I intend to vote to override the President's veto of H.R. 4868, the South African sanctions legislation. Enactment of this legislation, even over the President's objections, is essential.

The question before us is a simple one: Are we going to take concrete action to push the Botha government to act to dismantle apartheid while they still have time, or are we going to stand with that repressive government as it works to continue to deny basic human rights to the black majority.

There is a strong moral case for imposing sanctions on South Africa. Apartheid is institutionalized evil. It is contrary to the basic principles on which the United States was founded. It is repugnant to all Americans.

There are many examples of the kind of brutal, disgusting policy the current South African Government follows that I could cite. I will not take the time of the Senate to do so, since I know my colleagues are well aware of the horrors this Government perpetrates in order to preserve its position. I cannot proceed, however, without briefly discussing a matter that I find almost too terrible to believe—the practice of prohibiting funerals, and breaking up funerals that do occur.

Think of it. A funeral is a sacred occasion. In South Africa, because all types of public meetings have been prohibited, funerals can take on a political dimension, but even so, families and friends are entitled to an opportunity to bury their dead, without running the risk of being beaten, or even killed by the police. Yet that is a common occurrence in South Africa. The Government now in control of South Africa actually sends police to break up funerals—funerals—and to gas, beat, and shoot those who attend. Evidently, according to the twisted logic of the South African Government, the way to express sorrow and grief at the death of one of its residents is to cause more pain, more anguish, and sometimes even more deaths, at the memorial services for those who have died.

Mr. President, we simply cannot afford to support in any way, or even to appear to support in any way, a government that has a policy of breaking up funerals. A government that feels threatened by funerals has lost all claim to legitimacy.

We therefore cannot continue to follow the bankrupt policy of "constructive engagement." The administration no longer uses the term "constructive engagement"—even they have recognized that this phrase has come to symbolize all that is wrong with our approach to the problems facing South Africa—but they continue to refuse to change that wrongheaded policy.

Congress, therefore, must take the lead if a policy change that is already long overdue is ever to be implemented. The President's veto of the sanctions package that passed the Congress with overwhelming bipartisan support cannot be allowed to stand.

Although the moral arguments for sanctions are compelling, it must also be noted that sanctions are in our long-term foreign policy interests. I am ordinarily very skeptical about sanctions. I think that Presidents, both Republican and Democrat, have all too often turned to sanctions in an attempt to achieve goals that sanctions cannot achieve.

For example, President Reagan imposed what have come to be known as the "pipeline" sanctions in an attempt to prevent construction of a Soviet pipeline designed to supply natural gas to Western Europe. The sanctions did not work. The pipeline was built. The Russians were not hurt but Americans were. American companies lost business to European and Japanese competitors. They lost the Soviet market and their ability to compete in other world markets was significantly weakened.

The South African situation, however, is significantly different. In South Africa, we are not trying to use sanctions to achieve an unachievable economic goal—like ensuring that the Soviet pipeline was not built. We are not trying to unilaterally prevent the transfer of state-of-the-art goods or technology without the cooperation of our allies that also produce these goods or that also possess this technology. Rather, we are imposing sactions for political reasons, to demonstrate that we will not economically or politically support a government that practices apartheid.

Sanctions can effectively be used to make that point. American companies that operate internationally do, in a way, represent the United States. Our trade relationship with a country is, to some extent, a gauge of our political relationship with that country. Imposing sanctions to limit our trade relationship with South Africa, therefore, is an appropriate way to express our view that apartheid must be ended.

Imposing strong sanctions on South Africa, sanctions that have been requested by the black leadership in that country, makes it clear that the United States stands with the black majority and not with a government attempting to deny most of its citizens the dignity and respect—the basic human rights—to which they are entitled.

Apartheid, in the long run, will not last. It cannot last. The issue is whether apartheid can be peacefully ended, or whether the growing level of violence in South Africa will escalate into civil war. I believe we should do all we can to ensure apartheid is ended, and ended peacefully.

I share the President's view that South Africa is important strategically to the United States. However, I cannot understand how vetoing sanctions legislation can contribute to constructive change in South Africa and to that country's long-term stability or to the maintenance of friendly relations between South Africa and the United States.

Frankly, I believe the veto contributes to instability in South Africa and puts the United States on the wrong side of an issue that we all know will not go away. I do not view sanctions as an isolationist withdrawal from South Africa. Rather, I believe sanctions legislation demonstrates our commitment to the process of peaceful change in the country, our concern for the rights of the black majority, and our willingness to use all the powers at our command on behalf of that oppressed majority. Our willingness to impose sanctions is a clear indication of the desire of the United States to actively work for change in South Africa.

I do not argue that enactment of the sanctions legislation now before us will ensure that apartheid is ended, and that sanctions will ensure a stable, Western-oriented South Africa over the long run. I do know, however, that sanctions are the only chance we have to put real pressure on the current Government to change peacefully before it is too late. The process of change in South Africa will be long and difficult. There is no guarantee that American objectives in that country will be met.

Sustaining the President's veto, on the other hand, does have a guarantee attached to it. That action is guaranteed to alienate black South African leadership, to contribute to instability in South Africa, and to decrease the chances that the United States will be able to constructively participate in ending apartheid.

Sustaining the veto would put us on the side of a morally bankrupt system of government. It would put the United States on record as supporting the status quo in South Africa—that is, as supporting apartheid—and that is intolerable.

Sustaining the veto would worsen our relationships in all of black Africa. It will provide aid and comfort for Soviet efforts to promote instability.

I would like to support the President. I recognize that the Constitution gives him the preeminent role in the foreign policy area, and I know it is much harder to succeed in the foreign policy area when Congress and the President are not working together. I was elected however, to exercise my best judgment—to vote for the President when he is right and against him when he is wrong. The Constitution does not give the President sole authority in the foreign policy area; Congress also has an essential role to play.

In a close case, I like to try to give the President the benefit of the doubt, but this is not a close case. The President is wrong. He is clearly wrong. This veto must be overridden. I urge my colleagues not to yield to Presidential pressure, but to stay with the position that they know is right. I hope the Senate will join the House of Representatives and vote to override the President's veto.

□ 2020

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. PRESSLER. Mr. President, I yield 10 minutes to the distinguished Senator from North Carolina [Mr. BROYHILL].

Mr. BROYHILL. I thank the Senator from South Dakota for yielding.

Mr. President, I asked the Senator to yield time on this matter because I am very concerned about this legislation and what we are about to do here.

I oppose apartheid. I join all Senators on both sides of the aisle who have expressed their opposition to the discriminatory system of government endured by black people in South Africa.

I also am just as determined as anyone else in this Chamber to send a very strong signal to the South African Government. We do not agree with what is going on there, and we do not want to maintain business-as-usual relations with a country that violates the human rights of the majority of its people.

I, too, want to see the South African Government move toward negotiation with the black majority in that country. But I just cannot bring myself to believe that this bill is the best way to do it. This bill, it appears to me, is declaring economic warfare on the very people we are trying to help. This bill imposes broad economic sanctions on numerous industries.

I ask the Senate: Does it make any sense to adopt these economic sanctions, these import bans and restrictions on investment by American firms there, which threaten to throw tens of thousands of black Africans, both inside and outside of South Africa, out of work? Yet, there are provisions in this bill that at the same time authorize the use of emergency food aid in South Africa.

We are trying to send a strong message to the South African Government. I do not believe we should be declaring economic warfare on the very people who are victims of apartheid.

It is for these reasons that I voted "no" on this legislation when it was before us, and it is for these reasons that I shall continue my stand in opposition to this legislation.

I am convinced that disrupting the South African economy and creating more unemployment will add to the violence and the depression that already exist there.

For example, banning the import of sugar—that is something all of us have said, "Let us do that; we can do that." But that affects the livelihoods of 25,000 black farmers, most of them Zulus. Their chief—the leader of 6 million blacks—has come out and said that he opposes these kinds of economic sanctions; he is as determined as anyone else to work toward the end of apartheid.

We are told that black unemployment in South Africa is already high, in some areas close to 50 percent. Creating more unemployment in an economy that is experiencing negative growth rates, it seems to me, is also going to create conditions of violence. This is hardly the best condition for promoting negotiation.

This afternoon, I met with some constituents from my State of North Carolina who know firsthand the problems of black unemployment in South Africa. In fact, they went to that country and formed a joint venture, in an attempt to alleviate the unemployment problem. I was told that this joint venture has resulted in the creation of over 2,000 new jobs for black South Africans, as well as opening of new employment opportunities for North Carolinians.

The constituents who visited me are people who genuinely care about the fate of black South Africans, and they sincerely want to do something to help them. Yet, they are going to be foreclosed from making the investments that would be necessary to accomplish their purpose. Should we deny these individuals, as well as others like them, the opportunity to help black South Africans? Can we, in good conscience, deny South Africans the chance to be helped? I do not think so. That is what this bill would do, and that is why I oppose it.

We in America are deeply troubled by the growing racial conflict in South Africa, and we are moved by the desire to do something to help that country.

Also, we want to do it in such a way that we avoid bloodshed.

In this legislation, Congress called for a timetable to end apartheid. This includes the release of all political prisoners. It includes the release of Nelson Mandela. It calls for allowing black liberal organizations to meet, and in this bill it calls for negotiations to achieve a political system where the rights of all individuals will be protected by law.

□ 2030

I would point out to my colleagues who might be listening, that the President has also called for all of those things. Congress in this legislation has called for assistance to the victims of apartheid and also has called for more economic opportunities for blacks in South Africa.

I would point out that the President has already requested $25 million in fiscal year 1987 for programs that are targeted at South African blacks in order to help them. And, of course, in his recent letter that he addressed to the majority leader, he promised to do more.

Congress reaction has been to call for sanctions that might, I am convinced, damage the fragile economies of not only South Africa but South Africa's neighbors.

About 350,000 black workers, I am told, are from neighboring states. They are legally employed in South Africa and their paychecks, which amount to as much as $200 million a year, go back into those countries and are supporting an additional 2 million to 3 million people at home. The President's approach to these regions' need for economic development is to try to help them with economic aid. This legislation would, in effect, call for a wide array of sanctions that would disrupt not only the South African economy itself but also the economies of the neighboring countries in that region of the world.

So, the President has proposed further steps that we need to take in order to bring an end to apartheid in South Africa. He has stood up against this repugnant system. I agree with the President. I join him in his abhorrence of this system. But the punitive approach that is represented in this final version of this sanctions bill does not fight the forces that undermine this system. It seems to me that it contributes to it by creating more misery, more violence, more repressions, and fewer possibilities for negotiation between white and black South Africans.

I thank the Senator.

Mr. PRESSLER. Mr. President, will my colleague yield for a question?

Mr. BROYHILL. I am delighted to yield.

The PRESIDING OFFICER. The Senator's 10 minutes have expired.

Mr. PRESSLER. I yield additional time to my colleague to respond to this question.

I compliment my colleague on his excellent statement. I enjoyed serving in the House of Representatives a number of years ago with my colleague. I think he has brought a great deal to the Senate in his speech in the area and with his long service in the House Commerce Committee the statement indicates his understanding of some of the economic consequences of sanctions, and we are lucky to have his analysis.

My question is: What does the Senator think these sanctions would do that would be harmful to the United States in an economic sense?

Mr. BROYHILL. My observation is that it would do relatively little harm immediately to the United States. Perhaps the Senator from South Dakota has other information. I think it would be devastating, however, in its harm of the South African economy as well as the economies of the neighboring countries in that area and would do significant harm to the very people that we are trying to help.

I am sure there would be some isolated industries that would be hurt by these sanctions, but it would appear to me that in some instances what we are doing here is actually aiding certain industries. It could be determined in some instances as a way to keep imports out of this country.

Now, perhaps the Senator from South Dakota has done a better job of analyzing that and has had more time to do that than I have had. When I was voting on these amendments and listening to the debate that occurred a few weeks ago on this legislation, it appeared to me that some of the sanctions that were contained in the legislation were aimed at protecting certain U.S. industries.

I thank the Senator for yielding and I yield back to him the remainder of my time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I yield 10 minutes to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, thank you.

Mr. PELL. In doing this, I must say he has taken a leading roll in the Senate in this whole matter and he is outstanding to lead off.

Mr. KENNEDY. Mr. President, I thank my friend and colleague who is the ranking minority member on the Foreign Relations Committee. He has over a very long and distinguished period of time made such an important difference on this issue and so many others.

Mr. President, the vote to override President Reagan's veto will be the single most important vote cast by the 99th Congress.

We must override this veto to keep faith with the American people. Throughout our Nation, our citizens have been working and marching and protesting and petitioning—in the universities, in the churches, in the union halls, in the corporate board rooms, and in the city council rooms and State legislatures throughout the land—to put America finally and for all time on the right side of freedom and justice in South Africa.

We must override this veto to remain true to our own most important and fundamental ideals. Three hundred years ago, our Founding Fathers pledged "their lives, their fortunes and their sacred honor" in the struggle for independence. In the face of the racism and repression and violence of apartheid, Americans cannot remain passive or silent and be true to our heritage. The days of meekness, weakness and hesitation must come to an end.

We must override this veto to give hope to the people of South Africa who every day put their lives and their liberty at risk in the struggle to end apartheid. With this vote, we will tell Desmond Tutu and Alan Boesak and Beyers Naude and Winnie Mandela and 26 million black people that, yes, America is with you, and together we shall overcome.

We must override this veto to restore our Nation to its rightful place as the defender of democracy and as the moral leader of the Western World. With constructive engagement, we have squandered our moral standing in the world. The whole world is watching and listening tonight. What we do and what we say will make a difference—not only to our friends and allies who yearn for leadership, not only to the people of South Africa who cry out for help, but also to ourselves. If we step forward now—with strength and with certainty and with confidence—we will be at the front again, where we belong, on the side of freedom.

We must override this veto to protect our own national security interests in the world. It is true that our adversaries seek every opportunity to expand their influence at our expense. It is also true that every day that constructive engagement lives on, America's enemies prosper. One day there will be freedom in South Africa, and on that day, I hope that the new leaders of South Africa will look to America as having been not only a friend of freedom when freedom was in trouble but also as having been a leader in the struggle.

And we must override this veto to tell the politicians in Pretoria that President Reagan does not speak for America on this issue. They must know that the days of indulgence are over. They must know that the double-standard has been destroyed. They must know that we care as much about the freedom of black people in South Afirca as we do about the freedom of white people in Poland or in the Soviet Union.

Mr. President, history will record this veto as the darkest day in President Reagan's tenure in the White House. But it is much, much more than that. This veto is the worst veto in American history. No President has ever used a veto in a way that so clearly challenges America's most fundamental ideals and values.

Andrew Jackson vetoed a bill to recharter the Bank of the United States, because he saw it as the tool of special interests.

John Tyler's veto of a tariff bill led to the first attempt by Congress to impeach a President.

Andrew Jackson fought Congress during Reconstruction and lost many veto fights. For those who wonder about hardball tactics used in veto fights, I would note that in preparing for the override of President Johnson's veto of the Civil Rights Act of 1866, the Senate actually expelled a Senator who supported Andrew Johnson. To override President Johnson's veto, the Senate first threw out Senator John P. Stockton of New Jersey. This happened when hardball had barely been invented.

Grover Cleveland vetoed hundreds of private pension bills and outraged veterans groups.

Franklin D. Roosevelt was the first President ever to veto a revenue bill, the Revenue Act of 1943. FDR called it "Tax Relief not for the Needy but for the Greedy"—but Congress overrode his veto anyway.

Harry Truman vetoed the Taft-Hartley Act, and a Republican Congress overrode his veto.

Most recently, in the aftermath of the Vietnam War, Richard Nixon vetoed the War Powers Act and Congress overrode his veto.

□ 2040

The controversies of the past have led to confrontations between Congress and the President. Each of those confrontations stirred the passions of the times and caused feelings to run high.

But President Reagan's veto has a different ring. He has reopened an issue that was long settled in America—this Nation's fundamental commitment to civil rights, human rights, and the ideals of individual liberty and equal justice under law—which appears in stone over the Supreme Court. History will look at this veto as a curious aberration, the least defensible veto that any President has ever issued.

President Reagan says that, with these sanctions, we "threaten the livelihood of 23,000 black farmers and 500,000 black miners." President Regan asks, "Are we truly helping the black people of South Africa when we throw them out of work and leave them and their families jobless and hungry?"

But Archbishop Desmond Tutu answers:

> Blacks are suffering already. To end that suffering, we will support sanctions, even if we have to take on additional suffering * * * To whom is the international community willing to listen? To the victims and their spokesmen or to the perpetrators of apartheid and those who benefit from it?

President Reagan says that, with these sanctions, we are "declaring economic warfare against the people of South Africa."

Archbishop Desmond Tutu answers:

> I do not want to destroy a land I love passionately. But if the South African Government remains intransigent and obstinate, then sanctions or no sanctions, the economy will be destroyed in the wake of the violence, bloodshed and chaos that will ensue if a full-scale civil war breaks out.

President Reagan says that these sanctions will be a "devastating blow to the neighboring states in southern Africa." But just last week, the President of Botswana said:

> Here is a country—South Africa—which attacks mine without provocation and yet expects to use us in its defense against sanctions. This is unacceptable. It is also unacceptable that friends of South Africa should try to use us to try to justify their support for South Africa. We think they should stop being disingenuous.

President Reagan stands alone—in this country and in the world.

Mr. President, Senator PRESSLER spoke about retaliation and its impact on American farmers. Senator LUGAR just a few minutes ago revealed that the Foreign Minister of South Africa, "Pik" Botha, has called up at least two farm State Senators and threatened them. Botha also bribed them. He said that if the veto were overriden, South Africa would stop purchasing United States grain. He also promised that if the veto were sustained, South Africa would buy more United States wheat.

I agree with Senator LUGAR. This is bribery. This is intimidation. We should not let the bullies and the thugs of Pretoria intimidate the Senate of the United States.

Does this not tell us a little about the kind of people who are running that government?

This bill does not prohibit grain or wheat sales to South Africa. There is no grain embargo in this legislation. The concern here is for retaliation—threats, intimidation, coercion—not for any embargo.

South African purchases of U.S. wheat is minimal. According to the Department of Commerce in terms of total dollar value, wheat does not even appear as one of the top 40-most important exports from the United States to South Africa for the years 1983, 1984, and 1985.

The South Africans may say that they will buy wheat, but they have not done it yet. And if they stop doing it now, it will not have much of an impact.

Mr. President, I hope that the Senate of the United States will override the President's veto.

The PRESIDING OFFICER. Who yields time?

Mr. PRESSLER. I yield to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, tomorrow the Senate will act on whether to override President Reagan's veto of the South Africa sanctions bill. If successful, this override will amount to little more than the United States shooting itself in the foot and then penalizing, through a series of harsh and regressive measures, the innocent victims of apartheid whom we are trying to protect.

It is an action I cannot support, despite my deep and abiding belief that apartheid is morally wrong and that the discriminatory policies of the white minority government in South Africa must be brought to an end.

Without question, this issue has torn at the hearts of our citizens; the conscience of its leaders; and has tried the patience of every decent person who has watched the violence against blacks unfold in this turbulent corner of the world.

All of us are in agreement on the central point of this debate: That apartheid is a cruel and inhuman system which must give way to a democracy which recognizes the basic rights of all people—regardless of race—and a pluralistic society where blacks and whites live in harmony.

However, there is deep division, not only in this body but across the Nation, on how to accomplish this goal, and in particular, what role the United States should play in bringing about these changes.

The measure vetoed by the President, although sponsored and supported by well-intentioned men and women, will not, in my opinion, accomplish our goal of ending apartheid. Rather, it strikes out at South Africa through a series of harsh and regressive sanctions and, in doing so, jeopardizes the security interests of the United States and the economic and political interests of the thousands of black South Africans. In addition, harsh sanctions will strengthen the resolve of the South African Government to stand firm against outside pressure.

South Africa is a source of rare minerals vital to the defense of the United States, and it remains a staunch anti-Communist nation in a strategically important area of the world.

Frankly, I was prepared to support the bill reported out of the Foreign Relations Committee under the sponsorship of its able and distinguished chairman, Senator RICHARD LUGAR of Indiana. During the debate on this issue, I indicated my willingness to support that measure, which I believe struck a more thoughtful and reasoned approach to the sanctions issue. However, I cautioned my colleagues that by adding still more sanctions to the bill, they risked losing not only my support, but directly impeded progress in ending apartheid in South Africa and directly jeopardized United States security interests there.

These are not concerns that can or should be taken lightly. Despite our moral outrage over apartheid, we cannot simply turn a blind eye to the realities of the political situation in that nation or the legitimate defense and security imperatives of our own Nation.

□ 2050

President Reagan, despite the hue and cry of his critics, has taken action to end apartheid. His policy of working through diplomatic channels has yielded results, and his Executive order mandating realistic sanctions against the Pretorian government is a step in the right direction. Over the objections of foreign policy experts and the President himself, Congress moved relentlessly forward toward enacting a bill which defeats the very purpose for which it was proposed.

The legislation was, therefore, vetoed by the President for all of the right reasons. When all is said and done on this issue, I believe that, instead of weakening the resolve of those bent on perpetuating the system of apartheid, their hand will be infinitely strengthened, while the security interests of our Nation will be diminished.

Finally, let us be honest with ourselves. It is rank hypocrisy for the United States to seek punishment of human rights violations in South Africa while we look away from the heinous atrocities being committed in the Soviet Union and its surrogate nations. This selective morality is more than inconsistent. It demeans the entire issue of challenging human rights violations because it shows to the world—and in particular the Soviet Union—that we are quite willing to kick certain nations for their abuses, while winking at others. To that extent, an override of the President's veto is a mockery of justice.

For those reasons, I will vote to sustain President Reagan's veto of this legislation and hope that this runaway train can be sidetracked and replaced with a policy that yields real and beneficial results, not just headlines for activists.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, I yield 7 minutes to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I rise to urge my colleagues to vote to override the President's veto of the legislation dealing with South Africa to which both Houses of Congress have already given overwhelming approval. This is the exact piece of legislation which passed the U.S. Senate by a vote of 84 to 14 only a few weeks ago; exact. It has not been changed in one respect. Eighty-four Members of this body voted to enact this legislation into law.

While the President's decision to veto the legislation was not a surprise, it is a keen disappointment and in my judgment ill considered, and ill timed.

With strong bipartisan support in both Houses, legislation has passed the Congress sharply reversing the Reagan administration's policy of constructive engagement, a failed and discredited policy that is perceived by black and white South Africans alike as an endorsement of the vicious apartheid system.

Mr. President, everyone says they deplore apartheid. Let us talk for a moment of what apartheid involves. Apartheid is an institutionalized system of the most vicious racial discrimination, in fact carried to such an extent that 22 million blacks, the vast majority of the population of South Africa are denied any opportunity to participate in setting the course of their future.

They are subjected to the most outrageous indignities in terms of their daily lives, and separated from their families. Apartheid is the most antifamily system in existence. It really destroys and undercuts the family. It is no wonder that all across this country people have had a sense of revulsion against the system, and seek to bring about change in South Africa.

The Government has imposed a limited state of emergency that has led to the deaths of hundreds and the detention of thousands. South Africa's black political leadership, most notably Nelson Mandela, remains in prison. And South Africa continues its acts of military aggression against neighboring States, and has recently initiated a series of damaging economic measures.

In the meantime, the degrading structure of apartheid remains in place. The Senate's response when it enacted this legislation to the continuing tragedy and outrage in South Africa was logical, it was necessary, and it was right. Major new provisions in the bill prohibit new investments, bank loans to the private sector, imports of goods produced by state owned or controlled corporations, and it suspends direct air travel in order to bring home in effect to the privileged in South Africa the consequences of the policy that the Government is pursuing in that country.

And it provides in a very carefully framed way the opportunity to terminate the sanctions that are in the bill, providing South Africa releases Nelson Mandela and other political prisoners, undertakes to lift the state of emergency, unban the political parties so they can operate in a free and open way, repeal the group areas and population registration, and undertake a good-faith commitment to negotiations.

If South Africa were to take those steps, the bill stipulates that the sanctions may be lifted.

Some critics of this legislation have argued that sanctions will hurt the blacks in South Africa. Bishop Desmond Tutu has eloquently rebutted this argument when he said, "Blacks are saying we are suffering here. To end it, we will support sanctions even if we have to take on additional suffering. I must ask to whom is the international community willing to listen; to the victims and their spokesmen, or to the perpetrators of apartheid and those who benefit from it?"

Critics also argue that sanctions will not work. Such an argument addresses the wrong question. We do not know for certain that sanctions will work, or that it will in fact bring change in South Africa. We know, however, that the absence of sanctions which has been the condition up to date has not worked, and the Commonwealth Eminent Persons Group, a very distinguished group of men and women from the Commonwealth, after 6 months of intensive study and negotiations in South Africa concluded, "It is not whether such measures will compel change"—referring to sanctions—"It is already the case that their absence and Pretoria's belief that they need not be feared defers change."

It was the same Commonwealth Eminent Persons Group which in their report stated, "While the Government claims to be ready to negotiate, it is in truth not yet prepared to negotiate fundamental change nor to countenance the creation of genuine democratic structures. Its program of reform does not end apartheid but seeks to give it a less inhuman face."

The time has come to take measures designed to end apartheid. I agree with the nearly 100 presidents of major American colleges and universities who concluded, "Sanctions legislation offers a critical opportunity for the United States to make a forceful bipartisan statement against apartheid."

□ 2100

"Legislation will convey more effectively than anything else the breadth and depth of national feeling against apartheid. Such action at this time offers the best prospect of inducing other nations to follow suit, thus placing strong pressure on the South African Government to pursue a different course."

Mr. President, a sanctions policy, as Bishop Tutu said not long ago, "Is the last nonviolent option left, and it is a risk with a chance."

In the face of the South African Government's intransigence, it is a chance we must now take.

In terms of all we stand for with respect to justice and to freedom, it is important to pass this legislation. I urge my colleagues to override the veto of the President.

Mr. President, I ask unanimous consent to have printed in the RECORD an article by Bishop Tutu and the letter from the college presidents previously referred to.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, June 16, 1986]

SANCTIONS VS. APARTHEID

(By Desmond M. Tutu)

A clear message resounds in recent surveys in South Africa in which more than 70 percent of blacks supported sanctions against the Government. Blacks are saying: "We are suffering already. To end it, we will support sanctions, even if we have to take on additional suffering."

Our people have shown they mean business by their use of consumer boycotts. Last year, organizations representing more than 12 million South Africans called for sanctions and economic pressure. These are not insignificant actions or irresponsible bodies or individuals.

I must ask, To whom is the international community willing to listen? To the victims and their spokesmen or to the perpetrators of apartheid and those who benefit from it?

I would be more impressed with those who made no bones about the reason they remain in South Africa and said, honestly, "We are concerned for our profits," instead of the baloney that the businesses are there for our benefit. We don't want you there. Please do us a favor: get out and come back when we have a democratic and just South Africa.

It is true that many foreign corporations in South Africa have introduced improvements for their black staff. They now have a better chance of promotion. They get better salaries. But these improvements have come about largely through the pressures of the disinvestment campaign. American companies, especially, have begun to speak out more forth-rightly against apartheid than has been their wont, and they would be the first to admit that they got a considerable jog to their consciences from the disinvestment campaign.

There has been progress, but we do not want apartheid ameliorated or improved. We do not want apartheid made comfortable. We want it dismantled.

You hear people say sanctions don't work. That may be so. But if they don't work, why oppose them so vehemently? If they don't work, why did Margaret Thatcher apply them to Argentina during the Falkland war? Why did the United States apply them to Poland and to Nicaragua? Why was President Reagan so annoyed that his European allies did not want to impose sanctions against Libya? If sanctions are so ineffective, why does the United States still maintain a blockade of Cuba? Yet we have all this wonderful sophistry when it comes to South Africa.

I am unaware of anything that has changed in South Africa without pressure. Changes in the sports policy were due to pressure from the sports boycott and not because there had been a change of heart on the part of white sports administrators.

We hear some say that sanctions will destroy the South Africa economy and leave us with a financial morass. My response is that the ball is surely in the South Africa Government's court. Its decisions about the future of the country will determine whether sanctions should be invoked or not. I certainly do not want to destroy a land I love passionately. But if the South Africa Government remains intransigent and obstinate, then sanctions or no sanctions the economy will be destroyed in the wake of the violence, bloodshed and chaos that will ensue if a full-scale civil war breaks out.

There is no guarantee that sanctions will topple apartheid, but it is the last nonviolent option left, and it is a risk with a chance. President Reagan's policy of constructive engagement, and similar efforts to persuade white South Africans who support apartheid to change, have failed dismally. Let's try another strategy.

There are those who are not ashamed to argue that if they pull out others will come in to exploit black South Africa. The moral turpitude of that argument is quite breathtaking. We are not asking people to make economic or political decisions. We are asking for a moral decision.

There is no room for neutrality. When you say you are neutral in a situation of injustice and oppression, you have decided to support the unjust status quo. Are you on the side of injustice? Are you on the side of oppression or liberation? Are you on the side of death or of life? Are you on the side of goodness or of evil?

Desmond M. Tutu, the 1984 Nobel Peace Prize winner, is Anglican Archbishop-elect of Cape Town, South Africa. This article was adapted from his recent commencement address at Hunter College, in New York City.

JULY 7, 1986.

Hon. ROBERT DOLE,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR DOLE: We wish to express our deep concern about the situation in South Africa and our support for imposing legislative sanctions on the South African government. We offer our views in our individual capacities and do not purport to speak on behalf of the institutions we serve. But our work has caused us all to give many hours of thought to the injustices of apartheid and to the various ways in which this nation's government and its citizens and private institutions can respond.

Many of us wrote to you in July of last year expressing our belief that legislation directed against the South African government was an effective way to undermine apartheid and hasten its end. Thereafter, as you know, the President issued an Executive Order containing some of the provisions of the legislation which then seemed virtually certain to be enacted by Congress. Since then, however, the crisis in South Africa has worsened so dramatically that we believe that our country must do much more to express a rejection of the apartheid system.

Our conclusions find support in the recent findings of the Commonwealth mission known as the Eminent Persons Group. Their report expresses little hope that the South African government will voluntarily enter into meaningful negotiations that could lead to a peaceful end to apartheid. As they point out, effective concerted action by the international community seems to offer the last opportunity to bring about such negotiations and avert massive bloodshed.

As the Commonwealth report reached the public, the South Africa government instituted new repressive measures which offend fundamental principles of human rights. Censorship has limited the available information on the effects of the new measures, but press reports indicate that they have failed to stem the violence and the number of deaths. Indeed, during the last three months, the weekly death toll has more than doubled.

Against this backdrop, sanctions legislation offers a critical opportunity for the United States to make a forceful, bipartisan statement against apartheid. We do not attempt to state the precise features that should be included in the legislation. We do urge that the measures adopted conform to the following criteria:

1. Sanctions should be sufficiently strong to demonstrate the depth and sincerity of this country's disapproval of apartheid.
2. The primary target of the sanctions should be the source of apartheid: the South African government itself.
3. Sanctions should avoid harming nonwhite South Africans to the extent possible.
4. The legislation should hold forth the prospect of additional measures if certain prescribed forms of progress are not achieved by a specified date.

We speak most effectively as a nation when we speak with one voice through laws enacted by our elected representatives and signed by the President. Legislation will convey more effectively than anything else the breadth and depth of national feeling against apartheid. Such action at this time offers the best prospect of inducing other nations to follow suit, thus placing strong pressure on the South African government to pursue a different course.

If we do not take this step and the violence continues to mount in South Africa, will we be able to say that we did everything possible to forestall further losses of life? Although no one can state with certainty what steps will bring justice and peace to South Africa most quickly, we believe that legislated sanctions offer the best chance we have of encouraging peaceful change and avoiding increased violence and bloodshed.

Sincerely,

David Alexander, President, Pomona College.

Edward J. Bloustein, President, Rutgers University.

Derek Bok, President, Harvard University.

William G. Bowen, President, Princeton University.

John Brademas, President, New York University.

Carroll W. Brewster, President, Hobart and William Smith Colleges.

H. Keith H. Brodie, President, Duke University.

William J. Byron, President, Catholic University of America.

Colin G. Campbell, President, Wesleyan University.

J. Martin Carovano, President, Hamilton College.

John T. Casteen III, President, University of Connecticut.

Alice Chandler, President, State University of New York, College at New Paltz.

Martha E. Church, President, Hood College.

Lattie F. Coor, President, University of Vermont.

Henry J. Copeland, President, College of Wooster.

Robert A. Corrigan, Chancellor, University of Massachusetts.

William R. Cotter, President, Colby College.

Richard M. Cyert, President, Carnegie-Mellon University.

John DiBiaggo, President, Michigan State University.

Robert H. Donaldson, President, Fairleigh Dickinson University.

Mary M. Dunn, President, Smith College.

Melvin A. Eggers,, President, Syracuse University.

David W. Ellis, President, Lafayette College.

Alice F. Emerson, President, Wheaton College.

James F. English Jr., President, Trinity College.

William P. Gerberding, President, University of Washington.

Melvin D. George, President, St. Olaf College.

Marvin L. Goldberger, President, California Institute of Technology.

Hanna H. Gray, President, University of Chicago.

Paul E. Gray, President, Massachusetts Institute of Technology.

A. LeRoy Greason, President, Bowdoin College.

Sheldon N. Grebstein, President, State University of New York, College at Purchase.

W. Lawrence Gulick, President, St. Lawrence University.

Sheldon Hackney, President, University of Pennsylvania.

Evelyn E. Handler, President, Brandeis University.

Paul Hardin, President, Drew University.

Bernard W. Harleston, President, City University of New York, City College.

Theodore M. Hesburgh, President, University of Notre Dame.

Ira Michael Heyman, Chancellor, University of California, Berkeley.

Stephen Horn, President, California State University, Long Beach.

Edward B. Jakubauskas, State University of New York, College at Geneseo.

Eamon M. Kelly, President, Tulane University.

Elizabeth T. Kennan, President, Mount Holyoke College.

Donald Kennedy, President, Stanford University.

Nannerl O. Keohane, President, Wellesley College.

William A. Kinnison, President, Wittenberg University.

James T. Laney, President, Emory University.

George D. Langdon, Jr., President, Colgate University.

Earl E. Lazerson, President, Southern Illinois University.

Peter W. Likins, President, Lehigh University.

John David Maguire, President, Claremont Graduate School.

Jean Mayer, President, Tufts University.

Ellis E. McCune, President, California State University, Hayward.

Mary P. McPherson, President, Bryn Mawr College.

Paul B. Mohr, Sr., President, Talladega College.

Francis C. Oakley, President, Williams College.

Joseph A. O'Hare, President, Fordham University.

Vincent O'Leary, President, State University of New York.

Paul Olum, President, University of Oregon.

Robert M. O'Neil, President, University of Virginia.

Wesley W. Posvar, President, University of Pittsburgh.

Peter R. Pouncy, President, Amherst College.

Harold Proshansky, President, City University of New York, Graduate School and University Center.

David V. Ragone, President, Case Western Reserve University.

Frank H. T. Rhodes, President, Cornell University.

Olin C. Robinson, President, Middlebury College.

George Rupp, President, Rice University.

Benno C. Schmidt, Jr., President, Yale University.

Ruth A. Schmidt, President, Agnes Scott College.

Donna E. Shalala, President, Hunter College.

Harold T. Shapiro, President, University of Michigan.

Robert L. Sinsheimer, Chancellor, University of California, Santa Cruz.

Michael I. Sovern, President, Columbia University.

S. Frederick Starr, President, Oberlin College.

Robert B. Stevens, President, Haverford College.

Jon C. Strauss, Worcester Polytechnic Institute.

Jerome H. Supple, Acting President, State University of New York, College at Plattsburgh.

Howard R. Swearer, President, Brown University.

Richard P. Traina, President, Clark University.

Rolf A. Weil, President, Roosevelt University.

Kenneth J. Weller, President, Central University of Iowa.

Joe B. Wyatt, Chancellor, Vanderbilt University.

Charles E. Young, Chancellor, University of California.

Richard C. Atkinson, Chancellor, University of California, San Diego.

Clifford D. Clark, President, State University of New York, Binghamton.

George A. Drake, President, Grinnell College.

Frank S. Falcone, President, Springfield College.

David W. Fraser, President, Swarthmore College.

Ulric Haynes, Jr., Acting President, State University of New York, College at Old Westbury.

David Lloyd Johnston, President, McGill University.

D. Bruce Johnstone, President, State University of New York, College at Buffalo.

David T. McLaughlin, President, Dartmouth College.

Percy A. Pierre, President, Prairie View Agricultural and Mechanical College.

Albert Somit, President, Southern Illinois University.

Clifton R. Wharton, Jr., Chancellor, State University of New York.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I shall try to be brief.

I would, for the purposes of the RECORD, appeal for reason on the part of my colleagues, please I say to them, look at both sides.

First of all, if the mail and telephone calls coming to my office are any measure, a vast majority of the American people wonder what we are trying to do, meddling in such a distructive way into the affairs of South Africa.

I do not understand the political emotionalism. It seems to me that there are a few facts that ought to be borne in mind.

First of all, what are the options with respect to South Africa?

The options really are whether this Government, the United States Government, will continue to encourage and press the South African Government to continue the reforms that are now well underway. Or will we selectively intrude upon the affairs of South Africa which has been a friend and an ally down through the years, a country that believes in the free enterprise system, which has been a reliable ally and a responsible trading partner with the United States—a country which is doing its best to cope with an admittedly difficult situation?

Over and over again on this floor Senators, including this one, have said they find apartheid repugnant. The South African Government, I repeat, has already instituted a long list of reforms. It is not necessary to take the word of a Senator from North Carolina in this regard. Let me quote a black city councilman from Oklahoma who went to South Africa. He reported that a member of the governing council for the black South Africans in the township of Soweto was beheaded the day the Oklahoma City councilman Goree James arrived for a 10-day visit.

Who did the beheading? Not the Government, Mr. James said. It was the followers of the so-called African National Congress, that marvelous group which so many Senators have praised on this floor, a group which has endorsed and perpetuated a heinous activity called necklacing.

Necklacing. That is, seeking out and finding those who are not in favor of sanctions, hanging automobile tires around their necks, pouring kerosene or gasoline in them and setting them on fire.

That is the way the followers of the ANC like to enforce discipline on this matter.

For my part, I want no part of the ANC, the majority of whose directors are known Marxists. This leads to the crucial point, Mr. President: that being that our choice is between working with the government in Pretoria and encouraging further reforms, or turning the whole situation there into a blood bath.

The beneficiary of the latter would be the Soviet Union, which has orchestrated the violence, the bloodshed, and the disruption in all of Africa. Look at all of the Communist nations, those surrounding South Africa, those in other parts of Africa. That is where the degradation of humanity really occurs, and it is never criticized on this floor. That is where people are starving. That is where there are no jobs.

And yet, those who have been so vociferous in their demands for our Government to impose sanctions upon South Africa never say a word about the atrocities of the African National Congress.

Let me refer further to City Councilman Goree James of Oklahoma City, and his visit to South Africa. Upon his return, according to the September 14, 1986, edition of the Sunday Oklahoman, Mr. James said:

> My trip to South Africa was one of the most exciting experiences I've ever had in my life. To say the least. All the things I have been led to believe about South Africa were not true, James said. The whole country is under a spirit of guilt, especially when it comes to what they feel Americans think about them.

Then he said:

> I had heard that all blacks had to get out of town (Johannesburg) before dark and that in the daytime they were limited where they could go. Black people go about wherever they want to in South Africa, restaurants, hotels, wherever.

The article continues:

> In Johannesburg, a city of 2 million people, I was expecting wholesale segregation. I was not expecting to find blacks in significant jobs, especially skilled jobs. Blacks hold almost 62 percent of the jobs in Johannesburg. They are administrators, engineers, managers, clerks, stenographers, mechanics, bricklayers, and heavy equipment operators.

So if Senators are willing to look at both sides, and have an opportunity to read what this black city official from Oklahoma City, OK, discovered when he went to South Africa, maybe there will be some changed minds. But I doubt it.

He said:

> It wasn't, however, a totally joyful trip. Soweto, a city of 2.5 million people the group visited, was rife with unrest. Students boycotted schools, renters refused to pay their landlords, and landlords were evicting their tenants. It's a powder keg.

James continuing said:

> Where the trouble lies, and I talked with citizens of Soweto, is the media gives you an opinion there's a band of soldiers with 15 to 20 people charging them. It's not 15 or 20 people, it may be a 1,000 or 2,000 people attacking the police.

I recommend the reading of this article by those who want to be fair to the President of the United States, not to mention the country of South Africa.

I ask unanimous consent that this article be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. Earlier this evening a distinguished Member of this body, a treasured friend of mine, went to the press gallery, and, to put it mildly, he unloaded. I was surprised, frankly, at the tone of the Senator's remarks because what he said was not typical of him.

He was angered, apparently, because the Foreign Minister of South Africa called me this afternoon.

□ 2110

The Senator went to the press gallery without consulting me to make the allegation that I was engaged in lobbying for the South African Government, that I was participating in a bribe—and other charges were made by the Senator, none of which was true.

I did talk to Pik Botha this afternoon. I have known the Foreign Minister of the Government of South Africa, since my early days as a Member of the Senate. He has been here many times. He has met with countless Senators. I consider him a friend. And he is and has been a friend of the United States. He called me today simply to advise that the situation in South Africa, as concerned the farmers of that country, was becoming very tense.

The farmers, he said, resent the instrusion by the United States Government, particularly that of the United States Congress, into the affairs of South Africa. These are black farmers as well as white farmers.

Pik Botha said that up to now, "We have restrained them, calmed them down," emphasizing to them that the United States is and has been a friend of South Africa, though critical of some of the difficulties there.

"But," he said, "My Government has now reached the point that we can no longer resist our farmers who are demanding that we stop importing wheat, feed grains, and other commodities among many other things from the United States."

Pik Botha said, while he was on the telephone, "If Senator ZORINSKY is available to the telephone, I think I owe him the courtesy of telling him the same thing," inasmuch as Senator ZORINSKY is the ranking Democrat on the Senate Agriculture Committee, which I happen to chair.

So I put down the phone, came on the Senate floor. I met Senator ZORINSKY there, in the middle aisle. I told him that Pik Botha was on the telephone and wanted to speak to him. Senator ZORINSKY went to the phone and had a conversation. I do not know what the substance of the conversation. Certainly, I do not know what Senator ZORINSKY said.

It is my understanding that two or three other Senators talked to Botha, who know him—Paul LAXALT, for example.

But for a distinguished Senator of this body, who is chairman of the Foreign Relations Committee, to go to the press gallery and make allegations about the nature and motivation of a telephone conversation with Pik Botha is, it seems to me, entirely inappropriate. I had thought better of him, but I bear him no ill will.

I later told the media that I would paraphase Shakespeare and say simply that methinks Senator LUGAR doth protest too much.

Senator LUGAR himself has discussed a $200 million appropriation with the President of the Philippines. I suppose could be called lobbying. But I do not make that charge against Senator LUGAR. He is my friend; I like him; I admire him. I simply regret that he lost his temper when, apparently, he became fearful that the President of the United States might win this vote tomorrow.

I do not know whether the President will win or not. I hope he will. I shall support him. I hope others will as well.

But let me point out, Mr. President, that the South African Government and its entrepreneurs, during the past 4 years, have bought 4,100,000 tons of wheat and feed grains from the United States. According to the Journal of Commerce of Wednesday, September 17, South Africa, prior to this development with the sanctions, had planned to import between 19 million and 37 million bushels of wheat in 1987. So, the point, Mr. President, is that by intruding into the affairs of the South African Government, we are shooting the farmers of America in the foot, and I shall have no part of it.

Mr. President, I ask unanimous consent that the article from the Journal of Commerce to which I have just alluded be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. HELMS. I thank the Chair.

Now, then, another article, this one from the Kansas City Times of September 5, said:

> The president and the executive director of the 4,000 member Kansas Association of Wheat Growers has sent House Speaker Mike Hayden a letter critical of his support for a ban on wheat sales to South Africa.

I cannot imagine House Speaker Mike Hayden, whoever he is, doing such a thing, but I think it is of sufficient interest for that article to be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 3.)

Mr. HELMS. Mr. President, I had a letter from a distinguished American just a few days ago, Mr. John A. Davenport of Middletown, NJ, with whom I have corresponded in the past. Mr. Davenport is a former editor of Barron's Weekly and a member of the board of editors of Fortune magazine. Mr. Davenport wrote an article published on September 22 for the Asbury Park Press. He discusses the irony of this sanctions proposition being conducted during the years when Ronald Reagan is President. He calls it a catastrophe. Let me quote just a paragraph or two from this fine article by Mr. Davenport.

> The chances of preventing this catastrophe never looked bleaker than in this autumn of 1986 when even the friends of South Africa seem to have lost heart and when both Houses of Congress have declared war against a country which has never harmed American life or property, which supplies the United States with strategic minerals wholly essential to our peacetime and defense industries and which, by its very location, is the key to defending United States interests in the South Atlantic and Indian Oceans.

This is the point that is scarcely ever mentioned on this floor. What happens when—and I do not say if—when the Soviet Union completes the job of taking over the entire continent of Africa? Do not make any mistake about it, the Soviet Union has its eyes on the minerals which are available almost solely in South Africa. The Soviet Union wants control of the vital shipping lanes, as Mr. Davenport has indicated. So that is what the battle is all about—whether the Soviet Union will now be put in a position to take over the entire continent of Africa.

They now have taken over a great many countries, all of which now are suffering from proverty and starvation and disease and tyranny and murder, violence, just as always happens when a country is subjugated and controlled by the Soviet Union.

□ 2120

Mr. Davenport concluded his article, which is entitled "Apartheid, Like Walls of Jericho, is Falling," with this paragraph which ought to be fair warning to all Senators:

> Sanctions are wrong because they run counter to U.S. adherence to the principles of free trade and free investment. They are wrong because they jeopardize our supply of strategic minerals. And they are wrong because they encourage those in South Africa who choose revolution as against evolution, terror as against order. It is time to support South African whites and blacks in working out their own destiny and their own form of power-sharing.

A very eloquent article. I ask unanimous consent, Mr. President, that the article be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Is there objection? Hearing no objection, it is so ordered.

(See exhibit 4.)

Mr. HELMS. I thank the Chair.

Mr. President, I have selected two or three letters out of the thousands that have come to me, and I would estimate that no more than 1 percent of all of the letters have favored sanctions that the Senate will be voting on tomorrow.

There is a letter, for example, from Richard Fox, who identifies himself as having earned a BS degree at Carnegie-Mellon University; MBA at the University of Cape Town. He is a first lieutenant in the U.S. Army, retired. He said:

> Dear Senator Helms: I am a 51 year old Detroit-born U.S. citizen living in South Africa. My South African wife died earlier this year, leaving me with our five minor children. I have few assets outside this country, having lived here since 1964, and we could survive as a family only with great difficulty if we returned to the U.S.A.
>
> I am second in the hierarchy of a South African company with four factories and about 1300 employees. We are engaged in two of the less attractive sections of any economy—the foundry and machine shop business. Most days I am at my office at 7 a.m., and I go home when I am able.
>
> Our industry pays "rate for the job", and blacks, whites and coloreds (the latter somewhere in between the poles) work side by side in the same trades. The average white artisan will have 7th or 8th grade education, the black or colored worker less. Because there is a chronic shortage of engineers, technicians, and managers in this country, most supervisors have a span of responsibility greater than that of U.S. or European managers.

He goes ahead and tells about his salary. He says he earns about $35,000 a year, and he talks about the tax situation and so forth. I am skipping around, but I am going to ask unanimous consent in a moment that this letter be printed in the Record because it is of great interest, I believe, or should be to Senators considering this question. He said:

> The world, led mostly by the U.S. Congress, has intensified its pressure for a quick fix to an Apartheid problem which originated in 1652 with the first permanent white settlement at Cape Town.
>
> If the Congress of the United States genuinely wants the South African whites to yield some or all of their power to "the black majority" (after all, is that appellation not the quintessence of racialism?) then Congress ought to state clearly and unambiguously what exactly is required of the white minority comprising nearly 5 million people, 3 million of whom have roots stretching 15 generations or more back to the Cape and no other place to go. If it is to surrender their fate to the whims of whichever black clique which emerges with power, then only direct military intervention by the U.S.A. or the Soviet Union will achieve that surrender.

Now, he did not say so, but he made clear that he knew which one would intervene and, of course, it will be the Soviet Union. He said:

> With further sanctions now inevitable I predict the post-sanctions scenario as follows: Increasing unemployment will result in increasing crime such as car theft, housebreaking, mugging in the white areas. The police and army, who have used only a fraction of the power available to them will react with increased force to black on black, black on white, and white on black violence. Then U.S. legislators, amid expressions of horror and condemnation, will pass further acts of sanction to fuel the upward spiral of violence further.

The man has it absolutely right. That is exactly what is going to happen. And this Senator from North Carolina wants no part of it. And then very wryly, Mr. Fox concludes:

> When I am deported penniless by the present South African government, forced to leave or face punishment by the U.S. Government, or forced to flee from the radical black socialist government which surely would result under "majority"-racist-black rule, the bloated Senator from Massachusetts will find me protesting on his doorstep in Hyannisport. That's a promise.

Now, that is typical of the kind of letter we are receiving from various people.

Mr. KENNEDY. Would the Senator from North Carolina be willing to yield for a question?

Mr. HELMS. I will yield for a question, yes.

Mr. KENNEDY. I was wondering if the Senator could tell us which other Senators——

Mr. HELMS. Mr. President, I will yield for a question on the Senator's time.

Mr. KENNEDY. Could I have 3 minutes?

Mr. PELL. I yield 1 minute to the Senator from Massachusetts.

Mr. KENNEDY. I was wondering if the Senator could tell us which other Senators had the opportunity to talk with the Foreign Minister of South Africa.

Mr. HELMS. I have told the Senate all I know about the situation, I will say to the Senator from Massachusetts. I am confident that Pik Botha knew it would be an exercise in futility to try to speak to the Senator from Massachusetts because your mind has been made up for a long, long time.

Mr. KENNEDY. The Senator indicated that Pik Botha spoke to a number of Senators, and I was just wondering if the Senator from North Carolina could tell us which other Senators other than Senator Zorinsky and yourself the Foreign Minister of South Africa spoke to.

Mr. HELMS. If the Senator had been listening carefully, he would have heard me say that Senator Laxalt spoke with him. I believe Senator Grassley also spoke with him and Senator Zorinsky, and of course myself.

Mr. KENNEDY. Would the Senator share with us the nature of the conversation? It has been alleged that the

Foreign Minister indicated to one or more of the Senators according to the chairman of the Foreign Relations Committee that if the President's veto——

The PRESIDING OFFICER. The Senator's 1 minute has expired.

Mr. KENNEDY. Will the Senator yield 1 more minute?

Mr. PELL. I yield 1 more minute.

The PRESIDING OFFICER. The Senator is recognized for 1 more minute.

Mr. KENNEDY. If it was sustained, that there might be increased sales of wheat and other farm products to South Africa.

Mr. HELMS. He made no such statement.

Mr. KENNEDY. Well, is there anything that the Senator would like to tell us about the nature of the conversation that would help us make our own judgment about whether it is really intimidation or in effect a bribe by a foreign minister, a member of a government to an American Senator? Is there anything that the Senator can tell us about so that we could make our own judgments, other Senators would be able to read through this and make their own judgment?

Mr. HELMS. I did not catch the last part of the Senator's question.

Mr. KENNEDY. So that other Senators would be able to read the RECORD and know, on the basis of what the conversation was between the Foreign Minister and the Senator from North Carolina, whether that conversation really would fall under the accusation of being a bribe?

The PRESIDING OFFICER. The Senator's time has again expired.

Mr. KENNEDY. Or intimidation?

Mr. HELMS. Mr. President, as the saying goes, there he goes again. The Senator is characterizing something he knows nothing about, with the somewhat less than clever question——

Mr. KENNEDY. Those are Senator LUGAR's words.

Mr. HELMS. I do not yield further, Mr. President. Regular order.

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. HELMS. The Senator can say whatever he likes on his own time. But I have related in full to the Senate earlier in my remarks exactly what happened this afternoon and what was said.

Mr. KENNEDY. Will the Senator yield on my time?

Mr. HELMS. Regular order, Mr. President.

Mr. KENNEDY. So I can give the authority for those words?

Mr. HELMS. Mr. President, will you advise the Senator from Massachusetts who has the floor?

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. HELMS. I thank the Chair.

□ 2130

Mr. President, I am willing to go further, if Mr. KENNEDY or anybody else will tell me the justification for support of people who boast about their power to inflict their will upon innocent people by hanging automobile tires around their necks, filling them with gasoline and setting them afire. But you do not hear the Senator from Massachusetts talk about that.

Mr. KENNEDY. Will the Senator yield and let me restate my position on that, or will the Senator deny me that opportunity?

Mr. HELMS. The Senator can have the floor in just a minute and speak. I do not have to stand here and listen to him. The Senator is not going to harass the Senator from North Carolina.

The Senator, throughout this thing, has supported the violent factions of South African puppets, and he knows it is a fact. What is at stake here, what is at issue, is whether the Soviet Union will take over the entire continent of Africa, including the minerals, including the shipping lanes, and convert it into a continent of tyranny and terror.

The Senator finds scarcely anything wrong with what is going on in Nicaragua, except he does not like the freedom fighters. He constantly complains about those. But this Senator differs with the Senator from Massachusetts. I am an anti-Communist, and unhesitatingly so I think that is the issue before this country—and its foreign policy all over the world.

Mr. President, I do not know whether the President will be sustained in his veto tomorrow. I hope he will. If he is not, it will be a tragic mistake for which the people of America, including the farmers, will pay a terrible price. The President has taken a stand, I admire him for it. I stand with him, and I hope he wins.

I yield the floor.

The exhibit follows:

EXHIBIT 1

CITY COUNCILMAN GETS DIFFERENT PICTURE OF SOUTH AFRICA

(By Wayne Singleterry)

A member of the governing council for the black South African township of Soweto was beheaded the day Oklahoma City Councilman Goree James arrived in that country to begin a recent 10-day visit.

Despite that gruesome incident, James, who returned to Oklahoma City last week, said he discovered that South African racial violence wasn't nearly as widespread as most Americans believe.

He also learned the plight of South Africa's blacks is not as bad as most Americans suspect.

"My trip to South Africa was one of the most exciting experiences I've ever had in my life. To say the least, all the things I had been led to believe about South Africa were not true," James said.

"The whole country is under a spirit of guilt, especially when it comes to what they feel Americans think about them," James said.

"It's the laws that are wrong. The majority of white people would like to see those laws changed. If there was a popular vote today, racial restrictions would not be there," he added.

In one of the few remaining countries where a racial minority controls the government, James said a South African black has a better chance of becoming part of society's mainstream than American blacks did in the 1950s.

"I had heard that all the blacks had to get out of town (Johannesburg) before dark" and that in the daytime they were limited where they could go.

"Black people go about wherever they want to in South Africa, restaurants, hotels, wherever."

In Johannesburg, a city of 2 million people, "I was expecting wholesale segregation. I was not expecting to find blacks in significant jobs, especially skilled jobs."

Blacks hold almost 62 percent of the jobs in Johannesburg. They are administrators, engineers, managers, clerks, stenographers, mechanics, bricklayers and heavy equipment operators.

James said he was also surprised to see blacks in the city after dark for leisure activities and shopping.

"I attended a Methodist Church expecting the worst, only to find the choir," James said.

"Most people think of South Africa emotionally. I conceived it out of my own experience during the years of segregation.

"Blacks will not have a hard time in South Africa melting into leadership roles as we did in this country," James said.

"I don't like to waste hate. Everybody who hears of South Africa has a common feeling of hatred toward everybody in South Africa. I don't think that's good for humanity," James said.

Accompanying James on his trip were a council member from Cincinnati; the mayor of Tel Aviv, Israel; the mayor of Taipei, Taiwan, and other dignitaries. Each

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Oklahoma City taxpayers did not fund James' trip, he said.

During his visit, James and other officials addressed Johannesburg's chief elected officials about that community's laws restricting where blacks, Asians and coloreds can live.

Anyone born of a mixed marriage between blacks and Asians, whites and blacks, of Asians and whites is called a colored. Asians are mostly people from India.

"Our suggestions to the council and administrators were to do away with the group area act that says blacks got to live here, Asians here, etc."

James said he brought tears to their eyes when he talked about some of his experiences during the American struggle for integration and civil rights in the 1950s and 1960s.

"I don't ever go just to learn. I went to effect a change," James said.

He learned later that the council had no authority to change that policy. The change had to be approved in Pretoria, the country's center of government and administrative power.

* * * * *

saying they would no longer prosecute anyone for violating that order.

"That was real refreshing," he said.

A mass transportation system that prohibits blacks, coloreds and Asians from riding the same buses as whites may also be on its way out.

James said he was told the 43-member Johannesburg council is one vote shy of being able to eliminate segregated busing.

The visitors also discussed blacks' involvement in business, and other relationships between the white minority and the people they rule.

"We labored real hard in discussions." James said he spent more time with the nationalists, the ruling conservative party, than he did with more liberal organizations.

Everywhere they went, James said people they were trying to do.

"They were the friendliest people I have ever met in my life," James said.

During his visit, James celebrated his 53rd birthday. He was frequently greeted with cakes and people singing "Happy Birthday."

Newspapers and local television stations did features on the group's visit.

It wasn't, however, a totally joyful trip.

Soweto, a community of 2.5 million people the group visited, was rife with unrest. Students boycotted schools, renters refused to pay their landlords and landlords were evicting their tenants.

"It's a powder keg," James said.

But the violence often shown on television between police and Soweto residents was overblown. Much of the actions against police were caused by gangs of hoodlums, just like the gangs in large America

* * * * *

the violence shown on television before South Africa banned the foreign news media, James said.

"So far as the media reflects the kind of laws on the books, we are getting a correct picture.

"Where the trouble lies, and I talked with citizens of Soweto, is the media gives you an opinion there's a ban of soldiers with 15 or 20 people charging them.

"It's not 15 or 20 people, it may be 1,000, to 2,000 people attacking the police."

James said full integration and the sharing of power by the white with the racial majority may occur quicker than many people believe.

He said he wants to return to South Africa later to determine if there are improvements.

EXHIBIT 2

SOUTH AFRICA LIKELY TO BECOME MAJOR MART FOR U.S. WHEAT

(By Dirck Steimel)

Failing crops in Africa and dwindling worldwide demand for U.S. wheat have combined to catapult South Africa into a position to become a major market for the winter wheat grown in U.S. Wheat Belt states.

But no one is putting South Africa, previously only a minor importer of U.S. grain, on the customer list yet. Politics has become a major hurdle.

Widespread condemnation of South Africa's apartheid policy has swept the farmers—and their representatives in Washington—into the intense debate over whether economic sanctions should be imposed on the South African government.

Regardless of sanctions, South African officials estimate that their nation will need to import between 19 million and 37 million bushels of wheat in 1987.

If South Africa were to buy the 37 million bushels from the United States, it probably would become the fifth or sixth largest U.S. wheat customer, said Richard Fritz, director of market analysis for U.S. Wheat Associates, a Washington-based export group.

South Africa's growing need for wheat coincides with a slump in U.S. grain exports, which could be aggravated further by the reluctance of the Soviet Union—traditionally a leading buyer of U.S. wheat—to fulfill its purchase commitment under a long-term trade agreement.

The United States sold 900 million bushels of the 1985 wheat crop overseas—only half of the 1.8 billion bushels sold in the peak year of 1981. The outlook for export sales of this summer's crop is only slightly better, according to the Agriculture Department.

Farm states are ensnared in the controversy over sanctions against South Africa. Several farm-state lawmakers have voiced opposition to a grain embargo, which has been widely discussed, saying that taking such action to protest the white minority government's racial policies would hurt U.S. farmers more than the Pretoria government.

The debate has spilled over into the governor's race in Kansas, the nation's top wheat-producing state. House Speaker Mike Hayden, the Republican candidate, drew criticism from some farm groups by saying he favors banning all sales—including grain sales—to South Africa. Lt. Governor Tom Docking, the Democratic candidate, opposes an embargo.

A bill that would have halted all trade with South Africa, including grain sales, was killed in the U.S. House in favor of a milder Senate-passed bill. The Senate version would ban U.S. investments and bank loans in South Africa and clamp down on mineral and food imports. But it would not block grain exports.

President Reagan is almost certain to veto the measure, although it appears there are enough votes for a two-thirds majority to override his veto. According to White House press secretary Larry Speakes, Mr. Reagan thinks the bill would "impede rather than advance the goal of further change in South Africa."

The South African government to some extent has fanned the controversy over sanctions by reminding U.S. legislators in a news release sent to Capitol Hill and the Washington press corps that it is potentially a major U.S. wheat customer.

The release, mailed out in July, underscored South Africa's record of buying grain from the United States and said it trusted that the United States would continue selling grain to Pretoria on a "non-discriminatory basis."

However, the release noted, "Should developments dictate otherwise in the future, the South African government would be forced to drastically review its purchasing policy from abroad."

EXHIBIT 3

[From the Kansas City Times, Sept. 5, 1986]

WHEAT GROWERS RIP HAYDEN'S SOUTH AFRICAN EMBARGO STANCE

WICHITA.—The president and the executive director of the 4,000-member Kansas Association of Wheat Growers have sent House Speaker Mike Hayden a letter critical of his support for a ban on wheat sales to South Africa.

Del E. Wiedeman, a WaKeeney farmer and group president, and Howard W. Tice, executive director, said in their letter Wednesday that any embargo would cause enormous damage to the United States reputation as a reliable supplier of wheat. They said much hard work has gone into rebuilding that reputation after the embargo against the Soviet Union imposed by President Jimmy Carter in 1980.

Mr. Hayden, Republican gubernatorial candidate, took the stand against wheat sales to South Africa during an agricultural news conference sponsored by the Kansas Farm Bureau last week.

Kelley Hayden, the candidate's brother and campaign spokesman, said the letter had been received and a response was being prepared. He said despite the wheat growers' criticism, telegrams from Democratic legislators and the state's congressional delegation and a verbal blast from a member of the Kansas Wheat Commission, Mike Hayden's stand has drawn positive comments from some people.

"It's all just a tempest in a teapot stirred up by the Democrats," Kelley Hayden said. "We're getting favorable response."

Mr. Weideman said he is registered as a Democrat, but he said that was beside the point.

"I know Mike Hayden and like him and think he'd make a fine governor," Mr. Wiedeman said. "But to advocate we might consider an embargo, no matter what country is involved, is not acceptable."

Mr. Wiedeman said he thinks that is an opinion shared by a majority of members of the wheat growers association.

EXHIBIT 4

[From the Asbury Park Press, Sept. 22, 1986]

APARTHEID, LIKE WALLS OF JERICHO, IS FALLING

(By John A. Davenport)

It would be an irony would it not, if the Republican conservative administration of President Reagan went down in the history books as that which has finally unhinged South Africa from the West, thereby completing the Sovietizing of the whole African continent. The chances of preventing this catastrophe never looked bleaker than in this autumn of 1986, when even the friends of South Africa seem to have lost heart and when both houses of Congress have declared war against a country, which has never harmed American life or property, which supplies the U.S. with strategic minerals wholly essential to our peacetime and defense industries and which, by its very location, is the key to defending U.S. interests in the South Atlantic and Indian oceans.

What in the name of common sense justifies this mindless adventure? The charitable answer is that our congressmen are concerned less with the national interest than with winning votes in the next election and appeasing liberal sentiments. In the process they and the country have been swamped by a virulent campaign against "apartheid"—an ugly word for separateness never defined in the legislation but always fraught with opprobrium.

Yet apartheid is a slippery term carrying two different meanings. If it refers to the natural desire of the tribes and races in a mixed society like South Africa to associate with each other, then it is no more offensive than that blacks in New York should congregate in Harlem or Germans in Yorkville. If, on the other hand, apartheid means forced separation by government, then it is morally offensive.

But, as matters are going, such enforced separation seems to be falling down like the walls of Jericho: gone the ridiculous signs directing whites and blacks to different facilities; gone their separation on the playing fields and in the factories; gone, finally, the hated pass laws which prevented blacks from moving freely around the country. But with each concession still more is asked of the South African government by our Senate and House.

This escalation of demands is best seen in Sen. Lugar's so-called "compromise" bill which may shape the final legislation going to the president for signature or veto. The bill inflicts on South Africa such wounds as forbidding it landing rights in this country but promises much more punishment tomorrow unless South Africa agrees to certain concessions. These include the freeing of Nelson Mandela, who could walk out of jail today if he would renounce the use of terror in that country; the immediate lifting of emergency edicts and, worst of all, the recognition of all South African political parties including the South African Communist Party and the African National Congress, whose stated purpose is to make the country "ungovernable."

No government in the world would accept such conditions in its own country, and President Botha is quite right in saying that he prefers U.S. sanctions to suicide. For what the United States is really asking is the abdication of the present South African government and the information of a new government to take its place.

This is very dangerous business as all history shows. It is all very well to dream that a new Kerensky will take over in South Africa, but in the end, Kerensky proved no match for Lenin. Just so present demands of Congress and the U.S. State Department are an invitation to anarchy and chaos in which all will lose and only the Soviets will win.

In the end only the president can stop this subversion, but so far he has spoken with a very uncertain trumpet. He is against sanctions but he has failed to develop a coherent argument against current proposals. Surely the country would be better served by plain speaking.

Sanctions are wrong because they run counter to U.S. adherence to the principles of free trade and free investment. They are wrong because they jeopardize our supply of strategic minerals. And they are wrong because they encourage those in South Africa who choose revolution as against evolution, terror as against order. It is time to support South African whites and blacks in working out their own destiny and their own form of power-sharing.

Several Senators addressed the Chair.

Mr. PELL. Mr. President, I yield 2 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KENNEDY] is recognized.

Mr. KENNEDY. Mr. President, as sometimes happens in this body, a Senator will state a position which is not the position of a Senator and then differ with him. That has just been done by the Senator from North Carolina, when he indicated that I was supporting regimes, organizations, or individuals who believe in violence in South Africa. That is completely untrue.

I yield to no one in this body, including the Senator from North Carolina, in deploring violence, and I believe that my record on that, in opposing violent groups, speaks for itself, and it will not be sullied by any statement, accusation, or false representation by the Senator from North Carolina. I wanted to make that point clear.

I regret, Mr. President—I know that my friend from Michigan wishes to speak, and I will have another opportunity tomorrow—that we did not have an opportunity to have a full revelation for the Senate about the nature of the conversation between Pik Botha, the Foreign Minister of South Africa, and the particular Senators, including the Senator from North Carolina, who spoke about the particular conversation. It was represented by the chairman of the Foreign Relations Committee as characterized as being a bribe and an attempt to intimidate the Members of the U.S. Senate. Those were not the words that were used by the Senator from Massachusetts but by the chairman of the Foreign Relations Committee.

Any Senator, including the Senator from North Carolina, who does not understand the distinction between Members of the Senate speaking with a friendly government and the President of a friendly government, like Cory Aquino, who represents ideals and shared values with the United States about the best way we can most effectively help her, and understanding and speaking with the Foreign Minister of a government that is committed by nature, disposition, and policy to a racist policy of apartheid——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KENNEDY [continuing]. I think fails to understand any significance in terms of foreign policy.

I ask for 1 more minute.

Mr. PELL. I yield 1 additional minute to the Senator.

Mr. KENNEDY. Fails to understand the significant difference in our role under the Constitution and foreign policy. I think the distinction is self-evident, and it is one that should even be appreciated by the Senator from North Carolina.

I wish we were faced with the issue in question about how the United States could best help the causes for democracy and those forces that are committed to democratic ideals, instead of a government that has a tradition and a commitment to violate them.

I thank my colleague, the Senator from Rhode Island.

Mr. DOLE. Mr. President, do I have any time remaining?

The PRESIDING OFFICER. The Senator has 46 minutes remaining.

Mr. DOLE. I yield 10 minutes to the Senator from Utah.

Mr. HATCH. I ask my colleague from Michigan if he is waiting.

Mr. LEVIN. I am willing to continue our process of switching. I wonder if I can inquire of the Senator about how long he expects to be.

Mr. HATCH. Not much longer than 10 minutes, unless we get into a dialog.

Mr. PELL. I promise no dialog.

Mr. HATCH. I thank the majority leader for this time.

Mr. President, I am one of the four Senators who voted for the Anti-Apartheid Act. I am also one of the Senators who supports the President's veto of that bill, and there are two basic reasons for my position.

First, I visited South Africa during the recess and learned, for instance, that Senator KENNEDY's friend Bishop Tutu is not what Senator KENNEDY claims him to be. Tutu's own church does not support his call for sanctions, and he has had to acknowledge that fact at an embarrassing press conference from which I will quote in a moment.

Not only does Tutu's Anglican Chuch not support his personal desire for sanctions, but also, two other black church groups that are larger than Tutu's have opposed his call for sanctions. The leader of the Zionist Christian Church, with 9 million members, Mr. Barnabas Lekgonyane, oppose sanctions, as does the leader of the Alliance of Independent Reformed Churches, Mr. Isaac Mokoena, with nearly 6 million followers. That is not to mention Chief Buthelezi, with whom I also met.

Mr. President, remember how many times we have heard the claim that Bishop Tutu and the black churches of South Africa want sanctions, no matter how many millions of blacks will be thrown out of work? This Chamber has echoed with this claim. Yet I learned in South Africa that Tutu, himself, has acknowledged that he is speaking only for Desmond Tutu, not his church. Indeed Tutu told a press conference in August that he believes his church is probably opposed to sanctions.

□ 2140

So Tutu wants them but his church members do not; neither do many of the other black church leaders. In fact 70 percent of the blacks in South Africa oppose sanctions or at least disinvestment.

Before this debate is over, Mr. President, I hope that those who wish to override the President on this issue will clarify who in South Africa is really calling for sanctions and who do they represent? It is naive to vote for sanctions in the belief that black South African churches are calling for them, because that is not the case. Yet many of my colleagues still seem to believe just that. Some are still confused because they have not yet visited South Africa, so they project the

American civil rights struggle and the vital role played by black church leaders in that struggle in the South in the 1960's to the South African scene today. But this is not so. This is not an American civil rights controversy. Nor does it have any innerworkings of an American civil rights controversy. It is much more complex than that and virtually everybody I met who opposed apartheid, from opposition political leaders to black leaders, to black political leaders to black small business people to black people who work for American businesses, oppose disinvestment and oppose sanctions and realize those things are going to hurt blacks all over Africa today.

My second reason for supporting the President's veto will be clear to anyone who will take the time to read the President's letter to our majority leader. President Reagan has accepted most of the important sanctions in the Antiapartheid Act, the Foreign Relations Committee version of the bill, and he has accepted my emphasis on black development aid funds to be spent in South Africa to strengthen black institutions such as the trade union movement.

I have good credentials here along with Senator Kennedy because the two of us worked very hard back in 1981 to see that the free black trade union leadership had support and they could develop and learn the skills of how to develop free black trade unions. They are not just limited to blacks. They invite nonblacks to join as well. So it has been a very good development and, of course, we worked very hard to do that together.

In other words, it would be wrong to argue that the issue is now sanctions or no sanctions.

The President has agreed to enough sanctions, in my view, to make the point with South Africa. Now a vote to override this veto is a vote to add additional sanctions that Senators ought to be prepared to justify to their constituents. The additional sanctions are almost certain to bring retaliation from South Africa that will hurt our own farmers.

We were on the floor today with another big farm amendment. How important that was to do something for the farmers, and yet here we are with I think a situation where our farmers can be definitely hurt and at the same time many blacks in Africa can be definitely hurt as well.

Mr. President, I hope that no one in this debate will suggest that the issue is sanctions or no sanctions. To do so would mean that the President's letter on the sanctions he intends to impose has not been read at all.

Let me outline some examples of the additional sanctions that some would like if we override the President's veto.

The additional sanctions will seriously harm not only South African blacks but American farmers and workers as well. These additional sanctions include a ban on imports of South Africa textiles, coal and uranium and agricultural products. If South Africa retaliates, bear in mind that since June 1986 South Africa has purchased over 160,000 tons of our wheat. Projected sales of United States wheat to South Africa in 1987 go as high as 1 million tons. Moreover, South Africa bought nearly $400 million of American corn in 1987, $50 million worth of rice and 170,000 bales of cotton.

The additional sanction of agricultural imports will mean that hundreds of thousands of black agricultural workers will be unemployed. About 400,000 black workers are already in the fruit industry in the Cape Province with almost 2 million dependents. There are nearly 100 million black workers and dependents involved in the sugar industry who will be affected if we override the President's veto.

In other words, Mr. President, the President has eliminated the sanctions that would cause the most harm to black workers and their families, such as the landing rights of South African Airways and the agricultural imports and the coal imports. There are still plenty of sanctions left to send a message to South Africa. Those who vote to override cannot claim that they just want to do something about apartheid. The President has agreed to do just exactly that in his letter to the majority leader, and a vote to override his veto is, in my opinion, a vote to throw a million blacks out of work in addition.

I think this is important. But let me go a little bit further. If we are serious about helping blacks in South Africa, I suggest we do it most positively. Apartheid is a heinous practice. There is no question that all of the outshoots from apartheid are heinous and very detrimental to blacks.

I found it is almost impossible for blacks in certain provinces and areas in South Africa to own property or even to own their own small businesses. We should be doing things that will help blacks to be able to own property, own their small businesses, be able to compete in a more free market system.

That is one reason why I supported the doubling of certain funds to $40 billion to help with vocational education, development of free black trade unions, the development of small business and many, many other things that could be done.

I think the President would be well to push these types of programs and to help people along these lines.

Mr. KERRY. Mr. President, is the distinguished Senator willing to yield for a question?

Mr. HATCH. I am happy to yield on the Senator's time.

Mr. KERRY. I do not know how much time I have.

The PRESIDING OFFICER. The Senator has no time at this point.

Mr. PELL. Mr. President, I am glad to yield to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. PELL. I am willing to yield time.

The PRESIDING OFFICER. Does the Senator from Rhode Island yield?

Mr. PELL. Yes.

Mr. KERRY. I ask my distinguished colleague from Utah.

The PRESIDING OFFICER. Is the Senator from Rhode Island yielding to the Senator from Massachusetts and, if so, how much time?

Mr. PELL. I yield to the Senator from Massachusetts. As I understand, he wanted a minute to phrase a question.

Mr. KERRY. I want to be able to ask a question, Mr. President.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 1 minute.

Mr. KERRY. Before I use that 1 minute on this point of victory, I would like to know whether or not the answer is supposed to come from the 1 minute.

Mr. PELL. No. I think the answer comes out of his time.

Mr. HATCH. It comes out of my time.

Mr. KERRY. I thank my distinguished colleague.

I listened with interest and I know the distinguished Senator is obviously heartfelt serious about what he is saying.

But is he aware that President Botha has himself said publicly that anything less than what the Senate has passed and the House has passed will be viewed as a victory and if we pass anything less than that, we will in fact be embracing Botha's regime as a consequence of their own statement that they view something less as a victory.

Mr. HATCH. That is, of course, not what he said. If the Senator wants to get the direct quote, I am happy to answer it.

Let me answer the Senator this way. I received a telegram. While I was over there, I met mainly with opposition people. I did meet Botha. I did meet with the President of South Africa. I did meet his Finance Minister and others. Since Botha was in Japan at the time I did meet his deputy, the man right under him in charge of the foreign ministry and I did meet a whole raft of other people mainly opposition people. I met with a lot of progressive party people, a lot of business people. I met with Chief Buthelezi. I met with business people. I met with people who enforce the Sullivan principles on American companies. I met with black small business people and blacks who work for American companies. I went through Alexander Bay which is worse than Soweto, worse than anything, living up against the most wealthy city in the world, Seeheim, and I can go on and go on with the people we met within South Africa.

Most of them were people who were violently opposed to apartheid, as I am.

And hardly any, unless they were connected with the African National Congress, hardly any of them—I cannot think of one who wanted sanctions because they felt it would hurt blacks.

They do want pressure. They do want the United States to assert moral leadership and they do feel President Reagan is doing that.

Let me tell you what really bothers them. What really bothers them is the interference in Congress in insisting on sanctions so politicians can go home and brag about how they stood up for civil rights in this country in a battle that is not a civil rights battle. This is not Martin Luther King facing up to Bull Connors. It is a complex problem, and we have a tendency to make it uncomplex on the Senate floor in our zeal to let people know how strong we are for civil rights over here.

Almost every one of them said we have been making strides under the reform movement under P.W. Botha with all his faults, we have been making strides. Reform has been coming. Many laws are no longer in force. A number of them have been repealed. And he himself has said that he will get rid of apartheid.

The PRESIDING OFFICER. All time has expired, the time of the Senator from Massachusetts as well as the time of the Senator from Utah.

Mr. HATCH. I ask I be yielded 5 minutes.

Mr. DOLE. I yield 5 minutes,

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. What I am really trying to say is that their big argument, and by the way I also met with the head of the South African foundation which is a conglomerate of all the businesses, himself very much opposed to apartheid. And I can tell you that from him right on down through many of the other people that I met with, in fact almost all of them, except I can only think of one or two black small business people who said "We don't know whether sanctions will help, but if they will help, we are for them."

That is what their argument was.

□ 2150

Mr. KERRY. Would the Senator yield to me 30 seconds?

Mr. HATCH. I yield 30 seconds off my time.

Mr. KERRY. Each and every one of the laws in which the Senator refers that have been changed have in fact been replaced by another law. Where the pass law may have been changed they put in a uniform identity card. In each case, one block that was changed may be replaced by another block.

And my question to the distinguished Senator is: The Eminent Persons Group said that it was their conclusion that the Botha government is simply trying to put a less inhumane face on apartheid but has no fundamental commitment to the notion of change.

I wonder how you would address that finding of these distinguished personages who spent that time there and drew that conclusion.

Mr. HATCH. Even the opposition people have admitted there are laws that should be taken out. There are a number of them that no longer can be enforced. There have been reforms. Those reforms had been going on until the Congress of the United States reared its ugly head and injected itself into this.

I was part of that. I voted for sanctions. I did for a variety of reasons. I am against apartheid and I wanted to put pressure on South Africa and I wanted to give Senator LUGAR and Senator PELL some support so we would not have to have the punitive sanctions that my good friends, Senator KENNEDY, and STEPHEN SOLARZ and others were arguing for. And they lost.

But when the President is willing to give virtually all of the sanctions that we asked for except those that are going to directly harm blacks—in other words, tailor the sanctions to hit those who really should be hit—I think we ought to go with the President. I think we ought to let him conduct foreign policy. I do not think we, in our zeal to act like civil rights reformers in America, should intervene with that type of foreign policy.

Let me just end by making a point I was going to make before. I think it is important to read into the RECORD a pretty important telegram. This telegram came to me this week, as I recall.

This comes from Colin Eglin, who is a Member of Parliament, leader of the Progressive Party. He is opposed to apartheid. He is one of the leaders over there. I had lunch with him one day, and I told him I voted for the sanctions. He said:

> Having discussed the situation in South Africa with you during your recent visit I am gratified to learn that you have now decided to oppose the imposition of economic sanctions as I mentioned to you when we met, I believe that economic sanctions will be counterproductive. They will not assist in getting rid of apartheid. On the contrary, they will make it more difficult to do so. May I suggest that you consider making another visit to South Africa with a view to identifying practical measures which could assist in a positive way, the elimination of apartheid.
>
> Kind regards,
>
> COLIN EGLIN, M.P.
> *Leader of the Progressive Federal Party.*

On my time could I ask the distinguished Senator from Massachusetts if he has been to South Africa. But I only yield 10 seconds.

Mr. KERRY. I will take the 10 seconds to say that the distinguished Senator has not been to South Africa, but I do serve as the ranking member of the African Subcommittee and I have spent a considerable amount of time listening and talking to people and being with people.

Mr. HATCH. I do not mean to denigrate my distinguished colleague.

Mr. KERRY. As the Senator knows, my colleague from Massachusetts has had an involvement with this for over some 20 years and has been on what I thought was one of the more recent trips to South Africa.

I think all of us know that while it is valuable to be in these places firsthand, it is not the requisite by which we make our decisions as to how we vote.

The PRESIDING OFFICER. The time of the Senator from Utah has once again expired.

Mr. HATCH. Mr. President, I ask unanimous consent that I be given 3 additional minutes and then I will finish.

The PRESIDING OFFICER. Is there objection?

Mr. PELL. There is no objection, as long as the 3 minutes comes out of the time of the other side.

Mr. HATCH. The 3 minutes will come out of the majority leader's time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Well, let me just say this. I think it is pretty tough to understand that situation unless you have been there. I thought I did, too. I really studied it. But without going there, without really meeting with people on both sides of this issue, I think it is pretty difficult to understand.

Now, admittedly, I spent 8 days in that area and that is a limited time. But that is 8 more days than any other Member of the U.S. Senate has spent, except those who have gone there with their minds made up to begin with. And there have been a number of those.

Let me just finish, because I promised I would yield the time and give it to my distinguished colleague from Alabama.

I think when somebody like Colin Eglin, who has taken a lot of abuse—all of his life, he has stood up against apartheid, all of his life he has stood up and said this—I think Colin Eglin should be listened to.

Furthermore, I believe you ought to listen to the great church leaders, black church leaders. I think we ought to listen to Chief Buthelezi, who heads the Kwa-Zulu nation, 7 million people. I think we ought to quit listening to the African National Congress, which is out in Zambia, and letting them make the decisions for us.

I would like to go on and on, because it is a really important issue. I think we have given it short shrift. I think the President ought to be backed. I think the President knows more about it than we do. Frankly, I think he will be able to keep the reform going if we give him a chance to do it. I think that he has had an effect on South Africa.

I just call to the attention of the distinguished Senator from Massachusetts and his senior colleague from Massachusetts, that you probably noticed where P.W. Botha has called for snap elections within the next 2 years. I can tell you, you will probably also notice that his party is continually moving to the right, to the Afrikaner's point of view. And they are being pushed there by none other than the Congress of the United States in its usual interference in foreign policy.

Now, the President tailored sanctions that will work. I think we ought to support him, and I am going to because they will work and they will benefit blacks all over South Africa. I think they will keep the pressure on for this Government to do what is right without being pushed into the arms of those who do not want to do what is right and never wanted to end apartheid.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, I yield 7 minutes to the Senator from Michigan.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank the Chair and I thank my friend from Rhode Island.

Mr. President, we have given the administration policies 6 years to produce results in South Africa. They have not.

Just last year, when the Congress was finally ready to act, the President asked for additional time. Surely, he told us, constructive engagement will work—surely, he said, the South African Government will begin to respond—surely, he predicted, the situation will improve if we stay the course.

Well, we listened, and so did the Government of South Africa. They heard our President's plea for congressional restraint and understood it as acceptance of their policies. And those policies have continued. Since September 1985, 3,000 black South Africans have died at the hands of agents of the Government.

Now they are hearing the President's veto message and they are understanding it too. As the Christian Science Monitor suggested, that veto message is being received as "good news for President Pieter W. Botha's government" and a "foreign policy victory" for Pretoria.

The net result is that the President himself, in a letter to Senator DOLE and Speaker O'NEILL, was forced to acknowledge that his policies have not produced results. Indeed, he had to acknowledge that, "In the last several months, the South African Government, instead of moving further down the once promising path of reform and dialog, has turned to internal repression."

So our policies have failed. To the extent that Pretoria is moving, it is moving backward.

And that should come as no surprise to us. We know that there is no point in dealing with terrorists—they are irrational, beyond reason, immune from persuasion. Our policy is not to negotiate with terrorists. It is time we applied that policy to the terrorist government in Pretoria. And the South African Government is a terrorist government: They kill innocent civilians; they take hostages and, without benefit of trial or hearing, place them in prison; their concept of justice is colored by color—by a racist ideology which permeates their every decision and action.

No, we cannot reason with them, we cannot persuade them, we cannot assume that they will see the light and change their ways. They will not. Unless they are forced to. And the sanctions bill before us is a modest way to bring pressure to bear against them.

But, Mr. President even if sanctions were no more persuasive than the current policy, we should still impose them. While our ultimate goal is movement, our immediate need is for a clear statement of a fundamental moral position. Because, Mr. President, America's moral commitment to end apartheid is in question now and it will remain in doubt as long as we refuse to impose sanctions.

I am embarrassed to say that. More than embarrassed; I am ashamed.

That America—a nation founded on the concept that we are all created equal and endowed by our Creator with certain unalienable rights—that America's position on the fundamentally moral question of apartheid is less than clear and more than tragic.

□ 2200

Let us use sanctions, then, as a way to send a message of morality to the world and to those who impose and suffer under apartheid.

But, we are told, that message is more than symbolism. Those who oppose sanctions invoke this warning: Sanctions will hurt those we seek to help.

And that claim, at least, is right. Sanctions will hurt the black majority in South Africa. They know that and we know that—and while neither they nor we welcome the hurt, we each can accept it, because there is no alternative. The black majority is hurt everyday that apartheid continues—and they are willing to accept the hurt of sanctions as a way of protesting and perhaps ending the pain of apartheid.

Ask the black majority if they are willing to accept the hurt of sanctions. They will give you the answer—they have given you the answer. When they march in Soweto they give you the answer—they accept the hurt of the clubs and the bullets of the Government which represses them. When they protest in churches they give you their answer—they are willing to accept the jail that the Government puts them in. When they speak out, when they gather to bury their dead, when they engage in a strike, when they even dream—then they prove that they are willing to accept the hurt which comes from trying to end an evil, perfidious system.

Ask Bishop Tutu if he is willing to accept the hurt of sanctions. Ask Nelson Mandela if he is willing to accept the hurt of sanctions. Ask Allan Boesak if he is willing to accept the hurt of sanctions. You know their answer, the American people know their answer—and so do the 27 million blacks living in South Africa.

But if you want, if you need, a clearer statement of intent, consider this: In November 1985 there was a peaceful march in Mamelodi organized by the women of the township to protest a ban on weekend funerals, high rent, and the brutal action of the security forces toward their families. They are not fools. They knew the risk they were taking and they tried to minimize it. They carried signs: "Do not shoot," the signs said, "This is a peaceful march," the signs said. And still the shots were fired. And still 19 peaceful protestors were shot and killed by the South African security forces and hundreds of others were injured. Among the dead were two 10-week old babies.

You ask those people if they were willing to be hurt by sanctions. Ask them if they respect a U.S. Government which speaks against apartheid but does not act against it.

Or if we do not wish to ask those questions, some may try other arguments in support of the President's veto. They tell us to wait so that we can act with our allies. But we did not wait when we went after terrorism in Libya and ought not wait to confront terrorism in Pretoria. They tell us we ought to speak with one voice. But they ignore the millions of voices and the hundreds of years of history which tell us what that voice ought to be saying.

Enough, Mr. President, enough. This issue is neither complicated nor confusing. It is as clear as day and night. And our answer ought to be as simple as the problem. No more, no more. You can't explain it, you cannot justify it. We cannot in all decency sustain this veto.

Mr. President, I yield the floor.

Mr. DENTON and Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DENTON. I think the floor manager will yield me time.

The PRESIDING OFFICER. Who yields times?

Mr. HELMS. Mr. President, may I inquire what the time situation is?

The PRESIDING OFFICER. The Senator from Rhode Island has 16 minutes remaining, and the majority leader has 30 minutes remaining.

Mr. HELMS. Does Senator PRESSLER have time remaining?

The PRESIDING OFFICER. Senator PRESSLER has 26 minutes remaining.

Mr. HELMS. I thank the Chair. I yield to the Senator from Alabama such time as he may require.

The PRESIDING OFFICER. The Senator from Alabama, Mr. DENTON.

Mr. DENTON. I thank the distinguished Senator from North Carolina. I regret that the Senator from Michigan, who just spoke, left the floor because I wanted to ask him a question about his claim that this is a simple problem, and a simple question. In his statement he praised Nelson Mandela for his willingness to sacrifice for his country and so on. Had he not left so hastily I would have asked him if he is aware that Nelson Mandela was found by Amnesty International, not the most right wing crowd in the world, not to be a prisoner of conscience but simply to be, justifiably, a prisoner. He is not apologized for, nor is admired by Amnesty International. If the Senator from Michigan admires Nelson Mandela, I would ask him on what grounds and on what grounds, in more specific terms, he regards this as a simple question.

I am glad that the junior Senator from Massachusetts is on the floor. I wish the senior Senator were also. As I informed the senior Senator from Massachusetts, I intend to address his own point of view with my own, but to do so with respect for his. I will do so with respect to the junior Senator from Massachusetts, who knows that he changed my mind when we discussed at length on a very important issue. Senator BIDEN, on his side, made a very lengthy statement in the Judiciary Committee with respect to that.

In other words, I think that I can be objective, I think the junior Senator from Massachusetts can, and I had an experience with the senior Senator from Massachusetts to prove that he, too, can be objective because he yielded to a point of view I had in opposition to him on the occasion, which I shall not quote.

My point, Mr. President, is that this is a complex question. I agreed with the junior Senator from Kansas, when I saw her on television addressing the Press Club, when they asked, "Do you Senators feel that you have enough information to vote on a question as complex as South Africa?

She equivocated. She implied that perhaps we have not had. I believe that we do not have, as a body. I do not presume to present myself as one who is extremely knowledgeable, but I do wish to present a point of view based on some knowledge. I will define the parameters of the knowledge.

I know more about South Africa than I like because I happen to have inherited the job, the new job, as chairman of the Security and Terrorism Subcommittee of the Judiciary Committee. Terrorism is an issue, but the greatest issue—from the point of view of the United States I think we would agree—is on both sides of this issue. First, the improvement of the lot of the black people of South Africa. Second, the national interests of the United States. How are they affected by the events which take place respecting South Africa?

In both of those interests, the improvement of the lot of the black people in South Africa, the monitoring of the interests of the United States, my knowledge and point of view result in a firm conclusion that both of those interests will be served by backing the President of the United States with respect to this sanctions issue.

Let me give one example of the kind of knowledge from the Security and Terrorism Subcommittee perspective. The other night about a week ago in my son's home, within walking distance of here, we had a fundraiser for a man named Hlapane. He is one of the most admirable and perhaps the most courageous man I have ever met. I did not show his picture on the floor, his photograph, the last time I talked on the subject on the floor. I believe Senate rules preclude that.

But were I to show his picture, you would see a man with a black face, gray hair, who has all the evident character of George Washington, Thomas Jefferson, you name it, hero of U.S. history. That man was a member for two decades of the African National Congress. He was an enthusiastic member. He became very doubtful during the early fifties about the influx of Communist influence. He saw the African National Congress slowly permeated by Communists in key positions receiving their guidance from overseas. He fought it within the African National Congress for roughly 10 years.

☐ 2210

He then broke with them, very expressly telling them why, and became an opponent of the African National Congress. He came to testify in 1982 before my subcommittee. Before he testified, a very interesting string of events occurred.

We gave him top security from John F. Kennedy Airport to Washington National; top security from that airport to the room where he agreed to remove the mask we had on him. He told me in the anteroom that he knew that I had done some things for my country that he had read about. He said that he loved his country and he loved his people.

He then said to me that he knew as the result of his testimony that day, he would be killed when he returned, he would be assassinated by the terrorists who are going to be so encouraged as to perhaps irreversibly be unleashed by the bill we might pass tomorrow.

Indeed, after he blew the whistle on the African National Congress, along with many other blacks who had much to lose, he returned to his nation and he was murdered, his wife was murdered, and his eldest daughter was crippled, maimed. The fundraiser that we had at my son's house was to raise money for the education of his two daughters who are doing very well at the college in Montevallo. That is my kind of participation in the South Africa issue.

There is a movie I will ask the distinguished junior Senator from Massachusetts to review sometime before the vote tomorrow, just to inject something of a condensation of my perspective on this. It will take 15 minutes. I will be happy to take 15 minutes if he suggests so. I invite all Senators to look at the movie in room S-207 from noon tomorrow until 4 p.m. Fifteen minutes is all I ask that you take to look at the movie.

I think it encapsulates the true vision we should have on South Africa.

My experience comes from Vietnam and my experience with international relations. I do not blow it up, but it is fairly considerable, considering the relativity.

My conclusions are that Vietnam was something we were not ready for as an establishment nor as the critics of the establishment, that is, the media and academia. We both broke down. That is also the point of view of a man named Fred Friendly whose program I participated in last Saturday in the Senate Caucus Room, which will be aired in January. I want to see a mending of that breakdown because the greatest harm being done to the United States and to the world is the disunity which was sowed during that period.

I implore my colleagues, particularly those like the junior Senator from Massachusetts who has seen evidence of my goodwill, to join in the effort to take a good look at this before we vote tomorrow and see what we are voting on without prejudice.

There are 535 Secretaries of State, if you count all 100 here and 435 over in the House. Nothing has crippled the U.S. interests or the world's interests in civilization greater than disunity.

Never has it been more plain, more repetitious, than when the chairman of the Foreign Relations Committee of the Senate openly breaks with the President of the United States and in a speech not too many days ago compared it to Senator Fulbright's break with President Johnson on Vietnam.

I do not say that President Johnson was right. I do not say that Senator Fulbright was right. Or wrong.

I say that the split between the two was a tragedy and remains a tragedy on this floor and in the other House today.

What I know about the situation is encapsulated by saying that if we take the vote tomorrow that we appear likely to take, we are going to feed the Communist-inspired terrorism in South African perhaps irreversibly. In doing so, we will condemn the black whose lot both sides are trying to improve and whose polls, on the black side, always show they oppose sanctions. We will lose that.

If you think you are receiving some political injection of economics by a threat to retaliate by not importing grain, wait until we contemplate what happens when that Government goes down and we are not able to get access to the metals and minerals without which this economy cannot exist.

Let us not be hypocritical about the issue of who is injecting domestic politics into this. The whole question has been soaked in domestic politics. That is why we have had such a vote as only 14 people for the President the last time. The domestic political perception is based on a false notion because I believe that the black people in the United States are going to identify with the black people in South Africa sooner or later because the truth will surface and the interests of those black people in South Africa will be properly identified not by Bishop Tutu who is a creature of the media. but men like Buthelezi and others who are leaders of black people, having identifiable constituents, and who are taking a stand opposed to that which this body has so far taken.

Nelson Mandela's wife says, "With our necklaces we will liberate our country."

Have you all seen what the necklaces are, filled with diesel fuel? Have you seen the way they shake matches to intimidate a whole crowd or an individual? When you see this film tomorrow you will see a man filmed picking up a knife off a table, going out in front of a crowd to a man who is being beaten up and then punching that knife into him about 30 times.

Mr. President, you do not like violence and I do not like violence. I ask you to look into this further, please, because we are going to vote tomorrow at 4 p.m. I say that because I am interested in nonviolence, I am interested in the lot of the black people in South Africa.

Bishop Tutu, you should know, made four demands about what should be done some time ago. He said if they were met he would not be in favor of invoking sanctions. The four demands have all been met. They were massive increases in expenditures in education, end of forced relocation, granting of citizenship, a process by which that is done, repeal of the influx control laws. All of those four have been done.

Bishop Tutu is luxuriating in his prominence. He does not have a constituency. Poll after poll among the black people say they do not agree with sanctions. They are intimidated. They are terrorized. The murder, torture, and intimidation are prevalent. I ask you to look into it.

I ask the junior Senator from Massachusetts if he will indeed look at the 15 minute film tomorrow. Will he do so?

Mr. KERRY. I thank my distinguished colleague.

Mr. DENTON. I am just asking a question.

Mr. KERRY. I wanted to say very respectfully that the earlier comments of the Senator were well-taken and I appreciated his reference to our discussion and the work we did together on that issue. It was very important. I know that he did change as a result of our conversation.

Out of respect for that, while I know my commitment on this is a firm one, out of respect for that I will indeed take the time to view that film. I will be happy to join the Senator.

Mr. DENTON. I thank the Senator from Massachusetts. I expected no other kind of response.

I ask the distinguished floor manager and he does not have to respond. I respectfully invite him. I listened to him with admiration when I was at the Navy College in Newport with him and the other Senator from his State. I respect them. I respect their point of view. I do add that, in spite of the firmness and depth of our position, we should take a look at this film.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. I yield the junior Senator from Massachusetts 10 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KERRY] is recognized.

Mr. KERRY. Mr. President, as I answered the distinguished Senator from Alabama, I am delighted to view the film tomorrow, notwithstanding that I have very strong feelings about this issue. It is my intention to vote for sanctions as I did vote for sanctions previously. I will vote to override the veto of the President.

□ 1020

Mr. President, indeed, I know where the Senator is from.

Mr. President, my reasons for urging my colleagues to vote to override the President's veto are not based on a partisan foundation at all. It is my perception of what I think is in the best interest of the foreign policy of the United States of America and the effort of the U.S. Senate to fulfill its obligation to appropriately set an example for the people of this country and the world about how we feel about human rights and the efforts to carry the revolution of democracy, if you will, beyond our shores.

While we debate this issue in the U.S. Senate, Mr. President, people are being killed in South Africa. Children are being shot, children are being lined up and shot. People are dying of starvation in death camps which the South African Government, in its arrogance, calls homelands.

As we speak here today, South Africans are suffering, right now, before sanctions. It is the kind of suffering that comes out of an oppression which this country has always said it stands against. It comes from the violation of basic human rights. Blacks in South Africa cannot live where they choose to live. They cannot move freely within their own country. They must carry a "Uniform Identity Document" at all times, and they must present it upon demand to the security police. And somehow, we are supposed to believe that time is going to heal the ignominy of that requirement.

While we discuss the economic impact of sanctions, hundreds of blacks are dying in the mines of South Africa because of a system which does not treat black people as human beings.

While we talk about whether sanctions will cause hardship, blacks in South Africa are getting on buses at 2:30 a.m. so that they can ride for hundreds of miles in the dark, to get to the factories in time to work at menial jobs.

While we listen to speeches about "democracy" in South Africa, the state of emergency continues, and thousands of black activists and union members are still being held in prison, even as we talk here about something less than we passed before. And while we talk about freedom, freedom of the press is being crushed in South Africa.

While we debate here, blacks are still being denied the right to vote in South Africa. They are being denied even the right to bury their dead with dignity in South Africa.

While we discuss the issue of a Presidential veto, blacks in South Africa are literally being enslaved by the system of apartheid. That is what we should be talking about here on the floor of the U.S. Senate—not future hardship but present hardship; not future indignity but present indignity; not future loss of life but present loss of life. Because that is what this vote is all about.

That is why I believe we ought to vote overwhelmingly to override the veto by the President of the United States, because this is a vote by the U.S. Senate to do whatever it can to try to end slavery in another country.

It has been suggested by this administration and its supporters that, if we vote to override the President on this issue, we will somehow send the wrong message before the summit meeting in Iceland. I suggest that the opposite is true. A vote to override will send the right message to the summit in Iceland. I believe it is the imperative message, that must be sent by the United States.

It will send a message to blacks in South Africa that we support their struggle against racism and oppression. It will send a message to the Botha regime in Pretoria that we are serious, and that there will be serious consequences for them if they do not enter into negotiations with the true black leadership in South Africa for a transition to majority rule. And it will send a message to the world that America still stands for the principles of freedom, equality, and democracy that America has always stood for in the world.

That is the real message.

That is the real message of the vote and I do not believe any efforts by the administration to transform it into a summit impact or any other kind of impact will work because I believe the U.S. Senate and the American people understand the nature of this message.

I regret to say, and I wish it were otherwise, but I believe that this administration, in its 6-year policy of constructive engagement—which, against all warning and against all requests by blacks, it has continued to pursue—has shown a moral insensitivity to the problem of apartheid.

While blacks suffer already because of apartheid, this administration has the audacity to try to suggest that blacks will suffer because of the effort to stop apartheid. They have failed to see that when we ally ourselves with the oppressors of black people in South Africa, that we weaken our commitment to human rights everywhere. We hurt the image of America in the eyes of the world. We hurt it in the eyes of Africa, of Asia, of Latin America, of Europe, and indeed, Mr. President, we hurt it in the eyes of black communities across this country and we hurt it before our own citizens of the United States.

We lessen, I think, what America represents, what it means. I think we undermine the achievements of our own civil rights movement in bringing about greater equality in the United States over the past 30 years, in a struggle which goes on even now.

That is not the course we should choose to follow in the U.S. Senate. We should, instead, seek the high moral ground in the struggle against the racist, apartheid system in South Africa. And we should heed the calls of black leaders within South Africa itself—moral leaders, leaders who have put their lives on the line, leaders who are in prison today because of their position. Those leaders say to us that while they understand it may require sacrifice by blacks, it is a sacrifice that is imperative because, without it, they will continue to make sacrifices that will be lost because they will not have gained their freedom as a consequence of those sacrifices.

Mr. President, there is an alternative to imposing sanctions. There is an alternative. That alternative was set forward by the Eminent Persons Group. They told us that greater violence, more destruction, and the possibility of the worst bloodbath since World War II will come if we do not impose sanctions. That is the alternative.

I just do not think that is an alternative, Mr. President. That is why we have a moral obligation to impose sanctions now in a last effort to avoid that bloodbath and bring about a peaceful resolution of the conflict.

Mr. President, I heard the distinguished Senator from Utah talk and others talk about trips to South Africa and about an understanding of South Africa. The Eminent Persons Group went to South Africa for a longer period of time than any United States Senator. The members of the Eminent Persons Group were people who, for years, have had a role in what has happened there because they have been part of the British Commonwealth. No less an individual than Sir Malcolm Fraser, the former Prime Minister of Australia; General Olusegun Obasanjo, proposed by the President of Zambia; Lord Barber Wentbridge, chairman of the Standard Chartered Bank; Nita Barrow, who was proposed by the Prime Minister of the Bahamas, a Barbadian national; Mr. John Malecela, proposed by the President of Zambia, the former Foreign Minister of Tanzania. Who could understand better what is happening there? Sardar Swaran Singh, proposed by the Prime Minister of India, who had been in public life since 1946, served as India's Minister of External Affairs.

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The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. KERRY. I request 3 more minutes.

Mr. PELL. Three more minutes.

The PRESIDING OFFICER. The Senator is recognized for 3 more minutes.

Mr. KERRY. Let me read the conclusion because the conclusion, I think, is more important than the words of any U.S. Senators. They said:

> We draw the conclusion that while the Government claims to be ready to negotiate, it is in truth not yet prepared to negotiate fundamental change, nor to countenance the creation of genuine democratic structures, nor to face the prospect of the end of white domination and white power in the foreseeable future. Its programme of reform does not end apartheid, but seeks to give it a less inhuman face. Its quest is power-sharing, but without surrendering overall white control.

And finally they said:

> The question in front of Heads of Government is in our view clear. It is not whether such measures will compel change; it is already the case that their absence and Pretoria's belief that they need not be feared, defers change. Is the Commonwealth to stand by and allow the cycle of violence to spiral? Or will it take concerted action of an effective kind? Such action may offer the last opportunity to avert what could be the worst bloodbath since the Second World War.
>
> We hope that his Report will assist the Commonwealth—and the wider international community . . .

Mr. President, the United States has already acted by virtue of the Senate and the House, the Commonwealth has acted, the House of Representatives has acted, the nonaligned nations have acted. Only the President of the United States refuses to act and tomorrow we have an opportunity as the U.S. Senate to act finally and to make clear our determination that this country will not send a lesser message, not send a weakened message, not sending something less than our original intent, but will send the message that makes clear that apartheid must end and that the United States will not tolerate anything but the strongest efforts to make it end and end now. This is a vote to end slavery, Mr. President, and I hope the Senate will overwhelmingly reject the veto of the President.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes and 51 seconds remaining.

Mr. PELL. Mr. President, I yield myself such time as I need.

Mr. President, I regret that the President chose to veto the South Africa sanctions bill passed overwhelmingly by the Senate and the House. In so doing, he has confirmed the worst fears of many black South Africans—that the U.S. administration does not support their struggle against apartheid.

The President justified his veto on the grounds that the sanctions in the bill would hurt the very people that we are trying to help. Yet, this position ignores the call for sanctions among many South African blacks including Nobel Laureate Arch Bishop Tutu as well as the recommendation of the British Commonwealth's Eminent Persons Group, which concluded that sanctions "may offer the last opportunity to avert what could be the worst bloodbath since the Second World War."

As a nation committed to peace and justice, the United States has a moral and political obligation to help all of the people of South Africa avoid a racial conflagration. We can no longer rely on talk and diplomacy—the heart of the administration's failed policy of constructive engagement. Rather, we must take action that will put meaningful pressure on the South African Government and make it clear to South African blacks that we are on their side.

The bill which was sent to the President achieves these objectives. It leaves no doubt about our moral stand. We are against apartheid not only in words but also in deeds. Moreover, it puts the South African Government on notice that there is a price to pay in their relationship with us if they do not take genuine steps to dismantle their inhumane and unfair system of apartheid.

I believe this is a good bill. Some of the sanctions, such as the bans on the importation of iron and steel and on new investment, have been agreed to by the European Community while many others are measures adopted by the commonwealth nations. Thus, in a real sense, this bill is part of a multilateral approach. In addition, there is nothing in the bill, in my view, that prevents the American people from expressing their outrage over apartheid through the passage of State and local antiapartheid laws. Finally, the bill provides assistance to the victims of apartheid.

The President has just announced his intention to issue an expanded Executive order that would add a partial ban on new investments, a ban on the import of iron and steel from South Africa, a ban on bank accounts for the South African Government and its agencies, and a $25 million aid fund for the victims of apartheid to the measures imposed by Executive order last year. This order falls far short of the bill which was sent to the President. To accept this as a substitute for the sanctions bill passed in this body by a strong bipartisan vote of 84 to 14 and in the House by a vote of 308 to 77 would send the wrong signal to the South African Government to believe that it has been let off the hook.

I urge my colleagues to reject the forthcoming Executive order and to pass this bill over the President's veto. Only in this way can we make our opposition to apartheid clear and unequivocal.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I believe that there are no other Senators who wish to be heard. In closing, Mr. President, let me raise just two or three questions.

I have heard this evening, as we all have heard on so many occasions, that Bishop Tutu is a hero. Perhaps so. We have heard that Bishop Tutu speaks for the people of South Africa. Perhaps so. If that is true, however, Mr. President, why is it that Bishop Tutu's own church voted to reject the notion of economic sanctions?

The truth of the matter is that Bishop Tutu represents a minority of blacks in Africa. And the minority he represents happens to be the violent minority.

We also have heard repeated comments by those who favor the intrusion of the United States Government into the affairs of South Africa that Nelson Mandela is a hero. That fact is that Mr. Mandela pleaded guilty to conspiracy to murder. That is why he was jailed. The fact also is that Mrs. Mandela boasted that they had enough automobile tires and bicycle tires to create enough "necklaces" to impose their will upon those in the majority who have the courage to stand up and say "We don't want sanctions."

Now, what kind of heroes, Mr. President, are we going to have around this place? But all of this is reminiscent, I guess, of what happened some years ago in the country formerly known as Rhodesia. You may remember that a very fine black Methodist minister named Abel Muzorewa was elected Prime Minister of Zimbabwe. Prime Minister Muzorewa did not last long because there began an undermining process in which the U.S. State Department and others participated. Bishop Muzorewa was pro-United States, he was antiviolence, he insisted upon Christian principles. And so another election was forced in Zimbabwe.

Prime Minister Muzorewa was placed under house arrest following that election, and a Marxist named Robert Mugabe became the Prime Minister. There has been chaos ever since in Zimbabwe. The standard of living there has plummeted, the country which once was among the foremost countries in that part of the world in terms of production and trade now is in the greatest of difficulties. It is acknowledged by all who will look at the situation that from 10,000 to 20,000 of Robert Mugabe's political adversaries have been eliminated. Even CBS designed to have a report on that on one occasion, but it was like a ship passing in the night. It was a fleeting report.

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Nobody talks any more about how a Marxist dictator just over the border in Zimbabwe operates. That is the way it is in this day and time, with the kind of "journalism" we have, the kind of "statesmanship" we see.

We hear virtually no complaints about a Communist country anywhere. With all due respect to various Senators, when have you heard them complain about Mugabe; when have you heard them complain about the atrocities committed by Communists anywhere? You do not hear it. It is as if it never happens.

You do not hear anything about Rumania. Hungary is long since forgotten. East Germany? You do not hear any complaints by Senators on this floor about the way Communist tyranny operates. No. It is sort of a boys-will-be-boys attitude.

It is only when a country such as South Africa and others presume to be two things—anti-Communist and pro United States—that you hear these voices raised.

If South Africa is so bad—and I do not claim that South Africa is perfect; nobody claims that—but to be honest about it, Mr. President, I do not know a perfect country on the face of this Earth. But if South Africa is so bad, why are tens of thousands of blacks from other countries pouring over the borders into South Africa every year, seeking work, seeking a higher standard of living, seeking to stay alive?

You do not hear about that. You do not hear about Ethiopia and what is going on there. Oh, maybe an occasional mention. But the focus is on South Africa. South Africa, warts and all, is head and shoulders above any other country on the continent of Africa.

Mr. President, it is this sort of thing that perplexes me, along with the fact that Senators stand up on this floor and, with a perfectly straight face, say that Ronald Reagan has done nothing at all to encourage South Africa to begin to rid itself of apartheid. That is simply not so; and with all due respect to Senators who say it, they know it is not so.

Mr. President, I do not know whether there is hope of sustaining the President's veto tomorrow. I pray that it will be sustained, because the very people who have encouraged the President of the United States to go and sit down with—who else?—the Soviet Union in Iceland are the very ones who are going to send him there with a defeat, if they possibly can do it. And they may succeed.

It makes me wonder what ever happened to the bipartisan policy in this country. There was a Senator named Arthur Vandenberg, a distinguished Member of this body, who was a Republican, and he was sort of an architect of the bipartisan nature of foreign policy. But we do not have it around this place anymore.

Anything and everything that Ronald Reagan does is wrong. They accuse him of duplicity. They accuse him of being ineffective. They accuse him of not really wanting to do anything about various situations when, as a matter of fact, he has done more than any President in recent years to move this country along.

I have not always agreed with President Reagan, but I respect him as an honest man who is doing the best he can under the most difficult circumstances and with almost no cooperation from his political adversaries.

Earlier this evening, Senator HATCH stated over and over again a self-evident truth—that being that this sanctions issue is domestic politics. Were this not an election year in the United States, we would not be here at 14 minutes to 11 o'clock debating an issue that ought not to have come up, in any case.

The President deserves the support of the Senate. He deserves to be given a chance to do his constitutional duty—that is, to conduct the foreign policy of this country—and it may be that he will be denied it tomorrow. If so, the RECORD will be clear as to who stood where. I stand with the President, and I do so proudly. He is right on the issue of South Africa, and he deserves to be supported.

Mr. President, does the Senator from Rhode Island desire to be heard?

Mr. PELL. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Twenty-four seconds.

Mr. PELL. Mr. President, I will close with a quotation, I believe, from Carl Schurz, when he said:

> My country, right or wrong. When right, to keep it right. When wrong, to try to put it right.

I think those of us who support the override tomorrow feel that this is the right direction to go.

Mr. PROXMIRE. Mr. President, I rise to urge my colleagues to override the President's veto of H.R. 4868, the Comprehensive Anti-Apartheid Act of 1986. The House has already voted overwhelmingly to do so. The bipartisan vote in the House to override the President was 313 to 83. Previously the House voted to pass H.R. 4868 for a vote of 308 to 77. So the antiapartheid bill actually picked up new support on the override vote. Such a lopsided, bipartisan rejection of the President's decision shows how out of touch he is with the American people on this issue. He is left now with trying to persuade one-third of the Members of the Senate to back him up.

On August 15 the Senate voted to pass H.R. 4868 by a vote of 84 to 14. I hope we in the Senate will reject the President's efforts to split our bipartisan coalition on this bill. It is designed to express the opposition of the United States to the apartheid policies of the Government of South Africa and to encourage South Africa to abandon such policies. It is not a radical bill. It does not force United States companies to leave South Africa. It does not even ban all new bank loans to the South African Government. During our August debate the argument was often made that we should not make the bill too strong as we needed a moderate bill that a supermajority of the Senate could support in case there was a need to override a Presidental veto. So we passed a bill that was not as strong as many of us would have preferred. Senator LUGAR then persuaded the House to accept the Senate bill without any change whatsoever. Again it was argued that we might need to override a veto and the bill should not be strengthened in conference. The House reluctantly agreed as its Members realized the absolute need to have legislation on this matter this year. In fact supermajorities in both Houses realized the need for our country to go on record with legislation demonstrating American opposition to apartheid. The Congress was convinced that the time for talk was over, and the time for action was upon it. It is very unfortunate that the President has decided to veto this bill—but our task is clear. We must override that veto.

I have given several speeches in the past explaining why it is both morally right and in our national interest to put America firmly on record about the need to end apartheid in South Africa. I will not repeat those arguments now. I do wish to note, however, that apartheid is a heinous system of racial repression, that was instituted by the majority white population to maintain their privileged rule over the majority black population. It is absolutely wrong. There is a growing political crisis in South Africa because of the just struggle by the blacks to end that system. In July President Reagan himself noted that the "root cause of South Africa's disorder is apartheid and he stated that 'time is running out for moderates of all races in South Africa.'" We recognized that and the legislation we passed in August and which is before us again today is specifically designed to move the South African Government to negotiate with black leaders to institute government by the consent of the governed before it is too late. The bill provides that all of its sanctions will be terminated if the South African Government will only take steps to move that country to a system of government by the consent of the governed. The bill is not designed to punish the people of South Africa. It is not a punitive sanctions bill. Rather it is designed to send encouragement to all those people of good will in South Africa, both white and black, who are striving to put an end to an evil, racist system.

President Reagan claims that the solution to South Africa's racial problem "can only be found in lifting the present state of emergency, releasing political prisoners, and unbanning of political parties—necessary steps opening the way for negotiations aimed at creating a new, democratic order for all South Africans." These are precisely the steps that our antiapartheid bill provides the South African Government must take to end the sanctions it imposes. Thus our bill will help lead to an end of the present crisis.

The President tells us that he opposes the comprehensive Anti-Apartheid Act of 1986 because it harms the victims of apartheid. And yet black leaders in South Africa both political and religious call for the type of measures in this bill.

In April Archbishop Tutu called on the international community to pressure the Government by means of economic sanctions to move toward nonviolent change. In May the Southern African Catholic Bishops Conference called on the world community to put economic pressure on the apartheid government and to link such pressure with negotiations with accepted leaders of the people. The Protestant South African Council of Churches has long called for economic sanctions against the Government. Our country should respond to the moral voices of the South African people—both white and black. This bill is designed to do just that. It is also in America's interest to encourage nonviolent reform in South Africa, and that is the purpose and design of this bill before us today.

Before closing I want to address one other issue that came up with regard to this legislation, that is whether in passing it we meant to preempt actions being taken by State and local governments to indicate their own opposition to apartheid. We did not and do not. During our debate last year on the South African sanctions bill Senators made it absolutely clear on the floor that we had no intention of preempting State divestment laws—see the 1985 CONGRESSIONAL RECORD at 18824 to 18826. Although that matter was not formally addressed during our August debate on this bill, our intention on this issue is the same. Congress has no intention of compelling sovereign States to invest in companies which their elected representatives have decided they should not invest in. If the Senate wanted to override such State laws it would have put a specific preemption provision in this bill. It did not and that is why I can state flatly that this bill is not meant to preempt any State or local action against apartheid that has occurred throughout this country.

Let me once again urge my colleagues to put America on record as being firmly against apartheid by passing the bill before us with an overwhelming vote. It is both morally right and in our national interest to do so.

ROUTINE MORNING BUSINESS

(During the day routine morning business was transacted and statements were submitted, as follows:)

PANAMA CANAL: FUTURE POLICY DETERMINATION

Mr. HELMS. Mr. President, the Panama Canal, opened to traffic in 1914, has long been recognized as one of the greatest works of man. It was made possible by the grant in 1903 by the Republic of Panama to the United States in perpetuity the "use, occupation and control" of the Canal Zone territory with "all the rights, powers and authority" it would possess "if it were sovereign" to the "entire exclusion" of their exercise by Panama. Its subsequent history until the giveaway of the Panama Canal under the 1977 treaties, which includes its "maintenance, operation, sanitation and protection" during both peace and war, completely establishes the wisdom of the action of President Theodore Roosevelt in acquiring the Canal Zone and launching the construction of the Panama Canal.

Because of the strategic location of the Central American Isthmus, its history tracing back almost to the age of discovery is long and involved. It includes recognition by leading U.S. naval strategists of the Monroe Doctrine as centered on it. Moreover, it serves as one of the major maritime crossroads of the world, especially to the countries of the free world. Its value has been set forth in an extensive literature, which includes the various RECORDS of the Congress.

Mr. President, in this connection, I would invite attention to three of my important addresses in the Senate as follows:

"Panama Canal: Evolution of a Plan." CONGRESSIONAL RECORD, vol. 124, pt. 21 (Aug. 24, 1978), pp. 5847-5854.

"U.S. Isthmian Canal Policy." CONGRESSIONAL RECORD, vol. 128 (March 30, 1982), pp. S3075-76 (temp.)

"The Panama Canal." CONGRESSIONAL RECORD, vol. 219 (March 17, 1983), pp. 5983-5986 (temp.)

These statements set forth the basic principles of improvements to the maintenance, operation, and sanitation of the canal, and discuss the considered opinions of experts with practical experience in canal matters.

For this reason, I have been disturbed by the recent publication of a report from the GAO on the canal which reveals that the State Department seems determined to ignore all of the sound work done by experts in this field. The publication is entitled:

"GAO Briefing Report to Honorable Webb Franklin, House of Representatives, on Panama Canal, Establishment of Commission to Study Sea Level Canal and Alternatives." (April 1986.)

Mr. President, I am sorry to say that the GAO establishes conclusively that the Department of State has seized the initiative to push forward on the sea level canal with actions going far beyond the scope proposed in the ill-fated Panama Canal Treaties. I opposed the treaties and I opposed the wrong-headed plans to build a sea level canal. The sea level proposals should have died a natural death. But the GAO shows that the State Department has assumed full responsibility for the sea level canal study, ignoring the Departments of Defense and Commerce, who represent the real U.S. interests. Ironically, the State Department pushed ahead even after its own conference on "Future Trans-Isthmian Transportation Alternatives," held by the Futures Group in October 1982, concluded that the main issue was whether a larger canal or enlarged transit capacity for the existing canal was needed, not whether a sea level canal was needed.

In reviewing the GAO report it is clear that the U.S. Government agencies consulted in its preparation voiced the long predetermined objective of certain special interests for a vast tidal lock, misnamed "sea level," canal. In addition, the report does not mention the views formally expressed by the Panama Canal Pilots Association, the members of which are charged with responsibility for the navigation and movement of vessels in canal waters, thoroughly understand its marine operational problems, and the solution to provide the best canal for navigation.

Mr. President, the Journal of Professional Issues in Engineering—the official journal of the American Society of Civil Engineers—recently carried a comprehensive analysis entitled "Panama Canal: Its Major Marine Operational Problems and Solutions" by Capt. Miles P. DuVal, Jr. Captain DuVal is internationally known as the great historian of the canal, as well as an experienced authority on its marine operations who, over the past 40 years, has done the most comprehensive studies on canal operating problems. Captain DuVal continues to give outstanding service and counsel to a large number of Senators and Congressman.

Mr. President, I wish to commend Captain DuVal on his latest important publications. Captain DuVal's article shows conclusively why improvements to the present canal make more sense than sea level schemes.

In addition to the April article by Captain DuVal we have a strong resolution by the Panama Canal Pilot Association quoted in 1978 hearings before the House Subcommittee on the Panama Canal which resolution was not mentioned in the GAO report.

Mr. President, because the three previously mentioned documents should be of great value to the Congress and the Nation at large, I ask unanimous consent for all three to be printed at this point in the RECORD as follows:

First. GAO Briefing Report to Honorable Webb Franklin, House of Representatives, on "Panama Canal, Establishment of Commission to Study Sea-Level Canal and Alternatives." (April 1986.)

Second. Capt. Miles P. DuVal, Jr., "Panama Canal: Its Major Marine Operational Problems and Solution." A.S.C.E. Journal of Professional Issues in Engineering, vol. 112, April 1986, which is well illustrated.

Third. Two items from the CONGRESSIONAL RECORD of November 5, 1973, with regard to statements of the Panama Canal Pilots Association.

[GAO Briefing Report to Hon. Webb Franklin, House of Representatives]

PANAMA CANAL: ESTABLISHMENT OF COMMISSION TO STUDY SEA-LEVEL CANAL AND ALTERNATIVES, APRIL 1986

GENERAL ACCOUNTING OFFICE,
Washington, DC, April 29, 1986.

B-114839.

Hon. WEBB FRANKLIN,
House of Representatives.

DEAR MR. FRANKLIN: In response to your request of December 10, 1985, and subsequent discussions with a representative of the House Merchant Marine and Fisheries Committee, this is our report on the establishment of the trilateral commission to study alternatives to the existing Panama Canal. The report describes why the State Department—instead of the Panama Canal Commission or the Department of Defense—led U.S. planning efforts for the study, how the study scope and U.S. financing arrangements were determined, and when these decisions were reached. Our findings and conclusions are summarized in this letter. A chronology of key events surrounding the study is presented in appendix I.

THE PROPOSED STUDY

The Republic of Panama and the United States formally agreed in September 1982 to establish a Preparatory Committee for the study of alternatives to the Panama Canal, including a sea-level canal, and to invite the government of Japan to participate as a full member—an invitation which Japan accepted. The Committee developed terms of reference for a trilateral Study Commission, which were adopted by the three governments in September 1985. These terms included.

The study objectives, i.e., identification of potential transportation alternatives to the existing canal in Panama and detailed study and conceptual planning for the best alternative;

A description of the transportation alternatives to be analyzed in the study;

The organizational structure and operating guidelines for the study;

A proposed study budget of $20 million, with costs to be equally shared by three governments; and

An expected commencement of the study in January 1986 with a duration of approximately 5 years.

Through an exchange of diplomatic notes, dated September 26, 1985, the United States and Panama agreed that upon its completion, the study of alternatives will fulfill the parties' mutual treaty obligation to study the feasibility of a sea-level canal in Panama.

TREATY OBLIGATION

Article XII paragraph 1 of the Panama Canal Treaty between Panama and the United States, signed in Washington on September 7, 1977, states that, " . . . during the duration of this Treaty [which expires on December 31, 1999], both Parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama. . . . " The Panama Canal Act of 1979 (Public Law 96-70, Sept. 27, 1979) implements this treaty provision in section 1109(a) of the act, which states that "The President shall appoint the representatives of the United States to any joint committee or body with the Republic of Panama to study the possibility of a sea level canal in the Republic of Panama pursuant to Article XII of the Panama Canal Treaty of 1977."

Neither the treaty nor the act is definitive regarding which federal agency should coordinate and direct U.S. planning efforts for the study, how the study should be conducted and financed, or when during the treaty period it was to be conducted. By Executive Order 12215, dated May 27, 1980, the President delegated certain functions vested in him by the Panama Canal Act of 1979 to the heads of federal agencies. This delegation of Panama Canal functions did not address the sea-level canal feasibility study.

WHY STATE DEPARTMENT LED U.S. PLANNING EFFORTS

Since no specific legislative or executive authority was delegated to a particular agency, the Department of State assumed the lead in coordinating U.S. planning efforts for this study by virtue of its customary responsibility of treaty implementation, international negotiation, and conduct of U.S. foreign relations. During the late 1970's Japan and Panama independently discussed the possibility of a sea-level canal in Panama and sought a U.S. commitment to immediately undertake a joint feasibility study. State's lead role concerning this U.S. treaty commitment evolved out of preliminary discussions with the Panamanians and Japanese in 1980. This role was confirmed in April 1981 when, at the request of the President's National Security Adviser Richard Allen, the State Department agreed to chair a senior interagency group tasked with formulating administration policy to implement the Panama Canal treaty. Defense and Commission officials informed us that they did not object to State taking control of the study preparations.

HOW STUDY SCOPE WAS DETERMINED

The U.S. commitment to proceed, in coordination with Japan and Panama, with a new feasibility study of a sea-level canal in Panama emerged from President Reagan's meeting with Japanese Prime Minister Suzuki on May 8, 1981. A question has been raised concerning what this commitment encompassed. Documentation made available to us regarding this matter indicates that the President's commitment was for the United States to participate with Panama and Japan in a sea-level canal study. The administration had no adopted a position on the scope of the study at the time of the meeting between President Reagan and Prime Minister Suzuki. The previously mentioned interagency policy review group, led by the State Department, did not submit its recommendations on how to proceed with the study to the White House until September 1981.

During the year preceding the President's meeting with the Japanese Prime Minister, Panamanian and Japanese officials had expressed their interest in moving ahead with a canal study—one that would explore the feasibility of a sea-level canal to Panama and update a study (known as the Anderson Study) completed in 1970. The Anderson Study concluded that a sea-level canal was not economically justifiable.

President Carter had expressed his willingness to include Japan, a major user of the Panama Canal, in a few feasibility study of a sea-level canal by providing Japan with a copy of the Anderson Study in June 1980 and requesting their comments. Panama expressed continuing interest in pursuing a trilateral feasibility study. An interagency group was convened in July 1980 to formulate a coordinated U.S. position on how to proceed with a new study. In October 1980, the group identified specific areas of inquiry needed to complete a sea-level canal feasibility study and thus discharge the treaty commitment.

In March 1981, Panama formally suggested a broad feasibility study which would encompass economic, social, political, and environmental concerns of a sea-level canal and identify possible alternatives. In April 1981, preceding the President's May 1981 meeting with the Japanese Prime Minister, the Japanese reaffirmed their strong interest in participating in a new canal feasibility study. During this meeting with President Reagan, Prime Minister Suzuki said that Japan was willing to share in financing the study.

State Department briefing papers for the May 1981 meeting indicate that State was not persuaded that a study limited to the sea-level canal issue would have merit. However, State felt that pursuing an immediate study had advantages because it would allow the United States to

Address most effectively the feasibility of a sea-level canal versus less costly options,

Manage the canal better by examining capital improvement needs before U.S. tenure ended, and

Enhance its bilateral relations with Japan and Panama.

During the spring and summer of 1981, State chaired the interagency review of U.S. policy toward Panama, which included consideration of how to implement the May 1981 decision to proceed with the sea-level canal feasibility study. The review group comprised representatives from the Departments of State, Defense, Treasury, Transportation, Commerce, the Panama Canal Commission and other agencies. In August 1981, State responded to the Panama Ambassador's earlier suggestion that a broad feasibility study be performed by informing him that the United States envisioned a study ". . . which would not only examine the feasibility of a sea-level canal, but which would also examine possible alteratives to a sea-level canal." State's response, which indicated that the United States was interested in a broader study than that contemplated by the 1977 treaty, was cleared by the National Security Council. State sent copies of the August 1981 response to the Panama Canal Commission and the Defense Department.

In September 1981, the interagency group reported its policy recommendations to the President's National Security Adviser. The recommendations were promptly approved by the White House, including that work begin on the development of study parameters. Specifically, the group recommended that

The feasibility study should include a range of canal alternatives;

Japan should be invited to participate in the study;

A bilateral group established by the Panama Canal Treaty of 1977 (Panama Canal Consultative Committee) should develop recomendations on study parameters;

A trilateral committee, including Japan, shoiuld convene to focus on study scope, timing, financing, and organizational procedure; and

The Department of State should be designated as the U.S. lead agency.

The Panama Canal Consultative committee, a high-level diplomatic body established by the treaty to recommend policies concerning canal operations, began developing guidelines for the study in October 1981 and, in June 1982, recommended that Japan be invited as a full member of a trilateral Preparatory Committee, which was to develop terms of reference for the study. The Preparatory Committee was established by the United States and Panama in September 1982 and joined by Japan in October 1982. The committee commenced work in December 1982 and was made up in part by U.S. delegates from State, the Office of Secretary of Defense, the Army Corps of Engineers, the Panama Canal Commission, the Smithsonian Tropical Research Institute, and the Agency for International Development. This committee's work culminated in the September 1985 agreement to perform the presently contemplated study.

Following this agreement, the Panama Canal Commission and the Department of Defense expressed reservations to State concerning its handling of the study preparations. They were concerned whether State (1) was adequately equipped to lead a study of such broad magnitude, (2) would designate appropriately qualified deputy commissioners to conduct the study, and (3) would give due attention to ongoing efforts to provide for future traffic demands. In March 1986, the Panama Canal Commission and the Departments of State and Defense reached agreement on a procedure which will require consensus by the three agencies, or eventual resolution of differences at the Secretary level, of matters pertaining to key personnel appointments and policy determinations for the study. The U.S. commissioner and his deputies have not yet been named.

HOW THE STUDY COST IS BEING FINANCED

The arrangement for funding the study is described in the final trilateral Preparatory Committee report, issued in June 1985. It reflects the principal of equal participation by the three member governments in cost-sharing and proportionate distribution of contract services. An estimated budget of $20 million has been established for the work of the trilateral Study Commission. Each member government will contribute, in cash and/or in kind, one-third of the budget.

The issue of which federal agency would fund the U.S. portion of the study budget was resolved early in the planning process. The 1970 Anderson study was funded from the White House budget. According to State Department officials, they felt the new Alternatives Study should also be funded from the White House budget. Following State's consultations with representatives from the Treasury Department and the Office of Management and Budget (OMB), it was decided that the needed funds would be included in the State Department's budget request.

The State Department began estimating a budget for the U.S. share of the cost of the Panama Canal Alternatives Study in 1982. In September 1982, a State Department-commissioned consultant estimated the total study cost in 1983 dollars to be $12 million. This $12 million figure was viewed by the State Department as a preliminary figure and not a definitive estimate. The Department of Transportation, the Army Corps of Engineers, and the Japanese predicted higher study costs, ranging from $13 to $30 million.

Based on the above estimates, the State Department submitted a budget request of $2 million for fiscal year 1984, with the understanding that two additional requests for $2 million each would follow. The budget request was denied by OMB as premature since the Preparatory Committee has not yet issued its report.

The State Department resubmitted its intitial budget request for $2 million in fiscal year 1985. The request was included in the Department's salaries and expenses appropriation (Bureau of Inter-American Affairs) as "Other Program Increase." The justification stated "a feasibility study of alternatives to the Panama Canal. The study will fulfill our obligation under the Panama Canal Treaty of 1977 to conduct a feasibility study of a sea-level canal in Panama."

Congress approved the request as submitted. The money earmarked for study was not spent but carried over to fiscal year 1986. In fiscal year 1986, the State Department asked for and received an additional $2 million for the study, bringing the total amount intended for the study to $4 million.

The question has been raised as to why the U.S. share of the study cost should not be borne by the Panama Canal Commission from its toll revenues. According to the 1979 act (sec. 1602(b)), tolls are designed to cover canal operation and maintenance costs, including plant expansion and improvements. Although the proposed study will undoubtedly aid in planning future canal capital programs, it is now a tripartite effort which has a different focus and approach than would be the case if it were conducted solely by the Panama Canal Commission, the administrative agency. Furthermore, officials of the Departments of State and Defense and the Panama Canal Commission are of the view that using Commission funds might have a detrimental effect on how Panama and Japan would perceive U.S. participation since Commission toll revenues are derived from canal users, not from government receipts, which Panama and Japan will contribute.

CONCLUSIONS

The proposed study will examine transportation alternatives in addition to the feasibility of a sea-level canal in Panama, will discharge a 1977 U.S.-Panama treaty obligation to conduct a sea-level canal feasibility study. While the proposed study is of broader scope than that necessary to discharge the treaty obligation, it is in accord with administration policy established in 1981 on U.S.-Panama treaty implementation. The State Department, having customary responsibility for treaty implementation matters, was designated by the President's National Security Adviser to be the lead U.S. agency for carrying out the plans to comply with this treaty provision. The decision to proceed at this time with a study that will examine alternatives in addition to a sea-level canal was arrived at by interagency group consensus and approved by the White House. State agreed to finance the U.S. portion of the study cost through its budget following consultations with Treasury and OMB. State requested initial funds for a feasibility study of a sea-level canal and alternatives to the Panama Canal, and the Congress approved its request in fiscal year 1985.

In March 1986, the Departments of State and Defense and the Panama Canal Commission agreed on a procedure which requires consensus among these agencies for making key personnel appointments and deciding policy issues for the study. This should facilitate getting the study under way and promote effective U.S. representation on the Study Commission.

As requested, we did not obtain official agency comments on this report. We did, however, discuss its contents with State, Defense, and Panama Canal Commission officials, and their views were considered in preparing this final report. Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date it is issued. At that time, we will send copies to the Chairmen, House Merchant Marine and Fisheries Committee, House Foreign Affairs, Committee, Senate Armed Services and Foreign Relations Committees, House and Senate Committees on Appropriations, House Committee on Government Operations Senate Committee on Governmental Affairs; and to the Director, Office of Management and Budget; Secretaries of State and Defense; the Chairman of the Board of Directors, Panama Canal Commission; and other interested parties.

Sincerely yours,

FRANK C. CONAHAN,
Director.

APPENDIX I

CHRONOLOGY OF EVENTS

September 1977: The Panama Canal Treaty is signed by the governments of the United States and Panama. Under the treaty (article XII), they commit themselves to study—during the Treaty's duration (through December 31, 1999)—the feasibility of a sea-level canal in the Republic of Panama.

September 1979: The Panama Canal Act of 1979 is enacted. Section 1109(a) of the act implements article XII of the 1977 treaty by requiring that the President appoint the representatives of the United States to any joint committee or body with the Republic of Panama to study the possibility of a sea-level canal in the Republic of Panama.

March 1980: The Secretary of State told the Japanese Foreign Minister that the U.S. would be favorably disposed to join with Panama and Japan in a new study of the feasibility of sea-level canal in Panama.

May/June 1980: President Carter met with Japanese Prime Minister Ohira, again welcoming Japanese participation in the proposed study and gave Japan a copy of a comprehensive 1970 interoceanic canal study for its review and comment in planning the new study.

July 1980: The Panama Canal Consultative Committee, a U.S.-Panama diplomatic body established by the treaty, held its first meeting in Panama. Members of both governments indicated a continuing interest in pursuing a trilateral feasibility study for a new sea-level canal. Meeting discussions were limited to organizational and procedural matters.

A U.S. interagency group met to discuss the need for a U.S. coordinated position on how to proceed with a sea-level canal feasibility study in light of results already obtained through the 1970 interoceanic canal (Anderson) study.

October 1980: Preliminary U.S. review of 1970 Anderson Study is completed, identifying specific areas of inquiry needed to complete a sea-level canal feasibility study.

March 1981: Panama formally proposed that the United States join it and Japan in conducting a broad feasibility study of a sea-level canal, one which encompassed economic, political, social, and environmental effects and searched for better alternatives.

April 1981: The Department of State was tasked by the President's National Security Adviser to chair an interagency group effort to formulate administration policy for implementing the Panama Canal treaty. Japan informed the United States that it had completed its review of the 1970 study and had a "strong interest" in participating in the proposed feasibility study.

May 1981: In briefing papers for President Reagan's upcoming meeting with Japanese Prime Minister Suzuki, the State Department indicated it was not persuaded that a sea-level canal itself would be meritorious, but State saw several advantages in pursuing the study immediately. State felt an immediate study would allow the U.S. to

Address most effectively the feasibility of a sea-level canal versus less costly options,

Manage the canal better by addressing capital improvement issues before the U.S. tenure draws to an end, and

Enhance bilateral relations with Japan and Panama.

During their May 8 meeting, Prime Minister Suzuki expressed to President Reagan Japan's interest in participating in a feasibility study of a sea-level canal and contributing toward its cost. President Reagan responded by indicating that the United States would support proceeding with the study effort.

August 1981: By letter dated August 27, 1981, the Secretary of State informed the acting Panamanian Ambassador that the United States was "committed in principle" to participate with Panama and Japan in the proposed feasibility study, one "which would also examine possible alternatives to a sea-level canal." State coordinated the letter with the National Security Council and sent copies to the Defense Department and Panama Canal Commission.

September 1981: The State Department submits to National Security Adviser, and the White House approves, a senior interagency group policy paper which recommended that work begin on the development of study parameters. Participating in the group or approving the submission were representatives from State, Defense, the Panama Canal Commission, Treasury, Transportation, Commerce, and other agencies.

October 1981: The Panama Canal Consultative Committee formed a subcommittee charged with developing guidelines for a tripartite study arrangement.

February 1982: In its fiscal year 1981 report to the Congress on the 1977 Panama Canal treaty, State reported progress toward development of study parameters and that the United States had made it clear that it envisioned a study which would include a range of possible alternatives to a sea-level canal.

June 1982: The Panama Canal Consultative Committee recommended that Japan be invited as a full member in the formation of a trilateral Preparatory Committee to develop the terms of reference for the study. Specifically, the Committee recommended that the participating governments agree to study the feasibility of a sea-level canal through the Republic of Panama and other alternatives to the Panama Canal. Representatives from State, Defense, and the Panama Canal Commission participated in this exercise.

The State Department, following a legal review and approval by the Under Secretary for Political Affairs to negotiate and conclude an agreement leading to the sea-level canal feasibility study, requested and received interagency personnel support to serve and provide guidance to U.S. representatives on the proposed Preparatory Committee.

In justifying moving ahead with a feasibility study at an early date which would look at alternatives to the existing canal, State used the rational that such a study would ". . . facilitate the management of capital improvements to the existing canal; lessen the overall cost to the United States because of Japanese participation; make dispassionate consideration of alternatives easier since it is removed from the time when Panama will assume full control of the canal; strengthen our ties with Japan and Panama; and reaffirm our commitment to maintain a long-term cooperative relationship concerning the existing canal, the Treaty, and any future canal."

September/October 1982: Through an exchange of diplomatic notes in September 1982, the United States and Panama agreed to establish a Preparatory Committee and to invite Japan as a member. Japan accepted the invitation to participate in the study and the trilateral Preparatory Committee was formally established in October 1982.

A consultant, commissioned by the State Department, presented budget estimate for a feasibility study of alternatives to the Panama Canal. State used the estimate as a basis to submit the first of three planned requests of $2 million each for the U.S. portion of the study cost.

October 1982: A conference on "Future Trans-Isthmian Transportation Alternatives" was held by The Futures Group (at a cost of approximately $60,000), under contract to the Department of State, in Washington, D.C. The purpose of the conference was to assess the viability of the Panama Canal over the next 30 years and to provide U.S. government representatives with conclusions and recommendations about the appropriateness of other trans-Isthmian transportation options. The conference included representatives from various government agencies, shipping companies that use the Panama Canal, transportation engineers, international economists, and private sector and World Bank financial consultants. The conference concluded that the main issue was whether a larger canal or enlarged transit capacity was needed, not whether a sea-level canal was needed.

December 1982: Preparatory Committee met (for the first of seven times) to draft terms of reference for the proposed study. The U.S. delegation to the Preparatory Committee comprised representatives from State, the Office of the Secretary of Defense, the Army Corps of Engineers, the Panama Canal Commission, the Smithsonian Tropical Research Institute, and the Agency for International Development.

Fiscal year 1985: The Department of State submitted, and the Congress approved, an appropriation for $2 million as the initial U.S. contribution to a feasibility study of alternatives to the Panama Canal. The request was included as "Other Program Increases" in the salaries and expenses of the Bureau of Inter-American Affairs. As part of the justification, State indicated that the study would (1) fulfill the U.S. obligation under the Panama Canal Treaty of 1977 to conduct a feasibility study of a sea-level canal in Panama and (2) look at various alternatives in addition to a sea-level canal, such as widening the present canal and the construction of a third lane of locks.

June 1985: Representatives of the three governments initialed the Final Report to the Preparatory Committee, establishing the terms of reference for the Canal Alternatives Study and recommendations for organizational structure; they also initialed draft diplomatic notes creating a Commission for the Study of Alternatives to the Panama Canal.

July 1985: The Panama Canal Commission and the Department of State begin active discussion over the composition of U.S. membership on the Canal Alternatives Study team. The Panama Canal Commission advocates participation of the Defense Department and the Panama Canal Commission at the deputy commissioner level.

September 1985: The agreement to establish the Canal Alternatives Study Commission is signed by the Secretary of State and the Foreign Ministers of Panama and Japan.

September/October 1985: The Panama Canal Commission and the Defense Department express concern to the State Department regarding the stature of suggested appointees to the Study Commission, arguing that the qualifications of such appointees would evaluate the study too high and create an unwieldy bureaucracy.

December 1985: Panama Canal Commission expresses concern that the State Department lacks knowledge and expertise to conduct the proposed study and requests Defense Department help in seeking balanced government and industry participation on the Study Commission in dictating the scope and conduct of the study.

January 1986: The first trilateral Study Commission meeting scheduled for January 19, 1986, is postponed until the United States names its members to the Commission.

March 1986: The Departments of State and Defense and the Panama Canal Commission reach agreement on procedure to appoint personnel to the U.S. study team and decide policy issues which may come before the Study Commission. At month-end, the U.S. members to the Study Commission had not been named.

APPENDIX II

OBJECTIVES, SCOPE, AND METHODOLOGY

At the request of Representative Webb Franklin, House Merchant Marine and Fisheries Committee, we are providing a chronological report on how the Department of State coordinated U.S. plans for a trilateral (U.S.-Panama-Japan) study of alternatives to the existing Panama Canal. Our review focused on the scope and financing of the study, which is designed to discharge a U.S.-Panama treaty obligation to conduct a sea-level canal feasibility study in Panama.

Our review was performed during January and February 1986 in Washington, D.C., in accordance with generally accepted government audit standards.

We interviewed State and Defense Department, Panama Canal Commission, and Army Corps of Engineers officials. We reviewed briefing papers, memorandums, cables, studies, and reports to observe the timing of events and to identify interagency and congressional coordination. We compared the public statements of State Department officials with supporting documentation and assessed the reasonableness of State's planning actions in light of the U.S. treaty obligation and the Department's assigned role and responsibilities.

We did not obtain official agency comments on information contained in this report. However, we discussed our observations with State and Defense Department and Panama Canal Commission officials, and their responses were considered in preparing this report.

[From the Journal of Professional Issues in Engineering, April 1986]

PANAMA CANAL: ITS MAJOR MARINE OPERATIONAL PROBLEMS AND SOLUTION

(By Miles P. DuVal, Jr.[1])

ABSTRACT: The purpose of this paper is to provide a valid solution for the major marine operational problems of the Panama Canal as derived from marine experience over many years. In so doing it gives parts of Isthmian canal history from the Age of Discovery, tells about some of the steps leading to its construction, presents parts of the story for the separation of the Pacific Locks by means of a small lake in contrast to the consolidated Atlantic Locks, and develops the solution aimed at providing the best canal for navigation at least cost.

PRESENT CANAL OPERATING PLAN

For any thoughtful mariner his first transit of the Panama Canal is always a memorable experience. Although few know its history and problems, people are always impressed by the magnitude of the undertaking and the quiet efficiency of its operations.

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[1] Capt., US Navy, Ret., 2121 Massachusetts Ave., N.W., Cosmos Club, Washington, DC 20008.

NOTE.—Discussion open until September 1, 1986. To extend the closing date one month, a written request must be filed with the ASCE Manager of Journals. The manuscript for this paper was submitted for review and possible publication on October 11, 1985. This paper is part of the Journal of Professional Issues in Engineering, Vol. 112, No. 2, April, 1986. copyright ASCE, ISSN 0733-9380/86/0002-0119/$01.00. Paper No. 20567.

The vessel gets underway in the Limon Bay area with a canal pilot in charge of its navigation and movement (see Fig. 1). It enters the Atlantic sea-level channel, passes an approach channel to a new Gatun lock excavation and a part of a channel excavated by the French, and then makes its approach to the three-step Gatun Locks that are quietly entered.

[Figures referred to not printed in RECORD.]

Raised some 85 ft to the Gatun Lake summit-level, it is piloted through the wide lake channels to Gamboa, where it enters the 8-mile Gaillard (Culebra) Cut, an artificial extension of the lake through the continental divide.

While in the cut one can see the discontinuities in the banks, the famous slide areas, some ledges on Gold Hill left by the French, and a few relics of the Construction Era.

Then the vessel approaches and enters the single-step Pedro Miguel Locks and is lowered to the small intermediate-level Miraflores Lake, 54 ft mean elevation, passes through lake, enters the 2-step Miraflores Locks, and is lowered to the Pacific sea-level to complete the transit at Balboa or to the ocean.

Many observe the dissymmetry between the Atlantic and Pacific Locks (Figs. 2 and 3) requiring double handling of vessels at the latter. Some ask why the Pacific Locks are not consolidated as they are at Gatun.

To the solution of the planning problem involved I now address myself—a task requiring knowledge of both canal history and marine operational problems.

EARLY HISTORY OF PANAMA CANAL, 1502–1904

The advantageous geographical location of the Central American Isthmus has been recognized since the Age of Discovery. On his fourth voyage, Christopher Columbus sailed southward along the east coast of the isthmus, passed the mouth of the San Juan River in Nicaragua, also that of the Chagres River in Panama, and spent the Christmas of 1502 in Limon Bay, the Atlantic entrance to the Panama Canal. The Atlantic terminal cities of Cristobal and Colon were named in his honor.

In 1513, Vasco Nuñez de Balboa, from a peak in Darien, discovered the Pacific Ocean, then called the Southern Sea. That feat was memorialized in the naming of the Port of Balboa at the Pacific entrance to the canal.

Within an amazingly short time after 1502, the early Spanish explored many isthmian crossings and reduced their fields of investigation to four main areas: Tehuantepec; Nicaragua; Panama; and Darien-Atrato. The first plan for the Panama Canal was prepared in 1529 by the Spanish engineer, Alvaro Saavedra, but nothing was done there or elsewhere until the 19th century (DvVal, 1947b).

Because of the lower continental divides at Nicaragua and Panama and penetration of the jungles of both by navigable rivers, the early explorers developed important trade routes over these two natural avenues that for many years were the leading competitors for transisthmian transit.

The first specific step toward construction of the Panama Canal was construction by US interests of the Panama Railroad that was opened for traffic in 1855 (duVal, 1947a).

The second major step was the great French effort, 1880–89, under the leadership of Ferdinand de Lesseps, the hero of the Suez Canal, who had envisioned a round-the-world canal route—Suez, Panama, and Kra (DuVal, 1947a).

Though the de Lesseps effort at Panama ended in tragic failure, it did prepare the way for the United States under the dynamic leadership of President Theodore Roosevelt to acquire in perpetuity the exclusive "use, occupation, and control" of the Canal Zone with "all the rights, power, and authority" that it would possess "if it were sovereign" and to the "entire exclusion" of their exercise by Panama (DuVal, 1947b).

The problem of site for the first Isthmian Canal was decided by the Spooner Act of 1902 after scorching debates in the Congress, 1899–1902, known as the "Battle of the Routes" between proponents of the Nicaragua and Panama locations. The matter of type was decided in 1906 after more heated debates in the Congress, with decision for the high-level lake and lock type (DuVal, 1947a).

THIRD LOCKS PROJECT AUTHORIZED, 1939

Acting in accord with official recommendations, the Congress authorized the construction of a third set of larger locks for the Panama Canal at a cost not to exceed $277,000,000. This project practically committed the United States to the canal's "conversion" to tidal lock (sea-level).

The approach of major war in Europe and the desire to protect the canal from bombing led to a plan for placing the proposed new locks at a distance from the existing locks and connecting them with the existing channels by means of by-pass channels. This plan involved excessive channel curvatures, the largest being a bend of 46°17' in the by-pass channel north of the proposed new locks at Pedro Miguel.

Construction started in 1940 and was pushed vigorously.

STUDY FOR INCREASED CAPACITY, 1929–30

The Panama Canal opened for traffic on August 15, 1914. After early slides were removed and traffic grew, canal engineer recognized that eventually the capacity of the canal would have to be increased, and that this would require years of study and planning. The first step was to secure more water; the second, to construct additional locks of larger size.

The great flood of 1923 that threatened to destroy the canal stimulated events leading to the construction of the Madden Dam project, Completed in 1935, this undertaking increased reserve water for maintaining channel depths in Gatun Lake, supplied additional power for canal operations, and reduced the danger of floods from the upper Chagres River.

The growing traffic in the early 1920s revived major isthmian canal issues, renewed agitations for a Nicaragua Canal, and resurrected the corpse for a tidal lock (sea-level) canal at Panama. In response to these pressures was created in 1929 the US Army Interoceanic Canal Board to delve into the problems involved.

This report estimated that a third set of larger locks for the Panama Canal would be required in about 1970, along with its eventual conversion to sea level (tidal lock).

WORLD WAR II EXPERIENCE, 1941–42

In early 1941, it was my good fortune to have been assigned as Captain of the Port of Balboa in the Canal Zone, with responsibility for marine operations in the Pacific half of the Panama Canal. This sector included the southern part of the summit-level Gatun Lake; the hazardous Gaillard (Culebra) Cut, 8 miles long; two sets of Pacific Locks; the small intermediate-level Miraflores Lake, separating those locks; and the Pacific sea-level part of the canal to deep water in the Pacific, including the Port of Balboa.

Soon after arrival on the isthmus, a series of serious marine accidents in the Pacific sector focused my attention on the crucial problems of marine operations (Fig. 4). The ensuring efforts included the examination of the records of hundreds of marine accident investigations since 1914, the plotting of their locations throughout the entire length of the canal, and the study of their proximate causes.

The results were quite revealing. The more serious accidents occurred in the narrow 8-mile rocky channels of the Gaillard (Culebra) Cut. Few occurred in Gatun Lake, where the channels are wide, or in the wide sea-level sections of the canal. Accidents in the lock chambers were of relatively minor character and proportional in numbers to the number of steps in the locks. The Pedro Miguel Locks, located squarely in the southern end of Gaillard Cut, had the highest number of accidents to vessels entering and leaving those locks, showing them to be the most hazardous of all the locks.

In May 1942, construction on the 1939 Third Locks Project was suspended because of more urgent war needs after the expenditure of some $76,000,000. The major parts that were completed, which should be useful in future major modernization, include huge lock site excavations at Gatun and Miraflores, a rail-vehicular bridge across the Miraflores Locks and a bed for relocating the Panama Railroad near Gatun. No excavation was started at Pedro Miguel, which was fortunate.

Those efforts required many visits to the tops of two mountains near the Pedro Miguel Locks to observe vessels in transit, frequent trips on vessels during transits, many discussions with experienced engineers and canal pilots, and examination of the terrain of the Pacific side of the Continental Divide.

MAJOR MARINE OPERATIONAL PROBLEMS, 1942–43

Extensive inquiries at that time, confirmed by later studies, showed that the canal had, and still has, the following major marine problems:

1. The dangerous bottleneck at the Pedro Locks. This characterization is established by the fact that it has the highest numbers of entering and leaving accidents of all locks. In addition, its location, squarely in the southern mouth of Gaillard (Culebra) Cut, forces southbound vessels to slow in a narrow rocky gorge and northbound vessels to leave the locks under adverse conditions.

2. The double handling of vessels at the Pacific Locks. The separation of the Pacific Locks forces two approaches and departures by vessels; double line handling causes an increased number of accidents and loss of time.

3. The adverse effect of night fogs on canal capacity and operations. Studies at the Panama Canal show that fogs are of the land radiation type, at times extending northward from Pedro Miguel as far as Bohio. During observations made from a mountaintop near Pedro Miguel over a period of one year there were 118 fog nights with only 8 occurring in the dry season. They usually formed after 9 P.M. but normally cleared by 8:30 A.M. Since they do not normally occur north of Bohio or over Miraflores Lake, the Atlantic Locks, using an-

chorages in Limon Bay and Gatun Lake, have 24-hr flexible operations. At the Pacific Terminal, the absence of a summit-level anchorage prevents the same flexible operations, facts caused by the location of the Pedro Miguel in the southern end of the cut.

4. The lockage surges in Gaillard (Culebra) Cut. The sudden withdrawal from the summit level of over 100,000 tons of water generates a wave-like surge of maximum altitude of 3 ft with a velocity of some 25 mph as far as Gatun Lake from which it is reflected toward Pedro Miguel with a period of 45 min, forcing lockage intervals to avoid cumulative effects. When these surges pass points or discontinuities in the banks, they cause local movements of water. More than one vessel has been sunk in the cut, presumably as a result of sheers caused by lockage surges.

5. The limited operating range of the summit water level of Gatun Lake. The designed highest lake level is 87 ft and the lowest is 82 ft, a range of 5 ft. Increased traffic near the end of the dry season, when the summit level is low, at times requires restrictions on the draft of vessels desiring transits.

6. The navigation hazards of Gaillard Cut. A plotting of marine accidents throughout the length of the canal discloses that Gaillard (Culebra) Cut has the heaviest concentration of accidents tending to occur near channel bends. Gatun Lake is generally accident free. Navigation in it is like navigating the Chesapeake Bay. Originally 300 ft in minimum width, the cut widening was completed in 1970 to 500 ft, and further enlargement is continuing.

7. The limited dimension of the present locks, 110 ft. by 1,000 ft. With the size of many merchant vessels increasing and the fact that the Panama Canal is one of the major crossroads of the world, the need for a set of larger locks for larger vessels is obvious.

SUMMIT LAKE-LEVEL EVALUATION, 1943

Before making positive recommendations, it was vitally important to determine the effect of changing the operating water level of the summit lake. When the marine operational factors such as hazardous channel length, effect of fog, transit speed, transit time, channel depths, and general navigability are listed and evaluated, the evidence is conclusive that lowering the lake level will impair navigation, and that raising the lake level will improve navigation.

In contrast with the acute marine problems caused by locating the Pedro Miguel Locks in the southern end of Gaillard (Culebra) Cut there were no such problems at its northern end where there are no locks but only the widening channels of Gatun Lake affording virtually unrestricted navigation. What was needed at the southern end of the cut was a summit-level lake between the narrow cut and Pacific Locks as an expansion chamber for traffic.

In line with my request, canal engineers drew the summit-level contour around the Miraflores Lake basis and found that a smaller lake at the same level as Gatun Lake, then 87 ft maximum, could be created with relatively small dike construction (see Fig. 5). Those associated in the study were thrilled by the discovery for they recognized its significance.

SOLUTION DERIVED FROM EXPERIENCE: TERMINAL LAKE—THIRD LOCKS PLAN

What are the solutions for the previously listed seven major marine problems?

1. For that of the dangerous bottleneck at the Pedro Miguel Locks, it is their complete physical removal.

2. For the double handling of vessels at the separated Pacific Locks, the remedy is their consolidation south of Miraflores at or near Aguadulce in continuous steps similar to the Gatun Locks, just as originally planned in 1906 by former Chief Engineer John F. Stevens.

3. For the adverse effects of fogs in Galliard (Culbera) Cut, the corrective is the elevated Miraflores Lake, which generally is fog free, for use as a traffic reservoir.

4. For the problems of lockage surges, the creation of the elevated Miraflores Lake will reduce them to negligible magnitude, probably less than an inch.

5. For the 5-ft operating range of Gatun Lake, the solution is raising its present maximum level of 87 ft to its optimum level of 92 ft, as recommended in the 1947 Report of the Investigation under Public Law 280, 79th Congress, thus doubling the reserve water supply and improving navigation.

6. For reducing the navigational hazards of Gaillard (Culebra) Cut the solution is its continued enlargement as shown to be necessary by marine experience.

7. For the transit of larger vessels, the remedy is one set of larger locks at both ends of the Canal.

The preceding remedial measures combined, known as the Terminal Lake—Third Locks Plan, or the Balanced Lake Plan, was approved in principle by two experienced governors of the Panama Canal: Glen E. Edgerton, who recommended its comprehensive investigation to the Secretary of War but warned him that advocates of the "sea-level" proposal would "oppose unjustifiably any major improvements of the existing Canal"; and Joseph C. Mehaffey who approved the plan "in general" as a modification of the original Third Locks Project.

In addition, Panama Canal pilots, who are its best informed professional group on marine operational requirements, after quoting the opinion of qualified experts in opposition to the sea-level proposal as "needlessly expensive, diplomatically hazardous, ecologically dangerous and less satisfactory than the existing canal," opposed its construction and strongly supported the Terminal Lake-Third Lock Plan (DuVal, 1978a).

Moreover, the Friends of the Earth International, at its Washington meeting, October 2-4, 1982, "opposed the construction of a sea-level canal in Central America" (Helms, 1982).

Most of the remedial measures so far taken are not basic solutions but mere symptomatic treatments that do not solve the real problems involved but only provide needed temporary relief pending authorization for major modernization.

PRINCIPAL ADVANTAGES OF TERMINAL LAKE—THIRD LOCKS PLAN

What are the principal benefits of the Terminal Lake—Third Locks Plan?

Its construction will eradicate the dangerous bottleneck at Pedro Miguel and provide an "expansion chamber" for southbound traffic emerging from Gaillard (Culebra) Cut.

It will provide uninterrupted lake-level navigation between the Atlantic and Pacific Locks and will enable northbound vessels to enter the cut under better control, thereby avoiding accidents.

It will decrease transit time about one hour, and will virtually eliminate lockage surges in Gaillard (Culebra) Cut. It will double the summit-level reserve water supply to between 82 and 92 ft.

It will mitigate the effect of fog on transit operations and will reduce the number of channel and lock accidents. It will provide the best navigational canal practicable of achievement at least cost.

Moreover, the Terminal Lake—Third Locks Plan has been tested since 1914 by the flexible operations of the generally fog-free Gatun Locks with convenient anchorages near both ends, and can be accomplished with full assurance of success. Also, it will enable the maximum utilization of all work so far accomplished on the Panama Canal not only during its construction but also since 1914, which is considerable.

HISTORICAL PERSPECTIVE

The Terminal Lake—Third Locks Plan is so obvious and simple that many have asked why it was not proposed earlier in the history of the Canal. It was.

In 1908, Col. William L. Sibert, an important canal builder, made strenuous efforts to change the approved plans for separating the Pacific Locks. He did not succeed because construction had started and a change in plans would have delayed the opening of the canal to traffic at a critical time in history, which was a controlling factor at that time.

In 1906, an able engineer, William Gerig, made the same proposal to Chief Engineer Stevens who let Gerig take full credit for the idea.

Earlier in 1906, prior to Gerig, Stevens made the same recommendation to the Congress. Unfortunately, his later investigations for lock foundations proved unsatisfactory and he was constrained by economic and political hazards that could not be ignored to proceed according to the approved plans for separating the Pacific Locks that he wished to consolidate as he had done for the Atlantic Locks.

Many have asked also why it was not considered by the French at the Paris Conference of 1879 called to decide upon the basic questions of site and type for an interoceanic canal. It was.

In that Congress of some 134 distinguished leaders from various countries, one engineer, who had studied the problems involved, when he saw how the gathering was being directed toward adopting the predetermined objective for a canal at Panama of sea-level design based on the success of the Suez Canal, rose in strong protest and stated that rather than have his name associated with what he knew would be a great disaster, he voted "No."

Then, with the insight of true genius based on his studies, he presented what he called a "practical plan" for constructing the Panama Canal: "Build a dam at Gatun and another at Miraflores, or as close to the seas as the configuration of the land permits. Let the waters rise to form two lakes about 80 feet high, join the lakes thus formed with a channel cut through the continental divide, and connect the lakes with the oceans by locks. This is not only the best plan for engineering, but also best for navigation."

In large measure, the 1879 plan was eventually adopted in 1906, mainly through the efforts of Chief Engineer Stevens, Secretary of War Taft, and President Theodore Roosevelt. But its originator was the notable French engineer Adolphe Godin de Lépinay who, by so speaking, won lasting fame as the "Precursor of the Panama Canal."

LATEST DEVELOPMENTS

The most recent event in the unfolding Isthmian Canal situation is a tripartite agreement in 1985 by the United States, Japan, and Panama to make a feasibility study, starting in 1986 and expected to require four years, to cover the improvement of the existing canal, construction of a new canal in Panama of tidal lock (sea-level) design to replace it, and alternatives, such as pipelines and highways (Figs. 6 and 7).

In addition, Soviet engineers are reportedly in Nicaragua making a feasibility study for a canal there, the historic rival of the Panama site (DuVal, 1947b).

These actions, if followed, may set the stage for another "Battle of the Routes" as to site, another "Battle of the Levels" as to type, and the Monroe Doctrine, with more heated debates in the Congress.

The control of the Panama Canal is a key element in the evolving Caribbean-Central American situation vital to the security of the United States and the entire free world. In view of its forthcoming surrender under the 1977 treaties any expressions of opinion at this time as to the consequences would be matters of conjecture, except to state that the "give-away" was accomplished in spite of the overwhelming opposition of the American people.

ACKNOWLEDGMENT

The opinions or assertions of the writer are those of a private individual and are not to be construed as official expressions of the Navy or other government agencies.

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[From the Congressional Record, Nov. 5, 1973, vol. 119, p. 37]

PANAMA CANAL PILOTS ASSOCIATION,
Washington, DC, October 25, 1973.

Re Panama Canal—Third Locks-Terminal Lake Plan.

DEAR CONGRESSMAN: The Panama Canal Pilots Association strongly supports the Thurmond-Flood bills regarding major modernization of the Panama Canal.

We have given much thought and study to this matter. Furthermore, in our work of transiting vessels through the Canal we constantly observe the operations and are, of course, thoroughly familiar with the physical features of the Canal.

The original engineering and construction were magnificent. The engineers involved were very farseeing and the Canal has essentially met the needs of world shipping for over 60 years. However, time and progress are fast catching up with and will soon overwhelm the Panama Canal as now structured.

Attached hereto, is a copy of a Resolution which was passed unanimously at a very well attended General Meeting of our Association held on October 15, 1973.

We hope that you will be able to support the Thurmond-Flood bills.

Sincerely yours,

CAPT. W. H. VANTINE,
President.

PANAMA CANAL MAJOR MODERNIZATION—OCTOBER 15, 1973

Whereas, since 1914 the pilots of the Panama Canal have accumulated a vast knowledge concerning its marine operations through thousands of transits on all types of vessels; and

Whereas, during World War II extensive studies in the Canal organization of marine operations conclusively established the location of the bottleneck at Pedro Miguel Locks in the south end of Gaillard Cut as the fundamental operational error in constructing the Canal; and

Whereas, as a result of those World War II studies, there was developed in the Canal organization and approved by a committee of our most distinguished senior pilots what is now known as the Terminal Lake-Third Locks Plan; and

Whereas, this plan has been consistently recognized by various responsible independent navigation interests as providing the best operational canal practicable of achievement; and

Whereas, more than $171,000,000, has been expended toward the major modernization of the Canal, $76,357,405 on the suspended Third Locks Project and some $95,000,000 on the enlargement of Gallard Cut; and

Whereas, the several items in the 1969 Improvement Program for the Panama Canal, though important, are non-basic in character and no solution for the Canal's major marine operational problems; and

Whereas, the Thurmond-Flood bills for the major modernization of the Canal now before the Congress will provide increased lock capacity for larger vessels, greater transit capacity, and eliminate the Pedro Miguel bottleneck locks; and

Whereas, the plan provided for in these bills would preserve the existing fresh water barrier between the oceans and thus continue to protect them from the biological hazards feared by respected scientists in any sea level undertaking; and

Whereas, responsible organizations and informed experts oppose the construction of any sea level canal as needlessly expensive, diplomatically hazardous, ecologically dangerous and less satisfactory operationally than the existing canal; Now, therefore, be it

Resolved, by the Panama Canal Pilots Association that it supports the Terminal Lake-Third Lock solution as provided in the Thurmond-Flood bills; and

Resolved, that the Panama Canal Pilots Association urges the Governor of the Canal Zone to use the full force of his office to support prompt enactment of the pending legislation for major canal modernization; and

Resolved, that the Panama Canal Pilot Association opposes the construction of a new canal of so-called sea level design; and

Resolved, that the Panama Canal Pilot Association directs that copies of this resolution be sent to the following:

President of the United States.
Vice President of the United States.
Secretary of State.
Secretary of Defense.
Secretary of the Army.
Secretary of the Navy.
All Members of the Congress.
Leading Marine Organizations and Periodicals.
American Society of Civil Engineers.
Society of American Military Engineers.
American Legion.
Veterans of Foreign Wars.

CAPT. W.H. VANTINE,
President, Panama Canal Pilots Association.

[From the CONGRESSIONAL RECORD, Mar. 30, 1982]

U.S. ISTHMIAN CANAL POLICY

Mr. HELMS. Mr. President, in an address to the Nation on February 24, 1982, before the Organization of American States, President Reagan summarized crucial elements in the current situations in the Caribbean and Central American danger zones and outlined plans of action to meet these challenges.

In recognition of the strategic aspects of those areas, he stated that—"Nearly half of U.S. trade, two-thirds of our imported oil, and over half of our imported strategic minerals pass through the Panama Canal or the Gulf of Mexico." (Washington Post, February 25, 1982, p. A12).

But apparently, for reasons of limited time and space, he did not go into any details concerning the question of trans-Isthmian transit.

Having made a study of both the history and problems of interoceanic transportation over a period of years, I believe it is appropriate for me to comment at some length on these matters as well as to quote later as parts of my remarks two recent resolutions by important national civic organizations, one by the American Legion and the other by the Friends of the Earth.

Mr. President, the history of the U.S. Isthmian Canal policy is long and complicated, often beset with bewildering confusion over its two most crucial issues: First, that of site; and second, that of type. The solution, as decided in the early part of the 20th century, after extensive Army and Navy explorations and prolonged debates in the Congress, was for a canal at the Panama site of the high-level lake and lock type.

Although the wisdom of those decisions is completely established, the questions of site and type are still with us. Moreover, the ill-advised 1977 Panama Canal Treaty provided for a joint United States-Panamanian feasibility study now underway for the construction of a canal of the sea-level design in Panama—a vast project that would necessarily require some form of tidal locks or controls and would not be as safe and convenient either operationally or environmentally as the existing canal. Thus it seems that the stage is being set for more scorching debates in the Congress in another "battle of the routes" and another "battle of the levels," both at the same time.

For proper understanding, the following facts should be known about Panama Canal history:

First, in 1931, the U.S. Army Interoceanic Canal Board, when recommending the construction of a third set of locks for the Panama Canal, contemplated the converting of the existing lake-lock canal to one of sea-level design (House Document No. 139, 72d Congress, pp. 32-44.)

Second, in 1939, the Congress, on administrative recommendations, authorized the construction of the third locks project at a cost not to exceed $277,000,000. An undisclosed objective in that undertaking was conversion of the present high-level lake-lock canal to one of the so-called sea-level type—and objective not specifically authorized by the Congress (Public Law 391, 76th Congress.)

Third, construction on the third locks project started in 1940 but was suspended in May 1942 because of more urgent war needs for shipping, manpower, and materials afer the expenditure of more than $76,000,000 mainly on two huge lock-site excavations at Gatun and Miraflores, a bed for relocating the Panama Railroad near Gatun, and a rail-vehicular bridge across the Miraflores Locks.

Fourth, during 1942-43, there was developed in the Panama Canal organization after extensive studies of marine operations in both peace and war what is known as the terminal lake-third locks plan for the future canal, which received the approval of President Franklin D. Roosevelt as a postwar project and was later approved in principle by two experienced Governors of the Panama Canal as the preferred modification for the authorized third locks project. Moreover, it became the subect of an extensive literature in professional and lay publications winning wide support.

Fifth, in 1945, after the advent of the atomic bomb, the Congress, again on administrative reocmmendations, authorized the Governor of the Panama Canal to make a comprehensive investigation of the means for increasing the capacity and security of the canal to meet future needs of interoceanic commerce and national defense, the first time the terms "security" and "national" defense were used in an important canal law (Public Law 280, 79th Congress.) In the investigation that followed these two terms, "security" and "national defense," were interpreted as "paramount and controlling," and even as "dictating" the sea-level type—a far more serious interpretation than was intended by the Congress that enacted the statute.

Sixth, in 1947, the Governor of the Panama Canal in his report recommended only the construction of a canal of sea-level design in the Canal Zone (Report of the Governor of the Panama Canal under Public Law 280, 79th Congress) but this recommendation failed to receive Presidential approval and the Congress took no action.

Seventh, in 1960, the report by an independent inquiry of the House Committee on Merchant Marine and Fisheries, opposed the 1947 recommendation for constructing a sea-level type of canal in the Canal Zone (House Report No. 1960, 86th Congress, 1960, p. 5.)

Eighth, in 1964, the Congress, on administrative recommendations, authorized another investigation, this time only for a canal of sea-level design. (Public Law 88-609, 88th Congress approved Sept. 22, 1964, as amended.)

Ninth, in 1970, the report of the last investigation recommended the construction of a canal of the sea-level tidal-control type 10 miles west of the existing canal at a cost of $2.88 billion at 1970 price levels (Report of the Atlantic-Pacific Interoceanic Canal Study Commission, Dec. 1, 1970.)

Tenth, also in 1970, the enlargement of Gaillard Cut was completed at a cost of $95,000,000 making a total of $171,000,000 already expended toward major modernization of the existing canal—$76,000,000 plus $95,000,000—which is too large a sum to be swept under the rug.

As is well known, there are many questions involved in the problems of Trans-Isthmian transit, among them an oil pipeline in the western part of Panama scheduled for completion in early 1983, the matter of a modernized Tehuantepec Railway in Mexico to transport container ship cargoes between the oceans, and the environmental dangers of any saltwater sea-level canal anywhere on the Central American Isthmus.

In spite of the official reports recommending the old predetermined objective of a small professional group for a sea-leval design at Panama, there have long been many experienced independent engineers, geologists, economists, navigators including Panama Canal pilots, and other competent experts strongly opposed to such construction. Instead, they have urged the major modernization of the existing Panama Canal under the well-known terminal lake-third lock plan, which proposal cuts through current perplexing confusions like an infrared ray through a fog.

This plan to provide for a third lane of large locks is authorized not only under the maintenance factor in the 1903 treaty but also under the 1977 treaty. In addition to increased lock capacity, it would provide a high-level terminal lake at the Pacific end of the canal similar to the lock-dam arrangement at the Atlantic end to serve as a long-needed expansion chamber for traffic. This is not only the proper and economic solution but in addition would provide for the world the best canal for marine operations practicable of achievement at least cost with complete assurance of success and bring great distinction to those responsible for its authorization.

Mr. President, in these general connections in must be recognized that the Central American Isthmus is not only strategic as regards its advantageous geographical location but also a region of endemic revolution and endless political intrigue that recent events in Central America have repeatedly dramatized. For these and many other reasons must of the experienced authorities referred to have stressed that the proposed major modernization of the Panama Canal be undertaken only at no risk to the U.S. taxpayers and investors and only under the undiluted sovereign control of the United States over both the canal and its indispensable protective territorial frame.

Another important angle in the problem that has been the subject of an extensive literature, including congressional hearings, is the environmental question with practically all of the major national and international conservation and environmental organizations opposing the mixing of the Atlantic and Pacific Oceans by means of a saltwater channel anywhere on the Central American Isthmus as the challenge of the century.

The Panama Canal, opened for traffic in 1914, was constructed not only for interoceanic commerce but also for national defense, the last angle having been dramatized in 1898 by the dash of the U.S.S. *Oregon* From the Pacific coast of the United States around Cape Horn to join the Atlantic Fleet just in time to participate in the Battle of Santiago.

The recent change of policy as regards the deployment of the U.S. Armed Forces calling for U.S. naval world superiority again emphasizes the vital importance of the Panama Canal not only to the United States but also to the entire free world (Washington Post, Dec. 14, 1981, p. 1), and raises serious questions as to why U.S. sovereign control over that key transportation center should ever have been surrendered.

Mr. President, two major organizations, the American Legion at its 1981 annual convention in Honolulu and the Friends of the Earth International at its October 2-4, 1981, meeting in Washington, DC., adopted highly significant resolutions on the interoceanic canal problem. Because these two resolutions should be of unusual interest to the Congress as well as the Nation at large and other countries that could be adversely affected by what many fear would be the colossal error of any sea-level undertaking, I ask that they be printed in the RECORD.

The resolutions follow:

THE AMERICAN LEGION RESOLUTION 84.—PANAMA CANAL

Whereas, the Panama Canal and the security of transit are, and will remain, vital to U.S. and Free World interests as long as ships sail the seas; and

Whereas, oceangoing traffic through the Panama Canal continues to increase, involving periodic long delays in transits on peak days, reaching a high backlog of 116 vessels in mid-April 1981 and involving huge costs to commercial shipping interests using the Canal; and

Whereas, experienced Panama Canal engineering and operational officials long ago foresaw the present situation and urged an increase of canal capacity for 1990; and

Whereas, as the result of World War II experience a valid plan for such major increase of capacity coupled with operational improvement was developed in the Panama Canal organization and received the approval of President Franklin D. Roosevelt as a post-war project; and

Whereas, in the sweep of history such notable naval authorities as admirals Alfred Thayer Mahan and Thomas H. Moorer have repeatedly called the Panama Canal the strategic center of the Americas, as well as the center for the Monroe Doctrine; and

Whereas, Panamanian officials, including Panama's President Aristides Royo, have issued statements expressing Panama's displeasure and taking exception to the two Panama Canal Treaties as modified and approved by the U.S. Senate in 1979; and

Whereas, the Panama Canal, under the post treaty management, has been wrongly used for the transit of illicit drugs contrary to the national interest of the United States and other nations; and

Whereas, the Republic of Panama has been used as a staging area for arms and men supporting left wing terrorists in Central America; now, therefore, be it

Resolved, by The American Legion in National Comvention assembled in Honolulu, Hawaii, September 1, 2, 3, 1981, that the U.S. Congress be urged to maintain the closest vigil on Panama Canal operations with a view to preserving and protecting U.S. national interests; and, be it further

Resolved. That urgently needed major modernization of the existing lake-lock Panama Canal for its major increase of capacity and operational improvement be resumed at the earliest practicable date; and, be it finally

Resolved, That such major modernization be authorized only when it can be achieved at no risk to U.S. investors and taxpayers and under undiluted U.S. sovereign control of both the Canal and its protective frame.

FRIENDS OF THE EARTH INTERNATIONAL RESOLUTION ON PANAMA-SEA-LEVEL CANAL PROJECT

Whereas, for four centuries, like a hardy perennial, the idea of a sea-level canal through the isthmus of Panama has been proposed; and

Whereas, the French, who began construction in Panama actually attempted a sea-level canal design, but the American engineers who took over the work in the early 1900's switched over to the locks and lakes system in existence today; and

Whereas, the fresh water Lake Gatun provides a biological barrier preventing any significant mixing of now separate species in the Atlantic and Pacific; and

Whereas, a sea-level canal would provide access on a continuing basis for several known predator Pacific species, including the crown-of-thorns starfish and the sea snake, as well as a host of unknown species; and

Whereas, the Panama Canal Treaties, ratified by Congress during the Carter Administration, committed the U.S. and Panama to study jointly the feasibility of a sea-level canal at some point during the life of the treaties; and

Whereas, because of the U.S. political climate in the U.S., there is reluctance by Congress to fund such a study with the result that Panama and other mega-project supporters have entered into negotiations with Japan to help finance such a study; and

Whereas, Friends of the Earth U.S., along with nearly every other major national and international environmental and conservation organization is on record opposing the construction of such a project; and

Whereas, Friends of the Earth International, assembled in Washington, D.C., October 2-4, 1981, now on 4 October 1981, therefore be it

Resolved, That Friends of the Earth International opposes the construction of a sea-level canal in Central America; and, be it further

Resolved, That Friends of the Earth International opposes any attempts to study nuclear construction of such a project; and, be it further

Resolved, That Friends of the Earth International supports the widest possible involvement of international environmental and conservation NGO's in preparation of and the actual carrying out of any sea-level canal study produced pursuant to the Panama Canal Treaties.

[From the Congressional Record, Mar. 17, 1983]

THE PANAMA CANAL

Mr. HELMS. Mr. President, among the gravely important policy questions that have faced the National Government of the United States since 1931 are those relating to the major increase of capacity and operational improvement of the Panama Canal.

A project for constructing a third set of larger locks was authorized in 1939, started in 1940 and, because of more urgent war needs, suspended in May 1942 after the expenditure of more than $76 million. The major parts completed included two huge lock site excavations at Gatun and Miraflores, a rail-vehicular bridge across the Miraflores locks, and a roadbed for relocating the Panama Railway near Gatun. In addition, some $95 million was spent on the enlargement of Gaillard Cut from 300 feet minimum width to 500 feet, making a total of more than $171 million already expended toward major modernization.

In these connections, Mr. President, attention is invited to two of my addresses: "Panama Canal: Evolution of a Plan" in the CONGRESSIONAL RECORD of August 25, 1978, pages 27878-27882, and "U.S. Isthmian Canal Policy" in the RECORD of March 30, 1982, page 5847-5849.

The second of those addresses, includes two important resolutions, one by the American Legion and the other by the Friends of the Earth International, which merit careful reading by serious students of the canal question.

The latest development in the evolving Ishmian situation was a notable program at the Noon Forum of the Cosmos Club in Washington, D.C., on January 18, 1983, before a distinguished gathering, which included Senate staff members, when the speaker was Capt. Miles P. DuVal, Jr., U.S. Navy, retired, former captain of the Port, Balboa, C.Z., who gave a highly informative illustrated address on this timely subject: "Panama Canal: Its Marine Operational Problems and the Solution."

On the same day of Captain DuVal's address, January 18, 1983, the U.S. Administration of the Panama Canal Commission, Lt. Gen. Dennis McAuliffe, U.S. Army, retired, was quoted in USA Today, page 9A, an important Washington newspaper, as favoring "two new and larger sets of locks at the Atlantic and Pacific Terminals" of the Panama Canal—an amazing and timely coincidence from knowledgeable sources as to the proper solution for increased canal capacity and operational improvement.

Mr. President, because the subject of the major modernization of the Panama Canal is one of global geopolitical importance and crucial for both interoceanic commerce and hemisphere security, I request that the full texts of the Cosmos Club Noon Forum Proceedings, including Captain DuVal's notable address, and the news story quoting General McAuliffe be printed in the RECORD.

The material follows:

PANAMA CANAL: ITS MAJOR MARINE OPERATIONAL PROBLEMS AND THE SOLUTION ILLUSTRATED, ADDRESS BEFORE THE COSMOS CLUB NOON FORUM BY CAPT. MILES P. DUVAL, JR., U.S. NAVY, RETIRED, JANUARY 18, 1983, WASHINGTON, D.C.

COSMOS CLUB NOON FORUM

Members of the Cosmos Club and guests, the Cosmos Club Noon Forum was started in 1971 for the purpose of providing an opportunity for club members and their guests to hear authoritative presentations on major issues, to analyze, and to discuss them. Its attendance has been gratifying as well as a measure of their success.

I now call upon our fellow club member, Fred Dyer, who was once a civilian assistant to the Secretary of the Navy and long familiar with the subject of today's program, to introduce our speaker, moderate the session, and adjourn at 1:55 p.m.

REMARKS OF FRED C. DYER, INTRODUCING CAPTAIN DUVAL

Good afternoon: As students of geopolitics realize, one of the major choke points for naval power and ocean commerce is the canal across the American Isthmus. Our speaker today, because of his long association with the problems of trans-Isthmian transit and contributions, has become recognized as a leading authority in that field.

A graduate of the Naval Academy, the Naval War College, the Naval Post Graduate School and Georgetown University, he was awarded at the last the degree of master of science in foreign service (M.F.S.). His career includes service on various types of vessels in many parts of the world.

During World War II while in charge of marine operations in the Pacific sector of the canal, 1941-44, he developed the widely acclaimed terminal lake—third locks plan for its major increase of capacity and operational improvement. In the opinion of some of the best informed Panama Canal engineers, that achievement will make him the architect of the future canal and eventually win the gratitude of navigators, both naval and commercial.

After returning from service in the Pacific, 1944-45, he was designated by Secretary of the Navy James Forrestal as the principal adviser of the Navy Department on Canal Policy Matters, 1946-49.

Since retirement from active duty, he has written extensively on the historical and marine operational aspects of the canal problem.

Books by him include a series on the canal:

I. "Cadiz to Cathay: The Story of the Long Diplomatic Struggle for the Panama Canal," 1502-1904;

II. "And the Mountains Will Move: The Story of the Building of the Panama Canal," 1904-14, both first published by Stanford University Press with later editions of both by the Greenwood Press of Westport, Conn.

III. "Let the Waters Rise," covering the period, 1914-79, is now ready for publication.

In addition to numerous articles and addresses, his writings include contributions on the canal question to professional magazines and the Encyclopaedia Britannica.

Incidentally, if any of you have books on seapower or Isthmian Canal matters you might consider contributing them to his collection on interoceanic canal and naval history at Georgetown University.

Members and guests, may I now present Capt. Miles DuVal who will address us on this timely subject: "Panama Canal: Its Major Marine Operational Problems and the Solution."

PANAMA CANAL: ITS MAJOR MARINE OPERATIONAL PROBLEMS AND THE SOLUTION BY CAPT. MILES P. DUVAL, JR., U.S. NAVY, RETIRED

Mr. Chairman, fellow members of the Cosmos Club and guests, at the outset, I dedicate my remarks to the great Americans largely responsible for the successful launching of the Panama Canal: Adm. John G. Walker, President of the U.S. Isthmian Canal Commission for Exploration, 1899-1902; President Theodore Roosevelt; Secretary of War William Howard Taft; and John F. Stevens who, as chief engineer of the Isthmian Canal Commission for Construction, 1905-07, was the basic architect of the Panama Canal.

The story of the Panama Canal is not new. It traces back in a vast literature to the age of discovery. On his fourth voyage of exploration, Christopher Columbus sailed southward along the east coast of the Central American Isthmus, passed the mouths of the San Juan River in Nicaragua and the Chagres River in Panama, and spent the Christmas of 1502 in Limon Bay at what is today the Atlantic entrance to the Panama Canal. The cities of Cristobal and Colon are named in his honor.

In 1513, Vasco Nunez de Balboa, from a peak in Darien, discovered the Pacific Ocean, then called the Southern Sea, thus completing the historical setting for what was to follow. That discovery is memorialized in the name of the Port of Balboa at the Pacific entrance of the canal.

Within a relatively short time after the voyage of Columbus, the Spanish colonizers, recognizing the strategic location of the Isthmus, explored it for transit routes all the way from Tehuantepec in Mexico to the Atrato River in Colombia. The first plan for the Panama Canal was prepared in 1529 by the Spanish engineer, Alvaro Saavedra.

Because of the lower continental divides at Nicaragua and Panama and penetration of the jungles of both by navigable rivers, the early Spanish developed important trade routes over these two natural avenues that for many years were the leading competitors for Trans-Isthmian Transit.

It was not until the 19th century, however, that serious explorations for canal sites were conducted, most notably by the U.S. Army and Navy.

The first specific step toward undertaking the Panama Canal was the construction by United States interests of the Panama Railroad—the first transcontinental railway in the Americas that was opened for traffic in 1855.

The second major step was the great French canal effort at Panama, 1880-89, under the leadership of Ferdinand de Lesseps, the hero of the Suez Canal. Though that attempt ended in tragic failure, it did prepare the way for the United States, under the dynamic leadership of President Theodore Roosevelt, to acquire control of the U.S. Canal Zone and launch the construction of the Panama Canal, which was opened to traffic in 1914, just in time to render vital services in World War I.

During the era of exploration by the United States, there evolved a definite pattern of investigation emphasizing two key issues: First, the question of site; and second, the matter of type. Their purposes were to secure the best site for the best type of canal, and this pattern has been repeated each time the canal issue has come up for major consideration.

The problem of site for the first canal across the Isthmus was decided in 1902 only after a searing struggle in the Congress, 1899-1902, known as the "Battle of the Routes" between the proponents of the Nicaragua and Panama location, which ended with the choice of the Panama site. The matter of type was decided in 1906 only after another scorching debate in the Congress, 1905-1906, known as the "Battle of the Levels" between supporters of a canal to be formed largely by fair-sized lakes and proponents of one of "sea-level" design, which resulted in victory for the high-level-lake and lock type. History has completely established the wisdom of those two great decisions: The Panama site for the lake-lock type.

Now let us look at some aerial views of the Panama Canal from the Atlantic to the Pacific to see it in operation.

In early 1941, it was my good fortune to have been ordered for duty at a critical period in history as captain of the Port of Balboa in the Canal Zone, with responsibility for marine operations in the Pacific half of the Panama Canal. This sector included the southern part of the summit level Gatun Lake: The hazardous Gaillard Cut, 8 milies long; Two sets of Pacific locks; the small intermediate level Miraflores Lake, separating those locks; and the Pacific sea-level section of the canal to deep water in the Pacific, including the Port of Balboa.

Soon after arrival of the Isthmus, a series of serious marine accidents in the Pacific sector focused my attention on the crucial problems of marine operations. The ensuring efforts included the examination of records of hundreds of investigations of marine accidents since 1914, the plotting of their locations throughout the entire length of the canal, and the study of their proximate causes.

The results were quite revealing. The more serious accidents occurred in the narrow rocky channels of Gaillard Cut. Few occured in Gatun Lake, where the channels are wide, or in the sea-level sections of the canal. Accidents in the lock chambers were of relatively minor character and proportional in numbers to the number of steps in the locks. The Pedro Miguel locks, located squarely in the southern end of Gaillard Cut, had the highest number of accidents to vessels entering and leaving those locks, making it the most dangerous of all the locks.

In May 1942, the 1939 project for the construction of a third set of larger locks then underway was suspended because of more urgent war needs after the expenditure of more than $76 million. The major parts completed, which will be used in future major modernization, included two huge lock site excavations at Gatun and Miraflores, a rail-vehicular bridge across the Miraflores locks, and a bed for relocating the Panama Railroad near Gatun.

Although stopping that tremendous work, which left the canal essentially as it was in 1914, appeared regrettable at the time, that action made it possible to make a deep study of the marine problems of ship transit for evolving a plan that would provide the best canal for navigation.

Those efforts included many visits to two mountain tops near the Pedro Miguel locks to observe vessels in transit, frequent trips on vessels during transits, discussions with experienced engineers and pilots, obtaining data on night fogs in Gaillard Cut, learning about lockage surges in Gaillard Cut, and an examination of the terrain of the Pacific side of the Continental Divide.

As shown by those inquiries and confirmed by later studies, the canal had, and still has, the following major marine operational problems:

(1) The dangerous bottleneck at the Pedro Miguel locks, at times causing southbound vessels to slow in a restricted channel, thereby losing steerage way and often forcing them to maneuver to avoid grounding.

(2) The double handling of vessels at the Pacific locks, with resulting inconvenience, increased numbers of accidents, and loss of time.

(3) The adverse effect of night fogs in Gaillard Cut on canal capacity and operations.

(4) The surges of 3 feet maximum amplitude in the Gaillard Cut water level caused by the operation of the locks at Pedro Miguel.

(5) The limited operating range of the summit water level of Gatun Lake from a high of 87 feet to a low of 82 feet.

(6) The navigation hazards in the rocky Gaillard Cut restricted channels, originally of 300 feet minimum bottom width but since 1970 of 500 feet.

(7) The limited dimensions of the present locks, 110 feet by 1,000 feet.

In contrast with the acute marine problems caused by the Pedro Miguel locks in the southern end of Gaillard Cut, there were no such problems at the northern end, where there were no locks but only the widening channels of Gatun Lake affording virtually unrestricted navigation. What was needed at the southern end of Gaillard Cut was a summit level lake between the narrow cut and the Pacific locks to serve as an expansion chamber for traffic.

In line with my request, canal engineers checked the impounding perimeter around the Miraflores Lake basin and found that a smaller Pacific terminal lake at the same level as Gatun Lake, then 87 feet maximum, could be created with relatively small dike construction. Those associated with the studies at the time were thrilled by that discovery, for they recognized its significance.

Before deciding what to do, it was necessary to determine, by careful evaluations, whether the maximum water level of Gatun Lake should be lowered or raised. That study conclusively established that lowering the Summit Lake water level by extending the length of Gaillard Cut would impair navigation and that raising the level would improve navigation.

What are the solutions for the previously listed seven major marine problems?

1. For that of the dangerous bottleneck at the Pedro Miguel locks, it is their complete physical removal.

2. For the problem of the double handling of vessels at the separated Pacific locks, the proper remedy is their consolidation south of Miraflores at Aguadulce in continuous

steps similar to the lock arrangement at Gatun.

3. For the adverse effect of night fogs in Gaillard Cut, the corrective is an elevated Miraflores Lake, which is fog free, for use as a traffic reservoir during fog periods.

4. For the problem of lockage surges, the creation of the elevated Pacific terminal lake will reduce them to negligible magnitudes, probably less than an inch.

5. For increasing the present 5 feet operating range of the Gatun Lake summit water level, the solution is to raise its maximum level of 87 feet to its optimum level of 92 feet, thus doubling the reserve water capacity for lockages and improving navigation.

6. For reducing the navigational hazards of Gaillard Cut, the corrective is its continued enlargement as shown to be needed by marine experience.

7. For the handling of larger vessels, the answer is construction of one set of larger locks.

The above remedial measures combined, known as the terminal lake-third locks plan, also as the balanced lake plan, were approved in principle by two experienced Governors of the Panama Canal for the major modification of the original third locks project and received strong support from the most knowledgeable Panama Canal engineers; and it is unanimously supported by Panama Canal pilots, who are the best informed professional group on the problems of the marine operational needs of the canal.

Most of the individual remedial measures so far taken are not basic solutions but mere symptomatic treatments that do not solve the major marine problems, but only provide needed temporary relief pending major modernization.

What will the terminal lake—third locks plan accomplish? It will eradicate the dangerous bottleneck at Pedro Miguel, create a summit level lake between Gaillard Cut and the Pacific locks thereby aiding vessels in the summit level when leaving or approaching them, provide uninterrupted summit level navigation from the Atlantic locks to the Pacific locks, reduce accidents, eliminate lockage surges, mitigate the effect of fog on operations, decrease transit time about 1 hour and simplify canal management thereby providing the best canal for operations practicable of achievement, and at least cost. Moreover, this plan has been tested for more than half a century of satisfactory operations at Gatun, and can be accomplished with full assurance of success. Such construction is authorized under both the 1903 and the 1977 canal treaties.

Most significantly, the terminal lake third locks solution will enable the maximum utilization of all work so far accomplished on the Panama Canal during its construction and since 1914, which is considerable. In addition the more than $76 million expended on the third locks project and some $95 million spent of the enlargement of Gaillard Cut from 300 feet to 500 feet minimum width, make a total of over $171 million already expended toward major modernization. In 1983 currency, all of the original cost estimates would be far greater.

The plan is so obvious and so simple that many have asked why it was not proposed earlier in the history of the canal. It was.

In 1908, Col. William L. Sibert, an important Panama Canal Builder, made determined efforts to change the approved plans so as to consolidate the Pacific locks in an arrangement similar to the Atlantic locks. He did not succeed, because construction had started and such a change would have delayed opening of the canal, which was a controlling factor at that time.

In 1906, an able canal engineer, William Gerig, made the same proposal to chief engineer, John F. Stevens, who let him take full credit for the idea.

Also, earlier in 1906, prior to Gerig, chief engineer, Stevens made the same recommendation to the Congress. Unfortunately, his later investigations for foundations proved unsatisfactory and he was constrained by economic and political hazards that could not be ignored to proceed according to the approved plans for separating the Pacific locks that he had sought to consolidate as he had done for the Atlantic locks.

Many have asked also why it was not considered by the French at the Paris Congress of 1879 called by Ferdinand de Lesseps to decide the questions of site and type for an Isthmian Canal. It was.

In that Congress of some 134 distinguished leaders from various countries, one engineer, when he saw the way the gathering was being directed toward adopting the predetermined objective for a canal at Panama of "sea-level" design based on the success of the Suez Canal, rose in strong protest and stated that rather than have his name associated with what he knew would be a great disaster, he voted no.

Then, showing the insight of true genius based on study of the key problems involved, he explained what he described as a "practical plan" for constructing the Panama Canal: "build a dam at Gatun and another at Miraflores, or as close to the seas as the configuration of the land permits. Let the waters rise to form two lakes about 80 feet high, join the lakes thus formed with a channel cut through the continental divide and connect the lakes with the oceans by locks. This is not only the best plan for engineering, but also the best for navigation."

In large measure, this 1879 plan was eventually adopted in 1906, mainly through the efforts of Chief Engineer Stevens, Secretary of War Taft, and President Roosevelt. But its originator was the notable French engineer, Adolphe Godin de Lepinay, who, by so speaking, won lasting fame as the precursor of the Panama Canal.

The terminal lake—third locks solution is not presented as a new idea for it is not. What is new is the fact that it is the first comprehensive plan for the future Panama Canal developed from actual marine experience.

The philosophy on which its evolution during those critical years of World War II was based is nowhere better expressed than by one of our country's most eminent builders of ports who, in 1915, stated "There is no profession in which experience is a greater factor than that of the engineer, especially as to the design of works affecting navigation; the adaptability of such works to the needs of the navigator, the chances of accidents and the necessary appliances to reduce such chances to a minimum are questions that experience largely determines." These words of power, so applicable to the planning of the future Panama Canal, are those of the great Army engineer who supervised the construction of the Gatun locks and dams, 1907-14. They are the words of Gen. William L. Sibert.

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[From the USA Today, Jan. 18, 1983]

BIG SHIPS, VOLUME DAM UP SEAWAY

(By Susan Morgan)

PANAMA CANAL.—The Panama Canal is in danger of becoming just a tourist and history book attraction unless it receives a major overhaul.

With last year's record $320 million in earnings and joint U.S.-Panamanian administration assured through the end of the century, it might be reasonable to assume Panama can sit back and watch the tolls roll in.

The chief problem, however is capacity. Most analysts believe the present canal can survive through the end of the century, but improvements will be vital after that.

The 51-mile-long canal's three main locks, which raise ships 85 feet above sea level, can only accommodate vessels of up to 67,000 tons.

Current energy costs mean it is cheaper for bulk cargo vessels of up to 250,000 tons to take the longer route around South America with some cargoes. The second problem concerns volume. In the 1970's as traffic increased, severe bottlenecks became common, with up to 180 ships sometimes waiting for a week.

As a result of what canal administrator Dennis McAuliffe calls "the chill that passed through the industry," capacity was raised to around 43 ships a day. At the same time, congestion is being relieved by the new trans-Panamanian oil pipeline.

Nevertheless. Panamanian analysts concede that new, long-term answers are needed.

One group, to which McAuliffe belongs, favors expanding the canal. This would require two new and larger sets of locks at the Altantic and Pacific terminals, and widening and straightening of the Gaillard Cut, often dubbed "the Snake."

The project, costing up to $3 billion, would open the canal to vessels of up to 170,000 tons, putting it on a par with the Suez Canal.

The more daring solution is to build an entirely new sea-level canal 10 miles west of the present one for up to $10 billion. The main advocate of this option is Japan, second to the United States in canal usage.

Panamanians are irked by the U.S. lack of interest in development. Even though less than 6 percent of U.S. maritime traffic passes through the canal, the total is 62 percent of all traffic. The 1977 Panama Canal Treaty, however, removed any serious stimulus for significant U.S. investment in the canal.

ANTIDRUG ABUSE LEGISLATION

MONEY LAUNDERING

Mr. MATHIAS. Mr. President, I would like to pose a question to the distinguished chairman of the Judiciary Committee [Mr. THURMOND]. My question concerns the drug legislation that was overwhelmingly approved by the Senate yesterday afternoon.

I am particularly interested in that portion of the drug bill that addresses money laundering and Bank Secrecy Act enforcement authority. One provision would empower the Secretary of the Treasury to issue a summons to a financial institution and order the production of "books, papers, or other data." That summons authority would also permit the Secretary to question under oath, "as may be relevant or material to an investigation," into enforcement of the Bank Secrecy Act.

While this tool might be helpful to the prosecution of money laundering offenses, the significance of that authority must not be taken for granted. I have every confidence that the Secretary of the Treasury would appreciate its significance. Have we included language that would ensure that the Secretary would not delegate this responsibility to someone less directly accountable to Congress?

Mr. THURMOND. Mr. President, under the new section 5318(a) (1) and (4), a summons may be issued only by the Secretary or, with his approval, by "an appropriate supervising agency" to which the Secretary has delegated Bank Secrecy Act enforcement authority. The Judiciary Committee recognized the significance of this delegation authority when it reviewed and reported S. 2683, a bill that is nearly identical to the money laundering portion of the drug bill. Accordingly, the committee discussed in its report one "appropriate supervising agency," the Internal Revenue Service. The report notes that it is the committee's intention that the delegation with respect to summons issued by the IRS will not extend to persons with responsibilities less than those currently exercised by the District Chief, Examination Division, or District Chief, Criminal Investigations Division.

The Judiciary Committee was sensitive to the significance of this summons authority and does not mean to establish a process where line officers are handing out these summonses as a matter of course.

Mr. MATHIAS. Mr. President, I thank the senior Senator from South Carolina, and appreciate the thoughtfulness with which he approached this matter. Can the chairman identify any other "appropriate supervising agency" that may be given this authority? If another agency were delegated the summons authority, could the summons authority be exercised by an officer entrusted with less responsibility than the District Chiefs that you have just identified?

Mr. THURMOND. The U.S. Customs Service, though not explicitly mentioned in the committee report, may be an appropriate supervising agency under certain circumstances. In the event that the Customs Service is granted that authority, the summons authority would not be exercised by an officer with less responsibility than those who may issue summonses for the Internal Revenue Service. It is my understanding that in the Customs Service, the summons authority would not be delegated to persons less senior than the District Director or the special agent in charge.

Mr. MATHIAS. I thank the chairman of the Judiciary Committee, and commend him for his stewardship of this legislation.

Mr. PELL. Mr. President, as one who has long been concerned with the drug abuse problem in our country, I voted for the omnibus antidrug abuse legislation adopted by the Senate yesterday. The United States is in the midst of a substance abuse crisis of massive proportions, but it is important to emphasize that this crisis did not arise overnight and will not recede without years of sustained effort.

For at least 20 years, Americans have been aware of a growing drug abuse problem. And yet at the outset of this administration the agencies on the front line of the war against drug abuse, the Drug Enforcement Administration, the Coast Guard, the Customs Service, and many others, found their budgets reduced and their ability to work effectively against drug traffickers diminished. The Coast Guard is a good example of an embattled agency whose resources have been taxed to the bone while its drug enforcement missions have been significantly expanded. I am pleased that H.R. 5484 belatedly addresses the needs of the Coast Guard and other agencies for more resources and equipment to get the job done in the war against drugs.

This legislation is not a panacea, however. Agencies like the Coast Guard have been underfunded for so many years that "a quick fix" such as this bill, will not succeed in enabling these agencies to "shut down" the drug trafficking industry. Moreover it should be pointed out present efforts are only interdicting about 10 to 15 percent of the illegal drugs entering the country. Perhaps the initiatives toward increased enforcement contained in H.R. 5484 will succeed in permitting our law enforcement agencies to stop 30 or even 40 percent of the illegal drugs flowing into the country. That will still leave a very flourishing and dangerous drug trafficking industry operating in the United States.

Without effective programs designed to reduce the domestic demand for illegal drugs I believe the war against drugs is doomed to failure. Troops standing shoulder to shoulder along the Mexican border will not succeed in preventing drug abuse in America as long as the demand for illegal drugs remains unabated.

Clearly, a massive assault on drug abuse must be launched in our schools. As urgent as this situation is, however, I must submit that I have severe reservations about the approach we are taking in this legislation. Quite simply, we do not have enough information on the education aspects of this problem. We do not know, for example, where the incidence of drug abuse is greatest.

We therefore do not know how—or where—to effectively target the use of education funds. Beyond that, we cannot adequately identify model education and prevention programs. I am of the mind that we should have this important information before we act so precipitously. At the same time, however, I recognize that we are faced with an emergency situation—one which requires immediate and direct attention in our schools. I do believe, therefore, that subsequent to the passage of this legislation, we must have a very careful examination of what we have done.

Concerning the international section of H.R. 5484, the legislation would cut off all foreign assistance to any major producer nation that fails to cooperate with the United States in the fight against drugs. It toughens the standards we use to measure progress in both the eradication and the interdiction aspects of this fight and it requires regular monitoring of a country's efforts by both the President, and the Congress. Funds for the International Narcotics Bureau at the Department of State are increased significantly, and for the first time funds for drug education programs are earmarked for both the Agency for International Development and USIA.

As Senator BIDEN, a key player in this entire legislative effort, stated in his remarks last week, H.R. 5484 provides both a carrot and a stick. It says to those nations that are either major producing nations or major transhipment countries for the international transport of illegal narcotics, "here is some help to curb the cultivation, production, processing and transhipment of these drugs." However, it also says "if you won't help us in this effort, the penalties will be sure, and strong. Assistance will be cut off, and even your loans at the multilateral institutions will be in jeopardy narcotics control is now a priority across the board for the United States of America."

Mr. President, the omnibus drug legislation unifies the international and the domestic aspects of this fight. It helps provide a unified policy for all of the Federal agencies which have a role to play in this endeavor. In the international section of this legislation it makes clear that narcotics control must be raised to the highest priority in our bilateral and multilateral relations. As producer nations get the message, we can look forward to some genuine progress in reducing marijuana, cocaine, and opium production. I think it is important to note that diplomacy will play and must play a key role here as well. Only when we succeed in persuading other nations that it is primarily in their own interest to curb drug traffic—because these traffickers, with their money and power to corrupt pose a grave threat to their own internal sovereignty—will we achieve the cooperation we truly need to win this battle.

In summary, Mr. President, I believe H.R. 5484 represents a long overdue beginning to a greater national commitment to eradicate drug abuse and narcotics trafficking. It is not a panacea. I hope my colleagues, once the national preoccupation with this issue has faded away, will continue to demonstrate the same level of interest and commitment represented by this bill. For only a long term and sustained commitment will have a chance to succeed in eliminating the drug abuse problem that imperils America today.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED BILL AND JOINT RESOLUTION SIGNED

At 11:54 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 1246. An act to establish a federally declared Floodway for the Colorado River below Davis Dam; and

H.J. Res. 743. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

The enrolled bill and joint resolution were subsequently signed by the President pro tempore (Mr. THURMOND).

MEASURES REFERRED

The following bills, previously received from the House of Representatives, were read the first and second times by unanimous consent, and referred as indicated:

H.R. 4059. An act to recognize the organization known as the Red River Valley Fighter Pilots Association; to the Committee on the Judiciary.

H.R. 5459. An act to direct the release, on behalf of the United States, of certain conditions and reservations contained in a conveyance of land to the State of Utah, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 5490. An act to amend title 11 of the United States Code to clarify the current meaning of section 1113 relating to the rejection of collective-bargaining agreements by debtors in bankruptcy; to the Committee on the Judiciary.

H.R. 5496. An act to designate certain National Forest System lands in the State of Georgia to the National Wilderness Preservation System, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

H.R. 5508. An act to designate the Sipsey River as a component of the National Wild and Scenic Rivers System, to designate certain areas as additions to the Sipsey Wilderness, and to preserve over 30,000 acres of pristine natural treasures in the Bankhead National Forest for the esthetic and recreational benefit of future generations of Alabamians, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 384. Concurrent resolution expressing the sense of the Congress concerning the Soviet Union's continued interference with postal communications between the United States and the Soviet Union; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bills, received from the House on September 30, 1986, were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2484. An act to amend title 28, United States Code, relating to quiet title actions against the United States, with respect to actions brought by States;

H.R. 4961. An act to amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1987, 1988, 1989, and for other purposes;

H.R. 5389. An act to withdraw certain public lands in the State of Alaska for military purposes, and for other purposes;

MEASURES HELD AT THE DESK

The following bills were ordered held at the desk by unanimous consent pending further disposition:

H.R. 4823. An act to amend the Immigration and Nationality Act to improve the administration of the immigration and nationality laws, and for other purposes;

H.R. 4917. An act to improve the quality of examinations of depository institutions, and for other purposes;

H.R. 5488. An act to prohibit implementation of certain regulations of the Federal Emergency Management Agency relating to the declaration process, eligibility for assistance, and non-Federal responsibility for major disasters under the Disaster Relief Act of 1974, and for other purposes;

H.R. 5554. An act to transfer the Community Development Credit Union Revolving Loan Fund to the National Credit Union Administration and to authorize the National Credit Union Administration Board to administer the Fund;

H.R. 5558. An act to amend title III of the Immigration and Naturalization Act to provide for administrative naturalization, and for other purposes.

H.R. 5564. An act to amend the National Housing Act to provide for the eligibility of certain property for single family mortgage insurance;

ENROLLED JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, October 1, 1986, she had presented to the President of the United States the following enrolled joint resolution:

S.J. Res. 202. Joint resolution designating October 1986 as "American Liver Foundation Liver Awareness Month."

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment:

S. 485: A bill to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the treatment of submerged lands and ownership by the Alaskan Native Corporation (Rept. No. 99-507).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 1617: A bill to provide for more effective management of lands of the Untied States which are subject to conflicting claims or disputes, and to require the Secretary of the Interior to report annually thereon (Rept. No. 99-508).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2204: A bill to amend the Land and Water Conservation Fund Act of 1965, as amended, to permit the use of park entrance, admission, and recreation use fees for the operation of the National Park System, and for other purposes (Rept. No. 99-509).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 2351: A bill to revise the boundaries of Olympic National Park and Olympic National Forest in the State of Washington, and for other purposes (Rept. No. 99-510).

By Mr. MATHIAS, from the Senate Impeachment Trial Committee:

Report of the Senate Impeachment Trial Committee regarding the matter of the impeachment of U.S. District Judge Harry E. Claiborne (Rept. No. 99-511).

By Mr. MATHIAS, from the Committee on Rules and Administration, without amendment:

S. Res. 482: A resolution authorizing the printing of the report entitled "Highway Bridge Replacement and Rehabilitation Program, Seventh Annual Report to Congress" as a Senate document (Rept. No. 99-512).

By Mr. MATHIAS, from the Committee on Rules and Administration, without amendment:

S. Res. 498: An original resolution to amend rule XXV of the standing Rules of the Senate (Rept. No. 99-513).

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with amendments:

S. 2412: A bill to withdraw and reserve certain public lands (Rept. No. 99-514).

By Mr. MATHIAS, from the Committee on Rules and Administration, without amendment:

H.R. 4545: A bill to authorize appropriations for the American Folklife Center for fiscal years 1987, 1988, and 1989, and for other purposes.

By Mr. MATHIAS, from the Committee on Rules and Administration, without amendment:

S. Res. 496: An original resolution to pay a gratuity to Eugene A. Bundy.

S. Res. 497: An original resolution to pay a gratuity to David K. Stokely.

By Mr. THURMOND, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 2529: A bill to amend title 28 of the United States Code to provide for retired magistrates to be recalled to service and to provide a retirement system for U.S. magistrates equal to the retirement system for bankruptcy judges.

Mr. THURMOND. Mr. President, I rise today in support of S. 2529, which provides Federal magistrates with retirement benefits equal to those currently received by bankruptcy judges and allows the recall of retired magistrates when a substantial need exists. I believe that it is appropriate that Congress pass legislation to ensure that benefits for magistrates are sufficient to make certain that we continue to attract high-caliber candidates for magistrate positions. The Judiciary Committee passed this legislation by unanimous consent, and I hope that it will receive similar, expeditious consideration and approval by the full Senate.

Magistrates have been entrusted with a steady increase in responsibility since creation of the U.S. magistrate system in 1968. The district courts appoint and oversee the Federal magistrates, and district courts have experimented with expanding the role of magistrates in Federal court system with great success. U.S. District Judge Spencer Williams, president of the Federal Judges Association, recently stated, in a letter submitted to the Courts Subcommittee of the Judiciary Committee the following:

> The ability of the judiciary to recruit and retain highly-qualified people is a key element in permitting us to provide a high level of justice to the people of the United States. The availability of an adequate retirement system is, of course, an important factor in the decision making process of every person considering accepting an appointment as either a Magistrate or a Bankruptcy Judge. * * * The Federal Judges Association believes that [Magistrate retirement benefits] should be improved to, at least, the level of other important team members, the Bankruptcy judges.

S. 2529 contains many important features which will ensure that we continue to recruit and maintain the quality of judicial officers which Congress envisioned in enacting and expanding the magistrate system. What follows is a section-by-section analysis of the legislation passed by the Judiciary Committee.

Section 1 allows magistrates to serve past the age of 70 when the retired magistrate is recalled upon the majority vote of the judges of the Federal judicial district. Section 2 provides for the recall of magistrates to serve for particular assignments by the judicial council for the circuit in which the magistrate is needed. Sections 3 and 4 make technical changes. Section 5 amends the schedule of deductions and contributions in the civil service retirement laws to increase the percentage to be deducted from their salary and contributed to their retirement from 7 to 8 percent.

Section 6 amends the criteria for bankruptcy judges' eligibility to receive an annuity under the civil service retirement laws to include magistrates and claims court judges. Section 7 expands the provisions for computing the annuity of a bankruptcy judge to include magistrates and claims court judges. Section 8 provides treatment for bankruptcy judges, magistrates, and claims court judges equivalent to that bankruptcy judges now have under the civil service retirement laws. Section 9 adds a new section to title 28 which permits the recall of these judicial officers for a 5-year period upon certification by the judicial council of the circuit in which the officer was serving at the time of retirement. Sections 10, 11, and 12 provide further necessary technical amendments.

The expansion of the powers and jurisdiction of magistrates has reflected the recognition of Congress that magistrates are necessary and capable officers at the "front line of Federal justice." If the Federal district courts are to continue to utilize magistrates to the extent which Congress intends, we should adopt measures to ensure the continued high quality of these judicial officers. I urge my colleagues to support this legislation.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. MATHIAS, from the Commission on Rules and Administration:

Thomas John Josefiak, of Virginia, to be a Member of the Federal Election Commission for a term expiring April 30, 1991; and

Scott E. Thomas, of the District of Columbia, to be a Member of the Federal Election Commission for a term expiring April 30, 1991.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. SYMMS (for himself, Mr. Grassley, Mr. McClure, and Mr. Abdnor):

S. 2899. A bill to amend the Farm Credit Act of 1971 to provide assistance to institutions and borrowers of the Farm Credit System, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. INOUYE (for himself and Mr. Matsunaga):

S. 2900. A bill to provide a temporary extension of the Interstate Transfer deadline for the H-3 Highway; considered and passed.

By Mr. HECHT:

S. 2901. A bill to provide special rules for purposes of the Internal Revenue Code of 1954 for the accrual of, and carryback of losses from, deductions for asbestos product liabilities in order to protect asbestos workers, and for other purposes; to the Committee on Finance.

By Mr. WALLOP (for himself, Mr. Hecht and Mr. Baucus):

S. 2902. A bill entitled the "Federal Land Exchange Facilitation Act of 1986"; to the Committee on Energy and Natural Resources.

By Mr. ZORINSKY:

S. 2903. A bill to require the Secretary of Agriculture to proclaim national marketing quotas for the 1988 through 1990 crops of wheat and to hold a marketing quota referendum by wheat producers, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MATHIAS:

S. 2904. A bill to amend title 17 of the United States Code to implement the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971, and for other purposes; to the Committee on the Judiciary.

By Mr. HATFIELD (for himself, Mr. Stafford, Mr. Heinz, and Mr. Cranston):

S. 2905. A bill to establish a national population policy, and improve methods for collecting, analyzing, and employing natural resources, environmental, and demographic data; to the Committee on Governmental Affairs.

SUBMISSION OF CONCURRENT AND SIMPLE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MATHIAS, from the Committee on Rules and Administration:

S. Res. 496. An original resolution to pay a gratuity to Eugene A. Bundy; placed on the calendar.

S. Res. 497. An original resolution to pay a gratuity to David K. Stokely; placed on the calendar.

S. Res. 498. An original resolution to amend rule XXV of the Standing Rules of the Senate; placed on the calendar.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SYMMS (for himself, Mr. Grassley, Mr. McClure, and Mr. Abdnor):

S. 2899. A bill to amend the Farm Credit Act of 1971 to provide assistance to institutions and borrowers of the Farm Credit System, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

FARM CREDIT SYSTEM INTEREST REDUCTION ACT

Mr. SYMMS. Mr. President, our Nation is at a crossroads in its policy toward American agriculture. For years now, government intervention in the farm sector has achieved none of its goals. It has not preserved family farms, nor has it stabilized farm income. If anything, it has only contributed to the decline of what was America's first and is today one of our greatest industries.

I do not believe, Mr. President, that any one piece of legislation alone will save the family farm. Save the family farm bills are usually followed by save your local grocer and save the American consumer bills. The sum of all these pieces of legislation is usually an overall worse economy. Instead of looking for a one-shot-cure-all for farmers, Congress needs to adopt an attitude of true concern for the farm economy. This means scrutinizing every piece of legislation to see what its effects on farmers will be. Every bill passed by Congress should be a pro-farmer bill.

Unfortunately, this has not been Congress' policy in the past. Look, for example, at the way in which Congress has devastated the economy by refusing to show fiscal constraint. What is the sense of passing save the family farm legislation when it is followed right behind by out-of-control spending resulting in higher interest rates for those same farmers.

President Reagan's efforts have restored some confidence to the economy, resulting in currently lower interest rates. But I'm not sure that confidence is founded in anything more than a mere hope for better fiscal constraint in the future. Congress has done little to bring substance to that hope.

One hapless victim of uncontrolled spending is the Farm Credit System, the largest single credit source for American farmers. Interest rates currently being offered by the banks of the Farm Credit System are still 12 to 14 percent. This is because $18 billion of the System's capital is in bonds with interest rates from 12 to 17 percent. These bonds came into the System's books during the era of skyrocketing inflation and superinterest that resulted from the last administration's fiscal policies. The American farmer is now paying for those policies.

It is high time for Congress to undo the harm it has done in the past. Today, therefore, several of my colleagues and I are introducing legislation to restore Farm Credit System interest rates to a more competitive market level. We call the bill, the Farm Credit System Interest Reduction Act. Here is a summary of it:

ASSISTANCE FROM THE TREASURY

Lends to institutions of the Farm Credit System $2 billion, interest beginning in the fifth year after the loan, repaid from a percentage of System profits.

Requires the money to be applied according to a plan developed by the Farm Credit Administration, approved by the Secretary of the Treasury, which accomplishes one or both of the following:

The removal of high-cost bonds—12 percent or greater—from the System's bond portfolio through the means of direct Treasury assumption of such bonds, unhinged and extended refinancing, exchange of lending terms; that is, short-term variable for long-term fixed, repurchase, or other means.

The retirement or restructuring of nonaccrual loans held by the System.

BORROWER INTEREST RELIEF

Directs the Farm Credit Administration [FCA] to insure that the assistance is accompanied by a proportionate—in dollar cost to the System—reduction in borrower interest rates, and that all borrowers receive equal benefits of the reduction.

Amortizes the $2 billion of lower interest over a time determined to maximize the System's lending volume, without threatening System solvency such that the financial assistance of the 1985 FCA amendments is invoked.

BORROWER/STOCKHOLDER RIGHTS

Guarantees FCS stockholders access to all documents in their loan files; lists of their fellow stockholders for System business; copies of the bylaws, forbearance policies, and a statement of rights.

Requires stockholders be given ample time and information prior to merger or consolidations of FCS institutions. Allows farmers to call for approval of such mergers at a district level by direct vote.

Allows stockholders to call for direct election of all FCS Board members except those appointed by FCA under law. Opens nominations for such positions to all qualified persons.

Requires financial disclosure of top district and national FCS officials to the FCA—similar to FEC disclosure.

Mandates a GAO study into the possibility of returning the FCS to local control.

INDEPENDENT RATESETTING AUTHORITY

Defines FCS goals to include the availability of competitive interest.

Removes FCA rate-setting authority.

Prevents System institutions from setting rates that threaten the safety and soundness of the institution.

FUNDING

Funds the capital infusion by offsetting reductions elsewhere in the budget: $292 million from Legal Services Corporation; $1,117 million from

U.S. Export-Import Bank; $50 million from AID population planning; $118 milion from 50 percent in U.N. voluntary contribution; and $423 million from foreign aid to non-Camp David countries.

Mr. President, there are some aspects of this bill which should be pointed out. First, it gets interest rates down for farmers—every dollar going in must come out in the form of lower interest rates applied evenly to all Farm Credit System borrowers. Second, it cleans out the financial situation of the Farm Credit System so that it can continue to offer competitive interest rates even after the capital infusion is used up. And third, it is more than budget neutral. The bill reduces areas of the budget that are of dubious benefit to the United States. After fiscal 1987, even though foreign aid programs are restored to their previous levels, the bill results in permanent savings of over a billion per year. Starting in 1992, the Farm Credit System will begin to pay back the loan from a percentage of System profits.

And one final point about this bill. Some of my colleagues may question why this Senator is introducing a $2 billion capital infusion of the Farm Credit System, when he has hitherto voted consistently against Government spending across the board. It's a good question which deserves an answer.

There is legislation currently before the Senate Committee on Agriculture which also hopes to lower Farm Credit System interest rates. This legislation has gathered broad support both in this Chamber, and among our colleagues in the other body. That bill releases the Federal Government from regulatory responsibility to prevent System banks from lowering rates below levels justified by their income and reserves.

While I support such lessening of Federal regulation, considering the financial condition of the Farm Credit System, that bill cannot provide any real reduction in interest rates without leaving the System near, if not ultimately, bankrupt. Furthermore, I feel that pressure to reduce interest rates will be more than the Farm Credit banks can bear, and that, given the opportunity, they will use the rope granted by the legislation before the Senate Agriculture Committee to hang themselves.

Mr. President, I ask the question, "Is it likely that Congress will allow the Farm Credit System to go bankrupt and thus eliminate the largest supplier of farm credit in the Nation?" Not on your life. If there is anything that this Congress is good at, it is respond to crisis with an abundance of Government solutions, rescues, and bailouts.

Why do I support loaning a capital infusion to the Farm Credit System now? Because without such an infusion, any lowering of interest rates will result in a crisis that: First, requires even more Federal funds; second, accomplishes less toward the long-term stability of the Farm Credit System; and third, sends a poor message to investors, making farm credit all the more difficult to obtain in the future.

If not for the sake of American farmers who have suffered from the spendaholism of this Congress, then for the sake of good public policy, I urge my colleagues to give this legislation their full support. I invite any and all to add their name as a cosponsor.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD at the appropriate place.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2899

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Farm Credit System Interest Reduction Act of 1986".

TITLE I—FARM CREDIT ASSISTANCE AND INTEREST REDUCTION

SEC. 101. DEFINITIONS.

As used in this title:

(1) CHAIRMAN.—The term "Chairman" means the Chairman of the Farm Credit Administration Board.

(2) INSTITUTION.—The term "institution" means an institution of the System.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(4) SYSTEM.—The term "System" means the Farm Credit System established under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

SEC. 102. LOANS TO FARM CREDIT INSTITUTIONS.

(a) IN GENERAL.—The Secretary shall make loans to institutions in a total amount of $2,000,000,000, to be expended in accordance with sections 103 and 104.

(b) INTEREST.—

(1) RATE.—The interest rate on a loan made under this section shall be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans.

(2) ACCRUAL.—Interest on the loan shall begin to accrue 5 years after the date of making the loan.

(c) SCHEDULE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the repayment schedule for loans made under this section shall be determined by the Secretary, in consultation with the Chairman, on the basis of a percentage of System profits.

(2) INITIAL PAYMENT.—The initial payment on a loan shall be made 5 years after the date of making the loan.

(2) SYSTEM SOLVENCY.—The repayment schedule shall be established in a manner that does not adversely affect the financial solvency of the System.

SEC. 103. PLAN FOR FARM CREDIT ASSISTANCE.

(a) DEVELOPMENT.—Not later than 90 days after the date of enactment of this Act, the Chairman shall develop a plan, that meets with the approval of the Secretary, to use loan proceeds provided under section 102 to accomplish one or both of the following purposes:

(1) The removal of high-cost bonds with rates of interest of 12 percent or more from the portfolio of the System through direct assumption of the bonds by the Secretary, unhinged and extended refinancing, exchange of lending terms, repurchase of the bonds, or other means.

(2) The retirement or restructuring of non-accruing loans held by institutions.

(b) EXPENDITURE.—Loan proceeds provided under section 102 shall be expended in accordance with the plan developed under subsection (a).

SEC. 104. INTEREST RATE REDUCTION FOR BORROWERS.

(a) IN GENERAL.—As a condition of obtaining assistance under this title, the Farm Credit Administration shall assure that such assistance be accompanied by a proportionate reduction (in dollar cost to the System) in interest rates charged to borrowers on loans made by institutions.

(b) EQUAL BENEFITS.—Any interest rate reduction derived under this title shall be applied equally to all System borrowers.

(c) AMORTIZATION PERIOD.—The amortization period used under subsection (a) shall be determined by the Farm Credit Administration in a manner that will provide the maximum number of eligible borrowers of the loans without allowing the financial condition of the System to reach a level that would authorize assistance under section 4.28J(a) of the Farm Credit Act of 1971 (12 U.S.C. 2216i(a)).

TITLE II—RIGHTS OF BORROWERS

SEC. 201. ACCESS TO DOCUMENTS AND INFORMATION.

Section 4.13A of the Farm Credit Act of 1971 (12 U.S.C. 2200) is amended to read as follows:

"SEC. 413A. ACCESS TO DOCUMENTS AND INFORMATION.—(a) In accordance with regulations of the Farm Credit Administration, System institutions shall provide their borrowers—

"(1) at the time of execution of loans—

"(A) copies of all documents in the loan file of the borrower; and

"(B) a statement of the rights and responsibilities of the borrower under this Act and the bylaws of the institution;

"(2) at any time thereafter, on the request of a borrower, copies of all documents in the loan file of the borrower; and

"(3) at any time, on request—

"(A) a copy of the institution's articles of incorporation or charter and bylaws; and

"(B) a list of the stockholders of the institution, subject to subsection (b).

"(b) To be eligible to obtain a list of stockholders from an institution under subsection (a)(3)(B), a borrower must sign a statement certifying that the list will be used only in connection with the business of the institution.".

SEC. 202. MERGER OF SIMILAR BANKS.

Section 410 of the Farm Credit Act of 1971 (12 U.S.C. 2181) is amended by adding at the end thereof the following new sentence: "Notwithstanding the preceding sentence, on a petition signed by at least 50 stockholders of associations of the banks that are proposing to merge under the preceding sentence, such banks may merge only on the vote of a majority of their stockholders present and voting or voting by written proxy at duly authorized meetings, and with the approval of the Farm Credit Administration.".

SEC. 203. ELECTION OF DISTRICT BOARDS OF DIRECTORS.

Section 5.2(c) of the Farm Credit Act of 1971 (12 U.S.C. 2223(c)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) In the case of the election of a director by the Federal land bank associations or the production credit associations, on a petition signed by at least 50 stockholders of the Federal land bank associations or the production credit associations, respectively, such director shall be elected only on the vote of a majority of their stockholders present and voting or voting by written proxy at duly authorized meetings.".

SEC. 204. FINANCIAL DISCLOSURE BY FARM CREDIT OFFICIALS.

(a) PERSONS REQUIRED TO FILE.—Section 204(f) of the Ethics in Government Act of 1978 (5 U.S.C. App. 4) is amended—

(1) by striking out "and" at the end of paragraph (6);

(2) by striking out the period at the end of paragraph (7) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(8) each executive officer of the Farm Credit Administration, and the chief executive officer of each district of the Farm Credit System, established under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).".

(b) FILING OF REPORTS.—Section 203 of such Act is amended by adding at the end thereof the following new subsection:

"(h) Each individual identified in section 204(f)(8) shall file the reports required by this title with the Farm Credit Administration.".

SEC. 205. STUDY OF LOCAL CONTROL OF FARM CREDIT SYSTEM.

(a) IN GENERAL.—The Comptroller General shall conduct a study of the feasibility and desirability of providing control of the Farm Credit System established by the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) to local institutions and stockholders of the System.

(b) ISSUES.—The Comptroller General shall include in the study an evaluation of—

(1) the steps necessary to implement the policy described in subsection (a);

(2) the increased responsiveness of the System to local stockholders from implementing the policy;

(3) the cost effectiveness of the policy in terms of reducing the level of District personnel and operations;

(4) the benefits the policy would create by having diversified decisions between banks and associations;

(5) the effect the policy would have on lowering the turnover rate of local personnel;

(6) the effect the policy would have on restoring stockholder confidence in the System; and

(7) the benefits of the policy towards fulfilling the mission of the System to be a locally controlled and operated system serving the needs of farmers and ranchers.

(c) REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing the results of the study conducted under this section, together with any appropriate recommendations.

TITLE III—INDEPENDENT INTEREST RATE-SETTING AUTHORITY

SEC. 301. POLICY.

Section 1.1 of the Farm Credit Act of 1971 (12 U.S.C. 2001) is amended by adding at the end thereof the following new subsection:

"(c) It is declared to be the policy of Congress that the credit needs of farmers, ranchers, and their cooperatives will be served if the Farm Credit System institutions provides credit to eligible borrowers at competitive interest rates that maximize System lending volume, based on the cost of funds and operating costs of the institution, taking into account the creditworthiness of borrowers.".

SEC. 302. ELIMINATION OF FARM CREDIT ADMINISTRATION APPROVAL OF INTEREST RATES CHARGED BY SYSTEM INSTITUTIONS.

(a) FEDERAL LAND BANKS.—The first sentence of section 1.7 of the Farm Credit Act of 1971 (12 U.S.C. 2015) is amended by striking out ", with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

(b) FEDERAL INTERMEDIATE CREDIT BANKS.—The second sentence of section 2.4 of such Act (12 U.S.C. 2075) is amended by striking out "with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

(c) BANKS FOR COOPERATIVES.—The first sentence of section 3.10(a) of such Act (12 U.S.C. 2131(a)) is amended by striking out ", with the approval of the Farm Credit Administration as provided in section 4.17 of this Act".

(d) FARM CREDIT SYSTEM INSTITUTIONS.—Section 5.17(a)(5)(A) of such Act (12 U.S.C. 2252(a)(5)(A)) is amended by striking out "and on loans made or discounted by such institutions".

SEC. 303. DETERMINATION OF INTEREST RATES.

Section 4.17 of the Farm Credit Act of 1971 (12 U.S.C. 2205) is amended by striking out the first sentence and inserting in lieu thereof the following new sentences: "In establishing interest rates on loans, no Farm Credit System institution shall establish a rate that will threaten the safety and soundness of the institution, increase the need of the institution for assistance from other Farm Credit System institutions, or reduce the ability of the institution to contribute as needed by other System institutions. Interest rates on loans from institutions of the Farm Credit System shall not be subject to any interest rate limitation imposed by any State constitution or statute or other law. Such limitations are preempted for purposes of this Act.".

TITLE IV—FUNDING FOR FARM CREDIT ASSISTANCE

SEC. 401. LEGAL SERVICES CORPORATION.

(a) REPEAL.—The Legal Services Corporation Act (42 U.S.C. 2996 et seq.) is repealed.

(b) TRANSITION.—Except to the extent required to fulfill obligations entered into prior to the date of enactment of this Act—

(1) all unexpended balances of funds available to the Legal Services Corporation shall be covered into the Treasury; and

(2) the Legal Services Corporation shall wind up its affairs in accordance with such regulations as the Director of the Office of Management and Budget may prescribe.

SEC. 402. EXPORT-IMPORT BANK.

(a) REPEAL.—The Export-Import Bank Act of 1945 (12 U.S.C. 635 et seq.) is repealed.

(b) TRANSITION.—Except to the extent required to fulfill obligations entered into prior to the date of enactment of this Act—

(1) all unexpended balances of funds available to the Export-Import Bank of the United States shall be covered into the Treasury; and

(2) the Export-Import Bank of the United States shall wind up its affairs in accordance with such regulations as the Director of the Office of Management and Budget may prescribe.

SEC. 403. AGENCY FOR INTERNATIONAL DEVELOPMENT.

Notwithstanding any other provision of law, $50,000,000 of the funds made available for the fiscal year 1987 to carry out section 104(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b(b)) (relating to population planning assistance) shall be withheld from obligation and expenditure.

SEC. 404. VOLUNTARY CONTRIBUTIONS TO THE UNITED NATIONS.

Notwithstanding any other provision of law, $118,000,000 of the funds appropriated for the fiscal year 1987 to carry out section 302 of the Foreign Assistance Act of 1961 (22 U.S.C. 2222) with respect to the United Nations and its specialized agencies shall be withheld from obligation and expenditure.

SEC. 405. FOREIGN AID FUNCTION.

Notwithstanding any other provision of law, $423,091,000 of the funds appropriated for United States assistance, as defined by section 481(i)(4) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291(i)(4)), shall be withheld from obligation and expenditure, except that no funds allocated for any country that is a party of the Camp David Accords may be withheld from obligation or expenditure.

● Mr. McCLURE. Mr. President, I rise in support of the bill just introduced by my good friend and colleague Senator SYMMS. This bill is necessary, it is timely, and I support it wholeheartedly.

The Farm Credit System is in need of help. Interest rates are higher than farmers in Idaho can afford. It is through no fault of the farmers themselves that this has happened. In the 1970's and early 1980's directives from the highest levels of the FCS pushed for loan volume instead of loan quality. The System changed its policy of lending based upon repayment capabilities of the land to lending based upon the assets of the farm. The Farm Credit System built in high interest rates through past sales of high cost bonds and past lending policies and now these high interest rate bonds haunt the system.

I am concerned about the future of the Farm Credit System. The System's financial condition deteriorated significantly during 1985. Last year, the System incurred an operating loss of $2.8 billion. Last year operating losses were absorbed by surpluses that were built up from prior years' earnings. This loss and certain other accounting adjustments required by law resulted in a reduction of the combined surplus of the System from $6.2 billion at the end of 1984 to $3.2 billion at the end of 1985. If these difficulties continue it is projected that the System could incur an operating loss between $1.7 to $2.9 billion in 1986. This would essentially deplete the System's remaining surplus.

During 1985, nonaccrual loans in the System increased from $1.8 billion to $5.1 billion. By June of 1986 nonaccruals had grown to $7.6 billion and other high-risk loans amounted to $4.7 billion. The allowance for loan losses increased from $1.3 billion at year end 1984 to $3.7 billion at year end 1985. It is clear that there are serious problems in rural America when loan losses and nonaccruals have increased at such alarming rates over such a short period of time.

I am concerned that the competitiveness of the System as an agricultural lender has weakened. The combined Federal Land Bank and Production Credit Association market share of farm debt declined from 32.6 percent at the end of 1984 to 29.4 percent at the end of 1985. During 1985, gross loans outstanding declined by 13 percent. During the first half of 1986 gross loans declined from $72.7 billion to $65 billion. Some of this is normal paydown of debt—some is the flight of good solid borrowers from the Farm Credit System. I have been told by my constituents and by FCS loan officers themselves that the more creditworthy borrowers are leaving the System because other agricultural lenders are offering more favorable lending rates. I know myself that this is happening. Farmers in the Magic Valley of Idaho who have borrowed from the Farm Credit System for 40 years are leaving because they have been offered better rates and terms than the Farm Credit System can offer.

The System's problems are twofold: First, it has problems with its loan portfolio and second the high cost of its debt that has resulted from funding variable rate loans with long-term, fixed-rate bonds. Triggered by weakness in the agricultural economy and falling land values, the System's loan portfolio contains a recordbreaking volume of problem loans. Many of these loans are not being repaid according to terms, and in many cases won't be paid at all. Many of these loans are not adequately collateralized and will result in losses when the loans are liquidated. Because the System's loan portfolio is essentially related to the depressed agricultural economy, there is little hope for relief in the short term for the System's loan portfolio problems.

The System has exposed itself to fluctuations in interest rates by funding variable rate loans with long-term fixed-rate bonds. The System reprices its loans on the basis of its average cost of borrowing. Because of this, when interest rates are rising, rates on its loans are lower than current interest rates and when interest rates are falling, rates on its loans are higher. During the past 8 years, long-term market interest rates rose from about 9 percent in 1978 to about 15 percent in 1981. In the 1980-82 period, the System adopted a strategy of growth, which it achieved by charging relatively low rates for variable rate loans during periods of rising interest rates. This growth was financed in part by long-term fixed rate bonds. This exposed the System to losses in the event that interest rates should decline, if its average borrowing costs could not be passed through to borrowers in a lower interest rate environment. While a funding strategy that resulted in pricing at current rates during the 1980-82 period might have increased repayment problems for existing borrowers, such a practice might also have discouraged many of the System's current borrowers from borrowing funds which they find difficult—if not impossible—to repay.

The combined effects of problem loans and high borrowing costs and the probability that these conditions will continue to raise serious questions about the viability of the Farm Credit System. I traveled through Idaho in August and heard first hand what the high interest rate structure of the 21st district Farm Credit System was doing to the farmers and ranchers in Idaho. They are crying for interest rate relief. They need this relief now, not in 1987 or 1988. That is why I support Senator SYMMS' bill to provide relief to the System now. Farmers on the Camas Prairie and in the Palouse cannot wait until next year to get interest rate relief. Their loans are being called today. Many farmers told me that they could pay thir debts if their interest rates were lowered. They need interest rates of 8 to 10 percent to survive.

This bill lends to the institutions of the Farm Credit System $2 billion to be used to remove the high interest rate bonds—12 percent or greater—from the System's bond portfolio through the assumption of these bonds by the Treasury. It also will be used for the retirement or restructuring of nonaccrual loans held by the System.

It will provide direct interest rate relief, relief that is sorely needed by farmers and ranchers of this country. It insures that the Farm Credit Administration, in receiving this assistance will provide for an equal interest rate reduction across the System. It does not threaten the solvency of the System, as it amortizes the $2 billion of lower interest rates over a time determined to maximize the System's lending volume.

In addition this bill guarantees Farm Credit System stockholders access to their own unsigned loan documents, it provides for lists of fellow stockholders which can be used only for System business, copies of the by-laws, forbearance policies, and statements of rights. It requires stockholders be given ample time and information prior to mergers or consolidations of FCS institutions. It allows stockholders to call for approval of such mergers by direct vote. These changes are needed to involve the stockholders in the workings of their own association. It also allows stockholders to call for direct election of all FCS board members except those appointed by FCA under current law. Most importantly, it opens nominations for such positions to all qualified persons.

To fund this proposal, Senator SYMMS has found offsetting reductions elsewhere in the budget. This complies with the requirements of the Gramm-Rudman-Hollings Deficit Reduction Act. We can no longer allow funds to go to other countries, such as funds to the World Bank, which go to countries for development of their agriculture which eventually compete against our farmers, while our farmers continue to stagger under debt loads that are unbearable.

Farmers in Idaho are not asking for a handout. They are only asking for what the Federal Government, what Congress has given to farmers in other times, a loan to recapitalize parts of the Farm Credit System. Back in the 1930's the Federal Government capitalized the Farm Credit System with a loan. This loan was paid back in full.

The Federal Government invested in the agricultural future of America once before. It was paid back handsomely over many years. It can be done again, if we will only look and find a way to reinvest in American agriculture. I believe that STEVE SYMMS has found a way to address this critical problem and I ask your support for his efforts to find a solution—I urge you to support this bill.●

By Mr. HECHT:

S. 2901. A bill to provide special rules for purposes of the Internal Revenue Code of 1954 for the accrual of a carryback of losses from deductions for asbestos product liabilities in order to protect asbestos workers, and for other purposes; to the Committee on Finance.

SPECIAL TAX TREATMENT OF ASBESTOS LIABILITY LOSSES

● Mr. HECHT. Mr. President, at a time when the very life of our Nation was at risk in World War II thousands of American workers performing vital functions in producing ships for military use were subjected to risks of asbestos injury by their Government under wartime conditions which would not have been tolerated in times of peace.

There were no substitutes for asbestos during World War II. The Federal Government took absolute control of all asbestos from manufacture to final application as high-temperature insulation material in cargo and naval ships vital to the World War II effort.

Inhalation or ingestion of asbestos dust or particles sometimes causes pulmonary and other disabilities. However, these ailments may not manifest themselves for 20 to 30 years after exposure.

The vital need to construct ships in the greatest numbers in the shortest possible time caused the Federal Government, which controlled all World War II shipyard workplaces and employment conditions, to ignore its own safety standards, in what was understandably believed to be in the national interest.

Long after the end of World War II some wartime shipyard workers began to suffer lung illnesses as a result of breathing asbestos dust during the time they built ships for military use.

However, when World War II workers suffering asbestos injuries have sued the U.S. Government, the Government has evaded responsibility for the injuries it caused by claiming sovereign immunity.

These injured workers are now suing the companies that produced high-temperature asbestos insulation even though they had nothing to do with either application of their products or the safety standards applied by the U.S. Navy in the shipyards it controlled.

Many of these companies have shouldered the Government's responsibility and paid asbestos injury claims. However, these claims exceed the ability of some companies to pay. This could result in the loss of thousands of jobs and erode our national taxpayer base and will be contrary to the national interest. Moreover, thousands of just claims of injured workers may well be defeated because the companies who are willing to settle and pay these claims do not have available funds to meet these thousands of claims.

It has been suggested that a self-insurance program might be the solution, because it will be more or less revenue neutral in that instead of deducting asbestos injury costs from present and future income, the taxpayer can deduct these costs from income at the time of injury. This will protect the taxpayer from possible additional toxic product liability Superfund costs, and will fit within well-established and fundamental tax policies of matching income and expenses, product liability loss carrybacks and accrual tax accounting.

In order to protect the rights of workers suffering World War II asbestos injuries as well as protecting the jobs of thousands of skilled workers for the various companies involved in asbestos injury claims, I am introducing today the Asbestos Workers Protection Act.

It can be a vehicle for generating discussion of the options and alternatives Congress is obligated to consider in assuring that our wartime industrial workers as well as the skilled artisans in our present work force are protected from economic calamity caused by war conditions over which they have had no control.●

By Mr. WALLOP (for himself, Mr. HECHT, and Mr. BAUCUS):

S. 2902. A bill entitled the "Federal Land Exchange Act of 1986"; to the Committee on Energy and Natural Resources.

FEDERAL LAND EXCHANGE ACT

● Mr. WALLOP. Mr. President, as a result of Federal budget cuts, the two largest Federal land management agencies are increasingly acquiring new Federal lands through land exchanges rather than outright purchases. The Department of the Interior's Bureau of Land Management [BLM] and the Department of Agriculture's Forest Service, from fiscal year 1982 through March 1985, completed 706 land exchanges involving over 1.1 million non-Federal and 900,000 Federal acres—a total land surface over two and one-half times the area of the State of Rhode Island. The Federal and non-Federal lands exchanged were each valued at over $370 million.

As chairman of the Subcommittee on Public Lands, Reserved Water and Resource Conservation, Senate Committee on Energy and Natural Resources, I asked GAO to review BLM's and the Forest Service's land exchange processes in order to provide information on the steps in the exchange process and to look at ways the process can be improved.

Land exchanges are the trading of Federal lands for non-Federal lands. They are frequently used by the two agencies to obtain needed land and to dispose of Federal tracts that are hard to manage because they are isolated and scattered. The process followed by BLM and the Forest Service for processing exchange proposals is guided by several Federal laws, regulations, and agency policies. As a result, the exchange process incorporates diverse steps that are designed to protect the public interest by:

Ensuring that exchange proposals conform with Federal land-use plans to promote the effective, efficient, and orderly management and use of public lands;

Addressing environmental concerns;

Ensuring that the concerns of State and local governments and other interested parties are addressed; and

Setting land values to ensure that the Government obtains equal value in its exchanges.

The laws authorizing BLM and Forest Service exchanges require that the agencies obtain equal value for the lands being exchanged. If the lands are not equal in value, the values must be equalized through cash payments not exceeding 25 percent of the value of the Federal lands. It is also permissible to adjust the number of acres being exchanged so that values are made equal or to decrease the amount of cash that must be paid to equalize values. In addition, lands to be exchanged must meet criteria specified in land-use plans for the disposal of Federal lands and acquisition of non-Federal lands.

ROLE OF BLM AND THE FOREST SERVICE IN LAND MANAGEMENT

Together, BLM and the Forest Service manage about 70 percent of all Federal lands. BLM, through its 11 State offices, 55 districts, and 155 resource area offices manages more than 342 million acres. In fiscal year 1986, BLM had a total budget of about $796 million; an estimated $2.8 million was allocated for land exchanges. The Forest Service, through its 9 regions and 155 national forests, manages about 191 million acres. In fiscal year 1986, the Forest Service's budget totaled about $2 billion; about $6.5 million was budgeted for land exchanges.

BLM and the Forest Service are both charged with managing public lands for multiple use. For BLM, this requirement is contained in the Federal Land Policy and Management Act of 1976 (FLPMA, 16 U.S.C. 1701 et seq.), and for the Forest Service, it is contained in the Multiple Use-Sustained Yield Act of 1960 (16 U.S.C. 528 et seq.). The multiple uses to be accommodated include recreation, rangeland, timber, minerals, watershed, fish, and wildlife. Natural, scenic, scientific, and historical values must also be taken into consideration.

ROLE OF LAND EXCHANGES

The land exchange process begins when either the Federal or the non-Federal party (the exchange proponent) present an exchange proposal. Federal laws and regulations and agency policies guide the exchange process. In order to protect the public interest, environmental, mineral resource, and other studies are conducted. The normal procedures associated with real estate transactions, such as appraisals and title searches, are also required. After legal and procedural requirements have been met, and if no obstacles have been encountered, the proposal is accepted and the process is completed.

Since 1981, the Departments of Agriculture and the Interior have both endorsed land exchanges as a preferred land management tool over land purchases. In October 1981, Agriculture's Assistant Secretary for Natural Resources and the Environment advised the Senate Committee on Energy and Natural Resources that the Forest Service could reduce its inefficient fragmented or "checkerboard" land ownership patterns, despite the reduction in funds to purchase lands, by using land exchanges. Checkerboard land patterns resulted from land grants in the 19th century that conveyed alternate tracts of public land to railroads. The purpose of these grants was to encourage the development of the West.

In February 1985 at my urging, the Interior Task Force on Large Land Exchanges was established to expedite the processing of potential land exchanges. This task force, initially chaired by BLM's Assistant Director for Land Resources, identified and ranked over 530 land exchange opportunities throughout Interior's landholdings. About 1.86 million acres were identified for potential acquisition, and about 1.7 milion acres were identified for potential disposal.

Interior's effort to expedite exchanges was augmented in September 1985, when Interior's Assistant Secretary for Fish, Wildlife and Parks was appointed task force chairman, thus increasing the task force's authority. In March 1986, the chairman stated that the task force was ranking proposed exchanges and would be recommending how they should be accomplished. The chairman further stated that the task force would recommend ranking potential exchanges because larger, more complex exchanges need more agency resources and effort to process than small, less complex exchanges. He said a congressional mandate would be sought for the high priority exchanges, which could not be easily processed using the normal exchange process. According to the chairman, the second highest priority class of exchanges would be closely monitored by Interior headquarters personnel to assure expeditious processing, while the lowest priority exchanges would continue to be administered by the Interior agencies field offices. The Assistant Secretary's office was reviewing the task force's draft report as of August 1, 1986. A report issuance date had not been set.

On April 2, 1985, I specifically requested that GAO provide information on the process used by BLM and the Forest Service to administer exchange proposals and to look at ways in which this process can be improved. As part of this review, I asked GAO to look at: First, the use of monetary credits in exchanges; second, the use of General Services Administration [GSA] surplus property in exchanges; third the terms of exchanges; fourth, the effect of exchanges on local governments' concerns that exchanges have a negative impact on their revenues; fifth, the administrative costs of processing exchanges and who should pay them; sixth, the process used to plan and control exchanges; seventh, the application of FLPMA's equal value and cash equalization provisions; and eight, ways of making the exchange process more expeditious within the framework of FLPMA's public interest provision. I also asked that GAO provide information on exchanges that convey known Federal mineral interests and those that separate the ownership of the surface and subsurface estates (create split estates) or that unify surface and subsurface estates that, prior to the exchange, had been owned by different parties.

GAO has sent the draft report to the agencies for comment. The report with comments is expected in November of this year.

Mr. President, on another front The National Parks and Conservation Association hosted a 2 day land exchange conference on March 24 and 25, 1986. I was privileged to address that group of experts from industry, Government and financial and nonprofit institutions.

A potpourri of ideas for legislation concerning Federal land legislation emerged, to wit:

Utilize "comparable value" when determining the value of lands in the exchange process—weight net benefits, tangible and intangible, to the acquiring agency with more emphasis on economics of exchange—keep equal value in the "ballpark" but not definite—look at the contributions being made by the acquired land.

Reevaluate interstate exchange prohibitions—possible use of revenue from the sale of lands in one State for the purchase of lands in another—market inventoried land and place the proceeds in a trust fund for future purchases.

Inventory all Federal lands on the basis of what should be retained for Federal purposes and what should be included in exchange stock.

Negotiate details before beginning the actual exchange process.

Establish a trust fund to pay exchange costs and to allow for emergency budgeting for proposals that develop during the fiscal year—negotiate exchange costs at the beginning of an exchange proposal and place greater burden on the proponent who is benefitting the most—establish the total cost of the exchange prior to initiating in event that added costs make the proposal economically impractical.

Consolidate all Federal lands available for exchange purposes in a pool—require the General Services Administration to pass surplus land through a review period where the lands may be utilized by other agencies in exchanges.

Allow a tax credit to private exchange proponent to help cover the costs of an exchange.

Establish interagency exchange teams to allow expertise to be shared among the Federal land agencies and to assure continued monitoring of exchange proposals—attract and keep experienced real estate specialists.

Keep from developing split estates in the exchange process.

Allow for public involvement in the exchange process.

Streamline congressional oversight of exchanges to allow for annual review of agency actions instead of oversight of individual exchanges on a piecemeal basis.

Close inventoried exchange lands from mineral entry—streamline process by which land can be withdrawn from entry after being identified as exchange land.

Utilize "safety net" formula where exact mineral values cannot be determined—i.e., divide future mineral royalties on a 50/50 basis to mollify concerns that valuable minerals may eventually be discovered on lands exchanged by the Federal Government.

Allow appraisal review prior to inception of exchange.

Evaluate use of Outer Continental Shelf as exchange stock; and

Improve appraisal process to allow for negotiation and arbitration of differences in value perception.

Mr. President, on February 10, 1986, the U.S. District Court for the District of Columbia issued an order pertaining to the National Wildlife Federation versus Robert F. Burford, et al., suit that in my estimation has severe adverse impacts upon individuals, States, counties, municipalities, and other Federal agencies.

The order directs that the:

First, defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them are hereby enjoined from:

Modifying, terminating or revoking, in full or in part, under the Federal Land Policy and Management Act [FLPMA] any withdrawal or classification that was in effect on January 1, 1981; or

Taking any action inconsistent with the specific restrictions of any withdrawal or classification in effect on January 1, 1981, including, but not limited to, the issuance of leases, the sale, exchange or disposal of land or interests in land, the grant of rights-of-way, or the approval of any plan of operations;

Second, terminations or modifications under the FLPMA of classifications and revocations or modifications under the FLPMA of withdrawals occurring since January 1, 1981, are hereby suspended until further action by this court.

Mr. President, over 260 agricultural entries cannot be consummated, over 430 sales cannot go forward, nearly 70 exchanges have been stopped, and nearly 1,000 leases and over 7,200 mining locations are potentially impacted. Nearly 70 exchanges were pending before the Department when the court's February 10, 1986, order was issued; exchanges that involved lands covered by the order. They cannot now go forward. The size and scope of these exchanges range from actions involving hundreds of thousands of acres to only a few acres. The exchange recipients include States, counties, environmental and conservation organizations, and private individuals. The vast majority of the exchanges were proposed for actions normally considered in the public interest and/or environmentally enhancing.

Mr. President, the lengthy dissertation on exchange is necessary prior to the introduction of the companion bill which has passed the House of Representatives, H.R. 4814, an act entitled the "Federal Land Exchange Act of 1986." This bill passed the House on August 11, 1986.

I am fully aware many issues relating to land exchanges cannot be completely addressed until the GAO report is finalized and NWF versus Burford is resolved. The legislation I am introducing today is not intended to be a complete cure, but rather a step toward perfecting a process I have long endorsed.

The purpose of this bill is not to change the basic principles and ground rules of existing law governing land exchanges, but rather to streamline current procedures. Specifically, it provides a mechanism for the arbitration or negotiation of disputes involving land appraisals or parcels to be exchanged. It permits the Forest Service to perform land surveys on its own lands, although the surveys must be in accordance with the Department of the Interior's survey standards. Moreover, the legislation will permit discretionary adjustments in land values to compensate for the costs of preparing lands for exchange. I want to make clear, however, that any decision by the Secretary of the Interior on using land as compensation must be in compliance with FLPMA's current requirements that the land exchange agreement be in the "public's interest." Further, the bill requires the promulgation of new regulations governing exchanges which will be more uniform from agency to agency and it permits the use of "short form" appraisals and other procedures to eliminate unnecessary red tape for land exchanges involving small tracts of land.

Mr. President, before I conclude, I wish to add that in my home State the land exchange process has been most useful. It has been particularly helpful in the protection of the scenic and wildlife values in areas like Jackson Hole and Grand Teton National Park, in the acquisition of key inholdings in the National Forests, and in blocking "checkerboard" lands for purposes of promoting logical units for coal mining and agriculture.

Most currently, a Wyoming energy boomtown found the land exchange process useful in resolving their "landlock" problem. Kemmerer, like many Western communities, face problems associated with fragmented land ownership patterns resulting from land grants in the 19th century that conveyed alternate tracts. Because of a successful land exchange, this community last month held ground breaking ceremonies for a new housing development project.

This legislation enjoys the formal endorsement of many diverse groups and organizations, both on the national and State level, such as the National Parks and Conservation Association, the Trust for Public Lands, the Nature Conservancy, the National Forest Products Association, the Sierra Club, the American Ski Federation, and the CSX Corp., the Jackson Hole Land Trust, the Wyoming Outdoor Council, the Teton County Commissioners, the Greater Yellowstone Coalition, the Jackson Hole Alliance for Responsible Planning.

Mr. President, I ask unanimous consent that the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2902

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 2. (a) The Congress finds and declares that—

(1) land exchanges are a very important tool for Federal and State land managers and private landowners to consolidate Federal, State and private holdings of land or interests in land for purposes of more efficient management and to secure important objectives including the protection of fish and wildlife habitat and aesthetic values; the enhancement of recreation opportunities; the consolidation of mineral and timber holdings for more logical and efficient development; the expansion of communities; the promotion of multiple-use values; and fulfillment of public needs.

(2) needs for land ownership adjustments and consolidation consistently outpace available funding for land purchases by the Federal Government and thereby make land exchanges an increasingly important method of land acquisition and consolidation for both Federal and State land managers and

(3) the Federal Land Policy and Management Act of 1976 and other laws provide a basic framework and authority for land exchanges involving lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture; but

(4) such existing laws are in need of certain revisions to streamline and facilitate land exchange procedures and expedite exchange timetables.

(b) The purposes of this Act are to:

(1) facilitate and expedite land exchanges pursuant to the Federal Land Policy and Management Act of 1976 and other laws applicable to exchanges involving the Secretaries of the Departments of the Interior and Agriculture by:

(A) providing more uniform rules and regulations pertaining to land appraisals which reflect nationally recognized appraisal standards but which also reflect any differences between appraisals of lands and interests being considered for acquisiton by the Federal Government and appraisals of lands and interests being considered for transfer out of Federal ownership;

(B) establishing procedures and timetables for the arbitration of appraisal disputes; and

(C) providing to the Secretary having jurisdiction over the Federal land involved unified surveying and other authority for land exchanges; and

(2) provide sufficient resources to the Secretaries of the Interior and Agriculture to insure that land exchange activities can proceed consistent with the public interest.

LAND EXCHANGES AND APPRAISALS

Sec. 3. (a) Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) is hereby amended by adding the following new subsections:

"(d)(1) The Secretary of the Interior and the Secretary of Agriculture shall promulgate regulations providing that unless it is mutually agreed otherwise prior to the expiration of ninety days after entering an agreement to initiate an exchange of land or interest therein pursuant to this Act or other applicable law, no later than ninety days after entering an agreement the Secretary concerned and the other party or parties therein involved in the exchange shall arrange for an appraisal of the lands or interests therein involved in the exchange in accordance with subsection (g) of this section.

"(2) If within one hundred and eighty days after the submission of an appraisal for review and approval by the Secretary concerned, the Secretary concerned and the party or parties involved cannot agree to accept the findings of the appraisal, the appraisal shall be submitted to an arbitration to be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. Such arbitration shall be binding on the Secretary concerned and the other party or parties involved in the exchange insofar as concerns the value of the lands which were the subject of the appraisal.

"(3) Within thirty days after the completion of the arbitration, the Secretary concerned and the party or parties involved in the exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or to terminate the exchange. A decision to terminate the exchange may be made by either the Secretary of the other party or parties involved.

"(4) After submission of an appraisal for review by the Secretary concerned but prior to submission of an appraisal to arbitration pursuant to paragraph (2) of this subsection, if both the Secretary concerned and the other party or parties involved in an exchange determine it is in the best interest of consummating an exchange pursuant to this Act or other applicable law, they may mutually agree to employ a process of bargaining or some other process (instead of arbitration) to determine the values of the properties involved in the exchange, or they may mutually agree to suspend or modify any of the following:

"(A) The arbitration requirements of this subsection.

"(B) The deadlines for submission of an appraisal to arbitration.

"(C) The deadline for determinations subsequent to completion of an arbitration.

"(e) Notwithstanding any other provision of law, and unless the Secretary or Secretaries involved in an exchange of land or interests therein pursuant to this Act or other applicable law agree otherwise, the Secretary having jurisdiction over Federal land which would be included in such exchange is henceforth authorized to and shall have the responsibility to perform all necessary land surveys. All surveys shall be in accordance with the manual of surveying instruction of the Secretary of the Interior in effect at the time of survey and shall be filed with the Secretary of the Interior.

"(f) Unless mutually agreed otherwise by the Secretary concerned and the other party or parties involved in an exchange pursuant to this Act or other applicable law, all patents or titles to be issued for land or interests therein to be acquired by the Federal Government and lands or interests therein to be transferred out of Federal ownership shall be issued simultaneously.

"(g)(1) Within one year of the enactment of subsections (d) through (i) of this section, the Secretaries of the Interior and Agricultural shall promulgate new and comprehensive rules and regulations governing exchanges of land and interests therein pursuant to this Act and other applicable law. Such rules and regulations shall fully reflect the changes in law made by subsections (d) through (i) of this section and shall include provisions pertaining to appraisals of lands and interest therein involved in such exchanges.

"(2) The provisions of the rules and regulations issued pursuant to paragraph (1) of this subsection governing appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, The Uniform Appraisal Standards for Federal Land Acquisition: Provided, however, that the provisions of such rules and regulations shall—

"(A) Insure that appraisal standards henceforth cover both the acquisition and disposal of land by the Federal Government and adequately reflect any differences involved between appraising lands or interests therein being acquired by the Federal government and appraising lands or interests therein being transferred out of Federal ownership; and

"(B) Permit the Secretary to make adjustments to the relative values assigned to properties involved in an exchange in order to reflect the costs (including, but not limited to, such costs as land surveys and salvage, removal of encumbrances, arbitration pursuant to subsection (d) of this section, curing deficiencies preventing highest and best use, and other costs to comply with laws, regulations and policies applicable to exchange transactions), time and other factors necessary to bring the Federal and non-Federal lands or interests therein involved to their highest and best use for the appraisal and exchange purposes.

"(h) Until such time as new and comprehensive rules and regulations governing exchange of land and interests therein are promulgated pursuant to subsection (g) of this section, land exchanges may proceed in accordance with existing laws and regulations, and nothing in this Act shall be construed to require any delay in, or otherwise hinder, the processing and consummation of land exchanges pending the promulgation of such new and comprehensive rules and regulations. Where the Secretary concerned and the party or parties involved in an exchange of land or interests therein prior to the date of enactment of this Act, the time deadlines and other provisions of subsections (d) through (i) of this section shall not apply to such exchanges unless the Secretary concerned and the party or parties involved in the exchange mutually agree otherwise.

"(i)(1) Notwithstanding the provisions of this Act and other applicable laws which require that exchange of lands or interests therein be for equal value, where the Secretary concerned determines it is in the public interest and that the consummation of a particular exchange will be expedited thereby, the Secretary concerned may exchange lands or interest therein which are of approximately equal value in cases where:

"(A) the combined value of the lands or interests therein to be transferred from federal ownership by the Secretary concerned in such exchange is not more than $150,000.00; and

"(B) the Secretary concerned finds in accordance with the regulations to be promulgated pursuant to subsection (g) of this section that a determination of approximately equal value can be made without formal appraisals, as based on a certification by a qualified appraiser; and

"(C) the definition of and procedure for determining "approximately equal value" has been set forth in regulations by the Secretary concerned and the Secretary concerned documents how such determination was made in the case of the particular exchange involved.

(2) As used in this subsection, the term "approximately equal value" shall have the same meaning as it does in the Act of January 22, 1983 (commonly known as the "Small Tracts Act")."

(b) The first sentence of section 206(b) (43 U.S.C. 1716(b)) of the Federal Land Policy and Management Act of 1976 is hereby amended by inserting the words "the Secretary".

LAND EXCHANGE FUNDING

SEC. 4. In order to ensure that there are increased funds and personnel available to the Secretaries of the Interior and Agriculture to consider, process, and consummate land exchanges pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, there are hereby authorized to be appointed for fiscal years 1988 through 1997 an annual amount not to exceed $4,000,000.00 which shall be used jointly or divided among the Secretaries as they determine appropriate for the consideration, processing, and consummation of land exchanges pursuant to the Federal Land Policy and Management Act of 1976, and as amended, and other applicable law. Such moneys are expressly intended by Congress to be an addition to, and not offset against, moneys otherwise annually requested by the Secretaries, and appropriated by Congress for land exchange purposes.

SEC. 5. (a) Section 205 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715(c)) is amended in the first sentence of subsection (c) by striking out "Lands and interests" and inserting in lieu thereof "Except as provided in subsection (e), lands and interests".

(b) Section 205 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715(c)) is further amended by adding at the end thereof the following new subsection:

"(e) Lands acquired by the Secretary pursuant to this section of section 206 in exchange for lands which were revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218) or reconveyed to the United States pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to, the revested or reconveyed lands exchange for the lands acquired by the Secretary.".

SEC. 6. Nothing in this Act shall be construed as amending the Alaska Native Claim Settlement Act (P.L. 92-203), as amended) or the Alaska National Interest Lands Conservation Act (P.L. 96-487, as amended) or as enlarging or diminishing the authority with regard to exchanges conferred upon either the Secretary of the Interior or the Secretary of the Agriculture by either such Acts.●

By Mr. ZORINSKY:

S. 2903. A bill to require the Secretary of Agriculture to proclaim national marketing quotas for the 1988 through 1990 crops of wheat and to hold a marketing quota referendum by wheat producers, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

WHEAT MARKETING ACT

● Mr. ZORINSKY. Mr. President, this past summer, the Department of Agriculture conducted a nonbinding poll of wheat producers, asking them if they favored mandatory controls on production in exchange for prices in excess of 125 percent of the cost of production for a bushel of wheat. The results were certainly enlightening.

Among commercial-sized wheat producers responding to the poll, over 57 percent favored mandatory controls. Of poll respondents whose principal crop is wheat, over 60 percent voted in the affirmative. Within the 11 Central Plains States, which produce over two-thirds of all U.S. wheat, more than 64 percent of all respondents, a margin of almost 2 to 1, voted in favor of mandatory controls.

Some support for an affirmative vote in the poll was lost due to understandable uncertainty over what an actual mandatory supply management program would look like. I am offering legislation at this time that will address that uncertainty.

The Mandatory Supply Management Program for wheat I am presenting today is similar to the program contained in the Food Security Act of 1985, the implementation of which is discretionary with the Secretary of Agriculture.

In addition to mandated implementation, changes include a delay in implementation until crop year 1988, the establishment of a nonrecourse loan rate of $4.65 per bushel, and the elimination of target prices and deficiency payments.

The program would work as follows:

The Secretary of Agriculture will announce no later than June 1, 1987, a national marketing quota for wheat.

The quantity of the national quota will be the amount of wheat the Secretary estimates is necessary to meet anticipated annual demand, taking into account domestic consumption, export requirements, emergency food aid needs, and sufficient carryover stocks. I want to emphasize that the Secretary's estimate of export requirements should be maintained at least at current levels, for reasons I will discuss later.

The national marketing quota will then be apportioned among wheat farmers based on historic plantings during the base period of 1981 to 1985.

Not later than August 1, 1987, the Secretary will conduct a national referendum by mail ballot. To be eligible to vote, a producer must have produced a crop of wheat during at least one of the 1981 to 1985 crop years for wheat on a farm with a wheat acreage base of at least 40 acres.

If at least 60 percent of the eligible producers vote in the affirmative, the Secretary must implement marketing quotas.

If the Secretary fails to limit quotas sufficiently to increase market prices above the established loan rate of $4.65, the producer may forfeit his grain as repayment on the loan.

Opponents have claimed that mandatory supply management programs would relinquish our export markets. In reality, we are relinquishing our export markets under current programs.

The volume of annual wheat exports, for example, has declined by almost 50 percent from marketing year 1981-82, despite a continual decline in price over this same period. More critically, the value has declined by an astonishing 58 percent. Where we have traditionally exported 60 percent of our wheat, we now export only 44 percent, based on the 1985-86 marketing year.

Although the absence of a competitive price has often been blamed for the decline in exports, other factors, such as the strength of the dollar, grain quality problems, and past embargoes have contributed, as well.

Nonetheless, the failure of the Soviet Union to take advantage of our recent discounted tender of wheat underscores the obvious fact that foreign purchasers are not going to buy from us when they can buy higher quality wheat elsewhere for a lower price.

If we are to compete on the basis of price in the international market, we must acknowledge that, as long as the international market price is below our domestic cost of production, we can be price-competitive only to the extent that we are willing to subsidize our exported grain.

Opponents of mandatory supply management have also resorted to claims that the imposition of a mandatory program would result in set-asides of 55 percent or more. Such statements reflect a misunderstanding of how the type of program I have long advocated can and should work.

First of all, my program does not place strict limits on production; it does limit the number of bushels of wheat a farmer can market per year. Thus, it would be possible for a producer who wishes to create his own reserve to produce over and above his marketing quota in year 1, and then adjust his production in later years as protection against unforeseen disasters, thereby reducing or even eliminating the need for expensive crop insurance and disaster payments. Of course, it would be the Secretary's duty to adopt rules and regulations to prevent the unauthorized marketing of wheat.

Second, since there would no longer be incentives for today's intensive farming practices that are designed to produce higher yields on limited acreage, planted acreage could in fact increase while per-unit costs of production decline.

Third, estimated production of wheat for crop year 1986 was 2.166 billion bushels, while estimated total disappearance for marketing year 1986 was 2.175 billion bushels. Thus, for 1986, supply and demand were already in balance. By bringing into the Government program those acres that are not currently enrolled, the percentage of idled acres under the program could actually decline.

Of course, Government must dispose of the vast carryover stocks that the Government has accumulated over the years. These surpluses suppress the natural value that a balance of supply and demand establishes for the commodity.

With that in mind, the following actions should accompany the implementation of a mandatory supply management program:

First, the Secretary of Agriculture should use his discretionary authority to implement an across-the-board, long-term export enhancement program using surplus Government commodities in such a manner as will ensure that U.S. wheat will remain competitive in international markets.

Second, as either a complement or an alternative to export enhancement, consideration should be given to the use of a marketing loan in conjunction with a mandatory program.

Either mechanism effectively establishes a two-price system for our wheat, whereby domestic prices are sustained at a level that will afford a reasonable return to the producer, and export prices are reduced to a level that is internationally competitive.

The cost of such an export program would be more than offset by the reduction in current Federal farm program outlays that adoption of a mandatory program would achieve.

Third, Government surpluses could be further reduced by the continued use of payments in kind, where such payments do not adversely affect the market.

Fourth, surplus stocks could be used to a greater extent for ethanol and other alternative uses.

Finally, the long-term retirement of marginal land, much of which is wheat ground, could and should be continued through the conservation reserve program.

Again, speculative statements concerning the level of set-aside acres in a mandatory program that uses a bushel-based marketing quota system are irrelevant.

Opponents express concern also that mandatory programs will dramatically increase the consumer's cost of food.

The 14 percent of disposable income that Americans spend on food is the lowest in the world. Nonetheless, increasing the price a farmer receives for a bushel of wheat would increase the cost of a loaf of bread by less than 2 cents. In fact, the wrapper on that loaf of bread costs more than the wheat used to make the bread.

I have been asked why my program proposal includes only wheat. Let me emphasize that I support mandatory supply management programs for any commodity for which an excessive surplus exists, and have cosponsored legislation to that effect.

However, there are a number of factors that compel me to pursue a separate program for wheat at this time, not the least of which is the recently conducted nonbinding wheat poll in which wheat growers expressed their clear support for such a program.

In addition, wheat, unlike feed grains and soybeans, is consumed directly by humans. Therefore, increases in the price of a bushel of wheat are more directly—and more equitably—passed on to consumers.

Feed grains and soybeans, on the other hand, pass through a more complex food chain, and the consumer is more price sensitive with regard to the meat end product. This results in the increased costs being absorbed by middlemen, some of whom, such as livestock feeders, may be in as weak a financial position as the farmer.

Also, wheat-growing operations tend to be less diversified than feed grain or soybean operations, leaving wheat producers more vulnerable to market fluctuations and less able to weather low grain prices for extended periods of time.

Furthermore, due to low prices, over 300 million bushels of wheat are being fed annually to livestock. Increased prices will eliminate the use of wheat as livestock feed, thereby increasing the consumption of feed grains.

Mr. President, we are simply producing more wheat than we can consume or dispose. This has led to the accumulation of massive Government surpluses, accompanied by plummeting market prices and skyrocketing Government expenditures. The need for an effective, predictable supply management program is overwhelming.

Conceptually, supply management merely entails bringing production into balance with demand. It is the most fundamental tenet of the marketplace. As a former businessman, I can assure you that the absence of effective supply management would bankrupt any business, just as it is bankrupting our Nation's farmers and adding to the burden of our Nation's taxpayers.

I urge my colleagues to support this legislation.●

By Mr. MATHIAS:

S. 2904. A bill to amend title 17 of the United States Code to implement the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris on July 24, 1971, and for other purposes; to the Committee on the Judiciary.

BERNE CONVENTION IMPLEMENTATION ACT OF 1986

● Mr. MATHIAS. Mr. President, last month marked the 100th anniversary of one of the world's oldest multilateral agreements. On September 9, 1886, the International Convention for the Protection of Literary and Artistic Works, better known as the Berne Convention, was signed.

What 10 European nations began in Switzerland 100 years ago has become the world standard for copyright protection. The Berne Convention has proven to be a dynamic agreement that has adapted to a dramatically changing world environment while remaining faithful to established principles that ensure high levels of copyright protection. As chairman of the Senate's Subcommittee on Patents, Copyrights and Trademarks, I am pleased to mark this centennial anniversary by introducing legislation that would bring U.S. copyright law in compliance with the Berne Convention.

On June 18, 1986, the President sent the Berne Convention to the Senate for its ratification. The bill I introduce today is the implementing legislation. I agree with the President that 100 years on the sidelines is long enough. It is time for the United States to join the rest of the world copyright community by adhering to the Berne Convention.

The influence of copyright law is sometimes invisible, but increasingly pervasive. Words, images, music, and movement are the media through which thought and imagination take on expressive forms that can be shared by all humanity. Copyright recognizes that these expressions of our culture are also products that can be exchanged in the market. Copyright not only sustains the work of the individual author and artist, but also supports a system that enhances diversity in the marketplace. In today's "information age," the commerce in copyrighted materials has mushroomed and is measured in the tens of billions of dollars.

In addition, the growing importance of world trade to our domestic economy has underscored the role of copyright in maintaining American competitiveness. The United States is the world's largest exporter of copyrighted materials. The trade in books, sound recordings, motion pictures, computer software, and other copyrighted works is one of the few bright spots in a trade picture that is overshadowed by record trade deficits.

However, if the United States is to maintain its competitive edge, it must confront the emerging issues in copyright: problems of striking the right balance between the proprietor and user, and of curbing rampant copyright piracy. Explosive changes in technology have recast these questions not only for our country, but for the entire international community as well.

Currently, the United States conducts its multilateral copyright relations primarily through the Universal Copyright Convention [UCC]. But the UCC's low standards of copyright protection diminish our effectiveness in the international copyright arena. Furthermore, our withdrawal from Unesco, the administrative body of the UCC, has cast a cloud over our continued participation there. Clearly, if the United States is to be a leader in copyright, it needs another forum.

That forum is the Berne Convention. Its 78 members comprise not only our major trading partners, but also a sizable number of developing countries. These countries have embraced a standard that includes not only national treatment—that is, equal treatment for domestic and foreign copyright claimants—but also clear formulation of exclusive rights as a minimum for copyright protection. These standards are set out in the kind of detail commensurate with today's global communications environment.

In addition, U.S. adherence to Berne would be a major step forward for our efforts to develop a dispute settlement mechanism to redress the trade-distorting consequences of inadequate intellectual property protection. The recent trade talks in Uruguay concluded that intellectual property should be on the agenda of the General Agreement on Tariffs and Trade. GATT requires a mature standard of copyright principles as a yardstick for evaluating trade barriers. The Berne Convention provides that yardstick. It would be in our best interests to measure up.

The United States has considered joining Berne before. Indeed, in the 1930's we nearly did so. In the past the differences between our laws and the Berne Convention standards have made the short-term costs of adherence appear too high for the long-term gains. However, with the adoption of the 1976 revision of the Copyright Act, these differences are now minimal. As the President indicated in his transmission to the Senate, now is the time to join. The economic and trade stakes for U.S. industry are too high to begin confronting the broad range of copyright issues except upon the basis of a strong and widely shared set of existing copyright principles. Those principles are in the Berne Convention and nowhere else.

GUIDELINES

The bill I introduce today is a product of 2 days of hearings in May 1985 and April 1986, at which testimony was received from both Government and private sector witnesses. The hearings revealed a broad consensus of support for U.S. adherence to the Berne Convention. In addition, this bill builds on the valuable work of both the report of the Ad Hoc Working Group on U.S. Adherence to the Berne Convention, convened by the State Department, and the Copyright Office draft legislation.

In building on this substantial record, this bill is guided by two principles. First, it seeks to make the minimal changes to existing law required to ensure compliance with Berne obligations. Other changes that may be useful or desirable can be considered on their merits after our entry into the Berne union. Adherence to Berne would strengthen the basis of our international copyright relations. That paramount goal can be achieved by making only those changes that the record reveals are necessary.

Second, this bill does not make distinctions—which the convention permits—between works of foreign and domestic origin. Read literally, Berne only requires that works of foreign origin from Berne states need be accorded minimum rights. This bill seeks to maintain uniformity in the treatment of domestic and qualifying foreign works. Suggestions for a two-tiered approach that discriminates against works of U.S. authors, while compatible with Berne, have been rejected.

SECTIONAL ANALYSIS

With these guidelines in mind I will now turn to the legislation itself and explain what this bill does and does not do.

One of the central features of the bill concerns the application of the Berne Convention to U.S. copyright law. While the Ad Hoc Working Group, the Copyright Office, and the President in his message to Congress, were all of the view that the Berne Convention is not self-executing under U.S. law, nevertheless the bill includes provisions to help to dispel any lingering doubts in this area.

Section 2 is intended to preclude the direct legal application of the Berne Convention in U.S. courts as the controlling law in copyright cases. While some of the witnesses during the hearings felt that Berne had some provisions that might be self-executing, I agree with the President that Berne ought not to be self-executing. To this end, section 2 of the bill declares that Berne obligations are performed exclusively through legislation and that the amendments adopted, along with the existing law, completely implement our obligations under the Berne Convention.

Intimately bound up with this question of self-execution are two features which this legislation intentionally does not address. These aspects are the moral rights of authors and retroactive application of the convention.

Article 6 bis of the Berne Convention establishes the moral rights of authors, above and beyond the economic rights with which we are all familiar. The convention includes among moral rights the right to claim authorship of one's works and to object to distortion, mutilation, modification or other derogatory action with respect to the work which would be prejudicial to the author's honor of reputation.

The record of our hearings and the views of most specialists in copyright is that moral rights are substantially available under U.S. law, although not integrated in the Copyright Act. Contract law, trademark, unfair competition and defamation provide means to redress invasions of rights akin to moral rights. In addition, the present right of authors under title 17 to authorize the creation of derivative works provides a potential source of protection for certain moral rights.

The record of our hearings and submissions subsequent to them also disclosed sharp controversies over the wisdom of absorbing into the copyright statute the diverse threads of U.S. law touching moral rights. These threads reach into the common law of the 50 States as well as Federal laws outside copyright. This bill, therefore, does not include a provision on moral rights. The provision rejecting self-execution of the convention should preclude resort to article 6 bis as a basis for asserting entitlement to moral rights in any litigation, based upon any statute or rule of common law, to the extent that it is claimed that the Berne Convention confers greater rights that the statute or rule of law involved.

Although this bill does not have a moral rights provision, it is not intended to influence the independent development of moral rights in U.S. law. Under the language of section 2, courts and legislatures can continue the process of elaborating legal protections in the nature of moral rights. In particular, Congress would be free to reexamine moral rights issues, and I would urge that it do so once the United States has joined the Berne union. But adherence to Berne will not by itself create a new set of legal obligations.

Section 3 of the bill provides that the implementing legislation will have no retroactive effect. Thus, works still protected in other Berne union countries which had fallen into the public domain in this country prior to U.S. adherence to Berne would not be protected anew after U.S. adherence.

Retroactive application of the convention to foreign works which have fallen into the public domain due to noncompliance with formalities is clearly contemplated by article 18(1) of the convention. It is also clear that the withdrawal of works from the public domain is fraught with practical, philosophical and legal difficulties. It is not to be favored; to the extent it may be required, it should be minimized.

While Berne contemplates retroactive protection for some foreign works that are in the public domain, the convention gives entering members a certain amount of discretion as to how to apply that retroactive protection. Indeed, retroactivity under Berne appears to establish a "principle" whose application can be dealt with after a country's adherence to the convention.

However, the legal dimensions of retroactive application of Berne requires careful analysis, including a sensitivity to constitutional considerations. Arguments have been advanced which would relieve us of any obligation to accord retroactive application to foreign works in the public domain. They should be reassessed. If retroactivity is needed, the means to establish it could be developed on a case-by-case basis.

Section 102 of the Copyright Act would be amended to add architectural works to the subject matter now expressly protected by copyright. Additionally, section 113 would be amended to deal with remedies available in an infringement case concerning architectural works.

There is a broad consensus that protection of architectural works under U.S. law requires adjustment for compatibility with Berne. But it is far from clear how extensive that adjustment has to be, both in terms of rights or subject matter.

Next, this legislation would eliminate the present section 116 of the Copyright Act, with an appropriate transition period. Section 116 establishes the compulsory license for the public performance of works by jukeboxes. There is no doubt from the record that the present jukebox compulsory license is incompatible with the Berne Convention, although some have suggested that its economic impact is minor to the point of insignificance.

Affected parties need to hammer out a private, voluntary agreement to resolve dissatisfaction with the existing jukebox compulsory license—with rate adjustments, with the demonstrated expense and complexity of the licensing system. The proposed deletion of this section is an invitation for such negotiations to occur where they ought to—in the marketplace.

Section 7 of this bill would amend the formalities of notice, registration and recordation. Pursuant to the clear requirement of article 5(2) of the Berne Convention, this bill would repeal those sections of our copyright law requiring notice of copyright as a condition of copyright, or which relate to the consequences of failure to comply with the notice requirement.

There is no doubt that Berne requires this fundamental change in our law. Yet, surprisingly, there appears to be little controversy over the proposed demise of the notice formality. Perhaps the international utility of notice of copyright is so well accepted that elimination of compulsory notice will not mean disappearance of the practice.

The bill would eliminate the requirements for registration and recordation of assignments (where applicable) as preconditions for the bringing of an infringement suit. The bill retains provisions of title 17 which make prompt registration a prerequisite for the extraordinary remedies of statutory damages and attorney's fees.

While there is general agreement that this approach brings U.S. law into compliance with the Berne union, some feel that it goes too far, eliminating the favorable incentives that ensure registration and the public benefits derived from it. Others, as might be expected, believe the proposal does not go far enough in eliminating the need for registration. This is clearly an area that deserves more congressional examination in its own right. We should examine whether and to what extent public policy requires maintaining strong incentives for timely and comprehensive registrations of works protected under title 17.

Removing the requirement of registration as a precondition to the bringing of an infringement suit would diminish the Copyright Office's role of examination of claims to copyright prior to any judicial action. The approach of the bill is to maintain incentives to registration. The prime facie evidentiary value of the registration certificate, along with the availability of statutory damages and attorney's fees, can be adequate to sustain a comprehensive national data base of copyright claims, including their scope, ownership, and exercise.

However, any changes in registration should take account that the collections of the Library of Congress are, to a large extent, built on access to copies of works which accompany registration applications. If registrations were to decline, or become untimely, it could be very costly for the Library of Congress to acquire such copies through enforcement of deposit requirements under section 407 of the law or through purchase.

This proposal is predicated upon the assumption that it is possible to eliminate one sort of incentive to register without drastically upsetting the system of public information and access to works for the Library. Further study of the proposal is needed, and further amendments may be in order. The task is to find the right combination of incentives that retains these advantages but meets obligations under the Berne Convention.

A brief mention should be made regarding the manufacturing clause. Although it is clearly incompatible with the Berne Convention, its expiration at midnight on June 30, 1986, removes it as an obstacle to adherence. Any resurrection of the clause would be a setback for the goal of Berne adherence, as well as an act of defiance toward our obligations under the General Agreement on Tariffs and Trade.

Mr. President, like most other legislation, all copyright laws are compromises. The high level of protection mandated by Berne does not in any way require us to rethink the balanced and limited exceptions in our law that favor education and research. Our law of "fair use," generally applicable to reasonable commercial and noncommercial uses of copyrighted works, is fully compatible with the results reached in the laws of other Berne union countries. Finally, our cable television license appears compatible with the convention—although a number of Berne countries have not taken the same approach. The same is true for the limited license for noncommercial broadcasting under section 118.

Mr. President, I introduce this bill at the end of a Congress that coincides with the end of my service as a Member of the Senate. It may seem peculiar that, as we conclude our deliberations for this year, I offer this legislation as a starting point. But Congresses, like parents, leave legacies in the form of challenges and projects to be taken up by their successors. This month marks the centennial anniversary of the Berne Convention. How fitting it would be if this bill were a point of departure for the One Hundredth Congress to take action on U.S. adherence to the world's oldest copyright convention.

Mr. President, I ask unanimous consent that the bill and the President's message to the Senate on the Berne Convention be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

S. 2904

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Berne Convention Implementation Act of 1986".

Sec. 2. (a) The Congress finds and declares that—

(1) United States adherence to the International Convention for the Protection of Literary and Artistic Works (better known as the "Berne Convention") would enhance copyright protection for the works of American authors, artists, and other creators; would strengthen relations with other nations in the field of copyright, and would serve the national interest;

(2) the Berne Convention is not self-executing under the Constitution and laws of the United States;

(3) the obligations of the United States as a Berne Union member may be performed only pursuant to appropriate legislation; and

(4) title 17 of the United States Code does not provide copyright protection for any work that is in the public domain in the United States.

(b) It is the intent of the Congress that the amendments made by this Act, together with existing law, will enable the United States to meet all of its obligations as a Berne Union member and that no further legislation will be necessary for that purpose. It is the further intent of the Congress that the provisions of the Berne Convention shall be given effect under title 17 of the United States Code, as amended by this Act, and any other relevant provision of Federal or State law, including common law, and shall not be directly enforceable in any action brought on the basis of the Berne Convention itself.

Sec. 3. The instrument of accession by the United States to the Berne Convention shall specify January 1, 1988, as the date of entry into force of the Berne Convention with respect to the United States.

Sec. 4. Chapter 1 of title 17 of the United States Code is amended—

(1) in the table of sections, by amending the title of section 113 to read as follows: "Scope of exclusive rights in pictorial, graphic, and sculptural works; scope of exclusive rights in architectural works.";

(2) in section 101, by—

(A) inserting between the definition of "anonymous work" and "audiovisual works", the following:

"'Architectural works' include three-dimensional works in the form of buildings, monuments, and other structures, as well as two-dimensional and three-dimensional works in the form of plans, sketches, technical drawings, diagrams, and models relating to such buildings, monuments, or structures.";

(B) inserting between the definition of "audiovisual works" and "best edition", the following:

"The 'Berne Convention' is the Convention for the protection of Literary and Artistic Works signed at Berne on September 9, 1886, together with its later additional acts, protocols, and revisions, up to and including the Paris revision of 1971.

"A work is a 'Berne Convention work' if—

"(1) in the case of an unpublished work, one or more of the authors is a national of a Berne Union member, or in the case of a published work, one or more of the authors is a national of a Berne Union member on the date of first publication, and for these purposes authors who are domiciled or have their habitual residence in a Berne Union member are considered nationals of that member;

"(2) the work was first published in a Berne Union member, or was simultaneously published in a Berne Union member and in a foreign nation that is outside the Berne Union, and for these purposes a work is considered as having been published simultaneously in two or more nations if it has been published in one nation within thirty days of its publication in the other nation;

"(3) in the case of an audiovisual work: (A) if one or more of the authors is a legal entity, said author has its headquarters in a Berne Union member; or (B) if one or more of the authors is an individual, said author has his or her habitual residence or domicile in a Berne Union member;

"(4) in the case of an architectural work, the work was erected in a Berne Union member; and

"(5) in the case of a pictorial, graphic, or sculptural work, the work is incorporated in a building or other structure located in a Berne Union member.

"A 'Berne Union member' is a country or nation that is bound by any one of the texts of the Berne Convention."; and

(C) amending the definition of "pictorial, graphic, and sculptural works" by inserting before the period at the end of the first sentence the following: ", but do not include architectural works";

(3) in section 102(a), by—

(A) striking out "and" at the end of clause (6);

(B) striking out the period at the end of clause (7) and inserting in lieu thereof "; and"; and

(C) adding at the end thereof a new clause as follows:

"(8) architectural works.";

(4) in section 104, by—

(A) renumbering paragraph (4) of subsection (b) as paragraph (5); and

(B) adding between paragraph (3) and paragraph (5), as redesignated herein, a new clause as follows:

"(4) the work is a Berne Convention work; or";

(5) in section 108(a), by—

(A) striking out paragraph (3);

(B) adding "and" after the end of paragraph (1); and

(C) striking out "; and" at the end of paragraph (2) and inserting in lieu thereof a period;

(6) in section 113, by—

(A) amending the section heading to read as follows:

"§ 113. Scope of exclusive rights in pictorial, graphic, and sculptural works; scope of exclusive rights in architectural works"; and

(B) adding at the end thereof the following:

"(d) In any action for infringement of an architectural work by construction of a structure incorporating the architectural work, the court shall have discretion to enjoin construction of the infringing structure or order its demolition or seizure, and in exercising its discretion the court shall consider whether construction of the structure has been substantially begun, whether the infringement was willful, and whether monetary recovery would be wholly inadequate as a remedy for the infringement."; and

(7) in the table of sections by amending the item relating to section 113 to read as follows:

"Sec. 113. Scope of exclusive rights in pictorial, graphic, and sculptural works; scope of exclusive rights in architectural works.".

(8) in section 116 by adding at the end thereof the following:

"(f) The provisions of subsections (a) through (d) of this section shall remain in effect until January 1, 1988. Thereafter, the exclusive right, under section 106(4), to publicly perform a nondramatic musical work embodied in a phonorecord by means of a coin-operated phonorecord player shall not be limited by subsections (a) through (d) of this section and, unless authorized by the copyright owner, such performance shall be actionable as an act of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506 and 509.".

Sec. 5. Section 205 of chapter 2 of title 17 of the United States Code is amended by—

(1) repealing subsection (d); and

(2) redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

Sec. 6. (a) Chapter 4 of title 17 of the United States Code is amended—

(1) by repealing sections 401 through 406;

(2) in section 407(a), by striking out "with notice of copyright";

(3) in section 408(a), by striking out "Subject to the provisions of section 405(a), such" at the beginning of the second sentence, and inserting in lieu thereof "Such";

(4) in section 408(c)(2), by—

(A) striking out "under all of" and inserting in lieu thereof "under";

(B) repealing subparagraph (A); and

(C) redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively;

(5) in section 409, by adding "and" at the end of clause (9), and by repealing clause (10); and

(6) by amending section 411 to read as follows:

"§ 411. Registration and infringement actions

"(a) Registration is not a prerequisite to the institution of an action for infringement of copyright.

"(b) In the case of a work consisting of sounds, images, or both, the first fixation of which is made simultaneously with its transmission, the copyright owner may, before such fixation takes place, institute an action for infringement under section 501, fully subject to the remedies provided by sections 502 through 506 and sections 509 and 510, if, in accordance with requirements that the Register of Copyrights shall prescribe by regulation, the copyright owner serves notice upon the infringer, not less than ten or more than thirty days before such fixation, identifying the work and the specific time and source of its first transmission, and declaring an intention to enforce copyright protection in the work.".

(b) Title 17, United States Code, is amended in the table of chapters by amending the item relating to chapter 4 to read as follows:

"4. DEPOSIT AND REGISTRATION .... 401".

(c) The table of sections for chapter 4 of title 17, United States Code, is amended to read as follows:

"CHAPTER 4—DEPOSIT AND REGISTRATION

"Sec.
"401. Repealed.
"402. Repealed.
"403. Repealed.
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"405. Repealed.
"406. Repealed.
"407. Deposit of copies or phonorecords for Library of Congress.
"408. Copyright registration in general.
"409. Application for copyright registration.
"410. Registration of claim and issuance of certificate.
"411. Registration and infringement actions.
"412. Registration as prerequisite to certain remedies for infringement.".

Sec. 7. Chapter 5 of title 17 of the United States Code is amended in section 501(b), by striking out "sections 205(d) and 411" and inserting in lieu thereof "section 411(b)".

Sec. 8. Chapter 8 of title 17 of the United States Code is amended—

(1) in the table of sections, by adding after the item relating to section 810, the following:

"811. Public performances of nondramatic musical works by means of coin-operated phonorecord players: Transitional provision."; and

(2) by adding at the end thereof the following:

"§ 811. Public performances of nondramatic musical works by means of coin-operated phonorecord players: Transitional provision

"In accordance with subsection (f) of section 116, the Copyright Royalty Tribunal shall, after January 1, 1988, institute no further proceedings and make no further determinations with respect to the copyright royalty rates applicable under section 116. However, the Tribunal shall institute and conclude all necessary proceedings and take all necessary actions to carry out its duties under section 801(b)(3) with respect to the distribution of royalty fees paid under section 116 prior to such date.".

Sec. 9. This Act, and the amendments made by this Act shall become effective on January 1, 1988.

Sec. 10. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

Sec. 11. If any provision of this Act, or of title 17 of the United States Code, as amended by this Act, is declared unconstitutional, the remainder of this Act, and of title 17, and their application are not affected thereby.

LETTER OF TRANSMITTAL

The White House, *June 18, 1986.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to accession, I transmit herewith the Berne Convention for the Protection of Literary and Artistic Works. I also transmit, for the information of the Senate, the report of the Department of State with respect to the Convention.

The Convention obligates States party to the Convention to maintain high levels of protection for artistic works. The extent of protected works is broad, ranging from conventional works—such as blacks, motion pictures, and music—to new technological works including audio and video cassettes, and computer-related works. The Convention contains detailed provisions that specify minimum levels of protection to be provided by member countries.

Adherence to the Convention by the United States will demonstrate our commitment to improving international protection afforded intellectual property. When we are urging other countries to enhance copyright protection, the United States can no longer remain outside the Berne Union. It is, therefore, a matter of some urgency that the United States finally join the Berne Convention.

As indicated in the report of the Department of State, implementation of the Convention will require legislation. Until this legislation is enacted, the United States instrument of accession will not be deposited with the Director General of the World Intellectual Property Organization.

I recommend that the Senate give early and favorable consideration to the Convention and give its advice and consent to accession.

Ronald Reagan.

LETTER OF SUBMITTAL

Department of State,
Washington, June 4, 1986.

The President,
The White House.

The President: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to accession, the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, completed at Paris on May 4, 1896, revised at Berlin on November 13, 1908, completed at Berne on March 20, 1914, and revised at Rome on June 2, 1928, at Brussels on June 26, 1948, at Stockholm on July 14, 1967, and at Paris on July 24, 1971 and amended in 1979 (hereinafter "the Convention"). As of January 1986, seventy-six nations were party to the Convention. Upon the recommendation of the former Cabinet Council on Commerce and Trade, you endorsed adherence to the Convention in 1985.

The Convention is administered by the World Intellectual Property Organization (WIPO)(and is the oldest and most important multilateral copyright treaty. The Convention's member pledge to maintain high levels of protection for the rights of authors in their literary and artistic works. The extent of protected works is broad, ranging from conventional works—such as books, motion pictures, and music—to new technological works including video cassettes and computer-related works. The Convention contains detailed provisions that specify minimum levels of protection to be provided by member countries.

Because of differences of certain copyright principles, the United States has not adhered to the Berne Convention. These differences include United States requirements for copyright formalities such as notice and registration, and requirements for domestic manufacture to obtain protection. The United States, the Soviet Union and China are the only major countries that are not parties to the Convention.

The fundamental principle of the Berne Convention is protection based upon national treatment. Works entitled to the benefits of the Convention enjoy in each country of the Berne Union the advantages accorded to the works of nationals of the country where protection is sought. Because the Convention minima are explicit and substantial, the level of assured protection is higher than that afforded by the Universal Copyright Convention.

Some of the Convention minima are:

—protection of unpublished and published works of nationals of Berne Union countries; and, of all works first published in any member country, even when authored by nationals of non-Union countries;

—term of protection is generally life of the author plus 50 years;

—exclusive right to make and authorize translations and other adaptions;

—right to perform publicly dramatic and musical works;

—right of reproduction by any means of process;

—right to authorize communication of a work to the public (original broadcasting and secondary retransmission);

—exclusive right of authorizing the first recording of musical works;

—moral rights of the author—right to claim authorship and to object to any distortion, mutilation, or other alteration that would be prejudicial to the author's honor or reputation.

The latest version of the Berne Convention is the text agreed to on January 24, 1971 at Paris, when the Berne Convention was revised. This version contains special provisions in favor of developing countries regarding translation and reproduction for educational purposes. Following is a summary of the 1971 text of the Berne Convention to which the United States would adhere.

Article 1 of the Convention establishes that the countries to which it applies form a single Union.

Article 2 defines the subject matter of protection: "literary and artistic works". These include all productions in the literary, scientific and artistic domain, without limitation by reason of the mode or form of their expression. The value merit or intended purpose of a work is irrelevant to protection under the Convention. Further, the list of protected works in Article 2 is intended to be merely illustrative rather than exhaustive. A State party to the Berne Convention remains free to maintain legal standards which determine whether particular examples of the kinds of works listed in Article 2 are to be protected; that they involve some minimum of creative expression; that they be original in their creation (that is, done without copying); and that protection for a work not extend to the underlying ideas, systems, formats or utilitarian aspects of a work which would fall into the realm of industrial rather than literary and artistic property.

Article 2(2) of the Convention authorizes States to require as a condition of proetction of a work that works be "fixed in some material form", thus permitting the exclusion from protection of ephemeral performances not reduced to a medium of tangible expression.

Article 2(3) of the Convention establishes the principle of the protection of derivative works independently of the original works upon which they are based and without prejudice to the copyright status of the underlying original.

Article 2(4) and (5) deal with protection of so-called official texts and collective works. Protection of the former is left entirely to national discretion. In the latter case, such collections of pre-existing materials which evidence intellectual creativity by reason of the "selection and arrangements of their contents" are to be protected as original works, apart from the copyright status of the particular contents.

Article 2(6) establishes the central principle that works mentioned in Article 2(2) enjoy protection in all countries of the Union and that such protection "shall operate for the benefit of the author and his successors in title."

Article 2(7) constitutes an important exception to the general obligation derived from Article 2(2) to protect works of "applied art," and industrial designs and models. The Convention permits States to set the extent of application of their copyright laws to such works as well as to prescribe conditions for their protection. This discreion is limited with respect to the term of protection which is set at a minimum of 25 years from the making of the work.

Article 2(8) provides that protection of works under the Convention shall not require the protection of "news of the day" or to "miscellaneous facts having the character of mere items of press information". This provision is in general accordance with well-accepted copyright principles which protect the creative expression of an author, but not the underlying factual information which such expression relates.

Article 2bis of the Convention provides that the scope of protection accorded political speeches and speeches delivered in the course of legal proceedings and of lectures and addresses is subject to national discretion. The Convention requires only that the right of the author of such oral works to make or authorize the making of a collection of such speeches or lectures be recognized.

Article 3 contains the first of a number of provisions the object of which is to lay down the points of attachment of the Convention, i.e., the conditions to be fulfilled if protection is to be enjoyed under it. The Convention protects the works of authors who are nationals of the countries of the Union (or have their habitual residence in one of them), whether published or not and wherever first published—either in a Union country or elsewhere, as well as works of any national first published in a Union country.

Article 4 provides special points of attachment for motion pictures and architectural works which do not have "nationality" in ordinary sense of Article 3 of the Convention. Article 4 deals with this problem by establishing that the Convention's protection extends to films, the maker of which "has his headquarters or habitual residence in one of the countries of the Union;" and, to architectural works "incorporated in a building or other structure located in country of the Union."

Article 5 sets out the fundamental principles on which the Convention is based: national treatment; automatic protection; and the independence of copyright protection as between the country of origin of a work and the other countries of the Union. It assures, first of all, to protected works national treatment; that is, works which originated in a Berne Union country obtain in all other Berne Union countries the same protection as the latter give to the works of their own nationals as well as the rights specially granted by the Convention.

Article 5(2) requires automatic protection, that is, the enjoyment and exercise of rights may not be conditioned on the observance of any formality whatsoever. The same Article establishes the principles of the independence of protection. This means that, apart from the specific provisions of the Convention (the Convention minima), the extent of protection is governed by the laws of the country where protection is claimed, and not dependent upon protection anywhere else, nor upon reciprocity.

Further, Article 5 establishes the rule that protection within the country of origin of a work (the place of first publication for published works) is a matter exclusively for the domestic law of that country and is outside the scope of Convention obligations. This is true whether the author is a national of that country or not.

Article 6 allows Union countries the possibility of restricting protection in the case of works of nationals of certain non-Union countries which fail to protect in an adequate manner the works of nationals of Union countries. This provision was introduced into the Convention in order to permit limited retaliation against non-Union member countries wohse nationals secured protection within the countries of the Union by the device of first publishing their work in a Union State. Although it was never invoked for that purpose, the provision was desigend for use against the United States, which had at the time a copyright law less generous than those found in States party to the Berne Convention, and whose publishers had regularly published their works in Canada in order to claim, through the so-called "backdoor", protection under the Berne Convention.

Article 6bis provides that, in addition to economic rights, copyright under the Convention also encompasses so-called moral rights. These rights including the author's prerogatives to claim the paternity of his or her work (to be correctly credited as the author) and to object to any distortion, mutilation or other modification of the work which would be prejudicial to the author's honor or reputation.

The Convention further establishes that moral rights shall generally extend for the term of economic rights; that is, even after the death of the author. Nonetheless, Article 6bis(2) of the Convention permits Union States to determine by whom such right may be exercised *after* the author's death; and, States which have not at the time of accession to the Convention, extended moral rights into the post-mortem term of copyright, may limit rights during this period. In general, the precise means by which authors and their successors to moral rights may exercise and obtain redress for violations of moral rights are left to national discretion.

Article 7 sets out the minimum term of copyright duration binding on all countries of the Union. The general rule is for a term of life of the author and fifty years after his death. However, for certain works for which calculation of term based upon the life of a natural person is impractical, or out of step with the laws of many countries, Article 7 provides special terms. Thus, Article 7(2) provides a minimum term of copyright in motion pictures of 50 years from public availability of the work, or, in the absence of release, 50 years from the making of the work. Under Article 7(3) anonymous and pseudonymous works are assured a term of 50 years from the death of the author, should his or her identify become known. Works of applied art and photographs are given the minimum term of protection of 25 years from the making of such works by virue of Article 7(4).

These are, of course, minimum terms of protection. Article 7(6) provides that Berne members may grant protection for a longer period than provided for in Articles 7(1)-(4). Of particular importance is Article 7(8) concerning reconciliation between the laws of

States whose terms of copyright differ as to specified works. The term of copyrights in a work is determined by the law of the country where protection is sought; however, the term of protection need not exceed that established in the country of origin of the work. Countries of the Union, may, of course, choose by legislation to grant strict national treatment as to term, regardless of the period of protection established for a work in the country of origin. This so-called "rule of the shorter term" in Article 7(8) is an exception to the national treatment obligation.

Article 8 allows the author the exclusive right to translate the work or to authorize the translation of his or her work. The Berne Convention traditionally limited the obligation of States in the Union to respect translation rights fully, during the normal duration of copyright protection. Earlier texts of Berne authorized Union States to limit the period of authors' control over translations of their works to a period of 10 years from first publication. As now written, Berne has established a complete translation right, normally effective during the full term of copyright in a work, life plus 50 years post mortem.

Article 9 gives the author of a literary and artistic work the exclusive right of authorizing the reproduction of the work, in any manner or form. It should be noted here that the Convention does not establish the exclusive right of the author to control the public distribution of copies of his or her work. It is considered by many states that the right of the author to first publish his or her work was an aspect of moral rights; and, further, effective control over the rights to distribute copies to the public was assured through the establishment of the right of reproduction in Article 9.

Article 9 (2) and (3) permit countries of the Union to make exceptions to the exclusive right of reproduction "in certain special cases", so long as an exception does not "conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author." This general formulation of the power to exempt incidental or commercially insignificant uses of works from the right of reproduction leaves States with a considerable degree of discretion in connection with "fair uses" of copyrighted materials and similar non-infringing reproductions of protected works. Exceptions to the reproduction right may be related to sound or visual recordings as well as the traditional reprographic reproduction of printed materials.

The various subsections of Article 10 concern the free use of copyrighted works in a variety of contexts, some of which are quite familar to United States law and practice. Thus, Article 10(1) permits quotations from published works so long as it is "compatible with fair practice" and justified by the purpose of the quote.

Article 10(2) concerns the utilization of copyrighted works in teaching activities. It provides that national legislation and special agreements among Union countries may determined the terms under which literary and artistic works may be used for teaching purposes. Such uses are, again, subject to the limitations of "fair practice" and justifiable given the purpose in a teaching context. These exceptions to copyright extend to the utilization of works in publications, broadcasts or sound or visual recordings. The Convention requires, however, that uses of works under the formula of Article 10(2) require crediting the source of the material and the name of the author if it appears on the copy of the work utilized.

Article 10bis establishes special exceptions in connection with the use of protected works in newspapers or broadcasts and in the reporting of current events, generally. Article 10bis(1) allows reproduction by the press—electronic or otherwise—of "articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character". The Convention provides, however, that such an exception can be established only with respect to works where the right to such reproduction, broadcasting or other communication thereof "is not expressly reserved."

Article 10bis(2) permits legislative exceptions to the incidental reproduction of protected works during the course of coverage of current events or other newsworthy activities.

Article 11, 11bis and 11ter concern important contemporary rights under copyright: public performance, recitations and broadcasting activities. Although quite detailed, the provisions of these articles appear to reflect the basic elements of copyright law common to industrialized countries including the United States. Thus, Article 11(1) provides that authors of dramatic, dramatic-musical and musical works have the exclusive right to control the public performance of their works by any means or process and the communication to the public of performances of their works. These rights extend to works in their original or translated forms.

The rights of public performance provided for in Article 11 extend to all sorts of performances with the exception of broadcasting. Thus, the performance of a work in live concert, in a public place by means of phonorecords, or a controlled transmission of a performance to a paying audience, would come within the scope of the exclusive rights established under Article 11. This is of importance in view of the fact that the Convention does not appear to authorize specific, permissible, limitations on the right of authors over these sorts of public performances, but clearly does so with respect to performances through broadcasting.

Article 11bis(1) deals with the right of authorizing the broadcasting of a work, the communication to the public of broadcasts by wire or rebroadcasting "when this communication is made by an organization other than the original one", or the communication of broadcasts to the public by loudspeaker.

Article 11bis(2) authorizes national legislation to determine "the conditions under which the rights" broadcasting, rebroadcasting and the public communication of broadcasts in Article 11bis(1) may be exercised. In the absence of agreement among the parties (and without prejudice to moral rights), equitable remuneration may be set by a "competent authority" to the State.

Article 11bis(3) concerns so-called "ephemeral recordings", the subject of Section 112 of the United States Copyright Law. This provision of Berne allows States to enact legislation permitting authorized broadcasters of a work to make ephemeral recordings of works for the purpose of carrying out their own broadcasting activities.

Finally, Article 11ter establsihes the right of the author of a literary work to authorize the public recitation of his or her work "by any means or process" and to authorize any communication to the public of the recitation of the work. These rights extend to literary works in their original form or in translation.

Article 12 of the Convention concerns so-called derivative works; that is, independently copyrightable transformations or adaptations of pre-existing works, such as the making of a novel into a film, or the arrangement of a piece of music for a particular instrument or group of instruments. Translations of works, dealt with as a separate activity and work are, in fact, a form of derivative work. This Article establishes the rule that authors enjoy the exclusive right to authorize the creation of derivative works based upon their copyright original. (Article 2(3) of the Convention established the principle that adaptations are protectable independently from the original works upon which they are based.)

Article 13 allows member countries to limit the exclusive right to contract the further recording of musical works after the first authorized recording and distribution of copies of such recordings. Essentially, this Article permits the compulsory licensing of the right to make sound recordings of protected musical compositions in much the same fashion as has long been provided for in United States Copyright Law.

Article 13(3) reinforces the territorial basis of Article 13 compulsory licensing by requiring Union States to establish provisions for the seizure of recordings produced in one country under a compulsory license and imported into another country without the permission of the concerned parties.

Article 14 sets out special rules governing rights and copyright ownership in cinematographic works. These provisions are of particular importance to the United States film industry. They were included in the Berne Convention at the Stockholm Revision Conference (1967) and have as their aim the harmonious reconciliation of the laws of Berne States which have important differences in approaching the question of authorship, ownership of rights and their exercise in the film area.

Article 14(1) sets down the right of authors of literary and artistic works to authorize the making of their works into films and their reproduction in film form, as well as to authorize the distribution of such films. Further, authors of literary and artistic works are accorded the right to control the public performance and communication to the public by wire of their works which are reproduced or adapted to film.

Article 14(2) provides that the author of an original work made into a film retains control over the further adaptation of his or her work from such an authorized film. Essentially, this means that when a novel is made into a film, a party who wishes to make the film into a musical version will require authorization from the novelist and, in accordance with Article 14bis(1), the filmmaker.

Article 14(3) provides that the compulsory license for the use of musical works in sound recordings, established in Article 13(1), is not applicable to films.

Article 14bis deals with the rights of artistic contributors to films. Article 14bis(1) begins by affirming the copyrightability of films as independent works, apart from the original work upon which such film may have been based. Article 14bis(2) provides that ownership of copyright in a film is a matter for the legislation of the country where protection is sought. Succeeding articles create a system of limited presumptions, modifiable by express contract, under which the "authors who have brought contributions to the making of the work" may be held to have consented by their participation in the making of the film to the reproduction, distribution, public performance, communication to the public by various means, subtitling or dubbing of the film embodying their various constributions. States with protection is sought for films may, however, require that the undertakings to contributors to films be in writing for such a presumption to apply. Finally, if such presumptions are to apply to the contributions to a film made by the principal director, scenarist or composer of music works created for the film, national legislation must expressely so provide.

Article 14ter of the Convention concerns a realm of copyright known as the "droit de suite". This system of law concerns original works of art and original manuscripts of writers and composers. It permits the authors of such material embodiments of their creativity to enjoy the enhanced value of unique copies of their works which accure with time and subsequent sales and resales. The most classic example of the application of "droit de suite" is the case of the fine art painting, sold for little at first, but acquiring considerable value as the reputation of the artist increases over time. "Droit de suite" would permit the creator, or after his or her death, such persons authorized by legislation, to "enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work." The Convention does not mandate that "droit de suite" be established in countries of the Union; it regulates, instead, the application of the system among countries of the Union which have established the system. In general, "droit de suite" may be claimed for works originating in a country of the Union only in such countries which have the system in their copyright laws and, further, only where the country of origin of such works also recognizes "droit de suite". In short, the benefits depend upon reciprocity.

Article 15 of the Convention deals with presumptions as to the authorship of works. In general, copyright enforcement actions may be brought by the author of a work and Article 15(1) provides that, in the absence of proof to the contrary, the person whose name appears in the normal fashion on the work shall be presumed to be the author and entitled to institute infringement proceedings in Union countries. This rule is extended to the persons or corporate bodies whose name appears on films, "in the usual manner." Article 15(3) authorizes the publisher of an anonymous or pseudonymous work to represent the author and enforce his or her rights. Finally, Article 15(4) authorizes States to designate authorities to protect and enforce in other States party to the Convention the rights of authors of unpublished works where the identity of the author is unknown but "there is every ground to presume that he is a national of a country of the Union".

Article 16 allows the author (or his successor in title) to take steps to seize infringing copies of his work. Each country may choose its own conditions, and the provision only applies if the work in question is protected in the country concerned.

Article 17 provides that the provisions of the Convention cannot affect in any way the right of governments of each State party "to permit, to control or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right."

Article 18(2) deals with the way in which the Convention applies to works already in existence when their country of origin first joins the Union. There is no obligation to protect works which, when their country of origin first becomes a Union country, are already in the public domain there. If, in the country where protection is claimed, a work was once protected but that protection has lapsed because its term has come to an end, there is no obligation to protect it anew.

Article 19 states that the minimum rights prescribed by the Convention form the basis of the Union but if, under the national laws of member countries, Convention nationals and their successors in title can claim better copyright treatment, nothing stops their doing so.

Article 20 deals with special agreements between the member countries such as bilateral treaties which go further in protecting authors than the Convention itself. It makes clear that there is nothing the Convention which prevents the continuation of such treaties.

Article 21 introduces the Appendix containing special provisions for developing countries.

Articles 22 to 26 are administrative clauses that were added to the Berne Convention at the Stockholm Conference in 1967. They relate to such matters as the administrative bodies of the Berne Union (Assembly and the Executive Committee), the Secretariat called the International Bureau, finances, and the manner of amending Articles 22 to 26.

Article 27 relates to the revision of all other articles (excepting Articles 22 to 26) of the Convention provides that such revision shall be by unanimity.

Article 28 concerns the acceptance and entry into force of the Paris Act (1971) of the Berne Convention by Berne Union countries (i.e. member States).

Article 29 deals with accession and entry into force for nonmember States of the Berne Convention.

Article 29bis concerns a technical point as to the relationship between the Paris Act (1971) of the Berne Convention and the Convention Establishing the World Intellectual Property Organization (1967).

Article 30 regulates reservations to the Convention by newly adhering States.

Article 31 sets out the conditions under which the Berne Convention can be applied to territories whose external relations are the responsibility of another country.

Article 32 regulates the relations between member countries of the Berne Convention bound by different texts of the Convention .

Article 33(1) provides that any dispute between two or more member countries over the interpretation or application of the Convention, not settled by negotiation, may, by any one of the countries concerned be brought before the International Court of Justice. However, Article 33(2) permits a country to declare, at the time it accedes to the Convention, that it will not bound by Article 33(1).

Article 34 provides that no country may ratify or accede to any Act prior to the Paris Act (1971) once the substantive provisions of this Act entered into force (i.e. October 10, 1974).

Article 35 states that the Convention remains in force indefinitely and that a country may not denounce the Convention earlier than five years from the date of its adherence.

Article 36 states explicitly that a member State must adopt the measures necessary to ensure the application of the Convention and that when a country becomes bound by the Convention, it must be in a position under its domestic law to give effect to the various provisions of the Convention.

Article 37 contains clauses on such matters as authentic texts of the Convention (English and French), official texts of the Convention, and notifications of ratification or accession to the Director General of WIPO.

Article 38 pertains to transitional provisions which provided for a changeover from the earlier United International Bureau for the Protection of Intellectual Property to the new World Intellectual Property Organization which came into being in April 1970. This Article would have no effect on the United States upon adherence to the Berne Convention.

The Appendix to the Convention, made up of six articles, allows Union countries classified as developing countries, more latitude regarding the rights of translation and of reproduction than is normally permitted by the Convention proper.

A developing country may provide for a regime of non-exclusive, non-assignable compulsory licenses carrying an obligation to make fair payments to the copyright owner, to translate and/or reproduce works protected by the Convention, exclusively for systematic instructional activities (or in some cases for teaching, scholarship or research).

The copyright owner enjoys a period in which to exercise his exclusive rights. If he does so, no compulsory license can be granted in the country in which he has exercised it for the use in question. If a license is granted, it covers only the country in question and export of copies made under it is forbidden.

The payment to be made by the compulsory licensee must be consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned and must be transmissible to the copyright owner.

United States adherence to the Convention will require some adjustments to U.S. law to make it compatible, although the 1976 revision to the United States Copyright Law removed some of the important problems (e.g., term of protection). Among the areas requiring amendment are those dealing with jukebox licensing, the domestic manufacturing clause, and notice and registration requirements.

Even if the Senate gives its advice and consent to accession, prior to enactment of the implementing legislation, the instrument of accession will not be deposited with the World Intellectual Property Organization until such legislation has been enacted.

United States adherence to the Convention is supported by other interested agencies including the Copyright Office, the Patent and Trademark Office and the Office of the U.S. Trade Representative.

I recommend that you forward this Convention to the Senate for early advice and consent to accession.

Respectfully submitted,

GEORGE P. SHULTZ.●

By Mr. HATFIELD (for himself, Mr. STAFFORD, Mr. HEINZ, and Mr. CRANSTON):

S. 2905. A bill to establish a national population policy, and improve methods for collecting, analyzing, and employing natural resources, environmental, and demographic data; to the Committee on Governmental Affairs.

GLOBAL RESOURCES, ENVIRONMENT, AND POPULATION ACT

● Mr. HATFIELD. Mr. President, today I am introducing legislation designed to help our Government anticipate and respond to a number of important demographic trends that dramatically affect this country and the world. I welcome the cosponsorship of Senators CRANSTON, HEINZ, and STAFFORD, all of whom were sponsors of a similiar bill last Congress. The bill calls for coordination among Federal agencies, under the leadership of the President's Council on Environmental Quality, to assure that policymakers use consistent, up-to-date demographic, resources and environmental information in planning and decision making. The legislation also declares that there are economic, social and environmental advantages to the stabilizing of the population of the United States.

This legislation is not new. For three consecutive Congresses, I have introduced measures to provide for improved global foresight in the U.S. Government. The Global 2000 Report was issued, yet no comprehensive analysis has been proposed to update the study's findings. In the face of enormous budget deficits, new research in long-term issues is either dwindling, or being totally eliminated.

The Global Resources, Environmental and Population Act would require that the President issue a triannual report that evaluates the short-term and long-term impact national and global changes in population size and age structure will have on the availability of natural resources and environmental changes.

We can ignore no longer the relentless pace of population growth. The world's population is increasing by 85 million people a year and is expected to soar to over 6 billion by the year 2000. In many regions of the globe staggering population growth has created environmental problems of nightmarish proportion and has led to great human suffering and political instability.

The strains from population growth colliding with limited resources are also visible in America. We see them in the water-short sprawl of cities in the Southwest and West, in the annual conversion of a million acres of prime farming land to residential and commercial use, and in the overflowing dumpsites and tainted water supplies.

In the context of these pressing human concerns, we see Federal policy too often being set in the absence of reliable, timely information. It should come as no surprise that the institutional framework for providing policymakers with consistent, accurate data is sorely deficient. Far too often we in Congress are forced to manage a crisis rather than looking for ways to anticipate change and head off conflict. This legislation will help us to avoid shortsighted action and govern with an eye to the future.

Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2905

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Global Resources, Environmental, and Population Act of 1986".

DEFINITIONS

SEC. 2. For purposes of this Act, the term—

(1) "agency" shall have the same meaning provided in section 551(1) of title 5, United States Code;

(2) "global population stabilization" means that which occurs when the number of human births approximately equal the number of human deaths;

(3) "long-term", when used with respect to trends or impacts, means a period of thirty or more years;

(4) "national population stabilization" means that which occurs when the sum of the number of human births and the number of individuals immigrating approximately equals the sum of the number of human deaths and the number of individuals emigrating:

(5) "person" shall have the same meaning provided in section 551(2) of title 5, United States Code; and

(6) "short-term", when used with respect to trends or impacts, means a period of less than thirty years.

FINDINGS AND POLICY

SEC. 3. (a) The Congress finds and declares that—

(1) continued population growth in the United States directly affects the Nation's environmental quality, the availability of natural resources, economic development, and national security;

(2) continued unanticipated changes in population size and age structure affect the ability of localities and the Nation—

(A) to fulfill the needs of the people for education, training, jobs, health care, housing, and transportation;

(B) to protect the environment;

(C) to control expenditures at the local, State, and Federal levels of government;

(D) to provide income maintenance for dependent individuals, such as infants, the unemployed, the retired, and the disabled;

(E) to produce food and agricultural products; and

(F) to maintain adequate energy supplies;

(3) there are economic, social, governmental, and environmental advantages to the stabilization of the population of the United States, which will allow a sustainable balance among population size, consumption patterns, natural resources, and the environment;

(4) Federal action can affect State, local, and individual decisions and actions that promote population stabilization;

(5) the Federal Government is the logical entity for collecting and analyzing data that affects the Nation's quality of life; and

(6) the Federal Government is presently unable to derive internally consistent projections of the availability of natural resources and the quality of the environment under different assumed population and consumption trends, to analyze the effects of population, resource, and environmental trends on Federal policies and programs, and to consider such trends in making and modifying Federal policies and programs.

(b) It is the public policy of the United States that—

(1) all actions, policies, and programs of the Federal Government that affect fertility be consistent with United States constitutional rights of privacy, and with the attainment of population stabilization in the United States as soon as practicable in a manner in accordance with the Mexico City Declaration on Population and Development in 1984 supported by the United States which provides in part that "all couples, and individuals can exercise their human rights to decide freely, responsibly, and without coercion the number and spacing of their children and to have the information, education, and means to do so; in exercising this right, the best interests of their living and future children, as well as the responsibility toward the community should be taken into account";

(2) all actions, policies, and programs of the Federal Government that affect immigration and emigration shall encourage the attainment of population stabilization in the United States as soon as practicable;

(3) the Federal Government cooperate with State and local governments and other persons to promote national population stabilization in the United States;

(4) in declaring the national policy of population stabilization, the Federal Government can encourage the nations of the world to achieve national population stabilization and a sustainable balance among population size and age structure, natural resources, and environmental quality; and

(5) the Federal Government develop and maintain the capability to derive internally consistent projections of the availability of natural resources and the quality of the environment under different assumed population and consumption trends, to analyze the effects of population, resources, and environmental trends on Federal policy and programs, and to consider such trends in making and modifying Federal policies and programs.

INTERPRETATION AND ADMINISTRATION OF POLICIES, REGULATIONS, AND PUBLIC LAWS

SEC. 4. The Congress authorizes and directs that, to the fullest extent possible—

(1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act; and

(2) all agencies of the Federal Government shall—

(A) use reliable demographic, natural resource, and environmental information in planning and decisionmaking, and, under the leadership of the President's Council on Environmental Quality, coordinate these findings to provide for consistency; and

(B) make available to State and local governments and to other persons research and projections that may be useful to the States and localities in efforts to balance population, resources, and environmental quality in their areas.

POLICY REVIEW

SEC. 5. The head of each agency shall review the statutory authority, administrative regulations, and policies and procedures of the agency to determine whether there are any deficiencies or inconsistencies which limit or prevent compliance with the purpose, policies, and provisions of this Act. The head of each agency shall, within one year after the date of enactment of this Act, act to eliminate any deficiencies or inconsistencies and recommend to the President and to the Congress any administrative or legislative actions deemed necessary to eliminate any deficiencies or inconsistencies.

REPORT

SEC. 6. Within three years after the date of enactment of this Act, and every three years thereafter, the President shall prepare and transmit to the Congress a global resources, environment, and population report which shall include—

(1) the current and foreseeable trends in national and global population size and age structure;

(2) an evaluation of the adequacy of available natural resources for fulfilliing the human and economic requirements of the United States and the world based on such current and foreseeable trends;

(3) an evaluation of the short-term and long-term impact which national and global trends in population size and age structure, availability of natural resources, and environmental change will have on the economy and national security of the United States;

(4) a review of the effects of the laws, regulations, programs, and activities of the Federal Government and State and local governments and of the activities of other persons on the attainment of national and global population stabilization; and

(5) such recommendation for legislative actions as the President considers necessary to carry out the purposes and policies of this Act.●

ADDITIONAL COSPONSORS

S. 1456

At the request of Mr. Lautenberg, the names of the Senator from Maine [Mr. Cohen], the Senator from New Hampshire [Mr. Rudman], the Senator from North Carolina [Mr. Helms], the Senator from Kentucky [Mr. Ford], the Senator from Indiana [Mr. Quayle], the Senator from Vermont [Mr. Leahy], the Senator from Colorado [Mr. Hart], the Senator from Tennessee [Mr. Sasser], the Senator from Illinois [Mr. Dixon], the Senator from Kentucky [Mr. McConnell], the Senator from Virginia [Mr. Warner], the Senator from Maryland [Mr. Mathias], the Senator from Georgia [Mr. Nunn], the Senator from North Dakota [Mr. Burdick], the Senator from Hawaii [Mr. Inouye], the Senator from Arizona [Mr. DeConcini], the Senator from Iowa [Mr. Harkin], the Senator from Arkansas [Mr. Pryor], the Senator from Indiana [Mr. Lugar], the Senator from Kansas [Mr. Dole], the Senator from South Dakota [Mr. Pressler], the Senator from North Carolina [Mr. Broyhill], and the Senator from Utah [Mr. Hatch] were added as cosponsors of S. 1456, a bill to recognize the Army and Navy Union of the United States of America.

S. 1940

At the request of Mr. Nickles, his name was added as a cosponsor of S. 1940, a bill to protect the security of the United States by creating the offense of international terrorism, and for other purposes.

S. 2134

At the request of Mr. Nickles, his name was added as a cosponsor of S. 2134, a bill to amend title 39, United States Code, to extend to certain officers and employees of the Postal Service the same procedural and appeal rights with respect to certain adverse personnel actions as are to Federal employees under title 5, United States Code.

S. 2314

At the request of Mr. Nickles, his name was added as a cosponsor of S. 2314, a bill to amend the Newspaper Preservation Act.

S. 2379

At the request of Mr. Nickles, his name was added as a cosponsor of S. 2379, a bill to repeal the application of Revenue Ruling 86-63, relating to the deductibility of contributions to university athletic funds.

S. 2545

At the request of Mr. Cranston, the name of the Senator from Massachusetts [Mr. Kerry] was added as a cosponsor of S. 2545, a bill to place a moratorium on the relocation of Navajo and Hopi Indians under Public Law 93-531, and for other purposes.

S. 2835

At the request of Mr. D'Amato, his name was added as a cosponsor of S. 2835, a bill to establish literacy programs for individuals of limited English proficiency.

S. 2878

At the request of Mr. Nickles, his name was added as a cosponsor of S. 2878, a bill to strengthen the laws against illegal drugs, and for other purposes.

SENATE JOINT RESOLUTION 112

At the request of Mr. Pell, the name of the Senator from California [Mr. Cranston] was added as a cosponsor of Senate Joint Resolution 112, a joint resolution to authorize and request the President to call a White House Conference on Library and Information Services to be held not later than 1989, and for other purposes.

SENATE JOINT RESOLUTION 260

At the request of Mr. Nickles, his name was added as a cosponsor of Senate Joint Resolution 260, a joint resolution designating the first Sunday of October as "National Stepparents Day."

SENATE JOINT RESOLUTION 311

At the request of Mr. Cranston, the name of the Senator from Rhode Island [Mr. Chafee] was added as a cosponsor of Senate Joint Resolution 311, a joint resolution designating the week beginning November 9, 1986, as "National Women Veterans Recognition Week".

SENATE JOINT RESOLUTION 313

At the request of Mr. Hollings, the name of the Senator from Florida [Mr. Chiles] was added as a cosponsor of Senate Joint Resolution 313, a joint resolution proposing an amendment to the Constitution of the United States with respect to limiting expenditures in Congressional elections.

SENATE JOINT RESOLUTION 348

At the request of Mr. Glenn, the name of the Senator from South Carolina [Mr. Thurmond] was added as a cosponsor of Senate Joint Resolution 348, a joint resolution to designate the week beginning November 24, 1986, as "National Family Caregivers Week".

SENATE JOINT RESOLUTION 359

At the request of Mr. Nickles, the name of the Senator from Alabama [Mr. Denton] was added as a cosponsor of Senate Joint Resolution 359, a joint resolution to designate March 17, 1987, as "National China-Burma-India Veterans Association Day".

SENATE JOINT RESOLUTION 375

At the request of Mr. Nickles, his name was added as a cosponsor of Senate Joint Resolution 375, a joint resolution designating the week beginning September 21, 1986, as "National Adult Day Care Center Week".

SENATE JOINT RESOLUTION 403

At the request of Mr. Roth, the names of the Senator from North Dakota [Mr. Burdick], the Senator from Tennessee [Mr. Gore], the Senator from Minnesota [Mr. Durenberger], the Senator from Mississippi [Mr. Stennis], the Senator from New York [Mr. Moynihan], the Senator from Louisiana [Mr. Johnston], the Senator from Nebraska [Mr. Zorinsky], and the Senator from Vermont [Mr. Stafford] were added as cosponsors of Senate Joint Resolution 403, a joint resolution to designate 1988 as the "National Year of Friendship with Finland".

SENATE JOINT RESOLUTION 404

At the request of Mr. Simon, the name of the Senator from Massachusetts [Mr. Kennedy] was added as a cosponsor of Senate Joint Resolution 404, a joint resolution to designate October 1986 as "Polish American Heritage Month".

SENATE JOINT RESOLUTION 419

At the request of Mr. Moynihan, the names of the Senator from Ohio [Mr. Glenn], the Senator from Arkansas [Mr. Pryor], the Senator from Florida [Mrs. Hawkins], the Senator from Oklahoma [Mr. Nickles], the Senator from New Hampshire [Mr. Humphrey], the Senator from Illinois [Mr. Simon], the Senator from Virginia [Mr. Trible], the Senator from Oklahoma [Mr. Boren], the Senator from Missouri [Mr. Eagleton], and the Senator from California [Mr. Wilson] were added as cosponsors of Senate Joint Resolution 419, a joint resolution to designate December 11, 1986 as "National SEEK and College Discovery Day".

SENATE JOINT RESOLUTION 422

At the request of Mr. Boschwitz, the names of the Senator from Indiana [Mr. Lugar], and the Senator from Rhode Island [Mr. Pell] were added as cosponsors of Senate Joint Resolution 422, an original joint resolution commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion.

SENATE CONCURRENT RESOLUTION 130

At the request of Mr. Hollings, the names of the Senator from North Carolina [Mr. Broyhill], and the Senator from Florida [Mr. Chiles] were added as cosponsors of Senate Concurrent Resolution 130, a concurrent resolution to recognize the visit by the descendants of the original settlers of Purrysburg, SC, to Neufchatel, Switzerland, in October 1986 as an international gesture of goodwill.

SENATE RESOLUTION 390

At the request of Mr. Nickles, his name was added as a cosponsor of Senate Resolution 390, a resolution relating to the nuclear accident at Chernobyl in the Union of Soviet Socialist Republics.

SENATE RESOLUTION 412

At the request of Mr. Nickles, his name was added as a cosponsor of Senate Resolution 412, a resolution to thank the Honorable Margaret Thatcher.

SENATE RESOLUTION 455

At the request of Mr. Dixon, the name of the Senator from Minnesota [Mr. Boschwitz] was added as a cosponsor of Senate Resolution 455, a resolution to call for the creation of an early notification system for nuclear accidents.

SENATE RESOLUTION 492

At the request of Mr. Nickles, his name was added as a cosponsor of Senate Resolution 492, a resolution to express the sense of the Senate that the Motion Picture Association of America incorporate a subcategory in the voluntary movie rating system to identify clearly films which depict drug use in a benign or favorable light, and give a "D" rating to movies that so depict drug use so that parents can make an informed choice about the movies their children attend.

AMENDMENT NO. 3087

At the request of Mr. Dixon, the name of the Senator from Missouri [Mr. Danforth] was added as a cosponsor of Amendment No. 3087 proposed to House Joint Resolution 738, a joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

SENATE RESOLUTION 496—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY TO EUGENE A. BUNDY

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar:

S. Res. 496

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Eugene A. Bundy, widower of Carolyn E. Bundy, an employee of the Senate at the time of her death, a sum equal to seven months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 497—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY TO DAVID K. STOKELY

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar:

S. Res. 497

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to David K. Stokely, son of Wilma K. Stokely, an employee of the Senate at the time of her death, a sum equal to eight months' compensation at the rate she was receiving by law at the time of her death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 498—ORIGINAL RESOLUTION REPORTED TO AMEND THE STANDING RULES OF THE SENATE

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar:

S. Res. 498

Resolved, That the last sentence of paragraph 4(b) of rule XXXV of the Standing Rules of the Senate is amended by striking out "Prior to the beginning of any such program, the" and inserting in lieu thereof "The".

AMENDMENTS SUBMITTED

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

BOREN (AND OTHERS) AMENDMENT NO. 3100

Mr. BOREN (for himself, Mr. Bumpers, Mr. Levin, Mr. Pryor, and Mr. Heflin) proposed an amendment to the joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes; as follows:

At the end of the resolution, add the following new titles:

TITLE—PAYMENTS TO CATTLE PRODUCERS

SEC. . SHORT TITLE.

This title may be cited as the "Cattle Restitution and Indemnity Payments Act of 1986".

SEC. . RESTITUTION PAYMENTS TO CATTLE PRODUCERS.

(a) With funds or commodities held by the Commodity Credit Corporation, the Secretary shall pay to each producer who owned one or more cattle prior to March 28, 1986 and who sold one or more cattle in the period beginning on March 28, 1986, and ending on June 30, 1986, for any purpose other than breeding, an amount equal to the product of $6.00 per hundredweight and the live weight (measured in hundredweights) of such cattle at the time of such sale.

(b) Submission of Claims for Payment.—(1) A producer shall be ineligible to receive a payment under this Act if such producer fails to submit a claim for such payment to the Secretary before July 1, 1987.

(2) Claims for payment under section 2 shall be submitted to the Secretary in such form, and with such evidence, as the Secretary may require by rule, including—

(A) a bill of sale for cattle, or

(B) a brand inspection document issued by a State or the United States showing evidence of sale of cattle, or

(C) other documentation showing evidence of sale of cattle.

(3) Not later than October 1, 1987, the Secretary shall inform each producer who submits a claim for such payment whether the Secretary will pay or dispute the claim of such producer.

(c) Determination of Disputed Claims.—If any producer who submits a claim for payment under section (a) objects to—

(1) the amount paid with respect to such claim, or

(2) the denial of such claim,

by the Secretary, then such producer shall give written notice of such objection to the Secretary not later than 60 days after such producer receives such payment or the Secretary informs such producer of the denial of such claim as the case may be. Not later than 60 days after receiving such notice, the Secretary shall determine the validity of such claim after a hearing on the record.

(d)(1) Judicial Review.—Any producer aggrieved by a determination under subsection (c) made by the Secretary may obtain review of such determination by filing a civil action in an appropriate district court of the United States not later than 30 days after such producer receives notice of such determination. As part of the Secretary's answer, the Secretary shall file in such court a certified copy of the record upon which the determination complained of is based.

(2) The district courts of the United States shall have jurisdiction to review any determination made under subection (c) by the Secretary.

(e) For purposes of this section—

(1) the term "cattle" includes steers, bulls, cows, heifers, and calves,

(2) the term "producer" means any person, or group of persons, that owns or acquires ownership of any cattle, except that

a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of such cattle is a sales commission, handling fee, or other service fee,

(3) the term "Secretary" means the Secretary of Agriculture, and

(4) the term "sold" means exchanged for value, in cash or in kind, for slaughter or otherwise.

(f) This section shall be effective on October 1, 1986.

SEC. . PAYMENT OF INDEMNITY FOR CATTLE CONTAMINATED BY HEPTACHLOR.

(a) PAYMENT OF INDEMNITY FOR CERTAIN LOSSES.—With funds and commodities held by the Commodity Credit Corporation, the Secretary of Agriculture shall indemnify a producer for economic loss resulting from—

(1) a quarantine imposed by the Department of Agriculture on cattle owned by such producer, or

(2) slaughter of cattle owned by such producer carried out because such cattle were contaminated by heptachlor in the period beginning on January 1, 1986, and ending on March 31, 1986, in the State of Oklahoma, the State of Arkansas, or the State of Missouri.

(b) ADMINISTRATIVE PROVISIONS.—

(1) SUBMISSION OF CLAIMS FOR INDEMNITY.—(A) A producer shall be ineligible to receive indemnity under subsection (a) if such producer fails to submit a claim for such indemnity to the Secretary before July 1, 1987.

(B) Claims for indemnity under subsection (a) shall be submitted to the Secretary in such form, and with such evidence, as the Secretary may require by rule.

(C) Not later than October 1, 1987, the Secretary shall inform each producer who submits a claim for such indemnity whether the Secretary will pay or dispute the claim of such producer.

(2) DETERMINATION OF DISPUTED CLAIMS.—If any producer who submits a claim for indemnity under subsection (a) objects to—

(A) the amount paid with respect to such claim, or

(B) the denial of such claim,

by the Secretary, then such producer shall give written notice of such objection to the Secretary not later than 60 days after such producer receives such indemnity or the Secretary informs such producer of the denial of such claim, as the case may be. Not later than 60 days after receiving such notice, the Secretary shall determine the validity of such claim after a hearing on the record.

(3) JUDICIAL REVIEW.—Any producer aggrieved by a determination under paragraph (2) made by the Secretary may obtain review of such determination by filing a civil action in an appropriate district court of the United States not later than 30 days after such producer receives notice of such determination. As part of the Secretary's answer, the Secretary shall file in such court a certified copy of the record upon which the determination complained of is based.

(4) JURISDICTION OF DISTRICT COURTS.—The district courts of the United States shall have jurisdiction to review any determination made under paragraph (2) by the Secretary.

(c) DEFINITIONS.—For purposes of this Act—

(1) the term "cattle" includes steers, bulls, cows, heifers, and calves,

(2) the term "producer" means any person, or group of persons, that owns or acquires ownership of any cattle, and

(3) the term "Secretary" means the Secretary of Agriculture.

(d) EFFECTIVE DATE.—This section shall take effect on October 1, 1986.

TITLE —AMENDMENTS TO PRICE SUPPORT PROGRAMS FOR CERTAIN CROPS

SEC. . COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 is amended by striking out "marketing year for such crop" and inserting in lieu thereof "the first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

SEC. . LOANS AND PURCHASES FOR THE 1986 CROP OF SUNFLOWERS.

Effective only for the 1986 crop of sunflowers, section 201 of the Agricultural Act of 1949 is amended—

(1) in the first sentence, by inserting "sunflowers," after "soybeans,"; and

(2) by adding at the end thereof the following new subsection:

"(l)(1) The Secretary shall support the price of sunflowers through loans and purchases in the marketing year for the 1986 crop of sunflowers as provided in this subsection. The support price for such crop shall be at such level as the Secretary determines will take into account the historical oil content of sunflowers and soybeans and not result in excessive total stocks of sunflowers taking into consideration the cost of producing sunflowers, supply and demand conditions, and world prices for sunflowers, except that such level may not be less than 9 cents per pound.

"(2)(A) The Secretary shall permit a producer to repay a loan made under paragraph (1) for the 1986 crop of sunflowers at a level that is the lesser of—

"(i) the loan level determined for such crop; or

"(ii) the prevailing world market price for sunflowers, as determined by the Secretary.

"(B) The Secretary shall prescribe by regulation—

"(i) a formula to define the prevailing world market price for sunflowers; and

"(ii) a mechanism by which the Secretary shall announce periodically the prevailing world market price for sunflowers.

"(3) For the purposes of this subsection, the marketing year of sunflowers shall be prescribed by the Secretary by regulation.

"(4) Notwithstanding any other provision of law, the Secretary shall not require participation in any production adjustment program for sunflowers or any other commodity as a condition of eligibility for price support for sunflowers.".

SEC. . SUPPORT PRICE AND MARKETING LOANS FOR 1986 CROP OF SOYBEANS.

(a) SUPPORT PRICE.—Effective only for the 1986 crop of soybeans, section 201(i)(2) of the Agricultural Act of 1949 (7 U.S.C. 1446 (i)(2)) is amended by inserting "(other than the marketing year for the 1986 crop of soybeans)" after "a marketing year".

(b) MARKETING LOANS.—Effective only for the 1986 crop of soybeans, section 201(i) of such Act is amended—

(1) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7);

(2) by inserting after paragraph (2) the following new paragraph:

"(3)(A) In the case of the 1986 crop of soybeans, the Secretary shall implement the provisions of Plan A or Plan B in accordance with this paragraph.

"(B)(i) If the Secretary elects to implement Plan A, the Secretary shall permit a producer to repay a loan made under this subsection for a crop at a level that is the lesser of—

"(I) the loan level determined for such crop; or

"(II) the prevailing world market price for soybeans, as determined by the Secretary.

"(ii) If the Secretary elects to implement Plan A, the Secretary shall prescribe by regulation—

"(I) a formula to define the prevailing world market price for soybeans; and

"(II) a mechanism by which the Secretary shall periodically announce the prevailing world market price for soybeans.

"(C)(i) If the Secretary elects to implement Plan B, the Secretary shall, for the 1986 crop of soybeans, make payments available to—

"(I) producers who, although eligible to obtain a loan or purchase agreement under this subsection, agree to forgo obtaining such loan or agreement in return for such payments; and

"(II) in the case of producers who have placed their soybeans under such loan or agreement, producers who agree to redeem such loan or agreement and to forgo obtaining such loan or agreement in return for such payments.

"(ii) A payment under this subparagraph shall be computed by multiplying—

"(I) an amount equal to 20 percent of the loan payment rate; by

"(II) the quantity of soybeans the producer is eligible to place under loan."; and

"(3) in paragraph (4)(A) (as redesignated by paragraph (2)), by striking out "If" and inserting in lieu thereof "In the case of each of the 1987 through 1990 crops of soybeans, if".

(c) OTHER OILSEEDS.—The Secretary shall consider the impact of this section on other oil seeds that do not participate in price support program, and shall consult with producers of such oil seeds.

TITLE—NATURAL DISASTERS EMERGENCY ASSISTANCE FOR FARMERS AND RANCHERS

SEC. **1. EMERGENCY DISASTER ASSISTANCE.

The President and the Secretary of Agriculture shall make emergency disaster assistance available, as provided in this Title to farmers and ranchers in natural disaster areas.

SEC. **2. DEFINITIONS.

For the purposes of this title—

(1) the term "natural disaster areas" includes any area in the United States in which farming and ranching operations have been adversely affected by a drought or excessively hot weather disaster, or a flood disaster, occurring in calendar year 1986, as determined by the Secretary of Agriculture, such that assistance is available in the area under subtitle C of the Consolidated Farm and Rural Development Act for such disaster; and

(2) the term "livestock" includes all classes of beef and dairy cattle, sheep, goats, and swine.

EMERGENCY FEED DONATIONS

SEC. **3. Notwithstanding any other provision of law:

(a) The Secretary of Agriculture shall make available to farmers and ranchers in each natural disaster area, at no cost, surplus stocks of commodities held by the Commodity Credit Corporation (in the area, in the State in which the area is located or an adjoining State, or in a storage deficient area (as described in section **9(b) of this title)), for the purpose of, and under the conditions set out in, subsection (b) of this section.

(b)(1) The Secretary shall make such commodities available, in any natural disaster area in which the Secretary determines there is a critical need for livestock or poultry feed, in amounts necessary to preserve livestock herds and poultry flocks in the area. For purposes of this section, the phrase "critical need for livestock or poultry feed" means that (A) the total supply of feed grains and forage available to livestock and poultry producers in the area involved is insufficient to cover the combined feed needs of such producers for more than seventy-two hours or such other period, determined by the Secretary, reasonably needed for supplies of feed to arrive in the area for commercial use from feed surplus areas, whichever is a longer period; and (B) as a result of such deficient supply levels, it reasonably can be expected that, without the assistance made available under this section, farmers and ranchers in the area will suffer significant losses of livestock or poultry due to mortality.

(2) Subject to section **9(c), the Secretary shall cover any costs involved in transporting such surplus commodities to the natural disaster area, using the funds, facilities, and authorities of the Commodity Credit Corporation for such purposes.

(3) The Secretary shall continue to make commodities available under this section until there no longer is a critical need for livestock or poultry feed, as determined by the Secretary.

(4) In determining the feed needs of producers in an area and the amount of commodities to be made available in the area under this section, the Secretary shall use the regulations issued under section 1105 of the Food and Agriculture Act of 1977 (7 C.F.R. 1475.52(n) and 1475.55(f)(1) (1986) and comparable rules for poultry.

(5) Donations under this section shall be made available during the period beginning three days after the date of enactment of this title and ending March 31, 1987, or the date, as determined by the Secretary, on which the emergency created by the drought, excessively hot weather, or flood no longer exists, whichever is earlier.

EMERGENCY LIVESTOCK FEED ASSISTANCE

SEC. **4. Notwithstanding any other provision of law:

(a)(1) The Secretary of Agriculture shall make emergency livestock and poultry feed assistance under section 1105 of the Food and Agriculture Act of 1977 to farmers and ranchers in natural disaster areas. Reimbursement for purchased feed provided to such farmers and ranchers under section 1105 shall be made in kind, as provided in section 9(a) of this Act, using surplus stocks of commodities held by the Commodity Credit Corporation. Whenever, under any export development program conducted by the Secretary of Agriculture, a feed grain or other commodity used for animal feed is made available to foreign purchasers at prices less than the average domestic market price for the commodity, as determined by the Secretary, reimbursement under this paragraph for purchases of such commodity shall be made at a level in excess of 50 per centum of the cost of the purchased commodity if necessary to ensure that the net cost to the producer for such commodity (taking into account the * * *) price at which the commodity is made available to foreign purchasers under such export development program.

(2) The Secretary of Agriculture shall permit any producer of the 1986 crop of wheat, feed grains, upland cotton, or rice (A) who is participating in the program under the Agricultural Act of 1949 for such crop, and (B) whose farm is located in a natural disaster area, to devote acreage on the farm diverted from the production of the crop under such program to hay or grazing without regard to limitations on when haying or grazing may take place otherwise imposed under the Agricultural Act of 1949.

(3)(A) In carrying out any emergency assistance program, for farmers and ranchers in a natural disaster area under the Disaster Relief Act of 1974, subject to subparagraph (B), the President shall direct the Secretary of Agriculture to implement an emergency hay program to assist such farmers and ranchers in obtaining hay to feed their livestock. Under such program, the Secretary, subject to section **9(c), shall pay 80 per centum of the cost of transporting hay from areas in which hay is in plentiful supply to the area in which the farmers and ranchers are located.

(B) The President shall take the action required under subparagraph (A) only if the Secretary of Agriculture reports to the President that—

(i) as a result of the drought, excessively hot weather, or flood disaster, the amount of hay readily available to such farmers and ranchers at reasonable prices to feed their livestock is substantially below the amount normally available; and

(ii) the assistance to be made available under paragraph (1) and haying or grazing permitted under paragraph (2) together will be insufficient to prevent substantial losses of livestock or liquidation of herds by such farmers and ranchers in such area.

(C) The Secretary of Agriculture shall determine whether the conditions described in clauses (i) and (ii) of subparagraph (B) exist for each natural disaster area, and if such conditions exist so report to the President, within thirty days after the date of enactment of this Act and at reasonable intervals of time thereafter.

(D) Prior to making any determination under subparagraph (B), the Secretary of Agriculture shall consult with the Governor and the Secretary of Agriculture (or comparable official) of the State involved, and give due consideration to the views of such persons.

(4) Paragraphs (1) and (3) shall become effective fifteen days after the date of enactment; and assistance under such paragraphs shall be available until March 31, 1987, or the date, as determined by the Secretary of Agriculture, on which the emergency created by the drought, excessively hot weather, or flood no longer exists, whichever is earlier.

(b) Effective October 1, 1986, section 1105 of the Food and Agriculture Act of 1977 (7 U.S.C. 2267) is amended by adding at the end thereof the following:

"(h) If—

"(1) the Secretary of Agriculture makes emergency livestock or poultry feed assistance available to producers in a county under section 407 of the Agricultural Act of 1949; but

"(2) surplus commodities of adequate nutritive value are not made available under such authority for distribution to such producers within ten days after the announcement of the program under such authority for such county, the Secretary shall make assistance available to such producers under this section until such time as surplus commodities are made available under the announced program.".

DISASTER PAYMENT PROGRAM

SEC. **5. Notwithstanding any other provision of law:

(a) The Secretary of Agriculture shall make disaster payments available, at the request of the producer, on the 1986 crops of wheat, feed grains, upland cotton, rice, and soybeans, sugar beets and peanuts under sections 107D(c)(2)(D), 105C(c)(2)(D), 103A(c)(2)(D), 101A(c)(2)(D), and 201(k) of the Agricultural Act of 1949, respectively, to producers located in natural disaster areas.

(b) For the purposes of this section, the conditions set out in sections 107D(c)(2)(D)(i), 105C(c)(2)(D)(i), 103A(c)(2)(D)(i), and 101A(c)(2)(D)(i) of the Agricultural Act of 1949 shall be considered as having been met.

(c) Payments under this section shall be made in kind, as provided in section **9(a) of this Act, using surplus stocks held by the Commodity Credit Corporation.

(d) The total amount of in kind payments that a person shall be entitled to receive for the producer's crops of wheat, feed grains, upland cotton, rice, peanuts, sugar beets, and soybeans under this section shall not exceed an amount of commodities of a combined value of more than $100,000.

(e) In making payments to persons for a crop under this section, the Secretary of Agriculture shall ensure that each person that has entered into a crop insurance contract covering such crop under the Federal Crop Insurance Act receives payment under this section without any reduction in the amount of the payment to take into account the indemnity received by the person under the crop insurance contract for the crop, except that no such person shall receive a payment under this section on a portion of the person's normal production that combined with the indemnity under the person's crop insurance contract will cause such person to receive payments under both on more than 100 per centum of the person's normal production, as determined by the Secretary.

MILK PROGRAM PRODUCER ASSESSMENTS

SEC. **6. Notwithstanding any other provision of law:

(a) At the option of the producer, no reductions in the price received by producers for milk marketed for commercial use under section 201(d)(2)(A) of the Agricultural Act of 1949 shall be made on milk produced by producers in natural disaster areas and marketed for commercial use during the period beginning October 1, 1986, and ending December 31, 1986.

(b) The Secretary of Agriculture shall increase the amount of the reduction in the price received by each producer in a natural disaster area, if the producer exercises the option for a suspension of reductions under subsection (a), for milk produced and marketed by such producer for commercial use under section 201(d)(2)(A) of the Agricultural Act of 1949 during the period beginning January 1, 1987, and ending September 30, 1987, by an amount that will ensure that, to the extent practicable, the aggregate amount of reductions applicable to milk of such producer for the period beginning October 1, 1986, and ending September 30, 1987, will be the same aggregate amount of reductions that would have been made if the suspension of reductions under subsection (a) had not been in force for such producer.

ASSISTANCE FOR QUOTA AND ALLOTMENT HOLDERS

Sec. **7.(a) Effective only for the 1986 crop of peanuts, section 358a(k)(1) of the Agricultural Adjustment Act of 1938, as added effective for the 1986 through 1990 crops of peanuts, is amended by adding at the end thereof the following:

"Notwithstanding the foregoing provisions of this paragraph, because of the severe drought conditions in many 1986 peanut production areas and because producers of the 1986 crop were not timely notified of their farm poundage quotas, including any increase therein for undermarketings of quota peanuts from previous years, the Secretary shall waive the requirement, with respect to any 1986 farm poundage quota, that a lease of the quota may be entered into during the fall or after the normal planting season only if the quota has been planted on the farm from which the quota is leased, as provided in the following two sentences. The Secretary shall waive such requirement at the request of the owner, or the operator with permission of the owner, of the farm if the county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act determines and certifies that such owner or operator made a good faith effort to plant and produce the 1986 quota on such farm. For the purpose of the preceding sentence, a person may establish that the person made a good faith effort to plant the crop by showing that the person did not intentionally fail to plant or that the person was not provided with timely information as to the amount of the 1986 quota for the farm.".

(b) Section 316(a)(1)(A)(ii) of the Agricultural Adjustment Act of 1938 is amended by striking out the period at the end of the last sentence and inserting in lieu thereof a colon and the following: "*Provided*, That because of the severe drought conditions in many 1986 production areas, such prohibition on lease and transfer shall become effective beginning with the 1988 crop if the holder of record of the allotment or quota to be leased or transferred—

"(1) is age 55 or older and receives at least one-half the person's income from the allotment or quota; or

"(2) is blind or disabled; or

"(3) is a single head of household and receives at least one-half of the person's income from the allotment or quota.

For the purposes of the proviso to the preceding sentence, when there are more than one holder of record of the allotment or quota, if one-half or more of such holders meet one or more of the criteria under such proviso, such proviso shall apply to the allotment or quota.".

COST-SHARING FOR SOIL CONSERVATION MEASURES AND TIMBER STAND RESEEDING EXPENSES

Sec. **8.

(a) The Secretary of Agriculture shall make available—

(1) cost-sharing payments under the agricultural conservation program to producers in natural disaster areas for conservation measures designed to prevent anticipated soil erosion due to loss of vegetative cover; and

(2) cost-share payments under the forestry incentives program to forest landowners in natural disaster areas for the reestablishment of stands of pine trees lost to drought conditions.

(b) The Secretary shall share not less than 50 per centum of the cost of such measures or reestablishment of timber stands; and such cost-share payments shall be made in kind, as provided in section **9 (a) of this Act, using surplus stocks of commodities held by the Commodity Credit Corporation.

(c) Payments made under this section shall be in addition to, and not in lieu of, payments made under the Soil Conservation and Domestic Allotment Act or the Corporative Forestry Assistance Act of 1978 using funds appropriated for such purposes.

(d) Assistance under this section shall be made available to persons in natural disaster areas during the period beginning 15 days after the date of enactment of this Act and ending March 30, 1987.

PAYMENTS

Sec. **9. Notwithstanding any other provisions of law:

(a)(1) In making in-kind payments under section **4(a)(1), **5, or **8,

or subsection (c) of this section, the Secretary of Agriculture may—

(A) acquire and use commodities that have been pledged to the Commodity Credit Corporation as security for price support loans under the Agricultural Act of 1949, including loans made to producers under section 110 of such Act; and

(B) use other commodities owned by the Commodity Credit Corporation.

(2) The Secretary may make in-kind payments by—

(A) if requested by the producer, delivery of the commodity to the producer at a warehouse or other similar facility, as determined by the Secretary; or

(B)(i) the transfer of negotiable warehouse receipts;

(ii) the issuance of negotiable certificates that the Commodity Credit Corporation shall redeem for a commodity in accordance with regulations prescribed by the Secretary; or

(iii) such other methods as the Secretary determines appropriate to enable the producer to receive such payments in an efficient, equitable, and expeditious manner so as to ensure that the producer receives the same total return as if the payments had been made in cash.

(b) In carrying out this section and section **3, the Secretary, to the maximum extent practicable, shall use Commodity Credit Corporation commodities stored in storage deficient areas such as the midwestern United States.

(c) Transportation cost payments made under section **3(b)(2) or **4(a)(3) of this Act may be made in kind, as provided in subsection (a), using surplus stocks of commodities held by the Commodity Credit Corporation, or in cash.

(d) The Secretary of Agriculture shall assist recipients of in-kind payments in marketing warehouse receipts, certificates, or other documents representing such in-kind payments.

CREDIT FORBEARANCE

Sec. **10. It is the sense of Congress that, with respect to farm borrowers who are adversely affected by natural disaster conditions in calendar year 1986—

(1) the Secretary of Agriculture should exercise the authority provided under section 331A of the Consolidated Farm and Rural Development Act and instruct the Farmers Home Administration to defer loan repayments and forgo foreclosures in cases where such farm borrowers are unable to make loan payments in * * *.

(2) the lending institutions of the Farm Credit System and commercial lending institutions are encouraged, insofar as practicable, to adopt lenient lending, forbearance, and foreclosure policies, and to the maximum extent possible participate and cooperate with Federal and State lenders in assistance programs, with respect to such borrowers who are under financial stress due to no fault of their own.

COORDINATION OF ASSISTANCE EFFORTS

Sec. **11. It is the sense of Congress that, with respect to the provision of Federal assistance to farmers and ranchers in natural disaster areas, the Secretary of Agriculture should take steps immediately to—

(1) establish an overall coordinating mechanism within the Department of Agriculture to ensure that the assistance provided by each agency within the Executive Branch is coordinated with, and complements, the assistance provided by other agencies;

(2) ensure that Government and voluntary agencies, and the farmers and ranchers, in each natural disaster area are provided a single contact person or unit for Federal assistance, and that a similar such Federal contact person or unit is provided for Government and voluntary agencies, farmers and ranchers, and other persons outside natural disaster areas who wish to contribute additional assistance to natural disaster areas; and

(3) consult with the Governor, Secretary of Agriculture (or comparable official), and the State disaster relief agency in each State in which a natural disaster area is located, on the disaster assistance needs of farmers and ranchers located in the State.

TITLE—RURAL ELECTRIFICATION AND TELEPHONE SYSTEMS LOANS.

SEC. –. PREPAYMENT OF FEDERAL FINANCIAL BANK LOANS

In the case of a borrower of a loan made by the Federal Financing Bank, and guanteed by the Administrator of the Rural Electrification Administration, under section 306 of the Rural Electrification Act of 1936 (7 U.S.C. 936) that is outstanding on the date of enactment of this Act, the borrower may prepay any loan advance by payment of the outstanding principal balance due on the loan advance using private capital, at repayment terms agreeable to the REA borrower, with the existing loan guarantee, which shall be fully transferable and assignable without condition and remain available for the remainder of the term originally agreed to by REA. No sums in addition to payment of such balance shall be charged as the result of such prepayment against the borrower, the Rural Electrification and Telephone Revolving Fund established under section 301 of such Act (7 U.S.C. 931), or the Rural Electrification Administration. To qualify for prepayment, the board of directors of the borrower shall certify that prepayment savings will be passed on to its customers, or be used to make debt service or other payments in cases of financial hardship, or to aviod future rate increases. Regulations under this provision shall be issued and become effective within 30 days of enactment of this Act and shall implement the intention of Congress to: (1) facilitate prepayment: (2) provide for full processing of each prepayment request within 30 days of its submission to REA: and (3) impose no restrictions, except as specifically provided for in this Act, which increase the cost to borrowers of obtaining private capital for prepayment, or which inhibit the ability of the borrower to enter into prepayment arrangements pursuant to this Act.

TITLE —RESEARCH ON EXTERNAL COMBUSTION ENGINES

SEC.—. Section 4 (m) of the Commodity Credit Corporation Act is amended at the end thereof by adding a new sentence as follows: "During fiscal year 1987, the Corporation shall use not more than 10,000,000 worth of surplus agricultural commodities owned by the Corporation in establishing and carrying out a research and development program on external combustion engines under this subsection: *Provided*, That to the extent that funding is made available from private sources to finance such program, the Corporation shall provide not less than twice that value in the form of Corporation-owned commodities.".

TITLE * * a—AGRICULTURAL LOAN INTEREST SUBSIDY PROGRAM

SEC. 101. DEFINITIONS.

As used in this title:

(1) BORROWER.—The term "borrower" means a person who meets the eligibility criteria prescirbed in section 103.

(2) LENDER.—The term "lender" means a commercial bank, savings and loan association, credit union, insurance company, or institution, including a subsidiary or affiliate thereof, that—

(A) has agreed to participate in the interest subsidy program; and

(B) has been approved for participation in the interest subsidy program by the appropriate State agency.

SEC. 102. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a Federal-State-Lender cooperative agricultural loan interest subsidy program under which, at the request of a State, borrowers and lenders within the State may participate in the interest subsidy program in accordance with this title.

(b) CONSULTATION.—The Secretary shall establish the interest subsidy program in consultation and cooperation with the Secretary of the Treasury, the Comptroller of the Currency, the Chairman of the Federal Reserve Board, the Chairman of the Farm Credit Administration, the Chairman of the Federal Deposit Insurance Corporation, and each State agency.

SEC. 103. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this title, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan made by a lender for agricultural purposes that is outstanding on April 1, 1986;

(3) during the period beginning on the date of the approval of a State plan under section 106 and ending September 30, 1987—

(A) be delinquent in the payment of principal or interest, or both, on the loan; or

(B) demonstrate to the lender that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower will be temporarily unable, without assistance provided under this Act, to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years;

(6) have a debt ot asset ratio of at least 40 percent;

(7) have an ability to repay the loan, based on past performance as a capable producer and assistance to be provided under this Act; and

(8) not produce an agricultural commodity on highly erodible land or converted wetland in violation of section 1211 or 1221 of the Food Security Act of 1985 (16 U.S.C. 3811 or 3821).

SEC. 104. INTEREST SUBSIDIES.

(a) APPLICATIONS.—During the period beginning on the date of the approval of a State plan by the Secretary under section 106 and ending September 30, 1987, a borrower may apply to a lender for an interest subsidy for any agricultural loan made by the lender to the borrower that is outstanding on April 1, 1986.

(b) INTEREST SUBSIDIES.—If a borrower of a loan applies to a lender for an interest subsidy in accordance with subsection (a), the lender determines that the borrower meets the eligibility criteria prescribed in section 103, and the lender agrees to participate in the interest subsidy program, subject to this section, not later than 90 days after receipt of the application, the loan shall be restructed in such a manner that the interest rate payable by the borrower shall be fixed for a period of 3 years or the remaining term of the loan, whichever is less, at a rate equal to the interest rate of the loan on April 1, 1986, less up to 5 percentage points.

(c) PAYMENT OF SUBSIDIES.—If an interest subsidy is provided for a loan made by a lender to a borrower in a State—

(1) the Secretary shall pay 2 percentage points of the subsidy by making payments through the State agency to the lender;

(2) if the State elects to make such payments, the State may pay not less than 1 percentage point and not more than 2 percentage points of the subsidy by making payments to the lender; and

(3) the lender shall—

(A) pay 1 percentage point of the subsidy; or

(B) cancel at least 15 percent of the principal due on the loan.

(d) TERM OF LOAN.—The term of any loan for which an interest subsidy is provided under this section shall not be less than the term of the loan outstanding before the subsidy is provided.

(e) SCHEDULE OF PAYMENTS.—The schedule of payments on a restructured loan shall be established in accordance with the ability of the borrower to repay the loan.

(f) ACCRUED INTEREST.—Interest accrued on a restructured loan prior to restructuring shall not be capitalized but shall be paid by the borrower to the lender prior to any retirement of principal under the loan as restructured in accordance with this title.

(g) REPAYMENT.—Any balance of principal and interest outstanding on any restructured loan shall be repaid at a rate that is agreed on by the lender and borrower, except that the rate of interest on the loan may not exceed the standard rate charged by the lender on loans with comparable maturities for similar purposes at the time the loan is restructured.

(h) MAXIMUM AMOUNT OF ASSISTANCE.—The aggregate outstanding amount of loan principal for which an interest subsidy may be provided under this title may not exceed—

(1) in the case of a loan made to an individual, $400,000; and

(2) in the case of a loan made to a family corporation or family partnership, $600,000.

SEC. 105. PAYMENTS TO STATES.

(a) IN GENERAL.—From sums available pursuant to section 403 and subject to subsection (b) and section 106, the Secretary shall pay to each State for each of the fiscal years ending September 30, 1987, through September 30, 1990, an amount equal to the sum of—

(1) the amount necessary to finance the share of interest subsidies provided to borrowers residing in the State that is required to be paid by the Secretary under section 104(c)(1); and

(2) 100 percent of the administrative expenses that are incurred by the State agency in carrying out this title and are approved by the Secretary.

(b) MAXIMUM AMOUNT OF PAYMENTS.—The aggregate amount payment paid by the Secretary of States under subsection (a) for a fiscal year may not exceed $600,000,000.

SEC. 106. STATE PLANS.

(a) IN GENERAL.—To be eligible to participate in the interest subsidy program during a fiscal year, a State must—

(1) submit a plan to the Secretary for the fiscal year; and

(2) receive the approval the Secretary for the plan.

(b) PLAN REQUIREMENTS.—To receive the approval of the Secretary for a plan, a State must submit a plan that—

(1) designates a single agency that shall be responsible for the administration, or the supervision of the administration, of the interest subsidy program in the State;

(2) assesses the interest subsidy needs of borrowers residing in the State;

(3) describes the interest subsidy program established in the State (including any agencies designated to provide a subsidy under such program), which program must meet such requirements as the Secretary may prescribe;

(4) estimates the amount of funds necessary to provide interest subsidies under the program and related administrative expenses, except that such amount may not exceed the amount allocated by the Secretary for payment to the State out of the total amount available for payment under section 105;

(5) requires any lender participating in the interest subsidy program to provide to any borrower who is delinquent in the payment of principal or interest, or both, due on a loan during the period referred to in section 104(a) prompt written notice that describes the assistance available under this title and any deadlines for application for the assistance; and

(6) includes such other information as the Secretary may require.

(c) APPROVAL OF PLANS.—(1) The Secretary shall approve or disapprove a plan submitted by a State under subsection (b) not later than 45 days after the State submits the plan.

(2) The Secretary shall approve any plan that complies with subseciton (b).

(d) AUDITS.—(1) Each State agency shall—

(A) provide for an annual audit of expenditures made by the State agency in carrying out the interest subsidy program, not later than 60 days after the end of each year in which the program is conducted; and

(B) promptly report to the Secretary the findings of such audit.

(2) Not later than 60 days after the end of each year in which a State agency participates in the interest subsidy program, a State agency shall provide the Secretary with a statement that provides—

(A) a description of whether (and, if so, by how much) the payments received under section 105 for such year exceeded the expenditures by the State agency during such year; and

(B) such other information as the Secretary may require.

(e) Denial or Withholding of Payments.—(1) If the Secretary finds that a State has failed to comply with subsection (b) or (d) during a fiscal year, except as provided in paragraph (2), the Secretary shall—

(A) notify the appropriate State agency that payments will not be made to the State agency under section 105 for the year until the Secretary is satisfied that the State is complying with such subsection; and

(B) make no payments under section 105 until the Secretary is satisfied that the State is complying with such subsection.

(2) If the Secretary finds that a State has failed to comply with subsection (b) or (d) during a fiscal year, the Secretary may—

(A) suspend the denial of payments under paragraph (1) for such period as the Secretary determines is appropriate; and

(B) withhold payments of approved State administrative expenses incurred in providing assistance under the plan, in whole or in part, for the year,

until the Secretary is satisfied that the State is complying with such subsection, at which time such withheld payments shall be paid.

(3) If the Secretary finds that a State has substantially failed to comply with subsection (b) or (d), the Secretary may, in addition to or in lieu of any action taken under paragraph (1) or (2), refer the matter to the Attorney General with a request that the Attorney General seek injunctive relief to require compliance by the State. If the Attorney General brings a suit in an appropriate district court of the United States and makes a showing of substantial noncompliance, appropriate injunctive relief shall issue.

SEC. 107. REVIEW BY SECRETARY AND STATE AGENCIES.

(a) Review and Technical Assistance by Secretary.—The Secretary—

(1) shall provide for review, and may provide for an audit, of the manner in which the interest subsidy program is carried out in a State; and

(2) may provide to States technical assistance in carrying out the program.

(b) Review by State Agencies.—A State agency may monitor the compliance of a lender with this title. Any lender that violates this title shall be ineligible to receive further payments under this title.

SEC. 108. NOTICE AND DETERMINATIONS OF ASSISTANCE.

A lender in a State participating in the interest subsidy program may not take any action as the result of a borrower defaulting on an outstanding loan made by such lender to a borrower unless the lender has—

(1) provided the borrower with the notice required under section 106(b)(5); and

(2) in the case of a borrower who has applied for assistance under this title, determined that the borrower does not meet the eligibility criteria prescribed in section 103.

SEC. 109. ASSISTANCE OF FEDERAL AND STATE AGENCIES.

(a) In General.—To make assistance under this title available expeditiously and in a consistent and uninterrupted manner, the Secretary shall—

(1) use such funds, personnel, and facilities of the Department of Agriculture (including the Commodity Credit Corporation) as the Secretary considers necessary to carry out this title; and

(2) request other Federal or State agency to provide such funds, personnel, and facilities as the Secretary considers necessary to carry out this title.

(b) Reimbursement.—Any agency that provides advanced funds, personnel, or facilities under subsection (a) shall be fully reimbursed for such assistance as soon as is practicable from subsequent appropriations.

SEC. 110. PROGRAM INELIGIBILITY FOR PRODUCTION ON HIGHLY ERODIBLE LAND OR CONVERTED WETLAND.

(a) Highly Erodible Land Conservation.—Section 1211 of the Food Security Act of 1985 (16 U.S.C. 3811) is amended—

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(3) an interest subsidy during such crop year under the interest subsidy program established under section 102 of the Farm Credit Assistance Act of 1986.".

(b) Wetland Conservation.—Section 1221 of the Food Security Act of 1985 (16 U.S.C. 3821) is amended—

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(3) an interest subsidy during such crop year under the interest subsidy program established under section 102 of the Farm Credit Assistance Act of 1986.".

TITLE **B—FARM CREDIT SYSTEM INSTITUTION BORROWERS

Subtitle A—Farm Credit System Loan Restructuring Program

SEC. 201. DEFINITIONS.

As used in this subtitle:

(1) Borrower.—The term "borrower" means a borrower of a loan made by an institution.

(2) Capital Corporation.—The term "Capital Corporation" means the Farm Credit System Capital Corporation established under section 4.28A of the Farm Credit Act of 1971 (12 U.S.C. 2216).

(3) Chairman.—The term "Chairman" means the Chairman of the Farm Credit Administration Board designated under section 5.8(a) of the Farm Credit Act of 1971 (12 U.S.C. 2242(a)).

(4) Committee.—The term "committee" means a credit review committee selected from and by—

(A) the local board of directors of the institution from which a loan originated; or

(B) in the case of consolidated or merged institutions, members of a local advisory board elected by the stockholders served by the merged or consolidated institutions from which a loan originated.

(5) Cost of Foreclosure.—The term "cost of foreclosure" includes—

(A) the difference between the outstanding amount of principal due on a loan made by an institution and the value of collateral used to secure the loan, taking into consideration the lien position of the institution;

(B) the estimated cost of maintaining a loan as a nonperforming asset;

(C) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure;

(D) the estimated, adverse impact of the sale of property acquired as the result of a loan foreclosure on the value of property held by other borrowers of institutions;

(E) the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(F) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(6) Loan.—The term "loan" means a loan made by an institution under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

SEC. 202. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this subtitle, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan made by, and and a stockholder of, an institution who is delinquent in the payment of principal or interest, or both, on the loan on the date of enactment of this Act or during the 3-year period beginning on such date;

(3) demonstrate to the institution that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower is temporarily unable to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years; and

(6) have an ability to repay the loan, based on past performance as a capable producer and assistance provided under this Act.

SEC. 203. LOAN DETERMINATIONS.

Before instituting a proceeding to foreclose a loan made to a borrower, an institution must determine—

(1) the cost of foreclosure; and

(2) the cost of restructuring the loan in accordance with this subtitle.

SEC. 402. LOAN FORECLOSURE AND RESTRUCTURING.

If an institution determines that the cost of foreclosure of a loan made to a borrower is equal to or exceeds the cost of restructuring the loan in accordance with this subtitle, in lieu of foreclosure, the institution shall reduce the principal or interest, or both, due on the loan, or otherwise restructure the loan, in a manner that would enable the borrower to make payments of principal and interest due on the loan without unduly impairing the standard of living of the borrower.

SEC. 205. ADDITIONAL COLLATERAL.

An institution may not—

(1) require any borrower to provide additional collateral to secure a loan if the borrower is current in the payment of principal or interest on the loan; or

(2) bring any action to foreclose on, or otherwise liquidate, any loan as the result of the failure of a borrower to provide additional collateral to secure a loan if the borrower was current in the payment of principal or interest on the loan at the time the additional collateral was required.

SEC. 206. APPEALS.

(a) Determination of Ineligibility.—(1) If an institution determines that a person does not meet the eligibility criteria prescribed in section 202, not later than 15 days after such determination, the institution shall provide the person with a written notice of—

(A) the determination and the reasons for the determination; and

(B) the right of the person to appeal the determination before a committee.

(2) If a person makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the person shall have the right to appear before the committee to contest the determination.

(b) Determination To Not Restructure.—(1) If an institution determines that the cost of restructuring a loan in accordance with this subtitle exceeds the cost of foreclosure of the loan, not later than 15 days after such determination, the institution shall provide the borrower of the loan with a written notice of—

(A) the determination and the reasons for the determination;

(B) the computations used by the institution to make the determination, including the estimate of the collateral value of the land used to secure the loan; and

(C) the right of the borrower to appeal the determination before a committee.

(2) If a borrower of a loan made by an institution makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the borrower shall have the right to—

(A) request the committee to arrange an independent appraisal of the cost of foreclosure of the loan and the cost of restructuring the loan in accordance with this subtitle; and

(B) appear before the committee to contest the determination.

(3) If a borrower requests a committee to arrange an independent appraisal made under paragraph (2)(A), the committee shall—

(A) arrange the independent appraisal, in accordance with regulations issued by the Farm Credit Administration; and

(b) consider such appraisal when reviewing the determination of the committee.

(4) If an independent appraisal is conducted under this subsection of the cost of foreclosure of a loan made by an institution to a borrower and the cost of restructuring the loan in accordance with this subtitle, the cost of the appraisal shall be borne by—

(A) the institution if the appraised cost of restructuring the loan in accordance with this subtitle is equal to or less than the appraised cost of the foreclosure of the loan; or

(B) the borrower if the appraised cost of restructuring the loan in accordance with this subtitle is greater than the appraised cost of the foreclosure of the loan.

(c) Determination to Restructure.—(1) If an institution determines that a borrower of a loan meets the eligibility criteria prescribed in section 202 and that the cost of restructuring the loan in accordance with this subtitle is less than or equal to the cost of foreclosure of the loan, not later than 15 days after such determination, the institution shall provide the borrower with a written notice of—

(A) the determination and the reasons for the determination;

(B) the amount of the reduction in principal or interest, or both, or method of restructuring, the institution determines is adequate to enable the borrower to make payments in accordance with section 204; and

(C) the right of the borrower to contest the amount of the reduction, or method of restructuring, before a committee.

(2) If a borrower makes a written request to a committee not later than 30 days after receipt of a notice to contest the amount of the reduction, or method of restructuring, referred to in paragraph (1), the borrower shall have the right to appear before the committee to contest the amount of the reduction or method of restructuring.

(d) Voluntary Agreements.—A borrower of a loan made by an institution shall have the right to appear before a committee to contest a determination, amount, or action under this subtitle if—

(1) the institution and the borrower enter into an agreement under which the institution agrees to restructure the loan in accordance with this subtitle and the borrower agrees not to contest the determination, amount, or action, as the case may be;

(2) the institution does not restructure the loan in accordance with this subtitle; and

(3) THE BORROWER MAKES A WRITTEN REQUEST TO THE COMMITTEE TO CONTEST THE DETERMINATION, AMOUNT, OR action, as the case may be, not later than 30 days after the date by which the institution agreed to restructure the loan in accordance with this subtitle.

(e) Notice of Decisions.—Not later than 15 days after any review conducted by a committee, the committee shall provide the aggrieved person or borrower with written notice of the decision of the committee and the reasons for the decision.

SEC. 207. REIMBURSEMENT FOR PRINCIPAL REDUCTION.

The Capital Corporation shall reimburse an institution for the amount of principal due on loans that is reduced by the institution under section 204 if the Chairman determines that such action is necessary to avoid the liquidation or insolvency of the institution.

SEC. 208. REPORT

Not later than 270 days after the date of enactment of this Act, the Chairman shall submit a report to Congress on the operation of this subtitle, including—

(1) an analysis of the impact of actions taken under this subtitle on losses suffered by institutions;

(2) an analysis of the impact of the actions on property values;

(3) an analysis of the accuracy of the cost of foreclosure determined by institutions under this subtitle;

(4) the number and amount of loans restructured in accordance with this subtitle;

(5) the number of current and estimated future delinquencies before and after the expiration of this subtitle on loans made to borrowers; and

(6) the recommendations of the Chairman concerning reauthorization of this subtitle.

Subtitle B—Farm Credit System Reform

SEC. 211. ACCESS TO APPRAISALS.

Section 4.13A of the Farm Credit Act of 1971 (12 U.S.C. 2200) is amended to read as follows:

"Sec. 4.13A. Access to Documents and Information.—In accordance with regulations of the Farm Credit Administration, a System institution shall provide to each borrower of such institution—

"(1) at the time of execution of a loan, a copy of each document signed by the borrower;

"(2) at any time thereafter, on request, a copy of each document signed or delivered by the borrower;

"(3) at any time, on request, a copy of the articles of incorporation or charter and bylaws of the institution; and

"(4) at the time of execution of a loan and at any time thereafter, on request, a copy of each appraisal of the assets of the borrower.".

SEC. 212. HOMESTEAD PROTECTION.

Part C of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.20 (12 U.S.C. 2208) the following new section:

"Sec. 4.21. Homestead Protection.—If an institution forecloses a loan made by the institution or a borrower of a loan made by the institution declares bankruptcy or goes into voluntary liquidation to avoid foreclosure or bankruptcy, the institution is encouraged to permit the borrower to retain possession and occupancy of the principal residence of the borrower, and a reasonable amount of adjoining land, to maintain the family of the borrower.".

SEC. 213. INTEREST RATES ON CLASSIFIED LOANS.

Part C of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.22 (as added by section 212) the following new section:

"Sec. 4.22. An institution of the Farm Credit System may not increase the interest rate on a loan made to a borrower that is outstanding on the date of enactment of the Farm Credit Assistance Act of 1986 as the result of the loan been classified as a risk or problem loan.".

SEC. 214. CERTIFICATION OF NEED FOR FINANCIAL ASSISTANCE.

Section 4.28J of the Farm Credit Act of 1971 (12 U.S.C. 2216i) is amended by inserting after "Treasury.—" the following new sentence: "Not later than 60 days after the date of enactment of the Farm Credit Assistance Act of 1986, and each 90 days thereafter, the Farm Credit Administration shall determine whether the Farm Credit System is in need of financial assistance to address financial stress of System institutions.".

SEC. 215. OPERATING EXPENSES OF INSTITUTIONS.

Part D1 of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.28L (12 U.S.C. 2216k) the following new section:

"Sec. 4.28M. Operating Expenses of Institutions.—During the period beginning on date of enactment of the Farm Credit Assistance Act of 1986 and ending the later of September 30, 1990, or such time as the Secretary of the Treasury no longer holds any obligations issued by the Capital Corporation, the operating expenses of an institution of the Farm Credit System may not exceed the average cost of bonds issued by the System, plus 1 percent.".

SEC. 216. DISPOSITION AND LEASING OF FARMLAND.

Part F of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.36 (12 U.S.C. 2219a) the following new section:

"SEC. 4.37. DISPOSITION AND LEASING OF FARMLAND.—(a) The Farm Credit Administration shall issue regulations for the disposition and leasing of farmland acquired by any institution of the Farm Credit System, including the Capital Corporation, (hereafter in this section referred to as an 'institution') in accordance with this section.

"(b) An institution shall to the extent practicable sell or lease farmland acquired under this Act in the following order of priority:

"(1) Sale of such farmland to operators (as of the time immediately before such sale) of not larger than family-size farms.

"(2) Lease of such farmland to operators (as of the time immediately before such lease is entered into) of not larger than family-size farms.

"(c)(1) An institution shall not offer for sale or sell any such farmland if the placing of such farmland on the market will have a detrimental effect on the value of farmland in the area.

"(2) In selling such land, the institution shall give special consideration to a previous owner or operator of such land.

"(d)(1) An institution shall consider granting, and may grant, to an operator of not larger than a family-size farm, in conjunction with subsection (e), a lease with an option to purchase farmland acquired under this act.

"(2) The Farm Credit Administration shall issue regulations providing for leasing such land, or leasing such land with an option to purchase, on a fair and equitable basis.

"(3) In leasing such land, the institution shall give special consideration to a previous owner or operator of such land if such owner or operator has financial resources, and farm management skills and experience, that the institution determines are sufficient to assure a reasonable prospect of success in the proposed farming operation.

"(4) To the extent an institution may lease or operate real property under this section, the institution shall, if the institution determines to administer such property through management contracts, offer the contracts on a competitive bid basis, giving preference to persons who will live in, and own and operate qualified small businesses in, the area where the property is located.

"(e)(1) An institution shall offer such land for sale to operators of not larger than family-size farms at a price that reflects the average annual income that may be reasonably anticipated to be generated from farming such land.

"(2) If two or more qualified operators of not larger than family-size farms desire to purchase, or lease with an option to purchase, such land, the local board of the institution shall, by majority vote, select the operator who may purchase such land.

"(f) If farmland is available for disposition under this section, the institution shall—

"(1) publish an announcement of the availability of such farmland in at least one newspaper that is widely circulated in the county in which the farmland is located; and

"(2) post an announcement of the availability of such farmland in a prominent place in the local office of the institution that serves the county in which the farmland is located.".

SEC. 217. STOCK PURCHASE REQUIREMENTS.

Part F of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.37 (as added by section 216) the following new section:

"SEC. 4.38. STOCK PURCHASE REQUIREMENT.—A borrower must purchase stock in the Farm Credit System, in accordance with regulations issued by the Farm Credit Administration, to be eligible—

"(1) to obtain a loan from an institution of the Farm Credit System; or

"(2) to enter into an installment contract for the purchase of farmland acquired by the Farm Credit System.".

TITLE ** C—FARMERS HOME ADMINISTRATION BORROWERS

SEC. 301. DEFINITIONS.

As used in this title

(1) BORROWER.—The term "borrower" means a borrower of a loan who meets the eligibility criteria prescribed in the section 302.

(2) COMMITTEE.—The term "committee" means the appropriate county committee established under section 332 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1982).

(3) COST OF FORECLOSURE.—The term "cost of foreclosure" includes—

(A) the difference between the outstanding amount of principal due on a loan and the value of collateral used to secure the loan, taking into consideration the lien position of the Secretary;

(B) the estimated cost of maintaining a loan as a nonperformance asset;

(C) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure;

(D) the estimated, adverse impact of the sale of property acquired as the result of a loan foreclosure on the value of property held by other borrowers of the Secretary;

(E) the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of action to foreclose or liquidate the loan and the ending on the date of the disposition of the collateral; and

(F) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(4) LOAN.—The term "loan" means a loan made by the Secretary under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

SEC. 302. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this title, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan who is delinquent in the payment of principal or interest, or both, on the loan on the date of enactment of this Act or during the 3-year period beginning on such date;

(3) demonstrate to the Secretary that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower is temporarily unable to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years; and

(6) have an ability to repay the loan, based on past performance as a capable producer and assistance provided under this Act.

SEC. 303. LOAN DETERMINATIONS.

Before instituting a proceeding to foreclose a loan made to a borrower, the Secretary must determine—

(1) the cost of foreclosure; and

(2) the cost of restructuring the loan in accordance with this title.

SEC. 304. LOAN FORECLOSURE AND RESTRUCTURING.

If the Secretary determines that the cost of foreclosure of a loan made to a borrower is equal to or exceeds the cost of restructuring the loan in accordance with this title, in lieu of foreclosure, the Secretary shall reduce the principal or interest, or both, due on the loan, or otherwise restructure the loan, in a manner that would enable the borrower to make payments of principal and interest due on the loan without unduly impairing the standard of living of the borrower.

SEC. 305. ADDITIONAL COLLATERAL.

The Secretary may not—

(1) require any borrower to provide additional collateral to secure a loan if the borrower is current in the payment of interest on the loan; or

(2) bring any action to foreclosure on, or otherwise liquidate, any loan as the result of the failure of a borrower to provide additional collateral to secure a loan if the borrower was current in the payment of interest on the loan at the time the additional collateral was required.

SEC. 306. APPEALS.

(a) DETERMINATION OF INELIGIBILITY.—(1) If the Secretary determines that a person does not meet the eligibility criteria prescribed in section 302, not later than 15 days after such determination, the Secretary shall provide the person with a written notice of—

(A) the determination and the reasons for the determination; and

(B) the right of the person to appeal the determination before a committee.

(2) If a person makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the person shall have the right to appear before the committee to contest the determination.

(b) DETERMINATION TO NOT RESTRUCTURE.—(1) If the Secretary determines that the cost of restructuring a loan in accordance with this title exceeds the cost of foreclosure of the loan, not later than 15 days after such determination, the Secretary shall provide the borrower of the loan with a written notice of—

(A) the determination and the reasons for the determination;

(B) the computations used by the Secretary to make the determination, including the estimate of the collateral value of the land used to secure the loan; and

(C) the right of the borrower to appeal the determination before a committee.

(2) If a borrower of a loan made by the Secretary makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the borrower shall have the right to—

(A) request the committee to arrange an independent appraisal of the cost of foreclosure of the loan and the cost of restructuring the loan in accordance with this title; and

(B) appear before the committee to contest the determination.

(3) If a borrower requests a committee to arrange an independent appraisal made under paragraph (2)(A), the committee shall—

(A) arrange the independent appraisal, in accordance with regulations issued by the Farm Credit Administration; and

(B) consider such appraisal when reviewing the determination of the committee.

(4) If an independent appraisal is conducted under this subsection of the cost of foreclosure of a loan made by the Secretary to a borrower and the cost of restructuring the loan in accordance with this title, the cost of the appraisal shall be borne by—

(A) the Secretary if the appraised cost of restructuring the loan in accordance with this title is equal to or less than the appraised cost of the foreclosure of the loan; or

(B) the borrower if the appraised cost of restructuring the loan in accordance with this title is greater than the appraised cost of the foreclosure of the loan.

(c) DETERMINATION TO RESTRUCTURE.— (1) If the Secretary determines that a borrower of a loan meets the eligibility criteria prescribed in section 302 and that the cost of restructuring the loan in accordance with this title is less than or equal to the cost of foreclosure of the loan, not later than 15 days after such determination, the Secretary shall provide the borrower with a written notice of—

(A) the determination and the reasons for the determination;

(B) the amount of the reduction in principal or interest, or both, or method of restructuring, the Secretary determines is adequate to enable the borrower to make payments in accordance with section 304; and

(C) the right of the borrower to contest the amount of the reduction, or method of restructuring, before a committee.

(2) If a borrower makes a written request to a committee not later than 30 days after receipt of a notice to contest the amount of the reduction, or the method of restructuring, referred to in paragraph (1), the borrower shall have the right to appear before the committee to contest the amount of the reduction or method of restructuring.

(d) VOLUNTARY AGREEMENTS.—A borrower of a loan made by the Secretary shall have the right to appear before a committee to contest a determination, amount, or action under this title if—

(1) the Secretary and the borrower enter into an agreement under which the Secretary agrees to restructure the loan in accordance with this title and the borrower agrees not to contest the determination, amount, or action, as the case may be;

(2) the Secretary does not restructure the loan in accordance with this title; and

(3) the borrower makes a written request to the committee to contest the determination, amount, or action, as the case may be, not later than 30 days after the date by which the Secretary agreed to restructure the loan in accordance with this title.

(e) NOTICE OF DECISIONS.—Not later than 15 days after any review conducted by a committee, the committee shall provide the aggrieved person or borrower with written notice of the decision of the committee and the reasons for the decision.

SEC. 307. REPORT.

Not later than 270 days after the date of enactment of this Act, the Secretary shall submit a report to Congress on the operation of this title, including—

(1) an analysis of the impact of actions taken under this title on losses suffered by the Secretary;

(2) an analysis of the impact of the actions on property values;

(3) an analysis of the accuracy of the cost of foreclosure determined by the Secretary under this title;

(4) the number and amount of loans restructured in accordance with this title;

(5) the number of current and estimated future delinquencies before and after the expiration of this title on loans made to borrowers; and

(6) the recommendations of the Secretary concerning reauthorization of this title.

SEC. 308. ALTERNATIVE CROP LOAN PROGRAM.

The Consolidated Farm and Rural Development Act is amended by inserting after section 352 (7 U.S.C. 2000) the following new section:

"SEC. 353. (a) For purposes of this section, the term 'alternative crop' means any agricultural operation (including acquaculture and livestock production) conducted by an applicant if—

"(1) there is no substantial history of such operation in the area in which the applicant resides; and

"(2) the applicant has derived from such operation not more than 20 percent of the gross annual income of the applicant during any of the 5 preceding taxable years.

"(b) In addition to the purposes prescribed in sections 303 and 312, the Secretary may make and insure, or guarantee, real estate and operating loans under subtitles A and B, respectively, to farmers and ranchers in the United States for the production of alternative crops.

"(c)(1) Subject to paragraph (2), to be eligible to obtain a loan or loan guarantee for a real estate or operating loan for the production of an alternative crop, a person must—

"(A) meet the eligibility requirements prescribed for a real estate loan under section 302 or an operating loan under section 311, respectively; and

"(B) submit to, and receive the approval of, the Secretary for a 5-year plan of projected production and income from the proposed alternative crop.

"(2) In determining eligiblity for a loan or loan guarantee under this section, the Secretary shall consider training or farming experience that the Secretary determines is sufficient to assure reasonable prospects of success in the proposed farming operation, whether or not such training or experience is in the production of an alternative crop.

"(d) The Secretary may enter into a multiyear commitment to provide a loan or loan guarantee under this section for a term, of not to exceed 3 years, that is consistent with the nature of the alternative crop operation.".

TITLE **D—MISCELLANEOUS PROVISIONS

SEC. 401. INTER-AGENCY AGRICULTURAL TASK FORCE.

"(a) ESTABLISHMENT.—In light of the severe economic problems confronted by many agricultural banks and the regulatory responsibilities of bank regulatory agencies, not later than 30 days after the date of enactment of this Act, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Federal Reserve System shall develop an Inter-Agency Agricultural Task Force to assist commercial agricultural banks and the borrowers of the banks to resolve present economic problems and to facilitate commercial bank lending to agriculture in the future.

"(b) DUTIES.—The Inter-Agency Task Force shall—

(1) review existing regulations and policies to facilitate agricultural lending;

"(2) cooperate with field office personnel to avoid conflicts and inconsistencies between the agencies; and

"(3) consider meaningful alternatives to assist commercial banks in providing agricultural financing through regulatory or statutory changes, including accounting changes, interest rate buy-downs, or other similar methods for assisting banks.

"(c) REPORTS.—Not later than 6 months after the date of enactment of this Act, and semiannually thereafter, the Inter-Agency Task Force shall report its findings and recommendations in carrying out this section to—

"(1) the Committee on Agriculture of the House of Representatives;

"(2) the Committee on Agriculture, Nutrition, and Forestry of the Senate;

"(3) the Committee on Banking, Finance and Urban Affairs of the House of Representatives; and

"(4) the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 402. REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Secretary and the Farm Credit Administration shall issue such regulations as are necessary to carry out provisions of this Act under their jurisdiction.

SEC. 403. GENERAL DEFINITIONS.

As used in titles **a through **d of this Act—

(1) INSTITUTION.—The term "institution" means an institution of the Farm Credit System described in section 1.2 of the Farm Credit Act of 1971 (12 U.S.C. 2002).

(2) INTEREST SUBSIDY PROGRAM—The term "interest subsidy program" means the Federal-State-Lender cooperative agricultural loan interest subsidy program established under title **a.

(3) FCS LOAN RESTRUCTURING PROGRAM—The term "FCS loan restructuring program" means the restructuring program established under subtitle A of title **b for loans made by institutions if the Farm Credit System.

(4) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(5) STATE—The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or (to extent the Secretary determines it is feasible and appropriate) the Trust Territory of the Pacific Islands.

(6) STATE AGENCY.—The term "State agency" means the agency designated by a State under section 106(b)(1) of this Act to carry out the interest subsidy program in the State.

(7) The term "this Act" means titles **a through **d of this resolution.

SEC. 404. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to out this Act.

SEC. 105. TERMINATION DATE.

Except as otherwise provided in this Act, the authority granted by this Act shall terminate 3 years after the date of enactment of this Act.

SEC. 106. SHORT TITLE.

Titles **a through **d of this resolution may be cited as the "Farm Credit Assistance Act of 1986".

TITLE .—FARM CREDIT SYSTEM

SEC. . TREATMENT OF CERTAIN FARM CREDIT ASSOCIATIONS.

Section 5.17(a)(2) of the Farm Credit Act of 1971 is amended by striking out in line 2 "; and the Farm Credit Administration shall ensure that the board of directors of district banks does not discriminate against the disapproving associations in exercising its supervisory authorities. Such associations shall not be (i) charged any assessment under this Act at a rate higher than that charged like associations in the district or (ii) discriminated against in the provision of any financial service and assistance" and insert in lieu thereof the following: ". The Farm Credit Administration shall ensure that disapproving associations (i) shall not be charged any assessment under this Act at a rate higher than that charged other like associations in the district and (ii) shall be provided, on the same basis as like associations in the district, financial services and assistance".

TITLE .—SCHOOL LUNCH AND CHILD NUTRITION AMENDMENTS OF 1986

Subtitle I—Reauthorization of Child Nutrition Programs

SEC. 101. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

Section 13(p) of the National School Lunch Act (42 U.S.C. 1761(p)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 102. COMMODITY DISTRIBUTION PROGRAM.

Section 14(a) of the National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 103. STATE ADMINISTRATIVE EXPENSES.

Section 7(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(i)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 104. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(1) in subsection (c)(2), by striking out "Subject to" and all that follows through "1984" and inserting in lieu thereof "Subject to amounts appropriated to carry out this section under subsection (g)";

(2) in subsection (g)—

(A) by designating the first and second sentences as paragraphs (1) and (3), respectively; and

(B) by amending paragraph (1) (as so designated) to read as follows:

"(1) There are authorized to be appropriated to carry out this section $1,570,000,000 for the fiscal year ending September 30, 1986, such sums as may be necessary for each of the fiscal years ending September 30, 1987, and September 30, 1988, and $1,782,000,000 for the fiscal year ending September 30, 1989."; and

(3) in subsection (h)(2), by striking out "1984" and inserting in lieu thereof "1989".

SEC. 105. NUTRITION EDUCATION AND TRAINING PROGRAM.

The first sentence of section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SUBTITLE II—School Lunch and Breakfast Programs

SEC. 201. BASIS OF COMMODITY ASSISTANCE.

Section 6(b) of the National School Lunch Act (42 U.S.C. 1755(b)) is amended—

(1) in the first sentence, by striking out "May 15" and inserting in lieu thereof "June 1"; and

(2) in the second sentence, by striking out "June 15" and inserting in lieu thereof "July 1".

SEC. 202. INCLUSION OF WHOLE MILK AS A SCHOOL LUNCH BEVERAGE.

Effective July 1, 1986, section 9(a) of the National School Lunch Act (42 U.S.C. 1758(a)) is amended—

(1) by designating the first, second, and third sentences as paragraphs (1), (3), and (4), respectively; and

(2) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) In addition to such other forms of milk as the Secretary may determine, the lunches shall offer whole milk as a beverage.".

SEC. 203. AUTOMATIC ELIGIBILITY FOR CERTAIN PROGRAMS.

Effective July 1, 1986, section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)) is amended by adding at the end thereof the following new paragraph:

"(6)(A) A child shall be considered automatically eligible for a free lunch and breakfast under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively, without further application or eligibility determination, if the child is a member of—

"(i) a household receiving assistance under the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

"(ii) an AFDC assistance unit (under the aid to families with dependent children program authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)), in a State where the standard of eligibility for the assistance does not exceed 130 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))).

"(B) Proof of receipt of food stamps or aid to families with dependent children shall be sufficient to satisfy any verification requirement imposed under paragraph (2)(C).".

SEC. 204. LIMITATION ON MEAL CONTRACTING.

Effective July 1, 1986, section 9 of the National School Lunch Act (42 U.S.C. 1758) is amended by adding at the end thereof the following new subsection:

"(e) A school or school food authority participating in a program under this Act may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced-price, and full-price reimbursable meals to all eligible children.".

SEC. 205. CHANGE IN TUITION LIMITATION FOR PRIVATE SCHOOLS.

(a) School Lunch Programs.—Section 12(d)(5) of the National School Lunch Act (42 U.S.C. 1760(d)(5)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(b) School Breakfast Programs.—Section 15(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1784(c)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1,500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(c) Application.—(1) The amendments made by subsections (a)(1) and (b)(1) shall apply for the fiscal year beginning on October 1, 1986, and each school year thereafter.

(2) The amendments made by subsections (a)(2) and (b)(2) shall apply for the school year beginning on July 1, 1988, and each school year thereafter.

SEC. 206. USE OF SCHOOL LUNCH FACILITIES FOR ELDERLY PROGRAMS.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end thereof the following new subsection:

"(i) Facilities, equipment, and personnel provided to a school food authority for a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) may be used, as determined by a local educational agency, to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).".

SEC. 207. PILOT PROJECTS FOR ADMINISTRATION OF CHILD NUTRITION PROGRAMS BY CONTRACT OR DIRECT DISBURSEMENT

(a) Pilot Projects.—Section 20 of the National School Lunch Act (42 U.S.C. 1769) is amended by striking out subsection (d) and inserting in lieu thereof the following new subsection:

"(d) The Secretary may conduct pilot projects in not more than three States in which the Secretary is currently administering programs to evaluate the effects of the Secretary contracting with private profit and nonprofit organizations to act as a State agency under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) for schools, institutions, or service institutions referred to in section 10 of this Act and section 5 of the Child Nutrition Act of 1966 (42 U.S.C. 1774).".

(b) Conforming Amendment.—The first sentence of section 20(c) of the National School Lunch Act is amended by striking out "except for the pilot projects conducted under subsection (d) of this section,".

SEC. 208. DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS.

(a) School Lunches.—Section 22(d) of the National School Lunch Act (42 U.S.C. 1769b(d)) (as added by section 1408(a) of the Education Amendments of 1978 (92 Stat. 2368)) is amended by striking out "and for" and all that follows through "reduced-price lunch".

(b) School Breakfasts.—Section 20(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1789) is amended by striking out "and for" and all that follows through "reduced-price breakfast".

SEC. 209. RESTORATION OF CERTAIN KINDERGARTENS TO THE SPECIAL MILK PROGRAM.

Effective October 1, 1986, section 3(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)) is amended—

(1) in the first sentence—

(A) by inserting "(1)" after the subsection designation;

(B) by redesignating clauses (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) in subparagraph (A) (as so redesignated), by inserting "except as provided in paragraph (2)," after "and under,";

(2) by designating the second though eighth sentences as paragraphs (3) through (9), respectively; and

(3) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized uner this Act or the National School Lunch Act (42 U.S.C. 1751 et seq.).".

SEC. 210. IMPROVEMENT OF BREAKFAST PROGRAM MEAL PATTERN.

(a) Additional Assistance.—Effective October 1, 1986, section 4(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)) is amended by adding at the end thereof the following new paragraphs:

"(3) The Secretary shall increase by 3 cents the annually adjusted payment for each breakfast served under this Act and section 17 of the National School Lunch Act (42 U.S.C. 1766). These funds shall be used to assist States, to the extent feasible, in improving the nutritional quality of the breakfasts.

"(4) Notwithstanding any other provision of law, whenever stocks of agricultural commodities are acquired by the Secretary or the Commodity Credit Corporation and are not likely to be sold by the Secretary or the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, the Secretary shall make such commodities available to school food authorities and eligible institutions serving breakfasts under this Act in a quantity equal in value to not less than 3 cents for each breakfast served under this Act and section 17 of the National School Lunch Act.

"(5) Expenditures of funds from State and local sources for the maintenance of the breakfast program shall not be diminished as a result of funds or commodities received under paragraph (3) or (4).".

(b) Nutrition Requirements.—(1) The Secretary of Agriculture shall review and revise the nutrition requirements for meals served under the breakfast program authorized under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and section 17 of the National School Lunch Act (42 U.S.C. 1766) to improve the nutritional quality of the meals, taking into consideration both the findings of the National Evaluation of School Nutrition Programs and the need to provide increased flexibility in meal planning to local food authorities.

(2) Not later than 180 days after the date of enactment of this title, the Secretary of Agriculture shall promulgate regulations to implement the revisions.

SEC. 211. EXTENSION OF OFFER VERSUS SERVE PROVISION TO THE SCHOOL BREAKFAST PROGRAM.

Section 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this Act may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume. A refusal of an offered food item shall not affect the full charge to the student for a breakfast meeting the requirements of this section or the amount of payments made under this Act to a school for the breakfast.".

SEC. 212. STAFFING STANDARDS.

Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) (as amended by section 103) is further amended—

(1) by striking out subsection (b); and

(2) by redesignating subsections (c) through (i) as subsections (b) through (h), respectively.

Subtitle III—Special Supplemental Food Program for Women, Infants, and Children

SEC. 301. COSTS FOR NUTRITION SERVICES AND ADMINISTRATION.

(a) Definitions.—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended—

(1) by striking out paragraph (1);

(2) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively; and

(3) by inserting after paragraph (3) (as so redesignated) the following new paragraph:

"(4) 'Costs for nutrition services and administration' means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.".

(b) Conforming Amendments.—Section 17 of such Act is amended—

(1) by striking out "administrative funds" each place it appears in subsections (f)(11), (h)(2), (h)(3), and (h)(4) and inserting in lieu thereof "funds for nutrition services and administration"; and

(2) by striking out "administrative costs" each place it appears in subsection (h) and inserting in lieu thereof "costs for nutrition services and administration".

SEC. 302. STATE ELIGIBILITY FOR WIC FUNDS.

(a) Eligibility.—Section 17(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(c)) is amended by adding at the end thereof the following new paragraph:

"(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.".

(b) Application.—The amendment made by subsection (a) shall apply to a State beginning with the fiscal year that commences after the end of the first regular session of the State legislature following the date of the enactment of this title.

SEC. 303. PARTICIPATION REPORT.

(a) Biennial Report.—Section 17(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)) is amended by adding at the end thereof the following new paragraph:

"(4) The Secretary shall report biennially to Congress on—

"(A) the income and nutritional risk characteristics of participants in the program;

"(B) participation in the program by members of families of migrant farmworkers; and

"(C) such other matters relating to participation in the program as the Secretary considers appropriate.".

(b) Use of Evaluation Funds for Report.—Section 17(g)(3) of such Act (as amended by section 104(2)(A)) is further amended by inserting "preparing the report required under subsection (d)(4)," after "health benefits,".

SEC. 304. PLAN OF OPERATION AND ADMINISTRATION.

(a) Plan.—Paragraph (1) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)) is amended to read as follows:

"(1)(A) Each State agency shall submit annually to the Secretary, by a date specified by the Secretary, a plan of operation and administration for a fiscal year.

"(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

"(C) The plan shall include—

"(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program, to be administered in accordance with standards developed by the Secretary;

"(ii) a description of the financial management system of the State agency;

"(iii) a plan to coordinate operations under the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, prenatal care, well-child care, family planning, alcohol and drug abuse counseling, child abuse counseling, and with the aid to families with dependent children, food stamp, and maternal and child health care programs;

"(iv) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants and Indians;

"(v) a plan to expend funds to carry out the program during the relevant fiscal year;

"(vi) a plan to provide program benefits under this section to unserved and underserved areas in the State, if sufficient funds are available to carry out this clause;

"(vii) a plan to provide program benefits under this section to eligible persons most in need of the benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable; and

"(viii) such other information as the Secretary may require.

"(D) The Secretary may permit a State agency to submit only those parts of a plan that differ from plans submitted for previous fiscal years.

"(E) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note)."

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a plan submitted by a State agency under section 17(f)(1) of the Child Nutrition Act of 1966 for the fiscal year ending September 30, 1987, and each fiscal year thereafter.

SEC. 305. PUBLIC COMMENT.

Paragraph (2) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(2)) is amended to read as follows:

"(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.".

SEC. 306. AVAILABILITY OF PROGRAM BENEFITS.

Paragraph (8) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(8)) is amended to read as follows:

"(8)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible persons (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas).

"(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

"(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible persons who are most in need of the benefits, including pregnant women in the early months of pregnancy.".

SEC. 307. REPAYMENT OF CERTAIN BENEFITS BY RECIPIENTS.

Effective October 1, 1986, section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) is amended by adding at the end thereof the following new paragraph:

"(15) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.".

SEC. 308. PRIORITY FUNDS FOR WIC MIGRANT PROGRAMS.

(a) PRIORITY FUNDING.—Effective October 1, 1986, section 17(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)) (as amended by section 104(2)(A)) is further amended by inserting after paragraph (1) the following new paragraph:

"(2) Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.".

(b) ACCOUNTABILITY.—To the extent possible, accountability for migrant services under section 17(g)(2) of the Child Nutrition Act of 1966 (as added by Subsection (a)) shall be conducted under regulations in effect on the date of the enactment of this title.

SEC. 309. IMPROVING STATE AGENCY ADMINISTRATIVE SYSTEMS.

Section 17(g)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(3)) (as amended by sections 104(2)(A) and 303(b)) is further amended by inserting "providing technical assistance to improve State agency administrative systems," after "subsection (d)(4),".

SEC. 310. PAPERWORK REDUCTION.

Section 17(h)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(1)) is amended by adding at the end thereof the following new sentence: "The Secretary shall limit to a minimal level any documentation required under the preceding sentence.".

SEC. 311. ALLOCATION STANDARDS.

Section 17(h)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(3)) is amended—

(1) in the second sentence, by striking out ", which satisfy allocation guidelines established by the Secretary"; and

(2) by striking out the last sentence.

SEC. 312. ADVANCE PAYMENTS.

Effective October 1, 1986, section 17(h)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(4)) is amended by striking out "shall" and inserting in lieu thereof "may".

SEC. 313. AVAILABILITY OF FUNDS.

(a) AVAILABILITY.—Section 17(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)) is amended—

(1) by designating the first, second, third, fourth, and fifth sentences as paragraphs (1), (2), (4), (5), and (6), respectively; and

(2) by inserting after paragraph (2) (as so designated) the following new paragraph:

"(3)(A) Notwithstanding paragraph (2)—

"(i) not more than 1 percent of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year; or

"(ii) not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year.

"(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.".

(b) APPLICATION.—Section 17(i)(3)(A)(i) of the Child Nutrition Act of 1966 (as amended by subsection (a)) shall not apply to appropriations made before the date of enactment of this title.

Subtitle IV—Other Nutrition Programs

SEC. 401. HEARINGS ON FEDERAL AUDIT ACTIONS UNDER THE CHILD CARE FOOD PROGRAM.

Section 17(e) of the National School Lunch Act (42 U.S.C. 1766(e)) is amended—

(1) by striking out "The" and inserting in lieu thereof "(1) Except as provided in paragraph (2), the"; and

(2) by adding at the end thereof the following new paragraphs:

"(2) A State is not required to provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination.

"(3) If a State does not provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination, the Secretary, on request, shall afford a hearing to the institution concerning the action.".

SEC. 402. BASIS FOR NUTRITION EDUCATION GRANTS.

Section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "$75,000" each place it appears and inserting in lieu thereof "$50,000".

SEC. 403. EXTENSION OF ALTERNATIVE MEANS OF ASSISTANCE.

Section 14 of the National School Lunch Act (42 U.S.C. 1762a) is amended by adding at the end thereof the following new subsection:

"(g)(1) As used in this subsection, the term 'eligible school district' has the same meaning given such term in section 1581(a) of the Food Security Act of 1985.

"(2) In accordance with the terms and conditions of section 1581 of such Act, the Secretary shall permit an eligible school district to continue to receive assistance in the form of cash or commodity letters of credit assistance, in lieu of commodities, to carry out the school lunch program operated in the district.

"(3)(A) On request of a participating school district (and after consultation with the Comptroller General of the United States with respect to accounting procedures used to determine any losses) and subject to the availability of funds, the Secretary shall provide cash compensation to an eligible school district for losses sustained by the district as a result of the alteration of the methodology used to conduct the study referred to in section 1581(a) of such Act during the school year ending June 30, 1983.

"(B) There are authorized to be appropriated $50,000 to carry out this paragraph, to be available without fiscal year limitation.".

SEC. 404. NATIONAL DONATED COMMODITY PROCESSING PROGRAMS.

In accordance with the terms and conditions of section 1114(a)(2) of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e(a)(2)), whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary of Agriculture, the Secretary shall encourage consumption of the commodity through agreements with private companies under which the commodity is reprocessed into end-food products for use by eligible recipient agencies.

Subtitle V—Technical Corrections

SEC. 501. OBSOLETE PROVISIONS.

(a) NUTRITION PROGRAM STAFF STUDY; TRUST TERRITORY APPROPRIATIONS.—(1) Sections 18 and 19 of the National School Lunch Act (42 U.S.C. 1767 and 1768) are repealed.

(2) The first sentence of section 3 of such Act (42 U.S.C. 1752) is amended by striking out "sections 13, 17, and 19" and inserting in lieu thereof "sections 13 and 17".

(b) STUDY OF MENU CHOICE.—Section 22 of such Act (42 U.S.C. 1769c) (as added by section 9 of the Child Nutrition Amendments of 1978 (92 Stat. 3623)) is repealed.

(c) CONFORMING AMENDMENTS.—(1) The National School Lunch Act (as amended by sections 207 and 208(a) and subsection (b)) is further amended by redesignating sections 20, 21, and 22 (42 U.S.C. 1769, 1769a, and 1769b) as sections 18, 19, and 20, respectively.

(2) Clause (3) of the first sentence of section 6(a) of such Act (42 U.S.C. 1755(a)) is amended by striking out "section 20" and inserting in lieu thereof "section 18".

SEC. 502. OBSOLETE REFERENCES TO HEALTH, EDUCATION, AND WELFARE.

(a) References in National School Lunch Act.—Clause (1) of the sixth sentence of section 17(a) of the National School Lunch Act (42 U.S.C. 1766(a)) is amended by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services".

(b) References in Child Nutrition Act of 1966.—(1) The Child Nutrition Act of 1966 is amended by striking out "Health, Education, and Welfare" each place it appears in section 4(a) (42 U.S.C. 1773(a)), subsections (b)(6), (b)(13), (e)(2), (k)(1), and (k)(2) of section 17 (42 U.S.C. 1786), and subsections (d)(2) and (d)(3) of section 19 (42 U.S.C. 1788) and inserting in lieu thereof "Health and Human Services".

(2) Section 19(j)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(3)) is amended by striking out "Office of Education of the Department of Health, Education, and Welfare" and inserting in lieu thereof "Department of Education".

SEC. 503. CONFORMING AMENDMENTS.

(a) Definition of Secretary.—Section 12(d) of the National School Lunch Act (42 U.S.C. 1760(d)) is amended by adding at the end thereof the following new paragraph:

"(8) 'Secretary' means the Secretary of Agriculture.".

(b) Redesignation of Subsection.—Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) (as amended by sections 105, 402, and 502(b)(2)) is further amended by redesignating subsection (j) as subsection (i).

BOREN (AND OTHERS) AMENDMENT NO. 3101

Mr. BOREN (for himself, Mr. Bumpers, Mr. Levin, Mr. Pryor, and Mr. Heflin) proposed an amendment to amendment No. 3100 proposed by Mr. Boren (and others) to the joint resolution (H.J. Res. 738), supra, as follows:

Beginning with line 4 on page 2 of the pending amendment, strike out everything down through the end of the amendment, and insert in lieu thereof the following:

SEC. . RESTITUTION PAYMENTS TO CATTLE PRODUCERS.

(a) With funds or commodities held by the Commodity Credit Corporation, the Secretary shall pay to each producer who owned one or more cattle prior to March 28, 1986 and who sold one or more cattle in the period beginning on March 28, 1986, and ending on June 30, 1986, for any purpose other than breeding, an amount equal to the product of $6.00 per hundredweight and the live weight (measured in hundredweights) of such cattle at the time of such sale.

(b) Submission of Claims for Payment.—(1) A producer shall be ineligible to receive a payment under this Act if such producer fails to submit a claim for such payment to the Secretary before April 1, 1987.

(2) Claims for payment under section 2 shall be submitted to the Secretary in such form, and with such evidence, as the Secretary may require by rule, including—

(A) a bill of sale for cattle or

(B) a brand inspection document issued by a State or the United States showing evidence of sale of cattle, or

(C) other documentation showing evidence of sale of cattle.

(3) Not later than July 1, 1987, the Secretary shall inform each producer who submits a claim for such payment whether the Secretary will pay or dispute the claim of such producer.

(c) Determination of Disputed Claims.—If any producer who submits a claim for payment under section (a) objects to—

(1) the amount paid with respect to such claim, or

(2) the denial of such claim,

by the Secretary, then such producer shall give written notice of such objection to the Secretary not later than 60 days after such producer receives such payment or the Secretary informs such producer of the denial of such claim, as the case may be. Not later than 60 days after receiving such notice, the Secretary shall determine the validity of such claim after a hearing on the record.

(d) Judicial Review.—Any producer aggrieved by a determination under subsection (c) made by the Secretary may obtain review of such determination by filing a civil action in an appropriate district court of the United States not later than 30 days after such producer receives notice of such determination. As part of the Secretary's answer, the Secretary shall file in such court a certified copy of the record upon which the determination complained of is based.

(2) The district courts of the United States shall have jurisdiction to review any determination made under subsection (c) by the Secretary.

(e) For purposes of this section—

(1) the term "cattle" includes steers, bulls, cows, heifers, and calves,

(2) the term "producer" means any person, or group of persons, that owns or acquires ownership of any cattle, except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of such cattle is a sales commission, handling fee, or other service fee,

(3) the term "Secretary" means the Secretary of Agriculture, and

(4) the term "sold" means exchanged for value, in cash or in kind, for slaughter or otherwise.

(f) This section shall be effective on October 10, 1986.

SEC. . PAYMENT OF INDEMNITY FOR CATTLE CONTAMINATED BY HEPTACHLOR.

(a) Payment of Indemnity for Certain Losses.—With funds and commodities held by the Commodity Credit Corporation, the Secretary of Agriculture shall indemnify a producer for economic loss resulting from—

(1) a quarantine imposed by the Department of Agriculture on cattle owned by such producer, or

(2) slaughter of cattle owned by such producer, carried out because such cattle were contaminated by heptachlor in the period beginning on January 1, 1986, and ending on March 31, 1986, in the State of Oklahoma, the State of Arkansas, or the State of Missouri.

(b) Administrative Provisions.—

(1) Submission of claims for indemnity.—(A) A producer shall be ineligible to receive indemnity under subsection (a) if such producer fails to submit a claim for such indemnity to the Secretary before April 1, 1987.

(B) Claims for indemnity under subsection (a) shall be submitted to the Secretary in such form, and with such evidence, as the Secretary may require by rule.

(C) Not later than July 1, 1987, the Secretary shall inform each producer who submits a claim for such indemnity whether the Secretary will pay or dispute the claim of such producer.

(2) Determination of disputed claims.—If any producer who submits a claim for indemnity under subsection (a) objects to—

(A) the amount paid with respect to such claim, or

(B) the denial of such claim,

by the Secretary, then such producer shall give written notice of such objection to the Secretary not later than 60 days after such producer receives such indemnity or the Secretary informs such producer of the denial of such claim, as the case may be. Not later than 60 days after receiving such notice, the Secretary shall determine the validity of such claim after a hearing on the record.

(3) Judicial review.—Any producer aggrieved by a determination under paragraph (2) made by the Secretary may obtain review of such determination by filing a civil action in an appropriate district court of the United States not later than 30 days after such producer receives notice of such determination. As part of the Secretary's answer, the Secretary shall file in such court a certified copy of the record upon which the determination complained of is based.

(4) Jurisdiction of District Courts.—The district courts of the United States shall have jurisdiction to review any determination made under paragraph (2) by the Secretary.

(c) Definitions.—For purposes of this Act—

(1) the term "cattle" includes steers, bulls, cows, heifers, and calves,

(2) the term "producer" means any person, or group of persons, that owns or acquires ownership of any cattle, and

(3) the term "Secretary" means the Secretary of Agriculture.

(d) Effective Date.—This section shall take effect on October 10, 1986.

TITLE —AMENDMENTS TO PRICE SUPPORT PROGRAMS FOR CERTAIN CROPS

SEC. . COMPUTATION OF EMERGENCY COMPENSATION UNDER THE 1986 WHEAT PROGRAM.

Section 107D(c)(1)(E)(ii) of the Agricultural Act of 1949 is amended by striking out "marketing year for such crop" and inserting in lieu thereof "the first 5 months of the marketing year for the 1986 crop and the marketing year for each of the 1987 through 1990 crops".

SEC. . LOANS AND PURCHASES FOR THE 1986 CROP OF SUNFLOWERS.

Effective only for the 1986 crop of sunflowers, section 201 of the Agricultural Act of 1949 is amended—

(1) in the first sentence, by inserting "sunflowers," after "soybeans,"; and

(2) by adding at the end thereof the following new subsection:

"(l)(1) The Secretary shall support the price of sunflowers through loans and purchases in the marketing year for the 1986 crop of sunflowers as provided in this subsection. The support price for such crop shall be at such level as the Secretary determines will take into account the historical oil content of sunflowers and soybeans and not result in excessive total stocks of sunflowers taking into consideration the cost of producing sunflowers, supply and demand conditions, and world prices for sunflowers, except that such level may not be less than 9 cent per pound.

"(2)(A) The Secretary shall permit a producer to repay a loan made under paragraph (1) for the 1986 crop of sunflowers at a level that is the lesser of—

"(i) the loan level determined for such crop; or

"(ii) the prevailing world market price for sunflowers, as determined by the Secretary.

"(B) The Secretary shall prescribe by regulations—

"(i) a formula to define the prevailing world market price for sunflowers; and

"(ii) a mechanism by which the Secretary shall announce periodically the prevailing world market price for sunflowers.

"(3) For the purposes of this subsection, the marketing year of sunflowers shall be prescribed by the Secretary by regulations.

"(4) Notwithstanding any other provision of law, the Secretary shall not require participation in any production adjustment program for sunflowers or any other commodity as a condition of eligibility for price support for sunflowers.".

SEC. . SUPPORT PRICE AND MARKETING LOANS FOR 1986 CROP OF SOYBEANS.

(a) Support Price.—Effective only for the 1986 crop of soybeans, section 201(i)(2) of the Agricultural Act of 1949 (7 U.S.C. 1446(i)(2)) is amended by inserting "(other than the marketing year for the 1986 crop of soybeans)" after "a marketing year".

(b) Marketing Loans.—Effective only for the 1986 crop of soybeans, section 201(i) of such Act is amended—

(1) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7);

(2) by inserting after paragraph (2) the following new paragraph:

"(3)(A) In the case of the 1986 crop of soybeans, the Secretary shall implement the provisions of Plan A or Plan B in accordance with this paragraph.

"(B)(i) If the Secretary elects to implement Plan A, the Secretary shall permit a producer to repay a loan made under this subsection for a crop at a level that is the lesser of—

"(I) the loan level determined for such crop; or

"(II) the prevailing world market price for soybeans, as determined by the Secretary.

"(ii) If the Secretary elects to implement Plan A, the Secretary shall prescribe by regulation—

"(I) a formula to define the prevailing world market price for soybeans; and

"(II) a mechanism by which the Secretary shall periodically announce the prevailing world market price for soybeans.

"(C)(i) If the Secretary elects to implement Plan B, the Secretary shall, for the 1986 crop of soybeans, make payments available to—

"(I) producers who, although eligible to obtain a loan or purchase agreement under this subsection, agree to forgo obtaining such loan or agreement in return for such payments; and

"(II) in the case of producers who have placed their soybeans under such loan or agreement, producers who agree to redeem such loan or agreement and to forgo obtaining such loan or agreement in return for such payments.

"(ii) A payment under this subparagraph shall be computed by multiplying—

"(I) an amount equal to 20 percent of the loan payment rate; by

"(II) the quantity of soybeans the producer is eligible to place under loan"; and

(3) in paragraph (4)(A) (as redesignated by paragraph (2)), by striking out "If" and inserting in lieu thereof "In the case of each of the 1987 through 1990 crops of soybeans, if".

(c) Other Oilseeds.—The Secretary shall consider the impact of this section on other oil seeds that do not participate in price support program, and shall consult with producers of such oil seeds.

TITLE —NATURAL DISASTERS EMERGENCY ASSISTANCE FOR FARMERS AND RANCHERS

SEC. **1. EMERGENCY DISASTER ASSISTANCE.

The President and the Secretary of Agriculture shall make emergency disaster assistance available, as provided in this Title, to farmers and ranchers in natural disaster areas.

SEC. **2. DEFINITIONS.

For the purposes of this title—

(1) the term "natural disaster areas" includes any area in the United States in which farming and ranching operations have been adversely affected by a drought or excessively hot weather disaster, or a flood disaster, occurring in calendar year 1986, as determined by the Secretary of Agriculture, such that assistance is available in the area under subtitle C of the Consolidated Farm and Rural Development Act for such disaster; and

(2) the term "livestock" includes all classes of beef and dairy cattle, sheep, goats, and swine.

EMERGENCY FEED DONATIONS

Sec. **3 Notwithstanding any other provision of law:

(a) The Secretary of Agriculture shall make available to farmers and ranchers in each natural disaster area, at no cost, surplus stocks of commodities held by the Commodity Credit Corporation (in the area, in the State in which the area is located or an adjoining State, or in a storage deficient area (as described in section **9(b) of this title)), for the purpose of, and under the conditions set out in, subsection (b) of this section.

(b)(1) The Secretary shall make such commodities available, in any natural disaster area in which the Secretary determines there is a critical need for livestock or poultry feed, in amounts necessary to preserve livestock herds and poultry flocks in the area. For purposes of this section, the phrase "critical need for livestock or poultry feed" means that (A) the total supply of feed grains and forage available to livestock and poultry producers in the area involved is insufficient to cover the combined feed needs of such producers for more than seventy-two hours or such other period, determined by the Secretary, reasonably needed for supplies of feed to arrive in the area for commercial use for feed surplus areas, whichever is a longer period; and (B) as a result of such deficient supply levels, it reasonably can be expected that, without the assistance made available under this section, farmers and ranchers in the area will suffer significant losses of livestock or poultry due to mortality.

(2) Subject to section **9(c), the Secretary shall cover any costs involved in transporting such surplus commodities to the natural disaster area, using the funds, facilities, and authorities of the Commodity Credit Corporation for such purposes.

(3) The Secretary shall continue to make commodities available under this section until there no longer is a critical need for livestock or poultry feed, as determined by the Secretary.

(4) In determining the feed needs of producers in an area and the amount of commodities to be made available in the area under this section, the Secretary shall use the regulations issued under section 1105 of the Food and Agriculture Act of 1977 (7 C.F.R. 1475.52(n) and 1475.55(f)(1) (1986)) and comparable rules for poultry.

(5) Donations under this section shall be made available during the period beginning three days after the date of enactment of this title and ending March 31, 1987, or the date, as determined by the Secretary, on which the emergency created by the drought, excessively hot weather, or flood no longer exists, whichever is earlier.

EMERGENCY LIVESTOCK FEED ASSISTANCE

Sec. **4. Notwithstanding any other provision of law:

(a)(1) The Secretary of Agriculture shall make emergency livestock and poultry feed assistance under section 1105 of the Food and Agriculture Act of 1977 to farmers and ranchers in natural disaster areas. Reimbursement for purchased feed provided to such farmers and ranchers under section 1105 shall be made in kind, as provided in section 9(a) of this Act, using surplus stocks of commodities held by the Commodity Credit Corporation. Whenever, under any export development program conducted by the Secretary of Agriculture, a feed grain or other commodity used for animal feed is made available to foreign purchasers at prices less than the average domestic market price for the commodity, as determined by the Secretary, reimbursement under this paragraph for purchases of such commodity shall be made at a level in excess of 50 per centum of the cost of the purchased commodity if necessary to ensure that the net cost to the producer for such commodity (taking into account the reimburse: * * * price at which the commodity is made available to foreign purchasers under such export development program.

(2) The Secretary of Agriculture shall permit any producer of the 1986 crop of wheat, feed grains, upland cotton, or rice (A) who is participating in the program under the Agricultural Act of 1949 for such crop, and (B) whose farm is located in a natural disaster area, to devote acreage on the farm diverted from the production of the crop under such program to hay or grazing without regard to limitations on when haying or grazing may take place otherwise imposed under the Agricultural Act of 1949.

(3)(A) In carrying out any emergency assistance program, for farmers and ranchers in a natural disaster area under the Disaster Relief Act of 1974, subject to subparagraph (B), the President shall direct the Secretary of Agriculture to implement an emergency hay program to assist such farmers and ranchers in obtaining hay to feed their livestock. Under such program, the Secretary, subject to section ** 9(c), shall pay 80 per centum of the cost of transporting hay from areas in which hay is in plentiful supply to the area in which the farmers and ranchers are located.

(B) The President shall take the action required under subparagraph (A) only if the Secretary of Agriculture reports to the President that—

(i) as a result of the drought, excessively hot weather, or flood disaster, the amount of hay readily available to such farmers and ranchers at reasonable prices to feed their livestock is substantially below the amount normally available; and

(ii) the assistance to be made available under paragraph (1) and haying or grazing permitted under paragraph (2) together will be insufficient to prevent substantial losses of livestock or liquidation of herds by such farmers and ranchers in such area.

(C) The Secretary of Agriculture shall determine whether the conditions described in clauses (i) and (ii) of subparagraph (B) exist for each natural disaster area, and if such conditions exist so report to the President, within thrity days after the date of enactment of this Act and at reasonable intervals of time thereafter.

(D) Prior to making any determination under subparagraph (B), the Secretary of Agriculture shall consult with the Governor and the Secretary of Agriculture (or comparable official) of the State involved, and give due consideration to the views of such persons.

(4) Paragraphs (1) and (3) shall become effective fifteen days after the date of enactment; and assistance under such paragraphs shall be available until March 31, 1987, or the date, as determined by the Secretary of Agriculture, on which the emergency created by the drought, excessively hot weather, or flood no longer exists, whichever is earlier.

(b) Effective October 1, 1986, section 1105 of the Food and Agriculture Act of 1977 (7 U.S.C. 2267) is amended by adding at the end thereof the following:

"(h) If—

"(1) the Secretary of Agriculture makes emergency livestock or poultry feed assistance available to producers in a county under section 407 of the Agricultural Act of 1949; but

"(2) surplus commodities of adequate nutritive value are not made available under such authority for distribution to such producers within ten days after the announcement of the program under such authority for such county,

the Secretary shall make assistance available to such producers under this section until such time as surplus commodities are made available under the announced program.".

DISASTER PAYMENT PROGRAM

SEC. **5. Notwithstanding any other provision of law:

(a) The Secretary of Agriculture shall make disaster payments available, at the request of the producer, on the 1986 crops of wheat, feed grains, upland cotton, rice, and soybeans, sugar beets and peanuts under sections 107D(c)(2)(D), 105C(c)(2)(D), 103A(c)(2)(D), 101A(c)(2)(D), and 201(k) of the Agricultural Act of 1949, respectively, to producers located in natural disaster areas.

(b) For the purposes of this section, the conditions set out in sections 107D(c)(2)(D)(i), 105C(c)(2)(D)(i), 103A(c)(2) (D)(i), and 101A(c)(2)(D)(i) of the Agricultural Act of 1949 shall be considered as having been met.

(c) Payments under this section shall be made in kind, as provided in section **9(a) of this Act, using surplus stocks held by the Commodity Credit Corporation.

(d) The total amount of in kind payments that a person shall be entitled to receive for the producer's crops of wheat, feed grains, upland cotton, rice, peanuts, sugar beets, and soybeans under this section shall not exceed an amount of commodities of a combined value of more than $100,000.

(e) In making payments to persons for a crop under this section, the Secretary of Agriculture shall ensure that each person that has entered into a crop insurance contract covering such crop under the Federal Crop Insurance Act receives payment under this section without any reduction in the amount of the payment to take into account the indemnity received by the person under the crop insurance contract for the crop, except that no such person shall receive a payment under this section on a portion of the person's normal production that combined with the indemnity under the person's crop insurance contract will cause such person to receive payments under both on more than 100 per centum of the person's normal production, as determined by the Secretary.

MILK PROGRAM PRODUCER ASSESSMENTS

SEC. **6. Notwithstanding any other provision of law;

(a) At the option of the producer, no reductions in the price received by producers for milk marketed for commercial use under section 201(d)(2)(A) of the Agricultural Act of 1949 shall be made on milk produced by producers in natural disaster areas and marketed for commercial use during the period beginning October 1, 1986, and ending December 31, 1986.

(b) The Secretary of Agriculture shall increase the amount of the reduction in the price received by each producer in a natural disaster area, if the producer exercises the option for a suspension of reductions under subsection (a), for milk produced and marketed by such producer for commercial use under section 201(d)(2)(A) of the Agricultural Act of 1949 during the period beginning January 1, 1987, and ending September 30, 1987, by an amount that will ensure that, to the extent practicable, the aggregate amount of reductions applicable to milk of such producer for the period beginning October 1, 1986, and ending September 30, 1987, will be the same aggregate amount of reductions that would have been made if the suspension of reductions under subsection (a) had not been in force for such producer.

ASSISTANCE FOR QUOTA AND ALLOTMENT HOLDERS

SEC. **7. (a) Effective only for the 1986 crop of peanuts, section 358a(k)(1) of the Agricultural Adjustment Act of 1938, as added effective for the 1986 through 1990 crops of peanuts, is amended by adding at the end thereof the following:

"Notwithstanding the foregoing provisions of this paragraph, because of the severe drought conditions in many 1986 peanut production areas and because producers of the 1986 crop were not timely notified of their farm poundage quotas, including any increase therein for undermarketings of quota peanuts from previous years, the Secretary shall waive the requirement, with respect to any 1986 farm poundage quota, that a lease of the quota may be entered into during the fall or after the normal planting season only if the quota has been planted on the farm from which the quota is leased, as provided in the following two sentences. The Secretary shall waive such requirement at the request of the owner, or the operator with permission of the owner, of the farm if the county committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act determines and certifies that such owner or operator made a good faith effort to plant and produce the 1986 quota on such farm. For the purpose of the preceding sentence, a person may establish that the person made a good faith effort to plant the crop by showing that person did not intentionally fail to plant or that the person was not provided with timely information as to the amount of the 1986 quota for the farm.".

(b) Section 316(a)(1)(A)(ii) of the Agricultural Adjustment Act of 1938 is amended by striking out the period at the end of the last sentence and inserting in lieu thereof a colon and the following: "*Provided*, That because of the severe drought conditions in many 1986 production areas, such prohibition on lease and transfer shall become effective beginning with the 1988 crop if the holder of record of the allotment or quota to be leased or transferred—

"(1) is age 55 or older and receives at least one-half the person's income from the allotment or quota; or

"(2) is blind or disabled; or

"(3) is a single head of household and receives at least one-half of the person's income from the allotment or quota.

For the purposes of the proviso to the preceding sentence, when there are more than one holder of record of the allotment or quota, if one-half or more of such holders meet one or more of the criteria under such proviso, such proviso shall apply to the allotment or quota.".

COST-SHARING FOR SOIL CONSERVATION MEASURES AND TIMBER STAND RESEEDING EXPENSES

(a) The Secretary of Agriculture shall make available—

(1) cost-sharing payments under the agricultural conservation program to producers in natural disaster areas for conservation measures designed to prevent anticipated soil erosion due to loss of vegetative cover; and

(2) cost-share payments under the forestry incentive program to forest landowners in natural disaster areas for the reestablishment of stands of pine trees lost to drought conditions.

(b) The Secretary shall share not less than 50 per centum of the cost of such measures or reestablishment of timber stands; and such cost-share payments shall be made in kind, as provided in section **9(a) of this Act, using surplus stocks of commodities held by the Commodity Credit Corporation.

(c) Payments made under this section shall be in addition to, and not in lieu of, payments made under the Soil Conservation and Domestic Allotment Act or the Cooperative Forestry Assistance Act of 1978 using funds appropriated for such purposes.

(d) Assistance under this section shall be made available to persons in natural disaster areas during the period beginning 15 days after the date of enactment of this Act and ending March 30, 1987.

PAYMENTS

SEC. **9. Notwithstanding any other provision of law:

(a)(1) In making in-kind payments under section **4(a)(1), **5, or **8, or subsection (c) of this section, the Secretary of Agriculture may—

(A) acquire and use commodities that have been pledged to the Commodity Credit Corporation as security for price support loans under the Agricultural Act of 1949, including loans made to producers under section 110 of such Act; and

(B) use other commodities owned by the Commodity Credit Corporation.

(2) The Secretary may make in-kind payments by—

(A) if requested by the producer, delivery of the commodity to the producer at a warehouse or other similar facility, as determined by the Secretary; or

(B)(i) the transfer of negotiable warehouse receipts;

(ii) the issuance of negotiable certificates that the Commodity Credit Corporation shall redeem for a commodity in accordance with regulations prescribed by the Secretary; or

(iii) such other methods as the Secretary determines appropriate to enable the producer to receive such payments in an efficient, equitable, and expeditious manner so as to ensure that the producer receives the same total return as if the payments had been made in cash.

(b) In carrying out this section and section **3, the Secretary, to the maximum extent practicable, shall use Commodity Credit Corporation commodities stored in storage deficient areas such as the midwestern United States.

(c) Transportation cost payments made under section **3(b)(2) or **4(a)(3) of this Act may be made in kind, as provided in subsection (a), using surplus stocks of commodities held by the Commodity Credit Corporation, or in cash.

(d) The Secretary of Agriculture shall assist recipients of in-kind payments in marketing warehouse receipts, certificates, or other documents representing such in-kind payments.

CREDIT FOREBEARANCE

SEC. **10. It is the sense of Congress that, with respect to farm borrowers who are adversely affected by natural disaster conditions in calendar year 1986—

(1) the Secretary of Agriculture should exercise the authority provided under section 331A of the Consolidated Farm and Rural Development Act and instruct the Farmers Home Administration to defer loan repayments and forgo foreclosures in cases where such farm borrowers are unable to make loan payments in

(2) the lending institutions of the Farm Credit System and commercial lending institutions are encouraged, insofar as practicable, to adopt lenient lending, forbearance, and foreclosure policies, and to the maximum extent possible participate and cooperate with Federal and State lenders in assistance programs, with respect to such borrowers who are under financial stress due to no fault of their own.

COORDINATION OF ASSISTANCE EFFORTS

SEC. **11. It is the sense of Congress that, with respect to the provision of Federal assistance to farmers and ranchers in natural disaster areas, the Secretary of Agriculture should take steps immediately to—

(1) establish an overall coordinating mechanism within the Department of Agriculture to ensure that the assistance provided by each agency within the Executive Branch is coordinated with, and complements, the assistance provided by other agencies;

(2) ensure that Government and voluntary agencies, and the farmers and ranchers, in each natural disaster area are provided a single contact person or unit for Federal assistance, and that a similar such Federal contact person or unit is provided for Government and voluntary agencies, farmers and ranchers, and other persons outside natural disaster areas who wish to contribute additional assistance to natural disaster areas; and

(3) consult with the Governor, Secretary of Agriculture (or comparable official), and the State disaster relief agency in each State in which a natural disaster area is located, on the disaster assistance needs of farmers and ranchers located in the State.

TITLE —RURAL ELECTRIFICATION AND TELEPHONE SYSTEMS LOANS

SEC. . PREPAYMENT OF FEDERAL FINANCIAL BANK LOANS.

In the case of a borrower of a loan made by the Federal Financing Bank, and guaranteed by the Administrator of the Rural Electrification Administration, under section 306 of the Rural Electrification Act of 1936 (7 U.S.C. 936) that is outstanding on the date of enactment of this Act, the borrower may prepay any loan advance by payment of the outstanding principal balance due on the loan advance using private capital, at repayment terms agreeable to the REA borrower, with the existing loan guarantee, which shall be fully transferable and assignable without condition and remain available for the remainder of the term originally agreed to by REA. No sums in addition to payment of such balance shall be charged as the result of such prepayment against the borrower, the Rural Electrification and Telephone Revolving Fund established under section 301 of such Act (7 U.S.C. 931), or the Rural Electrification Administration. To qualify for prepayment, the board of directors of the borrower shall certify that prepayment savings will be passed on to its customers, or be used to make debt service or other payments in cases of financial hardship, or to avoid future rate increases. Regulations under this provision shall be issued and become effective within 30 days of enactment of this Act and shall implement the intention of Congress to: (1) facilitate prepayment; (2) provide for full processing of each prepayment request within 30 days of its submission to REA: and (3) impose no restrictions, except as specifically provided for in this Act, which increase the cost to borrowers of obtaining private capital for prepayment, or which inhibit the ability of the borrower to enter into prepayment arrangements pursuant to this Act.

TITLE —RESEARCH ON EXTERNAL COMBUSTION ENGINES

SEC. . Section 4(m) of the Commodity Credit Corporation Act is amended at the end thereof by adding a new sentence as follows: "During fiscal year 1987, the Corporation shall use not more than 10,000,000 worth of surplus agricultural commodities owned by the Corporation in establishing and carrying out a research and development program on external combustion engines under this subsection: *Provided*, That to the extent that funding is made available from private sources to finance such program, the Corporation shall provide not less than twice that value in the form of Corporation-owned commodities.".

TITLE **a—AGRICULTURAL LOAN INTEREST SUBSIDY PROGRAM

SEC. 101. DEFINITIONS.

As used in this title:

(1) BORROWER.—The term "borrower" means a person who meets the eligibility criteria prescribed in section 103.

(2) LENDER.—The term "lender" means a commercial bank, savings and loan association, credit union, insurance company, or institution, including a subsidiary or affiliate thereof, that—

(A) has agreed to participate in the interest subsidy program; and

(B) has been approved for participation in the interest subsidy program by the appropriate State agency.

SEC. 102. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a Federal-State-Lender cooperative agricultural loan interest subsidy program under which, at the request of a State, borrowers and lenders within the State may participate in the interest subsidy program in accordance with this title.

(b) CONSULTATION.—The Secretary shall establish the interest subsidy program in consultation and cooperation with the Secretary of the Treasury, the Comptroller of the Currency, the Chairman of the Federal Reserve Board, the Chairman of the Farm Credit Administration, the Chairman of the Federal Deposit Insurance Corporation, and each State agency.

SEC. 103. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this title, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan made by a lender for agricultural purposes that is outstanding on April 1, 1986;

(3) during the period beginning on the date of the approval of a State plan under section 106 and ending September 30, 1987—

(A) be delinquent in the payment of principal or interest, or both, on the loan; or

(B) demonstrate to the lender that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower will be temporarily unable, without assistance provided under this Act, to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years;

(6) have a debt to asset ratio of at least 40 percent;

(7) have an ability to repay the loan, based on past performance as a capable producer and assistance to be provided under this Act; and

(8) not produce an agricultural commodity on highly erodible land or converted wetland in violation of section 1211 or 1221 of the Food Security Act of 1985 (16 U.S.C. 3811 or 3821).

SEC. 104. INTEREST SUBSIDIES.

(a) APPLICATIONS.—During the period beginning on the date of the approval of a State plan by the Secretary under section 106 and ending September 30, 1987, a borrower may apply to a lender for an interest subsidy for any agricultural loan made by the lender to the borrower that is outstanding on April 1, 1986.

(b) INTEREST SUBSIDIES.—If a borrower of a loan applies to a lender for an interest subsidy in accordance with subsection (a), the lender determines that the borrower meets the eligibility criteria prescribed in section 103, and the lender agrees to participate in the interest subsidy program, subject to this section, not later than 90 days after receipt of the application, the loan shall be restructured in such a manner that the interest rate payable by the borrower shall be fixed for a period of 3 years or the remaining term of the loan, whichever is less, at a rate equal to the interest rate of the loan on April 1, 1986, less up to 5 percentage points.

(c) PAYMENT OF SUBSIDIES.—If an interest subsidy is provided for a loan made by a lender to a borrower in a State—

(1) the Secretary shall pay 2 percentage points of the subsidy by making payments through the State agency to the lender;

(2) if the State elects to make such payments, the State may pay not less than 1 percentage point and not more than 2 percentage points of the subsidy by making payments to the lender; and

(3) the lender shall—

(A) pay 1 percentage point of the subsidy; or

(B) cancel at least 15 percent of the principal due on the loan.

(d) TERM OF LOAN.—The term of any loan for which an interest subsidy is provided under this section shall not be less than the term of the loan outstanding before the subsidy is provided.

(e) SCHEDULE OF PAYMENTS.—The schedule of payments on a restructured loan shall be established in accordance with the ability of the borrower to repay the loan.

(f) ACCRUED INTEREST.—Interest accrued on a restructured loan prior to restructuring shall not be capitalized but shall be paid by the borrower to the lender prior to any retirement of principal under the loan as restructured in accordance with this title.

(g) REPAYMENT.—Any balance of principal and interest outstanding on any restructured loan shall be repaid at a rate that is agreed on by the lender and borrower, except that the rate of interest on the loan may not exceed the standard rate charged by the lender on loans with comparable maturities for similar purposes at the time the loan is restructured.

(h) MAXIMUM AMOUNT OF ASSISTANCE.—The aggregate outstanding amount of loan principal for which an interest subsidy may be provided under this title may not exceed—

(1) in the case of a loan made to an individual, $400,000; and

(2) in the case of a loan made to a family corporation or family partnership, $600,000.

SEC. 105. PAYMENTS TO STATES.

(a) IN GENERAL.—From sums available pursuant to section 403 and subject to subsection (b) and section 106, the Secretary shall pay to each State for each of the fiscal years ending September 30, 1987, through September 30, 1990, an amount equal to the sum of—

(1) the amount necessary to finance the share of interest subsidies provided to borrowers residing in the State that is required to be paid by the Secretary under section 104(c)(1); and

(2) 100 percent of the administrative expenses that are incurred by the State agency in carrying out this title and are approved by the Secretary.

(b) MAXIMUM AMOUNT OF PAYMENTS.—The aggregate amount of payments paid by the Secretary to States under subsection (a) for a fiscal year may not exceed $600,000,000.

SEC. 106. STATE PLANS.

(a) IN GENERAL.—To be eligible to participate in the interest subsidy program during a fiscal year, a State must—

(1) submit a plan to the Secretary for the fiscal year; and

(2) receive the approval of the Secretary for the plan.

(b) PLAN REQUIREMENTS.—To receive the approval of the Secretary for a plan, a State must submit a plan that—

(1) designates a single agency that shall be responsible for the administration, or the supervision of the administration, of the interest subsidy program in the State;

(2) assesses the interest subsidy needs of borrowers residing in the State;

(3) describes the interest subsidy program established in the State (including any agency designated to provide a subsidy under such program), which program must meet such requirements as the Secretary may prescribe;

(4) estimates the amount of funds necessary to provide interest subsidies under the program and related administrative expenses, except that such amount may not exceed the amount allocated by the Secretary for payment to the State out of the total amount available for payment under section 105;

(5) requires any lender participating in the interest subsidy program to provide to any borrower who is delinquent in the payment of principal or interest, or both, due on a loan during the period referred to in section 104(a) prompt written notice that describes the assistance available under this title and any deadlines for application for the assistance; and

(6) includes such other information as the Secretary may require.

(c) APPROVAL OF PLANS.—(1) The Secretary shall approve or disapprove a plan submitted by a State under subsection (b) not later than 45 days after the State submits the plan.

(2) The Secretary shall approve any plan that complies with subsection (b).

(d) AUDITS.—(1) Each State agency shall—

(A) provide for an annual audit of expenditures made by the State agency in carrying out the interest subsidy program, not later than 60 days after the end of each year in which the program is conducted; and

(B) promptly report to the Secretary the findings of such audit.

(2) Not later than 60 days after the end of each year in which a State agency participates in the interest subsidy program, a State agency shall provide the Secretary with a statement that provides—

(A) a description of whether (and, if so, by how much) the payments received under section 105 for such year exceeded the expenditures by the State agency during such year; and

(B) such other information as the Secretary may require.

(e) DENIAL OR WITHHOLDING OF PAYMENTS.—(1) If the Secretary finds that a State has failed to comply with subsection (b) or (d) during a fiscal year, except as provided in paragraph (2), the Secretary shall—

(A) notify the appropriate State agency that payments will not be made to the State agency under section 105 for the year until the Secretary is satisfied that the State is complying with such subsection; and

(B) make no payments under section 105 until the Secretary is satisfied that the State is complying with such subsection.

(2) If the Secretary finds that a State has failed to comply with subsection (b) or (d) during a fiscal year, the Secretary may—

(A) suspend the denial of payments under paragraph (1) for such period as the Secretary determines is appropriate; and

(B) withhold payments of approved State administrative expenses incurred in providing assistance under the plan, in whole or in part, for the year,

until the Secretary is satisfied that the State is complying with such subsection, at which time such withheld payments shall be paid.

(3) If the Secretary finds that a State has substantially failed to comply with subsection (b) or (d), the Secretary may, in addition to or in lieu of any action taken under paragraph (1) or (2), refer the matter to the Attorney General with a request that the Attorney General seek injunctive relief to require compliance by the State. If the Attorney General brings a suit in an appropriate district court of the United States and makes a showing of substantial noncompliance appropriate injunctive relief shall issue.

SEC. 107. REVIEW BY SECRETARY AND STATE AGENCIES.

(a) REVIEW AND TECHNICAL ASSISTANCE BY SECRETARY.—The Secretary—

(1) shall provide for review, and may provide for an audit, of the manner in which the interest subsidy program is carried out in a State; and

(2) may provide to States technical assistance in carrying out the program.

(b) REVIEW BY STATE AGENCIES.—A State agency may monitor the compliance of a lender with this title. Any lender that violates this title shall be ineligible to receive further payments under this title.

SEC. 108. NOTICE AND DETERMINATIONS OF ASSISTANCE.

A lender in a State participating in the interest subsidy program may not take any action as the result of a borrower defaulting on an outstanding loan made by such lender to a borrower unless the lender has—

(1) provided the borrower with the notice required under section 106(b)(5); and

(2) in the case of a borrower who has applied for assistance under this title, determined that the borrower does not meet the eligibility criteria prescribed in section 103.

SEC. 109. ASSISTANCE OF FEDERAL AND STATE AGENCIES.

(a) IN GENERAL.—To make assistance under this title available expeditiously and in a consistent and uninterrrupted manner, the Secretary shall—

(1) use such funds, personnel, and facilities of the Department of Agriculture (including the Commodity Credit Corporation) as the Secretary considers necessary to carry out this title; and

(2) request other Federal or State agency to provide such funds, personnel, and facilities as the Secretary considers necessary to carry out this title.

(b) REIMBURSEMENT.—Any agency that provides advanced funds, personnel, or facilities under subsection (a) shall be fully reimbursed for such assistance as soon as is practicable from subsequent appropriations.

SEC. 110. PROGRAM INELIGIBILITY FOR PRODUCTION ON HIGHLY ERODIBLE LAND OR CONVERTED WETLAND.

(a) HIGHLY ERODIBLE LAND CONSERVATION.—Section 1211 of the Food Security Act of 1985 (16 U.S.C. 3811) is amended—

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(3) an interest subsidy during such crop year under the interest subsidy program established under section 102 of the Farm Credit Assistance Act of 1986.".

(b) WETLAND CONSERVATION.—Section 1221 of the Food Security Act of 1985 (16 U.S.C. 3821) is amended—

(1) by striking out "or" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; or"; and

(3) by adding at the end thereof the following new paragraph:

"(3) an interest subsidy during such crop year under the interest subsidy program established under section 102 of the Farm Credit Assistance Act of 1986.".

TITLE 6—FARM CREDIT SYSTEM INSTITUTION BORROWERS

SUBTITLE A—FARM CREDIT SYSTEM LOAN RESTRUCTURING PROGRAM

SEC. 201. DEFINITIONS.

As used in this subtitle:

(1) BORROWER.—The term "borrower" means a borrower of a loan made by an institution.

(2) CAPITAL CORPORATION.—The term "Capital Corporation" means the Farm Credit System Capital Corporation established under section 4.28A of the Farm Credit Act of 1971 (12 U.S.C. 2216).

(3) CHAIRMAN.—The term "Chairman" means the Chairman of the Farm Credit Administration Board designated under section 5.8(a) of the Farm Credit Act of 1971 (12 U.S.C. 2242(a)).

(4) COMMITTEE.—The term "committee" means a credit review committee selected from and by—

(A) the local board of directors of the institution from which a loan originated; or

(B) in the case of consolidated or merged institutions, members of a local advisory board elected by the stockholders served by the merged or consolidated institutions from which a loan originated.

(5) COST OF FORECLOSURE.—The term "cost of foreclosure" includes—

(A) the difference between the outstanding amount of principal due on a loan made by an institution and the value of collateral used to secure the loan, taking into consideration the lien position of the institution;

(B) the estimated cost of maintaining a loan as a nonperforming asset;

(C) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure;

(D) the estimated, adverse impact of the sale of property acquired as the result of a loan foreclosure on the value of property held by other borrowers of institutions;

(E) the estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(F) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(6) LOAN.—The term "loan" means a loan made by an institution under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

SEC. 202. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this subtitle, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan made by, and a stockholder of, an institution who is delinquent in the payment of principal or interest, or both, on the loan on the date of enactment of this Act or during the 3-year period beginning on such date;

(3) demonstrate to the institution that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower is temporarily unable to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years; and

(6) have an ability to repay the loan, based on past performance as a capable producer and assistance provided under this Act.

SEC. 203. LOAN DETERMINATIONS.

Before instituting a proceeding to foreclose a loan made to a borrower, an institution must determine—

(1) the cost of foreclosure; and

(2) the cost of restructuring the loan in accordance with this subtitle.

SEC. 204. LOAN FORECLOSURE AND RESTRUCTURING.

If an institution determines that the cost of foreclosure of a loan made to a borrower is equal to or exceeds the cost of restructuring the loan in accordance with this subtitle, in lieu of foreclosure, the institution shall reduce the principal or interest, or both, due on the loan, or otherwise restructure the loan, in a manner that would enable the borrower to make payments of principal and interest due on the loan without unduly impairing the standard of living of the borrower.

SEC. 205. ADDITIONAL COLLATERAL.

An institution may not—

(1) require any borrower to provide additional collateral to secure a loan if the borrower is current in the payment of principal or interest on the loan; or

(2) bring any action to foreclose on, or otherwise liquidate, any loan as the result of the failure of a borrower to provide additional collateral to secure a loan if the borrower was current in the payment of principal or interest on the loan at the time the additional collateral was required.

SEC. 206. APPEALS.

(a) DETERMINATION OF INELIGIBILITY.—(1) If an institution determines that a person does not meet the eligibility criteria prescribed in section 202, not later than 15 days after such determination, the institution shall provide the person with a written notice of—

(A) the determination and the reasons for the determination; and

(B) the right of the person to appeal the determination before a committee.

(2) If a person makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the person shall have the right to appear before the committee to contest the determination.

(b) DETERMINATION TO NOT RESTRUCTURE.—(1) If an institution determines that the cost of restructuring a loan in accordance with this subtitle exceeds the cost of foreclosure of the loan, not later than 15 days after such determination, the institution shall provide the borrower of the loan with a written notice of—

(A) the determination and the reasons for the determination;

(B) the computations used by the institution to make the determination, including the estimate of the collateral value of the land used to secure the loan; and

(C) the right of the borrower to appeal the determination before a committee.

(2) If a borrower of a loan made by an institution makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the borrower shall have the right to—

(A) request the committee to arrange an independent appraisal of the cost of foreclosure of the loan and the cost of restructuring the loan in accordance with this subtitle; and

(B) appear before the committee to contest the determination.

(3) If a borrower requests a committee to arrange an independent appraisal made under paragraph (2)(A), the committee shall—

(A) arrange the independent appraisal, in accordance with regulations issued by the Farm Credit Administration; and

(B) consider such appraisal when reviewing the determination of the committee.

(4) If an independent appraisal is conducted under this subsection of the cost of foreclosure of a loan made by an institution to a borrower and the cost of restructuring the loan in accordance with this subtitle, the cost of the appraisal shall be borne by—

(A) the institution if the appraised cost of restructuring the loan in accordance with this subtitle is equal to or less than the appraised cost of the foreclosure of the loan; or

(B) the borrower if the appraised cost of restructuring the loan in accordance with this subtitle is greater than the appraised cost of the foreclosure of the loan.

(c) DETERMINATION TO RESTRUCTURE.—(1) If an institution determines that a borrower of a loan meets the eligibility criteria prescribed in section 202 and that the cost of restructuring the loan in accordance with this subtitle is less than or equal to the cost of foreclosure of the loan, not later than 15 days after such determination, the institution shall provide the borrower with a written notice of—

(A) the determination and the reasons for the determination;

(B) the amount of the reduction in principal or interest, or both, or method of restructuring, the institution determines is adequate to enable the borrower to make payments in accordance with section 204; and

(C) the right of the borrower to contest the amount of the reduction, or method of restructuring, before a committee.

(2) If a borrower makes a written request to a committee not later than 30 days after receipt of a notice to contest the amount of the reduction, or method of restructuring, referred to in paragraph (1), the borrower shall have the right to appear before the committee to contest the amount of the reduction or method of restructuring.

(d) VOLUNTARY AGREEMENTS.—A borrower of a loan made by an institution shall have the right to appear before a committee to contest a determination, amount, or action under this subtitle if—

(1) the institution and the borrower enter into an agreement under which the institution agrees to restructure the loan in accordance with the subtitle and the borrower agrees not to contest the determination, amount, or action, as the case may be;

(2) the institution does not restructure the loan in accordance with this subtitle; and

(3) the borrower makes a written request to the committee to contest the determina-

tion, amount, or action, as the case may be, not later than 30 days after the date by which the institution agreed to restructure the loan in accordance with this subtitle.

(e) NOTICE OF DECISIONS.—Not later than 15 days after any review conducted by a committee, the committee shall provide the aggrieved person or borrower with written notice of the decision of the committee and the reasons for the decision.

SEC. 207. REIMBURSEMENT FOR PRINCIPAL REDUCTION.

The Capital Corporation shall reimburse an institution for the amount of principal due on loans that is reduced by the institution under section 204 if the Chairman determines that such action is necessary to avoid the liquidation or insolvency of the institution.

SEC. 208. REPORT.

Not later than 270 days after the date of enactment of this Act, the Chairman shall submit a report to Congress on the operation of this subtitle, including—

(1) an analysis of the impact of actions taken under this subtitle on losses suffered by institutions;

(2) an analysis of the impact of the actions on property values;

(3) an analysis of the accuracy of the cost of foreclosure determined by institutions under this subtitle;

(4) the number and amount of loans restructured in accordance with the subtitle;

(5) the number of current and estimated future delinquencies before and after the expiration of this subtitle on loans made to borrowers; and

(6) the recommendations of the Chairman concerning reauthorization of this subtitle.

SUBTITLE B—FARM CREDIT SYSTEM REFORM

SEC. 211. ACCESS TO APPRAISALS.

Section 4.13A of the Farm Credit Act of 1971 (12 U.S.C. 2200) is amended to read as follows:

"SEC. 4.13A. ACCESS TO DOCUMENTS AND INFORMATION.—In accordance with regulations of the Farm Credit Administration, a System institution shall provide to each borrower of such institution—

"(1) at the time of execution of a loan, a copy of each document signed by the borrower;

"(2) at any time thereafter, on request, a copy of each document signed or delivered by the borrower;

"(3) at any time, on request, a copy of the articles of incorporation or charter and bylaws of the institution; and

"(4) at the time of execution of a loan and at any time thereafter, on request, a copy of each appraisal of the assets of the borrower.".

SEC. 212. HOMESTEAD PROTECTION.

Part C of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.20 (12 U.S.C. 2208) the following new section:

"SEC. 4.21. HOMESTEAD PROTECTION.—If an institution forecloses a loan made by the institution or a borrower of a loan made by the institution declares bankruptcy or goes into voluntary liquidation to avoid foreclosure or bankruptcy, the institution is encouraged to permit the borrower to retain possession and occupancy of the principal residence of the borrower, and a reasonable amount of adjoining land, to maintain the family of the borrower.".

SEC. 213. INTEREST RATES ON CLASSIFIED LOANS.

Part C of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.22 (as added by section 212) the following new section:

"SEC. 4.22. An institution of the Farm Credit System may not increase the interest rate on a loan made to a borrower that is outstanding on the date of enactment of the Farm Credit Assistance Act of 1986 as the result of the loan having been classified as a risk or problem loan.".

SEC. 214. CERTIFICATION OF NEED FOR FINANCIAL ASSISTANCE.

Section 4.28J of the Farm Credit Act of 1971 (12 U.S.C. 2216i) is amended by inserting after "TREASURY.—" the following new sentence: "Not later than 60 days after the date of enactment of the Farm Credit Assistance Act of 1986, and each 90 days thereafter, the Farm Credit Administration shall determine whether the Farm Credit System is in need of financial assistance to address financial stress of System institutions.".

SEC. 215. OPERATING EXPENSES OF INSTITUTIONS.

Part D1 of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.28L (12 U.S.C. 2216k) the following new section:

"SEC. 4.28M. OPERATING EXPENSES OF INSTITUTIONS.—During the period beginning on the date of enactment of the Farm Credit Assistance Act of 1986 and ending the later of September 30, 1990, or such time as the Secretary of the Treasury no longer holds any obligations issued by the Capital Corporation, the operating expenses of an institution of the Farm Credit System may not exceed the average cost of bonds issued by the System, plus 1 percent.".

SEC. 216. DISPOSITION AND LEASING OF FARMLAND.

Part F of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.36 (12 U.S.C. 2219a) the following new section:

"SEC. 4.37. DISPOSITION AND LEASING OF FARMLAND.—(a) The Farm Credit Administration shall issue regulations for the disposition and leasing of farmland acquired by any institution of the Farm Credit System, including the Capital Corporation, (hereafter in this section referred to as an 'institution') in accordance with this section.

"(b) An institution shall to the extent practicable sell or lease farmland acquired under this Act in the following order of priority:

"(1) Sale of such farmland to operators (as of the time immediately before such sale) of not larger than family-size farms.

"(2) Lease of such farmland to operators (as of the time immediately before such lease is entered into) of not larger than family-size farms.

"(c)(1) An institution shall not offer for sale or sell any such farmland if the placing of such farmland on the market will have a detrimental effect on the value of farmland in the area.

"(2) In selling such land, the institution shall give special consideration to a previous owner or operator of such land.

"(d)(1) An institution shall consider granting, and may grant, to an operator of not larger than a family-size farm, in conjunction with subsection (e), a lease with an option to purchase farmland acquired under this Act.

"(2) The Farm Credit Administration shall issue regulations providing for leasing such land, or leasing such land with an option to purchase, on a fair and equitable basis.

"(3) In leasing such land, the institution shall give special consideration to a previous owner or operator of such land if such owner or operator has financial resources, and farm management skills and experience, that the institution determines are sufficient to assure a reasonable prospect of success in the proposed farming operation.

"(4) To the extent an institution may lease or operate real property under this section, the institution shall, if the institution determines to administer such property through management contracts, offer the contracts on a competitive bid basis, giving preference to persons who will live in, and own and operate qualified small businesses in, the area where the property is located.

"(e)(1) An institution shall offer such land for sale to operators of not larger than family-size farms at a price that reflects the average annual income that may be reasonably anticipated to be generated from farming such land.

"(2) If two or more qualified operators of not larger than family-size farms desire to purchase, or lease with an option to purchase, such land, the local board of the institution shall, by majority vote, select the operator who may purchase such land.

"(f) Of farmland is available for disposition under this section, the institution shall—

"(1) publish an announcement of the availability of such farmland in at least one newspaper that is widely circulated in the county in which the farmland is located; and

"(2) post an announcement of the availability of such farmland in a prominent place in the local office of the institution that serves the county in which the farmland is located.".

SEC. 217. STOCK PURCHASE REQUIREMENT.

Part F of title IV of the Farm Credit Act of 1971 is amended by adding after section 4.37 (as added by section 216) the following new section:

"SEC. 4.38. STOCK PURCHASE REQUIREMENT.—A borrower must purchase stock in the Farm Credit System, in accordance with regulations issued by the Farm Credit Administration, to be eligible—

"(i) to obtain a loan from an institution of the Farm Credit System; or

"(2) to enter into an installment contract for the purchase of farmland acquired by the Farm Credit System.".

TITLE **C—FARMERS HOME ADMINISTRATION BORROWERS

SEC. 301. DEFINITIONS.

As used in this title

(1) BORROWER.—The term "borrower" means a borrower of a loan who meets the eligibility criteria prescribed in section 302.

(2) COMMITTEE.—The term "committee" means the appropriate county committee established under section 332 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1982).

(3) COST OF FORECLOSURE.—The term "cost of foreclosure" includes—

(A) the difference between the outstanding amount of principal due on a loan and the value of collateral used to secure the loan, taking into consideration the lien position of the Secretary;

(B) the estimated cost of maintaining a loan as a nonperforming asset;

(C) the estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure;

(D) the estimated, adverse impact of the sale of property acquired as the result of a loan foreclosure on the value of property held by other borrowers of the Secretary;

(E) the estimated cost of changes in the value of collateral used to secure a loan during the period begining on the date of the initiation of action to foreclose or liquidate the loan and the ending on the date of the disposition of the collateral; and

(F) all other costs incurred as the result of the foreclosure or liquidation of a loan.

(4) LOAN.—the term "loan" means a loan made by the Secretary under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.).

SEC. 302. ELIGIBILITY FOR ASSISTANCE.

To be eligible to receive assistance under this title, a person must—

(1) be an individual, family corporation, or family partnership;

(2) be a borrower of a loan who is delinquent in the payment of principal or interest, or both, on the loan on the date of enactment of this Act or during the 3-year period beginning on such date;

(3) demonstrate to the Secretary that, due to circumstances beyond the control of the borrower (including depressed land values, high interest rates, and low prices for agricultural commodities), the borrower is temporarily unable to continue making payments of the principal and interest when due without unduly impairing the standard of living of the borrower;

(4) have derived at least 50 percent of the gross annual income of the borrower from the production of raw agricultural products, including livestock, poultry, or the products of aquaculture, during at least 3 of the 5 preceding taxable years;

(5) have had gross annual sales of agricultural commodities of at least $30,000 during at least 3 of the 5 preceding taxable years; and

(6) have an ability to repay the loan, based on past performance as a capable producer and assistance provided under this Act.

SEC. 303. LOAN DETERMINATIONS.

Before instituting a proceeding to foreclose a loan made to a borrower, the Secretary must determine—

(1) the cost of foreclosure; and

(2) the cost of restructuring the loan in accordance with this title.

SEC. 304. LOAN FORECLOSURE AND RESTRUCTURING.

If the Secretary determines that the cost of foreclosure of a loan made to a borrower is equal to or exceeds the cost of restructuring the loan in accordance with this title, in lieu of foreclosure, the Secretary shall reduce the principal or interest, or both, due on the loan, or otherwise restructure the loan, in a manner that would enable the borrower to make payments of principal and interest due on the loan without unduly impairing the standard of living of the borrower.

SEC. 305. ADDITIONAL COLLATERAL.

The Secretary may not—

(1) require any borrower to provide additional collateral to secure a loan if the borrower is current in the payment of interest on the loan; or

(2) bring any action to foreclose on, or otherwise liquidate, any loan as the result of the failure of a borrower to provide additional collateral to secure a loan if the borrower was current in the payment of interest on the loan at the time the additional collateral was required.

SEC. 306. APPEALS.

(a) DETERMINATION OF INELIGIBILITY.—(1) If the Secretary determines that a person does not meet the eligibility criteria prescribed in section 302, not later than 15 days after such determinaiton, the Secretary shall provide the person with a written notice of—

(A) the determination and the reasons for the determination; and

(B) the right of the person to appeal the determination before a committee.

(2) If a person makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the person shall have the right to appear before the committee to contest the determination.

(b) DETERMINATION TO NOT RESTRUCTURE.—(1) If the Secretary determines that the cost of restructuring a loan in accordance with this title exceeds the cost of foreclosure of the loan, not later than 15 days after such determination, the Secretary shall provide the borrower of the loan with a written notice of—

(A) the determination and the reasons for the determination;

(B) the computations used by the Secretary to make the determination, including the estimate of the collateral value of the land used to secure the loan; and

(C) the right of the borrower to appeal the determination before a committee.

(2) If a borrower of a loan made by the Secretary makes a written request to a committee not later than 30 days after receipt of a notice to contest a determination referred to in paragraph (1), the borrower shall have the right to—

(A) request the committee to arrange an independent appraisal of the cost of foreclosure of the loan and the cost of restructuring the loan in accordance with this title; and

(B) appear before the committee to contest the determination.

(3) If a borrower requests a committee to arrange an independent appraisal made under paragraph (2)(A), the committee shall—

(A) arrange the independent appraisal, in accordance with regulations issued by the Farm Credit Administration; and

(B) consider such appraisal when reviewing the determination of the committee.

(4) If an independent appraisal is conducted under this subsection of the cost of foreclosure of a loan made by the Secretary to a borrower and the cost of restructuring the loan in accordance with this title, the cost of the appraisal shall be borne by—

(A) the Secretary if the appraised cost of restructuring the loan in accordance with this title is equal to or less than the appraised cost of the foreclosure of the loan; or

(B) the borrower if the appraised cost of restructuring the loan in accordance with this title is greater than the appraised cost of the foreclosure of the loan.

(c) DETERMINATION TO RESTRUCTURE.—(1) If the Secretary determines that a borrower of a loan meets the eligibility criteria prescribed in section 302 and that the cost of restructuring the loan in accordance with this title is less than or equal to the cost of foreclosure of the loan, not later than 15 days after such determination, the Secretary shall provide the borrower with a written notice of—

(A) the determination and the reasons for the determination;

(B) the amount of the reduction in principal or interest, or both, or method of restructuring, the Secretary determines is adequate to enable the borrower to make payments in accordance with section 304; and

(C) the right of the borrower to contest the amount of the reduction, or method of restructuring, before a committee.

(2) If a borrower makes a written request to a committee not later than 30 days after receipt of a notice to contest the amount of the reduction, or the method of restructuring, referred to in paragraph (1), the borrower shall have the right to appear before the committee to contest the amount of the reduction or method of restructuring.

(d) VOLUNTARY AGREEMENTS.—A borrower of a loan made by the Secretary shall have the right to appear before a committee to contest a determination, amount, or action under this title if—

(1) the Secretary and the borrower enter into an agreement under which the Secretary agrees to restructure the loan in accordance with this title and the borrower agrees not to contest the determination, amount, or action, as the case may be;

(2) the Secretary does not restructure the loan in accordance with this title; and

(3) the borrower makes a written request to the committee to contest the determination, amount, or action, as the case may be, not later than 30 days after the date by which the Secretary agreed to restructure the loan in accordance with this title.

(e) NOTICE OF DECISIONS.—Not later than 15 days after any review conducted by a committee, the committee shall provide the aggrieved person or borrower with written notice of the decision of the committee and the reasons for the decision.

SEC. 307. REPORT.

Not later than 270 days after the date of enactment of this Act, the Secretary shall submit a report to Congress on the operation of this title, including—

(1) an analysis of the impact of actions taken under this title on losses suffered by the Secretary;

(2) an analysis of the impact of the actions on property values;

(3) an analysis of the accuracy of the cost of foreclosure determined by the Secretary under this title;

(4) the number and amount of loans restructured in accordance with this title;

(5) the number of current and estimated future delinquencies before and after the expiration of this title on loans made to borrowers; and

(6) the recommendations of the Secretary concerning reauthorization of this title.

SEC. 308. ALTERNATIVE CROP LOAN PROGRAM.

The Consolidated Farm and Rural Development Act is amended by inserting after section 352 (7 U.S.C. 2000) the following new section:

"SEC. 353. (a) For purposes of this section, the term 'alternative crop' means any agricultural operation (including aquaculture and livestock production) conducted by an applicant if—

"(1) there is no substantial history of such operation in the area in which the applicant resides; and

"(2) the applicant has derived from such operation not more than 20 percent of the gross annual income of the applicant during any of the 5 preceding taxable years.

"(b) In addition to the purposes prescribed in sections 303 and 312, the Secretary may make and insure, or guarantee, real estate and operating loans under subtitles A and B, respectively, to farmers and ranchers in the United States for the production of alternative crops.

"(c)(1) Subject to paragraph (2), to be eligible to obtain a loan or loan guarantee for a real estate or operating loan for the production of an alternative crop, a person must—

"(A) meet the eligibility requirements prescribed for a real estate loan under section 302 or an operating loan under section 311, respectively; and

"(B) submit to, and receive the approval of, the Secretary for a 5-year plan of projected production and income from the proposed alternative crop.

"(2) In determining eligibility for a loan or loan guarantee under this section, the Secretary shall consider training or farming experience that the Secretary determines is sufficient to assure reasonable prospects of success in the proposed farming operation, whether or not such training or experience is in the production of an alternative crop.

"(d) The Secretary may enter into a multiyear commitment to provide a loan or loan guarantee under this section for a term, of not to exceed 3 years, that is consistent with the nature of the alternative crop operation.".

TITLE **d—MISCELLANEOUS PROVISIONS

SEC. 401. INTER-AGENCY AGRICULTURAL TASK FORCE.

(a) ESTABLISHMENT.—In light of the severe economic problems confronted by many agricultural banks and the regulatory responsibilities of bank regulatory agencies, not later than 30 days after the date of enactment of this Act, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Federal Reserve System shall develop an Inter-Agency Agricultural Task Force to assist commercial agricultural banks and the borrowers of the banks to resolve present economic problems and to facilitate commercial bank lending to agriculture in the future.

(b) DUTIES.—The Inter-Agency Task Force shall—

(1) review existing regulations and policies to facilitate agricultural lending;

(2) cooperate with field office personnel to avoid conflicts and inconsistencies between the agencies; and

(3) consider meaningful alternatives to assist commercial banks in providing agricultural financing through regulatory or statutory changes, including accounting changes, interest rate buy-downs, or other similar methods for assisting banks.

(c) REPORTS.—Not later than 6 months after the date of enactment of this Act, and semiannually thereafter, the Inter-Agency Task Force shall report its findings and recommendations in carrying out this section to—

(1) the Committee on Agriculture to the House of Representatives;

(2) the Committee on Agriculture, Nutrition, and Forestry of the Senate;

(3) the Committee on Banking, Finance and Urban Affairs of the House of Representatives; and

(4) the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 402. REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Secretary and the Farm Credit Administration shall issue such regulations as are necessary to carry out provisions of this Act under their jurisdiction.

SEC. 403. GENERAL DEFINITIONS.

As used in titles **a through **d of this Act—

(1) INSTITUTION.—The term "institution" means an institution of the Farm Credit System described in section 1.2 of the Farm Credit Act of 1971 (12 U.S.C. 2002).

(2) INTEREST SUBSIDY PROGRAM.—The term "interest subsidy program" means the Federal-State-Lender cooperative agricultural loan interest subsidy program established under title **a.

(3) FCS LOAN RESTRUCTURING PROGRAM.—The term "FCS loan restructuring program" means the restructuring program established under subtitle A of title **b for loans made by institutions of the Farm Credit System.

(4) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(5) STATE.—The term "State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or (to extent the Secretary determines it is feasible and appropriate) the Trust Territory of the Pacific Islands.

(6) STATE AGENCY.—The term "State agency" means the agency designated by a State under section 106(b)(1) of this Act to carry out the interest subsidy program in the State.

(7) The term "this Act" means titles **a through **d of this resolution.

SEC. 404. AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated such sums as may be necessary to out this Act.

SEC. 405. TERMINATION DATE. Except as otherwise provided in this Act, the authority granted by this Act shall terminate 3 years after the date of enactment of this Act.

SEC. 406. SHORT TITLE. Titles **a through **d of this resolution may be cited as the "Farm Credit Assistance Act of 1986".

TITLE —FARM CREDIT SYSTEM

SEC. . TREATMENT OF CERTAIN FARM CREDIT ASSOCIATIONS.

Section 5.17(a)(2) of the Farm Credit Act of 1971 is amended by striking out in line 2 "; and the Farm Credit Administration shall ensure that the board of directors of district banks does not discriminate against the disapproving associations in exercising its supervisory authorities. Such associations shall not be (i) charged any assessment under this Act at a rate higher than that charged like associations in the district or (ii) discriminated against in the provision of any financial service and assistance" and insert in lieu thereof the following: ". The Farm Credit Administration shall ensure that disapproving associations (i) shall not be charged any assessment under this Act at a rate higher than that charged other like associations in the district and (ii) shall be provided, on the same basis as like associations in the district, financial services and assistance".

TITLE —SCHOOL LUNCH AND CHILD NUTRITION AMENDMENTS OF 1986

Subtitle I—Reauthorization of Child Nutrition Programs

SEC. 101. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

Section 13(p) of the National School Lunch Act (42 U.S.C. 1761(p)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 102. COMMODITY DISTRIBUTION PROGRAM.

Section 14(a) of the National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 103. STATE ADMINISTRATIVE EXPENSES.

Section 7(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(i)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. 104. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(1) in subsection (c)(2), by striking out "Subject to" and all that follows through "1984" and inserting in lieu thereof "Subject to amounts appropriated to carry out this section under subsection (g)";

(2) in subsection (g)—

(A) by designating the first and second sentences as paragraphs (1) and (3), respectively; and

(B) by amending paragraph (1) (as so designated) to read as follows:

"(1) There are authorized to be appropriated to carry out this section $1,570,000,000 for the fiscal year ending September 30, 1986, such sums as may be necessary for each of the fiscal years ending September 30, 1987, and September 30, 1988, and $1,782,000,000 for the fiscal year ending September 30, 1989."; and

(3) in subsection (h)(2), by striking out "1984" and inserting in lieu thereof "1989".

SEC. 105. NUTRITION EDUCATION AND TRAINING PROGRAM.

The first sentence of section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "1984" and inserting in lieu thereof "1989".

Subtitle II—School Lunch and Breakfast Programs

SEC. 201. BASIS OF COMMODITY ASSISTANCE.

Section 6(b) of the National School Lunch Act (42 U.S.C. 1755(b)) is amended—

(1) in the first sentence, by striking out "May 15" and inserting in lieu thereof "June 1"; and

(2) in the second sentence, by striking out "June 15" and inserting in lieu thereof "July 1".

SEC. 202. INCLUSION OF WHOLE MILK AS A SCHOOL LUNCH BEVERAGE.

Effective July 1, 1986, section 9(a) of the National School Lunch Act (42 U.S.C. 1758(a)) is amended—

(1) by designating the first, second, and third sentence as paragraphs (1), (3), and (4), respectively; and

(2) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) In addition to such other forms of milk as the Secretary may determine, the lunches shall offer whole milk as a beverage.".

SEC. 203. AUTOMATIC ELIGIBILITY FOR CERTAIN PROGRAMS.

Effective July 1, 1986, section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)) is amended by adding at the end thereof the following new paragraph:

"(6)(A) A child shall be considered automatically eligible for a free lunch and breakfast under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively, without further application or eligibility determination, if the child is a member of—

"(i) a household receiving assistance under the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

"(ii) an AFDC assistance unit (under the aid to families with dependent children program authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)), in a State where the standard of eligibility for the assistance does not exceed 130 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

"(B) Proof of receipt of food stamps or aid to families with dependent children shall be sufficient to satisfy any verification requirement imposed under paragraph (2)(C).".

SEC. 204. LIMITATION ON MEAL CONTRACTING.

Effective July 1, 1986, section 9 of the National School Lunch Act (42 U.S.C. 1758) is amended by adding at the end thereof the following new subsection:

"(e) A school or school food authority participating in a program under this Act may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced-price, and full-price reimbursable meals to all eligible children.".

SEC. 205. CHANGE IN TUITION LIMITATION FOR PRIVATE SCHOOLS.

(a) School Lunch Programs.—Section 12(d)(5) of the National School Lunch Act (42 U.S.C. 1760(d)(5)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1,500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(b) School Breakfast Programs.—Section 15(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1784(c)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1,500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(c) Application.—(1) The amendments made by subsections (a)(1) and (b)(1) shall apply for the fiscal year beginning on October 1, 1986, and each school year thereafter.

(2) The amendments made by subsections (a)(2) and (b)(2) shall apply for the school year beginning on July 1, 1988, and each school year thereafter.

SEC. 206. USE OF SCHOOL LUNCH FACILITIES FOR ELDERLY PROGRAMS.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end thereof the following new subsection:

"(i) Facilities, equipment, and personnel provided to a school food authority for a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C 1771 et seq.) may be used, as determined by a local educational agency, to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).".

SEC. 207. PILOT PROJECTS FOR ADMINISTRATION OF CHILD NUTRITION PROGRAMS BY CONTRACT OR DIRECT DISBURSEMENT.

(a) Pilot Projects.—Section 20 of the National School Lunch Act (42 U.S.C. 1769) is amended by striking out subsection (d) and inserting in lieu thereof the following new subsection:

"(d) The Secretary may conduct pilot projects in not more than three States in which the Secretary is currently administering programs to evaluate the effects of the Secretary contracting with private profit and nonprofit organizations to act as a State agency under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) for schools, institutions, or service institutions referred to in section 10 of this Act and section 5 of the Child Nutrition Act of 1966 (42 U.S.C. 1774).".

(b) Conforming Amendment.—The first sentence of section 20(c) of the National School Lunch Act is amended by striking out "except for the pilot projects conducted under subsection (d) of this section,".

SEC. 208. DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS.

(a) School Lunches.—Section 22(d) of the National School Lunch Act (42 U.S.C. 1769b(d)) (as added by section 1408(a) of the Education Amendments of 1978 (92 Stat. 2368)) is amended by striking out "and for" and all that follows through "reduced-price lunch".

(b) School Breakfasts.—Section 20(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1789) is amended by striking out "and for" and all that follows through "reduced-price breakfast.".

SEC. 209. RESTORATION OF CERTAIN KINDERGARTENS TO THE SPECIAL MILK PROGRAM

Effective October 1, 1986, section 3(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)) is amended—

(1) in the first sentence—

(A) by inserting "(1)" after the subsection designation;

(B) by redesignating clauses (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) in subparagraph (A) (as so redesignated), by inserting "except as provided in paragraph (2)," after "and under,";

(2) by designating the second through eighth sentences as paragraphs (3) through (9), respectively; and

(3) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under this Act or the National School Lunch Act (42 U.S.C. 1751 et seq.).".

SEC. 210. IMPROVEMENT OF BREAKFAST PROGRAM MEAL PATTERN.

(a) Additional Assistance.—Effective October 1, 1986, section 4(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)) is amended by adding at the end thereof the following new paragraphs:

"(3) The Secretary shall increase by 3 cents the annually adjusted payment for each breakfast served under this Act and section 17 of the National School Lunch Act (42 U.S.C. 1766). These funds shall be used to assist States, to the extent feasible, in improving the nutritional quality of the breakfasts.

"(4) Notwithstanding any other provision of law, whenever stocks of agricultural commodities are acquired by the Secretary or the Commodity Credit Corporation and are not likely to be sold by the Secretary or the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, the Secretary shall make such commodities available to school food authorities and eligible institutions serving breakfasts under this Act in a quantity equal in value to not less than 3 cents for each breakfast served under this Act and section 17 of the National School Lunch Act.

"(5) Expenditures of funds from State and local sources for the maintenance of the breakfast program shall not be diminished as a result of funds or commodities received under paragraph (3) or (4).".

(b) Nutrition Requirements.—(1) The Secretary of Agriculture shall review and revise the nutrition requirements for meals served under the breakfast program authorized under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and section 17 of the National School Lunch Act (42 U.S.C. 1766) to improve the nutritional quality of the meals, taking into consideration both the findings of the National Evaluation of School Nutrition Programs and the need to provide increased flexibility in meal planning to local food authorities.

(2) Not later than 180 days after the date of enactment of this title, the Secretary of Agriculture shall promulgate regulations to implement the revisions.

SEC. 211. EXTENSION OF OFFER VERSUS SERVE PROVISION TO THE SCHOOL BREAKFAST PROGRAM.

Section 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this Act may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume. A refusal of an offered food item shall not affect the full charge to the student for a breakfast meeting the requirements of this section or the amount of payments made under this Act to a school for the breakfast.".

SEC. 212. STAFFING STANDARDS.

Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) (as amended by section 103) is further amended—

(1) by striking out subsection (b); and

(2) by redesignating subsections (c) through (i) as subsections (b) through (h), respectively.

Subtitle III—Special Supplemental Food Program for Women, Infants, and Children

SEC. 301. COSTS FOR NUTRITION SERVICES AND ADMINISTRATION.

(a) Definitions.—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended—

(1) by striking out paragraph (1);

(2) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively; and

(3) by inserting after paragraph (3) (as so redesignated) the following new paragraph:

"(4) 'Costs for nutrition services and administration' means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.".

(b) CONFORMING AMENDMENTS.—Section 17 of such Act is amended—

(1) by striking out "administrative funds" each place it appears in subsections (f)(11), (h)(2), (h)(3), and (h)(4) and inserting in lieu thereof "funds for nutrition services and administration"; and

(2) by striking out "administrative costs" each place it appears in subsection (h) and inserting in lieu thereof "costs for nutrition services and administration".

SEC. 302. STATE ELIGIBILITY FOR WIC FUNDS.

(a) ELIGIBILITY.—Section 17(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(c)) is amended by adding at the end thereof the following new paragraph:

"(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a State beginning with the fiscal year that commences after the end of the first regular session of the State legislature following the date of the enactment of this title.

SEC. 303. PARTICIPATION REPORT.

(a) BIENNIAL REPORT.—Section 17(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)) is amended by adding at the end thereof the following new paragraph:

"(4) The Secretary shall report biennially to Congress on—

"(A) the income and nutritional risk characteristics of participants in the program;

"(B) participation in the program by members of families of migrant farmworkers; and

"(C) such other matters relating to participation in the program as the Secretary considers appropriate.".

(b) USE OF EVALUATION FUNDS FOR REPORT.—Section 17(g)(3) of such Act (as amended by section 104(2)(A)) is further amended by inserting "preparing the report required under subsection (d)(4)," after "health benefits,".

SEC. 304. PLAN OF OPERATION AND ADMINISTRATION.

(a) PLAN.—Paragraph (1) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)) is amended to read as follows:

"(1)(A) Each State agency shall submit annually to the Secretary, by a date specified by the Secretary, a plan of operation and administration for a fiscal year.

"(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

"(C) The plan shall include—

"(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program, to be administered in accordance with standards developed by the Secretary;

"(ii) a description of the financial management system of the State agency;

"(iii) a plan to coordinate operations under the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, prenatal care, well-child care, family planning, alcohol and drug abuse counseling, child abuse counseling, and with the aid to families with dependent children, food stamp, and maternal and child health care programs;

"(iv) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants and Indians;

"(v) a plan to expend funds to carry out the program during the relevant fiscal year;

"(vi) a plan to provide program benefits under this section to unserved and underserved areas in the State, if sufficient funds are available to carry out this clause;

"(vii) a plan to provide program benefits under this section to eligible persons most in need for the benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable; and

(viii) such other information as the Secretary may require.

"(D) The Secretary may permit a State agency to submit only those parts of a plan that differ from plans submitted for previous fiscal years.

"(E) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a plan submitted by a State agency under section 17(f)(1) of the Child Nutrition Act of 1966 for the fiscal year ending September 30, 1987, and each fiscal year thereafter.

SEC. 305. PUBLIC COMMENT.

Paragraph (2) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(2)) is amended to read as follows:

"(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.".

SEC. 306. AVAILABILITY OF PROGRAM BENEFITS.

Paragraph (8) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(8)) is amended to read as follows:

"(8)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible persons (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas).

"(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

"(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible persons who are most in need of the benefits, including pregnant women in the early months of pregnancy.".

SEC. 307. REPAYMENT OF CERTAIN BENEFITS BY RECIPIENTS.

Effective October 1, 1986, section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) is amended by adding at the end thereof the following new paragraph:

"(15) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.".

SEC. 308. PRIORITY FUNDS FOR WIC MIGRANT PROGRAMS.

(a) PRIORITY FUNDING.—Effective October 1, 1986, section 17(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)) (as amended by section 104(2)(A)) is further amended by inserting after paragraph (1) the following new paragraph:

"(2) Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.".

(b) ACCOUNTABILITY.—To the extent possible, accountability for migrant services under section 17(g)(2) of the Child Nutrition Act of 1966 (as added by subsection (a)) shall be conducted under regulations in effect on the date of the enactment of this title.

SEC. 309. IMPROVE STATE AGENCY ADMINISTRATIVE SYSTEMS.

Section 17(g)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(3)) (as amended by sections 104(2)(A) and 303(b)) is further amended by inserting "providing technical assistance to improve State agency administrative systems," after "subsection (d)(4),".

SEC. 310. PAPERWORK REDUCTION.

Section 17(h)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(1)) is amended by adding at the end thereof the following new sentence: "The Secretary shall limit to a minimal level any documentation required under the preceding sentence.".

SEC. 311. ALLOCATION STANDARDS.

Section 17(h)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(3)) is amended—

(1) in the second sentence, by striking out ", which satisfy allocation guidelines established by the Secretary"; and

(2) by striking out the last sentence.

SEC. 312. ADVANCE PAYMENTS.

Effective October 1, 1986, section 17(h)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(4)) is amended by striking out "shall" and inserting in lieu thereof "may".

SEC. 313. AVAILABILITY OF FUNDS.

(a) AVAILABILITY.—Section 17(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)) is amended—

(1) by designating the first, second, third, fourth, and fifth sentences as paragraphs (1), (2), (4), (5), and (6), respectively; and

(2) by inserting after paragraph (2) (as so designated) the following new paragraph:

"(3)(A) Notwithstanding paragraph (2)—

"(i) not more than 1 percent of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year;

or

"(ii) not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year.

"(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.".

(b) Application.—Section 17(i)(3)(A)(i) of the Child Nutrition Act of 1966 (as amended by subsection (a)) shall not apply to appropriations made before the date of enactment of this title.

Subtitle IV—Other Nutrition Programs

SEC. 401. HEARINGS ON FEDERAL AUDIT ACTIONS UNDER THE CHILD CARE FOOD PROGRAM.

Section 17(e) of the National School Lunch Act (42 U.S.C. 1766(e)) is amended—

(1) by striking out "The" and inserting in lieu thereof "(1) Except as provided in paragraph (2), the"; and

(2) by adding at the end thereof the following new paragraphs:

"(2) A State is not required to provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination.

"(3) If a State does not provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination, the Secretary, on request, shall afford a hearing to the institution concerning the action.".

SEC. 402. BASIS FOR NUTRITION EDUCATION GRANTS.

Section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "$75,000" each place it appears and inserting in lieu thereof "$50,000".

SEC. 403. EXTENSION OF ALTERNATIVE MEANS OF ASSISTANCE.

Section 14 of the National School Lunch Act (42 U.S.C. 1762a) is amended by adding at the end thereof the following new subsection:

"(g)(1) As used in this subsection, the term 'eligible school district' has the same meaning given such term in section 1581(A) of the Food Security Act of 1985.

"(2) In accordance with the terms and conditions of section 1581 of such Act, the Secretary shall permit an eligible school district to continue to receive assistance in the form of cash or commodity letters of credit assistance, in lieu of commodities, to carry out the school lunch program operated in the district.

"(3)(A) On request of a participating school district (and after consultation with the Comptroller General of the United States with respect to accounting procedures used to determine any losses) and subject to the availability of funds, the Secretary shall provide cash compensation to an eligible school district for losses sustained by the district as a result of the alteration of the methodology used to conduct the study referred to in section 1581(a) of such Act during the school year ending June 30, 1983.

"(B) There are authorized to be appropriated $50,000 to carry out this paragraph, to be available without fiscal year limitation.".

SEC. 404. NATIONAL DONATED COMMODITY PROCESSING PROGRAMS.

In accordance with the terms and conditions of section 1114(a)(2) of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e(a)(2)), whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary of Agriculture, the Secretary shall encourage consumption of the commodity through agreements with private companies under which the commodity is reprocessed into end-food products for use by eligible recipient agencies.

Subtitle V—Technical Corrections

SEC. 501. OBSOLETE PROVISIONS.

(a) Nutrition Program Staff Study; Trust Territory Appropriations.—(1) Sections 18 and 19 of the National School Lunch Act (42 U.S.C. 1767 and 1768) are repealed.

(2) The first sentence of section 3 of such Act (42 U.S.C. 1752) is amended by striking out "sections 13, 17, and 19" and inserting in lieu thereof "sections 13 and 17".

(b) Study of Menu Choice.—Section 22 of such Act (42 U.S.C. 1769c) (as added by section 9 of the Child Nutrition Amendments of 1978 (92 Stat. 3623)) is repealed.

(c) Conforming Amendments.—(1) The National School Lunch Act (as amended by sections 207 and 208(a) and subsection (b)) is further amended by redesignating sections 20, 21, and 22 (42 U.S.C. 1769, 1769a, and 1769b) as sections 18, 19, and 20, respectively.

(2) Clause (3) of the first sentence of section 6(a) of such Act (42 U.S.C. 1755(a)) is amended by striking out "section 20" and inserting in lieu thereof "section 18".

SEC. 502. OBSOLETE REFERENCES TO HEALTH, EDUCATION, AND WELFARE.

(a) References in National School Lunch Act.—Clause (1) of the sixth sentence of section 17(a) of the National School Lunch Act (42 U.S.C. 1766(a)) is amended by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services".

(b) References in Child Nutrition Act of 1966.—(1) The Child Nutrition Act of 1966 is amended by striking out "Health, Education, and Welfare" each place it appears in section 4(a) (42 U.S.C. 1773(a)), subsections (b)(6), (b)(13), (e)(2), (k)(1), and (k)(2) of section 17 (42 U.S.C. 1786), and subsections (d)(2) and (d)(3) of section 19 (42 U.S.C. 1788) and inserting in lieu thereof "Health and Human Services".

(2) Section 19(j)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(3)) is amended by striking out "Office of Education of the Department of Health, Education, and Welfare" and inserting in lieu thereof "Department of Education".

SEC. 503. CONFORMING AMENDMENTS.

(a) Definition of Secretary.—Section 12(d) of the National School Lunch Act (42 U.S.C. 1760(d)) is amended by adding at the end thereof the following new paragraph:

"(8) 'Secretary' means the Secretary of Agriculture.".

(b) Redesignation of Subsection.—Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) (as amended by sections 105, 402, and 502(b)(2)) is further amended by redesignating subsection (j) as subsection (i).

GOLDWATER AMENDMENT NO. 3102

Mr. GOLDWATER proposed an amendment to the joint resolution, (H.J. Res. 738), supra; as follows:

At the appropriate place, insert the following: None of the funds appropriated for fiscal year 1987 for the Department of Defense may be obligated or expended for the procurement, modification or research, development, test, and evaluation of T-46 trainer aircraft.

DANFORTH (AND OTHERS) AMENDMENT NO. 3103

Mr. DANFORTH (for himself, Mr. Eagleton, and Mrs. Kassebaum) proposed an amendment to the joint resolution, (H.J. Res. 738), supra; as follows:

At the appropriate place, insert the following:

Sec. . (a) Section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) is amended by adding at the end the following new subsection:

"EMPLOYEE SENIORITY RIGHTS

"(g)(1) In any case which results in the operational integration or partial operational integration of the affected carriers, the acquiring carrier, and the designated representatives of employees of the acquiring carrier (if any) and the designated representatives of employees of any acquired carriers (if any), shall provide for the development, in a fair and equitable manner, of integrated seniority ranking lists for all affected employee groups.

"(2)(A) If any dispute or controversy arises regarding integration of seniority lists under paragraph (1) of this subsection and such dispute or controversy cannot be resolved by the parties, any party may refer such dispute or controversy to an arbitrator for consideration and determination.

"(B) If a contract which is applicable to such dispute or controversy and which has been entered into between or among any of the parties provides for referral of such dispute or controversy to an arbitrator, such referral shall be in accordance with the terms of such contract.

"(C) If referral of such dispute or controversy to an arbitrator is not provided for by such a contract, the referral of such dispute or controversy to an arbitrator, and the appointment of an arbitrator, shall be made in a manner acceptable to all parties. If the parties are unable to agree on the appointment of an arbitrator, any party which is seeking to make such referral may request assistance from the National Mediation Board. If such a request is made, the National Mediation Board shall furnish to such parties a panel of seven names of individuals with expertise in aviation labor issues. The parties shall select such arbitrator by the deletion of names from such panel in turn until one name remains, and such person shall serve as arbitrator. The arbitrator may conduct hearings regarding such dispute or controversy, but any such hearings shall be conducted in an expedited manner.

"(D) In making a determination under this subsection regarding such a dispute or controversy, the arbitrator shall consider such factors as the arbitrator considers appropriate, including the economic viability of the acquiring carrier and the promotion of any economic efficiencies sought through the transaction. The determination of such arbitrator shall be binding on all such parties.

"(E) The salary and expenses of the arbitrator shall be borne equally by the parties.".

(b) The amendment made by subsection (a) of this section shall apply with respect to any transaction approved by the Secretary of Transportation under section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) on September 12, 1986, and with respect to any transaction for which an original application is filed after the date of enactment of this Act, except that such amendment shall not apply with respect to any transaction in which the parties invoke and are able to satisfy the requirements of the failing company doctrine.

(c) The item in the table of contents of the Federal Aviation Act of 1958 relating to section 408 is amended by adding at the end the following:

"(g) Fair treatment of employees.".

(d) The amendments made by subsections (a) and (c) of this section and the provisions of subsection (b) of this section shall cease to be in effect on January 1, 1989.

DIXON AMENDMENT NO. 3104

Mr. DIXON proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC.   . For activities authorized by title II, part B of the Job Training Partnership Act, $100,000,000, in addition to amounts otherwise provided for these purposes, to be allocated to states so that each service delivery area receives, as nearly as possible, an amount equal to its program year 1985 allocation for this program, to be available for obligation for the period July 1, 1986 through June 30, 1987.

SIMON (AND OTHERS) AMENDMENT NO. 3105

Mr. SIMON (for himself, Mr. PELL, Mr. MOYNIHAN, Mr. MATSUNAGA, and Mr. HARKIN) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the joint resolution, add the following new section:

SEC.   . Notwithstanding any other provision of this joint resolution, not more than $248,200,000 may be appropriated for the account entitled "Department of State Acquisition and Maintenace of Buildings Abroad." There is $800,000 appropriated in addition to funds otherwise appropriated in this joint resolution for the purpose of carrying out the Department of State Soviet-East European Research and Training Program. There is $24,000,000 appropriated in addition to funds otherwise appropriated in this joint resolution for the purpose of carrying out the United States Information Agency Educational and Cultural Exchanges Programs, which shall be available only for the purposes of providing expenses of Fulbright, International Visitor, Humphrey Fellowship and Congress-Bundestag Exchange Programs, as authorized by Reorganization Plan No. 2 of 1977 and the Mutual Educational and Cultural Exchange Act, as amended (22 U.S.C. 2451 et seq.).

HARKIN (AND GRASSLEY) AMENDMENT NO. 3106

Mr. HARKIN (for himself and Mr. GRASSLEY) proposed an amendment to the joint resolution (H.J. Res. 738) supra; as follows:

At the end of the resolution, add the following new title:

TITLE —

SEC.   . This title may be cited as the "Agricultural Program Payment Limitation Act of 1986".

SEC.   . (a) Effective with respect to each of the 1987 through 1990 crops, section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308) is amended—

(1) by striking out paragraphs (1), (2), and (3) and inserting in lieu thereof the following new paragraphs:

"(1) For each of the 1987 through 1990 crops, the total amount of deficiency payments (excluding any deficiency payments described in paragraph (2)(B)(iv)) and land diversion payments that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) for wheat, feed grains, upland cotton, extra long staple cotton, and rice may not exceed $50,000.

"(2)(A) For each of the 1987 through 1990 crops, the total amount of payments described in subparagraph (B) that a person shall be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949 for wheat, feed grains, upland cotton, extra long staple cotton, rice, honey, and (with respect to clause (iii)(II) of subparagraph (B)) other commodities, when combined with payments for such crop described in paragraph (1), shall not exceed $500,000.

"(B) As used in subparagraph (A), the term 'payments' means—

"(i) any part of any payment that is determined by the Secretary of Agriculture to represent compensation for resource adjustment (excluding land diversion payments) or public access for recreation;

"(ii) any disaster payment under one or more of the annual programs for a commodity established under the Agricultural Act of 1949;

"(iii)(I) any gain realized by a producer from forfeiting or repaying a loan for a crop of wheat, feed grains, upland cotton, rice, or honey at the rate permitted under section 107D(a), 105C(a), 103A(a), 101A(a), or 201(b), respectively, of such Act (7 U.S.C. 1445b-3(a), 1444e(a), 1444-1(a), 1441-1(a), or 1446(b)); or

"(II) any gain realized by a producer from repaying a loan for a crop of any other commodity at a lower level than the original loan level established under such Act;

"(iv) any deficiency payment received for a crop of wheat or feed grains under section 107D(c)(1) or 105C(c)(1), respectively, of such Act as the result of a reduction of the loan level for such crop under section 107D(a)(4) or 105C(a)(3) of such Act;

"(v) any loan deficiency payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(b), 105C(b), 103A(b), or 101A(b), respectively, of such Act; and

"(vi) any inventory reduction payment received for a crop of wheat, feed grains, upland cotton, or rice under section 107D(g), 105C(g), 103A(g), or 101A(g), respectively of such Act.";

(2) by adding at the end of paragraph (5) the following new subparagraph:

"(C) The regulations issued under subparagraph (A) shall provide that the term 'person' shall not include any cooperative association of producers that markets commodities for producers with respect to the commodities so marketed for producers.";

(3) in paragraph (6)—

(A) by striking out "lands owned" and inserting in lieu thereof "lands or animals owned"; and

(B) by inserting ", or animals are husbanded," after "lands are farmed"; and

(4) by redesignating paragraphs (4), (5), and (6) as paragraphs (3), (4), and (5), respectively.

(b) The amendments made by subsection (a) shall not apply with respect to any payment or loan received under any agreement or contract made before the date of enactment of this Act.

(c)(1)(A) The Secretary of Agriculture shall review the regulations in effect on the date of enactment of this Act that define the term "person" under section 1001 of the Food Security Act of 1985 and related regulations in effect on such date otherwise affecting the payment limitations under such section, to determine ways in which such regulations can be revised to better ensure the fair and reasonable application of limitations and eliminate fraud and abuse in the application of such payment limitations.

(B) The Secretary also shall review the amendments to section 1001 of the Food Security Act of 1985 made by this section.

(2) Based on the reviews conducted under paragraph (1), the Secretary of Agriculture shall submit to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives, not later than March 1, 1987, a report on such reviews and—

(A) with respect to the matters reviewed under paragraph (1)(A), proposed regulations or amendments to regulations, to take effect not earlier than October 1, 1987, that will meet the objections with respect to limitations specified in paragraph (1)(A); and

(B) with respect to the matters reviewed under paragraph (1)(B), recommendations on legislative changes to section 1001 of the Food Security Act of 1985 that the Secretary determines are necessary or appropriate.

ELECTRONIC SURVEILLANCE

LEAHY (AND OTHERS) AMENDMENT NO. 3107

Mr. BYRD (for Mr. LEAHY, for himself, Mr. MATHIAS, and Mr. THURMOND) proposed an amendment to the bill (H.R. 4952) to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Electronic Communications Privacy Act of 1986".

TITLE I—INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.

(a) DEFINITIONS.—(1) Section 2510(1) of title 18, United States Code, is amended—

(A) by striking out "any communication" and inserting "any aural transfer" in lieu thereof;

(B) by inserting "(including the use of such connection in a switching station)" after "reception".

(C) by striking out "as a common carrier" and

(D) by inserting before the semicolon at the end the following: "or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit".

(2) Section 2510(2) of title 18, United States Code, is amended by inserting before the semicolon at the end the following: ", but such term does not include any electronic communication".

(3) Section 2510(4) of title 18, United States Code, is amended—

(A) by inserting "or other" after "aural"; and

(B) by inserting ", electronic," after "wire".

(4) Section 2510(5) of title 18, United States Code, is amended in clause (a)(i) by inserting before the semicolon the following: "or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business".

(5) Section 2510(8) of title 18, United States Code, is amended by striking out "identity of the parties to such communication or the existence,".

(6) Section 2510 of title 18, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (10);

(B) by striking out the period at the end of paragraph (11) and inserting a semicolon in lieu thereof; and

(C) by adding at the end the following:

"(12) 'electronic communication' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

"(A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

"(B) any wire or oral communication;

"(C) any communication made through a tone-only paging device; or

"(D) any communication from a tracking device (as defined in section 3117 of this title);

"(13) 'user' means any person or entity who—

"(A) uses an electronic communication service; and

"(B) is duly authorized by the provider of such service to engage in such use;

"(14) 'electronic communications system' means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"(15) 'electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications;

"(16) 'readily accessible to the general public' means, with respect to a radio communication, that such communication is not—

"(A) scrambled or encrypted;

"(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

"(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

"(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

"(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

"(17) 'electronic storage' means—

"(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

"(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

"(18) 'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.".

(b) EXCEPTIONS WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—

(1) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof" and inserting in lieu thereof "such disclosure";

(B) by striking out "the carrier" and inserting in lieu thereof "such person"; and

(C) by striking out "an order or certification under this subparagraph" and inserting in lieu thereof "a court order or certification under this chapter".

(2) Section 2511(2)(d) of title 18, United States Code, is amended by striking out "or for the purpose of committing any other injurious act".

(3) Section 2511(2)(f) of title 18, United States Code, is amended—

(A) by inserting "or chapter 121" after "this chapter"; and

(B) by striking out "by" the second place it appears and inserting in lieu thereof ", or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing".

(4) Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

"(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

"(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

"(ii) to intercept any radio communication which is transmitted—

"(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

"(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

"(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

"(IV) by any marine or aeronautical communications system;

"(iii) to engage in any conduct which—

"(I) is prohibited by section 633 of the Communications Act of 1934; or

"(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

"(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

"(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

"(h) It shall not be unlawful under this chapter—

"(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

"(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Chapter 119 of title 18, United States Code, is amended—

(A) in each of sections 2510(5), 2510(8), 2510(9)(b), 2510(11), and 2511 through 2519 (except sections 2515, 2516(1) and 2518(10)), by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof; and

(B) in section 2511(2)(b), by inserting "or electronic" after "wire".

(2) The heading of chapter 119 of title 18, United States Code, is amended by inserting "and electronic communications" after "wire".

(3) The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United States Code is amended by inserting "and electronic communications" after "Wire".

(4) Section 2510(5)(a) of title 18, United States Code, is amended by striking out "communications common carrier" and inserting "provider of wire or electronic communication service" in lieu thereof.

(5) Section 2511(2)(a)(i) of title 18, United States Code, is amended—

(A) by striking out "any communication common carrier" and inserting "a provider of wire or electronic communication service" in lieu thereof;

(B) by striking out "of the carrier of such communication" and inserting "of the provider of that service" in lieu thereof; and

(C) by striking out ": *Provided*, That said communication common carriers" and inserting ", except that a provider of wire communication service to the public" in lieu thereof.

(6) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "communication common carriers" and inserting "providers of wire or electronic communication service" in lieu thereof;

(B) by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(C) by striking out "if the common carrier" and inserting "if such provider" in lieu thereof.

(7) Section 2512(2)(a) of title 18, United States Code, is amended—

(A) by striking out "a communications common carrier" the first place it appears and inserting "a provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "a communications common carrier" the second place it appears and inserting "such a provider" in lieu thereof; and

(C) by striking out "communications common carrier's business" and inserting "business of providing that wire or electronic communication service" in lieu thereof.

(8) Section 2518(4) of title 18, United States Code, is amended—

(A) by striking out "communication common carrier" in both places it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "carrier" and inserting in lieu thereof "service provider".

(d) Penalties Modification.—(1) Section 2511(1) of title 18, United States Code, is amended by striking out "shall be" and all that follows through "or both" and inserting in lieu thereof "shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5)".

(2) Section 2511 of title 18, United States Code, is amended by adding after the material added by section 102 the following:

"(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

"(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then—

"(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

"(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than $500.

"(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

"(i) to a broadcasting station for purposes of retransmission to the general public; or

"(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

"(5)(a)(i) If the communication is—

"(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

"(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

"(ii) In an action under this subsection—

"(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

"(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

"(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.".

(e) Exclusivity of Remedies With Respect to Electronic Communications.—Section 2518(10) of title 18, United States Code, is amended by adding at the end the following:

"(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.".

(f) State of Mind.—Paragraphs (a), (b), (c), and (d) of subsection (1) of section 2511 of title 18, United States Code, are amended by striking out "willfully" and inserting in lieu thereof "intentionally".

(2) Subsection (1) of section 2512 of title 18, United States Code, is amended in the matter before paragraph (a) by striking out "willfully" and inserting in lieu thereof "intentionally".

SEC. 102. REQUIREMENTS FOR CERTAIN DISCLOSURES.

Section 2511 of title 18, United States Code, is amended by adding at the end the following:

"(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

"(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

"(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

"(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

"(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

"(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.".

SEC. 103. RECOVERY OF CIVIL DAMAGES.

Section 2520 of title 18, United States Code, is amended to read as follows:

"§ 2520. Recovery of civil damages authorized

"(a) In General.—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) Relief.—In an action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) Computation of Damages.—(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

"(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5)(a)(i) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500.

"(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5)(a)(i) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1000.

"(2) In any other action under this section, the court may assess as damages whichever is the greater of—

"(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

"(d) Defense.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other law.

"(e) Limitation.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.".

SEC. 104. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.

Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division".

SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.

(a) Wire and Oral Interceptions.—Section 2516(1) of title 18 of the United States Code is amended—

(1) in paragraph (c)—

(A) by inserting "section 751 (relating to escape)," after "wagering information),";

(B) by striking out "2314" and inserting "2312, 2313, 2314," in lieu thereof;

(C) by inserting "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),";

(D) by inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," after "1952 (interstate and foreign travel or transportation in aid of racketeering enterprises),";

(E) by inserting ", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organizations)"; and

(F) by—

(i) striking out "or" before "section 351" and inserting in lieu thereof a comma; and

(ii) inserting before the semicolon at the end thereof the following: ", section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)";

(2) by striking out "or" at the end of paragraph (g);

(3) by inserting after paragraph (g) the following:

"(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

"(i) any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code;

"(j) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act); or";

"(k) the location of any fugitive from justice from an offense described in this section;

(4) by redesignating paragraph (h) as paragraph (l); and

(5) in paragraph (a) by—

(A) inserting after "Atomic Energy Act of 1954)," the following: "section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel),";

(B) striking out "or" after "(relating to treason),"; and

(C) inserting before the semicolon at the end thereof the following: "chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)".

(b) Interception of Electronic Communications.—Section 2516 of title 18 of the United States Code is amended by adding at the end the following:

"(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.".

SEC. 106. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF ORDERS.

(a) Place of Authorized Interception.—Section 2518(3) of title 18 of the United States Code is amended by inserting "(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)" after "within the territorial jurisdiction of the court in which the judge is sitting".

(b) Reimbursement for Assistance.—Section 2518(4) of title 18 of the United States Code is amended by striking out "at the prevailing rates" and inserting in lieu thereof "for reasonable expenses incurred in providing such facilities or assistance".

(c) Commencement of Thirty-Day Period and Postponement of Minimization.—Section 2518(5) of title 18 of the United States Code is amended—

(1) by inserting after the first sentence the following: "Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered."; and

(2) by adding at the end the following: "In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.".

(d) Alternative to Designating Specific Facilities From Which Communications Are To Be Intercepted.—(1) Section 2518(1)(b)(ii) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "a particular description".

(2) Section 2518(3)(d) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "there is".

(3) Section 2518 of title 18 of the United States Code is amended by adding at the end the following:

"(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

"(a) in the case of an application with respect to the interception of an oral communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

"(iii) the judge finds that such specification is not practical; and

"(b) in the case of an application with respect to a wire or electronic communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

"(iii) the judge finds that such purpose has been adequately shown.

"(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.".

(4) Section 2519(1)(b) of title 18, United States Code, is amended by inserting "(including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title)" after "applied for".

SEC. 107. INTELLIGENCE ACTIVITIES.

(a) In General.—Nothing in this Act or the amendments made by this Act constitutes authority for the conduct of any intelligence activity.

(b) Certain Activities Under Procedures Approved by the Attorney General.—Nothing in chapter 119 or chapter 121 of title 18, United States Code, shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to—

(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978; or

(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by

the Foreign Intelligence Surveillance Act of 1978.

SEC. 108. MOBILE TRACKING DEVICES.

(a) IN GENERAL.—Chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"§ 3117. Mobile tracking devices

"(a) IN GENERAL.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

"(b) DEFINITION.—As used in this section, the term 'tracking device' means an electronic or mechanical device which permits the tracking of the movement of a person or object.".

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"3117. Mobile tracking devices.".

SEC. 109. WARNING SUBJECT OF SURVEILLANCE.

Section 2232 of title 18, United States Code, is amended—

(1) by inserting "(a) PHYSICAL INTERFERENCE WITH SEARCH.—" before "Whoever" the first place it appears;

(2) by inserting "(b) NOTICE OF SEARCH.—" before "Whoever" the second place it appears; and

(3) by adding at the end the following:

"(c) NOTICE OF CERTAIN ELECTRONIC SURVEILLANCE.—Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

"Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.".

SEC. 110. INJUNCTIVE REMEDY.

(a) IN GENERAL.—Chapter 119 of title 18, United States Code, is amended by adding at the end the following:

"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by adding at the end thereof the following:

"2521. Injunction against illegal interception.".

SEC. 111. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b) or (c), this title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any interception pursuant to section 2516(2) of title 18 of the United States Code which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such interception occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of State law conforming the applicable State statute with chapter 119 of title 18, United States Code, as so amended; or

(2) the date two years after the date of the enactment of this Act.

(c) EFFECTIVE DATE FOR CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.—Section 104 of this Act shall take effect on the date of enactment of this Act.

TITLE II—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

SEC. 201. TITLE 18 AMENDMENT.

Title 18, United States Code, is amended by inserting after chapter 119 the following:

"CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

"Sec.
"2701. Unlawful access to stored communications.
"2702. Disclosure of contents.
"2703. Requirements for governmental access.
"2704. Backup preservation.
"2705. Delayed notice.
"2706. Cost reimbursement.
"2707. Civil action.
"2708. Exclusivity of remedies.
"2709. Counterintelligence access to telephone toll and transactional records.
"2710. Definitions.

"§ 2701. Unlawful access to stored communications

"(a) OFFENSE.—Except as provided in subsection (c) of this section whoever—

"(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

"(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

"(b) PUNISHMENT.—The punishment for an offense under subsection (a) of this section is—

"(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain—

"(A) a fine of not more than $250,000 or imprisonment for not more than one year, or both, in the case of a first offense under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than two years, or both, for any subsequent offense under this subparagraph; and

"(2) a fine of not more than $5,000 or imprisonment for not more than six months, or both, in any other case.

"(c) EXCEPTIONS.—Subsection (a) of this section does not apply with respect to conduct authorized—

"(1) by the person or entity providing a wire or electronic communications service;

"(2) by a user of that service with respect to a communication of or intended for that user; or

"(3) in section 2703, 2704 or 2518 of this title.

"§ 2702. Disclosure of contents

"(a) PROHIBITIONS.—Except as provided in subsection (b)—

"(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

"(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(b) EXCEPTIONS.—A person or entity may divulge the contents of a communication—

"(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

"(2) as otherwise authorized in section 2516, 2511(2)(a), or 2703 of this title;

"(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

"(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

"(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

"(6) to a law enforcement agency, if such contents—

"(A) were inadvertently obtained by the service provider; and

"(B) appear to pertain to the commission of a crime.

"§ 2703. Requirements for governmental access

"(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

"(b) Contents of Electronic Communications in a Remote Computing Service.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

"(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

"(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena; or

"(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

"(2) Paragraph (1) is applicable with respect to any electronic communication that is held or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(c) Records Concerning Electronic Communication Service or Remote Computing Service.—(1)(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury subpoena;

"(ii) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

"(iii) obtains a court order for such disclosure under subsection (d) of this section; or

"(iv) has the consent of the subscriber or customer to such disclosure.

"(2) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

"(d) Requirements for Court Order.—A court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

"(e) No cause of Action Against a Provider Disclosing Information Under This Chapter.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

"§ 2704. Backup preservation

"(a) Backup Preservation.—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

"(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

"(3) The service provider shall not destroy such backup copy until the later of—

"(A) the delivery of the information; or

"(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

"(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

"(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

"(B) has not initiated proceedings to challenge the request of the governmental entity.

"(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

"(b) Customer Challenges.—(1) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate United States district court or State court. Such motion or application shall contain an affidavit or sworn statement—

"(A) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

"(B) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

"(2) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, the term 'delivery' has the meaning given that term in the Federal Rules of Civil Procedure.

"(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

"(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

"(5) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

"§ 2705. Delayed notice

"(a) Delay of Notification.—(1) A governmental entity acting under section 2703(b) of this title may—

"(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

"(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

"(2) An adverse result for the purposes of paragraph (1) of this subsection is—

"(A) endangering the life or physical safety of an individual;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

"(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

"(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

"(A) states with reasonable specificity the nature of the law enforcement inquiry; and

"(B) informs such customer or subscriber—

"(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

"(ii) that notification of such customer or subscriber was delayed;

"(iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and

"(iv) which provision of this chapter allowed such delay.

"(6) As used in this subsection, the term 'supervisory official' means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

"(b) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

"(1) endangering the life or physical safety of an individual;

"(2) flight from prosecution;

"(3 destruction of or tampering with evidence;

"(4) intimidation of potential witnesses; or

"(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"§ 2706. Cost reimbursement

"(a) PAYMENT.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

"(b) AMOUNT.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

"(c) The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (a) if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

"§ 2707. Civil action

"(a) CAUSE OF ACTION.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In a civil action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c); and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) DAMAGES.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense to any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

"§ 2708. Exclusivity of remedies

"The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

"§ 2709. Counterintelligence access to telephone toll and transactional records

"(a) DUTY TO PROVIDE.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(c) PROHIBITION OF CERTAIN DISCLOSURE.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

"(d) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made under subsection (b) of this section.

"§ 2710. Definitions for chapter

"As used in this chapter—

"(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section; and

"(2) the term 'remote computing service' means the provision to the public of computer storage or processing services by means of an electronic communications system.".

(b) Clerical Amendment.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by adding at the end the following:

"121. Stored Wire and Electronic Communications and Transactional Records Access 2701".

SEC. 202. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect ninety days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

TITLE III—PEN REGISTERS AND TRAP AND TRACE DEVICES

SEC. 301. TITLE 18 AMENDMENT.

(a) In General.—Title 18 of the United States Code is amended by inserting after chapter 205 the following new chapter:

"CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

"Sec.
"3121. General prohibition on pen register and trap and trace device use; exception.
"3122. Application for an order for a pen register or a trap and trace device.
"3123. Issuance of an order for a pen register or a trap or trace device.
"3124. Assistance in installation and use of a pen register or a trap and trace device.
"3125. Reports concerning pen registers and trap and trace devices.
"3126. Definitions for chapter.

"§ 3121. General prohibition on pen register and trap and trace device use; exception

"(a) In General.—Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

"(b) Exception.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

"(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

"(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service, or with the consent of the user of that service.

"(c) Penalty.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

"§ 3122. Application for an order for a pen register or a trap and trace device

"(a) Application.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

"(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

"(b) Contents of Application.—An application under subsection (a) of this section shall include—

"(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

"§ 3123. Issuance of an order for a pen register or a trap and trace device

"(a) In General.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

"(b) Contents of Order.—An order issued under this section—

"(1) shall specify—

"(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

"(B) the identity, if known, of the person who is the subject of the criminal investigation;

"(C) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

"(D) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

"(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.

"(c) Time Period and Extensions.—(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

"(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed sixty days.

"(d) Nondisclosure of Existence of Pen Register or a Trap and Trace Device.—An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that—

"(1) the order be sealed until otherwise ordered by the court; and

"(2) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

"§ 3124. Assistance in installation and use of a pen register or a trap and trace device

"(a) Pen Registers.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 3123(b)(2) of this title.

"(b) Trap and Trace Device.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in section 3123(b)(2) of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order.

"(c) Compensation.—A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

"(d) No cause of action against a provider disclosing information under this chapter.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

"(e) Defense.—A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

"§ 3125. Reports concerning pen registers and trap and trace devices

"The Attorney General shall annually report to Congress on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the Department of Justice.

"§ 3126. Definitions for chapter

"As used in this chapter—

"(1) the terms 'wire communication', 'electronic communication', and 'electronic communication service' have the meanings set forth for such terms in section 2510 of this title;

"(2) the term 'court of competent jurisdiction' means—

"(A) a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals; or

"(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device;

"(3) the term 'pen register' means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

"(4) the term 'trap and trace device' means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted;

"(5) the term 'attorney for the Government' has the meaning given such term for the purposes of the Federal Rules of Criminal Procedure; and

"(6) the term 'State' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.".

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18 of the United States Code is amended by inserting after the item relating to chapter 205 the following new item:

"206. Pen Registers and Trap and Trace Devices .... 3121".

SEC. 302. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect ninety days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under Federal law as amended by this title; or

(2) the date two years after the date of the enactment of this Act.

SEC. 303. INTERFERENCE WITH THE OPERATION OF A SATELLITE.

(a) OFFENSE.—Chapter 65 of title 18, United States Code, is amended by inserting at the end the following:

"§ 1367. Interference with the operation of a satellite

"(a) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both.

"(b) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States."

(b) CONFORMING AMENDMENT.—The table of sections for chapter 65 of title 18, United States Code, is amended by adding at the end the following new item:

"1367. Interference with the operation of a satellite.".

ACCESS DEVICES AND COMPUTER FRAUD

TRIBLE (AND LAXALT) AMENDMENT NO. 3108

Mr. DOLE (for Mr. TRIBLE, for himself and Mr. LAXALT) proposed an amendment to the bill (S. 2281) to amend title 18, United States Code, to provide additional penalties for fraud and related activities in connection with access devices and computers, and for other purposes; as follows:

S. 2281 is amended—

1. In Section 2(b), by adding the term "(1)" before the words "to read as follows"; and

In Section 2(b), by adding at the end thereof the following new paragraph:

"(2) by striking out the flush language after section 1030(a)(3) of title 18, United States Code, beginning with "It is not an offense" and all that follows through "use of the computer.";

2. In Section 2(a), by adding at the end thereof the following new paragraph:

"(3) by striking out the term "or" where it appears at the end of section 1030(a)(2) of title 18."

3. In Section 2(f), by adding at the end thereof the following new paragraph:

"(9) by deleting the term "(b)(1)" where it appears in the first line of section 1030(c) of title 18 and inserting in lieu thereof the term "(b)"."

4. In Section 2(g), by adding to the list of terms to be defined as "financial institutions" the following:

"(G) a broker-dealer registered with the Securities and Exchange Commission pursuant to section 15 of the Securities Exchange Act of 1934;

"(H) the Securities Investor Protection Corporation."

5. In Section 2(a), by deleting the period at the end of paragraph (2) and inserting in lieu thereof a semicolon.

In Section 2(a), by adding at the end thereof the following new paragraph:

"(3) by adding after the term "financial institution" the following: "or of a card issuer as defined in section 1602(n) of Title 15,".

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

SPECTER AMENDMENT NO. 3109

(Ordered to lie on the table.)

Mr. SPECTER submitted an amendment intended to be proposed by him to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the Continuing Resolution, add the following new Section:

SEC. . Any judicial official, as defined by paragraphs (A) and (B) of section 376(a)(1) of title 28, United States Code, serving in office after June 19, 1986, or the surviving spouse of any such official, may elect, at any time after June 19, 1986, and before April 1, 1987, to participate in the survivors' annuities program authorized by section 376 of title 28, United States Code, as amended by the Judicial Improvements Act of 1985. Any such election shall be made by filing such election with the Director of the Administrative Office of the United States Courts. Such election shall be effective when made and shall entitle the judicial officer, and any survivors, to participate in all the obligations and benefits of the program, as such program, as amended, is to be administered, without regard to section 2(f) of such Act. The election authorized by this Act shall be in addition to any other election authorized by section 376 of title 28, United States Code.

NOTICES OF HEARINGS

SUBCOMMITTEE ON FOREIGN AGRICULTURAL POLICY

Mr. HELMS. Mr. President, I wish to announce that the Subcommittee on Foreign Agricultural Policy, of the Committee on Agriculture, Nutrition, and Forestry, will hold a hearing to review the implications for agricultural trade arising out of the GATT ministerial meetings at Punta del Este, Uruguay.

The hearing, to be chaired by subcommittee Chairman RUDY BOSCHWITZ, will take place at 11 a.m. on Wednesday, October 8, 1986, in 332 Russell Senate Office Building.

If further information is needed, please contact Dan Pearson, at 224-5641.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ROTH. Mr. President, the Senate Committee on Governmental Affairs will hold a business meeting on Thursday, October 2 at 10 a.m. in room SD-342. Under consideration will be the following:

S. 2479.—Prompt Payment Amendments.

S. 2630.—Defense Transportation Bill Audit Improvement Act of 1986.

S. 2887.—Relating to the coordination of Federal information policy (Title VI of S. 2230).

Nomination of John Agresto to be Archivist of the United States.

Nomination of Bob Bedell to be Administrator of Federal Procurement Policy.

Nomination of Henry Frazier to be a Member of the Federal Labor Relations Authority.

Nomination of John Griesemer to be a Governor of the U.S. Postal Service.

Nomination of John Melchner to be Inspector General of the Department of Transportation.

For further information, please contact the committee office at 224-4751.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON RULES AND ADMINISTRATION

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, October 1, 1986, in order to conduct a business meeting marking up the following executive and legislative business:

Nominations of Thomas J. Josefiak and Soctt Thomas to be members of the Federal Election Commission, S. 2673, H.R. 4545, S. 2448, Senate Joint Resolution 268, Senate Resolution 330, and Senate Resolution 482.

The PRESIDING OFFICER. Without objection, it is so ordered.

SELECT COMMITTEE ON INTELLIGENCE

Mr. DOLE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, October 1, in closed session, to conduct a hearing on intelligence matters; and to consider business items.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON BUSINESS, TRADE, AND TOURISM

Mr. DOLE. Mr. President, I ask unanimous consent that the Subcommittee on Business, Trade, and Tourism of the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Wednesday, October 1, to conduct a hearing on travel and tourism statistics.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

DEMOCRACY IN CHILE

● Mr. SIMON. Mr. President, I ask to have printed in the RECORD, my statement which was presented at an Institute for Policy Studies rally for "Democracy in Chile" on September 22, 1986.

The statement follows:

STATEMENT OF PAUL SIMON

We are here because we believe in freedom, democracy and justice in Chile, and because for too long these basic human rights have been denied to the Chilean people. We have a particular responsibility to restore democracy in Chile. Thirteen years ago our government helped put General Pinochet into power and for the last five years our government has helped to keep him there. It is time to change our policy. Last week, Filipino President Cory Aquino visited Washington and described their transition to democracy as the triumph of the aspirations of the Filipino people. Let's help make what happened in the Philippines happen in Chile as well. The United States government should stop supporting loans to Chile and start supporting democracy and human rights in that country.

You know the record of the Pinochet government: church workers, human rights activists, shanty town dwellers and members of political opposition groups have been targeted in both official and unofficial operations. Mass roundups, such as the detention of some 15,000 people in May of this year, have resulted in some of the highest arrest figures since the days following the 1973 coup which brought the present government to power.

On July 2, 1986, we were all moved by the burning of Gloria Carmen Quintana and the tragic death of Rodrigo Rojas de Negri. The world was outraged by this crime. The Chilean government responded to the international outcry for justice by bringing mild charges of neglect against one lieutenant who took part in the attack. Their investigation openly disregarded the testimony of many eye-witnesses.

Under the emergency laws in force since the 1973 coup, political parties are banned. Journalists, political and comunity leaders and trade unionists are harrassed and imprisoned for criticizing the government or seeking to organize peaceful protests. Less than two weeks after the attack on Carmen Quintana and Rodrigo Rojas, General Pinochet declared that he would not relinquish power in 1989 as required by the Chilean constitution. His reason for violating the law is, and I quote, "for the pleasure of it."

Recently Pinochet declared a state of seige in response to an attempt to assassinate him. Pinochet has used this assassination attempt as a pretext for a new campaign of repression. Since this state of seige, four of the major opposition leaders have been killed. There has bee no investigation of any of these murders. Also, as part of the state of seige, the government has expelled some of the foreign journalists stationed in Chile and the domestic opposition press has been silenced.

The U.S. cannot be silent while Pinochet distorts three of the most important American ideals: democracy, human rights and freedom of the press. Congress must make it clear that further human rights abuses will not be tolerated. The investigation and prosecution of any further human rights cases will be monitored by Congress to ensure that justice is obtained.

Assistant Secretary of State Eliot Abrams has gone on record to say that the United States does not intend on extending any loans to Chile through multilateral development banks. This decision, as well as the actions of Ambassador Barnes, are to be applauded. We must continue to push for democracy, freedom and justice in Chile.●

JOYCE NALEPKA RECEIVES ICPA FAMILY AWARD

● Mrs. HAWKINS. Mr. President, I was delighted to learn that Joyce Nalepka was honored by the International Commission for the Prevention of Alcoholism and Drug Dependency by receiving its 1986 "ICPA Family Award."

Joyce's award reads: "ICPA Family Award" * * * Honors Mrs. Joyce Nalepka for pioneering and developing parent organizations for drug-free youth * * * Sixth ICPA World Congress, Nice, 1986."

Joyce is the president of the National Federation of Parents for Drug-Free Youth. She is a valuable national resource in our society's war on drugs. Joyce epitomizes the kind of individual commitment and effective private action against drug use that President Reagan must have had in mind when he called upon each of us to add our individual effort and influence to the fight against drug use.

Joyce declared her own personal war on drugs in the late seventies, long before the issue enjoyed the widespread interest and awareness that it does today. She entered the trenches soon after escorting her two sons and their friends to a rock concert at the Capital Centre outside Washington, DC. The spectacle of widespread and flagrant illegal drug use by thousands of teenagers, under the tolerant eyes of the Capital Centre authorities, galvanized her commitment to fight back against drugs use.

Rather than just talking about the problem, Joyce rolled up her sleeves and got busy. She enlisted her friends and neighbors, contacted local officials, refused to take no for an answer, went from one battle to another, started filing her information and contacts, and ultimately played a significant part in the founding of the National Federation of Parents for Drug-Free Youth which today has over 9,000 chapters.

Some of Joyce's accomplishments include:

Spearheading a successful lobbying effort before Congress in 1979 to halt legislation which would have decriminalized marijuana possession, when the bill appeared sure of passage;

Successfully educating the constituents of at least one ex-Member of Congress about his unsatisfactory record on the drug issue;

Spearheading other successful lobbying efforts for model legislation against drug paraphernalia shops and designer drugs;

Alerting parents and communities to the faulty drug education programs which taught "responsible use" of illegal drugs rather than no use.

The drug culture has learned, to its chagrin, that Joyce Nalepka is a tough and determined opponent. She is articulate, she is energetic, and she does not shy away from locking horns with the drug problem, wherever it raises its ugly head. She has clearly demonstrated that one person can indeed make a difference.

Money can't buy the commitment, the enthusiasm, the genuine quality in Joyce Nalepka's work against drug use. She has spread her contagious commitment and enthusiasm, as well as her valuable knowledge and experience, everywhere she goes.

She is one of the most widely traveled spokesmen and proselytizers for the parents' movement. This mother and housewife from Silver Spring, MD, now has national stature and no one deserves it more than she. Joyce collects her awards the old-fashioned way, she earns them. Congratulations, Joyce, for a difficult job well done.●

JOAN SHORENSTEIN BARONE CENTER AT HARVARD

● Mr. **KENNEDY.** Mr. President, last weekend, the ceremonies were held to mark the opening of the Joan Shorenstein Barone Center on the Press, Politics and Public Policy at the John F. Kennedy School of Government at Harvard.

Joan Barone's tireless dedication to journalistic excellence was well know to her countless friends and associates, and all of us who knew her are grateful that her legacy will be carried forward through the center. Joan's extraordinary life and the goals of the center that bears her name are eloquently set forth by David Border in his column in today's Washington Post, and I ask that the column may be printed in the RECORD.

The column follows:

[From the Washington Post, Oct. 1, 1986]

SKEPTICAL VOTERS, SKEPTICAL READERS

(By David S. Broder)

CAMBRIDGE, Mass.—One of the puzzles for politicians and journalists alike this fall has been the widespread public skepticism about the tax-revision bill passed by Congress last week and now awaiting the president's signature.

While President Reagan, its original proponent, and leaders of both parties in Congress hailed it as a major step toward economic rationality and political equity, voters have appeared either indifferent or hostile. Claims that 6 million of the working poor will come off the tax rolls entirely, that 76 million mainly middle-income people will receive a tax cut of about $800 apiece by 1988, and that only 20 million—mainly wealthy—will pay more seemingly have fallen on deaf ears.

What has come through to voters so far is that the government is changing the tax system. And any sentence that contains the words "government" and "taxes" spells bad news to them.

This oddity of public opinion provided a peculiarly fitting background for the ceremonies here last weekend opening the Joan Shorenstein Barone Center on the Press, Politics and Public Policy at Harvard's John F. Kennedy School of Government.

The event had special meaning for me, because Joan, who died of cancer last year, was a dear friend for the last 16 of her 38 years. I met her when she was a graduate student at Harvard, encouraged her to come to The Washington Post as a political researcher in 1970 and watched with pride as she outgrew that job, moved to CBS News and became producer of its "Face the Nation" interview program and many of its best political pieces.

The center her parents, Walter and Phyllis Shorenstein of San Francisco, endowed as a memorial to Joan can be of enduring importance to all of those who have a stake in the way this nation's press and government function.

As Derek Bok, the president of Harvard, said: "Our understanding of the extraordinary role and influence of the press in American politics and government today is only rudimentary." And the same point could be made with equal force about the way in which government officials—at all levels from the president down to the city councilman—seek to influence, manipulate and control the press coverage they and their issues receive.

In a panel discussion at the center's opening, Albert Hunt of The Wall Street Journal clashed with Richard Neustadt and Martin Linsky of Harvard, academies with government backgrounds, on the classic question of whether a journalist or news organization should weigh the consequences of a particular story on government policy before deciding whether to publish or broadcast.

What both journalists and government officials would agree, I think, is that cynicism is equally a threat to both of us. When the public distrusts what its elected and appointed officials say and what its journalists report, the chances of maintaining a healthy democracy are sharply diminished.

That is why so many of us were dismayed at the recent polls showing substantial minorities or even pluralities of the American public saying they thought Nicholas Daniloff might be a spy in the Soviet Union, despite assurances from the president, the secretary of state, the publisher of Daniloff's magazine and his colleagues on the Moscow beat that the Soviet accusations were false.

And the climate of cynicism surrounding the tax bill makes it even more remarkable that a Congress divided between the parties had the courage and persistence to pass such an ambitious measure, lowering rates, closing loopholes and broadening the tax base.

My own feeling is that we in the press and television contributed to the skepticism on the tax bill by questioning President Reagan's motives in proposing it and by dwelling endlessly on the influence of "the special interests" on the members of the congressional tax panels.

Most of all, we failed, as we too often do, to illuminate the substance of this sweeping measure, so that the voters could comprehend the boldness of what has been done.

That is where the new Harvard center can do a service, if it just finds a way to embody and communicate the standards to which Joan Barone devoted her professional life.

She was renowned among her colleagues for being a stickler on the details, for never letting a politican or a reporter slide off the hard points of evidence or argument. She never doubted that newspapers and television broadcasts had a responsibility that went far beyond entertaining people or boiling things down to easily digested simplicities.

She shared the faith of the nation's founders that an informed public would exercise its sovereignty with wisdom. She believed that those who acquire vital information—whether government officials or journalists—have an absolute obligation to communicate as much of it as they possibly can to the readers, the viewers and the voters to whom they are accountable.

She worked to those exacting standards all her life, even when gravely ill, and the center that bears her name will, I hope, instill those same standards in others from the academic, political and journalistic world who come through its doors.●

A MUTUALLY AGREED ARMS RACE

● Mr. **KERRY.** Mr. President, as we approach the nonsummit summit between President Reagan and Mr. Gorbachev scheduled to take place in Iceland on October 11 and 12, we all wish the President the best of luck in reaching further arrangements with the Soviets aimed at preserving peace and improving the security of our country.

It seems possible that an agreement between the United States and the Soviets on intermediate range nuclear weapons may be near agreement. According to press accounts, each side might retain 100 INF weapons in Europe, and the Soviets would agree to substantial restrictions on INF weapons in Asia. Such an arrangement, if that is in fact negotiated, could well be in the interests of the United States and the NATO alliance. And I hope we will have the opportunity to make that judgment in the course of full hearings and study through the ratification process.

However, there is an apparent stumbling block to a new treaty—the Soviet insistence that no new treaty is possible without continued United States commitment to the ABM Treaty, even as the Reagan administration apparently seeks a new agreement to phase out the limits of the ABM Treaty over the next decade.

Regardless of the Soviet position, I believe the current American position is a mistake, and urge the President to reconsider that position before meeting with Mr. Gorbachev.

It is ironic that the Reagan administration is trying to negotiate a treaty on strategic defenses that would replace current limits on the testing, development, and deployment of ballistic missile defenses with a treaty framework that allows the arms race to proceed forward by mutual agreement—exactly the charge that President Reagan once made about SALT II, when he termed it "fatally flawed."

As Spurgeon M. Keeny, president of the Arms Control Association, has editorialized in the September 1986 issue of Arms Control Today, the Reagan administration proposal is not arms control at all, but "a transparently self-serving arrangement to abolish the ABM Treaty on a timetable consistent with an optimistic assessment of the U.S. Strategic Defense Initative while constraining a potential Soviet ABM deployment in the short term."

As Mr. Keeny rightfully suggests this idea would tear the guts out of the ABM Treaty and effectively render it a nullity, permitting both sides to move forward into an area of the arms race that had previously been constrained.

To quote Mr. Keeny, "eliminating restraints on strategic defenses is not the formula for arms control; rather, it is a prescription for a new arms spiral between the superpowers. * * * The administration has achieved the ultimate arms control irony. In the name of arms control, it has proposed that the superpowers cooperate in destroying the ABM Treaty, the keystone of the existing arms control framework, and move from mutually assured deterrence to a mutually agreed arms race."

I ask that the full text of Mr. Keeny's editorial be printed in full at the end of my statement.

We should not be seeking to replace the ABM Treaty we should be seeking to strengthen it. We should not be repudiating SALT II—we should live within it while negotiations on reductions in offensive arsenals continue. We should not be rejecting the Soviet nuclear testing moratorium—it is in the interest of our own national security to join it.

There are issues between us and the Soviets which President Reagan should raise—not United States repudiation of the ABM Treaty, but solutions to the problems of the Krasnoyarsk radars, the proliferation and modernization of Soviet air defenses, Soviet strategic laser research, and encryption. These issues can and must be resolved not by abandoning the treaties involved, but through aggressive negotiation and diplomacy, even as the Daniloff case was resolved by achieving the freeing of a prominent Soviet dissident after lengthy meetings between Secretary of State Shultz and Soviet Foreign Minister Shevardnavze last week.

The general language of the ABM Treaty, for example, is filled with terms that have eluded clear definition, terms like "components," or "tested in an ABM mode." The treaty does not even provide clear guidance on the most fundamental questions, such as the difference between permitted research and prohibited development.

To modernize arms control, we need to elaborate and update the general language of the treaty with definitions that both sides can agree on. That process can be done in the secrecy and quiet of the Standing Consultative Commission established by the treaty. Or it can be done in Geneva. But done it must be if the treaty is to survive.

Moreover, ABM Treaty restrictions are increasingly imperiled by giant loopholes—loopholes like the freedom to test and deploy antisatellite weapons, such as are under development in our SDI Program. Both sides are at the edge of vastly improved ASAT capabilities, as the recent U.S. test in space in which a kinetic kill was made through the collision of two satellites aptly demonstrated. We depend on our satellites—we should move to protect them with an ASAT Treaty. There are many possibilities for such a treaty—but the most obvious protection would be for both sides to agree to a ban on ASAT tests. ASAT testing bans can be verified. An untested ASAT has little military value. An ASAT testing ban thus does much to protect both sides satellites.

Preserving and extending arms control is a difficult and even perilous enterprise when both sides are demonstrating the best of wills. As the "non-summit" summit approaches, I call on the President to reconsider his administration's course of dismantling the work of five preceding administrations, and instead to get on with what must be done to preserve and extend these too fragile, but still significant, foundations of arms control.

The editorial follows:

TOWARD A MUTUALLY AGREED ARMS RACE

The Reagan administration is apparently attempting to persuade the Soviet Union to join the United States in a new agreement on strategic defenses that would guarantee the demise of the ABM Treaty by mutual consent. President Reagan has reportedly offered not to deploy space-based antimissile defense systems for five to seven years provided the Soviet Union agrees they can be deployed thereafter. Moreover, the administration has made clear that these currently prohibited systems could be developed and tested in the meantime.

The President's proposal is a transparently self-serving arrangement to abolish the ABM Treaty on a time table consistent with an optimistic assessment of the U.S. Strategic Defense Initiative while constraining a potential Soviet ABM deployment in the short term. This will hardly be seen as a concession by the Soviet Union because the administration acknowledges that the United States could not possibly begin deployment of a space-based defense system, utilizing new technology, until after the mid-1990's. The Soviet Union, however, could begin a nationwide deployment of its Moscow-type ground-based ABM system much sooner.

The administration's insistence on the right to develop and test space-based defenses involving new technologies would place the ABM Treaty in immediate jeopardy. This action would go a long way toward rendering the ABM Treaty meaningless since a ban on space-based and other mobile defenses is central to the treaty's basic objective of preventing a nationwide defense. In return for these "concessions," the Soviet Union would be expected to agree to deep cuts in its strategic offensive forces.

If these press reports in fact reflect the administration's position, there will almost certainly not be an agreement. And, if the Soviet Union should unexpectedly agree to renegotiate the ABM Treaty along these lines, we will have managed to design an agreement to ensure a fruitless race to build strategic defenses. This will not lead to deep cuts in offensive forces since both sides will move promptly to expand and improve their offensive arsenals in order to guarantee their ability to retaliate in all circumstances. Eliminating restraints on strategic defenses is not the formula for arms control; rather, it is a prescription for a new arms spiral between the superpowers.

President Reagan claims he wishes the United States and the Soviet Union would join together to protect the world from the danger of nuclear weapons. Unfortunately, his administration has no credible plan for achieving this goal. Instead, it would scrap the ABM Treaty in the face of a growing consensus that an effective nationwide defense is technically impossible.

To make room for "Star Wars," the Reagan administration first tried to destroy the ABM Treaty with an unsupportable reinterpretation that would reverse its universally accepted meaning by permitting the banned development and testing of space-based systems. Now, in a more direct approach, President Reagan is apparently trying to enlist the Soviet Union in a cooperative program to undermine and then formally destroy the ABM Treaty. The administration has achieved the ultimate arms control irony. In the name of arms control, it has proposed that the superpowers cooperate in destroying the ABM Treaty, the keystone of the existing arms control framework, and move from mutually assured deterrence to a mutually agreed arms race.

Spurgeon M. Keeny, Jr.●

THE A-7 STRIKEFIGHTER AIRCRAFT

● Mr. DOMENICI. Mr. President, in its report on the fiscal year 1987 defense authorization bill, the Senate Armed Services Committee authorized $35 million in research and development funding for the A-7 Strikefighter aircraft. The House Appropriations Committee also included the provision in the House-reported DOD appropriations bill. The purpose of this program is to modernize our current A-7 aircraft and thus enhance its capability for the close-air support role. The Air Force is planning to equip the Air National Guard with F-16 fighter aircraft at some future time, but there is a strong case to be made instead for modernizing the Air Guard with the Strikefighter.

The A-7 is an excellent aircraft. As many Members are aware, it has been a mainstay of the Navy's fleet of attack aircraft for years. Although the average age of our A-7's is over 12 years, it still has plenty of useful life left. With a considerably upgraded engine, aerodynamic structural modifications and improved night attack avionics, the Strikefighter would be twice as effective as the existing A-7 and probably better than the F-16 in the close-air support role. It could perform the close-air support role well into the 21st century.

Furthermore, development of the Strikefighter would cost only about $200 million over 2 years, followed by a $6 million per aircraft modification effort. This is about half the cost of any new aircraft. In short, the Strikefighter Program is worthwhile and cost-effective, at a time when we need to find ways to save money.

I strongly support this needed investment in our country's air forces, and I urge that House-Senate conferees on defense appropriations adopt the funding level recommended by the Senate Armed Services Committee and the House Appropriations Committee. While there is no funding for Strikefighter R&D in the Senate defense appropriations bill for fiscal year 1987, I urge the conferees to accept the House position and fund this program.

MANNING FOR THE NATIONAL GUARD AND RESERVE

● Mr. DOMENICI. Mr. President, during the last few years, an increasing amount of the responsibility for the defense of our country has been placed on our National Guard and Reserve Forces. We are shifting more of the tasks currently being performed by our Active Duty Forces to the Guard and Reserve. I support this process. At a time of budgetary constraints, expanding the size and strength of the Guard and Reserve provides a cost-effective alternative for maintaining a strong defense posture.

The fiscal year 1987 budget request for the Guard and Reserve calls for an increase in full-time manning of 12,112 over the fiscal year 1986 level. The Senate Armed Services Committee has authorized no growth in this area, recommending full-time manning to be maintained at 64,277. The House recommendation also provides no growth. The Senate Appropriations Committee's recommendation does allow for some growth. It sets full-time manning for the Guard and Reserve at 68,311 for the upcoming fiscal year.

I wish to commend the Defense Appropriations Subcommittee in its effort to provide enough flexibility in funding to allow our Guard and Reserve to man the new weapons systems which have been authorized for them. I know that in my own State of New Mexico the Army National Guard has deployed or is preparing to deploy weapons such as the Roland, Chapparal, and Stinger missile defense systems. We will also be deploying a new Hawk missile battalion.

Again, these weapons systems have been authorized. They are important components of our Guard and Reserve Modernization Program, but they require an increase in full-time manning. I urge the distinguished chairman of the Defense Appropriations Subcommittee to ensure that the cuts in full-time manning for the Guard and Reserve do not jeopardize the deployment of these systems with the Guard. In this respect, I believe it is vital that the House-Senate conferees on defense appropriations adopt the Senate level for full-time manning of the Guard and Reserve, and I urge my colleagues who are on the conference committee to stand fast during negotiations on this issue.●

CONCERNING THE SAFETY PROGRAM OF TINDLE MILLS, INC.

● Mr. DANFORTH. Mr. President, truck safety is a serious problem on our Nation's highways. Heavy truck accidents kill 5,000 people each year. Truck accidents reported to the Department of Transportation were 18 percent higher in 1984 than in 1983 and rose another 6 percent in 1985.

There are some companies that are taking steps to stop this disturbing trend. For example, Tindle Mills, Inc., of Springfield, MO, pays drivers on a per-mile basis for every mile driven without an avoidable accident.

Tindle has shown that safety pays for both the company and its drivers. In a 28-month stretch, Tindle's drivers accumulated almost 1.5 million miles without an accident. Its drivers have received $70,000 in bonuses since the program began in 1979.

I congratulate Tindle on its successful program and urge other companies to profit from its example.●

ENGLISH PROFICIENCY ACT

● Mr. D'AMATO. Mr. President, I rise today as a cosponsor of S. 2835, the English Proficiency Act of 1986, excellent legislation introduced by the distinguished Senator from New Mexico.

Recently, we have been overwhelmed with statistics that highlight the startling rise in the illiteracy rate in the United States. Current estimates by the Department of Education indicate that 25 million American adults are considered functionally illiterate. They are lacking such basic skills as reading, writing, comprehension, and mathematics that are necessary to function beyond the fourth grade. Another survey conducted by the Census Bureau and the Department of Education found that, while 13 percent of all American adults are illiterate, the illiteracy rate for adults whose first language is other than English is an astounding 48 percent. Hispanics in particular stand out with an illiteracy rate of 56 percent.

As Americans, we pride ourselves on the vast number of opportunities this land provides us; foremost among these opportunities is education. The fact that there are so many millions of Americans who cannot write their own name, or read a road sign or newspaper, is both shocking and deplorable.

This legislation would combat illiteracy and focus on groups that are particularly plagued with deficient reading and writing skills. It would provide grants for adult literacy programs for high school dropouts who are limited in their understanding of the English language; would establish a clearinghouse to facilitate the acquisition and dissemination of effective teaching methods for the targeted population; and would make more effective use of existing resources and programs at the Department of Education.

The consequences that arise from the growing illiteracy rate must be acknowledged. The Americans that are most affected by their inability to read and write cannot afford to continue along this path. The basic skills that result from a solid education are the most important means these people have of bettering their opportunities in life. We have a responsibility to provide the means for these people to become full and productive citizens. It is for these reasons that I strongly support the English Proficiency Act of 1986 and urge my colleagues to act expeditiously in passing it.●

ABORTION AND INFORMED CONSENT: IOWA

● Mr. HUMPHREY. Mr. President, I hope my colleagues will read Ellie's letter from Iowa carefully. I hope they will try to imagine what it must be like for a young woman to realize that she has been misinformed about the true nature of her baby's development. There is a conspiracy of silence regarding the true nature of abortion and the complications associated with the procedure. I ask my colleagues from Iowa to heed the plea of their constituent and cosponsor S. 2791 requiring that women be told all the facts about abortion before they submit to an abortion.

The letter follows:

JULY 4, 1986.

DEAR SENATOR GORDON HUMPHREY: As August approaches, I already feel myself getting depressed. August 10th will be the 16th anniversary of the day I allowed my only child to be destroyed.

Although I should have known what was going on (I was 29 at the time), I'm somewhat embarrassed to admit I didn't. No one told me anything about the developing baby inside me, nor did anyone tell me what would happen to the baby during the abortion. In fact, I wasn't even told what would take place. Certainly, I didn't get any information on how the abortion could affect me psychologically in later years.

My abortion was done in New York City at 16 weeks, a saline abortion, an especially gruesome type since the baby is well developed at 16 weeks. I was fortunate to have no physical complications at all. The abortion was performed at Hillcrest General Hospital in Queens.

Oh, my life was different from the beginning. I'd lost self-respect as well as the respect of some other people in my life, but I had no idea how I would be affected when I finally saw pictures of what developing babies look like and what abortion does to them! It was traumatic, and I've suffered depression, guilt, nightmares, heart irregularities, unstable relationships, et cetera, during the less than 2 years that have passed since I became aware of the facts.

I'm active in helping other women come to terms with their post-abortion depression and distress, and want you to know how much we all appreciate the efforts you're making to get legislation passed to assure that women soon will have the facts before they make a "choice" they''ll regret so much later on.

I, too, feel education is the best means to help people understand what's involved before a problem pregnancy exists, and definitely before a "choice" can be made. Keep up your efforts, and we will continue to support you and the other pro-life people in Washington, D.C. as well as we can from here.

Sincerely for life,

Ellie Rought,
Cedar Rapids, Iowa.●

FOUNDER'S HONOR

● Mr. SIMON. Mr. President, I welcome the news of the impending release of Soviet dissident Yuri Orlov, one of the cofounders of the Helsinki Watch Group. The watch members bravely monitored Soviet compliance with the Helsinki agreements of 1975. Amongst the founders were Anatoly Shcharansky, recently released from the Soviet Union, and Naum Meiman, still held against his will within the Soviet Union. For their efforts to assist with the Helsinki agreements, Orlov and Shcharansky were imprisoned and Naum Meiman and his family were ostracized from Soviet society.

It has been more than a decade since Naum and Inna Meiman have requested to emigrate from the Soviet Union. Their quest for repatriation to Israel is the Meimans' life-long dream, but their desire to leave the Soviet Union now has additional importance. A fifth tumor has appeared on Inna's neck. The Soviet doctors feel there is nothing more they can do for her.

In the spirit of cooperation, with Soviet-American relations at a crucial juncture, I strongly encourage the Soviet Union to allow the Meimans to emigrate to Israel.●

PROGRAM

Mr. HELMS. Mr. President, as a brief recap the Senate will convene tomorrow morning at 8:30 a.m. We will be back on the continuing resolution at 9 a.m. Rollcall votes could occur early Thursday morning with relation to the continuing resolution, and at 2:15 tomorrow afternoon the veto message on South Africa will be the pending business under controlled time with a vote at 4 o'clock tomorrow afternoon.

Following that vote, the Senate will return to the consideration of the continuing resolution with rollcall votes very, very late into the evening and possibly beyond.

RECESS UNTIL TOMORROW AT 8:30 A.M.

Mr. HELMS. Mr. President, there being no further business to come before the Senate, under the previous order I move that we stand in recess.

The motion was agreed to; and the Senate, at 10:48 p.m., recessed until Thursday, October 2, 1986, at 8:30 a.m.

NOMINATIONS

Executive nominations received by the Senate October 1, 1986:

In the Army

The following-named officer to be placed on the retired list in grade indicated under the provisions of title 10, United States Code, section 1370:

To be general

Gen. Fred K. Mahaffey, [redacted] age 52, U.S. Army.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 1, 1986:

Executive Office of the President

William R. Graham, of California, to be Director of the Office of Science and Technology Policy.

National Aeronautics and Space Administration

Dale D. Myers, of California, to be Deputy Administrator of the National Aeronautics and Space Administration.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

EXTENSIONS OF REMARKS

U.S. SENATE PRODUCTIVITY AWARD PROGRAM

HON. CHARLES McC. MATHIAS, JR.

OF MARYLAND

IN THE SENATE OF THE UNITED STATES

Wednesday, October 1, 1986

● Mr. MATHIAS. Mr. President, in 1982 the Senate established the U.S. Senate Productivity Award to recognize how important productivity is to the economic well-being of our country. At that time, the Senator from Alaska [Mr. STEVENS] and others thought it would be appropriate to award a medal in each State for outstanding improvements in productivity.

The program was to serve two purposes. First, it would bring attention to those companies, organizations and individuals who were actually doing something to be more competitive and, hopefully, inspire others to follow their example. Second, it would help Members of the Senate become more aware of the productivity efforts in the country and how public policy could encourage improved productivity.

For the past 3 years, I have conducted a productivity program in conjunction with the University of Maryland's Center for Productivity and Quality of Working Life. We put together a panel of distinguished Marylanders and invited individuals, unions, companies and other organizations to tell us how and why they were improving productivity. The quality of the responses has been excellent and demonstrates that there are people doing things to make themselves and the country more competitive.

The winners of this year's U.S. Senate Productivity Award for Maryland were the 4,600 associates of Preston Trucking Co. in Caroline County, MD, and around the country. At Preston, productivity is gospel. Last year Preston's associates developed, approved and implemented over 3,000 productivity initiatives.

But Preston has not been content with just winning the Senate Productivity Award. The company will provide information on productivity to anyone interested and in the future will offer case studies for business schools and a how to series on productivity applicable to any company. Preston has also started the American productivity campaign to bring national attention to the need for improvements in productivity.

Mr. President, this productivity award program has demonstrated its effectiveness to me over the past several years and I hope other Senators will consider how it can be used to make more people more aware of productivity in their States.●

TRIBUTE TO DR. HUGH E. McGUIGAN

HON. ROBERT J. MRAZEK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. MRAZEK. Mr. Speaker, on December 31, the guiding hand of the Port Washington Union Free School District, Dr. Hugh E. McGuigan, will retire after 17 years as the district's superintendent. I rise today to call the attention of my colleagues to this fact, and to salute the fine work performed by Dr. McGuigan for the benefit of a generation of young people in the Port Washington community.

Under his leadership, Port Washington's Paul D. Schreiber High School has been recognized by President Reagan and the Department of Education as one of the outstanding high schools in the Nation. Schreiber is the only high school on Long Island to receive this designation, and it stands as a credit to Dr. McGuigan's principled leadership.

Prior to coming to Long Island, Dr. McGuigan served as superintendent of schools in Woodbury, CT, and in Niles, IL, a suburb of Chicago. He also served as a principal in Farmingdale, NY. He received his educational preparation in the fields of history, government and public school administration at Adelphi, Hofstra and New York Universities.

Along with his responsibilities in developing new and innovative teaching programs, Dr. McGuigan has found time to contribute his energies to WLIW, the Long Island Public television station, as vice chairman of the station. He also has served as an associate trustee of North Shore University Hospital for 10 years, and is a member of Phi Delta Kappa and Delta Kappa Phi, national scholastic honorary societies.

Earlier this year, he received the Exceptional Achievement Award from the Educational Assistance Center of Long Island. He also serves on the New York State Education Department Tenure Hearing Panel.

Mr. Speaker, I'm sure that my colleagues will join me in wishing Dr. McGuigan the very best as he steps down from his years of service to the Port Washington community.

YURI ORLOV'S FIGHT FOR HUMAN RIGHTS WILL CONTINUE IN THE UNITED STATES

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. GILMAN. Mr. Speaker, I was extremely pleased to learn today, as did many others, that Moscow Helsinki Group founder Yuri Orlov, will be released from his term of exile in Siberia within the next few weeks. This is joyous news for all of us involved in the fight for human rights in the Soviet Union.

The announcements today from President Reagan and Secretary Shultz that a summit meeting will be held on October 11-12 in Rejkyavik, Iceland, prior to which Yuri Orlov will be released to the West, is welcome news indeed. This past month has caused a great deal of tension between our two nations, as we sought to negotiate a settlement in the Daniloff affair. Indications from the President that "they blinked first" only confirms our knowledge that the President and Secretary Shultz maintain a strong and firm commitment to the high ideals of this Nation, including their personal dedication to the precepts of the Helsinki Final Act.

Yuri Orlov, a brilliant scientist, was the founder of the highly regarded Moscow Helsinki Watch Monitoring Group. With Andrei Sakharov and Anatoly (Natan) Shcharansky, he set the standard for so many other Helsinki Watch groups established throughout the Soviet Union. It was because of Yuri Orlov and his associates that others were able to gather the necessary courage to stand up for their internationally guaranteed rights. Yet it was these same founders who suffered severely because of these beliefs.

Yuri Orlov is a 62-year-old high energy physicist of international standing who was elected a corresponding member fo the Armenian Academy of Sciences in 1968. In October 1973 he became one of the founders of the Moscow branch of Amnesty International, and in retaliation for this, Dr. Orlov was dismissed several months later from his post at the Institute for Terrestial Magnetism and Radiowave Propagation [IZMIRAN]. Nevertheless, he managed to continue his theoretical research and during those years originated "wave logic," an important approach to problems of theoretical physics. In addition, he continued to monitor human rights violations, signing petitions and literally standing up with his persecuted fellow citizens.

Dr. Orlov's strong human rights advocacy culminated in his chairmanship of the Moscow Helsinki Watch Group in May 1976. Under his leadership, the group issued over 20 authoritative reports on Soviet Violations of the Helsinki accords. These activities led to his arrest

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

in February 1977, on the charges of anti-Soviet agitation and propaganda.

After being held incommunicado for 15 months, Dr. Orlov was sentenced to the maximum term of 7 years strict regime labor camp and 5 years internal exile. His expulsion from the Armenian Academy of Sciences followed soon after. Professor Orlov's term of hard labor was punctuated by the confiscation of his scientific papers, beatings, and his relegation to special punishment cells. This cruel mistreatment led to physical disorders including hypertension, kidney disease, a heart murmer, and respiratory problems, among others.

Following his 7-year term of labor camp, Dr. Orlov was transferred to his place of exile in Yakutsk, Siberia. There, he was forced to live in a crude hut without heat or other basic amenities. In the almost 10 years in which Dr. Orlov has suffered, photos have shown us that he has aged 20.

Dr. Orlov's release to the West is gratifying news. His courage, integrity, and determination to ensure compliance by the Soviet Union with the Helsinki Final Act are appreciated by us all as a superhuman act under subhuman conditions. Yet we will not cease our efforts to obtain the release of other confined human rights activists, such as Drs. Andrei Sakharov and Yelena Bonner, still held incommunicado in the closed Soviet city of Gorky. They and so many other innocent men and women need our best efforts on their behalf if we are to ensure that the upcoming summit meeting between President Reagan and Soviet General Secretary Mikhail Gorbachev will produce substantial human rights programs.

LEGAL TOOLS LIMITED TO ENFORCE SUBPOENA

HON. CARROLL HUBBARD, JR.

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. HUBBARD. Mr. Speaker, prominent Washington, DC, attorney James Hamilton has written an excellent article which recently appeared in the September 22 edition of the National Law Journal.

Jim Hamilton, one of Washington's most outstanding attorneys, is a member of the successful Washington law firm of Ginsburg, Feldman & Bress, Chartered. Mr. Hamilton is the former assistant chief counsel to the Senate Watergate Committee. Mr. Hamilton is the author of "The Power to Probe: A Study of Congressional Investigations."

Mr. Hamilton highlights his thoughts about the nomination of Justice William H. Rehnquist as Chief Justice. He discusses the controversy of the Senate's legal right to confidential documents which were written by Justice Rehnquist. His detailed article emphasizes some very important points on both sides of this issue.

Mr. Hamilton's article follows:

[From the National Law Review, Sept. 22, 1986]

LEGAL TOOLS LIMITED TO ENFORCE SUBPOENA

(By James Hamilton)

A controversy erupted when President Reagan invoked executive privilege during the Senate Judiciary Committee's proceeding to determine whether Justice William H. Rehnquist should be confirmed as chief justice. That controversy now has passed, but important issues linger in its wake.

The president asserted executive privilege in refusing to give Democrats on the committee confidential documents written by Mr. Rehnquist in 1969-1971 when he was assistant attorney general for the Office of Legal Counsel. The documents, the president contended, involved advice that Mr. Rehnquist provided as part of the government's decision-making processes.

The spurned senators howled about the president's "blanket" assertion of privilege, claiming that the documents concern controversial subjects—for example, domestic surveillance and wiretapping—and were needed to determine whether Justice Rehnquist should be confirmed. The controversy was deflated when the president relented and produced memorandums on various specified topics.

The administration concession was in line with its own 1982 policy memorandum regarding congressional requests for information, which states: "Every effort shall be made to comply with the congressional request in a manner consistent with the legitimate needs of the executive branch."

Basic questions remain, however: Did the Senate's legal right to these documents outweigh the president's claim of executive privilege? Could the Democrats have forced their production had the President not capitulated?

In my view, the answer to the first question is probably "yes." The answer to the second is, unfortunately, "no."

The U.S. Supreme Court has ruled that, while the president has a constitutionally based executive privilege, this privilege is not absolute. The president's reasons for withholding must be balanced against Congress' need for the information sought.

In U.S. v. Nixon, 418 U.S. 683, the Supreme Court in 1974 recognized "the valid need for protection of communications between high government officials and those who advise and assist them in the performance of their manifold duties."

The court added: "Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decision-making process."

A complicating factor was that many of the Rehnquist documents contain legal advice. While there is debate on this issue, a good argument can be made that Congress has no right at all to materials protected by a valid claim of an attorney-client privilege. It is not clear whether that privilege, which would depend on the nature of each document sought, was technically applicable.

There were, however, other circumstances that weakened President Reagan's claim of executive privilege.

First, many of the documents were not directed to the president. The need to protect communications between government officials other than the president is not as compelling as the need to safeguard his communications, which the Supreme Court has said are "presumptively privileged."

The Rehnquist memorandums also were at least 15 years old, and whatever reasons once existed to shield them likely had diminished with the years. Moreover, some Office of Legal Counsel memorandums are routinely published and Mr. Rehnquist apparently had no objection to the release of his.

On the other side of the equation, the Senate's need for the Rehnquist documents was substantial. The Senate is being called on to confirm a chief justice who may well lead the world's most important court for 20 years. The chief justice is more than just a jurist; he is, as well, a symbol of justice. The views Justice Rehnquist expressed as a high government official could have been significant.

The Senate's requirement for information for the confirmatory process arguably is even stronger than Congress' need for information to pursue its general legislative and oversight functions. And why should the country be left with worrisome doubts about the man who probably will become chief justice? Such doubts, which were stirred by the president's assertion of privilege, do not promote respect for the court and the administration of justice.

All this said, the fact remains that Senate Democrats did not have the legal tools to obtain the documents.

The committee had no legal right to these memorandums unless it issued a subpoena for them. It appeared that the Democrats could have gathered the votes to do this. But, if the subpoena had been defied, it likely would have been enforced, if at all, by a criminal contempt of Congress proceeding against the person refusing to honor the subpoena.

A criminal contempt proceeding can be initiated only by a majority vote of the Senate. The Democrats probably would not have had the votes to reach this result.

The only other way for the Senate to enforce a subpoena is to send the Senate sergeant-at-arms to arrest the individual defying it. However, such a procedure also requires full Senate approval and has not been used by either house since 1945. It also would be somewhat unseemly for the sergeant-at-arms to walk into the Justice Department to haul away Attorney General Edwin Meese or some other high department official who had not acceded to the Senate's demands.

The Senate does have authority to bring a civil action to enforce a subpoena directed to an individual not employed by the federal government, but this procedure would not be available concerning a subpoena to a Justice Department official.

Even if the Senate had voted criminal contempt, a successful prosecution would have been highly unlikely because the Justice Department has broad discretion over which cases will be prosecuted and which will not.

And there was another wrinkle. If the person defying the subpoena were the attorney general or other top Justice Department official, any contempt of Congress prosecution would fall under the Ethics in Government Act and would require the appointment of an independent counsel. The courts, however, have held that the attorney general's decision whether to apply to a special three-judge federal court for an independent counsel is not reviewable by the courts.

In short, the Senate could not have forced production of the Rehnquist documents by initiating a criminal contempt proceeding.

In reality, the Senate's only viable way to compel release of the documents was to indicate that confirmation was foreclosed without them, a stance that politics made improbable. The Senate thus was fortunate that the president changed his mind.

It is, however, unfortunate that Congress has such limited legal tools to compel the executive branch to disclose confidential documents tht may be most relevant to Congress' various missions. For these reasons, I have long advocated a civil procedure that would allow a federal court, on an expedited basis, to rule on a president's claim of executive privilege precipitated by a congressional request for information.

THE SIMPLEST WAY TO FIGHT DRUGS

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. BIAGGI. Mr. Speaker, this august body recently passed the most hard-hitting and comprehensive antidrug legislation in the history of our Nation. Over the next 3 years it would provide more than $4 billion to fight drug abuse. I was an original cosponsor and strong supporter of that legislation.

The bill contains many attractive features. As a former law enforcement officer, I particularly liked the tougher penalties it would impose on drug traffickers, and the more than $1 billion in Federal assistance it would provide to help State and local law enforcement agencies fight drugs. Similarly, I have spoken out many times in support of the bill's provisions to promote a vigorous drug abuse education program in the schools, beginning in the earliest grades and lasting throughout a child's school years.

However, a recent op-ed piece that appeared in the New York Times spotlighted yet another critical component of the Omnibus Drug Enforcement, Education, and Control Act—drug eradication. As James Mills, a man who has spent the last 6 years writing a book about the international narcotics industry, states in his article, "The cause of the drug problem is drugs. If drugs had never existed, there could be no drug problem. Apparent solution: Remove drugs. Without the presence of drugs, there would be no need for programs to interdict drugs, arrest drug dealers, seize drug profits, treat drug addicts or test potential drug users."

That is good, sound logic. Unfortunately, the total eradication of illicit drugs cannot occur overnight. In fact, total eradication will probably never happen, at least not in our lifetimes. That is why we must also focus our efforts on education, interdiction, strengthening our drug penalties, increased law enforcement and treatment programs.

However, I agree with Mr. Mills, that an effective drug eradication effort will make the rest of the drug abuse prevention work that much easier. Significantly, the omnibus drug bill we passed is consistent with this view. In fact, the bill conditions certain U.S. foreign assistance on the willingness of drug producing nations to develop and implement eradication programs. Further, the bill encourages multilateral development banks to support increased lending for eradication programs and crop substitution programs. Foreign countries that do not cooperate with U.S. interdiction and eradication efforts could also be denied preferential tariff treatment. In addition, the bill authorizes more than $100 million for international eradication and interdiction efforts, as well as for research and development of safe and effective herbicides to eradicate coca, from which cocaine is produced.

Mr. Mills points out that U.S. eradication and crop substitution assistance worked very effectively in Turkey in the 1970's. I supported those efforts and would agree that the same success can be expected elsewhere. The Omnibus Drug Enforcement, Education, and Control Act will allow that to happen. At this time, Mr. Speaker, I am submitting the full text of James Mills' article:

THE SIMPLEST WAY TO FIGHT DRUGS

(By James Mills)

What do the traffickers themselves think of all this drug hysteria—President Reagan's urinalysis, the first blockade of New York harbor since the War of 1812, proposals to seal the Mexican border with a 2,000-mile cocaine curtain? In a fortified mansion in Bangkok, in a Mexico City prison, in homes, hotel rooms and restaurants on four continents, I have spoken to a few of the men who run the international narcotics industry, and I am certain their reaction to the war on drugs is the same today as when I met them. They are laughing. With each desperate new response to the drug dilemma, we move further and further from the real solution, and give the narcotics tycoons every reason to celebrate.

When an intelligent person has a problem, he first examines the problem, breaks it into its components, tries to find the fundamental cause (as opposed to symptoms masquerading as causes) and then attacks that cause. He also asks himself what attacks have been made on the problem in the past, and which, if any, of those attacks have had success.

Clearly, the cause of the drug problem is drugs. If drugs had never existed, there could be no drug problem. Apparent solution: remove drugs. Without the pressure of drugs, there would be no need for programs to interdict drugs, arrest drug dealers, seize drug profits, treat drug addicts or test potential drug users.

What attacks have been launched against the drug problem in the past? They include: interdiction, law enforcement, penalties, treatment, denying profits, eradication.

Which of these, if any, have worked? Only one: eradication. It worked in Turkey, and it worked more recently and temporarily, in Mexico. None of the others has ever worked, to any significant degree, anywhere at any time.

Doesn't common sense tell us that before we throw billions of dollars and immense effort at other recommended attacks on the problem, we should fully exhaust attempts at eradication, the only remedy that has ever worked? Not only is eradication the only remedy that has worked, it is also the only approach that directly attacks the fundamental problem—removing drugs.

Eradication also happens, fortunately, to be the cheapest and easiest approach. Ninety-five percent of the world's cocaine, for example, originates in only two countries, Peru and Bolivia. They have a combined population approximately equal to that of California. They are impoverished and desperately in need of aid. Surely, it would be relatively easy to encourage—and, if necessary, to force—those countries to stop growing coca.

Peru and Bolivia complain that eradication of coca plants would unduly upset peasants who earn their livings from coca. But when members of the Senate Select Committee on Narcotics Abuse and Control visited Peru and Bolivia in 1983 they found that many, if not most, of the coca-growing compesinos had until recently been growing legitimate food crops. Only when the campesinos abandoned food crops for the more lucrative coca plants did both those countries have to be fed by emergency international relief programs.

Bolivia further claims that since campesinos represent 60 percent of the electorate, their disfavor could topple the Government. Well, so what—compared to the alternative of continuing cocaine abuse? Bolivian governments have been collapsing regularly for the past 30 years and will no doubt continue to collapse with or without the eradication of coca fields.

Note that Thailand has offered the peasants-will-starve argument for some 15 years, while its poppy acreage has grown and grown. Turkey said the same thing (it had 300,000 farmers growing poppies)—until President Richard M. Nixon gave the Turkish Government money for the farmers who were put out of opium business in early 1970's. Most of the money went into the pockets of corrupt officials. Still, there were no reports of mass starvation in Turkey.

A few weeks ago, President Victor Paz Estenssoro of Bolivia, asking for $100 million a year in anti-drug funds from the United States, was quoted as saying: "If we are going to tell the peasants not to grow coca, we have to have alternatives. Without an all-weather highway, they can't market rice, coffee, oranges and other legal crops they could substitute for coca." I first heard those words—virtually verbatim—about a decade ago from Thailand officials. The Thais got the money they requested, they got their crop substitution programs and they got their highway. Today, the money is gone, crop substitution is still in the "demonstration" stage, poppy acreage is vastly increased and the highway has been used to transport opium and morphine base.

It is also argued that if we eradicate in one country, growers will simply shift to another. This ignores the fact that there are only a limited number of locations with the agricultural and climatic conditions necessary for the growth of coca and poppies. And once the full power of the United States comes down on Peru and Bolivia, forcing eradication, surely other countries will see the handwriting on the wall. Will they imagine that they can succeed where Peru and Bolivia failed? Would not the United States be as capable of coercing those countries into eradication as it was Peru and Bolivia? And isn't there something fundamentally unsound, and craven, about the other-countries-will-step-in argument? Is it wise not to attack one enemy for fear that others might then appear?

After having observed the international drug scene for 20 years, I am convinced that eradication is the only thing that will work, and that it would work quite easily. If President Reagan dug in his heels and became obsessive about eradication, he could reduce the availability of cocaine by 50 percent in six months, and 80 percent in a year. Heroin could be similarly reduced, though over a longer period of time.

Why, then, is eeradication always at the bottom of every politician's list of "things to do?" I think because it's the least politically attractive recommendation. Surely, it is no accident that the present furor over drugs (sparked only in part by the emergence of crack) precedes the November elections by three months. (President Reagan declared his was on drugs 19 days before the 1982 elections) Politicians appear to believe that workers are interested only in what is nearest to them. So we get domestic solutions: interdiction, testing and enforcement. Eradication—a big word that happens in distant lands—isn't so viscerally appealing as capital punishment for pushers.

We have to stop wanting to appear as if we are doing something—and do something. There is no end to the good you can accomplish if you don't care who gets the credit. Eradication could make all other approaches, from interdiction to testing, irrelevant.

I might also add that drugs are not exclusively an American problem. The war must be a world war not only in the sense that producing countries are our enemies, but in the sense that other victim countries are—or should be—our allies. We do not have the highest per capita addiction rate in the world. (Colombia is said to have three million addicts, which is one in nine citizens—almost unbelieveable.) Many countries in Asia, Latin America and Europe have large and growing drug problems. They should be as eager as we to see to it that producing countries get out of the dope business.

Last year, 23 Americans died in terrorist attacks, and we bombed Libya. If the world's coca fields were in Libya, instead of in Peru and Bolivia, President Reagan would know what to do and we would not have a cocaine problem today.

By concentrating the bulk of its efforts on domestic approaches, our Government keeps the heat off the leaders of the international narcotics industry, men whose supply, production and management teams are overseas.

So the traffickers are laughing. They know how to solve the drug problem. The war on drugs is the best thing that ever happened to them.

GEORGETOWN SENIOR LEAGUE SOFTBALL WORLD SERIES CHAMPIONS

HON. GUY VANDER JAGT

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. VANDER JAGT. Mr. Speaker, the Georgetown Little League from Georgetown Township in Jenison, MI, a part of our Ninth Congressional District recently won the Senior League World Series for Softball in Kalamazoo, MI. The Georgetown league is part of District 9 Michigan, centered in Grand Rapids, MI. The senior division is made up of girls age 13, 14 and 15.

Facing a strong team from Pittsburg, CA, the Georgetown All-Stars were able to overcome a 2–5 deficit after the first inning and go on to win with a score of 7–5. There were several outstanding individual performances during the game, but the whole team and Coach Bob Ear rightly deserve our praise. The team finished tournament play with an outstanding 17–1 record. Until Georgetown's victory, a Michigan team had not won a softball world series since 1979. This was the sixth year the series was held in Kalamazoo, but it was the first year in which a Michigan team won the championship. Their final statistics are testimony to the greatness of their team. They scored 196 runs for a 10.88 average and they only gave up 29 runs for a 1.61 average.

I know my colleagues will join me in saluting the members of this outstanding championship team: Krista Abbott, Dawn Droog, Laurie Haan, Melanie Hoezee, Beth Horstmanshof, Cheri Idziak, Kim Idziak, Stephanie Kisscorni, Kari Kunnen, Karla Kunnen, Jenny Pyper, Jodi Pyper, Jodi Robrahn and Mary Zuidema, Bob Earl, coach, Stu Wilson, manager, Ray Sheler, Jr., assistant coach.

I am submitting for my colleagues review a copy of a newspaper article that appeared in the Grand Valley Advocate on August 12 regarding this tremendous victory.

G'TOWN CROWNED WORLD SERIES CHAMPS

(By Gary Morrison)

KALAMAZOO.—The Georgetown Little League Senior Girls All-Star team now knows all about "that championship feeling."

Saturday, at Wilson Field in Kalamazoo, the Georgetown All-Stars faced, for the second time in three days a strong team from Pittsburg, Calif. And after staking the West Coast championships to a 5-2 advantage after the first inning, rebounded to win the Senior League Softball World Series, 7-5.

And they made it look like just another game.

Georgetown was declared the visiting team, by a toss of a coin, and they took advantage with a fast start in the top of the first inning.

Kari Kunnen drew a walk and Jodi Pyper singled, Karla Kunnen then singled and drove home her twin sister, for the game's first score. Georgetown took a 2-run lead when Pyper scored from third base while her sister Jenny was at the plate.

Kari Kunnen started on the mound for Georgetown and had control trouble from the outset. She gave up six walks and three hits in the first inning, with most of the damage resulting from a two-run double off the bat of Pittsburg's Rachelle Davis.

"I knew that our team would come out hitting," Karla Kunnen said after the game, despite the rocky start. "We had six innings to hit and I knew it was something we could do."

Kunnen was replaced on the mound by Stephanie Kisscorni, and that move proved to be a welcome relief, both for the team and the many area fans who made the trip down to Kalamazoo. Kunnen, meanwhile moved to third base for the rest of the game.

Offensively, Karla finished the game with two singles, one walk, and two RBI's.

Kisscorni had pitched only three innings prior to the championship game, but the decision to play her was a sound one.

"We use Stephanie to pitch batting practice," said Georgetown manager Stu Wilson. "She is one of the most consistent pitchers we have when it comes to putting the ball across the plate and that's all we wanted her to do.

"We know our defense is strong and it was up to Steph to put the ball in play and let the rest of the team do their job."

One of the most crucial plays in the game involved the first batter Kisscorni faced. Pittsburg's Latrice Gamblin tagged a 2-2 pitch and sent it flying to right field, where Laurie Haan made a running catch for the second out in the inning.

Without hesitation Haan turned and fired a strike to Mary Zuidema at home plate to easily double up Kenysha Warren, who was trying to score from third after the catch.

That play proved to be the turning point. From then on, the Gerogetown girls dug in their heels to get back into the ball game.

Georgetown began its comeback in the third inning after Karla Kunnen singled and Jodi Robrahn walked. Jenny Pyper followed with a double to left that sent Kunnen scampering home, making the score 5-3.

Meanwhile, Kisscorni had the West Coast champions stymied, as they managed just three hits and two walks off the Georgetown reliever over the remainder of the game. When Pittsburg did make contact, the Georgetown fielders were usually in the right place at the right time.

A scoreless fourth gave way to a productive fifth for Georgetown. Robrahn reached first on a fielder's choice, moved to third on a sacrifice by Jenny Pyper and a single by Haan, then scored on Dawn Droog's single.

In the sixth, Georgetown forged ahead—for good.

Kisscorni reached based with a walk and advanced to second on a single by Kari Kunnen. Jodi Pyper reached on an error to load the bases to set of the game-winning rally.

Karla Kunnen was safe at first on a bunt to send Kisscorni home. Robrahn then knocked in what proved to be the winning run with a sacrifice fly.

"It felt great," Robrahn said of her game winning RBI. "I didn't think I could hit the ball because I haven't been hitting good in the tournament. But I knew we could win.

"We came back before, and I knew we could do it again."

In the final stanza, Kari Kunnen drove in the final run of the game when she singled home Droog. From then on the object was to prevent Pittsburg from scoring.

Kisscorni gave up a one-out single to Charleta Thompson and a two-out walk to Felecia Collier in the bottom half of the seventh, but a grounder by Charise Owens to Kunnen, and the ensuing 6-3 putout, touched off a wild Georgetown celebration.

"I was so nervous," Kisscorni said after the game. "I didn't expect to pitch at all. I knew our team was good but I didn't think we would get to be the World Series champs."

In spite of certain outstanding individual performances, Georgetown coach Bob Earl praised the entire team. Georgetown finished tournament play with a 17-1 record, with its only loss coming in the state playoffs against Essexville.

"We probably benefited from that game the most," Earl said. "It was a loss that they got out of the way and made them more relaxed. Plus it proved to them that can also come back and win ball games."

The last time a Michigan team won a softball world series championship was in 1979 when a squad from Gaylord captured the crown in Portland, Oregon. This was the sixth year the World Series has been held in Kalamazoo but the first year in which a

Michigan team to win the championship in its home state.

ROAD TO THE TITLE

The Georgetown girls made a valiant comeback to become champions of the Softball World Series, but to get to the final game, they use a completely different approach. On Wednesday, against the Glasgow, Del., champions of the East Coast, Georgetown took an early lead and coasted to a 12-2 semifinal win.

On Thursday, the Georgetown girls faced the Pittsburg, Calif., team they would face again for the championship on Saturday. And similar to the Wednesday contest, Georgetown jumped out to an early advantage.

PROBLEMS FACING OUR NATION'S YOUTH

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. DYSON. Mr. Speaker, I rise today to bring to your attention the myriad problems that often overwhelm our Nation's youth whether it be sex, drug, or alcohol related. It is in this vein that I read to this distinguished body four prize winning essays sponsored by the Liebman-Berger Post No. 707 Auxiliary, Jewish War Veterans of the United States and the Wicomico County, MD, Board of Education:

THE BICENTENNIAL OF THE VIRGINIA STATUTE FOR RELIGIOUS FREEDOM

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. ACKERMAN. Mr. Speaker, this year the United States is celebrating the 200th anniversary of the Virginia Statute for Religious Freedom, drafted by Thomas Jefferson and vigorously supported by James Madison.

More than anyone else, it was these two architects of this Nation's concept of civil liberties who truly understood the meaning of religious freedom. This idea does not mean that one is free solely in one's own personal interpretation of divine providence, but also from any interpretation of providence. This hallmark statute expressed the fervent belief of Jefferson and Madison that religion is a matter that must be left to religious institutions—neither promoted nor interfered with by the Government.

I urge all of my colleagues to read the article which appeared in the September 28, 1986, issue of the Washington Post.

The article follows:

[From the Washington Post, Sept. 28, 1986]

THE FREEDOM THAT MADE AMERICA

IGNORE PIOUS ADVOCATES OF STATE RELIGION: JEFFERSON KNEW WHAT HE WAS DOING

(By William Lee Miller)

It is the most significant achievement on behalf of religious freedom in our nation's history. As such, it is one of the definitive achievements—perhaps absolutely the most unusual—of America's founding. A distinguished historian has even gone so far as to say that the 200-year-old Virginia Statute for Religious Freedom, crafted by Thomas Jefferson, is the most significant American document—bar none. It held that "our civil rights have no dependence on our religious opinions." And it is having its bicentennial this year.

And how then have Americans 200 years later honored this great accomplishment? By a kind of inadvertent anticelebration. On the bicentennial of the key political victory by James Madison that led to the passage of the Statute by the Virginia Assembly, the state of Alabama contended before the Supreme Court that it could set up an established church if it wanted to. On the anniversary of Madison's great Remonstrance, Edwin Meese, the attorney general of the United States, was telling the American Bar Association that we really can't know what the founders meant. In Virginia itself preachers like Jerry Falwell and Pat Robertson were pounding away on the tube with a political-religious message at odds not only with Jefferson but with his allies—the forbears of today's evangelical Christians. And in the climactic bicentennial year, Jefferson's and Madison's successor in the White House nominated for the chief justiceship of the U.S. Supreme Court William Rehnquist, a justice who had gone out of his way, alone, in dissent and at length (in that Alabama prayer case), to deny that Thomas Jefferson had anything to do with the nation's religious policy.

I propose, in contrast, to make a few remarks tending to honor what Jefferson and Madison did, in the form of a tourguide to religious freedom (Old Dominion division).

I have had an unusual connection to this agitated matter of the religious beliefs and church-state convictions of the Founders—a connection not so much by scholarly study or intellectual appropriation, or by religious identification or ideological affinity, as by geography, automobile route, and what we might call space allocation proximity. Until the musical chairs of such assignments rotated me out of it I was allowed to use a faculty study in the Alderman Library of the University of Virgina placed exactly between the editorial offices of the Papers of George Washington, on the one side, and the Papers of James Madison, on the other. Down the hall, exuding total knowledge of Thomas Jefferson, was the study of Dumas Malone. Out the window of my study I could look upon the Rotunda Mr. Jefferson designed for his university.

Beyond the Rotunda were the streets of Charlottesville, wherein—according to a picture in the Bayly Museum, off to the left—there once rode on horseback side by side James Madison, Thomas Jefferson, and James Monroe. Above those streets is Monticello, wherein probably at some time in 1777, probably with Locke's "Letter Concerning Toleration" and perhaps Milton's "Areopagitica" before him, Jefferson composed his Bill for Establishing Religious Freedom; that he was its author is carved on his gravestone up there beyond the gift shop at Monticello, as one of the three accomplishments for which he wanted most to be remembered. (He omitted being president.)

When I drive to Alexandria or Washington, I turn at the Tastee Freeze in Orange to work my way across the civil-war battlefields to meet I-95 at Fredericksburg. But if instead of turning at the Tastee Freeze I go further north and turn in the other direction, back west toward the Blue Ridge, I soon find Montpelier, out there in the horse country in Orange County, the home throughout his life (85 years) of James Madison.

In Montpelier, 200 years ago last summer, young Madison, then 35, composed his remarkable Memorial and Remonstrance Against Religious Assessments, the second most significant document in American history on the subject of religious liberty, after Jefferson's bill, to which Madison's Memorial gave a boost in the fall of 1785. These two most important American documents on this subject were composed by these two young Virginia friends within 30 miles in one direction or another of that window of my ex-study.

First, a brief catechism on Jeffersonian liberty, with some explanations and some imaginings:

Did "religious freedom" for Jefferson and Madison extend to atheists? Yes. To agnostics, unbelievers, and pagans? Yes. To heretics and blasphemers and the sacrilegious? Yes. To "the Jew and the Gentile, the Christian and Mohametan, the Hindoo, and infidel of every denomination"? Yes. To "Papists"? Yes. To "irreligion"? Yes. To people who want freedom from religion? Yes. To people who want freedom against religion? Yes.

Jefferson was proud that this Statute went further than Locke, who drew the line at atheists (because they would dissolve the basis for oaths and promises, the bonds of society) and, by indirection and partly for reasons of an Englishman's international politics, at Roman Catholics. Jefferson and Madison drew no such lines. Jefferson wrote, of Locke's toleration: "It was a great thing to go so far. Where he stopped, we may go on."

Madison, who, as the floor manager who maneuvered the Statute through the Virginia assembly, deserves credit for it alongside Jefferson, explained in his Memorial and Remonstrance that this natural right of religious conscience was interwoven with all the rights and liberties for which the patriots had fought; it was a part of the meaning of "the late Revolution." Because each human being has by natural right the liberty of his or her own belief, it is therefore not a matter of listing groups of believers that may or may not be included, by belief or by lack of it: All persons are included, whatever their belief, by breathing, by being human. In fact, civil society has no just claim to make any inclusions and exclusions.

Did this liberty of belief for Jefferson and Madison entail separation of church and state? Yes. A ban on tax aid to religion? Yes. On state help to religion? Yes. Even religion-in-general? Yes. Even if it were extended without any favoritism among religious groups? Yes. The completely voluntary way in religion? Yes.

Did all the founders agree with Jefferson and Madison? Certainly not. Otherwise there wouldn't have been a fight.

Jefferson was so sure that these ideas were grounded in universal moral reason—in nature and nature's God, who has created the mind free—that he appended what we may call an unJeffersonian third part to his bill, after the enacting clause, which told future generations to leave this accomplishment alone, because it was a matter of natural right: "If any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right."

And so, when one reads today that forward-looking, future-admonishing section of the Virginia Statute, one pictures the ghost of Thomas Jefferson himself (attended by the ghost of his friend James Madison), paying midnight visits, like the ghosts of Christmas past and present on Scrooge, on Meese, the officers of the state of Alabama, Falwell down Route 29 in Lynchburg and Robertson out I-64 in Virginia Beach, and particularly on Rehnquist. One may glimpse this tall elegant and gentle ghost, shaking his head at them and solemnly, up out of the third part of his Statute, across 200 years, saying, don't do it. It violates natural right. And reason. And republican principle. What we fought for in the late revolution.

These worthies and unworthies cannot dismiss him—this great Virginia ghost—or his fellow ghost Madison. Of course, they may send an assistant to telephone down to those offices near my ex-study in Charlottesville to get a quote or an episode (in a hurry please and never mind the context) in which one of these founders referred to "Providence" or endorsed some religious practice. But, by so doing, they cannot set aside the significance of the whole careers of Jefferson and Madison on this question. These two men were more consistent on this matter through the vicissitudes of five decades or six of actual life, through all the politics of a nation's founding, than most statesmen are able to be on anything—even more than Jefferson and Madison themselves were able to be on almost anything else.

Can you seriously doubt, Jefferson's ghost will say, that I was pledged to freedom of the mind, with every bone in my body? Go visit my monument out there by the Tidal Basin, and read the great oath that encircles it: "I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man." Can even a pop "conservative" note only the alter but miss what was sworn there? Does anyone doubt, the ghost would thunder, that freedom of the mind was for me the basic liberty on which this country was founded?

The new nation deregulated the religion market. The resulting free market in religion, like most free markets, was not neutral among the competitors but favored those in a position to take advantage of its conditions; the hither-to dissenters, the sectarians, the pietists, the revivalists, the new "churches of the common man."

But that deregulation was not confined to the domestic market; the new United States also eliminated all tariff barriers to belief. By their strong endorsement of the separation of church and state the original American freechurch Protestants gave themselves as enormous inadvertent enrichment program. Those huddled masses of Europe yearned to breathe free not only from political but also from religious oppression and persecution.

And even that is not the entire signficance of the statute. In the last part of the long preamble, Jefferson left religion behind, and spread his rhetoric wings over the whole spacious territory that was his home, the freedom of the human mind. "Truth is great and will prevail, if left to herself," he wrote. "She is the proper and sufficient antagonist to error, and has nothing to fear from the conflict unless by human interposition deprived of her natural weapons, free argument and debate. . . ."

Justices Brandeis and Holmes in the 20th century reach back to Jefferson, who in his turn reached back to Locke and Milton; Jefferson, in the middle, in his Statute, affirming that "Truth is great and will prevail" if it gets a rational chance. The freedom of belief and of argument, and the consequent exchange of ideas, was intended by this great tradition to be not just a private privilege but the foundation of free government: "Liberty," indeed.

There may be those today who are not aware that religion made any contribution to this accomplishment of freedom of mind and conscience. It did make such a contribution. But the heritage of intellectual freedom would not have been generated out of the religious tradition alone; there had to be others, outside it, challenging its insularity.

Those who now insist that the United States was founded on religion, or on a belief in God, are, to be sure, in some loose and extended way partly right, but they are in a more significant way wrong. The actual construction was done by two great movements of rebellion against conservative religion, and in particular against conservative political religion.

One such movement began with the Protestant Reformation protesting against conservative political Rome, and continued through the Puritans protesting against the conservative political Canterbury, and the Congregational Puritans protesting against conservative political Geneva. It came finally to the Separatists, levelers, sectarians—that little trickle of radicalism over to the side of the stream of Protestantism in Europe, that became in this country the main current—who protested against every form of national-religious connection whatsoever.

The other great movement ("The Age of Reason") began—when?—perhaps in the Renaissance, in the beginnings of modern science, in the growth of modern political liberalism, and came to a flowering in the international Enlightenment exactly at the time of this nation's founding. It may be said that its great opponent, too, was conservative political religion.

These two movements flowed down the highways of Virginia 200 years ago, coming over the mountains from the Scotch Irish in the valley and down Route 29 from Culpeper and I-95 from Gunston Hall and Alexandria, and back down I-64 from Hanover County and Williamburg and the Tidewater, and (though opposed to each other at other times and places) came together in one great moment on Jefferson's little mountain in 1777, and another in Richmond in 1786, when Jefferson wrote, and then the Assembly of Virginia to the astonishment of the world enacted, the statute that asserted in its ringing opening sentence that "Almighty God hath created the mind free."

REPAYMENT OF THE CENTRAL VALLEY PROJECT, CALIFORNIA

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. MILLER of California. Mr. Speaker, last week the House passed the continuing resolution providing funds for the various Federal agencies. I would like to take this opportunity to make a few brief remarks concerning provisions in the resolution which impact the Bureau of Reclamation.

The resolution included a provision which amends the San Luis Unit, Central Valley Project [CVP] authorization (Act of June 3, 1960, Public Law 86-488). The amendment provided that none of the costs associated the construction of any distribution systems or drains, including the San Luis interceptor drain or any alternatives to it, will be recovered—either directly or indirectly—by the Secretary from "power contractors" of the CVP.

Mr. Speaker, I did not object to the inclusion of this language in the resolution, although I would like to make several observations concerning the amendment.

My first reaction is one of disappointment that the amendment does not clearly outline who is going to pay for the drainage costs in the San Luis Unit and how these costs will be repaid. This amendment only provides that power contractors of the CVP will not be saddled with the costs. It does not say, however, that the taxpayers or other water users in the CVP will be relieved of repayment responsibilities. If history is any guide, the Westlands Water District will make every effort to unload their repayment responsibilities on other water users or the taxpayers.

Present law clearly says who should pay what costs and how. Under the Reclamation Projects Act of 1939, drainage is the responsibility of the local irrigation district and they must repay those costs through a repayment contract over 40 years at zero percent interest.

I have found the Department's silence on the question of repayment by power consumers to be testament to the need for this amendment. On March 24, 1986, I addressed the House and pointed out that the proposed Westlands settlement contained at least seven violations of law and other unwise changes in policy. One charge I made was that the settlement would "shift payment costs [of drainage] to other water and power users." The Department denied this charge. This amendment proves that my observations were correct.

The recent settlement between the Westlands Water District and the Department proposes to change this policy. Under that settlement, the Westlands Water District is proposing to have power users and other CVP water users assist in repayment of their drainage costs. The amendment in this resolution will head off this misguided change in policy.

I would strongly urge my colleagues who are concerned about the future of Reclamation programs to carefully consider what this amendment says. For the first time, power consumers are refusing to assist in the repayment of a Reclamation project. CVP power contractors have legitimately balked at paying hundreds of millions of dollars in drainage costs which are not their responsibility. I can't blame them for seeking legislative protections against an illegal settlement.

However, it is absolutely essential that we understand the precedent which is being set by the amendment. For 50 years, power has repaid virtually all the costs of reclamation projects. Now they are saying "enough." It is not inconceivable that power consumers will seek similar redress on other projects where costs have skyrocketed due to inflation and the wasteful construction practices of the Bureau of Reclamation.

The result will surely be that the repayment fiction which has propped up Reclamation projects for the last 50 years will evaporate.

It should also be noted, Mr. Speaker, that this amendment takes the first step toward determining who will pay for the cleanup of Kesterson Reservoir. The amendment provides that power contractors will not have to pay any of those costs. Thus, the cleanup costs will either be borne by the water users or the taxpayers. This decision will be addressed next year when the Water and Power Subcommittee considers legislation to authorize Kesterson cleanup.

Finally, I would point out that the amendment refers to "power confractors" of the Central Valley Project. It is clear that this phrase should include all entities who have a contract for such power, including the Pacific Gas and Electric Company.

Mr. Speaker, this will not be the last time the Congress deals with the problems presented by the Westlands settlement. Because that settlement is so flawed and blatantly illegal, it will take years to correct the damage that has been done by this administration. This amendment is just the first step in the long, long journey.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Any changes in committee scheduling will be indicated by placement of an asterisk to the left of the name of the unit conducting such meetings.

Meetings scheduled for Thursday, October 2, 1986, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

OCTOBER 3

9:30 a.m.
Joint Economic
To hold hearings on the employment-unemployment situation for September.
SD-562

OCTOBER 7

9:00 a.m.
Armed Services
To hear and consider the nominations of Robert B. Barker, of California, to be Chairman of the Military Liaison Committee to the Department of Energy, William A. Clinkscales, of Virginia, to be Director of the Selective Service System, and James F. McGovern, of Virginia, to be Under Secretary of the Air Force, and military nominations.
SR-222

10:00 a.m.
Select on Intelligence
To hold closed hearings on intelligence matters.
SH-219

OCTOBER 9

9:00 a.m.
Armed Services
Task Force on Inventory Management, to hold open and closed hearings on ammunition security.
SR-232A

CANCELLATIONS

OCTOBER 3

10:00 a.m.
Environment and Public Works
Nuclear Regulation Subcommittee
To resume hearings to review nuclear power safety measures in the aftermath of the Chernobyl nuclear power-plant accident.
SD-406

SENATE—*Thursday, October 2, 1986*

(Legislative day of Wednesday, September 24, 1986)

The Senate met at 8:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

He hath shewed thee, O man, what is good; and what doth the Lord require of thee, but to do justly, to love mercy, and to walk humbly with thy God. Micah 6:8.

God of justice, truth and mercy, for such a clear, unequivocal mandate by which to live, we thank You. Give us grace that our lives may conform. The one hundred men and women who occupy the desks in this Chamber are committed to justice. Over and over again, in debate and decision, they reveal a love for mercy. May a humble walk with their God be a daily experience and a witness to their commitment to Godly leadership. In His name Whose life was a model of the mandate. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDING OFFICER. The distinguished acting majority leader is recognized.

Mr. BROYHILL. I thank the Chair.

SCHEDULE

Mr. BROYHILL. Mr. President, under the standing order, the two leaders will be recognized for 10 minutes each at the beginning of this session. Routine morning business will not extend beyond the hour of 9 a.m. During that period, Senators will be permitted to speak for not more than 5 minutes each.

I wish to announce that at 9 o'clock the Senate will resume consideration of House Joint Resolution 738, which is the continuing resolution. I also wish to announce that debate on that joint resolution and amendments thereto will continue until the hour of 2:15 p.m.

At 2:15 p.m. the Senate will continue debate on the veto message to accompany the South Africa bill and at 4 p.m. a vote will occur on the question, "Shall the bill pass, the objection of the President to the contrary notwithstanding?"

Following the vote on the veto message, the Senate will then resume consideration of the continuing resolution.

I wish to announce that votes will occur throughout the session and a late night session is expected.

Mr. President, I reserve the balance of the leader's time on this side.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The distinguished Democratic leader, Senator ROBERT BYRD, of West Virginia, is recognized.

Mr. BYRD. Mr. President, I thank the Chair.

I ask unanimous consent that all my time under the order may be reserved throughout the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I yield the floor.

Mr. PROXMIRE addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Wisconsin, Senator PROXMIRE, is recognized.

ROUTINE MORNING BUSINESS

Mr. PROXMIRE. Mr. President, it is my understanding there is a period now for routine morning business in which each Senator may be recognized for not more than 5 minutes; is that correct?

The PRESIDING OFFICER. The Senator is correct.

THE LOGICAL EXPLANATION FOR THE PRE-SUMMIT SUMMIT

Mr. PROXMIRE. Mr. President, what should we expect from the unique mid-October pre-summit summit? This meeting has been announced not as an actual, bottom in bond, genuine summit. But it is.

It takes two things to meet the standard of a summit. No. 1 is the presence of the President of the United States in person. No. 2 is the presence of the General Secretary of the Soviet Communist party, in person. They will both be present in Iceland on October 11 and 12. So it will be a genuine summit.

But this is a most unique summit meeting. Previous summit meetings have been held for the purpose of arriving at an agreement on arms control, human rights, regional problems or for some other substantive purpose. Not this one. This will be for the simple purpose of deciding what to discuss at a second summit that will be held later this year in Washington. It will be strictly procedural. Why can't this procedure be handled as it always has in the past by top subordinates? The recent procedural meeting between the superpowers two foreign ministers, Shultz and Schevardnadze, were hailed as preliminary to the substantive summit meeting between Reagan and Gorbachev. Now it appears that, for some unexplained reason, there will be for the first time two back-to-back summit meetings, first on procedure—"what do we discuss," second on the substance.

Why this unusual arrangement? Mr. President, in the judgment of this Senator the answer is political, strictly political.

Here is why: At the previous summit meeting last year Gorbachev was unable to get any significant agreement out of President Reagan. President Reagan was able to claim, rightly, that it was a pleasant, cooperative meeting of the leaders of the two superpower adversaries. It was a get acquainted meeting that showed the two leaders could talk in a friendly fashion in an atmosphere without animosity. So the President, on the one hand, made no concessions. On the other hand, he provided a national and international picture of a cooperative relationship. That was a political plus for President Reagan in this peace-minded country. After all, President Reagan was the President who has called the Soviet Union an evil empire. He carried baggage with a majority of the American electorate as the first President who had made no progress on arms control. The President made a massive and very costly military buildup the top priority. In spite of huge Federal deficits, the President had commanded American troops into action in Grenada and was pushing hostile military action against Nicaragua. Some of these individual actions were popular, but they added up to a disturbing militancy that bothered many Americans. Now it is true that the first Reagan summit made no progress on arms control, but its friendliness eased fears of a dangerous increase in hostility between the two armed to the teeth nuclear powers.

So what does the Iceland pre-summit conference do? It gives Gorbachev the best chance he has to get the smiling, glad-handing public relations element out of the way in mid-October, so there will be little excuse for

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

still another unsubstantial minuet when the brass-tacks substantive meeting takes place later this year.

What does President Reagan get out of this? Answer: Exactly what he wants. Ask yourself, once again: When is this meeting taking place? Answer: October 11 and October 12. Why is that significant? Answer: It occurs precisely 3 weeks before the 1986 congressional elections. So what? So President Reagan is going to be up to his neck in these crucial elections, especially the elections for the control of the U.S. Senate for the final 2 years of the Reagan administration. All this makes the Iceland meeting a political gift from heaven for the President. He will emerge from that meeting precisely 3 weeks before the November 4 congressional election as the President who has once again reassured American voters yearning for peace by his friendly meeting is explicitly billed as simply a preliminary, procedural get-together, the President will not have to put any kind of an arms control agreement on the line prior to that crucial November 4 congressional election. The President will return for the last 20 days of the election campaign without any antipeace baggage and without running the risk of an arms control advantage for the Soviet Union. So the President will ride into Senate campaigns in New York and Wisconsin, in Maryland and Florida, in Nevada, the Dakotas, California and elsewhere only a few days away from his historic summit meeting with Secretary Gorbachev. His timing will be politically perfect. Mr. President, it will be perfect and make no mistakes about it, it will also be political.

Mr. BYRD. Would the distinguished Senator yield on my time?

Mr. PROXMIRE. Of course.

Mr. BYRD. I thank the Senator. I compliment him on his perspicacious statement. Of course, this is PR, pure PR, and probably a part of the deal that was worked out, perhaps in connection with the swap of a Soviet spy who pleaded no contest for an American newsman, an innocent newsman.

That was a swap. The President says there would be no deal. Yet, we have seen a deal.

There were supposed to be 25 Soviets expelled from the United Nations. Well, 25 Soviets have not yet been expelled from the United Nations. Perhaps that will be one of the results of the Icelandic meeting. Perhaps we will learn then what is going to happen in that regard, whether all those 25 Soviets indeed are going to be expelled. That will be one of the results that will flow from that meeting, I would assume.

Then, of course, perhaps out of that meeting will come a definite date for the third summit. The President and Mr. Gorbachev had a summit; now they are going to have a summit. That is summit No. 2. Whoever heard of heads of State getting together to make the preparations for a summit? It is a joke.

Mr. PROXMIRE. That is exactly right. As if the king and queen would come in and wait on the table. After all, this is not the job for the President and Secretary Gorbachev.

Mr. BYRD. Who is kidding whom? Of course, it is a summit. When the two leaders of these two superpowers sit down, that is a summit.

And it will be successful in that at least they may come out with a definite date for the "summit," and then the PR, the political PR will be obvious, as the distinguished Senator from Wisconsin has said.

Mr. Gorbachev is going to get some political PR out of this, too. He cannot come out of this a loser. It was his proposal, as I understand it, that they meet. The President apparently is very eager to accept this proposal coming as it does just prior to the elections. And also that may have been one of the requirements that Mr. Gorbachev wanted in order that Mr. Daniloff be sent home.

We see the administration going to great lengths to dissuade any impression that this was a swap.

Mr. PROXMIRE. I thank my good friend.

Mr. BYRD. The Senator knows the old saying that anything that looks like a duck, walks like a duck, and quacks like a duck is a duck. Anything that looks like a swap and smells like a swap is a swap.

So I compliment the distinguished Senator from Wisconsin for calling it as it is. It is characteristic of him. I thank him for yielding.

I reserve the balance of my time.

Mr. PROXMIRE. Mr. President, I want to thank my good friend, the distinguished Democratic leader. He has as fine political judgment as anybody I know. He is also a very, very loyal American. We both support the President.

I think we have to recognize under these circumstances there is a peculiar political timing involved here that we all should be conscious of and many people naively may overlook.

COMMEMORATION OF THE CENTENNIAL BIRTHDATE OF CHIANG KAI-SHEK

Mr. PROXMIRE. Mr. President, today I join with my distinguished colleague, Mr. GOLDWATER, in commemorating the centennial birthdate of the late Chiang Kai-shek, President of the Republic of China.

Born to a moderately prosperous merchant and farmer family on October 31, 1887, Chiang Kai-shek was a man with a purpose.

Known as a soldier and politician, revolutionary and traditionalist, Christian and Confucian, Chiang was driven by the desire to unify China.

With Sun Yat-sen as his mentor and friend, Chiang provided leadership during a time of turmoil. For over 60 years the man whose name means Firm Rock, struggled to unite China. He fought to rid China of the Manchu dynasty, the warlords who flourished in its ruins, imperial Japanese invaders and communism.

On April 5, 1975 Chiang Kai-shek died leaving behind him a rich and varied legacy. His most impressive contribution, Mr. President is today's Taiwan, a humane, largely free and prosperous society.

Thanks to Chiang's legacy, the economy of Taiwan has grown as rapidly as any other developing country in the world.

Between 1984 and 1985 Taiwan's economy experienced 4.6-percent real growth. The per capita income for 1984 was $2,980, $2,280 higher than it was in 1975.

Economic growth and stability have come to Taiwan through many sources.

Free public education, now readily available to young people in Taiwan, played an important role in the creation of Taiwan's flexible and efficient labor force.

An educated labor force is a productive labor force. Efficient Taiwanese labor is attractive to foreign businessmen and has enhanced the economic growth and stability of the country.

Profits from agriculture production, stimulated by land reform actions carried out between 1949 and 1957, has helped to finance the modern day industrialization in Taiwan.

Along with this industrialization has come great improvements in the living standards and public health of the people of Taiwan. Today, the life expectancy in Taiwan is only slightly below that of the United States.

Today, Mr. President, Taiwan is a monument to free enterprise and an important ally of the United States in a volatile region of the world.

THE MYTH OF THE DAY: PATIENTS DO NOT SHOP FOR HOSPITALS

Mr. PROXMIRE. Mr. President, the myth of the day is that Americans who need to be admitted to a hospital for nonemergency care are dependent upon physicians for their choice of hospitals.

There once was a time when that was true. But recent evidence suggests that the days in which a physician directed the choice of a patient's hospital are quickly ending. In the near future, that practice will seem as quaint as "Old World" parents arranging marriages for their children.

A recent report by the National Research Corp. suggests that patients are becoming more assertive than ever before as competition in health care takes hold.

Their most recent survey found 62 percent of patients either selected their own hospital or made the choice together with the physician. Only 37 percent of hospital patients left the choice in the hands of the physician.

And as patients become more involved in the decisionmaking process regarding the hospital in which they will be treated, they have increasingly demanded more information: 75 percent believe that hospital advertising is appropriate; 73 percent believe that hospitals should advertise the prices of their services; and 60 percent would like to receive more information regarding hospital services.

The most surprising result of their survey was the finding that 60 percent of patients did not equate high price with high quality—a finding that contradicts conventional wisdom regarding the supposed inability of patients to become cost conscious consumers of health care.

It is clear, Mr. President, that we still have a long way to go before patients become effective consumers for health care services. We need better patient outcome data by procedure and by hospital. We need better concepts of what constitutes quality medical care.

But given the imperfect nature of the available data, it is clear that prospective patients are beginning to seek more control over their own course of treatment. And that is good news for all of us as well as the death of another myth.

I yield the floor.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

COMMEMORATION OF THE CENTENNIAL BIRTH DATE OF CHIANG KAI-SHEK

Mr. WALLOP. Mr. President, today is the anniversary of, and would have been the 100th year of the birth of Gen. Issimo Chiang Kai-shek.

As we look at events that have occurred since his passing I think it is fitting that the United States take time to look back and examine that great patriot's dream, and the freedom for his people. Look indeed at the ways and means in which the Congress of the United States sometimes conducts foreign policy to the great detriment to the people it says it seeks most to help. There is a free Chinese people. They live on the island of Taiwan. Their nation is called the Republic of China. Once recognized by this great Nation, it is the only nation in the world with whom our relations are established by law, the Taiwan Relations Act. We see a tendency on the part of American Government to put greater faith in the fragility of communism, the People's Republic of China, than we do in constancy with a constant ally. To me, as we look at Chiang Kai-shek's life of heroism and sacrifice on behalf of a people that he hoped to lead to freedom, we see a segment of that people in freedom. Perhaps one day all Chinese will live in freedom. But it is not a likely event for a little tiny nation of Taiwan to go across the Straits of Formosa and assault mainland China. That is not a purpose of anybody I know in this country. But it is the purpose that the Republic of China fears the People's Republic of China has for it, and with good reason. Some 16 times in this decade leaders of the People's Republic of China from Deng Xiaoping on down have threatened to take the island of Taiwan by force. This Government in its search for wisdom has missed the mark.

We have decided not to continue the modernization in any credible way of the people on Taiwan, and are busily helping the Communist Chinese modernize their forces. It seems to this Senator that is an invitation to a question that we would really not have to be faced with somewhere down the road. We will be faced, as we invite bolder and bolder adventures on the part of the Communist Chinese, with a question of do we walk away from the law of the United States, the Taiwan Relations Act? Do we walk away from faithful promises to what has been a faithful friend and ally because a bigger power menaces them, or do we say to the bigger power with whom we have been trying to develop these relations that here we stand in the way, the relations are over, and we will fight to protect our ally as indeed we are required to by law.

I do not see why we have to make that choice, but the choice is being forced upon us by a selection of policies that invite it. Sooner or later, unless those policies change and the Republic of China is strong enough to stand on its own to deliver to its people the promise of Chiang Kai-shek on this 100th anniversary, I bid this Nation pause and wonder if truly we have not got an obligation to live by our word.

Mr. President, it is fitting that we pay tribute today to the illustrious leader of the free Chinese, Chiang Kai-shek, the father of modern, democratic China as the centennial of his birth, October 31, approaches. Chiang Kai-shek was not only a Chinese patriot, a man who opposed tyranny in all its forms, be it Japanese militarism or Communist totalitarianism—he was also a solid friend of the United States and the American people.

As I reflect on Chiang's struggle for his people's freedom, I am dismayed that the current policy of the United States is increasingly at odds with the vision that both Chiang and America's postwar leaders shared on the importance of a free and prosperous China to American interests and world peace and stability.

In testimony before the Senate Foreign Relations Committee last April on the subject of arms sales to the People's Republic of China, I observed the following:

> My central concern is that a new China policy is emerging, one that gives preferential treatment to a Communist totalitarian government that has long been antagonistic to the United States, and substandard treatment to an old and trusted, democratic ally, the Republic of China on Taiwan.

I rise today not only to commemorate the birthday of the man, Chiang Kai-shek, but to commemorate the principles and ideas that made up his life. I intend to examine further the state of United States-Chinese relations. In particular, let us examine the continuing policy of United States accommodation toward the People's Republic of China and the State Department's irresponsible and dangerous ignorance of that country's threats to a free and sovereign people on the island of Taiwan. Today we must not forget that Chiang Kai-shek spent most of his life fighting for that freedom.

Mr. President, since 1975 there have been numerous accounts of high-level Communist Chinese Government and party officials clearly stating that they have not and will not renounce the use of force in their effort to reunify Taiwan with the mainland.

On April 26, 1978, the deputy chief of the general staff of the People's Liberation Army stated:

> [We] will not be able to liberate Taiwan without using military force. Communist China will be able to liberate Taiwan only when we possess air and sea superiority and create a favorable international environment.

On January 5, 1979, then Vice Premier Teng Hsiao-ping said in a talk to 27 U.S. reporters in Peking:

> We cannot commit ourselves to use nothing but peaceful means to achieve the reunification of the motherland.

In another January talk to a Senate special committee, he elaborated that:

> Possible circumstances under which we might use force to settle the Taiwan issue would include continued refusal on Taiwan's part to negotiate (on reunification) and a Soviet attempt to interfere in Taiwan's affairs.

On September 25, 1981, Teng said:

> If peaceful reunification with Taiwan cannot be realized by 1986, [we] will blockade Taiwan with airplanes and warships and force it to the negotiation table.

Teng stated as recently as July 22, 1985, that—

> We cannot promise not to use force forever, because if we make such a promise, we

will never be able to hold peace talks with Taiwan.

Mr. President, the implication of this most recent statement, and there are many others like it, is chilling: Taiwan is being asked to come to the negotiation table under the threat of the use of military force against it by a Communist totalitarian power with 50 times the population and a standing army half the size of the entire population of Taiwan.

Mr. President, the American response to these threats is even more disturbing.

Teng warned in 1984 that U.S. policy toward Taiwan, in effect our support for their continued independence, could lead to an eruption in the United States-Red Chinese Relations. Again he hinted at the possibility of a future blockade of Taiwan. How did the State Department react? They baldly stated that the PRC had told them they would prefer to solve the so-called Taiwan issue peacefully? Mr. President, whom do we believe? The Communist Chinese when they consistently state that they cannot renunciate the use of force in their effort to reunify China, or the State Department who listens only to the first half of what the Communists have to say—they would prefer a peaceful resolution—and ignore the second half: they won't rule out force.

Of course they would rather gain their objectives by peaceful means. What tyrannical regime wouldn't? It is always preferable to achieve aggressive designs without resorting to force, but we are inviting Communist adventure.

Mr. President, ours is a shockingly weak response to these direct threats to an ally. What policy prerogative are we protecting here? It would seem obvious that in ignoring these threats to a key ally and at the same time offering closer diplomatic and military relationships with Communist China, we are tempting the Communists to make the very move that our policy in the region seeks to prevent. Their sense of adventure will grow as our ambivalence grows.

Do we not, in fact, earn only the contempt of the People's Republic of China when we strengthen them and by stated policy weaken the defensive strength of Taiwan? This policy leads us down the path of having to choose between an old and trusted ally and a powerful Communist government—a choice no rational person should want to make, and certainly not at our own hand.

Some would argue that we must distance ourselves, if only cosmetically, from Taiwan in order to establish this tacit geopolitical alliance with Communist China. I would warn, as I have done before, that Communist China does not become our friend just because they are a temporary aspect of our global geopolitical struggle with the Soviet Union. Inasmuch as our common interest with the Chinese Communist is by definition limited and subject to rapid change without notice, we should remain wary of providing them the means to do our friends and allies harm in the future. Are we not creating through these policies a choice we would prefer never to make?

The choice will be, do we stand by an ally—indeed an ally by law—and confront Communist aggression should it come, or do we abandon our friendship and our own laws and mount the tiger PRC? Why should our policy force us to make this choice when our presence is by itself of great value to the PRC. If that relationship is so fragile that it requires this Nation to abandon its word and break its own laws—that relationship is too fragile to endure.

Mr. President, the Communist Chinese have not changed their fundamental commitment to reunification on their terms. They are playing a cautious strategy of intimidation with their tiny neighbor while trying to wean away from them the only hope Taiwan has for a continued existence in freedom: their close relationship with the United States. Do we forget so soon the passion for freedom of Chiang Kai-shek?

Mr. President, I hope that these relations—that Communist China remains dedicated to liberating the free Chinese of their remaining freedoms—will cause more in this Senate to contemplate our obligation both under law and as defenders of freedom.

I pray to God that a firm commitment to democratic China's freedom and our alliance remain a bipartisan American principle that is unshakable. I know that Chiang Kai-shek would view the current state of U.S. policy toward his people with alarm. As we commemorate the centennial of his birth, I ask my colleagues to take a long, hard look at where that policy is leading in the hopes that we in the Senate can act to protect our special relationship maintains. Chiang would love such a gift of freedom from an ally he cherished and fought beside.

Mr. President, I ask unanimous consent that a statement which I have to this effect be inserted in the RECORD at this point.

Mr. President, I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, a number of us wish to recognize the anniversary of Chiang Kai-shek's birthday today. Principal among the longest and staunchest allies of the Taiwan people is Senator GOLDWATER.

I ask unanimous consent that a statement by Senator GOLDWATER and other Senators throughout the day be inserted in the RECORD at the same place, with Senator GOLDWATER'S being the first.

CHIANG KAI-SHEK—SYMBOL OF A FREE, UNITED CHINA

Mr. GOLDWATER. Mr. President, without any doubt, one of the major figures in contemporary history, certainly during the period of history that covers most of my life, is the late President Chiang Kai-shek of the Republic of China. Four weeks from now, on October 31, free China will commemorate the 100th anniversary of the birth of President Chiang. The Senate will not be in session then and many of my colleagues and I would like to take a few minutes today to discuss the achievements of this great world leader, a man whom I had the good fortune to meet during his lifetime. In particular, I wish to acknowledge his contributions to freedom in the world and his steadfast friendship with the United States.

The life of the late President Chiang Kai-shek was in many ways the history of the free Chinese Republic. President Chiang was the devoted successor to the founding father of the Republic of China, Dr. Sun Yat-sen. President Chiang dedicated his life to serving his people and nation and to building the kind of a nation which could support the universal goal of security and stability in the world. His dream was that the peoples of all nations could enjoy a lasting peace in conditions of freedom and equality.

President Chiang lived by three principles which he and Dr. Sun conceived as representing the crystalization of China's civilization and her peoples' highest virtues. These three principles are nationalism, democracy, and the well-being of the people. They echo the theme in Abraham Lincoln's phrase: "Government of the people, by the people, for the people."

In his short work, "China's destiny," President Chiang wrote:

> The aim of life is to be found in the betterment of life for all mankind.

By this, he meant that all modes of life in this world are made and determined by individuals; and the destiny of a nation is shaped by the entire people themselves. The life or death of a nation, the independence of a country and the freedom of its people, depend upon the readiness of a people to strive to maintain their collective freedom and to make sacrifices for the betterment of life of their fellow citizens.

President Chiang was a leader of indomitable courage and will. Against incredible adversity, he persisted with his effort to obtain a position of equality for China in the world, to restore independence and unity to his nation and to establish a constitutional government, the first experiment with a free republic in Asia.

For 14 years, Generalissimo Chiang Kai-shek was the leader under whom the people of China fought against the massive military forces of the Japanese Empire, 4 of these years alone and unaided by the West. At the end of World War II, Gen. George C. Marshall ordered Chiang Kai-shek to form a coalition government with the Communists. When Chiang refused, the United States withdrew logistic support, free Chinese retreated to Taiwan, and the slavery of communism fell over the mainland.

However, it was on Taiwan that President Chiang achieved his lifelong design for a free republic and democratic form of government. There he and his government created a blueprint of civil and governmental organization that has achieved almost unparalleled progress among the developing countries of the world.

Economic prosperity and stability were achieved by the twin actions of peaceful land reform and industrial development and were designed to make the fullest use of the inherent skills and potentials of each individual citizen. It is not an understatement to say that the policies of President Chiang initiated a rebirth of the free market spirit throughout the region.

Chiang took over a preindustrial society and created a dynamic market environment for the entire country. He demonstrated that economic and political liberty go hand in hand. Freedom of the market has been accompanied by expanded political freedoms on Taiwan.

In the words of Prof. W.G. Goddard of England, Chiang Kai-shek was able to inspire and rejuvenate the Republic of China "to so transform it that today it is a model for the whole of Asia," a model "by a free people assured of reaping the full reward of their own enterprise and toil."

Mr. President, I also believe President Chiang will be remembered as America's most certain and faithful ally in the Pacific. The Republic of China under Chiang Kai-shek and under its current President, Chiang Ching-Kuo, has always proved itself ready to support the United States in every way possible.

Finally, I believe history will show that Chiang Kai-shek was a prophet without peer among contemporary Western leaders. More than others, he saw the true nature of communism and the threat that totalitarian expansionism presents to the survival of freedom.

In recognition of the friendship and loyalties given to my country by Generalissimo Chiang Kai-shek and the continued source of friendly strength which is found among the Chinese people of the Republic of China, I offer this brief tribute to a friend, who remains a symbol of the dream of freedom of millions of people in the world. And in making these remarks, Mr. President, I hope that it may concentrate more attention on the Pacific region, an area whose defense is important both to the United States and the whole world.

Mr. DECONCINI. Mr. President, on October 31 we would celebrate the 99th birthday of Chiang Kai-shek. Before his death in April of 1975, he had served an illustrious and prominent role in the destiny of China. At the height of his power in the early 1940's, he wrote a book entitled "China's Destiny." China's destiny and his destiny were one and the same for a majority of this century. For most of his life he bravely fought to shape history, sustain his power, and battle communism.

He viewed himself as the father of modern China. He ruled that country for 20 years. In this period, he experienced sweet victories and bitter defeats. He moved from revolutionary and ardent nationalist to a wartime member of the Big Four, along with Roosevelt, Stalin, and Churchill. He developed and cultivated many friends in the United States. Churchill once said:

> To American eyes, he was one of the dominant forces in the world. He was the champion of "the new Asia".

Time magazine wrote after his death:

> Clear-eyed, strong-jawed, supremely self-assured, Chiang Kai-shek was one of the century's major figures. Sixty years of his life were consumed by bitter uphill struggles—first against the crumbling Manchu Dynasty, then against the warlords who flourished in its ruins, next against invaders from imperial Japan and finally against the Communist peasants that foreclosed his dream of dominance in China.

Chiang Kai-shek's wife was also deeply admired by many Americans. Wendell Wilkie spoke of her combination of "brains, persuasiveness and moral force * * * with wit and charm, a generous and understanding heart, a gracious and beautiful manner, and a burning conviction." Chiang has had many supporters and followers in China and the United States. His name literally translates into "firm rock" and his commitment and loyalty to a unified China could not have been more resolute. His historical significance cannot be argued. Soldier and politician, revolutionary and traditionalist, Christian and Confucian, anti-Communist with a Leninist leaning, Chiang embodied the cross currents and confusion of a transitional period in Chinese history. As we would salute his 100th birthday next year, I would like to recognize his loyalty and friendship with the United States.

THE LATE CHIANG KAI-SHEK, PRESIDENT OF THE REPUBLIC OF CHINA

Mr. THURMOND. Mr. President, I am pleased and proud to join my distinguished colleague from Arizona, Senator BARRY GOLDWATER, in paying tribute to the late Chiang Kai-shek, who served with such dedication and devotion as the President of the Republic of China until his death in 1975.

The centennial celebration of Chiang's birth falls on October 31, and as one Senator who remembers well his struggle to preserve freedom for his people, I am delighted that time has been set aside today to remember him and his great accomplishments.

Today, we remember Chiang Kai-shek not only as a friend, but as a man who, in a very real sense, was a modern-day Moses to the people of China. He led his people by the thousands from the Communist mainland to the tiny island of Taiwan, and there carved out a sanctuary of freedom and free enterprise which grew and developed with astonishing speed.

A staunch supporter of the United States and its foreign policy, Chiang was an ally who courageously advocated the defeat of communism in his homeland and the perpetuation of democratic governments throughout the Pacific Basin.

He was a valiant soldier for his people, but a man who cherished peace and freedom above war. Nonetheless, Chiang Kai-shek knew that freedom must be protected against those who seek its destruction, and as a soldier, the "Generalissimo" was an able warrior.

Out-manned, underequipped and suffering huge losses in its war with Japan, the Republic of China—under the command of Chiang Kai-shek—repelled its enemy and proclaimed to the world that the island nation would fight to the last man before surrendering its destiny.

Eight years and 2 million casualties later, in one of the costliest theatre wars in history, the Japanese surrendered to China. A grateful people, many of whom followed Chiang Kai-shek into battle, remembered their leader with tremendous affection and reverence. For his fellow citizens, Chiang was "the father," the head not only of their nation, but of their individual families and, indeed, the entire family of the Chinese people.

An intensely religious, Christian man, Chiang Kai-shek's vision extended far beyond the battlefield. He helped build Taiwan into the economic force that it is today, and he established for his people the guiding principles needed to sustain them in the future.

Freedom-loving people around the world mourned his death in 1975. However, they remember his guidance and wisdom in carving out for his people a legacy of freedom and hope. His life's work—as well as his vision for the future of the republic he helped create—are forever enshrined in the Chiang Kai-shek Memorial in Taipei.

Upon visiting this shrine, one cannot help but notice its resemblance to our own Lincoln Memorial here in Washington. In many ways, that is not coincidence. For Chiang, like Lincoln, led his people through the fires of war, forged a hard-won peace, and set his country on a course for the future. Today, we remember him as the simple man who rose to greatness; a man whose vision for freedom was inspired by our own "experiment with democracy." We remember his life and we join the people of the Republic of China—our devoted friends—in celebrating the birth of a great world leader.

Mr. President, on the 100th anniversary of Chiang Kai-shek's birth, it is only fitting and appropriate that the U.S. Senate take time to honor this great man and the nation he created. As the Senate's President pro tempore, and a long-time friend of the people of the Republic of China, I am honored to be a part of this tribute.

Mr. HECHT. Mr. President, a month or so ago Forbes magazine hailed the Republic of China on Taiwan as a model of economic success, commenting that Third World countries should learn from Taiwan in turning poverty into prosperity. Mr President, we all know that the secret of the ROC's economic success is Chinese intellect and industriousness. Moreover, the ROC Government is willing to trust its economic future to free enterprise rather than to socialism or communism.

In other words, Mr. President, Taiwan is free enterprise at work, and its been working exceptionally well. When the Republic of China's late President, Chiang Kai-shek went to Taiwan in 1949, it was a very poor country without an industrial base, without schools and without any resources.

Chiang Kai-shek calmly guided his nation, exhorting his people not to be afraid but to have confidence in themselves. He was right. He quickly built factories, schools and developed exports. We witness today a burgeoning country; free, prosperous and alive.

Chiang Kai-shek made Taiwan what it is today. For that, Mr. President, the free Chinese people on Taiwan will forever be grateful. As they begin to commemorate their late President's 100th birthday on October 31, 1986, I congratulate them and join them in remembering and honoring President Chiang Kai-shek.

SPECIAL TRIBUTE TO CHIANG KAI-SHEK

Mr. DENTON. Mr. President, I rise to join my colleagues in the Senate in extending my best wishes and congratulations to my friends in the Republic of China on Taiwan on their late President Chiang Kai-shek's 100th birthday—October 31, 1986.

Generalissimo Chiang Kai-shek was a 20th century giant. He helped the allies defeat the Japanese during World War II, and under his leadership, the Republic of China became one of the five great powers of the post-war period. Chiang Kai-shek was an important friend and reliable ally of the United States. He therefore helped our country during the Korean war and also during the Vietnam war. He took the mutual obligations of our alliance seriously, and understood the nature of the security threat in the Pacific region. I believe that we are indebted to him and his countrymen for their stalwart willingness to share the responsibilities of preserving freedom from totalitarian encroachment.

When we terminated our foreign aid to the Republic of China in the early 1960's, Chiang Kai-shek led his country to economic independence. He provided the Chinese people with moral leadership, and he helped them have confidence in themselves. By the time of his death in 1975, Taiwan enjoyed the second highest standard of living in Asia.

Chiang Kai-shek was a leader in the truest sense of the word; his personal life was one of courage and dedication. Despite years of war against the Chinese warlords, the Japanese and the Chinese Communists, he was always strong in spirit and faithful to Dr. Sun Yat-Sen's three principles aimed at building a strong China.

I salute the late Generalissimo, Chiang Kai-shek. I salute the people of the Republic of China and restate my continued support for the special relationship that exists between our two countries, and which has been so mutually beneficial.

THE 100TH BIRTHDAY OF CHIANG KAI-SHEK

Mr. HELMS. Mr. President, October 31 marks the 100th birthday of the late President of the Republic of China, Chiang Kai-shek, and it is appropriate to acknowledge the many contributions President Chiang Kai-shek made to not only the Republic of China, but to the world.

I have at hand an article, written by Dr. Nathan Mao, professor of English at Shippensburg University, Shippensburg, PA, which provides an excellent overview of the many achievements of the late President. Dr. Mao's article not only outlines the successes of Chiang Kai-shek the leader, but reveals many facets of Chiang Kai-shek, the individual.

President Chiang Kai-shek was a man of great courage and high moral standards. His Christian beliefs were well-known and in evidence throughout his life. His death was a loss to the entire free world. His life was an example to all.

Mr. President, I commend to my colleagues "A Grateful Nation Remembers Chiang Kai-shek" and ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A GRATEFUL NATION REMEMBERS CHIANG KAI-SHEK

(October 31, 1986—The Centennial Birthday of the Late President of the Republic of China)

(By Nathan K. Mao)

Time magazine featured Generalissimo and Mme Chiang Kai-shek as "Man and Wife of the Year" in 1937, highlighting America's admiration and support for China's war against Japan. At that time, China fought Japan without any foreign assistance. Japan had 4,480,000 ground troops, 2,700 first-line war planes and 1,900,000 tons of warships in active service. China, on the other hand, had a poorly equipped army of 1,700,000 men, 350 planes and 59,000 tons of various vessels.

Chinese losses were high but China, under the command of CKS, refused to surrender. Invoking Churchillian eloquence, CKS proclaimed to the world: "We shall fight to the last dying man; this is a war of national survival. We shall win the ultimate struggle. It's a war between right and wrong."

CKS was right. After eight years and 2 million casualties on the Chinese side, Japan surrendered to China on August 10, 1945. That evening, CKS wrote in his diary of his appreciation of Psalms 9: "I will praise thee, O Lord, with my whole heart . . . when mine enemies are turned back, they shall fall and perish at thy presence. For thou has maintained my right and my cause."

Filled with God's love, CKS was grateful that the war was over and that peace would come to Asia. He sought no vengeance and he asked of no reparations from Japan. Instead he accorded the Japanese magnanimity.

Magnanimity was manifested in CKS's efforts to repatriate to Japan the 2.8 million Japanese soldiers and civilians in China and in CKS's insistence to Roosevelt that Japan be allowed to keep its status for the emperor, knowing as he did of Japan's reverence for the emperor. Thus CKS allowed Japan to quickly recover from the wounds of the war and emerged as the post-war power that it is today.

CKS's Christian spirit of forgiveness and love, so evident in his treatment of the Japanese after the war, guided him for the rest of his life until his passing on April 5, 1975.

Dr. Fredrick Chien, a personal interpreter to CKS, remembers the late president and Mme. Chiang Kai-shek as devout Christians. CKS built a small chapel near his residence where he prayed alone and often with the Mme. CKS studied the Bible every morning, worshipped regularly, and gave his assistance to call Christian causes, the result being the phenomenal growth of Christian churches in Taiwan today.

Besides Christianity, another factor that dominated CKS's life was his total dedication to establishing a strong China. At the time of his birth in Fenghua, Chekiang province on October 31, 1887, China was one of the weakest countries in the world, with foreign powers enjoying enormous economic privileges and concessions in China. To put a quick end to the Manchu government was the aspiration of every Chinese man and woman.

CKS joined Dr. Sun Yat-sen in overthrowing the Manchus in the 1911 revolution, after having been taught Confucian classics and conduct by his widowed mother. She told him many a time that he must put the interests of China well above any personal considerations.

As a filial son, CKS never forgot his mother's instruction. After Dr. Sun's death in 1925, CKS began the first step of national unification by setting out to eliminate all the warlords that were scavenging China. In 1928 he united China for the first time in the century.

Meanwhile CKS realized that the threat to the welfare of China lay in Chinese communism, "the disease of the heart." He led several anti-Communist eradication campaigns in the 1920's and 1930's. His efforts were less than fruitful due to Japan's invasion of China starting with its occupation of Manchuria in 1931 and ending with its defeat in 1945.

CKS, however, was successful in expelling foreign powers which had dominated China since the Opium War of the 1940's. CKS persuaded the United States, Great Britain and other Western powers to give up their unequal treaties with China in the 1940's. And at the Cairo Conference in 1943, CKS obtained pledges from the Allies for the return of Taiwan and Pescadores to China after the war.

In fact, CKS achieved international acclaim for China. He himself was asked to be the Supreme Commander of the China Theatre by Roosevelt, while his country, The Republic of China, was one of the Five Great Powers after the war.

After Japan's surrender in 1945, CKS looked forward to implementing Dr. Sun Yat-sen's Three Principles of Nationalism, Democracy and Social Welfare. But CKS was denied that opportunity with the Communists' occupation of the mainland in 1949.

It was in Taiwan that CKS got the opportunity to architect the modern nation that he and Dr. Sun had envisioned. By introducing land reform, capital formation, industrial development, universalization of education, and direct democratic processes, CKS gave birth to modern Taiwan, which had been ravished by Japanese colonial rule. By 1975 Taiwan enjoyed the second highest living standard in Asia and was a model of economic success for developing countries in the world.

When CKS passed away in April 1975, a million ordinary men and women mourned him, lining the funeral route from downtown Taipei to Tzuhu, his temporary resting place in the suburbs. One weeping soldier, kneeling along the funeral route, refused to get up. "I followed the late president from Canton to Nanking, to Chungking, to Nanking and then to Taiwan. He was my father, my whole family. Now he's gone, what's left of life?" Others remembered him as modern China itself, his life mirroring all the traumatic changes of twentieth century China. President Chiang Ching-kuo remembered him best: "Father was a great time in his time and decisive force in the modern development of the country and the people."

Indeed, eleven years after CKS's passing, CKS has been proven as the decisive force. Today Taiwan is an economic giant, being the sixth largest trading partner of the United States; it enjoys a per capita income of more than US $3,200.00, the highest ever in Chinese history. Its private enterprise system is the envy of the world and has worked so well that Mainland China is anxious to imitate.

To Chiang Kai-shek, a Christian and Confucian nationalist, the Chinese people are indebted. He freed them from the Manchus, the warlords, the Japanese and foreign imperialists. By transforming an impoverished island into a beacon of freedom and an economic giant, all within the time of a generation, he showed the world and especially Mainland China the right way of establishing a strong nation.

A nation of the people, by the people, and for the people—the dream of man—is now in existence in Chiang's Republic of China on Taiwan.

Mr. LAXALT. Mr. President, in this uncertain world of ours, reliable friends are few and far between. Yet I can say without any doubt that one of the truest allies of the United States is, and has been, the Republic of China on Taiwan.

Their friendly attitude toward the United States is due to the influence of their late President, Chiang Kai-shek, whom many of us remember as the Supreme Commander of the China Theater during World War II.

We appreciated the sacrifices made by the Chinese during World War II. We were equally grateful to the Republic of China for their offer of assistance during the Korean war and also during the Vietnam war. Whenever we needed them, the Chinese were ready to lend us a helping hand.

Mr. President, in our latest round of trade negotiations with them, the Republic of China team, represented by Vincent Shew and Dr. Frederick Chien, did everything they could to accomodate United States concerns. They have agreed to lower tariffs and to open their market to American goods; right at this moment, they have a "Buy American" delegation visiting different States and purchasing American products.

I wish to send my greetings to President Chiang Ching-kuo and Vice President Lee Teng-hui of the Republic of China on the forthcoming birthday of their national father: Chiang Kai-shek.

COMMEMORATION OF PRESIDENT CHIANG KAI-SHEK: FOUNDER OF THE REPUBLIC OF CHINA AND GREAT FREE WORLD STATESMAN

Mr. McCLURE. Mr. President, I take this opportunity to join with my distinguished colleagues led by Senator Barry Goldwater, to commemorate the birth and life of the late President Chiang Kai-shek, founder and preserver of the Republic of China. Chiang Kai-shek's centennial birth date is on October 21, but the Senate will be out of session then so we are celebrating it now.

I was among the 25 Senators who signed the obituary telegram read at Chiang's funeral in April 1975, praising his great and lasting contributions to the free world.

Chiang Kai-shek will always be remembered as a great statesman, soldier, Christian, social reformer, and political leader. During the many years that he ruled China, from 1928 to 1949, China emerged again into the first rank of nations. Chiang Kai-shek was a worthy successor to Dr. Sun Yat-sen as leader of the Kuomintang, China's Nationalist Revolutionary Party, and he fought many wars against Mao Tse-tung's Communists, warlords all over China, and against the Japanese well before World War II, in order to restore peace and public security to the Chinese people. Unfortunately, the Kuomintang's program of political, social, and cultural reform did not succeed in taking strong roots throughout China, and Chiang was finally defeated by Mao's totalitarian Marxist-Leninists in 1949, after the renewal of the anti-Communist civil war following the defeat of the Japanese. Perhaps if the United States had provided more military and economic aid right after World War II, and had refrained from trying to mediate the civil war, Chiang's Republic of China would still control the mainland of China. The U.S. State Department's inability to perceive the dangers of Maoism tragically contributed to Chiang's defeat on the mainland.

Unfortunately, as we all know, Chiang was finally left with only the province of Taiwan as the remnant of free China, but his Republic of China after 1949 became an outpost and stronghold for the free world. The Republic of China has experienced an amazing economic growth and has prospered phenomenally since 1949, and remains an important bulwark of freedom and free enterprise in the Far East.

The whole world mourned Chiang's death on April 5, 1975. Symbolically and tragically, it occurred just as another American-supported anti-Communist struggle was ending in defeat with the fall of Saigon. Again, the U.S. State Department failed to understand how to defeat communism in an Asian context. But the birth of Chiang Kai-shek in Chekiang Province, China on October 31, 1887, marked not only the beginning of an important chapter in China's long and proud history. Chiang's birth a century ago also marked the beginning of the continuing struggle to bring the Chinese people and culture into the modern industrial world, with all the social upheaval that modernization inevitably entails. Chiang tried to reform China while still preserving the best elements of ancient Chinese culture, and he tried to install the modern values of individual freedom, free enterprise, and prosperity. But Chiang was overwhelmed by the totalitarian thrust of the Maoists.

Chiang Kai-shek will always be remembered as a great shepard of his proud people, who several times repelled foreign invaders and internal tyrants, only to lose out in to the ruthless final onslaught of the Maoists, who could not have conquered China in 1949 without massive support from their fellow totalitarians in the Soviet Union.

I have personally visited Chiang's impressive shrine in Taipei, and I join my colleagues in celebrating the centennial of the birth of such a great free world statesman.

Mr. GRAMM. Mr. President, we honor Chiang Kai-shek today because against all odds he succeeded in building a humane and prosperous nation on Taiwan. He succeeded while so many others—Mao Tse Tung, Ho Chi Minh, Kim Il Sung, and closer to home, Fidel Castro, failed both morally and economically. Chiang Kaishek's place in history is guaranteed by the success of Taiwan.

The success of Taiwan is a beacon of hope to poor and developing countries around the world, that the possibility of a decent life for their people is within reach and that the road to a better life is one which is known and has been proven for all time. The road is capitalism: private property, the free market, low taxes, individual enterprise, foreign investment and economic freedom.

The Republic of China on Taiwan is continuing to grow and develop. For the people on Taiwan, in the permanent contest between the freedom of the individual and the power of the state, the individual is winning. Their political system, though maturing, has not yet reached the level of democracy that will make their dream complete, but the sphere of the state is profoundly smaller than on the mainland of China, and the range of individual opportunity experienced on Taiwan is of a level that on the mainland is undreamed of.

Chiang Kai-shek's dream, which was never realized, was to return to the mainland of China. But the nation he created on Taiwan is today the 12th largest trading nation in the world. A decade after his death, through the resonance of Taiwan's economic success, it is this example which we see returning to the Chinese mainland.

The parallel existence of two social experiments, one based in Taipei, the other in Beijing, had tremendous implications for the entire East Asian region. In 1949, both lands were impoverished. Today one of them has prospered, while the other offers its people only the most meager existence. It is the Communists who now are trying capitalism, not the other way around. This great triumph is a victory of ideas, not of armies.

The Republic of China, by exemplifying for other countries that there was a path which led to greater freedom and greater well-being for its people, has benefited hundreds of millions of people throughout Asia and the world. In a very real sense, Chiang Kai-shek's ideas are doing what his army could not do: free the people of mainland China.

Let the facts speak for themselves. Taiwan's growth in real GNP has averaged 8.6 percent per year for the last 33 years. Taiwan's GNP has grown at about three times the average annual rate of most developing countries. In 1952 the U.S. dollar equivalent, per capita GNP in Taiwan was $50. Today it is $3,430. The per capita income in Communist China is variously reported from $300 to $500 annually for recent years. Official unemployment rates in Taiwan, currently under 3 percent, have for most of the last 30 years been under 2 percent.

Taiwan is the sixth largest trading partner of the United States. In 1985 there was over $20 billion in two-way trade—more trade than between the United States and France. Taiwan, population 19 million, which is the 12th largest trading nation in the world, will purchase 0.2 metric tons of U.S. grain per person this year. Taiwan today signed an agreement to buy at least 18.15 million metric tons of United States grain over the next 5 years.

In its remarkably rapid transformation from a pre-modern into a modern economy, Taiwan took a different path than most young nations of the 1950's and 1960's. While others relied on the state to plan and manage the economy and hasten industrialization, Taiwan relied on private enterprise, the free market, and the people themselves. In doing so, Taiwan proved once again that growth comes through economic freedom.

Mr. WALLOP. Mr. President, I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 0910

Mr. BAUCUS. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER (Mr. ANDREWS). Without objection, it is so ordered.

COMPETITIVENESS AND EDUCATIONAL REFORM

Mr. BAUCUS. At the end of World War II, the United States economically dominated all other countries. We had the most advanced technology, and we had the manufacturing and marketing resources to be the leader in international trade. But recently, the world has become much more competitive. Our country's position in international markets is challenged by intense foreign competition.

To meet that competitive challenge we must pay closer attention to our educational challenge—the quality of our schools.

The advantage in the future will go to countries that turn out 18-year-old builders who have mastered advanced project planning techniques—lab technicians who can use sophisticated methods of statistical analysis—and factory floor managers who understand the technical basis of operating their machines.

These requirements come at a time when we have fewer young people in our population, and in addition an increasing number of our children are from minority and low-income backgrounds. These are the children who have profited least from our educational system.

EDUCATIONAL REFORM MOVEMENT—PROBLEMS AND SOLUTIONS

The real problem, the one on which we have to focus, is that the country must achieve standards it has never met. The schools of the 1950's simply are not good enough in a world that has been changed by advancing technology and transformed by a competitive environment.

If we are to have a healthy economy, one based on a highly skilled work force backed up by advanced technology, then this country will have to provide to all its students a quality education that until now has been reserved for some.

Educational reform means setting a higher standard, not simply stopping the decline in past standards.

As that happens, we will find we must restructure schools, attract better teachers, and keep those teachers who have the high level of skills required for this ambitious task.

This will not be easy. Most teachers need to be convinced that they will be the beneficiaries rather than the victims of educational reform.

Between 1986 and 1992, 1.3 million new teachers will be needed. Almost half of the students enrolling in teacher education today come from high school programs which are not intended to prepare them for college.

The fact is 13 percent of all adult Americans are illiterate. That is 20 million men and women, in the home and in the work place, who cannot read or write well enough to cope with the simplest communications of everyday life—20 million adults at a loss for words.

The fact is the world we live in runs on words and on numbers. It is frightening to know that 13 percent of our adults cannot address an envelope correctly and 28 percent could not make change if they were given a store receipt. Fundamental illiteracy is jeopardizing our Nation's economy.

CONCLUSION

Successful educational reform must consider the significant changes that have occurred in the American family and the changes in the nature and availability of work. Educational changes that ignore these forces would be inadequate or, indeed, counterproductive.

In his book, "Zero Sum Solution," Lester Thurow warns that today's high-quality school system begins with a public that wants a high-quality school system, gives high-quality education its total support, is willing to provide the necessary financial resources, and refuses to tolerate low standards.

Unless these conditions exist, there is nothing that can be done inside the classroom that is going to improve American education * * * other countries have done what was necessary to make themselves competitive with America. America can and must do what is necessary to make itself competitive with them.

Our Nation is faced with a crisis in its education system, a crisis in its work force and a crisis in its ability to compete in international markets. We must embrace these crises as challenges—a call for our Nation to work together as a nation united—the opportunity is before us and we have the power to turn that opportunity into reality—together.

We must do so, Mr. President, if we are going to compete in the rest of this decade and into the next and leave a legacy of which our children can be proud, so that our children have a chance to have a higher standard of living than we enjoy today.

OCTOBER QUARTERLY AND 12-DAY PRE-GENERAL ELECTION REPORTS

Mr. DOLE. Mr. President, the mailing and filing dates of the October quarterly and the 12-day pre-general election reports required by the Federal Election Campaign Act, as amended, are Wednesday, October 15, 1986, and Thursday, October 23, 1986, respectively. Principal campaign committees supporting Senate candidates in 1986 elections file their reports with the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510-7116.

The Public Records Office will be open from 9 a.m. until 9 p.m. on the filing dates for the purpose of accepting these filings. In general, reports will be available to the public 24 hours after receipt. For further information, please contact the Public Records Office on 202-224-0322.

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE

BRIEFS, MEMORANDA, AND MOTIONS

Mr. THURMOND. Mr. President, the parties to the impeachment—the managers on behalf of the House of Representatives and Judge Claiborne—have filed their briefs with the Secretary of the Senate together with a number of memoranda and motions. The briefs have been filed today pursuant to a directive of the chairman of the Senate Impeachment Trial Committee and a joint letter of the President pro tempore and the majority and minority leaders. The briefs set forth the analysis of the parties of the evidentiary record presented to the committee, and also the analysis by each party of the law which is applicable to these impeachment proceedings.

In addition to their brief, the managers have filed, pursuant to a directive of the Senate Impeachment Trial Committee, a memorandum on the constitutionally required standard for conviction applicable to the four articles of impeachment.

Judge Claiborne has filed today several motions and memoranda in addition to his brief: First, a supplemental motion for full and fair impeachment trial before the entire Senate of the United States, or in the alternative for dismissal; second, supplemental points and authorities re: collateral estoppel and summary disposition of third article of impeachment; third, a motion to postpone the hearing on articles of impeachment until the resolution of the supplemental section 2255 motion by the district court or the ninth circuit court of appeals; fourth, the motion referred to in the motion to postpone; and fifth, an application for issuance of subpoenas for full and fair impeachment trial before full Senate.

Judge Claiborne is requesting that the Senate consider these motions at the outset of next week's floor proceedings on the impeachment. Because each of these documents has been filed after the printing of Senate hearing report 99-812, which is a record of the proceedings of the Senate Impeachment Trial Committee, I ask unanimous consent that they be printed at a suitable place in today's CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[In the Senate of the United States, Sitting as a Court Of Impeachment]

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE

Post-Trial Brief of the House of Representatives:

I. ARTICLES I AND II

Articles I and II of the Articles of Impeachment set forth allegations that Judge Claiborne willfully made and subscribed a false statement on his income tax returns for 1979 and 1980. Each Article alleges a violation of § 7206(1) of title 26, United States Code.

Although Judge Claiborne already had been convicted of these two charges in the federal courts, the House of Representatives independently offered proof in support of each Article. In the following sections of this brief, the House of Representatives sets forth the legal standard of "willfulness" as used in § 7206(1), and summarizes the evidence presented by both parties with respect to the 1979 and 1980 tax returns.

A. The Legal Standard of "Willfulness."

The first two Articles of Impeachment allege that Judge Claiborne committed the felony offense proscribed in 26 U.S.C. § 7206(1). Section 7206(1) is violated when an individual "[w]illfully makes and subscribes any [tax] return," under penalties of perjury, "which he does not believe to be true and correct as to every material matter." *United States* v. *Bishop,* 412 U.S. 346, 350 (1973). In *United States* v. *Marabelles,* 724 F.2d 1374, 1380 (9th Cir. 1984), the court defined the elements of § 7206(1) as follows:

> (1) the defendant made and subscribed a return, statement, or other document that was incorrect as to a material matter;
>
> (2) the return, statement, or other document subscribed by the defendant contained a written declaration that it was made under the penalties of perjury;
>
> (3) the defendant did not believe the return, statement, or other document to be true and correct as to every material matter; and
>
> (4) the defendant falsely subscribed to the return, statement, or other document willfully, with the specific intent to violate the law.

The issue in this case has centered on the element of "willfulness." There has been no dispute that Judge Claiborne's tax returns for 1979 and 1980 were incorrect as to material matters. The 1979 return failed to report $18,740 in taxable income. The 1980 return failed to report $173,933 in taxable income, avoiding payment of over $96,000 in tax. The sole issue has been whether this underreporting of income by Judge Claiborne was willful, as that term is used in § 7206(1), or somehow accidental.

1. Definition of "Willfulness."

The word willfulness, when used in the criminal law, has been defined in many ways. *See United States* v. *Murdock,* 290 U.S. 389, 394 (1933) (listing various articulations of the definition of "willfulness"). Recently, however, the Supreme Court defined with some particularity the meaning of willfulness in § 7206(1). In *United States* v. *Pomponio,* 429 U.S. 10 (1976), the Supreme Court held: "willfulness [in § 7206] simply means a voluntary, intentional violation of a known legal duty." *Id.,* at 12.

In *Pomponio,* the Supreme Court reversed a decision of the Court of Appeals that had held that § 7206 "requires a finding of a bad purpose or evil motive." *See United States* v. *Pomponio,* 528 F.2d 247, 249 (4th Cir. 1975). The Court of Appeals had based its decision on the following paragraph in *United States* v. *Bishop,* 412 U.S. 346, 360 (1973), where the Supreme Court had stated:

> The Court, in fact, has recognized that the word "willfully" in [§ 7206 and other tax] statutes generally connotes a voluntary, intentional violation of a known legal duty. It has formulated the requirement of willfulness as "bad faith or evil intent," *Murdock,* 290 U.S., at 398, or "evil motive and want of justification in view of all the financial circumstances of the taxpayer," *Spies,* 317 U.S., at 498, or knowledge that

the taxpayer "should have reported more income than he did." *Sansone,* 380 U.S., at 353.

In its decision in *Pomponio,* the Supreme Court clarified the meaning of this paragraph: Our references to other formulations of the standard did not modify the standard set forth in the first sentence of the quoted paragraph. On the contrary, as the other Courts of Appeals that have considered the question have recognized, *willfulness in this context simply means a voluntary, intentional violation of a known legal duty.*

429 U.S. at 12 (emphasis supplied).

Consistent with the standard established ion *Pomponio,* the court in *United States* v. *Daniels,* 617 F.2d 146, 148 (5th Cir. 1980) stated that "willfulness is demonstrated by proof of conscious, deliberate, purposeful acts, rather than negligent, unconscious, or mistaken conduct."

2. Proof of Willfulness.

While the legal standard of willfulness may be stated readily, courts have recognized that the defined state of mind rarely is proved directly: Direct proof of a taxpayer's intent to evade taxes is rarely available. Willfulness may be inferred, however, by the trier of fact from all the facts and circumstances of the attempted understatement of tax.

United States v. *Conforte,* 624 F.2d 869, 875 (9th Cir.), *Cert. denied,* (449 U.S. 1012 (1980)' (Harry E. Claiborne, counsel). A crime whose very purpose is to conceal is not often telegraphed with direct proof. Thus, "Congress did not often define or limit the methods by which a willful attempt to defeat and evade might be accomplished and perhaps did not define lest its efforts to do so result in some unexpected limitation." *Spies* v. *United States,* 317 U.S. 492, 499 (1943). The Supreme Court in *Spies* emphasized that willfulness may be inferred from "any conduct, the likely effect of which would be to mislead or to conceal." *Id.*

Many factors have been identified as legitimate and sufficient proof of willfulness under § 7206 and other tax statutes. As summarized recently in *United States* v. *Hughes,* 766 F.2d 875, 877-878 (5th Cir. 1985) (footnotes and citations omitted):

> The government may rely on such circumstantial evidence as "a consistent pattern of understating large amounts of income, coupled with evidence of falsehood, surreptitious cash transactions and inadequate records kept by taxpayer," substantial understatement of taxable income and tax liability for the years in question, the withholding of material information from the taxpayer's bookkeepers by giving them only summary sheets of the records in question, and the expenditure of large amounts of cash that cannot be reconciled with the amount of income reported.

In a case in which Judge Claiborne participated as counsel, the court identified these and other circumstances from which willfulness may be inferred: the "extensive use of currency and cashier's checks to satisfy obligations"; a "pattern of understatement of income in successive years"; the "use of memory, surmise, estimates, or a careless disregard in making of tax returns"; a "taxpayer's effort not to learn what his tax obligations are"; and the "presence of large sums of money in cash not deposited in a bank." *United States* v. *Conforte, supra,* 624 F.2d at 875.

a. *Consistent pattern of underreporting.*

One of the most frequently cited factors tending to show willfulness is "evidence of a consistent pattern of underreporting large amounts of income." *Holland* v. *United States,* 348 U.S. 121, 139 (1954). *See also United States* v. *Daniels, supra,* 617 F.2d at 149 ("[t]he consistency of the taxpayer's practice of understating his income may also establish the essential inference of willful intent"); *United States* v. *Ashfield,* 735 F.2d 101, 105 (3d Cir.), *cert. denied,* 105 S. Ct. 189 (1984) ("repetitious conduct resulting in underpayment of taxes may be sufficient to show willfulness"). It has been held that "a two year pattern of derelictions . . . [is] itself indicative of the willfulness of [the taxpayer's] actions." *United States* v. *Greenlee,* 517 F.2d 899, 903 (3d Cir.), *cert. denied,* 423 U.S. 985 (1975). *See also United States* v. *Hughes, supra,* 766 F.2d at 878 (substantial amount of unreported income over two consecutive years).

b. *Magnitude of the error.*

It also has been held that "[t]he magnitude of [the] error . . . itself tends to support a finding of willfulness." *United States* v. *Daniels, supra,* 617 F.2d at 149 (understatement of taxable income by $37,879, $36,855 and $54,258). *See also United States* v. *Ashfield, supra,* 735 F.2d at 105; *United States* v. *Hughes, supra,* 766 F.2d at 878.

c. *Disclosure of summary data only.*

Another factor that has been cited by the courts as evidence of willfulness is "the withholding of material information from the taxpayer's bookkeepers by giving them only summary sheets of the records in question." *United States* v. *Hughes, supra,* 766 F.2d at 878. In *Hughes,* the Court of Appeals affirmed a tax fraud conviction, relying in part on evidence that [t]he person who prepared the Hughes' tax returns for 1978 and 1979 testified that she used only Hughes' summary lists containing income and expense figures, but that no other books or records were made available to her.

In *United States* v. *Garavaglia,* 566 F.2d 1056, 1059 (6th Cir. 1977), the court similarly relied on evidence of the "preparation of returns by an accountant who did not see any underlying records but relied on information furnished by the taxpayers."

d. *Sudden change in accountants.*

A sudden change in accountants also has been cited as evidence of willfulness. In *United States* v. *Nathan,* 536 F.2d 988 (2d Cir.), *cert. denied,* 429 U.S. 930 (1976), the defendant switched accountants after learning that he would incur a substantial tax liability. The defendant contended that he fired his former accountant for cause. The court held that "the jury could well have believed" that the accountant, allegedly discharged for cause, "was fired because of the [taxpayer's] desire to conceal his income." *Id.,* at 990.

e. *Surreptitious cash transactions.*

Many cases have found the presence of large sums of money in cash, not deposited in a bank, to be highly suspicious. *United States* v. *Conforte, supra,* 624 F.2d at 875; *Warring* v. *United States,* 222 F.2d 906, 909 (4th Cir. 1955). In *United States* v. *Garavaglia, supra,* 566 F.2d at 1059, the court noted:

> In *United States* v. *Callanan,* 450 F.2d 145, 148 (4th Cir. 1971), the court wrote that a defendant's "failure to record fees he personally received or to deposit them in his office bank account made it virtually impossible for his accountant to include them in his tax returns." A taxpayer who keeps on regular books but relies on his bank records to reflect his income engages in a deceptive practice when he fails to deposit payments from business customers.

f. *Background of the accused.*

The experience and background of the defendant also is a factor that has been noted in sustaining a finding of willfulness. *See United States* v. *Garcia,* 762 F.2d 1222, 1226 (5th Cir.), *cert. denied,* 106 S. Ct. 238 (1985) (defendant had "several years of legal training at the University of Texas Law School, including a course on federal taxation"); *Gaunt* v. *United States,* 184 F.2d 284, 291 (1st Cir. 1950) (defendant was "an intelligent, astute and successful business executive with many years of experience"; jury could very reasonably "wholly discoun[t] his defense that those understatements for the most part were made stupidly or carelessly"); *Escobar* v. *United States,* 388 F.2d. 661, 666 (5th Cir. 1967) (defendant was "a practicing attorney with experience in the tax field"); *United States* v. *MacKenzie,* 777 F.2d 811, 818 (2d Cir. 1985) (defendants each had college degrees in business-related field).

g. *Turning a blind eye.*

As a final factor bearing on willfulness, courts have held that it is proper to instruct a jury that willfulness may be inferred "from proof that a defendant deliberately closed his eyes to what would otherwise have been obvious to him." *United States* v. *Martin,* 773 F.2d 579, 584 (4th Cir. 1985); *United States* v. *MacKenzie, supra,* 777 F.2d at 818 n.2. "Stated another way, a defendant's knowledge of a fact may be inferred from his willful blindness to the existence of a certain fact or facts." *United States* v. *Martin, supra.*

h. *Reliance on accountant or other expert.*

These are but some of the factors that have been used to supply proof of willfulness. Considering briefly the opposing side of the coin, it is common for a defendant to claim that errors in reporting are not his fault, but rather that of an accountant or other expert. *See, e.g., United States* v. *Daniels, supra,* 617 F.2d at 147 (defendant claimed "he relied upon the accounting system organized by his bookkeeper" and "was too ignorant of accounting practices to realize that the accounting system was inadequate to reflect his true business earnings"); *United States* v. *Garavaglia, supra,* 566 F.2d at 1058 (defendant testified that he "did not understand bookkeeping or taxes"). Judge Claiborne in fact relied on this defense in cases in which he served as counsel. *See United States* v. *Conforte, supra,* 624 F.2d at 876-878.

As stated in *United States* v. *Whyte,* 699 F.2d 375, 379 (7th Cir. 1983) (emphasis supplied):

> It is a valid defense to a charge of filing a false return if a defendant provides full information regarding his taxable income and expenses to an accountant *qualified to prepare federal tax returns,* and that the defendant adopts and files the return as prepared *without having reason to believe it is incorrect.*

There are two essential elements of this defense: "1) full disclosure of all pertinent facts; and 2) good faith reliance on the accountant's advice." *Id.,* at 380. *See also United States* v. *Conforte, supra,* 624 F.2d at 877 ("[e]ssential to the claim of reliance on counsel is a showing that the reliance be in good faith"). It has been held that reliance is not a complete defense, "but only a circumstance indicating good faith which the trier of fact is allowed to consider on the issue of willfulness." *Id.,* at 876; *United States* v. *Crum,* 529 F.2d 1380, 1383 (9th Cir. 1976).

One closing comment on the issue of willfulness warrants mention. Many of the concepts raised in this section, including the notion of reliance, were considered in *United States* v. *Drape*, 668 F.2d 22 (1st Cir. 1982). The defendant in *Drape* was convicted of a violation of § 7206(1). The facts showed that the defendant had gone to an accountant and had learned that he would owe $81,109 in tax on his yearly tax return. At about this time, at his brother-in-law's suggestion, the defendant visited an attorney who "promoted" a number of tax shelters. The attorney stated that the defendant could avoid paying *any* taxes for that year and could in fact claim a refund for taxes paid in prior years if he invested in the tax shelter. On these representations, the defendant signed the papers, some of which were backdated. The defendant ultimately claimed a tax refund for that year of $58,542. He never mentioned his investment in the tax shelter to the original accountant, nor did he tell that accountant that he had filed a tax return with tax savings of over $100,000.

The defendant was convicted of a violation of § 7206(1). On appeal, he contended that the conviction should be set aside. He asserted "that he did not know that the documents which he signed had later been backdated; that he knew nothing about tax shelters and that he relied on [the attorney's] professional advice." *Id.*, at 25.

The Court of Appeals affirmed the conviction. After emphasizing the wide disparity between the taxpayer's earlier estimated tax and the return as filed, the court stated that "[i]t is inconceivable that this raised no questions in appellant's mind." *Id.* The court further emphasized:

"It taxes credulity that appellant, having met [the attorney] for the first time, would sign a succession of legal documents, including a blank promissory note, and agree to pay [the attorney] $30,000 in cash without knowing what he was doing."

Id., at 26. Reliance upon the tax preparer was not justified in the absence of good faith; moreover, "[i]ntent may be established where a taxpayer 'chooses to keep himself uninformed as to the full extent that [the return] is insufficient.'" *Id.* (*quoting Katz* v. *United States*, 321 F.2d 7, 10 (1st Cir. 1963)).

3. Conclusion

With these legal principles established, a determination of willfulness readily may be made in this case. Willfullness has been inferred from the very factors that are present here. The evidence summarized in the following sections firmly establishes that Judge Claiborne's massive understatement of income and evasion of tax was willful.

B. The 1979 Tax Return

Article I alleges that Judge Claiborne willfully and knowingly filed a false income tax return for 1979. On August 19, 1984, a jury found Judge Claiborne guilty of this same charge beyond a reasonable doubt. The testimony and exhibits presented before the Senate establish that the verdict of the jury is proper and supported by overwhelming evidence.

1. Judge Claiborne Engaged In Willful Conduct Designed to Underreport His Income

In 1979, Judge Claiborne received $41,072.93 in ordinary income pursuant to "fee-splitting" arrangements with his two former associates, James Brown and Annette Quintana. "Report Of the Senate Impeachment Trial Committee," Part I (hereinafter "R(I)"), at page 974. The money was paid in fourteen separate checks. R(I) 301-304 (motion granted R(I) 110). Judge Claiborne reported only $22,332.87, or approximately half, of this income on his 1979 income tax return. House Exhibit 15, R(IV) 2102.

The evidence establishes that this significant underreporting of income and evasion of tax resulted from conscious, deliberate and purposeful actions by Judge Claiborne. He engaged in conduct that was designed to result in a significant underreporting of his income.

a. *The cashing of income checks at local casinos.*

For thirty years, Judge Claiborne meticulously deposited every fee check that he received in bank accounts. R(I) 626, 975. He did so "for the very purpose I wanted my books and records to show every penny that came through my office." *Id.* The records of these deposits were sent directly to Judge Claiborne's accountant, Mr. Joseph Wright. R(I) 535.

In 1979, Judge Claiborne began to walk past his own banks to cash his fee checks at local casinos. (R(I) 975-976. He cashed eight of the fourteen checks that he received in 1979, many of which were for amounts of several thousand dollars. R(I) 301-304 (motion granted R(I) 110). According to Judge Claiborne, he did so to receive "pocket money." R(I) 976. In cashing fee checks, Judge Claiborne left no bank record of their receipt, and generated no information for his accountant. *Id.*

b. *The withholding of vital information from Mr. Wright.*

Judge Claiborne never told Mr. Wright that, for the first time in his professional life, he was cashing fee checks. R(I) 535. Indeed, Judge Claiborne never provided Mr. Wright with detailed information concerning the income that he received. R(I) 980. In 1979, Mr. Wright stopped receiving information directly from Judge Claiborne's banks. R(I) 538. Judge Claiborne failed to provide Mr. Wright with copies of the checks that he received, or a detailed list of the amounts and sources of this income. R(I) 980. Judge Claiborne provided no substitute for the detailed information that has been sent directly to Mr. Wright from the bank. *Id.*

c. *The dissemination of conflicting summary information to Mr. Wright.*

In March 1980, Judge Claiborne provided Mr. Wright with information concerning the receipt of legal fee income in 1979. R(I) 538. In a handwritten memorandum, Judge Claiborne sent Mr. Wright a list of his fee earnings, which he described as "taken from my deposits and authentic." House Exhibit 17, R(IV) 2110. Judge Claiborne testified that he compiled this list by selecting deposits from his bank statements that he believed represented the receipt of fee income. R(I) 985-986.

The March 1980 memorandum is significant for at least two reasons. First, the memorandum and Judge Claiborne's testimony with respect to it are fraudulent. Over half of his fee checks in 1979 had been cashed, not deposited. R(I) 301-304 (motion granted R(I) 110). As Judge Claiborne well knew, it would be meaningless to compile information concerning fee income from deposits. R(I) 990. Judge Claiborne's memorandum is evidence that he deliberately sought to mislead Wright by concealing from him the fact that he was cashing fee checks in significant amounts.

It also is significant that Judge Claiborne prepared the March 1980 memorandum from memory. R(I) 985. He claimed that he did not have at that time any records of the fee income that he had received, and he obviously could not rely upon Mr. Wright for the information. *Id.* In preparing the memorandum, Judge Claiborne estimated his fee income as approximately $46,000. House Exhibit 17, R(IV) 2110. He thus demonstrated his familiarity with the fact that, in 1979, he has received over $40,000 in fee income—an amount almost equal to that of his judicial salary. R(I) 990; *see also* R(IV) 2097. This evidence is significant in light of Judge Claiborne's subsequent claim that, at tax time, he repeatedly "forgot" that his fee income was more than $22,332.87. R(I) 998-999, 1004. It may be telling that the March 1980 memorandum was prepared to secure a loan from a bank, R(I) 937; Judge Claiborne's memory is remarkably crisp when it serves his interest.

d. *Judge Claiborne participated directly in the misstatement of income on the tax return.*

As stated above, Judge Claiborne reported only $22,332.87 in fee income on his 1979 tax return. R(IV) 2102. The evidence establishes that Judge Claiborne directly was responsible for the derivation of this incorrect figure.

Joseph Wright testified that, of the seven "deposits" set forth in the March 1980 memorandum, Judge Claiborne specifically designated four items as fees in a subsequent telephone conversation. R(I) 546, 548. The conversation occurred as Mr. Wright was preparing the 1979 tax return in June 1980. R(I) 546. The four items designated as fees totalled $22,332.87. R(I) 548. Judge Claiborne identified the remaining items, which previously has been listed as fees, as interest income, proceeds from a time certificate of deposit (TCD), and proceeds from the sale of an airplane. R(I) 547. This highly incriminating testimony of Joseph Wright is corroborated by Judge Claiborne. It also is consistent with Wright's marginal notations on House Exhibit 17, with other evidence, and with past practice. Moreover, Joseph Wright demonstrated persuasively that he is an unbiased witness.

During his testimony, Judge Claiborne acknowledged that he had a conversation with Mr. Wright concerning the March 1980 memorandum. R(I) 938, 1004-1005. Judge Claiborne testified that he told Mr. Wright of at least one item on the list that was *not* fee income. R(I) 1005. Judge Claiborne further admitted that, with respect to the other items, Mr. Wright had no independent information from which he could identify certain deposits as fees and other deposits as interest or other income. R(I) 1009.

Rather, in 1980, Joseph Wright was dependent on Judge Claiborne for this information. R(I) 985. Wright was not receiving any information from Judge Claiborne's banks. R(I) 538. He had no means of determining that Judge Claiborne cashed and deposited a time certificate of deposit on February 2. R(I) 548. He had no access to information concerning interest income. *Id.* He did not even know that Judge Claiborne owned an airplane. *Id.* The evidence presented at the Senate hearing, and at each of the criminal trials, establishes that Joseph Wright had no way of identifying which deposits on the March 1980 memorandum were fees and which were not. *Id.* In three separate proceedings, Judge Claiborne has presented no evidence to rebut Joseph Wright's testimony that he received this information directly from Judge Claiborne.

Mr. Wright's testimony also is consistent with prior practice. For many years, Judge Claiborne had deposited all fee income, and had told Wright to treat all deposits as income unless otherwise instructed. R(I) 535, 980. During this year, Judge Claiborne occasionally would receive and deposit money that was not fee income. R(I) 541. He would instruct Wright of this fact, and Wright would make a marginal notation to exclude that deposit. *Id.* The analysis of the deposits listed on the March 1980 memorandum was consistent with this practice. *Id.* Mr. Wright testified that Judge Claiborne told him, as he had done before, that certain deposits in fact did not represent fee income and should be excluded from the list. R(I) 546-547.

Joseph Wright is a credible and conscientious witness. He testified candidly that he had no independent recollection of the conversation with Judge Claiborne. R(I) 546. He refused to amplify his testimony by claiming to have a specific recollection of what was a common and ordinary event. Joseph Wright's statements are based upon, and consistent with, his established business practices and the documentary evidence that he had preserved. His testimony is amplified only by the marginal notations that he made recording the information he received from Judge Claiborne, R(IV) 2110, and by the undisputed evidence that, in 1980, Wright had no source of information for the notations other than Judge Claiborne. R(I) 1009.

Joseph Wright testified that Harry Claiborne was a special client and a long-standing friend. R(I) 532, 535. *See also* R(I) 585, 626. He has no reason or motive to lie. He has demonstrated, through his refusal to embellish his testimony, that he has no bias against Judge Claiborne. Joseph Wright did not manufacture the specific disclosures on the March 1980 memorandum from thin air. The information came from Judge Claiborne.

e. *Consistent with his own disclosure of information, Judge Claiborne repeatedly used the $22,332.87 figure.*

Judge Claiborne's direct participation in the calculation of the $22,332.87 figure for legal fee income is corroborated by events immediately preceding the preparation of the 1979 return. In his own hand, R(I) 995, Judge Claiborne prepared a worksheet that set forth "earnings [from] private law practice before judgeship" as $22,332.87. House Exhibit 21, R(IV) 2116. Joseph Wright used this worksheet to complete the 1979 return. R(I) 549. Similarly, in his 1979 Judicial Ethics filing, Judge Claiborne identified "clients" fees while in private practice" as $23,050.76. House Exhibit 16, R(IV) 2108. Judge Claiborne testified that he computed the figure himself by using the $22,332.87 amount and adding a small refund check that he had received. R(I) 1002-1003. Each of these documents *prepared by Judge Claiborne* is consistent with his determination, as relayed to Joseph Wright, that his 1979 fee income consisted of four "deposits" totalling $22,332.87. R(I) 546-548.

Schedule C of Judge Claiborne's 1979 tax return reports legal fee income of $22,332.87. House Exhibit 15, R(IV) 2102. The return was signed by "Harry E. Claiborne." *Id.;* R(IV) 2099. On Monday, June 16, 1980—the day the *completed* return was filed—there is a notation in Mr. Wright's appointment book that Wright "worked on and called Harry Claiborne's return and *he was in later.*" House Exhibit 35, R(IV) 2183. The return stood uncorrected until March 11, 1983, well after the government's investigation of the tax fraud had begun. Claiborne Exhibit 11, R(IV) 2232.

2. *The Explanation of the Deficiency Offered by Judge Claiborne is Contorted, Inconsistent With Other Evidence, and Not Worthy of Belief.*

Judge Claiborne has offered a lengthy and convoluted explanation for the significant underreporting of income and evasion of tax on the 1979 return. His vigorous protestations of innocence are not worthy of belief. Indeed, the evidence reveals that Judge Claiborne's testimony has been totally self-serving, largely manufactured, and simply false. The Senate must recognize and appreciate that it cannot accept blindly the statements that are offered. Judge Claiborne asks the Senate to believe too much, to accept too many coincidences, and to ignore too many mistakes. A jury properly rejected this proffered explanation at trial; it is entitled to no more credence in the United States Senate.

The unpersuasiveness of Judge Claiborne's explanation is demonstrated best by revealing its many and varied components. Judge Claiborne would have the Senate believe and accept each of the following propositions:

—that Judge Claiborne started cashing fee checks in 1979 simply to obtain "pocket money." R(I) 976. The evidence reveals that, in 1979 and 1980, Judge Claiborne cashed fee checks as large as $37,500, and totaling over $50,000. R(I) 301-304 (motion granted R(I) 110). This is hardly "pocket money," even in Las Vegas. Judge Claiborne also testified that he deposited some of the money in his bank account, *after* he cashed the check at a casino. R(I) 977. The logical inference from this bizarre behavior is that Judge Claiborne first cashed the items at a casino to avoid a record of its receipt.

—that, despite its claim to be "authentic," Judge Claiborne had no idea that Joseph Wright would use the March 1980 memorandum for income tax purposes. R(I) 992-993; *see* House Exhibit 17, R(IV) 2110.

—that, out of the blue, Judge Claiborne received a telephone call from Mr. Wright, who in essence was "mulling over" the items listed in the March 1980 memorandum. R(I) 938, 1005. According to Judge Claiborne, Mr. Wright initiated a conversation concerning a February 2, 1979 deposit of $20,622.17, despite the fact that Wright had no independent information that could cause him to question it. R(I) 1005, 1009. Mr. Wright purportedly asked Judge Claiborne to re-examine the deposit. R(I) 938, 1005. Judge Claiborne testified that he did so, and later called Wright to tell him that at least a portion of the deposit consisted of the proceeds of a time certificate of deposit (TCD). R(I) 1005. Thus, Judge Claiborne attempted to provide an explanation for Wright's notation to that effect on the March 1980 memorandum. The House of Representatives presented evidence, however, that the February 2 deposit in fact consisted of three items: a fee check for $17,500, a fee check for $84.30, and a Treasury check for $3,037.87. House Exhibit 42, R(IV) 2208; *see also* testimony at R(I) 1006-1007. *The deposit had nothing to do with a $10,000 TCD.* Judge Claiborne's purported explanation is fraudulent. Significantly, Judge Claiborne did not even attempt to offer an explanation for the other notations made by Mr. Wright on the March 1980 memorandum. R(I) 938.

—that, when he prepared the March 1980 memorandum, Judge Claiborne had "misplaced" the slips of paper on which he had recorded his legal fee income, and thus had to "estimate" from his "bank statements." R(I) 985. Since he had *cashed* over *half* of his fee checks, this attempted explanation of the March 1980 memorandum again is fraudulent. Had Judge Claiborne merely lost the information, he readily could have called his two former associates who paid him the money. R(I) 987. It is more likely that the March 1980 memorandum is inaccurate because Claiborne attempted to compile the total only from bank deposits. *Id.* It is a convenient coincidence that, on April 11, 1980, when Judge Claiborne allegedly sent Wright, a letter identifying the sum of his fee income, Claiborne suddenly discovered the slips. R(I) 990-991. Judge Claiborne has possession of accurate information only when it suits him.

—that Judge Claiborne sent Mr. Wright the correct total of his fee income in an April 11 letter, despite the fact that Wright neither solicited nor needed the information at that time. R(I) 932. In fact Wright was operating on the assumption that he had received the correct figure in the March 1980 memorandum. R(I) 545. Wright already had computed Judge Claiborne's estimated tax by using the $46,371 figure in that document. *Id.; see* House Exhibit 19, R(IV) 2114. Wright's diary reflects that he prepared the estimate April 8. House Exhibit 35, R(IV) 2175. It also is significant that, over a month *after* the April 11 letter supposedly was sent, Wright continued to use the figure in the March 1980 memorandum in letters that he wrote to two mortgage companies. House Exhibits 18(B) and 18(C), 2112-2113; *see also* testimony at R(I) 546.

—that on May 1, 1980, 19 days after Judge Claiborne allegedly found the slips of paper, added them to derive an income figure of $41,072.93, and sent that information to Mr. Wright, Judge Claiborne accepted from Wright a figure for legal fees that was only $22,332.87. R(I) 991, 998. Judge Claiborne apparently simpy "forgot" almost half of his legal fee income during those 19 days. R(I) 999. Not only was the $22,332.87 figure grossly inconsistent with the April 11 figure that Claiborne purportedly had computed personally and retained in his files, it was widely disparate from the $46,371.93 figure that Judge Claiborne had prepared and sent to Wright in March 1980.

—that Judge Claiborne signed a blank tax return around May 2, 1980. R(I) 929, 999-1000. Wright's diary reveals, however, that Wright *left on vacation* on May 2. House Exhibit 35, R(IV) 2180. Moreover, the diary reflects that Judge Claiborne went to Mr. Wright's office on June 16, *the date the completed return was filed. Id.,* R(IV) 2183. Wright denied that Claiborne had signed the 1979 return in blank. R(I) 564-565. Ken Swanson, an employee in Wright's office, testified that Wright earlier had discontinued the practice of accepting returns signed in blank. R(I) 667, 670. Judge Claiborne, when confronted with the evidence that Joseph Wright had left on vacation May 2, changed his earlier testimony that he had gone to Wright's office in the evening and claimed instead that he had gone there at lunch. *Compare* R(I) 1000-1001, with R(I) 1002. Judge Claiborne's self-serving and inconsistent trestimony should be disregarded.

—that on May 15, 1980, Judge Claiborne "mistakenly" used the $22,332.87 figure from the tax worksheets on his 1979 Judicial Ethics filing. R(I) 1002-1003. No reasonable explanation has been offered, however, as to why Claiborne would use the tax worksheets, which have virtually nothing in common with the ethics filing, rather than his own financial diary or the copy of the purported April 11 letter that allegedly was in his files. Compare House Exhibits 15 and 16, R(IV) 2098-2109. Again, it is unpersuasive that Judge Claiborne simply would "forget" the substantially greater figure that he actually received in 1979, that he had estimated in March 1980 memorandum, and that he allegedly computed and used in the April 11 letter.

—that he never reviewed the 1979 tax return, despite the fact that, according to his testimony, he had signed it in blank before it was prepared. R(I) 1017.

Judge Claiborne's explanation simply requires too much to be believed. It is inconsistent with the sworn testimony of other witnesses, it is internally inconsistent, and it is contrary to the documentary evidence. Most importantly, virtually every facet of his explanation is contrary to common sense. It is an unpersuasive attempt to reconcile the incriminating evidence revealed in his tax return, tax worksheets, and that other documents found in his accountant's files. Judge Claiborne was a sophisticated lawyer, businessman and judge; he is an equally sophisticated witness. The substance of his testimony, however, does not withstand reasoned scrutiny.

3. The April 11 Letter.

Since the defense relies so heavily on the April 11 letter, it is useful to consider separately the problems with this evidence. While the House of Representatives disputes the authenticity of the letter, the existence or non-existence of this letter is not determinative.

There are many reasons to doubt that Judge Claiborne ever prepared and sent the April 11 letter, in which he purportedly disclosed the total amount of his legal fee income. Judge Claiborne acknowledges that Joseph Wright had not requested this information. R(I) 932, 992. The primary purpose of the April 11 communication was to deliver a check to Wright in connection with an application for an extension of time. R(I) 933. Mr. Wright already had determined the amount of the check, preparing an estimate of Judge Claiborne's tax liability from W-2 data and the March 1980 memorandum. R(I) 932, 992; House Exhibits 19-20, R(IV) 2114-2115. Joseph Wright testified that the estimate was prepared on April 8, 1980; a notation from his appointment book for that date reveals that he "worked on Harry Claiborne's data and talked to Judy his secretary and got W-2 data from her and figured approximate tax." R(I) 544; House Exhibit 35, R(IV) 2175. The worksheet used to prepare the estimate records legal fee income of $46,371.93, which is the amount Judge Claiborne disclosed in his March 1980 memorandum. R(I) 545; House Exhibits 17 and 19, R(IV) 2110 and 2114. Thus, the information with respect to legal fee income in the April 11 letter neither was solicited nor needed at that time.

It also is significant that the April 11 letter, which purportedly sets forth a new total for legal fee income, makes no reference to the March 1980 memorandum. See House Exhibit 36, R(IV) 2185. That earlier memorandum had claimed to be "authentic." See Exhibit 17, R(IV) 2110. The April 11 letter simply disregards that document and sets forth a new bald total for legal fee income, without any of the detail provided in prior years through bank statements or proffered in the March 1980 memorandum.

Both Joseph and Constance Wright testified that they had not seen the April 11 letter before it was shown to them by Defense Counsel Oscar Goodman in late 1983. R(I) 550-551, 586. Moreover, the original of that letter was not found in Mr. Wright's file, unlike *each* of the other documents that have been identified as prepared in connection with Judge Claiborne's 1979 tax return. R(I) 551, 586; other documents R(I) 540, 542, 543, 549. While the defense has made every effort to suggest that the April 11 letter was lost or destroyed—going so far as to imply that the FBI broke into Mr. Wright's office on three occasions and surgically removed this single document from the file—there is no actual evidence that this document in fact was lost. Nor has any explanation been offered as to why both Joseph and Constance Wright would lie to cover up such a loss. Indeed, Constance Wright testified forcefully that she searched thoroughly for the document in hopes that she would *find* it, to help someone who had been a favorite and special client. R(I) 585-586. Unlike all of the other documents properly maintained in Mr. Wright's file, that document was not found.

Judy Ahlstrom's testimony that she delivered and now remembers the contents of the letter is not credible. Ms. Ahlstrom did not write or type the letter; it was handwritten by Judge Claiborne. R(I) 699. The letter did not require her review. *See* House Exhibit 36, R(IV) 2185. Ms. Ahlstrom did not see the letter for over three years, until after the indictment was returned. R(I) 683. At that time, she did not retrieve the letter from the file; it was shown to her by Judge Claiborne and Oscar Goodman. R(I) 683-684. She had no reason to remember the contents of the letter.

Ms. Ahlstrom's testimony at the hearing also was impeached repeatedly with prior sworn testimony. At the hearing, Ms. Ahlstrom claimed that she had read the April 11 letter "carefully" and "in detail." R(I) 680, 681. At Judge Claiborne's first trial, she testified that she "didn't read it in great detail," that she "didn't care what was in it," and that she "just skimmed it because [she] was copying it and waiting for other things to be copied." R(I) 681. At the hearing, when asked whether she typically read Judge Claiborne's personal mail, Ms. Ahlstrom testified, "as a general proposition, if it was given to me, I did." *Id.* When asked this same question at Judge Claiborne's first criminal trial, her answer had been, "not as a general rule, no." R(I) 682. Similarly, Ms. Ahlstrom testified at the hearing that she remembered "the majority" of the contents of the letter. R(I) 684. At Judge Claiborne's second trial, she testified quite differently: "If you had asked me to tell you, read it to you or tell you what was in it, I could not have told you." R(I) 685.

In sum, Ms. Ahlstrom's testimony concerning the April 11 letter has been incredible and inconsistent. At the hearing, she acknowledged that she has a personal stake in the outcome of these proceedings. Her position on the federal payroll is dependent upon Judge Claiborne's return to office. R(I) 695.

The House of Representatives has not disputed that someone, and in all probability Ms. Ahlstrom, delivered an envelope containing an $8,000 check to Mr. Wright's office on April 11, 1980. Ms. Ahlstrom well may remember that she delivered something to Mr. Wright's office on that day; she strains her credibility by claiming to remember the precise contents of any letter that was included. Similarly, the recent affidavit submitted by Ellen Arthur, a witness who suddenly has surfaced after more than six years, does not establish that Judge Claiborne wrote or delivered the April 11 letter. Ms. Arthur purports to have received an envelope that Ms. Ahlstrom delivered to Mr. Wright's office. R(I) 1142. Ms. Ahlstrom, on the other hand, testified that she is certain she delivered the envelope to Mrs. Wright. R(I) 677, 698. In any event, Ms. Arthur does not claim to have seen the contents of the envelope. *See* R(I), 1142-1143.

Proof of willfulness in 1979 does not depend upon the delivery or nondelivery of the April 11 letter. The evidence that Judge Claiborne *analyzed* the information in the March 1980 memorandum, that he *told* Joseph Wright that his fee income was $22,332.87, that he *recorded* that amount on his tax worksheets, that he *used* that amount in filing his Judicial Ethics statement, and that he *endorsed*—or failed for three years to correct—a tax return using the $22,332.87 figure, conclusively demonstrates that Judge Claiborne personally is responsible for the underreporting of income and the evasion of taxes on his 1979 tax return. The possible disclosure of an unsolicited, unneeded and summary statement of income in a letter purportedly sent to accompany a tax payment check does not undermine this evidence. *See United States* v. *Hughes, supra,* 766 F.2d at 878 (willfulness inferred from the withholding of material information from an accountant by providing only summary sheets); *United States* v. *Garavaglia, supra,* 566 F.2d at 1059 (same).

4. Conclusion

The evidence establishes that Judge Claiborne willfully made and subscribed a tax return in 1979, under penalties of perjury, that he did not believe to be true and correct as to every material matter. Ample evidence is present from which willfulness must be inferred.

Direct "evidence of falsehood" is present. *United States* v. *Hughes, supra,* 766 F.2d at 877. Judge Claiborne sent his accountant a memorandum that fraudulently sought to identify fee income from bank deposits. In addition, Judge Claiborne told Joseph Wright, in analyzing the "deposits" in the March 1980 memorandum, that his fee income in 1979 was $22,332.87, or *half* of the correct amount.

Judge Claiborne engaged in an extensive practice of "surreptitious cash transactions." *Id.* He cashed over half of the fee checks that he received. His failure "to deposit them in his bank account made it virtually impossible for his accountant to include them in his tax returns." *United States* v. *Callanan,* 450 F.2d 145, 148 (4th Cir. 1971).

Judge Claiborne withheld material information from Mr. Wright "by giving [him] only summary sheets of the records in question." *United States* v. *Hughes, supra,* 766 F.2d at 878. Moreover, by repeatedly using the incorrect figure for his legal fee income—when verifiable information readily was available to him—Judge Claiborne at best "deliberately closed his eyes to what would otherwise have been obvious to him." *United States* v. *Martin, supra,* 773 F.2d at 584.

Each of these facts provides a legitimate inference of willfulness. Coupled with the overwhelming evidence of Judge Claiborne's massive understatement of income in 1980 and subsequent years, the Senate must find that Judge Claiborne's actions were willful.

The *same* evidence that has been presented to the Senate was heard by a jury in Judge Claiborne's criminal trial. That jury weighted this evidence, evaluated the credibility of these same witnesses, and found beyond any reasonable doubt that Judge Claiborne willfully had underreported his income in 1979. Both the trial judge and the Court of Appeals found as a matter of law that the evidence was sufficient to sustain that verdict. Nothing has been presented that should cause the Senate to differ from the reasoned verdict of the jury and the considered judgment of the Judicial Branch of our government.

C. The 1980 Tax Return

Article II alleges that Judge Claiborne willfully and knowingly filed a false income tax return for 1980. On August 10, 1984, a jury found Judge Claiborne guilty of this same charge beyond a reasonable doubt. The testimony and exhibits presented before the Senate establish that the verdict of the jury is proper and supported by overwhelming evidence.

1. The Evidence Proves That Judge Claiborne Engaged In Willful Conduct Designed to Underreport His Income.

The evidence forcefully establishes that Judge Claiborne willfully underreported a massive amount of his income in 1980. In that year, two significant tax events occurred. First, Judge Claiborne received a substantial amount of fee income from his law practice. He received four checks that totalled $87,912—an amount far greater than his judicial salary of $54,499.92. R(I) 306-307 (motion granted R(I) 110). Second, Judge Claiborne sold his home for a considerable gain, and reinvested only a small portion of that money in a new dwelling. R(I) 1019. Specifically, he sold his home, which has an adjusted basis of $362,800, for $725,000 and reinvested only $285,000 in a new home. See House Exhibit 37, R(IV) 2192. Discounting commissions and expenses of sale, Judge Claiborne realized a gain on the transaction of $314,812. *Id.* Taking into account an appropriate exclusion of $100,000, Judge Claiborne incurred a taxable gain of $214,812. *Id.*

Judge Claiborne was acutely aware of the significance of these tax events. He specifically had been advised that he would have to pay a substantial amount of tax because of the real estate transaction. R(I) 742, 778. This "concerned" him, R(I) 742, and he turned to Mr. Watson, the man who prepared the 1980 return. R(I) 778. Moreover, Judge Claiborne had estimated, in an application for an extension of time, that his tax liability would be $42,847.96. House Exhibit 32, R(IV) 2151. Judge Claiborne likely prepared the estimate himself. It was signed by him and not by any tax preparer. *Id.* Mr. Watson believed that his office had not prepared it. R(I) 746. Finally, Watson did not credit the corresponding tax payment on the 1980 return. House Exhibit 27, R(IV) 2134. To be blunt, Judge Claiborne had major tax problems in 1980 and he knew it. R(I) 1019.

It is in this context that Judge Claiborne rejected the services of his accountant for the preceding thirty years, Joseph Wright. Mr. Wright called Judge Claiborne five or six times in 1981, expecting fully that he would prepare the judge's 1980 tax return. R(I) 551, 693. Judge Claiborne did not even return those calls. R(I) 1018. Instead, the judge retained Jerry Watson, with the displayed firm name, "Creative Tax Planning." R(I) 737. Judge Claiborne made no attempt to determine Mr. Watson's qualifications or experience, R(I) 1021, and retained him despite what appears to be an unfavorable community reputation. R(I) 799, 811. Watson in fact has only a high school education. R(I) 704. Judge Claiborne, an exceptional trial lawyer, a successful businessman, R(I) 971-972, and educated judge, allegedly hired Mr. Watson becaue the judge was "impressed" with the way that Watson "handled a telephone call." R(I) 939-940, 1020.

In the months preceding the filing of Judge Claiborne's 1980 return, the judge and Mr. Watson had extensive discussions concerning the two significant tax events that had occurred in 1980. The initial discussions centered around the sale of Judge Claiborne's home and the significant tax liability that the judge had been told to expect. R(I) 707, 726, 742, 778, 1023. Mr. Watson told Judge Claiborne that he believed he could do something about that tax liability. R(I) 742. In addition, in a letter to the judge sent well before the return was filed, Watson stated that "on your home we should be able to work up a figure that would cause that transaction to be tax free." House Exhibit 31, R(IV) 2149. This advice was completely at odds with the advice that Judge Claiborne earlier had received from others. R(I) 742, 778. Significantly, it was after he received the letter that Judge Claiborne retained Watson to prepare his tax return. R(I) 757, 1165.

The judge and Mr. Watson also discussed extensively a proposal in which Judge Claiborne would declare a "loss" from the termination of his law practice in 1978. R(I) 723-724, 726-728, 1023-1024. Judge Claiborne had not purchased his practice. It had no cost basis. On his 1978 tax return, Judge Claiborne had depreciated and recovered completely the cost of his library, his fixed equipment, and his leasehold improvements. House Exhibit 34, R(IV) 2155. Nevertheless, Judge Claiborne and Mr. Watson decided to take a loss in 1980 from the termination of the law practice. Mr. Watson testified that the two men had "several" discussions about this topic. R(I) 723-724, 726-728. Judge Claiborne acknowledged one conversation of between 30 and 45 minutes and at least one other conversation. R(I) 1023-1024. During the conversations, the two men discussed supposed fair market values for the law practice as a whole and for specific "elements" of that practice, such as a telephone list and legal briefs. R(I) 766-767, 1062. In the letter sent to Judge Claiborne, Wastson confirmed that "the possibility of taking a loss on your business looks good." House Exhibit 31, R(IV) 2149. Again, *after* he received that letter, Judge Claiborne told Watson that he wanted Watson to prepare the 1980 return. R(I) 757, 1165.

The entire purpose of the scheme to declare a loss from the practice was to subtract Judge Claiborne's legal fee income from the amount of the declared loss. R(I) 1063. Since only $3,000 of a long term loss may be utilized as a deduction against ordinary income in any tax year, the actual tax consequence of the loss itself was negligible. R(I) 723. However, Mr. Watson used the loss as a base against which he surreptitiously offset Judge Claiborne's receipt of ordinary income. R(I) 719-720, 722, 730-733. The approach Watson utilized is false, both factually and legally. First, Watson reported on Schedule D that a transaction had occurred with respect to assets acquired in 1978 and sold in 1980. *See* House Exhibit 27, R(IV) 2137. No such transaction had occurred. Second, he listed the cost or other adjusted basis of the property sold as $25,000 a figure he admitted was his estimate of fair market value rather than cost. R(I) 729-730. The estimate was based at least in part on information supplied by Judge Claiborne. R(I) 723. Finally, Watson deducted an artificial sales price of $150,000, which allegedly included the $88,000 ordinary income. R(I) 730-731. From a non-existent sale, Watson created a $100,000 loss. Using this method, Watson eliminated over $87,000 in taxable income in 1980, $40,000 in taxable income in 1981, and a similar amount in 1982—all in addition to the $3,000 loss actually utilized as a deduction. R(I) 1095-1096, 1098.

Neither Judge Claiborne nor Mr. Watson explicitly remembered whether their discussions concerning the business loss included reference to this treatment of ordinary income. Since this treatment was the only meaningful tax consequence resulting from the loss, however, it is difficult to imagine that the discussions did not include this concept. Moreover, it is noteworthy that Mr. Watson "arbitrarily" chose $250,000 as the "cost or other basis" of the practice. R(I) 720, 723. Judge Claiborne testified that he had expected to receive approximately $230,000 in income from his former practice after he took the bench. R(I) 1120. It is an odd "coincidence" that Mr. Watson "arbitrarily" chose a value for the practice that corresponds so perfectly to the income that Judge Claiborne projected. Rather, it is likely that the loss and the income were *intended* to be consumed together, which is precisely what Mr. Watson and Judge Claiborne did over a three year period. R(I) 1095, 1098.

There is further evidence that Judge Claiborne *knew* that his legal fee income would be "written off" in some fashion and not reported as taxable income. After the return was filed, Jerry Watson told a federal grand jury that Judge Claiborne had *not* disclosed to him the $87,912 in legal fees that the judge had received. R(I) 749, 943. Watson told this to Judge Claiborne, who responded: "Jerry, you have just indicted me." R(I) 943, 948. This statement of Judge Claiborne is remarkable. If Judge Claiborne had believed that his fee income was reported openly and properly on the tax return itself, Watson's statement to the grand jury would have had no consequence. Watson's grand jury "blunder" only could have been significant to Judge Claiborne if the judge *knew* that his fee income was not reported on the face of the return and, instead, he was counting on Watson to fill in the gap.

In sum, there is substantial evidence that Judge Claiborne participated in and had direct knowledge of the fraudulent treatment of fee income on his 1980 return.

The return as prepared and filed delivered on each of Mr. Watson's grand promises. On Form 2119 of the 1980 return, Watson determined that the sale of Judge Claiborne's residence resulted in *zero* taxable gain. House Exhibit 27, R(IV) 2139. Through a series of computational "errors," Watson was able to eliminate an actual taxable gain of $214,812. As promised in his letter, Watson indeed was able to "work up a figure" that "would cause that transaction to be tax free." House Exhibit 31, R(IV) 2149. Watson testified that he prepared this portion of the return himself. R(I) 738-739. After consideration of the tax preference for capital gains, this fraudulent tax treatment avoided $85,925 in taxable income. House Exhibit 39, R(IV) 2200.

Similiarly, the 1980 return reported *zero* legal fee income. House Exhibit 27, R(IV) 2133. The return did not include a "Schedule C," where such income properly should have been reported. R(I) 593. Indeed, the $87,912 figure for legal fee income does not appear anywhere on the return. There is a notation on "Schedule D"—which pertains to capital gains and losses—suggesting that "accounts receivable from private practice" were included within a $150,000 item labeled "gross sales price less expense of sale." House Exhibit 27, R(IV) 2137. This fraudulent tax treatment avoided $87,912 in taxable income. House Exhibit 39, R(IV) 2200.

As a consequence of the treatment of these tax events, Judge Claiborne's 1980 tax return declared a total tax liability of $1,103. House Exhibit 27, R(IV) 2134. In other words, a man who had earned a judicial salary of $54,500, who had received $87,900 in legal fees, and who had realized a taxable gain of $214,000 on the sale of his home, *reported and paid $1,103 in taxes.* Not surprisingly, the return declared that Judge Claiborne was entitled to a refund of $20,927. *Id.* After consideration of estimated tax payments that were not reflected on the return, Judge Claiborne in fact received a check from the United States Treasury for $44,256. House Exhibit 33, R(IV) 2153.

The significance of the fraudulent treatment of Judge Claiborne's sale of his home and his receipt of fee income is summarized in House Exhibit 39. R(IV) 2200. That exhibit was explained by Mr. William Wilson, an independent expert retained by the House of Representatives. R(I) 600-602. Mr. Wilson demonstrated that Judge Claiborne reported only 23.5 percent of his gross income, which translated into 15.8 percent of adjusted gross income. *Id.* Taking into account legitimate deductions and exemptions, Judge Claiborne reported only 5.4 percent of his true taxable income. *Id.* Perhaps most significantly, the $1,103 in tax liability reported by Judge Claiborne was 1.1 percent of the $97,864 that he actually should have paid as income tax for 1980. *Id.*

As a result of Watson's work on the 1980 return, Judge Claiborne paid him a fee of $2,000. R(I) 752. In contrast, Judge Claiborne had paid Mr. Wright $600 a year to do both monthly accounting work and to prepare the annual tax return. R(I) 552. Mr. Watson acknowledged that the amount of his fee was determined in part by the magnitude of the tax savings that he had been able to secure for Judge Claiborne. R(I) 752, 770-771.

In considering the import of these events, it is significant that Judge Claiborne is an educated and sophisticated man. He attended both college and law school. He built a lucrative trial practice out of nothing. R(I) 971-972. He rose to become a federal judge. As a lawyer and as a judge, he participated in numerous cases involving tax and tax-related issues. R(I) 960-969. By his own admission, Judge Claiborne is familiar with basic tax concepts and understands the distinction between ordinary income and capital gains. R(I) 973-974. He had sufficient knowledge and experience to understand the concepts in the 1980 return, which are not complex. R(I) 613, 616, 799.

2. The Explanation of These Events Offered by Judge Claiborne Is Not Worthy of Belief

Judge Claiborne's explanation of the events surrounding his 1980 return is difficult to discern. He has difficulty articulating just what he knew, and what he did not know. He has difficulty identifying when he became aware of certain facts, and when he appreciated their significance. Fundamentally, he has waffled repeatedly between embracing the 1980 return as "logical" tax treatment, and discarding it as an "abomination" visited upon him by an incompetent tax preparer, upon whom he foolishly relied.

In any event, Judge Claiborne's attempted explanation is not worthy of belief. His testimony is inconsistent with other witnesses and evidence, with his prior sworn testimony and, most importantly, with common sense. The Senate must face the reality that Judge Claiborne has not testified truthfully. The proffered explanation was rejected by a jury at trial and should be rejected by the Senate.

It is again useful to identify each of the many and varied components of Judge Claiborne's defense. He would have the Senate believe and accept each of the following propositions:

—that Judge Claiborne discarded Joseph Wright as his accountant because Wright was "cold" and "uninterested" in preparing Judge Claiborne's return. R(I) 939, 1130. The evidence presented at the hearing established, however, that both Joseph and Constance Wright viewed Harry Claiborne as a special client and an honored friend. R(I) 535, 585. Judge Claiborne's assertion that Mr. Wright was not interested in preparing the judge's tax return is belied by the fact that Wright called Claiborne five or six times in anticipation of completing the return. R(I) 551, 693. Indeed, it was Judge Claiborne who never bothered to return those phone calls, R(I) 1018; it was Judge Claiborne who was "cold" or "indifferent" to his old friend. The more logical and appropriate inference from this evidence is that Joseph Wright was discarded because he knew too much (Judge Claiborne already had identified the receipt of $41,000 in 1980 fee income on the March 1980 memorandum, House Exhibit 17, R(IV) 2110) and because Joseph Wright simply was too "exceedingly honest" to create the tax savings that Judge Claiborne sought. R(I) 626.

—that Judge Claiborne had no idea of Mr. Watson's lack of experience and competence. R(I) 1021. Judge Claiborne in fact had ample notice of Mr. Watson's business orientation. The sign "Creative Tax Planning" was displayed on Watson's office door. R(I) 737. The "handyman" nature of his practice was featured on the stationery that Watson used to correspond with the judge and in a brochure the judge admitted he had read. House Exhibit 31, R(IV) 2149; R(I) 1020. There is substantial evidence that Watson's reputation in the community was poor. R(I) 788, 799, 811. Again, the logical and appropriate inference from the record is that Judge Claiborne knowingly selected a tax preparer who would not be encumbered with a valued professional reputation, a full knowledge of the tax law, or personal integrity. Certainly, qualified experts were known by, available to, and passed over by Judge Claiborne. R(I) 1022.

—that Judge Claiborne did not read the completed 1980 return or understand its treatment of the significant tax events that had occurred. This claim is astonishing in light of the fact that Judge Claiborne had never used Watson before that time. Moreover, the claim is belied by the fact that Judge Claiborne had discussed the tax concepts utilized on the return with Mr. Watson prior to its completion, R(I) 723-724, 726-728, 1023-1024, and that Judge Claiborne obviously was familiar with these basic tax concepts. R(I) 973-974. It is inconceivable that, after learning from other accountants that he would incur a substantial tax liability in 1980, and then deliberately choosing Mr. Watson to do the return, Judge Claiborne had no idea that the return reported only $1,103 in total tax. In addition, as explained above, Judge Claiborne's protestations of ignorance are inconsistent with his immediate realization that Watson had "indicted" him by failing to tell the grand jury of the scheme employed on Schedule D.

—that Judge Claiborne realized that "something was wrong" at least three days after the return was filed. In an attempt perhaps to bolster his credibility, Judge Claiborne testified repeatedly that he has the "impression" that "something was wrong" shortly after he filed the 1980 return. R(I) 947, 1031, 1134-1135. This claim is remarkable in light of Judge Claiborne's failure ever to do *anything* to correct or even review the return carefully. R(I)(1031. It also is inconsistent with his acceptance of a refund of $44,256, and with his previous testimony that the tax treatment on the return seemed "logical" to him. R(I) 1179. He also retained Watson for two additional years. R(I) 1134-1135. Again, the normal and appropriate inference is that Judge Claiborne did nothing to change the 1980 return because he was aware of, and endorsed, its contents. He undoubtedly had the "impression" that something was wrong, but that "impression" did not result from a cursory review of the return. The entire return was a fraud that Judge Claiborne had helped to create.

—that Judge Claiborne was "too busy" to notice and correct the gross underreporting of income on the 1980 tax return. R(I) 1110, 1149. This perhaps is Judge Claiborne's most blatantly artificial claim. When asked what he had done with the $44,256 refund that he had received from the government, Judge Claiborne testified that he cashed the check to finance the purchase of quarter horses in Mexico. R(I) 1134. When that transaction fell through, he invested in two apartment houses. *Id.* During this same period, Judge Claiborne bought two separate homes and remodeled one. R(I) 977. A man who has time to investigate quarter horses in Mexico and to invest in real estate certainly has time to read ten pages of a tax return.

Judge Claiborne's purported explanation is not simply beyond belief. It is fraudulent. The House of Representatives respectfully submits that the Senate must face and accept the reality that Judge Claiborne not only has willfully defrauded the government on his tax returns, but has perjured himself in his testimony before the Senate. A jury rejected Judge Claiborne's defense and implicitly found that he had lied under oath. His testimony continues to change from hearing to hearing and, indeed, from day to day. Although he portrays himself as an unsophisticated "country" boy who was duped by two separate tax preparers and hounded by the government, the evidence reveals that Judge Claiborne in fact is a convicted felon who will say whatever he believes is necessary to absolve his guilt.

3. The Significance of Full Disclosure, the Sloppiness of the Return, and the Right to an Audit

Apart from his explanation of the events that led to the filing of the 1980 return, Judge Claiborne raises three additional arguments in support of his claims of innocence. Specifically, he points to the disclosure of $88,500 in fee income on his Judicial Ethics filing for 1980; he contends that the 1980 return was prepared too "sloppily" to be a concerted attempt to defraud the government; and he asserts that he had a right to correct any deficiencies in the return through an audit. None of these arguments warrants his acquittal.

The House of Representatives acknowledges that Judge Claiborne disclosed $88,500 in fee income on the 1980 Judicial Ethics filing. Such disclosure, however, is not inconsistent with Judge Claiborne's treatment of his fee income on the 1980 tax return. In 1980, Judge Claiborne apparently did not seek to withhold information from his accountant, Mr. Watson. He apparently did not *need* to do so; Watson had many "creative" ways to avoid paying taxes. Judge Claiborne allied with Watson in the development of two schemes that reduced his tax liability from $97,864 to $1,103. The defense of reliance upon a tax preparer requires not only full disclosure of all pertinent facts, but also "good faith reliance on the accountant's advice." *United States v. Cox*, 348 F.2d 294, 296 (6th Cir. 1965). Such "good faith" reliance cannot be found in this case.

Similarly, an intent to defraud is not negated by the sloppiness of the return. At the outset, it is disingenuous for Judge Claiborne to assert such a defense; he testified that he never even *read* the return carefully to notice its inartful preparation. R(I) 946. Judge Claiborne testified that he could not say from the copy that he received that the return looked unprofessional. R(I) 1030. Indeed, he supposedly did not notice that it was prepared in pencil until he received a "xerox copy" three days later. R(I) 946. In any event, as Mr. Wilson testified, the return on its face does not necessarily call for an audit. R(I) 606-607. As a fact, no such audit occurred. It is equally plausible that the inartfulness of the return was seized as a "hedge," a ready defense in the event that the fraudulent treatment of tax concepts on the return was challenged.

Finally, Judge Claiborne asserts that he was *entitled* to an audit as a preliminary method of correcting the gross underreporting of income and evasion of taxes on the return. This argument is incorrect as a matter of law. If a taxpayer had a "right" to an audit, there would be no need for criminal sanctions in the tax code. A taxpayer willfully could report anything on his tax returns, correcting only those deficiencies that were detected in an audit. The United States Congress, in enacting § 7206(1) of title 26 of the United States Code, has determined that willfully making a false statement on a tax return is a criminal offense. If there is evidence that a taxpayer willfully acted with the intent to defraud the government, as is present in this case, criminal prosecution is appropriate whether or not steps are taken to correct the *civil* deficiency through an IRS audit.

4. Conclusion

The evidence of willfulness for tax year 1980 is overwhelming. Virtually every factor from which willfulness may be inferred is present.

Judge Claiborne changed accountants in circumstances that are highly suspect. The Senate may infer that Mr. Wright, allegedly discharged for cause, "was fired because of the [taxpayer's] desire to conceal his income." *United States* v. *Nathan, supra*, 536 F.2d at 990.

For a second consecutive year, Judge Claiborne understated his income by a significant amount. "[A] two year pattern of derelictions . . . [is] itself indicative of the willfulness of his actions." *United States* v. *Greenlee, supra*, 517 F.2d at 903.

Again, evidence of surreptitious cash transactions is present. *United States* v. *Hughes, supra*, 766 F.2d at 877. Moreover, Judge Claiborne's repeated claims that he never questioned Watson about his qualifications, that he never read the return, and that he never attempted to understand Watson's treatment of the capital gain and legal fee income is evidence, at a minimum, that Judge Claiborne "deliberately closed his eyes to what would otherwise have been obvious to him." *United States* v. *Martin, supra*, 773 F.2d at 584.

Good faith reliance upon Jerry Watson cannot be found on this record. Watson, a high school graduate, was not "qualified to prepare federal tax returns"; nor can it reasonably be contended that Judge Claiborne could adopt and file the 1980 return "without having reason to believe it is incorrect." *United States* v. *Whyte, supra*, 699 F.2d at 379.

This case is similar in virtually all respects to *United States* v. *Drape, supra*, 668 F.2d 22. Given the wide disparity between the amount of tax that Judge Claiborne had estimated he would pay, and that Watson declared on the return, "[i]t is inconceivable that this raised no questions in [Judge Claiborne's] mind." *Id.*, at 25. "Intent may be established where a taxpayer 'chooses to keep himself uninformed as to the full extent that [the return] is insufficient.' *Id.* (*quoting Katz* v. *United States*. 321 F.2d 7, 10 (1st Cir. 1963)).

Based on the same evidence heard by the Senate, a jury found beyond a reasonable doubt that Judge Claiborne willfully underreported his income in 1980. The trial judge and the Court of Appeals again found sufficient evidence as a matter of law to sustain this verdict. Considering the legal standard of willfulness, and the overwhelming evidence in this case, no other conclusion is tenable.

D. Significance of Multiple Years of Underreporting

As explained previously, willfulness may be inferred from "evidence of a consistent pattern of underreporting large amounts of income." *Holland* v. *United States*, 348 U.S. 121, 139 (1954). *See also* cases cited, *supra*, Part I(A)(2)(a). The specific evidence adduced with respect to both 1979 and 1980 is compelling. The *cumulative* effect of the underreporting that occurred in 1979, 1980, and successive years shatters any doubt.

In *United States* v. *Daniels*, 617 F.2d 146 (5th Cir. 1980), the court stated: Proof of "repetitious conduct [is] admissible for the limited purpose of showing the intent of the appellant where, otherwise, it might be claimed that the acts in the tax years were either inadvertant or innocent."

Id. at 149 (citations omitted).

Judge Claiborne failed to report $18,740 in legal fee income in 1979. In the following year, he failed to recognize a $214,812 capital gain, and failed to report $87,912 in legal fee income. In 1981, Judge Claiborne again failed to report $40,000 in legal fee income. *See* Committee Exhibit 7, R(IV) 2064. There is evidence that a similar understatement of income occurrred in 1982. R(I) 1098. In sum, there is proof that Judge Claiborne consistently understated his income by massive amounts, until the government's investigation of his tax fraud began.

This repeated understatement of income and evasion of tax cannot be innocent or inadvertant. Judge Claiborne suggests, in essence, that in 1979 he "mistakenly" wrote $22,332 in fee income on his tax worksheets, forgetting the remaining $18,740 that he had received. Claiborne places the entire blame for the error on his accountant, Joseph Wright. In 1980, Judge Claiborne changed accountants. He again suggests, in essence, that he "mistakenly" signed a return that failed to report *any* taxable income from the sale of his home or from his receipt of fee income. The blame this time belongs to a new accountant, using a new scheme. Indeed, the judge "mistakenly" failed to notice that these errors were repeated for two additional years. Judge Claiborne portrays himself as the "innocent beneficiary" of four years of gross errors by two different accountants.

This evidence alone is sufficient to convict Judge Claiborne. When a "bonanza" occurs four times, a taxpayer must know that the decks are stacked. The consistent evidence of underreporting large amounts of income establishes that Judge Clairborne willfully and repeatedly cheated the federal government.

E. Constitutional Issues

In Articles I and II, the House of Representatives alleged that Judge Claiborne's actions were willful. It was evidence of *willful* conduct that justified and mandated Judge Claiborne's criminal convictions. Similarly, it was evidence of *willful* conduct that motivated the House of Representatives unanimously to impeach Judge Claiborne. The House of Representatives set out to prove, and respectfully submits that it has established beyond any doubt, *willful* conduct of Judge Claiborne.

It is the position of the House of Representatives that Judge Claiborne's conviction in the Senate rests upon these allegations of willfulness.

In light of that position, the constitutional issues raised by the first two Articles of Impeachment are readily resolved. The Constitution provides that Judge Claiborne may be impeached and convicted for "High Crimes and Misdemeanors." Article II, Section 4. The willful making or subscribing of a false statement on a tax return is a felony offense under the laws of the United States. The commission of such a felony is a proper basis for Judge Claiborne's impeachment and conviction in the Senate. *See also* Memorandum In Support of Motion For Summary Disposition of Third Article of Impeachment, R(I) 165-167.

II. ARTICLE III

Article III of the Articles of Impeachment alleges that Judge Claiborne should be removed from office because he has been convicted of a felony offense in the federal courts of the United States. The facts in support of this Article are not in dispute. On August 10, 1984, a jury found Judge Claiborne guilty of two counts of willfully making a false statement on a federal income tax return, in violation of § 7206(1) of title 26, United States Code. The United States Court of Appeals for the Ninth Circuit affirmed the conviction. *United States* v. *Claiborne*, 765 F.d 784 (9th Cir. 1985). The Supreme Court denied a petition for a writ of certiorari. *Claiborne* v. *United States*, 106 S.Ct. 1936. Judge Claiborne presently is in prison.

The preceding sections of this brief demonstrate that Judge Claiborne is guilty of these crimes beyond any doubt. The evidence of guilt is powerful and compelling. That evidence also is significant with respect to Article III. It proves that Judge

Claiborne's conviction in the federal courts is justified and proper. The evidence supports the jury's implicit finding, invited by the defense, that Judge Claiborne in his testimony committed perjury. In closing argument, defense counsel admonished the jury that it could not convict Judge Claiborne without finding that he had lied under oath. The jury returned a guilty verdict. After hearing Judge Claiborne and considering his testimony, the Senate is compelled to reach the same conclusion.

Since the Senate heard evidence on the facts underlying Judge Claiborne's conviction, it need not rely on the judicial proceedings to remove him from office. In light of the evidence that has been heard, however, the allegations of Article III assume added significance. An individual who has been convicted of a felony, in a proceeding that was fair and supported by overwhelming evidence, does not deserve to be a federal judge.

Judge Claiborne's judicial proceedings are final. Nothing has been tendered that raises any doubt of that fact. Judge Harry E. Claiborne is, and will remain forever, a convicted felon—a man who cannot legitimately preside over judicial proceedings, who cannot fairly pass judgment on other persons, and who cannot hope to maintain the trust and the respect of the American people.

Much has been heard in this proceeding about honor. The response of an editorial in the Philadelphia Inquirer (Sept. 20, 1986) is clear: "If [Judge Claiborne] had a shred of honor he would have resigned." The Senate has offered full rights and deference to Judge Claiborne. It now must recognize the impact of his multiple convictions for a felony offense.

The House of Representatives submits that judgment is appropriate on Article III. The ultimate issue in any impeachment proceeding is whether there has been a violation of the public trust:

> A well constituted court for the trial of impeachment is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself.

The Federalist No. 65 (Alexander Hamilton), at 477 (Franklin Lib. Ed. 1984).

Through his convictions for a felony offense, Judge Claiborne has violated the public trust. He has earned a mark of infamy, which the evidence proves is sadly but unequivocally deserved. That mark—his felony convictions in a federal court—provides a legitimate and sufficient basis for the Senate to determine that he should never resume the federal bench.

III. ARTICLE IV

Article IV alleges that Judge Claiborne should be removed from office because he has "betrayed the trust of the people of the United State and reduced confidence in the integrity and impartiality of the judiciary." Judge Claiborne has done so "by willfully and knowingly falsifying his income on his Federal tax returns for 1979 and 1980."

The allegations of Article IV rest on the same evidence adduced in support of Articles I, II and III. The allegations have been proved by overwhelming evidence. Conviction on Article IV rests on a separate legal theory, however, which has roots deeply imbedded in the impeachment power.

As explained in the House Report that accompanied Article IV:

> Article IV makes clear that Judge Claiborne's conviction for falsifying his income tax return for two consecutive years does more than tarnish only his personal reputation as a member of the federal judiciary. The consequence of his illegal and improper actions has brought his court and the entire federal judiciary into disrepute, thereby undermining public confidence in the integrity and impartiality of the administration of justice. Such a result renders him unfit to continue to serve on the federal bench.

H. Rep. No. 688, 99th Cong., 2d Sess. 23 (1986). In 1936, the Senate convicted Judge Halsted L. Ritter of this same misconduct.

Judge Claiborne has brought disrepute upon the federal judiciary. In two years, he failed to report over $190,000 in *taxable* income. Judge Claiborne cashed large fee checks at local casinos, and used the tax refund that he received to invest either in quarter horses in Mexico or real estate in Las Vegas. The evidence consistently and persuasively demonstrates that his actions were deliberate, purposeful, and willful. When confronted with his crimes, Judge Claiborne lied under oath. He has refused to resign his office. He has continued to collect his salary while in prison. He has drawn scorn upon himself and the federal judiciary that he represents.

Through these actions, Judge Claiborne has undermined the integrity of the Judicial Branch of government. To restore that integrity, and to maintain public confidence in the administration of justice, Judge Claiborne should be convicted on Article IV.

IV. CONCLUSION

On June 26, 1986, by a vote of 406 to 0, the House of Representatives voted to impeach Judge Harry E. Claiborne on four Articles of Impeachment. In proceedings before the Senate, the House of Representatives presented worthy evidence in support of each Article. On behalf of the people of the United States, and on the basis of the evidence that has been adduced, the House of Representatives respectfully submits that the Senate should convict Judge Claiborne on each of the four Articles of Impeachment and remove him from office.

Respectfully submitted,

U.S. HOUSE OF REPRESENTATIVES.

Managers of the House of Representatives

Peter W. Rodino, Jr., Robert W. Kastenmeier, Romano L. Mazzoli, William J. Hughes, Dan Glickman.

Hamilton Fish, Jr., Henry J. Hyde, Thomas N. Kindness, Michael DeWine.

Impeachment Trial Staff

Nicholas D. Chabraja, special counsel; David W. DeBruin, associate special counsel.

House Judiciary Committee Staff Participating in Impeachment Trial Preparation

M. Elaine Mielke, general counsel; Alan F. Coffey, Jr., associate counsel; Judith Bailey, counsel; Daniel M. Freeman, counsel; Gary G. Goldberger, counsel; Warren S. Grimes, counsel; Joseph V. Wolfe, counsel; Jonathan R. Yarowsky, counsel.

[In the Senate of the United States Sitting as a Court of Impeachment]

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE

Notice of Filing

(To: Ms. Jo-Anne Coe, Secretary of the Senate, United States Senate (S-221 Capitol))

Please take notice that on this 30th day of September, 1986, the United States House of Representatives has filed with the Secretary of the Senate, an original and thirty copies of the following:

Memorandum on the Constitutionally Required Standard for Conviction Applicable to the Four Articles of Impeachement.

Simultaneous with the filing of the above described documents, the same were served on opposing counsel, Oscar B. Goodman, Esquire by federal express, and on The Honorable Howard W. Cannon by messenger.

Managers of the House of Representatives

Peter W. Rodino, Jr., Robert W. Kastenmeier, Romano L. Mazzoli, William J. Hughes, Dan Glickman, Hamilton Fish, Jr., Henry J. Hyde, Thomas N. Kindness, Michael DeWine

Impeachment Trial Staff

Nicholas D. Chabraja, Special Counsel, David W. DeBruin, Associate Special Counsel.

House Judiciary Committee Staff Participating in Impeachment Trial Preparation

M. Elaine Mielke, *General Counsel;* Alan F. Coffey, Jr., *Associate Counsel;* Judith Bailey, *Counsel;* Daniel M. Freeman, *Counsel;* Gary G. Goldberger, *Counsel;* Warren S. Grimes, *Counsel;* Joseph V. Wolfe, *Counsel;* Jonathan R. Yarowsky, *Counsel.*

[In the Senate of the United States Sitting as a Court of Impeachment]

In re

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE, Memorandum on the Constitutionally Required Standard for Conviction Applicable to the Four Articles of Impeachement

The House of Representatives, through its managers and counsel, submits this memorandum to aid the Senate in its construction of the Articles of Impeachement.[1] Specifically, this memorandum addresses whether the Fourth Article's use of the word "misdemeanors" in the "wherefore" clause of that Article pleads a different standard for conviction than is alleged in the other three Articles, where reference made to "high crimes and misdemeanors." *See* Transcript of Proceedings before Senate Impeachement Trial Committee, at 163-64 (September 11, 1986).

The sole impeachment standard for the President, Vice President and all civil officers of the United States, including federal judges, is found in Article II, Section 4 of the Constitution, which provides for removal from office for "treason, bribery or other high crimes and misdemeanors." Because this test is the constitutionally prescribed standard, the Senate is obliged to apply it in reaching a judgment as to whether Judge Claiborne has committed impeachable offenses as alleged. The form or styling of the Articles by the House has *no effect* on the test for conviction by the Senate because under the Constitution, the House is given no power to establish a standard contrary to the prescription found in Article II, Section 4.

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[1] The House of Representatives has addressed the subject at length in its pleading captioned, "Opposition to Motion to Dismiss Articles of Impeachement for Failure to State Impeachable Offenses" (hereinafter "Opposition to Motion to Dismiss").

Past impeachment proceedings, both in the United States and England, show that the practice of abbreviating the phrase "high crimes and misdemeanors" in the articles is common and has no legal effect on the ultimate test for impeachable offenses. Such treatment is also consistent with judicial practice and procedure.

I. The Exclusive Constitutional Standard for Impeachable Offenses is Set Out in Article II, Section 4 of the Constitution

Article II, Section 4 of the Constitution provides that "[t]he President, Vice President and all civil officers of the United States shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors." Constitutional history is clear that the Framers intended to include federal judges as civil officers for purposes of the impeachment clause.

The proceedings of the Constitutional Convention show that for a brief period, a dual standard for impeachment was contemplated—one for the removal of the President and one for the removal of federal judges. *See* discussion in House Opposition to Motion to Dismiss, at 5-8. But the Delegates expressly rejected such a scheme, and instead chose to adopt a uniform impeachment standard applicable to the President, Vice President, and all other federal officials, including judges. *Id.* The proceedings likewise demonstrate, and constitutional experts agree, that the "good behavior" requirement for federal judges in Article III was employed to prevent executive tampering with the judiciary, and not to insulate judges from removal when they misbehaved. *Id.*

In short, constitutional history and practice dictate that federal judges be subject to the removal standard exclusively set out in the impeachment clause of Article II of the Constitution.

II. Impeachment Practice Has Long Followed The Convention That Abbreviation Of The "High Crimes and Misdemeanors" Standard Do Not Create a New or Different Test

The impeachment standard of "high crimes and misdemeanors" was taken directly from English parliamentary and judicial practice, and this derivation was explicitly noted at the Constitutional Convention. *See, e.g.,* comments of Benjamin Franklin and Gouverneur Morris, 2 *Records of Federal Convention of 1787* 67-69 (M. Farrand ed. 1911). From the first appearance of the phrase in written records describing the impeachment of the Earl of Suffolk in 1388, it was clear that "high crimes and misdemeanors" was a term of art without roots in ordinary criminal law.[2] The phrase was used to signify the constitutional offense of violating the public trust, and not to describe whether a particular act by an official was a "felony" or "misdemeanor" under the criminal statues.[3] Because the phrase was considered "all of apiece," abbreviations of the phrase in English impeachment procedings were commonplace and considered interchangeable with the complete set of words describing the constitutional offense. *See* Berger, "Impeachment for 'High Crimes and Misdemeanors,'" 44 *S. Cal. L. Rev.* 395, 403 (1971).

The same practice took root in the American experience with impeachment.[4] In the twentieth century, all four impeachment proceedings involved Articles of Impeachment with abbreviated references to "high crimes and misdemeanors" in the "wherefore" clause of the Articles. The styling of these Articles did not trigger a standard for conviction different from that mandated in Article II of the Constitution.

For example, in the impeachment of Judge Archbald, the "wherefore" clause of two Articles recited that he was guilty of "high crimes and misdemeanors" while the "wherefore" clause of the eight other Articles of Impeachment used the abbreviated formulation of "misdemeanors in office." *House Committee on the Judiciary, Impeachment, Selected Materials,* 93d Cong., 1st Sess. 176-83 (1973). Judge Archbald was convicted on five different Articles (I, III, IV, V and XIII), two of which adverted to "high crimes and misdemeanors" and three which alleged "misdemeanors." *Id.* Similarly, in all the four Articles of Impeachment drawn up against Judge English, the "wherefore" clause stated that Judge English was guilty of a "misdemeanor." *Id.*, at 163-73. In the impeachment of Judge Louderback, all the Articles of Impeachment concluded with the statement that Judge Louderback was guilty of "misdemeanors in office," including the last article which, like Article IV of the instant proceedings, charged him with bringing "scandal and disrepute" onto the court and the administration of justice. *Id.*, at 184-87. Finally, in the most recent impeachment trial involving Judge Halsted Ritter, the "wherefore" clause of the seven articles utilized the following combinations of phrases to refer to the uniform impeachment standard: Articles I, II, IV, and VII alleged "high crimes and misdemeanors"; Articles II and V alleged "high misdemeanors." *Id.*, at 188-202.

As with prior impeachment proceedings, all the Articles in this case are styled with reference to the constitutional offense of breaching the public trust. During the deliberations by the House Judiciary Committee on the text of Article IV, careful attention was drawn to the historical precedent of not limiting impeachment offenses to only that conduct resulting in a conviction for an indictable offense under the criminal law.[5] *Markup of House Resolution 461, Impeachment of Judge Harry E. Claiborne,* 99th Cong., 2d Sess. 59-66 (Comm. Print 1986). As Congressman Kastenmeier made clear, the term "misdemeanor" appearing in the wherefore clause of Article IV was intended to refer to the "constitutional misdemeanor" proscribed by the impeachment clause, and *not* to a criminal offense of a "lesser nature." *Id.* at 59. As such, "misdemeanor" is an unambiguous reference to the standard for conviction found in the "high crimes and misdemeanors" test of Article II of the Constitution.

It is finally worth noting that although some respondents, like Judge Ritter, moved to strike the Articles as being "multiplicitous" in form, none challenged the abbreviated variations of the "high crimes and misdemeanors" standard as establishing a standard other than that which the Constitution plainly describes. *See, e.g., Deschler's Precedents,* ch. 14, § 18.12, at 688-89. And neither has respondent in this proceeding.

III. Under the Constitution, the House of Representatives is Granted the Sole Power of Impeachment, which Includes the Drafting of the Articles of Impeachment. But the House of Representatives is not Given the Power to Establish the Standard for Conviction By the Language Contained in the Articles. Variations in the Form or Wording of the Wherefore Clause of the Articles Have No Legal Effect on the Constitutionally Prescribed Test

Under the Constitution, the House of Representatives is given the sole power of impeachment. Article I, Section 2. Over the past 200 years, the House's has exercised that power through the drafting of Articles of Impeachment, which, on the basis of careful deliberations, allege impeachable offenses under the Constitution. The Senate is given the sole constitutional power to pass judgment on whether a federal official should be convicted and removed for impeachable offenses, as alleged in the Articles of Impeachment. Judgment by the Senate should not be affected simply because the form or styling of the "wherefore" clause of Article IV utilizes an abbreviated phrasing of the mandated conviction standard of "high crimes and misdemeanors." In any event, the House of Representatives has not been granted the constitutional authority to establish the standard for conviction in an impeachment proceeding, and the wording of the "wherefore" clause can do nothing to change, subtract or supplement the mandated test set forth in Article II of the Constitution.

Judicial practice has taken an identical approach in treating the sufficiency of legal pleadings where a demand for judgment follows no ironclad form. *See* Rule 8(a)(3) of the Federal Rules of Civil Procedure.[6]

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[2] Although "misdemeanors" has appeared as a term of art connected with impeachment proceedings for 600 years, there was no such category of offense in the ordinary criminal law until the mid 1600's. *See* Berger, "Impeachment and 'Good Behavior'", 79 *Yale L. J.* 1475, 1509 (1970).

[3] In a report issued by the House Judiciary Committee following its consideration of the Articles of Impeachment againt President Nixon, careful study was directed to whether the "high crimes and misdemeanors" standard necessarily referred to crimes under the ordinary criminal statutes. The report concluded that while impeachable conduct does not lend itself to "precise definition", it encompasses all "serious offenses against the system of government. It is not controlling whether [they] are criminal. More important, they are constitutional wrongs that subvert the structure of government, or undermine the integrity of office and even the Constitution itself, and are thus 'high offenses' in the sense he word was used in English impeachments." *Impeachment of Richard M. Nixon, President of the United States,* H.R. Rep. No. 93-1305, 93d Cong., 2d Sess., 6-7 (1974) (hereinafter *House Judiciary Report on Impeachment of President Nixon).*

[4] Constitutional experts are in agreement about the "indivisibility" of the phrase "high crimes and misdemeanors" as set out in Article II of the Constitution. They note, for instance, that the adjective "high" must be taken to modify both "crimes" and "misdemeanors" in the "high crimes and misdemeanors" formulation. Similarly, the word "crime" or "misdemeanor", even when standing alone in the impeachment context, must necessarily be read to connote "high crimes" or "high misdemeanor." *See* Fenton, "The Scope of the Impeachment Power," 65 *N.W. L. Rev.* 719, 723-30 (1973).

[5] At the time of its adoption of the Articles of Impeachment against President Nixon, the House Judiciary Committee also noted that criminality was not necessarily an "essential ingredient" of the Articles. "The emphasis [in past American impeachments] has been on the significant effects of the conduct—undermining the integrity of office, disregard of constitutional duties and oath of office . . . adverse impact on the system of government." *House Judiciary Report on the Impeachment of President Nixon, Supra,* at 7.

[6] Rule 8(a)(3) of the Federal Rules of Civil Procedure provides that pleading asserting a clam for relief shall contain a demand for judgment for the

IV. Conclusion

The House of Representatives respectfully submits that the wording of the "wherefore" clause of Article IV establishes no different test for conviction than applies to Articles I, II and III. All Articles of Impeachment must be judged by the Senate on the basis of the prescribed standard found in Article II, Section 4 of the Constitution.

Respectfully submitted,

NICHOLAS D. CHABRAJA,
Special Counsel.

[In the Senate of the United States sitting as a court of impeachment]

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE

Notice of Filing

(To: Ms. Jo-Anne L. Coe, Secretary of the United States Senate, S-221,The Capitol, Washington, D.C. 20510)

Please take notice that on this 1st day of October, 1986, the Honorable Harry E. Claiborne, Respondent, will deliver to BYRON HOOVER, the below-listed documents to be hand delivered by him on the 2nd day of October, 1986 to the Clerk of the Committee on Rules and Administration of the United States Senate and also to the United States House or Representatives through its Special Counsel, Nicholas D. Chabraja:

1. Post Evidentiary Hearing Brief;
2. Supplemental Motion for Full and Fair Impeachment Trial Before the Entire Senate of the United States, or in the Alternative Dismissal;
3. Supplemental Points and Authorities Re: Collateral Estoppel and Summary Disposition of Third Article of Impeachment;
4. Motion to Postpone the Hearing on Articles of Impeachment until the Resolution of the Supplemental Section 2255 Motion by the District Court or the Ninth Circuit Court of Appeals;
5. Amended and Supplementary Motion to (1) Vacate Sentence; (2) For Evidentiary Hearing; (3) For Discovery Proceedings; and (4) For New Trial, and
6. Application for Issuance of Subpoenas for Full and Fair Impeachment Trial Before Full Senate.

Respectfully Submitted:

HARRY E. CLAIBORNE.
(By Oscar B. Goodman, Esq. and Honorable Howard W. Cannon, Attorneys for Respondent.)

[In the Senate of the United States sitting as a court of impeachment]

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE, Post Evidentiary Hearing Brief

(By Oscar B. Goodman, Howard W. Cannon, Attorneys for Respondent)

October 2, 1986.

At issue is whether or not Harry E. Claiborne, as the taxpayer, has committed a willful and knowing violation of the tax laws.

SENATOR. To ask one additional follow-up, your Article IV says that "Judge Claiborne, by willfully and knowingly falsifying his income on his Federal tax returns for 1979 and 1980. . . . If we were to determine that he not willfully and knowingly, or at least that was not proven, but he did so with gross negligence, he prepared his 1979 and 1980 tax returns in a grossly negligent manner which in our own view, the Senate's view, constituted misconduct that should justify removal from office, in your view would that kind of expansion of Article IV be legal?

HOUSE MANAGER'S COUNSEL. I do not think it is fair; no I do not think so. And I think we would have to have brought an additional Article. (Part 1, p. 102).

CHAIRMAN. In the fourth article . . . are you contemplating that there would be a lower level of intent necessary to be proved under the fourth article?

HOUSE MANAGER'S COUNSEL. That is not our contemplation and that is not the fashion of the allegations. (Part 1, p. 101).

The Supreme Court has held that willfulness means the "voluntary, intentional violation of a known legal duty." United States v. Pomponio, 429 U.S. 10 (1976).

Willful activity connotes "bad purpose." United States v. Murdock, 290 U.S. 389, 394–395 (1933); Spies v. United States, 317 U.S. 492 (1943). "Willful" has also been construed to mean an act done with specific intent to violate the law. Screws v. United States, 325 U.S. 91, 101 (1945).

Careless disregard, negligence, even gross negligence, does not amount to willfulness. United States v. Bishop, 412 U.S. 346 (1973).

Willfulness is a state of mind of the taxpayer wherein he is fully aware of the existence of a tax obligation to the Government which he seeks to avoid. United States v. Martel, 199 F.2d 670, 672, (3rd Cir., 1952).

To reach an opinion as to whether a taxpayer acted willfully, the trier of fact must look at all the facts and circumstances surrounding the preparation of the returns in issue.

An instructive case on the issue of willfullness is United States v. Sternstein, 596 F.2d 528 (2nd Cir., 1979). Sternstein ws convicted of aiding and assisting in the preparation of income tax returns which were false or fraudulent as to material matters. His conviction was reversed:

After Sternstein was indicted his attorney made a motion for production of exculpatory material. The prosecutor informally showed the defense attorney an I.R.S. investigative report which indicated an " 'exceedingly large number of tax returns' " were examined and taxpayers " 'interviewed in depth,' " yet the investigation resulted " 'in only those comparatively very few returns and taxpayers named in the Indictment.' " 596 at 529. Sternstein's lawyer argued that the facts in the report supported Sternstein's position that any erroneous deductions entered by Sternstein were the " 'result of inadvertence and not [of] any intent or purpose to commit the crime alleged.' "

[As was the case in the Claiborne proceedings, counsel sought production of exculpatory material, and in particular the report of the I.R.S. Special Agent. As in Claiborne, the trial judge did not conduct any examination of the Special Agent's report before denying the motion for production.]

At trial the prosecution called taxpayers who had been serviced by Sternstein, who testified that at least one itemized deduction listed as an expense had not been incurred and had not been submitted as an expense to Sternstein. The taxpayers also testified that they paid Sternstein a flat fee and there existed no contingency upon a possible refund. The taxpayers denied reviewing or examining the returns which contained the falsely stated deductions.

The appeal rested on the issue as to whether Sternstein was deprived of due process of law by the court's failure to turn over the I.R.S. report.

The Appellate Court recognized that the critical element in a tax fraud case is the "mental state" of the defendant. 596 F.2d at 530. It noted that the accused, should be permitted " 'wide latitude in the introduction of evidence which tends to show lack of specific intent.' " Ibid.

Sternstein's counsel argued that his client innocently entered the deductions in question based upon information supplied to him by his clients. He added that there was no motive to prepare fraudulent returns since his fee was not contingent. The prosecution countered by contending that Sternstein's motive was to have satisfied customers, because of their receiving refunds, return to Sternstein year after year.

The Appellate Court recognized that the I.R.S. memoradum was crucial on the intent issue since it would support Sternstein's contention by demonstrating that he did not have a scheme to generate new business by gaining inflated returns, but rather the overwhelming majority of his clients' returns had been audited and found to be proper.

[A most analogous issue was raised at the Claiborne trial. No court has yet examined the I.R.S. and F.B.I. memorandum which remain under seal, and it was not until the receipt of evidence at the Committee pursuant to Rule XI that any evaluation has been so conducted, however cursory.]

BURDEN OF PROOF

In analyzing the proofs, the standard, it is submitted, to be applied by this Honorable Body, is Proof Beyond a Reasonable Doubt.

In a prior time, when an impeachment was contemplated, Senate leaders expressed this rationale:

The Honorable Sam Ervin, Jr., during August 5 and 6, 1974, pre-impeachment hearings, stated unequivocally:

"In a case of this kind, if we are called upon to try an impeachment, I would not hope for conviction on any charge unless I was satisfied beyond a reasonable doubt of the truth of the charges."

The Honorable Strom Thurmond echoed this position when he posited that:

"The penalty of impeachment is severe. It is not a criminal penalty, but I know of no penalty that would be more severe than to remove once again a President from office. And, therefore, I believe the evidence should be beyond a reasonable doubt."

Finally, the Honorable John C. Stennis emphatically contributed that:

"Where any party is charged with an impeachable offense, and is tried by the Senate which is highly important to them, be it a so-called minor official on up to the highest official under our Constitution, then I think the proof required ought to be beyond a reasonable doubt. The Nation is a party, and that requires substantial evidence beyond a reasonable doubt."

PROOFS ADDUCED THUS FAR

It is submitted that the totality of the circumstances surrounding the filing of the

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relief to which the pleader considers himself entitled. However, Rule 8(a)(3) does not require a party to frame his demand for judgment according to a prescribed form; any concise statement making reference to the remedies sought and the parties involved is sufficient. C. Wright and A. Miller, *Federal Practice and Procedure*, ch. 4, § 1255, at 250. The sufficiency of a pleading is tested by the statement of the claim, and the demand for judgment is *not* considered part of the claim. Thus, the selection of an improper remedy in the demand or variations in the phrasing of the relief sought will not be fatal to a party's claim if the statement of his claim indicates that he is entitled to relief." *Id.*, at 252. *See also* East Girard Savings Ass'n. v. Citizens National Bank and Trust Co., 593 F.2d 598 (5th Cir. 1979); Mays v. Scranton City Police Dept., 87 F.R.D. 310,313 (C.D. Pa. 1979).

1979 and 1980 returns of Harry E. Claiborne negate the proposition that he knowingly engaged in a willful plan to defraud the Government.

Harry E. Claiborne, 69 years of age, was born in McRae, Arkansas. (Part 1, p. 924). He was educated at Quachita Baptist University in Arkadelphia, Arkansas, for three years, and then went to Cumberland University School of Law in Lebanon, Tennessee, where he graduated in 1941. (Part 1, p. 924). He entered the armed services in 1941, and served until 1945. (Part 1, p. 924). Thereafter he came to Las Vegas, Nevada, where he became a police officer, pending his taking the Nevada bar exam. (Part 1, p. 925). Upon being admitted to the bar, he went into the district attorney's office as an assistant (Part 1, p. 925) where he was employed for three years. (Part 1, p. 925). He resigned in order to run for the Nevada Assembly, where he served one term. (Part 1, p. 925).

Thereafter Harry E. Claiborne engaged in the private practice of law. At first he handled all types of legal matters, and eventually specialized in trial litigation. (Part 1, p. 925). He represented high-profiled clients in high profile cases (Part 1, p. 926) but he did not forget his commitment to those with whom he served in the past, representing many free of charge. (Part 1, p. 926).

Several probative matters were established in the review of Harry E. Claiborne's activities during his thirty years of private law practice:

1. His bookkeeping procedures in the running of his law practice were organized in a manner to provide his bookkeeper and tax preparer, Joseph Wright, with all business and banking records, consistent with operating an enterprise consisting of a secretary and two full-time associates (Part 1, p. 928);

2. His directive to Joseph Wright that if a question arose concerning the treatment of an item to be reported to the Internal Revenue Service it must be "resolved in the favor of the government" (Part 1, pp. 927-928);

3. His lack of concern and indifference to money matters, was exhibited by his retention of a fifty thousand dollar cashier's check in a desk drawer for a period in excess of one year (which was not earning interest) (Part 1, p. 1169); and his storage of one hundred thousand dollars in a safe deposit box at a Las Vegas Casino for several years (which was not earning interest), before it was removed and then deposited in order for a check to be drawn to satisfy a tax obligation (Part 1, p. 1169);

4. His complete reliance on his tax preparer, the fact that he never prepared his own return, (Part 1, p. 1148) or a return for a client; that he had infrequent intercourse with Wright about the content of the returns; that he would on occasion sign his return in blank; and

5. His practice of either referring a client to a criminal law tax specialist, or associating such a practitioner, if he was contacted about defending a tax fraud prosecution (Part 1, p. 1148).

In early 1978 the Las Vegas Federal Judiciary was embroiled in an on-going battle with representatives of the United States Justice Department Organized Crime and Racketeering Strike Force. Harry E. Claiborne was nominated for appointment to the bench in April of 1978, and ultimately sworn in as United States District Judge for the District of Nevada on September 1, 1978. (Part 1, pp. 926-927).

He was assigned the court calendar in Reno, Nevada (Part 1, p. 930); however, he also travelled at the request of the Chief Judge of the Ninth Circuit Court of Appeals to other districts within the Circuit. (Part 1, p. 929).

He continued to utilize the services of Joseph Wright for the sole purpose of tax return preparation, since there was no need for bookkeeping now that he was on the bench and not having to administer a private law practice. (Part 1, p. 927).

In 1979, trusting Wright, as he had during the twenty years of their relationship, he signed a 1978 tax return in blank and sent it to Wright, for completion and filing from the Eastern District of Washington, where he was performing a judicial assignment. (Part 1, p. 928).

Judge Claiborne settled in, disbursing his judicial function with fairness to all litigants who came before him, with a keen sensitivity to their rights as citizens, but with a stern view if he believed the litigant to have abused and taken advantage of societal interests. (Part 1, p. 195). He was a workaholic, spending long and exhausting hours on the bench. (Part 1, p. 844). He was attentive and willing to learn about areas in which he had no particular expertise. He was a student being educated by the experts in particular areas over which he had no special knowledge. (Part 1, pp. 833-834; 913-922). For example in tax cases, he had to learn basic principles, but once taught, was able to write scholarly and innovative opinions. (Part 1, p. 835). His reputation for the highest integrity was unquestioned. (Part 1, pp. 829-845).

While he was performing his judicial duties, he became involved in the conflict which existed prior to his taking the bench that other members of the Nevada judiciary were having with the Strike Force's attorneys and agents. (Part 1, p. 931). Harry E. Claiborne stood in the "ambitious path" they desired to carve (Part 1, p. 930).

The atmosphere between the Executive and the Judiciary in the Las Vegas Community was hostile at the time Judge Claiborne engaged in the preparation of his 1979 tax returns.

On April 4, 1980, then Chief Judge Roger Foley authorized the Federal Marshals to seize from the Las Vegas Offices of the Strike Force, characitures depicting the federal judiciary in a contumaceous manner, referring to Judge Foley as a clown, and pointing insulting and derogatory remarks towards Judge Claiborne. (Part 1, p. 931).

On April 9, 1980, it was reported in the Las Vegas media that the Strike Force selectively leaked secret grand jury material in order to undermine the reputation and career of Judge Clairborne. The headlines blazed "Claiborne Target of Las Vegas Strike Force" (Part 4, p. 2308) and announced that the Judge was being investigated for having engaged an investigator to conduct illegal wiretapping, while Judge Claiborne was a private practitioner.

Characteristically, Judge Claiborne reacted to the Strike Force tactic and stratagem. "[The Strike Force attorneys] are a bunch of crooks, and they know I know it," he angrily asserted. "I'm not going to let them ride roughshod over this community. I'm going to stop them." (Part 4, p. 2312) "Those bastards are out to destroy Nevada and I'm not going to let them do it." (Part 4, p. 2313). Such was the atmosphere in Las Vegas, Nevada, on April 10, 1980.

Joseph Wright called Judge Claiborne on the 10th (Part 1, p. 931). As a result of the call, Judge Claiborne, before going to the Courthouse on the morning of April 11, 1980, hand-wrote a letter to Wright in which he referenced the enclosure of a check payable to the Internal Revenue Service in the amount of $8,000, which was to accompany his application for automatic extension, his W-2 form, and the full and correct amount he received as fees ($41,073.93) during 1979, earned from his private practice before he became a judge. (Part 4, p. 2185). He also wrote the $8,000 check at home (Part 4, p. 2222) and took both letter and check to his office. The Judge asked his secretary, Judy Ahlstrom, to get his W-2 form from a file drawer and deliver it, with the letter and check to Wright's office. (Part 1, p. 932).

Judy Ahlstrom delivered the letter, check and W-2 to Wright's office.[1] (Part 1, pp. 675-680; Part 4, pp. 2077-2082).

Later on April 11, 1980, Wright called Judge Claiborne and said he needed another check for $2,500 (Part 4, p. 2146) to accompany the Judge's estimated return. (Part 4, p. 2147). The Judge complied.

Thereafter, in preparing Judge Claiborne's return, Wright did not utilize the true and accurate income figure theretofore provided him by Harry E. Claiborne. (Part 4, p. 2098). Tragically, he either lost or misplaced it. (Part 4, p. 2077). Unfortunately, at the time the return was prepared, it was completed on a form which the Judge had previously signed in blank, having expected to be out of town performing his judicial function on the due date. (Part 1, pp. 928-989). The return declared lesser figures than that which Judge Claiborne fully disclosed in his April 11, 1980, letter.[2]

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[1] It is settled that a taxpayer has the right to rely on professional assistance, and the same is a defense in a tax prosecution. The reliance must be bona fide. The taxpayer also may not withhold information from the tax preparer.

During the closing argument of the government prosecutor at Judge Claiborne's second trial, he stated: I submit to you . . . when you think about this you will conclude that the only real issue in the 1979 year is whether Jay Wright got [the April 11, 1980 letter]. That's what it all comes down to, it's very simple." (Part 3, p. 1384.) During the proceedings before the Senate Committee, the House Managers' counsel stated: "* * * there has never been any dispute that I am aware of that on the 11th Judy Ahstrom went over to the Wrights' office with an envelope." (Part 1, p. 1144). Respondent's counsel reacted: "The first time I hear that there is a concession that she was there and delivered something was today." (Part 1, p. 1146). House Manager's Counsel responded: "We have offered no evidence to the contrary. Absolutely none." (Part 1, p. 1146). Judy Ahlstrom unequivocally stated that she delivered the April 11, 1980, letter. During the Senate proceedings she was perceived as being "* * * a credible, believable witness. * * *." (Part 1, p. 1146).

[2] The taxpayer's signature on a tax return is not conclusive proof of knowledge of its contents. In United States v. Bass, 425 F.2d 161 (7th Cir., 1970), the defendant was charged and convicted of various criminal tax violations. His conviction was reversed on the following set of facts: He was the sole stockholder of an auto financing business. He was a salaried employee but not an officer or director of the corporation. He was charged with receiving preferential dividends from the corporation which were not reported in his income. Further, the corporation deducted these dividends as corporate expenses. Bass claimed, at trial, that he had no knowledge that his income tax return did not reflect the payments made by the corporation in his behalf and that the corporate income was not adjusted appropriately.

As to the charge of personal income tax evasion, Bass alleged that he signed his returns in blank and, therefore, claimed the court erred in charging the jury that if they found from the evidence that the defendant signed his tax return, you may draw the inference and find that the defendant had knowledge of the contents of such return.

The atmosphere of conflict and hostility continued with the Strike Force during 1980 and 1981. (Part 1, p. 833; pp. 929-931). A new foe joined their ranks as well, in the personage of FBI Special Agent in Charge Joseph Yablonsky. (Part 1, pp. 929-931). He was unabashed in his public posture of being anti-Claiborne. (Part 1, p. 840). The Judge's friends and associates were being harassed; they were questioned concerning the Judge's life style; they, too, became targets and victims of the vendetta against Harry E. Claiborne.[3] (Part 1, pp. 921-930).

In February of 1981, Judge Claiborne was introduced to Jerry Watson, by the Judge's former wife. By happenstance, after delivering some documents to Watson, she returned to the automobile, in which the Judge was waiting, and said that her accountant, Watson, wanted to meet him. Upon entering Watson's office, the Judge recognized Watson as being a fellow congregant at the First Southern Baptist Church. (Part 1, p. 939). Judge Claiborne, during the course of this first gathering, overheard Watson speaking to someone on the phone about a tax problem, and the Judge was impressed with his ostensible professionalism. (Part 1, pp. 939-940). Casually, they discussed matters concerning the Judge's sale of his home, and purchase of a new home. They cordially parted.

In April of 1981, Watson wrote to Judge Claiborne (Part 4, p. 2149) and suggested that the Judge provide him with certain information should the Judge desire to retain him to prepare the 1980 tax return.

Thereafter Judge Claiborne provided Watson with a substantial volume of tax material; handwritten notes which set forth intricate financial details, including the amount earned from accounts receivable from monies earned ($88,500) while he was in private practice (Part 4, p. 2223) escrow instructions, sales agreements, trust deeds, a promissory note, contractors' agreements, canceled checks, bills, invoices and his tax returns for the years 1973 through 1979. (Part 1, p. 945). Watson prepared an application for an automatic extension (Part 4, p. 2151), which the Judge signed and sent in with a check in the amount of $20,817.59. (Part 1, pp. 945-946).

Watson spoke to Judge Claiborne sporadically. Watson represented that he had two accountants working for him, "one * * * a CPA * * * and the other * * * a very fine accountant who principally works on large business accounts" (Part 1, p. 942), who would service the Judge, but Watson further promised that he would "personally supervise it [himself]". (Part 1, p. 942). Watson Misrepresented Himself and His Ability to Perform. (The Judge was not the only Watson victim; other professional and business men were also duped and defrauded by Watson.[4] (Part 1, p. 1090).

Charlotte Travaglia, a Watson employee, worked in preparation of the 1980 return. She had no communication whatsoever with Judge Claiborne. (Part 1, p. 783). She sought advice from Watson concerning the treatment of items on the return. She received no answer. (Part 1, pp. 785-786). She placed the Claiborne work product on Watson's desk and had no further contact with it. A secretary in Watson's office, one Adelle Ferrel, made the decision for a Watson client to come in and sign the return, and Judge Claiborne was called. (Part 1, p. 1054). He went to Watson's during a noon recess and signed the portion next to paper clip on the second page of House Manager Exhibit 27 (purporting to be the 1980 Income Tax Return), (Part 4, p. 2134) which consisted of loose pages. (Part 1, p. 946). The Judge did not register that House Manager Exhibit 27 was in pencil (Part 1, p. 947), and had markings depicting arrows on the Schedule D contained therewith.

Three days later Watson came to the Judge's chambers, with a copy of House Manager's Exhibit 27 and a bill for the preparation of the return. (Part 1, pp. 946-947; p. 1025). It was at this time the Judge first formed an impression that there was something wrong with Schedule D. (Part 1, p. 1025). Then, too, he questioned the amount of the refund. (Part 1, p. 1025). Watson responded authoritatively that he accomplished that in his treatment of the closure of the Judge's law practice which was precipitated as a result of the Judge taking the bench in 1978. (Part 1, pp. 1025-1026). Harry E. Claiborne said "[T]hat is good . . . as long as you can support it." Watson replied: "I can sure support it." And then in a refrain reminiscent of his admonition to give the government the benefit of every doubt, Judge Claiborne stated that all he was concerned about was whether Watson could support it, ". . . because I don't want trouble with the IRS because I got all the trouble with the FBI that I can handle right now." (Part 1, p. 1140).

Around July 24, 1981, Judge Claiborne received a refund check from the I.R.S. for $44,256. (Part 4, p. 2153). He spoke with Watson about it and was assured it was appropriate to cash it, since the "'extra amount . . . was $20,000 that you paid on your estimate.'" (Part 1, p. 952). the Judge cashed the United States Treasury check at the Golden Nugget Casino. (Part 1, p. 952).

The Judge also insisted that Watson represent that his treatment of the return was consistent with "solid" ". . . accounting principles and regulations of the Revenue Code." (Part 1, pp. 947-948). Watson responded that he had taken the ". . . return to two individuals in the Internal Revenue Office, in whom I have a lot of confidence. One of them works on nothing but audits over a million dollars" and "[b]oth of them have told me that this return is right." (Part 1, pp. 710-711 and 951-952).

On hindsight, it is clear that the "Watson Office" treated the return in an improper manner, and although all witnesses (Harry E. Claiborne, Watson, Travaglia) have testified that the $88,500 figure representing income earned from prior private practice was considered on the return, and fully disclosed to the preparer by Judge Claiborne, the numerical figure does not appear thereon generally, nor specifically in Schedule D, where it was treated. (Part 4, pp. 2137-2138).

It should be noted that the $88,500 figure was specifically disclosed to the Judicial Ethics Committee on May 15, 1981, (HEC-X-1), just one month to the day that the 1980 tax return was signed. (Part 1, p. 1124; Part 4, p. 2220)..

Judge Claiborne's loyalty and attachment to his professional obligations sapped his time and energy, precluding him from carefully and assiduously preparing himself against the onslaughts which have now followed. (Part 1, pp. 1126-1127).

It stands uncontraverted, that anyone who chose to set about to cheat or defraud, would have acted with cunning and guile, and not in the open manner as did Judge Claiborne.

"* * * [H]ow, if you were setting out to intentionally conspire to defraud the government, you could have picked Watson particularly and then have signed a return which has been characterized as 'abominable', 'abyssmal', any number of terms here. It strikes me as being just stupid as to be beyond your ability to step that far down. If you were going to conspire * * * you would have picked a slightly smarter man and probably, based on what you have written in these opinions, could have figured out perhaps a more clever way—" (Part 1, pp. 1115-1116).

On appeal, the government argued that the instruction merely rephrased the statement that appears at the bottom of all tax returns and was proper under the law. The language at the bottom of the return as filed stated:

"I declare under penalties of perjury that I have examined this return (including accompanying schedules and statements) and to the best of my knowledge and belief it is true, correct and complete."

The Appellate Court held that ". . . it cannot be said that the effect of such statement is to attribute knowledge of the contents of the return to the taxpayer on the basis of his signature alone." 425 F.2d at 163. The Circuit Court went on to state that the trial court's instruction created a conclusive presumption and it was in error. (In dictum the decision also distinguished the issue of knowledge, from the issue of willfulness, and recognized both elements had to be proved beyond a reasonable doubt; also it was noted that the government's summary witness testified that certain business expenses of the corporation were improper and charged them to Bass as income because proper substantiation of the transactions did not exist. The Court noted that such testimony was improper because it shifted the burden of proof to Bass to show that the disbursements were ordinary business expenses. Interestingly it was observed that "While the Internal Revenue Code requires adequate documentation, lack of such documentation alone will incur civil liability but not criminal liability." 425 F.2d at 164 (citation omitted)).

[3] It should be noted that the "atmosphere" existing at the time the subject returns were prepared, and at the time Judge Claiborne was providing his tax preparers with the information necessary for their preparation, has never been permitted to be referenced or explored in any proceeding, other than in the limited manner permitted pursuant to the Senate Committee's directive. Therefore, it is submitted, at no time has Judge Claiborne's true "state of mind" ever been before a trier of fact.

[4] The reliance defense is not limited to reliance on accountants, lawyers, tax preparers, or other professionals. It is a valid defense for a taxpayer to contend that he is a victim of misplaced reliance on anyone. "For example, suppose a businessman pays for personal expenses with corporate funds. He then gives receipts for the expenses to his secretary, whom he tells to send the bills to the accounting department with instructions that they be charged to his loan account. The secretary misunderstands those instructions and instead tells the accounting department that the bills should be charged to the travel and entertainment account. In such a case, the businessman would be the victim of misplaced reliance on his secretary." Fink, Tax Fraud, Vol. 1 (Mathew Bender, 1985).

In effect, there is a great deal of overlap between a reliance defense and a negligence defense. Both defenses ultimately rest upon the existence of a mistake of fact, either a mistake on the part of the taxpayer or a mistake on the part of some third party on whom the taxpayer relied.

It is clear that mere negligence, carelessness, or even gross negligence, by Judge Claiborne is not sufficient to satisfy the element of willfulness.

"You may find that the defendant had knowledge that his tax returns contained false information if you find beyond a reasonable doubt that the defendant was aware of a high probability that the returns contained false information and that he deliberately avoided learning the truth. You may not find such knowledge, however, if you find that the defendant actually believed that the returns contained no false information, or if you find that the defendant was simply careless, negligent or grossly negligent." (Part 1, p. 178).

Judge Claiborne was stalked by the Executive Branch.[5] He was denied his opportunity to ameliorate his tax difficulties. (Part 1, p. 828-829).

Judge Claiborne was not afforded the same elaborate set of safeguards and opportunities available to other citizens whose tax returns have been investigated. Pertinent parts of an excellent treatise are referred to in illustration of the manner and means by which Judge Claiborne was deprived. See, Defending Federal Tax Evasion Cases, 13 Am.Jur. Trials, p. 1 et seq.; set forth substantially verbatim hereinafter:

The initial investigation of an income tax return is usually commenced by a revenue agent, * * * experienced to some degree in investigation, and familiar with auditing procedures and the provisions of tax laws and regulations. If the revenue agent finds evidence of fraud during the course of an audit, the audit procedure is modified. The revenue agent will prepare, unknown to the taxpayer, a special report to his group supervisor. The group supervisor sends the report to the Intelligence Division, which decides whether or not the matter warrants investigation by one of its special agents.

In arriving at his decision, the Chief of the Intelligence Division will consider the facts in connection with the return under investigation, based upon the report of the revenue agent together with the group supervisor's approval of such report, or upon other leads that may have been developed indicative of fraud in the return. If, in his opinion, there appears to be no reason for further investigation of the case, the Audit Division is so advised and the case is closed without further action. If, on the other hand, the Chief of the Intelligence Division decides that further investigation is justified, the case is assigned to a special agent of the Intelligence Division for this purpose. The assignment of a special agent may also occur at an earlier stage in the event that leads supplied to or developed by the Intelligence Division itself have indicated the possibility of fraud.

In any event, if the special agent finds that there is no substance to the suspicions of fraud, he so reports and steps out of the case. But if his examination reveals the probability of fraud, a joint investigation is carried on by the revenue agent and the special agent. In the joint investigation the role of the revenue agent is to gather data establishing that a tax deficiency exists. The special agent is concerned with the issue of fraud and with the development of the facts of the case upon which a decision can be reached whether criminal prosecution of the taxpayer is question should be attempted. The revenue agent makes available to the special agent all results of his prior investigation and works under the special agent's direction and control during the joint investigation.[6]

REVIEW BY INTELLIGENCE DIVISION

After the special agent completes his investigation with the aid of the revenue agent, he must decide whether to recommend criminal action against a taxpayer. The guidelines for this determination leave much to be desired. Obviously he must find a deficiency in tax as well as the ingredients of "wilfulness" or "criminal intent." But whether the case should be closed merely with a recommendation that only the civil fraud penalty be imposed (which as a practical matter involves the same two elements), or that criminal tax evasion charges be brought in addition, depends on various factors that are not apparent from published Internal Revenue Service procedures.[7] However, the following basic guidelines seem to be indicated:

1. Should the special agent conclude that there is but negligence or carelessness on the part of the taxpayer involved (in the light of his mental attributes and experiences) he is likely to close the case without a recommendation for criminal action.

2. If it appears that the taxpayer in the preparation of his return sought and relied upon advice by others whom he had reason to believe were qualified to give such advice, and nothing in the case points to fraudulent conduct on the part of the taxpayer, the special agent might be inclined not to recommend criminal prosecution even though the reliance of the taxpayer resulted in an understatement of his income upon his tax return.

If the Intelligence Division decides not to bring a criminal prosecution against the taxpayer, the case is returned to the Audit Division for determination of civil tax liability. The Intelligence Division may direct the Audit Division to add civil fraud penalties to the tax deficiency. However, if the Intelligence Division decides that the taxpayer should be criminally prosecuted, the case is assigned to the Assistant Regional Counsel-Enforcement.[8]

ASSISTANT REGIONAL COUNSEL-ENFORCEMENT

The Assistant Regional Counsel-Enforcement is a division of the Regional Counsel's Office. On receipt of a case from the Intelligence Division, the Assistant Regional Counsel informs the Washington Enforcement Division of the Chief Counsel's Office, and then assigns the case to a field office attorney for review from a legal standpoint. In reviewing the file, consisting of the revenue agent's report, the special agent's report, and any supporting exhibits, the field office attorney may be assisted by a technical adviser on the staff of the Assistant Regional Commissioner-Enforcement.

The field office attorney may at this time ask the taxpayer if he wants a conference. (Judge Claiborne was afforded NONE).

At the conclusion of his investigation and consideration of the case, the field attorney reports back to the Assistant Regional Counsel with a recommendation either for or against a criminal prosecution. His recommendation of criminal prosecution will depend on whether, in his opinion, (1) the taxpayer has been guilty of willful tax evasion, or other criminal action, and (2) there is a reasonable likelihood that the taxpayer can be successfully prosecuted in a criminal action.

If the decision made is not to prosecute, the case is sent back to the Audit Division via the Intelligence Division. The Assistant Regional Counsel can make a binding recommendation that civil fraud penalties be imposed. If the Intelligence Division insists on a criminal prosecution despite the Assistant Regional Counsel's contrary conclusion, the conflict is resolved by the Washington Enforcement Division of the Chief Counsel's Office * * *.

If the Assistant Regional Counsel decides that prosecution is warranted, he sends the case directly to the Justice Department. An information report of his decision is sent to the Washington Enforcement Division.[9]

WASHINGTON ENFORCEMENT DIVISION

The office of the Chief Counsel of the Internal Revenue Service in Washington has an Enforcement Division. Where a protest to the dropping of criminal charges has been lodged at the national level by the Director of the Intelligence Division, the protest goes to the Enforcement Division. After a review of the case by the division, if the Chief Counsel is of the opinion that no criminal prosecution should be had, he will attempt to secure a withdrawal of the protest made to the dropping of the criminal charges. In any event, however, the Chief Counsel has final authority and his decision as to criminal prosecution is binding.

The Enforcement Division also takes an active interest in a potential criminal prosecution where a conflict arises by reason of the rejection by the Justice Department of an Assistant Regional Counsel's recommendation to prosecute.[10]

ROLE OF JUSTICE DEPARTMENT

When the Regional Counsel decides that criminal prosecution is in order, he makes that recommendation directly to the Justice Department in Washington. The Assistant Attorney General in charge of the Tax Division receives the case and sends it to the Criminal Tax Section of his division. The case is assigned to one particular attorney. After he has studied the case, he makes a report which is reviewed both in the Criminal Tax Section and in the Tax Division. If a decision not to prosecute is made, the case is sent back to the Revenue Service's Chief Counsel. If his Enforcement Division disagrees with the decision, it will protest it. However, it can only try to convince the Justice Department that it should prosecute; it cannot force prosecution if the Justice Department refuses to change its mind.

The attorney writes a memorandum on the case concluding with recommendations * * *

The report of the reviewing attorney is checked by his superior, is sent to the Chief of the Criminal Section, and finally to the Assistant Attorney General in charge of the Tax Division.[11]

TAXPAYER CONFERENCES

Unlike a normal tax situation, a taxpayer who is involved in a possible criminal case is not given many opportunities to present his side of the case. The taxpayer [can have] direct contact with government representatives [which] might enable [him] to influence the course of the investigation. . . .

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[5] See, Respondent's Supplemental Motion for Full and Fair Impeachment Trial, paragraph 22, characterizing the unique and unfair treatment afforded Judge Claiborne in all procedures and proceedings wherein he was the "target".

[6] Research Institute of America (hereinafter RIA) Tax Coordinator [paragraph] T-1103; 34 AM JUR 2d, Federal Taxation [paragraph] 9015. See discussion of procedures set out in Revenue Agents Manual, reproduced in United States v. Lipshitz 132 F.Supp 519 (D.N.Y., 1955).

[7] Although the Internal Revenue Service has an elaborate "Statement of Procedural Rules" (see 26 CFR, Part 601; 20 Fed Reg 127) with an abundance of detail as to civil tax procedures, it contains little information with respect to the criminal investigation process, and nothing as to what test the special agent should use in making his recommendation. Therefore, it is submitted, that the animus of the Executive is relevant and material and at issue herein.

[8] Audit and Intelligence Division of Treasury Department. RIA Tax Coordinator [paragraph] V-3402; 34 AM JUR 2d, Federal Taxation [paragraphs] 9263, 9264.

[9] Function of Assistant Regional Counsel-Enforcement in tax fraud cases. RIA Tax Coordinator [paragraph] V-3402.

[10] Function of Washington Enforcement Division in tax fraud case. RIA Tax Coordinator [paragraph] V-3402.

[11] Handling a tax fraud case through the Justice Department. RIA Tax Coordinator [paragraph] V-3403.

[I] CONFERENCES IN INTELLIGENCE DIVISION

[Judge Claiborne was Afforded None]

[II] CONFERENCE IN OFFICE OF REGIONAL COUNSEL

[Judge Claiborne was Afforded None]

The taxpayer is granted the opportunity for a conference when his case is assigned to a field attorney in the Assistant Regional Counsel's Office. After the government attorney has studied the case, he will usually offer (sometimes by mail) to confer with the taxpayer and his lawyer. One or more of the attorneys on the staff of the Assistant Regional Counsel's Office may be present at the conference and a record is usually made of anything the taxpayer has to say. The taxpayer will first be advised of his constitutional rights and the representatives of the Internal Revenue Service will usually discuss the case from a legal viewpoint. The field attorney is interested in filling in the legal aspects of the case. The government representatives are likely to outline the basic propositions on which they rest their case and may indicate proposed deficiencies for civil purposes. While these figures are not necessarily relevant to criminal tax deficiency, some idea may be obtained of the outside limits of liability. Efforts [by the] taxpayer [can] be directed toward convincing the field attorney that the evidence collected is legally deficient, or that the taxpayer has satisfactory defenses to any criminal prosecution. . . .

[III] CONFERENCE WITH JUSTICE DEPARTMENT

After a case reaches the Justice Department, it is assigned to an attorney in the Criminal Section of the Tax Division. It is not the practice to invite the taxpayer to another conference at this point, but one will be granted if the taxpayer requests it. . . .

[Judge Claiborne availed himself of such a conference. It proved to be a futile charade, since the government participants were relying on the theory that Judge Claiborne received monies from Joseph Conforte].

[IV] "LAST CHANCE" CONFERENCE WITH U.S. ATTORNEY

[Judge Claiborne was Afforded None]

The taxpayer has one last chance for a conference when the case is assigned to the local United States attorney for prosecution. Particularly if the file has been received by him with only a qualified recommendation for prosecution, much advantage may be gained by the taxpayer from a conference with the United States attorney, since argument may be directed to local factors. For instance, the taxpayer's local reputation may be so high that it would be difficult to find a jury willing to convict him. Local prejudices, reliability of witnesses, and other such factors may be taken into consideration by the United States attorney in arriving at his decision as to prosecution. If he decides not to prosecute, the chances are excellent that the Justice Department will not overrule his decision, even though it has made an unqualified recommendation of criminal prosecution of the taxpayer. Argument at this conference should therefore by directed to additional considerations that may convince the local United States attorney that a conviction could not be obtained, and that, after all, his is the ultimate decision as to whether conviction is reasonably probable in the case.[12]

[Of course, Judge Claiborne had no contact with the Nevada United States Attorney since the investigation of his activity was being conducted by Stephen Shaw of the Public Integrity Section based in Washington, D.C., through, in large part, grand juries situated in Portland, Oregon].

OPPOSITION TO SUGGESTION TO VARY ARTICLES OF IMPEACHMENT

There has been some suggestion that this Honorable Body can alter the basis upon which to conclude its judgment on matters other than those which are specifically alleged in the Articles of Impeachment.

The four Articles of Impeachment are grounded on the basis that Judge Harry E. Claiborne, "willfully and knowingly" engaged in criminal activity which constituted misconduct sufficient to justify removal from office. The Articles do not suggest that a finding of "gross negligence" would suffice as the standard for judgment.

Judge Claiborne carved his defense and presented the same to the Committee Established Pursuant to Rule XI based on the particulars alleged in the Articles of Impeachment.

To now vary the charges, after the proofs have in large part been produced, would be fundamentally unfair and violative of the accused citizen's due process guarantees afforded by the United States Constitution.

Authority for the proposition that the Articles are not subject to variance is founded on Thomas Jefferson's analogy of the impeachment process to the process of laws founded within the criminal justice system. "The accusation (articles) of the Commons is substituted in place of an indictment." Constitution Jefferson's Manual and Rules of the House of Representatives of the United States Ninety-Ninth Congress, Wm. Holmes Brown Parliamentarian, U.S. Government Printing Office, Washington, 1985, p. 293. "They can neither omit any part of the legal judgment nor add to it. Their sentence must be secundum non ultra legem (citation omitted). This trial, though it varies in external ceremony, yet differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments, prevailed. . . ." ibid at p. 299.

VARIANCE

The seminal case of "variance" is *Berger* v. *United States*, 295 U.S. 78, 82 (1935), which held that reversible error exists where the variance between the charge and proof was such as to affect the substantial rights of the accused.

In the impeachment trial, in response to Harry E. Claiborne's Motion for Bill of Particulars, the House Managers limited the scope of the Articles to evidence of alleged "willfullness" in the Articles and specifically addressed the issue as to whether the Senate could, pursuant to Article IV, remove Judge Claiborne if they believed his activity was grossly negligent:

Mr. CHABRAJA: "I do not think it is fair * * * I think we would have to have brought an additional article."

The Berger Court reasoned that the accused must be definitely informed as to the charges against him so that he can prepare for trial and not be surprised by evidence produced.

Other courts have agreed with the Berger standard and have added that the charging document should be sufficiently definite as to prevent the prosecutor from changing the theory of the case.

In *Russell* v. *United States*, 369 U.S. 749, 765–766 (1962), the Supreme Court held that in order to satisfy basic principles of fundamental fairness the subject under inquiry must be identified with reasonable certainty, to inform the accused of the nature of the accusation against him.

Another purpose of specificity of the charging document, the Russell Court, supra, states, is to inform the tribunal "of the facts alleged, so it may decide whether they are sufficient in law to support a conviction, if one should be had." Citing *United States* v. *Cruikshank*, 92 U.S. 542, 558.

Jefferson also provides guidance for the proposition that for conduct to constitute an impeachable offense, it must be criminal: "The general course is to pass a resolution containing a criminal charge against the supposed delinquent, and then to direct some member to impeach him. . . ." Constitution Jefferson's Manual, supra, at 289.

To suggest a level of conduct such as "gross negligence" to be the standard would run contra to precedent which requires the conduct to be criminal, i.e.—"willfull" be it felony or misdemeanor. See, *United States* v. *Bishop*, supra.

CONCLUSION

It is essential that the Honorable Senate recognize that substantial issues, such as the failure of the Internal Revenue Service and the Justice Department to follow normal procedures, was never permitted to be aired before the jury sitting at Judge Claiborne's trial.

In spite of the fact that several Senate Committee members were concerned with the aforementioned and also the campaign directed against Judge Claiborne by the Justice Department, the trial judge refused to permit any testimony at the time of trial concerning these issues. The trial transcripts are replete with comments from the Bench denying Judge Claiborne the opportunity to receive a full and fair trial by allowing him to present evidence essential to his defense.

Equally important, the prosecution failed to disclose exculpatory material to the defense and the trial court did not remedy that error, thereby depriving the jury of vital information. These representations are not self-serving but have been recognized in the Honorable Stephen Reinhardt's decision found at 781 F.2d 1327 (9th Cir., 1986) in *United States* v. *Claiborne*.

Indeed, it is necessary that the Senate consider all that was previously omitted from consideration by the jury in order for the Senate to perform its constitutionally mandated function of providing Judge Claiborne with an autonomous trial.

Respectfully submitted,
HARRY E. CLAIBORNE
By Oscar B. Goodman, Esq. and
Hon. Howard W. Cannon,
Attorneys for Respondent.

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[12] Conference with U.S. Attorney. RIA Tax Coordinator [paragraph] V-3412.

[In the Senate of the United States Sitting as a Court of Impeachment]

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE

SUPPLEMENTAL MOTION FOR FULL AND FAIR IMPEACHMENT TRIAL BEFORE THE ENTIRE SENATE OF THE UNITED STATES, OR IN THE ALTERNATIVE FOR DISMISSAL

The Respondent, the Honorable Harry E. Claiborne, by and through his counsel, Oscar B. Goodman, Esq. and the Honorable Howard W. Cannon,[1] by this pleading respectfully and emphatically moves for a full and fair impeachment trial before the entire Senate of the United States, or in the alternative for dismissal of the Articles of Impeachment. As authority therefore, Judge Claiborne relies upon the Constitution of the United States, the Senate Rules of Procedure, all pleadings presently on file herein, the record on file herein and the attached Memorandu, all of which are incorporated by reference herein.

Respondent, Harry E. Claiborne, alleges as follows:

1. That seven (7) days of testimony was presented to the Senate Committee convened pursuant to Rule XI of the Senate Rules on Impeachment.

2. That after these seven (7) days of hearings not one single witness was produced by the House Managers that questioned Judge Claiborne's integrity as characterized by the witnesses presented by Judge Claiborne, and in fact the House conceded that Judge Claiborne was of fine character and a respected jurist in its Motion In Limine, (Part I, p. 500), and not one character witness was even cross-examined by the Managers (Part I, pp. 829-844).

3. That the hearing held by the Committee, whose "Charter" was unique in the annals of the Senate, [was] a limited one. "It had been created not in any sense to conduct a trial of this bill of impeachment, nor even to recommend the ultimate outcome of the process, but to develop the record on which the Senate may act." Chairman Mathias (Part I, p 41).

4. In this spirit, the Committee clearly served the desired purpose. The evidence adduced at the Committee level, revealed that quite clearly the Judge believed at the time he executed the disputed returns that he was the target of a calculated four (4) year campaign by the Executive (United States Justice Department); and, furthermore, that the judicial process, did not permit an airing of the issues, as the full Senate is embodied to do, and must do, to perform its constitutionally mandated function of conducting a trial of impeachment.

5. That the Rule XI Committee limited the expanse of the evidence because it acknowledged it was not the trier of fact, but an information gatherer.

6. That the patient and insightful questioning of the Senate Committee members laid the foundation for the full trial before the Nation, the "Inquest" contemplated by the Constitutional framers. Several members of the Committee apparently had additional questions to ask, but the Committee was bound by time constraints. See e.g. (Part I, pp. 1110, 1112, 1115-1116, 1119, 1123, 1127, 1130.)

7. That the United States Senate historically has never deviated from the course of permitting a full and fair trial before the entire Senate when considering Articles of Impeachment.

8. That the proceedings before the Committee raised substantial issues of law and fact.

9. That the Senate Committee exhibited concern and suggested they had additional inquiry.

10. That it took the Senate Committee seven (7) days to receive evidence, even though the presentation was limited.

11. That the Committee had originally hoped to conclude the hearings in five (5) days.

12. That it would be impossible for the full Senate of the United States to fully digest the Committee transcripts in the time frame presently established.

13. That considering the Committee hearings fell short of a constitutionally mandated Senate trial to which Judge Harry E. Claiborne, and the American People, are entitled, it is respectfully submitted that an abbreviated review of the transcripts would constitute an abrogation of the United States Senate's constitutional function.

14. That it is respectfully submitted that considerations concerning calendaring have no place in the equation when the Senate is required to perform a fundamental function in our Republic's scheme of checks and balances.

15. That the House of Representatives, as prosecutor, would have this august body expeditiously "rush to judgment", thereby denying to the Honorable United States Senate its constitutionally mandated and created power to conduct a full trial, separate and distinct from any judicial proceeding.

16. That the Honorable Harry E. Claiborne has proclaimed his innocence of all charges from the inception of the Executive's campaign against him. He has filed legal pleadings; pretrial, during trial, after trial, appeal, post appeal. He has most eloquently stated his innocent posture at the proceedings before the Committee. (Part I, pp. 924-1042 and 1106-1179).

17. That Harry E. Claiborne does not resign, but instead requests the imperative of a full Senate trial, bespeaks the illogic of any position that proposes a shortening of a full trial before the Senate.

18. That Harry E. Claiborne's detractors would argue that the judicial proceeding does not bar his impeachment trial by reason of double jeopardy. Nor did the Executive agree that the Judge had to be impeached before undergoing a judicial proceeding. As a direct result thereof, the Senate trial must be treated as a distinct and autonomous proceeding with all the inherent guarantees attendant to a full and fair trial.

19. That to deny the Honorable Harry E. Claiborne the opportunity to call witnesses at such a constitutionally mandated trial would be unconstitutional.

20. That any trier of fact must, in order to reach a proper and fair determination, view witnesses and judge, not just their words, but their demeanor. An abbreviated proceeding before the Senate would deny the Honorable Harry E. Claiborne, and the American People due process of law. It is respectfully submitted that it would be a dereliction of duty to each Senator's constituents, to presume to substitute the typed transcript of the Committee proceedings in place of a full evidentiary trial. Without having viewed the proceedings, how could each trier cast a meaningful vote?

21. That the exercise of expediency, at the expense of important and deliberate legislative function, would only further exacerbate Judge Claiborne's (an Article Three, life-tenured, federal judge) contentions that he has been and is treated differently from other citizens, a concern voiced by Senate Committee members.

22. In support of Harry E. Claiborne's contention, he commends attention to the fact he has been subjected to investigation by four, not one, grand juries convened to indict him. Three grand juries convened outside of the city in which Judge Claiborne had lived for some thirty years; Grand jury witnesses perjured themselves; A convicted felon, procurer and fugitive was forgiven sixteen ($16,000,000.00) million dollars in outstanding Internal Revenue tax indebtedness as consideration for testifying against Judge Claiborne; The Nevada Regional Director of the Internal Revenue Service was removed from his position when he would not condone unconscienable plans against the judge; Numerous people were openly solicited by the Agent in Charge of Nevada FBI Office, Joseph Yablonsky, to cooperate in "stings" against the Judge. Others were investigated or indicted, and then promised leniency or forgiveness if they would injure the Judge; The Judge and a state court colleague were the subjects of a "mail cover"; Judge Claiborne was the subject of what was characterized as a "black bag" break-in of his home; The Judge was never notified by the Internal Revenue Service about queries concerning his return (as would be the normal procedure for any United States citizen); Instead he was indicted; A special "hand-picked" judge presided over the investigating grand juries and over his trial; A special "hand-picked" appellate panel reviewed his case, notwithstanding procedural prohibitions against the same were existent at the time of such selection; That in the most rare of occasions multiple dissenting opinions addressing the denial of Judge Claiborne's request for a rehearing en banc of his appeal were filed, which condemned the appeal's panel for failing to properly review the record of the trial and in failing to review exhibits and evidence and the process by which the panel was selected. That even though Judge Claiborne was in his late sixties and had led an exemplary life, having been lauded on the floor of the United States Senate during his confirmation hearings, the "handpicked" federal judge who tried him sentenced him to incarceration in a federal prison, when other people would never even have been tried based on the tax returns filed by Judge Claiborne.

23. That it would be a constitutional shame if once again Judge Claiborne were to be treated differently from other American citizens. In the entire history of our Republic impeached officials have been given a full trial before the Senate. Impeachment trials have averaged from sixteen (16) to seventeen (17) days according to the literature. Such a solemn ceremony has not taken place in the past half century. There is not a member of the Senate who was in office during the last impeachment. It would be a tragedy of our system of checks and balances, which is designed to assure the independence of the judiciary, if the Senate of the United States once again permitted Harry E. Claiborne to be treated differently from all those who have preceded him in such proceedings. It was, afterall, through and after full and fair trials, that many who stood impeached by the House of Representatives were not convicted by the Senate.

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[1] This pleading was prepared with the assistance of co-counsel, David Z. Chesnoff, Esq. of the firm of Savarese and Chesnoff, Ltd.

24. That had not Judge Claiborne alleged that his prosecution (persecution) was the product of Justice Department overreaching, the "chilling" of the judiciary, the unique manner in which he was convicted and how that conviction was affirmed, that had he not maintained his absolute innocence, that were his character not so resolutely affirmed by sworn witnesses, the proceedings before this Honorable body, implicitly would be brief. Where, however, Senate Committee members were moved to vigorously inquire about the spectre of executive misconduct, to openly question the Judge's culpability, and for the Judge to withstand intensive examination by twelve learned men and a retained prosecutor, steadfastly maintaining his innocence to the impeachment charges, then any proceeding short of the full trial requested, it is respectfully submitted, would reflect Senatorial insensitivity to its sanctified constitutional responsibility.

25. That President John F. Kennedy, in Profiles in Courage, warned about prejudging individuals faced with impeachment. Each and every Senator, as burdensome as it might seem, must hear all the evidence in order to satisfy the Command that a trial occur in the United States Senate before a life-tenured Article Three Judge could contemplatively be removed from office. It is respectfully submitted that after a full and fair trial before the entire Senate of the United States that the Honorable Harry E. Claiborne will be found not guilty by the Honorable members of the Senate.

Wherefore, the premises considered, Harry E. Claiborne prays that this Honorable Senate grant a full trial before the entire United States Senate.

Respectfully submitted:

HARRY E. CLAIBORNE.

(By Oscar B. Goodman, Esq. and Honorable Howard W. Cannon, Attorneys for Respondent.)

I. THE UNITED STATES CONSTITUTION, THE FEDERALIST PAPERS, CASE LAW AND THE RULES OF THE SENATE MANDATE A FULL EVIDENTIARY TRIAL BEFORE THE ENTIRE UNITED STATES SENATE

It is respectfully submitted, and acknowledged by the Committee Chairman, the Honorable Senator Mathias, that the Rule XI Committee's "charter" was "limited" and that the Committee was not "created * * * in any sense to conduct a trial of [the] bill of impeachment." Rather, it was for "the Senate to carry out * * * its unique constitutional power to try all impeachmens." (Part I, p. 41).

"* * * So there are particular moments in public affairs when the people, stimulated by some irregular passion . . . or misled by the artful misrepresentation of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutory will be the interference of some temperate and respectable body of citizens, in order to check the misguided career and to suspend the blow mediated by the people against themselves, until reason, justice and truth can regain their authority over the public mind? What bitter anguish would not the people of Athens have often escaped if their government had contained so provident a safeguard against the tyranny of their own passion? Popular liberty might then have escaped the indelible reproach of decreeing to the same citizens the hemlock on one day and statutes on the next." The Federalist, No. 63.

In the following, Judge Claiborne will reiterate the historical importance of permitting him to confront the witnesses against him and for this Honorable Body to permit him to call the witnesses he chooses so that the intent of Article I, Section III of the United States Constitution can be assiduously adhered to by the Senate.

The Federalist Papers which historian Clinton Rossiter described with little exaggeration as standing third only to the Declaration of Independence and the Constitution itself among all the sacred writings of American political history, (The Federalist, Mentor, 1961 at p. vii), justified the need for the Senate to assure a well-ordered and long-lived Republic to conduct such a proceeding.

The Framers wisely provided in Article One, Section Three, of the Constitution, that "The Senate shall have the sole Power to try all Impeachments."

Now "interested men" urge the Senate to assume its unique constitutional position as the sole fact finder and judge in this impeachment proceeding.

There are very few checks on the Judiciary and Executive power. The Federalist Papers make it clear that the sole power of impeachment is one of those necessary Constitutional checks.

Our system of constitutional government is based upon the remarkable concept of separation of powers, which has its roots in Western European struggles between legislative bodies and monarchs. See, W.B. Gwyn, The Meaning of the Separation of Powers (Tulane Univ., 1965).

English precedent formed the basis of the Framers of the Constitution's position as it related to impeachment. Power consistently was passing between the King and the Parliament from the time of the English Civil War. These historical developments led to the formulation of a delineation of powers. J. Locke, Second Treastise of Government [An Essay Concerning the True Origin, Extent and End of Civil Government].

It was Montesquieu, however, whose writings were accepted throughout Western Europe and the American Colonies, in the Eighteenth Century, who captured the spirit upon which the Constitutional Framers relied.

Montesquieu observed that any combination of judicial, legislative or executive powers would create a system whose path would lead to inescapable tyranny and absolutism. Montesquieu, The Spirit of the Laws, 151-2 (Nugent Trans. 1949).

As a result the Honorable Harry E. Claiborne respectfully submits that the proposal by the House of Representatives to limit his defense would create the antithesis envisioned by Locke, Mortesquieu and the Framers.

Since the days of the American Revolution the concept and sanctity of the separation of powers has been embedded in our system of government.

The United States Constitution was drafted in a manner consistent with the rationale of Montesquieu. The Framers sought to establish a system of checks and balances between the branches and to prevent the cancerous growth of exhorbitant power in any one branch of government.

The concept of checks and balances is relied upon by Judge Claiborne. The significance of the Senate permitting a full trial cannot be understated. It will ensure the functioning of our constitutional system; it must accede to preconceptions or expediency.

Benjamin Franklin, in reflecting upon the moral imperative of impeachments wrote:

"What was the practice before this in cases where the chief magistrate rendered himself obnoxious? What recourse was had to *assassination* in which he was not only deprived of his life but of the opportunity of vindicating his character? It would be the best way, therefore, to provide in the Constitution for the regular punishment of the executive when his misconduct should deserve it, and *for his honorable acquittal when he should be unjustly accused.*" Benjamin Franklin, 1787 (italic added).

The House proposal would have Judge Claiborne convicted without benefit of procedural and substantive due process and without an opportunity to vindicate his reputation. Judge Claiborne has claimed he has been improperly maligned and that his judicial function has been disrupted. These allegations are too serious to be ignored for expediency's name.

Significantly the Executive and the Courts did not bar his judicial trial. Why then, should the impeachment trial not be accorded the same solemn autonomy? They are independent of each other. A trial on the merits is mandated in order to assure that the power of the Executive does not become so wholly concentrated as to subvert and chill the function of an independent federal Judiciary.

If the House of Representatives believes that the Judicial proceedings against Judge Claiborne are all that are constitutionally contemplated, then it is submitted that the Judge is serviing his punishment and these proceedings should be dismissed. If not, then the Judge should be permitted the opportunity to plead his case before the Senate. Contrary to the assertions of the House of Representatives, Judge Claiborne has always vigorously claimed that he has been denied due process, and has been subjected to encroachment upon his sworn function as a judicial officer as a result of criticizing misconduct by the Executive who prosecuted cases in his Court.

If the House of Representatives seeks to read impeachment in terms of the previous criminal prosecution they invite the bar of double jeopardy. *Richard Screw Anchor Co.* v. *U.S.*, 275 U.S. 331 (1928); *U.S.* v. *Jim Fuey Moy*, 421 U.S. 439, 401 (1916).

The integrity and independence of the judiciary was protected by the Constitution by the appointment for life of Federal judges. The politically astute Framers, all of whom swelled within with the cause of liberty and protection of people's rights, recognized that this life term was necessary to insure a judiciary that would be independent, a judiciary which would and could protect the rights of the citizen from abuses by the Executive and Legislative Branches, without fear of reprisal.

In support of the concept of separation of powers as it related to impeachment, Alexander Hamilton wrote:

"Would there not be the greatest reason to apprehend that error in the first sentence would be the parent of error in the second sentence? That the strong bias of one decision would be apt to overrule the influence of any new lights which might be brought to vary the complexion of another decision?

"By making the same persons judges in both cases, those who might happen to be the objects of prosecution would, in a great measure, be deprived of the double security intended them by a double trial.

"Juries are frequently influenced by the opinions of judges. They are sometimes induced to find special verdicts, which refer the main question to the decision of the court. Who would be willing to stake his life and his estate upon the verdict of a jury acting under the auspices of judges who had predetermined his guilt." [Hamilton, Federalist Papers]

James Madison forewarned: "Were the power of judging joined to the executive power, the judge might behave with all the violence of the oppressor."

This Honorable Senate should be insulted by the House of Representatives' suggestion that the Senate's constitutionally mandated independent judgment be supplanted by the judgment of twelve lay citizens; twelve jurors who were deprived of hearing claims of executive overreaching as having been the reason for Judge Claiborne being tried.

The issues must be tried before the Senate to confirm again the separation of powers doctrine:

"The Judiciary is beyond comparison the weakest of the three departments of power, and all possible care is requisite to enable it to defend itself against attacks. *The general liberty of the people can never be endangered so long as the judiciary remains truly distinct from both the legislative and the executive* * * * [but] the judiciary is in continual jeopardy of being overpowered, awed, or influenced by its coordinated branches." [Hamilton, Federalist Papers] (italic supplied).

In effect the Senate would be sanctioning the procedures chosen by the Executive, which resulted in indictment, conviction and incarceration of Judge Claiborne, should the Senate adopt the House of Representatives' proposal of summary disposition.

It should also be noted that the division of functions which assigned the role of prosecutor to the Commons while the Lords sat in judgment was the "model" of the parallel division of impeachment functions between the House of Representatives and the Senate. Federalist Paper No. 65 at 425.

The House of Representatives wants, as prosecutor, to convict Judge Claiborne. Unfortunately, they seek their conviction by attempts to usurp Senatorial power and in derogation of the Constitution of the United States, in the name of expediency. The House of Representatives would ask the Senate of the United States to ignore critical constitutional issues affecting the fabric of our system of government.

The Honorable Harry E. Claiborne respectfully submits that our parallel House of Representatives/House of Commons, Senate/House of Lords impeachment procedures do not permit for less than a full trial before the entire Senate.

No research has shown of any reference to a Committee of the Lords for hearing of the evidence. The authoritative Raoul Berger, Charles Warren Senior Fellow in American Legal History, Harvard Law School, in his book, Impeachment: The Constitutional Problems (Harvard University Press, Cambridge, Mass., 1973, p. 171) has so found. A statement made by the Managers of the Lords at a conference between members of the Lords and Commons (reported January 18, 1691) confirms that "In the case of impeachments, which are the groans of the people * * * and carry with them a great supposition of guilt than any other accusation, there all the Lords must be judge." 4 Hatsell 343, 33, 342.

"When you are called upon to arraign an individual, and that individual a judge, everyone must be anxious that the attendance should be as full as possible." 7 Parl. Deb. 762 (1806). See also, Plucknett, Concise History, 232 of 1 Holdsworth 389 (7th Ed., 1956).

Judge Claiborne submits that impeachment is a carefully delineated process, tolerated only if exercised within bounds. "Limits" on Congress determined by Congress would be no limits at all. Federalists Papers Nos. 65 and 78. It "cannot be the natural presumption * * * that the legislative body are themselves the constitutional judges of their own powers. * * *" Federalist Paper No. 78 at 506.

Judge Harry E. Claiborne respectfully suggests that he not be faced with a similar scenario as existed at the time of the impeachment of President Andrew Johnson, that is that "prejudgment on the part of most senators * * * was brazenly announced." John Fitzgerald Kennedy, Profiles in Courage, 133 (N.Y., 1961).

In fact, those who propose a swift conviction on impeachment stood silent when Judge Claiborne argued that he could not be tried in a judicial proceeding prior to his actual impeachment and conviction. If the judicial function was an autonomous event, so, too, should his impeachment be.

II. EVIDENCE MUST BE HEARD ABOUT ALL THE EVENTS OCCURRING AT THE TIME OF THE ALLEGED ILLEGAL CONDUCT BY JUDGE CLAIBORNE, SO THAT THE SENATE AS THE TRIER OF FACT, CAN PROPERLY JUDGE HIS STATE OF MIND AT THE TIME IN DETERMINING HIS GUILT OR INNOCENCE

Federal Rules of Evidence 803(3), contemplates statements confirming the mental condition of a defendant as they are sufficiently trustworthy. Dangers of misperception, faulty memory, or insincerity may be less when the evidence relates to existing mental, emotional or physical states of the defendant. Moore's Federal Procedure § 803(3)

The Honorable Harry E. Claiborne and all who will testify about their perception and memory of events of the campaign against Judge Claiborne will be available for cross-examination. It is significant that the House does not fully deny the claims of Judge Claiborne, but rather would have them kept from the Senate. Clearly, the perceptions of Judge Claiborne of the events transpiring at the time he is alleged to have formed criminal intent to violate the tax laws must be publicly aired. To do otherwise would be to deny him due process. It is axiomatic that state of mind evidence is admissible to show lack of criminal intent.

In *United States* v. *Taglione*, 546 F.2d 194 (5th Cir., 1977), a defendant was charged with making extortionate demands for return of credit card invoices which he had forged. The defendant claimed that he had merely been negotiating for a reward. It was error to have excluded the testimony of the defendant's former attorney as to a conversation in which the defendant asked if it would be legal to negotiate for a reward. The statement is admissible pursuant to Federal Rules of Evidence § 803(3). See also *United States* v. *Ottley*, 509 F.2d 667 (2d Cir., 1975) (regarding a union official charged with a violation of federal statute requiring records be maintained in sufficient detail to substantiate claims for reimbursed cash expenses. State of mind was in issue because the statute applied only if its provisions were violated "wilfully". This principle applies to statements of third persons made to a principle. In *Scholle* v. *Cuban-Venezuela Oil Voting Trust*, 285 F.2d 318 (2d Cir., 1962), the Court held that the Hearsay Rule does not bar admission of statements used circumstantially, since, when so used the primary focus of inquiry is whatever inferences can be drawn from the fact that the words were spoken and not the truth of what was said." 285 F.2d at 321.

The Honorable Harry E. Claiborne respectfully submits that his claims of improper conduct by the judiciary were acknowledged in the dissents filed by Circuit Judges Ferguson and Reinhardt styled *United States* v. *Claiborne*, 781 F.2d 1325 and 1327 (9th Cir., 1986). (For a complete text of these dissents, see Part I, pp. 521-538.)

Finally, "Impeachment" Miscellaneous Documents, Committee on Rules and Administration, United States Senate (August 7, 1974), Memorandum IV On the Rules of Evidence for Senate Impeachment Trials, makes it clear that it was deemed advisable that all evidence not trivial or obviously irrelevant shall be received without objection. It is respectfully suggested that evidence that tears at our constitutional heart and depicts intimidation of an independent judiciary cannot be characterized as trivial or irrelevant.

Furthermore, "The Senate is not just like a court in an impeachment trial. It is the Senate acting". Ibid at 245.

This Honorable Senate, in fulfilling its constitutional mandate must provide this responding Article Three Judge with a full and fair opportunity to present the truth in order for him to be fully exonerated and restored to his independent role of dispensing the duties of his branch of government. In *Powell* v. *McCormack*, 395 U.S. 486, 506 (1969), the Supreme Court stated: "[i]t is the province and the duty of the judicial department to determine . . . whether the powers of any branch of the government . . . have been exercised in uniformity to the Constitution, and if they have not, to treat their acts as null and void."

III. IN ORDER TO GUARANTEE JUDGE CLAIBORNE AND THE AMERICAN PEOPLE DUE PROCESS OF LAW AND THE TRIAL MANDATED BY THE UNITED STATES CONSTITUTION, IT IS RESPECTFULLY SUBMITTED THAT EACH SENATOR MUST VIEW THE WITNESSES AND THE EVIDENCE AND ANY ABBREVIATION OF THIS HISTORICALLY DOCUMENTED PROCESS, WOULD BE UNLAWFUL AND UNCONSTITUTIONAL

A. Demeanor Evidence Is An Essential Element of a Fair Trial.

The demeanor of a witness traditionally has furnished the trier of fact with valuable information concerning the significance of testimony. *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474, 495-496 (1951).

In the instant case the demeanor of witness Watson before the Committee, especially the bravado with which he testified under oath, led Committee members to conclude that he was an individual completely willing to present himself as capable and convincingly so, when in fact his ineptness was the subject of senatorial disdain. (Part I, pp. 115-116).

A witness testifying before the United States Senate Impeachment Trial, as many have done throughout our country's history, will undoubtedly be impressed with the solemnity of the occasion and the possibility of public disgrace. In fact, willingness to falsify may reasonably become more difficult. Judge Claiborne's detractors, unprotected by a less than full trial, as was the case in the judicial trial, will be compelled to be forthright or else they will be discovered by an insightful Senator.

Rules 26 and 43(a) of the Federal Rules of Criminal and Civil Procedure, respectively, include the requirement that testimony be taken orally in open court. The Sixth Amendment right of confrontation is a manifestation of these beliefs and attitudes.

Cross-examination, and the co-extensive demeanor extracted therefrom, are a vital feature of our Anglo-American System of Justice. Cross-examination is "beyond doubt the greatest legal engine ever invented for the discovery of truth" 5 Wigmore § 1367, p. 29.

The belief that the examination of live witnesses is effective in exposing imperfections of perceptions memory and narrative is fundamental. Morgan, Forward to Model Code of Evidence 37 (1942).

A crucial function of the trier of fact is to evaluate questions of credibility based upon the observation of whomever is testifying. (For example, a reading of the transcript of the Committee proceedings would fail to reveal the incessant handwringing and obvious nervousness of I.R.S. Agent Skelton while testifying, under oath, about his abusive interaction with potential witnesses while preparing them to testify against the Judge.)

Only by personal observation can this Senate weight the credibility of a witness. Mr. Chief Justice Appelton wrote concerning observation of demeanor:

"[T]he promptness and unpremeditatedness of answers or, the reverse, their distinctiveness and particularly of the weight of these essentials, their incorrectness in general, or particulars, their directness or evasiveness * * * The appearance and manner, the voice, the gesture, the readiness and promptness of their answers, the evasions, the reluctance, the silence, the contumacious silence, the contradictions, the explanations, the intelligence or the want of intelligence of the witness, the passions which move or control—fear, love, *hate, envy or revenge*—are all open to observation * * *." Wigmore on Evidence, 3d Edition, § 1395; Appleton Evidence 220 (*added.*)

In *N.L.R.B.* v. *Dinion Coil Co.*, 201 F.2d 484, 487, 488 (2nd Cir., 1952), the late Judge Jerome Frank eloquently wrote that demeanor evidence "has had a long history" and that:

"[i]n the earlier period of Roman legal development, * * *, the witnesses testified orally before the judges, and the practice of having oral testimony heard by the judge prevailed originally in the Roman-canonical procedure [footnote omitted], Ullman tells us that the 14th Century Postglossators—who, as judges or advocates, 'had their eyes fixed upon the practical administration of law—maintained that the *'indispensible requisite for the judge to form his opinion on the trustworthiness of witnesses was that they appeared before him personally* * * * The personal impressions made upon the judge by the witnesses, their way of answering questions, their realities and behavior in Court, were the only means of ascertaining whether their statements were trustworthy or not." (*added.*)

In *Creamer* v. *Bivert*, 214 Mo. 433, 113 S.W. 1118, 1120-1121, the Court observed:

"* * * one witness may give testimony that reads in print, here, as if falling from the lips of an angel of light, and yet not a soul who heard it, * * *, believed a word of it; and another witness may testify so that it reads brokenly and obscurely in part, and yet there was that about the witness that carried conviction of truth to every soul who heard him testify * * *."

The astute and scholarly Judge Frank further intoned:

"For the demeanor of an orally-testifying witness is 'always assumed to be in evidence'. It is 'wordless language'. The liar's story may seem uncontradicted to one who merely reads it, yet it may be 'contradicted' in the Trial Court by his manner, his intonations, his grimaces, his gestures, and the like-all matters which "cold print does not preserve" and which constitute 'lost evidence' so far as an upper court is concerned. For such a court, it has been said, even if it were titled a 'rehearing court', is not a seeing court.' Only were we to have 'talking movies' of trials could it be otherwise. A 'stenographic transcript correct in every detail fails to produce tones of voice and hesitations of speech that often make a sentence mean the reverse of what the words signify. The best and most accurate record is like a dehydrated peach; it has neither the substance nor the flavor of the fruit before it was dried.' it resembles a pressed flower. The witness' demeanor, not apparent in the record, may alone have 'impeached' him." *Broadcast Music* v. *Havana*, 175 F.2d 77, 80 (2nd cir., 1950).

In conclusion, each and *every* Senator, in fulfilling his constitutional function as a trier of an impeachment, cannot rely solely on the written transcript. Afterall, "the most acute observer would never be able to catalogue the tones of vcice, the passing shades of expression or the unconscious gesture which he had learned to associate with falsehood * * *." "Every man must learn matters of this sort himself." *N.L.R.B.* v. *Dinion Coil, supra* at p. 489. (Italic added.)

Respectfully submitted:

HARRY E. CLAIBORNE.

(By Oscar B. Goodman, Esq. and Honorable Howard W. Cannon, Attorneys for Respondent.)

[In the Senate of the United States sitting as a Court of Impeachment]

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE

Supplemental points and authorities re collateral estoppel and summary disposition of Third Article of Impeachment

Should you feel inclined to censure
Faults you may in others view,
Ask your own heart, ere you venture,
If that has not failings, too.

Do not, then, in idle pleasure,
Trifle with a brother's fame,
Guard it as a valued treasure,
Sacred as your own name.

Do not form opinions blindly.
Hastiness to trouble tends;
Those of whom we thought unkindly,
Oft become our warmest friends.

PHILIP PAUL BLISS.

I. Preliminary Statement

By way of pretrial motion, the House of Representatives attempts an end-run around the Impeachment process in raising the August 10, 1984 conviction of Judge Claiborne of two counts of violation of Title 26, United States Code, Section 7206(1) as an offensive weapon which would collaterally estop Judge Claiborne from challenging Articles I and II of the Articles of Impeachment.[1]

Even more alarming is the House's request for summary disposition of the Third Article of Impeachment on the notion that Judge Claiborne is guilty of "high crimes" and "misbehavior" based solely on a conviction for violation of 26 U.S.C. Section 7206(1). Prior to, and in the absence of, the presentation of any evidence herein, the House sought the summary disposition of the Third Article of Impeachment under doctrines of finality, full faith and credit and collateral estoppel. The evidence now before the Senate[2] militates against ever swapping one separate constitutional mandate for another.[3]

26 U.S.C. Section 7206(1) does not embody "moral turpitude."

The Motion for Summary Disposition as to Third Article of Impeachment necessarily hinges on the faulty premise that the issue of fraud, in one form or another, was necessarily before the jury, and necessarily decided by the jury in returning a verdict of guilty on two counts of violation of Section 7206(1). On the contrary, 7206(1) is not the crime of tax evasion, nor is fraud an element of the offense.

Although the term "willful" found in Sections 7201 (evasion) and 7206(1) (statement) has the same meaning,[4] each requires perpetration of a different act.[5] In *United States* v. *Considine*, 683 F. 2d 1285 (9th Cir. 1982), the Court of Appeals for the Ninth Circuit confirmed the distinction that must be made here:

"The express language of Section 7201 requires an intent to avoid tax (a legitimate synonym for fraud). Section 7206(1) (false return), however, does not require any fraudulent intent." (citations omitted) *"Because Section 7206(1) does not require a willful attempt to evade tax a conviction under Section 7206(1), without more, does not establish fraudulent intent."* (emphasis added) (citation omitted).

The House argues that tax evasion is a high crime or misdemeanor within the meaning of the Constitution and justifies removal from office.[6] That question is not before us since Judge Claiborne was not charged with nor convicted of evading taxes. This innocent "misspeak" by House's counsel reveals the manifest injustice in ever summarily disposing of any Article of Impeachment. Members of the Senate, relying on counsels characterization of the offense below as "evasion", might easily have inferred fraud, and ultimately "turpitude", from nothing more than a rumor.[7]

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[1] Articles I and II allege that Judge Claiborne "willfully and knowingly" made false statements on his federal income tax returns for 1979 and 1980, in violation of 26 U.S.C. Section 7206(1).

[2] Attention is directed particularly to the compelling testimony of Kenneth Swanson, Charlotte Travaglia and the affidavit of Esther Arthur.

[3] Had the Senate summarily disposed of the Third Article of Impeachment, this body, and the nation, would not now know that there is indeed some fire beneath the shrouded smoke of an overzealous, overreaching, and misguided executive branch of government.

[4] See *United States* v. *Bishop*, 412 U.S. 346, 93 S. Ct. 2008, 36 L. Ed. 2d 941 (1973).

[5] *United States* v. *Bishop*, supra, at 360 n. 8, 93 S. Ct. 2017 n. 8; See also *Considine* v. *United States*, 683 F. 29 1285, 1287 (9th Cir. 1982).

[6] See Memorandum in Support of Motion for Summary Disposition of Third Article of Impeachment, pp. 19-21.

[7] Thus is exposed the pitfall of inductive reasoning—arriving at ultimate facts based upon general premises. If the general premise is faulty, the conclusion cannot be correct.

Relying only on the conviction below, the House urges that Judge Claiborne is now a "felon" and must be removed because public confidence cannot be maintained short of such action. Judge Claiborne submits that only through a separate and independent determination of the conduct alleged in the Articles of Impeachment can public confidence be maintained.

II. Offensive collateral estoppel cannot be applied without a fair and complete hearing on Respondent's claim

The House of Representatives recognizes that the Senate is not bound by the result of the issues presented in the criminal trial of Judge Claiborne, but urges that there are compelling reasons why the Senate sitting as a court of impeachment should choose to accept as already established certain issues which the House claims were necessarily resolved by the jury below.

In *Huntington* v. *Attrill*, 146 U.S. 657, (1982), the United States Supreme Court confirmed the principle that a judgment which originates out of a "penal" cause of action does not fall within the parameters of full faith and credit under Article IV Section I of the United States Constitution.[8]

During the course of the presentation of evidence thus far in this proceeding, Judge Claiborne has directly refuted and placed in issue the House's assertion that he had a full and fair opportunity to prove his claim during the criminal proceeding.

Historically, the doctrine of collateral estoppel has been utilized as a defensive mechanism to present an unsuccessful plaintiff in one action from proceeding to a second forum and again attempting to relitigate an affirmative position. In *Blonder-Tongue Labs.* v. *University Foundation*, 402 U.S. 313, 91 S. Ct. 1434, 28 Led. 2d 788 (1971), the United States Supreme Court discussed the conditions which must be present before a litigant will be estopped from asserting a claim. The Court held that a plaintiff "must be permitted to demonstrate, if he can, that he did not have 'a fair opportunity procedurally, substantively and evidentually to pursue his claim the first time.' (citations omitted)" 402 U.S. at 333. The Court went on in *Blonder-Tongue* to discuss those items which must be determined in order to conclude that a party had a fair opportunity to pursue his claim.

"Determining whether a patentee has had a full and fair chance to litigate the validity of his patent in his earlier case is in necessity not a simple matter. In addition to the consideration of choice of forum and incentive to litigation mentioned above, (footnote omitted) certain in other factors immediately emerge. * * * whether the opinions filed by the district court and the revealing court, if any, indicate that the prior case was one of those relatively rare instances where the courts wholly failed to grasp the technical subject matter and issues in suit; and *whether without fault of his own the patentee was deprived of crucial evidence or witnesses in the first litigation*". (footnote omitted) (emphasis added)

Judge Claiborne has alleged, and certain evidence has already been adduced during this proceeding, that he was deprived both of crucial evidence and of knowledge and/or access to witnesses in the criminal proceeding. Judge Claiborne strongly urges that a full and complete trial must be had on all issues in order for this body to fully and intelligently determine whether or not Judge Claiborne was in fact deprived of a full and fair opportunity to present his claims during the criminal proceeding.

An examination of the transcript of the criminal proceedings, both at the trial level and the appellate level, together with the opinion of the specially appointed panel of the Circuit Court of Appeals for the Ninth Circuit, indicate that this is, in fact, one of those "relatively rare instances" where the courts have wholly failed to grasp the issues which were raised at trial and on appeal by Judge Claiborne.

In *Parklane Hosiery Company* v. *Shore*, 439 U.S. 322, (1979), The United States Supreme Court extended the use of collateral estoppel to a plaintiff, with the ultimate effect of precluding defenses on the part of defendant. The Court found that the use of offensive collateral estoppel does not necessarily promote judicial economy, at least in the same manner as the defensive use does. *Parklane Hosiery Company* v. *Shore*, supra at 329. The Court made it clear that the offensive use of collateral estoppel is precluded where it may be unfair to a defendant.

"Allowing offensive collateral estoppel may also be unfair to a defendant if the judgment relied upon as a basis for the estoppel is itself inconsistent with one or more previous judgments in favor of the defendant. *Still another situation where it might be unfair to apply offensive estoppel is where the second action affords the defendant procedural opportunities unavailable in the first action that could readily cause a different result. Parklane Hosiery,* supra at 330, 331." (emphasis added)

No set of circumstances could better illustrate the wisdom of the Supreme Court in establishing the above caveat to the enforcement of offensive estoppel as is presented by Judge Claiborne in this impeachment proceeding. At trial below, Judge Claiborne was forced to go to trial away from his home in Las Vegas, Nevada, and travel approximately 500 miles to Reno, Nevada and litigate in that distant forum. Judge Claiborne has also testified in this proceeding as to the apparent friction or tension between Las Vagas and Reno, Nevada residence.

"If, for example, the defendant in the first action was forced to defend in an inconvient forum and therefore was unable to engage full scale discovery or call witnesses, application of collateral estoppel may be unwarrented. Indeed, differences in available procedure may sometimes justify no allowing a prior judgment to have an estoppel effect in a subsequent action even between the same parties, or where defensive estoppel is asserted against a plaintiff who has litigated and lost. *The problem of unfairness is particularly accute in cases of offensive estoppel, however, because the defendant against whom estoppel is asserted typically will not have chosen the forum in the first action.*" (Emphasis Added) *Parklane Hosiery*, 439 U.S. 322, 331 n. 15.

"We have concluded that the preferable approach for dealing with these problems in the federal courts is not to preclude the use of offensive collateral estoppel, but to grant trial courts broad discretion to determine when it should be applied. (Footnote omitted). The general rule should be that in cases where a plaintiff could easily have joined in the earlier action, or where, either for reasons discussed above or for other reasons, the application of offensive estoppel would be unfair to a defendant, a trial judge should not allow the use of collateral offensive estoppel." Id., 439 U.S. at 331.

The court in *Parklane Hosiery* also observed that a "stronger showing that the prior opportunity to litigate was adequate may be required * * *" Id. at 331.

The Senate now has the advantage of determining the propriety of allowing the use of offensive collateral estoppel in light of the evidence which has already been adduced during the proceeding. One glaring example rings through.

With respect to Judge Claiborne's 1979 income tax return, the major issue during the criminal proceeding was whether or not the April 11, 1980 letter from Judge Claiborne, which adequately discloses his legal fee income for 1979, was actually received by Judge Claiborne's accountant, Jay Wright.

"I submit to you, ladies and gentlemen, when you think about this that you will conclude that the only real issue in the 1979 year is whether Jay Wright got defense Exhibit 1. That is what it all comes down to, it is very simple.[9]

At the criminal trial, the government hotly contested and challenged the testimony of Judge Claiborne's secretary, Judy Ahlstrom, that she in fact delivered defense Exhibit I (HM-X-36) to Jay Wright's office. During the course of these proceedings before the Senate, it is now uncontested that Judy Ahlstrom in fact delivered an envelope on April 11, 1980 to Jay Wright's office. Two new witnesses were now available for the hearing before the Senate, Kenneth Swanson and Esther Arthur, both of which corroborate the testimony of Judy Ahlstrom. It is obvious, if this corroborating testimony and evidence would have been available at trial, a much different outcome would have been likely.

In permitting the use of offensive collateral estoppel, the Supreme Court in *Parklane Hosiery Company, supra*, specifically noted that there were no procedural opportunities available to the petitioners that were unavailable in the first action "of a kind that might be likely to cause a different result." (Footnote omitted) 439 U.S. 322 at 332.

Judge Claiborne would respectfully submit, that even at this stage of the Impeachment proceeding, sufficient evidence has been presented to establish that were Judge Claiborne afforded even the limited scope of testimony that has been afforded thus far by the United States Senate, such procedural opportunities are of a kind that "might be likely to cause a different result." Ibid.

III. The judgment of conviction is subject to review under principles of Federal Rules of Civil Procedure 60(b), thereby necessitating a full and complete trial on the merits

Rule 60(b), Federal Rules of Civil Procedure, provides for relief from a judgment or order upon a showing of the following:

(1) Mistake, inadvertance, surprise, or excusable neglect;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(4) The judgment is void;

* * * * *

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[8] See also *Hunt* v. *B.P. Exploration Company, Ltd.*, 492 F. Supp. 885 (N.D. Tex. 1980).

[9] Closing agrument of William Hendricks, (Report of the Senate Impeachment Trial Committee, Part III, Page 1384).

(6) Any other reason justifying relief from the operation of the judgment.

IV. The Uniform Enforcement of Foreign Judgments Act, as incorporated in Nevada law, requires a full and complete evidentiary hearing on Respondent's claim

In determining whether or not to enforce the doctrine of collateral estoppel, a reviewing or second court must consider whether, under the law of the original forum, that state or forum would have an interest in enforcing the collateral effect of the original judgment.[10]

Particularly under the principles of "full faith and credit" of Article IV Section 1 of the United States Constitution, the state of Nevada is the actual party, on behalf of its citizenry, which would have an interest in having the judgment of conviction given full faith and credit, and in having Judge Claiborne collaterally estopped from defending the first and second Articles of Impeachment herein.

Once again, we have the fortunate occasion, arising during the pendency of this impeachment proceeding, to know exactly the view of the Supreme Court of the State of Nevada. As evidenced by Respondent's Exhibits HEC-X-22 (report of the Senate Impeachment Trial Committee, Part IV, Page 2235) and HEC-X-27 (report of the Senate Impeachment Trial Committee, Part IV, Page 2305) now part of this record, the Nevada Supreme Court has indicated an interest in determining whether or not Judge Claiborne has been deprived of his rights to due process and a fair trial, as they specifically relate to the conviction in 1984. Accordingly, there can be no dispute that the Nevada Supreme Court would not foreclose Judge Claiborne from his defense of any claims arising by virtue of the 1984 Judgment of conviction.

In 1979, the Nevada Legislature adopted the Uniform Enforcement of Foreign Judgments Act, which is now embodied in Nevada Revised Statutes Sections 17.330 through 17.400.

The original Uniform Enforcement of Foreign Judgments Acts was approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1948. *Johnson,* Validity, construction, and application of Uniform Enforcement of Foreign Judgments Act. 31 Arl. 4th 706, 712.

NRS 17.3702 provides as follows:

"If the judgment debtor shows the court any ground upon which enforcement of a judgment of any court of this state, would be stayed, the court shall stay in enforcement of the foreign judgment, for an appropriate period, requiring the same security for an appropriate period * * *"

For reasons already stated, Judge Claiborne submits that he has provided substantial grounds upon which enforcement of the Judgment of Conviction would be stayed by any court of competent jurisdiction in the state of Nevada. Accordingly, the House of Representatives should not be permitted to offensively use the doctrine of collateral estoppel, or to in any way plead the fact of the 1984 Judgment of Conviction as basis for conviction herein under the first and second Articles of Impeachment.

Because Judge Claiborne has raised substantial issues regarding the enforcement of the Judgment of Conviction, it is clear that no Nevada court would preclude Judge Claiborne from a full and complete hearing, in any forum that will hear him, as to the claims which are presented herein. Accordingly, summary disposition and the offensive use of collateral estoppel with respect to the First, Second, and Third Articles of Impeachment would be improper.

Conclusion

The record clearly shows that Judge Claiborne is a hard-working, no-nonsense, salt-of-the-earth individual. Former adversaries have testified that, as an attorney, and a judge, Harry Claiborne did not take short-cuts or cheap shots. Judge Claiborne's own words before this body reflect what is now at issue:

"When I came away from the courtroom I knew I had been convicted wrongfully. In my heart I knew I had not committed any violation of any laws of the United States. I began to fight to once again restore my reputation and my good name, and I appealed to every court until I ran out of remedies, and I went to prison, a place I figured I would never be.

"I had tried in the District Court every way that I could to get the Court to hear, just hear, what my government, through its agents, had done to me in the process; and the trial judge turned a deaf ear. And nobody heard it.

"I appealed to the Circuit Court of Appeals, complaining that the lower court did not hear me, and the District Court was affirmed. And I appealed by certiorari to the Supreme Court of the United States, and they denied certiorari.

"And I was hopeful that somewhere along the line that somebody would stand up and say, we want to hear what happened to this man. We want to hear. * * *

"I have been stripped of my freedom, I have been stripped of my reputation, I have been stripped of my good name and my honor.

"Now I have three grandchildren, one of which is very close to me. And I have to leave the heritage to my grandchildren, and they have stripped everything that I could leave them from me but courage.

"Maybe, after all, the best heritage that I could leave my grandchildren is the heritage of courage and guts, so at least they can say years from now, at least old grandpa had guts.

"And that is why I am here. I am continuing to fight wherever anybody will hear me. And some day, in all my heart, I will prevail. It may be after I serve my sentence in the penitentiary, and it may be years from now, but some day I will prevail, as developments every day happen in my favor like the woman's affidavit.

"Every day something happens of a tiny significant way that adds to proof that I was wrongfully convicted, and some day we will get it all. And when that day comes I just hope I have a judge that is just as fair to me as I have been to every defendant that has ever been in my court. And then I will prevail."

Judge Claiborne is asking for nothing more than an opportunity to be heard, completely, by a Court of Impeachment made up of fair and just members of the Senate.

A lyrcist of unknown identity offers this final caution to those who urge summary disposition in the name of expediency:

"Let each man learn to know himself; To gain that knowledge let him labor, Improve those failings in himself Which he condemns so in his neighbor.

"How lenient our own faults we view, And conscience's voice adeptly smother. Yet, oh, how harshly we review The self-same failings in another!—Author unknown.

Respectively submitted,

OSCAR B. GOODMAN, Esq.[11]
Hon. HOWARD W. CANNON.
Attorneys for respondent.

[11] Timothy S. Cory, Esq., has contributed in large part to this pleading.

[In the Senate of the United States Sitting As a Court of Impeachment]

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE

Motion to Postpone the Hearing on Articles of Impeachment Until the Resolution of the Supplemental Section 2255 Motion by the District Court or the Ninth Circuit Court of Appeals.

The Respondent, Judge Harry E. Claiborne, through his counsel,* Oscar B. Goodman, Esq., and the Honorable Howard W. Cannon, Esq., respectfully moves the Senate to Postpone the Hearing on the Articles of Impeachment Until the Resolution of the Supplemental Section 2255 Motion by the District Court or the Ninth Circuit Court of Appeals.

This Motion is brought in the interest of developing a full and fair record for the determination of the Senate, to provide to the District Court and to the regularly constituted Ninth Circuit Court of Appeals an opportunity to consider and rule upon crucial issues involving newly discovered evidence and previously suppressed exculpatory evidence.

Respondent fully anticipates that the District Court and/or the regularly constituted Ninth Circuit Court of Appeals will determine that the newly discovered evidence and exculpatory evidence previously suppressed by the prosecution warrants a vacation of the judgment and sentence and/or a new trial.

Respondent respectfully suggests to the Senate that his exoneration in such judicial proceedings will be directly relevant to Articles I, II, III and IV of the Articles of Impeachment exhibited by the Managers.

Respectfully submitted,

Judge HARRY E. CLAIBORNE.
By Oscar B. Goodman, Esq., Honorable Howard W. Cannon, Attorneys for Respondent.

MEMORANDUM IN SUPPORT OF MOTION TO POSTPONE THE HEARING ON ARTICLES OF IMPEACHMENT UNTIL THE RESOLUTION OF THE SUPPLEMENTAL SECTION 2255 MOTION BY THE DISTRICT COURT OR THE NINTH CIRCUIT COURT OF APPEALS

On May 5, 1986, Respondent Judge Harry E. Claiborne filed his motion to Vacate Judgment and Sentence and For Evidentiary Hearing and Discovery herein before the United States District Court for the District of Nevada specifically alleging three separate grounds.

The prosecution filed their response on or about May 17, 1986. The United States District Court has not yet set that motion for hearing.

Simultaneous with the preparation of this Motion, Respondent, Judge Harry E. Claiborne has filed his Amended and Supplementary Motion (1) Vacate Sentence; (2) For Evidentiary Hearing; (3) For Discovery Proceedings; and (4) For New Trial.

The Amended and Supplementary Motion, a true copy of which is appended hereto and incorporated by reference sets forth newly discovered evidence which has become available since May 5, 1986. Much of such newly discovered evidence surfaced for the first time during the course of proceedings before the Senate Impeachment Trial Committee which convened on September 15, 1986 for the taking of testimony and evidence in this matter.

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[10] See *United States* v. *Pink,* 315 U.S. 203 (1942), 62 Sup. Ct. 553, 562; *Braselton* v. *Clearfield State Bank,* 606 Fed. 2d 285, 287 (10th Cir. 1979).

*Michael Vaclav Stuhff, Esq., has contributed in large part to the preparation of this motion.

The Amended and Supplementary Motion is also based upon the Respondent's discovery of previously suppressed exculpatory evidence which was available to the Justice Department, the FBI and the IRS.

Respondent respectfully suggests to the Senate that a full and fair review of such newly discovered and/or previously suppressed exculpatory evidence in proceedings by the United States District Court for the District of Nevada and by the regularly constituted Ninth Circuit Court of Appeals, will result in a determination by such courts that it is reasonably probable that the outcome of Respondent's trial would have been different had such evidence been disclosed to the Respondent and presented at trial.

Respondent, Judge Harry E. Claiborne respectfully suggests to the Senate that such a determination by said Courts will result in the vacation of the judgments of conviction and the sentence therein and will lead to his exoneration in the regularly constituted judicial system.

Respondent, Judge Harry E. Claiborne respectfully suggests to the Senate that such a disposition and exoneration by the regularly constituted judicial system will simplify any further proceedings before the Senate, will minimize any apparent conflicts between the Legislative and the Judicial Branches of government and will best serve the interests of Justice.

Respectfully submitted,

Judge Harry E. Claiborne.

(By Oscar B. Goodman, Esq., Honorable Howard W. Cannon, Attorneys for Respondent.)

[In the United States District Court for the District of Nevada, Case No. CR-R-83-57]

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* HARRY E. CLAIBORNE, DEFENDANT

AMENDED AND SUPPLEMENTARY MOTION

(1) To vacate sentence;
(2) for evidentiary hearing;
(3) For discovery proceedings; and
(4) For new trial

Comes now the defendant, Harry E. Claiborne, through his attorney, Oscar B. Goodman, Esq. under the provisions of 28 USC Section 2255, and Rules 33 and 35 of the Rules of Criminal Procedure, respectfully supplements and amends his pending Motion (1) To Vacate Judgment and Sentence; (2) For Evidentiary Hearing; and (3) For Discovery Proceedings previously filed on or about May 5, 1986, and respectfully moves this Court for an order and judgment that the Judgment of conviction and sentence heretofore imposed upon the defendant shall be vacated and held for naught or, in the alternative, that he be granted a new trial.

In support hereof, Defendant Harry E. Claiborne states unto the Court;

1. Name and location of court which entered the judgment of conviction under attack:

United States District Court for the District of Nevada, at Reno, Nevada.

2. Date of judgment of conviction:

October 3, 1984.

3. Length of sentence:

Two (2) years.

4. Nature of offense involved (all counts):

Count IV—violating 26 USC Section 7206(1) by filing an income tax return for the year 1978 falsely reporting amount of income.

Count IV—violating 26 USC Section 7206(1) by filing an income tax return for the year 1979 falsely reporting amount of income.

5. What was your plea?

Not guilty.

6. Kind of trial:

Jury.

7. Did you testify at the trial?

Yes.

Did you appeal from the judgment of conviction?

Yes.

9. If you did appeal, answer the following:

(a) Name of Court: United States Court of Appeals for the Ninth Circuit.

(b) Result: Conviction affirmed.

(c) Date of result: July 8, 1985.

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes.

11. If your answer to 10 was "yes," give the following information:

(a)(1) Name of court: United States Supreme Court.

(a)(2) Nature of proceeding: Petition for writ of certiorari.

(a)(3) Grounds raised:

A. That Title III judge is not subject to criminal prosecution in advance of impeachment and removal by Congress:

B. That the Defendant should have been allowed to prove allegations that officers of the executive misused their powers to obtain the indictment of Defendant motivated by an intent to drive him from office.

C. That the trial court wrongfully withheld Jencks/Brady material.

(a)(4) Did you receive an evidentiary hearing on your petition, application or motion? No.

(a)(5) Result: Petition for a writ of certiorari was denied.

(a)(6) Date of result: Monday, April 21, 1986.

11. (b)(c)(d)(e) As to any second or subsequent petition, application or motion or appeal from action thereon, give the same information:

No second or subsequent petitions, applications or motions have been filed, except for the filing of certain motions in the United States Court of Appeals for the Ninth Circuit, filed substantially contemporaneously with the original motion herein on or about May 5, 1986.

A. Ex Parte Emergency En Banc Motion for the Designation or Assignment of a judge of the Ninth Circuit of the United States to preside over this Section 2255 motion;

B. Ex Parte Motion for Stay of Execution of Sentence.

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same:

12. (A) Ground One: Conviction obtained in violation of the Due Process Clause of the Fifth Amendment of the United States Constitution by reason of outrageous, illegal and unconscionable conduct of agents of the federal government in the commission of a pre-indictment burglary of Defendant's home and the examination and seizure (by photography) of the contents of Defendant's personal financial diary, which was utilized in obtaining Defendant's conviction.

Supporting Facts (tell your story briefly without citing cases or law):

Note: The following facts are derived from the affidavits appended to the original motion filed herein on or about May 5, 1986. Defendant was not a witness to the burglary.

At a time before the indictment was returned against defendant in approximately 1981, although the exact date will need confirmation by further investigation and discovery proceedings herein (which are hereby requested), Defendant's home at 1908 Plaza De La Cruz, Las Vegas, Nevada, was the subject of a burglary conceived and promoted by Joseph Yablonsky, then the Special Agent in Charge [hereafter SAIC] of the Las Vegas office of the Federal Bureau of Investigation [hereafter FBI].

Participants in the burglary included Stephen Rybar, then a Special Agent of the FBI; Dennis Caputo, Sergeant of the Las Vegas Metropolitan Police Office [hereafter METRO]; Clifford D. Isbell, an informant for Metro working with then Metro Commander Kent Clifford; and James D. Johnson, an associate of Isbell's, recruited by then Commander Clifford to participate in a "sting" operation with Saic Yablonsky.

The object of the burglary was to gain access to any personal financial records in Defendant's home.

FBI Special Agent Rybar searched the home and photographed a personal financial diary located there.

This diary recorded fees received by me for work perfomed in my private law practice after I became a United States District Judge.

Illegal access to this information provided agents of the IRS, the FBI, and the prosecution with sources of evidence with which to establish that my legal fees were underreported on income tax returns submitted by me for the tax years of 1979 and 1980.

Details of the burglary are contained in the affidavits appended to the original motion of: James D. [Daniel] Johnson and Lake Headley, an investigator, who describes the relationship of Clifford D. Isbell to then Metro Commander Kent Clifford, and statements made by Isbell regarding his participation in the burglary.

Further support for Ground One is contained in the affidavits of former Metro homicide detective and polygraph examiner, Charles Lawrence Lee and his attorney, Michael Vaclav Stuhff; the tax preparer, Jerry D. Watson; and his former assistant, Charlotte Travaglia; and private investigator Eddie LaRue, illustrating the evil animus which impelled Saic Yablonsky to direct the burglary of Defendant's home and to perform further outrageous and unconscionable acts, harmful to many other people, in his quest to achieve Defendant's conviction.

Finally, Ground One is supported by an attached copy of a grand jury subpoena served on Defendant on July 7, 1983, by Leo B. Halper, an agent of the Internal Revenue Service, seeking production of the very document which then FBI agent Stephen Rybar had photographed: "12. Personal dairies kept by you at any time between September 1, 1978 and the date of this subpoena [July 7, 1983]." (Emphasis supplied).

12. (B) Ground Two: Conviction obtained on indictment based on grand jury testimony which the prosecutor and investigating agents knew was material and was incorrect,

and which the prosecutor and investigating agents refused to correct before the grand jury.

The indictment of Defendant with respect to Count VI, with spillover prejudicial effect as to Count V, was the result of the testimony of Mr. Watson before the Reno Grand Jury that Defendant had not disclosed his receipts of money in 1979 for legal services performed by Defendant before he became a federal district judge. Only the prosecutors and their agents knew that Jerry D. Watson, who is not a qualified accountant, was under the mistaken impression that "collection of accounts receivable" was not "legal fees."

The affidavits of Mr. Jerry D. Watson and Mrs. Charlotte Travaglia and the FBI 302 memorializing FBI agent Richard Jessinger's interview dated June 17, 1983 of Charlotte Travaglia (c.f. Hearings before the Senate Impeachment Trial Committee, hereinafter "Hearings", Part 3, pp. 2047-8) show that the federal prosecutor and federal investigative agents provided the indicting grand jury a false impression that Defendant had not reported all Defendant's 1979 legal fees to the tax preparer, when the prosecution knew, from the FBI 302 and follow-up interview of Charlotte Travaglia, in FBI offices, that the "yellow page" whereon such information was itemized, was authentic, and contained handwritten notations Mrs. Travaglia personally made before the preparation of the return for the tax year 1979.

Despite (or more likely because of) this knowledge, when Mr. Watson [through his attorney, Lawrence Semenza, a former United States Attorney for the District of Nevada] sought to return to the grand jury to correct his former testimony, (1) Prosecutor Shaw unreasonably demanded that Mr. Watson examine his earlier grand jury testimony in an extremely narrow time frame which Mr. Semenza thought could not possibly be done; (2) A federal agent present addressed Prosecutor Shaw in Mr. Watsons presence by directing Mr. Shaw to inform Mr. Watson that Mr. Watson was a present target of the grand jury investigation; and (3) Prosecutor Shaw then refused any access by Mr. Watson to transcripts of his former testimony.

The affidavit of Mr. Watson also serves to demonstrate the intimidating and psychologically brutal tactics employed by investigating agents in this case.

12. (C) Ground Three: The sentence was imposed illegally and in an illegal manner because, by its terms, execution of the sentence will require the Defendant, a life-tenured judge under Article III of the United States Constitution to reside elsewhere than the Federal District for which he is the judge, in violation of 28 USC Section 1334(b), which requires a judge to reside in the district for which he is appointed. Further, execution of the sentence will functionally removed defendant from his judicial office—a power reserved to Congress under its constitutional impeachment authority.

12. (D) Ground Four: The testimony of Charlotte Travaglia before the Senate Impeachment Trial Committee of the United States Senate on September 18, 1986 set forth that prior to trial on this matter, Charlotte Travaglia, mistakenly under the impression that a "subpoenaed witness for the Justice Department" which she considered herself to be, "should not talk" with the defense attorney, refused to talk fully and freely to defense counsel about her role in the preparation of Judge Harry E. Claiborne's 1980 tax return. (Hearings, Part 1, pp. 789)

The prosecutors, with full knowledge of the exculpatory nature of Mrs. Travaglia's prospective testimony, intentionally misrepresented to the defense and to at least one other witness, Jerry Watson, that Charlotte Travaglia's testimony, if elicited, would be damaging to the defendant and the prosecution intentionally, willfully and wrongfully suppressed and withheld from Judge Claiborne the exculpatory statement of Charlotte Travaglia to FBI agent Richard Jessinger, memorialized in an official FBI report, form 302 dated June 17, 1983 and transcribed on June 23, 1983. (Hearings, Part 3, pp. 2047-8)

The statement of Charlotte Travaglia to FBI agent, Richard Jessinger, assigned to procure the indictment and conviction of Judge Harry E. Claiborne, established that Judge Harry E. Claiborne made a full disclosure to his accountant of $88,500 in fees received during 1980 for legal work accomplished prior to Judge Claiborne's elevation to the bench in 1978. The issue of whether Judge Claiborne had made such a disclosure to his accountant was a critically contested issue at the trial of this matter before this Court in August of 1984.

The agents of the prosecution wrongfully withheld such information from the defense and intentionally misrepresented to the defendant's attorneys, and a witness, the tenor of Mrs. Travaglia's prospective testimony. Mrs. Travaglia, prior to trial, out of misapprehension and fear, failed and refused to disclose her prospective testimony to the defendant's attorneys. Her testimony, confirming her use and examination of the critical "yellow sheet", trial exhibit No. 41, was clearly material. It is reasonable that the disclosure of Mrs. Travaglia's statement to the defense would have led to the use of her testimony at trial and the result of the trial would have been different.

In the absence of the testimony of Charlotte Travaglia, procured through a combination of the prosecution's unconscionable suppression of her exculpatory statement, wrongful misrepresentation by prosecution agents of what her testimony would be, if offered and her misapprehension and fear of discussing the details of her prospective testimony with agents of Judge Claiborne, Judge Claiborne was unable to present crucial testimony corroborating the authenticity of the critical "yellow sheet." The "yellow sheet," trial exhibit No. 41, was wrongfully, maliciously and successfully portrayed as a recent fabrication by unscrupulous government prosecutors who knew and suppressed the truth.

IRS Agent Donald Skelton, who was irregularly designated as a grand jury agent, irregularly detailed to the Justice Department's Public Integrity Section team which targeted Judge Claiborne and who was given an unusual cash bonus of approximately $4,500.00 for his unusual and extraordinary and unethical efforts leading to the indictment of Judge Claiborne, wrongfully told another witness, Jerry Watson, "We have talked to Mrs. Travaglia and you are going to be very surprised at what she has testified to." Such statement was intended to convey and did convey the false and erroneous implication that Mrs. Travaglia had been induced to make statements incriminating Judge Claiborne. (Hearings, Vol. 3, pp. 1985)

12. (E) Ground Five: Kenneth Swanson, was interviewed by an agent of the FBI and an agent of the IRS prior to trial in this matter. (Hearings, Part 1, pp. 671, 673-674)

Kenneth Swanson, a disinterested and unbiased witness made exculpatory statements to such officers which established that the secretary to Judge Claiborne had indeed personally delivered critical documents to the offices of witness Joseph Wright. At trial in this matter, both the prosecution and this Court openly questioned and attacked the credibility of witness Judy Ahlstrom on this critical issue. Swanson also established that Joseph Wright perjured himself at trial when he denied using presigned blank tax returns. (Hearings, part 1, pp. 667)

The agents of the prosecution either wrongfully failed to memorialize this exculpatory evidence in written form in a 302 or memorandum of interview or wrongfully withheld such memorialization from this Court when presenting such materials for in camera review.

In either event, Judge Claiborne was wrongfully deprived of critical material evidence on a contested issue, the proper determination of which reasonably would have affected the verdict. The supperssion of this exculpatory interview by the prosecutor's agents undermines confidence in the outcome of the trial.

12. (F) Ground Six: The premises of accountant Joseph Wright were the subject of unusual multiple burglaries between April 11, 1980; (the date that the letter was delivered to Joseph Wright by Judy Ahlstrom) and November of 1983. (Hearings, Part 1, pp. 665-666; and Part 1, pp. 651-657)

During the course of the burglaries, in which a safe was chiseled open and a fireproof file cabinet forced open, the burglar or burglars rummaged through both locked and unlocked files, moving files from place to place, shuffling files together and, on at least one occasion, on December 24, 1980, strewed files around the floor.

During the trial of this matter, both Joseph Wright and his wife and secretary, Constance Wright, claimed that the files in their office were maintained with great care and integrity. Both of the Wrights, and the prosecution, wrongfully conveyed to the jury the false impression that the absence of the original April 11, 1980 letter from the file of Judge Claiborne could only mean that the letter had never been delivered by Judy Ahlstrom. That false and erroneous conclusion supported the prosecutor's successful argument that the April 11, 1980 letter could only be a recent fabrication.

Notwithstanding whether or not that agents of the federal government, local law enforcement agents and other cooperating with such federal agents were involved in any or all of the unusual burglaries which plagued the Wrights, the chain of custody and the presumption of the integrity of business records maintained in the normal course was destroyed.

The failure of the Wrights during direct or cross-examination to acknowledge such tampering with the files constitutes deliberate perjury on their part.

The failure of the Wrights to disclose such burglaries during the course of their testimony through the investigative processes, and two jury trials, and impeachment proceedings before a Senate Impeachment Trial Committee, prior to Joseph Wright being confronted about the previously undisclosed burglaries (during which times the Wrights repeatedly denied even the possibility that any document could have been misplaced, destroyed or removed in any fashion), seriously undermines any confidence in the propriety or integrity of the 40-50 hours of coaching of the witness by the prosecutorial team, especially since Wright, now admits to a conversation (memorialized in a previously suppressed 302 of January 4, 1983) in which he explained that certain documents were most likely "misplaced or inadvertently destroyed." (Hearings, Part 1, pp. 845-7; and Part 4, pp. 2250)

The FBI 302 memorializing said exculpatory statement was wrongfully withheld from the defense. That memorandum, like other documents sealed by the Trial Court, was not examined by the Special Panel specifically appointed to decide the appeal in this case. It was forwarded to the Senate Impeachment Trial Committee under seal, examined by the staff of that Committee, and disclosed to Judge Claiborne by order of that Committee.

The newly discovered burglaries in which files were examined, shuffled together and/or strewn on the floor, taken together with the previously withheld statements of Mr. Wright that documents "most likely had been misplaced or inadvertently destroyed", is material and undermines confidence in the outcome of the trial.

Judge Claiborne, at trial and in the Senate impeachment proceeding was required to persuade the tier of fact that a critical document had in fact been delivered. Judge Claiborne was unable to effectively account for the absence of that document from Joseph Wright's file. Judge Claiborne has maintained that Joseph Wright's perjured testimony and memory were "shaped" by the coaching of government agents over a period of at least 40-50 hours.

Once confronted with his previous statement to FBI Agent Bitterman, and confronted about the previously undisclosed burglaries, the prosecution's crucial witness, Joseph Wright, admitted to Senator Howell Heflin that he now "does not know" whether or not he received the letter of April 11, 1980. (Hearings, Part 1, pp. 847) If such an admission from this critical witness, together with the circumstances of the undisclosed exploratory burglaries, and the coaching of the witness, had been presented to the trial court, it is reasonably probable that the outcome of the trial would have been different.

12. (G) Ground Seven: During the course of the impeachment proceedings before the Senate Trial Impeachment Committee another former employee of Joseph Wright came forward with new information which, if it had been presented at trial, would probably have affected the outcome of the trial.

Ellen Arthur, who observed the Senate Impeachment Proceedings on cable T.V., discovered that there had been a factual dispute about the delivery of the April 11, 1980 letter at the trial in this matter. [In the Impeachment Proceedings, the House of Representative Managers, did not contest the credibility of Judy Ahlstrom and Judy Ahlstrom was deemed to be a truthful witness.] (Hearings, Part 1, pp. 1144-1146)

In the trial of this matter, the credibility and veracity of Judy Ahlstrom was very much placed in issue.

Unfortunately, her truthful testimony was not corroborated at trial by other witnesses such as Ellen Arthur or Kenneth Swanson. As a result, at the trials in this matter, Ms. Ahlstrom was subjected by the prosecution and on Trial Court to unnecessary humiliation and even sequestration from the defense attorney and was improperly impeached.

Ms. Ellen Arthur's affidavit (Hearings, Part 4, pp. 2077-2082; Part 1, pp. 1141-1143) and prospective testimony would have effected the outcome of the trial. The availability of this corroboration was one of the factors which influenced the Managers of the House and accept the credibility of Judy Ahlstrom.

Ellen Arthur recalls being asked to await an important delivery from Judge Claiborne's secretary to the Wright office. She recalls the delivery. She also recalls that the papers for Judge Claiborne's return were misplaced and that Constance Wright asked for help in locating them. Ellen Arthur recalled that both of the Wrights, shortly after the delivery of the April 11, 1980 letter, came into her office and searched all of her files for that letter because it had been misplaced.

Ellen Arthur's affidavit is clearly crucial new evidence which establishes perjury by the government's crucial witnesses, Joseph and Constance Wright, and which would have changed the outcome if available at the trial in this matter.

12. (H) Ground Eight: Harry E. Claiborne was the subject of an airport surveillance watch during the period that he was targeted by the FBI and its cooperating Las Vegas Metropolitan Police (Metro) Intelligence detectives.

Metro officers assigned to the McCarran Airport Substation were instructed to report departures of Judge Claiborne as well as the destination city and the carrier.

In addition, Metro Intelligence Commander Kent Clifford ordered the installation of closed circuit camera equipment to monitor departure gates "A" and "B", the only main terminal commercial gates at the time.

Information regarding the departures of Judge Claiborne and his destination city allowed the FBI and its cooperating Metro agents and informants to choose an appropriate time to accomplish a surreptitious entry on Judge Claiborne's residence with a minimum chance of discovery and exposure.

The FBI and Metro agents would then have the benefit of information gained from such "fishing" expeditions and would be able to shield their wrongdoing if necessary by falsely claiming that the information or documents were obtained by confidential informants who had occasion to be present in Judge Claiborne's home.

12. (I) Ground Nine: Andrew Gramby Hanley, a Federally protected witness, last known to be located in the Federal Correctional Center at Sandstone, Minnesota, has given information and testimony in numerous cases leading to arrests and convictions. During the Impeachment hearings, Mr. Hanley volunteered that he had been approached by the FBI in approximately 1979 or 1980 to supply to them the floor plan of Judge Claiborne's then current residence at 500 Rancho Road in Las Vegas. The existence of such an inquiry by the FBI is relevant to this trial pursuant to Rule 404(b) establishing motive, opportunity, intent, preparation, plan, knowledge, identity (by modus operandi) or the surreptitious entry of Judge Claiborne's home by and at the direction of the FBI.

12. (J) Ground Ten: Movant, the Honorable Harry E. Claiborne is entitled to a new trial for the reason that he received ineffective assistance of counsel in violation of his rights under the Sixth Amendment. Trial Counsel retained for the tax aspects of this case was Richard Johnston of Oakland, California.

The counsel Richard Johnston, over the strenuous objection of Defendant Judge Harry E. Claiborne, refused to examine Jerry Watson in regard to Watson's claims to the Judge that two IRS employees had verified Watson's treatment of the Schedule D for the Tax year 1980.

Lack of preparation by tax counsel. The refusal of tax counsel to examine Watson as requested and demanded by Judge Harry E. Claiborne denied Judge Claiborne an adequate defense on the only counts for which any jury returned a verdict of guilty.

13. If any of the grounds listed in 12A, B, C, D, E, F, G, H, and I were not previously presented, state briefly what grounds were not so presented and give your reasons for not presenting them:

Ground One was not presented because of the following circumstances:

Information relating to the burglary became available to Defendant only after his conviction; the facts pertaining to the burglary are still coming to light. Discovery proceedings and a full evidentiary hearing are necessary and hereby requested in order to fully reveal the facts of the burglary.

The treatment of Messrs. Charles Lawrence Lee and Eddie LaRue was relied upon in pretrial proceedings seeking dismissal of the indictment for government misconduct, as to which Defendant was denied an evidentiary hearing. However, further details of those matters have only become fully available to Defendant since the United States Supreme Court denied Defendant's application for a writ of certiorari and the prosecution phase of this case was closed. For example, Charles Lawrence Lee has only recently through the FOIA/PA obtained access to portions of the 1239 pages compiled on him by unscrupulous FBI agents, including Yablonsky and unethical prosecutor Geoffrey Anderson. These matters are significant in demonstrating that the Saic Yablonsky accepted no limits to his exercise of power—not even the limits of the United States Constitution.

Ground Two was not presented at trial or on appeal because Charlotte Travaglia, was under the mistaken belief that she should not talk to the Defendant's attorney if she was a subpoenaed witness for the Justice Department. Mrs. Travaglia was fearful and reluctant to volunteer information to the defense for that reason. Mrs. Travaglia was unaware of the significance of her knowledge or prospective testimony. Her fear and misapprehension was exacerbated by her poor health.

The Defendant had no knowledge of the exculpatory FBI 302 which was wrongfully withheld from the defense. In the absence of any disclosure of such Brady material, Defendant relied on the false and misleading statements of prosecution agents that Mrs. Travaglia had been induced to provide incriminating testimony in regard to this Defendant.

Ground Three was not presented on direct appeal because during the pendency of that appeal, and the pendency of Defendant's petition to the United States Supreme Court for a writ of certiorari, the sentence was not final. A post-appeal issue is appropriate under 28 USC Section 2255 and also Rule 35(a), Federal Rules of Criminal Procedure.

Grounds Four through Ten: The information set forth in Grounds Four through Nine is information which was only revealed to Defendant, the Honorable Harry E. Claiborne, during the course of the Impeachment proceedings commencing on September 15, 1986 before the Senate Impeachment Trial Committee. This Court is requested to take judicial notice of the testimony and affidavits presented at such hearing, particularly the testimony and/or affidavits of Charlotte Travaglia, Kenneth Swanson, Richard Jessinger, Donald Skelton, Joseph Wright, Judy Ahlstrom, Ellen Arthur and the representations of counsel, Oscar B. Goodman, in regard to mid-hearing disclosures of airport surveillance of Judge Harry E. Claiborne by Metro and the FBI and in regard to the prospective testimony of Andrew Gramby Hanley.

14. Do you have any petition or appeal now pending in any court as to the Judgment under attack?

Defendant has filed in the United States Court of Appeals for the Ninth Circuit (1) Emergency en banc motion for designation of Ninth Circuit Judge; and (2) Emergency petition for stay of execution.

Petitioner has also filed in the United States Court of Appeals for the Ninth Circuit the following: (3) Original En Banc Petition for Mandamus, prohibition and quo warranto seeking the reinstatement of Defendant's appeal from his conviction and the decision of his appeal by a panel of nonrecused judges randomly assigned from the Ninth Circuit; (4) Original En Banc Petition for Writ of Mandamus, prohibition and quo warranto for an order disqualifying the Honoral Walter E. Hoffman, Senior United States District Judge for the Eastern District of Virginia from conducting further proceedings in any matter pertaining to this District Court case. Such motions have been addressed at 790 F.2d 1355.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: No preliminary hearing was conducted.

(b) At arraignment and plea: Oscar B. Goodman, Esquire, 520 South Fourth Street, Las Vegas, Nevada 89101

(c) At trial: Oscar B. Goodman, Esquire, 520 South Fourth Street, Las Vegas, Nevada 89101; William J. Raggio, Esquire, 1 E. First Street, #1204, Reno, Nevada 89501;

J. Richard Johnston, Esquire, 1221 Broadway, Twentieth Floor, Oakland, California 94612.

(d) At sentencing: Oscar B. Goodman, Esquire, 520 South Fourth Street, Las Vegas, Nevada 89101.

(e) On appeal: Oscar B. Goodman, Esquire, 520 South Fourth Street, Las Vegas, Nevada 89101; Annette R. Quintana, Esquire, 520 South Fourth Street, Las Vegas, Nevada 89101.

(f) In any post-conviction proceeding: Terence J. Anderson, Esquire, c/o University Coral Gables, Florida 33124; Robert S. Catz, Esquire, Cleveland Marshal College of Law, Cleveland, Ohio; Of Counsel: Oscar B. Goodman, Esquire, 520 South Fourth Street, Las Vegas, Nevada 89101.

(g) On appeal from any adverse ruling in a post-conviction proceeding: None.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes. I was sentenced on the two counts described in paragraph 4 above. The sentence on Count V was a $5,000.00 fine and a term of two (2) years imprisonment; the sentence of imprisonment on Count VI was for two (2) years, to run concurrently with the same sentence on Count V. An additional, cumulative fine of $5,000.00 was imposed on Count VI.

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

No.

Wherefore, Movant-Defendant prays that the Court grant him an evidentiary hearing to establish the truth of the allegations herein contained, together with pre-hearing discovery proceedings, and that the judgment of conviction of Defendant be ordered vacated and held for naught because it is the product of outrageous and unconscionable behavior by federal prosecutors and agents of the FBI and the Internal Revenue Service. In the alternative Movant, the Honorable Harry E. Claiborne moves that this Court order a new trial for newly discovered evidence and because of the wrongful suppression of material exculpatory evidence by the government.

Respectfully submitted,

OSCAR B. GOODMAN, *Esquire.*

CERTIFICATE OF DEFENDANT-MOVANT

I hereby certify, under penalty of perjury, that the information contained in the foregoing motion is true and correct, except those matters contained in the affidavits appended hereto, and as to the content of those affidavits, I sincerely believe them to be true.

Dated this 1 day of October, 1986, at Las Vegas, Nevada.

OSCAR B. GOODMAN, *Esquire.*

[Affidavit]

STATE OF NEVADA, COUNTY OF CLARK, SS

I, Joseph McDonnell, having first been duly sworn, deposes and states that:

1. He retired from the Las Vegas Metropolitan Police Department on July 16, 1983, after twenty-eight (28) years' service for Metro and its predecessor agency.

2. For approximately four years preceding his retirement, he was assigned to the McCarran International Airport detail. McCarran is the commercial airport serving Clark County and Las Vegas, Nevada.

3. There were approximately twenty-six (26) commissioned officers assigned to the airport detail. Generally on any day or swing shift approximately six officers would be assigned. On any graveyard shift, approximately three officers would be assigned.

4. One of the functions of the airport detail was to monitor individuals at the request of other agencies such as the F.B.I. and out of town police agencies, and Metro Intelligence.

5. At approximately the time that there were public disclosures of the fact that a grand jury was meeting in Portland, Oregon, this affiant was requested by his immediate supervisor, Lt. Koch, to report on departures of Judge Harry E. Claiborne.

6. To the best of the affiant's recollection, Lt. Koch mentioned that Metro Sgt. Dennis Caputo was the originator of the request for surveillance. The airport detail under no circumstances "self-initiated" the surveillance of any individuals such as Judge Harry E. Claiborne.

7. On one occasion a fellow officer observed Judge Claiborne departing from McCarran. Pursuant to the previous request, I attempted to contact the F.B.I. Since it was after hours, I spoke with a duty clerk. When I did not hear back from an F.B.I. agent with approximately thirty (30) minutes. I then attempted to contact Metro Intelligence pursuant to prior instruction.

8. I was unable to contact Metro Intelligence directly because of the hour or the weekend. I then contacted Metro dispatch.

9. Sometime later two Metro Intelligence officers came to the airport in response to my report. I referred them to the fellow officer who observed Judge Harry E. Claiborne and thought nothing more of it at the time.

10. I subsequently had a brief conversation with F.B.I. Agent David Gillum, who was detailed to the airport on the cat walk outside the Metro substation at the airport in regard to my attempted report. Special Agent Gillum raised his hands in a defensive manner and said, "I'm not involved in that".

11. I am bringing this information forward now because if we were involved unknowingly in something that was wrong, I want it to be righted.

Further, affiant sayeth naught.

JOSEPH MCDONNELL.

(Subscribed and sworn to before me this 1st day of October, 1986.)

[Affidavit]

STATE OF NEVADA,
County of Clark, ss:

I, Terri Lee Headley, having been first duly sworn, deposes and says that:

1. I am married to Private Investigator Lake W. Headley and been so married to my husband for approximately five years.

2. I reside with my husband at 4412 Hayes Place, Las Vegas, Nevada.

3. I have worked with my husband as a private investigator in Arizona and California, as well as Las Vegas, Nevada, doing research as necessary.

4. I have been licensed as a private investigator in Arizona and California as an employee of Lake Headley Investigations.

5. It is and has been the practice of my husband and myself to make and receive business telephone calls at our home.

6. Prior to leaving for Washington, D.C., to be present at the Senate hearings on the impeachment of Judge Harry E. Claiborne, my husband had advised me that he had made arrangements for a federally protected witness, one Andrew Gamby Hanley, to call from his unknown location to our home, collect, to discuss with my husband Hanley's role as a federal informant in the Claiborne case. My husband further advised me that Hanley had been cooperating with the F.B.I. and other law enforcement agencies for a long period of time and was considered a valued F.B.I informant. My husband also instructed me to accept any collect calls from Hanley and to relate to Hanley my husband's being in Washington, D.C., and to provide Hanley with my husband's telephone number and request that Hanley call my husband in Washington, D.C.

7. During the week of September 15, 1986, while my husband was in Washington, D.C., attending the impeachment hearings of Federal Judge Harry E. Claiborne, I received two collect long distance telephone calls from a subject who identified himself as Andrew Gramby Hanley.

8. Mr. Hanley stated that he was trying to reach my husband to relay information that he believed relevant to Judge Claiborne's case.

9. Mr. Hanley stated that this information concerned F.B.I. requests of Mr. Hanley to provide the F.B.I. with floor plans or sketches of the interior of Judge Harry E. Claiborne's home.

10. Mr. Hanley further advised me that while he was incarcerated at the present time he could receive messages through his daughter, Velicity Hanley, whose telephone number in Las Vegas is (702) 384-3062.

11. During both of my rather lengthy conversations with Andrew Gramby Hanley, he expressed his willingness to testify to the above F.B.I. requests for him to provide the information regarding the interior floor plans of Judge Claiborne's home.

Further, affiant sayeth naught.

TERRI LEE HEADLEY.

(Subscribed and sworn to before me this 1st day of October, 1986)

[In the Senate of the United States, Sitting as a Court of Impeachment]

IMPEACHMENT OF JUDGE HARRY E. CLAIBORNE

Application for Issuance of Subpoenas for Full and Fair Impeachment Trial Before Full Senate

The Respondent, Harry E. Claiborne, by and through his counsel, Oscar B. Goodman, Esq. and the Honorable Howard W. Cannon, hereby makes application, pursuant to Rule XXV, Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, for the issuance of subpoenas, and in support thereof offers a brief synopsis regarding the area of testimony and the subject matter of testimony in order to assure Respondent a full and fair trial:

I. THE VENDETTA BY THE EXECUTIVE AGAINST JUDGE CLAIBORNE

1. JOSEPH YABLONSKY—Address unknown. Special Agent in Charge of the F.B.I. who boasted that he would have Harry Claiborne's picture on his wall with other persons "stung" by him over the years. Professed hatred for Nevada, Nevada politicians, the Mormon Church, and intended to plant the "American flag in the Nevada desert".

2. DAN CAMILLO—c/o F.B.I., 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101. Special Agent of F.B.I. assigned to work out "deal" to get Joe Conforte to "deliver Harry Claiborne's head on a silver platter"; Reported directly to Yablonsky.

3. ARCHIE BANBURY—c/o I.R.S., 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101. Chief, Criminal Investigation Division, I.R.S. (Las Vegas); approved unconscionable tax settlement with Conforte at the behest of Yablonsky; Circumvented and countermanded District Director on Gerald Swanson.

4. STEVEN SHAW—United States Attorney's Office, Southern District of Texas. Public Integrity Attorney, who acted as investigator and prosecutor; Visited fugitive Conforte in Rio de Janeiro; Shaped witnesses testimony by threats and intimidation through 4 grand juries and 2 trials.

5. PETER PERRY—P.O. Box 21510, Reno, Nevada 89515. Conforte attorney; himself charged with rape in Washington, D.C.; charges dropped when he negotiated for Conforte; Set-up his own client in order to entrap District Director Swanson, but failed to so do.

6. JOSEPH CONFORTE—c/o. Mustang Ranch, Storey County, Nevada. Panderer and procurer; Had negotiated an historically unconscionable "deal" with Yablonsky and Shaw to falsely testify against Judge Claiborne; Had sentence illegally reduced; Had reduction of taxes from $21.5 million to $3.5 million; Had habitual criminal charge dismissed; Permitted to return from fugitive status without penalty.

7. BRUCE LYONS—600 N.E. 3rd Avenue, Ft. Lauderdale, Florida 33304. Attorney and President of National Association of Criminal Defense Lawyers; While in Yablonsky's presence for first time and within 5 minutes of first meeting him, is told by Yablonsky "I hate Claiborne and I'm going to get him".

8. Mills Lane, III—Washoe County Courthouse, Reno, Nevada. District Attorney of Washoe County (Reno, Nevada) who was deceived by federal executive authorities in their efforts to "cut a deal" with Conforte who faced charges with a possible penalty of a life sentence.

9. Geoffrey Anderson—U.S. Department of Justice, San Francisco, California. Department of Justice, Strike Force Chief, in Nevada. Described by Reno Federal Judge as being "schizophrenic", avowed enemy of Nevada Judiciary; it was in his office where government witnesses were debriefed in the presence of caricatures depicting Federal Judge Foley as a clown, and Judge Claiborne as the "Ayatollah".

10. James Perry—c/o F.B.I., Washington, D.C. F.B.I. Agent in Las Vegas; right hand man to Yablonsky; coordinator of Claiborne investigation.

II. "STINGS" TO ENSNARE JUDGE CLAIBORNE

1. Eddie LaRue—1105 South Eighth Street, Las Vegas, Nevada 89101. Private investigator indicted for illegal wiretapping before being acquitted after being prosecuted by Public Integrity lawyers, was told he would get 25 years in prison if convicted, but could have charge dismissed if he testified against Judge Claiborne.

2. Andrew Reich—U.S. Department of Justice, Washington, D.C. Public Integrity lawyer who prosecuted LaRue case, even though prosecution was outside the scope of Section's responsibilities; threatened LaRue, supra.

3. Gerald Swanson—c/o Internal Revenue Service, Dallas, Texas. Nevada District Director of I.R.S.; would not approve Yablonsky request to reduce Conforte taxes; targeted for "Yablonsky-type" "sting"; the "sting" fails, but he is demoted to field office and transferred from his home in Nevada to Texas.

4. Chuck Lee—Clark County District Attorney's Office, 200 E. Carson, Las Vegas, Nevada 89101. Former Las Vegas Metropolitan Police Department Officer who administered polygraph test at Judge Claiborne's request; when F.B.I. discovered that test results indicated Judge Claiborne was truthful, pressure was placed on Lee, he was targeted by F.B.I., and subsequently demoted.

5. Richard Wright—302 E. Carson, Suite 620, Las Vegas, Nevada 89101. An attorney in Las Vegas who represented Floyd Lamb, Nevada State Senator; Wright was advised that if Lamb would provide information against Judge Claiborne and other Nevada politicians, criminal charges then pending against Lamb would be dismissed; Wright advised authorities Lamb could not provide such information.

6. Paul Ashe—P.O. Box 1986, Ocala, Florida 32678. Attorney from Florida under Nevada indictment; former secretary was Joe Yablonsky's ex-wife; Ashe was told by Yablonsky that Ashe should attempt to bribe Judge Claiborne who was presiding over Ashe's case, either directly to Judge Claiborne or through Ashe's attorney, Oscar B. Goodman; Ashe refused.

7. Ron Veatch—Address Unknown. A convicted felon who was contacted while in custody and promised relief if he would participate in a bribe of Judge Claiborne as it related to certain motions filed in the Nevada Courts; Veatch declined.

8. Walter Rozanski—10416 Connechusett, Tampa, Florida 33617. A probationer in Las Vegas, whose probation officer was contacted by the F.B.I.; after the contact the probation officer threatened Rozanski with probation revocation if Rozanski refused to testify that Judge Claiborne acted as an intermediary where monies were allegedly passed to assure Rozanski's receiving probation; Rozanski refused, stating that such was not the case.

II. ILLEGAL BREAK-IN TO JUDGE CLAIBORNE'S HOME

1. Andy Gramby Hanley—c/o F.C.I. Sandstone, Sandstone, Minnesota 55072. A federally protected witness; Hanley was contacted in 1980 or 1981 by F.B.I. Agent John Bailey and asked to provide a floor plan to Judge Claiborne's home.

2. Joseph McDonnell—4724 Casitas Way, Las Vegas, Nevada. A former Las Vegas Metropolitan Police Department Officer, assigned to the Intelligence Detail at Las Vegas McCarran Airport, who was instructed to advise his superiors and the F.B.I. any time Harry Claiborne departed from Las Vegas, providing the time, airline and destination of the departure.

3. Lake Headley—300 South Fourth Street, Suite 600, Las Vegas, Nevada 89101. A private investigator who assembled information concerning the break-in of Judge Claiborne's home, wherein evidence consisting of a personal financial diary was copied, and which provided the basis for the tax prosecution of Judge Claiborne; Headley interviewed Cliff Isbell, one of the alleged perpetrators of the burglary.

4. Cliff Isbell—c/o Lake Headley, 300 South Fourth Street, Suite 600, Las Vegas, Nevada 89101. A longtime petty criminal, who acted as an informant for the Intelligence Division of the Las Vegas Metropolitan Police Department; admitted to the burglary of the Judge's home.

5. James Johnson—c/o Lake Headley, 300 South Fourth Street, Suite 600, Las Vegas, Nevada 89101. A convicted felon who has provided an affidavit under oath that he participated in the break-in of Judge Claiborne's home with representatives of the F.B.I., Las Vegas Metropolitan Police Department and Cliff Isbell.

6. Dennis Caputo—c/o Las Vegas Metropolitan Police Department, 430 E. Stewart Avenue, Las Vegas, Nevada 89101. A Las Vegas Metropolitan Police Department Officer who allegedly participated in the break-in of the Claiborne residence; allegedly he received a large monetary reward for this activity.

7. Steven Rybar, 11165 Forestview Lane, San Diego, California 92131. A former F.B.I. Agent, identified by burglar James Johnson, as being a participant in the Claiborne burglary.

III. EXECUTIVE OVER-REACHING AND TAMPERING WITH WITNESSES

1. Richard Jessinger—c/o F.B.I., Foley Federal Building, 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101. Las Vegas F.B.I. Agent responsible at a field level for Claiborne investigation; he failed to follow internal regulations concerning the preparation of F.B.I. Form 302 memoranda.

2. Donald Skelton—c/o I.R.S., Foley Federal Building, 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101. An I.R.S. Agent who donned the role of an "agent of the Grand Jury", was detailed to the Public Integrity Section, and spent over 50 hours shaping the testimony of the key prosecution witness on the preparation of the 1979 tax return, Joseph Wright; established a fraternal relationship with Wright and took advantage of Wright's inability to have a "present recollection" about any of the

facts; was awarded $4,500 for his participation in the Claiborne investigation; violated every I.R.S. regulation concerning the preparation of memoranda memorializing witness interviews.

3. Leo Halper—c/o I.R.S., Foley Federal Building, 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101. I.R.S. Agent who threatened key witness on the preparation of the 1980 tax return, Jerry Watson, after Watson was advised that he was a "target" of the Grand Jury; attempted to chill Watson's relationship with Watson's attorney; used foul and abusive language during the time the threats to Watson were made.

4. William Hendricks—c/o Public Integrity Section, U.S. Department of Justice, Washington, D.C. Public Integrity attorney involved in Judge Claiborne's prosecution; awarded the John Marshall Award as Prosecutor of the Year for his participation in the Claiborne case; furnished no exculpatory information to the defense notwithstanding his knowledge of the same.

IV. JUDICIAL FEAR OR INDIFFERENCE

1. Honorable Walter Hoffman—c/o U.S. District Court, Norfolk, Virginia. Judge from Norfolk, Virginia, specially solicited to preside over Grand Jury and trial matters concerning Judge Claiborne; failed or refused to examine exculpatory materials, thus depriving Judge Claiborne of his opportunity to a full defense.

2. Honorable John L. Smith—c/o United States Courthouse, Washington, D.C. Federal judge in the District of Columbia who participated in an illegal reduction of Conforte's sentence at the behest of the Justice Department.

3. Honorable Wilbur F. Pell—c/o Seventh Circuit Court of Appeals. Senior Judge of the Seventh Circuit Court of Appeals, specially designated to preside over Judge Claiborne's direct appeal, in contravention of established rules in the Ninth Circuit Court of Appeals; refused and/or failed to review sealed pleadings which contained exculpatory material so vital to Judge Claiborne's defense.

4. Honorable J. Edward Lumbard—c/o Second Circuit Court of Appeals. Senior Judge of the Second Circuit Court of Appeals, specially designated to preside over Judge Claiborne's direct appeal, in contravention of established rules in the Ninth Circuit Court of Appeals; refused and/or failed to review sealed pleadings which contained exculpatory material so vital to Judge Claiborne's defense.

5. Honorable Robert H. McWilliams—c/o Tenth Circuit Court of Appeals. Senior Judge of the Tenth Circuit Court of Appeals, specially designated to preside over Judge Claiborne's direct appeal, in contravention of established rules in the Ninth Circuit Court of Appeals; refused and/or failed to review sealed pleadings which contained exculpatory material so vital to Judge Claiborne's defense.

6. Honorable Warren Ferguson—c/o Ninth Circuit Court of Appeals. Judge, Ninth Circuit Court of Appeals, in whose dissent to Judge Claiborne's request for rehearing en banc, it was disclosed that no Judge ever reviewed the sealed material which contained exculpatory information for Judge Claiborne.

7. Honorable Stephen Reinhardt—c/o Ninth Circuit Court of Appeals. Judge, Ninth Circuit Court of Appeals, in whose dissent on Judge Claiborne's petition for rehearing en banc, was acutely critical of the manner in which the Judiciary was assigned to hear aspects of the Claiborne case, finding the precedures to be improper.

V. PREPARATION OF 1979 TAX RETURN

1. Joseph Wright—333 North Rancho Drive, Las Vegas, Nevada 89106. The tax preparer of the 1979 return; he had no present recollection at any of the proceedings involving Judge Claiborne as to what he was testifying; he perjured himself in denying that he did not receive a latter of 4/11/80 wherein Judy Ahlstrom made full disclosure to him, for purposes of tax preparation, of the income received as a result of monies earned while the Judge was in private practice; failed to advise during any proceedings that his office had been the object of numerous burglaries.

2. Judge Ahlstrom—2803 Iris Court, Henderson, Nevada 89015, or Foley Federal Building, 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101. Judge Claiborne's secretary who delivered the aforementioned letter of 4/11/80 to Wright's office, together with the Judge's W-2 and a check in the amount of $8,000 made payable to the I.R.S., which check was received by the I.R.S. in its normal course.

3. Annette R. Quintana—c/o 520 South Fourth Street, Las Vegas, Nevada 89101. A former Claiborne associate who provided parallel information to Wright's office which would have dove-tailed with the information provided to that office by Judge Claiborne, regarding the fees earned in private practice.

4. Kenneth Swanson—A Wright employee who confirmed that Judy Ahlstrom in fact made a delivery to Wright's office on 4/11/80; and who disclosed numerous burglaries of Wright's office during the time that the Justice Department was investigating Judge Claiborne's affairs; he also was cognizant of Wright's practice, which Wright denied, of permitting taxpayers to sign their returns in blank.

5. Ellen Arthur—3745 Manhattan, Apt. 86, Las Vegas, Nevada 89109. A former Wright employee who received the envelope from Judy Ahlstrom on 4/11/80 and placed the same on Wright's desk; she was later queried by Mrs. Wright as to the whereabouts of the papers since they appeared to have been lost or mislaid.

VI. PREPARATION OF 1980 TAX RETURN

1. Jerry Watson—1700 E. Desert Inn Road, Las Vegas, Nevada 89109. An entrepreneur who represented himself to professional and business people in the Las Vegas community as being a master of all trades; he assumes full responsibility for the document filed as the "purported" tax return of Judge Claiborne; he is knowledgable about Judge Claiborne's true and complete disclosure of fees earned from private practice in the sum of $88,500.

2. Charlotte Travaglia—A former Watson employee who participated in the working up of Judge Claiborne's return; she was cognizant of the full and complete disclosure by Judge Claiborne of the $88,500 but never discussed how the same should be treated on the Judge's return, and in fact never had any discussion with Judge Claiborne about anything; she disputes with Watson who decided to treat the income as accounts receivable on the Schedule "D".

3. Peggy Kotecki—A former Watson employee who, in the preparation of Judge Claiborne's 1981 return, treated income received on Schedule "D" as well.

4. Noriko Lowe—A former I.R.S. Agent with whom Watson discussed the propriety of Judge Claiborne's 1980 tax return, and who indicated that it certainly would not be the subject of a criminal prosecution.

5. Lawrence Semenza—560 E. Plumb Lane, Reno, Nevada 89510. An attorney who represented Watson at the Grand Jury, who overheard the threats and observed the abuse Watson received as a result of Shaw and Skelton's actions.

6. Clyde Maxwell—567 San Nicolas Drive, Suite 208, Newport Beach, California 92660. A former Justice Department prosecutor in the Tax Division whose opinion was that the Claiborne returns should have been subjected to civil, rather than criminal, process.

VII. CHARACTER AND BACKGROUND WITNESSES

1. H.M. Greenspun—121 S. Highland Drive, Las Vegas, Nevada 89106. The publisher of the Las Vegas Sun who was intimately involved in the investigative reporting of the entire Claiborne matter; who was cognizant of a Justice Department vendetta and coverup.

2. Peter Echeverria—555 South Center Street, Reno, Nevada 89501. A former Chairman of the Nevada Gaming Commission whose opinion of Judge Claiborne's character trait of honesty and integrity was excellent.

3. Edward Kane—300 South Fourth Street, Suite 600, Las Vegas, Nevada 89101. A former prosecutor who appeared before Judge Claiborne, whose opinion of Judge Claiborne's character trait of honesty and integrity was excellent.

4. Lorraine Luke—c/o Sahara Hotel, Security Podium, 2535 Las Vegas Blvd. South, Las Vegas, Nevada 89109. A former court clerk to Judge Claiborne, whose opinion of Judge Claiborne's character trait of honesty and integrity was excellent.

5. Brad Gerbic—200 South Third Street, Seventh Floor, Las Vegas, Nevada 89155. A former law clerk of Judge Claiborne's, whose opinion of Judge Claiborne's character trait of honesty and integrity was excellent.

6. Mike O'Callaghan—200 South Third Street, Seventh Floor, Las Vegas, Nevada 89155. A former law clerk of Judge Claiborne's, whose opinion of Judge Claiborne's character trait of honesty and integrity was excellent.

7. Eugene Sadoian—7900 Martingale Lane, Las Vegas, Nevada 89119. Former Chief of United States Department of Parole and Probation, Las Vegas, Nevada, whose opinion of Judge Claiborne's character trait of honesty and integrity was excellent.

8. Leland Lutfy—233 South Fourth Street, Las Vegas, Nevada 89101. A former prosecutor who appeared before Judge Claiborne, whose opinion of Judge Claiborne's character trait of honesty and integrity was excellent.

9. Daniel Markoff—330 South Third Street, #1050, Las Vegas, Nevada 89101. Present Public Defender for the District of Nevada, Las Vegas, whose opinion of Judge Claiborne's character trait of honesty and integrity was excellent.

10. Eileen Brookman—Former State Assemblywoman in Nevada, whose opinion of Judge Claiborne's character trait of honesty and integrity was excellent.

11. Tim Corey—515 South Third Street, Las Vegas, Nevada 89101. A former law clerk of Judge Claiborne, whose opinion of Judge Claiborne's character trait of honesty and integrity was excellent.

Each of the above former employees of Judge Claiborne would testify that he had relied upon them, trusted them and placed a great deal of confidence in whatever work product they participated in preparing.

VIII. THE HONORABLE HARRY E. CLAIBORNE

Respectfully Submitted:
Harry E. Claiborne,
By Oscar B. Goodman, Esq., and Honorable Howard W. Cannon, Attorneys for Respondent.

CONCLUSION OF ROUTINE MORNING BUSINESS

The **PRESIDING OFFICER**. Morning business is closed.

CONTINUING APPROPRIATIONS

Mr. **DOLE**. Mr. President, first let me encourage our colleagues to come to the floor and offer amendments. The chairman has been here since 8:30. Senator Stennis has been here since about that time. It is now 9:20. It is just another hour longer we are going to have to stay this evening because Members indicated last evening they would be here this morning and now they are saying, "Oh, we cannot be here until later." It makes it very difficult for those who are managing the bill to not only take care of this problem on the floor but the many other responsibilities they have as well as other Members. I think at a time like this the managers of the bill deserve the priority, and so I urge my colleagues on both sides to get over here and offer amendments—either that or let us go ahead and complete the continuing resolution. At 2:15 we will need to interrupt the progress for debate on South Africa, the veto. That vote will come at 4 o'clock.

It will probably be 4:30 before we are back on this measure. I think it is safe to assume that for every hour we waste during the day it will be another hour we have to be here tonight. It seems to me that does not make much sense. Most people would rather be in bed at 1 a.m., but we are probably going to be right here at 1 a.m., or 3 a.m. I am just notified, or maybe even later or earlier, however you look at that. So I urge my colleagues to come to the floor, to cooperate with Senator Stennis and Senator Hatfield.

This is the fourth day they have been here. They would like to complete action so they can go to conference. It is obvious that we are not going to be able to finish our business this week, and now there is some doubt if we can finish it next week, at the rate we are going in offering amendments.

Mr. President, I ask unanimous consent that I may proceed as in morning business. If anyone comes in with an amendment, I will sit down very quickly.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

□ 0920

THE REAL CRISIS IN AFRICA

Mr. **DOLE**. Mr. President, a great deal of energy has been consumed in the Congress debating the sad racial problems in South Africa. That is all to the good, because the system of apartheid is abhorrent to our principles; and the United States will be in a position to exercise positive influence in the matter, if Congress and the administration can find common ground on the best approach to ending apartheid.

But all of our debates, and votes, should not delude us into thinking that we have at last focused national attention on the much neglected Human right abuses of Africa.

For I think it is utterly astonishing that, in the middle of all the concern we are rightly showing about one part of Africa, we are saying not a word about problems in another area that are unprecedented in their urgency and horror.

I am talking here about the forced famine—yes, the genocide—which is, at this very moment, being imposed by the Marxist rebels of the Sudan upon the helpless people of that country. But, it is hard to find news about it. On Tuesday, one had to search until page A23 in the Washington Post to find a report. The New York Times did better, with coverage on page A6. Today the Post carries a story even further back, on page A28. Even these reports are skeletal, and nowhere do they indicate any serious effort by the United States to address this desperate situation.

It may be that some people think the problems of the starving were addressed many months ago, when much money was raised to provide food aid to Africa. That effort, it turns out, was only the first needed step in the process.

The problem now is in the delivery of that food to the hungry who crave it.

According to international relief agencies, some 2 or 3 million people are imminently threatened with starvation in the Sudan, and it is not due to lack of food.

It is due to the crass unwillingness of the Marxist rebels to permit the delivery of that food.

Relief flights to the south no longer take place, because the rebels have refused to suspend their practice of shooting them down, as they did last August, when a civilian aircraft, ferrying food supplies, was attacked by ground-fired missiles, killing the 60 passengers aboard. Rebel activity similarly has choked off roads and rivers which would provide a route for emergency assistance.

Mr. President, let me repeat the gruesome statistics, because otherwise my listeners may think they have misheard me: Two to three million people are threatened with starvation.

And they are threatened, to be precise, because the "Sudanese People's Liberation Army," which claims to be fighting for the interests of the Sudanese people, is instead refusing to let them get the food they so urgently need.

This is at the very time when a new coalition government in Kharthoum has come to power in the first democratic election there in 17 years. Sudan should at last be getting more United States attention, and we should be using any influence we have on both the government and the rebels to avert this human calamity.

Mr. President, only a few in this body have had the vision and the courage to speak to this unfolding crisis: Senator Kassebaum stands out in this regard, and the people of the region owe her a debt of gratitude.

Yet we are faced with a tragic irony.

When South African police charge the black demonstrators of Soweto, and a dozen are killed, there is an uproar in this country, as well there should be: Those actions are despicable, and deserve worldwide condemnation.

But when food, instead of clubs, is used as the weapon, and millions rather than dozens are threatened, we hear mainly silence.

Something is deathly wrong.

The Congress, the administration, the press, and the public must pay vastly more attention to this unparalleled human crisis, and they must do it now.

Our debate on South Africa must not deflect our attention from the rest of Africa.

We must not think that sanctions on the South African Government will solve the entire continent's difficult problems.

Our debate today must not be allowed to satisfy our conscience that we have at last addressed Africa's human rights abuses.

As we debate South African sanctions, the plight of the Sudan demands that we keep our perspective.

ORDER OF PROCEDURE

Mrs. **HAWKINS**. Mr. President, I ask unanimous consent that I may speak as in morning business.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

DRUG REHABILITATION PROGRAMS OFFER A LIFE LINE

Mrs. **HAWKINS**. Mr. President, there is a young executive today in Palm Beach, FL, who has a family, a home and a promising future. He is a kind father, a good neighbor, and a friend. But he has been to hell and back.

Two years ago, at a party, he joined his friends and snorted a line of cocaine. He liked it the first, the second, and the third time he tried it. And he became hooked. It was an expensive habit. First he lost his job, then he lost his home and his assets. He knew that he had made a mistake, but he could not quit. So he left for Jamaica with his pregnant wife—to run away from the drug pimps.

On an isolated section of the island, he watched helplessly as his wife miscarried their first child—for there was no medical help available. And with the death of his child, that young executive reached for a life line—he decided to get help for himself.

This story is true, and variations of this account can be repeated by thousands of recovering addicts and their rehabilitation counselors. For recent studies show that addicts cannot kick a substance problem alone. They must receive the support of some rehabilitative services. And these services are not inexpensive. It will cost about $5,000 annually to rehabilitate a cocaine addict. About $3,500 a year to serve a heroin user.

That is why I am pleased that the omnibus drug package, recently agreed to by the Senate, increased the alcohol, drug abuse and mental health services block grant from the current budget outlay of $478 million to the higher funding level of $686 million. A portion of these funds will be used specifically to serve the needs of high risk youth, our Nation's veterans, and American Indians.

From this total, about $125 million will be retained by the Secretary of Health and Human Services to be targeted to States on the basis of need. And that need is great. I urge my colleagues to work with their States to ascertain exactly what their States need.

Mr. President, my colleagues might be interested to learn that in an informal survey of only 15 rehabilitative facilities in my home State of Florida, there were more than 460 individuals who were on waiting lists to receive rehabilitative services and conseling; 460 men and women, boys and girls who have grasped for that life line—but are told that they will have to wait. And no one really knows how long.

It is my belief that the antidrug abuse legislation is a step in the right direction toward meeting the ever-growing needs of this Nation's substance abusers—who have finally realized that they are addicts and that they need help.

The rehabilitation services provided for in the drug package may well be their life line.

ORDER OF PROCEDURE

Mr. HATFIELD. Mr. President, I ask unanimous consent that I may proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 0930

SALT II AND THE LEGACY

Mr. HATFIELD. Mr. President, as everyone here knows, the House of Representatives has passed and incorporated into its continuing resolution a series of important arms control measures. I rise to support those measures and express my hope that this body will take a favorable view toward any conference report which leaves those provisions essentially intact. As this funding train presses on, we cannot ignore the cargo it carries. We are responsible for the schedule, yes, but we are also charged with a responsibility to ensure that the Senate speaks wisely to the issue of survival.

I speak to this issue today because I think we have fallen short of our responsibility in this area. It is fair to say that we have in some ways, I believe, failed in our duty even to this administration and to the American people. At the least, we have looked the other way when common sense demanded that we look straight ahead. And the announcement of a summit yesterday, while it is surely welcome news, should not become yet another diversion from the central issue. The central issue is how do we get from point A, which is the status quo, to point B., which is a sensible arms control program and policy.

We were given an arms control litmus test in March and again in August of this year. The Soviets announced that they would extend their unilateral moratorium on underground nuclear tests. By any measure of reasonableness, this proposal represents an initiative which deserves serious and urgent attention. Yet the response of this Government was to launch a new series of nuclear explosions in the Nevada desert. The key to understanding why lies with the response of the media and this Congress is great part to these actions.

What was the response of this Congress to the Nevada tests?

The response was a minor bleep on the political screen. A few self-proclaimed arms control advocates even rushed to defend the tests.

They said it was our right. They said Mr. Gorbachev is playing the public relations game. They said that he is trying to achieve through public political pressure that which he has not been able to achieve at the bargaining table. That is what disturbed the Washington Post and the New York Times.

In my opinion, that is a pathetic response.

They might just as well have said to the administration: "Go ahead—do something even more outrageous—even more threatening to the human race."

And that is just what the administration did. It threw SALT II right out the window.

It is strange that an administration which is obviously pursuing strategic superiority would allow the collapse of agreements and potential agreements which in many ways constrain the Soviets more than they constrain us. Let us look at the facts. The forecasts of projected U.S. and Soviet missile deployments show clearly that without SALT the Soviets are in a better position to produce and deploy more weapons than the United States. Without SALT they are in a position to produce warheads at a faster rate than the United States. Under the SALT process, the Soviets have been forced to dismantle more strategic systems than the United States. And as far as the comprehensive mutual test ban treaty is concerned: it would freeze our advantage in warhead technnology.

My distinguished colleague from Arkansas [Mr. BUMPERS] made an interesting comment on this floor a while back. He said, "What if it were the other way around? What if Secretary Gorbachev had announced that SALT was dead and the race is on?" I would add another example. What if we were unilaterally withholding underground nuclear tests and the Soviet response was to accelerate its test schedule?

I will tell you what the reaction would be. It would create utter panic in this Government. It would serve to fuel the war machine as though world war III were about to begin tomorrow. Congress and the administration would join in a holy patriotic alliance to confront the newly exposed Soviet monster.

It is to your credit, Mr. President, that there is a new spirit for many amongst this Nation today.

But, Mr. President, don't allow this kind of foreign policy madness to go any further.

Don't give the last word to those who would obliterate every last vestige of Soviet-American cooperation.

Don't allow them unlimited reign in pursuit of their warped and dangerous ideological agenda, an agenda which says there is security in new and improved nuclear weapons which we know to be false, an agenda which is as skeptical about peace as it is enthusiastic about force—we know that will not work—an agenda which makes excuses for the arms race: we have run out of excuses.

Because all they want for you, Mr. President, is a legacy of wreckage, the wreckage of shattered agreements which could have been rescued, the wreckage of forsaken opportunities for our children to inherent a safer world, the wreckage of fragile international institutions and agreements, which however imperfect, are all that stand between us and the law of the jungle.

I will submit to you, Mr. President, that whoever argued for tossing SALT and the comprehensive test ban into the trash heap of history does not care very much about your place in history. And if they do, then they are ignorant of history. They are obsessed with Chamberlain and impressed with Caesar. And that is all they seem to know.

And I would submit to you that the facts, the figures, the charts, and the graphs which they invariably used to make the case were nothing but distractions, distractions from the much broader ideological agenda which they are encouraging now that you have been reelected, reelected and liberated from the political constraints which future elections would impose. That is the way they think.

The hidden agenda of those who are urging the President to veto the House bill because of its arms control provisions has very little to do in reality with merits and flaws. They seem to care very little about that.

Their real problem is very simply that those provisions represent agreement, period, agreement with the Russians. It does not matter what kind of agreement you are talking about because they do not want any agreement at all. They want wreckage.

But I do not think the mentality of the ideologues and their coconspirators in the weapons laboratories is particularly well understood around here.

Just what do they hope for?

They think about more underground nuclear explosions in the Nevada desert. They await the death of the Anti-Ballistic Missile Treaty. They dream of the heavens littered with weapons of war.

You have too many Dr. Frankenstein's in your village, Mr. President. And they live only for wreckage.

The destruction of SALT II and the comprehensive test ban are but two among a venerable plethora of targets at which the ideologues in this administration have taken aim and intend to destroy before they walk away from Washington. And I say to my colleagues that until you face up to that fact, instead of constantly checking the "lethality index" on our pocket calculator, we are going to miss the point.

The point is that the rough parameters of a hypothetical arms control agreement we can expect from this administration under the best possible circumstances are clear. We might control the number of weapons. We might control the types of weapons permitted. We might control the timeframe in which certain activities are permissible and others are not. But we will not actually control in any meaningful way the dangerous march of technology which is the lifeblood of the arms race. It is clear that this administration intends to challenge the status quo only so far as the already inadequate limitations which now exist are concerned.

And so I appeal to my colleagues, to the media, and to the American people, and ask: Where will we draw the line? When will we say "no"?

To my colleagues on the other side of the aisle, to my friends in the Democratic Party, I say let us face up to the facts. There are only a handful of Republicans on this side of the aisle who will challenge this madness. You are the loyal opposition. Take a stand. The real issue is whether we are going to turn this nuclear juggernaut back. I get the impression that you do not know what you are against let alone what you are for as the loyal opposition. Those people downtown really have you baffled.

And the latest news, the news of a summit, has compounded your and our confusion. Well, it has not compounded mine. The summit is viewed by this administration as an opportunity to achieve peace, yes. But it also just happens to fit very well into the designs and timing of those who want to redefine peace. They want to redefine it as something we get as a prize for having won and survived, by sheer luck, the most dangerous roll of the dice imaginable: and that is nuclear brinksmanship. There is a very terrifying inconsistency at work here. And before you buy on to the "support the administration at all costs" presummit bandwagon remember this: The range of nuclear arms control proposals in the House of Representatives represent the very minimum we should demand from an arms agreement. Why, then, is this administration so adamantly opposed to those provisions? It is quite simple. They have no intention of negotiating that kind of agreement.

You can count on them. You can bet your money they will tear up, dismantle, disregard, unravel, and demolish every symbol of what they consider the old appeasement regime, the old regime of imperfect, flawed attempts to reduce by a small measure the insanity of this world in which we live, whether it is the ABM treaty or the SALT process or a comprehensive test ban. They seek to destroy it. And they will smash everything in their path to achieve the legacy of wreckage. Yet all the while we stand here and wait and wonder whether they really will try to take this thing further.

I say you can bet that I will, unless we show some strength and some determination as the elected representatives of the people.

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

The Senate resumed consideration of the joint resolution.

Pending: Simon Amendment No. 3105, to provide additional funds for carrying out the Department of State-East European Research and Training Act and the United States Information Agency Educational and Cultural Exchanges Programs, and to reduce funds for the Department of State's acquisition and maintenance of buildings abroad.

The PRESIDING OFFICER. Who seeks time?

The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, on behalf of my senior colleague, Senator THURMOND, and myself I wish to send an amendment to the desk.

The PRESIDING OFFICER. There is a pending amendment at the desk.

Mr. HOLLINGS, Let me ask, is it all right to set it aside?

Mr. HATFIELD. Mr. President, I apologize to the Senator. I was not listening.

Mr. HOLLINGS. My request to the distinguished chairman is, is it all right to set the pending amendment aside so that I may take up this amendment?

Mr. HATFIELD. We are ready to receive amendments and consider them.

Mr. President, I ask unanimous consent that the amendment offered by the Senator from Illinois [Mr. SIMON] be temporarily laid aside in order that the Senator from South Carolina may be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3110

(Purpose: To name the United States Courthouse in Aiken, South Carolina after Charles E. Simons, Jr.)

Mr. HOLLINGS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS], for himself and Mr. Thurmond, proposes an amendment numbered 3110.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the Joint Resolution, insert:

SEC. . The United States Courthouse located at 223 Park Avenue Southwest in Aiken, South Carolina, shall be known and designated as the "Charles E. Simons, Jr., Federal Courthouse". Any reference in any law, regulation, document, record, map, or other paper of the United States to such courthouse is deemed to be a reference to the "Charles E. Simons, Jr., Federal Courthouse".

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

□ 0940

Mr. HOLLINGS. Mr. President, I have checked with our distinguished colleagues, the chairman of the committee, and our ranking member. This is an amendment to name a courthouse in Aiken, SC, after the former chief judge of the eastern district of South Carolina, who has taken senior status, now in retirement, my good friend Charlie Simons, who I served with in the legislature some years back and over some 22 years have observed his outstanding service on the Federal bench.

Mr. President, this amendment is identical to S. 2733 that my senior colleague and I introduced on August 8, 1986, to designate the U.S. courthouse in Aiken, SC, as the "Charles E. Simons, Jr., Federal Courthouse." While I am honored to submit this amendment, Senator Thurmond knows better than any of us the great achievements of Judge Simons. Prior to his appointment to the bench, Judge Simons was Senator Thurmond's law partner, and remains a trusted advisor and close personal friend of my senior colleague.

Judge Simons was appointed U.S. district judge for the eastern district of South Carolina on May 1, 1964, and entered on duty May 22, 1964. He became chief judge on May 10, 1980, and served until August 17, 1986, when he took senior judge status. He received an AB degree from the University of South Carolina in 1937 and an LL.B. degree from the University of South Carolina Law School in 1939. He served in the U.S. Navy, 1942-46.

Prior to his appointment to the Federal bench, Judge Simons was a member of the South Carolina Constitutional Revision Committee, 1948; member of the South Carolina House of Representatives, 1942, 1947-48 and 1961-64. He served as the elected district judge representative from the fourth circuit to the Judicial Conference of the United States for two consecutive terms, 1973-79. In 1979 he was appointed to the Advisory Committee on Codes of Conduct. He has been a member of the Subcommittee on Federal Jurisdiction since 1979 and was appointed as its chairman in 1980. In 1980, he was appointed to the Judicial Conference Committee on Court Administration.

Judge Simons is married to the former Jean Brewster Knapp and has four children: Charles E. III, Paul Knapp, Richard Brewster, and Jean Brewster Simons Smith. He is a member of the South Carolina Bar Association, the American Bar Association, and the American Law Institute.

I appreciate the assistance of Senators Hatfield, Stennis, Abdnor, and DeConcini in accepting this amendment on behalf of the committee.

Mr. THURMOND. Mr. President, I am pleased to join Senator Hollings in this effort to appropriately recognize one of the most distinguished jurists ever to have on the Federal bench in South Carolina, Judge Charles E. Simons, Jr. This amendment would designate the U.S. courthouse in Aiken, SC, as the "Charles E. Simons, Jr., Federal Courthouse."

Judge Simons was born in my home county of Edgefield 70 years ago. He was a Phi Beta Kappa graduate of the University of South Carolina in 1937. He also received his law degree there in 1939.

He began the practice of law in Aiken, SC, in 1939. In 1942, his legal career was interrupted by his military service in the Navy, where he served on the staff of Admiral Nimitz. In 1946, Judge Simons returned to his Aiken law practice.

He was elected to serve in the South Carolina General Assembly from 1947 to 1948, and again from 1960 to 1964. As Governor of South Carolina in 1948, I appointed Judge Simons to the South Carolina Constitutional Revision Committee.

In 1964, President Johnson appointed Simons to be a U.S. district judge. He became chief judge of the U.S. District Court for the District of South Carolina in 1980.

In addition to his demanding schedule on the Federal bench, he has been active in the U.S. Judicial Conference. He has served as the fourth circuit district judge representative; on the Advisory Committee on the Codes of Judicial Conduct; and as chairman of the Subcommittee on Federal Jurisdiction. Judge Simons has also always found time to devote himself to church, civic, and community service. He and his lovely wife, Jean, have four fine children and several grandchildren.

Throughout our State, Judge Simons is deeply respected for his legal knowledge, his fairness, and his integrity. Judge Simons has consistently demonstrated these qualities during the course of our long friendship. After over 22 years on the Federal bench, Judge Simons assumed senior status last month.

Mr. President, based on the contributions of Charles E. Simons, Jr., to his State and Nation, I believe it is appropriate that the U.S. courthouse in Aiken, SC, be named the "Charles E. Simons, Jr., Federal Courthouse." Furthermore, the significance of this honor would be heightened if this legislation is enacted in the year which Judge Simons stepped down as chief judge of the U.S. District Court for the District of South Carolina. I urge my colleagues to support this amendment.

Mr. HATFIELD. Mr. President, as we have indicated and as we have demonstrated, the committee is resisting all amendments which in any way affects the budgetary matter of outlays and also if it would make major policy and authorization. This amendment does neither.

Therefore, it has been cleared on both sides of the aisle and it would be acceptable. I move its adoption.

The PRESIDING OFFICER. Have the yeas and nays been ordered?

Mr. THURMOND. No, Mr. President, we do not need the yeas and nays.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3110) was agreed to.

Mr. THURMOND. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. THURMOND. Mr. President, I wish to thank the able chairman of the committee.

AMENDMENT NO. 3105

Mr. SIMON. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the amendment of the Senator from Illinois.

Mr. SIMON. Mr. President, I would like to modify my amendment to reflect an agreement that I have worked out with Senator Rudman.

The PRESIDING OFFICER. The Senator has a right to modify his amendment.

Mr. SIMON. I shall modify it and the page can take it down. I want to list Senators Dodd, Moynihan, Kerry, Roth, Matsunaga, and Pryor as cosponsors.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 3105), as modified, reads as follows:

On page 2, at the end of line 24 strike the period and insert:

> *Provided*, That notwithstanding any other provision of this subsection, $145,000,000 shall be available for United States Information Agency, "Educational and Cultural Exchange Programs", of which $25,000,000 to remain available until expended, shall become available for expenditure on October 1, 1987.

Mr. SIMON. Mr. President, this is an amendment that has been worked out with Senator Rudman. It does bring the Fulbright Program back up to where it was. Frankly, what we do is we authorize some budget authority, but we say $25 million of it cannot be spent until after October 1. It satisfies our needs.

I know of no objection to it. I hope it can be accepted by this body.

Mr. HATFIELD. Mr. President, on behalf of the Subcommittee on State, Justice, and Commerce, chaired by the Senator from New Hampshire, Senator Rudman, who last night indicated a willingness to work this out with the Senator from Illinois, this is now acceptable.

Let me emphasize for the record, again, this has a neutral impact on the budget, because it is a reconfiguration of allotments between accounts within this appropriation bill. So, consequently, it has no budgetary impact. It is not a major policy matter. It is merely shifting moneys for greater emphasis in one area to another.

This is acceptable and I would move its adoption.

Mr. SIMON. Mr. President, I thank my colleague from Oregon, as well as my colleague from New Hampshire on this.

The PRESIDING OFFICER. Have the yeas and nays been ordered?

Mr. HATFIELD. No. I move its adoption.

The PRESIDING OFFICER. Is there objection to the adoption of the amendment?

Mr. BUMPERS. Mr. President, I apologize, but I was just off the floor when this was agreed to. Could somebody please explain to me what has been agreed to?

Mr. SIMON. If my colleague would yield, what has been agreed to is, basically, an increase of $24 million in budget authority. That will bring the Fulbright Program back up to the fiscal year 1986 level, but with the understanding explicitly that $25 million of this cannot be spent until after October 1. But it gives the Fulbright people the full opportunity to go ahead. I think it solves the immediate problem.

Mr. BUMPERS. Has the Senator been in touch with the people at USIA who operate this program?

Mr. SIMON. Yes, I have. They informed me this will work out now. Frankly, I have not had a chance, because I just learned of this this morning, I have not had a chance to discuss it with the Senator from Arkansas who was concerned about this yesterday. But we have checked it out. I apologize for not getting back to my colleague from Arkansas.

Mr. BUMPERS. Mr. President, if the people who operate the Fulbright Scholarship Program say that they can maintain a full level of scholarly exchange with his amendment, then I am not going to object to it. But I must say, I have serious reservations as to whether they can do that. They ought to know.

But is this the same proposition that was submitted yesterday afternoon?

Mr. SIMON. It is basically the same proposition. The wording may be modified a little. Frankly, after our discussion, I had a discussion with Senator Pell and then our staffs met with Senator Rudman's staff. Initially I think our reaction was somewhat negative. But, on contacting the people who administer the Fulbright Program, they say this is acceptable, this will work out. So I think we can go ahead on this basis.

Mr. BUMPERS. The Appropriations Committee approved $120 million for the exchange programs for fiscal year 1987. The House appropriated $144 million, or $24 million more than we did. The House provision would allow for close to full funding of the exchange programs. The Fulbright Program, as you know, is only one of several exchange programs, but it is the one that I am most interested in.

But now the amendment that you have agreed to, and that has apparently been accepted by the committee, is one that raises the budget authority by $24 million, but provides no additional outlays in the program in fiscal year 1987. Is it not correct that no additional funds will be available until October 1, 1987, the beginning of fiscal year 1988?

Mr. SIMON. The understanding is that we raised the budget authority, as was indicated, either $24 million or $25 million. Then the understanding is that $25 million of that budget authority will be available after October 1. That is stated explicitly in the amendment that is adopted. I frankly do not know of any precise precedent for this but, apparently, it is workable.

Mr. BUMPERS. Is this program not included in the State, Justice, and Commerce appropriations bill?

Mr. HATFIELD. Yes.

Mr. BUMPERS. I hope that I will be on the conference committee on that particular portion of the continuing resolution and that we will have the chance to revisit this in conference.

Mr. SIMON. Obviously, I have hopes the conferees will do better than that, particularly in a program that you and I believe in and I think the American people understand is so important. We have to build this base of understanding between countries.

Mr. BUMPERS. I agree with the Senator. I am not going to slow down this amendment. After all, what I am after is to make certain we do not diminish the number of Fulbright scholars.

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As you know, the Soviet Union outspends us four to one on scholastic exchanges. They had 93,000 students on full scholarships in the Soviet Union and Eastern Europe in 1984 and in 1980 they had 12 times as many students from all over Africa studying in the Soviet Union as we had studying in our country under United States sponsorship.

To cut this program in light of those statistics is the height of irresponsibility in my opinion. We ought to be spending two to three times as much money.

Mr. SIMON. I could not agree more. Let me add one more dramatic statistic. In Central America, the Caribbean, the United States today provides 391 scholarships. In that same area the Soviet Union provides 7,500 scholarships. We worry about Central America by sending a few dollars down there for guns. They are in there fighting with their hearts and minds for these people in the future. That is where we ought to be.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. I have no objection.

Mr. PELL. Mr. President, I would like to commend my colleague from Illinois, Mr. Simon, for his long-time leadership in the House of Representatives, and now as a Senator, on behalf of international educational exchanges. I was partricularly delighted to join him as the original cosponsor of the Simon-Pell amendment to restore funding for these programs.

Unfortunately, I cannot support the proposed compromise. Transferring a part of the funds to fiscal year 1988 only creates a financial problem the exchange programs will have to face then. Over the long term this compromise will not in fact restore the cuts made in these programs.

Instead it is my hope that this amendment will be seen as a sign of strong Senate support for educational and cultural exchanges. I hope that the Senate conferees on the continuing resolution will take note of this support and accept in fiscal year 1987 the House funding level for the Fulbright exchange programs.

Mr. PRYOR. Mr. President, I am pleased to join with Senator Simon and Senator Pell in this effort to increase funding for international education and exchange programs. The Senate Appropriations Committee approved $120 million for the fiscal year 1987 USIA Educational and Cultural Exchange Program budget. The committee's action amounts to $46.6 million less than the administration's original request, and $24.35 million less than the House allowance. Our amendment seeks to restore full funding for the USIA exchange programs, as well as the State Department's Soviet and East European Studies Program, by transferring $24.8 million from the State Department's acquisition and maintenance of buildings abroad account.

As my colleagues have explained, most of the funds available for the construction and maintenance account are not tied to firm project commitments—in fact, much of this money is unobligated—therefore, we can afford to divert the $24.8 million necessary for international exchanges without jeopardizing essential State Department activities.

My long association with Senator J. William Fulbright has heightened my awareness of the importance of international education and exchange programs to our strength as a nation. The scholars program that bears his name is recognized today as the most important and far-reaching educational exchange in the world. It is ironic to note that as the Fulbright Program celebrates its 40th year, funds for international education have been reduced substantially. The program's primary objective—increased understanding among the nations of the world, leading to the development of friendly, sympathetic, and peaceful relations between the United States and other countries—is as pertinent today as it was in 1946.

Since the program's inception, more than 155,000 individuals, over 54,000 from the United States, and 101,000 from other countries have become "Fulbrighters." A list of Fulbright alumni from this country includes such distinguished Americans as Harvard University President Derek Bok, economist Milton Friedman, fellow Arkansan Fred Graham of CBS news, Washington Post columnist Meg Greenfield, and our own colleague, the honorable senior Senator from New York [DANIEL PATRICK MOYNIHAN].

Foreign alumni of the Fulbright Program are also a distinguished breed.

There are: 24 former and current Cabinet-level officials, including the current Prime Minister of Sweden and the former Egyptian Prime Minister; 36 former and current members of national legislative bodies—7 current members of the Japanese Legislature and 1 member of the British Parliament are former Fulbrighters; 10 Supreme Court Justices—Fulbright alumni serve on the high court in Australia, Israel, Norway, the Philippines, and Japan; 59 former and current university presidents and rectors—including the presidents of the University of Paris, the Austrian Academy of Sciences, and 7 Japanese universities—as well as the rectors of Tel Aviv University and the University of Chile; and, 32 former and current Ambassadors—such as Austria's Ambassador to Egypt, the Ambassador of Singapore to the United States, and New Zealand's Ambassadors to both England and the United States. The list goes on and on, Mr. President.

International exchange programs provide the opportunity to observe firsthand the freedoms of our society. I would like my colleagues to imagine, Mr. President, the impact of our way of life on citizens of countries who have never experienced a free press or universal suffrage—freedom of movement or responsive government. For vast numbers of the world's population, these basic democratic concepts must seem incomprehensible.

Whenever we address the subject of international exchange programs in this body, I am reminded of the eloquent remarks by the distinguished senior Senator from Connecticut, Mr. WEICKER, in 1981. As he spoke of a previous visit to Cuba, Senator WEICKER shared his thoughts after witnessing hundreds of African students being educated in Cuban secondary schools. It was clear to my colleague then, that the indoctrination of those young minds, at the hands of the Soviet Union and Cuba, posed a real threat to the United States.

This year approximately 93,000 Third World students are being educated in the Soviet Union and Eastern Europe. Thousands more will participate in exchange programs with Cuba. By contrast, the combined AID/USIA scholarship total for 1986 is only 15,000—15,000, Mr. President.

The Central American region—the countries of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Panama—appears to be particularly vulnerable. We have been negligent in our outreach efforts to Central American students and university officials. The National Bipartisan Commission on Central America—the Kissinger Commission—addressed this shortcoming in its 1984 report, recommending a program of Government-sponsored scholarships to bring talented Central American students to the United States. The USIA is to be commended for the development of the Central American Program of Undergraduate Scholarships—the Campus Program—in response to the suggestions of the Commission. The campus project, implemented as a pilot program in January of this year, has three primary goals: First, to improve the range and quality of educational alternatives for young Central American students of limited financial resources; second, to match educational opportunities in the United States with skill shortages in Central America; and third, to build lasting ties between the United States and the Central American nations. The campus project provides a clear alternative to the recruiting efforts of the Soviet bloc in the region.

Throughout the month of September, a group of Central American university officials has been visiting each of the 12 U.S. institutions that are hosting Campus students. Several weeks ago, these distinguished visitors were in Washington for a series of meetings sponsored by the USIA and administered by the Institute of International Education. In a roundtable discussion with congressional staff members, the Central American guests expressed their views on the need to forge a stronger bond between the United States and their respective countries. One of the Guatemalan visitors explained in quite eloquent terms his distress regarding the limited educational opportunties for students in his country. While many students in other circumstances would reject the efforts of the Soviet bloc, in a number of instances these countries offer the only alternative. His plea was for the United States to increase their commitment to educational exchanges for Central America. Those sentiments were echoed by several others, including the Panamainian Ambassador to the United States, his excellency Kaiser Bazan, who addressed the visitors at a special luncheon session here on Capitol Hill. Mr. Bazan, a graduate of West Point Academy and Stanford University, spoke of the importance of spreading democratic concepts throughout the region, imploring Congress to reaffirm its comittment to international education and exchange programs for Central America.

In conjunction with the Campus effort, the USIA continues to expand Fulbright exchanges in Central America for 1986. By the end of this year, approximately 157 Central American students are expected to enroll in 2-year graduate programs in the United States; 66 grants will be provided to university faculty in the region, with 50 grants set aside for Central America scholars and lecturers to work and study in our country. In addition, 51 grants will be provided for American researchers to teach and study in association with Central American universities. It is difficult to imagine this level of exchange activity continuing next year at the reduced funding level approved by the Senate Appropriations Committee.

According to a 1984 GAO report, Soviet bloc scholarships to Latin America and the Caribbean have increased dramatically compared to the number offered by the United States.

Consider these figures, Mr. President:

In 1982, the Soviet Union and Eastern European governments sponsored 9,080 students from developing countries, compared with 2,197 students sponsored by the United States.

From 1972 through 1982 the Soviet bloc increased their scholarship offers to students in Latin America and the Caribbean by 205 percent, not 25 percent, Mr. President, but 205 percent. During that same 10-year period, programs sponsored by the United States for students from this region declined 52 percent.

While it is not my intention to unduly alarm my colleagues, I do feel it is crucial for us to consider these facts seriously. The Soviet message is clear—their motives evident. How best to counter their intensified efforts? Certainly not by reducing our own exchange programs 25 percent.

Finally, Mr. President, let me share with my colleagues Senator Fulbright's own words on the importance of international education, from a 1983 address to the annual conference of the Council on International Educational Exchange:

> The purpose of international education transcends the conventional aims of foreign policy. This purpose is nothing less than an effort to expand the scope of human, moral, and intellectual capacity * * * we must try, therefore, through education, to realize something new in the world, an aim that will inspire us and challenge us to use our talents and material wealth in a new way, by persuasion rather than force, cooperatively, rather than competitively * * * far, therefore, from being a means of gaining national advantage in the traditional game of power politics, international education should try to change the nature of the game, to civilize and humanize it in this nuclear age.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Illinois.

The amendment (No. 3105) as modified was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3111

(Purpose: To permit the Administrator of the General Services Administration to acquire, by means of a lease, space for the U.S. District Courts in Tacoma, Washington)

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, I send an amendment to the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The Senator from Washington [Mr. Gorton] proposes an amendment numbered 3111.

Mr. GORTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> At the appropriate place in the bill insert the following: "The Administrator of the General Services Administration, under Section 210(h) of the Federal Property and Administrative Services Act of 1949, as amended, shall acquire, by means of a lease of up to 30 years duration, space for the U.S. Courts in Tacoma, Washington at the site of Union Station, Tacoma, Washington."

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Mr. President, today I am offering an amendment which will enable the General Services Administration to acquire by means of a lease a valuable and historic building in downtown Tacoma, WA. This acquisition will serve the interests of the Federal Government by providing a new home for the U.S. district courts in Tacoma, which are currently housed in overcrowded facilities. The lease will also breathe new life into Union Station, a gorgeous copper-domed building which was dedicated in 1911 to serve as the major railroad terminal for the city of Tacoma. Unfortunately, the decline in railroad service has left the building vacant and boarded up since 1984.

Earlier this year, GSA evaluated the Federal Government's need for space in the Tacoma area and concluded in a written prospectus dated September 15, 1986, that the court requirements in Tacoma could be best accommodated in a leased facility. We are very fortunate indeed that Union Station fits the specifications of the courts' projected needs, and with renovation will offer a functional and beautiful new home for the courts. By giving new life to the building, it will become a beacon to commerce and visitors in the downtown area. Mr. President, seldom do the requirements of the Federal Government coincide so nicely with the needs of a city.

The purpose of my amendment is to give GSA authority to lease the Union Station building for the city. The House has already included this provision in its bill, thanks to the work of Congressman Norm Dicks who represents the Sixth District. I appreciate the willingness of Senator Abdnor, the distinguished chairman of the Treasury/Post Office Subcommittee and Senator Hatfield, the full committee chairman, to accept the amendment. I also want to express my thanks to Senator Stafford, the able chairman of the Environment and Public Works Committee. All have been more than helpful.

Finally, Mr. President, I would like to recognize the work performed by the city of Tacoma, the community based group "Save Our Station," which has worked so hard to make this lease a reality, Bob Eberle, GSA's Regional Administrator for region 10, and Congressman Norm Dicks, who has fought harder than anyone in Congress for this successful arrangement.

Mr. HATFIELD. Mr. President, we are checking now with the other side of the aisle on this matter. It has been cleared on our side. We should have a response from the military side of the aisle in just a few moments.

Mr. President, I know that we all are conscious of the timeframe which we are operating under, and the inability to have cleaned up many of the items of business in the authorizing committees. I want to say that in the 6 years that I have been chairman of the Appropriations Committee, and in the years prior when I was a minority member, that there were many times when the authorizing committee leadership, chairmen, or others, of those committees would rise to be very critical of the Appropriations Committee that was found guilty of legislating on appropriations. I have a feeling there is about ready to break here on the floor a dam of another kind on what we have resisted thus far, and that is the actual clearance of authorizing committees for legislative matters to be attached to this continuing resolution.

I am not in any way raising a question of the merit of those amendments, nor the importance, nor the timing, nor the necessity of those amendments. I merely am observing that we are about ready to merge the authorizing and the appropriations process without a major reorganization of the committee structure of the Senate. I know we are all selective on occasion in our application of perhaps rules, regulations, and principles that make this body function.

But I would just hope that we not just go through a pro forma action today or tomorrow, whenever we finish this bill, and as far as I am concerned when I say tomorrow, I am not talking about tomorrow daylight. I am talking about tomorrow dark hours of 1 a.m., 2 a.m., 3 a.m., 4 a.m., or 5 a.m. or whatever it might take to finish this bill.

But I hope the authorizing committees will not just in a pro forma way just say, oh, sure, go ahead, get it on the continuing resolution, we did not get our agenda finished in the committee.

I know this is important and so forth. Let us show some restraint because even though they qualify perhaps in the sense that we have said we will try to work out amendments on a selective basis, or that they do not have an impact on the outlay problems we have here in the budget or they are not major policy legislative matters. I still do not think we are ready to accept a plethora of amendments that are authorizing in character because frankly that is going to delay the conference, and we are going to find a House very reluctant to accept Senate add-ons.

That is when the House always says: "Oh, but they are subject to a point of order under our rules and therefore we can't take this back." Then they begin to use them for bargaining chips for other more important matters of the conference.

I am not about ready to frankly stand by and hold tight on a lot of these amendments because they are trying to use them for bargaining on issues like Labor/HHS bills, levels of funding, and so forth. They are very able at packaging up deals and as the Senator from Wisconsin knows, we are going to have to concentrate on major issues that are appropriation matters rather than packaging up a lot of little amendments that are very important to individuals, and yet may not really be necessary for the continuation of the health and the functioning of the Republic.

Mr. PROXMIRE. Mr. President, will the manager yield just momentarily?

Mr. HATFIELD. I yield.

Mr. PROXIMIRE. It is my understanding that the minority has no objection to the amendment offered by the Senator from Washington, Senator GORTON, with respect to the GSA. We are happy to support that amendment.

Mr. HATFIELD. I thank the Senator.

Mr. President, it has been cleared on our side. I am very happy to accommodate the Senator from Washington, Senator GORTON. I move the adoption of his amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Washington.

The amendment (No. 3111) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GORTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. I yield the floor.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

AMENDMENT NO. 3112

Mr. HOLLINGS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS], for himself and Mr. THURMOND, proposes an amendment numbered 3112.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the joint resolution insert. That, in order to provide for needed facilities for visitors to Fort Sumter National Monument, including a tour boat dock and associated facilities, and an interpretive and museum facility in cooperation with the State of South Carolina and the city of Charleston, the Secretary of the Interior (in this Act referred to as the "Secretary"), is authorized to acquire by purchase with donated or appropriated funds, donation, or exchange, not to exceed 8.91 acres of lands, including submerged lands, and interests in lands, within the area generally depicted on the map entitled "Dockside II, Proposed Site, Tourboat Facility," which map shall be on file and available for public inspection in the office of the National Park Service. When acquired, lands, including submerged lands and interests in lands, depicted on such map shall be administered by the Secretary as a part of Fort Sumter National Monument, subject to the laws and regulations applicable to such monument, and subject to the provisions of this Act.

SEC. 2. (a) With respect to the lands, including submerged lands, and interests in lands acquired pursuant to the first section of this Act, the Secretary is authorized—

(1) to convey, notwithstanding the provisions of section 5 of Public Law 90-400 (82 Stat. 356) and subject to the provisions of subsection (b), a leasehold interest in not to exceed one and a half acres to the State of South Carolina or the city of Charleston or either of them for development by either of them or their agents or lessees of a marine museum and associated administrative facilities;

(2) to grant covenants or easements for ingress, and egress to the State of South Carolina, the city of Charleston, and to other parties as the Secretary may deem necessary to facilitate public use; and

(3) to enter into cooperative agreements with the State of South Carolina, the city of Charleston, and other parties as the Secretary may deem necessary, pursuant to which construction, maintenance, and use of buildings, utilities, parking facilities, and other improvements may be shared among the parties to the agreement.

(b) Any conveyance made pursuant to subsection (a)(1) and any renewal thereof may be for a period of up to 50 years, and may include the option to purchase the property in fee by the lessee within the first 10 years, upon payment by the lessee of the cost of the property to the United States plus interest based on the average yield of United States Treasury notes with maturities of one year. The Secretary may convey title to the property in fee in the event such option to purchase is exercised, subject to the condition that the property is used for a public marine museum and associated administrative facilities. Notwithstanding any other provision of law, any leasehold interest conveyed pursuant to subsection (a)(1) shall be conveyed without monetary consideration. The proceeds from any conveyance of property in fee pursuant to subsection (a)(1) shall be deposited in the Land and Water Conservation Fund in the Treasury of the United States.

SEC. 3. Section 117 of Public Law 96-199 (94 Stat. 71) is hereby repealed.

SEC. 4. (a) Notwithstanding any other provision of law, sums heretofore appropriated but not, on the date of enactment of this Act, obligated for construction of a tourboat facility at the Broad Street site, and for the acquisition and construction of the Fleet landing site for Fort Sumter National Monument, which was authorized by section 117 of Public Law 96-199 (94 Stat. 71) are hereby made available for obligation for the acquisition of the lands including submerged lands, and interests in lands identified in the first section of this Act and for construction of necessary facilities thereon, and to the extent that sums heretofore appropriated for land acquisition of the Fleet landing site are not sufficient to cover the cost of acquisition of the properties identified in the first section of this Act, sums heretofore appropriated for construction of facilities at the Broad Street site and the Fleet landing site may be obligated for the purposes of acquisition as authorized in the first section of this Act.

(b) In addition to the sums made available under subsection (a), there is authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

SEC. 5. The Secretary of the Interior shall transfer administrative jurisdiction over the Federal property, consisting of approximately 1 acre, known as the Broad Street site, to the Secretary of the Department in which the Coast Guard is operating, who shall transfer to the Secretary of the Interior, subject to such reservations, terms, and conditions as may be necessary for Coast Guard purposes, administrative jurisdiction over the Federal property, consisting of approximately 1 acre located near Fort Moultrie on Sullivan's Island for purposes of maintenance workshop, storage, and seasonal housing in connection with the administration and protection of the Fort Sumter National Monument.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator is recognized.

The Senate will be in order. The Senator deserves to be heard.

Mr. HOLLINGS. Mr. President, this has been cleared on both sides. This is S. 2534, relative to a National Park Service installation at the Dockside II rather than the Fleet Landing Site in my home town of Charleston, SC, as the dock for the Fort Sumter tour boats.

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Actually, the moneys were appropriated and have been appropriated since 1978. So it does not affect the Appropriations Committee. It does not affect the appropriations here. It does not have any significant policy change. It has been cleared on both sides.

Mr. President, it is a great pleasure to join my senior colleague in urging adoption of our amendment. This is identical to S. 2534 as reported by the Energy and Natural Resources Committee. I appreciate the chairman of the Committee on Energy and Natural Resources [Mr. McCLURE], the distinguished chairman of the subcommittee, Mr. WALLOP, and the help of the distinguished ranking minority member, Senator JOHNSTON in clearing this amendment. They readily realized the need for this legislation and expeditiously processed it through the committee. I also want to thank the committee staff for their sympathetic help to a very urgent requirement.

This amendment will grant the necessary legislative authority to the agreement worked out by the National Park Service, the city of Charleston, and the operator of the Fort Sumter tour boat with regard to location of the dock for the tour boat. This has, admittedly, been a long struggle, but now that we have finally secured agreement among the three parties, I urge the Senate to move to approve this amendment. The situation in Charleston has become critical since the present tour-boat dock lies close by the impending construction of the new James Island Bridge.

As the Senate may recall, in 1976 it was determined that the tour boat should be moved from the city marina to a better location. In 1978, I secured the appropriation of $5,581,000 for a new dock. Later we enacted a rider to delay that appropriation due to a dispute with the National Park Service who had proposed a Broad Street location of the facility. The city of Charleston preferred a location at the Fleet Landing site in connection with the development of new tourist facilities. In 1980, the city and the Park Service came to agreement on utilizing the former Fleet Landing site and Congress enacted my amendment as part of Public Law 96-199 authorizing the purchase of the Fleet Landing site. In late 1982 we provided $368,000 to acquire the Fleet Landing site.

However, the operator of the tour boats was not part of that agreement and in the ensuing years, we have seen several additional sites proposed and rejected by the various parties. Finally they have now all come to agreement on a site adjacent to the Dockside II condominiums development.

Not only do we have the three interests in agreement, but as sometimes happens when things are delayed, we have a better location for the tour boat facility. Furthermore, we will have a superior project in that it will be contiguous to a proposed City Marine Science Museum or aquarium, and a restaurant that will provide a more enjoyable visit to the thousands of persons who visit Fort Sumter each year. The new site is much more accessible to the highways serving Charleston and will provide sufficient parking for cars and buses. In addition, the city will provide shuttle service to historic Charleston and the Cooper River location will enable the tour boats to stop at Patriots Point. The concept and location for the new facility has been widely discussed and endorsed by the local media, citizens, committees, and preservation groups.

Mr. President, Charleston is a unique city and in the long struggle to locate the tour-boat facility, we have always kept uppermost in our minds our great tradition of historic preservation. Mayor Joseph Riley has maintained that tradition, while providing outstanding economic progress in Charleston. He recently received the "City Livability Award," which is just another tribute to Charleston's fidelity to our heritage. Similarly, the city has worked to accommodate the ever-increasing number of visitors with as little disruption as possible. The Dockside II location conforms to that policy and I commend Mayor Riley, the National Park Service, Mr. George Campson, and the tour-boat operators for working out this proposal.

Mr. President, the Energy and Natural Resources Committee added two amendments that improve the bill which we submit as an amendment to the continuing resolution. The first one deletes vehicular parking from section 2(a)(2). This is at the suggestion of the Park Service that the more appropriate way to share the use of parking facilities is under a cooperative agreement pursuant to section 2(a)(3) of the amendment. The second amendment authorizes the transfer of two Charleston properties between the Park Service and Coast Guard. This merely conforms the jurisdiction over these properties to the agencies that are actually using the parcels.

Mr. THURMOND. Mr. President the amendment I offer today along with my colleague from South Carolina, Senator Hollings, is identical to S. 2534, legislation which would authorize the acquisition and development of a mainland tour-boat facility for the Fort Sumter National Monument in Charleston, SC. That legislation was the subject of a hearing in the Public Lands, Reserved Water and Resource Conservation Subcommittee of the Senate Energy and Natural Resources Committee on July 18, 1986. Then, on September 23, 1986, S. 2534 was reported favorably with an amendment to the full Senate. In order to ensure that the unique tour-boat site designated by this legislation remains available, it is imperative that the Congress act this year.

As one of the most historic landmarks in our Nation, each year almost 180,000 tourists from throughout South Carolina and the Nation visit Fort Sumter which stands on a small island at the mouth of Charleston Harbor. It was at this site that the first shots of the Civil War were fired, when Union troops, under the leadership of Maj. Robert Anderson, refused to surrender Fort Sumter to Confederate Gen. Pierre Beauregard.

In 1948, Fort Sumter was designated a Civil War Memorial and also became part of the National Park Service system. Since 1948, tens of thousands have been ferried in boats from the Peninsula of Charleston to the fortress island and the number continues to grow each year.

Despite the busy traffic between the city and the fort, the National Park Service has never had a permanent dock from which boats can launch to take visitors to and from the island. Instead, the Park Service has utilized space in the city for this purpose. Unfortunately, this option will not be available within the next 2 years as construction of an expressway is planned for the site from where the boats currently launch.

Recognizing the eventual need for a new location for the boat dock on the Charleston Peninsula, Congress in 1978 appropriated $5,581,000 to construct an appropriate welcome center and boat dock at what is known as the Broad Street site. This site was deemed inappropriate, however, when city officials persuaded the National Park Service that locating the dock at Broad Street would greatly inhibit and inconvenience the future growth of the tourist industry within the city.

To remedy this situation, Congress in 1980 enacted legislation authorizing the National Park Service to purchase the Fleet Landing site, and in 1982 Congress appropriated an additional $368,000 to pay for this property. However, subsequent consideration of the Fleet Landing site revealed that each year a significant amount of money would be needed to dredge and maintain the boat dock area, making the site a poor investment for the Federal Government. Furthermore, locating the boat dock on this property would cause congestion in one of the most historic districts of Charleston. Since 1982, the National Park Service has considered four other sites, but each one was determined to be unacceptable.

I am pleased to report, however, that the Park Service, with the cooperation of the city of Charleston and especially Mr. George Campson, the current Fort Sumter tours concessionaire, has finally identified a potential site known as the Dockside II property. This parcel of land passes the tests that the others failed—its location does not create a traffic congestion problem and the natural features of the property precludes a significant amount of dredging. In addition, the local community highly endorses the Dockside II site as the best possible site for the tour-boat facility.

Mr. President, I am confident that pursuing the Dockside II site alternative is in the best interests of the Federal Government. I believe the American taxpayers would prefer to have a site with ample parking and little dredging costs. To affect this change in the Fort Sumter tour-boat project, Senator Hollings and I introduced S. 2534.

This legislation would allow a major portion of the money which was originally designated for the construction of the facility to be used instead for the acquisition of property. The change is necessitated largely because initial plans called for the acquisition of a much smaller parcel of land upon which a parking garage would be constructed. In the revised plan, a larger parcel of land would be acquired. In fact, the new tract will be large enough to accommodate a flat level parking area, and as a result, an expensive parking garage would not be required.

In addition, this legislation would expand the 1978 law by allowing the city of Charleston to lease or purchase from the National Park Service a portion of the site upon which an aquatic museum could be built. I believe this museum would add greatly to the Fort Sumter facility, as visitors, especially school groups, would be able to combine the experiences of an historic monument and an aquarium.

Furthermore, this legislation would give the Park Service authority to grant and accept easements and covenants over the property. This provision would allow the Park Service to enter into agreements to share portions of the parking area with the city and other local parties. In return, the city would perform routine services such as lawn maintenance and refuse removal. Of course, any covenant or easement which the Park Service grants would require the recipients to strickly comply with National Park Service standards.

Mr. President, in conclusion, I would like to emphasize two important facts. First, this amendment does not appropriate any new funds but merely reprograms money already provided for in previous legislation, and allows the Park Service to purchase the Dockside II site rather than the Fleet Landing site. Second, both the National Park Service and the city of Charleston strongly support Dockside II as the best possible location for the Fort Sumter facility. While six different sites have been considered over the past 10 years, I am pleased that the two parties now mutually agree that the provisions of this amendment meet and exceed their individual expectations and requirements.

Mr. President, in short, this amendment authorizes the National Park Service to purchase and develop the only remaining piece of property in Charleston which can adequately house the type of welcome center and tour-boat facility which the Fort Sumter National Monument deserves. This legislation will ensure convenient access for visitors to Fort Sumter for many years to come. I urge my Senate colleagues to support its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. HATFIELD. Mr. President, we are now informed that this matter has been cleared on both sides of the aisle and move its adoption.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I have no objection to this amendment and I will stand aside for its approval. But while driving in this morning I was listening to the Senator from Oregon talk about using the appropriations bill not alone as an authorizing committee but as a committee dealing with substantive legislation.

I just would like to add my voice to his. I do not know how you decide which ones are OK and which ones are not OK.

This one is fine with me. I have no problem about it. I will step aside and let it pass. But I want to say to my colleague that I think it is a great responsibility for one man or two men to be out here on the floor and taking a lot of cats and dogs that did not go through the committees themselves, that did not come here in the normal procedure.

I will not stand in the way of this one, but I heard Tacoma, WA, making arrangements for the lease of a property there; and I heard another one which I have forgotten. I quess it was naming a building in South Carolina.

There is really no problem about that. No one has a particular objection about naming a building in South Carolina.

But I want to point out as you continue this process, each one gets a little more stronger, a little more substantive, and finally we have changed the entire legislative process and turned it over entirely to this appropriations bill or the continuing resolution.

I just wanted to rise to make that point. I will not stand in the way of adoption.

Mr. HOLLINGS. If the distinguished Senator will yield, I made that point at the time I offered the amendment, that these moneys had been appropriated in 1978 or 1980. Different organizations, historic associations, and everyone else, have been negotiating in a 5-year period. The Energy Committee unanimously reported it out and cleared it to the calendar. This does not set policy and it does not affect the appropriations.

Mr. METZENBAUM. I voted for it to come out of the Energy Committee. I am raising the issue of the process, how we conduct ourselves around here. I am echoing the words the distinguished chairman himself used a little bit earlier. My concern is this one is all right, but how about the next one that may not be all right? Then where do we go at that point?

Mr. BUMPERS. Will the Senator yield?

Mr. METZENBAUM. I yield.

Mr. BUMPERS. In connection with what the Senator from Ohio just said, I want to take exception to some of the things he just said. All year long we hold hearings and markup sessions, but maybe a Senator cannot get his chairman to put his item on the business agenda, even though his bill is of great concern to the people back home. But he absolutely cannot get it on the agenda.

I regret this whole CR process. The way we operate in the last 2 weeks of Congress reminds me of when Lou Holtz was coach of the New York Jets. In the pregame warmup, he would say, "Remember, men, if we receive, try to recover the fumble, and if we kick, try to block the extra point."

This CR is a terrible thing, and we recognize that. But we know if we do not get some things that we feel to be legitimate and much needed by the people back in our respective States included in the CR, it will be our last chance to be heard. We ought to have a right to be heard on the CR. It is the last chance we have until the next Congress.

Some of the things we're considering today are fairly urgent. I recognize the position of the Senator from Oregon and the Senator from Ohio, but I want to be the devil's advocate and say that all of these amendments ought not fall simply because somebody failed to cross a "t" or dot an "i." We are dealing with people's lives, with farm prices, with utilities across the country, a whole host of things that are relevant and important to our people.

If you take that highly legalistic position that everything is out of order, not a germane, or legislation on an appropriations bill, you will be doing your own people a disservice.

It is OK to look skeptically at some of these things, but I have experienced a lot of frustration, as have many other Members, in trying to get something done during the year, and this is the last train leaving the station. While I try to be as circumspect as I can, I think every amendment I intend to offer on this bill would have been perfectly legitimate to offer in committee. We did not offer them in committee because the chairman asked us not to, saying that he wanted to report a clean bill to the floor.

Mr. HATFIELD. I have one brief observation concerning some of the remarks made by the Senator from Ohio. I appreciate his view as he expressed it because it coincides with what I have been attempting to do.

□ 1010

I say to the Senator from Ohio that yesterday, we had a series of amendments which were clearly rewriting policy or regulations in major laws. They constituted major policy change within the existing law. Those were put to a test vote on germaneness and so forth. I was very grateful for the Senate's standing behind those challenges.

We indicated at that time that there would be amendments that we would try to set up criteria for—such as this amendment: those amendments which would have no budgetary impact; that is, there would be no impact on the outlay; those which were minor in character and affected only one small area, geographic or some very small part of existing law—in other words, trying to keep it down to that very, very what we would call less consequential kind of amendment.

I also urge today that the chairmen of these authorizing committees stand firm on these requests that are put to them as having been cleared by the authorizing committee and not just automatically clear them and say, "Go make your try on the floor." I think we have to have their cooperation, their support, because the body as a whole depends upon their strength to withstand such efforts. I appreciate that.

I also wish to say that Senator THURMOND indicated to me, I believe, that Senator McCLURE, in this case the chairman of the authorizing committee, has given clearance for this to be offered on the continuing resolution.

(Mr. BOSCHWITZ assumed the chair.)

Mr. THURMOND. That is correct, Mr. President. This is an emergency and almost has to be passed.

Mr. HATFIELD. I might say we also have the debt ceiling coming down, so this is not quite the last train out of the station. It might be nice to share with that committee some of the responsibilities of handling that emergency legislation.

Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3112) was agreed to.

Mr. HATFIELD. I move to reconsider the vote by which the amendment was agreed to.

Mr. THURMOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3113

(Purpose: To allocate $200,000,000 of economic support fund assistance for the Philippines out of funds transferred for Central American democracies)

Mr. BYRD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 3113.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. —. (a) Notwithstanding any other provision of this joint resolution, of the amounts transferred under this joint resolution (as described in section 205 of H.R. 5052, as passed the Senate on August 13, 1986) for assistance to the Central American democracies in accordance with the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund), $200,000,000 shall be available only for the provision of such assistance for the Philippines.

Funds allocated for the Philippines provided that this shall be in addition to amounts of such assistance otherwise available for that country.

Mr. BYRD. Mr. President, I am offering this amendment to transfer $200 million from the $300 million which exists in the military construction appropriations bill for Central American assistance to the Philippines for economic assistance. This amendment would require the money to be spent for economic support, which is for the same purpose as Central America assistance money. I am not proposing—Mr. President, may we have order?

The PRESIDING OFFICER. The Senator is correct. The Senate will please be in order.

The Senator may proceed.

Mr. BYRD. I thank the Chair.

Mr. President, I am not proposing that we appropriate new funding for the Philippines or that we add to the budget deficit. I am simply suggesting that we transfer this needed money from other uses that have a lower priority. The funding from which I propose to direct $200 million for Philippine assistance is the $300 million fund for Central America, which was placed in the military construction appropriations bill when it was considered in the House.

I presume that the fund was created to make voting for the Contra aid program more attractive in that bill.

The other day, when I offered an amendment to transfer $200 million to the Philippines from economic support funds for certain other countries, it was said then that money could not be transferred from Central American assistance in fiscal year 1987 because there was doubt that such funds would exist. That $300 million had been created by the other body as a "sweetener," supposedly to make it easier for Members there to vote for Contra aid. There was some question then with respect to a possible point of order, it being said that, inasmuch as such an amendment would be dealing with 1987 moneys.

I have been advised now by the General Accounting Office that the Central American assistance fund, which was for fiscal year 1986, can be made available for expenditure in fiscal year 1987. As I say, that was why I was reluctant earlier this week to offer this particular amendment. I now have a letter addressed to me, in response to an inquiry from my office, by the Comptroller General of the United States.

In the letter, I would say the bottom line on this point is that funds—I shall read a pertinent part. It is responding to my office's inquiry requesting the views of the Comptroller General:

As to whether section 205 of the Military Construction Appropriations Act of 1987, H.R. 5052, as passed on by the Senate on August 5, 1986, would be effective to make available for FY 1987 funds that would otherwise expire at the end of FY 1986 if the bill is enacted as law through inclusion in a continuing resolution, as of fiscal year 1987.

As discussed below, we would consider the statutory language in question to make funds which would have otherwise expired in fiscal year 1986 available for obligation in fiscal year 1987.

Mr. President, I shall not at the moment insert the whole letter in the RECORD because I may use it again later. Then, at the conclusion of my statement, I shall ask that it be printed in the RECORD.

The $300 million Central American fund is just a "slush" fund, in my opinion. I am going to explain why I say it is a "slush" fund.

It has no particular rationale for being.

The administration requested a total of over $1.1 billion in its regular foreign aid request for fiscal year 1987 for the four Central American neighbors of Nicaragua. That is a 10-percent increase over the amount requested for fiscal year 1986, which was $1 billion. So Central America has not been subjected to cuts. Does anyone doubt that the $100 million Contra aid program—which has already been voted on—will further support the economy of Honduras in particular and also the other Central American countries as well?

□ 1020

So then, to add yet another $300 million to that to pile it up even higher just does not have a very persuasive rationale. It was added by the other body to the military construction bill. The administration never requested it. It is of questionable rationale; it is what is known as a "sweetener." It was put there by the other body to ease the pain in voting for Contra military aid. In other words, to gain votes. But, Mr. President, the countries in Central America are going to get much more than their fair share in 1987. Who is going to get what? Under the administration's request, El Salvador will get $522 million; Costa Rica, $191 million; Guatemala, $150 million; Honduras will get $254 million. That is $1.1 billion. Add another $100 million for the Contras—which the Senate has already voted on some days ago—and now add another $100 million which will still be left after my amendment is adopted, if it is adopted. That is a total of $1.3 billion. That is already a 30-percent increase over last year.

The Philippine Government deserves this support. This body played an important role in supporting the coming to power of President Aquino, but we did not spend any funds in that role. Now our role must change and we need to reorient some priorities for the democratic development of one of our oldest allies, and, I would point out, military allies. The bases we have there are vitally important to this Nation in keeping the Communist guerrilla problem under control. Eradicating it is going to take our sustained help.

This is infrastructure money. This is anti-Communist money. This is military security money. My amendment is going to convert slush money into something which can help us and also help our Philippine friends. It is a partnership and we need to keep our end of the bargain. We cannot just applaud heavily when President Aquino comes here, as my good friend and our colleague Senator LUGAR said the other day, we cannot just applaud and then turn away from her when she gets on the aircraft.

Therefore, I propose to convert some of this "slush" into genuine assistance, to turn "waste" into constructive investment in a new democracy. The Philippines desperately need, and I am persuaded that that Government can wisely use an additional $200 million in aid above and beyond the administration's request of $233 million for fiscal year 1987. That is a total of $433 million. It is still nearly $100 million below what we are going to give El Salvador, for example, next year. El Salvador has a guerrilla problem which is relatively under control, a guerrilla force which is less than half the size of the Communist guerrilla movement in the Philippines. Every improvement that can be made in the Philippine countryside will help to put the guerrillas on the defensive and to help erode the base of support there for the Communists.

I cannot see how we can do less for a friendly nation that is doing everything in its power to be a genuine democracy. I cannot think of how we can better spend tax dollars in our own national security interests than in providing this money at a time of trial for the Philippine Government.

I urge the adoption of the amendment.

Mr. BUMPERS. Will the Senator yield?

Mr. BYRD. Yes, I am happy to yield.

Mr. BUMPERS. Mr. President, I rise in support of the amendment of the Senator from West Virginia. I did not speak on the amendment when it was presented in this body earlier, but I want to state in the most forceful terms possible my support for this amendment. I have always said that I would not vote for anybody for public office who did not have a good sense of humor, because that would indicate he took himself too seriously and that I would not vote for anybody who did not understand history. I have alluded to it once before on the floor, a book that I am still wading through as I get time by Barbara Tuchman, the eminent historian, called "The March of Folly," from the Trojan War to Vietnam, in which she points out that during the roughly 4,000 to 5,000 years that man has been trying to govern himself, he keeps ignoring history and therefore keeps making the same mistakes.

Since I have been in the United States Senate, we have propped up the Shah of Iran, we have propped up Anastasio Somoza, Ferdinand Marcos, and other lesser lights because they said they hated Communists. That is about all you have to do to get the purse strings untied at the U.S. Treasury. Just say you are anti-Communist. We propped them up and you can see what has happened.

We are getting ready to vote on South African sanctions today. Nobody believes that what we do in imposing sanctions on South Africa is going to bring the South African Government down, but at least it affirms to the rest of the world that the United States has some character, that we do have some moral values that we stand behind. As Cory Aquino said in a joint session of Congress, the revolution in the Philippines was the cheapest revolution the United States ever bought into; it did not cost a dime.

I am going to offer an amendment later in the day to try to kill the National Endowment for Democracy. NED was a bad idea when it was authorized in 1983 and it still is. I find that some of NED's money went to an organization in the Philippines that was pro-Marcos. Until almost the day he was overthrown, this organization was trying to prop up Marcos.

Barbara Tuchman is absolutely correct when she says if we don't understand history, we will continue to shoot ourselves in the foot. Can you imagine the message we sent to the Philippines the other day, I ask the Senator, when this body rejected his amendment.

Mr. BYRD. Yes. I fully realize the message that was sent.

Mr. BUMPERS. I promise you it had a devastating effect on the country, the morale of the country and President Aquino's credibility as a leader in that country. After she was so warmly received here, she goes back home and the first thing that happens is we say no—despite your abject poverty, despite the fact that your army is fighting Communist insurgents all over the Philippine Islands, the United States is saying no to aid to the Philippines.

We have the opportunity to support a credible, fine leader, who is absolutely committed to democracy and everything we cherish and believe in, and we say no. Now, if the Communist insurgency in the Philippines begins to take control and they are on the outskirts of Manila, we will send her $5 billion.

Mr. BYRD. Yes.

Mr. BUMPERS. Or whatever they want, whatever they need, whatever their military apparatus says they need, we will send it to them by the shipload.

Mr. BYRD. And maybe in the long run, some American boys.

Mr. BUMPERS. Yes, possibly. But $200 million to try to help a woman who is committed not only to staving off communism but improving the plight of her people economically. I do not know of a country in which communism has gotten a foothold where the people were not in abject poverty. And so we will sit here and give the National Endowment for Democracy $15 million or $20 million and they pass it out to hundreds of grantees. It is not at all clear that we are getting any benefit out of the investment in NED or the hundreds of other millions and possibly billions of dollars that we appropriate here for very questionable causes. Not even the people who are prepared to vote against the Senator's amendment, not one person who is going to vote against his amendment will tell you that it is not meritorious to try to help Cory Aquino build democracy in the Philippines and thereby eliminate future trouble for the United States. We want military bases? You bet we want them, and we need them.

□ 1030

One of the biggest political problems President Aquino faces in her country are those people who are not even Communists but who say: "Let's not let the United States in here with ships that carry nuclear weapons," or, "Let's eliminate the U.S. presence totally at Subic Bay and Clark Field."

I can tell you that the attitude of this body about trying to help President Aquino fosters the very thing we deplore most, and that is opposition to her efforts to democratize and improve the economic plight of her country.

I will most certainly vote for the Senator's amendment.

Mr. BYRD. I thank the Senator. I could not make a better case.

Of course, we sent a message to the Philippines the other day. The distinguished Senator from Arkansas has well stated the implications of that point. I hope we do not send a second similar one today.

He has spoken of our bases. Those bases are irreplaceable, certainly in the near time. They are strategically located. The American people have invested billions of dollars in them, and it would take billions more to locate bases elsewhere; and even then, they would not be as strategically located as are our air base and naval base in the Philippines.

It is a fledgling democracy, and I think that this demonstration of substantive support for that country at this time can go a long way in shoring up that country. What could be more in the good interests, the national security interests, of our own country?

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The majority leader.

Mr. DOLE. Mr. President, what we are hearing is the argument we heard yesterday and the day before all over again. I think there is still an ongoing effort to try to devise some way to assist the Philippines, so this is not a pro or antivote with respect to the Philippine Government of Mrs. Aquino. This is just another earmarking from accounts already badly cut.

What this really is, when you get down to the bottom line, is another way to kill aid to the Contras. That is what this is all about. After all those great speeches we have heard about the fledgling democracy, I have not heard anybody talk about trying to help those who are fighting communism in Nicaragua, giving their lives, while the Communists and the Cubans and the Soviet Union would have another beachhead in Nicaragua. Nobody seems to care. Still, a majority cares.

Throughout this year, we have been trying to get some aid to the freedom fighters, who would like a democracy in Nicaragua, who would like free elections. But we are told that we cannot have that; that would upset Daniel Ortega, who has one foot on the Catholic Church and another foot on the free press. He has closed down the only opposition paper. He has kicked out the bishop of the Catholic Church.

Now it is proposed that we take the glue that held together the Contra aid package—not a slush fund, the glue—and say, "We will take that away. Nobody needs that, nobody wants that, and we will give that to the Philippines."

We are talking about democracies in Central America. They are a bit fragile.

Again, it seems to me that we had better keep on searching for some way, if there is a way, to give additional aid to the Philippines. But no real case has been made for it. We have increased aid to the Philippines. There is $505 million in the fiscal year 1987 budget for the Philippines, a substantial increase. I fail to understand why it is imperative on the part of some that we find $200 million because the House passed, by a margin of six votes, a $200 million aid package to the Philippines, because somebody thought we ought to do it.

I hope we still can keep searching for some bipartisan way to make this happen, but, in the process, I hope we do not put the final nail in the coffin of the Contras, which is what this is all about. That is the bottom line.

Nobody is being fooled by this maneuver. I think we should take a look at all the earmarkings we have now, and perhaps we ought to suggest, if we are going to take it out of foreign aid or ESF, that we take it out of all the countries, instead of some democracies that are struggling in Central America, probably struggling as hard, under difficult circumstances, as the Philippines—maybe even more so. I am not certain we are in a position to judge which country ought to be able to give up a few million dollars to help another country that is in difficulty.

So I hope that, at the proper time, we can table this amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. MATTINGLY. Mr. President, I join in the remarks of the majority leader in opposition to the amendment that is being proposed.

There are two points: This amendment is not just an amendment for assistance to the Philippines but, really, it is an amendment for the Philippines and, at the same time, against the freedom fighters in Nicaragua.

Around here, we often use the term "killer amendments." This is another killer amendment. This is an amendment meant to kill the package that was so well put together by the House of Representatives, the U.S. Senate, and our President in order to give assistance not only to the freedom fighters—humanitarian aid and military assistance—but also economic aid to the democracies in Central America.

We have watched the growth of democracy in Central America. That is where this assistance is going to go—to Guatemala, Honduras, El Salvador, and Costa Rica. The package was put together in the House of Representatives. If this amendment were to succeed, what would happen would be that we would go to conference with a package that was different from that approved by the House of Representatives. Whereas we had what we term a nonconferenceable type package in the two military construction bills in reference to aid to Nicaragua and the surrounding democracies, it would become a conferenceable item if this amendment is adopted.

□ 1040

Opponents of the aid package tried here in August I believe, if I am not mistaken, some 19 different times to offer amendments to change that package and they were defeated each time.

Now we are replaying it once again. We played it here on the floor of the Senate in March and passed an assistance program 53 to 47. They replayed it once again in June in the House of Representatives and we had to do the same thing again in August here on the floor of the Senate and again it was passed by a vote of 53 to 47.

Mr. President, I heard the comment made about a slush fund. Most of the people of the United States probably look at foreign aid as all slush fund. I know the remark was made that the economic assistance package to Central America was a slush fund.

That is probably good political rhetoric but I am certain that those who use that terminology would not think those were slush funds that were going to some other countries. In fact, it is economic assistance and it is not waste as demonstrated by the success of our Central American policy.

I am certain there are those in this body who may think that the assistance being asked by the Philippines of $200 million is waste. I do not think we ought to get up on the floor of the Senate and say it is waste or slush but rather debate that question upon its merits. How much money can the United States afford to give in assistance to the Philippines or any other country? I think that is the way that we should debate those matters.

But basically what we do not want to see happen is the unraveling of an agreement that Congress has already spent so many hours on. We spent 10 hours in March on the floor of the Senate debating aid to Nicaragua. We spent 2½ days in August debating.

All this amendment does is just begin yet another debate on the same subject. I think we all would probably like to dispose of it in probably about

5 minutes but it probably will not be disposed of in 5 minutes.

What I would think would be the better thing to do would be to continue the efforts of going on off the floor of the Senate, a bipartisan effort to try to come up with some type of package that can be offered in regard to assistance to the Philippines.

Mr. President, as I said before, we have already voted many times on this issue. I do not think we should have to spend time voting again on the economic assistance package to Central America.

In all probability, there are other accounts in the continuing resolution from which Philippine aid can be found. I do not think the Central American aid should be the target. It has been decided already. We don't need more attacks at that target. Although apparently we will continue to have more attacks on the bipartisan Central American agreement.

I think what we probably need to do is focus our attention in some other direction, not on something that has already been decided not once, not twice, but now three times.

So let us try to draft an amendment that will be targeted to something else and not at this economic assistance that is going to Central America where it really does mean a lot, not only to Central American democracies but for stability in this hemisphere.

I do not want to debate this whole issue over again, but if you want to create further instability in this area of the world a good way to do it is to change the assistance package on which we have agreed.

So I would say, Mr. President, that I join with the majority leader and at the appropriate time we should table this amendment. Perhaps the proponents of this amendment will search for some other place where they can come up with the economic assistance they seek.

Mr. President, I yield the floor at this time.

Mr. PELL. Mr. President, I rise to enthusiastically support this amendment of the minority leader. I think it is an excellent one.

I would agree with the Senator from Georgia it should not take much time to debate. We all have our views and know them. I know my own view that I think the Philippines deserve a bit more help. It is maybe a little bit of an extreme statement to say it was a $200 million honorarium. But there is something in that, in that wonderful speech of Mrs. Aquino, a beautiful speech and a lovely speech, that did tug at the heartstrings of all of those there and we wanted to help her.

The question is how we help her and what we damage by doing it.

In this case we would be helping ourselves because the money would come from the Central American funds which a few of us, and it is a question of how many the few of us are—maybe it is a plurality, maybe someday it will be a majority—feel that it is in error to pump that money in Central America almost indiscriminately at this time.

This year alone if you add up the total $1.2 billion requested by the administration and an additional $300 million that we funneled in economic aid it adds up to $1.5 billion.

I would like to see the money for the Philippines taken from this pot, particularly from the support for what I call our terrorists, others call the Contras, the people who by acts of indiscriminate violence hope to change the policy of a government.

I think this is an ideal source for these funds and I am very glad indeed to support the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. DOMENICI. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. Mr. President, since I was not here when we opened debate on this, is there any time limit on this amendment?

The PRESIDING OFFICER. There is no time limit.

Mr. DOMENICI. I thank the Chair.

Mr. President, I join the majority leader in opposing this amendment. I also want to compliment him for the remarks he made.

It is absolutely astounding to the Senator from New Mexico that we are here once again debating the issue of aid to Central America.

When we heralded a Kissinger Commission on Central America a few years ago, which was the result of the late Senator Scoop Jackson's serious and significant desire that we approach Central America in a bipartisan manner, this occurred. The Commission gave a rather unanimous and compelling set of recommendations as to why it is in our national interest to foster Central American democracy, to help El Salvador, and to contain the Communist regime in Nicaragua. The Commission and its recommendations had enormous success, here in Congress and in the region, although some do not appear to be aware of that.

Who would have anticipated that Guatemala, just a few years ago chastised for conduct precisely the opposite of democracy now established by constitutional plebiscite and subsequent elections for the Presidency and Congress, would decide to try this exciting form of government called democracy?

Who would have thought that all of those Central American countries, except Nicaragua, are on the road to people-supported governments with individual and human decency and integrity as their cornerstone, moving from the exact opposite style of rule as rapidly as poverty-stricken countries can do that?

So we debated and voted, time and time again, whether we should help all of those countries. Then we decided, after 2 years of debate, that we would not only help the Nicaraguan freedom fighters but we would restore the original Kissinger Commission economic support package for the new democracies that surround the Communist regime of Nicaragua. Congress had come to recognize not only that Nicaraguans needed help but that our other neighbors down there also needed help. Honduras, Guatemala, and El Salvador have had enormous problems in trying to succeed at people type of governments with a little bit of freedom and democracy and a little bit of prosperity. Costa Rica and Belize already possessed freedom, but they, too, lacked prosperity, because of debt and commodity price decline.

We have voted one time, two times, and three times, and the U.S. Senate has stood fast. Each time we voted to give Central Americans a chance. Let us try again, today, to keep faith with them.

Recall for a moment, 3 years ago when all we heard, especially in the Senate, was criticism of El Salvador and of efforts to address those problems by our President. Now everyone runs around taking credit for the successes that are occurring with reference to infant democracy in El Salvador.

Well, a choice for democracy in a foreign country will not happen as a result of talk. It will not happen with praise. Democracy results from guts and determination by the people of a country. It will not have a chance of consolidating and succeeding unless the premier freedom country of the world decides to hlep them. That means the United States can't sit back and watch.

There seem to be some who feel we can help Central Americans by talking. But we are willing to help other friends of ours in the world who need economic and military support, not with $200 million or $300 million but with literally billions of dollars each and every year. Yet, our next door neighbors are desperately trying to make democracy work.

Today, no matter what you call this amendment by the distinguished minority leader, it will indeed say to our appropriators when they go to conference, unequivocally and absolutely: You have less money for the nonearmarked friends of the United States, including Central America. They will be cut rather than increased or frozen because the proposed Philippine aid is not only a transfer of funds from one region to another but it is earmarked.

This $200 million earmark joins the parade of mandates that now are eating up most of the economic support funds in this particular foreign aid bill. It will be worse in conference, where there is real trouble in store for our friends who have not had the pleasure of having a congressional patron who insists that their money be earmarked—such as Israel, Egypt, Pakistan, Ireland, and on and on. What is left over for the rest of the world, including the poor countries of Africa and our friends right here in our hemisphere, is about $600 million for all of them.

□ 1050

This is what this amendment does. It makes a reasonable allocation of limited funds more difficult. It makes that unearmarked pot smaller, and there is no way to get around it.

If you did not want to cut our other friends Monday, when a similar amendment of the distinguished minority leader was defeated, nothing had changed. If you did not want additional Philippine aid taken out of important friends, not protected by earmarks, that we have already ratcheted down to where they should seriously question whether we are serious about helping them, you ought to vote no again.

This amendment is more of the same and there is no question about it.

Mr. President, it is interesting that we started this year all talking about fiscal restraint. Both Houses of Congress decided that if there is one area where we are going to have fiscal restraint, it is foreign economic aid and foreign military assistance. In February, a conservative Republican President sends us a large foreign aid package and asks us to help with it. Shortly thereafter we cut it, for starters, 24 percent in the U.S. Senate. That is fine. That is the will of the institution.

Then we ask our appropriators to work within that ratcheted down foreign aid total—which we are not going to get by with very much longer and be a player in the world; we are not going to cut this President and other Presidents' foreign-aid package 24 percent every year in the name of Gramm-Rudman-Hollings and fiscal responsibility. But we did it this year.

Then, after we have done this, a majority said, "OK, Egypt and Israel are our premier friends; earmark them." Let us see how much. For example, we earmark them out of this Senate economic spport fund package of $3.9 billion; the House is only $3.2 billion. We will earmark $2 billion for Israel and Egypt. No one can take anything out of that. The administration cannot move it around. That is it. The House earmarks $150 million for Pakistan, and on and on, until we are down to about $600 million left for everybody, including Central America.

Now, we decided that we want to cut foreign aid. We ask our appropriators to do the very best they can, and they do. Senators KASTEN and INOUYE did a great job. Then we get a last-minute request that we find another $200 million for the Philippines.

It seems to me that we ought to find a way to provide between $150 million and $200 million worth of aid to the Philippines without jeopardizing our chances of being a real neighbor, a real friend, to budding democracies in this hemisphere. I believe we can.

I do not believe we can do it this way. I believe we will do it before we finish this resolution, but we do not have to do it this way.

It is also interesting, Mr. President, that the U.S. House, by six votes, after hearing the Aquino speech to the joint session did not change their regular foreign aid appropriations bill. They passed a freestanding supplemental that was supposed to run its way through the Congress, but it is sitting here in the U.S. Senate.

In the House, they govern their budget by different rules than we do, but they did not put it in the continuing resolution. By six votes, they said, "Let's send it over to the United States Senate so we can tell the world we voted for the Philippines, and we are not so sure where we are going to find the money." Although they have an easier job of finding money for the Philippines under their budget process than we do, the House has not found it yet.

In the Senate, we are asked to find another $200 million for the Philippines by cutting aid from the nonearmarked funds, the one little pot that is left after we have taken most of it and said it goes to these specific ones I have mentioned. Now we say, "Let's cut one-third out of that little pot and give it to the Philippines."

I hope we defeat this, as we did the last amendment on this subject.

I yield the floor.

Mr. MATTINGLY. Mr. President, I join in the remarks of the distinguished senior Senator from New Mexico. I think if we did this, went along with this amendment, we would be starting again on this issue from square one. I do not think we want to do that at all. In fact, I am confident that we do not want to do it.

So, I would say that what we should do is leave the Central American agreement intact, and try to find funding, for the Philippines from a different source.

Mr. BYRD. Mr. President, it is somewhat amusing to listen to the arguments that are made against this amendment. The distinguished majority leader refers to it as a "maneuver." Mr. President, call it whatever one will, it is a good amendment. And it is in the good interests of the United States of America.

Everybody agrees that we ought to make some funding available to the Philippines. That is what I hear from the other side by my friends who oppose this amendment. They are all agreed to that. But where is the money to come from? They do not want it to come out of defense funding. I prefer that it not come out of defense.

They do not want it to come out of ESF—economic security funds—from which source my amendment the other day would have taken the $200 million. They do not want it come out of there.

Now they do not want it to come out of this "slush" fund. They say they support the money for the Philippines, but where are they going to get it, from what source or fund? Not out of defense; not out of economic security fund; but, oh, no, do not touch that Contra aid "tree," do not touch that. "Woodsman, spare that tree."

Well, Mr. President, the administration asked for $1.1 billion for Guatemala, Honduras, Costa Rica, El Salvador—$1.1 billion. That is one-tenth of a billion more than last year. One billion last year; $1.1 billion this year. And the administration is getting that. The administration is getting that.

The administration did not request the $300 million that the House put in the military construction bill. The administration did not request that. Why is the administration now, through its loyal supporters opposing the transfer of these funds? I admire the distinguished majority leader. He often carries a load, I would venture, I would bet that he does not really have his heart in. I cannot presume to speak for him, but he is a loyal leader for the President on this floor. And the President is lucky that he has ROBERT DOLE fighting his fights for him.

But, why all of this sudden massing of the cavalry and the artillery and the infantry and making this Herculean defense of a $300 million "slush" fund that the House put in the military construction bill? The administration did not ask for the money. I cannot understand it. The administration did not ask for it. The administration is getting what it wanted. Now why all of this sudden massing of forces to get out here and make an all out assault on this amendment that is in our own country's interest, that is in the interest of the Philippines, that "fledgling democracy"—I will use that term again, which my good friend, the distinguished majority leader tried to place on the rack.

□ 1100

But why all of this? Is it an indication that the Contra policy is failing? Is it an indication that the $1.1 billion is not going to be enough? $300 million is intended for Guatemala, Nicaragua, Costa Rica, El Salvador, not the Contras we hear. Is the majority leader saying that without this $300 million on top of the $1.1 billion now, the Contra policy will fail? That says little, it seems to me, for the wisdom of the Contra policy. And it does not say very much for the supposed quiet support by our Central American neighbors for that policy. If we have to buy their support with another $300 million, then the administration's Contra policy is even more bankrupt than many already believe. Those nations do not need all of that money, but Philippine democracy clearly does.

I urge that the Senate support the amendment, and that if a tabling motion is made, that the tabling motion fail.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, I will move to table the amendment. Again, it is not, I hasten to say, to underscore that there is a feeling that we do not want to help the Philippines. I think that may be at least the perception of some.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. I assure the distinguished majority leader that I do not for a moment think or imply that the majority leader or the distinguished Senator from Georgia do not want to help the Philippines.

Mr. DOLE. No. I certainly made no reference to that. But I appreciate that comment by the distinguished minority leader because on this floor the last time we had this debate I indicated to the Senator from Massachusetts [Mr. KERRY] that perhaps this was an area we might look to to see if there were funds available. The distinguished minority leader addressed this earlier last week. This is not a new proposal. It has been around at least a week or 10 days. It is no something that has caught anyone by surprise. I must say that my mere mention of that on the Senate floor brought a number of opportunities to discuss my position with the House Members who feel very strongly on this issue.

This is not a slush fund. This is glue. This is a glue that held the Contra aid package together on the House side. It has been so long ago since we voted the first time to support the Contras in this Chamber this year. It was March. They still have not gotten any money. Do not misunderstand me. It was March when a majority in this Senate, a bipartisan majority in this Senate, stood up and said we want to help the freedom fighters, we want to help the freedom fighters in Nicaragua overcome the oppression of one Daniel Ortega, who is nothing but a surrogate for Moscow and Havana. There is no doubt about that. Ortega is proud of it. It is a fact. He is establishing a Communist beachhead in Nicaragua. Nobody denies that.

But for some reason we refuse to help the people who want freedom in that part of the world. We were going to give $100 million. We were going to give real aid to the Contras, military aid, not band-aids and blankets, but military aid. What has happened since then? Nothing. Nothing. We are starving the freedom fighters because this Congress refuses to appropriate the money the President has asked for. One way to make certain they do not get any, I am advised by my friends in the House, is to take away the $200 million.

That does not in the view of this Senator indicate anything about the Philippines. It is a wholly different argument. As far as I know, right now the Philippines are not fighting for their freedom. They have it. They wrested it peacefully, fortunately, from Mr. Marcos.

We do have an interest in the Philippines. I was surprised to read however—I do not have the clipping with me—a story in the New York Times where someone, a Filipino official, indicated if we did not shape up over here and give the money, they would remember that when it came to the bases. I am not certain that is the kind of friendship that people had in mind, though I understand the Finance Minister of the Philippines was trying to reach me by telephone. I might note that some would suggest it is all right for the Finance Minister in the Philippines to call up a Senator, but not somebody from South Africa to call a Senator.

But in any event, I think we still need to try to find a way. I know the chairman of the Senate Foreign Relations Committee, Senator LUGAR, is trying to find a way that will make it possible to come up with not $200 million, but $150 million, but even that is fraught with danger because it gets into a lot of different accounts. It would give the President discretion. I must say there is no reluctance on the part of the Secretary of State to have more foreign aid money. But I do believe that until we have found that way, we should not in a back door effort kill what little hope we have now for Contra aid. I do not know what the Philippine position is on aid to the Contras. But I know they believe in freedom. I know they do not support communism. I know they are concerned about the Communist insurgents in the Philippines. They might agree that maybe we are taking money away from Costa Rica, Honduras, El Salvador, Guatemala, and the regional programs. I am not certain that their governments are totally stable when you talk about fragile or fledgling democracies.

(Mr. RUDMAN assumed the chair.)

So, I reluctantly, and I say this because I have the greatest respect for the distinguished minority leader, and he is not here with any surprise attack. He said a week ago, this might be a good idea. And if this were in fact a slush fund, if in fact it had no relevance to another very serious problem, that being Contra aid, which the distinguished minority leader does not support, then we might be able to look at it a bit differently. But it would seem to me that not only those of us who supported Contra aid but the others who are concerned about other democracies should oppose this amendment.

Therefore, I move to table the amendment and ask for the yeas and nays.

Mr. BYRD. Mr. President, before the distinguished Senator moves to table, the majority leader has referred to $300 million as not slush but glue. That is a lot of money—$300 million for glue. He uses that term to explain why the House put in the $300 million.

□ 1110

That is economic. They did not need it. The President asked for $1.1 million, I understand, and that is what they are getting. But it was a political "glue" to pick up votes.

I have already indicated that I have no doubt but that the distinguished majority leader and Senator MATTINGLY want to aid the Philippines. The Senator from Georgia has wrongly referred to my amendment as a killer amendment. I am sorry about that.

Where do the Senators propose to get this money if not from the slush fund that is for Guatemala, Honduras, El Salvador, and Costa Rica, when those countries are already provided for in the $1.1 billion?

The administration did not ask for the $300 million. What better place from whence to take it? We are not taking it from the economic support fund across the board in the way we asked the other day. From where does the distinguished majority leader propose to get this money, if not from this source, or if not from economic support funding as I proposed the other day?

As I understand, the distinguished Senator from Indiana [Mr. LUGAR] may come in with an amendment in the second degree which would give the President discretion.

Well, now, if it would give the President discretion, he may take it from any fund, activity or account—not just economic support, not just foreign aid. It could come out of national defense. It could come out of education moneys. It could come out of FAA airport safety programs. It could come out of food stamps, coal research, cancer research, whatever.

But if not from all these, where?

I thank the distinguished majority leader for yielding, but I would like to have the answer to my question.

Mr. MATTINGLY. Will the Senator yield?

Mr. DOLE. I will yield in a moment.

I am advised that even though the $1.1 billion was requested, that level is not going to be reached. It is my understanding that there is about $656 billion in ESF funds for Central America and they will be lucky to receive $328 million. So the request may be one thing and reality may be another.

I do not want to leave the impression that this is going to be $1.1 billion plus $300 million, that we are giving more money than anybody asked for or more money than they might be able to use.

I will yield to the Senator from Georgia because he has some additional information on the $300 million.

Mr. MATTINGLY. I would just like to point out for the record that in the President's June 24 address to the Nation he outlined his request for aid to the Nicaraguan democratic resistance. The President requested the Congress to approve $300 million for new economic assistance to Central America. He clearly stated his support for that assistance.

Second, I would say to the distinguished majority leader that there may be other methods of providing assistance for the Philippines; they could use surplus commodities, there could be forgiveness of debt and other possibilities.

Mr. President, I ask unanimous consent to have the statement of the President entered into the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

WHY DEMOCRACY MATTERS IN CENTRAL AMERICA

(Following is President Reagan's address to the nation from the White House, Washington, D.C., June 24, 1986.)

My fellow citizens, the matter that brings me before you today is a grave one and concerns my most solemn duty as President. It is the cause of freedom in Central America and the national security of the United States. Tomorrow, the House of Representatives will debate and vote on this issue. I have hope to speak directly and at this very hour to Members of the House of Representatives on this subject but was unable to do so. Because I feel so strongly about what I have to say, I've asked for this time to share with you—and Members of the House—the message I would have otherwise given.

Nearly 40 years ago a Democratic President, Harry Truman, went before the Congress to warn of another danger to democracy, a civil war in a faraway country in which many Americans could perceive no national security interest.

Some of you can remember the world then. Europe lay devastated. One by one, the nations of Eastern Europe had fallen into Stalin's grip. The democratic Government of Czechoslovakia would soon be overthrown. Turkey was threatened, and in Greece, the home of democracy, communist guerrillas, backed by the Soviet Union, battled democratic forces to decide the nation's fate.

Most Americans did not perceive this distant danger, so the opinion polls reflected little of the concern that brought Harry Truman to the well of the House that day. But go he did. And it is worth a moment to reflect on what he said.

In a hushed chamber, Mr. Truman said that we had come to a time in history when every nation would have to choose between two opposing ways of life. One way was based on the will of the majority—on free institutions and human rights. "The second way of life," he said, "is based upon the will of a minority forcibly imposed upon the majority. It relies upon terror and oppression, a controlled press and radio, fixed elections and the suppression of personal freedoms. I believe," President Truman said, "that it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures."

When Harry Truman spoke, Congress was controlled by the Republican Party. But that Congress put America's interest first and supported Truman's request for military aid to Greece and Turkey—just as 4 years ago Congress put America's interest first by supporting my request for military aid to defend democracy in El Salvador.

THE THREAT TO DEMOCRACY

I speak today in the same spirit of bipartisanship. My fellow Americans and Members of the House, I need your help. I ask first for your help in remembering—remembering our history in Central America so we can learn from the mistakes of the past. Too often in the past the United States failed to identify with the aspirations of the people of Central America for freedom and a better life. Too often our government appeared indifferent when democratic values were at risk. So we took the path of least resistance and did nothing.

Today, however, with American support, the tide is turning in Central America. In El Salvador, Honduras, Costa Rica—and now in Guatemala—freely elected government's offer their people the chance for a better future, a future the United States must support."

But there's one tragic, glaring exception to that democratic tide—the communist Sandinista government in Nicaragua. It is tragic because the United States extended a generous hand of friendship to the new revolutionary government when it came to power in 1979. Congress voted $75 million in economic aid. The United States helped renegotiate Nicaragua's foreign debt. America offered teachers, doctors, and Peace Corps volunteers to help rebuild the country. But the Sandinistas had a different agenda.

From the very first day, a small clique of communists worked steadily to consolidate power and squeeze out their democratic allies. The democratic trade unionists who had fought Somoza's National Guard in the streets were now told by the Sandinistas that the right to strike was illegal and that their revolutionary duty was to produce more for the state.

The newspaper *La Prensa*, whose courage and determination had inspired so much of the Nicaraguan revolution, found its pages censored and suppressed. Violeta Chamorro, widow of the assassinated editor, soon quit the revolutionary government to take up the struggle for democracy again in the pages of her newspaper.

The leader of the Catholic Church in Nicaragua, Archbishop—now Cardinal—Obando y Bravo, who had negotiated the release of the Sandinista leaders from prison during the revolution, was now vilified as a traitor by the very men he helped to free.

Soviet arms and bloc personnel began arriving in Nicaragua. With Cuban, East German, and Bulgarian advisers at their side, the Sandinistas began to build the largest standing army in Central American history and to erect all the odious apparatus of the modern police state.

Under the Somoza dictatorship, a single facility held all political prisoners. Today, there are eleven—11 prisons in place of one.

The Sandinistas claim to defend Nicaraguan independence. But you and I know the truth. The proud people of Nicaragua did not rise up against Somoza—and struggle, fight, and die—to have Cubans, Russians, Bulgarians, East Germans, and North Koreans running their prisons, organizing their army, censoring their newspapers, and suppressing their religious faith. One Nicaraguan nationalist, who fought in the revolution, says: "We are an occupied country today."

I could go on, but I know that even the Administration's harshest critics in Congress hold no brief for Sandinista repression. Indeed, the final verdict has already been written by Cardinal Obando himself in the *Washington Post*. Listen carefully to the Cardinal's words. He says: that the Sandinista regime "is a democratic government, legitimately constituted, which seeks the welfare and peace of the people and enjoys the support of the overwhelming majority" is not true. To accept this as true, the Cardinal says, "is to ignore the mass exodus of the Miskito Indians, the departure of tens of thousands of Nicaraguan men and women of every age, profession, economic status, and political persuasion. It is to ignore the most terrible violation of freedom of the press and of speech in the history of our country, the expulsion of priests and the mass exodus of young people eligible for military service." As for the Catholic Church in Nicaragua, we have been "gagged and bound," the Cardinal says.

Many brave Nicaraguans have stayed in their country despite mounting repression—defying the security police, defying the Sandinista mobs that attack and deface their homes. Thousands—peasants, Indians, devout Christians, draftees from the Sandinista army—have concluded that they must take up arms again to fight for the freedom they thought they had won in 1979.

The young men and women of the democratic resistance fight inside Nicaragua today in grueling mountain and jungle warfare. They confront a Soviet-equipped army, trained and led by Cuban officers. They face murderous helicopter gunships without any means of defense. And still they volunteer. And still their numbers grow.

Who among us would tell these brave young men and women: "Your dream is dead; your democratic revolution is over; you will never live in the free Nicaragua you fought so hard to build?"

The Sandinistas call these freedom fighters contras—for "counterrevolutionaries." But the real counterrevolutionaries are the Sandinista comandantes, who betrayed the hopes of the Nicaraguan revolution and sold out their country to the Soviet empire.

The comandantes even betrayed the memory of the Nicaraguan rebel leader Sandino, whose legacy they falsely claim. For the real Sandino—because he was a genuine nationalist—was opposed to communism. In fact, Sandino broke with the Salvadoran communist leader, Farabundo Marti, over this very issue.

The true Nicaraguan nationalists are the leaders of the United Nicaraguan Opposition: Arturo Cruz—jailed by Somoza, a former member of the Sandinista government; Adolfo Calero—who helped organize a strike of businessmen to bring Somoza down; and Alfonso Robelo—a social democrat and once a leader of the revolutionary government.

These good men refused to make any accommodation with the Somoza dictatorship. Who among us can doubt their commitment to bring democracy to Nicaragua?

U.S. VITAL INTERESTS

So, the Nicaraguan people have chosen to fight for their freedom. Now we Americans must also choose. For you and I and every American have a stake in this struggle.

Central America is vital to our own national security, and the Soviet Union knows it. The Soviets take the long view, but their strategy is clear: to dominate the strategic sealanes and vital chokepoints around the world.

Half of America's imports and exports, including oil, travels through the area today. In a crisis, over half of NATO's supplies would pass through this region. And Nicaragua, just 277 miles from the Panama Canal, offers the Soviet Union ports on both the Atlantic and Pacific Oceans.

The Soviet Union already uses Cuba as an air and submarine base in the Caribbean. It hopes to turn Nicaragua into the first Soviet base on the mainland of North America. If you doubt it, ask yourself: why have the last four Soviet leaders—with a mounting economic crisis at home—already invested over $1 billion and dispatched thousands of Soviet-bloc advisers into a tiny country in Central America?

I know that no one in Congress wants to see Nicaragua become a Soviet military base. My friends, I must tell you in all seriousness, Nicaragua is becoming a Soviet base every day that we debate and debate and debate—and do nothing.

In the 3 months since I last asked for the House to aid the democratic resistance, four military cargo ships have arrived at Nicaraguan ports, this time directly from the Soviet Union. Recently we have learned that Russian pilots are flying a Soviet AN-30 reconnaissance plane for the Sandinistas.

Now, the Sandinistas claim this is just for making civilian maps. Well, our intelligence services believe this could be the first time Soviet personnel have taken a direct role in support of military operations on the mainland of North America.

Think again how Cuba became a Soviet air and naval base. You'll see what Nicaragua will look like if we continue to do nothing. Cuba became a Soviet base gradually over many years. There was no single dramatic event—once the missile crisis passed—that captured the nation's attention. And so it will be with Nicaragua.

The Sandinistas will widen and deepen another port while we debate: is it for commercial vessels or Soviet submarines? The Sandinistas will complete another airstrip while we argue: is it for 707s or Backfire bombers? A Soviet training brigade will come to Nicaragua; half will leave and half will stay. And we will debate: are they soldiers or engineers?

Eventually, we Americans have to stop arguing among ourselves. We will have to confront the reality of a Soviet military beachhead inside our defense perimeters—about 500 miles from Mexico. A future President and Congress will then face nothing but bad choices, followed by worse choices.

My friends in the House, for over 200 years the security of the United States has depended on the safety of unthreatened borders, north and south. Do we want to be the first elected leaders in U.S. history to put our borders at risk?

Some of you may say, well, this is fearmongering. Such a danger to our security will never come to pass. Well, perhaps it won't. But in making your decisions on my request for aid tomorrow, consider this: what are the consequences for our country if you're wrong?

THE DEMOCRATIC RESISTANCE: POPULAR SUPPORT AND THE NEED FOR U.S. AID

I know some Members of Congress who share my concern about Nicaragua have honest questions about my request for aid to the democratic resistance. Let me try to address them. Do the freedom fighters have the support of the Nicaraguan people? I urge Members of the House to ask their colleague, the Chairman [Les Aspin] of the House Armed Services Committee, who recently visited a town in Nicaragua that was a Sandinista stronghold during the revolution. He heard peasants, trade unionists, farmers, workers, students, and shopkeepers all call on the United States to aid the armed resistance.

Or listen to the report from Time magazine of Central American scholar Robert Leiken, who once had hopes for the Sandinista revolution. He says, "I have gone to a number of towns in Nicaragua where I have found that the youth are simply not there. I ask the parents where they're gone, and they say, they've gone off to join the contras." In Managua, Leiken reports 250 Nicaraguans stood on a breadline for 3 hours. "Who is responsible for this?" he asked. "The Sandinistas are responsible. The Sandinistas." That's what the people said. "The Sandinistas," Leiken concluded, "have not only lost support, I think they are detested by the population."

Can the democratic forces win? Consider there are 20 times as many Nicaraguans fighting the Sandinista dictatorship today as there were Sandinista fighters a year before Somoza fell. This is the largest peasant army raised in Latin America in more than 50 years. And thousands more are waiting to volunteer if American support comes through.

Some Members of Congress—and I know some of you—fear that military aid to the democratic resistance will be only the first step down the slippery slope toward another Vietnam. Now, I know those fears are honest. But think where we heard them before. Just a few years ago, some argued in Congress that U.S. military aid to El Salvador would lead inevitably to the involvement of U.S. combat troops. But the opposite turned out to be true.

Had the United States failed to provide aid then, we might well be facing the final communist takeover of El Salvador and mounting pressures to intervene. Instead, with our aid, the Government of El Salvador is winning the war, and there is no prospect whatever of American military involvement.

El Salvador still faces serious problems that require our attention. But democracy there is stronger, and both the communist guerrillas and the right-wing death squads are weaker. And Congress shares credit for that accomplishment. American aid and training are helping the Salvadoran Army become a professional fighting force, more respectful of human rights. With our aid we can help the Nicaraguan resistance accomplish the same goal.

I stress this point because I know many Members of Congress and many Americans are deeply troubled by allegations of abuses by elements of the armed resistance. I share your concerns. Even though some of those charges are Sandinista propaganda, I believe such abuses have occurred in the past, and they are intolerable.

As President, I repeat to you the commitments I made to Senator Sam Nunn. As a condition of our aid, I will insist on civilian control over all military forces; that no human rights abuses are tolerated; that any financial corruption be rooted out; that American aid go only to those committed to democratic principles. The United States will not permit this democratic revolution to be betrayed nor allow a return to the hated repression of the Somoza dictatorship.

The leadership of the United Nicaraguan Opposition shares these commitments, and I welcome the appointment of a bipartisan congressional commission to help us see that they are carried out.

U.S. POLICY GOALS

Some ask: what are the goals of our policy toward Nicaragua? They are the goals the Nicaraguan people set for themselves in 1979: democracy, a free economy, and national self-determination. Clearly the best way to achieve these goals is through a negotiated settlement. No humane person wants to see suffering and war.

The leaders of the internal opposition and the Catholic Church have asked for dialogue with the Sandinistas. The leaders of the armed resistance have called for a ceasefire and negotiations at any time, in any place. We urge the Sandinistas to heed the pleas of the Nicaraguan people for a peaceful settlement.

The United States will support any negotiated settlement or Contadora treaty that will bring real democracy to Nicaragua. What we will not support is a paper agreement that sells out the Nicaraguan people's right to be free. That kind of agreement would be unworthy of us as a people. And it would be a false bargain. For internal freedom in Nicaragua and the security of Central America are indivisible. A free and democratic Nicaragua will pose no threat to its neighbors or to the United States. A communist Nicaragua, allied with the Soviet Union, is a permament threat to us all.

President Azcona of Honduras emphasized this point in a recent nationwide address:

"As long as there is a totalitarian regime in Central America that has expansionist ambitions and is supported by an enormous military apparatus . . . the neighboring countries sharing common borders with the country that is the source of the problem will be under constant threat."

If you doubt his warning, consider this: the Sandinistas have already sent two groups of communist guerrillas into Honduras. Costa Rican revolutionaries are already fighting alongside Sandinista troops.

My friends in the Congress, with democracy still a fragile root in Central America—with Mexico undergoing an economic crisis—can we responsibly ignore the long-term danger to American interests posed by a communist Nicaragua, backed by the Soviet Union, and dedicated—in the words of its own leaders—to a "revolution without borders"?

KEEPING FAITH WITH A COMMITMENT TO FREEDOM

My friends, the only way to bring true peace and security to Central America is to bring democracy to Nicaragua. And the only way to get the Sandinistas to negotiate seriously about democracy is to give them no other alternative. Seven years of broken pledges, betrayals, and lies have taught us that.

And that's why the measure the House will consider tomorrow—offered, I know, in good faith—which prohibits military aid for at least another 3 months, and perhaps forever, would be a tragic mistake. It would not bring the Sandinistas to the bargaining table—just the opposite.

The bill, unless amended, would give the Sandinistas and the Soviet Union what they seek most—time: time to crush the democratic resistance, time to consolidate power. And it would send a demoralizing message to the democratic resistance: that the United States is too divided and paralyzed to come to their aid in time.

Recently, I read the words of a leader of the internal democratic opposition. What he said made me feel ashamed. This man has been jailed, his property confiscated, and his life threatened by the security police. Still he continues to fight. And he said:

"You Americans have the strength, the opportunity, but not the will. We want to struggle, but it is dangerous to have friends like you—to be left stranded on the landing beaches on the Bay of Pigs. Either help us or leave us alone."

My friends in the House of Representatives, I urge you to send a message tomorrow to this brave Nicaraguan and thousands like him. Tell them it is not dangerous to have friends like us. Tell them America stands with those who stand in defense of freedom.

When the Senate voted earlier this year for military aid, Republicans were joined by many Democratic leaders: Bill Bradley of New Jersey, Sam Nunn of Georgia, David Boren of Oklahoma, Howell Heflin of Alabama, Lloyd Bentsen of Texas, Bennett Johnston and Russell Long of Louisiana, Fritz Hollings of South Carolina, John Stennis of Mississippi, and Alan Dixon of Illinois.

Today, I ask the House for that kind of bipartisan support for the amendment to be offered tomorrow by Democrats Ike Skelton of Missouri and Richard Ray of Georgia and Republicans Mickey Edwards of Oklahoma and Rod Chandler of Washington. This bipartisan amendment will provide the freedom fighters with what they need—now.

With that amendment, you also send another message to Central America. For democracy there faces many enemies: poverty, illiteracy, hunger, and despair. And the United States must also stand with the people of Central America against these enemies of democracy.

And that's why—just as Harry Truman followed his request for military aid to Greece and Turkey with the Marshall Plan—I urge Congress to support $300 million in new economic aid to the Central American democracies.

The question before the House is not only about the freedom of Nicaragua and the security of the United States but who we are as a people. President Kennedy wrote on the day of his death that history had called this generation of Americans to be "watchmen on the walls of world freedom." A Republican President, Abraham Lincoln, said much the same thing on the way to his inauguration in 1861. Stopping in Philadelphia, Lincoln spoke in Independence Hall, where our Declaration of Independence had been signed. He said far more had been achieved in that hall than just American independence from Britain. Something permanent—something unalterable—had happened. He called it: "Hope to the world for all future time."

Hope to the world for all future time—in some way, every man, woman, and child in our world is tied to those events at Independence Hall, to the universal claim to dignity, to the belief that all human beings are created equal, that all people have a right to be free.

We Americans have not forgotten our revolutionary heritage. But sometimes it takes others to remind us of what we ourselves believe. Recently, I read the words of a Nicaraguan bishop, Pablo Vega, who visited Washington a few weeks ago. Somoza called Pablo Vega the "communist bishop." Now, the Sandinistas revile him as "the *contra* bishop." But Pablo Vega is really a humble man of God. "I am saddened," the good bishop said, "that so many North Americans have a vision of democracy that has only to do with materialism." The Sandinistas "speak of human rights as if they were talking of the rights of a child—the right to receive from the bountifulness of the state—but even the humblest *campesino* knows what it means to have the right to act. We are defending," Pablo Vega said, "the right of man to be."

Well, Reverend Father, we hear you. For we Americans believe with you that even the humblest *campesino* has the right to be free. My fellow citizens, Members of the House, let us not take the path of least resistance in Central America again. Let us keep faith with these brave people struggling for their freedom. Give them, give me, your support; and together, let us send this message to the world: that America is still a beacon of hope, still a light unto the nations. A light that casts its glow across the land and our continent and even back across the centuries—keeping faith with a dream of long ago.

Mr. DOLE. I want to read what Mr. Saguisag had to say. I understand he is one of Aquino's top advisers. This is dated October 1, 1986.

> If they are nice to us now, we will be nice to them. If they're not nice to us, we will not forget either. We have a long memory.

It seems to me that over a half billion dollars in fiscal 1987 is being fairly nice. How many dollars does it take to be nice to Mr. Saguisag, $1 billion? $2 billion? Close down the base?

Are we going to get into that kind of a game, that we have to be measured on whether we are generous in this country because we do not all rush to give away $200 million because somebody passes through town? We have people in Central America who are dying and fighting for their freedom and this Congress says, "No, not one dime. Not one dime."

That is for 2 years.

"We will give you band-aids, we will give you blankets, and we will give you Daniel Ortega forever."

That is what this Congress has said.

"We are not concerned about Moscow, Havana, La Prensa or the Catholic Church in Nicaragua."

I may be mixed up, but it seems to me that there ought to be some balance. A half billion dollars for the Philippines and we are trying to find more? We have been trying to find $100 million for the Nicaraguan freedom fighters all year long and we are being frustrated at every turn by those who talk about democracy and at the same time deny those even an opportunity for freedom in our own hemisphere.

I understand Costa Rica, Honduras, El Salvador and Guatemala have economies not exactly jumping. They might be able to use the aid just as well as some other country in some other part of the world.

I guess it would be a question of faith around here, that we have to vote $200 million or somehow you are anti-Philippines. It is all right to be an anti-Guatemala and an anti-freedom fighter and an anti-Honduras, but do not be an anti-Philippines.

We are not anti anything and I do not believe anyone else is in this Chamber. But we are broke. We do not have any money. We have not even raised the debt ceiling this year. We have to go to $2.3 trillion. We are paying $150 billion in interest on the debt this year. But some of us cannot wait just to shovel out another $200 million.

Somewhere along the line we have sort of lost reason.

Here we are warned by Mrs. Aquino's top command, one of her two closest advisers, we better shape up and ship out the money or we are going to be in trouble.

Maybe we can find it, but it would seem to me that before we worry about this $200 million we ought to make certain at least we try to help those who are fighting for freedom and giving their lives on a daily basis in Central America. We have snubbed them time after time. We have turned our backs on those people and said, "Forget it."

If we want to kill it again for another year, we adopt this amendment and we will be back here next year. I guess sooner or later they will be starved out. There will not be anybody left except Ortega and those who believe in his philosophy and those who believe we ought to shut down the opposition press and those who believe we ought to kick out the Catholic Church. They will be in charge. Castro will be strolling up and down main street somewhere in Managua arm in arm with Mr. Gorbachev and we will be saying, "We should have done something there."

I just suggest we are going to continue, as I promised the distinguished Senator from Massachusetts, to try to find some way to be of additional help of the Philippine Government. They are our friends. They are our allies. They have been linked with us for the past 100 years.

This is not the way, I guess, I would like to table the amendment.

Mr. KERRY. Would the distinguished Senator yield?

Mr. BYRD. Mr. President, I am sorry to continue to ask the majority leader to yield, but he has intrigued me by some of the things he has said. I shall not attempt to play on his pleasure long if he will withhold his motion.

The distinguished majority leader continues to refer to the action of the House in putting in this $300 million sweetener——

Mr. DOLE. Glue.

Mr. BYRD. 300 million dollars' worth of glue. The House has passed a supplemental appropriation bill providing $200 million for the Philippines. Why not call that bill up? The House took that action. Why not respect the House's action in that matter?

Second, the distinguished majority leader quite rightly decries what is happening to La Prensa, the one independent newspaper in Nicaragua. This Senator offered an amendment not very long ago which would have provided $450,000 to keep La Prensa alive. I said at that time that that was a vote for and against free press in Nicaragua. I offered that amendment. I shall not ask any Senator how he voted on that amendment, but the record is there.

The Senate had its chance then to preserve La Prensa. I spoke of that noble woman who risked her own life in the face of an assassination of her husband, which occurred some time back. She risked her own life and wants to keep the La Prensa organization intact. But only recently, she had to lay off 138 employees following the Senate's vote on La Prensa. She had to sell off a good bit of her equipment, trucks, and so on. So the Senate had its opportunity to speak up for La Prensa when it rejected my amendment to the military construction appropriation bill several weeks ago.

What did the Senate do? It rejected my amendment. Now we hear it said that we ought to do something about La Prensa. I may have an amendment that will do that a little later. It may be offered again.

Third and finally, I say to the distinguished Senator, I do not approve of the statement that has been made by Mrs. Aquino's subordinate any more than the Senator from Kansas approves of it. The Senate is not going to be intimidated.

I went to the Soviet Union and spoke with President Brezhnev in the Crimea on July 4, 1979. That is exactly what I told him and told Mr. Gromyko the next day with respect to the intimidating statements coming out of the Soviet Union anent the SALT II treaty: The Senate is not going to be intimidated by anyone or any government. I resent that statement as much and will resist it as much as will any Senator.

But let us not let that statement, that unwise and rather indiscreet statement by a subordinate of Mrs. Aquino, take our eyes off the ball. We are influenced here, not by one individual who makes an absurd threat. We are talking about the Philippines, a people, a democracy, a country that is of vital interest to our own security.

May I say to the distinguished majority leader, to use a rather hackneyed term around here, let us not be "knee-jerk." Let us not be "knee-jerk" because of what a subordinate of Mrs. Aquino says.

I ask unanimous consent that a letter sent to me by the Comptroller General of the United States be printed in the RECORD.

I thank the Senator for his patience. I will not ask again for him to yield.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The majority leader has the floor.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, DC, October 1, 1986.

B-224828
Hon. ROBERT C. BYRD,
U.S. Senate.

DEAR SENATOR BYRD: Yesterday Mr. Richard D'Amato of your staff requested our views as to whether section 205 of the Military Construction Appropriations Act, 1987, H.R. 5052 (as passed by the Senate on August 13, 1986) would be effective to make available in fiscal year 1987 funds that would otherwise have expired at the end of fiscal year 1986, if the bill is enacted as law (through inclusion in a continuing appropriations resolution) after the beginning of fiscal year 1987. As discussed below, we would consider the statutory language in question to make funds which would have otherwise expired in fiscal year 1986 available for obligation in fiscal year 1987.

Section 205 of H.R. 5052 provides in pertinent part as follows:

"ASSISTANCE FOR THE CENTRAL AMERICAN DEMOCRACIES

"SEC. 205. (a) There are hereby transferred to the President for assistance to the Central American democracies (Costa Rica, El Salvador, Guatemala, and Honduras) in accordance with the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 [relating to Economic Support Funds (ESF)], $300,000,000 of unobligated funds from the accounts specified in subsection (b). Amounts transferred under this section shall be administered in accordance with the terms and conditions of chapter 6 of part I of the Foreign Assistance Act of 1961 [relating to the Central American Democracy Peace and Development Initiative]. Notwithstanding any other provision of law, funds made available by this section—

"(1) shall be in addition to amounts previously appropriated for the fiscal year 1986 and allocated for assistance to Central American countries, and

"(2) shall remain available for obligation until September 30, 1987, except that not less than $100,000,000 shall be obligated on or before September 30, 1986.

"(b) Amounts made available by this section shall be transferred from such accounts as the President may designate for which appropriations were made by title II of the Foreign Assistance and Related Programs Appropriations Act, 1986, title IV of the Agriculture, Rural Development and Related Agencies Appropriations Act, 1986 [Public Law 480 funding], (as contained in Public Law 99-190), and title II of the Urgent Supplemental Appropriations Act, 1985 (Public Law 99-10)."

The provision is identical to a similar provision in the House-passed version of the same bill, enacted as part of a package of floor amendments relating to Central America (including aid to the Nicaraguan Democratic Resistance). *See* 132 Cong. Rec. H4253 (daily ed. June 25, 1986).

Related to the provision quoted above is section 301 of the same bill, which would increase funding under title II of the Urgent Supplemental Appropriations Act, 1985 (under the category "Emergency Reserve for African Famine Relief") by $300,000,000, and make those additional funds available for obligation until September 30, 1987. Because title II of the Urgent Supplemental Appropriations Act, 1985, is one of the sources for transfer under section 305, amounts made available in section 301 would also be available for transfer to ESF.

The Committee explanation of these two provisions is as follows:

"The Committee has recommended an appropriation in the amount of $300,000,000, as requested by the President in his June 24, 1986, speech, for economic aid to the Central American democracies * * *. These funds will be used to continue the efforts of the National Bipartisan Commission on Central America. That commission reported to the President in January 1984 that the fundamental interests of the United States required a national commitment to human development and democracy in Central America.

"The House amendment had proposed using unobligated fiscal year 1986 funds from several accounts, including the emergency reserve for African famine relief and the Public Law 480 Overseas Food Aid Program, as sources of funding for the Central American economic assistance. In title III, the Committee has increased the amount available in the famine relief account by $300,000,000 in order to leave the balance of these and other Public Law 480 moneys available for possible future obligation in the overseas food aid programs." S. Rep. No. 368, 99th Cong., 2d. Sess. 54-55 (1986).

From our discussions with your staff, we understand that enactment of H.R. 5052, through incorporation in a continuing appropriations resolution, will not occur until sometime after the end of fiscal year 1986. Your staff has also indicated that most of the funds in the source appropriations cited in section 205(b) are unavailable beyond the end of fiscal year 1986. The question presented to us, therefore, is whether section

205 of the bill will be effective to appropriate $300,000,000 in unobligated funds in the source accounts that would otherwise have expired at the end of fiscal year 1986.

As a preliminary matter, it is our view that section 301 of the bill constitutes a new appropriation of $300,000,000 for African Famine Relief. By increasing amounts provided under a previous appropriation and by extending the period of availability of those funds, section 301, in effect, provides new fiscal year 1987 budget authority for the program in an amount equal to the increase in the original appropriation. These amounts are available in fiscal year 1987 either for African Famine Relief or for transfer to ESF under section 205.

Thus, the principal question remaining is whether—in addition to amounts made available under section 301—unobligated but expired funds in the source appropriations cited in section 205(b) are available for transfer under the terms of that section. Under ordinary circumstances, we would consider the authority to transfer unobligated balances to apply only to unobligated balances available for current obligation at the time of the enactment of the authority in question, unless the statutory language was clear that the intent was to reappropriate expired balances.

In the present case, section 205 does not state specifically that the intent of the provision is to reappropriate expired unobligated balances. Nonetheless, it seems clear from the circumstances of its creation that section 205 was intended to apply to expiring fiscal year 1986 budget authority: not only was the provision originally expected to be enacted in fiscal year 1986, but the sources of the funds for transfer are all fiscal year 1986 (or fiscal year 1985 supplemental) appropriations acts. Consequently, we would consider section 205 to authorize the transfer of expired unobligated balances of the source appropriations (in addition to any unexpired unobligated funds).

One further question raised with regard to section 205 is the effect of clause 2 of subsection (a) of the provision. As set out above, that clause states that funds made available under the provision are to remain available until September 30, 1987, except that not less than $100,000,000 of the $300,000,000 made available must be obligated prior to the end of fiscal year 1986. It would be reasonable, in our view, to interpret section 205(a)(2) as prescriptive language for those carrying out the program, rather than as language affecting the period of availability of the funds. Under this view, the Administration's failure to comply with the obligation requirement due to the intervening close of the fiscal year would not be considered to affect the authority to obligate such funds in fiscal year 1987. Alternatively, it is arguable that section 205(a)(2) has the effect of limiting the availability of funds for transfer in fiscal year 1987 to $200,000,000. In light of the ambiguity of the provision, we would suggest the need for a clear indication of legislative intent, either in the statute itself or in any accompanying conference report.

Finally, we have been asked to provide our views as to the proper method of budgetary "scoring" to apply to sections 205 and 301. We have previously taken the view that new statutory authority to obligate unobligated moneys that have previously expired constitutes new budget authority. See B-201110-O.M., December 30, 1980. At the same time, it is also our view that the scoring of budget authority for purposes of the Congressional Budget Act (and for purposes of the internal rules of each House of the Congress) falls within the purview of the committees of the Congress with jurisdiction over such matters (or, ultimately, of the Congress itself). Consequently, we would defer to the interpretations of budgetary conventions made by those other bodies.

We hope that the foregoing is of assistance to you.

Sincerely yours,
MILTON J. SOCOLAR
(for Comptroller General
of the United States).

Mr. DOLE. Mr. President, I would like to tell the Senate again what we have done for the Philippines so Mr. Saguisag could look at it again if he gets a look at the RECORD. It is $553 million in fiscal year 1986. That makes them the fifth largest recipient of U.S. aid. Military aid is about $400 million; cash, food aid, Peace Corps, grants, others—that makes up the balance, for a total of $553 million.

Again, I did not want to leave anyone in doubt about the support of this Congress, this administration, for this democracy in the Philippines.

I shall be happy to yield briefly, without yielding the floor, to the Senator from Massachusetts because if we are going to move on, we must go on with the continuing resolution.

Mr. KERRY. I thank the majority leader. I understand he wants to move forward. This is not the time to debate only issues with respect to Central America or the Philippines. However, I would like to take issue, if I may, with the distinguished majority leader's comments regarding what the choice is here.

This is not a choice between more assistance to an already well assisted country and/or giving continued assistance to so-called freedom fighters in Central America. While the distinguished majority leader is a strong supporter of the efforts of the Contras to be properly classified as freedom fighters and to accomplish their goals, I think the choice is very different here. The money that we are looking for for the Philippines does not come from the money that will directly assist the freedom fighters. That is not the choice. We are not going to impact one iota their ability to continue to fight and die or not fight and die in the field as the case may be. I think it is unfair to put that choice before the Senate in that way.

The money that we are talking about is money that has been, subsequent to the administration's request and subsequent to all the additional money that has been given to the Contras, that was then put in as a kind of sweetener—glue if you want to call it that—but fundamentally as money to try to get other governments in Central America to like what we are doing—without any hearings, without any determination about how that money was going to be spent, just additional money. No one to this day knows precisely how that money is going to be spent. But it will not affect the ability of the freedom fighters to do what Congress has passed and given them the right to do.

Moreover, and I think this is the most important point of all and I would like to make it, the Philippines represents perhaps the best choice this country has had in years to be able to foster democracy in any part of the world. We do not have a country where we are trying to thrust it on an unwilling people; we do not have a country where we are trying to teach it from scratch; we do not have a country where we are getting people somehow to understand it. We have a country where people want it, where they are saying desperately to us, "Help us make real the model you have given us"; where they are trying to put in place a new constitution and elections and a whole host of democratic undertakings literally taken straight from this Chamber and from the House and from this country.

□ 1130

Now, if you are going to measure aid and assistance, I would like to submit for the RECORD, if I may, what we have put into Central America in the last 5 or 6 years. And this year in Central America compared to what we gained last year, we have been more generous, so much so that to say that the additional $300 million is necessary really defies logic. I ask unanimous consent that the Central American 1987 request for Costa Rica, Nicaragua, El Salvador, Guatemala, and Honduras be made a part of the RECORD. In Costa Rica, $191 million; El Salvador, $522 million; Guatemala, $150 million; Honduras, $254 million. These are no small sums of money, for a total population in five countries of about 10 million people compared to a total population in the Philippines of 55 million, the 15th largest country in the world and one where we have the major beachhead of democracy in the Far East.

So, Mr. President, I hope that we can make the choice in the manner that it ought to be, and I would like to simply ask one last question of the majority leader.

As an alternative to this particular amendment, I would like to have a sense of the majority leader, if I could, of where he thinks we are with respect to the other efforts to find $200 million for the Philippines and whether or not that may or may not be, in his perspective, a reality that he will join in producing in the course of this debate on the continuing resolution.

Mr. DOLE. Mr. President, there are some efforts underway, as the Senator from Massachusetts knows. I think the Foreign Relations Committee chairman, Senator Lugar, and his staff, our staff has met with his staff, maybe the Senator's staff—I am not certain—trying to find some other way out, but every way we find somebody objects to so far. That does not mean we have given up, but to be very candid, so far we have not found $200 million or $150 million that somebody will have no objection to. I think we are trying to find the least objectionable approach and will continue to work on that throughout the day.

Let me also indicate the numbers the Senator read were requests. Nobody has any notion they are going to get anywhere near that much money. The money I indicated the Philippines received had actually been received, and I am going to renew my motion to table; we will be here the rest of the day.

Mr. President, I ask for the yeas and nays.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. Is there sufficient second? Is there a sufficient second.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. For what purpose does the Senator from Massachusetts seek recognition?

Mr. KERRY. I ask the distinguished majority leader to yield to me for 1 minute.

Mr. MATTINGLY. I object.

Mr. DOLE. I have the floor.

Mr. KERRY. I did not ask unanimous consent that the majority leader yield.

Mr. DOLE. I would be happy to yield to the Senator from Massachusetts.

Mr. KERRY. Just two quick points, Mr. President. Indeed, they are requests, but the record of the last 6 years is that in every year the President of the United States has made a request regarding Central America, we have given him more money rather than less. In every single year. So I think the requests are an important figure.

Finally, throughout the course of what has debilitated the Philippines, the United States has been supportive of President Marcos and his literal ravaging of the economy of that country, and if ever there was a country that had a responsibility to make up for that, I think it is us. I thank the distinguished majority leader.

Mr. DOLE. I am advised—I would have to check the Record—the first statement is just not accurate, it is not true, and we will supply information for the Record.

I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. Garn] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Michigan [Mr. Levin] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 309 Leg.]

YEAS—57

Abdnor
Andrews
Armstrong
Bentsen
Boren
Boschwitz
Broyhill
Chiles
Cochran
Cohen
Danforth
DeConcini
Denton
Dole
Domenici
Durenberger
Evans
Goldwater
Gorton
Gramm
Grassley
Hatch
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Johnston
Kassebaum
Kasten
Laxalt
Long
Lugar
Mattingly
McClure
McConnell
Murkowski
Nickles
Nunn
Packwood
Pressler
Quayle
Roth
Rudman
Simpson
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Wilson
Zorinsky

NAYS—41

Baucus
Biden
Bingaman
Bradley
Bumpers
Burdick
Byrd
Chafee
Cranston
D'Amato
Dixon
Dodd
Eagleton
Exon
Ford
Glenn
Gore
Harkin
Hart
Hatfield
Inouye
Kennedy
Kerry
Lautenberg
Leahy
Mathias
Matsunaga
Melcher
Metzenbaum
Mitchell
Moynihan
Pell
Proxmire
Pryor
Riegle
Rockefeller
Sarbanes
Sasser
Simon
Specter
Weicker

NOT VOTING—2

Garn
Levin

The motion to lay on the table the amendment (No. 3113) was agreed to.

□ 1150

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3114

(Purpose: To exempt the Pan American Health Organization from the deferral of U.S. contributions until fiscal year 1988)

Mr. KENNEDY. Mr. President, I send to the desk an amendment on behalf of myself, the Senator from Utah [Mr. Hatch], the Senator from Hawaii [Mr. Inouye], the Senator from South Carolina [Mr. Hollings], and the Senator from Tennessee [Mr. Gore], and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. Kennedy] for himself and Mr. Hatch, Mr. Inouye, Mr. Hollings, and Mr. Gore proposes an amendment numbered 3114.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 24, before the period insert a colon and the following:

Provided further, That not less than $31,729,477 of the funds appropriated for the Department of State under the heading entitled International Organizations and Conferences "Contributions to International Organizations" shall be available only for payment of United States contributions during the fiscal year 1987 to the Pan American Health Organization

Mr. KENNEDY. Mr. President, this amendment will neither increase the appropriations ceilings nor the outlay ceilings in the bill but it will avoid serious damage to a particularly worthy inter-American institution, the Pan American Health Organization [PAHO].

If accepted, and I am hopeful that it will be, it would exempt the Pan American Health Organization from the proposed deferral of one-third of the U.S. payment of our assessed contribution until fiscal year 1988.

Although I originally had intended to present an amendment to cover all inter-American institutions and the World Health Organization, it appears clear that only this more limited measure will meet with wide Senate support at this time.

In the current bill, of the $385 million in assessed contributions for international organizations provided in the continuing resolution, expenditure of some $130 million will be deferred until October 1, 1987. This deferral of one-third of the U.S. contributions to these organizations would have a particularly negative impact on the Pan American Health Organization and other inter-American organizations since these organizations rely much more on the United States for their funding than do the United Nations and other agencies.

The United Nations and related agencies now receive 20 percent of their budget from the United States, but the U.S. contribution to inter-American organizations represents 60 percent of their regular budget—meaning they would find more than 20 percent of their fiscal year 1987 budget deferred for more than 1 year compared to a 7-percent deferral for U.N. agencies. I should add that I would hope some mechanism could be found to avoid that deferral entirely.

However it would hit the Pan American Health Organization three times harder than other agencies and turn a cash-flow problem for U.N. agencies into a cash-flow disaster for this inter-American organization. This amendment would rectify that extremely damaging consequence.

The Senate Health Committee has recognized that the Pan American Health Organization provides very direct benefits not only to the people of Latin America, but also to our own citizens. PAHO acts in concert with the Center for Disease Control and other U.S. Federal and State health agencies to provide epidemological screening throughout Latin America and the Caribbean. PAHO helps provide the United States with information, testing, quarantine actions, and preventive health measures that help prevent the transmission of disease into this country.

As one example, PAHO organized an emergency meeting last month to deal with the entry into the United States from Asia of a dengue and yellow fever-carrying breed of mosquito. Drawing together entymologists from Brazil, Panama and Barbados, they have joined with the U.S. Center for Disease Control to develop a strategy for eradicating these mosquitoes before they become a serious health hazard.

In addition, PAHO is working with NIH in an international collaborative research effort on AIDS aimed at providing the United States with the latest data samples and laboratory work in the region and on providing other nations with the best ways to obtain rapid diagnosis to improve their laboratory procedures, and to institute preventive actions.

PAHO was a director of the regional effort a few years ago which resulted in the Western Hemisphere being the first region to eradicate smallpox. It unveiled last year a campaign with other agencies, its member countries and private groups like Rotary International, to eradicate polio in this hemisphere by the year 1990 and I was pleased to join Drs. Salk and Sabin and the U.S. Surgeon General at the inauguration of that effort at PAHO headquarters. That program also will be a means to expand immunization against other childhood diseases which still cause the needless deaths of some 700,000 children in this hemisphere each year.

PAHO works directly to help the United States and State and local health officials meet the health concerns of our citizens. In fact, PAHO operates a unique field office in El Paso, TX, which manages the United States-Mexico Border Health Program and provides the linkage between State and local health officials in the Southwest and their counterparts across the border in order to help deal with common health concerns. And given the vast flow of people and goods between Latin America and the Caribbean into the United States, its work to improve health conditions in those countries also helps to prevent the flow of disease across our borders.

In this time of U.S. budget concerns, PAHO has been particularly responsive by taking special steps to improve the effectiveness of their activities. PAHO has insured that the United States is on the Executive Committee whenever budgets are considered. Of all the international organizations, PAHO has had the lowest rate of budget increases over the last decade.

We are mindful of the need to get this country's budget deficit under control. But we must ensure that we balance our budget in a fair, just and equitable manner. This amendment simply protects an inter-American institution which carries out its technical cooperation responsibilities in the field of health in an effective fashion and assures that it will not suffer a disproportionate impact as a result of any proposed budget deferral.

There are three final points I want to make concerning this entire matter.

First, the overall amount of funds is far below what we are in fact obligated to pay to the various international organizations under our treaties with them. The $385 million total figure is approximately $155 million below the total amount of our assessed contributions to those organizations.

Second, it is quite unfortunate that the administration's stance a few years ago of indiscriminate bashing of international organizations was followed by a series of congressional amendments which made matters worse. Obviously, we want to see international programs operating ever more effectively, just as we do domestic programs. But I truly believe we have placed at risk the very existence of those organizations—and their international character—by the methods we have been using.

Third, we have been undermining our own objectives by the indiscriminate reductions in budgets which have cut even the very best of the international organizations. There are several which have been singled out for their technical excellence, such as PAHO, WHO, IAEA, and the International Civil Aviation Agency. PAHO and WHO have also been singled out for their responsiveness to U.S. budget concerns and for their fiscal management generally.

This amendment really attempts to protect one of the very best, PAHO, which would be hurt more than the others by the across-the-board deferral.

I urge my colleagues to support this simple but important amendment.

I also ask unanimous consent that a further background on PAHO be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WHAT PAHO OFFERS TO UNITED STATES

The Pan American Health Organization (PAHO) is a specialized organization of the inter-American system under a 1950 agreement with the OAS. It is the oldest international health organization in the world, organized in 1902. It also serves as the Region of the Americas for WHO.

The U.S. was active in the creation of PAHO and has maintained a major role throughout its history for several reasons which make PAHO unique among international organizations so far as its importance to the U.S. is concerned.

First, failure to control communicable diseases in the region would pose serious health consequences for our own citizens. Borders are relatively ineffective barriers to disease. And with tourism, commerce and immigration—both legal and illegal—on the rise, the reduction of health hazard in Latin America becomes an increasingly important concern for the U.S.

Second, the U.S. has recognized that in Latin America and the Caribbean, improvements in the basic standard of living, particularly in health, advance both social justice and stability and thereby advance our own foreign policy interests.

Third, to the degree that health problems and the prevalence of disease limit the economic capacity of those nations, our own economy suffers. Latin America constitutes the second largest regional market for U.S. exports and Mexico already is our third largest trading partner. The countries who are members of PAHO purchase one third of all their imports from the U.S. The location of PAHO headquarters in the U.S. also has resulted in a substantial utilization of U.S. suppliers in the health field, both through PAHO and directly with member nations.

Fourth, PAHO provides a unique and cost-effective extension of the disease surveillance and control services of the U.S. public health service to the Caribbean, Mexico and Central and South America. The Center for Disease Control at Atlanta uses PAHO resources, access and knowledge to help in dealing with the threat of imported infectious diseases.

Finally, PAHO, which operates a special center at El Paso, acts as an acceptable intermediary in helping to establish and maintain effective epidemiological surveillance along the U.S.—Mexican border.

WHAT PAHO DOES

PAHO acts as the regional coordinator of inter-country health prevention and control activities. It is the major conduit and provider of technical cooperation for the health ministries of countries throughout Latin America and the Caribbean defining ways to cope with health problems and in attracting resources. It has been the region's chief promoter of primary health care, including the extension of potable water and sewage, the immunization of children as part of maternal and child health services, the control of malaria and other infectious and communicable diseases.

Immunization

PAHO experts have designed, directed and helped to carry out immunization campaigns throughout Latin America which led to the elimination of smallpox in 1972.

PAHO set up the Expanded Immunization Program revolving fund in 1977 which has resulted in enourmous gains in coverage for the major childhood killer diseases. From a 25-30 percent coverage in 1977, immunization has doubled in the past 8 years. Polio coverage has tripled during that time period.

On May 14, 1985, PAHO brought Drs. Sabin and Salk together along with the

Nobel prize winners for polio, as well as UNICEF, the World Bank, the IDB, AID, WHO/Geneva, the CEC, Rotary International, HHS and others, as PAHO Director, Dr. Carlyle Guerra de Macedo, announced a 5-year campaign to eliminate polio from the Western Hemisphere.

In El Salvador, on February 4, March 3 and April 21, 1985, PAHO, in conjunction with UNICEF, AID and the government of Spain, helped the Duarte government organize a nationwide massive child immunization program that reached 300,000 children. During those three days, PAHO was able to help arrange a de facto cease fire which resulted in no fighting-except the fight to protect children from crippling and often fatal diseases. The 3-day campaign and cease fire were repeated in 1986.

Disease control

PAHO has been the architect of most of the national campaigns aimed at the control of yellow fever, dengue fever, malaria and other mosquito-borne diseases. Its research efforts, linked to those of the Center for Disease Control in Atlanta, have sought to keep pace with new strains of these diseases and to test new ways to cope with them. PAHO, in conjunction with the CDC, is able to arrange for testing of new approaches which could not be carried out in the U.S. itself.

PAHO has a special center, the Caribbean Epidemiology Center (CAREC), which it operates in Trinidad-Tobago and which serves the entire Caribbean, training epidemiologists and acting as the research and control arm for all the English-speaking Caribbean. CAREC has been engaging with the CDC and the Public Health service in a campaign to identify and eradicate the sources of dengue fever which were found both in the Caribbean and the Southwest U.S. in recent years.

As an example of PAHO response to urgent disease problems. PAHO has been a key part of the WHO Global AIDS Control effort. PAHO hosted the international experts meeting on AIDS late last year, has provided guidelines for diagnosis, surveillances, prevention and control to countries in the Region, particularly the least developed, helped local laboratories in assuring their capacity for diagnosing AIDS, advised member countries on the provision of safe blood and blood products and is helping countries organize AIDS prevention and control programs. All of this is in conjunction with CDC and NIH.

PAHO's work with the agricultural sector in Latin America is of major interest to U.S. agriculture. PAHO Centers on foot and mouth disease and other communicable diseases in Argentina and Brazil work closely with USDA in preventing any introduction of such diseases into the U.S. In 1976, it was estimated that the introduction of foot and mouth disease alone would cost the U.S. $12 billion. PAHO centers provide a means for the USDA to carry out research outside U.S. borders, thereby eliminating any risk that experiments would result in introduction of the particular disease into the U.S.

RESEARCH

The ten PAHO centers, such as those on epidemiology, tropical diseases, prenatal and maternal care, sanitation and water supply, health education and training, nutrition, ecology and animal health, offer training, practical research and technical support to governments on critical regional health problems.

EDUCATION AND TRAINING

Responding to individual country needs, PAHO centers and the Organization's headquarters offer more than 300 specific training programs and extend some 1200 fellowships—most at the mid and technical level—each year.

HEALTH NEEDS IN LATIN AMERICA

Much has been accomplished in recent decades, including reducing the infant mortality rate by a third over the past decade on average within the region, cutting death rates for children from 1-4 years of age, expanding prenatal care and extending services, including immunization to some 60 percent of the population.

Nevertheless, the needs remain extraordinary. Some 40 percent of the people still do not have access to the formal health system. Infant mortality in the region still average about 45 per 1,000 and in some countries it remains over 100. Among the poor in the region, infant mortality still is nearly one in ten live births. In some parts of Brazil, Ecuador, and Peru, it actually reaches close to 200 deaths per 1,000 live births. In the U.S. only 2.5 percent of all deaths come in the first year. In Latin America, death is ten times more likely to occur in that first year.

Even with the progress made, only 50 percent of pregnant women have access to prenatal care and 40 percent of all births occurred outside any hospital, clinic or other institutional setting.

With the current economic crisis, most of the governments are finding it extremely difficult to even maintain the current level of health services.

Approximately 130 million people in the region have no access to safe water and an even higher number, perhaps 60 percent of urban residents and more than 90 percent of rural dwellers have no access to sewage facilities.

TECHNICAL COOPERATION

PAHO provides scientific and technical cross-fertilization, helping the countries of the region deal with their critical health problems in the most effective way. At the same time, it provides U.S. scientists and researchers with an opportunity to work closely with other countries in the region in a "hands on" testing of new methods and concepts.

□ 1200

Mr. STENNIS. Point of order, Mr. President. The Members cannot hear and that means you cannot understand the speaker, and this is an important matter.

The PRESIDING OFFICER (Mr. DENTON). The distinguished Senator from Mississippi is correct. Senators will tone down conversations so that the Senator from Massachusetts, who has the floor, may be heard.

Mr. KENNEDY. Mr. President, I have had the opportunity to talk with the chairman of the Appropriations Committee and the chairman of the Health Subcommittee and the ranking minority member. I find that they have no objection. I hope that the amendment will be accepted.

Mr. HATFIELD. Mr. President, the Senator from Massachusetts is correct. We have looked this matter over that he proposes. What it is, basically, is reallocating funds within the account from one program to another. It has the approval of our subcommittee chairman, as he has indicated, and I believe it has the approval of the minority manager, as well; is that correct?

Mr. STENNIS. Yes, the Senator is correct, Mr. President.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3114) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. Mr. President, I will take just a few minutes. I do not have an amendment to offer but I think that the RECORD should show very clearly the rationale and reasons for my vote just a few minutes ago and my vote of 1 day ago on the tabling motion to provide additional aid for the Philippines.

I listened this morning with increasing dismay to the debate preceding the vote on that tabling motion. It appears, and I believe unfortunately, that people on the outside of this Chamber now may believe that we are backing away from our friendship with the Philippines, that we are missing a chance to aid them in their economic recovery after their successful revolution, and that we are being forced to make a choice. It would appear that we are being forced to make a choice between our admiration for the Philippine people and the necessary economic aid, extra economic aid, which we have already authorized for friendly Central American countries, those people in Central America who are either in developing democracies or who have well-developed democracies and who need and deserve our sustained aid.

To make a choice between those two is not only unfortunate, it is unnecessary. I am confident I speak for a substantial majority of the Members of this Senate in believing that before we quit we must successfully return to this issue, provide the kind of sustenance and the kind of indication to the people of the Philippines that I think is terribly important, and that is to provide them with the aid they so richly deserve. We should not have to choose between our friends in Central America and our friends in the Philippines to do so.

I am confident that we can and will come back with a bipartisan amendment, one which will do the job successfully. I, for one, do not intend to allow this measure to proceed to its conclusion without returning to the issue, and I believe the next time, returning successfully to the issue.

AMENDMENT NO. 3115

(Purpose: To deny authority for disbursement of foreign military sales credits without requirement of repayment of principal or interest)

Mr. BINGAMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration. I send it to the desk on behalf of myself, Mr. Dixon, Mr. Exon, Mr. Bumpers, and Mr. Harkin.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from New Mexico [Mr. Bingaman] for himself, Mr. Dixon, Mr. Exon, Mr. Bumpers, and Mr. Harkin, proposes an amendment numbered 3115.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page four, line sixteen (16), before the period insert a colon and the following: "*Provided,* That section 551 of such bill shall not apply."

Mr. KERRY. Mr. President, will the distinguished Senator yield for 1 minute?

Mr. BINGAMAN. I yield to the Senator from Massachusetts.

Mr. KERRY. Mr. President, I simply want to join, if I may, in the comments of the distinguished Senator from Washington. There are many of us who are working in a bipartisan fashion to come up with a compromise. I certainly want it clear on the Record that this issue regarding aid to the Philippines will be revisited today and that I anticipate, as does my colleague and others, that we will come up with a solution and that we will provide that aid. And I anticipate hopefully doing that within hours. I thank the Senator.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, the amendment that I have sent to the desk would have the effect of invalidating a specific section that is in the foreign aid appropriation bill, which, of course, is 1 of the 13 appropriation bills incorporated in this omnibus continuing resolution. It is incorporated by reference in the continuing resolution.

Specifically, the amendment that I have offered would invalidate section 551. Now, let me read you section 551. The guts of it is only a sentence long. It says:

Funds appropriated under prior year appropriation acts for the purposes of sections 23 and 24 of the Arms Export Control Act may be disbursed without requirement to repayment of principal or interest.

Mr. President, I think we all know what funds appropriated for prior years means. There is no mystery about that. But let me just for a moment describe what is meant by this phrase: "Funds appropriated * * * for the purposes of sections 23 and 24 of the Arms Export Control Act."

Section 23 of the Arms Export Control Act says that the President is authorized to finance the procurement of defense articles and defense services by friendly foreign countries. Specifically, it is the section we use historically in the Congress to make loans to friendly countries that they then can use to buy military equipment and hardware and services.

But, Mr. President, I point out there are a couple of important provisions in section 23 of the Arms Export Control Act. The first important provision is that the President, when he provides that money to those foreign countries, friendly foreign countries, has to require repayment of the money. And the second provision is that the President is required to charge interest on the money.

Now knowing full well that these were to be loans and not grants and that interest had to be charged on these loans, Congress in each of the prior years had appropriated money for that purpose. In 1985, for example, we authorized and appropriated about $4.9 billion for this purpose. In 1986, we authorized and appropriated again about $4.9 billion.

And of the amounts that we appropriated in 1985 and 1986, there is still about $3.5 billion for the 2 years combined that has not been disbursed; that is, there is $3.5 billion that we had decided to loan out with interest but we have not yet given these countries the money.

Section 551, which I am trying to invalidate with my amendment, would give the administration authority to turn those loans into grants.

Let me at this point, Mr. President, ask unanimous consent that I be allowed to have printed in the Record a list of the undisbursed FMS loans from 1985 and 1986 by country. I ask unanimous consent that that list be printed in the Record, Mr. President.

There being no objection, the list was ordered to be printed in the Record, as follows:

UNDISPURSED FMS LOANS FROM 1985 AND 1986 BY COUNTRY

[In millions of dollars]

Country	1985 undispursed [1]	1986 undispursed [1]	Total
Greece	500	430.6	930.6
Turkey	388.3	409.5	797.8
Spain	375	383	758
Thailand	95	90.5	185.5
Jordan	82.8	81.3	164.1
South Korea		129.1	129.1
Pakistan		100.8	100.8
Portugal	55	43.1	98.1
Tunisia	50	25.8	75.8
Oman	40	9.1	49.1
Philippines	15	14.4	29.4
Indonesia	32.5	19.1	41.6
Morocco	5.7	1	6.7
Peru	6.4		6.4
Malaysia	4	1.5	5.5
Botswana	5		5
Ecuador	1	3.8	4.8
El Salvador	2.8		2.8
Dominion Republic	2.7		2.7

[1] This figure is principal only, and does not include the interest which the United States would earn if this money were loaned out.

Source: Defense Security Assistance Agency [DSAA], Col. Griffin, congressional affairs.

Mr. BINGAMAN. Mr. President, let me just briefly describe this list for my colleagues.

The list contains 19 countries and it adds up to somewhere close to $3.5 billion. The 19 countries include—I will not go through the entire list—Greece, Turkey, Spain, Thailand, Jordan, South Korea, Oman, Tunisia, Indonesia, Botswana, Eucador, Dominican Republic, and there is even $2.8 million for El Salvador. But, as you can see, it is a laundry list of those countries that we have traditionally made loans to.

Clearly, I do not think it singles out any particular country, but I think it is instructive for the Senate to know to whom we have agreed to loan money that we appropriated in 1985 and 1986.

My amendment does not try to interfere with those loans. Let me make that very clear. My amendment simply says: "Let us go ahead and do what we agreed to do in 1985 and 1986. Let us loan them the money. Let us not give the administration the authority to grant that money to them or to give that money to them without any requirement of repayment of either principal or interest."

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I have several problems with the section 551 that I am trying here to strike out, Mr. President. Let me just mention three of them.

First, this is a major policy change. It should not be done. If we did it at all, it should not be done on this continuing resolution. We have heard a great deal of discussion here in the Senate in the last day or two about how we should not legislate on an appropriation bill, that we should keep this continuing resolution clean.

Mr. President, that is what my amendment is trying to do. I am trying to knock out a provision that clearly legislates on an appropriations bill. The committee's own report makes the point very convincingly and very proudly, I would point out. They say in their own report, page 123 of the report that accompanies this appropriations bill, the committee is recommending a fundamental change in the Foreign Assistance Program by eliminating the MAP Grant Program and providing instead authority for an all grant program under foreign military credit sales. Then they go on to describe what they are doing in more detail.

Mr. President, as I say, I am not arguing with their ability to do this prospectively. My amendment does not deal with that. I do think that is something the Foreign Relations Committee should be concerned about. But my amendment does not try to solve that problem. My amendment says let us not do it retroactively. Let us not go back into money we appropriated in 1985 and 1986 on one assumption and change the assumptions by changing the authorizing legislation by reference in the Appropriations Act that is incorporated by reference in this continuing resolution.

Mr. President, in order to make the point I would like to propose two questions to the Chair, if I could. I am not planning to make a point of order, but I think it is important that my colleagues know what we are dealing with here.

The first question I would like to get the Chair's response to, if I could, the President's response, if S. 2824, which is this Foreign Assistance Appropriations Act, were before us as a freestanding bill, would section 551 be subject to a point of order as legislation on an appropriations bill? I would be interested in the Chair's response to that question.

The PRESIDING OFFICER. The Senator would be correct. The section would amend previously enacted law, and therefore would be legislation.

Mr. BINGAMAN. Thank you, Mr. President. Let me ask one further question, if I could, also as a parliamentary inquiry and not as a point of order. Since we are dealing with the continuing resolution—that is House Joint Resolution 738—and this appropriations bill, S. 2824 is incorporated only by reference in section 101(f) of the continuing resolution, is it true that the only way to make a point of order of legislation on an appropriations bill against this section 551 is to make the point against the section 101(f) of the continuing resolution which is the whole foreign assistance appropriations bill? Is that also a correct understanding?

The PRESIDING OFFICER. The Senator is correct.

Mr. BINGAMAN. Thank you, Mr. President.

Let me say to my colleagues, obviously, I do not want to make such a point of order. I think there are many important programs funded in the bill. I do not want to see the entire foreign assistance part of the continuing resolution dropped. I doubt that there would be many votes at all in this Chamber to sustain such a point of order even though the Chair would rule that way. But I think this underlines how difficult it is to deal with appropriations bills when they are not brought to the Senate as freestanding bills but, instead, are part of the continuing resolution.

Mr. President, I accept the fact that the committee, the Appropriations Committee in this case, is prospectively going to change the substantive law. That is part of what is happening here. My amendment does not try to deal with that, but my amendment does say let us not go back and take the money previously appropriated for loans and use it as gifts.

The jurisdiction for turning those loans into gifts is extremely weak in the committee report, as I see it. The committee report offers two reasons for turning those loans into gifts. I will quote you the first of those reasons. It says the FMS debt of countries which have received assistance under this program has become a burden on many of these countries.

Mr. President, I do not doubt that that is the case. I am sure debt is a major burden on these countries. But I point out that this Government, that we are all working for here, has made a lot of loans to a lot of people which undoubtedly are burdens upon them. Having to repay those loans is clearly a burden. But I do not know that is an adequate basis for us for giving the money.

The second reason that has been offered, I think, is even weaker. It says, again a quote from the report: Turning these loans into grants "would ease current pressures on the United States to grant to aid recipients the most favorable terms under their military loan programs."

Mr. President, obviously that is true as well. The analogy that occurs to me is this: the next time I go in to see my banker and he is upset with me for urging him to give me a lower interest rate, I can say, "If you don't want me to keep bugging you about the interest rate on this loan, why don't you just make it a gift, and I will not ever mention the subject again?"

So I do not really think that is a very strong reason, Mr. President, to justify turning these loans into grants.

Another reason that I am concerned about the bill or the provision 551 is that it clearly will increase the deficit. There are $3.5 billion in undisbursed foreign military sales appropriations from 1985 and 1986. Under current law, which my amendment would try to return to, the Federal Government would gain a total of $6.9 billion over the next 30 years if that money is repaid and repaid with interest.

Under section 551, at the discretion of the President, the money becomes a gift. So this section could potentially cost the taxpayers of the country $6.9 billion.

I am advised that even though this adds to the deficit, it does not show up as costing us any money in the committe report. I have had problems understanding that, Mr. President. Quite frankly, CBO, the Congressional Budget Office, has been somewhat circumspect in trying to explain exactly their position in this regard. In fact, they have refused to provide me with an explanation on CBO stationery. But my office did receive an explanatory memo from one of the CBO analysts. I would like to read to my colleagues a couple of paragraphs out of that memo.

This CBO analyst says the following:

> This section provides indefinite spending authority as defined by section 401(C)(2)(b) of the Budget Act dealing with foregone proprietary offsetting receipts. Since the language is discretionary and neither the Senate report nor the executive branch has indicated the extent to which it may be used, CBO did not include a point estimate within the scoring of the bill. Instead, CBO included the following footnote in our estimate.

The footnote reads:

> Section 551 permits balances of FMS direct loans to be disbursed without repayment of principal and interest with advanced notification to the Appropriations Committees of both Houses of Congress. To the extent used, foregone proprietary receipts will increase budget authority and outlays.

Mr. President, somehow that footnote, which CBO made in their estimate, did not find its way into the committee report. I think the committee should have to advise the Senate that this was going to increase both budget authority and outlays.

Let me go on with the last two or three sentences of his memo. He says:

> The Defense Security Assistance Agency estimates take the undisbursed balance of $3.5 billion in FMS loans are eligible for forgiveness under section 551.

I think that is what we are talking about, Mr. President, forgiveness of that $3.5 billion. They estimate that over the next 30 years expected principal and interest payments on these loan balances would total $6.9 billion. If repayment on all balances of FMS loans were forgiven they estimate interest repayments in fiscal year 1987 would be lowered by about $100 million.

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"I think DSAA—which is the Defense Security Assistance Agency—estimates of foregone interest payments are high, but the potential cost of the proprietary receipts is significant."

The short conclusion is that this is going to cost the American taxpayer a large amount of money, and that money is nowhere reflected in the budget and it is nowhere reflected in this continuing resolution.

Mr. President, let me make one final point in support of this amendment that I have offered as an objection to section 551.

In my view, what we are doing here is giving preferential treatment to one group of debtors and not giving it to others to whom we have loaned money. Over the past few years the administration has recommended substantial cuts in domestic loan programs, such as the Farmers' Loan Program, VA loans, guaranteed student loans, rural housing loans, just to name a few.

When they have not been successful in cutting the program, they have urged us to increase the interest rates on these loans. In the face of these domestic cuts, the Appropriations Committee is asking us to turn what is today a revenue-generating program, that is the FMS Program does bring in interest at the present time, to turn that into a welfare program for recipients of U.S. military aid.

They are asking us to do it retroactively, Mr. President.

That is all my amendment tries to deal with, the retroactive aspect of this.

I am convinced that there are many farmers in this country who would appreciate having their loans forgiven. There are undoubtedly many students in this country who would like to see their loans forgiven, and former students who are working to repay those loans. But we have not chosen to do that.

I do not think we should, in this bill, agree to that kind of forgiveness for these countries.

I do not think that the committee justification that says the debts of these countries have become a burden to them is adequate justification for us to step back and say, "OK, you do not owe us the money."

People may say I am singling out Botswana or one of these other 19 countries for adverse treatment. I certainly do not intend to do that, Mr. President. But I do not sincerely believe that we have enough extra money in the Federal Government to afford to forego repayment of loans to these foreign nations. If we do have that money, it has not been made known to me.

Somewhere in the haste of getting this Congress over with, getting this continuing resolution passed, we have lost sight of our priorities, Mr. President. We pass a Budget Act, we pass a Gramm-Rudman bill, and then we go about trying to find ways to get around it. We found a way here, which I am informed is perfectly legal, and a point of order on the Budget Act will not lie.

I would urge my colleagues to agree with the chairman of the Appropriations Committee, who is managing this bill. He said that he wants a clean bill. He wants a bill that does not legislate but just appropriates.

My amendment would help him do that. My amendment would retain the present law. It would keep this a clean bill. It would eliminate this legislation on an appropriations bill. In my view, it would make us comply not only with the letter of the Budget Act but with the spirit of it. It would be fiscally responsible.

Thank you, Mr. President.

Mr. HARKIN. Will the distinguished Senator yield?

Mr. BINGAMAN. I am glad to yield to my colleague.

Mr. HARKIN. I thank the distinguished Senator from New Mexico for yielding.

I want to engage in a brief colloquy with the Senator regarding his amendment.

As I understand it, and I want to get this clear, section 551 of the foreign operations bill provides for a forgiveness, is that right, a forgiveness of principal and interest in the FMS Loan Program?

Mr. BINGAMAN. I would respond in this way: It says that the amounts that have previously been appropriated and not yet disbursed may be forgiven or may be granted "without any requirement of repayment of either principal or interest" at the administration's discretion.

Mr. HARKIN. Of either principal or interest? It is not just an interest forgiveness? Does it not include principal and interest?

Mr. BINGAMAN. No; this is $3.5 billion of principal plus whatever interest might accumulate on that.

Mr. HARKIN. I want to further ask the distinguished Senator about the cost of this provision. Obviously, if we are going to be forgiving interest and principal, then this is going to have a cost downstream to our Government.

Again, would the distinguished Senator inform me as to what he said the cost would be? I have a figure here and I wonder if this is correct. Principal alone would cost the American taxpayers $3.5 billion and I am further informed that the Defense Security Assistance Agency estimated if the administration used all of this authority to the fullest extent it would cost the Government approximately $6.9 billion in foregone principal and interest payments over the life of the loans of 30 years.

Is that correct?

Mr. BINGAMAN. That is consistent with the information we received.

Mr. HARKIN. What the distinguished Senator said in his closing remarks caught my ear, when he said that in the report by the Foreign Operations Subcommittee of the Appropriations Committee, the committee noted that in FMS debtor countries these loans have become a burden.

Mr. BINGAMAN. That is one of the main reasons.

Mr. HARKIN. As the distinguished Senator pointed out, there are many people in our country who have a lot of debt burden right now. I know of no sector of our economy laboring under greater burdens than the American farmer.

Yet when we ask for debt relief for the American farmer or for people living in rural areas, we are told we cannot afford it.

Yesterday we had a provision on the floor that the distinguished Senator from Oklahoma offered that would have provided for the Rural Electrification Administration to prepay, not to forgive their loans but just to prepay them, with penalties right now so that people living on our farms and in our small communities could have lower utility bills over the next 10, 20, or 30 years. But we were told that we could not afford that amendment because it might cost the Government a little bit of money downstream because of the high interest loans.

Now we are being asked to let other countries off the hook on their principal and interest.

Talk about mixed up priorities.

Let me ask the distinguished Senator if he would think that perhaps we might want to apply these benefits to our domestic programs. Let me point out to the Senator facts that I am sure he is quite well aware of.

In my own State of Iowa, 22 percent of the farm borrowers of Farmers Home Administration are behind in their payments. Thirty-three percent of the borrowers in Indiana are behind. In the State of Wisconsin, 21 percent of the farmers are behind and are finding it difficult to make their payments to Farmers Home Administration.

In fact, in Wisconsin, of the 9,563 active farmers in the FmHA Program, 2,092 are behind in their payments.

I can give you the figures for Iowa. In Iowa we have 3,000 farmers behind in their payments. I am sure farmers in New Mexico suffer similar problems.

According to the USDA, figures for 1985 indicate that 74,661 farmers are behind in their payments. That represents 27 percent of all the farmers.

I ask the distinguished Senator, fair is fair, and if we are going to forgive interest and principal to foreign countries for foreign military sales, would it not be fair to give the same kind of relief to our farmers in this country?

Mr. BINGAMAN. I agree with the point that is being made. If we have additional money, and clearly we do not, I agree with many who are urging that the deficit is a tremendously serious problem. Next week we are going to be asked to approve an increase in the national debt substantially above $2 trillion. We are in a difficult position ourselves to be forgiving other people's debts to us.

Mr. HARKIN. The distinguished Senator is saying next week we will be asked to increase the debt again, not to help our farmers or our people who are burdened with debt but to help other countries to help in their debts from agreements which they had made.

Mr. BINGAMAN. The Senator is correct.

Mr. HARKIN. I thank the Senator for offering this amendment and engaging in this colloquy. On behalf of this Senator, I cannot understand the priorities here at the same time where we are saying we plan to forgive interest and principal to these other countries for foreign military sales, we are going to increase the national debt next week and we decrease assistance to our farmers.

□ 1230

I just do not see the priorities.

I thank the Senator.

Mr. HART. Mr. President, will the Senator from New Mexico yield?

Mr. BINGAMAN. I yield to the Senator from Colorado.

Mr. HART. Mr. President, I appreciate the Senator's yielding. I think the colloquy between the two Senators from New Mexico and Iowa is a simple expression of what has happened to the fiscal priorities of this Nation in the past 6 years. I happen to belong to a small group, composed basically of myself and the distinguished Senator from New York [Mr. MOYNIHAN], who believes the whole system of Reaganomics was set up from the very beginning—the massive tax cuts of 1981, the massive spending increases for the military, and a huge deficit were all designed to lead to a Gramm-Rudman straitjacket where the good would always be the enemy of the best.

I happen to know that the Senator from Iowa is an internationalist and believes America has an important and constructive role in the world, yet here we have a spokesman for the farmers of the Nation quarreling with a very legitimate and good proposal by the Senator from New Mexico.

That is exactly what the proponents of Reaganomics contemplated 6 years ago, that we would be pitting American farmers against Americans who believe in internationalism and that worthy causes would be quarreling with each other for limited resources—because of that massive tax cut which this Senator opposed and the massive spending increase for the military which this Senator opposed because it was as predictable as the night follows the day that this day would come on the floor of the Senate, in which the interests of the Nation abroad and the interest of this Nation at home would be pitted against each other. That is the exact outcome of Reaganomics.

I thank the Senator.

Mr. BINGAMAN. I thank the Senator from Colorado.

Mr. President, I have finished my statement, I shall yield the floor so others may speak if they would like to.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I congratulate the Senator from New Mexico on his excellent amendment. I think the moneys involved here are of real significance. We tend to take millions and billions sort of casually. We certainly should not. Every time a billion dollars is given away, that involves an involuntary expenditure of $4 on the part of each man, woman, and child in our country. We are now getting into multiple billions.

In this regard, it is sort of interesting. If all of the loans that so far have not been disbursed were turned into grants, the total amount of principal would be $3.5 billion, and over the next 30 years, with accumulated interest, et cetera, it would come to nearly $7 billion given away. Maybe $7 billion does not seem like much when we keep talking about trillions of dollars, but it is a great deal of money, indeed. I commend the Senator for bringing this matter to light.

Mr. President, from the viewpoint of Senate procedures, once more the question comes up of whether there should be legislation on an appropriations bill. Under other circumstances, a point of order could well be appropriate. Speaking as ranking Democratic member of the Committee on Foreign Relations, this is the kind of decision that should have come before the authorizing committee for careful review and judgment and then moved down through the pipelines to appropriations. So all told, I think the amendment to delete this provision is an excellent one and I look forward to supporting it.

Mr. DIXON. Mr. President, I congratulate my colleague, the distinguished Senator from New Mexico, on this amendment, which I am pleased to join him in. I hope every Senator on the floor and off the floor takes note of the fact that what is being attempted here in the CR is to give a gift of $3.5 billion to 19 foreign countries to buy military hardware. That is what it amounts to—forgiveness of loans, an outright gift of $3.5 billion to 19 foreign countries to buy weaponry at the expense of the American taxpayer.

This time in the budget round and in reconciliation, we eliminated Federal revenue sharing for the cities of this country. The price tag was $4.5 billion. They would have been more than happy to have less. The money that we are going to give to these 19 foreign countries would take care of Federal revenue sharing for every city in the United States of America.

Yesterday, I presented a really modest proposition to the Senate. In the interest of balancing the budget, we cut $175 million out of summer jobs for poor disadvantaged kids in the major cities of America. I wanted to put back just $100 million so that kids who cannot work, who are going to be on street corners causing trouble in the summers, could have jobs. No, do not put it in.

I remember on the Agriculture Committee, I sat there for interminable hours while we cut down on the money and reduced the opportunity for obtaining money for rural electrification, rural telephones, increased the interest rates for those things. WIC has been cut back, assistance for women, infants, and children.

We have decimated every decent program for ordinary folks in this country—for the farmers, for the kids who cannot find jobs in the city, for children, for infants. Then, by almost—well, I will not say a subterfuge. The Appropriations Committee, of course, was aware of it. But hidden in this huge CR is a gift, an outright gift of $3.5 billion.

Some of these countries are oil countries, in better shape financially than we are, that we are giving money to. I think it is remarkable. I expect it will be done. I have an idea that the distinguished Senator from New Mexico will do about average on this amendment, maybe get 35 or 40 votes, and the Senate will jump overwhelmingly on this opportunity to give $3.5 billion—as my distinguished colleague has pointed out so excellently, in time, $6.9 billion—to countries half of which most people do not even know about, some of which most people are mad at. It is remarkable. And we are going to do it in a moment.

There is not a Senator here, not one of the 100, who would want to go home and debate this in a public place before a townhall meeting. I would like to see us get up before 125 folks in Litchfield, IL, or Booneville, IL, or someplace like that and explain how you did this, while the guys in the bib overalls ask, "How about my farm?"

We have the notice out to foreclose on these farms all over America. Every time I go flying in a little airplane over Illinois, trying to get a little campaigning in on those rare occasions we get out of here, I look down and there is a big crowd out on some farm. They are foreclosing on the farms, but they are not going to foreclose on Thailand or Jordan or Pakistan or Morocco or Indonesia or Tunisia or Portugal or Botswana. We are going to give them money to buy weapons to shoot people with.

I am a member of the Committee on Armed Services and sometimes in trouble in my own party because I vote so often for a strong military presence by this country in the world at large. I get in trouble from time to time for supporting the administration in some of its foreign policy efforts. I am considered, I suppose among those on this side, relatively hawkish. But I find this offensive. If they want to buy our weapons, I am willing to sell them to them. Let them pay for it, the good old American system. Pay for it.

I wish sometimes that we would not have our blind loyalties and feel compelled to do these things just because the administration wants to do it. There are not really many people here who want to do this, I suspect.

□ 1240

I do not have any illusion about the chances of the distinguished Senator from New Mexico, but I will tell you one thing. If there is one right vote you are going to cast this year that you can be happy talking about everyplace you go back home, from the big cities to the little villages, you ought to vote for the amendment of the Senator from New Mexico just to make these folks pay back the money that they owe us and not give them money when we are making, as he said, every kid that goes to school and gets a college education pay back, and I think they should pay back, and making everybody else pay back. Let Botswana pay back, let Portugal pay back, let Oman pay back, let Morocco pay back, and let Tunisia pay back.

At the time when we are fighting to balance the budget—I cosponsored and voted for Gramm-Rudman-Hollings, I voted for the reconciliation bill, did all the responsible fiscal things we have to do—I say let us do another fiscally responsible thing here. Let us keep this $3.5 billion and in the total amount, when it is all paid back, $6.9 billion for the American people and let these 19 foreign countries pay us back.

I support the amendment of the Senator from New Mexico, and I congratulate him on the fine job he has done.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I rise with some sadness because it is not easy for me to speak in opposition to my dear friend from New Mexico. I believe my voting record should indicate where my allegiance is, and loyalties have lain so far. But I would like to spend a few moments, Mr. President, if I may, to clarify what is before us.

The moneys that my friend speaks of are moneys in the FMS trust fund. These moneys have not been spent. They are set aside for loans by several countries. Yes, discussions have been held between those countries and the United States, but the terms have not been decided.

These countries that wish to make these loans are still in the process of accumulating sufficient reserves, straightening out their financial condition so they can sign on the dotted line.

I would like to point out for the record the countries that are involved—and keep in mind, Mr. President, that this is discretionary. It does not require that these countries be given money or made free of all responsibilities or repayment of loans: Greece, an important NATO country, a country that we have been calling upon to play a greater role in NATO responsibilities. We all know that Greece is having financial problems, and Greece is hopeful of purchasing F-16's, howitzers, frigates, and Phalanx missiles, and they are now negotiating the possibility of borrowing $930,650,000. We have air bases and naval bases in Greece.

The next country is Turkey, Mr. President, a very, very important NATO country with a border with the Soviet Union greater than any other country. We are depending upon Turkey to hold up the southern flank. Turkey is not the wealthiest country in the world, but it has decided to take upon this responsibility to face the Soviets. We have suggested that if Turkey is to carry out her mission, she must purchase more F-16's, more frigates, more tanks, and more helicopters.

Mr. GOLDWATER. Will the Senator yield at that point?

Mr. INOUYE. I will be very happy to yield.

Mr. GOLDWATER. I thank the Senator from Hawaii.

I just want to call the attention of my colleagues to the fact that Turkey is the biggest supplier of troops to NATO and they are among the finest soldiers in the whole world, yet they are very poorly equipped. The equipment that we have given them, loaned them, whatever you want to say, down through the years is fast becoming obsolete. I think we should do more for them than what we are doing.

I thank my friend.

Mr. INOUYE. I thank my dear friend from Arizona.

Mr. President, the next country is Spain. Spain is a newly democratic country that has decided to become part of NATO. We have naval bases there and some of our most important naval vessels are ported there. We have a major air base on Spanish soil. The sum that they would like to borrow is $757,573,000, because they wish to carry out their responsibilities as a NATO country and to do that they would have to buy F-18's, AV-8B's, destroyers, and helicopters.

The next country, Mr. President, is Pakistan. We have had many hours of debate on Pakistan and the role Pakistan plays in our differences with the Soviet Union on Afghanistan. Pakistan feels that in order to carry out her role in doing our battle requires more howitzers, personnel carriers, aircraft, destroyers, and they wish to borrow from us $208,644,000.

The next country is Thailand, the only country that we can depend upon to hold back the forces of Cambodia, Laos, and Vietnam. And in order to do our battle in that part of the world, Thailand feels they need more air defense radar, more helicopters, and F-16's, and they wish to pay for this by borrowing $175,531,000.

There is a country called Syria. We are very much concerned about Syria, Mr. President, and the threat Syria poses on the geopolitical and strategic interests of the United States, and one of the countries that is poised and always threatened by Syria is Jordan. In order to defend herself, this country needs air defense modernization, it needs more ammunition for its troops, and more missiles. The amount requested is $164,108,000.

Mr. President, the next country is South Korea. South Korea has been threatened by North Korea now for over 30 years. I hope that all of my colleagues know the problems of South Korea. We have air bases in South Korea, we have our troops there, and the South Koreans feel that in order to carry out their responsibilities and carry out our mission they need more F-16's, more helicopters, and more missiles. The amount they wish to borrow from us is $129,091,000.

□ 1250

The next country is Portugal. After struggling through with a totalitarian government, they have a democracy today. We have been using their soil for air bases. The Portuguese feel that in order to carry out their responsibilities and their mission in NATO, they would have to borrow some money so that they can modernize their antisubmarine warfare equipment and purchase more frigates. It would cost us $98,065,000.

Mr. President, Libya is in the news just about every day. There is one country that is right next to Libya and is constantly under the threat of Libya. A very dear friend of ours, in order to defend herself, she needs air defense and more C-3 aircraft, command control. This is Tunisia. Tunisia wishes to borrow from us $75,828,000.

We have important sealanes in Southeast Asia, sealanes that our naval vessels must use to go to the Indian Ocean, sealanes that are absolutely essential for our trade. Indonesia provides security for these sealanes, and to do this they require F-16's and to modernize their ships and aircraft. They are hoping to borrow from us $51,640,000.

We do not hear too much about the Straits of Hormuz, but the Straits of Hormuz are still there. It is very important to the security of the United States, to the economy of the United States. One country stands there almost defenseless—the country of Oman. Oman feels that in order to protect those straits for us, they would require greater air defense and aircraft modernization, and they wish to borrow from us $45,140,000.

Mr. President, we have had a debate for over 3 hours now on the Philippines—how much we all want to help the Philippines. The Philippines are having problems—we all know that—and they are having problems with the Communists. Mrs. Aquino knows that you cannot fight the Communists with peashooters. They need better command and control; they need more vehicles; they need more logistical support. They are hoping to borrow from us $29,355,000.

Morocco is being harassed by outside rebels. Yes, they are outside rebels financed by Libya. Morocco has been good to us. They want to borrow $6,637,000.

Peru, at our urging, recently had a peaceful democratic election. Until now, they have been courted by the Soviets, and they have been purchasing goods from the Soviets. Now we are trying to suggest that they should purchase goods from us, and they would like to purchase goods from us, and they hope to borrow $6,386,000.

Malaysia, together with Indonesia, plays the major role in protecting those sealanes in Southeast Asia. In order to carry out that responsibility, Malaysia hopes to borrow from us $5,484,000.

Botswana: We depend on Botswana to maintain some sense of stability in South Africa. Botswana feels that in order to do that, they need troops, and they hope to borrow from us $5 million.

Ecuador, at our urging, just became a new democratically elected country. They have their problems. They hope to borrow some money from us—$4.828 million.

Panama: I am certain that most of us will agree that the Panama Canal is extremely important to the United States. I think it is important enough for consideration. In order to carry out their responsibilities under the United State-Panama Treaty, the Panamanians hope to borrow from us $3.828 million.

We have spent hours on El Salvador. I need not repeat those arguments and the gist of the debates that have gone on with respect to El Salvador. El Salvador wants to borrow some money so that they can buy more ammunition, bullets—$2.832 million.

We finally come to the Dominican Republic, a democratically elected government. They have their problems. They just want to borrow $2.7 million so that they can purchase rifles.

That is what this amendment relates to: these countries that I have mentioned, these countries which essentially serve our national interests, these countries which in essence are borrowing money because we told them they should borrow this money, to purchase these arms, to carry out our mission—our mission, Mr. President.

As I said when I opened, I find it extremely difficult to find myself in opposition to my beloved colleagues, but I find that, in this case, our national interests would not be well served if this amendment should be adopted.

Mr. KASTEN. Mr. President, in listening to some of the debate I think there is a great deal of misunderstanding with respect to this provision, so I am pleased that we have an opportunity to discuss this.

The Senator from Hawaii, the ranking minority member of the committee, has just made a very eloquent statement as to what parts of the world and what important countries and what important U.S. interests could be at risk without this provision.

I also want to correct, if I can, some of the rather extraordinary and wild charges that people are talking about in terms of the effect of this amendment.

First of all, this provision is permissive. It gives the administration the authority to propose subsequent action to be provided to Congress. The provision relates to the FMS loans which have not yet been disbursed, so the examples of student loans, or farm loans, are not apt. These loans have not been disbursed.

The point is that it is not loans that have been made that are being forgiven.

The other important point is that there are those who have referred to these loans as already having been made. That is the point—these loans have not been made. The provision applies only to loans not yet disbursed.

□ 1300

The second aspect of the provision—which is a very restrictive one—relates to subsequent congressional approval of any proposals which are made under this provision. Specifically, if the administration decides to utilize the authority for any specific country it must go through the regular reprogramming process. That means four different committees of Congress must give their separate OK's in order for the administration to use this authority. Only if the administration went through these different steps could the provision benefit a country by providing forgiven loan rather than concessional loans or Treasury loans or any combination.

So of itself the provision does not result in a single dime to the Government, and that is why CBO and others have scored it at zero. It is only if Congress takes subsequent action that any of these particular points would come into effect.

The purpose of the provision is clear. It is to try to fill in some of the gaps that are as a result of the very low security assistance numbers that we are recommending in our bill.

We in our committee have cut the administration's request by $1.7 billion for military assistance programs, and in so doing we have restructured the programs so that the military assistance help henceforth will be provided on an all-grant basis.

Without this change, we would not be able to make the reductions, we would not be able to make the cuts in this program and, frankly, deeper cuts would have to be made in development assistance and economic support funds and multilateral development programs, the humanitarian programs which are also being squeezed.

So through this provision, if you will, we are protecting some of the very, very important humanitarian programs which are also contained in our legislation.

The underlying policy objective in these changes, including section 551, reflects concern over all of the debt situation. The committee believes that these provisions will in fact end up saving the American taxpayers a great deal of money because we will not be adding to the FMS debt. We fear additional FMS debt is about to result in a number of countries simply walking away from those loans, and of course if they do, under guaranteed provisions the American taxpayers would have to pick up the tab. We do not need to exacerbate the situation any more than it is at the current time with these huge debts that are piling up.

Therefore, we are recommending this provision for countries that seek to reduce that debt burden, countries that after all we are trying to help and also countries which in turn help our security.

The point that is important to make is that we are not in any way forgiving loans already made. Also any action by the administration must be approved through the reprogramming process and then and only then will we be in a position of determining exactly whether these are going to be loans or grants and at what level and at what proportion.

I believe that this provision is important to our legislation, and I am confident that the Bingaman amendment will not be agreed to.

Mr. BINGAMAN. Mr. President, if I could, I would like to just ask a question or two in finishing this debate. I do not mean to prolong it, but I did have a couple questions to ask of the subcommittee chairman, if I could, about the provision.

I agree with much of what he said, that this does involve loans that have not yet been made. I agree that this is exactly what is involved here. It is $3.5 billion of funds that were appropriated for the making of loans which we have now determined perhaps the administration would rather give away in grants, and I agree that it is discretionary. The administration does not have to give this money away, it can still loan it, but I think that clearly we are giving him the authority to give it away in this section.

Let me say also that I think there is some confusion abroad in that I am not objecting to these loans being made, and I am not in any way disputing the need that these countries have for this military equipment. I think that decision has been made. Congress appropriated the money to provide for it, not only do we allow them to buy the military equipment, we loan them the money with which to buy the military equipment. That is present law.

What I am saying is let us not go the next step and give them the money with which to buy the military equipment, particularly in the case of some of these countries which really do have the ability to repay us, as I see it.

Quite a few of these countries are termed by the World Bank to be middle-income countries. Why we would want to give the administration authority to give additional money to South Korea, I do not understand. South Korea has such an amazing trade surplus with the United States today, and I think it is an item that does not get much publicity, but the truth is South Korea is doing pretty darn well economically, and there are a lot of countries on this list doing well.

I ask the chairman of the subcommittee, if I could, what is the problem with just going ahead as Congress had previously agreed and loaning the money? That is my suggestion, because that is really what my amendment would allow to happen.

Mr. KASTEN. Mr. President, the difficulty we have here is living within the level set by the 302(b) allocation. To do that, we believe we need to allow additional flexibility, and that is the purpose of this particular section. What it will mean is that we could end up with the situation as the Senator has described, and that is the money goes out as loans and I think that is probably very likely. It is not in any way clear whether this is going to be loans or grants or no money at all. It simply depends upon what the administration recommends and then what Congress does, the authorizing committees and the appropriating committees, and that is why it is scored at zero.

It is scored at zero because there is no cost until Congress takes certain action following this legislation.

Mr. BINGAMAN. Let me just ask the following question. The Senator says that Congress needs to take subsequent action. As I read the provision—first, there are two provisions—the law itself says, "Provided, that the Appropriations Committees of both Houses of Congress are notified 15 days in advance" of these previously thought of loans being made grants. That is the language in the bill.

I understand there is a provision in the report that says that they should follow the regular reprogramming procedure. I do not see any reference to the authorizing committee. But I am wondering why the provisions of the statute would not govern over the provisions in the report.

Mr. KASTEN. Mr. President, in the Foreign Assistance Act there is a provision which relates to the utilization of the authorizing committee as well. That provision remains in effect and the whole process will take the foreign assistance regular reprogramming process which involves both the authorizers and the appropriators of both the House and the Senate.

Mr. BINGAMAN. The Senator says that nothing could be done here until you have a subsequent action by Congress. I am not on the Foreign Relations Committee, and I am not sure how you do it there, or on the Appropriations Committee, but in the Armed Services Committee, I can assure the Senator that reprogramming within the military budget does not require subsequent action by Congress. Reprogramming requests come in daily. They are approved very perfunctorily. We do not have committee meetings to discuss them. They are approved by the committee staff, the committee chairman and the ranking minority member. It never comes to the attention of Congress.

Do you follow a very different procedure? Does the Senator mean to say this would come back before the Senate for consideration before these loans would be transferred into grants?

Mr. KASTEN. Let me just say to the Senator, and the Senator from Hawaii is probably better able to respond to this question on reprogramming than I because he was chairman of the Foreign Operations Subcommittee for a number of years and established a number of very firm principles. Let me say that as long as I have been chairman of the committee, no reprogramming has taken place which has not received the approval of our committee, and I believe that that is the procedure that the Senator from Hawaii established before I came.

I yield to the Senator.

Mr. BINGAMAN. Does the Senator mean the approval of his subcommittee is what he is talking about as I understand it?

Mr. INOUYE. Mr. President, I would like to assure my friend from New Mexico that during all the years that I have been privileged to serve as chairman of the subcommittee and now as ranking minority member whenever the subcommittee indicated disfavor or opposition the administration, whether it be Democratic or Republican, has always honored us and rejected whatever that proposal was.

□ 1310

Mr. BINGAMAN. I certainly do not disagree with that, but the point I am trying to make is that this is management by exception. What you are saying is that if your subcommittee wants to object, then you have the ability to do that and the administration will honor that objection.

Mr. INOUYE. Yes.

Mr. BINGAMAN. But the Congress does not have to take further action in order for them to go forward with the grants, which I think was the point that the Senator from Wisconsin was making; am I correct in that?

Mr. INOUYE. The Congress will take the step of not objecting.

Mr. BINGAMAN. Right; so the Congress, by its inaction, allows it to go forward.

Mr. INOUYE. We notify the administration that we have no objections. That is the action taken.

Mr. BINGAMAN. But that is not action by Congress. It is action by the subcommittee of the Appropriations Committee.

Mr. INOUYE. The Senator is correct. We act as your agent.

Mr. BINGAMAN. I understand. Let me just clarify one other thing and then I will summarize my comments.

The Senator from Wisconsin made the argument that by authorizing the transfer or the use of these $3.5 billion for grants rather than loans, we are in fact saving the American taxpayer money. I just very genuinely cannot understand that argument. Perhaps he could elaborate on that just briefly for me.

Mr. KASTEN. The subcommittee feels that with the $18 billion or $19 billion worth of debt which we now have piled upon these countries, that we are reaching literally crisis proportions in some key countries. The subcommittee feels that we do not want to continue to pile more and more debt on these countries, because if we do we are pushing them closer and closer to a point where they may have to default.

As I understand your position, you do not object to doing that prospectively in the bill, but you do have a concern about the fact that it might be done with some of the loans and/or grants that are still there but have not been made. But the point, from the committee's point of view, is the reason that we have switched from a combination of loans to a much lower level of grant only is that we want to reduce the debt burden overall.

Mr. BINGAMAN. Well, I appreciate the answer. Let me just say that I do not really think that the argument that we should start giving these countries money because we have already loaned them so much that they cannot afford to carry any more debt, well, I find that a weak argument, Mr. President. I understand the argument, but I think that the solution to their having too much debt is not to just start giving them grants. I think that that is not a fiscally responsible way for us in the Congress to act.

Let me just make two or three points very briefly. My amendment merely tries to keep the present law. My amendment is an effort to take some legislation on this appropriations bill out and keep the present law with regard to past years.

The Senator from Wisconsin is correct. I do not in my amendment object to change in the law, even though it is a change in an appropriations bill, in the authorizing law for future years. I am merely saying that for the years 1985 and 1986, in which we appropriated the funds on assumption those funds were going to be loaned, to go ahead and make the loans. The recipients may well need the money; that is fine. But let us not now come back and say as an afterthought that you do not really have to ever make them repay it and you certainly do not have to charge any interest.

I think the amendment is straightforward. I think the Senate has had a chance to hear it explained. I do not know of any other statements.

I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, there are 20 countries, I believe, on this list. Of those 20, as my friend from New Mexico has pointed out, there are some who are comparatively affluent. And I can assure my friend from New Mexico and my colleagues that those countries will not receive undue benefits. In fact, I feel certain that less than 10 of these countries, in rather small amounts, would be granted the special treatment that we are speaking of.

But, Mr. President, we must keep in mind that, as I tried to convince my colleagues, these countries are doing our work. We have been urging our friends in NATO to beef up their defenses. And I am certain, Mr. President, you will agree with me that if they beefed up their defenses much more than what they are doing now, we could bring back some of our men. But as long as these countries do not reach that level, we would have to maintain our troops, at huge expense. And I think it would be well for us to remind ourselves that for the last fiscal year the NATO bill was $129 billion, most of it as a result of personnel, American personnel, being stationed there.

Second, and very important, Mr. President, these less than 10 countries that I spoke of, for all intents and purposes, if left up to certified public accountants, would be declared bankrupt. Under the laws of our land, Mr. President, a country can decide to default in payment and when that action is taken our country can, under our laws, provide them with this treatment of nonrequirement of repayment of loans.

But what country is going to come before us and declare herself in default and tell the rest of the world that they are bankrupt; tell their creditors that they are bankrupt; tell the World Bank that they are bankrupt; tell their constituents that they are bankrupt?

So we are faced with this predicament. We want these countries to carry out our mission. At the same time, we do not want them to be put through this pubic indignity of declaring themselves bankrupt.

So this is the step we have taken, Mr. President, to give this discretionary authority to the President to provide this special assistance. And before that special assistance can take effect, it must come before us. And we, the members of the subcommittee, acting as agents of the Senate, will make that decision. And if that decision is not consonant with the views of the Members of this Senate, I hope they will tell us.

But so far, in all the years that I have served on this committee, no Member of the U.S. Senate has disagreed with a decision of the Subcommittee on Foreign Operations of the Appropriation Committee.

The PRESIDING OFFICER. Is there further debate?

Mr. KASTEN. Mr. President, I move to table the amendment on behalf of the Senator from Hawaii and myself and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from New Mexico [Mr. BINGAMAN]. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Maryland [Mr. MATHIAS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 55, nays 43, as follows:

[Rollcall Vote No. 310 Leg.]

YEAS—55

Abdnor
Andrews
Armstrong
Boschwitz
Bradley
Broyhill
Chafee
Cochran
Cohen
D'Amato
Danforth
Denton
Dodd
Dole
Domenici
Durenberger
Evans
Goldwater
Gorton
Gramm
Hart
Hatch
Hatfield
Hawkins
Hecht
Heinz
Helms
Humphrey
Inouye
Kassebaum
Kasten
Kerry
Lautenberg
Laxalt
Lugar
Mattingly
McClure
McConnell
Murkowski
Pressler
Quayle
Roth
Rudman
Sarbanes
Simpson
Stafford
Stennis
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson

NAYS—43

Baucus
Bentsen
Biden
Bingaman
Boren
Bumpers
Burdick
Byrd
Chiles
Cranston
DeConcini
Dixon
Eagleton
Exon
Ford
Glenn
Gore
Grassley
Harkin
Heflin
Hollings
Johnston
Kennedy
Leahy
Levin
Long
Matsunaga
Melcher
Metzenbaum
Mitchell
Moynihan
Nickles
Nunn
Packwood
Pell
Proxmire
Pryor
Riegle
Rockefeller
Sasser
Simon
Specter
Zorinsky

NOT VOTING—2

Garn
Mathias

So the motion to lay on the table Amendment No. 3115 was agreed to.

□ 1330

Mr. KASTEN. I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. NICKLES. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1340

Mr. DOLE. Mr. President, I hope we can have one more vote before we start the debate on the South Africa veto message at 2:15. I think every 5 minutes we delay now will be 5 minutes longer at 2 or 3 a.m. that we will be here. If someone has an amendment, I wish they would offer it. Maybe we could not conclude it but maybe we can start it, and possibly conclude it before the other debate starts at 2:15.

I know the managers are anxious to get on with their work. I really do not believe it is fair to the managers for everybody to say they want to wait. A lot of us will not want to wait at 3 or 4 o'clock tomorrow morning.

Does anybody have an amendment or are there any amendments that can be offered?

Mr. INOUYE. Yes, Mr. President, I do.

AMENDMENT NO. 3116

(Purpose: To provide an exemption from Section 4(f) of the Federal Aid Highway Act for the H-3 Highway)

Mr. INOUYE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Hawaii [Mr. INOUYE] proposes an amendment numbered 3116.

Mr. INOUYE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert:

SEC. . The Secretary of Transportation shall approve the construction of Interstate Highway H-3 between the Halawa interchange to, and including the Halekou Interchange (a distance of approximately 10.7 miles), and such construction shall proceed to completion notwithstanding section 138 of title 23 and section 303 of title 49, United States Code.

SEC. . Notwithstanding Section 102 of this Joint Resolution the provisions of Section —— shall constitute permanent law.

Mr. INOUYE. Mr. President, this amendment was fully debated and passed by a vote of 78 to 16 during the evening of September 23. This is the so-called H-3 amendment. I am requesting that this amendment be made part of the continuing resolution because, if the Chair will recall, that amendment was made to the highway bill. The highway bill is now in or out of conference, no one knows, and there is no certainty as to whether it will be passed on to the President. Therefore, I have asked the managers of this measure, I have cleared it with the authorizing committees and the Appropriations Subcommittees and the full committee and they have all approved it. I hope the chairman of the committee will accept this amendment.

Mr. HATFIELD. Mr. President, we are in the process of clearing this amendment on the Democratic side of the aisle. I might say that this amendment is illustrative of a rather narrow-based amendment in terms of how much of an area or a part of a program it may affect. It is a very narrow, specific amendment. It does not have a budgetary impact on outlays and I believe it is one of those amendments that is eligible for consideration.

In supporting the exemption of highway H-3 from section 4(f) of the U.S. Department of Transportation Act, I want to make clear my view that this vote does not and should not be seen as setting a precedent for departures in the future from the Nation's environmental laws. My understanding is that exceptional measures have been taken in this case to meet—and in some cases exceed—the requirements of all State and Federal environmental statutes with the exception of this provision of the Transportation Act. The facts surrounding H-3 make this situation unique and in my opinion justify exempting it from the 4(f) requirement.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. STENNIS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Mississippi.

Mr. STENNIS. Mr. President, regarding the amendment concerning the highway in Hawaii, as I understand it, the same measure was considered before.

Mr. INOUYE. Yes, on September 23, Mr. President.

Mr. STENNIS. It was passed by an overwhelming vote. I do not know of any opposition on this side of the aisle. In fact, I think it has been approved, with no objection to passing it.

Mr. HATFIELD. Mr. President, with the clearance on the other side of the aisle, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3116) was agreed to.

Mr. HATFIELD. I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I believe we may have very shortly a sense-of-the-Senate resolution to be offered by two of our colleagues which would require a rollcall. That could take us up, under the time arrangement, to the hour at which we would set aside the current measure and take up the President's veto of sanctions on South Africa. I therefore suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, in the interest of time, I wonder if the manager would be willing to set this aside momentarily for the purpose of my offering an amendment which it is my understanding he is prepared to accept.

Mr. HATFIELD. There is no amendment pending at this time. If the Senator from Ohio has an amendment we have discussed that he is now identifying, we are in the process of clearing that.

Mr. METZENBAUM. This has to do with the central Utah project, which I understand the chairman is ready to accept.

Mr. HATFIELD. This amendment we have discussed and it has been cleared, I believe, on both sides of the aisle. I would welcome the Senator's submitting it at this time to move our process along.

Mr. METZENBAUM. I thank the Senator for his cooperation.

AMENDMENT NO. 3117

Mr. METZENBAUM. Mr. President, I send two amendments to the desk and ask for their immediate consideration.

The PRESIDING OFFICER. The amendments will be stated.

Mr. METZENBAUM. I ask unanimous consent that the two amendments be considered en bloc.

The PRESIDING OFFICER. Is there objection? Without objection, the amendments will be considered en bloc.

The clerk will state the amendments.

The bill clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes amendments en bloc numbered 3117.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading be dispensed wth.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amendments to H.J. Res. 738, to be proposed by Senator METZENBAUM to be considered en bloc.

At the appropriate place in the bill, insert the following:

Except that H.R. 5162, the Energy and Water Development Appropriations Act, 1987, as reported by the Committee on Appropriations on September 15, 1986, is amended as follows:

On page 22, line 19, after the word "pay", insert "principal and";

On page 22, lines 22-23, strike "the ten year interest-free period provided by" and insert in lieu thereof "exceptions (1) and (2) of the last proviso of the first sentence of";

THE CENTRAL UTAH PROJECT

Mr. METZENBAUM. Mr. President, this amendment has to do with language contained in H.R. 5162, the Energy and Water Development Appropriations bill, as reported by the Committee on Appropriations and incorporated by reference in the continuing resolution that is before the Senate today. As reported, section 206 of the energy and water bill contained legislative language regarding the central Utah project that would respond to certain findings and recommendations made by the General Accounting Office in two reports prepared at the request of this Senator.

The purpose of this amendment is to conform the text of the energy and water bill to what I understand to be the meaning and intent of section 206 as explained in the committee report on the bill. That report states, in pertinent part, that:

> The purpose of this section is to nullify application of the 10-year interest-free period provided by section 301(b)(2) [of the Water Supply Act of 1958] which may have been utilized to defer repayment on those portions of the Strawberry Collection System which were the subject in 1981 of the Water Supply Act invocation. It is the Committee's intent that repayment of these Strawberry Collection System features should commence in accordance with the terms provided for repayment by the several repayment agreements entered into between project sponsors and the Bureau of Reclamation which require repayment of principal and interest to commence upon issuance of block notices by the Bureau." S. Rept. 99-441, p. 90.

The language of my amendment will simply clarify that repayment of both principal and interest will commence on a timely basis, without deferral.

It should be noted that the amendment does not require the renegotiation of any existing repayment contracts.

Mr. METZENBAUM. Mr. President, I think this amendment is acceptable to the managers of the bill.

Mr. HATFIELD. Mr. President, I have indicated this particular amendment offered by the Senator from Ohio has been cleared on both sides of the aisle. I move its adoption.

Mr. HATCH. Mr. President, I appreciate the opportunity to speak in behalf of myself and Senator GARN in support of the Appropriations Committee action on the central Utah project because of its direct importance to me and to the people of our State. The people of Utah and the central Utah water conservancy district are proud of the central Utah project and the challenges which it has recently overcome. In short, Mr. President, what you have today is a new central Utah project; a lean, cost effective reclamation project which has wholehearted support of the people of Utah.

On November 19, 1985, a new supplemental repayment contract was approved by the voters in the 12 county central Utah water conservancy district; 73 percent of the voters favored approval of this contract which was signed by the district and the Bureau of Reclamation on November 25, 1985, and submitted to the Congress for the requisite 100-day review period on December 12, 1985. That review period expired on March 21, 1986.

The new supplemental repayment contract increased the repayment obligation of the central Utah water conservancy district by $368 million. This will provide funds to complete construction and pay for Utah's fair share of the Jordanelle Dam and Reservoir and to provide payment for the Strawberry aqueduct and collection system. These funds will also pay for facilities to bring central Utah project water from the Strawberry Reservoir to the Wasatch Front.

I think it is important for all of us to remember that the expectations of the people of Utah for the central Utah project and the Bonneville unit are no different than the expectations that have been realized throughout the arid West for badly needed reclamation projects. Salt Lake County for example needs the Bonneville unit to be completed as soon as possible. Salt Lake County has already overbuilt its water supply. The last major water supply for this area came with the Deer Creek project, which was built between 1938 and 1941.

The population of Salt Lake County in 1940 was only 212,000. Today that number approaches 700,000 for an increase of over 300 percent. By the year 2000 it is projected to be 912,000. Over the next 25 years, Salt Lake County is projected to increase by 425,000 people. This growth will require an additional 140,000 acre feet of water for municipal and industrial uses. Only 70,000 acre feet of this water, or about half of what will be needed, will be supplied by the Bonneville unit.

Now that the project has been restructured and over 73 percent of the citizens of Utah have voted to approve the new repayment contract, the project must resume an aggressive construction schedule in order to meet both current and future water needs.

An issue that has been raised deals with the propriety of the use of the Water Supply Act of 1958 to defer M&I repayment obligations for certain features of the Bonneville unit. Frankly, Mr. President, I view this as a nonissue. Not only has the Department's solicitor approved the use of the Water Supply Act, but the new supplemental repayment contract which obligates the district to repay all properly allocated M&I costs renders the issue moot. Furthermore, Mr. President this bill requires the people of Utah to pay all interest which might have been deferred.

Mr. President, the time has come to put the rancor and debate behind us and to move ahead toward a prompt and efficient completion of this project. Working with the Bureau of Reclamation, the central Utah water conservancy district has developed a plan which will see this project completed once and for all within the next 10 years. The people of Utah have put their money on the table. Now it is time for the Congress to move ahead to complete this project in an expeditious manner. The American people have already invested over $600 million in this project. To stop now simply makes no sense.

Mr. President, as you are aware, last year's bill, the Energy and Water Development Appropriations Act of 1986, Public Law 99-141 contained language which prohibited the expenditure of further funds for the construction of the Bonneville unit of the central Utah project until:

> A supplemental repayment contract from municipal and industrial water supply, sufficient to recover all allocable reimbursable costs plus interest has been executed . . . and such contract has been submitted to the Congress and 100 days have elapsed.

Mr. President, the requirements of this law have been met, and the time has come to move forward with construction of the Bonneville unit.

On November 19, 1985, a new supplemental repayment contract was approved by the voters in the 12-county central Utah water conservancy district, 73 percent of the voters favored approval of this contract which was signed by the district and the Bureau of Reclamation on November 25, 1985, and submitted to the Congress for the requisite 100-day review period on December 12, 1985. That review period expired on March 21, 1986.

The new supplemental repayment contract clearly reflects the mandate of the Congress in the fiscal year 1986 Energy and Water Development Appropriations Act in that it provides complete coverage for the district's M&I obligation. Specifically, the supplemental repayment contract obligates the district to repay to the Federal Government "the reimbursable costs, properly allocated under Federal reclamation law to municipal and industrial water use for construction of the project."

On March 11, 1986, the House Committee on the Interior and Insular Affairs Subcommittee on Water and Power Resources held an oversight hearing on the repayment arrangements for the Bonneville unit. The testimony provided by the Department of the Interior and the district demonstrated that adequate contract coverage now exists for the anticipated reimbursable costs of building the project. During the hearing the subcommittee received testimony from the U.S. General Accounting Office in which the GAO criticized the use in 1981 of the Water Supply Act of 1958 to defer costs associated with future water supplies. However, as counsel for the district and the Department of the Interior correctly pointed out, the use of the Water Supply Act was always envisioned for repayment of the Bonneville unit M&I component. In paragraph 6(f) of the original 1965 repayment contract it was specifically recognized that the Water Supply Act could be used, in accordance with its terms, to defer payment under the 1965 contract since it was recognized at that time not all of the M&I water would be needed at the initiation of water deliveries.

I obviously strongly support the views of both the Department of the Interior and the central Utah water conservancy district and believe the adoption of the supplemental repayment contract has rendered the entire issue moot. The supplemental repayment contract, in concert with the other repayment arrangements and the upfront contributions by the district, is more than adequate to cover the costs allocated to M&I water. Thus, any work which the GAO has asserted was done without adequate contract coverage has been now covered by the 1985 supplemental repayment contract, and the water supply that was deferred in 1981 has been contractually subscribed for.

To avoid further controversy with the project, however, the Utah congressional delegation, project sponsors and Chairman GEORGE MILLER of the House Interior Subcommittee on Water and Power Resources participated in lengthy discussions concerning the GAO estimate that up to $97 million in interest payments could be deferred by means of the 10-year interest deferral period provided by the Water Supply Act.

Although the Utah participants stand by the legality of their position and disagree with $97 million estimate, what we Utahns want most is to go ahead and finish this project. To accomplish this, we compromised with Chairman MILLER on an amendment which he offered to this bill on the House floor.

The Metzenbaum amendment, which has been offered today, is intendeed to clarify language of the Miller amendment so that it better reflects the committee report language and committee intent. I appreciate the Senator from Ohio's concerns and pleased that they could be clarified in this manner.

I want to thank Chairman HATFIELD for his cooperation as well as the other members of the Appropriations Committee. I also want to thank Representative GEORGE MILLER. He is a tough negotiator and an able legislator. Mr. President, I urge support of the committee bill with the Miller amendment, as modified by the Metzenbaum amendment.

Mr. President, I am also inserting for the RECORD a copy of a letter from the entire Utah delegation to Interior Secretary Don Hodel regarding some concerns which we have regarding the management of this project.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

UNITED STATES SENATE,
Washington, DC, September 15, 1986.

Hon. DONALD PAUL HODEL,
Secretary of the Interior, Department of the Interior, Washington, DC.

DEAR MR. SECRETARY: As you know, the entire Utah Congressional delegation along with every elected governor and member of Congress from Utah has made completion of the Central Utah Project an important priority for the state since contruction of the project began nearly 20 years ago. We continue to strongly support the construction of this project as the very best way to meet the future agricultural, municipal and industrial water needs of our state.

For some time we have been concerned over the lack of progress being made by the Bureau of Reclamation in the construction of the Bonneville Unit of the Central Utah Project. Despite the fact that this project was first authorized in 1956 as a part of the Colorado River Storage Project Act and construction began in the mid 1960's, the Project still remains incomplete.

During the past 20 years the citizens of Utah have witnessed a dramatic increase in the cost of the Central Utah Project. There can be no doubt that if this project has been built on time and funded properly it would have been completed long ago and the Government would today be receiving reimbursement from the beneficiaries of the Project. Our sense of concern with this situation has now turned to a sense of anger in the light of facts that have recently come to light with regard to the management of this Project by the Bureau of Reclamation.

We have recently become aware that millions of dollars that the Congress has appropriated for the construction of the Bonneville Unit over these many years have never found their way to the Project itself. Through a combination of underfinancing, transfers to other Bureau projects, and other bureaucratic slight of hand, some $67 million has been diverted from the Congressionally approved levels of expenditures for the Central Utah Project during the last six years. That figure represents approximately 18% of the Congressionally approved funding levels for the Project since Fiscal Year (FY) 1981. While we find this intolerable the trend seems to be getting worse rather than better. In FY 1985, 40.5% of the funds which Congress approved for construction of the Bonneville Unit never found their way to the Project. In FY 1986, this figure approached a staggering 54.2% of total appropriations. We believe that these figures demonstrate a gross mismanagement of this project by the Bureau and that they are indicative of a breakdown of the funding history of the Bonneville Unit which our staffs have obtained from the Bureau. If this breakdown is anywhere near accurate, it shows a complete disregard on the Bureau's part for Congress' authority to determine project construction levels.

We have no doubt that the Bureau will attempt to rationalize this behavior by claiming that these fund transfers were necessary in order to obligate the Bureau's total appropriation westwide every years. This ignores the fact that construction funds are appropriated as "no year" money and are avilable until expended. Furthermore, it is the Congress *not* the Bureau of Reclamation which has the responsiblity of dividing the Bureau's construction budget between the various projects.

For years the members of the Utah Congressional Delegation have fought hard to provide adequate funding for the Bonneville Unit while defending the Bureau of Reclamation against the criticisms which have been leveled at it by its opponents. That era is over. Henceforth, the members of the Utah Congressional Delegation will not allow funds appropriated to the Bonneville Unit to be siphoned off to finance the Bureau's other projects in direct contravention of the direction of Congress and the law. We will not hesitate to take whatever steps may be necessary to stop this practice.

In response to the problems which we have discovered with the funding of the Bonneville Unit, we recently attached language to the Bureau of Reclamation's FY 1987 Appropriation which will require that no more than 20 percent of funds appropriated for the Project go to overhead and that all remaining funds appropriated for the Project go to project construction. You should be aware that it is our intent that this language prevent the use of underfinancing with respect to this project and absolutely prohibit the transfer of funds away from the Project to any other Bureau of Reclamation project.

Mr. Secretary, we hope that we will have your support in our efforts to return to the Bonneville Unit those funds which have been diverted to other Bureau of Reclamation projects over the past several years and put an end to the fiscal mismanagement of the financing of the Bonneville Unit. We have an aggressive construction schedule planned and will need your personal assistance in order to meet that schedule. To this end we would like to meet with you at the earliest possible time to discuss this situation in greater depth. We will look forward to hearing from you in this regard.

Sincerely,

JAKE GARN,
ORRIN G. HATCH,
U.S. Senators.
JAMES V. HANSEN,
HOWARD C. NIELSON,
DAVID S. MONSON,
Members of Congress.

□ 1350

The PRESIDING OFFICER. The Chair must take note that there were two amendments and unanimous consent was obtained to consider them en bloc. Is there no confusion?

Mr. HATFIELD. No objection.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3117) was agreed to.

Mr. HATFIELD. I move to reconsider the vote by which the amendment was agreed to.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I do not know of any amendment immediately, but I hope to have a few more. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the role.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

AMENDMENT NO. 3118

(Purpose: to prohibit contracting out of certain functions at McAlester Army Ammunition Plant, McAlester, Oklahoma, and at the Crane Army Ammunition Activity, Crane, Indiana)

Mr. NICKLES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read the amendment as follows:

The Senator from Oklahoma [Mr. NICKLES] (for himself, Mr. BOREN, and Mr. QUAYLE) proposes an amendment numbered 3118.

Mr. NICKLES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the joint resolution insert the following new section:

SEC. .

(a) PROHIBITION OF CONTRACTING.—Neither the Secretary of Defense nor the Secretary of the Army may enter into a contract on or after the date of enactment of this joint resolution for the performance by contractor personnel of any functions performed by employees of the Department of Defense at the McAlester Army Ammunition Plant, McAlester, Oklahoma, or the Crane Army Ammunition Activity, Crane, Indiana.

(b) EXCEPTION.—The prohibition in subsection (a) does not apply to a contract (or the renewal of a contract) for the performance of a function that on the date of the enactment of this joint resolution is already under contract for performance by contractor personnel.

Mr. NICKLES. Mr. President, I rise today to offer an amendment on behalf of myself, Senator BOREN, and Senator QUAYLE which would halt the contracting out studies at the Army Ammunition Plant in McAlester, OK and at the Crane Army Ammunition Activity. As you know, these studies have been stopped temporarily while the GAO studies the desirability of contracting out. I believe we can save the Defense Department thousands of additional dollars by canceling the study altogether now, and not waiting for the General Accounting Office report on the matter.

Clearly, the Army has disregarded the admonitions of Congress for the past 2 years on this issue. It has also ignored the recommendations of many experts.

The Army has already spent $750,000 and countless man-hours on a previous study only to find out that in fact the base operations function at McAlester can be done most cost effectively by the existing on-base personnel.

The Army seems to have ignored its experience at Hawthorne, where a contractor under-bid the inhouse people by $3 million and it cost the Government some $25 million to bail out the contractor who failed to perform the work as it had agreed. In addition to the loss of military readiness, the original cadre of workers at Hawthorne has been lost. The Government is now at the mercy of this irresponsible contractor.

The GAO said the Hawthorne contract never should have been awarded, and when asked whether the functions at McAlester should be contracted out, the Commanding General who oversees both McAlester and Hawthorne responded in a 1984 report, "No." He said the Army should continue inhouse performance because of the turmoil and impact on readiness and mobilization, the experience of 18 months of unsatisfactory operation, costly TDY of 2210 days, and enormous attrition and morale problems. He also cited severe loss of skilled personnel, serious production shortfalls, and the inability to respond properly during isolated, volatile, world incidents of much less magnitude than a full mobilization as being cogent reasons for not contracting out this mission-essential function.

As you know, I am a strong advocate of eliminating wasteful Government spending in every area of Government, including defense. Because of the potential costs and security problems I have raised, Senator BOREN and I have introduced legislation to force the Army to recognize the intent of past legislation concerning the mission-essential nature of this plant. This amendment would accomplish the same end.

Mr. STEVENS. Mr. President, we have reviewed the amendment submitted by our distinguished colleagues from Oklahoma and Indiana and find it acceptable. The House has a similar provision in its appropriations bill.

Mr. President, I think we have this cleared on both sides and I appreciate the cooperation of the managers of the bill.

Mr. BOREN. Mr. President, I am pleased to cosponsor this amendment with my good friend and colleague, Mr. NICKLES, to prohibit contracting out the critical functions at McAlester Army Ammunition Plant in Oklahoma.

This amendment is the result of continued attempts by the Department of the Army to contract out the entire conventional ammunition and ammunition-related components missions/functions which, in my view, would compromise the vital ability to mobilize sustained combat ammunition requirements for an emergency.

Mr. QUAYLE. Mr. President, I join with my colleague from Oklahoma in offering this amendment to halt the contracting-out process at the Crane Army Ammunition Activity in Indiana and the McAlester Army Ammunition Plant in Oklahoma.

This spring, the Department of the Army announced it would study the installation operations at the Crane and McAlester plants for conversion from in-house operation to commercial contract operation.

Crane and McAlester are the last two ammunition plants under direct Government control and operation. If these plants are contracted out, the vital function of ammunition manufacture, renovation, and storage for our forces will be entirely contractor controlled. While the Department of the Army here in Washington has proposed this contracting out, the operational Army, including former commanders at Crane, have at least twice expressly recommended to their superiors that these facilities remain under direct Government control.

The last time the Army contracted out a facility similar to Crane and McAlester, the Hawthorne Army Ammunition Depot in Nevada, the result was near disaster. Many of the trained personnel declined to work for a contractor and sought alternative employment. The contract cost much more for its first years than originally bid and had to be rewritten as a cost plus award fee contract rather than the original cost plus fixed fee. During this period Crane was called upon to fulfill work orders originally assigned to Hawthorne.

Further, while the civilian employees of the Department of the Army at Crane and McAlester cannot go out on strike, it is instructive to note that the contractor employees of the Army's ammunition plant in Radford VA, are presently out on strike.

On May 12, 1986, Senator LUGAR and I wrote to the Secretary of the Army requesting that he address our concerns over the impact that contracting out Crane and McAlester would have on the national defense readiness and mobilization base.

Because prompt and reassuring answers were not forthcoming from the Army, on June 20 I successfully offered, then introduced, an amendment during the Senate Armed Services Committee's consideration of the fiscal year 1987 Department of defense authorization bill that would have forced the Army to stop the contracting-out studies at Crane and McAlester until the General Accounting Office [GAO] could review the situation at Hawthorne, examine the Army's plans and procedures for studying Crane and McAlester, and report on the cost effectiveness of contracting out these facilities and its effect on our defense readiness and mobilization base.

When this did not produce a response from the Department of the Army, I took the matter up with Secretary Weinberger. In a July 2 telephone conversation with me, Mr. Weinberger agreed to cancel the studies at Crane and McAlester. Work halted on the study at Crane on July 9.

While I certainly take the Secretary at his word, the livelihood and welfare of 800 Indiana workers are at stake here. In the absence of the final passage of the defense authorization bill—and my amendment—by the Congress, Senator NICKLES and I are taking this opportunity to achieve a final settlement of this issue. I believe this amendment deserves my colleagues full support.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I have no idea whether this is a good amendment or a bad amendment. It is just one of those things that comes up in the middle of the day and we do not get much advance notice about it. Under the circumstances, either I would have to ask that it be set aside so we can study it or I would suggest the absence of a quorum so that we not move forward with respect to a vote. I do not know if I am for it. I do not know if I am against it. I guess nobody else in the Senate does either. We do not know what is in it.

Mr. NICKLES. If the Senator will yield, I do not think it would take very long. This is not major language. This language was in the House bill. Basically, it would prohibit contracting out a study which had already been done, $750,000 had already been spent. It is language that we had run through and by Senator STEVENS.

I might also say to the Senator from Ohio that he just passed a couple of amendments that I doubt too many people had thoroughly examined as well. This is not a major amendment, but it will save the taxpayers some money at the same time.

Mr. METZENBAUM. I am sure that the Senator from Oklahoma is correct, and I am sure that I will not stand in the way of its passage, but I would like to get a chance just to take a peek at it.

The Senator from Oklahoma is absolutely correct in saying the amendment that I just passed very much falls in the same category and I would not have objected to somebody taking a look at it. I do not intend to give the Senator from Oklahoma a problem in passing his amendment, but I am sure if I get a chance to look at it, we will be able to clarify the facts.

Does the Senator from Oregon have other amendments that he wishes to proceed forward with at the present moment?

Mr. HATFIELD. We do. I will say to the Senator from Ohio, merely to emphasize again the situation we are in, we acted upon two amendments the Senator from Ohio had based upon the careful scrutiny by the managers of the bill, and I am not saying that we are without error but certainly we gave it careful scrutiny as we did with the amendment of the Senator from Oklahoma. These are times when we are having to move legislation. Any Member has the right to read any amendment, to be informed on any amendment. But I also appreciate that the body gave consent to consider the amendments of the Senator from Ohio based in part, I think, on the fact they have the confidence in the managers of the bill.

Mr. President, I ask unanimous consent we temporarily lay aside the amendment offered by the Senator from Oklahoma in order that we might take up an amendment to be offered by the Senator from Florida.

Mr. METZENBAUM. I say to the Senator from Oregon, the manager, that while he was stating his position, the Senator from Oklahoma was good enough to bring the amendment over to me. I read it, and I have no objection to the amendment.

Mr. HATFIELD. I thank the Senator from Ohio. I will withhold the unanimous consent request to temporarily lay the amendment, and I move adoption of the Nickles amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Oklahoma.

The amendment (No. 3118) was agreed to.

Mr. HATFIELD. I move to reconsider the vote by which the amendment was agreed to.

Mr. CHILES. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3119

(Purpose: To restrict further spending on the new U.S. embassy in Moscow until a study is completed on its structural integrity and management changes are made by the State Department)

Mr. CHILES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Florida [Mr. CHILES], for himself, Mr. LEAHY, Mr. LUGAR, Mr. JOHNSTON, Mr. PELL, Mr. INOUYE, Mr. BYRD, Mr. DURENBERGER, Mr. COHEN, Mr. SPECTER, Mr. KERRY, and Mr. KASTEN, proposes an amendment numbered 3119.

Mr. CHILES. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the joint resolution add the following:

NEW MOSCOW EMBASSY OFFICE BUILDING

SEC. . Of the funds appropriated to the Department of State, Administration of Foreign Affairs, "Acquisition and Maintenance of Buildings Abroad" pursuant to this Joint Resolution, up to $1,000,000 shall be available for transfer under the Economy Act to the Director of the National Bureau of Standards for the purpose of conducting an independent analysis of the new United States embassy office building being constructed in Moscow: *Provided*, That a report including this analysis, an assessment of the current structure and recommendations and cost estimates for correcting any structural flaws or construction defects shall be transmitted by the Director of the National Bureau of Standards to the Speaker of House of Representatives and the Appropriations and Foreign Relations committees of the Senate no later than April 15, 1987: *Provided further*, That the Director of the National Bureau of Standards shall assemble a team of appropriately cleared personnel to undertake this analysis: *Provided further*, That no funds appropriated to the Department of State in this or any other Act may be obligated for construction of the new office building in Moscow, until 30 days after the receipt of the above report, except as necessary for preservation of existing structures and to conduct necessary inspections and prepare plans in connection with repair and renovation options: *Provided further*, That the obligation of funds for further construction of the new office building in Moscow shall be subject to appropriate reprogramming procedures: *Provided further*, That no funds may be disbursed to the Soviet Union or its entities for construction efforts associated with the new office building including, but not limited to, work performed, unless and until the Secretary of State transmits to the Speaker of the House of Representatives and the Appropriations and Foreign Relations Committees of the Senate an assessment of the adequacy of such work and the extent of damages to the United States: *Provided further*, That the Director of the Office of Foreign Missions is directed to develop and submit to the Speaker of the House of Representatives and the Appropriations and Foreign Relations Committees of the Senate by April 15, 1987, a plan to establish essential parity in the numbers and types of buildings held by the United States in Moscow and the Soviet Union in Washington, D.C. and this plan shall include provisions that the Soviet Union may only continue to utilize its present embassy location on 16th Street, N.W. in Washington, D.C., as long as the United States is allowed to utilize its present embassy location in Moscow: *Provided further*, That the Department of State will now allow contractor personnel employed by the Department of State to travel to the Soviet Union prior to receiving appropriate security clearances: *Provided further*, That beginning on February 1, 1987, the Director of the Office of Foreign Missions shall report every six months to the Speaker of the House of Representatives and the Appropriations and Foreign Relations committees of the Senate on any failure during the past six months by Soviet agencies to perform obligations to United States diplomats or United States missions to the Soviet Union and the actions undertaken by the Office of Foreign Missions to redress these failures: *Provided further*, That beginning on February 1, 1987 and every six months thereafter, the Secretary of State shall issue a report to the Speaker of the House of Representatives and the Appropriations and Foreign Relations Committees of the Senate on the progress of construction in Moscow.

Mr. CHILES. Mr. President, today I am offering an amendment which attempts to address a multitude of difficulties faced by the United States in building a new office building for our Embassy in Moscow.

Mr. President, this is not a recent issue. In fact, it goes back 17 years—to 1969. Since 1969 we have been trying to complete a new Embassy in Moscow. And frankly, the cost overruns, the delays and the lack of reciprocity are a scandal.

Since we began this project, the total cost of construction has nearly tripled, from an original estimate of $75 to $192 million—and the building is still at least 3 years away from completion.

The complex in Moscow was originally slated for completion in July 1982. Last year we were told that this date has been pushed back to December 1987. Now we are told it won't be until October 1989.

Last year we passed an amendment requiring the Soviet Union to reimburse the United States for all damages and costs due to Soviet-caused delays in construction. Unfortunately, this amendment did not address the construction defects which have been found in the new office building.

Mr. President, let's take a brief look at the history of this matter.

In 1969, the United States and the Soviet Union agreed to build new Embassies and we started looking for appropriate sites in Washington and Moscow.

Well, 1969 was the beginning of détente, and so, we made the first of many bad deals. The 1972 agreement gave the Soviets property at one of the highest points in Washington, DC—a spot ideal for intelligence collection.

We got a bad deal, but it was our fault. To paraphrase Boris Malakhov, the Soviet Embassy spokesman, the Soviets didn't have to capture the site, it was given to them.

In 1972, we reached an agreement to allow parallel construction and, Mr. President, in 1977, the United States signed a protocol with the Soviet Union. This protocol called for a fixed price contract for the construction of the exterior of the building, to be built by the Soviets. This contract price was supposed to be based on the costs of similar construction in the Washington, DC, area.

Why we agreed to this is beyond me. Surely the costs of construction in Moscow is far below that of construction in the United States. We know the quality of construction is well below our standards. Another bad deal.

Mr. President, in 1978 we negotiated a contract with the Soviets. But even though we had an agreement with the Soviets to base construction costs in Moscow on comparable Washington, DC, costs, the Soviet bid was outrageously high. But, the State Department had a solution. In return for the Soviets being reasonable about costs, we agreed to let them occupy new housing at the Washington, DC, site as soon as it was completed—in 1979, 7 years ago. Our new housing in Moscow is only just being made available this fall. Another bad deal.

In 1978, the State Department estimated the cost of the whole Moscow Embassy complex to be $75 million and the State Department assured us that the project would be completed in 1982.

By 1979, however, we had appropriated a total of $91.5 million.

In 1981, $12 million more was appropriated. The total price tax for the project then exceeded $100 mllion.

In 1982, an additional $31.7 million was appropriated, and we were assured that the total amount for the Moscow complex would not exceed $135.2 million. The completion date, however, slipped to 1984.

Mr. President, another year went by and we told once again that additional funding was needed and a $5 million supplemental was approved. This time, we were told the complex would not be ready for occupancy until October 1984.

In 1984, our own Department of State said our Moscow Embassy project would be completed in 1984, but it would cost another $7 million. By that time, the cost of the project had doubled. But we were assured the nightmare was over, the Embassy would be finished.

Well, in 1985, lo and behold, the State Department was back, asking for a $20 million supplemental for the project and telling us that the complex wouldn't be completed until December 1987.

But even that's not the end of this tale. This year, in the fiscal year 1986 supplemental, another $25 million was appropriated for security equipment for the Embassy. A total of $192 million appropriated to date. What about completion? Well, now they're saying October 1989.

If this was the whole story, it would be bad enough. But no, Mr. President, there's more.

Recent investigations indicate severe construction problems in the new office building.

These problems are generally due to shoddy workmanship on the part of the Soviet contractor. The extent of these problems is not fully known. However, these flaws may be so pervasive that extensive demolition and reconstruction may be necessary.

Staff from the Budget and Foreign Relations Committees was sent to Moscow last week to look into these problems. They reported significant concerns about the status of construction on the new office building.

The kinds of problems they found include:

Shear walls that are not attached to building columns;

Floor slabs are uneven, some with cracks, holes, and other flaws;

Inadequate mortar which has been alleged to make the existing brickwork unstable and vulnerable to water damage;

Substandard concrete may have been used in the construction;

Some structural elements are open and exposed to the weather; and,

Water infiltration is so extensive that after a rain, water seeps for 4 days from the roof—the ninth story of the building—to the fourth floor.

Clearly these problems need to be investigated by construction engineers who are qualified to make judgments as to the extent of these problems and the cost of fixing them.

This amendment does just that. It will earmark up to $1 million so that the National Bureau of Standards' Office of Building Technology can conduct an independent assessment of the structural and construction defects of the building.

It will prohibit further obligation of funds for construction until these reports have been reviewed by the Congress.

It also prohibits the further disbursement of funds to the Soviet Union for construction efforts until the State Department makes an assessment of the adequacy of the work and the extent of damages.

Mr. President, our amendment also includes provisions to ensure more equitable treatment of the U.S. mission in Moscow and improve the State Department's management of this program.

It will do this by requiring the Office of Foreign Missions to submit to Congress a plan to establish essential parity in the numbers and types of buildings owned in the capital cities and to report every 6 months on how the OFM is dealing with unacceptable Soviet behavior.

Finally, it will force some much-needed improvements in State Department management of the program. It will require the State Department to ensure that all U.S. contractor personnel have security clearances before they go to Moscow—some, I understand, have or are going to be sent back after we have paid to send them over. It also requires the Secretary of State to send a semiannual report to the Congress on the status of construction.

In 1980, Congress enacted legislation to secure equal treatment of U.S. Embassies abroad and foreign counterpart Embassies in Washington. Yet, we have allowed the Soviets to occupy some of their new facilities in Washington, while we have watched the Soviets delay construction of our new facilities in Moscow.

This amendment seeks to get this construction project back on track, by determining whether or not construction problems do exist and promoting some much needed management changes within the State Department. The amendment enjoys the wide support of Members in this body, including the chairman and ranking members of the Foreign Relations Committee, Senator LUGAR and Senator PELL, and the Intelligence Committee, Senator DURENBERGER and Senator LEAHY.

I particularly thank my friend from Vermont, Senator LEAHY. He and I have worked together over the years on this issue and his efforts have proven invaluable in this regard.

We need a new embassy in Moscow; but 10 years is too long—$200 million is too expensive. I hope the State Department gets the message—this building had better get on track fast or we are going to have to legislate the solutions.

Mr. LEAHY. Mr. President, I am pleased to offer this amendment on the new American Embassy building in Moscow with my good friend, the senior Senator from Florida [Mr. CHILES]. We worked together on a related amendment last year on the State Department appropriation which stopped payments by the U.S. Government for damages caused by Soviet delays in construction work on the new building. Our joint efforts on that amendment could save the U.S. taxpayer over $25 million.

This amendment today is a natural follow-on to the 1985 Chiles-Leahy amendment. The new embassy building in Moscow, standing two-thirds completed, open to rain and snow, with shabby workmanship and shoddy materials, has become a scandal. The American taxpayer is being ripped off to the tune of $200 million, while the Soviets here in Washington await the opportunity to occupy their lavish, beautifully built chancery on Mount Alto.

At least, thanks to the Chiles-Leahy amendment last year, the Soviets cannot occupy that new chancery on Mount Alto until the U.S. Government receives payment for damages caused by the Soviets in work by Soviet crews on our building in Moscow.

Mr. President, in the face of the terrible history of the new building in Moscow, this amendment is amazingly mild. We do not ask for the building to be demolished at Soviet expense, and a decent one built, also at Soviet expense. Instead, we set aside $1 million from State Department funds to hire an independent team to do a complete structural analysis of the building to see what—if anything—can be done to make it habitable in some reasonable period of time. That review is to be completed by April 15, 1987.

Mr. President, this building was to be finished in 1982, at a total cost of some $75 million. Now, the new completion date is the end of 1989, at a cost of nearly $200 million.

Our amendment today will require suspension of all payments by the U.S. Government to the Soviet Union until this assessment is completed and the extent of damages caused by Soviet materials and workmanship can be determined. It further prohibits further obligation of any funds for construction work on the new building until this assessment is completed, except work needed to prevent deterioration of work done to date.

We also direct the Office of Foreign Missions to prepare a plan to establish parity in the numbers and types of buildings in each nation's capital city. As coauthor of the two Leahy-Cohen measures requiring equivalence in diplomatic and U.N. representation, I particularly like this feature of our amendment. It means the Soviets must allow us to have the same numbers and kinds of buildings in Moscow that we so generously afford them here. And, it prevents the Soviets from retaining their current chancery building on 16th Street when they occupy the Mount Alto building unless the United States is also allowed to keep its present chancery building when it moves into the new building—if indeed, it ever does.

Finally, Mr. President, this amendment requires security clearances of all United States contractors before they go to Moscow to work on the building, and it directs the submission of semiannual reports from the Secretary of State on progress on the new building and from OFM on its plans to respond to unacceptable Soviet behavior.

Mr. President, concern over the shambles that we politely call our new chancery in Moscow dates back a long time. As I mentioned, the Chiles-Leahy amendment last year dealt with one aspect of it. This is not any sort of punitive move against the Soviet Union because of the unjust arrest of Nicholas Daniloff. It, like the two Leahy-Cohen amendments, seeks to restore some parity and equivalence in the thoroughly lopsided treatment each nation affords the diplomats of the other.

Concerns might be raised about Soviet retaliation. I am not concerned on that score. In my opinion, the Soviets respect firm insistence on equivalence and equal treatment, and they have probably been bemused for years at our willingness to accept blatantly unequal treatment in our respective diplomatic establishments.

This is a good amendment, and I give high praise to my colleague, Senator CHILES, for his leadership on it. I urge all Senators to join us in demanding at least this much justice from the Soviets.

Mr. CHILES. Mr. President, before the Senate leaves this subject, I would like to point out that the State Department's construction problems are not unique to the Moscow Embassy project.

In 1980, the State Department began a 5-year, $192 million program to upgrade security at 125 posts. However, after 5 years, the program had been reduced to 62 posts at a cost of $145 million and would take 7 years.

In 1984—the year this program was supposed to be completed—only 10 of the projects were finished and the remaining 52 are scheduled for completion next year.

The State Department's perimeter security improvement program began with an estimated $40 million to complete 70 posts. In June, contractors were estimating it would cost about $91 million to complete just 37 of the 70 posts.

In 1975, the State Department purchased a new ambassador's residence in Cairo. With renovations, it cost almost $3 million. It was ready for occupancy in 1978. However, because the Ambassador did not like it, it has remained vacant since 1978. They now want to sell it, never having been occupied, for a loss.

In 1979, work on another residence in Cairo was started. It was supposed to have been completed in 1981 at a cost of $2 million. However, after having spent $3.5 million, it is still incomplete. GAO tells us that almost $1 million more would be required to repair the poor workmanship and complete the building. As a result, we now own three ambassador's residences in Cairo.

Also in Cairo, a new chancery building, which was to be completed in January of 1986 at a cost of $27.6 million, is only about one-third complete. About $16 million has been spent and new estimates indicate total cost could exceed $45 million.

This whole area of State Department construction needs a fresh look. I intend to dig into this area in detail in the coming months and I know my colleagues on the Appropriations and Foreign Relations Committees share my concerns. Their actions this year to significantly constrain the State Department's budget for new construction, is an important first step in getting a handle on this problem. Next year, I am afraid, we are going to have a lot more work to do.

Mr. HATFIELD. Mr. President, the amendment of the Senator from Florida has been reviewed by staff and the managers of the bill on both sides of the aisle, and it is acceptable. Therefore, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Florida.

The amendment (No. 3119) was agreed to.

Mr. CHILES. I move to reconsider the vote by which the amendment was agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 1400

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Cohen). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3117, AS MODIFIED

Mr. METZENBAUM. Mr. President, I previously offered and sent to the desk, and had adopted, two amendments en bloc. I have now been advised by the desk that they think the language would be better if it were clarified. Therefore, I ask unanimous consent that I may offer this as a modification of the amendment heretofore adopted.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment as modified is as follows:

At the appropriate place in the bill, insert the following:

Sec. . Notwithstanding any other provision of this joint resolution, H.R. 5162, the Energy and Water Development Appropriations Act, 1987, as reported by the Committee on Appropriations on September 15, 1986, is amended as follows:

On page 22, line 19, after the word "pay", insert "principal and"; and

On page 22, lines 22-23, strike "the ten year interest-free period provided by" and insert in lieu thereof "exceptions (1) and (2) of the last proviso of the first sentence of".

AMENDMENT NO. 3120

Mr. HATFIELD. Mr. President, in the continuing resolution, by the action of the full Committee on Appropriations, we adopted an amendment offered by the Senator from Nevada [Mr. Laxalt]. This amendment was to address the issue of the California-Nevada compact. That amendment was adopted in the committee.

It has elicited a great deal of interest as well as controversy. In order to strip the continuing resolution of one additional, perhaps unresolvable, issue, the Senator from Nevada [Mr. Laxalt] has asked me to offer an amendment on his behalf of delete that provision within the continuing resolution. That, in effect, would strip the continuing resolution of the California-Nevada compact statement, which took a position that is contrary to the administration's viewpoint as well as to the American Indians involved in this.

This has been cleared on both sides of the aisle. This is one of those efforts to simplify and remove a real problem.

So I offer that amendment at this time, on behalf of the Senator from Nevada.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. Hatfield], for Mr. Laxalt, proposes an amendment numbered 3120:

On page 2, line 24 strike the period at the end of the line and insert: "*Provided further*, That notwithstanding any other provision of this subsection, section 609 of H.R. 5161, as reported to the Senate on September 3, 1986, shall be deemed to be stricken."

Mr. HATFIELD. Mr. President, as I have said, this has been cleared on both sides of the aisle. Therefore, I ask for adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3120) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMISSION ON THE BICENTENNIAL OF THE U.S. CONSTITUTION

Mr. HOLLINGS. Mr. President, I rise at this time to urge the Senate to give its full support to the recommendation of the Appropriations Committee for $13.4 million for the Commission on the Bicentennial of the U.S. Constitution. This includes an important provision for $2.7 million for the National Bicentennial Competition which has been developed and is being administered by the Center for Civic Education.

Mr. President, this project means a great deal to me, and I am glad that I have been joined by so many of my colleagues in supporting it. I would like to express my appreciation for the strong leadership of the distinguished senior Senator from Mississippi, Senator Stennis. I cannot commend him too highly for his untiring efforts to secure support for this program. The support for funding the National Bicentennial Competition, like the support for the celebration of the bicentennials of the political foundations of this country, comes from both sides of the aisle.

I know they feel as I do, not only that the Commission on the Bicentennial of the U.S. Constitution, under the dynamic leadership of former Chief Justice Warren Burger, should receive its entire appropriation, but also that it is in the interest of this Nation that the National Bicentennial Competition on the Constitution and Bill of Rights be fully funded as a part of that appropriation.

The reasons for this is not hard to fathom. There are not many events in the life of a great nation such as ours which have the capacity to kindle the enthusiasm of youth to study the meaning of the documents that express the values and principles which underlie our Government. In the past two and a half decades, this country has been through a difficult and sometimes turbulent period. It is now time for an era of national renewal, or recommitment by all of us to the constitutional underpinnings of our way of life. A nationwide competition which has the capacity, as the Center of Civil Education's competition does, to involve every secondary and elementary school in this country, is surely an effective means of bringing home the message of the Constitution and Bill of Rights to the next generation of Americans.

I understand that this national competition is in the final stages of being tested in the number of States, including my own, where it is under the direction of a fine administration, Jack Hanna, the coordinator of the ways of the law program of the South Carolina Department of Education.

No one in this body is more conscious of budgetary constraints than I. But the funding for the Commission on the Bicentennial of the U.S. Constitution, of which $2.7 is earmarked for the National Bicentennial Competition, is only a tiny portion of the vast appropriations that are before us. Dedicating these resources to this cause represents our commitment to passing on to a new generation of Americans both knowledge and resoned understanding of their heritage. I urge all of my colleagues to support this program.

Mr. COHEN. Mr. President, I would like to commend the members of the Senate Appropriations Committee for their consideration of the issue of the closure of the Department of Housing and Urban Development [HUD] field offices across the country. At a time of a tremendous surge in applications for Federal Housing Authority [FHA] guaranteed home loans, it is essential that we ensure an adequate level of service to home buyers so that they may take advantage of the low mortgage interest rates we are currently experiencing. It is obvious to me that the closure of HUD field offices would negate all positive effects of affordable mortgages for low- and middle-income citizens. This point was brought home to me through one of the greatest examples of bureaucratic mismanagement and overzealousness I have ever witnessed.

On July 15, 1986, the HUD field office in Bangor, ME, was closed as a result of actions initiated last December. It was one of five HUD field offices slated for closing as a cost saving measure. Throughout the comment period and until the closing date, the Department of Housing and Urban Development showed no interest in being responsive to repeated requests by the Maine congressional delegation for additional information nor in learning the reasons why we felt the office should remain open. In any event, we were at least assured of a smooth transition period.

I would like to share with my colleagues how HUD carries out the smooth transition of the closing of one of its field offices.

In my hometown of Bangor, the phones were not answered in the 2 weeks prior to the office's closing; sacks of unopened mail were forwarded to the Manchester, NH, office, which was unprepared to handle the volume; the toll-free number set up at the Manchester office was staffed by three temporary employees who were instructed to respond to inquiries by saying, 'I don't know the status of your application, and I can't check. It will be 6 weeks before we can check on the status of individual applications." I shudder to think what a shoddy transition might entail.

This was a poorly studied, unnecessary and ill-advised closing. The Bangor HUD office has repeatedly been commended by HUD for handling 30 percent of all insured loan applications in New England; it has tripled its caseload in 3 years, and the employees gave excellent, quick service to both lenders and prospective home buyers.

In a study conducted by the General Accounting Office at the request of Senator MITCHELL and me, the Bangor office was called "highly productive," with a productivity level higher than that of nationwide FHA offices and certainly higher than that of the office to which its work was to be transferred.

In a bit of bureaucratic reasoning which only the U.S. Government can invent, HUD addressed this issue by informing me that the Bangor office's level of service was superior to most others in the Nation and that therefore HUD needed to reduce—that's right, reduce—the service level in New England to the nationwide level. Apparently HUD believes this is a sound management decision.

Generally, the GAO's report confirmed what I had believed all along. First, HUD has seriously miscalculated the costs of closing the Bangor office. Rather than the $19,350 which HUD estimated it would cost, the closure actually cost $37,722, twice the amount claimed. Second, the cost savings HUD claimed would be achieved in 6 months will actually not occur until 16 months have elapsed, and even then the amount of cost savings will not be the $35,689 HUD estimated but will instead amount to just $27,661.

Finally, the closing has been so disruptive that FHA service in Maine has suffered drastically. Processing times have doubled and in some cases tripled as a result of the transfer of work to the Manchester office. While I am fully aware of the immense increase in workload at all FHA offices as a result of lower interest rates, these backlogs had already occurred at the Bangor office and have only been exacerbated by the transfer of work to Manchester. In fact, in July, when the transition occurred, 1,250 unprocessed loans were sent in huge mail sacks from Bangor to Manchester, where the staff was overwhelmed, to say the least.

Mr. President, I respectfully suggest to the Senate that this hardly constitutes a smooth transition. The office manager at Manchester was never consulted as to whether his staff could handle the obviously increased workload, and the full-time staff positions at the Bangor office have not been reallocated to Manchester.

As a result of these events, at least one lending institution in Maine has stopped processing FHA loans and many others expressed their frustration to the GAO investigators regarding the lack of access to essential business information. The GAO reported to me that, most of the time, the Manchester office would respond to an inquiry only when the president of the lending institution placed the call—Manchester then assumed it was an emergency. Many loan packages were simply returned to the lender unprocessed, when a simple phone call would have resolved the problems. But the staff at Manchester didn't have time to handle this type of work.

I think this treatment of potential homeowners and lenders is shameful, and it certainly nullifies any benefit that might be gained from favorable mortgage interest rates. I am, therefore, quite pleased at the action taken by the Appropriations Committee requiring HUD to reverse its administrative actions on the closure of its field offices. I think this is a sound policy decision which will ensure adequate service to lending institutions and borrowers. Again, I want to express my thanks to the members of the committee for their foresight.

I won't be completely satisfied, however, until I get some assurances from HUD that they will comply with this congressional directive in a responsible manner. In my last meeting with agency representatives, it was obvious to me that they have not yet acknowledged the problems which accompanied the closing of the Bangor office. I hope that it will not take further congressional action to ensure that the Bangor FHA office is once again open for business.

APPROPRIATIONS FOR THE OFFICE OF GOVERNMENT ETHICS

Mr. COHEN. Mr. President, as chairman of the subcommittee with jurisdiction over the Office of Government Ethics, I want to express my concern over the appropriations level that will be available for the OGE under this continuing resolution.

The Office of Government Ethics, the principal office responsible for implementation of the executive branch's ethics program, is part of the Office of Personnel Management. Although the budget for the OGE is a line item in the President's annual budget submitted to Congress, the appropriations process does not establish a separate appropriations level for this office. Rather, the amount allocated to OGE is included in the salaries and expenses appropriations for the Office of Personnel Management.

The President's budget proposed an annual appropriation of $1.1 million for the Office of Government Ethics, and this is the funding level recommended by the House in its report accompanying the Treasury, Postal Service, and General Government Appropriations bill. Because the appropriation level contained in the continuing resolution before us, however, sets appropriations for the Office of Personnel Management below the President's budget estimate, I have serious concerns over whether the Office of Government Ethics will have enough funds to perform even minimally its statutory mandates.

The Office of Government Ethics is a very small office of the Government that performs a very large task. With a lean staff of approximately 22 positions, this Office is responsible for reviewing the financial disclosure reports of Presidential appointees and senior executive branch officials to detect and remedy conflict-of-interest problems. The OGE also monitors the compliance of officials with blind trust and recusal agreements, and provides ongoing interpretation and guidance to agency personnel and ethics officers on how to comply with statutory and administrative ethics requirements. The Office of Government Ethics also oversees the ethics program within individual executive branch agencies.

According to budget estimates of the OGE, a funding level of $1.1 million for fiscal year 1987 is crucial to the operation of this Office. Currently, over

91 percent of the Office's fiscal year 1986 funding level of $1,121,000 is used for salaries and benefits. If the Office were cut below the $1.1 million level set by the President's budget, the Office would have to reduce its already small staff, reduce its evaluations of agencies' ethics programs, and restrict Governmentwide ethics training programs, which are, in my opinion, essential to making Government officials and employees aware of the ethical laws and regulations governing them.

Mr. President, time and time again we have seen how conflicts of interest and ethical problems of high Government officials can shake the public's confidence in government. Within the past few years, the executive branch ethics program has become highly visible, and the Congress has repeatedly called on the Office of Government Ethics to respond to its concerns over specific cases of ethical misconduct.

I realize that all agencies of Government must share in the important goal of deficit reduction. Due to these budgetary concerns, I am not offering an amendment to provide more funding for the Office of Government Ethics. For the ethics program to be effective, however, we must provide the OGE with enough staff and resources to fulfill its important statutory mandates. Allowing the funding level of this Office to fall below $1.1 million could seriously hurt the ethics program and, consequently, result in more conflict-of-interest problems throughout the executive branch. Thus, I encourage the Office of Personnel Management to allocate the full $1.1 million provided in the President's budget to the Office of Government Ethics for fiscal year 1987.

RADON RESEARCH IN HOMES AND SCHOOLS

Mr. CHAFEE. Mr. President, I have an amendment which I will withhold from offering for the moment. I am confident that we can address my concerns without amending the language of the bill.

First, I want to commend my colleagues, the distinguished Senators from Utah and Vermont, for adding $1,300,000 to the fiscal year 1987 appropriation for the Environmental Protection Agency to restore the Radon Research Program, and for adding $1,200,000 to the amount requested for radon activities. I understand that these two additions will increase radon activities by almost 50 percent.

The problem of the seepage of radon gas into buildings and homes in emerging as a major environmental problem and could be a leading cause of lung cancer among nonsmokers. A recent GAO report concludes that indoor radon contamination is a national problem.

Already homeowners are beginning to employ contractors to mitigate high radon levels found in their homes. The publication of a technical guidance manual on effective mitigation techniques, provided for in your bill, is essential to assure that money being invested by these homeowners is wisely spent, and is in fact ridding homes of unacceptably high levels of radon.

There is a legitimate concern that EPA's emphasis on exposure surveys to identify radon concentrations in homes may outrun our technical capabilities to correct such problems. Unless EPA assigns research on radon mitigation techniques a much higher priority, homeowners will inevitably waste money and be victimized by incompetent or unscrupulous contractors. The additional funds you provide will help develop and validate cost effective radon mitigation methods for various types of residential construction.

Now, this brings me to the subject of my concern and my proposal. If I may engage the floor managers of the bill in a short colloquy. It is my understanding that the national radon survey being conducted by EPA is aimed exclusively at residences. I would ask the distinguished floor managers if they have also considered the need to determine whether elevated radon levels exist in our schools? Knowledgeable experts at EPA have informed my staff that of all public buildings, schools may be the most likely to suffer from high radon levels because many schools are one story, close to the ground structures.

Although there are no studies of children exposed to radon to determine whether they are more sensitive than adults, scientific studies of other types of radiation exposure indicate that children are more sensitive. An EPA report on the subject concludes that "children could be more at risk than adults from exposure to radon."

Certain States, such as Maryland, are already seeking funds to undertake a survey of radon levels in elementary schools. I am considering introducing legislation later this week or early next year which would require EPA to work with the State departments of health to perform inexpensive tests to determine if high radon levels exist in schools.

Therefore I would ask the floor managers of this portion of the bill whether they would be willing to modify the directive to EPA to instruct the agency to undertake a pilot survey of schools as part of the national radon survey. In addition, I would ask that the technical guidance manual on radon mitigation techniques, which is directed to be published by the portion of the bill restoring the Radon Research Program, take account of the special conditions that may exist in mitigating radon in school buildings.

I would ask the distinguished Senators from Utah and Vermont to assure this Senator that they will strive to keep these new directives in the final bill that is enacted this year.

Mr. GARN. I thank my distinguished colleague from Rhode Island for his support for adding funding to EPA's budget for radon activities and research, and for raising an important concern about the need to determine whether high radon levels exist in our schools. I believe it would be appropriate for the committee report language to specify that a portion of the funds appropriated for radon activities and research be used for conducting a pilot survey of radon levels in schools. Also I would urge EPA in conducting radon mitigation research to take into account the special conditions which may be encountered in school buildings. The Senate report on this matter should be considered so modified, and I assure Senator CHAFEE that we will seek to have the conference report language address his concerns, and include the directive to conduct a pilot survey of radon in schools and to broaden the scope of the technical guidance manual to take account of conditions in schools.

Mr. LEAHY. Mr. President, I agree with my colleagues and thank the Senator from Rhode Island for raising an important issue. The assurances provided by the chairman of the subcommittee, Mr. GARN, are shared by this side of the aisle.

Mr. CHAFEE. Thank you, Mr. President. I thank my colleagues, and with those assurances, see no need to offer my amendment. Again, Mr. President, our colleagues are to be congratulated for the fine job they have done with this bill.

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, let me indicate to my colleagues that at 2:15, the debate will begin on the South Africa veto message. The vote will come at 4 o'clock.

I wish to give my colleagues who wish to speak on the veto message early warning that in less than 5 minutes, we will be on that veto message.

Immediately following the South Africa veto vote, we will return to the continuing resolution. I am advised by the managers that they would like to complete action on the bill before we leave here, either late tonight or early tomorrow morning.

COMPREHENSIVE ANTI-APARTHEID ACT OF 1986—VETO MESSAGE

The **PRESIDING OFFICER.** Under the previous order, the Senate will now turn to the Comprehensive Anti-Apartheid Act of 1986 veto message, with the time under the control of the managers.

The Senate resumed consideration of the veto message.

Mr. **SPECTER.** Mr. President, on the issue of sanctions for South Africa, I intend to vote to override the President's veto, because for too long the issue of ending apartheid and the determination of the position of the United States has been based on questions of what is politically expedient, rather than what is morally correct.

We have extend more than sufficient time, in my judgment, to the Government of South Africa to take a forceful step for human rights and to eliminate the problems of apartheid, and the South Africian Government has not acted and, in my judgment, the time is now for the United States Senate and the United States Congress to act to see to it that strong sanctions are in place.

If America truly reflects the ideals of freedom and justice for all and if America is to proudly proclaim itself as a society where true democracy dwells, then, in my opinion, Mr. President, we cannot send a message to the black men, women, and children of South Africa that the doors of hope are closed and they need not to seek to enter.

Sufficient time has been given for the Government of South Africa to act. Since they have not done so, the United States should take a forceful stand on the imposition of sanctions.

Almost a year ago the President, faced with a similar problem issued an Executive order which adopted many of the provisions of the pending conference report, legislation proposed by Congress. Today the President has offered to expand that Executive order, but in my judgment that is simply not enough to accomplish the objectives which we must achieve at the present time.

At this juncture, Mr. President, I believe there can be no compromises in addressing the oppression by the South African Government of the deprivation of the people who dwell in that country. Conditions in South Africa continue to worsen steadily while the reported average death toll among blacks continue to rise.

Unlike citizens of the United States, members of the black majority are denied the right to vote or to live in the community of their choice. By law, husbands and fathers are separated from their families most of the year, while being forced to live in hostels near major urban centers, thereby insuring a continuing supply of cheap labor to the white minority community which controls that country. The South African Government's destruction of black families is perhaps the most dehumanizing aspect of apartheid.

Mr. President, as the record shows, I have consistently supported the imposition of sanctions against the South African Government. As early as July 11, 1985, I cosponsored Senate bill 995, the Antiapartheid Act of 1985 which called for bans on new United States bank loans, the export of nuclear technology to South Africa, curbing computer sales, and the tighter implementation of the Sullivan principles. This legislation passed overwhelmingly in the Senate by a vote of 80 to 12 and marked the first time in history of the Senate that a South African sanctions bill has passed.

On May 21, 1986, I was one of the only two Republican Senators to join 15 of my colleagues to call for tougher sanctions against South Africa by cosponsoring S. 2498. Twenty-nine days later I signed on as an original cosponsor of the Anti-Apartheid Action Act of 1986, S. 2570 which calls for the total divestment of United States business interest in South Africa.

It is clear from the numerous measures which have been introduced before this body that the fight to end apartheid knows no party or political bounds.

Shall justice prevail in South Africa or will strategic and economic opportunity prevail as the United States motivation and interest in South Africa? The eyes of the world are upon us. If we fail to stand up and speak out on this important human and civil rights issue we have, in fact, set the tone for deterioration of human rights and civil rights for blacks and other minorities in America.

I strongly support the overriding of the President's veto of H.R. 4868 and urge my colleagues to support it as well.

I shall not take more time because I note that the floor is beginning to fill with my colleagues who wish to speak on this subject and there is a limited amount of time which has been set aside.

But in essence, Mr. President, it seems to me that the basic consideration of human rights require a leadership position by the United States of America. It is not certain what will result from the imposition of these sanctions. That is problematical. But we do know with certainty that the failure to impose strong sanctions has had an adverse effect and that the dehumanizing conditions in South Africa continue.

It would be the hope of this Senator that the Western democracies would join this declaration of public policy of the United States of America as enacted by Congress if in fact the veto is overridden and that the Western democracies would join us on such sanctions.

I think that will be necessary if the sanctions are to have real effect.

It would be my further hope that if, as, and when the veto is overridden the President of the United States would join with Congress in endorsing this action and direct the State Department to actively seek to persuade our allies to join these sanctions.

In the long run, Mr. President, the elevation of human rights is by far the better practice.

While there are obviously some undesirable consequences to some aspects of U.S. trade, I think that is the price we have to pay for standing by our principles.

Mr. President, I thank the Chair, and I yield the floor.

The **PRESIDING OFFICER.** Who yields time?

Mr. **PRESSLER.** Mr. President, I yield myself time.

The **PRESIDING OFFICER.** The Senator from South Dakota.

Mr. **PRESSLER.** Mr. President, I shall reserve the remainder of my time.

I do want to add to what I said last night in that I feel that there are certain grave misconceptions about the South African vote.

One misconception is that it has been taken as a domestic civil rights vote. South Africa is manifestly not that. We must subject it to the rigorous analysis of a foreign policy vote. That sort of analysis reveals grave consequences that would occur if the President's veto is not sustained. I am very much against apartheid, but I believe this act would cause apartheid to be prolonged. This is the grave consequences that I am most worried about.

I would like to report to the Senate that this morning I had a phone call not from the President of the United States, not from "Pik" Botha, but from the Zulu chief, Buthelezi. He emphasized again how much he is against sanctions. Chief Buthelezi is the leader of the largest black political organization in South Africa, which has between 6 million and 7 million members. He even has a million dues-paying members. He is an elected official, but he is also a tribal chairman.

I hope that some of the remarks here today will focus on why Buthelezi, who is an elected black leader, is so much against sanctions. He stated that his people would be in a desperate situation if sanctions were imposed. He also reiterated that sanctions would slow down the ending of apartheid. I stress again that he is the most legitimate black leader in South

Africa, the only elected black leader of substantial note.

So, I did want to report that and also say that I think we are operating under certain illusions here in terms of this vote. There are two or three illusions that are generally accepted by the media and in our society. The first is that what is going on in South Africa is analogous to what happened in our civil rights movement in the 1950's and 1960's. That is not true at all. There is no relationship between the philosophy or the goals of Oliver Tambo and the philosophies of Martin Luther King. Mr. King believed in peaceful evolution and in democracy; Oliver Tambo is a totalitarian Communist who, if and when he comes to power, will not allow free elections. Indeed, Tambo's followers in the A.N.C. have engaged in "necklacing" the moderate blacks. Necklacing means that one puts a tire around someone's neck, puts gasoline into it, lights it and executes someone.

A second misconception I think that we are operating under is that sanctions will speed the end of apartheid. Indeed, the main threat to the Botha government is from the right, not from the left, and the Afrikaners have no place to flee to. They can't cut and run, and their opposition is far more conservative than they are. That means that sanctions will reduce Botha's maneuvering room, not increase it.

A third misconception is that this is a black versus white conflict in South Africa. It is not. The coloreds and the Asians look to the whites for protection against the black ANC. Similarly, blacks are divided among themselves in dozens of ways.

A majority of blacks, led by Buthelezi, are critics of the government, they want to see apartheid ended. Nevertheless, they are very much opposed to sanctions.

There was a very fine article written in the Sunday New York Times Magazine by Ms. Helen Sussman, a liberal member of Parliament. She has been for a number of years one of the chief opponents of the government in Parliament. She argued, nevertheless, in this recent article that sanctions will slow down the ending of apartheid.

So, I say to my friends who have made this such an emotional civil rights debate that it is not an extension of the civil rights debate of the 1950's and 1960's. It is being framed as such, but we must submit this vote to the rigorous analysis that a foreign policy vote deserves.

□ 1420

Mr. President, Senator Dole controls the majority of the time. I control only a few more minutes. Whoever is speaking for Senator Dole will yield to other Senators on this side. Senator Dole, I believe, has 2 hours. I do not have time to yield.

The PRESIDING OFFICER. The Chair will advise the Senator from South Dakota that the majority leader has 45 minutes left.

Mr. PRESSLER. How much time does the Senator from South Dakota have left? I wanted to have 15 minutes.

The PRESIDING OFFICER. The Senator has 10 minutes remaining.

Mr. PELL. Mr. President, I yield 4 minutes to the Senator from Delaware, Mr. Biden.

Mr. BIDEN. Mr. President, I thank the distinguished ranking member of the Foreign Relations Committee. I wish there were time to reply to the Senator from South Dakota.

Mr. President, William Butler Yeats, writing of another tragic situation about 70 years ago, said: "Too long a sacrifice can make a stone of the heart. Oh, when may it suffice?"

Mr. President, whether you characterize this as a civil rights vote or a foreign policy vote, it in no way masks the tragedy that is taking place.

Mr. President, I rise today to speak out both in sorrow and in anger against President Reagan's veto of the South African sanctions legislation that has been overwhelmingly endorsed by the U.S. Congress and the U.S. Senate.

I rise in sorrow, Mr. President, because I believe that the Reagan administration is, in its unwillingness to embrace this legislation, throwing away an historic opportunity to stand united as a nation—in a true bipartisan consensus—against the abhorrent system of apartheid.

Let us all stop for a moment and think how much clearer and stronger a signal we would send if the President were willing to commit his remarkable prestige and determination to the effort to bring about change in South Africa, rather than to his dogged fight against punitive sanctions.

We in Congress have created an opportunity for a positive, forward looking policy that is consistent with the moral obligation of this great Nation to stand with the oppressed. President Reagan, in rejecting that policy, is sending the wrong message at a critical time to the government in Pretoria, and an even more reprehensible message to the black people of South Africa.

I rise in anger because I reject the message the President of the United States is sending.

In the very narrowest sense, I agree with the President—economic sanctions are an imperfect tool, and they will certainly not, no matter how stringent solve the problem of apartheid.

But the situation in South Africa has reached crisis proportions. This summer we have borne witness to a dramatic increase in frustration and violence between blacks and whites and among blacks themselves. And I strongly believe that sanctions are the only means at our disposal now to make the political and moral point that the American people believe change must come to South Africa. If change does not come, South Africa will descend into an ugly, bloody civil war, in which all parties stand to lose a great deal.

It is for this reason that I share the view of many international leaders: Economic sanctions are the only remaining peaceful alternative open to the West. If we fail to seize the moment, it will dramatically diminish our ability to affect the nature of the transition and of majority rule itself.

The President's veto of the sanctions bill sends a signal to the Afrikaners that the United States will not actively oppose the white minority's relentless effort to maintain control over the black majority.

The President's veto says to Pretoria that America will not thwart its determination to use all the power at its disposal—including a highly motivated army, a ruthlessly effective internal security apparatus, and even its nuclear know-how if need be—to preserve its hegemony in southern Africa.

To use a term often employed by diplomats engaged in negotiations with an adversary when the opponent's offer is a total nonstarter, such a stance is unacceptable.

We must let the black people of South Africa know that even though with all our power it continues to be difficult to budge the Afrikaners, we will not let Pretoria's stubborness deter us; that we will stand by them through this struggle. The fact that South African Foreign Minister Botha is lobbying Members of Congress on this vote comes as no surprise to me: We all know that the Afrikaners will use every ruse and will cling to their power until the bitter end. But we must show that we will not let Pretoria's cunning sway us either.

Nor will we allow the Reagan administration to make mere cosmetic changes in a failed policy. Constructive engagement is an abject failure. And in a repeat performance of last year, the President is again trying to persuade Congress to accept an Executive order to impose a set of sanctions which falls considerably short of the mesures contained in the Senate bill.

Moreover, yesterday we learned that the President, in his effort to win congressional approval for his policies, had appointed a veteran black Foreign Service Officer, Edward J. Perkins, as the new American Ambassador to Pretoria.

The selection of Mr. Perkins is only the most recent example of the charade that continues to characterize this administration's policy toward

South Africa. The crisis in American policy produced by 6 years of adherence to "constructive engagement" can not be remedied by sending a new Ambassador who is black.

Characterizing this as some kind of an antiseptic decision we are about to make, as my friend from South Dakota does, or sending a black Ambassador to South Africa does not begin to focus on the problem. It is not the race of the Ambassador we send to South Africa that matters, but the policy he is sent to carry out. Whomever the new Ambassador is, he must be sent with a new message, and that is the one that this Congress has resoundingly approved. Our new American Ambassador must herald a new era.

Let me close in the few seconds I have left with a few words from our own Nation's history. In 1963, President Kennedy spoke to the American people on "the moral issue of equal rights for all colors."

His speech came in a moment when passions were running very high and the same kind of rhetoric was heard—we are going to hurt blacks; move slowly; time, time, time. We had 300 years of time and nothing happened. We have had constructive engagement—time, time, time—and nothing happens.

President Kennedy, speaking at that time, offered moral guidance that is equally applicable today when he told us:

> A great change is at hand and our task our obligation, is to make that revolution that change, peaceful and constructive for all. Those who do nothing are inviting shame as well as violence, those who act boldly are recognizing right as well as reality.

Mr. President, the notion that failure to bring sanctions is somehow going to bring peace is absurd. If you are a black man or a black woman sitting in a segregated neighborhood being brutalized and you are told that the last best hope for mankind—the United States—has turned its back, what peaceful alternative do you have?

Mr. President, it is time to act. It must be the main objective of American policy toward South Africa to bring about a peaceful transition toward a system in which the color of a man's or woman's skin is no longer the basis of political rights. This legislation puts the policy of the United States in line with the principles that our great Nation stands for. Thank you.

Mr. PELL. Mr. President, I yield 2 minutes to the Senator from Ohio.

Mr. METZENBAUM. May I have 3?

Mr. PELL. Two minutes, I am sorry.

Mr. METZENBAUM. Mr. President, there is one overriding fact that we are dealing with in connection with this override and it is a question of morality. It is a question of decency. It is a question of right over wrong. When everything else has failed, it means now that we must take the steps that we have been going to take.

We have been talking about constructive engagement and there has been delays and this suggestion and that suggestion. But the fact is the only thing that the South African Government will understand is a strong move on the part of the United States Government. That is what this issue is all about.

Constructive engagement has meant "business as usual." It has meant continued apartheid. The vast majority of the South African blacks supports sanctions and believes that it will accelerate the arrival of democracy.

The question that we have to ask ourselves is the question that is being asked all over the world today, and that is: On whose side is America? Are we on the side of the blacks, who are seeking freedom and independence and democracy and self-recognition, or are we on the side of the South African Government?

There is more than South Africa involved in this issue. The people of the world are looking at our country and they are saying that if we thought that democracy was right for America in 1776, why do we not think it is right for the people of South Africa? We can do no less than to stand up on the side of the blacks. It is our obligation. It is an absolute moral obligation on our part to do so. And no amount of conversation, no amount of speeches, no amount of negotiation is going to change the issue.

We have an obligation to stand up and be counted. We have that opportunity this afternoon. We must—we must—override the veto.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. DOLE. I yield 7 minutes to the distinguished Senator from Wyoming, Senator WALLOP.

Mr. WALLOP. I thank the majority leader. I had hoped, frankly, that the distinguished chairman of the Foreign Relations Committee would be here, first, because I am a little bit astonished at his outrage expressed on television last night at the South African Foreign Minister's interfering in American politics. I would have to ask him what it is that he thinks that we are doing? Clearly, this is an intrusion, an attempt to force actions from the South African Government.

I have some questions that I wished to propose to him and since he is not here, I guess I will just propose them anyway. I had sent word I wanted to talk to him on the floor. But here we are. One question is about his substituting his judgment for the judgment of the President of the United States in the matter of foreign policy. I would just have to say that he is taking on a heavy burden.

Now the distinguished chairman seems to be satisfied in his own mind that he knows what he is doing in South Africa better than the President of the United States and the Secretary of State. I believe it would be appropriate if he would make clear to the body precisely why he thinks as he does.

First, I would ask him and others who support these sanctions what they think will happen in South Africa as a result of the passage of this bill? How do they expect it to bring about a better South Africa?

I remember the arguments last year when we sponsored a set of sanctions with the promise that they would stem the tide of violence in South Africa, only to see that violence increase. And I said it would.

□ 1430

I wonder then, why anybody believes that the sanctions which failed to stem the violence last year will do so this year? In turn I would have asked, had the distinguished chairman been here, if he admitted that there was a possibility, somewhere along the line, that his reading of the South Africa situation could be wrong? Surely anybody in this body with any experience in life would know that there is the possibility that our judgment is not always supreme and not always on target. If we were to admit that was the case, and there is a possibility it could be wrong. I wonder what would have to happen in South Africa for the distinguished chairman or his followers to judge that in fact they had misread the situation?

In other words, what are the criteria by which we judge the success or failure of the course of policy that we are substituting for that of the President of the United States? Keep in mind we are not establishing policy. We are establishing law.

Supposing for a moment that the distinguished chairman, in his wisdom and modesty, came to the judgment that the policy he had substituted for that the President was having unintended consequences, indeed, that the radicals in South Africa were much encouraged; indeed, that we had established a black civil war within a civil war; indeed, the millions of people were suffering more, and the level of freedom in the area was not rising but declining. Supporing all of that for the sake of argument, what would anybody suggest we do to go about correcting this costly mistake?

I believe that we are in a situation have not fully thought about the consequences of the action that we are going to take. If we want to make judgments in this body, judgments we should make but the consequences of those judgments are not just the votes that we get from the black communities of America, the liberal college communities and campuses in America. The consequences are real and they belong to people who work, live, and die in a country that is not ours. It is comfortable to be able to make judgments that cause them suffering and leave us here to confront ourselves in a moral self-sufficiency.

We do not seem to have any credible criteria to judge the success or failure of what we are doing. There is no way out of it once this is established in law except to change the law. There is always going to be one other person's judgment as to when that time has come.

Just for example, my friends, you are about to say that we cannot invest in businesses in South Africa unless those businesses are under majority black ownership. That is a very prosperous and generous thing to do. That investment which is permitted will therefore drive a further wedge between white-black cooperation. We cannot use the power of America's economy to invest in these black businesses in South Africa, one of the short-sighted events in this piece of legislation. There is going to be a need for 700,000 new homes in South Africa. Where is that capital going to come from? Those 700,000 new homes come from new rights afforded to blacks in the recent years. They will now be able to move into areas where they have not been able to live before, and no money for those homes. So the policy lies dormant because of the arrogance of this body substituting its judgment.

Last, I would just say that it generally grieves me for us to sit here beyond judgment, just on our own, expressing rage, that there is a political reaction in South Africa, giving the ultimate triumph to apartheid. Yes, that is what we are doing. We have separated South Africa permanently and practically speaking maybe forever into a black camp and a white camp with no room for moderates, and no place in the middle—just those whom we favor and those whom we oppose. We are the only ones driving black and white further apart in South Africa.

Mr. President, I think that is an unwise step, and there is no means by which we can step back out of it now.

I yield the balance of my time.

The PRESIDING OFFICER. Who yields time?

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. Mr. President, I apologize to my colleagues for the shortness of time for each one of them. We have 38 minutes remaining. We have something like 18 people wanting to speak.

I yield to the Senator from Illinois [Mr. SIMON] for 1 minute.

Mr. SIMON. I thank my colleague for that 1 minute.

I support the override of the President's veto and the imposition of sanctions because they are the only hope to bring about peaceful change in South Africa.

It is obvious that South Africa is in the midst of a crisis of catastrophic proportions. During the last 21 months, more than 1,700 people have been killed in South Africa. More than 40,000 people have been arrested on political charges during the last year. During the last state of siege nearly 2,000 children under the age of 16 were arrested by the Government and many of them were abused and tortured. We know those facts, but we need to remind ourselves from time to time what the reality of life is like in South Africa.

A deadly silence has also descended upon events in that country. The Government has imposed restrictions on the press under the state of emergency. It is difficult to cover the violence, the protests, the repression. Yet the conflict is ongoing and seems certain to escalate.

The South African Government says that things are getting better. Bishop Tutu's plea to Congress during his most recent visit was a sad and poignant contrast to the official story of the South African Government. "Ladies and gentlemen," he said, "our country is bleeding, our children are dying. We are on the verge of a catastrophe. Please help us."

There are a variety of reasons why we must act now. There is no question that the United States has a moral duty to distance itself from a system that practices institutional and brutal racial discrimination. As Elie Wiesel said during a recent visit to the White House:

> The opposite of love is not hate but indifference, the opposite of hope is not despair but indifference, the opposite of sanity is not insanity but indifference.

Our Nation is founded on the moral principle of equality before the law. We must say no to a government that represses the basic human rights of 21 million of its people. We must say no to a government that arrests schoolchildren for rejecting the myth of their own inferiority. We must say no to a government that arrests thousands of leaders of organizations that advocate nonviolent change. Many nations, such as the Scandinavian countries, have already demonstrated their abhorrence for apartheid by instituting sanctions. Should not the United States be providing moral leadership as well?

There are also pragmatic political reasons why we should reject apartheid. American interests are jeopardized by the growing violence and radicalization in South Africa. Just as in the Philippines, American interests can be damaged by too close an association with a repressive minority regime and by policies which unintentionally encourage that regime to hold on to power by violence.

Martin Luther King once said, "The arc of the moral universe is long but it bends towards justice." South Africa's 20 million blacks will eventually win their freedom, with or without American assistance—and when they do, they will remember whether we stood with them or against them.

So will the rest of the African states. Indeed, our relations with African states and with blacks in South Africa have already been damaged by the perception that America is a tacit participant in apartheid. We do not want to create a situation where blacks must turn to the Soviet bloc as their only ally against apartheid.

The United States long-term interest is in seeing peaceful change in southern Africa. We have seen in the case of Nazi Germany that when institutionalized racial discrimination is not ended peacefully, it results in violence and that violence is not contained within the borders of any one country. We made the mistake of not speaking out strongly enough against Hitler's persecution of the Jews. I hope that we will not repeat the same mistakes with the racial tyranny in South Africa.

What can the United States do about the situation in South Africa?

Constructive engagement—the policy of the administration—is a failure, yet the administration does nothing more. Appointing a black as our Ambassador to South Africa is a nice gesture and I applaud it, but the only chance for real change is through concerted economic pressure.

There is something that we can do. The changes that the South African Government has made in recent years have been in response to international pressure, and South Africa has deep-seated economic and psychological need to retain its ties to the West. The Eminent Persons Group testified before Congress. This independent multinational group of leaders from the Commonwealth countries went to South Africa, surveyed the situation, and recommended implementing sanctions as the only hope for bringing about further change. I hope that we will follow their recommendations. As Bishop Tutu recently said, "There is no guarantee that sanctions will topple apartheid but it is the last nonviolent option left and it is a risk with a chance."

Just a few minutes ago I was visiting with a black South African minister who happened to stop by my office, Reverend Hlapane. I said, "What would it mean in South Africa if we passed over the President's veto?" He said it would mean that America cares.

That is the message I want to get to the people.

I do not want us dragging our feet in the cause of justice. I want us out there leading the cause of justice. We made a great mistake not standing up to Hitler, other than with pious words, and I do not want to see us making the same mistake again. No one who advocates overriding the President's veto can guarantee that it is going to work. But we can guarantee if we continue the present policy that we are not going to have justice in South Africa, and that is what this country ought to stand for. Let us override the President's veto. Let us do it overwhelmingly.

Mr. **DOLE**. Mr. President, I yield 2 minutes to the Senator from Washington.

The **PRESIDING OFFICER**. The Senator from Washington is recognized for 2 minutes.

Mr. **EVANS** Thank you, Mr. President.

Only rarely should this body ever seek to override a Presidential veto, particularly on an issue of foreign policy.

This is an extremely important issue of foreign policy for this country and it is imperative that we, as a nation, stand on "the right side of history," as the very able chairman of the Foreign Relations Committee has stated.

I know something of the Executive's privilege of veto and I respect the privilege. I believe the judicious use of the privilege is an essential component of our Government. As a Governor, I made over 250 vetos in 10½ years before finally being overridden. I found that once you are overriden it was easier for a legislature to override again. And several times in the last 1½ years of my tenure as Governor I was then overridden. This is not to be done lightly.

It is true that the President is the architect of American foreign policy. But he is not the czar of American foreign policy. Congress must play a role. Our foreign policy works best when it is both bipartisan and done in concert—the Executive and the Congress working together. This body tried very hard to do just that on this issue. No one worked harder with—and I emphasize—with—the administration to develop a acceptable policy toward South Africa than the chairman of the Foreign Relations Committee.

I would say to the Senator from Wyoming I do not have to defend the able Senator from Indiana—he can defend himself and his record speaks very well for itself. The question of the chairman of the Foreign Relations Committee substituting his judgment for that of the President's on this matter is simply not appropriate. The Senator from Indiana is as loyal, as understanding, as close to the administration as anyone in the body. He sent strong signals to the administration and to the President that the administration's policies in South Africa were not acceptable—to Congress or the people of this country. The storm signals were clearly flying. With respect to his preeminence in foreign policy, I would say that the chairman of the Foreign Relations Committee is probably more knowledgeable about foreign policy than anyone in this body. He has contact daily with the President, with the Secretary of State and with the heads of state and senior representatives of many countries. He knows what is going on in the world and he fully understands the nuances of U.S. foreign policy. The chairman understands these nuances better than any other Member of this body. So he did not come to the decision he reached easily.

It is ironic that the President now suggests that we must sustain his veto and thus his policies. Basically, the President has agreed to do many of the things we, the Congress, have in our legislation. In some instances, the policy differences are small. But the differences in the messages the President would sent and that the Congress would send are vast.

I guess we have to ask what will happen with the passage of this bill? We cannot tell. What will happen without the passage of this bill? We cannot tell. We simply must proceed as judgment tells us what is right.

Mr. President, the issue has transcended sanctions. It has transcended the details of the bill. It is now a question of whether by sustaining the President's veto we send the wrong message—not just domestically but throughout the world. I firmly believe that should we choose to sustain this veto we will send the wrong message to the people of this country, the wrong message to the oppressed people in South Africa, the wrong message to our allies and those we wish to have join us in our call for sanctions, the wrong message to the black African countries bordering South Africa. In particular, we would send the wrong message to those who would crudely attempt to influence.

Mr. President, I say this with great sadness but the crisis in South Africa requires that I vote to override the President's veto.

The **PRESIDING OFFICER**. The Senator's time has expired. Who yields time?

Mr. **PELL**. I yield 1 minute to the Senator from South Carolina.

Mr. **HOLLINGS**. Mr. President, within a matter of hours this body will likely override President Reagan's veto of South African sanctions. I feel no sense of victory in this action. I had hoped Mr. Reagan would lead us in applying meaningful sanctions against the Botha regime in South Africa. But, in the end, the President's decision was to keep faith with Botha and to break faith with the clear wishes of the American people.

Accordingly, it now falls to Congress to speak for the United States on the subject of South Africa. And by overwhelming, bipartisan votes in both Houses of Congress, we will do just that.

For 6 years, the administration has treated the Botha regime with kid gloves. It has pursued a policy of carrot and carrot. We now embark on a policy of carrot and stick. If the old policy was constructive engagement, call this one constructive confrontation.

We are not abandoning Pretoria. We are simply telling the Botha government—at long last—that apartheid is a crime against humanity, that the United States will not tolerate it, and that we will take energetic, effective steps to end it at the earliest date possible. Our new policy will be as simple, and as difficult, as that.

Mr. President, with or without sanctions, the order is changing in South Africa. As Lincoln said a century and a quarter ago, "A house divided against itself cannot stand." Whether violently or peacefully, the system of apartheid and minority rule has no long-term future. And yet, to date, the U.S. Government has doggedly, stubbornly aligned itself with those who would sustain this abhorent system.

I am not comfortable justifying sanctions on the grounds of realpolitik. They are more than justified strictly on moral grounds. We have an overriding moral obligation to impose sanctions, without regard to any geopolitical consideration or calculation.

Nonetheless, I feel obliged to note the political cost and folly of staying in bed with Botha. America is viewed throughout Africa—throughout the world—as an apologist for apartheid and the South African status quo. President Reagan has characterized the Botha regime as a "reformist administration." Incredibly, President Reagan has praised Botha for "eliminating the segregation that we once had in our own country." President Reagan has fought sanctions tooth and nail as though he were defending the holy grail.

This outrageous policy of word and deed has tarnished the United States in the eyes of the world. And, not surprisingly, the Soviet Union has enjoyed a propaganda field day. It is a grotesque irony that the Soviets now pose as the champions of freedom and liberation in South Africa, while portraying the United States as Botha's diehard ally.

What is more, this is not just a public relations windfall for the Soviets. It is rapidly translating into hard political assets on the ground. Soviet-style Communists have made major inroads within the African National Congress. And the ANC as an organization is being pushed inexorably into the Soviet embrace—as are the frontline states.

Mr. President, having made these observations, let me reiterate: The vote to override the President's veto must be based first and foremost on moral considerations. I have listened to the strategic arguments for and against sanctions. I have listened to the economic and political pros and cons. They all miss the gut issue, which is that apartheid is a monstrous moral wrong that the South African Government supports and that we must oppose.

What's more, it is not enough that we speak with passion and outrage against apartheid. Talk is cheap—we have had 6 years of it. The time has come for action.

There is no question that sanctions will damage the South African economy. Blacks as well as whites will feel the bite. Bear in mind, we are seeking to eradicate a cancer, and the treatment for cancer is always painful and arduous. But we must remember that while sanctions will hurt, apartheid kills.

Mr. President, I urge the Senate to join with its sister body in overriding the President's veto of South Africa sanctions. Heretofore, America's revulsion against apartheid and minority rule has not been reflected in offical U.S. Government policy. The time has come for Congress to speak for the American people.

Mr. President, the distinguished Senator from Wyoming claimed that sanctions are an intrusion into South African policy. This is not an intrusion into South African policy. This is an affirmation of the most fundamental American principle. "We hold these truths to be self-evident that all men are created equal."

Mr. President, this insistence on equal rights under law is a cardinal principle of our foreign policy. Bear in mind, the credibility of our foreign policy is dependent on our values as a people, the capacity of our military, and the strength of our economy. With respect to our values as a people in the eyes of the world, we are presented today with a golden opportunity. We have negotiated and cajoled and talked for 6 years. We worked patiently under the Sullivan principles. We tried the Solarz amendment. But it is now clear that all this nonsense about constructive engagement is nothing but a State Department smokescreen. The President tries to distract us with the appointment of a black ambassador. At the same time, the foreign minister of South Africa dares to intrude into the Senate with a crude mixture of intimidation and bribery. It is outrageous nonsense.

We are trying a case here, Mr. President. We are not trying South Africa's case. We are trying America's case, and the verdict must be for freedom and equality. We have an opportunity today to set our best foot forward on this fundamental principle of human dignity and equal rights. We must not fail this test.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, let me yield 3 minutes of our time to the Senator from Connecticut.

Mr. PELL. I understand we are going to match time. I thought it was 5 minutes each. Anyway, I made a commitment to yield 5 minutes to the Senator from Connecticut.

Mr. WEICKER. I thank the majority leader.

The PRESIDING OFFICER. The Senator from Connecticut is recognized for 5 minutes.

□ 1440

Mr. WEICKER. Mr. President, today the U.S. Senate stands exactly where each Member knew it would be a month ago.

At that time the Senate voted by an overwhelming margin to impose economic sanctions on South Africa after lengthy debate and thoughtful crafting of legislation.

Instead of working throughout the constitutional process to achieve an effective and traditional American response to oppression, the White House has launched its belated effort to see the veto sustained, including the sponsorship of limited and wholly inadequate measures against the racist government in Pretoria. We knew that might happen, though many of us hoped for a voluntary rather than a forced unity of American response to the shame of apartheid.

There was also great hope in this country that the passage of the Comprehensive Anti-Apartheid Act of 1986 by such tremendous margins in both Houses of the Congress would spur the South African Government to institute change. That has not happened.

You will remember that the state of emergency has been in effect since June 12. Three hundred people have died in political violence in South Africa since that date. Death continues daily, its truth shielded from the world by South African censorship. Last Thursday, the South African Bureau for Information announced new restrictions on news, designed to delay further the transmission of even officially approved information. This restriction tightens even further the media blackout being attempted by South Africa.

In early September, according to the Pretoria News, South African President P.W. Botha said the violence in South Africa is between, "Communists and democrats, not the black and white races." Botha also said the state of emergency was declared on June 12, again quoting, to "Safeguard blacks against the unnecessary cruel deeds by terrorists."

In short, Mr. President, nothing has changed within the councils of apartheid.

But not everything has remained static in the month since the Senate acted. The death toll continues to mount and the grim details of repression, detention, and torture continue to seep over the wall of censorship imposed by the South African Government.

Let me quote from the first two paragraphs of a story on the front page of the New York Times last Sunday. The story begins,

> Civil rights monitoring groups, former detainees and physicians who have examined detainees after their release assert that South Africa's emergency decree has led to harsh conditions and sometimes torture for those held under its provisions.
>
> In interviews over a period of several weeks, former detainees have asserted that they were physically and psychologically abused in detention. Physicians who have examined former detainees have asserted that they were physically and psychologically abused in detention.

The testimony revealed in this report includes accounts of hoods being placed over detainees heads, electrodes attached to their bodies to apply electric shock, interrogation at gunpoint. In court testimony a Catholic priest said he had been forced to stand blindfolded, handcuffed, and half naked during a nonstop 30-hour interrogation session, during which shots were fired behind his head.

So far, the South African Government has revealed the names of 8,500 individuals detained under the emergency decree. Civil rights monitoring groups place the number at more than 15,000.

The detainees' Parents Support Committee, which has monitored the detentions in South Africa, has estimated that some 79 percent of those detained were affiliated with the United Democratic Front, the largest nonparliamentary opposition group in South Africa.

Let us be clear about what "nonparliamentary" means. It does not mean that members of the UDF have refused to participate in the South African political process. It does not mean that they have opted to work outside the system of city, regional, and national politics. It means that they have become politically involved even though they have no parliament, even though they have no chance to vote, to run for office or participate in any official capacity.

These are the people that fill the jails of Pretoria; these are the people who frighten the apartheid system more than any combination of land mines, or puny squads of armed men, or desperate collections of young thugs with gasoline and automobile tires.

The fear of the South African Government; this fear of evolution that exceeds its fear of revolution; extends beyond the politically active. In 40 black townships across South Africa, some 300,000 residents have been engaged in a largely nonviolent protest refusing to pay rents that support the token black councils in the townships. Security forces attempting to evict the protesters in the Johannesburg Township of Soweto in early September killed 20 blacks and left 100 wounded. Yet still the rent strike continues despite the loss of life, despite the loss of basic services in the neighborhoods like sewage and trash removal and running water.

The fear of the South African Government also extends to those whites with the courage to seek racial change. Ten years ago, the four Watson brothers of Port Elizabeth, South Africa, as a gesture of opposition to apartheid, quit their whites-only rugby team to play with teams in the black townships. About a year ago, the Watsons' family home burned to the ground and two black employees were badly burned. In August of this year, three of the brothers were charged with arson and fraud in a scheme to collect insurance money. The evidence supposedly came from one of the employees, but recently, the employee's wife received notes from her husband, smuggled out of detention on sheets of toilet paper. He was beaten, he said, and his head was held in a wet bag until he would fabricate a confession. Still the Watsons remain in jail, scheduled for trial in December or January.

Mr. President, taken together, these are the prices South Africans, black and white are paying for pursuing a vision of racial peace and nonracial governance. The opportunity the United States will gain when the Senate votes the position of the American people into law is an opportunity to ally ourselves with evolution rather than revolution. It is a first step toward ending apartheid. It is a beginning toward alliance with inevitably democratic South Africa.

The new relationship between the United States and the Government of South Africa put into law with this vote will not end violence nor guarantee political equality. Only the Government of South Africa and those who put them in office have the power to take that step toward reconciliation. Today it is not the vote of an enemy but the voice of a friend who is saying, "enough."

Our action in translating national ideals into the law of the land allays the worst fears of South African blacks and their white brethren; that the United States will stand idle.

It is unfortunate this issue comes to the Senate today as an override of a Presidential veto. Clearly, the support of the President would have been welcomed. But that support is not essential to the making of law in our constitutional process. For this moment, at least, the President has become an irrelevancy to the ideals, heartfelt and spoken, of America.

The authors and supporters of this bill are looking for an end to apartheid, not to anyone's politics. I urge my colleagues to resist the din of partisanship. Longfellow wrote, "Not in the clamor of the crowded street, not in the shouts and plaudits of the throng, but in ourselves, are triumph and defeat."

It is now that this generation comes face to face with an evil that will neither go away nor be made acceptable. As the Midwest was reminded yesterday and all the Nation shortly, sacrifice will be required of all before this conflict plays out.

But compared to the reasons for tears already shed in South Africa, our inconveniences are zero to nothing.

Today's vote is today's generation saying no to the incipient holocaust of our times.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Mr. President, have I any time remaining?

The PRESIDING OFFICER. The Senator has 1½ minutes remaining on his time.

Mr. DOLE. We will divide that up; 45 seconds each.

Mr. PELL. Mr. President, I yield 2 minutes to the Senator from Kentucky [Mr. McConnell].

Mr. McCONNELL. Mr. President, it is with the utmost reluctance that I rise today to challenge this Nation's President. During my election campaign and my past 2 years in office, I have wholeheartedly embraced and endorsed President Reagan's policies and priorities. Time, and time again, I have cast my vote with the President. I have believed each vote was cast in support of a sound policy and a strong, clear vision of America's future.

Last year, I supported President Reagan when he asked the Senate to sustain his veto of South Africa legislation. I was hopeful that the President had finally put the issue of apartheid on his agenda, and that he would forge a policy that addressed the black majority's urgent needs. Unfortunately, this has not happened.

This year, I feel compelled to stand apart from my President. This has been a difficult decision to reach.

Actually, I do not feel I made a decision to act, so much as the President made a decision not to act. During the 2 years that I have been closely following events in South Africa, the President has publicly, voluntarily, addressed this issue only twice. Two speeches in 2 years. Compare this with the dozens and dozens of personal TV and radio addresses, letters, and phone calls that President Reagan has made regarding aid to the Nicaraguan freedom fighters and you begin to realize where South Africa fits into the White House list of priorities. It does not.

In the meantime, the situation in South Africa only gets worse. Each of us has been deeply disturbed by the incomprehensible brutality of "necklacing." No one can persuade me that there is any sense in such actions. This is not "street justice" as some might have us believe. "Necklacing" is a raw, barbaric act of murder that divides and destroys families and communities.

But, I must admit, while necklacing is incomprehensible, I can make no more sense of the Government's decision to detain well over 10,000 South Africans since June 12 of this year. Sheena Duncan, the past president of the activist, antiapartheid group, Black Sash, describes the current situation in stark terms. She notes:

> No where does the [South African] law prevent the authorities from detaining someone for a lifetime. A detainee no longer has even the protection of public knowledge of who he is, where he is being held, and what his condition is. Every bit of information about detainees is hard won and publication of the facts is hedged with prohibitions. It is impossible to know whether official figures (regarding detainees) are complete.

The detentions are the most heavy-handed and obvious indication of the Government's frustration and repressive inclinations. However, on a daily basis, every black experiences in intimate detail the full weight, the full force, of the minority government's will to deny them basic rights. None of us in this Chamber need to be reminded that blacks cannot vote. None of us need to be reminded that nonwhites in South Africa cannot travel where they want, when they want. Each one of us knows blacks cannot choose where they want to live, work, or attend school. Our images of South Africa are all too clear: blacks herded into the barbed-wired, flood-lit, confines of townships, struggling to eke out a subsistence living under the menacing gaze of soldiers patrolling the streets in armored personnel carriers.

My colleague in the House, Representative LYNN MARTIN, framed the issue well. She asked President Reagan, "What if you had been refused an education in Tampico because of your color? What if you could not be President because your supporters could not vote?"

It is this deliberate, calculated, cruelty of the South African Government's policies that I find so alarming. I was recently told the South African Government invested millions of dollars building a sand dune along the highway connecting Cape Town with its airport. Not a particularly noteworthy detail of life in South Africa until it is explained that the sand dune hides one of the most destitute, hopeless black squatter camps in the country. The camp sits on a bleached stretch of wind-blown beach where as many as 60,000 people are squashed together in tin, paper, and plywood huts. Can you imagine the improvement of morale, of hope within the community, if the South African Government had spent even $1 million on housing instead of the many millions they spent building the sand dune? The sand dune is a horrifying monument to apartheid. It is the most compeling example that I can think of that demonstrates that the South African Government is engaged in cosmetic not substantive changes.

Two speeches in 2 years has not changed the South African minority government's posture or policies. In fact, the South African Government has praised our administration for not becoming involved.

But the fact of the matter is, we are involved, like it or not. Just as we offer moral, political, and economic support to fledging democracies in Central America and to freedom fighters in Afghanistan, the United States must recognize and respond to the vocal aspiration for freedom of 23 million blacks in South Africa. Secretary Shultz recently delivered an address at Harvard entitled "Progress, Freedom and Responsibility." These are not goals that we can selectively choose to support worldwide—this Nation is the embodiment of these principles. We cannot pretend the struggle for freedom and civil rights in South Africa is not important or is not consistent with our policy and interests. The United States cannot build a sand dune.

The United States must deliver a sharp, strong message to the South African Government, to the South African voter, and to South Africa's black majority. An override of the President's veto is the only way to accomplish this.

To the South African Government we must make it clear that reform is not a matter of time or a question of convenience. It is urgent. Sanctions will not solve South Africas problems. However, targeted sanctions will firmly assert American resolve to distance ourselves from the enforcement of apartheid. Until now, the South African Government has been able to ignore the President and congressional statements of opposition to apartheid. In a recent editorial my colleagues, Senators LUGAR and KASSEBAUM point out, "The Botha government has made clear that anything less than a congressional bill would be a victory. No matter how much the United States might protest, a vote to sustain the President's veto would be seen as support for the South African Government's policies. Regardless of what the United States says or how many Executive orders are issued, we would be perceived as apologists for apartheid."

The South African Government's history demonstrates that they believe actions speak louder than words. The time has come for us to act.

Our action must convince the South African voter that he has a great deal at stake if apartheid is sustained. As Secretary Shultz has noted, "White South Africans must recognize that apartheid is a disaster of their own creation and must be done away with in an active and orderly fashion if their interests are to survive." However, white South Africans did not recognize the disaster had to be done away with until they were threatened with sanctions. In the past 2 years, the business community in South Africa has been galvanized into active opposition to apartheid because of the threat of sanctions. Representatives of the business community are finally bringing their weight to bear on the political process in South Africa and they are demanding the end of apartheid. If they are joined by a majority of the voters in South Africa, the Government will have to respond.

Finally, this legislation must convince South Africa's black majority that their call for change is strongly supported by the people of the United States. There must be no doubt that we still hold fast to the democratic ideals and the spirit of independence that drove the American Revolution and our civil rights movement. We must demonstrate that "liberty and justice for all" knows no borders nor boundaries. We must demonstrate that we are prepared to stand beside those who courageously struggle for their freedom.

Because I have chosen to stand with those who struggle for freedom, I must stand apart from my President. I will vote to override the President's veto and urge my colleagues to do the same.

Mr. President, I ask unanimous consent to insert into the RECORD Senators LUGAR and KASSEBAUM's editorial that appeared in the Washington Post on Tuesday. I think it is an accurate and thoughtful account of how many of us feel about this issue. It is not an easy decision to override the President's veto, but it is the right one. I join in the distinguished chairman of the Senate Foreign Relations Committee's pledge to work with the administration to shape a policy that will facilitate dialog in South Africa between the Government and the majority of South Africans. As the chairman has observed, we must move beyond the current stalemate and focus attention "not on the evils of apartheid, which are plain, or sanctions, which can be debated forever, but on the true objective—peaceful, political change."

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

OVERRIDE THE PRESIDENT'S VETO

The House has voted to override the President Reagan's veto of legislation imposing new economic sanctions on South Africa, and the Senate will soon decide whether to do the same. As two members of the Senate who have sought to work with the administration on this issue, we believe, regretfully but firmly, that an override is essential to our long-term foreign interests throughout Africa.

Like many other members of Congress, we share some of the president's reservations about part of this bill. It is not a perfect product. However, we are convinced that this legislation provides an important and necessary departure from our policy toward South Africa, based on a bipartisan consensus in both houses of Congress.

We believe it is time to send a blunt message to President P. W. Botha's government. This is the real foreign policy issue facing Congress, not just the number or the origin of sanctions imposed on South Africa. To argue that there are Republican sanctions imposed by the president, as opposed to bipartisan congressional sanctions, mutes our message and weakens American foreign policy.

The Botha government has made clear that anything less than the congressional bill would be a victory. No matter how much the United States might protest, a vote to sustain the president's veto would be seen as support for the South African government's policies. Regardless of what the United States says or how many executive orders are issued, we would be perceived as apologists for apartheid.

We have profound respect for the office of the president and believe sincerely in the importance of presidential leadership in foreign policy. We also have deep personal respect for Ronald Reagan. These beliefs must be secondary, however, to our own commitment to the basic principles that are the very foundation of our democracy, and to the need to uphold those principles wherever they are challenged.

For all of these reasons, we will vote to override the president's veto and urge our colleagues to do the same. Whatever the outcome, however, we pledge to renew and redouble our efforts to work with the administration on this issue. We believe it is particularly important to focus attention on the next step, both in terms of our policies and in terms of what should be happening in South Africa.

In a sense, the debate over sanctions is a diversion from the real issue that confronts South Africa, the South African government hopes to make sanctions the primary issue rather than allow attention to focus on its own actions.

By themselves, sanctions—no matter how tough—cannot solve the problems of South Africa. While it is important for us to seek effective leverage in influencing events there, we must not become preoccupied with meting out punishment to the white minority government. We cannot impose an external solution on South Africa, and we run a serious risk of total failure if we try to do so.

The real goal of our policy in South Africa is to help bring about peaceful change.

What we seek are a society and a system that not only are more just in recognizing the rights of the black majority, but which offer a more secure and more stable future for all South Africans.

If this transformation is ever to occur in South Africa, we believe it is essential for us to resolve clearly and forcefully the issue of sanctions, which in the short term may have little effect on the status quo, and focus our efforts on shaping a framework for what must replace apartheid and unilateral white power.

We believe the United States, Great Britain and West Germany should assemble a team of special, high-level envoys to begin discussions with all groups in South Africa on the future of the nation. The objectives of this diplomatic initiatives should be twofold.

First, it should determine whether there is a basis for broad agreement, a loose consensus, on what should follow apartheid. This requires discussions with all groups in South Africa—the government and opposition parties, all black leaders, including Nelson Mandela; all black parties, including those now banned by the government; all other racial groups; and the business community.

Second, it should deliberately and openly provide the opportunity for black leaders to join in the political debate about South Africa's future. This can open the way for blacks to select their own leaders for discussions with the government and can help unify their agenda for such talks.

President Botha has repeatedly said he is willing to join in discussions with black leaders. Unfortunately, he has insisted on controlling the entire process. The result has been that no credible, responsible black leader has been willing to begin such talks.

Given the present, dangerous impasse, we in the West must make every effort to provide a forum for the kind of dialog that must be started in South Africa. This dialog is a crucial first step in moving beyond the present stalemate and focusing attention not on the evils of apartheid, which are plain, or sanctions, which can be debated forever, but on the true objective—peaceful, political change.

Mr. McCONNELL. Mr. President, today for the first time since I came to the Senate I break with my President on a major issue. I have supported him on all of his major foreign policy initiatives from aid to UNITA, from aid to the Contras, to a strong national defense time and time again. Last year in spite of my cosponsorship with the senior Senator from Delaware, Senator ROTH, of what subsequently became the bill that passed both the House and the Senate with regard to South Africa, I nevertheless supported his Executive order, feeling that there was still a chance that the President might come on board with some kind of responsible policy with regard to South Africa.

What has happened since last year's Executive order, Mr. President? What results has our policy of constructive engagement brought about? The crisis in South Africa has only worsened. Between 10,000 and 12,000 people have been detained since June 12 of this year. Included in those detainees are some individuals as young as 7 years old. It is hard to see how a 7 year old could be a threat to national security in South Africa. The South Africa crisis is not going to go away. Fully one-half of the black population of South Africa is 21 years of age or younger.

The future spells trouble for that regime.

Over 10 million people in South Africa are under the age of 21. Those people have never known freedom. They have known nothing but crisis after crisis after crisis. They have never had a vote, never had the opportunity to affect the quality of their lives. These problems are not going to go away.

What have these sanctions achieved? We can argue about that, but at the very least they achieve three things: They send a strong message to the South African Government, a strong message to the South African voter, and a strong message to the black majority in South Africa.

In conclusion, Mr. President, let me say that with great reluctance I break with my President. I have been with him on all the major foreign policy issues of this administration. But on this one I think he is ill-advised. I think he is wrong. I think we have waited long enough for him to come on board for a policy obviously endorsed by an overwhelming majority of the Members of the Congress, an overwhelming majority of the citizens of this country, and an overwhelming majority of our allies.

□ 1450

The PRESIDING OFFICER. The Chair will not engage in the prenotification of time in the future.

Mr. DOLE. Mr. President, I yield to my colleague from Kansas.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mrs. KASSEBAUM. Mr. President, I thank the majority leader for yielding time to me.

There are few of us in this Chamber who believe that sanctions are ever an effective policy. We have had sanctions before—against Nicaragua, against Libya, against Poland, against the Soviet Union—and they have had a marginal impact, if that, on changing any of the policies of those governments. We should not delude ourselves into thinking that this will indeed bring the Botha government to its knees, nor do we want that to happen. Nor will it create economic havoc in South Africa. We have imports from South Africa that are about $2.2 billion. We are talking about sanctions in this package that affect about $330 million to $350 million, a small portion.

But, Mr. President, this has become more of a symbol than a substantive issue. As such, it is an important one for us today, to make sure that there are those not only in South Africa but on the African continent who know where we stand.

I hope that we can get this issue behind us, because that really is not what is important. What is important is finding a way for peaceful change that is inevitable in South Africa, and I hope we can continue to be a supportive voice in that process.

I yield back whatever time may remain.

Mr. DOLE. Mr. President, may I ask what time there is?

I yield 5 minutes to the distinguished Senator from Alabama [Mr. DENTON].

The PRESIDING OFFICER. The Senator from Alabama.

Mr. DENTON. Mr. President, to us here, in the Senate, I think we are confronting a situation, unknowingly most of us, in which too many of us are seeing a quick solution to a complex problem and, as usual, quick, simple solutions to complex problems are wrong.

As this Senator sees it, the principal wrong involved is the psychological effect that too heavy a sanctions imposition upon South Africa—too heavy a sanctions effort—will contribute a psychological effect in South Africa which will accelerate the already extremely harmful trend toward a deluge of terror with the ultimate conclusion of a takeover by a Communist group, which already is occupying key positions in South Africa, particularly in the African National Congress.

It should not come as a surprise to too many of my colleagues that extreme sanctions are a principal goal of the Soviet Union, a principal goal of the African National Congress.

I have said a lot of words on the African National Congress in past speeches. I shall not today. I think our choice is between waging what amounts to economic war against the South African Government by this sanctions bill and economic war against the blacks, the coloreds, the Asians, and other peoples in South Africa; between, on the one hand, encouraging terrorism as I mentioned, and concluding with the likely takeover by a Communist government, in which the United States interest would be drastically affected.

We would lose access to the metals and minerals without which this economy cannot survive, without which this economy cannot function.

On the other hand, our choice could be milder pressure, which is recommended by the President of the United States, I think with a consciousness of the domestic political issues as well as the international political issues, abroad and domestically. I think he assesses those. I do not see why he, whether his name be Carter, Kennedy, or Reagan, would not be more accurate than this body in its admitted state of relative ignorance about this problem which, as I mentioned last night, was expressed by the junior Senator from Kansas on a recent television show, for which I admire her.

The choice is between that milder pressure and giving the Government a chance to further accelerate its progress toward a peaceful solution favorable to the interests of blacks of South Africa and to the interest of the United States.

What progress has been made? Many of my colleagues are not aware, but the South African Government realizes that the country must be unified. They have granted autonomy to Kwa Nbedele. They have given Kwa Nbedele money because it does not have budget independence like Transkei. They are prepared to have power-sharing with the blacks; they are prepared to release Nelson Mandela, whom Amnesty International has condemned as a justified political prisoner, not a prisoner of conscience; not that.

The Government is committed to urban political parties, to negotiate with any black. But they will not do it, they will not be able to proceed, unless the violence abates. They will not be able to proceed very fast because they see themselves caught in the trap of having to impose sufficient security to permit the existence of the country and the functioning of the Government in order by fashion.

It may surprise my colleagues that two-thirds of the blacks killed over there are blacks being killed by ANC-type terrorists; in other words, blacks who were incited by and organized by the ANC are killing other blacks, to the tune of two-thirds. The other third are blacks being killed in the demonstrations by the Government or some situation like that.

But the "necklace" is the power by which Winnie Mandela has said she will take over the Government. The necklace is not a pretty means by which to do that, the shaking of the matches to intimidate the masses. I do not think any of us wants to be associated with that. The Senator's confirmed belief from his involvement is that we are.

I thank the Chair.

The **PRESIDING OFFICER.** The Senator's time has expired. Who yields time?

Mr. **MITCHELL.** Mr. President, the Senate today can assert a broad, bipartisan, national consensus on a foreign policy issue which addresses fundamental principles of morality and justice.

It is an issue in which American ideals, and our claim to moral leadership in the world, are at stake.

Rarely do we see an issue which so broadly transcends the political differences that divide us. This is one of those rare occasions.

The basic issue is simple: apartheid is wrong. Political, economic, and strategic concerns must be secondary to that reality. Apartheid is immoral. It is a system of institutionalized injustice which inevitably breeds violence and repression. Continuing apartheid in South Africa guarantees a widening cycle of hatred, bloodshed, fear, and death.

The world has been patient. Time and time again, the Government of South Africa has been given an opportunity to demonstrate a genuine commitment to reform. But it has spurned them all. Instead, oppression has endured.

In 1965, Martin Luther King declared:

> The whole human race will benefit when it ends the abomination that has diminished the stature of man for too long. This is the task to which we are called by the suffering in South Africa. Our response should be swift and unstinting. Out of this struggle will come the glorious reality of man.

Over 20 years later, the United States still faces the task of ending the abomination called apartheid. We have an opportunity to strike a clear, unequivocal blow for freedom. Every day that we delay risks our moral standing in the international community. Every day we delay adds credence to voices that argue that the United States is an accomplice of the white minority government in Pretoria.

For the past 5 years, Congress has been patient. We have allowed President Reagan to pursue the policy called constructive engagement. For 5 years, we have deferred to the President. Yet if anything is obvious, it is that constructive engagement has failed.

This past June, the Government of South Africa imposed new repressive measures. The minority government's willingness—indeed, eagerness—to resort to greater repression to maintain its control illustrates the moral and political bankruptcy of the apartheid regime.

Moral persuasion has failed. Public encouragement has failed. Private diplomacy has failed. Constructive engagement has failed. The crisis is now. It is time to impose a set of immediate, comprehensive, and mandatory sanctions on the South African Government.

It is time for the United States to proclaim unequivocally: Apartheid is wrong, and we will have nothing more to do with it.

The American people already have spoken out against apartheid. Cities, towns, universities, and States across the Nation have taken action to withhold investments which underwrite the South African regime.

Antiapartheid efforts in this country have been a demonstration of American federalism and democracy at its best. They have rung a call for liberty, justice, and equality under law, not just at home, but also abroad. They have been an affirmation of the faith that individuals and communities can make a difference; the same faith so eloquently spoken by the late Senator Robert F. Kennedy, in an address at the University of Capetown, in South Africa, in 1966.

"Few will have the greatness to bend history itself; but each of us can work to change a small portion of events," Kennedy declared.

> It is from numberless diverse acts of courage and belief that human history is shaped. Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring those ripples build a current which can sweep down the mightiest walls of oppression and resistance.

Communities and States across America have taken stands against apartheid. They have struck out against injustice, and sent ripples of hope across the land. Such actions have made a difference. And as a nation, we can make a difference in ending apartheid.

Sanctions will achieve several important, immediate objectives:

First, U.S. sanctions will spur other Western nations, with whom South Africa conducts much of its trade and relies for foreign capital, to follow suit. The apartheid regime will face uniform condemnation by the international community.

Second, sanctions will place additional pressure on the South African Government to respond in a meaningful way to the rightful grievances of the black majority.

Third, sanctions will lend support and encouragement to elements in the white South African community who understand that apartheid is doomed. At the moment, the only white voices to whom the Pretoria government seems to listen are those who cry only for retrenchment and repression.

Fourth, sanctions will make a statement about America, about our values and priorities. Those who dismiss the symbolic importance of sanctions make a serious mistake. Unless we put the full weight of America's influence behind the movement to end apartheid, we risk our moral standing in the world.

Fifth and finally, sanctions are in America's long-term self-interest. Make no mistake about it. Change is coming to South Africa. It may come with great violence and bloodshed, although I hope not; or it may come through the peaceful workings of a democratic system. But come it will. And when a new order arrives in South Africa, when the black majority has won its rightful share of power and opportunities, what will they say about our own role in the process? What will our role be as history unfolds?

I regret that President Reagan has chosen to veto this legislation. I regret he has chosen to hold fast to the failed policy of constructive engagement. I regret that he has chosen to ignore the opportunity to bend history itself; to help build a current, to sweep down apartheid's walls of oppression and resistance.

I urge the Senate to override his veto.

As Nobel Peace Prize winner Bishop Desmond Tutu has declared:

> There is no guarantee that sanctions will topple apartheid, but it is the last nonviolent option left, and it is a risk worth taking.

There is no guarantee of what the future holds for South Africa. But South Africa is moving toward ever-increasing violence and chaos. I hope that further bloodshed can be averted, and the pain of economic sanctions minimized. But that can only be achieved through genuine reform.

South Africa must put an end to government-sanctioned violence.

South Africa must declare its commitment to end all forms of discrimination based on race, and issue a specific timetable for the implementation of this commitment.

South Africa must release its political prisoners; and lift its restrictions on political activity, free speech, and free association.

South Africa must end its curbs on the freedom of the press and other media.

South Africa's white minority government must enter into good faith negotiations with representative leaders of the black majority over fundamental issues involving the distribution of political and economic power in the country.

South Africa must move toward a genuine democracy, based on the principle of "one person, one vote."

The struggle for equality and democracy is a difficult one. But the difficulty of the challenge is not a reason to shrink from it. It is a challenge—and a risk—worth taking.

We Americans periodically are called upon to renew ourselves—and to reaffirm what we, as a Nation, stand for. Today is such a time.

It took us many years to understand fully the error of racism and injustice. We fought the American Civil War over the issue, and endured a long civil rights struggle. But we learned that lesson, and we are wiser—and stronger—for it.

Let us not forget all that we have learned.

I urge the Senate to act now. Do not let South Africa destroy its soul—and its people—in the process of acquiring that same wisdom. Without the shock that strong sanctions will represent, I fear that South Africa will only slide into greater turmoil, with greater bloodshed.

I urge my colleagues to override the President and enact sanctions. For us to do less would be to betray our American ideals; our own experience; and the hope of oppressed people throughout the world.

Mr. PELL. Mr. President, with apologies for the shortness of time, I yield 1 minute to the Senator from Colorado [Mr. HART].

The PRESIDING OFFICER. The Senator from Colorado is recognized for 1 minute.

Mr. DOLE. Mr. President, I yield 1 minute to the Senator.

Mr. HART. Mr. President, I thank the Senator from Rhode Island and the Senator from Kansas.

Mr. President, I have a simple appeal to make to the President of the United States regarding his veto of the bill to impose sanctions against South Africa.

It is this: Mr. President—rejoin the Nation. Close ranks with the American people for justice in South Africa. Put democratic values in the forefront of our foreign policy. And give South Africa's people a chance to join in the democratic life we cherish.

The cause of human dignity against state terror—Soviet or South Africa—is essential to our mission in the world. American security is enhanced whenever and wherever we use our great power to broaden—and not to block—that tide of human dignity.

Nowhere is the tide of human freedom running as strongly as it is in South Africa where human beings like you and me every day stand before the barrels and the nightsticks to ask for dignity and justice.

Two years ago, when the American people were presented with that picture of bravery amid brutality, they were outraged. And they have since told our Government again and again—in every way they can and in every place they can—from the campuses of California to the streets of Washington, DC: "Release the chains on human dignity. Let those people go."

But those in power have only offered words to the people of South Africa as they stand before that terror. And is anyone in this Chamber surprised that the majority of South Africa's people have lost hope in their best hope—America? And now look upon our Government, if not as the collaborator, then at least as the comforter of the white regime.

Here is our chance to break with that record of inaction. Here is our chance to join with the British Commonwealth. Here is our chance to say—at long last—to the peoples, captive and free, or southern Africa: "We have heard your call for sanctions, and we are ready to act."

Mr. President, we have long debated the question of sanctions and, in August of this year, we resolved in favor of imposing them.

We, who support sanctions, don't believe that they provide the only answer to all that is so deeply wrong in South Africa. But they do—at long last—put us on the right side of the question.

We in the Senate regard sanctions as only a beginning. We believe that there are a host of positive actions that we must take—from building up the frontline states to bringing black South Africans to this country for education. But we must begin. And this is a beginning.

Mr. President, there is a word in South Africa that black people use to solute the dead as well as the living in their long struggle. That word is: Asijiki

It means: "We are not turning back."

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. How much time remains?

The PRESIDING OFFICER. The Senator from Colorado consumed 2 minutes.

Who yields time?

Mr. PELL. Mr. President, I yield 1 minute to the Senator from New Jersey [Mr. LAUTENBERG].

The PRESIDING OFFICER. The Senator is recognized for 1 minute.

Mr. LAUTENBERG. Mr. President, I thank the manager of the bill on our side.

I just returned from a trip to South Africa less than a month ago. What I saw there reaffirms my belief that the United States must override the President's veto. We cannot participate in the prolongation of the abysmal practice of apartheid. There is simply no other way to make our stand on this moral issue known to the South African Government than to override this veto.

□ 1500

Mr. President, I urge my colleagues to do just that. Time is running out for a peaceful solution in South Africa. The Senate's action today may have a profound effect on unfolding events and may set the course for our relations with the African continent for decades to come.

As the world's leading democracy, America must take a strong stand against South Africa's apartheid regime. Under apartheid, great disparities in wealth, education, and opportunity are enshrined on the basis of color. Those disparities are maintained through repression of the black majority. The apartheid system is carefully constructed to keep the white minority of 4 million in control, while the black majority of 24 million remains without political or economic power in its own country. Although poverty and repression exist the world over, in South Africa these conditions are racially based, legitimized by law and enforced by the power of the state.

Words cannot describe the misery and squalor of black South Africa. As much as I had read about apartheid, I was unprepared for what I witnessed 3 weeks ago. Whites around Johannesburg live in affluent suburbs. Large, stately homes. Swimming pools. Neatly manicured lawns. Few venture into the poverty and violence of Soweto, the black township nearby.

Mr. President, I wish every Member of this body could visit Soweto. I wish the President could. In a typical home I visited there, a large family lives in one small room with only a stove and a table. Kitchen chairs are stowed on the table top each night to make room on the floor on which they sleep. With no privacy and no place to shower, bathe, or go to the bathroom, dignity is hard to maintain, but they try. Thousands more Sowetans live illegally in corrugated iron and cardboard shacks lacking sanitation or electricity.

Hard as it is to imagine after visiting Soweto, those in the townships are fortunate compared to blacks who must live in the homelands. Millions of blacks have been moved forcibly to these baren, bleak, and arid black ghettoes in an attempt to separate the races. When a black South African is assigned to a homeland, he loses his South African citizenship, and becomes an alien in his own country. It is as if 5 million Americans with a common haircolor were suddenly stripped of their American citizenship, forced to resettle in the Nevada desert, and become citizens of a newly independent State there.

Because there are few jobs in the homelands, many men are forced to commute as many as 4 or 5 hours daily to the cities for work. The alternative is to live in rundown hostels in the townships for 11 months of the year, apart from family and friends. Living quarters are little more than hovels, dimly lit, with no privacy. Deprived of a normal family life, many residents of the hostels turn to alcohol for solace. Though some courageous church and human rights leaders protest the inequality and repression that are official government policy, a large segment of the white minority looks the other way.

As blacks have grown impatient with the paltry lot white South Africa has assigned them, they have begun to press for equality. Blocked from peaceful pursuit of these goals by the South African Government's intransigence, some have resorted to violence in frustration over the lack of progress. During this debate, I have heard about black on black violence, about necklacing as a reason not to impose sanctions.

Mr. President, we cannot condone such violence. But what about the violence of the South African Government? The Afrikaner's essential response to legitimate black demands for equality and justice has been repression and violence. In fact, I was told that at times, the government had shot blacks and then necklaced them after they were dead to give credence to charges of black on black violence.

Government violence under the most recent state of emergency has reached new levels, even for South Africa. Under the state of emergency imposed by the government, thousands have been removed from their homes in the dead of night. Mothers and fathers are denied information about their children. They do not know if they are dead or alive. They do not know where they are being kept, if they are being tortured, or when they may see their children again.

The detainees have no right to a lawyer. They have no right to a trial. They can be held for prolonged interrogation without being charged of any crime. In most cases, no charges are ever filed against them. They live in dark, dank prisons, not knowing if further retaliation is being visited on their families.

Mr. President, if they were treating animals the way blacks are now being treated in South Africa, the world would be in an uproar about it.

America cannot condone this behavior toward blacks, either through silence or inaction. Today, we must decide if we want to be identified with oppression or justice; with majority rule or minority tyranny; with basic civil liberties or arbitrary repression and violence; with racism or equality. That is what is at stake in this vote.

Although President Reagan maintains that black South Africans would be the first ones hurt by these measures, the black South Africans I met want America to impose strong sanctions. Increasingly blacks feel that sanctions will not materially worsen their economic lot, and could improve their political future dramatically. After seeing for myself the abject poverty in which most of black South Africa lives, and the repression used to maintain it, I understood that feeling. Blacks see sanctions and international shame as the only peaceful tool to spark long term and fundamental change.

If America does not respond to that message, if we do not place ourselves clearly on the side of the black majority, our future in black-ruled South Africa will be significantly impaired. Failure to override this veto would send a message to black South Africans that they cannot rely on America to stand up for their freedom.

Such a message can only encourage instability and violence, as blacks seek to obtain at long last what should have been theirs from the beginning. And it will provide fertile ground for the Communists, who have supported black South Africans' struggle more forcefully than the world's democracies. Clearly, the reasons for overriding this veto are based on practical American self-interest as well as morality.

Sanctions, while not the perfect solution, are one of the few nonviolent options left in South Africa. Sanctions will make it impossible for white South Africans to maintain their lifestyle. Faced with real pressure on the economy, they may pressure their government to move to dismantle apartheid and to share power with the black majority. The South African economy is relatively self-sufficient, dynamic, and sophisticated. But, it cannot indefinitely survive a loss of credit, markets and normal commerce with other nations of the developed world.

Sanctions are a blunt and imperfect tool. But, the intransigence of the existing government has eliminated other options that most Americans would have preferred. Talk of reform abounds, but little has been done to address blacks' legitimate demands for powersharing. Defense Minister Magnus Malan and other members of South Africa's ruling National Party argue that progress is being made, and we must be patient.

But Mr. President, after talking with a wide variety of groups across the political spectrum in South Africa, I believe the National Party is living in never-never land. Most of the reforms it points to are meaningless to blacks living in South Africa. And some reforms that have been given with one hand have been taken away with the other. I doubt that the government will move toward real reform on its own.

The fact is that blacks do not want apartheid reformed; they want it dismantled. Active defiance of white rule is growing. I visited the remains of the crossroads squatter camps near Capetown, for years a symbol of that defiance. Several months ago, the government incited black vigilantes to burn squatter's shacks in crossroads as part of a government effort to reassert its power over blacks.

The government bulldozed the debris, fenced off the land, and ordered the 70,000 homeless refugees to move to another township. But many blacks have resisted being pushed from the land. They have moved back to the forbidden areas and are rebuilding shelters from sticks and plastic in open fields. They are willing to risk repeated destruction of their homes, and jail in order to make a point that they will no longer tolerate the status quo. Their insistence on living where they choose represents a growing trend of defiance that white South Africans cannot afford to ignore.

Yet like the ostrich indigenous to South Africa, the Afrikaners believe they can maintain power over the black majority indefinitely. They plan to use very bit of force at their disposal to do so. It is not difficult to imagine what a government willing to threaten the U.S. Senate to stave off sanctions might be willing to do to their own unarmed civilian population. As black frustration and violence against blacks rises, the chance for a peaceful settlement in South Africa dwindles.

If we fail to override the President's veto, the South African Government will continue to believe, in its heart of hearts, that America will support it no matter how slow the pace of change, no matter how much violence and repression are directed against blacks. That can only strengthen those who advocate violence in the belief that they have no other choice. International economic pressure may offer the last hope of avoiding a racial conflagration. And this vote may be America's last chance to weigh in on the side of change.

The Senate will not be bullied by the South African Government threats into a course of action so out of keeping with our own national character.

Because time is not only running out for a peaceful solution in South Africa. It is running out for America too.

I urge my colleagues to override this veto.

SOUTH AFRICAN SANCTIONS VETO MUST BE OVERTURNED

Mr. DIXON. Mr. President, I believe the arguments for voting to override the President's veto of the South African sanctions legislation are compelling. There are strong moral reasons to impose sanctions. Further, imposing sanctions is the best foreign policy decisions we could make. It is the only decision that is in accordance with long-run American interests in southern Africa.

I have discussed my reasons for voting to overturn the sanctions veto at some length earlier in this debate. At this time, I would simply like to briefly comment on what I believe are two very poor reasons for voting to sustain the veto.

First, it has been argued by some that the Senate should not override, because doing so would "weaken" the President at his upcoming meeting with Mikhail Gorbachev in Iceland. Frankly, I do not understand this argument. South Africa is not even on the summit agenda. It has nothing to do with the issues that the President and the Soviet leader will discuss.

I do not think that overturning the veto "weakens" the President. Rather, I think it strengthens America by demonstrating that we are willing to stand with the black majority there, and that we are willing to change our policy so that it better reflects real American principles and interests.

Further, I think that a President who failed to negotiate with the Congress at any time on this issue is in a very poor position to argue now, at the very last moment, that Congress should again wait. The administration talks compromise, but what it really wants is business as usual. In this Senator's opinion, we can no longer afford that kind of policy—we probably never could. As I have stated before, the time for waiting is over. It is time to act. It is time to make the fundamental changes in our policy toward South Africa that are already long overdue.

An even worse reason to sustain the veto was offered by the South African Foreign Minister yesterday in conversations with a few Senators. He stated that South Africa would purchase more grain from the United States if the sanctions legislation was not enacted, but would cut off American grain purchases if the veto was not overturned. I find that kind of interference in U.S. policy decisions outrageous, and I am sure all American farmers are insulted by this crude attempt at political blackmail.

The South African sanctions bill did not pass the Senate by an overwhelming bipartisan vote of 84 to 14 by accident. The bill commanded that majority because it was carefully drafted, and because it was the right response to the deteriorating situation in South Africa. The arguments for the bill are probably even more compelling now than they were in August. I therefore urge my colleagues to sustain the bipartisan judgment that produced this bill. I urge them to vote to override the President's veto.

Mr. COHEN. Mr. President, this body expressed its view last year that economic sanctions were necessary in order to press the government of South Africa to dismantle its system of apartheid. We made it clear that we were prepared to legislate such measures if the administration did not take appropriate action on its own.

President Reagan initiated a number of measures which fell short of those contemplated by Congress but which, it was argued, sent a clear warning to the South African Government. A year has now passed and we have seen nothing to indicate that the administration's policy has been effective. On the contrary, the situation in South Africa has deteriorated considerably. The levels of violence in South Africa have increased and the Botha government has instituted repressive new measures.

It was in response to these developments that I voted in favor of this legislation in August and it is for these reasons that I will vote today to override the President's veto.

The President has indicated that in his view sanctions will diminish the prospects for peaceful reform. He has also expressed deep concern over the impact sanctions would have on the victims of apartheid.

I realize that economic sanctions do not offer a panacea for South Africa's problems. This legislation will not instantly project that country on a path leading to a reversal of its tragic history of apartheid. In my view, however, the risks associated with this legislation are much less than the risks of continuing on our present course. It is not enough to merely denounce the South African Government for its apartheid policies. We must take concrete action to demonstrate our seriousness and resolve.

There is a contentious debate today among black South Africans over the best means to bring about an end to the apartheid system. Some black leaders, such as Reverend Boesak and Archbishop Tutu, advocate peaceful reform. Other, more radical black leaders, believe that violence is the only means by which the apartheid system can be overturned.

Young black South Africans today are less willing than their parents to patiently endure the suffering and humiliation inflicted on them by the apartheid system. They are angry, frustrated, and increasingly susceptible to the appeals of radical black leaders. A poll conducted last year by the London Sunday Times showed that nearly half of all urban blacks in South Africa believe that violence is justified in the struggle against apartheid. A majority of those interviewed expressed the belief that civil war is already inevitable.

Clearly, the overriding goal of U.S. policy in the region must be to support a peaceful transition to representative government. A violent revolution would be a disaster for the people of that entire region as well as the United States and its allies. Yet, that appears to be the direction in which South Africa is moving. All evidence indicates that there is a polarization of public opinion in South Africa, that the ideological distance between blacks and whites is growing, that attitudes are becoming more rigid. The opportunity for a negotiated settlement to the conflict in South Africa is diminishing every day.

In order to give new impetus to the prospects for peaceful reform we must be willing to pressure the white government and make it unmistakably clear that we support the peaceful aspirations of the black majority. We must keep alive the hope among black

South Africans that there is an alternative to violent revolution. Without both the tangible and symbolic help of the United States, that hope is considerably diminished.

I share the President's concern over the impact that these sanctions will have on black South Africans. In part, these concerns are diminished by the support for economic sanctions which exists among blacks in South Africa. They realize, as we must, that it is not possible to pressure the elite minority who run South Africa without affecting other elements of the population.

This legislation is tough, as it must be in order to be effective, but it is also flexible. We are not calling for complete disinvestment in South Africa. United States corporations can continue their operations in South Africa as long as they conform to the Sullivan principles, which require nondiscriminatory practices in the workplace. We have also made it clear that these sanctions will be lifted or modified if the South African Government makes demonstrable progress toward dismantling the apartheid system. This legislation is not, as the South African Government suggests, an act of blind retribution; rather, it is a balanced approach to a complex problem.

Mr. President, I do not question the President's desire to promote the dismantlement of apartheid in South Africa. After 6 years, however, it seems clear that the means chosen by the administration to accomplish this objective have failed. At this point, U.S. attitudes and goals appear weak and inconsistent with our history and traditions. The modest measures instituted by the administration last year were intended to send a clear message to the South African Government. If the message was received, it has been largely ignored. We must now take stronger and more resolute actions. I regret that the administration has chosen to follow rather than lead the American people in these actions.

In this regard, I would like to take a moment to express my deep respect and admiration for the courage and tenacity of the chairman of the Foreign Relations Committee, Dick Lugar. he has patiently worked with the administration and his colleagues in the Senate to come up with a policy which would promote an end to apartheid and the maintenance of a strong United States interest and influence in South Africa. The result was the legislation passed by this body in August. I was proud to join him in support of that measure and I am proud to join him today in resisting the administration's attempt to scuttle it.

In sum, the policy of constructive engagement has been tried and found wanting. The levels of violence in South Africa have escalated in recent years and the black population has become more hostile toward the United States and more sympathetic to radical leaders who advocate violence. Against whatever risks are associated with economic sanctions we must compare the risks of continuing on the present course. In my view, we would be courting disaster if we continued on the present course. It is time—past time—for a change. I hope that my colleagues will join together today to make that change possible.

SELF-RIGHTEOUS INDIGNATION BY SANCTIONS SUPPORTERS

Mr. HELMS. Mr. President, it borders on the laughable to note the self-righteous indignation on the part of some in reacting to South Africa's response to the proposed congressionally imposed sanctions.

This is not a new development. It is not a threat, nor is it aimed exclusively at the United States.

It has been the policy of the South African Government not to do business with nations that impose sanctions against South Africa.

Mr. President, Foreign Minister R.F. (Pik) Botha made his government's position quite clear on September 16 following economic sanctions imposed by the European community, when he said:

> Now that further punitive measures have become a reality, the South African Government will consider appropriate measures in defense of the sectors affected and in the interests of the country as a whole.

So it was no last minute "bombshell" as described by the media. Nor is there anything unreasonable about South Africa's position. The sanctions bill vetoed by the President proposes to ban totally the importation of South African agricultural products. Who would be so naive as to expect the South Africans to continue buying large supplies of corn and wheat when the U.S. Congress votes to ban South Africa's commodities?

Mr. President, the United States has been exporting far more to the South Africans than we have been purchasing from them. So it is obvious who will be loser in the area of agricultural trade.

I ask unanimous consent that an article in this connection from the Washington Post be inserted in the Record at the conclusion of my remarks.

There being no objection, the article was order to be printed in the Record, as follows:

S. Africans Vow to Defy Sanctions

(By William Claiborne)

Pretoria, South Africa, Sept. 16—The South African government and the country's business leaders today vowed to circumvent the limited package of sanctions imposed by the European Community.

But they acknowledged that a slowdown in investment and increased unemployment will eventually result from the measures adopted in Brussels and those that are thought here to be certain to follow in the United States and Japan.

While asserting that no country in the world is more capable of coping with economic sanctions, government officials issued thinly veiled threats of reprisal measures, which they said would be taken "in defense of the sectors affected."

While not explicitly stated, the threats were widely interpreted to encompass South Africa's exports of strategic minerals to the western world, as well as punitive measures that could be taken against bordering black African states that, despite their economic dependence on South Africa, have been in the vanguard of the move toward sanctions.

Foreign Minister Roelof F. (Pik) Botha declared, "Now that further punitive measures have become a reality, the South African government will consider appropriate measures in defense of the sectors affected and in the interests of the country as a whole."

The EC measures involve bans on the imports of South African iron, steel and gold coins, and block new investments here. But coal, one of South Africa's biggest exports, will not immediately be part of the sanctions package. Exports of iron and steel to Europe alone were worth more than $330 million last year, although the immediate import bans amount to only about 4 percent of South Africa's sales to Europe.

The first move to fight off the sanctions package was made last night by President Pieter W. Botha even as EC foreign ministers were still engaged in tough negotiations on hammering out the final package, which is similar to the limited measures adopted by President Reagan.

Botha announced he will convene an economic conference Nov. 7 to plan a development strategy for southern Africa to counter sanctions. The conference, to be held in Pretoria and called "Forward With Confidence," will be the first major meeting of government and business officials in five years.

"The government remains committed to establishing and maintaining an investment climate," Botha said.

The director of South Africa Steel and Engineering Industries Federation, Sam van Coller, said today that the EC sanctions represent a serious blow to the country's iron and steel sectors.

"A direct ban on iron and steel imports by the [Europeans] could spread to other markets," Coller said, adding that the new sanctions could affect 50,000 jobs in the iron and steel industries. If coal sanctions are imposed, an additional 43,500 jobs in iron and steel would be affected, he said.

Coal industry officials said upward of 50,000 black coal miners could be thrown out of work if coal sanctions are imposed, although independent industry analysts said that the estimate would not hold up if South Africa was successful in expanding in markets in Taiwan, South Korea and Hong Kong, as it has been attempting to do.

South Africa, a traditonally self-reliant nation, has gradually been adopting a defiant attitude toward sanctions.

"Sanctions-busting" has already emerged as a potentially major business here with "unconventional trading" sections established in several government ministries and plans being made to circumvent import bans with a mixture of ingenuity and brazeness developed over years of threats by the world community to impose punitive economic measures unless the apartheid system of racial segregation was not dismantled.

South Africa's gold exports—at relatively high prices of over $400 an ounce—provide it with enough hard currency to pay premium prices to keep the economy running, along with revenues from such strategic minerals as platinum, manganese, chromium, vanadium and rhodium. Government officials say that it is unlikely that western nations can do without these strategic ores, and that the mere threat of being cut off from South African exports is a factor to be considered.

Mrs. **HAWKINS.** Mr. President, the question before us whether to override the President's veto of the South African sanctions legislation we passed earlier this year. I must admit that the question before this body is a difficult one for me. On the one hand, as a supporter of this bill when it was before this body in August, I believe a limited and balanced sanctions package will encourage the South African Government to move more forcefully toward reform. On the other hand, as a strong supporter of President Reagan, I believe that this body should give him the authority to freely exercise his responsibility to represent our Nation in foreign policy. How I ultimately resolve this question turned on determining which path would result in the best overall policy toward South Africa.

I believe that there is greater consensus on this issue than the upcoming vote will reflect. Everybody involved in this issue agrees that apartheid is wrong and that we need to send a strong signal to the government of South Africa about our feelings toward apartheid. I also think that there is general agreement that a number of economic sanctions are required to reinforce our message to the government of South Africa and move that government toward reform. President Reagan's willingness to sign an additional executive order imposing a number of the sanctions included in the bill before us is evidence of this consensus.

There is disagreement, however, about the proper scope of the sanctions to be applied and whether the sanctions should be purely punitive. I believe it would be wrong for us to adopt a policy of purely punitive sanctions that would attempt to weaken South Africa or precipitate a crisis that would topple the current regime. Such a policy would needlessly run the risk of replacing the current regime in South Africa with one that may be worse or result in a condition of uncontrolled anarchy. This is the reason I could not support the bill passed by the House of Representatives earlier this year. I do not believe that the bill as finally adopted and presented to the President is the kind of purely punitive measure adopted by the House.

My reservation about overriding the President's veto of this measure rests on my feeling that an override may permanently undermine the possibility of obtaining a truly bipartisan, consensus policy toward South Africa. There is much that has occurred in the debate over this issue that has polarized the various groups involved. I believe that there has been a tendency by some involved in this debate to view this issue as a domestic civil rights issue as opposed to a foreign policy issue. I believe that proponents of this legislation, who are outside this body, seriously weaken their cause by implying that opponents of this measure are either racists or opposed to civil rights. Any attempts to portray President Reagan as opposed to civil rights on the basis of his views on this issue are wrong and misleading and this Senator will not be a party to any such effort. I must say that this aspect of the debate made me less likely, not more likely, to support the bill when it was before us in August.

As I stated earlier, however, my real concern with regard to overriding the President's veto is whether an override will leave us with a stronger policy toward South Africa. As much as I believe that the provisions of the bill we passed will encourage the South African Government to move toward reform, I also believe that if we start an unending battle over specific aspects of our policy toward South Africa that policy will be seriously weakened. Secretary of State Shultz has said if the veto is overridden, "We can't have a two-track policy. The Congress takes over the policy. There is no way they can manage it." I agree with the Secretary that the Congress cannot manage a foreign policy program without some cooperation from the executive branch. We must make such we exchange the current policy for a better policy, not exchange the current policy for an endless domestic debate. A continuing debate of that sort will result in not having any clear policy toward South Africa.

Thus, the question that is important to this Senator is how we can most easily and quickly rebuild a consensus in our policy toward South Africa. The choice we face is sustaining the veto and starting all over again in the next Congress or overriding the veto and working with the administration to form a new consensus around a new policy. If we opt for starting over again by sustaining the President's veto we will abandon a measure that I believe would serve as an impetus for peaceful change. If we opt for forming a new consensus around a new policy by overriding the veto, we must also assume the responsibility of overcoming the divisiveness of this debate. We must invite the administration to participate in the management of this new policy. The Congress, as the Secretary of State has pointed out, cannot manage the program by itself. The Congress can build this new consensus by realizing that some of the things the administration is saying about South Africa are right. I must admit, however, that building this new consensus in the event of an override will not be easy. It will take patience and perseverance, but it can be done.

Mr. President, I believe that we can best achieve a new consensus on our policy toward South Africa by not abandoning the efforts we have made here in Congress so far. Thus, I will vote to override the President's veto of H.R. 4868. I do so with some reluctance. But I also do so with the hope that we will quickly move to reconcile the differences between us on this issue and arrive at the kind of consensus we need to manage a successful policy toward South Africa.

Mr. **LEAHY.** Mr. President, there comes a time when the Congress of the United States can no longer acquiesce in a policy toward South Africa that has put us squarely on the wrong side of history. Fifteen percent of the population of that country cannot hold the other 85 percent in bondage forever.

The South Africa Government has made it clear that it will consider anything less than this sanctions legislation a major victory. A vote to sustain the President's veto would be seen as support for the Botha government's policies, no matter what the United States says to the contrary. I intend to vote to override the veto because the United States cannot afford to be seen as willing to tolerate apartheid, or to stand by and let events in South Africa careen out of control.

The time is coming when South African blacks will control their destiny. The question before us is how we can best influence the white government to make the fundamental reforms, including the immediate abolition of apartheid and full political participation by blacks, before the outbreak of a full-scale civil war. Our task is to do what we can to make the white government come to its senses, to end apartheid, and begin negotiating seriously about the future of South Africa, a future of peaceful coexistence between the races.

Overwhelming bipartisan majorities of both the Senate and House have voted for these economic sanctions. That was because we have lost patience with a South Africa policy that has utterly failed, and because we are not prepared to stand by and see that country go up in flames. We are tired of being told to wait, not to interfere with diplomatic efforts. This isn't interference. This is a historic opportunity to show the world that America is true to its most sacred principle—that all human beings are created equal. If South Africa wants to do business with us it is going to have to start honoring the fundamental human rights of all its people.

This sanctions legislation will not bring the Botha government to its knees. Nor should sanctions be our whole policy. The United States should undertake high-level diplomacy aimed at bringing together representatives of blacks and whites, and to assist the frontline African nations whose economies are so dependent on South Africa to break free of apartheid's grip. It is profoundly disappointing that the administration has chosen not to join Congress in rejecting apartheid with one voice. To do anything less would be to turn our backs on the millions of blacks and whites who want democracy and freedom, and on the principles that each of us holds dear.

Mr. CHILES. Mr. President, the vote today to override the Presidential veto of the sanctions bill is an important time in the 99th Congress. Clearly, the Senate offers not a rejection of the President but rather a projection of the will of the American people on this issue.

I agree that the imposition of sanctions will not, all by itself, remove this rancid system of state-enforced racial segregation from South Africa. Indeed, that must be accomplished by South Africans—both black and white. I believe that South Africans will do just that. The shoulders of South Africa are not broad enough to continue to carry this heavy burden called apartheid.

It is important, Mr. President, that the people of South Africa know that the people of the United States of America no longer support the cruel state-enforced segregation which is inflicted on the black citizens of South Africa.

The administration's response to each new violent occurrence in South Africa has been singular—"Let's wait, the government will change." The truth is the government hasn't changed, the wait has already been too long and while sanctions will not be a cure-all, a panacea, clearly the people of this Nation may well be proud of this body, this Congress.

Mr. President, we've heard a great deal of discussion about the impact of sanctions on the very people we're trying to help—the poor blacks in South Africa. Leaders in the black community in South Africa—Rev. Alan Boesak and Bishop Desmond Tutu have declared their support for sanctions. Yes, sanctions may cause short-term pain but they seem to be necessary in order to ensure long-term gain. Blacks in South Africa have suffered for 40 years under the yoke of apartheid; they have indicated a willingness to suffer some more in the interest of freedom.

The administration has responded to each new outrage from Pretoria with cosmetic replies. The current response is simply to name a black ambassador to South Africa. The problem has been not with the messenger but with the message.

The message to the South African Government in the Congress is that a change in their policies must come.

I sincerely hope that the President of the United States will join with Congress in singular voice to speak for freedom and justice in South Africa.

Mr. ROTH. Mr. President, I am aware that many Americans differ over the correct U.S. policy toward South Africa. However, I do most fervently hope that we all agree that the apartheid constitutes a gross moral wrong and that it is the duty of the United States and all free nations to strive for its abolition.

I shall not vote to override the President's veto light-heartedly. Nevertheless, I find that I cannot, in all conscience, support the President on this issue. His southern Africa policy has failed and now is the time for change. The congressional bill on South Africa may not represent the best policy, but it does represent a considerable improvement over the administration's current, failed policy. Mr. President, the State Department simply refuses to recognize that its southern Africa policy has utterly failed to achieve any of the goals set in 1981. Under the circumstances, a vote to sustain the veto would constitute a vote to condone not only a failed policy but continued adherence to that failed policy. Mr. President, we can all fail at our appointed tasks, but we owe it to ourselves and to our country to recognize those failures and to change our course. The strong recognize their own failings; the weak persist in ignoring them.

I cannot close Mr. President, before commenting on one broadly held opinion, namely, that this Government should not act because the South African Government is determined to reform itself. Anyone who believes this, Mr. President, should study State President Botha's (Boata's) statements of this week. He has declared, quite definitely, that there will be no general election, no change of leadership and, consequently, no change of course, in 1987. On the contrary, his government now asserts that its primary task is deflating the "overinflated expectations" of the black majority. Any government which can look at the current South African situation and draw that conclusion is severely lacking both in human compassion and political insight. We can place no faith, either in its heart or in its head.

Mr. ROCKEFELLER. Mr. President, as we debate President Reagan's veto of the Anti-Apartheid Act of 1986, racial repression and political polarization in South Africa tragically continue to accelerate. Over 10,000 blacks have been jailed during the current "state of emergency." The prospects for reconciliation are growing worse daily. Continued inaction on our part can only contribute to further disintegration in South Africa.

In my view, President Reagan—by refusing to match rhetoric with action—is prolonging the racist policy of apartheid and dimming the prospects for national reconciliation. When the Congress last year passed legislation to impose tough sanctions, the white business community in South Africa pressured President Botha to undertake reforms—because it hit them in their pocketbooks. Mr. Reagan vetoed those sanctions and gave apartheid a reprieve. This year, we must not again let America's message be compromised.

Apartheid is a moral as well as a political issue for Americans. We are right in wanting to take a strong and unambiguous moral stand against the evil policy of government-sanctioned racial repression. We are also acting in our own national interest in doing so: civil war in South Africa could seriously jeopardize important American security interests.

Despite pleas from leading Members of his own party in Congress to adopt a more aggressive antiapartheid policy, the President continues to cling to his failed policy of "constructive engagement." In the face of continuing intransigence on the part of the South African Government, President Reagan in August actually rewarded Pretoria by increasing textile import quotas from South Africa. And now President Reagan has chosen to veto the moderate sanctions legislation which passed the House and the Senate last summer by overwhelming margins.

Congress and most of America's allies, including the so-called Eminent Persons' Group of the British Commonwealth, are convinced that sanctions are necessary. Blacks in South Africa, like Bishop Tutu, also support sanctions as a necessary means of placing pressure on the Government in Pretoria. Undoubtedly, some blacks will be harmed when sanctions are invoked, but they are being killed in the streets of Soweto while President Reagan pursues "constructive engagement." Tragically, things may have to get worse before they get better.

Mr. President, I am under no illusions that sanctions will end apartheid tomorrow. Nor do I think that the grave predictions of economic hardship painted by the administration will come to pass. I am convinced, however, that our sanctions in concert with those of our allies will place very real pressure on the white government and its supporters to begin a process of dialog with legitimate black leaders, including the exiled African National Congress.

Congress has moved decisively to fill the void created by Reagan's lack of leadership. The 1986 Anti-Apartheid Act which passed the Senate on August 15 contained several new sanctions: no landing rights for South Africa Airways; no new United States investments in South Africa; a ban on the import of South African coal, steel, uranium and agricultural products. These could be lifted if the white government engages in a real dialog with legitimate black leaders, including Nelson Mandela, and ends the state of emergency. Further sanctions are envisioned if no progress is made.

A more radical sanctions bill—calling for a trade embargo and total disinvestment—was adopted by the House of Representatives in July. A similar measure was offered as an amendment to the Senate sanctions bill. I supported this—not because a total pull-out would be the most effective way of pressuring South Africa to end apartheid—but because it sends a strong message to the White House and to the South African Government that we are prepared to contemplate drastic measures if progress is not made.

President Reagan is wrong in his policy toward South Africa—and in his criticism of this bill. This is not the "cut and run" policy the President chided in his July speech. It is appropriate pressure on the white South African ruling party to adopt real reform before it is too late. It is the right thing to do morally. It is in America's national interest. The President, in vetoing the South African sanctions legislation, is not acting in America's best interest nor is he speaking for the American people. I urge my colleagues to override the President's veto.

Mr. DODD. Mr. President, in the middle of August, a measure to impose sanctions on the government of South Africa was shaped, debated, and approved by an overwhelming majority of the Members of this body.

Fashioned by a bipartisan majority of the Foreign Relations Committee, its passage seemed a foregone conclusion given the near unanimity of opinion in the Congress and among the American people. Something had to be done—and it had to be more than what the administration was prepared to do on its own. Our challenge was to shape a measure that delivered loudly and clearly a message of stern opprobrium to the government of South Africa but which minimized the impact of economic sanctions both on the South African people and on American concerns which stood to lose from a disruption in investment and trade.

Under the very able guidance of the distinguished chairman of the Foreign Relations Committee, our diligence and persistence paid off, and we passed an extremely well-crafted and potent sanctions package. It captured the essence of what most of us felt should constitute a good bill: it expressed condemnation, it contained both the carrot and the stick, and it did not threaten the South African economy with the severe disruption that more sweeping measures might have brought.

Mr. President, it is a grave disappointment that the President has chosen to veto this measure. It once again demonstrates the depth of the President's conviction, but it betrays a disturbing contempt for his responsibility to respond to the views of the electorate. More disturbing than that, however, I think it displays a contempt for the capacity of the American people to comprehend South African reality and its implications for our foreign policy. How unfortunate, because the American people, I submit, understand administration policy and so-called constructive engagement with greater comprehension than perhaps our President himself.

They understand that it means pumping dollars, energy, and expertise into a racist, elitist economic system. They understand that it means continuing to finance an apparatus of repression and state violence. And they understand that it means placing our faith in Pretoria's dubious promises when our own history tells us radical change does not happen without the compelling force of those who will no longer tolerate their condition.

It is a policy which this Congress has rightly and overwhelmingly repudiated. Even the limited sanctions imposed last year yielded a positive impact—on the pass laws, which have been abolished; on funding for black education, which has increased sevenfold; and on restrictions on private life such as the intermarriage laws, which have been lifted. I would like to believe that the South African Government made those changes because they thought it was right. But I don't believe that, any more than any one else in this Chamber. Those changes were made because the message of last year's sanctions got through, and the time is now ripe to send another, stronger message. That message is contained in the bill before us.

We must stand by it. There is no man or woman with a seat in this Chamber who would question the authority of the President in the formulation and conduct of U.S. foreign policy. But by the same token, the U.S. Congress has a very important role to play in that process—a role of great responsibility and of great seriousness—but a role the President appears unwilling to concede, at least with respect to South Africa.

The challenges of formulating policy toward South Africa go far beyond routine diplomacy or the day-to-day management of our Embassy in Pretoria. The policy we write today reflects profoundly on the character of the American people and on the values we cherish. We cannot compromise, because this policy will convey this Nation's most profound moral judgment. It is a judgment the American people are fully competent to make, and by now have made, and it is now up to our national leaders to commit themselves to carrying it through.

That commitment is one that the current administration is not prepared to make. It was made in this Chamber several weeks ago, and it ought to be reaffirmed today.

Mr. President, before I yield the floor, I have a final and very important point. In the aftermath of congressional approval of the bill before us, considerable controversy arose over the issue of the preemption of State and local antiapartheid measures. The President indicated on Monday that the expanded Executive order which he intends to issue would constitute a "complete and comprehensive statement of U.S. policy toward South Africa, with the intent of preempting inconsistent State and local laws." During the Foreign Relations Committee's hearings on South Africa in July, I pointed out that the adoption of antiapartheid measures by State and local governments has helped to shape our views on this issue and also create an additional set of pressures for a change in American policy toward South Africa. Preemption would remove those pressures and deny Americans an opportunity to express their outrage over apartheid through activities directed by State and local governments.

The Foreign Relations Committee did not address the preemption issue during its deliberations on the South Africa bill. However, the issue arose during debate on the floor in connection with an amendment offered by Senators D'AMATO and MOYNIHAN. That amendment, which I supported, would have allowed State and local governments to enforce their antiapartheid laws with respect to contracting and procurement without losing Federal funding as long as those entities assumed the excess financial costs of choosing a higher bidder. In opposing this amendment, the distinguished chairman of the Foreign Relations Committee stated his view that the South Africa sanctions bill "occupies the field" and therefore supersedes all State and local antiapartheid measures.

While I respect the chairman's views and commend him for his work in forging a bipartisan consensus on this bill, I do not believe that there is any language in the bill which constitutes preemption. It was certainly not my intention in voting for this bill in August to limit or affect in any way the authority of State and local governments to adopt antiapartheid measures. I might note that the House of Representatives took the same position when it passed the Senate's bill on South Africa. The grassroots antiapartheid movement has played an important role in bringing us to the point that we are at today. I believe that we must let that movement, which is a testament to the openness and health of our system, flourish.

With these points in mind, I urge my colleagues to override the President's veto of the measure pending before us and to reaffirm our national commitment to the dismantling of apartheid in South Africa.

Mr. DURENBERGER. Mr. President, I rise to support the motion to override the Presidential veto of the Comprehensive Anti-Apartheid Act of 1986. I regret that this body is forced to consider sanctions of this type; it is even more regrettable that to enact sanctions we must act over the objection of the President of the United States.

In considering the issue of sanctions yet again, we must remember that the real issue is not the imposition of sanctions against the Republic of South Africa. Sanctions are merely a means to an end. In the debate over sanctions, many have lost sight of the real issue: how can our country best foster constructive change in South Africa. The Anti-Apartheid Act is one step I believe the United States should take toward the objective all of us share, dismantling an abhorrent form of government and replacing it with a more humane and just system.

I do not lightly support a policy of sanctions. Such a policy is only justified in unique circumstances. I believe the internal policy of the South African Government reflects the kind of institutional disenfranchisement and suppression of individual liberty that compels the United States to take the harsh road of sanctions.

Secretary of State Shultz argues that President Reagan is in closer touch with the desires of the American people than is the Congress on the issue of United States policy toward South Africa. He cites President Reagan's enormous electoral victory in 1984 to support this contention. But on the issue of our policy toward the minority government of the Republic of South Africa, Mr. President, the evidence is to the contrary of Secretary Shultz' claim. The overwhelming vote to override President Reagan's veto in the House of Representatives, and the vote to override his veto in this body that I expect to take place shortly, shows just how wrong he is.

I fear that the President does not appreciate the depth and breadth of American public opinion on the need for the United States to play a forceful, positive role in ending apartheid. In my home State of Minnesota, for example, I have been contacted by representatives and members of Lutheran churches who have traveled to Southern Africa and seen firsthand the horrors of apartheid. Through their contacts, their work, and their travels, these people are aware of the tragedy of apartheid. I have heard their message and they demand that the United States take a stronger position in bringing about peaceful change in South Africa.

Our Nation cannot afford to continue to have two policies toward South Africa, one from Congress and one from the administration. The President has an obligation that no one else in Government can fulfill. He must use the full resources available to the executive branch to inform the American people about the situation in South Africa. He also has an obligation to provide this information to Congress, and to detail what he hopes to achieve, and what tools he plans to use in pursuing his goals. Unfortunately, he has not done so to date.

Mr. President, I fully understand that the imposition of sanctions is a grave step, and one which may affect the United States as well as the targeted Nation. In my home State of Minnesota, when thousands of my constituents think of economic sanctions, they think of the ill-fated "Soviet grain embargo" imposed by President Carter following the invasion of Afghanistan. The effect of those unfortunate sanctions is still being felt in hundreds of farming communities which are now fighting to stay alive amidst the influence of world economic forces far beyond their control.

But, Mr. President, it is important to remember that any negative effects resulting from the passage of the Anti-Apartheid Act are the consequence of actions and policies of the South African Government. This body would not be voting on sanctions at all if it were not for the Botha government's continued intransigence and tyranny.

A threat to reduce purchases of grain by South Africa is both degrading and foolish. We understand on this floor and across this Nation that sanctions always cut both ways and always bear a cost. I hope the vote we cast this afternoon will be an educational experience for Mr. Botha and for South African farmers, and that they will come to understand that the American people are more than willing to pay a price in defense of our principles.

U.S. foreign policy should seek to support those governments that strive to ensure individual liberty and improve the human condition; it should also seek to oppose those governments that make a mockery of individual freedoms and condemn the bulk of their citizens to lives of despair.

No one has seriously argued that the apartheid system in South Africa is anything but morally repugnant. Too many years of apartheid have sown the seeds of hatred among the black majority in South Africa. No one doubts that change will come to South Africa—even Boer extremists are beginning to recognize the inevitability of change. But the heart of the issue before us today is how United States policy can play a positive role in encouraging peaceful change in South Africa.

For the United States to be a constructive force in South Africa, our policy must do two things. It must unequivocally support those elements within South Africa that advocate nonviolent change. American policy must also make it perfectly clear to the South African Government that our Nation will not condone—in any way—policies which are antithetical to the principles that form the essence of our democracy.

I believe the Anti-Apartheid Act supports both of these fundamental objectives. The sanctions do have teeth, enough teeth to send a strong signal to the South African Government that the United States will not tolerate the kind of repression and injustice embodied in apartheid. Any action less than an override of the President's veto would be interpreted by the Botha government as a victory. This body must not give any reason for celebration to a government that systematically denies even the most basic freedoms.

The act also contains provisions which indicate that the United States supports the victims of apartheid and gives hope to those working for a peaceful path for South Africa. These measures—scholarship programs, aid to nongovernmental organizations, support for human rights, encouragement of businesses which follow the "Sullivan Principles"—direct American efforts toward those South Africans that must play an increasing role in their country's future if further bloodshed is to be avoided.

I support sanctions which oppose the Government; I do not support sanctions which will harm the South African people that have suffered so much already. There is no justice in punishing people that have the misfortune to live under apartheid. The Anti-Apartheid Act is not perfect and I do have concerns about some of its provisions. Any economic sanctions that are effective will cause economic dislocation. But this is not a reason to oppose sanctions in and of itself. How many of my colleagues opposed imposing sanctions against Poland after the imposition of martial law, sanctions which unquestionably caused economic disruption that made life more difficult for the Polish people? The answer to economic problems caused by sanctions is to aid those South Africans affected, not to refrain from implementing measures which send a long overdue signal to the South African Government.

There is no doubt that many elements in the opposition to the Botha government do not share the United States objective of peaceful change in South Africa. The African National Congress has Communists among its members and its leadership. But the presence of Communists in the opposition does not mean the United States should not support the forces of democracy in South Africa. It does mean that we must exercise insight and judgment in our efforts to isolate extremists and reinforce moderates. South Africa does not have to end up with a government that merely replaces one form of tyranny with another. The challenge for the future is for the United States to place itself on the side of those working to ensure democratic change.

As I indicated when I began, we must remember the underlying objective of our policy: aiding peaceful change in South Africa. The Anti-Apartheid Act should not be viewed as the sum total of United States policy for South Africa. It is an important step that must be followed by further actions. The Reagan administration has recently shown a willingness to review its policies toward South Africa. The appointment of Edward Perkins as U.S. Ambassador is a positive sign. I sincerely hope that our policy can move beyond a discussion of sanctions and on to what the United States should do next.

I congratulate the patient efforts of the distinguished chairman of the Foreign Relations Committee. He worked tirelessly to try to bring the President into line with the desires of the Congress, and the desires of the American people. I hope that our action today will lead to greater action on the part of the Reagan administration.

The process of change in South Africa is going to continue in South Africa. There is no easy solution to the problems in that land and we should have no illusions that sanctions are a magic formula. Internal political dynamics in South Africa are such that the process of change is exceedingly difficult. There are some whites that will never accept change in the current system. There are elements in the opposition that will accept no compromise short of total revolution. The United States objective should be to stand with the majority of South Africans that desire only peace and freedom. Sanctions are a clear signal that we do stand with this majority of South Africans. When the inevitable change comes, the passage of the Anti-Apartheid Act will enable us to credibly deal with those forces in South Africa who desire neither bloodshed nor tyranny.

The Anti-Apartheid Act provides a point of departure for the development of a long-range policy that will facilitate the process of peaceful change in the Republic of South Africa. I do not doubt the difficulty of the task I have outlined here but I also do not doubt that we have an obligation to develop and implement a strategy that matches our objectives—an obligation to South Africans, to ourselves, and to the world.

Mr. NICKLES. Mr. President, I rise today to make a strong statement against the abhorrent system of apartheid in South Africa. Some time ago I remember seeing blacks refused service in restaurants and hotels. To see human beings treated with such contempt was distrubing to me then, and is loathsome to me now. I want to be sure that we, as Americans, do all we can to alleviate the pain, suffering, abuse and violence to which the black majority in South Africa is being subjected. The blatant racial discrimination in the education system, in the ability to travel and live where one wishes, and the lack of basic human rights in the apartheid system of South Africa must be changed.

With the vote by the Senate on August 1, we sent a message to President Botha and the South African Government that we did not then, and do not now, believe that the dismantling of the apartheid system is progressing quickly enough and with sufficient good faith. I support action to pressure the South African Government to change. The question today before the Senate is, which means shall we choose.

President Reagan's letter to the distinguished majority leader outlines the President's proposal for more limited sanctions than the package previously approved by this body. The sanctions proposed by the President are directed to apply pressure to the white minority government in South Africa, and are intended to assist the blacks, coloreds, and Asians whom we profess to be helping get out from under the yolk of racial and political oppression. The principal differences between the two packages are that the congressional bill places embargoes on coal, uranium, textiles, and agricultural commodities.

This week many signals have been received from the South African Government that any ban on United States imports of South African agricultural goods will be met with a similar South African ban on importation of American agricultural goods.

From an Oklahoma perspective, I share the concern of Oklahoma agriculture leaders who feel the bill before us will lead to an embargo of U.S. agriculture exports. I have spoken with leaders of the Oklahoma Wheat Growers Association, the Oklahoma Soybean Association, the Oklahoma Farm Bureau, the Oklahoma Farmers Union, and the Oklahoma Wheat Commission. Based on their experience and counsel, today I vote with the Oklahoma agriculture community in hopes of preventing another grain embargo we can ill afford.

In Oklahoma, we depend on exports. Eighty percent of our wheat and approximately 50 percent of our cotton and soybeans are shipped into overseas markets. We have suffered a tremendous loss of export markets that began with the Soviet grain embargo. Have we not learned, We saw our share of the Soviet market fall from 70 to 25 percent following that grain embargo.

Currently, South Africa is the largest cash customer of Oklahoma wheat. We grow hard, red, winter wheat and they've bought 163,000 tons of it this year. According to the Oklahoma Wheat Commission, South Africa is going to purchase 500,000 tons annually from someone. The Oklahoma agriculture leaders I have spoken with feel this is a growing market we cannot afford to lose. Given our depressed agriculture economy, we cannot afford to lose any market.

History shows farmers lose under embargoes and our competitors win. And when Oklahoma farmers lose sales, the loss is felt in the small business in rural communities and throughout the whole Oklahoma economy.

During Senate consideration of this bill during August, I offered an amendment which was narrowly approved designed to exempt agriculture export programs from the economic sanctions. It is a positive amendment for Oklahoma and can allow us to remain competitive for this market, but if the whole bill shuts us out of the market, the amendment's effect is crippled.

Mr. President, the views of the Oklahoma agriculture leaders I spoke with was appropriately summed up in a letter I received from James Lockett, president of the Oklahoma Farm Bureau. I ask unanimous consent the text of the letter be printed in the RECORD following my remarks.

I would also ask unanimous consent that the text of a letter written by Mangosuthu G. Buthelezi, Chief Minister of Kwazulu, to the distinguished majority leader also be placed in the RECORD following my remarks. I hope that my colleagues have all had a chance to read Chief Buthelezi's letter. The Chief pleads the case of the South African sugar industry—only a small part of their entire agricultural economy. In the sugar industry 150,000 black workers are employed. Of a total of 25,000 sugar farmers, 23,500 are black. Some 900,000 blacks are interdependent on this industry. The sugar industry relies on exports and constitutes 30 percent of the agricultural exports to the United States. How do we help eliminate apartheid by causing thousands of blacks to lose their jobs? The resulting unemployment will only lead to an increase in violence and bloodshed, which is what we all desperately want to avoid.

I support sanctions aimed at bringing about needed changes and believe the strengthened administration sanctions will not cost hundreds of thousands of black South Africans their job and will not cost American farmers additional markets which we desperately need to maintain.

There being no objection, the letters were ordered to be printed in the Record, as follows:

Oklahoma Farm Bureau,
Oklahoma City, OK, September 24, 1986.
Hon. Don Nickles,
U.S. Senate,
Washington, DC.

Dear Senator Nickles: This letter is in anticipation of the President's veto of the bill calling for sanctions against South Africa.

Even though the bill was amended to exempt our sales to South Africa of farm products, there is also an amendment to prohibit the purchase of farm products from that nation.

The other sanctions in the bill almost guarantee that South Africa would buy no products from this nation if they are available anyplace else in the world.

South Africa is our ninth best customer for wheat.

South Africa is the only major customer that pays in cash.

On the one hand, we are desperately trying to increase exports, and here is a bill that will decrease them.

Farm Bureau policy states that "we oppose any export restraints . . . except where national security requires such action." We see no threat to our national security from South Africa.

The loss of sales to the USSR because of the last grain embargo is a major reason for today's depressed agricultural situation. In other words, we haven't gotten over the last embargo yet!

We urge you not to vote to override the veto.

Sincerely,
James L. Lockett,
President.

Ministry of the Chief Minister,
Economic Affairs and Police,
Kwazulu, September 8, 1986.
Hon. Senator Dole,
Hart Office Building,
U.S. Senate, Washington, DC.

Dear Senator Dole: In the wake of the Senate's vote on sanctions legislation, permit me to address a personal letter to you because of my deep concern at the turn events are taking with regard to our sugar quota. My concern is for my people, large numbers of whom are involved in the South African sugar industry and who depend on it for their livelihood. The quota is in itself of great importance to the economy of Natal-KwaZulu because of the premium price obtainable. This is especially so in the current low-priced world market. But more than that, I fear that action by the United States to removing the quota will trigger action by other countries which purchase Natal sugar. This would be disastrous and would result in great suffering among my people.

You are aware of my deep appreciation of the support of the American people in our efforts to rid our nation of apartheid. My plea to you is to do all in your power to protect us from a course of action which can only retard the upliftment of blacks in this country and bring great suffering without necessarily shortening the road to the liberation of all people in South Africa.

I do not believe that punitive economic sanctions directed towards a labor-intensive industry which employes large numbers of blacks, and which has over 23,000 black farmers will achieve what you and your fellow Americans most ardently desire. In the end, there is little righteousness or moral justification in taking the bread away from the mouth of a poor black child and giving it to a poor Filippino child. Each needs sustenance, but the black child will go without if the action of the Senate prevails.

Yours sincerely,
Mangosuthu G. Buthelezi,
Chief Minister of Kwazulu and
President of Inkatha.

STATEMENT TO CLARIFY THE INTENT OF THE PROHIBITION OF NEW INVESTMENT IN SOUTH AFRICA

Mrs. KASSEBAUM. Mr. President, the question has been raised whether the prohibition on new investment in South Africa that is contained in H.R. 4868 could be interpreted to prohibit a United States firm from financing the steps that are necessary or appropriate to curtail or dispose of business interests in that country, consistent with good business practices. For example, it may be necessary for the United States firm to provide funds to a controlled affiliate in South Africa to provide severance payments or other financial support to employees laid off or separated by reason of business curtailment or a sale to other parties. Another illustration is one in which a business in South Africa is to be sold to its local employees. The U.S. parent company may find it necessary or appropriate to provide funds or credit, directly or indirectly, to help finance the sale.

It is not the intention of the Congress in enacting this legislation to prohibit loans or investments that facilitate orderly disinvestment or curtailment of activities in South Africa. Any funding arrangement that has the purpose and effect of curtailing or eliminating United States investment in South Africa is not prohibited. Regulations implementing the legislation should be consistent with this basic purpose.

Mr. BINGAMAN. Mr. President, I rise today to comment on the President's decision last Friday to veto the sanctions legislation passed overwhelming in both the House and the Senate and overridden in the House just a few days ago.

Two and a half months have passed since we listened expectantly for the announcement of a new South Africa policy from the White House. But there was not new policy. Congress responded by taking the matter into our own hands, enacting far-reaching sanctions against South Africa and thereby signaling an end to our Nation's tolerance of that country's injustice against its black majority.

On July 22 the President said that the United States "cannot maintain cordial relations with a government whose power rests on apartheid." And yet by vetoing the sanctions legislation which had broad bipartisan support in both Houses, the President has contradicted himself. He has rejected Congress' efforts to end "cordial relations," choosing instead to tell the Pretoria Government that he is unwilling to punish it for its actions.

The President's willingness to back the South African Government would not be so offensive had it been in response to sincere reforms there. Instead, by refusing to sign the sanctions bill we sent him with an 82 to 14 vote, the President is rewarding the South African Government for its continuing violations of the basic human rights we take for granted in democracies around the world. This despite the Botha regime's continuing refusal to lift the state of emergency it declared early this summer, an act the President himself has requested. Just last week the New York Times reported that the South African Government has stepped up its restrictions on the flow of information there. These additional restrictions indicate that the government's grip on the basic rights of its citizens has only tightened in the past 3½ months.

Despite the censorship, some international journalists have risked detention and arrest to compile estimates of the numbers killed in the climate of violence and fear instituted with the state of emergency. The Washington Post estimates that nearly 300 South Africans have been killed since the government's action on June 12. In the past 2 years of unprecedented violence, 2,200 have died needlessly. While the situation has worsened measurably in the past few years, the conflict is not new. One need only recall the Sharpesville massacre of 1960 to know that apartheid has been long in crumbling.

The President apparently is not mindful of that historical context, nor does he seem bothered by the quickening pace of violence and oppression by the South African Government in recent years. Keep in mind that Congress has not acted hastily in passing these measured sanctions.

It is clear to me, however, that the South African Government will not begin to dismantle apartheid willingly. Their actions indicate just the opposite—that they will hold back as long as possible, no matter how high the death toll. It is my hope that the sanctions we enact today work to hasten the South African Government's realization that it cannot hold out any longer, that it must begin negotiation with the antiapartheid agents of the majority of its people. I am not naive enough to believe that our vote today to override the President's veto will have an immediate or definitive impact on South Africa. My conscience, however, does not allow me to forego the chance that our action might have a positive effect.

Mr. **EAGLETON.** Mr. President, for almost 6 years this administration has told Congress and the country that "quiet diplomacy," "constructive engagement," and "restraint" are the operative tools for a successful foreign policy toward South Africa. For almost 6 years, quiet diplomacy, constructive engagement, and restraint have not moved the South African Government. For almost 6 years, the situation in South Africa has deteriorated steadily.

In October 1985, the Commonwealth Group of Eminent Persons [EPG] was charged with the task of formulating a policy for the 49 Commonwealth nations, including the so-called front-line nations, to advance peaceful change in South Africa. In June of this year, the EPG issued its thoughtful and compelling report, concluding that "while the South African Government claims to be ready to negotiate, it is in truth not yet prepared to negotiate fundamental change, nor to countenance the creation of genuine democratic structures, nor to face the prospect of the end of white domination and white power in the foreseeable future. Its programme of reform does not end apartheid, but seeks to give it a less inhuman face."

In the same Eminent Persons Group report, they stated:

> It is not whether economic sanctions will compel change; it is already the case that their absence, and Pretoria's belief that they need not be feared, deters change.

The administration condemns this package of economic sanctions because they would hurt blacks. The sanctions will hurt blacks, there can be little doubt about that, but blacks are infinitely more hurt by the repugnant system of apartheid.

Mr. President, the antiapartheid legislation approved by Congress is in large measure symbolic. South Africa's President Botha has made public his government's plans to evade virtually every sanction contained in this bill. What President Botha cannot evade, however, when we override President Reagan's veto, is the clear and unified message, on a bipartisan basis, that the United States will no longer tolerate the status quo.

Mr. **HEINZ.** Mr. President, a month and a half has passed since this Senate voted overwhelmingly to adopt strong sanctions against South African apartheid, and nothing has changed to alter my commitment to end that evil system.

The attitude of the white government in Pretoria has not changed. If anything, it has become more defiant of world opinion, as the commonwealth countries and then the European Community imposed economic sanctions against South Africa. The more than 10,000 South Africans, black and white, being held under the state of emergency have not been freed. The violence in the townships has not abated. The muzzled press has not been made free. The commitment of South Africa to intimidate through violence all at home or in the region who challenge its doomed system of institutionalized racism has not weakened one bit.

The intransigent evil of apartheid has shown its resolve; now we must show ours. We have tried other ways. We have talked to the South African Government. We have tried more limited sanctions. The South African Government has not only ignored our warnings; it has violated pledges made to the President. We believe it is time to send a clear message to the South African Government. If we fail to act now, with thousands in prison because of their belief in human freedom and dignity, with thousands more suffering the terrifying oblivion of detention without trial, with others facing the bullets, clubs, and fists of the security forces in the streets, we break faith with the highest American ideals and the people of South Africa. A vote to sustain the President's veto would be seen as support for the South African Government and its appalling record on apartheid. The South African Government, as evidenced by the unprecedented lobbying of Senators by Foreign Minister Botha, is even using threats—no matter how carefully crafted the words—to get its way. We cannot allow this country to be cajoled or terrorized into support for apartheid.

Overriding a Presidential veto is a serious step, even more so in sensitive questions of foreign policy. But with all due respect to the President I believe this veto must be overriden, and I will vote to override it. The package of sanctions we passed in August is responsible, it is well-crafted, it is necessary. I submit, also that the fact that the administration has made a barely discernible effort to sustain the President's veto means that the administration is not so much opposed to the substance of this legislation as they are to Congress having a role in foreign policy. I do not question that having an active congressional role in the conduct of our Nation's affairs at home or abroad makes the Chief Executive's job more complex. But the Constitution defines our role as a coequal branch of Government, and this Senator believes we must meet our responsibilities squarely. Taking a principled stand on this legislation is our duty.

Mr. President, let me state for the record my view of the impact of this legislation.

Sanctions will not end apartheid. That is not a reason to oppose them. They will put the United States clearly on record opposing a system that is anathema to everything we in this body stand for. Sanctions will not magically change the minds of those Afrikaners who cling to their discredited creed of racial domination. They will let the white hardliners know that their choice is between apartheid and the best ideals of the American people.

I urge my colleagues to speak out for American values, to speak out against racism, to vote to adopt the South African sanctions legislation that this body wrote and passed overwhelmingly just a few weeks ago.

Mr. **CHAFEE.** Mr. President, I am voting today to override the President's veto of the South Africa sanctions legislation. Since I am usually a strong supporter of the Chief Executive's role as shaper and director of U.S. foreign policy, this is not a vote that I take lightly. However, I have concluded that the administration's South Africa policy is off the mark, and that these sanctions are required.

The President's well-intentioned policy of constructive engagement has thus far failed to move the Botha government away from its intolerable apartheid system, and shows no signs of ever doing so. Faced with an increasingly violent revolt on the verge of boiling over, and with mounting international pressure to dismantle apartheid peacefully, the South African Government has made clear its intention to dig in its heels and fight. In my view, given the high profile of the United States within South Africa—especially in trade and business—we have a responsibility to give our policy the force that mere rhetoric cannot provide. More than any other nation in the world, we have leverage in South Africa, and I believe that the time has come to use it.

These sanctions do not guarantee positive change in South Africa, but they represent our best hope for affecting such change. By halting new investments and loans in South Africa, banning key South African imports to the United States, and denying landing rights to South African aircraft, they will send the strong message of protest that we must send to the South African Government.

It is particularly important to me that although this is a hard-hitting sanctions bill, it does not call for complete disinvestment. It does not signify a total United States abandonment of the South African situation, a policy of cutting all our ties to South Africa, throwing up our hands and walking away. Some would prefer such an approach, but I believe we have a greater responsibility to black South Africans. As Senators LUGAR and KASSEBAUM have written:

> It is essential for us to resolve clearly and forcefully the issue of sanctions, which in the short term may have little effect on the status quo, and focus our efforts on shaping a framework for what must replace apartheid and unilateral white power.

In approving strong but limited sanctions, I believe that we have indicated our absolute rejection of apartheid and our support for real democracy in South Africa, as well as our desire to continue working for peaceful change there.

Because it is my hope that other nations will adopt a similarly strong but constructive attitude toward South Africa, I offered an amendment to this legislation that I hope will strengthen the effectiveness of these sanctions. My amendment, which passed the Senate and is included in the final version of the bill, calls upon the President to instruct our permanent representative to the United Nations to propose that the U.N. Security Council approve and impose the same kinds of sanctions as those imposed by this bill. This amendment is aimed at confronting apartheid in a unified and consistent way, and also at preventing other nations from undercutting the U.S. sanctions. I appreciate the support it has received and hope it will stimulate cooperative U.N. action on this issue.

Whatever direction other nations decide to take on the issue, the world is waiting for our decision on sanctions. That is as important a reason as any, Mr. President, for the Senate to override the Presidential veto. Because the United States is looked to for leadership on issues of civil and human rights, in the urgent case of South Africa we must clearly and unequivocally take a stand.

PRESIDENTIAL VETO ON SOUTH AFRICAN SANCTIONS

Mr. SIMPSON. Mr. President, I want to share with my colleagues just why I believe that the Senate should vote to sustain the Presidential veto of H.R. 4868, a bill to impose economic and political sanctions against South Africa. In August I voted, along with 83 of my colleagues, including the distinguished majority leader, to support this legislation. During consideration of H.R. 4868 the argument was forcefully made that the South African Government had done precious little to dismantle the brutal system of apartheid and that the President's Executive order from the preceding September was soon to expire. I agreed with the arguments at that time that it was important for the United States to continue to show its solid opposition to apartheid and that we would be sending the wrong signal to the Botha regime if Congress allowed the Executive order to expire without taking any additional actions.

Since that time, the President has reimposed the Executive order from last year which encompasses many of the sanctions which we included in the Senate bill, such as a ban on loans to the South African Government, a ban on all exports of computers to apartheid enforcing entities including the military and the police, a ban on the importation of South African Krugerrands, ban on the export of nuclear technology except that related to health, safety, and IAEA programs, as well as requiring U.S. businesses operating in South Africa to abide by the Sullivan principles.

On Monday of this week the President sent the majority leader a letter outlining a number of additional steps he is prepared to take to augment the original Executive order. These additional steps include such things as a ban on new investments other than those in black-owned firms or companies abiding by Sullivan principles; a ban on the importation of steel and iron; a ban on bank accounts for the South African Government; a requirement for a report on means to reduce U.S. reliance on South African strategic materials; $25 million in scholarships, education, community development and legal aid to disadvantaged South Africans and others who have been abused by violations of human rights; a requirement to consult with allies to coordinate sanctions policies; the imposition of severe criminal penalties for violations of the sanctions order; a requirement of a report on whether any of these sanctions has led to increasing dependence by the United States and our allies on the Soviet Union for strategic materials, and; a statement that the Executive order states the policy of the United States and preempts inconsistent State and local laws which under the Constitution may be preempted.

I have come to believe that in many ways the Executive order and the President's additional sanctions are superior to the Senate bill. In addition, the President asked for and I felt it important to lend my support to the President in my role as assistant majority leader—since it is going to be a very tough haul. Rather than indiscriminately attacking all businesses, the President would specifically target the awful force of apartheid by banning investment to only those businesses that do not abide by the Sullivan principles or those that are not black owned. H.R. 4868 would unfairly ban new investments in all corporations, no matter how many blacks they employed and no matter how hard the affected businesses may have worked for the equal opportunity of South African blacks. H.R. 4868 would do exactly what we have all said we do not want to do, and that is to hurt those that we most want to help.

During consideration of the legislation, the Senate accepted an amendment to ban the importation of agricultural commodities and products from South Africa. It is estimated that this action will result in the loss of nearly half a million jobs which support over 2 million workers and their families. With blacks accounting for the bulk of agricultural workers, such actions will only exacerbate the misery of black unemployment. The sanctions to be imposed by the President would wisely not include such a ban.

I am also supportive of the President's focus on the positive steps that can be taken, such as the coordination of sanctions with our other allies, the additional scholarship and aid money to victims of apartheid and, the requirement that a study be completed on the United States dependence on South African strategic materials. All of these steps are integral to a comprehensive policy against apartheid—which is something that H.R. 4868 sorely lacks.

That apartheid is to be condemned is, in my mind, beyond the scope of any debate. Who is "for" apartheid? Not one person in Congress. What remains for us to determine is how the government of South Africa can be best influenced to amend its policies. The United States has placed itself firmly on record as opposing the appalling system of apartheid. I believe that we must also associate our Nation with peaceful change and avoid steps that would further polarize an already explosive situation. By forcing unemployment and economic deprivation upon thousands of black South Africans, as this legislation would do, we will only escalate the tragic violence that we claim we are trying so sincerely and honestly to quell.

I am sympathetic to the comments that the administration has lagged behind Congress in participating in discussions on this issue, but I do not believe that gives some in the U.S. Congress license to engage in the unproductive process of "President bashing." Some partisans have been salivating in the wings to get that done. They can't wait to unleash their dogs in this fight. The administration has agreed to take a number of important steps—very similar to those included in this legislation—to continue the battle of conscience against apartheid. I believe that the United States must speak with one voice in foreign policy matters and that the President should continue to be our single spokesman. I urge my colleagues to oppose overriding the President's veto.

Mr. MOYNIHAN. Mr. President, only once in my 10 years as U.S. Senator have I voted to override a veto of foreign policy legislation. It is not a step to be taken lightly.

But the issue we confront today is of extraordinary import. Apartheid is a moral abomination. There are other evils in the world, but none more clearly and irreconcilably inconsistent with the democratic principles and institutions of the United States.

For that reason, I have supported a number of bills requiring the Federal Government to take action against apartheid. I was an original cosponsor of "The Anti-Apartheid Act of 1985," S. 635, which provided limited but significant sanctions against the South African regime. I also supported the "Anti-Apartheid Action Act of 1985," S. 995, which—to provide a further spur to change—stated that it would be U.S. policy to impose additional sanctions within 12 months if significant progress had not been made toward ending apartheid. Yet no such progress occurred. Accordingly, on August 15, 1986, I voted—along with 83 of my colleagues—for "The Comprehensive Anti-Apartheid Act of 1986," a measure providing much stronger and more effective sanctions—and the act that was vetoed by President Reagan on September 26.

I also offered a provision to the Federal Highway Act of 1986 allowing State and local governments to enforce antiapartheid bidding laws, without losing Federal funds as long as any additional costs that ensued were borne by those States and localities. The Senate Committee on Environment and Public Works approved my provision. However, on September 24, the full Senate voted 65 to 32 to strike that provision, with a number of Senators arguing that apartheid was a foreign policy issue falling solely within the purview of the Federal Government.

I disagreed strongly. Although the conduct of foreign policy is a national responsibility, apartheid is a moral travesty that States and localities ought to be able to oppose in the manner allowed by my provision. As I stated at the time:

> It is characteristic of our country that when people feel strongly about ethical issues, moral issues, they act in local ways; and often in our history, policy has come up from the lower levels of government rather than come down from the higher ones.

And not through Government action alone have Americans addressed this moral issue. The National Council of Churches—made up of the major Protestant and Orthodox denominations—has condemned apartheid and endorsed sanctions as the "last avenue for peaceful change in South Africa." Three days ago, the U.S. Catholic Conference called on the Senate to override the President's veto of such sanctions. And a similar call was made on the same day by 57 national and local Jewish agencies, representing over 4 million American Jews.

The Senate now stands ready to take such action, and to require the imposition of sanctions. I might note, Mr. President, that we have only come to this point after an extended period of patient insistence on change. For my part, this began in 1975 when I was the U.S. Permanent Representative to the United Nations. I persuaded our Government—President Ford needed no persuading—to support a General Assembly resolution entitled "Solidarity with the South African Political Prisoners."

This resolution called upon the South African regime to "grant unconditional amnesty to all persons imprisoned or restricted for their opposition to apartheid," and to "repeal all repressive laws and regulations restricting the right of the people to strive for an end to the apartheid system." And the General Assembly has voted every year since 1975 to condemn apartheid and demand such change.

Mr. President, the time for stronger action has arrived. I urge my colleagues to override the President's veto. And I ask unanimous consent that two items be entered into the record: a list of resolutions passed by the United Nations General Assembly condemning apartheid, and the anti-apartheid statement made by 57 State and local Jewish agencies on September 29, 1986.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RESOLUTIONS PASSED BY THE GENERAL ASSEMBLY OF THE U.N. CONDEMNING THE SYSTEM OF APARTHEID

Date and G.A. resolution number:
November 10, 1975—3377 [1]
November 9, 1976—31/6.
December 14, 1977—32/105.
January 24, 1979—33/183.
December 12, 1979—34/93.
December 16, 1980—35/206.
December 17, 1981—36/172.
December 9, 1982—37/69.
December 5, 1983—38/39.
December 13, 1984—39/72.
December 10, 1985—40/64.

STATEMENT OF 57 NATIONAL AND LOCAL JEWISH ORGANIZATIONS

We, the undersigned national and community agencies representing major Jewish communities in America, urge that the U.S. Congress vote to override the President's veto of H.R. 4868, the Anti-Apartheid Act of 1986.

Our dedication to society committed to equal rights, justice, and opportunity prompts our long-standing public opposition to South Africa's system of apartheid and our support for measures that would bring pressure to bear upon the government of South Africa to end apartheid.

We believe that the Congress has acted resolutely in uniting on a group of sanctions and other provisions embodied in HR 4868. These provisions are, in our judgment, the minimum necessary in view of apartheid. We believe that these provisions reflect the views and convictions of the vast majority of Americans that the United States must act resolutely on this issue.

We commend both houses of Congress for their overwhelming passage of H.R. 4868, and we urge you to vote to override the President's veto of this bill.

Sincerely,

American Jewish Committee, President—Theodore Ellenoff;

American Jewish Congress, President—Theodore R. Mann;

Hadassah, President—Ruth W. Popkin;

Jewish Labor Committee, President—Herb Magidson;

Jewish War Veterans of the U.S.S., President—Edwin Goldwasser;

National Council of Jewish Women, President—Barbara Mandel;

Union of American Hebrew Congregations, President—Rabbi Alexander M. Schindler;

Union of Orthodox Jewish Congregations of America, President—Sidney Kwestel;

United Synagogue of America, President—Franklin D. Kreutzer;

Women's League for Conservative Judaism, President—Mrs. Selma Weintraub;

Women's American Ort, Inc., President—Gertrude S. White;

Oakland Greater East Bay Jewish Community Relations Council, Chair—Gary Sirbu;

Sacramento Jewish Community Relations Council, Chair—Linda Rae Brodt;

San Francisco Jewish Community Relations Council, Chair—Tanette Goldberg;

Greater Bridgeport Jewish Federation, Chair—Rabbi Leon Waldman;

New Haven Jewish Federation, Chair—Mary Lou Winnick;

Greater Washington Jewish Community Council, Chair—Norman Goldstein;

South County, FL Jewish Federation, Chair—Frances Sacks;

Greater Miami Jewish Federation, Chair—Jeffrey Berkowitz;

Palm Beach County Jewish Federation, Chair—Dr. Helen G. Hoffman;

Savannah Jewish Council, Chair—Dana Braun;

Springfield, Ill Jewish Federation, Chair—Dr. Stephen P. Stone;

Indianapolis Jewish Community Relations Council, Chair—Norman Sider;

South Bend Jewish Federation of St. Joseph Valley, Chair—Dr. Joseph Wind;

Louisville Jewish Community Federation, Chair—Alfred Joseph, III;

Greater New Orleans Jewish Federation, Chair—Rabbi David Goldstein;

Portland Southern Maine Jewish Federation—Community Council, Lisa Cohen;

Baltimore Jewish Council, Chair—Rabbi Donald Berlin;

Springfield, Mass Jewish Federation, Chair—Iris Linson, James Gordon;

Metropolitan Detroit Jewish Community Council, President—Leon S. Cohen;

Flint Jewish Federation, Chair—Dr. Ronald Silverman;

Minneapolis Minnesota and Dakotas Jewish Community Relations Council—Anti-Defamation League, Chair—Lawrence D. Gibson;

Atlantic County Federation of Jewish Agencies, Chair—Barry Cohen, Esq.;

Cherry Hill, NJ Jewish Community Relations Council of Southern New Jersey Jewish Federation, Chair—Jeffrey Sorokin, M.D.;

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[1] The numbering system for resolutions was changed in 1976.

Delaware Valley, NJ Jewish Federation, Chair—Martin Okean;

East Orange MetroWest New Jersey Jewish Community Federation, Chair—Rabbi Norman Patz;

Greater Middlesex County, NJ Jewish Federation, Chair—Canton Mordecai Goldstein, Dr. Jacob Kirshner;

Union Central New Jersey Jewish Federation, Chair—Judy Kronick;

Binghamton Jewish Federation of Broome County, Chair—Michael Wright;

Greater Buffalo Jewish Federation Chair—Janet Wisbaum;

Greater Kingston Jewish Federation, Chair—Charles Fliegler;

Syracuse Jewish Federation, Chair—Marilyn Pinsky;

Akron Jewish Community Federation, Chair—Gary Rosen;

Cincinnati Jewish Community Relations Council, President—June Burgin;

Portland, Oregon Jewish Federation, Chair—Roger Auberbach;

Allentown Community Relations Committee, Chair—Steven Bergstein;

Erie Jewish Community Council, Chair—Richard Levick;

Greater Philadelphia Jewish Community Relations Council, Chair—Barry Ungar;

Pittsburgh Community Relations Committee of United Jewish Federation, Chair—Lawrence A. Kaplan;

Providence Community Relations Council, Chair—Norman Orodenker;

Nashville and Middle Tennessee Jewish Federation, Chair—Evelyn Goldberg;

Tidewater, VA CRC United Jewish Federation, Chair—Ellie Lipkin;

Greater Seattle Jewish Federation, Chair—Sidney Weiner;

Madison Jewish Community Council, Chair—Fred Gants, Mark Frankel;

Milwaukee Jewish Council, Chair—Robert Friebert;

St. Louis Jewish Community Relations Council, Chair—Lynn Lyss; and

El Paso Jewish Community Relations Committee Chair—Nina Grey.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. How much time is remaining?

The PRESIDING OFFICER. The majority leader has 25 minutes and 48 seconds, the Senator from Rhode Island has 25 minutes and 41 seconds, and the Senator from South Dakota has 10 minutes.

Mr. DOLE. Would the Senator from South Dakota like to use some of that time now?

Mr. PRESSLER. No.

The PRESIDING OFFICER. Who yields time?

Mr. DOLE. Let me yield 6 minutes to the distinguished Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 6 minutes.

Mr. HELMS. Mr. President, I, of course, thank the distinguished majority leader for yielding to me. I was sitting here listening to the elegant oratory, and thinking about Lewis Carroll's book, "Through the Looking Glass," in which Humpty-Dumpty said, "When I use a word, it means just what I choose it to mean—neither more nor less," if I recall it correctly. If ever there was a piece of Humpty-Dumpty legislation, this is it—replete with doubletalk, and meaningless declarations of self-esteem. I hope that the piosity will simmer down after the vote is taken today because a heavy dose of reality is sorely needed around this place. The fact is, Mr. President, that we have gone through a 2-year charade with self-serving proclamations about wanting to help the beleaguered blacks in South Africa. The trouble is that this is the kind of help provided by the Boy Scout who grabbed a little old lady and hustled her across the street when she did not want to go. Every poll except one taken in South Africa shows that the blacks in South Africa do not want sanctions. Even Bishop Tutu's church is on record against sanctions.

Mr. LAUTENBERG. Will the Senator yield for a question?

Mr. HELMS. I did not interrupt the Senator, and I am sorry, I cannot yield; I have only a few minutes.

Mr. President, Ronald Reagan was absolutely correct in vetoing this absurd legislation, and I support the President completely in his decision.

The thrust of these sanctions is not to bring about change. The thrust of this legislation is to bring about violent, revolutionary change; and following that change, a lasting tyranny. There is no question about who is behind all the revolutionary violence, necklacing, burning, pillaging, and destruction in South Africa. It is the Soviet Union. If we miss that point, we miss the whole thing.

If this bill were simply directed toward encouraging the government of South Africa to bring the black peoples of South Africa into a representational democratic system, I cannot think of any who would argue against it. Not even the South African Government argues against that.

What we are arguing about here is what kind of a system will emerge in the South African situation. Will it be free and democratic—or will it be a tyranny? I think all of us, in our heart of hearts, know the answer to that.

This legislation, make no mistake about it, makes a decisive choice for tyranny. I reiterate that we all know, or should know, who is orchestrating it.

Mr. President, I realize that the Senators who are supporting this bill are not consciously choosing to impose tyranny—and I mean a Communist tyranny—upon the people of South Africa. But they do not seem to understand the structure of the bill.

The bill proposes a series of sanctions. We all know what they are. But then it says that the sanctions will be lifted if the government of South Africa agrees to do certain things. In other words, the attempt is to induce South Africa to take certain actions.

The thrust has very little to do with the elimination of apartheid. As a matter of fact, apartheid is dead. The entire legal structure of apartheid has been dismantled, with the exception of the Group Areas Act, which is the basis of residential segregation patterns.

This bill is not about segregation, or apartheid. It is about power. It is not about the sharing of power; it is about the transfer of power.

And who will the power be transferred to? Not to the black peoples of South Africa. Not to the whites.

No, it will not be power to the people. The bill specifically mentions only a very limited number of persons and political parties. It will be power to a small minority elite. That elite is the Communist Party of South Africa.

Why is it, Mr. President, that the only persons mentioned by name in the bill are Communists? Why is it that the only parties referenced in the bill are precisely those parties which are under the total control and support of the international Communist movement? Why is it that the only things we are pressuring the Government of South Africa to do is to legitimize and free the antidemocratic forces in South Africa—the forces which have snuffed out freedom throughout the world? Why is it that the bill contains no references to the democratic black forces—the forces which represent the majority of the black peoples in South Africa?

This is in short a bill for minority rule. It is a bill for Communist rule, for Marxist-Leninist rule. We know what Marxism-Leninism is all about. Marxism is a discredited political and economic system; but Leninism is a theory of power. It is a very powerful system for dominating and controlling a population, for crushing resistance, for imposing a brutal system by force. This bill gives legitimacy to the Marxist-Leninists.

We know perfectly what kind of a system will be imposed by the persons and parties legitimized by this bill. We have seen it elsewhere. We have seen it in China, in Cambodia, in Ethiopia, in the Soviet Union. We can safely predict the wholesale slaughter of millions in the quest for power. We can expect that organized starvation will help consolidate that power.

The system which we are attempting to impose on the South African peoples, black and white, is the system represented by the fiery necklace. We will impose communism upon the innocent, like the necklace is imposed upon its victims.

We will impose starvation. We will impose loss of jobs. We will impose disruption of families. We will impose totalitarian systems of thought control and penalties for freedom the like of which have not yet been seen.

I know there are those who will say that I am overly concerned about communism. I can remember a few short years ago when we were debating aid to the Sandinista government of Nicaragua on this floor. I pointed out in the debate that the $75 million would only go to strengthen the Communist despotism over the people of Nicaragua. Many Senators did not agree with me. They voted for aid to the Communist government of Nicaragua; I voted against.

Some of those Senators are still Members of this body today. Some of those Senators who thought concern about communism in Nicaragua was exaggerated are in the very forefront of those today saying that concern about communism in South Africa is exaggerated. If the President's veto is not sustained, we shall soon see whether that concern is exaggerated.

Mr. President, there is one additional thing to say. If we override the President's veto today, the effect will be just the opposite that the proponents of the bill are expecting. There is no doubt that the Government of South Africa will be strengthened in its resolve. And if it should not be strengthened directly, there are plenty of other South Africans willing and eager to serve their country.

No South African, black or white, can morally accept the consequences of this bill. No South African can stand by and see his country taken over by communism. The vast majority of blacks who have been killed in the violence in South Africa have been blacks who resisted the leadership of the Communist leaders. We have had blacks killing blacks; but the most significant aspect is that it is black Communists killing black anti-Communists.

Mr. President, both black and white South Africans know that they have a duty to resist the implications of this bill. It is my duty as a U.S. Senator to warn them that they should use every appropriate means to prevent the takeover of South Africa—and of all Africa—by international communism.

It is my earnest hope, Mr. President, that peace, freedom, and democratic rule will advance in South Africa. This bill is a deterrent to peace, freedom, and democratic rule. I urge my colleagues to sustain the President's veto.

Mr. President, think for a moment what this will do to the black peoples of South Africa, just on the economic level. In the agricultural field alone, 20 percent of the total population, mostly blacks, depend on the farm for a living. It is the black peoples who will be hit the hardest.

Mr. President, this morning I received a telegram from the president of the South African Agricultural Union which explains in detail how sanctions will injure the black farmers of South Africa, and I ask unanimous consent that it be printed in the RECORD at the conclusion of my remarks.

There being no objection, the telegram was ordered to be printed in the RECORD, as follows:

Senator HELMS,
Senate Committee on Agriculture.

On behalf of the farming community of South Africa, their workers and dependents, I hereby earnestly appeal to you not to support the imposition of further sanctions against South Africa.

We believe that it remains most important that normal trade between our countries—and free trade principles in general—be maintained.

The greatest burden of sanctions will fall on the people of our country who are least able to afford it and will result in unnecessary misery, suffering and even famine. Not only the Republic, but the whole of the southern African region and its people will be detrimentally affected and destabilized by sanctions, due to the interdependence of the economies within the region.

Fair participation of all population groups in social development and the creation of wealth is only possible in a healthy and growing economy, which should rather be promoted than hindered through the applying of sanctions.

The commercial agricultural sector in South Africa employs about 1.3 million workers (mostly blacks) and together with their dependents about 5.5 million people (or about 20 per cent of the total South African population) live on farms and are totally dependent of agriculture for their livelihood—apart from the workers in industry linked to agricultural inputs and outputs.

The loss or serious contraction of our important agricultural export markets would thus disastrously affect the economic viability of a very large number of farmers (which are already under pressure), their workers and dependents.

Sanctions is, of course, also a double-edged sword. Due to the negative effect which boycotts have on the economies of farmers in countries applying sanctions, it is no wonder that such measures are not supported by the local farmers. I have in fact recently again received strong support from the President of the American Farm Bureau Federation against the imposition of sanctions against South Africa by the USA.

You will, however, understand that it will be difficult for us to continue buying agricultural and other products from countries boycotting South Africa, when other sources of supply is readily available. This particularly applies to grains, where the main producing countries are at present scrambling to try and find markets.

In these circumstances we therefore support our foreign Minister. Mr. Pik Botha's message to you that South Africa will have to reconsider the continuing importation of wheat and other agricultural products from the United States in the event of the USA Senate deciding to impose sanctions against South Africa agricultural products.

This should not be seen as a threat, but as the rational and normal reaction of a proud sector being attacked and forced into a corner and fighting for survival. I am sure that you will understand and see it as thus.

We as farmers sincerely believe that sanctions would be neither in South Africa's nor the United State's interest. We thus earnestly appeal to you as a leading member of the Agricultural Committee of the Senate to vote for maintaining your President's veto when this important matter is decided on today in the United States Senate.

Yours sincerely,

KOBUS JOOSTE,
President of SA Agricultural Union.

Mr. HELMS. Now, Mr. President, having said that, let me turn to the economic aspects for just a moment. In addition to the economic hardship that these sanctions will cause for the millions of blacks in South Africa—and that is acknowledged on both sides of the aisle—overriding the President's veto will certainly take away an important market for American farmers. We are shooting the American farmers in the foot and doing harm to the black people of South Africa whom so many plead so piously that they want to help. Well, proponents of sanctions are going to "help" them by destroying their jobs, they are going to "help" them by imposing violence, bloodshed, and starvation upon them. I have been fascinated to note the number of speakers on the other side who have acknowledged already that there will be bloodshed. Then why do they insist on these sanctions?

Now, let me refer to some import-export records compiled by the U.S. Department of Agriculture. During the past 2½ years, Mr. President, from January 1984 to August 1986, the United States exported $637 million worth of agricultural commodities to the Republic of South Africa, while importing $258 million worth of agricultural commodities from South Africa. That gives the United States a favorable trade balance of $379 million, the way I figure it. It is unnecessary for me to express the importance of exports to the American farmers, but let us have a few statistics which I believe are relevant. Ninety percent of South African cigarette imports are from the United States. More than 50 percent of South African corn imports have been from the United States.

The PRESIDING OFFICER (Mr. NICKLES). The Senator's 6 minutes have expired.

Mr. HELMS. I yield myself 2 more minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Eighty percent of South Africa's rice imports are from the United States, 50 percent of their tallow imports, and two-thirds of their seed imports, and so forth and so on, Mr. President.

Now, this loyalty to U.S. agricultural products is going to be eliminated when the sanctions are imposed, if they are imposed.

Mr. President, I ask unanimous consent that certain statistical information be included in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the information was ordered to be printed in the RECORD, as follows:

VALUE OF U.S. AGRICULTURAL EXPORTS TO AND IMPORTS FROM REPUBLIC OF SOUTH AFRICA

[In millions of dollars]

	Calendar year 1984	Calendar year 1985	Calendar year 1986 [1]
Exports:			
Wheat and products	5	2	17
Coarse grains	367	33	2
Oilseeds	13	12	10
Rice	52	25	10
Others	44	36	9
Total	481	108	48
Imports:			
Wool	21	8	5
Fruit, nuts, vegetables	50	48	26
Sugar	30	18	6
Others	16	24	6
Total	117	98	43
Agricultural trade surplus	364	10	5

[1] January through August.

Mr. HELMS. I yield the floor. I thank the Chair.

The PRESIDING OFFICER. Who seeks time?

Mr. PELL. Mr. President, I yield to the deputy minority leader 4 minutes.

Mr. CRANSTON. I thank the ranking member of the Foreign Relations Committee.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, another judgment hour has come. The Senate must decide whether we stand with the oppressed or with the oppressors.

The Senate must decide whether we will back those who struggle for freedom and for simple human dignity, or whether we will back Fascists who rule by the whip and the club.

The time has come for Republicans and Democrats to unite to vote sanctions against Pretoria. We would not do business with Nazi Germany. We should no longer profit from apartheid in South Africa.

Mr. President, it is suggested that Congress must show full and total support of the President on virtually every foreign policy issue at this time.

I disagree.

I believe that such enforced unanimity sends the wrong signal to the Russians.

It gives them a false view of how our constitutional democracy works.

And the consequences could be calamitous.

Soviet leaders do not understand the democratic concept of a loyal opposition.

In the Soviet system, all opposition is disloyal.

Soviet leaders also have the mistaken notion that the United States Congress is like the supreme Soviet—a dummy legislature that merely rubber stamps the Executive.

That's why failure of the Senate to ratify SALT II came as such a shock to them.

In their ignorance of how our system works, the Soviet leaders thought that once the President of the United States OK'd a treaty, that was it.

Period.

They thought ratification by the Senate would follow automatically.

United States-Soviet relations still suffer from the Soviets' disappointment when, to their utter astonishment, that did not happen.

We must do all in our power to avoid such a misreading of the Senate from happening again.

The Soviet leaders must learn what the American people already know and are so proud of:

That the Congress of the United States is an independent branch of our Government.

That the Congress of the United States is nobody's "yes man."

That the strength of our constitutional system is that Congress serves as a check on—not as a rubber stamp for—the President.

That the Constitution gives the U.S. Senate particular responsibilities in the field of foreign policy.

And that this Senate intends to live up to those responsibilities.

Each of us was elected to exercise our independent judgment.

Each of us was elected to support the President when we think he is right and to oppose him when we think he is wrong.

The Soviet leaders had better understand that.

And right now, on this vote on the South African sanctions override, is the time for us to drive home the lesson:

Each of us in the Senate will act as our reason and our conscience tells us.

We are not the puppets of this President or any future President.

And Mr. Gorbachev had better remember that when he gets to Reykjavik).

The United States must stand for our national security interest and against the racist Government of South Africa.

We must give our full support to Bishop Desmond Tutu and all those who are struggling for freedom.

Bishop Tutu and other civil rights leaders in South Africa have urged the United States to impose tough sanctions.

Bishop Tutu knows that many of the boundless opportunities that our world can offer to men and women have been lost forever to so many of his generation.

But he is determined, he is dedicated, to redeeming those priceless opportunities for those who are now only children in South Africa.

Life, today, for those children, is beyond belief.

Archbishop Tutu, and we, and others must change it for their tomorrows.

Today, when a school bell rings in a South African township, it doesn't always beckon children to the wonder of learning.

On the first day of the Soweto uprising in 1976, the ringing of a school bell signaled the children to make a decision—whether to take a history exam or join the march.

Thirteen-year-old Hector Peterson decided to protest. He was the first casualty. He was shot in the back. School was never the same. Students were encouraged to write poetry and paint pictures about what happened. Political consciousness was being raised by hanging children's reflections of a classmate's killing in the halls and classrooms of a schoolhouse.

Ten years later, Godfrey Phuroe, age 15, was playing in a Soweto schoolyard, when a white man, carrying a police walkie-talkie, drove up and began shooting into the play area. Godfrey was shot in the head. His brother fell on him in a reflex of love and protection but it was too late. The killer placed stones next to the body so that he could say that he was provoked—stones are the weapons of the children of South Africa.

The man threatened the other children with death and drove away. There were no reports. No investigation. No official recognition that a life was taken or that one had lived—a 15-year-old was brutally murdered and to the violent supporters of the brutality of apartheid he had no meaning. Two hundred other children were killed last year. No records. Some die in detention.

Some die at the funerals of friends. Many die in school yards. Then there are what Bishop Tutu calls the walking vegetables. The children who are taken into detention and allowed to live. Johnnie, age 15, was jailed in Alexandra when the police did a sweep picking up youngsters. He was charged with no crime. He was a healthy, active youth. He was kept for 2 weeks, beaten so badly that he took refuge by becoming psychotic. Psychosis was his way out of the pain.

The shocking story about South Africa is the revolution of the children. Children who are taking to the streets, trying to change the system by throwing stones at the police. Bishop Tutu talks of this new generation of children as having no fear of dying—and they are dying.

The hundreds, perhaps thousands of children, who have died or who live in a detached state, have taken on the most noble of responsibilities—the responsibility for fighting for liberty.

Their parents cannot vote. Their parents must live in undesirable areas. Their parents cannot travel or work without permission and when they do work they must leave the family and go elsewhere. Their parents are not free to speak or act against these injustices without penalty. While 22 million blacks live in their own country without the basic rights of citizenship—the children throw stones at the system. The children of South Africa are the real freedom fighters—Patrick Henry would have approved.

The **PRESIDING OFFICER**. The Senator's 4 minutes have expired.

Mr. **CRANSTON**. I yield the floor.

The **PRESIDING OFFICER**. Who yields time?

□ 1510

Mr. **PRESSLER**. Mr. President, I had hoped to make these concluding remarks at the end, but I will do it now, because some speakers are not yet on the floor.

During consideration in the Foreign Relations Committee, I spoke frequently on this subject. Let me say that I arrive at my conclusion that sanctions would be harmful as well as ineffective in eliminating apartheid based on an analysis of the situation there and throughout southern Africa.

My vote has nothing to do with the sale of grain, necessarily, or the upcoming meeting in Iceland. Rather, I have chosen my position on the merits of regional politics in southern Africa—in Zimbabwe, Mozambique, and so forth.

I want to emphasize that the regional geopolitical situation is much more important. Nothing I have said should be construed as suggestive that the position I have taken is linked to positions that other Senators have taken as a result of the sale of anything or because the President is going to Iceland.

I remain firmly convinced, as Mrs. Insman is, that the imposition of sanctions will slow down the elimination of apartheid. I have been interested in southern Africa for some time. In fact, I am an honorary member of the board of directors of a group of former Rhodes scholars who are very interested in education in southern Africa and have worked hard on it. I am not a Johnny-come-lately to this issue, and I have worked hard at understanding the complexity of the situation.

As I stated earlier, there are several misperceptions in this debate. The first misperception is that this is basically a civil rights issue. It is being equated politically to a 1950's or 1960's civil rights vote. I have already covered that in my speech of last night. We all want to see apartheid ended. But, in fact, what we are doing here is just the opposite.

Many black leaders, such as Buthelezi, have told me that sanctions would slow down the ending of apartheid. His comments were certainly from the most legitimate elected political black figure in South Africa.

There is also a mistaken assumption in this debate that the Botha government will move to the left under the pressure of economic sanctions. In fact, every indication is that they would move to the right, because the main political threat to the Botha government is on the right. I fear that if Botha's government is replaced, it will be by a group from the right. Then we would really have problems.

Another misperception in this debate is that the Afrikaners will cut and run somewhere. They have no place to cut and run to. In a civil war, they would fight to the last man. Surely, this augurs for a very problematic resolution to a situation of increasing violence, where the government perceives that it has been backed into a corner.

Perhaps in Rhodesia, where there were descendants of the English, was emigration an option to a win-or-lose situation. Indeed, many Rhodesians moved to South Africa and then back to England or Australia. Maybe some of the English-speaking South African whites would move to Australia or back to England. However, South Africa has become the Afrikaner's country, and they are not going to cut and run. Yet, that seems to be an assumption some people have.

Also there is an assumption that if there were a civil war in South Africa, it would be blacks versus whites. That is not true. Asians look to the white government for protection from the ANC. Blacks and coloreds look to the government for protection from the ANC.

So the point I am making here is that we have a number of misperceptions that greatly limit our ability to examine the issue of South African sanctions in a rigorous fashion.

Mr. **SARBANES**. Mr. President, will the Senator yield on that point?

Mr. **PRESSLER**. I will yield on the Senator's time. Let me finish my speech, and I will yield on the Senator's time.

Another dangerous assumption is that we can micromanage events in southern Africa. Indeed, it is the assessment of many black leaders that just the opposite would be the case.

If we look at a map of southern Africa, we realize how dependent the entire region is on the economy of South Africa in terms of transportation, just to cite only one factor. Last night, I went through some of the strategic minerals arguments and some of the transportation and technology and communications arguments. So, we realize what sort of an aid package would be required if South Africa was unable to meet its commitments to the region because of a sanctions package that undermined its infrastructure.

Have some of my friends who speak in such high moral terms looked at what harsh punitive sanctions would do to unemployment rates among blacks? Have they examined what the consequences would be for medical supplies and food?

I must identify myself with the remarks of Margaret Thatcher. She argues pervasively that these sanctions will probably have the opposite impact. It is my personal assessment that a very necessary and dangerous scenario is going to be played out.

I very strongly support the President, but I deeply fear that he will be defeated on this floor in a few minutes. When that occurs, if that occurs, sanctions will go into effect. There will be even more harsh sanctions next year, and more repressive action by the South African Government as a result. A long period of bloodshed will be ushered in. There was an alternative. There is an alternative. By moving peacefully, we could end apartheid and could provide a decent standard of living for all those in the region.

I predict that 3 or 4 years down the road, there will be proposed on the Senate floor a massive aid program for all of southern Africa. I suppose some will rise and blame the United States; specifically, they will blame the President. What we are doing here today will cause that to happen and that makes me very sad.

Mr. President, I reserve the remainder of my time.

Mr. **PELL**. Mr. President, I yield one-half minute to the Senator from Michigan.

Mr. **RIEGLE**. I thank my colleague.

Mr. President, apartheid is wrong, and it has to end now. That is the feeling of the American people, and that is the message we have a chance to send today.

Black people in South Africa are being murdered ruthlessly each day.

□ 1520

If the veto were to be sustained it would send exactly the wrong signal. It is time to put our country on the the side of justice and freedom and majority rule.

We can do that by overriding the veto today, and I am hopeful that we will do exactly that.

Mr. **DOLE**. Mr. President, I yield 3 minutes to the distinguished Senator from Idaho, Senator SYMMS.

The **PRESIDING OFFICER**. The Senator from Idaho.

Mr. **SYMMS**. I thank the distinguished majority leader for yielding.

Mr. President, I would say to my distinguished friend from Michigan that of course apartheid is wrong. I agree with him that it is wrong, but I disagree with him about this vote. Overriding the President's veto and passing this legislation will not help the people who we want to help—the blacks in Africa.

Mr. President, I had the opportunity in 1984 to visit South Africa. I also visited southwest Africa. I visited Jonas Savimbi in Angola in January 1984 and Savimbi was in his base camp in free Angola. If this legislation causes U.S. investment to be withdrawn from South Africa, the course of events in Angola will be very disastrous.

In South Africa itself, more blacks will be out of work, there will be more starvation, more unemployment, a weakening of the resistance to the Communist-Soviet expansionism in Africa. The border states will also suffer enormously. All of this so we on this floor can demonstrate our moral righteousness.

I can assure my colleagues that this legislation will do no good for the workers in the mines in Africa, nor for the workers on the sugar plantations in Africa who will lose their jobs. If we want to help those people, we should encourage capital investment and U.S. influence which has been a very, very positive influence in the southern part of Africa.

It is interesting that the standard of living is better in South Africa for the blacks than it is in any other of the states in the area. It is also interesting that the blacks in South Africa own more automobiles than all the citizens of the Soviet Union, and yet we do not talk about that here. How can we claim to be humanitarians if we take away the tools, the ability, the wherewithal for people to earn a living to raise their families and to support their means of existence.

Mr. President, I stand opposed to this attempt to override the President's veto of the South African sanctions bill. I opposed this bill when the Senate passed it and today I support the President's veto. I support the President because he is right. The legislation he vetoed should not become law. It was bad law, and it was bad foreign policy.

The other day, as one of my colleagues was arguing for sanctions, he suggested that it was time for the United States to stop its "moral grandstanding" and get on with the positive step of beating this veto and enacting this legislation. Mr. President, this legislation is the most blatant moral grandstanding I have ever seen in this body.

Now, lest I be labeled a racist, let me express my sincere opposition to apartheid. I share the concern of all my colleagues for the plight of the disadvantaged victims of the discrimination of apartheid.

The system of legalized race separation and discrimination practiced in South Africa is repugnant to all Americans who cherish individual liberty and equality. The issue here is not whether to accept or condemn apartheid, but how best to aid South Africa's efforts to dismantle this policy and bring greater freedom and prosperity to all South Africans. I do not believe this sanction bill will accomplish this goal.

I don't believe any of my colleagues think it will either. Not only will this foolish legislation not help the peaceful struggle against apartheid, it will probably harm the very victims of that system who we strive to aid. In addition to the black South Africans, and the people of the "frontline states," we now have some reason to believe that American farmers will suffer from our conscience cleansing.

Pik Botha was subjected to a lot of abuse around here yesterday for delivering what many called a threat to this body. I did not perceive it as a threat, but as a logical, though regrettable, South African reaction to aggression from the American Congress. I don't think it is any more despicable for South Africa to retaliate than it is for us to meddle in their domestic affairs and attempt to destroy their economy.

I am not entirely opposed to U.S. involvement in South African affairs. I oppose apartheid and I support constructive American action to help end it. But I share with President Reagan the desire to help solve that problem rationally, rather than emotionally.

I urge my colleagues to support the President's veto. Those who have a burning moral need to be heard on this issue have been heard. They can take solace in the bill they passed; their message has been sent. But now the Senate should defer to the President's sovereignty over foreign affairs. We have cleared our consciences and passed our quick fix, now we should step aside and let United States-South African relations be handled in a more mature and reasoned manner.

Mr. President, I ask unanimous consent that a letter from the President of the American Farm Bureau be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

AMERICAN FARM BUREAU FEDERATION,
Washington, DC, September 29, 1986.
Hon. STEVEN D. SYMMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR SYMMS: The American Farm Bureau Federation wishes to reiterate its concern over the use of international trade as a weapon in foreign policy disputes or as leverage to force changes in domestic policies of foreign nations.

This has been a longstanding and consistent policy of Farm Bureau with respect to all such measures, be they export embargoes or other forms of economic sanctions. History has proven that using trade as a tool to achieve foreign policy objectives is not effective, no matter how valid those objectives might be, and that all too often they result in greater damage to U.S. economic interests.

Amercian farmers have experienced the adverse effects of trade embargoes several times in the past. While the short-term trade loss is always disturbing, the long term effect is even worse. Each time farm exports are turned off for foreign policy reasons, the perception that the U.S. is an unreliable food supplier is reinforced among our trading partners.

Farm Bureau urges you to take these concerns into account and look for better ways than trade embargoes and sanctions to accomplish valid foreign policy goals.

Sincerely,

DEAN KLECKNER,
President.

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. PELL. Mr. President, I yield a minute and a half to the Senator from Maryland [Senator SARBANES].

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I rise in very strong support of the effort to override the President's veto. This is exactly the same legislation that 84 Members of this body voted for. It has not been changed—not one dotted "i," one crossed "t." It is exactly the same legislation that 84 Members have already voted for.

Second, Mr. President, this is an effort to bring consistency to American policy in terms of all we stand for with respect to justice and freedom.

It is asserted that sanctions will hurt the blacks, but the best answer to that comes from Bishop Tutu, who said, "Blacks are saying we are suffering here; to end it we will support sanctions, even if we have to take on additional suffering.

"I must ask to whom is the international community willing to listen—to the victims and their spokesmen, or to the perpetrators of apartheid and those who benefit from it, apartheid, the most vicious system of racial discrimination in the world."

Mr. President, sanctions offer the last nonviolent option to bring about change in South Africa. Sanctions do not guarantee that change will occur. But as the Commonwealth Eminent Persons Group has pointed out, the absence of sanctions has clearly not brought about change. That has been the existing situation—there have been no sanctions—and change has not taken place.

It is already the case, as the Eminent Persons Group concluded that absence of sanctions and Pretoria's belief that they need not be feared defers change.

We now have an opportunity to move away, finally, from the discredited policy of constructive engagement and to move toward freedom and justice in South Africa.

I urge an override of the veto.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. PELL. Mr. President, I yield 30 seconds to the Senator from Iowa [Senator HARKIN].

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, the issue of apartheid is not a political issue, it is a moral issue; and by his vetoing these moderate sanctions, the President has tried to make it a political issue.

We should speak forcefully and with one unified voice. It is a moral issue on which we in this country should be unified. We are not going to tolerate the blackmail of "Pik" Botha, who now threatens to cut off our grain sales to South Africa. We are not going to tolerate his "grainmail," either.

Mr. President, I rise to support the motion to override the President's veto of H.R. 4868, the Comprehensive Anti-Apartheid Act of 1986.

More than a generation ago, the Reverend Martin Luther King, Jr. wrote that the problem of race is not a political but a moral issue.

President Reagan, by vetoing this package of moderate sanctions, has made apartheid a political issue. He has imposed divisions where unity should prevail.

He has been shortsighted when vision is called for.

It is unfortunate that the Senate is forced even to consider this matter at a time when our Nation should be speaking with one unified and bipartisan voice against apartheid.

It is unfortunate that Mr. Reagan has turned his back on the traditions of his own party—the party of Abraham Lincoln.

It is tragic that the President has chosen to remain silent on the most important moral issue of our day.

The showdown today should be between our Nation and President Botha. Unfortunately, we now face a battle between Mr. Reagan and the Congress. By his action, the President has abdicated moral leadership, and, whether intended or not, has placed his administration on the side of the forces of apartheid.

If the President is unwilling to act, then Congress must.

We must send a message to all South Africans that the United States, which has stood so long as the beacon of freedom and as a refuge from repression, is not an apologist for apartheid.

The administration claims that it must oppose punitive sanctions because they would victimize black South Africans. I suggest Mr. Reagan stop listening to Mr. Botha, and start listening to South Africa's black leaders, and particularly Bishop Desmond Tutu who called sanctions "the last nonviolent option left."

Now we are told by "Pik" Botha that sanctions will harm American farmers. Just as Pretoria has threatened its neighbors, just as the white minority has killed black protestors, and just as his henchmen have blocked grieving mothers from attending the funerals of their murdered sons, Botha now threatens our farmers. Blackmail is one word for it, but I prefer to call it "grainmail."

It won't work.

American farmers, like all Americans, will not be cowed. In fact, South Africa is a major competitor for the corn trade.

At a time when our Nation should shout its opposition to apartheid, the President has chosen to remain silent. He instead offers a nonpolicy of quiet diplomacy and "constructive engagement."

Five and a half years of constructive engagement have offered only greater destruction and bloodshed for the people of South Africa.

Five and a half years of quiet diplomacy have not muted the shotgun blasts of South Africa's police. It has not silenced the cries of the mothers of the children killed by those bullets.

Five years of quiet diplomacy have fallen on deaf ears in Pretoria.

Bishop Tutu has clearly stated the choice before us:

> There is no room for neutrality. When you say you are neutral in a situation of injustice and oppression, you have decided to support the status quo. . . . Are you on the side of oppression or liberation? Are you on the side of death or life? Are you on the side of goodness or evil?

The time has come to decide whether we stand with Mr. Botha and the forces of apartheid, or whether we align ourselves with black South Africans and the forces of freedom.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. PELL. Mr. President, I yield to the Senator from Massachusetts 5 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, in the course of every nations's history, there are moments of great testing. Often the challenge comes as a threat to our freedom and security. Sometimes, it comes as a threat to our fundamental ideals. In the past, faced with such threats, we have answered as one people—with courage, with sacrifice, and with a restatement of our commitment in our own day and generation to the values that have made this country special in the world today and special throughout the two centuries of our history.

The intervention yesterday by the Foreign Minister of South Africa will go down in infamy alongside the Zimmermann telegram on the eve of World War I as one of the notorious attempts by a foreign government to interfere in the foreign policy of the United States.

In January 1917, Arthur Zimmermann, the Foreign Secretary of Germany, sent a telegram to the German Ambassador in Mexico with this threat:

If the United States enters the war against Germany, and if Mexico is willing to assist the Kaiser, Germany in return will help Mexico recover Texas, New Mexico, and Arizona from the United States. All America was outraged and 2 months later, President Woodrow Wilson asked Congress to declare war between the United States and Germany.

Today, with this vote and on this issue, the American people and the American Congress are being tested again. This is one of those moments that will live in our history, that each of us will remember, as long as we live—the day America set its policy right on one of the great issues of our time, the cause of a free South Africa.

Will we have the courage to be strong in the face of those who counsel caution and hesitation? Are we willing to risk sacrifice in the face of unseemly threats of intimidation and retaliation by the bullies whose racist policies we oppose? Does America's commitment to liberty and human decency extend to 26 million black brothers and sisters who live in oppression thousands of miles away? Will we speak as one people and with one voice?

We have been told that with these sanctions we will hurt those whom we most want to help. But those who make that argument have no idea of the cruelty and suffering that goes on today in that tormented land.

Apartheid is not just a "codified system of segregation," as President Reagan described it in the cool detachment of his veto message. It is much, much more—and much, much worse. It is the torture of children and the use of terror against their parents. It is the total disenfranchisement of an entire population. It is midnight arrests and disappearances. It is the forced relocation of entire villages. It is attacks on innocent neighbors with bombs and bullets and planes. It is starvation, disease, and early death. It is genocide, a crime against humanity.

It is possible to visit South Africa and to be led around to showcase places where the suffering never shows. That has happened to some Senators who have spoken in this debate. They did not see the single-sex hostels in Soweto, where black men live out their lives in cramped and primitive quarters, hundreds of miles from their families, to tote and carry, to sweep and clean for the wealthy whites of Johannesburg. They did not see the children's graves of Onverwacht, where 350,000 black citizens have been forcibly relocated in the middle of a desert, and where 50 percent of the children die during their first year of life.

□ 1530

They did not see the faces of the mothers and fathers in Crossroads who live with the daily fear that the tanks and the trucks and the bulldozers will roll through their town and rollover the shanties and shacks they have built as homes for their families.

They did not see the inside of Pollsmoor Prison where Nelson Mandela, the father of his country, now enters his 25th year of captivity.

They do not know that, in the past 60 days alone, 16,000 South African citizens have been arrested and detained—and that 40 percent of them are under the age of 18.

They have not seen the suffering of apartheid. They cannot understand why the people of South Africa are, in fact, willing to endure any hardship, even to die, so that their country may be free forever from the scourge of apartheid.

We are told to be patient, that reform is on the way. Instead, we should heed the words of one of the greatest moral leaders of our country, our time, and our generation, Dr. Martin Luther King. He too was told to go slow. He too was told to be patient. He too was told to wait. He too was shamefully accused of fomenting violence, of being un-American, of being a revolutionary, of being a Communist. Dr. King's answer then should be our answer today—now is the time.

Opponents of this legislation say now is not the time for sanctions against apartheid.

For them, now is never the time.

We heard that discredited argument 100 years ago—and America said now is the time to abolish slavery.

We heard that discredited argument 25 years ago, and Martin Luther King told us, now is the time—now is the time to end segregation and discrimination in the United States of America. And America agreed.

The time is now again.

The time for procrastination and delay on apartheid is over.

Now is the time to keep the faith with Martin Luther King, Bishop Desmond Tutu, and all those who believe in a free South Africa. Now is the time for America to act against apartheid.

The PRESIDING OFFICER. Who yields time?

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. PRESSLER. Mr. President, I will conclude by responding in part to my distinguished colleague from Massachusetts. When I went to South Africa I was certainly not led around. I went to Soweto and Crossroads and all the most difficult places where violence is now occurring. I emphasized meeting common people, as opposed to the officials, in my trip planning. I wanted to see things for myself in that country. There were, of course, many things that I disagreed with that I saw.

Let me remind the Senator from Massachusetts that well-intentioned people can reach opposite conclusions. The conclusion that I reached after that visit was that conditions will be far worse in South Africa and in the region if the President's position is not sustained.

I should also say—and I think that it illustrates that this is taken as a civil rights vote by many—that it is my judgment that if we do not have enough votes to override, there will be 5 or 10 votes that will fall off. People will hold back from voting until they can see the tide of action. Then they will switch—even if they have promised the President—if they find it politically expedient. The final count will look as though this veto was defeated by more than it really was, because it is perceived as a major civil rights vote domestically. That is a problem I hope my colleagues will submit to the rigorous analysis that a foreign policy vote should have. I also hope that you will look at the long-term consequences of these santions throughout the region.

If the President's position is not sustained, I further predict that we will see a moving to the right of the Botha government, a far more repressive regime in power, a lack of economic viability in southern Africa, not just in South Africa, a serious loss of jobs for the region as a whole, a lack of medical supplies, and finally a request to the United States for massive aid over the next 4 or 5 years. The aid will be requested not only to ameliorate the problem in South Africa, but also in Botswana, Zimbabwe, Mozambique, Swaziland, Lesotho and throughout the region. And that is most unfortunate.

Mr. President, I urge that the President's position be upheld.

The PRESIDING OFFICER. Who yields time? If no one yields time, the time will be charged equally to all sides.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator now has 9 minutes and 52 seconds remaining.

Mr. PELL. We still have to hear from the chairman of our committee and also from the minority leader. So I will yield 6 minutes to the chairman of the committee on my time and the balance to the minority leader.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I rise to ask the Members of this body to vote for this legislation once again. It has been pointed out that we had a vigorous debate in the Senate of the United States and, by 84 votes to 14 in opposition, we passed the legislation. We were persuasive with the House of Representatives and that House passed our legislation by a vote of 308 to 77.

We have come together as two Houses. We have come together with a majority of both parties. We have counseled with the President of the United States, the Secretary of State, those involved in our African policy throughout this entire endeavor.

I rise with a sense of disappointment and regret that we could not come together. But I am appreciative of the fact that the President of the United States, in a most recent message, a letter to the majority leader, has indicated that he shares a substantial amount of the idealism which was expressed by this body and perhaps equally importantly a substantial number of precise measures we have suggested.

Now, Mr. President, the question has been raised: How confident are we that our procedures will work? Mr. President, there can be no confidence with regard to sanctions or incentives or all the encouragement we have given to American business to stay the course and to work for racial and economic justice in South Africa. There can be no confidence on the part of the front line states, the European Community, Japan, the Commonwealth, the Eminent Persons Group, and all who have been involved in this. We are dealing with a tragic situation. We are dealing with history in the making, and it is dynamic.

Mr. President, those of us who have voted for this legislation believe that we saw a small window of opportunity in this month of September just past and now these few days of October in which hope could be given to blacks in South Africa that we cared, that the world cared.

Mr. President, the fact is that people are being killed and harmed there now. One can say people are being killed and harmed in the Soviet Union. And, indeed they are. There is oppression throughout the world and we must oppose it vigorously, and this Nation does so. And I back the President of the United States in his policy enunciated on March 14, in which he said we will fight for democratic institutions everywhere; against totalitarians of the left and authoritarians of the right, both. And that is important, Mr. President.

We are against tyranny. And tyranny is in South Africa, and we must be vigorous in that fight.

Now, our resources are limited. Our influence is limited. We started the debate and we started the legislation knowing that and, Mr. President, tragically our influence may be so limited that the government of South Africa will pursue headlong a course bound to lead to destruction of that government. We are not destroying the government. That Government is self-destructing. At this late point, as a friend of that government, we are saying, "Wake up." That is what the sanctions are about, to try to get an alert that we are serious. And the reason that we pursued this legislation is we believed that the President of the United States was not being heard loud and clear. Now, I think he will be, after this legislation is passed. I am confident we are going to come together with our President and make sure we are all heard with one voice.

□ 1540

We are close together, Mr. President, it would be a bad mistake to be misinterpreted today by failure to push ahead with this legislation.

I finally would state, Mr. President, that we have a long way to go in our African policy generally. The world watches today as to whether or not we are going to move in the direction that we should. We must not falter. We shall not falter.

Mr. President, I appreciate the bipartisan support that has characterized the debate in our committee, on the floor, and in the House of Representatives. Congressmen were determined to be heard on this issue. They put aside partisanship. They put aside authorship. They have moved constructively, and they have done a good job. We pray that the results will be satisfactory, and in humility we acknowledge if they are not we shall revisit the issue with our President, and try to do better.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. PELL. Mr. President, on behalf of the minority leader, I think the Senator from Massachusetts wanted a minute, Mr. KERRY.

I yield a minute to the Senator from Montana [Mr. MELCHER].

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, much has been said in the last 24 hours in dealing with South Africa's purchase of wheat from the United States. I am not knocking any country that buys U.S. agriculture commodities. But it should not be used as a threat.

The amount of wheat that South Africa has purchased from the United States is 30,000 metric tons in 1984, 16,000 metric tons in 1985, and 162,000 metric tons so far this year 1 month not reported.

This amount should be compared with other countries in Africa or other countries in the world. But just taking one country in Africa, Nigeria, I might point out——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. MELCHER. The amount that Nigeria purchases in United States wheat is 35 times greater than South Africa. The amount of wheat that South Africa purchased from the United States is minimal.

The PRESIDING OFFICER. The Senator's minute has expired.

Who yields time?

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. PELL. I yield my remaining time to the minority leader, Mr. BYRD, and I understand the majority leader has been very gracious and wants to yield.

Mr. DOLE. Mr. President, let me yield 2½ minutes to the distinguished minority leader.

Mr. BYRD. I thank both the distinguished leader and my friend from Rhode Island, Mr. PELL.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, when the Senate passed this legislation by a vote of 84 to 14, and the other body passed the legislation by a vote of 308 to 77, Congress sent the President a clear bipartisan message that the American people and the American Congress were ready for and wanted action, and that it was a matter that affected our security, indirectly at least.

The President was presented thereby with a ready-made consensus on the need for action. He had an opportunity to pick up the mantle of American leadership, and join with our allies in steering a course that would do most to encourage positive change and end the violence in South Africa.

By his veto, the President cast aside this opportunity to exercise strong personal leadership in a positive way. The administration has cast doubts on the direction of our foreign policy by trying to fight something—racist policies in South Africa—with nothing. The President's veto sent all of the wrong signals. The President announced his dissent to the violence but he offers no direction for U.S. foreign policy.

No one disagrees that the ultimate solution to the South African problem will lie with South Africans themselves—black and white, working together to heal their society. But the rest of the world has a responsibility to encourage that healing process. Americans through the Congress have made it clear that violence and hatred in South Africa must not go on.

An invitation to Marxist-Leninist exploitation must not be written in the blood of South Africans. The President's offer of sanctions comes too late, and is much too little. They only add to the uncertainty that already surrounds American policy toward South Africa.

The administration has changed its course slightly but it is still sailing without a compass. Lip service has been tried but lip service is not enough. The President has refused to send the message that the American people, through their elected representatives in Congress, have wanted him to send. Today, we shall send that message from the people of this great country, and we will send it to the President, to the people, to the government of South Africa, and we will send it to the world.

Mr. President, in that midnight discussion between Brutus and Cassius on the plains overlooking Philippi, while their legions were brimful, their cause was ripe, and their strength was at its height and ready to decline, Brutus said to Cassius:

There is a tide in the affairs of men
Which taken at the flood leads on to fortune;
Omitted, all the voyage of their life
Is bound in shallows and in miseries.
On such a full sea are we now afloat,
And we must take the current when it serves,
Or lose our ventures.

Mr. President, we shall take the current when it serves. We shall send a message to the President of the United States. Lip service is not enough. We will send a message to the people of South Africa, and to the government of South Africa: Stop the violence; stop the killing; and stop apartheid before it tears your great nation asunder. I urge Senators to vote to override the veto.

The PRESIDING OFFICER. The Senator's time has expired.

The majority leader is recognized.

Mr. DOLE. Mr. President, I thank the Senator from Rhode Island.

We have been trying to work out everybody's problems on time. I think most everyone has had an opportunity to speak. Some were here until 11 o'clock last night. This is a very, very important issue. It is a very sensitive issue. It is an issue on which there are very strong views. It is bipartisan in a sense. It is troublesome. There will be a vote. Thirty or forty minutes from now the outcome will be known. But I suggest, if we were voting on whether or not to end apartheid, the vote would be unanimous. So that is not the issue.

If we were voting on whether or not we wanted to change the South African Government to some extent, I assume it would be near unanimous. If we were to suggest that perhaps the White House has not been moving as quickly as many of us would like, I assume there would be a majority who would say that is right.

But it has been my view for some time that the President of the United States, whether he be a Democrat or a Republican, when it comes to foreign policy matters—and this should be a foreign policy matter, it may not be at this moment—that the President of the United States was the one with the moral authority to speak for America on a matter of this seriousness.

□ 1550

Today, if the President loses, it is going to be our policy we end up with, it is going to be the policy the Congress established, and we will be responsible.

Who is going to direct that policy from the Congress of the United States?

If, in his letter of August 29, the President had not almost adopted the bill reported out by the distinguished chairman of the Senate Foreign Relations Committee, I would have joined the distinguished Senator, Senator LUGAR.

But the President has moved. He does understand the problem. He does not go quite as far as a bill that came here and was amended on the Senate floor—amendments, I might add, opposed by the distinguished chairman of the Foreign Relations Committee. Now we have to make a judgment.

I happen to believe the letter the President sent up here was very strong. I hope those who have denounced it have read it. It is four pages long, or more.

The President said, "In the last several months, the South African Government, instead of moving further down the once promising path of reform and dialog, has turned to internal repression. We all know that South Africa's real problem traces to the perpetuation of apartheid."

Make no mistake about where the President is coming from.

He also promised in this letter, and I believe the President's word is good, it has been, that he would expand the Executive order which came about because of action here last year by a vote of 80 to 12 when we passed the first sanctions bill. All but 12 Senators supported it.

The President understood at that time that he was going to have to do something, and he did. He understands now that he did not go far enough, so he is offering a new Executive order.

A ban on new investments; a ban on the import of South African iron and steel; a ban on bank accounts.

He also wishes to work with the Congress.

There are a number of other things I did not read.

A requirement to provide at least the $25 million in assistance for scholarships; a requirement to consult with allies in order to coordinate policies and programs toward South Africa.

I guess the question we have to ask ourselves is, do the sanctions add up to policy? Is this the policy of the United States of America? The bill passed today, if the veto is overridden, is that our policy, and for how long? Who will be at fault the next time something happens in South Africa? The President of the United States or those who voted to override the President's veto?

I imagine there will be some way to blame the President. They will figure out a way to make it Ronald Reagan's fault because it did not work, because the bill we passed, that we passed over his objection, did not work.

That is going to be Ronald Reagan's fault.

So this is not a question of whether or not there should be sanctions. An overwhelming majority of us feel there should be. The question is, how far should we go?

I am convinced that we are very close together, as the chairman of the Foreign Relations Committee mentioned a few moments ago. If there were some wide gap between the President of the United States and the Members of Congress, then we could perhaps say, "OK, let him have it."

There is not a wide gap. There is hardly a gap at all in what the President believes ought to be done and what the majority of us in this body believe ought to be done.

What are the real issues?

The President abhors and condemns apartheid. If anybody here doubts that, they ought to stand up and say so.

There have been mild rumors that somehow the President may be racist, that he made racist statements or he has a racist policy.

I do not think that is the case nor, I hope, does anyone else.

He has imposed sanctions. He is willing to go a step further, many steps further.

He is prepared to undertake new diplomatic initiatives—to dialog with the frontline states; to reach out to opposition blacks inside and outside South Africa; to help all elements of the political scene of South Africa get together to work out a rapid, peaceful transition to a postapartheid society.

Who is going to do that now? Should the President? Or should he say, "Well, it is all yours. You have decided the policy, some of it partisan and some of it nonpartisan. You have decided that South Africa is no longer a responsibility of the President of the United States."

That will not be the case. The President will not shrink from his responsibility notwithstanding the vote today on the Senate floor.

I believe the President wants to cooperate with—and not in defiance of—the Congress. He has reached out to us and asked us to join him, and he has made dozens of phone calls—maybe not dozens but quite a few phone calls—asking Members, particularly on this side of the aisle, to support him.

He ran in 1980 and was elected. He ran in 1984 and was reelected. We have had our differences, but this is a big, big step. I am convinced if the President's veto is sustained he is going to do all the things he promised, and more.

I think the letter is a rather clear message, and I ask unanimous consent that it be made part of the RECORD. All of you have probably seen it.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, September 29, 1986.

Hon. ROBERT DOLE,
Majority Leader,
U.S. Senate,
Washington, DC.

DEAR BOB: I understand and share the very strong feelings and sense of frustration in the Congress and in our Nation about apartheid, an unconscionable system that we all reject. The ongoing tragedy in South Africa tests our resolve as well as our patience. None of us wants to aggravate that tragedy.

In the last several months, the South African Government, instead of moving further down the once promising path of reform and dialogue, has turned to internal repression. We all know that South Africa's real problem traces to the perpetuation of apartheid. And we know that the solution to this problem can only be found in lifting the present State of Emergency, repealing all racially discriminatory laws, releasing political prisoners, and unbanning political parties—necessary steps opening the way for negotiations aimed at creating a new, democratic order for all South Africans. The South African Government holds the key to the opening of such negotiations. Emerging from discussion among South Africans, we want to see a democratic system in which the rights of majorities, minorities, and individuals are protected by a bill of rights and firm constitutional guarantees. We will be actively pursuing diplomatic opportunities and approaches in an effort to start a movement toward negotiations in South Africa.

I outlined in my message to the House of Representatives on Friday my reasons for vetoing the Comprehensive Anti-Apartheid Act of 1986, principally my opposition to punitive sanctions that harm the victims of apartheid and my desire to work in concert with our Allies. I also indicated in that message that I am prepared to sign an expanded Executive order that strongly signals our rejection of apartheid and our desire to actively promote rapid positive change in South Africa. I am prepared to expand the range of restrictions and other measures that will characterize our relations with South Africa. There would be strong sanctions in my new order, sanctions that I earnestly wish were unnecessary. These sanctions, directed at the enforcers not the victims of apartheid, encompass measures recently adopted by many of our Allies, as well as many elements of the original Senate Committee version of the bill. They are incontestably necessary in today's circumstances. My intention is to make it plain to South Africa's leaders that we cannot conduct business-as-usual with a government that mistakes the silence of racial repression for the consent of the governed.

My new Executive order will, therefore, reaffirm and incorporate the measures I imposed last year (i.e., bans on loans to the South African Government and its agencies, all exports of computers to apartheid-enforcing entities and the military and police, all nuclear exports except those related to health, safety, and IAEA programs, imports of South African weapons, the import of Krugerrands, and a requirement for all U.S. firms to apply fair labor standards based on the Sullivan principles). The Executive order will also add:

A ban on new investments other than those in black-owned firms or companies applying the fair labor standards of the Sullivan principles;

A ban on the import from South Africa of iron and steel;

A ban on bank accounts for the South African Government and its agencies;

A requirement to identify countries taking unfair advantage of U.S. measures against South Africa with a view to restricting their exports to the United States by the amount necessary to compensate for the loss to U.S. companies;

A requirement to report and make recommendations on means of reducing U.S. dependence on strategic minerals from southern Africa;

A requirement to provide at least $25 million in assistance for scholarships, education, community development, and legal aid to disadvantaged South Africans with a prohibition on such assistance to any group or individual who has been engaged in gross violation of internationally recognized human rights;

The imposition of severe criminal and civil penalties under several statutes for violation of the provisions of my Executive order;

A requirement to consult with Allies in order to coordinate policies and programs toward South Africa;

A requirement to report on whether any of these prohibitions has had the effect of increasing U.S. or allied dependence on the Soviet bloc for strategic or other critical materials, with a view to appropriate modifications of U.S. measures under my Executive order should such dependency have been increased;

And a clear statement that the Executive order constitutes a complete and comprehensive statement of U.S. policy toward South Africa, with the intent of preempting inconsistent State and local laws which under our Constitution may be preempted.

Sanctions, in and of themselves, do not add up to a policy for South Africa and the southern Africa region. Positive steps as well as negative signals are necessary. This unusually complex and interrelated part of the world is one that cries out for better understanding and sympathy on our part. We must consider what we can do to contribute to development of healthy economies and democratic institutions throughout the region and to help those who are the victims of apartheid.

Following the Congress' lead and building on existing programs, I plan to expand our assistance to those suffering the cost of apartheid and to help blacks as they prepare to play their full role in a free South Africa. We spent $20 million in FY 86 and have requested $25 million in FY 87. We will do more, much of it along the lines incorporated in the South Africa bill.

I am also committed to present to the next Congress a comprehensive multi-year program designed to promote economic reform and development in the black-ruled states of southern Africa. We intend to seek the close collaboration of Japan and our European allies in this constructive effort. Our goal is to create a sound basis for a post-apartheid region—a southern Africa where democracy and respect for fundamental human rights can flourish.

I believe the United States can assist responsibly in resolving southern Africa's tragic dilemma. Many observers in and outside South Africa regard present trends with despair, seeing in them a bloody inevitability as positions harden over the central question of political power. This is a grim scenario that allows no free choice and offers a racial civil war as the only solution. It need not be so if wisdom and imagination prevail.

South Africans continue to search for solutions. Their true friends should help in this search. As I have said before, our humanitarian concerns and our other national interests converge in South Africa as in few other countries. With the actions I propose today, I believe it is clear that my Administration's intentions and those of the Congress are identical. May we unite so that U.S. foreign policy can be effective in bringing people of good will and imagination in South Africa together to rebuild a better, just, and democratic tomorrow.

Sincerely,

RONALD REAGAN.

Mr. DOLE. Some would say the President did not act quickly enough. Some told me today, "If I had had this letter a month ago, I would have been on board with the President."

Well, it is here now and that is the important thing.

If somebody believes that somebody other than the President of the United States can stand up anywhere in a press conference right after the vote or tomorrow morning and speak for America, they are kidding themselves.

So I guess we have to determine today whether we are going to work with the President. I do not believe there is any clearer way to send the wrong message than to cut the ground out from under the President of the United States.

"We are ready to strike out on our own," some say. "Let us do it our way. Maybe our way is the right way."

Next year there will be another bill, and we will be back. This is going to be on the calendar for years. We are not going to give up in our opposition to apartheid.

I just wonder if the Congress is equipped to decide more than just if we want sanctions. We have decided that. But are we all going to be around here ready to do what is necessary when those sanctions strike home, and strike home most forcefully against the very blacks whose fortunes we claim to champion?

I had a phone call this morning from Chief Buthelezi, Chief of the Zulus, the largest tribe in South Africa. I was not aware of the call. I probably would have taken the call. My understanding is that he was calling me to ask me to sustain the President's veto.

He may know as much about South Africa as some in this Chamber. Maybe not. We have never been there, many of us.

So this is a "feel good" vote. This is a feel good foreign policy. Do not go near the problem, just parcel out the solution.

Maybe Mr. Buthelezi is somehow wrong. He has been discussed at length by the distinguished Senator from South Dakota.

I guess the only question I would ask, and I have some trouble with this problem myself, because unfortunately some view it as sort of a civil rights celebration, that this is a litmus test for those of us who feel strongly about civil rights in America. Nothing could be further from the truth. But I ask the question as I conclude my debate: Who is going to be around to solve the problems we create by not working with the President of the United States?

□ 1600

Again, I say that it is a tough decision. I know the distinguished chairman of the Committee on Foreign Relations is one of the strongest supporters Ronald Reagan has and it is a tough decision for him. We came that close to an agreement, but could not quite work it out.

I just say that we are not going to end apartheid, but we can help.

We can help if we take a strong postion against apartheid, if we back it up with strong action—and if we stand together. If we do less than this, then we end up doing very little, if anything.

So, finally, thats our choice: Do we want to do something effective against apartheid, with the President? Or do we just want to do something, anything, so we can say "we did?"

Thats what this vote is really all about.

I hope my colleagues will vote to sustain the President's veto.

The VICE PRESIDENT. The Senator from South Dakota has 20 seconds.

Mr. PRESSLER. Mr. President, I would like quickly to say that I note the presence on the floor of many members of the Congressional Black Caucus. I have worked with many of them in the House, I welcome them.

My record on civil rights is very strong. But I think if anything, this vote has be to taken as a civil rights vote. I am convinced that this is very unfortunate, because it has not been subjected to the rigors of committee action on its foreign policy implications. If anything, this display of the members of the House Black Caucus is truly indicative of what the vote really is—not a foreign policy vote, not one taken on the merits of the geopolitical realities, but a domestic U.S. vote. South Africa deserves better. We deserve better.

The VICE PRESIDENT. All time has expired. The question is, Shall the bill pass, the objections of the President of the United States to the contrary notwithstanding?

The yeas and nays are mandatory under the Constitution. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. Garn] is necessarily absent.

The VICE PRESIDENT. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 78, nays 21, as follows:

[Rollcall Vote No. 311 Leg.]

YEAS—78

Abdnor
Andrews
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Bumpers
Burdick
Byrd
Chafee
Chiles
Cohen
Cranston
D'Amato
Danforth
DeConcini
Dixon
Dodd
Domenici
Durenberger
Eagleton
Evans
Exon
Ford
Glenn
Gore
Gorton
Grassley
Harkin
Hart
Hatfield
Hawkins
Heflin
Heinz
Hollings
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Long
Lugar
Mathias
Matsunaga
Mattingly
McConnell
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nunn
Packwood
Pell
Proxmire
Pryor
Quayle
Riegle
Rockefeller
Roth
Sarbanes
Sasser
Simon
Specter
Stafford
Stennis
Trible
Warner
Weicker
Wilson
Zorinsky

NAYS—21

Armstrong
Broyhill
Cochran
Denton
Dole
Goldwater
Gramm
Hatch
Hecht
Helms
Humphrey
Laxalt
McClure
Nickles
Pressler
Rudman
Simpson
Stevens
Symms
Thurmond
Wallop

NOT VOTING—1

Garn

The VICE PRESIDENT. The Chair reminds the occupants of the galleries and the visitors on the floor that they are the guests of the Senate and demonstrations of approval or disapproval are not permitted.

On this vote, the yeas are 78, the nays are 21. Two-thirds of the Senators present and voting having voted in the affirmative, the bill, on recommendation, is passed, the objections of the President of the United States to the contrary notwithstanding.

□ 1620

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. RIEGLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Evans). Without objection, it is so ordered.

The Senate is not in order.

Senators who are conversing in the aisles will please retire to the cloakrooms or their seats so that the business of the Senate may continue. The Senate cannot continue until the Senate is in order. Will those who are conversing in the aisles please take their seats or retire from the Chamber? The Senate will not continue until the Senate is in order.

Mr. RIEGLE. I thank the Chair.

Mr. President, I think the vote that has just been recorded is a remarkable statement by the American people of their feeling about the events that have been transpiring in South Africa. I think the size of the vote, 78 to 21, says unmistakably to the world how the people of this country feel about apartheid and about the fact that apartheid must end, and it must end now.

Mr. President, the House of Representatives, by its overwhelming vote, has stated its position on the issue, and now the U.S. Senate has done likewise.

I am very proud of the fact that every Senator on this side of the aisle voted to override the veto.

It is not easy for Members of Congress—the House and the Senate—whichever party, to cast an override vote when the President of the United States has expressed himself to the contrary. But we have done so here, and properly so, and for the right reasons.

I think this increases substantially our chances for peaceful change to majority rule in South Africa, and that is what must come, and what we hope to see.

So I congratulate my colleagues in the Senate and the House for the strength of their conviction to be willing to vote to override this veto. I think this is a great victory for our country, for our belief in freedom and self-determination, and a majority rule in South Africa and everywhere on this Earth.

I yield the floor.

Mr. PELL. Mr. President, I hope that the vote on the veto override that we have just taken will not be taken as any personal repudiation of the President as he goes off to the presummit in Iceland. I believe we all wish him good luck and success when he goes there in his dealings with the Soviets. His success there is our success.

With regard to the vote we have just taken, I am pleased that the Senate has followed the House and overriden the President's veto. In so doing, we have made it clear that the American people and Congress are against apartheid not only in words but also in deeds. We have put the South African Government on notice that there is a price to pay in their relationship with us if they do not take genuine and immediate steps to dismantle their inhumane and unjust system of apartheid. I sincerely hope that the administration will recognize that its policy of constructive engagement has failed and that the administration will fulfill the spirit as well as the letter of the South Africa bill which we have now enacted.

I know of no way for us as a Nation to send a more powerful statement than we have done. The House of Representatives, by an overwhelming majority, has taken this position.

The PRESIDING OFFICER. Will the Senator yield, so that the clerk can report the pending business?

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

The PRESIDING OFFICER. The clerk will state the pending business.

The bill clerk read as follows:

A joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes.

The Senate resumed the consideration of the joint resolution.

Mr. HATFIELD. Mr. President, I think we are ready now with an amendment by the Senator from Tennessee, which has been pending or which he has had ready since last night.

I believe we have close to 120 amendments remaining to be handled. I want to put the Senate on notice that we are going to go as many hours or days as it will require, and as many nights, to finish it.

We are now on a marathon. We are not committed to completing this CR. I do hope that people will be considerate from the standpoint that there are those who are not interested at this time in listening to long speeches on any subject and that it has to be brief and to the point, if we want to be reasonable in the period of time that is going to be required. Otherwise, we can just expect a marathon that is not to the benefit of anyone.

I yield the floor at this time.

AMENDMENT NO. 3121

(Purpose: To amend the Communications Act of 1934 to provide for security and fair marketing practices for certain encrypted satellite communications)

Mr. GORE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The bill clerk read as follows:

The Senator from Tennessee (for himself, and others) [Mr. GORE], proposes an amendment numbered 3121.

Mr. GORE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill, insert the following new sections:

SEC. . (a) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting after section 510 the following new section:

"WILLFULL AND MALICIOUS INTERFERENCE WITH SATELLITE COMMUNICATIONS AND OPERATIONS

"SECTION 511. Whoever without authorization willfully or maliciously interferes with, or causes interference to, the transmission of any lawful communication conveyed by means of satellite, or the operation of any satellite, shall, upon conviction, be fined not more than $250,000 or imprisoned not more than ten years, or both.".

(b) Within thirty days after the date of enactment of this Act, the Federal Communications Commission shall commence an inquiry into equipment, methods, and systems for the detection and prevention of violations of section 511 of the Communications Act of 1934 and other potentially damaging signal interference with satellite communications. In conducting such inquiry, the Commission shall consult with the National Telecommunications and Information Administration and other interested Federal agencies.

(c) Section 1362 of title 18, United States Code, is amended by adding at the end thereof:

"This section shall not apply to conduct prohibited by section 511 of the Communications Act of 1934, relating to interference with satellite communications.".

(d) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States."

FEDERAL COMMUNICATIONS COMMISSION RULEMAKING ON ENCRYPTION DEVICES

SEC. . Within seven days of the enactment of this Act the Federal Communications Commission shall initiate a notice of proposed rulemaking to address issues to ensure, to the greatest extent possible, that earth station owners shall need only one device to decrypt programming. Nothing in this section shall be construed to alter or affect any encryption which was in effect or announced on the date of enactment of this Act.

FAIR MARKETING OF CERTAIN SATELLITE COMMUNICATIONS

SEC. . Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsection (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c)(1) Any person who is encrypting satellite cable programming for private viewing on or after thirty days of enactment of this Act shall—

"(A) make such programming available for private viewing by home satellite antenna users;

"(B) in the case such persons utilize any other person distribute encrypted satellite programming to home satellite antenna users—

"(i) not discriminate on price, terms, or conditions among different distributors offering distribution services to the consumer, or in making programming available to such distributors.

"(2) Any person aggrieved by any violation of paragraph (1) of this subsection may bring a civil action in a United States district court or in any other court of competent jurisdiction. Such court may—

"(A) grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain such violations; and

"(B) direct the recovery of full costs, to a prevailing plaintiff including awarding reasonable attorney fees, actual damages, and additional profits of the violator, or statutory damages for all violations in a sum of not more than $100,000 as the court considers just.".

DEFINITIONS

SEC. . Section 705(d) of the Communications Act of 1934 (as redesignated by section 2(1) of this Act) is amended—

"(1) 'satellite cable programming' means video programming which is transmitted via satellite and which is primarily intended for the direct receipt by cable operators for their transmission to cable subscribers;";

(2) in paragraph (4) by striking out "and" and at the end thereof;

(3) in paragraph (5) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

(4) by adding at the end thereof the following new paragraphs:

"(6) 'home satellite antenna user means a person who utilizes a satellite reception antenna to view or listen to, in his home or residence, communications, received directly from a communications satellite in Earth orbit".

Mr. GORE. Mr. President, I ask unanimous consent that the names of the following Senators be added as cosponsors of the amendment: Senator SASSER, Senator PRYOR, Senator BENTSEN, and Senator MCCONNELL.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORE. Mr. President, I wish to note that the original cosponsors of this amendment, in addition to myself, are Senator FORD and Senator BUMPERS.

This amendment has to do with the right of satellite dish owners to pay for scrambled programming on a fair basis. There is a tremendous problem being faced by owners of satellite dishes due to the fact that programmers like HBO and Showtime and others, as well as some advertiser-supported programmers, have begun to scramble their signals, thus denying access to millions of Americans, most of them in rural areas, who in the past were able to watch these programs.

Let me make on point crystal clear at the outset of this debate, Mr. President. No one, and certainly not the sponsors of this amendment, is saying that satellite owners should be able to get these programs for nothing. The satellite dish owners want the opportunity to pay for the scrambled programming, but they want a price to be set by competition.

☐ 1630

Second, Mr. President, no one is saying, and certainly not the sponsors of this amendment, that the price for these programs should be set by the Government. No one is saying that there should be regulation by the Government. That is a red herring. It has nothing to do with this amendment.

What we are saying is that we should allow the forces of the free marketplace to work and set the price.

Third, Mr. President, no one is saying, and certainly not the sponsors of this amendment, that there should be a moratorium on scrambling. The owners of these programs, the managers of these programs, the copyright holders, should be allowed to scramble. These programs represent private property. They make them and sell them for a living. There is no moratorium in this amendment. Scrambling can proceed.

Mr. President, that is what this amendment does not do. Now let me describe for my colleagues what the amendment does do.

This amendment is intended to open up the marketplace to allow competition to take place. Why is that needed?

It is needed, Mr. President, because competition is now being stifled by the programmers who are owned and controlled by another industry in competition with the satellite dish industry.

HBO, Showtime, Cinemax, the Movie Channel, MTV, Nickelodeon, ESPN, and others, are all owned by cable television companies or by larger corporations that are heavily involved in ongoing cable television businesses around the United States.

Also, some of the programmers that are not owned by cable television companies are nevertheless subject to being controlled by the cable industry because more than 95 percent of their revenue comes from cable television. Let me give you an example, Mr. President: The Christian Broadcasting Network relies on advertising revenue for 100 percent of the money it receives. You would naturally think as a result that the Christian Broadcasting Network would be interested in getting as many viewers as possible. After all, if you are publishing a magazine and you are selling advertisements, you go to your advertisers and you say, "I have a million subscribers so you have to pay me more money for my ads. If you can build up that subscriber base to 2 million, you can raise the price of your advertisements."

So, naturally, the Christian Broadcasting Network will be interested in increasing the number of people seeing that network. Why, then, Mr. President, would the Christian Broadcasting Network begin scrambling its signal thus denying the 1.5 to 2 million satellite dish owners access to that station? They have announced plans to do that later this year. The answer, Mr. President, and we have this documented, is that the Christian Broadcasting Network has been informed by some large multisystem cable operators that unless it scrambles, they will be denied further access to the cable systems.

You begin to see the picture. They depend for most of their customers on cable systems. The cable industry has economic power over that station. They use that economic power in an unfair way to tell them they have to scramble and deny their signal to satellite dish owners or else they will begin to lose a lot of money because they will no longer be able to put their signal on cable systems. That is not fair, Mr. President. It is just that simple. It is not fair.

Because of political pressure and because of the outrage of satellite dish owners throughout the United States, programmers like HBO began last year to sell their signal to satellite dish owners. But the price, Mr. President, is higher and often significantly higher than the price charged to cable customers. In addition, the satellite dish owner has the expense of buying a $400 decoder at the expense of the initial equipment and the cable company has no expense in providing service there because there is no cable extended there.

□ 1640

So why should the price to a satellite dish owner be more than the price to a cable company? The answer, of course, is that the cable industry insists that the price be higher than the price charged to cable customers.

Let me give you an analogy to explain this point. Everyone in this Chamber is familiar with videocassettes that can be rented at chains like Erol's or hundreds, perhaps thousands, of outlets now; I am sure thousands. In my hometown of Carthage, TN—and it is only 2,000 people—there are now more than six stores that rent these videocassettes.

Let us say, by way of making an analogy here, let us say that the movie theater industry controlled the supply of movies to the rental cassette industry. They might well be interested in establishing a rental price that was no lower than the price of a ticket to the movie theater. Often the same movies are shown. And if one industry controls the source of supply to its competitor, that industry might very well be tempted to establish a floor under the price that could be charged by its competitor, making the argument, the self-serving argument that people should not be encouraged to go to the rental cassette market instead of going to the movie theater.

Well, fortunately, the movie theater industry does not control the source of supply to the rental cassette industry. As a result, market forces have pushed the price of that videocassette rental down to levels far below the price of a movie theater ticket.

The two markets are very different. Even though you may see the same movie, if you are renting a videocassette, you have to buy the video machine, you have to get in your car and go rent the tape, bring it back home. And when you are through looking at it, you have to go back to the store and take it back. That is a different marketplace. And the forces in the marketplace have set prices lower in that part of it than in the other part.

Now, using that analogy, look at what has happened to the owners of satellite dishes. That market is very different from the market for cable television. In the case of the cable television market, it is the retailer that incurs a large expense to put poles in the ground or rent pole space and extend cable lines out to the customers. In the case of the satellite dish market, the retailer incurs virtually no expense.

In the case of the cable market, the customer has virtually no expense. But in the case of the satellite dish market, the customer has an enormous expense—$2,000 and, of course, the more expensive systems can get much higher than that. They they have got the expense of that $400 descrambler.

My point is this: These two markets are very different markets. There is no logical reason why the forces of the marketplace would produce exactly the same price in one market as opposed to the other market. And intuitively one would expect the price in the satellite dish market to be driven by market forces down to a point lower than the price in the cable market. But that is not happening.

It is not happening for one simple reason: The cable industry controls totally the supply of programs for the home satellite dish market. They have a stranglehold on it and they will not let it go.

Call up HBO, Mr. President. If you live in a rural area of Tennessee or Kentucky or Arizona or South Carolina, and you live in a franchise area that is not served by cable—you do not have a cable television line going to your home; you do have a satellite dish—if you call up HBO and tell them you want to pay for their program, they will charge you more than a cable customer pays. And do you know what else they will do? They will charge you an extra $5 a month that they then turn around and give directly to the nearest cable television company. You are not even hooked up to that television company. You have nothing to do with them. You have tried to get them to run their line out to your house and they will not do it. So why do you have to pay them $5 a month in order to see the programming on your satellite dish?

I challenge any Member of this body to answer that question. The only answer is that it is done by virtue of sheer, raw, unfair market power. That is why it is done.

Now let us say you are a businessman, Mr. President, and you see a market opportunity. You see 1½ to 2 million owners of satellite dishes out in America and you have got a good idea. You say:

> I am going to sell them programming. I am going to buy it wholesale from HBO or CNN or wherever and then I am going to turn around and sell it retail to these satellite dish owners, because my expense will be less than those of a cable television company. I am not going to have to fool with all of that cable.

All right, as a businessman, you call up HBO and you say: "I want to buy your signal on a wholesale basis and turn around and retail it to satellite dish owners." Let us say you have all of the equity capital you need; you have an established business. There is no reason for you to be turned down.

Do you know what they will tell you? They will say no. They will say no, because you are not a cable television company. You see, Mr. President, the cable industry and the programming industry are so closely intertwined that one has complete control over the other. And the programming industry officially adopts the position that they refuse to sell to anyone except a cable television company, or they have started these direct marketing programs to the dish owner at prices way above the cable television customer's price. This is not fair.

Let me give you another example. Let us say you are a cable television company this time, and you are selling the signal to satellite dish owners in your franchise area and you see a business opportunity to sell it outside your franchise area. You do not want to make as big a profit as many might. You want to sell it nationwide or you want to sell it in the next county.

The minute you start doing that, HBO cuts you off. This was tried in the Northwest. A cable company tried to sell it outside its franchise area and got cut off. That is not fair, Mr. President.

How do we remedy this? The remedy is in the marketplace. If the forces of competition are allowed to work, this problem will be solved. But we have a monopoly situation here. We have an unfair use of an enormous market power preventing the forces of competition from working.

□ 1650

So we are proposing this amendment. This amendment will solve the problem in a fair way, in a way that is fair to all. Let me describe how it works. First of all, it has a section that stiffens the penalties for anybody like that Captain Midnight character who illegally interfered with the HBO signal. There ought to be tougher penalties for that. They are in this bill.

Second, this bill asks the FCC to immediately begin an inquiry on how a standard for decoders can be established. An earlier version of the amendment was more specific on that point. This version of the amendment that we are introducing does not mandate the single standard. It initiates the inquiry and moves us in the direction of a commonsense result on that. Then we come to the major part of this amendment. Let me describe it in clear and simple terms.

This amendment says that if a programmer like HBO sells its signal for retail resale to satellite dish owners it cannot discriminate against other potential retailers simply by virtue of the fact that they happen not to be cable television companies. If they just want to sell it direct to the dish owners, they are not affected by this provision. But if they sell it to retailers, for resale to the satellite dish owners, they will be prohibited by this amendment from refusing to sell to noncable television companies—a very simple change, Mr. President, but one which will have the refreshing liberating effect of unleashing the forces of competition. Nobody here knows what the fair and correct price for satellite dish programming is. None of us know that.

The marketplace has to set that price. And satellite dish owners want the marketplace to set the price. But the market is not going to work unless we remove this artificial distortion in the marketplace, and get rid of it because that distortion is what is preventing market forces from operating.

Mr. President, at this point I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. GORE. Thank you, Mr. President.

The vote, which will later occur on this amendment may occur on a procedural motion to make it possible to have the vote on the amendment. And every Member of this body should be very clear about the fact that that vote is not going to be viewed as a procedural vote.

There have been almost a million letters arriving at the U.S. Senate over the last few weeks. The telephone calls, and letters are geared to this procedural vote. It is clear what this issue is about. We have tried for 2 years to get this solution to the problem. We have not been able to do it going through the normal channels.

This is the last opportunity to solve this problem. This solution will work. It relies on the market. It is fair, not only to satellite dish owners but to programmers and to the cable industry as well. All it says is let the competition work.

So, Mr. President, I hope everyone who has talked to a satellite dish owner in his or her home State and has been made aware of this problem will understand clearly that this is the vote. This is it. This is the one. If you vote in favor of this amendment, you are going to solve this problem, or rather you are going to vote to let the market solve it. If you vote against it, you are voting in effect to allow some powerful vested interests to keep the market locked up for satellite dish owners, and the supply of programs that they want to pay for. It could not be a clearer choice. If you want competition, if you want to see this industry survive, and bring the service out to rural America and to others, you will support it.

One other thing before closing. Let us remember that this magnificent technology of satellite broadcasting was developed at taxpayer expense. The Federal Government with Federal tax dollars paid the lion's share of the money needed to develop this new technology. As a result of this effort mainly by Government funding, the private sector was able to come in and launch this new broadcasting industry. Now satellite dish owners in rural areas are in a position of having seen their tax dollars develop this satellite technology so they can be put up there, now the signal is falling on their yards and they are told they cannot watch it, or they are told they have to pay an arm and a leg, plus an extra little kickback to the nearest cable company if they are using HBO in order to see it.

Mr. President, this is our last opportunity in this session of Congress to right this wrong.

So I urge all of my colleagues to vote yes on this amendment.

Mr. McCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, I want to commend the Senator from Tennessee for his leadership on this most important issue, as well as the Senator from Arkansas and particularly my colleague from Kentucky, Senator FORD, who worked with this issue and tried to develop it in the Commerce Committee.

I may say, Mr. President, I just finished going into over 20 counties in eastern Kentucky during the August recess. At every single town meeting I had, you might wonder what the biggest issue was. Not the deficit, not aid to the contras, and not South African sanctions; in eastern Kentucky, surprisingly, not even coal. The No. 1 issue in every town meeting was this. "Senator, what are you going to do about the scrambling? What are you going to do about the scrambling? I just spent $2,500 or $3,000 for a dish," and sometimes more. It is the only outside access for many of the remote areas of our State, particularly up in the hills and up in the hollows of eastern Kentucky. It is really the only outside access to what is going on in the rest of world. It is a rather remote area. Cable will never come there, Mr. President, it will never, ever come there. But it is not just the mountains of eastern Kentucky. It is all of the remote rural areas of our State.

I might say we do not have as many dishes as a lot of States. We have about 36,000. That does not even put us near the top. But it is a serious problem for rural America. And the amendment of the Senator from Tennessee is very reasonable, and very restrained. It does not make anybody do anything. But it does say we are expecting the industry—we are not mandating them—will share their corner of the market for third-party distributors in the interest of competition, and that the amendment again I say asks, but not mandates, that the FCC ensure that the dish owner needs only one decoder to receive the code.

Mr. President, during my recent visit to Kentucky and in previous visits I have been approached repeatedly by back-yard dish owners about the issue of scrambling. By and large these are constituents who live in rural parts of Kentucky outside cable franchise areas, and it is unlikely that they will ever be served by cable. They believe it is patently unfair, given the fact that they have purchased and installed an expensive dish, that they must now pay for a decoder and monthly subscription fee. But notwithstanding what they perceive to be an injustice, I believe that most dish owners are resolved to the fact that scrambling is here to stay, that they will need to buy a decoder to unencrypt the signal and pay a monthly charge. But they protest, and I agree, that dish owners should not have to buy more than one decoder and that the monthly charge should be reasonable and fair. As a constituent from West Liberty, KY, recently wrote, "I don't mind paying a fair price, but the prices they are charging are outrageous:" and herein lies the rub. In the absence of rate regulation, how can we ensure that the dish owner receives a fair shake?

I will not challenge the fact that the programmer has the right to scramble its signal and protect its investment. But I do challenge the assertion that the marketplace is working—that if we just wait it out, dish owners will have access to competitively priced services. Mr. President, that is wishful thinking absent an open and competitive marketplace.

To receive programs which are now scrambled dish owners must either pay the monthly fee to the cable company—which would not serve them in the first place—or contact the programmer directly. Third-party distributors of programming are an anomaly. Time and time again I have heard that programmers refuse to do business with potential noncable distributors. Without effective competition, the dish owner cannot hope to receive the fair price that an open marketplace would provide.

For some time I have been following this issue with the hopes that the marketplace would be allowed to work. But it has not and the recent hearing before the Senate Commerce Committee confirmed this fact. Therefore, I was pleased that legislation was crafted to provide a mechanism for the competitive, nondiscriminatory distribution of satellite programming to dish owners.

On September 19, I was pleased to cosponsor the Satellite Television Security and Fair Marketing Act. Although the bill introduced by Senators GORE, BUMPERS, FORD,and COCHRAN did not provide for rate regulation and did not contain a moratorium on scrambling, there was a great hue and cry from the cable industry. Quite frankly, Mr. President, I am baffled by the cable industry's opposition to the bill. If the market is working as the industry contends, then it would follow that they should not mind more players in the marketplace. If cable and the programmers are already providing competitive packaging, then they should not have any trouble competing with third-party distributors. If their packages are the least expensive, then I assume those will be the packages that will be bought. So why the intense opposition? Could it be, Mr. President, that they fear that a third-party distributor could offer lower priced services and therefore cut into their profits? Are they afraid of competition? I assume this must be the case because I can think of no other reason for the objections to the bill.

But the cable industry is very powerful, Mr. President, and unfortunately the amendment offered recently. Had we had more time in this session, we could and should have done more for the 1.7 million dish owners across the country. but we do not have time, and it appears that the amendment offered today is the very least we can do.

My State of Kentucky has about 36,000 TVRO owners. If my colleagues read the recent letter from Senator GORE, they will see that Kentucky has a relatively small number of dishes compared to other States. But they are vocal and they believe they have been wronged; and I agree. It angers me when a segment of the population must take whatever is handed it without recourse; and that is the case with the dish owners. Programmers and cable operators may be offering some financially attractive packages today, but there is no assurance that those prices will not go up dramatically; and when and if that happens, who will take up the slack? No one, Mr. President. No one, because as I mentioned earlier, programmers refuse to do business with third-party distributors.

Mr. President, at the least, the amendment offered today will send a signal to programmers and cable alike. But this measure, we are telling the industry that we expect, not mandate, but expect that they will share their corner of the market to third-party distributors in the interest of competition; and the amendment asks, but does not mandate, that the FCC try to ensure that the dish owner needs only one decoder to receive programming.

I tell my colleagues that this is an extremely modest proposal. For those of you with dish owners in your States, and there are many, I encourage you to join us in a pledge of support for this under-represented segment of our population by voting for this amendment.

Mr. President, that is really all I have to say about this issue. We have many amendments to consider. I will not prolong.

I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, first of all I want to say that the distinguished Senator from Kentucky, Mr. FORD, the distinguished Senator from Tennessee, Mr. GORE, and I have been working on this issue close to a year. And all of our detractors have consistently said that if we would just get out of this business, and let the marketplace decide, the whole thing would resolve itself.

That argument was sufficient to slow us up for a while. Finally, the Senator from Kentucky, Mr. FORD, and I offered an amendment on the floor to put a moratorium on scrambling.

□ 1700

That was sufficient pressure to get a hearing, which was held in the Commerce Committee, where this issue was aired. Those hearings were very revealing. But let me go back from where we came.

I became interested in this issue for two reasons: No. 1, Arkansas was one of the biggest manufacturers of satellite dishes in the United States. It was a significant industry in our State. I do not know how it developed in a State like Arkansas, but it did. As Senator MCCONNELL pointed out a moment ago, about a year ago I began to tour the State, holding town hall meetings, and I got the same reaction he did. People were more interested in what we were going to do here to make sure they were not discriminated against in getting a decent signal on their satellite receivers than they were any other single issue. I must confess at that time I was a real novitiate. I did not understand the issue, and I hardly knew what they were talking about scrambling signals. But the more I heard about it, the more I delved into it, the more I realized that there was developing in this country a real potential for discrimination against rural America.

I further found that there are 1.8 million of these dishes around the country. And do you know why they are there? They are in rural America. There is a very simple explanation for it. Many rural people cannot get a signal of any kind.

Up in the Ozark Mountains of my State, there are 400 television households who cannot get a clear television signal on any kind of an antenna. For those 400 television households satellite dishes finally brought some relief. Those people can now watch the evening network nets just like their city cousins. But another 40,000 people bought the dishes in my State and 30,000 of them bought them because they are outside a cable franchised area. They wanted to receive C-SPAN, HBO, Cinemax, Showtime, CNN, so they could sit in their living rooms and watch the same shows their city cousins watched.

Now, there was a difference. Their city cousins were having to pay for those signals through the local cable operator. If you are one of the 65,000 subscribers to cable in Little Rock, AR, you have to pay Storer Communications so much money every month for those programs. Here were these 30,000 satellite dish owners, 1.8 million nationwide, getting the signal free. Naturally, HBO and the premium programmers began to think: "This thing is epidemic. The first thing you know everybody is going to have a satellite dish and we're not going to be able to collect from anybody for our program."

They did what any prudent business person would have done. They began to figure out a way to deprive those satellite dish owners of that signal. They developed this technique of scrambling. While they were developing the technique for scrambling, they were also developing a technique for descrambling through a decoder, as it is called.

And so we now have most of the premium programmers scrambling their signals. Many programmers now scramble their signals. I have a list of the present schedule for scrambling, which I ask unanimous consent, Mr. President, to be inserted in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

THE SCRAMBLING SCHEDULE

BET (Black Entertainment Television)—1987.
Bravo—No firm date.
CBN Cable Network—first quarter, 1987.
CNN—July 1986.
CNN Headline News—July 1986.
Cinemax—January 1986.
Disney Channel—fourth quarter, 1986.
ESPN—first quarter, 1987.
Financial News Network—No firm date.
Home Box Office—January 1986.
Home Theater Network—No firm date.
Lifetime—No firm date.
MTV: Music Television—first quarter, 1987.
The Movie Channel—May 1986.
The Nashville Network—No firm date.
Nickelodeon—first quarter, 1987.
Playboy Channel—1987.
Showtime—May 1986.
TEMPO—September 1986.
USA Cable Network—1987.
VH-1: Video Hits One—first quarter, 1987.
WGN—fourth quarter, 1986.
WOR—March 1986.
WTBS—first quarter, 1987.

Mr. BUMPERS. In short, everything, virtually every premium programmer, is going to be scrambled by the end of 1978. These people now say that if you will buy a $395 decoder, so-called M/Acom decoder, and you pay each one of these people who scramble a certain amount of money, you can get these signals.

So far, so good. Not one single person in Arkansas has every said, "Senator, I think you ought to keep those people from scrambling." Not one single person in Arkansas has said, "We're not willing to pay for the signal." On the contrary, they have all said, "We understand why they want to scramble, but they must understand why we want these signals at a competitive price."

That is all we are here for today. We want to pass a very simple amendment—not stringent in any sense of the word—which simply says, "We want some competition so that the rural people of this country will pay no more for a package of programs then their city cousins have to pay."

Now, who here can argue with that? Who here is going to stand up and say, "Senator BUMPERS, you are dead wrong. We want all these people out there in the country, after they spent anywhere from $1,500 to $5,000 for their satellite dish, spend another $395 for their decoder, and on top of that we want them to pay some kind of price in excess of what their city cousins have to pay." Nobody in this Senate is going to say that. If you are not willing to stand up and say that, then vote "yea" for this amendment because that is all this amendment says. We want competition to take place. For all those people who were saying to Senator FORD and me this past year, "All we want is the marketplace to decide," that is what we are saying.

We want the marketplace to decide, too. But we want a free market. Now, some of these premium programmers want to get in the retail business. We do not have any quarrel with that. But we are saying that if you are going to sell this signal to anybody, you have to sell it to everybody. It is not fair to ask the people out there on a dish to call HBO one day and get HBO unscrambled, call Showtime and Cinemax the next day and get their signal unscrambled, and then call CNN or a host of others. The first thing you know you are going to be sending 15 checks to 15 different operations at the end of the month. That is not fair. Nobody suggests that is fair. If you do that, not only are these rural satellite dish owners going to be required to go through an unbelievable amount of trouble in sending that many separate checks, it is going to cost a lot more money.

Now, there is one point that I especially want to emphasize, and that is this is not anything against cable companies, nor does it discriminate against cable companies in any way. If the cable companies can compete in the rural market they should. If they can put together a batch of programs and go to HBO and say, "Look, I have 3,000 rural customers in Franklin County, AR, who are willing to pay 'x' dollars a month for a number of programs, including HBO. I want you to sell me this program for the same price that you sell HBO to any other cable operator with 3,000 customers."

I could make the argument—I am not going to make the argument; I do not suggest this is the reason for voting for or against this amendment—that rural people ought to get a cheaper price than anybody else. Do you know why? You do not have to send anybody out of the house to hook up the wire. Betty and I have a condominium in Little Rock we have been renting. When we decided to take cable, we made a phone call. The guy on the other end said, "When can we come to your home?" You give him a time, he comes by. He takes the cable, he brings it in the house, and he screws it into your TV.

□ 1710

Mr. President, do you know what it takes to hook up a cable? Do you know what it takes to hook up a satellite dish on them? You make a call to HBO. You call a number, and say "I want HBO. What is the price?" They will tell you.

They say, "What is the number on your decoder?"

You say, "The number on my decoder is 794782000."

They say, "Hold on just a minute."

You hold on for 30 seconds and they say, "Now, can you get it?"

You say yes, and you are in business.

That is all there is to it. Nobody comes to the front door, nobody knocks. It is all done with a computer in Omaha, NE. I do not care if you live in Key West, FL. Just call HBO and they will have it on for you in 60 seconds.

Is that not simple? You do not have to have a panel truck with a driver to go out and hook you up. All I am saying is you can make the argument that these people really ought to get a signal cheaper than the city people do where somebody has to go out and actually, physically hook up your television set.

If somebody goes to all of these different people—CNN, HBO, and so on—and they say, "We have *x* number of customers out there who want to buy your signal," we expect that company to say "you can have it for exactly what the boys in town paid for it."

That is all this amendment does. It does say that we are going to give the FCC rulemaking authority to establish one decoder. Bear in mind that if you just got through paying $2,500 for a satellite plus $395 for a decoder, you ought at least to have some assurance that you are not going to have to turn around and pay $395 for still another decoder.

Maybe technically, that is not possible. Some people question that part of the amendment. So we changed this amendment.

We have tried to meet every single objection everybody has raised against this amendment. You talk about streamlined versions; this is version No. 19 we are submitting to the Senate. Because we have tried to keep this thing on track and help the rural people of this country get these signals at a reasonable price.

Kentucky, Tennessee, and Arkansas are pretty heavily rural States. Of course we are interested. But I want to remind my colleagues that an estimated 300,000 of these satellites are inside cable areas. They are in St. Louis, they are in New York City, they are everywhere—in and out of the cable franchise area.

So I ask my colleagues, please, please help us with this amendment and help us help our people and your own.

I yield the floor, Mr. President.

Mr. FORD. Mr. President, today, I join with my colleagues, Senator GORE and Senator BUMPERS, in offering an amendment to settle the major issue with backyard satellite dish owners. Not a weekend goes by when I am in Kentucky that a backyard satellite owner hasn't come up to me to discuss the problems with obtaining program packaging. In many parts of my State, this is the No. 1 legislative issue.

I certainly sympathize with many Kentucky backyard satellite owners. For years, they have been unable to even receive the three networks even with the most powerful antennas. The invention of the backyard satellite dish created a whole new world for these citizens—television diversity. While they did enjoy cable programming for free for several years, once the Congress allowed scrambling, they were willing to pay for the programming they enjoy.

Unfortunately, many involved in the issue of cable scrambling make reference to the fact that backyard satellite dish owners want something for free. This is not a fact. Backyard satellite dish owners, in a large majority of the cases, purchased a dish at considerable expense just to have the ability to receive this programming. Due to economic considerations, there are many parts of Kentucky which will never be wired for cable. The citizens in the rural areas have only one chance of participating in the information and entertainment explosion and that is a backyard satellite dish. These people are willing to pay, but they want a reasonable price and that is why we are here today.

Mr. President, it is hard for many in Washington to understand what it is like to turn on the television and receive only one station. This is the situation in many parts of my State. It is also hard to believe the wonders of receiving many channels after so long being a television-poor area. Those of us fortunate to live in a city where there is cable service cannot conceive what it is like in many parts of eastern and western Kentucky.

All of my colleagues have heard that the marketplace is working and therefore there is no need for this amendment. I have been following the market since HBO scrambled in January. I hasten to think what would have happened to the marketplace if the Congress had not gotten involved. Also, the intervention of the Department of Justice has caused cable programmers to take a more cautious approach. The market is still unfair particularly to the rural dish owner.

This is a bare bones amendment. It does not mandate third-party programmers nor is it Federal rate regulation. More important, the amendment is not a moratorium. The amendment is simple and fair and is very important to backyard satellite dish owners.

The amendment does not in any way apply to network transmission of feeds. All three of the networks are seeking a resolution to the so-called "white areas" in rural areas so there was a decision made by the sponsors not to address this matter in this amendment.

Finally, I would like to inform my colleagues that the Senators interested in this matter have attempted to compromise so that we would not have to take the time of the Senate on this matter under such circumstances. In August, Senator GORE, Senator BUMPERS and I were ready to introduce a bill on this matter. My office was contacted by the National Cable Television Association and asked not to introduce the bill until they had a chance to offer a compromise. I talked with my two colleagues and we agreed not to introduce the bill with the hope that something could be worked out. I have since read in the press that NCTA has stated that they never asked me to not introduce the bill. The president of the association did not call me directly, but one of the members of his staff did call which I assume was at his direction.

The president of NCTA then visited my office in early September and although there is some confusion as to whether he had an offer, there certainly was nothing on paper. We discussed some very general provisions. No basic changes from the current system were discussed and nothing was ever formally offered in writing. I wanted the opportunity to explain to my colleagues that this series of events took place even though press reports have indicated the opposite. We are still ready to compromise. We attempted to resolve this Thursday, but the cable industry won't take anything. This amendment is the results of compromise discussions and although we removed the third-party provisions, NCTA still resisted our efforts to compromise.

No matter the outcome of this vote, we will be back next year. Due to actions by the Congress in 1984, all cable operators will be deregulated in January. No longer will we have the watchful eye of local officials to guarantee reasonable basic rates. I would not want to see basic rates combined with third party program packaging, but that is what we face. Let's solve this issue today and send a message to rural America that we have heard their message.

When I first came to the Congress, the cable industry was mainly composed of Moms and Pops. Since that time, there has been an enormous amount of acquisitions of the small systems by huge multisystem owners. What we have is David versus Goliath. I have faith that David will eventually win. We cannot ignore the interest of over a million families who simply want fairness in the marketplace.

Mr. President, we have heard three eloquent speeches relating to this amendment from the Senator from Tennessee [Mr. GORE], the Senator from Arkansas [Mr. BUMPERS], and my distinguished colleague [Mr. MCCONNELL]. They have gone into detail, they have explained the situation, I think.

There are a couple of points I would like to make: There is a matter of fairness here. As the distinguished Senator from Arkansas has said, we have streamlined our amendment to try to accommodate all of the questions, all of the problems of those who might object. Senator BUMPERS said this is version No. 19.

Mr. President, those in rural areas seldom complain. They like the country, they are there by choice, most of them. But they would like to have those things that other people have. It has become extremely hard in some cases to do those things. But lo and behold, through a discovery, an invention, if you will, with taxpayers' dollars, we learned of satellites. We can send them up into the sky and they fall in your backyard. If you have the ability to collect it, fine. But you have to pay for the collector.

My distinguished friend from Arkansas gave some very elaborate prices for a disc. Most in my area cost somewhere between $1,995 and $2,500. But it is in the rural areas. They do not have a lot of money and they are paying for it over a 36-month period or longer. For the first time, they have adequate viewing on television sets. Maybe, just maybe, with a large, powerful antenna, they will get one television station.

What happens now? After that expenditure of money, after 36 months of payment, interest, enjoyment, we find that they can no longer receive it unless—unless—this distinguished body says to those people throughout America, "We want you to have a fair opportunity to have TV, simple; we have one decoder, a reasonable price, and that it be available in the marketplace."

There has been a lot said about trying to work things out and there has been a lot in the press about offers made to compromise. Well, there is something about that that is unfortunate, that bothers me so, I want to say again that the president of NCTA had a staff member call, I would think at his direction, asking Senator GORE, Senator BUMPERS, and myself, back in mid-August, the Friday before we went out on recess, not to introduce this amendment; they wanted to come in and see if we could not work out a compromise.

Well, 3 weeks went by and we did not hear anything from them.

☐ 1720

Finally, after we got back here in September, the President called, asked for an appointment, and he got it, to come by and talk about a compromise. Well, if he offered a comrpomise, I do not have a very good understanding of compromise. He talked about what the cable business was doing now. It is not what they were willing to do. They did not want to change anything. Nothing was offered in writing to work out. So I do not know that a compromise was offered.

I wanted the opportunity to explain to my colleagues that this series of events took place, even though the press reports have indicated the opposite.

We are still ready to compromise. We have tried to compromise up to an hour ago. But no—they keep asking for more, asking for more.

My 36,000 homes that have satellite dishes deserve to be heard. Senators can vote against this if they want to. They can use a procedural motion and say they are not voting against the owners of satellite dishes out there, but they will be voting against those owners of satellite dishes in my State, in your State, where you have tens of thousands.

Out on the desert, on a ranch, miles away from everybody, if you finally get a satellite dish, you get to sit there and smoke a pipe and rock and watch television. All of a sudden, as you smoke your pipe and rock, your television goes off because it is scrambled, and you have already paid for it. Nobody wants to help you.

As my colleagues have said, it is a simple procedure.

I would like to make one other point, that this does not apply to networks. All three of the networks are asking a resolution to the so-called white areas and rural areas. So there was a decision made by the sponsors not to address this matter in this amendment.

I ask my colleagues to give this package their consideration. I believe that if they do, they will support our position because it is fair, it is reasonable, and it is not anything against the cable companies.

As Senator Bumpers said, we have been friends. I guess this is the first time, basically, we have disagreed. But you cannot have all of it all the time, when people out there want the service, deserve the service, and should have it.

Mr. GORE. Mr. President, I want to pay my respects to my distinguished colleague from Kentucky and my distinguished colleague from Arkansas, both of whom have been leaders in this fight. I have enjoyed working with them.

My colleague from Kentucky referred to the fact that there are 36,000 home satellite dish owners in Kentucky. There are 61,000 of them in Tennessee and there are 40,000 in Kentucky.

Mr. President, I ask unanimous consent that this not be counted as a second speech. I have no intention to drag out the debate.

Mr. HATFIELD. Mr. President, reserving the right to object, will the Senator repeat his unanimous-consent request?

Mr. GORE. That I be recognized without it being counted as a second speech. I have no intention of dragging out the debate. I want to make a concluding remark.

Mr. HATFIELD. I hope the Senator will withhold making that request at this time, because we have been almost an hour on this amendment, and I am anxious to move to some conclusion. I do not want to cut the Senator off, but I must say that the Senator has had reasonable time, I think, along with the other remarks that have been made.

Will the Senator indicate how long he would like to have for further remarks?

Mr. GORE. Mr. President, I think the chairman's point is a reasonable one. I will pass this information out to each Senator's desk and refer to it briefly in my concluding remarks.

Mr. GOLDWATER. Mr. President, I oppose this amendment, but I want to say that it is entirely different from the amendment I thought I was going to have to oppose, different from the one that was on my desk last night.

In view of the fact that the amendment has been substantially changed, I hope that the public relations people who have been handling this across the country will recognize that and inform their listeners that Senator Goldwater had nothing to do with denying them time. I was kept awake all last night and the night before and had to talk to them all day in my office.

I can say with pride that every piece of legislation that passed that has made satellite and cable television possible was passed under my supervision.

Mr. President, the whole approach of this particular amendment is not aimed at having a solution by the Communications Subcommittee of the Commerce Committee. It has to be referred to the Judiciary Committee, because this, purely and simply, is a matter of copyright. That is all it involves.

Mr. President, before I say any more, I just want to comment that while the Federal Government did have a good part in the development, investigation, and so forth, of the satellite dish concept, private money has developed this to the point it is at today.

I will say, too, that under ComSat, which is a joint Federal and private engagement, within a year or a year and a half, the average American family can have satellite television in their homes for around $400 or less, compared to as much as $10,000 or $20,000 in the past. Today, a good set would probably run around $1,200 to $2,000.

I think a point of order will rest against this amendment—I might suggest that.

First, I want to discuss why I believe it is premature.

There are two issues involved here. One is a method of scrambling and the other is the distribution of signals that are scrambled. Both issues are being actively investigated right now by the Federal Communications Commission and the National Telecommunications and Information Administration. In addition, the Department is investigating anticompetitive complaints. The FCC is against legislation at this time.

□ 1730

The FTIA is opposed to legislation at this time.

Each of them have written to me asking for time to complete a formal inquiry into the entire subject matter which is already underway.

I repeat what I said in the outset. In addition, there are copyright issues involved. In fact, I remind my colleagues that just 1 or 2 days ago in the morning paper appeared a statement by the motion picture industry that they are going to even fight harder the use of their films translated onto cassettes than they have in the past.

The relationship between antitrust law and the proposed amendment has not been explored.

These issues would probably fall under the jurisdiction of the Judiciary Committee, which has not held any hearings at all on the subject. So I believe this matter should be set aside until studied further.

Mr. President, I will conclude my statement by saying that I have made a study of the availability of programs to dish owners in my own State, and I do not see any great difference between the rates comparable subscribers pay and the rates that dish owners pay.

I might say, Mr. President, that I can understand perfectly the arguments of the Senator from Tennessee, the argument of the Senator from Kentucky, in fact the argument made by the Senator from any State. We have dishes in what we call the boondocks where you cannot get television any other way.

Mr. President, I ask unanimous consent to have printed in the Record a table listing the services and fees in Arizona.

There being no objection, the table was ordered to be printed in the Record, as follows:

SAMPLE OF ARIZONA CABLE RATES [1]

Showtime/The Movie Channel has announced a package plan for backyard dish owner subscription to Showtime and scrambled basic cable service. The package provides ten basic cable services for $10 per month, plus the cost of Showtime at $10.95 per month—a total of $20.95 per month to the backyard dish owner. (Basic cable services consist of programming such as CBN, CNN, MTV, C-SPAN, and ESPN.) The following table shows the rate cable subscribers pay for a similar package in rural Arizona communities. In all but one case the Showtime and basic charge to cable subscribers exceeds the charge to backyard dish owners. (Two cable services connected with a diagonal line means the services share a channel on a part-time basis.)

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[1] As of September 26, 1986.

Community	Show-time	Basic	Total	Basic cable services carried
Ajo	$11.95	$16.75	$28.70	CBN, ESPN.
Camp Verde	10.00	11.50	21.50	CBN, CNN, C-Span, ESPN, Headline News, Lifetime, MTV, Nickelodeon, The Nashville Network, USA Network.
Cottonwood	10.00	11.50	21.50	CBN, CNN, C-Span, ESPN, Headline News, Lifetime, MTV, Nickelodeon, The Nashville Network, USA Network.
Dewey/Humboldt	10.00	11.50	21.50	CBN, CNN, C-Span, ESPN, Headline News, Lifetime, MTV, Nickelodeon, The Nashville Network, USA Network.
Douglas	9.50	12.00	21.50	CBN, ESPN, SIN.
Flagstaff	13.00	14.95	27.95	Arts & Entertainment, CBN, CNN, C-Span, ESPN, FNN, Headline, MTV, Nickelodeon, The Nashville Network, USA Network, VH–1.
Kachina/Mountainaire.	10.00	11.50	21.50	CBN, CNN, C-Span, ESPN, Lifetime, MTV, Nickelodeon, The Nashville Network, USA Network, VH–1.
Kearny	12.00	11.00	23.00	CBN, ESPN, The Nashville Network, SIN, USA Network.
Mammoth	12.00	11.00	23.00	ESPN, The Nashville Network, SIN, USA Network.
Mayer	10.00	11.50	21.50	CBN, C-Span, ESPN, Headline News, Lifetime, MTV, Nickelodeon/ARTS, The Nashville Network, USA Network, VH–1.
Nogales	9.45	12.85	22.30	CBN, CNN, C-Span/FNN, ESPN, Lifetime, MTV, Nickelodeon/ARTS, The Nashville Network, SIN, The Weather Channel, USA Network.
Oro Valley (no separate charge).			17.95	CNN, ESPN.
Pinewood	10.00	11.50	21.50	CBN, C-Span, ESPN, FNN, Headline News, Lifetime, MTV, Nickelodeon/ARTS, The Nashville Network, USA Network.
Prescott	12.95	12.95	25.90	CBN, C-Span, ESPN, Headline News, Lifetime, Nickelodeon, The Nashville Network, MTV, The Weather Channel, USA Network.
San Manuel	12.00	12.00	24.00	ESPN, SIN.
Verde Village	10.00	11.50	21.50	CBN, CNN, C-Span, ESPN, Headline News, Lifetime, MTV, Nickelodeon, The Nashville Network, USA Network.
Village of Oak Creek.	10.00	11.50	21.50	Arts & Entertainment, CBN, CNN, ESPN, FNN, Lifetime, MTV, C-Span, Nickelodeon, The Nashville Network, USA Network.
Williams	9.50	12.00	21.50	CBN, CNN, ESPN.

Mr. GOLDWATER. I further ask unanimous consent to have printed in the RECORD letters I have received from the Federal Communications Commission and the general counsel of the U.S. Department of Commerce.

There being no objection, the letters were ordered to be printed in the RECORD, as follow:

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, DC, September 26, 1986.

Hon. BARRY GOLDWATER,
Chairman, Subcommittee on Communications, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In response to your request for our views, the Department of Commerce strongly opposes S. 2823, the "Satellite Television Security and Fair Marketing Act," and urges that it not be enacted.

We have no objection to that portion of the bill which would increase sanctions for willful or malicious interference with satellite communications and direct the Federal Communications Commission (FCC), in consultation with the Department's National Telecommunications and Information Administration (NTIA), to inquire into means of detecting such interference more effectively. We defer to the Department of Justice regarding the propriety of the particular sanctions selected. We strongly oppose, however, those provisions which legislate methods for distributing satellite cable programming to individual owners of television receive-only antennas or "dish" owners.

Under the bill, persons encrypting or "scrambling" programs relayed by satellite to cable television systems for distribution to cable subscribers would also be required to make that programming available to dish owners through cable television operators or independent distributors. Programmers would be obliged to employ FCC-approved encryption methods and sell programming on nondiscriminatory terms. The bill would create a new right of action enabling aggrieved parties to secure injunctive relief, recovery of costs including attorneys' fees, and actual as well as punitive damages not to exceed $500,000 from programmers. Although S. 2823 purports only to establish preconditions for signal scrambling, the conditions in the bill are so unlikely to be fulfilled for commercial or technological reasons that enactment of this measure would effectively impose a moratorium of indefinite duration on signal scrambling. Requiring a "universal encryption system," for example, could cause considerable turmoil and confusion in the industry given that the system now used by satellite users differs greatly from the system generally used by cable television system operators.

As Assistant Secretary Sikes indicated when he testified on satellite scrambling July 31, 1986 before the Senate Commerce Committee, we understand the concerns motivating this legislative proposal. Several cable programming firms began scrambling their satellite signals earlier this year. Although methods to sell viewing rights to dish owners have been established, some delays and other problems have arisen. An effect has been to curtail the availability of popular satellite programming previously available to nearly one million dish owners.

Available evidence indicates that marketplace forces are moving to ensure dish owners the ability to purchase the right to receive and "de-scramble" satellite cable programming at competitive prices. The Department of Justice is reviewing allegations that present program sales arrangements are anticompetitive. The FCC and NTIA jointly are conducting a formal inquiry which will yield a sound factual basis to support judgments regarding any need for Government action. There is thus no need for Government to intervene at this time to dictate any one solution to a perceived problem which, once the facts are known, may prove nonexistent or amenable to far less intrusive solutions.

Not only is there no demonstrated need for Government intervention, but legislation along the lines of S. 2823 could impede the rapid development of an effectively competitive, unregulated satellite cable program distribution and sales system. As Assistant Secretary Sikes also stated in his testimony on this issue, Congressional intervention at this juncture would hobble private sector efforts to develop program packaging services, if it would not prevent such initiatives altogether by curtailing access to venture and investment capital.

Sincerely,

DOUGLAS A. RIGGS.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, DC, September 25, 1986.

Hon. BARRY GOLDWATER,
Chairman, Subcommittee on Communications, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN. This is in response to your letter of September 23, 1986 requesting comments on S. 2823, the "Satellite Television Security and Fair Marketing Act" introduced September 16, 1986 by Senators Gore, Bumpers, Cochran, Ford and Sasser. In important part, this bill would (1) require, for the first time, satellite cable television programmers to provide their programming to home stellite dish owners for private viewing; (2) require programmers that employ cable operators to distribute their material to home satellite antenna users to also license independent "third party" distributors; (3) provide for civil actions for up to $500,000 for violation of such provisions; (4) require the FCC to establish uniform standards for decoding devices so as to assure that only one such device would be necessary to view all scrambled programming; and (5) establish new severe penalties for the interruption of a satellite signal.

If enacted, S. 2823 would appear to effect some significant, unnecessary changes in the way that the home satellite dish market operates. In addition, there are serious ambiguities in the text of the bill. Furthermore, I think it ill-advised to move forward in this area without at least examining the specific provisions of the Bill in hearings and without waiting for the results of the Commission's Congressionally-requested study.

In direct response to Congressional interest (*see, e.g.,* Hearings of the Subcommittee on Telecommunications, Consumer Protection, and Finance of the House Energy and Commerce Committee of March 6 and June 12, 1986 and of the Senate Communications Subcommittee of the Committee on Science, Commerce, and Transportation on July 31, 1986), this Commission, in cooperation with the National Telecommunications and Information Administration, on August 7, 1986 launched an extensive *Notice of Inquiry* into this entire subject matter. Specifically, this Inquiry (copy enclosed) examines, and requests data and comments from all interested parties, concerning: the development of descrambling equipment, including the issue of whether the industry is developing a *de facto* standard; the marketing and distribution systems that are developing for programming; and the legal and policy issues related to scrambling.

Comments in that proceeding are due October 10 and Reply Comments on October 27, 1986. Because of the timeliness of this proceeding, no delays in this schedule are anticipated. Indeed, the staff has indicated its intention to present a final recommendation to the full Commission by the end of this calendar year.

Therefore, in view of this outstanding and expedited *Notice of Inquiry*—which encompasses all of the issues contained is S. 2823 as well as other, inter-related issues—it is our recommendation that action on the subject bill be held in abeyance pending the outcome of our *Inquiry*.

Moreover, we observe that in a short period of time, the marketplace appears to be responding reasonably well to the tensions in this area. For example, the industry appears to be settling upon a *de facto* technical standard for decoders in its general acceptance of the M/A Com Videocipher II, and according to trade press reports prices of satellite programming are coming down.

Lastly, we offer the following comments with respect to certain of the provisions of S. 2823 itself:

Proposed Sec. 511(c) would require the FCC, within 30 days and in conjunction with NTIA, to commence an inquiry into "equipment, methods, and systems for the detection and prevention of violations of section 511." Such an *Inquiry* is already underway in the *Notice of Proposed Rule Making and Notice of Inquiry in General Docket No. 86-337*, adopted on August 7, 1986 (copy enclosed) which is a companion item to our broader policy *Inquiry, supra*.

Proposed Sec. 705(c)(1)(A) would require any person encrypting satellite cable programming to make that programming available for private viewing by home satellite antenna users. This is a significant step beyond the Cable Communications Policy Act of 1984. Cable programmers are not common carriers and it seems inappropriate to mandate that they serve all would-be customers. This is particularly true if, as I believe is the case, they have appropriated market incentives in most instances to provide service without regulation. Furthermore, this provision is likely to create serious problems of billing and collection. For example, producers of one-time events such as boxing title fights might find it difficult to obtain compensation from individual dish owners. Prudence dictates investigating the broad ramifications of this provision prior to adopting it.

Proposed Sec. 705(c)(1)(B)(i) would require any person encrypting satellite cable programming and utilizing cable systems to distribute the programming to home satellite antenna users to not restrict such systems from selling service outside the system's franchise area and "not discriminate in price, terms, or conditions based on whether sale of such programming is for a cable subscriber or dish owner." Although the bill's sponsors claim they are not proposing rate regulation, this provision could result in administrative procedures fully as intrusive and cumbersome as rate regulation. The term "discrimination" is undefined. If the bill in fact would allow cost-based differences in rates for satellite dish and cable subscribers, then some forum (the FCC or the courts) would have to decide whether differences are cost-based. To resolve them, the same information needed for full-blown rate regulation would be required. Imposition of this imperfect and unnecessary process would severely burden the forum and the industry.

Proposed Sec. 705(c)(1)(B)(ii) would require that any person encrypting satellite cable programming and using cable systems to distribute the programming to dish owners "establish reasonable financial and character criteria" for noncable distributors to qualify to distribute such programming to dish owners and "not discriminate in price, terms or conditions among different distributors offering similar distribution services to the consumer." This proposal is both intrusive and ambiguous. It requires programmers to accept an unspecified number of distributors, and, since discrimination remains undefined makes it unclear what if any discretion the programmer has in dealing with distributors who provide different levels of service. Thus, it is not clear that the bill would allow programmers to take account of the billing expertise of local cable operators or the scale economies associated with large distributors.

Proposed Sec. 705(c)(1)(C) would require that the FCC establish uniform standards for a universal encryption system so that only one such device would be necessary to view all scrambled programming, subject to specific performance specifications set forth in the bill. We have already observed that the industry itself appears well on the way to utilization of a *de facto* scrambling standard. The need for such a provision (which is being examined in our outstanding *Notice of Inquiry*) is unclear, and the effect of adopting it is ambiguous. Although the bill does not provide explicitly, it appears that it would impose a moratorium on all scrambling, starting 30 days after enactment and ending when FCC standards are established. Such a moratorium could last for a substantial period of time, with obvious adverse effects on the market in terms of uncertainty and reduced programmer incentives. In the past, when this Commission has promulgated technical standards—*e.g.*, AM stereo and color TV—it has been a lengthy and litigious process. Furthermore, there is no guarantee that the Commission would do as good or as quick a job as the marketplace in setting standards.

Accordingly, in view of the foregoing, we cannot support S. 2823 at this time.

Sincerely,

MARK S. FOWLER,
Chairman.

Mr. GOLDWATER. I yield the floor.

Mr. WILSON. Mr. President, the pending amendment offered by the Senator from Tennessee [Mr. GORE] and others, is a recently crafted follow-on to his bill, S. 2823, which is entitled "The Satellite Television Security and Fair Marketing Act."

Now, my attention is necessarily drawn to any bill that has the word fair in its title. After all, who can be against fairness? Yet, when the word "fair" is used in connection with commercial activity, it can be somewhat misleading.

For example, Federal law for many, many years used to make an exception in our antitrust prohibitions for so-called fair trade laws enacted by States. A more descriptive way to refer to these State statutes was to call them retail price maintenance laws. Retail price maintenance was not fair, fo this governmental allowance of collusive commercial behavior lead to artifically increased prices.

True fairness, in a commercial setting, allows the market to set the price. It is not fair for companies to conspire to set the price, and, in the absence of a natural monopoly of essential services, it is not fair for the Government to set the price.

Mr. President, not all commercial combinations are bad, but those that artificially inflate prices are not in the public interest. That is why we have antitrust laws—laws that can be invoked by governmental as well as private parties. They are broad in scope, and they have generally served us well, particularly with regard to price fixing and concerted efforts that lead to a refusal to deal.

These laws do not, however, generally require companies to sell their products to any person or group if the seller, on his own, feels that it is not in his best interest. A seller must have the opportunity to establish his own marketing strategies to maximize his market and his profits—again, only if it is done without conspiring with other sellers or with certain select customers.

With specific reference to the pending amendment, its sponsors want to impose upon a developing, nascent marketplace a Federal regulatory scheme.

The sponsors want the sellers of programming services, such as HBO, Showtime, ESPN, CNN, and others, to make their programming available to satellite dish owners. The sponsors want these sellers not to impose territorial restrictions on the marketing efforts of those who retail the programming directly to the satellite dish owners. And, the sponsors want the programming sellers to make their programming available to the wildest array of retailers who are economically capable of performing in a responsible, businesslike fashion.

Mr. President, I agree with each and every one of these goals. But, Mr. President, I am not persuaded that the Congress should mandate these goals, for it is the role of the government to allow the marketplace to work—not to mandate any particular set of results.

Indeed, Mr. President, the efforts of many on both sides of the aisle and on both sides of the Capitol have successfully jawboned market-based improvements in the availability and distribution of programming to satellite dish owners.

Scrambling was a response to the fact that a growing number of people were gaining access to entertainment programming without paying for it. Some called it theft, others said that it was simply receiving clear radio signals that were being projected on our continent. In any event, the Cable Television Act, enacted in 1984, acknowledged that this activity was legal. At the same time, the Congress recognized that the copyright owners were entitled to be compensated for their efforts. They were entitled to be paid for access to the programming. They had taken the economic risk, and for that they have a right to charge a fee to those who have the opportunity to view the programming—and, they actually have the right to try to make a profit.

The intent of the programming suppliers originally was not to supply access to satellite dish owners, but with the call of many in the Congress, the programmers decided to make the programming available. A victory for the satellite dish industry.

Then, before scrambling began, some attempted to erect a moratorium expressing a fear that there would not be enough decoders available for satellite dish owners to purchase. The industry responded, producing an overabundance of decoders, many of which are still sitting in warehouses, gathering dust, not profits. The general availability of decoders was another victory for the satellite dish industry.

Then some feared that each programmer would establish a different scrambling protocol, requiring satellite dish owners to purchase multiple decoders. The industry responded, and today there is a de facto industry standard. Another victory for the dish industry.

Then some feared that prices for the programming would be set unreasonably high; that satellite dish owners would have to pay more for programming than cable subscribers. Well, considering that full-time scrambling only began less than 10 months ago, it is particularly commendable that the pressures of the marketplace have already come into play, bringing prices down. Another victory for the satellite dish industry.

And when those who felt it was unfair to pay more than cable subscribers saw prices fall below those paid for by such subscribers, they then began to complain that the prices were still too high—by some unknown yardstick.

Yet prices continue to fall, to the point where some cable systems in my State of California are selling HBO to satellite dish owners at $7.95 per month, which is $3 less than they are selling HBO to their cable subscribers. This price is an exception, but the market is continuing to move. After all, with more than a million satellite dish owners, and with programmers that offer directly competitive services, the competitive urge should bring prices even lower.

There have been complaints about the rebate—some call it a kickback—that program suppliers were paying to cable systems for each dish owner in the cable system's franchise area who signed up for satellite service. These payments did raise the specter of collusion and price fixing, and therefore, it is welcome news that this payment program was recently ended. Another victory for the satellite dish industry.

Yet with all of these beneficial changes in marketing practices, with all of these victories for the satellite dish industry and satellite dish owners—again, in the very short time that this market has been in existence—we are now told that progress has not been fast enough and that the Congress should artificially accelerate the mechanisms of the marketplace.

We are asked to force private copyright holders and licensees to sell to make their product available to people to whom it is already available through a marketing scheme that they apparently do not want to employ at present. The premise upon which we are asked to act is that this issue raises significant first amendment concerns; That if we do not act, we will be denying the first amendment rights of satellite dish owners—the right to receive entertainment programming in their homes.

If we were to take the approach of this amendment and apply it to other types of products, companies could not test market their goods nor could they, for whatever reasonable plan they might devise, limit their products to one region of the country.

If we were to apply the approach of this amendment to the arts generally, we would force every Broadway play on tour to travel to every town in the country—whatever the desires of the producers. With regard to motion pictures, we would force distributors to place their movies in every theater that asked—even if that meant that a blockbuster would appear simultaneously in every theater in town. With regard to television shows, we would force the networks to license their first-run shows not only to their affiliates, but to independent stations broadcasting in the same town and at the same time as their affiliates.

Mr. President, there is no monopoly in the cable programming industry. And, Mr. President, as important as television programming and movies are to satellite dish owners, many of whom live in rural areas, we are considering primarily entertainment, not basic necessities such as water, light, electricity, or telephone service on which we all depend and which are regulated monopolies. For this reason, and in light of the enlightened trend toward deregulation, the case against the pending amendment is even stronger.

And, as for the invocation of the first amendment by the proponents of Federal intervention, after careful consideration, I just do not believe that a first amendment analysis of the dispute is determinative or helpful.

Mr. President, I know that passions run wide and deep on this issue. I have received numerous letters, telegrams, and telephone calls imploring me to support this amendment. Certainly, if I did not know that there were thousands of satellite dish owners in California before this issue surfaced—and I did know this—I would certainly know it now. And, Mr. President, there is a great deal of merit in the basic desires of the people who sell, make, and own satellite dishes.

Because of the many calls I received, my office brought the two sides on this issue together for a meeting in my office in Fresno to exchange information and try to clarify some of the numerous issues. This meeting was productive, I am told, for some of the supposed areas of disagreement turned out to be simple misunderstandings.

Now, Mr. President, as to the merits of the antitrust issues, I share the concerns of many in the satellite dish industry over concentration of power in the cable industry. Such power, to the extent that it now exists or may develop, could allow cable system operators to disrupt the orderly marketing of programing to satellite dish owners.

Furthermore, there have been allegations made that the decisions of the program suppliers as to how they market their services—such as whether they will scramble and what scrambling protocol they will use—were made in concert, to some degree, with cable system operators. If these allegations prove to be true, they would not only run counter to national telecommunications policy, but would be in violation of our antitrust laws.

The Federal Communications Commission currently is considering the issue of concentration in the cable industry, and the Department of Justice has underway an antitrust investigation of events surrounding the initial scrambling decisions made by the program suppliers.

So, Mr. President, I cannot support the amendment offered by the Senator from Tennessee [Mr. GORE], despite my support for the purposes for which it was offered.

The reason that I oppose the amendment is that scrambling and the satellite programming delivery market has been in existence for less than 1 year, normal market mechanisms have had significant impact on the price and availability of programming to satellite dish owners, the cable industry's market power is being studied by the FCC, and allegations of unlawful, collusive conduct is under active investigation by the Justice Department. Therefore, any congressional action—even if appropriate at some later time—is premature at this time.

I do appreciate the fact that a great number of dish manufacturers and sellers have seen bad times during the transition to scrambling. They had developed their markets during a time of free programming, and adjustments have to be made.

I believe that uncertaintly in the marketplace—whether there will be a moratorium on scrambling—is one of the most significant impediments to renewed strength in the industry. I trust that as the programming delivery market continues to develop, prices will continue to decline throughout the country.

As for satellite dish owners, I appreciate the fact that they have spent large amounts of money on their equipment and, that unlike cable subscribers, they must pay the cost of maintaining their equipment. Therefore, it is reasonable that the pricing of programming take this into account. But, as I have noted, the market is new and developing quickly, so I see no need now for Federal intervention.

Mr. President, as I have indicated, I support the basic goals of the Senator from Tennessee, as I support the development of a sound, competitive market for the delivery of programming to satellite dish owners. But, Mr. President, I must strongly oppose his amendment.

Mr. PRYOR. Mr. President, I support the Satellite Television Security and Fair Marketing Act, S. 2823. This bill will today be offered as an amendment to the continuing resolution. It will encourage fair treatment for rural satellite dish owners and save jobs in an important new communications industry.

I have joined as a cosponsor of this bill after considerable thought, believing that while it is not a perfect solution to the problem, it is the best and final opportunity for the Senate to voice its concern before the 99th Congress adjourns.

I want to commend the senior Senator from Arkansas, my colleague and friend, Senator BUMPERS. He has exercised great leadership on this issue, along with Senators GORE and FORD. All of us represent rural constituencies appreciate the efforts they have put forth to see fairness made a part of the law with regard to the reception of scrambled satellite signals.

As a supporter of this amendment, I say to my colleagues that this is all the satellite owner desires: Fairness—nothing more, nothing less.

Mr. President, none of us dispute the fact that programmers and cable companies are entitled to compensation for the signals they produce or relay to the homes of America. Without such compensation, these businesses would be forced to provide their services for free to millions of homes. Needless to say, such an arrangement would be unconscionable.

Instead, this amendment requires programmers to make their signals available to qualified third party distributors. This provision fosters competition by giving the satellite dish owner a choice as to the source of the signal which he or she will pay to receive. This competition is what the marketplace is all about, and will insure that prices for scrambled services are competitive and reasonable.

In addition, the bill requires the Federal Communications Commission [FCC] to establish uniform standards for decoders. This is necessary so that satellite owners will be certain they can receive all scrambled signals with one decoder. Otherwise, the possibility would always exist that the consumer might have to purchase more than one decoder. This is a reasonable delegation of authority to the agency which Congress created to make precisely these kinds of technical determinations.

Mr. President, I would prefer that the market work without Government intervention. Unfortunately, hundreds of letters and calls from Arkansans testify to the fact that this is not occurring. Therefore, I hope the Senate will today send a signal to all concerned that this is a problem which must be addressed. A vote today for this amendment is an important step in this direction.

Mr. BOREN. Mr. President, the Senate is preparing to vote on an issue of great importance to many people in my State. The amendment we are considering concerns how best to bring about vigorous, healthy competition in providing television programming to satellite dish owners.

Many of us care very deeply about this issue because we come from States where a significant part of the population lies outside areas served by cable TV. In those cases, rural residents have had no choice but to purchase expensive satellite dish systems in order to receive the benefits of cable programming. It is for these rural residents that we must take action to assure that strong, free-market competition is working to hold down the rates satellite dish owners pay.

I want to make it very clear that if the pending Gore amendment limited itself to addressing this rural issue, I would vote for it. I wish it had been modified to address that issue only. Unfortunately, however, the amendment goes far beyond that.

In seeking to bring the benefits of competition to the rural areas, the amendment also opens the door to serious erosion of the "subscriber base" in cable franchised areas. That presents a major problem because cable systems have invested millions of dollars in providing programming to thousands of communities across the Nation. In my own State of Oklahoma, an estimated 600,000 people currently subscribe to cable TV.

I am concerned, as many of my colleagues are, over what might happen to rates for cable subscribers under this amendment. The amendment would clearly provide new incentives for current cable subscribers to purchase satellite systems and programming outside the cable system from so-called independent distributors. Were that to happen, the expensive, fixed-costs of cable systems would have to be paid for by a shrinking pool of cable subscribers. With fewer subscribers to pay, rates would have to go up—perhaps dramatically. That kind of situation would hurt lower-income subscribers the most, since they can least afford to purchase a satellite system. I don't think any of us want to see that happen.

Mr. President, the Gore amendment clearly poses a dilemma for those of us who feel strongly about our rural constituents who do not enjoy the benefits of living in a cable franchise area. We are told the marketplace is already working to provide fair, affordable rates to dish owners outside cable areas. As the old saying goes, Mr. President, "seeing is believing." I will be watching very closely to see if cable programming is provided, as we are promised, at fair prices to dish owners. If that does not happen, I want to state for the RECORD that I am prepared to work with my colleague from Tennessee [Mr. GORE] is coming back with a proposal that addresses the rural issue head on.

I compliment him for bringing this important matter to the attention of the Senate and, in so doing, assuring that the legitimate needs of thousands of satellite dish owners are considered.

SATELLITE TV SCRAMBLING

Mr. DOLE. Mr. President, today we are being asked to vote on an amendment that purports to address the serious concerns of many satellite television viewers located in my home State and across the Nation. These viewers, who receive their TV signals through satellite dish receivers, want to be assured that they are charged fair prices for those signals. They are rightfully concerned that dish owners may someday be required to purchase more than one very expensive descrambler to receive the programming they desire. After paying thousands of dollars for dishes, the dish owners are also concerned that access to television signals will be cutoff or made prohibitively expensive. Unfortunately, the amendment being offered here today seems unlikely to solve their problems. I wish it were otherwise.

The chairman of the Commerce Committee has already pointed out how complex this issue is. He has reminded the Senate that there are two governmental studies. Now underway which are designed to improve our knowledge on these matters. One study is being conducted jointly by the Federal Communications Commission and the Department of Commerce, the other by the Department of Justice.

Results of both studies should be available early next year.

Administration witnesses at a recent Senate hearing gave assurances that the matter is being closely monitored. They were hopeful that the marketplace will produce a fair solution, but also promised to consider taking action if the marketplace doesn't work fairly or quickly enough. In addition, the witnesses assured the Senate that only one descrambling technology has been adopted by the cable industry. No one anticipates that a new technology will dislodge this de facto standard in the forseeable future.

I hope the experts are right. The dish owners are running out of patience, and rightly so. I want the dish owner to know that all of us are also closely watching. The distinguished chairman of the Commerce Committee has assured me that he will be reviewing the matter on an ongoing basis. If the system does not work, I can assure you of my intention to seek a legislative solution.

Mr. HATFIELD. Mr. President, we have spent a little over an hour on this amendment. I think it has had considerable amount of hearing on it. Therefore, I would at this time raise a point of order on the question of germaneness.

Mr. GORE. Mr. President, will the Senator yield?

Mr. PRESSLER. Mr. President, a point of order. Will the Senator withhold a moment? Is it possible to get 5 minutes? I have not had a chance to speak and I have been waiting to speak.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Senator from South Dakota be yielded 5 minutes for a point he wishes to make and I ask that the Senator from Tennessee be yielded 3 minutes for closing the argument.

Mr. GORE. A parliamentary objection?

The PRESIDING OFFICER. Is there objection?

Mr. GORE. Reserving the right to object.

Mr. DANFORTH. If the Senator from Oregon could suggest, I might be yielded 3 minutes.

Mr. HATFIELD. Yes.

Mr. GORE. I wish to raise a germaneness question when the point is made. Must I do that at this point or can this await the three speeches under the unanimous consent?

Mr. HATFIELD. I say to the Senator I will raise it under rule XVI which is not a matter debatable and the question of germaneness is put immediately to the floor. One does not have to raise it.

The PRESIDING OFFICER. The point of order is that the amendment is not germane.

Mr. HATFIELD. Mr. President, I repeat my unanimous-consent request that the Senator from South Dakota be yielded 5 minutes, the Senator from Missouri 3 minutes, and the Senator from Tennessee for 3 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from South Dakota is recognized.

Mr. PRESSLER. Mr. President, I rise today to support the amendment offered by the distinguished Senator from Tennessee and others. I do so with some reservation because I feel that I am supporting the lesser of two evils, very frankly. But I do so, and I do not like interfering with the free market. But the free market is not being allowed to function in this industry. From everything I can determine, it is purposely being held back.

I think what is happening here illustrates the need for a Teddy Roosevelt era of trust busting, or something, because I get so many complaints from the small cable operators who want to negotiate for pictures, and so forth. They will not be negotiated with by HBO.

I recently chaired a hearing where the witness from HBO said he did not know what price they charged different groups. He had a staff of five or six people and none of them knew or seemed to know, and it really is a mystery to me that some of the small or medium-sized cables are not treated better. The same thing is true of access.

I recently participated in a hearing on this issue, which I entered with an open mind. But as I listened to the testimony, it became increasingly clear to me that we are not dealing with a truly competitive industry here. That is the problem I have with the status quo. If the industry was truly competitive, or if I had any indication that the industry was moving in a more competitive direction, I probably would oppose this amendment. But that is not what is happening.

For the TVRO industry to survive, it needs access to programming at reasonable prices. Now I would not like to get into the business of defining and dictating a reasonable price. The marketplace can do that if it is allowed to function and it is not functioning currently. I do not even like forcing the access issue. But there are few alternatives. The cable industry appears to have been quite successful to date in keeping premium programming largely to themselves. As far as I have been able to determine, they have done this through their ability to dictate terms to the programmers. It appears to be something of an "if you sell to others, I won't buy from you" technique. Now they have not been so blatant as to shut the dish owners off completely. They do make programming available, although it usually costs a dish owner—who has invested thousands of dollars in hardware programming—more for the software than it does for the cable customer who has virtually no capital investment. As far as anyone can tell, there is no real justification for this kind of price discrimination. I have asked for it many times. But we cannot get an answer.

Perhaps that fact more than anything else has led to my position on this amendment. I really feel that we are being stonewalled by the biggest elements of the industry. And I emphasize biggest. Too often I think we talk about the cable industry in generic terms. There is a vast difference between the biggest MSO's and the small independent operators in States like South Dakota. I recently attended the South Dakota Cable Association Convention in my State and had the opportunity to talk to the operators. They are working hard to provide service to their customers at reasonable rates. But in a very real sense I think they are in the same boat as many of the TVRO dealers and consumers. They are constantly being squeezed by increasing programming costs. Because of their weaker bargaining position, they are forced to pay up to twice as much as their larger cousins. And when they group together in an effort to gain some purchasing power, the programmers refuse to deal with them.

To some extent, the smaller operators are subsidizing the big MSO's. It is impossible to prove or disprove that at this point because the industry has steadfastly refused to supply us with adequate cost and price data.

Mr. President, I hope that we consider a subpoena if we have to get this information. The point is that the smaller cable operators are victims of this problem, too. They provide a great service, and it would be unfortuante if they are punished for the sins of others. That is one of the reasons I urged that the decoder standardization provision of this amendment be changed or deleted. With that and other changes made, I do support this measure.

We will hear in this debate how programming is available simply by dialing a toll-free number; how demand is slowly increasing; and how prices are already coming down. And to a limited extent most of that is true.

But the crux of the problem here is that it could and should be working much better if the market were allowed to function. Today, it seems to me that the market is allowed to function only to the extent those in control will allow it to.

One of the keys to correcting the problem is to allow aggressive third party distribution of satellite programming. That way, the free market would have a real chance of resolving this problem. Today, dish owners have only one source from which they are allowed to purchase programming. They have to go straight to the programmer. There have been efforts by the National Cable Cooperative, the REA and others to package potential subscribers in order to realize sufficient economies to deliver the signal at ever-decreasing prices. But the programmers refuse to deal with them. Whether it is through pressure from the large cable operators or their own decision I do not know. But I do know that there is no movement within the cable industry to resolve this problem by themselves. The TVRO industry is literally dying. The MMDS industry is not even being allowed to see the light of day. The smaller cable operators are at a huge disadvantage vis-a-vis their giant counterparts. And the bottom line is that the consumer suffers.

I may be wrong in my assessment of what is happening. But I have asked time and time again for an explanation from the industry. I have yet to receive an answer.

I wish there were some way, short of legislation, that this problem could be corrected. But as of today, I don't see one. So, I support this amendment. And if it fails, I will continue working to develop an alternative which will work. If the industry continues to refuse to cooperate in resolving these real problems, we will simply have to step in. And if it doesn't work today, we will be back later, and at some point we will develop an answer that the big cable operators are not going to like. But it will happen because the cable industry is forcing it to happen. We cannot stand by and allow a few big corporate giants to stifle a market for their benefit, and make millions of consumers around the country pay the price.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, at the outset I would like to pay tribute to Senator GOLDWATER. He has been Mr. Communications in the Senate for years. I think this is perhaps his last floor fight on a communications issue. He really has been invaluable and it is not going to be the same without the Senator from Arizona in the future.

Mr. President, let me say I am for dish owners. I am for taking care of their problems. I have no doubt that their problem is going to be resolved, but I think it would be a very serious mistake to attempt to write extraordinarily complex legislation on a continuing resolution.

As has been pointed out already, the exact details of this amendment have been under negotiation for days. The details have been changing. It is a complex problem.

It is also a new problem, Mr. President. The problem of scrambling goes back only to January 1986 when HBO began scrambling and that was the first scrambling that was done on a large-scale basis. Showtime began scrambling in May 1986.

The Government has not exactly been asleep on this issue. The Commerce Committee has held a hearing. I do not think that it is possible to have sat through that hearing without realizing what a contentious and complex issue this is.

But our committee has held a hearing on it. I am sure we are going to be involved in this in the future.

What is more, studies are now being undertaken, one of them jointly by the Commerce Department and the FCC and another by the Justice Department. And it is anticipated that those studies are going to be completed by very early 1987.

So, this is not a question of inaction. It is a new problem that is under intense investigation both in Congress and in the executive branch.

I do not think that there is a Member of Congress who is certain that the approach that is offered in this amendment is the correct approach.

□ 1740

It would mandate that, if a programmer of television programming wanted to sell the programming to a third party, it would have to be available to all third parties. For example, if the Christian Broadcasting Network wanted to sell its program through HBO and have it packaged through HBO, it would have to offer the same programming to Playboy or be sued by Playboy. I do not think that that is necessarily the right approach or the right answer to this problem.

It seems to me that the best approach is to wait for the studies which will be completed by early next year and then figure out what is the best approach to deal with it, rather than trying to address this problem in a continuing resolution.

Mr. WILSON. Will the Senator yield for a question?

The PRESIDING OFFICER (Mr. MCCONNELL). The Senator's 3 minutes have expired.

Mr. WILSON. I ask unanimous consent for 1 additional minute so he might yield for a question.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. WILSON. Thank you, Mr. President.

My question to the Senator from Missouri is: Do I understand that there is a Federal Communications Commission investigation currently under way in the area of the concentration of the cable industry?

Mr. DANFORTH. In precisely the question of scrambling, an investigation is now being conducted jointly by the FCC and the Department of Commerce.

Mr. WILSON. Did I understand you to say that the Department of Justice has underway an antitrust investigation of the events surrounding the initial scrambling decision?

Mr. DANFORTH. That is correct. And it is also correct to say that the Commerce Committee of the Senate has held a hearing in this area. We have received very complex and conflicting statements. But there is a lot of interest on the part of the Commerce Committee. And I am confident that either the marketplace is going to solve this problem, as was the testimony of the administration, or the Congress will.

Mr. WILSON. Can you state when those investigations will be completed?

Mr. DANFORTH. Early 1987. I believe one of them will be completed in January 1987.

Mr. WILSON. I thank the Senator.

The PRESIDING OFFICER. The Senator from Tennessee has 3 minutes.

Mr. GORTON. Will the Senator yield for a question?

Mr. GORE. I am happy to yield briefly.

Mr. GORTON. Before the Senator from Tennessee begins, I should like to ask this question. I am concerned that pay-per-view services might have a difficult time of complying with the terms of the amendment of the Senator from Tennessee, if indeed, it is intended to apply to them. Is it the intention of the Senator from Tennessee to see that the amendment covers those services?

Mr. GORE. I am happy to clarify that point.

It is not the intention of the amendment to require pay-per-view services be sold to dish owners if that were not practical or economical on the part of the programmer. It is not intended to have that effect. MACOM says that it will be compatible. If it is not technically compatible or practical or economical, it is not intended to cover pay-per-view services. I hope that clarifies that point.

Mr. President, in concluding this debate, let me make a few brief points.

First of all, the statement was made if they sell it to someone, they have to sell it to everyone. That is not accurate. They have to establish business criteria. They determine what the criteria are. But a retailer that meets the programmer's own business criteria cannot be discriminated against solely on the basis of the fact that he or she is not a cable company.

Mr. President, there are many other points that ought to be made. Basically, we have a big injustice going on right now. It ought to be solved. This amendment will solve it.

In concluding the debate, let me just briefly point out the reasons why this amendment should be passed, why you should vote yes on the vote that we are about to have. I mentioned the number of dish owners in the States of the three primary sponsors of this amendment. Let me conclude by reading to my colleagues the number of dish owners in their own States who are interested in this legislation.

In Louisiana, 51,000; in Oklahoma, 47,000; in Texas, 159,000; Alabama, 62,000; in Mississippi, 31,000; in New York, 47,000; in Pennsylvania, 45,000; in Florida, 59,000; in Georgia, 48,000; in North Carolina, 59,000; in South Carolina, 36,000 in West Virginia, 8,000; in Virginia, 33,000; in Maryland, 13,000; in Delaware, 3,000; in Maine, 5,000; in New Hampshire, 5,000; in Vermont, 5,000, in Massachusetts, 5,000; in Rhode Island, 2,000; in Connecticut, 5,000; in Ohio, 56,000; in New Jersey, 6,000; in Indiana, 55,000; in Illinois, 47,000; in Michigan, 56,000; in Wisconsin, 30,000; in Minnesota, 22,000; in Iowa, 27,000; in Missouri, 53,000; in North Dakota and South Dakota, 8,000 each; in Nebraska, 22,000; in Kansas, 33,000; in Montana, 21,000; in Idaho, 14,000; in Wyoming, 9,000; in Colorado, 43,000; in New Mexico, 18,000; in Arizona, 24,000; in Utah, 7,000; in Nevada, 16,000; in Alaska, 2,000; in California, 44,000; in Washington, 14,000; in Oregon, 37,000; in in Hawaii, 1,000.

Mr. President, those are 1,673,000 reasons for this body to vote yes on the question about to be put.

The PRESIDING OFFICER. The time of the Senator has expired.

The question is, is the amendment germane?

Mr. GORE. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Is the amendment germane? The yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called to roll.

Mr. ARMSTRONG [when his name was called]. Present.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. Garn] is necessarily absent.

The PRESIDING OFFICER (Mr. Symms). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 44, nays 54, as follows:

[Rollcall Vote No. 312 Leg.]

YEAS—44

Abdnor
Baucus
Bentsen
Biden
Bingaman
Broyhill
Bumpers
Burdick
Byrd
Chiles
Cohen
D'Amato
Denton
Dixon
Exon
Ford
Gore
Gorton
Grassley
Hawkins
Heflin
Hollings
Johnston
Kasten
Leahy
Long
Mattingly
McConnell
Metzenbaum
Mitchell
Moynihan
Murkowski
Nunn
Pell
Pressler
Proxmire
Pryor
Rockefeller
Sasser
Simon
Specter
Symms
Trible
Zorinsky

NAYS—54

Andrews
Boren
Boschwitz
Bradley
Chafee
Cochran
Cranston
Danforth
DeConcini
Dodd
Dole
Domenici
Durenberger
Eagleton
Evans
Glenn
Goldwater
Gramm
Harkin
Hart
Hatch
Hatfield
Hecht
Heinz
Helms
Humphrey
Inouye
Kassebaum
Kennedy
Kerry
Lautenberg
Laxalt
Levin
Lugar
Mathias
Matsunaga
McClure
Melcher
Nickles
Packwood
Quayle
Riegle
Roth
Rudman
Sarbanes
Simpson
Stafford
Stennis
Stevens
Thurmond
Wallop
Warner
Weicker
Wilson

ANSWERED "PRESENT"—1

Armstrong

NOT VOTING—1

Garn

The PRESIDING OFFICER. On this vote, the yeas are 44, the nays are 54, and 1 present. The judgment of the Senate is that the amendment is not germane.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was judged to be not germane.

Mr. STENNIS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, at this time I would like to propound a unanimous-consent request on a time agreement.

The Senator from North Carolina [Mr. Helms] is about ready to offer an amendment dealing with title X on the subject of parental consent for providing contraceptives. This has been a subject that has been discussed in this body many times in the past. The Senator from North Carolina is willing to enter into a 40-minute time agreement, 20 minutes to a side, with himself controlling the proponents' side and the managers of the bill would control the opposition side.

At the appropriate moment, I would expect to make the same point of order that has been made on the previous amendments on the question of germaneness.

I would hope that we could expedite this subject with a time agreement of this kind and get to the question that will be presented to the body for disposing of the amendment.

□ 1810

Mr. METZENBAUM. Will the Senator from Oregon yield for a question?

Mr. HATFIELD. Yes, I will be happy to yield.

Mr. METZENBAUM. Do I understand the unanimous-consent agreement to be 40 minutes, 20 minutes on a side on the issue of germaneness, but if the matter is ruled germane, then there is unlimited time available to discuss the merits?

Mr. HATFIELD. The Senator is correct.

Mr. METZENBAUM. I thank the Chair.

Mr. HATFIELD. Mr. President, I make such a unanimous-consent request.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. Is the Senator raising an objection?

Mr. HEINZ. No. I am seeking recognition.

The PRESIDING OFFICER. The Senator from Oregon still has the floor.

Mr. HATFIELD. Mr. President, I will be happy to yield to the Senator from Pennsylvania if he wishes to make a point.

Mr. HEINZ. No. The Senator from Pennsylvania is seeking recognition of the Chair.

Mr. HATFIELD. Mr. President, I would like to indicate that at this time we are hoping to make unanimous-consent requests for time agreements on each amendment that will be considered henceforth in order to try to expedite the process of the Senate.

I also would like to say to the Senator from Pennsylvania we have been ready for amendments from very early hours, and we have tried to follow a procedure, without trying to determine who gets recognition, of moving from one side of the aisle to the other. And so I would say to all the Members of the body again that we have tried to employ the fairness doctrine in every respect. We do not have a time agreement for the Senator from North Carolina.

Mr. HEINZ addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

AMENDMENT NO. 3123

Mr. HELMS. Mr. President, I have an amendment at the desk and ask it be stated.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from North Carolina [Mr. Helms] proposes an amendment numbered 3123.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At an appropriate place in the joint resolution, add the following:

"SEC. . None of the funds appropriated under this Act for the Department of Health and Human Services shall be used to provide contraceptive drugs or devices, or prescriptions for such drugs or devices, to an unemancipated minor without the written consent of such minor's parent or guardian. For the purposes of this section, the term "unemancipated minor' means unmarried individual who is age 17 or under and is a dependent as defined in section 152(a) of the Internal Revenue Code of 1954."

Mr. **HELMS**. I send a second-degree amendment to the desk and ask it be stated.

The **PRESIDING OFFICER**. The Senator is informed that a second-degree amendment would not be——

Mr. **HELMS**. I ask for the yeas and nays on the underlying amendment, Mr. President.

The **PRESIDING OFFICER**. The amendment will not be in order at this point until the time has been used or yielded back. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. **HELMS**. I thank the Chair.

Mr. President, I share the wish of the distinguished Senator from Oregon in wanting to move amendments as quickly as possible, and I am not going to tie up the Senate with extended debate, but the amendment now pending is extremely important to millions of Americans.

For the very first time, Senators will have an opportunity to tell the American people if they favor or oppose giving Federal funded contraceptives to minors without parental consent. The parents of this country have a right to know how each of us stand on this issue.

Mr. President, the amendment I am offering is relatively simple. It would require that parental consent be obtained before federally funded contraceptive drugs or devices or prescriptions for such drugs or devices are given to an unemancipated minor who is 17 years old or younger.

Mr. President, in order to make sure that no one misrepresents my position on this matter, let me first say that I am not advocating, nor would I advocate, congressional restrictions on the use of safe contraceptives by married couples. The issue here is not whether we will restrict contraceptives but whether we will have parental involvement when the Federal Government goes into the business of dispensing contraceptives to teenagers.

Imagine this situation, Mr. President. A married couple has a family, and their oldest child becomes a teenager. They have worked hard all their lives, paid their taxes, and tried to instill religious and moral values into their children. One of those values is that sexual activity should be confined to marriage.

Then their young teenager comes in contact with a so-called family planning clinic. This clinic is funded in part with the hard earned tax dollars of these parents. The teenager goes to the clinic and is told that the clinic will provide contraceptives—often powerful prescriptive drugs or devices—without the parents being involved at all. The teenager is told that there is no need to worry about what parents may think, that the dispensing of contraceptives will be kept a secret between the teenager and the clinic.

In effect, Mr. President, what we now have is this: The Federal Government takes money from American parents and then uses that money to give contraceptives—often powerful drugs—to their teenage children, without notice or consent, all behind the backs of the parents. Mr. President, this is wrong, this is immoral, and this is evidence of a Federal Government out of control and going far beyond anything the Founding Fathers ever had in mind.

Mr. President, when the Department of Health and Human Services attempted to turn the tide in 1983 by promulgating parental notification regulations, opponents balked, claiming parental involvement would only increase teen pregnancy rates. In order to reduce the pregnancy rate among American teenagers, the Government must step in and shield minors from the decisions of their parents.

But, Mr. President, the past 15 years have proven that this argument just doesn't wash. Despite the Federal Government's attempts to keep parents "out in the cold," the teenage pregnancy and abortion rates have skyrocketed. Studies by Zelnik and Kantner in 1971, 1976, and 1979, and by the National Survey of Family Growth in 1982 show a near doubling of pregnancies from 1971 to 1979 for never married women aged 15-19, from 8.5 percent to 16.2 percent and then a slight drop in 1982, to 13.5 percent. The Congressional Research Service reports that illegitimate births among this age group have increased from 190,000 in 1970 to 263,000 in 1980. Abortions among this age group have doubled since 1973 from 232,000 to 445,000 in 1980.

Furthermore, Mr. President, statistics show that in Minnesota, where a 1981 law required parental notification law for abortion, the pregnancy, abortion and birth rates among adolescents have plummeted. According to a 1985 report by the House Select Committee on Children, Youth, and Families, from 1980 to 1983, abortions to teens aged 15-19 dropped 40 percent, the teen birth rate decreased 23.4 percent and the number of teens aged 15-19 decreased by 13.5 percent.

So, Mr. President, there is simply no basis for the argument that allowing parents to decide whether their children should receive contraceptives will cause the teenage pregnancy rate to increase. Rather, I believe, parental involvement will discourage teenage sexual activity and the pregnancy rates will decline.

And what about the health risks, Mr. President? Health risks that parents should be aware of. Let's look at the oral contraceptive, the most popular contraceptive distributed at federally funded clinics. The patient packages insert lists 51 possible side effects associated with this contraceptive including loss of vision, hepatic tumors; breast, cervical, vaginal and liver cancer; gallbladder disease; a decrease in glucose tolerance; elevated blood pressure; headaches; bleeding irregularities and depression.

One study, conducted in 1980, has concluded that there exists a significant relationship between oral contraceptive usage and breast cancer, especially if the patient's aunt or grandmother has breast cancer. The authors of the study concluded, "Family history is a significant covariable in the relationship between OC [oral contraceptive] usage and breast cancer."

Because of these adverse effects and the real threat of cancer, the FDA has advised the physician to take a complete medical and family history and a thorough physical examination before prescribing oral contraceptives. To expect a 13-year-old, a 14-year-old, or even a 15-year-old to have the requisite knowledge to supply this essential information about family history is naive, Mr. President.

Furthermore, a recent study by Dr. A. Eugene Washington which appeared in the April 19, 1985 Journal of the American Association concluded that there is evidence linking the pill to chlamydia, a pelvic inflammatory disease which can lead to permanent sterility. In the article, Dr. Washington and his colleagues recommended:

> The choice of a reversible contraceptive must be expanded beyond considerations of reliability, convenience, and acute medical complications to include concern about the long-term complications from PID [pelvic inflammatory disease], ectopic pregnancy, and infertility. (reference: Oral Contraceptives, chlamydia trachomatis infection, and Pelvic Inflammatory Disease: A Word of Caution About Protection, A. Eugene Washington, M.D. et al, JAMA, April 19, 1985 Vol-253, No 15. pp. 2246-50.)

In addition, Mr. President, a 1984 publication of the Ecologist, entitled "Cancer and the Pill," reiterates the health hazards of the pill, especially to young teenagers. Furthermore, the author concludes:

> Based on medical evidence alone, parents, not the federal government, should have the right to make such a crucial decision

about their child's health and physical well-being.

So, Mr. President, I believe the issue here is quite clear: Do we believe parents have the right to help guide their children as to sexual behavior or will we continue to allow the Federal Government to sneak behind the parents' backs to provide drugs to our Nation's children.

I ask unanimous consent that a copy of the study entitled "Family History and Oral Contraceptives: Unique Relationships in Breast Cancer Patients" by Maurice M. Black, M.D., Stephen Kwon, M.D. et al. appear at this point in the RECORD.

I also ask unanimous consent that a copy of the article entitled, "Cancer and the Pill", by Ellen Grant, which appeared in Vol. 14, No. 2, edition of the Ecologist, appear in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CANCER AND THE PILL

(By Ellen Grant)

On the 22nd of October 1983 the British public knew at last that the pill could cause cancer. Two papers, published in *The Lancet*, were widely reported in the media. A British group led by Professor Martin Vessey [1] in Oxford had found large increases in cancer of the neck of the womb in women using the pill and a Californian group led by Professor Malcolm Pike [2] demonstrated a marked increase in breast cancer among young women who had started taking the pill before the age of twenty-five. *The Lancet* editorial concluded that the residual and long term effects of the pill on health needed to be taken seriously and not dismissed in an attempt to avoid the anxiety that might be created in the short term.

Such information had thus appeared and been made public more than fifty years after it was first discovered that oestrogens could casue breast cancer in male mice. Indeed, since 1932 numerous animal studies have proved that the female hormones—oestrogens, progesterone and its synthetic substitutes the progestogens, as well as the male hormones—androgens, can cause malignant growths in hormone sensitive tissues such as the breast, uterus, ovary, pituitary and testes and also elsewhere such as the brain, liver, kidney and lymphoid tissue.[3]

The well known facts of cancer induction brought about through the use of male and female hormones have been confused by the dual role of such steroids. Small doses can stimulate cancer, while large doses can inhibit tumour growth. This anomaly is not so strange when we think of X-rays. Small doses of radiation can cause cancer while large doses are used in radiotherapy. Thus a letter to *The Lancet* referred to a 1967 account of nine out of forty-two women with metastatic breast cancer who improved when treated with 'Lyndiol'. This pill contained the highest doses of oestrogen and progestogen used as a contraceptive pill in the U.K.

However, this high dose pill, although well tolerated by the women, was quickly discontinued because it caused too many missed periods. The dose was thought to cause excessive pituitary suppression with an increased risk of infertility in sensitive women. Moreover women taking the pill had pregnancy-like changes in the lining of the womb and some women developed large raw areas on the neck of the womb—an early warning sign of the risk of cervical cancer. Later the Royal College of General Practitioners reported that the risk of severe cases of inflammation of the cervix increased with increasing doses of progestogen.

In 1961 I was asked to test a wide range of pills for the research body of the Family Planning Association. In 1967 I published a method for assessing the hormone balance of the various oral contraceptives by their effect on the lining of the womb.[4] Progesterone or progestogens turn the cells in the glands—rapidly growing and dividing under the influences of oestrogens—into secreting cells. The secretion is a mixture of glycogen and fats and it normally appears at mid-cycle as a sign of ovulation in the form of vacuoles below the cell nucleus. The more progestogenic the mixture, the sooner the vacuoles appear after a woman starts taking pills—as soon as two days after the first pill. Meanwhile the endometrium (womb lining) becomes thin and sparse if such pills also contain a low dose of oestrogen; hence the reason why bleeding is usually less than during a woman's normal period in between pill cycles. Weak mixtures, which are neither mostly oestrogenic nor progestogenic in action, give indications of vacuoles for more days than usual in the middle of the month and many women therefore bleed early—before they finish taking the pill for the stated twenty days. Because oestrogen is known to cause cancer and thrombosis, and, because of the breakthrough bleeding (BTB) problem with low dose pills, most oral contraceptives come to have marked similarities; tending to be predominantly progestogenic combined with a low dose of oestrogen and have a BTB incidence of two to ten per cent of cycles.

By the mid-sixties we had tested over sixty varieties of pills among nearly a thousand women at the headquarters of the FPA in London. Seven protestogens, synthetic derivatives of progesterone or the male hormone testosterone, and two oestrogens, ethinyl oestradiol (EO) and its 3-methyl ether (Mestranol) were tested as combined or sequential pills.

Low dose pills caused not only irregular bleeding but also too many unplanned pregnancies whether given as progestogen-only pills, sequentials or combined. The progestogens—norethisterone acetate 0.3 mg, norgestrel 0.05 mg and chlormadinone 0.5 mg—gave pregnancy rates of four, nine, and twelve per 100 women-years of use while, with megestrol acetate 0.25 mg, twenty-one out of forty-three women became pregnant in a trial of progestogen-only pills carried out in Yugoslavia in 1969.[5] Although this very low dose of megestrol acetate had no obvious effect on the endometrium, the post coital tests gave poor results showing deficient cervical mucous. Again, an early clue that the cervical cells were to prove especially sensitive to the effects of the progestogens.

The oestrogens—ethinyl oestradiol (EO) 0.05 mg or mestranol 0.8 mg, given for the first eleven or fifteen days of a sequential regime, also allowed unplanned pregnancies.

The combined pill norethisterone acetate 1 mg plus E.O. 0.05 mg was given to twenty-two women, two of whom became pregnant; the break-through bleeding incidence was twenty-six per cent of cycles. That pill was therefore considered unsatisfactory for use.

Several years later, in the seventies, other pills were marketed with the same labelled doses—norethisterone acetate 1 mg plus E.O. 0.05 mg. Surprisingly these pills gave good cycle control and very few unplanned pregnancies. Since then even lower doses of the combination have been marketed. It seemed that a change in bioavailability had taken place. Pill hormones were now being micronised so that they were more efficiently absorbed by the gut with the result that apparently low doses had the same biological effect as previously achieved by higher dose pills. Obviously, women must be given large enough amounts of hormones reliably to block ovulation and to prevent endometrial bleeding. A truly low dose pill is a myth.

We found that small variations in dose of either oestrogen or progestogen could vary the side effects and the changes in blood vessels and enzymes. Very high doses of steriods could temporarily suppress 'allergic' reactions like those evident in the premenstrual syndromne, but some lower dose pill combinations exaggerate particular aspects.

Irregular bleeding was most likely with lower dose pills which were neither mostly oestrogen nor mostly progestogenic and had a prolonged early secretory phase. Headaches and migraine affected up to sixty percent of women within a year of taking those progestogenic pills which had both a prolonged late secretory effect, and marked development of endometrial arterioles.[6]. Vein complaints were most likely with either basically oestrogenic or progestogenic higher dose oestrogen pills, which also dilated endometrial sinusoids.[7] Irritability, aggression and weight gain were most likely with the pills which altered both the arterioles and sinusoids. Depression and loss of libido was most likely with high dose progestogen pills containing a low dose of oestrogen, which also increased womb monoamine oxidas activity for most of the cycle, instead of for two or three days, as in a normal cycle.[8]

The switching of symptoms is not surprising as both hormones alter amine metabolism, which controls blood vessel reactivity and mood and behaviour. Such changes can also alter prostaglandin synthesis and immune mechanisms. In fact, the most striking effect of the pill is variation in individual susceptibility. Some women have severe and disabling reactions to any type of pill while others remain symptom free for years.

In 1961 half of the women we enrolled already had had accidential pregnancies and all of our volunteers wanted to use the pill. By 1968, the world literature was reporting numerous pill side effects and three large prospective "control" studies were started in which roughly half the women (the controls) used other methods.

THE ROYAL COLLEGE OF GENERAL PRACTITIONER'S (RCGP) STUDY[9]

Forty-seven thousand women were enrolled, but ten years later 25,000 of them had been lost and only 4.4 percent of the original takers were known to be still using the pill, probably because they had an increased change of developing over 60 different types of illnesses. A few conditions were less common among women still taking the pill but even those ailments were slightly more common among women who had given up the pill than among women who had never taken hormones. Nevertheless it is claimed that the pill offers protection, a

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Footnotes at end of article.

claim which has been reported on numerous occasions and has received widespread publicity.

One such condition is benign breast disease. High doses of progestogen and longer pill use are said to prevent lumps developing, yet sensitive women will discontinue any type of pill more quickly, especially the highest and lowest dose pills, because of side effects. Moreover doctors are less likely to give the pill to women with breast disease and more likely to advise them to stop if lumps develop.

By 1979,[10] although the death rate in the study was below that in England and Wales as a whole, women who had used the pill had a 4.3 times greater chance of dying from vascular disease compared with women who had never used the pill.

By 1981[11] breast cancer had significantly increased among women aged thirty to thirty-four at diagnosis. There were by now twenty-two cases among users and six among controls aged fifteen to thirty-four, but that difference did not reach significance for the wider age range.

By 1983[12] there were thirty-four cases of invasive cervical cancer among 'ever-users' and ten among controls. Some of the pill controversy has arisen because certain conditions, such as breast cancer, are rare among young women and the numbers in prospective studies may be too small to be mathematically significant in a statistical analysis. Conversely, because breast cancer is relatively common in older women a large increase in numbers may still not reach significance.

THE OXFORD FAMILY PLANNING ASSOCIATION STUDY[13]

This study, which comprised 17,000 higher social class, well supervised women, gives a more optimistic picture of pill risks compared with those run by women in the country as a whole. After ten years[14] the death rate among women using the pill when enrolled was only half that for England and Wales, although the study showed the pill increased from vascular disease, especially the risk of death from myocardial infarction. The study also had a particularly low death rate from accidents and violence, nevertheless pill users were four times more likely to be admitted to hospital for attempting suicide compared with diaphragm users.

In 1981 the incidence of breast cancer had doubled after four years of pill use and when the interval from first use was longer than twelve years, but those figures were too small to reach significance.[15]

Professor Vessey and his team published in The Lancet in October 1983 that all of the sixteen women who had developed invasive cervical cancer had used the pill. The rates for the less serious types of cervical neoplasia had increased much more rapidly among pill users than among IUD users. Unfortunately the report did not give the increase among the women who had taken the pill before having a child (nearly forty percent of the pill users). And yet it is those youngest immature nulliparous women (who have not yet had a child) who are at special risk from changes in cell type that can lead to neoplasia.

THE WALNUT CREEK (USA)[16]

For the Walnut Creek study 16.6 thousand women were enrolled and, already at entry to the study, 34 conditions were significantly increased among 'ever-users' who were also more likely to be taking tranquillisers and other medication. Incredibly one in five of the 'control' women were using or had used oestrogens as had one in ten of the pill group.

After ten years there was an increased risk of breast cancer for pill users aged forty to forty-nine especially after four years of use.

There were thirty-seven cases of cervical cancer among women under forty and one case, a heavy smoker, among the controls. Women aged forty to forty-nine also had an increased risk which rose with longer use of the pill.

The real risks of womb (cervical and endometrial) cancer must be greater than appear in the study, since the hysterectomy rate among pill users is extraordinarily high, even among those under forty years old. Such operations were performed presumably because the women suffered significant increases in uterine fibromas, adenomyosis, severe bleeding and pelvic inflammatory disease. Hysterectomy is often advised to remove the risk of future womb cancer, especially likely in older women taking 'hormones replacement theraphy'.

Endometrial cancer was significantly increased by current or past use of oestrogen in women over fifty despite it being claimed that pill use protected against endometrial cancer. Thus, there were thirty-two cases of endometrial cancer among the controls and eleven among these older pill users. Unfortunately the control group at entry contained three times more women of which three times as many had used oestrogens. These facts could equally suggest that the combined pill may be even more carcinogenic than oestrogens given along.

The number of women developing ovarian cancer is too small for conclusions to be drawn but we know from other studies that American women have a high ovarietomy rate. Non-malignant ovarian tumours and cysts increased among young women who had used the pill as did malignant melanoma. Lung cancer was increased among users who smoked. All six cases of urinary tract neoplasms and six of the seven thyroid cancers occurred among users.

BREAST CANCER

Between 1962 and 1978 registrations in England and Wales increased overall by 36.5 percent and mortality rates by 23.5 percent with breast cancer now the commonest cause of death in middle-aged women. Oestrogens have been given to women since the 1940s although many studies indicate the increased risk of breast cancer, especially in older women. Breast cancer in males has risen slightly, but in men over 75 years old, who are most likely to be given oestrogens for prostatic cancer, the increase is twenty percent.

Several American studies, since 1974 indicate that pill-use significantly increases the risk of breast cancer in certain high risk groups including older women, those with a history of benign breast disease, a family history likely to affect sisters, and long term users. Most worrying of all, four studies show statistically significant increased risks, ranging from two to fourteen times according to length of pill use among women who used the pill before their first full term pregnancy compared with women who never used the pill. In 1970 it was noticed that if women had their first child before the age of twenty they had half the usual risk of developing breast cancer, while first time mothers over thirty-five had twice the risk. The pill significantly increased the "natural" risk according to some studies.

STUDY EXPANDED

Professor Pike and his colleagues in their 1983 study, expanded on the previous 1981 findings that women who used the pill before their first full term pregnancy had an increased risk of breast cancer which went up the longer the pill had been used. The patients were Los Angeles county white women who developed breast cancer between 1972 and 1982 and were less than thirty-seven years of age when diagnosed. Of 510 eligible cases 52 were dead and the attending physicians refused permission to contact some of the others. Eventually 330 women completed questionnaires and 314 matched controls were found. They were all asked if and when they had used any type of contraceptive pill. The women with breast cancer had used oral contraceptives for an average of 49.6 months and the controls for 29.3 months. The cases averaged 16.8 months of pill use before age twenty-two compared with 10.6 months for the controls. Nearly 80 percent of these young women had begun use of the pill before age twenty-five. The paper does not list how many young women with breast cancer had ever used the pill at any age.

Professor Pike divided the women according to their memory of which pills they had used, those with high and low progestogen potency. He claimed that women had an increased risk of breast cancer only if they used the "high"—progestogen combinations. Nine women using such pills for longer than 73 months before the age of twenty-five had breast cancers. Meanwhile no one in the control group had used those pills for that length of time at that young age. Yet, the table showing the use of any type of pill before age twenty-five, indicated twenty-four women with breast cancer who had used the pill for more than 73 months compared with only seven control women, leaving fifteen cases to seven controls for lower dose pills. From such figures it is difficult to understand the conclusion that use of a "low" progestogen component pill "appears to increase breast cancer risk little or not at all." Instead the prolonged use of any type of pill appears to increase the risk of breast cancer.

Several of the letters written to *The Lancet* following the publication disputed the method used to establish progestogen potency and one letter referred to my method of subnuclear vacuole assessment as being the most accurate. In fact little difference probably exists between the effects of norethisterone, norethisterone acetate and ethynodiol diacetate or norethynodrel as the last three are metabolised in the body into norethisterone. The commonly used progestogen norgestrel is much more powerful than the others and smaller doses can be used. I found that 0.1 mg of norgestrel plus 0.05 mg EO was progestogenic while 0.1 mg of ethynodiol diacetate plus 0.1 mestranol was oestrogenic in endometrial effect.

Professor Victor Wynn at St. Mary's hospital in London and Professor William Spellacy in Chicago studied the effects of the different pills on carbohydrate and fat metabolism. They found that 4,000 times less norgestrel was needed to bring about a given alteration in carbohydrate metabolism—an androgen (male hormone) effect—compared with progesterone, given by injection. Meanwhile the norethisteronee progestogens were four times less powerful than norgestrel but still a thousand times more powerful than progesterone.

The situation is further confused because of different techniques being used in pill manufacture during the early 1970s. The micronizing of the pill hormones meant that the particles being smaller, could be more readily absorbed by the gut. Such a change may also explain why progestogen only pills, which previously allowed conception, are now being used with impunity as contraceptives.

In a recent letter to *The Lancet* replying to questions concerning the safety of pills containing a very low dose of oestrogen, Professor Pike and his colleagues stated that very few women in their study had used combined pills containing 35 micrograms or less of ethinyl oestradiol. Most who did, used Lo/Ovral—30 micrograms E.O. plus 0.3 mg norgestrel, and among those, four women with breast cancer had used Lo/Ovral for a total of 145 months. No controls had used that combination.

Young women taking low dose pills have abnormally high red blood corpuscles glutathione peroxidase levels after seven months. That finding suggests a disturbance in the normal, extremely important, antioxidant mechanisms. The same abnormalities have been found in older women with breast cancer. Liver clearance rates are also altered by pill steroids indicating changes in the normal detoxifying mechanisms. We found that the more liver clearance was abnormal, the more numerous were reactions to foods and chemicals, with the result that some ex-pill users had a "multiple allergy syndrome".

TOXIC AND TERATOGENIC EFFECTS OF HORMONES[18]

How does pill use affect future generations? The pill has become the Thalidomide story all over again, only in some ways much worse. A recent paper gave a twenty-three times increased risk of limb deformity when hormones are taken in early pregnancy[19]. The effects of the pill can be very insidious and responsible for much of the ill-health among women during their child-bearing years. There has been much publicity about women with multiple allergies who seem to react to everything. All of the most sensitive women that I have seen had taken the pill before they became ill. Many also smoked, some took regular alcohol and others had taken various drugs or medicines.

As I came to appreciate after attending a clinical ecology conference in the United States in 1978, the people getting ill with severe allergies, were not old, but young women. Why were all those women getting ill in their twenties and thirties just at the time when it mattered for child bearing? The main reason, I believe, was the pill.

If something becomes common enough, popular enough, it it is given to nearly everyone (as is now happening with the pill) people accept it as normal and do not realize how much trouble it is causing. The attitude in this country is "Give the pill to younger and younger girls—the most important thing is to avoid pregnancy". But as sex education gets more widely given, including 'contraceptive advice', (which mostly means giving the pill) the rates of abortions and early pregnancies have both gone up.

It was obvious from the beginning that the pill was causing migraine headaches, strokes, heart attacks, and all sorts of conditions which normally did not happen to healthy young women. When the pill's side-effects became undeniable, the figures were added up and doctors said "It is all right to take the pill if you are under 35" because most of the serious vascular accidents happen to women over that age. Thus gradually, year by year, the pill has been given to younger and younger women. The pill then seems safer than it really is, because young girls are less likely to be seriously ill. They do not yet have families to look after; they do not have heavy responsibilities. They may still be at school, keeping fit playing games. They are at the best time of their life for being healthy. Girls are being given hormones at a time when they are most likely to be able to take them without having obvious side-effects.

More women, younger women, have been taking the pill for longer, so that the cancer rate in young women between fifteen and twenty-four is rising rapidly. The rates are rising far more steeply than in the age groups which normally get such degenerative diseases. Consequently we are at the start of a very serious situation.

Many of the biochemical and immune changes caused by smoking appear to be much the same as those caused by the pill. Although a campaign against smoking in pregnacy has been launched with posters, films and television advertisements, Government policy seems to be to encourage as many young girls as possible to start taking the pill while they are still at school, hoping that such action will prevent the ever-rising number of abortions and early teenage pregnancies.

Girls are encouraged to start sex early. Yet the statistics show that for every year younger than nineteen when girls start sexual intercourse, the risk of their developing cervical cancer is increased; moreover the risks for breast cancer increase too. It is only the first full-term pregnancy that protests a woman from the risk of breast cancer. In fact the younger and longer she takes hormones, or the younger she has an abortion before having her first baby, the greater is the eventual risk that she will develop breast cancer. And more young women are now putting themselves at risk.

Women have been cheated over the pill. In theory, it is the only suitable and reliable method for unmarried sex, especially when men and women have a number of different partners. Such activities are rapidly becoming normal with the result that veneral diseases have taken on epidemic proportions in America, while gonorrhea has increased five times among young women in Britain. The increased risks of cervical cancer depend not only on how many partners the woman has had, but on how many partners the man has had. Each new paper on cervical cancer totals a greater number of partners. Veneral diseases like herpes also increase the risk of congenital abnormalities in future off-spring.

The pill is much more toxic than smoking in most respects.[20] Although lung cancer is obviously caused by smoking and pollution, smoking women who take the pill are more likely to get lung cancr than smokers who do not take the pill.

The pill is more likely to cause illnesses of all types especially cancer, mental illness and vascular illnesses, those being the commonest causes of death. With exaggerated emphasis being put on thrombosis people are unaware (as I was until I looked at the statistics), that women in their childbearing years are more likely to die from cancer, than from other causes.

In the American Walnut Creek study slightly more women died of mental deaths (i.e. suicides or accidents—women being more prone to accidents during times of hormone change)—than of vascular death, but cancer deaths were twice as common as either.

If a woman is suffering from the effects of toxic substances, as far as pregnancy is concerned this means that:

1. She may not become pregnant at all.

2. She may abort early, whether the foetus appears to be normal or abnormal, for instance, she may, through smoking, lose an otherwise normal baby owing to placental changes. Thus hemorrhages are more likely because of blood vessel changes. In fact women who smoke have twice the chance of an early abortion, even though many such foetuses appear to be normal. Equally, women who have stopped taking the pill, have more chance of having an abortion, especially those who have had side effects while on the pill, such as those who have had vascular changes in their endometrium and those who have become very allergic. Such women are more likely to have miscarriages and their children are more likely to be abnormal than are the children of women who have smoked but not taken the pill.

3. She may give birth to an obviously abnormal child. The abnormalities may be gross, they may be multiple, or they may consist of some small defect, such as cleft palate or club foot. An American study of severe multiple abnormalities such as those caused by Thalidomide showed that when the mothers' histories were checked for exposure to toxic substances in pregnancy—fifteen out of thirty-two had been exposed to hormones during pregnancy. Exposure to X-rays and drugs was far less prevalent. In conclusion it would seem that exposure to hormones in pregnancy is especially dangerous.

The hormone pregnancy test was banned some years ago, largely as a result of the efforts of Dr. Isabel Gal, who studied the toxicity of excess Vitamin A. She found that women on the pill had higher levels of vitamin A, which appeared to be associated with more spina bifida and other central nervous system abnormalities in subsequent pregnancies.[21] Moreover the hormones given in the pregnancy test were the equivalent in dosage to taking the pill for several months. Although this was an almost single-handed campaign, Dr. Gal managed to get the hormone pregnancy test banned in Britain. But a few years have passed, and high levels of hormones given in early pregnancy may be reintroduced in the form of the "Morning After" pill.

Thus post-coital contraception consists of taking a progestogen and a much higher dose of oestrogen than is usually permitted in a contraceptive pill. This practice is not only dangerous for the woman, increasing the risk of thrombosis if she is sensitive, but carries a greatly increased risk of a malformed child if the pregnancy is not terminated. Doctors have been advised to warn patients of such risks. Equally, pregnancies are more likely to happen with low dose pills and progestogen-only mini-pills, as both produce more unplanned pregnancies than diaphragm use.

4. When a women suffers a slight toxic effect she may have a child which looks normal, but which may have learning defects and behaviour problems that do not show up until years later. Learning defects can be caused by many factors including maternal smoking, alcohol, lead pollution, zinc deficiency and other vitamin and mineral deficiencies caused by taking the pill.[22] Hyperactivity has been linked to lack of es-

sential fatty acids. Normal fat metabolism, essential for the developing brain and immune system, is altered by pill hormones. Doctors involved in clinical ecology are finding that more and more women are having very allergic children; hence children with abnormal immune systems. I have seen three generations in one family; the grandmother had one or two allergies; her daughter had several; and the daughter's baby was reacting to nearly everything.

The daughter came to me to at nineteen with chest pains and migraine. I got her to give up smoking and stop the pill. She did the exclusion diet and stopped a few foods like bread. She felt so much better that she forgot to rotate her diet as advised and she even started to smoke a few cigarettes again. Two years later she became pregnant and later brought to me a very ill and allergic baby who had not stopped crying for six months. The baby also had an enlarged liver and a hereditary glycogen storage disease of the liver which was later diagnosed by a biopsy.

Although the mother tried everything she could to stop her baby crying, nothing helped. She went to the Hospital for Sick Children at Great Ormond Street; she went to one specialist after another. At six months, when she was just about to stop breast feeding, she tried cow's milk—no help. When she saw me, I told her to try soya milk but the baby still reacted, then she tried goat's milk but to no avail. The only thing that stopped the baby crying was when the mother produced more breast milk through more frequent feeds, rotated her own diet and stopped eating things she was allergic to herself. The baby began to gain weight and was very much better. It would appear that the baby reacted to the same foods as the mother.

What is actually happening? Are we getting, not only more children with learning defects, but more allergic babies than ever before? Professor Butler, who twenty years ago discovered that smoking caused learning defects has now discovered from his research in Bristol that more babies are developing eczema among those who are breast fed than among those who are bottle fed.[23] My conclusion is that mothers have become allergic, because of defects in their immune systems, having been on the pill, and that the babies are reacting to the foods to which their mothers react.

5. If a woman is exposed to toxins she may well have an apparently normal baby. Indeed most children are normal looking when they are born and even a mother who is known to be severely alcoholic, may produce a normal looking baby. Thus, in one instance with twins, one had a full-blown foetal alcohol syndrome and the other was completely normal. For some reason, certain foetuses seem able to withstand poisons better than others.

The number of alcoholic young women has risen enormously in recent years, women being more likely to suffer liver damage than men. A woman who takes the pill increases the chances of liver damage, allergies and the tendency to become addicted to alcohol. A recent survey of British women found only 16.4 per cent were teetotal compared with 50 per cent in American studies. The Charing Cross Hospital survey found 58.1 per cent of women drank during pregnancy; 24.8 per cent were moderate to heavy drinkers with an increased risk of an abnormal baby or a spontaneous abortion.[24]

It is known that abortions are more likely among smokers, and in women who have stopped the pill because of the side effects. The pill is likely to cause more abnormalities than smoking. The surprise finding of Vessey and his colleagues in the Oxford/FPA Oral Contraceptive Study [13] was that if women had never taken the pill and used the diaphragm, 0.4 per cent had abnormal babies compared with 3.8 percent of babies of those women who had taken the pill (nine and a half times as many). This result applied only to the first baby. The incidence of abnormal babies was about 5 per cent for women having subsequent babies. As women get older, they are more likely to have children with Down's Syndrome as well as other conditions; thus the difference was most marked with the first baby. In contrast, Lejeune et al [39] were able to show that among mothers of 730 children with Down's Syndrome, those over 30 were significantly more likely to have used the pill for longer than one year and/or to have become pregnant within six months of stopping it. This result applied only to the first baby.

The increased risk of older women having abnormal babies may be because age increases the risk of chromosome abnormalities. Nevertheless it has been known since 1967 that the pill increases that risk and in 1979 [25] a paper found significantly higher rates for sister-chromatid exchanges among women taking "low dose" pills compared with normal and pregnant women.

Once a girl has taken the pill, which is a synthetic oestrogen and a progesterone, (and most of the pills available now are nortestosterones i.e. they are the male hormone altered synthetically), she may have permanently damaged her body. Dr. Kitty Little, in her book *Bone Behaviour*[26] stated that research on animals showed that male hormones like testosterone altered blood vessels more than female hormones did. Nortestosterones has a far larger effect on the blood vessels than did the natural hormones of either sex; a possible reason why we found the connection between the high incidence of migraine and the development of arteries in the endometrium.

When a woman is given such drugs, her body changes in many ways. The hormones alter every cell in the body, change the blood, the red cells, the white cells, the platelets and cause immune defects. It has been known for about twenty years that platelets change, becoming stickier and clotting more easily. Changes also occur in membrane transport between the cells. Thus if the cell walls become too tight, premature-aging effects such as osteoporosis and premature senility result. If the cell walls become too loose, as happens when steroids are withdrawn schizophrenia and other mental disorders as well as headaches may be induced. Such headaches are also related to changes in the blood/brain barrier. Normally the brain is impermeable to the products of digestion such as amines, but hormones can alter the transport mechanisms so that such substances are able to pass across the barrier, bringing on headaches and other reactions.

Consequently, every known illness can be increased by the pill—including cancer, migraine, vascular and mental disease and multiple allergies (eczema, asthma, weight gain, arthritis, hay fever).

Cervical cancer has increased ten times among fifteen to twenty-four years olds since 1965. Indeed, according to a Birmingham study over ten years, nearly one in a hundred pregnant women had a positive smear.[27] Breast cancer has risen by about a third in most age groups, but has doubled in the fifteen to twenty-four year olds. And about one in a hundred young women each year try to commit suicide. The increase has occurred in all western countries and has been most dramatic, once again among fifteen to twenty-four year old females, especially since the use of low dose oestrogen pills became prevalant in 1969.[28]

In America a synthetic oestrogen, Diethylstilboestrol (DES), was given to millions of women to avert miscarriages. In 1971 two papers reported that girls, born to women who had taken this synthetic oestrogen during pregnancy, were getting vaginal cancer.[29] Not only were the girls getting cancer, but more boys were developing cancer of the testes.

Recently it has been claimed that the pill protects against ovarian cancer, but this is unlikely to be true. Most young women developing ovarian and breast cancer have taken the pill, and the risk increases with oestrogen use. Proper control groups do not exist because of the difficulty of finding women who have never taken oestrogens or hormones. Moreover once a woman has taken hormones she is more likely to be at risk from pelvic disease and the need of a hysterectomy at an early age. Meanwhile both sexes can be affected by any hormones the mother may taking during pregnancy DES can in fact cause ovarian cancer as well as vaginal cancer after intrauterine exposure.

Hormones are given to animal livestock in many countries including Britain and Puerto Rico. The illegal use of hormones in chicken feed in Pureto Rico in order to promote growth has been blamed for an alarming outbreak of precocious puberty, breast growth in young male children and ovarian cysts in female children. But Puerto Rico was the scene of the first large scale trials of large doses of oral contraceptives in the 1950s and it is where 90 per cent of US birth pills are manufactured today.[30]

We are now at the second generation. Girls are being given the pill, whose mothers also took it. The most common type of cancer now appearing in young women is cervical cancer. They say it is not serious. If you find a positive smear, you cut it out, no problem. But sometimes the cancer recurs, appearing later in the vagina and in different areas. Among fifteen to twenty-four year olds the national death rate has increased four times. Some of these girls die suddenly, just months after a negative smear.

At the Margaret Pike Centre, the largest Family Planning Clinic in Europe, one in twenty-five women have an abnormal smear and the sharpest increases have been in the more serious forms.[31] Furthermore a rapidly fatal type of breast cancer is more likely in women under 50.[32]

Why does the pill cause so much trouble? One of the reasons may be that once the synthetic oestrogen is taken antibodies build up. Beaumont and his research team in Paris [33] found that such antibodies appeared two months after a woman had taken the pill and were still there years later, causing "long-term immunological scarring" even though the pill had been discontinued. Certain women with the highest level of antibodies had had thrombosis, indicating a tie-up between thrombosis and antibodies.

ABNORMAL LIVER

Dr Ifor Capel and his team at the Marie Curie Memorial Laboratories discovered abnormal liver metabolism in migraine patients we had sent him. It was previously known that the pill altered liver metabolism, now we found that women with severe allergies had abnormal anti-pyrine clearance rates and abnormal copper/zinc ratios.[34] Zinc deficiency is endemic in the UK and a major cause of illness and cogenital abnormalities. The pill hormones cause high blood copper levels and lower body stores of zinc.

New work by Dr Ifor Capel and his team indicates that girls on the pill have abnormally high levels of glutathione peroxidase after seven months on low dose pills. As the levels of that enzyme go up so the levels of Vitamin B2, riboflavin, go down.[35] Vitamin B2 is involved with antioxidant mechanisms, as are Vitamin C, Vitamin E and selenium. Oestrogens and progestogens are broken down into catechol oestrogens which can be very toxic if the antioxidant mechanisms are abnormal. Indeed the pill causes a basic change which cannot be corrected by giving extra Vitamin B2, there being a general disturbance of metabolic function, that can affect carbohydrate, fat and protein metabolism. The work on dosage by Professor Wynn at St. Mary's [36] and Professor Spellacy [37] in America showed that 300 to 400 milligrams of progesterone was equivalent to 0.75 milligrams of norgestrol in male hormone effect. Hence a so-called micro-dosage pill can still be a very powerful progestogen, especially in causing metabolic changes. The male-like effect on fat metabolism is though to increase the heart attack risk and may also relate to the increase in sticky platelets. Meanwhile Professor Breckenridge and his colleagues in Liverpool have shown that women given the same pill can have an eight-fold variation in plasma norethisterone levels and a ten-fold variation in plasma norgestrol levels owing to variations in activity of the enzymes in the gut wall and the liver.[38]

CONCLUSION

To summarize, the use of the pill and other sex steroid hormones before, during and after pregnancy interferes with basic cellular mechanisms. This interference in turn makes other toxins more likely to be toxic to eggs still in the ovary, to a foetus or to a newly born child. In view of our present knowledge, all young women should avoid taking pill steroids at any time, but especially before, during and immediately after a pregnancy.

For the sake of future generations, parents should protect their daughters from being prescribed powerful oral contraceptive hormones while they are too young to appreciate the risks involved.

The most recent advise to women taking the pill is—don't panic. Go on taking the lowest dose pill which suits you and have frequent breast examinations and cervical smears. While it is true that cervical smear tests can detect very early signs of cervical cancer when at an easily treatable stage, nevertheless the death rate for young women with cervical cancer has increased.

Self-examination for breast lumps just before a period each month is essential for any woman today. But one in ten of those very young women in the California study had already died from breast cancer, long before the age when cancer becomes more likely. Surely, it would be much more sensible to avoid using such powerful hormones for sexual convenience. A return to mechanical forms of contraception, especially the diaphragm and spermicides, may not be so suitable for multiple partners but society would benefit in the long run.

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FAMILY HISTORY AND ORAL CONTRACEPTIVES

UNIQUE RELATIONSHIPS IN BREAST CANCER PATIENTS

(By Maurice M. Black, MD,* C. Stephan Kwon, MD,* Henry P. Leis, Jr., MD.† and Thomas H. C. Barclay, MD‡)

The relative frequency of a history of breast cancer among specific blood relatives was determined for breast cancer patients according to their prior use of oral contraceptives (OC). These data were compared with those derived from patients having various types of noninvasive breast lesions and from control women. It was found that a history of breast cancer among grandmother or aunts was significantly more frequent among breast cancer patients who had used OC for one or more years continuously than among OC-negative breast cancer patients, and among patients with noninvasive breast lesions and control women, regardless of OC usage. Breast cancer patients whose grandmothers or aunts had breast cancer used OC significantly more frequently than did family history (FH)-negative breast cancer patients and breast cancer patients having a history of breast cancer limited to relatives other than grandmothers and aunts (mothers, sisters, cousins). It appears that the family history is a significant co-variable in the relationship between OC usage and breast cancer. There is a need for specific studies to test the possibilities that OC usage increases the risk of breast cancer among women whose grandmothers or aunts had breast cancer, and reduces the risk of breast cancer in FH-negative women. *Cancer* 46:2747-2751, 1980.

There have been numerous case control studies of the influence of oral contraceptives (OC) on the incidence of benign and malignant breast lesions.[1,5,10,12,13]

From the Departments of * Pathology and † Surgery, New York Medical College, Valhalla, New York, and the ‡ Saskatchewan Cancer Foundation, Saskatchewan, Canada.

Address for reprints: Maurice M. Black, MD, Department of Pathology, New York Medical College, Valhalla, NY 10595.

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Footnotes at end of article.

Most of these studies indicate that OC usage decreases the risk of benign breast lesions without appreciably altering the incidence of breast cancer. However, Paffenbarger *et al.* suggested that OC might accelerate the malignant process in transformed cells.[10] An analogous suggestion was made by Cole.[5] Lee *et al.* have reported that OC usage may increase or decrease this risk of breast cancer in premenopausal women according to duration of use, recency of use, and a history of a prior benign biopsy.[8] In a recent study, Paffenbarger *et al.* compared OC usage in a series of breast cancer patients of all ages with OC usage in a matched series of control medical and surgical patients.[11] They found that ever-use of OC was not associated with a significant change in the relative risk of breast cancer. However, use of OC for more than two years seemed to be associated with an increased risk of breast cancer (relative risk 1.38 $P=0.02$).

In the Paffenbarger study and in a study by Vessey *et al.*,[13] a history of maternal breast cancer did not significantly influence the risk of breast cancer from OC usage. However, Brinton *et al.* reported that OC usage seems to increase the risk of breast cancer among women with a family history of breast cancer.[4] Their study included information regarding breast cancer in mothers, sisters, daughters, and grandmother, but not aunts. In a study that specifically identified all family members with breast cancer, Black and Kwon found that breast cancers of family history (FH)-positive patients who had used OC for more than one year continuously differed from breast cancers in OC-positive, FH-negative cases and OC-negative, FH-positive cases in regard to nuclear grade.[2] In a subsequent study, they observed that OC usage was not distinctively related to breast cancer patients whose mothers or sisters had breast cancer.[3] On the other hand, it appeared that OC usage by women with a family history of breast cancer among gramdmothers or aunts seemed to favor the progression of precursor lesions to invasive breast cancer. In contrast, OC usage by FH-negative women seemed to retard the precursor to invasive progression.

We now report additional data on the relationship between OC usage and family history in patients with different types of breast lesions. The family history characteristics among OC-positive breast cancer patients are significantly different from OC-negative breast cancer patients and also different from control women and patients with noninvasive breast lesions, regardless of OC usage.

MATERIALS AND METHODS

In 1970, a clinicopathological registry of breast lesions was established by one of us (MMB). This registry included patients who received their primary surgical treatment for breast lesions at the Flower-Fifth Avenue Hospital as well as referral cases. All primary breast lesions were assigned to one of the following diagnostic groups: normotypic (nonfibroadenoma), fibroadenoma, atypia, precursor lesions (precancerous mastopathy and *in situ* carcinoma), and invasive carcinoma. In addition, the following clinical information was routinely obtained regarding each patient: sex, age, prior breast surgery, number of pregnancies, and number of full term deliveries, age at first and last parity, use of OC and replacement estrogens (when started, when stopped), family history of breast cancer (all blood relatives, maternal and paternal), prior gynecologic surgery. Using the registry cases we have examined the relationship between OC usage and diagnosis with particular reference of family history. For this study we have also collected data regarding OC usage and family history from a series of 502 women, 25-49 years of age, who had come for breast evaluation but were found to be free of lesions requiring biopsy and an unselected series of 206 breast cancer patients from the Saskatoon Cancer Foundation.

In this report, OC-positive patients are defined as those who used OC for one or more years continuously prior to the reference lesion; OC-negative patients are those who never used OC preparations. Patients who used OC for less than one year continuously are listed separately. Patients who used replacement estogen therapy, with or without OC, have been excluded from this report. The relationship between OC usage and family history was examined in regard to particular relatives and family history groups defined as follows: (1) Grandmother (GMA)—all patients whose maternal or paternal grandmothers had breast cancer; (2) Aunt—patient whose aunts (maternal or paternal) but not grandmothers, had breast cancer; (3) Others—patients with a history of breast cancer in blood relatives (maternal and paternal) other than gma or aunts. The most frequent relatives in this group were mothers and sisters. FH-negative—no family history of breast cancer in any maternal or paternal blood relative.

RESULTS

Family History among Breast Cancer Patients

Table 1 lists the family history distribution of breast cancer patients by OC usage and age at diagnosis. If we had limited our definition of FH-positive cases to patients whose mothers or sisters had breast cancer we would conclude that the proportion of FH-positive cases is the same among OC-positive and OC-negative breast cancer patients less than 50 years of age: OC-negative—31/240 (13%); OC-positive—18/112 (15%). However, these data reflect only 48% of the total FH-positive cases in the OC-negative series and 33% of the FH-positive cases in the OC-positive series.

When the definition of FH-positive cases includes all blood relatives, the proportion of FH-positive cases among breast cancer patients under 50 years of age, is strikingly different in the OC-positive as compared with the OC-negative series: 54/112 (48%) and 65/240 (27%), respectively ($P<0.0005$). These findings reflect a distinctive frequency of OC usage by those breast cancer patients whose grandmothers or aunts had breast cancer. In the total series of OC-positive and OC-negative cases of all ages, OC-positive cases accounted for 48% of those patients whose grandmothers had breast cancer either alone or in combination with other relatives. Among patients whose aunts had breast cancer, either alone or in combination with other relatives, 37 and 34%, respectively, were OC positive. These values are significantly greater than the 10% OC-positive cases in the FH-negative series. Among 43 breast cancer patients whose mothers only had breast cancer, eight (19%) were OC positive, a value significantly less than that for grandmothers only, $P<0.05$. It is noteworthy that among 12 breast cancer patients with a history of breast cancer among mothers plus grandmothers or aunts, eight (67%) were OC positive. The finding that family history characteristics were correlated with OC usage among breast cancer patients led us to ask whether a similar relationship existed among control women or among patients with breast lesions other than invasive breast cancer. The results of these studies are shown in Table 2.

Family History by Diagnosis and OC Usage

Table 2 demonstrates that the OC-associated differences in family history found in breast cancer patients are not found among control women or among patients having different types of noninvasive breast lesions. Among OC-positive (>1 year) cases the family history characteristics were essentially the same in the controls and in each of the noninvasive series as in the corresponding OC-negative series. In contrast, the OC-positive invasive cancer series was characterized by significant increases in the proportion of patients whose grandmothers or aunts had breast cancer, namely, an increase from 3 to 14% for grandmothers ($P<0.0005$) and an increase from 10 to 21% for aunts ($P<0.01$). At the same time, the proportion of FH-negative cases decreased from 73 to 52% ($P<0.0005$). Among those breast cancer patients who had used OC for less than one year, the relative frequency of patients whose grandmothers or aunts had breast cancer (22%) was intermediate to that found in the OC-negative (13%) and OC-positive series (35%).

Family History, Parity and Age

It is well known that parity and age are associated with qualitative and quantitative changes in mammary parenchyma. Moreover, both age and parity influence the risk of breast cancer. It was therefore of interest to determine whether the aforementioned OC-FH relationships were related to age or parity characteristics at the time OC usage was started. For this purpose we have determined the family history distribution among OC-positive breast cancer patients grouped according to their age at starting OC and their parity at start of OC and at diagnosis. Similar data were collected for OC-positive patients with normotypic breast lesions.

Table 3 demonstrates that the family history distribution in the normotypic series was not influenced by parity or age at starting OC. In all groups almost 90% were FH negative and a history of breast cancer among grandmothers or aunts was uncommon. Among 15 nulliparous breast cancer patients who started OC before age 30 years, ten (67%) had a history of breast cancer among grandmothers or aunts. Only four (27%) of these patients were FH-negative. These data contrast with those patients who were nulliparous when they stated OC before age 30 years, but then became parous before the diagnosis of breast cancer. Twelve (80%) of these 15 patients did not have a family history of breast cancer, only one was aunt-positive, and none was grandmother-positive. These findings also differ from those of the group who were already parous at the time of starting OC, before age 30. In this group only 15 (47%) of the 32 patients were FH negative, five (16%) were grandmother-positive, and eight (25%) were aunt-positive. Similar findings were obtained among those parous breast cancer patients who started OC usage at 30-34 years of age. However, among those parous breast cancer patients who started using OC at a later age (35-44) only 5/23 (21%) had a history of breast cancer among grandmothers or aunts and 61% were FH negative. It appears that studies of the relationship between OC usage and mammary carcinogenesis should take note of age and parity as well as family history.

Table 4 presents the relationship between family history and OC usage for breast cancer and normotypic cases grouped by parity and limited to OC usage started before age 30. In both the nulliparous and parous breast cancer series similar FH-OC relationships were evident; grandmother > aunt > others = FH-negative. No such relationships were seen in the normotypic series. In both the nulliparous and parous groups of breast cancer patients OC usage tended to be more frequent among grandmother or aunt-positive cases than in the corresponding series of normotypic cases, *viz.* nulliparous 10/19 (53%) vs. 2/12 (17%), parous 13/40 (33%) vs. 4/24 (17%). Equally interesting, a reverse tendency is seen in regard to OC usage by FH-negative breast cancer cases as compared with FH-negative normotypic cases. Because OC usage has been reported to be inversely correlated with the development of normotypic breast lesions,[5] the finding that OC usage by FH-negative breast cancer patients tends to be even less frequent than OC usage by matched normotypic cases suggests that OC retards mammary carcinogenesis in FH-negative women.

COMMENTS

This study supports our previous impression that the family history is a significant co-variable in the relationship between OC usage and mammary carcinogenesis. More specifically, our findings raise questions of immediate clinical concern as well as questions of considerable conceptual interest. On the clinical level the questions are:

(1) Does OC usage increase the risk of breast cancer in women whose grandmothers or aunts had breast cancer?

(2) Does OC usage decrease the risk of breast cancer in women whose blood relatives are free of breast cancer?

Although our data suggest an affirmative answer to both of these questions, we emphasize the need for carefully designed case-control studies to address these questions. Particular attention should be paid to defining those conditions that modulate the OC-associated risk of breast cancer in FH-defined populations, *viz.* age at starting OC, duration of use, parity, etc. We submit that there is a pressing moral responsibility to answer these questions with all possible speed.

On a conceptual level, the finding that the relationship between OC usage and breast cancer varies with family history suggests that there may be genetically determined differences in the responsiveness of mammary parenchyma to circulating sex hormones. Because the influence of female sex hormones on breast tissue is mediated via estrogen receptors (ER) and progesterone receptors (PR) it is reasonable to ask whether "normal" breast tissues and noninvasive breast lesions could be classified by their ER and PR characteristics. More specifically, are the ER and PR characteristics of histopathologically defined noninvasive breast lesions related to family history, age, and the susceptibility to hormone-induced malignant transformation? Although there is a voluminous literature on ER and PR characteristics of invasive breast cancer, there have been no systematic studies of the receptors of non-invasive lesions or any attempt to relate the receptor characteristics of benign or malignant lesions to breast cancer risk factors. Our data suggest that such studies might provide important insight into the nonrandom development of breast cancer in general and the biologic consequences of exogenous estrogens in defined subpopulations.

FOOTNOTES

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TABLE 1.—FAMILY HISTORY OF BREAST CANCER AMONG INVASIVE BREAST CANCER PATIENTS BY AGE AT DIAGNOSIS AND OC USAGE (≧ 1 yr)

Family history	<40 yrs		40–49 yrs		50–54 yrs		≧55 yrs	Total
	OC+	OC−	OC+	OC−	OC+	OC−	OC−	
Gma, only	(43)* 9	2	(5) 1	4	0	3	2	(100) 21
+aunt	0	1	0	0	0	1	0	2
+mother	3	0	1	0	0	0	2	6
+sister	0	0	0	0	0	0	1	1
+mother and aunt	0	0	1	0	0	0	1	2
+others	1	0	0	0	0	0	0	1
Total	(39) 13	3	(9) 3	4	0	4	6	(100) 33
Aunt, only	(26) † 14	4	(11) 6	16	0	6	8	(100) 54
+mother	1	2	1	1	1	1	0	7
+sister	0	0	1	1	0	0	2	4
+mother and sister	0	0	0	0	0	0	1	1
+others	1	1	0	0	0	3	2	7
Total	(22) 16	7	(11) 8	18	(1) 1	10	13	(100) 73
+Mother, only	(7) 3	4	(12) 5	9	0	3	19	43
+sister	0	0	0	2	0	0	2	4
+others	0	1	0	1	0	0	0	2
Total	(6) 3	5	(10) 5	12	0	3	21	(100) 49
Sisters, only	(2) 1	0	0	10	0	5	29	(100) 45
+others	0	0	1	0	0	0	2	3
Total	(2) 1	0	(2) 1	10	0	5	31	(100) 45
Others, only	(10) 2	1	(10) 2	5	(5) 1	2	7	(100) 20
FH neg	(4)* † 29	37	(4) 29	138	(1) 9	76	337	(100) 655
Total	(7) 64	53	(5) 48	187	(1) 11	100	415	(100) 878

P(X^2 with Yates correction). *<0.0005, † <0.005.

TABLE 2.—FAMILY HISTORY OF BREAST CANCER AMONG PATIENTS WITH DIFFERENT TYPES OF BREAST LESIONS AND RELATION TO OC USAGE

Family history	Invasive	ISC/atypia	Diagnosis normotypic	Fibroadenoma	Controls
OC-Neg.					
Gma	(3)* 7	(4) 4	(2) 9	(3) 5	(2) 6
Aunt, not gma	(10)† 25	(9) 9	(4) 21	(3) 5	(9) 28

TABLE 2.—FAMILY HISTORY OF BREAST CANCER AMONG PATIENTS WITH DIFFERENT TYPES OF BREAST LESIONS AND RELATION TO OC USAGE—Continued

Family history	Invasive	ISC/atypia	Diagnosis normotypic	Fibroadenoma	Controls
Not gma/aunt	(14) 33	(14) 15	(7) 35	(6) 10	(11) 34
FH-Neg	(73)‡ 175	(73) 76	(87) 421	(89) 159	(77)221
Total	(100) 240	(100) 104	(100) 486	(100) 179	(100) 302
OC<1 yr					
Gma	(7) 3	2	(3) 2	(2) 1	0
Aunt, not gma	(15) 7	0	(7) 5	(7) 3	(8) 3
Not gma/aunt	(13) 6	1	(4) 3	(2) 1	(8) 3
FH-Neg	(65) 30	4	(85) 58	(88) 37	(85) 33
Total	(100) 4	7	(100) 68	(100) 42	(100) 39
OC>1 yr					
Gma	(14)* 16	(9) 4	(2) 4	(5) 3	(4) 7
Aunt, not gma	(21)† 24	(7) 3	(6) 13	(11) 7	(9) 14
Not, gma/aunt	(13) 14	(13) 6	(5) 11	(2) 1	(12) 20
FH-neg	(52)‡ 58	(72) 33	(87) 191	(83) 54	(75) 120
Total	(100) 112	(100) 46	(100) 219	(100) 65	(100) 161

P values (x^2 with Yates correction): $* < 0.0005$, $† < 0.01$, Ages of patients ranged from 25–49 years. $‡ < 0.0005$.

TABLE 3.—FAMILY HISTORY CHARACTERISTICS OF OC-POSITIVE BREAST CANCER AND NORMOTYPIC PATIENTS IN RELATION TO AGE STARTING OC, PARTY AT STARTING OC, AND AT DIAGNOSIS

Family history	Null-Null		Para-Para		Null-Para	
	Bca	Normo	Bca	Normo	Bca	Normo
OC start<30yrs						
GMA	(40) 6	(1) 1	(16) 5	(2) 1	(0) 0	1
Aunt	(27) 4	(1) 1	(25) 8	(5) 3	(7) 1	1
Others	1	6	4	1	2	0
FH-neg	(27) 4	(88) 59	(47) 15	(92) 54	(80) 12	(89)16
Total	(100) 15	(100) 67	(100) 32	(100) 54	(100) 15	(100) 18
OC start 30–34 yrs						
Gma	0	0	(17) 4	0	0	0
Aunt	0	2	(26) 6	1	0	0
Others	2	0	1	3	0	0
FH-neg	1	3	(52) 12	(88) 29	3	0
Total	3	5	(100) 23	(100) 33	3	0
OC start 35–44 yrs						
Gma	0	0	(4) 1	0		
Aunt	1	1	(17) 4	(8) 2		
Others	1	0	4	0		
FH-neg	2	8	(61) 14	(92) 24		
Total	4	9	(100) 23	(100) 26		

TABLE 4.—PERCENT OC USAGE BEFORE AGE 30 AMONG BREAST CANCER AND NORMOTYPIC CASES IN RELATION TO PARITY CHARACTERISTICS AND FAMILY HISTORY of BREAST CANCER

Family history	Nulliparous–Nulliparous		Parous–Parous	
	Bca	Normo	Bca	Normo
Gma	6/8 (75)	1/5 (20)	5/11 (45)	1/6 (17)
Aunt	4/11 (36)	1/7 (14)	8/29 (28)	3/18 (17)
Others	1/6 (17)	6/19 (32)	4/28 (14)	1/23 (4)
FH-neg	4/50(8)	59/176(34)	15/144(10)	54/355(15)
Total	15/75(20)	67/207(32)	32/212(15)	59/402(15)

Ages of patients ranged from 25–49 years.

Mr. HELMS. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? If neither side yields time, time runs equally.

Mr. PRYOR. Mr. President, will the Chair please inform at least this Senator as to what is going on in the Senate at this moment?

The PRESIDING OFFICER. The Chair states that we are in a unanimous consent time agreement on the Helms amendment, and unless either Senator HELMS or Senator HATCH yields time, the time is running equally.

Mr. PRYOR. There seems to be a large body of silence at this moment, Mr. President, and I was very curious. It is rare that we have this degree of silence in the Senate Chamber.

Mr. HELMS. Enjoy it while you can.

Mr. PRYOR. I just rise on a point of curiosity, I say to my friend from North Carolina.

Mr. HELMS. Mr. President, I am going to yield back the remainder of my time, if there is no objection to the amendment. This is a delightful set of circumstances.

Mr. HATFIELD. Mr. President, will the Senator yield for an inquiry?

Mr. HELMS. I yield.

Mr. HATFIELD. Did I correctly understand the Senator to say that he was willing to yield back the remainder of his time?

Mr. HELMS. If the other side is willing to do so.

Mr. HATFIELD. Will the Senator yield for an inquiry?

Mr. HELMS. I yield.

Mr. HATFIELD. Mr. President, the question of germaneness is the question that has been presented at this point—or, under rule XVI, when is that to be made?

The PRESIDING OFFICER. That will be submitted at the end of the time.

Mr. HATFIELD. I understand.

Mr. President, I know of no one who wishes to speak on our side. Therefore, I would be willing to yield back the time.

Mr. HELMS. I will do that in 1 minute.

Mr. HATFIELD. I will withhold.

Mr. HELMS. Mr. President, I know what my good friend from Oregon intends to do. He will raise a point of order. That the amendment is not germane, and we will get a vote on this matter one way or the other.

On the issue of germaneness, let me point out that this joint resolution contains the funding by the taxpayers of America for all Federal birth control programs—all of them. Thus, it is perfectly germane to offer at his time my amendment modifying Federal programs providing birth control.

I do believe that this amendment is germane; and I urge Senators who favor giving parents the right to consent before birth control pills are given to their children—to vote that the amendment is germane.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina yields back his time.

Mr. HATFIELD. Mr. President, will the Senator withhold for a moment?

Mr. HELMS. Yes.

Mr. HATFIELD. I would not want to mislead the Senator that I am going to yield back the 20 minutes I have on my side, or 19 minutes.

What is the time?

The PRESIDING OFFICER. Sixteen minutes and 49 seconds.

Mr. HATFIELD. I will yield back my time at the proper moment. What I am trying to do is to protect the right of any Senator to be heard on any subject by indicating that we are about ready to yield back the time—not to constitute an invitation to anyone to come and make a speech, merely to indicate that we are ready to move to the question of germaneness on the Senator's amendment.

I would not want the Senator to yield back his time and not be able to respond to a Senator.

Mr. HELMS. I share the observation of the distinguished Senator from Arkansas, who said he was enjoying the uncustomary silence in this Chamber, and so was I.

Mr. HATFIELD. It is a delightful moment in the Senate at this time, but the silence does not necessarily mean that there are not strong feelings on both sides of this issue.

Mr. President, I suggest the absence of a quorum, to be charged to my time.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 1630

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. Mr President, I am now ready to yield back the remainder of my time.

Mr. HELMS. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time is yielded back.

Mr. HATFIELD. Mr. President, now I make a point of order under rule XVI that this amendment is not germane to the appropriations measure before us and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were order.

The PRESIDING OFFICER. The question is, Is the amendment offered by the Senator from North Carolina germane.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 34, nays 65, as follows:

[Rollcall Vote No. 313 Leg.]

YEAS—34

Abdnor
Andrews
Armstrong
Biden
Boren
Broyhill
Byrd
Chiles
Denton
Dole
Durenberger
Ford
Gramm
Grassley
Hatch
Hawkins
Hecht
Heflin
Helms
Humphrey
Laxalt
Mattingly
McClure
McConnell
Nickles
Nunn
Pressler
Quayle
Rudman
Symms
Thurmond
Trible
Wallop
Zorinsky

NAYS—65

Baucus
Bentsen
Bingaman
Boschwitz
Bradley
Bumpers
Burdick
Chafee
Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Dixon
Dodd
Domenici
Eagleton
Evans
Exon
Glenn
Goldwater
Gore
Gorton
Harkin
Hart
Hatfield
Heinz
Hollings
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Long
Lugar
Mathias
Matsunaga
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Packwood
Pell
Proxmire
Pryor
Riegle
Rockefeller
Roth
Sarbanes
Sasser
Simon
Simpson
Specter
Stafford
Stennis
Stevens
Warner
Weicker
Wilson

NOT VOTING—1

Garn

□ 1850

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote? Are there any Senators who wish to change their votes? If not, on this vote, there are 34 yeas and 65 nays.

The amendment is not germane.

Mr. HATFIELD. I move to reconsider the vote by which the amendment was declared not germane.

Mr. STENNIS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Could we have order in the Chamber, please? Would all Senators in conversations please direct their attention to the Senator from Oregon.

The Senator from Oregon.

Mr. HATFIELD. Mr. President, I would like to make two observations. One, on this last amendment which we had a unanimous consent time agreement on, we had 40 minutes, 20 minutes to a side, and it came to the point where I was ready to yield back most of the 20 minutes on the side that I control. The question was raised whether or not Senators were aware that we might be voting this early, and hotlines were put out to alert them.

I would like to say for the record that really we are not in the business of inviting Senators to come to the floor and offer an amendment or to make a speech. We are trying to get this bill expedited. I just want to say that all Senators ought to be on notice that even under time agreements of 40 minutes, it does not mean that we are going to use all 40 minutes in every case. So we could have a vote much earlier than the 40 minutes imply.

The second observation I would like to make is that I would like——

The PRESIDING OFFICER. Would the Senator suspend so we could have order? Would those people in the back of the room cease conversations so we may hear the distinguished chairman?

The Senator from Oregon.

Mr. HATFIELD. Thank you, Mr. President.

The second observation is that I would like to now invite Senators to make known to the respective managers if they have an amendment that they expect to bring up. Please do not feel obligated to cover your base by just creating an amendment in order to have a slot in the timeframe. But I do mean serious amendments, that we will continue to put the point of order to all amendments that deal in large part with national policy, that try to revise existing legislation, or that will have a budgetary impact.

I think we have demonstrated that we are without fear or favor nor are we being selective. We have adopted some amendments that have a very narrow impact as far as local situations are concerned. We will continue to look at such amendments with care.

Mr. ARMSTRONG. Mr. President, will the Senator yield?

Mr. HATFIELD. But I want to make clear that we will be continuing to make a point of order against amendments, and we would like to begin to develop a little bit of understanding of where we are precisely in terms of the remaining amendments that will be offered, serious amendments that will be offered. I would like to invite the Republican side to make that known here at the managers' desk. I would like to invite the Democratic Senators to make that known to the Senator from Mississippi [Mr. STENNIS].

I yield to the Senator. Yes.

Mr. ARMSTRONG. If the manager would be kind enough to yield, the policy which he has enunciated about amendments which deal with large broad scale national policy issues it seems to me is one which if consistently applied has great appeal. The problem which some of us face, however, is that the continuing resolution as it comes to the floor incorporates such broad scale national policy changes, and so it is very difficult for Senators who are not members of the Appropriations Committee who did not, therefore, have an opportunity to put these broad policy changes into the continuing resolution previously to refrain from doing so now. I say that as one who has voted fairly consistently with the managers to avoid these amendments.

But my question is this: Could the Senator suggest a way in which we could strip out of the bill the kind of provisions which make policy changes and which are not directly related to the continuing appropriations process?

Mr. HATFIELD. I will say to the Senator that was done earlier today by the managers of the bill in stripping out a committee amendment on that very precise basis.

□ 1900

On behalf of the Senator from Nevada, we stripped from the continuing resolution a committee-adopted amendment relating to the California-Nevada water compact as broad national policy. To the Senator from Colorado, I would say, on deleting something from the bill, we would have to take perhaps a little different perspective of that perhaps than one that is being added.

We are getting into very difficult categories. There are a number of Senators now who wish to address the calendar and do a wrapup of bills on the calendar by transferring them to the continuing resolution.

We feel that invades the role of leadership to a great extent. We are trying to automatically resist such efforts as that.

So these things are evolving as Senators are presenting their amendment.

Let me say to the Senator from Colorado, we are giving careful review to each of them. We are trying to figure out if each of them fit our criteria and we are not acting in a cavalier manner to reject all amendments.

We have had an amazing number of amendments where Senators have indicated, "If you do raise a point of order on that and I see you have been consistent, I will not offer it."

Mr. ARMSTRONG. The problem I am addressing is this: In the form the bill comes to the Senate as recommended by the Appropriations Committee, it incorporates by reference unpassed but reported legislation, the appropriations bill which have been acted on by the committee but not taken up here on the floor.

Contained within those in a number of instances are some very, very major policy changes, policy changes which would have resulted in a filibuster of those bills had they been called up separately.

My concern is how can we get those provisions out of this bill? I do not mean to be too insistent, but it is really a problem for those of us who were not in the committee, who are not members.

Mr. HATFIELD. The simple way to do that is for the Senator to offer an amendment.

Mr. ARMSTRONG. I certainly hope the chairman will support the amendment.

Mr. HATFIELD. We will be happy to review any amendment any Senator wishes to present.

Mr. EXON. All of us would like to expedite things to help the chairman and the ranking member. The majority leader is saying to hurry up.

I will hurry at my own pace, I will say in all due respect to the majority leader.

I have two or three amendments that I think might be accepted. Who do I see on those? Do I see you? Do I see the subcommittee chairman? For the advice of myself and others, who do we go to help you expedite the matter?

If I have something that I think might not be too controversial, do I see you, the chairman, the ranking member, or the subcommittee chairman under which it would usually fall?

Mr. HATFIELD. I would suggest the Senator might come directly to the managers first to get some instructions as to who would be involved. For instance, let me say that we have been trying very diligently to follow the procedure that if an amendment deals with the Subcommittee on State, Justice, Commerce, Senator RUDMAN would be consulted, and the ranking member on the Democratic side is Mr. HOLLINGS, to be consulted.

If it has any part of an authorizing character to it at all, then we would suggest you see the chairman and ranking member of the authorizing committee. It depends on each amendment.

W can help you and give you instructions as to who should be consulted on such amendments.

Mr. EXON. I thank the chairman. I will be there forthwith.

Mr. HATFIELD. Mr. President, I would now like to propound a unanimous-consent request on a time agreement for an amendment to be offered by the Senator from South Dakota [Mr. ABDNOR]. There will be an amendment dealing with the REA portfolio, which we have dealt with before, concerning early payback without penalty. This subject has been discussed at some length on the Senate floor. The Senator from South Dakota has agreed to a 40-minute time limit to be equally divided between himself and the proponents of the amendment and the managers of the bill representing the opposition.

At the appropriate time, Mr. President, I would like to make a point of order based upon the budget resolution and violating the Budget Act.

Mr. ABDNOR. Will the chairman yield?

Mr. HATFIELD. Yes.

Mr. ABDNOR. I am going to have to beg off at this time. I found a mistake, and I have to have some further information.

Mr. HATFIELD. Would the Senator indicate how long he would like to delay this?

Mr. ABDNOR. I do not know. I have to find certain people to assist me. That is difficult to do at 7 o'clock in the evening. I will do it as quickly as possible.

Mr. METZENBAUM. Mr. President, is there a unanimous-consent request before the body?

The PRESIDING OFFICER. No, there is not.

Mr. HATFIELD. Mr. President, we are open, then, for other amendments to be considered at this time.

Mr. DOMENICI. Mr. President, I have no amendments, but might I talk with the chairman for a moment?

Mr. HATFIELD. Yes.

Mr. DOMENICI. On the REA amendment, we have a reconciliation bill that you and the Senate know that has REA refinancing that the Senator referred to. I do not need a long period of time, but since that has all been in the conference, that previous solution to the problem, or at least we thought it was, I need a little bit of time to see what the conferees agreed to so I can share that with you and the Senate. They are trying to find out now. As soon as we know with some specificity, it may answer some of the Senator's questions here on the floor about REA refinancing. We would like a little time, maybe 15 minutes, to get an answer for you.

Mr. HATFIELD. I thank the Senator from New Mexico for his explanation.

Mr. President, I would like to have the Senators who are in communication with the floor to know that we do not have an amendment at this moment. I would also like to indicate that at some point I may ask for a unanimous-consent agreement dealing with the unspecified number of remaining amendments for a time certain to bring the bill to a vote for final passage. If there are not amendments to be offered, I would not necessarily close out the possibility of further amendments but ask for a time certain that the bill would be voted on, which would give ample time for Senators to get to the floor and offer amendments.

If they are important amendments, we are here to consider them.

We urge the Senators to come offer them.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER (Mr. WILSON). The majority leader.

Mr DOLE. Mr. President, let me again make a plea on behalf of the managers of the bill. Let me indicate there is no window.

Mr. STENNIS. May we suspend other matters while the leader is speaking, Mr. President.

The PRESIDING OFFICER. The point of order raised by the Senator from Mississippi is well taken. Conversations will be taken from the floor.

Mr. DOLE. I thank the Presiding Office.

I just wanted to indicate there is no window now. We are trying to move this bill. We have been trying all week long to bring this to an end. I sympathize with the managers because we have not really had that many amendments. Now we are getting into time agreement and that may speed it up a little bit.

I do not want to stay here all night. Maybe some Members do. I would hope if Members have amendments they would bring them to the floor. Every 5 minutes we waste now we waste the managers' time, the staff time, and we are also going to keep everybody here half the night.

I can sort of feel it in my bones that everybody is going to be out of here for the next 1½ hour and nothing is going to happen except amendments that can be agreed to. If nothing else, we can have a Sergeant at Arms rollcall to bring Members back who have amendments. I would urge my colleagues to cooperate with both the chairman and the ranking member of the Appropriations Committee. They have a very difficult job. If we want to complete the session a week from Friday we better be completing this bill before morning.

□ 1910

AMENDMENT NO. 3125

(Purpose: To increase available funds for the insured water and sewer facility loan programs of the Rural Development Insurance Fund, with an offset)

Mr. MATTINGLY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Georgia [Mr. MATTINGLY] proposes an amendment numbered 3125.

Mr. MATTINGLY. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 34, line 1, strike the figure "325,380,000;" and insert in lieu thereof the following:

"335,380,000, provided that funds available under this Act from the Agricultural Credit Insurance Fund for emergency insured and guaranteed loans to meet the needs resulting from natural disasters are hereby reduced by $10,000,000;".

Mr. MATTINGLY. Mr. President, I understand the amendment I have offered has been cleared with the managers. It is a very simple amendment. It will restore $10 million to the insured loan account of the rural water and sewer facility loan programs of the Farmers Home Administration. In 1986, we provided $345 million for these important loan activities, and the House included an identical amount for fiscal year 1987 in their bill. The Senate bill provides $325.4 million, or a reduction of almost $15 million.

I point out that the program is the only source of loan funds for nonprofit rural water systems which are the backbone of rural community life. Requests for loan assistance far exceed the level of funds available. The recently passed Federal Safe Drinking Water Act dramatically increased the burden on small systems to upgrade their water quality to meet new Federal standards. To do this, they need a stable source of financing, and I have already pointed out that the FmHA Loan Program is the only available source. The program prevents numerous rural water crises, and in hard-pressed rural areas, it is critically important.

The $10 million my amendment would restore to the loan program would be taken by reducing the $700 million in the bill for emergency disaster loans. I might point out that such disaster loans do not really help many of our farmers, who cannot pay the debts they already have, and there will be more than enough remaining for those who do qualify for disaster loans.

Mr. HATFIELD. Mr. President, I do not believe we have a copy of the amendment and the minority side says they have not cleared it. Could we have a copy of the amendment?

Mr. MATTINGLY. Mr. President, I address the chairman of the committee to say I had cleared this with the chairman of the Agriculture Subcommittee on Appropriations. He had given his OK on this amendment.

Mr. HATFIELD. What about the minority side? Amendments have to be cleared, Mr. President, on both sides.

Mr. MATTINGLY. It was my understanding it had been cleared on the minority side but if the Senator would care to withhold the amendment, we could check on that.

Mr. HATFIELD. Mr. President, may I suggest we temporarily lay this amendment aside and let the Senator discuss the matter with the minority side?

Mr. MATTINGLY. I believe the minority side has already consented. If I am not mistaken, we can move the amendment.

Mr. STENNIS. Mr. President, I am informed that we think this has been cleared. It can be approved. It is worthy and we believe we can safely accept it.

Mr. HATFIELD. Mr. President, the amendment appears now to have been cleared on both sides. Therefore, I move its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3125) was agreed to.

Mr. HATFIELD. I move to reconsider the vote by which the amendment was agreed to.

Mr. MATTINGLY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3126

Mr. HEINZ. Mr. President, may I inquire of Senator HATFIELD what the arrangement is? I do not wish to delay things but the floor was open for a while and things are not moving as he anticipated they would. I am prepared to offer an amendment but I do not want to interrupt any arrangement that has been informally reached.

Mr. HATFIELD. Mr. President, if the Senator will yield, I would welcome his amendment at this time. In fact, we were informally seeking to tell the Senator that such amendment would be welcome.

Could I ask for a time agreement?

Mr. HEINZ. If the Senator can withhold that until I explain the amendment, I shall send it to the desk, then we can have a unanimous-consent request. I have no disagreement with that whatsoever.

Mr. President, in just 1 minute, I shall send an amendment to the desk. It is an amendment I circulated to my colleagues last week. It is cosponsored by Senator WILSON, the Senator in the Chair at the moment, Senator MCCLURE, Senator SYMMS, and others whose names I shall supply later.

The reason this amendment is timely is that we are debating the continuing resolution. The continuing resolution is going to set what we spend for the coming fiscal year. Yet, as we are debating this resolution, the Soviet Union is spending some of last year's budget that we appropriated to steal our own national security secrets. I know that sounds pretty farfetched, but let me tell my colleagues that there is nothing more farfetched than the Soviets having snatched an innocent reporter, Nicholas Daniloff, who is not free after being a victim of Soviet cynicism and their relentless war of espionage against the West. To me, it would be ironic if the Senate were to act today to continue appropriating money that will go in part to finance the secret Soviet war of espionage against the West.

It is legitimate to ask how we are paying, as a Government, as a Congress, for that espionage. The means is simple. This has been amply documented by the report by the Senate Intelligence Committee issued last year, that we are subsidizing that espionage because we and the United Nations allow the Soviets to skim the salaries of their citizens who work at the United Nations. They get hard currency from that. My colleagues and the public should by now be familiar with this Soviet scheme that use United States contributions to the U.N. to finance Soviet spying and subversion directed against the United States and our allies.

We pay 20 percent, fully 20 percent, of all the contributions to the U.N.

Mr. HATFIELD. Will the Senator yield?

Mr. HEINZ. I shall yield in just 30 seconds.

The United States contributes fully 20 percent of the entire U.N. budget for the Secretariat, the civil service, for all the U.N. agencies.

What that means is we pay fully 20 percent of the salaries of Soviet U.N. spies operating in this country.

I just wanted to explain the amendment in case it was read. I wanted people to understand what it is about.

I am agreeable to entering into a time agreement. Twenty minutes equally divided would be more than adequate, I think.

AMENDMENT NO. 3126

(Purpose: To restrict United States assessed contributions to the United Nations)

Mr. HEINZ. Mr. President, let me send the amendment to the desk at this point and ask that it be stated.

THE PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. HEINZ] for himself and Mr. SYMMS, Mr. WILSON, and Mr. MCCLURE, proposes an amendment numbered 3126.

Mr. HEINZ. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the joint resolution, insert the following new section:

Sec. —. None of the funds appropriated by this joint resolution may be used to meet the obligations of the United States for annual assessed contributions to the United Nations or its specialized agencies until the President certifies to the Congress that the Secretary General of the United Nations has undertaken an investigation examining—

(1) the use of salary remission arrangments whereunder the nationals of member states serving as employees of the United Nations Secretariat or any of its specialized agencies are required to turn over their salaries to their national governments and retain only a portion of the salary paid to them by the United Nations;

(2) the excessive use of secondment by member states whereunder nationals of the member states serving as employees of the United Nations Secretariat or the specialized agencies are seconded to such employment on fixed-term contracts and not allowed to become regular career employees of the United Nations, with a view to implementing the recommendations of the Group of 18 with respect to limits on the use of secondment; and

(3) the blatant control of nationals of member states serving as employees of the United Nations Secretariat or the specialized agencies through regular supervision, consultation, and evaluation of such nationals of member states by their permanent missions to the United Nations or to the specialized agencies of the United Nations.

Mr. HEINZ. I ask for the yeas and nays, Mr President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HATFIELD. Mr. President, I shall at this time propound a time agreement to be the length of 20 minutes, 10 minutes to a side, between the Senator from Pennsylvania, the proponent, and the managers of the bill.

The PRESIDING OFFICER. Is there objection?

Mr. METZENBAUM. Reserving the right to object, please.

The PRESIDING OFFICER. The Senator from Ohio. Is there objection?

Mr. METZENBAUM. I wanted to be certain that second-degree amendments would not be in order, that this be the only amendment and there be no second-degree amendments.

Mr. HATFIELD. Mr. President, I plan to make a point of order against the amendment on the matter of germaneness at the appropriate time.

□ 1920

The PRESIDING OFFICER. Is there objection?

Mr. HATFIELD. Does that satisfy the request?

Mr. President, I would then get back to my unanimous-consent request as stated.

Mr. METZENBAUM. I just want to point out that even if the Senator plans to make that point of order, if somebody comes up with a second-degree amendment that is not totally different, there would be no time allocated to that second-degree amendment. I am just wondering why the unanimous-consent agreement could not——

Mr. HATFIELD. Mr. President, I have no objection to incorporating that into the unanimous-consent request.

Mr. HEINZ. Mr. President, I do not feel that I can accept that. I do not myself plan to offer any perfecting amendment. I do not know of anybody else who does. But I would want to be sure that there would be no objection to that on my side of the aisle.

Mr. METZENBAUM. I do not want to object to the time limit, but I am advised by those who speak for others in the Senate in leadership positions that without that they would not feel very comfortable about it and would probably ask me to object, the point being that without having that limitation on the second-degree amendment, the second-degree amendment could be called up without any debate being available at all. And I just would ask my colleague from Pennsylvania, I am not trying to frustrate his efforts, what objection he would have to limiting——

Mr. HEINZ. Speaking for myself, if the Senator from Oregon will yield—I think he has the floor—I do not have any objection, but I do not think people have anticipated a unanimous-consent request of the kind that the Senator from Ohio has just proposed. Maybe if he would withhold it for 5 minutes so that we can be sure we are not frustrating anybody, we could preserve everybody's rights and we will run the clock as if there is a unanimous-consent agreement.

Mr. METZENBAUM. I have no objection. Then the Senator's suggestion is to proceed with the debate and offer the unanimous-consent request at a later time?

Mr. HEINZ. In a few minutes. I do not think that prejudices anybody's right.

Mr. HATFIELD. Mr. President, I must admit that I am somewhat puzzled by this. This is the frst time in the unanimous-consent agreement that we have propounded and achieved all day that we have had such. I guess maybe there is a dimension here of which I am not aware. I will withdraw my unanimous-consesnt request. And if the Senator from Pennsylvania will withhold for just a moment, Mr. President, I would like to put in a quorum call.

CALL OF THE ROLL

The **PRESIDING OFFICER.** The clerk will call the roll.

The legislative clerk called the roll and the following Senators answered to their names:

[Quorum No. 13]

Hatfield
Heinz
Metzenbaum
Proxmire
Stennis
Wilson

The **PRESIDING OFFICER.** A quorum is not present. The clerk will call the names of the absent Senators.

The legislative clerk resumed the call of the roll.

□ 1930

Mr. HATFIELD. Mr. President, I move that the Sergeant at Arms be directed to request the attendance of absent Senators.

The **PRESIDING OFFICER.** The question is on agreeing to the motion of the Senator from Oregon.

Mr. HATFIELD. Mr. President, I ask for the yeas and nays.

The **PRESIDING OFFICER.** Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The **PRESIDING OFFICER.** The question is on agreeing to the motion of the Senator from Oregon [Mr. HATFIELD] to direct the Sergeant at Arms to request the attendance of absent Senators. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator for Utah [Mr. GARN], and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

The **PRESIDING OFFICER.** Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 93, nays 5, as follows:

[Rollcall Vote No. 314 Leg.]

YEAS—93

Abdnor
Andrews
Armstrong
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Broyhill
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
Cranston
D'Amato
Danforth
DeConcini
Denton
Dixon
Dodd
Dole
Domenici
Durenberger
Eagleton
Evans
Exon
Ford
Glenn
Gore
Gorton
Gramm
Grassley
Harkin
Hart
Hatch
Hatfield
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Laxalt
Leahy
Levin
Long
Lugar
Mathias
Matsunaga
Mattingly
McClure
McConnell
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Pryor
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simon
Simpson
Specter
Stafford
Stennis
Symms
Thurmond
Trible
Warner
Wilson
Zorinsky

NAYS—5

Proxmire
Quayle
Stevens
Wallop
Weicker

NOT VOTING—2

Garn
Goldwater

So the motion was agreed to.

The **PRESIDING OFFICER.** With the addition of Senators voting who did not answer the quorum call, a quorum is now present.

The Senator from Pennsylvania is recognized.

Mr. HEINZ. Mr. President, what is the pending business?

The **PRESIDING OFFICER.** The amendment of the Senator from Pennsylvania.

□ 1950

Mr. HEINZ. Mr. President, we were attempting to——

The **PRESIDING OFFICER.** Will the Senator suspend? The Senator cannot be heard by the Chair. I am sure he cannot be heard by others on the floor. He deserves courtesy. Will the Senators and staff please take their conversations off the floor? Will they please take their seats or move to the cloakroom? The Senate will not proceed until order is restored, and the Senator from Pennsylvania can be heard.

The Senator from Pennsylvania is recognized.

Mr. HEINZ. Mr. President, a few minutes ago before the quorum call we were attempting to get a unanimous consent to limit time. I am agreeable to that. But I will not propound any unanimous-consent request. We wil just proceed as expeditiously as possible.

Let me briefly state what my amendment would do. My amendment, as I explained, woud restrict U.S. taxpayers' money to the United Nations until the United Nations is committed to cleaning up its own house and addressing the Soviet kickback scheme, and the other serious abuses that have been documented by our intelligence community. Once again I would refer interested Senators to the report of last year by the Senate Intelligence Committee on this subject.

My amendment in effect says that we will restrict our contribution to the United Nations. We will not make any contribution until the President certifies that the United Nations is cleaning up the Soviets' act. And by that it means we hope to put the strongest possible pressure on the United Nations Secretary General to clean up this Soviet spy nest at the United Nations.

By the way, let me point out that I have nothing but the highest respect for the Secretary General, Mr. Perez de Cuellar. I think he wants to do the right thing. But there are 800 Soviet employees, of the United Nations, at least 200 of whom are KGB agents. And those employees, including those agents, fan out through the United Nations and through the Secretariat, the international civil service of the United Nations, to which they are all seconded or assigned by the Soviet Union, and they work not for U.N. purposes, but largely for Soviet purposes. We need to do everything we can to stop that.

I think my colleagues know, Mr. President, I have been and I am a strong supporter of the United Nations. I believe it is a positive force for the resolution of conflict. I am not one of those who is a U.N baiter. I still support the objectives of the United Nations. But frankly the Soviet perversion of the United Nations for their own purposes simply cannot go on.

I mentioned the Senate Intelligence Committee investigation, and how it has confirmed that the United Nations has literally been transformed by these Soviet abuses, transformed from a promoter of peace into an agency of espionage.

As we convene here the Soviets have just welcomed back to the U.S.S.R. Mr. Zakharov, a confessed Soviet spy from that very spy nest. Mr. Zakharov was one of those U.N. "civil servants" seconded on short-term contract as indeed are virtually all of those 800 Soviet citizens working at the United Nations. Mr. Zakharov is just the tip of this massive iceberg.

And by skimming their citizens' salaries, by preventing their citizens from becoming true international civil servants, by blatantly controlling their citizens whose duty ought to be to the United Nations and international peace, it is this Senator's judgment that the Soviets pervert the true purpose of the United Nations, and they mock Americans' generosity in hosting and more importantly financially supporting the United Nations which has its headquarters in New York.

Mr. President, if my amendment passes, as I hope it does, the way it will work is this: The United States will withhold contributions until the President tells us that the Secretary General has begun an appropriate and comprehensive investigation into the abuses I have described. The United Nations has a choice. It can start to put its own house in order or it can do without our financial support.

Frankly, I do not believe they want to do without our financial support. And I also believe that the Secretary General and anybody who has studied this matter knows that the abuses I have cited are blatant violations of article 100 of the U.N. Charter, which is the key legal basis of the Secretariat.

Let me quote just a few lines from article 100. It is in this article that every member of the United Nations and most specifically, every single one of the U.N. civil servants, the people who work at the U.N. Secretariat in New York and elsewhere pledge "* * * to respect exclusively the international character of the responsibilities of the Secretary General and the staff and not to seek to influence them in the discharge of their responsibilities."

The U.N. employees from every member state also agree further "* * * not to seek or receive instructions from any government or any other authority external to the United Nations. They shall refrain from any action which might reflect on their positions as international officials responsible only to the organization." The organization is the United Nations.

Mr. President, that is the U.N. Charter. That is the basis for the United Nations on which all countries participating in it agree, to establish standards for behavior and cooperation. And Soviet behavior at the United Nations rips that code to shreds.

The Intelligence Committee estimates that the Soviets net $20 million a year, net, clean, profit from their salary kickback scheme. They force their employees who are paid at low wages, much lower than the U.N. civil servant wage, to turn over their entire paycheck to the Soviet mission at the United Nations. And then they receive just a portion of that back. The remainder, which is hard currency, most of it ours, goes on to subsidize Soviet subversion.

These Soviet citizens, these 800 of them, do not live in apartments in New York. They do not take the MTA to work. They do not report just to the U.N. Secretariat. They are domiciled in Soviet housing. They are also employees of the Soviet Embassy and Mission in New York. They are required to attend weekly meetings in the Soviet Embassy for orientation. We know what that means. They are, in fact, working part time for the United Nations, and far more than part time for the Soviet Union.

What is so offensive to me, Mr. President, is that American taxpayers pay for this, and subsidize a substantial part of this blatant outrage. So I hope, Mr. President, that the Senate will take a strong, firm stand, that we would say "no" to the Soviet infiltration of the United Nations, and once and for all get rid of this nest of Soviet spies that Mr. Zakharov proves exists, and that our Intelligence Committee has documented beyond a shadow of a doubt.

Mr. President, I reserve the balance of my time.

Mr. LEAHY addessed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I have listened with interest to the comments of the distinguished Senator from Pennsylvania. He is right when he says the Soviet Union has placed a great number of KGB agents under diplomatic cover into the United Nations.

□ 2000

This assertion does not disclose any confidential material but in fact refers to the open, published comments of the administration.

The matter that has greatly concerned me first as a member of the Intelligence Committee and more recently as vice chairman of the Intelligence Committee, is that a year ago, together with the distinguished Senator from Maine, we introduced and had signed into law the Leahy-Cohen amendment. The amendment requires parity in personnel between the United States and the Soviet Union at their diplomatic missions. It simply states that the Soviets may have no more people under diplomatic cover in the United States than the United States has at its diplomatic missions in the Soviet Union.

We did this because the Soviets now have a 3-to-2 advantage over the United States in diplomatic personnel. The 3-to-2 ratio means that they have well over 100 more diplomats here than we have in the Soviet Union. This does not include the large numbers of Soviet diplomats at the United Nations.

The FBI has stated that 35 percent of the Soviets in this country serving with diplomatic immunity, are in fact active KGB agents.

The distinguished Senator from Maine, who has, along with me, reviewed all of the material regarding Soviet diplomatic personnel, decided to join me in an effort to reduce their numbers. It had become almost a good news-bad news issue. Someone would go to the Director of the FBI and say, "We have good news and bad news, Mr. Director. The good news is that we have identified all the KGB agents in the United States. The bad news is there are so many that we cannot keep tabs on them."

The Leahy-Cohen amendment was signed into law by the President. Over a 3-year period we will achieve parity with the Soviet Union.

The distinguished Senator from Maine and I then looked at the problem at the United Nations, referred to by the distinguished Senator from Pennsylvania. We found that the Soviet diplomatic mission to the United Nations is by any standard far, far larger than anything they or any other country would ever need for a diplomatic mission at the United Nations. Again, there have been published reports by the adminstration, stating that a very significant percentage of Soviet diplomats at the U.N. mission are KGB or other Soviet intelligence agents.

So, again during the past few weeks, Senator COHEN and I introduced legislation which was added to the fiscal year 1987 intelligence authorization bill. Our amendment has been incorporated into the conference report which was today passed by the House of Representatives. It requires parity between the United States and the U.S.S.R. in the number of diplomatic personnel at their respective missions at the United Nations.

Our bill allows the Soviet mission to have somewhat more people than we are allowed to have at the United Nations for the obvious reason that we can simply augment our mission by simply putting our State Department people on the Washington to New York shuttle and know that within a matter of hours they will arrive in New York City without having to travel through time zones. There might be inevitable delays at the airport, but no time zone delays.

The reason I mention this, Mr. President, is that there has been a lot of talk about the 25 Soviet diplomats who have been told to leave the United States by our State Department.

Now there is a discussion of whether some might be allowed to remain in the United States.

Under Leahy-Cohen II that is simply not possible. In addition to the 25, an additional 75 Soviets would be forced to leave the United States.

The Leahy-Cohen amendment did not come about because of the Daniloff case. It came about because of legitimate counterintelligence needs. The Soviets have greatly abused their diplomatic privileges by bringing so many intelligence agents into the United States under diplomatic cover. The United States should not be in a position where on the one hand we may well be able to identify the KGB agents in this country but remain unable to keep them under surveillance due to a lack of manpower.

We are simply saying that the Soviets have abused their diplomatic privileges in this country to such an extent, that there is no way that the United States can guarantee the security of its people, the security of its institutions, the security of its Government without taking some commonsense action.

We are saying to the Soviets: "If you are playing that game, you will play it by our rules and play it with a lot less players than you have now."

I see the distinguished Senator from Maine on the floor. I commend him for joining us because of his unique position as a member of the Intelligence Committee. He is well aware of the problem we face.

Mr. HEINZ. Will the Senator yield for a question?

Mr. LEAHY. Certainly.

Mr. HEINZ. First, I commend the Senator from Vermont and the Senator from Maine for their efforts to reduce the Soviet mission to the United Nations to the same size as ours. Of course, in that initiative what you and the Senator from Maine have been dealing with is the number of Soviets who work for the Soviet mission, who have no employment whatsoever at the United Nations, except, maybe, to conduct the orientation meetings, the weekly orientation meetings, which the so-called Soviet employees of the United Nations probably attend.

I know the Senator is undoubtedly aware that, although he has spoken mainly about his amendment on cutting back the size of the Soviet mission, my amendment deals with a totally different subject. It deals with the civil servant bureaucracy in the United Nations, the so-called Secretariat, where none of the employees are supposed to work for another country, and where, in some instances, this process of seconding is permitted. A lot of countries use it, but only to a very small extent.

In the case of the Soviet Union, more than 90 percent of all the 800 Soviet citizens that work in the United Nations are on short-term contracts. They never become permanent employees. Indeed, the Soviet Union just churns them through there as fast a they can.

Let me ask, Does the Senator substantially agree with my representation of the facts here?

Mr. LEAHY. Would the Senator repeat his question?

Mr. HEINZ. I said there are approximately 800 Soviets working for the United Nations and approximately 90 percent of them are seconded. But in the case of those 90 percent or around 750, if you will, those employees really are not only Soviet citizens but they work full time for the Soviet Government. The Soviet Government lends them under this process called seconding. The Soviet Union allows them a fraction of what the United Nations pays them. Out of that, the Soviet Union strips from them what the Intelligence Committee has estimated would be $20 million to $30 million a year.

I wonder if the Senator understands me to be portraying, as far as he is concerned, the facts to be correct or the portrayal to be substantially accurate.

Mr. LEAHY. I have no reason to doubt the Senator's portrayal. The Senator's amendment, of course, address a different issue than the Senator from Maine and I have addressed. I have not found a way, partly because the Senator from Vermont does not have adequate information for examining all the issues associated with the U.N. Secretariat and in particular the legal issues.

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Our amendment does not affect the U.N. Secretariat. I would say my only hesitation in answering the question of the Senator from Pennsylvania is that it regards an area in which the Senator from Vermont does not feel he has enough available information, at this moment within the public record, to rely upon. In fact, the Senator from Vermont wonders whether the Senator from Pennsylvania would consider modifying his amendment into a sense-of-the-Senate amendment calling upon the Secretary of State to provide the Senate with a specific study which might give us more exact information.

I wonder whether he may desire, because of the further foreign policy ramifications and because of the involvement of other countries, to fashion a sense-of-the-Senate resolution which may give all of us the facts.

Mr. HEINZ. Will the Senator yield further so I may respond?

Mr. LEAHY. Of course.

Mr. HEINZ. A good deal of the information, particularly the specific facts I enumerated to the Senator a moment ago, come from a committee report from the Senator's own committee, printed in May of 1985. That is entitled "The Soviet presence in the U.N. Secretariat; A report by the Senate Select Committee on Intelligence of the United States Senate." I would normally ask that this be printed in the RECORD, but I had it printed in the RECORD this week, Mr. President, and I shall not do so again.

In answer to the other question of the Senator from Vermont, would I consider modifying or weakening the amendment to a sense-of-the-Senate resolution, let me tell him why I would be extremely reluctant to do that. As the Senator's own committee has documented, and indeed, as it concludes in the committee print on many occasions, the excessive use of secondment by the Soviet Union at the United Nations is utterly outrageous. There has been some small effort by a body called the "group of 18."

It was created to reform the U.N. budget process. It recommended—and it is only an advisory group—that there be a cap of 50 percent placed on the secondment of nationals by any member state to the U.N. staff.

I have tried to take into account recent developments. Last year the Congress required the Department of State and the U.S. Representative to the United Nations to seek an end to what I have described, to having the salaries given and processed by the Soviet Union. Our Ambassador, Vernon Walters, sent the Secretary General, Perez de Cuellar, a letter. In that letter, he asked him to look into this kickback scheme and if it was going on, to do something about it. That was last year.

In response, I say to my friend from Vermont, to a congressional mandate, let me tell him what Vernon Walters and Congress got back from that. It was not much.

The Secretary General just ducked the issue entirely. He said there was no evidence of a kickback scheme. He just repudiated the report of the committee. He also claimed that looking into the kickback issue would be invasion of the privacy of U.N. employees.

Mr. President, I do not see how anybody could be farther off the mark. Forced skimming of salaries by national governments is an invasion of the rights of U.N. employees. It is an outrageous violation of article 100.

That is what we have to put a stop to, and help the United Nations put a stop to. That is the purpose of our amendment. A sense-of-the-Senate amendment would be no better, probably a little weaker, than what Congress did last year, and we were given the back of the hand by the Secretary General last year.

Mr. LEAHY. Mr. President, the Senator referred to the Senate Intelligence Committee report, and I am glad he has it available. First, his reference to the report and his description of its contents are accurate. The only hesitation of the Senator from Vermont was the specific report referred to by the Senator from Pennsylvania. I recall now that it is indeed unclassified.

There is no question that it goes into far greater detail than the answer provided by the Secretary General of the United Nations. I do not think that neither the Senator from Pennsylvania or the Senator from Vermont is the least bit surprised by this fact.

My concern, and I shall yield the floor after this point, is that I do not know nor does our report deal with the legal issues regarding our jurisdiction over U.N. employees. The Leahy-Cohen amendment was very specific to the Soviet diplomatic delegation of the U.N. mission, We have very specific legal guidance covering the mission.

I am not sure on what legal grounds we stand with regard to actions against U.N. employees. That is the issue that creates concern.

Our report spells out the facts very clearly. I believe that the Intelligence Committee has done a good job in this regard. It is the legal ramifications of our action which are uncertain and require further study.

Mr. President, I yield the floor

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. COHEN. Mr. President, I might answer a couple of comments by speaking of the original Leahy-Cohen I and son of Sam Leahy-Cohen II and what connection they might have to the current proposal on the floor.

What Senator LEAHY and I became concerned about when we introduced the initial measure is, we discovered that there was not only a very active, aggressive espionage activity being conducted by Soviet agents in this country, but we found we were at a great disadvantage even in our own embassy in Moscow—finding, for example, there were more Soviet citizens employed in our Embassy in Moscow than we had American citizens employed there. What Senator LEAHY and I tried to do was establish a sort of rough equivalence, the same amount of personnel situated or stationed in the Soviet Union as the Soviet Union has stationed here. The State Department did not quite agree the nature of the threat in this country and, rather than ask the Soviets to reduce their presence here, the State adopted a plan to increase the number of U.S. employees in Moscow. That is proposal No. 1.

With respect to the second proposal, in Leahy-Cohen II, again we found a great disparity between the size of the Soviet mission in the United States and what other countries have. In fact, the Russians have approximately 275 personnel assigned to that mission. We have roughly 130 people assigned, China has about 125. Under the second proposal which was passed by the Senate and which will be passed by the House, we have ordered the Department of State to seek a reduction of some 100 personnel so the Soviets would come down, roughly, from 275 to 170 over a 3-year period. That still gives them roughly a 30-percent advantage over the United States or any country that would even be close to us in personnel. The purpose of that measure is to try to reduce the size of the threat the Soviets pose in terms of the numbers of people that the FBI has to watch.

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With respect to this amendment that Senator HEINZ has introduced, it is really trying to get at the whole problem of kickbacks. I think Arkady Shevchenko, in his book, "Breaking With Moscow," not only documented this in some detail, but also gave more credence, perhaps, to our own intelligence report that this is the prevalent practice within the United Nations, that the Soviets do take a percentage of the money that should go to the employees, and use the money to fund its espionage activities in this country.

So Leahy-Cohen II was an effort to address the question of whether we should be forced to hire more FBI agents, and tax our people more to pay for the agents, or to reduce the Soviet presence in the United States.

This is a continuation of that effort, which is to reduce the amount of money American citizens have to contribute to the United Nations to fund Soviet KGB activities in this country.

I think the question of germaneness is going to be raised this evening, as to whether this amendment is germane. Assuming that it is ruled to be germane, if that is the will of the Senate, the next question is, Is it desirable? Is this a desirable amendment to pursue on this resolution or on any resolution?

I am sure the argument will be made that this is the wrong time to introduce this kind of measure. I say to my colleagues that there probably is never going to be a good time for this measure, under any circumstances.

Now, it comes shortly before the presummit summit. After that presummit summit is held, the argument will be made: "Don't rock the boat at this point, because we have a summit coming up this year or early next year."

Once that summit takes place, the argument will be: "Please don't rock the boat, because we have an era of good will prevailing, and we don't want these kinds of measures to jeopardize this flowering relationship."

So, timing is important; timing is everything. But the reality is such that there will never be a good time for this kind of legislation because of the arguments that can and will be advanced by the State Department and perhaps by the President.

The question will be: Will actions taken by Members of the Senate and the House jeopardize the President's negotiating hand at the presummit or the summit meeting? I think I could make an argument that we have not jeopardized the President's hand by pursuing certain arms control recommendations, but in any event, that this measure would only strengthen the President's hand in dealing with the Soviet Union.

The President could go to Iceland and say: "Look, I want better relations with the Soviet Union. That is why I am here. That is why you are here. But I also have a Congress to deal with. I have a U.S. Senate that does not like what is taking place with respect to the United Nations in its use and misuse, and I am having difficulty controlling them, as you saw by the vote on South Africa. I can't always control them. But in this case, they are serious. I advised them against going forward, but my hands are tied on this issue, the feeling is so strong in this country."

So I think you put the President in a stronger position. As a result of the Senate passing the Leahy-Cohen II bill, which I mentioned before, it allowed the Secretary of State in the Daniloff negotiations to say, "We are taking out 25 of your Soviet 'diplomats.'"

It was the Senate and the House that forced that issue. So it enabled the President to say not only that we want Daniloff out and would like to get some dissidents in exchange, but also, "We are telling you to reduce the size of your spying network in this country; and as an initial first step on a down payment of the 100 to come out, 25 have to go in the next couple of weeks."

That was a strong position for him to be in, and it was brought about not by the State Department or the executive branch but by this body.

I submit that if it is ruled to be germane, this kind of action will strengthen the President's hand as he goes to Iceland, rather than weakening it, and will give him something more to talk about to Mr. Gorbachev, that we are serious about reducing the kinds of activities taking place in this country, and I commend Senator HEINZ for his effort.

Mr. McCLURE. Mr. President, does the Senator from Pennsylvania wish to be heard briefly?

Mr. HEINZ. Will the Senator allow me to proceed for 1 or 2 minutes,

Mr. McCLURE. I yield.

Mr. HEINZ. Mr. President, I thank the Senator from Idaho for yielding. In a few minutes, the Senator from Idaho will be required to make a point of germaneness against this amendment.

This is an an amendment on an appropriations bill. The Senate has no rules of germaneness, except what the Senate decides on a case-by-case basis.

The Appropriations Committee and its members have taken the pledge to challenge the germaneness of any amendment to this bill unless it is extraordinarily tightly drawn. Therefore, before, the Senator makes the point of germaneness, I want to argue very briefly that this is germane. It is germane because it is a limitation on an appropriations bill, and the Senator has often agreed that such limitations on an appropriations bill were germane to what we are considering.

The only argument that could be made is that, were we under a rule of germaneness, it would be that in addition to being a limitation which would satisfy any known rule of germaneness, it also constituted additional duties on some other agency or branch of the U.S. Government. There are some additional duties that this amendment requires of the President, but it is a very modest duty.

The duty it requires is for the President to make a certification—or not, as the case may be—that the United Nations is investigating and taking the appropriate investigatory steps to clean up the outrage I have described. If the President makes that certification, there will be a release of any of the funds that might be withheld under this amendment. If he does not, the amendment, the limitation, would continue in effect until the President could make that certification.

So it would be my hope that my colleagues would vote this amendment germane. Since it is so limited, I would suggest that anybody who says this amendment is not germane may very well simply be using that as a device to vote against the substance of the amendment. I hope my colleagues do not do that. I hope they vote it up or down on the merits that they do make it germane, and that we can proceed accordingly.

I thank the Senator from Idaho for yielding.

Mr. McCLURE. Mr. President, I make the point of order that the amendment is not germane, under the provisions of rule XVI.

The PRESIDING OFFICER. The question of germaneness is submitted to the Senate, and it is not debatable.

Mr. SIMON. Mr. President, will the Senator yield for 2 minutes, before making the point of order?

The PRESIDING OFFICER. Is there objection?

Mr. LONG. I object.

The PRESIDING OFFICER. Objection is heard.

The question is, Is the amendment germane?

Mr. HEINZ. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Is the amendment germane? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah Mr. GARN is necessarily absent.

The result was announced—yeas 46, nays 53, as follows:

[Rollcall Vote No. 315 Leg.]

YEAS—46

Abdnor
Andrews
Armstrong
Bentsen
Bradley
Broyhill
Bumpers
Burdick
Byrd
Chiles
Cohen
D'Amato
DeConcini
Denton
Dixon
Eagleton
Ford
Gramm
Grassley
Hatch
Hawkins
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Kasten
Mattingly
McClure
McConnell
Mitchell
Murkowski
Nickles
Pressler
Pryor
Quayle
Rudman
Sasser
Specter
Symms
Thurmond
Trible
Wallop
Wilson
Zorinsky

NAYS—53

Baucus
Biden
Bingaman
Boren
Boschwitz
Chafee
Cochran
Cranston
Danforth
Dodd
Dole
Domenici
Durenberger
Evans
Exon
Glenn
Goldwater
Gore
Gorton
Harkin
Hart
Hatfield
Inouye
Johnston
Kassebaum
Kennedy
Kerry
Lautenberg
Laxalt
Leahy
Levin
Long
Lugar
Mathias
Matsunaga
Melcher
Metzenbaum
Moynihan
Nunn
Packwood
Pell
Proxmire
Riegle
Rockefeller
Roth
Sarbanes
Simon
Simpson
Stafford
Stennis
Stevens
Warner
Weicker

NOT VOTING—1

Garn

The PRESIDING OFFICER. Are there other Senators wishing to vote? If not, on this vote, on the question is this amendment germane, there are 46 yeas, 53 nays. The amendment is found not to be germane, and therefore, falls.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was declared not germane.

Mr. CHAFEE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

AMENDMENT NO. 3127

(Purpose: To restore to states and local governments the power to protect ratepayers from the costs of abandoned or cancelled generating units)

Mr. BUMPERS. Mr. President, I send an amendment to the desk for myself, Senator PRYOR, Senator HART, and Senator EXON and ask for its immediate consideration.

The PRESIDING OFFICER. The Senate will be in order. Senators are asked to take their seats. The Senate is not in order.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS], for himself, Mr. PRYOR, Mr. HART, and Mr. EXON proposes an amendment numbered 3127.

Mr. BUMPERS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Sec. . None of the funds made available to the Federal Energy Regulatory Commission by this Act may be used to fix or permit to take effect a rate or charge applicable to the transmission or sale of electric energy which includes any portion of the costs of an abandoned or cancelled generation facility, except to the extent that such costs would be permitted to be included in a rate for resale or retail rate set under the law, regulation or stated policy of the state or local government having jurisdiction over the wholesale purchaser to which the electric energy is transmitted or sold.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Arkansas.

Mr. BUMPERS. Mr. President, if I could have the attention of my colleagues for just a few moments I think you will find this a very interesting amendment. I will tell you the reason for it and what it does in a nutshell.

Here is the evolution of the history of the problem. We have what is called the Federal Energy Regulatory Commission, commonly referred to as FERC. Under existing law, any time a utility company sells or buys power at the wholesale rate, FERC has exclusive jurisdiction over that sale of power. The power does not have to cross State lines as you normally would think of interstate commerce. The law has been interpreted to mean that if a utility company in your State decides to buy power at wholesale from another utility company, FERC has exclusive jurisdiction over the rate that would be paid for that power.

As long as it is a retail sale within your State, your own State public utility commission has exclusive jurisdiction. But the reason for this amendment is twofold: First, for wholesale sales of power the States are being required to accept rates set by a Federal commission which never looks behind the decision to build a powerplant in the first place.

The PRESIDING OFFICER. Will the Senator suspend? The Senate is not in order. The Senators are asked to take their seats. Staff on both sides of the aisle are asked to take their seats and withdraw to the rooms outside the Chamber.

The Senator from Arkansas.

Mr. BUMPERS. Mr. President, not only does FERC have exclusive jurisdiction over wholesale sales of power, but under the Narragansett Doctrine, the States have absolutely no choice but to pass on whatever rate FERC sets. And what my amendment does is to say that if a powerplant has been abandoned or canceled, then FERC may not mandate the passing on of a rate which includes the cost of that abandoned or canceled plant unless it would be permitted by State law. Some States already have laws dealing with the rate making treatment of abandoned plants, but State law does not apply on wholesale sales of power because FERC has exclusive jurisdiction, and under the Narragansett Doctrine State law is out the window.

Let me give you three or four examples of how this can happen. Let me say to you I know a lot of Senators in this body right now in States where canceled or abandoned plants are a hot issue, and for those of you where it is not a hot issue, I promise you it is going to become one.

Why in the name of all that is good and holy, should the ratepayers of your respective States be asked to pick up the tab for, let us say, a $1 billion cost on a $3 billion plant that will never be completed, that will never generate one kilowatt of electricity? Why should the ratepayers of your State be asked to pick up the tab for that, especially in some instances where the State has never had so much as a nod, a bow, so much as a by your leave about building that plant in the first place? All of a sudden they find themselves in a predicament of having to pay for an abandoned plant that they never authorized, never asked to be built, were never consulted about, and yet $1 billion worth of such costs are going to be imposed upon them.

Nobody believes that is right. If you really believe in States rights, you will never find a better opportunity to demonstrate it.

Let us assume that an electrical generating company, a utility in your State is a part of a holding company. Let us assume there are four or five subsidiaries in the holding company. Let us assume further that the holding company decides to build a big generating plant and each utility says they will buy such power as is needed. If they need it, they will buy it. If they do not, they will not. You know what happens in the case like that? Immediately FERC gets jurisdiction even though your State and your utility regulating commission has never even known about the new generating plant. And later on that plant is abandoned. The utility company goes to FERC. They get a wholesale rate to sell power to the utility in our State, and your State commission has no choice but to pass it on.

I must say the courts are beginning to get active in this kind of a case again, happily.

Let me tell you another case. Maybe your utility company is not a part of a holding company but let us assume it is a part of a consortium. They can go out and build a generating plant and never get permission from the utility regulator in your State. Yet, later on your ratepayers will find themselves having to pay for that.

My amendment simply says that in the future they cannot impose that cost on your consumers unless State law authorizes them to. Incidentally, let me mention something here that is pretty important. FERC—listen to this—has never ruled a plant, finished or unfinished, was imprudently built—never. They have never disallowed recovery of the costs of a powerplant on the basis of imprudence.

The other day Anthony Sousa came before the Energy Committee. He had been nominated by the President to be chairman of FERC, and the question was submitted to him.

> Mr. Sousa, do you not agree that this rush to get jurisdiction with FERC is out of control?

I am going to see if I can find his precise answer. Here is what he said in answer. He said:

> I am aware, Senator, of that trend, where corporations have sought to circumvent local regulations by trying to come under the jurisdiction of the FERC, and perhaps that is an area where Congress should be enacting some laws to avoid that kind of circumvention. I am also aware of advice being given by so-called consultants to circumvent or avoid local regulation by coming under the umbrella of Federal regulation.

So says the chairman of FERC.

□ 2100

Lawyers and consultants are cropping up all over America telling utilities how they can avoid State regulations. All you have to do is to get to a wholesale sale of power, FERC gets jurisdiction, and the States are completely out of it.

I am telling you it is out of control. Do you know how much of a reserve margin or excessive generating capacity there is in my State right now? Seventy-two percent. There are 100 abandoned plants in America right now.

I do not want anybody to think my amendment deals with all 100 of them because it does not. It only deals with a half-dozen or so that are subject to FERC jurisdiction.

But did you know the incentive is for utilities to build large powerplants because they get rates based on their investment? They get a return on investment. So the incentive is to build.

There is a case pending before the FERC right now on abandoned plant treatment called the New England Power Co. case. Listen to this one.

FERC has always granted a return of what they call sunk costs. You start out to build a $3 million plant, you spend $1 million and you abandon it, and FERC will give you your $1 million back.

All they do is say to the consumers in your States they have to pay that $1 million whether they had anything to do with the decision to build the plant or not.

But do you know what the New England Power case is all about that is pending before FERC right now? They are asking not only that the ratepayers be required to pay back the sunk cost on those plants, but that the utility be allowed a return on the sunk cost of about 16 percent.

Mr. President, if you believe that the utility companies are infallible and that they never make a mistake in a decision to build a plant, you ought not to vote for my amendment.

If you think there are occasion where two or three things have happened: No. 1, where they have deliberately circumvented State jurisdication in order to get to FERC for these reasons I have just pointed out, you ought to vote for me.

If you believe that is unfair for the ratepayers of your respective States to pay for an abandoned, canceled generating plant, you ought to vote for me.

If you believe that the States are being trampled upon and that States rights have been usurped by everybody rushing to FERC, you ought to vote for this amendment.

If you believe that occasionally, just occasionally, a plant was built because of a bad management decision, or bad planning, you ought to vote for this amendment.

Mr. President, as I pointed out a moment ago, some States have already passed laws dealing with this. Some of them say that they may give a part of the cost of a canceled plant back to the company. Some of them say they are not going to pay for part of it unless that plant generates electricity.

I just want to point out that this is a fairly simple amendment, and above all I want to point this out to you: This amendment is endorsed by the National Governors Association, by the National Association of Attorneys General, and by the American Public Power Association.

This amendment is not just something that was conjured up. Most of you know this has been a hot issue for a long time. But that is not peanuts, to have all the Governors, the attorneys general and the American Public Power Association on your side. That means that we have a serious problem.

It seems to me that based upon our hearing before the Energy Committee in July, when some of the best economist in the country said, "Yes, this ought to be done," when the President of the National Association of Regulatory Utility Commissioners came in and said, "This problem should be addressed," when the National Governors Conference chairman came in and said, "Yes, we ought to do this," then the Senate ought to look at this issue.

The utility companies in this country have done very well in the past 5 years. They have gotten a return for the stockholders of privately investor-owned power companies, a return over the past 5 years of 22.9 percent, almost 23 percent; whereas, the Standard & Poor's stock index average is 13.6. So the stockholders of utility companies have received almost twice as big a yield as the Standard & Poor's index of stocks.

So, Mr. President, these utility companies are doing just fine. We are not talking about whether they are good, bad, or somewhere in between. We are talking about utility companies that have gilt-edge monopolies. Yes, they have a responsibility to provide a reliable source of power. Nobody argues about that. But they also have a second mandate and that is to provide it at the cheapest possible rate.

Why are we here if we are not here to make sure that public utilities do not exist just to protect the stockholders, the shareholders? That is fine. But they have the responsibility to protect people, and we have the responsibility to protect people from the exploitation of monopolistic power.

As I pointed out a moment ago, if you have not experienced this problem in your State, you are going to because the trend is toward seeking FERC, jurisdiction and avoiding State jurisdiction.

Mr. President, the Senator from Nebraska is a cosponsor of this amendment and Senator Pryor is also a cosponsor. I want them to be heard also.

Mr. HATFIELD. If the Senator will yield for a moment, I wonder if we can possibly get an idea of how many minutes for the Senators?

Mr. EXON. Two minutes.

Mr. PRYOR. Three minutes.

Mr. HATFIELD. I thank the Senators.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, I have known and worked with the distinguished Senator from Arkansas for a long, long time. We served as Governors of our States together, and we have served here for the last 8 years together. I have supported him on many occasions and sometimes we have parted ways. I have never heard a better explanation of why we should move for the protection of the ratepayers of this Nation; why we should move to protect States rights, which we all maintain is very important.

It has never been explained better than just outlined by the Senator from Arkansas.

I have had my difficulties with FERC over the years, and other Members of this body have been more successful with FERC than I have.

You will remember that within the last few weeks I lost a motion by one vote, and one vote only, to overturn FERC's granting of the elimination of the previously controlled old gas. That action, if it ever goes into effect, is going to cost my farmers and my people back in Nebraska dearly.

I have long felt that FERC does a much better job in protecting the stockholders than they do in protecting the interest of the people they were designed to protect. Of course, that is the consumers.

□ 2110

Just let me say that while I suspect it may be moved that this is not germane, there are an awful lot of things in this continuing resolution that are in there only because the committee of jurisdiction decided that they should be in there.

I simply say that this amendment is so important and it is so appropriate on the only major appropriations bill that we are going to have a chance to vote on this year that we should reverse the process that has been going on. That is simply to rule these nongermane and get them out of the way.

Mr. President, this is something that we cannot put off. This is something that we should stand up to now, protecting the consumers of America. I think in so doing, we can send a loud and a very clear signal to FERC that we are not satisfied with the way that organization has not been protecting the consumers of America.

I am pleased to join as a cosponsor of the amendment and I urge my colleagues, rather than go the well and vote when someone whispers into their ears, to look at the merits, the worthy merits of the amendment that has been offered by my colleague from Arkansas.

Mr. President, I yield the floor.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas [Mr. Pryor].

Mr. PRYOR. Mr. President. I rise in very strong support of the amendment now pending before the Senate. Very briefly, in the 1970's, the State of Arkansas and the ratepayers of the State of Arkansas constructed their own generating powerplants. At that time, and I say this out of the greatest respect for our neighbors from the States of Louisiana and Mississippi, our good neighbors, no ratepayers of those two respective States helped in any way to pay for the costs of the generation of electricity in the State of Arkansas. The Arkansas ratepayers paid for those plants.

In the middle 1970's, the chairman of the board of Middle South Utilities that owns the electric powerplants in the States of Mississippi, Louisiana, Arkansas, and now in southern Missouri, testified before the Arkansas Public Services Commission that if Grand Gulf 1 and Grand Gulf 2 could be constructed, if that construction were allowed to proceed and to be completed, the people of Arkansas, the ratepayers of Arkansas, would have to pay absolutely nothing toward the costs for those plants and especially for the energy produced by those plants if no energy were consumed by the ratepayers of our State. That was the chairman of the board of Middle South Utilities in the middle 1970's.

Then we come up, Mr. President, to the 1980's. That was the time when we had seen a vast cost overrun, cost escalation, that boggles the mind on these two powerplants, Grand Gulf 1 and Grand Gulf 2.

Then what happened? What happened was very simple. It was at that time that this utility went to the Federal Energy Regulatory Commission and said, "We know that in the mid-1970's we said that the Arkansas ratepayers would have to pay none of these costs; however, these costs have become so enormous, so great, so unbelievable that we are going to have to have someone help share this burden."

Mr. President, who do you think that someone was? It was one of the poorest States in the United States, the State of Arkansas—where we in our State had built our facilities. We had paid for our facilities. We needed no more electric power. Yet, because of a tremendous corporate blunder, a tremendous corporate mistake, this mistake and this blunder are reaping today human tragedy in one of the poorest States in this country.

We cannot, in our State, afford to pay one cost of these plants or one-third of the cost of this energy produced if we do not consume that energy. We have our energy. We have more than we need. For us to subsidize our grand neighbors, Mississippi and Louisiana, in these costs is something that is not only unthinkable, it is grossly unfair.

So we come tonight to the court of last resort. We come to the Congress to attempt to say that this decision was wrong. It applied, yes, not only to the people of Arkansas but, once again, to the parts of southern Missouri now served by Middle South Utilities.

Every member of the delegation from our State and the State of Missouri, House and Senate, Republican and Democrat, challenged the Federal Energy Regulatory Commission to reverse its decision, to no avail.

Mr. President, as I have said before, we have come to a court of last resort. We make our argument, we make our plea. We hope that you will hear that plea because it is sincere, it is one brought out of deep frustration.

Mr. President, at this time, I am deeply hopeful that the people of our State of Arkansas and of southern Missouri will no longer have to bear the burden of these costs which have been unjustifiably placed upon our heads.

I yield the floor, Mr. President.

Mr. HATFIELD. Mr. President, this is a very complex amendment offered by the Senator from Arkansas and cosponsored by the Senators from Arkansas, Nebraska, and other States. It does not only involve a number of States; it involves as well a number of committees. It has not had a markup. It would require, I am sure, very extended debate for a considerable period of time for Senators to totally comprehend this complexity.

It is, in my opinion and that of the managers of the bill, not germane to this appropriations bill. I raise a point of order based upon rule XVI——

Mr. BUMPERS. Mr. President, will the Senator from Oregon yield for just a moment, please? I would like the Senator from Montana to have 2 or 3 minutes, then I would like to have 2 or 3 minutes, if I may.

Mr. HATFIELD. I shall be very happy to accommodate the two Senators.

Mr. President, I make my point of order and ask unanimous consent—let me restate that.

I would like to ask unanimous consent that the Senator from Montana be granted 3 minutes and the Senator from Arkansas 3 minutes.

Mr. BUMPERS. And possibly the Senator from Colorado 2 or 3 minutes; he may want to speak for a couple of minutes.

Mr. HATFIELD. Mr. President, I have to emphasize one point. We have had over half an hour now on this amendment. I am very willing to accommodate Senators present on the floor and ready to speak. If we get into this business of waiting for a Senator to arrive who is not on the floor—I restrict my unanimous-consent request to 3 minutes for the Senator from Arkansas and 3 minutes for the Senator from Montana. Then the point of order will be made at that time on the germaneness question.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Montana is recognized.

Mr. MELCHER. Mr. President, a plant that is completed and generating electricity sells the electricity and pays off the bonds by charging the consumer. That is the general way. There is nothing wrong with that and this amendment does not touch that. But this is a different case, an abandoned or canceled electrical generating plant that has not been subject to State control. That is what it involves. Why would it not be involved in State control, the State regulatory commission having authority over it as a generator case? Because a plant is being constructed not to sell any electricity in that State. It is just going to generate it there.

□ 2120

In this case, when it is abandoned or canceled, the Federal Energy Regulatory Commission dictates to a State in which it is built what portion of the cost of construction will be assigned to the ratepayers, to the electricity consumers of that State. That is passed on to those consumers by FERC dictum.

Obviously, this is a cancellation of the authority of the State's right to set electric rates. It is a very dangerous policy. FERC must not supersede the State's authority in this instance.

The Senators from Arkansas have presented a case for their State, but it is an issue that can affect all of us, in our own States.

Therefore, I vote for Montana, my State. My vote is for the amendment. I hope the amendment is agreed to by the Senate.

Mr. BUMPERS. Mr. President, I know that the manager of the bill is going to raise the point of order on germaneness. I know the Chair is not going to rule and will submit it to the Senate.

No. 1, you can hide behind those crossed t's and dotted i's, but this is not legislation on an appropriation. We cleared it with the Parliamentarian.

We lacked about three votes in the Energy Committee to get my original bill, S. 1149, reported out. If you cannot get a bill out of committee, you have no choice but to put it on where you can. We worked endless hours to draft this amendment so as not to be legislation on an appropriations bill.

I want to say one other thing: This amendment imposes not one dime burden on Mississippi or Louisiana. As a matter of fact, they will get the same benefit and protection from this amendment that Arkansas or any other State will get. This amendment is prospective in nature. I wish I could have made it retroactive, but there is a constitutional problem with that, and I recognize it and defer to it.

This is not a fight between the States. This is not a fight between Arkansas and any other State. But I can promise you that every State at some point is going to face this same problem, and you are going to be confronted with a vote tonight on States rights.

It does not do anything for Arkansas that it does not do for every State in the Nation which may now or in the future be confronted with this kind of situation.

Why should any ratepayer be saddled with the burden of paying for a plant that will never generate one watt of electricity?

Mr. President, I yield the floor.

Mr. HART. Mr. President, I join as a cosponsor of the amendment by the Senator from Arkansas. I believe this amendment offers hope to electric utility ratepayers who now find themselves saddled with costs that should be borne by others. I refer to the costs associated with electric power facilities that are abandoned or that are canceled prior to completion.

Some States have adopted laws prohibiting the passthrough of such costs to ratepayers. This amendment is, in part, an invitation to other States to do so. Under this amendment, such State laws could no longer be circumvented by utilities taking their abandoned or canceled plant costs to the Federal Energy Regulatory Commission in the form of rate requests.

Mr. President, this Commission has been delegated authority over wholesale power sales. But it has an obligation, just as any Federal agency has, to discharge its authority according to congressional intent. By granting rate increases to utilities to cover the cost of useless powerplants, the Commission has failed in its responsibility to set just and reasonable rates.

By allowing rate increases to cover the cost of mistaken utility investments, FERC renders a judgment that State regulatory authorities cannot reverse. States are obligated to pass the rate increase through to retail consumers—in full. So, with FERC regularly allowing all of these plant costs to be recovered in wholesale rate increases, the States' own laws forbidding such passthrough are without effect.

But this is not an abstract contest between State and Federal authority. Because, in this area of multibillion-dollar powerplants, the stakes in these rate cases have become enormous.

Is such circumvention of State law an isolated occurrence? Hardly. Utilities are flocking to FERC. Besides the abandoned and canceled plant cases, FERC finds itself with a lengthening docket of rate requests from utilities that have altered their corporate structure so as to qualify for FERC jurisdiction.

A year ago, FERC Commissioner Anthony Sousa came before the Senate Energy Committee for a hearing on his nomination for a second term. He acknowledged the explosion of wholesale rate requests.

He noted that consulting firms had sprung up that advise utilities on skirting State law and escaping to the protection of FERC. He even suggested that Congress consider legislation to arrest this trend.

The Energy Committee has also heard witness after witness tell how FERC grants full rate requests even when a utility has made unwise and imprudent decisions on plant construction. They could not recall one instance in the past 5 years in which FERC had excluded any of a plant's cost.

This Senator is informed that FERC is considering even more generous treatment of abandoned plant costs. A proposal now under consideration would even allow utilities a rate of return on their investment in these useless facilities.

Mr. President, this Senator does not believe Federal agencies should be the adversaries of the industries they regulate. But neither should they be the handmaidens. And certainly they should not be in business to encourage the circumventing of State laws intended to protect consumers.

Mr. McCLURE. Mr. President, the purpose of this amendment is to prohibit FERC from compelling a utility, in a wholesale rate proceeding, to pay all or part of the costs of an abandoned powerplant, if the State with jurisdiction over the utility prohibits the flowthrough of such costs to the utility's ratepayers through retail rates. I am strongly opposed to this amendment for a number of reasons, which I will state briefly.

First, if this amendment were to become law, it would apply retroactively to plants that have already been partly constructed and then abandoned. Its application would not be restricted to plants that are abandoned in the future. Such retroactive treatment would be fundamentally unfair, because it would be a form of extreme financial punishment for decisions made years ago, as many as 10 or 12 years ago, when conditions were much different than they are today.

The retroactive effect of this amendment clearly would be unfair to utilities and their shareholders, and ultimately, this amendment could seriously harm ratepayers as well. This proposal does not involve merely protecting ratepayers from having to pay higher rates today and in the next few years. It also involves the potential for forcing ratepayers to pay much higher rates in the future. This could occur because electric utilities would be forced to defer new plant construction, which would result in temporary shortages of baseload generating capacity on their systems. They would then be compelled to buy additional power at high rates, or to rely on high-cost generating units that normally would be used only during peak demand periods on their systems.

This amendment would accelerate what is already an alarming trend among electric utilities in this country. Many utilities have discovered that if they build a large plant, and it comes on line too early before all of its power is needed, they face the risk of being financially penalized by their State regulatory commissions. This increased financial risk in some States is excessive and unreasonable. If this risk were increased even further by passage of legislation such as the amendment now before us, then it is even more likely that many utilities will simply delay construction of new plants, thus increasing the risk of shortages. They will have no choice, but the adverse effects on electric consumers could be severe. The last thing we should do is pass legislation that sets the groundwork for future shortages of electric power.

Mr. President, another reason for my opposition to this amendment is the simple fact that FERC's policy on the treatment of abandoned plant costs has not been shown to be extreme or unreasonable. The claim has been made that FERC has never disallowed a rate because a plant was imprudently built. That is not the case. In 1979, in a decision involving a nuclear powerplant abandoned by Southern California Edison Co., the Commission disallowed the costs of the plant. The Commission found that the company had failed to show that the costs were prudent. The company had not provided sufficient evidence to justify its recovery of the costs. It is just not accurate to say that FERC has never disallowed abandoned plant costs.

Current FERC policy has not been shown to be unreasonable. It has been upheld by reviewing courts on numerous occasions. The most recent occasion is a case involving the New England Power Co. decided last month by the U.S. Court of Appeals for the First Circuit.

The Commission's policy consists of balancing abandoned plant costs between shareholders and ratepayers. A utility is entitled to recover its actual investment in the plant, if the investment was prudent; however, a utility is not entitled to a return on the investment, because the property is not used and useful. This is not an extreme policy. Of course, there are those who disagree with the Commission's standards for determining when a decision was prudent, but their disagreement certainly does not demonstrate that the policy is unreasonable.

The standard for prudency is a matter of judgment. I believe that a utility's investment decision must be judged by what the utility's management knew, or could have known, at the time the costs were incurred. The question is whether the costs are those which a reasonable utility management would have incurred, in good faith, under the same circumstances, and at the relevant point in time. That is the test used by the Commission and approval by the courts. It is not an unreasonable standard.

If the Congress decides to abandon this standard by permitting the States to set their own standard, it should do so only after holding hearings and carefully considering the issue. That has not been done. The Committee on Energy and Natural Resources has not held a hearing on the plant abandonment issue. The fact is, this amendment raises complex financial impact issues, legal issues, and Federal policy issues. These issues deserve far more careful consideration than can be given here in this debate.

This amendment is premature for another reason. The precise issue raised by the amendment is now pending before FERC. The Commission is examining the rate treatment of abandoned plant costs in two proceedings: the Notice of Inquiry on electric utility regulation, and the New England Power Co. rate proceeding. FERC is equipped to conduct the type of careful, detailed analysis that is required. The Congress cannot. We should wait for FERC to act.

Mr. President, this amendment should be rejected because it would escalate what is already a serious practical problem at the State level. This problem is this: When State legislatures, State regulatory commissions, and other State officials are confronted with environmental problems or energy-related issues, they are inclined to protect the parochial interests of the State, which may not be in the national interest, or in the interests of neighboring States. The States tend to respond to what is often intense political pressure from citizens and groups within the State, and the outcome is predictable.

This amendment would have the effect of pitting one State against another. As an example, consider the case of the Grand Gulf Unit II plant. Construction of the plant was stopped in 1979, when it was 30 percent complete. If the Arkansas Legislature should vote to prohibit the payment by Arkansas ratepayers of any portion of the costs of the Grand Gulf II nuclear plant, then FERC would be prevented from permitting a portion of the costs of the plant to be recovered through wholesale rates paid by Arkansas Power & Light Co. Arkansas, in effect, would be saying: Let the utilities and ratepayers in Mississippi and Louisiana pay for it. Those two States would have little choice. They would also prevent recovery of the costs. What would happen to the $900 million spent on the plant? Would Middle South Utilities, the owner of the plant, be able to absorb that loss? Possibly not. It is presently in serious financial condition. It has already suspended the payment of dividends on its common stock.

Mr. President, I note that this amendment has the support of the American Public Power Association. That is understandable, because the utility members of the APPA would not be subject to this amendment. They would be protected from the major financial risk imposed by this amendment on investor-owned utilities. The amendment relates to utilities subject to State commission ratemaking jurisdiction; however, municipal utilities and other publicly owned utilities set their own rates. They could protect their bondholders by requiring full cost recovery through their rates, without interference from the State commissions. It seems to me that if State legislatures are to be permitted to decide who should pay the costs of abandoned plants, municipal utilities should be subjected to the same treatment and the same financial risks as privately owned utilities.

Finally, Mr. President, I want to emphasize again what I stated earlier. This amendment is contrary to a basic Federal energy policy, which is to ensure that this country has adequate future supplies of energy at a reasonable cost. This amendment, however, would induce shortages of baseload generating capacity on some utility systems. Also, it undoubtedly would impose higher rates on ratepayers over the long term. It would do so for two reasons. First, it would encourage utilities to defer new plant construction for an excessive period of time, creating the risk of temporary shortages of baseload generation. Such shortages would require the purchase or generation of replacement power at a much higher cost, resulting in higher rates to ratepayers. Second, the amendment would create a new financial risk for utilities. The risk would be failure to recover all or a portion of the actual investment in abandoned plants. This increased risk would create a higher cost of capital, resulting in higher rates to ratepayers.

This issue is extremely complex. The results of this amendment are for reading and unpredictable. This is not the way to legislate on complicated issues. I urge my colleagues to support the committee by voting that the amendment is not germane.

Mr. HATFIELD. Mr. President, I make a point of order on the pending amendment as nongermane under rule XVI.

The PRESIDING OFFICER. All time is yielded back.

Under rule XVI, questions of germaneness are submitted to the Senate without debate.

The question before the Senate is, Is this amendment germane?

Mr. BUMPERS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Is this amendment germane? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from New Jersey [Mr. BRADLEY] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 45, nays 53, as follows:

[Rollcall Vote No. 316 Leg.]

YEAS—45

Baucus
Biden
Bingaman
Boren
Bumpers
Burdick
Byrd
Chafee
Chiles
Cranston
Danforth
DeConcini
Dixon
Dodd
Eagleton
Exon
Ford
Gore
Harkin
Hart
Heflin
Heinz
Hollings
Inouye
Kennedy
Kerry
Lautenberg
Leahy
Levin
Matsunaga
Melcher
Mitchell
Moynihan
Nunn
Pell
Proxmire
Pryor
Riegle
Rockefeller
Sarbanes
Sasser
Simon
Specter
Trible
Zorinsky

NAYS—53

Abdnor
Andrews
Armstrong
Bentsen
Boschwitz
Broyhill
Cochran
Cohen
D'Amato
Denton
Dole
Domenici
Durenberger
Evans
Glenn
Goldwater
Gorton
Gramm
Grassley
Hatch
Hatfield
Hawkins
Hecht
Helms
Humphrey
Johnston
Kassebaum
Kasten
Laxalt
Long
Lugar
Mathias
Mattingly
McClure
McConnell
Metzenbaum
Murkowski
Nickles
Packwood
Pressler
Quayle
Roth
Rudman
Simpson
Stafford
Stennis
Stevens
Symms
Thurmond
Wallop
Warner
Weicker
Wilson

NOT VOTING—2

Bradley
Garn

The PRESIDING OFFICER. The amendment is found not to be germane and therefore falls.

Mr. HATFIELD. Mr. President, I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3128

(Purpose: To provide that a certain provision of law regarding airline mergers continue in effect in its current form)

Mr. DANFORTH. Mr. President, I send an amendment to the desk and ask that it be reported.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Missouri [Mr. DANFORTH] for himself, Mr. PROXMIRE, and Mr. GLENN, proposes an amendment numbered 3128;

On page 2, insert the following immediately before the period on line 24: ", except that the provisions of section 608 of H.R. 5161 shall have no force and effect".

☐ 2150

Mr. DANFORTH. Mr. President, this amendment raises expressly the question of legislating on an appropriations bill. For the last 2 days, we have heard the manager of the bill stand up, as was appropriate for him to do, to make a point of order that the amendment that was pending was legislation on an appropriations bill. Senators have come into the Chamber and they have gone to the well to find out what the vote is about and they have been told, well, this is a very meritorious amendment, it makes a lot of sense, and we should really do it, but it is not germane.

The PRESIDING OFFICER. Would the Senator suspend? The Senate is not in order.

The Senator from Missouri, Mr. DANFORTH, should be heard on his amendment. Senators are asked to take their seats.

The Senator from Missouri.

Mr. DANFORTH. And we are told that because the amendment is not germane we should simply vote no without going into the merits at all. And that same argument was made with respect to the Bumpers amendment. Senator BUMPERS offered a very meritorious amendment, and the point of order was made. It was held not germane. And I was down in the well when Senators were urged to vote no on the question of germaneness. Well, the issue that is before the Senate now is whether the Appropriations Committee can do what we cannot do on the floor of the Senate. The question before us with the amendment that I have just sent to the desk is whether the Appropriations Committee has license in effect to legislate on an appropriations bill, and then send it out to the floor where we cannot legislate on an appropriations bill.

What the Appropriations Committee did was was this: In 1984 when Congress enacted the Sunset Act for the Civil Aeronautics Board, Congress placed in the Department of Transportation jurisdiction to review and approve airline mergers. Congress put this authority in the Department of Transportation in 1984. In this appropriations bill, the Appropriations Committee removes that authority from the Department of Transportation, and placed it in the Department of Justice.

In the 1984 legislation we agreed to put this authority in the Department of Transportation until January 1, 1989. Prior to that time, on July 1, 1987, we said the Department of Transportation was to make a study of where the authority to review these mergers should be. It is the intention of the Commerce Committee which has jurisdiction over air transportation to analyze whatever study comes from the Department of Transportation, in one way or another, to review the matter and to make our own decision. But the Appropriations Committee in this legislation says, oh, no, this should be a matter for the Department of Transportation to review. This should not be a matter for the legislative committee, the Commerce Committee, to review, have hearings on, and markup.

Instead, the Appropriations Committee is going to feel free to legislate in this appropriations bill.

I imagine the argument is going to be made, well, there should be an exception because this is good legislation.

Mr. President, I do not know if it is good or bad. Maybe the idea of transferring this authority to the Department of Justice make eminently good sense. Maybe that is what we will agree to do in another year or two when we have had a chance to review it. But no committee has reviewed it as yet to my knowledge. The Commerce Committee certainly has not reviewed it, and if the rest of the Senate is not to legislate on an appropriations bill, the Appropriations Committee should not do it either.

The PRESIDING OFFICER. Is there further debate?

Mr. RUDMAN. Mr. President, I have sat here and listened to the argument propounded by my friend from Missouri. He is absolutely right. This is legislation on appropriations. The Senator does make one statement which he is in error on. In 1984 when the U.S. Senate considered the CAB sunset bill, the position of this body was to place antitrust authority over that industry, the airline industry, in the Justice Department.

The airline lobby prevailed in the House of Representatives. They wanted it in the Transportation Department. What better result in antitrust than having the fox in the chicken coop? That is exactly what we have seen.

In the last several months, DOJ has filed objections to major mergers in that industry. The Department of Transportation has approved those mergers over the objections of the Department of Justice.

The Senator from Missouri says, well, let us wait a year or two. Let us wait a year or two. We will wait until we have one huge airline or maybe three in America. This is where we are headed. The Department of Justice takes a neutral, detached view of mergers and acquisitions. I do not think the Senator from Missouri is going to stand up and say—and I did not hear him say—that the Department of Transportation, which has quite an interest in the airline industry, take a neutral and detached view of that industry.

But the Senator from Missouri is absolutely correct. So I am going to do something that may surprise him. I will accept the amendment. I am going to strike the language, and place in the Senate Commerce Committee the full responsibility to see what kind of combinations, mergers, concentration, anticompetitiveness, and anticonsumer action we get from the American airline industry, which I do not trust to be regulated by the Department of Transportation.

Mr. President, we are happy to accept the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Missouri.

The amendment (No. 3128) was agreed to.

Mr. DANFORTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GOLDWATER). Without objection, it is so ordered.

AMENDMENT NO. 3129

(Purpose: For The Relief of Valerie S. Ford of Richmond, VA)

Mr. INOUYE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Hawaii [Mr. INOUYE], for himself and Mr. GOLDWATER, and Mr. WARNER, proposes an amendment numbered 3129.

Mr. INOUYE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, add the following:

The amendment is as follows:

That (a)(1) notwithstanding any other provision of law, except as provided in paragraph (1) or (2), the Secretary of the Navy shall reimburse Valerie S. Ford of Richmond, Virginia for the expenses she incurred for her travel and the travel of her two dependent children and the transportation of her household goods in moving herself and her children from Makakilo, Hawaii, to Richmond, Virginia in May 1984.

(2) The Secretary of the Navy may not make the reimbursement authorized in paragraph (1) unless, within one year after the date of enactment of the Act, the Secretary receives from Valerie S. Ford such application for reimbursement and documentation of expenses as the Secretary considers appropriate.

(3) The amount paid to Valerie S. Ford pursuant to paragraph (1) may not exceed the amount that would have been payable for the travel and transportation referred to in such paragraph if the travel and transportation had been timely and a proper and timely application had been submitted in the case of the said Valerie S. Ford as provided by law or applicable regulations.

SEC. 2. No part of any amount reimbursed pursuant to the first section of this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with such reimbursement, and the same shall be unlawful, any contract to the contary notwithstanding. Violation of the provisions of this section is a misdemeanor punishable by a fine not to exceed $1,000.

Mr. INOUYE. Mr. President, this amendment has been cosponsored by the Presiding Officer and by Senator WARNER of Virginia, and myself. It has been approved by the Department of Defense, the Department of the Navy, the OMB, by the ranking members of the committee, and it is a very simple amendment.

The Navy made a mistake in providing information to a young lady. As a result, she suffered losses. OMB and DOD says they should be authorized to make restitution.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Hawaii.

The amendment (No. 3129) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3130

(Purpose: Expressing the opposition of the United States to the continued repression of religious, political, and cultural freedom by the government of Romania)

Mr. TRIBLE. Mr. President, on behalf of myself and Senator DODD, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Virginia [Mr. TRIBLE], for himself and Mr. DODD, proposes an amendment numbered 3130.

Mr. TRIBLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the approriate place in the bill, add the following.

Since the Department of State has determined that "In the area of human rights, major discrepancies persist between Romania's Constitution, law, public pronouncements and international commitments on the one hand, and the civil liberties and human rights allowed by the regime on the other";

Since it is apparent from numerous accounts by the State Department, congressional delegations, and human rights organizations that Romanian citizens are being arbitrarily harassed, interrogated, and arrested by government authorities for exercising their civil and religious liberties;

Since Romania's harassment of religious believers extends to the arrest of persons for distributing Bibles and the destruction of places of worship, including most recently the country's largest Seventh Day Adventist Church and the Sephardic synagogue in Bucharest;

Since the Romanian government has imposed severe limits on the freedom of Hungarians and other ethnic minorities to express and maintain their cultural heritage, and has attempted to systematically eliminate Hungarian churches, schools, traditions, and even the Hungarian language from Romanian society;

Since the United States' extension of Most-Favored-Nation trade status to Romania, although linked in the Jackson-Vanik

Amendments to freedom of emigration from that country, might be misconstrued as an endorsement of that nation's abusive internal practices:

Now, therefore be it declared by the Senate—

Sec. 2. That the Congress strongly condemns Romania's continued hostility to the exercise of religious, political and cultural rights, and calls upon Romania to cease such persecution, to halt its destruction of places of worship, and to lift its ban on the production and distribution of Bibles and other religious literature.

Sec. 3. That it is the sense of the Congress that the President should consider the following factors in shaping our bilateral relations with Romania:

(A) whether Romania is making substantial progress in halting its persecution of Romanian citizens on religious and political grounds and its repression of Hungarians and other ethnic minorities; and

(B) whether Romania is fulfilling its commitments to permit the printing of several thousand Bibles in Romania and to provide for and preserve places of worship.

Sec. 4. The Secretary of State shall transmit a copy of this resolution to the head of the diplomatic mission of Romania to the United States and to Romania's permanent representative to the United Nations.

Mr. TRIBLE. Mr. President, the essence of our national experience is the pursuit of freedom and justice at home and around the world. We must oppose oppression in any form and in any place in the world—tyranny of the right and tyranny on the left.

□ 2200

It is that noble purpose, I believe, which influenced our vote today on South Africa. It is for that reason that Senator Dodd and I offer this resolution concerning Romania's hostility to religious and cultural rights, calling on Romania to halt the presecution of its people to halt the destruction of churches and synagogues and to lift its ban on the production of religious materials.

The resolution expresses the sense of the Congress that in shaping our bilateral relations with Romania, the President should consider the progress that Romania is making in ending religious and political persecution, the repression of Hungarians and other ethnic minorities and whether Romania is permitting the printing of Bibles, and preserving places of worship.

In spite of MFN and our very best efforts for the last decade, Romania remains one of the most oppressive and antireligious nations in the world.

The purpose of this resolution, simply stated, is to underscore that harsh reality, to record our concerns as Senators of the people of the United States of America, to encourage our President to be mindful of these concerns and to work across the full spectrum of our bilateral relations to achieve progress in the area of human rights and political freedom.

Senator Dodd and I believe that all of our colleagues will want to support this sense-of-the-Senate resolution.

I yield to my friend from Connecticut [Mr. Dodd]

Mr. DODD. I thank my colleague for yielding.

Mr. President, just very briefly, because we want to move these amendments along. Senator Trible deserves a great deal of credit for crafting this resolution. It is not a binding resolution, but I will say to my colleagues this is the 12th year in the Congress that I have supported a resolution to try to get some change in Romanian behavior. Every year we have extended most-favored-nation status to this particular country despite the fact that their record on human rights is one of the most deplorable of any in the world.

Every major human rights organization from Amnesty International to the Helsinki Watch, and others, have recounted in great detail the violations that have occurred against religious groups and ethnic groups in that country, against synagogues, churches, in one instance after another.

Of course, just around the time most-favored-nation status is about to come up, there is this flurry of activity and increase in emigration. Then, of course, we extend the MFN status to them and they return to the same kind of practices they were engaged in before.

I wish this were binding legislation. The distinguished majority leader of the Senate 4 years ago introduced a resolution which carried the Senate with almost the very language which is contained in this resolution.

This is not a binding piece of legislation, but it is a sense-of-the-Congress resolution. I hope we will send a message with this resolution and maybe one of these years we will see a change in the MFN status or, better yet, a change in Romanian behavior.

I doubt the latter, but I hope that at some point we will not be lulled into the same kind of trap we have been lulled into in the past several years.

Earlier today we passed a sanctions bill against South Africa. The least we can do against a country that engages in despicable violations of human rights is that it ought to receive some kind of sanction from this body.

Mr. President, while I strongly urge my colleagues to vote for this amendment, a sense-of-the-Congress resolution, I also have to tell them that what we are doing here is too little too late. From the history of this issue before the Congress I sometimes wonder if we are all dedicated to the idea of human rights only as long as we do not have to do anything about it.

There is nothing new in what we are trying to accomplish here. Four years ago, on September 24, 1982, the Senate unanimously passed Senate Resolution 445, introduced by our present majority leader, Senator Dole. This resolution expressed the same concerns that we are discussing today. It listed the difficulties facing those who want to emigrate from Romania and the harassment and persecution of religious groups and ethnic minorities. The result was the usual; an increase of the repression ever since.

I have followed the human rights situation in Romania for most of my 12 years in Congress. I have testified at hearings in both Houses and spoke in the House of Representatives in support of a resolution to terminate the most-favored-nation status of Romania for that government's deplorable human rights record.

Originally, however, I did not come to this issue with any preconceived conclusions. The record shows that for years I raised my concerns about Romania's restrictions of the right to emigration and about the way that government manipulates this issue to deceive our Government and public. I also protested the way that government attempts to assimilate forcibly the country's 2 to 2.5 million Hungarian minority population and other ethnic minorities by denying them the cultural rights that are guaranteed by numerous international agreements; among them the Helsinki Final Act. Still, for several years I concluded that I wanted to give that government the opportunity to review its practices and improve its human rights performance and I expressly supported renewal of MFN.

Eventually I had to realize that the Romanian Government does not hear the voice of reason. According to any reliable witnesses, or respected human rights monitors such as Amnesty International, Helsinki Watch, the International League of Human Rights and others, the record of that government has been sharply deteriorating ever since the granting of MFN.

It is often raised in this debate that the Jackson-Vanik amendment referred only to the right of emigration with respect to the renewal of MFN status for Communist countries. That is true, but there is more to it than that. Jackson-Vanik is a piece of legislation that Congress can be proud of, and that it ought to preserve, strengthen, and implement. This amendment institutionalized and wrote into law our concern for the right of emigration. To argue, however, that it wanted to exclude any other human rights considerations would mean arguing that its purpose was to restrict, not extend, our concern for human rights. This is patently absurd, and contradicts the language of Jackson-Vanik itself. I would also argue, that Jackson-Vanik is one way to terminate a Communist country's MFN status but not the only way. There is nothing in Jackson-Vanik or in the Trade Act of 1974 for that matter that would prohibit Congress to deny MFN status by legislation to any Communist country for a reason other than the denial of the right of emigration. This is what the legislation of Senator TRIBLE, S. 1817, was aiming at by trying to suspend Romania's MFN for a trial period of 6 months. I cosponsored that legislation which should have been passed by the Senate instead of this meritorious but weak attempt to express only the sense of the Congress on this matter.

There is no time here to list even a fraction of the reprehensible practices of the Romanian Government against its own people. My colleagues can consult the records of the relevant hearings before the Finance and Foreign Relations Committees for details. We are talking about a country where a Hungarian Catholic priest was beaten to death by the police solely for a Christmas sermon, an incident confirmed by our own Ambassador. If Father Palfy were alive, I am sure he would appreciate our concern for this right to emigrate. He cannot emigrate anymore, though. He is dead. How should we react to the bulldozing this past July of the country's ancient Sephardic synagogue, an abominable act of sacrilege just a few days before our Senate hearing on Romania's MFN status. Do you think the late Senator Jackson would call on us to disregard this insult as it does not concern emigration? To ask the question is to answer it.

Mr. President, I commend my colleague, Senator TRIBLE, for the leadership he has provided us on this issue. It is certainly not for the lack of his efforts that we have to fall back on another set of exhortations instead of applying the long overdue sanctions on a government that cannot be influenced any other way. We will be back next year, Mr. President. If recent years can be of any guidance, the Romanian Government will probably provide new outrages to fuel congressional and public condemnation of their practices. Given the little time we have left of this Congress this resolution is the bare minimum we must do to express our feelings on this matter. I urge my colleagues to pass this amendment.

Mr. WEICKER. Mr. President, if the Senator will yield, I want to commend the distinguished Senator from Virginia and the distinguished Senator from Connecticut on what is an outstanding sense-of-the-Senate resolution. I ask to be added as a cosponsor to it and I recommend that the amendment be adopted.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PELL. Mr. President, as a founding member of the Helsinki Commission, I have followed the human rights situation in Romania for many years. Romania has taken some positive steps. They have made a concerted effort to fulfill the freedom of emigration requirements of the Jackson-Vanik amendment. However, there is room for improvement. For example, there is the case of the Fodor family. For the last 4 years, Georgeta Fodor and her son, Stefan, have been denied permission to leave and join Georgeta's husband and Stefan's father, Napoleon Fodor, in the United States.

Romania has also made some efforts with respect to religious rights. The Romanian Government has agreed to permit the Protestant Bible to be printed in Romania for the first time in decades.

However, on balance, the record is just deplorable, as my colleagues have said. I think this is a useful amendment and should be adopted.

Mr. DOLE. Mr. President, I ask unanimous consent to be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, this is an important amendment. I know the sponsors would like to have a record vote. I have suggested I think it is unanimous. It would seem to me if we would all join as cosponsors you would have a record vote; 99 cosponsors. I hope the authors would permit all of us to cosponsor the amendment. It is an important resolution.

This resolution is similar to the resolution many of us addressed about 4 years ago. I hope we might be able to save about 20 minutes but not in any way indicate that this is not an important amendment. It is an important amendment. It should have the full support and it does have the full support of the Senate.

Mr. DODD. Mr. President, if the majority leader will yield, I meant to request that. If he would be willing to round up the other 97 cosponsors, I am sure the Senator from Virginia and the Senator from Connecticut would be willing to accommodate his desires and not ask for a rollcall vote. We appreciate his comments in emphasizing the importance of it.

Mr. BRADLEY. Mr. President, the United States excepts Romania from its laws governing trade with Communist countries. Americans want to show support for a country that, although dominated by the Soviet Union, nevertheless tries to steer an independent course. Independence has meant recognition of Israel and restrictions on certain Warsaw Pact maneuvers inside Romania. But it is coming to include policies that show even more contempt for human rights than does any other Soviet-bloc country.

United States trade preferences make a difference: The United States imported more from Romania last year than it imported from the Soviet Union, Poland, Czechoslovakia, East Germany, and Bulgaria combined. The United States imported from Romania more than four times as much as it exported to Romania last year. But I fear Romania's trade privileges are now ratifying bald human rights abuses—abuses which we would not tolerate in subsistence economies threatened by drought, famine, and plague, let alone in a signatory of the Helsinki accord.

The Bucharest government's treatment of its ethnic Hungarian minority appalls our moral sense because it debases its own citizens and astonishes us because it is needless. Last August a Hungarian newspaper cited Romanian policies that deny access of ethnic Hungarians to Hungarian schools, break up Hungarian communities by dispersing ethnic Hungarian workers to purely Romanian regions, and block ethnic Hungarians from taking jobs with the state news media.

Recently, 25 Hungarian graduate students protested after none was allowed to return to the main Hungarian province of Romania to teach school. The state disperses Hungarian doctors to remote parts of the country even though there is a shortage of Hungarian doctors in this province. The Committee for Human Rights in Romania says the evidence points to an acceleration of deliberate government policy to deny the identity and rights of ethnic Hungarians as a group: They cite the recent destruction of an ancient Hungarian university, the recent closing of the last Hungarian high school, several Hungarian theaters, and several Hungarian radio stations, in addition to the continuing imprisonment, torture, or harassment of Hungarian poets, priests, and other leaders.

Last July, the International League for Human Rights testified before this committee on numerous cases where the Romanian Government unreasonably denied emigration applications. Some were poignant. Many of these people were very old. What has become of Borislav Nikolin, who is partially paralyzed; Michael Weber, 83 years old, suffering from a stomach disease, and his nearly blind wife Elisabetha; Anna Bieber, 70, suffering arteriosclerosis and myocardial sclerosis and her husband Jakob, 80, also suffering myocardial sclerosis? What is the point of these denials of emigration to people who need Western medical attention?

Every year, some new gruesome reports emerge. The 48th International PEN Conference brought to light two deaths apparently at the hands of the Romanian secret police. Gheorghe Ursu was arrested for writings in a personal diary. His wife was later informed by telephone that she was a widow. Arpad Visky, one of the most prominent Hungarian actors in Romania, was found hanged from a tree by a policeman just minutes after the death. The incident followed several weeks of official intimidation as Visky had applied to emigrate to Hungary. Reports such as these warrant a thorough investigation.

The list of complaints of unexplained disappearances, torture and harassment of priests, denial of the right to work, supposedly guaranteed in Romania, and forced dislocation seems never to end. I would like to see evidence of improved conditions for the ethnic Hungarian minority in Romania—including simple access to Hungarian schools and churches; of easier and fairer emigration procedures; of a halt to religious persecution and political imprisonment—as an integral part of any extension of MFN status for Romania.

Mr. JOHNSTON. Mr. President, the amendment has been cleared on this side. I ask to be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TRIBLE. Mr. President, Senator Bradley wishes to be added as a cosponsor and also Senator Metzenbaum, Senator Domenici, Senator Grassley, Senator Mathias, and Senator Nunn.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TRIBLE. Also Senator Leahy, Senator Long, Senator Mattingly, Senator Mitchell, Senator Denton, and Senator Nickles.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I ask unanimous consent that we have 1 hour after the acceptance of this amendment for anyone to join as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3130) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. TRIBLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

AMENDMENT NO. 3132

(Purpose: To provide procedures to account for amounts budgeted and appropriated for the use of the Department of Defense for inflation)

Mr. LEAHY. Mr. President, I send an amendment to the desk on behalf of myself, Mr. Grassley, Mr. Pryor, Mr. Melcher, Mr. Andrews, Mr. Bumpers, Mr. Ford, Mr. Kerry, Mr. Baucus, Mr. Inouye, Mr. Proxmire, and Mr. Harkin, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Vermont [Mr. Leahy], for himself, Mr. Grassley, Mr. Pryor, Mr. Melcher, Mr. Andrews, Mr. Bumpers, Mr. Ford, Mr. Kerry, Mr. Baucus, Mr. Inouye, Mr. Proxmire, and Mr. Harkin, proposes an amendment numbered 3132.

Mr. LEAHY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution, insert the following:

Sec. . (a) Section 1105 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(g)(1) The amount of proposed budget authority included in the budget, submitted to Congress under this section, for any major weapon system acquisition program of the Department of Defense shall be determined on the basis of—

"(A) the cost of such program determined as of the time the budget is submitted; and

"(B) the anticipated rate of inflation for the fiscal year for which the budget is submitted, computed on the basis of the gross national product deflator forecast of inflation that is estimated by the Office of Management and Budget and stated in such budget.

"(2) In estimating or computing the anticipated rate of inflation for the purpose of paragraph (1)(B), the gross national product deflator referred to in such paragraph may not be increased on the basis of the defense deflator inflation index published by the Bureau of Economic Analysis of the Department of Commerce or any other factor.".

(b)(1) Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2215. Reports on unobligated balances

"(a) The Secretary of Defense shall submit to the Committees on Armed Services, Appropriations, and Budget of the Senate and House of Representatives reports (at the times specified under subsection (d)) containing an estimate of the amount of funds in each appropriation account of the Department of Defense that at the time of the report—

"(1) is available for obligation; and

"(2) is in excess of the amount needed to carry out the programs for which the funds were appropriated.

The Secretary shall transmit a copy of each such report to the Comptroller General.

"(b) Each report under subsection (a) shall include, set forth separately for each account, estimates of amounts attributable to—

"(1) inflation savings;

"(2) foreign currency savings;

"(3) excess working capital fund cash; and

"(4) all other savings.

"(c) Each such report shall also identify unanticipated cost increases resulting from adverse economic trends.

"(d) A report under this section shall be submitted to Congress each year on February 1, April 25, and August 15.

"(e) The Comptroller General shall review each report submitted under subsection (a) and shall transmit to the Committees referred to in such subsection his analysis of such report and such additional comments relating to such report as he considers appropriate.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2215. Reports on unobligated balances.".

(c) Section 1407 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 745), is repealed.

(d)(1) The amendment made by subsection (a) shall take effect with respect to budgets submitted to Congress under section 1105(a) of title 31, United States Code, for fiscal years beginning after fiscal year 1987.

(2) The amendments made by subsection (b) shall take effect with respect to appropriations for fiscal years beginning after fiscal year 1987.

Mr. LEAHY. Mr. President, is the Senator from Maryland seeking recognition?

Mr. MATHIAS. I was, but after this amendment is disposed of.

□ 2210

Mr. LEAHY. Mr. President, my amendment is quite straightforward. It aims to close the floodgates to the $44 billion slush fund built up at the Department of Defense due to overestimates of inflation in major defense contracts.

I point out to interested Senators that our amendment has been significantly modified from the draft originally circulated.

Before describing our amendment, I would like to thank Senators Pryor and Grassley for their leadership on this issue. For nearly 3 years, Senator Pryor, in particular, has studied the inflation forecasting procedures used by the Department of Defense and has become the Senate's foremost expert on the subject. Without his guidance and support, this amendment would not be before the Senate today.

Mr. President, I think all Members of the Senate are aware also of Senator Grassley's great concern in the area and the tremendous amount of work he has done trying to save the taxpayers money.

I should also mention our amendment is endorsed by the National Taxpayers Union. I ask unanimous consent that a letter from the National Taxpayers Union to Senator Grassley, myself, and Senator Pryor be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

National Taxpayers Union,
Washington, DC, October 2, 1986.
Hon. Charles Grassley,
Hon. Patrick Leahy,
Hon. David Pryor,
U.S. Senate,
Washington, DC

Dear Senators Grassley, Leahy and Pryor: The National Taxpayers Union, representing 150,000 members nationwide, supports your amendment to the omnibus appropriations bill to tightly control the effects of inflation estimates on the appropriations process for the Department of Defense.

The General Accounting Office has expressed concern that inaccurate inflation indicators have cost taxpayers billions of dollars. Your amendment simply adopts two important recommendations offered by the Comptroller General.

First, It would require that the Defense Department use the same inflation indicator used by other government agencies—the gross national product deflator. Second, It would prohibit the Defense Department from making any special adjustments to the deflator in the budget process.

Finally, the amendment would require that reports already being prepared by the Defense Department be forwarded to the Budget and Appropriations Committees, and that the General Accounting Office comment on these reports each year.

With the federal budget deficit at record levels, Congress should take this opportunity to approve your amendment. It could save billions of dollars.

Sincerely,

David Keating
Executive Vice President.

Mr. LEAHY. Mr. President, on April 30, 1986, Comptroller General Charles A. Bowsher reported to the House Armed Services Committee that the Defense Department has accumulated more than $44 billion since fiscal year 1982, due to overestimates of inflation in DOD budget requests. In other words, Congress appropriated $44 billion more than was necessary in the last 4 fiscal years to provide the level of defense authorized by Congress.

The General Accounting Office also found that the Defense Department overspent by $14 billion on major weapons systems, because the Pentagon used a special inflation kicker to jack up its forecasts of the future costs of major weapons systems.

Mr. President, with a Federal deficit of $230 billion, there is no question that this is an area where we should be looking at savings, where we are forced to cut spending on defense and domestic programs of the highest priorities, I do not think we should allow this kind of inflation budget padding to continue.

The $44 billion slush fund not only diverts the taxpayer's dollars from other important programs, but it also encourages cost overruns. With a $44 billion kitty at the Pentagon, defense contractors have little incentive to bring their projects in under budget.

They know they have a fudge factor that large so there really is not too much that tells them to get out the sharp pencils and calculators.

Mr. President, in his testimony before the House Armed Services Committee, the Comptroller General made a series of recommendations to prevent further inflation budget padding. This amendment is consistent with Mr. Bowsher's recommendations.

First, the amendment would codify the current practice of the Department of Defense in basing its budget requests for major weapons systems on the same measure of inflation used by every other department and agency of government—the so-called GNP deflator. No special inflation multipliers would be allowed.

The GNP deflator is currently used by the Department of Defense in nearly all of its procurement accounts, and as of fiscal year 1987 it is used for major weapons systems. However, between 1983 and 1986, the Office of Management and Budget made a special exception to its rule that all departments and agencies must base their budget requests on the GNP deflator. The Department of Defense was allowed to use a special measure of inflation for major weapons systems—an index published by the Department of Commerce. The exception was made to allegedly help the Pentagon to more accurately forecast the costs of big ticket items.

In reality, however, GAO found that the special inflation multiplier was a grossly inaccurate measure of inflation and that it actually encouraged cost overruns. In the words of the Comptroller General, the inflation kicker became "a self-fulfilling prophesy." The special multiplier caused Department of Defense inflation projections for major weapons systems to overshoot the actual costs of these programs by $14 billion in the last 4 fiscal years.

To its own credit, the Defense Department admitted to the excess appropriations created by the kicker and responded to congressional concerns by ending the use of the special multiplier in its fiscal year 1987 budget submission. Our amendment simply codifies this commonsense policy, to ensure the kicker is not used in the future.

Second, our amendment reiterates and expands upon the reporting requirement established in section 1407 of Public Law 99-145. Section 1407 was the result of the hard work of the distinguished chairman of the Armed Services Committee, Senator Goldwater, and my distinguished colleague from Illinois, Senator Dixon.

Our amendment requires the Department of Defense to submit reports three times each year—on February 1, April 15 and August 15—to the Armed Services, Appropriations and Budget Committees of the House and Senate. Under current law, only the Armed Services Committee has direct access to these reports. Our amendment would expand access to the Appropriations and Budget Committees—essential players in our yearly defense budget deliberations.

As required by the Goldwater-Dixon amendment, these reports include an estimate of the funds available to the Department of Defense in excess of amounts appropriated to carry out programs authorized by Congress.

Included in these reports are estimates of excess funds attributable to: inflation savings, foreign currency savings, excess working capital fund cash, and all other savings. In addition, each report must identify unanticipated cost increases resulting from adverse economic trends.

In specifying the dates on which the reports are to be submitted to Congress, our amendment remedies an unintended consequence of the Gramm-Rudman-Hollings law. Specifically, that law repealed the April 15 reporting requirement established in Public Law 99-145. Similar corrective legislation is included in the DOD authorization conference report—language which I understand the Senate conferees have agreed to.

Our amendment goes one step further. It directs GAO to perform an independent analysis of the three annual DOD reports to Congress. GAO has already conducted indepth audits of Defense Department inflation accounts. Their independent assessments will help Congress make informed decisions in resolving the problem of inflation padding.

Finally, Mr. President, our amendment simply codifies current practice and requires no new paperwork on the part of the Defense Department or Congress. It merely expands access to analyses already being performed by the Pentagon to members of the Budget and Appropriations Committees.

Our amendment is not the final solution to the problem of defense budget padding, but it will provide Congress with the information required to address this problem once and for all, in a comprehensive manner.

Our amendment will also prevent the problem from getting even worse, by putting an end to funny numbers. No more special inflation kickers at the Pentagon. No more exceptions to the rules used by every other department and agency of Government. No more $44 billion inflation padding slush funds.

Mr. President, I see the distinguished Senator from Iowa [Mr. Grassley] on the floor. I would like to be able to yield to him and I know the distinguished Senator from Arkansas [Mr. Pryor] also wishes to speak to this amendment.

I yield to the distinguished Senator from Iowa.

Mr. **GRASSLEY.** Mr. President, there is no doubt about the fact——

Mr. **HATFIELD.** Mr. President, I do not believe any Senator can yield the floor. I am seeking recognition.

Mr. **GRASSLEY.** I have the floor in my own right.

The **PRESIDING OFFICER.** The Senator from Oregon has the floor.

Mr. **HATFIELD.** Mr. President, I have no intention of cutting off any Senator from speaking on this or any other amendment but I would like to have some kind of understanding of where we are and the time required by the Senators.

Mr. President, I wish to inquire as to what Senators wish to be heard and what period of time they feel is necessary to explain their position, because I shall then make a motion to challenge this amendment on a point of order on the basis of germaneness. That will come to a vote of the Senate. So I inquire of Senators who wish to be heard how long they will take. Four minutes for the Senator from Arkansas. Ten minutes to the Senator from Iowa.

I ask unanimous consent that the Senator from Iowa be recognized for 10 minutes, the Senator from Arkansas 4 minutes, the Senator from Vermont for 2 minutes, at which time, a point of order will be made on the basis of germaneness.

The **PRESIDING OFFICER.** Is there objection? The Chair hears none.

Without objection, it is so ordered.

Mr. **HATFIELD.** I thank the Chair. I thank the Senators for agreeing to this time limitation.

The **PRESIDING OFFICER.** The Senator from Iowa.

Mr. **GRASSLEY.** Mr. President, I want to say to the Senator from Oregon that if he opposes this amendment, he would be out of character on anything I have ever worked with him on appropriations bills in the 6 years I have been in the Senate.

Mr. President, there is no doubt about the fact that Congress has overfunded the defense budget for inflation, and by tens of billions of dollars since 1982. The most recent calculation is by GAO. As of this month, DOD has been overfunded for inflation by $46.8 billion since 1982, according to GAO.

Already, GAO has found an additional $3.5 billion of excess inflation funds not for the fiscal year 1986 budget, but for the fiscal year 1987 budget.

Like hot air around Washington, there seems to never be a shortage of excess defense funds.

The defense over-funding problem is very real, Mr. President. CBO has stated it. GAO has stated it. So has DOD. So has the chairman of the House Armed Services Committee. Even the Military Reform Caucus has stated it. There is no one left to state the obvious. I guess that makes it officially a fact.

My colleagues have eloquently argued the case of over-funding for inflation, and the need for corrective measures. I commend their efforts and their persistence on this issue.

As a member of the Senate Budget Committee, I can assert the unconditional need for this amendment.

The Budget Committee this year took the first step in correcting excess defense funding by simply recognizing the problem. Instead of funding full inflation at the baseline level of $301 billion, the committee readjusted the inflation level to account for actual inflation savings. The result was a defense budget fully funded for inflation at $295 billion, instead of $301 billion.

That was the first time the Budget Committee has taken account of inflation savings to lower the defense budget baseline.

But the normal procedure for the Budget Committee getting information on inflation savings, has been backward, through no fault of our own.

Now, I am not an expert in these matters, Mr. President, but I assume this information is more useful before we budget rather than after. Usually, the Defense Department identifies excess funding only after the budget axe has fallen.

Before it falls, we are told that a nickel cut will bring frowns upon the faces of the Gods and that national security calamities will befall us.

Of course, that makes the skeptics among us even more skeptical.

So we dig around, find a little slush, and then accuse the Department of squirreling away money in the mattress.

All of which makes for great P.R. wars, but none of which contributes to an orderly process for budgeting. That is all we are trying to do here—get a little more orderly budgeting.

□ 2220

So, from a Budget Committee perspective, as much as from a congressional perspective, a mechanism must be established that brings these shortcomings into check, yet does not add a great deal of complexity, or requirements, or structural change.

I believe, Mr. President, that this amendment provides all of that.

This amendment has three objectives;

One, to avoid unreasonable inflation estimates that are the underlying cause of excess funding;

Two, to measure the dollar differential between projected and actual inflation for defense accounts; and

Three, to have this information at the front end of the budget process, rather than ex post facto.

This amendment is consistent with the recommendations of both CBO and GAO on correcting defense overfunding due to misestimates of inflation.

The amendment is consistent with current practice, since this year's defense budget request included inflation limited to only 100 percent of the GNP, and without the normal 30 percent kicker. Can you believe that? Not only 100 percent inflation, but for the past we have been given an additional 30 percent. This year it is just that 100 percent.

Moreover, virtually every independent study has questioned the validity of the kicker.

The remaining section of the amendment is language the Senate has already passed and which has been agreed to in conference.

It includes two additional provisions: One, is that the reports on unobligated balances go to not only the Armed Services Committees, but also to the Budget Committees and the Appropriations Committees.

The second provision would allow GAO to audit the reports.

I do not believe anyone in this body is prepared to argue against either current practice, against language that has already passed this body and been agreed to in conference, against ensuring that our Appropriations and Budget Committees are fully informed, or against allowing GAO to audit reports.

Mr. President, this is obviously a way to get at a serious deficiency in the spending process without wrenching the system or adding complexity to it.

It would provide us with information that is indispensable in providing for the national defense.

As CBO has put it:

> The importance of this issue is underlined by repeated offers from DoD to apply excess prior-year funds to its current budget request, while at the same time Congressional agencies such as GAO and CBO have been unable to determine how much excess funding remains in DoD's budget.

The amendment would also ensure that Congress is no longer held subject to the Department's extortion schemes, which argue that one nickel cut from the defense budget will close down the Armed Forces.

There are broader concerns as well, Mr. President. This amendment is not just vital to the Budget Committee.

It is important also to the Appropriations Committee, to all the authorizing committees, and to all fiscal conservatives.

How can we watch out for the taxpayers' budget if there is Mickey Mouse in determining what is a true inflation factor?

To the extent that excess money is appropriated for defense inflation, which incidentally does not buy additional defense hardware, all other programs are, by necessity, in this day of Gramm-Rudman, funded less.

Or, seen another way, excess funds for inflation create pressure for a tax increase because they increase spending needlessly in a rising-deficit environment.

We have a simple choice: we can waste that money now, and really pay the price, or we can invest it in the deficit, or into those programs genuinely in need.

This is a problem, Mr. President, of the most serious order. It is universally recognized. There is even institutional recognition, through CBO, GAO, and even DOD.

In conclusion, Mr. President, I would like to impress one point upon this body. As recently as May, a nationwide poll asked Americans the following question:

> What should be the priority of the federal government today?
>
> Overwhelmingly, Americans responded:
>
> Number one: Terrorism;
>
> Number two: Defense waste.

Please allow me to interpret, Mr. President. With the exception of terrorism, which has had high profile in the news recently, the No. 1 problem still on the minds of most Americans today remains defense waste; 88 percent of the 1,500 Americans polled said that there is still substantial waste in military spending.

That concern over defense waste is relevant to this vote, Mr. President. There is no clearer instance of defense waste than that of over funding for inflation. This amendment is not an end-all solution. It is merely a first step.

I hope this body recognizes the need for this amendment, and appreciates the manner in which it tackles a serious spending deficiency without adding complexity to the process.

With this amendment as law, we can begin to make better informed decisions of the defense budget, and ensure that the funds we budget are buying the maximum defense for the dollar.

I reserve the remainder of my time, Mr. President.

Mr. PRYOR. Mr. President, tonight I am pleased to join the Senator from Vermont [Mr. LEAHY] and the Senator from Iowa [Mr. GRASSLEY] in proposing this amendment of the Senate. This amendment is very simple, and it does three things—and three things only.

First, it would prohibit the Department of Defense from collecting advance inflation funding at a higher rate than any other Department or Agency of the Federal Government. That is the first thing it does.

Second, it would prohibit the now infamous 30-percent multiplier that weapons programs have been collecting in the past 5 fiscal years and which has been a major contributor to the inflation windfall enjoyed by the Department of Defense. Every independent study has indicated, without one exception, that they have found this 30-percent multiplier absolutely to be unjustified.

The third and final thing this amendment does is this: It would provide an early-warning system about inflation windfalls in future years. With this information, Congress could make a determination about what to do with any excess money, and that decision could be made early in the annual budget process, not as a last-minute surprise. If Congress ever shortchanges the Pentagon for inflation, this provision will inform us of that, also.

□ 2230

This part of the amendment will not, Mr. President, require the Defense Department to surrender any money to the Treasury. I wish it did but it does not. It will only give Congress information so that we can make an informed decision before rather than after the fact.

We thought that public knowledge about such huge budget errors would ultimately lead to their end and we were wrong.

What happened instead was a state of disbelief. The amounts of lost money were too huge to believe. While most of us were incredulous the Pentagon continued to reap absolutely tremendous inflation windfalls, a total of $16 billion for fiscal years 1986 and 1987.

Mr. President, in May 1985 Senator GRASSLEY and I released a study on behalf of the military reform caucus. This study plainly stated it revealed that Congress had given the Department of Defense too much money for inflation. This amendment attempts to correct that situation to bring the situation into balance and to bring Congress once again back into this issue where we have left it to the bureaucracy, where we have left it to a multiplier that is excessive, and where we have appropriated literally billions of dollars for inflation that did not exist.

Mr. President, in May 1985, Senator GRASSLEY and I released a study on behalf of the military reform caucus. The study revealed that Congress had given the Defense Department too much money for inflation. We stated that these overappropriations had been occurring since fiscal year 1982 and that they amounted to something in excess of $40 billion.

We thought that public knowledge about such huge budgeting errors would lead to their end. We were wrong. What happened instead was disbelief. The amounts of lost money were too huge to believe. While most of us were incredulous, the Pentagon reaped additional inflation windfalls: a total of $16 billion for fiscal years 1986 and 1987.

While the overappropriations for Defense Department inflation continued, the matter was, at least, studied. It was studied by the House Armed Services Committee, the GAO, the CBO, and the Defense Department. All came to the same conclusion: we had, indeed, been appropriating too much for defense inflation. The only difference in the studies was how much money was lost. Now, those estimates vary between $35 billion and something over $50 billion.

Clearly, we have a very serious and very expensive problem.

The practice has become so routine that it has a nickname: it is called the inflation windfall. In my judgment, we should not be calling it the Defense Department's inflation windfall; we should be calling it the Congress' defense slush fund.

Why? Because Congress is a part of the problem; it has not insisted that this excess inflation funding be returned to the Treasury; instead, most of the money has been plowed back into the defense budget through reprogrammings, which are approved by a very small minority of Congress, and through transfers, which few of us pay much attention to in appropriations bills. This money has been used for all manner of things: some supported by the Defense Department, some opposed by it. But, in either case, the responsibility for the money's use is the Congress; if we had not approved these transactions, the money would have reverted to the Treasury.

This year there is a new—very constructive—development. For it, we all owe thanks to the Chairman of the Defense Appropriations Subcommittee, Senator STEVENS. Instead of the usual practice of plowing the inflation slush fund back into the defense budget, he recommended that $4.6 billion of it be rescinded to the Treasury.

There, Mr. President, is where the money belongs. It is money that should have remained in the Treasury in the first place and not have been appropriated to the Defense Department; it is money for inflation that never occurred. I certainly hope things will stay just this way when this bill goes to conference with the House. I say this because the other body, too, found some unused inflation money, but, unfortunately, the House followed old, bad habits and prevented the money's returning to the Treasury.

We also owe some special thanks to the Senator from Vermont [Mr. LEAHY]. He has taken what some regard to be a very complex, difficult subject, and he has devised a very simple, constructive amendment.

The amendment would prohibit the Defense Department from collecting advance inflation funding at a higher rate than any other department or agency of the Federal Government.

It would prohibit the now infamous 30 percent multiplier that weapons programs have been collecting for the past 5 fiscal years and which has been a major contributor to the inflation windfall. Every independent study—without exception—found this 30 percent multiplier to be unjustified.

Finally, the amendment would provide early warning about inflation windfalls in future years. With this information Congress can make a determination about what to do with any excess money, and that decision can be made early in the annual budget process—not as a last minute surprise. If Congress ever short changes the Pentagon for inflation, this provision will inform us of that also. This part of the amendment will not require the Defense Department to surrender any money to the Treasury; it will only give Congress information so we can make an informed decision.

This amendment should not be controversial. It is a very positive step forward, and it is consistent with all the independent studies that have been conducted. It is consistent with the congressional military reform caucus' study, GAO's study and CBO's study.

The amendment is also very modest. If we wanted to completely eliminate the inflation windfall problem, and particularly the part of it that I call the Congress' defense slush fund, we would go even farther. We would prohibit the reprogramming of inflation money, and we would require that any and all excess inflation money immediately revert back to the Treasury—just as Senator STEVENS has recommended.

I regret to say, however, that I do not believe the Senate is willing to go as far as I would like. I fear that there are too many of us in this body who would feel that returning any money from the Pentagon to the Treasury somehow amounts to a cut, even if the Pentagon should not have received the money in the first place. I do hope, however, that we can revisit this issue in the future to address those aspects that continue to trouble me; the congressional end of the problem remains to be addressed.

The vote on this amendment will be the Senate's first opportunity to put itself on the record on a practice that, so far, has cost the taxpayers over $50 billion in unnecessary appropriations. The amendment is no radical solution; it is only a first step. If we cannot go at least this far, it will be quite clear to me that the Senate endorses and supports the concept of slush funds, both for us and for every Federal department and agency. If this amendment is rejected, the Senate will be writing a prescription not for budgetary control but for overspending and chaos.

It is a simple straightforward approach and, Mr. President, I hope our colleagues will look favorably upon it.

I reserve the remainder of my time.

Mr. JOHNSTON. Mr. President, I want to state that I do not approve of the way the Senate has done business this year. We have not allowed time for Senators to bring up their amendments, to bring up their legislation for consideration on the floor.

The PRESIDING OFFICER. If the Senator will yield, under agreement only the Senator from Vermont has time and he only has 2 minutes remaining.

Mr. JOHNSTON. All right. I will withhold.

Mr. LEAHY. Mr. President, I know that the amendment is germane. There is similar language in the House bill. The amendment is germane because it provides the Appropriations Committee with much needed information, information obviously required to make decisions on how to spend the taxpayers' money.

It really stretches all logic to call an amendment nongermane when that amendment is to cut billions of dollars in waste on an appropriations bill that contains $600 billion in spending, the biggest such bill ever.

So this is really not a vote on germaneness. It is a vote on waste. A vote "yes" is to cut waste. A vote "no" is to look the other way at $44 billion in waste.

I would ask my colleagues to take a look at the letter from the National Taxpayers Union that is on the desks of every Member of the Senate here.

I commend again Senators GRASSLEY and PRYOR for their leadership. I am proud to have been able to join with them in this effort.

The amendment will prevent the inflation problems from getting even worse by putting an end to funny numbers, no more special inflation kickers to the Pentagon, no more exception to the rules used by every department and agency of Government, but lastly no more $44 billion inflation padding slush funds. That is what the amendment is.

Mr. HATFIELD. Mr. President, I now raise a point of order under rule XVI this amendment pending is not germane to the appropriations bill before us.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Is the amendment germane?

On this question, the yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] is necessarily absent.

Mr. CRANSTON. I announce that the Senator from Mississippi [Mr. STENNIS] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 48, nays 50, as follows:

[Rollcall Vote No. 317 Leg.]

YEAS—48

Abdnor
Andrews
Baucus
Bentsen
Biden
Bingaman
Boren
Bradley
Bumpers
Burdick
Byrd
Chiles
Cranston
DeConcini
Dixon
Eagleton
Evans
Exon
Ford
Gore
Gorton
Grassley
Harkin
Hart
Heinz
Hollings
Inouye
Kennedy
Kerry
Lautenberg
Leahy
Levin
Matsunaga
Melcher
Metzenbaum
Mitchell
Nickles
Pell
Pressler
Proxmire
Pryor
Riegle
Rockefeller
Sarbanes
Sasser
Simon
Specter
Zorinsky

NAYS—50

Armstrong
Boschwitz
Broyhill
Chafee
Cochran
Cohen
D'Amato
Danforth
Denton
Dodd
Dole
Domenici
Durenberger
Glenn
Goldwater
Gramm
Hatch
Hatfield
Hawkins
Hecht
Heflin
Helms
Humphrey
Johnston
Kassebaum
Kasten
Laxalt
Long
Lugar
Mathias
Mattingly
McClure
McConnell
Moynihan
Murkowski
Nunn
Packwood
Quayle
Roth
Rudman
Simpson
Stafford
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson

NOT VOTING—2

Garn
Stennis

☐ 2250

The PRESIDING OFFICER. The amendment is not germane.

Mr. DOLE. Mr. President, I move to reconsider the vote.

Mr. JOHNSTON. Mr. President, I move to lay the motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, could we have order. And I would request the Members remain for an observation or two on the remainder of the evening.

The PRESIDING OFFICER. Will the Senator suspend until we have order. Please clear the well.

The Senator from Oregon.

Mr. HATFIELD. Mr. President, a number of people have inquired as to what we might project for the rest of the evening. May I just review as objectively as I can for the record that we have now had 15 rollcall votes on the question of germaneness and we have sustained that question in each and every case. Those amendments have been challenged by the managers of the bill on the stated policy, regardless of the merit of the case, that the amendment either was national in scope, in legislative impact, rewriting on an appropriation bill in effect a piece of legislation, or that it has a budgetary impact that would violate the Budget Act or the 302(b) allocations.

We have accepted a number of amendments that were parochial or very localized, that did not have that national impact, and that did not have a budgetary impact. Now we are in a situation where we, frankly, do not know the total number of amendments that may be out there somewhere that people will plan to offer. Senator JOHNSTON and I are very anxious to accommodate those amendments that we can accommodate, and we are very determined to pursue the policy that we have set of resisting all other amendments that violate the criteria that I indicated.

We are suggesting to the membership at this point that we can expedite the entire remaining part of this bill and get it to third reading with the cooperation of the membership, and this is the proposal that we would like to set before you as a plan of action. We would suggest that any Senator who has an amendment who feels it would qualify for acceptance as being a parochial, nonnational, nonlegislative scope, would they, with their statements, bring the amendment to the respective sides of the aisle. We would review them and then we would put them together in a way in which we would, I suppose, adopt a sort of wrap-up style session as does the leadership when they are in a wrap-up session on bills that are coming off of the calendar and action is to be taken. We would introduce them, clear them, put in the statement, and move on.

That we would be most anxious to do to accommodate any and all Senators. We at the same time would, as I say, reiterate the policy that we will continue to resists, bringing up a point of order on a germaneness question, all other such amendments. In that way I really feel—and I would like to yield to Senator Johnston to make any additional remarks and interpretations—that we could move this bill, therefore, into a position for final passage.

I must say that our expectation is, notwithstanding this proposal being adopted or not adopted, we will pursue the completion of this bill throughout the night. But I think we have reached a point where there is a pretty well set pattern that has evolved out of the support of the body. This has been the will of the Senate. One case was 49 to 49 but it still prevailed on a tie vote. And we have different sized margins on the rollcalls, but I think 15 have pretty well identified a pattern already before the body.

I would like, Mr. President, to yield to my colleague for any additional remarks and then perhaps if there are questions I would be happy to respond.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I thank the distinguished chairman. I thoroughly disapprove of the situation in which we find ourselves. I believe we should have brought the legislative calendar along earlier this year because there are a world of very worthy amendments that should have been considered legislatively much earlier. I think it was unnecessary to do so.

Mr. President, we cannot rewrite that history, as much as we would like to and as much as some would say we might do next year. Nevertheless, this year is this year and history is history and the situation is this, and let us be very plain and frank about it. We have possible amendments here that have been identified—I have eight typewritten pages. The first page contains 20 amendments. I have not bothered to count all of them. Included among those amendments are things like an REA refinancing amendment—something I think is very worthy and ought to be passed—increase in Public Law 480. I and a number of my colleagues from farm States think that is very important; child nutrition programs. I know the Senator from Arkansas feels very strongly about that; Legal Services Corporation, natural gas legislation, housing authorization amendments, HHS regulations on family planning, targeted jobs tax credit program, gray market goods legislation, balanced budget amendments, test ban issues, and on and on.

I think it is perfectly plain, Mr. President, that there is no way we can break this dam and deal with these things. We should have dealt with them. We should have dealt, in my view, with each one of them. But we cannot. So I think our decision is do we face reality? Do we want to face reality at 11 o'clock on Thursday night or do we want to wait until 3 a.m. and then face it or do we want to go all night and then tomorrow say we are going to face it because reality is reality, and there is really no compromise with that.

So, Mr. President, as much as I hate to agree the conclusion I think is inevitable. I can say that our staff stands ready to clear any amendment which is basically noncontroversial. The Senator from Oregon gave his rule for it. If it is basically noncontroversial, as far as we are concerned on this side of the aisle, if everyone is agreeable and it is not going to forestall the whole bill situation, I would be inclined to clear that.

It may only get cleared on our side and not on the other side. But the fact is if it is one of these controversial amendments—we are now in what, the fourth day or the fifth day of this bill and I think the handwriting is rather clear on the wall. So, Mr. President, I hope we will face that handwriting and, if we do, I think in not too many hours we can finish this bill. The big carrot is that if we can finish this bill tonight late we can get on with the conference.

□ 2300

I do not know what the Senator from Oregon has as a view as to how long it would take in the conference committee, but I know that in two subcommittees that I am ranking and acting ranking on, Interior and Energy and Water, we are very close to having those flanged up in advance.

I suspect defense will be a little more difficult.

If we could finish tonight, we might get that conference report on this appropriations bill finished within the next 2 or 3 days, maybe by Tuesday. Maybe that is a vain hope, but I think it is possible to do that.

I would hope we would try because I think it is achievable. Whether we take the high road or the low road or the long road or the short road, we are going to end up at exactly the same place, which is a relatively clean bill with only the relatively noncontroversial matters included.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. EXON. Mr. President, once again I appeal in the hopes of an understanding. I have submitted two minor amendments that totally meet the outlines just made by the chairman and by the manager on this side. Two or 3 hours ago I made this suggestion to the chairman of the Subcommittee on Appropriations—Senator ZORINSKY and I also made it last year—and was ignored.

I would like to know if the Senator from Nebraska has amendments that fit the parameters that have just been outlined, whether or not those two amendments can be accepted.

Mr. HATFIELD. If the Senator will yield, I will be very happy to respond. I should have indicated in the original description of this procedure, we have followed throughout this entire period one additional step, besides the clearance on both sides of the aisle. That is, where there has been an element that involves any possibility of the authorizing committee, we have checked with the authorizing committee chairman and the ranking member.

I would say as far as the Senator's amendments they were cleared as far as we were concerned because they did meet our criteria, but there was objection raised by the authorizing committee.

We must again emphasize the point that we as the appropriators are attempting to do everything to cooperate with the authorizing committees. When Senator JOHNSTON and I seem to feel it fits our criteria, we still check each of these amendments with the authorizing committee if there is any element that involves the authorizing committee in the amendment.

We have been through two or three colloquies today with people objecting about authorizing in the appropriations process. We are trying to be very up front about this matter. I want to say to the Senator we are still going to work with the authorizing committees before we adopt even the so-called noncontroversial amendments.

Mr. EXON. I suppose that would be true even though in these times of trying to meet the budget requirements that it would even include agreements that had been made by the authorizing and appropriations committees of both the House and the Senate.

Let me just lay it out on the line. The Senator from Colorado raised this point somewhat earlier.

If you are on the right committee and you are in the right spot at the right time, you get done what you want. We are talking about examples of legislating on a continuing appropriation.

The Senator from South Dakota, [Senator ABDNOR] is one who is holding up my particular thing that I think is not objected to here at all. Yet I know that Senator ABDNOR was able to put legislation on an appropriations bill.

Let me enumerate some of them. The Abdnor beer bill antitrust exemption, REA prepayment provision, the Justice Department appropriations, increasing penalties for sexual exploitation of children, transportation appropriations provision for air traffic controllers, to enforce the Federal implementation of fairness doctrine.

It is all right for the Senator from South Dakota, who is running for reelection, to do what he thinks is right.

I do not think it is right since we are in this process we are in right now for those of us who have legitimate amendments, many of which are going to save money, to be trampled over in this process. If we do insist, we are going to be accused, I suppose, of keeping the Senate in session to a late hour.

As far as this Senator is concerned, if you are going to trample over me, I am going to keep you here as long as I can, at least until I get consideration and an up-or-down vote on my amendments. It is wonderful that we have prevailed in each and every case. Is it fair? That is the question that should be asked. Every Member should ask that question, Is it fair for those of us who do not happen to be on the right committee to be trampled over while those who are on the right committee get what they want in? That is an objection that I have. I do not think it is fair and I think we should receive fair consideration.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. MATHIAS. I have two amendments which have no budgetary impact. I submit my amendments to the managers of the bill. I understand they will be acceptable.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I wonder if I might ask the chairman of the Appropriations Committee a question.

Mr. HATFIELD. I would be happy to yield for a question.

Mr. DOMENICI. Let me ask my friend from Oregon a question, while we are talking about completing the CR, which I hope we can complete as soon as possible. Is one of the conditions on whether we are going to get a CR enacted a requirement that we get a reconciliation bill passed? Is that part of the scenario that you have in mind, that the House knows about, that Mr. MILLER has been talking about, that we need the reconciliation bill also?

Mr. HATFIELD. Mr. President, I would respond to the Senator by saying this is obviously tied to reconciliation because one of the criteria which the administration has set forth to sign any CR is that a reconciliation action has been concluded by the Congress. To answer the question, yes, this CR or any CR that we hope to pass not only by the Congress but to get signed into law.

Mr. DOMENICI. I thank the chairman for his answer. I want to once again ask the chairman and ranking members of the committees——

Mr. GRAMM. Could we have order, Mr. President?

The PRESIDING OFFICER. The Senate will be in order.

Mr. DOMENICI. I thank the Chair.

I want to once again ask the chairman and ranking members if they will try to complete their reconciliation work. The deadline has now been extended to 3 o'clock tomorrow afternoon. I believe by that time we are going to try to package up the reconciliation bill. We hope the savings will be in the neighborhood of $10 to $12 billion. We cannot finish reconciliation until the subconferences finish their work. I think they are trying hard. But somehow with these extensions of time, there may be some notion that we are not going to get it done tomorrow. I believe we have to. If we do not, we cannot vote on it early next week in which event we cannot get the appropriations bills finished.

I am willing to help. I hope they understand that it is critical. I thank the Chair.

The PRESIDING OFFICER. Are there further amendments?

Mr. EVANS. Mr. President, I simply must rise and agree with much of what the Senator from Nebraska has said. I first give all of the high marks in the world to the chairman of the Appropriations Committee, to the ranking members, and those who have worked so hard on appropriations. But let us face it, my colleagues, this process is a travesty. It is a travesty for us to do what we are doing. All Senators, like all Americans, are created equal, except some are a lot more equal than others if they happen to be on the Appropriations Committee. Do not kid yourself that it is any different.

I have had the opportunity to go through this list, the Senate report that accompanies the appropriations bills. I do not have my computer with me, but I think the figures are reasonably accurate.

We are in the process in this continuing resolution of appropriating $55 billion of unauthorized expenditures. That is just not a pittance or just barely going over or finding that there are one or two items that have not been authorized.

These subcommittees and the committee as a whole have submitted to us reports that in total have $55 billion of unauthorized expenditures.

What is worse than that, when an authorizing committee does do its job and does create an authorization and does send it to the Appropriations Committee, it does not make any difference.

For the first time in many years the Foreign Relations Committee did send a 2-year authorization bill up, and what do we get for our efforts? We get for our efforts words in the act that say, "Funds appropriated or otherwise made available by this act may be obligated or expended notwithstanding provisions of section 10 of Public Law 91-672."

☐ 2310

In essence, the authorization makes no difference because you wipe out the authorization and go ahead and spend it any way you want.

As if that were not enough, I point to one other item that may well be a good one. It may well be appropriate, but in the bill that relates to foreign operations, all of the assistance to Africa was done not according to the authorization bill, not according to what we had done in the authorizing committee. It is allocated for assistance for sub-Saharan Africa in accordance with the provisions of S. 2208 as introduced on March 18, 1986—a bill that, as far as I know, never came before the Foreign Relations Committee, was not heard anyplace. If it was, I am not aware of it. Not only was it inserted and adopted by reference, it becomes the bill on which all appropriations for sub-Saharan Africa are made.

Mr. President, something is very wrong in what we are doing. We have laid some very tough limits on ourselves through the combination of the Budget Act, the Gramm-Rudman Act, and the Appropriations Act. But we have put ourselves in a box because we cannot do our job in a timely fashion so that the Members of this body who are not on appropriations have little or no chance to do their job and responsibly represent the people of their State, or more importantly, responsibly represent the people of the Nation.

Mr. BUMPERS. Will the Senator yield?

The PRESIDING OFFICER. The Chair has been requested to instruct the members of the staff who are not seated to vacate the Chamber. I do that reluctantly, but it is the rule.

Mr. BUMPERS. Will the Senator yield?

Mr. EVANS. I yield to the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. In case the Senator feels lonesome because he is not a member of the Appropriations Committee, I am a member of the Appropriations Committee and voted there the other day to report this clean continuing resolution to the floor.

We voted almost unanimously—I think it was unanimously—that all Senators on the Appropriations Committee would withhold their amendments and offer them to the floor in the interest of expedience and time. The Senator knows I just offered an amendment that I felt very strongly about a moment ago, forewent offering it in committee and got a point of order on germaneness raised against it. In case the Senator from Washington is feeling lonesome because he is not on the Appropriations Committee, join the crowd.

Mr. EVANS. I thank the Senator. It is not that I feel lonesome, Mr. President. I am sure there is a certain group in this Chamber that feels as I do. I am not sure what we can do at this late date unless we want to stay and stay and insist and insist. But if we just roll over and collapse and adopt it because it is convenient and we want to get out of here, we are simply not doing our job for the people of this country and of our State.

I might say, in passing, to the chairman of the Appropriations Committee and the majority leader that I think yesterday and today, we have done more to destroy the building and budding relationship with the Republic of the Philippines—in 2 days—than we have built up over the course of the period of time of euphoria which accompanied the revolution and the time past that.

I believe we simply cannot and must not ignore or leave ourselves in the position we are now in, having turned down what the House has adopted, turned down twice certain aid to the Philippines.

I, for one, Mr. President, do not intend to agree to any unanimous-consent agreement and I do not intend, no matter how long it takes, to finish this bill until we have had a chance to revisit that issue and revisit it positively.

The PRESIDING OFFICER. Are there any other amendments?

The Senator from Oregon.

AMENDMENT NO. 3133

(Purpose: To provide funds for a program blocking the migration of Africanized bees)

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD] for the Senator from Maryland [Mr. MATHIAS] proposes an amendment numbered 3133.

Mr. HATFIELD. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 12, strike out "1986." and insert in lieu thereof "1986, except that, of the funds made available to the Animal and Plant Health Inspection Service for salaries and expenses, $1,000,000 shall be made available to fund a project to establish a biological barrier zone in the Isthmus of Tehuantepec to block the northward migration of Africanized bees.".

KILLER BEE FUNDING AMENDMENT

● Mr. MATHIAS. Mr. President, I am today offering an amendment to the continuing resolution that would seize what may well be this country's last chance to stave off the invasion of the killer bee. While this may have the sound of a science fiction story, the threat to American agriculture embodied in the northward migration of this insect is all too real. By earmarking $1 million out of the $302 million appropriated to the U.S. Animal and Plant Health Inspection Service in the continuing resolution, this amendment would launch a project that holds promise for keeping the killer bee from ever reaching the United States.

As many of my colleagues know, the killer bee—known by scientists more properly as the "Africanized bee"—has been advancing northward from Latin America and, if unhindered, will probably enter Texas in 1990. Besides posing a threat to the lives and health of animals and people, the Africanized bee also threatens the health of American agriculture. If it spreads through the United States, scientists tell us, the aggressive Africanized bee will dominate the gentler variety of bee that now inhabits this country and which we rely upon for commercial pollination of orchards and other crops. The losses to American agriculture caused by this disruption to commercial pollination are likely to be great.

Until now, Government and private research have yielded little hope for heading off this unhappy scenario. Recently, however, scientists in the Animal and Plant Health Inspection Service devised a plan to prevent the Africanized bee from migrating through Mexico into the United States. The plan calls for the establishment of a biological "barrier" across the isthmus of Tehuantepec in Mexico. The "barrier" would be made up of a package of genetic and biological devices to attract, capture, and kill the killer bees entering the zone.

There is sound reason to believe the plan might actually block the bees from moving beyond this zone. At the least, however, the barrier would slow the bee's advance by 5 or 10 years, which would buy enough time to develop other strategies to genetically dilute the aggressive characteristics of the Africanized bee. And, since this isthmus is the last geographic area between the present location of the Africanized bee and the United States that lends itself to such a barrier, this plan may well be the last chance to stop the bee before it arrives at our doorstep.

The Mexican Government has pledged its full support for and cooperation in this effort. And, at a time when we are often discussing the need for improved cooperative efforts between our governments, this seems an opportunity to demonstrate the commitment behind our words.

We must move swiftly, however, if this plan is to work. The Africanized bee is now roughly 100 miles south of the isthmus and scientists predict they will arrive there within 3 to 6 months. Funds must be committed immediately to this project if it is to succeed.

I recognize that this is late in the game to seek support for this project. Unfortunately, scientists only just finished working out the details of this plan, so this is the first—and, I am afraid, the last—chance to bring it before Congress for consideration.

I also recognize that this is a time of financial stringency. I submit, however, that if we pass up this opportunity, we will have to pay a far greater price in a few years for our inaction today. I urge my colleagues to support this amendment.●

Mr. HATFIELD. Mr. President, this is one of those amendments that meets our criteria. It is being offered on behalf of the Senator from Maryland [Mr. MATHIAS]. It is within the budget. It is earmarked funds out of other appropriated funds. It has been presented to the managers and we accept it.

The PRESIDING OFFICER. Do both managers accept the amendment?

Mr. JOHNSTON. Mr. President, this amendment has been cleared on this side.

Mr. HATFIELD. Mr. President, I move the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3133) was agreed to.

Mr. HATFIELD. I move to reconsider the vote.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3134

(Purpose: To set aside $1,000,000 for the payment of a claim of the City of Frederick, Maryland)

Mr. HATFIELD. Mr. President, I send an amendment to the desk on behalf of Mr. MATHIAS and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for Mr. MATHIAS, proposes an amendment numbered 3134.

Mr. HATFIELD. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution, add the following:

SEC. . Of the amount appropriated under the other provisions of this joint resolution to the Department of Defense for fiscal year 1987, for payment of claims authorized by law to be paid by the Department of Defense (except for civil functions), the Secretary of the Army shall pay $200,000 to the City of Frederick, Maryland in full satisfaction of the claims of the city arising from the events of July 1864, and in complete reimbursement of the payment made by that city to protect military property and supplies of the United States.

● Mr. MATHIAS. Mr. President, the amendment I am offering is about justice, simple justice. For over 120 years this Nation has failed to recognize the sacrifice made by the people of Frederick, MD, in the service to the country during the War between the States.

My colleagues have heard me recount the circumstances of this injustice many times in the Senate and on earlier occasions in the other body so I will not recount them today. Suffice it to say that we in Maryland believe that it is never too late to show that a grateful Nation appreciates acts of civic responsibility and courage.

This amendment calls for the payment of $1 million to the city of Frederick, MD, for their actions in 1864 in saving Federal supplies from an invading Confederate Army and delaying their march on lightly defended Washington. Let me remind my colleagues that the supplies held in Frederick at the time were valued at over $1 million and that was in 1864 dollars. It would be difficult to imagine how much they would cost today.

Frederick could have taken the easy way out and just turned over the supplies but instead the city borrowed the money to meet the Confederate ransom demands. It then took several generations of Frederick citizens to repay the debt that they did not have to incur.

In 1972, the Senate Judiciary Committee held hearings in Frederick on my ransom bill. At that time testimony was received documenting the events of 1864 and showing the value of the Federal supplies stored in the city's warehouses. Testimony was also heard that the actual cost to Frederick in retiring the debt was over $4 million. My amendment is considerably less than that amount.

Mr. President, at any cost justice must be done. The patriotic actions of the people of Frederick cannot be allowed to go unrewarded any longer. Frederick sacrificed money it did not have in order to defend Federal supplies. It is now time for a grateful Nation to show its appreciation.●

Mr. HATFIELD. Mr. President, this is a very local, parochial amendment on behalf of the Senator from Maryland. In 1864, the city of Frederick, MD, lent the Federal Government $200,000. The Federal Government has never paid that back. This is one of the issues that Senator MATHIAS, a native of Frederick, MD, got involved in in his high school class I guess. It is something he has raised on the floor from time to time. I think Mr. SARBANES is also familiar with this.

Mr. President, I offer this amendment on behalf of the Senator from Maryland. It is within existing funds. It is for $200,000 without interest.

Mr. JOHNSTON. Mr. President, after all this time, we shall agree to the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3134) was agreed to.

Mr. HATFIELD. I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3135

Mr. JOHNSTON. Mr President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read of follows:

The Senator from Louisiana [Mr. Johnston], for Mr. EXON and Mr. ZORINSKY proposes an amendment numbered 3135.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered,

The amendment is as follows:

At the appropriate place in the bill insert the following:

SEC. . The Secretary of the Army, Acting through the Chief of Engineers, shall provide funds for design and construction of a storage facility including necessary conveyances, to resolve a water quality problem associated with Dam Site 18 of the Papillion Creek and Tributaries Lakes, Nebraska. The funds are to be provided from available funds.

● Mr. EXON. Mr. President, the amendment I am offering affects what is known as the Papio Creek project in Nebraska. My amendment would reduce the cost of flood control on the Papio Creek from $120 million to roughly $7 million.

This reduction in cost is made possible because local residents, in cooperation with Federal, State, and local officials, have endorsed a scaled-down version of the Papio project. This modified plan achieves many of the same flood control benefits as originally envisioned. However, instead of relying on costly and controversial dams, the modified plan utilizes channel improvements in the Papio Creek and an electronic flood warning system.

Mr. HATFIELD. Mr. President, before my friend from Nebraska gets too far along, I would like to address this legislation. Although this type of legislation rightfully falls within the jurisdiction of authorizing committees, the House has seen fit to make this revision in authorization in its version of the 1987 energy and water appropriations. Although I have no immediate objections to the project revisions, I remain concerned about the practice of legislating on appropriations measures.

I appreciate the cost savings embodied in this amendment. Certainly, this is a commonsense approach to dealing with flood control problems and an admirable example of cooperation between local, State, and Federal officials. However, I am always reluctant to infringe on the jurisdiction of authorizing committees in the appropriations process.

Mr. ABDNOR. Mr. President, as chairman of the conference committee on the omnibus water bill, I too have a great deal of interest in this proposal. I share my colleague's admiration of this approach which reduces overall costs and shows a great deal of local, State, and Federal cooperation and compromise.

I believe my friend from Nebraska brought this revision to the attention of several Members who are conferees on the omnibus water bill which is still in conference. Unfortunately, this revision was not included in either the House or Senate version of the water bill. Seen in that light, this revision should not rightfully be considered during the conference. However, I recognize the need for timely action on this revision and would hope that some type of action could take place so this scaled-down project could receive timely consideration by the Senate.

Mr. EXON. Mr. President, as you can see, this revision has been considered by both the chairman of the conference on the water bill and the chairman of the Appropriations Committee. Unfortunately, one constraint or another has prevented it from receiving the consideration it deserves. I can understand the authorizing committee's reluctance to act on a "nonconferenceable" item and the Appropriations Committee's concern about infringing on the jurisdiction of the authorizing committee. However, as has been pointed out, this commonsense approach to flood control deserves timely consideration.

Mr. President, I would like to ask a question of the Senator from Oregon [Mr. HATFIELD].

Mr. Chairman, I realize this amendment is cause for concern on your part. On the one hand, you could support this amendment at the risk of infringing on the jurisdiction of another committee. On the other hand, you could oppose this much-needed revision and work to keep the appropriations process pure. Certainly, that is not a situation I envy.

Mr. HATFIELD. Mr. President, my colleague from Nebraska has made what I consider to be a very good suggestion. I am certainly willing to move in that direction provided my colleague from the committee of jurisdiction does not object.

Mr. ADBNOR. Mr. President, I think this is a most appropriate course of action. Anytime we can save over $100 million and achieve the purposes intended, we should go ahead. In light of the support it has received, I see no reason for its further delay.

Mr. JOHNSTON. Mr. President, this amendment and the next amendment are being offered on behalf of the distinguished Senators from Nebraska [Mr. EXON and Mr. ZORINSKY]. We recently discussed a deal with regard to Papillion Creek, which provides that the Corps of Engineers shall provide funds for the design and construction of a storage facility including necessary conveyances to resolve a water quality project associated with dam site 18 of Papillion Creek on Tributaries Lakes, NE. It is provided from available funds. It has been cleared with Senator Abdnor as well as the distinguished Senator from Oregon.

Mr. HATFIELD. Mr. President, the Senator is correct. Senator ABDNOR of South Dakota graciously withdrew his objection to this amendment offered by the Senator from Nebraska [Mr. EXON]. It has been cleared by the appropriations subcommittee of jurisdiction. I move its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3135) was agreed to.

□ 2320

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3136

Mr. JOHNSTON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] for Mr. EXON, and Mr. ZORINSKY proposes an amendment numbered 3136.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the bill insert the following:

SEC. . The Secretary of the Army, acting through the Chief of Engineers, is authorized to construct flood control structures in accordance with the plan contained in the reevaluation report of the Chief of Engineers for Papillion Creek and Tributaries Lakes, Nebraska, dated March 1985 (revised October 1985). Features of such project authorized by the Flood Control Act of 1968 but eliminated by or otherwise not in accordance with the reevaluation report are not authorized after the date of enactment of this Act.

Mr. JOHNSTON. Mr. President, this amendment, submitted on behalf of Senator EXON, also deals with Papillion Creek. The Secretary of the Army, acting through the Chief of Engineers, is authorized to construct flood control structures in accordance with the plan contained in the reevaluation report of the Chief of Engineers for Papillion Creek and tributaries.

The features of the project contained by the flood control but eliminated are not authorized after date of enactment of this act.

Mr. President, this amendment has been cleared by Senator ABDNOR as well as both sides of the aisle.

Mr. HATFIELD. Mr. President, this is the second half of that particular project, on behalf of the Senator from Nebraska: One, the authorizing; one, the appropriating function. It has been cleared on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3136) was agreed to.

AMENDMENT NO. 3137

Mr. HATFIELD. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for Mr. STENNIS, proposes an amendment numbered 3137:

At the appropriate place in the bill, insert the following: "From existing funds the Secretary of Defense shall take additional steps for further development of planning, research, and facilities for physical acoustics and related matters and shall develop facilities for advanced microelectronics design research and development including but not restricted to military components replacement and the Mapped Array Differential Equation Machine;"

● Mr. STENNIS. Mr. President, a great deal of work in the area of physical acoustics has been done at the University of Mississippi. A concentration of highly qualified scientists specializing in the discipline of physical acoustics, working through the Mississippi Institute for Technology Development have made a proposal to the Department of Defense to undertake the research necessary to satisfy the physical acoustics needs of our defense establishment. The Department of Defense should proceed with the planning and facilities at the University of Mississippi for the advanced acoustics research for defense.

A core group or extremely able advanced microelectronics researchers at Mississippi State University, in cooperation with the Mississippi Institute for Technology Development, are presently working under contract from the Defense Department on the feasibility of developing a super computer system known as a mapped array differential equation machine, which will be a thousand times faster than the most poweful super computer in use today. Further, these scientists are preparing a proposal to use advanced microelectronics for military components replacement, a program which when developed will provide greater efficiency and cost savings in the production of military replacement parts. The Department of Defense should proceed with the development of research capability and facilities at Mississippi State University to accommodate this vital research.●

Mr. HATFIELD. Mr. President, this is an extension of a project which has been going on there and which has been reviewed by committees on both sides, and it is approved on this side.

Mr. JOHNSTON. Mr. President, the amendment has been cleared on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3137) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. Are there further amendments?

Mr. HATFIELD. Mr. President, in the meantime, we are temporarily stalled.

AMENDMENT NO. 3138

Mr. HATFIELD. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oregon [Mr. Hatfield], on behalf of Mr. Kerry and Mr. D'Amato, proposes an amendment numbered 3138.

Mr. HATFIELD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place insert the following:

Sec. . Regional referral centers for States previously under waiver.

In the case of a hospital that—

(1) is located in a State with respect to which a waiver under section 1886(c) of the Social Security Act or section 402 of the Social Security Amendments of 1967 terminates on December 31, 1985, and

(2) makes application pursuant to section 1886(d)(5)(C)(i) of such Act for reclassification as a rural referral center.

the Secretary of Health and Human Services shall make the determination with respect to such reclassification on the basis of data for the 9-month period ending September 30, 1986.

Mr. HATFIELD. Mr. President, this amendment, which is submitted on behalf of the Senator from Massachusetts [Mr. Kerry] and the Senator from New York [Mr. D'Amato], refers to two specific centers in those two States. These are two parochial, or local, programs.

There is no budgetary impact to this. What it does is basically shift within the existing funds medicare funding. It has been cleared on both sides of the aisle, by the respective subcommittees.

Mr. JOHNSTON. Mr. President, the amendment has been cleared on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3138) was agreed to.

AMENDMENT NO. 3139

(Purpose: To require the Secretary of Health and Human Services to approve an application for a demonstration project submitted by Fresno County, CA, and the California Department of Social Services)

Mr. JOHNSTON. Mr. President, on behalf of Mr. Cranston and Mr. Wilson, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. Johnston], for Mr. Cranston and Mr. Wilson, proposes an amendment numbered 3139.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . APPROVAL OF DEMONSTRATION PROJECT.

Subject to the second sentence of this section, the Secretary of Health and Human Services shall approve the application dated February 26, 1986, for a 24-month demonstration project submitted, under section 1115 of the Social Security Act, by Fresno County, California, and the State of California's Department of Social Services to promote the employment of principal earners in the aid to families with dependent children-unemployed parents program carried out under title IV-A of the Social Security Act. The implementation of such project may not result in any additional expenditure of Federal funds.

● Mr. CRANSTON. Mr. President, this amendment, on behalf of myself and Mr. Wilson, would direct the Department of Health and Human Services [HHS] to grant a waiver application, jointly submitted by Fresno County, CA, and the California Department of Social Services, to establish a 24-month demonstration program in Fresno County to determine the impact of revising the Federal definition of unemployment in the Aid to Families with Dependent Children-Unemployment Parent [AFDC-UP] families to accept employment in excess of 100 hours. The amendment specifically provides that no additional Federal funds may be expended in connection with this demonstration program. In fact, Mr. President, Fresno estimates that the Federal Government will save approximately $6 million in AFDC costs during the 24-month period.

Mr. President, Fresno County has been attempting for sometime now to obtain the waivers from certain regulations in the AFDC-UP Program in order to implement on a demonstration basis a program aimed at ensuring in a cost-saving manner that the principal wage earners in the county's AFDC-UP Program acquire the job experience needed to help them break away from welfare dependency and achieve financial independence. The waiver application, which was submitted to HHS in February on behalf of the State of California and Fresno County, was endorsed by the California State Legislature and has been supported by members of the California congressional delegation lead by my good friend and colleague from Fresno, Representative Rick Lehman. Unfortunately, the Department of Health and Human Services has still not acted on the county's application for the waivers necessary to conduct this program.

Mr. President, in view of the critical need to curb Federal spending, I want to emphasize to my colleagues that the demonstration program does not require any additional Federal funding and—as I mentioned before—is, in fact, estimated by the county to result in a total net savings to the Federal Government of approximately $6 million.

Mr. President, under current Department of HHS AFDC regulations, unemployment in the AFDC-UP Program is defined as working less than 100 hours per month. As a result, if the principal wage earner in a family participating in the AFDC-UP Program accepts a job of 100 hours or more, his or her family becomes ineligible for assistance, regardless of the amount of income resulting from that employment. In California, the amount of income that would be earned in jobs of 100 hours or more per month—for example, at the minimum wage level—can fall far below the standard of need used to determine eligibility for the AFDC-UP Program in California. Thus, because under the existing HHS "good cause" regulation an AFDC-UP recipient is allowed to refuse to accept a job which would result in less income than provided under the AFDC Program, the 100-hour work rule is regarded as a significant disincentive to accepting many job opportunities.

Mr. President, Fresno is particularly concerned about the large number of Southeast Asian refugee families residing in the county who are time-expired refugees now in the regular AFDC-UP Program. As a result of the 100-hour work rule, the principal wage earners in these families are unable to accept work without substantial financial hardships to their families. Thus, without the opportunity to gain the basic language, work, and cultural skills needed to find and hold down jobs these individuals have become locked into welfare dependency.

The amendment we are offering would allow Fresno County to establish a 2-year pilot program in which the current 100-hour work rule and the good cause rule would be waived and principal wage earners in AFDC-UP. families would be required to accept suitable job offers without jeopardizing their eligibility for aid until the amount of their net earned income matches the size of the AFDC-UP grant they would have otherwise received. Only the difference between the AFDC-UP grant and the families' net earned income resulting from that employment would be provided under the AFDC-UP Program.

Mr. President, through this approach, Fresno County estimates a total net savings of $12.7 million, approximately half of which would be Federal funds. The county estimates that between 5,000 and 6,000 families would be involved.

Mr. President, Fresno is very anxious to implement this proposed program in an effort to release families in the county's AFDC-UP Program from the grip of welfare dependency. I fully support that objective and support the efforts of Fresno County to demonstrate that they can help families achieve that goal. Thus, I urge my colleagues to support this amendment.

Mr. JOHNSTON. Mr. President, the amendment has been cleared on this side.

Mr. HATFIELD. Mr. President, the amendment has been cleared on this side of the aisle.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3139) was agreed to.

AMENDMENT NO. 3140

(Purpose: To provide access to the eastern point of Middle Bass Island)

Mr. JOHNSTON. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. METZENBAUM, proposes an amendment numbered 3140.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the joint resolution, insert the following: ": *Provided,* That of the amounts made available under the account entitled Department of the Army, Corps of Engineers—Civil, Construction General, $250,000 shall be available only for carrying out the reconstruction of Deist Road on Middle Bass Island, Ottawa County, Ohio, in accordance with the authority contained in Section 14 of Public Law 79-526, as amended.".

□ 2330

Mr. JOHNSTON. Mr. President, this amendment submitted on behalf of the distinguished Senator from Ohio [Mr. METZENBAUM] provides that of the amounts made available under the account entitled Department of the Army, Corps of Engineers—Civil, in the amount of $250,000, shall be made available only for the carrying out of the reconstruction of Deist Road on Middle Bass Island, in Ottawa Country, OH, in accordance with the public law as designated.

Mr. METZENBAUM. Mr. President, this amendment would direct the Corps of Engineers to help a community on Middle Bass Island on Lake Erie repair a flood damaged road.

The project would cost the Government no additional money. Funds would be provided under the corps' continuing authority under the section 14 program. Section 14 permits the corps to assist communities when public facilities—roads, water lines, or sewage treatment plants are threatened by erosion.

The record high-water level of Lake Erie is threatening to cut Middle Bass Island in half. At present, the only land connecting the main body of the island to its eastern point is a rock dike. Deist Road, which lies behind the dike has been under 2 feet of water for the past 2 years. On the other side of Deist Road, where there was once a wetland bog, there is now open lake.

In other words, when people who live on east point leave or return to their homes, they must drive through Lake Erie.

That can be a frightening experience when the waves are 6 inches high.

It is impossible when the waves are a foot or higher.

Again, the amendment simply directs the corps to use its existing authority to help this community restore its only means of access, and its link to the rest of the island.

It is an important amendment to the people of Middle Bass Island, and I believe it is the very least we can do to help the Lake Erie flooded areas in Ottawa County, OH.

Mr. HATFIELD. Mr. President, the amendment is cleared on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3140) was agreed to.

Mr. HATFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 2340

Mr. HATFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Let us have order.

Mr. HATFIELD. Mr. President, we had a veritable shower of amendments that Senators have considered to be noncontroversial that we could accept. In order to handle each one carefully, we have now sent our staffs, the minority and majority staffs, to the committee room downstairs to review each one. So as not to lose time on other matters that will necessarily be brought before the body, the Senator from South Dakota will be raising an amendment, on which we will make a point of order, relating to the REA portfolio, which we have visited before.

Therefore, the Senator from South Dakota [Mr. ABDNOR], has indicated that he would be willing to enter into a time agreement of 40 minutes, 20 minutes to a side, and a point of order as to the question of germaneness would be made at the end of that period of debate.

Therefore, I would propound at this time a unanimous-consent request for such 40 minutes, with no amendments in the second degree in order.

Mr. METZENBAUM. Reserving the right to object, and I do not intend to object, we all know what this amendment is. We all know what your objection is going to be. Forty minutes is a long time at this time of night.

I wonder if you could not prevail upon the Senator from South Dakota to take 5 minutes to present it. We all know the arguments. We have all received the letters. Then you could go ahead and make your motion and instead of spending 40 minutes maybe we could spend 5 or 10 minutes on it.

□ 2350

Mr. HATFIELD. I wonder if the Senator would consider 10 minutes equally divided.

Mr. ABDNOR. Ten to each side.

Mr. HATFIELD. Mr. President, I amend my request to make it a total of twenty minutes equally divided with no second degree amendments in order.

Mr. JOHNSTON. Mr. President, reserving the right to object—I shall not object—I say, Mr. President, that our staffs are going to retire downstairs to a quiet place to consider these amendments which we are trying to clear during this debate.

So I urge any Senators who would like to clear noncontroversial amendments to please get it to us now so we can have it studied at a more leisurely rate downstairs while this amendment is being debated.

Mr. DOMENICI. Reserving the right to object might I say to the chairman that that part of his unanimous-consent request was not that the only objection would be germaneness. He might want to raise a point of order under the Budget Act.

Mr. HATFIELD. The Senator is correct. I want to broaden that. There will be a point of order made at the end of the 20-minute period equally divided.

The PRESIDING OFFICER. Will the Senator restate the time?

Mr. HATFIELD. Twenty minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3125, AS MODIFIED

Mr. MATTINGLY. Mr. President, will the Senator yield for a moment.

Mr. President, it came to my attention that the amendment we adopted earlier, No. 3125, contained a technical error. I ask unanimous consent to be allowed to modify that amendment.

Mr. HATFIELD. Mr. President, the request made by the Senator from Georgia has been cleared as a technical amendment only to an amendment that we acted upon.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 3125) as modified, is as follows:

On page 2 of the bill, line 12, strike out the period and insert in lieu thereof the following: ", except that $335,380,000 shall be available for insured water and sewer facility loans in the Rural Development Insurance Fund, and $690,000,000 shall be available for emergency insured and guaranteed loans to meet the needs resulting from natural disasters from funds in the Agricultural Credit Insurance Fund.".

The PRESIDING OFFICER. The Senator from South Dakota.

AMENDMENT NO. 3141

(Purpose: To allow the prepayment of certain loans made by rural electrification and telephone systems)

Mr. ABDNOR. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from South Dakota (Mr. ABDNOR) for himself and Mr. BURDICK, Mr. ANDREWS, Mr. STEVENS, Mr. THURMOND, Mr. HOLLINGS, Mr. SARBANES, Mr. DENTON, Mr. BOREN, and Mr. NICKLES proposes an amendment numbered 3141.

Mr. ABDNOR. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution, add the following new section:

SEC. . (a)(1) In the case of a borrower of a loan made by the Federal Financing Bank and guaranteed by the Administrator of the Rural Electrification Administration (hereinafter in this section referred to as the "Administrator") under section 306 of the Rural Electrification Act of 1936 (7 U.S.C. 936) that is outstanding on the date of enactment of this Act, the borrower may prepay any loan advances by payment of the outstanding principal balance due on such advances using private capital with the existing loan guarantee, if:

(i) such loan advances bear an interest rate of 10.5 percent per annum or greater, or;

(ii) the borrower is a generation and transmission system borrower whose member distribution systems as an aggregate serve fewer than 3.0 consumers per mile of line or;

(iii) the borrower is an electric distribution and telephone borrower which serves fewer than 3.0 consumers per mile of line, or;

(iv) the borrower is a borrower experiencing financial hardship.

Such private capital shall be obtained at repayment terms agreeable to the borrower. The guarantee shall be fully transferable and assignable without condition and without requiring that guaranteed funds be pooled with nonguaranteed funds and shall remain available for the remainder of the term originally agreed to by the Administrator.

(2) No sums in addition to payment of such balance shall be charged as the result of such prepayment against the borrower, the Rural Electrification and Telephone Revolving Fund established under section 301 of such Act (7 U.S.C. 931), or the Administrator.

(3) To qualify for prepayment, the borrower shall certify that prepayment savings will be passed on to customers of the borrower, used to make debt service or other payments in cases of financial hardship, or used to avoid future rate increases.

(b) Not later than 30 days after the date of enactment of this Act, the Secretary of the Treasury shall issue regulations to implement subsection (a) that reflect the intent of this section to—

(1) facilitate prepayment;

(2) provide for full processing of each prepayment request not later than 30 days after submission of the request to the Administrator; and

(3) impose no restrictions, except as provided in this section, that—

(A) increase the cost to borrowers of obtaining private capital for prepayment; or

(B) inhibit the ability of the borrower to enter into prepayment arrangements pursuant to this section.

(c) Notwithstanding any other provision of law, this section shall govern the prepayment of loans described in subsection (a)(1), except in a specific circumstance where a provision of law enacted before or after the date of enactment of this Act facilitates or expands eligibility for prepayment of such loans or reduces the cost of private capital obtained by borrowers of such loans to a greater extent than this section.

Mr. ABDNOR. Mr. President, my colleague, the Senator from Ohio, is correct. I am sure we all pretty well understand what this amendment does. We only have to go back to June 26, 1986 when we had the supplemental appropriations bill on the floor. Senator BURDICK and I offered this same amendment and it was overwhelmingly adopted. It was changed considerably from what came out of conference committee. It was changed and amended under a unanimous-consent request in the House.

I had great misgivings about what took place in the House, but after a colloquy with our good chairman, and between three or four of us, we went along with it.

I want to quote from a statement of our chairman after discussing and questioning how the final agreement would be implemented. The chairman turned to me, and said, "May I respond to the Senator from South Dakota in that I would associate myself with him in this whole matter. I think we have worked out an accommodation, and I am sure that the Senator will be very much a policeman on this as this is implemented. And down the line next year, or the following year, or whatever, if this would appear to be getting off track, I know Senator ABDNOR would be the first to correct it."

That is exactly right. It got off track immediately. The first time the Treasury Department issued rules to implement the refinancing provisions, it was worthless to us. Because of that, we are coming back to you tonight to introduce an amendment that will make it proper, and one that we will have to pay attention to.

It is sponsored by Senator BURDICK, Senator ANDREWS, Senator STEVENS, Senator THURMOND, Senator HOLLINGS, Senator SARBANES, Senator DENTON, and Senator BOREN.

The amendment will permit REA borrowers to repay their loans from the Federal Financing Bank using private capital. It is not going to let anyone who wants to refinance do so, but only those borrowers who have loans bearing the interest rates of 10½ percent or greater, or who serve fewer than three consumers per mile of line, or who are experiencing financial hardship.

This amendment will permit REA borrowers to prepay their loans from the Federal Financing Bank using private capital.

The amendment is not going to let anyone who wants to refinance do so. Only those borrowers who have loans bearing interest rates of 10.5 percent or greater or who serve fewer than three consumers per mile of line or who are experiencing financial hardship will qualify for prepayment.

This amendment is needed because a similar provision, which was included in the Urgent Supplemental Appropriations Act signed by the President on July 2, 1986, has not accomplished its intended purpose.

You will recall that last May I introduced an amendment to the Urgent Supplemental Appropriations Act on prepayment of FFB loans by REA borrowers. That amendment was debated on the floor of the U.S. Senate on June 5 and was passed by a vote of 62 to 36. However, when the urgent supplemental came back to the Senate from the House, it included language which seriously weakened the provision that I had originally cosponsored with Senator BURDICK.

In the House, our refinancing provision was changed slightly so that the final agreement read as follows:

To qualify for prepayment, a borrower shall certify that such prepayment will result in substantial savings to its customers or lessen the threat of bankruptcy of the borrower unless in such individual case, in the opinion of the Secretary of the Treasury, to prepay would adversely affect the operation of the Federal Financing Bank.

I did not like the changes agreed to by the House, and I said so, loud and clear. On the Senate floor on June 26, when this matter was debated, I voted for the amendment only because of assurances that an agreement had been struck that would allow rural electric systems to pay off their FFB loans without being penalized. We in the Senate accepted the House change based on assurances which we received from the Treasury Department, the Office of Management and Budget, and the distinguished chairman of this committee that refinancing would be allowed, that refinancing would take place, and that the Treasury Department would not arbitrarily issue restrictive regulations or deny refinancing requests. As the chairman of this committee remembers, I entered into a colloquy with him as did other members of this committee.

During that debate I stated that I would be the first one to try to correct and improve the compromise, or go back to the original Burdick-Abdnor language, if the intent of the Congress was breached and REA borrowers were unable to prepay their FFB loans.

Well, that is exactly what has happened.

On August 12, the Treasury Department issued interim rules to implement this provision of the Urgent Supplemental Appropriations Act. Those interim rules make it impossible for all but perhaps a very few systems to refinance their loans. Well, I have news for the Members of the Senate. The Treasury Department broke its agreement.

In its regulations, Treasury mandates that in order to qualify for prepayment of debt, a borrower must be on the brink of bankruptcy or must be willing to reduce its rates to consumers by at least 25 percent. Even if a cooperative were to pass along 100 percent of the interest savings from refinancing, consumers' electric or telephone bills would only be reduced 3 to 5 percent. To require a 25-percent reduction in rates is arbitrarily denying all refinancing.

In my home State of South Dakota, a man's word is as good as his honor. I guess Washington doesn't have that same ethical code.

We've come to a point here on this issue where mere words can't be trusted anymore.

I offer my amendment because I think this Congress, rural electric and telephone consumers, and the American people should insist that the Treasury Department keep its word and abide by the law.

The amendment I am offering today will not even go back to fulfill the intent of the original Burdick-Abdnor language. It will allow only those rural electric and telephone systems which meet the criteria I listed above to refinance.

To deny REA borrowers the ability to prepay is simply unfair. Why should the Government require REA systems to be locked into interest rates as high as 15.128 percent when the Government's own cost of money is in the 7- to 8-percent range? Refinancing is occurring in every sector of our economy, from homeowners to private urban utilities. We should not prevent rural people from sharing in these benefits.

I therefore ask that you support this amendment.

Mr. MURKOWSKI. Mr. President, I likewise rise in support of the amendment of the Senator from South Dakota. I condemn the action of the Department of the Treasury for frustrating, through its interim regulations of August 12, 1986, the crystal-clear purpose of the Rural Electrification Administration [REA] cooperative prepayment provision of Public Law 99-349.

There is plainly no excuse for Treasury's arrogant refusal to properly implement a law passed by Congress and signed by the President. This is in flagrant violation of a basic responsibility of the executive branch. I believe that all Members of Congress, including the small number in each House who voted against the refinancing provision, should join with me and others in repudiating the Department of the Treasury for its inappropriate and probably illegal action here.

Let me reiterate the reason for this legislation in the first place. It is not to increase corporate profits or to increase stockholder dividends at the expense of the Government. Rather, the provisions in Public Law 99-439 is intended to allow the consumers our nonprofit, member-owned cooperatives to benefit from refinancing just as investor-owned utilities and virtually every other sector of our economy are doing today. It is ironic that our electric and telephone cooperatives, created and involved as they are in the REA Program solely to benefit their consumers, have been singularly deprived of the major benefits of refinancing because of a Federal prepayment penalty stipulation in their Federal loan agreements. This simply does not make sense. To remove that stipulation is the reason we passed the legislation.

I am pleased that we now have the opportunity to make this refinancing opportunity available to the consumers of our REA cooperatives, including one in my State—Chugach Electric Association—which serves nearly three-quarters of all Alaskans. Chugach can save its consumers as much as $6 million a year if it can refinance without penalty as investor-owned and municipal utilities are doing. My colleagues from many other States can cite similar examples.

I regret that we must now pass an even stronger law to force the Treasury Department to comply with a congressional policy decision previously made but administratively frustrated. This amendment is all the more imperative because I believe some bureaucrats in Treasury and other executive departments would like nothing better than to slow roll this matter until Congress adjourns and interest rates edge upward.

We must not allow this to occur. We must adopt the amendment before us. Much is at stake here for consumers. I urge the amendment's adoption.

Mr. BURDICK. Mr. President, we have before us again the issue of prepayment of loans made by the Federal Financing Bank [FFB] and guaranteed by the Rural Electrification Administration [REA]. We have discussed this indepth when we considered the Supplemental Appropriations Act for this fiscal year. And we adopted a provision at that time to allow the prepayment of these loans without the borrowers paying a prepayment penalty.

So why are we here today? Why do we have to deal with this issue again? Well, I would like to explain that answer for my colleagues.

In a nutshell, the problem is that this administration has not responded.

Last June we mandated that the Treasury allow the prepayment of these loans without penalty. We told Treasury that it had 30 days to implement any regulations that would be necessary. So how many loans have been repaid? None, Mr. President.

Treasury wrote regulations that don't allow refinancing. They make qualifying so restrictive that next to no borrowers would qualify—two or three at the most. When we passed the provision last June, we were assured that the administration would use good faith efforts to allow as many refinancings as possible. We were assured that they would work to refinance $300 million this fiscal year. We are at the end of this fiscal year and we have no refinancings.

This amendment would authorize the refinancing of debt which carries an interest rate of 10.5 percent or higher, and also allows any system that has a density of fewer than three customers per mile of line to refinance.

I urge my colleagues to accept the amendment offered by my friend from South Dakota.

Mr. ABDNOR. I thank the Senator from North Dakota. I now yield to my good friend, Senator ANDREWS.

Mr. ANDREWS. Mr. President, I appreciate my colleague yielding to me.

Let me briefly point out what this does. One of the things we are proud of is the fact that we have gotten inflation under control, and interest rates are coming down. But for some strange reason we have taken one class of power borrowers, and said you cannot refinance your loan. The private utilities have been able, and have been refinancing their loans by the billions of dollars. If we allow this refinancing to go on, Mr. President, what will happen is we will transfer some money from Federal borrowing to private borrowing, and we will actually have a favorable impact on the budget deficit.

But item No. 2, we carefully crafted this amendment so that it will apply only to those co-ops who are paying exorbitantly high-interest rates, or who have low densities of consumers, less than 3 per mile of line who truly need the help. All we are doing in this amendment, Mr. President, is setting up some type of comparability between what the private investor owned utilities are being able to do for their consumers and what the rural electric cooperatives ought to be able to do for their consumers. It results in a net budget plus.

I hope the Senate will adopt the amendment.

Mr. DOMENICI addressed the Chair.

Mr. ABDNOR addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota has the floor.

Mr. ABDNOR. I will take my time and yield.

Mr. DOMENICI. I want to make a parliamentary inquiry, Mr. President. On the side in opposition we have 10 minutes. If a quorum call is asked for, is it charged against either side?

The PRESIDING OFFICER. It is charged against the side that asks for it.

□ 2400

Mr. DOMENICI. I yield the floor.

Mr. THURMOND. Will the Senator yield 1 minute?

Mr. ABDNOR. I yield.

Mr. THURMOND. Mr. President, I rise in support of the amendment of the distinguished Senator from South Dakota which would permit REA borrowers to prepay their loans from the Federal Financing Bank using private capital. This amendment would ensure the proper and legal implementation of the REA refinancing policy approved by the Congress earlier this summer.

Mr. President, on July 2, 1986, President Reagan signed the urgent supplemental appropriations bill—Public Law 99-349. Among other things, the act included a provision to permit rural electric cooperatives and telephone systems to prepay, without penalty, high-interest debt from the late 1970's and early 1980's held by the Federal Government. Investor-owned utilities and municipal electric utilities have already refinanced most of their high-interest debt.

The prepayment provision was supported by 62 Members of the Senate. Its purpose was clear and equitable. It advanced the administration's privatization goals by requiring that high-interest—up to 15 percent—debt be refinanced using private sources of capital. The chairman of the Appropriations Committee and other Members made clear and convincing legislative history as to the purpose and operation of the prepayment provision. The President acceded to the provision and signed the bill.

Unfortunately, the regulations promulgated by the Treasury Department to implement the prepayment provision have the effect of prohibiting refinancing. The regulations essentially deny all REA borrowers, except those on the brink of bankruptcy, the benefit of the refinancing authority that Congress so clearly granted. The regulations are arbitrary and capricious. They ignore the clear intent expressed by Congress, particularly the Senate, in enacting the prepayment provision. They are inconsistent with the executive branch's constitutional obligation to "faithfully execute the law."

The amendment directs the Department of the Treasury to carry out the clear directive contained in the Urgent Supplemental Appropriations Act.

It is very important that the rural cooperatives, which are an essential part of rural America, be permitted to refinance their loans. Such refinancing advances the administration's goal of privatization and would provide relief to REA cooperatives. I am pleased to be a cosponsor of this amendment and urge my colleagues to join me in support of this amendment.

Mr. ABDNOR. Mr. President, I reserve the balance of my time.

Mr. President, how much time remains on this side?

The PRESIDING OFFICER. Two minutes 57 seconds, and the other side has 10 minutes.

Mr. ABDNOR. I thank the Chair.

Mr. HART. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER (Mr. SIMPSON). The Senator will state it.

Mr. HART. Against which side is the time running at this time?

The PRESIDING OFFICER. The time is being charged equally.

Mr. ABDNOR. May I inquire why?

The PRESIDING OFFICER. That is the precedent under the unanimous-consent agreement.

Mr. HATFIELD. Mr. President, may I make an inquiry? Is the distinguished Senator ready to yield back his time?

Mr. ABDNOR. No.

Mr. BOREN. Will the Senator yield me 1 minute?

Mr. ABDNOR. Yes, I yield 1 minute.

Mr. BOREN. I thank my colleague from South Dakota. I commend him for offering this amendment.

This is similar to part of the proposal we discussed, part of a package amendment which I offered earlier. It simply implements the intent of Congress. Congress previously decided that when the rural electric cooperatives can refinance their debt to save money and pass on substantial savings to their customers, they should be allowed to do so. At the same time, it will save the Government money, according to the CBO, and helps us to balance the budget.

In the regulations that have been issued, the intent of Congress has been totally thwarted. They have held that you have to be able to reduce utility rates by 25 percent to qualify. I have a cooperative in my State that can save $8 million under this amendment I have cosponsored with Senator ABDNOR. But that does not mean they can reduce the rate 25 percent. It is a substantial savings which will help the customers, the utility and the Federal Government to reduce the deficit. This amendment makes great sense. I commend my colleague from South Dakota for offering it and I hope it will be passed by a wide margin.

Mr. HATFIELD. Mr. President, I yield 4 minutes to the Senator from New Mexico.

Mr. DOMENICI. I think the distinguished chairman of the Appropriations Committee will make a point of order that this violates the Budget Act. When he makes that point of order, it will be clear to everyone why it violates the budget resolution and the Budget Act.

For a few minutes, I would like to share with the Senate why I think we ought not adopt this amendment even if it was not subject to a point of order.

No. 1, we had a reconciliation bill here on the floor of the Senate within the last couple of weeks. In that reconciliation bill, we decided that we would let some of the most needy REA cooperatives refinance. We worked with the administration and we came up with a compromise.

In that compromise, essentially, we said about $1.7 billion could be refinanced. We would waive prepayment penalties on $1.7 billion in debt and thus take that much debt off the books of the Federal Government.

We have now gone to conference with the House and we have compromised even further. We are going to waive the prepayment penalties on $2.1 billion in debt for the really needy REA cooperatives.

Now the rural cooperatives come to us. They are my good friends, they are everyone's good friends.

The PRESIDING OFFICER. There will be order in the Chamber, please.

Will those staff people conversing please retire from the Chamber?

The Senator from New Mexico.

Mr. DOMENICI. The rural cooperatives came to us during reconciliation, had their lead Senators here, had them in conference on reconciliation. The conference report on that bill is coming over here shortly. We are going to be up to $2.1 billion in refinancing. We gave them the criteria they wanted because the administration had apparently been too restrictive in their regulations.

We have very simple criteria in the reconciliation bill that passed the Senate. They have to show some savings to their customers and the level of refinancing cannot have an adverse effect on the Federal Finance Bank, which holds this debt. It there is an adverse effect on it, obviously the FFB cannot halt its refinancing. That criteria has been addressed in the conference. In addition we have replaced the test of bankruptcy and now that is not enough.

Tonight they come and say, "Let us open the whole window." They tell us it is limited in some way. We cannot figure how it is limited. Anything carrying over 10.5 percent interest rate must be refinanced.

I really believe we ought to help, but I do not think we ought to help every week. I think we ought to help when we are doing it in a reasonable manner, not at the last minute when somebody brings us an amendment that we can hardly understand, that we can hardly get a preliminary estimate of its costs.

I can tell you this: There are no ways to really save money by refinancing cooperatives debt. Our best estimate is this: In a technical way, you will probably take $5 to $7 billion off the Federal budget because you are taking these loans out of the portfolio and placing them in the private markets.

But our best estimate is that we lose $25 billion in the long run that we were otherwise entitled to receive into the Federal Treasury because we used taxpayers' money and lent it to cooperatives under long-term loans with fixed interest rates.

Now, when interest rates come down a bit, we say to the taxpayers of this country who subsidized this lending year in and year out, "Let us run right up there and refinance this debt at a lower rate and take away what would have gone into the Treasury over the next 25 years."

Mr. President, we have said over and over let us try to accommodate these cooperatives by allowing some refinancing. We are up to $2.1 billion in refinancing for the most needy of the REA cooperatives.

What happens is the cooperatives' representatives run around the country and they find a Senator and they say, "It will not fit your utility. It will not fit your new generating station." We come down here tonight and to make sure none will be left out. What we are going to do is waive all prepayment penalties, refinance the whole package, and claim it as savings to the cooperatives' ratepayers. And to taxpayers who funded REA over all these years, we will say, "You can forget about collecting what you were due."

I remind you, it is indeed subject to a violation of the Budget Act and for real reasons, because it is going to cost us money over the long run. I think enough is enough, $2.1 billion for the most needy cooperatives is about what we ought to do. We are going to do that.

Now, to turn right around and say, "we did not do enough 2 weeks ago. Let us give them the whole package tonight. Let us forget about the subsidy they received from the taxpayers of the country since we began this enormous loan guarantee program over 10 years ago." This is a mistake.

□ 0010

The PRESIDING OFFICER. The Senator from South Dakota has 1 minute remaining.

Mr. HATFIELD. Mr. President, I withhold that. I thought the Senator from South Dakota had completed his time. I withhold yielding back my time.

The PRESIDING OFFICER. Who yields time?

Mr. ABDNOR addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. ABDNOR. First I ask unanimous consent that Senator NICKLES be listed as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ABDNOR. What the Senator from New Mexico is saying is not quite true. We are not asking that every REA loan be refinanced by any means, only those with rates of 10.5 percent or greater, and those in areas where they serve less than three consumers per mile of line or those experiencing financial hardship. Actually, there is a savings in the first year so I do not see that it is a budget breaker as was suggested. As a matter of fact, we should reduce outlays in fiscal year 1987.

What bothers me the most is that we made an agreement back in June. We worked it out with the Treasury Department. Unfortunately, it was the House which diluted my amendment. We were assured by the chairman that refinancing would take place, that it would be fair, and that we had nothing to worry about. Then the Treasury Department issued their disastrous regulations and they expected us to accept them. We voted on this issue once before. The colloquy in the RECORD is clear what the intent was. Back in South Dakota when we give our word, we keep it. Somehow they lose track of it around here. I think this is necessary legislation.

The PRESIDING OFFICER. The Senator's time his expired.

Mr. ABDNOR. I urge the amendment's adoption.

Mr. BURDICK. I ask unanimous consent to proceed for 1 minute.

Mr. HATFIELD. Mr. President, I would be happy to yield the Senator 1 minute from my time.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. BURDICK. Mr. President, I have three statements from CBO on this issue—one on my original amendments, one on the provisions as enacted by the Supplemental Appropriations Act, and one based on the regulation written by the administration. Not one of them shows any impact on the budget authority.

I submit, Mr. President, there is none. I ask unanimous consent that the three CBO statements be printed in the RECORD at this point.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

[Memorandum]

CONGRESSIONAL BUDGET OFFICE,
Washington DC, May 15, 1986.

To: Rocky Kuhn, Senate Appropriations Committee.

From: Kathleen Gramp, Congressional Budget Office.

At your request, I have prepared a preliminary estimate of the fiscal year 1986 and 1987 budgetary impact of allowing rural electric and telephone cooperatives to prepay long-term loans guaranteed by the Rural Electrification Administration (REA) and financed by the Federal Financing Bank (FFB) without paying the premiums required under the existing loan agreements. These premiums would be forgiven if the borrower pays the outstanding principal balance to the FFB using private capital, backed by the existing REA guarantee. (Although your proposal also specifies that the REA revolving fund would not be liable for the premiums, it is unclear whether the REA, as guarantor, would be liable for the premium.)

Using CBO's baseline interest rate assumptions, I estimate that this proposal would have no effect on budget authority in either 1986 or 1987, but would reduce outlays by approximately $0.3 billion in 1986, and by about $7.0 billion in 1987. Starting in 1988, however, outlays would increase by about $0.9 billion a year for the next 25 to 35 years, as a result of the lost repayments on the loans refinanced in 1986 and 1987. This estimate assumes that all existing loans bearing interest at 10 percent or more would be refinanced.

This transaction results in a net cost to the government, because the government would lose a repayment stream bearing interest at 10 percent or more, while its current borrowing is at a lower rate. This net cost, on a present value basis, is represented by the amount of premiums that would be due to the FFB under the current agreements if the cooperatives were to refinance. Based on information from the FFB, I estimate that the net cost to the government of this proposal would be about $2.4 billion.

RUDOLPH G. PENNER, *Director.*

[Memorandum]

CONGRESSIONAL BUDGET OFFICE,
Washington DC, September 4, 1986.

To: Rocky Kuhn, Senate Appropriations Committee.

From: Pete Fontaine, Congressional Budget Office.

On June 25, 1986, the Congressional Budget Office estimated the budget impact of a provision in the Supplemental Appropriations bill (P.L. 99-349) that allowed borrowers of rural electric loans from the Federal Financing Bank (FFB) to prepay such loans, under certain conditions, without paying the premiums required under the original loan agreements. Specifically, the law states that a rural electric and telephone cooperative may prepay FFB loans without paying a premium if the cooperative can certify that such prepayment will result in substantial savings to its customers or lessen the threat of bankruptcy of the borrower. Treasury issued interim regulations on August 7, 1986 for use in determining which FFB borrowers qualify for prepayment under P.L. 99-349.

Although CBO has not changed the scoring of P.L. 99-349, CBO has prepared an updated estimate of the budget impact of P.L. 99-349 for the purpose of projecting fiscal year 1987 outlays under the provisions of the Balanced Budget Act (Gramm-Rudman-Hollings). Based on the interim Treasury regulations, CBO estimates that outlays will not be affected in fiscal year 1986, and that outlays will be reduced by aproximately $1.22 billion in fiscal year 1987 as a result of the prepayment provision. Starting in fiscal year 1988, outlays will increase by about $140 million a year for the next 25 to 35 years, as a result of the lost repayments on the loans refinanced in 1987.

Before Treasury issued interim regulations regarding the prepayment of FFB loans by rural electric borrowers, CBO had estimated that approximately $1.85 billion in loans would be prepaid in fiscal years 1986 and 1987. The new budget impact estimate assumes that no prepayment will occur in 1986 and that about $1.25 billion loans will be prepaid in 1987. The earlier estimate assumes that the Treasury would limit prepayment of loans to $1.85 billion so that the annual loss to the government from such prepayment would not exceed the expected FFB surplus (approximately $200 million per year). Under this assumption, no additional loan prepayments could take place after 1987.

The new estimate assumes that borrowers who can satisfy the requirements of the Treasury regulations would prepay $1.25 billion in loans in fiscal year 1987. Additional FFB loan prepayments could occur in future years, if other borrowers can meet the criteria set forth in the Treasury regulations. The new estimate only reflects loan amounts that could be prepaid to FFB in 1987. The two budget impact estimates are summarized in Table 1.

TABLE 1: BUDGET IMPACT OF THE SUPPLEMENTAL APPROPRIATIONS PROVISION FOR PREPAYMENT OF RURAL ELECTRIC FFB LOANS

[By fiscal years, in millions of dollars]

	1986	1987	1988	1989	1990	1991
Outlays, as scored for the appropriations bill (June 25, 1986)	−300	−1,400	200	200	200	200
Outlays, estimated for the Gramm-Rudman-Hollings deficit snapshot (August 15, 1986) [1]		−1,220	140	140	140	140

[1] The CBO estimate included in the August 15 snapshot is based on interim regulations issued by the Treasury on August 7, 1986. This estimate applies only to the snapshot; it does not apply to the scoring of the appropriations bill (P.L. 99–349). The Gramm-Rudman-Hollings estimate only reflects loan prepayments for 1987. Under the Treasury regulations, additional prepayments to FFB loans in future years could occur, but are not included in this estimate. By contrast, the earlier estimate assumed that no prepayments would occur after 1987.

RUDOLPH G. PENNER, *Director.*

[Memorandum]

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 26, 1986.

To: Rocky Kuhn, Senate Committee on Appropriations.

From: Pete Fontaine, Congressional Budget Office.

Subject: Budget impact of REA loan refinancing provision in the supplemental appropriations bill.

At your request, I have prepared an estimate of the budget impact of allowing rural electric and telephone cooperatives to prepay long-term loans guaranteed by the Federal Financing Bank (FFB), without paying the premiums required under existing loan agreements, subject to the restrictions outlined in the Supplemental Appropriations bill that is currently before the Congress. The current bill language allows for refinancing without prepayment premiums if the borrower meets two conditions: (1) the borrower must certify that prepayment will result in substantial savings to customers or lessen the threat of bankruptcy, and (2) the Secretary of the Treasury determines that prepayment will not adversely affect the operation of the FFB.

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989	1990	1991
Outlays	−300	−1,400	200	200	200	200

These estimates assume that approximately $1.85 billion in loans will be prepaid in 1986 and 1987. I estimate that outlays will be reduced by $300 million in 1986 and $1.4 billion in 1987. The estimate for 1987 assumes prepayment of $1.55 billion in loans and lost repayments of $150 million. Starting in 1988, outlays would increase by about $200 million a year for the next 25 to 35 years, as a result of the lost repayments on the refinanced loans.

The prepayment transaction results in a net cost to the government, because the government would lose a repayment stream bearing interest at rates of 10 percent or more, while its current borrowing is at a lower rate. The net cost, on a present value basis, is represented by the amount of the premiums that woud be due to the FFB under current loan agreements if the cooperatives were to refinance. Based on information from the FFB, I estimate that the net cost to the government of this proposal would be about $580 million.

RUDOLPH G. PENNER, *Director.*

Mr. BURDICK. Mr. President, any point of order against this amendment based on exceeding the 302(b) budget authority allocation is misplaced. I urge my colleagues to consider it because, if they do, they will surely see that we are giving money back to the Government, not causing it to spend more.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I now am ready to yield back the rest of my time.

Mr. ABDNOR. I yield back my time.

Mr. HATFIELD. Mr. President, I make a point of order under section 302(f) of the Budget Act that the amendment provides new budget authority such that the allocation to the Agriculture Subcommittee of the Appropriations Committee reported under section 302(b) is exceeded.

Mr. ABDNOR addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. ABDNOR. I move to waive section 302(f) of the Budget Act and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN] and the Senator from Arizona [Mr. GOLDWATER] are necessarily absent.

Mr. BYRD. I announce that the Senator from California [Mr. CRANSTON] and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—45 yeas, 51 nays, as follows:

[Rollcall Vote No. 318 Leg.]

YEAS—45

Abdnor
Andrews
Baucus
Boren
Broyhill
Bumpers
Burdick
DeConcini
Denton
Dixon
Durenberger
Eagleton
Exon
Ford
Gore
Grassley
Harkin
Hart
Heflin
Hollings
Inouye
Johnston
Leahy
Levin
Long
Mattingly
McClure
McConnell
Melcher
Murkowski
Nickles
Nunn
Pressler
Pryor
Riegle
Sarbanes
Sasser
Simon
Specter
Stevens
Symms
Thurmond
Trible
Warner
Zorinsky

NAYS—51

Armstrong
Bentsen
Biden
Bingaman
Boschwitz
Bradley
Byrd
Chafee
Chiles
Cochran
Cohen
D'Amato
Danforth
Dodd
Dole
Domenici
Evans
Glenn
Gorton
Gramm
Hatch
Hatfield
Hawkins
Hecht
Heinz
Helms
Humphrey
Kassebaum
Kasten
Kennedy

Kerry
Lautenberg
Laxalt
Lugar
Mathias
Matsunaga
Metzenbaum
Mitchell
Moynihan
Packwood
Pell
Proxmire
Quayle
Rockefeller
Roth
Rudman
Simpson
Stafford
Wallop
Weicker
Wilson

NOT VOTING—4

Cranston
Garn
Goldwater
Stennis

The **PRESIDING OFFICER**. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the waiver motion is not agreed to.

The Chair states that the amendment increases budget authority by $102 million, and because the allocation of budget authority for the Agriculture Subcommittee, under section 302(b), would be exceeded, the point of order is sustained. The amendment falls.

Mr. **HATFIELD**. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. **GRAMM**. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. **HATFIELD**. Mr. President, the Senator from Florida [Mrs. HAWKINS] has an amendment relating to child nutrition. She has agreed to a time limit on that amendment of 10 minutes, equally divided.

Therefore, I at this time propound a unanimous-consent request that there be 10 minutes on the amendment by Mrs. HAWKINS, 5 minutes on a side, with no secondary amendments in order.

The **PRESIDING OFFICER**. Is the objection? The Chair hears none, and it is so ordered.

AMENDMENT NO. 3142

(Purpose: To extend and improve the National School Lunch Act and the Child Nutrition Act of 1966)

Mrs. **HAWKINS**. Mr. President, I send an amendment to the desk.

The **PRESIDING OFFICER**. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Florida [Mrs. HAWKINS] for herself and others, proposes an amendment numbered 3142.

Mrs. **HAWKINS**. Mr. President, I ask unanimous consent that reading of the amendmnt be dispensed with.

The **PRESIDING OFFICER**. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution, add the following new title:

TITLE *—SCHOOL LUNCH AND CHILD NUTRITION AMENDMENTS

SEC. *01. SHORT TITLE: TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "School Lunch and Child Nutrition Amendments of 1986".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TABLE OF CONTENTS

Sec. *01. Short title; table of contents.

Subtitle A—Reauthorization of Child Nutrition Programs

Sec. *11. Summer food service program for children.
Sec. *12. Commodity distribution program.
Sec. *13. State administrative expenses.
Sec. *14. Special supplemental food program for women, infants, and children.
Sec. *15. Nutrition education and training program.

Subtitle B—School Lunch and Breakfast Programs

Sec. *21. Basis of commodity assistance.
Sec. *22. Inclusion of whole milk as a school lunch beverage.
Sec. *23. Automatic eligibility for certain programs.
Sec. *24. Limitation on meal contracting.
Sec. *25. Change in tuition limitation for private schools.
Sec. *26. Use of school lunch facilities for elderly programs.
Sec. *27. Pilot projects for administration of child nutrition programs by contract or direct disbursement.
Sec. *28. Department of Defense overseas dependents' schools.
Sec. *29. Restoration of certain kindergartens to the special milk program.
Sec. *30. Improvement of school breakfast program meal pattern.
Sec. *31. Extension of offer versus serve provision to the school breakfast program.
Sec. *32. Staffing standards.

Subtitle C—Special Supplemental Food Program for Women, Infants, and Children

Sec. *41. Costs for nutrition services and administration.
Sec. *42. State eligibility for WIC funds.
Sec. *43. Participation report.
Sec. *44. Plan of operation and administration.
Sec. *45. Public comment.
Sec. *46. Availability of program benefits.
Sec. *47. Repayment of certain benefits by recipients.
Sec. *48. Priority funds for WIC migrant programs.
Sec. *49. Improving State agency administrative systems.
Sec. *50. Paperwork reduction.
Sec. *51. Allocation standards.
Sec. *52. Advance payments.
Sec. *53. Availability of funds.

Subtitle D—Other Nutrition Programs

Sec. *61. Hearings on Federal audit actions under the child care food program.
Sec. *62. Basis for nutrition education grants.
Sec. *63. Extension of alternative means of assistance.
Sec. *64. National donated commodity processing programs.

Subtitle E—Technical Corrections

Sec. *71. Obsolete provisions.
Sec. *72. Obsolete references to Health, Education, and Welfare.
Sec. *73. Conforming amendments.

Subtitle F—Sale of Agricultural Notes and Other Obligations

Sec. *81. Sale of agricultural notes and other obligations.

Subtitle A—Reauthorization of Child Nutrition Programs

SEC. *11. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

Section 13(p) of the National School Lunch Act (42 U.S.C. 1761(p)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. *12. COMMODITY DISTRIBUTION PROGRAM.

Section 14(a) of the National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. *13. STATE ADMINISTRATIVE EXPENSES.

Section 7(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(i)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. *14. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(1) in subsection (c)(2), by striking out "Subject to" and all that follows through "1984" and inserting in lieu thereof "Subject to amounts appropriated to carry out this section under subsection (g)";

(2) in subsection (g)—

(A) by designating the first and second sentences as paragraphs (1) and (3), respectively; and

(B) by amending paragraph (1) (as so designated) to read as follows:

"(1) There are authorized to be appropriated to carry out this section $1,570,000,000 for the fiscal year ending September 30, 1986, such sums as may be necessary for each of the fiscal years ending September 30, 1987, and September 30, 1988, and $1,782,000,000 for the fiscal year ending September 30, 1989."; and

(3) in subsection (h)(2), by striking out "1984" and inserting in lieu thereof "1989".

SEC. *15. NUTRITION EDUCATION AND TRAINING PROGRAM.

The first sentence of section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "1984" and inserting in lieu thereof "1989".

Subtitle B—School Lunch and Breakfast Programs

SEC. *21. BASIS OF COMMODITY ASSISTANCE.

Section 6(b) of the National School Lunch Act (42 U.S.C. 1755(b)) is amended—

(1) in the first sentence, by striking out "May 15" and inserting in lieu thereof "June 1"; and

(2) in the second sentence, by striking out "June 15" and inserting in lieu thereof "July 1".

SEC. *22. INCLUSION OF WHOLE MILK AS A SCHOOL LUNCH BEVERAGE.

Effective July 1, 1986, section 9(a) of the National School Lunch Act (42 U.S.C. 1758(a)) is amended—

(1) by designating the first, second, and third sentences as paragraphs (1), (3), and (4), respectively; and

(2) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) In addition to such other forms of milk as the Secretary may determine, the lunches shall offer whole milk as a beverage.".

SEC. *23. AUTOMATIC ELIGIBILITY FOR CERTAIN PROGRAMS.

Effective July 1, 1986, section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)) is amended by adding at the end thereof the following new paragraph:

"(6)(A) A child shall be considered automatically eligible for a free lunch and breakfast under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively, without further application or eligibility determination, if the child is a member of—

"(i) a household receiving assistance under the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

"(ii) an AFDC assistance unit (under the aid to families with dependent children program authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)), in a State where the standard of eligibility for the assistance does not exceed 130 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))).

"(B) Proof of receipt of food stamps or aid to families with dependent children shall be sufficient to satisfy any verification requirement imposed under paragraph (2)(C).".

SEC. *24. LIMITATION ON MEAL CONTRACTING.

Effective July 1, 1986, section 9 of the National School Lunch Act (42 U.S.C. 1758) is amended by adding at the end thereof the following new subsection:

"(e) A school or school food authority participating in a program under this Act may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced-price, and full-price reimbursable meals to all eligible children.".

SEC. *25. CHANGE IN TUITION LIMITATION FOR PRIVATE SCHOOLS.

(a) SCHOOL LUNCH PROGRAMS.—Section 12(d)(5) of the National School Lunch Act (42 U.S.C. 1760(d)(5)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1,500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(b) SCHOOL BREAKFAST PROGRAMS.—Section 15(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1784(c)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1,500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(c) APPLICATION.—(1) The amendments made by subsections (a)(1) and (b)(1) shall apply for the calendar year beginning on January 1, 1987, and each calendar year thereafter.

(2) The amendments made by subsections (a)(2) and (b)(2) shall apply for the school year beginning on July 1, 1988, and each school year thereafter.

SEC. *26. USE OF SCHOOL LUNCH FACILITIES FOR ELDERLY PROGRAMS.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end thereof the following new subsection:

"(i) Facilities, equipment, and personnel provided to a school food authority for a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) may be used, as determined by a local educational agency, to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).".

SEC. *27. PILOT PROJECTS FOR ADMINISTRATION OF CHILD NUTRITION PROGRAMS BY CONTRACT OR DIRECT DISBURSEMENT.

(a) PILOT PROJECTS.—Section 20 of the National School Lunch Act (42 U.S.C. 1769) is amended by striking out subsection (d) and inserting in lieu thereof the following new subsection:

"(d) The Secretary may conduct pilot projects in not more than three States in which the Secretary is currently administering programs to evaluate the effects of the Secretary contracting with private profit and nonprofit organizations to act as a State agency under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) for schools, institutions, or service institutions referred to in section 10 of this Act and section 5 of the Child Nutrition Act of 1966 (42 U.S.C. 1774).".

(b) CONFORMING AMENDMENT.—The first sentence of section 20(c) of the National School Lunch Act is amended by striking out "except for the pilot projects conducted under subsection (d) of this section,".

SEC. *28. DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS.

(a) SCHOOL LUNCHES.—Section 22(d) of the National School Lunch Act (42 U.S.C. 1769b(d)) (as added by section 1408(a) of the Education Amendments of 1978 (92 Stat. 2368)) is amended by striking out "and for" and all that follows through "reduced-price lunch".

(b) SCHOOL BREAKFASTS.—Section 20(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1789) is amended by striking out "and for" and all that follows through "reduced-price breakfast".

SEC. *29. RESTORATION OF CERTAIN KINDERGARTENS TO THE SPECIAL MILK PROGRAM.

Effective January 1, 1987, section 3(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)) is amended—

(1) in the first sentence—

(A) by inserting "(1)" after the subsection designation;

(B) by redesignating clauses (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) in subparagraph (A) (as so redesignated), by inserting "except as provided in paragraph (2)," after "and under,";

(2) by designating the second through eighth sentences as paragraphs (3) through (9), respectively; and

(3) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under this Act or the National School Lunch Act (42 U.S.C. 1751 et seq.).".

SEC. *30. IMPROVEMENT OF SCHOOL BREAKFAST PROGRAM MEAL PATTERN.

(a) ADDITIONAL ASSISTANCE.—Effective July 1, 1987, section 4(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)) is amended by adding at the end thereof the following new paragraphs:

"(3) The Secretary shall increase by 3 cents the annually adjusted payment for each breakfast served under this Act and section 17 of the National School Lunch Act (42 U.S.C. 1766). These funds shall be used to assist States, to the extent feasible, in improving the nutritional quality of the breakfasts.

"(4) Notwithstanding any other provision of law, whenever stocks of agricultural commodities are acquired by the Secretary or the Commodity Credit Corporation and are not likely to be sold by the Secretary or the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, the Secretary shall make such commodities available to school food authorities and eligible institutions serving breakfasts under this Act in a quantity equal in value to not less than 3 cents for each breakfast served under this Act and section 17 of the National School Lunch Act.

"(5) Expenditures of funds from State and local sources for the maintenance of the school breakfast program shall not be diminished as a result of funds or commodities received under paragraph (3) or (4).".

(b) NUTRITION REQUIREMENTS.—(1) The Secretary of Agriculture shall review and revise the nutrition requirements for meals served under the school breakfast program authorized under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) to improve the nutritional quality of the meals, taking into consideration both the findings of the National Evaluation of School Nutrition Programs and the need to provide increased flexibility in meal planning to local school food authorities.

(2) Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall promulgate regulations to implement the revisions.

SEC. *31. EXTENSION OF OFFER VERSUS SERVE PROVISION TO THE SCHOOL BREAKFAST PROGRAM.

Section 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this Act may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume. A refusal of an offered food item shall not affect the full charge to the student for a breakfast meeting the requirements of this section or the amount of payments made under this Act to a school for the breakfast.".

SEC. *32. STAFFING STANDARDS.

Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) (as amended by section *13) is further amended—

(1) by striking out subsection (b); and

(2) by redesignating subsections (c) through (i) as subsections (b) through (h), respectively.

Subtitle C—Special Supplemental Food Program for Women, Infants, and Children

SEC. *41. COSTS FOR NUTRITION SERVICES AND ADMINISTRATION.

(a) DEFINITIONS.—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended—

(1) by striking out paragraph (1);

(2) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively; and

(3) by inserting after paragraph (3) (as so redesignated) the following new paragraph:

"(4) 'Costs for nutrition services and administration' means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.".

(b) CONFORMING AMENDMENTS.—Section 17 of such Act is amended—

(1) by striking out "administrative funds" each place it appears in subsections (f)(11), (h)(2), (h)(3), and (h)(4) and inserting in lieu thereof "funds for nutrition services and administration"; and

(2) by striking out "administrative costs" each place it appears in subsection (h) and inserting in lieu thereof "costs for nutrition services and administration".

SEC. *42. STATE ELIGIBILITY FOR WIC FUNDS.

(a) ELIGIBILITY.—Section 17(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(c)) is amended by adding at the end thereof the following new paragraph:

"(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a State beginning with the fiscal year that commences after the end of the first regular session of the State legislature following the date of the enactment of this Act.

SEC. *43. PARTICIPATION REPORT.

(a) BIENNIAL REPORT.—Section 17(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)) is amended by adding at the end thereof the following new paragraph:

"(4) The Secretary shall report biennially to Congress on—

"(A) the income and nutritional risk characteristics of participants in the program;

"(B) participation in the program by members of families of migrant farmworkers; and

"(C) such other matters relating to participation in the program as the Secretary considers appropriate.".

(b) USE OF EVALUATION FUNDS FOR REPORT.—Section 17(g)(3) of such Act (as amended by section *14(2)(A)) is further amended by inserting "preparing the report required under subsection (d)(4)," after "health benefits,".

SEC. *44. PLAN OF OPERATION AND ADMINISTRATION.

(a) PLAN.—Paragraph (1) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)) is amended to read as follows:

"(1)(A) Each State agency shall submit annually to the Secretary, by a date specified by the Secretary, a plan of operation and administration for a fiscal year.

"(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

"(C) The plan shall include—

"(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program, to be administered in accordance with standards developed by the Secretary;

"(ii) a description of the financial management system of the State agency;

"(iii) a plan to coordinate operations under the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, prenatal care, well-child care, family planning, alcohol and drug abuse counseling, child abuse counseling, and with the aid to families with dependent children, food stamp, and maternal and child health care programs;

"(iv) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants and Indians;

"(v) a plan to expend funds to carry out the program during the relevant fiscal year;

"(vi) a plan to provide program benefits under this section to unserved and underserved areas in the State, if sufficient funds are available to carry out this clause;

"(vii) a plan to provide program benefits under this section to eligible persons most in need of the benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable; and

"(viii) such other information as the Secretary may require.

"(D) The Secretary may permit a State agency to submit only those parts of a plan that differ from plans submitted for previous fiscal years.

"(E) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a plan submitted by a State agency under section 17(f)(1) of the Child Nutrition Act of 1966 for the fiscal year ending September 30, 1987, and each fiscal year thereafter.

SEC. *45. PUBLIC COMMENT.

Paragraph (2) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(2)) is amended to read as follows:

"(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.".

SEC. *46. AVAILABILITY OF PROGRAM BENEFITS.

Paragraph (8) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(8)) is amended to read as follows:

"(8)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible persons (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas).

"(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

"(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible persons who are most in need of the benefits, including pregnant women in the early months of pregnancy.".

SEC. *47. REPAYMENT OF CERTAIN BENEFITS BY RECIPIENTS.

Effective October 1, 1986, section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) is amended by adding at the end thereof the following new paragraph:

"(15) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.".

SEC. *48. PRIORITY FUNDS FOR WIC MIGRANT PROGRAMS.

(a) PRIORITY FUNDING.—Effective October 1, 1986, section 17(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)) (as amended by section *14(2)(A)) is further amended by inserting after paragraph (1) the following new paragraph:

"(2) Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.".

(b) ACCOUNTABILITY.—To the extent possible, accountability for migrant services under section 17(g)(2) of the Child Nutrition Act of 1966 (as added by subsection (a)) shall be conducted under regulations in effect on the date of the enactment of this Act.

SEC. *49. IMPROVING STATE AGENCY ADMINISTRATIVE SYSTEMS.

Section 17(g)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(3)) (as amended by sections *14(2)(A) and *43(b)) is further amended by inserting "providing technical assistance to improve State agency administrative systems," after "subsection (d)(4),".

SEC. *50. PAPERWORK REDUCTION.

Section 17(h)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(1)) is amended by adding at the end thereof the following new sentence: "The Secretary shall limit to a minimal level any documentation required under the preceding sentence.".

SEC. *51. ALLOCATION STANDARDS.

Section 17(h)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(3)) is amended—

(1) in the second sentence, by striking out ", which satisfy allocation guidelines established by the Secretary"; and

(2) by striking out the last sentence.

SEC. *52. ADVANCE PAYMENTS.

Effective October 1, 1986, section 17(h)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(4)) is amended by striking out "shall" and inserting in lieu thereof "may".

SEC. *53. AVAILABILITY OF FUNDS.

(a) Availability.—Section 17(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)) is amended—

(1) by designating the first, second, third, fourth, and fifth sentences as paragraphs (1), (2), (4), (5), and (6), respectively; and

(2) by inserting after paragraph (2) (as so designated) the following new paragraph:

"(3)(A) Notwithstanding paragraph (2)—

"(i) not more than 1 percent of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year; or

"(ii) not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year.

"(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.".

(b) Application.—Section 17(i)(3)(A)(i) of the Child Nutrition Act of 1966 (as amended by subsection (a)) shall not apply to appropriations made before the date of enactment of this Act.

Subtitle D—Other Nutrition Programs

SEC. *61. HEARINGS ON FEDERAL AUDIT ACTIONS UNDER THE CHILD CARE FOOD PROGRAM.

Section 17(e) of the National School Lunch Act (42 U.S.C. 1766(e)) is amended—

(1) by striking out "The" and inserting in lieu thereof "(1) Except as provided in paragraph (2), the"; and

(2) by adding at the end thereof the following new paragraphs:

"(2) A State is not required to provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination.

"(3) If a State does not provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination, the Secretary, on request, shall afford a hearing to the institution concerning the action.".

SEC. *62. BASIS FOR NUTRITION EDUCATION GRANTS.

Section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "$75,000" each place it appears and inserting in lieu thereof "$50,000".

SEC. *63. EXTENSION OF ALTERNATIVE MEANS OF ASSISTANCE.

Section 14 of the National School Lunch Act (42 U.S.C. 1762a) is amended by adding at the end thereof the following new subsection:

"(g)(1) As used in this subsection, the term 'eligible school district' has the same meaning given such term in section 1581(a) of the Food Security Act of 1985.

"(2) In accordance with the terms and conditions of section 1581 of such Act, the Secretary shall permit an eligible school district to continue to receive assistance in the form of cash or commodity letters of credit assistance, in lieu of commodities, to carry out the school lunch program operated in the district.

"(3)(A) On request of a participating school district (and after consultation with the Comptroller General of the United States with respect to accounting procedures used to determine any losses) and subject to the availability of funds, the Secretary shall provide cash compensation to an eligible school district for losses sustained by the district as a result of the alteration of the methodology used to conduct the study referred to in section 1581(a) of such Act during the school year ending June 30, 1983.

"(B) There are authorized to be appropriated $50,000 to carry out this paragraph, to be available without fiscal year limitation.".

SEC. *64. NATIONAL DONATED COMMODITY PROCESSING PROGRAMS.

In accordance with the terms and conditions of section 1114(a)(2) of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e(a)(2)), whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary of Agriculture, the Secretary shall encourage consumption of the commodity through agreements with private companies under which the commodity is reprocessed into end-food products for use by eligible recipient agencies.

Subtitle E—Technical Corrections

SEC. *71. OBSOLETE PROVISIONS.

(a) Nutrition Program Staff Study; Trust Territory Appropriations.—(1) Sections 18 and 19 of the National School Lunch Act (42 U.S.C. 1767 and 1768) are repealed.

(2) The first sentence of section 3 of such Act (42 U.S.C. 1752) is amended by striking out "sections 13, 17, and 19" and inserting in lieu thereof "sections 13 and 17".

(b) Study of Menu Choice.—Section 22 of such Act (42 U.S.C. 1769c) (as added by section 9 of the Child Nutrition Amendments of 1978 (92 Stat. 3623)) is repealed.

(c) Conforming Amendments.—(1) The National School Lunch Act (as amended by sections *27 and *28(a) and subsection (b)) is further amended by redesignating sections 20, 21, and 22 (42 U.S.C. 1769, 1769a, and 1769b) as sections 18, 19, and 20, respectively.

(2) Clause (3) of the first sentence of section 6(a) of such Act (42 U.S.C. 1755(a)) is amended by striking out "section 20" and inserting in lieu thereof "section 18".

SEC. *72. OBSOLETE REFERENCES TO HEALTH, EDUCATION, AND WELFARE.

(a) References in National School Lunch Act.—Clause (1) of the sixth sentence of section 17(a) of the National School Lunch Act (42 U.S.C. 1766(a)) is amended by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services".

(b) References in Child Nutrition Act of 1966.—(1) The Child Nutrition Act of 1966 is amended by striking out "Health, Education, and Welfare" each place it appears in section 4(a) (42 U.S.C. 1773(a)), subsections (b)(6), (b)(13), (e)(2), (k)(1), and (k)(2) of section 17 (42 U.S.C. 1786), and subsections (d)(2) and (d)(3) of section 19 (42 U.S.C. 1788) and inserting in lieu thereof "Health and Human Services".

(2) Section 19(j)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(3)) is amended by striking out "Office of Education of the Department of Health, Education, and Welfare" and inserting in lieu thereof "Department of Education".

SEC. *73. CONFORMING AMENDMENTS.

(a) Definition of Secretary.—Section 12(d) of the National School Lunch Act (42 U.S.C. 1760(d)) is amended by adding at the end thereof the following new paragraph:

"(8) 'Secretary' means the Secretary of Agriculture.".

(b) Redesignation of Subsection.—Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) (as amended by sections *15, *62, and *72(b)(2)) is further amended by redesignating subsection (j) as subsection (i).

Subtitle F—Sale of Agricultural Notes and Other Obligations

SEC. *81. SALE OF AGRICULTURAL NOTES AND OTHER OBLIGATIONS.

(a) In General.—The Secretary of Agriculture shall, under such terms as the Secretary may prescribe, sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a) in such amounts as to realize net proceeds of not less than—

(1) $25,000,000 from such sales during fiscal year 1987;

(2) $36,000,000 from such sales during fiscal year 1988; and

(3) $37,000,000 from such sales during fiscal year 1989.

(b) Collection and Sale of Notes.—The second sentence of section 309A(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a(e)) is amended—

(1) by inserting "and other obligations" after "Notes"; and

(2) by striking out the period at the end thereof and inserting the following: ", including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes and other obligations sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed had the borrower remained indebted to the Secretary.".

(c) Farm Credit System Institutions.—Notwithstanding any other provision of law, institutions of the Farm Credit System operating under the Farm Credit Act of 1971 (12 U.S.C. 2001) shall be eligible to purchase notes and other obligations held in the Rural Development Insurance Fund and to service (including the extension of additional credit and all other actions necessary to preserve, conserve, or protect the institutions' interests in such notes and other obligations), collect, and dispose of such notes and other obligations, subject only to such terms and conditions as may be agreed to by the Secretary of Agriculture and such purchasing institutions and as are approved by the Farm Credit Administration.

The PRESIDING OFFICER. The Senate is not in order. Those wishing to converse will leave the Chamber.

Mrs. HAWKINS. Mr. President, this amendment is submitted on behalf of myself and Senators Dole, Leahy, Melcher, Andrews, Boschwitz, Harkin, Abdnor, Simon, Danforth, Bradley, and Kerry.

□ 1140

Mr. President, the amendment at the desk reauthorizes the major Federal child nutrition programs. These programs are the School Lunch and Breakfast Programs, the Summer Food Service Program, the Special Supplemental Food Program for Women, Infants, and Children, known as the WIC Program, and the Commodity Distribution Program.

This amendment reflects an agreement reached in the House-Senate conference on child nutrition programs that met earlier this year. Essentially, it is a cost-neutral amendment. However, the amendment does allow for program growth of 1 percent over current services. The amendment is consistent with the authorization levels in the fiscal year 1987 budget resolution for these programs. Furthermore, the Senate Agriculure Committee has met and reported out a measure that meets its reconciliation instructions under the budget resolution. Those reconciliation instructions do not include any reductions in these programs.

In sum, all of the budgetary requirements for passage of this legislation to extend the child nutrition programs have been met.

Mr. President, some Senators may wonder why we are offering this amendment on child nutrition to the continuing resolution.

We are offering this amendment at this time to ensure that the child nutrition programs are acted on and sent to the President before the end of this Congress.

The Senate has acted on this legislation twice before during this Congress. The first time was to send a cost-neutral amendment to the House and facilitate a conference on H.R. 7. That amendment passed the Senate. A House-Senate conference ensued and the resulting conference report was offered as an amendment to the Department of Defense authorization bill. Because it is unclear to this Senator as to whether the conference will be completed on the Department of Defense authorization bill, I feel it is important to include this amendment in the continuing resolution to ensure that the President will have the opportunity to sign this child nutrition amendment into law.

The first major component of this legislation is authorization of the Summer Food Service Program, the Commodity Distribution Program, the provision of State administrative expenses, and the Nutrition Education and Training Program. In addition, the amendment provides for an increase in School Breakfast Program, the change in the tuition limitation for private schools, and provision of the Special Milk Program for children who do not have access to the breakfast or lunch programs.

The other major component of this amendment is the WIC Program. Under this program, the people who are helped by the program are those most in need of good nutrition. These are pregnant women and new born infants. Now this is not a traditional welfare program. In fact, this is a tightly structured program based on a two-tiered standard of need. The first standard is income. To receive help under this program, a person must have income below 185 percent of the poverty line. The second standard is nutritional deficiency. Before the assistance can be provided, the pregnant woman or new baby must also be found by a medical doctor to be nutritionally deficient.

When both these standards have been met, then the mother receives a voucher for exactly the foods that will supply the necessary nutritional supplement. Finally, since the WIC Program is not considered an entitlement program, it is subject to appropriations. This has led to the development of a priority list that ensures that those most in need of nutritional assistance receive help first.

So the WIC Program is a tight program. It is not an income support program with lots of loopholes. It is, however, a vitally important program that should be extended along with the school lunch and breakfast programs.

Mr. President, let me briefly summarize.

This amendment falls within the budget. Its spending levels are specifically identified in the fiscal year 1987 budget resolution.

These are popular and well-known programs and have broad support. The last major vote on these programs took place during the debate on the fiscal year 1986 budget resolution. An overwhelming majority of Senators supported the program at that time.

The provisions of the amendment reflect a conference agreement reached between the House and Senate in May and a large majority of members of the Senate Agriculture Committee are cosponsors of the amendment.

We have been working for months to bring this legislation to the floor. Scheduling problems, work in the Agriculture Committee and in other committees, as well as the many important subjects such as aid to the Contras, South Africa, the tax bill, the farm bill technical corrections, have come before the Senate or are being discussed.

But now time is running out. This amendment needs to be acted on before the clock runs out on us. Since it meets the budgetary requirements and the programs themselves are relatively noncontroversial it is my hope that we can go ahead with this amendment.

It has gotten to be a drill. I hope all Senators remember how they voted on this each and every time.

It meets in my opinion several of the categories outlined by the distinguished chairman of the Appropriations Committee earlier this evening.

The way it is now drafted, No. 1, it is parochial. All of you can clutch it to your heart and run home and say how wonderful it was to get this passed. No. 2, it is budget neutral as per the Budget Committee. And, No. 3, it is not controversial. It has passed the Senate twice. First, last year it was adopted and sent to the House of Representatives. The conference report has been signed. It was unanimously adopted by the Senate. It is tied up right now with the DOD amendment over in the House side.

We have been negotiating throughout the last several days to bring this in line with the budget. In good faith to accomplish that goal, we merely moved the effective dates to July 1, 1987, and in addition, we provided an offset to a sale of a small amount of notes and other obligations held in the rural development insurance fund.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I yield the time to anyone who would like to be heard. Otherwise, I am ready to yield back my time if the Senator from Florida has finished her time and wishes to yield back her time.

Mrs. HAWKINS. Mr. President, I ask unanimous consent that Senator DeConcini and Senator Wilson be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mrs. HAWKINS. Mr. President, I ask for the yeas and nays.

Mr. HATFIELD. Mr. President, I am ready to yield back time on this side. Has all time been yielded back?

The PRESIDING OFFICER. All time has not been yielded back. There is a request for the yeas and nays.

Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HATFIELD. Mr. President, I am ready to make a point of order, but I believe I cannot make that until time is yielded back.

The PRESIDING OFFICER. The Senator is correct.

Mrs. HAWKINS. Mr. President, I yield all time back on this side.

Mr. HATFIELD. Now is all time yielded back?

The PRESIDING OFFICER. All time is yielded back.

Mr. HATFIELD. Now, Mr. President, I raise a point of order that this amendment under rule XVI is not germane to the bill that is pending before the Senate and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Is the amendment germane? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], and the Senator from Utah [Mr. STAFFORD] are necessarily absent.

Mr. BYRD. I announce that the Senator from California [Mr. CRANSTON] and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

The PRESIDING OFFICER (Mr. STEVENS) are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 78, nays 17, as follows:

[Rollcall Vote No. 319 Leg.]

YEAS—78

Abdnor
Andrews
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Broyhill
Bumpers
Burdick
Byrd
Chafee
Chiles
Cohen
D'Amato
Danforth
DeConcini
Denton
Dodd
Dole
Domenici
Durenberger
Eagleton
Evans
Ford
Glenn
Gore
Gorton
Grassley
Harkin
Hart
Hatch
Hawkins
Heinz
Hollings
Humphrey
Inouye
Johnston
Kasten
Kennedy
Kerry
Lautenberg
Leahy
Levin
Matsunaga
Mattingly
McConnell
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pell
Pressler
Proxmire
Pryor
Riegle
Rockefeller
Roth
Sarbanes
Sasser
Simon
Simpson
Specter
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Zorinsky

NAYS—17

Armstrong
Cochran
Dixon
Exon
Gramm
Hatfield
Hecht
Heflin
Helms
Kassebaum
Laxalt
Long
Lugar
Mathias
McClure
Quayle
Rudman

NOT VOTING—5

Cranston
Garn
Goldwater
Stafford
Stennis

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The PRESIDING OFFICER. The amendment is germane.

Mr. HATFIELD. Mr. President, I ask unanimous consent that the yeas and nays that were asked for and granted for the final passage on this be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HATFIELD. Mr. President, we will accept this amendment and take it to conference.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3142) was agreed to.

AMENDMENT NO. 3143

(Purpose: To establish a James Madison Fellowship Program)

Mr. JOHNSTON. Mr. President, on behalf of Mr. KENNEDY, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report

The legislative clerk read as follows:

The Senator from Louisiana (Mr. JOHNSTON) for Mr. KENNEDY (for himself and others) proposes an amendment numbered 3143.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the end of the resolution, add the following:

SHORT TITLE

SEC. . This title may be cited as the "James Madison Memorial Fellowship Act".

PURPOSE

SEC. . It is the purpose of this title to establish the James Madison Fellowship Program which is designed to encourage graduate study of the American Constitution, its roots, its formation, its principles, and its development.

FOUNDATION

SEC. . (a) In order to commemorate the bicentennial of the Constitution, there is established, as an independent establishment of the executive branch, the James Madison Memorial Fellowship Foundation.

(b)(1) The Foundation shall be subject to the supervision and direction of a Board of Trustees. The Board shall be composed of thirteen members, as follows:

(A) Two Members of the Senate, of different political parties, shall be appointed by the President upon the recommendation of the President pro tempore of the Senate, in consultation with the Majority Leader and Minority Leader of the Senate.

(B) Two Members of the House of Representatives, of different political parties, shall be appointed by the President upon the recommendation of the Speaker of the House, in consultation with the Minority Leader of the House of Representatives.

(C) Two members of the Federal judiciary shall be appointed by the President upon the recommendation of the Chief Justice of the United States.

(D) Six members, not more than three of whom shall be of the same political party, shall be appointed by the President with the advice and consent of the Senate, of whom one shall be a chief executive officer of a State, two shall be members of the general public, and three shall be members of the academic community, appointed upon the recommendation of the Librarian of Congress.

(E) The Secretary of Education or his designate shall serve ex officio as a member of the Board, but shall not be eligible to serve as Chairman.

(2) The term of office of each member of the Board shall be six years; except that (A) the members first taking office shall serve as designated by the President, four for terms of two years, five for terms of four years, and four for terms of six years, and (B) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed, and shall be appointed in the same manner as the original appointment for that vacancy was made. This provision shall not apply to members ex officio.

(c) Members of the Board shall elect from the members of the Board a Chairman and such other officers as may be necessary to carry out the duties of the Foundation.

(d) Members of the Board shall serve without pay, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties.

FELLOWSHIP RECIPIENTS

SEC. . (a) The Foundation is authorized to award fellowships to outstanding students and teachers who will pursue graduate study leading to the degree of Master of Arts in teaching or other appropriate masters degree for teachers, with a major in social studies or American history. Each recipient must take at least twelve semester hours, or its equivalent, in topics directly related to the Constitution of the United States, as determined by the Board.

(b)(1) James Madison fellowships shall be awarded to individuals who are, or who desire to become, social studies and American history teachers in accordance with paragraphs (2) and (3).

(2) Junior fellowships shall be awarded to graduate students who are about to complete or have recently completed their undergraduate course of study, and plan to begin graduate work on a relatively full-time basis.

(3) Senior fellowships shall be awarded to experienced teachers who wish to undertake work for a graduate degree on a part-time basis during summers or in evening programs.

PERIOD FOR AWARD

SEC. . Junior fellowships shall be granted for such periods as the Foundation may prescribe but not to exceed two academic years. Senior fellowships shall be granted for such periods as the Foundation may prescribe, but not to exceed five calendar years.

RECIPIENT'S CHOICE OF INSTITUTION

SEC. . Fellowship recipients may attend any institution of higher education in the United States with an accredited graduate program which offers courses of study or training which emphasize the origins of the Constitution of the United States, its principles, its development, and its comparison with other forms of government, as determined according to criteria established by the Foundation.

RECIPIENT'S ELIGIBILITY

SEC. . Each student awarded a fellowship under this title shall demonstrate the potential, and a serious intention, to follow a career of educating students in secondary schools. Each institution of higher education at which such a student is in attendance shall make reasonable efforts to encourage such a student to meet the objectives of this section.

SELECTION OF FELLOWSHIP RECIPIENTS

SEC. . (a) Madison scholars shall be selected for their academic achievements and their potential to become secondary school teachers of social studies and American history.

(b)(1) The Foundation is authorized, either directly or by contract, to provide for the conduct of a nationwide competition for the selection of fellowship recipients. Each applicant must have a demonstrated interest in pursuing a course of study which emphasizes the Constitution, its principles, and its history, and have a demonstrated record of willingness to devote themselves to civic responsibility.

(2) Each application shall be accompanied by an essay explaining the importance of the study of the Constitution both to the applicant's career aspirations and contributions to public service, and to citizenship generally in a constitutional regime.

(3)(A) Each application shall include a description of a program of study for the graduate program, designating the courses to be taken, and the proposed Master's Thesis, where appropriate.

(B) For the purpose of this paragraph, the Board of Trustees of the Foundation shall establish general criteria for programs in constitutional studies.

(c) The Foundation shall adopt selection procedures which shall assure that at least one Madison Fellow shall be selected each year from each State, the District of Columbia, and the Commonwealth of Puerto Rico (including Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, considered as a single entity) in which there are at least two resident applicants who meet the minimum criteria established by the Foundation; and, if sufficient funding is available, to invite applications from scholars overseas for study in the United States.

AMOUNT OF FELLOWSHIPS

SEC. . Each student awarded a fellowship shall receive a stipend which shall not exceed the cost to the student for tuition, fees, books, room and board, or $12,000, whichever is less, for each academic year of study.

FELLOWSHIP CONDITIONS

SEC. . (a) A student awarded a Madison Fellowship shall continue to receive payments only during such periods as the Foundation finds that the student is maintaining satisfactory progress in an approved program of study or research. Recipients of junior fellowships shall devote essentially full time to their program of study.

(b) The foundation is authorized to require reports from any fellowship recipient containing such information, in such form, and to be filed at such times as the Foundation determines to be necessary. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, approved by the Foundation, stating that such student is making satisfactory progress in a program of study or research, with such exceptions as the Foundation may establish.

JAMES MADISON MEMORIAL FELLOWSHIP TRUST FUND

Sec. . (a) There shall be established in the Treasury of the United States a trust fund consisting of appropriations and amounts contributed by the Foundation for the commemoration of the constitution and other private sources to be available, in accordance with the provisions of this title, to carry out the provisions of this title.

(2) No fellowships may be awarded under this part unless the Federal share of the amount available in the Trust Fund is at least equal to 66⅔ per centum of the amount in the Trust Fund.

(3) No funds in the Trust Fund may be available for fellowship until the contributions from private sources are equal to $10,000,000.

(b) It shall be the duty of the Secretary of the Treasury to invest in full the amounts appropriated and contributed to the fund. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Such special obligations shall be issued only if the Secretary determines that the purchase of other obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States or original issue at the market price, is not in the public interest.

(c) Any obligations acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from, the sale or redemption of any obligations held in the fund shall be credited to and form a part of the fund.

EXPENDITURES AND AUDIT

SEC. . (a) The Secretary of the Treasury is authorized to pay to the Foundation from the interest and earnings of the fund such sums as the Board determines are necessary and appropriate to enable the Foundation to carry out the provisions of this title.

(b) The activities of the Foundation under this title may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, and files and all other papers, things, or property belonging to or in use by the Foundation, pertaining to such activities and necessary to facilitate the audit.

EXECUTIVE SECRETARY OF FOUNDATION

SEC. . (a) There shall be an Executive Secretary of the Foundation who shall be appointed by the Board. The Executive Secretary shall be the chief executive officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and direction of the Board.

(b) The Executive Secretary of the Foundation shall be compensated at the rate specified for employees placed in grade GS-18 of the General Schedule set forth in section 5332 of title 5.

ADMINISTRATIVE PROVISIONS

SEC. . (a) The Foundation is authorized—

(1) to appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter, except that in no case shall employees other than the Executive Secretary be compensated at a rate to exceed the rate provided for employees in grade GS-15 of the General Schedule set forth in section 5332 of title 5;

(2) to procure temporary and intermittent services of such experts and consultants as are necessary to the extent authorized by section 3109 of title 5, but at rates not to exceed the rate specified at the time of such service for grade GS-18 in section 5332 of such title;

(3) to prescribe such regulations as it deems necessary governing the manner in which its functions shall be carried out;

(4) to receive money and other property donated, bequeathed, or devised, without condition or restriction other than it be used for the purposes of the Foundation; and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(5) to accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5;

(6) to enter into contracts, grants, or other arrangements, or modificatioins thereof, to carry out the provisions of this chapter, and such contracts or modifications thereof may, with the concurrence of two-thirds of the members of the Board, be entered into without performance or other bonds, and without regard to section 5 of title 41;

(7) to make advances, progress, and other payments which the Board deems necessary under this chapter without regard to the provisions of section 529 of title 31;

(8) to rent office space in the District of Columbia;

(9) to conduct programs in addition to or in conjunction with the Fellowship program which shall further the Foundation's purpose of encouraging research and study of constitutionalism in America; and

(10) to make other necessary expenditures.

(b) The Foundation shall submit to the President and to the Congress an annual report of its operations under this chapter.

DEFINITIONS

SEC. . As used in this title—

(1) the term "Board" means the Board of Trustees of the James Madison Memorial Fellowship Foundation;

(2) the term "Foundation" means the James Madison Memorial Fellowship Foundation;

(3) the term "institution of higher education" has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965; and

(4) the term "secondary school" has the same meaning given that term by section 1201(d) of the Higher Education Act of 1965.

APPROPRIATIONS

SEC. . There are appropriated to the James Madison Memorial Trust Fund $20,000,000 to carry out the provisions of this title, to become available for expenditure on October 1, 1987.

Mr. KENNEDY. Mr. President, this amendment would create the James Madison Memorial Fellowship Program as part of the commemoration of the bicentennial of the Constitution. The National Commission on the Bicentennial of the U.S. Constitution has adopted the James Madison Memorial Fellowship Program as the centerpiece of its commemoration of the Constitution's bicentennial, and has committed to raise $10 million for the endowment.

The James Madison Memorial Fellowship Program would provide fellowships of up to $12,000 per year for 2 years to graduate students pursuing master's degrees in teaching with an emphasis on the Constitution, in preparation for careers as junior and senior high school social studies and American history teachers; and to full-time teachers returning to school for graduate degrees with an emphasis on the Constitution. The program will be administered by an independent foundation, with an initial endowment of $30 million—$20 million in appropriations and $10 million in private contributions. Initially at least 55 new fellowships will be awarded per year, one for each State and territory.

The James Madison Memorial Fellowship Program is designed to encourage graduate study of the American Constitution, its roots, its formation, its principles, and its development. Madison Fellows will be chosen both for their academic achievements and their potential to become junior high school and high school teachers of social studies and American history. The fellowships will provide support for graduate study leading to the degree of master of arts in teaching or other appropriate master degrees for teachers.

James Madison was the fourth President of the United States, and has become known to history as the Father of the Constitution. As a celebration of the Bicentennial of the Constitution, it is fitting to honor Madison through the creation of a perpetual education fellowship program to encourage graduate education in constitutional law, and American political thought.

America's founding generation was steeped in the literature of classical and modern political philosophy, in the political and constitutional history of England, and in the common law. The Founders' understanding of this rich constitutional and political heritage provided the intellectual framework of the great founding documents of the United States: The Declaration of Independence, the Articles of Confederation, the Northwest Ordinance, the Constitution, and the Bill of Rights. No one of that generation had a more profound understanding of this heritage than did James Madison.

Madison was a living example of the value of deep study and mature reflection on the purposes and history of government. But he also encouraged such study and reflection by others: Together with Thomas Jefferson, he was a strong advocate of a public school system for Virginia and a founder of the University of Virginia.

No field of academic study could be more appropriate than constitutional studies for a free people, or more in keeping with the spirit of learning of the founding generation. An understanding of the foundations of our constitutional system of government will be an indispensable support as the Constitution of 1787 begins its third century. Such an understanding is of particular importance at the middle and secondary level, where citizens first learn about the Constitution and its importance as the fundamental charter of American liberty. I urge my colleagues to adopt the amendment.

Mr. JOHNSTON. Mr. President, this amendment, on behalf of Senator KENNEDY, sets up the James Madison Scholarship Foundation which was provided for under the Bicentennial Commission upon their recommendations. It will be principally funded by private sources. However, the bill authorizes $20 million to be appropriated but not to be available until fiscal year 1987 and to be used as seed money for the private contributions. It has been cleared on both sides and by the authorization committee as well.

Mr. HATFIELD. Mr. President, the Senator is correct. It has been cleared by the subcommittee chairman and authorizing committee on our side of the aisle.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3143) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3144

(Purpose: To prohibit expansion of pre-inspection activities outside the United States by the Immigration and Naturalization Service or Customs Service in competition with Bangor International Airport in Maine)

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. MITCHELL and Mr. COHEN, proposes an amendment numbered 3144.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the appropriate place in the joint resolution, insert the following new section.

SEC. . None of the funds appropriated or otherwise made available by this joint resolution may be available for the performance of any pre-inspection activities by the Immigration and Naturalization Service or Customs Service (1) at Shannon International Airport in Ireland or (2) at any international airport outside the United States in competition with Bangor International Airport in Maine.

Mr. MITCHELL. Mr. President, along with Senator COHEN, I propose this amendment which would prohibit the Immigration and Naturalization Service [INS] or the Customs Service from using fiscal year 1987 funds to perform preinspection activities at foreign airports which compete with Bangor International Airport in Maine.

The amendment would prevent INS, and possibly the Customs Service, from moving forward with a program which would adversely affect the competitive position of an airport which is essential to the economy of Maine, and unnecessarily expose American personnel and facilities abroad to potential terrorist attacks.

Since July 1, 1986, the Immigration and Naturalization Service has been conducting an experimental preinspection program at Shannon International Airport in Ireland. The program should end on October 31. This program has been of major concern to Senator COHEN and myself, both for its broader policy implications, and its immediate adverse impact on Bangor International Airport.

Senator COHEN and I have communicated our concerns to the State Department and INS throughout the past year. What has become apparent is that the bureaucracy seems committed to establish, on a permanent basis, a preinspection program which is ill-advised, and which would result in irreparable economic harm to Maine.

Prior to initiation of the experimental program at Shannon Airport, the Maine congressional delegation asked for an opportunity to review any proposed agreement with the Irish Government prior to its signature. The request was ignored.

The Maine delegation was told that the preinspection program at Shannon was on a trial basis only; and that an "intensive analysis" of its results would occur, including its economic impact on airports such as Bangor. We were assured that there was "absolutely no intention to continue to a permanent program if concrete benefits are not established." However, in August, the Maine delegation learned that INS had invited European officials to a "walk-through" demonstration of the Shannon program on September 26. According to airline industry reports, INS is already talking about making the preinspection program permanent—as well as trying to extend it to other European airports. A request to cancel the September 26 demonstration was denied.

For Bangor International Airport [BIA], the preinspection program will have an immediate, adverse impact. Located on the great circle route, BIA is a natural refueling stop, and immigration and customs clearing point, for transatlantic air traffic. Because it is primarily a service-provider and only infrequently an ultimate destination, it is highly susceptible to competition from other airports providing similar services. It derives 50 percent of its revenues from international transit operations; diversion of even a small portion of its international traffic would cause the airport to operate at a loss and could result in its complete shutdown.

BIA competes directly with Shannon Airport. Shannon enjoys a competitive advantage in refueling operations as result of offering discounted aviation fuel from the Soviet Union. Permanent establishment of INS preinspection facilities at Shannon would add to BIA's disadvantage. We also fear that an inevitable temptation would be created to assign customs services to accompany INS preinspection abroad—which is our reason for including Customs in the prohibition. All of the permanent preinspection programs which presently exist in Canada, Bermuda and the Bahamas involve joint INS and customs operations.

It is unacceptable that a program of this nature should proceed in this manner, without regard to its impact on American airports and the prospects for economic development in surrounding regions.

We question the wisdom of the preinspection program itself. It makes no sense to station American personnel abroad at foreign airports; where they are outside of American jurisdiction; with no powers of arrest; and where they will present attractive targets for potential terrorist attacks. It represents an unnecessary risk, and a needless expense to the American taxpayer. It contradicts the administration's own policy of reducing our international trade deficit.

In the case of Shannon Airport, specifically, we also question the wisdom of the United States Government bestowing a competitive advantage on an airport which in fact serves as a refueling stop for Soviet military flights—to the extent, we understand, that the Defense Department has considered moving its own refueling operations out of Shannon, because of increased Soviet military activity.

The time to nip this program in the bud is now, before it expands further, beyond the limits of common sense and concern for American economic interests.

Mr. COHEN. Mr. President, my good friend and colleague from the State of Maine, Senator MITCHELL, and I are introducing this amendment to prohibit the Immigration and Naturalization Service and Customs Service from expanding pre-inspection activities at Shannon International Airport, Ireland and at any other international airports in competition with Bangor International Airport in Maine.

Several months ago, the INS announced that representatives of the United States and Ireland were meeting here in Washington to negotiate the establishment of INS pre-inspection facilities for transatlantic flights at Shannon International Airport. These negotiations resulted in an agreement to conduct a 4-month trial pre-inspection program that is now underway.

Mr. President, time and again I have received personal assurances from INS and State Department officials that an intensive analysis of the Shannon pre-inspection test program would be conducted before any final decision is reached in this matter. The purpose of the formal evaluation is to determine the test program's impact on Bangor International Airport, as well as its value to the United States. Despite these assurances, it appears that INS is fully poised to make pre-inspection facilities at Shannon Airport permanent and to expand pre-inspection to other European airports, without the benefit of analysis of the 4-month Shannon pre-inspection test.

There is little doubt that INS supports the concept of pre-inspection at Shannon Airport and fully intends to expand pre-inspection to other European airports. It has pursued the Shannon initiative for over 5 years. Additionally, it recently invited several European countries to participate in a walk-through demonstration of the Shannon facility. The purpose of the walk-through was clear—to encourage other European countries to participate in the European pre-inspection program.

Mr. President, INS believes that pre-inspection at Shannon will relieve congestion at over-crowded U.S. gateways and enhance law enforcement. While I applaud the objective of relieving congestion at over-crowded U.S. gateways, I believe that its rationale for establishing a pre-inspection facility at Shannon Airport is defective, and is clearly not in the best interest of Bangor International Airport, the State of Maine or the Nation.

I strongly believe that the problem of congestion at INS facilities at U.S. gateways could more readily be solved by encouraging carriers to route service through Bangor International Airport [BIA], as opposed to Shannon Airport.

BIA is ideally suited to accomplish INS's goal. It is located directly on the great circle route in the Northeast corner of the United States which makes it a natural transit point for transatlantic traffic. Moreover, already existing INS facilities at BIA, which can process 1,000 passengers per hour, are currently underutilized, and transatlantic passengers entering the United States through BIA are able to clear INS as well as customs quickly and efficiently.

BIA, formerly Dow Air Force Base, was established in 1968. The airport is owned and operated by the city of Bangor, ME. Since it receives no subsidy from that city or from the Federal Government, it is totally dependent on its own revenues.

Although Bangor is a relatively small city, BIA has established itself as a viable international airport by offering needed technical services to transatlantic traffic which then continues beyond Bangor to interior U.S. points. Among the most useful services provided by BIA is the opportunity to have transatlantic passengers clear immigration before proceeding to their ultimate destinations. Clearing immigration at Bangor is a major benefit to passengers and carriers because it enables passengers to avoid often lengthy immigration delays at other more congested airports. It also allows passengers to proceed directly to interior points which do not have their own INS facilities. Finally, BIA provides refueling services to transatlantic flights and provides transit passengers with the opportunity to clear customs before proceeding to their final destinations.

Because BIA operates principally as a provider of services, and is infrequently an ultimate destination, it is highly susceptible to competition from other airports providing similar services, including Shannon Airport. Although Shannon Airport does not now provide the full array of services offered by BIA, it does function as a refueling stop for flights originating in the Middle East or in Central or East Europe, which might otherwise refuel in Bangor. In this role, Shannon Airport already enjoys a competitive advantage, as it can offer discounted aviation fuel from the Soviet Union.

Establishment of INS facilities at Shannon Airport will clearly result in the loss of traffic at Bangor by increasing Shannon's ability to divert traffic away from Bangor and other U.S. airports which provide transit services.

Senator MITCHELL and I are very concerned about the serious economic impact which would result from the loss of Bangor's international traffic. Bangor currently derives approximately 50 percent of its total revenues from international transit operations, approximately $2 million out of a total of $4 million. Diversion of even a small portion of its international operations would cause the airport to operate at a loss and could result in the complete shutdown of the airport. Neither Maine nor the city of Bangor can afford to lose the economic activity resulting from airport operations.

Mr. President, establishment of pre-inspection facilities at Shannon Airport would have adverse consequences on the United States as a whole as well as BIA and the State of Maine. Since stationing INS personnel at Shannon Airport is more expensive than having them perform identical functions at domestic entry points, Shannon preinspection would needlessly result in increased expenditure for the U.S. taxpayer and would increase the already massive U.S. trade deficit.

From a security point of view, the stationing of U.S. agents at overseas airports would seem to make no sense whatsosever. It is clearly evident that international airports are the prime targets of recent terrorist activities. The stationing of unprotected U.S. personnel at Shannon or any other foreign point for preinspection purposes would significantly increase U.S. citizen exposure to terrorist attack, and only enhance the attractiveness of these targets. The provision of adequate security, in itself, would inevitably become a major problem and involve increased security costs and risks. This is especially true since both carriers and foreign governments are resisting U.S. Government efforts to have them assume part of the costs.

I understand that the U.S. Department of Defense if considering moving its refueling operations out of Shannon because it is uneasy about the extensive utilization of Shannon Airport by east block military forces. Establishment of INS preinspection facilities would appear to be inconsistent with DOD disengagement at Shannon Airport.

Mr. President, in the final analysis, I believe that the concept of preinspection at Shannon Airport is flawed and will lead to an unnecessary expenditure of taxpayer money. It makes no sense to establish INS facilities at Shannon Airport and station U.S. Government personnel in Ireland while Bangor's INS facilities, which occupy 5,331 square feet of rent-free space in BIA's multimillion dollar international arrivals building, are currently underutilized and able to accommodate significantly increased traffic loads. It would be contrary to efficient resource allocation to establish duplicative facilities at Shannon Airport. While there is some justification for preinspection/preclearance at Canadian or Caribbean points where most passengers are returning Americans, they clearly are inappropriate at Shannon Airport.

Mr. President, I strongly urge my colleagues to suppport this amendment.

Mr. JOHNSTON. Mr. President, this amendment has been cleared on both sides.

Mr. HATFIELD. Mr. President, the Senator is correct. It has been cleared on this side of the aisle.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3144) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3145

(Purpose: To change the effective date of section 264 of the Internal Revenue Code)

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] on behalf of himself and Mr. SPECTER, proposes an amendment numbered 3145.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

Insert at the appropriate place the following:

SEC. . AMENDMENT RELATED TO SECTION 1003 OF THE TAX REFORM ACT OF 1986 AND SECTION 264 OF THE INTERNAL REVENUE CODE OF 1986.

(a) The last sentence of section 264(a) of the Internal Revenue Code of 1986 and subsection (a) of section 1003 of the Tax Reform Act of 1986 are each amended by striking out "June 20, 1986" and substituting in lieu thereof "2 days after enactment of H.J. Res. 738, a joint resolution making continuing appropriations for the fiscal year 1987."

(b) The amendment made by this section shall be effective as if it was contained in the Tax Reform Act of 1986 as originally enacted.

Mr. JOHNSTON. Mr. President, this amendment corrects a problem created by the recently enacted Tax Act in that life insurance policies were made subject to a June 20, 1986 date, which did not comport with the other provisions of the Tax Act.

The PRESIDING OFFICER. Will the Senator suspend for a moment?

I thank the Senator from Louisiana.

Mr. Johnston. That was the earliest date provided for any of those provisions.

Mr. President, this has been cleared by Senators PACKWOOD, and LONG. It removes that date of June 20, 1986, and substitutes in lieu thereof October 2, 1986, or 2 days after the enactment of House Joint Resolution 738, a joint resolution making continuing appropriations, which is this bill. It simply allows those in the life insurance business to get written those policies which were in the pipeline for which they had no notice at the time that act was passed. It gives them 2 days after this act in order to get those cleaned up.

Mr. MATTINGLY. Mr. President, I would like to ask a question. Is this to the new Tax Act?

Mr. JOHNSTON. Yes, indeed.

Mr. MATTINGLY. That is not yet been signed?

Mr. JOHNSTON. I think that is correct.

Mr. MATTINGLY. How can you make a change to a tax law that has not yet been signed into law?

Mr. DOMENICI. It is difficult, but not impossible.

Mr. JOHNSTON. As the Senator from New Mexico said, it is difficult, but not impossible.

Mr. HATFIELD. Mr. President, this has been cleared on this side by the Finance Committee and the authorizing committee and the subcommittee on appropriations.

Mr. MATTINGLY. I would object until I have an opportunity to look at the amendment.

Mr. JOHNSTON. The Senator objects to the amendment?

Mr. MATTINGLY. I do object to the amendment until I get an opportunity to look at it.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the amendment be temporarily laid aside.

The PRESIDING OFFICER. Without objection, the amendment is temporarily laid aside.

AMENDMENT NO. 3146

(Purpose: To provide for reimbursement of certain airport developments, and for other purposes)

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will read.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] on behalf of Mr. SASSER, proposes an amendment numbered 3146.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the end of the joint resolution, add the following new section:

Sec. . (a) Section 512 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2211) is amended by—

(1) redesignating subsections (b) and (c), and all references thereto, as subsections (c) and (d), respectively; and

(2) inserting after subsection (a) the following new subsection:

"(b) REIMBURSEMENT OF CERTAIN AIRPORT DEVELOPMENT.—The Secretary may approve a project grant application and make a grant to reimburse a sponsor for airport development accomplished by the sponsor (including project formulation costs), if—

"(1) the airport development for which reimbursement is requested is limited to work associated with the construction of a new runway to accommodate large turbojet air carrier aircraft at a primary airport;

"(2) before the development began, the sponsor notified the Secretary of its intent to carry out the development and request reimbursement subsequent to accomplishment of the development; and

"(3) before the development began, the sponsor provided the Secretary with sufficient information to enable the Secretary to determine that the development would be carried out in accordance with all applicable statutory and administrative requirements imposed on sponsors in connection with projects funded under this title;".

(b) Section 513(a) of the Airport and Airway Improvements Act of 1982 (49 U.S.C. 2212(a)) is amended—

(1) in paragraph (3) by striking out "and" at the end thereof;

(2) in paragraph (4) by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(3) by inserting immediately after paragraph (4) the following new paragraph:

"(5) it was incurred prior to the execution of the grant agreement with respect to the project (not a necessary cost of formulating the project) in connection with airport development accomplished before the execution of the agreement, if (A) the airport development for which the cost was incurred is limited to work associated with the construction of a new runway to accommodate large turbojet air carrier aircraft at a primary airport, and (B) the development was carried out in accordance with all applicable statutory and administrative requirements imposed on sponsors in connection with projects funded under this title.".

● Mr. SASSER. Mr. President, as this session of the Congress draws to a close, we in Tennessee are confronted with a serious problem—one which I believe the Congress can remedy satisfactorily and still remain revenue neutral in this time of severe budgetary constraints.

The Metropolitan Nashville Airport is located in the middle part of my State in an area which can presently only be described as booming. There is a new Nissan auto manufacturing plant nearby and I'm sure all of you are familiar with the vast General Motors Saturn undertaking in middle Tennessee. Air transportation is vital to their operations. Nashville has always enjoyed a thriving economy, but now the capital city is literally bursting with development and enterprise.

The Nashville Airport has planned carefully for expansions necessary to accommodate this entire region, with projected developments extending to the next century. But in the meantime, the airlines have restructured their operations, with their primary emphasis on the installation of hub organizations.

In April of this year American Airlines chose Nashville for the siting of a new hub operation. The airline commercial traffic, already extremely heavy, has doubled at the Nashville Airport since that time. Over the next 3 years, flights are expected to increase another 50 percent. This increase in traffic will require a 150-percent increase in gate capacity. These factors have significantly altered the airport's development timetable. It is obviously essential that the airport authority's longer range development plans be compressed to provide immediately additional new facilities including a new runway.

This necessity raises a problem of financing. To meet the unique pressures on the Nashville Airport, we have worked out what I consider a reasonable and equitable solution, providing an interim mechanism to keep the construction programs on time and within budget.

Mr. President, the amendment I offer today represents an agreement that the Metropolitan Nashville Airport Authority can proceed with the immediate construction of the essential new jet runway with the use of its own funding mechanisms and the Federal Government will reimburse these necessary expenditures, with certain restrictions to ensure that the development is preapproved, that the work is limited to runway construction, and that all statutory and administrative requirements have been met. With these conditions, the agreement is satisfactory to officials of the Federal Aviation Administration and the authorizing and Appropriating Committees of this body.

Accordingly, Mr. President, I urge my colleagues in the Senate to vote in favor of the amendment which I have sent to the desk and which I ask to be read at this time.

Mr. ANDREWS. May I ask my distinguished colleague from Tennessee to further describe for this body the information which has occasioned his proposed amendment?

Mr. SASSER. I thank the chairman. I am pleased to have the record show that during the year 1986 the commercial flights at the Nashville Airport have increased by 107 flights per day. This represents a 45-percent increase just during the current year at an already very busy airport. I am further pleased to have the record show that State and local entities have provided more than $150 million toward the expansion project. Unfortunately, Federal funds are not available immediately to support the essential expansion. For this reason, we have worked out an interim authority for the Nashville Airport to use non-Federal funds this year for construction of its new runway with a provision for later Federal reimbursement.

● Mr. ANDREWS. May I inquire of my colleague from Tennessee whether his amendment changes the appropriations level for the Airport and Airway Improvement Act for fiscal year 1987?

● Mr. SASSER. No, Mr. Chairman, the current budgetary provisions for the Airport and Airway Improvement Act will remain the same.

● Mr. ANDREWS. Perhaps it would be well to know the views of the authorizing committee with respect to the provisions of the amendment.

● Mr. SASSER. Mr. President, I am pleased to report that we have consulted with the chairman of the authorizing committee, the Honorable NANCY KASSEBAUM, and that she has recognized the unique problem involved in Nashville where the airport construction has outstripped the Federal resources available at this time. Chairman KASSEBAUM has further recognized the protections built into this amendment requiring preapproval and compliance with all Federal regulations. At this time, I ask unanimous consent for Chairman KASSEBAUM's letter to this effect to be entered in the RECORD.

● Mr. ANDREWS. Has the chairman of the authorizing committee given any indication of future concern in this matter?

● Mr. SASSER. Chairman KASSEBAUM has indicated an intention to explore in depth the question of the proper level of Federal funding for all airports before the next reauthorization for the Airport and Airway Improvement Act.

● Mr. ANDREWS. I thank the Senator from Tennessee. May I further inquire whether there may be any objection on the part of officials of the Federal Aviation Administration?

● Mr. SASSER. I thank the chairman for bringing up this important consideration. In response, let me say that officials of the FAA have provided their concurrence with the interim arrangement represented in the amendment.

● Mr. ANDREWS. I thank the Senator from Tennessee.

● Mr. SASSER. I thank the chairman for providing an opportunity for my colleagues to clarify in their own minds the unique and pressing problem at the Nashville Airport and the concurrence of the appropriate authorities in the interim solution we have sent to the desk.●

Mr. JOHNSTON. Mr. President, this amendment has been cleared on this side.

Mr. HATFIELD. Mr. President, this has been cleared by both the authorizing committee and the Subcommittee on Appropriations and I move its adoption.

□ 0110

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I would like to ask the chairman of the Appropriations Committee a question. I have utmost confidence in the process of clearance. I just would like to ask, none of the amendments that are going to be cleared in this manner will have budgetary effect?

Mr. HATFIELD. No.

Mr. President, has the amendment been disposed of?

The PRESIDING OFFICER. The amendment has not been disposed of.

The question is on agreeing to the amendment.

The amendment (No. 3146) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3145

The PRESIDING OFFICER. The Chair advises that the amendment of the Senator from Louisiana to which the Senator from Georgia objected is automatically before the Senate.

Mr. MATTINGLY. Mr. President, I am satisfied that it is all right.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3145) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3147

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The Senator from Louisiana [Mr. JOHNSTON], for Mr. SASSER, proposes an amendment numbered 3147.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> At the appropriate place in the joint resolution, insert the following new section:
>
> SEC. . Section 1203 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b) is amended—
>
> (1) in subsection (3) by striking the semicolon at the end thereof and inserting in lieu thereof "and an officially recognized or designated public employee member of a rescue squad or ambulance crew who was responding to a fire, rescue or police emergency;"; and
>
> (2) in subsection (7) by striking all after the words "law enforcement officer" and inserting ", a firefighter, or rescue squad or ambulance crew."

Mr. SASSER. Mr. President, I am offering an amendment to the Public Safety Officers' Benefits Act of 1976 (Public Law 4-430) to extend eligibility for the $50,000 death benefit to the survivors of public employees working in paramedic or emergency medical technician units maintained by State or local governments, who die as a direct and proximate result of a personal injury sustained in the line of duty.

The Public Safety Officers' Benefit Act of 1976 was enacted to provide the survivors of public safety employees who die in the line of duty with a $50,000 death benefit. The rationale for enactment of the act was twofold: It sought to provide the survivors of these public safety officers with needed financial support, since many of them found it difficult to obtain adequate life insurance coverage as a result of the hazardous nature of their work. Second, the act sought to recognize and act on society's obligation to help compensate the families of those individuals who daily risk their lives to protect our families and communities.

However, an inequity has arisen as a result of the definitions of "firefighter" developed during the regulatory process resulting in the routine denial of death benefits to survivors of paramedics. The Department of Justice, which administers the death benefit, has defined "firefighter" as "all fire service personnel authorized to engage in the suppression of fires * * *" (28 C.F.R. 32.2 (h), (i), and (j)).

Because many paramedics and EMT's do not have primary or collateral responsibility for fire suppression, they are excluded from eligibility for the benefit. In other words, if a paramedic and a firefighter working side by side at a fire are both killed, the firefighter's family would receive the $50,000 benefit and the paramedic's family would not. Why? The answer is that although the paramedic was acting in a public safety capacity his or her responsibility was not "the suppression of fires."

Unfortunately this oversight has had devastating effects for the survivors of paramedics and other emergency medical technicians, who have been killed in the line of duty. On June 26, 1984, Milton A. Densford, a Memphis paramedic, who was hired, trained, and qualified as a firefighter, responded to an emergency call in a rescue vehicle owned by the city of Memphis and the Memphis Fire Department. Sadly, on the way to the emergency, Milton Densford was involved in a vehicular accident that resulted in his death.

Although Mr. Densford died "as the direct and proximate result of a personal injury sustained in the line of duty," quoting from the PSOB statute, the Justice Department denied his survivors the $50,000 benefit. Their ruling stated:

> Mr. Densford was hired in 1967 as a firefighter. He transferred to the ambulance bureau in 1973 and in 1983 was reclassified as a paramedic 1. The basis for the denial is that Mr. Densford's transfer and later reclassification terminated his duties and responsibilities as a firefighter.

The Justice Department did not treat this incident callously—the Department merely followed the guidelines set by Congress. Guidelines which currently are inequitable. For example, in 1977 Henry Rutledge, a Memphis firefighter, died in a traffic accident while on duty. While the survivors of Mr. Rutledge received the death benefit, Mr. Densford's survivors were denied the benefit.

Public safety officers are members or volunteers of officially recognized safety departments. Fire and police personnel are public safety officers, as are emergency medical technicians and paramedics. These people risk their lives every day to ensure the safety of our families, friends and neighbors in communities across the Nation. In the name of equity and basic fairness, the PSOB death benefit should be extended to EMT's and paramedics who die in the line of duty. The tragic case of Mr. Densford clearly illustrates the urgent need to do so.

The budget impact of this bill is negligible. Fortunately, only a handful of EMT's and paramedics are killed in the line of duty each year. However, the financial burden on families as well as the pain and suffering when a loved one is lost is enormous. This small gesture on the part of Congress will go a long way toward easing their suffering. I urge my colleagues to support this amendment.

Mr. THURMOND. If my good friend from Tennessee would yield for a question. I am concerned here that we not create a large loophole in the law. I would ask the Senator, he is not trying to provide coverage for private commercial ambulance crews, is he?

Mr. SASSER. I would say to my good friend from South Carolina that that is not my intention. As the language of the bill states, we are taking about "an officially recognized or designated public employee member" of a rescue squad or ambulance crew.

There is no intention to include private commercial ambulance personnel. We are only taking rescue squad members and ambulance crews who are actually part of municipal or county public safety departments.

Mr. THURMOND. So then, the Senator is saying that just because a private ambulance company was responding to an emergency that, for instance, the fire department was also responding to, that would not trigger coverage for them.

Mr. SASSER. That is absolutely correct. We are only talking about people who are considered by their local government to be members of their public safety department. Most municipalities have them in a separate department of the city or county government, although some are a part of the police or fire departments.

Mr. THURMOND. Now, there's another one I would like to clear up, and that concerns volunteer rescue squads and ambulance crews. Does the Senator contemplate that volunteers would be covered? This just seems to me to be an area that could be far too openended if eligibility is not carefully laid out.

Mr. SASSER. As the Senator knows, this issue was raised in the Committee hearings. And I agree that the coverage for volunteers has to be carefully defined.

What I am thinking of here is the situation that arises in Tennessee and many other States. Communities rely on volunteer fire departments. They may have a small number of permanent employees but the majority of the personnel are volunteers. However, they are considered public employees. They must undergo training, take courses, and otherwise develop competence and expertise in their field. These are the sort of people I would cover.

I think that first of all these volunteers would have to be considered by their local government to be an integral part of their public safety department—it couldn't be just some informal arrangement.

Second, there would have to be some evidence that the rescue squads or ambulance crews are organized in a professional way—requirements for training, continuing education and refresher courses, an indication that they are considered by the local government to be a permanent body of volunteers, not just people off the street.

Mr. SASSER. I thank my friend from South Carolina. As always, he has been most cooperative in working out an agreement on this amendment.

I would also like to thank the managers of the bill for their cooperation on this amendment.

Mr. JOHNSTON. Mr. President, this amendment has been cleared.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, this has been cleared by a Subcommittee of State, Justice, and Commerce on our side.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 3147) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. METZENBAUM and Mrs. KASSEBAUM, proposes an amendment numbered 3148.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Notwithstanding section 102 of this joint resolution, there are appropriate $500,000 for fiscal year 1987 for grants and contracts under section 5 of the Orphan Drug Act, which shall be in addition to amounts appropriated for such grants and contracts under section 101(a) of this joint resolution.

(b) Notwithstanding any other provision of this joint resolution, the total amount appropriated for fiscal year 1987 under section 101(a) of this joint resolution for the Commodity Futures Trading Commission shall be reduced by $500,000.

Mr. METZENBAUM. Mr. President, the amendment I have offered carries a price tag of $0.5 million. In the larger scheme of things, it may not seem like a lot of money.

But for people who suffer from rare diseases, it can mean the difference between life and death.

The Orphan Drug Act authorizes the expenditure of $4 million every year to award grants to researchers who are developing treatments for orphan diseases.

We passed the Orphan Drug Act, Mr. President, because we want to encourage the development of drugs to treat disorders which afflict relatively few people. Pharmaceutical companies will not go through the time and expense to develop drugs that they cannot make money on—and we cannot expect them to.

These afflictions have names like Tourette syndrome, cystic fibrosis, Huntington's disease, A.L.S. (Lou Gehrig's disease), Tay Sachs, narcolepsy, and hundreds more.

I ask unanimous consent to insert a list of rare disease organizations who support the amendment.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

American Narcolepsy Association.
Amyotrophic Lateral Sclerosis Association.
Association for Glycogen Storage Disease.
Cornelia de Lange Syndrome Foundation, Inc.
Cystic Fibrosis Foundation.
Cystinosis Foundation, Inc.
Dysautonomia Foundation.
Dystrophic Epidermolysis Bullosa Research Association.
Ehlers-Danlos National Foundation.
Epilepsy Foundation of America.
Families of Spinal Muscular Atrophy.
Friedreich's Ataxia Group in America, Inc.
Guillain-Barré Syndrome Support Group International.
Hemochromatosis Research Foundation.
Hereditary Disease Foundation.
Huntington's Disease Foundation of America, Inc.
Immune Deficiency Foundation.
International Joseph Diseases Foundation.
International Rett Syndrome Association, Inc.
Interstiital Cystitis Association.
Mucopolysaccharidoses Research Funding Center.
Narcolepsy Network.
National Association for Sickle Cell Disease, Inc.
National Ataxia Foundation.
National Foundation for Ectodermal Dysplasias.
National Gaucher's Foundation.
National Head Injury Foundation.
National Huntington's Disease Association.
National Ichthyosis Foundation.
National Marfan Foundation.
National Multiple Sclerosis Society.
National Neurofibromatosis Foundation, Inc.
National Retinitis Pigmentosa Foundation.
National Tay-Sachs & Allied Disease Association.
National Tuberous Sclerosis Association, Inc.
Osteogenesis Imperfecta-NCA, Inc.
Paget's Disease Foundation, Inc.
Parkinson's Disease Foundation.
Parkinson's Educational Program (PEP-USA).
Polycystic Kidney Research Foundation.
Prader-Willi Syndrome Association.
Scleroderma Info Exchange.
Scleroderma Society.
Sjogren's Syndrome Foundation.
Tourette Syndrome Association, Inc.
United Leukodystrophy Foundation, Inc.
United Parkinson Foundation.
United Scleroderma Foundation, Inc.
Williams Syndrome Association.
Wilson's Disease Association.
American Spasmodic Torticollis Association.
Good Samaritan Medical Center, Neurological Coalition, Portland, OR.
National Addison's Disease Foundation.
National Chronic Epstein-Barr Virus Syndrome Association.
Ohio Tourette Syndrome Association.
Research Trust for Metabolic Diseases in Children.

Mr. METZENBAUM. In total, over 8 million Americans suffer from over 5,000 rare diseases. Half of these are childhood diseases.

Unfortunately, the Congress has never appropriated the full funding for the FDA Grant Program.

While that has resulted in a tiny savings in our overall budget, it has proved to be a tragic waste to society.

This past year, only half of the grants that were approved by FDA were funded. That means promising new treatments are idled. Talented researchers are turned away. And these terrible diseases continue to take the lives of thousands.

Mr. President, a person who suffers from a disease suffers no less if that disease happens to be rare.

If we have identified a drug that can potentially save lives, we have an obligation to puruse that drug.

When we fail to fund the Orphan Drug Grant Program, we are failing to fulfill that obligation.

Mrs. KASSEBAUM. Mr. President, I am pleased to join in cosponsoring the amendment of the Senator from Ohio [Mr. METZENBAUM] to provide an additional $500,000 for the Orphan Drug Grant Program. This grant program is designed to support research on ideas which hold potential for the treatment of rare diseases.

Each year, the Food and Drug Administration receives far more promising research proposals than they are able to support. In fiscal year 1986, for example, FDA's Office of Orphan Products Development received 50 grant applications—of which 42 were approved. However, it will be possible to fund only 20 of these grants. By increasing funding for the grant program today, we will further enhance a program with a proven record of success.

Mr. JOHNSTON. Mr. President, this amendment has been approved on this side and also by Senator COCHRAN.

Mr. HATFIELD. The Senator is correct. It has been approved by the subcommittee of jurisdiction. I move its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3148) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3149

Mr. JOHNSTON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. LAUTENBERG and Mr. BRADLEY, proposes an amendment numbered 3149.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the resolution, insert the following new section:

Notwithstanding any other provision of law, appropriations available to the Department of Defense during the current fiscal year shall be available to make payments to a hospital that obtains 12 percent or more of its operating funds from contributions and that limits the care it provides to the treatment of heart and lung conditions: Provided that, payment may not be denied for a claim for otherwise reimbursable services submitted under a plan contracted for under sections 1079(a) and 1086(a) of title 10, United States Code, solely on the basis that such hospital does not impose a legal obligation, including a patient cost share or deductible, on its patients to pay for such services.

Mr. LAUTENBERG. Mr. President, I am offering an amendment to allow CHAMPUS reimbursement for a hospital which raises a large amount of its operating budget from charitable contributions and limits its care to heart and lung conditions. The hospital also does not impose a legal obligation, including a patient cost share or deductible, on its patients to pay for services.

Deborah Heart and Lung Center of Browns Mills, NJ, is a nonprofit hospital that provides care at no expense to its patients. Deborah is nationally known for its specialized work on serious cardiac and pulmonary ailments. Patients come to Deborah from all over the country, and no one is ever turned away for lack of ability to pay. The hospital bills third party payors including, Blue Cross, and Medicare for their fair share of a patient's costs. The only third party payor that does not pay for its covered patients is CHAMPUS.

CHAMPUS regulations say that a hospital is denied reimbursement unless the patient is billed and required to share part of the cost. Deborah does not bill its patients or require them to pay anything.

Deborah serves about 70 or more CHAMPUS eligible patients each year. It estimates the loss from lack of CHAMPUS reimbursement at about $1 million a year, out of a total budget of about $47.5 million. Payments from third party payors provide about $41 million of the budget. The remainder of the budget is raised by 70,000 supporting members of the hospital.

My amendment is narrowly drafted to apply to the Deborah situation and require CHAMPUS to pay its fair share for patients covered by that program.

I understand that this amendment has been cleared on both sides. I urge its adoption.

Mr. BRADLEY. Mr. President, I rise to join my colleague from New Jersey Mr. LAUTENBERG in cosponsoring this amendment to provide for CHAMPUS reimbursement to a very special health facility in my home State of New Jersey.

Mr. President, Deborah Heart and Lung Center in Browns Mills, NJ, is a truly unique institution. Over 70,000 volunteers in four States contribute time, money, and expertise to support its health services program, its research program and its teaching activities. Through this remarkable network of support, Deborah is able to admit any patient, regardless of ability to pay. Deborah has never billed a patient for services received at the facility.

In addition, Deborah has developed a remarkable program of bringing medical personnel from developing countries to teach them the latest surgical techniques—particularly for open heart surgery on children. Deborah has also brought children injured in wars throughout the world to their hospital for treatment. Deborah is truly a special place.

Deborah relies on its volunteers, charitable contributions, and third party payors to meet its financial needs. Prior to last year, CHAMPUS provided its share of third party payments. But last year, Deborah was informed by CHAMPUS that it would be denied reimbursement based on a CHAMPUS regulation prohibiting payment for services "for which the beneficiary * * * has no legal obligation to pay." Taking into consideration the number of CHAMPUS-eligible patients that Deborah treats, the financial impact of this loss of funds on Deborah has been substantial.

Mr. President, I wrote to the director of CHAMPUS to ask if anything could be done to change the policy. The director indicated that nothing could be done to change CHAMPUS policy without legislative action.

The House Department of Defense authorization bill allows institutions that do not bill patients, such as Deborah Heart and Lung Center of Browns Mills, NJ, to receive reimbursement from CHAMPUS at the level that they are reimbursed by other third party payors. Unfortunately, the outlook for the DOD authorization bill is very much in doubt. That is why this amendment is being offered today.

An institution like Deborah whose policy has been to take care of all, regardless of ability to pay, should not be forced to refuse military dependents on this technicality. This amendment allows Deborah for the next year to receive the reimbursement it is owed from CHAMPUS in order to continue its humanitarian mission. I urge my colleagues to support this amendment.

Mr. JOHNSTON. Mr. President, this amendment has been cleared on this side.

Mr. HATFIELD. Mr. President, both the Armed Services Committee of jurisdiction authorizing committee and the Appropriations Subcommittee, chaired by the Senator from Alaska, have cleared this amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3149) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3150

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for Mr. DOLE, proposes an amendment numbered 3150.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . The Director of the Office of Management and Budget shall include in the area designated as the Wichita Metropolitan Statistical Area the County of Harvey, Kansas.

Mr. DOLE. Mr. President, recently I was approached by a group of citizens from Newton, KS, asking that I help convince the Office of Management and Budget to designate their home county as a part of the metropolitan statistical area [MSA] of Wichita, KS. Today, I am offering an amendment to accomplish that purpose.

CONCEPT OF AN MSA

The general concept of a metropolitan statistical area is one of a large population nucleus, together with adjacent communities which have a high degree of economic and social integration with that nucleus. AN MSA may include outlying counties which have close economic and social relationships with the central counties. Mr. President, Harvey County, KS, fits that definition and rightfully deserves to be designated a part of the Wichita, KS, metropolitan statistical area.

HARVEY COUNTY, KS

Harvey County, KS, includes the city of Newton, KS, a city of approximately 16,000 residents, and several other smaller communities. Many of the people living within Newton, and the outlying communities and rural areas, travel to Wichita on a daily basis to go to work since Newton is conveniently located within a short distance of Wichita and is connected to the city by a modern interstate highway.

GOVERNMENT COOPERATION

On October 26, 1972, the counties of Butler, Harvey, and Sedgwick established the Central Plains, Tricounty Planning Committee. The committee was created as a result of the Governor's designation of Butler, Harvey, and Sedgwick Counties as a State planning subarea. The purpose of this committee is to provide "overall guidance and coordination of area planning programs." The formation of this committee demonstrates the local opinion that these three counties constitute an integral unit with social, cultural and economic ties among the individual counties. Of the three counties included within the planning area, Harvey County, KS, is the only county not included in Wichita's MSA.

EDUCATION

The area of education definitely exhibits ties among the three counties. Four unified school districts cross county borders and involve Harvey County with the other two counties. The Halstead-Bentley School District and the Sedgwick School District are both Harvey County-based but include parts of Sedgwick County. Conversely, the Valley Center School District is Sedgwick County-based but includes part of Harvey County. In addition, the Butler County-based Remington School District includes part of Harvey County.

Higher education also provides significant ties among the counties. Diverse educational opportunities give students in the tricounty area numerous options with respect to colleges and universities. Of all the tricounty area students attending college in Harvey County, 20.8 percent come from the other two counties within Wichita's MSA. Many students from Harvey County also attend Wichita State University.

FINANCIAL INSTITUTIONS

As far as economic ties are concerned, a look at the area financial institutions provides valuable information. Two of three Newton banks are owned by Wichita-based holding companies. These are the Kansas State Bank—owned by the Fourth Financial Corp.—and the First Bank of Newton—owned by Newton Bankshares of which one of the major stockholders is a Wichita resident and the corporation is headquartered in Wichita. Along these same lines, the State Bank of Bentley—located in Sedgwick County—and the Halstead Bank—located in Harvey County—are owned by the same Harvey County family. Also, as branch financial institutions flourish, more and more intercounty arrangements are possible. At the present time, First Federal Savings Bank of Newton has a branch facility located in Valley Center, Sedgwick County, KS.

HEALTH CARE

Health care providers in Harvey County not only provide services to Harvey County residents, but also, to Sedgwick and Butler County residents. The Halstead Hospital/Hertzler Clinic medical complex has several ties to the MSA counties. The hospital is owned and operated by the Sisters of St. Joseph of Wichita. The salaries and benefits offered by the hospital are very competitive with the Wichita hospitals. The Hertzler Clinic maintains a satellite office in Wichita. All in all, the medical complex treats approximately 4,500 patients from Sedgwick County on an annual basis. The Bethel Clinic of Newton has a satellite office in Valley Center. The three general, acute-care hospitals in Harvey County provide services to a significant number of residents from Sedgwick and Butler County.

CONCLUDING REMARKS

Mr. President, the intent of the MSA classification is clear: to recognize areas which have significant social, cultural and economic ties to an adjacent large urbanized area. The problem then becomes how to identify what exhibits those ties. The present statistical criteria simply do not tell the whole story. The factors outlined here today demonstrate the close ties between the three counties of Harvey, Butler, and Sedgwick. As such, it is only appropriate, that Harvey County be designated a part of Wichita's MSA.

Today, Mr. President, I offer an amendment to accomplish that purpose and urge its adoption.

Mr. HATFIELD. Mr. President, this amendment has been cleared on this side.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. The amendment has been cleared on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3150) was agreed to.

AMENDMENT NO. 3151

(Purpose: To clarify the purposes for which tied aid credits may be used, and to appropriate funds for such credits subject to the overall lending ceiling of the Export-Import Bank)

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for Mr. HEINZ, proposes an amendment numbered 3151.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 4, line 16, after the period insert the following: "The first proviso under the heading 'Limitation on Program Activity' in title IV of S. 2824 shall read as follows: '*Provided*, That, if the Chairman of the Export-Import Bank certifies that such budget authority will not be fully utilized during the fiscal year 1987, up to $150,000,000 of that amount may be available, subject to the regular notification procedures of the Appropriations Committees of the Senate and House of Representatives, as tied aid credits in accordance with the provisions of the Export-Import Bank Act Amendments of 1986:' and for the purposes of that proviso, there is appropriated to the Export-Import

Bank of the United States an amount equal to the grant amount of tied aid credits which are made available from time to time, but not to exceed $150,000,000, which shall be subject to the limitation on gross obligations for the principal amount of direct loans specified under such heading.".

Mr. HEINZ. Mr. President, I am proposing an amendment to eliminate a point of order problem regarding appropriations for the Export-Import Bank. The problem arises in the foreign operations appropriation language that has been incorporated into the continuing resolution.

That appropriation authorizes a Tied Aid Credit Program in the Export-Import Bank. The authorization is not only nongermane but is in conflict with the Eximbank authorizing bill for which the conference report has already passed the House and is pending in this Senate.

The Exim appropriation is subject to a point of order, and by extension, the entire reference to the foreign operations appropriation in the continuing resolution is subject to a point of order.

I am not proposing to raise that point of order. I am instead proposing an amendment to conform the language referenced in the continuing resolution to language in the soon-to-be-passed authorizing bill.

The amendment is basically technical; it makes no changes in budget totals, outlays or the deficit. It has approval of the administration and has been cleared with appropriations and budget staff. It only incorporates language that has passed both House and Senate in another bill.

The appropriators intentions in including an Exim authorization in their bill were laudable. With passage of our authorizing bill in question, this language provided a "safety net" to keep the program running.

However, passage of our bill is now imminent and there are two areas of conflict between the appropriation and the authorizing bill that would be conformed by my amendment.

The changes relate to the tied aid war chest that is being established this year to support administration efforts to end predatory export financing by our major trading partners.

My amendment would simply require that funds provided for tied aid credits be used "in accordance with the provisions of the Export-Import Bank Amendments Act of 1986." This will avoid any possible confusion with slightly different language in the continuing resolution.

Second, with regard to funding for tied aid credits, the amendment provides that funds made available in the continuing resolution actually be appropriated rather than simply being scored against the Exim lending limitation while drawing down the reserves of the Bank.

The continuing resolution provides a $900 million direct credit ceiling for the Bank, of which up to $150 million may be used for tied aid credits if the Bank certifies it is not needed for direct credit in fiscal year 1987. While the direct loans the Bank normally makes are relatively slow disbursing and generate reflows, the tied aid credit payments are grants. Thus, unless the funds for tied aid grants are appropriated, they will quickly drain Bank reserves.

While the Treasury provided the language used in the continuing resolution, Treasury failed to ensure that the language tracked the Exin authorizing bill that calls for appropriation of funds for the Tied Aid Credit Program. Changing the wording of the continuing resolution in this regard does not increase budget authority or outlays over levels otherwise anticipated and it protects the Bank capital from being reduced.

Making this technical amendment will avoid any conflict between the continuing resolution and the bill that will go to final passage possibly as early as today.

Mr. HATFIELD. Mr. President, this amendment is offered on behalf of Senator HEINZ. This amendment conforms the Eximbank provision and foreign assistance section with respect to the tied aid credits on the conference agreement on Eximbank reauthorization legislation. It has been cleared by Senator KASTEN and Senator INOUYE of the subcommittee and by the chairman and ranking member of the Banking Committee.

Mr. JOHNSTON. Mr. President, the amendment has been cleared.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3151) was agreed to.

Mr. HATFIELD. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3152

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for Mr. DURENBERGER, proposes an amendment numbered 3152.

Mr. HATFIELD. Mr. President, I ask, unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

At the appropriate place in the resolution add the following new section:

SEC. . Such amounts as may be necessary of the Polish currencies held by the United States which have been generated by the sale to Poland of surplus United States dairy products shall be available for construction and renovation projects to be undertaken in Poland under the auspices of the Charitable Commission of the Polish Catholic Episcopate for the benefit of handicapped and orphaned children. Such currencies may be utilized without regard to the requirements of section 1306 of title 31, United States Code, or any other provision of law.

Mr. DURENBERGER. Mr. President, I rise to offer an amendment to the continuing resolution that would authorize the expenditure of funds generated from the sale of surplus dairy products for construction and renovation projects within Poland designed to benefit handicapped and orphaned children. I would indicate to my colleagues that this amendment is identical to legislation I introduced with Senators LUGAR and PELL on December 13, 1985, S. 1945.

My amendment would not cost the U.S. Treasury another cent, Mr. President. At this moment, there are 576 million zlotys in U.S. accounts that are not convertible to U.S. dollars. At present exchange rates, this works out to roughly $30 million. When this account was opened with dairy product sales in 1981 before the imposition of martial law, it was worth over $70 million. Because of successive devaluations of the zloty, it is now worth less than one half of that original amount. My amendment would ensure that we derive full benefit from those zlotys which have no use for the United States unless we spend them in Poland. The diary products were purchased by the U.S. Government as part of its Price Support Program and, because of that, U.S. farmers have already received a benefit from this transaction. My amendment would extend further benefit to the beleaguered people of Poland.

The United States imposed a harsh set of sanctions when the Jaruzelski government instituted martial law in December 1981. This was a proper course of action at that time. Martial Law has since been lifted, although many of its provisions have been incorporated into legislation. Earlier this month, the Polish Government released the last of its political prisoners. Some have called for the lifting of U.S. sanctions in response to the amnesty. I have indicated my support for the Reagan administration's review of sanctions and my hope that by insisting on real progress toward national reconciliation in Poland, we may be able to achieve something much more lasting than the temporary release of 225 political prisoners.

But, Mr. President, it is important that this body remember the cost of economic sanctions to the Polish people. We must recognize the essential cruelty of making the brave people of Poland pay such a high price for the actions of their Communist masters. Continued humanitarian aid is vital in this regard. My amendment would give these zlotys to the Catholic Church to benefit those who need it most: handicapped and orphaned children.

I visited one of these orphanages when I was Krakow. I can personally attest that the need is desperate. The Polish Government cannot or will not make the resources available to such projects. We should not punish those most in need because they have the misfortune of living under Communist rule. I urge my colleagues to support this amendment so we send a message to the Polish people and let them know that Americans will never forget them.

Mr. HATFIELD. Mr. President, this has been cleared by Senator Kasten and Senator Inouye of the Subcommittee on Appropriations and by the legislative Committee of Foreign Relations, Senator Lugar and Senator Pell.

Mr. JOHNSTON. Mr. President, this amendment has been cleared.

Mr. HATFIELD. Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3152) was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3153

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oregon [Mr. Hatfield], for Mr. Kasten, Mr. Inouye, Mr. D'Amato, Mr. Specter, and Mr. Johnston, proposes an amendment numbered 3153.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the resolution, insert the following:

Sec.   . The last sentence of Section 61(a) of the Arms Export Control Act is amended by inserting immediately following the word "life" the phrase ", nor shall it apply to a lease made in exchange with the lessee for a lease on substantially reciprocal terms of defense articles for the Department of Defense; *Provided*, That this section does not constitute authorization of appropriations for payments by the United States for leased articles."

Mr. HATFIELD. Mr. President, I offer this amendment on behalf of Senators Kasten, Inouye, D'Amato, Specter, and Johnston. This is an amendment which has no cost expansion of existing leasing authorities and provides for reciprocal leasing arrangements on a no-cost basis. It protects the authorization responsibility of the Armed Services Committee by specifically stating that legislation does not constitute authorization of appropriation. It has been cleared by Senator Stennis, Senator Pell, Senator Stevens, Senator Lugar, Senator Kasten, Senator Inouye.

RECIPROCAL LEASING AGREEMENT

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Mr. KASTEN. Mr. President, this amendment is the result of recent meetings between the United States and Israel with regard to security agreements between our two countries, specifically the agreement the amendment addresses is that relating to reciprocal leasing arrangements.

The amendment would open up to the Department of Defense the opportunity of cross-leasing agreements. It is prompted by the positive experience of the U.S. Navy, which last year entered into a leasing agreement with Israel, wherein the Israeli Air Force leased a squadron of KFIR jet fighters to perform the aggressor role in certain training programs conducted by the Navy.

In fact, the program was so successful, that the Navy has decided to lease a second squadron of KFIR's for the Marine Corps.

Against that background, the possibility of cross leasing is foreseen, whereby the United States may lease defense articles to NATO or non-NATO allies in exchange for a lease by such countries to the United States of defense articles on substantially reciprocal terms, to be determined by the United States and the other country.

It is envisioned that such cross-leasing agreements will clearly be the mutual benefit of the United States and the NATO or non-NATO ally.

As to the budgetary impact of the proposed amendment, there will be no additional cost to the U.S. Government or to the U.S. taxpayer.

Mr. President, we view this amendment as basically a technical change that is required as a result of recent successful negotiations between the United States and Israel.

Mr. JOHNSTON. Mr. President, the amendment has been cleared in this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3153) was agreed to.

Mr. HATFIELD. I move to reconsider the vote.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HATFIELD. Mr. President, I believe we are concluding at this point the amendments that have been cleared of a noncontroversial nature. We are open for other amendments that may be of a controversial nature.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Georgia.

AMENDMENT NO. 3154

(Purpose: To modify agricultural disaster payment provisions of the bill, and to identify an offsetting amount)

Mr. MATTINGLY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Georgia [Mr. Mattingly] proposes an amendment numbered 3145.

Mr. MATTINGLY. I ask unanimous consent that the further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2 of the bill, line 12, strike out the period and insert in lieu thereof the following: ", except that the Secretary shall carry out section 633, and for such purpose, shall reduce the amount of funds available for emergency insured and guaranteed loans to meet the needs resulting from natural disasters from funds in the Agricultural Credit Insurance Fund by $132,000,000; *Provided further*, That—

(1) notwithstanding any other provision of section 633, for the 1986 crop year, the Secretary of Agriculture shall utilize certificates redeemable from stocks of commodities held by the Commodity Credit Corporation, with an aggregate value of $190,000,000 for the purpose of making disaster payments to producers of nonprogram crops, fruits, vegetables, tree nuts, or other agricultural products (including 1986 program crops damaged by hail or flood), in counties in which producers became eligible subsequent to July 1, 1986, to receive disaster emergency loans under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961) as the result of drought, excessive heat, flood, hail, or excessive moisture, and

(2) the Secretary of Agriculture shall make such payments (not to exceed $100,000 to any individual producer) if the Secretary determines that—

(A) the producer has suffered a substantial loss of production due to drought, excessive heat, flood, hail, or excessive moisture, and

(B) such loss has created an economic emergency for the producer to the extent that additional assistance must be made available to alleviate such economic emergency, and

(3) for the purpose of making such disaster payments to eligible producers of nonprogram crops, fruits, vegetables, tree nuts, or other agricultural products (including 1986 program crops damaged by hail or flood) the Secretary of Agriculture shall reduce the amount of funds available for

emergency insured and guaranteed loans to meet the needs resulting from natural disasters from funds in the Agricultural Credit Insurance Fund by $200,000,000.".

Mr. MATTINGLY. Mr. President, I shall propound a time agreement request of 10 minutes to a side. I ask unanimous consent that that be done.

The PRESIDING OFFICER. Is there objection to the time agreement?

Mr. BOSCHWITZ. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DOMENICI. Reserving the right to object.

Mr. JOHNSTON. Reserving the right to object, what is the nature of the amendment?

Mr. MATTINGLY. It is a drought disaster relief amendment.

The Senator from Mississippi, chairman of the subcommittee, has no objection on this side. I believe there is no objection on the other side, either.

Mr. JOHNSTON. Mr. President, we have not seen the amendment. I hope the Senator will give us an opportunity to see it.

Mr. MATTINGLY. I am happy to do that.

Mr. President, I withdraw the request.

The PRESIDING OFFICER. The request for the time agreement is withdrawn.

Mr. MATTINGLY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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Mr. HATFIELD. Mr. President, I ask unanimous consent that further proceedings under the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATFIELD. The Senator from Georgia [Mr. MATTINGLY] has an amendment pending. He has agreed to enter into a time limitation on that amendment. There will be made a point of order by the manager at some point in time, but at this time I propound a unanimous-consent request that we allocate 10 minutes, 5 minutes to a side, on this amendment with no secondary amendments in order.

The PRESIDING OFFICER. Is there objection?

Mr. MATTINGLY. I object.

Mr. Boschwits. I object.

Mr. HATFIELD. Mr. President, I apologize. It was my misunderstanding. It is the request that we have a total of 20 minutes with 10 minutes to a side, with no secondary amendments in order.

The PRESIDING OFFICER. Is there objection to the time request? Without objection, it is so ordered. Who controls time? The Senator from Georgia.

Mr. MATTINGLY. Mr. President, to the amendment I sent to the table I ask unanimous consent to add as cosponsors Mr. RIEGLE, Mr. LEVIN, Mr. DENTON, Mr. THURMOND, Mr. NUNN, Mr. TRIBLE, Mr. ABDNOR, and Mr. DOLE.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATTINGLY. Mr. President, the amendment that I offer makes minor changes in material which is already contained in the bill. When we marked up the agriculture bill, I offered an amendment which would make limited disaster payment assistance available to producers in about 11 States who suffered through the worst drought in over 100 years. At that time the chairman of the subcommittee noted that CBO insisted on scoring the costs of the program as though it were going to require cash outlays instead of crediting us with financing the program entirely through the use of certificates redeemable in CCC surplus commodities. Such scoring, he indicated, would put the bill over the 302(a) allocation and thus we would not be able to report it out. At that point I accepted the suggestion that we make the provision discretionary, avoiding the adverse scoring action while leaving the basic language in the bill. Since that time, I have worked with the Budget Committee staff and its chairman and can now offer an offset which will allow us to reinstate the mandatory nature of the program without increasing the totals in the bill.

This amendment would provide for a disaster payment program estimated by CBO to cost on drought disaster roughly $125 million for a reduction of $132.5 million in the Emergency disaster loan program which has a total of $700 million in this bill. To anyone familiar with the emergency Disaster Loan Program, I probably do not need to point out that the program is probably a disaster in itself. Our farmers do not need another loan when they cannot pay a portion of the debt they already owe. This program will allow farmers to borrow from FmHA, farm credit banks and commercial lenders on the operating loans they got last spring in order to plant the crops which have largely burned up in the fields.

Mr. President, I am also happy to note that I have been working closely with Senators RIEGLE and LEVIN and with the majority leader in an effort to broaden the scope of this proposal in order to assist it with subsequent disaster situations resulting from flooding and hail damages. I think we have been able to partially accommodate their concerns in this amendment by identifying the additional moneys for reduction in the Disaster Loan Program.

Mr. President, in August the House unanimously passed a much more expansive measure and the Senate adopted a nearly identical provision as an amendment to the debt ceiling bill. However, both of these efforts have been stranded because of procedural wrangling. Now, I implore my colleagues and the managers of the bill to accept this much-needed provision. There may be raised a point of order by the chairman of the Appropriations Committee against this amendment to question its germaneness. It is a question of germaneness.

☐ 0140

I want to clearly point out that agriculture disaster payments are already subject to section 633 of the agriculture appropriations bill, which is incorporated by reference in the CR. It is that section that the amendment modifies. So it is very clear that the amendment is germane.

The Senator has been correct all day and all week in reference to germaneness. This is one time it will be raised when the amendment is germane.

Mr. BOREN. Mr. President, will the Senator yield for a question?

Mr. MATTINGLY. I yield.

Mr. BOREN. The Senator mentioned that it covers situations of hail and flood as well as a drought situation. Does that apply to all those situations in this calendar year? We are now experiencing in my State, in the last few days, a very severe flooding problem. It is continuing at this moment. Would that disaster be covered under the terms of the amendment of the Senator from Georgia?

Mr. MATTINGLY. Yes.

Mr. BOREN. Mr. President, I ask unanimous consent that my name be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, will the Senator yield for a question?

Mr. MATTINGLY. I yield.

Mr. JOHNSTON. In most disaster relief, in order to be eligible, it requires that you be in a county that has been declared an eligible county. Is that a requirement of this amendment?

Mr. MATTINGLY. Yes, it is.

Mr. JOHNSTON. Will the Senator point out where that requirement is?

Mr. MATTINGLY. I believe it is in section 633 of the agriculture appropriation bill. It is also referenced in line 17, page 2.

Mr. JOHNSTON. I thank the Senator.

The test for whether one is eligible is that it has created an economic emergency for the producer to the extent that additional assistance must be made available to alleviate such economic emergency.

Mr. MATTINGLY. That is correct.

Mr. JOHNSTON. Can the Senator tell me what in the world that means?

Mr. MATTINGLY. That would be a secretarial determination.

Mr. JOHNSTON. Is there any guidance at all? Whatever he considers to be an economic emergency is adequate? Does that have to do with the condition of the producer for the amount of the loss or both or either?

Mr. MATTINGLY. That is the same language they have in the 1985 farm bill. It is spelled out very clearly.

Mr. JOHNSTON. Is that a condition of the farmer, himself, or of the loss—or does the Senator know?

Mr. MATTINGLY. I cannot answer right now. I think it is probably the farmer.

Mr. RIEGLE. Mr. President, will the Senator yield?

Mr. MATTINGLY. I yield.

Mr. RIEGLE. Mr. President, in Michigan at the present time, we are experiencing an unprecedented flood condition. We have had rain nonstop for 20 days and have had as much rain in the last 3 weeks as we get in an entire year. We have entire crop areas—sugar beets, dried beans, potatoes, and other vegetables—that have been completely destroyed.

The crop loss now for individual farmers in our agricultural sector is estimated to be in excess of $300 million, in a 3-week period.

So we are talking about a total loss. We are talking about a whole year's production gone in that period of time. There is a likelihood that because of the saturation condition of the soil now, not only is there no chance for a winter crop, like wheat, but we may experience a second level disaster next spring.

We have a situation on our hands that is absolutely without precedent.

Mr. MATTINGLY. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. MATTINGLY. I yield on the time of the Senator from Louisiana.

Mr. JOHNSTON. May I have 1 minute?

Mr. HATFIELD. I yield 1 minute.

Mr. JOHNSTON. Mr. President, it is my recollection with respect to disaster relief that it requires that a certain percentage of multiple crops be destroyed, not just one crop. That is a vague recollection of mine.

My question is this: Under this, if a producer has crops and a substantial portion of one is destroyed but the other is intact, is he eligible or not?

Mr. MATTINGLY. He will still have to meet the same criteria in the 1985 farm bill—a 30-percent loss.

Mr. JOHNSTON. A 30-percent loss of each crop or of one crop? Let us say he has 30 percent of his soybeans destroyed and his wheat crop is intact.

Mr. MATTINGLY. In order for him to be eligible for a loan, such as soybeans, he would have to come up with a 50-percent loss, under this amendment.

Mr. JOHNSTON. The economic emergency, then, is described as a 50-percent loss?

Mr. MATTINGLY. These are provisions that are already contained in 633. If we want to get the CR out, we can go through that.

Mr. JOHNSTON. On page 1, lines 9 and 10, it says: "notwithstanding any other provision of section 633." So this supersedes section 633.

Mr. MATTINGLY. This would apply to the nonprogram crops, because the program crops are already covered in 633.

The PRESIDING OFFICER. Who yields time?

Mr. RIEGLE. Mr. President, how much time remains under the control of the Senator from Georgia?

The PRESIDING OFFICER. Two minutes and forty seconds.

Mr. RIEGLE. I would like a piece of that, and my colleague from Michigan would as well.

Mr. MATTINGLY. I yield 1 minute to the Senator.

Mr. RIEGLE. Mr. President, we have a catastrophe on our hands in our State that is beyond anything in recorded history in Michigan. The crop losses alone in the last 3 weeks exceed $300 million.

With reference to the question of the Senator from Louisiana, we are not talking about a 30-percent crop loss or a 50-percent crop loss. We are talking about a 100-percent crop loss. What has happened is just beyond comprehension.

The President has declared all these counties—some 22 counties in the State—as disaster areas because of the scale of what has taken place. The rains have not stopped. The estimates are that 22 percent of the farmers in Michigan will be out of business next spring unless some response is brought forward.

I think this is exactly comparable to farmers who have been hit by the drought. We have to respond.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time?

Mr. MATTINGLY. I yield 1 minute to the Senator from Michigan.

Mr. LEVIN. Mr. President, the Senate has come to the rescue of many States over the years I have been here.

One of the most eloquent speeches I ever heard when I first got here related to some floods in Mississippi, where it was required that we have provisions of the Small Business Act, in order to come to the rescue of people who were victimized by floods in that State.

We now have unprecedented drought in parts of our country. In our State of Michigan, we have a flood which has no known equal in recorded or memorable history. We go back as far as memory to come up with a flood like this, and no one can remember.

About 20 percent of our crops are out. Farmers cannot grow crops at all next year because of these floods.

When you look at the maps on the television screens on the 11 o'clock news——

The PRESIDING OFFICER. The time of the Senator has expired.

□ 1050

Mr. LEVIN. I thank my friend.

I wonder if the Senator from Louisiana might give us a minute if he has an extra minute.

Mr. HATFIELD. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 8 minutes remaining, and proponents have less than a minute.

Mr. HATFIELD. Let me yield time to some of the opponents first and then if we have some time I will be happy to yield to the Senator.

Mr. BOSCHWITZ. I did not hear the request.

The PRESIDING OFFICER. Who yields time?

Mr. HATFIELD. I am happy to yield 3 minutes to the Senator from Mississippi, 2 minutes to the Senator from Minnesota, and 2 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I am sympathetic with the suggestion the Senator from Georgia is making to the Senate tonight because we considered this request in the Committee on Appropriations and wanted to include a provision in our bill that would direct the Secretary of Agriculture to make available benefits from the Commodity Credit Corporation to drought-stricken farmers, and that was the request that was made of us.

We worked with the Senator and came up with language that is included in the bill that urges the Secretary to make those benefits available. It does not, though, go as far as the amendment goes tonight that is before the Senate. This creates a new disaster assistance program.

I would like very much to join with the Senator from Georgia and others to try to make sure that our disaster program is sensitive to the needs of those who have been harmed by natural disasters.

We did have in place other forms of assistance. Federal crop insurance which is subsidized, loans from the emergency loan fund. This actually takes in effect hundreds of millions of dollars from that loan fund and offsets that against this new disaster assistance program.

I think we can make available essentially a disaster assistance program, but I do not think we can write a new program tonight with this legislation.

I would hope that we would support the managers of the bill when we get to that point where we have to vote.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. BOSCHWITZ. Mr. President, I also rise in opposition to this amendment. There are many things presently in place. The USDA insures cost-sharing eligible livestock producers up to 50 percent of the cost of feeding their livestock under the assistance that has already been announced. Farmers have been prepaid $1 billion in advance deficiency payment under the same announcement.

Under the emergency feed assistance programs, eligible farmers may purchase feed grain owned by the CCC in their country at 75 percent of the loan rate.

The Emergency Loan Assistance Program is providing family farmers unable to obtain credit also where low-interest loans of 5 percent up to $100,000 and 8 percent above that level.

There is a lot of assistance already in place.

It is not clear to me from this amendment. The farmer insures his crops. Most of the sugar beet farmers in Minnesota and I am sure in Michigan do insure their crops. It is not clear to me whether or not they can get both insurance and disaster payments. If we are going to have payments, they are going to be looking for disaster if that indeed is the case.

There is no short-term budget effect, but the Emergency Disaster Loan Program would normally be in the form of loans so there will not be a repayment. So in future years, there will be a budget effect even though there is not a budget effect in the short term.

There are many programs in place. There have been announcements by the USDA to provide for the farmers who have had drought impact in the Southeast and in other parts of the country.

Therefore, I would join with my friend from Mississippi in opposing this new program which would be $332 million.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. BURDICK. Mr. President, I have grave concerns about this amendment. My concern is not that we should not be providing this drought assistance to those who have suffered from the disaster. My concern is that we are using emergency disaster loans to pay for it.

We are set to begin fiscal year 1987 with only $700,000,000 emergency disaster loans. Last year, we started with $1,300,000,000. If my colleagues will recall, last year we came up short on operating loans for our farmers and so the administration transferred $700,000,000 from the emergency loan fund to the operating loan fund. Still, we ended the year without being able to fund all of the operating loan applications that qualified.

Next year, we will be starting out with less direct operating loan funds than we had this year. There exists every possibility that we will need to transfer money from emergency loans to operating loans again. Since we're starting out with only $700,000,000 this year in disaster loans, a similar transfer to last year's would wipe out the fund.

If we adopt this amendment, not only would we not be able to make the transfer, but we wouldn't have any funds left after the transfer for emergency loans.

So, I just feel it is unwise to deplete our disaster loan funds before we have even begun the year when we don't now know what kind of disasters we will face and where the money will be needed.

Therefore, I urge rejection of the amendment.

All we are doing here is robbing Peter to pay Paul.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BURDICK. If they have a good case I support them, but to rob another program that works as well is not justified.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BURDICK. Thank you.

The PRESIDING OFFICER. Who yields time?

Mr. HATFIELD. I yield 30 seconds more to the Senator.

Mr. BURDICK. This amendment will reduce the amounts for this fund from the $700 million already reduced to $332 million.

If you want to support it on a standing basis by itself, I will be glad to support it.

The PRESIDING OFFICER. Who yields time?

Mr. HATFIELD. Mr. President, I yield 1 minute to the Senator from Michigan.

Mr. LEVIN. I thank my friend from Oregon.

Mr. President, there is a provision in this bill which urges the Secretary to do this. If we want to do more than feel satisfied that we have done something by urging him, we are going to have to mandate it.

We visited with the Secretary. The Secretary needs a mandate. These words will not do it that are in the bill. This amendment is germane to existing language in section 633. But if we want to do something real for people who are suffering terribly, as this Senate has done historically, we have to adopt the Mattingly amendment for the victims of these historic droughts and these historic floods.

I hope the Senate will rise to this occasion tonight as we have over the years that I have been here and for decades I know before that. When people who have been flooded out or droughted out or hailed out they have been able to look to us for assistance.

Mr. HART. Mr. President, the majority leader—who was instrumental in putting this package together—has accommodated the special needs of Colorado farmers in this drought relief measure. The Senator from Colorado is most grateful for his leadership on the issue.

As the Senate considers drought assistance, we are restoring language to the legislation which was removed from the House-passed drought relief measure. We are adding the term "excess moisture situation" in addition to the other qualifications for assistance under the bill. Adding this term will ensure that farmers in my State whose farms sustained hail damage will receive assistance under this program.

When this language was omitted from the bill, I was joined by several Senators in seeking inclusion of this language in the measure. The majority leader responded to our request, and he responded with compassionate understanding.

This legislation comes at a critical time. We must not turn our backs on farmers who during normal times might be able to survive periods of drought, flooding, or hail damage. But there are not normal times.

Farmers are struggling with inordinate levels of debt. Prices are depressed. Export markets are vanishing. And the Nation has become a net importer of food. This continuing economic tragedy has worsened in the face of problems brought on by bad weather. That's why this bill is so important.

The Senators with whom I worked on the "excess moisture" provision are Senators Boren, Zorinsky, Pryor, Sasser, Gore, Riegle, Nunn, Ford, Melcher, and Levin. I appreciate their efforts and urge adoption of the amendment.

DISASTER ASSISTANCE

Mr. DOLE. Mr. President, many of my colleagues and I have been quite concerned about the prolonged drought that occurred in several Southeastern States, and the severe flooding that has devastated many Michigan farmers. In addition, we have experienced severe hail damage in Kansas and other Midwestern States.

SOUTHEAST DROUGHT

I commend Senator Mattingly and others who have worked on the disaster legislation we are considering today. It had been reported the livestock and crop losses from the Southeastern drought were expected to total about $2 billion or more.

We have seen other farmers trying to lend a helpful hand by sending hay for emergency feed donations to the Southeast and I congratulate them for their compassion and concern.

MICHIGAN FLOODING

I have also talked with Michigan agricultural leaders who have witnessed the type of flood that occurs only once in over 400 years, devastating over $200 million worth of beans, potatoes, sugar beets, vegetables, and other speciality crops.

KANSAS MIDWEST HAIL STORM

Many Kansas farmers experienced one of the worst hail storms in memory earlier this summer. Golf ball sized hail devastated crops, homes, and equipment. Over 3,600 farms were affected with physical damage reported to be over $21 million.

HELPFUL LEGISLATION

There are no easy answers to what can be done to ease the pain of these disasters. The administration has announced some measures to provide assistance to the Southeast. However, more needs to be done for Southeastern farmers and we need to address the severe flooding in Michigan and the hail storm losses in Kansas, Colorado, and other Midwestern States.

I am joining with Senator Mattingly and others in sponsoring legislation to provide disaster payments in the form of negotiable PIK certificates. It does not involve any cash outlay since this will be a lateral transfer of sufficient funds out of emergency loan programs. It would cap benefits at $100,000. Many of the farmers who would receive assistance under this approach would not qualify for the loan program since their collateral and cash-flow have been so severely diminished.

CONCLUSION

I would state the assistance we are providing is not a bailout by any stretch of the imagination, but does provide minimum assistance to those producers who have faced these unfortunate natural disasters.

Mr. President, many farmers are facing severe economic problems, today. When a natural disaster hits, suddenly and unexpectedly, it can cause a farmer who had a chance of surviving to lose both his farm and everything he has gained from a lifetime of hard work. I support the legislation and urge its immediate adoption.

Mr. RIEGLE. Mr. President, I rise in strong support of the Mattingly/Riegle amendment, as modified. The language that is before the Senate is the only tangible hope that thousands of farmers around the country have for recovery from the drought or flood disasters which have afflicted the Nation since the middle of the summer.

The modification that Senator Mattingly has added to his original amendment is specifically designed and intended to meet the pressing needs in my State of Michigan and in other areas of the Midwest which have experienced unprecedented levels of rain and flooding in recent weeks.

Since September 9, Michigan has seen more than 26 inches of rain fall, most of it concentrated in rural and agricultural areas of the State. In contrast, the average annual rainfall in Michigan—annual rainfall—is 32 inches. So, 82 percent of our annual rainfall has come in a 3-week period and there is simply no place for that water to go, it is standing in fields and—when combined with warmer than normal termperatures—crops are rotting—there is no other way to describe the effects of the rains, than to say that there is a smell of dead or dying crops is everywhere. And it is not getting any better.

It is still raining in Michigan and in the Midwest. Even if it stopped today, it would be several weeks before farmers could get into their fields and begin harvesting. At that point, they would be running dangerously close to the winter snows and the loss of their entire crops.

Mr. President, what has happened in Michigan is nothing less than a tragedy for our farmers. We were anticipating a very productive year, crops were bountiful, we had been spared the misfortune that descended upon the South and the East. In fact, when the drought hit the hardest in the South, it was Michigan farmers among others loading carload after carload of hay to give to their fellow producers in other States.

While Michigan farmers had to confront the same difficulties that all farmers face—low prices, high costs, high-interest rates—as a whole they felt that they could make it through the year, and be in business next year. But this wasn't to be the case and thousands of farmers watched their expectations wash away in the torrents of rain.

Just as Michigan farmers began to prepare for the harvest, or in some cases actually got into their fields and started to harvest some crops, the rains started, and they haven't stopped. Rains that haven't been seen in Michigan in more than 400 years. Rains which no one could foresee nor plan for, and all harvest activities were stopped in midstride, and will not begin for at least 3 weeks—if all goes well and the weather cooperates

Regardless of what happens to the weather we have a continuing disaster in the Midwest the likes of which no one has ever seen. Michigan has already suffered more than $300 million in agricultural damages alone, Many farmers have told me that their entire crop, a crop that they nurtured throughout the year has been lost. Not a single usable commodity. It's the same as if some catastrophe leveled hundreds of factories in a single State, completely eliminating all means of production, the impact of this disaster is so great.

Michigan State University estimates that right now, today, without the assistance provided in this bill 22 percent of all Michigan farmers will not be in business in 1987. Twenty-two percent, more than one-fifth of all our farmers wiped out in a 3-week period. We are talking about more than 25,000 farmers—and it is not just farmers, it is families that will be hurt—in just 1 year, due to a natural disaster of unprecedented propositions.

Indeed, they are top managers, the survivors of the last 5 years of hardship, in many cases they are second- and third-generation farmers, and in a real sense they are the future of Michigan agriculture.

Michigan farmers have no disaster relief available to them now. The disaster loan program is inadequate in meeting the needs of farmers in my State. Interest rates for disaster loans are 5 percent for the first $100,000, and 8 percent for amounts greater than $100,000. This is simply too high for our stricken farmers to bear.

Mr. President, the last thing farmers need at this time is more debt—especially at these levels of interest. Interest costs are already the single largest input for farmers. Furthermore, it is difficult, if not impossible, for farmers to collateralize another loan, even a disaster loan. Their assets are in the ground under water, their cash has been used up paying the operating debt for this year's crop, so in many cases even if they wanted to obtain loans, they coudn't even qualify.

Crop insurance has shown itself to be of little value, as well. With respect to many of the crops in Michigan, the nonprogram crops no insurance is available. In other instances, the premiums are so high, in relation to the actual risk, that sound management plan would dictate the purchase of insurance. It is difficult for anyone to rationalize purchasing insurance to protect against a 1-in-430-year occurrence.

The amendment before the Senate today would extend a disaster payment program to victims of floods for nonprogram crops. These are crops such as sugar beets, dry edible beans, potatoes, onions, carrots, and a host of other vegetables and products which are not part of any price support programs. In addition, it would extend the disaster payment program to victims of floods or hail which have damaged program crops in 1986, as well.

USDA is given quite a bit of discretion to construct the program, though we fully expect them to issue regulations within a 30-day period and begin distributing funds to the disaster areas. Nonprogram producers are in many cases under contract to processors or shippers, so records will be available to determine the appropriate base and level of losses. With the program crops, of course, ASCS does have the average yields to compute losses and the administration of the program should not present them with any severe difficulties.

The amendment would convert disaster loan money to disaster grants, in the form of PIK certificates. I realize that this may be controversial to some Senators, and cause them problems since unobligated disaster loan funds are typically converted into the operating loan program, but Michigan farmers are confronting a disaster that will put many of them out of business this year, right now. I do not see many alternatives to fund this effort, we must keep the amendment's budgetary impact neutral, we do that. There might be other sources of funding, and I'm open to considering those sources, but I cannot state forcefully enough that Michigan farmers are in a desperate situation, which is unprecedented in modern history, and we must respond to meet their needs—just as we respond in any other natural disaster in this country or abroad—be it a volcano in Washington State or an earthquake in Mexico. This amendment, and the funding mechanism is truly the last best hope for the farmers in Michigan, Georgia, South Carolina, and in many other States.

I would like to thank Senator MATTINGLY for his assistance and cooperation in this regard. We both have terribly difficult situations in our States, we expect that with the passage of this amendment the USDA will provide aid as soon as possible to our producers.

The PRESIDING OFFICER. Who yields time?

Mr. HATFIELD. Mr. President, I believe I have 1 minute remaining and I will be happy to yield to the proponents of the amendment.

The PRESIDING OFFICER. The Senator has 1½ minutes left and the proponents have half a minute remaining.

Mr. HATFIELD. Mr. President, I yield 45 seconds to the Senator from Michigan and 45 seconds to the Senator from Georgia.

Mr. RIEGLE. Mr. President, I thank the chairman and he is gracious. It is a late hour and I appreciate the consideration being given.

This is a most urgent situation. I can just tell you having been to these flooded areas and having talked to the farmers they are absolutely desperate. We have a crisis condition on our hands today. This is a disaster program that we are taking from and using it to meet a disaster that has now happened and that is precisely what we should be doing.

We have responded to other situations like this, whether it was Mount St. Helens and whatever and that is part of the reason we think in terms of the national response to extraordinary problems that strike a certain part of the country.

We now have that in our part of the country. I appeal to my colleagues to give us this help now when it is desperately needed.

The PRESIDING OFFICER. The time has expired.

The Senator from Georgia now has 1 minute remaining.

Mr. MATTINGLY. I just conclude, Mr. President, to say that the emergency loan program right now in its current form is absolutely useless to those farmers who have gone through this disaster in Michigan and in the Southeast. They do not need any more loans. This amendment currently the way it is set up uses the surplus commodities and does not use any money. There is absolutely no cost to this amendment. It is a lateral move of money. It has been scored that way by the Budget Committee and everyone else who does the bean counting.

So what in fact we have here is something that is not only germane, because we legislated it this way, this amendment to the continuing resolution, but in fact it costs no money and what it is going to do is going to get the assistance to the farmers immediately.

The PRESIDING OFFICER. The time has expired.

Mr. MATTINGLY. Mr. President, I ask unanimous consent Senator HOLLINGS be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I rise in support of the amendment by the distinguished Senator from Georgia that would require that the Secretary of Agriculture to implement a program to provide certificates redeemable from stocks of commodities held by the Commodity Credit Corporation to those producers who are eligible for disaster emergency loans.

Mr. President, our farmers who are suffering from the impact of the drought of 1986 do not need further loans. These farmers need assistance in the form of generic certificates as provided for under this amendment.

I commend the Senator from Georgia for his persistance in this issue. I am pleased to join him as a cosponsor of this amendment and I urge my colleagues to join me in support of this amend.

Mr. HATFIELD. Mr. President, I make a point of order under rule XVI that the amendment is not germane to the bill pending before the Senate and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under rule XVI, the question is submitted to the Senate without debate.

The question is, Is the amendment of the Senator from Georgia germane?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], the Senator from Florida [Mrs. HAWKINS], and the Senator from Vermont [Mr. STAFFORD] are necessarily absent.

Mr. BYRD. I announce that the Senator from California [Mr. CRANSTON] and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

The PRESIDING OFFICER (Mrs. KASSEBAUM). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 33, as follows:

[Rollcall vote No. 320 Leg.]

YEAS—61

Abdnor
Baucus
Biden
Bingaman
Boren
Broyhill
Bumpers
Byrd
Chiles
DeConcini
Denton
Dixon
Dodd
Dole
Domenici
Eagleton
Exon
Ford
Glenn
Gore
Hart
Hatch
Heflin
Heinz
Helms
Hollings
Inouye
Johnston
Kasten
Kennedy
Kerry
Laxalt
Leahy
Levin
Long
Lugar
Matsunaga
Mattingly
McConnell
Melcher
Metzenbaum
Moynihan
Murkowski
Nickles
Nunn
Packwood
Pressler
Pryor
Quayle
Riegle
Rockefeller
Sarbanes
Sasser
Simon
Specter
Stevens
Thurmond
Trible
Warner
Wilson
Zorinsky

NAYS—33

Andrews
Armstrong
Bentsen
Boschwitz
Bradley
Burdick
Chafee
Cochran
Cohen
D'Amato
Danforth
Durenberger
Evans
Gorton
Gramm
Grassley
Harkin
Hatfield
Hecht
Humphrey
Kassebaum
Lautenberg
Mathias
McClure
Mitchell
Pell
Proxmire
Roth
Rudman
Simpson
Symms
Wallop
Weicker

NOT VOTING—6

Cranston
Garn
Goldwater
Hawkins
Stafford
Stennis

□ 0210

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote? If not, on this vote, there are 61 yeas and 33 nays. The amendment is declared germane.

Mr. HATFIELD. Madam President, we will accept the amendment, and take it to conference.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Georgia.

The amendment (No. 3154) was agreed to.

Mr. RIEGLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. RIEGLE. Madam President, I want to thank the chairman for accepting the amendment, and I want to thank our colleagues for such a strong vote. I am very grateful for that support.

Mr. LEVIN. Madam President, I join in the expression of gratitude, and I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

□ 0220

Mr. HEINZ. Madam President, I would like to send an amendment to the desk but I want to be sure there will not be objection to it. Can the Senator from Oregon inform me?

Mr. HATFIELD. I have no knowledge of the amendment.

Mr. HEINZ. Madam President, let me address an inquiry to the chairman of the Appropriations Committee. I want to be sure there is no understanding or arrangement that I am intruding upon. I have an amendment involving a stipulation. It gives an order to appropriate money for the Target Jobs Tax Credit Program.

I understand that this amendment, which has been drafted in consultation with the Department of Labor and with the help of the staff of Senator WEICKER's subcommittee and the minority, is acceptable. But I have not had a chance to speak directly with Senator WEICKER to see if it is.

Mr. HATFIELD. May I respond to the Senator that we are proceeding at this time rather under a gentleman's understanding. It is not hard and fast. What we are doing at this time is checking such amendments that Senators feel may be noncontroversial or have been modified to meet previous objections.

As we have with others, if the Senator would like to, we will send the amendment through the checking procedures of those committee chairmen and ranking members, and if it is cleared we will handle groups of them here at the manager's desk. If that is a way the Senator finds satisfactory, we will be happy to handle it in that manner.

If it is an amendment that is controversial that does not clear that process, the Senator is free to offer it and we will make a point of order and go through the normal procedure that way.

I believe the Senator indicated that it has been modified from the time we talked about it before when there was objection. If we do that general procedure, I would be happy to accept it.

Mr. HEINZ. Madam President, I think this amendment has been appropriately modified but I will withhold it at this time until a final check is made.

Mr. HATFIELD. Madam President, we are in the process of moving these amendments as rapidly as the staff can complete work on them.

AMENDMENT NO. 3155

(Purpose: To permit SBA recognition of certain costs incurred by the University of Georgia Small Business Development Center)

Mr. JOHNSTON. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. NUNN, proposes an amendment numbered 3155.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution, add the following:

SEC. . Notwithstanding any other provision of law, the Small Business Administration is authorized to recognize all costs incurred prior to December 16, 1980, by a small business development center at the University of Georgia in pursuit of the purposes of the Small Business Development Center Program as allowable costs chargeable to a fiscal year 1981 cooperative agreement, provided such costs were incurred subsequent to October 1, 1979, and have not been reimbursed from non-Federal sources.

Mr. NUNN. Madam President, this is a simple amendment to give the Small Business Administration the discretionary authority to recognize certain costs incurred by the Small Business Development Center at the University of Georgia. The University of Georgia Small Business Development Center was one of the initial participants in the pilot SBDC Program begun in 1977 and has been a model center as the SBDC concept has expanded to over 40 States.

The need for the technical amendment I am offering has arisen because of an audit of the cooperative agreement in effect between SBA and the Georgia SBDC for the period December 16, 1980, through December 31, 1981. As a result of this audit, SBA has disallowed certain expenses incurred by the Georgia SBDC for programming during calendar year 1980.

Madam President, the SBA agrees that all funds in question were expended by the Georgia SBDC for the legitimate purposes of the Small Business Development Center Program. It is also clear that during the 2-year period of fiscal year 1980 and fiscal year 1981 the total funds expended by the Georgia SBDC were within its Federal allocation. It appears from the SBA audit, however, that the Georgia SBDC expended approximately $66,000 in excess of its Federal allocation during the fixed price agreement in effect with SBA during fiscal year 1980 and paid for these excess costs from funds received under the cooperative agreement in effect for fiscal year 1981. There was general confusion in the SBDC Program during this period due to the change in the law governing SBDC's and the protracted appropriations process in Congress in 1980 which was not concluded until a final continuing resolution was adopted December 15, 1980.

The members of the Grants/Cooperative Agreement Review Committee at SBA all agree that equity is on the side of the Georgia SBDC in this case and that the Georgia SBDC should not be required to repay to the SBA funds which were spent for legitimate SBDC activities. Nonetheless, the Committee believes it is compelled by the legal interpretations of the current law governing cooperative agreements to request repayment unless discretionary authority is provided SBA to hold harmless the Georgia SBDC in this matter. My amendment would provide the SBA with this limited and discretionary authority which would be welcomed by the Appeals Committee.

Madam President, I believe this amendment has been cleared on both sides of the Appropriations Committee and with Chairman WEICKER and Senator BUMPERS, the ranking Democrat on the Small Business Committee.

Mr. JOHNSTON. Madam President, this amendment has been approved on this side.

Mr. HATFIELD. Madam President, the Senator is correct. The amendment has been cleared on this side by the respective subcommittees.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3155) was agreed to.

Mr. HATFIELD. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GRAMM. Madam President, I move to lay that motion on the table.

The motion to lay on the table is agreed to.

Mr. MATTINGLY. Madam President, I ask unanimous consent that I may be added as a cosponsor to amendment No. 3155.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

AMENDMENT NO. 3156

(Purpose: To provide funds to carry out the targeted jobs tax credit program and to provide offsetting funds)

Mr. HATFIELD. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The **PRESIDING OFFICER.** The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. Hatfield], for Mr. Heinz, (for himself, Mr. Long, Mr. Grassley, Mr. Symms, Mr. Dixon, Mr. Baucus, Mr. Chiles, Mr. Thurmond, Mr. Sasser, Mr. Kerry, Mr. Denton, Mr. Specter, Mrs. Hawkins, Mr. Heflin, Mr. Durenberger and Mr. Dodd) proposes an amendment numbered 3156.

Mr. HATFIELD. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The **PRESIDING OFFICER.** Without objection, it is so ordered.

The amendment is as follows:

On page 6, line 2, before the period, insert the following: ", except that funds made available under such Act, and the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1986 (Public Law 99-178; 99 Stat. 1103), under the paragraph of each Act entitled "STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS" that are authorized under section 6 of the Wagner-Peyser Act (29 U.S.C. 49e) may be used to carry out the targeted jobs tax credit program under section 51 of the Internal Revenue Code of 1986".

Mr. HEINZ. Madam President, one of the great achievements of the Tax Reform Act of 1986 is the reauthorization of the targeted jobs tax credit. Those of us who worked long and hard to win this reauthorization—the 42 cosponsors of S. 1250—did not get to savor our victory. The continuing resolution before us has no money to administer the targeted jobs tax credit, and without administrative support there will be no tax credit. The Department of Labor has long known that TJTC would be reauthorized. They did not provide for the reauthorization, and my understanding is that they have yet to take the slightest preliminary step to begin administering the credit.

The amendment I have offered makes no policy change, takes no money from any other program, but merely restates current law. States may administer the targeted jobs tax credit from employment service funds. I have been informed by the Department of Labor that this would probably be the case even without an amendment, but, Mr. President, there is going to be a lot of confusion following reauthorization of TJTC, and it is imperative that the intent of Congress be clear.

Madam President, in fiscal year 1985 TJTC assisted 630,000 of the structurally unemployed to find rewarding work, thus saying $400 million in costs to the Federal Government—that figure includes the cost of the credit. TJTC is one of the most effective programs to encourage private sector employment of those who historically have found it hard, if not impossible, to break into the job market. The credit produces jobs by providing employers with a strong incentive for hiring those who are from one of the target groups. Those groups include:

Disadvantaged Vietnam veterans;

SSI and general assistance recipients;

Disadvantaged former convicts;

AFDC recipients and WIN registrants;

Disadvantaged youth; and

Vocational rehabilitation referrals.

I recognize that the Labor-HHS-Education appropriation is now in conference, and my friend the Senator from Connecticut wants to send that to the President as a separate bill. If that happens, and I understand his desire to send the bill out, I only hope that he will join with us in supporting TJTC in the near future.

Madam President, the Finance Committee worked long and hard to get this credit put back on track. As soon as the President signs the Tax Reform Act, TJTC will again be active, and the thousands of economically disadvantaged individuals who are seeking employment would again have the assistance of this incentive, if only there were some money to administer the credit.

Let me emphasize to my colleagues that there could be a real disaster in their States if we do not approve this amendment. When TJTC is reauthorized, requests for certification are going to pour in to your State employment security offices. With no certainty as to where the money is coming from, they will not be able to handle the demand, and those few who are certified will have to wait months and months to be processed. Although it is my view that current law will ultimately be ajudicated in favor of reimbursing the States costs involved, the prospect of confusion and delay, even for a relatively short period, would be damaging and unfair to the people we say we want to help. For that reason I urge the approval of my amendment, which does not violate the Budget Act.

Madam President, I ask unanimous consent that letters received from the American Council of the Blind and the Association for Retarded Citizens of the United States be printed in the Record.

There being no objection, the letters were ordered to be printed in the Record, as follows:

American Council of the Blind,
Washington, DC. October 2, 1986.
Attention: Mr. Andrew McElwaine.
Senator John Heinz,
Russell Senate Office Building,
Washington, DC.

Dear Senator Heinz: In view of the enormous importance of the Targeted Jobs Tax Credit program, the purpose of this letter is to endorse and support your bill to provide funds for the administration of the program by the Labor Department. Inasmuch as the unemployment rate among blind people of working age is approximately 65%, the TJTC program must be carried out as another way of helping to improve this disgraceful situation.

Yours sincerely,
Oral O. Miller,
National Representative.

October 2, 1986.

Hon. John Heinz,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

Dear Senator Heinz: The Association for Retarded Citizens of the United States is most supportive of your initiative to amend the Continuing Resolution for FY 1987 to provide the necessary funds to administer the Targeted Jobs Tax Credit Program. Without such funds, the hard fought victory of extending to jobs credit in the Tax Reform Act would likely be for naught.

Thousands of persons with mental retardation who can and want to become economically independent and productive citizens in our society will only achieve their goals through the jobs credit program. Their ability to obtain employment is hinged on the full implementation of the Targeted Jobs Tax Credit Program.

Please do all you can to convince other Members of Congress to appropriate the necessary funds for this program on behalf of the six million citizens with mental retardation in our nation. I wish also to commend you for your efforts.

Sincerely,
V.K. "Warren" Tashjian,
President.

● **Mrs. HAWKINS.** Mr. President, as many of my colleagues are aware, the tax reform bill which the Senate recently enacted, contained a provision which extended the Targeted Jobs Tax Credit [TJTC] retroactively from January 1, 1986 through December 31, 1988. I strongly supported the inclusion of this credit.

All of us are well aware of the positive impact that the targeted jobs tax credit has had on the employability of those who otherwise would be unable to compete in the job market. The TJTC has provided a realistic and positive alternative to poverty and joblessness. And it has diminished Federal entitlement spending.

The credit produces jobs by providing employers with a tax credit for hiring someone who is from one of nine targeted groups: Vocational rehabilitation referrals; economically disadvantaged students; economically disadvantaged Vietnam-era veterans; supplemental security income recipients; welfare recipients; economically disadvantaged cooperative education students; economically disadvantaged former convicts; AFDC recipients and WIN registrants; economically disadvantaged summer youth employees.

However, with the extension of the TJTC came the unfortunate reality that no funds had been made available for its implementation. And State agencies now face the financial burden of not only restarting the program but also processing the tremendous backlog of retroactive claimants with no Federal support.

Mr. President, for these reasons, I strongly support the amendment being offered to the continuing resolution by my good friend from Pennsylvania, Mr. HEINZ.●

● Mr. SASSER. Mr. President, I am pleased to be a cosponsor of the amendment offered by the distinguished Senator from Pennsylvania. The Targeted Jobs Tax Credit [TJTC] has been one of the most consistently successful Federal programs for the unemployed and I urge my colleagues in the Senate to support its extension in the continuing resolution.

TJTC is invaluable in helping the structurally unemployed enter the job market. It provides employers with the necessary incentive to hire and to train those who traditionally have had the hardest time finding employment. Without TJTC, most employers are unwilling to take the extra time and effort required to help these persons acclimate themselves to the work world.

It is important to note that TJTC not only provides jobs for thousands of unemployed persons it also turns tax users into taxpayers. Those hired through TJTC now pay Federal income and Social Security taxes, whereas, before, they were only on the receiving end of Federal funds.

By taking many of these people off the welfare roles, TJTC saves government dollars that would be spent on public assistance programs. In fact, it is estimated that the savings in welfare and general assistance payments would be almost twice the cost of a 1-year extension of the TJTC Program.

In my own State of Tennessee, TJTC provided 13,487 jobs in fiscal year 1985. The gross public assistance savings resulting from these TJTC jobs was $2.7 million. Since the program cost only $1 million to administer, there was a net public assistance savings of $1.7 million in Tennessee.

However, the ultimate accomplishment of the TJTC Program is not the millions of dollars it saves in public assistance but the thousands of lives it enriches with the offer of jobs and the promise of self-sufficiency.

Mr. President, I have always been a strong supporter of the Targeted Jobs Tax Credit and I urge my colleagues now to support the continuation of this vital program for the Nation's disadvantaged.●

● Mr. SPECTER. Mr. President, I join my distinguished colleague from Pennsylvania, Senator HEINZ, in sponsoring this amendment and strongly urge my colleagues to give it their favorable consideration.

The economy of this country has made great strides under our current national leadership, especially as compared with the disastrous conditions we were facing in 1980. But in some sections of the country, the full benefits of the economic recovery have yet to be felt. In my own Commonwealth of Pennsylvania, for instance, we continue to face unacceptably high levels of unemployment in the coal mines, in the steel mills, and in the inner cities. The people living in these areas are conscientious and want to work, but they are concerned that this country is forgetting them.

The Targeted Jobs Tax Credit [TJTC] is an important weapon against unemployment in the hardest hit areas of Pennsylvania and the Nation and we must not sacrifice it in this time of need. The categories of people who are eligible for hiring with assistance from the TJTC are those most in need. Economically deprived young people, Vietnam veterans, families on AFDC, and others are thrown a life line by this provision of law. In 1985 alone, 19,000 Pennsylvanians found jobs because of the TJTC. Nationwide, 622,848 people were in gainful employment because of it.

In many of the communities where the beneficiaries of the TJTC live, there are very few economic bright spots in the picture. This program is one of the few that helps keep some of these depressed communities alive, gives hope to the structurally unemployed, and helps keep families together. There can be no higher priority for us in promoting the public welfare.

The Tax Reform Act that we just passed reauthorizes the Targeted Jobs Tax Credit. This amendment would provide the funds necessary to administer the program. A vote for the amendment is a vote for jobs, and jobs are what our constituents want most of all.

I commend my colleague for offering this amendment and hope it will pass by a resounding margin.●

Mr. HATFIELD. Madam President, the amendment has been cleared on this side.

Mr. JOHNSTON. Madam President, the amendment has been cleared.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3156) was agreed to.

Mr. JOHNSTON. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HATFIELD. Madam President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3157

Mr. HATFIELD. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for Mr. RUDMAN, (for himself Mr. DOMENICI, and Mr. KASTEN) proposes an amendment numbered 3157.

Mr. HATFIELD. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, line 24 strike the period at the end of the line and insert: *Provided further*, That notwithstanding any other provision of this subsection, during fiscal year 1987 $36,450,000 shall be available for Department of Commerce, General Administration, "Salaries and Expenses"; $22,700,000 shall be available for Economic Development Administration, "Salaries and Expenses"; $196,500,000 shall be available until expended for International Trade Administration, "Operations and Administration"; $39,675,000 shall be available for Minority Business Development Agency, "Minority Business Development", of which $29,805,000 shall remain available until expended; and $1,008,612,000 shall be available until expended for National Oceanic and Atmospheric Administration, "Operations, Research, and Facilities": Provided further, That of the funds available for Regional Development Program, "Regional Development Programs", $1,576,000 are rescinded.

Mr. RUDMAN. Madam President, this amendment makes a series of technical changes to various accounts within the Commerce Department to allow for an increase for important trade programs within the International Trade Administration and to prevent reductions in force in the Commerce administrative account.

None of the decreases to the salaries and expenses account of the EDA, to the Minority Business Development Agency, or to the National Oceanic and Atmospheric Administration, will have a programmatic impact. Using unobligated balances available in these accounts, and adjusting the salaries and expenses account of the EDA to reflect the Senate program level, the Senate can provide an increase of $5,710,000 over the committee recommendation for the International Trade Administration.

These funds will be used to monitor voluntary steel agreements with other countries, to enhance our ability to enforce U.S. trade laws to regulate exports and protect U.S. industry against unfair foreign competition, and to meet the new and expanded statutory requirements resulting from the adoption of the Export Administration Amendments Act of 1985.

In addition, the amendment provides an additional $625,000 to the administrative account of the Commerce Department to prevent reductions in force.

Madam President, this amendment has been cleared with the minority and I know of no objection to its acceptance and I urge that the amendment be adopted.

Mr. KASTEN. Madam President, I want to thank the chairman, Mr. RUDMAN, for his willingness to work with me and the Department of Commerce on strengthening the International Trade Administration appropriation.

When I introduced my amendment in committee markup of H.R. 5161, I knew that a lot of work needed to be done in order to prevent the erosion of our statutory trade programs, yet stay within the limits of constrained resources. Together we have identified a series of offsets that should not cut any other Commerce Department operations.

The $5.7 million we are restoring to ITA reflects the concern we all share about vigorously enforcing existing statutes in order to fight our growing trade deficit. These programs are not glamorous, but they represent the battle in the trenches that must be sustained just to hold our ground.

I would like to outline the priority activities which these funds will go to:

Carrying out unfair trading investigations of foreign dumping and subsidization;

Assuring compliance with the President's steel program;

Enforcing the machine tool and semiconductor programs once they are inaugurated;

Continuing the improvement of export licensing and the implementing of foreign policy controls.

These activities will promote equality in international trade, they will help prevent the needless loss of thousands of jobs, they will provide for our national security, will reduce the burden of Government regulation, and will ensure the full enactment of any trade restrictions passed by Congress.

While we in Congress will struggle with new trade legislation in order to make progress on world economic problems, we must not forget the programs already in place. We must continue to pressure the administration to fully enforce our trade laws. If we fail to pass tough trade legislation, then this appropriation takes on even more importance.

Again, I thank the chairman and staff for their efforts.

Mr. HATFIELD. Madam President, this amendment has been cleared. It is nonlegislative in character. It has been cleared by the subcommittees. It is Mr. RUDMAN's amendment from the State, Justice, Commerce Committee.

Mr. DECONCINI. Madam President, will the Senator yield? I would like to ask the manager of the bill and the ranking member when they think we might end tonight so we might go home?

Mr. HATFIELD. Madam President, might I say that we are going to finish the bill, whenever that time comes, when Senators cease offering amendments.

Mr. DECONCINI. Would it not be better to take up amendments that had to be voted on compared to these that are going to be accepted? Could we not do it at a later time? It is ridiculous to this Senator's mind to be in at 2:30 in the morning.

Mr. HATFIELD. If we knew what amendments were going to be raised that had to be voted on, we could do that. But we are proceeding with amendments that have been presented that are noncontroversial in character.

□ 0230

The Senator from Louisiana and I shall be happy to stop at any time in this process when a Senator indicates that he or she has an amendment he or she would like to raise that would require a vote. I have asked for such notification by Senators who intend to do that. At this time, I must say to Senator DECONCINI our desks are clear of any such amendments.

Mr. DECONCINI. Madam President, I only want to express the view that I think this is getting ridiculous. We are going to be here well into next week. It is 2:30 in the morning. I know it is well intended on the part of the chairman and the ranking member to want to grind this out, but I know there are others who have families they would like to be with, as I do. We have work to do tomorrow. For us to be here at 2:30 a.m. to grind this out because we have only until sunset tomorrow does not seem to make sense.

Mr. HATFIELD. Madam President, I move the adoption of the amendment.

Mr. JOHNSTON. Madam President, the amendment has been cleared on this side.

If I may say to my distinguished friend from Arizona, we are in hopes that we are at the last stages of this bill. I have not been informed of another amendment that will take a rollcall vote. There may be one, there may be many, but I have not been informed. So I hope that we are getting to the final stages. If so, I hope the Senator will understand that it is probably better to push a ball across the field rather than let everyone go home and have overnight to think up new amendments.

Mr. DECONCINI. I agree if he is talking about another 10 or 15 minutes, but we were talking like that at 11 o'clock. I thought it was very wise of the chairman and ranking member to push the ball across the field but there comes a time when grown men and women ought to go to their homes and be with their families and not be doing the business of this country because the business of this country can wait until a few hours later in the day to be taken up, in this Senator's judgment.

The PRESIDING OFFICER. Is there any further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3157) was agreed to.

Mr. HATFIELD. I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3158

(Purpose: Expressing support for Chile's National Accord for the Transition to Full Democracy)

Mr. KENNEDY. Madam President, I send an amendment to the desk and ask for its immediate consideration. I hope there is not any controversy about it.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Massachusetts (Mr. KENNEDY) (for himself, Mr. LUGAR, Mr. PELL, Mr. DURENBERGER, Mr. HARKIN, Mr. SARBANES, and Mr. DECONCINI) proposes an amendment numbered 3158.

Mr. KENNEDY. I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk resumed reading as follows:

At the appropriate place in the resolution, add the following new section:

SEC. . (a) The Congress finds that:

(1) On September 11, 1986, the people of Chile marked the thirteenth anniversary of an authoritarian government characterized by restrictions on Civil liberties, including suspension of all political activities;

(2) On August 25, 1985, Cardinal Juan Francisco Fresno announced the National Accord for the Transition to Full Democracy in Chile, an agreement endorsed by eleven political parties spanning a broad political spectrum which commits the signatories to concrete steps to achieve a peaceful evolution toward full and authentic democracy;

(3) This national accord, which includes the repudiation of violence, the restoration of full civil liberties, the legalization of political parties, the preservation of a mixed economy, including guarantees of private property, and the holding of elections by direct popular vote, represents an honest and prudent effort toward this necessary transition; and

(4) The political parties, labor unions, professional organizations, and other groups supporting the accord reflect the overwhelming support of the Chilean people for a peaceful return to democratic rule: Now, therefore, be it

(b) It is the sense of the Congress that the United States—

(1) supports the efforts of democratic forces in Chile to achieve a peaceful return to democratic government;

(2) expresses its view that the National Accord for the Transition to Full Democracy is an important first step toward this goal; and

(3) calls upon the Government of Chile and the leaders of all sectors of Chilean society to demonstrate their commitment to a genuine transition through a process of dialogue and negotiation aimed at securing a return to democratic rule.

Mr. HELMS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

□ 0250

Mr. HATFIELD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Will the Senator suspend until there is quiet in the Chamber?

Mr. HATFIELD. Madam President, I am not going to propound the unanimous-consent request. We will spend more time trying to define it than it would take to go ahead with the amendment.

Let me describe what the agreement is on a gentleman's basis at this time between the proponent of the amendment and the Senator from North Carolina.

The proponent of the amendment, Mr. KENNEDY, and Mr. HELMS have agreed that there will be a 5-minute time agreement on this amendment, no secondary amendments, and the time would be equally divided, at the end of which Mr. KENNEDY would move to table the amendment. If that motion prevails, that ends the issue. If it does not prevail, then the Senator from Massachusetts [Mr. KENNEDY] has agreed to pull the amendment down.

Madam President, I ask unanimous consent that there be a 5-minute limitation, with no secondary amendments being in order, for the consideration of the pending amendment, to be equally divided between the Senator from Massachusetts and the Senator from North Carolina.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. DOLE. Madam President, I think that before we have the rollcall vote on the amendment, it would be very helpful to the managers to know precisely how many Members have amendments that are going to require votes.

My own view is that we have just about exhausted, I hope—I do not think we have exhausted Senators. I hope we have exhausted the amendments.

I understand that the managers want to stay here, unless they can be assured about the situation. I hope there are no amendments, but if amendments are going to require rollcall votes, they need to have notice during the vote that will occur on the tabling motion, so that they can decide whether or not to continue through the evening or come back later today.

Mr. SIMON. Madam President, if the Senator will yield, I believe that Senator KERRY or Senator EVANS or I will have some kind of Philippines amendment. I do not know whether it will be controversial, but it could be.

Mr. KERRY. Madam President, if the Senator will yield, as the majority leader knows, we are trying very hard to find a pot of money somewhere which will permit us to move forward in a bipartisan fashion.

I have just had a conversation with the distinguished Senator from Washington. The staff is working on a new proposal at this moment, and I hope it will provide us with a viable alternative.

At any rate, I think the Senator from Washington feels as I do, that there have been two very negative and detrimental messages sent by this body regarding the Philippines; and we hope—and I think most of the Senate hopes—that we can rectify that within the course of the next few hours. We are trying to do it in a bipartisan fashion.

Mr. DOLE. I do not want to stand here and delay the Senate. If you have an amendment that is going to require a rollcall vote, will you please let one of the managers know, so that we can add them up after the vote and see where we will go from here.

The PRESIDING OFFICER (Mr. WALLOP). The Senator from Massachusetts.

Mr. President, as I understand, we have a time agreement.

The PRESIDING OFFICER. Yes.

Mr. KENNEDY. I intend to yield myself 1½ minutes and then yield 1 minute to the Senator from Minnesota.

First of all, I offer this amendment on behalf of myself and the chairman of the Foreign Relations Committee, Mr. LUGAR; the ranking minority member, Mr. PELL; the Senator from Minnesota [Mr. DURENBERGER] and a number of other Senators.

This is a basic expression of administration policy. It is a resolution that was adopted 16 to 1 by the Senate Foreign Relations Committee. That particular resolution has rested at the desk of the U.S. Senate for 1 year, on which there has been no action.

Earlier today, we had the Ambassador from Chile who spoke to many of us and thinks this would be a constructive and positive step in aiding the democratic nonviolent forces in Chile. It basically is supporting the non-Communist political party in Chile, and expresses the view of the United States that we will support the nonviolent democratic forces, so that Chile may return to democratic institutions.

That is all this amendment does. It incorporates what has been passed and deliberated by the Senate Foreign Relations Committee and has the support of 16 members of the Foreign Relations Committee.

It seems to me that since we have not had an opportunity for the Senate to address this issue, and this is the last opportunity, it is a sense-of-the-Senate expression, but I think it is extremely constructive and supportive of the democratic forces there. I hope the Senate will support it.

Mr. KENNEDY. Mr. President, the people of Chile continue in their heroic struggle to return their nation to democratic rule, but the Government of Chile—in the person of General Pinochet—remains intransigent and unyielding. The violence of the repression grown with each passing day as students, housewives, workers, physicians, and lawyers are beaten and arrested on the streets of Santiago.

But the violence of the repression only breeds more violence. The voices of opposition grow stronger and ever more insistent. Civil war is just around the corner. Chile today is a classic example of the irresistible force of democracy meeting the immovable object of entrenched military rule. There must be visible and early progress toward a restoration of democracy, or there will be even greater tragedy in store for the people of Chile. The situation is very serious, and it is time for the U.S. Congress to speak.

The assassination attempt against General Pinochet—and his government's reckless and irrational response—were serious setbacks. Rather than show restraint at a time of national crisis, General Pinochet and his henchmen capitalized on the incident to unleash an unprecedented crackdown designed to crush any voice of dissent of opposition in the country. This campaign is a thinly veiled attempt to ensure that General Pinochet achieves his announced desire to remain in power well into the 1990's. The result can only be an escalation of violence and instability in the country.

A state of siege has once again been imposed on the people of Chile. Leaders of political parties, student associations, neighborhood organizations, human rights groups, the church, and the press have all become targets for Pinochet's campaign to destroy any challenge to his authority. Jose Carrasco, the editor of the opposition magazine Analisis, was abducted from his home by armed men in civilian clothes and executed in cold blood—three bullets to the brain. A teacher and a machinist were also abducted and murdered in similar fashions. Riot policemen attacked several hundred people with clubs who had gathered for the funeral of Mr. Carrasco and then fired on the group with tear gas and water cannons.

Three French priests have been expelled from the country and two United States priests were detained for a brief period. The government has detained dozens of individuals, most of whom are associated with the political opposition, and has closed five opposition magazines, temporarily suspended the right of the Reuter news agency to dispatch from Chile and closed the Italian news agency ANSA.

Today I am offering an amendment that is identical in its text to Senate Concurrent Resolution 82 which was approved by the Senate Foreign Relations Committee by a vote of 16 to 1 last fall. The resolution was reported out last October 23, and it has been on the Senate calendar since that time. But the full Senate has not yet had the opportunity to go on record in support of the democratic forces of Chile, and it is urgent that the Senate do so today.

On August 25, 1985, Cardinal Juan Francisco Fresno of Santiago announced the national accord for the transition to full democracy in Chile. This aggreement was endorsed by 11 political parties from a broad political spectrum. The signatories committed themselves to take concrete steps to achieve a peaceful evolution toward full and authentic democracy. This amendment will put the Senate on record in support of the national accord.

The national accord repudiates violence and calls for the restoration of full civil liberties. It calls for the legalization of political parties, the preservation of a mixed economy and the holding of elections by direct popular vote. The accord has received the overwhelming support of the Chilean people—as reflected by the many groups that have expressed their support for the accord. In addition to the 11 political parties that signed the accord, labor unions, student government, professional organizations, and other social and civic groups have all stated their strong support for this agreement.

And yet, when Cardinal Fresno met with General Pinochet at Christmastime last year, General Pinochet berated him. He scolded the cardinal and told him that neither he nor anyone in his government would ever negotiate with the signatories of the national accord.

Last January, I had the privilege of visiting Santiago. While I was there, I talked with the leaders of the non-Communist opposition to General Pinochet's dictatorship. They came from all parts of the political spectrum—as well as from all parts of society—from the churches, the labor unions, the business community, the universities, the professions, the political parties—from mainstream conservatives to democratic socialists. I came away with two dominant impressions:

First, the democratic spirit in Chile is high, and the pressure for reform is strong, broadly based, and increasingly impatient. Pinochet has never been more isolated. The opposition to his regime now comes from all parts of Chilean society, even from those who supported his coup against Allende.

Second, despite pledges to return to limited democratic government in 1989, General Pinochet has no plans to give up his power. The Constitution of 1980 is mere camouflage for General Pinochet's plan to continue his rule into the 1990's. This view of Pinochet's intentions is widely shared by most Chileans and has even prompted rumblings of discontent among the members of the junta.

General Pinochet boldly stated his contempt for advocates of human rights the day after the recent assassination attempt warning, "Now the war is going to begin on our side, and we are going to be tough, and all those people involved in human rights and the other things are going to be expelled from the country or locked up." Those ominous words do not bode well for the future of Chile.

By declining to engage in a dialog with the national accord and by undermining the bridge-building efforts of the Catholic Church, the Pinochet regime promotes precisely the kind of polarization that forces the contest into the streets, thereby allowing the military to portray the future as a choice between the uncontrolled chaos of the Communists and the artificial order of the police state.

To his credit, President Reagan seems to have learned important lessons from the Marcos experience in the Philippines. He appears much more open to the idea of the United States identifying itself with the popular forces in opposition to Pinochet—despite Pinochet's noisy anticommunism. Perhaps we have finally learned that for every Chiang Kai-shek, there is a Mao Tse Tung; for every Batista, there is a Castro; and for every Somoza, there is the inevitable Daniel Ortega. Perhaps the Philippine experience has finally taught us that the best thing the Communists have going for them in Chile is the continuation of the repressive Pinochet dictatorship and the widespread perception that it is propped up by United States aid and moral support.

For that reason, U.S. policy must continue to identify the United States with the democratic opposition and to distance itself from Pinochet. The words and deeds of United States policymakers receive enormous attention in the Chilean press, but United States policy must take its direction from the democratic leadership inside Chile.

The greatest challenge facing the democratic forces inside Chile is to isolate the extremes and to consolidate the center. The members of the national accord have risen above their own factional differences and adopted the kind of broad program that can serve as the basis for a real national consensus, one that can withstand the polarizing efforts of the far left and the far right. Their program presents a reasonable and coherent way to achieve an early return to democracy in Chile, one that will capture the support of all but the most extreme elements of Chilean society. Such a program is moderate enough to appeal to sensible elements within the armed forces—in an effort to isolate Pinochet from his last remaining power base—but vigorous enough to command the loyalty of the democratic activists in the streets.

Three weeks ago, the national accord took a major step forward to present an alternative framework of national concensus to the people of Chile. It is a natural next step to the original statement of principles which they issued after being convened by his eminence Cardinal Fresno.

At this moment of perhaps greatest polarization in the aftermath of the deplorable attempt on General Pinochet's life and his unbridled reaction of massive repression, the statement of the national accord offers an alternative of peace.

We can take an important first step here today—by telling the people of Chile that the United States does support the forces of democracy in their country, and by telling the dictator that the American people and the American Government are together in support of the national accord.

The greatest poet of Chile, in his immortal poem, asked the question "When." Today we should answer "Soon. Very, very soon."

I urge my fellow Senators to support this amendment.

Mr. DURENBERGER. Mr. President, I rise today to support the amendment to the continuing resolution expressing the sense of the Senate in support of a transition to democracy in Chile.

Just 1 year ago, on September 23, 1985, I introduced Senate Concurrent Resolution 68 with Senator LUGAR, expressing our strong support for a transition to democracy in Chile. The Senate Foreign Relations Committee reported an identical resolution, Senate Concurrent Resolution 82, which was placed on the Senate calendar October 23, 1985.

The world witnessed a landmark event in Chilean political history when, on August 25, 1985, 11 Chilean political parties representing the full breadth of the democratic center joined in signing the National Accord on the Transition to Full Democracy. I supported then and continue to support now the objectives of the democratic center in Chile: a peaceful return to democratic rule in that country.

Since I first introduced Senate Concurrent Resolution 68, circumstances in Chile have changed greatly. The assassination attempt on General Pinochet on September 7 of this year has unfortunately led to a declaration of a state of siege and an increase in government repression. The reprehensible act of terrorism by antigovernment forces gave those who oppose democracy in Chile a perfect opportunity to crack down, not just on Communists who advocate violent opposition, but also on those who favor a peaceful transition to democracy.

The brave Chileans who work for human rights in Chile have been subject to harassment and intimidation. The national coordinator of the Chilean Human Rights Commission, German Molina was sought for arrest. Dr. Pedro Castillo, chairman of the National Commission Against Torture, was detained for several days. These are only two examples of many more that I could cite of government action against those who had absolutely nothing to do with the attempt on Pinochet's life.

It is more important now than ever for the United States to support the democratic center in Chile. The solutions of the radical left in Chile are not the solutions of the people of Chile. Continued authoritarian rule only increases the appeal of the extremist options. I urge my colleagues to consider the impact of a continued polarization of Chilean society. Terrorism feeds the already entrenched fear and resentment of the left. The terrorists are receiving arms and support from external forces that strive to oppose American interests.

It is imperative that we support the efforts of the democrats in Chile. Those working for democracy in that beleaguered state must not give up hope. I have joined with others in expressing my support for the appointment of a Papal envoy to mediate the current crisis in Chile. I have called on the parties of the national accord to encourage the responsible left, represented by the MDP, to denounce acts of terrorism. And I have urged the courageous democrats in Chile not to let themselves be drowned out by the forces of extremism.

Mr. President, an expression of support by this body for democratic transition in Chile is the least we can do to show our position in the southern cone. We have witnessed the democratic revolution take hold throughout South America. I urge my colleagues to support this amendment. The future of Chile may be decided in the coming months, and this body must make its position in support of democratic change known to the American public, to Chileans, and to the world.

Mr. LUGAR. Mr. President, I rise to speak in support of this resolution, which expresses our firm support for democracy in Chile, and a transition which engages the government of that country with the parties of the national accord.

Recent events in Chile have once again reminded us that really only two outcomes are possible there—one, a return to democracy, with a full complement of civil and political rights, as is now practiced in the vast majority of Latin American countries; the other, increasing polarization, violence, and the emergence of a violent left as the only alternative to the current military government.

No one can say exactly how the process of transition should or can take place. But it must begin sometime, through dialog and negotiation, between the opposition and the military. What cannot be imagined is a transition in which the government of Chile simply ignores everyone who does not support it.

Last year the parties of the democratic opposition, under the sponsorship of the Catholic church, drafted a document which for the first time attempts to bridge the gap between democratic left and democratic right; to pull in the vast elements of the center; and to open serious negotiations with the Chilean Government and Armed Forces. Sensing that this would undercut their rising influence among the disaffected, the Communists and their allies chose to remain outside the accord, although theoretically they could have subscribed to it if they had wished.

Though apparently some members of the armed forces were initially receptive to the accord, President Pinochet made it clear from the beginning that he had no interest in discussing it, and today the fragile consensus of moderation which it represents is in serious danger of coming unraveled.

The United States has had some successes of late in fostering transitions in the Philippines and Haiti; in El Salvador and Guatemala. Our failures in Cuba and Nicaragua still haunt us, and exact a continuing and almost prohibitively high price. We cannot assure a democratic outcome in Chile, but this Senate as a body must make it clear that we support those forces who would achieve it.

This resolution, Mr. President, is an appropriate gesture—one which will give heart to our friends, preempt the ideological ground of the Marxist left, and underline to the Government of Chile the seriousness of our concern, and the depth of our democratic conviction. It will also put some Chilean officials on notice that the banner of anticommunism is not enough; that this Senate regards democracy as the only political system capable of assuring long-term political stability in Chile.

Mr. HARKIN. Mr. President, I rise in strong support of the amendment expressing the support of Congress for the early and peaceful return of democratic rule in Chile, and I commend the distinguished Senators from Massachusetts [Mr. Kennedy] and Indiana [Mr. Lugar] for this efforts to bring this bill to the Senate floor.

Thirteen years ago this month, on September 11, 1973, Gen. Augusto Pinochet seized power in Chile and murdered in process the democratically elected President, Salvador Allende.

Thirteen years of authoritarian rule by General Pinochet has brought repression, bloodshed, and horror to the Chilean people. Political parties have been suspended, the press has been censored, and arbitrary detentions and disappearances have been commonplace.

Despite Pinochet's repression and despite the state-sponsored violence of the military junta, the democratic opposition parties in Chile have put aside their partisan differences and presented a blueprint for a peaceful transition to democracy.

Last August, with the blessing of Cardinal Juan Francisco Fresno, the leaders of 11 parties, from conservative to left-of-center, agreed to work for direct Presidential and congressional elections in 1989. The accord also includes a call for the creation of an electoral register, the legalization of political parties, and for a mixed economy and respect for private property. Moreover, in a bow to the military, the accord "rules out collective trials for human rights abuses," while demanding the full restoration of civil rights and political freedoms.

Tens of thousands of ordinary Chileans have added their signatures to the National Accord. The U.S. State Department has hailed the accord as "positive, pragmatic, and forward looking," and on September 26 of last year, the House of Representatives approved, by voice vote, a resolution in support of the National Accord.

The optimism of last summer has been silenced by recent developments. For the past year, General Pinochet has resisted taking any steps toward returning democracy to Chile, and in

July of this year, he announced that he was prepared to remain in power until 1997.

Furthermore, in the wake of this month's terrorist attack against him, Pinochet has used emergency powers to crack down on his political opponents. Under the state of siege, two American priests and three French priests and democratic opposition and human rights leaders have been detained by Chilean authorities.

Six opposition magazines have been shut down, the Reuters News Agency was ordered to close its Santiago office, and Jorge Carrasco, editor of the opposition magazine, Analisis, was shot to death, reportedly by Chilean security forces.

Senate approval of this resolution would give the democratic opposition in Chile a much needed shot in the arm. The real freedom fighters in Chile, the Gabriel Valdez, Cardinal Fresno, and countless others, are not seeking arms to accomplish their goals, they are not asking for money to fund their cause, they seek only our moral and political support.

Congressional support for the National Accord should mark the beginning of a policy—both in Congress and in the Reagan administration—that strongly, consistently, and publicly demonstrates United States commitment to democracy in Chile. We should make it clear to Pinochet that we fully support this opportunity for free and open political expression, and that we will not be silent if he continues to suppress it.

It is imperative for the future of democracy in Chile that we distance ourselves from Pinochet and put ourselves squarely on the side of the Chilean people, who see free and fair elections as the way out of their 13-year nightmare of Pinochet's rule.

Mr. PELL. Mr. President, this amendment supports the efforts of the democratic forces in Chile to achieve a peaceful return to democratic government and calls upon the Chilean Government and the leaders of Chilean society to demonstrate their commitment through dialog and negotiation as called for in the National Accord.

I want to echo the sentiments expressed by the Senator from Massachusetts. This amendment which is the actual resolution reported by the Foreign Relations Committee last year, is an excellent melding of the resolutions on Chile which were referred to the Foreign Relations Committee.

It is a balanced and fair statement from the Congress in support of the National Accord, a Church-sponsored plan for a transition to democracy after 13 years of military rule.

The National Accord was endorsed by a wide array of political parties, from left to right, representing a broad spectrum of thought in Chile.

It is important that we pass this amendment so it will be taken as a sign by all concerned in Chile that the United States is very much with the overwhelming majority of the people of Chile who are working for a peaceful return to democracy.

This amendment is especially appropriate at this time as the regime of General Pinochet increases its grip on the Chilean people suffering under one of the most repressive, intolerant, and systematic military dictatorships in Latin America.

This amendment, in the form of a resolution, was passed overwhelmingly by the Foreign Relations Committee in October of last year. Its passage by the Senate is long overdue.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from North Carolina.

Mr. HELMS. Mr. President, what is the time situation?

The PRESIDING OFFICER. Two and half minutes.

Mr. HELMS. How much time does Mr. Kennedy have?

The PRESIDING OFFICER. The time has expired.

Mr. HELMS. I thank the Chair.

Mr. President, if there ever was an inappropriate amendment at 3 o'clock in the morning in the U.S. Senate, this it it.

Everybody, without exception, favors an orderly transition to democracy in Chile.

□ 0300

But very few it any Members of the Senate know anything about Chile.

The distinguished Senator from Massachusetts went to Chile earlier this year and spent most of his time in the Embassy.

I went to Chile and I do not pretend to be an expert on the country but I was there long enough to talk to about 30 Americans living in Chile.

I would hope that this amendment will be tabled with the understanding that this Senator is going to ask the chairman of the Foreign Relations Committee to schedule hearings so that people who know something about Chile can come before the committee and give both sides of the question for once.

The major news media of this country have not given both sides. Certainly the political activists in this country have not given both sides.

So my urgent plea to the Senate is to vote to table this amendment with the understanding that I will press for hearings and then conduct this matter in an orderly fashion.

I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. Mr. President, I move to table the amendment and ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. KENNEDY. I make the motion to table, and I intend to vote against it.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Massachusetts to lay on the table the amendment of the Senator from Massachusetts.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Utah [Mr. Garn], the Senator from Arizona [Mr. Goldwater], the Senator from Florida [Mr. Hawkins], the Senator from Oregon [Mr. Packwood], and the Senator from Utah [Mr. Stafford] are necessarily absent.

Mr. BYRD. I announce that the Senator from California [Mr. Cranston], the Senator from Colorado [Mr. Hart], and the Senator from Mississippi [Mr. Stennis] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 0, nays 92, as follows:

[Rollcall Vote No. 321 Leg.]

NAYS—92

Abdnor
Andrews
Armstrong
Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Broyhill
Bumpers
Burdick
Byrd
Chafee
Chiles
Cochran
Cohen
D'Amato
Danforth
DeConcini
Denton
Dixon
Dodd
Dole
Domenici
Durenberger
Eagleton
Evans
Exon
Ford
Glenn
Gore
Gorton
Gramm
Grassley
Harkin
Hatch
Hatfield
Hecht
Heflin
Heinz
Helms
Hollings
Humphrey
Inouye
Johnston
Kassebaum
Kasten
Kennedy
Kerry
Lautenberg
Laxalt
Leahy
Levin
Long
Lugar
Mathias
Matsunaga
Mattingly
McClure
McConnell
Melcher
Metzenbaum
Mitchell
Moynihan
Murkowski
Nickles
Nunn
Pell
Pressler
Proxmire
Pryor
Quayle
Riegle
Rockefeller
Roth
Rudman
Sarbanes
Sasser
Simon
Simpson
Specter
Stevens
Symms
Thurmond
Trible
Wallop
Warner
Weicker
Wilson
Zorinsky

NOT VOTING—8

Cranston
Garn
Goldwater
Hart
Hawkins
Packwood
Stafford
Stennis

So the motion to lay on the table amendment (No. 3158) was rejected.

Mr. KENNEDY. Mr. President, I regret we did not have an opportunity to debate this at greater length. But clearly the vote this evening is much closer to the expression of the Senate Foreign Relations Committee than might have been expected. I think it really represents the feeling of the American people.

I will give the assurance to the Members that we will have an opportunity to address this issue again, hopefuly, in the very near future.

Mr. President, in accordance with the previous agreement——

The PRESIDING OFFICER. Will the Senator withhold? Could we have order in the Chamber?

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, in accordance with the agreement, I withdraw my amendment.

The PRESIDING OFFICER. Without objection, the amendment is withdrawan.

Mr. DOLE. Mr. President, during the last vote, a number of Members were kind enough to give us their amendments. As I understand, these are ones that would require rollcalls.

The Kasten amendment. Is Senator KASTEN here?

Mr. KASTEN. That is the United Nations amendment.

Mr. DOLE. How long would that take?

Mr. KASTEN. Five or ten minutes.

Mr. DOLE. Could we get an agreement?

Mr. KASTEN. I would be pleased to agree to 10 minutes, equally divided.

Mr. DOLE. No amendment in the second degree?

Mr. BYRD. What is this?

Mr. KASTEN. The amendment would reduce contributions to the United Nations depending on them moving toward a proportional or representative system of voting.

Mr. JOHNSTON. Mr. President, it is a foreign relations matter. I do not know of any objection on this side.

Is there objection on this side?

Mr. MOYNIHAN. Mr. President, I object.

The PRESIDING OFFICER. There has been no consent agreement offered. The majority leader has the floor.

Mr. DOLE. I was just exploring the possibility.

There is a Humphrey amendment on abortion. Senator HUMPHREY has agreed to 20 minutes.

Mr. HUMPHREY. If the majority leader would yield, 20 minutes on this side.

Mr. DOLE. What is the amendment?

Mr. HUMPHREY. This is the amendment we proposed to offer to the tax reform bill but withheld at the President's request, contingent upon his supporting us later on, which is the case. It would revoke tax-exempt status for providers of abortion.

Mr. BRADLEY. Mr. President, will the leader yield?

Mr. DOLE. Yes.

Mr. BRADLEY. If the Humphrey amendment is debated, my guess is it will be debated for a very long time.

Mr. HUMPHREY. We would offer to limit the debate on this side to 20 minutes.

Mr. EXON. Mr. President, will the majority leader yield?

Mr. DOLE. Yes.

Mr. EXON. I would like to direct a question, if I might, to the Senator from New Hampshire.

If I understand it, your amendment is one we have discussed on many, many occasions on this floor, right?

Mr. HUMPHREY. No, that is not correct.

Mr. EXON. My question is: Does it have a rape and incest clause in it or not?

Mr. HUMPHREY. The Senator is incorrect. This proposal has never been debated on the floor, as far as I know.

Mr. EXON. I am sorry. There is so much noise. Could you explain your amendment once again briefly so that I could hear it?

Mr. HUMPHREY. The amendment would revoke tax exempt status or tax-deductible status for abortion providers and financers. It is the other side of the public financing coin. We have a cutoff on the Hyde amendment cash outlays. Now we are saying, if it is logical to do that, we should also cut off the tax subsidies.

□ 0320

Mr. EXON. Is this an amendment that the Senator attempted to offer within the last 6 weeks on another measure?

Mr. HUMPHREY. It is not. I have not attempted to offer this on the tax reform bill.

Mr. EXON. This is a brand new amendment that we have never discussed before?

Mr. HUMPHREY. It has never been debated.

Mr. EXON. Is there any rape or incest language in the amendment?

Mr. HUMPHREY. There is not. This is a standard item.

Mr. EXON. This is not?

Mr. HUMPHREY. This is a standard item in the language.

Mr. EXON. It sounds a great deal to this Senator like things that we debated before, and that when Senator ARMSTRONG was on the floor one day, and Senator GOLDWATER was here, we debated something very near to this.

I reserve the right to offer an amendment in the second degree with regard to rape and incest if the amendment is offered.

Mr. HUMPHREY. In that case, if the majority leader will yield further——

Mr. DOLE. Mr. President, I do not mind yielding further, but I think it is obvious we are going to have some debate on this. We are just trying to get an indication.

Mr. METZENBAUM. I assume the germaneness issue would be raised by the managers of the bill. Otherwise it is obvious there would be protracted debate.

Mr. DOLE. Let me put out the whole turkey. There are nine amendments listed here that are going to require rollcall votes. I understand Senator MELCHER cannot give us a time agreement, and apparently there is no time agreement on the U.N. amendment, and there is no time agreement on the abortion amendment. I only tried three. That would leave six amendments, one on uranium enrichment, one on AIDS, one on food assistance, one on the Philippines, one on foreign operations, and the Kennedy-Kassebaum amendment, I am advised by the managers. And I am willing to do whatever the managers wish to do. If they would like to stay here, we are all here.

Mr. DeCONCINI. Mr. President, will the leader yield?

Mr. DOLE. I am happy to yield.

Mr. DeCONCINI. Would the leader perhaps try to get a unanimous-consent agreement that we have a vote certain sometime tomorrow, and let everybody stay that wants to stay here. Then you can get the bill finished tomorrow.

Mr. DOLE. It is difficult to get a time for a vote certain because then anybody could drop in any amendment on anything, line-item veto, acid rain, or whatever might be popped in there. You would have to vote on it.

Mr. DeCONCINI. If the Senator will yield, why not list those amendments, and just do not set any time. See if you can get a unanimous consent on those and have a vote sometime tomorrow. I want to say, Mr. Leader, it is now 3:30. I do not think the Government is going to come to a crashing halt if we go home and come back tomorrow. We have the Government taken care of until next Wednesday at midnight. For us to sit around until 12:30, this is not what I had envisioned as a member of the Quality of Life Committee last year which the two leaders sponsored—and I thank them for doing that—along with a number of other good-willed Senators here that we are going to change our ways.

□ 1530

Some of us really feel very strongly that we ought to be home, even if our families are asleep. At least the dog will come to the door. [Laughter.]

Mr. DOLE. I wonder if I might explore this possibility: Could we agree that the amendments properly identified are these: Kasten on United Nations, Evans and others on the Philippines, Hatfield with a drug amendment which I understand will be a bipartisan amendment; Kassebaum, Kennedy on provisions of foreign operations; Humphrey on abortion; Melcher on food assistance, Metzenbaum on LTV; Domenici on another amendment, Pressler on hearing aid compatible telephones. And there is one minor amendment on regional airports. [Laughter.]

There will be a Helms amendment on terrorism.

Mr. KENNEDY. We will possibly have an amendment which will require a rollcall.

Mr. DOLE. And Leahy-Lautenberg on Superfund.

Can we get an agreement that only these amendments, plus the amendments that are going to be agreed upon by the managers and others involved in that process, would be in order?

Mr. BRADLEY. If the leader will yield, I would like to reserve an amendment just to protect against any but the amendments on the list being debated. I would like to put on the list an amendment which would deny the tax deduction for cigarette advertising, in case the Humphrey amendment is debated at length. That would be in the second degree. I would like to reserve the right for that amendment. I do not intend to offer it, but I want to reserve the right that I might offer it.

Mr. FORD. Here we go again. I am very sorry, Mr. Leader, if he is going to do something like that, we have troubles.

Mr. DOLE. I think we have troubles whether he does or not.

Mr. FORD. But he is just heaping.

Mr. DOLE. You would have objection to him having that amendment? We are not seeking a time agreement.

Mr. FORD. That is right.

Mr. BYRD. Will the distinguished majority leader yield?

Mr. DOLE. Yes.

Mr. BYRD. I have several amendments listed. Some of them may have been disposed of. Some of the Senators may not wish to call them up. In any event, I wonder if we might inquire as to whether or not the following Senators intend to call up the amendments that are listed on this page. Senators have indicated their names and identities of their amendments with the staff. I have Mr. BUMPERS listed, National Endowment For Democracy.

Mr. BUMPERS. Mr. Leader, I would like to offer that but I would also like to get out of here. I was sitting here meditating a moment ago whether to interrupt the majority leader. If we are going to have the debt limit ceiling coming through, we will have to have some kind of agreement as to amendments on that. Otherwise, I would only require about 5 minutes equally divided.

Mr. BYRD. Mr. BUMPERS indicates he would be willing to offer this amendment to the debt limit but he also wants to keep his options open for the possible offering of his amendment to this bill, one possible amendment by him.

Mr. MELCHER.

Mr. DOLE. We already have that.

Mr. BYRD. Do you have an amendment?

Mr. DOLE. Yes, on food assistance.

Mr. BYRD. Then Mr. CHILES. Mr. SIMON? Mr. PRYOR? EPA and toxic waste.

Mr. PRYOR. Mr. Leader, I hope not to offer that amendment. I am still going to trust the good judgment and wisdom of all the powers that be around here. It only applies to Arkansas, in fact one little town in Arkansas. I hope it will be accepted.

Mr. BYRD. Mr. METZENBAUM?

Mr. METZENBAUM. I have the LTV but that is the only one. I might say that the Chiles amendment was one that has been agreed to.

Mr. BYRD. Mr. RIEGLE. Mr. SASSER. Mr. HOLLINGS. Mr. GLENN. Mr. DECONCINI.

Mr. DECONCINI. Mr. Leader, I do not intend to offer any amendments assuming we can get out of here tonight or tomorrow. If we hang around a week or so I will have several amendments.

Mr. BYRD. Mr. PELL.

Mr. PELL. No.

Mr. BYRD. Mr. JOHNSTON.

Mr. JOHNSTON. No.

Mr. BYRD. Mr. President, those are the Senators on the list. I wanted to be sure they were protected. Some of the Senators are not in the Chamber at the moment. I would like to indicate if there is an amendment on the Philippines offered, I would like to reserve an amendment in the second degree which I might not offer.

Mr. JOHNSTON. A germane amendment?

Mr. BYRD. Yes.

Mr. DOMENICI. Will the leader yield so that I might inquire of the chairman of the Appropriations Committee?

Mr. DOLE. I am happy to yield.

Mr. DOMENICI. Might I ask the distinguished chairman of the Appropriations Committee about an amendment that you and I had discussed regarding those States that did not have an opportunity to evaluate their options under clear title provision of the 1985 farm bill. I understand you circulated that, but there were objections to it.

Mr. HATFIELD. The Senator is correct. We did attempt to clear that in our procedure, and it was objected to.

Mr. DOMENICI. I understand, then, that if it were offered, it would be nongermane or at least the Senate would have to vote on its germaneness to this bill?

Mr. HATFIELD. There would be a vote required.

Mr. DOMENICI. I thank the chairman.

Mr. HELMS. Mr. President, would the majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. HELMS. This does not preclude the offering of second-degree amendments?

Mr. DOLE. No.

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Mr. FORD. Mr. President, would the majority leader yield?

Mr. DOLE. Yes, I yield,

Mr. FORD. I am kind of putting everbody on notice: I do not know what is going to happen, but if the Gramm-Nickles bill is offered, I have six amendments I wish to add to that. We do not have that now, but there is a possibility that in the second degree, we could get on that so-called Gramm-Nickles amendment little things like curtailment, take or pay, that sort of thing.

Mr. DOLE. Mr. President, I am advised that one Member is coming to the floor who wants to be heard on that.

We now have 17 amendments that people have indicated require rollcalls, or 18. If that were the case, even if we got it down to 12, that would be 3 hours in rollcalls. I assume there would be some debate. I think it is discouraging, but I do not know what to do as one Member.

Mr. BYRD. Mr. President, would the distinguished majority leader yield?

Mr. DOLE. Yes.

Mr. BYRD. I offer the suggestion that he ask unanimous consent that the amendments listed be the only amendments in order and if there are no objections, we go home.

Mr. DOLE. Mr. President, I intended to do that but I think there is one Member coming to the floor who may want to object to that and I may want to visit with him.

Mr. HARKIN. Mr. President, if the majority leader will yield, I understand that he is going to ask unanimous consent that these be the only amendments that would be offered. Then there are a whole bunch of other amendments that were downstairs.

Mr. DOLE. I made the statement of these plus those in the review process with the distinguished managers and others who are in that process which may be accepted.

Mr. HARKIN. There is an amendment that Senator Grassley and I have jointly down there. Senator Grassley was going to offer it. I do not see him on the floor right now. If it is not cleared on both sides, obviously, I would like to reserve the right to offer that amendment. I do not know if it is going to be cleared or not. I think it was cleared on one side.

Mr. JOHNSTON. If the distinguished Senator will yield, that has been cleared on this side.

Mr. HARKIN. If it has been cleared on both sides, that is fine.

Mr. JOHNSTON. My record shows it has been.

Mr. THURMOND. Mr. President, if the distinguished majority leader will yield, I am in the process of working out an amendment involving the Medical University of South Carolina. I think it might be worked out or is worked out with everybody but Senator Metzenbaum, I believe. If that is not worked out, I would like to have the opportunity to offer that amendment.

Mr. HATFIELD. Will the distinguished majority leader yield?

Mr. DOLE. I shall be happy to yield.

Mr. HATFIELD. I wonder if we might take ourselves out of the dilemma by adopting all these amendments en bloc on the basis that we would drop them all en bloc in the committee conference.

Mr. STEVENS. Why not just adopt a motion to table them all and go home?

Mr. MOYNIHAN. Mr. President, will the majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. MOYNIHAN. With great respect we would have to know what the amendments were that were adopted.

Mr. DANFORTH. Will the majority leader yield?

Mr. DOLE. Yes.

Mr. DANFORTH. We were making pretty good headway with Senator Hatfield just making a point of order against the amendments as they came up. So even without time agreements when Members offer their amendments, debate them for 8 minutes and Senator Hatfield stands up and makes the point of order. The result is better, I would think, than time agreements or an awful lot of rollcall votes invovled in that, but it is very short debate time.

Mr. DOLE. I am not trying to reach a time agreement. We have had only 13 rollcall votes so far in the last day-and-a-half and we have 17 people who suggest that they want additional rollcalls. It has taken us until 10 to 4 to get 10 rollcalls. I am not sure how long it would take.

Mr. DeCONCINI. Mr. President, I think that is a very good point and certainly argues well that we ought to knock off for tonight and come back. We are not going to finish 17 rollcalls by the time the Sun comes up.

Mr. HATFIELD. Mr. President, we are ready now to consider any amendments anyone has to offer and continue to consider them until we complete them. Senator Johnston and I have a number that we have cleared on our list of noncontroversial ones. We will proceed on that basis of taking care of them until anyone wishes to offer an amendment that will require a rollcall. A point of order of some kind will probably be made against each one and we will press on with the duty before us.

AMENDMENT NO. 3159

(Purpose: To provide a pension in recognition of the service of former Senator Gladys Pyle.)

Mr. HATFIELD. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oregon [Mr. Hatfield], for Mr. Abdnor, proposes an amendment numbered 3159.

Mr. HATFIELD. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the joint resolution, add the following:

Sec. . (a) The Director of the Office of Personnel Management (hereafter in this section referred to as the "Director") shall pay out of the Civil Service Retirement and Disability Fund, an annuity of $1,500 per month to Gladys Pyle of Huron, South Dakota, who served as a United States Senator from November, 1938, to January, 1939, and is not otherwise eligible to receive an annuity on the basis of her service as a Senator.

(b) The annuity provided under subsection (a)—

(1) shall commence on the first day of the month in which this joint resolution is enacted; and

(2) shall terminate on the date of the death of the said Gladys Pyle.

(c)(1) The Director shall administer the provisions of this section.

(2) Sections 8340, 8346, 8348(a), and 8348(f) of title 5, United States Code, shall apply with respect to the annuity provided under the subsection (a).

THE HONORABLE GLADYS PYLE

● Mr. ABDNOR. Mr. President, this is an amendment to provide a pension in recognition of the service of the Honorable Gladys Pyle, a former U.S. Senator from South Dakota.

I am pleased to have the opportunity to offer this amendment to establish a pension for former Senator Gladys Pyle. On Saturday, October 4, 1986, this truly remarkable woman will celebrate her 96th birthday. I have been privileged to know Senator Pyle my entire life and I wish to share with my colleagues some of her impressive "firsts:"

The first woman to be elected to the South Dakota House of Representatives, 1922;

The first woman to serve as assistant in a State constitutional office—assistant secretary of State, 1923-26;

The first woman to be elected to a constitutional office in South Dakota—secretary of State, 1926;

The first woman to serve in a State commission—securities commission, 1931—because of holding this position, she was the first woman to be in charge of an executive department and the first woman ever allowed on the trading floor of the New York Curb Market;

The first Republican woman to be elected to the U.S. Senate, the first South Dakota woman to be elected to either House of Congress, and the first woman of either party to be elected to the U.S. Senate without having first been appointed, 1938;

The first woman to place a name in nomination for President of the United States—Republican National Convention, 1940;

Member and assistant foreman of the first jury in South Dakota on which women were permitted to serve, 1947; and

The first woman to receive the Distinguished Service Award from the Huron Chamber of Commerce, Huron, SD, 1965.

Mr. President, in addition to having the distinct honor of following in Senator Gladys Pyle's footsteps as a U.S. Senator from South Dakota, it pleases me to note that we both began our professional careers as high school teachers. We both began our political careers in the South Dakota State Legislature, where Gladys Pyle—the first woman to serve in the South Dakota State Legislature—was a strong proponent for ratification of the child labor amendment to the U.S. Constitution. Subsequently, as secretary of state she championed legislation to provide one of the first safety codes for motor vehicles. In 1930, Gladys Pyle defeated four opponents in the Republican primary election for Governor but, failing to obtain 35 percent of the vote, later lost her party's nomination at the State convention.

Mr. President, I ask that a newspaper article which appeared in the Sioux Falls Argus Leader on September 29, 1986, be printed in the Record at the conclusion of my remarks.

As former Senator Gladys Pyle's 96th birthday approaches, I think it fitting tribute that we establish this annuity in sincere appreciation for her devoted service to her State and her Nation.

Mr. President, I ask my colleagues to join me in honoring this outstanding, former member of this distinguished body by supporting my amendment.

The article follows:

The Spirit Is Ageless in S.D. Trailblazer

(By Steve Young)

Huron.—Gladys Pyle lies on her bed at the Huron Nursing Home, blanket pulled tightly around her, staring through the rain beyond the window.

Noon's light falls softly across her wrinkled face, filling in the grooves of yesterdays immemorial. "I hope my body wears out before my mind," she once said to one of the many who listened with pen and pad in hand.

But her body was strong then. Now it seems, this woman so witty, so compassionate, so enduring, is caught in the inevitable twist of time.

How witty? Pyle, who might have been governor of South Dakota once, turns 96 Saturday. "Nothing I can do about that," she says with her usual aplomb. "Seems like it happens every year."

How compassionate? During World War I, she braved winter's savage squalls to stay with a Wessington school teacher who was looking after a baby stricken with the flu.

It was supposed to be a death watch. But with their care, the child survived.

And how enduring? Well, Pyle is as old as her house at 376 Idaho S.E.—the one she's lived in most of her life—and as unchanging as the wrought-iron gate surrounding it.

"It occurs to me, what will become of my property when I go?" she asks now, having left her domain to the care of others after falling and striking her head there this summer.

Will the next owner love the iron fence as much as she?

It's a distant worry from those of a half century ago, when she moved so boldly into South Dakota politics.

Gladys Pyle, in 1922, was the first woman elected to the state Legislature. Four years later, she was the first woman elected to a constitutional office—secretary of state. And in 1931, she became the first woman on a state commission, the Securities Commission.

She also was the first Republican woman to be elected to the U.S. Senate, and in 1941 became the first woman to nominate a presidential candidate at a national political convention.

Talk often digresses to her 1930 Republican gubernatorial bid. Gladys defeated four opponents in the primary, but failed to get the necessary 35 percent of the vote and lost the nomination at the party convention.

"It didn't make me bitter," she says now. "It made me cognizant of a lot of the ways that things happen. I regretted it, of course. But I really became more appreciative of the fact that it threw a lot on the man who was nominated."

Warren Green, low man in the primary, got that nod. He became governor, and at Pyle's insistence, cleaned up a state banking commission frought with embezzlement.

Today, Pyle's portrait hangs in the state Capitol. The story of its placement is a special tale for Gov. William Janklow.

It seems Pyle had picked the photograph she wanted used as her official portrait. It was taken at her home as she stood before a mirror.

"I didn't like the picture," Janklow says. "I tried to get her to let us take another. But she was adamant."

Later, as she addressed a gathering for the unveiling, she explained why. "This is my picture," she said. "When I was in the Legislature, you used to have to have eyes in the front of your head and the back of your head to see in all directions. So there is symbolism in my picture."

Janklow says: "I thought that was incredible for a 92-year-old woman. She is an institution. There are two people I call grand old people, that I've come to know well. One is Gladys. The other one was Emil Loriks of Oldham."

Both made their marks on South Dakota. Pyle in particular was a product of her parents' examples. John Pyle was attorney general of South Dakota when he died in 1902. His wife, Mamie, reared four children in his absence, and was strong in the women's suffrage movement.

The Pyles instilled a deep concern for community in their children, too. No one, for example, is a stronger supporter of Huron than Gladys Pyle.

"I had someone tell me once that no person would have a real successful life if they lived in their hometown," she says. "I began to enumerate the successful businessmen up and down our streets. They grew up here. You know, that person had to admit to me he was probably wrong."

He wasn't the first to argue with Pyle. And her thought processes are still up to the test, though "all the details burned into my consciousness are gone now."

Her sharp mind gone dull? That's worth an argument itself. But in Pyle's own words. "I'm still a stubborn old piece." The spirit, even the soul, still are obviously kicking.

Besides, growing old isn't so bad. "I'd rather be 69," she says, laughing. "But it's not so terrible."

And should Gladys Pyle not attain physical immortality, well, she wants to be remembered "as a high school teacher. That's good enough. And a proud citizen of Huron."

Somehow, she won't escape woman extraordinary, either. Undoubtedly, she fits all three.●

Mr. HATFIELD. This is a relief bill that has been offered on behalf of Senator Abdnor. It has been cleared on both sides of the aisle.

Mr. JOHNSTON. Mr. President, the amendment has been cleared on this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3159) was agreed to.

Mr. HATFIELD. I move to reconsider the vote by which the amendment was agreed to.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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AMENDMENT NO. 3160

Mr. HATFIELD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. Hatfield], for Mr. Dole, Mr. Leahy, and Mr. Boschwitz, proposes an amendment numbered 3160.

Mr. HATFIELD. I ask unanimous consent further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following new section:

Sec. . (a) Clause (B) of the last sentence of section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e)) is amended by striking out "for the excess shelter expense deduction contained in clause (2)" and inserting in lieu thereof "contained in clause (1)".

(b)(1) Except as provided in paragraphs (2) and (3), the amendment made by subsection (a) shall become effective 30 days after the date of enactment of this Act.

(2) Except as provided in paragraph (3), the amendment made by subsection (a) shall not apply to an allotment issued to any eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) for any month beginning before the effective date of this subsection.

(3) If a State elected before the date of enactment of this Act to compute household income in accordance with section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e)) (as amended by subsection (a)), the amendment made by subsection (a) shall become effective on May 1, 1986.

Mr. HATFIELD. This is an amendment entered on behalf of Senator Dole and Senator Leahy. This is a technical amendment affecting the elderly. The Agricultural Appropriations Subcommittee has cleared it and the authorizing committees have cleared it as well.

Mr. DOLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration. Senators Boschwitz and Leahy join me in this effort to make a technical correction in the 1985 farm bill with regard to the Food Stamp Program. I might add this is truly technical, and was to be included in a package of technical amendments which the Senate and House Agriculture Committees have been working on. However, we are in the final days of this session of the Congress, and there has been no movement on this package at all. Therefore, we would like to make certain that this one small change is made before we adjourn.

BACKGROUND

Mr. President, the food stamp benefit increases contained in the 1985 farm bill went into effect on May of this year. However, there is one change that needs to be made in the shelter deduction level. The current language results in somewhat of an inequity between the elderly and disabled and everybody else. This drafting error that I refer to results in a different deduction level for the elderly and disabled. This amount would be $147 indexed, whereas everybody else in the program has a deduction level of $160 nonindexed for inflation. This discrepancy is driving program administrators crazy.

The problem should have been taken care of earlier this year, in the supplemental, or perhaps the Agriculture Appropriations bill, but we were holding out hope that the long-awaited technical package could be agreed upon. Before this session ends, I think we should at least take care of this one small problem in the Food Stamp Program.

To further confuse matters, some States, like Texas, have already been operating under the congressional intent, whereas others have been obeying the letter of the law. This is really an issue that needs to be corrected before the Congress adjourns, and I ask my colleagues to support this amendment. This is a very simple amendment and I believe the managers of the bill are prepared to accept it.

Mr. **JOHNSTON**. Mr. President, the amendment has been cleared on this side.

The **PRESIDING OFFICER**. The question is on agreeing to the amendment.

The amendment (No. 3160) was agreed to.

Mr. **HATFIELD**. I move to reconsider the vote by which the amendment was agreed to.

Mr. **JOHNSTON**. I move to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3143, AS MODIFIED

Mr. **JOHNSTON**. Mr. President, I send a modification to amendment 3143 to the desk.

The **PRESIDING OFFICER**. The Senator has that right.

The amendment is so modified.

The amendment, as modified, is as follows:

At the end of the resolution, add the following:

SHORT TITLE

SEC. . This title may be cited as the "James Madison Memorial Fellowship Act".

PURPOSE

SEC. . It is the purpose of this title to establish the James Madison Fellowship Program which is designed to encourage graduate study of the American Constitution, its roots, its formation, its principles, and its development.

FOUNDATION

SEC. . (a) In order to commemorate the bicentennial of the Constitution, there is established, as an independent establishment of the executive branch, the James Madison Memorial Fellowship Foundation.

(b)(1) The Foundation shall be subject to the supervision and direction of a Board of Trustees. The Board shall be composed of thirteen members, as follows:

(A) Two Members of the Senate, of different political parties, shall be appointed by the President upon the recommendation of the President pro tempore of the Senate, in consultation with the Majority Leader and Minority Leader of the Senate.

(B) Two Members of the House of Representatives, of different political parties, shall be appointed by the President upon the recommendation of the Speaker of the House, in consultation with the Minority Leader of the House of Representatives.

(C) Two Members of the Federal judiciary shall be appointed by the President upon the recommendation of the Chief Justice of the United States.

(D) Six members, not more than three of whom shall be of the same political party, shall be appointed by the President with the advice and consent on the Senate, of whom one shall be a chief executive officer of a State, two shall be members of the general public, and three shall be members of the academic community, appointed upon the recommendation of the Librarian of Congress.

(E) The Secretary of Education or his designate shall serve ex officio as a member of the Board, shall not be eligible to serve as Chairman.

(2) The term of office of each member of the Board shall be six years; except that (A) the members first taking office shall serve as designated by the President, four for terms of two years, five for terms of four years, and four for terms of six years, and (B) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed, and shall be appointed in the same manner as the original appointment for that vacancy was made. This provision shall not apply to members ex officio.

(c) Members of the Board shall elect from the members of the Board a Chairman and such other officers as may be necessary to carry out the duties of the Foundation.

(d) Members of the Board shall serve without pay, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties.

FELLOWSHIP RECIPIENTS

SEC. . (a) The Foundation is authorized to award fellowships to outstanding students and teachers who will pursue graduate study leading to the degree of Master of Arts in teaching or other appropriate masters degree for teachers, with a major in social studies or American history. Each recipient must take at least twelve semester hours, or its equivalent, in topics directly related to the Constitution of the United States, as determined by the Board.

(b)(1) James Madison fellowships shall be awarded to individuals who are, or who desire to become, social studies and American history teachers in accordance with paragraphs (2) and (3).

(2) Junior fellowships shall be awarded to graduate students who are about to complete or have recently completed their undergraduate course of study, and plan to begin graduate work on a relatively full-time basis.

(3) Senior fellowships shall be awarded to experienced teachers who wish to undertake work for a graduate degree on a part-time basis during summers or in evening programs.

PERIOD FOR AWARD

SEC. . Junior fellowships shall be granted for such periods as the Foundation may prescribe but not to exceed two academic years. Senior fellowships shall be granted for such periods as the Foundation may prescribe, but not to exceed five calendar years.

RECIPIENT'S CHOICE OF INSTITUTION

SEC. . Fellowship recipients may attend any institution of higher education in the United States with an accredited graduate program which offers courses of study or training which emphasize the origins of the Constitution of the United States, its principles, its development, and its comparison with other forms of government, as determined according to criteria established by the Foundation.

RECIPIENT'S ELIGIBILITY

SEC. . Each student awarded a fellowship under this title shall demonstrate the potential, and a serious intention, to follow a career of educating students in secondary schools. Each institution of higher education at which such a student is in attendance shall make reasonable efforts to encourage such a student to meet the objectives of this section.

SELECTION OF FELLOWSHIP RECIPIENTS

SEC. . (a) Madison Fellows shall be selected for their academic achievements and their potential to become secondary school teachers of social studies and American history.

(b)(1) The Foundation is authorized, either directly or by contract, to provide for the conduct of a nationwide competition for the selection of fellowship recipients. Each applicant must have a demonstrated interest in pursuing a course of study which emphasizes the Constitution, its principles, and its history, and have a demonstrated record of willingness to devote themselves to civic responsibility.

(2) Each application shall be accompanied by an essay explaining the importance of the study of the Constitution both to the applicant's career aspirations and contributions to public service, and to citizenship generally in a constitutional regime.

(3)(A) Each application shall include a description of a program of study for the graduate program, designating the courses to be taken, and the proposed Master's Thesis, where appropriate.

(B) For the purpose of this paragraph, the Board of Trustees of the Foundation shall establish general criteria for programs in constitutional studies.

(c) The Foundation shall adopt selection procedures which shall assure that at least one Madison Fellow shall be selected each year from each State, the District of Columbia, and the Commonwealth of Puerto Rico, and considered as a single entity, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific Islands, and the Commonwealth of the Northern Marianas in which there are at least two resident applicants who meet the minimum criteria established by the Foundation; and, if sufficient funding is available, to invite applications from scholars overseas for study in the United States.

AMOUNT OF FELLOWSHIPS

SEC. . Each student awarded a fellowship shall receive a stipend which shall not exceed the cost to the student for tuition, fees, books, room and board, or $12,000, whichever is less, for each academic year of study.

FELLOWSHIP CONDITIONS

SEC. . (a) A student awarded a Madison Fellowship shall continue to receive payments only during such periods as the Foundation finds that the student is maintaining satisfactory progress in an approved program of study or research. Recipients of junior fellowships shall devote essentially full time to their program of study.

(b) The Foundation is authorized to require reports from any fellowship recipient containing such information, in such form, and to be filed at such times as the Foundation determines to be necessary. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, approved by the Foundation, stating that such student is making satisfactory progress in a program of study or research, with such exceptions as the Foundation may establish.

JAMES MADISON MEMORIAL FELLOWSHIP TRUST FUND

Sec. . (a)(1) There shall be established in the Treasury of the United States a trust fund consisting of appropriations and amounts contributed by the Foundation for the Commemoration of the Constitution and other private sources to be available, in accordance with the provisions of this title, to carry out the provisions of this title.

(2) No funds in the Trust Fund may be available for fellowships until the contributions from private source are equal to $10,000,000.

(b) It shall be the duty of the Secretary of the Treasury to invest in full the amounts appropriated and contributed to the fund. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Such special obligations shall be issued only if the Secretary determines that the purchase of other obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States or original issue at the market price, is not in the public interest.

(c) Any obligations acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from, the sale or redemption of any obligations held in the fund shall be credited to and form a part of the fund.

EXPENDITURES AND AUDIT

Sec. . (a) The Secretary of the Treasury is authorized to pay to the Foundation from the interest and earnings of the fund such sums as the Board determines are necessary and appropriate to enable the Foundation to carry out the provisions of this title.

(b) The activities of the Foundation under this title may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, and files an all other papers, things, or property belonging to or in use by the Foundation, pertaining to such activities and necessary to facilitate the audit.

EXECUTIVE SECRETARY OF FOUNDATION

Sec. . (a) There shall be an Executive Secretary of the Foundation who shall be appointed by the Board. The Executive Secretary shall be the chief executive officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and direction of the Board.

(b) The Executive Secretary of the Foundation shall be compensated at the rate specified for employees placed in grade GS-18 of the General Schedule set forth in section 5332 of title 5.

ADMINISTRATIVE PROVISIONS

Sec. . (a) The Foundation is authorized—

(1) to appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter, except that in no case shall employees other than the Executive Secretary be compensated at a rate to exceed the rate provided for employees in grade GS-15 of the General Schedule set forth in section 5332 of title 5;

(2) to procure temporary and intermittent services of such experts and consultants as are necessary to the extent authorized by section 3109 of title 5, but at rates not to exceed the rate specified at the time of such service for grade GS-18 in section 5332 of such title;

(3) to prescribe such regulations as it deems necessary governing the manner in which its functions shall be carried out;

(4) to receive money and other property donated, bequeathed, or devised, without condition or restriction other than it be used for the purposes of the Foundation; and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(5) to accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5;

(6) to enter into contracts, grants, or other arrangements, or modifications thereof, to carry out the provisions of this chapter, and such contracts or modifications thereof may, with the concurrence of two-thirds of the members of the Board, be entered into without performance or other bonds, and without regard to section 5 of title 41;

(7) to make advances, progress, and other payments which the Board deems necessary under this chapter without regard to the provisions of section 529 of title 31;

(8) to rent office space in the District of Columbia;

(9) to conduct programs in addition to or in conjunction with the Fellowship program which shall further the Foundation's purpose of encouraging research and study of constitutionalism in America; and

(10) to make other necessary expenditures.

(b) The Foundation shall submit to the President and to the Congress an annual report of its operations under this chapter.

DEFINITIONS

Sec. . As used in this title—

(1) the term "Board" means the Board of Trustees of the James Madison Memorial Fellowship Foundation;

(2) the term "Foundation" means the James Madison Memorial Fellowship Foundation;

(3) the term "institution of higher education" has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965; and

(4) the term "secondary school" has the same meaning given that term by section 1201(d) of the Higher Education Act of 1965.

APPROPRIATIONS

Sec. . There are appropriated to the James Madison Memorial Trust Fund $20,000,000, to carry out the provisions of this title, to be available on October 1, 1987, and to remain available until expended.

Mr. JOHNSTON. Mr. President, this is a technical amendment. A moment ago we adopted amendment No. 3143 with respect to the Fellowship Program. Senator Kennedy and others proposed the amendment. Inadvertently, a noncorrected copy of that amendment was adopted, so, Mr. President, I would first ask unanimous consent that action on amendment No. 3143 be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JOHNSTON. Now, Mr. President, this is the amendment that was meant to be adopted as corrected, the James Madison fellowship amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as modified.

The amendment (No. 3143), as modified, was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. HATFIELD. Mr. President, I move to lay the motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3161

(Purpose: To state that it is the sense of the Congress that, at the upcoming summit in Reykjevick, Iceland, President Reagan should aggressively seek to achieve a resolution with the U.S.S.R. regarding the U.S.S.R.'s obligation to purchase wheat under the 1983 long term grain agreement and explore ways of expanding the U.S.-U.S.S.R. trade)

Mr. HATFIELD. Mr. President, I send an amendment to the desk on behalf of Senator Baucus.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. Hatfield] for Mr. Baucus, proposes an amendment numbered 3161.

Mr. HATFIELD. I ask unanimous consent further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following.

Sec. . (a) Congress finds that—

(1) in 1983, the U.S. entered a long-term Grain Agreement with the U.S.S.R. obligating the U.S.S.R. to purchase four million

metric tons of wheat by a stipulated time each year; and

(2) between September 30, 1985, and September 30, 1986, the U.S.S.R. purchased only four percent of the wheat it was obligated to purchase; and

(3) the Soviet failure to purchase this wheat has been the primary cause of a 29 percent decrease in the volume of U.S. wheat exports over the same period; and

(4) this decrease has caused serious injury to American farmers; and

(5) a strong grain trade can be a valuable element of a peaceful relationship between the U.S. and the U.S.S.R.

(b) It is the sense of the Congress that, at the upcoming summit meeting in Reykjavik, Iceland, President Reagan should aggressively seek to achieve a resolution with first secretary Gorbachev regarding the U.S.S.R.'s obligation to purchase U.S. wheat under the U.S.-U.S.S.R. Long-Term Grain Agreement.

(c) Further, it is the sense of Congress that the President, at the preparatory summit, should, with first secretary Gorbachev, explore ways to strengthen the wheat trade between the U.S. and the U.S.S.R.

Mr. BAUCUS. Mr. President, I rise to offer an amendment expressing the sense of the Congress regarding the upcoming preparatory summit in Iceland.

This amendment urges President Reagan to seek to achieve a resolution with Secretary Gorbachev regarding the U.S.S.R.'s obligations to purchase United States wheat under the 1983 long-term agreement. It also states that it is the sense of the Congress that the President should explore ways to strengthen wheat trade between our two countries.

Farmers in my State and across the Grain Belt depend on grain exports for their livelihood.

Mr. President, $1 out of every $3 earned by farmers is now generated by agricultural exports. By the year 2000, that figure will have risen to $1 out of every $2.

As any of my distinguished colleagues from an agricultural State like my own can attest, the American farmer is caught in a severe economic bind.

Last year, 50 percent of America's farmers had negative incomes. The farmer needs every export dollar he can get.

We signed an agreement with the U.S.S.R. in 1983 to help the farmer sell grain. This agreement requires the U.S.S.R. to purchase 4 million metric tons of wheat each year. Unfortunately, the Soviets have not bought that amount of wheat.

In the contract year that ended September 30 of this year, the Soviets purchased only about 4 percent of the grain they had agreed to buy.

Largely because of the Soviet's failure to purchase this wheat, United States farmers' grain exports dropped by 29 percent—one of the largest 1-year drops yet experienced.

Mr. President, in my home State and throughout the farm States, this kind of drop is not reflected only in some cold statistics about the trade deficit.

As in any business, when a large customer does not purchase as much as expected, it means that farmers cannot meet mortgage payments, that whole farms are forced out of business and that farmers must brace for another lean year.

I believe that each and every American wheat farmer demands that we take action to convince the U.S.S.R. to purchase the amount of grain envisioned in its agreement with the United States.

In the 1970's, when the Soviets needed grain, we agreed to sell to them. Now it is the Soviet's turn. The President should aggressively seek to achieve a resolution with the U.S.S.R. regarding the U.S.S.R.'s obligations under the long-term grain agreement to purchase wheat.

President Reagan has stated that this preparatory summit is intended to cover a wide range of issues, not just arms control. There is no issue more important to America's future than the continued growth of America's agricultural export markets.

Mr. President, that is why I am offering a sense of the Congress amendment to urge President Reagan at the preparatory summit to aggressively seek to achieve a resolution of this dispute.

The grain trade has been the most successful area of detente between the United States and the U.S.S.R. The trade benefited both superpowers and gave both an interest in keeping the peace.

We can strengthen these agricultural ties if proper diplomatic pressure is applied.

We owe this to America's farmers. We should not allow this preparatory summit to pass without pressing this important issue.

Mr. HATFIELD. Mr. President, this is a sense of the Senate amendment regarding the Reagan-Gorbachev meeting in Iceland concerning wheat trade. It has been cleared by the Agriculture Committee, authorizing committee; it has been cleared by the Appropriation Subcommittee on Agriculture and by the leadership.

The PRESIDING OFFICER. The question is in agreeing to the amendment.

The amendment (No. 3161) was agreed to.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Senator from Kansas [Mr. DOLE] be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. I thank the Senator.

AMENDMENT NO. 3162

(Purpose: To restrict appropriations available for assessed contributions to the United Nations)

Mr. KASTEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

Mr. ARMSTRONG. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order.

The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. KASTEN] proposes an amendment numbered 3162.

Mr. KASTEN. I ask unanimous consent further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . Funds appropriated by this joint resolution may not be used for any assessed contribution to the United Nations or to any specialized agency of the United Nations which would cause the assessed contributions made by the United States to such organization or agency in such year to exceed the amount paid by the Government of the Soviet Union as its assessed contribution to such organization or agency, as the case may be, for such year: *Provided*, That this section shall not apply if the Secretary of State has certified that such organization or agency has adopted a plan which grants voting rights to each member state on matters of budgetary consequences proportionate to the contribution of each such member state to the budget of the United Nations and its specialized agencies.

Mr. KASTEN. Mr. President, this amendment addresses a question which this body has worked through a number of different times. We still do not have a proportional or a representative voting system at the United Nations. One of the things that I learned when I was a delegate to the 1982 General Assembly is that you can get a majority vote in the General Assembly, and yet, not provide 1 percent of the assessed budget. Eighty nations is a majority of the 158 U.N. member states contained in the General Assembly—80 nations can vote and yet their total contribution could be less than 1 percent.

Each year, over a billion dollars of the American taxpayer's money is used at the United Nations. This amount is higher than that of which any other country provides to the international peacekeeping organization, including the Soviet Union. Yet, the Soviet Union, it's allies, and satellite countries are using the United Nations as a forum to denounce the United States in order to promote Soviet causes throughout the world.

The United Nations organization was formed in 1942 to promote world peace and security. For over 40 years, this organization has been the arena for international dialog and discussion. In recent years, the U.N. has become a platform for the U.S.S.R. and it's radical allies. They use it to criticize both U.S. foreign policy and international benevolence, all the while, readily accepting American dollars through various United Nations agencies.

A step toward eliminating anti-American activity in the United Nations was taken by President Reagan with the decision to withdraw from UNESCO. Prior to this, American dollars given to the U.N. were used to advance policies contrary to American interests.

Moreover, it is crucial to note that the Soviet Union, with the added votes of Byelorussia [Bel-o-rush-a] and the Ukraine, maintains a 3 to 1 voting advantage over the United States in the U.N. General Assembly. The Soviet Union sustains this voting advantage even though the United States contributes twice as much in funding to the U.N. budget. By voting against the United States in the U.N. and benefiting from the funding differential, the Soviets possess an inordinate amount of influence over U.N. policy. In other words, the Soviet Union manipulates the discontent of some third-world nations by using U.N. issues to fuel an ideological war against the United States.

This amendment reduces the United States funding for the assessed contributions to the United Nations so as not to exceed the amount provided by the next higher donor, the Soviet Union, unless the Secretary of State certifies the following: The United Nations and its agencies that receive U.S. funds, have adopted a procedure which grants to member countries a vote on budgetary matters proportional to the contribution each member makes to that organization's budget. The voice of freedom and the interests of the world must be heard in the U.N. Our goal should be the same as the United Nation's goal stated 44 years ago: Peace and Freedom. I believe that by adopting these procedures, which would grant member countries a vote on budget matters proportional to members' contributions, we help put ourselves and our allies in a more equal position with the Soviet Union in this peacekeeping organization. I urge you to join me, in reasserting the United States position and moving toward reduced Soviet power within the United Nations, by voting for the amendment.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I am going to raise a point of germaneness. Do I hear anyone who wishes—Mr. President, I do not wish to cut anyone off.

Mr. MOYNIHAN. Will the Senator from Oregon yield for brief comments? Will the Senator from Oregon allow a brief statement?

Mr. HATFIELD. How much time would the Senator require?

Mr. MOYNIHAN. Not much time.

Mr. HATFIELD. Two minutes?

Mr. MOYNIHAN. No, four perhaps.

Mr. DODD. I would also like to say I would like a few minutes on this as well.

Mr. HATFIELD. How much time?

Mr. DODD. Four minutes.

Mr. HATFIELD. I ask unanimous consent, Mr. President, that the Senator from New York and the Senator from Connecticut and the Senator from Maryland be reocgnized for 4 minutes each and then I would make a point of order—

Mr. KASSEBAUM. Mr. President, just maybe about 2 minutes.

Mr. HATFIELD. And the Senator from Kansas 2 minutes.

Mr. BYRD. I reserve the right to object. Mr. President, will the distinguished Senator add to that request no amendments in the second degree be in order.

Mr. HATFIELD. That is correct, no amendments in the second degree.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New York.

Mr. MOYNIHAN. Mr. President, this is not the first time this matter has come before the Senate, but it is the first time that I have chosen to address the issue. And I do so in the most elemental terms.

The U.N. Charter is a treaty which the United States was very much involved in drafting, together with its principal allies during the Second World War. It has as an elemental principle that of one country, one vote, just as we in this Chamber have the principle of one State, two votes. It is a fact that most of the countries in the United Nations contribute very little to its budget. Most countries are very small, many are very poor. It is also a fact that contributions to the budget of the United Nations are meant to be proportional to each nation's share of world gross product, the equivalent of gross national product.

It is an easy political thing to do, I suppose, to say on this floor that we will not pay our contributions under terms that we have agreed to and abided by over the years. But any such reduction in our contribution is supposed to reflect a reduction in our States in the world's economy. I could see a very clear case being made for cutting the budget of the United Nations. I see no case to be made for cutting our measure of influence in the world as the United Nations measures it, which is what this would do.

This proposal would have no effect, save to create a crisis which we will have no capacity to undo in the aftermath of our failure to pay our dues. To change U.N. voting in the manner envisioned by this measure would require an amendment to the charter, which is not likely to come about.

Far the more reasonable proposal is to reduce overall U.N. outlays so that our net dollar expenditures are lower. But to propose reducing our influence is to say the United States is a lesser nation than it was. I do not think we are. I hope we will not be.

□ 0400

I ask the Senate to consider whether it wishes to declare this fact in the absence of any evidence other than the onset of the November election.

If you wish to create a crisis for our country and President and the Secretary of State, go right ahead. Then, when the consequences of that action are back on this floor, with the President pleading not to carry it through, and the Secretary of State wandering the halls, saying, "What has overcome the United States, which created the United Nations," then we shall see whether we acted wisely tonight.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I associate myself with the remarks of my colleague from New York, who speaks on this issue with more than passing interest, having served our Nation with great distinction as Ambassador of the United States to the United Nations, under a previous administration.

Mr. President, it is with some degree of irony that this subject comes up on this day, at this hour. It was 40 years ago yesterday that the Nuremberg trials concluded. It will be 40 years ago on the 16th of this month that the defendants at Nuremberg were executed, having been charged and found guilty and given the punishment of a death penalty.

It is ironic that we would be debating this evening a proposal that would suggest that the United States diminish and lessen the role of those nations, ourselves included, in a body that we helped create as a result of the Nuremberg experience. It was the United States that insisted that there be a world court to try to at least reduce tensions in the world; to see this evening that we are about to engage in a form of debate that approaches demagoguery, bashing the United Nations, because that has become sort of politically popular, despite the fact that the institution, with all its problems, has at least served to make it possible for people to gather together to try to reduce some of those tensions.

The Senator from New York is absolutely correct. If you want to deal with the United Nations effectively, that budget should be reduced. It is a bureaucratic nightmare. But we do not want to be in a position in this country where we destroy the very institution we helped create. In fact, it was Republicans and Democrats alike who worked in the 1940's and 1950's to try to make this come about. I think it would be a sad chapter, indeed, at this hour, on this day, if this body were to go on record to destroy an institution to which we helped give birth.

I hope the motion on germaneness will be approved.

The PRESIDING OFFICER (Mr. MATTINGLY). The Senator from Maryland.

Mr. SARBANES. Mr. President, I will be very brief.

This amendment clearly reflects why we should not be legislating at 4 o'clock in the morning. Obviously, the implications and consequences of this amendment have not been thought through. One wonders why we have an amendment here which diminishes and belittles the United States of America.

We are a powerful country, and one source of our power is our economic strength, and one place where it is reflected is how we participate in international organizations, including the United Nations and its specialized agencies.

Why we have an amendment before us that seeks, in effect, to place us in the same box with the Soviet Union is beyond me, which is what the first part of this amendment would do, to which no reference was made when it was offered. One of the things that has distinguished us from the Soviet Union is our economic strength and our willingness to use that economic strength to advance a stable and peaceful world order. Of course, this amendment moves in exactly the opposite direction.

I agree with my two colleagues who have already spoken, that there are some difficulties we encounter in dealing with the United Nations. But the United Nations itself was a great concept in the post-World War II period and in many respects has served the world well, and we ought not lose sight of that fact.

It is easy to beat up on the United Nations, but at some point you will have to ask yourselves the question: What would take its place? Does it not serve some important and useful purposes?

It was only recently that the President and the Secretary of State, perhaps recognizing the extent to which this sentiment had gone, had begun to talk about the importance of supporting the United Nations. That took place only a few weeks ago.

I hope very much that the Members will reject this amendment when the vote comes.

I yield back the remainder of my time.

Mrs. KASSEBAUM. Mr. President, I have worked with the Senator from Wisconsin in the past on this matter. We passed legislation which has reduced our contribution $75 million.

I think the United Nations at this point has really made a great effort and has undertaken some major reforms which I think will strengthen the body, and we need to give encouragement to the efforts that have already taken place. I believe now is not the time to address another U.N. initiative.

I yield back the remainder of my time.

Mr. HATFIELD. Mr. President, I raise the point of order under rule XVI against the present amendment as not being germane to the bill before us.

Mr. KASTEN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

PENDING AMENDMENTS

Mr. DOLE. Mr. President, I ask unanimous consent that I may proceed for 5 minutes, to see if we can nail down the agreements. If we can, then we can proceed to vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I have given a copy of the list I have to the distinguished minority leader and the two managers of the bill. Let me quickly run down the list of amendments that I have.

Senator THURMOND, South Carolina Medical University.

Senator PRESSLER, hearing aid compatible telephone.

Senator KASTEN: The third one is before us now, so that could be eliminated.

Senator EVANS, the Philippines.

The minority leader, Senator BYRD, a possible second-degree amendment.

Senator BUMPERS, National Endowment for Democracy.

Senators WARNER and TRIBLE, regional airport.

Senator HATFIELD, drug funding.

□ 0410

Senators KASSEBAUM, KASTEN, and KENNEDY, foreign operations; Senator HUMPHREY, tax treatment of 501(c)(3)'s, abortion; MELCHER, food assistance; BRADLEY, tobacco tax; METZENBAUM, LTV labor provisions; DOMENICI, uranium enrichment; KENNEDY, AIDS, and HELMS, second-degree amendment to that; HELMS, death penalty, first or second degree; majority leader, Philippines; LEAHY, Superfund; KENNEDY, health planning; HATCH, medical devices; and BENTSEN, energy policy.

Mr. BRADLEY. I did not hear the tax one.

Mr. DOLE. Yes, BRADLEY, tobacco tax.

Mr. BRADLEY. Tobacco tax reduction for advertising.

I would like to reserve the right to have a second-degree amendment offered to the Humphrey amendment if indeed it passes the germaneness test.

Mr. DOLE. And a second-degree amendment to the Humphrey amendment.

Mr. EXON. Mr. President, will the leader yield for a statement?

Mr. DOLE. I yield.

Mr. EXON. I recall I believe I reserved the right also to offer an amendment to the amendment to be offered by my friend from New Hampshire with regard to the rape and incest clause. I would like to have the opportunity to offer that amendment.

If the Senator from New Jersey is intending to offer an amendment, we might have some difficulty along the lines someplace. But I want to try and clean up, if I could, just those words in the amendment being offered by my friend from New Hampshire that I think is tremendously important with regard to rape or incest. I am not going to buy the Hyde amendment per se, and I said that before.

So I will want to try to amend that somewhere to improve his amendment whether he thinks that is necessary or not.

Mr. FORD. Mr. President, I would like to reserve the right for an amendment in the second degree as it relates to the funding of the drug legislation.

Mr. METZENBAUM, Mr. President, I want to cooperate with the leader and limit the number of amendments, but I think the leader is sharp enough to recognize that two of the amendments that are being discussed would tie this body up for quite a while if they were ruled germane, one being capital punishment and the other one being the abortion amendment.

I would not want to be limited as to the number of second-, third-, fourth-, and fifth-degree amendments that might be offered to either of those amendments.

I hope his unanimous-consent request would be drafted in such a manner that second-degree amendments could be offered as long as we wanted to offer them in the event those amendments are considered to be germane. I think the leader understands my position.

Mr. PACKWOOD. Mr. President, I missed the start of the request. What is it going to ask on the abortion amendment?

Mr. DOLE. All we are going to ask is that these be the only amendments in order except those now being processed by the manager of the bill that will probably be accepted in nearly every case. We are not asking for any time agreement.

Mr. McCLURE. The manager will clear the others.

Mr. DOLE. Right, if the managers will clear the other amendments they will be adopted. We are not asking for a time agreement. We are trying to circumscribe the total number of amendments that may be offered.

Mr. PACKWOOD. What was the leader's response to the Senator from Ohio about the abortion amendment and also he mentioned the capital punishment second-degree amendment and other amendments. I do not want to be frozen out of either the time limit on the Humphrey amendment if it is ruled germane.

Mr. DOLE. We will provide that second-degree amendments would be in order.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. PACKWOOD. I think I am going to object to the Humphrey amendment being on the list.

Mr. JOHNSTON. Will the Senator yield?

Mr. DOLE. I yield.

Mr. JOHNSTON. Is it understood that second-degree amendments, except in those cases specified, would be germane amendments?

Mr. DOLE. Yes.

We have an objection to the Humphrey amendment being on the list which would effectively——

Mr. HUMPHREY. If the Senator will yield, objection is to the unanimous-consent request, is that not the case?

Mr. DOLE. I would not put the request unless we could include the amendments; otherwise, we have not gained much ground.

Mr. HUMPHREY. If the majority leader will yield, I wonder if the Senator from Oregon inasmuch as he missed part of the discussion is aware there is no restriction on amendments, there is no time limit. If the Humphrey amendment is ruled to be germane, it will be open to debate at any length. It would be open to all amendments and the Senator has all the rights.

Mr. PACKWOOD. That is what I want to make sure because I did not hear the request of the majority leader as he was putting his request.

Mr. HUMPHREY. I think the Senator's concerns have been abated.

Mr. DOLE. There will be no time limit on any amendment, if he identifies the amendment.

Mr. PACKWOOD. No limitation on amendments.

Mr. DOLE. No limitation on amendments.

Mr. JOHNSTON. Except, Mr. President——

Mr. DOLE. They must be germane.

Mr. KERRY. Mr. President, I expect the vote will be proceeding on the amendment of the Senator from Washington. It has been a joint effort on that amendment. If that is not possible perhaps my amendment would be subsumed in either the distinguished majority leader's or distinguished minority leader's. I hope it would be. I simply would like to protect my right in the event that none of those happened and would ask to be included in that amendment.

Mr. METZENBAUM. Would the majority leader be good enough to indicate just a throwaway line "it must be germane"? As I understand that would be applicable with respect to all of the amendments except the capital punishment and the abortion amendment.

Mr. DOLE. Some of the second-degree amendments have not been identified.

Mr. METZENBAUM. I wonder if the majority leader would consider making a requirement that any second-degree amendment in connection with the other amendments would all have to be germane. That would allay the conerns expressed by the Senators from Oregon and Ohio that that limitation would not apply to specific amendments.

Mr. ARMSTRONG. Mr. President, if the majority leader will yield, that would scarcely be a fair request to make. I hope the Senator from Ohio would not raise such an expectation. That is simply not fair.

Mr. DOLE. I think it is fairly obvious we are not going to get agreement. I am not going to waste additional time. I think we will just proceed. If the managers want to go to 6 o'clock tomorrow night, it is all right with me.

Mr. BYRD. Mr. President, if the distinguished majority leader will refrain for a moment, I do not think we are that far from agreement. I think there is some misunderstanding here as I heard questions asked about second-degree amendments.

The majority leader in his original request was listing all of the amendments that could be offered. There were, I believe, two amendments excluding the death penalty and the abortion amendment in which provision was made for second-degree amendments. They were the Philippines amendment and the AIDS amendment by Mr. KENNEDY.

In the case of the death penalty and in the case of abortion, as I understood it, the majority leader was going to provide that if either of those was determined to be germane by a vote of the Senate that amendment in the second degree would be in order.

Those were the only exceptions with regard to second-degree amendments. We have a listing of the amendments.

So with those exceptions there are to be no second-degree amendments called up.

Did I overlook one?

Mr. FORD. Yes.

I am reserving the right to have an amendment in the second degree to the funding amendment for drugs.

Mr. BYRD. Very well.

I thank the distinguished Senator.

So with that additional exception, the leader would include, I am sure, the request that none of the amendments listed could be offered as second-degree amendments to any of the other amendments listed. So I do not see any problem with regard to the second-degree amendments. The amendments are listed. They are those exceptions. That should be clear.

It seems to me that as long as the Senators who are opposed to the capital punishment amendment and those who have problems with the abortion amendment may call up second-degree amendments thereto and I understood the distinguished majority leader was going to include that. I do not see any problem.

Because they are protected, as far as the two-speech rule is concerned, if they are able to call up additional second-degree amendments.

I hope the majority leader would try to get that kind of an agreement. It seems to me that protects everybody. We will have a list of the amendments.

The distinguished chairman has sat here, and the ranking manager and all the Members have sat here, with great patience and forbearance and we made progress.

Now it seems to me to stop before at least putting the request and trying to get the request seems to me might perhaps not be the best thing to do. At least we ought to try to get that request. I would urge the majority leader to try.

Mr. ARMSTRONG. If the minority leader will yield to me.

Mr. BYRD. The majority leader has the floor.

Mr. DOLE. I am happy to yield.

Mr. ARMSTRONG. If I understand correctly the line of reasoning advanced by the minority leader, it is that we are going to qualify a large number of amendments and that, with respect to all but three of them, we are going to have one set of ground rules, but the three amendments which are distasteful to some Members will be treated differently.

Now, I am perfectly willing, as one Member, to say that unlimited second-degree amendments will be available to all of the amendments which were qualified, or to say there will be no second-degree amendments to any. But it does not seem, as a matter of elementary fairness, that we ought to treat these three important amendments in some different way because it seriously disadvantages their opportunity for passage.

So, Mr. President, I hope that we would not proceed in that way. I am perfectly willing to go either way, but it ought to be across the board. It should not be singling out amendments that are of a particular interest to the Senator from Ohio or the Senator from Kentucky or the Senator from Colorado or any other particular Senator and say we are going to treat those amendments procedurally in a different manner than the other amendments.

Mr. DOLE. Mr. President, we have listed the amendments. I do not know of any additions. The last amendment on the list I have read twice now was the Hatch medical devices amendment. Are there any additional amendments since that amendment was added?

The only question we would have would be on the second-degree amendments. I do believe the Senator from Colorado makes a good point that we are either going to permit it in every case or in none of the cases. I do not know if anybody would have any objection to having second-degree amendments on any of the amendments if they are determined to be germane.

Mr. BYRD. Mr. President, I do not have any objection as long as they are related to or germane.

Mr. JOHNSTON. Mr. President, I think it would be accomplishing a lot if we can get that list of amendments approved. I would expect we could then see the light at the end of the tunnel.

Mr. DOLE. Let me make the request that the amendments listed be the only amendments in order except for the ones that are being processed by the review committee and that they be subject, if germane, to second-degree amendments.

Mr. JOHNSTON. Reserving the right to object, did the Senator mean to say those being processed by the review committee and agreed to by the minority and majority managers?

Mr. DOLE. That is correct.

Mr. PRYOR. Would the majority leader yield just a moment?

Mr. DOLE. Yes.

Mr. PRYOR. This is very important. If those amendments being processed by the committee are not accepted by the committee or by the minority and majority managers, then would those be out of order pursuant to the majority leader's request?

Mr. DOLE. I think in that case we would make a further determination. To say now they are out of order might not be fair to those who are going through the process. I would hope they would not be offered, but I would add to that request, if they are not accepted by the committee, that they could be made in order.

Mr. JOHNSTON. If the Senator would yield, they would certainly be in order as a second-degree amendment. We would try to accommodate people as best we could. But I hope we would have a finite number of amendments to be identified and otherwise have them to be agreed upon. Otherwise, we have an unlimited number.

Mr. SARBANES. Will the majority leader yield for a question?

Mr. DOLE. Yes.

Mr. SARBANES. Must the second-degree amendment be germane to the first-degree amendment to which it is offered?

Mr. DOLE. That is correct.

Mr. BYRD. Or related to, either.

Mr. COHEN. Will the majority leader yield for a question? Is there to be any sort of time limitation on the number of those amendments that are currently being processed by the two managers of the bill or will these to multiply like tadpoles during the course of 4:30 on?

Mr. DOLE. The question—and I think it is a good question—is have you received all of the amendments you intend to receive? If not, there will be 50 more in your lap tomorrow morning.

Mr. JOHNSTON. Mr. President, I think we have 28, but that includes amendments on both sides. And those have all been cleared at this point.

Mr. DOLE. I guess the point is, you are not accepting additional amendments?

Mr. JOHNSTON. We would hope, for example, to be able to clear the amendment of the distinguished Senator from Arkansas. We hope to be able to work that out.

Mr. DOLE. Let us say we come back at 10 o'clock and the majority leader has five more amendments to put in the review process. Is there a cutoff time somewhere down the line?

Mr. BYRD. Why do we not make the cutoff time now?

Mr. McCLURE. Will the Senator yield?

Mr. DOLE. Yes.

Mr. McCLURE. There is an amendment which various staff have been working on all day. I do not think it has been submitted yet because staff are still working on it. I would not want that to be cut off. It involves the Senator from Nevada and the Senator from Ohio. Their staffs have been working with the staff of the Committee on Energy and Natural Resources. I think there is a substantial possibility, if not a probability, there there will be an agreement that we can then come to the managers and offer. I think they are aware of that amendment, but I do not know whether that is one of the 28 that they have.

That amendment deals with geothermal leases and park protection in that field. Obviously, unless it is approved by the managers of the bill on both sides, we are not going to offer it.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The majority leader has the floor.

Mr. DOLE. I am happy to yield to the Senator from Louisiana.

Mr. JOHNSTON. I would say to the majority leader that I think it is protection enough to have a requirement that the amendments be agreed upon by the majority and minority because, frankly, if there are amendments that come in late tomorrow afternoon, I expect that will be too late to get them agreed to.

Mr. DOLE. I think the point is that somebody could drop them in at noon tomorrow and say, "If you don't like them, I will just offer them to the bill." So we have to have some protection from being flooded with additional amendments here if they are rejected by the review committee. If we can just shut it off here, that would be one thing. I do not know of any objection.

Mr. BYRD. Also close off this list as it is presently written.

Mr. McCLURE. Might I inquire how the floor managers of the bill if the amendment to which I made reference a moment ago dealing with geothermal leases and park protection is on your list?

Mr. JOHNSTON. It has not been cleared yet.

□ 0430

Mr. McCLURE. Is it on the list?

Mr. JOHNSTON. We will put it on.

Mr. BYRD. If that is going to be on the list, I think Mr. ROCKEFELLER and I had one also we want to include on that, the geothermal amendment.

Mr. METZENBAUM. There is negotiation on that. I do not want to indicate by implication or otherwise we come to an agreement but certainly if we do come to an agreement I have no objection to it being on the agreed list. If that is the case my understanding is the Senator from Idaho would not object to the Senators from West Virginia getting this matter on the list.

Mr. McCLURE. If the Senators from West Virginia get their matter on the list, the Senator from Idaho wants his on the list.

Mr. BYRD. I am not asking for Mr. ROCKEFELLER and myself to have an amendment on the list. I have not said that. If the Senator from Idaho is going to get his amendment on the list, inasmuch as he is holding up a matter——

Mr. McCLURE. It is not my amendment.

Mr. BYRD. Why does the Senator want it on the list?

Mr. McCLURE. It is because I know there is one the Senator from Nevada has offered. We have been trying to work out between the Senators from Nevada and Ohio. It is not my amendment.

Mr. BYRD. I do not mind the Senator having his amendment on the list. I am not objecting to that. I want one on also.

Mr. DOLE. There would be two additional amendments.

Mr. McCLURE. Put one on from the Senator from Idaho.

Mr. DOLE. We did and both Senators from West Virginia.

Mr. President, let me try one more time. We can stay here all night.

The agreement is pending, the request is pending.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, I am doing this to protect and am making the reservations for the protection of all Senators. Does the distinguished majority leader include in that request no motion to recommit will be in order?

Mr. DOLE. Yes.

We should also include in that request—I think I have by implication—there will be no additional amendments received by the review committee.

Mr. JOHNSTON. The Senator is correct.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Reserving the right to object, Mr. President, if I might finish with the majority leader, and I will not ask any further questions, no motion to recommit the bill is in order. Second, are we leaving provision for any committee amendments that have not been agreed to yet? There are not.

Finally, what about the Labor-HHS conference report? Will this agreement allow another conference report which may be adopted to be folded into this omnibus bill? May we make provision for that so that there will be flexibility in folding into this omnibus spending bill any other appropriation bill that has been adopted and the conference report has been accepted?

Mr. DOLE. I am advised by the distinguished manager that can be taken care of in conference.

Mr. BYRD. All right. I have no objection.

Mr. STEVENS. Mr. President, reserving the right to object, as I hear these amendments, as I looked at the majority leader's list, I find none that raise any issue in the defense portion of the bill. I do not think we have had any situation like this before where we have not seen any more of the amendments. Can I inquire, are there any of these amendments that touch any portion of the defense bill except the omnibus drug amendment?

Mr. DOLE. I do not believe so.

Mr. STEVENS. If they do, I would like to reserve the right to have an amendment.

Mr. DOLE. Unless it is the Philippines amendment.

Mr. EVANS. Depending on how we work out the funding, the funding may come from a variety of sources.

Mr. STEVENS. I raise that because the defense bill is right up to the limit. If someone is going to put additional money on it in order to escape the point of order, I have to reserve the right to have an amendment to change the defense bill. I want to reserve that right in the event any amendment is adopted here so we can escape the point of order on the Budget Act. I would like to have that understanding. I think other Members who are subcommittee chairmen may want to have the same protection.

Mr. JOHNSTON. Will the Senator yield?

Mr. STEVENS. Yes.

Mr. JOHNSTON. On our list of 28 amendments plus 2, we are not aware of any amendment that relates to the defense section of the bill.

Mr. STEVENS. Very well. I do not raise an objection.

Mr. DOMENICI. Mr. President, if I may ask the majority leader, I understand no points of order are waived?

Mr. DOLE. That is correct.

Mr. DOMENICI. Do I understand if any of the 28 can be agreed upon with the managers, there is nothing about this unanimous-consent agreement that requires that they be voted on?

Mr. DOLE. I would hope not.

Mr. DOMENICI. I thank the majority leader.

Mr. MOYNIHAN. Would the majority leader yield?

The PRESIDING OFFICER. Is there objection? Is there objection to the agreement?

Mr. MOYNIHAN. Mr. President, will the majority leader yield? There will be an amendment on medical advisers. I would like to reserve the opportunity to offer a second-degree amendment.

Mr. DOLE. Second-degree amendment will be in order.

The PRESIDING OFFICER. Is there objection? Without objection, the agreement is agreed to.

Mr. DOLE. Mr. President, I want to ask the managers now that we have this agreement. There is a vote that will occur immediately. What time do you want to be here to start again?

Mr. HATFIELD. We will not stop. We want to continue.

Mr. President, I would like to respond with this number of amendments, there is no indication at all that we can get through tomorrow or tomorrow night. If we do not continue now, frankly, I hope continuing now people will take another look at whether we follow through with the amendments. I only say we have a precedent here. We went through the night until 6:30 p.m. on a continuing resolution but we finally finished it after we had tried two or three times to get some kind of cutoff. But you have seen the demonstration here tonight. It has taken us this length of time to even reach on understanding of where we are. I must say we have to go to conference. It is going to take us a full day just in paperwork to take care of all the things that have happened here.

The House is not going to stay in. We are not going to be able to do it Saturday with the House or even planned that. I am not sure the House will indicate they will even meet on Monday. So we may be out into Tuesday. It is going to take us two full days once we get to conference.

I just want to say to the body, I said this so it should not be a surprise to anyone, that we have dilly-dallied along here with all of these amendments, important ones, but still it has taken the time. It has taken almost an hour to even understand where we are going to go from here. We must press on. I am not enjoying it but we must press on in order to do the Nation's business. Until we show a little more self-restraint in this body on this whole matter of amendments, we all have to pay the price and still carry our responsibilities.

I am going to stand here until this is completed.

Mr. BYRD. Mr. President, I thought we were working on agreeing to a list of amendments which would shut out all other amendments, and once having agree upon that list of amendments the Senators were going to go home. That was my understanding.

Mr. HATFIELD. If the minority leader would yield, when we were discussing that, I said unless we get a time certain or unless we get time agreements. The list is not in itself an agreement merely to list these. We have to get some understanding of when we are going to finish this bill. And I can tell you now, to the Democratic leader and to any other person here, we will not finish this bill even now, probably before Saturday. It has taken us all this time to have that many rollcalls, unless we have an understanding that people are not going to offer these amendments. I mean we all are human. But at the same time, we have a responsibility. It is awfully easy to dump it back on the Appropriations Committee, and say, "well, you pick it up and carry it on to conference," and so forth.

I say we have limitations that we have to operate in, too. We cannot just immediately go to conference. We cannot control the time of the conference. We have a tough bill here to deal with the House. The House-passed bill is loaded with legislative matters that we are going to have arguments on. I imagine the defense committee conference itself will take probably 2 to 3 days maybe. And I am just saying we have only a day, October 8, to meet. We will never meet it because we have other items to do. I just must say, like it or not, we have to complete this.

Mr. BYRD. Mr. President, will the majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. Is it the majority leader's plan to go out now? I can appreciate the problem that is confronted by the distinguished chairman of the committee. I do not know of anybody in the Senate who has been nicer and more courteous, more considerate of other Senators than the chairman of this committee. I know that he is faced with a long day tomorrow. And we are going to have to stop by sundown in any event. But I would hope that we would not now that we have gotten this list, at least that much done. Otherwise, if we had no list completed we could have gone on into tomorrow, on into Monday, and on into Tuesday.

□ 0440

Now we are trying to tie it down to a list of a certain number of amendments. I would hope now that we are not going to continue to stay here and attempt to complete this list of amendments. I hope the distinguished chairman will tell me, but I will tell you: It is not going to do any good if a Senator dies on this floor. We are going to kill some Senators. It does not necessarily have to be a Senator as old as Abraham. It can be a young Senator. That can happen.

There are several of us who have colds, the Senator from Kentucky has a cold, the distinguished Senator from Oregon has one, the distinguished majority leader has had one for 2 weeks. I will tell you, we are going to look silly. I have had about enough of it. We have given the list.

I will bend over backward. I take a back seat to nobody, and I do not think anyone will challenge this, when it comes to one's responsibility. I know what my responsibility is. I have a wife sitting over there in McLean waiting on me to come home. She will not go to bed until I get there.

I will say to you, Mr. Majority Leader: If we are not going to go home, I am going to tell the rest of these people they can go because I am going to hold this fort, if I have to do it. I think I can stand another 8 or 10 hours, but I do not think that is necessary. I think we have to be reasonable around here. We have people's health.

This measure could have been called up before it was called up. I hope we will consider that fact. We did not have to jam ourselves into this situation. This measure could have been called up but it was not called up.

I hope the distinguished chairman will forgive me, but I think it is a terrible error to go on like this.

I hope the majority leader will put us out. The two distinguished managers, if they want to, can stay and handle these amendments. They can take mine off. I have an amendment on the list that the managers are going to work with. They can take mine off.

Mr. President, I hope the majority leader will not keep the Senate in any longer with rollcall votes and working on this list of amendments. I can tell you right now, it is not going to make progress.

Mr. DOLE. Mr. President, I must confess, I was under the impression, and I had not cleared it with the distinguished chairman of the committee so I apologize to him, that we were trying to corral all these amendments and we could go home and take a shower and come back. It may not seem like progress. It did take an hour. But we now can identify the amendments. I am willing to bet half of those will not be offered. I think a lot of people just put in a little insurance amendment here and there.

The distinguished minority leader made it rather clear that we should do one of two things, either try to agree to go home or to vitiate the agreement. I think many people entered into the agreement on the theory this was going to be a ticket home. I would hope we could work out some agreement to have this vote, lay down an amendment that is going to require a vote, and have that vote sometime between 9:30 and 10 o'clock this morning. Otherwise, I believe the distinguished chairman is right, that we will not finish this bill by sundown. That would give everybody 4½ hours if they went right home.

[Laughter.]

Mr. DOLE. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. DOLE. Let me indicate very quickly: There will be a vote. You can vote on the way out. We will come in at 9:30 tomorrow morning. The Humphrey amendment will be pending. He will lay that amendment down this evening. There will be about 30 minutes of material they can take care of tomorrow morning.

□ 0450

Mr. BYRD. Mr. President, will the majority leader get consent that the pending amendment will be laid down and set aside temporarily? These others can be negotiated.

Mr. DOLE. Yes, I will do that.

I imagine the first vote will come about 10:20 or 10:30 and go home.

The PRESIDING OFFICER. The question is, Is the amendment germane? The yeas and nays have been ordered.

Mr. HATFIELD. Mr. President, before we proceed with the vote, I would like to inquire of the majority leader, may I get a commitment from the leadership that once we undertake this bill tomorrow, we will pursue this bill and finish it tomorrow? Can I get that commitment? Are we going to freak out again because we get a little bit lazy?

Mr. STEVENS. Tomorrow night is a holiday.

Mr. HATFIELD. I want to finish this bill tomorrow. I would just like to get a commitment from the leadership.

Mr. BYRD. Any commitment I give, I will keep. I cannot keep that commitment, because it is beyond my power to do it for this reason: There are three or four amendments on there that are filibusterable. Sundown or no sundown, we cannot finish that bill if those develop into a filibuster. I hope they would not be called up. I suggest we get those up first. Then, once we dispose of them, we might enter into a time agreement for passage.

Mr. HATFIELD. Well, Mr. President, let me put the Senate on notice that if I have any authority to do so as the manager of the bill, I want to say that I will not be as accommodating tomorrow night at this hour if we have to go that far. We will finish this bill. We just have to finish this bill tomorrow once we undertake it.

Mr. METZENBAUM. I think the Senator understands that it is a holiday for some of us and we are going to leave. We will expect our leadership to protect us, that there are no votes. I think we have had those assurances always in the past. We will try to cooperate but I think we need cooperation all around.

KASTEN AMENDMENT NO. 3162—GERMANENESS

The PRESIDING OFFICER (Mr. SIMPSON). The question is, Is the amendment germane? The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr SIMPSON. I announce that the Senator from Utah [Mr. GARN], the Senator from Arizona [Mr. GOLDWATER], the Senator from Florida [Mrs. HAWKINS], and the Senator from Vermont [Mr. STAFFORD], are necessarily absent.

Mr. BYRD. I announce that the Senator from Colorado [Mr. HART], the Senator from California [Mr. CRANSTON], the Senator from Louisiana [Mr. LONG] and the Senator from Mississippi [Mr. STENNIS], are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 32, nays 60, as follows:

[Rollcall Vote No. 322 Leg.]

YEAS—32

Abdnor
Andrews
Armstrong
Broyhill
Byrd
D'Amato
DeConcini
Denton
Dole
Domenici
Eagleton
Ford
Gramm
Grassley
Hatch
Heinz
Helms
Hollings
Humphrey
Kasten
Mattingly
McClure
McConnell
Melcher
Nickles
Pressler
Quayle
Rudman
Symms
Thurmond
Wilson
Zorinsky

NAYS—60

Baucus
Bentsen
Biden
Bingaman
Boren
Boschwitz
Bradley
Bumpers
Burdick
Chafee
Chiles
Cochran
Cohen
Danforth
Dixon
Dodd
Durenberger
Evans
Exon
Glenn
Gore
Gorton
Harkin
Hatfield
Hecht
Heflin
Inouye
Johnston
Kassebaum
Kennedy
Kerry
Lautenberg
Laxalt
Leahy
Levin
Lugar
Mathias
Matsunaga
Metzenbaum
Mitchell
Moynihan
Murkowski
Nunn
Packwood
Pell
Proxmire
Pryor
Riegle
Rockefeller
Roth
Sarbanes
Sasser
Simon
Simpson
Specter
Stevens
Trible
Wallop
Warner
Weicker

NOT VOTING—8

Cranston
Garn
Goldwater
Hart
Hawkins
Long
Stafford
Stennis

□ 0500

The PRESIDING OFFICER. The Kasten amendment is not germane and falls.

Mr. GORTON. Mr. President, will the distinguished Senator from Oregon, as chairman of the Appropriations Committee, answer a question concerning the limitation on the Department of Energy's funds for use in siting a high level nuclear waste repository? Is it correct that the Appropriations Committee limited the fiscal year 1987 funding for the Department's Nuclear Waste Disposal Program to $380 million in order to place a 1 year moratorium on any site-specific activity relating to characterization of candidate sites for a repository or monitored retrievable storage facility for the disposal of high level nuclear waste or spent fuel? And, more specifically, is it the committee's intent that the Department not undertake the characterization of Hanford or candidate sites in Nevada and Texas in fiscal year 1987?

Mr. HATFIELD. My colleague from Washington, Mr. GORTON, is absolutely correct. Very serious concerns have been raised about the Department of Energy's ability to properly implement the Nuclear Waste Policy Act of 1982. Intense and widespread criticism, extremely controversial programmatic decisions by the Secretary of Energy, and a proliferation of litigation has led to considerable uncertainty over the Nuclear Waste Program's future. The committee, therefore, reduced the nuclear waste fund's resources, thereby "freezing" the program and providing the courts and Congress with an opportunity to address the numerous controversies.

The $380 million provided for the nuclear waste disposal fund in fiscal year 1987 is less than half of the administration's requested amount, and $110 million less than Congress appropriated for the nuclear waste disposal fund last year. The administration requested over $769 million for the nuclear waste disposal fund in fiscal year 1987 and indicated that the increase was for, and I quote, "exploratory shafts at three sites that will be recommended as candidates for the permanent repository * * * and for the proposed monitored retrievable storage facility."

The amount provided by the committee will not enable the Department to sink an exploratory shaft at Hanford or the other two candidate sites. The committee appropriated $380 million to allow the Department to continue with its generic activities such as waste packaging, data base management, transportation, regulatory activities, and institutional activities including the enhancement of Federal/State interactions relating to the disposal and transportation of high level nuclear waste. These activities would go forward regardless of where any high level nuclear waste repositories are sited. It is the committee's intent to place a 1-year moratorium on the characterization of the Hanford site and the candidate sites in Nevada and Texas.

I would like to thank my colleague, the Senator from Washington, Mr. GORTON, for his crucial assistance and leadership on this issue. His experience with, and knowledge of, the Nuclear Waste Policy Act of 1982 together with his ability to convince his colleagues of the equity and appropriateness of the committee's actions greatly contributed to passage of this legislation. His efforts in building a strong coalition in support of this approach facilitated this legislation's passage. At the key point in the committee's consideration of this issue, the Senator from Washington provided invaluable assistance by indicating his willingness to debate at length—translated filibuster if necessary any action by the committee that served to undermine the Nuclear Waste Policy Act 1982.

Mr. McCLURE. I would like to add to the discussion between the Senator from Washington and the distinguished chairman of the Appropriations Committee. The Nuclear Waste Policy Act of 1982, which I and several of my colleagues including Senators HATFIELD and GORTON helped develop, requires the Department of Energy to recommend to the President three candidate sites for site characterization as a second repository for high level radioactive waste by July 1, 1989. I fully support the Appropriations Committee's actions to halt all site-specific characterization activity and allow the courts and the appropriate committees an opportunity to address the Department of Energy's questionable implementation of the Nuclear Waste Policy Act of 1982. To do any less would run the risk of jeopardizing ongoing litigation on this issue. I completely agree with the Appropriations Committee chairman's characterization of the committee's action.

Mr. DOMENICI. As a member of both committees which worked so diligently in the 97th Congress to develop the Nuclear Waste Policy Act of 1982, and as a member of the Appropriations Committee, I concur with all I have heard from my colleagues during this exchange. Both the Energy and Natural Resources Committee, and the Environment and Public Works Committee, on which both Senator GORTON and I served, worked diligently in the 97th Congress to develop a compromise which would bring credibility to and depoliticize the process of site selection.

It is only with the understanding that the Appropriations Committee's intent is to allow for no site-specific characterization activities in fiscal year 1987 to provide both the courts and Congress with an opportunity to address the Department's actions that I believe we will be able to pass this continuing resolution. I know how strongly my friend from Washington feels on this issue. He was one of the key players in the development and passage of the Nuclear Waste Policy Act in the 97th Congress, and, in fact, it was at his insistance that the committee adopted a regional siting approach. As I recall, he also proposed the 70,000-ton limit on the first repository on the floor in order to ensure that the second repository would be built. I know he intends that the site selection process be based on scientific fact and carried out in a fair way with our concern for the public health and safety as paramount. If this action by the committee was to be construed as allowing the Department to characterize the first three candidate sites and completely abandon plans for a second site, I am sure he would have us here until the new year, at least.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES, BOARDS, COMMISSIONS, CORPORATIONS AND OFFICES APPROPRIATIONS, 1987

Mr. LAXALT. Mr. President, I ask unanimous consent that we set aside the pending business and proceed to the consideration of H.R. 5313, the HUD appropriation bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAXALT. Mr. President, I further ask unanimous consent that the only amendment in order with the exception of the committee reported amendments be the Leahy-Lautenberg Superfund amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAXALT. I further ask that no motions to recommit be in order and that there be 20 minutes equally divided on the bill, including all amendments thereto.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 5313) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1987, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Appropriations with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italic):

H.R. 5313

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1987, and for other purposes, namely:

TITLE I

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Programs

ANNUAL CONTRIBUTIONS FOR ASSISTED HOUSING

[(INCLUDING RESCISSION)

[The amount of contracts for annual contributions, not otherwise provided for, as authorized by section 5 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437c), and heretofore approved in appropriations Acts, is increased by $638,280,885: *Provided,* That the budget authority obligated under contracts for annual contributions shall be increased above amounts heretofore provided in appropriations Acts by $8,095,000,000: *Provided further,* That of the budget authority provided herein, $366,120,000 shall be for assistance in financing the development or acquisition cost of public housing for Indian families; $1,436,940,000 shall be available as an appropriation of funds, to remain available until expended, for modernization of existing public housing projects pursuant to section 14 of such Act (42 U.S.C. 1437l); $1,602,786,540 shall be for assistance for projects developed for the elderly or handicapped under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q); $790,950,000 shall be for the section 8 existing housing program (42 U.S.C. 1437f); $716,287,500 shall be for the section 8 moderate rehabilitation program (42 U.S.C. 1437f); $1,025,000,000 shall be available for the housing voucher program under section 8(o) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f), for use, notwithstanding the limitations in section 8(o)(1) of such Act that the Secretary conduct a demonstration, and in section 8(o)(4) of such Act that the Secretary use substantially all authority in connection with certain programs, in connection with the rental rehabilitation program under section 17 of such Act and for any other purposes as determined by the Secretary; $250,000,000 shall be available as an appropriation of funds, to remain available until September 30, 1987, only for rental rehabilitation grants pursuant to section 17(a)(1)(A) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437o); and $225,000,000 shall be available as an appropriation of funds, to remain available until September 30, 1987, only for development grants pursuant to section 17(a)(1)(B) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437o): *Provided further,* That with respect to grants as authorized by section 17(a)(1)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437o) which are made using funds under this paragraph, notwithstanding the rental housing vacancy rate criteria of the third and sixth sentences of section 17(d)(2) of such Act, no unit of general local government shall be eligible for such a grant unless it has a percentage of rental dwelling units which are vacant of less than eight per centum, and a percentage of rental dwelling units which are vacant for more than two months of less than four per centum, except that the housing vacancy criteria specified in this paragraph shall not apply to grants authorized by the seventh sentence of such section 17(d)(2): *Provided further,* That none of the amounts available for obligation in 1987 shall be subject to the provisions of section 213(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 1439): *Provided further,* That all amounts of budget authority (and contract authority) equal to the amounts of such budget authority (and contract authority) which are recaptured during fiscal year 1987, shall be rescinded.

[Section 17(f) of the United States Housing Act of 1937 is amended by adding at the end the following new sentence: "This subsection shall not apply to requirements relating to rents imposed on a structure by a State as a condition of receiving State financial assistance for the rehabilitation of such structure, if the dollar amount of such State financial assistance (including the principal amount of loans) exceeds the dollar amount of financial assistance provided for such structure under this section.".**]**

The amount of contracts for annual contributions, not otherwise provided for, as authorized by section 5 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437c), and heretofore approved in appropriations Acts, is increased by $618,816,778: Provided, That such amount of contracts for annual contributions is further increased by such amounts as may be necessary to permit the obligation of budget authority heretofore provided in appropriation Acts and carried over into fiscal year 1987: Provided further, That the budget authority obligated under contracts for annual contributions shall be increased above amounts heretofore provided in appropriations Acts by $7,295,855,500: Provided further, That any part of the amount of the increase in budget authority provided for in the immediately foregoing proviso that is available under this Act as being for public housing development and acquisition costs or which is to be used for amendments for such costs, shall be available as an appropriation of funds, to remain available until expended, for grants, which are hereby authorized in lieu of loans under section 4(a) of the United States Housing Act of 1937 (42 U.S.C. 1437b), and which the Secretary may make on substantially the same terms (except for repayment unless repayment is a properly imposed sanction) as those heretofore set forth in annual contributions contracts for loans and annual contributions: Provided further, That during 1987 and thereafter, any amounts of budget authority which are carried over from a prior year, or which are otherwise available for obligation, and which are available for public housing development and acquisition costs, together with any amounts of budget authority which are to be used for amendments for such costs, in accordance with any Act, shall also be made available as an appropriation of funds for grants, under the same terms as those applying under the immediately preceding proviso: Provided further, That of the budget authority provided herein, $137,938,000 shall remain available until expended for assistance in financing the development or acquisition cost of public housing for Indian families; $1,436,940,000 shall be available as an appropriation of funds, to remain available until expended, for modernization of existing public housing projects pursuant to section 14 of such Act (42 U.S.C. 1437l); $1,602,786,540 shall be for assistance for projects developed for the elderly or handicapped under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q); $790,950,000 shall be for the section 8 existing housing program (42 U.S.C. 1437f); $477,525,000 shall be for the section 8 moderate rehabilitation program (42 U.S.C. 1437f); $1,450,975,000 shall be available for the housing voucher program under section 8(o) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f), for use, notwithstanding the limitations in section 8(o)(1) of such Act that the Secretary conduct a demonstration, and in section 8(o)(4) of such Act that the Secretary use substantially all authority in connection with certain programs, in connection with the rental rehabilitation program under section 17 of such Act and for any other purposes as determined by the Secretary: Provided further, That an amount equal to approximately half the amounts of budget authority which have been reserved or obligated for assistance authorized under section 8, United States Housing Act of 1937 (42 U.S.C. 1437f), and which are recaptured, shall be made available as an appropriation of funds, to remain available until September 30, 1989, for rental rehabilitation grants pursuant to section 17(a)(1)(A) of such Act (42 U.S.C. 1437o), and an amount equal to the balance of such recaptured budget authority amount shall be made available as an appropriation of funds, to remain available until September 30, 1989, for development grants pursuant to section 17(a)(1)(B) of such Act: Provided further, That with respect to grants as authorized by section 17(a)(1)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437o) which are made using funds made available under this paragraph, notwithstanding the rental housing vacancy rate criteria of the third and sixth sentences of section 17(d)(2) of such Act, no unit of general local government shall be eligible for such a grant unless the percentage of rental dwelling units within its jurisdiction which are vacant is less than the national percentage of rental dwelling units that are vacant and a percentage of rental dwelling units within its jurisdiction which are vacant for more than two months is less than the national percentage of dwelling units that are vacant for more than two months, except that the housing vacancy criteria specified in this paragraph shall not apply to grants authorized by the seventh sentence of such section 17(d)(2): Provided further, That an *amount equal to the amounts of budget authority which have been reserved or obligated for assistance in financing the development or acquisition cost of public housing and which are recaptured (not including such amounts as may be recaptured from amounts heretofore obligated for such assistance for Indian families, and amounts that become available for rescission pursuant to section 4(c)(3) of the United States Housing Act of 1937 (42 U.S.C. 1437b)), and any amount equal to amounts of budget authority which have been made available for programs authorized under the United States Housing Act of 1937 (except section 17 thereof) (42 U.S.C. 1437), which are recaptured, and which are not otherwise provided for, shall be made available as an appropriation of funds for major reconstruction of obsolete public housing projects (other than for Indian families): Provided further, That an amount equal to the amounts of budget authority which have been obligated for assistance in financing the development or acquisition cost of public housing for Indian families and which have been recaptured (not including amounts that become available for rescission pursuant to section 4(c)(3) of the United States Housing Act of 1937 (42 U.S.C. 1437b)), in addition to other amounts of budget authority specified for such purpose under this Act, shall be made available as an appropriation of funds, to remain available until expended for grants for such development or acquisition cost of public housing for Indian families: Provided further, That an amount equal to the amounts of budget authority which have been reserved or obligated for assistance for modernization of existing public housing projects pursuant to section 14 of such Act (42 U.S.C. 1437l) and which are recaptured (not including amounts that become available for rescission pursuant to section 4(c)(3) of the Act (42 U.S.C. 1437b)) or which are carried over from a prior year or are otherwise available for obligation, shall be made available as an appropriation of funds, to remain available until expended, for grants for modernization of existing public housing projects: Provided further, That none of the amounts available for obligation in 1987 shall be subject to the provisions of section 213(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 1439).*

Amounts of funds for rental rehabilitation grants as authorized by section 17(a)(1)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437o) that were appropriated under this heading in the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1985 (Public Law 98-371, 98 Stat. 1213, 1215, amending Public Law 98-45, 97 Stat. 219, 220), to become available in part during fiscal year 1984, and in part on October 1, 1984, shall remain available for obligation until September 30, 1987; and the balance of the amounts of funds for rental rehabilitation grants, that were appropriated under this heading in the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986 (Public Law 99-160, 99 Stat. 909), to be available during fiscal year 1986, which remains following sequestration under the President's order of February 1, 1986, pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-117; H. Doc. 99-160, 99th Cong., 2d Sess., pages 462-463), shall remain available until September 30, 1988: Provided, That the foregoing extensions of the periods of availability for the respective amounts of funds shall apply only to amounts which are recaptured, and section 17(b)(4) of the United States Housing Act of 1937 (relating to reallocations of fund amounts) shall not apply to the respective amounts.

RENT SUPPLEMENT

(RESCISSION)

The limitation otherwise applicable to the maximum payments that may be required in any fiscal year by all contracts entered into under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) is reduced in fiscal year 1987 by not more than $2,900,000 in uncommitted balances of authorizations provided for this purpose in appropriations Acts.

RENTAL HOUSING ASSISTANCE

(RESCISSION)

The limitation otherwise applicable to the maximum payments that may be required in any fiscal year by all contracts entered into under section 236 of the National Housing Act (12 U.S.C. 1715z-1) is reduced in fiscal year 1987 by not more than $3,500,000 in uncommitted balances of authorizations provided for this purpose in appropriations Acts.

HOUSING FOR THE ELDERLY OR HANDICAPPED FUND

In 1987, $592,661,000 of direct loan obligations may be made under section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q), utilizing the resources of the fund authorized by subsection (a)(4) of such section, in accordance with paragraph (C) of such subsection: *Provided*, That such commitments shall be available only to qualified nonprofit sponsors for the purpose of providing 100 per centum loans for the development of housing for the elderly or handicapped, with any cash equity or other financial commitments imposed as a condition of loan approval to be returned to the sponsor if sustaining occupancy is achieved in a reasonable period of time: *Provided further*, That the full amount shall be available for permanent financing (including construction financing) for housing projects for the elderly or handicapped: *Provided further*, That the Secretary may borrow from the Secretary of the Treasury in such amounts as are necessary to provide the loans authorized herein: *Provided further*, That, notwithstanding any other provision of law, the receipts and disbursements of the aforesaid fund shall be included in the totals of the Budget of the United States Government: *Provided further*, That, notwithstanding section 202(a)(3) of the Housing Act of 1959, loans made in fiscal year 1987 shall bear an interest rate which does not exceed 9.25 per centum, including the allowance adequate in the judgment of the Secretary to cover administrative costs and probable losses under the program.

CONGREGATE SERVICES

For contracts with and payments to public housing agencies and nonprofit corporations for congregate services programs in accordance with the provisions of the Congregate Housing Services Act of 1978, [$3,400,000] *$3,000,000*, to remain available until September 30, 1988.

PAYMENTS FOR OPERATION OF LOW-INCOME HOUSING PROJECTS

For payments to public housing agencies and Indian housing authorities for operating subsidies for low-income housing projects as authorized by section 9 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g), [$1,300,000,000] *$1,400,000,000, to remain available for obligation in accordance with section 9(a), notwithstanding section 9(d), of such Act until September 30, 1988: Provided, That $100,000,000 of the foregoing amount shall be made available to public housing agencies and Indian housing authorities in the discretion of the Secretary and notwithstanding the last sentence of section 9(a)(1) of such Act, to contribute toward meeting, or to meet, increases in the costs of insurance coverage required pursuant to annual contributions contracts.*

HOUSING COUNSELING ASSISTANCE

For contracts, grants, and other assistance, not otherwise provided for, for providing counseling and advice to tenants and homeowners—both current and prospective—with respect to property maintenance, financial management, and such other matters as may be appropriate to assist them in improving their housing conditions and meeting the responsibilities of tenancy or homeownership, including provisions for training and for support of voluntary agencies and services as authorized by section 106(a)(1)(iii) and section 106(a)(2) of the Housing and Urban Development Act of 1968, as amended, [$4,000,000] *$3,500,000.*

TROUBLED PROJECTS OPERATING SUBSIDY

For assistance payments to owners of eligible multifamily housing projects insured, or formerly insured, under the National Housing Act, as amended, in the program of operating subsidies for troubled multifamily housing projects under the Housing and Community Development Amendments of 1978, all uncommitted balances of excess rental charges and any collections after September 30, 1986, to remain available until September 30, 1988: *Provided*, That assistance payments to an owner of a multifamily housing project assisted, but not insured, under the National Housing Act may be made if the project owner and the mortgagee have provided or agreed to provide assistance to the project in a manner as determined by the Secretary of Housing and Urban Development.

FEDERAL HOUSING ADMINISTRATION FUND

For payment to cover losses, not otherwise provided for, sustained by the Special Risk Insurance Fund and General Insurance Fund as authorized by the National Housing Act, as amended (12 U.S.C. 1715z-3(b) and 1735c(f)), $272,955,000, to remain available until expended.

During 1987, within the resources available, gross obligations for direct loans are authorized in such amounts as may be necessary to carry out the purposes of the National Housing Act, as amended.

During 1987, additional commitments to guarantee loans to carry out the purposes of the National Housing Act, as amended, shall not exceed a loan principal of [$80,000,000,000] *$120,000,000,000.*

During fiscal year 1987, gross obligations for direct loans of not to exceed $73,800,000 are authorized for payments under section 230(a) of the National Housing Act, as amended, from the insurance fund chargeable for benefits on the mortgage covering the property to which the payments made relate, and payments in connection with such obligations are hereby approved.

NONPROFIT SPONSOR ASSISTANCE

During 1987, within the resources and authority available, gross obligations for the principal amounts of direct loans shall not exceed $1,000,000.

Government National Mortgage Association

PAYMENT OF PARTICIPATION SALES INSUFFICIENCIES

For the payment of such insufficiencies as may be required by the Government National Mortgage Association, as trustee, on account of outstanding beneficial interest or participations in assets of the Department of Housing and Urban Development (including the Government National Mortgage Association) authorized by the Independent Offices and Department of Housing and Urban Development Appropriation Act, 1968, to be issued pursuant to section 302(c) of the Federal National Mortgage Association Charter Act, as amended (12 U.S.C. 1717), $1,079,000.

GUARANTEES OF MORTGAGE-BACKED SECURITIES

During 1987, new commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act, as amended (12 U.S.C. 1721g), shall not exceed **[**$132,500,000,000**]** *$160,000,000,000* of loan principal.

Solar Energy and Energy Conservation Bank

ASSISTANCE FOR SOLAR AND CONSERVATION IMPROVEMENTS

The funds appropriated under this heading in the Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1985 (Public Law 98-371) shall remain available until September 30, 1987: *Provided*: That all funds recaptured from prior year appropriations under this heading shall be reallocated to eligible financial institutions.

Community Planning and Development

COMMUNITY DEVELOPMENT GRANTS

For grants to States and units of general local government and for related expenses, not otherwise provided for, necessary for carrying out a community development grant program as authorized by title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301), $3,000,000,000, to remain available until September 30, 1989: *Provided*, That not to exceed 20 per centum of any grant made with funds appropriated herein *(other than a grant using funds set aside in the next following proviso)* shall be expended for "Planning and Management Development" and "Administration" as defined in regulations promulgated by the Department of Housing and Urban Development*: Provided further, That not more than $2,000,000 shall be made available from the foregoing $3,000,000,000 to carry out a neighborhood development demonstration under section 123 of the Housing and Urban-Rural Recovery Act of 1983 (Public Law 98-181)*.

During 1987, total commitments to guarantee loans, as authorized by section 108 of the **[**aforementioned Act**]** *Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301)*, shall not exceed $150,000,000 of contingent liability for loan principal.

[During 1987 and each succeeding fiscal year, any city within a metropolitan area shall be considered to be a metropolitan city under section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) if such city—

[(1) was classified as a metropolitan city under clause (B) of such section pursuant to the amendment made to such section by section 102(a) of the Housing and Community Development Act of 1977 (Public Law 95-128);

[(2) had, according to the 1980 decennial census, a population of 36,957; and

[(3) received a preliminary grant approval on February 8, 1984, for an urban development action grant under section 119 of the Housing and Community Development Act of 1974.**]**

URBAN DEVELOPMENT ACTION GRANTS

For grants to carry out urban development action grant programs authorized in section 119 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301), pursuant to section 103 of that Act, **[**$275,000,000**]** *$225,000,000*, to remain available until September 30, 1990.

REHABILITATION LOAN FUND

During 1987, collections, unexpended balances of prior appropriations (including any recoveries of prior reservations) and any other amounts in the revolving fund established pursuant to section 312 of the Housing Act of 1964, as amended (42 U.S.C. 1452b), after September 30, 1985, are available and may be used for commitments for loans and operating costs and the capitalization of delinquent interest on delinquent or defaulted loans notwithstanding section 312(h) of such Act.

URBAN HOMESTEADING

For reimbursement to the Federal Housing Administration Fund or the Rehabilitation Loan Fund for losses incurred under the urban homesteading program (12 U.S.C. 1706e), and for reimbursement to the Administrator of Veterans Affairs and the Secretary of Agriculture for properties conveyed by the Administrator of Veterans Affairs and the Secretary of Agriculture, respectively, for use in connection with an urban homesteading program approved by the Secretary of Housing and Urban Development pursuant to section 810 of the Housing and Community Development Act of 1974, as amended, $12,000,000, to remain available until expended.

MODEL CITIES PROGRAM

Notwithstanding any other provision of law or other requirement, the Secretary of Housing and Urban Development may not require the City of New Orleans in the State of Louisiana to pay any amount relating to ineligible costs incurred with respect to the model cities grant numbered ME-17-001 under title I of the Demonstration Cities and Metropolitan Development Act of 1966.

Policy Development and Research

RESEARCH AND TECHNOLOGY

For contracts, grants, and necessary expenses of programs of research and studies relating to housing and urban problems, not otherwise provided for, as authorized by title V of the Housing and Urban Development Act of 1970, as amended (12 U.S.C. 1701z-1 et seq.), including carrying out the functions of the Secretary under section 1(a)(1)(i) of Reorganization Plan No. 2 of 1968, **[**$16,173,000**]** *$18,000,000, to remain available until September 30, 1988.*

Fair Housing and Equal Opportunity

FAIR HOUSING ASSISTANCE

For contracts, grants, and other assistance, not otherwise provided for, as authorized by title VIII of the Civil Rights Act of 1968, as amended, $6,341,300, to remain available until September 30, 1988.

Management and Administration

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary administrative and nonadministrative expenses of the Department of Housing and Urban Development, not otherwise provided for, including not to exceed $4,000 for official reception and representation expenses, **[**$649,085,000**]** *$634,011,000*, of which $306,962,000 shall be provided from the various funds of the Federal Housing Administration.

ADMINISTRATIVE PROVISION

None of the funds appropriated by this or any other Act shall be used to implement or enforce the regulations published on April 1, 1986, at 51 Fed. Reg. 11198-11231.

No part of the funds made available by this or any other Act in fiscal year 1987 maybe used to close any field office of the Department of Housing and Urban Development. Of the funds made available by this Act, the Secretary of the Department of Housing and Urban Development shall utilize such sums as are necessary to re-open any such field office closed by the Department in the twelve months preceding the date of enactment of this Act.

Section 119 (n)(1) of the Housing and Community Development Act of 1974 is amended by adding at the end thereof the following: Such term also includes the counties of Kauai, Maui and Hawaii in the state of Hawaii.

TITLE II

INDEPENDENT AGENCIES

American Battle Monuments Commission

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, including the acquisition of land or interest in land in foreign countries; purchases and repair of uniforms for caretakers of national cemeteries and monuments outside of the United States and its territories and possessions; rent of office and garage space in foreign countries; purchase (one for replacement only) and hire of passenger motor vehicles; and insurance of official motor vehicles in foreign countries when required by law of such countries; $11,673,000: *Provided*, That where station allowance has been authorized by the Department of the Army for officers of the Army serving the Army at certain foreign stations, the same allowance shall be authorized for officers of the Armed Forces assigned to the Commission while serving at the same foreign stations, and this appropriation is hereby made available for the payment of such allowance: *Provided further*, That when traveling on business of the Commission, officers of the Armed Forces serving as members or as Secretary of the Commission may be reimbursed for expenses as provided for civilian members of the Commission: *Provided further*, That the Commission shall reimburse other Government agencies, including the Armed Forces, for salary, pay, and allowances of personnel assigned to it: *Provided further*, That section 409 of the general provisions carried in title IV of this Act shall not apply to the funds provided under this heading.

Consumer Product Safety Commission

SALARIES AND EXPENSES

For necessary expenses of the Consumer Product Safety Commission, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18, and not to exceed $500 for official reception and representation expenses, [$34,452,000] *$33,000,000*: *Provided*, That no more than $250,000 of these funds shall be available for personnel compensation and benefits for the Commissioners of the Consumer Product Safety Commission appointed pursuant to 15 U.S.C. 2053 [: *Provided further*, That none of these funds shall be available after March 31, 1987, for any Commissioners' offices located in the Logan Building].

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' and Airmen's Home National Cemetery, and not to exceed $1,000 for official reception and representation expenses; [$6,701,000] *$15,783,000*, to remain available until expended: *Provided*, That reimbursement shall be made to the applicable military appropriation for the pay and allowances of any military personnel performing services primarily for the purposes of this appropriation.

ENVIRONMENTAL PROTECTION AGENCY

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, including hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $25,000 per project; and not to exceed $3,000 for official reception and representation expenses; [$696,047,000] *$701,107,000*: *Provided*, That none of these funds may be expended for purposes of Resource Conservation and Recovery Panels established under section 2003 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6913).

RESEARCH AND DEVELOPMENT

For research and development activities, [$202,500,000] *$200,434,000* to remain available until September 30, 1988.

ABATEMENT, CONTROL, AND COMPLIANCE

For abatement, control, and compliance activities, [$532,550,000] *$585,985,000*, to remain available until September 30, 1988: *Provided*, That none of these funds may be expended for purposes of Resource Conservation and Recovery Panels established under section 2003 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6913), or for support to State, regional, local and interstate agencies in accordance with subtitle D of the Solid Waste Disposal Act, as amended, other than section 4008(a)(2) or 4009 (42 U.S.C. 6948, 6949).

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment for facilities of, or use by, the Environmental Protection Agency, [$5,000,000] *$9,500,000*, to remain available until expended *of which $2,500,000 shall be for construction of a laboratory addition at the Environmental Research Center at the University of Nevada, Las Vegas.*

ADVANCES TO THE HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

For payment, as repayable advances to the Hazardous Substance Response Trust Fund, when specifically authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, borrowed funds as may be necessary to carry out the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, including sections 111 (c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), [$861,300,000] *$1,050,000,000*, to be derived from the Hazardous Substance Response Trust Fund, to remain available until expended: *Provided*, [That none of these funds shall be available for obligation until the enactment of a subsequent appropriations Act authorizing obligation of such funds: *Provided further*,] That funds appropriated under this account may be allocated to other Federal agencies in accordance with section 111(a) of Public Law 96-510. [For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, an additional $135,000,000 shall be available for administrative expenses.]

CONSTRUCTION GRANTS

For necessary expenses to carry out title II of the Federal Water Pollution Control Act, as amended, other than sections 201(m)(1-3), 201(n)(2), 206, 208, and 209, $2,400,000,000, to remain available until expended: [*Provided*, That none of these funds may be used for any project providing treatment more stringent than secondary, unless the project has been reviewed in accordance with the Environmental Protection Agency's advance treatment review policy: *Provided further*, That none of these funds shall be available for obligation until the enactment of a subsequent appropriations Act authorizing obligation of such funds] *of which $600,000,000 shall be made available and derived from sums previously appropriated for this purpose in Public Law 99-190: Provided, That availability of funds made available under this section shall not be limited to phases or segments of previously funded projects: Provided further, That allocation of the sums made available under this section shall be in accordance with the formula in effect on October 1, 1984: Provided further, That of the funds made available under this paragraph, the Administrator of the Environmental Protection Agency shall advance to Clark County, Nevada those funds which have been previously approved by the Regional Administrator for defense costs incurred as a result of the case of Frank Brisco Company, Inc. v. Morison-Knudsen Company, Inc., et al. (Civil No. LV-80-135, HEC), that said funds shall be advanced out of the State of Nevada's allocations under the construction grants program and shall be debited against the State's allocation in equal amounts over a period of twenty years; and that said funds shall be advanced only to the extent that such costs have been audited and approved pursuant to existing regulations: Provided, further, That no unit of government shall receive less in 1987 than it received in 1985 under sections 205(g) and 205(j) of the Federal Water Pollution Control Act.*

ADMINISTRATIVE PROVISION

Not to exceed $5 million of the funds collected by the Environmental Protection Agency pursuant to 31 U.S.C. 9701 for Quality Assurance Mandatory Services and for Quality Assurance Materials shall hereafter be credited to the appropriation which incurred the costs therefore and shall be available for the purposes of that appropriation.

EXECUTIVE OFFICE OF THE PRESIDENT

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For necessary expenses of the Council on Environmental Quality and the Office of Environmental Quality, in carrying out their functions under the National Environmental Policy Act of 1969 (Public Law 91-190), the Environmental Quality Improvement Act of 1970 (Public Law 91-224), and Reorganization Plan No. 1 of 1977, including not to exceed $500 for official reception and representation expenses, and hire of passenger motor vehicles, [$670,000] *$800,000*.

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

For necessary expenses of the Office of Science and Technology Policy, in carrying out the purposes of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 and 6671), hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, not to exceed $1,500 for official reception and representation expenses, and rental of conference rooms in the District of Columbia, [$1,671,000] *$2,217,000: Provided*, That the Office of Science and Technology Policy shall reimburse other agencies for not less than one-half of the personnel compensation costs of individuals detailed to it.

FEDERAL EMERGENCY MANAGEMENT AGENCY

DISASTER RELIEF

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses in carrying out the functions of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 et seq.), [$175,000,000] *$120,000,000*, to remain available until expended: *Provided*, [That $5,385,000 shall, upon enactment of this Act, be transferred to the "Salaries and expenses" appropriation for costs of employees doing disaster assistance work located at headquarters and regional offices and the amount so transferred shall be available until September 30, 1987: *Provided further*,] That the regulation changes proposed by the Federal Emergency Management Agency and set forth at 51 Fed. Reg. 13332-13373 (April 18, 1986), or any finally adopted regulations related to or developed or following from such proposed regulations, shall not be effective from enactment of this Act through September 30, 1987.

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, including hire and purchase of motor vehicles (31 U.S.C. 1343); uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for GS-18; expenses of attendance of cooperating officials and individuals at meetings concerned with the work of emergency preparedness; transportation in connection with the continuity of government program to the same extent and in the same manner as permitted the Secretary of a Military Department under 10 U.S.C. 2632; and not to exceed $1,500 for official reception and representation expenses, [$118,507,000] *$124,000,000.*

EMERGENCY MANAGEMENT PLANNING AND ASSISTANCE

For necessary expenses, not otherwise provided for, to carry out activities under the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001 et seq.), the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 et seq.), the Earthquake Hazards Reduction Act of 1977, as amended (42 U.S.C. 7701 et seq.), the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2201 et seq.), the Strategic and Critical Materials Stock Piling Act, as amended (50 U.S.C. 98 et seq.), the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), section 103 of the National Security Act (50 U.S.C. 404), and Reorganization Plan No. 3 of 1978, [$250,743,000] *$273,800,000.*

NATIONAL FLOOD INSURANCE FUND

[(TRANSFERS OF FUNDS)

[Of the funds available from the National Flood Insurance Fund for activities under the National Flood Insurance Act of 1968, and the Flood Disaster Protection Act of 1973, $9,300,000 shall, upon enactment of this Act, be transferred to the "Salaries and expenses" appropriation for administrative costs of the insurance programs and $45,200,000 shall, upon enactment of this Act, be transferred to the "Emergency management planning and assistance" appropriation for flood plain management activities, including $4,720,000 for expenses under section 1362 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4103, 4127), which amount shall be available until September 30, 1988.] In fiscal year 1987, no funds in excess of (1) $42,788,000 for operating expenses, (2) $117,950,000 for agents' commissions and taxes, and (3) $5,362,000 for interest on Treasury borrowings shall be available from the National Flood Insurance Fund without prior notice to the Committees on Appropriations. *In fiscal year 1987, for activities under the National Flood Insurance Act of 1968, and the Flood Disaster Protection Act of 1973, not to exceed $45,200,000 for flood plain management, and $9,300,000 for salaries and expenses shall be available from the National Flood Insurance Fund.*

[EMERGENCY FOOD AND SHELTER PROGRAM

[There is hereby appropriated $70,000,000 to the Federal Emergency Management Agency to carry out an emergency food and shelter program. Notwithstanding any other provision of this or any other Act, such amount shall be made available under the terms and conditions of the following paragraphs:

[The Director of the Federal Emergency Management Agency shall, as soon as practicable after enactment of this Act, constitute a national board for the purpose of determining how the program funds are to be distributed to individual localities. The United Way of America, the Salvation Army, the National Council of Churches of Christ in the U.S.A., the National Conference of Catholic Charities, the Council of Jewish Federations, Inc., and the American Red Cross shall each nominate a representative to sit on the national board, and the Director of the Federal Emergency Management Agency shall designate a representative from each of these organizations to sit on the national board. The Federal Emergency Management Agency shall also designate a representative to sit on the national board, and the representative of the Federal Emergency Management Agency shall chair the national board.

[Each locality designated by the national board to receive funds shall constitute a local board for the purpose of determining how its funds will be distributed. The local board shall consist, to the extent practicable, of representatives of the same organizations as the national board except that the mayor or appropriate head of government will replace the Federal Emergency Management Agency member.

[The Director of the Federal Emergency Management Agency shall award a grant for $70,000,000 to the national board within thirty days after enactment of this Act for the purpose of providing emergency food and shelter to needy individuals through private voluntary organizations and through units of local government.

[Eligible private voluntary organizations should be nonprofit, have a voluntary board, have an accounting system, and practice nondiscrimination.

[Participation in the program should be based upon a private voluntary organization's or unit of local government's ability to deliver emergency food and shelter to needy individuals and such other factors as are determined by the local boards.

[Total administrative costs shall not exceed 2 per centum of the total appropriation.

[As authorized by the Charter of the Commodity Credit Corporation, the Corporation shall process and distribute surplus food owned or to be purchased by the Corporation under the food distribution and emergency shelter program in cooperation with the Federal Emergency Management Agency.]

GENERAL SERVICES ADMINISTRATION

CONSUMER INFORMATION CENTER

For necessary expenses of the Consumer Information Center, including services authorized by 5 U.S.C. 3109, $1,272,000, to be deposited into the Consumer Information Center Fund: *Provided,* That the appropriations, revenues and collections deposited into the fund shall be available for necessary expenses of Consumer Information Center activities in the aggregate amount of $5,200,000. Administrative expenses of the Consumer Information Center in fiscal year 1987 shall not exceed $1,664,000. Appropriations, revenues and collections accruing to this fund during fiscal year 1987 in excess of $5,200,000 shall remain in the fund and shall not be available for expenditure except as authorized in appropriations Acts.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF CONSUMER AFFAIRS

For necessary expenses of the Office of Consumer Affairs, including services authorized by 5 U.S.C. 3109, [$1,000,000] *$1,750,000.*

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

RESEARCH AND DEVELOPMENT

For necessary expenses, not otherwise provided for, including research, development, operations, services, minor construction, maintenance, repair, rehabilitation and modification of real and personal property; purchase, hire, maintenance, and operation of other than administrative aircraft, necessary for the conduct and support of aeronautical and space research and development activities of the National Aeronautics and Space Administration; [$3,020,700,000] *$3,122,100,000,* to remain available until September 30, 1988: [*Provided,* That none of the funds in this bill shall be used to reassign programs and/or transfer personnel from the Johnson Space Center without the express authorization of Congress: *Provided further,* That of the funds appropriated under this heading, not to exceed $160,000,000 shall be provided for space station phase C/D development and such funds shall not be available for obligation until the enactment of a subsequent appropriations Act authorizing the obligation of such funds.]

SPACE FLIGHT, CONTROL AND DATA COMMUNICATIONS

For necessary expenses, not otherwise provided for; in support of space flight, spacecraft control and communications activities of the National Aeronautics and Space Administration, including operations, production, services, minor construction, maintenance, repair, rehabilitation, and modification of real and personal property; tracking and data relay satellite services as authorized by law; purchase, hire, maintenance and operation of other than administrative aircraft; [$3,038,000,000] *$3,624,000,000,* to remain available until September 30, 1988, *of which, $531,000,000 shall not be available for obligation until January 15, 1987, unless made available for obligation prior to such date in an subsequent appropriation Act.*

CONSTRUCTION OF FACILITIES

For construction, repair, rehabilitation and modification of facilities, minor construction of new facilities and additions to existing facilities, and for facility planning and design not otherwise provided, for the National Aeronautics and Space Administration, and for the acquisition or condemnation of real property, as authorized by law, [$166,300,000] *$174,300,000,* to remain available until September 30, 1989: *Provided,* That, notwithstanding the limitation on the availability of funds appropriated under this heading by this appropriations Act, when any activity has been initiated by the incurrence of obligations therefor, the amount available for such activity shall remain available until expended, except that this provision shall not apply to the amounts appropriated pursuant to the authorization for repair, rehabilitation and modification of facilities, minor construction of new facilities and additions to existing facilities, and facility planning and design: *Provided further,* That no amount appropriated pursuant to this or any other Act may be used for the lease or construction of a new contractor-funded facility for exclusive use in support of a contract or contracts with the National Aeronautics and Space Administration under which the Administration would be required to substantially amortize through payment or reimbursement such contractor investment, unless an appropriations Act specifies the lease or contract pursuant to which such facilities are to be constructed or leased or such facility is otherwise identified in such Act: *Provided further,* That the Administrator may authorize such facility lease or construction, if he determines, in consultation with the Committees on Appropriations, that deferral of such action until the enactment of the next appropriations Act would be inconsistent with the interest of the Nation in aeronautical and space activities.

RESEARCH AND PROGRAM MANAGEMENT

For necessary expenses of research in Government laboratories, management of programs and other activities of the National Aeronautics and Space Administration, not otherwise provided for, including uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901-5902); awards; lease, hire, maintenance and operation of administrative aircraft; purchase (not to exceed thirty-three for replacement only) and hire of passenger motor vehicles; and maintenance and repair of real and personal property, and not in excess of $100,000 per project for construction of new facilities and additions to existing facilities, repairs, and rehabilitation and modification of facilities; $1,425,000,000: *Provided*, That contracts may be entered into under this appropriation for maintenance and operation of facilities, and for other services, to be provided during the next fiscal year: *Provided further*, That not to exceed $35,000 of the foregoing amount shall be available for scientific consultations or extraordinary expense, to be expended upon the approval or authority of the Administrator and his determination shall be final and conclusive.

National Credit Union Administration

CENTRAL LIQUIDITY FACILITY

During 1987, obligations of the Central Liquidity Facility for new loans to member credit unions as authorized by the National Credit Union Central Liquidity Facility Act (12 U.S.C. 1795) shall not exceed $600,000,000: *Provided*, That administrative expenses of the Central Liquidity Facility in fiscal year 1987 shall not exceed $850,000.

National Science Foundation

RESEARCH AND RELATED ACTIVITIES

For necessary expenses in carrying out the purposes of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875), title IX of the National Defense Education Act of 1958 (42 U.S.C. 1876-1879), and the Act to establish a National Medal of Science (42 U.S.C. 1880-1881); services as authorized by 5 U.S.C. 3109; maintenance and operation of aircraft and purchase of flight services for research support; acquisition of one aircraft; hire of passenger motor vehicles; not to exceed $2,500 for official reception and representation expenses; uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901-5902); rental of conference rooms in the District of Columbia; and reimbursement of the General Services Administration for security guard services; [$1,333,300,000] *$1,479,000,000*, to remain available until September 30, 1988: *Provided*, That of the funds appropriated in this Act, [or from funds appropriated previously to the Foundation,] not more than [$75,000,000] *$78,000,000* shall be available for program development and management in fiscal year 1987: *Provided further*, That contracts may be entered into under the program development and management limitation in fiscal year 1987 for maintenance and operation of facilities, and for other services, to be provided during the next fiscal year: *Provided further*, That receipts for scientific support services and materials furnished by the National Research Centers and other National Science Foundation supported research facilities may be credited to this appropriation: *Provided further*, That to the extent that the amount appropriated is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally.

UNITED STATES ANTARCTIC PROGRAM ACTIVITIES

For necessary expenses in carrying out the research and operational support for the United States Antarctic Program pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875); maintenance and operation of aircraft and purchase of flight services for research and operations support; maintenance and operation of research ships and charter or lease of ships for research and operations support; hire of passenger motor vehicles; not to exceed $1,000 for official reception and representation expenses; $117,000,000, to remain available until expended: *Provided*, That receipts for support services and materials provided to individuals for non-Federal activities may be credited to this appropriation: *Provided further*, That no funds in this account shall be used for the purchase of aircraft.

SCIENCE EDUCATION ACTIVITIES

For necessary expenses in carrying out science education programs and activities pursuant to the purposes of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861-1875), including award of graduate fellowships, services as authorized by 5 U.S.C. 3109, and rental of conference rooms in the District of Columbia, $99,000,000, to remain available until September 30, 1988: *Provided*, That to the extent that the amount of this appropriation is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally.

SCIENTIFIC ACTIVITIES OVERSEAS

(SPECIAL FOREIGN CURRENCY PROGRAM)

For payments in foreign currencies which the Treasury Department determines to be excess to the normal requirements of the United States, for scientific activities, as authorized by law, $700,000, to remain available until September 30, 1988: *Provided*, That this appropriation shall be available in addition to other appropriations to the National Science Foundation for payments in the foregoing currencies.

Neighborhood Reinvestment Corporation

PAYMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION

For payment to the Neighborhood Reinvestment Corporation for use in neighborhood reinvestment activities, as authorized by the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8101-8107), [$18,669,000] *$19,000,000.*

Selective Service System

SALARIES AND EXPENSES

For necessary expenses of the Selective Service System, including expenses of attendance at meetings and of training for uniformed personnel assigned to the Selective Service System, as authorized by law (5 U.S.C. 4101-4118) for civilian employees; and not to exceed $1,000 for official reception and representation expenses; [$26,128,000] *$27,000,000: Provided*, That during the current fiscal year, the President may exempt this appropriation from the provisions of 31 U.S.C. 1341, whenever he deems such action to be necessary in the interest of national defense: *Provided further*, That none of the funds appropriated by this Act may be expended for or in connection with the induction of any person into the Armed Forces of the United States: *Provided further*, That upon enactment of this Act, the amendments to title 32 of the Code of Federal Regulations set forth at 51 Fed. Reg. 17618-17628 (May 14, 1986) shall be null and void.

Department of the Treasury

OFFICE OF REVENUE SHARING, SALARIES AND EXPENSES

For necessary expenses of the Office of Revenue Sharing, including hire of passenger motor vehicles, $5,560,000.

Veterans Administration

COMPENSATION AND PENSIONS

For the payment of compensation benefits to or on behalf of veterans as authorized by law (38 U.S.C. 107, chapters 11, 13, 51, 53, 55, and 61); pension benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 15, 51, 53, 55, and 61; 92 Stat. 2508); and burial benefits, emergency and other officers' retirement pay, adjusted-service credits and certificates, payment of premiums due on commercial life insurance policies guaranteed under the provisions of Article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and for other benefits as authorized by law (38 U.S.C. 107, 412, 777, and 806, chapters 23, 51, 53, 55, and 61; 50 U.S.C. App. 540-548; 43 Stat. 122, 123; 45 Stat. 735; 76 Stat. 1198), $14,364,400,000, to remain available until expended.

READJUSTMENT BENEFITS

For the payment of readjustment and rehabilitation benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 21, 30, 31, 34-36, 39, 51, 53, 55, and 61), $741,150,000, to remain available until expended.

VETERANS INSURANCE AND INDEMNITIES

For military and naval insurance, national service life insurance, servicemen's indemnities, and service-disabled veterans insurance, as authorized by law (38 U.S.C. chapter 19; 70 Stat. 887; 72 Stat. 487), $4,770,000, to remain available until expended.

MEDICAL CARE

For necessary expenses for the maintenance and operation of hospitals, nursing homes, and domiciliary facilities; for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Veterans Administration, including care and treatment in facilities not under the jurisdiction of the Veterans Administration, and furnishing recreational facilities, supplies and equipment; funeral, burial and other expenses incidental thereto for beneficiaries receiving care in Veterans Administration facilities; repairing, altering, improving or providing facilities in the several hospitals and homes under the jurisdiction of the Veterans Administration, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; uniforms or allowances therefor, as authorized by law (5 U.S.C. 5901-5902); aid to State homes as authorized by law (38 U.S.C. 641); and not to exceed $2,000,000 to fund cost comparison studies as referred to in 38 U.S.C. 5010(a)(5); [$9,488,612,000] *$9,240,176,000*, plus reimbursements.

MEDICAL AND PROSTHETIC RESEARCH

For necessary expenses in carrying out programs of medical and prosthetic research and development, as authorized by law, to remain available until September 30,

1988, [$193,915,000] ***$189,915,000*** **plus reimbursements.**

MEDICAL ADMINISTRATION AND MISCELLANEOUS OPERATING EXPENSES

For necessary expenses in the administration of the medical, hospital, nursing home, domiciliary, construction, supply, and research activities, as authorized by law, [$41,694,000] *$41,194,000*, plus reimbursements.

GENERAL OPERATING EXPENSES

For necessary operating expenses of the Veterans Administration, not otherwise provided for, including uniforms or allowances therefor, as authorized by law; not to exceed $3,000 for official reception and representation expenses; cemeterial expenses as authorized by law; purchase of eleven passenger motor vehicles, for use in cemeterial operations, and hire of passenger motor vehicles; and reimbursement of the General Services Administration for security guard services, and the Department of Defense for the cost of overseas employee mail; *$760,000,000*: *Provided*, That none of the funds appropriated by this or any other Act shall be obligated to effect the closing of the St. Paul Insurance Center during the period beginning on the date of the enactment into law of this Act and ending on [September 30, 1987] *June 30, 1987.*

CONSTRUCTION, MAJOR PROJECTS

For constructing, altering, extending and improving any of the facilities under the jurisdiction or for the use of the Veterans Administration, or for any of the purposes set forth in sections 1004, 1006, 5002, 5003, 5006, 5008, 5009, and 5010 of title 38, United States Code, including planning, architectural and engineering services, and site acquisition, where the estimated cost of a project is $2,000,000 or more or where funds for a project were made available in a previous major project appropriation, [$382,708,000] *$291,000,000*, to remain available until expended: *Provided*, That, except for advance planning of projects funded through the advance planning fund and the design of projects funded through the Design Fund, none of these funds shall be used for any project which has not been considered and approved by the Congress in the budgetary process: *Provided further*, That funds provided in the appropriation "Construction, major projects" for fiscal year 1987, for each approved project shall be obligated (1) by the awarding of a working drawings contract by September 30, 1987 and (2) by the awarding of a construction contract by September 30, 1988: *Provided further*, That the Administrator shall promptly report in writing to the Comptroller General and to the Committees on Appropriations any approved major construction project in which obligations are not incurred within the time limitations established above; and the Comptroller General shall review the report in accordance with the procedures established by section 1015 of the Impoundment Control Act of 1974 (title X of Public Law 93-344): *Provided further*, That no funds from any other account, except the "Parking garage revolving fund", may be obligated for constructing, altering, extending, or improving a project which was approved in the budget process and funded in this account until one year after substantial completion and beneficial occupancy by the Veterans Administration of the project or any part thereof with respect to that part only: *Provided further*, That prior to the issuance of a bidding document for any construction contract for a project approved under this heading (excluding completion items), the director of the affected Veterans Administration medical facility must certify that the design of such project is acceptable from a patient care standpoint.

CONSTRUCTION, MINOR PROJECTS

For constructing, altering, extending, and improving any of the facilities under the jurisdiction or for the use of the Veterans Administration, including planning, architectural and engineering services, and site acquisition, or for any of the purposes set forth in sections 1004, 1006, 5002, 5003, 5006, 5008, 5009, and 5010 of title 38, United States Code, where the estimated cost of a project is less than $2,000,000, [$65,562,000] *$80,000,000*, to remain available until expended, along with unobligated balances of previous "Construction, minor projects" appropriations which are hereby made available for any project where the estimated cost is less than $2,000,000: *Provided*, That not more than [$37,885,000] *$38,000,000* shall be available for expenses of the Office of Facilities, including research and development in building construction technology: *Provided further*, That funds in this account shall be available for (1) repairs to any of the nonmedical facilities under the jurisdiction or for the use of the Veterans Administration which are necessary because of loss or damage caused by any natural disaster or catastrophe and (2) temporary measures necessary to prevent or to minimize further loss by such causes.

PARKING GARAGE REVOLVING FUND

(INCLUDING TRANSFER OF FUNDS)

For the parking garage revolving fund as authorized by law (38 U.S.C. 5009), $30,000,000, together with income from fees collected, to remain available until expended, of which $4,000,000 shall be derived by transfer from "Construction, major projects". Resources of this fund shall be available for all expenses authorized by 38 U.S.C. 5009.

During 1987, within the resources available, gross obligations of the "Parking garage revolving fund" shall not exceed $31,000,000.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For grants to assist the several States to acquire or construct State nursing home and domiciliary facilities and to remodel, modify or alter existing hospital, nursing home and domiciliary facilities in State homes, for furnishing care to veterans, as authorized by law (38 U.S.C. 5031-5037), $42,400,000, to remain available until September 30, 1989.

GRANTS TO THE REPUBLIC OF THE PHILIPPINES

For payment to the Republic of the Philippines of grants, as authorized by law (38 U.S.C. 632), for assisting in the replacement and upgrading of equipment and in rehabilitating the physical plant and facilities of the Veterans Memorial Medical Center, $500,000, to remain available until September 30, 1988.

DIRECT LOAN REVOLVING FUND

During 1987, within the resources available, not to exceed $1,000,000 in gross obligations for direct loans is authorized for specially adapted housing loans (38 U.S.C. chapter 37).

LOAN GUARANTY REVOLVING FUND

(INCLUDING TRANSFER OF FUNDS)

During 1987, the resources of the loan guaranty revolving fund shall be available for expenses for property acquisitions, payment of participation sales insufficiencies, and other loan guaranty and insurance operations, as authorized by law (38 U.S.C. chapter 37, except administrative expenses, as authorized by section 1824 of such title): *Provided*, That the unobligated balances, including retained earnings of the direct loan revolving fund, shall be available, during 1987, for transfer to the loan guaranty revolving fund in such amounts as may be necessary to provide for the timely payment of obligations of such fund, and the Administrator of Veterans Affairs shall not be required to pay interest on amounts so transferred after the time of such transfer.

During 1987, with the resources available, gross obligations for direct loans and total commitments to guarantee loans are authorized in such amounts as may be necessary to carry out the purposes of the "Loan guaranty revolving fund".

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

Not to exceed 5 per centum of any appropriation for 1987 for "Compensation and pensions", "Readjustment benefits", and "Veterans insurance and indemnities" may be transferred to any other of the mentioned appropriations, but not to exceed 10 per centum of the appropriations so augmented.

Appropriations available to the Veterans Administration for "Parking garage revolving fund" may be increased by a transfer from "Construction, major" and "Construction, minor" not to exceed 10 per centum of the appropriation so augmented.

Appropriations available to the Veterans Administration for 1987 for salaries and expenses shall be available for services as authorized by 5 U.S.C. 3109.

No part of the appropriations in this Act for the Veterans Administration (except the appropriations for "Construction, major projects" and "Construction, minor projects") shall be available for the purchase of any site for or toward the construction of any new hospital or home.

No part of the foregoing appropriations shall be available for hospitalization or examination of any persons except beneficiaries entitled under the laws bestowing such benefits to veterans, unless reimbursement of cost is made to the appropriation at such rates as may be fixed by the Administrator of Veterans Affairs.

One or more pilot programs shall be conducted to determine the effectiveness of utilizing private contractual services to assist in the administrative collection of various types of delinquent debts or other funds due the Government.

TITLE III

CORPORATIONS

Corporations and agencies of the Department of Housing and Urban Development and the Federal Home Loan Bank Board which are subject to the Government Corporation Control Act, as amended, are hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Act as may be necessary in carrying out the programs set forth in the budget for 1987 for such corporation or agency except as hereinafter provided: *Provided*, That collections of these corporations and agencies may be used for new loan or mortgage purchase commitments only to the extent expressly provided for in this Act (unless such loans are in support of other forms of assistance provided for in this or prior appropriations Acts), except that this proviso shall not apply to the mortgage insurance or guaranty operations of these corporations, or where loans or mortgage purchases are necessary to protect the financial interest of the United States Government.

Federal Home Loan Bank Board

LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL HOME LOAN BANK BOARD

Not to exceed a total of $27,693,000 shall be available for administrative expenses of the Federal Home Loan Bank Board for procurement of services as authorized by 5 U.S.C. 3109, and contracts for such services with one organization may be renewed annually, and uniforms or allowances therefor in accordance with law (5 U.S.C. 5901-5902), and said amount shall be derived from funds available to the Federal Home Loan Bank Board, including those in the Federal Home Loan Bank Board revolving fund and receipts of the Board for the current fiscal year, of which not to exceed $800,000 shall be available for purposes of training State examiners and not to exceed $1,500 shall be available for official reception and representation expenses: *Provided*, That members and alternates of the Federal Savings and Loan Advisory Council may be compensated subject to the provisions of section 7 of the Federal Advisory Committee Act, and shall be entitled to reimbursement from the Board for transportation expenses incurred in attendance at meetings of or concerned with the work of such Council and may be paid in lieu of subsistence per diem not to exceed the dollar amount set forth in 5 U.S.C. 5703: *Provided further*, That, notwithstanding any other provisions of this Act, except for the limitation in amount hereinbefore specified, the expenses and other obligations of the Board shall be incurred, allowed, and paid in accordance with the provisions of the Federal Home Loan Bank Act of 1932, as amended (12 U.S.C. 1421-1449).

LIMITATION ON ADMINISTRATIVE EXPENSES, FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Not to exceed $1,466,000 shall be available for administrative expenses, which shall be on an accrual basis and shall be exclusive of interest paid, depreciation, properly capitalized expenditures, expenses in connection with liquidation of insured institutions or activities relating to section 406(c), 407, or 408 of the National Housing Act, liquidation or handling of assets of or derived from insured institutions, payment of insurance, and action for or toward the avoidance, termination, or minimizing of losses in the case of insured institutions, legal fees and expenses and payments for expenses of the Federal Home Loan Bank Board determined by said Board to be properly allocable to said Corporation, and said Corporation may utilize and may make payments for services and facilities of the Federal home loan banks, the Federal Reserve banks, the Federal Home Loan Bank Board, the Federal Home Loan Mortgage Corporation, and other agencies of the Government: *Provided*, That, notwithstanding any other provisions of this Act, except for the limitation in amount hereinbefore specified, the administrative expenses and other obligations of said Corporation shall be incurred, allowed, and paid in accordance with title IV of the Act of June 27, 1934, as amended (12 U.S.C. 1724-1730f).

TITLE IV

GENERAL PROVISIONS

Section 401. Where appropriations in titles I and II of this Act are expendable for travel expenses and no specific limitation has been placed thereon, the expenditures for such travel expenses may not exceed the amounts set forth therefor in the budget estimates submitted for the appropriations: *Provided*, That this section shall not apply to travel performed by uncompensated officials of local boards and appeal boards of the Selective Service System; to travel performed directly in connection with care and treatment of medical beneficiaries of the Veterans Administration; to travel performed in connection with major disasters or emergencies declared or determined by the President under the provisions of the Disaster Relief Act of 1974; to site-related travel performed in connection with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; to site-related travel under the Solid Waste Disposal Act, as amended; or to payments to interagency motor pools where separately set forth in the budget schedules: *Provided further*, That if appropriations in titles I and II exceed the amounts set forth in budget estimates initially submitted for such appropriations, the expenditures for travel may correspondingly exceed the amounts therefor set forth in the estimates in the same proportion.

Sec. 402. Appropriations and funds available for the administrative expenses of the Department of Housing and Urban Development and the Selective Service System shall be available in the current fiscal year for purchase of uniforms, or allowances therefor, as authorized by law (5 U.S.C. 5901-5902); hire of passenger motor vehicles; and services as authorized by 5 U.S.C. 3109.

Sec. 403. Funds of the Department of Housing and Urban Development subject to the Government Corporation Control Act or section 402 of the Housing Act of 1950 shall be available, without regard to the limitations on administrative expenses, for legal services on a contract or fee basis, and for utilizing and making payment for services and facilities of Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Financing Bank, Federal Reserve banks or any member thereof, Federal home loan banks, and any insured bank within the meaning of the Federal Deposit Insurance Corporation Act, as amended (12 U.S.C. 1811-1831).

Sec. 404. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

Sec. 405. No funds appropriated by this Act may be expended—

(1) pursuant to a certification of an officer or employee of the United States unless—

(A) such certification is accompanied by, or is part of, a voucher or abstract which describes the payee or payees and the items or services for which such expenditure is being made, or

(B) the expenditure of funds pursuant to such certification, and without such a voucher or abstract, is specifically authorized by law; and

(2) unless such expenditure is subject to audit by the General Accounting Office or is specifically exempt by law from such audit.

Sec. 406. None of the funds provided in this Act to any department or agency may be expended for the transportation of any officer or employee of such department or agency between his domicile and his place of employment, with the exception of the Secretary of the Department of Housing and Urban Development, who, under title 5, United States Code, section 101, is exempted from such limitation.

Sec. 407. None of the funds provided in this Act may be used for payment, through grants or contracts, to recipients that do not share in the cost of conducting research resulting from proposals not specifically solicited by the Government: *Provided*, That the extent of cost sharing by the recipient shall reflect the mutuality of interest of the grantee or contractor and the Government in the research.

Sec. 408. None of the funds provided in this Act may be used, directly or through grants, to pay or to provide reimbursement for payment of the salary of a consultant (whether retained by the Federal Government or a grantee) at more than the daily equivalent of the maximum rate paid for GS-18, unless specifically authorized by law.

Sec. 409. No part of any appropriation contained in this Act for personnel compensation and benefits shall be available for other object classifications set forth in the budget estimates submitted for the appropriations.

Sec. 410. None of the funds in this Act shall be used to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings. Nothing herein affects the authority of the Consumer Product Safety Commission pursuant to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056 et seq.).

Sec. 411. Except as otherwise provided under existing law or under an existing Executive order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are (1) a matter of public record and available for public inspection, and (2) thereafter included in a publicly available list of all contracts entered into within twenty-four months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract.

Sec. 412. Except as otherwise provided by law, no part of any appropriation contained in this Act shall be obligated or expended by any executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) for a contract for services unless such executive agency (1) has awarded and entered into such contract in full compliance with such Act and the regulations promulgated thereunder and (2) requires any report prepared pursuant to such contract, including plans, evaluations, studies, analyses and manuals, and any report prepared by the agency which is substantially derived from or substantially includes any report prepared pursuant to such contract, to contain information concerning (A) the contract pursuant to which the report was prepared and (B) the contractor who prepared the report pursuant to such contract.

Sec. 413. Except as otherwise provided in section 406, none of the funds provided in this Act to any department or agency shall be obligated or expended to provide a personal cook, chauffeur, or other personal servants to any officer or employee of such department or agency.

SEC. 414. None of the funds provided in this Act to any department or agency shall be obligated or expended to procure passenger automobiles as defined in 15 U.S.C. 2001 with an EPA estimated miles per gallon average of less than 22 miles per gallon.

TITLE V—SHELTER PROGRAM

Part A—General Provisions

SEC. 501. SHORT TITLE.

This title may be cited as the "Emergency Food and Shelter Act of 1986".

SEC. 502. DEFINITIONS.

For the purpose of this title—

(1) the term "Board" means the Emergency Food and Shelter Program National Board;

(2) the term "Director" means the Director of the Federal Emergency Management Agency;

(3) the term "emergency shelter" means a facility all or a part of which is used or designed to be used to provide temporary housing;

(4) the term "homeless" means families and individuals who are poor and have no access to either traditional or permanent housing;

(5) the term "local government" means a unit of general purpose local government;

(6) the term "locality" means the geographical area within the jurisdiction of a local government;

(7) the term "private nonprofit organization" means a secular or religious organization described in section 501(c) of the Internal Revenue Code of 1954 which is exempt from taxation under subtitle A of such Code, and which has an accounting system and a voluntary board, and which practices nondiscrimination in the provision of assistance;

(8) the term "Secretary" means the Secretary of Housing and Urban Development; and

(9) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States.

SEC. 503. EMERGENCY FOOD AND SHELTER PROGRAM NATIONAL BOARD.

(a) Establishment of National Board.—There is established to carry out the provisions of this title the Emergency Food and Shelter Program National Board. The Secretary of Housing and Urban Development shall enter into an interagency agreement with the Federal Emergency Management Agency for the purpose of constituting the Board in accordance with subsection (b) and administering the program under this title.

(b) Board of Directors.—The Board shall consist of 6 members who shall be appointed by the Secretary of Housing and Urban Development not later than 30 days after the date of enactment of this Act, one from those individuals nominated by each of the following:

(1) The United Way of America.

(2) The Salvation Army.

(3) The National Council of Churches of Christ in the U.S.A.

(4) Catholic Charities U.S.A.

(5) The Council of Jewish Federations, Inc.

(6) The American Red Cross.

In addition, the Secretary of each of the Departments of Housing and Urban Development, Agriculture, and Health and Human Services, and the Federal Emergency Management Agency shall be members of the Board ex officio. The Board shall select one individual who has demonstrated a commitment to addressing homelessness and hunger from among those recommended by individuals and organizations active in the provision of shelter, food, and supportive services for the homeless to be an additional member of the Board.

(c) Election of Chairman and Vice Chairman.—The Board shall elect from among its members a Chairman and a Vice Chairman and such other officials as it deems appropriate in the conduct of its affairs.

(d) Other Activities of the Board.—Except as otherwise specifically provided by this title, the Board shall establish its own procedures and policies for the conduct of its affairs.

(e) Termination of the Board.—The Board shall terminate its activities and cease to exist on October 1, 1991.

SEC. 504. LOCAL BOARDS.

(a) Establishment.—Each locality designated by the Board shall constitute a local board for the purpose of determining how program funds allotted to the locality will be distributed. The local board shall consist, to the extent practicable, of representatives of the same organizations as the national board, except that the mayor or other appropriate heads of government will replace the Federal members. The chair of the local board shall be elected by a majority of the members of the local board. Local boards are encouraged to expand participation of other private nonprofit organizations on the local board.

(b) Responsibilities.—Each local board shall—

(1) determine which private nonprofit organizations or public organizations of the local government in the individual locality shall receive grants to act as service providers;

(2) monitor recipient service providers for program compliance;

(3) reallocate funds among service providers;

(4) ensure proper reporting; and

(5) coordinate with other Federal, State, and local government assistance programs available in the locality.

SEC. 505. ROLE OF FEMA.

(a) In General.—The Director of the Emergency Management Agency shall provide the Board administrative support and act as Federal liaison to the Board.

(b) Specific Support Activities.—The Director shall—

(1) make available to the Board, upon request, the services of the Agency's legal counsel and inspector general;

(2) assign clerical personnel to the Board on a temporary basis; and

(3) conduct audits of the Board annually and at such other times as may be appropriate.

SEC. 506. RECORDS AND AUDIT OF BOARD AND RECIPIENTS OF ASSISTANCE.

(a) Annual Independent Audit of Board.—

(1) The accounts of the Board shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of the Board are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Board and necessary to facilitate the audits shall be made available to the person or persons conducting the audits, and full facilities for verifying transactions with any assets held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(2) The report of each such independent audit shall be included in the annual report required in section 507. Such report shall set forth the scope of the audit and include such statements as are necessary to present fairly the assets and liabilities of the Board, surplus or deficit, with an analysis of the changes during the year, supplemented in reasonable detail by a statement of the income and expenses of the Board during the year, and a statement of the application of funds, together with the opinion of the independent auditor of such statements.

(b) Access to Records of Recipients of Assistance.—

(1) Each recipient of assistance under this title shall keep such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Board, or any of its duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this title.

(c) Authority of Comptroller General.—The Comptroller General of the United States or any of his duly authorized representatives shall also have access to any books, documents, papers, and records of the Board and recipients for such purpose.

SEC. 507. ANNUAL REPORT.

The Board shall transmit to the Congress an annual report covering each year in which it conducts activities with funds made available under this title.

Part B—Emergency Food and Shelter Grants

SEC. 511. GRANTS BY SECRETARY.

Not later than 30 days following the date of enactment of a law providing appropriations to carry out this part, the Secretary of Housing and Urban Development shall award a grant for the full amount that Congress appropriates for the program under this part to the Board for the purpose of providing emergency food and shelter to needy individuals through private nonprofit organizations and through units of local government in accordance with section 513.

SEC. 512. RETENTION OF INTEREST EARNED.

Interest accrued on the balance of any grant to the Board shall be available to the Board for reallocation, and total administrative costs shall be determined based on total amount of funds available, including interest and any private contributions which are made to the Board.

SEC. 513. PURPOSES OF GRANTS.

(a) Eligible Activities.—Grants to the Board may be used—

(1) to supplement and expand ongoing efforts to provide shelter, food, and supportive services for the homeless with sensitivity to

the transition from temporary shelter to permanent homes, and attention to the special needs of the homeless with mental and physical disabilities and illnesses, and to facilitate access for the homeless to other sources of services and benefits;

(2) to promote greater cooperation between the public and private sectors in providing more adequate resources to meet the basic human needs and to engender greater respect for the human dignity of the homeless;

(3) to serve, in cooperation with other organizations in order to avoid duplication of effort, as a national forum and a repository of knowledge to aid in the gathering and dissemination of information relating to homelessness;

(4) to strengthen efforts to create more effective and innovative local programs by providing funding for them; and

(5) to conduct minimum rehabilitation of existing mass shelter or mass feeding facilities, but only to the extent necessary to make facilities safe, sanitary, and bring them into compliance with local building codes.

(b) Limitations on Activities.—The Board may only provide funding provided under this part for—

(1) programs undertaken by nonprofit organizations and units of local government; and

(2) programs that are consistent with the purposes of this title.

The Board may not carry out programs directly.

SEC. 514. LIMITATION ON CERTAIN COSTS.

Not more than 5 percent of the total appropriation for the emergency food and shelter program each year may be expended for the costs of administration.

SEC. 515. PROGRAM GUIDELINES.

(a) Guidelines.—The Board shall establish written guidelines for carrying out the program under this part, including—

(1) methods for identifying localities with the highest need for emergency food and shelter assistance;

(2) methods for determining amount and distribution to these localities;

(3) eligible program costs, including maximum flexibility in meeting currently existing needs; and

(4) guidelines specifying the responsibilities and reporting requirements of the Board, its recipients, and service providers.

(b) Publication.—Guidelines established under subsection (a) shall be published annually, and whenever modified, in the Federal Register. The Board shall not be subject to the procedural rulemaking requirements of subchapter II of chapter 5 of title 5, United States Code.

SEC. 516. PROGRAM AUTHORIZED.

(a) Authorization.—To carry out this part, there are authorized to be appropriated and there are hereby appropriated $70,000,000 for fiscal year 1987, and there are authorized to be appropriated such sums as may be necessary for fiscal year 1988.

(b) Carryover.—Any appropriated funds not obligated in a fiscal year shall remain available until expended.

PART C—TRANSITIONAL HOUSING DEMONSTRATION PROGRAM

SEC. 521. DEFINITIONS.

For the purpose of this part—

(1) the term "homeless person" means a homeless person, as defined in section 502, who is capable within a reasonable amount of time of living independently;

(2) the term "housing for homeless persons" means a structure suitable for the provision of housing and supportive services in an appropriate group setting;

(3) the term "recipient" means any governmental or private nonprofit entity that is approved by the Secretary as to financial responsibility;

(4) the term "operating costs" means expenses incurred by a recipient operating housing for homeless persons under this part with respect to—

(A) the administration, maintenance, repair, and security of such housing;

(B) utilities, fuel, furnishings, and equipment for such housing;

(C) the conducting of the assessment required in section 524(c)(2); and

(D) the provision of supportive services to the residents of such housing; and

(5) the term "supportive services" means assistance in obtaining permanent housing, medical and psychological counseling and supervision, employment counseling, nutritional counseling, and such other services essential for maintaining independent living as the Secretary determines to be appropriate. Such term includes the provision of assistance to residents of housing for homeless persons in obtaining other Federal, State, and local assistance available for such persons, including mental health benefits, employment counseling, and medical assistance.

SEC. 522. ESTABLISHMENT OF DEMONSTRATION PROGRAM.

(a) In General.—The Secretary shall carry out a program in accordance with the provisions of this part to develop innovative approaches for providing transitional housing and supportive services for homeless persons, focusing on those capable of moving into independent living.

(b) Purposes.—The demonstration program carried out under this part shall be designed to determine—

(1) the cost of acquisition, rehabilitation, acquisition and rehabilitation, or leasing of existing structures for the provision of housing for homeless persons;

(2) the cost of operating such housing and providing supportive services to the residents of such housing; and

(3) the social, financial, and other advantages of such housing and supportive services as a means of assisting homeless persons.

SEC. 523. TYPES OF ASSISTANCE.

(a) In General.—The Secretary may provide the following assistance under the demonstration program established in this part:

(1) a non-interest-bearing advance, in an amount not to exceed $200,000, of the aggregate cost of acquisition, rehabilitation, or acquisition and rehabilitation of an existing structure for use in the provision of housing and supportive services for homeless persons, whichever is less;

(2) annual payments for operating costs of such housing, not to exceed 75 percent of the annual operating costs of such housing; and

(3) technical assistance in establishing and operating such housing and providing supportive services to the residents of such housing.

(b) Nonrepayment of Advances.—Any advance provided under subsection (a)(1) shall not be required to be repaid if the recipient involved utilizes the structure for which such advance is made as housing for homeless persons in accordance with the provisions of this part for not less than the 10-year period following initial occupancy of such housing, or if the Secretary determines that such structure is no longer needed for use as transitional housing and approves the use of such structure for another charitable purpose, for the remainder of such 10-year period. If the applicant fails to comply with the conditions for waiver of repayment, the applicant shall repay to the Secretary in cash the full amount of the advance received on such terms as may be prescribed by the Secretary.

SEC. 524. PROGRAM REQUIREMENTS.

(a) Applications.—Applications for assistance under this part shall be made in such form and in accordance with such procedures as the Secretary shall establish.

(b) Selection Criteria.—In selecting recipients for assistance under this part, the Secretary shall consider—

(1) the ability of the applicant to develop and operate housing for homeless persons and to provide or coordinate supportive services for the residents of such housing;

(2) the innovative quality of the proposal in providing housing and supportive services in a manner which facilitates the transition to independent living;

(3) the need for such housing and supportive services in the area to be served; and

(4) such other factors as the Secretary determines to be appropriate for purposes of carrying out the demonstration program established by this part in an effective and efficient manner.

(c) Required Agreements.—Each recipient under this part shall agree, with respect to each structure for which such assistance is provided—

(1) to operate transitional housing assisting residents in the transition to independent living and limiting the stay of individual residents to a period to be established by the Secretary;

(2) to conduct an assessment of the supportive services required by the residents of such structure;

(3) to employ a full-time residential supervisor with sufficient expertise to provide, or supervise the provision of, supportive services to the residents of such structure;

(4) to utilize such structure as housing for homeless persons in accordance with the provisions of this part for not less than the 5-year period following initial occupancy of such housing;

(5) to monitor and report to the Secretary on the progress of homeless persons assisted; and

(6) to comply with such other terms and conditions as the Secretary may establish for purposes of carrying out the demonstration program established in this part in an effective and efficient manner.

(d) Occupant Rent.—Each homeless person residing in housing assisted under this part shall pay as rent an amount determined in accordance with the provisions of section 3(a) of the United States Housing Act of 1937.

(e) Authority of Board.—The Board shall, from time to time, furnish advice to the Secretary in connection with the demonstration programs under this title.

SEC. 525. GUIDELINES.

(a) In General.—Not later than the expiration of the 180-day period following the date of enactment of this Act, the Secretary shall issue such guidelines as may be necessary to carry out the provisions of this part.

(b) Advance Consultation.—Before issuing guidelines under this section, the Secretary shall consult with persons and entities having expertise with respect to the problems and needs of homeless persons or experience in providing housing or supportive services for such persons.

(c) PUBLICATION.—Guidelines established under subsection (a) shall be published annually and whenever modified in the Federal Register. The Secretary shall be subject to the procedural rulemaking requirements of subchapter II of chapter 5 of title 5, United States Code.

SEC. 526. REPORTS TO CONGRESS.

The Secretary shall submit to the Congress—

(1) not later than 3 months after the end of fiscal year 1987, an interim report summarizing the activities carried out under this part during such fiscal year and setting forth any preliminary findings or conclusions of the Secretary as a result of such activities; and

(2) not later than 6 months after the end of fiscal year 1988, a final report summarizing all activities carried out under this part and setting forth any findings, conclusions, or recommendations of the Secretary as a result of such activities.

SEC. 527. LIMITATION ON BUDGET AUTHORITY.

The aggregate amount of non-interest bearing advances and annual payments for operating expenses made by the Secretary under this part in fiscal year 1987 may not exceed $10,000,000 from the amount made available under section 536. Such amount shall remain available until expended.

PART D—EMERGENCY SHELTER GRANTS PROGRAM

SEC. 531. GRANT ASSISTANCE.

The Secretary shall, to the extent of amounts approved in appropriation Acts under section 536, make grants to States, units of local government, and to private nonprofit organizations providing assistance to the homeless in order to carry out activities described in section 535.

SEC. 532. ALLOCATION AND DISTRIBUTION OF ASSISTANCE.

(a) IN GENERAL.—The Secretary shall allocate assistance under this part to metropolitan cities, urban counties, and States (for distribution to units of general local government in the States) in a manner that ensures that the percentage of the total amount available under this part for any fiscal year that is allocated to any State, metropolitan city, or urban county is equal to the percentage of the total amount available for section 106 of the Housing and Community Development Act of 1974 for such prior fiscal year that is allocated to such State, metropolitan city, or urban county.

(b) MINIMUM ALLOCATION REQUIREMENT.—If, under the allocation provisions applicable under this part, any metropolitan city or urban county would receive a grant of less than $30,000 for any fiscal year, such amount shall instead be reallocated to the State.

(c) DISTRIBUTIONS TO NONPROFIT ORGANIZATIONS.—Any unit of general local government receiving assistance under this part may distribute all or a portion of such assistance to private nonprofit organizations providing assistance to the homeless.

(d) REALLOCATION OF FUNDS.—

(1) The Secretary shall, not less than twice during each fiscal year, reallocate any assistance provided under this part that is unused or returned or which becomes available under subsection (b).

(2) The Secretary shall provide such reallocation funds—

(A) to units of general local government demonstrating extraordinary need or large numbers of homeless individuals;

(B) to private nonprofit organizations providing assistance to the homeless; and

(C) to meet such other needs consistent with the purposes of this part.

SEC. 533. ELIGIBLE ACTIVITIES.

Assistance provided under this part may be used for the following activities relating to emergency shelter for the homeless:

(1) renovation, major rehabilitation, or conversion of buildings to be used as emergency shelters;

(2) provision of essential services, including services concerned with employment, health, drug abuse, or education, if—

(A) such services have not been provided by the unit of general local government during any part of the immediately preceding 12-month period; and

(B) not more than 15 percent of the amount of any assistance to a unit of general local government under this part is used for activities under this paragraph; and

(3) maintenance, operation (other than staff), insurance, utilities, and furnishings.

SEC. 534. RESPONSIBILITIES OF GRANTEES.

(a) SUBMISSION OF HOMELESS ASSISTANCE PLAN.—Following notification by the Secretary of eligibility for assistance under this part, each State, metropolitan city, and urban county shall submit to the Secretary a plan describing the proposed use of such assistance. The Secretary shall provide the appropriate amount of assistance to such State, metropolitan city, or urban county before the expiration of the 60-day period following the date of the submission of such plan, unless the Secretary determines before the expiration of such period that such plan is not in compliance with this part.

(b) MATCHING AMOUNTS.—

(1) Each grantee under this part shall be required to supplement the assistance provided under this part with an equal amount of funds from sources other than this part. Each grantee shall certify to the Secretary its compliance with this paragraph, and shall include with such certification a description of the sources and amounts of such supplemental funds.

(2) In calculating the amount of supplemental funds provided by a grantee under this part, a grantee may include the value of any donated material or building, the value of any lease on a building, any salary paid to staff to carry out the program of the grantee, and the value of the time and services contributed by volunteers to carry out the program of the grantee at a rate determined by the Secretary.

(c) ADMINISTRATION OF ASSISTANCE.—Each grantee shall act as the fiscal agent of the Secretary with respect to assistance provided to such grantee.

(d) CERTIFICATIONS ON USE OF ASSISTANCE.—Each grantee shall certify to the Secretary that—

(1) it will maintain as a shelter for the homeless for not less than a 3-year period any building for which assistance is used under this part, or for not less than a 10-year period if such assistance is used for the major rehabilitation or conversion of such building;

(2) any renovation carried out with assistance under this part shall be sufficient to ensure that the building involved is safe and sanitary; and

(3) it will assist homeless individuals in obtaining—

(A) appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(B) other Federal, State, local, and private assistance available for such individuals.

SEC. 535. ADMINISTRATIVE PROVISIONS.

(a) REGULATIONS.—Not later than the expiration of the 60-day period following the date of enactment of this Act, the Secretary shall by notice establish such requirements as may be necessary to carry out the provisions of this part. Such requirements shall be subject to section 553 of title 5, United States Code. The Secretary shall issue requirements based on the initial notice before the expiration of the 12-month period following the date of enactment of this Act.

(b) INITIAL ALLOCATION OF ASSISTANCE.—Not later than the expiration of the 60-day period following the date of enactment of a law providing appropriations to carry out this part, the Secretary shall notify each State, metropolitan city, and urban county that is to receive a direct grant, of its allocation of assistance under this part. Such assistance shall be allocated and may be used notwithstanding any failure of the Secretary to issue requirements under subsection (a).

SEC. 536. APPROPRIATIONS FOR PARTS C AND D.

There are authorized to be appropriated and there are hereby appropriated to the Department of Housing and Urban Development for fiscal year 1987, $30,000,000 to carry out part C and this part.

This may be cited as the "Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1987".

Mr. LAXALT. Mr. President, we now have before us H.R. 5313, making appropriations to the Department of Housing and Urban Development and for sundry independent agencies for fiscal year 1987.

Mr. President, I am pleased to act on behalf of Senator JAKE GARN in bringing the regular appropriations bill for the Department of Housing and Urban Development and Independent Agencies before the Senate. I would like to compliment the ranking minority member of the subcommittee, Senator LEAHY, for his generous help and assistance under the unusual conditions resulting from the absence of the subcommittee chairman, Senator GARN, due to medical reasons that I am sure we are all familiar with.

Mr. President, the bill before us reflects our best efforts to hold down Federal spending and yet addresses a host of vital national needs. The bill totals $53.7 billion which is a reduction of $4.5 billion from the adjusted fiscal year 1986 appropriation and is $328 million below the House allowance. Despite these constraints, it still makes significant steps toward meeting pressing human needs, environmental and consumer protection, and investments in science and technology.

The following briefly highlights the committee's action:

TITLE I

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The Committee recommendation includes $7,295,855,500 in new budget authority for annual contributions for assisted housing and $264,362,000 in recaptures for a total of $7,560,217,500. This provides for a total of 105,500 units of public housing and Section 8 housing. The total units include 2,000 units of Indian housing and 12,000 units of

Section 8 housing. Under the Department of Housing and Urban Development, the Committee recommendation includes: $1,400,000,000 in payments for operation of low-income housing projects; a $120,000,000,000 limit for mortgage and loan insurance commitments; a $160,000,000,000 limit for guaranteed loans in the Government National Mortgage Association (GNMA) through the Mortgage-Backed Securities Program; $3,000,000,000 for the Community Development Block Grant (CDBG) Program; $225,000,000 for Urban Development Action Grants (UDAG); $18,000,000 for research and technology and $327,049,000 in direct appropriations for salaries and expenses under Management and Administration plus $306,962,000 from various funds of the Federal Housing Administration for salaries and expenses.

TITLE II—INDEPENDENT AGENCIES

CONSUMER PRODUCT SAFETY COMMISSION

The Committee recommendation provides $33,000,000 for the activities of the Consumer Product Safety Commission.

CEMETERIAL EXPENSES, ARMY

The Committee recommended $15,783,000 for the operation of the Arlington National Cemetery and Soldiers' and Airmen's Home National Cemetery. Of the total $9,082,000 is included to complete the Visitors' Center construction project.

ENVIRONMENTAL PROTECTION AGENCY

The Committee recommendation provides $4,939,126,000 for EPA, including $600,000,000 in new obligations from prior-year appropriations for construction grants. The total provided includes: $701,107,000 for salaries and expenses; $200,434,000 for research and development (which provides additional new funding for radon research, approximately $16,000,000 to develop and validate alternative toxicity testing methods and an additional $1,500,000 funding for Great Lakes; $585,985,000 for abatement, control and compliance (including the following additional amounts over the request, $6,000,000 for activities under the Safe Drinking Water Act, $4,500,000 for the Clean Lakes program; $1,800,000 for wastewater treatment operator training; $2,800,000,000 for the Rural Water Association, $50,000,000 for the asbestos school hazardous abatement program; and $10,000,000 for Section 106 grants); $9,500,000 for buildings and facilities; $1,050,000,000 for the hazardous substance response trust fund; $2,400,000,000 for construction grants ($600,000,000 of which is derived from the carryover from fiscal year 1986 which was not released because the Clean Water Act has not yet been reauthorized).

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

The Committee recommendation for the Council on Environmental Quality is $800,000.

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

The Committee recommendation for the Office of Science and Technology Policy is $2,217,000.

FEDERAL EMERGENCY MANAGEMENT AGENCY

The Committee recommendation provides $517,800,000 for the Federal Emergency Management Agency. The total provided includes: $120,000,000 for funds appropriated to the President—Disaster Relief (the Committee direction to FEMA prohibited the implementation of proposed regulatory changes for disaster assistance); $124,000,000 for salaries and expenses (including funding for all employees of the U.S. Fire Administration deleted in the budget request, and transfer of 90 disaster assistance employees previously funded under Disaster Relief); $273,800,000 for emergency management planning and assistance (including funding for stipends and lodging of trainees at the National Emergency Training Center, funds for the National Fire Academy and the U.S. Fire Administration); $70,000,000 for emergency food and shelter is provided under a new authorization and transferred to the Department of Housing and Development.

OFFICE OF CONSUMER AFFAIRS

The Committee recommendation includes $1,750,000 to continue the full activities of the Office of Consumer Affairs during fiscal year 1987.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

The Committee recommendation includes $8,345,400,000 for NASA. The total funding reflects the amended agency budget request with a limited number of changes. The funding recommendation includes: $3,122,100,000 for research and development ($90,000,000 recommendation above the budget request includes increases for the Advanced Communications Technology Satellite, Orbital Maneuvering Vehicle, Upper Atmospheric Research Satellite, Transatmospheric Research and Technology and reductions in the funding of replacement equipment to support the inertial upper stage which have been provided in other appropriations); $3,624,000,000 for *space flight, control, and data communications* (reflecting a decrease of $250,000,000 for a replacement orbiter and an increase of $531,000,000 to offset the deletion of a DOD reimbursement for shuttle cargoes made in the Defense Appropriation Act); $174,300,000 for *construction of facilities* ($8,000,000 above the amended budget request is recommended to initiate construction of spacecraft systems development and integration facility); $1,425,000,000 for *research and program management.*

NATIONAL SCIENCE FOUNDATION

The Committee recommendation for the NSF provides $1,695,700,000. This total includes: $1,479,000,000 for *research and related activities* (emphasis is placed in high priority centers in supercomputing and in biotechnology centers); $117,000,000 for *U.S. Antarctic program activities* (including study efforts into the depletion of ozone above the Antarctic continent); $99,000,000 for *science and engineering education activities* (emphasizing pre-college activities); and $700,000 for *special foreign currency program (scientific activities overseas).*

NEIGHBORHOOD REINVESTMENT CORPORATION

The Committee recommendation for the Neighborhood Reinvestment Corporation is $19,000,000.

SELECTIVE SERVICE SYSTEM

The Committee recommendation for the Selective Service System is $27,000,000.

VETERANS' ADMINISTRATION

The Committee recommendation for the VA is $25,781,505,000. The funding for the entitlement programs is provided at the budget request level. The remainder of the total is distributed as follows: $9,240,176,000 for medical care (provides for 71,333 inhouse patients treated at VA hospitals above the level of the budget request and 740,000 staff outpatient visits above the budget request, includes $247,000,000 above the request for personnel and directs the agency to offset increases with $93,000,000 in non-specified reductions); $189,915,000 for medical and prosthetic research (includes an increase of $3,400,000 in medical research and $1,050,000 in rehabilitation research above the budget request); $41,194,000 for medical administration and miscellaneous operating expenses; $760,000,000 for general operating expenses; $291,000,000 for construction, major projects (provides funding for the budget request level except for $10,000,000 transferred to the parking garage revolving fund); $80,000,000 for construction, minor projects; $26,000,000 for parking garage revolving fund (an additional $4,000,000 is transferred from major construction funds appropriated but not obligated for parking structures).

TITLE V

SHELTER PROGRAM

The Committee recommendation includes $100,000,000 for a shelter program within the Department of Housing and Urban Development. This includes $70,000,000 transferred from FEMA for the conduct of Emergency Food and Shelter National Board Program and $30,000,000 for the establishment of a demonstration program to develop innovative approaches for providing transitional housing and supportive services for homeless persons.

Mr. LEAHY. Mr. President, the HUD-independent agencies appropriations bill which we are considering today is the third largest appropriations bill. I am the ranking minority member of the HUD-Independent Agencies Subcommittee.

Working with Acting Chairman LAXALT, we have produced a good bill.

It is within the budget.

In fact, it appropriates over $400 million less than permitted by the budget resolution.

At the same time, it provides the funds needed to protect the environment, promote science, support our veterans, explore space, and provide housing for the poor and elderly.

This bill is more than fiscally sound. It meets critical local needs as well.

For example, it includes funds to cleanup asbestos in schools in Brighton, Charleston, Holland, and St. Johnsbury.

It will start the construction of plants to reduce water pollution in Windsor, St. Johnsbury, and Fair Haven.

It appropriates the funds—$9.3 million—to build a new research facility at the White River Veterans' Administration Hospital.

It provides the funds to move ahead with the cleanup of toxic waste dumps in Springfield and Burlington.

And finally, it will provide $1.7 more for the State to help control pollution throughout Vermont.

This is a good bill that meets national needs in a fiscally responsible manner.

This is the second time now in 2 years this bill has come in within the budget and in this case $400 million under.

Again, I thank the distinguished Senator from Nevada for doing yeoman service in this case.

Mr. LAXALT. I thank the Senator.

Now, Mr. President, I ask unanimous consent that the committee amendments be considered and agreed to en bloc and the bill as thus amended be regarded for purposes of amendment as original text provided that no points of order shall be considered to have been waived by reason of agreement to this order.

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 0520

AMENDMENT NO. 3163

Mr. LEAHY. Mr. President, I send an amendment to the desk on behalf of myself, Mr. LAUTENBERG, and others and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mr. LAUTENBERG, Mr. STAFFORD, Mr. DURENBERGER, Mr. CHAFEE, Mr. BAUCUS, Mr. MITCHELL, and Mr. HUMPHREY, proposes an amendment numbered 3163.

Mr. LEAHY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

On page 25, line 24, strike out "$1,050,000,000" and insert in lieu thereof "$1,650,000,000".

On page 26, line 7, insert before the period the following: ": *Provided Further*, that of the amounts appropriated under this hearing in Public Law 99-160, $600,000,000 are rescinded."

Mr. LEAHY. Mr. President, Senator LAUTENBERG and I have introduced this amendment to the HUD independent agencies appropriation bill for 1987. This is a technical amendment, but it is also a very important amendment.

In last year's HUD-independent agencies appropriation bill, we appropriated $900 million for the Superfund Program. We fenced those funds. That is, we provided that they could not be spent unless Superfund was amended. Since Superfund had never been amended, this provision meant that these funds could not be spent until the Superfund reauthorization was enacted. We included these provisions at the request of the authorizing committees which feared that if all of the Superfund funding were immediately available, the urgency to resolve the Superfund legislation would dissipate.

It took longer than expected to reauthorize the Superfund Program. As a consequence, twice during this year we have had to release funds to keep the program operating. At the end of fiscal year $600 million of the funds appropriated have not been released. There are experts within the administration and the GAO who believe that since these funds are derived from a trust fund which has no funds in it, the authority will lapse on September 30, 1986.

There are serious questions about the correctiveness of this understanding of trust fund law. However, in order to ensure that these funds are made available, we are proposing in this legislation to rescind $600 million of 1986 funds and appropriate an additional $600 million for Superfund in 1987. From a budget point of view, this action is a wash. However, without this amendment $600 million of funds to clean up hazardous sites would be lost.

Six hundred million is more than the Agency has ever spent in a single year to clean up hazardous waste sites.

Thus these funds are critical to a vital effective Superfund Program.

I must say, in this regard, we had tremendous help from the Senator from New Jersey, who is also on the authorizing committee and is an expert in ths field.

I yield to the Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank the Senator from Vermont for his kind remarks. The hour is late and therefore I will not take all of the time that has been reserved.

I also thank my distinguished colleague from Nevada, standing in as acting chairman and manager on that side for this amendment.

Mr. President, I would like to join Senator LEAHY and others in offering this amendment. It simply assures that the money appropriated in fiscal year 1986 for Superfund is not lost to the program. It does not release this sum, but simply preserves it. Due to the delay in reauthorizing the program, only a small portion of the fiscal year 1986 appropriation was ever made available for obligation, and $600 million remains. Unless Congress takes appropriate action at this point, these remaining funds will lapse.

This amendment ensures that these funds do not lapse, and I strongly support it.

Mr. President, with over 900 sites on the National Priority List and 99 of these sites in New Jersey, we cannot afford to lose these funds. What this amendment does is first, rescind the $600 million carryover for fiscal year 1987 purposes, and then second, reappropriate the $600 million in fiscal year 1987. This assures availability of these funds for the Superfund Program without action on the fiscal year 1986 carryover by September 30, all remaining fiscal year 1986 funding will be lost to the program.

The amendment should in no way remove pressure on Congress and the President to enact the Superfund reauthorization. The measure simply ensures that the appropriation does not expire. But in doing so, the amendment does not release for obligation any of the $600 million. The amendment does not, for example put any funds into the Superfund trust fund either directly or through borrowing authority.

This approach preserves the $600 million appropriation, but keeps the pressure on the Congress to complete its work on the conference report, and on the President to sign a reauthorizing bill.

Mr. President, today's agreement by the tax conferees on the Superfund conference report marks what can be the beginning of a new era of environmental protection.

Now the way is clear for the House and Senate to consider and approve this landmark legislation, after considerable delay and debate.

At this point, attention shifts to the White House. The fate of this bill now is in the hands of the President. Will he veto it, or pocket veto it, not even giving the Congress a chance to respond?

The administration has consistently maintained that it will veto any bill with revenues exceeding $5.3 billion in revenues. Further, it has expressed opposition to a broadbased tax, or an oil tax. This agreement announced today contains all three measures. Top administration officials have warned me and others that the veto drums are beating loudly. I have been told that the Treasury Department has issued a statement saying the Department will recommend that the President veto the bill. I have not been able to confirm that.

Before the President takes such an action, he should think carefully about the ramifications of veto. A veto would starve this program and possibly kill it. It would stop work at over 100 Superfund sites by the end of this month. A vote says "no" to new tough cleanup standards. It says "no" to community right to know. It says "no" to radon mitigation. "No" to a leaking underground tanks program. "No" to citizen suits. And "no" to many other programs vital to cleaning up our toxic waste sites.

These provisions were the result of almost 3 years of consideration by Congress. What we have today is the potential for an historic step forward. To New Jersey, with its 99 Supperfund sites, it means at least $500 million of funding to clean up our abandoned toxic waste sites.

Citizens of New Jersey and other States need to let the President know that he should sign the Superfund bill. The message should be clear. Both Houses of Congress approved Supperfund by overwhelming margins.

If there is a veto, the President is out of step with the country.

I will be circulating a letter to the President, among my colleagues, asking him not to veto this bill.

Mr. President, the Superfund Program has suffered enough disruption and delay. It has been operating on a series of interim funding measures since the taxing authority expired last September 30. It has been funded at reduced levels. And, it will soon be out of money. Action on this bill must be concluded before we adjourn for the year.

Last March, we passed a $150 million interim funding bill to prevent a shutdown of the program. On August 15, we passed another stop gap interim funding measure designed to avert the crisis for another month, hoping the tax conferees would complete action on the bill. Now we are courting the same crisis in funding for the program. According to a September 22, 1986, letter from EPA Administrator Lee Thomas, work at 114 remedial projects will stop on October 31, 1986, including 16 projects in my home State of New Jersey. And as the Administrator predicted, contract termination notices were sent out on October 1.

It is urgent that we enact the Superfund reauthorization bill. We must act, and we must act swiftly. In the meantime, adopting this amendment is important to assure that the $600 million remaining from fiscal year 1986 appropriations not be lost to the program.

Mr. LEAHY. Mr. President, I too want to compliment the Senator from Nevada who has done a superb job filling in on short notice for our distinguished colleague and friend JAKE GARN.

As always, it is a pleasure to work with Senator LAXALT, one of the outstanding Members of this body.

Mr. President, I yield back my time on the amendment and move its adoption.

The PRESIDING OFFICER. The question is on agree to the amendment.

The amendment (No. 3163) was agreed to.

Mr. LEAHY. I move to reconsider the vote by which the amendment was agreed to.

Mr. LAXALT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SUPERFUND APPROPRIATIONS AND FUNDING OF CROW CLEANUP TECHNOLOGY DEMONSTRATION

Mr. SIMPSON. Mr. President, I would like to inquire of my colleague from Nevada how he envisions this continuing appropriation will fund CERCLA.

Mr. LAXALT. I would be happy to respond to my good friend from Wyoming.

Mr. SIMPSON. It is my understanding that future funding of CERCLA will depend on final congressional action to reauthorize the Nation's hazardous waste cleanup bill. Is this correct?

Mr. LAXALT. Yes; the continuing appropriations resolution provides that $1.05 billion will be appropriated after CERCLA is reauthorized in fiscal year 1987. In the interim, it is our understanding that the Environmental Protection Agency will have carryover funds from fiscal year 1986 to avoid disruptions to this important program.

Mr. SIMPSON. As the Senator may be aware, the agreed-to CERCLA conference report includes important provisions to assure that innovative/alternative hazardous waste site cleanup technologies are developed and demonstrated. A second provision authorizes resources to assure university research into hazardous waste related issues. These provisions will make cleanup responses cost-effective, safe, and timely. EPA has already started to implement these provisions through a program known as SITE. Would the Senator agree that funds would be available to continue the SITE Program leading to the eventual implementation of these new, more extensive reseach, development, and demonstration activities?

Mr. LAXALT. The committee is aware that EPA has begun the effort to develop and demonstrate innovative and alternative cleanup technologies to assist in the tremendous task of responding to hazardous waste threats. As part of the appropriation to continue CERCLA progress, the committee appropriates funds to implement the provisions relating to research and demonstration of innovative and alternative hazardous waste cleanup technologies. It is my understanding that Congress directs the Environmental Protection Agency to initiate a program to test and to evaluate innovative and alternative response technologies that can be used at hazardous waste sites. This program is to be under a newly created office, the Office of Technology Demonstration. Further, EPA is directed to establish university hazardous substance research centers. Each of these activities would be funded under this continuing appropriations resolution.

Mr. SIMPSON. During reauthorization of CERCLA it came to our attention that an emerging disposal capacity problem exists with regard to disposing contaminated soils and other wastes excavated during cleanup responses. A particular concern centers on waste sites that have oily wastes characteristics that threaten ground water supplies. At least 40 waste sites listed on the CERCLA national priority list are sites exhibiting oily characteristics such as chlorinated hydrocarbons and coal tars. A past study identified that at least 2,000 other sites across the country also exhibit these characteristics and pose a health threat to ground water supplies. These sites will only exacerbate the capacity shortfall if alternative cleanup processes are not developed and we continue to rely on traditional cleanup methods.

In reauthorizing CERCLA, we believe that the limited capacity to dispose of contaminated soils and other wastes makes it encumbent upon the EPA to assign top priority to research, development, testing, and demonstration of technologies that promise to avoid the excavation of large volumes of contaminated soils. One such technology that has come to our attention is the University of Wyoming Research Corp's. contained recovery of oily wastes [CROW] technology. This technology embodies the various attributes of a high priority innovative/alternative technology. It avoids excavation. It recovers wastes for recycling. In addition, it integrates other innovative cleanup technologies such as microbial degradation to assure a cost-effective, environmentally safe, and timely cleanup.

Would it be the Senator's understanding that such a technology should be considered as an example of the kind of high priority project that would be eligible for assistance?

Mr. LAXALT. Yes; if such a technology held the prospect of reducing the need to rely on excavation and other traditional cleanup methods, then the committee would direct the Environmental Protection Agency to enter into contracts and grants with the University of Wyoming Research Corp. to conduct the necessary research, testing, and demonstration of the contained recovery of oil wastes innovative/alternative hazardous waste site treatment technology using such authorities as those provided under CERCLA.

Mr. SIMPSON. It is my understanding that this technology is a complete remedial response action that moves us away from the conventional backhoe excavation approach to hazardous waste site emergencies.

Mr. LAXALT. Then I would suggest to the Senator that this technology should certainly be a top priority for development and demonstration at an actual national priority list site.

Mr. SIMPSON. I thank the distinguished Senator from Nevada for his clarification on this important matter.

FUNDS FOR EPA IN THE AREA OF OZONE DEPLETION, THE GREENHOUSE EFFECT, AND CLIMATE CHANGE

Mr. CHAFEE. Mr. President, it is a pleasure to rise and discuss the manner in which this continuing resolution addresses the international environmental problems of stratospheric ozone depletion, the greenhouse effect, and climate change. These issues have extraordinary ramifications for the world we inhabit and I am pleased to see that the Committee on Appropriations, under the leadership of Senators HATFIELD, STENNIS, GARN, and LEAHY, have recognized this fact.

Although the problems of stratospheric ozone depletion, the greenhouse effect, and climate change have not yet been elevated to the same level of public awareness as toxic waste or acid rain, more and more people are becoming aware of—and concerned about—ozone modification and climate change. The press that these issues have received in the past few months is evidence of mounting awareness and concern, there have been stories and editorials in newspapers across this country, Canada, and Europe, national television, radio, and magazines like Newsweek and The New Yorker.

In June of this year, the Senate Subcommittee on Environmental Pollution, which I chair, conducted 2 days of hearings to explore the nature of these problems and to examine what is being done by the U.S. Government, domestically and internationally, to both improve our understanding of these matters and to respond to them.

Now, why did we decide to spend time on these problems? Why is all of this so important? Why are the policymakers demanding action before the scientists have resolved all of the questions and uncertainties?

We are doing so because there is a very real possibility that man—through ignorance or indifference, or both—is irreversibly altering the ability of our atmosphere to perform basic life support functions for the planet.

This is not a matter of Chicken Little telling us the sky is falling. At our hearings, we heard graphic, powerful, and disturbing testimony from distinguished scientists. The scientific evidence is telling us we have a problem, a serious problem. There is much that we know. There is a great deal that we can predict with a fair amount of certainty.

As evidenced by the October 1985 Villach Conference, there is now an international consensus among the scientific community. Although there will always be dissenters—those who claim, for example, that the Earth is actually cooling, not warming—the scientific community has told us with unusual clarity that we have a problem. We must not allow their message to fall on deaf ears.

Now, it is true that we lack the tools to close all of the scientific gaps. We do not completely understand our climate systems and we cannot predict precise outcomes. But we will always be faced with a level of uncertainty. It is a fact that the current gaps in scientific knowledge may not be closed for many years. Scientists have characterized our treatment of the greenhouse effect as a global experiment. It strikes me as a form of planetary Russian roulette.

We should not be experimenting with the Earth's life support systems until we know that—when the experiment is concluded—the results will be benign. As Russell Peterson, former Chairman of the President's Council on Environmental Quality who worked as a chemist for 26 years, has said, "We cannot afford to give chemicals the same constitutional rights that we enjoy under the law * * * chemicals are not innocent until proven guilty."

By not making policy choices today, by sticking to a "wait and see" approach, we may in fact be making a passive choice. By allowing the so-called "greenhouse" gases to continue to build up in the atmosphere, this generation may be committing all of us to severe economic and environmental disruption without ever having decided that the value of "business as usual" is worth the risks.

Those who believe that these are problems to be dealt with by future generations are misleading themselves. Man's activities to date may have already committed us to some level of temperature change. If historical evidence is any guide, a slight warming may be enough to turn productive, temperate climates into deserts. To quote from a recent Department of Energy report, "Large changes in both precipitation and the extent of deserts and grasslands can be associated with relatively small variations in the global mean temperature."

The path that society is following today is much like driving a car toward the edge of a cliff. We have a choice. We can go ahead, take no action and drive off the edge—figuring that, since the car will not hit the bottom of the canyon until our generation is already long gone, the problem of coping with what we have made inevitable is for future generations to deal with. We can hope that they will learn how to adapt. On the other hand, we can put the brakes on now, before the car gets any closer to the edge of the cliff and before we reach a point where momentum will take us over the edge with or without application of the brakes.

Having painted a bleak picture, the question arises: What do we do about all of this?

First, it is important to focus attention on the potential effects of ozone modification and climate change. Simply telling people that there will be a change is not enough. They need to understand how they will be affected by it.

In addition, we must begin to consider the choices that will have to be made if we are going to avoid further buildup of harmful gases in the atmosphere. All of us must recognize that these are no longer just science issues. They are now policy issues. They demand solutions.

Many of the Government witnesses who appeared before my subcommittee last summer argued that we need studies. They contend that there are too many scientific uncertainties to warrant action.

Only Lee Thomas recognized what is at stake here. He was the only decisionmaker from the Government who appreciated the fact that there will always be scientific uncertainty and that policymakers and those who make regulatory decisions cannot allow themselves to be paralyzed by these gaps in knowledge.

Sure, we can continue to study the problem—and we should continue our studies—but we cannot wait until these studies are completed. We need action.

Those who argue against action like to recite the caveats, uncertainties, and margins of error that accompany scientific reports and projections in this area. For those people, it is worth nothing that the margins of error usually associated with the greenhouse effect are in terms of only decades. The issues of magnitude and timing need to be resolved but they do not need to be resolved before we take action. It is important to talk about projections of, for example, global warming over the next 50 to 100 years. But disagreement over the accuracy of projections for that timeframe obscure the issue: Do we have the right to pollute the atmosphere today in a manner that will wreak havoc in as few as 100 to 300 years?

Obviously, no one step is going to solve the multitude of problems associated with these matters. But we must not let the enormity of the task keep us from taking a series of small steps.

The growing use of chlorofluorocarbons [CFC's] is a prime candidate for controls. Given the risks associated with ozone modification and climate change, a treaty that limits the availability of CFC's would seem to be a sensible course to pursue. The good news is that, under the leadership of the United Nations Environment Program, negotiations aimed at developing an international agreement to limit future growth in CFC's—to impose controls—are currently underway. The not-so-good news is that we don't have an agreement yet.

Although CFC's are not the only source of the problem, they are a significant factor, and controlling them would represent a major accomplishment.

The need for international cooperation in addressing these matters is obvious. We are dealing with a global issue. But the difficulty of getting international agreement should not keep the United States from taking action unilaterally. By taking such action, we can move once again into the role we once proudly held: We can be a world leader in environmental protection. We can set the example. A country as large and powerful as ours can afford to make temporary sacrifices that ultimately will benefit all of mankind. The trick will be to do so in a manner that does not unfairly penalize industry in this country. Later this week, I plan to present my colleagues with a more detailed statement of my views on CFC controls and the ongoing international negotiations.

The importance of these issues is matched only by the complexity of them. But we have created complex problems before and we have responded to them with creative solutions. There is no reason to believe that the only answer is to throw up our hands and wait for the inevitable.

We lose so very little by trying. We lose everything by doing nothing.

Tough choices need to be made and we should start what promises to be a long, sometimes frustrating process of making policy choices and regulatory decisions. By working together, we can attempt to minimize the disruptions that go along with changes in the status quo. But there will be changes. The generations of today and tomorrow—the generations of all life forms—are dependent upon our making the right choices.

Mr. DURENBERGER. Mr. President, I would like to enter into a brief colloquy with the distinguished manager of this bill, the Senator from Oregon [Mr. HATFIELD] and the distinguished chairman of the Budget Committee, Mr. DOMENICI.

The subject matter of this colloquy is leaking underground storage tanks and the new response program to cleanup leaks from underground tanks that will be created in the Superfund legislation that the Senate will be taking up in the next few days.

Leaks from an underground storage tanks are a serious and national environmental problem. Every State in the Union has experienced loss of valuable natural resources including drinking water and ground-water supplies as the result of gasoline and other chemicals that have leaked into the soil from underground storage tanks. Recently EPA completed a national survey of underground storage tanks containing petroleum products including gasoline and found that as many as 189,000 tanks across the country may be releasing substantial quantities of harmful chemicals into the soil.

In the Superfund Amendments and Reauthorization Act of 1986 there is a new response program to be administered by the Environmental Protection Agency for these leaking tanks. The program will provide the Agency with $500 million over the next 5 years to protect public health and the environment from damage caused by leaks and to clean up sites where leaks are discovered. These funds are on top of the insurance funds that tank owners and operators will be required to maintain to respond to leaks from tanks.

This response program will be financed by a tax on gasoline and other motor fuels sold in the United States. The rate of the tax will be 0.1 cents per gallon. The tax will go into effect on January 1, 1987. The revenue from the tax will be put into a dedicated trust fund which can only be used by EPA to pay for this response program. We will not be imposing any new burden on the budget of the U.S. Government because we will be raising the money for the program with a dedicated tax.

But the trust fund will not release any money until an appropriation has been made by the Congress. Until an appropriations bill which specifically makes funds available to EPA for obligation for cleanups is enacted by the Congress, no funds can be spent even though revenues will begin entering the trust fund on January 1 of next year.

There is no appropriation for this purpose in the continuing resolution that we are now debating. And there will be no other vehicle for an appropriation until the 1987 supplemental appropriation which will not be enacted until May or June of next year.

I considered coming to the floor and offering an amendment to the continuing resolution to make an appropriation for the new Underground Storage Tanks Program. There is a good case for an appropriation. And there will be tax revenue to offset the expenditures. I believe that we could make an appropriation of at least $50 million for 1987. I believe that much money can be wisely spent. And the new gasoline tax will raise at least that amount between January and September of next year.

But I have decided not to offer such an amendment at this time for two reasons. First, the authorizing legislation has not yet been enacted. There might be some resistance to such an amendment from the manager of the bill and from the chairman of the Budget Committee. The revenues have not been scored in the baseline and there has been no allocation to the Appropriations Committee in the budget resolution for this purpose. Even though the dollars will actually come in, there is no room for them in the budget resolution under which we are operating.

Second, I believe that the program may ultimately benefit from a small gap in the time between authorization and the time when funds can actually be obligated. This period of a few months may be used to put in place the financial and administrative procedures that are necessary to assure that each dollar will be spent in a way that produces the maximum environmental benefit.

So, I have decided not to offer an amendment to the continuing resolution that would add appropriations for the Leaking Underground Storage Tank Response Program at this time. But I did want to assure here on the floor of the Senate that my colleagues on the Budget and Appropriations Committees will be clearing the way for such an appropriation as part of the supplemental early next year.

I seek these assurances because I think that it would be unfair to the American public to impose a new gasoline tax on January 1 and then leave the revenue in some cookie jar somewhere as a device to balance the budget. I want to know that the Budget and Appropriations Committees will have no objection to making the appropriation next year.

Mr. DOMENICI. It is appropriate for the Senator from Minnesota to raise this issue. He is correct when he says that neither these expenditures nor these dedicated revenues were anticipated in the budget resolution. Until such time as the authorizing legislation which establishes the tax is passed it would be dangerous, in this Senator's view, to make an appropriation.

However, when that tax comes into place and the revenue is there, the Senator from Minnesota can be assured that I will do everything that I can to facilitate an appropriations for the underground storage tank trust fund in the supplemental appropriations bill next year. I think that we should make these funds available in 1987 and we could do that by making a supplemental appropriation for that purpose. In addition, as we develop next year's budget, I will work to see expenditures under this important program are accommodated.

As the Senator may know, leaks from underground storage tanks are an important problem in my home State of New Mexico. In fact, I offered, successfully in the Senate, an amendment to the Superfund reauthorization that would authorize grants to the States so that they could respond to leaks from tanks. That amendment has become a well-defined and fully funded response program in the Superfund conference report. So it is a problem in my State and one that I have taken action to address here in the Senate.

Mr. President, I have a letter here from the director of the environmental improvement division of the Health and Environment Department in New Mexico which raises the same concerns that have been expressed by the Senator from Minnesota. I would ask that this letter be printed in the RECORD along with my comments today.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DOMENICI. Mr. President, I would just conclude by once again saying I will do everything that I can to achieve an appropriation for the leaking underground storage tank program in a supplemental appropriations bill early next year. The Congress is creating a tax for this purpose and given the enormity of the problem we face with leaking tanks we have a responsibility to assure that the revenue from the tax is used for the purpose intended.

Mr. HATFIELD. Mr. President, as the chairman of the Appropriations Committee, I want to join with my colleagues from Minnesota and New Mexico to say that we will take up the issue of the underground storage tanks in the supplemental appropriations bill next year.

The Senators have noted that there will be a dedicated tax. The tax will begin in a few short weeks. Revenues will flow into the trust fund for approximately three-quarters of the 1987 fiscal year. EPA will have authority to respond to releases from tanks. That authority gives the Agency a great deal of flexibility in designing and managing the response program. That flexibility will be critical in getting off to an early and effective start.

We will want to consult with the Agency before making any appropriation. We will want to be sure that they are prepared to effectively spend the funds appropriated. But we will be prepared to ask these questions in the context of the supplemental appropriations bill early next year, Mr. President.

Mr. DURENBERGER. Mr. President, I want to thank my colleagues for their attention to this issue and say that I look forward to working with them to assure that the Congress gives fully and timely support to the Environmental Protection Agency as it implements that underground storage tank response program.

EXHIBIT 1

ENVIRONMENTAL IMPROVEMENT DIVISION,
Santa Fe, NM, September 18, 1986.

Hon. PETE V. DOMENICI,
U.S. Senator,
Dirksen Senate Office Building,
Wasington, DC.

DEAR SENATOR DOMENICI: I appreciate your efforts in attempting to amend CERCLA to include a program to protect our citizens from ground water contamination caused by leaking underground storage tanks. The compromise reached by the conferees is a good one and our Environmental Improvement Division is establishing a workable and effective state program. Such a program will be dependent upon the State being able to secure monies from the Leaking Underground Storate Tank Trust Fund.

It has come to my attention that the HUD-Independent Agencies appropriations bill, governing Superfund, does not contain a provision which would allow states' access to the approximately $90 million which the fund would collect in FY 86 because the budget resolution has no provision for the fund revenues from tax receipts or expenditures from the fund. I urge you to correct this problem, which could delay the implementation of a remedial and preventive program governing underground storage tanks in New Mexico. Thank you for your attention to this important issue to the health and safety of the citizens of our State.

Sincerely,

DENISE D. FORT,
Director.

WASTEWATER CONSTRUCTION GRANTS

Mr. CHAFEE. Mr. President, I would like to take a few moments to discuss funding in this bill for wastewater construction grants. This program, authorized under the Clean Water Act, provides communities across the Nation with funds to build sewage treatment plants which result in significant water quality benefits.

Since 1972, when the Clean Water Act was first enacted, over $58 billion has been spent on constructing publicly owned treatment works. The Federal Government has contributed over $42 billion, with the State and local governments contributing the remainder. By 1982 there were over 15,000 wastewater treatment plants in operation. The number of people utilizing secondary treatment increased 67 percent from 1972 to 1982, which population increased only 11 percent. Thirty-six States have reported specific improvements resulting from the construction of municipal wastewater treatment facilities.

In 1981, the Congress enacted further improvements to the Construction Grants Program. We reduced the annual authorization by more than half—from $5 billion to $2.4 billion. We made nonwater quality projects such as collector sewers ineligible for Federal funds. We cut back the Federal share from 75 to 55 percent. Our goal was to focus the program on treatment of wastewater and increase the financial responsibility of State and communities participating in the program.

In enacting these reforms we estimated it would take $2.4 billion over 10 years—from 1981 to 1991—to build those projects needed to meet the cleanup requirements mandated in the law. In adopting this approch we had a commitment from the administration to support an annual appropriation of $2.4 billion over the 10-year period to meet these projected needs. That commitment was restated by then-EPA Administrator William Ruckelshaus at a budget hearing before the Environment and Public and Works Committee. His statement is as follows:

> I think that while there may be some at OMB who would prefer not to see this kind of program continue, I have not run in personally to those people at OMB, and there is an understanding that there is an agreement with the administration with the Congress that for 10 years this level of funding, at least, is a commitment. If you will note the difference between what we submitted to the President in terms of our budget and what we are now requesting is somewhat less. We went down to $2.4 billion as a result of that commitment. That was something the administration put back into our budget over our submission.

In 1985, we revisited the Clean Water Act. In June of last year the Senate passed, by a vote of 96 to 0, legislation that reaffirmed a funding level of $2.4 billion with additional funds for a revolving loan program that would eventually turn the entire Construction Grants Program over to the States.

As I said, the Senate passed the bill in June 1985, the House passed similar legislation with higher funding levels in July, and ever since we have been trying to work with our colleagues in the other body to agree to a conference.

Despite our continuing efforts, we have not yet reached accord with our colleagues in the other body. We have had two conferences and have agreed on a number of minor issues, but they are not calling another conference meeting until the funding levels and other programmatic provisions are agreed upon in informal negotiations.

Both bills authorize the Construction Grants Program for $2.4 billion over the next two fiscal years. Although the House bill had additional funds over the $2.4 billion—$3 billion to be exact—they have informally agreed to the Senate level of $2.4 billion.

Now, the point here is that conferees have tentatively agreed to an authorized funding level of $2.4 billion for the Construction Grants Program, for fiscal years 1986 and 1987.

Let's review the current funding situation and what is in the measure before us and what is in the House-passed continuing resolution

During fiscal year 1986—the House and Senate Appropriations Committees had appropriated $2.4 billion but only made $1.8 billion available. The $600 million was withheld until the authorizing committees completed their work. Now the bill before us appropriates $2.4 billion in fiscal year 1987 in construction grants funds of which $600 million is derived from fiscal year 1986 making the grand total for fiscal year 1987 $2.4 billion.

So I am concerned that this could be construed as a rapid phaseout of the Construction Grants Program as contained in the administration's clean water proposal. That proposal called for cutting the Construction Grants Program to $1.8 billion in fiscal year 1987, $1.2 billion in fiscal year 1988, $0.6 billion in fiscal year 1989, and zero in fiscal year 1989. The Environment and Public Works Committee rejected that proposal and adopted a long-term phaseout with a revolving loan fund that lived up to the commitment Congress made in 1981 of $2.4 billion through 1991. That approach was approved by a 96 to 0 vote in the entire Senate.

What we are talking about here is potential for a major disruption of a large national environmental program which, for the most part, is working extremely well. I might remind my colleagues that the current law says every municipality in the Nation must meet the secondary treatment requirements by July 1, 1988. That is to say they must have treatment plants that remove 85 percent of pollutants.

Failure to provide full funding to our communities to meet this deadline will result in slowed construction schedules, difficulty in planning due to uncertain future funding, and noncompliance by many communities resulting in enforcement actions by the EPA. According to State water pollution control administrators over 3,300 projects exceeding $21 billion in construction costs are necessary to meet the July 1, 1988, municipal enforcement deadline.

And that is just to bring facilities into compliance by 1988. According to the EPA Needs Survey—a nationwide survey which inventories the costs of treatment works, over $53 billion is needed to fund eligible treatment through the year 2000.

Failure to provide adequate funding at the $2.4 billion level for both fiscal year 1986 and 1987 will cause major disruptions in communities where treatment works are being built, will divert us from attaining our clean water goals, and will only add to costs later on down the road.

I do not plan to offer an amendment to prohibit the carryover of fiscal year 1986 funds and add the $600 million for fiscal year 1986—I recognize the severe restraints the committee is under to produce a bill within the budget limits and which will be signed by the President.

However, I note that the House-passed continuing resolution includes $2.4 billion for fiscal year 1987 but does not release the remaining $600 million in fiscal year 1986 funds. The House bill also fences the money until such time as the authorizing committees complete action on the Clean Water Act and subsequent appropriations are made. As I indicated, we are making good progress on the clean water conference, but I fear that action on the continuing resolution may be completed prior to completion of a clean water conference report. If that is the case, under the House bill, funds will be unavailable to the State due to the fencing provision.

I would ask the distinguished floor manager to make every effort in conference to accept the House provision which includes $2.4 billion in fiscal year 1987 and keep the $600 million in fiscal year 1986 funds, but to oppose fencing the entire amount of money.

Mr. **LAXALT**. The gentleman from Rhode Island has made some very good points. I know he has worked hard to improve this program over the years—and indeed his efforts are paying off. I also know he is making every effort to work with the other body to bring a conference report on clean water to the floor before we adjourn. I share his concern over funding for this program and the impact on communities in meeting the 1988 compliance deadline.

My friend also makes another very good point. We are dealing under severe budget constraints in this bill. We recognize the importance of keeping the funding level of this program at the $2.4 billion level and we have done that for 1987. I can assure my friend from Rhode Island, we will look at the situation he has outlined very carefully in conference.

Mr. **CHAFEE**. I have great confidence in my friend from Nevada and I know he will do everything he can to keep this program funded at its $2.4 billion level.

Mr. **LEAHY**. I want to assure the Senator from Rhode Island that I share his conviction that the Construction Grants Program be fully funded. The administration has committed itself to a $2.4 billion program, and I aim to keep them to their promise.

In that regard, I ask unanimous consent that a scorekeeping sheet prepared by the Office of Management and Budget, which indicates that it scores our construction grant funding level at $2.4 billion, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HUD-Independent agencies appropriations bill, 1987 identification of scorekeeping differences

[Budget authority in millions of dollars]

	Senate Subcommittee Action
Congressional estimate, bill total. Source: (CSBA—9/17/86)	$53,640
Less:	
VA, mandatory programs	−15,110
Subsidized housing programs.	−9,150
Congressional estimate, annually funded programs	29,380
Scorekeeping differences (discretionary programs):	
EPA, Construction grants. By using prior year balances to fund this program, the subcommittee has not increased new budget authority but has maintained a program level that will lead to higher spending. Therefore, the subcommittee total does not correctly reflect the actual spending level	+600
OMB estimate, annually funded programs	29,980

Detail may not add to total due to rounding.

EAST CLEVELAND CDBG FUNDING

Mr. **METZENBAUM**. Mr. President, the city of East Cleveland is one of the Nation's most distressed cities.

Per capita income in 1983 was only $7,814 per year with an unemployment rate twice the national average. Forty-one percent of the families with children receive some form of public welfare assistance, while 51 percent of school-age children are eligible under Federal income guidelines for free lunches.

If ever there was a city that the Community Development Block Grant [CDBG] Program was intended to help, East Cleveland is it.

But it does not.

Under the hold-harmless provisions enacted under the initial CDBG Program, the city of East Cleveland used to receive about $1 million per year until 1980.

In 1981, the hold-harmless provision of the law was eliminated. East Cleveland must now compete for CDBG funds under the Small Cities Program.

The city is lucky if it receives $200,000 in any given year.

The HUD appropriations legislation passed by the House would confer upon East Cleveland entitlement status under the CDBG Program. The Senate bill eliminated that provision.

In view of the fact that the CDBG Program was created to help communities like East Cleveland, I hope that my colleague from Nevada will agree to the House provision in conference.

Mr. **LAXALT**. Mr. President, in response to the Senator from Ohio, allow me to say that the committee recommendation that the House provision be stricken was based on three factors. First, we have attempted to avoid provisions of a legislative character. While this is normally the case, it was especially important now since the chairman of the Banking Committee, who also serves as chairman of the Appropriations Subcommittee, is necessarily absent. The second reason we were troubled by the provision is the fact that while East Cleveland's financial plight may, indeed, be the worst in the Nation, its situation is not unique in terms of economic distress nor in the application of existing law to their eligibility for assistance under CDBG. To provide an exemption for this community would necessarily raise the issue of why not address the problems of other similarly situated cities.

Finally, Mr. President, the committee was confronted with some uncertainty as to the exact nature of the legislative relief being sought by the city of East Cleveland.

Under these circumstances, the committee felt it only prudent to strike the House passed provision.

This action, as the able Senator from Ohio has pointed out, preserves the issue for final resolution in conference.

It is my expectation and hope that by then we will have the benefit of Senator GARN's direct involvement as to the merits and procedural implications of such an action.

Mr. President, while I am not in a position, at this time, to commit to simple acceptance of the House passed provision in conference, we certainly will view the issue sympathetically and with an intent to be as helpful as possible in solving the plight of East Cleveland.

EPA TREATMENT OF INDIAN TRIBES' WATER SYSTEMS UNDER THE SAFE DRINKING WATER ACT

Mr. ABDNOR. Mr. President, I would like to engage my distinguished colleague and floor manager of the HUD-Independent Agencies section of House Joint Resolution 738, Senator LAXALT, in a discussion concerning the need for the Environmental Protection Agency and the Indian Health Service to help Indian tribes address their existing drinking water supply problems. There is an urgent need for attention and assistance directed toward correcting problems which exist at a significant number of systems owned and operated by Indian tribes. As many as one-half of the tribal water systems nationwide do not meet minimal standards. This is due, in part, to poor raw water quality and to the financial and technical constraints on these systems. The Oglala Sioux Tribe in my own State of South Dakota has lived with a water system contaminated by unacceptably high levels of radio-nuclear and other contaminants for several years now. The presence of these contaminants was confirmed by a 1980 Indian Health Service study. Mr. Chairman, I think the United States, particularly the EPA, has a trust responsibility to help the Indian people remedy such problems. This was my primary interest as an original cosponsor of the Indian amendment to the Safe Drinking Water Act and remains my concern as we now consider the appropriations for the EPA for fiscal year 1987.

Mr. LAXALT. I agree with my able colleague that we do have such a responsibility, and expect that the EPA will use its new legal authority and funds to the fullest to aid Indian tribes in improving their drinking water supplies. The EPA, consistent with the law and its own Indian policy, should enter into grants, contracts, and cooperative agreements with tribal governments to achieve this end.

Mr. ABDNOR. I thank my friend from Nevada for clarifying this important matter.

ASPINWALL VA MEDICAL CENTER

Mr. SPECTER. Mr. President, I would like to bring a matter of great importance to the attention of the acting chairman of the HUD and Independent Agencies Appropriations Subcommittee, Senator LAXALT.

The VA Medical Center at Aspinwall, PA, suffers from a seriously outdated facility. The current building does not meet minimal health and safety standards. The age and general condition of the building has led to, among other problems, the facility being exceedingly hot in the summer and cold and drafty in the winter.

Hospital officials have concluded that replacement of the facility is the only option within reason to remedy all of the problems related to the current building. The total cost is estimated at $53 million. The House Veterans' Affairs Committee has authorized the funding and the House Appropriations Committee has appropriated $5.3 million for the first phase of the project, design, and engineering. I requested that similar funding be included in the Senate bill but no funding has been included. I request that the distinguished Senator keep the need for these funds in mind during the conference on HUD appropriations, and that he give every consideration to including the $5.3 million for Aspinwall in conference.

Mr. LAXALT. I thank the Senator from Pennsylvania for bringing this matter of importance to my attention. I commend the Pittsburgh Veterans Medical Center for its fine work, but I am also aware of the problems presented by the physical condition of the center. I will give every consideration to his request in conference.

Mr. SPECTER. I thank the distinguished Senator.

URBAN DEVELOPMENT ACTION GRANTS

Mr. SPECTER. Mr. President, I would like to engage in a discussion with the distinguished acting chairman of the Senate HUD and Independent Agencies Subcommittee on Appropriations regarding Urban Development Action Grants [UDAG's].

Mr. LAXALT. Please do.

Mr. SPECTER. Nearly 10 years ago, Congress made a commitment to stimulate our country's decaying urban areas through the use of the Urban Development Action Grants Program [UDAG's]. This was a national commitment to benefit low-income persons, remove blight conditions, and encourage economic development. The UDAG Program fosters economic improvement and job creation in distressed large and small cities by stimulating private investment with Federal funds. UDAG's target funds to the neediest communities, and projects are selected on a competitive basis. UDAG's also require a private commitment of funds. They uphold the concept of public/private partnerships in solving national problems. UDAG's rely on the initiative of local governments and businesses to tailor projects to local needs and circumstances.

UDAG's work. The UDAG Program more than pays for itself by increasing the number of jobs, lowering Federal-State and local expenditures for support programs, and increasing the number of tax paying citizens. According to the U.S. Department of Housing and Urban Development, since January 1981, Pennsylvania has received more than 140 grants totaling more than $200 million and generating more than $900 million in private investments, and more than $60 million in additional public investments by the State and local governments. These projects created more than 14,000 new jobs.

The UDAG's Program, since its inception nationally, has assisted more than 2,400 development projects and more than 1,000 cities. In recent years, the annual appropriation for UDAG had been $400 million. In fiscal year 1986, the appropriation for UDAG's was approximately $316 million. I would like to see UDAG's funded at this level for fiscal year 1987. However, the House reduced UDAGs' appropriation to $275 million and now the HUD appropriation contained in the continuing resolution lowers the amount for UDAG's further to $225 million. Because of the importance of this program as I have outlined it, I would hope that the chairman, in conference, would accede to the House figure and restore funds to the UDAG's program.

Mr. LAXALT. I thank the Senator for his comments on UDAGs. It is apparent that he is well versed in the importance of this program to his constituents. I have listened carefully, and will give every consideration to his request.

Mr. SPECTER. I thank the Senator for his consideration.

● Mr. LEVIN. I would like to bring to the attention of the distinguished chairman of the Subcommittee on HUD-Independent Agencies language that appears on page 62 of the House Appropriations Committee report accompanying H.R. 5313. This language expresses the committee's belief that the veterans of Michigan would be best served by adoption of the "dual campus" concept for the proposed replacement/modernization of the Veterans' Administration Medical Center [VAMC] at Allen Park, MI. The House committee urges the VA to retain the Allen Park Hospital as a nursing home and long-term care facility, and to build a new hospital in Detroit to provide ambulatory, medical, and surgical care. The committee also directs the

VA to prepare plans for the conversion of the Allen Park VAMC into a long-term care facility.

This report language was adopted as a result of the release in late July 1986 of a final environmental impact statement [EIS] for the Allen Park VAMC replacement/modernization. The final EIS recommended building a total replacement VAMC on a site adjacent to the Detroit Medical Center and closing down the Allen Park facility altogether. The VA Administrator has yet to make a final decision on whether to accept this recommendation or to adopt the dual campus proposal.

I would like to point out to the subcommittee chairman some of the compelling reasons for adopting the dual campus concept. Medical District 14, which the Allen Park facility serves, currently has the lowest bed-per-veteran ratio in the country. The dual campus proposal would do far more to address this disparity than would the single site proposal recommended in the EIS. In particular, the increasing need by Michigan's veterans for nursing home care—a need which will continue to grow in the future—would be better met by retention of the Allen Park VAMC as a long-term care facility. The favorable environmental situation in Allen Park and the easy access of the facility to family and friends of veterans are other factors which should be considered.

Finally, the EIS's cost estimate is misleading because it fails to take into account the cost of closing down the Allen Park facility, or the likely loss to the Government of the land on which the Allen Park facility is located. Even using the EIS's flawed cost estimate, the differences in operational and construction cost between the dual campus alternative and the single facility plan are insubstantial and should not outweigh strong arguments in favor of the dual campus and the preference of the State's veteran population for retention of the Allen Park facility for long-term care.

I ask the chairman that he consider the arguments in favor of the dual campus plan, and that he take these factors into account while working toward an agreement on this issue.●

● Mr. RIEGLE. I strongly support the position outlined by my colleague from Michigan, Senator LEVIN, and join him in urging the chairman's consideration of the dual campus plan to replace and modernize the Veterans' Administration Medical Center at Allen Park, MI.

The House Appropriations Committee has stated its position that the needs of Michigan's veterans can best be met by building a dual campus facility. I agree with that judgment and hope that the chairman gives serious consideration to the compelling arguments which support the dual campus approach.●

● Mr. GARN. I assure the Senators from Michigan that I will consider the arguments they have put forward for the dual campus proposal, and will work to try to reach an accommodation on this issue.●

Mr. HEINZ. Mr. President, if I may have the attention of the Senator from Nevada [Mr. LAXALT], I would like to address some questions to him. My colleague from California, Mr. CRANSTON, and I understand that the Appropriations Committee has approved a $33-million budget to fund the activities of the Consumer Product Safety Commission for fiscal year 1987. Is that correct?

Mr. LAXALT. The Senator is correct.

Mr. HEINZ. Is it true that none of the funds appropriated for the CPSC by the Senate has been specifically earmarked to fund the Cigarette Safety Act study, which, as you will recall, was authorized by law 2 years ago to explore the technical and economic feasibility of producing fire safe cigarettes?

Mr. LAXALT. That is also correct. The House has earmarked $600,000 of the $605,000 needed for the completion of the study. The committee did not target money specifically for this project, but the Consumer Product Safety Commission has the authority to spend the amount needed to fund the study.

Mr. CRANSTON. May I inquire of my colleagues whether he has any objections to the study itself?

Mr. LAXALT. No; I do not. I support the Cigarette Safety Act study and, as you know, agreed to inclusion of $500,000 in the fiscal year 1985 supplemental appropriations bill to ensure that the work of the interagency committee was not interrupted due to lack of funds. Last year we included report language stating that the Consumer Product Safety Commission, in establishing its own priorities, has the authority to spend up to $1 million to fund this project.

Mr. CRANSTON. Senator HEINZ and I have been assured that CPSC is committed to the completion of this study. Because of the reduction in the Commission's budget in recent years, if there is no earmark, it could be difficult for the Commission to divert limited agency resources to the Cigarette Safety Act study at the expense of other ongoing and longstanding safety programs. If a special allocation is necessary to finish the work of the study group, would you consider additional funding?

Mr. LAXALT. If the agencies responsible for coordinating the study provide me and my subcommittee with sufficient information legitimizing the need for more funds, I would be open to such recommendations.

Mr. HEINZ. I have received assurances from CPSC Chairman Scanlon that he will provide you with any information you might require concerning the Cigarette Safety Act project. Also, I have been informed that because of an initial 6-month delay in funding, the technical study group needs a 6-month extension to complete its final technical report and to submit policy recommendations to the Congress. The House has included a 6-month extension in House Joint Resolution 730, the continuing appropriations bill for fiscal year 1987.

VETERANS' ADMINISTRATION MEDICAL CARE STAFFING LEVELS

Mr. CRANSTON. Mr. President, there is one point regarding Veterans' Administration medical care appropriations under the portion of the continuing resolution pertaining to the HUD-Independent Agencies Appropriations Act, fiscal year 1987, about which my distinguished colleague from Arizona [Mr. DECONCINI], a member of both the Appropriations Committee and the Veterans' Affairs Committee, and I, as ranking minority member of the Veterans' Affairs Committee, remain very concerned. As reported by the Appropriations Committee on September 25 (S. Rept. No. 99-487) the bill, H.R. 5313, includes an appropriation of $9,240,176,000 for the VA medical care account which, according to the committee report, would enable the VA to maintain fiscal year 1987 medical-care staffing of an estimated 192,186 full-time employee equivalents [FTEE]—a reduction of 1,755 FTEE from the medical care staffing level of 193,941 FTEE for which Congress appropriated funds for fiscal year 1985 (Public Law 98-371) and for fiscal year 1986 (Public Law 99-160 and 99-349). We also note that the House recommended a VA medical care appropriation level in fiscal year 1987 of $9,488,612,000—$248 million more than the Senate committee level—and specified that this level of funds was intended to maintain the 193,941 FTEE staffing level in fiscal year 1987 as well as to add 450 FTEE for purposes of implementing the income-eligibility and third-party-reimbursement provisions enacted in April 1986 in the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272).

Mr. President, we applaud the members of the Appropriations Committee for emphasizing in the committee report that the objective of VA medical services is to provide the best health care to the largest number of eligible veterans. We are also pleased that the committee has clearly demonstrated that it does not agree with the drastic reductions in medical care services that would have been necessary had the funding level for the VA medical care account requested by the administration—$9,083,983,000—been accepted. That funding level contemplated the reduction of medical care staffing by 8,848 FTEE in fiscal year 1987.

The demand for VA health care services continues to rise as large numbers of World War II veterans encounter ever greater health care needs associated with their advancing years and turn to the VA. According to the VA's Chief Medical Director's February 20 testimony before the Veterans' Affairs Committee, actual VA medical care staffing levels had been maintained at the appropriated level—approximately 193,900 FTEE at that time.

Although it is true that productivity gains in recent years have enabled the VA to provide medical care for increasing numbers of veterans within its limited resources, the already increasing demand for services by the aging veteran population coupled with decreased staffing resources could cause undue hardship for many veterans. Even at the 193,941 FTEE level in fiscal year 1985, a VA Department of Medicine and Surgery survey reported that approximately 9,000 veterans in need of care were turned away by the VA during the survey week in April 1985.

We believe that VA health care staffing levels should be maintained at existing levels to ensure that the level and quality of VA health services provided to our Nation's veterans is not sacrificed or compromised. We, therefore, strongly urge that the Senate conferees give this matter most careful and sympathetic consideration and cooperate with the House conferees in providing resources in the medical care account that will be adequate to maintain current staffing levels and support adequate workload estimates and to so specify in the joint explanatory statement accompanying the conference report.

Mr. DECONCINI. Mr. President, I agree completely with the distinguished ranking minority member of the Veterans' Affairs Committee [Mr. CRANSTON] on this matter. As a member of both the Appropriations Committee and the Committee on Veterans' Affairs, one of my highest legislative priorities has been to ensure adequate funding and staffing levels for veterans' health care, and I remain committed to that effort. A reduction of over 1,750 staff years in fiscal year 1987, as contemplated by the Appropriations Committee report, would seriously impair the VA's ability to provide health care to eligible veterans. I am particularly concerned by recent data that the Senator from California cited showing that the VA is already turning away many thousands of veterans in need of care every month, a situation that could only multiply many fold if a staffing reduction of this magnitude were to be imposed.

While this phenomenon of turning away needy veterans exists systemwide, it is especially critical in my State of Arizona and other Sun Belt areas.

Mr. President, I underscore the urgings of my good friend from California [Mr. CRANSTON] and ask that the Senate conference make every effort to maintain VA medical care funding in fiscal year 1987 at a level sufficient to support the 193,941 FTEE.

Mr. LAXALT. Mr. President, I thank my good friends from California [Mr. CRANSTON] and Arizona [Mr. DECONCINI] for expressing their concerns about VA medical care appropriations recommended by our committee in H.R. 5313. On behalf of myself and the distinguished Appropriations Subcommittee chairman [Mr. GARN], let me say that we appreciate the concerns expressed by our colleagues. While we are not in total agreement with your description of the effects of our recommendation, we will do all we can in conference to accomodate your concerns in determining the level of funding for the VA medical care account.

Mr. LEAHY. Mr. President, as the ranking minority member of the Appropriations Subcommittee, I too express my appreciation to my two colleagues from the Veterans' Affairs Committee [Mr. CRANSTON and Mr. DECONCINI] for raising and explaining their concerns about VA medical care appropriations in fiscal year 1987. I intend to do my best in conference in cooperation with Senators LAXALT and GARN to achieve medical care account funding sufficient to maintain the staffing level provided for in both the fiscal year 1985 and fiscal year 1986 Appropriations Acts for the VA.

I must explain that as the ranking minority member of the subcommittee I do not necessarily agree with all of the priorities established by the chairman. A number of the accounts would be different if the bill were developed according to my priorities. But, as the ranking member, I do not oppose the recommendations of the chairman if I consider them to have a sound basis. I accepted the chairman's recommendations on the basis of the explanation that the levels in the Senate bill would increase the number of veterans who receive medical care compared to the 1985 level, the House level, and the administration's request.

Mr. CRANSTON. Mr. President, I thank all three of my colleagues for their interest in and concern for America's veterans and their cooperation on this important matter.

Mr. MITCHELL. Mr. President, I commend the members of the Appropriations Committee for their willingness to confront a serious threat impeding the future of the Department of Housing and Urban Development's Federal Housing Administration.

The basic objective of the Federal Housing Administration since it was created in 1934 is to provide homeownership and affordable rental opportunities to families who are not adequately served by the private sector. Because Maine is a rural State with the majority of its people earning well below the national average, FHA has always played an important role for Maine home buyers.

In fact, during the last several years, the Department of Housing and Urban Development's FHA office in Bangor, ME, has processed nearly 65 percent of the applications in the tri-State area of Maine, New Hampshire, and Vermont.

Despite the office's track record, on December 16, HUD proposed closing the Bangor office along with other FHA offices in Burlington, VT, Wilmington, DE, Topeka, KS, and Springfield, IL.

I wrote to HUD Secretary Samuel Pierce in December and again in March opposing the proposed closing of the Bangor office and requesting information concerning the cost-savings involved. In response, I received a brief note stating that it was inappropriate for the agency to comment at the time.

Without notification, HUD issued a memorandum to the Bangor employees in May announcing that the Bangor office would be closed on July 15. Immediately the entire Maine delegation wrote again opposing the office closing and requesting responses to our unanswered questions. By June 23 when the delegation had not yet received a response from Secretary Pierce, I joined with Senators COHEN, BIDEN, ROTH, and SIMON requesting the Secretary to delay the closings of all the FHA offices until the housing authorization bill was resolved by Congress.

On June 25, the Maine delegation received a letter from the Secretary which stated, "all comments, concerns, and issues were given full review and consideration in light of our mandate to cut costs wherever possible. Based on this review, the Department has decided to close the Bangor office."

No cost-savings were offered by the Secretary. No other explanations were proffered. I wrote again to Secretary Pierce, but long before I received another evasive response from the agency, the Bangor office was closed. The office's caseload along with the caseload from the Burlington, VT office was transferred to Manchester, NH.

At the beginning of August, Senator COHEN and I met with two HUD officials to discuss the cost-savings and the manner in which the office had been closed. We were informed that 90 percent of FHA work could be handled by the phone, so there was no need for the five offices the agency had closed. In addition, we were informed that the level of service in Maine was too good so now Maine residents would enjoy the same mediocre services offered in other areas. Last, but not least, we were told that this was just the beginning and in the years ahead, many more offices would be closed.

With no other recourse, Senator COHEN and I requested the General Accounting Office to review the closing and provide us with cost-savings information as well as an assessment of how Maine residents are now serviced.

The GAO findings are astounding. The Bangor office handled 30 percent of the FHA cases in New England and 65 percent of the FHA cases in the tri-State area of Maine, New Hampshire, and Vermont. While it took the Bangor office on average between 45 and 60 days to process FHA applications, it now takes the Manchester office 90 to 150 days. While HUD repeatedly stated the agency would hire additional personnel to cover Vermont and Maine, no additional personnel have been hired.

To make matters worse, the Manchester office is authorized to employ 20 staff members, but the office is only manned by 14—7 of which have little experience as they have been working at the Manchester office less than a year. And, while HUD promised toll-free telephone lines to assist Maine clientel GAO investigators found that the lines weren't working properly, rang unanswered for long periods of time, and when answered staff responding merely replied that he or she was unable to answer any questions.

Not surprisingly, GAO found that Maine banks and realtors were refusing to work with FHA anymore.

HUD's rationale for closing the Bangor office was that it would save $19,350. GAO found that it actually cost $35,380 to close the office down. While HUD claimed that the agency would save $36,000 annually by not operating an office in Bangor, GAO estimated that the savings would be nearer to $28,000.

It bothers me that we were told the service in Maine was too good. It bothers me even further that out of a $13 billion budget, HUD doesn't think Maine residents are worth $28,000 a year. But, it bothers me most that HUD officials said this was just the beginning. Under the guise of cost savings, the administration is seeking to dismantle the single most effective program helping the average homebuyer today.

That is why I am pleased that the members of the Appropriations Committee approved a provision to stop this administration policy. As approved by the committee, no funds appropriated by the Congress this year can be used to close any FHA field offices next year. Of the funds made available this year, the Secretary of the Department of Housing and Urban Development must direct such sums as necessary to reopen the field offices closed in the preceding 12 months.

The Appropriations Committee acted wisely, and I hope that the full Senate will uphold the committee's actions.

FUNDS FOR EPA IN THE AREA OF OZONE DEPLETION, THE GREENHOUSE EFFECT AND CLIMATE CHANGE

● Mr. CHAFEE. Mr. President, I would like to discuss with Senators GARN and LEAHY the manner in which this continuing resolution, House Joint Resolution 738, addresses the problems of stratospheric ozone depletion, the greenhouse effect and climate change. This resolution incorporates, by reference, the provisions of the regular fiscal year 1987 appropriations bill, H.R. 5313, as reported to the Senate on September 25, 1986, including the Senate report (S. Rept. 99-487). Is that correct?

● Mr. GARN. The Senator from Rhode Island is correct.

● Mr. CHAFEE. I am pleased to see in the Senate version of H.R. 5313 and, therefore, in this bill, a major new initiative in the area of the global environment, specifically the problems of stratospheric ozone depletion, the greenhouse effect and climate change that is caused, in part, by manmade pollution. The bills include a comprehensive, three agency effort to fully understand the threat of global environmental change and to decide what should be done about it.

In addition to funds for NASA and the National Science Foundation, the committee has added $7.6 million to the Environmental Protection Agency's budget to support the upcoming international negotiations on chlorofluorocarbon controls, analyze and evaluate control technologies, develop chemical alternatives to chlorofluorocarbons, evaluate the effects of ozone depletion on human health, determine the potential environmental and economic impact of climate change, and analyze policies to stabilize greenhouse gas concentrations.

Now, on September 12, 1986, Senators STAFFORD, DURENBERGER, HUMPHREY, MITCHELL, GORE, BAUCUS, one of the distinguished floor managers, Senator LEAHY, and I wrote to Lee Thomas, the Administrator of the EPA, to request that he undertake two studies on climate change due to the greenhouse effect and submit them to Congress no later than March 31, 1988.

One of the studies is to examine the health and environmental effects of climate change including, but not limited to, the potential impacts on agriculture, forests, wetlands, human health, rivers, lakes and estuaries as well as other ecosystems and societal impacts. The other study is to include an examination of the policy options that, if implemented, would stabilize current levels of greenhouse gases in the atmosphere. The policy options are to include a specific plan for what the United States can do to stabilize or reduce its share of greenhouse gas emissions as well as a plan for helping other nations to achieve comparable levels of controls.

As set forth in the Senate report accompanying H.R. 5313 and, by reference, this bill, EPA is directed to use the funds appropriated by this bill to conduct a number of studies concerning the global environment. Are the studies requested in our letter of September 12, 1986, as I have just described them, included in that directive?

● Mr. LEAHY. Yes, they are. The studies requested in the letter referred to by the Senator from Rhode Island are among the studies cited in the Senate report. So that there can be no confusion on that point, I ask that a copy of the letter to Lee Thomas, dated September 12, 1986, be printed in the RECORD. One important difference, however, is that the letter refers to a study of options to "stabilize current levels of atmospheric greenhouse gas emissions." There is a likelihood that such levels are already too high and, therefore, the study of policy options should examine how to stabilize current levels of greenhouse gases already in the atmosphere, as the Senator from Rhode Island has stated. We must consider how to reduce current emission levels.

● Mr. GARN. The Senator from Vermont has accurately stated the purpose of the committee directive.

● Mr. CHAFEE. I thank my friends from Utah and Vermont for their assistance and congratulate them on the fine work they have done in putting this bill together.

The letter follows:

U.S. SENATE,
COMMITTEE ON ENVIRONMENT
AND PUBLIC WORKS,
Washington, DC, September 12, 1986.

Mr. LEE THOMAS,
Administration Environmental Protection Agency, Washington, DC.

Dear Mr. THOMAS: The purpose of this letter is to formally request that EPA undertake two studies on climate change due to the greenhouse effect and submit them to Congress no later than March 31, 1988.

At the outset, we want to thank you, for appearing before the Subcommittee on Environmental Pollution at hearings last June on the problems of global climate change and stratospheric ozone depletion. Your testimony showed a refreshing appreciation for the magnitude of the environmental risks presented by these problems and the need to be exploring incremental actions that can be taken to reduce these risks.

As summarized at those hearings and elsewhere, the scientific community appears to have reached agreement that substantial ozone depletion may result from the continued use of chlorofluorcarbons (CFC's) and that increases in CFC's and other greenhouse gases are like to produce global climate changes greater than any in man's history. There is a very real possibility that man—through ignorance or indifference, or both—is irreversibly altering the ability of our atmosphere to perform basic life support functions.

What is urgently needed now if for us to begin to deal with these issues. They can no longer be treated solely as important scientific questions. First, some actions including limits on CFC's appear warranted in the near term. Second, we need to expand efforts to more fully understand the effects that atmospheric pollution has on the environment and to develop an extensive range to policy options for dealing with the serious global problem of climate change due to greenhouse effect. This second need has led to our request for two EPA studies.

One of the studies we are requesting should examine the health and environmental effects of climate change. This study should include, but not be limited to, the potential impacts on agriculture, forests, wetlands, human health, rivers, lakes, and estuaries as well as other ecosystems and societal impacts. This study should be designed to include original analyses to identify and fill in where important research gaps exist, and to solicit the opinions of knowledgeable people throughout the country through a process of public hearings and meetings.

The other study should include an examination of the policy options that, if implemented, would stabilize current levels of atmospheric greenhouse gas emissions. This study should address: the need for and implications of significant changes in energy policy, including energy efficiency and development of alternatives to fossil fuel; reductions in the use of CFC's; ways to reduce other greenhouse gases such as methane and nitrous oxides; as well as the potential for and effects of reducing deforestation and increasing reforestation efforts. It should include a series of policy options and recommendations for concrete steps to be taken along with a discussion of the potential effectiveness of each for limiting climate change. Since the United States must take a leadership role in addressing these global problems, the policy options that you develop should include a specific plan for what the United States can do to stabilize its share of greenhouse gas emissions as well as a plan for helping other nations to achieve comparable levels of control.

We realize that undertaking this project will be a significant challenge and will require substantial resources. We therefore urge you to immediately direct the necessary funds in both FY-87 and FY-88 to assure that you can comply with our request to promptly conduct these studies.

Many of us believe that these are among the most important environmental problems of the next decade. The sooner you can provide recommendations to Congress, the sooner we will be able to provide leadership throughout the world to prevent a pending environmental disaster.

Your personal attention and prompt reply to this request will be greatly appreciated. We look forward to working with you on these important environmental problems. Please do not hesitate to contact us for additional guidance and assistance.

Sincerely,

George J. Mitchell, John H. Chafee, Albert Gore, Max Baucus, Patrick J. Leahy, Robert T. Stafford, Dave Durenberger, and Gordon J. Humphrey.●

STRATOSPHERIC OZONE DEPLETION, THE GREENHOUSE EFFECT AND GLOBAL CLIMATE CHANGE

● Mr. CHAFEE. In light of the funding being provided in this bill to the National Science Foundation for work in these areas, would the managers agree that the NSF should do more in 1987 than simply prepare for more scientific studies and should focus attention and energy to another important aspect of this problem: namely, educating the public about what we already know and about the implications of scientific findings to date?

● Mr. GORE. I would like to point out that Public Law 99-383, the NSF authorization bill for 1987, contains a provision that authorizes educational activities to be developed in connection with the "International Year of the Greenhouse Effect." Therefore, it is appropriate to include in the continuing resolution a directive concerning NSF activities in this area. I join with my colleague in asking Senator GARN if he supports the legislative initiative to increase awareness of the greenhouse effect?

● Mr. GARN. The Senators' suggestion is supported by this Senator. It is difficult to strike a precise balance between the need to conduct more scientific research and the need to begin a process to share the information that we already have. Nevertheless, the Foundation clearly has the responsibility to support science education programs to promote the progress of science in the United States. As stated in the Senate report accompanying H.R. 5313, included by reference in this bill, the Foundation is to provide research and equipment support for undergraduate faculty and students as well as provide opportunities for undergraduate faculty enhancement. The subject of global climate change is a prime candidate for such support and opportunities.

● Mr. CHAFEE. The managers of this bill obviously recognize the importance of understanding and dealing with the problems of stratospheric ozone depletion, the greenhouse effect and climate change. Would they agree to include as part of the fiscal year 1987 NSF appropriation a directive that the NSF shall develop and begin to implement in 1987 a science education program for faculty and students to focus attention on and to promote understanding of the problems of global climate change, the greenhouse effect and stratospheric ozone depletion?

The education program should include, at a minimum, two NSF conferences in 1987 for teachers in elementary, junior high and high schools, as well as undergraduate college teachers, and the creation and distribution of model curricula, films and other science education materials.

● Mr. LEAHY. The suggestion is a good one and is acceptable to the manager of the bill on this side.

● Mr. GARN. I agree with my colleague from Vermont. The Senators from Rhode Island and Tennessee have made a valuable contribution to this effort with the directive they seek to have included regarding the education activities of the NSF. Such directive shall be considered a part of this bill and we will seek to include it in the report of the conference committee on a bill enacted this year.

● Mr. CHAFEE. I thank the Senators for their assistance. This is a modest initiative. It is a small step in an attempt to come to grips with what, at times, appears to be an overwhelming problem. Educating our educators and children about the greenhouse effect before it becomes an unmanageable crisis may be the key to preventing it from becoming a global environmental crisis. We cannot affort to wait until we are certain of all the details. In addition to continuing to search for more information, we must begin to share the information that we already have.

● Mr. GORE. I, too, thank the managers of the bill, Senators GARN and LEAHY for their assistance and support. I would say that this concept of an international year has been used successfully in the past. In fact, the best and most complete collection of data based on atmospheric concentrations of carbon dioxide began in 1957 as a result of the International Geophysical Year. I believe this directive will significantly improve national and international cooperation, education and understanding. In time, it will produce the vital support Congress needs to make the appropriate policy decisions regarding the greenhouse effect.●

Mr. LAXALT. Mr. President, I ask that we go to third reading.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time, and passed.

Mr. LEAHY. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. LAXALT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LAXALT. Mr. President, I move that the Senate insist on its amendments and request a conference with the House and the Chair be authorized to appoint conferees on the part of the Senate.

The motion was agreed to, and the Presiding Officer (Mr. SIMPSON) appointed Mr. HATFIELD, Mr. GARN, Mr.

WEICKER, Mr. LAXALT, Mr. D'AMATO, Mr. ABDNOR, Mr. DOMENICI, Mr. LEAHY, Mr. STENNIS, Mr. PROXMIRE, Mr. JOHNSTON, and Mr. LAUTENBERG conferees on the part of the Senate.

Mr. LAXALT. Mr. President, we thank everybody for their patience and consideration.

HIROSHIMA AND NAGASAKI COMMEMORATION

Mr. HARKIN. Mr. President, the spiraling nuclear arms race is an issue which affects us all. yet the issue is particularly important to our children. It is our children who must live with the legacy of the decisions we make, and with the frightening reality of the massive stockpiles of nuclear weapons we are building.

Every year, citizens of my State of Iowa hold a memorial service to commemorate the first and only use of nuclear weapons in wartime. On August 6, Iowans gather to remember the dropping of the atomic bombs on Hiroshima and Nagasaki. This past August, one of the speakers at this annual commemoration was Charity Grant, a 12-year-old girl from Iowa City, IA. Charity is one of the many young people throughout our Nation who are becoming increasingly aware of the threat posed to their future by the nuclear arms race.

Mr. President, I ask unanimous consent that Charity's speech be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

HIROSHIMA/NAGASAKI COMMEMORATION

(By Charity Grant, Guest Speaker)

It is an honor to be invited to speak before you tonight. I accept this invitation because I want to share an experience I have had, and I also want to share an idea.

Mainly I want to speak to children. It seems to me that we children must prepare ourselves to deal directly with the problems of nuclear weapons and nuclear waste, if we are to salvage our world, along with our futures.

For as long as I can remember I have understood that war is wrong. That any kind of violence is wrong.

The first time I ever heard a person say that the use of nuclear weapons was right was when I was in fifth grade. The teacher told our class that it was right for the United States to have used the atomic bombs on Japan because it saved American lives. I wanted to say something, to disagree, because I had grown up believing that killing people, for whatever reason, was wrong. But I wasn't prepared to argue my case.

Finally I asked the teacher if I could try to find someone who had studied the issue. I could invite them to come to the school and talk with the class. That way the class could hear both sides of the story.

I found a friend who had studied the events leading up to the bombing of Hiroshima and Nagasaki. She had a science background and a teaching degree. She told me she believed that the bombing was wrong. She agreed to visit our class. Maybe some of you know Karen Kubby. She lives in Iowa City, but is from Des Moines. Unfortunately it wasn't to happen. When I asked for a specific time for Karen to come to the class I was told by my teacher that there wasn't time. So our class didn't get to hear both sides of the story. The last thing they heard on the subject was the teacher saying that the bombing was a good thing—that it had saved American lives.

Right after that my Dad took me to the library and helped me start researching what had happened 41 years ago when the first nuclear weapons were used. It was very different reading. There is so much material and most of it is written for adults. And, as usual, I was impatient. I decided there had to be a faster way of getting the material together. I wrote a letter explaining what I was looking for, and why, and sent the letter to the editors of some daily newspapers. Answers came to me from all over the United States. Much of the mail was hate mail. Hate letters from people who saw my letter in the newspapers, but didn't really read it. They called me un-American, a Communist and anti-Christian. Many things I was called I can't repeat here.

I also heard from many veterans of World War 2. One was a member of military intelligence. One was an officer who was on Tinian Island when the Enola Gay took off 41 years ago. And one letter was from a submarine sailor who had been off the coast of Japan for a few weeks just prior to the atomic bombs being used.

These are just three of many letters I received, but these three I want to tell you about. I want to share them because they taught me more about what was going on, politically and militarily, 41 years ago than my teacher did. Probably more than any of my junior high or senior high history books will tell me.

The sailor was on a submarine that had been sent to Japan where it was to stay off the coast to pick up any survivors from bombers that might go down during the extensive bombing of Japanese cities that was going on.

After being there for a short time they realized that they did not have to submerge during daylight hours. This sailor explained to me that submarines are almost helpless if they are caught on the surface by enemy aircraft, navy war ships, patrol boats, or even artillery from the shore—and they were often close enough to the shore to watch the Japanese people through their binoculars.

They were there, off the coast of Japan, until the first days of August, 1945, when they were ordered to return to Pearl Harbor. On their way back they heard the news that the city of Hiroshima had been destroyed by an atomic bomb. He wrote that the crew of the submarine didn't believe that such a bombing had really taken place. They knew that the island was defenseless. Such an attack simply wasn't necessary. They had been there. There were no airplanes to defend the island, no war ships, no real army. He described to me the looks of disbelief on the faces of the submarine crew.

Three days later, as they were entering Pearl Harbor, they learned that Nagasaki had been destroyed by a second atomic bomb. He explained to me that when the crew heard the news about the second bombing they were all sickened. They were horrified at the thought of such needless killing.

He didn't say it, but it sounded like they were sickened, and ashamed.

The next letter is from an officer who was stationed on Tinian Island in 1945. He was one of the officers who had access to classified information—to classified documents. He explained that he, and others on Tinian, knew that the Japanese were attempting to surrender. The Japanese codes had all been broken by military intelligence. They had been reading the decoded dispatches for weeks previous to the Enola Gay taking off for Hiroshima.

The knowledge that this officer had was made even more painful when, years later, maps of Hiroshima showed that the atomic bomb was dropped so that the maximum number of civilians would be killed, with a minimum of damage to the docks and warehouses around the harbor and most of the military buildings.

Another letter was from a member of a very special team of men within military intelligence. This is the team that broke the Japanese codes. Broke them, in fact, before the Japanese attacked the military installations and the ships at Pearl Harbor.

Other letters included material that showed me that many of our military leaders were opposed to the use of the atomic bomb on civilian targets.

The letters I received taught me a lot. I learned that it had not been necessary to use those atomic bombs to win the war against Japan. The bombs didn't save lives. Our political and military leaders knew all this. But the bombs were used anyway. Some say we did it to get even. An act of revenge. Some say it was to show the world, particularly Russia, how powerful we were. Some say it was simply a military experiment.

After the bombs were dropped on Hiroshima and Nagasaki the government of the United States convinced almost everyone that it had been right, and necessary, to use the bombs to end the war—to save the lives of our soldiers, sailors and fliers.

The government convinced my fifth grade teacher. And no doubt a lot of other teachers, and parents, and some future presidents.

But the government didn't convince the crew of that submarine. Or the members of the team, in military intelligence, that broke the Japanese codes. Or the officers on Tinian Island who knew that the Japanese were trying to surrender.

And they didn't convince me. Because for as long as I can remember I have known that war is wrong. That wars do not solve problems. That no problems are solved by using violence. And now I know why.

When that incident happened in fifth grade I lost all respect for my teacher. It wasn't until months later that I realized I was wrong. She is a hard working teacher and a good person. She is only one of millions of people in this country, and around the world, who believe that everything their government tells them is the truth.

My teacher had never been taught to question authority. And she isn't teaching her students to question authority. And I believe that children have to learn this. The children have to learn this because the adults of the world, the taxpayers and the voters, have brought us all to the brink of destruction. And because this is our world, and because our futures are at stake, the children of the world have to understand that serious action is called for. Action by children, for children.

Children have to understand that the nuclear arms race has created so many deadly weapons that even a minor mistake could end life on earth. And to me, this is absolutely unacceptable, because it's my world, and it's my future.

And it isn't bad enough that there is a nuclear weapons problem. We also have to face the equally serious problem of nuclear wastes.

At the Hanford Nuclear Reservation, in the state of Washington, there is over 3000 pounds of plutonium waste. If three ounces of this plutonium waste were spread around the earth, each person, all five billion of us, would be exposed to more of this carcinogen (something that causes cancer) than science tells us a person can be safely exposed to in a lifetime. Three ounces of plutonium waste contaminating the entire population of the earth—with 48,000 ounces left over.

Radio active and chemically contaminated groundwater from the Hanford Nuclear Reservation has entered the Columbia River. Even though Hanford is 300 miles from the coast this radioactive pollution has contaminated the Pacific continental shelf from southern Canada to northern California.

I want the children of the United States to think about this: Not only is our world being poisoned and on the brink of destruction, but our government is going to make us pay for it. Right now, every child, from a new-born on up, owes somewhere between $50,000 and $100,000 that we will be forced to pay in taxes because of military spending and borrowing. I can't be more accurate because it is almost impossible to find out exactly what the military is spending. I have an idea about what those figures mean because I have worked for almost a year babysitting and have saved $300. At that rate, if I drag my childhood out for 166 years I could save enough to pay off the conservative estimate.

But I am not going to do that. In fact I am taking this opportunity to inform our government that I am one child who is refusing to assume any obligation, or responsibility, for any of their military spending. And I am letting them know in adequate time to stop this military insanity.

I will pay no money to support present or future war machines. And I sincerely believe that if enough children go on record and let their governments know that we are through supporting this military insanity, that we might be able to slow it, and stop it, finally.

I want you to understand that I am not opposed to paying taxes when I become a wage earner. I will pay whatever taxes are necessary to insure that hunger ends in my world; that there is health care for everyone in my world; and that there is an excellent education for everyone in my world. I will work for peace and give all I am able to give for peace. But I will not give one red cent for weapons of war.

I know that there are other children who feel as I do. I want these children to contact me so we can share ideas and organize. I can be reached at Box 123, Iowa City, IA 52244. I have material that I want to share. I know that it will take hard work to get rid of the war machines of the world. But it must be done. We must begin to prepare to end the war machines, before the war machines end us, end our futures, end our world.

Do you know that the world spends 800 billion each year for military programs? Did you know that 17 billion each year can end hunger on earth. With the military budget for one year we could end hunger on earth for over 40 years. The farmers in Iowa and the midwest alone could take a fraction of the money that goes to the military and they could feed the world.

In Africa alone, 14,000 of our fellow children die each day from hunger and hunger related causes. I know this is an unacceptable to you as it is to me.

Please allow me to join with you in a children's crusade for peace. Not only can we do it, we have to do it. We have to do it for the children who are starving, who cannot read, who are uncared for and unloved. It will take hard work and it will take some luck.

Part of the hard work is learning to question authority intelligently and respectfully, and learning how to separate historic fact from fiction. Together we can do it, but each of us must be willing to start as individuals. We don't need leaders, but all of us have to be capable of leading.

We have great resources that can be used, for the wisdom off the elders will help us. The Meridel LeSueurs of the world will understand us and will help us. My Dad says that the two most powerful groups in the world are the children and the elders. With their wisdom and our energy we will end this insane arms race.

I want to say that I feel very lucky to have parents that encourage me to question everything, including authority, and who are quick to help me dig up information. Lucky to get that letter published and answered. And lucky to have been invited to share my experience and idea with you tonight. Thank you.

BIRTHDAY OF CHIANG KAI-SHEK

Mr. KASTEN. Mr. President, as the Republic of China on Taiwan prepares to celebrate their late President Chiang Kai-shek's 100th birthday on October 31, 1986, I wish to make a few remarks and observations.

Taiwan is our ally. Even though the United States no longer has official ties with Taiwan, the unofficial relationship is ongoing and getting stronger every day due to the tireless efforts of Dr. Fredreick Chien, Taiwan's top representative in Washington, DC. Dr. Chien and his colleagues have shown the utmost cooperation with our Trade Representative's Office in the latest round of trade discussions. And I am pleased to note that Taiwan's 12th special procurement mission is currently in the United States, and in fact in Washington, DC, tonight, purchasing soybeans, maize and other commodities in different States.

Mr. President, it's my belief that we must abide by the Taiwan Relations Act and sell to Taiwan whatever defensive weapons they need. The Communist threat against them is real, and no one should be so naive to take the Communist's peaceful offer as gospel truth.

I wish my Taiwanese friends the best of luck. I admire their courage, their independence, and their industriousness. I am sure they will continue to prosper under the capable leadership of President Chiang Ching-kuo.

GLOBAL WARMING COMMITTEE RECOMMENDATIONS

Mr. BAUCUS. Mr. President, I commend the committee for recognizing the seriousness of the problems facing the entire planet caused by the consequences of unabated release of ozone-destroying and greenhouse gases.

Greenhouse gases—CO_2, methane, N_2O, chlorofluorocarbons, and others—are causing a steady global warming of the atmosphere. Temperatures within a decade my exceed the range experienced for 100,000 years.

The warming promises major consequences for rainfall and other weather patterns and sharply higher sea levels. Agricultural and forest belts may shift, possibly by hundreds of miles. even the major currents and circulation patterns of the ocean may change.

The direct and indirect health effects of the warming will likely be massive, ranging from large increases in summertime urban death rates to death and disease brought by drought, storm and flood.

There is a scientific consensus that the problem is real and one that we must confront. Dr. Robert Watson, a noted expert in this area, has found that a 2- to 3-percent ozone depletion may already have been observed.

We take the stability of our climate for granted. Each of us simply assumes that the atmosphere is resilient enough to absorb stresses of human origin without danger to existing ecosystems and the economies which depend on them.

But, the scientific community worldwide is rapidly moving toward recognition that the atmosphere and climate are fragile.

There isn't anything particularly great about our current atmosphere and climate, but this climate is the one that we are used to. Life and civilization are adapted to this environment; change necessarily will be disruptive.

Record droughts were experienced in the South this past summer. These droughts cannot truly be called indicative of what we would expect to see with permanent long-term global warming. They are, however, an indication of the kind of dislocation that can be expected although on a more permanent long-range basis.

Much of the world's population lives with but a small agricultural and economic safety margin. Even minor changes in climate must be considered bad.

During this Congress, both the Toxic Substances and Environmental Oversight Committee, of which I am ranking member, and the Environmental Pollution Subcommittee of the Environment and Public Works Committee, have conducted hearings on the greenhouse effect and threats to the stratisphere.

As a participant in both those hearings, any illusions that I had as to whether or not global warming is a threat have been dispelled.

Although it is clear that scientific data is incomplete, the magnitude and enormity of the problems that could result from greenhouse gases argue strongly for changing course now.

As Lee Thomas, the Administrator of EPA, testified at a hearing earlier this summer, the world cannot afford the luxury of waiting for certainty.

It is clear that some degree of warming and ozone destruction are inevitable. The future extent of the damage is dependent on decisions which we will make in the coming few years.

The Environmental Protection Agency's conduct of scientific assessment and decisionmaking processes pursuant to the stratispheric ozone protection plan and preparations for resumption of chlorofluorocarbon protocol negotiations next fall to date have been commendable.

I join with the members of the HUD and Independent Agencies Appropriation Committee in supporting EPA in their initiative for greatly expanded funding.

One of the purposes of this increased funding is to permit an increased role in the international community. There is a need to ensure concerted international action to address climate change.

The appropriation will provide support of expanded international activities related to the ongoing international negotiations on a chlorofluorocarbon control protocol, including analysis of global control options, studies of potential effects of stratispheric ozone depletion of concern to other nations, and expanded communications with experts and policymakers from abroad.

These international CFR negotiations will largely determine whether or not we, as a world, can come together and address the serious problem of ozone depletion.

CFC's are the dominant chemicals in ozone depletion. In equivalent radiative terms, they also account for at least a sixth of the current atmospheric stock of greenhouse gases, and they are growing more rapidly than other pollutants.

To date, both domestic and international discussion has focused on alternatives for CFR controls which range from very modest measures to a cap on production at current levels.

Recently, the Alliance for a Responsible Chlorofluorocarbon Policy recognized that, while the science is uncertain, our state of knowledge can't tell us that CFC's won't cause climate change.

There are compelling reasons to conclude that it is no longer sufficient to just talk about avoiding increases in CFC production.

EPA needs to aggressively pursue a proactive approach to the control of CFC's during international negotiations. This increased funding will allow them to move in that direction.

CFC reductions clearly present the best present opportunity to stave off ozone depletion and to limit the extent of global warming. A cap on current levels will not reduce levels of CFC's reaching the stratisphere. EPA must aggressively investigate strategies which include a reduction in the production of CFC's in related chemicals.

Specific attention should be paid to cutting by over 50 percent over the next 2½ years CFC_{11}; CFC_{12}; CFC_{22}; CFC_{113}; two halons—halon 1,2,1,1 and halon 1,3,0,1; carbontetrachloride; and methyl chloroform. Within 5 years, these compounds should be totally banned.

Emphasis on the use of chlorofluorocarbons needs to be directed toward chlorofluorocarbon 123 or chlorofluorocarbon 134A, or other substitute compounds which will break down in the troposphere and therefore will not lead to stratispheric ozone depletion.

For uses of chlorofluorocarbons or other substitute compounds that cannot be substituted, international protocols need to be developed to ensure that these uses rely on closed systems with product recovery and recycling. At the same time, nonessential aerosol uses should be phased out immediately.

EPA needs to take a position of leadership worldwide. Forceful actions now will ensure an orderly transition to other chemicals, other processes, and other end products. By acting now, future global warming can be significantly minimized.

I commend the committee for its willingness to address the question of greenhouse gas buildup head-on and provide EPA with the needed funding to address threats posed by global warming.

Congress, by the resources provided in this legislation, recognizes the significance of the problem. It is my hope that EPA will continue Lee Thomas' initiative in a vigorous manner to press for significant reductions in chlorofluorocarbon use worldwide and complete phaseout of the chlorofluorocarbons that are directly contributing to the problem within a short timeframe.

I plan to watch EPA's use of these appropriated funds and to work with them on this critical issue. If significant progress has not been made by the beginning of the 100th Congress, I plan to move forward with legislation to meet this objective.

INTERSTATE PIPELINE TAXATION

Mr. NICKLES. Mr. President, I would like to take this opportunity to draw my colleagues' attention to a lawsuit—Mid-America Pipeline Company versus Elizabeth H. Dole—that was recently filed in Federal district court in the northern district of Oklahoma that challenges the constitutionality of a portion of the Omnibus Budget Reconciliation Act of 1985. Section 7005 of the act grants to the Department of Transportation the power to tax interstate pipelines in order to cover the cost of administering the Hazardous Liquid Pipeline Safety Act of 1979 and the Natural Pipeline Safety Act of 1968. While the new levy is technically described in the legislation as a "user fee," the fact is that for the first time in our history, Congress, in enacting section 7005, has sought to hand over its power to tax to an executive agency.

Section 7005 was the product of a rush to reduce budget deficits and to achieve certain fiscal objectives set by this administration while at the same time avoiding the appearance of raising taxes. Rather than impose these taxes ourselves, we shifted the power and discretion to impose them to a Federal agency. Never before has Congress, the duly elected and representative body of the people of the United States, seen fit to hand over its power to tax to the executive branch. This delegation of a uniquely legislative power to an executive agency is much more than a historical novelty. It is a dangerous precedent that should not stand. It is a breach of Congress' constitutional duty under article I, which makes explicit, in no uncertain terms, that only Congress can levy taxes. One of the linchpins to our structure of government since its founding, and to a proper separation of powers, is that taxation is a legislative function, and one that may not be delegated to another branch of Government.

However politically expedient this path may be, Congress must remain accountable, as the Constitution both contemplates and requires, for exercising the taxing authority. To delegate the difficult policy choices of raising revenue to an agency is to shirk this obligation and to fail our constituents. As the Supreme Court held in Gramm-Rudman, the various branches of Government cannot abdicate their constitutionally appointed duties and the goal of deficit reduction cannot and ought not be purchased at the price of undercutting the foundations of our constitutional framework. If Congress wants to tax an industry, it is fully empowered to do so; but to confer this power upon an executive department is contrary to our system of government.

In the coming months, we may be urged to adopt similar expedients to fund the budgets of Federal agencies. I urge my colleagues to resist this temptation and to refuse to hand off to bureaucrats the power to tax. If we are to meet our responsibilities to deal with the Federal deficit, a goal which I certainly share, we should do so directly and responsibly, while preserving the principles of separation of power so embedded in our Constitution.

DEVELOPMENTAL SERVICES OF NORTHWEST KANSAS

Mr. DOLE. Mr. President, I would like to take a brief moment to salute a Kansas organization that is committed to one goal: The goal that individuals who have physical or mental impairments should be able to exercise self-determination and actively participate in all aspects of society.

Developmental Services of Northwest Kansas is a small agency that works together with local communities throughout the State to find pragmatic ways to enable individuals with disabilities to assume their rightful place in society.

One project of Developmental Services that is exceptionally noteworthy is Operation LINK. LINK—"Living Independently in Northwest Kansas" took on an enormous task recently to improve the accessibility of Kansas polling places.

In response to a Federal law requiring polling places to be totally accessible to the disabled, Operation LINK staff member, Kathleen Fischer, traveled over 20,000 miles in northwest Kansas, visiting more than 125 polling places. County clerks and city officials in the communities were offered commonsense, practical solutions toward achieving greater accessibility to the polls.

Temporary ramps or wedges were recommended to make the buildings wheelchair accessible. Where problems existed that could not be solved by down-to-earth economical means, officials were simply advised to move the polling places to other public buildings that afforded easier access to the elderly or disabled.

This pragmatic approach to problem-solving has been a hallmark of Developmental Services' effort to ease the restraints the disabled encounter.

Mr. President, the disabled face obstacles every day, but one barrier they should never have to face is the inability to exercise their right to vote. Developmental Services of Northwest Kansas has demonstrated a commitment to clear the roadblocks and help the disabled live easier, self-sufficient lives. Their commitment has made them one of the oldest and most influential rural independent living centers in the country.

SMITH & WESSON

Mr. KENNEDY. I want to take a few moments to comment on an issue in this legislation that is of great importance to one of the most famous firms in Massachusetts, Smith & Wesson of Springfield. Smith & Wesson is one of the world's premier producers of firearms and it has an outstanding history and reputation. First established in 1852, Smith & Wesson's famous designs won broad popularity on the American frontier. During the Civil War, many infantrymen carried Smith & Wesson pistols. Two years after the war, a Smith & Wesson revolver won the highest award at the Paris international exposition, and the firm was on its way to the world renown it has maintained ever since.

Today, however, Smith & Wesson is involved in a complex and protracted controversy regarding competition for a $75 million contract for the Army's new 9mm handgun. In April 1985, the Army awarded a 5-year contract to the Beretta Corp. to produce nearly 316,000 9mm handguns. Smith & Wesson competed for the contract but was eliminated because of its alleged failure to pass certain tests that were part of the competition.

The decision to eliminate Smith & Wesson from the competition has been extremely controversial from the beginning; and it soon became obvious that the company had been the victim of unfair treatment. Last year, the General Accounting Office reviewed the controversy in detail. GAO officials concluded—and so testified before the House Government Operations National Security Subcommittee—that Smith & Wesson had been unfairly eliminated from the competition.

The House Government Operations Committee agreed with the GAO findings and concluded that the award of the contract to Beretta was improper. The committee recommended that the contract should be canceled after fulfillment of the current order, and that a recompetition should be held for the remaining weapons needed by the Army. The House Defense Appropriations Act contains a specific provision conditioning the expenditure of funds for the handguns on the cancellation of the current contract with Beretta and recompetition of the remainder of the contract.

I strongly support the House provision, and I hope that it will be enacted into law. Serious questions have been raised about the process which resulted in the award of the contract to Beretta. Smith & Wesson and any other company involved in the competitive process is entitled to fair and objective treatment. That is the only way to restore confidence in the procurement process. Smith & Wesson is a firm with a long and proud tradition. It has been badly treated in this competition, and it is up to Congress to right this wrong.

Mr. President, I ask unanimous consent that a portion of the GAO report regarding the elimination of Smith & Wesson be placed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PISTOL PROCUREMENT—ALLEGATIONS ON ARMY SELECTION OF BERETTA 9 MM. AS DOD STANDARD SIDEARM

S&W UNFAIRLY ELIMINATED

While we found no reason to question the Army's elimination of other candidates, our review of the Army's test procedures and results indicates that the Army erred in finding that S&W's weapon was technically unacceptable. The Army evaluators eliminated S&W based on their conclusion that the firm's pistol failed to meet two mandatory test requirements—24 inch ounces of firing pin energy and an expected service life of at least 5,000 rounds. The Federal District Court and the First Circuit Court of Appeals upheld the Army's elimination of S&W. However, our investigation showed that the Army's evaluation of both of these tests was flawed.

FIRING PIN ENERGY

The firing pin energy requirement was designed to ensure that candidate pistols could fire any 9-mm. cartridge having a primer hardness manufactured to North Atlantic Treaty Organization (NATO) specifications. Our calculations show that the requirement was overstated because of a mistake in converting the NATO metric standard into U.S. units of measurement.

The Army rounded off to the nearest whole number and failed S&W for missing the required measurement by one-ten-thousandth of an inch. With such a miniscule margin of failure, it is clear that the conversion from metric to U.S. measurements was critical and that rounding-off to whole numbers was inappropriate. S&W's test pistols would have passed the more precisely converted firing pin energy requirement. This aspect of the firing pin energy issue was not considered by either the district or appellate court.

SERVICE LIFE

The Army's rationale for eliminating S&W based on demonstrated service life was also flawed.

The request for test samples called for "an expected service life of at least 5,000 rounds." The word "expected" is defined in dictionary term as average and is used in the same way as the phrase "life expectancy."

The Army told firms that it needed pistols with an average service life of at least 5,000 rounds. The average service life of the three S&W pistols tested was at least 6,000 rounds. While not discovered until after 5,000 rounds had been fired, one of three S&W pistols cracked at some point between 4,500 and 5,000 rounds. S&W was eliminated because each of its weapons did not exhibit a minimum service life of 5,000 rounds.

The Army rationale for its use of minimum service life was based on the small number of weapons tested (three from each firm) and the desire for a high degree of probability that the selected pistol would actually meet the requirement for an average service life of 5,000 rounds. This application of the test standard was not made known to the competing firms. The decision to test a limited number of weapons was made by the Under Secretary of the Army and was intended to conserve test resources and expedite the selection process.

The court, in dealing with this issue, held that the Army interpretation was reasonable and did not "materially deviate" from the announced 5,000 round expected service life requirement. We believe that the court's view resulted from misunderstanding the Army's statistical calculations.

S&W's test results, the Army told the court, indicate that it had a 52 percent probability of having an average 5,000 round service life. According to the Army such a low probability compared to Beretta's 88 percent was unacceptable and justified interpreting expected service life as a minimum 5,000 round criterion.

However, no one explained to the court that because the test results were so close, because so few weapons were tested, and finally, because so few rounds were fired, any probability statement was grossly imprecise. Both Army and GAO statisticians agree that such probability statements cannot properly be used to differentiate among candidate pistols. The Army inappropriately used such probability statements to justify S&W's elimination despite the fact that S&W's pistols passed the announced service-life criterion.

SMITH & WESSON

Mr. KERRY. Mr. President, I want to indicate my strong support for the statement and the sentiments expressed by my senior colleague. As he has eloquently put it, an injustice has been done and something should be done to remedy that situation which would have a negative impact on the Smith & Wesson Co. and its 2,000 employees in the greater Springfield area of Massachusetts.

After studying the facts of the Smith & Wesson case, I believe that this company was unjustly excluded by the Army from the final bidding for 9mm handguns. And it's not just the Massachusetts congressional delegation that believes that action is indicated: Both GAO and the House Government Operations Committee have reached the same conclusion. GAO stated that the test that eliminated Smith & Wesson was flawed and the House committee concluded that Smith & Wesson was "unfairly eliminated from the competition."

The Senate should follow the House's lead by adopting language that would rectify this situation. However, it is clear to these Senators that that action is not forthcoming. So I want to echo the request of my colleague that our conferees seriously consider adopting the House language in this matter.

ALEXANDER PEKELIS: THE AMERICAN JEW AS CIVIL SERVANT

Mr. SIMON. Mr. President, the American Jewish Congress has been a prominent, innovative leader in areas of constitutional rights, civil liberties and social justice. The American Jewish Congress is dedicated to protecting the freedoms we all cherish so dearly—protection of human rights, economic equity, and the elimination of all forms of discrimination: racial, sexual, and religious. For over 70 years, the AJC has been in the middle of many of the key fights in Congress fighting for the rights of all Americans. Their slogan is "Only when the rights of all Americans are secure will the rights of Jews be secure."

Social action has been a key component of the work of the American Jewish Congress. One of the individuals who helped establish a social action program for the organization that combined Jewish tradition and values with American policy and law was Alexander Pekelis, a law professor at Columbia University. Recently Jacob Freid wrote an excellent article on Mr. Pekelis. I urge my colleagues to read the article, which through its portrayal of Mr. Pekelis allows us to see the history of the AJC's tradition of social action. I ask that the arcticle be printed in full in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ALEXANDER PEKELIS: THE AMERICAN JEW AS CIVIL SERVANT

(By Jacob Freid)

The end of World War II saw bright young Jews mustered out of the armed forces and government service to become civil servants in the communal agencies of American Jewry. This was particularly true of the American Jewish Congress, the American Jewish Committee, and the Anti-Defamation League of B'nai B'rith.

They came with a sense of commitment to a comprehensive program of positive Jewish life in a democratic society. Moved by the war experience, the Nazi churban and the labor pangs that preceded the birth of the State of Israel, they wanted the opportunity to serve the Jewish community in a fiduciary capacity. It was a time of ferment, innovation, and creative experiment on the frontiers of social action, civil rights, and intercommunity relations.

Legal scholars and lawyers grappled with the perplexities of civil rights, the separation of Church and State, the defense of minorities, and the drafting and passage of legislation outlawing discrimination. Social scientists examined the roots of prejudice, intercommunity relations, and group identity. Historians and critics examined the problems of Diaspora and Galut, relations with Israel, population and economic trends, and Jewish culture, art, and literature. Pledged to the service and freedom of man and to the Jeffersonian trinity of "life, liberty, and the pursuit of happiness," they allied the moral qualities of prophetic Judaism to those of the Enlightenment and American life. And they implemented their insights in the spheres of public life; in the court chamber, the legislative hall, and the executive office, in the market-place, public accommodations, and the halls of learning.

Alexander Pekelis of Columbia University Law School was a paradigm of the committed Jewish intellectual. Under his aegis the entire context of Jewish social action in the United States was revolutionized by the Commission on Law and Social Action (CLSA) of the American Jewish Congress. Pekelis formulated a Jewish community action approach to the social functions of law to combat anti-Semitism and to achieve first-class citizenship and civil rights for all. The appreciation of the import of Pekelis's law and social action thesis by Rabbi Stephen Wise, and its incisive legal implementation by people like Will Maslow, Leo Pfeffer, and Phil Baum, transformed community responses to the attacks of Father Charles Couglin, the Christian Front, and their lunatic-fringe allies into a brilliantly conceived and executed strategic and tactical program solidly based upon American constitutional law.

Pekelis was himself an authentic symbol of the Jew in Galut. Max Ascoli, who knew him in Italy and the United States, said: "He had an amazingly disturbing power to assimilate the culture of any country, to make himself into a citizen of every community. Therefore if the capacity of absorbing and dramatizing culture is, as I think, a Jewish trait . . . [he was] thoroughly a Jew."

Those working with Pekelis shared his view that "one of the tasks that educators face today is to narrow the appalling chasm between those who, in schools and research centers, study our community, and those who in legislative committees and courts, shape its life." [1] Law was the binding force of human relations. It was too important in community life to be reduced to mere legalism and left to attorneys alone. The social sciences were needed to facilitate the law's proper function in a constitutional democracy: "Law without a knowledge of society is blind; sociology without a knowledge of law, powerless." [2]

Pekelis articulated a program of Jewish social action in America grounded upon Jewish tradition and American law and society. The result was his historic memorandum to the American Jewish Congress in 1945, which confronted American Jewry and its defense agencies with the need to determine its ends and the means necessary to attain them. He had no use for apologetics and anonymity in Jewish community relations. He believed Jews must fight against injustice and discrimination not as "anti-anti-Semites," but as conscious self-respecting Jews, entitled to the quality of free men in a free society.

Pekelis knew that cellmates in a prison enjoy equality—but they do not have freedom. This was the import of the Declaration of Independence and the Bill of Rights. That was why "the adoption of the first Ten Amendments . . . was indeed a vindication of the rights of the individual and was at least a partial return to the general philosophy of the Declaration of Independence.[3]

We seek freedom not only as individuals but as groups—as Americans and as Jews. Liberty was the price exacted by the Emancipation's blandishments of personal equality that enticed the Jews of Western Europe. This is the caveat of the negators of the Galut in their entreaties and prophecies concerning the impossibility of creative Jewish survival in the Diaspora. But, as against predictions of extinction, and the

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[1] Alexander H. Pekelis, Law and Social Action, edited by Milton R. Konvitz, Cornell University Press, 1950, p. 14.

[2] Ibid.

[3] *Ibid.*, p. 94.

Jeremiads of Israeli intellectuals that this was the inevitable fate of Diaspora existence, Pekelis, himself a refugee and leader of Poale Zion, had posed a counter-thesis that this price need not be paid in the United States. Indeed, he insisted, it would mortally wound American democracy, whose lifeblood would course only so long as the arteries of freedom did not harden against any religious or ethnic group.

Quotas against Jewish students in higher education are but a vile memory today. Pekelis recalled his Odessa youth when a Tsarist law established a "healthy" ratio between Christians and Jews in any given class. "Today, my children here do not have to grow up under the humiliation of such a law . . . Laws on the books have a reality all their own, and believe me, the phrase 'all men are created equal' makes better reading and a better rearing for children than the circulars of a Russian or Prussian minister of education." [4]

The efforts of Pekelis and others like him made it possible for minority groups to utilize effectively their constitutional rights. CLSA gave an inservice education to the National Association for the Advancement of Colored People and other minority groups in the struggle against discrimination and prejudice. One the question of limiting Jewish defense efforts to problems of explicitly Jewish concern. Pekelis argued that it was as difficult to disassociate Jewish and American interests as to operate successfully on Siamese twins. The air of freedom was breathed by all; contaminate it and all were affected. It is no wonder, he said, that ever since the Enlightenment Jews have been in the forefront of struggle in what Heinrich Heine called "the liberation war from humanity."

This is the basis of the close support American Jewry gave blacks and other minorities. In virtually every major discrimination case Jewish defense agencies file amicus curiae briefs. American Jewry's aid in the desegregation struggle has been of central significance.

This was a program worthy of allegiance. An older generation had seen as the spearhead of such causes and programs of social betterment and equality of opportunity only the Communist Party and its front groups. Even with the shock of discovery of their being duped they were unable to see Judaism, Jewish affiliation, and community identification and participation as a means of realizing the moral purposes and potentialities of American democracy for all peoples. For the wartime generation such a program existed. It coincided with the internal migration, the centrifugal push from the city centers to the suburbs with its proliferation of new synagogues and Jewish community centers, and community and social compulsions to affiliate.

This was a dynamic change from earlier programs that lacked imagination and daring. It was a thinking nation and daring. It was a thinking, liberal program; it provided an opportunity to relate the prophetic ethical qualities and moral principles of Judaism to American life. It was a program for Jews with a sense of Jewish identity and a commmitment, untroubled by charges of "dual loyalty." Jews with faith in the reason and integrity of the American people, Constitution, and political democracy as the instrument that would make the achievement of creative Jewish life possible in America. Accordingly, in the post-World War II years, scholars, and thinkers devoted their talents to the betterment of Jewish and American life through the three major Jewish defense agencies.

Community relations today, more than ever before, under the aegis of the National Community Relations Advisory Council (NCRAC), the American Jewish Committee, the American Jewish Congress and the Anti-Defamation League of B'nai B'rith, are vehicles of adult education and forums of popular statesmanship. The gains on behalf of minority groups in general and blacks in particular have been substantial. Pekelis's contributions to law and social action have been continually adapted by able civil servants of the Jewish community to enlarge democracy and to achieve its social, economic, and political promise as against the special interest groups and private associations who would pervert that promise and frustrate its attainment. Sabbath sermons, community forums, adult education programs, periodical literature and books acknowledge that the community's representatives occupy a central position in the fight to break through to freedom and equality of opportunity by making accessible to all minority groups the information and understanding on which their choices and actions depend.

TRIBUTE TO MARY BURGESS WARREN ON HER 100TH BIRTHDAY

Mr. THURMOND. Mr. President, it has come to my attention that a very special South Carolinian, Mary Burgess Warren, celebrated her 100th birthday on September 20.

A school teacher for 40 years and public service volunteer for eight decades, Mrs. Warren was named "Outstanding Older South Carolinian" in 1982 by the South Carolina Commission on Aging.

At age 65 she retired from teaching and began her second career as executive director of the Sumter, SC, YWCA, an organization she was instrumental in founding in 1924. Mrs. Warren retired from her second full-time career at age 81, but remained active as a volunteer.

She was one of the founders of the Adult Education School and served for years in a voluntary capacity as the co-director of the Adult Education Center of Sumter County. A charter member of the American Legion Auxiliary, Mrs. Warren is past chairwoman of the Americanism and Child Welfare Committees.

She served for more than 30 years as a USO volunteer and has been on the board of directors of the Sumter County Tuberculosis Association.

An active church member, Mary Warren taught Sunday School for 35 years and then organized the Young People's Service League, an organization of young people from all denominations who meet each Sunday night. She was awarded a rare certificate from the Department of Religious Education of the National Council of the Protestant Episcopal Church in New York as early as 1925 for her volunteer contributions.

She was instrumental in the establishment of the Sumter County Domestic and Civil Relations Court, the Mary McLeod Bethune branch of the YWCA, and the Camp for the Mentally Retarded.

Mrs. Warren was chosen as the first Sumter Woman of the Year in 1959, and has held longstanding membership in the South Carolina Education Association, and the South Carolina Federation of Older Americans.

The untimely death of her husband, Guy L. Warren, left her with two children to raise alone, so Mrs. Warren began her teaching career, studying at Withrop College, the University of South Carolina and Columbia University in New York in the summers.

She worked Saturdays to earn extra income, serving as secretary and treasurer for both the People's Building & Loan Association, which her husband had organized prior to his death, and the Victory Building & Loan Association, which she later organized and administered. Eventually, she sent her children and two nephews through college.

Mrs. Warren is to be commended for her life-long service to her family, her church, and her community. Her hard work, independent spirit, and faith in God have benefited many in the Sumter community as well as across South Carolina, and I would like to take this opportunity to thank Mary Warren for the generosity she has shown.

LLOYD NOLAND HEALTH PIONEER AWARD

Mr. DENTON. Mr. President, Dr. William L. Roper, who heads the Federal agency which administers the Nation's Medicare and Medicaid Programs, received the first Lloyd Noland Health Pioneer Award, in ceremonies on Capitol Hill in Washington, DC, on September 30.

The award is named for public health and industrial medicine pioneer Dr. Lloyd Noland. Virginia-born Noland fought tropical diseases in Panama during the building of the Panama Canal, when he was still in his twenties. After leaving Panama, Noland was recruited to Jefferson County, AL where—using concepts he had learned in Panama—he founded what many have called the Nation's first major experiment in industrial medicine.

Dr. Leon C. Hamrick, president of the Lloyd Noland Foundation, presented the award. The foundation governs the Lloyd Noland Hospital and Health Centers, located in Fairfield, AL, just outside of Birmingham. According to Dr. Hamrick, the award was well deserved and most appropriate.

"Dr. Lloyd Noland began making contributions to public health at a young age, and Dr. Bill Roper has done likewise. Dr. Lloyd came to Jefferson County, AL, at a time when diseases such as typhoid and malaria were rampant, and set up a pioneer public health program which saved thousands of lives and served as a model to other parts of the world. Today, our challenge in public health and in the entire health care industry lies not so much in learning how to control epidemics of disease as it does in formulating sound policy to deal with issues such as access to health care and mechanisms of health care financing. Dr. Bill Roper already has made and continues to make significant contributions to the development of such policy."

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[4] Ibid., p. 102.

A native of Birmingham, 38-year-old Roper was sworn in in May as Administrator of the Health Care Financing Administration [HCFA] in the U.S. Department of Health and Human Services. HCFA runs both the Medicare and Medicaid Programs—which together provide financing for health care for 54 million Americans, with a Federal budget of some $75 billion for Medicare and a Federal share of some $23 billion for the Federal-State Medicaid Program.

President Ronald Reagan nominated Roper to the HCFA post in March 1986. In confirming Roper's nomination, the U.S. Senate confirmed a young public health leader who had served for several years as county health officer for the Jefferson County Department, a year as a White House fellow assigned to the White House's Office of Policy Development, and then as special assistant to President Reagan for health policy.

Roper holds both an M.D. degree from the University of Alabama School of Medicine, and a master of public health degree from the University of Alabama at Birmingham School of Public Health. He is certified by both the American Board of Pediatrics and the American Board of Preventive Medicine.

I am proud to join Dr. Hamrick and the Lloyd Noland Foundation in recognizing the achievements of Dr. William Roper, a distinguished Alabamian.

ENVIRONMENTAL BENEFITS OF METHANOL

Mr. PRESSLER. Mr. President, several months ago I made a statement on the need for continued research and incentives for the development of alternative energy sources, with a special emphasis on methanol. In that statement I emphasized the need to reduce dependence on oil. Today, I would like to draw the attention of my colleagues to the environmental benefits of an increased use of methanol as a fuel.

Anyone who walks down a busy street in a large city and smells the fumes of auto, truck, and bus exhaust will agree further action is necessary to reduce air pollution. There are visible signs of pollution, but most of the damage goes unnoticed. Gasoline vehicle emissions are composed of hydrocarbons which form photochemical oxidants, such as ozone. The use of methanol would significantly reduce the ozone levels in urban areas. Studies indicate that the ozone formation could be reduced by 50 percent if all vehicles were converted to methanol.

The reduction in pollution would be even greater if methanol would replace diesel fuel. Diesel engines emit high levels of particulate matter. Particulate matter emissions are virtually nonexistent in methanol engines. EPA standards for particulate matter emissions will be reduced by 1991. Since buses operating in stop and go traffic in urban areas are responsible for an estimated 50 percent of diesel particulate loads, switching to buses that use methanol would greatly reduce pollution in urban areas.

Several demonstration projects are currently underway testing the use of methanol in buses. One of the primary stumbling blocks to widespread use of methanol is the lack of a distribution system. You cannot pull into any gas station and purchase methanol. Since buses get their fuel at a central location, the distribution system is not a problem. We must continue to encourage local public transit authorities to purchase methanol buses. The widespread use of methanol buses would have great environmental benefits and would be an important first step in increasing methanol use.

Mr. President, the development and use of alternative fuels such as methanol would not only reduce our dependence on foreign oil, but also have significant environmental benefits. I urge my colleagues to join in supporting the expanded usage of this alternative fuel.

LYMAN-JONES AND WEST RIVER RURAL WATER PROJECT

Mr. PRESSLER. Mr. President, last year I introduced legislation authorizing construction of the Lyman-Jones and West River rural water project in western South Dakota.

In August, the Senate Water and Power Subcommittee of the Energy and Natural Resources Committee held a field hearing in Kadoka, SD. Several hundred residents attended the hearing and voiced their unanimous support for the project. Two Indian tribes in the area have expressed their desire to be included in the project. All of the major environmental organizations have expressed their support for the project. The support for this project is very impressive. Unfortunately, time has run out for consideration of this important legislation during this session of Congress. When the Senate reconvenes next year I will reintroduce this legislation and continue to aggressively work for its enactment.

On several occasions I have taken the Senate floor to discuss the great need to develop the Lyman-Jones and West River rural water project. The project would provide good quality Missouri River water to a large area in western South Dakota. The ground water in this area does not meet Environmental Protection Agency standards, is very expensive to pump from the ground and of limited quantities. Western South Dakota is a large tourist area with the Black Hills, Badlands, and numerous other attractions. Most people traveling to these areas must travel through the area to be served by this project. Currently service station owners and others must post warning signs on water faucets. Travelers who drink the water in the area often suffer health problems. Residents of the area also suffer health problems as a result of the water quality.

The project has such overwhelming support because residents in the area have no alternative source of water. These people have worked for over 25 years to develop this project. Over 90 percent of the residents and all of the communities in the region have paid signup fees to receive water from the project. The local residents are willing to pay for the project, but due to the sparse population, Federal assistance is needed to construct the project.

In conclusion, I would like to thank Senator MURKOWSKI and Senator WALLOP for their work scheduling and chairing the field hearing on this project. The project has made great strides in the last 2 years. Next year I will reintroduce this bill and will continue to work for its adoption.

THE 100TH BIRTHDAY OF CHIANG KAI-SHEK

Mrs. HAWKINS. Mr. President, on October 31, 1986, the people of the Republic of China will celebrate the 100th birthday of one of China's greatest leaders, Chiang Kai-shek. Throughout the world the legacy of Chiang Kai-shek lives on, and nowhere are his dreams and aspirations more alive than on the industrious little island of Taiwan.

Chiang Kai-shek was a heroic soldier and a great statesman. He worked hard to ensure that the true Chinese spirit of hard work and industriousness would survive even in the wake of a Communist China. To that end he worked very hard to ensure the security of the little island of Taiwan. Today the Republic of China is a radiant example of free enterprise at its best.

We here in the Senate must not forget the independent Republic of China, we must not forget Generalissimo Chiang Kai-shek's contributions to World War II, but most of all we must never forget the fiery independence that Chiang Kai-shek demanded for the people of China against the overwhelming odds of communism.

Chiang Kai-shek was a great patriot in the American sense and an ardent foe of communism. He died in 1975 after having fostered the triumph of the Republic of China. We must keep his dream alive for it is only an ironic twist of fate that we fail to maintain diplomatic relations with a true friend of democracy and economic prosperity. I salute Chiang Kai-shek and the people of the Republic of China on their centennial celebration.

NATIONAL URBAN POLICY REPORT—MESSAGE FROM THE PRESIDENT—PM 178

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Pursuant to the National Urban Policy and New Community Development Act of 1970 (42 U.S.C. 4503), I transmit herewith the fifth biennial National Urban Policy Report.

RONALD REAGAN.

THE WHITE HOUSE, *October 2, 1986.*

PRESIDENTIAL APPROVALS

A message from the President of the United States announced that he had approved and signed the following enrolled bills and joint resolutions:

On September 25, 1986:

S. 98. An act for the relief of Cirilo Raagas Costa and Wilma Raagas Costa.

S. 720. An act to establish a permanent boundary for the Acadia National Park in the State of Maine, and for other purposes.

S.J. Res. 196. Joint resolution designating September 22, 1986, as "American Business Women's Day".

S.J. Res. 357. Joint resolution to designate the week of September 15, 1986, through September 21, 1986, as "National Historically Black Colleges Week".

On September 30, 1986:

S. 290. An act for the relief of Catherine and Robert Fossez.

S. 1963. An act to direct the Secretary of the Interior to convey certain interests in land in Socorro County, New Mexico, to the New Mexico Institute of Mining and Technology.

S. 2095. An act to reauthorize the Tribally Controlled Community College Assistance Act of 1978 and the Navajo Community College Act.

S. 2888. An act to temporarily delay the repeal of the United States Trustee System.

S.J. Res. 353. Joint resolution to provide for the extension of certain programs relating to housing and community development, and for other purposes.

S.J. Res. 415. Joint resolution to provide for a settlement to the Maine Central Railroad Company and Portland Terminal Company labor-management dispute.

MESSAGES FROM THE HOUSE

At 9:58 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the amendment of the House to the text of the bill (S. 2069) to amend the Job Training Partnership Act.

The message also announced that the House agrees to the amendments of the Senate to the joint resolution (H.J. Res. 686) to designate August 12, 1986, as "National Civil Rights Day".

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 5073) to amend the Toxic Substances Control Act to require the Environmental Protection Agency to promulgate regulations requiring inspection for asbestos-containing material in the Nation's schools, development of asbestos management plans for such schools, response actions with respect to friable asbestos-containing material in such schools, and for other purposes; with an amendment, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the joint resolution (S.J. Res. 308) designating March 25, 1986, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy"; with amendments, in which it requests the concurrence of the Senate.

The message further announced that the House has passed the following bill and joint resolutions, without amendment:

S. 2884. An act to amend the Fair Labor Standards Act of 1938 to require that wages based on individual productivity be paid to handicapped workers employed under certificates issued by the Secretary of Labor;

S.J. Res. 245. Joint resolution designating "National Epidermolysis Bullosa Awareness Week";

S.J. Res. 280. Joint resolution designating the month of November 1986 as "National Alzheimer's Disease Month";

S.J. Res. 318. Joint resolution designating November 1986, as "National Diabetes Month";

S.J. Res. 368. Joint resolution to designate the month of October 1986, as "National Spina Bifida Month";

S.J. Res. 385. Joint resolution to designate October 23, 1986, as "National Hungarian Freedom Fighters Day";

S.J. Res. 390. Joint resolution to authorize and request the President to proclaim the week of November 23, 1986, to November 30, 1986, as "American Indian Week"; and

S.J. Res. 406. Joint resolution to designate October 4, 1986, as "National Outreach to the Rural Disabled Day".

The message also announced that the House has passed the following bill and joint resolution, in which it requests the concurrence of the Senate:

H.R. 3415. An act to authorize the minting of coins in commemoration of the bicentennial of the United States Constitution;

H.J. Res. 438. Joint resolution to designate October 31, 1986, as "National Child Identification and Safety Information Day";

H.J. Res. 555. Joint resolution to designate the week beginning November 24, 1986, as "National Family Caregivers Week";

H.J. Res. 635. Joint resolution to designate the school year of September 1986 through May 1987 as "National Year of the Teacher" and January 28, 1987, as "National Teacher Appreciation Day";

H.J. Res. 671. Joint resolution designating 1987 as the "Year of the Reader";

H.J. Res. 735. Joint resolution to designate December 11, 1986, as "National SEEK and College Discovery Day"; and

H.J. Res. 741. Joint resolution to designate March 1987, as "Development Disabilities Awareness Month".

ENROLLED BILLS SIGNED

At 10:40 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2183. An act to amend title 28 of the United States Code to make certain changes with respect to the participation of judges of the Court of International Trade in Judicial Conferences, and for other purposes;

H.R. 2721. An act to amend title 13, United States Code, to require the collection of statistics on domestic apparel and textile industries;

H.R. 2971. An act granting the consent of the Congress to the amendments of the Susquehanna River Basin Compact; and

H.R. 4588. An act to authorize appropriations for the Administrative Conference of the United States, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. THURMOND).

At 6:22 p.m., a message from the House of Representatives, delivered by Mr. Allen, one of its clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4759) to authorize appropriations for intelligence and intelligence-related activities of the U.S. Government the Intelligence Community Staff, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5316) to amend title 28 of the United States Code to provide for the appointment of additional bankruptcy judges, to provide for the appointment of U.S. trustees to serve in bankruptcy cases in judicial districts throughout the United States, to make certain changes with respect to the role of U.S. trustees in such cases, and for other purposes.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5548) to amend the Export-Import Bank Act of 1945.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (H.R. 426) to amend the Federal Power Act to provide for more protection to electric consumers.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 4952) to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5353. An act to provide for a land exchange in Alaska.

At 7:25 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4021) to extend and improve the Rehabilitation Act of 1973.

The message also announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4116) to extend and improve the Domestic Volunteer Service Act of 1973.

The message further announced that the House disagrees to the amendment of the Senate to the bill (H.R. 3129) to authorize funds for construction of highways, for highway safety programs, and for mass transportation programs, to expand and improve the relocation assistance program, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints the following as managers of the conference on the part of the House:

For consideration of all provisions except title V of the House bill and title IV of the Senate amendment: Mr. Howard, Mr. Anderson, Mr. Edgar, Mr. Snyder, and Mr. Shuster.

As exclusive conferees, for consideration of title V of the House bill and title IV of the Senate amendment: Mr. Rostenkowski, Mr. Pickle, Mr. Jenkins, Mr. Guarini, Mr. Matsui, Mr. Anthony, Mr. Flippo, Mr. Duncan, Mr. Frenzel, Mr. Schulze, and Mr. Thomas of California.

As additional conferees for consideration of section 155 of the Senate amendment and modifications committed to conference: Mr. Hawkins, Mr. Murphy, and Mr. Jeffords.

The message also announced that pursuant to section 501(a) of Public Law 99-205, the Speaker appoints Mr. Evans of Iowa as a member of the National Commission on Agricultural Finance; and the following are appointed as members from private life: Mr. James A. McCarthy, of Rio Hondo, TX, Mr. John R. Brake, of Ithaca, NY, and Mr. Sanford A. Belden, of Plymouth, MN.

The message further announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 235. An act to authorize the establishment of the Jimmy Carter National Historic Site in the State of Georgia, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 400. A concurrent resolution to direct the Clerk of the House of Representatives to make correction; and

H. Con. Res. 401. A concurrent resolution to correct technical errors in the enrollment of the bill S. 2069.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message further announced that the Speaker has signed the following enrolled bills and joint resolutions:

H.R. 4217. An act to provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolikot Dam, and for other purposes;

H.R. 5480. An act to extend the expiration date of the Defense Production Act of 1950 and to authorize appropriations for purposes of such Act;

S.J. Res. 245. Joint resolution designating "National Epidermolysis Bullosa Awareness Week";

S.J. Res. 318. Joint resolution designating November 1986 as "National Diabetes Month";

S.J. Res. 368. Joint resolution to designate the month of October 1986 as "National Spina Bifida Month"; and

S.J. Res. 390. Joint resolution to authorize and request the week of November 23, 1986, to November 30, 1986, as "American Indian Week."

MEASURES PLACED ON THE CALENDAR

The following joint resolutions were read the first and second times by unanimous consent, and placed on the calendar:

H.J. Res. 555. Joint resolution to designate the week beginning November 24, 1986, as "National Family Caregivers Week"; and

H.J. Res 741. Joint resolution to desginate March 1987, as "Developmental Disabilities Awareness Month."

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3792. A communication from the Secretary of the Army and the Secretary of Agriculture, jointly transmitting, pursuant to law, notice of the intention of the Departments of the Army and Agriculture to interchange jurisdiction of civil works and Forest System acquired lands at Patoka Lake, Indiana; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3793. A communication from the Assistant Secretary of the Navy (Shipbuilding and Logistics), transmitting, pursuant to law, the third supplement to the Environmental Impact Statement and Supplemental Information Report on the St. Mary's Entrance channel for the Fleet Ballistic Missile Submarine Support Base at Kings Bay, Georgia; to the Committee on Appropriations.

EC-3794. A communication from the Deputy Assistant Secretary of Defense (Administration), transmitting, pursuant to law, notice of the intention of the Department of the Navy to exercise provisions of law concerning the examination of records by the Comptroller General; to the Committee on Armed Services.

EC-3795. A communication from the Assistant Secretary of Defense (Health Affairs), transmitting, pursuant to law, a review of the special pays for military health professionals for the period July 1, 1984 to June 30, 1986; to the Committee on Armed Services.

EC-3796. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "ICBM Modernization: Status, Survivable Basing Issues, and Need to Reestablish a National Concensus"; to the Committee on Armed Services.

EC-3797. A communication from the Chairman of the Federal Deposit Insurance Corporation, transmitting, pursuant to law, the annual report of the Corporation for calendar year 1985; to the Committee on Banking, Housing, and Urban Affairs.

EC-3798. A communication from the Assistant Administrator for Legislative Affairs, National Aeronautics and Space Administration, transmitting, pursuant to law, a report on the implementation status of certain budget recommendations affecting NASA; to the Committee on Commerce, Science, and Transportation.

EC-3799. A communication from the Secretary of the Interstate Commerce Commission, transmitting, pursuant to law, notice of the extension of time for rendering a decision on Classification Ratings on Chemicals, Conrail, April 30, 1986; to the Committee on Commerce, Science, and Transportation.

EC-3800. A communication from the Administrator of the Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the revised National Airspace System Plan; to the Committee on Commerce, Science, and Transportation.

EC-3801. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, a report on the proposed use of certain NASA funds; to the Committee on Commerce, Science, and Transportation.

EC-3802. A communication from the Secretary of Transportation, transmitting, pursuant to law, the annual report on the status of the Public Ports of the United States for calendar year 1985; to the Committee on Commerce, Science, and Transportation.

EC-3803. A communication from the Deputy Associate Director for Royalty Management, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3804. A communication from the Deputy Associate Director for Royalty Management, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of certain overpayments of offshore lease revenues; to the Committee on Energy and Natural Resources.

EC-3805. A communication from the Acting Assistant Attorney General (Antitrust Division), transmitting, pursuant to law, the report of the Department of Justice under the Federal Coal Leasing Amendments; to the Committee on Energy and Natural Resources.

EC-3806. A communication from the Chairman of the United States International Trade Commission, transmitting, pursuant to law, the forty-seventh quarterly report on trade between the United States and the nonmarket economy countries; to the Committee on Finance.

EC-3807. A communication from the Chairman of the United States International Trade Commission, transmitting, pursuant to law, the first annual report on the impact of the Caribbean Basin Economic Recovery Act on United States industries and consumers; to the Committee on Finance.

EC-3808. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on the administration, impact, and cost of the Utilization and Quality Control Peer Review Organization Program for fiscal year 1985; to the Committee on Finance.

EC-3809. A communication from the Secretary to the Railroad Retirement Board, transmitting, pursuant to law, a report on five new Privacy Act systems of records; to the Committee on Governmental Affairs.

EC-3810. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Review of Competitive Sealed Proposal No. JA/86363 Residential Treatment for Youth in Need of Substance Abuse Rehabilitation"; to the Committee on Governmental Affairs.

EC-3811. A communication from the Director of Personnel, Farm Credit Banks of St. Louis, transmitting, pursuant to law, the pension plan report for the Sixth Farm Credit District Retirement Plan for plan year ended December 31, 1985; to the Committee on Governmental Affairs.

EC-3812. A communication from the Acting Under Secretary of Agriculture (Small Community and Rural Development), transmitting, pursuant to law, a report on changes to an existing Privacy Act system of records; to the Committee on Governmental Affairs.

EC-3813. A communication from the Assistant Secretary of State (Legislative and Intergovernmental Affairs), transmitting, pursuant to law, a copy of a Secretarial determination regarding application of Section 5 of the Fishermen's Protection Act; to the Committee on Foreign Relations.

EC-3814. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "Follow-up Review of Request for Proposal No. JA/86040 To Conduct a Comprehensive School-Based Substance Abuse and Prevention Program in the D.C. Public School System"; to the Committee on Governmental Affairs.

EC-3815. A communication from the Chief Justice of the United States, transmitting, pursuant to law, notice that the Court will begin its October 1986 term on October 6, 1986; to the Committee on the Judiciary.

EC-3816. A communication from the chief Immigration Judge, Executive Office for Immigration Review, Department of Justice, transmitting, pursuant to law, a report on the suspension of deportation of certain aliens pursuant to sections 244(a)(1) and 244(a)(2) of the Immigration and Nationality Act; to the Committee on the Judiciary.

EC-3817. A communication from the Secretary of Labor, transmitting a draft of proposed legislation to authorize the Secretary of Labor to accept and utilize gifts, and for other purposes; to the Committee on Labor and Human Resources.

EC-3818. A communication from the Administrator of Veterans' Administration, transmitting, pursuant to law, a report on a delay in a previously reported administrative reorganization; to the Committee on Veterans' Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-885. A concurrent resolution adopted by the Legislature of the State of Texas; to the Committee on Finance.

"SENATE CONCURRENT RESOLUTION

"Whereas, Local businesses pay property taxes to support local schools and city and county governments; and

"Whereas, Local businesses employ thousands of Texans who in turn pay local property taxes; and

"Whereas, Local businesses are required by state law to collect and remit the state sales tax to the State of Texas; and

"Whereas, Large national, out-of-state mail order companies who sell products to Texas residents in direct competition with local businesses are not required to collect and remit the Texas sales tax; and

"Whereas, These large out-of-state mail order companies take more than $3 billion out of the Texas economy each year and in return give nothing toward the support of Texas's local and state institutions or toward the Texas economy; and

"Whereas, The fact that these out-of-state firms do not collect and remit the State sales tax gives them an automatic, competitive advantage over Texas businesses, allowing them to charge less for the same goods sold by local Texas businesses; and

"Whereas, This unfair advantage results in lost sales by Texas businesses and, in turn, in lost jobs among their workers; and

"Whereas, The State of Texas will lose more than $100 milion per year in potential sales tax revenue as long as these out-of-state businesses remain exempt from having to collect and remit the state sales tax; and

"Whereas, The unfair competitive advantage out-of-state mail order firms have over local Texas businesses is solely the result of a 1967 ruling by the United States Supreme Court; and

"Whereas, The Supreme Court has acknowledged that the Congress of the United States has the full power to overturn this ruling and require these firms to collect and remit the state sales tax; and

"Whereas, Overturning this ruling would restore the competitive balance between Texas businesses and out-of-state firms; and

"Whereas, The passage of the necessary law by the congress would greatly aid the State of Texas in meeting its current fiscal needs; and

"Whereas, Actions by the congress have reduced federal aid to the State of Texas, creating additional fiscal pressure upon the state; and

"Whereas, United States Representative Jack Brooks of Texas has introduced H.R. 5021 which would overturn the 19-year-old court ruling and thereby restore the competitive balance between out-of-state and Texas businesses; and

"Whereas, The passage of this legislation would not reduce federal revenues by a single penny but might partially offset some of the effects of reduced aid to the state; now, therefore, be it

"*Resolved,* That the 69th Legislature of the State of Texas, 2nd Called Session, request that the Congress of the United States enact H.R. 5021 by Brooks during the current session of the congress; and, be it further

"*Resolved,* that the 69th Legislature of the State of Texas, 2nd Called Session, call upon all members of the congress from Texas to actively support and work for the prompt passage of this legislation; and, be it further

"*Resolved,* That the secretary of state forward official copies of this resolution to the President of the United States, to the Speaker of the House of Representatives and the President of the Senate of the United States, and to all members of the Texas delegation to the congress, with the request that it be entered in the congressional Record as a memorial to the congress of the United States."

POM-886. A resolution adopted by the City Council of Blue Ash, Ohio regarding a city-wide effort to eliminate drug abuse; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. McCLURE, from the Committee on Energy and Natural Resources, with amendments:

S. 1687. A bill to develop a national policy for the utilization of fuel cell technology (Rept. No. 99-515).

By Mr. MATHIAS, from the Committee on Rules and Administration, without amendment:

S. 2448. A bill to repeal P.L. 87-186 relating to the National Armed Forces Museum Advisory Board of the Smithsonian Institution (Rept. No. 99-516).

S.J. Res. 268. Joint resolution to provide for the reappointment of Murray Gell-Mann as citizen regent of the Board of Regents of the Smithsonian Institution (Rept. No. 99-517).

By Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2708. A bill to authorize certain atmospheric and satellite programs and functions of the National Oceanic and Atmospheric Administration, and for other purposes (Rept. No. 99-518).

By Mr. LUGAR, from the Committee on Foreign Relations, with an amendment:

S. 1828. A bill to implement the Inter-American Convention on International Commercial Arbitration (Rept. No. 99-519).

By Mr. PACKWOOD, from the Committee on Finance, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 1868. A bill to amend the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions of that Act (Rept. No. 99-520).

By Mr. ROTH, from the Committee on Governmental Affairs, without amendment:

H.R. 2436. An act to establish a coordinated National Nutrition Monitoring and Related Research Program, and a comprehensive plan for the assessment of the nutritional and dietary status of the United States population and the nutritional quality of the United States food supply, with provision for the conduct of scientific research and development in support of such program and plan (Rept. No. 99-521).

By Mr. THURMOND, from the Committee on the Judiciary, without amendment:

H.R. 439. A bill to amend title 28, United States Code, to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order.

H.R. 897. A bill to recognize the Army and Navy Union of the United States of America.

By Mr. STAFFORD, from the Committee on Environment and Public Works, without amendment:

H.R. 2403. A bill to require that public buildings constructed or altered under the Public Buildings Act of 1959 comply, to the maximum extent feasible, with nationally recognized model codes and with local zoning laws and certain other laws.

By Mr. THURMOND, from the Committee on the Judiciary, without amendment and with a preamble:

H.J. Res. 588. Joint resolution commemorating January 28, 1987 as a National Day of Excellence in honor of the crew of the space shuttle Challenger.

H.J. Res. 617. Joint resolution to designate the week beginning September 21, 1986, as "National Adult Day Care Center Week".

H.J. Res. 678. Joint resolution to designate October 1986 as "Crack/Cocaine Awareness Month".

By Mr. THURMOND, from the Committee on the Judiciary, with an amendment in the nature of a substitute and an amendment to the title and an amended preamble:

S. Res. 436. Resolution to recognize Mr. Eugene Lang for his contributions to the education and the lives of disadvantaged young people.

By Mr. MATHIAS, from the Committee on Rules and Administration, without amendment:

S. Res. 499. An original resolution to pay a gratuity to Majorie A. Pattison.

S. Res. 500. An original resolution managing the expenditure of funds for Senate official mail during fiscal year 1987.

By Mr. STAFFORD, from the Committee on Environment and Public Works, without amendment:

S. 511. A bill to change the name of the Loxahatchee National Wildlife Refuge, Florida, to the Arthur R. Marshall Loxahatchee National Wildlife Refuge.

By Mr. THURMOND, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1853. A bill to amend the Court Interpreters Act of 1978.

By Mr. THURMOND, from the Committee on the Judiciary, without amendment:

S. 2454. A bill to repeal section 1631 of the Department of Defense Authorization Act, 1985, relating to the liability of Government contractors for injuries or losses of property arising out of certain atomic weapons testing programs, and for other purposes.

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 2479. A bill to amend chapter 39 of title 31, United States Code, to require the Federal government to pay interest on overdue payments, and for other purposes.

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 2630. A bill to increase Government economy and efficiency and to reduce the deficit by implementing certain recommendations of the President's Private Sector Survey on Cost Control to strengthen the auditing of Department of Defense transportation bills, and for other purposes.

By Mr. ROTH, from the Committee on Governmental Affairs, without amendment:

S. 2887. A bill to amend chapter 35 of title 44, United States code, relating to the coordination of Federal information policy, and for other purposes.

By Mr. STAFFORD, from the Committee on Environment and Public Works, with amendments and an amendment to the title:

S. 2890. A bill to designate the United States Courthouse for the Eastern District of Virginia in Alexandria, Virginia, as the "Albert V. Bryan Federal Courthouse."

By Mr. THURMOND, from the Committee on the Judiciary, without amendment and with a preamble:

S.J. Res. 348. A joint resolution to designate the week beginning November 24, 1986, as "National Family Caregivers Week".

S.J. Res. 410. A joint resolution to designate the period commencing February 9, 1987, and ending February 15, 1987, as "National Burn Awareness Week".

S.J. Res. 414. A joint resolution to designate March 16, 1987, as "Freedom of Information Day".

S.J. Res. 417. A joint resolution designating the week of January 25 through January 31, 1987 as "National Productivity Improvement Week".

S.J. Res. 418. A joint resolution to designate February 4, 1987, as "National Women in Sports Day".

S. Con. Res. 130. A concurrent resolution to recognize the visit by the descendants of the original settlers of Purrysburg, South Carolina, to Neufchatel, Switzerland, in October 1986 as an international gesture of goodwill.

By Mr. THURMOND, from the Committee on the Judiciary; without amendment:

H.R. 1598. An act for the relief of Steven McKenna.

RELIEF OF STEVEN MC KENNA—H.R. 1598

Mr. THURMOND. The intention of the committee in reporting this bill is to allow Steven M. McKenna to bring an action under the Federal Tort Claims Act despite the time limitations and exception provided in 28 U.S.C. section 2680(k), which would otherwise apply in the absence of the bill. In addition, the limitation provided in 28 U.S.C. 1402(b) is not applicable to the extent provided in the bill. With these exceptions, the requirements and limitations of the Federal Tort Claims Act will remain applicable.

Is my understanding correct?

Mr. METZENBAUM. As you know, I introduced in the Senate a bill virtually identical to the House measure we are now considering. Your understanding of the intention of the sponsor of the bill and the committee in reporting it favorably is correct.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary:

Patrick J. Duggan, of Michigan, to be United States District Judge for the Eastern District of Michigan;

Douglas H. Ginsburg, of the District of Columbia, to be United States Circuit Judge for the District of Columbia Circuit;

Alex T. Howard, Jr., of Alabama, to be United States District Judge for the Southern District of Alabama;

Joseph F. Anderson, Jr., of South Carolina, to be United States District Judge for the District of South Carolina;

Bruce M. Seyla, of Rhode Island, to be United States Circuit Judge for the First Circuit;

James R. Spencer, of Virginia, to be United States District Judge for the Eastern District of Virginia;

John Paul Wiese, of Virginia, to be a Judge of the United States Claims Court for a term of fifteen years;

Robert L. Barr, Jr., of Georgia, to be United States Attorney for the Northern District of Georgia;

J. William Roberts, of Illinois, to be United States Attorney for the Central District of Illinois for the term of four years;

George L. McBane, of North Carolina, to be United States Marshal for the Middle District of North Carolina for the term of four years;

Donald Ray Melton, of Arkansas, to be United States Marshal for the Eastern District of Arkansas for the term of four years;

George MacKenzie Rast, of Florida, to be a Commissioner of the United States Parole Commission for a term of six years; and

John L. Napier, of South Carolina, to be a Judge of the United States Claims Court for a term of fifteen years, vice Kenneth R. Harkins, term expired.

By Mr. ROTH, from the Committee on Governmental Affairs.

John W. Melchner, of Maryland, to be Inspector General, Department of Transportation.

(The above nomination was reported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. GARN, from the Committee on Banking, Housing, and Urban Affairs:

Simon C. Fireman, of Massachusetts, to be a member of the Board of Directors of the Export-Import Bank of the United States for the remainder of the term expiring January 20, 1987;

Thomas T. Demery, of Michigan, to be an Assistant Secretary of Housing and Urban Development; and

Fred E. Hummel, of California, to be a member of the Board of Directors of the National Institute of Building Sciences for a term expiring September 7, 1989.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. ROTH, from the Committee on Governmental Affairs:

Henry Bowen Frazier III, of Virginia, to be a member of the Federal Labor Relations Authority for a term of five years expiring July 1, 1990;

Robert P. Bedell, of Virginia, to be Administrator for Federal Procurement Policy; and

John N. Griesemer, of Missouri, to be a Governor of the United States Postal Service for the term expiring December 8, 1995.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. STAFFORD, from the Committee on Environment and Public Works:

Vaun A. Newill, of New Jersey, to be an Assistant Administrator of the Environmental Protection Agency.

(The above nomination was repported with the recommendation that it be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. GOLDWATER, from the Committee on Armed Services:

The following-named officer to be placed on the retired list in grade indicated under the provisions of Title 10, United States Code, Section 1370:

To be general

Gen. Fred K. Mahaffey, [redacted], (Age 52), United States Army.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MATHIAS, from the Committee on Rules and Administration:

S. Res. 499. An original resolution to pay a gratuity to Majorie A. Pattison; placed on the calendar.

By Mr. MATHIAS:

S. Res. 500. An original resolution managing the expenditure of funds for Senate official mail during fiscal year 1987; placed on the calendar.

ADDITIONAL COSPONSORS

S. 961

At the request of Mr. Sarbanes, the name of the Senator from Ohio [Mr. Glenn] was added as a cosponsor of S. 961, a bill to authorize the Alpha Phi Alpha Fraternity to establish a memorial to Martin Luther King, Jr., in the District of Columbia.

S. 2451

At the request of Mr. Melcher, the name of the Senator from Georgia [Mr. Nunn] was added as a cosponsor of S. 2451, a bill to provide for entry into the United States of sugar only from friendly developing countries, to provide for entry of sugar from the Philippines on at least as favorable terms as sugar from any other country, and for other purposes.

S. 2454

At the request of Mr. D'Amato, his name was added as a cosponsor of S. 2454, a bill to repeal section 1631 of the Department of Defense Authorization Act, 1985, relating to the liability of Government contractors for injuries or losses of property arising out of certain atomic weapons testing programs, and for other purposes.

S. 2479

At the request of Mr. Trible, the name of the Senator from Delaware [Mr. Roth] was added as a cosponsor of S. 2479, a bill to amend chapter 39 of title 31, United States Code, to require the Federal Government to pay interest on overdue payments, and for other purposes.

S. 2545

At the request of Mr. Cranston, the name of the Senator from Tennessee [Mr. Gore] was added as a cosponsor of S. 2545, a bill to place a moratorium on the relocation of Navajo and Hopi Indians under Public Law 93-531, and for other puproses.

S. 2755

At the request of Mr. Byrd, the name of the Senator from Ohio [Mr. Glenn] was added as a cosponsor of S. 2755, a bill to amend section 232 of the Trade Expansion Act of 1962 to improve its administration, and for other purposes.

S. 2778

At the request of Mr. Zorinsky, the name of the Senator from Nebraska [Mr. Exon] was added as a cosponsor of S. 2778, a bill to reinstate the originally authorized lost sharing rules of the Missouri National Recreation River.

S. 2795

At the request of Mr. Bumpers, the name of the Senator from Missouri [Mr. Eagleton] was added as a cosponsor of S. 2795, a bill to improve agricultural price support for the 1987 through 1990 crops, and for other purposes.

S. 2872

At the request of Mrs. Kassebaum, the name of the Senator from Tennessee [Mr. Gore] was added as a cosponsor of S. 2872, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit applicants to file abbreviated applications for registration of pesticides or new uses of pesticides under certain circumstances, and for other purposes.

SENATE JOINT RESOLUTION 112

At the request of Mr. Pell, the name of the Senator from Arizona [Mr. Goldwater] was added as a cosponsor of Senate Joint Resolution 112, a joint resolution to authorize and request the President to call a White House Conference on Library and Information Services to be held not later than 1989, and for other purposes.

SENATE JOINT RESOLUTION 352

At the request of Mr. D'Amato, his name was added as a cosponsor of Senate Joint Resolution 352, a joint resolution to designate the week beginning September 7, 1986, as "Gaucher's Disease Awareness Week."

SENATE JOINT RESOLUTION 402

At the request of Mr. Lugar, the names of the Senator from Nebraska [Mr. Exon], and the Senator from Illinois [Mr. Dixon] were added as cosponsors of Senate Joint Resolution 402, a joint resolution designating July 2 and 3, 1987, as the "United States-Canada Days of Peace and Friendship."

SENATE JOINT RESOLUTION 404

At the request of Mr. Simon, the name of the Senator from Ohio [Mr. Glenn] was added as a cosponsor of Senate Joint Resolution 404, a joint resolution to designate October 1986 as "Polish American Heritage Month."

SENATE JOINT RESOLUTION 411

At the request of Mr. Murkowski, the name of the Senator from California [Mr. Cranston] was added as a cosponsor of Senate Joint Resolution 411, a joint resolution to provide for the designation of April 9, 1987, as "National Former Prisoner of War Recognition Day."

SENATE JOINT RESOLUTION 419

At the request of Mr. Moynihan, the names of the Senator from Rhode Island [Mr. Pell], the Senator from Maine [Mr. Mitchell], the Senator from Massachusetts [Mr. Kennedy], the Senator from Massachusetts [Mr. Kerry], the Senator from South Carolina [Mr. Hollings], and the Senator from Florida [Mr. Chiles] were added as cosponsors of Senate Joint Resolution 419, a joint resolution to designate December 11, 1986, as "National SEEK and College Discovery Day."

SENATE JOINT RESOLUTION 420

At the request of Mr. Goldwater, the names of the Senator from Georgia [Mr. Mattingly], and the Senator from Nevada [Mr. Hecht] were added as cosponsors of Senate Joint Resolution 420, a joint resolution relating to the commemoration of January 28, 1987, as a "National Day of Excellence."

SENATE CONCURRENT RESOLUTION 130

At the request of Mr. Hollings, the name of the Senator from Alaska [Mr. Stevens] was added as a cosponsor of Senate Concurrent Resolution 130, a concurrent resolution to recognize the visit by the descendants of the original settlers of Purrysburg, SC, to Neufchatel, Switzerland, in October 1986 as an international gesture of good will.

AMENDMENT NO. 3105

At the request of Mr. Simon, the names of the Senator from Connecticut [Mr. Dodd], the Senator from Massachusetts [Mr. Kerry], and the Senator from Arkansas [Mr. Pryor] were added as cosponsors of amendment No. 3105 proposed to House Joint Resolution 738, a joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

At the request of Mr. Bingaman, his name was added as a cosponsor of amendment No. 3105 proposed to House Joint Resolution 738, supra.

At the request of Mr. Boren, his name was added as a cosponsor of amendent No. 3105 proposed to House Joint Resolution 738, supra.

SENATE RESOLUTION 499—ORIGINAL RESOLUTION REPORTED TO PAY A GRATUITY OF MARJORIE A. PATTISON

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar:

S. Res. 499

Resolved, That the Secretary of the Senate hereby is authorized and directed to pay, from the contingent fund of the Senate, to Marjorie A. Pattison, widow of Thomas R. Pattison, an employee of the Senate at the time of this death, a sum to equal 1 year's compensation at the position gross rate he was receiving by law at the time of his death, said sum to be considered inclusive of funeral expenses and all other allowances.

SENATE RESOLUTION 500—ORIGINAL RESOLUTION REPORTED RELATING TO SENATE OFFICIAL MAIL EXPENDITURES

Mr. MATHIAS, from the Committee on Rules and Administration, reported the following original resolution; which was placed on the calendar:

S. Res. 500

Resolved, That for purposes of this resolution—

(1) the term "franked mail" has the meaning given to such term by section 3201(4) of title 39, United States Code;

(2) the term "mass-mailing" is a mass mailing (as defined in section 3210(a)(6)(E) of such title) which is to be mailed as franked mail; and

(3) the term "official mail costs" means the equivalent of—

(A) postage on, and fees and charges in connection with, mail matter sent through the mail under the franking privilege; and

(B) those portions of the fees and charges to be paid for handling and delivery by the Postal Service of Mailgrams considered as franked mail under section 3219 of such title.

(4) the term "Senate office" means the Vice President of the United States, a United States Senator, a United States Senator-elect, a committee of the Senate, the Joint Committee on Printing, the Joint Economic Committee, an officer of the Senate, or an office of the Senate authorized by section 3210(b)(1) of title 39 of the United States Code to send franked mail.

Sec. 2. (a) Notwithstanding any provision of law or of the Standing Rules of the Senate, the total amount which may be incurred by a Senate office for official mail costs for fiscal year 1987 shall not exceed the amount allocated to such Senate office for such period by the Committee on Rules and Administration in accordance with this resolution.

(b) As soon as practicable after this resolution is agreed to, the Committee on Rules and Administration shall determine—

(1) The total amount to be allocated for official mail costs for the Senate, which shall be one-half of the total amount appropriated for official mail costs for the Senate and the House of Representatives for fiscal year 1987.

(2) The total amount necessary for official mail costs for FY87 for Senate offices other than Senators and Senators-elect.

(3) The total amount necessary for the official mail costs for Senators-elect for the period beginning on November 5, 1986, and ending on January 3, 1987, provided, however, that such amount shall not include amounts for unsolicited mass-mail.

(4) The total amount necessary for the official mail costs of newly-elected Senators for the period January 3, 1987 through September 30, 1987, provided, however, that such amount shall not exceed three-fourths of the amount that such Senators would receive for a full fiscal year.

(5) The total amount necessary for the official mail costs for Senators whose service as Senators will end on January 3, 1987 (except Senators whose retirement from the Senate was announced prior to October 1, 1986) for the period beginning on November 5, 1986, and ending on April 3, 1987, provided, however, that not more than one-sixth of the amount such Senators would receive for a full fiscal year shall be available for the period November 5, 1986, through January 3, 1987, and that no amounts shall be provided for unsolicited mass-mailings for the period January 3, 1987, through April 3, 1987.

(6) The total amount necessary for the official mail costs for Senators whose retirement from the Senate was announced prior to October 1, 1986, for the period October 1, 1986, and ending on April 3, 1987, provided, however, that not more than one-fourth of the amount such Senator would receive for the full fiscal year shall be available for the period October 1, 1986, through January 3, 1987, and that no amounts shall be provided for unsolicited mass-mailings for the period January 3, 1987, through April 3, 1987.

(7) The total amount necessary to be reserved for contingencies, which shall not exceed ten percent of the amount determined pursuant to paragraph A.

(8) The total amount available for allocation to Senators other than Senators whose terms of service as a Senator will begin or end on January 3, 1987, which shall be the amount determined pursuant to paragraph (1) minus the sum of the amounts determined pursuant to paragraphs (2) through (7).

(9) The allocation to a Senate officer (other than a Senator or a Senator-elect) for fiscal year 1987, which shall be an amount equal to the product of the amount determined pursuant to paragraph (2) multiplied by the ratio that the official funds provided to such office bears to the sum of the official funds provided to all such offices, except that for purposes of this paragraph the funds provided to the Sergeant at Arms shall be considered to be equal to one-half of the funds provided to the Secretary of the Senate and provided further that the official mail costs of the Joint Committee on the Library shall be charged to the amount allocated to the Committee on Rules and Administration.

(1) The allocation of a Senator-elect for official mail costs for that portion of fiscal year 1987 beginning on the date of the election of such Senator-elect and ending with the date such Senator-elect is appointed to the Senate, which shall be an amount equal to the product of the total amount determined pursuant to paragraph (3) multiplied by the ratio that the population of the State represented by the Senator-elect bears to the total population of States represented by Senators-elect.

(11)(A) Subject to the exception in subparagraph (B) of this paragraph, the allocation of a newly elected Senator for official mail costs for the period January 3, 1987, through September 30, 1987, which shall be an amount equal to the product of the total amount determined pursuant to paragraph (4), multiplied by the ratio that the population of the State represented by such Senator bears to the total population of the States represented by such Senators.

(B) Any Senator whose allocation pursuant to subparagraph (A) of this paragraph is less than $75,000 shall be granted such sums from the contingent fund provided for in section 2(b)(7) to bring such Senator's total allocation up to but not to exceed $75,000 upon request of such Senator to the Committee on Rules and Administration. Funds shall be withheld in the contingent fund during each fiscal year for the use of Senators referred to in this paragraph until each such Senator has indicated the total additional sums, if any, that will be needed by such Senator.

(12) The allocation of a Senator whose service as a Senator will end on January 3, 1987 (except a Senator who announced his retirement prior to October 1, 1986) for official mail costs for the period November 5, 1986, through April 3, 1987, which shall be an amount equal to the product of the total amount determined pursuant to paragraph (5), multiplied by the ratio that the population of the State represented by such Senator bears to the total population of the States represented by such Senators.

(13) The allocation of a Senator whose retirement from the Senate was announced prior to October 1, 1986, for official mail

costs for the period October 1, 1986, through April 3, 1987, which shall be an amount equal to the product of the total amount determined pursuant to paragraph (6), multiplied by the ratio that the population of the State represented by such Senator bears to the total population of the States represented by such Senators.

(14)(A) Subject to the exception to subparagrah of this paragraph, the allocation of a Senator whose term of service as a Senator does not begin or end on January 3, 1987, for official mail costs for fiscal year 1987, which shall be an amount equal to the product of the total amount determined pursuant to paragraph (8), multiplied by the ratio that the population of the State represented by such Senator bears to the total population of the States represented by such Senators.

(B) Any Senator whose allocation pursuant to subparagraph (A) of this paragraph is less than $100,000 shall be granted such sums from the contingent fund provided for in section 2(b)(7) to bring such Senator's total allocation up to but not to exceed $100,000 upon request of such Senator to the Committee on Rules and Administration. Funds shall be withheld in the contingent fund during each fiscal year for the use of Senators referred to in this paragraph until each such Senator has indicated the total additional sums, if any, that will be needed by such Senator.

(c) In determining official mail costs, and in making the allocations of Senate offices under this resolution, the Committee on Rules and Administration shall consult with the Postmaster General of the United States.

Sec. 3. The Senate urges the House of Representatives to limit the amounts which may be expended by Members of the House of Representatives, Delegates, Resident Commissioners, and committees, officers, and offices of the House of Representatives in a manner which is similar to the limitations on the expenditure of such amounts which are applicable to Senators during fiscal year 1987.

Sec. 4. The Committee on Rules and Administration shall prescribe a record keeping system to be used by Senate offices to ensure that the amounts allocated to such offices are not exceeded.

Sec. 5. The Committee on Rules and Administration shall prescribe a procedure whereby portions of an allocation made to a Senate office may be transferred to another Senate office, provided that each such transfer shall be approved by the Committee on Rules and Administration and that no Senate office shall acquire a total amount in excess of the amount that the office could use with the paper officially allotted to such office. The amount of each transfer together with the name of the transferring office, the name of the receiving office, and the date of the transfer shall be set forth in the semi-annual Report of the Secretary of the Senate, immediately following the tabulation of Senators' quarterly mass-mail costs.

Sec. 6. During the first session of the 100th Congress, the Committee on Rules and Administration shall study the feasibility of revising the manner in which funds for official mail costs are appropriated, expended, and accounted for and shall report its findings and recommendations to the Senate. Such study shall consider the feasibility of providing official mail funds to Senate offices as part of their official office expense accounts and the use of postage meters or other mail handling machinery to more accurately account for the postage costs of each Senate office. The Committee on Rules and Administration may employ consultants in conducting the study required by this section.

AMENDMENTS SUBMITTED

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

HOLLINGS (AND THURMOND) AMENDMENT NO. 3110.

Mr. HOLLINGS (for himself and Mr. Thurmond) proposed an amendment to the joint resolution (H.J. Res. 738) making continuing appropriations for the fiscal year 1987, and for other purposes; as follows:

At the appropriate place in the joint resolution, insert:

Sec. . The United States Courthouse located at 223 Park Avenue Southwest in Aiken, South Carolina, shall be known and designated as the "Charles E. Simons, Jr., Federal Courthouse". Any reference in any law, regulation, document, record, map, or other paper of the United States to such courthouse is deemed to be a reference to the "Charels E. Simons, Jr., Federal Courthouse".

GORTON AMENDMENT NO. 3111

Mr. GORTON proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the bill insert the following:

"The Administrator of the General Services Administration, under Section 210(h) of the Federal Property and Administrative Services Act of 1949, as amended, shall acquire, by means of a lease of up to 30 years duration, space for the U.S. Courts in Tacoma, Washington at the site of Union Station, Tacoma, Washington."

HOLLINGS (AND THURMOND) AMENDMENT NO. 3112

Mr. HOLLINGS (for himself and Mr. Thurmond) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

That, in order to provide for needed facilities for visitors to Fort Sumter National Monument, including a tour boat dock and associated facilities, and an interpretive and museum facility in cooperation with the State of South Carolina and the city of Charleston, the Secretary of the Interior (in this Act referred to as the "Secretary"), is authorized to acquire by purchase with donated or appropriated funds, donation, or exchange, not to exceed 8.91 acres of lands, including submerged lands, and interests in lands, within the area generally depicted on the map entitled "Dockside II, Proposed Site, Tourboat Facility," which map shall be on file and available for public inspection in the office of the National Park Service. When acquired, lands, including submerged lands and interests in lands, depicted on such map shall be administered by the Secretary as a part of Fort Sumter National Monument, subject to the laws and regulations applicable to such monument, and subject to the provisions of this Act.

Sec. 2. (a) With respect to the lands, including submerged lands, and interests in lands acquired pursuant to the first section of this Act, the Secretary is authorized—

(1) to convey, notwithstanding the provisions of section 5 of Public Law 90-400 (82 Stat. 356) and subject to the provisions of subsection (b), a leasehold interest in not to exceed one and a half acres to the State of South Carolina or the city of Charleston or either of them for development by either of them or their agents or lessees of a marine museum and associated administrative facilities;

(2) to grant covenants or easements for ingress, and egress to the State of South Carolina, the city of Charleston, and to other parties as the Secretary may deem necessary to facilitate public use; and

(3) to enter into cooperative agreements with the State of South Carolina, the city of Charleston, and other parties as the Secretary may deem necessary, pursuant to which construction, maintenance, and use of buildings, utilities, parking facilities, and other improvements may be shared among the parties to the agreement.

(b) Any conveyance made pursuant to subsection (a)(1) and any renewal thereof may be for a period of up to 50 years, and may include the option to purchase the property in fee by the lessee within the first 10 years, upon payment by the lessee of the cost of the property to the United States plus interest based on the average yield of United States Treasury notes with maturities of one year. The Secretary may convey title to the property in fee in the event such option to purchase is exercised, subject to the condition that the property is used for a public marine museum and associated administrative facilities. Notwithstanding any other provision of law, any leasehold interest conveyed pursuant to subsection (a)(1) shall be conveyed without monetary consideration. The proceeds from any conveyance of property in fee pursuant to subsection (a)(1) shall be deposited in the Land and Water Conservation Fund in the Treasury of the United States.

Sec. 3. Section 117 of Public Law 96-199 (94 Stat. 71) is hereby repealed.

Sec. 4. (a) Notwithstanding any other provision of law, sums heretofore appropriated but not, on the date of enactment of this Act, obligated for construction of a tourboat facility at the Broad Street site, and for the acquisition and construction of the Fleet landing site for Fort Sumter National Monument, which was authorized by section 117 of Public Law 96-199 (94 Stat. 71) are hereby made available for obligation for the acquisition of the land including submerged lands, and interests in lands identified in the first section of this Act and for construction of necessary facilities thereon, and to the extent that sums heretofore appropriated for land acquisition of the Fleet landing site are not sufficient to cover the cost of acquisition of the properties identified in the first section of this Act, sums heretofore appropriated for construction of facilities at the Broad Street site and the Fleet landing site may be obligated for the purposes of acquisition as authorized in the first section of this Act.

(b) In addition to the sums made available under subsection (a), there is authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

Sec. 5. The Secretary of the Interior shall transfer administrative jurisdiction over the

Federal property, consisting of approximately 1 acre, known as the Broad Street site, to the Secretary of the Department in which the Coast Guard is operating, who shall transfer to the Secretary of the Interior, subject to such reservations, terms, and conditions as may be necessary for Coast Guard purposes, administrative jurisdiction over the Federal property, consisting of approximately 1 acre located near Fort Moultrie on Sullivan's Island for purposes of maintenance workshop, storage, and seasonal housing in connection with the administration and protection of the Fort Sumter National Monument.

BYRD AMENDMENT NO. 3113

Mr. BYRD proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Notwithstanding any other provision of this joint resolution, of the amounts transferred under this joint resolution (as described in section 205 of H.R. 5052, as passed the Senate on August 13, 1986) for assistance to the Central American democracies in accordance with the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to the economic support fund), $200,000,000 shall be available only for the provision of such assistance for the Philippines provided that the funds allocated for the Philippines shall be in addition to amounts of such assistance otherwise available for that country.

KENNEDY (AND OTHERS) AMENDMENT NO. 3114

Mr. KENNEDY (for himself, Mr. Hatch, Mr. Inouye, Mr. Hollings, and Mr. Gore) proposed an amendment to the joint resolution H.J. Res. 738, supra; as follows:

On page 2, line 24, before the period insert a colon and the following:

Provided further, That not less than $31,729,477 of the funds appropriated for the Department of State under the heading entitled "International Organizations and Conferences Contributions to International Organizations" shall be available only for payment of United States contributions during the fiscal year 1987 to the Pan American Health Organization.

BINGAMAN (AND OTHERS) AMENDMENT NO. 3115

Mr. BINGAMAN (for himself, Mr. Dixon, Mr. Exon, Mr. Bumpers, and Mr. Harkin) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page four, line sixteen (16), before the period insert a colon and the following: "*Provided,* That section 551 of such bill shall not apply."

INOUYE AMENDMENT NO. 3116

Mr. INOUYE proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place, insert:

SEC. . The Secretary of Transportation shall approve the construction of Interstate Highway H-3 between the Halawa Interchange to, and including the Halekou Interchange (a distance of approximately 10.7 miles), and such construction shall proceed to completion notwithstanding section 138 of title 23 and section 303 of title 49, United States Code.

SEC. . Notwithstanding Section 102 of this Joint Resolution the provisions of Section shall constitute permanent law.

METZENBAUM AMENDMENT NO. 3117

Mr. METZENBAUM proposed an amendment, which was subsequently modified, to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the bill, insert the following:

Sec. . Notwithstanding any other provision of this joint resolution, H.R. 5162, the Energy and Water Development Appropriations Act, 1987, as reported by the Committee on Appropriations on September 15, 1986, is amended as follows:

On page 22, line 19, after the word "pay", insert "principal and"; and

On page 22, lines 22-23, strike "the ten year interest-free period provided by" and insert in lieu thereof "exception (1) and (2) of the last proviso of the first sentence of":

NICKLES (AND OTHERS) AMENDMENT NO. 3118

Mr. NICKLES (for himself, Mr. Boren, and Mr. Quayle) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the joint resolution insert the following new section:

SEC. .

(a) Prohibition of Contracting.—Neither the Secretary of Defense nor the Secretary of the Army may enter into a contract on or after the date of enactment of this joint resolution for the performance by contractor personnel of any functions performed by employees of the Department of Defense at the McAlester Army Ammunition Plant, McAlester, Oklahoma, or the Crane Army Ammunition Activity, Crane, Indiana.

(b) Exception.—The prohibition in subsection (a) does not apply to a contract (or the renewal of a contract) for the performance of a function that on the date of the enactment of this joint resolution is already under contract for performance by contractor personnel.

CHILES (AND OTHERS) AMENDMENT NO. 3119

Mr. CHILES (for himself, Mr. Leahy, Mr. Lugar, Mr. Pell, Mr. Johnston, Mr. Inouye, Mr. Durenberger, Mr. Byrd, Mr. Cohen, Mr. Specter, and Mr. Kerry) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the joint resolution add the following:

NEW MOSCOW EMBASSY OFFICE BUILDING

SEC. . Of the funds appropriated to the Department of State, Administration of Foreign Affairs, "Acquisition and Maintenance of Buildings Abroad" pursuant to this Joint Resolution, up to $1,000,000 shall be available for transfer under the Economy Act to the Director of the National Bureau of Standards for the purpose of conducting an independent analysis of the new United States embassy office building being constructed in Moscow: *Provided,* That a report including this analysis, an assessment of the current structure and recommendations and cost estimates for correcting any structural flaws or construction defects shall be transmitted by the Director of the National Bureau of Standards to the Speaker of House of Representatives and the Appropriations and Foreign Relations committees of the Senate no later than April 15, 1987: *Provided further,* That the Director of the National Bureau of Standards shall assemble a team of appropriately cleared personnel to undertake this analysis: *Provided further,* That no funds appropriated to the Department of State in this or any other Act may be obligated for construction of the new office building in Moscow, until 30 days after the receipt of the above report, except as necessary for preservation of existing structures and to conduct necessary inspections and prepare plans in connection with repair and renovation options: *Provided further,* That the obligation of funds for further construction of the new office building in Moscow shall be subject to appropriate reprogramming procedures: *Provided further,* That no funds may be disbursed to the Soviet Union or its entities for construction efforts associated with the new office building including, but not limited to, work performed, unless and until the Secretary of State transmits to the Speaker of the House of Representatives and the Appropriations and Foreign Relations committees of the Senate an assessment of the adequacy of such work and the extent of damages to the United States: *Provided further,* That the Director of the Office of Foreign Missions is directed to develop and submit to the Speaker of the House of Representatives and the Appropriations and Foreign Relations committees of the Senate by April 15, 1987, a plan to establish essential parity in the numbers and types of buildings held by the United States in Moscow and the Soviet Union in Washington, D.C., and this plan shall include provisions that the Soviet Union may only continue to utilize its present embassy location on 16th Street, N.W. in Washington, D.C. as long as the United States is allowed to utilize its present embassy location in Moscow: *Provided further,* That the Department of State will not allow contractor personnel employed by the Department of State to travel to the Soviet Union prior to receiving appropriate security clearance: *Provided further,* That beginning on February 1, 1987, the Director of the Office of Foreign Missions shall report every six months to the Speaker of the House of Representatives and the Appropriations and Foreign Relations committees of the Senate on any failures during the past six months by Soviet agencies to perform obligations to United States diplomats or United States missions to the Soviet Union and the actions undertaken by the Office of Foreign Missions to redress these failures: *Provided further,* That beginning on February 1, 1987 and every six months thereafter, the Secretary of State shall issue a report to the Speaker of the House of Representatives and the Appropriations and Foreign Relations committees of the Senate on the progress of construction in Moscow.

LAXALT AMENDMENT NO. 3120

Mr. HATFIELD (for Mr. Laxalt) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page 2, line 24 strike the period at the end of the line and insert:

: *Provided further*, That notwithstanding any other provision of this subsection, section 609 of H.R. 5161, as reported to the Senate on September 3, 1986, shall be deemed to be stricken.

GORE (AND OTHERS) AMENDMENT NO. 3121

Mr. GORE (for himself, Mr. FORD, Mr. BUMPERS, Mr. SASSER, Mr. PRYOR, Mr. BENTSEN, and Mr. MCCONNELL) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the bill, insert the following new sections:

SEC. .(a) The Communications Act of 1934 (47 U.S.C. 151 et seq.) is amended by inserting after section 510 the following new section:

"WILLFUL AND MALICIOUS INTERFERENCE WITH SATELLITE COMMUNICATIONS AND OPERATIONS

"SEC. 511. Whoever without authorization willfully or maliciously interferes with, or causes interference to, the transmission of any lawful communication conveyed by means of satellite, or the operation of any satellite, shall, upon conviction, be fined not more than $250,000 or imprisoned not more than ten years, or both.".

(b) Within thirty days after the date of enactment of this Act, the Federal Communications Commission shall commence an inquiry into equipment, methods, and systems for the detection and prevention of violations of section 511 of the Communications Act of 1934 and other potentially damaging signal interference with satellite communications. In conducting such inquiry, the Commission shall consult with the National Telecommuncations and Information Administration and other interested Federal agencies.

(c) Section 1362 of title 18, United States Code, is amended by adding at the end thereof: "This section shall not apply to conduct prohibited by section 511 of the Communications Act of 1934, relating to interference with satellite communications.".

(d) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States.

FEDERAL COMMUNICATIONS COMMISSION RULEMAKING ON ENCRYPTION DEVICES

SEC. . Within seven days of the enactment of this Act the Federal Communications Commission shall initiate a notice of proposed rulemaking to address issues to ensure, to the greatest extent possible, that earth station owners shall need only one device to decrypt programming. Nothing in this section shall be construed to alter or affect any encryption which was in effect or announced on the date of enactment of this Act.

FAIR MARKETING OF CERTAIN SATELLITE COMMUNICATIONS

SEC. . Section 705 of the Communications Act of 1934 (47 U.S.C. 605) is amended—

(1) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c)(1) Any person who is encrypting satellite cable programming for private viewing on or after thirty days of enactment of this Act shall—

"(A) make such programming available for private viewing by home satellite antenna users;

"(B) in the case such persons utilize any other person distribute encrypted satellite programming to home satellite antenna users—

"(i) not discriminate on price, terms, or conditions among different distributors offering distribution services to the consumer, or in making programming available to such distributors.

"(2) Any person aggrieved by any violation of paragraph (1) of this subsection may bring a civil action in a United States district court or in any other court of competent jurisdiction. Such court may—

"(A) grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain such violations; and

"(B) direct the recovery of full costs, to a prevailing plaintiff including awarding reasonable attorney fees, actual damages, and additional profits of the violator, or statutory damages for all violations in a sum of not more than $100,000 as the court considers just.".

DEFINITIONS

SEC. . Section 705(d) of the Communications Act of 1934 (as redesignated by section 2(1) of this Act) is amended—

"(1) 'satellite cable programming' means video programming which is transmitted via satellite and which is primarily intended for the direct receipt by cable operators for their transmission to cable subscribers;";

"(2) in paragraph (4) by striking out "and" and at the end thereof;

"(3) in paragraph (5) by striking out the period at the end thereof and inserting in lieu thereof a semicolon; and

"(4) by adding at the end thereof the following new paragraphs:

"(6) 'home satellite antenna user' means a person who utilizes a satellite reception antenna to view or listen to, in his home or residence, communications received directly from a communications satellite in Earth orbit."

INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

LUGAR AMENDMENT NO. 3122

(Ordered to lie on the table.)

Mr. LUGAR submitted an amendment intended to be proposed by him to the bill (S. 1828) to implement the Inter-American Convention on International Commercial Arbitration; as follows:

Strike out section 4 of the bill and insert in lieu thereof the following:

SEC. 4. (a) Chapter 1 of title 9, United States Code, is amended by adding at the end thereof the following new section:

"§ 15. Inapplicability of the Act of State doctrine

"Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.".

(b) Section 1605(a) of title 28, United States Code, is amended by—

(1) striking out "or" at the end of paragraph (4);

(2) striking out the period at the end of paragraph (5) and inserting in lieu thereof "; or "; and

(3) adding at the end thereof the following:

"(6) in which the action is brought either to enforce an agreement made by the foreign State with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable."

(c) Section 1610(a) of title 28, United States Code, is amended by—

(1) striking out the period at the end of paragraph (5) and inserting in lieu thereof ", or"; and

(2) adding at the end thereof the following:

"(6) the judgment is based on an order confirming an arbitral award rendered against the foreign State, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement.".

● Mr. LUGAR. Mr. President, today the Committee on Foreign Relations reported S. 1828, a bill to implement the Inter-American Convention on International Commercial Arbitration. The committee adopted an amendment to S. 1828 that would allow U.S. courts to help Americans engaged in international business to have their fair day in court. The amendment adopted by the committee would enable U.S. courts to enforce the decision of international arbitrators, which they cannot do adequately now.

In order to submit a dispute to arbitration, an arbitration clause must be written into an agreement negotiated between a foreign company and the government of the country in which it wishes to do business. Typically, the clause stipulates that any disputes that arise can be resolved by a mutually agreed upon arbitrator or by an arbitrator assigned by the International Court of Justice. From the would-be litigant's point of view, this process has obvious advantages to the altern-tive—litigation in the judicial system of the country involved.

The amendment adopted in committee reassures U.S. businesses that the international arbitration process will work. The amendment I offer today would accomplish the same objectives as the language adopted in committee while correcting some technical concerns raised by the State Department. This amendment is offered as a substitute for the language on enforcing arbitral awards. Like the language it replaces, this amendment to the Arbitration Act would remove any doubt about the applicability of the act of state doctrine in cases involving the enforcement of arbitral awards. Consistent with our longstanding policy favoring arbitration in international commerce, the other provisions of this amendment would perfect the Foreign Sovereign Immunities Act [FSIA] to provide explicitly for the enforcement of arbitral agreements or awards. Currently, agreements and awards are enforced under the provisions of the FSIA that concern explicit or implied waivers of immunity. Although courts are finding that arbitral agreements constitute waivers in the appropriate cases, the amendment would give more explicit guidance to judges in dealing with these issues.●

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

HELMS AMENDMENT NO. 3123

Mr. HELMS proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At an appropriate place in the joint resolution, add the following:

"SEC. . None of the funds appropriated under this Act for the Department of Health and Human Services shall be used to provide contraceptive drugs or devices, or prescriptions for such drugs or devices, to an unemancipated minor without the written consent of such minor's parent or guardian. For the purposes of this section, the term 'unemancipated minor' means unmarried individual who is age 17 or under and is a dependent as defined in section 152(a) of the Internal Revenue Code of 1954.".

CONSUMER RAIL EQUITY ACT

SIMPSON AMENDMENT NO. 3124

(Ordered to lie on the table.)

Mr. SIMPSON submitted an amendment intended to be proposed by him to the bill (S. 477) to enhance rail competition and to ensure reasonable rail rates where there is an absence of effective competition; as follows:

Amend section 9(b), subsection (1)(a) as follows:

On page 10, line 1, strike all through the period on page 10, line 12 and insert in lieu thereof:

"(a) Notwithstanding any other provision of this subtitle, upon petition of any interested rail carrier, shipper, receiver, or other party directly impacted, the Commission shall require any portion of its line of railroad or terminal facilities owned by a rail carrier providing transportation in interstate or foreign commerce, to be used by another rail carrier, if the Commission finds that use to be practicable and necessary for the provision of alternative competitive rail service by the latter carrier, or otherwise in the public interest, without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business.".

CONTINUING APPROPRIATIONS, FISCAL YEAR 1987

MATTINGLY AMENDMENT NO. 3125

Mr. MATTINGLY proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page 2 of the bill, line 12, strike out the period and insert in lieu thereof the following: ", except that $335,380,000 shall be available for insured water and sewer facility loans in the Rural Development Insurance Fund, and $690,000,000 shall be available for emergency insured and guaranteed loans to meet the needs resulting from natural disasters from funds in the Agricultural Credit Insurance Fund.".

HEINZ (AND OTHERS) AMENDMENT NO. 3126

Mr. HEINZ (for himself, Mr. SYMMS, Mr. WILSON, and Mr. MCCLURE) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . None of the funds appropriated by this joint resolution may be used to meet the obligations of the United States for annual assessed contributions to the United Nations or its specialized agencies until the President certifies to the Congress that the Secretary General of the United Nations has undertaken an investigation examining—

(1) the use of salary remission arrangements whereunder the nationals of member states serving as employees of the United Nations Secretariat or any of its specialized agencies are required to turn over their salaries to their national governments and retain only a portion of the salary paid to them by the United Nations;

(2) the excessive use of secondment by member states whereunder nationals of the member states serving as employees of the United Nations Secretariat or the specialized agencies are seconded to such employment on fixed-term contracts and not allowed to become regular career employees of the United Nations, with a view to implementing the recommendations of the group of 18 with respect to limits on the use of secondment; and

(3) the blatant control of nationals of member states serving as employees of the United Nations Secretariat or the specialized agencies through regular supervision, consultation, and evaluation of such nationals of member states by their permanent missions to the United Nations or to the specialized agencies of the United Nations.

BUMPERS (AND OTHERS) AMENDMENT NO. 3127

Mr. BUMPERS (for himself, Mr. PRYOR, Mr. HART, and Mr. EXON) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the bill, add the following:

"SEC. . None of the funds made available to the Federal Energy Regulatory Commission by this Act may be used to fix or permit to take effect a rate or charge applicable to the transmission or sale of electric energy which includes any portion of the costs of an abandoned or canceled generation facility, except to the extent that such costs would be permitted to be included in a rate for resale or retail rate set under the law, regulation or stated policy of the state or local government having jurisdiction over the wholesale purchaser to which the electric energy is transmitted or sold.".

DANFORTH AMENDMENT NO. 3128

Mr. DANFORTH proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page 2, insert the following immediately before the period on line 24: ", except that the provisions of section 608 of H.R. 5161 shall have no force and effect".

INOUYE (AND OTHERS) AMENDMENT NO. 3129

Mr. INOUYE (for himself, Mr. GOLDWATERS, and Mr. WARNER) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place, add the following: That (a)(1) notwithstanding any other provision of law, except as provided in paragraph (1) or (2), the Secretary of the Navy shall reimburse Valerie S. Ford of Richmond, Virginia for the expenses she incurred for her travel and the travel of her two dependent children and the transportation of her household goods in moving herself and her children from Makakilo, Hawaii, to Richmond, Virginia in May 1984.

(2) The Secretary of the Navy may not make the reimbursement authorized in paragraph (1) unless, within one year after the date of enactment of this Act, the Secretary receives from Valerie S. Ford such application for reimbursement and documentation of expenses as the Secretary considers appropriate.

(3) The amount paid to Valerie S. Ford pursuant to paragraph (1) may not exceed the amount that would have been payable for the travel and transportation referred to in such paragraph if the travel and transportation had been timely and a proper and timely application had been submitted in the case of the said Valerie S. Ford as provided by law or applicable regulations.

SEC. 2. No part of any amount reimbursed pursuant to the first section of this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with such reimbursement, and the same shall be unlawful, any contract to the contrary notwithstanding. Violation of the provisions of this section is a misdemeanor punishable by a fine not to exceed $1,000.

TRIBLE (AND OTHERS) AMENDMENT NO. 3130

Mr. TRIBLE (for himself, Mr. DODD Mr. DOLE, Mr. WEICKER, Mr. JOHNSTON, Mr. BRADLEY, Mr. METZENBAUM, Mr. DOMENICI, Mr. GRASSLEY, Mr. MATHIAS, Mr. NUNN, Mr. NUNN, Mr. *Leahy*, Mr. LONG, Mr. MATTINGLY, Mr. MITCHELL, Mr. PROXMIRE, Mr. GLENN, Mr. ARMSTRONG, Mr. BOSCHWITZ, Mr. DENTON, Mr. EVANS, Mr. GOLDWATER, Mrs. KASSEBAUM, Mr. MCLURE, Mr. MURKOWSKI, Mr. Nickles, Mr. PELL, Mr. SARBANES, Mr. SIMPSON, Mr. STEVENS, and Mr. LUGAR) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the bill, add the following:

Since the Department of State has determined that "In the area of human rights, major discrepancies persist between Romania's Constitution, law, public pronouncements and international commitments on the one hand, and the civil liberties and human rights allowed by the regime on the other";

Since it is apparent from numerous accounts by the State Department, congressional delegations, and human rights organizations that Romanian citizens are being arbitrarily harassed, interrogated, and arrested by government authorities for exercising their civil and religious liberties;

Since Romania's harassment of religious believers extends to the arrest of persons for distributing Bibles and the destruction of places of worship, including most recently the country's largest Seventh Day Adventist Church and the Sephardic synagogue in Bucharest;

Since the Romanian government has imposed severe limits on the freedom of Hungarians and other ethnic minorities to express and maintain their cultural heritage, and has attempted to systematically eliminate Hungarian churches, schools, traditions, and even the Hungarian language from Romanian society;

Since the United States' extension of Most-Favored-Nation trade status to Romania, although linked in the Jackson-Vanik Amendment to freedom of emigration from that country, might be misconstrued as an endorsement of that nation's abusive internal practices;

Now, therefore be it declared by the Senate—

SEC. 2. That the Congress strongly condemns Romania's continued hostility to the exercise of religious, political and cultural rights, and calls upon Romania to cease such persecution, to halt its destruction of places of worship, and to lift its ban on the production and distribution of Bibles and other religious literature.

SEC. 3. That it is the sense of the Congress that the President should consider the following factors in shaping our bilateral relations with Romania:

(A) whether Romania is making substantial progress in halting its persecution of Romanian citizens on religious and political grounds and its repression of Hungarians and other ethnic minorities; and

(B) whether Romania is fulfilling its commitments to permit the printing of several thousand Bibles in Romania and to provide for and preserve places of worship.

SEC. 4. The Secretary of State shall transmit a copy of this resolution to the head of the diplomatic mission of Romania to the United States and to Romania's permanent representative to the United Nations.

MULTIPLE APPEALS WITH RESPECT TO THE SAME AGENCY ORDER

McCONNELL AMENDMENT NO. 3131

(Ordered to lie on the table.)

Mr. McCONNELL submitted an amendment intended to be proposed by him to the bill (H.R. 439) to amend title 28, United States Code, to provide for the selection of the court of appeals to decide multiple appeals filed with respect to the same agency order; as follows:

At the end of the bill add the following new section:

SEC. . (a) Section 1341 of title 28, United States Code, is amended by—

(1) inserting "(a)" before "The district"; and

(2) adding at the end thereof the following:

"(b)(1) Notwithstanding the provisions of subsection (a), and without regard to the amount in controversy or the citizenship of the parties, the district courts of the United States have jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to enjoin, suspend, restrain, or set aside any tax of any State or local unit of government which is in violation of paragraph (3) hereafter. Relief may be granted under this subsection only if the ratio of assessed value to true market value of natural gas transmission property exceeds, by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the assessment jurisdiction. The burden of proof in determining such assessed value and true market value shall be governed by State law.

"(2) If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction, to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a 'sales assessment ratio study', then the court shall hold unlawful and a violation of this section—

"(A) an assessment of the natural gas transmission property at a value that has a higher ratio to the true market value of the natural gas transmission property than the assessed value of all other property in the assessment jurisdiction has to the true market value of all such other property; and

"(B) the collection of an ad valorem property tax on the natural gas transmission property at a tax rate that exceeds the tax rate applicable to taxable property in the taxing district.

Any sales assessment ratio study conducted pursuant to this subsection shall be carried out under statistical principles applicable to such study.

"(c)(1) The Congress finds and declares that the acts specified in this section unreasonably burden and discriminate against interstate commerce. No State, subdivision of a State, or authority acting for a State or subdivision thereof may—

"(A) assess natural gas transmission property at a value that has a higher ratio to the true market value of the natural gas transmission property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property;

"(B) levy or collect a tax on an assessment that may not be made under subparagraph (C);

"(C) levy or collect an ad valorem property tax on natural gas transmission property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction; and

"(D) impose any other property tax that discriminates against a natural gas company subject to the jurisdiction of the Federal Energy Regulatory Commission.

"(d) As used in this section—

"(1) 'assessment' means valuation for a property tax levied by a taxing district;

"(2) 'assessment jurisdiction' means a geographical area in a State used in determining the assessed value of property for ad valorem taxation;

"(3) 'natural gas transmission property' means property owned or used for the transportation of natural gas by a natural gas company providing transportation of natural gas by pipeline in interstate commerce;

"(4) 'commercial and industrial property' means all real and personal property, other than natural gas transmission property, minerals, public utility property, and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use;

"(5) 'natural gas company' has the meaning natural gas company has under the Natural Gas Act, except that such term shall not include any person not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act solely by reason of section 1(c) of such Act (15 U.S.C. 717 and following); and

"(6) 'public utility property' means property (other than natural gas transmission property), (A) which is owned or used by a person whose rates are established or approved by a Federal, State, or local agency, and (B) which is subject to the jurisdiction of such agency.".

(b) It is the sense of the Congress that any savings accruing to any person (including any natural gas company) by reason of the enactment and implementation of this section and the amendments made by this section should be passed on to the ultimate consumers of natural gas through the applicable regulatory process.

(c) This section, and the amendments made by this section, shall become effective on January 1, 1987.

● Mr. McCONNELL. Mr. President, today I am filing an amendment to H.R. 439, the so-called "Race to the Courthouse" bill. H.R. 439 addresses an issue concerning the appellate jurisdiction of the U.S. circuit courts of appeal. My amendment would confer jurisdiction on Federal district courts to prohibit discriminatory State property taxation of interstate natural gas pipeline companies.

The necessity for establishing such a Federal cause of action has been well documented in the courts of several congressional hearings. A provision substantially similar to my proposed amendment was favorably reported out by the House Judiciary Committee on July 8, 1985, as well as by the House Public Works and Transportation Committee on May 15, 1985. A hearing record was established in both committees. I might add that in the waning days of the 98th Congress, this proposal was the subject of a hearing before the Senate Committee on Commerce, Science, and Transportation; however, no action was taken prior to adjournment.

Mr. President, the issue that my amendment addresses simply boils down to a question of fairness. There exists in this country a pattern of discriminatory assessment practices which results in interstate natural gas pipeline owners paying proportionately higher property taxes than other commercial and industrial property owners in the same state. As I shall demonstrate, this is not only unfair to this particular industry; but, it imposes a burden on interstate commerce and adversely affects consumers across the country.

Discriminatory tax treatment takes several forms. One form is via de jure statutory property tax classification schemes. In short, this is a practice by which different industries are taxed at different rates. In at least 14 States, natural gas pipelines are taxed at the highest statutory rate—some by as much as 100 percent higher than for other commercial taxpayers. I have with me a table that documents these disparities and, moreover, shows that as a consequence, interstate natural gas pipeline companies have paid out almost $100 million in discriminatory taxes that were subsequently passed along to consumers in the form of higher prices. I ask unanimous consent that this table be printed in the RECORD.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

NATURAL GAS PIPELINE COMPANIES EFFECTS OF PROPOSED FEDERAL LEGISLATION BASIS OF STUDY—1983 TAX YEAR

Col. A State	Col. B 1983 taxes [1]	Col. C pipeline industry level of assessment (Percent)	Col. D other commercial and industrial level of assessment (Percent)	Col. E 1983 pipeline taxes and commercial and industrial level Col. B/(C/D)	Col. F estimated discriminatory taxes Col. B— col. E
Alabama [2]	2,196,109	30	20	1,464,073	732,036
Alaska	0			0	0
Arizona [2]	13,823,461	38	25	9,094,382	4,729,079
Arkansas [3]	8,499,278	20	12	5,099,567	3,399,711
California	719,204			719,204	0
Colorado	7,377,182			7,377,182	0
Connecticut	609,192			609,192	0
Delaware	43,030			43,030	0
Florida	1,381,864			1,381,864	0
Georgia	1,942,051			1,942,051	0
Hawaii	0			0	0
Idaho	1,118,584			1,118,584	0
Illinois	2,477,024			2,477,024	0
Indiana	2,940,151			2,940,151	0
Iowa [3]	44,505,243	100	65	28,928,408	15,576,835
Kansas [3]	22,974,122	30	12	9,189,649	13,784,473
Kentucky	4,162,126			4,162,126	0
Louisiana [2]	35,941,896	25	15	21,565,138	14,376,758
Maine	0			0	0
Maryland	9,849,018			9,849,018	0
Massachusetts	2,940,656			2,940,656	0
Michigan	41,316,658			41,316,658	0
Minnesota [2] [4]	15,547,407	(PP) 43	(PP) 0	3,109,481	12,437,926
Mississippi [2]	9,673,581	30	15	4,836,791	4,836,790
Missouri	2,703,463			2,703,463	0
Montana [2]	7,466,237	100	32	2,389,196	5,077,041
Nebraska [3]	7,760,491	100	70	5,432,344	2,328,147
Nevada	754,460			754,460	0
New Hampshire	232,475			232,475	0
New Jersey	4,559,666			4,559,666	0
New Mexico	3,503,465	100	67.5	2,364,839	1,138,626
New York	44,884,753			44,884,753	0
North Carolina	543,070			543,070	0
North Dakota	6,916,702			6,916,702	0
Ohio [2] [4]	21,746,111	(PP) 100	(PP) 35	10,438,133	11,307,978
Oklahoma	14,744,949	26	12	6,805,361	7,939,588
Oregon	2,325,405			2,325,405	0
Pennsylvania	924,752			924,752	0
Rhode Island	975,358			975,358	0
South Carolina	903,781			903,781	0
South Dakota	3,652,278			3,652,278	0
Tennessee [2]	2,877,212	55	40	2,092,518	784,694
Texas	33,266,583			33,266,583	0
Utah	1,835,085			1,835,085	0
Vermont	0			0	0
Virginia	4,489,974			4,489,974	0
Washington	2,343,551			2,343,551	0
West Virginia	10,895,221			10,895,221	0
Wisconsin	2,646,983			2,646,983	0
Wyoming	4,679,592			4,679,592	0
Washington, DC	298,967			298,967	0
Total	417,968,421			319,518,739	98,449,682

[1] Extracted from FERC form No. 2—annual report of natural gas companies—year of report Dec. 31, 1983.

[2] Reflects States which have "legal" classification; all other States listed reflect "de facto."

[3] Based on 1982 Bureau of the Census study entitled—Taxable Property Values and Assessment Sales Price Ratios.

[4] Column "E" calculation based on following formula—(Col. B ÷ 80%)/(C/D) + (B ÷ 20%). (This adjustment pertains only to personal property which, in both Minnesota and Ohio, is estimated to be 80 percent of total taxes).

Mr. McCONNELL. Mr. President, a second form of discriminatory property tax treatment is de facto. State constitutions mandate full and fair assessments. State uniform valuation laws require that all properties be valued at market value. What happens in practice, however, is that natural gas pipeline property is revalued annually, whereas other commercial properties may only be revalued every 5 or 10 years.

Mr. President, these and other similar practices are clearly and unabashedly discriminatory. Yet, this industry—unlike several others—is denied any effective judicial remedy. By law, the so-called Tax Anti-Injunction Act (28 U.S.C. 1341), Federal courts, in general, have no jurisdiction to enjoin discriminatory State taxation practices. On the other hand, seeking relief through the appropriate State administrative and judicial forums, is invariably an exercise in futility.

Generally, appeals made to State administrative tax boards or commissions fall upon deaf ears. This should surprise no one and I needn't go into the reasons why. Subsequent appeals to State courts are generally to no avail. The court will generally defer to the decision of the administrative body. Moreover, the grounds for appeal are extremely narrow.

That is why, in recent years, Congress has granted access to the Federal courts for a number of interstate industries confronted with similar Catch-22 situations. This relief was provided for the railroads in 1976, for the trucking industry in 1980, for airlines in 1982, and for buses in the same year. My amendment would simply provide a comparable privilege for one additional industry. As I suggested earlier, this is a matter of fairness.

Let me note at this point that my amendment is not, in any crude sense, special interest legislation. It may well be that other industries similarly warrant such equitable treatment. That is not really relevant at this time. The simple matter is that this particular industry has, convincingly I believe, petitioned Congress over the past few years for this relief while others have not. This in no way forecloses broader application of the provisions of my amendment to other industries in the future.

In addition, Mr. President, any savings that results from passage of this legislation would directly benefit consumers. Not only for the citizens of a particular taxing State; but, to consumers beyond its borders as well. Why? These taxes are passed on as a cost of service, by the ratemakers, to all consumers. Thus, the taxing State can effectively "export" its tax burden to citizens of other natural gas consuming States. This is clearly an unreasonable burden upon interstate commerce. A $100 million burden. And the citizens of Kentucky are among those unjustifiably suffering the financial consequences of this discriminatory taxation.

There are several misconceptions which I ought to clarify about this amendment. First and foremost, my amendment would not—I repeat, it would not—directly benefit the balance sheets of interstate natural gas pipeline companies themselves. As I noted above, since this industry is regulated by the Federal Energy Regulatory Commission, any reduction of property taxes obtained through the implementation of this legislation would pass through directly to consumers. Indeed, my amendment explicitly provides that this be the case.

Mr. President, there has been testimony from officials of several States protesting this legislation. I don't blame them. They have been unfairly milking these "deep pocket" taxpayers in order to more favorably treat other commercial businesses in their State. Why not? These pipeline companies have no choice as to where to extract natural gas. They extract it where they find it. So the gas producing States have been exploiting this industry—to the detriment of consumers in all other States. Federal action is necessary to address this form of blatant discrimination and exploitation.

Congress has seen fit to correct this situation for the railroads, the truckers, airlines, and bus companies. I urge my colleagues to apply this same justice to one additional common carrier. Fairness dictates that you do so.

What does this amendment do specifically? It creates an additional exception to the aforementioned Federal Anti-Injunction Act and thus grants Federal jurisdiction to this industry. However, it then asserts that a Federal court can not issue an injunction unless the petitioner can prove that this discriminatory practice has resulting in at least a 5-percent tax differential. This is identical to the formula Congress has adopted for other common carriers.

Moreover, it is explicitly limited to discriminatory property taxation. That is, it does not apply to State income tax, sales tax, excise tax, or other forms of nonproperty taxation. This is not a broadbrush incursion into State taxing discretion. It simply establishes a Federal cause of action to appeal the results of a particularly unjust form of tax discrimination that clearly and unreasonably burdens interstate commerce.

Mr. President, I appeal to the common sense of each Member of this body and urge that this amendment be adopted.●

LEAHY (AND OTHERS) AMENDMENT NO. 3132

Mr. LEAHY (for himself, Mr. GRASSLEY, Mr. PRYOR, Mr. ANDREWS, Mr. MELCHER, Mr. BUMPERS, Mr. FORD, Mr. KERRY, Mr. BAUCUS, Mr. INOUYE, Mr. PROXMIRE, and Mr. HARKIN) proposed an amendment to the joint resolution, H.J. Res. 738, supra; as follows:

At the end of the joint resolution, insert the following:

SEC. . (a) Section 1105 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(g)(1) The amount of proposed budget authority included in the budget, submitted to Congress under this section, for any major weapons system acquisition program of the Department of Defense shall be determined on the basis of—

"(A) the cost of such program determined as of the time the budget is submitted; and

"(B) the anticipated rate of inflation for the fiscal year for which the budget is submitted, computed, on the basis of the gross national product deflator forecast of inflation that is estimated by the Office of Management and Budget and stated in such budget.

"(2) In estimating or computing the anticipated rate of inflation for the purpose of paragraph (1)(B), the gross national product deflator referred to in such paragraph may not be increased on the basis of the defense deflator inflation index published by the Bureau of Economic Analysis of the Department of Commerce or any other factor.".

(b)(1) Chapter 131 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2215. Reports on unobligated balances

"(a) The Secretary of Defense shall submit to the Committees on Armed Services, Appropriations, and Budget of the Senate and House of Representatives reports (at the times specified under subsection (d)) containing an estimate of the amount of funds in each appropriation account of the Department of Defense that at the time of the report—

"(1) is available for obligation; and

"(2) is in excess of the amount needed to carry out the programs for which the funds were appropriated.

The Secretary shall transmit a copy of each such report to the Comptroller General.

"(b) Each report under subsection (a) shall include, set forth separately for each account, estimates of amounts attributable to—

"(1) inflation savings;

"(2) foreign currency savings;

"(3) excess working capital fund cash; and

"(4) all other savings.

"(c) Each such report shall also identify unanticipated cost increases resulting from adverse economic trends.

"(d) A report under this section shall be submitted to Congress each year on February 1, April 25, and August 15.

"(e) The Comptroller General shall review each report submitted under subsection (a) and shall transmit to the Committees referred to in such subsection his analysis of such report and such additional comments relating to such report as he considers appropriate.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2215. Reports on unobligated balances.".

(c) Section 1407 of the Department of Defense Authorization Act, 1986 (Public Law 99-145; 99 Stat. 745), is repealed.

(d)(1) The amendment made by subsection (a) shall take effect with respect to budgets submitted to Congress under section 1105(a) of title 31, United States Code, for fiscal years beginning after fiscal year 1987.

(2) The amendments made by subsection (b) shall take effect with respect to appropriations for fiscal years beginning after fiscal year 1987.

MATHIAS AMENDMENT NOS. 3133 AND 3134

Mr. HATFIELD (for Mr. MATHIAS) proposed two amendments to the joint resolution (H.J. Res. 738), supra, as follows:

AMENDMENT NO. 3133

On page 2, line 12, strike out "1986." and insert in lieu thereof "1986, except that, of the funds made available to the Animal and Plant Health Inspection Service for salaries and expenses, $1,000,000 shall be made available to fund a project to establish a biological barrier zone in the Isthmus of Tehuantepec to block the northward migration of Africanized bees.".

AMENDMENT NO. 3134

At the end of the joint resolution, add the following:

SEC. . Of the amount appropriated under the other provisions of this joint resolution to the Department of Defense for fiscal year 1987, for payment of claims authorized by law to be paid by the Department of Defense (except for civil functions), the Secretary of the Army shall pay $200,000 to the City of Frederick, Maryland in full satisfaction of the claims of that city arising from the events of July, 1864, and in complete reimbursement of the payment made by that city to protect military property and supplies of the United States.

EXON AMENDMENT NOS. 3135 AND 3136

Mr. JOHNSTON (for Mr. EXON) (for himself and Mr. ZORINSKY) proposed two amendments to the joint resolution (H.J. Res. 738), supra, as follows:

AMENDMENT NO. 3135

At the appropriate place in the bill insert the following:

SEC. . The Secretary of the Army, acting through the Chief of Engineers, shall provide funds for design and construction of a storage facility including necessary conveyances, to resolve a water quality problem associated with Dam Site 18 of the Pappillion Creek and Tributaries Lakes, Nebraska. The funds are to be provided from available funds.

AMENDMENT NO. 3136

At the appropriate place in the bill insert the following:

SEC. . The Secretary of the Army, acting through the Chief of Engineers, is authorized to construct flood control structures in accordance with the plan contained in the reevaluation report of the Chief of Engineers for Papillion Creek and Tributaries Lakes, Nebraska, dated March 1985 (revised October 1985). Features of such project authorized by the Flood Control Act of 1968 but eliminated by or otherwise not in accordance with the reevaluation report are not authorized after the date of enactment of this Act.

STENNIS AMENDMENT NO. 3137

Mr. HATFIELD (for Mr. STENNIS) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the bill, insert the following:

"From existing funds the Secretary of Defense shall take additional steps for further development of planning, research, and facilities for physical acoustics and related matters and shall develop facilities for advanced microelectronics design research and development including but not restricted to military components replacement and the Mapped Array Differential Equation Machine;"

D'AMATO (AND KERRY) AMENDMENT NO. 3138

Mr. D'AMATO (for himself and Mr. KERRY) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place insert the following:

SEC. . REGIONAL REFERRAL CENTERS FOR STATES PREVIOUSLY UNDER WAIVER.

In the case of a hospital that—

(1) is located in a State with respect to which a waiver under section 1886(c) of the Social Security Act or section 402 of the Social Security Amendments of 1967 terminated on December 31, 1985, and

(2) makes application pursuant to section 1886(d)(5)(C)(i) of such Act of reclassification as a rural referral center.

the Secretary of Health and Human Services shall make the determination with respect to such reclassification on the basis of data for the 9-month period ending September 30, 1986.

CRANSTON (AND WILSON) AMENDMENT NO. 3139

Mr. JOHNSTON (for Mr. CRANSTON, for himself and Mr. WILSON) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place, insert the following new section:

SEC. . APPROVAL OF DEMONSTRATION PROJECT.

Subject to the second sentence of this section, the Secretary of Health and Human Services shall approve the application dated February 26, 1986, for a 24-month demonstration project submitted, under section 1115 of the Social Security Act, by Fresno County, California, and the State of California's Department of Social Services to promote the employment of principal earners in the aid to families with dependent children-unemployed parents program carried out under title IV-A of the Social Security Act. The implementation of such project may not result in any additional expenditure of Federal funds.

METZENBAUM AMENDMENT NO. 3140

Mr. JOHNSTON (for Mr. METZENBAUM) proposed an amendment to the joint resolution House Joint Resolution 738, supra; as follows:

At the appropriate place in the joint resolution, insert the following:

": provided, that of the amounts made available under the account entitled Department of the Army, Corps of Engineers—Civil, Construction General, $250,000 shall be available only for carrying out the reconstruction of Deist Road on Middle Bass Island, Ottawa County, Ohio, in accordance with the authority contained in Section 14 of Public Law 79-526, as amended.".

ABDNOR (AND OTHERS) AMENDMENT NO. 3141

Mr. ABDNOR, (for himself, Mr. BURDICK, Mr. ANDREWS, Mr. STEVENS, Mr. THURMOND, Mr. HOLLINGS, Mr. SARBANES, Mr. DENTON, Mr. BOREN, and Mr. NICKLES) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the joint resolution, add the following new section:

SEC. . (a)(1) In the case of a borrower of a loan made by the Federal Financing Bank and guaranteed by the Administrator of the Rural Electrification Administration (hereinafter in this section referred to as the "Administrator") under section 306 of the Rural Electrification Act of 1936 (7 U.S.C. 936) that is outstanding on the date of enactment of this Act, the borrower may prepay any loan advances by payment of the outstanding principal balance due on such advances using private capital with the existing loan guarantee, if:

(i) such loan advances bear an interest rate of 10.5 percent per annum or greater, or;

(ii) the borrower is a generation and transmission system borrower whose member distribution systems as an aggregate serve fewer than 3.0 consumers per mile of line, or;

(iii) the borrower is an electric distribution and telephone borrower which serves fewer than 3.0 consumers per mile of line, or;

(iv) the borrower is a borrower experiencing financial hardship.

Such private capital shall be obtained at repayment terms agreeable to the borrower. The guarantee shall be fully transferable and assignable without condition and without requiring that guaranteed funds be pooled with nonguaranteed funds and shall remain available for the remainder of the term originally agreed to by the Administrator.

(2) No sums in addition to payment of such balance shall be charged as the result of such prepayment against the borrower, the Rural Electrification and Telephone Revolving Fund established under section 301 of such Act (7 U.S.C. 931), or the Administrator.

(3) To qualify for prepayment, the borrower shall certify that prepayment savings will be passed on to customers of the borrower, used to make debt service or other payments in cases of financial hardship, or used to avoid future rate increases.

(b) Not later than 30 days after the date of enactment of this Act, the Secretary of Treasury shall issue regulations to implement subsection (a) that reflect the intent of this section to—

(1) facilitate prepayment;

(2) provide for full processing of each prepayment request not later than 30 days after submission of the request to the Administrator; and

(3) impose no restrictions, except as provided in this section, that—

(A) increase the cost to borrowers of obtaining private capital for prepayment; or

(B) inhibit the ability of the borrower to enter into prepayment arrangements pursuant to this section.

(c) Notwithstanding any other provision of law, this section shall govern the prepayment of loans described in subsection (a)(1), except in a specific circumstance where a provision of law enacted before or after the date of enactment of this Act facilitates or expands eligibility for prepayment of such loans or reduces the cost of private capital obtained by borrowers of such loans to a greater extent than this section.

HAWKINS (AND OTHERS) AMENDMENT NO. 3142

Mrs. HAWKINS (for herself, Mr. DOLE, Mr. MELCHER, Mr. LEAHY, Mr. SIMON, Mr. ABDNOR Mr. ANDREWS, Mr. DANFORTH, Mr. BOSCHWITZ, Mr. HARKIN, Mr. DECONCINI, Mr. WILSON, Mr. STEVENS, Mr. THURMOND, Mr. BRADLEY, and Mr. KERRY), proposed an amendment to the joint resolution House Joint Resolution 738, supra; as follows:

At the end of the joint resolution, add the following new title:

TITLE •—SCHOOL LUNCH AND CHILD NUTRITION AMENDMENTS

SEC. •01. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "School Lunch and Child Nutrition Amendments of 1986".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TABLE OF CONTENTS

Sec. •01. Short title; table of contents.

Subtitle A—Reauthorization of Child Nutrition Programs

Sec. •11. Summer food service program for children.
Sec. •12. Commodity distribution program.
Sec. •13. State administrative expenses.
Sec. •14. Special supplemental food program for women, infants, and children.
Sec. •15. Nutrition education and training program.

Subtitle B—School Lunch and Breakfast Programs

Sec. •21. Basis of commodity assistance.
Sec. •22. Inclusion of whole milk as a school lunch beverage.
Sec. •23. Automatic eligibility for certain programs.
Sec. •24. Limitation on meal contracting.
Sec. •25. Change in tuition limitation for private schools.
Sec. •26. Use of school lunch facilities for elderly programs.
Sec. •27. Pilot projects for administration of child nutrition programs by contract or direct disbursement.
Sec. •28. Department of Defense overseas dependents' schools.
Sec. •29. Restoration of certain kindergartens to the special milk program.
Sec. •30. Improvement of school breakfast program meal pattern.
Sec. •31. Extension of offer versus serve provision to the school breakfast program.
Sec. •32. Staffing standards.

Subtitle C—Special Supplemental Food Program for Women, Infants, and Children

Sec. •41. Costs for nutrition services and administration.
Sec. •42. State eligibility for WIC funds.
Sec. •43. Participation report.
Sec. •44. Plan of operation and administration.
Sec. •45. Public comment.
Sec. •46. Availability of program benefits.
Sec. •47. Repayment of certain benefits by recipients.
Sec. •48. Priority funds for WIC migrant programs.
Sec. •49. Improving State agency administrative systems.
Sec. •50. Paperwork reduction.
Sec. •51. Allocation standards.
Sec. •52. Advance payments.
Sec. •53. Availability of funds.

Subtitle D—Other Nutrition Programs

Sec. •61. Hearings on Federal audit actions under the child care food program.
Sec. •62. Basis for nutrition education grants.
Sec. •63. Extension of alternative means of assistance.
Sec. •64. National donated commodity processing programs.

Subtitle E—Technical Corrections

Sec. •71. Obsolete provisions.
Sec. •72. Obsolete references to Health, Education, and Welfare.
Sec. •73. Conforming amendments.

Subtitle F—Sale of Agricultural Notes and Other Obligations

Sec. •81. Sale of agricultural notes and other obligations.

Subtitle A—Reauthorization of Child Nutrition Programs

SEC. •11. SUMMER FOOD SERVICE PROGRAM FOR CHILDREN.

Section 13(p) of the National School Lunch Act (42 U.S.C. 1761(p)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. •12. COMMODITY DISTRIBUTION PROGRAM.

Section 14(a) of the National School Lunch Act (42 U.S.C. 1762a(a)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. •13. STATE ADMINISTRATIVE EXPENSES.

Section 7(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1776(i)) is amended by striking out "1984" and inserting in lieu thereof "1989".

SEC. •14. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN.

Section 17 of the Child Nutrition Act of 1966 (42 U.S.C. 1786) is amended—

(1) in subsection (c)(2), by striking out "Subject to" and all that follows through "1984" and inserting in lieu thereof "Subject to amounts appropriated to carry out this section under subsection (g)";

(2) in subsection (g)—

(A) by designating the first and second sentences as paragraphs (1) and (3), respectively; and

(B) by amending paragraph (1) (as so designated) to read as follows:

"(1) There are authorized to be appropriated to carry out this section $1,570,000,000 for the fiscal year ending September 30, 1986, such sums as may be necessary for each of the fiscal years ending September 30, 1987, and September 30, 1988, and $1,782,000,000 for the fiscal year ending September 30, 1989."; and

(3) in subsection (h)(2), by striking out "1984" and inserting in lieu thereof "1989".

SEC. •15. NUTRITION EDUCATION AND TRAINING PROGRAM.

The first sentence of section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "1984" and inserting in lieu thereof "1989".

Subtitle B—School Lunch and Breakfast Programs

SEC. •21. BASIS OF COMMODITY ASSISTANCE.

Section 6(b) of the National School Lunch Act (42 U.S.C. 1755(b)) is amended—

(1) in the first sentence, by striking out "May 15" and inserting in lieu thereof "June 1"; and

(2) in the second sentence, by striking out "June 15" and inserting in lieu thereof "July 1".

SEC. •22. INCLUSION OF WHOLE MILK AS A SCHOOL LUNCH BEVERAGE.

Effective July 1, 1986, section 9(a) of the National School Lunch Act (42 U.S.C. 1758(a)) is amended—

(1) by designating the first, second, and third sentences as paragraphs (1), (3), and (4), respectively; and

(2) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) In addition to such other forms of milk as the Secretary may determine, the lunches shall offer whole milk as a beverage.".

SEC. •23. AUTOMATIC ELIGIBILITY FOR CERTAIN PROGRAMS.

Effective July 1, 1986, section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)) is amended by adding at the end thereof the following new paragraph:

"(6)(A) A child shall be considered automatically eligible for a free lunch and breakfast under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.), respectively, without further application or eligibility determination, if the child is a member of—

"(i) a household receiving assistance under the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.); or

"(ii) an AFDC assistance unit (under the aid to families with dependent children program authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)), in a State where the standard of eligibility for the assistance does not exceed 130 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))).

"(B) Proof of receipt of food stamps or aid to families with dependent children shall be sufficient to satisfy any verification requirement imposed under paragraph (2)(C).".

SEC. •24. LIMITATION ON MEAL CONTRACTING.

Effective July 1, 1986, section 9 of the National School Lunch Act (42 U.S.C. 1758) is amended by adding at the end thereof the following new subsection:

"(e) A school or school food authority participating in a program under this Act may not contract with a food service company to provide a la carte food service unless the company agrees to offer free, reduced-price, and full-price reimbursable meals to all eligible children.".

SEC. •25. CHANGE IN TUITION LIMITATION FOR PRIVATE SCHOOLS.

(a) SCHOOL LUNCH PROGRAMS.—Section 12(d)(5) of the National School Lunch Act (42 U.S.C. 1760(d)(5)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1,500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(b) SCHOOL BREAKFAST PROGRAMS.—Section 15(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1784(c)) is amended—

(1) in clause (A) of the first sentence, by striking out "$1,500" and inserting in lieu thereof "$2,000"; and

(2) by adding at the end thereof the following new sentence: "On July 1, 1988, and each July 1 thereafter, the Secretary shall adjust the tuition limitation amount prescribed in clause (A) of the first sentence of this paragraph to reflect changes in the Consumer Price Index for All Urban Consumers during the most recent 12-month period for which the data is available.".

(c) APPLICATION.—(1) The amendments made by subsections (a)(1) and (b)(1) shall apply for the calendar year beginning on

July 1, 1987, and each calendar year thereafter.

(2) The amendments made by subsections (a)(2) and (b)(2) shall apply for the school year beginning on July 1, 1988, and each school year thereafter.

SEC. *26. USE OF SCHOOL LUNCH FACILITIES FOR ELDERLY PROGRAMS.

Section 12 of the National School Lunch Act (42 U.S.C. 1760) is amended by adding at the end thereof the following new subsection:

"(i) Facilities, equipment, and personnel provided to a school food authority for a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) may be used, as determined by a local educational agency, to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 et seq.).".

SEC. *27. PILOT PROJECTS FOR ADMINISTRATION OF CHILD NUTRITION PROGRAMS BY CONTRACT OR DIRECT DISBURSEMENT.

(a) PILOT PROJECTS.—Section 20 of the National School Lunch Act (42 U.S.C. 1769) is amended by striking out subsection (d) and inserting in lieu thereof the following new subsection:

"(d) The Secretary may conduct pilot projects in not more than three States in which the Secretary is currently administering programs to evaluate the effects of the Secretary contracting with private profit and nonprofit organizations to act as a State agency under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) for schools, institutions, or service institutions referred to in section 10 of this Act and section 5 of the Child Nutrition Act of 1966 (42 U.S.C. 1774).".

(b) CONFORMING AMENDMENT.—The first sentence of section 20(c) of the National School Lunch Act is amended by striking out "except for the pilot projects conducted under subsection (d) of this section,".

SEC. *28. DEPARTMENT OF DEFENSE OVERSEAS DEPENDENTS' SCHOOLS.

(a) SCHOOL LUNCHES.—Section 22(d) of the National School Lunch Act (42 U.S.C. 1769b(d)) (as added by section 1408(a) of the Education Amendments of 1978 (92 Stat. 2368)) is amended by striking out "and for" and all that follows through "reduced-price lunch".

(b) SCHOOL BREAKFASTS.—Section 20(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1789) is amended by striking out "and for" and all that follows through "reduced-price breakfast".

SEC. *29. RESTORATION OF CERTAIN KINDERGARTENS TO THE SPECIAL MILK PROGRAM.

Effective July 1, 1987, section 3(a) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)) is amended—

(1) in the first sentence—

(A) by inserting "(1)" after the subsection designation;

(B) by redesignating clauses (1) and (2) as subparagraphs (A) and (B), respectively; and

(C) in subparagraph (A) (as so redesignated), by inserting "except as provided in paragraph (2)," after "and under,";

(2) by designating the second through eighth sentences as paragraphs (3) through (9), respectively; and

(3) by inserting after paragraph (1) (as so designated) the following new paragraph:

"(2) The limitation imposed under paragraph (1)(A) for participation of nonprofit schools in the special milk program shall not apply to split-session kindergarten programs conducted in schools in which children do not have access to the meal service program operating in schools the children attend as authorized under this Act or the National School Lunch Act (42 U.S.C. 1751 et seq.).".

SEC. *30. IMPROVEMENT OF SCHOOL BREAKFAST PROGRAM MEAL PATTERN.

(a) ADDITIONAL ASSISTANCE.—Effective July 1, 1987, section 4(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(b)) is amended by adding at the end thereof the following new paragraphs:

"(3) The Secretary shall increase by 3 cents the annually adjusted payment for each breakfast served under this Act and section 17 of the National School Lunch Act (42 U.S.C. 1766). These funds shall be used to assist States, to the extent feasible, in improving the nutritional quality of the breakfasts.

"(4) Notwithstanding any other provision of law, whenever stocks of agricultural commodities are acquired by the Secretary or the Commodity Credit Corporation and are not likely to be sold by the Secretary or the Commodity Credit Corporation or otherwise used in programs of commodity sale or distribution, the Secretary shall make such commodities available to school food authorities and eligible institutions serving breakfasts under this Act in a quantity equal in value to not less than 3 cents for each breakfast served under this Act and section 17 of the National School Lunch Act.

"(5) Expenditures of funds from State and local sources for the maintenance of the school breakfast program shall not be diminished as a result of funds or commodities received under paragraph (3) or (4).".

(b) NUTRITION REQUIREMENTS.—(1) The Secretary of Agriculture shall review and revise the nutrition requirements for meals served under the school breakfast program authorized under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) to improve the nutritional quality of the meals, taking into consideration both the findings of the National Evaluation of School Nutrition Programs and the need to provide increased flexibility in meal planning to local school food authorities.

(2) Not later than 180 days after the date of enactment of this Act, the Secretary of Agriculture shall promulgate regulations to implement the revisions.

SEC. *31. EXTENSION OF OFFER VERSUS SERVE PROVISION TO THE SCHOOL BREAKFAST PROGRAM.

Section 4(e) of the Child Nutrition Act of 1966 (42 U.S.C. 1773(e)) is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) At the option of a local school food authority, a student in a school under the authority that participates in the school breakfast program under this Act may be allowed to refuse not more than one item of a breakfast that the student does not intend to consume. A refusal of an offered food item shall not affect the full charge to the student for a breakfast meeting the requirements of this section or the amount of payments made under this Act to a school for the breakfast.".

SEC. *32. STAFFING STANDARDS.

Section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) (as amended by section *13) is further amended—

(1) by striking out subsection (b); and

(2) by redesignating subsections (c) through (i) as subsections (b) through (h), respectively.

Subtitle C—Special Supplemental Food Program for Women, Infants, and Children

SEC. *41. COSTS FOR NUTRITION SERVICES AND ADMINISTRATION.

(a) DEFINITIONS.—Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)) is amended—

(1) by striking out paragraph (1);

(2) by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively; and

(3) by inserting after paragraph (3) (as so redesignated) the following new paragraph:

"(4) 'Costs for nutrition services and administration' means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program (including centrifuges, measuring boards, spectrophotometers, and scales used for the certification), food delivery, monitoring, nutrition education, outreach, startup costs, and general administration applicable to implementation of the program under this section, such as the cost of staff, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.".

(b) CONFORMING AMENDMENTS.—Section 17 of such Act is amended—

(1) by striking out "administrative funds" each place it appears in subsections (f)(11), (h)(2), (h)(3), and (h)(4) and inserting in lieu thereof "funds for nutrition services and administration"; and

(2) by striking out "administrative costs" each place it appears in subsection (h) and inserting in lieu thereof "costs for nutrition services and administration".

SEC. *42. STATE ELIGIBILITY FOR WIC FUNDS.

(a) ELIGIBILITY.—Section 17(c) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(c)) is amended by adding at the end thereof the following new paragraph:

"(4) A State shall be ineligible to participate in programs authorized under this section if the Secretary determines that State or local sales taxes are collected within the State on purchases of food made to carry out this section.".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a State beginning with the fiscal year that commences after the end of the first regular session of the State legislature following the date of the enactment of this Act.

SEC. *43. PARTICIPATION REPORT.

(a) BIENNIAL REPORT.—Section 17(d) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(d)) is amended by adding at the end thereof the following new paragraph:

"(4) The Secretary shall report biennially to Congress on—

"(A) the income and nutritional risk characteristics of participants in the program;

"(B) participation in the program by members of families of migrant farmworkers; and

"(C) such other matters relating to participation in the program as the Secretary considers appropriate.".

(b) USE OF EVALUATION FUNDS FOR REPORT.—Section 17(g)(3) of such Act (as amended by section *14(2)(A)) is further amended by inserting "preparing the report required under subsection (d)(4)," after "health benefits,".

SEC. *44. PLAN OF OPERATION AND ADMINISTRATION.

(a) PLAN.—Paragraph (1) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(1)) is amended to read as follows:

"(1)(A) Each State agency shall submit annually to the Secretary, by a date specified by the Secretary, a plan of operation and administration for a fiscal year.

"(B) To be eligible to receive funds under this section for a fiscal year, a State agency must receive the approval of the Secretary for the plan submitted for the fiscal year.

"(C) The plan shall include—

"(i) a description of the food delivery system of the State agency and the method of enabling participants to receive supplemental foods under the program, to be administered in accordance with standards developed by the Secretary;

"(ii) a description of the financial management system of the State agency;

"(iii) a plan to coordinate operations under the program with special counseling services, such as the expanded food and nutrition education program, immunization programs, prenatal care, well-child care, family planning, alcohol and drug abuse counseling, child abuse counseling, and with the aid to families with dependent children, food stamp, and maternal and child health care programs;

"(iv) a plan to provide program benefits under this section to, and to meet the special nutrition education needs of, eligible migrants and Indians;

"(v) a plan to expend funds to carry out the program during the relevant fiscal year;

"(vi) a plan to provide program benefits under this section to unserved and underserved areas in the State, if sufficient funds are available to carry out this clause;

"(vii) a plan to provide program benefits under this section to eligible persons most in need of the benefits and to enroll eligible women in the early months of pregnancy, to the maximum extent practicable; and

"(viii) such other information as the Secretary may require.

"(D) The Secretary may permit a State agency to submit only those parts of a plan that differ from plans submitted for previous fiscal years.

"(E) The Secretary may not approve any plan that permits a person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program authorized under sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note).".

(b) APPLICATION.—The amendment made by subsection (a) shall apply to a plan submitted by a State agency under section 17(f)(1) of the Child Nutrition Act of 1966 for the fiscal year ending September 30, 1987, and each fiscal year thereafter.

SEC. *45. PUBLIC COMMENT.

Paragraph (2) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(2)) is amended to read as follows:

"(2) A State agency shall establish a procedure under which members of the general public are provided an opportunity to comment on the development of the State agency plan.".

SEC. *46. AVAILABILITY OF PROGRAM BENEFITS.

Paragraph (8) of section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(8)) is amended to read as follows:

"(8)(A) The State agency shall, in cooperation with participating local agencies, publicly announce and distribute information on the availability of program benefits (including the eligibility criteria for participation and the location of local agencies operating the program) to offices and organizations that deal with significant numbers of potentially eligible persons (including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas).

"(B) The information shall be publicly announced by the State agency and by local agencies at least annually.

"(C) The State agency and local agencies shall distribute the information in a manner designed to provide the information to potentially eligible persons who are most in need of the benefits, including pregnant women in the early months of pregnancy.".

SEC. *47. REPAYMENT OF CERTAIN BENEFITS BY RECIPIENTS.

Effective October 1, 1986, section 17(f) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)) is amended by adding at the end thereof the following new paragraph:

"(15) If a State agency determines that a member of a family has received an overissuance of food benefits under the program authorized by this section as the result of such member intentionally making a false or misleading statement or intentionally misrepresenting, concealing, or withholding facts, the State agency shall recover, in cash, from such member an amount that the State agency determines is equal to the value of the overissued food benefits, unless the State agency determines that the recovery of the benefits would not be cost effective.".

SEC. *48. PRIORITY FUNDS FOR WIC MIGRANT PROGRAMS.

(a) PRIORITY FUNDING.—Effective October 1, 1986, section 17(g) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)) (as amended by section *14(2)(A)) is further amended by inserting after paragraph (1) the following new paragraph:

"(2) Of the sums appropriated for any fiscal year for programs authorized under this section, not less than nine-tenths of 1 percent shall be available first for services to eligible members of migrant populations. The migrant services shall be provided in a manner consistent with the priority system of a State for program participation.".

(b) ACCOUNTABILITY.—To the extent possible, accountability for migrant services under section 17(g)(2) of the Child Nutrition Act of 1966 (as added by subsection (a)) shall be conducted under regulations in effect on the date of the enactment of this Act.

SEC. *49. IMPROVING STATE AGENCY ADMINISTRATIVE SYSTEMS.

Section 17(g)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(g)(3)) (as amended by sections *14(2)(A) and *43(b)) is further amended by inserting "providing technical assistance to improve State agency administrative systems," after "subsection (d)(4),".

SEC. *50. PAPERWORK REDUCTION.

Section 17(h)(1) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(1)) is amended by adding at the end thereof the following new sentence: "The Secretary shall limit to a minimal level any documentation required under the preceding sentence.".

SEC. *51. ALLOCATION STANDARDS.

Section 17(h)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(3)) is amended—

(1) in the second sentence, by striking out ", which satisfy allocation guidelines established by the Secretary"; and

(2) by striking out the last sentence.

SEC. *52. ADVANCE PAYMENTS.

Effective October 1, 1986, section 17(h)(4) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)(4)) is amended by striking out "shall" and inserting in lieu thereof "may".

SEC. *53. AVAILABILITY OF FUNDS.

(a) AVAILABILITY.—Section 17(i) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(i)) is amended—

(1) by designating the first, second, third, fourth, and fifth sentences as paragraphs (1), (2), (4), (5), and (6), respectively; and

(2) by inserting after paragraph (2) (as so designated) the following new paragraph:

"(3)(A) Notwithstanding paragraph (2)—

"(i) not more than 1 percent of the amount of funds allocated to a State agency under this section for supplemental foods for a fiscal year may be expended by the State agency for expenses incurred under this section for supplemental foods during the preceding fiscal year; or

"(ii) not more than 1 percent of the amount of funds allocated to a State agency for a fiscal year under this section may be expended by the State agency during the subsequent fiscal year.

"(B) Any funds made available to a State agency in accordance with subparagraph (A)(ii) for a fiscal year shall not affect the amount of funds allocated to the State agency for such year.".

(b) APPLICATION.—Section 17(i)(3)(A)(i) of the Child Nutrition Act of 1966 (as amended by subsection (a)) shall not apply to appropriations made before the date of enactment of this Act.

Subtitle D—Other Nutrition Programs

SEC. *61. HEARINGS ON FEDERAL AUDIT ACTIONS UNDER THE CHILD CARE FOOD PROGRAM.

Section 17(e) of the National School Lunch Act (42 U.S.C. 1766(e)) is amended—

(1) by striking out "The" and inserting in lieu thereof "(1) Except as provided in paragraph (2), the"; and

(2) by adding at the end thereof the following new paragraphs:

"(2) A State is not required to provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination.

"(3) If a State does not provide a hearing to an institution concerning a State action taken on the basis of a Federal audit determination, the Secretary, on request, shall afford a hearing to the institution concerning the action.".

SEC. *62. BASIS FOR NUTRITION EDUCATION GRANTS.

Section 19(j)(2) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(2)) is amended by striking out "$75,000" each place it appears and inserting in lieu thereof "$50,000".

SEC. *63. EXTENSION OF ALTERNATIVE MEANS OF ASSISTANCE.

Section 14 of the National School Lunch Act (42 U.S.C. 1762a) is amended by adding at the end thereof the following new subsection:

"(g)(1) As used in this subsection, the term 'eligible school district' has the same meaning given such term in section 1581(a) of the Food Security Act of 1985.

"(2) In accordance with the terms and conditions of section 1581 of such Act, the Secretary shall permit an eligible school district to continue to receive assistance in the form of cash or commodity letters of credit assistance, in lieu of commodities, to carry out the school lunch program operated in the district.

"(3)(A) On request of a participating school district (and after consultation with the Comptroller General of the United States with respect to accounting procedures used to determine any losses) and subject to the availability of funds, the Secretary shall provide cash compensation to an eligible school district for losses sustained by the district as a result of the alteration of the methodology used to conduct the study referred to in section 1581(a) of such Act during the school year ending June 30, 1983.

"(B) There are authorized to be appropriated $50,000 to carry out this paragraph, to be available without fiscal year limitation.".

SEC. *64. NATIONAL DONATED COMMODITY PROCESSING PROGRAMS.

In accordance with the terms and conditions of section 1114(a)(2) of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e(a)(2)), whenever a commodity is made available without charge or credit under any nutrition program administered by the Secretary of Agriculture, the Secretary shall encourage consumption of the commodity through agreements with private companies under which the commodity is reprocessed into end-food products for use by eligible recipient agencies.

Subtitle E—Technical Corrections

SEC. *71. OBSOLETE PROVISIONS.

(a) NUTRITION PROGRAM STAFF STUDY; TRUST TERRITORY APPROPRIATIONS.—(1) Sections 18 and 19 of the National School Lunch Act (42 U.S.C. 1767 and 1768) are repealed.

(2) The first sentence of section 3 of such Act (42 U.S.C. 1752) is amended by striking out "sections 13, 17, and 19" and inserting in lieu thereof "sections 13 and 17".

(b) STUDY OF MENU CHOICE.—Section 22 of such Act (42 U.S.C. 1769c) (as added by section 9 of the Child Nutrition Amendments of 1978 (92 Stat. 3623)) is repealed.

(c) CONFORMING AMENDMENTS.—(1) The National School Lunch Act (as amended by sections *27 and *28(a) and subsection (b)) is further amended by redesignating sections 20, 21, and 22 (42 U.S.C. 1769, 1769a, and 1769b) as sections 18, 19, and 20, respectively.

(2) Clause (3) of the first sentence of section 6(a) of such Act (42 U.S.C. 1755(a)) is amended by striking out "section 20" and inserting in lieu thereof "section 18".

SEC. *72. OBSOLETE REFERENCES TO HEALTH, EDUCATION, AND WELFARE.

(a) REFERENCES IN NATIONAL SCHOOL LUNCH ACT.—Clause (1) of the sixth sentence of section 17(a) of the National School Lunch Act (42 U.S.C. 1766(a)) is amended by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Health and Human Services".

(b) REFERENCES IN CHILD NUTRITION ACT OF 1966.—(1) The Child Nutrition Act of 1966 is amended by striking out "Health, Education, and Welfare" each place it appears in section 4(a) (42 U.S.C. 1773(a)), subsections (b)(6), (b)(13), (e)(2), (k)(1), and (k)(2) of section 17 (42 U.S.C. 1786), and subsections (d)(2) and (d)(3) of section 19 (42 U.S.C. 1788) and inserting in lieu thereof "Health and Human Services".

(2) Section 19(j)(3) of the Child Nutrition Act of 1966 (42 U.S.C. 1788(j)(3)) is amended by striking out "Office of Education of the Department of Health, Education, and Welfare" and inserting in lieu thereof "Department of Education".

SEC. *73. CONFORMING AMENDMENTS.

(a) DEFINITION OF SECRETARY.—Section 12(d) of the National School Lunch Act (42 U.S.C. 1760(d)) is amended by adding at the end thereof the following new paragraph:

"(8) 'Secretary' means the Secretary of Agriculture.".

(b) REDESIGNATION OF SUBSECTION.—Section 19 of the Child Nutrition Act of 1966 (42 U.S.C. 1788) (as amended by sections *15, *62, and *72(b)(2)) is further amended by redesignating subsection (j) as subsection (i).

Subtitle F—Sale of Agricultural Notes and Other Obligations

SEC. *81. SALE OF AGRICULTURAL NOTES AND OTHER OBLIGATIONS.

(a) IN GENERAL.—The Secretary of Agriculture shall, under such terms as the Secretary may prescribe, sell notes and other obligations held in the Rural Development Insurance Fund established under section 309A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a) in such amounts as to realize net proceeds of not less than—

(1) $25,000,000 from such sales during fiscal year 1987;

(2) $36,000,000 from such sales during fiscal year 1988; and

(3) $37,000,000 from such sales during fiscal year 1989.

(b) COLLECTION AND SALE OF NOTES.—The second sentence of section 309A(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a(e)) is amended—

(1) by inserting "and other obligations" after "Notes"; and

(2) by striking out the period at the end thereof and inserting the following: ", including sale on a nonrecourse basis. The Secretary and any subsequent purchaser of such notes and other obligations sold by the Secretary on a nonrecourse basis shall be relieved of any responsibilities that might have been imposed had the borrower remained indebted to the Secretary.".

(c) FARM CREDIT SYSTEM INSTITUTIONS.—Notwithstanding any other provision of law, institutions of the Farm Credit System operating under the Farm Credit Act of 1971 (12 U.S.C. 2001) shall be eligible to purchase notes and other obligations held in the Rural Development Insurance Fund and to service (including the extension of additional credit and all other actions necessary to preserve, conserve, or protect the institutions' interests in such notes and other obligations), collect, and dispose of such notes and other obligations, subject only to such terms and conditions as may be agreed to by the Secretary of Agriculture and such purchasing institutions and as are approved by the Farm Credit Administration.

KENNEDY (AND OTHERS) AMENDMENT NO. 3143

Mr. JOHNSTON (for Mr. KENNEDY) (for himself, Mr. THURMOND, Mr. STEVENS, and Mr. DECONCINI) proposed an amendment, which was subsequently modified, to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the resolution, add the following:

SHORT TITLE

SEC. . This title may be cited as the "James Madison Memorial Fellowship Act".

PURPOSE

SEC. . It is the purpose of this title to establish the James Madison Fellowship Program which is designed to encourage graduate study of the American Constitution, its roots, its formation, its principles, and its development.

FOUNDATION

SEC. . (a) In order to commemorate the bicentennial of the Constitution, there is established, as an independent establishment of the executive branch, the James Madison Memorial Fellowship Foundation.

(b)(1) The Foundation shall be subject to the supervision and direction of a Board of Trustees. The Board shall be composed of thirteen members, as follows:

(A) Two Members of the Senate, of different political parties, shall be appointed by the President upon the recommendation of the President pro tempore of the Senate, in consultation with the Majority Leader and Minority Leader of the Senate.

(B) Two Members of the House of Representatives, of different political parties, shall be appointed by the President upon the recommendation of the Speaker of the House, in consultation with the Minority Leader of the House of Representatives.

(C) Two members of the Federal judiciary shall be appointed by the President upon the recommendation of the Chief Justice of the United States.

(D) Six members, not more than three of whom shall be of the same political party, shall be appointed by the President with the advice and consent of the Senate, of whom one shall be a chief executive officer of a State, two shall be members of the general public, and three shall be members of the academic community, appointed upon the recommendation of the Librarian of Congress.

(E) The Secretary of Education or his designate shall serve ex officio as a member of the Board, but shall not be eligible to serve as Chairman.

(2) The term of office of each member of the Board shall be six years; except that (A) the members first taking office shall serve as designated by the President, four for terms of two years, five for terms of four years, and four for terms of six years, and (B) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed, and shall be appointed in the same manner as the original appointment for that vacancy was made. This provision shall not apply to members ex officio.

(c) Members of the Board shall elect from the members of the Board a Chairman and such other officers as may be necessary to carry out the duties of the Foundation.

(d) Members of the Board shall serve without pay, but shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of their duties.

FELLOWSHIP RECIPIENTS

SEC. . (a) The Foundation is authorized to award fellowships to outstanding students and teachers who will pursue graduate study leading to the degree of Master of Arts in teaching or other appropriate masters degree for teachers, with a major in social studies or American history. Each recipient must take at least twelve semester hours, or its equivalent, in topics directly related to the Constitution of the United States, as determined by the Board.

(b)(1) James Madison fellowships shall be awarded to individuals who are, or who desire to become, social studies and American history teachers in accordance with paragraphs (2) and (3).

(2) Junior fellowships shall be awarded to graduate students who are about to complete or have recently completed their undergraduate course of study, and plan to begin graduate work on a relatively full-time basis.

(3) Senior fellowships shall be awarded to experienced teachers who wish to undertake work for a graduate degree on a part-time basis during summers or in evening programs.

PERIOD FOR AWARD

SEC. . Junior fellowships shall be granted for such periods as the Foundation may prescribe but not to exceed two academic years. Senior fellowships shall be granted for such periods as the Foundation may prescribe, but not to exceed five calendar years.

RECIPIENT'S CHOICE OF INSTITUTION

SEC. . Fellowship recipients may attend any institution of higher education in the United States with an accredited graduate program which offers courses of study or training which emphasize the origins of the Constitution of the United States, its principles, its development, and its comparison with other forms of government, as determined according to criteria established by the Foundation.

RECIPIENT'S ELIGIBILITY

SEC. . Each student awarded a fellowship under this title shall demonstrate the potential, and a serious intention, to follow a career of educating students in secondary schools. Each institution of higher education at which such a student is in attendance shall make reasonable efforts to encourage such a student to meet the objectives of this section.

SELECTION OF FELLOWSHIP RECIPIENTS

SEC. . (a) Madison Fellows shall be selected for their academic achievements and their potential to become secondary school teachers of social studies and American history.

(b)(1) The Foundation is authorized, either directly or by contract, to provide for the conduct of a nationwide competition for the selection of fellowship recipients. Each applicant must have a demonstrated interest in pursuing a course of study which emphasizes the Constitution, its principles, and its history, and have a demonstrated record of willingness to devote themselves to civic responsibility.

(2) Each application shall be accompanied by an essay explaining the importance of the study of the Constitution both to the applicant's career aspirations and contributions to public service, and to citizenship generally in a constitutional regime.

(3)(A) Each application shall include a description of a program of study for the graduate program, designating the courses to be taken, and the proposed Master's Thesis, where appropriate.

(B) For the purpose of this paragraph, the Board of Trustees of the Foundation shall establish general criteria for programs in constitutional studies.

(c) The Foundation shall adopt selection procedures which shall assure that at least one Madison Fellow shall be selected each year from each State, the District of Columbia, and the Commonwealth of Puerto Rico, and, considered as a single entity, Guam, the Virgin Islands, American Samoa, the Trust Territories of the Pacific Islands, and the Commonwealth of the Northern Marianas in which there are at least two resident applicants who meet the minimum criteria established by the Foundation; and, if sufficient funding is available, to invite applications from scholars overseas for study in the United States.

AMOUNT OF FELLOWSHIPS

SEC. . Each student awarded a fellowship shall receive a stipend which shall not exceed the cost to the student for tuition, fees, books, room and board, or $12,000, whichever is less, for each academic year of study.

FELLOWSHIP CONDITIONS

SEC. . (a) A student awarded a Madison Fellowship shall continue to receive payments only during such periods as the Foundation finds that the student is maintaining satisfactory progress in an approved program of study or research. Recipients of junior fellowships shall devote essentially full time to their program of study.

(b) The Foundation is authorized to require reports from any fellowship recipient containing such information, in such form, and to be filed at such times as the Foundation determines to be necessary. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, approved by the Foundation, stating that such student is making satisfactory progress in a program of study or research, with such exceptions as the Foundation may establish.

JAMES MADISON MEMORIAL FELLOWSHIP TRUST FUND

Sec. . (a)(1) There shall be established in the Treasury of the United States a trust fund consisting of appropriations and amounts contributed by the Foundation for the commemoration of the Constitution and other private sources to be available, in accordance with the provisions of this title, to carry out the provisions of this title.

(2) No funds in the Trust Fund may be available for fellowship until the contributions from private sources are equal to $10,000,000.

(b) It shall be the duty of the Secretary of the Treasury to invest in full the amounts appropriated and contributed to the fund. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Such special obligations shall be issued only if the Secretary determines that the purchase of other obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States or original issue at the market price, is not in the public interest.

(c) Any obligations acquired by the fund (except special obligations issued exclusively to the fund) may be sold by the Secretary at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) The interest on, and the proceeds from, the sale or redemption of any obligations held in the fund shall be credited to and form a part of the fund.

EXPENDITURES AND AUDIT

SEC. . (a) The Secretary of the Treasury is authorized to pay to the Foundation from the interest and earnings of the fund such sums as the Board determines are necessary and appropriate to enable the Foundation to carry out the provisions of this title.

(b) The activities of the Foundation under this title may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, and files and all other papers, things, or property belonging to or in use by the Foundation, pertaining to such activities and necessary to facilitate the audit.

EXECUTIVE SECRETARY OF FOUNDATION

SEC. . (a) There shall be an Executive Secretary of the Foundation who shall be appointed by the Board. The Executive Secretary shall be the chief executive officer of the Foundation and shall carry out the functions of the Foundation subject to the supervision and direction of the Board.

(b) The Executive Secretary of the Foundation shall be compensated at the rate specified for employees placed in grade GS-18 of the General Schedule set forth in section 5332 of title 5.

ADMINISTRATIVE PROVISIONS

SEC. . (a) The Foundation is authorized—

(1) to appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this chapter, except that in no case shall employees other than the Executive Secretary be compensated at a rate to exceed the rate provided for employees in grade GS-15 of the General Schedule set forth in section 5332 of title 5;

(2) to procure temporary and intermittent services of such experts and consultants as are necessary to the extent authorized by section 3109 of title 5, but at rates not to exceed the rate specified at the time of such service for grade GS-18 in section 5332 of such title;

(3) to prescribe such regulations as it deems necessary governing the manner in which its functions shall be carried out;

(4) to receive money and other property donated, bequeathed, or devised, without condition or restriction other than it be used for the purposes of the Foundation; and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;

(5) to accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5;

(6) to enter into contracts, grants, or other arrangements, or modifications thereof, to carry out the provisions of this chapter, and such contracts or modifications thereof may, with the concurrence of two-thirds of

the members of the Board, be entered into without performance or other bonds, and without regard to section 5 of title 41;

(7) to make advances, progress, and other payments which the Board deems necessary under this chapter without regard to the provisions of section 529 of title 31;

(8) to rent office space in the District of Columbia;

(9) to conduct programs in addition to or in conjunction with the Fellowship program which shall further the Foundation's purpose of encouraging research and study of constitutionalism in America; and

(10) to make other necessary expenditures.

(b) The Foundation shall submit to the President and to the Congress an annual report of its operations under this chapter.

DEFINITIONS

SEC. . As used in this title—

(1) the term "Board" means the Board of Trustees of the James Madison Memorial Fellowship Foundation;

(2) the term "Foundation" means the James Madison Memorial Fellowship Foundation;

(3) the term "institution of higher education" has the same meaning given that term by section 1201(a) of the Higher Education Act of 1965; and

(4) the term "secondary school" has the same meaning given that term by section 1201(d) of the Higher Education Act of 1965.

APPROPRIATIONS

SEC. . There are appropriated to the James Madison Memorial Trust Fund $20,000,000 to carry out the provisions of this title, to be available on October 1, 1987, and to remain available until expended.

MITCHELL (AND COHEN) AMENDMENT NO. 3144

Mr. JOHNSTON (for Mr. MITCHELL) (for himself and Mr. COHEN) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . None of the funds appropriated or otherwise made available by this joint resolution may be available for the performance of any pre-inspection activities by the Immigration and Naturalization Service or Customs Service (1) at Shannon International Airport in Ireland or (2) at any international airport outside the United States in competition with Bangor International Airport in Maine.

SPECTER AMENDMENT NO. 3145

Mr. JOHNSTON (for Mr. SPECTER) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

Insert at the appropriate place the following:

SEC. . AMENDMENT RELATED TO SECTION 1003 OF THE TAX REFORM ACT OF 1986 AND SECTION 264 OF THE INTERNAL REVENUE CODE OF 1986.

(a) The last sentence of section 264(a) of the Internal Revenue Code of 1986 and subsection (a) of section of 1003 of the Tax Reform Act of 1986 are each amended by striking out "June 20, 1986" and substituting in lieu thereof "2 days after enactment of H.J. Res. 738, a joint resolution making continuing appropriations for the fiscal year 1987."

(b) The amendment made by this section shall be effective as if it was contained in the Tax Reform Act of 1986 as originally enacted.

SASSER AMENDMENT NO. 3146

Mr. JOHNSTON (for Mr. SASSER) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the joint resolution, add the following new section:

SEC. . (a) Section 512 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2211) is amended by—

(1) redesignating subsections (b) and (c), and all references thereto, as subsections (c) and (d), respectively; and

"(b) REIMBURSEMENT OF CERTAIN AIRPORT DEVELOPMENT.—The Secretary may approve a project grant application and make a grant to reimburse a sponsor for airport development accomplished by the sponsor (including project formulation costs), if—

"(1) the airport development for which reimbursement is requested is limited to work associated with the construction of a new runway to accommodate large turbojet air carrier aircraft at a primary airport;

"(2) before the development began, the sponsor notified the Secretary of its intent to carry out the development and request reimbursement subsequent to accomplishment of the development; and

"(3) before the development began, the sponsor provided the Secretary with sufficient information to enable the Secretary to determine that the development would be carried out in accordance with all applicable statutory and administrative requirements imposed on sponsors in connection with projects funded under this title;".

(b) Section 513(a) of the Airport and Airway Improvements Act of 1982 (49 U.S.C. 2212(a)) is amended—

(1) in paragraph (3) by striking out "and" at the end thereof;

(2) in paragraph (4) by striking out the period at the end thereof and inserting in lieu thereof a semicolon and "and"; and

(3) by inserting immediately after paragraph (4) the following new paragraph:

"(5) it was incurred prior to the execution of the grant agreement with respect to the project (not a necessary cost of formulating the project) in connection with airport development accomplished before the execution of the agreement, if (A) the airport development for which the cost was incurred is limited to work associated with the construction of a new runway to accommodate large turbojet air carrier aircraft at a primary airport, and (B) the development was carried out in accordance with all applicable statutory and administrative requirements imposed on sponsors in connection with projects funded under this title.".

SASSER (AND OTHERS) AMENDMENT NO. 3147

Mr. JOHNSTON (for Mr. SASSER) (for himself, Mr. GLENN, and Mr. HEFLIN) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . Section 1203 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b) is amended—

(1) in subsection (3) by striking the semicolon at the end thereof and inserting in lieu thereof "and an officially recognized or designated public employee member of a rescue squad or ambulance crew who was responding to a fire, rescue or police emergency;"; and

(2) in subsection (7) by striking all after the words "law enforcement officer" and inserting ", a firefighter, or rescue squad or ambulance crew."

METZENBAUM (AND KASSEBAUM) AMENDMENT NO. 3148

Mr. JOHNSTON (for Mr. METZENBAUM) (for himself and Mrs. KASSEBAUM) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . (a) Notwithstanding section 102 of this joint resolution, there are appropriated $500,000 for fiscal year 1987 for grants and contracts under section 5 of the Orphan Drug Act, which shall be in addition to amounts appropriated for such grants and contracts under section 101(a) of this joint resolution.

(b) Notwithstanding any other provision of this joint resolution, the total amount appropriated for fiscal year 1987 under section 101(a) of this joint resolution for the Commodity Futures Trading Commission shall be reduced by $500,000.

LAUTENBERG (AND BRADLEY) AMENDMENT NO. 3149

Mr. JOHNSTON (for Mr. LAUTENBERG) (for himself and Mr. BRADLEY) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the resolution, insert the following new section: Notwithstanding any other provision of law, appropriations available to the Department of Defense during the current fiscal year shall be available to make payments to a hospital that obtains 12 percent or more of its operating funds from contributions and that limits the care it provides to the treatment of heart and lung conditions: *Provided*, That, payment may not be denied for a claim for otherwise reimbursable services submitted under a plan contracted for under sections 1079(a) and 1086(a) of title 10, United States Code, solely on the basis that such hospital does not impose a legal obligation, including a patient cost share or deductible, on its patients to pay for such services.

DOLE AMENDMENT NO. 3150

Mr. HATFIELD (for Mr. DOLE) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the joint resolution, insert the following new section:

SEC. . The Director of the Office of Management and Budget shall include in the area designated as the Wichita Metropolitan Statistical Area the County of Harvey, Kansas.

HEINZ AMENDMENT NO. 3151

Mr. HATFIELD (for Mr. Heinz) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page 4, line 16, after the period insert the following: "The first proviso under the heading 'Limitation on Program Activity' in title IV of S. 2824 shall read as follows: '*Provided*, That, if the Chairman of the Export-Import Bank certifies that such budget authority will not be fully utilized during the fiscal year 1987, up to $150,000,000 of that amount may be available, subject to the regular notification procedures of the Appropriations Committees of the Senate and House of Representatives, as tied aid credits in accordance with the provisions of the Export-Import Bank Act Amendments of 1986:' and for the purposes of that proviso, there is appropriated to the Export-Import Bank of the United States an amount equal to the grant amount of tied aid credits which are made available from time to time, but not to exceed $150,000,000, which shall be subject to the limitation on gross obligations for the principal amount of direct loans specified under such heading.".

DURENBERGER (AND OTHERS) AMENDMENT NO. 3152

Mr. HATFIELD (for Mr. Durenberger) (for himself, Mr. Lugar, and Mr. Pell) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the resolution add the following new section:

Sec. . Such amounts as may be necessary of the Polish currencies held by the United States which have been generated by the sale to Poland of surplus United States dairy products shall be available for construction and renovation projects to be undertaken in Poland under the auspices of the Charitable Commission of the Polish Catholic Episcopate for the benefit of handicapped and orphaned children. Such currencies may be utilized without regard to the requirements of section 1306 of title 31, United States Code, or any other provision of law.

KASTEN (AND OTHERS) AMENDMENT NO. 3153

Mr. HATFIELD (for Mr. Kasten) (for himself, Mr. Inouye, Mr. D'Amato, Mr. Specter, and Mr. Johnston) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the resolution, insert the following:

Sec. . The last sentence of Section 61(a) of the Arms Export Control Act is amended by inserting immediately following the word "life" the phrase ", nor shall it apply to a lease made in exchange with the lessee for a lease on substantially reciprocal terms of defense articles for the Department of Defense: *Provided*, That this section does not constitute authorization of appropriations for payments by the United States for leased articles."

MATTINGLY (AND OTHERS) AMENDMENT NO. 3154

Mr. MATTINGLY (for himself, Mr. Riegle, Mr. Levin, Mr. Denton, Mr. Thurmond, Mr. Nunn, Mr. Trible, Mr. Abdnor, Mr. Dole, Mr. Boren, and Mr. Hollings) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page 2 of the bill, line 12, strike out the period and insert in lieu thereof the following: ", except that the Secretary shall carry out section 633, and for such purpose, shall reduce the amount of funds available for emergency insured and guaranteed loans to meet the needs resulting from natural disasters from funds in the Agricultural Credit Insurance Fund by $132,000,000; *Provided further*, That—

(1) notwithstanding any other provision of section 633, for the 1986 crop year, the Secretary of Agriculture shall utilize certificates redeemable from stocks of commodities held by the Commodity Credit Corporation, with an aggregate value of $190,000,000 for the purpose of making disaster payments to producers of nonprogram crops, fruits, vegetables, tree nuts, or other agricultural products (including 1986 program crops damaged by hail or flood), in counties in which producers became eligible subsequent to July 1, 1986, to receive disaster emergency loans under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961) as the result of drought, excessive heat, flood, hail, or excessive moisture, and

(2) the Secretary of Agriculture shall make such payments (not to exceed $100,000 to any individual producer) if the Secretary determines that—

(A) the producer has suffered a substantial loss of production due to drought, excessive heat, flood, hail, or excessive moisture, and

(B) such loss has created an economic emergency for the producer to the extent that additional assistance must be made available to alleviate such economic emergency, and

(3) for the purpose of making such disaster payments to eligible producers of nonprogram crops, fruits, vegetables, tree nuts, or other agricultural products (including 1986 program crops damaged by hail or flood) the Secretary of Agriculture shall reduce the amount of funds available for emergency insured and guaranteed loans to meet the needs resulting from natural disasters from funds in the Agricultural Credit Insurance Fund by $200,000,000.".

NUNN (AND MATTINGLY) AMENDMENT NO. 3155

Mr. JOHNSTON (for Mr. Nunn) (for himself and Mr. Mattingly) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the joint resolution, add the following:

Sec. . Notwithstanding any other provision of law, the Small Business Administration is authorized to recognize all costs incurred prior to December 16, 1980, by a small business development center at the University of Georgia in pursuit of the purposes of the small business development center program as allowable costs chargeable to a fiscal year 1981 cooperative agreement, provided such costs were incurred subsequent to October 1, 1979, and have not been reimbursed from non-federal sources.

HEINZ AMENDMENT NO. 3156

Mr. HEINZ proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page 6, line 2, before the period, insert the following: ", except that funds made available under such Act, and the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1986 (Public Law 99-178; 99 Stat. 1103), under the paragraph of each Act entitled "STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS" that are authorized under section 6 of the Wagner-Peyser Act (29 U.S.C. 49e) may be used to carry out the targeted jobs tax credit program under section 51 of the Internal Revenue Code of 1986".

RUDMAN (AND OTHERS) AMENDMENT NO. 3157

Mr. HATFIELD (for Mr. Rudman) (for himself, Mr. Domenici, and Mr. Kasten) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

On page 2, line 24 strike the period at the end of the line and insert:

:Provided further, That notwithstanding any other provision of this subsection, during fiscal year 1987 $36,450,000 shall be available for Department of Commerce, General Administration, "Salaries and Expenses"; $22,700,000 shall be available for Economic Development Administration, "Salaries and Expenses"; $196,500,000 shall be available until expended for International Trade Administration, "Operations and Administration"; $39,675,000 shall be available for Minority Business Development Agency, "Minority business Development", of which $29,805,000 shall remain available until expended; and $1,008,612,000 shall be available until expended for National Oceanic and Atmospheric Administration, "Operations, Research, and Facilities": Provided Further, That of the funds available for Regional Development Program, "Regional Development Programs", $1,576,000 are rescinded.

KENNEDY (AND OTHERS) AMENDMENT NO. 3158

Mr. KENNEDY (for himself, Mr. Lugar, Mr. Pell, Mr. Durenberger, Mr. Harkin, Mr. Sarbanes, and Mr. DeConcini) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the resolution, add the following new section:

Sec. —.

(a) The Congress finds that:

1. On September 11, 1986, the people of Chile marked the thirteenth anniversary of an authoritarian government characterized by restrictions on civil liberties, including suspension of all political activities;

2. On August 25, 1985, Cardinal Juan Francisco Fresno announced the National Accord for the Transition to Full Democracy in Chile, an agreement endorsed by eleven political parties spanning a broad political spectrum which commits the signatories to concrete steps to achieve a peaceful

evolution toward full and authentic democracy;

3. This national accord, which includes the repudiation of violence, the restoration of full civil liberties, the legalization of political parties, the preservation of a mixed economy, including guarantees of private property, and the holding of elections by direct popular vote, represents an honest and prudent effort toward this necessary transition; and

4. The political parties, labor unions, professional organizations, and other groups supporting the accord reflect the overwhelming support of the Chilean people for a peaceful return to democratic rule: Now, therefore, be it

(b) It is the sense of the Congress that the United States—

1. supports the efforts of democratic forces in Chile to achieve a peaceful return to democratic government;

2. expresses its view that the National Accord for the Transition to Full Democracy is an important first step toward this goal; and

3. calls upon the Government of Chile and the leaders of all sectors of Chilean society to demonstrate their commitment to a genuine transition through a process of dialogue and negotiation aimed at securing a return to democratic rule.

ABDNOR AMENDMENT NO. 3159

Mr. HATFIELD (for Mr. Abdnor) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the end of the joint resolution, add the following:

Sec. . (a) The Director of the Office of Personnel Management (hereafter in this section referred to as the "Director") shall pay out of the Civil Service Retirement and Disability Fund, an annuity of $1,500 per month to Gladys Pyle of Huron, South Dakota, who served as a United States Senator from November, 1938, to January, 1939, and is not otherwise eligible to receive an annuity on the basis of her service as a Senator.

(b) The annuity provided under subsection (a)—

(1) shall commence on the first day of the month in which this joint resolution is enacted; and

(2) shall terminate on the date of the death of the said Gladys Pyle.

(c)(1) The Director shall administer the provisions of this section.

(2) Sections 8340, 8346, 8348(a), and 8348(f) of title 5, United States Code, shall apply with respect to the annuity provided under the subsection (a).

DOLE (AND OTHERS) AMENDMENT NO. 3160

Mr. HATFIELD (for Mr. Dole, for himself, Mr. Leahy, and Mr. Boschwitz) proposed an amendment to the joint resolution (H.J. Res, 738), supra; as follows:

At the appropriate place, insert the following new section:

Sec. . (a) Clause (B) of the last sentence of section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e)) is amended by striking out "for the excess shelter expense deduction contained in clause (2)" and inserting in lieu thereof "contained in clause (1)".

(b)(1) Except as provided in paragraphs (2) and (3), the amendment made by subsection (a) shall become effective 30 days after the date of enactment of this Act.

(2) Except as provided inparagraph (3), the amendment made by subsection (a) shall not apply to an allotment issued to any eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) for any month beginning before the effective date of this subsection.

(3) If a State elected before the date of enactment of this Act to compute household income in accordance with section 5(e) of the Food Stamp Act of 1977 (7 U.S.C. 2014(e)) (as amended by subsection (a)), the amendment made by subsection (a) shall become effective on May 1, 1986.

BAUCUS (AND DOLE) AMENDMENT NO. 3161

Mr. HATFIELD (for Mr. Baucus for himself and Mr. Dole) proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place, insert the following:

(Sec. . (a) Congress finds that—

(1) in 1983, the United States entered a long-term Grain Agreement with the U.S.S.R. obligating the U.S.S.R. to purchase four million metric tons of wheat by a stipulated time each year; and

(2) between September 30, 1985, and September 30, 1986, the U.S.S.R. purchased only four percent of the wheat it was obligated to purchase; and

(3) the Soviet failure to purchase this wheat has been the primary cause of a 29 percent decrease in the volume of United States wheat exports over the same period; and

(4) this decrease has caused serious injury to American farmers; and

(5) a strong grain trade can be a valuable element of a peaceful relationship between the United States and the U.S.S.R.

(b) It is the sense of the Congress that, at the upcoming summit meeting in Reykjavick, Iceland, President Reagan should aggressively seek to achieve a resolution with First Secretary Gorbachev regarding the U.S.S.R.'s obligation to purchase United States wheat under the U.S.-U.S.S.R. Long-Term Grain Agreement.

(c) Further, it is the sense of Congress that the President, at the preparatory summit, should, with First Secretary Gorbachev, explore ways to strengthen the wheat trade between the United States and the U.S.S.R.

KASTEN AMENDMENT NO. 3162

Mr. KASTEN proposed an amendment to the joint resolution (H.J. Res. 738), supra; as follows:

At the appropriate place in the joint resolution, insert the following new section:

Sec. . Funds appropriated by this joint resolution may not be used for any assessed contribution to the United Nations or to any specialized agency of the United Nations which would cause the assessed contributions made by the United States to such organization or agency in such year to exceed the amount paid by the Government of the Soviet Union as its assessed contribution to such organization or agency, as the case may be, for such year: *Provided*, That this section shall not apply if the Secretary of State has certified that such organization or agency has adopted a plan which grants voting rights to each member state on matters of budgetary consequences proportionate to the contribution of each such member state to the budget of the United Nations and its specialized agencies.

HOUSING AND URBAN DEVELOPMENT AND INDEPENDENT AGENCIES APPROPRIATIONS, 1987

LEAHY (AND OTHERS) AMENDMENT NO. 3163

Mr. LEAHY (for himself, Mr. Lautenberg, Mr. Stafford, Mr. Durenberger, Mr. Chafee, Mr. Baucus, Mr. Mitchell, and Mr. Humphrey) proposed an amendment to the bill (H.R. 5313) making appropriations for the Department of Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1987, and for other purposes; as follows:

On page 25, line 24, strike out "$1,050,000,000" and insert in lieu thereof "$1,650,000,000".

On page 26, line 7, insert before the period the following:

": *Provided further*, That of the amounts appropriated under this heading in Public Law 99-160, $600,000,000 are rescinded."

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON AGRICULTURAL RESEARCH, CONSERVATION, FORESTRY, AND GENERAL LEGISLATION

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Subcommittee on Agricultural Research, Conservation, Forestry, and General Legislation, of the Committee on Agriculture, Nutrition and Forestry, be authorized to meet during the session of the Senate on Thursday, October 2, to hold a hearing to address the following legislation:

S. 1767 (H.R. 148), the Michigan Wilderness Act of 1985;

S. 2838, the Georgia Wilderness Act of 1985;

H.R. 4685, the Texas Wilderness Act Amendments of 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Thursday, October 2, to hold a hearing to consider S. 2203, the new Clean Air Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Thursday, October 2, 1986, in order to conduct a markup on the following bills and nominations:

S. 2479;
S. 2630;
S. 2887;
Bob Bedell, to be Administrator of the Federal Procurement Policy;
Henry Frazier, to be member of Federal Labor Relations Authority;
John Griesemen, to be Governor, U.S. Postal Service; and
John Melchner, to be Inspector General of the Post Office.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Thursday, October 2, to conduct a business meeting to consider S. 397, Foreign Trade Antitrust Improvements Act of 1985, resolutions, and commemoratives.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

REPUBLICAN CONFERENCE TASK● FORCE ON AIR TRANSPORTATION SAFETY: FINAL REPORT

● Mr. KASTEN. Mr. President, I rise today to bring to the attention of my colleagues the final report of the Republican Conference Task Force on Air Transportation Safety, of which I have served as the chairman. This task force was organized last January at my request in recognition of the American public's growing apprehension in flying. This apprehension came on the heels of the worst year in the number of deaths related to aviation accidents. Over 2,000 lives were lost during all of 1985.

Just over 1 year ago, a Midwest Express DC-9 crashed just after take-off in Milwaukee. Concerns over the deterioration in the margins of safety were brought home to me. As a member of both the Transportation Appropriations Subcommittee and the Commerce, Science, and Transportation Committee—two separate assignments that oversee aviation issues, I have long held an interest in aviation safety, and my concern has continued to increase over the inadequacies within our air transportation system.

The task force has provided another forum for exploring the current and potential problems related to aviation safety, as well as for studying possible solutions to those problems. The task force has worked with a wide variety of interested parties in an effort to study this important issue.

Mr. President, the culmination of our work of the Air Transportation Safety Task Force is the final report, which illustrates many of the significant issues with which the task force strongly recommends that the Federal Aviation Administration and the aviation industry, as well as Congress and the administration, concern themselves with and strive to address. I would like to thank my colleagues on the task force, which included Senators ANDREWS, KASSEBAUM, DANFORTH, GOLDWATER, BOSCHWITZ, and CHAFEE, for their help and contributions both on the task force and in contributing to this final report.

Mr. President, it is my hope that this report can help in the efforts to improve overall air safety. I ask that the report be printed into the RECORD.

The report follows:

SENATE REPUBLICAN CONFERENCE TASK FORCE ON AIR TRANSPORTATION SAFETY: FINAL REPORT

BACKGROUND ON THE TASK FORCE

In January of 1986, the Republican Conference Task Force on Air Transportation Safety was formed in recognition of the American public's growing concern over the safety of the domestic aviation system.

Senator Robert W. Kasten, Jr. of Wisconsin, who serves on both the Senate Appropriations Subcommittee and the Senate Commerce Committee, was named as chairman. The task force also includes Senator Nancy Landon Kassebaum of Kansas, Chairman of the Commerce Subcommittee on Aviation; Senator John C. Danforth of Missouri, Chairman of the Senate Commerce Committee; Senator Mark Andrews of North Dakota, Chairman of the Transportation Appropriations Subcommittee; Senator Barry Goldwater. member of the Senate Commerce Committee; Senator Rudy Boschwitz; and Senator John Chafee, Chairman of the Senate Republican Conference and ex-officio member of the task force.

With the varied backgrounds of the members of the task force, they bring with them the expertise on the spectrum of aviation issues that is necessary to study the subject of air safety. When the task force was formed, it took particular note of two major factors contributing to the ongoing public concern over air safety.

First, during 1985, more than 2000 lives were lost in aviation accidents in the non-Communist world, which was the highest total of fatalities for any calendar year. According to the National Transportation Safety Board (NTSB), non-scheduled domestic airlines suffered the highest fatality rate in more than a decade. 526 lives were lost in all American air carrier operations during the past year, second only to the 655 recorded airline deaths in 1977. 1985 began with the crash of an Eastern Airliner crash in Bolivia; shortly before the year's end, the lives of more than 248 servicemen and women were lost as an Arrow Air charter went down outside of Gander, Newfoundland. During the year, the worst single plane crash ever occurred in Japan with more than 500 lives lost when a J.A.L. 747 went down. Closer to home, the worst airline disaster occurred last year when a Delta Airlines L-1011 crashed due to the force of wind shear, killing 137 passengers and crew on board.

Second, the number of reported and unreported "near-misses" between various aircraft with passenger planes continued to rise. Media reports surfaced that many reports of near-misses were being downgraded by the Federal Aviation Administration (FAA). Of the 439 reported near mid-air collisions in the first half of 1985, 121 involved at least one commercial aircraft. During this year, significant attention has been given to Chicago's O'Hare International Airport where several near-misses, in which many lives could have been lost, occurred between passenger airplanes. Most recently, during the month of August, one near-miss turned into tragedy when a small general aviation aircraft collided with an AeroMexico DC-9 over the skies of California. All abroad both aircraft, as well as many more on the ground, were killed.

Despite both of these factors, Admiral Donald Engen, FAA Administrator, proclaimed that 1985 was one of the safest years on record. During that year, air traffic was up considerably as the world's fifty busiest airports served more than 757 million passengers. Recognizing the major role that Congress plays in sharing the responsibility of enhancing air safety, the Republican Conference Task Force on Air Transportation Safety set out to examine the broad scope of aviation safety with the intention of making recommendations for the upgrading of safety standards which could be considered by both the government and aviation groups.

TASK FORCE COMPILATION OF INFORMATION

While the subject of aviation safety has been examined by several different Congressional committees, the Republican Conference has provided yet another forum for the examination and discussion of this critical issue. Although under the auspices of the Republican Conference, the members of the task force recognize and emphasize that this concern as well as efforts to improve overall standards of safety transcend party lines. In keeping with this spirit, the task force has readily accepted and encouraged the participation of all interested parties.

During the month of March, 1986, the task force conducted a meeting of inquiry with the participation of a wide-range of public officials and industry professionals. Among the diverse governmental bodies and organizations represented were the FAA, General Accounting Office (GAO), Air Transport Association (ATA), Regional Airline Association (RAA), General Aviation Manufacturers' Association (GAMA), Aircraft Owners and Pilots Association (AOPA), American Association of Airport Executives (AAAE), and the International Airline Passengers Association (IAPA). Task force members, as well as Senator James Exon (D-NE), the ranking member of the Commerce Subcommittee on Aviation, took part in the exchange with these distinguished representatives.

Since the meeting, the task force has gathered additional information supplied by these and other organizations as well as from knowledgeable individuals and members of the press. The task force has found these resources to be extremely valuable in better understanding the problems before the aviation community as well as the possible remedies to increase the margins of air safety.

As the task force collected and gathered information, it took note of efforts undertaken by its individual members and other Senators and Congressmen to address specific problems through legislative action. While the task force members may approach each problem differently, the members are in general agreement on the definition of the problems and agree in principle as to the solutions.

TASK FORCE OBJECTIVES

In its initial report, the Republican Conference Task Force on Air Transportation Safety listed seven objectives which it planned to address. The seven objectives which the task force used as the outline for its work included:

(1) *Aircraft inspection standards.*—Are the standards applied by the FAA and the airlines adequate, and are they being adequately conducted by skilled personnel;

(2) *Air traffic control.*—Are there enough qualified air traffic controllers, is air controller education strong enough to meet the demands in a crisis, and is their scheduling monitored closely enough;

(3) *Aircraft manufacturing standards.*—Are these standards and the plant's equipment inspection adequate enough to maintain air safety;

(4) *Variance in airports.*—Since not all airports are equally equipped, especially smaller airports, what, if any improvements (such as longer runways, more runways, more airports for some areas) are needed to guarantee safety;

(5) *Proliferation of new airlines.*—With new airlines organizing more frequently due to the deregulation of the industry, is the increased traffic imperiling the skies, are less qualified pilots now flying more frequently, and are their planes receiving proper maintenance;

(6) *Patterns in accidents.*— Are there any common links to any of the air disasters of the past year (i.e. pilot error or inexperience, maintenance oversights, plane malfunctions); and

(7) *Government's role.*—What actions have been taken by the government, airlines, and airports to increase safety aboard airlines, and what if any further voluntary and federally mandated action should be taken to ensure safer skies in the future.

TASK FORCE FINDINGS

I. Aircraft inspection standards

The task force has found that a disturbing trend exists in government inspection of airline maintenance. As a result of Congressional requests, the GAO published reports on FAA inspection control. The FAA has fallen short in maintaining adequate inspection schedules. While the FAA has reported its findings of thousands of violations found by its inspectors on certain airlines, which in turn have resulted in millions of dollars worth of fines—some of which are being contested, the GAO report concluded that some airlines have not been inspected at all on a regular basis. Some, in fact, have not been subjected to any inspections in the past years. Additionally, the GAO found that the FAA has no set criteria on which to base its inspections, as well as no guidelines for how often to inspect the various air carriers' operations.

While the task force has found that most airlines strive to exceed the FAA's minimum safety standards, there are those that are not even meeting the FAA's standards. Since some airlines are not even being inspected, there is a concern that there may be an incentive for some carriers to cut corners.

Since 1978, when the airline industry was deregulated, fierce competition has allowed the American public to fly at greatly reduced rates. Most notably, during the past few years with the emergence of no-frills airlines with substantially lower fares, other airlines, both large and small, have found it necessary to match the competition. Thus it set the stage for reduced profitability for most carriers.

Since deregulation, over one hundred airlines have filed for bankruptcy. The task force has recognized that while the industry has become more competitive by offering lower fares, the necessity for careful cost control in all areas of airline operation became apparent. A 1977 internal FAA memorandum, which contained an assessment of the potential effects that regulatory reform might have, said "in order to be competitive with other carriers in ticket prices, the carriers could be expected to cut economic corners wherever possible." There is a concern by the task force that such cost control or cost-cutting may have occurred in the area of airline maintenance. Experts have estimated that some airlines have reduced their budgets between twenty to fifty percent per year. With such an estimate, there is serious concern that maintenance has suffered.

As evidenced by the large number of safety violations uncovered by the FAA over the past two years, it is clear that the FAA has the capacity to detect problems where they exist. Unfortunately, the FAA has experienced a decline in the level of safety inspectors since deregulation began, a trend reversed by Congress over the last two years.

According to the FAA, there has been more than a 300% increase in the number of operating scheduled airlines since deregulation. This translates to a sizable increase in the number of actual aircraft flying.

The task force concludes that, with the significant increase in air traffic and aircraft since deregulation, there is an insufficient number of air safety inspectors employed by the FAA. The task force also concludes that, despite the fact that most airlines, particularly major carriers, pride themselves on meeting or exceeding the FAA's minimum safety standards, there remain a number of carriers that have not acted responsibly by meeting the minimum margins of safety in maintenance, based upon the FAA's records of non-compliance.

II. Air traffic control

The Republican Conference Task Force on Air Transportation Safety recognizes the concern in Congress and the FAA, as well as throughout the aviation community and the general traveling public, over the current levels of air traffic controllers.

In a Congressionally authorized report published in March, 1986, the GAO stated that the margin of aviation safety had declined since the time immediately before the Professional Air Traffic Controllers Organization (PATCO) went on strike in 1981. When the strike began, President Ronald Reagan, who maintained that the striking air traffice controllers were breaking the law and thus jeopardizing the safety of air travelers, fired all striking PATCO members. In order to increase the immediate safety conditions, the FAA reacted by placing restrictions on the number of commercial flights which would be allowed. Currently, even though the controller levels are still below those in place before the strike, all such restrictions have been lifted except for those in place at Washington National, New York JFK and La Guaradia, and Chicago O'Hare.

The GAO report showed that although the volume of air traffic had dramatically increased over the past few years the number of full performance level (FPL) air traffic controllers was substantially below the level on duty immediately preceding the 1981 strike when they numbered approximately 13,200 (or 80%) out of a total work force of 16,200. According to the FAA's latest report dated August 31, 1986, the total number of air traffic controllers is 14,484, of which 9,352 (or 65%) are FPL, while 1,695 are operations controllers, who assist in the tower but are not trained or equipped to the extent that an FPL is. The task force recognizes that this number has increased signficantly over the past two years.

The task force is seriously concerned about understaffing among the controllers, especially with respect to the burgeoning air traffic. Principle concerns lie in sheer numbers. Although the FAA reports that the average controller only works an average of six hours per shift, this number takes into account all airports, with both small and large volumes of traffic. Periodic reports have shown that at major airports like O'Hara, New York's J.F.K., Atlanta Hartsfield, and Los Angeles International, understaffing occurs with great frequently, and as a result many controllers have been found to work a substantially high number of overtime hours. In fact, according to the GAO, controller overtime amounted to 908,00 hours in 1985 compared with 337,000 hours of overtime in 1980.

Taking into account the fact that the controllers hold high-tension positions, experts generally contend that this is not the type of occupation that can allow for extensive overtime due to the "burn-out" factor—controller's attention must be maintained at all time, since regular duty can cause exhaustion in itself, overtime adds to the tension and exhaustion suffered by the controllers, thus burning them out. The task force takes note that this one point, in and of itself, could be potentially harmful to overall safety.

The task force is also concerned over the FAA's plans to increase the controllers corps. Although it is recognized that the FAA is working to increase the number of controllers, the FAA only maintains one training school in Oklahoma City, Oklahoma. The school is only able to handle a class load of forty students each month; however, there is a sizable attrition rate of approximately fifty percent per class. This, coupled with the anticipated retirement of a substantial number of controllers, will prove to make the FAA's task of increasing the controller work force more difficult, and thus, will not give the aviation system noticeable relief. However, the task force notes that the FAA has instituted a valuable program called, "Cross Option," which encourages experienced controllers to move to air centers that are understaffed; this program offers positive hope for the future of the air traffic control system.

III. Aircraft manufacturing standards

The study of the aircraft manufacturing standards has proven to be the most satisfying in terms of safety analysis. Certainly, although there may be some problems within the actual manufacture of aircraft, the industry has progressed to a point which can best be characterized as "pride through state of the art technology." Although the task force has found no specific problems in this area with which to express serious concern, it strongly urges the FAA to continue research into technological development, both ground and airborne, which show promise of increased safety.

Over the past thirty years, great advances have been made in aircraft technology, from the propeller airplane era to the Concorde jet age. Even during the past ten years since the Concorde first appeared, technological advances have continued. Through this evolution within the industry, potentially harmful airplane parts have continued to be replaced or made obsolete.

Concern has arisen over the safety of certain types of aircraft. In 1979, an American Airlines DC-10 crashed shortly after taking off from O'Hare in Chicago. This incident renewed fears that the DC-10 might not be as safe as previously believed. Studies of the aircraft have proven otherwise. More recently, concerns have been expressed over the structural framework of aging 747 jets. Although it is clear that 747s in general are safe, it brings to light the importance of continuing proper inspections and maintenance of such aircraft. As with all machinery, aircraft can age and wear out; the only way to prolong its life is to oversee its upkeep regularly. Such a conclusion underscores the necessity of maintaining adequate FAA inspection teams.

IV. Variance in airports

When the Republican Conference Task Force on Air Transportation Safety was being formed, concerns were expressed that not all airports were equally equipped for handling air traffic. However, when comparing Chicago O'Hare, which is the world's busiest airport, with a smaller airport like Central Wisconsin Airport in Mosinee, Wisconsin, it became clear why all airports are not equally equipped. O'Hare handles aircraft of all sizes of which one lands almost every minute of the day; Central Wisconsin handles a much smaller traffic load with much smaller aircraft landing a few times each hour. The disparity is one of necessity.

Yet, the task force recognizes the importance of maintaining the equipment and facilities that are used at both of these airports, as well as every other type in between. Money for the upkeep and improvements comes from the Aviation Trust Fund, which Congress created in response to intolerable air transportation capacity and safety considerations by establishing transportation taxes. In 1982, the Airport and Airway Improvement Act included higher taxes on airline passengers and other aviation users to fund a ten-year program to fully modernize the domestic air traffic control system.

During the period from 1971 to 1985, Trust Fund income has exceeded expenditures by more than $5 billion. The Trust Fund surplus will total $4.5 billion at the end of Fiscal Year 1986. There is a concern that the Trust Fund expenditure levels are being reduced by the Administration out of budgetary constraints, as well as unanticipated and serious technological delays in the National Airspace System (NAS) plan. Failure to use these funds could mean that progress in airport and airways modernization could be impeded, safety and capacity programs will be slowed, and important national air transportation system improvements will not be completed as necessary. Since the Trust Fund issue is tied directly to so many programs necessary for the long-term safety of the air transportation system, the task force feels that this is an issue with which it must be concerned.

V. Proliferation of new airlines

Although none of the areas which the task force has chosen to study are without controversy, the members recognize that the discussion of the effect that the proliferation of new airlines has had on aviation safety ranks as one of the most controversial.

Through the era of airline deregulation, nothing has been more startling than the number of airlines that have been created as a result of deregulation. Before deregulation, there were government regulations limiting the number of interstate airlines; now, with no such limits, new airlines such as New York Air, People Express, Midwest Express, and others have been given the opportunity to begin operations in a more competitive atmosphere. As a result, consumers have generally been given more airlines from which to choose, and thus have been able to save millions of dollars in air fare costs. Also, many Americans who never would have given thought to flying have been afforded the opportunity to do so.

However, as has already been noted with respect to safety inspections, more does not necessarily mean better. Although it is very desirable to have healthy competition in any industry, there are some side effects from the airline fare wars that could potentially impede aviation safety. As previously noted, competition through reduced fares—although good in itself for consumers—means reduced airline revenues, which in turn creates the need for internal cost controls. Such cost controls for some airlines have meant eliminating free baggage service and free in-flight beverage and meal service; however, the task force is concerned that maintenance costs have also suffered reductions.

Another aspect of the proliferation of new airlines that concerns the task force is the higher volume of air traffic, especially in already overburdened traffic routes. Given the sizable flight activity of general aviation, the addition of even more commercial flights could have a disastrous effect in high density traffic areas. In the case of the AeroMexico collision with a general aviation aircraft, reports surfaced that the air traffic controller screen at Los Angeles International Airport was "full"—making one plane almost indistinguishable from another.

One question that was raised when the task force formed its objectives was whether the new airlines employed inexperienced pilots and whether their planes were properly maintained. The task force has been reassured that before a new airline gets off the ground, it must receive FAA approval, and pilots must meet minimum standards before being allowed to fly. However, the task force has found that an increasing number of pilots are being trained through simulators and are promoted to the head-pilot seat at a much earlier rate than in the past. In the case of established major airlines, labor agreements and seniority have meant longer roles—as often as ten to twelve years—as copilots. The salaries offered by major carriers have been such that copilots are willing to wait for advancement. Also, major airlines were able to gain a lion's share of former armed forces pilots to fill out their own ranks. By contrast, newer airlines cannot match the salaries of the major carriers, and thus a majority of their pilots have been specifically trained in-house to fly commercial aircraft. Even though advancement occurs much faster within the newer airlines, it does appear that their pilots are equipped and trained to handle such aircraft.

In the case of maintenance, once again, the task force is concerned about all maintenance activity. With the advent of dozens of new air carriers, there has also been the expansion in servicing contracts for smaller airlines which do not have the capacity or employee work force to service their own planes. While the task force is concerned that the FAA is not using enough manpower and resources in maintenance inspection and that some airlines may try corner-cutting to save money, the task force does not feel that the margins of safety are being reduced by the contracting out on airline maintenance between an airline and a maintenance company.

VI. Patterns in Accidents

The Republican Conference Task Force on Air Transportation Safety found no conclusive proof of any correlation or common links to any of the air disasters of the past year.

VII. Government's role: Recommendations

Despite the citings of the previously mentioned problems of the aviation system and the consequent concerns of the task force that the margins of aviation are not as strong as they should be, Admiral Engen has been quoted as saying that air transportation has become, "so safe that even improvements over the long-term record will be difficult to achieve." The task force recognizes that air travel remains the safest and most efficient mode of transportation available. But to deny that specific problems exist would pave the way for erosion in the margins of safety.

The task force has raised many questions with respect to the FAA's ability to effectively inspect airline maintenance and control the skies. The task force is also concerned with the time it sometimes takes for the FAA to proceed with recommendations. In report after report on the causes of airline crashes, the NTSB has consistently placed part of the cause on FAA's failure to correct or recognize an already established problem; some critics have suggested that the FAA will not act on a recommendation if it has not originated within the agency.

Senator Kasten has stated that, "The FAA has in all too many cases been a reactive agency. The FAA seems to use what has been called 'tombstone technology'—that is, even though there are available technological means to correct potentially disastrous situations, the FAA only acts after tragedy strikes."

After an airplane fire in 1973 near Paris killed 124, the NTSB recommended that the FAA require large airliners to carry smoke detectors as well as automatic fire extinguishers in the lavatories as well as full face-masks with oxygen bottles for all crew members. Ten years later, a fire broke out on an Air Canada jet in Cincinnati. Twenty-three lives were lost because a fire in the lavatory went undetected for fifteen minutes. Only after the Cincinnati tragedy did the FAA mandate smoke detectors.

In the Midwest Express DC-9 crash in Milwaukee in September, 1985, one of the contributing factors was the explosion of an engine spacer. This spacer failure was the fifteenth recorded by the FAA since 1973. Even though a more durable replacement part was available since 1974, the FAA had only recommended that airlines replace the older spacer. Only after the Midwest Express disaster did the FAA issue a notice of proposed rulemaking to require that airlines replace the old-line spacer.

Most recently, the FAA has begun rulemaking procedures to require all American jets to be equipped with advanced collision avoidance system equipment, while general aviation aircraft that travel in certain terminal control areas will be required to install altitude encoding transponders so that they may be detected by the jet aircraft. This has come about within a few weeks after the AeroMexico collision with a general aviation aircraft.

There is little doubt that there is room for the improvement in aviation safety. The task force strongly recommends that the FAA closely examine and act upon prudent safety recommendations such as those proposed by the NTSB. Rather than wait until after lives have already been lost, the task force suggests that the FAA mandate the use of effective life-saving technology whenever possible before tragedy strikes.

The task force recognizes that a significant problem within the FAA is directly related to its manpower capabilities, which the task force has found to be insufficient. Two of the task force members, Senator Mark Andrews and Senator Bob Kasten, also serve on the Transportation Appropriations Subcommittee (Senator Andrews serves as chairman), which has worked to appropriate more funds directed at personnel areas of the FAA. The Senate's FY87 Transportation Appropriations bill contains the following language:

"The Committee was alarmed when FAA witnesses at the budget hearing were not able to provide information on current inspection personnel onboard strength. Furthermore, given the Committee's concern and scrutiny of safety activities, the level of detail provided in the budget justification is insufficient for all the safety-related job categories."

The committee report language continues by specifying that the FAA must account for total employment levels within both the safety inspector and air traffic controller ranks, as well as to include projections for academy trainees, washout rates at the academies and facilities, and retirements. Furthermore, the committee included more in the "Operations" appropriations than both the 1986 appropriations and the 1987 budget request included (below):

Appropriations, 1986	$2,658,732,000
By transfer	4,250,000
Budget request	2,764,867,000
Committee recommendation	2,769,300,000

Included within the Operations appropriations are the operation of the air traffic control system; maintenance of the traffic control system; and direction, staff, and supporting services. All totaled, the committee included $4,433,000 more than the budget request had asked for.

The task force recognizes that it is within the Congressional domain to help bolster the manpower for safety inspectors and air traffic controllers. The members recommend that Congress appropriate resources for the FAA to improve those two work forces in both a qualitative and quantitative manner relative to the specifications set out within the Transportations Appropriations report language.

With respect to controllers, the task force recommends that at a minimum, the FAA should reach the Congressionally mandated air traffic controller levels. The FAA should continue its "Cross Option" program as well as explore other possible employment incentives to get experienced controllers at critically understaffed centers and towers in order to reach a 75 percent FPL level in FY87. In the event that staffing levels remain insufficient to control traffic, the FAA must be prepared to take appropriate action, with the possibility of reducing volume, necessary to guarantee safety.

The task force has found a correlation between safety inspections and a spectrum of safety issues previously addressed. The task force recommends that the FAA must better target inspection resources as well as develop uniform inspection guidelines. The FAA must continue and reinforce its policy of strict enforcement of its safety standards for established major carriers, regional carriers, and new airlines, as well as general aviation. The FAA would be well-advised to carefully study and act upon NTSB recommendations, which were delivered by letter to the FAA on September 30, 1986, that call for improved training and testing of commuter pilots, increased FAA oversight, and other improvements for commuter airlines. While deregulation has removed some federal controls in the industry, the FAA must continue to guarantee the highest possible standards of safety. It must do so (1) by maintaining its role as the industry's watchdog, (2) by encouraging the industry to double the safety efforts by policing itself, and (3) by working cooperatively with the industry to solve the problems confronting it.

The task force also strongly supports the additional use of funding from the Airport and Airway Trust Fund. While the public debates the merits of removing this trust fund from the general budget, the task force recommends that more of the surplus funds be broken free for its intended use. Fortunately, the Transportation Appropriations Subcommittee has followed this wise course by including in its report language a limitation on obligations for airport development and planning grants which are financed under contract authority. The limitation recommended for FY87 is $1 billion, which is $287,500,000 more than the budget request had called for. Such a move will allow for additional progress in airport and airway modernization, safety and capacity programs, and national air transportation system improvements.

The Republican Conference Task Force on Air Transportation Safety endorses legislation that was introduced in 1986 by Senator Robert Byrd (D-WV) that would establish a "blue-ribbon" Presidential Commission on Aviation Safety. The members of the task force recognize the value that such a commission can have in further illustrating the problems confronting air safety. The Aviation Safety Commission Act, which was approved by the Senate on September 11, 1986, is the culmination of the growing concern that many members of the Senate have felt as reports of decreasing margins of air safety have proliferated over the past year and one half. Certainly, the formation of this task force is evidence of that concern. In his legislation, Senator Byrd took the goals of the task force one step further by proposing to move the public debate into this presidential commission, and the task force heartily welcomes such a move.

CONCLUSIONS

The Republican Conference Task Force on Air Transportation Safety concludes that there are many serious problems that must be confronted by the FAA and the aviation industry immediately. There is no doubt that although air travel remains essentially safe, the margins of safety have eroded. While the FAA and Congress have begun to take steps to make positive changes, only through continued diligent action and oversight will those margins once again increase.●

GLOBAL WARMING: THE IMPERATIVE OF TIMELY RESPONSE

● **Mr. BIDEN.** Mr. President, a few days ago I introduced the Global Climate Protection Act of 1986. Unfortunately, the text of the bill was not printed in the RECORD at that time. I ask that the text of the bill and my statement on it be printed in the RECORD.

Mr. President, it is a sad truth of human affairs that however well we as individuals may anticipate dangers in the distant future, and however severe those dangers may be, our public policies—even with responsive democratic government—seldom take serious account of consequences on a time horizon stretching beyond the next election.

This Nation's perilous economic situation amply demonstrates the point. For 5 years, an administration policy of reflation through massive Government borrowing has contributed to a sustained, if uneven, recovery—and has, therefore, proven politically as well as economically expedient. Unfortunately, the negative effects of an accumulating national and international debt, while slow to manifest themselves, may eventually prove ruinous. Future administrations and future Congresses will be left to cope—while cursing this generation's lack of economic foresight and responsibility.

THE OUTLINES OF A POTENTIAL CATASTROPHE

But deferral to future generations may simply not be possible with certain problems relating to the environment in which we live. In an age when mankind's numbers and activities are so extensive as to affect the planetary conditions that have been the very basis of human life, the cost of irresponsibility could be survival itself.

Environmental problems are interrelated. Only now, for example, are we beginning to understand, and address, the potentially far-reaching environmental consequences of a rate of tropical deforestation by which mankind is annually eliminating from the Earth's surface a forest area the size of West Virginia. We do not yet know the full implications of this trend. What we do know is that tropical forests, while covering only 7 percent of Earth, serve as an important source of oxygen in our atmosphere, that they provide sanctuary to approximately half the animal species now living, and that the current rate of destruction would, if perpetuated, nearly erase tropical forests from the face of our planet during the 21st century. Accordingly, I have been pleased to support H.R. 2957, the tropical deforestation legislation by which Congress is manifesting at least one fortunate exception to our generally weak institutional capacity for foresight. In this regard, I pay special tribute to the fine work done on this legislation by my colleage from Delaware, Senator ROTH, and by the distinguished ranking member of the Foreign Relations Committee, Senator PELL.

But a related problem as yet unaddressed, and at least as ominous as tropical deforestation, is global warming—a term, though seemingly esoteric, that could, as time passes, come to signify an environmental disaster second only to nuclear war.

Scientists now predict that, by the middle of the next century, accumulated emissions of certain man-made pollutants—carbon dioxide, chlorofluorocarbons [CFC's], and other trace gases—could, through the so-called greenhouse effect, raise the average temperature on Earth by 3-8 degrees. In terms of human comfort, this temperature change may seem merely inconvenient—and, for some persons, even welcome. But the effects would not be. Life on this planet exists only under highly specialized circumstances, occuring within a band of a few thousand feet above and below Earth's surface. Similarly, all life exists within a very narrow range of temperatures and under specialized atmospheric and climatic conditions. Indeed, so special are these circumstances that even a small rise in temperature could disrupt the entire complicated environment that has nurtured life as we know it.

For man, a central element in this equation is the delicate dependency of food production on weather. Within living memory, such shifts in weather patterns as the recent drought in Africa, El Nino in the Southern Hemisphere, and the North American dust bowls of the 1930's have devastated agriculture, producing enormous human suffering. Yet global warming, should scientific fears be realized in the decades immediately ahead, would produce climatic changes far more extensive and disastrous.

In the United States, agriculture is particularly vulnerable to climatic change. Across the surface of the planet, any global warming would be uneven—less near the oceans, with a greater temperature rise in the middle of continents. For the North American Farm Belt, situated in mid-continent, global warming could mean a new and permanent dust bowl.

Scientists predict also that global warming would mean temperature increases more rapid near the poles than at the Equator. This would mean a partial melting of the polar ice caps and of glaciers at the higher latitudes. Water released from these ice concentrations would raise sea levels up to 4 to 5 feet, producing widespread coastal flooding. Should this occur, mankind could—within the lifetimes of many now alive—witness a sudden alteration in global geography unlike any change in recorded history.

Over the longer term, the consequences of global warming, while less certain, are even more ominous. A 1985 report of the distinguished multinational Scientific Committee on Problems of the Environment, after detailing the climatic effects in the midterm, went on to ask whether any subsequent equilibrium would permit man's continued existence on Earth. The answer: we don't know.

THE RANGE OF UNCERTAINTY

At present, amidst the considerable uncertainty surrounding the global warming theory, some cause for optimism may be found in evidence running counter to the direct predictions. Under the postulated greenhouse effect, manmade pollutants rise into the atmosphere and prevent heat from escaping to space. Yet for all of the carbon dioxide, methane, and CFC's released into the atmosphere since the Industrial Revolution, temperatures in the northern latitudes, including the United States, have actually declined slightly during the last half-century.

No scientist, however, disputes the validity of the greenhouse theory, nor is there doubt that the level of carbon dioxide in the atmosphere is steadily increasing. Moreover, while the northern latitudes have cooled marginally in recent decades, the Southern Hemisphere has warmed steadily. Scientists theorize that warming in the Northern Hemisphere may simply have been postponed by an increased cloudiness that has temporarily—but only temporarily—offset the greenhouse effect.

Such uncertainty means that we cannot cite as evidence of global warming such simple statistics as the fact that, in our Nation's Capital, 3 of the 10 hottest years in the century have occurred in the 1980's. Weather patterns in any specific year in a particular area are too unpredictable to provide evidence for a long-term trend. Nor can we say with any certainty that the recent drought in the southern United States is an early and already observable result of the global warming phenomenon.

What we can say is that this drought, the most severe since recordkeeping began, is the kind of climatic change that global warming would cause. It is a relatively mild and deeply sobering example of just what global warming would mean, should it occur. We would thus prudently regard this current, limited disaster as a potential harbinger deserving of serious heed.

Global warming, should it occur in accord with the direst predictions, would be a catastrophe of biblical proportions for the entire World. The human activities that could bring it about—the inefficient burning of fossil fuels, the atmospheric release of CFC's, the destruction of tropical forests—are occurring right now. And unless these activities are changed in the next few years—through sharply stepped up energy conservation, restrictions on CFC emissions, and preservation of tropical forests—a disastrous and irreversible warming could become inevitable. As a major producer of atmospheric pollutants and as a major potential victim of global warming, the United States has a profound responsibility and interest in moving promptly to address—and lead others to address—the global warming question.

A LEGISLATIVE START TOWARD A NATIONAL STRATEGY

Toward that end, I have introduced legislation, S. 2891, on behalf of myself, Senator PELL, and Senator MATHIAS, to codify the process of developing an effective American response to the threat posed by global warming. I take note of comprehensive hearings conducted this summer by Senator CHAFEE's Subcommittee on Environmental Pollution, which did much to underscore the seriousness of the problem. And I note also a concurrent resolution introduced last December by Senator GORE, which pointed to the need for cooperative international research with respect to the greenhouse effect. I believe, however, that there is now need for formal legislation to bring about a concerted governmental response. The bill is short and self-explanatory. Its effect is to create a top-level executive branch task force—a task force on the global climate—to develop, in the next 12 months, a governmentwide strategy to assess the threat raised by global warming and to respond to that threat by national and multinational means.

Underscoring the international dimension of the problem, the legislation designates as chairman of the task force the Secretary of State, who bears primary responsibility within the Government for the conduct of international environmental affairs. The task force mandate, in addition to conducting further study of all phenomena associated with global arming, is to develop specific recommendations for cooperative action to be undertaken with other nations. Three months following its completion, the President would submit the strategy to Congress with specific recommendations for further legislative action.

I am aware that some members of the Committee on Environment and Public Works have requested that the Environmental Protection Agency conduct two studies related to the greenhouse effect—one on environmental effects, the other on needed policy changes. This legislation would be consistent with that initiative, in that it mandates the administrator of EPA to serve as the vice chairman and executive director of the Government task force.

The legislation also takes account of multilateral efforts already underway through the International Geosphere-Biosphere Program, under the sponsorship of the International Council of Scientific Unions, the membership of which includes the scientific academies of 71 nations, as well as international scientific organizations in all fields of physical and biological science. Under a plan approved by the Union's assembly earlier this month, 4 years of preparation and planning will now precede a major multilateral activity—analogous to the Geophysical Year of 1957-58—to be conducted in the early 1990's. This effort has received pledges from the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and the National Science Foundation, the head of each of which would be a member of the task force created by this legislation.

Because the participation of such diverse and separate agencies in multilateral activities related to global warming can be expected to increase steadily, the legislation would direct the President to appoint an ambassador at large to coordinate and lead such participation. Operationally, this high-level official would also, on a practical basis, usually represent the Secretary of State in the workings of the Task Force on the Global Climate. One duty of this ambassador at large would be to seek early designation, within the United Nations System, of an International Year of Global Climate Protection. The designation of an International Year of the Greenhouse Effect was originally proposed by Senator GORE in his concurrent resolution, and this legislation would mandate carrying that good idea formally into the international arena.

Finally, the legislation calls upon the President to give high priority to global warming on the agenda of United States-Soviet relations. As the world's major consumers of fossil fuels, the superpowers are the largest producers of the atmospheric emissions that could produce global warming. And with vast continental agricultural belts in the northerly latitudes, both are especially vulnerable to the climatic shifts that could result. Both nations, consequently, have a powerful obligation and interest in the global warming question.

Some months ago, Senators PELL and LUGAR demonstrated considerable vision, I believe, in offering a Senate resolution, later unanimously adopted, calling upon the two superpowers to join in leading a cooperative multilateral effort to achieve the World Health Organization goal of universal child immunization by the year 1990. The subject of global warming holds comparable potential and need for effective superpower cooperation.

At last year's Geneva Summit, President Reagan told Secretary General Gorbachev that if we had an invasion from Mars, both sides would put aside our differences. While not an extraterrestial threat, global warming could prove no less dangerous. Even though decades away, the most serious consequences of global warming could prove unavoidable unless we act now to prevent them. Our failure to show foresight when the dangers are clearly discernible would be an unforgivable dereliction of duty to our children and all mankind not yet born.

The text of the bill follows:

S. 2891

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Global Climate Protection Act of 1986".

SECTION 1. FINDINGS.

Congress finds that—

(a) there exists compelling evidence that man-made pollution—the release of carbon dioxide chlorofluorocarbons, and other trace gases into the atmosphere—may be producing a long-term and substantial increase in the average temperature on Earth, a phenomenon known as "global warming" through the "greenhouse effect";

(b) by early in the next century, this increase in Earth temperature could—

(1) so alter global weather patterns as to have disastrous effect on existing agricultural production and on the habitability of large portions of the Earth; and

(2) cause thermal expansion of the oceans and partial melting of the polar ice caps, resulting in rising sea levels and widespread coastal flooding around the world;

(c) while the effects of the greenhouse effect may not be felt until the next century, on-going pollution may be contributing now to an irreversible process, making timely action imperative if the climate is to be preserved;

(d) the global nature of this problem will require vigorous efforts to achieve international cooperation aimed at minimizing and responding to climate change; and

(e) effective international cooperation will require United States leadership, which will depend upon early arrival at, and implementation of, a coordinated national strategy.

SECTION 2. TASK FORCE ON THE GLOBAL CLIMATE.

(a) ESTABLISHMENT.—The President shall establish a Task Force on the Global Climate.

(b) PURPOSE.—The Task Force on the Global Climate shall be mandated to determine and supervise the research necessary for a coordinated national strategy on the global climate, to develop such a strategy, and to initiate implementation of such strategy domestically and in the international arena.

(c) COMPOSITION.—The Task Force shall include—

The Secretary of State, who shall serve as chairman;

The Administrator of the Environmental Protection Agency, who shall serve as vice-chairman and executive director for research;

The Chairman of the National Science Foundation;

The President of the National Academy of Sciences;

The Administrator of the National Aeronautics and Space Administration;

The Administrator of the National Oceanic and Atmospheric Administration;

The Administrator of the Agency for International Development; and

Tthe heads of other appropriate government agencies, and other persons knowledgeable about the problems of global warming, as the chairman and vice-chairman may determine.

(d) ADVISORY ROLE.—The Chairmen and Ranking Minority Members of the Committee on Foreign Relations and Committee on Environment and Public Works in the Senate and the Committee on Foreign Affairs and Committee on Energy and Commerce in the House of Representatives shall serve as advisors to the Task Force.

(e) TASK FORCE REPORT.—Not later than twelve months after the date of enactment, the Task Force shall develop and transmit to the President a United States Strategy on the Global Climate, which shall include—

(1) a full analysis of the global warming phenomenon, including its environmental and health consequences; and

(2) a comprehensive strategy, including the policy changes, further research, and cooperative actions with other nations that would be required to stabilize domestic and international emissions of atmospheric pollutants at safe levels.

SECTION 3. REPORT TO CONGRESS.

Not later than three months after receipt of the United States Strategy on the Global Climate, the President shall submit such Strategy to the Speaker of the House of Representatives and the Chairmen of the Senate Committee on Foreign Relations and the Senate Committee on Environment and Public Works, together with recommendations for further legislative action.

SECTION 4. AMBASSADOR-AT-LARGE.

To coordinate and lead the participation of United States government agencies in various multilateral activities relating to global warming, including United States participation in planning for the International Geosphere-Biosphere Program scheduled for the early 1990s, the President shall appoint an Ambassador-at-Large, who shall also represent the Secretary of State in the operations of the Task Force on the Global Climate.

SECTION 5. INTERNATIONAL YEAR OF GLOBAL CLIMATE PROTECTION.

In order to focus international attention and concern on the problem of global warming, and to foster further work on multilateral treaties aimed at protecting the global climate, the Secretary of State shall undertake all necessary steps to promote, within the United Nations system, the early designation of an International Year of Global Climate Protection.

SECTION 6. CLIMATE PROTECTION AND U.S.-SOVIET RELATIONS.

In recognition of the respective leadership roles of the United States and the Soviet Union in the international arena, and of their joint role as the world's two major producers of atmospheric pollutants, Congress urges that the President accord the problem of climate protection a high priority on the agenda of U.S.-Soviet relations.

EARL WAXMAN, PRESIDENT, HARBOR LINEN CORP.

● Mr. BRADLEY. Mr. President, I would like to take this moment to bring to the attention of my colleagues the generosity of Mr. Earl Waxman, president of the Harbor Linen Corp. of Cherry Hill, NJ, his employees, and the Polish American Congress.

This past June, I had the pleasure of visiting the Harbor Linen Co. to recognize that company's generous donation of thousands of dollars worth of linens to the Catholic University of Lublin, Poland. Harbor Linen is the largest linen distributor in the country. Mr. Waxman had recently visited Poland and returned to the United States determined to help the Polish people in some way. Mr. Waxman contacted the Polish American Congress with an offer to provide blankets, bedsheets, tablecloths, and various other linens. The Polish American Congress which has led the United States relief effort in Poland told Mr. Waxman of the university's need.

Harbor Linen's help is an excellent example how strongly the American people support the heroic efforts of the Polish people in their quest for freedom and democracy.

We cannot forget that the Polish people continue to need our moral and material support to help them persevere. Earl Waxman and the Polish American Congress should be commended for their commitment and generosity. I ask my colleagues to join with me in saluting the hard work and compassion of Mr. Waxman, the Harbor Linen Corp., and the Polish American Congress.●

REPEAL SECTION 1631

● Mr. D'AMATO. Mr. President, I rise today in support of legislation on behalf of atomic veterans. I commend my colleague, Senator MURKOWSKI, for his initiative and commitment to the veterans of this Nation.

S. 2454 restores an important legal option in the redress of injuries derived from the Atomic Weapons Testing Program. By repealing section 1631 of the Department of Defense Authorization Act of 1985, we will enable veterans exposed to ionizing radiation to file suits against atomic weapons contractors for acts of negligence or omissions in conducting atomic weapons tests.

Over 200,000 military personnel participated in the atomic testing program between 1946 and 1962. In the years following the testing program, many veterans who were present at nuclear tests have expressed concern about the long-term health effects of exposure to radiation.

Prior to October 1984, veterans who believed that they had been adversely affected by radiation exposure resulting from contractor negligence could bring suit directly against a contractor. Veterans lost this avenue of redress, however, with the passage of section 1631 of the Department of Defense Authorization Act of 1985.

Section 1631 established that the United States would replace the contractors as the defendant in suits filed by atomic veterans, and provided that such cases would fall under the jurisdiction of the Federal Tort Claims Act [FTCA]. Under the FTCA, the U.S. Government is protected by the Feres doctrine which holds that the United States is not liable for injuries to servicemen incurred in the course of their service.

The veterans who participated in the Atomic Weapons Testing Program should not be denied their right to be heard in a court of law. By repealing section 1631, S. 2454 will enable atomic veterans to again seek judicial review of their claims. I encourage my colleagues to join me in supporting this legislation, and I urge its immediate passage.

Thank you, Mr. President.●

● Mr. SIMON. Mr. President, last Thursday evening the Senate agreed to the conference report on S. 1965, the Higher Education Act Amendments of 1986. Included in that conference report were revisions to title VII, Facilities and Construction authored by my friend and colleague from Connecticut Senator DODD.

S. 1965 authorizes a new program to assist colleges and universities in meeting their growing facilities and instrumentation needs. The Chicago Tribune, in its September 27, 1986 edition, carried an excellent article by Paul E. Gray, president of the Massachusetts Institute of Technology. "The Chill at Research Universities" discusses in part the growing concerns of research universities about their relationship with the Federal Government. One of those concerns has been the inability, for budgetary reasons, of Congress to appropriate funds to meet the demand to replace decaying research facilities and equipment on many campuses. Although I recognize the critical need in this area, the $80 billion estimated cost makes direct assistance a budgetary impossibility.

Senator DODD's creative legislative solution provides for a new college construction loan insurance association to facilitate the availability of credit and provide direct insurance and reinsurance in order to help research institutions of higher education carry out new construction and replace worn out, dated instrumentation. The junior Senator from Connecticut should be commended by all Members of this body for his legislative craftsmanship and his political skill in securing the agreement of the House conferees to his proposal.

Mr. President, I ask that the September 27 article from the Chicago Tribune be included into the RECORD.

The article follows:

[From the Chicago Tribune, Sept. 27, 1986]

RESEARCH UNIVERSITIES

THE CHILL AT RESEARCH UNIVERSITIES

(By Paul E. Gray)

Summer has ended and universities across the country are beginning another term. Yet even before the trees start losing their leaves or the football season reaches high gear, many campuses are feeling a chill.

The chill is not in the weather, but in the relationship between these universities and the federal government. This is particularly true of research universities engaged in pioneering studies on medicines, new technologies, the environment and other subjects vital to society.

Consider the following developments of recent years:

Federal cutbacks in support of education, including financial aid to students.

Decaying research facilities and equipment on many campuses.

Growing disputes between university administrators and federal officials over whether the government is paying the full cost of the research it supports.

Continuing efforts by some federal officials to constrain the independence and open communication that are the heart of scientific progress.

The list goes on, but it adds up to deterioration in the cooperation between government and research universities.

Obviously, research universities are most concerned in this regard about funding questions. But there is also a broader issue: the serious erosion in the sense of common purpose that used to unite government and academe.

The ties between the federal government and research universities first became strong after World War II. Science and technology, of course, were extraordinarily important—some would say decisive—forces in bringing victory to the Allies in the war. As a result, America's leaders came to recognize the extent to which the nation's well-being depended on scientific research.

After the war, new arrangements were worked out to continue federal support of basic research at universities. And as this partnership expanded during the 1950s and '60s, universities became the nation's principal agencies for carrying out such research. They helped create the scientific and engineering base that led to the Apollo missions, the computer revolution, expanded agricultural productivity and other accomplishments.

The federal government's role in this transformation was central. It funded research, aided students and supported major new research facilities. It recognized that research universities were essential in creating the expertise the United States requires to remain strong and competitive in the modern world.

In the late 1960s and early '70s, however, this sense of partnership between universities and the federal government began to unravel. Federal support of students came to be seen in some quarters as a drain on the economy rather than as an investment in the future. This was remarkable, because at the same time people were calling for a revitalization of education. There also was too little federal concern about the appalling condition of many university research facilities. Since the '60s, the federal government has had no planned program to maintain existing facilities or build new ones.

Many officials apparently have become so preoccupied with transient issues that they have lost sight of these longer-term needs. The contributions of university-based science and technology to our nnational goals are a matter of record, but, increasingly, they are ill appreciated.

Ironically, the horizons of science and engineering have never been more exciting than they are today, with major developments awaiting us in biology, chemistry, space science and other fields. Yet this promise cannot be fulfilled unless government renews its commitment to this partnership with academe. We are drawing down our stores of science and technology faster than we are replenishing them. More important, we are forgetting that an educated citizenry is the wellspring of a healthy economy, a just society and a vigorous future.

This country's strength is founded in large measure on our democratic and scientific institutions. Ultimately, if we allow a wall of ice to grow between them, the whole nation, not just its campuses, will feel the chill.●

THE HIGH-FLEX SOCIETY

● Mr. **BINGAMAN**. Mr. President, most of us in the Senate agree that the U.S. standard of living and world leadership face enormous economic challenge from foreign competition. The President's "Young" Commission on Industrial Competitiveness has declared that meeting this challenge must become the economic agenda for the next decade. I could not agree more.

The Senate's Democratic Working Group on Economic Competitiveness, of which I am the chairman, recently released its report on the competitive position of the U.S. economy. Our findings are a veritable tale of horrors: real wages are below 1963 levels, real GNP growth in the 1980's is half the rate of the fifties and sixties, commercial investment and productivity is in decline, the United States is now the world's largest debtor and will owe more than all of Latin America combined by 1988.

Responsibly and productively addressing the competitive challenge will be as complex as it is essential to our Nation's continued prosperity. One of the most insightful people I have found on these issues is Pat Choate. Pat's thesis is that our business, labor, educational and governmental institutions are not adapting fast enough or well enough to the rapid pace of technological and economic change worldwide.

In their new book, "The High-Flex Society," Pat Choate and J.K. Linger point out that America's competitive advantage has always been our unique diversity of flexibility. He identifies dozens of specific bottlenecks, or "choke points," which have developed, reducing our flexibility, and recommends specific action. You may disagree with Pat on specific points, but I think you will find his vision of a high-flex society to be of enduring value to you in the challenging days ahead. I ask unanimous consent that a brief executive summary of "The High Flex Society" by Pat Choate and J.K. Linger be inserted in the RECORD.

We all need to be concerned with international competitiveness issues, they are vital to all Americans.

The summary follows:

THE HIGH-FLEX SOCIETY

(By Pat Choate and J.K. Linger)

Nations decline when they fail to adapt. Ancient Greece, imperial Rome, and the empires of Spain and Britain all burst forth on the world stage, enjoyed their moment of glory and then faded. Historian J.H. Elliot isolated the disease that destroys the vigor of nations in his epitaph of imperial Spain, a nation whose people "could not bring themselves at the moment of crisis to surrender their memories and alter the antique patterns of their lives . . . (for they had lost) . . . the essential ingredient for survival—the willingness to change."

Today, this malady afflicts America. The flexibility of workers, business and government—the fountainhead of America's economic and political dynamism—is waning. This book documents that we are resisting our national genius for change, that a kind of national sclerosis, a resistance to new directions is setting in. To paraphrase George Santayana, change has become an unwelcome stranger in America.

Change, however, is unavoidable. This book describes the most likely direction of this change, and how it will irrevocably alter America's position in the world. It reveals the principal obstacles to confronting change, the alarming number of chokepoints that are slowly, but surely, destroying America's flexibility to deploy capital, technology, and workers to meet the quick-shifting challenges of foreign competition.

Drawing on research and discussions with leaders of both major parties, and of business, academe, unions, as well as many individual citizens, Members of Congress, Governors and state legislators, The High-Flex Society suggests a program of cogent, rational, politically feasible solutions that can help America overcome these obstacles, marshall its formidable assets, and adapt to change with competence and confidence. Two interdependent agendas of action are presented: one external and the other internal.

The external agenda would create a flexible trade strategy which recognizes that America's national economic interests are as critical to the nation's well-being as its defense and foreign policy interests. Its objective would be to create stable and pragmatic relations with foreign economic systems that are very different from our own, and to do so not by punishing other nations for their success or reversing their economic progress, but by increasing America's capacity to compete.

The external agenda proposes specific recommendations on how to:

Shift from a process-oriented to a results-oriented trade and investment strategy, one that is based on actions rather than expressions of intent to open markets or the signing of new treaties.

Craft a multifaceted U.S. approach to trade negotiations: (a) bilateral (one nation at a time) with Japan, Korea, Taiwan, Canada and Singapore on their mounting trade surpluses with the U.S. and their growing investments in the U.S.; (b) plurilateral (with a few nations) on issues such as intellectual property rights and counterfeiting; and (c) multilateral (with many nations) on the new GATT talks.

Create a new industry and adjustment program in which responsibility for initiating action and creating a plan would reside with the affected firms and workers. Government participation would be negotiated and come only after all participants had agreed to specific actions, timetables, and penalties.

Aggressively enforce existing laws that prohibit predatory foreign trade practices, such as dumping, antitrust conspiracy, counterfeiting, and mislabeling imports to avoid U.S. tariffs.

Prohibit former U.S. officials, such as the Secretary of State, Director of the Central Intelligence Agency, and United States Trade Representative from becoming lobbyists for other governments and foreign economic interests.

The internal agenda focuses on eliminating the many chokepoints that constrain and the flexibility of business, workers, and government in adapting to change. It includes specific recommendations on how to:

Reduce the two principal pressures on business for short-term performance: the demands of financial institutions, particularly pension funds, on big business for immediate results; and the inability of small business to secure long-term capital.

Create a two-track compensation system that permits scientists, engineers, and technical specialists to earn as much as managers.

Expedite federal export review and licensing processes.

Permit the Justice Department to give an automatic antitrust exemption for U.S. firms' operations with foreign affiliates in countries that force them to cede majority ownership to a local partner.

Eliminate the current tax provision that forces U.S. companies to shift their R&D activities from American universities and company labs to other nations.

Make foreign access to U.S.-sponsored research contingent on reciprocal U.S. access to foreign-sponsored research.

Alter existing income tax provisions to create an elective, high-incentive, share compensation system for workers and executives.

Modernize unions by pooling their organizing skills; creating joint union-management committees on production, productivity, health, safety, and welfare; conducting joint training seminars for foremen and shop stewards; and holding regular retreats for top company and union officials.

Establish a National Competitiveness Advisor to the President who, as an honest broker, would help bring focus to the diverse government actions—fiscal policy, regulatory and tax policies, foreign affairs, human resource development, and technological innovation, among others—that affect America's global competitiveness.

Provide a factual basis for decision-making by requiring government to prepare a Competitiveness Impact Statement for proposed legislation, policies and regulations.

Establish a deficit-reduction commission, similar to the 1982 Social Security Commission, that would develop a comprehensive package of deficit-reduction actions to be considered by the President and Congress.

Create a National Infrastructure Bank to provide private loans to public works projects that have a guaranteed revenue flow from their fees.

Prohibit state practices that make it difficult for jobless workers who are collecting unemployment insurance benefits to take retraining courses.

Establish safeguards that prevent the politicization of career federal employees.

Create a two-year federal budget process, attach fiscal-impact statements to each piece of legislation, and require Congress to consider all thirteen appropriations bills at once, thereby forcing hard choices.

Create a federal office to guide companies through the regulatory maze and to help the President and Congress identify where the regulatory underbrush needs to be cut back.

Alter PAC legislation to: (a) prohibit Members of Congress from converting unused campaign contributions into personal funds: (b) prohibit permanent stockpiling of PAC funds; (c) prohibit PAC contributions from exceeding the total donations of citizens in the state or district a candidate is seeking to represent; (d) increase the tax credit for gifts to political parties; (e) provide partial public campaign financing, much as is done now in presidential campaigns.

Control illegal immigration through employer sanctions and worker identification (Simpson-Rodino Bill).

Strengthen the customized training programs of states through: (a) new tax incentives to stimulate more private sector donations of monies and training equipment; (b) state-owned and -operated pools of training equipment that can be moved from school to school; (c) cooperative equipment-sharing arrangements with private firms; (d) incentive pay plans to encourage faculty upgrading; and (e) public training programs that are linked to the identified needs of employers.

Create a block investment credit (BIC) that would equalize federal tax treatment of investments in machinery, R&D, and worker training.

Create Individual Training Accounts for displaced workers—a voucher-based displaced worker training program modeled on the GI Bill with self-financed, savings-and-equity-based financing analogous to the Individual Retirement Accounts (IRA).

Reform the unemployment insurance system so firms that give advance notification of plant closings pay lower payroll taxes that those that close with little or no notice.

Reform the unemployment insurance system so tax collections are based on a company's record in contributing to unemployment.

Release the $1 billion of payroll taxes the federal government levies on employers to operate the state job service and use these monies to: (a) modernize testing and counseling services; and (b) computerize data exchange so the job service can better match workers seeking employment with employers seeking workers.

Establish local child care information and referral services and provide federally funded child care vouchers for low- and moderate-income families with mothers who work.

Establish a Portable Pension Plan that would tie pensions to the worker rather than the job and provide private coverage for all workers.

America faces a future in which the shift to the technologies, production processes, and management styles of the twenty-first century will proceed with few certainties and in an environment of fierce, often predatory, global competition. The most practical way to confront the challenges of this fast-paced, highly uncertain change is to improve America's capacity to adapt to the future, whatever it brings. The contention of this book is that the future belongs to those who are the most flexible.

The urgent message here is that the United States still has enough time and assets—though barely—to forge an ambitious, prosperous future, to regain its agility, to be the world's foremost High-Flex society. This book tells what is required and by whom.●

SENATOR LUGAR'S REMARKS AT THE UNIVERSITY OF ARKANSAS

● Mr. PRYOR. Mr. President, this past Sunday the distinguished chairman of the Foreign Relations Committee traveled to Fayetteville, AR, to deliver an address at the Fulbright Institute of International Relations at the University of Arkansas.

As you may know, this year marks the 40th anniversary of the Fulbright Scholarship Program, which I consider to be one of the most effective foreign policy programs we have ever established. I was extremely pleased that Senator LUGAR took the time to honor the Fulbright program and the Fulbright School with his presence and his remarks.

Senator LUGAR chose to discuss the promotion of democracy in the Philippines and South Africa. His comments reflect his customary fairness, balance, and well-reasoned insights, and I ask to place excerpts from his speech in the RECORD.

The remarks follow:

THE PURPOSE OF POWER

(By Senator Richard G. Lugar)

It is a great honor for me to address this special gathering to celebrate the 40th Anniversary of the Fulbright Scholarship Exchange Program.

Senator J. William Fulbright once wrote that the Senate Foreign Relations Committee should be a "crucible in which a national consensus as to objectives may be translated into a consensus of policy as well." When I was elected Chairman of the Senate Foreign Relations Committee two years ago, I set out looking for that consensus on foreign policy with a series of hearings on the general objectives of American foreign policy. I designed the hearings along the lines of Chairman Fulbright's educational hearing 20 years earlier.

Senator Fulbright concluded from his hearings in 1966 that the United States suffered from an "arrogance of power." It has been my conclusion that since Vietnam, the United States has suffered from an abdication of power, and that it is time that we regain a consensus on the purpose of American power in the world today.

That purpose, I believe, is the active protection and promotion of democratic institutions in the world. We achieved that purpose in the Philippines earlier this year, and we are trying to assert that purpose now in South Africa, and Nicaragua, and Chile and many other places in the world where people are struggling for human dignity, freedom, justice and democracy.

Senator Fulbright is remembered in part for his break with a President of his own party over a major foreign policy issue of the time. I find myself today in a similar position with a President of my own party. I am a loyal supporter of President Reagan. According to the voting studies of Congressional Quarterly magazine, I have consistently been one of the handfull of Senators giving the greatest amount of support to the President. But on the issue of South Africa, I now find myself in disagreement. It is a position I take with considerable sadness, because I have tirelessly looked for a way to build a consensus between Congress and the President on this most important foreign policy issue.

Two years ago, Senator Nancy Kassebaum and I urged President Reagan in a letter to take a strong lead on South Africa. When we felt more was needed, we wrote a bill in the Senate adopting some limited sanctions against South Africa. When both houses of Congress passed this bill, the President decided to adopt the language of bill by executive order rather than sign it or veto it. I agreed with that decision because I believed it was important that the United States act with one voice on the issue.

Earlier this year, I again urged the President to take a stronger stand against apartheid. When action was not forthcoming, I wrote a new bill in Committee which the Senate passed 84-14 and the House 308-77.

Just last week, I met with the President in the Oval Office and urged him to sign the bill, and demonstrate clearly where the United States stood against apartheid. He refused and vetoed the bill.

The foreign policy issue is not just the number of sanctions imposed on South Africa. To argue that there are Republican sanctions imposed by the President, as opposed to bi-partisan Congressional sanctions, weakens American foreign policy. The political battle lines in South Africa are set in a different manner. The Botha government has made it clear that anything less than the Congressional bill would be a victory. No matter how much the United States would protest, a vote to sustain the President's veto would be seen as support for the South African government's policies. Regardless of what the United States says or how many executive orders are issued and diplomatic initiatives undertaken, the United States would be seen as apologists for apartheid.

The United States has a small window of opportunity to show which side we are on. This is not a situation in which the United States can afford to stand back and let matters evolve. Blacks will govern much of South Africa at some time in the future. That is inevitable. The choice for American foreign policy is whether we are going to support those blacks and whites in South Africa who are struggling for freedom and democracy, now. If we turn our backs on them, and give a wink to the present government, we will lose our opportunity to help effect change.

The United States succeeded in the Philippines earlier this year because we positioned ourselves with those Filipinos struggling for their democratic voices to be heard and their votes counted. At an important juncture in that political drama in Manila, the United States did the right thing by standing with democracy. Now is the time to do the right thing in South Africa. If we fail, the United States will severely weaken our influence with all peoples around the world struggling for freedom.

Following the fall of Ferdinand Marcos in the Philippines, President Reagan issued an important message to Congress outlining a foreign policy in which the United States would combat dictatorships on both the left and the right. Such a policy, argued the President, complimented our basic foreign policy goal of deterring Soviet aggression. It recognized that if the United States does not support those struggling for freedom, the Soviet Union will seek to manipulate them toward other ends.

Opposing dictatorships on both the left and the right is a foreign policy the American people want to support. It should be the purpose of American power in the world today. It is neither an arrogant use of power, nor the abdication of power. It is time to implement this policy in South Africa.

When I returned from the Philippines in February as chairman of the special American election observer team, Americans from all walks of life and political persuasion throughout the country said to me how pleased they were that for once the United States did the right thing by opposing a dictator and backing democracy. Not only did I hear this from average Americans, but also from world leaders in Latin America, Asia and Europe. They all said that for once the United States did the right thing.

The United States succeeded in the Philippines, not because we arrogantly deposed a dictator, and not because we abdicated our power, but because used our power with purpose and sophistication.

When the new democratically elected President Aquino visited Washington last week, she was welcomed as a champion of democracy. She pointed out that the power of the United States to help build democracy is still needed. The problems of the Philippines are enormous. They did not disappear with Marcos.

Democracy is the strongest suit for American foreign policy. Democracies believe in the human rights we hold dear. They do not threaten our security interests, and they are good trading partners.

But democracy is not easy. Too often in the past the United States naively called for democracy in developing countries that had no institutions to support it. Petty despots often won out. Democracy requires institutions that make it work—universities, a free press, labor unions, business groups and careful election procedures. The United States should not dictate to other countries how they should govern themselves. That would be the arrogance of power. But we do have a stake in the protection and promotion of the democaracy in the world. When there are struggles for democracy, the United States must find thoughtful and effective ways to act. That is the purpose of American power.●

A DEATH IN THE FAMILY

● Mr. SIMON. Mr. President, the crisis in our Farm Belt continues unabated and there seems to be no relief in sight. Farmers are going out of business at an alarming rate and the Farm Credit System is going broke. My State of Illinois is one that has been particularly hard hit. In my weekly newspaper column I've taken another look at the problem and how one man in western Illinois has responded. I ask that it be printed in the Record.

A Death in the Family

(By Senator Paul Simon)

Sen. Tom Harkin of Iowa had a simple amendment in committee and plans to bring it before the full Senate. It would limit subsidies under farm programs to a maximum of $500,000 to any one farmer.

He lost his proposal in committee by one vote.

When he brings it up on the floor of the Senate I will strongly support his efforts.

American farmers are hurting: Family farmers, the farm people who are solid and independent contributors to our nation, who provide much more than simply an important financial resource to the country.

At the present time, one California operation receives just under $20 million in subsidies. How do you defend that? I don't think you can. There are too many other examples.

While many struggling Illinois and Iowa and Indiana farmers lose their land, others receive huge subsidies.

As far as I am concerned, the $500,000 ceiling proposed by Sen. Harkin should be much lower. But I recognize that lower ceiling would not pass at this point. We will be lucky to get a $500,000 ceiling.

That one step does not solve our problems. It does not raise income for farmers. It does not increase exports. But it saves money so that more sensible policies can be followed.

On election day 1980, corn sold for $3.43 a bushel. Today, after paying for transportation and dockage for moisture, farmers are getting around $1.00 a bushel. And their costs have risen.

These figures spell massive trouble.

If not attended to soon, the farm problem will result in the shrinkage of the economy of small-town and rural America and an inevitable flight into our cities—not good for rural America and not good for the cities.

One man called my Springfield office and said he just had to talk to someone. He had just seen his neighbor's farm machinery hauled away and his neighbor was standing in the driveway, crying. "It's the first time in all these years I've seen him cry."

I can't enter that incident into any bank of computers and come out with a statistical analysis of what is happening to America. But I know it is not good.

Frank Thompson of Smithshire, Ill., has put together a small book he titles simply "The American Farmer Book." Between advertisements for Martha's Family Restaurant in Viola, Ill., and Knorr and Walker Farm Implement Co. in Carthage, Ill., farmers speak.

Eva Galbraith of Smithshire, for example, writes, "All I ask for is a market. With hungry people all over the world, I'm positive it is there and a successful export market could be developed."

In it is also a poem written by Sharon Steider that expresses simply and effectively the pain that is part of this nation's rural landscape:

A Death in the Family

They're going to take our farm.
It's like losing a right arm,
Or a heart, or a soul.
But it's something we can't control.

In 1854 this land was sold
To a Catherine Steider we are told.
And it passed on down since then,
So through the years again and again.

This land is fair, black and fine
And once these acres were all mine,
I knew its roll and knew its feel,
But now this situation is so unreal.

I'm 47 now and much too old
To start anew once the farm's sold.
I thought I would farm all my life.
This turn of events cuts like a knife.

"They're sellin' just a farm," you say.
Might as well take the sun away.
This land was our security, our dream,
Our children's inheritance to redeem.

No more will I plant, nor plow.
My tractor seat is empty now.
No more freedom to have my way.
Dreams lie fallow and then decay.●

NATIONAL GAUCHER'S DISEASE AWARENESS WEEK

● Mr. D'AMATO. Mr. President, I rise today to cosponsor Senate Joint Resolution 352, legislation designating the week beginning October 19, 1986, as "National Gaucher's Awareness Week." I commend my colleague from Ohio, Senator Metzenbaum, for introducing this legislation.

While most prevalent among those of Eastern European ancestry, Gaucher's is a deadly disease which does not discriminate against anyone; it is a severe hereditary disorder which occurs among all known racial and ethnic groups. It affects the spleen, liver, bones and, in some cases, the brain and general nervous system. It results from the abnormal accumulation of a fatty chemical compound which forms as the body replaces worn-out tissues. Victims of Gaucher's disease do not produce enough of a certain enzyme which breaks down this fatty material, which, as a result, builds up in the affected organs.

There are three basic types of Gaucher's disease. The first can begin at any age and is characterized by damage to bones and joints and by enlargement of the liver and spleen. The victim's lifespan is shortened significantly and, in some cases, death results from complications such as pneumonia. The second type generally appears during the first 6 months of life and is characterized by severe mental retardation or loss of muscle control, as well as by enlargement of the liver and spleen. Most victims die before reaching 2 years of age. The symptoms of the third type are essentially the same as the first, but most victims die from disease-related complications between the ages of 15 and 30.

Both at home and abroad, researchers are working tirelessly to find a cure. In 1984, major progress was made when a scientist identified the gene responsible for the body's failure to produce enough of the essential enzyme. The key to opening the door to a cure has been found, but the necessary experiments will take both time and money. To help meet this need, the National Gaucher Foundation was established to support research into

Gaucher's disease, as well as to help victims and families cope with the devastating effects of this disease.

Mr. President, we, too, can play a part in the fight against Gaucher's disease by supporting Senate Joint Resolution 352. By passing this legislation, we will raise the public's attention and understanding of Gauche's. In doing so, we will be that much closer to ridding ourselves of this deadly disease.●

NUCLEAR TESTING

● Mr. MATHIAS. Mr. President, I thought the distinguished chairman of the Appropriations Committee made an excellent statement this morning about the need to push for sound arms control measures. In that regard I recall that a little more than a month ago the Senate reaffirmed its overwhelming support for immediate progress toward a halt to nuclear testing. By a vote of 65 to 34 it called for the immediate resumption of test ban negotiations. At that time the Senate also rejected an amendment that condoned the failure to return to the conference table. Unfortunately, some still have not gotten the message. Instead of negotiating, the United States continues to test. This week the United States conducted its 10th nuclear test of the year.

American inflexibility on nuclear testing comes at a time when the Soviet Union appears more willing than ever to meet our verification concerns. Just recently the Soviet Union agreed to accept challenge inspections as part of the agreement to monitor troop movements in Europe. And General Secretary Gorbachev has repeatedly stated that he is prepared to accept on-site inspections and the placement of seismic boxes on Soviet territory to monitor a test ban. Indeed, the Soviet Union has allowed a group of American scientists to establish a monitoring station near one of the Soviet test sites.

The Soviet Union has also demonstated its interest in nuclear test limitations by refraining from any nuclear testing for over a year. Secretary Gorbachev has now extended the Soviet moratorium three times. It is not difficult to imagine the reaction in the Senate if the Soviet Union had continued testing in the face of a United States moratorium. My intent is not to applaud the Russians, but to ask why we have chosen to surrender the responsible ground we once held on this issue.

Gorbachev has stated that the Soviet Union will not test before January 1987. It is critical that we take advantage of that time to negotiate significant limitations of nuclear testing. The 99th Congress will soon come to an end. I think every Senator who, just a month ago, voted for the immediate resumption of test ban negotiations would prefer to leave this issue in the hands of the President. Unfortunately, the administration's stated policy on this issue leaves us with little hope for substantial effort. Therefore, if we are to have any restrictions on nuclear testing between now and January, Congress must take the lead.

I, therefore, urge the Senate to approve a policy of seeking significant limitations on nuclear testing before the 99th Congress expires. We can promote this objective by adopting a limit of 1 kiloton on all nuclear tests after January 1, 1987. This limitation would automatically be suspended if the President certified that the Soviet Union had conducted a nuclear explosion above 1 kiloton after that date. It would also be suspended if the President certifies to Congress that the Soviet Union refuses to accept and implement in-country monitoring arrangements. Finally, and most importantly, the limitation would be lifted if the President achieved an agreement with the Soviet Union that placed significant restrictions on nuclear testing. If the President and the General Secretary can conclude a nuclear testing limitation at their upcoming summit, this legislation would be superseded by a treaty as the law of the land.

The provisions I have described are essentially those contained in the House appropriations bill. The Senate has voiced its strong support for immediate progress toward a complete halt to nuclear testing. The nuclear testing provisions of the House appropriations bill are certainly consistent with the Senate call for immediate action. If significant limitations on nuclear testing are not established before 1987, we will have allowed a historic opportunity to pass.

It is well known that the distinguished chairman of the Appropriations Committee has played a key role in the effort to halt nuclear testing and he strongly supported the recent Senate action calling for the immediate resumption of test ban negotiations. Would he agree that the recent Senate resolution endorsing immediate progress on this issue is consistent with the type of measures I have just described?

● Mr. HATFIELD. I think that is unquestionably the case. As you have said, the Senate voted just over a month ago for immediate progress on the nuclear testing issue. It seems to me that the measures you have described are entirely consistent with that objective. I know that an overwhelming majority of the Senators on the Appropriations Committee supported the Mathias-Kennedy resolution and would like to see us move forward on this issue. In fact, I have tested the waters in the Appropriations Committee on the very proposal you have described and I am pleased to report that at least half, if not a majority, of the Members support such a step. So I can assure you that I will do whatever possible to see that such progress is made.

● Mr. MATHIAS. That is very good news. I know that the distinguished chairman of the Appropriations Committee is committed to bringing an end to nuclear testing and that he will do all he can to enact such legislation.●

NAUM AND INNA MEIMAN TOWARD PROGRESS

● Mr. SIMON. Mr. President, although our outrage about the Daniloff case has quieted with its resolution, we must continue our struggle for human rights in the Soviet Union. Instead of relaxing, we should be working for the rights of all, especially those whose illnesses merit immediate attention. The Daniloff affair should be used as a stepping stone, not a stumbling block.

My two dear friends, Naum and Inna Meiman, an elderly Soviet couple, desperately need to emigrate to the West. Inna is suffering from her fifth cancerous tumor on her neck. The Soviet doctors claim there is nothing more they can do. Fortunately, there is treatment available for Inna, but only in the West. This is a matter of life or death.

I strongly urge the Soviet Union to allow the Meimans to emigrate to Israel.●

COLLECTIVE BARGAINING FOR MUSICIANS

● Mr. CRANSTON. Mr. President, I join with my colleagues in expressing regret that the Senate has not acted favorably on S. 670 during this session of Congress.

This bill seeks to protect musicians against the instability of short-term employment by extending to the entertainment industry the same provisions as already apply to other short-term workers in similar industries. By permitting musicians to bargain collectively with club and lounge owners and other purchasers of their services, and by classifying the purchaser—rather than the bandleader—as an employer for labor law purposes, S. 670 tries to correct a longstanding injustice in our labor laws.

Enactment of this legislation will give performers a more even chance to bargain collectively, as most other workers can, for improved conditions of employment.

Regrettably, Mr. President, the Labor and Human Resources Committee did not act on S. 670, nor on S. 281—an identical bill—in the previous Congress. However, the need for this legislation remains, and, as time passes, grows greater.

I look forward to supporting this legislation again in the next Congress, when we may have a Senate more willing to deal with the inequities facing working men and women generally, and musicians in particular.●

ABORTION AND INFORMED CONSENT: KANSAS

● Mr. HUMPHREY. Mr. President, Rosemarie's complaint from Kansas reveals a truly horrifying lack of respect for women. Why aren't abortion advocates angered by this sort of testimony? What good is a choice if it is not accompanied by a complete disclosure of all pertinent facts?

A conspiracy of silence among those who advocate and provide abortion services prevents women from knowing what actually occurs when the unborn are killed. Why not tell Rosemarie about the procedure? Had she been told, she might not have chosen to abort. This is why she and millions of other women are kept in ignorance.

I hope my colleagues will join me in cosponsoring S. 2791 so that we can be certain that women will know all the facts about abortion. We must help end the silence.

The letter follows:

DEAR SENATOR HUMPHREY: There are no words to express my deepest sincere support of an informed consent bill. Being a woman who experienced an abortion, I can tell you that withholding information from women that may affect them for the rest of their lives is both dangerous and demeaning. Doctors may explain more to their patients about tonsillectomies or appendectomies than they do about abortions. I really believe that if I had been fully informed, both medically and as to my options, I would have chosen not to abort my baby.

I was given a saline abortion at four months and I never once was told of the pain involved during the injection of the saline solution into my womb. Neither was I told of the pain involved in labor, nor even that my body would go into labor to reject the struggling, dying baby that was being burned alive in my uterus. Over four hours after the injection, I gave birth to my dead son. I know he was my son because I asked the nurse what it was as she removed the bedpan and she said, "It's a boy."

Then began the horror that I lived with for years afterward, the horror of the certainty that I had killed my own son in a moment of confusion and, I believe, the omission of basic information that could have changed the course of my life. I was twenty-one years old then. My son would now be fourteen.

Most sincerely yours,

ROSEMARIE GASTON.●

TAX REFORM ACT OF 1986

● Mr. BOSCHWITZ. Mr. President, I ask that a letter I sent to J. Roger Mentz, Assistant Secretary, U.S. Treasury Department, and the statement accompanying that letter be printed in the RECORD. I had intended to include these materials in the RECORD during debate of the conference report to H.R. 3838—the Tax Reform Act of 1986—but time limitations did not permit me to do so.

The material follows:

U.S. SENATE,
Washington, DC, October 2, 1986.

Hon. J. ROGER MENTZ,
Assistant Secretary, U.S. Treasury Department, Washington, DC.

DEAR MR. MENTZ: We are writing regarding the availability of investment tax credits for certain cargo containers.

The concern that has been expressed to us is that certain provisions in the Tax Reform bill (H.R. 3838) may be seized upon as a basis for threatening denial or restriction of investment tax credit allowable on acquisitions of equipment placed in service during tax years prior to effective dates for repeal set forth in the bill.

It is understood that the attached statement on views on these issues has been submitted to you by members of Congress. While I have not had an opportunity to fully study all of the points made and am not yet prepared to agree with each and every point made, I do, however, strongly agree with the statement's primary point: taxpayers who are in the U.S. container industry should not be required to expend funds to prove eligibility for the investment tax credit that would be unreasonable in relation to the value of the credit involved. Therefore, those taxpayers should not, as a condition to approving eligibility for the credit, be required to retroactively document the exact movement of individual containers for many previous years if that would be the result.

We commend the views expressed in the accompanying statement to the Treasury and to the Internal Revenue Service for guidance in formulation of policies, rules, and administrative practices for application of the investment tax credit, and look forward to your prompt response.

Sincerely,

RUDY BOSCHWITZ.

STATEMENT ACCOMPANYING LETTER FROM MEMBERS OF CONGRESS TO U.S. TREASURY DEPARTMENT RE EFFECT OF TAX REFORM ACT OF 1986 ON ELIGIBILITY OF PROPERTY FOR INVESTMENT TAX CREDIT UNDER EXISTING LAW

This statement expresses the views of the subscribing Members of Congress in regard to certain issues and concerns that have been called to our attention regarding the effect of the Tax Reform Act of 1986 (H.R. 3838) on eligibility of property for investment tax credit under existing law.

Concern has been expressed, for example, in regard to those depreciation provisions in the bill as reported by the conferees (new Code sec. 168(g)(4), added by bill sec. 201(a)), which direct that "rules similar to the rules under (existing investment tax credit law Code) section 48(a)(2), including the exceptions contained in subparagraph (B) thereof . . ." shall apply in determining whether property is used predominantly outside the United States.[1]

We do not believe that this or other language in the bill in fact authorizes, or was intended to authorize, the Treasury or Internal Revenue Service to prescribe rules that would have the effect of retroactively denying or restricting the investment tax credit or depreciation allowable under existing law in respect to investments in equipment placed in service prior to the effective dates set forth in the bill for application of its new rules. Indeed, we cast our votes for the bill, both on its original passage and as reported by the conferees, on the understanding there would be no such effect.

Our understanding is consistent with the declaration that "The Congress intends that prior law rules interpreting these (predominant foreign use) exceptions will apply", which appeared in explanation of a comparable provision of the ACRS depreciation provisions in the Economic Recovery Tax Act of 1981 (see p. 91 of "General Explanation of the Economic Recovery Tax Act of 1981, JCS 71-81, prepared by the staff of the Joint Committee on Taxation). Thus it is our understanding that any Treasury regulation or IRS rule purporting to diminish or restrict the property now eligible for investment tax credit under existing law would be invalid by reason of being outside the scope of authority delegated by Congress.

Similarly, some of our constituents have expressed concern that the same section 168(g)(4) could be used as a basis for revoking or otherwise narrowing the liberal ruling treatment heretofore accorded aircraft and vessels under section 48(a)(2)(B)(i) and (iii). Again, we do not believe that this or any other provision in the bill authorizes the Treasury to take a step which would be so sharply at variance with its present published ruling positions. Under current law, the IRS has ruled that an aircraft is eligible for the investment tax credit as long as it returns to the United States every fourteen days unless forces beyond the control of the taxpayer prevent it from doing so (Rev. Rul. 73-367, 1973-2 C.B. 8; LTR 8104069). In the case of a vessel, the IRS has ruled that a U.S. flag vessel documented by the U.S. Coast Guard for use in the foreign or domestic commerce of the United States qualifies for the investment tax credit, even though it is used exclusively outside the United States. (Rev. Rul. 69-509, 1969-2 C.B. 3.) Although the bill repeals the investment credit, after the effective dates prescribed, nothing in the bill should be construed as permitting Treasury or Internal Revenue Service to revoke or narrow its prior ruling policy with respect to aircraft or vessels, or indeed any other transportation equipment.

Another problem called to our attention during our work on the bill involves the eligibility of cargo containers for the investment credit under current law. We are advised that certain IRS agents, in selected audits of U.S. owners of cargo containers recently have taken the new and highly restrictive position that the owners of such containers are not eligible for the investment tax credit unless they prove that each individual container touched the United States, and touched with some as yet unspecified degree of frequency during its period of service.

This new position would interpret existing investment tax credit law (in Code sections 48(a)(2)(B)(v)), which has been unchanged since 1962, so as to deny all or a large part of the credit claimed for prior years' investments in containers by certain members of our U.S. container equipment industry whose tax returns for prior years happen to remain open for audit and adjustment of their tax. Such a result would be manifestly in conflict with the intent expressed by Congress in Code section 48(a)(2)(B)(v) to insure availability of the investment credit for cargo containers of U.S. persons.

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[1] Significantly, this provision of the bill as reported by the conferees omits a clause, which appeared in both the earlier Senate and House-passed versions, which would have granted to the Treasury special regulatory authority respecting these rules.

We are advised this would represent a substantial change in IRS audit practice, which for more than 20 years was generally to allow all the credit for cargo containers claimed by taxpayers in our U.S. industry. This change is proposed without any evidence of a change in the pattern of usage of cargo containers that would be relevant for tax purposes.

This new audit position has no judicial sanction and is contrary to the prior general audit position of the Internal Revenue Service. Many U.S. owners of cargo containers lease them to foreign companies. In these circumstances, it is clear that such owners would be hardpressed to gather evidence of the movement of individual containers for many previous years. Indeed, the cost of gathering information as to the world-wide whereabouts of containers of U.S. owners, assuming it were even available, could far exceed the value of the credit.

We believe that Congress should not be presumed to have intended to require U.S. owners of containers to expend funds as a condition of eligibility for the credit that would exceed the value of the investment tax credit or to have intended to authorize the Internal Revenue Service to impose administrative standards that would require U.S. owners to trace the movement of individual containers. Such a position is contrary to common sense principles for establishing the whereabouts and credit eligibility of a mass of fungible assets. Containers are made to be interchangeable and are useless if not.

In voting on the Tax Reform bill, we did not intend to embrace any such novel position or to put our stamp of approval on any efforts by the Treasury or the Internal Revenue Service to adopt interpretations that would impose upon U.S. owners of shipping containers such an onerous burden of proof.

We believe there are two principles that should be applied in response to any proposals for such a radical change in tax audit treatment. First, no interpretation should be presumed to be in accordance with the original or current intent of Congress, and particularly of its tax-writing committees, if it would result in denial of the investment credit for an investment made by a member of our U.S. industry in cargo containers that are leased or otherwise used and move about the world in response to the practical commercial necessities of prevailing conditions of world trade.

Second, there should be no change having such a drastic, adverse impact on the competitive position of our U.S. container industry that would result under the new interpretations recently proposed by some IRS field agents unless:

(1) The contemplated change is first evaluated and approved for its economic and tax policy implications at all appropriate policy making levels of the National Office of the Internal Revenue Service, the Treasury Department, and the tax-writing committees of Congress; and

(2) The change of position is imposed, not retroactively and unevenly on a case-by-case basis, but solely prospectively by rules of general application to all similarly situated taxpayers, promulgated through a proposed change in regulations which would be processed in accordance with the usual procedural safeguards accorded interested members of the public.

We should maintain diligent oversight to insure that the Treasury and the IRS adheres to these principles. Indeed, failure to observe either of these principles would result in disparate treatment of similarly-situated members of our highly competitive U.S. container equipment industry. Tax policy makers have no business unnecessarily introducing such inequalities into treatment of competitors in the market place.

We also wish to point out that the restrictive audit position newly devised by certain IRS field agents with respect to cargo containers is contrary to our understanding of the law and is legally defective on a broader ground than the burden of proof considerations previously mentioned.

From the very inception of the investment tax credit in 1962, Congress has included cargo containers of U.S. persons within the liberalized class of movable transportation and communication equipment that is not subject to the restrictive "predominant foreign use" test generally applicable to other types of tangible property. The exceptions to the predominant foreign use test are set forth in subparagraph (B) of Internal Revenue Code section 48(a)(2). The exception for containers covers "any container of a United States person which is used in the transportation of property to and from the United States" (Code section 48(a)(2)(B)(v)). Other transportation equipment covered by exceptions to the predominant foreign use test include "any aircraft which is registered by the Administrator of the Federal Aviation Agency and which is operated to and from the United States" (Code section 48(a)(2)(B)(i)) and "any vessels documented under the laws of the United States which are operated in the foreign or domestic commerce of the United States" (Code section 48(a)(2)(B)(iii)).

With respect to aircraft and vessels, the regulations and published rulings set forth with clarity the standards to be applied in allowing the credit for those classes of transportation assets. Indeed, in the case of a vessel, the regulations (as amplified by Rev. Rul. 69-509, 1969-2 C.B. 3) make it very clear that any U.S. flag vessel documented by the U.S. Coast Guard for use in the domestic or foreign commerce of the United States qualifies for the investment credit, even though the vessel is in fact used exclusively outside the United States.

When the Service published the vessel ruling, it clearly manifested its intention to accept, in the case of a U.S. flag vessel, the U.S. Coast Guard's decision to enroll a vessel in the registry of those eligible to engage in the domestic or foreign commerce of the United States as determinative of the vessel's satisfying the investment tax credit requirement that it be operated in the domestic or foreign commerce of the United States. The promulgation of this ruling was necessarily premised upon the Service's acceptance of the proposition that there is no basis in the language of the statute, the legislative history, or the regulations for any requirement that a documented vessel return to the United States at any time during its period of service. Accordingly, the publication of this liberalized ruling occurred only after a considered policy decision by the Service that it would not look behind the Coast Guard's documentation of a U.S. flag vessel and that the Service would not make its own factual determination as to whether such a vessel is, in fact, operated in the foreign or domestic commerce of the United States.

There is no basis in the language of the statute, the legislative history, or the regulations for applying a U.S. contact or frequency of U.S. contact test with respect to containers. In marked contrast, the regulations applicable to aircraft and motor vehicles expressly require that they return to the United States or be operated to and from the United States "with some degree of frequency" (section 1.48-1(g)(2)(i) and (iv)). These regulations properly reflect Congress' explicitly stated intention to impose such a test with respect to such property. H. Rep. No. 1447, 87th Cong., 2 Sess. pp. A19-A20 (1962); S. Rep. No. 188, 87th Cong. 2d Sess. p. 156 (1962). There is, however, no proper or authoritative basis for the few revenue agents' reported attempts to apply the same requirement to containers.

Throughout the history of the investment credit, Congress has consistently accorded cargo containers markedly liberal treatment for purposes of qualification. For example, on a number of occasions the Congress, for purposes of assuring qualification of equipment for the investment tax credit, required that recognition be given to the fact that equipment is designed and constructed for use as complementary or integral parts of an ocean-going vessel or "mother ship". Thus, when Congress repealed the investment tax credit in 1969, it acted to preserve to credit for barges (and "machinery and equipment to be installed on such barges and necessary for their planned use") which are "specifically designed and constructed . . . for use with ocean-going vessels which are designed to carry barges," where credit for the vessel continued to be available pursuant to a binding contract or other type of transitional relief rule (Code sec. 49(e)(9), added by sec. 703 of the Tax Reform Act of 1969 (P.L. 91-172)). Similarly, in providing a partial investment tax credit for certain subsidized vessels constructed out of subsidy funds established under the Merchant Marine Act of 1936, the Congress acted to assure that the credit would be available not only for "a qualified vessel" but also for "barges or containers which are part of the complement of a qualified vessel" (Code sec. 46(g)(1)(B)). At this juncture, when we are repealing the investment credit, there is no legal or policy justification for our taking any action that might be interpreted as Congressional approval of the restrictive positions of a few revenue agents.

Moreover, Congress' refusal to apply any type of U.S. contact, or frequency of U.S. contact standard, with respect to containers strongly demonstrates that there should be no U.S. contact, or frequency of U.S. contact, test imposed upon containers, as proposed by the agents in selected cases. Although worldwide statistics of container movements suggest that it is likely that a container will at some point make contact with the United States during its years of service, a U.S. container owner would be hardpressed to trace the movements of each container, especially while they are on lease to foreign companies which may not be accountable for the whereabouts of containers. It is hardly likely that Congress would have authorized the Internal Revenue Service to impose administrative standards that would render the liberalized container exception generally useless for most U.S. container owners. Indeed, Congress' would never have intended to allow the credit for a costly container vessel ship (whose movements are easily traceable) whether or not the vessel ever touched the United States, but to disallow the credit for all of the relatively inexpensive containers used on such a vessel.

This conclusion is entirely in accord with the structure and underlying policy of Code section 48(a)(2)(B). An examination of the statute reveals that for each exception for transportation equipment where there are specific tests imposed by regulations or rulings, the test is formulated in a manner that is designed to further Congress' intent that the investment credit will be generally available for such asset. For example, the frequency test imposed for aircraft is one that the owner can satisfy with reasonable diligence. As liberally interpreted by the Internal Revenue Service, the vessel exception can be easily met. Containers are low-unit-cost, high-volume items and the Treasury or the Internal Revenue Service should hardly be permitted to impose a test for containers that a majority of U.S. container owners could not satisfy without expending more money than the value of the intended tax benefit.

The U.S. courts have consistently held that shipping containers are the functional modern equivalent to the hold of a vessel. See e.g., *Northwest Marine Terminal Co.* v. *Caputo*, 432 U.S. 249, 270 (1977); *Leather's Best, Inc.* v. *Mormadynx*, 451 F. 2d 800, 815 (2d Cir. 1971). There is, accordingly, a close relationship between containers and the vessels. Since neither the vessel nor the container exception is premised upon a standard of U.S. contact or frequency of such contact. We believe that Congress always intended that the container exception be interpreted for containers of U.S. owners in a manner similar to the exception for U.S. flag vessels.

Accordingly, any container of a U.S. person should be treated as satisfying the requirement of Code section 48(a)(2)(B)(v) in any case where it meets the safety and customs standards currently prescribed by the United States Coast Guard respecting use of the container in the domestic or foreign commerce of the United States. A container of a U.S. person should be treated as meeting such standards if it is listed in the *Official Intermodal Equipment Register* or similar publication.

We commend the views expressed in our statement to the Treasury and to the Internal Revenue Service for guidance in formulation of policies, rules, and administrative practices for application of the investment tax credit. We in the Congress will maintain continuing oversight of interpretative and administrative rules and positions on the issues addressed here.●

DRUG TESTING

● Mr. SIMON. Mr. President, according to many Americans, drug abuse is the most serious problem facing the country, our schools and our families. I share the sense of urgency that we must address the problems of drug abuse and access to drugs, particularly by our young.

The bill recently passed by the Senate represents a good faith effort to approach the drug problem in a reasonable fashion. Emphasis is placed on education and rehabilitation and changes in our criminal laws which will get the producers and distributors of drugs off the streets.

The Senate wisely chose not to include some of the more controversial issues which, while they may have great momentary popularity, undermine our Constitution and some of our most basic principles. One of these issues is drug testing. The administration has announced its intention to begin mandatory drug testing of Federal employees in senstive positions. I have serious concerns about massive drug testing—both its constitutionality and the validity of many testing procedures. Recently, Diane Geraghty wrote an article for the Chicago Lawyer on drug testing, Ms. Gerahty, who is the president of the Illinois Chapter of the American Civil Liberties Union and a constitutional law professor at Northwestern School of Law, presents a response to those who believe that mandatory drug testing should be a component of an antidrug campaign in this country. I urge my colleagues to read her article and ask that it be printed in full in the Record.

The article follows:

[From the Chicago Lawyer, October 1986]

What's Your Urine Got To Hide?

(By Diane Gerahty)

As a mother of four, I am concerned about the drug problem. I would be heartbroken if one of my children fell prey to abuse or addiction.

I want the schools to educate my children about drug abuse. I want to be involved in that effort myself, and I want the government involved in it. I also want the government involved in providing treatment and rehabilitation for those who already suffer from the illness of drugs.**

However, I do not want the government to be involved in the war on drugs in a way that could subject my children, myself, or anyone else to violations of the federal Constitution. As a professor of constitutional law, I have come to respect that document, the idea behind it, and the people who, in order to come up with it, had to find a balance between individual liberty and government rights.

For reasons grounded in the Constitution itself, I oppose, and the American Civil Liberties Union opposes, the idea that stole headlines over the course of the summer and escalated in recent days—random drug testing in the workplace.

First, random drug testing would violate the search and seizure clause of the Fourth Amendment.

It is not by chance that we have the Fourth Amendment. Prior to the founding of the U.S. government, it was common in both England and the colonies for authorities to conduct random searches of homes and businesses in search of evidence of law violations. The searches were so offensive that they led eventually to the American Revolution.

The Fourth Amendment is a wise law that does not prohibit the government under all circumstances from conducting searches in order to protect itself. Rather it sets a standard to be followed. The standard is that there must be, in the language of the Fourth Amendment, probable cause to believe that an individual. is engaging in illegal activity before the individual may be subject to a government search.

One problem with random drug testing is that by definition there is no probable cause involved. Employees who are performing their jobs adequately—long-term—faithful employees, would be as much subject to the tests as employees whose performance is impaired or who have engaged in behavior indicating they have a drug abuse problem.

Second, random drug testing violates the privacy provisions embodied in the Fourteenth Amendment.

While public opinion polls indicate that the majority of Americans favor random drug testing, most people probably have not stopped to think about what drug testing in fact means. Effective drug testing cannot be done in quite the same way that a medical blood test is done. The potential for substitution or doctoring of the sample is too great; the sale of "pure urine" reportedly is already going on. The only way to conduct random drug testing is to have an observer watch the subject urinate into a container.

Drug testing currently is being done at approximately 25 percent of the Fortune 500 companies. As a result of President Reagan's executive order of September 15, approximately 1.1 million federal employees will now be subject to the same kind of testing. Normally, when these tests take place, supervisors must go in and watch the urine-taking procedure. If most Americans were aware of this, I suspect that their sense of privacy, of their right to conduct some bodily functions without observation by government, would be offended and they would oppose random drug testing.

Furthermore, if most Americans were aware of the nature and extent of information that can be discovered through urine tests, I suspect that they would be further opposed to random drug testing. Many people say, "I wouldn't be afraid to submit to random drug testing because I do not use drugs. I have nothing to hide." But they probably do not realize that the same test will show whether an employee is pregnant and whether an employee is taking medications for illnesses or disabilities that may be none of the employer's business.

Third, random drug testing poses a due-process problem that relates to the inherent unreliability of the tests being used.

The most frequently used test is referred to as EMIT. It is the most frequently used because it is the least expensive. It costs between $10 and $30 per specimen. The problem is that the false positive rate with EMIT is running from 10 to 40 percent. The makers of EMIT and similar tests warn that in case of a positive result a more sophisticated and more expensive test must be performed—usually either a gas chromatography or a mass spectrometry test. These tests cost about $100 each. And, while they are considerably more accurate than EMIT, they too are far from perfect.

A related problem is the lack of qualified technicians to perform the tests. Some enterprising entrepreneurs have seen the increasing public concern over drugs as a gold mine. In the wake of President Reagan's executive order, it does not take much imagination to see the opportunity, and drug testing laboratories are springing up all over the country.

Some statistics from the Federal Center for Disease Control in Atlanta highlight the problem. In the spring of 1985—this according to the New York Times—experts at the center reported a crisis in drug testing at 13 laboratories that served 252 methadone treatment centers across the country. The study considered 80 percent accuracy as an acceptable performance level and found that only one lab met the standard for barbiturates and cocaine, that none met it for amphetamines, and that only half met it for methadone.

Even if the search and seizure, privacy, and due process problems were not present, persons taking drug tests ought to have reasonable assurance that they will not be falsely accused simply because the tests are unreliable.

When President Reagan addressed the nation on the eve of issuing his executive order, he concluded with these words: "As we mobilize for this national crusade, please remember this is when your courage is tested: You are Americans. You are the product of the freest society mankind has ever known. No one ever has the right to destroy your dream or to shatter your life."

I agree with President Reagan.

The problem is that random drug testing does have the potential for destroying dreams and shattering lives, for causing people to lose their jobs, putting them on unemployment rolls, and for damaging their reputations in ways that violate the federal Constitution.

I agree with President Reagan when he said, "Say no to drugs."

But I believe that, as a society, despite the pressures currently being place on us, we have to say no also to unconstitutional methods that are being proposed to combat the drug problem.●

CONTINUED VIOLATIONS OF HUMAN RIGHTS IN CASTRO'S CUBA

● Mr. SYMMS. Mr. President, I ask that a recent letter from Dr. Claudis Benedi to Dr. Luis Adolofo Siles Salinas, chairman of the Inter-American Commission on Human Rights, be printed in the Record. Dr. Benedi is a great anti-Communist advocate, and is the distinguished Washington representative of the Junta Patriotica Cubana. I am delighted to help the Junta focus world public opinion upon tragic human rights violations committed by Fidel Castro's tyranny in Communist Cuba.

The letter follows:

Cuban Patriotic Board,
Merrifield, VA, September 18, 1986.

Dr. Luis Adolfo Siles Salinas,
Chairman, Inter-American Commission on Human Rights, Organization of the American States, Washington, DC.

Distinguished Mr. Chairman: With the condition that I have accredited since the inception of the Inter-American Commission on Human Rights, in the capacity of Washington Coordinator of the quasi-totality of associations and organizations of present and former Cuban political prisoners, male and female, and as the representative of the Cuban Patriotic Board, it is my privilege to address you and, through your efforts, the Honorable members of that Commission, in order to thank you all for the opportunity afforded me once more to appear before this prestigious Commission, in order to state and denounce the following:

That since the Seventh Report was prepared and approved, and since the last Annual Report was submitted last year to the Fifteenth Regular General Assembly of the Organization of American States (OAS), the Marxist-Leninist regime has continued in Cuba a pattern of violations of human rights, which is inherent to that system, one "cruel, inhuman and degrading" system, such as this Commission has denounced. Institutional violations have continued in effect, contained in the so-called "Socialist Constitution of 1976", in the Penal Code and the legislation in force, as well as "de facto" violations.

The latter take place, in a larger or lesser measure, both in the leftist as in the rightist regimes, but Institutional Violations only happen within communist regimes, since there occurs a Transculturation, a new conception, juridical if we can call it that, in which violations affect the American Declaration of Rights and Duties of Man, enacted on April, 1948, the Human Rights Convention and the Universal Declaration of Human Rights approved on December, 1948, by the United Nations. All of which implies a challenge to this Commission, that is the tutor and guardian of human rights in this Hemisphere, which implies the duty to accept these denouncements and, in turn, to denounce by itself this system that violates principles and values, as well as a challenge to those institutions that protect human rights, which after so many years we have been able to devise, proclaim and implement. That system of violations runs counter to our Judeo-Christian civilization.

The uninterrupted continuation of those violations, institutionally and "de facto", force us once more to denounce them and in turn forces this Commission, within its power, to condemn them. Continued commission of any crime does not attenuate either the duty to denounce it or that of condemning it.

There are presently in Cuba over 15,000 political male and female prisoners, as it has been verified by international organizations and published by Amnesty International and other entities.

We have denounced that, in the political prison at Boniato, a fateful center for the torture and annihilation of the human being, as well as in that one called "Kilo-7", the Combinado del Este and other prisons up to 25, scattered throughout the Cuban territory, the same pattern is being followed as in the forced-labor camps. We have enclosed a plan outlining the locations of a majority of those prisons.

There still exist in those prisons above referred to, the Walled-up Cells, where sunlight is not visible; the "Drawers" where up to three prisoners are punished and locked up in a space that is scarce even for one. In all of these places, physical and psychological tortures, as well as medical experiments with political prisoners, are still continuing.

The "Plantados", male and female political prisoners, who have resisted indoctrination for over 20 years, constitute a permanent denouncement of the infamy of the Cuban political system of prisons, where there are men and women who have been incarcerated for over 25 years, who have been convicted and sentenced outside of any procedural guarantees and with infringement upon the most elemental rights under the tutelage of this Commission. The Cuban political prison system is the oldest and most numerous in the History of the Americas, and perhaps of the world.

There is no Rule of Law in Cuba, and this was stated by the International Commission of Jurists, an agency of the United Nations. This statement has a greater force today than it had when formulated by the jurists, because the communist regime prevailing in Cuba is not only anti-juridical, but it lacks any juridicty, which has been repeatedly proven. It is a system diametrically contrary and opposed to that which this Commission represents.

We have denounced the Political Prison System for Women in Cuba as a whole and, in specific cases, all of which is in the files of that Commission. In this appearance we would like to reiterate those denouncements and we are enclosing copies of books that contain the same denouncements, for your information and in order for same to be included in the Annual Report.

In the last few days, through the humanitarian efforts of the United States Catholic Conference and those of the Cuban Prelates, as well as others from individuals, 70 Cuban political prisoners were released who had been imprisoned for over 20 years, some of them up to 25 and 27 years. One of them, Mr. Mateo Gomez Blanco, died while in transit between the prison and the airport, where he would have boarded the plane to bring him to the United States. His organism, same as those of the other political prisoners, had been weakened by the long prison years and the tortures to which they have been subjected. It is possible that some other prisoners might be released, but there shall remain most of those 15,000 in prison. While such a system would continue to exist, many other Cubans, male and female, will be subjected to the political prison system regardless of their classification given by the communist regime, that sometimes labels them as "common criminals", other times as "undesirables", etc. Those recently-liberated prisoners have not been released due to the humanitarian feelings of the regime, but with purposes of political propaganda.

Political prisoner Ramon Pedro Grau Alsina, who served over 21 years, was locked up for several years in the fateful prison at Boniato, because of opposing the communist regime and for having participated in the exodus from Cuba of over 14,000 children of both genders, who were very young, before parents lost their parental authority upon them. Those parents would rather separate from their children than seeing them poisoned by the Marxist-Leninist hate. With Ramon Grau, a nephew of the former Constitutional President of Cuba, Dr. Ramon Grau San Martin, it so happened that in the last "shake-down" before leaving prison, guards wanted to take away from him the Cross of Christ that hanged from his neck, and he told them that "they had been able to imprison his body, but his soul had always been free due to his faith in Christ." We have here a firm religious conviction, as that stated by those prisoners who, upon being taken to the Execution Wall, died shouting "Long Live a Free Cuba" (Viva Cuba Libre), and "Long Live Christ the King" (VIVA Cristo Rey). The echoes of those shouts still reverberate in the communist dungeons, as a scorn for their executioners and denouncement before the world of all that has been happening in Cuba.

We have denounced the religious persecution contained in the same Socialist Constitution. Closed temples, confiscated religious schools, convents and seminaries closed. A Catholic Bishop, Monsignor Eduardo Boza Masvidal, together with other 138 religious persons, many of them Cubans, among them the present Auxiliary Bishop of the Catholic Archdiocese of Miami, Monsignor Agustin Roman, were expelled with only the clothes they were wearing, on the steamer "Covadonga", a Spanish ship that happened to be in the harbor at La Habana.

There were 87 Evangelical churches in Cuba of the Gedeon Group, out of which only 13 remain, very limited in their religious functions. There was the Church of Our Lady of Charity in the provincial capital of Camagüey, with the Pastor, the Rev. Eugenio Garcia, and it was condemned. Another church in Nuevitas, province of Camagüey, whose Pastor was the Rev. Ramon Santoya, was closed as well. Those who profess any religion are second-class citizens, they are not allowed to attend any college or university, are denied the right to work productively and deprived of all other rights. That is happening in Cuba at the present time.

Jehovah Witnesses are persecuted and imprisoned. Some of them have been executed because of their creed, as it has also happened with Catholics and Protestants. Whoever professes any religion is considered "an enemy of the State", despite the fact that the regime may want to have some denominations become its instruments, or else some of the ministers of those denominations, with solely propagandistic purposes.

Professor Marcelo de Varona, who taught Physics at the University of Camagüey and was a Catholic who attended the above listed church of Our Lady of Charity, was convicted for having said that there was inflation in the world and also in Cuba. He was sentenced for not adhering to the regime, labeled as "micro-fractionist", denied the right to work at said University and elsewhere. His wife, Dr. Martina Varona, was pressured to leave him. We do not know whether she is free or imprisoned. The regime wants them to become "non-persons", albeit they may be in apparent liberty.

Engineer Leonel Arrazola Sigas was sentenced to 12 years of imprisonment, on charges that he misdesigned an industrial plant, but they added 8 years to his sentence for telling jokes against the revolution. He was sentenced in the summer of 1983 at the so-called Revolutionary Court of Camagüey.

Felipe Regalado, a telephone worker, was accused of being a "micro-fractionist" because of having said that "socialism could be better than its Cuban version." They said he had sabotaged the telephone switchboard and gave him a 9-year sentence through the same Court listed above, in 1981-82.

Architect Grave de Peralta, who stated his wishes of leaving Cuba, was sentenced to 20 years, forced to give his family up and persecuted. He had his sentence suspended and was submitted to a lengthy "rehabilitation", another way of being imprisoned. It is not known if he is still in prison.

Alberto Carlos Jane Padron was sentenced in 1966 to 30 years, on charges of "being a CIA agent", in the same Revolutionary Court of Camagüey. It is not known in which prison he may be serving his sentence.

Martin Perez, one of the "Plantados" in the fateful prison at Boniato, was sentenced to 30 years and has already served 28. His health is diminished because of tortures and the length of his term of imprisonment. His imprisonment is a condemnation of the very regime that sentenced him. It is high time for his release.

We have denounced before the Commission that, out of the 10,000 persons who sought asylum at the Embassy of Perú in Havana, over 2,500 left that place with safe-conducts issued by the regime to await for visa exits at their homes. Many of these have disappeared, as we have denounced before this Commission; others have been executed by firing squads; still others are imprisoned and the rest of them have become "non-persons"; they are persecuted and denied employment, education and adequate food. We reiterate our denouncement about these cases. We ask that the Commission would obtain from the Government of Perú the lists of those who sought asylum and those who have been able to leave, in order to determine who are those still pending exit visas.

Out of those who sought asylum in the Peruvian Embassy at La Habana, in March, 1980, there still remain in that diplomatic see Pedro Betancourt Collazo, Eduardo Herrera Diaz and Felino Ramirez Batista, who have not been able to obtain any safe conducts to leave Cuba. They have mailed a handwritten letter denouncing the violation of the right to seek asylum. This letter, that has been smuggled out of Cuba, we shall submit as a proof before this Commission.

We have already denounced, and we reiterate before this Commission, that there were 12,500 Jews in Cuba, out of whom 12,000 have been able to leave, but there are 500 left there without due spiritual assistance; they lack any Rabbi to conduct their religious services. We ask this Commission to open this case and effect pertinent efforts.

We denounce before this Commission that executions by firing squads continue at the Managua Encampment, with the victims being youngsters who refuse to fight abroad with the "internationalist mission" imposed by the communist regime. According to official statements issued by said regime, there are presently 150,000 Cuban "internationalists" in 47 nations of Asia, Africa and Latin-America. This denotes the seriousness of the case and the persecutions to which youngster who refuse to leave "voluntarily" to combat abroad are subjected, when they are ordered to Central-America, South-America and the Caribbean.

The Committee for Human Rights that was created inside the prison by former Professor of Philosophy Dr. Ricardo Boffill, continues to denounce executions by firing squads and tortures that are being committed in the Cuban prisons. Professor Boffill has requested asylum at the French Embassy in Havana and he has not been allowed to leave Cuban territory. We ask this Commission to intervene in order for him to be able to leave.

Poet Armando Valladares, who was imprisoned for 22 years and whose denouncements we submitted to this Commission, joined by his wife, Marta Valladares, who has been a true heroine in the defense of her husband, have written a book, that has enjoyed a great impact, entitled "Against All Hope" (Contra Toda Esperanza), The Cuban Gulag. This Commission, that performed so many efforts on behalf of Valladars, deserves due credit for its participation in the release of this Cuban patriot, poet and writer. In his book, this Commission will be able to find many denouncements that the European press has echoed, as well as the Asian, African and Latin-American media. We would like to leave evidence of our gratitude to this Commission for that task accomplished.

We respectfully request of this Commission that, despite the workload we know is upon same, would expedite the processing of the denouncements we have submitted and those others we are now submitting in this appearance, given the seriousness of those violations against human rights that are being committed in Cuba at the present time.

We would like to state our gratitude to the Commission for the promise we have received, to include in its Annual Report to the next General Assembly of the OAS, the Institutional Violation and "de Facto" violation of human rights in Cuba.

We request of this Commission, recently made up by new members, in a respectful manner, to prepare as soon as possible the Eighth Report, to equate the former members of the Commission who have already prepared seven reports and resolutions.

We furthermore request of the Commission the reiteration, before the Government of Venezuela, of its petition for the prompt release of Dr. Orlando Bosch and his companions in prison. Dr. Bosch has already been declared not guilty by two Venezuelan courts, but he is still in prison, which constitutes a flagrant violation of his human rights.

In two other instances, we have come before this Commission and delivered to the Executive Secretary, Dr. Edmundo Vargas Carreno, as well as the person in charge of Cuban Affairs, Dr. Luis Jimenez, having been accompanied by former Cuban political prisoner Col. Ricardo Montero Duque, a request for the Commission to intervene on behalf of the release of the last political prisoner remaining from the Bay of Pigs landing, Ramon Conte, who has also served 25 years in prison but not released yet. We beg of the Commission its invaluable efforts to attain the release of Ramon Conte.

The illustrious Professor of the University of La Habana, in its Faculty of Philosophy and Letters, Dr. Herminio Portell Vila, historian, writer, journalist and a great Cuban and American patriot, has written several works about this Commission. We enclose a copy of the last of those works by Dr. Portell Vila.

Also, the illustrious journalist Guillermo Martinez Marquez, founder and a former President of the Inter-American Press Society (SIP), a Cuban and American patriot, has written several articles regarding the works of this Commission. We enclose a copy of his last work.

We remain with our greatest consideration and respect,

Yours very sincerely,

DR. CLAUDIO F. BENEDI,

Coordinator and Representative of the quasi-totality of associations of former Cuban male and female political prisoners, as well as the associations of political prisoners' relatives, and of the Cuban Patriotic Board.●

TRIBUTE TO COACH JOHN McKISSICK

● Mr. HOLLINGS. Mr. President, I rise to congratulate Coach John McKissick of Summerville High School who became the winningest football coach for a single school this past weekend when the Summerville Greenwave defeated Goose Creek 28 to 0. I have to say, Mr. President, that this does not surprise me. Quality student athletes are a long tradition in Summerville. During my 20 years in the Senate, I have made more appointments to the service academies from Summerville High than from any other school, and many of them were products of Coach McKissick's fine football program.

Over the 35 seasons Coach McKissick has been with Summerville High School he has compiled the phenomenal record of 337-61-13. Needless to say, Summerville is a dynasty in South Carolina football.

Some of Coach McKissick's career highlights include: Three of his first five Summerville teams went undefeated, winning the State class B titles in 1955 and 1956. Between 1978 and 1980 his teams won 41 consecutive games. He has coached eight State championship teams, winning three State AAA, the State's largest division, titles since 1982.

Incidentally, the record that coach McKissick broke had previously been held by another South Carolinian, Coach Julius "Pinky" Babb, of Greenwood, SC. Further, the man third in line for the honor is from Woodruff, SC, Coach Willie L. Varner.

I am sure that Coach McKissick is very proud of his accomplishment, but no prouder than his players of both past and present. There is no greater reward than to know that you have been taught by the best.

America could use more men like John McKissick. We need men who demand the most out of America's youth, for only when you are demanded to give your best, do you learn what your best really can be.●

EXECUTIVE SESSION

Mr. LAXALT. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nomination of Fred K. Mahaffey to be a general, U.S. Army.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination will be stated.

U.S. ARMY

The legislative clerk read the nomination of Fred K. Mahaffey to be a general, U.S. Army.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. LAXALT. Mr. President, I move to reconsider the vote by which the nomination was considered and confirmed.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. LAXALT. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to this nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. LAXALT. Mr. President I ask unanimous consent that the Senate now resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR FRIDAY

ORDER FOR RECESS UNTIL 9:30 A.M.

Mr. LAXALT. Mr. President, I ask unanimous consent that once the Senate completes its business today it stand in recess until the hour of 9:30 a.m., today, Friday, October 3, 1986.

Mr. LEAHY. Mr. President, it sounds like a good time to me. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ROUTINE MORNING BUSINESS

Mr. LAXALT. Mr. President, following the orders for the two leaders, I ask unanimous consent that there be a period for the transaction of routine morning business for not to extend beyond the hour of 9:45 a.m. with Senators permitted to speak therein for not more than 2 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. LAXALT. At 9:45 a.m., the Senate will resume consideration of House Joint Resolution 738, the continuing resolution. If time permits, it will be the intention of the majority leader to turn to any of the following items: S. 2792, FIFRA. One vote is expected. S. 2045, CFTC, and hopefully this will be concluded by unanimous consent. We have various conference reports that may be considered, intelligence authorization, bankruptcy, Export-Import Bank, technology transfer, and the handicap bill.

Votes can be expected throughout the day. However, it is the hope of the majority leader to recess the Senate by 6 p.m. or so.

RECESS UNTIL 9:30 A.M. TODAY

Mr. LAXALT. Mr. President, I move in accordance with the previous order that the Senate stand in recess until 9:30 a.m. this morning, Friday, October 3, 1986.

Mr. LEAHY. Mr. President, that is the best suggestion we have heard in 24 hours. I concur.

Thereupon, at 5:27 a.m., the Senate recessed until 9:30 a.m., Friday, October 3, 1986.

HOUSE OF REPRESENTATIVE—*Thursday, October 2, 1986*

The House met at 10 a.m.

Rabbi Judea Miller, Temple B'rith Kodesh, Rochester, NY, offered the following prayer:

Tomorrow at sundown marks the end of the liturgical year according to the ancient Jewish religious calendar. Rosh Hashanah marks the start of the new year 5747.

I ask that each of us quietly, in his or her own way, invoke God's blessing for this new year.

[Moment of silence.]

Thou to whom we pray:

Source of all life, foundation of our yearnings for justice, freedom, and peace; may the recognition of our own failings lead us to be patient with the shortcomings of others. And may the will to goodness which Thou hast implanted within us, reveal to us the dignity of every human being, for every soul is precious in Thy sight.

Grant us insight, understanding, and sensitivity.

Teach us to listen to each other.

Teach us also to listen to our own prayers, that we follow Thee in courage and trust.

Help us break down walls of fear and arrogance that blind us to Thy will.

Release us from easy conventions and the terrible fears that silence the promptings of our consciences.

Expose us to the anguish from which we hide in our cloaks of deliberate ignorance.

Make vivid to us the destruction of bodies and spirits which we may allow. Give us hearts as wide as the needs of all Thy children that we may see the blessings we may bring.

May we feel Thy presence.

Remember us unto life, for Thou delightest in life.

Inscribe us for the new year in the Book of Life.

Praised be Thou, who hearest our prayer. Amen

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. GEKAS. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. GEKAS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 247, nays 122, answered "present" 2, not voting 61, as follows:

[Roll No. 429]

YEAS—247

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Applegate
Archer
Aspin
Barnard
Barnes
Bateman
Bedell
Beilenson
Bennett
Berman
Bevill
Biaggi
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Broomfield
Brown (CA)
Bruce
Bryant
Bustamante
Byron
Callahan
Carper
Carr
Chappell
Clinger
Coelho
Coleman (TX)
Collins
Combest
Cooper
Coyne
Daniel
Darden
Daschle
Davis
de la Garza
Dellums
Derrick
Dicks
DioGuardi
Donnelly
Dorgan (ND)
Dowdy
Downey
Duncan
Durbin
Dwyer
Early
Eckart (OH)
Edwards (CA)
Edwards (OK)
English
Erdreich
Evans (IL)
Fazio
Feighan
Fish
Flippo
Florio
Foglietta
Foley
Franklin
Frost
Fuqua
Gaydos
Gephardt
Gibbons
Gilman
Glickman
Gonzalez
Gradison
Gray (PA)
Guarini
Hall (OH)
Hall, Ralph
Hamilton
Hammerschmidt
Hatcher
Hayes
Hefner
Hertel
Hillis
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hyde
Jeffords
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennelly
Kildee
Kolter
Kostmayer
Lantos
Leath (TX)
Lehman (CA)
Lehman (FL)
Levin (MI)
Levine (CA)
Lipinski
Lloyd
Long
Lowry (WA)
Lujan
Luken
MacKay
Manton
Markey
Martin (NY)
Martinez
Matsui
Mazzoli
McCloskey
McDade
McKinney
Mica
Mikulski
Miller (CA)
Miller (WA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Natcher
Nelson
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Panetta
Pashayan
Pease
Pepper
Perkins
Petri
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ray
Reid
Richardson
Rinaldo
Robinson
Rodino
Roe
Rose
Rowland (GA)
Roybal
Rudd
Russo
Sabo
Savage
Scheuer
Schneider
Schulze
Schumer
Seiberling
Sharp
Shelby
Shumway
Sisisky
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Snyder
Solarz
Spratt
St Germain
Staggers
Stallings
Stark
Stenholm
Studds
Sweeney
Swift
Synar
Tallon
Tauzin
Taylor
Thomas (GA)
Torricelli
Towns
Traficant
Valentine
Vento
Visclosky
Volkmer
Walgren
Watkins
Weaver
Weiss
Wheat
Whitley
Whitten
Williams
Wilson
Wirth
Wise
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (MO)

NAYS—122

Armey
Badham
Bartlett
Barton
Bentley
Bereuter
Bilirakis
Bliley
Boehlert
Boulter
Brown (CO)
Burton (IN)
Chandler
Chappie
Cheney
Coats
Cobey
Coble
Conte
Coughlin
Courter
Craig
Dannemeyer
Daub
DeLay
Dickinson
Dornan (CA)
Dreier
Emerson
Evans (IA)
Fawell
Fiedler
Fields
Frenzel
Gallo
Gekas
Gingrich
Goodling
Gregg
Gunderson
Hansen
Hawkins
Hendon
Henry
Hiler
Holt
Hopkins
Hunter
Ireland
Jacobs
Kindness
Kolbe
Kramer
Lagomarsino
Latta
Leach (IA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Loeffler
Lott
Lungren
Mack
Madigan
Marlenee
Martin (IL)
McCain
McCandless
McGrath
McKernan
McMillan
Meyers
Michel
Miller (OH)
Molinari
Monson
Moorhead
Oxley
Packard
Parris
Penny
Regula
Ridge
Roberts
Roemer
Rogers
Roth
Roukema
Rowland (CT)
Saxton
Schaefer
Schroeder
Schuette
Sensenbrenner
Shaw
Shuster
Sikorski
Skeen
Slaughter
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solomon
Spence
Stangeland
Strang
Stump
Sundquist
Tauke
Thomas (CA)
Torres
Vander Jagt
Vucanovich
Walker
Weber
Whittaker
Wolf
Young (AK)
Young (FL)

ANSWERED "PRESENT"—2

Green
Hutto

NOT VOTING—61

Anthony
Atkins
AuCoin
Bates
Boggs
Breaux
Brooks
Burton (CA)
Campbell
Carney
Chapman
Clay
Coleman (MO)
Conyers
Crane
Crockett
DeWine
Dingell
Dixon
Dymally
Dyson
Eckert (NY)
Edgar
Fascell
Ford (MI)
Ford (TN)
Fowler
Frank
Garcia
Gejdenson
Gordon
Gray (IL)
Grotberg
Hartnett
Jenkins
Kleczka
LaFalce
Leland
Lowery (CA)
Lundine
Mavroules
McCollum
McCurdy
McEwen
McHugh
Mitchell
Moore
Neal
Nichols
Ritter
Rostenkowski
Siljander
Stokes
Stratton
Swindall
Traxler
Udall
Waldon
Waxman
Whitehurst
Zschau

☐ **This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.**

Matter set in this typeface **indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.**

□ 1025

So the Journal was approved.

The result of the vote was announced as above recorded.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mrs. Emery, one of his secretaries, who also informed the House that on the following dates the President approved and signed bills and a joint resolution of the House of the following titles:

On September 25, 1986:

H.J. Res. 692. Joint resolution to designate the week of October 19, 1986, through October 26, 1986, "National Housing Week"; and

H.R. 1529. An act for the relief of Gerald M. Hendley.

On September 30, 1986:

H.R. 1483. An act to authorize the Smithsonian Institution to plan and construct facilities for certain science activities of the Institution, and for other purposes;

H.R. 3002. An act to provide for the establishment of an experimental program relating to the acceptance of voluntary services from participants in an executive exchange program of the Government;

H.R. 4421. An act to authorize appropriations for fiscal years 1987, 1988, 1989, and 1990 to carry out the Head Start, Follow Through, dependent care, community services block grant, and community food and nutrition programs, and for other purposes; and

H.R. 4530. An act to amend the Department of Defense Authorization Act, 1985, to provide that members of the Commission on Merchant Marine and Defense shall not be considered to be Federal employees for certain purposes, to extend the deadline for reports of the Commission, and to extend the availability of funds appropriated to the Commission.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment bills and concurrent resolution of the House of the following titles:

H.R. 4216. An act to provide for the replacement of certain lands within the Gila Bend Indian Reservation, and for other purposes.

H.R. 4217. An act to provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolikot Dam, and for other purposes;

H.R. 5522. An act to authorize the release to museums in the United States of certain objects owned by the U.S. Information Agency; and

H. Con. Res. 332. Concurrent resolution concerning the Soviet Union's persecution of members of the Ukrainian and other public Helsinki Monitoring Groups.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 4952. An act to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

The message also announced that the Senate had passed bills and joint resolutions of the following titles, in which the concurrence of the House is requested:

S. 2281. An act to amend title 18, United States Code, to provide additional penalties for fraud and related activities in connection with access devices and computers, and for other purposes;

S. 2900. An act to provide a temporary extension of the Interstate Transfer deadline for the H-3 Highway;

S.J. Res. 336. Joint resolution to express the sense of Congress on recognition of the contributions of the seven Challenger astronauts by supporting establishment of a Children's Challenge Center for Space Science; and

S.J. Res. 422. Joint resolution commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion.

RABBI JUDEA MILLER

(Mr. HORTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HORTON. Mr. Speaker, it is a great pleasure and privilege for me to recognize Rabbi Judea Miller, the rabbi of Temple B'rith Kodesh, in my home community of Rochester, NY. Rabbi Miller, at my request, has offered this morning's opening prayer as we begin today's session of the House.

Rabbi Miller's prayer is offered only 1 day before observance of the Jewish high holy days by Jews around the world who will gather in synagogues everywhere to celebrate Rosh Hashana, the Jewish New Year, tomorrow evening.

Rabbi Miller is the spiritual leader of one of America's best known reform Jewish congregations. As rabbi of more than 1,000 Jewish families, Rabbi Miller has also assumed a leadership role in speaking out on critical social, international and community issues, and is looked upon by the entire Rochester community as a thoughtful, concerned, and articulate spokesman of human rights issues.

Rabbi Miller received his doctor of divinity degree in Cincinnati, OH, and New York City from the Hebrew Union College-Jewish Institute of Religion. He served as a chaplain in the U.S. Army, and as a Veterans' Administration chaplain in Massachusetts and New York. He was elected delegate to the World Zionist Congress in Jerusalem in 1979, serves on the board of governors of the New York Board of Rabbis, and has been widely published.

Rabbi Miller's predecessor at Temple B'rith Kodesh was the late Rabbi Philip S. Bernstein, a great friend of many Members of this House. Rabbi Bernstein was the founder of the American Israel Public Affairs Committee here in Washington, an organization he formed to win popular and political support in America for the then fledgling new State of Israel.

Rabbi Miller, himself, is a man who has touched the lives of Members of the House in important ways. As rabbi of Temple Emanu-el in Wichita, KS, many years ago, he had the pleasure of officiating at the bar mitzvah of our colleague DAN GLICKMAN. Rabbi Miller's son, Jonathan Miller, is now rabbi of Wise Temple in Los Angeles, which is attended by our colleague HENRY WAXMAN and his family. I know the Members of this House join me in extending our respect and gratitude to Rabbi Miller and his congregation, for his moving and thoughtful prayer here in the House Chamber this morning, and for his continued leadership on community issues of conscience which all of us must address in our official and personal lives.

Mr. Speaker, I yield to the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Mr. Speaker, I thank my colleague for yielding to me.

Mr. Speaker, I would like to welcome my former rabbi and teacher, Rabbi Miller, who was a rabbi when I was growing up in Wichita, KS, not only for whatever influence, which I think was great, he had in my life, but what he has done for his faith as well as his country. He has been a remarkable spiritual leader, and I am delighted that my colleague, the gentleman from New York, invited him to give the prayer this morning.

CONFERENCE REPORT ON H.R. 3773, FEDERAL TECHNOLOGY TRANSFER ACT OF 1986

Mr. FUQUA submitted the following conference report and statement on the bill (H.R. 3773) to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Science Foundation, and for other purposes:

CONFERENCE REPORT (H. REPT. 99-953)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3773) to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Science Foundation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Technology Transfer Act of 1986".

SEC. 2. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

The Stevenson-Wydler Technology Innovation Act of 1980 is amended by redesignating sections 12 through 15 as sections 16 through 19, and by inserting immediately after section 11 the following:

"SEC. 12. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

"(a) General Authority.—Each Federal agency may permit the director of any of its Government-operated Federal laboratories—

"(1) to enter into cooperative research and development agreements on behalf of such agency (subject to subsection (c) of this section) with other Federal agencies; units of State or local government; industrial organizations (including corporations, partnerships, and limited partnerships, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); or other persons (including licensees of inventions owned by the Federal agency); and

"(2) to negotiate licensing agreements under section 207 of title 35, United States Code, or under other authorities for Government-owned inventions made at the laboratory and other inventions of Federal employees that may be voluntarily assigned to the Government.

"(b) Enumerated Authority.—Under agreements entered into pursuant to subsection (a)(1), a Government-operated Federal laboratory may (subject to subsection (c) of this section)—

"(1) accept, retain, and use funds, personnel, services, and property from collaborating parties and provide personnel, services, and property to collaborating parties;

"(2) grant or agree to grant in advance, to a collaborating party, patent licenses or assignments, or options thereto, in any invention made in whole or in part by a Federal employee under the agreement, retaining a nonexclusive, nontransferrable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government and such other rights as the Federal laboratory deems appropriate; and

"(3) waive, subject to reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government, in advance, in whole or in part, any right of ownership which the Federal Government may have to any subject invention made under the agreement by a collaborating party or employee of a collaborating party; and

"(4) to the extent consistent with any applicable agency requirements and standards of conduct, permit employees or former employees of the laboratory to participate in efforts to commercialize inventions they made while in the service of the United States.

"(c) Contract Considerations.—(1) A Federal agency may issue regulations on suitable procedures for implementing the provisions of this section; however, implementation of this section shall not be delayed until issuance of such regulations.

"(2) The agency is permitting a Federal laboratory to enter into agreements under this section shall be guided by the purposes of this Act.

"(3)(A) Any agency using the authority given it under subsection (a) shall review employee standards of conduct for resolving potential conflicts of interest to make sure they adequately establish guidelines for situations likely to arise through the use of this authority, including but not limited to cases where present or former employees or their partners negotiate licenses or assignments of titles to inventions or negotiate cooperative research and development agreements with federal agencies (including the agency with which the employee involved is or was formerly employed).

"(B) If, in implementing subparagraph (A), an agency is unable to resolve potential conflicts of interest within its current statutory framework, it shall propose necessary statutory changes to be forwarded to its authorizing committees in Congress.

"(4) The laboratory director in deciding what cooperative research and development agreements to enter into shall—

"(A) give special consideration to small business firms, and consortia involving small business firms; and

"(B) give preference to business units located in the United States which agree that products embodying inventions made under the cooperative research and development agreement or produced through the use of such inventions will be manufactured substantially in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, as appropriate, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements.

"(5)(A) If the head of the agency or his designee desires an opportunity to disapprove or require the modification of any such agreement, the agreement shall provide a 30-day period within which such action must be taken beginning on the date the agreement is presented to him or her by the head of the laboratory concerned.

"(B) In any case in which the head of an agency or his designee disapproves or requires the modification of an agreement presented under this section, the head of the agency or such designee shall transmit a written explanation of such disapproval or modification to the head of the laboratory concerned.

"(6) Each agency shall maintain a record of all agreements entered into under this section.

"(d) Definition.—As used in this section—

"(1) the term 'cooperative research and development agreement' means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its laboratories, provides personnel, services, facilities, equipment, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory; except that such term does not include a procurement contract or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code; and

"(2) the term 'laboratory' means a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government.

"(e) Determination of Laboratory Missions.—For purposes of this section, an agency shall make separate determinations of the mission or missions of each of its laboratories.

"(f) Relationship to Other Laws.—Nothing in this section is intended to limit or diminish existing authorities of any agency.".

SEC. 3. ESTABLISHMENT OF FEDERAL LABORATORY CONSORTIUM FOR TECHNOLOGY TRANSFER.

Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710) is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

"(e) Establishment of Federal Laboratory Consortium for Technology Transfer.—(1) There is hereby established the Federal Laboratory Consortium for Technology Transfer (hereinafter referred to as the 'Consortium') which, in cooperation with Federal laboratories and the private sector, shall—

"(A) develop and (with the consent of the Federal laborotary concerned) administer techniques, training courses, and materials concerning technology transfer to increase the awareness of Federal laboratory employees regarding the commercial potential of laboratory technology and innovations;

"(B) furnish advice and assistance requested by Federal agencies and laboratories for use in their technology transfer programs (including the planning of seminars for small business and other industry);

"(C) provide a clearinghouse for requests, received at the laboratory level, for technical assistance from States and units of local governments, businesses, industrial development organizations, not-for-profit organizations including universities, Federal agencies and laboratories, and other persons, and—

"(i) to the extent that such requests can be responded to with published information available to the National Technical Information Service, refer such requests to that Service, and

"(ii) otherwise refer these requests to the appropriate Federal laboratories and agencies;

"(D) facilitate communication and coordination between Offices of Research and Technology Applications of Federal laboratories;

"(E) utilize (with the consent of the agency involved) the expertise and services of the National Science Foundation, the Department of Commerce, the National Aeronautics and Space Administration, and other Federal agencies, as necessary;

"(F) with the consent of any Federal laboratory, facilitate the use by such laboratory of appropriate technology transfer mechansims such as personnel exchanges and computer-based systems;

"(G) with the consent of any Federal laboratory, assist such laboratory to establish programs using technical volunteers to provide technical assistance to communities related to such laboratory;

"(H) facilitate communication and cooperation between Offices of Research and Technology Applications of Federal labora-

tories and regional, State, and local technology transfer organizations;

"(I) when requested, assist colleges or universities, businesses, nonprofit organizations, State or local governments, or regional organizations to establish programs to stimulate research and to encourage technology transfer in such areas as technology program development, curriculum design, long-term research planning, personnel needs projections, and productivity assessments; and

"(J) seek advice in each Federal laboratory consortium region from representatives of State and local governments, large and small business, universities, and other appropriate persons on the effectiveness of the program (and any such advice shall be provided at no expense to the Government).

"(2) The membership of the Consortium shall consist of the Federal laboratories described in clause (1) of subsection (b) and such other laboratories as may choose to join the Consortium. The representatives to the Consortium shall include a senior staff member of each Federal laboratory which is a member of the Consortium and a representative appointed from each Federal agency with one or more member laboratories.

"(3) The representatives to the Consortium shall elect a Chairman of the Consortium.

"(4) The Director of the National Bureau of Standards shall provide the Consortium, on a reimbursable basis, with administrative services, such as office space, personnel, and support services of the Bureau, as requested by the Consortium and approved by such Director.

"(5) Each Federal laboratory or agency shall transfer technology directly to users or representatives of users, and shall not transfer technology directly to the Consortium. Each Federal laboratory shall conduct and transfer technology only in accordance with the practices and policies of the Federal agency which owns, leases, or otherwise uses such Federal laboratory.

"(6) Not later than one year after the date of the enactment of this subsection, and every year thereafter, the Chairman of the Consortium shall submit a report to the President, to the appropriate authorization and appropriation committees of both Houses of the Congress, and to each agency with respect to which a transfer of funding is made (for the fiscal year or years involved) under paragraph (7), concerning the activities of the Consortium and the expenditures made by it under this subsection during the year for which the report is made.

"(7)(A) Subject to subparagraph (B), and amount equal to 0.005 percent of that portion of the research and development budget of each Federal agency that is to be utilized by the laboratories of such agency for a fiscal year referred to in subparagraph (B)(ii) shall be transferred by such agency to the National Bureau of Standards at the beginning of the fiscal year involved. Amounts so transferred shall be provided by the Bureau to the Consortium for the purpose of carrying out activities of the Consortium under this subsection.

"(B) A transfer shall be made by any Federal agency under subparagraph (A), for any fiscal year, only if—

"(i) the amount so transferred by that agency (as determined under such subparagraph) would exceed $10,000; and

"(ii) such transfer is made with respect to the fiscal year 1987, 1988, 1989, 1990, or 1991.

"(C) The heads of Federal agencies and their designees, and the directors of Federal laboratories, may provide such additional support for operations of the Consortium as they deem appropriate.

"(8) (A) The Consortium shall use 5 percent of the funds provided in paragraph (7)(A) to establish demonstration projects in technology transfer. To carry out such projects, the Consortium may arrange for grants or awards to, or enter into agreements with, nonprofit State, local, or private organizations or entities whose primary purposes are to facilitate cooperative research between the Federal laboratories and organizations not associated with the Federal laboratories, to transfer technology from the Federal laboratories, and to advance State and local economic activity.

"(B) The demonstration projects established under subparagraph (A) shall serve as model programs. Such projects shall be designed to develop programs and mechanisms for technology transfer from the Federal laboratories which may be utilized by the States and which will enhance Federal, State and local programs for the transfer of technology.

"(C) Application for such grants, awards, or agreements shall be in such form and contain such information as the Consortium or its designee shall specify.

"(D) Any person who receives or utilizes any proceeds of a grant or award made, or agreement entered into, under this paragraph shall keep such records as the Consortium or its designee shall determine are necessary and appropriate to facilitate effective audit and evaluation, including records which fully disclose the amount and disposition of such proceeds and the total cost of the project in connection with which such proceeds were used.".

SEC. 4. UTILIZATION OF FEDERAL TECHNOLOGY.

"(a) RESPONSIBILITY FOR TECHNOLOGY TRANSFER.—Section 11(a) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(a)) is amended—

"(1) by inserting "(1)" after "POLICY.—"; and

"(2) by adding at the end thereof the following new paragraphs:

"(2) Technology transfer, consistent with mission responsibilities, is a responsibility of each laboratory science and engineering professional.

"(3) Each laboratory director shall ensure that efforts to transfer technology are considered positively in laboratory job descriptions, employee promotion policies, and evaluation of the job performance of scientists and engineers in the laboratory.".

(b) RESEARCH AND TECHNOLOGY APPLICATIONS OFFICES.—(1) Section 11(b) of such Act (15 U.S.C. 3710(b)) is amended—

(A) by striking out "a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time" and inserting in lieu thereof "200 or more full-time equivalent scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions";

(B) by inserting immediately before the next to last sentence the following new sentence: "Furthermore, individuals filling positions in an Office of Research and Technology Applications shall be included in the overall laboratory/agency management development program so as to ensure that highly competent technical managers are full participants in the technology transfer process.";

(C) by striking out "requirements set forth in (1) and/or (2) of this subsection" in the next to last sentence and inserting in lieu thereof "requirement set forth in clause (2) of the preceding sentence"; and

(D) by striking out "either requirement (1) or (2)" in the last sentence and inserting in lieu thereof "such requirement".

(2) Section 11(c) of such Act (15 U.S.C. 3710(c)) is amended—

(A) by striking out paragraph (1) and inserting in lieu thereof the following:

"(1) to prepare application assessments for selected research and development projects in which that laboratory is engaged and which in the opinion of the laboratory may have potential commercial applications;";

(B) by striking out "the Center for the Utilization of Federal Technology" in paragraph (3) and inserting in lieu thereof "the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer,", and by striking out "and" after the semicolon;

(C) by striking out "in response to requests from State and local government officials." in paragraph (4) and inserting in lieu thereof "to State and local government officials; and"; and

(D) by inserting immediately after paragraph (4) the following new paragraph:

"(5) to participate, where feasible, in regional, State, and local programs designed to facilitate or stimulate the transfer of technology for the benefit of the region, State, or local jurisdiction in which the Federal laboratory is located."

(c) DISSEMINATION OF TECHNICAL INFORMATION.—Section 11(d) of such Act (15 U.S.C. 3710(d)) is amended—

(1) by striking out "(d)" and all that follows down through "shall—" and inserting in lieu thereof the following:

(d) DISSEMINATION OF TECHNICAL INFORMATION.—The National Technical Information Service shall—";

(2) by striking out paragraph (2);

(3) by striking out "existing" in paragraph (3), and redesignating such paragraph as paragraph (2);

(4) by striking out paragraph (4) and inserting in lieu thereof the following:

"(3) receive requests for technical assistance from State and local governments, respond to such requests with published information available to the Service, and refer such requests to the Federal Laboratory Consortium for Technology Transfer to the extent that such requests require a response involving more than the published information available to the Service;";

(5) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively; and

(6) by striking out "(c)(4)" in paragraph (4) as so redesignated and inserting in lieu thereof "(c)(3)".

(d) AGENCY REPORTING.—Section 11(f) of such Act (15 U.S.C. 3710(e)) (as redesignated by section 3(1) of this Act) is amended—

(1) by striking out "prepare biennially a report summarizing the activities" in the first sentence and inserting in lieu thereof "report annually to the Congress, as part of the agency's annual budget submission, on the activities"; and

(2) by striking out the second sentence.

SEC. 5. FUNCTIONS OF THE SECRETARY OF COMMERCE.

Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980 (as amended by the preceding provisions of this Act) is further amended by adding at the end thereof the following new subsection:

"(g) FUNCTIONS OF THE SECRETARY.—(1) The Secretary, in consultation with other Federal agencies, may—

"(A) make available to interested agencies the expertise of the Department of Commerce regarding the commercial potential of inventions and methods and options for commercialization which are available to the Federal laboratories, including research and development limited partnerships;

"(B) develop and disseminate to appropriate agency and laboratory personnel model provisions for use on a voluntary basis in cooperative research and development arrangements; and

"(C) furnish advice and assistance, upon request, to Federal agencies concerning their cooperative research and development programs and projects.

"(2) Two years after the date of the enactment of this subsection and every two years thereafter, the Secretary shall submit a summary report to the President and the Congress on the use by the agencies and the Secretary of the authorities specified in this Act. Other Federal agencies shall cooperate in the report's preparation.

"(3) Not later than one year after the date of the enactment of the Federal Technology Transfer Act of 1986, the Secretary shall submit to the President and the Congress a report regarding—

"(A) any copyright provisions or other types of barriers which tend to restrict or limit the transfer of federally funded computer software to the private sector and to State and local governments, and agencies of such State and local governments; and

"(B) the feasibility and cost of compiling and maintaining a current and comprehensive inventory of all federally funded training software.".

SEC. 6. REWARDS FOR SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL OF FEDERAL AGENCIES.

The Stevenson-Wydler Technology Innovations Act of 1980 (as amended by the preceding provisions of this Act) is further amended by inserting after section 12 the following new section:

"SEC. 13. REWARDS FOR SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL OF FEDERAL AGENCIES.

"The head of each Federal agency that is making expenditures at a rate of more than $50,000,000 per fiscal year for research and development in its Government-operated laboratories shall use the approriate statutory authority to develop and implement a cash awards program to reward its scientific, engineering, and technical personnel for—

"(1) inventions, innovations, or other outstanding scientific or technological contributions of value to the United States due to commercial applications or due to contributions to missions of the Federal agency or the Federal Government, or

"(2) exemplary activities that promote the domestic transfer of science and technology development within the Federal Government and result in utilization of such science and technology by American industry or business, universities, State or local governments, or other non-Federal parties.".

SEC. 7. DISTRIBUTION OF ROYALTIES RECEIVED BY FEDERAL AGENCIES.

The Stevenson-Wydler Technology Innovation Act of 1980 (as amended by the preceding provisons of this Act) is further amended by inserting after section 13 the following new section:

"SEC. 14. DISTRIBUTION OF ROYALTIES RECEIVED BY FEDERAL AGENCIES.

"(a) IN GENERAL.—(1) Except as provided in paragraphs (2) and (4), any royalties or other income received by a Federal agency from the licensing or assignment of inventions under agreements entered into under section 12, and inventions of Government-operated Federal laboratories licensed under section 207 of title 35, United States Code, or under any other provision of law, shall be retained by the agency whose laboratory produced the invention and shall be disposed of as follows:

"(A)(i) The head of the agency or his designee shall pay at least 15 percent of the royalties or other income the agency receives on account of any invention to the inventor (or co-inventors) if the inventor (or each such co-inventor) was an employee of the agency at the time the invention was made. This clause shall take effect on the date of the enactment of this section unless the agency publishes a notice in the Federal Register within 90 days of such date indicating its election to file a Notice of Proposed Rulemaking pursuant to clause (ii).

"(ii) An agency may promulgate, in accordance with section 553 of title 5, United States Code, regulations providing for an alternative program for sharing royalties with inventors who were employed by the agency at the time the invention was made and whose names appear on licensed inventions. Such regulations must—

"(I) guarantee a fixed minimum payment to each such inventor, each year that the agency receives royalties from that inventor's invention;

"(II) provide a percentage royalty share to each such inventor, each year that the agency receives royalties from that inventor's invention in excess of a threshold amount;

"(III) provide that total payments to all such inventors shall exceed 15 percent of total agency royalties in any given fiscal year; and

"(IV) provide appropriate incentives from royalties for those laboratory employees who contribute substantially to the technical development of a licensed invention between the time of the filing of the patent application and the licensing of the invention.

"(iii) An agency that has published its intention to promulgate regulations under clause (i) may elect not to pay inventors under clause (i) until the expiration of two years after the date of the enactment of this Act or until the date of the promulgation of such regulations, whichever is earlier. If an agency makes such an election and after two years the regulations have not been promulgated, the agency shall make payments (in accordance with clause (i)) of at least 15 percent of the royalties involved, retroactive to the date of the enactment of this Act. If promulgation of the regulations occurs within two years after the date of the enactment of this Act, payments shall be made in accordance with such regulations, retroactive to the date of the enactment of this Act. The agency shall retain its royalties until the inventor's portion is paid under either clause (i) or (ii). Such royalties shall not be transferred to the agency's Government-operated laboratories under subparagraph (B) and shall not revert to the Treasury pursuant to paragraph (2) as a result of any delay caused by rulemaking under this subparagraph.

"(B) The balance of the royalties or other income shall be transferred by the agency to its Government-operated laboratories, with the majority share of the royalties or other income from any invention going to the laboratory where the invention occurred; and the funds so transferred to any such laboratory may be used or obligated by that laboratory during the fiscal year in which they are received or during the succeeding fiscal year—

"(i) for payment of expenses incidental to the administration and licensing of inventions by that laboratory or by the agency with respect to inventions which occurred at that laboratory, including the fees or other costs for the services of other agencies, persons, or organizations for invention management and licensing services;

"(ii) to reward scientific, engineering, and technical employees of that laboratory;

"(iii) to further scientific exchange among the government-operated laboratories of the agency; or

"(iv) for education and training of employees consistent with the research and development mission and objectives of the agency, and for other activities that increase the licensing potential for transfer of the technology of the Government-operated laboratories of the agency.

Any of such funds not so used or obligated by the end of the fiscal year succeeding the fiscal year in which they are received shall be paid into the Treasury of the United States.

"(2) If, after payments to inventors under paragraph (1), the royalties received by an agency in any fiscal year exceed 5 percent of the budget of the Government-operated laboratories of the agency for that year, 75 percent of such excess shall be paid to the Treasury of the United States and the remaining 25 percent may be used or obligated for the purposes described in clauses (i) through (iv) of paragraph (1)(B) during that fiscal year or the succeeding fiscal year. Any funds not so used or obligated shall be paid into the Treasury of the United States.

"(3) Any payment made to an employee under this section shall be in addition to the regular pay of the employee and to any other awards made to the employee, and shall not affect the entitlement of the employee to any regular pay, annuity, or award to which he is otherwise entitled or for which he is otherwise eligible or limit the amount thereof. Any payment made to an inventor as such shall continue after the inventor leaves the laboratory or agency. Payments made under this section shall not exceed $100,000 per year to any one person, unless the President approves a larger award (with the excess over $100,000 being treated as a Presidential award under section 4504 of title 5, United States Code).

"(4) A Federal agency receiving royalties or other income as a result of invention management services performed for another Federal agency or laboratory under section 207 of title 35, United States Code, shall retain such royalties or income to the extent required to offset the payment of royalties to inventors under clause (i) of paragraph (1)(A), costs and expenses incurred under clause (1) of paragraph (1)(B), and the cost of foreign patenting and maintenance for such invention performed at the request of the other agency or laboratory. All royalties and other income remaining after payment of the royalties, costs, and expenses described in the preceding sentence shall be transferred to the agency for which the services were performed, for distribution in accordance with clauses (i) through (iv) of paragraph (1)(B).

"(b) CERTAIN ASSIGMENTS.—If the invention involved was one assigned to the Federal agency—

"(1) by a contractor, grantee, or participant in a cooperative agreement with the agency, or

"(2) by an employee of the agency who was not working in the laboratory at the time the invention was made.

the agency unit that was involved in such assignment shall be considered to be a laboratory for purposes of this section.

"(c) REPORTS.—(1) In making their annual budget submissions Federal agencies shall submit, to the appropriate authorization and appropriation committees of both Houses of the Congress, summaries of the amount of royalties or other income received and expenditures made (including inventor awards) under this section.

"(2) The Comptroller General, five years after the date of the enactment of this section, shall review the effectiveness of the various royalty-sharing programs established under this section and report to the appropriate committees of the House of Representatives and the Senate, in a timely manner, his findings, conclusions, and recommendations for improvements in such programs.".

SEC. 8. EMPLOYEE ACTIVITIES.

The Stevenson-Wydler Technology Innovation Act of 1980 (as amended by the preceding provisions of this Act) is further amended by inserting after section 14 the following new section:

"SEC. 15. EMPLOYEE ACTIVITIES.

"(a) IN GENERAL.—If a Federal agency which has the right of ownership to an invention under this Act does not intend to file for a patent application or otherwise to promote commercialization of such invention, the agency shall allow the inventor, if the inventor is a Government employee or former employee who made the invention during the course of employment with the Government, to retain title to the invention (subject to reservation by the Government of a nonexclusive, nontransferrable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the Government). In addition, the agency may condition the inventor's right to title on the timely filing of a patent application in cases when the Government determines that it has or may have a need to practice the invention.

"(b) DEFINITION.—For purposes of this section, Federal employees include 'special Government employees' as defined in section 202 of title 18, United States Code.

"(c) RELATIONSHIP TO OTHER LAWS.—Nothing in this section is intended to limit or diminish existing authorities of any agency.".

SEC. 9. MISCELLANEOUS AND CONFORMING AMENDMENTS.

(a) REPEAL OF NATIONAL INDUSTRIAL TECHNOLOGY BOARD.—Section 10 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3709) is repealed.

(b) CHANGES IN TERMINOLOGY OR ADMINISTRATIVE STRUCTURE.—(1) Section 3(2) of the Stevenson-Wydler Technology Innovation Act of 1980 is amended by striking out "centers for industrial technology" and inserting in lieu thereof "cooperative research centers".

(2) Section 4 of such Act is amended—

(A) by striking out "Industrial Technology" in paragraph (1) and inserting in lieu thereof "Productivity, Technology, and Innovation";

(B) by striking out "'Director' means the Director of the Office of Industrial Technology" in paragraph (3) and inserting in lieu thereof "'Assistant Secretary' means the Assistant Secretary for Productivity, Technology, and Innovation";

(C) by striking out "Centers for Industrial Technology" in paragraph (4) and inserting in lieu thereof "Cooperative Research Centers";

(D) by striking out paragraph (6), and redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively; and

(E) by striking out "owned and funded" in paragraph (6) as so redesignated and inserting in lieu thereof "owned, leased, or otherwise used by a Federal agency and funded".

(3) Section 5(a) of such Act is amended by striking out "Industrial Technology" and inserting in lieu thereof "Productivity, Tedchnology, and Innovation".

(4) Section 5(b) of such Act is amended by striking out "DIRECTOR" and inserting in lieu thereof "ASSISTANT SECRETARY", and by striking out "a Director of the Office" and all that follows and inserting in lieu thereof "an Assistant Secretary for Productivity, Technology, and Innovation.".

(5) Section 5(c) of such Act is amended—

(A) by striking out "the Director" each place it appears and inserting in lieu thereof "the Assistant Secretary";

(B) by redesignating paragraphs (7) and (8) as paragraphs (9) and (10), respectively; and

(C) by inserting immediately after paragraph (6) the following new paragraphs:

"(7) encourage and assist the creation of centers and other joint initiatives by State of local governments, regional organizations, private businesses, institutions of higher education, nonprofit organizations, or Federal laboratories to encourage technology transfer, to stimulate innovation, and to promote an appropriate climate for investment in technology-related industries;

"(8) propose and encourage cooperative research involving appropriate Federal entities, State or local governments, regional organizations, colleges or universities, nonprofit organizations, or private industry to promote the common use of resources, to improve training programs and curricula, to stimulate interest in high technology careers, and to encourage the effective dissemination of technology skills within the wider community;".

(6) The heading of section 6 of such Act is amended to read as follows:

"SEC. 6. COOPERATIVE RESEARCH CENTERS."

(7) Section 6(a) of such Act is amended by striking out "Centers for Industrial Technology" and inserting in lieu thereof "Cooperative Research Centers".

(8) Section 6(b)(1) of such Act is amended by striking out "basic and applied".

(9) Section 6(e) of such Act is amended to read as follows:

"(e) RESEARCH AND DEVELOPMENT UTILIZATION.—In the promotion of technology from research and development efforts by Centers under this section, chapter 18 of title 35, United States Code, shall apply to the extent not inconsistent with this section.".

(10) Section 6(f) of such Act is repealed.

(11) The heading of section 8 of such Act is amended by striking out "CENTERS FOR INDUSTRIAL TECHNOLOGY" and inserting in lieu thereof "COOPERATIVE RESEARCH CENTERS".

(12) Section 8(a) of such Act is amended by striking out "Centers for Industrial Technology" and inserting in lieu thereof "Cooperative Research Centers".

(13) Section 19 of such Act (as redesignated by section 2 of this Act) is amended by striking out "pursuant to this Act" and inserting in lieu thereof "pursuant to the provisions of this Act (other than sections 12, 13, and 14)".

(c) RELATED CONFORMING AMENDMENT.—Section 210 of title 35, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) The provisions of the Stevenson-Wydler Technology Innovation Act of 1980, as amended by the Federal Technology Transfer Act of 1986, shall take precedence over the provisions of this chapter to the extent that they permit or require a disposition of rights in subject inventions which is inconsistent with this chapter.".

(d) ADDITIONAL DEFINITIONS.—Section 4 of such Act (as amended by subsection (b)(2) of this section) is further amended by adding at the end thereof the following new paragraphs:

"(8) 'Federal agency' means any executive agency as defined in section 105 of title 5, United States Code, and the military departments as defined in section 102 of such title.

"(9) 'Invention' means any invention or discovery which is or may be patentable or otherwise protected under title 35, United States Code, or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

"(10) 'Made' when used in conjunction with any invention means the conception or first actual reduction to practice of such invention.

"(11) 'Small business firm' means a small business concern as defined in section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

"(12) 'Training technology' means computer software and related materials which are developed by a Federal agency to train employees of such agency, including but not limited to software for computer-based instructional systems and for interactive video disc systems.".

(e) REDESIGNATION OF SECTIONS TO REFLECT CHANGES MADE BY PRECEDING PROVISIONS.—(1) Such Act (as amended by the preceding provisions of this Act) is further amended by redesignating sections 11 through 19 as sections 10 through 18, respectively.

(2)(A) Section 5(d) of such Act is amended by inserting "(as then in effect)" after "sections 5, 6, 8, 11, 12, and 13 of this Act."

(B) Section 8(a) of such Act is amended by striking out the last sentence.

(C) Section 9(d) of such Act is amended by striking out "or 13" and inserting in lieu thereof "10, 14, or 16."

(3) Section 13((a)(1) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "section 12" in the matter preceding subparagraph (A) and inserting in lieu thereof "section 11."

(4) Section 18 of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "sections 12, 13, and 14" and inserting in lieu thereof "sections 11, 12, and 13."

(f) CLARIFICATION OF FINDINGS AND PURPOSES.—(1) The second sentence of section 2(10) of such Act (15 U.S.C. 3701(10)) is amended by inserting ", which include inventions, computer software, and training technologies," immediately after "developments."

(2) Section 3(3) of such Act (15 U.S.C. 3702(3)) is amended by inserting ", including inventions, software, and training technologies," immediately after "developments."

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same.

Don Fuqua,
Doug Walgren,
Stan Lundine,
Manuel Lujan, Jr.,
Sherwood L. Boehlert,
Managers on the Part of the House.
Jack Danforth,
Fritz Hollings,
Don Riegle,
Slade Gorton,
Larry Pressler,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3773) to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Science Foundation, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

The following section-by-section analysis explains actions for the managers in the conference report to accompany H.R. 3773.

SECTION 1.—SHORT TITLE

The Conferees chose to use the Senate version of the title: "Federal Technology Transfer Act of 1986."

SECTION 2.—COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS

There were marked similarities between the House and Senate-passed versions of this section. Both reflected the concern that the Federal laboratories need clear authority to do cooperative research and that they need to be able to exercise that authority at the laboratory level. Both permit the laboratories to enter into cooperative research and development agreements with a wide range of parties. Both strive to make the entering of these agreements as easy as possible from the point of view of the private sector participant, while protecting the legitimate concerns of the government. This authority is optional in both versions and is not intended to affect previously existing cooperative agreement authority, such as the Space Act provisions, which for almost three decades have permitted NASA laboratories to enter into cooperative agreements.

The conferees deleted the House version's requirement of an agency plan within 180 days of enactment of the section. Instead of requiring a plan or regulations, the conference version of the legislation makes regulations optional and makes it clear that implementation of the cooperative research and development authority can begin in advance of any regulations.

The conferees adopted many of the modifications the Senate made to the House-passed version of this section. The conference version specifically states that a laboratory may accept funds, personnel, and services, and collaborating parties may accept the same, with the exception of funds, as their contribution under a cooperative agreement. It applies to any inventions occurring under a cooperative R&D agreement, the long-standing tradition of reserving the right in the government to a paid-up non-exclusive license in that invention. It also clearly gives permission to present and former federal employees of a laboratory to be a party to efforts to commercialize that laboratory's inventions, to the extent they can do so and not be in violation of agency requirements and standards of conduct.

The conditions on the exercise of the cooperative agreement authority which were part of the Agency Plan under the House version of the legislation are still to be considered by the laboratories in deciding with whom to contract. Special consideration is still to be given to small businesses and consortia involving small business. The purpose of this requirement is to ensure access by these groups to the laboratories and is not intended to limit access by non-profit organizations and universities.

The provisions from both versions dealing with the preference to U.S. business units were accepted. Therefore, laboratories are to give preference to business units located in the United States which agree to domestic manufacture. When evaluating whether to grant access by a foreign company, the Federal laboratories may examine the willingness of the foreign government to open its own laboratories to U.S. firms.

The House-passed provisions on conflict on interest are retained as is, and its provisions for review of a cooperative research and development agreement and for limited headquarters review of agreements are accepted substantially as passed by that body.

SECTION 3.—ESTABLISHMENT OF FEDERAL CONSORTIUM FOR TECHNOLOGY TRANSFER

The conferees recommend adopting the Senate decisions to affiliate the Federal Laboratory Consortium with the National Bureau of Standards to establish a program for demonstration projects in technology transfer. They further recommend funding the consortium at House-recommended levels.

Both the House and the Senate-passed vesions of this legislation address the need of the Federal Laboratory Consortium (FLC) to have a permanent connection with a federal agency and a more predictable source of funding for the next five years. These two changes will permit the FLC, which has operated with very limited funding for much of its 15 years, to coordinate its program better and to expand its efforts at permitting the technology transfer officers of the various Federal laboratories to work more closely together. It is the clear intent of both Houses that, to the extent possible, the existing programs and initiatives of the FLC be continued uninterrupted as the organizational changes required by the Act are made. As soon as practical after enactment, the current FLC officers are asked to begin the FLC's transition by convening a meeting both of the current FLC representatives and of representatives of any laboratories added to the Consortium by this Act. Because of the twin goals of continuity and increased effectiveness for the FLC, these efforts should not await funds transfers under the FLC set-aside provision.

The Federal Laboratory Consortium is expected to remain a networking organization of the Federal laboratories and their technology transfer officers. The consortium is to function as a clearinghouse of information and has purposely been established with a small budget and small paid staff so that the volunteer spirit that has made the organization a success to date will continue. The consortium is not to engage directly in the transfer of technology. Rather, it is expected to help the laboratories that develop the technology to do a better job of transferring it by themselves or through appropriate agents.

The conferees felt, however, for the FLC to perform this function properly, increased funding is necessary for such projects as expanding the Consortium's electronic mail system and strengthening its regional operations. These efforts, plus the planned re-establishment at the National Bureau of Standards of a small Washington presence, led the conferees to recommend that the FLC set-aside be the House-passed figure of .005% to fund the operations of the organization. Five percent of these funds would be used to cover the Senate-passed program of demonstration projects in technology transfer. The Conferees see these demonstrations as a useful complement to the Federal Laboratory Consortium. At least two such demonstrations are to be funded over the 5 year life of the demonstration program, and the Consortium should look for diversity both in the types of demonstrations funded and in the States hosting the demonstrations. The Federal Laboratory Consortium is expected to develop program specifications, but the conferees expect the actual competition and awards process to be conducted at the request of the FLC either by a federal agency or by a laboratory with existing capabilities to administer such a program.

The conferees recommend establishment of the House-passed concept of regional advisors for the Federal Laboratory Consortium but did not choose to establish formal advisory committees. These volunteers will provide insights from the business community which will help the consortium stay on target in its efforts to make the laboratories helpful and accessible to the business community. The conferees also recommend inclusion of the Senate provision authorizing the Consortium to encourage laboratories, when requested, to assist interested organizations and businesses in various facets of technology program planning and curriculum design.

SECTION 4.—UTILIZATION OF FEDERAL TECHNOLOGY

The House and Senate-passed versions of this section, designed to upgrade the status of laboratory professionals who do technology transfer, were similar. The conferees recommend accepting from the House version, the policy statement that technology transfer is a responsibility of every laboratory's scientific and engineering professional, and the requirement that technology transfer professionals be included in overall laboratory/agency management development programs. From the Senate version, the conferees recommend inclusion among the functions of technology transfer professionals, participation, where feasible, in State, local and regional technology transfer efforts.

The House requirements of technology transfer reports as part of agency annual budget submissions is retained.

SECTION 5.—FUNCTIONS OF THE SECRETARY

The conferees recommend acceptance of the Senate's two additions to the bill's lists of duties of the Secretary of Commerce. The Secretary is required to submit biennial reports to the President and the Congress on the use by agencies of Stevenson-Wydler Act authorities. The original Stevenson-Wydler Act required one such report. The Secretary also is required to submit a one-time report to the President and Congress on copyright provision and other types of legal barriers which limit the transfer of federally funded computer software and on the feasibility and cost of compiling and maintaining a current and comprehensive inventory of federally funded training software. The report is to identify recurring problems rather than to attempt to compile a comprehensive list of barriers facing individual software projects.

SECTION 6.—REWARDS FOR SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL OF FEDERAL AGENCIES

This section is identical in the House and Senate versions of this legislation.

SECTION 7.—DISTRIBUTION OF ROYALTIES RECEIVED BY FEDERAL AGENCIES

Both the House and Senate-passed versions of this section direct agencies to retain royalties from the licensing or assignment of inventions and to allocate them to their government-operated laboratories. Both versions have identical limits on the amount of money the laboratories may retain. Both have similar uses to which the laboratory directors may allocate the money, one of which is to reward employees of the agency for innovative work, both in furtherance of the agency's mission and in advancing inventions with commercial potential.

The Senate bill additionally directs agencies to allocate at least 15% of royalties from an invention to the inventor or coinventors, before allocating the remainder to its laboratories. The house had chosen not to include a percentage royalty share, preferring to leave maximum flexibility in rewarding inventors with laboratory management.

The conferees recommend acceptance of a compromise provision, which requires agencies either to allocate at least 15% of royalties from an invention to the inventor or coinventors, or to promulgate regulations providing an alternative set of rights in the inventor whose invention produces royalties for the government.

The conferees believe agencies should have the flexibility to formulate royalty payments to employees that best meet the unique circumstances of each agency and that meet the purpose of the Act. At the same time, the conferees agree that providing a predictable, guaranteed reward from royalties to federally employed inventors provides a strong incentive to report, develop, and help license inventions with commercial potential.

The conferees agree that royalty sharing alone, although effective, is an imperfect tool in promoting technology transfer. The process of turning an invention into a successful commercial product is complex, and involves the work of more than just the inventors. Within a laboratory a team of scientists and engineers, beyond those involved in patenting an invention, may contribute to its development and licensing, and their contribution may be as important to the commercial success of the invention as that of the inventors. In addition, a single, fixed royalty share may be an inadequate reward for an inventor, depending on the amount of royalties received.

Therefore, the conferees believe that laboratory directors should use the authority in section 14(a)(1)(B)(ii) to reward those employees who contribute to innovative work, in mission-related work with or without commercial potential. Similarly, agencies that choose to promulgate rules to set alternative royalty percentages should consider tiered allocation of royalties, which give more weight to the inventor's contribution when royalty income is small, but which also recognize the contributions of a wider team.

In the Federal laboratories, depending on size, a percentage of royalties could be allocated to the research team or project, in addition to the inventor's share, before the remainder is allocated to the Laboratory Director. Such an allocation is possible without formal rulemaking, provided the allocation is in addition to the minimum inventor's share of 15% under clauses 14(a)(1)(A)(i) or (A)(ii).

The initial 15 percent allocation for royalties is to take effect on enactment of the bill unless an agency publishes its intention to promulgate rules. The 15% or any alternative allocation is to apply to all royalty income received by an agency in a given year, including that from inventions patented and licensed before the date of enactment of this Act, and is to continue for as long as the agency receives income from an invention, including after the inventors may have left the agency. The compromise provides that a Federal employee may not receive more than $100,000 per year in royalty income without the approval of the President. This coincides with the limits on agencies' statutory authority to make cash awards to employees.

If an agency's rulemaking is completed within two years after enactment and the 15 percent royalty sharing has not gone into effect, the effective date of royalty sharing under the rule is to be the effective date of the Act. If there is no rule within two years of enactment and royalty sharing is not in effect, 15% mandatory royalty sharing is to go into effect for that agency retroactive to the date of enactment. If a rule goes into effect more than two years after enactment, the effective date of the royalty sharing under the rule for that agency is to be the same as the effective date of the rule.

The conferees wish to stress the flexibility of the compromise on royalty sharing. It is intended to give each agency the freedom to devise different employee award systems that accomplish the purposes of the Act and that best meet the unique needs, cultures, and technology transfer problems of the agencies' laboratories. In order to strengthen the program so that all agencies can benefit from what is learned in the varying approaches to royalty sharing, Comptroller General report has been mandated evaluating the first five years of this royalty sharing program.

The conferees value the licensing activities that have been performed by the National Technical Information Service for other agencies including other parts of the Department of Commerce. Section 14(a)(6) has been added to permit NTIS to continue this work without interruption after enactment.

The conferees are in agreement that there are inherent differences in the way public sector and private sector employees can be rewarded. Furthermore, they have provided agencies with flexibility in the establishment of programs to reward inventors. The conferees, therefore, do not expect any particular agency's approach for rewarding inventors, whether it includes 15 percent mandatory royalty sharing or not, to be viewed as setting a precedent for the private sector.

SECTION 8.—EMPLOYEE ACTIVITIES

The Conferees recommend acceptance of this provision from the Senate version of the legislation as modified. The provision is intended to assure that a Government employee has a chance to obtain title to an invention if the government does not plan to arrange for the commercialization of the invention. The conferees recommend giving the inventor an automatic right to request an invention where the government neither intends to file for a patent nor intends to promote the transfer of this information to the U.S. private sector by alternate means.

SECTION 9.—MISCELLANEOUS AND CONFORMING AMENDMENTS

The only significant difference between the House and Senate versions of these provisions is the Senate's addition of two new responsibilities for Department of Commerce's Office of Productivity, Technology and Innovation. The conferees recommend inclusion of both new responsibilities: promotion of joint initiatives in technology transfer and encouragement of cooperative programs among all appropriate parties regarding development and dissemination of technological skills.

DON FUQUA,
DOUG WALGREN,
STAN LUNDINE,
MANUEL LUJAN, Jr.,
SHERWOOD L. BOEHLERT,
Managers on the Part of the House.
JACK DANFORTH,
FRITZ HOLLINGS,
DON RIEGLE,
SLADE GORTON,
LARRY PRESSLER,
Managers on the Part of the Senate.

APPOINTMENT AS MEMBERS OF NATIONAL COMMISSION ON AGRICULTURAL FINANCE

The SPEAKER. Pursuant to section 501(a) of Public Law 99-205, the Chair appoints as members of the National Commission on Agricultural Finance the following Member of the House: The gentleman from Iowa, Mr. EVANS. And the following members from private life: Mr. James A. McCarthy, of Rio Hondo, TX; Mr. John R. Brake, of Ithaca, NY; and Mr. Sanford A. Belden of Plymouth, MN.

FIFTH BIENNIAL NATIONAL URBAN POLICY REPORT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Banking, Finance and Urban Affairs.

(For message, see proceedings of the Senate for today, Thursday, October 2, 1986.)

SUPPORT THE SUPERFUND CONFERENCE REPORT

(Mrs. LONG asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. LONG. Mr. Speaker, I urge quick completion of the conference committee version of the Superfund bill.

Over 10 million people now live near abandoned hazardous waste sites which qualify for Federal Superfund cleanup. There are presently over 800 toxic waste sites on the national priorities list of which four are in my district. These sites are only a fraction of the more than 22,000 sites known to exist throughout the country.

In my view, it is absolutely essential that the Nation's hazardous cleanup effort continue. Without enactment of reauthorization legislation, cleanup work at dozens of sites will come to a halt, and never begin at hundreds of others. Unless these sites are cleaned up, the toxic contamination of America's freshwater aquifers will become an irreversible reality.

The conferees have already agreed upon several improvements to the Superfund Program. The improvements include provisions which would establish clear and specific health standards and require EPA to initiate 375 cleanup projects within the next 5 years. The conferees also agree to extend the statute of limitations for lawsuits by persons exposed to environmental diseases with long latency periods. Finally the agreement would establish a $500 million cleanup program for leaking underground gasoline storage tanks and a national community right to know program.

The only obstacle which remains is agreement on the revenue provisions necessary to fund the program. I urge the conferees to expedite this crucial legislation and I urge my colleagues to support continuation of this vital program.

THE NEED TO COMPLETE SUPERFUND

(Mr. CLINGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CLINGER. Mr. Speaker, this morning's Washington Post reports that the tax conferees are nearing completion on the revenue provision of the Superfund bill. It also reports the administration does not support the use of a Superfund excise tax and that a veto may be recommended to the President.

Mr. Speaker, if the President should resist this piece of legislation in the 11th hour of the 99th Congress, it will bring a vital program to an unwarranted halt.

No legislation produced by the 99th Congress will do more to help clean our environment than the Superfund bill. The sheer effort involved in writing this legislation is astounding. Three years of oversight hearings, markups, sequential referrals, conferences, would all be washed down the drain were the President to veto this bill. And worse, all of us must be mindful that Congress is now entering a delicate phase whereby any bill we report can be vetoed or pocketvetoed without giving Congress the opportunity to vote for an override. Congress will be powerless to respond.

The administration knows of the tremendous backlog of cleanup work faced by the Environmental Protection Agency. They also know that for the past year the Superfund Program has been severely hampered by the reauthorization process. Let me remind all Members listening that Superfund's authorization expired 1 year ago. Since then it's been operating through three emergency extensions.

Now that we're 99 percent there, I think it would be an irreconcilable error for this bill to be vetoed. The EPA Administrator reports that absent quick action on Superfund, they will again be faced with the prospect of shutting down cleanups at existing sites. If we have no Superfund bill by adjournment, we won't have a Superfund Program when we return in January.

In the strongest terms possible, I encourage the President to sign the Superfund bill, and I encourage all concerned Members to carry the same message to the White House. This legislation must be enacted; we must put Superfund on a stable and predictable track; we must get the cleanup underway.

Mr. President, don't veto the bill.

THE DIFFERENCE IN PHILOSOPHY OF THE REPUBLICAN AND DEMOCRATIC PARTIES

(Ms. OAKAR asked and was given permission to address the House for 1 minute.)

Ms. OAKAR. Mr. Speaker, nothing should be more clearly defined than the difference in philosophy of the Democratic and Republican Parties than the front-page story in the Post about the tactics of the Republican Party in attempting to challenge American voters in predominantly minority districts. One of the most fundamental freedoms as Americans is our basic right to vote. This massive campaign on the part of the Republican Party to intimidate voters is disgraceful and a continuation of the devaluation of basic civil rights of our American people by this party.

I urge all Members, thoughtful Republicans and Democrats, to register their distaste for this attempt to deny a very basic American right, the right to vote.

TWO HUNDRED THIRTY MILLION POUNDS OF FLESH

(Mr. DANNEMEYER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DANNEMEYER. Mr. Speaker, Treasury and Federal Reserve officials try to sell the American people the idea that our trade woes are due to the so-called strong dollar. They have engineered a slide for the dollar which has already fallen 50 percent against the Japanese yen and the Swiss franc, with no end in sight to the slide, nor to the agony of the American exporters.

To beat down the international value of the dollar is an act of destruction, not construction. Our trade woes are entirely due to the misguided policies of the 1970's, when the Treasury and the Fed crucified America on a cross of high interest rates and low bond values. The high interest payments on our private and public debt flowing out of this country can only be met by exacting a pound of flesh from every American. No wonder the Japanese and the Germans, who used the regime of high interest rates in order to pay down their debts, not to increase them, now find it easy to compete against American business that is still hemorrhaging from the interest rate operations of the Treasury and the Fed.

Mr. Speaker, sensible doctors do not treat hemorrhage by diluting the patient's blood supply. Yet this is exactly what the Treasury and the Fed are doing, when they conspire to beat down the value of the dollar. Sensible doctors stop the bleeding, and give the patient a transfusion of wholesome blood, which, in our case, means a transfusion of dollars with a fixed gold content.

LET THE RECORD BE CLEAR WHEN THE VOTERS GO TO THE POLLS IN NOVEMBER

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, as the end of the session approaches what issues will be the victims of the adjournment crunch and political maneuvering? Immigration reform? Procurement reform? Arms control provisions? Fair trade legislation? South Africa? The drug bill, and who is to blame for these possible casualties? Let us look at the record.

Republicans killed the rule on immigration reform here in the House. Republicans in the other body are trying to kill any procurement reform, protecting defense contractors who pay no taxes. Republicans tried to kill the valuable arms control provision enacted here in the House saying it will handcuff the President in Iceland.

Fair trade legislation; the Republican-controlled Senate is too busy to act on fair trade. Drugs; because of an extraneous provision on sugar introduced by a Republican Member of the other body, the possible drug bill may not appear. Now South Africa. Linking South Africa to the summit. Now the Prime Minister of South Africa is threatening Senators with cutting off grain sales.

Mr. Speaker, let the record be clear when the voters go to the polls in November.

THE EYES OF FEDERALLY INSURED DEPOSITORS ARE UPON US

(Mr. PARRIS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PARRIS. Mr. Speaker, as we press toward adjournment for the year, depositor confidence in the safety and soundness of our Federal Deposit Insurance funds remains fragile. Despite the urgent need to begin to recapitalize the Federal savings and loan insurance fund and provide Federal bank regulators with essential power to arrange buyers for ailing banks across State lines, legislation to meet these needs has been removed from the agenda by the distinguished majority leader.

The House won't consider this legislation, according to an aide to the majority leader who was quoted in yesterday's Wall Street Journal, until the gentleman from Texas is assured by the Bank Board that "all this money given to FSLIC won't be used to harm thrifts involved in real estate ventures." The Bank Board, FSLIC's parent, is supposed to be the independent regulator and superviser of over 3,200 federally insured savings and loans.

All of us including insured depositors and taxpayers everywhere, has good reason to be concerned about this legislation. Without this bill, the Bank Board estimates by year end that FSLIC will have only $1.8 billion on hand to cover as much as $26 billion in losses at 250 S&L's expected to fail in the next 15 months around the country.

The former Director of FSLIC, Peter Stearns, forewarned us about the extent of the problems facing FSLIC in a December 12, 1985, interview with the American Banker. Stearns said:

> There are a lot more cases out there than anyone wants to believe. The calendar in Texas and California is full of really sick institutions. We're talking about problems with 30 percent, 40 percent, 50 percent of asset value, not 10 percent. All they do is pile up. Texas, Louisiana, Arkansas alone is a disaster. There are dozens in the $500 million to $1 billion range (with problems).

Since the first of this year, FSLIC has had to take over and manage six institutions with assets of $4.7 billion in Texas alone, including a Dallas-based thrift with $2 billion in assets, FSLIC's largest this year. FSLIC hasn't yet revealed the extent of the losses anticipated. Because of FSLIC's meager reserves it has only acted on S&L's posing the greatest risk to the safety of the insurance fund. I don't know how many of the 252 thrifts slated to be closed are in Texas, but many more may be the victims of its depressed economy and/or fraudulent and bad management. For example, there have been reports of a daisy chain of loan swappings, a continuous sale back and forth among thrifts of bad loans, going on in Texas.

Mr. Speaker, the State of Texas recently recognized the severity of the problems facing its banks and S&L's, and quickly and recently provided State regulators with emergency powers. Now the eyes of depositors everywhere are upon us. Their life savings must be protected. This Congress must consider and pass H.R. 5576 before we adjourn. Not to do so would simply be a criminal abrogation of our responsibility. I hope it will be rescheduled by the leadership at the earliest possible time.

SINGAPORE INCREASES EFFORTS TO PROTECT RHINOCEROS FROM EXTINCTION

(Mr. SCHEUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHEUER. Mr. Speaker, the five species of rhinoceroses that inhabit our planet are on the verge of extinction. After surviving as prehistoric mammals, the second largest on Earth, for 60 million years, they are about to succumb to their only known predator, man.

The vast poaching by hunters who illegally kill these great animals for the profit from selling their horns is about to do them in. Following a hearing of the Science and Technology Subcommittee on Natural Resources and Environment, which I chair, I received a letter from my good friend, Ambassador Tommy Koh of Singapore, in which he noted a change of heart on the part of his government on the rather inappropriate role that they have been playing as one of the principal trading centers for rhino horns.

In his letter, Ambassador Koh said:

> Concerning your inquiry regarding the sale of rhinoceroses in Singapore, my government has informed me that the issue does not arise because in November or December this year, Singapore will accede to the Convention on International Trade in Endangered Species of Wild Flora and Fauna [CITES]. My government has already informed the CITES Secretariat, on the 22nd of September, 1986, of its intention to accede to the convention.

Singapore's decision to join CITES is a key element in the international effort to save the rhino, the elephant and a vast number of other mammals and birds from extinction.

Credit for Singapore's decision to join the effort to save the rhino and other endangered species belongs in large part to the U.S. agencies involved in this effort—the State Department and the Interior Department which took decisive actions to protect the rhino immediately following my subcommittee hearing, and, of course, to the forward looking Government of Singapore led by one of the most extraordinarily talented and able chief executives on this planet.

LEGISLATION INTRODUCED TO STRENGTHEN LICENSE RENEWAL APPLICATIONS FOR NUCLEAR ACTIVITY

(Mr. GEKAS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEKAS. Mr. Speaker, today we are introducing legislation that will, for the first time, require the Nuclear Regulatory Commission to look deeply into the questions of character and integrity in the questions of applications for licenses or renewals of licenses in that very important field.

Up to now, we have had a hodge podge of procedures whereby the discretion of the Nuclear Regulatory Commission is wide open as to what they can inquire into as to what kind of people are applying for licenses or renewals of licenses.

We know that it is late in the season for introduction of such legislation, but even though the pennant race will come down to the last day maybe without consideration of this legislation, we can at least prepare for the day when we can say, "Wait until next year, we intend to push this as hard as we can in the new season."

□ 1045

FLOODING IN MICHIGAN

(Mr. WOLPE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WOLPE. Mr. Speaker, for the past several weeks, my home State of Michigan has been the victim of the worst flooding to hit our State in modern history. So far, 22 counties have been declared Federal disaster areas. And as the rains continue to swamp our State, thousands and thousands of fertile acres have vanished under a sea of water and hundreds of millions of dollars of valuable crops have been washed away.

It is estimated that without any disaster relief, almost 25 percent of the farmers affected by the flood will not be able to continue farming next year. Moreover, in Michigan, as in many States across our country, the farm economy is the very lifeblood of many small, rural communities. By failing to provide the necessary assistance to these farmers, we are jeopardizing the future of towns and villages throughout our region. We should not—we cannot—allow that to happen.

Mr. Speaker, I strongly urge the Secretary of Agriculture to exercise his discretionary powers to provide direct assistance to these distressed farmers. And I call upon the Farmers Home Administration to exercise a policy of forebearance, not foreclosure. We must work together to help those farmers who have been pushed to the brink of bankruptcy by an almost unprecedented act of nature.

AMENDMENT TO THE BUS DEREGULATION ACT OF 1982

(Mr. ROBERTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ROBERTS. Mr. Speaker, I rise today to introduce legislation which will assist in avoiding a great transportation travesty in rural America.

Once again rural America is being subjected to the water-drop torture of deregulation. For years, we have watched our essential services and industries such as airlines, railroads, banking and finance institutions and telecommunications, gradually fall prey to the affects of deregulation. Now our public bus carrier service can be added to that list as well.

In my home State of Kansas, bus carriers have been abandoning rural service routes at an alarming rate. This year alone carriers in my State have abandoned essential service routes on three different occasions. Their most recent attempt, intending to abandon service to 69 Kansas communities, 40 of which will be left with no bus carrier service at all.

Kansas is not alone in this paradox, Mr. Speaker. In our neighboring States of Nebraska and Colorado and other rural States such as Iowa, Illinois, Wyoming, Montana, Utah, and Nevada, the very same carrier intends to abandon all, 100 percent, of its service routes to the hundreds of communities it serves in those States.

Think what affect the abandoning of those routes will have on the thousands of passengers who depend on buses for both intra- and interstate transportation. Imagine what affect it will have on the local merchants, retailers, repair shops, and farmers who depend on the daily flow of freight and spare parts which bus service currently provides.

Mr. Speaker, the individual States realize the consequences of such wholesale abandonments. They have continually ruled against such service route abandonments. But when those decisions are appealed to the Interstate Commerce Commission, that agency, by regulation, is powerless to intervene.

You see, the regulators used to consider public convenience and necessity as a standard for protecting citizens and their essential transportation services. Now due to the Bus Deregulation Act of 1982, abandonment of essential bus service routes are determined solely on carrier revenue—if the carrier can show a loss, they simply abandon the service to that rural community and drive to the Sun Belt or big cities for their profit.

In short, the provisions of the Bus Deregulation Act of 1982 have made the ICC nothing more than a rubber stamp agency, ruling in favor of any bus carrier that can show unprofitability.

The legislation I am introducing today Mr. Speaker, will amend the Bus Deregulation Act of 1982 and restore to the ICC, decision criteria for the continued consideration of public convenience and necessity standard.

Briefly this legislation will:

First. Require the ICC to give greater weight to our State regulators.

Second. Mandate the ICC to give greater weight to whether the transportation is the last carrier service available and if an alternative service is available.

Third. Require the ICC to be more than a rubber stamp for carriers and work with States and regions to provide alternative carrier service.

Mr. Speaker, my colleagues join me in supporting this bill. A bill which will assist in averting the wholesale abandonment of essential bus service in rural America.

LOUISIANA VOTERS SPEAK OUT

(Mr. WATKINS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WATKINS. Mr. Speaker, the Louisiana voters September 27, by making a close contest in the U.S. Senate race there, probably did more for national security than they will ever know.

By placing Mr. BREAUX within striking distance of Mr. MOORE, they at least got the attention of the President. And, they were granted an audience earlier this week with the Chief of State.

News accounts indicate that the President's top advisors, including the Secretaries of Treasury, Energy, and Interior, joined him in a meeting on the domestic petroleum situation along with leading Republican legislators.

I commend the voters of Louisiana for getting the attention of the President. However, I think the voters of oil patch States, such as Oklahoma, Louisiana, and Texas, should be furious that the President is playing politics with their very economic livelihood and the national security of our country. He waited until there was a close election in Louisiana, which could tilt the Senate to the Democrats, before acknowledging there is a problem.

We have long advocated that the President take action by executive order to place a fee on the flood of foreign crude which is being imported and which has devastated the domestic industry while threatening our Nation's security. Those who are knowledgeable about the world petroleum situation agree that the plan of OPEC is to drive from production their competition. And their competition is the independent producer of the United States.

Each day, more wells are being plugged and each well that is plugged makes the United States that much more dependent upon insecure, foreign sources of crude oil.

The Louisiana voters may have helped turn the tide.

SUPERFUND IS NEEDED

(Mr. SMITH of New Hampshire asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of New Hampshire. Mr. Speaker, the 99th Congress winds to a close and we still do not have a Superfund. All across the country, we are seeing headlines like the one that appeared in the Manchester Union Leader, in my district, this morning: "EPA Cancels Cleanup Contracts."

> The Environmental Protection Agency canceled contracts for cleanup work at 104 of the Nation's worst toxic waste sites yesterday, saying the agency has run out of money to pay for the operation.

The time is now, Mr. Speaker. We need Superfund. What we do not need is a Superfund that is not based on the polluter-pay principle. We need a Superfund that is fair, saying that the polluters should pay for it.

The information that came out of the press this morning regarding the conferees says that they say they want to place a broad-based tax on all corporations with incomes of over $2 million, that is, all corporations, even those who do not pollute.

I urge the House conferees to stay tough on the polluter-pay principle. Let us remove the broad-based tax on the American people and the small businessses of America and replace it with a waste-end tax, Mr. Speaker, so that those who are doing the polluting can do the paying.

SELLING PRINCIPLES FOR KRUGGERANDS

(Mr. DURBIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DURBIN. Mr. Speaker, as a Member of Congress representing a farming area, I deeply resent the efforts of Prime Minister Botha of South Africa personally lobbying farm-belt Senators on the sanctions vote pending today in the other body.

First, it is virtually unprecedented for a foreign head of state to attempt to directly influence a vote in Congress. This type of tactic is antagonistic to the sovereignty of our Nation and should be viewed by every American as a threat to the integrity of our legislative process.

Second, the suggestion of Mr. Botha that farm-belt legislators or American farmers are prepared to ignore South Africa's racist regime in return for a grain sale is an insult to our farm families nationwide.

Apartheid is a vicious, racist corruption. Those who perpetrate this modern form of slavery in South Africa are insensitive to the most fundamental human values.

Mr. Botha's belief that farm-belt Congressmen will sell their principles for Kruggerands displays the arrogance and cynicism of his cruel regime.

JOB EXPORT TO MEXICO

(Mr. REGULA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. REGULA. Mr. Speaker, now I've heard everything. At a time when our biggest concern is keeping jobs alive in our districts, our Department of Commerce is sponsoring a trade show in Mexico to encourage United States businesses to move their assembly operations there.

The Commerce Department has sent and will send a total of 120,000 invitations to American firms, detailing the appeal of moving their plants to Mexico. The Mexican show will highlight the attractive features of low Mexican wages and benefits, with an emphasis on the profits to be realized by moving United States companies to Mexico.

It is outrageous that our Government is encouraging and financially supporting the export of American jobs. My constituents and yours deserve more than this for their tax dollars. This is an absurb example of the Government biting the hands that feed it and we should put a stop to it.

RESTORE THE SALES TAX DEDUCTION

(Mr. DICKS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DICKS. Mr. Speaker, I supported the historic Tax Reform Act of 1986 because I believe its overall effect will be very positive. The act will provide rate relief to millions of lower and middle income families. It will close tax loopholes used by the wealthy to shelter income from taxation. Future financial decisions will be based upon their own merit, rather than simply upon the tax consequences. The act will ensure that large, profitable corporations pay their fair share of taxes.

Despite the fact that I supported the tax reform agreement, I did not agree with every provision in the bill. In fact, I believe the conferees decision to eliminate the deduction for State and local sales tax was extremely unfair. I am, therefore, introducing legislation today which would restore the deduction for State and local sales tax effective December 31, 1986—the date it is due to end under the Tax Reform Act of 1986.

The State of Washington relies heavily on the sales tax as its means to raise revenues. In my opinion, it is highly discriminatory to treat this means of raising revenue any differently than means used by other States such as income taxes or property taxes. Yet for some reason, the conferees have chosen to disallow a deduction for sales tax, yet allow deductions for all other State and local taxes. While this provision will not make a penny's worth of difference to taxpayers from some States, it will mean a tremendous difference to taxpayers who itemize in the State of Washington. According to Gov. Booth Gardner, the average sales tax deduction in 1985 in our State was $786.

My legislation would correct a glaring inequity in the Tax Reform Act. It would bring us much closer to a tax system which treats all States, and all taxpayers, in a fair, equitable and just manner.

□ 1055

LEGISLATION TO ADDRESS PROBLEMS OF BANK AND THRIFT INDUSTRIES

(Mr. DREIER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DREIER of California. Mr. Speaker, on September 23, the House Banking Committee approved H.R. 5565 by a vote of 47 to 1. This legislation contains important provisions to recapitalize the Federal Savings and Loan Insurance Fund, and allow for interstate acquisitions of failing banks when an instate buyer cannot be found.

The committee reported this legislation so overwhelmingly for a reason. Everyone recognizes that something must be done this year to ensure that the FDIC and FSLIC have enough resources to meet their problem cases. Over 160 banks are expected to fail this year, an all time high. In many States, outside capital is the only solution. The FSLIC is in worse shape. The fund has less than $2 billion but needs as much as $25 billion to merge or liquidate the over 460 insolvent institutions.

The bank and thrift industries have the resources to solve their problems. H.R. 5565 only provides FDIC and FSLIC with the tools to get the job done. This legislation must not be killed for reasons of self-interest. I urge the leadership to put H.R. 5565 back on the calendar so we can move on with the business of improving the safety and soundness of our Nation's financial institutions.

UNFAIR AWARDING OF CONTRACTS BY NAVY

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, the Navy recently awarded a $6.8 million contract for the purpose of building mobile shelter facilities. Even though a company in my district, McDonald Welding, was the lowest bidder at $5 million, $1.8 million lower and has demonstrated a performance capability for this project, the firm receiving the bid enjoys an almost exclusive monopoly.

I thought we were after competitive bidding around here. Time and time again areas like mine of high unemployment continue to be shut out.

This time, though, I think the Navy has gone too far. I smell a rat and I believe Congress should investigate the procurement policies of our defense industry.

I have asked Secretary Lehman for a personal meeting. I have not even gotten a call. They are avoiding me and they are avoiding this issue.

What are they afraid of? If in fact they are not willing to meet with me and cannot give me these answers, then maybe this House and the subcommittee of the Armed Services Committee should call an investigation of these practices.

My God, when you have high unemployment like we have, you should be encouraging companies from those areas to bid on defense work, not discouraging them.

Mr. Speaker, I want some answers and I believe our Armed Services Committee should investigate this and I am going to ask for it.

SHOULD REGISTERED AGENTS OF FOREIGN GOVERNMENTS DECIDE HOW U.S. FOREIGN ASSISTANCE IS ALLOCATED?

(Mr. BROWN of Colorado asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of Colorado. Mr. Speaker, is it proper for registered agents of foreign governments to decide how the U.S. foreign assistance is allocated?

Incredibly, 11 registered agents, representing 14 countries, are officers or board members of the National Endowment for Democracy or groups it funds.

I will include in the Record a copy of those registered foreign agents, the countries they represent, and a letter from the Assistant Attorney General in this regard:

U.S. Department of Justice,
Office of Legislative and Intergovernmental Affairs,
Washington, DC, September 18, 1986.

Hon. Hank Brown,
House of Representatives,
Washington, DC.

Dear Congressman Brown: The Attorney General has asked me to respond to your letter of May 22, 1986 regarding the National Endowment for Democracy (NED). You advised that Messrs. Charles Manatt and Peter G. Kelly, who are registered under the Foreign Agents Registration Act of 1938 (FARA), as amended, both serve as officers of a NED grantee, the National Democratic Institute for International Affairs (NDIIA). Mr. Manatt also serves on NED's board of directors. Both NED and NDIIA are government funded, and you feel that it is inappropriate for these men "to be involved in any way with representing foreign governments or other foreign entities." You ask this Department to determine the extent of these activities, whether your officers or directors of NED or its grantees are registered foreign agents, whether any such person has violated FARA, and whether any such person participated in or influenced NED grants in countries they represented.

Upon receipt of your letter we contacted the NED and their counsel, Ross, Dixon & Masbeck. The firm and the public affairs staff of NED provided us with background information concerning NED, including some information for this response. Specifically, according to NED, in addition to Messrs. Manatt and Kelly, the only other individual currently serving as an officer or board member of NED or its grantees, who is also registered as a foreign agent, is Anne Wexler. However, responses to NED's inquiries on this point are still being received.

We note that Article VI, Section 5 of the NED Bylaws prohibits directors from considering or voting on a grant to their own organization, but not, more broadly, from considering or voting on a grant to be performed in a client's country, while allowing the interested director to present relevant information in all cases. In two instances detailed by NED, Mr. Manatt voted for NED grants for projects in countries that his firm represents. However, since NED and its grantees are not part of the federal government, see 22 U.S.C. § 4411 and § 4412(c), foreign agents who serve on NED do not thereby violate 18 U.S.C. § 219, "Officers and employees acting as agents of foreign principals". Still, these agents do have reporting obligations under FARA, and if any evidence is developed indicating a violation of this duty, you can be sure that we will initiate the appropriate action.

Your cooperation in providing this information is appreciated.

Sincerely,

John R. Bolton,
Assistant Attorney General.

Registered Foreign Agents Affiliated With Ned and Ned Grantees

Name, position, company affiliation, and client:

Grantee: CIPE Center for International Private Enterprise (Chamber of Commerce).

Grant Nos: 84-4A-01.0 and 85-099-P-001-02.2.

Abelardo Valdez, Director; Finley, Kumble & Wagner, Antigua & Barbuda.

S.D. Anderson, Anderson, Hibey, Nauheim & Blair; Comm. Industry Assoc. of Japan, Inst. Brasileiro de Siderrurgia, Japan Machine Tool build. assoc., Japan Forming Machinery Assc.; Japan Machinery, Exporters' Assoc., Sugar sales (Pvt) Limited; Curacao Int'l Trust Co., N.V.; Inst. of Financial and Fiscal Studies of Curacao; and Electronics Ind. Assoc. of Japan.

COMMITTEE FOR COMMUNITY OF DEMOCRACIES

Thomas Stern; CCD Treasurer; Korea Economic Institute of America; Republic of Korea.

Grantee: Freedom House.

Grant Nos: 84-AA-10.0 and 85-181-E-013-22.0.

P. Van Slyck; Trustee; Philip Van Slyck Associates; Japan.

OVERSEAS EDUCATIONAL FUND

Grantee: OEF International.

Grant Nos: 84-AA-11.0 and 85-528-P-014-06.0.

Susan Davis; Board Member; Susan Davis Companies; Egypt Turkish Rep of North Cypress.

Grantee: Prodemca.

Grant Nos. 85-524-E-024-03.0 and 85-524-P-024-08.0.

Peter Rosenblatt, Attorney, Taiwan, Haiti.

NATIONAL ENDOWMENT FOR DEMOCRACY

Charles Manatt, Board Member; Manatt, Phelps, Rothenberg, Tunney & Evans; Jamaica Broadcasting Corp., The Republic of Cyprus Jamaica.

J. Van Andel; Board Member; Amway Corp.; British Virgin Isl.

Grantee: NDIIA (Democratic institute).

Grant Nos. 84-4D-01.0 and 86-099-G-003-31.

Charles T. Manatt; Manatt, Phelps, Rothenberg, Tunney & Evans; Jamaica Broadcasting Corp The Rep. of Cyprus Jamaica.

Peter G. Kelly; Black, Manafort, Stone & Kelly; Chamber of Philippine Manufacturers, Exporters & Tourism Assoc.

Anne Wexler; Canadian Foothills Pipeline (Yucon), Ltd. Nova, Alberta Corporation Novacor Chemicals, Ltd.

Grantee: Cuny Bildner Center.

Grant No: 85-513-P-032-18.0.

Jacques Torczyner; Jewish Agency of Israel.

Even more amazing is the fact that these foreign agents in some instances have actually voted on grants or projects for the very countries they are paid to represent.

As the Assistant Attorney General, John Bolton, notes in his letter:

> Since NED and its grantees are not part of the Federal Government, * * * foreign agents who serve on NED are not thereby violating 18 U.S.C. section 219.

Mr. Speaker, the time has come for NED to live up to the same ethical standards that others who spend Federal money are subject to.

It is not a question of whether or not you believe in democracy. It is not a question of whether you are a Democrat or a Republican. It is a question of us insisting on reasonable standards to protect the taxpayer's money.

DISASTROUS FLOODS IN ILLINOIS

(Mr. CRANE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CRANE. Mr. Speaker, I had the occasion to be up in Saginaw, MI, recently and see the devastation that was the result of flooding there and in a little adjacent town called Vassar. They asked me if in my district we had ever had any comparable experience, and I said no.

I spoke too soon, Mr Speaker, because we have experienced in my district in the northern parts of Illinois the most devastating floods that we have had in the last 26 years, and it is still raining.

In fact, floods have forced the evacuation of a Des Plaines hospital, chased the Gurnee police and firefighters from their stations, and prevented 1,300 Lake County children from attending school.

In Libertyville, one man is missing and presumed drowned after his boat capsized on Monday afternoon.

Eight hundred people were forced out of their homes when the Fox and Des Plaines Rivers overflowed.

Because of this flooding and damage, I urge our Governor, Jim Thompson, to ask President Reagan to declare these parts of Lake, McHenry, and Cook Counties, which have been affected, as a Federal disaster area. This would enable the residences and businesses that have suffered flood damage to apply for low interest Federal disaster loans.

HOSTAGES AND TAXES

(Mr. DORNAN of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DORNAN of California. Mr. Speaker, I may not have a chance next week to again mention our hostages in Beirut.

Nick Daniloff did an absolutely glorious job on one of the network shows last night with Ted Koppel, a courageous man; but we have a journalist named Terry Anderson, I am wearing his bracelet today with his name on it.

In Beirut we are now back up to six hostages there.

There is a letter in the majority cloakroom for signatures to the President of Syria.

Today Secretary Shultz meets with Mr. Shara, the foreign minister.

I hope during our 4-month break here that all of us will remember to keep their names alive before our fellow American people.

One other item, Mr. Speaker. I want to take a pledge in the well right now that I will never vote to raise taxes in this House and I hope there is no secret plan on anybody's agenda next week to raise taxes. Next to being sworn into the military as an enlisted man and then again as a pilot and four times on this House floor raising my right hand to defend the Constitution, I feel good about raising my right hand right now and swear that I will never raise taxes as long as they are hovering at about 20 percent of the gross national product. I say 20 percent is more than enough and I say not a penny more.

SOVIET UNION PRESSURED FOR REUNIFICATION OF ALL DIVIDED FAMILIES

(Mr. SHAW asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHAW. Mr. Speaker, I know that we are all happy that Nick Daniloff has been released. We can only imagine the joy of the Daniloff family as they heard that their husband and father was being set free and would be reunited with them shortly. But as President Reagan and General Secretary Gorbachev meet in Iceland in a few days, I hope they won't forget the members of divided families in the United States who await similar word that the U.S.S.R. is granting permission for their loved one to leave and be reunited with them.

For one divided spouse in particular, that word has been long in coming. Dr. Galina Vileshina, currently a resident in my district, arrived in the United States 6 years ago. She left Lithuania expecting that her husband, Pyatras Pakenas, would also emigrate shortly. However her husband has been denied permission to leave 15 times in 6 years. No reason for the denials has ever been given. So Pyatras continues to apply and Galina continues to wait for word that one day they will be reunited and live as the couple they are intended to be.

Let us rejoice over the releases recently from the Soviet Union but let us also continue to push for the reunification of all divided families.

DEMOCRATS' SECRET PLAN TO RAISE TAXES

(Mr. MACK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MACK. Mr. Speaker, there is strong evidence today to suggest that the Democrats have a secret plan to raise taxes that they will spring on the American people in January.

Let me read some of the evidence, statements made by Members of the House Democratic leadership:

> I have long been a strong proponent of tax increases to shrink the deficit.

Another quote:

> We all know that we are going to raise taxes.

Another quote:

> Everyone knows we will eventually need to raise taxes.

You Democrats have been whining all year that there is no leadership on the deficit question. Well, let me point out that you control this House. You ought to tell us what your plan is.

Are you going to raise taxes on corporations? Are you going to raise the minimum tax on individuals and corporations? Are you going to raise tax rates?

If you are not going to raise tax rates, or taxes, then join me and make a pledge that you are not going to raise taxes; but if you cannot make that pledge, you might want to make the other pledge, that is the Mondale pledge to tell the truth. Why not tell the American people what your secret plan is to raise taxes?

SIGN THE PLEDGE NOT TO RAISE TAXES

(Mr. WALKER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WALKER. Mr. Speaker, there really is a legitimate concern that at the beginning of the new Congress we will see a move to increase taxes on the American people. That is what this election year is all about. What economic philosophies do the American people embrace?

The American people want the deficit cut. How will the deficit be cut? Will it be cut by raising taxes or by lowering spending?

Many of us feel as though this is something that can be done by reducing spending. We do not think that taxes ought to be increased. We think that there ought to be a pledge by Members of Congress not to raise taxes. We think they ought to sponsor a resolution that I am in the process of circulating that would say to the 100th Congress that the 99th Congress believes that we should not raise taxes. Nearly 60 Members of Congress have already signed onto that resolution. I would invite other Members to sign onto that resolution.

Let us not tell the American people that we can do something about the deficit and then not tell them how we are going to do it. If you are going to raise taxes, tell the American people so. If you want to join us and lower spending, take the pledge. Do not raise taxes.

SAME OLD ACCUSATIONS

(Mr. SMITH of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Florida. Mr. Speaker, here we go again. One month before the general election in November, what do we hear? The same tired shop-worn phrases, "You are going to raise taxes." They have got nothing else to go to the polls with this year, but "You are going to raise taxes."

Well, is that not interesting? All these months that you have been voting for the biggest spending in history, protecting the President's plan, wanting $350 billion for defense, but never once telling us how you are going to pay for it and next year the President will probably submit another budget, like in the last 6 years, loaded with goodies, over a trillion dollars, in the red by $200 billion.

And what are we going to hear from you? "Let's do it," not how to pay for it, just "Let's do it. We are going to raise the same kinds of income the President wants to raise. Whatever he wants to do to accommodate his budgets, we are going to do it to accommodate his budgets."

If he wants to call them user fees, probably he will get user fees.

He can close his eyes to the truth, but the American people will not. They are smarter now. After 6 years, there is no more putting a bag over their eyes. They know what the truth is: You gotta pay for what you want. Even though the President will not admit it, and the Republicans will not admit it, the Democrats understand it. We are not going to raise taxes, we are just going to make sure that the budgets balance, and one way or the other. The American people are not going to be hoodwinked any longer by the Republican show-worn phrases.

LET US PLEDGE NOT TO INCREASE TAXES

(Mr. HUNTER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HUNTER. Mr. Speaker, the previous speaker reminded me of the statement that was made by Walter Mondale at the national convention to the effect that both he and President Reagan would raise taxes, that President Reagan would not admit it but he would, and he did intend to do that.

Let me just say, Mr. Speaker, we should be guided by evidence, and the evidence that I would lay before you are some of the statements that have been made, particularly the statement by the gentleman from Illinois, the chairman of the Committee on Ways and Means, who stated in 1986 in a speech to the National Governors Association, "I have long been a strong proponent of tax increases to shrink the deficit. In 1985 we all know we're going to have to raise taxes."

The same gentleman, the chairman of the Committee on Ways and Means, the Speaker of the House said, 1985, "Should we pay through the nose by taxation? The answer is 'Yes.'"

And finally, in an interview with the Washington Post, September 4, 1986—this is what is bothering the American people—the chairman of the Ways and Means Committee, the gentleman from Illinois, "Everyone knows we will eventually need a tax increase."

That is the evidence that is greatly disturbing the American people, who generally have supported the tax package that just passed.

Mr. Speaker, let us pledge to the American people now that we are not going to follow our tax reform package with a tax increase.

DEMOCRATS INVITED TO JOIN IN DISCUSSING TAXES

(Mr. GINGRICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGRICH. Mr. Speaker, a Democratic Member from Ohio rose earlier to defend the right of dead voters and nonexistent voters to keep voting, and thus keep a Democratic majority in power despite the votes of the living. These same Democrats apparently intend to use the fictitious majority to raise real taxes on the living. Five leading House Democrats have called for tax increases.

Many of us are joining a bipartisan organization, Americans for Tax Reform, in signing a pledge to oppose tax increases. We pledge to fight to keep tax rates at 15 and 28 percent for individuals, and 34 percent for corporations. We will be holding a series of special orders to discuss the concept of a no-tax-increase pledge.

Last night several Democrats joined us and defended their leadership's commitment to raise taxes. Other Democrats have signed the pledge to oppose tax increases.

I invite all Democrats to join us in discussing the choice between protecting the family budget by holding down taxes and spending, versus protecting the Federal budget by raising taxes and spending.

RESTRICTIVE RULES DENY MEMBERS FULL PARTICIPATION IN SHAPING IMPORTANT LEGISLATION

(Mr. YOUNG of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. YOUNG of Florida. Mr. Speaker, the House of Representatives is the people's House of Congress. Here we represent the views of our constituents on the important legislation of the day.

But under changing House rules, many Members, and in turn their constituents, are being denied the opportunity to fully participate in the legislative process. Throughout this week I expressed my concern about so many closed rules which preclude the offering of amendments to important legislation. Today I want to discuss procedures used with increasing regularity that severely limit the time for debate on amendments that are allowed. These rules, in many cases, permit only the principal proponent and opponent of a particular proposal to receive debate time.

Let me cite a few examples on time limits imposed recently.

On September 11, House rules limited to 20 minutes the debate on a very important amendment to the omnibus drug bill that greatly expanded the scope of military involvement in the war against drugs. This amendment was of concern to the President, the Department of Defense, and Members of both sides of the aisle. Yet 435 of us, the entire House, were given only 20 minutes total to debate that issue.

Later that day, the House considered another amendment to the drug bill that imposed stiff new penalties, including in some cases life sentences, for anyone convicted of selling drugs to children. While I supported this amendment, I believe that Members on either side of this issue should have had whatever time necessary, but only 10 minutes were allowed for to express their views on such an important amendment.

Earlier this year, on June 25, the House again considered the question of whether or not to provide assistance to the freedom fighters in Nicaragua. This is an issue that has been heatedly debated for more than 4 years. Yet when the House considered a major new bipartisan amendment to provide U.S. aid, debate was limited to only 1 hour.

Finally, I would note that I am not only concerned about the actual time allotted for debate, but that a limit is imposed at all. Last month, on September 17, when the House considered a highly sensitive foreign policy amendment with regard to Angola, debate was limited to 2 hours. Even with an hour allocated to both sides, there still was not an opportunity for all Members who requested time to participate in the debate.

This is the people's body, Mr. Speaker. We are here to present our views. We cannnot do that if debate is limited or amendments precluded.

Tomorrow, I will suggest guidelines that should be adopted by the historic 100th Congress to ensure that this House of Representatives functions as our founders intended 200 years ago.

EXAMINE THE ALTERNATIVES ON DEFICIT REDUCTION

(Mr. DELLUMS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DELLUMS. Mr. Speaker, a number of my colleagues have spoken to the issue of pledging to not raise taxes. Obviously the issue of deficit reduction is still a reality.

It seems to this Member that there are only three ways to reduce the deficit. We have developed policies on the one hand that would embrace the notions of reindustrialization and full employment, because a healthy and vibrant economy with people working will indeed reduce the deficit. But we are not debating or discussing these policies. There are virtually no efforts in that direction.

The second alternative is to increase revenues. My colleagues want to make a pledge that we will not increase taxes. So be it. Let us move that second alternative off the table.

Where does that then leave us? To reduce expenditures. We have reduced expenditures significantly, particularly in the area of nondefense, which then leaves us to the area of defense. Are my colleagues who are suggesting that we pledge not to increase taxes ready to make a pledge to pursue the alternative of significantly reducing the military budget, embracing policies that will take us in the direction of nuclear disarmament, take us in the direction of peace, and take us away from a bloated, wasteful, and unnecessary military budget?

I would suggest to my colleagues that they cannot scream, "Do not raise taxes" in a vacuum. That means some policy alternatives that we must approach, and it seems to me that we should not in any way be hypocritical as we begin to address the significant issue of deficit-reduction policies.

ONE MORE LEGISLATIVE LEGACY

(Mr. **PORTER** asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. **PORTER**. Mr. Speaker, our President has built a strong legislative legacy during his Presidency. After rebuilding America's defenses, he went on to reform the Tax Code, a task many, including you, Mr. Speaker, thought impossible.

Now President Reagan has one last legacy that he must leave with the American people—the end of budget deficits and the continuing resolutions that help to feed them.

I urge the President, in his next State of the Union Address, to issue a warning to the Congress that we will not tolerate another continuing resolution. He should say that he will veto any CR that is sent to him, and force the Congress to pass each appropriation bill separately and on time.

Everyone knows why the CR's must end. In the neatly arranged annual ritual, programs, whether they are authorized or not; bills, whether they are considered on the floor or not; and a whole host of nongermane amendments added by the other body send spending through the roof. Many Members' wishes are granted in our annual "Christmas in October" while the bill goes onto the Nation's MasterCard, our national deficit.

The President should crown his legislative triumphs with an end to the continuing resolution. Only his leadership can force this to happen. Leave us that legacy, Mr. President.

CONFERENCE REPORT ON H.R. 4116, DOMESTIC VOLUNTEER SERVICE ACT AMENDMENTS OF 1986

Mr. **WILLIAMS** submitted the following conference report and statement on the bill (H.R. 4116) to extend and improve the Domestic Volunteer Service Act of 1973:

CONFERENCE REPORT (H. REPT. 99-954)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4116) to extend and improve the Domestic Volunteer Service Act of 1973, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Domestic Volunteer Service Act Amendments of 1986".

SEC. 2. VOLUNTEERISM POLICY.

(a) VOLUNTEERISM POLICY.—The Domestic Volunteer Service Act of 1973 (hereinafter in this Act referred to as "the Act") is amended by inserting immediately after the table of contents the following new section:

"VOLUNTEERISM POLICY

"SEC. 2. (a) Because of the long-standing importance of volunteerism throughout American history, it is the policy of the Congress to foster the tradition of volunteerism through greater involvement on the part of both young and older citizens.

"(b) The purpose of ACTION, the Federal domestic volunteer agency, is to foster and expand voluntary citizen service in communities throughout the Nation in activities designed to help the poor, the disadvantaged, the vulnerable, and the elderly. In carrying out this purpose, ACTION shall utilize to the fullest extent the programs authorized under this Act, coordinate with other Federal, State, and local agencies and utilize the energy, innovative spirit, experience, and skills of all Americans.".

(b) CONFORMING AMENDMENT.—The table of contents of the Act is amended by inserting before the item relating to title I the following:

"Sec. 2. Volunteerism policy.".

SEC. 3. ASSIGNMENT OF VOLUNTEERS.

(a) RECRUITMENT AND ASSIGNMENT.—Section 103(b) of the Act is amended to read as follows:

"(b) The Director shall establish, at a cost not to exceed $250,000, procedures to recruit and place individuals from all walks of life, age groups, economic levels, and geographic areas to serve as VISTA volunteers. The procedures shall include an information system to ensure that potential applicants are made aware of the broad range of VISTA volunteer opportunities and a system to identify and place qualified volunteers where their skills are most needed. The Director shall also establish procedures for national and local recruitment, media and public awareness efforts, and specialized campaigns designed to recruit recent college graduates, special skilled volunteers, and individuals 55 years of age and older. The Director, wherever feasible and appropriate, shall assign low-income community volunteers to serve in their home communities in teams with nationally recruited specialist volunteers. The Director shall make efforts to assign volunteers to serve in their home or nearby communities and shall make national efforts to attract other volunteers to serve in the VISTA program. The Director shall also, in the assignment of volunteers, recognize that the community identified needs which cannot be met in the local area, and the individual desires of VISTA volunteers in regard to placement in various geographic areas of the nation, should be taken into consideration.".

(b) REPORTS.—Section 407 of the Act is amended—

(1) by inserting "(a)" after "407."; and

(2) by adding the following subsection:

"(b) Not later than 120 days after the end of each fiscal year, the Director shall prepare and submit to the appropriate committees of the Congress a report describing activities under section 103(b).".

SEC. 4. ESTABLISHMENT OF VISTA LITERACY CORPS.

(a) ESTABLISHMENT OF LITERACY CORPS.—The Act is amended by inserting after section 108 the following new section:

"VISTA LITERACY CORPS

"SEC. 109.(a) As part of the Volunteers in Service to America program established under this part, the Director shall establish a VISTA Literacy Corps for the purpose of developing, strengthening, supplementing, and expanding efforts of both public and nonprofit organizations at the local, State, and Federal level to mobilize local, State, Federal, and private sector financial and volunteer resources to address the problem of illiteracy throughout the United States.

"(b) The Director shall assign volunteers to projects and programs that meet the antipoverty criteria of part A that provide assistance to functionally illiterate and illiterate individuals who are unserved or underserved by literacy education programs, with special emphasis upon disadvantaged individuals having the highest risk of illiteracy, and individuals with the lowest reading and educational level of competence.

"(c)(1) The Director shall assign volunteers under this subsection to projects and programs that utilize volunteers to address the needs of illiterate individuals.

"(2) Programs and projects under this subsection may be administered by public or private nonprofit agencies and organizations including local, State, and national literacy councils and organizations; community-based nonprofit organizations; local and State education agencies; local and State agencies administering adult basic education programs; educational institutions; libraries; antipoverty organizations; local, municipal, and State governmental entities, and administrative entities designated to administer job training plans under the Job Training Partnership Act.

"(3) In the assignment of volunteers under this subsection the Director shall give priority consideration to—

"(A) programs and projects that assist illiterate individuals in greatest need of assistance residing in unserved or underserved areas with the highest concentrations of illiteracy and of low income individuals and families;

"(B) projects and programs serving individuals reading at the zero to fourth grade levels;

"(C) projects and programs focusing on providing literacy services to high risk populations;

"(D) projects and programs operating in areas with the highest concentration of individuals and families living at or below the poverty level;

"(E) projects and programs providing literacy services to parents of disadvantaged children between the ages of two and eight, who may be educationally at risk; and

"(F) Statewide programs and projects that encourage the creation of new literacy efforts, encourage the coordination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

"(d)(1) The Director shall assign volunteers under this subsection to projects and programs that primarily utilize volunteers to tutor illiterate individuals.

"(2) Programs and projects under this subsection may be administered by local public or private nonprofit agencies and organizations including local literacy councils and

organizations, community-based nonprofit organizations, local educational agencies, local agencies administering adult basic education programs, local educational institutions, libraries, antipoverty organizations, local and municipal governmental entities, and administrative entities designated to administer job training plans under the Job Training Partnership Act.

"(3) In the assignment of volunteers under this subsection the Director shall give priority consideration to local programs and projects that assist illiterate individuals in greatest need of assistance residing in unserved or underserved areas with the highest concentrations of illiteracy and of low income individuals and families.

"(e) The Director shall ensure an equitable distribution of volunteers under this section in accordance with the equitable distribution requirement of section 414 of this Act.

"(f) The VISTA Literacy Corps shall consist of all volunteers serving under part A working on literacy projects and programs.

"(g)(1) Funds made available under section 501(a) for the purposes of this section shall be used to supplement and not supplant the level of services provided under part A in fiscal year 1986 to address the problem of illiteracy.

"(2) In any fiscal year in which the services provided under part A are reduced, the services provided under this section shall be proportionately reduced.".

(b) Conforming Amendment.—The table of contents of the Act is amended by inserting after the item relating to section 108 the following:

"Sec. 109. VISTA Literacy Corps.".

SEC. 5. SERVICE LEARNING PROGRAMS.

Section 111 of the Act is amended—

(1) by inserting "(a)" after the section designation;

(2) by striking out the second and third sentences of such section; and

(3) by adding the following new subsection:

"(b) This part provides for the University Year for ACTION (UYA) program of full-time volunteer service by students enrolled in institutions of higher education. The purpose of the UYA program is to strengthen and supplement efforts to eliminate poverty and poverty-related human, social, and environmental problems by enabling students at cooperating institutions to perform meaningful and constructive volunteer service in connection with the satisfaction of course-work while attending such institutions. Volunteer service under this part is conducted in agencies, institutions, and situations where the application of human talent and dedication may assist in the solution of poverty and poverty-related problems and secure and exploit opportunities for self-advancement by individuals experiencing such problems.".

SEC. 6. SERVICES TO INDIANS.

(a) Special Volunteer Programs.—Section 122(a)(1) of the Act is amended by inserting "(including Indian reservations)" after "rural areas".

(b) Definitions.—Section 421 of the Act is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and"; and

(3) by adding the following paragraph:

"(5) the terms 'public agencies or organizations' and 'Federal, State, or local agencies' shall include any Indian tribe, band, nation, or other organized group or community (including any Alaskan native village or regional village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act) which is recognized by the United States or the State in which it resides as eligible for special programs and services provided to Indians because of their status as Indians.".

SEC. 7. VOLUNTEERS SERVING WITHOUT STIPEND.

(a) Volunteer Service Projects.—(1) Section 211 of the Act is amended—

(A) in the first sentence of subsection (d) by inserting "low-income" after "provide to", and

(B) by adding at the end thereof the following:

"(f)(1)(A) Except as provided in subparagraphs (B) and (C), individuals who are not low-income persons may serve as volunteers under this part, in accordance with such regulations as the Director shall issue, if such individuals serve without receiving any allowance, stipend, or other financial support under this part except reimbursement for transportation, meals, and out-of-pocket expenses incident to serving under this part.

"(B) The regulations issued by the Director to carry out this part (other than any regulations relating to allowances, stipends, and other financial support authorized by subsection (d) to be paid under this part to low-income persons) shall apply to all volunteers under this part, without regard to whether such volunteers are eligible to receive a stipend under subsection (d).

"(C) Individuals who are not low-income persons may not serve as volunteers under this part in any community in which there are volunteers serving under part A of this title.

"(2)(A) Except as provided in subparagraph (B), each recipient of a grant or contract to carry out a project under this part shall give equal treatment to all volunteers who participate in such project, without regard to whether such volunteers are eligible to receive a stipend under subsection (d).

"(B) An individual who is not a low-income person may not become a volunteer under this part if allowing such individual to become a volunteer under this part would prevent a low-income individual from becoming a volunteer under this part or would displace a low-income person from being such a volunteer.

"(3) The Director may not require as a condition of receiving a grant or contract to carry out a project under this part, any applicant for such grant or contract—

"(A) to accept individuals who are not low-income persons to serve as volunteers under this part; or

"(B) to solicit locally generated contributions, in cash or in kind, to support such individuals.

"(4) Funds appropriated to carry out this part may not be used to pay any cost, including any administrative cost, incurred in connection with volunteers under this part who do not receive a stipend under subsection (d). Such cost incurred with respect to a volunteer may be paid with—

"(A) funds received by the Director as unrestricted gifts;

"(B) funds received by the Director as gifts to pay such cost;

"(C) funds contributed by such volunteer; or

"(D) locally generated contributions in excess of the amount required to be contributed under subsection (a), in the discretion of the recipient of a grant or contract under such subsection.".

(2) Section 211(f)(3) of the Domestic Volunteer Service Act of 1973, as added by paragraph (1), shall apply with respect to grants and contracts made under section 211(a) of such Act before the date of the enactment of this Act.

(b) Senior Companion Program.—Section 213(b) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5013(b)) is amended to read as follows:

"(b) Subsections (d), (e), and (f) of section 211, and such other provisions of part B as the Director determines to be necessary, shall apply to this part, except that for purposes of this part any reference in such subsections and such provisions to part B shall be deemed to be a reference to this part.".

SEC. 8. EVALUATION.

(a) General Authority.—Section 416(a) of the Act is amended to read as follows:

"(a) The Director shall measure and evaluate the impact of all programs authorized by this Act, their effectiveness in achieving stated goals, in general, and in relation to their cost, their impact on related programs, and their structure and mechanism for delivery of services. Each program shall be evaluated at least once every three years. Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated. Such evaluation shall also measure and evaluate compliance with the equitable distribution requirement of section 414 of this Act.".

(b) Title II Evaluation and Report to Congress.—Section 416 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5056) is amended—

(1) by redesignating subsection (f) as subsection (g), and

(2) by inserting after subsection (e) the following:

"(f) Not later than December 31, 1988, the Director shall—

"(1) evaluate the impact of ACTION Agency programs carried out under title II that relate to services that assist families caring for frail and disabled adult family members and shall include in such evaluation information on—

"(A) the range and extent of service needs of, and the services provided to, family caregivers assisted by volunteers;

"(B) the characteristics of volunteers and the skills, training, and supervision necessary to provide various types of volunteer assistance to family caregivers;

"(C) administrative costs, including recruitment, training, and supervision costs, associated with volunteer assistance to family caregivers; and

"(D) such other issues as may be relevant to provide services to assist family caregivers;

"(2) evaluate the impact that volunteers who participate in programs under parts B and C of title II without receiving a stipend have on such programs and shall include in such evaluation—

"(A) information on adminstrative costs associated with such volunteers;

"(B) a comparison of the quality of services provided by such volunteers and the quality of services provided by volunteers who receive a stipend under such parts, including the rate of absenteeism and turnover; and

"(C) a review of the effect that participation by volunteers who do not receive such stipend have on the administration of such programs; and

"(3) submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and

Human Resources of the Senate a report summarizing in detail the results of the evaluations made under paragraphs (1) and (2).".

SEC. 9. AUTHORIZATIONS OF APPROPRIATIONS.

(a) National Volunteer Antipoverty Programs.—Section 501 of the Act is amended by striking subsections (a), (b), (c), and (d)(1) and inserting the following:

"Sec. 501. (a)(1) There is authorized to be appropriated to carry out part A of title I (except section 109) $25,000,000 for fiscal year 1987, $26,000,000 for fiscal year 1988, and $27,040,000 for fiscal year 1989.

"(2) There is authorized to be appropriated to carry out section 109(c) and to expand the number of VISTA literacy corps volunteers in literacy programs and projects under part A of title I of this Act $2,000,000 for fiscal year 1987, $3,000,000 for fiscal year 1988, and $5,000,000 for fiscal year 1989.

"(3) There is authorized to be appropriated to carry out section 109(d) and to expand the number of VISTA literacy corps volunteers in literacy programs and projects under part A of title I of this Act $1,000,000 for each of the fiscal years 1987, 1988, and 1989.

"(b) There is authorized to be appropriated to carry out part B of title I of this Act $1,800,000 for each of the fiscal years 1987, 1988, and 1989.

"(c) There is authorized to be appropriated to carry out part C of title I of this Act $1,984,000 for each of the fiscal years 1987, 1988, and 1989.

"(d)(1) Of the amounts appropriated under this section for parts A, B, and C of title I and for sections 109(c) and 109(d), there shall first be available for part A of title I (other than section 109), an amount not less than the amount necessary to provide—

"(A) 2,400 years of volunteer service in fiscal year 1987;

"(B) 2,500 years of volunteer service in fiscal year 1988; and

"(C) 2,600 years of volunteer service in fiscal year 1989.".

(b) Retired Senior Volunteer Program.—Section 502(a) of the Act is amended—

(1) by striking out "$30,412,000" and all that follows through "1985, and", and

(2) by inserting after "1986" the following: ", $32,000,000 for fiscal year 1987, $33,280,000 for fiscal year 1988, and $34,610,000 for fiscal year 1989".

(c) Foster Grandparents and Older American Community Service Programs.—Section 502(b) of the Act is amended—

(1) by striking out "$52,650,000" and all that follows through "1985, and", and

(2) by inserting after "1986" the following: ", $60,000,000 for fiscal year 1987, $62,400,000 for fiscal year 1988, and $64,900,000 for fiscal year 1989".

(d) Senior Companions Program.—Section 502(c) of the Act is amended—

(1) by striking out "$17,607,000" and all that follows through "1985, and", and

(2) inserting after "1986" the following: ", $29,740,000 for fiscal year 1987, $30,930,000 for fiscal year 1988, and $32,170,000 for fiscal year 1989".

(e) Administration and Coordination.—Section 504 of the Act is amended by striking out "$25,800,000" and all that follows and inserting "$25,312,000 for each of the fiscal years 1987, 1988, and 1989.".

SEC. 10. TECHNICAL AMENDMENTS.

(a) Part Heading Correction.—

(1) The heading of part C of title II of the Act is amended to read as follows:

"Part C—Senior Companion Program".

(2) The item for part C of title II in the table of contents of the Act is amended to read as follows:

"Part C—Senior Companion Program".

(b) Conforming Amendment.—

(1) Section 16(a) of the Domestic Volunteer Service Act Amendments of 1984 is amended by striking out "Part C" and inserting in lieu thereof "Part D".

(2) Section 16(b) of such Act is amended by striking out "part C" and inserting in lieu thereof "part D".

(c) Section Heading Correction.—

(1) The heading of section 213 of the Act is amended by striking out "THE PROGRAM" and inserting in lieu thereof "VOLUNTEER SERVICE PROJECTS".

(2) The item for section 213 in the table of contents of the Act is amended by striking out "the program" and inserting in lieu thereof "volunteer service projects".

(d) Punctuation.—Section 122(a)(1) of the Act is amended by striking out a semicolon each place it appears and inserting in lieu thereof a comma.

(e) Reference.—The fifth sentence of section 401 of the Act is amended by striking out "level 5" and inserting in lieu thereof "level V".

(f) Punctuation.—Section 402(a)(1) of the Act (as redesignated by section 5(1) of this Act) is amended by inserting a comma immediately before "except" the second time it appears.

(g) Punctuation.—Section 419 of the Act is amended by striking out "to this Act" and inserting in lieu thereof "to this Act)".

(h) Reference.—Section 421(1) of the Act is amended by striking out "agency" and inserting in lieu thereof "Agency".

(i) Use of Gender Neutral Terminology.—

(1) Section 105(b) of the Act is amended by striking out "he" and inserting in lieu thereof "the Director".

(2) Section 112 of the Act is amended by striking out "he" and inserting in lieu thereof "the Director".

(3) Section 114(c) of the Act is amended by striking out "he" each time it appears and inserting in lieu thereof "the Director".

(4) Section 122(b) of the Act is amended by striking out "he" and inserting in lieu thereof "the Director".

(5)(A) Section 402(a) of the Act (as redesignated by section 5(1) of this Act) is amended by striking out "him" and inserting in lieu thereof "the Director".

(B) Section 402(a)(3) of the Act is amended by striking out "his functions" and inserting in lieu thereof "the functions of the Director".

(C) Section 402(a)(7) of the Act is amended by striking out "he" and inserting in lieu thereof "the Director".

(D) Section 402(a)(8) of the Act is amended by striking out "he" and inserting in lieu thereof "the Director".

(E) Section 402(a)(10) of the Act is amended by striking out "him" each time it appears and inserting in lieu thereof "the Director".

(F)(i) Section 402(a)(11)(B) of the Act is amended by striking out "him" and inserting in lieu thereof "the Director".

(ii) Section 402(a)(11)(B)(ii) of the Act is amended by striking out "his intention" and inserting in lieu thereof "the intention of the Director".

(G) Section 402(a)(14) is amended by striking out "he" and inserting in lieu thereof "the Director".

(6) Section 403(a) of the Act is amended by striking out "his official capacity" and inserting in lieu thereof "an official capacity".

(7) Section 404(e) of the Act is amended by striking out "he" and inserting in lieu thereof "the Director".

(8) Section 412(a) of the Act is amended by striking out "he" and inserting in lieu thereof "the Director".

(9) Section 415(d) of the Act is amended by striking out "he" and inserting in lieu thereof "the Director".

(10)(A) Section 601(c) of the Act is amended by striking out "his designee" and inserting in lieu thereof "the designee of the Director".

(B) Section 601(e) of the Act is amended by striking out "his official capacity" and inserting in lieu thereof "an official capacity".

SEC. 11. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this Act shall take effect October 1, 1986.

And the Senate agree to the same.

For consideration of all provisions of the House bill and of the Senate amendment and modifications committed to conference:

Augustus F. Hawkins,
Dennis E. Eckart,
James M. Jeffords,
Tom Coleman.

For consideration of all provisions of the House bill and of the Senate amendment (except sections 3, 4, 5, 7, and 8(a) of the House bill and sections 3, 6, and 9 of the Senate amendment) and modifications committed to conference:

Dale E. Kildee,
Major R. Owens,
Carl C. Perkins,
Terry L. Bruce,
Tom Petri,
Tom Tauke,

For consideration of all provisions of the House bill and of the Senate amendment (except sections 8(b), 8(c), 8(d), and 9 of the House bill and sections 4, 5, and 10 of the Senate amendment) and modifications committed to conference:

Pat Williams,
Mario Biaggi,
Matthew G. Martinez,
Charles A. Hayes,
A.R. Waldon, Jr.,
Bill Goodling,
Steve Bartlett,
Managers on the Part of the House.

Orrin G. Hatch,
Paula Hawkins,
Dan Quayle,
Edward M. Kennedy,
Christopher Dodd,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4116) to extend and improve the Domestic Volunteer Service Act of 1973, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the

House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

DOMESTIC VOLUNTEER SERVICE ACT AMENDMENTS OF 1986

House bill

The House bill amends the table of contents by adding a new item "Sec. 109. VISTA Literacy Corps."

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The Senate recedes.

Senate amendment

The Senate amendment amends the table of contents by changing the item for part C of title II to read "Part C—Senior Companions Program."

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

Senate amendment

The Senate amendment amends section 213 of the table of contents by striking "the program" and inserting "volunteer service projects".

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

Senate amendment

The Senate amendment amends the table of contents by adding a new item "Sec. 405. National Voluntary Service Advisory Council."

House bill

The House bill does not contain a comparable provision.

Conference agreement

The Senate recedes.

Senate amendment

The Senate amendment describes the tradition and importance of voluntarism in America.

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

House bill

The House bill states that the "purpose of ACTION, the federal domestic volunteer agency, is to foster and expand voluntary citizen services in activities designed to help the poor, the disadvantaged, the vulnerable, and the elderly."

Senate amendment

The Senate amendment states that "It is the intention of the Congress, through ACTION, the federal domestic volunteer agency, to foster and expand voluntary citizen service, and coordinate its efforts with other Federal agencies".

Conference agreement

The Senate recedes.

House bill

The House bill includes a technical amendment striking "and" at the end of paragraph 2.

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The Senate recedes.

House bill

The House bill requires the Director to establish procedures for national and local recruitment and placement of individuals as VISTA volunteers.

Senate bill

The Senate bill does not contain a comparable provision.

Conference agreement

The Senate recedes with amendment to limit expenditures for this purpose to $250,000.

House bill

The House bill strikes "he deems" and inserts "are considered".

Senate bill

The Senate amendment strikes "he" and inserts "the Director."

Conference agreement

The House recedes.

House bill

The House bill inserts a new section 109.

Senate bill

The Senate amendment inserts a new section 104 and redesignates the sections that follow.

Conference agreement

The Senate recedes.

House bill

The House bill specifies the purpose of the Literacy Corps as "strengthening, supplementing, and expanding the efforts of public and private nonprofit organizations to mobilize local, State, Federal and private sector financial and volunteer resources in addressing the problem of illiteracy throughout the United States."

Senate amendment

The Senate amendment includes "developing," before "strengthening,"; "public and nonprofit organizations at the local, State and Federal level" before "to mobilize"; and "to address" before "the problem."

Conference agreement

The House recedes.

House bill

The House bill authorizes assignment of volunteers "to projects and programs that are designed to meet the special needs of illiterate individuals and fulfull the antipoverty criteria of Part A."

Senate amendment

The Senate amendment specifies the assignment of volunteers "to projects or programs that provide assistance to functionally illiterate and illiterate individuals who are unserved or underserved by existing literacy education programs, with special emphasis upon individuals having the highest risk of illiteracy, and individuals with the lowest reading and educational level of competence."

Conference agreement

The House recedes with an amendment that deletes the word "existing" and reiterates the anti-poverty focus of the program.

House bill

The House bill specifies that projects and programs must utilize VISTA volunteers to meet the needs of illiterate individuals.

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The Senate recedes.

House bill

The House bill, in describing eligible sponsoring agencies or organizations, uses the term "includes" for the non-exhaustive list.

Senate amendment

The Senate amendment uses the phrase "any other appropriate organization" for its non-exhaustive list.

Conference agreement

The Senate recedes. It is the conferees intention that other appropriate organizations that meet the criteria under Section 103(a) of the Act may also have assigned to them literacy volunteers only if those volunteers work on literacy efforts.

House bill

The House bill specifies "local programs and projects that assist illiterate individuals in greatest need of assistance residing in unserved or underserved areas with the highest concentrations of illiteracy and of low income individuals and families."

Senate amendment

The Senate amendment specifies priority consideration being given to projects or programs: operating in unserved or underserved areas with the highest concentrations of individuals and families living at or below the poverty level; serving individuals reading at the zero to fourth grade levels; focusing on providing literacy services to high risk populations; and providing literacy services to parents of disadvantaged children between the ages of two and eight, who may be educationally at risk.

Conference agreement

The Senate recedes with an amendment which specifies the groups to which priority consideration must be given. These groups may include individuals in families living below the poverty level and parents of disadvantaged children between the ages of two and eight.

House bill

The House bill provides priority consideration to Statewide projects and programs.

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The Senate recedes with a technical amendment.

House bill

The House bill provides for assignment of volunteers to projects and programs that primarily utilize VISTA volunteers to tutor illiterate individuals.

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The Senate recedes.

House bill

The House bill, with slightly different wording, provides for equitable distribution of volunteers between rural and urban areas.

Senate amendment

The Senate amendment cites section 414 of the Act.

Conference agreement

The House recedes.

House bill

The House bill, with slightly different wording specifies that the VISTA Literacy Corps shall consist of all VISTA volunteers working on literacy projects and programs.

Senate amendment

The Senate amendment, with slightly different wording, specifies that the VISTA Literacy Corps shall consist of all VISTA volunteers working on literacy projects and programs.

Conference agreement

The Senate recedes.

House bill

The House bill provides that funds made available for the purposes of this section shall supplement and not supplant the level of services provided under Part A in FY 1986 to address the problem of illiteracy.

Senate amendment

The Senate does not contain a comparable provision.

Conference agreement

The Senate recedes with an amendment to specify that if total funding for VISTA is reduced either legislatively or through legislative action that may require administrative reductions, the VISTA volunteers placed in the Literacy Corps can be reduced proportionately.

Senate amendment

The Senate amendment includes the technical amendments for the section redesignation.

House bill

The House bill does not contain a comparable provision.

Conference agreement

The Senate recedes.

House bill

The House bill reorganizes current law and modifies the description of the University Year for ACTION program.

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The Senate recedes.

House bill

The House bill strikes "Health and Human Services" and inserts "Education."

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The Senate recedes.

House bill

The House bill inserts "(including Indian reservations)" after "rural areas."

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The Senate recedes.

Senate amendment

The Senate amendment makes a technical amendment by striking out each semicolon where it appears and inserting a comma.

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

House bill

The House bill strikes paragraph (2) and makes the necessary technical corrections.

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The House recedes.

House bill

The House bill amends the definition of "child" or "children" to include any mentally retarded individual or individuals who are less than 60 years of age.

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The House recedes.

Senate amendment

The Senate amendment authorizes the Director to assign non-low income individuals to serve as foster grandparents if they serve without stipend or reimbursement.

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes with an amendment specifying that the volunteers who work with or without a stipend are to be granted equal treatment by both the directors of the local programs as well as the Director of the action agency. Conferees note that the regulations should reflect this requirement for equal treatment. The conference agreement provides for the use of volunteers who serve without a stipend and specifies the conditions under which this authority may be used. The costs associated with volunteers serving without a stipend may be paid from funds received by the Directors as unrestricted gifts, restricted gifts, either cash or in-kind, including those which are donated on behalf of a particular project, and funds contributed by individual volunteers. Gifts made directly to local projects for costs associated with volunteers serving without a stipend may be accepted by that project on behalf of the Director.

While no foster grandparent project may be required to have volunteers serving without stipend or to raise local funds to pay for any costs associated with such volunteers as a condition for receiving a grant or contract (including renewals), projects may use locally generated contributions in excess of the required match for this purpose should they so desire.

In those projects where it is decided to use volunteers serving without stipend under the conditions prescribed in the law, it is expected that training, supervision and other support services will be made available equitably to all volunteers.

The Conferees intend that current regulations for low-income volunteers serving with a stipend apply to volunteers serving without a stipend. The Conferees recognize, however, that a volunteer serving without a stipend may not be available to serve 20 hours a week. Volunteers serving with a stipend serve an average of 3-4 clients during a 20 hour week, a ratio of approximately 5 hours per client. Volunteers serving without a stipend should be encouraged to work 20 hours. Any deviation from the established 20 hours of volunteer service should be approved by the project director on a case-by-case basis to ensure reasonable conformity with the average per client ratio for volunteers serving with a stipend in that project. The ratio is essential in establishing and maintaining a one-on-one continuous relationship between the volunteer and the client they are serving. The conferees, however, expect that volunteers serving without stipend will work with a minimum of two clients, 50 weeks a year.

Senate amendment

The Senate amendment amends the heading of part C of title II to read "Part C-Senior Companion Program"

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

Senate amendment

The Senate amendment amends the heading of section 213 by striking "The Program" and inserting "Volunteer Service Projects."

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

Senate amendment

The Senate amendment authorizes the Director to assign non-low income individuals to serve as senior companions if they serve without stipend or reimbursement.

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes with an amendment specifying that the volunteers who work with or without a stipend are to be granted equal treatment by both the directors of the local programs as well as the Director of the ACTION agency. The conferees intend that the regulations should reflect this requirement for equal treatment.

The conference agreement provides for the use of volunteers who serve without a stipend and specifies the conditions under which this authority may be used. The costs associated with volunteers serving without a stipend may be paid from funds received by the Director as unrestricted gifts, restricted gifts, either cash or in-kind, including those which are donated on behalf of a particular project, and funds contributed by individual volunteers. Gifts made directly to local projects for costs associated with volunteers serving without a stipend may be accepted by that project on behalf of the Director.

While no senior companion project may be required to have volunteers serving without stipend or to raise local funds to pay for any costs associated with such volunteers as a condition for receiving a grant or contract (including renewals), projects may use locally generated contributions in excess of the required match for this purpose should they so desire.

In those projects where it is decided to use volunteers serving without stipend under the conditions prescribed in the law, it is expected that training, supervision and other support services will be made available equitably to all volunteers.

The Conferees intend that current regulations for low-income volunteers serving with a stipend apply to volunteers serving without a stipend. The Conferees recognize, however, that a volunteer serving without a stipend may not be available to serve 20 hours per week. Volunteers serving with a stipend serve an average of 3-4 clients during a 20 hour week, a ratio of approximately 5 hours per client. Volunteers serving without a stipend should be encouraged to work 20 hours. Any deviation from the established 20 hours of volunteer service should be approved by the project director on a case-by-case basis to ensure reasonable conformity with the average per client ratio for volunteers serving with a stipend in that project. The ratio is essential in establishing and maintaining a one-on-one continuous relationship between the volunteer and the client they are serving. The conferees, however, except that the volunteers serving without a stipend will work with a minimum of two clients, 50 weeks a year.

Senate amendment

The Senate amendment amends section 401 by striking "level 5" and inserting "level V."

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

Senate amendment

The Senate amendment designates a new subsection (a).

House bill

The House bill does not contain a comparable provision.

Conference agreement

The Senate recedes.

Senate amendment

The Senate amendment in making the Act gender-free, strikes "him" and inserts "the Director".

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

Senate amendment

The Senate amendment inserts a comma immediately before "except" the second time it appears.

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

House bill

The House bill makes the language gender free.

Senate amendment

The Senate amendment, with slight differences, makes the language gender free.

Conference agreement

The House recedes.

House bill

The House bill makes the language gender free.

Senate amendment

The Senate amendment, with slight differences, makes the language gender free.

Conference agreement

The House recedes.

House bill

The House bill makes the language gender free.

Senate amendment

The Senate amendment, with slight differences, makes the language gender free.

Conference agreement

The House recedes.

House bill

The House bill makes the language gender free.

Senate amendment

The Senate amendment, with slight differences, makes the language gender free.

Conference agreement

The House recedes.

House bill

The House bill makes the language gender free.

Senate amendment

The Senate amendment, with slight differences, makes the language gender free.

Conference agreement

The House recedes.

Senate amendment

The Senate amendment authorizes the Director to accept in the name of the ACTION agency funds solicited from profit and nonprofit entities and to use those funds in accordance with the purposes and activities authorized by the Act. All funds so received shall become part of the gift fund account. The Director must assure that a majority of the aggregate amount in each fiscal year of all unrestricted gifts to the Agency will be spent to support volunteer projects carried out at the community level. The Director may not require local directors to conduct solicitations at the community level.

House bill

The House bill does not contain a comparable provision.

Conference agreement

The Senate recedes.

Senate amendment

The Senate amendment authorizes the establishment of a National Voluntary Service Advisory Council. The amendment stipulates the Council's: Purpose; composition; duties; length and number of membership terms; number of meetings each year; reimbursement of expenses for members who are not Federal employees; and financial disclosure requirements. Council meetings are to be public. The Council is required to make annual reports to the President, which will then be transmitted to the Congress.

House bill

The House bill does not contain a comparable provision.

Conference agreement

The Senate recedes.

House bill

The House bill provides for submission of a report describing the activities under section 103(b).

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The Senate recedes.

House bill

The House bill requires evaluations to be conducted every three years.

Senate amendment

The Senate amendment requires that the evaluations be conducted every 4 years.

Conference agreement

The Senate recedes.

Senate amendment

The Senate amendment requires the Director to evaluate the impact of Agency programs relating to services for frail and disabled adults.

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes with an amendment.

The Conferees expect that the ACTION agency, in carrying out the Older American Volunteer Programs evaluations, also examine the impact of the new provisions regarding volunteers serving without a stipend and the impact of Older American Volunteer Programs on services for frail and disabled adults. It is anticipated that no increase in appropriations will be necessary to meet these new reporting requirements due to the fact that evaluations are now being required every 3 years instead of every 2 years. Funds for this purpose may not be taken from those which would otherwise be used for Title I evaluations nor should the collection of this additional information disrupt ongoing evaluations. While these new issues are to be examined as part of the ongoing evaluation process, the results are to be transmitted to the United States Senate Committee on Labor and Human Resources and the United States House Committee on Education and Labor by December 31, 1988.

Senate amendment

The Senate amendment strikes "to this Act" and inserts "to this Act)".

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

Senate amendment

The Senate amendment strikes "agency" and inserts "Agency".

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

House bill

The House bill amends the definitions "public agencies or organization" and "Federal, State, or local agencies" to include Indian tribes.

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The Senate recedes.

House bill

The House bill authorizes the programs of part A of title I of this Act for 3 years at the following levels:

Volunteers in Service to America [VISTA]

Fiscal year:	
1987	$25,000,000
1988	26,250,000
1989	27,560,000

Senate amendment

The Senate amendment authorizes part A of title I for three years at the following levels:

Volunteers in Service to America [VISTA]

Fiscal year:	
1987	$25,000,000
1988	26,750,000
1989	27,522,000

Conference agreement

The Senate recedes with an amendment to authorities Part A of title I for three years at the following levels:

Volunteers in Service to America [VISTA]

Fiscal year:	
1987	$25,000,000
1988	26,000,000
1989	27,040,000

It is the intent of the conferees that no funds be expanded for the operation of the new literacy programs authorized by Sections 109 (c) and (d) until the funding required to carry out the activities in Part A is made available. It is further the intent of the conferees that no funds be expended for the operation of 109(d) until the funding required to carry out the activities in Part A and 109(c) is made available. Finally, it is the conferees intention that activities performed under sections 109 (c) and (d) be used to supplement and not supplant the level of services provided under Part A in fiscal year 1986 to address the problem of illiteracy.

House bill

The House bill authorizes funding for the Vista literacy corps for three years at the following funding levels:

VISTA Literacy Corps

Fiscal years:	
1987	$2,000,000
1988	$3,000,000
1989	$5,000,000

Senate Amendment

The Senate amendment authorizes funding for the Vista literacy corps for three years at the following funding levels:

Vista Literacy Corps

Fiscal years:	
1987	$2,000,000
1988	3,000,000
1989	5,000,000

Conference agreement

The provisions are identical.

House bill

The House bill authorizes such sums as are necessary for three years for funding section 109(d).

Senate amendment

The Senate amendment contains no comparable provision.

Conference agreement

The Senate recedes with amendment to authorize funding for section 109(d) at the following levels:

Fiscal years:	
1987	$1,000,000
1988	1,000,000
1989	1,000,000

House bill

The House bill authorizes funding for the Service Learning Programs and its programs for three years.

Fiscal years:	
1987	$1,800,000
1988	1,800,000
1989	1,800,000

Senate amendment

The Senate amendment authorizes funding for Service Learning Programs and its programs for three years.

Fiscal years:	
1987	$1,800,000
1988	1,800,000
1989	1,800,000

Conference agreement

The provisions are identical.

House bill

The House bill authorizes funding for the Special Volunteer Programs and its programs for three years.

Fiscal years:	
1987	$1,984,000
1988	1,984,000
1989	1,984,000

Senate amendment

The Senate amendment authorizes funding for the Special Volunteer Programs and its programs for three years.

Fiscal years:	
1987	$1,984,000
1988	1,984,000
1989	1,984,000

Conference agreement

The provisions are identical.

House bill

The House bill authorizes VISTA service funding floors at the following levels.

Fiscal years:	
1987	$2,600
1988	2,730
1989	2,865

Senate amendment

The Senate amendment authorizes VISTA service funding floors and such programs for three years.

Fiscal years:	
1987	$2,400
1988	2,400
1989	2,400

Conference agreement

The Senate recedes with amendment to authorize the program at the following levels:

Fiscal years:	
1987	$2,400
1988	2,500
1989	2,600

The Conferees intend that the figure for VISTA service years act only as a floor. To the extent possible, every effort should be made by the ACTION agency to maximize the number of service years in each fiscal year.

House bill

The House bill strikes paragraph 3.

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The Senate recedes.

House bill

The House bill authorizes the Retired Senior Volunteer Program and its programs for three years.

Fiscal year:	
1987	$32,340,000
1988	33,730,000
1989	35,320,000

Senate amendment

The Senate amendment authorizes the Retired Senior Volunteer Program and its programs for three years.

Fiscal year:	
1987	$31,100,000
1988	32,033,000
1989	32,990,000

Conference agreement

The Senate recedes with an amendment to authorize the programs at the following levels

Fiscal year:	
1987	$32,000,000
1988	33,280,000
1989	34,610,000

House bill

The House bill authorizes the Foster Grandparent Program and its programs for three years.

Fiscal year:	
1987	$61,050,000
1988	63,680,000
1989	66,660,000

Senate amendment

The Senate amendment authorizes the Foster Grandparent Program and its programs for three years.

Fiscal year:	
1987	$58,700,000
1988	60,461,000
1989	62,275,00,000

Conference agreement

The Senate recedes with an amendment to authorize the program at the following levels:

Fiscal year:	
1987	$60,000,000
1988	62,400,000
1989	64,900,000

House bill

The House bill authorizes the Senior Companions Program and its programs for three years.

Fiscal year:	
1987	$29,740,000
1988	31,020,000
1989	32,480,000

Senate amendment

The Senate amendment authorizes the Senior Companions Program and its programs for three years.

Fiscal year:	
1987	$28,600,000
1988	29,458,000
1989	30,342,000

Conference agreement

The Senate recedes with an amendment to authorize the programs at the following levels:

Fiscal year:	
1987	$29,740,000
1988	30,929,000
1989	32,170,000

House bill

The House bill authorizes the ACTION agency's Administration and Coordination programs for three years.

Fiscal year:	
1987	$25,000,000
1988	25,000,000
1989	25,000,000

Senate amendment

The Senate amendment authorizes the ACTION Agency's Administration and Coordination programs for three years.

Fiscal year:	
1987	$25,312,000
1988	25,312,000
1989	25,312,000

Conference agreement

The House recedes.

Senate amendment

The Senate amendment strikes "his designee" and inserting "the designee of the Director."

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

Senate amendment

The Senate amendment strikes "his official capacity" and inserts "an official capacity."

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

House bill

The House bill provides an effective date for the legislation.

Senate amendment

The Senate amendment does not contain a comparable provision.

Conference agreement

The Senate recedes.

Senate amendment

The Senate amendment makes technical and conforming changes to the Domestic Volunteer Service Act Amendment of 1984.

House bill

The House bill does not contain a comparable provision.

Conference agreement

The House recedes.

For consideration of all provisions of the House bill and of the Senate amendment and modifications committed to conference:

AUGUSTUS F. HAWKINS,
DENNIS E. ECHART,
DENNIS E. JEFFORDS,
TOM COLEMAN,

For consideration of all provisions of the House bill and of the Senate amendment (except sections 3, 4, 5, 7, and 8(a) of the House bill and sections 3, 6, and 9 of the Senate amendment) and modifications committed to conference:

DALE E. KILDEE,
MAJOR R. OWENS,
CARL C. PERKINS,
TERRY L. BRUCE,
TOM PETRI,
TOM TAUKE,

For consideration of all provisions of the House bill and of the Senate amendment (except sections 8(b), 8(c), 8(d), and 9 of the House bill and sections 4, 5, and 10 of the Senate amendment) and modifications committed to conference:

PAT WILLIAMS,
MARIO BIAGGI,
MATTHEW G. MARTINEZ,
CHARLES A. HAYES,
A.R. WALDON, JR.,
BILL GOODLING,
STEVE BARTLETT,
Managers on the Part of the House.

ORRIN G. HATCH,
PAULA HAWKINS,
DAN QUAYLE,
EDWARD M. KENNEDY,
CHRISTOPHER DODD,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 4021, REHABILITATION ACT AMENDMENTS OF 1986

Mr. WILLIAMS submitted the following conference report and statement on the bill (H.R. 4021) to extend and improve the Rehabilitation Act of 1973:

CONFERENCE REPORT (H. REPT. 99-955)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4021) to extend and improve the Rehabilitation Act of 1973, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Rehabilitation Act Amendments of 1986".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

TABLE OF CONTENTS

TITLE I—AMENDMENTS TO THE GENERAL PROVISIONS

Sec. 101. Statement of purpose.
Sec. 102. Rehabilitation Services Administration.
Sec. 103. Definitions.
Sec. 104. Monitoring, evaluation, and administration.
Sec. 105. Reports.
Sec. 106. Evaluation.
Sec. 107. Transfer of funds.
Sec. 108. State administration.
Sec. 109. Review of applications.

TITLE II—VOCATIONAL REHABILITATION SERVICES

Sec. 201. Authorization of appropriations.
Sec. 202. State plans.
Sec. 203. Individualized rehabilitation program.
Sec. 204. Scope of vocational rehabilitation services.
Sec. 205. Non-Federal share for construction.
Sec. 206. State allotments.
Sec. 207. Funds for American Indian vocational rehabilitation services.
Sec. 208. Payments to States; maintenance of effort.
Sec. 209. Client assistance program.
Sec. 210. Payments to States.
Sec. 211. American Indian vocational rehabilitation services grants.
Sec. 212. Study of needs of American Indians with handicaps.

TITLE III—RESEARCH AND TRAINING

Sec. 301. Authorization of appropriations.
Sec. 302. Redesignation of national institute.
Sec. 303. National Institute on Disability and Rehabilitation Research.
Sec. 304. Composition of Interagency committee.
Sec. 305. Research.

TITLE IV—SUPPLEMENTARY SERVICES AND FACILITIES

Sec. 401. Grants for construction of rehabilitation facilities.
Sec. 402. Vocational training services for individuals with handicaps.
Sec. 403. Training.
Sec. 404. Comprehensive rehabilitation centers.
Sec. 405. Special projects and supplementary services; reauthorization.
Sec. 406. Special demonstration programs.
Sec. 407. Special recreational programs.

TITLE V—NATIONAL COUNCIL ON THE HANDICAPPED

Sec. 501. Purpose of the Council.
Sec. 502. Duties of National Council.
Sec. 503. Staff.
Sec. 504. Reauthorization.

TITLE VI—ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Sec. 601. Architectural and Transportation Barriers Compliance Board.
Sec. 602. Interagency Coordinating Council.
Sec. 603. Electronic equipment accessibility.

TITLE VII—EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH HANDICAPS

Sec. 701. Equitable distribution of assistance.
Sec. 702. Reauthorization of part A of title VI.
Sec. 703. Projects with industry.
Sec. 704. Projects with industry reauthorization.
Sec. 705. Supported employment opportunities for individuals with severe handicaps.

TITLE VIII—SERVICES FOR INDEPENDENT LIVING

Sec. 801. Eligibility for comprehensive services.
Sec. 802. State plan assurance.
Sec. 803. State independent living council.
Sec. 804. Grants for centers for independent living.
Sec. 805. Evaluation and review of independent living centers.
Sec. 806. Reauthorization for title VII.

TITLE IX—AMENDMENTS TO OTHER LAWS

Sec. 901. Reauthorization of Helen Keller National Center Act.
Sec. 902. President's Committee on Employment of the Handicapped.

TITLE X—TECHNICAL AND MISCELLANEOUS PROVISIONS

Sec. 1001. Use of gender neutral terminology in Act.
Sec. 1002. Technical and conforming amendments.
Sec. 1003. Civil rights remedies equalization.
Sec. 1004. Cost rate report of secretary.
Sec. 1005. Maintenance of effort.
Sec. 1006. Effective Date.

TITLE I—AMENDMENTS TO THE GENERAL PROVISIONS

SEC. 101. STATEMENT OF PURPOSE.

Section 2 of the Rehabilitation Act of 1973 (hereinafter referred to as the "Act") is amended by inserting immediately before the period at the end thereof a comma and "for individuals with handicaps in order to maximize their employability, independence, and integration into the workplace and the community".

SEC. 102. REHABILITATION SERVICES ADMINISTRATION.

(a) QUALIFICATION OF COMMISSIONER.—Section 3 of the Act is amended by inserting after the second sentence the following new sentence: "The Commissioner shall be an individual with substantial experience in re-

habilitation and in rehabilitation program management.".

(b) Staffing.—Section 3 of the Act is amended by adding at the end thereof the following new subsection:

"(c) The Secretary shall take such action as necessary to ensure that—

"(1) the staffing of the Rehabilitation Services Administration shall be in sufficient numbers to meet program needs and at levels which will attract and maintain the most qualified personnel; and

"(2) such staff includes individuals who have training and experience in the provision of rehabilitation services and that staff competencies meet professional standards.".

SEC. 103. DEFINITIONS.

(a) Evaluation of Rehabilitation Potential.—Paragraph (5) of section 7 of the Act is amended—

(1) by inserting "recreational," in subparagraph (B) after "cultural, social,";

(2) by inserting "employability" after "individual's" the second time it appears;

(3) by striking out "and" at the end of subparagraph (F);

(4) by striking out the period at the end of subparagraph (G) and inserting in lieu thereof a semicolon and "and"; and

(5) by adding at the end thereof the following new subparagraph:

"(H) where appropriate, the provision of rehabilitation engineering services to any individual with a handicap to assess and develop the individual's capacities to perform adequately in a work environment.".

(b) Employability.—Section 7 of the Act is amended by redesignating paragraphs (6) through (10) as paragraphs (7) through (11), respectively, and by inserting after paragraph (5) the following new paragraph:

"(6) The term 'employability', with respect to an individual, means a determination that, with the provision of vocational rehabilitation services, the individual is likely to enter or retain, as a primary objective, full-time employment, and when appropriate, part-time employment, consistent with the capacities or abilities of the individual in the competitive labor market or any other vocational outcome the Secretary may determine consistent with this Act.".

(c) Federal Share.—

(1) Effective October 1, 1988, section 7(7) of the Act (as redesignated by subsection (b)) is amended to read as follows:

"(7)(A) Subject to subparagraphs (B) and (C), the term 'Federal share' means 80 percent.

"(B) For any fiscal year for which payments to a State under section 111(a) exceed such payments for fiscal year 1988, the Federal share for those payments in excess of the fiscal year 1988 amount shall be 79 percent for fiscal year 1989, 78 percent for fiscal year 1990, 77 percent for fiscal year 1991, 76 percent for fiscal year 1992, and 75 percent for fiscal year 1993.

"(C) The term 'Federal share' means 90 percent for the purposes of part C of title I of this Act and as specifically set forth in section 301(b)(3), except that with respect to payments pursuant to part B of title I of this Act to any State which are used to meet the costs of construction of those rehabilitation facilities identified in section 103(b)(2) in such State, the Federal share shall be the percentages determined in accordance with the provisions of section 301(b)(3) applicable with respect to the State.

"(D) For the purpose of determining the non-Federal share with respect to a State, expenditures by a political subdivision thereof or by a local agency shall be regarded as expenditures by such State, subject to such limitations and conditions as the Secretary shall by regulation prescribe.".

(2) Effective October 1, 1988, section 110(b)(2) of the Act is amended by striking out "80 percent" both places it appears and inserting in lieu thereof "the applicable Federal share".

(d) Handicapped Individual.—

(1) Section 7(8) of the Act (as redesignated by subsection (b)) is amended by striking out "handicapped individual" both places it appears and inserting in lieu thereof "individual with handicaps"; and

(2) The Act is amended—

(A) by striking out "a handicapped individual" each place it appears and inserting in lieu thereof "an individual with handicaps";

(B) by striking out "handicapped individual" each place it appears and inserting in lieu thereof "individual with handicaps"; and

(C) by striking out "handicapped individuals" each place it appears and inserting in lieu thereof "individuals with handicaps".

(e) Local Agency.—Section 7(9) of the Act (as redesignated by subsection (b)) is amended in the first sentence by striking out "Indian tribal organization (or combination of such units or organizations)" and inserting "Indian tribe (or combination of such units or tribes)".

(f) Rehabilitation Engineering.—Section 7 of the Act is further amended by redesignating paragraphs (11), (12), and (13) as paragraphs (13), (14), and (15), respectively, and by inserting before paragraph (13) (as redesignated) the following new paragraph:

"(12) The term 'rehabilitation engineering' means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with handicaps in areas which include education, rehabilitation, employment, transportation, independent living, and recreation.".

(g) Rehabilitation Facility.—Paragraph (13) of section 7 of the Act (as redesignated by subsection (f) of this section) is amended—

(1) by striking out "and" at the end of subparagraph (K);

(2) by striking out the period at the end of subparagraph (L) and inserting in lieu thereof a comma and "and"; and

(3) by adding at the end thereof "(M) psychosocial rehabilitation services for individuals with chronic mental illness.".

(h) Severe Handicap.—

(1) Paragraph (15) of section 7 of the Act (as redesignated by subsection (c)) is amended to read as follows:

"(15)(A) Except as provided in subparagraph (B), for purposes of this Act the term 'individual with severe handicaps' means an individual with handicaps (as defined in paragraph (8))—

"(i) who has a severe physical or mental disability which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of employability;

"(ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

"(iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.

"(B) For purposes of title VII of this Act the term 'individual with severe handicaps' means an individual whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of his or her physical or mental disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment.".

(2) The Act is amended by striking out "severely handicapped individuals" each place it appears and inserting in lieu thereof "individuals with severe handicaps".

(i) Supported Employment.—Section 7 of the Act is further amended—

(1) by redesignating paragraphs (14) and (15) as paragraphs (16) and (17), respectively; and

(2) by adding at the end thereof the following new paragraph:

"(18) The term 'supported employment' means competitive work in integrated work settings—

"(A) for individuals with severe handicaps for whom competitive employment has not traditionally occurred, or

"(B) for individuals for whom competitive employment has been interrupted or intermittent as a result of a severe disability, and

who, because of their handicap, need ongoing support services to perform such work. Such term includes transitional employment for individuals with chronic mental illness. For the purpose of this Act, supported employment as defined in this paragraph may be considered an acceptable outcome for employability.".

(j) Indian.—Section 7 of the Act is further amended by inserting at the end thereof the following new paragraphs:

"(19) The term 'public or nonprofit agency or organization' shall include an Indian tribe.

"(20) The terms 'Indian', 'American Indian', and 'Indian American' mean an individual who is a member of an Indian tribe.

"(21) The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act).".

SEC. 104. MONITORING, EVALUATION, AND ADMINISTRATION.

(a) Monitoring and Evaluation.—Section 12(a) of the Act is amended by striking out paragraph (5) and inserting in lieu thereof the following new paragraph:

"(5) provide monitoring and conduct evaluations.".

(b) Information Task Force.—Section 12(b) of the Act is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) In carrying out the provisions of this Act, the Commissioner shall appoint such task forces as may be necessary to collect and disseminate information in order to improve the ability of the Commissioner to carry out the provisions of this Act.".

SEC. 105. REPORTS.

Section 13 of the Act is amended—

(1) in the first sentence by striking out "for transmittal" and inserting in lieu thereof "and";

(2) by striking out the period at the end of the first sentence and inserting in lieu thereof ", including the activities and staffing of the information clearinghouse under section 15."; and

(3) by inserting at the end thereof "The annual report shall include an evaluation of the status of individuals with severe handicaps participating in programs under this Act.".

SEC. 106. EVALUATION.

(a) Evaluation General Rule.—The first sentence of section 14(a) of the Act is amended to read as follows: "For the purpose of improving program management and effectiveness, the Commissioner shall evaluate all the programs authorized by this Act, their general effectiveness in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services, using appropriate methodology and evaluative research designs.".

(b) Report of the Commissioner.—Section 14(c) of the Act is amended by inserting "including the standards used for such evaluations," after "effectiveness,".

(c) Use of Standards.—Section 14 of the Act is amended by striking out "Secretary" each time it appears and inserting in lieu thereof "Commissioner".

SEC. 107. TRANSFER OF FUNDS.

Section 16 of the Act is amended to read as follows:

"TRANSFER OF FUNDS

"Sec. 16. (a) Except as provided in subsection (b) of this section, no funds appropriated under this Act for any research program or activity may be used for any purpose other than that for which the funds were specifically authorized.

"(b) No more than one-half of 1 percent of funds appropriated for discretionary grants, contracts, or cooperative agreements authorized by this Act may be used for the purpose of providing non-Federal panels of experts to review applications for such grants, contracts, or cooperative agreements.".

SEC. 108. STATE ADMINISTRATION.

(a) State Administration.—The Act is amended by inserting after section 16 the following new section:

"STATE ADMINISTRATION

"Sec. 17. The application of any State rule or policy relating to the administration or operation of programs funded by this Act (including any rule or policy based on State interpretation of any Federal law, regulation, or guideline) shall be identified as a State imposed requirement.".

(b) Conforming Amendment.—The table of contents of the Act is amended by inserting after the item relating to section 16 the following:

"Sec. 17. State administration.".

SEC. 109. REVIEW OF APPLICATIONS.

(a) Review Authorized.—The Act is amended by inserting after section 17 (as added by section 108) the following new section:

"REVIEW OF APPLICATIONS

"Sec. 18. Applications for grants or contracts in excess of $60,000 in the aggregate authorized to be funded under this Act other than grants or contracts for evaluations, dissemination, or conferences shall be reviewed by panels of experts which shall include a majority of non-Federal members. Non-Federal members may be provided travel, per diem, and consultant fees not to exceed the rate provided for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code.".

(b) Conforming Amendment.—The table of contents of the Act is amended by inserting after the item relating to section 16 the following:

"Sec. 18. Review of applications.".

TITLE II—VOCATIONAL REHABILITATION SERVICES

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

(a) State Grant Authorization.—Section 100(b)(1) of the Act is amended to read as follows—

"(b)(1)(A) For the purpose of making grants to States under part B of this title (other than grants under section 112) to assist States in meeting the costs of vocational rehabilitation services provided in accordance with State plans under section 101, there is authorized to be appropriated $1,281,000,000 for fiscal year 1987 and the amount determined under subsection (c) for each of the fiscal years 1988, 1989, 1990, and 1991. The amount determined under subsection (c) for each fiscal year shall be based upon the amount authorized by this subsection, or the amount appropriated for this subsection, whichever is higher, plus the amount determined under subsection (c) for the immediately preceding fiscal year.

"(B) In addition, there are authorized to be appropriated for such purpose such additional sums as may be necessary for each of the fiscal years 1987 through 1991. Any such sums shall be allocated in accordance with section 110(a)(4).

"(C) In no event may the amount appropriated for the purpose of making grants to States under part B of this title (other than section 112) be more than $1,281,000,000 for fiscal year 1987, $1,409,100,000 for fiscal year 1988, $1,550,010,000 for fiscal year 1989, $1,705,011,000 for fiscal year 1990, and $1,875,512,100 for fiscal year 1991.".

(b) Innovation and Expansion Grants Authorization.—Section 100(b)(2) of the Act is amended to read as follows:

"(2) For the purpose of allotments under section 120(a)(1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.".

(c) Conforming Amendment.—Section 100(d) of the Act is amended by striking out "1986" and inserting "1991".

SEC. 202. STATE PLANS.

(a) Assessment of Rehabilitation Needs.—

(1) Section 101(a)(5)(A) of the Act is amended—

(A) by inserting "the results of a comprehensive, State-wide assessment of the rehabilitation needs of individuals with severe handicaps residing within the State and the State's response to the assessment," after "including";

(B) by inserting after "severe handicaps" the first time it appears, the following: "including individuals served under part C of title VI of this Act,";

(C) by striking out "show (i)" and inserting in lieu thereof "(i) show and provide the justification for"; and

(D) by inserting "show" after "(ii)".

(2) Section 101(a)(5) of the Act is amended—

(A) by striking out "and" at the end of subclause (A);

(B) by inserting "and" at the end of subclause (B); and

(C) by adding at the end thereof the following new subclause:

"(C) describe how rehabilitation engineering services will be provided to assist an increasing number of individuals with handicaps;".

(b) Personnel.—Section 101(a)(7)(B) of the Act is amended by inserting "qualified" after "facilities and".

(c) Provision of Services.—Section 101 (a)(8) of the Act is amended to read as follows:

"(8) provide, at a minimum, for the provision of the vocational rehabilitation services specified in clauses (1) through (3) and clause (12) of section 103(a), and for the provision of such other services as are specified under such section after a determination that comparable services and benefits are not available under any other program, except that such determinations shall not be required where it would delay the provision of such services to any individual at extreme medical risk;".

(d) Cooperative Arrangements.—Section 101(a)(11) of the Act is amended by inserting "community mental health programs," after "veterans programs,".

(e) Needs Assessment.—Section 101(a)(15) of the Act is amended—

(1) by striking out "(including" and inserting in lieu thereof ", including conducting a full needs assessment for serving individuals with severe handicaps and including"; and

(2) by striking out "agency)" and inserting in lieu thereof "agency".

(f) Consultation With Indian Tribes.—Section 101(a)(20) of the Act is amended by inserting "as appropriate, the State shall actively consult with Indian tribes and tribal organizations and native Hawaiian organizations in the development of the State plan, and that," after "Commissioner that,".

(g) Public Meetings; Transition.—Section 101(a) of the Act is amended—

(1) in paragraph (21) by striking out "and" after "organizations;";

(2) in paragraph (22) by striking out the period and inserting in lieu thereof a semicolon; and

(3) by inserting at the end thereof the following new paragraphs:

"(23)(A) provide satisfactory assurances that in the formulation of policies governing the provision of the rehabilitation services consistent with the State plan, and any revisions, that the State agency conducts public meetings throughout the State, after appropriate and sufficient notice, to allow interested groups and organizations and all segments of the public an opportunity to comment on the State plan, and (B) include a summary of such comments and the State agency's response to such comments;

"(24) contain the plans, policies, and methods to be followed to assist in the transition from education to employment related activities.".

(h) Supported Employment Services.—Section 101(a) of the Act (as amended by subsection (g))—

(1) by striking out the period at the end of clause (24) and inserting in lieu thereof a semicolon and the word "and"; and

(2) by adding at the end thereof the following new clause:

"(25) provide satisfactory assurances that the State has an acceptable plan for part C of title VI.".

SEC. 203. INDIVIDUALIZED REHABILITATION PROGRAM.

(a) Individualized Written Rehabilitation Program.—Section 102(b) of the Act is amended to read as follows:

"(b)(1) Each individualized written rehabilitation program shall—

"(A) be developed on the basis of a determination of employability designed to achieve the vocational objective of the individual;

"(B) include a statement of the long-range rehabilitation goals based on an assessment determined through an evaluation of rehabilitation potential for the individual;

"(C) include a statement of the intermediate rehabilitation objectives related to the attainment of such goals based on an assessment determined through an evaluation of rehabilitation potential;

"(D) where appropriate, include a statement of the specific rehabilitation engineering services to be provided to assist in the implementation of intermediate objectives and long-range rehabilitation goals for the individual;

"(E) include an assessment of the expected need for post-employment services;

"(F) include a statement of the specific vocational rehabilitation services to be provided and the projected dates for the initiation and the anticipated duration of each such service;

"(G) include objective criteria and an evaluation procedure and schedule for determining whether such goals and objectives are being achieved;

"(H) provide for a reassessment of the need for post-employment services prior to case closure and, where appropriate, for severely handicapped individuals, the development of a statement detailing how such services shall be provided or arranged through cooperative agreements with other service providers; and

"(I) provide a description of the availability of a client assistance project established in such area pursuant to section 112.

"(2) Each individualized written rehabilitation program shall be reviewed annually at which time such individual (or in appropriate cases, the parents or guardian of the individual) will be afforded an opportunity to review such program and jointly redevelop and agree to its terms. Each individualized written rehabilitation program shall be revised as needed.".

(b) Review of Determinations.—Section 102(d) of the Act is amended to read as follows:

"(d)(1) Except as provided in paragraph (4), the Director of any designated State unit shall establish procedures for the review of determinations made by the rehabilitation counselor or coordinator under this section, upon the request of an individual with handicaps (or, in appropriate cases, such individual's parents or guardian).

"(2) Such review procedures shall provide an opportunity to such individuals for the submission of additional evidence and information to an impartial hearing officer who shall make a decision based on the provisions of the State plan approved under section 101(a).

"(3)(A) Within 20 days of the mailing of the decision to the individual with handicaps (or, in appropriate cases, such individual's parents or guardian), the Director shall notify such individuals of the intent to review such decision in whole or in part.

"(B) If the Director decides to review the decision, such individuals shall be provided an opportunity for the submission of additional evidence and information relevant to a final decision.

"(C) A final decision shall be made in writing by the Director and shall include a full report of the findings and the grounds for such decision. When a final decision is made, a copy of such decision shall be provided to such individuals.

"(D) Except as provided in paragraph (4), the Director may not delegate responsibility to make any such final decision to any other officer or employee of the designated State unit.

"(4)(A) A fair hearing board, established by a State before January 1, 1985, and authorized under State law to review determinations under this Act, is authorized to carry out the responsibilities of the Director under this subsection.

"(B) The provisions of paragraphs (1) through (3) of this subsection shall not apply to any State to which subparagraph (A) of this paragraph applies.".

"(5)(A) The Director shall collect data described in subparagraph (B) and prepare and submit to the Commissioner a report containing such data. For the report submitted on or before February 1, 1988, the Commissioner shall prepare a summary of the information furnished under this paragraph and include the summary in the annual report submitted under section 13.

"(B) The data required to be collected under this paragraph shall include—

"(1) a description of State procedures for review;

"(2) the number of appeals to the independent hearing officer and the State Director, including the type of complaint and the issues involved;

"(3) the number of decisions by the State Director reversing in whole or in part the decision of the impartial hearing officer; and

"(4) the number of decisions affirming the position of the individual with handicaps assisted through the client assistance program.".

SEC. 204. SCOPE OF VOCATIONAL REHABILITATION SERVICES.

(a) Rehabilitation Technology.—Section 103(a)(1) of the Act is amended by inserting "evaluation by personnel skilled in rehabilitation engineering technology," after "appropriate,".

(b) Postemployment Services.—Section 103(a)(2) of the Act is amended by striking out "other postemployment services necessary to assist such individuals to maintain their employment and" and insert in lieu thereof "specific postemployment services necessary to assist such individuals maintain or regain employment, and other".

(c) Rehabilitation Engineering Services.—Section 103(a) of the Act is amended—

(1) by striking out "and" at the end of clause (10);

(2) by striking out the period at the end of clause (11) and inserting in lieu thereof a semicolon and "and"; and

(3) by adding at the end thereof the following new clause:

"(12) rehabilitation engineering services.".

SEC. 205. NON-FEDERAL SHARE FOR CONSTRUCTION.

Section 104 of the Act is amended by striking out "title," and inserting in lieu thereof "title (or to an Indian tribe under part D of this title),".

SEC. 206. STATE ALLOTMENTS.

(a) Additional Payments.—Section 110(b)(2) of the Act is amended—

(1) by striking out ", as a result of the maintenance of effort provisions of such section,"; and

(2) by inserting "for fiscal year 1972" after "of such State".

(b) Reallotment.—Section 110(c) of the Act is amended to read as follows:

"(c)(1) Not later than forty-five days prior to the end of the fiscal year, the Commissioner shall determine, after reasonable opportunity for the submission to the Commissioner of comments by the State agency administering or supervising the program established under this title, that any payment of an allotment to a State under section 111(a) for any fiscal year will not be utilized by such State in carrying out the purposes of this title.

"(2) As soon as practicable but not later than the end of the fiscal year, the Commissioner shall make such amount available for carrying out the purposes of this title to one or more other States to the extent the Commissioner determines that such other State will be able to use such additional amount during that fiscal year or to pay for initial expenditures during the subsequent fiscal year for carrying out such purposes.

"(3) For the purposes of this part, any amount made available to a State for any fiscal year pursuant to this subsection shall be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year.".

SEC. 207. FUNDS FOR AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES.

Section 110 of the Act is amended—

(1) in subsection (a)(1) by striking out "For" and inserting in lieu thereof "Subject to the provisions of subsection (d), for"; and

(2) by inserting after subsection (c) the following subsection:

"(d)(1) For fiscal year 1987 and for each subsequent fiscal year, the Commissioner shall reserve from the amount appropriated under section 100(b)(1) for allotment under this section a sum, determined under paragraph (2), to carry out the purposes of part D of this title.

"(2) For any fiscal year the sum shall be not less than ¼ of one percent and not more than one percent of the amount under paragraph (1), as determined by the Secretary.".

SEC. 208. PAYMENTS TO STATES; MAINTENANCE OF EFFORT.

Section 111(a) of the Act is amended to read as follows:

"Sec. 111. (a)(1) Except as provided in paragraph (2), from each State's allotment under this part for any fiscal year (including any additional payment to it under section 110(b)), the Commissioner shall pay to a State an amount equal to the Federal share of the cost of vocational rehabilitation services under the plan for that State approved under section 101, including expenditures for the administration of the State plan.

"(2)(A) The total of payments under paragraph (1) to a State for a fiscal year may not exceed its allotment under subsection (a) (and any additional payment under subsection (b)), of section 110 for such year and such payments shall not be made in an amount which would result in a violation of the provisions of the State plan required by section 101(a)(17).

"(B) The amount otherwise payable to a State for a fiscal year under this section shall be reduced by any amount by which expenditures from non-Federal sources under the State plan during such year under this title are less than the average of the total of

such expenditures for the three preceding fiscal years.

"(C) The Commissioner may waive or modify any requirement or limitation under paragraphs (A) and (B) if the Commissioner determines that a waiver or modification is an equitable response to exceptional or uncontrollable circumstances affecting the State.".

SEC. 209. CLIENT ASSISTANCE PROGRAM.

(a) Information on Available Services.—Section 112(a) of the Act is amended by adding at the end thereof the following new sentence: "The client assistance program may provide information on the available services under this Act to any handicapped individuals in the State.".

(b) Redesignation of Client Assistance Agency.—

(1) The last sentence of section 112(c)(1) of the Act is amended by inserting after "may" a comma and the following: "in the initial designation,".

(2) Section 112(c)(1) of the Act is amended—

(A) by inserting "(A)" after the paragraph designation; and

(B) by adding at the end thereof the following new paragraph:

"(B) The Governor may not redesignate the agency designated under subparagraph (A) without good cause and only after notice and an opportunity for public comment has been given of the intention to make such redesignation.".

(c) Payment of Allotment.—Section 112(e)(3) of the Act is amended to read as follows:

"(3) Except as specifically prohibited by or as otherwise provided in State law, the Secretary shall pay to the agency designated under subsection (c) the amount specified in the application approved under subsection (f).".

(d) Allotment.—Paragraph (1) of section 112(e) of the Act is amended by inserting at the end thereof the following new subparagraph:

"(D)(i) In any fiscal year that the funds appropriated for such fiscal year exceed $7,500,000, the minimum allotment shall be $75,000 for States and $45,000 for territories.

"(ii) Subject to subsection (c), the Commissioner may increase the minimum allotment under subparagraph (A) for any fiscal year for which funds appropriated under this section for such fiscal year exceed the sums appropriated under this section for the preceding fiscal year by more than the percentage increase in the Consumer Price Index published monthly by the Bureau of Labor Statistics.".

(e) Employee Provision.—Paragraph (1) of section 112(g) of the Act is amended by striking out ", or receive benefits of any kind directly or indirectly from".

(f) Authorization of Appropriations.—Section 112(i) of the Act is amended to read as follows:

"(i) There are authorized to be appropriated $7,100,000 for fiscal year 1987, $7,550,000 for fiscal year 1988, $8,000,000 for fiscal year 1989, $8,450,000 for fiscal year 1990, and $8,796,000 for fiscal year 1991 to carry out the provisions of this section.".

SEC. 210. PAYMENTS TO STATES.

Section 121(b) of the Act is amended in the first sentence by striking out "the fiscal year ending September 30, 1986." and inserting in lieu thereof "fiscal year 1991.".

SEC. 211. AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES GRANTS.

(a) Grants.—Section 130(a) of the Act is amended to read as follows:

"Sec. 130. (a) The Commissioner, in accordance with the provisions of this part may make grants to the governing bodies of Indian tribes located on Federal and State reservations (and consortia of such governing bodies) to pay 90 percent of the costs of vocational rehabilitation services for handicapped American Indians residing on such reservations. The non-Federal share of such costs may be in cash or in kind, fairly valued, and the Commissioner may waive such non-Federal share requirement in order to carry out the purposes of this Act.".

(b) Application.—Section 130(b) of the Act is amended—

(1) in paragraph (1)(B) by inserting immediately before the semicolon "and that, where appropriate, may include services traditionally used by Indian tribes";

(2) in paragraph (3) after "months" by inserting "or more than 36 months,"; and

(3) by inserting after paragraph (3) the following new paragraphs:

"(4) In making grants under this part, the Secretary shall give priority consideration to applications for the continuation of programs which have been funded under this part.

"(5) Nothing in this section may be construed to authorize a separate service delivery system for Indian residents of a State who reside in non-reservation areas.".

(c) Allotment.—Section 130 of the Act is amended by striking out all of subsection (c) and by redesignating subsection (d) as subsection (c).

SEC. 212. STUDY OF NEEDS OF AMERICAN INDIANS WITH HANDICAPS.

(a) Study of Needs of American Indians With Handicaps.—Part D of title I of the Act is amended by inserting at the end thereof the following new section:

"STUDY OF NEEDS OF AMERICAN INDIANS WITH HANDICAPS

"Sec. 132. The Secretary shall conduct a study on the special problems and needs of Indians with handicaps both on and off the reservation, in consultation with the Director of the Office of Special Education and Rehabilitative Services, the Director of the National Institute on Disability and Rehabilitation Research, the Assistant Secretary of the Interior for Indian Affairs, the Director of Indian Health Services, representatives of affected Indian tribes and tribal groups, and other appropriate officials, organizations, and individuals. The study shall also evaluate the nature and extent of cooperative efforts among programs conducted under this Act. Not later than 12 months after the date of enactment of the Rehabilitation Act Amendments of 1986, the Secretary shall submit the results of such study, together with such recommendations as are appropriate, to the President and to the appropriate committees of the Congress.".

(b) Conforming Amendment.—The table of contents of the Act is amended by inserting after the item relating to section 131 the following:

"Sec. 132. Study of needs of handicapped American Indians.".

TITLE III—RESEARCH AND TRAINING

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Section 201(a) of the Act is amended to read as follows:

"Sec. 201. (a) There are authorized to be appropriated—

"(1) for the purpose of providing for the expenses of the National Institute on Disability and Rehabilitation Research under section 202, other than expenses to carry out section 204, such sums as may be necessary for fiscal year 1987 and for each succeeding fiscal year ending prior to October 1, 1991; and

"(2) $49,000,000 for fiscal year 1987, $52,000,000 for fiscal year 1988, $55,000,000 for fiscal year 1989, $58,000,000 for fiscal year 1990, and $60,378,500 for fiscal year 1991 for the purpose of carrying out section 204, of which $1,000,000 shall be available for fiscal year 1987, $1,050,000 for fiscal year 1988, $1,102,500 for fiscal year 1989, $1,160,000 for fiscal year 1990, and $1,208,000 for fiscal year 1991 for the purpose of carrying out the last sentence of section 204(b)(2)(C).".

SEC. 302. REDESIGNATION OF NATIONAL INSTITUTE.

(a) Redesignation.——Section 202 of the Act is amended by redesignating the "National Institute of Handicapped Research" as the "National Institute on Disability and Rehabilitation Research".

(b) References.—The Act is amended by striking out "National Institute of Handicapped Research" each place it appears in the Act (including the table of contents) and inserting in lieu thereof "National Institute on Disability and Rehabilitation Research". Any reference in any other provision of law to the "National Institute of Handicapped Research" shall be considered to be a reference to the "National Institute on Disability and Rehabilitation Research".

SEC. 303. NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH.

(a) American Indian Services.—Section 202(b) of the Act is amended—

(1) in paragraph (2) by inserting "tribal," after "State,"; and

(2) in paragraph (8) by inserting "the Bureau of Indian Affairs, the Indian Health Service," after "Administration,".

(b) Pacific Basin Rehabilitation Center.—Section 202(j)(2) of the Act is amended—

(1) by inserting immediately before the period the following: "in order to improve services to individuals with handicaps through relevant rehabilitation research and training in the Pacific Basin and to assist in the coordination of rehabilitation services provided by a broad range of agencies and entities; and

(2) by adding at the end thereof the following: "Such Center shall (A) develop a sound demographic base, (B) analyze, develop, and utilize appropriate technology, (C) develop a culturally relevant rehabilitation manpower development program, and (D) facilitate interagency communication and cooperation, implementing advanced information technology.".

(c) Rural Rehabilitation Center.—Section 202(j) of the Act is amended by inserting at the end thereof the following new paragraph:

"(3) The Director shall establish, directly or by grant or contract, a center associated with an institution of higher education, for research and training concerning the delivery of rehabilitation services to rural areas.".

(d) Grants for Training.—Section 202 of the Act is amended by inserting after subsection (j) the following subsection:

"(k) The Director shall make grants to institutions of higher education for the training of researchers in the field of rehabilitation of individuals with handicaps.".

(e) Report to Congress.—Section 202 of the Act is amended by inserting after subsection (k) the following new subsection:

"(l) The Director shall submit to the Congress, not later than one year after the date of the enactment of the Rehabilitation Act

Amendments of 1986, policy recommendations for the establishment by the Congress of an agency designed to ensure (1) the development and cost-effective production and marketing of technological devices; and (2) the efficient distribution of such technology to individuals with handicaps. Such recommendations shall specifically evaluate the feasibility of the chartering by Congress of a private organization or the establishment of a joint public-private corporation to provide marketing and production-related services to the public and private sectors. The policy recommendation shall include suggested funding alternatives for an organization or agency and such other suggestions as the Director or the Committee on Handicapped Research may consider appropriate. Further such recommendations shall consider any potential conflicts of interest in the evaluation and marketing of new products for use by individuals with handicaps. In developing such policy recommendations, the Director shall solicit the views of the Interagency Committee on Handicapped Research and shall submit any dissenting views offered by any member of that Committee together with the submission of policy recommendations.".

(f) STUDY OF HEALTH INSURANCE PRACTICES.—Section 202 of the Act is amended by inserting after subsection (l) the following subsection:

"(m) The Director shall conduct a study of health insurance practices and policies which affect individuals with handicaps. Not later than February 1, 1990, the Director shall submit a report of the study to the appropriate committees of the Congress.".

SEC. 304. COMPOSITION OF INTERAGENCY COMMITTEE.

Section 203(a)(1) of the Act is amended—

(1) by inserting "the Director of the National Institute of Mental Health," after "Institutes of Health,"; and

(2) by inserting "the Assistant Secretary of the Interior for Indian Affairs, the Director of the Indian Health Service," after "Transportation,".

SEC. 305. RESEARCH.

(a) RESEARCH ACTIVITIES.—Section 204(a) of the Act is amended in the first sentence by inserting "Indian tribes, and tribal organizations," after "education,".

(b) GENERAL AUTHORITY.—Section 204(a) of the Act is amended in the second sentence—

(1) by inserting "recreational," after "vocational, social,"; and

(2) by inserting "studies, analyses, and other activities related to supported employment;" after "special needs of handicapped individuals;".

(c) SPECIALIZED RESEARCH ACTIVITIES.—(1) Section 204(b) of the Act is amended—

(A) in the second sentence of paragraph (1) by striking out "Center," and inserting in lieu thereof "Center (and as appropriate shall include consideration of rural issues),";

(B) by adding at the end of paragraph (1) the following: "The peer review of all applications for the renewal of a Rehabilitation Research and Training Center grant shall take into account the past performance of the applicant in carrying out the grant. The host institution with which the Rehabilitation Research and Training Center is affiliated may not collect in excess of 15 percent in indirect cost charges. Beginning with fiscal year 1991, awards under clause (C) of this paragraph shall be made on a competitive basis.".

(2) Section 204(b)(2) of the Act is amended—

(A) by inserting "and disseminate" after "develop" in clause (A);

(B) by striking out "and to (B)" and inserting in lieu thereof "(B) demonstrate and disseminate innovative models for the delivery to rural and urban areas of cost-effective rehabilitation engineering services that promote utilization of engineering and other scientific research to assist in meeting the employment and independent living needs of individuals with severe handicaps, to (C)"; and

(C) by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "and to (D) demonstrate and disseminate innovative models for the delivery of cost-effective rehabilitation engineering services to assist in meeting the needs of, and addressing the barriers confronted by, individuals with handicaps. In fiscal year 1987, at least two such Rehabilitation Engineering Centers shall be established. One grant to provide demonstrations pursuant to clause (D) of this paragraph shall be made to an agency or organization in the State of South Carolina and one such grant shall be made to an agency or organization in the State of Connecticut.".

(3) Section 204(b)(3) of the Act is amended by inserting at the end thereof: "In the award of grants under this paragraph the Director shall take into account the location of any proposed Center and the appropriate geographic and regional allocation of such Centers.".

(4) Section 204(b)(7) of the Act is amended by inserting "the National Institute of Mental Health," after "Institutes of Health,".

(5) Section 204(b)(8) of the Act is amended by inserting before the period ", except that research concerning handicapped Indian Americans shall include those 55 and older".

(6) Section 204(b)(11) of the Act is amended by striking out all that follows "(B)" and inserting in lieu thereof "such physical therapy, language development, pediatric, nursing, psychological, and psychiatric services as are necessary for such children; and (C) appropriate services for the parents of such children, including psychological and psychiatric services, parent counseling, and training.".

(c) ADDITIONAL RESEARCH ACTIVITIES.—Section 204(b) of the Act is amended by adding at the end thereof the following new paragraphs:

"(14) Conduct of studies of the rehabilitation needs of American Indian populations and of effective mechanisms for the delivery of rehabilitation services to Indians residing on and off reservations.".

"(15) Conduct of a demonstration program under which one or more projects national in scope shall be established to develop procedures to provide incentives for the development, manufacturing, and marketing of orphan technological devices designed to enable individuals with handicaps to achieve independence and access to gainful employment.".

(d) SPECIAL RULE.—Section 204 of the Act is amended by adding at the end thereof the following new subsection:

"(d)(1) In carrying out evaluations of research demonstration and related projects under this section, the Director is authorized to make arrangements for site visits to obtain information on the accomplishments of the projects.

"(2) The Director shall not make a grant under this section which exceeds $299,999 unless the peer review of the grant application has included a site visit.".

TITLE IV—SUPPLEMENTARY SERVICES AND FACILITIES

SEC. 401. GRANTS FOR CONSTRUCTION OF REHABILITATION FACILITIES.

Section 301(a) of the Act is amended—

(1) in the first sentence by striking out "fiscal year ending before October 1, 1986." and inserting in lieu thereof "of the fiscal years 1987, 1988, 1989, 1990, and 1991."; and

(2) in the second sentence by striking out "October 1, 1987." and inserting in lieu thereof "October 1, 1992.".

SEC. 402. VOCATIONAL TRAINING SERVICES FOR INDIVIDUALS WITH HANDICAPS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 302(a) of the Act is amended by striking out "fiscal year ending before October 1, 1986." and inserting in lieu thereof "of the fiscal years 1987, 1988, 1989, 1990, and 1991.".

(b) INCLUSION OF SUPPORTED EMPLOYMENT.—Section 302(b)(3)(A) of the Act is amended by inserting before the semicolon ",including supported employment".

SEC. 403. TRAINING.

(a) TRAINING OF QUALIFIED PERSONNEL.—Section 304(a) of the Act is amended—

(1) in the first sentence—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1)—"(2) personnel specifically trained to identify, assess, and meet the individual rehabilitation needs of individuals with severe handicaps,"; and

(2) by inserting after the first sentence—"Recipients of grants or contracts under this section shall give due regard to the training of individuals with handicaps as part of the effort to increase the number of qualified personnel available to provide rehabilitation services.".

(b) TARGETING.— The first sentence of section 304(b) of the Act is amended—

(1) by inserting before "rehabilitation medicine" the following: "rehabilitation engineering,";

(2) by inserting "rehabilitation dentistry," after "rehabilitation psychology,";

(3) by inserting "physical education, therapeutic recreation," after "speech pathology and audiology,"; and

(4) by inserting "specialized personnel in providing employment training for supported employment, other specialized personnel for those individuals who meet the definition of severely handicapped," after "job placement services for handicapped individuals,".

(c) LENGTH OF GRANT.—Section 304(b) of the Act is amended—

(1) by designating the first sentence as paragraph (1); and

(2) by striking out the last sentence and inserting in lieu thereof the following:

"(2)(A) Except as provided in subparagraph (B), no grant under this section may be used to provide any one course of study to an individual for a period of more than 4 years.

"(B) If the grant recipient determines that an individual has a handicap which seriously affects the completion of training under this section, the grant recipient may modify the limitation under subparagraph (A).".

(d) SCHOLARSHIP REQUIREMENTS.—Section 304(b) of the Act is amended by inserting at the end thereof the following new paragraph:

"(3)(A) A recipient of a grant of contract under this section shall provide assurances that each individual who receives a scholarship from funds provided under such grant or contract shall enter into an agreement with the recipient under which the individual shall—

"(i) within the ten-year period after completing the training for which the scholarship was awarded, maintain employment in a nonprofit rehabilitation or related agency, or in a State rehabilitation agency, on a full-time basis for a period of not less than two years for each year for which assistance was received; and

"(ii) repay all or part of any scholarship received, plus interest, if the individual does not fulfill the requirements of clause (i),

except as the Commissioner by regulation may provide for repayment exceptions and deferrals.

"(B) The Commissioner shall be responsible for the enforcement of each agreement entered into under subparagraph (A) upon completion of training under such subparagraph.".

(e) Technical Assistance.—Section 304 is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection:

"(e)(1) The Commissioner is authorized to provide technical assistance to State rehabilitation agencies and rehabilitation facilities, directly or through contracts with State vocational rehabilitation agencies or nonprofit organizations.

"(2) An expert or consultant appointed or serving under contract pursuant to this section shall be compensated at a rate subject to approval of the Commissioner which shall not exceed the daily rate payable for grade GS-18 of the General Schedule under section 5332 of title 5, United States Code. Such an expert or consultant may be allowed travel and transportation expenses in accordance with section 5703 of title 5, United States Code.".

(f) Authorization of Appropriations.—Section 304(e) of the Act is amended by striking out "$22,000,000 for the fiscal year 1984, $27,000,000 for the fiscal year 1985, and $31,000,000 for the fiscal year 1986" and inserting in lieu thereof "$31,000,000 for the fiscal year 1987, $33,000,000 for the fiscal year 1988, $35,000,000 for the fiscal year 1989, $37,000,000 for the fiscal year 1990, and $38,517,000 for fiscal year 1991.".

SEC. 404. COMPREHENSIVE REHABILITATION CENTERS.

Section 305(g) of the Act is amended to read as follows:

"(g) There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990, and 1991.".

SEC. 405. SPECIAL PROJECTS AND SUPPLEMENTARY SERVICES; REAUTHORIZATION.

Section 310(a) of the Act is amended—

(1) by striking out "section 316" and inserting in lieu thereof "sections 311(d), 311(e), and 316"; and

(2) by striking out "$12,900,000 for the fiscal year 1984, $13,600,000 for the fiscal year 1985, and $14,300,000 for the fiscal year 1986" and inserting in lieu thereof the following: "$15,860,000 for fiscal year 1987, $16,790,000 for fiscal year 1988, $17,800,000 for fiscal year 1989, $18,900,000 for fiscal year 1990, and $19,675,000 for fiscal year 1991".

SEC. 406. SPECIAL DEMONSTRATION PROGRAMS.

(a) Needs of Isolated Populations of Individuals with Handicaps.—Section 311(a) of the Act is amended—

(1) in paragraph (2) by striking out "and" after the semicolon;

(2) in paragraph (3) by striking out the period and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (3) the following new paragraph:

"(4) operating programs to meet the special needs of isolated populations of individuals with handicaps, particularly among American Indians residing on or outside of reservations.".

(b) Special Demonstration Programs for Supported Employment and Transitional Employment Services for Severely Handicapped Youth.—Section 311 of the Act is amended by inserting at the end thereof the following new subsections:

"(d)(1)(A) The Commissioner may make grants to public and nonprofit rehabilitation facilities, designated State units, and other public and private agencies and organizations for the cost of developing special projects and demonstrations providing supported employment.

"(B) Not less than one such grant shall be nationwide in scope. The grant shall (i) identify community-based models that can be replicated, (ii) identify impediments to the development of supported employment programs (including funding and cost considerations), and (iii) develop a mechanism to explore the use of existing community-based rehabilitation facilities as well as other community-based programs.

"(2)(A) The Commissioner may make grants to public agencies and nonprofit private organizations for the cost of providing technical assistance to States in implementing part C of title VI of this Act.

"(B) Not less than one such grant shall be nationwide in scope. Each eligible applicant must have experience in training and provision of supported employment services.

"(3)(A) On June 1, 1988, and on each subsequent June 1, the Commissioner shall submit a report to the Congress on activities assisted under paragraph (1) for the preceding fiscal year which includes—

"(i) a list of the grants awarded under this subsection;

"(ii) the number of individuals with severe handicaps served by each grant recipient, the average cost to provide support services to each such individual, and the average wage paid to each such individual; and

"(iii) the recommendations of the projects under paragraph (1)(B).

"(B) Each such report shall also include activities assisted under paragraph (2) for the preceding fiscal year, including (i) a list of the grants awarded under paragraph(2), (ii) the nature of technical assistance activities undertaken, and (iii) recommended areas where additional technical assistance is necessary.

"(4) There are authorized to be appropriated to carry out the provisions of this subsection $9,000,000 for the fiscal year 1987, $9,520,000 for the fiscal year 1988, $10,000,000 for the fiscal year 1989, $10,690,000 for the fiscal year 1990, and $11,128,000 for the fiscal year 1991.

"(e)(1) The Commissioner, subject to the provisions of section 306, shall make grants in accordance with the provisions of this subsection for the purpose of developing, expanding, and disseminating model statewide transitional planning services for severely handicapped youth. In order to facilitate similar model transitional programs, each grantee under this subsection shall—

"(A) collect data documenting the effectiveness of the project, including data on the outcome of the individuals served; and

"(B) disseminate the information to other States.

"(2) No grant may be made under this subsection unless an application is submitted to the Commissioner at such time, in such form, and in accordance with such procedures as the Commissioner may require.

"(3)(A) One grant under this subsection shall be made to a public agency in a predominantly urban State in New England for an existing model statewide transitional planning services program.

"(B) The application for the grant specified in subparagraph (A) shall—

"(i) provide assurances that a single office or agency of the State has responsibility for managing the referral process assigned under the model program for which assistance is sought;

"(ii) provide assurances that the schools involved, in consultation with families, initiate a referral at least two years prior to the anticipated date on which each such student will finish courses of study at the school;

"(iii) provide assurances that individualized transition plans will be developed by the schools and adult providers working cooperatively;

"(iv) provide assurances that case management responsibilities, together with appropriate tracking of each case designed to report on the progress of the handicapped individual, will be part of the responsibility of the office or agency designed under clause (i); and

"(v) contain such other assurances as the Commissioner may reasonably require.

"(4)(A)(i) A second grant authorized by this subsection shall be made to a public agency in a predominantly rural western State.

"(ii) A third grant authorized by this subsection shall be made to a public agency or nonprofit private organization in a predominantly rural southwestern State.

"(B) Each application for a grant submitted pursuant to subparagraph (A) of this paragraph shall describe model transitional planning services for both severely and mildly handicapped youth designed to develop procedures, strategies, and techniques which may be replicated successfully in other rural States.

"(5) There are authorized to be appropriated $450,000 for fiscal year 1987, $475,830 for fiscal year 1988, $504,427 for fiscal year 1989, $535,550 for fiscal year 1990, and $557,000 for fiscal year 1991 to carry out the provisions of this subsection.".

SEC. 407. SPECIAL RECREATIONAL PROGRAMS.

Section 316 of the Act is amended to read as follows:

"Sec. 316. (a)(1) The Commissioner, subject to the provisions of section 306, shall make grants to States, public agencies, and nonprofit private organizations for paying part or all of the cost of initiation of recreation programs to provide handicapped individuals with recreational activities and related experiences to aid in the mobility, socialization, independence, and community integration of such individuals. The programs authorized to be assisted under this section may include, but are not limited to, leisure education, leisure networking, leisure resource development, physical education and sports, scouting and camping, 4-H activities, music, dancing, handicrafts, art, and homemaking. Whenever possible and appropriate, such programs and activities should be provided in settings with nonhandicapped peers. Programs and activities under this section shall be designed to demonstrate ways in which such programs assist *in maximizing the independence and integration of individuals with handicaps.*

"(2) Each such grant shall be made for a minimum of a three-year period.

"(3) No grant may be made under this section unless the agreement with respect to such grant contains provisions to assure that, to the extent possible, existing resources will be used to carry out the activities for which the grant is to be made, and that with respect to children the activities for which the grant is to be made will be conducted before or after school.

"(b) There are authorized to be appropriated $2,330,000 for fiscal year 1987, $2,470,000 for fiscal year 1988, $2,620,000 for fiscal year 1989, $2,780,000 for fiscal year 1990, and $2,894,000 for fiscal year 1991 to carry out this section.".

TITLE V—NATIONAL COUNCIL ON THE HANDICAPPED

SEC. 501. PURPOSE OF THE COUNCIL.

Section 400(a) of the Act is amended—

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

"(2) The purpose of the National Council is to promote the full integration, independence, and productivity of handicapped individuals in the community, schools, the workplace and all other aspects of American life.".

SEC. 502. DUTIES OF NATIONAL COUNCIL.

(a) DUTIES.—

(1) Section 401(a)(4) of the Act is amended to read as follows:

"(4) review and evaluate on a continuing basis—

"(A) all policies, programs, and activities concerning handicapped individuals and persons with disabilities conducted or assisted by Federal departments and agencies, including programs established or assisted under this Act or under the Developmental Disabilities Assistance and Bill of Rights Act; and

"(B) all statutes pertaining to Federal programs which assisted such handicapped individuals and persons with disabilities;

in order to assess the effectiveness of such policies, programs, activities, and statutes in meeting the needs of handicapped individuals and persons with disabilities;".

(2) Section 401(a) of the Act is amended—

(A) by redesignating clauses (5), (6), and (7), as clauses (6), (7), and (8), respectively, and

(B) by inserting after clause (4) the following:

"(5) assess the extent to which such policies, programs, and activities provide incentives or disincentives to the establishment of community-based services for handicapped individuals, promote the full integration of such individuals in the community, in schools, and in the workplace, and contribute to the independence and dignity of such individuals;".

(3) Section 401(a)(8) of the Act (as redesignated by paragraph (2)) is amended by inserting "legislative proposals" after "recommendations".

(b) ADDITIONAL DUTIES.—Section 401(b) of the Act is amended to read as follows:

"(b)(1) Not later than January 30, 1988, and annually thereafter, the National Council shall issue a report to the President and the Congress on the progress that has been made in implementing the recommendation contained in the Council's January 30, 1986, report Toward Independence.

"(2) The reports issued pursuant to paragraph (1) shall present, as appropriate, available data on health, housing, employment, insurance, transportation, recreation, and education, and shall include appropriate information on the current status and trends in the status of individuals with disabilities.".

SEC. 503. STAFF.

Section 403(b) of the Act is amended by striking out paragraph (4).

SEC. 504. REAUTHORIZATION.

Section 405 of the Act is amended by inserting before the period at the end thereof the following: "for each of the fiscal years 1987, 1988, 1989, 1990, and 1991".

TITLE VI—ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

SEC. 601. ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

(a) MEMBERSHIP AND QUORUM REQUIREMENTS.—Section 502(a) of the Act is amended—

(1) in paragraph (1)(B) by striking out "The President" and all that follows through the end of such paragraph and inserting in lieu thereof "The Chairperson and vice-chairperson of the Board shall be elected by majority vote of the members of the Board to serve for terms of one year. When the chairperson is a member of the general public, the vice-chairperson shall be a Federal official; and when the chairperson is a Federal official, the vice-chairperson shall be a member of the general public. Upon the expiration of the term as chairperson of a member who is a Federal official, the subsequent chairperson shall be a member of the general public; and vice versa.";

(2) in paragraph (1)(A)—

(A) by striking out "Eleven" and inserting in lieu thereof "Twelve"; and

(B) by striking out "five" and inserting in lieu thereof "six";

(3) in paragraph (2) by striking out "and (ii)" and all that follows through the end of such paragraph and inserting in lieu thereof "(ii) a member whose term has expired may continue to serve until a successor has been appointed, and (iii) a member appointed to fill a vacancy shall serve for the remainder of the term to which that member's predecessor was appointed."; and

(4) by inserting after paragraph (5) the following paragraph:

"(6)(A) The Board shall establish such bylaws and other rules as may be appropriate to enable the Board to carry out its functions under this Act.

"(B) The bylaws shall include quorum requirements. The quorum requirements shall provide that (i) a proxy may not be counted for purposes of establishing a quorum, and (ii) not less than half the members required for a quorum shall be members of the general public appointed under paragraph (1)(A).".

(b) SPECIAL REPORTS.—Section 502(g) of the Act is amended by adding at the end thereof the following: "The Board shall prepare and submit two additional reports of its activities under subsection (c) of this section, one report on its activities in the field of transportation barriers of handicapped individuals and the other report on its activities in the field of the housing needs of handicapped individuals. The two additional reports required by the previous sentence shall be submitted not later than February 1, 1988.".

(c) AUTHORIZATIONS.—Section 502(i) of the Act is amended by striking out "fiscal year ending before October 1, 1986," and inserting in lieu thereof "of the fiscal years 1987, 1988, 1989, 1990, and 1991,".

SEC. 602. INTERAGENCY COORDINATING COUNCIL.

The first sentence of section 507 of the Act is amended by inserting "the Assistant Secretary of the Interior for Indian Affairs," after "Labor,".

SEC. 603. ELECTRONIC EQUIPMENT ACCESSIBILITY.

(a) ELECTRONIC EQUIPMENT ACCESSIBILITY.—Title V of the Act is amended by inserting after section 507 the following new section:

"ELECTRONIC EQUIPMENT ACCESSIBILITY

"SEC. 508. (a)(1) The Secretary, through the National Institute on Disability and Rehabilitation Research and the Administrator of the General Services, in consultation with the electronics industry, shall develop and establish guidelines for electronic equipment accessibility designed to insure that handicapped individuals may use electronic office equipment with or without special peripherals.

"(2) The guidelines established pursuant to paragraph (1) shall be applicable with respect to electronic equipment, whether purchased or leased.

"(3) The initial guidelines shall be established not later than October 1, 1987, and shall be periodically revised as technologies advance or change.

"(b) Beginning after September 30, 1988, the Administrator of General Services shall adopt guidelines for electronic equipment accessibility established under subsection (a) for Federal procurement of electronic equipment. Each agency shall comply with the guidelines adopted under this subsection.

"(c) For the purpose of this section, the term 'special peripherals' means a special needs aid that provides access to electronic equipment that is otherwise inaccessible to a handicapped individual.".

(b) CONFORMING AMENDMENT.—The table of contents of the Act is amended by inserting after item "Sec. 507." the following new item:

"Sec. 508. Electronic equipment accessibility.".

TITLE VII—EMPLOYMENT OPPORTUNITIES FOR INDIVIDUALS WITH HANDICAPS

SEC. 701. EQUITABLE DISTRIBUTION OF ASSISTANCE.

(a) EQUITABLE DISTRIBUTION.—Section 615(a)(1) of the Act is amended in the second sentence by inserting before the period "and the needs of Indian tribes".

(b) APPORTIONMENT.—Section 615(c)(2) of the Act is amended by inserting before the period "(including individuals residing on Indian reservations)".

SEC. 702. REAUTHORIZATION OF PART A OF TITLE VI.

Section 617 of the Act is amended by striking out "1984, 1985, and 1986." and inserting in lieu thereof "1987, 1988, 1989, 1990, and 1991."

SEC. 703. PROJECTS WITH INDUSTRY.

(a) GENERAL PROVISIONS.—

(1) Section 621(a) of the Act is amended—

(A) by redesignating paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4), respectively; and

(B) by inserting after the subsection designation the following: "(1) The purpose of this title is to promote opportunities for competitive employment of individuals with handicaps, to provide appropriate placement resources, to engage the talent and leadership of private industry as partners in the rehabilitation process, to create practical settings for job readiness and training programs, and to secure the participation of private industry in identifying and providing job opportunities and the necessary

skills and training to qualify people with handicaps for competitive employment.".

(2) Clauses (A), (B), and (C) of section 621(a)(2) of the Act (as redesignated by this subsection) are amended to read as follows:

"(A) shall create and expand job opportunities for individuals with handicaps by providing for the establishment of appropriate job placement services;

"(B) shall provide individuals with handicaps with training in a realistic work setting in order to prepare them for employment in the competitive market;

"(C) shall provide individuals with handicaps with such supportive services as may be required to permit them to continue to engage in the employment for which they have received training under this section;

"(D) shall, to the extent appropriate, expand job opportunities for individuals with handicaps by providing for (i) the development and modification of jobs to accommodate the special needs of such individuals, (ii) the distribution of special aids, appliances, or adapted equipment to such individuals, and (iii) the modification of any facilities or equipment of the employer which are to be used primarily by handicapped individuals; and

"(E) shall provide for business advisory councils comprised of representatives of private industry, business concerns, and organized labor who will identify job availability within the community and the skills necessary to fill jobs identified, and prescribe training and programs tailored to their need.".

(3) Paragraph (4) of section 621(a) of the Act (as redesignated by this section) is amended by striking out "each year of a funding cycle" and inserting in lieu thereof "each project year".

(4) The amendment made by paragraph (2), adding clause (E) to section 621(a)(2) of the Act, shall take effect one year after the date of enactment of this Act.

(b) AGREEMENT.—Section 621(b) of the Act is amended—

(A) by striking out "and" at the end of paragraph (2);

(B) By striking out the period at the end of paragraph (3) and inserting in lieu thereof "; and"; and

(C) by inserting after paragraph (3) the following paragraph:

"(4) provides assurance that an evaluation report containing data specified under subsection (a)(4) shall be submitted as determined by the Commissioner."; and

(c) Section 621(e) of the Act is amended to read as follows:

"(e)(1) Subject to the availability of appropriations, an agreement for financial assistance under this section may be effective for a period not to exceed five years. Any subsequent agreement for financial assistance under this section may be effective for not more than five years. In making a determination concerning any subsequent agreement, the Commissioner shall consider performance under the previous agreement and evaluation reports submitted under subsection (b)(4).

"(2) The Commissioner shall annually review each evaluation report submitted under subsection (b)(4) and make a determination concerning the termination, modification, or renewal of each agreement for financial assistance under this section.".

(b) Section 621(b) of the Act is amended—

(1) by striking out "and" at the end of clause (2);

(2) by striking out the period at the end of clause (3) and inserting in lieu thereof a semicolon and "and"; and

(3) by inserting after clause (3) the following new clause:

"(4) provides assurances that an evaluation report containing data specified under subsection (a)(4) shall be submitted to the Commissioner.".

(c) Section 621(d)(1) of the Act is amended by adding at the end thereof the following new sentence: "Such standards shall be revised as necessary, subject to paragraph (4) of this subsection.".

(d) TECHNICAL ASSISTANCE; INDICATORS FOR STANDARDS; CONTINUED FUNDING; APPLICATION APPROVAL.—(1) Subsection (f) of section 621 of the Act are amended to read as follows:

"(f)(1) By July 1, 1988, the Commissioner shall publish in the Federal Register in final form indicators of what constitutes minimum compliance consistent with the evaluation standards under subsection (d)(1).

"(2) Each grantee shall report to the Commissioner at the end of each project year the extent to which the grantee is in compliance with the evaluation standards, beginning with fiscal year 1989.

"(3) By the end of fiscal year 1991, the Commissioner shall have conducted on-site compliance reviews of at least one-third of the grantees receiving funding under this part in fiscal year 1987. The Commissioner shall conduct on-site compliance reviews of at least 15 percent of grantees annually in subsequent years. Selection of grantees for compliance reviews shall be on a random basis. The Commissioner shall use the indicators of the evaluation standards in determining compliance. At least one member of an on-site compliance review shall be a non-Federal employee with experience or expertise in conducting Projects With Industry.

"(4) Beginning with the annual report to Congress for fiscal year 1990 and in subsequent years, the Commissioner shall include an analysis of the extent to which grantees have complied with the evaluation standards. The Commissioner may identify individual grantees in the analysis. In addition, the Commissioner shall report the results of on-site compliance reviews, identifying individual grantees.

"(g) The Commissioner may provide, directly or by way of grant or contract, technical assistance to (1) entities conducting Projects With Industry for the purpose of assisting such entities in the improvement of or in the development of relationships with private industry or labor, and (2) entities planning the development of new Projects With Industry.".

(2) Section 621 is further amended by adding at the end thereof the following new subsections:

"(h)(1)(A) From sums appropriated for the purposes of this section for fiscal year 1990, an amount which is 80 percent of the amount appropriated for fiscal year 1989 shall be available only for grantees receiving assistance in fiscal year 1989.

"(B) The Secretary shall ensure that grants are made under subparagraph (A) only to Projects With Industry recipients that meet the evaluation standards and shall make a determination concerning the termination, modification, or renewal of each grant on the basis of such evaluation.

"(2) To the extent funds are available under paragraph (1), the Secretary shall award grants to new Projects With Industry recipients located in unserved geographic areas. Grants to new recipients shall be awarded on a competitive basis.

"(3) For fiscal year 1991 and for any subsequent fiscal year, new grant awards shall be made on a competitive basis and shall include consideration of past performance, where appropriate.

"(4)(A) Each grant recipient receiving assistance under this section in fiscal year 1986 shall continue to receive assistance through September 30, 1987, unless the Commissioner determines that the grant recipient is not in compliance with the provisions of the approved application of the grant recipient.

"(B) Grant recipients continuing to receive assistance on the basis of the review described in subparagraph (A) of this paragraph shall be evaluated by the Commissioner using standards described in subsection (d) and (f) of this section. Each such grant receipient shall continue to receive assistance for 3 years unless the Commissioner determines that the grantee is not substantially in compliance with such standards and with the provisions of the approved application of the grant recipient.

"(i) In approving applications under this section, the Commissioner shall give priority to the geographic areas among the States which are currently not served or underserved by Projects With Industry.".

SEC. 704. PROJECTS WITH INDUSTRY REAUTHORIZATION.

Section 623 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 623. There are authorized to be appropriated to carry out the provisions of section 621, $16,070,000 for fiscal year 1987, $17,010,000 for fiscal year 1988, $18,030,000 for fiscal year 1989, $19,149,000 for fiscal year 1990, and $19,925,000 for fiscal year 1991 and for section 622 such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, 1990 and 1991.".

SEC. 704. SUPPORTED EMPLOYMENT SERVICES FOR INDIVIDUALS WITH SEVERE HANDICAPS.

(a) GENERAL AUTHORIZATION.—

(1) Title VI of the Act is amended by inserting after part B of such title the following new part:

"PART C—SUPPORTED EMPLOYMENT SERVICES FOR INDIVIDUALS WITH SEVERE HANDICAPS

"PURPOSE

"SEC. 631. It is the purpose of this part to authorize grants (supplementary to grants for vocational rehabilitation services under title I) to assist States in developing collaborative programs with appropriate public agencies and private nonprofit organizations for training and traditionally time-limited post-employment services leading to supported employment for individuals with severe handicaps.

"ELIGIBILITY

"SEC. 632. Services may be provided under this part to any individual with severe handicaps whose ability or potential to engage in a training program and whose ability to engage in a supported employment setting has been determined by an evaluation of rehabilitation potential as defined in section 7 of this Act.

"ALLOTMENTS

"SEC. 633. (a)(1) The Secretary shall allot the sums appropriated for each fiscal year under this section among the States on the basis of relative population of each State, except that no State shall receive less than $250,000 or one-third of 1 percent of the sums made available for the fiscal year for which the allotment is made, whichever is greater.

"(2)(A) For the purposes of this subsection, the term 'States' does not include Guam,

American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

"(B) The jurisdictions described in subparagraph (A) shall be allotted not less than one-eighth of 1 percent of the amounts made available for purposes of this subpart for each such clause for the fiscal year for which the allotment is made.

"(b) Whenever the Commissioner determines that any amount of an allotment to a State for any fiscal year will not be expended by such State to carry out the provisions of this part, the Commissioner shall make such amount available for carrying out the provisions of this part to one or more of the States which the Commissioner determines will be able to use additional amounts during such year for carrying out such provisions. Any amount made available to a State for any fiscal year pursuant to the preceding sentence shall, for the purposes of this section, be regarded as an increase in the State's allotment for such year.

"(c)(1) In the first fiscal year in which appropriations are made pursuant to section 638 a State may, in lieu of receiving its allotment under this part, make an application for a planning grant for that fiscal year. The Secretary is authorized to approve the appropriation of States which meet the requirements of this subsection.

"(2)(A) The grant made under this subsection shall be used for planning activities designed to facilitate the State using its allotment under this part.

"(B) No grant under this subsection may exceed a period of 18 months.

"(3) No planning grant made under this subsection may exceed $250,000.

"STATE PLAN

"SEC. 634. (a) In order to be eligible for grants under this part, a State shall submit to the Commissioner as part of the State plan under title I of this Act a State plan supplement for a three-year period for providing training and traditionally time-limited post-employment services leading to supported employment for individuals with severe handicaps. Each State shall make such annual revisions in the plan supplement as may be necessary.

"(b) Each such plan supplement shall—

"(1) designate each agency of such State designated under section 101(a)(2)(B) of this Act as the agency to administer the program assisted under this part;

"(2)(A) specify results of the needs assessment conducted as required by title I of this Act of individuals with severe handicaps as such assessment identifies the need for supported employment services, including the coordination and use of the information within the State relating to section 618(b)(3) of the Education of the Handicapped Act; and

"(B) describe the quality, scope, and extent of supported employment services to be provided to individuals with severe handicaps under this part, and specify the State's goals and plans with respect to the distribution of funds received under section 635 of this part;

"(3) provide assurances that—

"(A) an evaluation for each individual describes training and traditionally time-limited post-employment services leading to supported employment;

"(B) an individualized written rehabilitation program as required by section 102 will be developed outlining the services to be provided;

"(C) such services will be provided in accordance with such program or a program specified under subsection (b)(3)(D) of this part;

"(D) such services will be coordinated with the evaluation results, the individual written rehabilitation plan or education plan as required under section 102 of this Act, section 123 of the Developmental Disabilities Act of 1984, and sections 612(4) and 614(5) of the Education of the Handicapped Act, respectively;

"(E) the State will conduct periodic reviews of the progress of individuals assisted under this part to determine whether services provided to such individuals should be continued, modified, or discontinued; and

"(F) the State will make maximum use of services from public agencies, private nonprofit organizations, and other appropriate resources in the community to carry out this part;

"(4) demonstrate evidence of collaboration by and funding from relevant State agencies and private nonprofit organizations to assist in the provision of supported employment services;

"(5) provide assurances that all designated State agencies will expend not more than 5 percent of the State's allotment under this part for administrative costs for carrying out this part; and

"(6) contain such other information and be submitted in such form and in accordance with such procedures as the Commissioner may require.

"SERVICES; AVAILABILITY AND COMPARABILITY

"SEC. 635. (a)(1) Services available under this part may include but are not limited to an evaluation of rehabilitation potential, provision of skilled job trainers who accompany the worker for intensive on-the-job training, systematic training, job development, follow-up services (including regular contact with the employer, trainee, and the parent or guardian), and consistent with subsection (b) regular observation or supervision of the individual with severe handicaps at the training site and other services needed to support the individual in employment.

"(2) The evaluation of rehabilitation potential authorized by paragraph (1) of this subsection shall be supplementary to the evaluation of rehabilitation potential provided under title I of this Act.

"(b) Services authorized under this part are limited to training and traditionally time-limited post-employment services leading to supported employment. Extended supported employment services shall be provided by the relevant State agencies and private organizations as specified under section 634(b)(4) of this part or any other available source.

"(c) Services provided under this part shall be complementary to services provided under title I of this Act.

"RESTRICTION

"SEC. 636. Each designated State agency shall collect the client information required by section 13 of this Act separately for supported employment clients under this part and for supported employment clients under title I.

"SAVINGS PROVISION

"SEC. 637. Nothing in this Act shall be construed to prohibit a State from conducting or from carrying out training and traditionally time-limited post-employment services leading to supported employment in accordance with the State plan submitted under section 101 from its State allotment under section 110.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 638. There are authorized to be appropriated to carry out this part $25,000,000 for the fiscal year 1987, $26,470,000 for the fiscal year 1988, $28,060,000 for the fiscal year 1989, $29,730,000 for the fiscal year 1990, $30,949,000 for the fiscal year 1991.".

(2) The table of contents of the Act is amended by inserting after item "Sec. 623." the following:

"PART C—SUPPORTED EMPLOYMENT SERVICES FOR SEVERELY HANDICAPPED INDIVIDUALS WITH SEVERE HANDICAPS

"Sec. 631. Purpose.
"Sec. 632. Eligibility.
"Sec. 633. Allotments.
"Sec. 634. State plan.
"Sec. 635. Services; availability and comparability.
"Sec. 636. Restriction.
"Sec. 637. Savings provision.
"Sec. 638. Authorization of appropriations.".

(b) LIMITATION.—

(1) The amendment adding section 634(a) (made by subsection (a) of this section) shall not apply in any fiscal year in which the appropriation for part C of title VI of the Rehabilitation Act of 1973 do not equal or exceed $5,000,000.

(2) The provisions of paragraph (1) are repealed on September 30, 1990.

TITLE VIII—SERVICES FOR INDEPENDENT LIVING

SEC. 801. ELIGIBILITY FOR COMPREHENSIVE SERVICES.

Section 702(b) of the Act is amended by striking out "recreational activities" and inserting in lieu thereof "recreational services".

SEC. 802. STATE PLAN ASSURANCE.

Section 705(a) of the Act is amended—

(1) by redesignating clauses (5), (6), (7), (8), and (9) as clauses (6), (7), (8), (9), and (10), respectively; and

(2) by inserting after clause (4) the following:

"(5) provide assurances that the State will consider recommendations of the State independent living council in determining how independent living services will be expanded or modified;".

SEC. 803. STATE INDEPENDENT LIVING COUNCIL.

(a) GENERAL AUTHORITY.—Part A of title VII of the Act is amended by adding at the end thereof the following new section:

"STATE INDEPENDENT LIVING COUNCIL

"SEC. 706. (a) There shall be established in each State receiving assistance under this title a State Independent Living Council (hereafter in this section referred to as the 'Council'). The Council shall—

"(1) provide guidance for the development and expansion of independent living programs and concepts on a statewide basis;

"(2) provide guidance to State agencies and to local planning and administrative entities assisted under this title; and

"(3) prepare and submit to the State agency designated under section 705(a)(1) a five-year plan addressing the long-term goals and recommendations for the need for independent living services and programs within the State.

"(b)(1) The Council shall be composed of representatives of the principal State agencies, local agencies, and nongovernmental agencies and groups concerned with services to handicapped individuals under this title; handicapped individuals and parents or guardians of handicapped individuals; directors of independent living centers; representatives from private business employing or interested in employing handicapped individuals; representatives of other appropriate organizations and other appropriate individuals.

"(2) A majority of the membership of the Council shall be handicapped individuals and parents or guardians of handicapped individuals.

"(3) The members of the Council shall be appointed by the director of the State agency designated under section 705(a)(1).

"(c) The chairperson of the Council shall be selected from among the membership and shall also serve as a member of any State advisory committee primarily concerned with the provision of rehabilitation services and any other appropriate State advisory committee concerned with services to handicapped individuals.

"(d) Any State in which there is a council which substantially meets the requirements of paragraphs (1) and (2) of subsection (b) and has the authority or will, promptly after the date of enactment of the Rehabilitation Act Amendments of 1986, have the authority to carry out the functions prescribed in subsection (a) shall be deemed to meet the requirements of this section.".

(b) Conforming Amendment.—The table of contents of the Act is amended by inserting after item "Sec. 705." the following new item:

"Sec. 706. State independent living council.".

SEC. 804. GRANTS FOR CENTERS FOR INDEPENDENT LIVING.

(a) Application Conditions.—

(1) Section 711(b) of the Act is amended—

(A) by striking out "and" at the end of clause (1);

(B) by striking out the period at the end of clause (2) and inserting in lieu thereof a semicolon and the word "and"; and

(C) by adding at the end thereof the following new clause:

"(3) contains assurances that each center will have a board which is composed of a majority of handicapped individuals.".

(2) The amendments made by paragraph (1) shall take effect one year after the date of enactment of this Act.

(b) Application Contents.—Section 711(c)(2) of the Act is amended—

(1) by inserting after "housing" in clause (E) a comma and the following: "recreation";

(2) by inserting after "housing" in clause (F) a comma and the following: "recreational opportunities"; and

(3) by striking out "activities" in clause (K) and inserting in lieu thereof "services".

(c) Timeliness of Application.—Section 711(d) of the Act is amended by striking out "six months" and inserting in lieu thereof "three months".

SEC. 805. EVALUATION AND REVIEW OF INDEPENDENT LIVING CENTERS.

(a) Revision of Standards.—Section 711(e)(1) of the Act is amended by adding at the end thereof the following new sentence: "Such standards shall be revised as necessary, subject to paragraph (4) of this subsection.".

(b) Indicators for Standards; Continued Funding; Approval of Applications.—Section 711 of the Act is amended by striking subsection (f) and by adding at the end thereof the following:

"(f)(1) By July 1, 1988, the Commissioner shall publish in the Federal Register in final form indicators of what constitutes minimum compliance consistent with the evaluation standards in subsection (e)(1).

"(2) Each grantee shall report to the Commissioner at the end of each project year the extent to which the grantee is in compliance with the evaluation standards, beginning with fiscal year 1989.

"(3) By the end of fiscal year 1991, the Commissioner shall have conducted on-site compliance reviews of at least one-third of the grantees receiving funding under this part in fiscal year 1987. The Commissioner shall conduct on-site compliance review of at least 15 percent of grantees annually in subsequent years. Selection of grantees for compliance reviews shall be on a random basis. The Commissioner shall use the indicators of the evaluation standards in determining compliance. At least one member of an on-site compliance review shall be a non-Federal employee with experience or expertise in the provision of independent living services.

"(4) Beginning with the annual report to Congress for fiscal year 1990 and in subsequent years, the Commissioner shall include an analysis of the extent to which grantees have complied with the evaluation standards. The Commissioner may identify individual grantees in the analysis. In addition, the Commissioner shall report the results of on-site compliance reviews, identifying individual grantees.

"(g)(1)(A) From sums appropriated for the purposes of this section for fiscal year 1990, an amount which is 90 percent of the amount appropriated for fiscal year 1989 shall be available only for grantees receiving assistance in fiscal year 1989.

"(B) The Secretary shall ensure that grants are made under subparagraph (A) only to Centers that meet the evaluation standards and shall make a determination concerning the termination, modification, or renewal of each grant on the basis of such evaluation.

"(C) A grant under subparagraph (A) may not be less than 80 percent or more than 100 percent of the grant to the Center for fiscal year 1989. The Commissioner shall determine the amount of each grant on the basis of—

"(i) the capacity of the recipient to obtain local resources to pay the non-Federal share of the cost of the Center; and

"(ii) the economic conditions in the community to be served by the Center.

"(2) To the extent funds are available under paragraph (1), the Secretary shall award grants to new Centers located in unserved geographic areas. Grants to new Centers shall be awarded on a competitive basis.

"(3) For fiscal year 1991 and for any subsequent fiscal year, new grant awards shall be made on a competitive basis and shall include consideration of past performance, where appropriate.

"(4)(A) Each grant recipient receiving assistance under this section in fiscal year 1986 shall continue to receive assistance through September 30, 1987, unless the Commissioner determines that the grant recipient is not in compliance with the provisions of the approved application of the grant recipient.

"(B) Grant receipients continuing to receive assistance on the basis of the review described in subparagraph (A) of this paragraph shall be evaluated by the Commissioner using standards described in subsections (e) and (f) of this section. Each such grant receipient shall continue to receive assistance for 3 years unless the Commissioner determines that the grantee is not substantially in compliance with such standards and with the provisions of the approved application of the grant recipient.

"(h) In approving applications under this section, the Commissioner shall give priority to geographic areas among the States which are currently not served or underserved by independent living centers.".

SEC. 806. REAUTHORIZATION FOR TITLE VII.

Section 741 of the Act is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 741. (a) There are authorized to be appropriated to carry out part A of this title $11,830,000 for fiscal year 1987, $12,310,000 for fiscal year 1988, $13,050,000 for fiscal year 1989, $13,860,000 for fiscal year 1990, and $14,428,000 for fiscal year 1991.

"(b) There are authorized to be appropriated to carry out part B of this title $24,320,000 for fiscal year 1987, $25,750,000 for fiscal year 1988, $27,300,000 for fiscal year 1989, $28,980,000 for fiscal year 1990, and $30,168,000 for fiscal year 1991.

"(c) There are authorized to be appropriated to carry out part C of this title $5,290,000 for fiscal year 1987, $5,600,000 for fiscal year 1988, $5,930,000 for fiscal year 1989, $6,300,000 for fiscal year 1990, and $6,558,000 for fiscal year 1991.

"(d)(1) There are authorized to be appropriated to carry out part D of this title such sums as may be necessary for each of the fiscal years 1987, 1988, 1989, and 1990.

"(2) The provisions of section 1913 of title 18, United States Code, shall be applicable to all moneys authorized under the provisions of this subsection.".

TITLE IX—AMENDMENTS TO OTHER LAWS

SEC. 901. REAUTHORIZATION OF HELEN KELLER NATIONAL CENTER ACT.

Section 205(a) of the Helen Keller National Center Act (29 U.S.C. 1904) is amended by striking out the first sentence and inserting in lieu thereof "There are authorized to be appropriated to carry out the provisions of this title such sums as may be necessary for each of the fiscal years 1987 through 1990.".

SEC. 902. PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED.

The joint resolution entitled "Joint resolution authorizing an appropriation for the work of the President's Committee on National Employ the Physically Handicapped Week", approved July 11, 1949, (63 Stat. 409) is amended—

(1) by striking out "annually, out of any money in the Treasury not otherwise appropriated, not to exceed the sum of $1,000,000" and inserting in lieu thereof "for each of the fiscal years 1987, 1988, 1989, 1990, and 1991, such sums as may be necessary"; and

(2) by inserting at the end thereof "The President's Committee on Employment of the Handicapped shall be guided by the general policies of the National Council on the Handicapped.".

TITLE X—TECHNICAL AND CONFORMING AMENDMENTS TO THE ACT

SEC. 1001. USE OF GENDER NEUTRAL TERMINOLOGY IN ACT.

(a) Amendments to the General Provisions.—

(1) Section 3(a) of the Act is amended—

(A) in the third sentence by striking out "his functions," and inserting in lieu thereof "the functions of the office,"; and

(B) in the sixth sentence by striking out "his functions" and inserting in lieu thereof "the functions of the office".

(2) Section 6(b) of the Act is amended—

(A) by striking out "he" after "satisfied," and inserting in lieu thereof "the Secretary"; and

(B) by striking out "he" after "or".

(3) Section 7(4) of the Act is amended by striking out "he" and inserting in lieu thereof "the Secretary".

(4) Section 12 of the Act is amended—

(A) in subsection (b) by striking out "his" and inserting in lieu thereof "the"; and

(B) in subsection (c) by striking out "he considers" and inserting in lieu thereof "are considered".

(5) Section 14(e) of the Act is amended—

(A) by striking "Secretary" and inserting "Commissioner"; and

(B) by striking out "to him, upon request" and inserting in lieu thereof "upon request of the Commissioner".

(b) AMENDMENTS TO TITLE I.—Title I of the Act is amended as follows:

(1) Section 101(a)(10) of the Act is amended—

(A) by striking out "his functions" and inserting in lieu thereof "the functions of the Commissioner"; and

(B) by striking out "he may find" and inserting in lieu thereof "are".

(2) Section 101(b) of the Act is amended—

(A) in the first sentence by striking out "he" and inserting in lieu thereof "the Commissioner" and by striking out "he"; and

(B) in the second sentence by striking out "his" and inserting in lieu thereof "the" and by striking out "he".

(3) Section 101(c)(1) of the Act is amended—

(A) in the first sentence by striking out "his discretion" and inserting in lieu thereof "the discretion of the Commissioner" and by striking out "he" and inserting in lieu thereof "the Commissioner"; and

(B) in the second sentence by striking out "he" and inserting in lieu thereof "the Commissioner".

(4) Section 101(d)(1) of the Act is amended by striking out "him" and inserting in lieu thereof "the Commissioner" and by striking out "he" and inserting in lieu thereof "the Commissioner".

(5) Section 102 of the Act is amended—

(A) by striking out "his parents" each place it appears in such section and inserting in lieu thereof "such individual's parents";

(B) by striking out "his parent" and inserting in lieu thereof "such individual's parent";

(C) in subsection (d)(1) by striking out "his" and inserting in lieu thereof "the"; and

(D) in subsection (d)(2) by striking out "his responsibilities" and inserting in lieu thereof "any responsibility of the Secretary".

(6) Section 111(b) of the Act is amended—

(A) in paragraph (1) by striking out "him," and inserting in lieu thereof "the Commissioner,"; and

(B) in the first sentence of paragraph (2)—

(i) by striking out "him" and inserting in lieu thereof "the Commissioner"; and

(ii) by striking out "he finds that his" and inserting in lieu thereof "the Commissioner finds that the".

(7) Section 112(e)(2) of the Act is amended by striking out "from time to time on such dates he may fix" and inserting in lieu thereof "at appropriate times".

(8) Section 120(b) of the Act is amended by striking out "he" both places it appears and inserting in lieu thereof "the Commissioner".

(c) AMENDMENTS TO TITLE II.—Section 202 of the Act is amended—

(1) in the second sentence of subsection (a) by striking out "his functions," and inserting in lieu thereof "the functions of the office,";

(2) in subsection (e) by striking out "he" and inserting in lieu thereof "the Director";

(3) in subsection (g) by striking out "he considers" and

(4) in subsection (i)—

(A) by striking out "whatever actions he considers appropriate" and inserting in lieu thereof "appropriate actions"; and

(B) by striking out "in his role of Chairman" and inserting "as Chairperson".

(d) AMENDMENTS TO TITLE III.—Title III of the Act is amended as follows:

(1) Section 302(b)(3) of the Act is amended—

(A) by striking out "on his determination" and inserting in lieu thereof "if the Commissioner determines";

(B) in subparagraph (C) by striking out "his" and inserting in lieu thereof "that individual's"; and

(C) in subparagraph (D) by striking out "he" and inserting in lieu thereof "the Commissioner".

(2) Section 303 of the Act is amended—

(A) in subsection (e)(1) by striking out "he" and inserting in lieu thereof "the Commissioner";

(B) in subsection (e)(2)(B) by striking out "he considers" and inserting in lieu thereof "considered";

(C) in subsection (e)(2)(C) by striking out "his" both places it appears and inserting in lieu thereof "a";

(D) by amending subsection (f)(1)(A) to read as follows:

"(A) to enable the Commissioner to discharge the responsibilities under loan guarantees issued under this section; and";

(E) in the third sentence of subsection (f)(1) by striking out "him from his" and inserting in lieu thereof "the Commissioner from";

(F) in subsection (f)(2)(A) by striking out "he", and inserting in lieu thereof "the Commissioner"; and

(G) in subsection (f)(2)(C) by striking out "he" and by striking out "him" and inserting in lieu thereof "the Secretary".

(e) AMENDMENTS TO TITLE IV.—

(1) Section 400(b)(3) of the Act is amended by striking out "his" and inserting in lieu thereof "such member's".

(2) Section 400(c) of the Act is amended by striking out "Chairman" both places it appears and inserting in lieu thereof "Chairperson".

(f) AMENDMENTS TO TITLE V.—Title V of the Act is amended as follows:

(1) Section 501(e) of the Act is amended by striking out "his" and inserting in lieu thereof "a".

(2) Section 503(b) of the Act is amended by striking out "his" and inserting in lieu thereof "a".

(3) Section 503(c) of the Act is amended by striking out "he" both places it appears and inserting in lieu thereof "The President", and by striking out "his" and inserting in lieu thereof "the".

(4) Section 507 of the Act is amended by striking out "Chairman" and inserting in lieu thereof "Chairperson".

(g) AMENDMENTS TO TITLE VII.—Title VII of the Act is amended as follows:

(1) Section 702 of the Act is amended by striking out "his" each place it appears and by inserting in lieu thereof "the".

(2) Section 703(c) of the Act is amended by striking out "he" both places it appears and inserting in lieu thereof "the Commissioner".

(3) Section 705(b) of the Act is amended by striking out "he" and inserting in lieu thereof "the Commissioner".

(4) Section 721(a) of the Act is amended—

(A) by striking out "his" both places it appears; and

(B) in paragraph (3) by striking out "able to care for himself;" and inserting in lieu thereof "self-sufficient;".

SEC. 1002. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS TO THE GENERAL PROVISIONS.—

(1) Section 7(3) of the Act is amended by striking out "designated State units" and inserting in lieu thereof "designated State unit".

(2) Section 7(11) of the Act is amended—

(A) by striking out subparagraph (B) and inserting in lieu thereof "(B) testing, fitting, or training in the use of prosthetic and orthotic devices,"; and

(B) in subparagraph (F) by inserting "psychiatric," before "psychological".

(b) AMENDMENTS TO TITLE I.—

(1) Section 130(b)(2) of the Act is amended by striking out "Health, Education, and Welfare" and inserting in lieu thereof "Education".

(2)(A) Section 131 of the Act is repealed.

(B) The table of contents of the Act is amended by striking out the item relating to "Sec. 131".

(c) AMENDMENTS TO TITLE II.—Section 202(j)(1) of the Act is amended by striking out "at an institution of higher education".

(d) AMENDMENTS TO TITLE III.—

(1) Section 301(b)(1) of the Act is amended by striking out "Commission" and inserting in lieu thereof "Commissioner".

(2) Section 304(a)(2) of the Act is amended by striking out "program, and" and inserting in lieu thereof "program, and".

(3) Section 305(c) of the Act is amended by redesignating paragraph (3) as paragraph "(2)".

(4) Section 306 of the Act is amended by striking out "305(g)" and inserting in lieu thereof "305(f)".

(e) AMENDMENTS TO TITLE V.—

(1) Section 501 of the Act is amended by striking out "Office of Personnel Management" each place it appears and inserting in lieu thereof "Equal Employment Opportunity Commission".

(2)(A) Section 501(d) of the Act is amended by striking out "of the the activities" and inserting in lieu thereof "of the activities".

(B) Section 502(d)(2)(A) of the Act is amended by striking out "any, final order" and inserting in lieu thereof "any final order".

(C)(i) Section 502(d)(3) of the Act is amended by striking out "Department of Health, Education, and Welfare" and inserting in lieu thereof "Department of Education".

(ii) Section 502(d)(3) of the Act is further amended by striking out "with respect overcoming to" and inserting in lieu thereof "with respect to overcoming".

(D) Section 502(e)(2) of the Act is amended by inserting "and" after "noncompliance".

(3) Section 503(a) of the Act is amended by striking out "section 7(7)" and inserting in lieu thereof "section 7(8)".

(4) Section 504 of the Act is amended by striking out "section 7(7)" and inserting in lieu thereof "section 7(8)".

(f) AMENDMENTS TO TITLE VI.—Section 611(a) of the Act is amended by striking out "section 7(7)" and inserting in lieu thereof "section 7(8)".

(h) AMENDMENTS TO TITLE VII.—Section 702 of the Act is amended by inserting "(a)" after the section designation.

SEC. 1003. CIVIL RIGHTS REMEDIES EQUALIZATION.

(a) General Provision.—

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973, title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective Date.—The provisions of subsection (a) shall take effect with respect to violations that occur in whole or in part after the date of enactment of the Rehabilitation Act Amendments of 1986.

SEC. 1004. COST RATE REPORT OF THE SECRETARY.

(a) Assessment.—The Secretary of Education shall conduct an assessment of the direct and indirect cost rates charged to State agencies designated to administer or supervise the administration of the State plan under the Rehabilitation Act of 1973 by other State agencies.

(b) Report.—Not later than February 1, 1987, the Secretary shall submit a report of such assessment to the Congress. Such report shall include recommendations regarding alternative methods for establishing indirect cost rates, including establishing pre-determined fixed rates by statute and prescribing standards for negotiating such rates.

SEC. 1005. MAINTENANCE OF EFFORT.

(a) General Provision.—Notwithstanding any other provision of the Education of the Handicapped Act, the Secretary and the State educational agency, in the case of section 614(a)(2)(B)(ii) of that Act, shall not include expenditures made from an accrued fund reserve surplus after July 1, 1983, and prior to October 1, 1985, which are used for services for handicapped children.

(b) Effective Date.—The amendment made by subsection (a) shall take effect with respect to fiscal years beginning after September 30, 1983.

SEC. 1006. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act shall take effect on the date of its enactment.

And the Senate agree to the same.

Augustus F. Hawkins,
Mario Biaggi,
Pat Williams,
Matthew G. Martinez,
Charles A. Hayes,
Dennis E. Eckart,
A.R. Waldon, Jr.,
James M. Jeffords,
Bill Goodling,
Tom Coleman,
Steve Bartlett,
Managers on the Part of the House.

Orrin Hatch,
Lowell P. Weicker, Jr.,
Robert T. Stafford,
Don Nickles,
Strom Thurmond,
John F. Kerry,
Paul Simon,
Edward M. Kennedy,
Christopher J. Dodd,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4021) to extend and improve the Rehabilitation Act of 1973, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. Sec. 2 of the Act as amended by the Senate amendment adds that the purpose is "for individuals with handicaps in order to maximize their employability, independence and integration into the workplace and the community."

The House bill has no comparable provision.

The House recedes.

2(a). Sec. 3(a) of the Act as amended by the House bill transfers the authority to appoint the Commissioner of the Rehabilitation Services Administration from the President to the Secretary.

The Senate amendment contains no comparable provision.

The House recedes.

2(b). Sec. 3(a) of the Act as amended by the House bill further has the Commissioner report directly to the Assistant Secretary of the Office of Special Education and Rehabilitative Services.

The Senate amendment contains no comparable provision.

The House recedes.

2(c). Sec. 3(a) of the Act as amended by the House bill further makes the Commissioner a GS-18 within the Senior Executive Service.

The Senate amendment contains no comparable provision.

The House recedes.

2(d). Sec. 3(a) of the Act as amended by the House bill further requires the Commissioner to have "substantial experience" in rehabilitation and in rehabilitation program management.

The Senate amendment contains no comparable provision.

The Senate recedes.

3. Sec. 3(a) of the Act as amended by the House bill strikes out the words "his functions" and replaces it with "the functions of the office".

The Senate bill contains no comparable provision.

The Senate recedes.

(a). Sec. 3(c)(1) of the Act as amended by the Senate amendment adds a new subsection directing the Secretary to ensure that the staffing of RSA be sufficient to meet program needs and at levels to attract and maintain the most qualified personnel.

The House bill contains no comparable provision.

The House recedes.

4(b). Sec. 3(c)(2) of the Act as amended by the Senate amendment further provides that qualified personnel shall include individuals with training and experience in the provisions of rehabilitation services; and that competencies meet professional standards.

The House bill contains no comparable provision.

The House recedes.

5. Sec. 6(b) of the Act as amended by the House bill strikes the word "he" and replaces it with "the Secretary".

The Senate amendment contains no comparable provision.

The Senate recedes.

6. Sec. 7(4) of the Act as amended by the House bill strikes the word "he" and replaces it with "the Secretary".

The Senate amendment contains no comparable provision.

The Senate recedes.

7(a). Sec. 7(5)(B) of the Act as amended by the Senate amendment adds "recreational" to the list of factors to be included in the diagnostic study of the individual.

The House bill contains no comparable provision.

The House recedes.

7(b). Sec. 7(5)(B) of the Act as amended by the Senate amendment further adds "employability" to the list of items to be evaluated for each individual.

The House bill contains no comparable provision.

The House recedes.

8. Sec. 7(5)(G) of the Act as amended by the House bill strikes the words "handicapped individual" both places it occurs and replaces it with the words "individuals with handicaps".

The Senate amendment contains no comparable provision.

The Senate recedes.

9. Sec. 7(5)(H) of the Act as amended by the Senate amendment adds "where appropriate, the provision of rehabilitation engineering services" to the assessment of an individual.

The House bill contains no comparable provision.

The House recedes.

10. Sec. 7(6) of the Act as amended by the Senate amendment adds a new definition of "employability" which is defined as "a determination that, with the provision of vocational rehabilitation services, the indivdual is likely to enter or retain, as a primary objective, full-time employment and when appropriate, part-time employment consistent with the capacities or abilities of the individual in the competitive labor market or any other vocational outcome the Secretary may determine".

The House bill contains no comparable provision.

The House recedes with an amendment inserting before the period "consistent with the Act". The Managers wish to make it clear that although the Secretary is authorized to determine additional vocational outcomes not specifically included in the statute, such a determination must be consistent with the Act.

11. Sec. 7(6) of the Act as amended by the House bill retains the 80 percent Federal share for FY 1987 and FY 1988. Beginning in FY 1989, the Federal share would decrease 1 percent for 5 years for funds in excess of the amount received in FY 1988. The Federal share would remain 80 percent for funds received by states that were equal to or less than the amount received in FY 1988.

The Senate amendment contains no comparable provision.

The Senate recedes.

12. Sec. 7(7) of the Act as amended by the House bill strikes out "a handicapped individual" each place it appears and replaces it with "an individual with handicaps". This change appears throughout the House bill.

The Senate amendment contains no comparable provision.

The Senate recedes.

13(a). Sec. 7(8) of the Act as amended by the House bill amends the definition of "local agency" by striking out "tribal" and all that follows before and the period and inserts "tribe (or combination of such units or tribes)".

The Senate amendment contains no comparable provision.

The House recedes with an amendment changing "Indian tribal organizations" to "an Indian tribe" and changing "organizations" to "tribes".

13(b). Sec. 7(8) of the Act as amended by the House bill deletes the last sentence.

The Senate amendment contains no comparable provision.

The House recedes.

14. Sec. 7(12) of the Act as amended by the Senate amendment adds a new definition of "rehabilitation engineering" which defines it as "the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with handicaps in areas which included education, rehabilitation, employment, transportation, independent living, and recreation."

The House bill contains no similar provision.

The House recedes.

15. Sec. 7(13)(C) of the Act as amended by the Senate amendment strikes "or" and inserts "and".

The House bill contains no similar provision.

The House recedes.

16. Sec. 7(11)(F) of the Act as amended by the House bill adds "psychiatric" to the list of services.

Sec. 7(13)(F) of the Act as amended by the Senate amendment contains a similar provision.

The Senate recedes.

17. Sec. 7(13)(M) of the Act as amended by the Senate amendment adds "psychosocial rehabilitation services for individuals with chronic mental illness".

The House bill contains no similar provision.

The House recedes.

18. Sec. 7(13)(A) of the Act as amended by the House bill amends the definition of "individuals with severe handicaps".

Sec. 7(15) of the Act as amended by the Senate amendment contains a similar provision.

The Senate recedes.

19. Sec. 7(13)(B) of the Act as amended by the House bill adds a new definition of "individuals with severe handicaps" for purposes of title VII of the Act.

The Senate amendment contains no similar provision.

The Senate recedes. This amendment simply includes in the statute the current definition from the regulations. Thus, this amendment should in no way be construed to modify current law or policy.

20. Sec. 7(16) of the Act as amended by the House bill adds a new definition of "public or nonprofit agency or organization" to include an Indian tribe.

The Senate amendment contains no similar provision.

The Senate recedes.

21. Sec. 7(17) of the Act as amended by the House bill adds a new definition of "Indian", "American Indian", and "Indian American" to mean "an individual who is a member of an Indian tribe".

The Senate amendment contains no similar provision.

The Senate recedes.

22. Sec. 7(18) of the Act as amended by the House bill adds a new definition of "Indian tribe" to mean "any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act)."

The Senate amendment contains no similar provision.

The Senate recedes.

23. Sec. 7(18) of the Act as amended by the Senate amendment adds a new definition of "supported employment".

The House bill contains no similar provision.

The House recedes. The conference agreement adopts the Senate definition of supported employment. Supported employment is defined to mean competitive work in integrated work settings for individuals with severe handicaps for whom competitive employment has not traditionally occurred, or for individuals for whom competitive employment has been interrupted or intermittent as a result of a severe disability, and who, because of their handicap, need ongoing support services to perform such work. Conferees intend that the phrase "competitive employment" refers to placement of disabled individuals in competitive environments in integrated work settings with nondisabled employees.

The conference agreement further clarifies that the term supported employment includes transitional employment programs for individuals with chronic mental illness. Such transitional employment programs refer to a wide range of work arrangements in the mental health field characterized by intensive contact between the client and a trainer, with a gradual reduction of assistance as a client becomes more skilled. The conference agreement recognizes transitional employment programs in the mental health rehabilitation field as one variation of the supported employment model. However, the conferees do not intend that supported employment services be limited to any one model of service provision or provided exclusively to one group of disabled individuals.

Finally, the conference agreement clarifies that, for the purpose of the Rehabilitation Act, supported employment may be considered an acceptable outcome for employability. The conferees recognize that research, demonstration projects, and successful service provision data have demonstrated the clear employment potential of disabled persons through supported employment and intensive individualized vocational training. The conferees are impressed by evidence that very severely disabled persons are capable of meaningful employment, given appropriate supports. Placement in supported employment is already considered by some State vocational rehabilitation systems to be an acceptable employment outcome. The conferees intend that all States may consider supported employment an acceptable employment outcome for their Title I program.

24(a). Sec. 12(a)(5) of the Act as amended by the Senate amendment deletes the authority to provide staff and assistance to the National Council on the Handicapped.

The House bill contains no similar provision.

The House recedes.

24(b). Sec. 12(a)(5) of the Act as amended by the Senate amendment adds a new subsection "provide monitoring and conduct evaluations".

The House bill contains no similar provision.

The House recedes.

25. Sec. 12(b) of the Act as amended by the House bill strikes "his" and "this" and inserts "the".

The Senate amendment contains no comparable provision.

The Senate recedes.

26. Sec. 12(b)(2) of the Act as amended by the Senate amendment adds the authority for the Commissioner "to appoint such task forces as may be necessary".

The House bill contains no comparable provision.

The House recedes.

27. Sec. 12(c) of the Act as amended by the House bill strikes "he" and inserts "are considered".

The Senate amendment contains no comparable provision.

The Senate recedes.

28(a). Sec. 13 of the Act as amended by the House bill requires that the annual RSA report go to the President and Congress simultaneously.

The Senate amendment contains no comparable provision.

The Senate recedes.

28(b). Sec. 13 of the Act as amended by the House bill further requires the annual report to include "the activities and staffing of the information clearinghouse under section 15".

The Senate amendment contains no comparable provision.

The Senate recedes.

28(c). Sec. 13 of the Act as amended by the House bill further requires that the annual report include "an evaluation of the status of individuals with several handicaps".

The Senate amendment contains no comparable provision.

The Senate recedes.

29(a). Sec. 14(a) of the Act as amended by the Senate amendment adds a purpose clause.

The House bill contains no comparable provision.

The House recedes.

29(b). Sec. 14(a) of the Act as amended by the Senate amendment transfer authority from the Secretary to the Commissioner to evaluate all the programs authorized by the Act.

The House bill contains no comparable provision.

The House recedes.

29(c). Sec. 14(a) of the Act as amended by the Senate amendment further requires that evaluations use "appropriate methodology and evaluative research designs".

The House bill contains no comparable provision.

The House recedes.

30. Sec. 14(b), (c), and (d) of the Act as amended by the Senate amendment transfers authority from the Secretary to the Commissioner.

The House bill contains no comparable provision.

The House recedes.

31. Sec. 14(c) of the Act as amended by the House bill requires that the annual evalua-

tion summaries include "the standards used for such evaluations".

The Senate amendment contains no comparable provision.

The Senate recedes.

32. Sec. 14(e) of the Act as amended by the House bill strikes "him" and inserts "of the Secretary".

Sec. 14(e) of the Act as amended by the Senate amendment strikes "Secretary" and inserts "Commissioner" and retains "him".

The Senate recedes with an amendment striking "Secretary" and inserting "Commissioner" both times it appears.

33. Sec. 16(b) of the Act as amended by the Senate amendment authorizes the use of "no more than one-half of 1 percent of funds appropriated for discretionary programs for non-Federal panels of experts" in the review process.

The House bill contains no comparable provision.

The House recedes.

34. Sec. 17 of the Act as added by the House bill allows for the "application of any State rule or policy relating to the administration or operation of programs funded by this Act" to be "identified as a State imposed requirement".

The Senate amendment contains no comparable provision.

The Senate recedes.

35. Sec. 17 of the Act as added by the Senate amendment adds a review procedure of grant applications and contracts in excess of $125,000.

The House bill contains no comparable provision.

The House recedes with an amendment deleting "$125,000" and inserting "$60,000 in the aggregate except for contracts for evaluations, dissemination and conferences".

35(b). Sec. 17 of the Act as added by the Senate amendment further states that each review panel must consist of a "majority of non-Federal members".

The House bill contains no comparable provision.

The House recedes.

35(c). Sec. 17 of the Act as amended by the Senate amendment further adds that the non-Federal panel members be provided "travel, per diem and consultant fees".

The House bill contains no comparable provision.

The House recedes.

36. Sec. 100(b)(1)(A) of the Act as amended by the House bill authorizes $1,301,862,400 for basic State grant entitlements for fiscal year 1987.

Sec. 100(b)(1)(A) of the Act as amended by the Senate amendment authorizes $1,281,000,000 for such purpose.

The House recedes with an amendment. The Conferees intend that the amount determined under subsection (c) for each fiscal year shall be based upon the amount authorized by this subsection, or the amount appropriated for this subsection, whichever is higher, plus the amount determined under subsection (c), for the immediately preceding fiscal year.

37. Sec. 100(b)(1)(A) of the Act as amended by the House bill provides a 5-year reauthorization for State grant entitlements through fiscal year 1991.

Sec. 100(b)(1)(A) of the Act as amended by the Senate amendment provides for a 4-year reauthorization through fiscal year 1990.

The Senate recedes with an amendment adding a new subsection (C) which establishes the following authorization ceilings: $1,281,000,000 for fiscal year 1987; $1,409,100,000 for fiscal year 1988; $1,550,010,000 for fiscal year 1989; $1,705,011,000 for fiscal year 1990; and $1,875,512,100 for fiscal year 1991.

38. Sec. 100(b)(2) of the Act as amended by the House bill authorizes such sums for section 120(a)(1) of the Act through fiscal year 1991.

Sec. 100(b)(2) of the Act as amended by the Senate amendment authorizes such sums through fiscal year 1990.

The Senate recedes.

39. Sec. 100(b)(3) of the Act as amended by the House bill authorizes such sums for Indian tribes under Part D of the Act through fiscal year 1991.

Sec. 100(b)(3) of the Act as amended by the Senate amendment authorizes such sums through fiscal year 1990.

The Senate recedes with an amendment deleting section 100(b)(3).

40. Sec. 100(d) of the Act is deleted in the House bill.

The Senate amendment retains current law.

The House recedes with an amendment changing "1986" to "1991".

41. Sec. 101(a)(5)(A) of the Act as amended by the House bill adds "the results of a comprehensive, State-wide assessment of the rehabilitation needs of all individuals with severe handicaps residing within the State and the State's response to the assessment".

Sec. 101(a)(5)(A) of the Act as amended by the Senate amendment contains a similar provision except it does not contain the words "comprehensive" or "all".

The Senate recedes with an amendment deleting the word "all".

42. Sec. 101(a)(5)(A) of the Act as amended by the Senate amendment adds a requirement to include individuals served by the new title VI-C to require a description of the method to be used to expand and improve services to this population.

The House bill contains no comparable provision.

The House recedes.

43. Sec. 101(a)(5)(A) of the Act as amended by the House bill adds a requirement to show and justify the order of selection.

Sec. 101(a)(5)(A) of the Act as amended by the Senate amendment contains a similar provision.

The Senate recedes.

44. Sec. 101(s)(5)(B) of the Act as amended by the House bill adds a requirement to "describe the manner in which rehabilitation engineering services will be utilized to provide assistance".

Sec. 101(a)(5)(C) of the Act as amended by the Senate amendment contains a similar provision.

The House recedes.

45. Sec. 101(a)(7)(B) of the Act as amended by the House bill inserts "qualified" before the reference to personnel providing services.

The Senate amendment contains no comparable provision.

The Senate recedes.

46(a). Sec. 101(a)(8) of the Act as amended by the House bill changes the requirement of "full consideration" of eligibility for similar benefits under other programs to require a determination that "comparable services and benefits are not available under any other program" before vocational rehabilitation services are provided.

The Senate amendment contains no comparable provision.

The Senate recedes.

46(b). Sec. 101(a)(8) of the Act as amended by the Senate amendment adds rehabilitation engineering services to the list of services to be provided without consideration of similar benefits.

The House bill contains no comparable provision.

The House recedes.

46(c). Sec. 101(a)(8) of the Act as amended by the House bill adds an exception for similar benefits determination where it would delay the provision of services to any individual "at extreme risk".

The Senate amendment contains no comparable provision.

The Senate recedes.

47. Sec. 101(a)(10) of the Act as amended by the House bill strikes "his functions" and inserts "the functions of the Commissoner".

The Senate amendment contains no comparable provision.

The Senate recedes.

48. Sec. 101(a)(11) of the Act as amended by the House bill adds cooperative agreements with "community mental health programs".

Sec. 101(a)(11) of the Act as amended by the Senate amendment adds cooperative agreements with "mental health community support programs".

The Senate recedes.

49. Sec. 101(a)(15) of the Act as amended by the Senate amendment adds a requirement to conduct "a full needs assessment for serving individuals with severe handicaps" as part of the continuing State-wide studies of the needs of handicapped individuals and how these needs may be effectively met.

The House bill contains no comparable provision.

The House recedes. The conferees intend that the States need only include a summary of the needs assessment as part of the State plan.

50. Sec. 101(a)(20) of the Act as amended by the House bill requires the assurance that "as appropriate the State shall actively consult with Indian tribes and tribal organizations and native Hawaiian organizations in the development of the State plan".

The Senate amendment contains no comparable provision.

The Senate recedes. The term "consultation" does not require or prohibit a formal approval of the State plan.

51(a). Sec. 101(a)(23)(A) of the Act as amended by the House bill requires that "in the formulation of the State plan, and any revisions, that the State agency conducts public meetings throughout the State."

The Senate amendment contains no comparable provision.

The Senate recedes.

51(b). Sec. 101(a)(23)(B) of the Act as amended by the House bill requires a summary of the public comments and the response to those comments.

The Senate amendment contains no comparable provision.

The Senate recedes.

52. Sec. 101(a)(23) of the Act as amended by the Senate amendment requires assurance that the State has an acceptable plan for title VI-C.

The House bill contains no comparable provision.

The House recedes.

53. Sec. 101(a)(24) of the Act as amended by the House bill adds a requirement for the inclusions of "plans, policies, and methods to be followed to assist in the transition from education to employment related activities".

The Senate amendment contains no comparable provision.

The Senate recedes.

54. Sec. 101(b) of the Act as amended by the House bill strikes "he" and "his" and inserts "the Commissioner".

The Senate amendment contains no comparable provision.

The Senate recedes.

55. Sec. 101(c)(1)(B) of the Act as amended by the House bill strikes "his", "until he is satisfied there is no longer any such failure", and "he" and inserts "of the Commissioner" and "the Commissioner".

The Senate amendment contains no comparable provision.

The Senate recedes.

56. Sec. 101(d)(1) of the Act as amended by the House bill strikes "him" and "he" and inserts "the Commissioner" both times.

The Senate amendment contains no comparable provision.

The Senate recedes.

57. Sec. 102(a) of the Act as amended by the House bill strikes "his" and inserts "such individuals' ".

The Senate amendment contains no comparable provision.

The Senate recedes.

58. Sec. 102(b) of the Act as amended by the House bill adds "goals based on an assessment determined through an evaluation of rehabilitation potential under section 7(5)".

The Senate amendment contains no comparable provision.

The Senate recedes with amendment delet "under section 7(5)". The determination must be based on an assessment determined through an evaluation of rehabilitation potential as defined in section 7(5) of the Act.

59(a). Sec. 102(b)(1)(A) of the Act as amended by the Senate amendment requires that the IWRP "be developed on the basis of determination of employability".

The House bill contains no comparable provision.

The House recedes with an amendment adding "designed" before "to achieve".

59(b). Sec. 102(b)(1)(B) of the Act as amended by the Senate amendment adds the inclusion of "a statement of the long-range rehabilitation goals".

The House bill retains current law.

The House recedes to the Senate and the Senate recedes to the House with a conforming amendment.

59(c). Sec. 102(b)(1)(C) of the Act as amended by the Senate amendment adds the inclusion of "a statement of the intermediate rehabilitation objectives".

The House bill retains current law.

The House recedes to the Senate and the Senate recedes to the House with a conforming amendment.

59(d). Sec. 102(b)(1)(D) of the Act as amended by the Senate amendment adds the inclusion of "a statement of the specific rehabilitation engineering services to be provided".

The House bill contains no comparable provision.

The House recedes with a conforming amendment.

59(e). Sec. 102(b)(1)(E) of the Act as amended by the Senate amendment adds "an assessment of the expected need for post-employment services".

The House bill contains no comparable provision.

The House recedes with a conforming amendment.

59(f). Sec. 102(b)(1)(F) of the Act as amended by the Senate amendment adds the inclusions of "a statement of the specific vocational rehabilitation services to be provided and the projected dates for the initiation and the anticipated duration of each such service".

The House bill contains a similar provision.

The House recedes to the Senate and the Senate recedes to the House with a conforming amendment.

59(g). Sec. 102(b)(1)(G) of the Act as amended by the Senate amendment adds "objective criteria and an evaluation procedure and schedule".

The House bill contains no similar provision.

The House recedes with a conforming amendment.

59(h). Sec. 102(b)(1)(H) of the Act as amended by the Senate amendment provides "for a reassessment of the need for post-employment services prior to case closure".

The House bill contains no comparable provision.

The House recedes with a conforming amendment. Of course, the conferees intend that there should be a reassessment of other services, where appropriate, and not just post-employment services.

59(i). Sec. 102(b)(1)(I) of the Act as amended by the Senate amendment requires "a description of the availability of a client assistance project" to be given to the individual.

The House bill contains no comparable provision.

The House recedes with a conforming amendment.

60. Sec. 102(b)(2) of the Act as amended by the Senate amendment requires the provision of an annual review and as needed revisions of the IWRP.

The House bill contains no comparable provision.

The House recedes.

61. Sec. 102(c) of the Act as amended by the House bill strikes "his" and inserts "such individual's".

The Senate amendment contains no comparable provision.

The Senate recedes.

62(a). Sec. 102(d)(1) of the Act as amended by the House bill requires that review procedures provide an opportunity for submission of additional evidence and information.

The Senate contains no comparable provision.

The House recedes to the Senate and the Senate recedes to the House with an amendment.

The conference agreement amends Sec. 102 of the Act to provide that the Director of any designated State unit shall establish procedures for the review of determinations made by the counselor or coordinator. The agreement provides that such procedures will include review by an impartial hearing officer if requested by the individuals.

The conferees believe that an impartial due process system is in the interest of both the clients and the rehabilitation services. The conferees intend that persons appointed to the position of impartial hearing officer shall have a background and experience in, and have knowledge of, the delivery of vocational rehabilitation services. Further, the conferees intend that the impartial hearing officer be an individual who has had no previous involvement in the decisions or services in dispute.

The responsibility for assuring that services are delivered to all clients consistent with sound vocational rehabilitative principles and that disputes are resolved promptly on a fair and equitable basis remains with the Director of the designated State unit. The Director will be responsible for a final review of determinations made by the impartial hearing officer, where such review occurs. The conferees expect that the review by the Director will occur in a timely manner, and further expect the Rehabilitation Services Administration to develop regulations delineating timelines for such review.

The conference agreement repeals Section 102(d)(2) of the Act, which provided for a review by the Secretary of decisions made by the Director.

In order to monitor the implementation of review procedures, the conference agreement requires State vocational rehabilitation agencies to provide specific data on reviews held in each State, and directs RSA to summarize this information in the Annual Report to Congress beginning February, 1988. The conferees expect that a GAO report will be requested by Congress prior to the fiscal year 1990 to further analyze the review system which States establish.

Nothing in the conference agreement prohibits any individual from pursuing a provate right of action.

62(b). Sec. 102(d)(1) of the Act as amended by the House bill further requires that the final decision include "a full report of the Director's findings and the grounds for such decision".

The Senate amendment contains no comparable provision.

The House recedes to the Senate and the Senate recedes to the House with an amendment. (See #62(a))

62(c). Sec. 102(d)(1) of the Act as amended by the House bill further requires that "a copy of such decision be provided to such individuals".

The Senate amendment contains no comparable provision.

The House recedes to the Senate and the Senate recedes to the House with an amendment. (See #62(a))

63(a). Sec. 102(d)(1) of the Act as amended by the Senate amendment allows the handicapped individual the right to a review of a determination or decision.

The House bill contains no comparable provision.

The House recedes to the Senate and the Senate recedes to the House with an amendment. (See #62(a))

63(b). Sec. 102(d)(2) of the Act as amended by the Senate amendment requires the Director to establish procedures for the review.

The House bill contains no comparable provision.

The House recedes to the Senate and the Senate recedes to the House. (See #62(a))

63(c). Sec. 102(d)(2) of the Act as amended by the Senate amendment further requires that the review to be held before an impartial hearing officer.

The House bill contains no comparable provision.

The House recedes to the Senate and the Senate recedes to the House with an amendment. (See #62(a))

64. Sec. 102(d)(2) of the Act as amended by the House bill strikes "his" and "his responsibilities" and inserts "such individual's" and "any responsibilities of the Secretary", respectively.

The Senate amendment strikes this subsection.

The House recedes.

65. Sec. 102(d)(3) of the Act as amended by the House bill permits a fair hearing board to review the determination made.

The Senate amendment contains no comparable provision.

The Senate recedes with an amendment changing date to "1985".

66. Sec. 103(a)(1) of the Act as amended by the House bill adds "evaluation by personnel skilled in rehabilitation technology" to the description of evaluation of rehabilitation potential under scope of services.

The Senate amendment contains no comparable provision.

The Senate recedes with an amendment adding "engineering" after "rehabilitation" and adding a comma after "technology".

67. Sec. 103(a)(2) of the Act as amended by the House bill strikes "other postemployment services necessary to assist individuals to maintain their employment" and inserts "specific postemployment services necessary to assist individuals to maintain or regain employment".

The Senate amendment contains no comparable provision.

The Senate recedes.

68. Sec. 103(a)1(1) of the Act as amended by the House bill adds "rehabilitation engineering services designed to assist individuals with severe handicaps increase their functional abilities and potential for self-sufficiency".

Sec. 103(12) of the Act as amended by the Senate amendment adds "rehabilitation engineering services".

The House recedes.

6. Sec. 104 of the House bill adds "(or to an Indian tribe under part D of this title)".

The Senate amendment contains no comparable provision.

The Senate recedes.

70. Sec. 110(a)(1) of the Act as amended by the House bill requires State allotments to be subject to the provisions of new subsection "(d)".

The Senate amendment contains no comparable provision.

The Senate recedes.

71. Sec. 110(b)(2) of the Act as amended by the House bill ties the additional payment under the maintenance of effort clause to fiscal year 1972.

The Senate amendment contains no comparable provision.

The Senate recedes.

72. Sec. 110(b)(2) of the Act as amended by the House bill strikes "80 percent" and inserts "the applicable Federal share" both times it appears.

The Senate amendment contains no comparable provision.

The Senate recedes.

73(a). Sec. 110(c)(1) of the Act as amended by the House bill requires that the Commissioner to make a determination that States will not use their full allotments not later than 45 days before the end of the fiscal year.

The Senate amendment contains no comparable provision.

The Senate recedes with a gender-free amendment.

73(b). Sec. 110(c)(2) of the Act as amended by the House bill requires the Commissioner to make such allotments available to other States.

The Senate amendment contains no comparable provision.

The Senate recedes.

73(c). Sec. 110(c)(3) of the Act as amended by the House bill requires that such additional amounts be regarded as an increase in such State's allotment.

The Senate amendment contains no comparable provision.

The Senate recedes.

73(d). Sec. 110(d)(1) of the Act as amended by the House bill requires that the Commissioner to reserve the portion authorized for title I-D from the rest of the amount authorized.

The Senate amendment contains no comparable provision.

The Senate recedes with an amendment deleting "authorized to be".

73(e). Sec. 110(d)(2) of the Act as amended by the House bill requires ¼ of one percent and not more than one percent to be available for title I-D.

The Senate amendment contains no comparable provision.

The Senate recedes.

74(a). Sec. 111(a)(1) of the Act as amended by the House bill ties the maintenance of effort requirement to 1972 "except as provided in paragraph (2)".

The Senate amendment contains no comparable provision.

The Senate recedes.

74(b). Sec. 111(a)(2)(A) of the Act as amended by the House bill authorizes waiver or modifications of requirements concerning construction of rehabilitation facilities.

The Senate amendment contains no comparable provision.

The Senate recedes.

74(c). Sec. 111(a)(2)(B) of the Act as amended by the House bill bases the maintenance of effort requirement on average expenditures for the three preceding fiscal years, rather than fiscal yar 1972.

The Senate amendment contains no comparable provision.

The Senate recedes.

75. Sec. 111(b) of the Act as amended by the House bill strikes "his", "him", and "he finds that his" and inserts "the Commissioner", "the Commissioner" and "the Commissioner finds that the", respectively.

The Senate amendment contains no comparable provision.

The Senate recedes.

76. Sec. 112(a) of the Act as amended by the Senate amendment authorizes the CAPs to provide information on services available under the Act "to any handicapped individual in the State".

The House bill contains no comparable provision.

The House recedes.

77(a). Sec. 112(c)(1)(A) of the Act as amended by the Senate amendment limits to initial agency designation the grandfathering exemption from the independence requirement.

Sec. 112(c)(1) of the Act as amended by the House bill retains current law.

The House recedes.

77(b). Sec. 112(c)(1) of the Act as amended by the House bill to allow the removal of the agency designated as the CAP only for good cause.

Sec. 112(c)(1)(B) of the Act as amended by the Senate amendment prohibits the Governor from redesignating the agency designated without good cause and requires that notice be given of the intention to redesignate such agency.

The House recedes.

78. Sec. 112(e)(3)(D) of the act as amended by the House bill allows for an increase in the minimum allotment when the current fiscal year's appropriation exceeds the previous fiscal year and is more than the percentage increase in the Consumer Price Index and that such increase will not result in a decrease in allotment to any other State.

Sec. 112(e)(1)(D) of the Act as amended by the Senate amendment increases the minimum allotment to $75,000 for States and to $45,000 for territories whenever the appropriation exceeds $7.5 million.

The House recedes. The conferees intend that the price index to be used to increase the minimum allotment for the CAP be the percentage change published in the Federal Register for the preceding fiscal year by the Secretary of Labor as required under section 100(c)(1).

79. Sec. 112(e)(2) of the Act as amended by the House bill strikes "from time to time on such dates he may fix" and inserts "at appropriate times".

The Senate amendment contains no comparable provision.

The Senate recedes with a gender-free amendment.

80. Sec. 112(e)(3)(A) of the Act as amended by the House bill to direct the Secretary to pay CAP funds directly to the designated CAP agency, rather than the Governor, except as specifically prohibited or as otherwise provided in State law.

Sec. 112(e)(3)(A) of the Act as amended by the Senate amendment is similar but does not have the exclusion for State law.

The Senate recedes. The applicability of State law governs the payment of Client Assistance Program funds directly to the designated CAP agency; for all other purposes Federal law governs.

8. Sec. 112(g)(1) of the Act as amended by the Senate amendment strikes "or receive benefits of any kind directly or indirectly".

The House bill contains no comparable provision.

The House recedes.

82. Sec. 112(i) of the Act as amended by the House bill authorizes such sums through fiscal year 1991.

Sec. 112(i) of the Act as amended by the Senate amendment authorizes:

[In millions of dollars]

Fiscal year:	
1987	$7.10
1988	7.55
1989	8.00
1990	8.45

The House recedes with an amendment adding an authorization for fiscal year 1991 of $8,796,000.

83. Sec. 120(b) of the Act as amended by the House bill strikes "he" both times it appears and inserts "the Commissioner".

The Senate amendment contains no comparable provision.

The Senate recedes.

84. Sec. 121(b) of the Act as amended by the House bill strikes "fiscal year ending September 30, 1986" and inserts "fiscal year 1991".

The Senate amendment contains no comparable provision.

The Senate recedes.

85(a). Sec. 130(a) of the Act as amended by the House bill adds "(and consortia of such governing bodies)" to eligible parties.

The Senate amendment contains no comparable provision.

The Senate recedes.

85(b). Sec. 130(a) of the Act as amended by the House bill further adds that the non-Federal share may be "in cash or in kind, fairly valued".

The Senate amendment contains no comparable provision.

The Senate recedes.

85(c). Sec. 130(a) of the Act as amended by the House bill allows the Commissioner to waive "the non-Federal share requirement in order to carry out the purposes of this Act".

The Senate amendment contains no comparable provision.

The Senate recedes.

86. Sec. 130(b)(1)(B) of the Act as amended by the House bill adds "where appropriate, may include services traditionally used by Indian tribes".

The Senate amendment contains no comparable provision.

The Senate recedes.

87. Sec. 130(b)(2) of the Act as amended by the Senate amendment strikes "Health, Education and Welfare" and inserts "Education".

The House amendment contains no comparable provision.

The House recedes.

88. Sec. 130(b)(3) of the Act as amended by the House bill establishes the maximum project period to be 36 months, but retains authority to modify by regulation.

The Senate amendment contains no comparable provision.

The Senate recedes.

89. Sec. 130(b)(4) of the Act as amended by the House bill requires that a priority be given to previously funded projects.

The Senate amendment contains no comparable provision.

The Senate recedes with an amendment adding "Nothing in this section shall be construed to authorize a separate service delivery system for Indian residents of a state who reside in non-reservation areas."

90. Sec. 130(d) of the Act as amended by the House bill is deleted.

The Senate amendment contains no comparable provision.

The Senate recedes.

91. Sec. 131(3) of the Act as amended by the House bill requires that the evaluation of the Indian program include an evaluation of the "nature and extent of cooperative efforts" between the Indian program and other vocational rehabilitation programs.

Sec. 131 of the Act as amended by the Senate amendment is deleted.

The House recedes with an amendment deleting Sec. 131(3). (See #92).

92. Sec. 132 of the Act as amended by the House bill requires a study, in conjunction with other Federal officials and Indian representatives, on the "special problems and needs" of Indians with handicaps, both on and off the reservation and that the report be submitted to the President and Congressional within 12 months of the enactment of this bill

The Senate amendment contains no comparable provision.

The Senate recedes with an amendment adding language of Sec. 131(3).

93(a). Sec. 201(a)(1) of the Act as amended by the House bill authorizes "such sums" for the National Research Institute on Disability and Rehabilitation under Sec. 202, other than expenses under Sec. 204, through fiscal year 1991.

Sec. 201(a)(1) of the Act as amended by the Senate amendment authorizes "such sums" for NIHR under Sec. 202, other than expenses under Sec. 204, through fiscal year 1990.

The Senate recedes with an amendment changing the name of the National Institute of Handicapped Research to the National Institute on Disability and Rehabilitation Research.

93(b). Sec. 201(a)(2) of the Act as amended by the House bill authorizes "such sums" for research under Sec. 204 through fiscal year 1991.

Sec. 201(a)(2) of the Act as amended by Senate amendment authorizes the following amounts for Sec. 204, including amount listed for rehabilitation engineering centers in South Carolina and Connecticut under Sec. 204(b)(2)(C):

[In millions of dollars]

	Sec. 204	Sec. 204(b)(2)(C)
Fiscal year:		
1987	49	1.000
1988	52	1.050
1989	55	1.1025
1990	58	1.160

The House recedes with an amendment authorizing $60,378,000 for fiscal year 1991 for the purposes of carrying out Sec. 204, of which $1,208,000 shall be available for carrying out Sec. 204(b)(2)(C).

94. Sec. 202(a) of the Act as amended by the House bill strikes "National Institute of Handicapped Research" and inserts "National Research Institute on Disability and Rehabilitation". This occurs throughout the bill.

The Senate amendment contains no comparable provision.

The Senate recedes with an amendment changing the name of the institute to the "National Institute on Disability and Rehabilitation Research". In light of the current budget constraints, the Managers intend that the Institute use up rather than discard all existing stationery and other materials which include the current name.

95. Sec. 202(a) of the Act as amended by the House bill strikes "his functions" and inserts "the functions of the office".

The Senate amendment contains no comparable provision.

The Senate recedes.

96. Sec. 202(b)(8) of the Act as amended by the House bill adds "the Bureau of Indian Affairs, the Indian Health Service," to the list of named agencies with which the Institute shall produce statistical reports and studies.

The Senate amendment contains no comparable provision.

The Senate recedes.

97(a). Sec. 202(c) of the Act as amended by the House bill transfers the authority to appoint the Director from the President to the Secretary.

The Senate amendment contains no comparable provision.

The House recedes.

97(b). Sec. 202(c) of the Act as amended by the House bill further requires the Director to report directly to the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

The Senate amendment contains no comparable provision.

The House recedes.

97(c). Sec. 202(c) of the Act as amended by the House bill further establishes that the Director's position be a GS-18 in the Senior Executive Service.

The Senate amendment contains no comparable provision.

The House recedes.

97(d). Sec. 202(c) of the Act as amended by the House bill further requires that the Director be guided by the general policies of the National Council on the Handicapped.

The Senate amendment contains no comparable provision.

The Senate recedes.

98. Sec. 202(e) of the Act as amended by the House bill strikes "he" and inserts "the Director".

The Senate amendment contains no comparable provision.

The Senate recedes.

99. Sec. 202(i) of the Act as amended by the House bill strikes "whatever actions he considers appropriate" and "in his role of Chairman" and inserts "actions" and "as Chairperson", respectively.

The Senate amendment contains no comparable provision.

The Senate recedes.

100. Sec. 202(j) of the Act as amended by the Senate amendment adds a purpose statement for the research and training center in the Pacific Basin.

The House bill contains no comparable provision.

The House recedes.

101. Sec. 202(j)(3) of the Act as amended by the House bill requires the Director to establish an R&T Center "associated with an institution of higher education, concerning the delivery of rehabilitation services to rural areas".

The Senate amendment contains no comparable provision.

The Senate recedes. It is the intent of the conferees that the rural Research and Training Center be located in Missoula, Montana.

102. Sec. 202(k) of the Act as amended by the House bill requires grants be made to institutions of higher education "for the training of researchers in the field of rehabilitation".

The Senate amendment contains no comparable provision.

The Senate recedes.

103. Sec. 202(l) of the Act as amended by the House bill requires the Director to submit policy recommendations to Congress "for congressional establishment of an agency designed to ensure (1) the development and cost-effective production and marketing of technological devices, and (2) the efficient distribution of this technology to handicapped individuals".

The Senate amendment contains no comparable provision.

The Senate recedes.

104. Sec. 202(m) of the Act as amended by the House bill requires the Director to study health insurance practices and policies affecting the handicapped and report to Congressional Committees by February 1, 1990.

The Senate amendment contains no comparable provision.

The Senate recedes.

105. Sec. 203(a)(1) of the Act as amended by the House bill adds the Assistant Secretary of the Interior for Indian Affairs and the Director of the Indian Health Service to the Interagency Committee.

Sec. 203(a)(1) of the Act as amended by the Senate amendment adds the Director of the National Institute of Mental Health.

The Senate recedes with an amendment adding the Director of the National institute of Mental Health.

106(a). 204(a)(1) of the Act as amended by the House bill adds "Indian tribes and tribal organizations" to the list of grantees.

The Senate amendment contains no comparable provision.

The Senate recedes.

106(b). Sec. 204(a)(1) of the Act as amended by the Senate amendment adds "recreational" to the list of factors affecting rehabilitation of the handicapped that may be studied.

The House bill contains no comparable provision.

The House recedes.

106(c). Sec. 204(a)(1) of the Act as amended by the House bill adds "studies, analyses, and other activities related to supported employment" to the list of projects the Director may make grants for.

Sec. 204(a)(1) of the Act as amended by the Senate amendment contains a similar provision.

The Senate recedes.

107. Sec. 204(b)(1) of the Act as amended by the House bill requires the consideration of rural issues, as appropriate, in determining the research to be carried out by each R&T Center.

The Senate amendment contains no comparable provision.

The Senate recedes. In specifying that the Director consider as appropriate rural issues, the Managers are requesting that the Director be sensitive to rural concerns and are not intending by this language to create a rural priority.

108. Sec. 204(b)(1) of the Act as amended by the House bill establishes a minimum annual award of $400,000 per center except for centers funded prior to enactment, and requires peer review to include consideration of past performance for any annual award of more than $400,000.

Sec. 204(b)(1) of the Act as amended by the Senate amendment requires the consideration of past performance for peer review of all renewal applications.

The House recedes. Research and Training Centers are established to: (a) provide a coordinated research program consisting of multiple projects focused on a particular research area; (b) provide training of researchers and service personnel; and (c) disseminate research results. The Center is to be a resource to its region or the Nation with respect to research training and dissemination. Recently, many Centers have been funded at levels too low to enable these functions to be undertaken, even with local contributions. To assure the successful operation of this important program, the Secretary must establish funding guidelines to assure sufficient levels and the conferees believe the minimum amount should ordinarily be about $400,000. Guidelines may include exceptions where the specific research and training focus or other similar facts justify smaller amounts. The conferees believe that the current funding levels of many Centers of $500,000 to $750,000 are reasonable and consistent with other Federal research center funding levels and do not wish to see those levels reduced. The intent of the conferees is to assure a reasonable minimum in order to prevent clearly inadequate funding.

109. Sec. 204(b)(1) of the Act as amended by the Senate amendment limits the indirect cost charges to 15%.

The House bill contains no comparable provision.

The House recedes. The conferees intend that the indirect cost charges be limited to 15% of the total award, calculated on an annual basis.

110. Sec. 204(b)(2)(A) of the Act as amended by the House bill addes a requirement to "disseminate", as well as develop, innovative methods.

The Senate amendment contains no comparable provision.

The Senate recedes.

111. Sec. 204(b)(2)(B) of the Act as amended by the House bill authorizes Research and Training Centers to "demonstrate innovative models for the delivery to rural and urban areas of cost effective rehabilitative engineering services to assist in meeting the employment and independent living needs of individuals with severe handicaps".

The Senate amendment contains no comparable provision.

The Senate recedes with an amendment adding "and disseminate" after "demonstrate". The inclusion of a reference to "urban and rural" areas is not intended to establish a priority for these areas.

112. Sec. 204(b)(2)(C) of the Act as amended by the Senate amendment authorizes two new rehabilitation engineering centers "to demonstrate and disseminate innovative models for the delivery of cost-effective rehabilitation engineering services" to be located in South Carolina and Connecticut.

The House bill contains no comparable provision.

The House recedes with an amendment to provide for competition for these Centers after four years. The conference agreement authorizes in fiscal year 1987 the establishment of two new rehabilitation engineering centers in the State of South Carolina and the State of Connecticut for the purpose of demonstrating and disseminating innovative models for the delivery of cost-effective rehabilitation services. The conferees expect both States will seek to maximize the benefits of their centers. The conferees intend that the REC in South Carolina be established through the State rehabilitation agency. The conferees intend that the REC in Connecticut be established as a cooperative network of private nonprofit agencies, colleges and universities, business and State agencies, to be managed by the United Cerebral Palsy Association of Connecticut, Inc. in association with the New England Association of Business, Industry and Rehabilitation. Finally, it is the intent of the conferees that these awards be made within six months.

113. Sec. 204(b)(3)(C) of the Act as amended by the House bill requires that for R&T spinal cord research centers to take into account "the proposed center location and the appropriate geographic and regional allocation".

The Senate amendment contains no comparable provision.

The Senate recedes.

114. Sec. 204(b)(7) of the Act as amended by the Senate amendment adds "the National Institute of Mental Health" to the list of named agencies with which the Director may carry out joint projects.

The House bill contains no comparable provision.

The House recedes.

115. Sec. 204(b)(8) of the Act as amended by the House bill requires that research concerning older handicapped Indian Americans include those 55 and older, rather than 60 and older.

The Senate amendment contains no comparable provision.

The Senate recedes.

116. Sec. 204(11) of the Act as amended by the House bill adds "psychological" services.

The Senate amendment contains no comparable provision.

The Senate recedes.

117. Sec. 204(b)(14) of the Act as amended by the House bill adds the authority to conduct studies of the rehabilitation needs of Indians and of effective mechanisms for delivery of services to Indians on and off the reservations.

The Senate amendment contains no comparable provision.

The Senate recedes.

118. Sec. 204(b)(14) of the Act as amended by the Senate amendment adds the authority for a demonstration program, including projects of national scope, "to develop procedures to provide incentives for the development, manufacturing, and marketing of orphan technological devices" to assist handicapped individuals achieve independence and access to gainful employment.

The House bill contains no comparable provision.

The House recedes.

119. Sec. 204(d) of the Act as amended by the Senate amendment authorizes the Director to make site visits when evaluating projects and requires peer review site visits for any grant in excess of $299,999.

The House bill contains no comparable provision.

The House recedes with a technical amendment.

120. Sec. 301(a) of the Act as amended by the House bill extends such sums authorizations through fiscal year 1991, and allow the appropriated funds to remain available to October 1, 1992.

Sec. 301(a) of the Act as amended by Senate amendment extends such sums authorization through fiscal year 1990, and allows appropriated funds to remain available prior to October 1, 1991.

The Senate recedes.

121. Sec. 301(b)(1) of the Act as amended by the Senate amendment strikes "Commission" and inserts "Commissioner".

The House bill contains no comparable provision.

The House recedes.

122. Sec. 302(a) of the Act as amended by the House bill extends such sums authorization through fiscal year 1991.

Sec. 302(a) of the Act as amended by the Senate amendment extends such sums authorization through fiscal year 1990.

The Senate recedes.

123(a). Sec. 302(b)(3) of the Act as amended by the House bill strikes "on his determination", "his need", and "he" and inserts "if the Commissioner determines", "that individual's" and "the Commissioner", respectively.

The Senate amendment contains no comparable provision.

The Senate recedes.

123(b). Sec. 302(b)(3) of the Act as amended by the House bill adds "including supported employment".

The Senate amendment contains no comparable provision.

The Senate recedes.

124. Sec. 303(e)(1) of the Act as amended by the House bill strikes "he" and inserts "the Commissioner".

The Senate amendment contains no comparable provision.

The Senate recedes.

125. Sec. 303(e)(2)(B) of the Act as amended by the House bill strikes "he considers" and inserts "considered".

The Senate amendment contains no comparable provision.

The Senate recedes.

126. Sec. 303(e)(2)(C) of the Act as amended by the House bill strikes "his" both places it appears and inserts "a".

The Senate amendment contains no comparable provision.

The Senate recedes.

127. Sec. 303(f)(1)(A) of the Act as amended by the House bill strikes "(A) to enable him to discharge his responsibilities under loan guarantees issued by him under this section; and" and inserts "(A) to enable the

Commissioner to discharge the responsibilities under the loan guarantees issued under this section; and".

The Senate amendment contains no comparable provision.

The Senate recedes.

128. Sec. 303(f)(1)(B) of the Act as amended by the House bill strikes "his from his" and inserts "the Commissioner from".

The Senate amendment contains no comparable provision.

The Senate recedes.

129. Sec. 303(f)(2)(A)(ii) of the Act as amended by the House bill strikes "he" and inserts "the Commissioner".

The Senate amendment contains no comparable provision.

The Senate recedes.

130. Sec. 303(f)(2)(C) of the Act as amended by the House bill strikes "he" and "him" and inserts "the Secretary" in both places.

The Senate amendment contains no comparable provision.

The Senate recedes.

131. Sec. 304(a)(2) of the Act as amended by the House bill adds "(2) personnel specifically trained to identify, assess and meet the individual rehabilitation needs of individuals with severe handicaps".

Sec. 304(a)(2) of the Act as amended by the Senate amendment contains a similar provision.

The Senate recedes.

132. Sec. 304(a)(2) of the Act as amended by the House bill adds "Recipients of grants or contracts under this section shall give due regard to the training of individuals with handicaps as part of the effort to increase the number of qualified personnel available to provide rehabilitation services."

The Senate amendment contains no comparable provision.

The Senate recedes.

133(a). Sec. 304(b)(1) of the Act as amended by the House bill adds "rehabilitation engineering" to potential areas of shortage.

Sec. 304(b) of the Act as amended by the Senate amendment adds "rehabilitation engineering,"; "rehabilitation dentistry,"; "physical education," and "therapeutic recreation" to potential areas of shortage.

The House recedes.

133(b). Sec. 304(b)(1) of the Act as amended by the House bill further adds "specialized personnel in providing employment training for supported employment" as a potential area of shortage.

Sec. 304(b) of the Act as amended by the Senate amendment is similar, but also adds "other specialized personnel for those individuals who meet the definition of severely handicapped".

The House recedes.

134. Sec. 304(b)(1) of the Act as amended by the House bill strikes the last sentence in this subsection.

The Senate amendment contains no comparable provision.

The Senate recedes.

135(a). Sec. 304(b)(2)(A) of the Act as amended by the House bill limits grants of one course of study to 4 years.

The Senate amendment contains no comparable provision.

The Senate recedes.

135(b). Sec. 304(b)(2)(B) of the Act as amended by the House bill allows the limitation of 4 years to be modified if the "individual has a handicap which seriously affects the completion of training".

The Senate amendment contains no comparable provision.

The Senate recedes.

136(b). Sec. 304(b)(3)(A) of the Act as amended by the House bill requires scholarship recipients to work full-time for a nonprofit rehabilitation agency for 2 years for each year assistance was received.

The Senate amendment contains no comparable provision.

The Senate recedes with an amendment providing that (1) the host institution's responsibility ceases when the person graduates; (2) after "rehabilitation" insert "and other related agencies"; and (3) inserting "state agencies" after "non-profit".

136(b). Sec. 304(b)(3)(B) of the Act as amended by the House bill requires the recipient to "repay all or part of any scholarship received, plus interest" if the requirements of subparagraph (A) are not met.

The Senate amendment contains no comparable provision.

The Senate recedes with an amendment changing "Secretary" to "Commissioner".

137. Sec. 304(e)(1) of the Act as amended by the House bill authorizes the Commissioner to provide technical assistance to State rehabilitation agencies and rehabilitation facilities.

The Senate amendment contains no comparable provision.

The Senate recedes.

138. Sec. 304(e)(2) of the Act as amended by the House bill sets the maximum daily rate of a GS-18 for experts and consultants.

The Senate amendment contains no comparable provision.

The Senate recedes.

139. Sec. 304(f) of the Act as amended by the House bill authorizes such sums for Sec. 304 through fiscal year 1991.

Sec. 304(f) of the Act as amended by the Senate amendment authorizes the following:

[In millions of dollars]

Fiscal year:	
1987	31
1988	33
1989	35
1990	37

The House recedes with an amendment adding an authorization for fiscal year 1991 of $38,517,00.

140. Sec. 305(g) of the Act as amended by the House bill authorizes such sums through fiscal year 1991.

Sec. 305(g) of the Act as amended by the Senate amendment authorizes such sums through fiscal year 1990.

The Senate recedes.

141. Sec. 306(a) of the Act as amended by the House bill makes a technical correction Sec. 305 "(f)".

Sec. 306(a) of the Act as amended by the Senate amendment contains a similar provision.

The Senate recedes.

142. Sec. 310(a) of the Act as amended by the House bill authorizes such sums through fiscal year 1991, except for Sec. 316.

Sec. 310(a) of the Act as amended by the Senate amendment authorizes the following, except for Sec. 311(d), 311(e), and 316:

[In millions of dollars]

Fiscal year:	
1987	15.86
1988	16.79
1989	17.80
1990	18.90

The House recedes with an amendment adding an authorization for fiscal year 1991 of $19,675,000.

143. Sec. 311(a)(4) of the Act as amended by the House bill adds authority for special projects and demonstrations to meet the needs of isolated populations, particularly American Indians.

The Senate amendment contains no comparable provision.

The Senate recedes

144(a). Sec. 311(d)(1) of the Act as amended by the House bill authorizes grants for special projects for supported employment.

Sec. 311 (d)(1)(A) of the Act as amended by the Senate amendment contains a similar provision.

The House recedes.

144(b). Sec. 311(d)(2) of the Act as amended by the House bill requires one such grant to be nationwide in scope.

Sec. 311(d)(1)(B) of the Act as amended by the Senate amendment contains a similar provision.

The House recedes.

145. Sec. 311(d)(3) of the Act as amended by the House bill requires RSA to submit a report to Congress on these supported employment grant projects annually, beginning June 1, 1988.

The Senate amendment contains no comparable provision.

The House recedes.

146. Sec. 311(d)(2) of the Act as amended by the Senate amendment authorizes grants for technical assistance to States in implementing title VI-C and requires one such grant to be nationwide in scope.

The House bill contains no comparable provision.

The House recedes.

147. Sec. 311(d)(3) of the Act as amended by the Senate amendment adds a reporting requirement for the technical assistance grants in Sec. 311(d)(2).

The House bill contains no comparable provision.

The House recedes.

148. Sec. 311(d)(4) of the Act as amended by the Senate amendment authorizes the following amounts for supported employment demonstrations and technical assistance grants:

[In millions of dollars]

Fiscal year:	
1987	9.00
1988	9.52
1989	10.00
1990	10.69

The House bill contains no comparable provision.

The House recedes with an amendment adding an authorization for fiscal year 1991 of $11,128,000.

149. Sec. 311(d)(4) of the Act as amended by the House bill allows States to use title I funds for training and traditional short-term postemployment services for supported employment, and allows supported employment to be paid for "out of funds under this title, Federal funds from other programs, or non-Federal sources".

The Senate amendment contains no comparable provision.

The House recedes because the policy in the House bill, as clarified in the Report accompanying the bill, is included in the Senate bill under the definition of the term "supported employment" and Title VI, part C as added by the Senate and modified by the conferees.

050. Sec. 311(d)(5) of the Act as amended by the House bill adds a definition of "supported employment".

The Senate amendment contains no comparable provision.

The House recedes.

151. Sec. 311(e) of the Act as amended by the Senate amendment directs the Commissioner to make three grants for developing, expanding and disseminating model statewide transitional planning services. The amendment requires one grant is to be made to a public agency in a predominantly urban State in New England for an existing model statewide transitional planning services program; one grant is to be made to a public agency in a predominantly rural western state; and one grant is to be made to a public agency or nonprofit private organization in a predominently rural southwestern state.

The House bill contains no comparable provision.

The House recedes.

152. Sec. 311(3)(5) of the Act as amended by the Senate amendment authorizes the following for the transitional planning grants:

[In millions of dollars]

Fiscal year:	
1987	450,000
1988	475,830
1989	504,427
1990	535,550

The House bill contains no comparable provision.

The House recedes with an amendment adding an authorization for fiscal year 1991 of $557,000.

153(a). Sec. 316(a)(1) of the Act as amended by the Senate amendment adds "independence" and "community integration" as program objects and adds other requirements.

The House bill contains no comparable provision.

The House recedes.

153(b). Sec. 316(a)(2) of the Act as amended by the Senate amendment further requires that grants shall be for a minimum of three years.

The House bill contains no comparable provision.

The House recedes.

154. Sec. 316(b) of the Act as amended by the House bill authorizes such sums through fiscal year 1991.

Sec. 316(b) of the Act as amended by the Senate amendment authorizes the following:

[In millions of dollars]

Fiscal year:	
1987	2.33
1988	2.47
1989	2.62
1990	2.78

The House recedes with an amendment adding an authorization for fiscal year 1991 of $2,894,000.

155. Sec. 400(a)(2) of the Act as amended by the Senate amendment adds a purpose statement for the National Council on the Handicapped.

The House bill contains no comparable provision.

The House recedes. In carrying out its functions under this Act, it is the conferees' intent that the National Council advise, brief and otherwise inform members and committees of Congress and agencies and departments of the executive branch regarding issues of importance to individuals with handicaps, particularly those described in the report "Toward Independence".

156. Sec. 400(b)(3) of the Act as amended by the House bill strikes "his" and inserts "such member's."

The Senate amendment contains no comparable provision.

The Senate recedes.

157. Sec. 400(c) of the Act as amended by the House bill strikes "Chairman" both places it appears and inserts "Chairperson".

The Senate amendment contains no comparable provision.

The Senate recedes.

158. Sec. 401(a)(4)(B) of the Act as amended by the Senate amendment requires the review of all statutes pertaining to Federal programs.

The House bill contains no comparable provision.

The House recedes.

159. Sec. 401(a)(5) of the Act as amended by the Senate amendment requires the assessment of the extent to which such policies, programs and activities provide incentives or disincentives.

The House bill contains no comparable provision.

The House recedes.

160. Sec. 401(a)(8) of the Act as amended by the Senate amendment is redesignated and adds "legislative proposals" to the information the Council should provide.

The House bill contains no comparable provision.

The House recedes.

161. Sec. 401(b) of the Act as amended by the House bill requires the Council to develop a system of national information and data collection on individuals with handicaps, to submit a plan for such system, and to require a report every 2 years on the changing status of individuals with handicaps.

The Senate amendment contains no comparable provision.

The Senate recedes with an amendment. (See #162)

162. Sec. 401(b) of the Act as amended by the Senate amendment requires the Council to establish goals for the year 2000, issue a report in 6 months on strategies, and to submit an annual report on the progress of meeting these goals.

The House bill contains no comparable provision.

The Senate recedes with an amendment. The conference agreement provides that the National Council shall annually issue a report to the President and the Congress on the progress that has been made in implementing the recommendations contained in the Council's January 30, 1986 report "Toward Independence". Such report shall present, as appropriate, available data on health, housing, employment, insurance, transportation, recreation and education, and shall include appropriate information on the current status and trends in the status of individuals with disabilities. It is not the intent of the conferees that the Council construe this legislation as requiring the submission of an annual report if the Council does not deem such a report necessary.

163. Sec. 405 of the Act as amended by the Senate amendment authorizes such sums through fiscal year 1990.

The House bill contains no comparable provision.

The House recedes with an amendment adding an authorization of such sums for fiscal year 1991.

164. Sec. 501 of the Act as amended by the Senate amendment strikes "Office of Personnel Management" each time it appears and inserts "Equal Employment Opportunity Commission".

The House bill contains no comparable provision.

The House recedes.

165. Sec. 502(a)(1)(A) of the Act as amended by the House bill increases the number of Presidential appointees from 11 to 12, and to require that 6 rather than 5 of those appointees be individuals with handicaps.

The Senate amendment contains no comparable provision.

The Senate recedes.

166. Sec. 502(a)(1) of the Act as amended by the House bill requires the annual election of the vice-chairperson by a majority vote of the members and that the Chairperson rotate annually from public to Federal member.

The Senate amendment contains no comparable provision.

The Senate recedes.

167. Sec. 502(a)(2) of the Act as amended by the House bill allows a member whose term has expired to serve until a successor is appointed.

The Senate amendment contains no comparable provision.

The Senate recedes.

168. Sec. 502(a)(6) of the Act as amended by the House bill requires the Board to establish bylaws, including quorum requirements.

The Senate amendment contains no comparable provision.

The Senate recedes.

169. Sec. 502(d)(3) of the Act as amended by the Senate amendment strikes "Department of Health, Education and Welfare" and "with respect overcoming to" and inserts "Department of Education" and "with respect to overcoming", respectively.

The House bill contains no comparable provision.

The House recedes.

170. Sec. 502(e)(2) of the Act as amended by the Senate amendment inserts "and" after the word "noncompliance".

The House bill contains no comparable provision.

The House recedes.

171. Sec. 502(g) of the Act as amended by the Senate amendment requires the Board to submit 2 additional reports by February 1, 1988.

The House bill contains no comparable provision.

The House recedes.

172. Sec. 503(c) of the Act as amended by the House bill strikes "he" both times it appears and "his" and inserts "the President" and "the", respectively.

The Senate amendment contains no comparable provision.

The Senate recedes.

173. Sec. 504 of the Act as amended by the Senate amendment strikes "7(7)" and inserts "7(8)".

The House bill contains no comparable provision.

The House recedes.

174. Sec. 507 of the Act as amended by the House bill adds "the Assistant Secretary of the Interior for Indian Affairs"; strikes "Chairman" the third time it appears and inserts "Chairperson".

The Senate amendment contains no comparable provision.

The Senate recedes.

175(a). Sec. 508(a) of the Act as added by the Senate amendment requires the Secretary to develop guidelines for electronic equipment accessibility.

The House bill contains no comparable provision.

The House recedes with an amendment adding "and the Administrator of the General Services Administration" after the word "Research".

175(b). Sec. 508(b) of the Act as added by the Senate amendment requires the Administrator of the General Services Administration to adopt such guidelines.

The House bill contains no comparable provision.

The House recedes.

175(c). Sec. 508(c) of the Act as added by the Senate amendment defines "special peripherals".

The House bill contains no comparable provision.

The House recedes. The Administrator of General Services shall submit no later than December 31st of each year an annual report on the progress of the implementation by Federal agencies of the regulations promulgated with GSA along with any recommendations and findings by the GSA's Interagency Committee for Computer Support of Handicapped Employees. For purposes of this section, equipment includes hardware, software and firmware.

176(a). Sec. 615(a)(1) of the Act as amended by the House bill adds "and the needs of Indian tribes" to the requirements the Secretary must consider when distributing title VI-A funds.

The Senate amendment contains no comparable provision.

The Senate recedes.

176(b). Sec. 615(c) of the Act as amended by the House bill adds "(including individuals residing on Indian reservations)".

The Senate amendment contains no comparable provision.

The Senate recedes.

177(b). Sec. 617 of the Act as amended by the House bill authorizes such sums through fiscal year 1991.

Sec. 617 of the Act as amended by the Senate amendment authorizes such sums through fiscal year 1990.

The Senate recedes.

178. Sec. 621(a)(1) of the Act as amended by the Senate amendment adds a purpose statement and redesignates the old paragraph "(a)" as "(2)".

The House bill contains no comparable provision.

The House recedes.

179. Sec. 621(a)(2) of the Act as amended by the Senate amendment revises the responsibilities of Projects with Industry, and requires Business Advisory Councils.

The House bill contains no comparable provision.

The House recedes.

180. Sec. 621(a)(3) of the Act as amended by the House bill strikes "each year of a funding cycle" and inserts "each project years".

Sec. 621(a)(4) of the Act as amended by the Senate amendment, as redesignated, retains current law.

The Senate recedes.

181. Sec. 621(b)(4) of the Act as amended by the House bill adds "(4)" provides assurances that an evaluation report containing data specified under subsection (a)(3) shall be submitted as determined by the Commissioner."

Sec. 621(b)(4) of the Act as amended by the Senate amendment adds "(4) provides assurances that an evaluation report containing data specified under subsection (a)(4) shall be submitted to the Commissioner."

The House recedes.

182. Sec. 621(d)(1) of the Act as amended by the Senate amendment authorizes the Commissioner to revise the PWI evaluation standards as necessary.

The House bill contains no comparable provision.

The House recedes.

183. Sec. 621(e) of the Act as amended by the House bill requires financial assistance for PWI grants to be effective for up to 5 years, contingent on the availability of appropriations, and directs the Commissioner to annually review the evaluations to determine the continued status of the agreements.

The Senate amendment contains no comparable provision.

The Housr recedes to the Senate and the Senate recedes to the House with an amendment providing that a portion of the funds are to be used for the establishment of new centers in accordance with established timelines.

184. Sec. 621(e) of the Act as amended by the Senate amendment allows the Commissioner to provide technical assistance to PWI's.

The House bill contains no comparable provision.

The House recedes.

185. Sec. 621(f) of the Act as amended by the Senate amendment provides continued funding for 4 years to PWI's which meet the standards approved by the National Council.

The House bill contains no comparable provision.

The Senate recedes. The conference agreement directs the Commissioner to publish indicators for minimum compliance with evaluation standards for Projects With Industry. Such indicators shall be consistent with the evaluation standards under subsection (d)(1), as approved by the National Council on the Handicapped.

The conferees wish to recognize and support the efforts of the Human Resources Development Institute to involve the American trade union movement and their ability to serve the nation's individuals with disabilities.

186. Sec. 621(f)(3) of the Act as amended by the Senate amendment requires the consideration of past performance when competing for new grant awards.

The House bill contains no comparable provision.

The House recedes.

187. Sec. 621(g) of the Act as amended by the Senate amendment requires the Commissioner to give priority to geographic areas unserved or underserved.

The House bill contains no comparable provision.

The House recedes.

188. Sec. 623 of the Act as amended by the House bill authorizes such sums for fiscal year 1987 through 1991 for Sec. 621 and Sec. 622.

Sec. 623 of the Act as amended by the Senate amendment authorizes such sums for fiscal years 1987 through 1990 for Sec. 622 and the following authorization for Sec. 621:

[In millions of dollars]

Fiscal year:	
1987	16.070
1988	17.010
1989	18.030
1990	19.149

The House recedes with an amendment adding an authorization for fiscal year 1991 of $19,925,000.

189. Sec. 631 of the Act as added by the Senate amendment adds a new State grant program for supported employment.

The House bill contains no comparable provision.

The House recedes with an amendment striking "short-term" and inserting "traditionally time-limited". The conference agreement provides for training and traditionally time-limited postemployment services leading to supported employment. It is the intent of the conferees that the new title VI, part C program be used to pay for such services. It is expected that other state agencies and organizations be responsible for the long-term support associated with this approach. For this reason, the conference agreement indicates that all services provided under this new part be of a limited time duration. However, the conferees recognize that these services will not be of a traditional nature and stress the importance of flexibility on the part of the State agencies in their organization of services under this part, in order that they respond to the individual needs of disabled individuals eligible for services under this program.

190. Sec. 632 of the Act as added by the Senate amendment outlines the eligibility.

The House bill contains no comparable provision.

The House recedes.

191. Sec. 633 of the Act as added by the Senate amendment provides for the allotting of funds.

The House bill contains no comparable provision.

The House recedes with an amendment to reference the territories consistent with current law.

192. Sec. 633(c) of the act as added by the Senate amendment provides for planning grants which may not exceed 18 months or $250,000.

The House bill contains no comparable provision.

The House recedes.

193. Sec. 634 of the Act as added by the Senate amendment provides for the State plan requirements that must be met in order to receive a grant.

The House bill contains no comparable provision.

The House recedes with an amendment deleting in Sec. 634(b)(3)(A) "has been performed outlining" and inserting "describes" after "individuals". Further, in subsection (b)(3)(D) add "results" after "evaluation".

194. Sec. 635 of the Act as added by the Senate amendment describes the services which may be provided.

The House bill contains no similar provision.

The House recedes with an amendment inserting after "guardian)", "and consistent with the provisions of subsection (b),".

195. Sec. 636 of the Act as added by the Senate amendment requires separate data collection information for supported employment under title I and title VI-C.

The House bill contains no comparable provision.

The House recedes.

196. Sec. 637 of the Act as added by the Senate amendment does not prohibit a State from providing supported employment under title I.

The House bill contains no comparable provision.

The House recedes with an amendment changing "part" to "Act".

197. Sec. 638(a) of the Act as added by the Senate amendment authorizes the following:

[In millions of dollars]

Fiscal year:	
1987	25.00
1988	26.47
1989	28.06
1990	29.73

The House bill contains no comparable provision.

The House recedes with an amendment adding an authorization for fiscal year 1991 of $30,949,000.

198. Sec. 638(b) of the Act as added by the Senate amendment limits the applicability of Sec. 638(a) in any fiscal year in which the appropriation for title VI-C does not equal or exceed $5,000,000.

The House bill contains no comparable provision.

The House recedes with an amendment deleting in subsection (b)(1), "subsection", and inserting "section 634(a)", and deleting "of this section".

199. Sec. 702(a) of the Act as amended by the Senate amendment strikes "recreational activities" and inserts "recreational services".

The House bill contains no comparable provision.

The House recedes.

200. Sec. 703(c) of the Act as amended by the House bill strikes "he" both times it appears and inserts "the Commissioner".

The Senate amendment contains no comparable provision.

The Senate recedes.

201. Sec. 705(a)(5) of the Act as amended by the Senate amendment requires that the State will consider the recommendations of the new State Independent Living Council.

The House bill contains no comparable provision.

The House recedes.

202. Sec. 705(b) of the Act as amended by the House bill strikes "he" and inserts "the Commissioner".

The Senate amendment contains no comparable provision.

The Senate recedes.

203. Sec. 706(a) of the Act as added by the Senate amendment adds a requirement for a State Independent Living Council to be established in each State which will provide guidance to agencies and provide a 5 year plan to the State rehabilitation agency.

The House bill contains no comparable provision.

The House recedes.

204. Sec. 706(b) of the Act as added by the Senate amendment describes the composition requirements for the new Council.

The House bill contains no comparable provision.

The House recedes.

205. Sec. 706(c) of the Act as added by the Senate amendment describes the responsibilities and the selection process for the Chairperson of the new Council.

The House bill contains no comparable provision.

The House recedes.

206. Sec. 706(d) of the Act as added by the Senate amendment provides for other State councils which may be allowed to function as the State independent living council.

The House bill contains no comparable provision.

The House recedes.

207 Sec. 711(b)(3) of the Act is amended by the Senate amendment requires that each independent living center to have a board which is composed of a majority of handicapped individuals.

The House bill contains no comparable provision.

The House recedes.

208(a). Sec. 711(c)(E) of the Act as amended by the Senate amendment adds "recreation".

The House bill contains no comparable provision.

The House recedes.

208(b). Sec. 711(c)(F) of the Act as amended by the Senate amendment adds "recreational opportunities".

The House bill contains no comparable provision.

The House recedes.

208(c). Sec. 711(c)(K) of the Act as amended by the Senate amendment strikes "activities" and inserts "services".

The House bill contains no comparable provision.

The House recedes.

209. Sec. 711(d) of the Act as amended by the Senate amendment strikes "six months" and inserts "three months" which is the period following the opening of the application period after which RSA may accept applications from organizations and agencies other than the State agency.

The House bill contains no comparable provision.

The House recedes to the Senate and the Senate recedes to the House with an amendment providing that a portion of the funds are to be used for the establishment of new centers in accordance with established timelines. It is expected that the Congress will revisit this issue within the next five years in anticipation of the next reauthorization of this program.

210. Sec. 711(e)(1) of the Act as amended by the Senate amendment allows the Commission to revise the evaluation standards as are necessary.

The House bill contains no comparable provision.

The House recedes.

211. Sec. 711(g) of the Act as amended by the Senate amendment provides continued funding for Centers that meet the standards and application conditions for four years.

The House bill contains no comparable provision.

The House recedes to the Senate and the Senate recedes to the House with an amendment. The conference agreement directs the Commissioner to publish indicators for minimum compliance with evaluation standards for Centers for Independent Living. Such indicators shall be consistent with the evaluation standards under subsection (e)(1), as approved by the National Council on the Handicapped.

212. Sec. 711(h) of the Act as amended by the Senate amendment requires the consideration of past performances when Centers compete for new awards, and priority to be given to unserved or underserved geographic areas.

The House bill contains no comparable provision.

The House recedes to Senate and the Senate recedes to the House with an amendment (See #211)

213. Sec. 721(a)(3) of the Act as amended by the House bill strikes "able to care for himself" and inserts "self-sufficient".

The Senate amendment contains no comparable provision.

The Senate recedes.

214. Sec. 741 of the Act as amended by the House bill authorizes such sums for Parts A, B, C, and D through fiscal year 1991.

Sec. 741 of the Act as amended by the Senate amendment authorizes the following:

[In millions of dollars]

	Part A	Part B	Part C	Part D
Fiscal year:				
1987	11.83	24.32	5.29	Such sums.
1988	12.31	25.75	5.60	Do.
1989	13.05	27.30	5.93	Do.
1990	13.86	28.98	6.30	Do.

The House recedes to the Senate with an amendment adding an authorization for fiscal year 1991 of $14,428,000 for Part A; an authorization for fiscal year 1991 of $30,168,000 for Part B; and an authorization for fiscal year 1991 of $6,558,000 for Part C.

215. Sec. 106 of the Act as amended by the House bill requires the Secretary to conduct an assessment of the indirect cost rates charges to State agencies and to submit a report to the Congress.

The Senate amendment contains no comparable provision.

The Senate recedes with an amendment adding an assessment of direct cost rates as well.

216. The House bill amends Sec. 205(a) of the Helen Keller National Center Act to authorize such sums through fiscal year 1989.

The Senate amendment amends Sec. 205(a) of the Helen Keller National Center Act to authorize such sums through fiscal year 1990.

The House recedes.

217(a). The House bill amends the Joint Resolution of July 11, 1949 to authorize such sums through fiscal year 1991.

The Senate amendment contains no comparable provision.

The Senate recedes.

217(b). The House bill amends the Joint Resolution of July 11, 1949 to require that PCEH be guided by the general policies of the National Council.

The Senate amendment contains a similar provision.

The Senate recedes.

218. Sec. 1003 of the Senate amendment requires that a State shall not be immune under the 11th Amendment for violations of Section 504 of the Rehabilitation Act of 1973, title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance. Subsection (b) further provides that the amendment shall take effect with respect to violations that occur in whole or in part after the date of enactment of this Act.

The House bill contains no comparable provision.

The House recedes with an amendment striking "this Act" and inserting "the Rehabilitation Act Amendments of 1986". By including this amendment to the Senate amendment, the conferees wish to make it clear that this provision is prospective from the date of enactment of these Amendments, and not retroactive with respect to the other Acts referenced herein.

219. Sec. 1001 of the House bill requires that this bill take effect October 1, 1986, except as otherwise stated.

Sec. 1004 of the Senate amendment requires that the amendment take effect October 1, 1986.

The House recedes to the Senate and the Senate recedes to the House.

220. The Senate amendment permits the Secretary to exclude expenditure made from an accrued fund reserve surplus in determining the level of State and local funds expended for the education of handicapped children.

The House bill contains no comparable provision.

The House recedes with an amendment adding a termination date of October 1, 1985.

Augustus F. Hawkins,
Mario Biaggi,
Pat Williams,
Matthew G. Martinez,
Charles A. Hayes,
Dennis E. Eckart,
A.R. Waldon, Jr.,
James M. Jeffords,
Bill Goodling,
Tom Coleman,
Steve Bartlett,
Managers on the Part of the House.

Orrin G. Hatch
Lowell P. Weicker, Jr.,
Robert T. Stafford,
Don Nickles,
Strom Thurmond,
John F. Kerry,
Paul Simon,
Edward M. Kennedy,
Christopher J. Dodd,
Managers on the Part of the Senate.

□ 1120

WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 4116, DOMESTIC VOLUNTEER SERVICE ACT AMENDMENTS OF 1986, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. DERRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 568 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 568

Resolved, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 4116) to extend and improve the Domestic Volunteer Service Act of 1973, all points of order against the conference report and against its consideration are hereby waived, and the conference report shall be considered as having been read when called up for consideration.

The SPEAKER pro tempore (Mr. Durbin). The gentleman from South Carolina [Mr. Derrick] is recognized for 1 hour.

Mr. DERRICK. Mr. Speaker, I yield the customary 30 minutes, for purposes of debate only, to the gentleman from Tennessee [Mr. Quillen], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 568 is a rule providing for consideration of the conference report on H.R. 4161, the Domestic Volunteer Service Act Amendments of 1986. The rule waives all points of order against the conference report and against its consideration. Finally, Mr. Speaker, this rule provides that the conference report is considered as having been read when called up for consideration.

Mr. Speaker, authorizations for several popular and successful domestic volunteer programs are carried in this conference report. The legislation reauthorizes four national volunteer antiproverty programs and three national older American volunteer programs. The VISTA Program and the Foster Grandparent Program are the largest and best known programs in each of these groups.

The conference report carries authorizations for these programs for the next 3 fiscal years. The authorizations would otherwise expire at the end of this year.

Mr. Speaker, the funding levels and policy issues addressed in this conference report will be detailed during debate on the measure. I would note, however, that the bill was passed in the House on June 17, 1986, on vote of 360 to 52. I believe that vote demonstrates the importance and success of these programs, as well as the support they enjoy among our colleagues in this Chamber.

Mr. Speaker, this rule will facilitate House action on this conference report. I urge adoption of the rule, and ask my colleagues to support the conference report.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge adoption of the rule on the Domestic Volunteer Service Act Amendments of 1986. The conference report provides 3-year extensions of these valuable programs; the Retired Senior Volunteer Program, the Senior Companion Program, and the Foster Grandparent Program.

In the closing hours of this session we cannot fail to extend this legislation, and I commend the conferees for this action in bringing the measure to the floor of this House.

Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. Walker].

Mr. WALKER. Mr. Speaker, I regret to say that to some extent this rule is kind of one of the end of the session shenanigans that we sometimes see happen around Congress. We are considering a rule on a report that was filed about 10 to 20 seconds before the rule was brought out here.

What that suggests to me is that we had to adopt this rule in the Rules Committee before we even had a conference report to look at. The conference report was just filed, it was just ordered printed. How can anyone know what is in it?

These are all good programs. I assume they are all aimed at doing good things, and everything in it may be all right. But how is any Member of Congress to know? How do we know here in the House, how did the Rules Committee know when they adopted this rule and brought it out to the floor?

So we are being asked to adopt a rule where the Rules Committee did not have the conference report before it before it adopted the rule, then brings it out to the floor and we are asked to approve a rule on a conference report that was filed 10 seconds before the rule comes up.

Yet we are supposed to go back and tell our constituents that somehow we are out here casting intelligent votes. It seems to me we have got some real problems with that.

Here is the trouble that I have. This particular rule waives all points of order. We do not even know whether there are any points of order that rest against this bill because it was only filed a couple of seconds ago. Yet we are coming here with a rule that waives all of the points of order.

We may be proceeding along the lines of trying to get through very good programs at the end of the session. But it is a bad way to do business. At the very least, the acountability of this House and the Members deserve the chance to know what it is we are voting on.

I am going to oppose this rule because it seems to me that it is brought to us in a way that does the House a disservice. There is no Member of Congress who is going to be able to vote on this rule knowing what points of order are being waived, because we simply do not have the information before us, could not have possibly had the information before us, the Rules Committee could not have possibly had the information before it.

I regret this is the way we often operate around here. It seems to me it is a bad way to operate, and I yield back the balance of my time.

Mr. QUILLEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. DERRICK. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 265, nays 141, not voting 26, as follows:

[Roll No. 430]

YEAS—265

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
Atkins
AuCoin
Barnard
Barnes
Bates
Bedell
Beilenson
Bennett
Berman
Bevill
Biaggi
Bilirakis
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boxer
Brooks
Brown (CA)
Bruce
Bryant
Bustamante
Byron
Callahan
Carper
Carr
Chapman
Chappell
Clinger
Coble
Coelho
Coleman (TX)
Collins
Conte
Cooper
Coughlin
Coyne
Crockett
Daniel
Darden
Daschle
Davis
de la Garza
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Edwards (CA)
English
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Flippo
Florio
Foley
Fowler
Frank
Frost
Fuqua
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Glickman
Gonzalez
Gordon
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hatcher
Hawkins
Hayes
Hefner
Hendon
Hertel
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kastenmeier
Kennelly
Kildee
Kolter
Kostmayer
LaFalce
Lantos
Latta
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lipinski
Lloyd
Lowry (WA)
Luken
Lundine
MacKay
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McDade
McHugh
McKinney
McMillan
Meyers
Mica
Mikulski
Miller (CA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Panetta
Parris
Pease
Penny
Pepper
Perkins
Petri
Pickle
Price
Quillen
Rahall
Rangel
Ray
Reid
Richardson
Rinaldo
Robinson
Rodino
Roe
Roemer
Rose
Rostenkowski
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage
Scheuer
Schroeder
Schumer
Seiberling
Sharp
Shelby
Sikorski
Sisisky
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NJ)
Solarz
Solomon
Spratt
St Germain
Staggers
Stallings
Stark
Stenholm
Stokes
Studds
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Watkins
Waxman
Weaver
Weiss
Wheat
Whitley
Whitten
Williams
Wilson
Wirth
Wise
Wolpe
Wright
Wyden
Yates
Yatron
Young (MO)
Zschau

NAYS—141

Archer
Armey
Badham
Bartlett
Barton
Bateman
Bentley
Bereuter
Bliley
Boehlert
Boulter
Broomfield
Brown (CO)
Burton (IN)
Chandler
Chappie
Cheney
Coats
Cobey
Coleman (MO)
Combest
Courter
Craig
Crane
Dannemeyer
Daub
DeLay
Dickinson
DioGuardi
Dornan (CA)
Dreier
Duncan
Eckert (NY)
Edwards (OK)
Emerson
Evans (IA)
Fawell
Fiedler
Fields
Fish
Franklin
Gallo
Gekas
Gingrich
Goodling
Gradison
Gregg
Hammerschmidt
Hansen
Henry
Hiler
Hillis
Hopkins
Hunter
Hyde
Ireland
Kasich
Kemp
Kindness
Kolbe
Kramer
Lagomarsino
Leach (IA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Loeffler
Lott
Lowery (CA)
Lujan
Lungren
Mack
Madigan
Marlenee
Martin (IL)
Martin (NY)
McCain
McCandless
McEwen
McGrath
McKernan
Michel
Miller (OH)
Miller (WA)
Molinari
Monson
Moorhead
Myers
Nielson
Oxley
Packard
Pashayan
Porter
Pursell
Regula
Ridge
Ritter
Roberts
Rogers
Roth
Roukema
Rudd
Saxton
Schaefer
Schneider
Schuette
Schulze
Sensenbrenner
Shaw
Shumway
Shuster
Skeen
Slaughter
Smith (NE)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Spence
Stangeland
Strang
Stump
Sundquist
Sweeney
Tauke
Taylor
Thomas (CA)
Vander Jagt
Vucanovich
Walker
Weber
Whitehurst
Whittaker
Wolf
Wortley
Wylie
Young (AK)
Young (FL)

NOT VOTING—26

Breaux
Burton (CA)
Campbell
Carney
Clay
Conyers
DeWine
Edgar
Foglietta
Ford (MI)
Ford (TN)
Frenzel
Garcia
Grotberg
Hartnett
Holt
Kleczka
Long
McCollum
Mitchell
Moore
Siljander
Stratton
Swindall
Traxler
Waldon

□ 1140

Mr. COBLE and Mr. GUNDERSON changed their votes from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON H.R. 3129, THE SURFACE TRANSPORTATION AND UNIFORM RELOCATION ASSISTANCE ACT OF 1986

Mr. HOWARD. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3129), to authorize funds for construction of highways, for highway safety programs, and for mass transportation programs, to expand and improve the relocation assistance program, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment and, agree to the conference asked by the Senate.

The SPEAKER pro tempore (Mr. Durbin). Is there objection to the request of the gentleman from New Jersey?

Mr. WALKER. Mr. Speaker, reserving the right to object, I reserve the right to object primarily to ascertain from the chairman where we may stand on a reasonably controversial issue that will be a part of this conference. The House fairly narrowly decided the issue of the 55-mile-an-hour speed limit, the Senate has decided that issue coming form another direction that basically would permit the States to raise the limit on some highways to 65.

I am just trying to ascertain whether or not we are working toward some kind of an accommodation on that issue that would in fact allow some modification of the 55-mile-an-hour speed limit.

Mr. Speaker, I would be very glad to yield to the gentleman from New Jersey [Mr. Howard].

Mr. HOWARD. I thank the gentleman for yielding, and I would say that this certainly is one of the items for discussion in the conference. Many things are being contemplated as we go toward that, and one of them certainly is this issue.

This is a controversial matter. Certainly there are many Members on both sides of the Capitol who are interested in having an increase in the speed limit on rural roads. All Members, I am sure, on both sides are also very interested in preserving and improving safety on our highways and certainly safety items that might be considered should the conference come out with a situation where there would be an increase in the speed limit on rural roads, I believe that this would be able to be worked out satisfactorily. This is certainly open in the conference.

Mr. WALKER. If I understand what the gentleman is telling us then, it is that there is some attempt to work out those concerns in some kind of a compromise package that likely would result in somewhat of a modification with some safety standards built into it.

Mr. HOWARD. This is one of the things that certainly I and many other Members of our conference are looking at and have some suggestions for, and it will certainly be discussed in the conference.

Mr. WALKER. I thank the gentleman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

MOTION OFFERED BY MR. SNYDER

Mr. SNYDER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

> Mr. Snyder moves that the managers on the part of the House, at the conference on the disagreeing votes of the Houses on the bill H.R. 3129, be instructed to insist on section 310 of the House bill.

The SPEAKER pro tempore. The gentleman from Kentucky [Mr. SNYDER] is recognized for 1 hour.

Mr. SNYDER. Mr. Speaker, my motion instructs the conferees on House bill 3129, the Surface Transportation and Relocation Act of 1986, to retain section 310, university transportation centers, during any conference with the other body.

University transportation centers were first authorized by the Surface Transportation Act of 1978, and again in the 1982 act. This provision would authorize $10 million in fiscal years 1986 through 1990 for these centers. These funds would be derived from the mass transit account and the highway account of the highway trust fund.

These centers will be established in 10 regions to do transportation research of all types, to ensure that an adequate supply of transportation managers is available, and to ensure that the results of research efforts are effectively disseminated to users. This provision will help ensure the viability of our Nation's transportation system by training young people about transportation.

I urge my colleagues to support this motion.

Mr. HOWARD. Mr. Speaker, will the gentleman yield?

Mr. SNYDER. I yield to the gentleman from New Jersey.

Mr. HOWARD. Mr. Speaker, we certainly are very conscious of this university study program. We believe that the entire House is very strong on this issue. I would like to say that we certainly agree with the gentleman's motion and will stick very firmly on that in the conference.

Mr. SNYDER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. DURBIN). The question is on the motion to instruct offered by the gentleman from Kentucky [Mr. SNYDER].

Without objection, the Chair appoints the following conferees: On all provisions except title V of the House bill and title IV of the Senate amendment, Messrs. HOWARD, ANDERSON, EDGAR, SNYDER, and SHUSTER.

As exclusive conferees on title V of the House bill and title IV of the Senate amendment, Messrs. ROSTENKOWSKI, PICKLE, JENKINS, GUARINI, MATSUI, ANTHONY, FLIPPO, DUNCAN, FRENZEL, SCHULZE, and THOMAS of California.

As additional conferees on section 155 of the Senate amendment and modifications committed to conference, Messrs. HAWKINS, MURPHY, and JEFFORDS.

There was no objection.

REQUEST TO FILE CONFERENCE REPORT ON H.R. 5233, LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1987

Mr. NATCHER. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight, October 2, 1986, to file a conference report on the bill (H.R. 5233) making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 1987, and for other purposes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

Mr. WALKER. Mr. Speaker, reserving the right to object, and I do not intend to object, but I yield to the gentleman to have him explain whether or not the minority has cleared this.

Mr. Speaker, I have just been consulting with the minority leader here, and the gentleman seems to think there are some ongoing discussions here that ought to be resolved before we ask for the filing.

Would it be possible the gentleman could withhold this particular request until we work out those minor problems, and then I do not think there will be any objection.

Mr. Speaker, under my reservation of objection, I yield to the gentleman from Kentucky.

Mr. NATCHER. Mr. Speaker, I see the gentleman from Massachusetts [Mr. CONTE] here on the floor. The gentleman might yield to the gentleman from Massachusetts at this time.

Mr. WALKER. Mr. Speaker, under my reservation of objection, I yield to the gentleman from Massachusetts [Mr. CONTE].

Mr. CONTE. Mr. Speaker, what is the gentleman's question?

Mr. WALKER. Mr. Speaker, I am trying to ascertain whether this filing has been cleared by everybody who is supposed to clear such things.

Mr. CONTE. Mr. Speaker, I just got done talking with the minority leader and we did not finish our conversation.

Let me just tell you what we have done. We have been working since Monday with the Senate on the Health and Human Services, Education and Labor bill, and we reached an agreement yesterday, which I think all Members signed on the minority side.

Mr. WALKER. Mr. Speaker, under my reservation of objection, I yield to the Minority Leader, the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Speaker, I thank the gentleman for yielding to me.

Mr. Speaker, I guess one of the problems I have with giving approval for filing of the report tonight is that that is one measure. There are several other measures, however, that there would have been good and sufficient time upon which we could have had a conference and some agreement on things in which this Member is interested in and which our President is interested in. Frankly, if the bulk of the Members are satisfied on this measure and then hold out on the other, you know, what happens to bargaining power around here? We are coming up to a time when we have to take an overall CR, and there is bargaining power for our side on that issue if, for example, in defense items that are very important to us, then get submerged to what is involved in this bill.

So for the moment, I think, I reluctantly object to my distinguished chairman's request until I have a little better sense of feel for where we are going on the CR, and I hope the gentleman understands that.

The. SPEAKER. Objection is heard.

WAIVING CERTAIN POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 4021, REHABILITATION ACT AMENDMENTS OF 1986, AND AGAINST CONSIDERATION OF SUCH CONFERENCE REPORT

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 569 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

> H. RES. 569
>
> *Resolved*, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 4021) to extend and improve the Rehabilitation Act of 1973, all points of order against the conference report and against its consideration are hereby waived, and the conference report shall be considered as having been read when called up for consideration.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN], pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 569 is the rule waiving points of order against the consideration of the conference report on H.R. 4021, the Rehabilitation Act Amendments of 1986.

Mr. Speaker, under the rules of the House, conference reports are privileged and are considered in the House under the 1-hour rule with no amendments in order. The rule also waives all points of order against the conference report, including any point of order against consideration of the conference report. In addition, the rule provides that when the conference report is called up for consideration, it shall be considered as having been read.

Mr. Speaker, the conference report on H.R. 4021 is a result of bipartisan cooperation that reaffirms Congress' support to provide quality vocational services to mentally and physically handicapped individuals across the country. The conference agreement authorizes $1.28 billion in fiscal year 1987, for the basic State grant program of the Rehabilitation Act of 1973. Many Members are aware of the important programs and services that this act has provided in the past to persons who are less fortunate than others, yet are able to compete for jobs and continue to open doors for employment that once were closed.

Mr. Speaker, H.R. 4021 passed the House under suspension of the rules by a vote of 401 to 0 on May 7, 1986. The Senate considered and passed S. 2515 on September 8 and then agreed to conference. Because of the heavy workloads of both Chambers, and the importance of the bill, a majority of the House conferees and all the Senate conferees agreed that the compromises presented to the conferees would expedite the conference report and guarantee the final passage of the conference agreement before the end of the session.

Mr. Speaker, I urge my colleagues to adopt House Resolution 569 and to pass the conference report on the Rehabilitation Act Amendments of 1986.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

The Rehabilitation Act Amendments of 1986 are most important. This measure should be enacted into law despite the discrepancy in the procedure involved before it came to the Rules Committee. I understand that there was no conference meeting of Members held on this measure.

☐ 1205

Mr. Speaker, this is most unusual. I do not recall another instance where the conferees of the House and the Senate have not gotten together and reached an agreement and reported the measure out for our consideration. However, the urgency of the adoption of the Rehabilitation Act amendments is so urgent that I feel the Rules Committee took the right step in reporting it out.

Mr. Speaker, I would like to advise the gentleman from Massachusetts that I do have three requests for time.

Mr. Speaker, I yield 3 minutes to the gentleman from Vermont [Mr. JEFFORDS].

Mr. JEFFORDS. I thank the gentleman for yielding me this time.

Mr. Speaker, It is with great reluctance that I rise in opposition to the rule. I also realize that on such a matter as this, when you are talking about rehabilitation and our programs, that the idea of trying to get the body to vote against the rule is probably a futile action.

I cannot let go by what we are doing here by waiving the Point of Order that this conference never met. I know that happens now and then, and although there may be nothing wrong with that, when a Member, any one Member, asks that that conference do meet to take up something which is of concern to that Member, then that conference ought to meet.

The House was willing to meet; the House requested a meeting, but the other body said, "no, we will not meet under any circumstances."

What was the issue? It was an issue not of great moment to the programs that we are considering here, but of some concern to all of us: Pork. That is the issue. There was some pork in there that a member of our committee, a member of the minority wanted to raise and to talk about and to bring it to the attention of the conferees that he was in objection to that.

He was denied that right. I do not think that is the way this body should act. I personally will vote against the rule. I am not going to make a big issue of this because I know that bad facts make bad precedents. To pick this time and this moment on this particular conference report to raise that issue is probably not the time to do it.

I can assure this body if that happens again to a Member on my side, the minority or a Member in this body that requests my assistance, I will do all I can to defeat such a rule.

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the gentleman from Texas [Mr. BARTLETT].

Mr. BARTLETT. I thank the gentleman for yielding me this time.

Mr. Speaker, I join with the ranking member from Vermont [Mr. JEFFORDS] in opposing this rule. If the rule is turned down as it should be because the process has been violated, I will and do intend to support a rule when it comes back to the House when and if the conference procedure is followed and the conferees have an opportunity to discuss the issues.

I will note that I support, and strongly support, the bill and the conference agreement as a whole and I know that Members will be reluctant, will be rightfully reluctant, to oppose either the bill or the rule because it is such a good piece of legislation.

Indeed, when the conference report is voted on, it is my judgment that the good outweighs the problems that are in the bill. Several provisions of the conference agreement are so far outside the bounds of good legislation, they are so far outside the bounds of good legislative process, that the conferees who introduced those provisions did not even want to meet to discuss those provisions.

One of the issues requires a waiver of the point of order which we are going to do right now. Waiver of a point of order for a provision in the bill that is nongermane to the legislation. The specific problem that led to the request for the conference to meet that was subsequently denied is in the area of competitive grants.

These competitive grants that are authorized in this legislation are set up to be, as they always have been, competitive, to assist persons with disabilities to be retained and to attain their full potential. We have in place a peer review process. That peer review process is designed and does meet, consider and weigh the merits of each proposal, one against another, and determines which proposal would provide the maximum delivery of service to persons with handicaps; to persons with disabilities.

The competitive grant process in this conference agreement has been circumvented in five specific cases. There are five grants to five specific States that have been taken out of the process, the peer review process, by this conference report and reserved for purely political reasons. Two of these grants had previously been turned down, had previously been turned down by the peer review process. One, in the State of Massachusetts, is a recycle grant, and it came in 15th, 15th in the competitive process for that particular proposal. That is the issue on the merits.

On the procedure and the reason the rule should be turned down is that the procedure is designed, rather the conference is designed to have majority rule, but the minority and each member of the conference should have the right to at least be heard. It is a process designed to resolve and to debate the issues on their merits. The House and the other body appoint conferee. Each conferees then designates staff to resolve the issues that can be resolved by the staff.

Those issues that are then not resolved or resolvable at the staff level then go to the conference. In this case, four conferees requested a conference and the chairman of the House committee, GUS HAWKINS, then submitted that request and he himself requested a conference in a letter to the other body on September 29 in which he said, in a letter to this Member:

> I agree with you wholeheartedly and have sent the attached letter to Senator HATCH requested this meeting.

To Senator HATCH he says:

> On behalf of the House conferees, I would like to request a meeting tomorrow or the next day. Our staffs have made progress in working out the minor issues involved in the conference, but now we believe the Members themselves should meet and resolve the major issues.

That conference was never held. Within a half-day, that decision was reversed. No conference was held; no reason was given. The conference report was rushed through until it was not delivered until 30 seconds before the previous rule was taken up to this House body. The procedures have been violated for the sake of these five specific grants to five specific States.

I plan to vote for the bill; it is a good bill. I signed the conference report because of the greater good in the bill. The conference report in fact was given to conferees with the message: Take it or leave it. But with no opportunity to discuss it.

I do urge the House to vote "no" on the rule, and "no" on the process that denies conferees the opportunity to at least meet and to discuss the unresolved issue in the conference.

Mr. MOAKLEY. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. HAWKINS].

Mr. HAWKINS. I thank the gentleman for yielding me this time.

Mr. Speaker, I do not believe that I need 2 minutes but let me say this: I think the gentleman from Texas [Mr. BARTLETT] has correctly stated the issues involved in this. It is true that as chairman of the Education and Labor Committee I did request a conference with the Senate and did in every way attempt to bring about that conference.

However, the Members on the other side did not agree to do so. The issue before us transcends, I think, the points that have been obviously created by the gentleman from Texas. I do not agree with the strategy employed, which I cannot fully discuss in this body, of the conferees on the other side. If, under ordinary circumstances we could go into that, I think that I would agree with many of the points that the gentleman from Texas has raised.

The point remains that if we are going to have a bill at this session of the Congress, that we have got to forsake the idea that we are going to have a battle with the other side over a few projects that I would not ordinarily go along with in order to get a rehabilitation bill.

□ 1215

I think the issue involved at this time, the other collateral issues, should be pushed aside. I strongly agree with what the Committee on Rules has done. I think it is a way that we can complete this issue that is before us.

As one of the original sponsors of the Rehabilitation Act when it was originally passed, I think it is one of the great accomplishments of this Congress, and I think it is jeopardized if we do not adopt this rule and proceed to adopt the conference report.

For that reason, I support the rule and would wish that the gentleman from Texas [Mr. BARTLETT] would, on some other occasion, give us the opportunity to agree with him in the strategy which he would employ under ordinary circumstances.

Mr. QUILLEN. Mr. Speaker, I yield 4 minutes to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. Mr. Speaker, I hope we would turn down this rule. It, once again, is another one of those hasty procedures that comes at the end of the Congress that does this body ill.

I think that the discussion that we have had here already tells us what the problem is. There are none of us in this body who disagree with the rehabilitation program. It is a program that should go forward.

We are faced here, though, with a very bad situation. If I understand correctly the debate that just took place, what we have permitted this body to do is to agree with the other body that some pork-barrel projects ought to be stuck down into our rehabilitation effort and now there is nothing we can do about it.

I think that is wrong. It is a wrong way to proceed. It is a wrong kind of program. This is a hasty procedure that we ought not condone.

The rules of the House say that you ought to have an open conference. What has happened here is that we have waived all points of order against the bill so we have now waived the open conference.

We are now coming to the floor and saying there are things that transcend that. What transcends it in this case is a bunch of pork-barrel projects that the other body wants. That is wrong. It is just plain wrong when you are dealing with the rehabilitation program.

I would suggest that this hasty procedure has given us a rule of some question. It was just made available to the Members a few minutes ago, but let me read the rule that we have before us:

Resolved, That upon the adoption of this resolution it shall be in order to consider the conference report on the bill (H.R. 4021) to extend and improve the Rehabilitation Act of 1973, all points of order against the conference report and against its consideration are hereby waived, and the conference report shall be considered as having been read when called up for consideration.

(i) exploration for, and stock assessment of, tuna and other fish;

(ii) improvement of harvesting techniques;

(iii) gear development;

(iv) biological resource monitoring;

(v) education and training in the field of fisheries; and

(vI) regional and direct bilateral assistance in the field of fisheries.

That is a very interesting rule that we have before us. I do not know what it has to do with the rehabilitation program. I do not know what it has to do with the rules of the House, but it sure is an interesting rule. It is one of the most interesting ones I have ever come across.

In our haste, we are going to adopt that rule?

Mr. MOAKLEY. Mr. Speaker, will the gentleman yield?

Mr. WALKER. I am glad to yield to the gentleman from Massachusetts.

Mr. MOAKLEY. Mr. Speaker, I am glad the gentleman brought it before the House because the Committee on Rules filed the proper rule. The extraneous material the gentleman from Pennsylvania [Mr. WALKER] just read was the mistake by the GPO and it has already been cleared with the Clerk.

But the Committee on Rules did not include any of this information in our rule. But I am glad that the gentleman, in his diligence, saw the mistake that was made by the GPO, and not by the Committee on Rules.

Mr. WALKER. I thank the gentleman, but my complaint, if the gentleman will hear me correctly, is that in our haste to get a lot of these things done, this is exactly what we are presented with.

The Members have not had a chance to see the conference report because the conference report was filed at the desk only 30 minutes ago.

We already had a rule in place to bring this on to the floor, and when we got the rule, we got the printed rule, it is loaded with garbage down in that evidently is the GPO's fault.

It just points out to me that we are operating here at the end of the session in a lot of haste. I do not think that it causes good deliberation. I think, as a result, the Members end up voting on things that they have no idea of what is down in them.

I think that is wrong. We ought to at least be held accountable by being certain that what we are doing is something that we all understand.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to say to the membership, whatever procedural error has been made, the value of the program itself overrides any of those concerns. Rehabilitation means so much to so many. I urge the adoption of the rule.

Mr. Speaker, to close debate on this side, I yield 1 minute to the gentleman from Vermont [Mr. JEFFORDS].

Mr. JEFFORDS. Mr. Speaker, as I said before, I will vote against the rule, but I just wanted to clear up that with respect to the chairman of the committee, the gentleman backed us as much as is possible in order to see that we would have an opportunity to be heard, and I certainly want to make that very clear to the body.

The problem was that the other body even refused when I suggested that we could find a Senate room right off the Senate Chambers so they could just walk over and listen to us, and they even refused to do that. I want to make that clear.

Mr. BARTLETT. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Texas.

Mr. BARTLETT. Mr. Speaker, I concur with the gentleman from Vermont [Mr. JEFFORDS]. I have a great deal of respect and appreciation for the chairman of the full committee [Mr. HAWKINS] for working with us in trying to obtain a conference.

It was the other body, and the chairman of the committee and the chairman of the conference [Mr. HAWKINS] was very helpful in that and we all appreciate his efforts.

It is still a rule that if we turn down the rule, we can then have a conference which the House Rules provide for.

Mr. MOAKLEY. Mr. Speaker, at this time, I would just like to reemphasize, on the dialog between the gentleman from Pennsylvania [Mr. WALKER] and myself, that the Committee on Rules did not include in the rule that was sent to the desk the extraneous material. This was done as a result of an error at the GPO and we have corrected it. Therefore, this is not part of the rule.

I would just like all of the Members present to know this.

Mr. Speaker, I yield 2 minutes to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, I thank the gentleman for yielding me this time and would like to tell my colleagues, in way of closing this debate on this rule, that, first, there is no opposition, serious opposition, to this bill. Even many of the Members who are against this rule are supportive of almost everything that is in this bill.

What is being objected to is the fact that there was not a formal conference in which Members of the other body and Members of the House sat together in the same room at the same time and discussed this bill.

The Members need to understand that every Member of the conference, including those who are objecting to this rule, have signed the conference committee report. No one has refused to sign it.

Both minority and majority Members in both the other body and here in the House have signed this rule.

I want to tell the Members that when this conference began, and there has been a conference, there were 220 points of disagreement. It took 4 days of meetings, 36 hours, to resolve those differences. We got them resolved.

Again, on the House side, everyone has signed the conference report, and in the other side body, everyone has signed the conference report. The gentleman from the minority, my ranking member on the subcommittee, the gentleman from Texas [Mr. BARTLETT], requested of the full committee chairman [Mr. HAWKINS] a conference with the other body. We made that request. A Senator from the other body said that everyone agrees; we are all in agreement with the conference. We do not need one. We have all met with our staffs. Many of us have met individually. I personally have spent a great deal of time meeting with my ranking minority member, the gentleman from Texas [Mr. BARTLETT], on this matter.

So the other body said, not without reason, we have all met at one time or another, let us sign this conference report. We are at the end of this session. The rehabilitation bill is critically important to get passed. It is the reauthorization for all of this effort in this Nation. Let us move it along.

So that is what we are attempting to do with this rule, and later this afternoon, with this bill. I urge my colleagues to support this rule so that we can get about the business of reauthorizing the Rehabilitation Act for the United States.

Mr. MOAKLEY. Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 258, nays 143, not voting 31, as follows:

[Roll No. 431]

YEAS—258

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
AuCoin
Barnard
Barnes
Bates
Bedell
Beilenson
Bennett
Bentley
Berman
Bevill
Biaggi
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boxer
Brooks
Brown (CA)
Bruce
Bryant
Bustamante
Byron
Carper
Carr
Chapman
Chappell
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conte
Cooper
Coughlin
Coyne
Crockett
Daniel
Darden
Daschle
Davis
Dellums
Derrick
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Edgar
Edwards (CA)
English
Erdreich
Evans (IL)
Fascell
Fazio
Feighan
Flippo
Florio
Foley
Ford (TN)
Frank
Fuqua
Gaydos
Gejdenson
Gephardt
Gibbons
Gilman
Gonzalez
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Guarini
Hall (OH)
Hall, Ralph
Hamilton
Hatcher
Hawkins
Hayes
Hefner
Hendon
Hertel
Holt
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Jacobs
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kastenmeier
Kemp
Kennelly
Kildee
Kleczka
Kolter
Kostmayer
LaFalce
Lantos
Lehman (CA)
Lehman (FL)
Leland
Levin (MI)
Levine (CA)
Lipinski
Lloyd
Long
Lowry (WA)
Luken
Lundine
MacKay
Manton
Markey
Martinez
Matsui
Mavroules
Mazzoli
McCloskey
McCurdy
McHugh
McKinney
Mica
Miller (CA)
Mineta
Moakley
Mollohan
Montgomery
Moody
Morrison (CT)
Mrazek
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nowak
Oakar
Oberstar
Obey
Ortiz
Owens
Panetta
Parris
Pease
Penny
Pepper
Perkins
Pickle
Price
Pursell
Quillen
Rahall
Rangel
Ray
Regula
Reid
Richardson
Rinaldo
Rodino
Roe
Roemer
Rose
Rostenkowski
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage
Scheuer
Schroeder
Schuette
Schumer
Seiberling
Sharp
Shelby
Sikorski
Sisisky
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NJ)
Smith, Robert (OR)
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stark
Stenholm
Stokes
Stratton
Studds
Swift
Synar
Tallon
Tauzin
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Udall
Valentine
Vento
Visclosky
Volkmer
Walgren
Watkins
Waxman
Weaver
Weiss
Wheat
Whitley
Whitten
Williams
Wilson
Wirth
Wise
Wolpe
Wright
Wyden
Yates
Young (MO)

NAYS—143

Archer
Armey
Badham
Bartlett
Barton
Bateman
Bereuter
Bilirakis
Bliley
Boehlert
Boulter
Broomfield
Brown (CO)
Burton (IN)
Callahan
Carney
Chandler
Chappie
Cheney
Clinger
Coats
Cobey
Coble
Combest
Courter
Craig
Crane
Dannemeyer
Daub
DeLay
Dickinson
DioGuardi
Dornan (CA)
Dreier
Eckert (NY)
Edwards (OK)
Emerson
Evans (IA)
Fawell
Fiedler
Fields
Fish
Franklin
Frenzel
Gallo
Gekas
Gingrich
Goodling
Gregg
Gunderson
Hammerschmidt
Hansen
Henry
Hiler
Hopkins
Hunter
Hyde
Ireland
Jeffords
Kasich
Kindness
Kolbe
Kramer
Lagomarsino
Latta
Leach (IA)
Lent
Lewis (CA)
Lewis (FL)
Lightfoot
Livingston
Loeffler
Lott
Lowery (CA)
Lujan
Lungren
Mack
Madigan
Marlenee
Martin (IL)
McCain
McCandless
McDade
McEwen
McGrath
McKernan
McMillan
Meyers
Michel
Miller (OH)
Miller (WA)
Molinari
Monson
Moorhead
Morrison (WA)
Nielson
Oxley
Packard
Pashayan

Petri
Porter
Ridge
Ritter
Roberts
Robinson
Rogers
Roth
Roukema
Rudd
Saxton
Schaefer
Schneider
Schulze
Sensenbrenner
Shaw
Shumway
Shuster
Siljander
Skeen
Slaughter
Smith (NE)
Smith, Denny (OR)
Smith, Robert (NH)
Snowe
Snyder
Strang
Stump
Sundquist
Sweeney
Tauke
Taylor
Thomas (CA)
Vander Jagt
Vucanovich
Walker
Weber
Whitehurst
Whittaker
Wolf
Wortley
Wylie
Young (AK)
Young (FL)

NOT VOTING—31

Atkins
Boucher
Breaux
Burton (CA)
Campbell
Clay
Conyers
de la Garza
DeWine
Foglietta
Ford (MI)
Fowler
Frost
Garcia
Glickman
Grotberg
Hartnett
Hillis
Leath (TX)
Martin (NY)
McCollum
Mikulski
Mitchell
Moore
Olin
Stangeland
Swindall
Traxler
Waldon
Yatron
Zschau

□ 1240

Mrs. MEYERS of Kansas changed her vote from "yea" to "nay."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 5548, EXPORT-IMPORT BANK ACT AMENDMENTS OF 1986

Mr. ST GERMAIN submitted the following conference report and statement on the bill (H.R. 5548) to amend the Export-Import Bank Act of 1945:

CONFERENCE REPORT (H. REPT. 99-956)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5548) to amend the Export-Import Bank Act of 1945, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SEC. 21. POLICY TOWARD UNITED STATES BUSINESS TRANSACTIONS IN ANGOLA.

(a) The Congress finds that—

(1) the Marxist Popular Movement for the Liberation of Angola (hereafter in this section referred to as the "MPLA") has failed to hold fair and free elections since assuming power in Angola in 1975;

(2) Angola currently harbors more than 35,000 Soviet and Cuban troops and advisers;

(3) the Cubans and Soviets have channeled more than $4,000,000,000 in assistance and military aid in furtherance of this intervention in Africa;

(4) the MPLA government of Angola obtains more than 90 percent of its foreign exchange from the extraction and production of oil;

(5) most of Angola's oil is extracted in Cabinda Province, where 75 percent of it is extracted by the Chevron-Gulf Oil Company;

(6) the MPLA has refused to make meaningful steps to end its dependency on Soviet and Cuban forces, engage in national reconciliation efforts within Angola, or encourage the independence of Namibia; and

(7) United States business interests are in direct conflict with United States foreign policy objectives in aiding the MPLA government of Angola, which directly opposes Jonas Savimbi and UNITA, receipients of United States support.

(b)(1) It is the sense of the Congress that the interests of the United States are best served when United States business transactions conducted in Angola do not directly or indirectly support Cuban troops and Soviet advisers.

(2) The Congress hereby requests that the President consider using his authorities under the Export Administration Act of 1979 to restrict United States business transactions that conflict with United States security interests in Angola.

SEC. 22. OPPOSITION OF MULTILATERAL ASSISTANCE FOR FOREIGN SURPLUS COMMODITIES AND MINERALS.

The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the Interenational Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary fund, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by such institutions, using funds appropriated or otherwise made available pursuant to any provision of law, for the production or extraction of any commodity or mineral for export, if—

(1) such commodity or mineral, as the case may be, is in surplus on world markets; and

(2) the export of such commodity or mineral, as the case may be, would cause substantial injury to the United States producers of the same, similar, or competing commodity or mineral.

And the Senate agree to the same.

FERNAND J. ST GERMAIN,
STEVE NEAL,
JOHN J. LAFALCE,
WALTER E. FAUNTROY,
GERALD D. KLECZKA,
BARNEY FRANK,
THOMAS J. MANTON,
CHALMERS P. WYLIE,
JIM LEACH,
NORMAN D. SHUMWAY,
STAN PARRIS,

As additional conferees, solely for consideration of section 23 of the Senate amendment and modifications committed to conference:

STAN LUNDINE,
SANDER LEVIN,
ESTEBAN E. TORRES,
DOUG BEREUTER,
MARGE ROUKEMA,
AL MCCANDLESS,

As additional conferees, solely for consideration of section 21 of the Senate amendment and modifications committed to conference:

DON BONKER,
HOWARD WOLPE,
MARK D. SILJANDER,
Managers on the Part of the House.

JAKE GARN,
JOHN HEINZ,
WILLIAM PROXMIRE,

As additional conferees, solely for consideration of section 23 of the Senate amendment and modifications committed to conference:

CHARLES MCC. MATHIAS, Jr.,
CLAIBORNE PELL,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5548) to amend the Export-Import Bank Act of 1945, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

H.R. 5548 contains a broad range of provisions intended to improve the competitiveness of the Bank, to ensure that it is aggressive in support of U.S. exports and to provide new tools for Bank support.

Section 2 of H.R. 5548 permits the Bank to charge reasonable fees to ensure that the Bank's marketing efforts are not limited by budgetary constraints. Fees may be charged to cover the cost of seminars and publications that are part of the Bank's efforts to market its products. This section establishes a "reasonableness" test for fees intended to limit the Bank to recovery of those additional costs associated with holding a seminar or producing a publication, not to charge fees covering salaries, rent, or other components of the Bank's normal administrative expense budget.

Section 3 is intended to ensure that the Bank remains competitive with foreign export credit agencies in the credit application fees that it charges. The Bank is required to ensure that its fees are competitive with average fees charged by its major foreign competitors and to permit payment of the fee over the life of the loan or at the outset of the loan either by the borrower or the exporter.

Section 4 calls upon the Bank to take steps to improve the competitiveness of and access to its medium-term programs. While the language places few specific requirements on the Bank, it is the intent of Congress that the Bank explore the widest possible range of options for improving its medium-term programs including reduction of the threshold for the size of direct credits.

Section 5 of H.R. 5548 addresses the Bank's "competitiveness mandate." Current law requires the Bank to be fully competitive, but stipulates that "rates, terms and conditions need not be equivalent to those offered by foreign countries, * * *." This would be changed to read: "Rates, terms and conditions need not be identical in all respects to those offered by foreign countries,* * *."

The subsitution of "identical in all respects" for "equivalent" is meant to strengthen the Bank's competitiveness mandate by removing any possible ambiguity in the current language that all of the Bank's programs are to be fully competitive. "Need not be equivalent" might be read as a relaxation of the competitiveness requirement; the new language requires that the Bank be fully competitive without qualification, but with the understanding that each individual rate, term and condition of an offer need not be identical to that of a foreign financing offer, as long as the financing package as a whole is fully competitive.

Section 6 directs the Bank to offer multiple-exporter risk protection coverage through creditworthy trade associations, cooperatives and the like. While directing the Bank to provide this type of coverage, the congress does not intend to create a new entitlement program. The section states that: "Nothing in this provision shall be interpreted as limiting the Bank's authority to deny support for specific transactions or to disapprove a request by such an organization to participate in such coverage." The Bank will, therefore, continue to make its normal determinations about the credit-risk of individual transactions or issuance of insurance policies.

Section 7 is intended to broaden access to the Bank's programs by ensuring that an entity is not denied access solely because that entity is not a bank or is not a U.S. Person. This provision ensures that if a foreign bank or a creditworthy non-bank financial entity wishes to finance U.S. exports, the Bank should be prepared to support that effort. At the same time, this is not an effort to limit the Bank's flexibility in determining access to its programs based on other criteria or to restructure them in any way. Thus, that Bank would still be able to establish rules for access to its programs as part of the process of implementing the mandates contained in its statutory charter, such as finding reasonable assurance of repayment and avoiding competition with private capital. The Bank would also be able to establish guidelines for access that permit it to administer its programs in an effective and efficient manner.

Section 8 prohibits Bank support for exports to Marxist-Leninist countries. It defines Marxist-Leninist; lists countries currently falling within that definition; and provides the President authority to determine whether a country should be removed from or added to the list. This provision does not affect the portion of current law providing a national interest waiver where the President determines that extension of credit to a proscribed country is in the national interest. Since the existing waiver authority is retained, for any country for which a general national interest determination has already been made prior to enactment of this bill, the legislation would not require the making of a new general national interest determination.

Section 9 places an explicit prohibition on financing for Angola, unless the President certifies that "no combatant forces or military advisors of the Republic of Cuba or of any other Marxist-Leninist country remain" there. Under this language, military attaches, guards or other military personnel nomally assigned to embassies and not involved directly or indirectly in combat or combat preparations would not be part of the certification. The prohibition does not apply to food or agricultural commodities, nor does it apply to past commitments by the Bank. This prohibition is not subject to the national interest waiver provision contained in Section 8 of this legislation and discussed in the preceding paragraph.

Section 10 authorizes "unrestricted" transferability of medium-term and long-term obligations insured or guaranteed by the Bank. This change in the Bank charter represents a significant step in attracting capital in support of U.S. exports by making these obligations highly liquid assets and encouraging the development of a secondary market in such assets. Section 10 also makes clear that transferability would apply only to guarantee and insurance transactions receiving final approval from the Bank after the date of enactment of the bill.

In combination with the language of Section 7, Section 10 directs the Bank to permit transfers by and to the widest range of potential capital sources without affecting or limiting in any way the Bank's guarantee or insurance. There should be no confusion that the langauge permitting transfer from "the originating lenders or their transferees to other lenders" is intended to limit transferability in any way. In this formulation, the term "other lenders" is not to be narrowly construed to mean simply another bank or a financial institution that normally makes export loans. Since the asset in question is a loan—a loan made by the original lender and guaranteed or insured by the Bank—any person or entity acquiring undiluted ownership of that asset should be deemed to be a "lender" under the language of this provision. This could include, but would not be limited to, non-commercial bank lenders such as pension funds, savings and loan associations, insurance companies and commercial credit or finance corporations, both foreign and domestic. The purpose of this provision is to permit the original lender to sell or transfer the loan to the widest possible range of potential capital sources.

Sections 11 and 12 add to the list of requirements in the charter that the Bank carefully consider the impact of its credit support on U.S. producers, parties, or persons that may be adversely affected by a foreign competitor aided by the sale. The Bank must assess this impact in writing and prepare documentation incorporating that assessment for the consideration of the Bank Board with regard to such sale. In making its determination on extension of Bank credit, the Board shall be guided by its determination that the overall benefits to U.S. industry and employment of proceeding with the sale outweigh the injury to U.S. producers of the same, similar or competing commodity.

Section 13 authorizes appropriation of $145 million in FY 1987 to cover the subsidy cost of new direct loans, as a permanent addition to Bank capital. This amount is intended to represent the subsidy cost of a $1.8 billion direct loan program, the level of direct credit support requested by the Administration for FY 1987.

Section 15 provides guidance on matching foreign official export credits in the United States. Under Section 1912 of the Export-Import Bank Amendments of 1978, Eximbank is permitted to offer financing support to U.S. suppliers who would otherwise lose sales in the U.S. market as a result of credit subsidies from other governments to support sales by foreign producers. The intent of Congress in this provision was to provide a strong and effective deterrent to foreign producers seeking to penetrate the U.S. market through predacious export financing. Since this use of Bank authority involved broad issues of U.S. economic and export policy, the Secretary of the Treasury was granted a role in the consideration of these deals.

The language of H.R. 5548 makes clear that this provision extends to credits "irrespective of whether these credits are being offered by governments which are signatories" to OECD export financing agreements. In addition, this provision imposes a burden on the Treasury to approve domestic financing *unless* the Secretary determines that financing is *not* a significant factor.

Section 19 of H.R. 5548 establishes within the Export-Import Bank a Tied Aid Credit War Chest. This War Chest is intended to provide the U.S. Government with the tools necessary to eliminate the trade-distorting practice of mixing foreign aid with export credit, and appropriation of $300 million is authorized for this purpose. The Administration is anxious to have this provision enacted to support its negotiating efforts in the OECD.

The structure and purpose of the War Chest have been carefully designed. It could be used for both "offensive" and "defensive" purposes; that is, it could be used aggressively to take markets away from other countries, and defensively to protect American exports facing unfair mixed credits financing. Its overriding purpose is to strengthen the hand of the Secretary of the Treasury in negotiating a comprehensive agreement to limit the use of mixed credits.

To serve that purpose, it is essential that the Secretary, who is in charge of these negotiations for the United States, play a role in the use of the funds from the War Chest. Thus, though the War Chest is lodged administratively in the Bank, the Secretary's role is assured by the language in this section that requires the Bank to administer this tied aid credit program "in consultation with the Secretary of the Treasury and in accordance with the Secretary's recommendations on how such credits could be used most effectively and efficiently to promote the negotiation of a comprehensive international arrangement restricting the use of tied aid and partially untied aid credits for commercial purposes."

Section 20 of the bill authorizes the Bank to make interest subsidy payments, the so-called I-Match program, under certain conditions. Under this section, the Bank is permitted to make interest subsidy payments to private lenders to subsidize export loans when below-market financing is required to compete with foreign subsidized financing. This I-Match authority, which is to be granted for two years, can become effective only if three conditions are met: first, the funds for the interest subsidy payments must be appropriated; second, loan guarantees accompanying these payments must not be scored as budget authority; and third, the Bank must have been authorized a direct loan budget of at least $700 million.

This last condition does not mean that the Bank must actually have loaned $700 million before I-Match becomes available, but that I-Match authority can become effective in any fiscal year only if the Bank has been provided sufficient authority in the budget to make at least $700 million of direct loans. This last requirement also reflects Congressional concern that even with a functioning I-Match, the direct credit program will still be needed.

POLICY TOWARD UNITED STATES BUSINESS TRANSACTIONS IN ANGOLA

The Senate provision finds that the Angolan government's refusal to hold free elections and the continued strong Cuban and Soviet military presence in Angola render United States business interests in Angola in direct conflict with United States foreign policy objectives. It requests that the President use powers under the International Emergency Economic Powers Act to block U.S. business transactions which conflict with U.S. security interests in Angola.

The House has no comparable provision.

The House recedes to the Senate with an amendment striking paragraph (a)(8), and requesting the President to consider using his powers under the Export Administration Act of 1979 to restrict U.S. business transactions that conflict with United States security interests in Angola, rather than using his powers under the International Emergency Economic Powers Act.

GROUP ELIGIBILITY REQUIREMENTS

The Senate provision amends the Trade Act of 1974 to extend the group eligibility requirements for certification by the Secretary of Labor for adjustment assistance for workers to provide relief for workers in the oil and gas industry.

The House has no comparable provision.

The Senate recedes to the House.

OPPOSITION OF MULTILATERAL ASSISTANCE FOR FOREIGN SURPLUS COMMODITIES AND MINERALS

The Senate provision requires the Secretary of the Treasury to instruct the U.S. Executive Directors to the multilateral development banks to oppose making available funds for the production or extraction of any commodity or mineral for export if it is in surplus in world markets and would substantially injure U.S. producers of the same or competing commodity or mineral, and would reduce payments to such institutions in proportion to their support for such production or extraction.

The House has no comparable provision.

The House recedes to the Senate with an amendment deleting subsection (b), which reduces U.S. payments to such institutions.

FERNAND J. ST GERMAIN,
STEVE NEAL,
JOHN J. LAFALCE,
WALTER E. FAUNTROY,
GERALD D. KLECZKA,
BARNEY FRANK,
THOMAS J. MANTON,
CHALMERS P. WYLIE,
JIM LEACH,
NORMAN D. SHUMWAY,
STAN PARRIS,

As additional conferees, solely for consideration of section 23 of the Senate amendment and modifications committed to conference:

STAN LUNDINE,
SANDER LEVIN,
ESTEBAN E. TORRES,
DOUG BEREUTER,
MARGE ROUKEMA,
AL MCCANDLESS,

As additional conferees, solely for consideration of section 21 of the Senate amendment and modifications committed to conference:

DON BONKER,
HOWARD WOLPE,
MARK D. SILJANDER,
Managers on the Part of the House.

JAKE GARN,
JOHN HEINZ,
WILLIAM PROXMIRE,

As additional conferees, solely for consideration of section 23 of the Senate amendment and modifications committed to conference:

CHARLES MCC. MATHIAS,
Jr.,
CLAIBORNE PELL,
Managers on the Part of the Senate.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 5233, DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES APPROPRIATIONS ACT, 1987

Mr. NATCHER. Mr. Speaker, I ask unanimous consent that the managers may have until midnight tonight, October 2, 1986, to file a conference report on the bill (H.R. 5233) making appropriations for the Departments of Labor, Health and Human Services, and Education and related agencies for the fiscal year ending September 30, 1987, and for other purposes.

The SPEAKER pro tempore (Mr. DURBIN). Is there objection to the request of the gentleman from Kentucky?

There was no objection.

CONFERENCE REPORT ON H.R. 4116, DOMESTIC VOLUNTEER SERVICE ACT AMENDMENTS OF 1986

Mr. WILLIAMS. Mr. Speaker, pursuant to House Resolution 568, I call up the conference report on the bill (H.R. 4116) to extend and improve the Domestic Volunteer Service Act of 1973.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. DURBIN). Pursuant to House Resolution 568, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House earlier today.)

The SPEAKER pro tempore. The gentleman from Montana [Mr. WILLIAMS] will be recognized for 30 minutes and the gentleman from Iowa [Mr. TAUKE] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, I yield myself such time as I may consume.

I rise in favor of the conference report concerning H.R. 4116 and S. 2324, the Domestic Volunteer Service Act Amendments of 1986.

The bill would reauthorize and extend the ACTION Agency and its programs, Volunteers in Service to America [VISTA], the Retired Senior Volunteer Program, the Foster Grandparent Program, and the Senior Companion Program for 3 years.

I would like to thank my colleague, the gentleman from Michigan, Mr. DALE KILDEE, chairman of the Subcommittee on Human Resources, for his work on this legislation. The Older American Volunteer Programs contained in title II of the act are under the jurisdiction of his subcommittee. With that in mind, I will limit my comments to those sections of the conference agreement that affect Titles I, IV and V.

The conference agreement adds a new section describing the tradition and importance of voluntarism in America and clarifying the ACTION Agency's purpose with respect to it's role in promoting voluntarism. ACTION is directed to utilize the programs authorized under this act, VISTA, the Retired Senior Volunteer Program, the Foster Grandparent Program, and the Senior Companion Program to expand citizen service throughout the Nation.

This conference report required the Director of the ACTION Agency to establish procedures to expand local and national efforts to recruit and assign individuals to serve as VISTA volunteers and to expand media and public awareness efforts. The cost of these efforts is not to exceed $250,000. The Director is further required to submit a report to the authorizing committees of the Congress outlining the steps taken to comply with these recruitment procedures.

Recognizing the valuable contribution that VISTA volunteers make in our efforts to combat illiteracy throughout our Nation, both the House and the Senate measures established a VISTA Literacy Corps. The conference agreement defines that the purpose of the corps is to utilize VISTA volunteers to strengthen, supplement, and expand efforts to address the problems of illiteracy throughout the United States. The corps will consist of all VISTA volunteers working on literacy projects and programs, not just those funded pursuant to this new authority.

The agreement provides for placement of volunteers to projects or programs that are designed to meet the special needs of low-income illiterate individuals. It provides for a separate effort and authorization for placing VISTA volunteers in literacy programs or projects that utilize those volunteers as mobilizers and catalysts. It also provides for a separate effort and authorization for placing VISTA volunteers in literacy programs or projects that primarily utilize those volunteers to tutor illiterate individuals.

Further, it is the conferees intention that activities performed under the new authority be used to supplement and not supplant the level of services provided under part A in fiscal year 1986 to address the problem of illiteracy.

The conference agreement also amends the requirements regarding evaluation of ACTION Agency programs. Currently, ACTION is required to evaluate all of its programs every 2 years. The conference agreement changes this requirement to every 3 years.

This agreement sets authorization levels for title I, part A, the VISTA

Program at $25 million for fiscal year 1987; $26 million for fiscal year 1988, and $27.04 million for fiscal year 1989. This represents a freeze for fiscal year 1987 with a 4-percent increase in the out years.

It provides separate authorizations for the new literacy initiatives established under section 109 of the bill. To carry out efforts established by section 109(c), $2 million, $3 million, and $5 million are authorized for fiscal years 1987, 1988, and 1989, respectively. One million dollars in each of the fiscal years 1987, 1988, and 1989 are authorized to carry out efforts established by section 109(d).

For title I, part B, the Service Learning Programs, the conference agreement authorizes $1,800,000 for each of the fiscal years 1987, 1988, and 1989 and for title I, part C, the Special Volunteer Programs, it authorizes $1,984,000 for each of the fiscal years 1987, 1988, and 1989.

The conference report further requires that of the moneys available for title I programs, there must first be available for the VISTA Program an adequate amount of funds to produce a minimum of 2,400 service years for fiscal year 1987; 2,500 service years for fiscal year 1988; and 2,600 service years for fiscal year 1989. This service year funding floor mechanism sets VISTA as the priority title I program and ensures that part A, VISTA, first receives a minimum funding level prior to providing funding for parts B and C of title I.

It is the intent of the conferees that no funds be expended for the operation of programs authorized under section 109(c) until the funding required to carry out the activities in part A is made available. Further, it is the intent of the conferees that no funds be expended for the operation of programs authorized under section 109(d) until the funding required to carry out the activities in part A and 109(c) is made available.

The agreement also provides $25,312,000 in administration and coordination funds for the ACTION Agency for the 3 years of the authorization.

The conference agreement makes certain technical and conforming amendments, including clarification of statutory language regarding the Service Learning Programs and, specifically, the University Year for ACTION Program; the addition of a definition of Indian tribe; clarification of statutory language to make the act gender free; and establishment of the effective date as October 1, 1986.

Finally, I wish to thank my colleagues who served on this conference committee, and their staffs, for their fine work in completing this legislation.

□ 1250

Mr. TAUKE. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Vermont [Mr. JEFFORDS], the ranking member of the Education and Labor Committee.

Mr. JEFFORDS. Mr. Speaker, I rise in support of this conference report and certainly want to commend the chairman of the committee, and especially the gentleman from Iowa [Mr. TAUKE], who worked so hard and diligently to make this a more responsible program.

Mr. Speaker, as the ranking minority member of the Education and Labor Committee and a House conferee on H.R. 4116, I rise in support of the conference committee report.

The conference report extends for 3 additional years, or through fiscal year 1989, all of the federally assisted national volunteer antipoverty programs authorized by the Domestic Volunteer Services Act and administered by the ACTION Agency.

Included in this reauthorization package are the Volunteers in Service to America Program, more popularly known as VISTA, and the Service Learning and Special Volunteer Programs. In addition, a trio of highly successful Older American Volunteer Programs—the Foster Grandparents, Senior Companion, and Retired Senior Volunteer, or RSVP, programs are reauthorized. Finally, the conference agreement contains authorizations of appropriations for the ACTION Agency's administration of these federally assisted volunteer antipoverty activities.

The conference report on H.R. 4116 also includes several policy changes that deserve mention. First, authority is provided for the establishment of a VISTA Literacy Corps. The primary charge of this new corps is to strengthen and expand efforts by public and nonprofit organizations in mobilizing the resources of the public, private, and voluntary sectors to the end that immediate and substantial progress is made in solving the serious illiteracy problems which face our Nation.

For this purpose, $2 million, $3 million, and $5 million are authorized for fiscal years 1987, 1988, and 1989, respectively.

A second change—which I believe is a step in the right direction—is designed to encourage senior citizens to serve as nonstipended Foster Grandparents and Senior Companion volunteers. Hopefully, this chance will enable us to match a greater number of talented seniors with children who are the victims of child abuse and neglect, youngsters with very special needs, and the frail disabled elderly.

With regard to authorization levels in general, where differences existed between the House and the Senate bills, the conference report calls for funding levels that are slightly higher than the Senate-passed measure and slightly lower than the authorizations in the House-approved bill.

During floor debate on the original House bill, the gentleman from California [Mr. McCANDLESS] offered, and the House accepted, an amendment that would have allowed, but not required, Foster Grandparent Programs to serve certain mentally retarded adults whose needs are commensurate with those of mentally retarded children now served by the program.

Unfortunately, the amendment offered by the gentleman from California was not retained in the conference report. In my judgment, the problem that my colleague's amendment attempted to address is a valid one and I believe that his amendment could have been the basis for allowing local Foster Grandparent projects to meet some very important local community needs. I trust, therefore, that my colleague from California, who has demonstrated a very strong commitment to the goals of the Foster Grandparent Program, will be willing to continue to work with us on this issue.

Mr. Speaker, the conference report on H.R. 4116 is basically a fairly simple and straightforward reauthorization of existing ACTION Agency authorities. Authorization of the Vista Literacy Corps is the only new initiative.

I believe that most of us are well aware of the tremendous job that VISTA and Older American Programs' volunteers are doing on a daily basis in communities everywhere. In my own State of Vermont we are fortunate to have VISTA's and Foster Grandparents, Senior Companions, and RSVP volunteers who are dedicated, talented, and the providers of invaluable one-on-one services to many of our neediest and most vulnerable residents.

Therefore, I urge my colleagues to join me in voting for adoption of the conference report on H.R. 4116.

Mr. WILLIAMS. Mr. Speaker, I yield 5 minutes to the gentleman from Michigan [Mr. KILDEE], my colleague on the Subcommittee on Human Resources, who had a major part in this bill and major jurisdiction therefor.

Mr. KILDEE. Mr. Speaker, I rise in support of the conference report for H.R. 4116, the Domestic Volunteer Service Act.

The conference agreement on H.R. 4116 includes a 3-year reauthorization of vital Older American Volunteer Programs under the jurisdiction of the Subcommittee on Human Resources. They are: the Retired Senior Volunteer Program, the Senior Companion Program, and the Foster Grandparents Program.

The conference agreement provides for authorizations for these programs at levels that are below the House bill, but above the amount proposed by the Senate. The conference agreement also contains modified Senate language creating authority for volunteers who do not meet the income requirements but who are willing to serve without a stipend to participate in the Foster Grandparent and Senior Companion Programs under certain conditions.

At the insistence of the Senate, the conference report does not include a provision of the House bill, of the gentleman from California [Mr. McCANDLESS], added on the House floor, which would have permitted foster grandparents to serve mentally retarded individuals of any age. The current law provides that mentally retarded adults may be served over the age of 21 only if they were receiving services prior to age 21.

No one worked harder than the gentleman from California [Mr. McCANDLESS], to bring this to our attention. We tried to propose a compromise that the minority staff and the gentleman from Iowa [Mr. TAUKE], had worked very hard to see whether the other body might try to bring about. But both the other body and the administration were very, very adamant on that and it finally reached the point where we would have had to hold up the entire conference report because they were not willing to yield on that, either the Senate or the administration.

I certainly know the gentleman from California [Mr. McCANDLESS] feels very strongly on this, and I will try to work with him in the next year to see whether or not something can be worked out, because he certainly has been constant in his devotion to this amendment.

Mr. Speaker, the Older American Volunteer Programs capitalize on the best qualities of our Nation's senior citizens by providing opportunities for them to continue contributing in a meaningful way to their communities. Whether it be—

A senior companion helping to keep a frail elderly person out of an institution,

A foster grandparent helping a needy child to learn and grow, or

An RSVP volunteer working with a victim of Alzheimers disease.

We all benefit tremendously from the efforts of these volunteers who give of their time, their knowledge, and their hearts.

In closing, I urge the adoption of the conference report. These fine programs accomplish a great deal of good for the participants and the people they serve. They deserve our support.

Mr. TAUKE. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. McCANDLESS].

Mr. McCANDLESS. Mr. Speaker, I thank the gentleman for yielding and rise to thank the committee for its assistance in attempting to properly perform the function of getting a successful conclusion to my amendment. Unfortunately, the other body's conferees, who never met with us, prevailed on this issue.

There appears to be some question on the administration's position here, whether it is actually the administration's position or one of their administrator's. Be that as it may, I want to take this time to express my appreciation to the members of the committee and the subcommittee chairman as well as the minority members for the assistance that they have given me in this endeavor.

Mr. WILLIAMS. Mr. Speaker, will the gentleman yield?

Mr. McCANDLESS. I am happy to yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Speaker, I want to thank the gentleman from California for his support for this legislation and for his involvement in the conference committee. The gentleman had an issue about which he felt very strongly, and about which this Member believes he was essentially correct.

I hope the gentleman will continue to pursue his point in later legislation, because this gentleman would like to continue his engagement with the gentleman in trying to arrive at a satisfactory solution to the problem the gentleman from California has identified, and which this bill does not fully resolve.

Mr. McCANDLESS. I thank the gentleman for his support. He can rest assured that if I am here in the 100th Congress, I will be back.

□ 1300

Mr. WILLIAMS. Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. BIAGGI], who has been a leader in this matter for many years.

Mr. BIAGGI. Mr. Speaker, I rise today in support of the conference report on H.R. 4116, the Domestic Volunteer Service Act Amendments, which extends the authorization for both the national volunteer antipoverty programs—including VISTA, service learning programs and special volunteer programs—and the national older American volunteer programs—including the Retired Senior Volunteer Program, Foster Grandparents, and Senior Companions Programs. These programs are an excellent example of how a relatively small Federal contribution can stimulate growth and development in our communities.

I would like to commend my colleague, the distinguished chairman of this subcommittee, PAT WILLIAMS, and the ranking Republican member TOM TAUKE and DALE KILDEE for their leadership in this process.

The VISTA Program distinguishes itself as the Federal Government's only full-time, domestic, antipoverty program. Often described as the domestic Peace Corps, VISTA uses its volunteers in service programs including assisting the handicapped, the homeless, the jobless, the hungry, the illiterate or functionally illiterate, and addressing problems including drug and alcohol abuse. In my district in New York, VISTA volunteers have accomplished much in areas related to: hunger/malnutrition, delinquency/crime, illiteracy, youth and veteran unemployment, drug abuse, and homelessness. The self-reliance fostered by VISTA programs has done much to create a lasting positive change in the impacted neighborhoods.

I would commend the inclusion in this conference report of provisions for recruiting VISTA volunteers from all ages and social, economic, and geographical backgrounds. This provision seeks to make potential volunteers more aware of the diversity and satisfaction of the VISTA Program.

This conference report also establishes a new VISTA Literacy Corps in an effort to strengthen and expand current VISTA literacy programs and focus attention on the grevious problem of illiteracy in our country. In a recently released report entitled "Literacy: Profiles of America's Young Adults," the following results were found about the literacy levels of our Young adults, aged 21 to 25. While 95 percent of this group can read at a fourth-grade level, less than 20 percent can perform at beyond the seventh-grade level. Less than 1 in 100 blacks, 3 in 100 Hispanics and only 11 in 100 white young adults can read and interpret prose at a level including news reports, books, and magazines. Only 25 in 100 whites, 7 in 100 Hispanics, and 3 in 100 blacks can use information from documents including maps, charts, and tables. Less than 10 percent of the group could interpret a four-line poem, less than 20 percent could effectively deal with a bus schedule, less than 10 percent could properly fill out a catalog form and less than 40 percent could calculate change due when ordering a simple meal from a menu. The Literacy Corps will develop and strengthen efforts, both public and private, to mobilize our volunteer forces to battle the growing problem of illiteracy.

This conference report also reauthorizes the Older American Volunteer Program which provides the opportunity for seniors, 60 or older, to work part time in a variety of community service activities. The RSVP Program involves older Americans in areas including youth counseling, literacy enhancement, long-term care, crime prevention, refugee assistance, housing rehabilitation, consumer education, and drug prevention. The Foster Grandparent Program assists them in providing supportive services to children with physical, mental, emotional or social disabilities. The Senior Companion Program assists older Americans in supporting and serving other more frail and vulnerable older Americans. As chairman of the Human Services Subcommittee of the House Select Committee on Aging, I commend the atmosphere of decency and dignity for all that is promoted by these programs which is the mainstay of life for the elderly in our country.

I would, however, encourage the volunteer community to, in the coming years, investigate the population of older mentally retarded persons who may benefit from the Foster Grandparent Program but are currently ineligible due to age limits.

Mr. Speaker, I urge my colleagues to give favorable consideration to this conference report.

Mr. TAUKE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 4116, the Domestic Volunteer Service Act Amendments of 1986. Passage of this conference report will ensure the continuation of the valuable services provided by volunteers under the direction of the ACTION Agency.

All of these programs are good programs and provide service to our citizens. In particular, Mr. Speaker, I am pleased that the Retired Senior Volunteer Program, the Foster Grandparent Program and the Senior Companion Program are reauthorized for 3 years by this conference report. These programs provide opportunities to elderly Americans to continue to contribute their talents and their energy to valuable community projects. The investment we make in these programs is returned many times over through the efforts of these unselfish individuals.

I do, however, have some reservations about this conference report. The authorization levels recommended by the conferees, although somewhat reduced from the House-passed levels, are out of line with even optimistic assumptions about future appropriations. These are valuable programs, but the authorization levels are somewhat unrealistic—that is, they are too high—in light of the overall budget deficit.

In addition, I believe that the conferees failed to make a good bill better by taking advantage of opportunities to give flexibility to these programs. For instance, a provision to allow nonlow income individuals to serve as Foster Grandparents or Senior Companions without receiving a stipend is so restrictive that it is unlikely that many projects will be willing or able to take advantage of this new authority and increase the number of volunteers serving as Foster Grandparents and Senior Companions.

Conferees also rejected a Senate provision that would have authorized the Director of the ACTION Agency to solicit funds from the private sector to supplement appropriations for these programs. Unfortunately, this provision was dropped and the possibility of additional revenue for these important programs was lost.

Finally, I am disappointed with the handling of a provision added to the House bill by the gentleman from California [Mr. McCANDLESS] and about the failure of the conferees to resolve the problem addressed by the gentleman's amendment. It is unfortunate that a majority of the conferees were unwilling to seriously consider this provision, which was designed to accommodate the desire of some Foster Grandparents to serve mentally retarded individuals regardless of their chronological age. I hope that this issue will be revisited.

Mr. Speaker, this conference report is not a bad effort, but I don't believe it is the product of our best efforts. This conference agreement avoids major controversies and makes no major changes in the programs it authorizes. While I believe the bill could be improved, I urge passage of the conference report to ensure that these valuable programs continue.

Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. BARTLETT).

Mr. BARTLETT. Mr. Speaker, I rise to note that the conference report in agreement is a substantial improvement over the original version of the bill as passed by this body. The conference agreement improves the House bill by lowering the VISTA service floor levels to 2,400, 2,500 and 2,600, respectively through fiscal year 1989, moving these figures closer to the House budget resolution.

These figures are still over the House budget resolution, but they are closer. They would still provide for increases over current services, but not as large an increase as was provided in the original House bill.

The agreement also refines the initiative proposed by Congressman WILLIAMS of Montana by incorporating a proposal authored by Senator PAUL SIMON of Illinois.

I do regret that the conferees did not accept a House provision authored by Congressman McCANDLESS of California which would have benefited mentally retarded persons in institutions. I remain hopeful that the House and Senate will address his concerns in the near future.

Mr. TAUKE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. WILLIAMS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge my colleagues to vote yes on this bill which again reauthorizes and extends the ACTION Agency and its programs. Those programs include VISTA, a very popular program in America; Volunteers in Service to America, the Retired Senior Volunteer Program, the Foster Grandparent Program, and the Senior Companions Program.

Ms. SNOWE. Mr. Speaker, I rise in support of the Domestic Volunteer Service Act which is before us today. Particularly, I want to express my support for a provision added during the conference committee which would require an evaluation of the impact of programs under the ACTION Agency on families caring for frail and disabled adult family members.

Only yesterday, this body passed a bill I sponsored, House Joint Resolution 555 establishing "National Family Caregivers Week." That bill was introduced, not only in recognition of the important and ongoing role of the family caregiver, but also in an effort to dispel the myth that families have abandoned their role in the care of adult family members. We know that is not the case. Indeed, we know that often, against all odds, families will make financial and emotional expenditures in an effort to maintain family members at home.

For this reason, I feel it is essential to support the family caregivers in their efforts. The presence of a cadre of community volunteers who assist caregivers could make a critical difference in the ability of caregivers to continue to provide care. Unfortunately, we do not know the extent to which volunteers have an impact on family caregiving.

The purpose of the provision in the conference report would be to provide for an evaluation of the ACTION programs as to their impact on family caregivers. At present, we do not know the full range of services provided by ACTION volunteers to caregivers. Nor do we know which services are in greatest demand or the skills and training needed to improve those services. In short, we really know very little about the volunteers and the demand for service from caregivers. This provision would provide a means for answering many unanswered questions and for improving the quality of the volunteer service provided.

I urge you to support his conference report. I believe it provides us with an opportunity to join those who have time and energy with those who need time and assistance.

Mr. TALLON. Mr. Speaker, I rise in support of the conference report on H.R. 4116, Domestic Volunteer Service Act amendments. VISTA and Older Americans Volunteer Programs reauthorized in this bill are outstanding volunteer programs that provide much to the neediest of our society. These programs deserve the wholehearted support of all Members.

VISTA has been of particular benefit in reducing the tragic problem of illiteracy in my State of South Carolina and across the Nation. The rate of illiteracy in the United States is a national disgrace; 25 million Americans cannot read or write. For many of these, unemployment and poverty are the inevitable results. Today over 600 VISTA volunteers are working at over 100 projects in nearly 40 States to reverse the cycle of illiteracy and poverty.

VISTA has made noteworthy contributions toward reducing illiteracy in its work with the

South Carolina Literacy Association. The South Carolina Literacy Association's goal is plain and simple: to reduce the illiteracy rate among adults in the State.

In the first 2 years of the project the VISTA volunteers enabled the literacy association to double the number of workshops, students, and volunteers. In 6 months, volunteers assigned to the association recruited 577 students, 248 volunteer tutors, led 14 workshops in addition to generating nearly $40,000 in public and private resources for the battle against illiteracy. They have succeeded in making the public more aware of the scope of the illiteracy problem in South Carolina and elsewhere in society, and they have succeeded in getting the resources and the commitment necessary to do something about it.

That, I think is the bottom line where VISTA is concerned. VISTA and its volunteers are doing something about it—whether "it" is poverty, hunger, homelessness, illiteracy, drug abuse, domestic violence, unemployment, or any of the other problems facing the needy of this country.

VISTA is one of the most effective, efficient antipoverty programs in Government today. It has earned our continued support by providing hope and an opportunity to the impoverished and disadvantaged. I am proud to support the conference report on H.R. 4116 and the fine work VISTA volunteers are currently doing in addressing hunger, unemployment, alcohol and drug abuse, rural economic development and so many other issues. I urge my colleagues to join me in support of this measure.

Mr. WILLIAMS. Mr. Speaker, I have no further requests for time and I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. TAUKE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 366, nays 33, not voting 33, as follows:

[Roll No. 432]

YEAS—366

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Aspin
AuCoin
Barnard
Barnes
Bateman
Bates
Bedell
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Bosco
Boucher
Boulter
Boxer
Brooks
Broomfield
Brown (CA)
Bruce
Bryant
Bustamante
Byron
Callahan
Carney
Carper
Carr
Chandler
Chapman
Clinger
Coats
Cobey
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Cooper
Coughlin
Courter
Coyne
Crockett
Daniel
Darden
Daschle
Daub
Davis
Derrick
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Fazio
Feighan
Fiedler
Fish
Flippo
Florio
Foglietta
Ford (MI)
Ford (TN)
Frank
Franklin
Fuqua
Gallo
Gaydos
Gejdenson
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hammerschmidt
Hatcher
Hawkins
Hayes
Hefner
Hendon
Henry
Hertel
Hiler
Hillis
Holt
Hopkins
Horton
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennelly
Kildee
Kindness
Kleczka
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Loeffler
Long
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Lungren
Mack
MacKay
Madigan
Manton
Markey
Martin (IL)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCurdy
McDade
McEwen
McGrath
McHugh
McKernan
McKinney
McMillan
Meyers
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morrison (CT)
Morrison (WA)
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Ortiz
Owens
Oxley
Packard
Panetta
Parris
Pashayan
Pease
Penny
Pepper
Perkins
Petri
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Savage
Saxton
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Seiberling
Sharp
Shaw
Shelby
Sikorski
Siljander
Sisisky
Skeen
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stark
Stenholm
Stokes
Strang
Stratton
Studds
Sundquist
Sweeney
Swift
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Watkins
Waxman
Weaver
Weber
Weiss
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams
Wilson
Wirth
Wise
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Young (AK)
Young (MO)

NAYS—33

Archer
Armey
Badham
Bartlett
Barton
Brown (CO)
Burton (IN)
Chappie
Cheney
Craig
Crane
Dannemeyer
DeLay
Dreier
Fields
Frenzel
Gekas
Gregg
Hansen
Hunter
Kolbe
Lewis (CA)
Marlenee
Monson
Roberts
Rudd
Schaefer
Sensenbrenner
Shumway
Shuster
Smith, Denny (OR)
Stump
Walker

NOT VOTING—33

Atkins
Breaux
Burton (CA)
Campbell
Chappell
Clay
Conyers
de la Garza
Dellums
DeWine
Duncan
Foley
Fowler
Frost
Garcia
Gephardt
Grotberg
Hartnett
Howard
Martin (NY)
McCollum
Mikulski
Mitchell
Moore
Mrazek
Olin
Stangeland
Swindall
Traxler
Waldon
Yatron
Young (FL)
Zschau

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Mr. WHITTAKER changed his vote from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. WILLIAMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the conference report on H.R. 4116, Domestic Volunteer Service Act Amendments of 1986.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Montana?

There was no objection.

PERMISSION TO HAVE UNTIL MIDNIGHT TOMORROW, OCTOBER 3, 1986, TO FILE CONFERENCE REPORT ON H.R. 5300, OMNIBUS BUDGET RECONCILIATION ACT OF 1986

Mr. GRAY of Pennsylvania. Mr. Speaker, I ask unanimous consent that the managers may have until midnight, October 3, 1986, to file the conference report on the bill (H.R. 5300) to provide for reconciliation pursuant to section 2 of the concurrent resolution on the budget for fiscal year 1987.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

REQUEST TO CONSIDER CONFERENCE REPORT ON H.R. 5300, OMNIBUS BUDGET RECONCILIATION ACT OF 1986, ON TUESDAY, OCTOBER 7, 1986, OR ANY DAY THEREAFTER

Mr. GRAY of Pennsylvania. Mr. Speaker, I ask unanimous consent that it shall be in order at anytime on Tuesday, October 7, 1986, and any day thereafter, to consider the conference report on H.R. 5300, the Omnibus Budget Reconciliation Act of 1986, that all points of order against the conference report and against its consideration be waived, and that the conference report be considered as read when called up, subject to the availability of the conference report to members for at least 2 hours.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

Mr. DONNELLY. Mr. Speaker, reserving the right to object, and I make the reservation of objection to ask the gentleman a question about the content of the document that is to be filed tomorrow night.

Does the gentleman know the resolution of the issue dealing with the Medicare tax on State and local employees?

Mr. GRAY of Pennsylvania. Mr. Speaker, if the gentleman will yield, I would say to my friend, the gentleman from Massachusetts that at this time we do not know the contents of the document. There are about four or five subgroups that are still working to get agreement, including the Ways and Means Committee of the House and the Finance Committee of the other body, of which the gentleman is a part on the House side.

We are talking about having the opportunity to file until midnight tomorrow night. I expect that they will be continuing to work today and tomorrow.

With regard to the issue on Medicare coverage for State and local employees, I do know that the Senate has that in their document and the House does not. The latest word that I had from the conferees is that the House is opposed to accepting the other body's position.

What the final outcome will be will be determined by the conferees of the Ways and Means Committee.

Mr. LATTA. Mr. Speaker, will the gentleman yield?

Mr. DONNELLY. I yield to the gentleman from Ohio.

Mr. LATTA. Mr. Speaker, to further answer the question, I heard the rumor that there is something that I certainly would object to being worked out in this subconference on this very question, and that is that it will be phased in over 4 years at 25 percent a year. I certainly shall object to that.

Mr. DONNELLY. Mr. Speaker, further reserving the right to object, I have heard that rumor, too.

Mr. LATTA. Mr. Speaker, if the gentleman will further yield, the question about State and local has nothing to do with the request of our chairman. The gentleman is merely saying that we ought to get down to business by next Tuesday and have this matter on the floor. That means that the Ways and Means subconference and the other subconference have got some work to do between now and then.

I think by the gentleman raising this subject, it will put them on notice that there is some opposition to this proposed proposal that is kicking around. So I would hope the gentleman would not object to bringing it up on Tuesday.

Mr. DONNELLY. Mr. Speaker, further reserving the right to object, it would seem to me that if in fact all of the issues are not solved, this does not seem to be the point in time to bring up this unanimous consent request that waives all points of order.

Mr. GRAY of Pennsylvania. Mr. Speaker, will the gentleman yield?

Mr. DONNELLY. Under my reservation of objection, I yield to the gentleman from Pennsylvania.

Mr. GRAY of Pennsylvania. Mr. Speaker, I would just say the reason why we are asking for this unanimous consent is because of the Gramm-Rudman deadlines which are mandated by law and, thus, if the conferees are successful in reaching a conclusion tomorrow, we must have it up on the floor on Tuesday to have a vote up or down so that it can be signed into law in order to avoid over $25 billion across-the-board cuts.

I can understand the gentleman's concern about that one particular issue, but I assure the gentleman that it is the Ways and Means Committee, of which the gentleman is a part, that will make that determination as to whether the House will recede in any way, shape or form to the other body's position.

Second, if the gentleman's own committee should do that, there is a recourse for the gentleman and any other Member who feels that that is an objectionable part of reconciliation which they cannot support. They could vote against it on Tuesday.

All we are asking for is if the conferees do complete their work, the ability to bring it up so that we can meet the Gramm-Rudman deadlines. Failure to do that means a sequestration order that will take $12.5 billion out of domestic spending and $12.5 billion out of defense spending.

So I would not want to prejudice the gentleman's case.

Mr. RUSSO. Mr. Speaker, will the gentleman yield?

Mr. DONNELLY. I yield to the gentleman from Illinois.

Mr. RUSSO. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, when we dealt with the tax bill, it repealed the 3-year basis recovery rule. And now we have the other body including a provision in which they want to mandate Medicare coverage for State and local government employees. The increased cost to State and local governments is enormous. States and local governments are getting cut back significantly by what happens in the Federal budget, and I think it would be another nail in the coffin of those public employees who we want and need to work for governments, whether local or State, by requiring Medicare coverage.

☐ 1335

What we are looking for is qualified, quality people to work in government. We have hurt their pensions, we have hurt their pay, and now we want to increase their burdens by including them under Medicare. I think it is a mistake and we ought to make sure it does not happen.

I thank the gentleman for raising this point.

Mr. DONNELLY. Mr. Speaker, further reserving the right to object, at this point in time, not knowing what will be in the document and being concerned about the points of order that are being waived, I object.

The SPEAKER pro tempore. Objection is heard.

CONFERENCE REPORT ON H.R. 4021, REHABILITATION ACT AMENDMENTS OF 1986

Mr. WILLIAMS. Mr. Speaker, I call up the conference report on the bill (H.R. 4021) to extend and improve the Rehabilitation Act of 1973.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 569, the conference report is considered as having been read.

(For conference report and statement see proceedings of the House earlier today.)

The SPEAKER pro tempore. The gentleman from Montana [Mr. Williams] will be recognized for 30 minutes and the gentleman from Texas [Mr. Bartlett] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Montana [Mr. Williams].

Mr. WILLIAMS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report concerning H.R. 4021, the Rehabilitation Act Amendments of 1986. A vote for this conference agreement is a vote for those individuals with handicaps who desire to become employed or retain employment in the competitive labor market or to pursue other vocational outcomes consistent with the act. A vote for the conference agreement is also a vote to extend comprehensive services for independent living to individuals with severe handicaps.

The conference agreement has the support of all 11 of the House conferees and all of the Senate conferees. Together approximately 220 points of disagreement were worked out. H.R. 4021 originally passed the House by a vote of 401 to 0.

The provisions in the conference report and the accompanying statement of managers are the result of protracted negotiations with the Senate conferees. We did not get everything we wanted and they didn't get everything they wanted. However, overall, I am pleased to report that the conference agreement contains most of the key provisions in the House bill.

Let me briefly describe the key provisions in the conference agreement.

First, the conference agreement generally continues the policy in current law regarding the basic State grant. The appropriation for this program is established using the following process. First fiscal year 1987, the base figure under section 100(b)(1)(A) is set at $1.281 billion. For the four succeeding fiscal years, the base figure is determined based on the amount authorized by section 100(b)(1)(A) or the amount appropriated for this subsection, whichever is higher, plus the amount determined under section 110(c)—providing an automatic upward adjustment based on the Consumer Price Index—for the immediately preceding fiscal year. Second, the bill includes an authorization for such additional sums as are deemed necessary. Finally, the bill includes a cap of $1.281 billion for fiscal year 1987, $1.409 billion for fiscal year 1988, $1.550 billion for fiscal year 1989, $1.705 billion for fiscal year 1990, and $1.875 billion for fiscal year 1991.

It is the expectation that the caps will be used to guide the Committee on Appropriations with respect to the funding of this critical cost-effective program, which returns $10.80 to the U.S. Treasury in taxes for every dollar spent on vocational rehabilitation.

Second, the conference agreement includes the changes to the matching and maintenance of effort provisions contained in the House bill. These provisions will help ensure increased funding for clients of the vocational rehabilitation system.

Third, the conference agreement includes several provisions contained in the House bill designed to further enhance opportunities for severely handicapped individuals. For example, the conference agreement includes: the House definition of "individuals with severe handicaps"; the House provision specifying the inclusion in the State plan of the results of a comprehensive statewide assessment of the rehabilitation needs of individuals with severe handicaps residing within the State and the State's response to the assessment; and the House provision requiring States to show and provide the justification for the order to be followed in selecting individuals for services.

Fourth, the provisions in the conference agreement regarding training and traditionally time limited postemployment services leading to supported employment incorporate the policies embedded in both the House and the Senate bills.

Fifth, the conference agreement includes provisions regarding centers for independent living and projects with industry which are designed to send a signal that portions of funds appropriated under these programs should be used to support new centers and projects and that existing centers and projects are expected to meet specified standards.

I would personally like to commend the efforts made by the Projects With Industry Program to involve the American trade union movement in the effort to serve the Nation's persons with disabilities. Toward this goal, I encourage the enhancement of the number of projects that are currently operating through the AFL-CIO's Human Resources Development Institute. During the past 8 years, the program has placed over 3,000 individuals in competitive employment. For the past 3 years, the average hourly wage has exceeded $6 for all placements; and $7.35 for union placements.

Sixth, the conference agreement clarifies and strengthens the participation of Indian tribes in rehabilitation programs under act. The conference agreement ensures that a minimum of one-fourth of 1 percent will be available to Indian tribes. This is a change from current law under which up to 1 percent of the moneys appropriated may be earmarked for tribal programs. Under current law, each year tribes have to lobby with appropriations committees to provide funds. Since fiscal year 1981, Congress has specifically appropriated funds for Indian tribes, beginning with the Navajo Tribe. In fiscal year 1985, two additional tribes received grants to operate their own vocational rehabilitation program.

The conference agreement also mandates a study of the rehabilitation needs of native Americans. Estimates are that the needs of native Americans are 1½ times the general public. Technical changes are made to assure that rehabilitation services are available for American Indians and Alaskan Natives. The intent of these changes is not to establish separate Indian rehabilitation programs for all tribes. There are only 26 States with more than 10,000 Indians living within their borders. The conference agreement provides for consultation between the State and tribes to ensure that duplication is avoided.

The conference agreement accepts the House provision that strikes every reference to handicapped individuals and replaces these references with the phrase "individuals with handicaps." Labels have great power and I believe that this seemingly insignificant change can have a very positive impact on the way persons with disabilities are perceived by themselves and others.

The conference agreement makes a number of other changes, all of which make positive improvements in the Federal-State partnership.

I urge my colleagues to support this conference agreement reauthorizing the Rehabilitation Act of 1973.

Mr. Speaker, I reserve the balance of my time.

Mr. BARTLETT. Mr. Speaker, I yield 6 minutes to the gentleman from Vermont [Mr. JEFFORDS].

Mr. JEFFORDS. I thank the gentleman for yielding me this time. Mr. Speaker, I rise in support of the conference agreement on H.R. 4021, the Rehabilitation Act Amendments of 1986. I have participated in a number of reauthorizations of the Rehabilitation Act since 1974, and it gives me great personal pleasure to participate again.

I want to thank the chairman of the committee, Mr. HAWKINS, for all his efforts to bring this conference agreement to closure. He was strongly supportive of the minority's requests during these negotiations. Further, I commend the work of the ranking Republican of the subcommittee, Mr. BARTLETT, and the chairman of the subcommittee, Mr. WILLIAMS. Both of these Members have managed to bring a reasonable resolution of most of the points in disagreement between the two bills to this body today in this conference agreement. I also want to thank them for this conference agreement. It is unfortunate that Members were unable to meet to try to resolve the issue of special projects—pork—contained in this agreement.

I strongly endorse the major substantive provisions in this agreement. They will strengthen and expand rehabilitation services for persons with disabilities. Rehabilitation services contribute to the independence, productivity, and employability of disabled Americans from all areas of the country and from every segment of our society.

This conference agreement, when enacted, will ensure the continuation and growth of these vital services. Such services have always been important, but a recent Harris poll would suggest that the need is even greater than we may have previously estimated. For example, the poll conducted of disabled individuals between 16 and 64 years of age indicated some alarming statistics:

Two-thirds of those surveyed are not working.

Ninety-five percent felt increased Government efforts are needed to improve educational, training, and rehabilitation services so disabled persons can work.

Forty percent of those interviewed did not finish high school.

The conference agreement we are considering today gives us an opportunity to have an impact on these statistics. In recent years the program, authorized by the Rehabilitation Act, has provided rehabilitation services to about 900,000 persons annually. About 20 percent of this number have been fully rehabilitated annually, most of whom have become productive members of the work force. In fact, the return on the Federal rehabilitation dollar has been estimated at a level of $10 in increased earnings power for each rehabilitation dollar invested in a disabled person.

There are several sections of this conference agreement that I would like to note. First, I would particularly like to highlight a new State grant program to assist States in developing supported employment opportunities for severely disabled persons. The basic concept for this program has been in operation in Vermont for over 6 years. There are currently eight projects sites in Vermont that use a place-train model which allows a severely disabled person to learn a job on the job with the assistance of a trainer/tutor.

The supported employment effort in Vermont has resulted in extensive interagency coordination and cooperation. Presently, the Vermont State Rehabilitation Agency has invested $300,000 in this project. Other State agencies dealing with mental health and mental retardation also have contributed a comparable amount to this effort. Just recently the Vermont Department of Employment and Training contributed $60,000 to establish the newest supported employment project.

These projects serve a limited number of severely disabled persons per year. This often creates a misleading cost estimate per placement. I would like to assure the Members of this body that at the completion of training, usually in a year, the participants in these programs are integrated in the fullest sense at their place of employment.

I believe that due to the extent of our experience in Vermont, we are most able and willing to share our knowledge and experiences with other States as they begin to implement supported employment efforts.

Second, I would like to point out that the conference agreement reaffirms our commitment to, and the value of, the time-tested basic State grant program for rehabilitation. The basic State grant rehabilitation program more than many others is an investment in America's future. Let me illustrate: In 1985 the general rehabilitation agency in the State of Vermont received $4 million to provide services and training under the basic State grant program. This investment returned $3.3 million in terms of reduced benefit payments and increased earnings as reported by individuals served and/or fully rehabilitated by the State agency.

The basic State grant program is complemented by discretionary programs. As my final point, I would like to comment on title VII of the act which authorizes independent living services. In this conference agreement we reauthorize title VII for 5 years. Since its inception in 1978, the independent living program has had a dramatic impact on services to the blind in my State. Vermont has a separate agency to respond to the rehabilitation needs of the blind; this agency has used moneys received this year under part A of title VII to establish a community grants program which has two purposes:

1. To address the transportation, recreation, and social needs of blind persons in rural areas, and,

2. To establish local inventories of adaptive aides and appliances for the blind.

Under part B of the same title, this agency is working cooperatively with the State special education agency to promote the transition of blind youth to adult services, opportunities and training. With part C funds under title VII, this agency is developing a quality low-vision program to serve persons in southern rural Vermont.

These three examples illustrate in very concrete terms the value in economic and human terms of the programs authorized by the Rehabilitation Act. The original legislation establishing the rehabilitation program was passed in 1921. It had strong bipartisan support then, and it continues to have that support now. The House bill for this reauthorization passed on May 7, 1986 on a recorded vote of 401 to 0.

I strongly urge my colleagues to support this conference agreement. In so doing, we will be continuing a time-honored tradition. Most importantly though, we are assuring continued access to rehabilitation services by persons with disabilities. Thus we are guaranteeing the possibility of a productive and meaningful future for a special segment of our population.

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Mr. WILLIAMS. Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. BIAGGI], who has been an outstanding leader in this Congress on every issue that has to do with handicapped individuals and the Federal legislative response.

I am pleased to work with the gentleman on these issues.

Mr. BIAGGI. Mr. Speaker, I thank the gentleman for his kind remarks.

Mr. Speaker, in 1973, this Congress passed landmark civil rights legislation for all Americans with disabilities. I am speaking, of course, of the 1973 Rehabilitation Act—the core of America's rehabilitation efforts.

As an original author of the 1973 Rehabilitation Act, and a longstanding supporter of legislation to improve the plight of our Nation's individuals with handicaps, I rise today in strong support of the Rehabilitation Act amendments conference report.

This legislation has vastly improved the lives of our citizens with disabilities.

The Rehabilitation Act provides funds for services, research, training, and innovative demonstration projects to help increase the independence of handicapped individuals and make these persons self-supporting.

It provides comprehensive vocational rehabilitation services designed to help physically and mentally handicapped persons become employable.

The act offers services to promote independent living.

Undoubtedly, the Rehabilitation Act of 1973 is the major step forward in this Nation's disability movement.

It is one of the most well-balanced, cost-efficient, and effective programs in the human services areas. By assisting persons move from a life of dependency into a life of productivity and self-sufficiency, we have made a tremendous improvement in the lives of the disabled by enabling them to enter the mainstream of society.

Since initial passage of this law, Congress has continued efforts to improve upon these programs and services, and thus enhance the quality of life for all handicapped persons.

I am proud to note that this conference agreement is yet another example of our efforts to do just that.

I wish to commend Mr. WILLIAMS for his work on this agreement. He led the efforts here in this House to make substantial improvements in this law, and expand all the programs and services offered under the act.

I also commend Mr. BARTLETT, the ranking Republican member for his work.

I also wish to acknowledge Senator WEICKER and the Senate Subcommittee on the Handicapped, for they too, contributed many innovative ideas with respect to improving the lives of the disabled, and offering them equal rights and protections under the law.

And finally, I want to say thank you to both the House and Senate staffs, who worked so hard to reach this agreement in such an expeditious manner.

Perhaps the most important provision contained within this agreement is the one strengthening the due process procedures afforded those with disabilities, and providing for an impartial hearing officer for review under this system. An impartial due process system is in the interest of both the clients and the rehabilitation service agencies and represents a significant step forward in providing disabled adults with equal rights and protections under the law.

In addition, this agreement will allow for great expansion of both projects with industry and independent living centers. In this time of Federal economic difficulties, we have been grappling with ways to expand the system, without increasing the financial burden on both Federal and State government. This agreement allows us to do just that by encouraging these programs to seek funding from other sources within the community, thus utilizing existing Federal dollars for new and much-needed centers.

And finally, this conference agreement substantially expands the important role of supported employment, a role vital in enabling persons with disabilities to lead useful and productive lives in the world of work. Supported employment is critical if we are to continue the important work of assisting handicapped citizens to be full and productive participants in all aspects of society.

This conference agreement reflects a social value commitment to ensuring equal opportunity for all and provides for individuals with disabilities the avenue for full participation within our society.

Over a decade has passed since this civil rights legislation was passed by Congress. Since that time, we have witnessed dramatic gains for the handicapped in the world of work, the world of education, and the world of recreation. However, efforts must continue to expand and reinforce their civil rights.

Today we face an even greater challenge than we did in the 1970's when we approved programs which would allow handicapped people full access to productive and healthy lives as viable members of society.

With passage of the Rehabilitation Act, the rights of the handicapped have been realized for the first time in this Nation's history.

But today, as we face ever-decreasing financial resources, it is the role of the Federal Government, the task of Congress, to ensure that we continue to make the appropriate commitments to these programs. I believe this conference agreement not only continues this commitment, but expands it as well. As a consponsor of H.R. 4021, I urge all of my colleagues to vote in support of this conference agreement.

Mr. BARTLETT. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Pennsylvania [Mr. GOODLING].

Mr. GOODLING. Mr. Speaker, I rise in support of our reaffirmation of the Rehabilitation Act. I am a supporter of the vocational rehabilitation programs funded by this legislation. I am in support of the conference agreement which we have reached on this important legislation. However, I do so with two serious reservations. First, certain methods employed have insured that specific provisions contained within this bill are being enacted with a virtual lack of discourse by the members of the conference committee. Second, I have serious reservations about certain provisions themselves. I wish first to address those provisions. There are five provisions contained within the statutory language of this bill giving special projects, as they are so euphemistically called, to specific areas of the country. Two States are specifically named. The other three are characterized in terms of area within the country. I strongly oppose such legislative tactics and the example it sets for us all.

My second reservation concerns the fact that the conferees were not permitted the opportunity to discuss these provisions. Although requested by myself and other members of the conference committee, the conferees never met as a group to air our differences. I hope that this inaction does not set a precedent which will be continued in the future and I admonish its use to sequester open discussion.

With those reservations aside, I do, however, recognize the importance of this legislation and support it. Furthermore, I urge my colleagues to join me in support of this rehabilitation bill.

□ 1355

Mr. BARTLETT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference agreement accompanying H.R. 4021, the Rehabilitation Act Amendments of 1986. I urge the passage of this reauthorization of the Vocational Rehabilitation Act and I express my strong support for this vitally important piece of Federal legislation, which provides persons with disabilities with the training they need to work or to return to work.

This conference agreement improves an excellent program, and but for one embarrassing flaw, which has been discussed under the rule and which I will elaborate on in a moment, enactment of this agreement will contribute significantly to improving the lives of handicapped people.

I will note that this reauthorizes the Vocational Rehabilitation Act Program. This program is one of the most cost-effective and excellent and well-run programs in the entirety of the Federal Government. In fact, it may be the most cost-effective program. It is a 65-year-old program and it is estimated that it will return a minimum of $10 in tax dollars for every $1 of public money that is expended. It is largely administered, and very well administered, by State agencies. It is a credit to this Congress that H.R. 4021 does not just ratify already excellent programs, that would be easy to do given the high level of its cost-effectiveness, but it both reauthorizes vocational rehabilitation and then builds on the good base that we already have built to make improvements in the act. I will take a few moments to specify just some of those improvements.

H.R. 4021 will improve the participation of consumers, Mr. Speaker, and advocates in the development of the State plan. It will ensure that modern rehabilitation engineering techniques and equipment are utilized where appropriate.

The bill places a greater responsibility on our vocational rehabilitation agencies to assist our disabled high school students to make the transition from school, under Public Law 91-142, to employment, and to insure that new independent living centers and projects with industry programs will come into being.

I am particularly proud of those provisions in H.R. 4021 which will improve the status of persons with severe disabilities in the vocational rehabilitation program. It was not too long ago, I would comment, that our assumptions concerning the employability of persons with severe handicaps were overwhelmingly pessimistic; but today assumptions about the employability and independence of persons with severe handicaps are thoroughly based in optimism. This optimism can be found in those provisions of H.R. 4021 which modernize the definition of severe handicaps and which clarify our intent that persons with severe handicaps who are capable of supported employment are eligible for training and traditional short/term post-employment services under the State grant program. We have also provided capacity building assistance to States in title XI that will enable States to develop and utilize support employment programs.

Mr. Speaker, this conference agreement has my support, as does the vocational rehabilitation program; however, I would be remiss if I did not point out and specify those five shameful provisions of this agreement, provisions originating in the other body. The House conferees, despite the objections of several conferees on the minority, chose to accept these provisions. These provisions are an embarrassment to the institution of the Congress and a slap in the face to persons with disabilities.

The process provided for instituting and isolating a grant; removing that grant from the competitive process for purely political purposes from competition is a sad indicator of the almost imperial selfishness which mades its way into our disability laws.

These five provisions specify five grants that would otherwise be competitively bid and that will be delivered without competition to five specific States designated by name or by very specific and narrow description, and I would read into the record the kind of specificity that the statute itself would enact.

One grant, it says in section 204, one grant to provide demonstrations pursuant to clause (c) of this paragraph shall be made to an agency or organization in the State of South Carolina and one such grant shall be made to an agency or organization in the State of Connecticut. These five provisions vary in quality. Some are excellent and would win no doubt on their own merits; others have already been turned down through the peer review process; but they all have one thing in common, and only one, and that is that each of these five goes to a State that is represented by a member on the Labor and Human Resources Committee of the other body.

Now, there are seven States represented on that committee and five of those States have one of these five pork barrel projects.

Keep in mind, Mr. Speaker, that these grants provide services to handicapped persons who are in need of the services, and realize that pork barreling these grants means that these handicapped persons run the unnecessary risk of perhaps receiving inferior services.

The States that are involved are the States of Connecticut, South Carolina, Massachusetts, Utah, and Oklahoma. It may come as a surprise to some House Members that our colleagues in the other body can behave so shamelessly. What is more surprising and disturbing on this House floor is that after the House adopted a clean bill, specifying the competitive process throughout and the peer review process to be adhered to, the House conferees then accepted those provisions so readily, and in fact in one case sought to ride the bandwagon by amending the statement of the managers to indicate that one grant be placed not just in a State, but in a particular city of Missoula, MT.

In a similar action, a Senate conferee included managers' language designating not just a State, but a particular organization and agency as to the recipient, and not coincidentally a former staff member from that Senator's office is now a lobbyist for that particular organization. This grant would establish a center in the State of Connecticut which will be the third such center in that State out of fewer than two dozen centers for the entire country. The normal process for selecting these grants is specified in the law. It is called the peer review process. It provides for a good competitive process and indeed H.R. 4021 and this conference agreement improves that process in the bill.

When we allow pork barreling of competitive grants, Mr. Speaker, we undermine the peer review process. In fact, another of the ironies of this is that some of the Members who have been the most vocal about the need for improved peer review processes are leading the charge to circumvent peer review of these five grants.

Mr. Speaker, I do urge my colleagues to vote for this conference agreement, I also apologize on behalf of the conferees to those handicapped persons who may receive second rate services as a result of being outside the competitive review process, because the Congress decided to allow a handful of Members to put their personal agendas ahead of the needs of handicapped persons.

Mr. WILLIAMS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want my colleagues to understand that I am not without some sympathy and understanding about what the gentleman from Texas has just said. I understand his complaints about what he perceives to be an unusual inclusion in this legislation of specific programs or centers in various places for various regions of this country.

Each administration has had a definition, let us say, definition of pork. Well, my definition of pork is when by legislation elected officials name those places where they would like programs or efforts to go. It somehow is not pork when unelected bureaucrats downtown decide where these things are to go.

My colleagues deserve to understand fully where those things are in this legislation and what they would do.

One—or rather two are rehabilitation engineering centers. Under this legislation, one is assigned to South Carolina and one is assigned to Connecticut.

There are, by the way, now no such centers in the entire Southeast region of America with a population of 40 million people and the Southeast region of America believed that it was time and so this bill directs that the State of South Carolina shall have one of those rehabilitation engineering centers.

This bill also names three regions of the country without, in the language of the bill, specifying the States where we shall place, if this legislation becomes law, statewide transitional services for severely handicapped youth.

I think we all understand now that severely disabled young adults leaving public schools face critical problems in accessing appropriate adult services to meet their unique continuing needs; so this legislation, in recognizing those problems and the potential solution to those problems, asked that three statewide transitional services be placed in the geographic regions of the Southwest, the West, and Northeast. We do that specifically in this bill and we do not mention States in the statute; however, we do make recommendations in the committee report language, but that, of course, is without the force of law.

The final matter to which the gentleman from Texas, not without reason, has objection is the matter of a rural rehabilitation center. The language in the bill says this:

> The Director shall establish directly or by grant or contract a center associated with an institution of higher education for research and training concerning the delivery of rehabilitation services to rural areas.

Now, the fact—it is a tragic fact—but the fact is that estimates show that disability is proportionately more prevalent in rural areas than it is in urban areas. Approximately 10 percent of the urban population have severe limitations, whereas almost 13 percent of rural nonfarm populations have limitations, and the same can be said of rural farm populations; so this legislation simply states that because there is not a single rural rehabilitation research and training center anywhere in the United States, that one should be located somewhere in the United States and that it shall be located in a rural area. We do not say where it should be located in the law, but again we do make a suggestion in the committee report language, which of course is without the value of law.

Now, I want to make this statement to the gentleman from Texas. There are currently three research and training rehabilitation centers in Texas. There are currently two rehabilitation engineering centers in Texas. I have no problem with that. They were selected in a perfectly legitimate way, but it seems to me that the Members of the Congress of the United States have not only the opportunity, but perhaps the requirement when we see growing needs that are unmet in regions of this country, to direct the bureaucracy, the administration, the Secretary and the President to pay particular attention to those regions of the country and give them specific assistance.

□ 1410

Now some say that that is pork. As I said to the gentleman from Texas, without whose help this bill would not have come as far as it has, and who was a signer of the conference committee report, I am not without understanding and I must say some sympathy for his objections to what the Senate and now the House is about to do. It is nonetheless not as outrageous a function as it is sometimes held up to be.

Mr. Speaker, I urge my colleagues to support this critically needed reauthorization, and I yield back the balance of my time.

Mr. BARTLETT. Mr. Speaker, I yield 1 minute to the gentleman from Pennsylvania [Mr. Goodling].

Mr. GOODLING. Mr. Speaker, in response to the subcommittee chairman's comments, I would merely say that the manner in which the three projects were written into the law—not into the report language, but into the law—is the way you do it properly. Specifying two States, as in the case of the other two, is not the way it should be done.

I understand why it was done that way. The Southeast would have been very happy just to have you say "the Southeast." The Northeast already had, and so the gentleman in the other body from that area of course could not have you say just "the Northeast," you had to specify a State. So to do it properly, of course, you specify an area, but not a State—a region, but not a State.

Mr. BARTLETT. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I will not take the entire 5 minutes, because I do not want to drag this out. I will say to the gentleman from Montana, whom I respect a great deal, and who was the sponsor of this legislation and who was quite instrumental in producing reform and improved legislation throughout, that I respect what he said and his work throughout the process.

In fact, the gentleman from Montana was good enough to agree early in the House process to keep the pork out of the House bill, and thereby we came to the House floor with a clean bill without any specified projects outside of the competitive process.

I indeed did support and continue to support the statutory language that was in the House bill regarding the rural State that he mentioned that is still in the House agreement. I would read it to the House floor so that my colleagues would know that it did not specify, either in the House bill or in the conference agreement, with regard to this particular item.

The bill says, as it should:

> The director shall establish directly or by grant or contract a center associated with an institution of higher education for research and training concerning the delivery of rehabilitation to rural areas.

That language is the way it should be. The House thereby established our priorities. We gave some guidance to the kind of grant it should be, and we gave some guidance to the peer-review process, but we did not say who should get the grant.

It is wrong for either the House or the Congress to specify who should receive what would otherwise be competitive grants. It would likewise be wrong for the bureaucrats downtown, to use the term of art that my colleague used, to do the same thing. Indeed, what we insist on through this legislation, with these five exceptions, is that the peer-review process, by selecting panels of peers throughout the country to examine the competitive bids and weigh the merits and demerits, then come out with the best delivery of service, people being helped.

In the case of the two rehabilitation engineering centers it is true that one of them is specified to go to the State of South Carolina. It is also true that the Southeast is long overdue for a center, and I offered in the conference to simply establish that there be a preference for those States or regions that do not have similar centers. That was rejected in favor of specifying that it go to one particular State in the Southeast.

It is also true—and I will say that I have examined the proposal from South Carolina specifically; I am not on the peer-review panel and do not want to be, and no one else in the House is—but from all who have looked at it, it appears that the proposal from South Carolina is highly competitive and likely would have won in the competitive process anyway. My point is that it would be a better proposal, where that agency would sharpen its pencil and deliver more services to those people were they required to go through the competitive process.

With regard to specificity to the State of Connecticut, that does not seem to be the case in the State of Connecticut. That proposal would be the third such center in that one State.

With regard to the other centers and the other types of programs—that is, the transition programs—in fact the language of the committee report is much more specific, I think, than the gentleman from Montana would describe it. The language says—and I will read it into the record—it does not specify a particular State, but it surrounds a State very, very narrowly.

The language says, in one case: "One grant under this subsection shall be made to a public agency in a predominantly urban State in New England"—of which there may well only be one. Another one specifies not a region of the country, but specifies a predominantly rural Western State, and another again not a region of the country but specifies a predominantly rural Southwestern State.

The point is that these grants and proposals may well be able to be adopted on their own merits. We should have sent them through the competitive process.

I do appreciate the patience of my colleague from Montana, and also his sticking with this approach throughout the House consideration of the bill.

The SPEAKER pro tempore. The time of the gentleman from Texas [Mr. Bartlett] has expired.

Mr. BARTLETT. Mr. Speaker, I yield myself 5 additional minutes.

Mr. WILLIAMS. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Montana.

Mr. WILLIAMS. Mr. Speaker, I do just want to make the point—and I admit to not making this without some partisanship—but inasmuch as this issue has been raised, I appreciate the gentleman's yielding, because I want to make the point that all of the States in which these centers and efforts are to be placed are represented by Members not of my party, but rather of the gentleman's party.

There is a sense in this country that whenever there is anything put in a bill that might have the slightest indication that it is pork, it must be a member of the Democratic Party doing it, but in this instance, as the gentleman knows, that is not so.

Mr. BARTLETT. I thank the gentleman for his point. The gentleman is 80-percent correct. Four of the Members involved were from my party, and one was from his party, Senator Kerry of Massachusetts. I would specify that it is a matter of right and wrong. It knows no partisan bounds. It is an issue in which this institution, the House of Representatives, should have taken a firmer stand.

Mr. WILLIAMS. If the gentleman would yield further, the gentleman's main objection, as I understand it, is not to the committee report language, but to the legislation itself, which names States, and those States are not represented by Democrats. Is that not true?

The States that are named in the legislation are not represented by Democrats. At least, it was not Democrats who insisted that their projects be in this bill. That was part of our dilemma on this side. We were working with a Republican majority and we were working with Republican Members of the other side who insisted that their States be named in this legislation.

Mr. BARTLETT. I know that the gentleman does not want to make it partisan, but it was the Republican conferees who asked for the conference, and it was the majority conferees who declined to insist that the Senate go to a conference. So it is not a partisan issue. There was plenty of blame in both parties to go around, but the gentleman could have joined in asking for a conference to at least discuss the issues.

Mr. WILLIAMS. If the gentleman would yield again, and I appreciate his patience, this gentleman did join in trying to get a conference with the gentlemen, but as he knows, the majority in the other body refused.

Mr. BARTLETT. I thank the gentleman for his clarification. That is not quite the case. The other body said that they would ask us to reconsider our request for a conference. The issue is now resolved. It is a shame that these specific provisions will be taken out of the peer-review process, and I think that we all hope that it does not occur again.

Mr. TALLON. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from South Carolina.

Mr. TALLON. Mr. Speaker, I rise in strong support of H.R. 4021, the conference report on Vocational Rehabilitation Act Amendments. We spend so much time here in the House debating irresolvable or inconsequential issues, so it is with relief and pride that I lend my support to this measure. Vocational rehabilitation is needed and it works. Each year, vocational training programs help 90,000 disabled people become self-sufficient.

We, in South Carolina, are proud of our remarkable and extremely efficient rehabilitation program. However, we firmly believe that engineering research could make the difference in helping thousands more handicapped individuals maintain lifelong economic independence by securing and holding productive employment.

H.R. 4021 includes a provision to establish rehabilitation engineering centers in South Carolina and Connecticut which would demonstrate and disseminate innovative models for the delivery of cost-effective rehabilitation engineering services. These services will assist in meeting the needs of, and addressing the barriers confronted by, individuals with handicaps. Two of our State's outstanding research institutions—Clemson University and the University of South Carolina Engineering School and Medical School—will cooperate in this exciting demonstration project.

Mr. Speaker, I believe this legislation will go far to unlocking the dependency cycle for disabled people, providing many across our State and Nation with that most precious gift of self-sufficiency. It is a gift that will be repaid many times over.

Mr. HAWKINS. Mr. Speaker, I rise in support of the conference report for the Rehabilitation Act Amendments of 1986. This act will provide more than $1.3 billion for basic State grants and other improved rehabilitation services that will serve millions of Americans with disabilities. This act includes an improved definition of supported work, provisions for post-employment services and the establishment of a rural rehabilitation research and training center, and improved independent living services. While I am very pleased with the outcome of this legislation, there is an issue that I feel needs further clarification.

Among the more important and, indeed, critical provisions of this legislation is the section which details the procedures for the review of determinations made by rehabilitation counselors. While these procedures incorporate a proceeding before an impartial hearing officer, the procedure nevertheless gives the State directors the authority to review and sustain or reverse the "initial" decisions of the impartial hearing officers. While we are hopeful and, indeed, expect that the decisions of the various State directors will be fair and impartial, it is critical that it be clear that it is our intent that the directors' review of the findings of fact and the recommendations of impartial hearing officers be based on the facts presented as well as the applicable laws and regulations. It is imperative that such decisions not be in contravention or disregard of the clear and convincing weight of the evidence presented.

While we intend that the directors' discretion to effectively administer the State's program and take account of its fiscal circumstances not be unduly constrained, that discretion is not without bounds and may not mask policies or practices which unfairly or unlawfully discriminate against groups or individuals. As with any fair and effective administrative process, decisions which are adjudicative in nature—that is, involving decisionmaking processes which dispose of individual rights—must be fair in form and content. Decisions of impartial hearing officers should take into account the clear and convincing evidence presented. Decisions of State directors rendered pursuant to this provision must similarly take account of, and be based on, substantial evidence viewed as a whole in the record before the hearing officer.

I congratulate Mr. Pat Williams for his exemplary leadership as chairman of the Subcommittee on Select Education and his fine staff in ensuring that needs of disabled Americans are addressed, particularly in the area of employment. Productive work is essential to the nurture of the human spirit. Every individual, whether able or disabled, who is willing to work should be afforded that opportunity. Thanks to the diligent efforts of Mr. Williams and the spirit of cooperation exemplified by other members of the subcommittee, we can feel assured that Americans with disabling conditions will have the opportunity to obtain meaningful work.

Mr. BARTLETT. Mr. Speaker, I yield back the balance of my time.

Mr. WILLIAMS. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

the SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BARTLETT. Mr. Speaker, I object to the vote on the ground that a quorum is not present, and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 408, nays 0, not voting 24, as follows:

[Roll No. 433]

YEAS—408

Abercrombie
Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
AuCoin
Badham
Barnard
Barnes
Bartlett
Barton
Bateman
Bates
Bedell
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boggs
Boland
Boner (TN)
Bonior (MI)
Bonker
Borski
Boucher
Boulter
Boxer
Brooks
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Burton (IN)
Bustamante
Byron
Callahan
Carney
Carper
Carr
Chandler
Chapman
Chappell
Chappie
Cheney
Clinger
Coats
Cobey
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Cooper
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Daniel
Dannemeyer

Darden
Daschle
Daub
Davis
DeLay
Dellums
Derrick
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dornan (CA)
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dymally
Dyson
Early
Eckart (OH)
Eckert (NY)
Edgar
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fawell
Fazio
Feighan
Fiedler
Fields
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Franklin
Frenzel
Frost
Fuqua
Gallo
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Gray (IL)
Gray (PA)
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hamilton
Hammerschmidt
Hansen

Hatcher
Hawkins
Hayes
Hefner
Hendon
Henry
Hertel
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennelly
Kildee
Kindness
Kleczka
Kolbe
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lightfoot
Lipinski
Livingston
Lloyd
Loeffler
Long
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Lungren
Mack
MacKay
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martinez
Matsui

Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCurdy
McDade
McEwen
McGrath
McHugh
McKernan
McKinney
McMillan
Meyers
Mica
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Monson
Montgomery
Moody
Moorhead
Morrison (CT)
Morrison (WA)
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens
Oxley
Packard
Panetta
Parris
Pashayan
Pease
Penny
Pepper
Perkins
Petri
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Rudd
Russo
Sabo
Savage
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Seiberling
Sensenbrenner
Sharp
Shaw
Shelby
Shumway
Shuster
Sikorski
Siljander
Sisisky
Skeen
Skelton
Slattery
Slaughter
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Strang
Stratton
Studds
Stump
Sundquist
Sweeney
Swift
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Udall
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Weaver
Weber
Weiss
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams
Wilson
Wirth
Wolf
Wolpe
Wortley
Wright
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)

NAYS—0

NOT VOTING—24

Atkins
Bosco
Breaux
Burton (CA)
Campbell
Clay
Conyers
de la Garza
DeWine
Fowler
Grotberg
Hartnett
Martin (NY)
McCollum
Mikulski
Mitchell
Moore
Mrazek
Swindall
Traxler
Waldon
Waxman
Wise
Zschau

□ 1430

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. WILLIAMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on H.R. 4021, the Rehabilitation Act Amendments of 1986, just agreed to.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Montana?

There was no objection.

□ 1440

DIRECTING THE CLERK TO MAKE CORRECTIONS IN THE ENROLLMENT OF H.R. 4021, REHABILITATION ACT AMENDMENTS OF 1986

Mr. WILLIAMS. Mr. Speaker, I send to the desk a concurrent resolution (H. Con. Res. 400) to direct the Clerk of the House of Representatives to make corrections in the enrollment of the bill (H.R. 4021) to extend and improve the Rehabilitation Act of 1973, and I ask unanimous consent for its immediate consideration.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Montana?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 400

Resolved by the House of Representatives (the Senate concurring), That, in the enrollment of the bill H.R. 4021 (to extend and improve the Rehabilitation Act of 1973), the Clerk of the House of Representatives shall make the following correction:

In the second sentence of subsection 100(b)(1)(A) of the Rehabilitation Act of 1973, as amended by section 201 of the bill, strike out "plus the amount determined under" and insert in lieu thereof "plus the amount of the Consumer Price Index addition determined under".

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

CORRECTING TECHNICAL ERRORS IN THE ENROLLMENT OF S. 2069, JOB TRAINING PARTNERSHIP ACT AMENDMENTS OF 1986

Mr. WILLIAMS. Mr. Speaker, I send to the desk a concurrent resolution (H. Con. Res. 401) to correct technical errors in the enrollment of the bill (S. 2069) to amend the Job Training Partnership Act, and I ask unanimous consent for its immediate consideration.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

Mr. JEFFORDS. Mr. Speaker, reserving the right to object, I do so solely for the purpose of asking the chairman to explain to us what we are doing on this resolution.

Mr. WILLIAMS. Mr. Speaker, will the gentleman yield?

Mr. JEFFORDS. I yield to the gentleman from Montana.

Mr. WILLIAMS. I thank the gentleman for yielding.

Mr. Speaker, the Senate was to have stricken one sentence concerning a technical matter about the funding. It was to be used for certain JTPA activities. The Senate inadvertently struck not only that sentence in the legislation but the next sentence, and, as a result, almost none of the JTPA activities could be conducted.

So it is clearly in the best interests of the Nation that this small but very important technical correction be made.

Mr. JEFFORDS. Further reserving the right to object, I just want to say that I have examined this concurrent resolution and agree with the statement of the chairman.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

There was no objection.

The Clerk read the concurrent resolution as follows:

H. CON. RES. 401

Resolved by the House of Representatives (the Senate concurring), That, in the enrollment of the bill (S. 2069) to amend the Job Training Partnership Act, the Secretary of the Senate shall make the following corrections:

(1) in section 3(2)(A) of the bill, strike out "Funds available" and insert in lieu thereof "At least 80 percent of the funds available";

(2) in such section 3(2)(A) of the bill, strike out "clause (3)" and insert in lieu thereof "clauses (1) and (3) of subsection (a)"; and

(3) in such section 3(2)(A) of the bill, strike out "such clause" and insert in lieu thereof "such clauses".

The concurrent resoluton was agreed to.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 4759, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1987

Mr. HAMILTON. Mr. Speaker, I ask unanimous consent for the immediate consideration of the conference report on the bill (H.R. 4759), to authorize appropriations for fiscal year 1987 for intelligence and intelligence-related activities of the U.S. Government, the intelligence community staff, and the Central Intelligence Agency retirement and disability system, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

Mr. GONZALEZ. Mr. Speaker, reserving the right to object, I rise for the purpose of asking some questions here as to just what the conference report represents.

I wanted to know if there are any moneys provided here for such things as covert activities on the part of the CIA, for such things as the destabilization of other governments and the executive action toward foreign entities and their leaders? Is there any, even the slightest insinuation that we would authorize such expenditures for such purposes in this conference report?

Mr. HAMILTON. Mr. Speaker, will the gentleman yield?

Mr. GONZALEZ. I yield to the gentleman from Indiana [Mr. HAMILTON].

Mr. HAMILTON. I thank the gentleman for yielding.

The specific activities, of course, that are covered by the conference report are classified. There are no funds in here for these Contras in particular, if that is one of the gentleman's concerns.

Mr. GONZALEZ. It is.

Mr. HAMILTON. There are funds in the bill, of course, to carry on the special activities of the Central Intelligence Agency. I cannot go into detail on those.

Mr. GONZALEZ. Further reserving the right to object, I have long protested the unwillingness or the inability of the Congress to demand accountability of these agencies. In the name of our people, these agencies have done what I consider to be atrocious acts contrary to the very heritage and basic principles for which our Nation stands.

I would object because I think that we are acting in the dark. We are being told that none of us in the Congress can be privy because of security to some of the most powerful delegation of authority that the Congress can give to a runaway agency, an unaccountable agency. But I also realize with the fullest respect that I have for the distinguished gentleman, the chairman of the subcommittee, as well as the chairman of the full Committee on Intelligence, that I will not interpose that objection.

But I do so reluctantly and with really a great deal of subjective protest, mental reservation, and just feel that sooner or later we, in the representative branch of the Government, are going to have to be trusted enough to have that information that has been held even from the leaders of the Congress.

Mr. HYDE. Mr. Speaker, will the gentleman yield?

Mr. GONZALEZ. I would be glad to yield to the gentleman from Illinois.

Mr. HYDE. I thank the gentleman for yielding.

I just want to say, if I could, that there is a structure set up for oversight and that the Permanent Select Committees on Intelligence of both the House and the Senate, which are bipartisan and which have more Democrats than Republicans on our side, are set up to do this very oversight and this very review. The chairman, Mr. HAMILTON, is a very sensitive person to all of the considerations that the gentleman has mentioned. But some of these things cannot be made unclassified by their very nature.

But I would hope the gentleman would have enough confidence in Mr. HAMILTON and all of the members of the committee, Republicans and Democrats, to understand that we are doing our job, that we do oversee these things, and many questions are asked. Hearings are held weekly. And we hope you do trust the system and understand the necessity for not making public many matters which would be dangerous to allies and to citizens of our country if they were known. But surely Mr. HAMILTON and all of the members of the committee cannot be accused of being insensitive to every concern that the gentleman has raised. We do ask questions.

Mr. GONZALEZ. No; I thank the distinguished gentleman and colleague from Illinois, and that is the reason I gave for not actually reaching the point where I would object because of the trust and confidence that I do have. But I will say this, though, in answer to the gentleman's observations, that I have never seen the reason why we should be dealt with as if we were first-class and second-class Members of the Congress, where only a privileged few, if at all. I recall that just recently the distinguished senior veteran member who is retiring, a member of the Senate from Arizona who is retiring, protested how he had been deceived as a member of this committee in the Senate by the CIA.

Now, you know, I have never seen—they said that necessity is the argument of tyrants and the creed of slaves. This idea of security where only a few privileged Americans, unaccountable to the people, in these mysterious secretive agencies, are going to determine what is for the best interests of the Nation, is horrendous. I rise to protest that, even though I recognize the fact that at this time I do not want to end up by objecting and taking it out on Members whom I respect and whom I trust and whose judgment I trust. And I am sure the gentleman is correct when he says they are sensitive to these issues.

Mr. HYDE. The gentleman is very gracious and quite accurate. But I would say everybody is accountable. You have colleagues of yours who are the engines of that accountability, who do a good job. Everything in this bill was discussed extensively, I would say exhaustively, debates and disputes; but we have come to a conclusion that is bipartisan in its final form, and I would hope the gentleman would not object.

Mr. GONZALEZ. No, I am not going to object, but let me say, further reserving my right to object, that in 1964, being chairman of the appropriations, a very distinguished fellow-Texan, I asked on the floor, "Can you tell us how much money we are appropriating to these agencies?" He said, "I can't, and I don't, and I don't want to know. Why does the gentleman want to know?"

I said, "Because I think if the Congress doesn't know such a vital question to answer, that what we are doing is creating something in the name of security that is going to devour us all and our democratic participatory system of government."

So I got so chagrined that I picked up the phone and called the Russian Embassy and said I want to know—I identified myself. And probably they have that somewhere in the FBI's bugging. I said, "I want to know how many employees are out here at Chantilly." And they came back and said, "Yes, 6,337."

Now, I think that most of this secure information has been secured from the American people but is widely known outside of the confines of the United States.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. HAMILTON. Mr. Speaker, I ask unanimous consent that the statement of the managers be read in lieu of the report.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

The SPEAKER pro tempore. The Clerk will read the statement.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of Wednesday, October 1, 1986, at page 27541.)

Mr. HAMILTON (during the reading). Mr. Speaker, I ask unanimous consent that the statement of the managers be considered as read.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

The SPEAKER pro tempore. The gentleman from Indiana [Mr. HAMILTON] will be recognized for 30 minutes and the gentleman from Arizona [Mr. STUMP] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Indiana [Mr. HAMILTON].

Mr. HAMILTON. Mr. Speaker, I yield myself such time as I may consume.

The conference agreement reached on the fiscal year 1987 Intelligence Authorization Act is a very satisfactory one. House and Senate conferees had little difficulty in resolving the differences between the two bills. The conference report, as a result, does provide a small amount of real growth for intelligence activities in this fiscal year. This occurs in part because a number of key intelligence accounts have been exempted from inflation and unallocated reductions that will apply across-the-board to other Defense accounts.

As in the past, the intelligence conference report is in agreement with the amounts agreed upon in the Defense authorization conference. Conferees from the Intelligence and Armed Services Committees serve on both conferences and worked closely together to ensure full congruence between the two bills.

In terms of legislative language, the conference report is essentially the House bill with several Senate amendments. I should note that the so-called Helms amendments have not been incorporated in the conference report.

Mr. Speaker, I want to compliment the gentleman from Arizona, the ranking minority member, Bob Stump, for his strong support and leadership in our conference with the Senate.

I also want to take this time, Mr. Speaker, to bring to the attention of the House the fact that this may be Bob Stump's last official appearance as ranking minority of the Permanent Select Committee on Intelligence. Both he and I must step down from our posts on the Intelligence Committee at the end of the 99th Congress.

I want to say that his cooperation, his understanding, and his excellent judgment have stood the committee, and particularly the chairman, in excellent stead throughout his years on the committee and particularly, the last 2 as ranking minority member. I cannot say enough about his steady hand and helpfulness during this Congress. He has continued the strong bipartisan tradition of his predecessor, Ken Robinson, and ensured that the committee's excellent reputation for careful, fair oversight of intelligence continued during the 99th Congress. He will remain our colleague in this body but we will all miss his contributions of the Permanent Select Committee on Intelligence.

□ 1455

Mr. Speaker, I reserve the balance of my time.

Mr. STUMP. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report on H.R. 4759, the Intelligence Authorization Act for fiscal year 1987. The bill has complete bipartisan support and provides the level of resources necessary to support U.S. intelligence capabilities vital to national security.

I want to commend the chairman of the committee, Lee Hamilton, and the chairman of the Budget Subcommittee, Lou Stokes, for their leadership and hard work in developing this legislation.

Mr. Speaker, I urge adoption of the conference report.

Mr. Speaker, I yield such time as he may consume to the gentleman from Wyoming [Mr. Cheney].

Mr. CHENEY. Mr. Speaker, I thank the gentleman for yielding this time to me.

Mr. Speaker, I will be very brief. I would like to rise in support of the conference report.

As was mentioned earlier in the colloquy on the floor involving Mr. Gonzalez, the committee carries a very special responsibility for the House in terms of its oversight obligations for the intelligence community.

Probably my greatest pride and satisfaction during my time in the House of Representatives, now for nearly 8 years, has been the service for the last 2 years on the Intelligence Committee, partly because the committee has functioned in a very professional manner and has functioned on a bipartisan basis. And although there are often times extremely important questions that divide us, we have always been able to work those differences out, with very few exceptions, within the confines of the committee.

Reference has been made to the fact that the chairman, Mr. Hamilton, and the ranking member, Mr. Stump, are about to depart their committee by virtue of the requirement that terms be limited to 6 years. Their departure, I think, is a significant loss for the House. My own personal view is that the committee ought to be a permanent standing committee of the House, and that the kind of expertise that is required to do an effective job of oversight takes the kind of experience these men had accumulated over the years.

Be that as it may, those of us who have been privileged to serve with both of them, I think, would join in the sentiments that have been expressed here earlier. Mr. Hamilton has been extremely fair in all of his dealings with those of us on the Republican side of the aisle, and Mr. Stump has been an outstanding leader for those of us who have been privileged to toil on the committee.

Finally, let me say that it has been my privilege to serve with Mr. Stokes on the Budget Subcommittee. Many of us look forward to his continued service on the committee as chairman in the years ahead.

Mr. Speaker, I would close my remarks by assuring my colleagues in the House that the bill is in fact a good one, and that the committee has strived long and hard to produce what we think is a very effective piece of legislation that will in fact safeguard the security interests of the United States. I would urge my colleagues to approve it.

Mr. STUMP. Mr. Speaker, I reserve the balance of my time.

Mr. HAMILTON. Mr. Speaker, I thank the gentleman from Wyoming for his gracious remarks.

Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Ohio [Mr. Stokes], chairman of the Subcommittee on Program and Budget Authorization, who has served with great diligence and skill and handled the most difficult work of the committee, that work being on the budget.

Mr. STOKES. Mr. Speaker, I rise in support of the conference report on H.R. 4759. I believe the conference report is a fair compromise with the other body and provides a responsible program for intelligence. It is within our budget targets.

Mr. Speaker, service on the Intelligence Committee is limited by the rules of the House to 6 years. Our current chairman, the gentleman from Indiana [Mr. Hamilton], and our ranking minority member, the gentleman from Arizona [Mr. Stump], will complete 6 years of membership at the end of this Congress. All of us owe them our thanks for their service. They have given endlessly of their time and energy to carry out their committee duties. Their leadership has been marked by cooperation and fairness to all members of the committee and the intelligence community. We shall miss them and look forward to their understanding and assistance as they continue their service in the House.

Mr. STUMP. Mr. Speaker, I yield 1 minute to the gentleman from Illinois [Mr. Hyde].

Mr. HYDE. Mr. Speaker, I just want to add my remarks to those of Mr. Cheney in praise of our great chairman, Lee Hamilton, whose gentleness and firmness and tolerance are unexceeded by any Member I have ever known. He has been scrupulously fair, and the gentleman has listened and put up with a lot of pyrotechnics on very difficult issues. The gentleman has done a magnificent job and he will be missed.

Bob Stump has the unique record of being right on every issue that has come along and is a great asset, not only to his State and to this Congress, but to the country.

I think that in this most difficult area of intelligence legislation and oversight, the country has been well served by Lee Hamilton and Bob Stump.

Mr. STUMP. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. HAMILTON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. HAMILTON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

CONFERENCE REPORT ON H.R. 5548, EXPORT-IMPORT BANK ACT AMENDMENTS OF 1986

Mr. NEAL. Mr. Speaker, I call up the conference report on the bill (H.R. 5548) to amend the Export-Import Bank Act of 1945, and ask unanimous consent for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

Mr. LEACH of Iowa. Mr. Speaker, reserving the right to object, I reserve the right to object only to ask the gentleman from North Carolina to express the intent of this measure and define for the House what is occurring.

Mr. Speaker, under my reservation of objection, I yield to the gentleman from North Carolina [Mr. NEAL].

Mr. NEAL. Mr. Speaker, let me say to the gentleman that the bill before us is the same bill that we passed not long ago, except that the conference added two nongermane amendments.

Mr. LEACH of Iowa. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

□ 1505

Mr. NEAL. Mr. Speaker, I ask unanimous consent that the statement of the managers be read in lieu of the report.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see prior proceedings of the House of today, Thursday, October 2, 1986.)

Mr. NEAL [during the reading]. Mr. Speaker, I ask unanimous consent that the statement be considered as read.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The SPEAKER pro tempore. The gentleman from North Carolina [Mr. NEAL] will be recognized for 30 minutes and the gentleman from Iowa [Mr. LEACH] will be recognized for 30 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. NEAL].

Mr. NEAL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this conference report is the culmination of our work on the reauthorization of the Export-Import Bank. It incorporates, unchanged, the complete text of H.R. 5548, the Eximbank reauthorization bill the House passed last week. To be brief, I won't review its provisions today, since they were covered in my floor statement on September 22, when the House considered and passed H.R. 5548.

I would just note that the Eximbank's authority expired on September 30, and that it can conduct no more business until we pass this conference report and get it to the President for enactment into law. Once enacted, the Bank's authority will then be extended for another 6 years.

The conferees adopted several new provisions, based on amendments originating in the other body. We did not adopt one controversial provision favored by the Senate, providing for the recapitalization of the Eximbank to make up for any losses the Bank suffers as a result of loan sales the Bank might be required to make. Though we cannot provide for Exim recapitalization in this bill, I agree that it is an important issue, and should be examined carefully by the Banking Committee early in the next Congress.

Mr. Speaker, in response to the question raised by my friend from Iowa, the Foreign Relations conferees on the bill added language that deplored United States business support for Angola, the Angolan Government, and requested the President to consider using his authority under the Export Administration Act to restrict United States business deals with Angola that threaten United States interests in Angola.

The subcommittee chaired by the gentleman from New York [Mr. LUNDINE] for his part on the conference agreed with the first half of the so-called FAIR amendment which essentially restates existing law that the United States oppose lending by multilateral development banks that support production of commodities or minerals if they are in surplus or if they injure U.S. producers.

Mr. Speaker, it is my understanding that once we pass this conference report that this will be the only trade bill that will have passed both Houses of Congress and be signed by the President in this session of the Congress. After all this talk about trade, this will be the only trade bill, the only bill we will have passed to help us compete in the world and do something about the horrendous $170-billion-a-year trade deficit.

I have to say I am sorry that we have not dealt with some of the other bills that are so necessary, but I am happy that we will have been able to make this contribution.

Mr. Speaker, I urge speedy adoption of this conference report.

Mr. Speaker, I reserve the balance of my time.

Mr. LEACH of Iowa. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would simply stress that this bill has been developed with bipartisan support; it is strongly supported by the administration. It is a wise thing to do at this time. Frankly, there are some disadvantages to an approach by which the Eximbank will be asked under other legislation to sell off some of its assets but that being the case, support for the Eximbank is one of the very powerful things we can do to help our exporters.

It is going to become more important in the next few years with the revaluation of our currency as our bids become more competitive in international trade and so I think it is a very positive sign that restructuring, rebolstering the old institutions that have had some positive effects on our trade balance occur in this Congress.

Finally, let me just say that I know of no subcommittee chairman more committed to helping an ongoing minor institution of the Federal Government and a minor institution that is very important in its own way, than the gentleman from North Carolina. It has been a privilege to work with him.

Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio [Mr. WYLIE].

Mr. WYLIE. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in strong support of the conference report to extend the Export-Import Bank Act of 1945.

Besides extending the Bank charter for another 6 years, a position I have supported to give some sense of certainty to American exporters, the conference report contains another major provision which is near and dear to my heart.

Last year, I introduced the Fair Export Financing Act of 1985, H.R. 3515. I was joined not only by the majority of my colleagues on the House Banking Committee, but also by BOB MICHEL, the House Republican leader, and the gentleman from Texas, the majority leader, Mr. Wright. My legislation was designed to give the Secretary of the Treasury the negotiating tools that he needs to get countries like Japan and France back to the bargaining table in an effort to eliminate unfair trade financing practices.

All too often foreign governments use what are known as predatory tied aid credits, the practice of blending favorable export financing with foreign aid, to win export deals for their domestic companies. This is an unfair trade practice and in too many cases has caused the United States to lose key export sales.

The conference report before us today does contain a provision to establish a tied aid credit war chest within the Export-Import Banks, which contains all the essential elements of my original legislation. Moreover, Eximbank will have to work closely to support the Secretary of the Treasury and in accordance with the Secretary's recommendations on how this new war chest can be used most effectively and effectively to advance the negotiation of a comprehensive international agreement restricting the use of these unfair trade financing practices.

Ensuring a strong and competitive export sector is vital for both employment and economic growth in this country. For example, my own State of Ohio ranks fifth in terms of total manufactured export sales in the country, according to the latest available data. The conference report before us today helps us to follow through in a credible, bipartisan fashion on President Reagan's commitment last year when he stated, and I quote, "I will not stand by and watch American businesses fail because of unfair trade practices abroad."

I want to thank all those who have worked together to bring this conference report to the House floor. I especially want to thank my colleague from North Carolina, Mr. Neal, the chairman of our trade subcommittee; Mr. Leach, and ranking Republican member on the subcommittee; Chairman St Germain; and all the cosponsors of my original proposal. Finally, Mr. Speaker, I would be remiss if I did not thank our excellent staff, who have been working on this for more than a year. Special thanks go to Frank Record of my staff, and Ben Crain and Lee Peckarsky of the majority staff, for all their good work.

I urge adoption of this conference report.

Mr. NEAL. Mr. Speaker, I yield such time as he may consume to the gentleman from Rhode Island [Mr. St Germain].

Mr. ST GERMAIN. I thank the gentleman for yielding me this time.

Mr. Speaker, I also rise in strong support of this conference report. I have to say that I think the House did quite well in insisting on the bulk of its provisions and on resisting some of the provisions that were in the Senate legislation.

I want to commend the subcommittee chairman, Mr. Neal, for his tireless efforts and the cooperation he has received and the leadership he has received from his ranking minority member, Mr. Leach, for whom we have a great deal of respect.

I think this is important legislation and legislation with which I have been concerned about during my 26 years in Congress. I am from Rhode Island where imports have hurt many of our industries to a degree or to an extent to where we have lost quite a few of our basic industries.

I wish that a long time ago we would have given the administration the assistance that we do in this particular piece of legislation. This legislation would establish a tied aid credit war chest to fight the subsidies that are given our foreign competitors and which they have unfairly used over, lo, these many years. If this legislation had been enacted earlier, perhaps many more plants in Rhode Island would be operating today.

Unfortunately, many of those mills have now been converted to other purposes.

Again, I thank my colleagues for their diligent work and hope that this conference report will be adopted unanimously because it is a giant step in the right direction.

□ 1515

Mr. LEACH of Iowa. Mr. Speaker, I yield 3 minutes to the gentleman from Pennsylvania [Mr. Ridge].

Mr. RIDGE. Mr. Speaker, I rise today in strong support of the conference report on H.R. 5548, which reauthorizes the programs of the Export-Import Bank. In addition, it includes a new mixed credit program within the Bank that will be used to combat similar financing used by many of our competitors. This program will give our exporters an opportunity to compete with mixed credit financing aggressively used by many of our trading competitors to capture new markets.

The record trade deficit of last year will soon be eclipsed by the trade deficit for this year. Therefore, it is important that we reauthorize our major trade promotion programs in Exim. This process has been long, arduous, and sometimes acrimonious this year. I have often disagreed with the majority of my colleagues on the Banking Committee over the mixed credit program. The compromise provided for in the conference committee meets the concerns of both sides of this debate and I strongly support it.

By reauthorizing the Exim, we will do much to assist our exporters to compete with foreign competition. Most of the major trading countries have substantially larger programs to assist their exporters. These include new programs established by some of our trading partners to offset the effects of the falling dollar. Our competitors are serious about capturing and maintaining other markets. By reauthorizing the Export-Import Bank, we affirm our commitment to expanding our own exports and competing for the international markets.

Before concluding my remarks, I would like to address one of the usual objections to funding the Eximbank. We often hear that it is an unnecessary Government subsidy for a few very large companies. Without considering the essential need to give our exporters financing tools similar to those of their competitors, we should recognize that the benefit of the program reaches substantially further then is readily seen. For example, General Electric uses these Exim programs to export locomotives, airplane engines, and turbines. These three product lines alone involve 9,000 suppliers located in 44 States. Clearly, the economic impact and benefit is national in scope and much broader than it appears on the surface.

I urge all of my colleagues to support this conference report and commend the gentleman from North Carolina and the gentleman from Iowa for their efforts in crafting a conference report that is responsive to the pressure on our exporters and should help reduce our trade deficit.

Mr. NEAL. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. Lundine], the chairman of the Subcommittee on International Development Institutions and Finance.

Mr. LUNDINE. Mr. Speaker, I want to compliment the gentleman from North Carolina [Mr. NealMr. LUNDINE. Mr. Speaker, I want to compliment the gentleman from North Carolina [Mr. Nealu] and his ranking minority member for the outstanding job they have done in conferring and coming up with reasonable compromise on this very important export facility.

As has been indicated by several of the previous speakers, unless we have financing capability which is fully competitive with any in the world, U.S. exports are not going to be able to penetrate markets, and we are not going to be able to create the kind of high-paying, high-quality jobs we want for ourselves and for future generations.

I think the compromises in this conference report are entirely reasonable, and I compliment those who have negotiated a reasonable program.

Mr. Speaker, in supporting the reauthorization of the Export-Import Bank, I want to make one observation about a provision in the bill which affects the multilateral development banks which are in the jurisdiction of the subcommittee of the Banking Committee, which I chair.

The provision having to do with U.S. voting policy in the MDB's on commodities in surplus on world markets is a reiteration of existing law. In appropriations measures since 1978, the Congress has made clear that the United States should not vote for loans for commodities in world oversupply.

The House conferees did not accept Senate language which would have extended existing law and which, in the view of House conferees and, I might add, in the view of the administration, would have been bad policy and would have adversely affected the U.S. role in these multilateral institutions. We accepted only this reiteration of existing law.

With that as an explanation and a further history as to what has happened and what was agreed to with respect to the U.S. support and vote on the multilateral development banks, I want to again express my support for the conference report.

I urge the Members to vote in favor of this conference report.

Mr. LEACH of Iowa. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to thank again the distinguished chairman of the subcommittee, particularly for allowing the input of the minority. Here I want to express a deep appreciation for the ranking minority member of the full committee, the gentleman from Ohio [Mr. Wylie], who has progressively and thoughtfully placed in this legislation a provision on tied aid that I think will be a dramatic consequence to the American exporter.

Mr. WYLIE. Mr. Speaker, will the gentleman yield?

Mr. LEACH of Iowa. I yield to the gentleman from Ohio [Mr. Wylie].

Mr. WYLIE. Mr. Speaker, I thank the gentleman for his complimentary remarks, and I would be remiss if I did not recognize the contributions of the gentleman from Iowa [Mr. Leach] on this legislation.

I think the gentleman's contribution with reference to the I-Match Program cannot be overstated. He has been a champion of the program from the outset, and through negotiations with the gentleman from North Carolina [Mr. Neal], does have an effective I-Match provision.

I would think that the gentleman from Iowa is the leading expert on this particular phase of the bill.

Mr. LEACH of Iowa. Mr. Speaker, I yield back the balance of my time.

Mr. NEAL. Mr. Speaker, I yield myself such time as I may consume for the purpose of a colloquy with the distinguished chairman of the Subcommittee on International Development Institutions and Finance, the gentleman from New York [Mr. Lundine.]

I would like to ask the gentleman for the Record a couple of questions which he might help me resolve in my own mind.

For a number of years now, the administration's representatives to a number of these development banks have been voting for loans that go to a long list of countries around the world that are used to develop textile mills and other businesses that then compete with our products. It has been hard for me to understand why the President would support this kind of activity over and over again.

I just wonder if the gentleman could help me on this. I have talked with the gentleman before about it. I have expressed my concern about it. I know the gentleman has tried, but it is my understanding that it continues.

I wonder if the gentleman can help me with this a bit.

Mr. LUNDINE. Mr. Speaker, will the gentleman yield?

Mr. NEAL. I yield to the gentleman from New York.

Mr. LUNDINE. Mr. Speaker, the purpose of the multilateral development banks, of course, is to provide financing for lesser developed countries to build their economies to a point where they not only provide for a higher standard of living for the people of their own country, but where they are contributing more to world economic prosperity.

Certainly it is appropriate that the MDB's support loans to countries who are trying to industrialize and trying to upgrade their own economies. However, almost similar to the comment I was just making about agriculture and commodities, it ought to be, and is, in fact, the stated policy of the United States not to encourage the development of economic entities in these lesser developed countries which are in oversupply around the world.

In other words, if you already have too much steel capacity or textile capacity, it does not make very much sense to get these countries further involved in something which will not result in the greatest prosperity to those countries because there is already an abundance of competitors out there.

□ 1525

The idea ought to be that the United States should support loans to industrialize those countries maybe where there is competition with our own companies, to be sure, or other developed countries, but only where there is not an oversupply of total capacity in the world. That is a judgment that I think our directors and our representatives to these banks have to make.

I agree with the gentleman from North Carolina. We should be certain not only in our own interests, but in the interests of these lesser developed countries, that we not be encouraging them in areas such as textiles where clearly there is a worldwide overcapacity.

Mr. NEAL. Well, here, and this really goes right to my question, as we both said earlier the nongermane amendment that was adopted to the Eximbank as a result of action by the gentleman's negotiations with the Senate conferees restates existing law that the United States should oppose lending by multilateral development banks that supports the production of commodities or minerals if they are in surplus or injure U.S. producers.

Now, I wonder if the administration has been abiding by that law by voting for all these projects. I am thinking specifically of textiles where we have lost some 400,000 jobs over the last 4 or 5 years and where our textile imports have doubled. I am just curious. Have they been abiding by the law or have they been in violation of the law, would the gentleman say?

Mr. LUNDINE. Mr. Speaker, will the gentleman yield further?

Mr. NEAL. I am happy to yield to the gentleman from New York.

Mr. LUNDINE. Well, in my judgment certainly the U.S. representatives to the multilateral development banks take into consideration the policies that have been stated in U.S. laws. I do not think there is a flagrant attempt to try to disregard the policies that the gentleman has mentioned or the other general philosophy that we should not support loans for industrial or other products that encourage worldwide overcapacity; however, I think there have been specific cases in which our efforts probably could have been greater to try to encourage development in areas other than those which are both harmful to our own economy and create undue competition all over the world, thereby driving prices down and make the jobs that are created less valuable.

Mr. NEAL. Mr. Speaker, I thank the distinguished gentleman.

I would just like to make this one further comment. I think it is clear that this provision in law has the overwhelming support of the Congress. It has been adopted in law for a number of years now.

I believe that the representatives to these banks ought to pay more attention to the law. They ought to be much more sensitive to the law.

I certainly appreciate the distinguished gentleman's comments. I have real questions myself whether or not they have been abiding by this law as carefully as they should. I think maybe this colloquy will help them understand that the Congress is aware of the situation and that the Congress, our committees of the Congress, will be watching this even more carefully and that it would be advisable for them to abide carefully by the law.

Mr. LUNDINE. Mr. Speaker, I thank the gentleman.

Mr. NEAL. Mr. Speaker, I have no further requests for time and I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. NEAL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on the conference report just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

CONFERENCE REPORT ON S. 426, ELECTRIC CONSUMERS PROTECTION ACT OF 1986

Mr. MARKEY. Mr. Speaker, I call up the conference report on the Senate bill (S. 426) to amend the Federal Power Act to provide for more protection to electric consumers, and ask unanimous consent for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that the statement of the managers be read in lieu of the report.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 30, 1986, page 27414.)

Mr. MARKEY [during the reading]. Mr. Speaker, I ask unanimous consent that the statement be considered as read.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts [Mr. MARKEY] will be recognized for 30 minutes and the gentleman from California [Mr. MOORHEAD] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of the conference report. Last April, the House passed the Electric Consumers Protection Act, H.R. 44, by unanimous voice vote on the suspension calendar. The Senate also passed its version of the bill, S. 426, last April. The two versions were radically different and a conference committee was appointed to resolve the differences.

I am pleased to report that the differences between the bills have been resolved and the bill we passed last April remains largely in tact, with some improvements agreed to in conference.

The legislation eliminates the possibility that municipally owned electric power systems could receive a tie-breaking preference in the relicensing of hydroelectric projects by the Federal Energy Regulatory Commission. The Senate bill included a preference for existing licensees. The House bill did not give a preference to any applicant. The conference report adopts the House provision, but makes clear that insignificant differences between competing applicants do not serve as the basis for transferring a license.

Mr. MOORHEAD. Mr. Speaker, will the gentleman yield?

Mr. MARKEY. Mr. Speaker, I am glad to yield to my friend, the gentleman from California, who I might add at this time has worked patiently with the majority to craft what I believe is an exemplary piece of legislation. It has taken us almost the entire year and a half that we have worked together as majority and minority in the Energy Subcommittee that we serve on in the Energy and Commerce Committee.

I would like at this time to publicly compliment the gentleman and his subcommittee staff for the job that they have done in helping us to bring this piece of consensus legislation to the floor at this time.

Mr. Speaker, I am glad to yield to the gentleman from California.

Mr. MOORHEAD. Mr. Speaker, as I understand the conference agreement, it includes language to ensure that insignificant differences between applications with regard to the relicensing criteria specified in section 15, subparagraphs (a)2 (A) through (G) are not determinative and shall not result in the transfer of a project.

Mr. MARKEY. That is correct.

Mr. MOORHEAD. Mr. Speaker, if the gentleman will yield further, what does the gentleman understand will be the basis for the Commission's relicensing decision when there are only insignificant differences between competing applications?

Mr. MARKEY. In the event that there are only insignificant differences between competing applications, the existing licensee's track record will be the basis for the Commission's decision.

Mr. MOORHEAD. Mr. Speaker, I thank the gentleman. That is my understanding also.

Mr. MARKEY. Mr. Speaker, I thank the gentleman again and once again would like to publicly commend the gentleman from California.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge all of my colleagues to support the conference report on the Electric Consumers Protection Act. This legislation represents a pragmatic compromise that has the support of virtually every Member who has worked on this measure. I supported the version of hydroelectric relicensing reform passed by the House last spring. I believe our efforts at conference, Mr. Speaker, further improved this legislation.

I want to commend all of the Members who participated in the conference. Enactment of this legislation would have been much more difficult without the spirit of cooperation that has characterized each step of the legislative process. While none of us may be 100 percent satisfied with this bill, I believe it is something that we can all take pride in supporting. It will benefit electric consumers nationwide.

The conference agreement will solve the problem that led to the introduction of this legislation. It will eliminate all possibility of a preference in relicensing proceedings based solely on an applicant's governmental status. Instead, licenses will be issued to applicants whose plans are best adapted to serve the public interest, taking into account several factors. In this regard, the physical, financial, and economic needs of each applicant's customers and consumers will be examined. The conference agreement recognizes utilities' mandatory duty to serve their customers at the lowest possible cost. For nonutility applicants, the needs of the communities where they are located, and the needs of the customers who ultimately pay for their products are all to be taken into account.

In some important ways, the conference agreement improved the House provision on the criteria to be applied by the Federal Energy Regulatory Commission in section 15 relicensing proceedings. The conference agreement refines the criteria so that licenses will not generally transfer unless there are significant differences between the competing applications. If there are only insignificant differences, then the existing licensee's track record regarding the operation of the project will be dispositive. And, under such circumstances, if the existing licensee has historically satisfied all of its license conditions, the license is unlikely to change hands. This refinement was made by the conferees to make clear that a transfer should only occur when it has been demonstrated that the transfer will result in a significant advantage to the public interest.

The conference agreement also ensures that all of the important factors will be taken into account by the Commission in awarding licenses under section 15. This legislation now emphasizes hard, economic facts and applicants' abilities. It does this by stressing FERC's responsibility to compare applicants' relative need for the project and their abilities to operate, maintain and employ the project in the best and most cost-effective manner. In particular, the House provision on need for power was expanded to include economic, as well as electrical, considerations across both the short and long term. This will require FERC to consider the types of increased costs for utility customers identified in the General Accounting Office's report to the Energy and Commerce Subcommittee on Energy Conservation and Power, dated September 16, 1985. Also, the relicensing criteria set forth in section 15 are not exclusive, for under section 15(a)(2)(G) the Commission may consider any further factors it finds relevant to the public interest.

It is important to note, however, that the conferees included the provision on applicant's plans to achieve the purposes of its application in a cost-effective manner in order to prevent gold plating of applications and bidding wars between applicants on matters that do not foster the public interest.

The conference agreement does not include the House provision increasing the compensation to be paid an existing licensee in the event the existing licensee loses its license. The conferees recognized that since all of the consumer costs associated with the loss of a license are to be considered under section 15(a)(2) (D) and (G), that dropping this provision and not requiring compensation to mitigate demonstrated consumer harm will reduce the likelihood of license transfers.

The conference agreement includes the Senate provision on antitrust. Further, while this provision expands the Commission's powers, it does so in the most narrow fashion. It would apply only in those cases where the operation of the project, as authorized by the license, would contravene the antitrust laws in a manner not otherwise justified by regulatory policy or the public interest. The conference agreement adopted a technical amendment to the provision to clarify that in cases in which the problem cannot be prevented or adequately minimized through license conditions, FERC may take whatever action is necessary to continue operation of the project until a new license is issued in accordance with section 15.

The conference agreement includes the House provision on the settlement of the contested relicensing cases now pending before FERC. I, personally, do not like this provision, but I supported the adoption of this provision in order to craft a workable compromise. As modified by the conferees, the possibility of some recovery above the Challenger's expenses is now capped at no more than the existing licensee's net investment.

This provision still leaves the existing licensees and their customers a good deal of room to negotiate a fair and reasonable result. However, should a negotiated settlement fail to be reached, FERC, in determining the appropriate settlement, shall take into account the quality and potential results of the competing applicants' proposals under prior law, as well as the genuineness of any claims of reliance and harm. There is certainly no guarantee of any amount in excess of actual expenses, although the possibility is certainly there.

Further, there is the very important question as to how the State regulatory commissions are going to treat these settlements. Since utilities are settling these cases in order to retain these very valuable hydroelectric projects for the benefit of their customers, it is clear that these expenses are business related and should be so treated for tax purposes.

Finally, I am pleased with the conferees' adoption of the House provision that will enable State and local governments to avoid FERC redtape whenever they install turbines of 40 megawatts capacity or less in conduits that are used solely for municipal water purposes.

Mr. Speaker, the conference agreement represents a lot of hard work undertaken on a bipartisan basis. The need for this legislation is clear. It represents sound policy. It will protect the millions of consumers who currently benefit from cheap hydroelectric power. I urge my colleagues to support this legislation, and to vote "aye" on the conference agreement on S. 426.

Mr. MARKEY. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD. I am happy to yield to the gentleman from Massachusetts.

Mr. MARKEY. It is my understanding that nothing in the legislation diminishes, increases, or otherwise modifies FERC's authority under existing law to order removal of an existing structure. Does the gentleman share this understanding?

Mr. MOORHEAD. Yes. However, in making decisions about fish and wildlife recommendations in relicensing cases, FERC must take into account existing structures.

Mr. MARKEY. I thank the gentleman for that clarification.

Mr. Speaker, I yield myself such time as I may consume.

The conference report includes the House bill's provisions establishing procedures for relicensing. It merges the House and Senate criteria to be applied by FERC in selecting a new licensee in a relicensing proceeding, except that the Senate economic impacts provisions are not included. However, to address some of the concerns that led the Senate to include the economic impacts provision, the conference report includes an expanded need for power test that is based on FERC and judicial precedent concerning an applicant's need for the power a project produces.

Mr. SWIFT. Mr. Speaker, will the gentleman yield?

Mr. MARKEY. I am glad to yield to the gentleman from Washington.

Mr. SWIFT. Mr. Speaker, directing the chairman's attention to the need for power test in section 4 of the bill, is that the economic impact test included in the other body's bill?

Mr. MARKEY. No, it is not. We agreed to drop the other body's economic impact test. Instead, we expanded the need for power provision to accommodate certain of the concerns that led the other body to include its economic impact test in its bill, yet at the same time meeting the House concerns about that test.

Mr. SWIFT. One objection to the other body's economic impact test was that when you stripped it down to its essentials it would say that the applicant with more customers is, by definition, the one with the greatest economic impact since more people are affected. Does the need for power test authorize FERC to engage in this sort of numbers counting game?

Mr. MARKEY. No, it does not.

Mr. MOORHEAD. Mr. Speaker, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from California.

Mr. MOORHEAD. Mr. Speaker, it is my understanding, however, that the need for power provision will require the Commission to look at the increased costs, if any, that might result from not receiving the license. Is this also the chairman's understanding?

Mr. MARKEY. Yes, it is.

Mr. SWIFT. Mr. Speaker, will the gentleman yield one more time?

Mr. MARKEY. I am glad to yield to the gentleman from Washington.

Mr. SWIFT. Mr. Speaker, one of the factors that is enumerated as part of the "need for power" test requires FERC to consider "the effect on the provider—including its customers—of the alternative source of power * * *." As I understand the intent of the conferees on this point, it would require FERC to consider, for example, the effect on the Bonneville Power Administration, including all of BPA's customers—for which there is a legal obligation to serve—if a recipient of power from Bonneville were an unsuccessful applicant. Does the chairman agree with my understanding of the conferees' intent?

Mr. MARKEY. Yes.

Mr. Speaker, may I inquire of the Chair how much time is remaining on either side?

The SPEAKER pro tempore (Mr. Gray of Illinois). The gentleman from Massachusetts [Mr. Markey] has 24 minutes remaining and the gentleman from California [Mr. Moorhead] has 26 minutes remaining.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the report adopts the House fish and wildlife provisions, except that the words "equitable treatment" in the amendment to section 4(e) of the Federal Power Act, have been changed to "equal consideration." This change was made to make clear that the amendment to section 4(e) does not require FERC to guarantee equal treatment for the various purposes of the Federal Power Act. These purposes include energy conservation, fish and wildlife, power development, and the protection of recreational opportunities. We do not intend that the amendments made by the report require FERC to order a licensee to spend an equal dollar amount on each purpose. Rather, the amendment is intended to require FERC to thoroughly evaluate each of these values, and not to presume that any one value is more important than any other value.

The report also includes the new section 10(j) of the Federal Power Act that was included in the House bill. The provision was slightly modified to require that FERC adequately and equitably protect, mitigate damage to, and enhance fish and wildlife through conditions to be included in all hydroelectric project licenses issued under the Federal Power Act. The provision is clearly and unmistakably intended to require FERC to rely on the agencies in establishing fish and wildlife conditions to be included in licenses.

The conference report also modifies FERC's responsibilities under section 10(a) of the Federal Power Act with respect to comprehensive planning. The amendment requires FERC to specifically consider a number of important concerns affected by hydroelectric development, including irrigation, flood control, water supply, recreation, and fish and wildlife. Importantly, the amendment also requires FERC to consider the extent to which an applicant's energy conservation programs can reduce or eliminate the need for the project, thus saving consumers the cost of building and operating a project and sparing the waterway the disruption and impact caused by project development.

The House provision concerning new dam or diversion hydroelectric projects is also included with certain minor modifications explained in the joint explanatory statement of the committee on conference. This provision is intended to address the environmental harm that can result when incentives to build new dams are provided.

The report includes the House provision addressing the nine cases involving competing applications filed by municipalities prior to FERC's Merwin decision. This provision is intended to resolve those cases in such a manner that the licenses remain in the hands of the existing licensees and that the municipalities are reimbursed for their costs and compensated for their lost opportunities and lost benefits. The provision encourages the parties to negotiate the amount of compensation to be paid and requires FERC to ensure that the parties do not delay. It is the intention of the conferees that these cases be resolved expeditiously. It is in no one's interest for these cases to continue to linger as a result of bureaucratic delays.

The conferees agreed to include the Senate antitrust provision which is also included in the conference report.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, am I correct that the conference agreement includes the other body's provision on antitrust?

Mr. MARKEY. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Massachusetts.

Mr. MARKEY. The answer to that is "yes."

Mr. MOORHEAD. Under this provision, will antitrust-type issues be part of the Commission's comparative evalaution of competing applications?

Mr. MARKEY. No. This provision was carefully drafted to ensure that antitrust considerations in relicensing proceedings are confined to the Commission's conditioning authority under section 10 and, as with fish and wildlife conditions, are not part of the basis for the Commission's comparative evaluation of competing applications.

Mr. MOORHEAD. I thank the gentleman. I share his understanding of this provision.

Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. Lent].

Mr. LENT. Mr. Speaker, I also urge my colleagues to support the conference report on S. 426, the Electric Consumers Protection Act.

I got involved in this legislation at a rather late date, but when I started to participate in the conference, I was impressed by the bipartisan and cooperative spirit in which this legislation was developed.

The conferees put in a great deal of attention and hard work on this legislation. It strikes a fair compromise and it will serve the interests of electric consumers nationwide. In addition, the conference agreement should promote competition at the same time it ensures licensees will not be transferred on the basis of insignificant or marginal differences.

I concur with the comments of my good friend and colleague from California that this is a bill we can all be proud of, and I urge my colleagues to vote for the conference report.

Mr. MOORHEAD. Mr. Speaker, I yield 5 minutes to the gentleman from Utah [Mr. Nielson].

Mr. NIELSON. Mr. Speaker, I would like to speak in support of the House-Senate conference report on S. 426, the Hydroelectric Relicensing Act of 1986. The members of the Committee on Energy and Commerce have worked for many months of this legislation. I would like to commend and congratulate Mr. Dingell, Mr. Markey, Mr. Shelby, and Mr. Moorhead for the superb leadership that they have demonstrated throughout the process and during the conference. I believe that S. 426 is the most comprehensive energy legislation to come out of the 99th Congress thus far.

The legislation which we consider today changes the rules under which hydroelectric facilities will be relicensed. Although this change, in my opinion, creates better public policy, it does change the rules in midstream. As a result of changing the rules in midstream, I believe that compensation should be awarded to those public utilities which had pending relicensing applications before the Federal Energy Regulatory Commission and had a realistic expectation that under existing law they would have been awarded a license.

It has long been my opinion that if the rules of relicensing were changed that the public utilities would have been harmed in three ways: First, they would have incurred substantial costs in pursuing their applications, second, they would have forgone the opportunity to participate in other energy projects; and third, they would have been denied the use of inexpensive hydropower.

The conference agreement acknowledges that the public utilities have been harmed and provides that they be compensated. The conference agreed that the maximum amount of compensation a public utility, in addition to the costs it incurred in pursuing its application would receive, be limited to "net investment" or some percent of net investment not to exceed 100 percent.

While the compensation provisions stipulates that the competing parties must negotiate within a specific time period, the conferees recognize that these negotiations may fail. I believe I speak for all of the conferees when I say that if FERC must decide the compensation amount, then, we expect the Commission to move expeditiously to settle the conflict. I believe it is critical that these cases be resolved quickly and fairly.

This is a balanced bill.

First, this bill takes away the preference for public utilities in relicensing procedures, but does not take away preference in purchase of Federal power.

Second, while the bill provides short wheeling to make the power available to successful challengers, it does not extend to long wheeling.

Third, economic impact desired by the investor-owned utilities and antitrust provisions desired by the public utilities were eliminated.

This legislation also contains a moritorium on the development of small hydropower facilities. In doing so it denies any new facilities PURPA benefits. I was pleased that the conference agreement allowed those projects not yet completed to continue qualifying for PURPA benefits if they qualified under one of the following three categories:

First, if they have filed for a license or exemption and FERC has accepted it prior to enactment of this legislation.

Second, if an application was filed prior to enactment and does not have substantial adverse effects on the environment.

Third, if a project has committed substantial monetary resources and have been diligent and timely in the completion of all requirements for filing for an license or exempt.

I am pleased with these transition rules and applaud the conferees for their insight and for dealing fairly with these small hydropower projects. I have had a number of constituents contact my office asking for some assistance and I think that the provisions in this report will address many if not all of their concerns.

In closing, I believe that the conference agreement is a good one and that this body should approve it. I feel that all parties have been dealt with fairly. As is the case with most legislation, no one side or interest received all that they had requested but in this case I think all the interested parties can live with this legislation.

Again, I wish to commend my colleagues on the conference committee for their excellent work. I urge Members to support this conference report.

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Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the joint explanatory statement includes a statement concerning two projects in the State of Nebraska. This language was included because of specific concerns raised by the Nebraska delegation. The report language is intended to alleviate those concerns and is drafted with specific knowledge of those projects. The language reflects what we believe the likely outcome will be in those relicensing proceedings. Other cases may have other results. Also, the Committee on Merchant Marine and Fisheries has inquired whether anything in that statement or the conference report modifies in any way FERC's responsibilities and obligations toward endangered species under the Endangered Species Act. I would like to make it clear that nothing in this act modifies or affects in any way FERC's obligations and responsibilities under the Endangered Species Act. I include in the RECORD copies of the correspondence between Chairman JONES of the Committee on Merchant Marine and Fisheries and myself concerning this issue.

This report represents an outstanding piece of legislation that brings the Federal Power Act up-to-date to reflect today's values with respect to the environment and energy conservation.

The letters referred to follow:

SUBCOMMITTEE ON ENERGY CONSERVATION AND POWER OF THE COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, October 2, 1986.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries, Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN JONES: Thank you for your letter of this date. I concur fully with your view that the Conference Committee on S. 426 clearly and unmistakably does not intend that anything in the hydroelectric relicensing legislation modify or affect in any way FERC's mandatory obligations and responsibilities under the Endangered Species Act.

Your concern in this matter is deeply appreciated.

Sincerely,

EDWARD J. MARKEY,
Chairman.

COMMITTEE ON
MERCHANT MARINE AND FISHERIES,
Washington, DC, October 2, 1986.

Hon. EDWARD J. MARKEY,
Chairman, Subcommittee on Energy Conservation and Power, Committee on Energy and Commerce, House Office Building, Washington, DC.

DEAR CHAIRMAN MARKEY: As you know, the Committee on Merchant Marine and Fisheries has worked closely with the Committee on Energy and Commerce in developing the fish and wildlife conservation measures contained in H.R. 44. Now that the Conference Report on S. 426 has been published, we note with some concern that part of it, containing a discussion of two licensed projects in Nebraska (FERC Nos. 1835 and 1417), could be interpreted as suggesting that S. 426 implicitly amends or diminishes the Section 7 obligations of FERC under the endangered Species Act of 1973.

We have been informed that this was not your Committee's intent and that the Conference Report language in question was intended to focus solely on FERC's environmental consideration procedures established for new Section 10(j) of the Federal Power Act under S. 426. Based on this information, FERC's mandatory obligation under Section 7 of the Endangered Species Act to not authorize projects which would jeopardize the continued existence of a listed species or adversely modify or destroy its critical habitat, would remain unaffected. Similarly, the great weight and deference to be accorded Section 7 Biological Opinions under the terms of the Endangered Species Act would not be altered or affected as a result of the "inconsistency" standard included in the new Section 10(j) of the Federal Power Act.

In short, nothing in S. 426 should be interpreted as diminishing or altering in any way either FERC's obligations to comply with Section 7 of the Endangered Species Act as currently written or the Fish and Wildlife Service's responsibility to develop a Section 7 Biological Opinion based upon the best available biological information.

In order to fully clarify this matter, we would appreciate it if you could confirm our above understanding of your intent behind S. 426. We would also respectfully request that our exchange of letters be noted and included in the Congressional Record when the Conference Report on S. 426 is brought up for a vote before the House.

With warmest personal regards, I am,

Sincerely,

WALTER B. JONES,
Chairman.

Mr. Speaker, I yield 2 minutes to the gentleman from Alabama [Mr. SHELBY], the prime sponsor of the legislation in the House of Representatives and the gentleman whose bill we used as the markup vehicle and the prime mover of this piece of legislation through the House, and the major negotiator between the House and the other body.

Mr. SHELBY. Mr. Speaker, as the lead sponsor of the Electric Consumers Protection Act in the House, I urge this body to act favorably on this landmark piece of legislation which would benefit a majority of consumers nationwide.

I first took up this battle more than 2 years ago because of the potential rate impact, without corrective legislation, on the electric consumers in my home State of Alabama. Without this legislation, over 60 percent of Alabama consumers, who are served by a regulated utility there, would risk losing the benefit of inexpensive, clean hydroelectric power. In addition, many Alabamians, who are indirect customers through wholesale arrangements, would be adversely affected.

The Alabama Power Co. holds operating licenses for 14 dams along the State's waterways. As of December 1, 1984, these projects had a value, based on 1985 equivalent fossil replacement cost, of approximately $2.7 billion. Because of the many conflicting decisions at the Federal Energy Regulatory Commission and in the courts over the issue of preference at relicensing, I am convinced that without this legislation, all of the licenses would be at risk of being transferred. The cost to the Alabama consumer would be extremely burdensome as these projects will have an equivalent fossil replacement cost at the time of license expiration of more than $18 billion. Most of the cost of constructing these dams has already been passed on to the customers through their electric bills, so the power they get from the dams is not very cheap. The bottom line is—without this legislation, over 1 million Alabamians could expect their electric bills to go up over 24 percent.

In response to the uncertainty surrounding relicensing and the inequities resulting without corrective legislation, both the House and the Senate have overwhelmingly approved the Electric Consumers Protection Act. The conference report before us now contains a much-improved relicensing procedure. At relicensing, the FERC would grant a license based on the best plan presented by the applicants, rather than on the arbitrary basis of the applicant's form of ownership. Further, the conferees have directed the FERC to take into account the economic consequences on customers and communities served by the applicants.

I want to emphasize that this legislation does not in any way affect the preference to municipalities when the FERC issues a first and original license for a hydroelectric project. Just as I think it is crucial for the customers of an existing licensee to be protected by H.R. 44, it is important to maintain local control at the original licensing. Further, this legislation does not in any way affect the Federal power marketing preference which enables municipal systems to provide cheap power to their customers.

Mr. Speaker, I am very thankful for the support and encouragement I have received throughout this effort. All my colleagues in the Alabama delegation cosponsored this legislation, and it has attracted broad bipartisan support from members across the Nation. In all, 182 House colleagues are cosponsors.

Scores of editorials in major news publications and organizations representing business, labor, farm, senior citizen, and environmental groups have endorsed H.R. 44's goal of consumer protection.

While H.R. 44 was a simple bill as introduced, bringing it through the legislative process has been a great test of our legislative skills and willingness to compromise. I am proud of all who have taken part in this process, and today, Mr. Speaker, we present to the House of Representatives and the Nation a fine product of diligent work.

The Electric Consumers Protection Act is an equitable and balanced bill. It establishes a fair process for the relicensing of hydroelectric facilities which is long overdue. It strengthens actual FERC procedure and requires a more thorough review of several important factors, including the impact on fish and wildlife and plans to promote energy conservation. The bill also addresses concerns of many of our colleagues over the licensing of hydrodams under PURPA.

I would like to emphasize a few other things about this legislation. In conference it became clear that, notwithstanding the different approaches taken in the House and Senate bills, no one wanted project licenses to change hands unless there was a compelling reason in the public interest to do so. Therefore, the bill agreed to now provides that insignificant differences between applications cannot be the basis for transferring the license for a project. In effect, we have recognized that continuity in ownership and management of these projects is worthwhile and that the public should not suffer the disruptions and economic dislocations that would be associated with a license transfer unless a good reason in the public interest has been shown.

An issue that was important to Members of the House and that was agreed to by Senate conferees concerned a new licensee's access to the benefits of a project for which it had succeeded in obtaining the license. We worked long and hard in the House to address this specific problem with the result that we have a well thought out, narrowly drafted provision that would be added as section 15(d)(2) of the Federal Power Act. If it is not feasible for the new licensee to utilize the energy from the project without provision by the existing licensee of reasonable services, including transmission services, the existing licensee and the new licensee are to negotiate for such services. If the negotiations fail, FERC is authorized to issue an order to compel the services, insofar as the order would not adversely affect the existing licensee in specified ways. One of these in particular I want to emphasize. Under what would become paragraph 15(d)(2)(A) FERC may not issue an order that would allow the new licensee to invade the service territory of the existing licensee for the purpose of taking over its customers.

In other words, we wanted to prevent the use of this limited authority for cherry picking customers of the existing licensee. Thus, under the language in paragraph 15(d)(2)(A) the existing licensee could not be compelled to transmit electric energy over its transmission lines anywhere but to the distribution system owned and operated by the new licensee and serving that licensee's existing customers "as of the date 1 day preceding the date of license award."

One other point I'd like to cover. The House conferees agreed to drop the compensation provision in the House bill with the result that any licensee, whether public or private, which loses its project will receive only net investment plus severance damages as now provided under existing law in sections 15 and 14 of the Federal Power Act. In doing so we yielded to compelling arguments presented by the distinguished chairman, Mr. McClure, and the distinguished ranking minority member, Mr. Johnston, of the Senate Energy Committee. By subsuming in the revised and broadened need for power criterion the considerations covered by the economic impact criterion which had been in the Senate bill, we have assured that the consequences on customers of the existing licensee from transfer of a project at net investment will be fully considered. And, as our colleagues in the Senate pointed out so persuasively, if a project were to transfer at net investment, the impact on the customers of the existing licensee would be far greater than if the transfer occurred at some higher level of compensation, thus, serving, in effect, to decrease the likelihood of a project being transferred. That, of course, is consistent with our overriding premise that projects shouldn't transfer without a significant benefit in the public interest.

Mr. Speaker, I commend my friend and colleague Mr. Markey of Massachusetts for his role in bringing diverse viewpoints together to consensus. I also thank my dear friend and colleague, Mr. Dingell, the chairman of the full Energy and Commerce Committee, who actively participated in this process from the beginning and whose guidance at key junctures was vital. I also want to commend him for his help in addressing concerns of the environmental community, particularly with respect to fish and wildlife.

Mr. Speaker, I would like to thank my Republican colleagues on the subcommittee for their support and help in this bipartisan effort. I particularly appreciate the leadership shown by the subcommittee's ranking minority member Mr. Moorhead and his able staff on behalf of consumers from California to Alabama.

Mr. Speaker, the Electric Consumers Protection Act is a consensus bill forged by hard work and a commitment to do the right thing for our constituents. I urge all my colleagues in the House to place their enthusiastic stamp of approval on this conference report so we can send it to the President for him to sign it into law.

Last, Mr. Speaker, I want to thank all the people who played major roles in bringing this legislation about, my dear friend, the gentleman from Michigan [John Dingell] chairman of the Committee on Energy and Commerce for his work and his role; the gentleman from Massachusetts [Ed Markey] chairman of the Subcommittee on Energy Conservation and Power; the gentleman from California [Mr. Moorhead] for the role he played all along from the initial time the bill was introduced until today, including a protracted conference; and to my dear friend, the gentleman from Oregon [Mr. Wyden] the gentleman from California [Mr. Matsui] and others.

Mr. MOORHEAD. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. Dannemeyer].

Mr. DANNEMEYER. Mr. Speaker, it is my pleasure to rise in support of the conference report to accompany S. 426, the Electric Consumer Protection Act. This legislation amends the Federal Power Act as it relates to licensing and relicensing of hydroelectric power projects by the Federal Energy Regulatory Commission [FERC].

As a member of the Committee on Energy and Commerce, and more importantly, as one whose State and district are directly impacted by the legislation, I want to thank my House colleagues who served on the conference committee for their cooperation and hard work. I am appreciative of the assistance of the gentleman from Michigan [Mr. Dingell], the gentleman from Massachusetts [Mr. Markey], my fellow Californian [Mr. Moorhead], the House sponsor of H.R. 44 [Mr. Shelby], the gentleman from Utah [Mr. Nielson], all of the other House conferees and our colleagues in the other body.

I would like to take this opportunity to comment on four of the key issues covered by the conference report: Compensation for the challenging applicants in the nine pending cases, the preference at relicensing, antitrust review and wheeling of power.

The most important issue in the conference was how to treat the nine pending cases in a fair manner. Both the original House and Senate provisions would eliminate the existing municipal preference at relicensing. I am pleased that the report includes a provision to compensate the municipal utilities with these pending FERC applications.

Specifically, the bill establishes a fair mechanism to prompt negotiations between the investor owned and municipal utilities that are parties to the nine pending cases. If negotiations fail, FERC will determine a reasonable amount of money to require the investor owned utilities to compensate the competing municipal utility applicants for their substantial out-of-pocket expenses and their lost opportunities to obtain the benefits of inexpensive hydropower and to participate in other energy projects. I am hopeful the parties will be able to reach agreement during the time period allowed for negotiation. If not, I fully expect FERC to act expeditiously in finally determining the amount of compensation to be paid.

This provision is critical to the competing municipal utilities in the nine cases, including one in my district. Anaheim, the largest city in my district, is one of the competing municipal utilities in two of the nine pending relicensing cases. Along with its coapplicants, Anaheim has spent millions of dollars to develop and pursue proposals which would significantly improve the existing hydro projects. In addition, Anaheim has forgone valuable opportunities to participate in other energy projects since the combination of the preference and the last right to amend under current law gives Anaheim a valuable advantage in a competitive relicensing proceeding. Anaheim's ratepayers, my constituents, should not be penalized for the city's good faith reliance on existing law.

On relicensing preferences, while I concur in the decision to remove the existing municipal preference, as in the original House bill, it is encouraging to note that the conferees did not adopt the original Senate provision of shifting the preference to the existing licensee, whether investor owned or municipal. Rather, the conference report provides that if the differences between the competing applications are insignificant, then FERC will make a decision based upon the operating record of the existing licensee.

As to antitrust review, while the House bill had no provision, the Senate bill did provide that the FERC must impose conditions on licensees to minimize any contravention of the policies of the antitrust laws that are "not otherwise justified by the public interest." This is a modest step in the right direction. As a member of the Judiciary Subcommittee on Monopolies and Commercial Law, which has jurisdiction over the antitrust laws, I appreciate the inclusion of this provision in the conference report.

Finally, I want to remind my colleagues of the continuing interest in access to transmission lines for other utilities, such as Anaheim in my district. We have seen the benefits of such an approach in the regulation of interstate natural gas pipelines. I am confident that we can work out the details for electric transmission that are unique to that industry. In any event, we elected to put this issue off until another day in the interest of getting a hydroelectric relicensing bill this year. The conference report makes some minor changes in this area of the law, but I expect we will be hearing more about this issue in the next few years.

All in all, the conferees have brought us an excellent piece of legislation that balances the competing interests at stake in this issue in a fair manner. We owe our colleagues a debt of gratitude for their fine work. This conference report deserves our wholehearted support.

□ 1600

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume, and I do so for the purpose of noting that, after 8 years of serving together, the gentleman from California [Mr. Dannemeyer] and I have found an issue upon which we agree 100 percent, despite all opinions to the contrary that it would have been impossible we have found it and this is the issue.

Mr. DANNEMEYER. Mr. Speaker, will the gentleman yield?

Mr. MARKEY. I yield to the gentleman from California.

Mr. DANNEMEYER. Mr. Speaker, I think we can agree on the fact that we both like baseball. May the best team win. I happen to represent the California Angels.

Mr. MARKEY. Once again, we are in 100 percent disagreement. This is a Red Sox year; although whatever God is doing in raining down that injury on Roger Clemens' elbow last night may in fact not indicate that we will be as successful as we thought we would be 24 hours ago.

Mr. Speaker, I would like at this time to yield to the chairman of the full Committee on Energy and Commerce.

I would note at this time that through considerably painstaking negotiations, the chairman of the full committee has made it possible for this bill to be presented to the full House for its consideration at this time.

I yield 3 minutes to the chairman of the full committee, the gentleman from Michigan [Mr. Dingell].

Mr. DINGELL. Mr. Speaker, I rise in strong support for this conference report, S. 426, to amend the Federal Power Act for the benefit of the Nation's electric consumers and for the protection of our valuable fish and wildlife resources.

Mr. Speaker, I first want to congratulate the chief sponsor of the bill, the able gentleman from Alabama [Mr. Shelby] for his tenacious and effective efforts in crafting this legislation on behalf of all consumers. I am particularly proud about his able leadership in helping to fashion, with me and Congressman Markey, the fish and wildlife provisions of the bill that I so strongly support. It was a long struggle, but one for which all of us can be proud, particularly Mr. Shelby and the people of Alabama who elected him.

The distinguished chairman of the subcommittee, Ed Markey, and the ranking minority member, Carlos Moorhead, more than any others, worked tirelessly to develop effective legislation and steer it through the subcommittee, the committee, the House, and conference so that the final product is so close to H.R. 44 that we might call it a twin. They are clearly effective leaders who worked well together on a bipartisan basis.

Great thanks must also go to our other House conferees on both sides of the aisle, Congressmen Swift; Lent, the ranking minority member of our committee; Bryant of Texas; Nielson; Wyden; and Oxley for their efforts, as well as the Senate conferees headed by Senators McClure and Johnston and their able staff.

Messrs. Swift, Wyden, and Nielson all had special concerns that they ably worked out for the benefit of their constituents and the Nation. I commend them. They are special people.

Three other Members helped to develop the original compromise that held together through this entire process. They are Congressmen Matsui, Miller of California, and Dannemeyer. Their help and support throughout the process proved to be invaluable in resolving very difficult issues important to many of us. I salute them.

There are many others who have helped. They include Congressmen Stallings, Coelho, Daub, Bevill, Fazio, Foley, the gentlelady Mrs. Smith of Nebraska, and Mr. Pashayan. Mr. Stallings was particularly helpful in working out the provisions regarding Henry's Fork in his State.

Mr. Speaker, ever since I came to Congress in 1955, I sought to provide adequate provisions of law to protect and enhance fish and wildlife resources affected by dams thrown across our Nation's waterways, with little or no concern for other nondevelopmental values. All too often I found that these valuable resources and their habitat and spawning areas were threatened or destroyed. Unfortunately, the former Federal Power Commission and now the Federal Energy Regulatory Commission were too prodevelopment and too willing to sacrifice fish and wildlife.

S. 426 is the culmination of my efforts. It offers solid statutory change. It offers hope. It gets the attention of all.

I am particularly proud of the new section 10(j) which originated from our committee and remains almost totally intact after conference. It is a fair and proper approach, backed by the careful legislative history of the House. See House Report 99-507 of March 25, 1986, beginning at page 17. The concerns expressed by our committee about the sins of the past should, for the first time, be eliminated or ameliorated by the new provisions of section 10 and the new provisions applicable to projects receiving PURPA benefits.

Mr. Speaker, let me at this point discuss some of the main features of the bill.

First, the agreement amends section 7(a) of the Federal Power Act to strike any reference to new licenses issued under section 15 of the act relating to the relicensing of hydro projects, and to make it clear that the reference provisions of section 7(a) only apply to preliminary permits and to original licenses for hydro power projects. This clarification of the law, which I stress should not be viewed as a precedent with regard to the preference provisions of this section or in other law, takes effect immediately with respect to each license or permit issued under section 15 after enactment of S. 426, except in the case of license proceedings subject to sections 9 and 10 of S. 426.

It is our intent in adopting this amendment to establish this policy without regard to the outcome of litigation for the FERC proceeding subject to section 9 of the bill. We do not intend to suggest or imply by this amendment that we agree or disagree with FERC's or the court's interpretation of section 7(a) of the Federal Power Act as it exists prior to enactment of this bill.

Second, the conference report regarding all projects ably discusses the intent and meaning of the amendments to section 4(e) of the act. I only want to stress that it compliments and confirms judicial holdings that nonpower issues must be considered and resolved prior to an original or a new license being issued. It seeks to ensure that nonpower values are, as noted by our committee, to the greatest extent possible, as "healthy and as abundant after licensing and development as before."

We recognize that the circumstances of each licensing, exemption, and permitting decision vary. If, for instance, it is determined that a project can economically produce needed power and also meet fish and wildlife needs after considering the project, not in a vacuum, but in relation to other projects on a waterway, then presumably a license would issue.

As was recognized in the Pacific Northwest Power Act of 1980, licensing to serve power purposes should not be permitted on the back of fish and wildlife, recreational values, including programs to restore fisheries, such as on the Merrimac and Connecticut Rivers in New England, or other similar values. In such cases, the Commission may be required to prohibit or restrict development in order to further the energy conservation, recreational, or fish and wildlife purposes of the act. We intend that the Commission will evaluate all license applications, including relicense applications, giving full and balanced consideration to all of the purposes and values promoted and protected by the act.

At this point, I want to reiterate a statement in the House report on H.R. 44, the companion to S. 426. We said:

> The term "fish and wildlife" as used in this section and elsewhere in this bill is intended to be construed broadly (See for example, the definition of this term, 16 U.S.C. 1532(8) and 16 U.S.C. 3371(a)). It applies to sport, as well as commercial, fisheries. It also applies to migratory and resident wildlife. In regard to the term "protection, mitigation of damage to, and enhancement," the Committee refers to its report of May 15, 1980 (H. Rept. 96-976, Part I), on the Pacific Northwest Electric Power Planning and Conservation Act of 1980 where we said:
>
> "It has been suggested that the terms 'protect, mitigates, and enhance' should be defined. The committee did not choose to do so in recognition of the fact that these terms are not new to those concerned with this resource, and because such a definition might later prove more limiting than anticipated.
>
> "At the same time, the Committee does not intend that these terms be construed in broad terms that biological and economic considerations will be totally ignored. They must be considered. However, cost should not be a deterrent if a fish and wildlife need might be sacrificed to save dollars."

The final version does not change these comments.

As the conference report observes, the new section 10(j) stems from that provision in the House bill. Again, the "Statement of Managers" is quite helpful and I support it. But again, I would like to quote from the House report which I think should also be helpful for all to see in applying this section in the future. We said:

> The Committee recognizes that in certain cases the expert opinion and recommendations of these agencies may be that development of a site, even with license conditions, would not be consistent with fish and wildlife values and that a license should not issue. They are free to make such recommendations. They are not required to make favorable recommendations laced with conditions. If State or Federal fish and wildlife agencies report that a project's impacts, taken alone or in combination with others on a waterway planned or in existence, cannot be mitigated, FERC may have to conclude that issuance of the license, whether original or otherwise, may be inappropriate (at least in the form proposed) for power development. Further, fish and wildlife enhancement, not just protection and mitigation, must be part of the consideration at FERC. The goal is to avoid actions that would jeopardize this resource.

I hasten to point out that the conferees and the House committee do not intend or expect that in the case of existing dams, these agencies would or should recommend the tearing down of dams or that FERC would conclude that to be sound policy, unless, of course, safety might also be a significant factor. We have all made that very clear, particularly in our discussions with the distinguished Senators from Nebraska. Indeed, their concerns are discussed in detail in the Statement of Managers which I, again, strongly support and endorse with my other colleagues on the conference. I particularly want to commend those Senators for their efforts in working out these matters.

Last, I stress that the ultimate decision on these recommendations is with FERC, although FERC clearly cannot reject them in a cavalier fashion.

Mr. Speaker, the "Statement of Managers" makes clear that section 10(j) does not change other environmental laws or the present duties of FERC under sections 4, 10(a), and 18 of the Federal Power Act, "nor diminish the importance of those provisions in providing fish and wildlife benefits" under section 18, particularly "both downstream and upstream of a project." In the case of section 18, I am particularly concerned about FERC's activities and that of the Interior Department in regard to a project in Maine and Virginia. It is a matter of great concern to our Oversight and Investigations Subcommittee which will be examining the matter.

Included in the conference report is section 4(c) of S. 426 requiring FERC to review and change certain 30-day periods in the Federal Power Act. This provision grows out of a recent General Accounting Office report entitled, "Hydropower Impact on Fish Should Be Adequately Considered." My relevant correspondence with FERC follows:

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS OF THE COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, June 16, 1986.

Hon. ANTHONY G. SOUSA,
Acting Chairman, Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC.

DEAR MR. CHAIRMAN: As you know, I continue to be quite critical of the Federal Energy Regulatory Commission (FERC) for the apparent lack of interest and sense of responsibility by your agency in carrying out FERC's duties under the laws applicable to hydro licensing, particularly in regard to fish and wildlife resources. Following hearings in September 1984 by the Subcommittee on Energy Conservation and Power, I thought that FERC was beginning to change that attitude and I commended former Chairman Raymond O'Connor. I am dismayed, however, to learn from the enclosed General Accounting Office (GAO) report that apparently FERC has really not changed.

Insensitivity toward fish and wildlife concerns still are all too prevalent at FERC. Fish and wildlife is the stepchild. As the enclosed GAO report shows, FERC personnel are apparently reluctant to exhibit any flexibility toward working out problems in order to make it easier for FERC and Federal and state fish and wildlife agencies to preserve, protect, and enhance this national treasure. Despite the requirements of the law, FERC seemingly shows great indifference toward working out accommodations to ensure full compliance with the law for this resource. That is troublesome and it cannot be tolerated. FERC must change now and I intend to make that very clear as we consider H.R. 44 in conference.

The GAO report cites the first sentence of section 313(a) of the Federal Power Act (FPA) which provides that:

Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party *may apply for a rehearing within thirty days after the issuance of such order.*

The GAO then found that:

The total number of hydroelectric applications filed annually with FERC has grown from as few as 63 in Fiscal Year 1978 to over 1,100 annually in Fiscal Years 1981 through 1985, with more than 2,100 applications in Fiscal Year 1981;

As of April 1, 1986, the Northwestern U.S. (Idaho, Montana, Oregon, and Washington) "had 258" nonfederal hydroelectric projects which is "about 16.5 percent of the total under FERC's jurisdiction nationwide;"

This increase "has affected not only FERC, but also" the Federal and State fish and wildlife agencies by substantially increasing the workload for all;

Pursuant to the Fish and Wildlife Coordination Act, these agencies must be given an opportunity to comment on all applications from a fish and wildlife standpoint and under the Federal Power Act they can be intervenors in FERC proceedings;

For licenses, etc., issued, not by the Commission, but by FERC's Office of Hydroelectric Licensing, intervenors have just 30 days to appeal; and

For licenses issued by the full Commission, intervenors have 30 days to request a rehearing.

1. Please explain under what circumstances the Office of Hydropower Licensing issues a license rather than the Commission. Please explain why the appeal period for licenses issued by the Hydropower Office is limited to 30 days. Is there any statutory reason for this short appeal period?

2. Why does FERC seemingly assume that these two 30-day periods are 30 calendar days which includes Saturdays, Sundays and Federal holidays? Is there any requirement in the law that specifically precludes FERC from interpreting the law to mean 30 working days?

3. The fourth sentence of section 313(a) of the Federal Power Act provides that unless FERC acts upon a rehearing request "within thirty days after it is filed, such application *may* be deemed to have been denied." (Italics supplied) The language gives FERC discretion to deny for this purpose. However, FERC's regulations take away that discretion by stating (18 CFR 385.713(f)) that if an application is *not* acted upon within 30 days "after the request is filed, the request is denied." Why is this automatic denial provided? Please provide a table showing all rehearing requests since January 1, 1980 to the present, showing the identity of the project, its location, the licensee, the person or persons requesting the rehearing (state whether or not the person was an intervenor), and the action taken by the Commission, including all instances where the application was *deemed* denied under this regulation.

The GAO points out that although fish and wildlife agencies have an opportunity to submit comments on an application, they wisely filed for intervenor status which makes them a party "to all subsequent events, including receiving copies of all correspondence between FERC and the applicant." However, GAO stresses that these agencies "generally do not know how their comments have been resolved" by FERC "until an order is *published* in the *Federal Register* and FERC *mails* a copy to the fish and wildlife agencies *announcing its decision* on the proposed hydroelectric project." (*Italic supplied*) Until then, these sister governmental agencies are in the *dark*. As an intervenor, these agencies, however, are supposed to have the final opportunity to present their views to the Commission on the decision. GAO states: "In our opinion, this is a particularly important phase in FERC's regulatory process."

I fully agree and if it worked properly, few could complain. But as GAO observes it does not work properly, particularly now that hydro applications number not in the tens or twenties annually, but in the hundreds and thousands. Simply stated, the FERC process, coupled with the slowness of the U.S. mails, combines to ensure that these agencies do *not* receive the FERC orders until 6 to 12 days after the orders are issued. This does not give these agencies enough time to respond and they have complained to FERC, but did not receive even a glimmer of hope. For example:

The NMFS Seattle office has also contacted FERC on several occasions about not receiving some FERC orders and receiving others too late to respond within the 30-day period. In May 1984, NMFS wrote to FERC regarding its April 1984 request for a rehearing on a hydroelectric project that was rejected because it was late. NMFS pointed out that the reason it was late was because it had not received a copy of the order. *Rather, it had learned of the order through a third party, a utility representative. NMFS also told FERC that there were other orders issued within the past 6 months for which NMFS had not received copies, and still other orders which were received about 2 weeks after issuance, thereby not providing adequate time for review and response.* Although NMFS could not provide the specific number of times this had occurred, beginning in 1983, NMFS officials had orally told FERC about these problems several times, *but FERC had not taken any corrective action.*

Because of the concerns expressed by the fish and wildlife agencies about FERC's 30-day period for orders, we reviewed FERC's procedures for processing and mailing its hydroelectric project orders to fish and wildlife agencies in the Northwest. According to a FERC official, after the Secretary of the Commission signs an order, it usually takes 3 to 5 days for FERC to print and process an order for mailing. It takes an average of 3 additional days for an order to reach the Northwest by first class mail service. (According to Postal Service standards, 90 percent of the first class mail sent from Washington, D.C., takes 3 days to reach the west coast.) In addition to these 6 to 8 days, another 3 days of the 30-day period are generally used in mailing the fish and wildlife agencies' response from the Northwest to FERC headquarters in the east.

We discussed the results of our review of FERC procedures and the fish and wildlife concerns with FERC officials. FERC officials *agreed* with the results of our review and recognized that interested parties *do* *not* have the full 30-day period *because of the processing and mailing time.* We asked them whether they had considered any alternatives which would give the fish and wildlife agencies in the Northwest more of the 30-day period. Although the FERC officials recognized the constraints that the 30-day period imposes on the fish and wildlife agencies in the Northwest, *they told us that they have not considered any alternatives to the current processes and procedures.*

The FERC officials pointed out, however, that since October 1985 FERC has sent the environmental assessments on each proposed hydroelectric project to all interested parties, including the fish and wildlife agencies. Therefore, these agencies will know how the FERC staff had handled their comments before FERC issues the order on the project. *Although this process might provide the agencies with timely information, we believe that it is too early to determine how much this process will help the agencies.* The fish and wildlife agencies in the Northwest told us that although this process might help them, it will *not* resolve their concerns because it only represents the FERC's *staff position,* which the Commission could change. Therefore, they still have to await FERC's order before beginning to prepare their response. (Italic supplied)

Mr. Chairman, the seriousness that FERC attached to this problem is exhibited by the GAO reporting that the Hydropower Licensing Office's absurd suggestion that these fish and wildlife agencies either waste time daily telephoning FERC and listening to FERC's "recording of FERC actions" or "subscribing" at some cost to a private service which "lists FERC actions." I am surprised that they did not contend that these agencies must rely on the *Federal Register* which is, of course, not cheap and is mailed. Nevertheless, GAO took the Hydropower Office's advice and you can imagine the results:

We called FERC's daily recording and found that it provides the name of the applicant, FERC's assigned project number, type of application/order, and action taken. As NMFS *officials had stated, the daily recording does not include any specifics about how fish and wildlife concerns were handled by FERC or the applicant.* Concerning the subscription service, NMFS officials said it would have to be received more quickly than FERC's mailings to be beneficial. According to an official of the firm that publishes FERC's subscription service, *the firm cannot provide the data on FERC's orders sooner than FERC's direct mailing* because (1) the firm must wait for a copy of FERC's orders before they can print it and (2) the firm's report of FERC's actions is published weekly. (Italic supplied)

GAO makes a recommendation with which I agree. However, I do not want to leave this matter to the whims of the Hydropower Licensing Office, nor do I think it should be treated as unique to the Northwest. I look to the Commission and its Acting Chairman for a nationwide solution and I give *you* 30 days, including Saturdays, Sundays, and Federal holidays, from the date you receive this letter to work out a reasonable solution. I suggest that you start with the idea that the law (written many years ago when applications were few) does not specify that the 30 days must be calendar days. They could be working days. I also want to know if this situation will continue to be a problem under H.R. 44 as passed by the House.

Finally, the GAO also examined FERC's inspection activities which the full Committee recently discussed in its report on H.R. 44 (H. Rept. 99-507, pp. 26-27, 39-40). The GAO said:

FERC is responsible under the FPA for inspecting nonfederal hydroelectric dams to ensure that such dams are operated and maintained in compliance with license or exemption conditions, *including fish and wildlife provisions.* During these inspections, FERC inspectors primarily focus on human health and safety conditions. Although they observe fish-protection measures, FERC officials said that the inspectors generally do *not* have the *technical* expertise to determine whether the fish-protection measures are working properly. FERC officials said that although no working agreements exist, they *rely* on state fish and wildlife agencies to make these determinations. *However, FERC officials are not aware of whether or how the states make these determinations and have not discussed them with the state fish and wildlife agencies.* Therefore, even though FERC is responsible for determining that fish-protection measures are working properly, *it does not fulfill this responsibility itself, nor does it take steps to assure that the state agencies do it.* During our review, we found evidence that the fish and wildlife agencies in two states are involved in reviewing the impact of hydroelectric dam operations on fish. These agencies indicated a willingness to assist FERC in fulfilling its fish-protection responsibilities. (Italic supplied)

GAO also recommends:

To fulfill its responsibilities under the FPA for protecting fish, we recommend that the Chairman, FERC, have the Director, Office of Hydropower Licensing, enter into written working agreements with fish and wildlife agencies in those states with significant fish populations potentially impacted by hydroelectric dams. These agreements should specify (1) to what extent FERC will rely on the agencies to ensure that fish-protection measures are working properly and (2) how FERC and the agencies will coordinate their respective activities, including inspections and sharing reports, analyses, and other pertinent data.

I have no objection to this approach in general, except that it tends to appear to relieve FERC of its duty under the law to enforce the law and *all* requirements of a license. I do not accept FERC's excuse that it lacks "technical expertise" in regard to *enforcing* conditions that FERC includes in any license, etc. The law, as it should, imposes enforcement responsibility on FERC, not on the state fish and wildlife agencies. For purposes of enforcement, FERC should acquire the needed expertise, particularly in light of FERC's comments in its enforcement memorandum attached to its May 16, 1986 letter to this Subcommittee.

I request that, within 45 days after receipt of this letter, FERC explain how it will correct this problem on a nationwide basis and provide a timetable for that correction.

Please provide a copy of your reply to the GAO for its review and comment to the Subcommittee.

With best wishes.

Sincerely,

JOHN D. DINGELL,
Chairman, Subcommittee on Oversight and Investigations.

FEDERAL ENERGY
REGULATORY COMMISSION,
Washington, DC, July 18, 1986.

Hon. JOHN D., DINGELL,
Chairman, Subcommittee on Oversight and Investigations, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of June 16, 1986, enclosing a copy of the General Accounting Office's (GAO) report Energy Regulation: Hydropower Impact on Fish Should Be Adequately Considered. Your letter also requests comments on the conclusions contained in the report and responses to specific questions arising from your review of the report.

Responses to the three specific questions on page two of your letter are enclosed as Appendix A to this letter. In regard to your request that the Commission consider allowing interested parties more time to respond to Office Director orders and Commission orders on hydorelectric projects, I have directed Commission staff to prepare a rulemaking order to extend the time period for filing appeals of Office Director orders from 30 to 45 days. This proposed rulemaking would be prepared for consideration by the Commission at one of its September 1986 meetings. A Commission staff analysis of GAO's three recommendations on this subject is attached as Appendix B to this letter.

However, as discussed in the enclosed response to question number 2, it appears that the time period for requests for rehearing under the Federal Power Act is limited to 30 calendar days. I would also note with regard to the period for rehearings that rehearing applies only to Commission orders. Unlike Office Director orders, the vast majority of Commission orders are issued after consideration at a public meeting, the agenda for which is made available to the public seven days in advance of the meeting. Pursuant to section 375.204(d) of the Commission's regulations, this list is mailed, at no charge, to any interested person. I have instructed the Secretary of the Commission to add to the mailing list the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, and the State fish and wildlife agencies, to the extent they are not already on the list. With this and the foregoing amendment to the rules, I believe the concerns you have raised should not be a problem whether or not H.R. 44 is enacted.

In response to your questions regarding the Commission's inspection and compliance activities, I have directed Commission staff to perform a full review of these activities, as they relate to the activities of state fish and wildlife agencies. This review will be presented to me in time to respond to your specific questions by August 1, 1986.

Mr. Chairman, I appreciate your and GAO's efforts to keep the Commission informed of issues relating to our administration of the hydropower licensing program under the mandates of Congress. Your oversight is beneficial and helpful. I share your specific concern that the time available for appeals and requests for rehearing be sufficiently flexible to allow all interested parties, anywhere in the country, a practical opportunity to exercise their rights under the law. In addition, I take the Commission's enforcement and compliance responsibilities seriously, as my previous letters to you have indicated. If I may be of further assistance to you in this or any other Commission matter, please let me know.

Sincerely,

ANTHONY G. SOUSA,
Acting Chairman.

APPENDIX A

Question 1. Please explain under what circumstances the Office of Hydropower Licensing issues a license rather than the Commission. Please explain why the appeal period for licenses issued by the Hydropower Office is limited to 30 days. Is there any statutory reason for this short appeal period?

Answer. The Office of Hydropower Licensing (OHL) has the delegated authority to issue a license where the license application is uncontested. 18 C.F.R. § 375.314(q)(2)(i) (1985). An application is uncontested if no motion to intervene, or notice of intervention, in opposition to the application made under 18 C.F.R. § 385.214 (intervention) has been received by the Commission. 18 C.F.R. § 375.301(c) (1985). As a matter of practice, OHL refers to the Commission for its decision any license application which poses novel or sensitive legal or policy issues, even if it is not contested.

OHL was delegated the authority to issue uncontested licenses in July 1979 (44 F.R. 45449). In the same order, the Commission expanded the appeal period for all delegated staff actions (other than a decision of a presiding officer) from 15 days to the current 30 days. See 18 C.F.R. § 385.1902 (1985). Before March 1974, the appeal period had been 10 days (39 F.R. 12731). The Commission's order in 1979 establishing the 30-day appeal period did not address why the appeal period is set at 30 days.

There is no statutory requirement that the appeal period be 30 days. In establishing procedures for appeals of delegated staff action, the Commission invoked Section 309 of the Federal Power Act, 16 U.S.C. § 825(h), and Section 16 of the Natural Gas Act, 15 U.S.C. § 717(o), which provide that the Commission "shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act." 44 F.R. 46449.

Question. 2. Why does FERC seemingly assume that these two 30-day periods are 30 calendar days which includes Saturdays, Sundays and Federal holidays? Is there any requirement in the law that specifically precludes FERC from interpreting the law to mean 30 working days?

Answer. No Commission order has been found explaining why the Commission's rules calculate the 30-day periods for filing appeals and rehearing requests (18 C.F.R. §§ 385.713(b), 385.2007(a) (1985)) by using calendar days as opposed to working days. Section 313(a) of the Federal Power Act, 16 U.S.C. 825*l*(a), which applies only to rehearing requests, does not specify either "calendar days" or "working days," so arguably the Commission is not legally precluded from interpreting Section 313(a) to mean 30 working days.

It should be noted, however, that the courts have repeatedly held that the failure of a party to file a request for rehearing with the Commission within 30 calendar days acts as a jurisdictional bar to judicial review. See, e.g., *Boston Gas Company* v. *F.E.R.C.*, 575 F.2d 975 (1st Cir. 1978) (request for rehearing filed on 34th calendar day held untimely), cited with approval in *Asarco, Inc.* v. *F.E.R.C.*, 777 F.2d 764, 774-5, (D.C. Cir. 1985); *Sierra Association for Environment* v. *F.E.R.C.*, No. 85-7390, slip op. (9th Cir. June 17, 1986). See generally 86 C.J.S. Time § 12 (1954) ("Ordinarily the word 'day,' as used in the law, means a calendar day"). Also, we are not aware of any instance in which a reference to a time period in a statutue or regulation has been construed to mean working days rather than calendar days where the applicable provision has not clearly indicated that working days were intended. The calendar day general rule appears to be applied by all Federal and State courts and agencies.

In addition, the time period in section 313(a) was construed to mean 30 working days, consistency would require that all time periods in the Federal Power Act also be construed to mean working days. Similarly, the parallel provision in the Natural Gas Act, section 19(a), might have to construed to apply to working days. This would not only be inconsistent with the universally accepted general rule mentioned above, but would be a departure from the common understanding that has been attached to these provisions by the Commission, the regulated entities and intervenors since these statutes were enacted. Thus, it is unlikely that the Commission could expand section 313(a)'s 30-day rehearing requirement by interpreting it to mean working days instead of calendar days.

The Commission's rules do provide that, where the last day of the time period falls on a Saturday, Sunday, part-day holiday that affects the Commission, or legal public holiday as designated in 5 U.S.C. § 6103, the period does not end until the close of Commission business of the next day which is not one of the aforementioned days. 18 C.F.R. § 385.2007(a)(2) (1985). This Commission rule is in pertinent part consistent with the Federal Rules of Civil Procedure governing the computation of any time period prescribed by those rules, by the local rules of any district court, and by any applicable statute. See Fed. R. Civ. P. 6(a)). Rule 6(a) (as amended August 1, 1985) also provides that, when the period of time prescribed is less than 11 days, then intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. Conversely, when the period of time prescribed is more than 11 days, Rule 6(a) is interpreted to include intermediate Saturdays, Sundays, and legal holidays in the computation. See 2 Moore's Federal Practice ¶ 6.04 at 6.64.

Question 3. The fourth sentence of section 313(a) of the Federal Power Act provides that unless FERC acts upon a rehearing request "within thirty days after it is filed, such application may be deemed to have been denied." (Underlining supplied) The language gives FERC discretion to deny for this purpose. However, FERC's regulations take away that discretion by stating (18 CFR 385.713(f)) that if an application is not acted upon within 30 days "after the request is filed, the request is denied." Why is this automatic denial provided? Please provide a table showing all rehearing requests since January 1, 1980 to the present, showing the identity of the project, its location, the licensee, the person or persons requesting the rehearing (state whether or not the person was an intervenor), and the action taken by the Commission, including all instances where the application was deemed denied under this regulation.

Answer. The fourth sentence of Section 313(a) of the Federal Power Act provides in full: "Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied." The sentence does not say that the Commission may deem the rehearing application denied; under the terms of the statute, anyone may deem rehearing to have been denied. Thus, the import of the sentence is notice to the public that, absent further Commission act, rehearing is denied and, as a consequence, the case is ripe for judicial review. The sentence's focus on the Commission's discretion is on the discretion to act and thereby to not deny rehearing. Courts have upheld the Commission's authority under this provision to essentially toll the time for disposing of a rehearing request by "acting" to issue a public notice of its intent to dispose of the rehearing application beyond the 30-day period. *California Company* v. *FPC*, 411 F.2d 720 (D.C. Cir. 1969); *General American Oil Co.* v. *FPC*, 409 F.2d 597 (5th Cir. 1969). The Commission could not, by regulation, change the terms of the statute to give itself longer than 30 days to act on rehearing before the public may deem rehearing denied and seek judicial review. Thus, the Commission's regulations simply repeat the statutory provision for finality that, if the Commission is silent, rehearing is to be deemed denied upon the thirtieth day. See *Texaco-Ohio Gas Co.* v. *FPC*, 207 F.2d 615 (D.C. Cir. 1953).

Attached is a table showing all rehearing requests since January 1, 1980, to the present, showing the identity of the project, its location, the licensee, the person or persons requesting the rehearing, and action taken by the Commission.

ATTACHMENT A

Licensee	Project No.	Location	Rehearing petitioners	Action taken	Citation
Palisade Irrigation District	8383	Colorado River, CO	Licensee	D,N	34 FERC ¶ 61,377 (Mar. 6, 1986).
Uncompahgre Valley Water Users Association Montrose Partners.	6423 6424 6425 6426 6427 6428	Montrose and Delta Canals Colorado	Energenics Systems, Inc. Gregory Wilcox, Umcompahgre Valley Water Users Assoc.	D,N	26 FERC ¶ 61,113 (Feb. 2, 1984).
Pacific Gas and Electric Co	77	East Fork Russian River, CA	Covelo Indian Community and California Trout	D,Y	25 FERC ¶ 61,334 (Dec. 1, 1983).
Escondido Mutual Water Co., city of Escondido Vista Irrigation District.	176	Escondido Creek, CA	Licensees's Dept of Interior; the R LaJoller and Son Pasqual Bonds of Mus Indians.	GP,Y	9 FERC ¶ 61,241 (Nov. 26, 1979).
Pacific Power and Light Co	935	Lewis River, WA	City of Santa Clara et al., American Public Power Association et al.	D,N	25 FERC ¶ 61,190 (Nov. 22, 1983).
Calaveras County Water District	2409	North Fork Stanislaus River, CA	Licensee Pacific Gas and Electric Co., Northern California Power Agency, Friends of the River.	D,Y	20 FERC ¶ 61,031 (July 9, 1982).

ATTACHMENT A—Continued

Licensee	Project No.	Location	Rehearing petitioners	Action taken	Citation
El Dorado Irrigation District and El Dorado County Water Agency.	2761	South Fork American River, CA	Licensees American River Recreation Association, Inc., Pacific Gas and Electric Co.	G,N	32 FERC ¶ 61,289 (Aug. 23, 1985).
S.D. Warren	2897	Presumpscott River, ME	S.D. Warren	D,N	10 FERC ¶ 61,153 (May 28, 1980).
South Columbia Basin Irrigation District	2926	Potholes East Canal, WA	Dept. of Interior	D,N	11 FERC ¶ 61,209 (May 28, 1980).
Solano Irrigation District	2780 3220	Monticello Dam, CA	Napa County and Napa County Flood Control and Water Conservation Dist., Dept. of Interior.	GP,N	15 FERC ¶ 61,068 (Apr. 23, 1981).
PG&E Co	233	Pit River, CA	The City of Santa Clara and Northern California Power Agency, California Trout.	GP,Y	15 FERC ¶ 61,169 (May 27, 1981).
Alabama Electric Co	2912	Tombigbee River, AL	Gulf States Paper Corp	Pending	
City of Seattle	2959	South Fork Tolt River, WA	NMFS, Tulalip Tribes, WA, Depts of Fisheries and Game, Licensee.	....do	
City of Richmond	3024	James River, VA	Department of Interior	....do	
Do	3029	....do	....do	....do	
Sacramento Municipal Utility District, et al	3223	Northfork Feather River, CA	Licensee	....do	
Jack M. Fuls	3473	Deschutes River, OR	Steidl Dam Co	....do	
Long Lake Energy Corp	4684	Hudson River, NY	Licensee	....do	
North Canal Waterworks	5906	Merrimack River, MA	....do	....do	
Weyerhaeuser Co	6220	Tokul Creek, WA	Wash. Depts of Fisheries and Game Tulalip Tribes, U.S. Fish and Wildlife Service.	....do	
Northwest Power Co., Inc	6727	South Yuba River, CA	Sierra Nevada Group, So. Yuba River Citizens League.	....do	
City of New Martinsville, WV	6902	Ohio River, West Virginia and Ohio	City of New Martinsville, WV	....do	
City of Rome, NY	7610	Mohawk River, NY	City of Rome	....do	
Long Lake Energy Corp	5867	Ausable River, NY	Essex County Industrial Development Agency	DD,N	(Feb. 4, 1983) unreported.
Morgan City Corp	5983	Weber River, UT	City of Bountiful	Withdrawn	
Arthur L. Bloom; Ada County, ID; City of Boise, ID	4881	Boise River, ID	Cook Electric Co. Licensees	D,N	33 FERC ¶ 61,046 (Oct. 18, 1985).
South Fork Resources, Inc	4885	South Fork Snoqualmie River	Licensee Washington State Dept. of Game and Fisheries, Tulalip Tribes, NMFS, U.S. Fish and Wildlife Service.	GP,Y	32 FERC ¶ 61,042 (July 5, 1985).
Brownville Power Co	4939	Black River, NY	Licensee	D,N	32 FERC ¶ 61,148 (July 26, 1985).
Maine Hydroelectric Development Corp	2809	Cobboseecontee Stream, ME	American Tissue Mills, Inc	DD,N	(June 29, 1981) unreported.
Sacramento Municipal Utility District	3177	Rock Creek, CA	SMUD	DD,N	But see 14 FERC ¶ 61,130 (Feb. 13, 1981).
Georgia Pacific	2548	Moose River, NY	Licensee	D,N	13 FERC ¶ 61,029 (Oct. 9, 1980).
Safe Harbor Water Power Corp	1025	Susquehanna River, PA	Pennsylvania Fish Commission, Susquehanna River Basin Commission.	GP,Y	13 FERC ¶ 61,131 (Nov. 18, 1980).
Louisville Gas and Electric Co	289	Ohio River, KY	Licensee	GP,N	20 FERC ¶ 61,345 (Sept. 23, 1982).
Georgia Pacific Corp	3892	Hudson River, NY	Long Lake Energy Corp	D,N	19 FERC ¶ 61,034 (Apr. 14, 1982).
Olcese Water District	4129	Kern River, CA	Kern County Water Agency	D,N	19 FERC ¶ 61,035 (Apr. 14, 1982).
Union Electric	459	Osage River, MO	Licensee	GP,N	20 FERC ¶ 61,016 (July 8, 1982).
Susquehanna Power Co., Philadelphia Electric Co	405	Susquehanna River, PA	Pennsylvania Fish Commission, Maryland Dept. of Natural Resources, Susquehanna River Basin Commission.	GP,Y	13 FERC ¶ 61,132 (Nov. 18, 1980).
York Haven Power Co	1888	....do	Pennsylvania Fish Commission Susquehanna River Basin Commission.	GP,Y	13 FERC ¶ 61,133 (Nov. 18, 1980).
Pennsylvania Power and Light Co	1881	....do	....do	GP,Y	13 FERC ¶ 61,145 (Nov. 19, 1980).
Nantahala Power and Light Co	2694	Queens Creek, NC	Licensee and Town of Highlands, North Carolina	D,N	13 FERC ¶ 61,143 (Nov. 19, 1980).
City of Santa Clara	3193	Stony Creek, CA	Orlando Unit Water Users' Association	D,N	22 FERC ¶ 61,121 (Feb. 4, 1983).
Joseph M. Keating	3195	South Fork American River, CA	Harriet La Flamme	D,Y	32 FERC ¶ 61,290 (Aug. 23, 1985).
Idaho Power Co	2845	Moscow River, ID	Licensee	GP,N	25 FERC ¶ 61,436 (Dec. 28, 1983).
East Columbia Basin Irr. Dist.; Quincy Irr. Dist.; So. Col. Irr. Dist.	2840 2849 3295	Main Canal, WA	Licensees and City of Seattle, WA. City of Tacoma, WA.	GP	25 FERC ¶ 61,177 (Nov. 7, 1983).
Robert W. Shaw	2861	Androscoggin River, NH	Appalachin Mountain Club, Society for the Protection of N.H. Forests.	GP,Y	26 FERC ¶ 61,408 (Mar. 29, 1984).
Met. Sanitary District of Greater Chicago	2866	Chicago Ship Canal, IL	Licensee	D,N	27 FERC ¶ 61,207 (May 9, 1984).
Kings River Conservation Dist	2890	Kings River, CA	Licensee and the Sierra Association for the Environment.	GP,N	32 FERC ¶ 61,021 (July 5, 1985).
Borough of Weatherly	2969	Lehigh River, PA	Licensee	D,N	32 FERC ¶ 61,398 (Sept. 19, 1985).
Suncook Power Corp	3179	Merrimack River, NH	Suncook Power Corp	D,N	24 FERC ¶ 61,107 (July 22, 1983).
New York State Energy Research and Development Authority.	6806	Moose River, NY	N.Y. ERDA	D,N	23 FERC ¶ 61,401 (June 22, 1983).
South Fork II, Inc	7563	Snoqualmie River, WA	Wash. Dept. of Fisheries and Game; U.S. Fish and Wildlife Services; Tulalip Tribes.	GP,Y	32 FERC ¶ 61,015 (July 2, 1986).
PUD No. 1 of Chelan County, WA	943	Columbia River, WA	Licensee National Marine Fisheries Service Oregon Dept. of Fish and Wildlife,* Yakima Indians*.	GP	21 FERC ¶ 61,264 (Nov. 23, 1982).
Idaho Power Co	2778	Snake River, ID	Idaho Power Co	G,N	16 FERC ¶ 61,042 (July 23, 1981).
Idaho Power Co	2777	....do	....do	GP,N	16 FERC ¶ 61,071 (July 24, 1981).
New York State Electric and Gas Corp	2934	Hudson River, NY	Licensee	GP,N	16 FERC ¶ 61,176 (Sept. 10, 1981).
Kings River Conservation District	2890	Dinkey Creek, CA	Sierra Association for the Environment	D,Y	21 FERC ¶ 61,079 (Nov. 15, 1982).

Key to table:

1. "Rehearing Petitioners": * = petitioner is not an intervenor (in all other cases the petitioner is an intervenor or the applicant).
2. "Action Taken": G = granted. GP = granted in part. D = denied. DD = denied by operation of law. Y = fish and wildlife issues. N = no fish and wildlife issues.

APPENDIX B

STAFF ANALYSIS OF GAO RECOMMENDATIONS

(See page 20 of the GAO Report)

The recommendation by GAO that printing and mailing of orders impacting the Northwest be expedited raises several concerns. A Commission policy of expediting processing and mailing of orders to one region of the country may be offensive to parties from other parties of the country who also deal with the Commission. The Commission has an obligation to accord equal treatment to all parties, wherever located. Similarly, it may be inappropriate to give special priority in this regard to hydroelectric orders.

There are also administrative concerns. While the Commission can expedite printing and mailing of some orders and does so where appropriate, it is clear that whenever resources are limited, the large the universe of orders one attempts to expedite, the less actual expedition will be achieved. This would be a particular concern with regard to hydroelectric orders, because they comprise a substantial portion of the total number of Office Director orders and Commission orders. Also, orders in other areas that require expeditious handling would have to take a back seat to hydroelectric orders, which may not be appropriate. In addition, potentially significant amounts of staff time would be devoted to identifying the orders qualifying for expedited treatment. Finally, parties to hydroelectric proceedings who believe an order of interest to them was not handled with sufficient expedition might be able to argue that the policy of expedited handling gives rise to a right to file an appeal or request for rehearing based on insufficient expedition. This raises the spectre of litigation over such matters as how soon after issuance an order must be printed and mailed to give a particular party adequate time to respond. The Commission's administrative processes may not be effective under such circumstances.

The idea of accepting an appeal or request for rehearing if postmarked within 30 days is facially attractive. However, there are three significant problems with this idea. First Federal agencies send almost all of their mail, including appeals and requests for rehearing to this Commission, in franked envelopes. These are not cancelled by the Post Office and therefore have no postmark. Absent a postmark, the Commission has no way of knowing whether the 30 day deadline (or any other deadline) has been met. Second, many of the entities that make filings with the Commission have postage meters. A postage meter can be set to show any mailing date the user desires. Thus, a party that misses a deadline can simply set its postage meter to show the desired date, backdate the appeal or rehearing, then reset it to show the correct date for other mail. It would be impossible for the Commission to ensure compliance. Finally, postmarks appear on the envelopes, not on the filings. The Commission receives dozens of filings and several hundred other pieces of correspondence each day. Many are not correctly addressed and must be rerouted to the Filings Branch from other offices. Notwithstanding the Commission's best efforts to the contrary, there is a strong possibility that some envelopes will be separated from the filings within, raising questions as to whether the filing was timely made.

Designating Portland, Oregon, or any other regional office as the official receiving point for hydroelectric orders also raises administrative problems. The regional offices are staffed with project inspectors or auditors. Very little support staff is available at these offices. Thus, they are not currently set up to receive and "stamp in" numerous filings each day. In addition, these offices would have to gather together each day's filings and mail them to the Commission's headquarters, where the staff that analyzes these filings and the Commission's recordkeeping staff are located. This raises several problems. First, the possibility of filings being lost or delayed in the mails increases. Second, if the postmark suggestion were adopted, the additional layer of handling would increase the possibility of the envelope being separated from the filing. Third, the Commission issues daily lists of the previous days filings, which are available in the Commission's Office of Public Information. The Commission would not be able to provide this timely information in the hydroelectric filings area if it had to await the arrival of each day's filings from Portland or from each of the other regional offices. Finally, the savings of time to be derived from mailing items to a regional office as opposed to the Washington headquarters does not appear to be significant. As the GAO report indicates (page 17) the Post Office states that 90 percent of all mail going from the east coast to the west takes only three days. Thus, mailing to a regional office would likely add one or two days at most to a party's time to respond.

In sum, GAO's concerns are legitimate, but its suggested solutions are not feasible. After consideration of the matter it appears a more appropriate way for the Commission to assist parties who may find it difficult to adequately respond to orders in 30 days would be to extend the time period for filing appeals of Office Director orders from 30 to 45 days.

FEDERAL ENERGY REGULATORY
COMMISSION,
Washington, DC, August 1, 1986.

Hon. JOHN D. DINGELL,
Chairman Subcommittee on Oversight and Investigations, U.S. House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: By letter of July 18, 1986, I provided you with a response to your request for comments on the conclusions contained in the General Accounting Office's (GAO's) report "Energy Regulation: Hydropower Impact on Fish Should be Adequately Considered," and responses to specific questions arising from your review of that report. The letter of July 18 also stated that I would provide an additional response by August 1, 1986, to your questions regarding the Commission's inspection and compliance activities and GAO's proposal regarding working agreements with state fish and wildlife agencies. A Commission staff analysis in this connection is enclosed.

Let me once again note that I appreciate your and the GAO's effort to keep the Commission informed of issues relating to the Commission's administration of the hydropower licensing program under the mandates of Congress. I take the Commission's enforcement and compliance responsibilities seriously. Consistent with that view, I have emphasized to the Commission's Director of the Office of Hydropower Licensing, whom I have recently appointed, that the compliance program must have high priority.

If I can be of further assistance to you in this or any other Commission matter, please let me know.

Sincerely,

ANTHONY G. SOUSA,
Acting Chairman.

RESPONSE TO CHAIRMAN DINGELL'S COMMENTS ON COMPLIANCE STAFF EXPERTISE AND GAO WORKING AGREEMENT PROPOSAL

Chairman Dingell's letter of July 16, 1986, raises two issues with regard to the Commission's inspection activities: first, whether the Commisson has the expertise needed to monitor compliance with license conditions, particularly in the area of fish protection measures, and second, whether GAO's proposal that the Commisson enter into working agreements with state fish and wildlife agencies specifying the roles of the parties and how they will coordinate their activities should be adopted.

The GAO report on H.R. 44 indicates that FERC officials said that field inspectors do not have the technical expertise to determine whether fish protection measures are working properly and rely on state agencies for this purpose. Notwithstanding any statements that may have been made by individual FERC employees, the 90 FERC inspectors in the regional offices are qualified to evaluate whether projects are operated and maintained in compliance with license and exemption conditions, including fish and wildlife provisions. Inspectors review both structural and operational features of projects. Structural facilities relating to environmental compliance include fish passage structures, intake screens, and physical streambed modifications. These project facilities are inspected to ensure that they are structurally sound, are maintained properly, and are operating as designed. Operational measures include providing adequate minimum flow releases, minimizing streamflow fluctuations, and minimizing reservoir fluctuations. The inspection of operational measures includes reviewing streamflow records, reviewing reservoir operating rule curves, as well as the visual inspection of the entire project, including tailwater gaging devices. The regional office staffs include structural and hydraulic engineers, as well as a complement of environmental specialists including fishery biologists, wildlife biologists, environmental protection specialists, and recreation specialists. The educational background and the on-the-job experience of these inspectors makes them well qualified to inspect all aspects of operating projects and to evaluate compliance with license conditions. To the extent that a regional office might require assistance in a particular case. the Commission has over 30 fishery and other environmental experts in Washington to provide technical assistance.

GAO's recommendation that the Chairman instruct the Director of OHL to enter into working agreements with state fish and wildlife agencies that would specify detailed requirements for interagency cooperation presents several problems. First, many states would be involved and each state may have up to three agencies with fish and wildlife responsibilities. Thus, a substantial administrative burden would be imposed on the Commisson in trying to negotiate so many agreements. In this regard, it appears from the language on page five of his letter that Chairman Dingell would contemplate that any such agreements relate to all license conditions, rather than just fish and wildlife conditions. As many license and exemption conditions do not relate to fish and wildlife concerns, an all encompassing approach might considerably expand the universe of state agencies with which to interact. Second, neither the Director of OHL nor the Commission is able to compel a state agency to enter into such an agreement. Even if the agency were willing to negotiate, it might not be possible to conclude an agreement satisfactory to both parties. In this connection, it is reasonable to suppose that the state agencies also desire a spirit of cooperation; however, they may find it advantageous not to commit to specific actions, but to make any agreement general in nature so as to fully preserve their options.

Finally, as Chairman Dingell notes, the Commission rather than the State agencies is responsible for ensuring compliance with license and exemption conditions. While the Commission can and should cooperate with the state fish and wildlife agencies in this regard, it cannot properly delegate that responsibility to such agencies. Thus, the Commission cannot "rely on the [state] agencies to ensure that fish protection measures are working properly", as suggested by GAO. In this regard, and without casting any aspersions on the state agencies, those agencies could not be compelled by the Director to abide by the terms of any agreement that might be negotiated. If a state agency were unwilling or unable to comply with its obligations under the agreement, the Commission's ability to meet its compliance responsibilities might be prejudiced.

In view of the foregoing, it would appear that a more fruitful approach to ensuring compliance with license and exemption conditions is to bolster the inspection program and to emphasize cooperation in that regard with the state agencies. The staff has made some significant improvements in this regard. One such effort is a computerized compliance tracking database, the Hydro License Compliance Tracking System (HLCTS), which has recently become fully operational. The HLCTS contains data regarding the license, exemption, and preliminary permit compliance requirements for all extant licenses, exemptions, and preliminary permits. At this time there are approximately 9,900 compliance requirements in the files. The HLCTS provides the staff with a description of each compliance requirement, the date by which the requirement must be met, and whether or not the requirement was met by the specific date. The files are updated continually. If the compliance date is not met, the staff contacts the licensee to find out why the deadline date has not been met, and determines the appropriate action to ensure compliance.

The HLCTS is fully integrated into the Commission's inspection program, which is carried out primarily by the inspectors at the original offices. When these inspectors visit the project sites, they have a complete

> checklist of the compliance requirements applicable to that specific project, and the current status of each, based on the HLCTS. They are responsible for determining whether all compliance requirements are being met. These inspections take place at regular intervals. In the case of dams classified as having a high hazard potential, inspections are made annually. Projects with dams are not so classified are inspected at least every three years.
>
> Finally, staff is currently engaged in a review of all proposed environmental protection license and exemption articles to find and eliminate potentially ambiguous language and to ensure that they are consistent with efficient enforcement. The article review is being conducted in cooperation with Federal agencies having resource management responsibilities. These agencies have authority under section 4(e) of the Federal Power Act to impose mandatory licensing conditions on projects located on Federal reservations under their jurisdiction.
>
> In sum, the GAO proposal does not appear to provide any advantage in this regard and is probably not practical to implement. However, staff is devoting significant resources to improve its cooperation with the state agencies, particularly in the compliance area, and will continue to work for further improvement.

Finally, Mr. Speaker, I note that the conference adopted the House additional enforcement provisions which are discussed in our committee's report. That report (pp. 26-27) also discusses, under the heading "Committee Oversight Findings," our continuing concerns about FERC's enforcement efforts. That investigation is continuing.

This is a good bill—a consumer bill, an environmental bill, and most importantly, a fair bill for both public and private power.

Before closing, I also want to commend the utilities for keeping their word regarding this bill. They worked with us and when agreement was reached, they stood fast, particularly in regard to the fish and wildlife provisions developed in the House and agreed to in conference. That is welcome.

I also want to commend two friends in the environmental community, Charlene Dougherty and David Conrad, who gave us facts and guidance in developing strong environmental provisions, particularly in regard to new dams and diversions subject to PURPA benefits and tax benefits. The proof, of course, will be in the administration of this bill at FERC. But I suspect these two good people will work with me and our conferees to see that our efforts bear real fruit.

In handling of matters of this sort on the floor, the Congress rarely honors those who contribute to the congressional process in a fashion not fully appreciated. I refer to our invaluable staffs, whose hard work, dedication, and loyalty makes possible good legislation.

Among those who have so labored are David Finnegan, my dear friend and invaluable member of the committee staff, Gil Sperling and Larry Seidman, able and dedicated members of the subcommittee staff, and the able Rob Ritzgibbons of the minority staff of the committee.

Pope Barrow, of legislative counsel, provided his usual highly competent service, and to him, the House may be properly grateful.

Finally, all of us on the committee rely heavily on the support staff who work long hours, often in great rushes, to prepare the documents and other materials required to make possible enactment of this important legislation. I applaud them.

I urge support for the conference report.

Mr. MOORHEAD. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Speaker, I rise today in support of the conference agreement on S. 426, the Electric Consumers Protection Act, which reforms the relicensing process for hydroelectric projects. I am pleased that the conference committee on which I served was able to resolve the differences between the House and the other body's versions of the legislation to the satisfaction of all of us.

As you know, in April the House overwhelmingly passed H.R. 44, the consensus relicensing reform package put together by the Energy and Commerce Committee. In working with the other body, I believe the House members of the conference committee have been able to put together a package consisting of the best of both bills. There were a number of principles in both bills on which there was agreement from the start. Both the House and the other body agreed that public utilities should not get a preference over private utilities when it comes time to renew hydroelectric licenses. In addition, both bodies agreed on the basic policy underlying this legislation: That competition should be promoted but that licenses should not be transferred to new licensees on the basis of minor or marginal differences, particularly when the transfer of the license would result in major economic disruptions.

With these principles in mind, the conference committee expanded the importance of the consideration of the applicants' need for power in determining the award of the license to include certain economic considerations. It is my understanding that this will focus on the fuel and capital costs to the applicants' customers. FERC must evaluate the relative need of each applicant for the project to serve its customers over the short and long term, including consideration of the reasonable costs and the reasonable availability of alternative sources of power, the effect on the applicant's operating and load characteristics, and the effect on the communities served by the project.

Mr. Speaker, passage of this conference agreement by both bodies will end the uncertainty surrounding the hydroelectric relicensing process over the past several years. I hope by colleagues will join in supporting this important legislative effort.

Mr. MOORHEAD. Mr. Speaker, I yield 3 minutes to the gentlewoman from Nebraska [Mrs. SMITH].

Mrs. SMITH of Nebraska. Mr. Speaker, I appreciate having this opportunity to speak on the conference report on S. 426, the Electric Consumers Protection Act.

At one time, I would have said that this bill is simply disastrous for the State of Nebraska. However, thanks to the cooperation and help of Mr. DINGELL, Mr. MOORHEAD, Mr. NIELSON, Mr. MARKEY, Mr. SHELBY, and others, this bill is now acceptable to me.

The bill requires that FERC include the recommendations of fish and wildlife agencies when fashioning a new hydrolicense, unless it can find that those recommendations are inconsistent with the purposes of the Federal Power Act.

This presents a special problem for the two FERC projects on Nebraska's Platte River, because a section of the Platte has been designated as a critical habitat area for the whooping crane.

Studies by the Bureau of Reclamation show that meeting the river flow requirements already suggested by Federal and State wildlife agencies for the Platte River would drain Lake McConaughy, the primary reservoir in the State, during low flow periods.

Let me explain that Lake McConaughy is a 22-mile-long reservoir, containing approximately 1.5 million acre-feet of water.

And it would be drained.

Further, those same Bureau of Reclamation studies show that once the reservoir were drained, it would never completely fill again.

In Nebraska, we can't do without water for irrigation. And although Lake McConaughy was built to store water for irrigation, flows from the lake are also used for hydropower, for cooling a coal-fired plant, and of course for recreation.

I, along with other members of the Nebraska delegation, have worked to obtain language in the conference report addressing the potential problems posed to these projects by this bill.

The report now contains language stating that in the specific case of the two Nebraska projects, fish and wildlife will be given equal consideration with the other developmental purposes of the project—irrigation, power development, and recreation, and that none of these considerations will be given undue weight at the expense of another.

I would like to express my appreciation to the chairman of the committee for his willingness to listen to the arguments presented by the Nebraska delegation.

In my view, the report language makes this an acceptable bill, and I thank the chairman for his cooperation.

□ 1610

Mr. MARKEY. Mr. Speaker, I yield 3 minutes to the gentleman from Washington [Mr. Swift] whose invaluable and hard work was indispensable.

Mr. SWIFT. I thank the gentleman for yielding time to me.

Mr. Speaker, the Energy and Commerce Committee has for 3 years worked on legislation to reform the way in which FERC implements part I of the Federal Power Act. The issues involved are arcane, and usually dry; but they are important to ratepayers, environmentalists, fisheries managers, and many others. The conference report now before the House is the produce of that work.

There is much in this bill that is good, particularly in the environmental area. Of course, few of us can look at any major piece of legislation and be happy with every bit of it. I'm not happy with all of the conference report. I believe that the public interest would be better served by preserving the public power preference at relicensing, which this bill eliminates.

Without reducing the importance of the public power preference—because its elimination has always made me cool toward the legislation—I can say that I believe that the rest of the bill, which requires FERC to reform its practices, is good public policy. As the conference report states, these amendments "are adopted with a view of not merely codifying existing practice at the Federal Energy Regulatory Commission * * *, but to change and improve it."

These amendments update the comprehensive planning provisions of existing law. Among the revisions is an express requirement that FERC consider the extent to which applications are consistent with comprehensive plans developed by other entities pursuant to State or Federal law. Furthermore, the bill directs FERC, in addition to considering power development purposes of the Federal Power Act, to give equal consideration to nondevelopment purposes, such as fish and wildlife, energy conservation, recreation, and other environmental values.

These are important steps we have taken to ensure that FERC decisions are based upon a complete understanding of the waterways and the impacts of hydroelectric development on those waterways; and to ensure also that nondevelopment purposes, which have been given little consideration by FERC in the past, be given equal consideration.

It should be noted that the comprehensive planning requirements currently in the Federal Power Act are retained. In other words, FERC is still required to prepare comprehensive plans for the waterway—a requirement that many of us believe that FERC has failed to fulfill. Among our concerns has been that FERC does not assess the cumulative impacts of hydrodevelopment on a river basin, which is clearly necessary in order to meet the requirements of comprehensive planning. By requiring FERC to consider plans developed by other State and Federal entities, where such plans exist, we do not alter FERC's own responsibility to prepare comprehensive plans. Indeed, the conference agreement provides greater clarity to FERC about the information it should assemble and include in a comprehensive plan.

There are other things in this bill that will greatly improve the Federal Power Act. I would like to conclude my remarks, however, by pointing out that there are two features contained in the Senate bill that are not in the conference report. First, there is no incumbent preference. Instead, if the differences between the applicants are insignificant, the determining factor will be whether the existing licensee had a good track record or a bad one. Second, there is no economic impact test, which was a test the Senate bill would have codified. Many people believed that such a test would always favor large utilities, and this concern led the House to keep it out of the House bill, H.R. 44.

The fact that these two policies were not in the House bill made it possible for the House to pass H.R. 44 on the suspension calendar earlier this year. I believe that their absence from the conference report has contributed greatly to the successful completion of that conference.

Finally, I would like to commend Chairman Dingell, who successfully championed the strong environmental requirements in this bill. I would also like to thank the chairman of the Energy Conservation and Power Subcommittee, Mr. Markey, who has no dams in his district, and yet was unlucky enough to spend hours upon hours wrangling with those of us who do.

Mr. Speaker, I yield back the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I do so for the purpose of publicly complimenting the gentleman from the State of Washington for his valuable contribution. He really made it possible for this bill to move forward in an almost silky smooth way.

Mr. Speaker, I wish to yield time to the gentleman's colleague from the Northwest, a gentleman who worked with us to ensure that the Northwest's interests were protected while integrating it into the comprehensive national bill which we produced.

I yield 3 minutes to the gentleman from Oregon [Mr. Wyden].

Mr. WYDEN. Mr. Speaker, I rise today in support of the conference report. Hydropower, clean and reliable, is the lifeblood of the Northwest. The conference bill will help ensure that we can continue to look to our rivers for clean power.

Three aspects of this bill are of particular interest to the Pacific Northwest. First are the modifications it makes to section 210 of the Public Utility Regulatory Policy Act of 1978, or PURPA. PURPA has unintentionally triggered a hydropower gold rush in the Northwest at a time when we need it least—during a power surplus. Many of these proposed dams would have impacts on fish, wildlife, or recreation that far outweigh any power benefits. The conference bill will help alleviate this problem by placing a carefully crafted moratorium on licensing of potentially damaging small hydro projects while FERC studies the problem. Also, the strong fish and wildlife provisions in the bill's licensing sections will ensure that FERC gives fish, wildlife, and environmental values their proper weight in licensing decisions.

Second, this bill will resolve the questions hanging over the role of public preference in relicensing. Uncertainties about the meaning of present relicensing law have cast a shadow over energy planning. Ratepayers in Oregon now face loss of a major power source—the Merwin Dam—and are embroiled in litigation over relicensing. That dispute will be resolved under existing law, which is fair to all sides. However, the bill should prevent other relicensing disputes from following the same tangled route.

Third, this bill is of interest to the Northwest because of its impact on the ultimate relicensing of the uniquely situated Pelton Project in Oregon. The Pelton dams and reservoirs are located on the Deschutes River, partially on the Warm Springs Indian Reservation. To my knowledge, they are the only dams soon to face relicensing that are located on tribal lands but licensed to private operations. The Warm Springs Tribes and the current license holder both wish the opportunity to present their case for a license to FERC when the time comes. I am pleased to say that both parties were able to endorse the conference language amending section 15(a) of the

Federal Power Act as it applies to tribal rights in the Pelton case.

Mr. Speaker, for its action on these three points and for many other reasons, this bill is good for the Northwest and for the Nation. I urge its approval.

Mr. MOORHEAD. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. Pashayan], an original cosponsor of this legislation who worked very hard with us on the legislation.

Mr. PASHAYAN. I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in strong support of the conference report on H.R. 44, the Electric Consumers Protection Act. The conference committee has improved the bill by enhancing protection for hydroelectric power consumers and those attempting to obtain hydroelectric licenses.

I am a cosponsor of hydro-relicensing reform legislation, and have been since the 1st session of the 98th Congress. This is an important issue for myself and many of my constituents. It is in the public interest to accord those who are previous holders of hydroelectric licenses first option for renewal. The conference report adopted the approach that is the fariest and the least disruptive to consumers of hydroelectric power.

The conference report also satisfies another critical concern of mine by making it clear that the Federal Regulatory Commission evaluates applications for economic, electrical, and consumer costs. I believe this assures the public that all consumers' interests of any given license transfer will be thoroughly analyzed and evaluated.

I do have reservations about the conference committee's decision to add a new antitrust feature to the legislation. In any utility as highly regulated as the hydroelectric power industry, any successful antitrust suit will only result in higher rates to consumers. Nevertheless, the antitrust provision in the bill is limited to the Federal Energy Regulatory Commission's authority to levy conditions. Overall, it seems highly unlikely that this particular expansion of the Commission's authority will have any real effect on licensing conditions or retention of licenses.

For all future cases and for the vast majority of American consumers, the Electric Consumers Protection Act represents the legislative process at its finest. Both Houses of Congress, the appropriate committee and their chairman, and the conference committee, are to be commended for their work on this important legislation. As a result of this legislation, the disposition of previous hydroelectric projects will be made on fair and full evaluations of the public interest. The hydroelectric power consumer is the winner with this legislation, and I strongly urge all my colleagues to support the bill.

Mr. MARKEY. Mr. Speaker, I yield 2 minutes to gentleman from California [Mr. Matsui] who has worked with our committee in an effort to ensure that there is a proper balance struck between the private power interests and the public power interests in the final drafting of this bill. He did so effectively. We responded to his concerns.

Mr. MATSUI. I thank the gentleman for yielding time to me.

Mr. Speaker, I want to commend my distinguished colleague, Mr. Markey, and the esteemed chairman of the Energy and Commerce Committee, Mr. Dingell, Mr. Moorhead, Mr. Shelby, Mr. Swift, and others for their efforts to reach a fair compromise concerning compensation to the public utilities with license applications pending before the Federal Energy Regulatory Commission.

Under the conference agreement, the competing applicants will be compensated for their out-of-pocket costs and the lost opportunity to compete for cheap hydro power. This provision is an essential part of the hydro relicensing bill. Without it, we would be unfairly penalizing these public utilities for their good faith reliance on existing law. The conferees should be congratulated for returning with a bill that recognizes that competing public power applicants deserve fair compensation.

This provision will have a direct impact on public utilities that have applications pending before FERC. For example, the Sacramento Municipal Utility District, the public utility that serves my district, has joint applications with other California public utilities pending before FERC to operate two large hydroelectric projects on the Feather River and the north fork of the Kings River in California. These public utilities have spent millions of dollars in public funds to diligently pursue their license applications before FERC and have forgone substantial and valuable opportunities to participate in other energy projects. In both cases, the public utilities proposed significant improvements to the existing project which will benefit all ratepayers, regardless of who receives the new licenses. With the compensation provision agreed to by the conferees, SMUD and the other public utilities will be able to recover their costs incurred in filing these relicensing applications, and in foregoing alternative projects. This legislation will give the utility ratepayers in my congressional district the opportunity to save potentially many millions of dollars.

Again, I commend the conferees for offering a fair and reasonable method to compensate public utilities in relicensing proceedings.

□ 1755

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. Fazio], who worked very closely with the committee in drafting this legislation.

Mr. FAZIO. Mr. Speaker, I thank Mr. Markey and Mr. Moorhead and other members of the full committee and the subcommittee for the efforts they have put forth to bring about a resolution to this very difficult issue.

I happen to have a district that is divided half public and half private in its utility orientation. I was an original sponsor of the Shelby bill and testified on behalf of it, but I want to give credit to my colleague and friend, Mr. Matsui, for bringing forward the values of the public utilities and making sure that they were brought into the final package and that we do have a very balanced and, I think, equitable approach to the future development of our hydroelectric power in this country.

I would, however, like to point out one other provision that is in the bill. It is not as important as those that have been discussed thus far, but it relates to fee-setting on local projects that have been developed in concert with the Bureau of Reclamation or the Corps of Engineers. The Salano irrigation district project in my district, for example, is one of them.

This committee was willing to pick up legislation authored by Congressman Foley and myself and include it in the bill, and I want to thank them very much for that, because it accomplishes a task that we have been unable to resolve administratively now for several years.

Mr. Speaker, this conference report will probably pass today without dissent, as the bill itself did some months ago in the House of Representatives and in the Senate. The general acclaim will mask the extraordinary legislative feat it represents.

No field of law is as complex as the subtle balances between the interest of public and private utilities. No field of policy is as controversial.

This bill manages to strike some enormously difficult compromises very well. It protects the customers of utilities who hold existing hydropower licenses from the severe economic disruption which would be caused were those licenses to be transferred to other categories of utilities by mechanical operation of law.

It fairly compensates those utilities who had applied for relicenses expecting that they would enjoy a preference for obtaining them, before the law was changed, essentially, under their feet.

I think this change was warranted, but there is no doubt that the old law was more favorable to public utilities and they did experience a substantial setback.

As the representative from a district whose constituents are half served by a public utility and half served by a private one, and whose utilities each had enormous stakes in the outcome, I am deeply appreciative that the issues were balanced in the fair way they were.

I also appreciate the efforts the bill makes to mitigate damage hydropower undeniably causes our national fisheries. The inadvertent encouragement the Public Utilities Regulatory Policy Act gives to excessive hydro development is largely corrected by this bill. Other provisions establish an obligation of the Federal Energy Regulatory Commission to take comprehensive effects of hydro development into account when approving new hydro proposals.

In my own northern California area, hydro development has become an acute problem on the smaller streams in our watersheds. The Energy and Water Appropriations Subcommittee, on which I sit, has also been made aware of the requirements that the FERC do comprehensive planning to determine cumulative effects of hydro development on watersheds as part of the FERC permit process. I know this is of great concern to Mr. Coelho, of California, as well.

Last, and somewhat parochially, I appreciate the inclusion in this bill of a piece of legislation I authored last session and again this one with the support of my great friend and the majority whip, Mr. Foley, of Washington. This legislation clarifies that the Federal Government will levy only one "falling water charge" of non-Federal interests who develop hydroplants on existing Federal dams.

It also establishes that this fee will be predictable and reasonable, so that we can allow for the development of this potential energy resource at no Federal expense.

This problem first emerged in the country with a water district in Solano County, CA, which had endured years of great frustration in its attempts to develop the hydropower potential on the Monticello Dam. The dam is being repaid by the Solano irrigation district's water fees, and the Solano district had originally requested that the Bureau of Reclamation construct a powerplant on it.

It was only when the Bureau itself opposed authorization to construct the powerplant that Solano began efforts to build the facility on its own. It got lost in a funhouse of conflicting and ambiguous policies and disputes between agencies whose objectives were more institutional than public.

All these achievements would not have been possible without the good faith and great abilities of many, many people. They include Ed Markey, the chairman of the Energy and Commerce Subcommittee on Conservation and Power, who, as a representative from eastern Massachusetts, found himself immersed for months in the labyrinths of western hydropower controversies. His willingness to listen, prod, cajole, understand, and propose, as well as that of his chairman, John Dingell, all through occasionally bitter negotiations, was probably the key to the success of the bill today.

Mr. Miller of California, chairman of the Interior Subcommittee on Water and Power, was instrumental in winning the point that incumbent utilities should not be deprived of their licenses without an overwhelming reason for the social disruption to occur. He was also key to stitching together the alliance between the utilities and environmentalists to achieve consensus on Mr. Dingell's and Mr. Markey's fishery provisions.

My colleague, Bob Matsui, of Sacramento, was instrumental in ensuring that the interests of public utilities were entertained in the process, and along with other public power advocates on the subcommittee established the position by which the public utilities with pending licenses ultimately won their compensation provisions.

All the members of the Conservation and Power Subcommittee were particularly attentive to these problems as well, and they were responsive to Mr. Foley and myself as we sought to explain the difficulties encountered by non-Federal interests as they ventured through the permit process for construction of powerplants on Federal dams.

Last, I would like to thank our counterparts in the other body, to whom some of these compromises came only with difficulty. I am particularly appreciative of Senator Bennett Johnston's generous efforts to undestand the needs of applicant public utilities for compensation in return for the loss of the public preference.

Mr. MOORHEAD. Mr. Speaker, I yield such time as he may consume to the gentleman from Nebraska [Mr. Daub].

Mr. DAUB. Mr. Speaker, I appreciate this opportunity to comment on the conference report on S. 426. As originally contemplated by H.R. 44, this legislation had serious implications for the State of Nebraska, and I want to thank the distinguished chairman of the Energy and Commerce Committee, Mr. Dingell, for addressing concerns expressed by me and other members of the Nebraska delegation with respect to the relicensing of the Central Nebraska Public Power and Irrigation District (project No. 1417) and the Nebraska Public Power District (project No. 1835).

Nebraska is unique in that it is the only wholly public power State in the Union. CNPPID and NPPD—which are a part of the public power network—play an integral role in the delivery of electricity, irrigation, and recreational opportunities to the State of Nebraska, and the continued viability of these entities is certainly essential to the State.

Mr. Speaker, the concerns expressed by CNPPID and NPPD with respect to this legislation centers on a provision requiring the Federal Energy Regulatory Commission [FERC] to include terms and conditions in each license based on recommendations received from Federal and State wildlife agencies. Under the provision, the FERC shall include terms and conditions for every recommendation it receives unless such recommendation is inconsistent with the purposes and requirements of the Federal Power Act.

Mr. Speaker, wildlife issues certainly deserve careful consideration, but not to the exclusion of other public uses. The requirement I have mentioned could conceivably tie the hands of the FERC and elevate wildlife concerns over many beneficial public uses of a hydropower project, such as irrigation, power, and recreation.

It has been estimated that implementation of existing State and Federal wildlife agency recommendations for minimum flows on the Platte River would completely and repeatedly drain the Lake McConaughy Reservoir, which provides the means for irrigation and hydropower for CNPPID and NPPD. As one would expect, Mr. Speaker, such an occurrence would severely constrain the power, irrigation, and recreational functions of CNPPID and NPPD.

These serious concerns have been addressed in an acceptable manner by providing report language specifically citing the unique nature of the Nebraska projects currently proceeding through the relicensing process. This report language will allow the FERC to balance the public uses of the CNPPID and NPPD projects with the wildlife concerns, and I again want to thank the gentleman from Michigan for addressing this issue.

Mr. MOORHEAD. Mr. Speaker, I yield 1 minute to the gentleman from Vermont [Mr. Jeffords].

Mr. JEFFORDS. Mr. Speaker, I rise in strong support of the conference report S. 426, the Electric Consumers Protection Act. I would like to commend the chairman of the Energy Conservation and Power Subcommittee, Mr. Markey, and the ranking member, Mr. Moorhead, for working so hard to insure that important provisions contained in the House bill were retained in this conference agreement.

This legislation will eliminate the public preference in the relicensing of hydroelectric facilities originally licensed some 50 years ago under the Federal Power Act. The bill includes tough new environmental and efficiency criterion to be used in a new competitive licensing procedure. The conferees have also approved important changes in the Public Utilities Regulatory Policies Act of 1978 [PURPA] that will restore congressional intent with respect to the licensing of existing small hydro projects. States are also given a greater role in the licensing of PURPA small hydro facilities. I will limit my comments today to these important provisions of the bill.

During the 96th Congress, my concern over the licensing of small hydroelectric facilities by the FERC led me to introduce a bill that would allow States to enter into an agreement with FERC to license small hydroelectric projects at existing dams.

This modest legislation was designed to provide States with more authority to scrutinize the environmental and economic impacts of these smaller projects, and to reduce some of the paperwork and bureaucracy for the applicants. It was offered at the request of the power planning, environmental regulatory and development communities from my home State. At that time, I was assured by the FERC that they would look into this issue and adjust their licensing and review procedures to make my legislation unnecessary. Unfortunately, the FERC did not respond to my concerns and the concerns of Vermont.

To address this failure, I introduced legislation in both the 98th and 99th Congresses that would grant the individual State Governors more control over any licensing decision made by the Commission on PURPA small hydro projects. Hearings were held on my bill and the whole issue of small hydro licensing in September 1984, under the direction of Chairman MARKEY. At these hearings I pointed out that Vermont officials were frustrated because they were being ignored in the licensing process. Repeatedly, important environmental, agricultural, and recreational issues raised at the State and local level were not taken into account by the FERC. I expressed my view that the FERC was too far away in distance and bureaucracy to ever give these State and local concerns the consideration they deserve.

I commend the committee for including in this legislation important modifications of PURPA embodying provisions consistent with my legislation that will require the laws of a State to be taken into account under PURPA's expedited licensing provisions. The concerns I have raised over the last 7 or 8 years have been addressed by this bill. Under the new provisions, States may designate rivers possessing unique natural, recreational, cultural, and scenic attributes as deserving of further review before a license could be granted by the FERC. States will now have the opportunity to take local issues into concern and will have a real say in hydro development within their borders.

Mr. Speaker, we in Vermont recognize the value of hydropower as a plentiful and renewable indigenous energy alternative. In the quest for energy self-sufficiency, hydroelectricity offers an attractive prospect. However, we cannot push the development of these projects at the expense of other equally important riverine resources: fisheries resources, prime flood plain agricultural lands, recreational opportunities, natural areas and riverfront investments.

The legislation we are considering today will go a long way toward addressing Vermont's concerns. First, the bill requires that dams receiving PURPA benefits may not be located on rivers that, under State law, have been determined to possess unique natural, recreational, cultural, or scenic attributes. Second, the committee report specifies that the definition of an existing dam should not include projects that substantially alter the watercourse or involved substantial new impoundments. Together, these two provisions will strengthen small hydro section of PURPA by protecting the environment without hampering expedited licensing procedures for projects on existing small hydro dams.

In strengthening fish and wildlife protection provisions in hydro licensing, the bill will require the FERC to look more closely at the cumulative impact of many small hydro projects in a basin. Of particular concern to me is the cumulative impact of hydro projects in the Connecticut River basin. I have urged the Secretary of the FERC to impose a temporary moratorium on Connecticut River projects pending the completion of a cumulative environmental impact review. As stated in the committee report on H.R. 44—

> * * * licensing to serve power purposes should not be permitted on the back of fish and wildlife (and) recreational values, including programs to restore fisheries, such as the Merrimack and Connecticut Rivers in New England.

Along with many Members from the Connecticut River States, especially Mr. CONTE, I have worked hard to restore anadromous Atlantic salmon and American shad to the Connecticut River and its tributaries. This legislation should reinforce and strengthen this effort by including fish and wildlife values in FERC's licensing process. I believe that a cumulative review of the Connecticut River hydro development would now be necessary in order to carry out the fish and wildlife damage mitigation mandate contained in this bill.

Therefore, I strongly support this bill and once again commend Mr. MARKEY and Mr. MOORHEAD for addressing my concerns. I urge all Members to support this conference report.

Mr. MARKEY. Mr. Speaker, I yield 1 minute to the gentleman from Alabama [Mr. ERDREICH].

Mr. ERDREICH. Mr. Speaker, I thank the gentleman for yielding this time to me. I want to thank Mr. MARKEY and Mr. DINGELL and other members of the committee for bringing this conference report forward.

I rise in support of the conference report, and I comment my colleague from Alabama [Mr. SHELBY] for the long hours he has worked on this project to protect ratepayers whose electricity is generated by hydropower.

I was a cosponsor of the original bill, and I feel strongly that the changes this bill brings about are needed and worthy.

This legislation makes necessary changes. It eliminates the preference criteria which I thought needed to be altered.

In brief, Mr. Speaker, I think this bill will prevent a rate increase in Alabama.

I compliment my colleague, the gentleman from Alabama [Mr. SHELBY] and all those involved, and I urge passage of the conference report.

Mr. MOORHEAD. Mr. Speaker, I yield 1 minute to the gentleman from Massachusetts [Mr. CONTE].

Mr. CONTE. Mr. Speaker, I do not want to take any time on this bill. I just want to take the time to compliment the gentleman from Massachusetts, Mr. MARKEY, the gentleman from California Mr. MOORHEAD, and JOHN DINGELL and others. I followed this legislation. I am one who has been very, very interested in trying to restore the salmon in the Connecticut River. I think this is a monumental piece of legislation and they all deserve a lot of credit.

Mr. MOREHEAD. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like at this time to conclude remarks on this piece of legislation. We have no further speakers requesting time on our side either.

The passage of this bill at this time really is a tribute to the cooperative spirit that was developed on our subcommittee and the full committee over the past year and a half. This bill had all the potential for being a minefield of controversy, acrimony and bitterness that oftentimes characterizes bills of this nature. But instead we did work cooperatively to deal with dozens of Members' concerns across this country, and I think we put together a comprehensive and good piece of legislation that will benefit this country for generations to come.

At this time I would like to mention and thank the Members whose tireless efforts and tenacity prevented this legislation from bedcoming dammed. The members include the Chairman of the Energy and Commerce Committee, the distinguished gentleman from Michigan, Mr. Dingell, the Gentleman from Alabama, who should be very proud of his efforts and the results, Mr. Shelby, the gentleman from Washington, Mr. Swift, the gentleman from Oregon, Mr Wyden, the Gentleman from Texas, Mr. Hall, the gentleman from California, Mr. Miller, the gentleman from California, Mr. Matsui, the gentleman from Utah, Mr. Nielson, the gentleman from New York and ranging minority member on the Energy and Commerce Committere, Mr. Lent, the gentleman from California, Mr. Dannemeyer, and last, but certainly not least, the gentleman from California and ranging minority member of my subcommittee, mr./ Moorehead.

In conclusion, I would like to thank some other people who oftentimes just do not get the credit they deserve for the long hours which they put in a piece of legislation of this nature.

I would like to compliment Pope Barrow. I would like to compliment Rob Fitzgibbons of the minority, Mike Gillett, Susan Wells, and compliment Dave Finnegan, who is JOHN DINGELL's very able right arm in legislation out here on the floor.

I would like to as well compliment my own staff, Larry Sidman, and ultimately Gil Sterling the gentleman who has helped to do the bulk of the work on this legislation and who has painstakingly crafted all of the details that have resulted in the compromise which we have here at this time. I cannot thank him enough for all of the effort, all of the energies, which he has put into this bill at this time. I greatly appreciate all of the efforts he has given.

I want to mention Gil Sterling, who has in fact done that work for the committee.

Mr. MILLER of California. Mr. Speaker, as a cosponsor of one bill, H.R. 44, and the author of another, H.R. 1959, I have closely followed legislation concerning the relicensing of hydroelectric facilities. I support the conference report and congratulate the conferees for resolving what has been a very controversial issue. I would like to highlight some important aspects of the legislation.

The conference report represents a victory for everyone concerned about protecting the public interest. The old stereotypes of "private power" versus "public power" no longer fit. Utility company consumers are every bit as much the "public" as those served by other systems, and their rights must be protected. In particular, the conference report, in words drawn from my own bill, H.R. 1959, emphasizes the Federal Power Act's original goal of encouraging the greatest good for the greatest number by assuring the broadest possible utilization of the benefits to be derived from our nation's water resources.

I am also pleased to see the conference report combines the House bill's outright rejection of any municipal relicensing preference with a public standard. Absent proof of some significant public interest benefit, no license will be transferred. In northern California alone, investor-owned facilities benefit about 10 million customers. With the threat of municipal preference gone and with the assurance that licenses will not be transferred without a significant public interest advantage—those customers, including all of my constituents—can feel confident that their hydro benefits will not be unjustly taken away.

The conferees should also be congratulated for emphasizing the fact that H.R. 44's relicensing "need" criterion is premised on economic as well as electrical factors. By requiring an assessment of the alternative costs to be imposed on a licensee's customers, the need criterion focuses directly on the inevitable results of stripping away a fuel-free resource. Those consumer costs of transfer, both fuel and capital related, are very real. As the General Accounting Office confirmed in its September 1985 report, and as the conference report makes clear, a hydro licensee's need to protect its customers from such costs must be measured by assessing the relative merits of given applications.

There is another important public interest element in the conference report. Section 15(a)(2)(G) requires the Federal Energy Regulatory Commission [FERC] during its review process to consider an applicant's ability to meet specific conditions listed in the legislation as well as any other factors which are in the public interest. By giving FERC the freedom to examine every relevant factor in every case, we have assured that no harmful consequence of project transfer will be ignored.

In view of the changed circumstances regarding the Merwin relicensing case, I am disappointed to see the conference report includes provisions requiring "compensation" payments in certain pending cases. While the conference report reflects my position stated at the time of H.R. 44's passage, that a "reasonable percentage of net investment" could never mean more than 100 percent, this section still would require my constituents to provide "compensation" to those municipally owned utilities who launched their relicensing cases with full awareness of the risks involved. Under these provisions, no amount above bare expenses need be paid until FERC has assessed the relative merits of the competing proposals. No matter what the courts do in the Merwin case, a realistic comparison of the competing proposals should sharply limit recovery in cases like those affecting my constituents, where the public interest would so obviously favor retention of the project. I am also confident that once FERC takes a good hard look at the "reliance" claims made by competing applicants, it will find no real harm and no basis on which to require any net investment-based recovery.

The conference report also addresses another concern of mine—the small hydro incentives in the Public Utilities Regulatory Policy Act [PURPA]. The mandatory avoided cost provision of PURPA has been used to force electric consumers to underwrite new developments with little or no environmental protection—and that was never the Congress' intent. Our free-flowing rivers and streams simply can't handle indiscriminate small hydro development.

Although the conference report does not eliminate the benefits offered to developers who build small hydro facilities at new sites—as my bill, H.R. 1959, would have done—it contains significant reforms. Before a facility can qualify for PURPA benefits, the developer will be subject to the following requirements: mandatory conditions imposed by State and Federal fish and wildlife agencies, location outside of State-protected waterways, and a new FERC review process to eliminate substantial adverse environmental effects. While I am concerned that the conference agreement grandfathers too many pending applications for small hydro licenses, rigorous enforcement of the environmental protection requirements should correct the worst offenders.

Again, I congratulate the conferees for bringing this difficult issue to such an effective conclusion. I urge my colleagues to join me in supporting this needed legislation.

Mr. MOORHEAD. Mr. Speaker, earlier in my remarks I referenced the General Accounting Office's Report to the Energy and Commerce Subcommittee on Energy Conservation and Power, dated September 16, 1985 (GAO/RECD-85-169). This report identified the cost components that need to be evaluated in calculating the costs associated with the transfer in ownership of hydroelectric projects. Certainly, these components will have to be considered by the Federal Energy Regulatory Commission in relicensing proceedings under section 15(a)(2)(D) of the Federal Power Act, as amended by the Electric Consumers Protection Act. I am, therefore, inserting pertinent portions of this report in the RECORD at this point:

EVALUATION OF COST ESTIMATES RELATED TO THE RELICENSING OF HYDROELECTRIC PROJECTS (GAO/RCED-85-169)

* * * * *

OBJECTIVES, SCOPE, AND METHODOLOGY

The Chairman, Subcommittee on Energy Conservation and Power, House Committee on Energy and Commerce, by letter dated July 11, 1985, requested that we review the cost estimates presented to the Subcommittee on the impacts of transferring the licenses of the three PG&E projects and all investor-owned utility projects nationwide. We were asked to determine the basis for the estimates and the reasons for the differences. In subsequent discussions with the subcommittee staff, we were asked to analyze the methodology, assumptions, and data in the two PG&E studies and to reflect the effect on the cost estimates of changes which we believe would be valid.

* * * * *

BACKGROUND

Various studies have used two different cost components in calculating the costs associated with transferring hydroelectric licenses from the original licensee to a new licensee. These components are (1) the increase in the average cost to the remaining customers of the original licensee, due to the necessity of allocating fixed charges for fossil and nuclear fuel and other operating expenses to a smaller number of customers [1] and (2) additional costs incurred by the utility to purchase or generate power to replace the output from the transferred project.

The increase in average cost to the remaining customers results from a reallocation of both the fuel and plant costs (costs used in determining the base rate) associated with generating power to a smaller customer base. For example, if an existing wholesale customer takes over a project license, then that customer does not need to purchase its power from the original license holder. As a result, sales of the original license holder are reduced but many costs remain fixed such as the cost of fuel to run the utility's coal- and oil-fired generating units. These fixed costs must now be reallocated to a smaller customer sales base which results in an increase in the average cost of power to the remaining customers.

Replacement power costs are costs incurred by the utility to replace the output of power lost to the utility when a project license is transferred. The utility can either generate the additional power from existing plants or purchase additional power from other sources. Replacement power costs can also include the cost of building or purchasing a new power plant and the fuel to generate the electricity lost by the transfer of the hydroelectric license.

One additional factor considered in determining the cost of transferring the hydroelectric licenses is the benefit gained from reduced ownership and operating expenses associated with the licensed project. For example, expenditures for property taxes, depreciation, maintenance, and similar items directly applicable to the transferred project will be eliminated after the transfer. The benefit from these reduced expenditures is offset against the increased costs to estimate the net costs of the transfer.

METHODOLOGY

While the methodologies for calculating these costs are straightforward from a mathematical sense, the practical use of the methodologies depends on which of the following questions the analyst is attempting to address.

What additional costs will the utility's customers incur from the license transfer?

What additional costs will the utility incur from the license transfer?

The PG&E study was undetaken to answer both questions according to its author. As such, it includes both the increase in averge cost and the replacement power cost components. On the other hand, the R.W. Beck study was designed, according to the official responsible for the study, to address the second question. As a result, the study includes an analysis of only the replacement power cost component. This difference accounts for about $72 million of the total variation in the PG&E and R.W. Beck cost estimates. Both studies also analyzed the benefit from reduced operating and ownership expenses.

ASSUMPTIONS

In calculating the costs of transferring the project licenses, both studies made certain assumptions related to the need to replace power, the source of that replacement power, and its cost. The key assumption that accounted for most of the difference in the study estimates of replacement power costs was the assumption on the amount of power needing to be replaced. The PG&E, study assumed that 92.87 percent of the output from two projects (Rock Creek-Cresta and the Hass-Kings River) needed to be replaced and that none of the power from the third project (Mokelumne) needed to be replaced. While the U.W. Beck study agreed on the Mokelumne project, it assumed that only 35.39 percent of the power from other two projects needed to be replaced.

* * * * *

RECALCULATION OF THE COST ESTIMATES

* * * * *

There are many factors that make it difficult to determine whether the PG&E or R.W. Beck study assumptions are more accurate. For example, the power output lost by PG&E, if the project licenses are transferred, will not be lost from the California power supply, rather only the ownership will change. The power would still be available for sale by the new owner, perhaps even to the original customers. From that point of view, the R.W. Beck assumption that there will be a shuffling of wholesale supply and demand appears to have merit. On the other hand, to assume, as in the R.W. Beck study, that there will be a large shuffling of wholesale supply and demand overlooks a number of complicating factors. There potential problems associated with long-term contracts between PG&E and its wholesale customers, wholesale customers' location relative to the projects, transmission line availability, and also the availability and price of the power.

Because of these difficulties, we modified the R.W. Beck study assumption. We assumed that PG&E would continue serving its wholesale customers, except for those customers which already have a relationship with the consortium of municipalities competing for the projects. We believe that where such a relationship already exists, there is a legitimate rationale for assuming that a shuffling of wholesale purchasers and suppliers could take place. For example, the city of Lodi is a member of NCPA, but is not participating in NCPA's competition for the project licenses. As such, PG&E counts Lodi as a continuing customer and counts power sales to Lodi as needing to be replaced by purchases of new power. On the other hand, we assumed that since Lodi is a member of NCPA and receives its power from PG&E indirectly through NCPA, that Lodi would switch its purchases to NCPA once NCPA has its own power source. Such a switch would reduce PG&E's need to replace power by an equivalent amount. We made similar reductions for direct sales to NCPA, to the city of Lompac, and to SMUD which receives power under an integration agreement with PG&E. We calculated that these changes would result in the need for replacement power at about 75.28 percent of the output of the Rock Creek-Cresta and Haas-Kings River projects.

Regarding the cost of replacement power, both the PG&E and R.W. Beck studies assumed that replacement power would be purchased at the marginal cost rate of power. This assumes that all existing plants are operating at full capacity or are needed as emergency reserves. Therefore, to generate additional units of power the company needs to build or buy new plant capacity and then burn additional fuel to generate power. This is a generally conservative approach to estimating the cost of replacement power because it assumes the worst case scenario and predicts the highest possible cost consequences.

Using Commission records (FERC Form-1), we determined that PG&E's reserve capacity for the 1985-88 time frame is about 32 percent of its total generating capacity. This figure is significantly higher than the 15-20 percent reserve margin generally considered sufficient by industry standards for a utility with multiple power plants and types (oil, gas, hydro, and nuclear) or generating capacity. Further, PG&E predicts reserve capacity to remain at about the same level over the next 10 years even after considering future growth in demand. As such, we believe that the most likely source of replacement power would be from PG&E's internal reserve capacity, not from building or purchasing new capacity at the marginal cost rate. By using internal reserve capacity, we estimate the cost of replacement power costs at 4.3 cents per kilowatt hour, rather than the 6.9 cents used by PG&E.

We did not calculate a separate amount for the benefit gained from reduced ownership and for operating expenses resulting from the licenses' transfer. Instead, we used PG&E's calculation since it was based on actual company data. Use of PG&E's estimate has the effect of reducing the cost of the transfer to PG&E customers.

Such changes in assumptions result in a revised cost estimate, including increased average costs of $105.1 million. Table 1.2 shows the major cost components of the revised cost estimate.

TABLE 1.2.—*Revised estimate—cost component*

Increased average cost allocated to remaining customers:	
Fuel costs	[1] $57,731,000
Base rate costs	25,865,000
Subtotal	83,596,000
Replacement power costs	[2] 55,542,000
Total	139,138,000
Reduced ownership and operating costs	−34,038,000
Net total Cost	105,100,000

[1] Calculated for 100 percent of the output from Mokelumne and 24.72 percent from the Rock Creek-Cresta and Hass-Kings River projects.

[2] Calculated at 4.3 cents per kilowatt hour for 75.28 percent of the output from Rock Creek-Cresta and Haas-Kings River projects.

Mr. MARKEY. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MARKEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the conference report just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 5353, HAIDA LAND EXCHANGE ACT OF 1986

Mr. SEIBERLING. Mr. President, I ask unanimous consent that the clerk be authorized and directed to make certain corrections in the engrossment of the bill, H.R. 5353, as passed by the House on September 30, 1986, the corrections are at the desk and I ask that they be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The list of correction to H.R. 5353 is as follows:

CORRECTIONS TO H.R. 5353

(1) In section 2(a), strike all of paragraph (10) and renumber all subsequent paragraphs accordingly.

(2) In section 3(a), paragraph (2) change "section 8" to "section 9", and strike "Any payment pursuant to this paragraph shall be made no later than 90 days after such

agreement by Sealaska or after a decision by Haida Corporation to accept an alternative pursuant to section 5(a), whichever is sooner.".

(3) Change section 3(b) to read: "Offer.—For and in consideration of the relinquishment and conveyance to the United States of all Haida Corporation's right, title, and interest in up to 1,000 acres of the Haida Exchange Lands, with the amount of acres to be specified by Haida Corporation at the time of its acceptance, if any, of this offer, there is hereby offered $3,000 per acre subject to the provisions of section 9. The Secretary shall specify which of the Haida Exchange Lands shall be conveyed to the United States pursuant to this subsection after Haida specifies the number of acres, if any, to be conveyed pursuant to this subsection.".

(4) In section 3(c), in the first sentence change "offer" to "offers"; and after the words "subsection (a)" insert "and, or subsection (b)".

(5) Change section 4(a) to read: "Island Area.—For and in consideration of the relinquishment to the United States of all of Sealaska's right, title, and interest in Goat Island and South Pass Islands, the cooperative information and education branch site and such other lands of the Haida Exchange Lands as Haida Corporation may relinquish and convey pursuant to subsection 3(b), there is hereby offered to Sealaska, an exchange on an equal value or equal acre basis, as the Secretary may determine."

(6) Change section 4(b) to read: "Other Areas.—If not later than one year after the date of enactment of this Act, Sealaska notifies the Secretary and the Secretary of the Interior of Sealaska's desire to make an exchange, the Secretary of the Interior shall convey to Sealaska the subsurface estate in lands conveyed to Haida Corporation pursuant to this Act in exchange for an equal acreage or equal value (as the Secretary may determine) of the subsurface estate in the Haida Exchange Lands conveyed to the United States by Haida Corporation pursuant to section 3(a).".

(7) Change the first sentence of section 4(c) to read: "Deadline.—Sealaska shall have 180 days from the date of enactment of this Act within which to accept the offer made by subsection (a) by providing to the Secretary a properly executed and certified corporate resolution binding upon Sealaska with respect to the relinquishment and conveyance of all Sealaska's interest in Goat Island and South Pass Islands, in the cooperative information and education branch site, and in such other lands of the Haida Exchange Lands as Haida Corporation relinquishes and conveys pursuant to section 3(b).".

(8) Change section 5(a) to read: "Contingency.—In the event that Haida Corporation does not make a timely acceptance of the offers made by section 3, any acceptance by Sealaska shall be ineffective and the United States shall not be bound to acquire any of Sealaska's interests in Goat Island, South Pass Islands or Haida Exchange Lands.".

(9) Strike Section 5(b) and insert the following:

"(b) Management.—If they are acquired by the United States pursuant to this Act, Goat Island and South Pass Islands shall be included within the Tongass National Forest, and shall be managed in accordance with laws applicable to the National Forest System and other applicable law. Subject to valid existing rights, Goat Island and South Pass Islands are hereby withdrawn from State selection under the Alaska Statehood Act and from native selection under the Alaska Native Claims Settlement Act. The provisions of section 1307(b) of the Alaska National Interest Lands Conservation Act shall apply to Goat Island and South Pass Islands notwithstanding the fact that such areas are not conservation system units.".

(10) In section 9, change "section 4" to "section 3" in the first sentence; and add the following sentence at the end of the section: "Any payments pursuant to section 3 shall be made no later than 90 days after an acceptance by Haida Corporation pursuant to section 3(c).".

(11) In section 10(a)(1), add the following sentence at the end of the paragraph: "The Secretary shall not concur in any withdrawal which would impair the Secretary's ability to manage the Tongass National Forest in accordance with applicable requirements of law.".

(12) In section 10(b), change the word "exercised" to "relinquished".

PATENT AND TRADEMARK OFFICE AUTHORIZATION

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2434), to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes, with Senate amendments thereto, concur in the Senate amendments numbered 1, 4, 5, 8, 9, 10, and 11, and concur in the Senate amendments numbered 2, 3, 6, and 7 with amendments which are at the desk.

The Clerk read the title of the bill.

The Clerk read the Senate amendments and the House amendments to Senate amendments numbered 2, 3, 6, and 7, as follows:

Senate amendments:

Page 2, line 6, strike out "(1)".

Page 2, line 7, after "paid" insert "on or after October 1, 1985,".

Page 2, line 19, after "sec. 3." insert "oversight and".

Page 2, line 20, strike out "prohibited".

Page 3, line 9, strike out "as described in section 41(f) of such title" and insert "which in the aggregate do not exceed fluctuations during the previous 3 years in the Consumer Price Index, as determined by the Secretary of Labor".

Page 3, after line 11, insert:

(c) Report to Congress.—The Commissioner of Patents and Trademarks shall, at the time of the President's annual submission to the Congress, provide the Committees on the Judiciary of the Senate and the House of Representatives a list of patent trademarks fee collections; a list of activities supported by patent fee collections, trademark fee collections, and appropriations; significant planning assumptions including out-year funding estimates, and any proposed disposition of surplus fees as well as any other information the Committees deem necessary.

Page 3, strike out all after line 17, over to and including line 2 on page 4, and insert:

SEC. 5. CONGRESSIONAL REVIEW OF PROPOSED PURCHASE OF AUTOMATED DATA PROCESSING SYSTEMS.

(a)(1) Submission of Automation Plan.—The Commissioner of Patents and Trademarks shall submit to the Committees on the Judiciary of the Senate and the House of Representatives the revised master automation plan (including a detailed cost benefit analysis), approved by the Secretary of Commerce and the Director of the Office of Management and Budget, by February 28, 1986. Such revised plan shall specify the key deployment decisions to be made in implementing the plan, as well as such other information as the appropriate Committees may deem necessary.

(2) Report by Commissioner.—The Commissioner shall report to the Committees on the Judiciary of the Senate and the House of Representatives, at least 90 calendar days in advance of the date of implementation of each key deployment decision provided for in the revised master automation plan. Each key deployment decision shall be approved by the Department of Commerce's designated Senior Official for Information Resources Management prior to submission. Reports of such decisions shall include the cost and method of financing the deployment decision proposed to be implemented including, where appropriate, a comparison with the cost benefit analysis contained in the revised automation master plan, as well as such other information as the committees may consider necessary to carry out such oversight authority.

(b) Prohibitions on New Obligations.—The Patent and Trademark Office may not enter into any new contract nor obligate any funds to implement a key deployment decision involving automated data processing systems as specified in subsection (a) prior to the expiration of 90 calendar days following the submission of each of the applicable reports required in such subsection.

Page 4, line 6, after "not" insert "enter into new agreements for the".

Page 4, line 7, after "exchange" insert "of".

Page 4, line 11, after "1988" insert: , nor continue existing agreements for the exchange of such items or services after April 1, 1987

Page 4, line 13, strike out "a bilateral or" and insert "an".

House amendments to Senate amendments numbered 2, 3, 6, and 7:

In lieu of Senate amendment numbered 2 insert the following:

Page 2, line 5, insert "(1)" before "Amounts".

Page 2, line 7, after "paid" insert "on or after October 1, 1985,".

Page 2, line 9, strike "(1)" and insert "(A)".

Page 2, line 12, strike "(2)" and insert "(B)".

Page 2, insert the following after line 13:

(2) Section 41 of title 35, United States Code, is amended by adding at the end the following new subsection:

"(h)(1) Fees charged under subsection (a) or (b) shall be reduced by 50 percent with respect to their application to any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or nonprofit organization as defined in regulations issued by the Commissioner of Patents and Trademarks.

"(2) With respect to its application to any entity described in paragraph (1), any surcharge or fee charged under subsection (c) or (d) shall not be higher than the surcharge or fee required of any other entity under the same or substantially similar circumstances.".

In lieu of Senate amendment numbered 3 insert the following:

Page 2, line 19, strike out "INCREASES OF" and insert "OVERSIGHT OF AND LIMITATIONS ON".

In lieu of the matter proposed to be inserted by the Senate amendment numbered 6 insert the following:

(c) Report to Congress.—The Secretary of Commerce shall, on the day on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

(4) any proposed disposition of surplus fees by the Office; and

(5) such other information as the committees consider necessary.

Strike out the matter proposed to be inserted by Senate amendment numbered 7 and insert the following:

SEC. 5. CONGRESSIONAL OVERSIGHT AND LIMITATIONS ON THE USE OF FEE REVENUES FOR PROPOSED PURCHASE OF AUTOMATED DATA PROCESSING SYSTEMS.

(a) Funding of Automated Data Processing Resources.—

(1) Allocations.—Of amounts available to the Patent and Trademark Office for automatic data processing resources for fiscal years 1987 and 1988, not more than 30 percent of such amounts in each such fiscal year may be from fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) and section 41 of title 35, United States Code. The Commissioner of Patents and Trademarks shall notify the Committees on the Judiciary of the Senate and the House of Representatives of any proposed reprogrammings which would increase or decrease the amount of appropriations expended for automatic data processing resources.

(2) Use of revenues by patent and trademark office.—Except as otherwise specifically provided in this Act and section 42(c) of title 35, United States Code, the Patent and Trademark Office is authorized to use appropriated or apportioned fee revenues for any of its operations or activities.

(b) Report by Commissioner on Implementing Automation Plan.—At least 90 calendar days before the date of implementation of each key deployment decision provided for in the revised master automation plan that was approved by the Secretary of Commerce and the Director of the Office of Management and Budget and that was submitted, in February 1986, to the Committees on the Judiciary of the Senate and the House of Representatives, the Commissioner of Patents and Trademarks shall report the proposed implementation to those committees. Each key deployment decision shall be approved by the designated Senior Official for Information Resources Management of the Department of Commerce before the report on the decision is made under the preceding sentence. Each such report on a key deployment decision shall include the cost and method of financing the deployment decision, including, where appropriate, a comparison with the cost benefit analysis contained in the revised automation master plan, as well as such other information as the committees consider necessary.

(c) Prohibition on New Obligations.—The Patent and Trademark Office may not enter into any new contract, or obligate any funds, to implement a key deployment decision described in subsection (b) until the expiration of 90 calendar days after the report with respect to such deployment decision is submitted under such subsection.

(d) Effective Date.—Subsections (b) and (c) take effect on January 1, 1987.

□ 1635

Mr. KASTENMEIER (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments and the House amendments to Senate amendments numbered 2, 3, 6, and 7 be considered as read and printed in the Record.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Wisconsin?

Mr. MOORHEAD. Mr. Speaker, reserving the right to object, could the gentleman from Wisconsin [Mr. Kastenmeier] explain areas where the House concurs to the Senate amendments and where the House concurs with amendments of its own?

Mr. KASTENMEIER. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Yes; I would be glad to do so. At the outset, I should note that this bill reauthorizes the Patent and Trademark Office for fiscal years 1986 through 1988. I would like to thank the gentleman from California, Mr. Moorhead, for his assistance in reaching a compromise. I also would like to thank the chairman of the House Committee on Government Operations, Mr. Brooks, also a member of my subcommittee, for his cooperation and input. In addition, I should express gratitude to my counterpart chairman on the Senate side, Senator Mathias, the ranking minority member, Senator Leahy, and the hard-working staff of the Senate Judicary Subcommittee on Patents, Copyrights and Trademarks for putting together a House-Senate compromise.

The House concurs in the Senate amendments 1, 4, 5, 8, 9, 10, and 11. The Senate amendments were all of a clarifying and technical nature and represent improvements to the House bill, as passed on June 24, 1985. The House concurred in Senate amendment 3, but added a technical correction.

We have amended the bill, as amended by the Senate, in three substantive areas. Our compromise reflects an agreement on three points. I will defer to the gentleman from California to explain the substance of the compromise.

Mr. MOORHEAD. Further reserving my right to object, I am happy to do so. First, the House-Senate compromise ensures that the small business, independent inventor, and nonprofit organization fee structure found in the preexisting authorization be continued as a part of current patent law.

Second, the House agrees with the Senate that there should be greater oversight of the Patent and Trademark Office's policies relating to user fees and actual use of those fees. Both Houses agree that activities funded by user fees should not diminish congressional oversight or authority. While fees may give the Office greater flexibility in spending, concerns have been raised that (1) user fees do result in diminished accountability to the public; and (2) the Office does not have a clear user fee policy.

Congress needs a better understanding of the Office's policies in this regard. Therefore, both Houses agree that the Secretary of Commerce, at the time of the President's annual budget submission to the Congress, should provide to the House and Senate Judiciary Committees the following: a list of collections; a list of activities which were supported by fees; budget plans for significant programs, projects and activities; and any proposed distribution of surplus fees. In addition, any other information the committees consider necessary should be provided, such as how fees are set and for what activities, and the relationship to the executive branch's overall fee policy.

Third, and in addition to the oversight contemplated by the "report" provisions, the House and Senate agree that greater oversight of the Office's automation plans is necessary. All questions have not been resolved regarding authorization limitations that might be placed on the Office.

In an effort to increase congressional oversight, the House required that funding for automation—both patents and trademarks—come solely from appropriations, totally to the exclusion of user fee revenue.

The Senate provided enhanced oversight of automation through a report-and-wait period of each key development decision in the automation plan. The Senate did not specify what type of funds—appropriations or user fees—could be used to pay for automation. The Senate's position was based on two factors. First, the type of funding used to underwrite automation should not diminish congressional oversight. Second, given the Office's reliance on fees, the Senate did not want excess fees to accumulate that could not be reprogrammed.

The agreement is a hybrid. The House and Senate agree on the following. In fiscal years 1987 and 1988, automated data processing resources should not be funded with more than 30 percent user fee moneys. Moreover, excess user fees can be reprogrammed in accordance with provisions in this bill and existing law. In addition, the report-and-wait periods, originally specified in the Senate bill about key development decisions relating to automation, are necessary.

Mr. Speaker, I withdraw my reservation of objection.

Mr. KASTENMEIER. The overall agreement is made contingent on three further policy factors. First, the appropriation/user fee percentage for funding automation—seventy/thirty percent—in no way sets a precedent for future authorizations. It may be that either less or more user fees will be used to fund automation in the future. Second, the compromise clearly proceeds on the assumption that automation of the Patent and Trademark office operations should proceed. Finally, the office's retention of user fees—or "back door" spending—must be carefully examined in the next authorization. What needs to be scrutinizedis is not charging fees for certain activities, but whether fees can be retained by the Office, and how fee decisions are made in the public interest.

The **SPEAKER** pro tempore. Is there objection to the initial request of the gentleman from Wisconsin?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just adopted.

The **SPEAKER** pro tempore. Is there objection to the request of the gentleman from Wisconsin.

There was no objection.

ELECTRONIC COMMUNICATIONS PRIVACY ACT OF 1986

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4952) to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Electronic Communications Privacy Act of 1986".

TITLE I—INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.

(a) DEFINITIONS.—(1) Section 2510(1) of title 18, United States Code, is amended—

(A) by striking out "any communication" and inserting "any aural transfer" in lieu thereof;

(B) by inserting "(including the use of such connection in a switching station)" after "reception".

(C) by striking out "as a common carrier" and

(D) by inserting before the semicolon at the end the following: "or communications affecting interstate or foreign commerce and such term includes any electronic storage of such communication, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit".

(2) Section 2510(2) of title 18, United States Code, is amended by inserting before the semicolon at the end the following: ", but such term does not include any electronic communication".

(3) Section 2510(4) of title 18, United States Code, is amended—

(A) by inserting "or other" after "aural"; and

(B) by inserting ", electronic," after "wire".

(4) Section 2510(5) of title 18, United States Code, is amended in clause (a)(i) by inserting before the semicolon the following: "or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business".

(5) Section 2510(8) of title 18, United States Code, is amended by striking out "identity of the parties to such communication or the existence,".

(6) Section 2510 of title 18, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (10);

(B) by striking out the period at the end of paragraph (11) and inserting a semicolon in lieu thereof; and

(C) by adding at the end the following:

"(12) 'electronic communication' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

"(A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

"(B) any wire or oral communication;

"(C) any communication made through a tone-only paging device; or

"(D) any communication from a tracking device (as defined in section 3117 of this title);

"(13) 'user' means any person or entity who—

"(A) uses an electronic communication service; and

"(B) is duly authorized by the provider of such service to engage in such use;

"(14) 'electronic communications system' means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"(15) 'electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications;

"(16) 'readily accessible to the general public' means, with respect to a radio communication, that such communication is not—

"(A) scrambled or encrypted;

"(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

"(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

"(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

"(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio;

"(17) 'electronic storage' means—

"(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

"(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

"(18) 'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.".

(b) EXCEPTIONS WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—

(1) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof" and inserting in lieu thereof "such disclosure";

(B) by striking out "the carrier" and inserting in lieu thereof "such person"; and

(C) by striking out "an order or certification under this subparagraph" and inserting in lieu thereof "a court order or certification under this chapter".

(2) Section 2511(2)(d) of title 18, United States Code, is amended by striking out "or for the purpose of committing any other injurious act".

(3) Section 2511(2)(f) of title 18, United States Code, is amended—

(A) by inserting "or chapter 121" after "this chapter"; and

(B) by striking out "by" the second place it appears and inserting in lieu thereof ", or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing".

(4) Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

"(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

"(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

"(ii) to intercept any radio communication which is transmitted—

"(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

"(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, in-

cluding police and fire, readily accessible to the general public;

"(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

"(IV) by any marine or aeronautical communications system;

"(iii) to engage in any conduct which—

"(I) is prohibited by section 633 of the Communications Act of 1934; or

"(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

"(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

"(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

"(h) It shall not be unlawful under this chapter—

"(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

"(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.".

(c) Technical and Conforming Amendments.—(1) Chapter 119 of title 18, United States Code, is amended—

(A) in each of sections 2510(5), 2510(8), 2510(9)(b), 2510(11), and 2511 through 2519 (except sections 2515, 2516(1) and 2518(10)), by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof; and

(B) in section 2511(2)(b), by inserting "or electronic" after "wire".

(2) The heading of chapter 119 of title 18, United States Code, is amended by inserting "and electronic communications" after "wire".

(3) The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United States Code is amended by inserting "and electronic communications" after "Wire".

(4) Section 2510(5)(a) of title 18, United States Code, is amended by striking out "communications common carrier" and inserting "provider of wire or electronic communication service" in lieu thereof.

(5) Section 2511(2)(a)(i) of title 18, United States Code, is amended—

(A) by striking out "any communication common carrier" and inserting "a provider of wire or electronic communication service" in lieu thereof;

(B) by striking out "of the carrier of such communication" and inserting "of the provider of that service" in lieu thereof; and

(C) by striking out ": Provided, That said communication common carriers" and inserting ", except that a provider of wire communication service to the public" in lieu thereof.

(6) Section 2511(2)(a)(ii) of title 18, United States Code, is amended—

(A) by striking out "communication common carriers" and inserting "providers of wire or electronic communication service" in lieu thereof;

(B) by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(C) by striking out "if the common carrier" and inserting "if such provider" in lieu thereof.

(7) Section 2512(2)(a) of title 18, United States Code, is amended—

(A) by striking out "a communications common carrier" the first place it appears and inserting "a provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "a communications common carrier" the second place it appears and inserting "such a provider" in lieu thereof; and

(C) by striking out "communications common carrier's business" and inserting "business of providing that wire or electronic communication service" in lieu thereof.

(8) Section 2518(4) of title 18, United States Code, is amended—

(A) by striking out "communication common carrier" in both places it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "carrier" and inserting in lieu thereof "service provider".

(d) Penalties Modification.—(1) Section 2511(1) of title 18, United States Code, is amended by striking out "shall be" and all that follows through "or both" and inserting in lieu thereof "shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5)".

(2) Section 2511 of title 18, United States Code, is amended by adding after the material added by section 102 the following:

"(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

"(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication that is not scrambled or encrypted, then—

"(i) if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, and the conduct is not that described in subsection (5), the offender shall be fined under this title or imprisoned not more than one year, or both; and

"(ii) if the communication is the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication, the offender shall be fined not more than $500.

"(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

"(i) to a broadcasting station for purposes of retransmission to the general public; or

"(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

"(5)(a)(i) If the communication is—

"(A) a private satellite video communication that is not scrambled or encrypted and the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

"(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

"(ii) In an action under this subsection—

"(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

"(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

"(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.".

(e) Exclusivity of Remedies With Respect to Electronic Communications.—Section 2518(10) of title 18, United States Code, is amended by adding at the end the following:

"(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.".

(f) State of Mind.—Paragraphs (a), (b), (c), and (d) of subsection (1) of section 2511 of title 18, United States Code, are amended by striking out "willfully" and inserting in lieu thereof "intentionally".

(2) Subsection (1) of section 2512 of title 18, United States Code, is amended in the matter before paragraph (a) by striking out "willfully" and inserting in lieu thereof "intentionally".

SEC. 102. REQUIREMENTS FOR CERTAIN DISCLOSURES.

Section 2511 of title 18, United States Code, is amended by adding at the end the following:

"(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

"(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

"(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

"(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

"(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

"(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.".

SEC. 103. RECOVERY OF CIVIL DAMAGES.

Section 2520 of title 18, United States Code, is amended to read as follows:

"§ 2520. Recovery of civil damages authorized

"(a) In General.—Except as provided in section 2511(2)(a)(ii), any person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) Relief.—In an action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) Computation of Damages.—(1) In an action under this section, if the conduct in violation of this chapter is the private viewing of a private satellite video communication that is not scrambled or encrypted or if the communication is a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, then the court shall assess damages as follows:

"(A) If the person who engaged in that conduct has not previously been enjoined under section 2511(5) and has not been found liable in a prior civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $50 and not more than $500.

"(B) If, on one prior occasion, the person who engaged in that conduct has been enjoined under section 2511(5) or has been found liable in a civil action under this section, the court shall assess the greater of the sum of actual damages suffered by the plaintiff, or statutory damages of not less than $100 and not more than $1000.

"(2) In any other action under this section, the court may assess as damages whichever is the greater of—

"(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(B) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

"(d) Defense.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other law.

"(e) Limitation.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.".

SEC. 104. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.

Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division".

SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.

(a) Wire and Oral Interceptions.—Section 2516(1) of title 18 of the United States Code is amended—

(1) in paragraph (c)—

(A) by inserting "section 751 (relating to escape)," after "wagering information),";

(B) by striking out "2314" and inserting "2312, 2313, 2314," in lieu thereof;

(C) by inserting "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relating to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),";

(D) by inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," after "1952 (interstate and foreign travel or transportation in aid of racketeering enterprises),";

(E) by inserting ", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organizations)"; and

(F) by—

(i) striking out "or" before "section 351" and inserting in lieu thereof a comma; and

(ii) inserting before the semicolon at the end thereof the following: ", section 831 (relating to prohibited transactions involving nuclear materials), section 33 (relating to destruction of motor vehicles or motor vehicle facilities), or section 1992 (relating to wrecking trains)";

(2) by striking out "or" at the end of paragraph (g);

(3) by inserting after paragraph (g) the following:

"(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

"(i) any violation of section 1679a(c)(2) (relating to destruction of a natural gas pipeline) or subsection (i) or (n) of section 1472 (relating to aircraft piracy) of title 49, of the United States Code;

"(j) any criminal violation of section 2778 of title 22 (relating to the Arms Export Control Act); or";

"(k) the location of any fugitive from justice from an offense described in this section;

(4) by redesignating paragraph (h) as paragraph (l); and

(5) in paragraph (a) by—

(A) inserting after "Atomic Energy Act of 1954)," the following: "section 2284 of title 42 of the United States Code (relating to sabotage of nuclear facilities or fuel),";

(B) striking out "or" after "(relating to treason),"; and

(C) inserting before the semicolon at the end thereof the following: "chapter 65 (relating to malicious mischief), chapter 111 (relating to destruction of vessels), or chapter 81 (relating to piracy)".

(b) Interception of Electronic Communications.—Section 2516 of title 18 of the United States Code is amended by adding at the end the following:

"(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.".

SEC. 106. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF ORDERS.

(a) Place of Authorized Interception.—Section 2518(3) of title 18 of the United States Code is amended by inserting "(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)" after "within the territorial jurisdiction of the court in which the judge is sitting".

(b) Reimbursement for Assistance.—Section 2518(4) of title 18 of the United States Code is amended by striking out "at the prevailing rates" and inserting in lieu thereof "for reasonable expenses incurred in providing such facilities or assistance".

(c) Commencement of Thirty-Day Period and Postponement of Minimization.—Section 2518(5) of title 18 of the United States Code is amended—

(1) by inserting after the first sentence the following: "Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered."; and

(2) by adding at the end the following: "In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.".

(d) Alternative to Designating Specific Facilities From Which Communications Are to be Intercepted.—(1) Section 2518(1)(b)(ii) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "a particular description".

(2) Section 2518(3)(d) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "there is".

(3) Section 2518 of title 18 of the United States Code is amended by adding at the end the following:

"(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

"(a) in the case of an application with respect to the interception of an oral communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

"(iii) the judge finds that such specification is not practical; and

"(b) in the case of an application with respect to a wire or electronic communication—

"(i) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(ii) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

"(iii) the judge finds that such purpose has been adequately shown.

"(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (11)(b) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall decide such a motion expeditiously.".

(4) Section 2519(1)(b) of title 18, United States Code, is amended by inserting "(including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title)" after "applied for".

SEC. 107. INTELLIGENCE ACTIVITIES.

(a) In General.—Nothing in this Act or the amendments made by this Act constitutes authority for the conduct of any intelligence activity.

(b) Certain Activities Under Procedures Approved by the Attorney General.—Nothing in chapter 119 or chapter 121 of title 18, United States Code, shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to—

(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978; or

(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978.

SEC. 108. MOBILE TRACKING DEVICES.

(a) In General.—Chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"§ 3117. Mobile tracking devices

"(a) In General.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

"(b) Definition.—As used in this section, the term 'tracking device' means an electronic or mechanical device which permits the tracking of the movement of a person or object.".

(b) Clerical Amendment.—The table of contents at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"3117. Mobile tracking devices.".

SEC. 109. WARNING SUBJECT OF SURVEILLANCE.

Section 2232 of title 18, United States Code, is amended—

(1) by inserting "(a) Physical Interference With Search.—" before "Whoever" the first place it appears;

(2) by inserting "(b) Notice of Search.—" before "Whoever" the second place it appears; and

(3) by adding at the end the following:

"(c) Notice of Certain Electronic Surveillance.—Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice or attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

"Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.".

SEC. 110. INJUNCTIVE REMEDY.

(a) In General.—Chapter 119 of title 18, United States Code, is amended by adding at the end the following:

"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.".

(b) Clerical Amendment.—The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by adding at the end thereof the following:

"2521. Injunction against illegal interception.".

SEC. 111. EFFECTIVE DATE.

(a) In General.—Except as provided in subsection (b) or (c), this title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) Special Rule for State Authorizations of Interceptions.—Any interception pursuant to section 2516(2) of title 18 of the United States Code which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such interception occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of State law conforming the applicable State statute with chapter 119 of title 18, United States Code, as so amended; or

(2) the date two years after the date of the enactment of this Act.

(c) Effective Date for Certain Approvals by Justice Department Officials.—Section 104 of this Act shall take effect on the date of enactment of this Act.

TITLE II—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

SEC. 201. TITLE 18 AMENDMENT.

Title 18, United States Code, is amended by inserting after chapter 119 the following:

"CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

"Sec.

"2701. Unlawful access to stored communications.

"2702. Disclosure of contents.

"2703. Requirements for governmental access.

"2704. Backup preservation.

"2705. Delayed notice.

"2706. Cost reimbursement.

"2707. Civil action.

"2708. Exclusivity of remedies.

"2709. Counterintelligence access to telephone toll and transactional records.

"2710. Definitions.

"§ 2701. Unlawful access to stored communications

"(a) Offense.—Except as provided in subsection (c) of this section whoever—

"(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

"(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

"(b) Punishment.—The punishment for an offense under subsection (a) of this section is—

"(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain—

"(A) a fine of not more than $250,000 or imprisonment for not more than one year, or both, in the case of a first offense under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than two years, or both, for any subsequent offense under this subparagraph; and

"(2) a fine of not more than $5,000 or imprisonment for not more than six months, or both, in any other case.

"(c) Exceptions.—Subsection (a) of this section does not apply with respect to conduct authorized—

"(1) by the person or entity providing a wire or electronic communications service;

"(2) by a user of that service with respect to a communication of or intended for that user; or

"(3) in section 2703, 2704 or 2518 of this title.

"§ 2702. Disclosure of contents

"(a) Prohibitions.—Except as provided in subsection (b)—

"(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

"(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(b) Exceptions.—A person or entity may divulge the contents of a communication—

"(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

"(2) as otherwise authorized in section 2516, 2511(2)(a), or 2703 of this title;

"(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

"(4) to a person employed or authorized or whose facilities are used to forward such communication to its destination;

"(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

"(6) to a law enforcement agency, if such contents—

"(A) were inadvertently obtained by the service provider; and

"(B) appear to pertain to the commission of a crime.

"§ 2703. Requirements for governmental access

"(a) Contents of Electronic Communications in Electronic Storage.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication, that is in electronic storage in an electronic communications system for one hundred and eighty days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than one hundred and eighty days by the means available under subsection (b) of this section.

"(b) Contents of Electronic Communications in a Remote Computing Service.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

"(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

"(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena; or

"(ii) obtains a court order for such disclosure under subsection (d) of this section; except that delayed notice may be given pursuant to section 2705 of this title.

"(2) Paragraph (1) is applicable with respect to any electronic communication that is held or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(c) Records Concerning Electronic Communication Service or Remote Computing Service.—(1)(A) Except as provided in subparagraph (B), a provider of electronic communication service or remote computing service may disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to any person other than a governmental entity.

"(B) A provider of electronic communication service or remote computing service shall disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) to a governmental entity only when the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury subpoena;

"(ii) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

"(iii) obtains a court order for such disclosure under subsection (d) of this section; or

"(iv) has the consent of the subscriber or customer to such disclosure.

"(2) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

"(d) Requirements for Court Order.—A court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State. A court issuing an order pursuant to this section, on a motion made promptly by the service provider, may quash or modify such order, if the information or records requested are unusually voluminous in nature or compliance with such order otherwise would cause an undue burden on such provider.

"(e) No Cause of Action Against a Provider Disclosing Information Under This Chapter.—No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, subpoena, or certification under this chapter.

"§ 2704. Backup preservation

"(a) Backup Preservation.—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

"(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

"(3) The service provider shall not destroy such backup copy until the later of—

"(A) the delivery of the information; or

"(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

"(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer if such service provider—

"(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

"(B) has not initiated proceedings to challenge the request of the governmental entity.

"(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in

destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

"(b) CUSTOMER CHALLENGES.—(1) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate United States district court or State court. Such motion or application shall contain an affidavit or sworn statement—

"(A) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

"(B) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

"(2) Service shall be made under this section upon a governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, the term 'delivery' has the meaning given that term in the Federal Rules of Civil Procedure.

"(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

"(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

"(5) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

"§ 2705. Delayed notice

"(a) DELAY OF NOTIFICATION.—(1) A governmental entity acting under section 2703(b) of this title may—

"(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed ninety days, if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

"(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed ninety days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result described in paragraph (2) of this subsection.

"(2) An adverse result for the purposes of paragraph (1) of this subsection is—

"(A) endangering the life or physical safety of an individual;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

"(4) Extensions of the delay of notification provided in section 2703 of up to ninety days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) of this section.

"(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first-class mail to, the customer or subscriber a copy of the process or request together with notice that—

"(A) states with reasonable specificity the nature of the law enforcement inquiry; and

"(B) informs such customer or subscriber—

"(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

"(ii) that notification of such customer or subscriber was delayed;

"(iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and

"(iv) which provision of this chapter allowed such delay.

"(6) As used in this subsection, the term 'supervisory official' means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

"(b) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

"(1) endangering the life or physical safety of an individual;

"(2) flight from prosecution;

"(3) destruction of or tampering with evidence;

"(4) intimidation of potential witnesses; or

"(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"§ 2706. Cost reimbursement

"(a) PAYMENT.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

"(b) AMOUNT.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

"(c) The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (a) if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

"§ 2707. Civil action

"(a) CAUSE OF ACTION.—Except as provided in section 2703(e), any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In a civil action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c); and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) DAMAGES.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense to any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

"§ 2708. Exclusivity of remedies

"The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

"§ 2709. Counterintelligence access to telephone toll and transactional records

"(a) DUTY TO PROVIDE.—A wire or electronic communication service provider shall comply with a request for subscriber information and toll billing records information, or electronic communication transactional records in its custody or possession made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(c) PROHIBITION OF CERTAIN DISCLOSURE.—No wire or electronic communication service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

"(d) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made under subsection (b) of this section.

"§ 2710. Definitions for chapter

"As used in this chapter—

"(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section; and

"(2) the term 'remote computing service' means the provision to the public of computer storage or processing services by means of an electronic communications system.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by adding at the end the following:

"121. Stored Wire and Electronic Communications and Transactional Records Access .... 2701".

SEC. 202. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect ninety days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

TITLE III—PEN REGISTERS AND TRAP AND TRACE DEVICES

SEC. 301. TITLE 18 AMENDMENT.

(a) IN GENERAL.—Title 18 of the United States Code is amended by inserting after chapter 205 the following new chapter:

"CHAPTER 206—PEN REGISTERS AND TRAP AND TRACE DEVICES

"Sec.
"3121. General prohibition on pen register and trap and trace device use; exception.
"3122. Application for an order for a pen register or a trap and trace device.
"3123. Issuance of an order for a pen register or a trap or trace device.
"3124. Assistance in installation and use of a pen register or a trap and trace device.
"3125. Reports concerning pen registers and trap and trace devices.
"3126. Definitions for chapter.

"§ 3121. General prohibition on pen register and trap and trace device use; exception

"(a) IN GENERAL.—Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

"(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

"(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

"(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or (3) where the consent of the user of that service has been obtained.

"(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

"§ 3122. Application for an order for a pen register or a trap and trace device

"(a) APPLICATION.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

"(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction of such State.

"(b) CONTENTS OF APPLICATION.—An application under subsection (a) of this section shall include—

"(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

"§ 3123. Issuance of an order for a pen register or a trap and trace device

"(a) IN GENERAL.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney for the Government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

"(b) CONTENTS OF ORDER.—An order issued under this section—

"(1) shall specify—

"(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;

"(B) the identity, if known, of the person who is the subject of the criminal investigation;

"(C) the number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and

"(D) a statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

"(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under section 3124 of this title.

"(c) TIME PERIOD AND EXTENSIONS.—(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days.

"(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of exten-

sion shall be for a period not to exceed sixty days.

"(d) NONDISCLOSURE OF EXISTENCE OF PEN REGISTER OR A TRAP AND TRACE DEVICE.—An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that—

"(1) the order be sealed until otherwise ordered by the court; and

"(2) the person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the court.

"§ 3124. Assistance in installation and use of a pen register or a trap and trace device

"(a) PEN REGISTERS.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 3123(b)(2) of this title.

"(b) TRAP AND TRACE DEVICE.—Upon the request of an attorney for the Government or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install such device forthwith on the appropriate line and shall furnish such investigative or law enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in section 3123(b)(2) of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law enforcement agency, designated in the court, at reasonable intervals during regular business hours for the duration of the order.

"(c) COMPENSATION.—A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

"(d) NO CAUSE OF ACTION AGAINST A PROVIDER DISCLOSING INFORMATION UNDER THIS CHAPTER.—No cause of action shall lie in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this chapter.

"(e) DEFENSE.—A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this chapter or any other law.

"§ 3125. Reports concerning pen registers and trap and trace devices

"The Attorney General shall annually report to Congress on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the Department of Justice.

"§ 3126. Definitions for chapter

"As used in this chapter—

"(1) the terms 'wire communication', 'electronic communication', and 'electronic communication service' have the meanings set forth for such terms in section 2510 of this title;

"(2) the term 'court of competent jurisdiction' means—

"(A) a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals; or

"(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register or a trap and trace device;

"(3) the term 'pen register' means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but such term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by such provider or any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business;

"(4) the term 'trap and trace device' means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted;

"(5) the term 'attorney for the Government' has the meaning given such term for the purposes of the Federal Rules of Criminal Procedure; and

"(6) the term 'State' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.".

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18 of the United States Code is amended by inserting after the item relating to chapter 205 the following new item:

"206. Pen Registers and Trap and Trace Devices .... 3121".

SEC. 302. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect ninety days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any pen register or trap and trace device order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under Federal law as amended by this title; or

(2) the date two years after the date of the enactment of this Act.

SEC. 303. INTERFERENCE WITH THE OPERATION OF A SATELLITE.

(a) OFFENSE.—Chapter 65 of title 18, United States Code, is amended by inserting at the end the following:

"§ 1367. Interference with the operation of a satellite

"(a) Whoever, without the authority of the satellite operator, intentionally or maliciously interferes with the authorized operation of a communications or weather satellite or obstructs or hinders any satellite transmission shall be fined in accordance with this title or imprisoned not more than ten years or both.

"(b) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency or of an intelligence agency of the United States."

(b) CONFORMING AMENDMENT.—The table of sections for chapter 65 of title 18, United States Code, is amended by adding at the end the following new item:

"1367. Interference with the operation of a satellite.".

Mr. KASTENMEIER (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

Mr. MOORHEAD. Mr. Speaker, reserving the right to object, I would like to ask the gentleman from Wisconsin if there have been any nongermane Senate amendments added to H.R. 4952?

Mr. KASTENMEIER. Mr. Speaker, if the gentleman will yield. I would say to the gentleman from California that there have not been any nongermane Senate amendments added to H.R. 4952.

Mr. MOORHEAD. Further reserving the right to object, is the substance of H.R. 4952 substantially the same as when it passed the House under suspension of the rules on June 23, 1986?

Mr. KASTENMEIER. If the gentleman will yield, I would say yes. H.R. 4952 was passed yesterday by the other body as a substitute amendment. The few changes that were made are relatively minor and uncontroversial. Therefore, I would surely hope we can act favorably on this measure this afternoon so we can see it enacted into public law.

Mr. Speaker, let me take just a few moments to describe the changes made by the other body.

Mr. Speaker, I am pleased to offer the bill H.R. 4952, the Electronic Communications Privacy Act of 1986. This bill was passed by the House under suspension of the rules on June 23, 1986, after being reported by the Committee on the Judiciary by a recorded vote of 34 to 0.

The Electronic Communications Privacy Act updates existing Federal wiretapping law to take into account new forms of electronic communications such as electronic mail, cellular telephones, and data transmission by providing such communications with protection against improper interception. The bill also benefits law enforcement by creating clearer procedures for the use of investigative techniques which involve the interception of communications.

This legislation, which grew out of extensive hearings and an Office of Technology Assessment study, enjoys the strong support of the business community, consumer groups, civil liberties organizations and the administration. In commenting on the bill the Department of Justice has said the "enactment of this bill would represent a major accomplishment for the 99th Congress." Business and professional organizations supporting the bill include the National Association of Manufacturers, the National Association of Broadcasters, the American Bar Association, numerous telephone companies and trade associations involved in electronic mail, videotex, cellular telephones, paging services and other telecommunications services.

H.R. 4952 was passed yesterday by the other body as a substitute amendment. The few changes that were made are relatively minor and uncontroversial. Therefore, I hope we can act favorably upon this measure this afternoon so that we can see it enacted into public law.

First, let me take a few moments to briefly describe the changes made by the other body:

The penalty for intentional interception of a cellular telephone call, reduced in the House bill from a 5-year felony to a 6-month petty offense, has been further reduced to a $500 fine for a first offense. This is true for voice pagers as well.

The penalty for private home viewing of certain satellite transmissions, such as so-called backhauls, has been reduced to a series of penalties, including fines and injunctive relief, that has been endorsed by representatives of satellite dish owners, broadcasters, and cable. Audio subcarriers, except for telephone and data transmissions, are exempt.

Electronic communications providers may move to quash an order for a "roving tap" if compliance would be unduly burdensome.

At the request of the Justice Department, the list of crimes for which an interception be authorized has been expanded.

A good faith defense is provided for those who comply with court orders or warrants, grand jury subpoenas, legislative or statutory authorizations, or a request of an investigative or law enforcement officer under section 2518(7) of title 18 concerning emergency situations. The term "good faith" is intended as an objective standard, which would include acting within the scope of a facially valid court order as received. Thus, under section 2520(a) of title 18, a civil action will not lie where the requirements of section 2511(2)(a)(ii) of title 18 are met. With regard to that exception, we intend that the following procedural standards will apply:

First, the complaint must allege that a wire or electronic communications service provider—or one of its employees: (a) disclosed the existence of a wiretap; (b) acted without a facially valid court order or certification; (c) acted beyond the scope of a court order or certification or (d) acted in bad faith. Acting in bad faith would include failing to read the order or collusion. If the complaint fails to make any of these allegations, the defendant can move to dismiss the complaint for failure to state a claim upon which relief can be granted.

Second, if during the course of pretrial discovery the plaintiff's claim proves baseless, the defendant can move for summary judgment.

Third, if the court denies the summary judgment motion, the case goes to trial. At the close of the plaintiff's case, the defendant again can move for dismissal. If that motion is denied, the defendant then has the opportunity to present to the jury its section 2520 good faith defense.

The bill also clarifies certain practices with regard to surveillance by intelligence agencies.[1]

I would like to thank the gentleman, the ranking minority member of my subcommittee, who is an original cosponsor of the bill and whose support has been critical to its progress. Thanks are also due to the sponsors of this measure in the other body, the gentleman from Vermont, Senator LEAHY, and the gentleman from Maryland, Senator MATHIAS, and the chairman of the committee, the gentleman from South Carolina, Senator THURMOND. Without their help, and that of their able staff, John Podesta and Ann Harkins for Senator LEAHY; Steve Metalitz and Ken Mannella for Senator MATHIAS; and Dennis Shedd and Cindy Blackburn for Senator THURMOND, we could not have moved this legislation. Finally, I would like to thank my own staff, Deborah Leavy and David Beier, as well as minority counsel Joseph Wolfe.

Mr. MOORHEAD. Mr. Speaker, further reserving the right to object, this legislation covers conduct that may be prohibited under section 705 of the Communications Act of 1934. Do I understand correctly that the sanctions contained in this legislation would be imposed in addition to, and not instead of, those contained in section 705 and other sections of the Communications Act?

Mr. KASTENMEIER. That is correct. This legislation is not intended to alter any rights or liabilities for conduct that also is covered by section 705 or other sections of the Communications Act. Similarly, it is not intended to authorize any conduct which otherwise would be prohibited by section 705 or other sections. It should be noted that we do not provide criminal liability for noncommercial, private viewing of unscrambled network feeds to affiliates by the owners of home satellite dishes. Accountability for that conduct will be determined solely under section 705 of the Communications Act. The private viewing of any other video transmission not otherwise excepted by section 705(b) will be subject to action under both the Communications Act and this legislation.

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[1] The bill amends chapter 33 of title 28, United States Code to grant the FBI authority to obtain telephone subscriber information or toll billing record information from a communication common carrier for counterintelligence purposes if the Director of the Federal Bureau of Investigation—or the Director's designee—finds that there are specific and articulate facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

Should the Director of the FBI decide to delegate his authority he or she should delegate it no further down the FBI chain of command than the level of Deputy Assistant Director. Because the need for timely access to subscriber information or toll billing records may be acute in certain circumstances, the Director of the FBI may delegate to the head or acting head of FBI field offices the authority to make the certifications and determinations required by the bill in exigent circumstances where time is of the essence, provided that the Director of the FBI is notified as soon as possible of the circumstances and the exercise of the authority.

The requirement of "reason to believe" that the person or entity to whom the telephone subscriber information or toll billing record information pertains is a foreign power or an agent of a foreign power is significantly less stringent that the requirement of "probable cause" to believe that the customer is an agent of a foreign power. It is intended that the FBI official making the determination required to exercise the authority will, in applying the "reason to believe" standard, take into account the facts and circumstances that a prudent investigator would consider insofar as they provide an objective, factual basis for the determination.

We expect the FBI to develop and issue guidelines, approved by the Attorney General, for the acquisition, retention, and dissemination of information pursuant to the authority granted by the bill.

These guidelines will, among other things, implement the requirement that information acquired under the authority may be disseminated to other agencies of the United States only if such information is clearly relevant to the authorized responsibilities of such agencies. The guidelines should also be reasonably designed to minimize the acquisition and retention of the information concerning U.S. persons, consistent with the need of the United States for foreign counterintelligence information. We expect that the FBI will submit the guidelines to the intelligence committees of the Congress prior to their taking effect. The intelligence committees of the Congress have discussed with FBI officials the current practices of the FBI for obtaining access to telephone subscribe information and toll billing record information in counterintelligence investigations under the existing voluntary arrangements. In large measure, these practices appear to be consistent with the requirements of the authority providing mandatory access to telephone records. However, to the extent, if any, that FBI practice under the voluntary authority permits access to a person's or entity's telephone subscriber or billing records solely on the basis that the person or entity is the target of a hostile recruitment effort, such practice with respect to the mandatory authority would conflict with the requirements of the bill.

Finally, we note that, in unusual circumstances, the FBI may seek telephone billing record information which pertains to a foreign power or agent of a foreign power which is carried in the records of the communication common carrier under the name of a person or entity other than the foreign power or agent of a foreign power. This could occur when the FBI official making the determination under the authority granted by the bill finds reason to believe that the foreign power or agent of a foreign power uses the telephone of a third party. We expect the FBI to apply strict minimization procedures in such situations to ensure that only the information contained in such third party records which pertains to the foreign power or agent of a foreign power will be acquired, retained and disseminated.

Mr. MOORHEAD. So this legislation, then, is not intended to legalize or decriminalize any conduct prohibited by the Communications Act?

Mr. KASTENMEIER. That is correct.

Mr. MOORHEAD. Mr. Speaker, further reserving the right to object, I would like to commend the gentleman from Wisconsin [Mr. KASTENMEIER], as well as his staff, David Beier and Deborah Leavy, for their outstanding work on H.R. 4952.

I would also like to commend Senator MATHIAS and Senator LEAHY as well as their very able counsels, Steve Metalitz and John Podesta, for their leadership and hard work on this issue.

I certainly also would like to commend the minority staff, Tom Mooney and Joe Wolf, for their work on this legislation.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

Mr. GONZALEZ. Mr. Speaker, reserving the right to object, I was merely reserving this right in order to ask the distinguished chairman if he could elaborate a little bit more on the specifics of the Justice Department's requested additions or changes.

I yield to the gentleman for his response.

Mr. KASTENMEIER. I thank the gentleman.

I am informed that the violations under the Arms Export Control Act were included at the request of the Justice Department.

Mr. GONZALEZ. That is not waiving the violations of the arms export law? That is, it is including the present law?

Mr. KASTENMEIER. That is correct.

Mr. GONZALEZ. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. Is there objection to the initial request of the gentleman from Wisconsin?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just debated and adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

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CONFERENCE REPORT OF H.R. 5316, BANKRUPTCY JUDGES, UNITED STATES TRUSTEES, AND FAMILY FARMER BANKRUPTCY ACT OF 1986

Mr. EDWARDS of California submitted the following conference report and statement on the bill (H.R. 5316) to amend title 28 of the United States Code to provide for the appointment of additional bankruptcy judges, to provide for the appointment of United States trustees to serve in bankruptcy cases in judicial districts throughout the United States, to make certain changes with respect to the role of United States trustees in such cases, and for other purposes:

CONFERENCE REPORT (H. REPT. 99-958)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5316) to amend title 28 of the United States Code to provide for the appointment of additional bankruptcy judges, to provide for the appointment of United States trustees to serve in bankruptcy cases in judicial districts throughout the United States, to make certain changes with respect to the role of United States trustees in such cases, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986".

TITLE I—AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE

Subtitle A—Appointment of Bankruptcy Judges

SEC. 101. ADDITIONAL BANKRUPTCY JUDGES.

Section 152(a)(2) of title 28, United States Code, is amended—

(1) in the item relating to the eastern district and the western district of Arkansas by striking out "2" and inserting in lieu thereof "3",

(2) in the item relating to the northern district of California by striking out "7" and inserting in lieu thereof "9",

(3) in the item relating to the eastern district of California by striking out "4" and inserting in lieu thereof "6",

(4) in the item relating to the central district of California by striking out "12" and inserting in lieu thereof "19",

(5) in the item relating to the southern district of California by striking out "3" and inserting in lieu thereof "4",

(6) in the item relating to the middle district of Florida by striking out "2" and inserting in lieu thereof "4",

(7) in the item relating to the northern district of Georgia by striking out "4" and inserting in lieu thereof "6",

(8) in the item relating to the southern district of Georgia by striking out "1" and inserting in lieu thereof "2",

(9) in the item relating to the district of Idaho by striking out "1" and inserting in lieu thereof "2",

(10) in the item relating to the northern district of Illinois by striking out "8" and inserting in lieu thereof "10",

(11) in the item relating to the central district of Illinois by striking out "2" and inserting in lieu thereof "3",

(12) in the item relating to the northern district of Indiana by striking out "2" and inserting in lieu thereof "3",

(13) in the item relating to the northern district of Iowa by striking out "1" and inserting in lieu thereof "2",

(14) in the item relating to the southern district of Iowa by striking out "1" and inserting in lieu thereof "2",

(15) in the item relating to the western district of Kentucky by striking out "2" and inserting in lieu thereof "3",

(16) in the item relating to the western district of Louisiana by striking out "2" and inserting in lieu thereof "3",

(17) in the item relating to the district of Maryland by striking out "2" and inserting in lieu thereof "3",

(18) in the item relating to the western district of Michigan by striking out "2" and inserting in lieu thereof "3",

(19) in the item relating to the district of Nebraska by striking out "1" and inserting in lieu thereof "2",

(20) in the item relating to the district of Nevada by striking out "2" and inserting in lieu thereof "3",

(21) in the item relating to the district of New Jersey by striking out "5" and inserting in lieu thereof "7",

(22) in the item relating to the western district of North Carolina by striking out "1" and inserting in lieu thereof "2",

(23) in the item relating to the northern district of Oklahoma by striking out "1" and inserting in lieu thereof "2",

(24) in the item relating to the western district of Oklahoma by striking out "2" and inserting in lieu thereof "3",

(25) in the item relating to the district of Oregon by striking out "4" and inserting in lieu thereof "5",

(26) in the item relating to the western district of Pennsylvania by striking out "3" and inserting in lieu thereof "4",

(27) in the item relating to the district of South Carolina by striking out "1" and inserting in lieu thereof "2",

(28) in the item relating to the district of South Dakota by striking out "1" and inserting in lieu thereof "2",

(29) in the item relating to the eastern district of Tennessee by striking out "2" and inserting in lieu thereof "3",

(30) in the item relating to the western district of Tennessee by striking out "2" and inserting in lieu thereof "3",

(31) in the item relating to the northern district of Texas by striking out "4" and inserting in lieu thereof "5",

(32) in the item relating to the southern district of Texas by striking out "3" and inserting in lieu thereof "6",

(33) in the item relating to the western district of Texas by striking out "2" and inserting in lieu thereof "3",

(34) in the item relating to the district of Utah by striking out "2" and inserting in lieu thereof "3",

(35) in the item relating to the eastern district of Virginia by striking out "3" and inserting in lieu thereof "4",

(36) in the item relating to the eastern district of Washington by striking out "1" and inserting in lieu thereof "2",

(37) in the item relating to the western district of Washington by striking out "4" and inserting in lieu thereof "5", and

(38) in the item relating to the eastern district of Wisconsin by striking out "3" and inserting in lieu thereof "4".

SEC. 102. QUALIFICATIONS FOR APPOINTMENT OF BANKRUPTCY JUDGES.

Section 120(c)(2) of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (Public Law 98-353; 98 Stat. 345) is amended by striking out "or the District of Columbia bar," and inserting in lieu thereof "the District of Columbia bar, or the bar of the Commonwealth of Puerto Rico,".

SEC. 103. DIVISION OF BUSINESS AMONG BANKRUPTCY JUDGES.

Section 156 of title 28, United States Code, is amended by adding at the end thereof the following:

"(d) No office of the bankruptcy clerk of court may be consolidated with the district clerk of court office without the prior approval of the Judicial Conference and the Congress.".

Subtitle B—Appointment of United States Trustees and Related Matters

SEC. 111. APPOINTMENT OF UNITED STATES TRUSTEES.

(a) APPOINTMENT NATIONWIDE OF UNITED STATES TRUSTEES.—Section 581(a) of title 28, United States Code, is amended to read as follows:

"(a) The Attorney General shall appoint one United States trustee for each of the following regions composed of Federal judicial districts (without regard to section 451):

"(1) The judicial districts established for the States of Maine, Massachusetts, New Hampshire, and Rhode Island.

"(2) The judicial districts established for the States of Connecticut, New York, and Vermont.

"(3) The judicial districts established for the States of Delaware, New Jersey, and Pennsylvania.

"(4) The judicial districts established for the States of Maryland, North Carolina, South Carolina, Virginia, and West Virginia and for the District of Columbia.

"(5) The judicial districts established for the States of Louisiana and Mississippi.

"(6) The Northern District of Texas and the Eastern District of Texas.

"(7) The Southern District of Texas and the Western District of Texas.

"(8) The judicial districts established for the States of Kentucky and Tennessee.

"(9) The judicial districts established for the States of Michigan and Ohio.

"(10) The Central District of Illinois and the Southern District of Illinois; and the judicial districts established for the State of Indiana.

"(11) The Northern District of Illinois; and the judicial districts established for the State of Wisconsin.

"(12) The judicial districts established for the States of Minnesota, Iowa, North Dakota, and South Dakota.

"(13) The judicial districts established for the States of Arkansas, Nebraska, and Missouri.

"(14) The District of Arizona.

"(15) The Southern District of California; and the judicial districts established for the State of Hawaii, and for Guam and the Commonwealth of the Northern Mariana Islands.

"(16) The Central District of California.

"(17) The Eastern District of California and the Northern District of California; and the judicial district established for the State of Nevada.

"(18) The judicial districts established for the States of Alaska, Idaho (exclusive of Yellowstone National Park), Montana (exclusive of Yellowstone National Park), Oregon, and Washington.

"(19) The judicial districts established for the States of Colorado, Utah, and Wyoming (including those portions of Yellowstone National Park situated in the States of Montana and Idaho).

"(20) The judicial districts established for the States of Kansas, New Mexico, and Oklahoma.

"(21) The judicial districts established for the States of Alabama, Florida, and Georgia and for the Commonwealth of Puerto Rico and the Virgin Islands of the United States.".

(b) TERM OF OFFICE.—Section 581(b) of title 28, United States Code, is amended—

(1) by striking out "seven years" and inserting in lieu thereof "five years", and

(2) by striking out "Office" and inserting in lieu thereof "office".

(c) REMOVAL OF UNITED STATES TRUSTEES.—Section 581(c) of title 28, United States Code, is amended by striking out "for cause".

(d) REMOVAL OF ASSISTANT UNITED STATES TRUSTEES.—Section 582 of title 28, United States Code, is amended—

(1) in subsection (a) by striking out "district" and inserting in lieu thereof "region", and

(2) in subsection (b) by striking out "for cause".

SEC. 112. VACANCIES IN OFFICE OF UNITED STATES TRUSTEE.

Section 585 of title 28, United States Code, is amended to read as follows:

"§ 585. Vacancies

"(a) The Attorney General may appoint an acting United States trustee for a region in which the office of the United States trustee is vacant. The individual so appointed may serve until the date on which the vacancy is filled by appointment under section 581 of this title or by designation under subsection (b) of this section.

"(b) The Attorney General may designate a United States trustee to serve in not more than two regions for such time as the public interest requires.".

SEC. 113. DUTIES OF UNITED STATES TRUSTEES.

(a) SUPERVISION AND ADMINISTRATION.—Section 586(a) of title 28, United States Code, is amended—

(1) by striking out "his district" and inserting in lieu thereof "the region for which such United States trustee is appointed",

(2) in paragraph (3)—

(A) by striking out the semicolon and inserting in lieu thereof "by, whenever the United States trustee considers it to be appropriate—", and

(B) by adding at the end of such paragraph the following:

"(A) monitoring applications for compensation and reimbursement filed under section 330 of title 11 and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to any of such applications;

"(B) monitoring plans and disclosure statements filed in cases under chapter 11 of title 11 and filing with the court, in connection with hearings under sections 1125 and 1128 of such title, comments with respect to such plans and disclosure statements;

"(C) monitoring plans filed under chapters 12 and 13 of title 11 and filing with the court, in connection with hearings under sections 1224, 1229, 1324, and 1329 of such title, comments with respect to such plans;

"(D) taking such action as the United States trustee deems to be appropriate to ensure that all reports, schedules, and fees required to be filed under title 11 and this title by the debtor are properly and timely filed;

"(E) monitoring creditors' committees appointed under title 11;

"(F) notifying the appropriate United States attorney of matters which relate to the occurrence of any action which may constitute a crime under the laws of the United States and, on the request of the United States attorney, assisting the United States attorney in carrying out prosecutions based on such action;

"(G) monitoring the progress of cases under title 11 and taking such actions as the United States trustee deems to be appropriate to prevent undue delay in such progress; and

"(H) monitoring applications filed under section 327 of title 11 and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to the approval of such applications;", and

(3) in paragraph (5) by inserting before the semicolon the following: "and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe".

(b) QUALIFICATIONS OF TRUSTEES.—Section 586(b) of title 28, United States Code, is amended to read as follows:

"(b) If the number of cases under chapter 12 or 13 of title 11 commenced in a particular region so warrants, the United States trustee for such region may, subject to the approval of the Attorney General, appoint one or more individuals to serve as standing trustee, or designate one or more assistant United States trustees to serve in cases under such chapter. The United States trustee for such region shall supervise any such individual appointed as standing trustee in the performance of the duties of standing trustee.".

(c) APPOINTMENT AND COMPENSATION OF TRUSTEES.—Subsections (d) and (e) of section 586 of title 28, United States Code, are amended to read as follows:

"(d) The Attorney General shall prescribe by rule qualifications for membership on the panels established by United States trustees under paragraph (a)(1) of this section, and qualifications for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11. The Attorney General may not re-

quire that an individual be an attorney in order to qualify for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11.

"(e)(1) The Attorney General, after consultation with a United States trustee that has appointed an individual under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11, shall fix—

"(A) a maximum annual compensation for such individual, not to exceed the annual rate of basic pay in effect for step 1 of grade GS-16 of the General Schedule prescribed under section 5332 of title 5; and

"(B) a percentage fee not to exceed—

"(i) in the case of a debtor who is not a family farmer, ten percent; or

"(ii) in the case of a debtor who is a family farmer, the sum of—

"(I) not to exceed ten percent of the payments made under the plan of such debtor, with respect to payments in an aggregate amount not to exceed $450,000; and

"(II) three percent of payments made under the plan of such debtor, with respect to payments made after the aggregate amount of payments made under the plan exceeds $450,000;

based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

"(2) Such individual shall collect such percentage fee from all payments received by such individual under plans in the cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee. Such individual shall pay to the United States trustee, and the United States trustee shall deposit in the United States Trustee System Fund—

"(A) any amount by which the actual compensation of such individual exceeds 5 per centum upon all payments received under plans in cases under chapter 12 or 13 of title 11 for which such individual serves as standing trustee; and

"(B) any amount by which the percentage for all such cases exceeds—

"(i) such individual's actual compensation for such cases, as adjusted under subparagraph (A) of paragraph (1); plus

"(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases. Subject to the approval of the Attorney General, any or all of the interest earned from the deposit of payments under plans by such individual may be utilized to pay actual, necessary expenses without regard to the percentage limitation contained in subparagraph (d)(1)(B) of this section.".

SEC. 114. SALARIES OF UNITED STATES TRUSTEES AND ASSISTANT UNITED STATES TRUSTEES.

(a) FIXING OF SALARIES.—Section 587 of title 28, United States Code, is amended to read as follows:

"§ 587. Salaries

"Subject to sections 5315 through 5317 of title 5, the Attorney General shall fix the annual salaries of United States trustees and assistant United States trustees at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5, United States Code.".

(b) TEMPORARY SUSPENSION OF LIMITATION ON APPOINTMENTS.—During the period beginning on the effective date of this Act and ending on October 1, 1989, the provisions of title 5 of the United States Code governing appointments in the competitive service shall not apply with respect to appointments under section 589 of title 28, United States Code.

SEC. 115. UNITED STATES TRUSTEE SYSTEM FUND.

(a) AMENDMENT TO TITLE 28 OF THE UNITED STATES CODE.—Chapter 39 of title 28, United States Code, as added by section 224 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2662), is amended by adding at the end thereof the following:

"§ 589a. United States Trustee System Fund

"(a) There is hereby established in the Treasury of the United States a special fund to be known as the 'United States Trustee System Fund' (hereinafter in this section referred to as the 'Fund'). Monies in the Fund shall be available to the Attorney General without fiscal year limitation in such amounts as may be specified in appropriations Acts for the following purposes in connection with the operations of United States trustees—

"(1) salaries and related employee benefits;

"(2) travel and transportation;

"(3) rental of space;

"(4) communication, utilities, and miscellaneous computer charges;

"(5) security investigations and audits;

"(6) supplies, books, and other materials for legal research;

"(7) furniture and equipment;

"(8) miscellaneous services, including those obtained by contract; and

"(9) printing.

"(b) There shall be deposited in the Fund—

"(1) one-third of the fees collected under section 1930(a)(1) of this title;

"(2) three-fifths of the fees collected under section 1930(a)(3) of this title;

"(3) one-half of the fees collected under section 1930(a)(4) of this title;

"(4) one-half of the fees collected under section 1930(a)(5);

"(5) all of the fees collected under section 1930(a)(6) of this title;

"(6) three-fourths of the fees collected under the last sentence of section 1930(a) of this title; and

"(7) the compensation of trustees received under section 330(d) of title 11 by the clerks of the bankruptcy courts.

"(c)(1) Except as provided in paragraph (2), amounts in the Fund which are not currently needed for the purposes specified in subsection (a) shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

"(2) On November 1, 1989, and on November 1 of each year thereafter, the Secretary of the Treasury shall transfer into the general fund of the Treasury the amount, if any, in the Fund that exceeds 110 percent of—

"(A) the amount appropriated for the entire current fiscal year for the purposes specified in subsection (a), or

"(B) if no appropriation has been made for the entire current fiscal year, the annual equivalent of the aggregate amount appropriated to date for the current fiscal year for the purposes specified in subsection (a).

"(d)(1) The Attorney General shall transmit to the Congress, not later than 120 days after the end of each fiscal year, a detailed report on the amounts deposited in the Fund and a description of the expenditures made under this section.

"(2) If for each fiscal year in any period of 2 successive fiscal years—

"(A) the aggregate amount deposited under subsection (b) in the Fund exceeds 110 percent of expenditures for the purposes specified in subsection (a), or

"(B) the costs incurred for the purposes specified in subsection (a) exceed the aggregate amount deposited under subsection (b) in the Fund,

then the Attorney General shall include in such report a recommendation regarding the manner in which the fees payable under section 1930(a) of title 28, United States Code, may be modified to cause the annual amount deposited in the Fund to more closely approximate the annual amount expended from the Fund.

"(e) There are authorized to be appropriated to the Fund for any fiscal year such sums as may be necessary to supplement amounts deposited under subsection (b) for the purposes specified in subsection (a).".

(b) TECHNICAL AMENDMENT.—The table of sections for chapter 39 of title 28, United States Code, as added by section 224 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2662), is amended by adding at the end thereof the following new item:

"589a. United States Trustee System Fund.".

SEC. 116. PANEL OF TRUSTEES.

Subsection (f) of section 604 of title 28, United States Code, as added by the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2549), is repealed.

SEC. 117. FEES.

Section 1930(a) of title 28, United States Code, is amended—

(1) in paragraph (1) by striking out "$60" and inserting in lieu thereof "$90",

(2) in paragraph (3) by striking out "$200" and inserting in lieu thereof "$500",

(3) in paragraph (4) by striking out "$500" and inserting in lieu thereof "$1,000",

(4) by inserting after paragraph (4) the following:

"(5) For a case commenced under chapter 12 of title 11, $200.

"(6) In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until a plan is confirmed or the case is converted or dismissed, whichever occurs first. The fee shall be $150 for each quarter in which disbursements total less than $15,000; $300 for each quarter in which disbursements total $15,000 or more but less than $150,000; $750 for each quarter in which disbursements total $150,000 or more but less than $300,000; $2,250 for each quarter in which disbursements total $300,000 or more but less than $3,000,000; $3,000 for each quarter in which disbursements total $3,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.", and

(5) by adding at the end thereof the following: "For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the court a fee of $400.".

Subtitle C—Miscellaneous Amendments and Technical Corrections to Title 28

SEC. 141. COURT IN LAWRENCE, KANSAS.

Section 96 of title 28, United States Code, is amended by inserting "Lawrence," after "Kansas City,".

SEC. 142. CUSTODY OF BANKRUPTCY COURT RECORDS AND DOCKETS.

Section 156 of title 28, United States Code, as amended by section 103 of this Act, is *amended by adding at the end thereof the following:*

"(e) In a judicial district where a bankruptcy clerk has been appointed pursuant to subsection (b), the bankruptcy clerk shall be the official custodian of the records and dockets of the bankruptcy court.".

SEC. 143. CONFORMING AMENDMENT.

Section 157(b)(2)(B) of title 28, United States Code, is amended by inserting ", 12," after "chapter 11".

SEC. 144. TECHNICAL CORRECTIONS.

(a) Section 156 of title 28, United States Code, as amended by sections 103 and 142 of this Act, is amended by adding at the end thereof the following:

"(f) For purposes of financial accountability in a district where a bankruptcy clerk has been certified, such clerk shall be accountable for and pay into the Treasury all fees, costs, and other monies collected by such clerk except uncollected fees not required by an Act of Congress to be prepaid. Such clerk shall make returns thereof to the Director of the Administrative Office of the United States Courts and the Director of the Executive Office for United States Trustees, under regulations prescribed by such Directors.".

(b)(1) Section 157(b)(2)(B) of title 28, United States Code, is amended by striking out "interest" and inserting in lieu thereof "interests".

(2) Section 157(b)(2)(G) of title 28, United States Code, is amended by inserting a comma after "annul".

(c) Section 526 of title 28, United States Code, is amended—

(1) in the heading by striking out "trustee" and inserting in lieu thereof "trustees",

(2) in subsection (a)—

(A) by striking out "and trustees" and inserting in lieu thereof ", trustees, including trustees in cases under title 11" in paragraph (1), and

(B) by striking out "courts of the Canal Zone and the Virgin Islands, probation officers, trustees in cases under title 11," and inserting in lieu thereof "court of the Virgin Islands, probation officers," in paragraph (2).

(d) Section 584 of title 28, United States Code, is amended by striking out "districts" and inserting in lieu thereof "regions".

(e) Section 1334(d) of title 28, United States Code, is amended by striking out "and of the estate" and inserting in lieu thereof "and of property of the estate".

(f) Section 1930(a) of title 28, United States Code, is amended by striking out "of the court" and inserting in lieu thereof "of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title,".

*(g)(1) The heading for chapter 39 of title 28, United States Code, as added by the Ethics in Government Act, is amended by striking out "**CHAPTER 39**" and inserting in lieu thereof "**CHAPTER 40**".*

(2) The table of chapters for part II of title 28, United States Code, is amended by striking out the item relating to Independent Counsel and inserting in lieu thereof the following:

"40. Independent Counsel.........................591".

(3) Section 49(f) of title 28, United States Code, is amended by striking out "chapter 39" each place it appears and inserting in lieu thereof "chapter 40".

TITLE II—AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE

Subtitle A—Activities of United States Trustees

SEC. 201. DEFINITIONS.

Section 101 of title 11, United States Code, is amended—

(1) in paragraph (14) by striking out "and governmental unit" and inserting in lieu thereof "governmental unit, and United States trustee" before the semicolon at the end thereof, and

(2) in paragraph (24) by inserting "(but not a United States trustee while serving as a trustee in a case under this title)" after "United States" the second place it appears.

SEC. 202. RULES OF CONSTRUCTION.

Section 102 of title 11, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (7) thereof,

(2) by striking the period at the end of paragraph (8) and inserting in lieu thereof "; and", and

(3) by inserting at the end thereof the following:

"(9) 'United States trustee' includes a designee of the United States trustee.".

SEC. 203. POWER OF COURT.

Section 105(a) of title 11, United States Code, is amended by adding at the end thereof the following new sentence: "No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.".

SEC. 204. INVOLUNTARY CASES.

Section 303 of title 11, United States Code, is amended—

(1) in subsection (g), by inserting "order the United States trustee to" after "may", the first time it appears, and

(2) in subsection (i)(1)—

(A) by inserting "or" at the end of subparagraph (A), and

(B) by striking out subparagraph (C).

SEC. 205. AUTHORITY OF UNITED STATES TRUSTEE IN CASES UNDER TITLE 11.

(a) AUTHORITY.—Subchapter I of chapter 3 of title 11, United States Code, is amended by adding at the end thereof the following:

"§307. United States trustee

"The United States trustee may raise and may appear and be heard on any issue in any case or proceeding under this title but may not file a plan pursuant to section 1121(c) of this title.".

(b) TECHNICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 11, United States Code, is amended by adding at the end thereof the following new item:

"307. United States trustee.".

SEC. 206. ELIGIBILITY OF UNITED STATES TRUSTEE TO SERVE AS TRUSTEE.

Section 321 of title 11, United States Code, is amended by adding at the end thereof the following:

"(c) The United States trustee for the judicial district in which the case is pending is eligible to serve as trustee in the case if necessary.".

SEC. 207. QUALIFICATION OF TRUSTEE.

Section 322 of title 11, United States Code, is amended—

(1) in subsection (a) by striking out "A person" and inserting in lieu thereof "Except as provided in subsection (b)(1), a person", and

(2) by amending subsection (b) to read as follows:

"(b)(1) The United States trustee qualifies wherever such trustee serves as trustee in a case under this title.

"(2) The United States trustee shall determine—

"(A) the amount of a bond required to be filed under subsection (a) of this section; and

"(B) the sufficiency of the surety on such bond.".

SEC. 208. REMOVAL OF TRUSTEE OR EXAMINER.

Section 324 of title 11, United States Code, is amended to read as follows:

"§324. Removal of trustee or examiner

"(a) The court, after notice and a hearing, may remove a trustee, other than the United States trustee, or an examiner, for cause.

"(b) Whenever the court removes a trustee or examiner under subsection (a) in a case under this title, such trustee or examiner shall thereby be removed in all other cases under this title in which such trustee or examiner is then serving unless the court orders otherwise.".

SEC. 209. LIMITATION ON COMPENSATION OF TRUSTEE.

Section 326(b) of title 11, United States Code, is amended to read as follows:

"(b) In a case under chapter 12 or 13 of this title, the court may not allow compensation for services or reimbursement of expenses of the United States trustee or of a standing trustee appointed under section 586(b) of title 28, but may allow reasonable compensation under section 330 of this title of a trustee appointed under section 1202(a) or 1302(a) of this title for the trustee's services, payable after the trustee renders such services, not to exceed five percent upon all payments under the plan.".

SEC. 210. EMPLOYMENT OF PROFESSIONAL PERSONS.

SEC. 231. Section 327(c) of title 11, United States Code, is amended by inserting "or the United States trustee" after "another creditor".

SEC. 211. COMPENSATION OF OFFICERS.

Section 330 of title 11, United States Code, is amended—

(1) in subsection (a) by inserting "to any parties in interest and to the United States trustee" after "notice", and

(2) by inserting at the end thereof the following:

"(d) In a case in which the United States trustee serves as trustee, the compensation of the trustee under this section shall be paid to the clerk of the bankruptcy court and deposited by the clerk into the United States Trustee System Fund established by section 589a of title 28.".

SEC. 212. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended—

(1) in subsection (a) by striking out "there shall be a meeting of creditors" and inserting in lieu thereof "the United States trustee shall convene and preside at a meeting of creditors",

(2) in subsection (b) by striking out "court may order" and inserting in lieu thereof "United States trustee may convene", and

(3) in subsection (c) by inserting "including any final meeting of creditors" before the period at the end thereof.

SEC. 213. EXAMINATION OF THE DEBTOR.

Section 343 of title 11, United States Code, is amended to read as follows:

"§343. Examination of the debtor

"The debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a) of this title. Creditors, any indenture trustee, any trustee or examiner in the case, or the United States trustee may examine the debtor. The United States trustee may administer the oath required under this section.".

SEC. 214. MONIES OF ESTATES.

Section 345(b) of title 11, United States Code, is amended to read as follows:

"(b) Except with respect to a deposit or investment that is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States, the trustee shall require from an entity with which such money is deposited or invested—

"(1) a bond—

"(A) in favor of the United States;

"(B) secured by the undertaking of a corporate surety approved by the United States trustee for the district in which the case is pending; and

"(C) conditioned on—

"(i) a proper accounting for all money so deposited or invested and for any return on such money;

"(ii) prompt repayment of such money and return; and

"(iii) faithful performance of duties as a depository; or

"(2) the deposit of securities of the kind specified in section 9303 of title 31.".

SEC. 215. INTERIM TRUSTEE.

Section 701(a) of title 11, United States Code, is amended to read as follows:

"(a)(1) Promptly after the order for relief under this chapter, the United States trustee shall appoint one disinterested person that is a member of the panel of private trustees established under section 586(a)(1) of title 28 or that is serving as trustee in the case immediately before the order for relief under this chapter to serve as interim trustee in the case.

"(2) If none of the members of such panel is willing to serve as interim trustee in the case, then the United States trustee may serve as interim trustee in the case.".

SEC. 216. SUCCESSOR TRUSTEE.

Subsections (b) and (c) of section 703 of title 11, United States Code, are amended to read as follows:

"(b) Pending election of a trustee under subsection (a) of this section, if necessary to preserve or prevent loss to the estate, the United States trustee may appoint an interim trustee in the manner specified in section 701(a).

"(c) If creditors do not elect a successor trustee under subsection (a) of this section or if a trustee is needed in a case reopened under section 350 of this title, then the United States trustee—

"(1) shall appoint one disinterested person that is a member of the panel of private trustees established under section 586(a)(1) of title 28 to serve as trustee in the case; or

"(2) may, if none of the disinterested members of such panel is willing to serve as trustee, serve as trustee in the case.

SEC. 217. DUTIES OF TRUSTEE.

Section 704 of title 11, United States Code, is amended—

(1) in paragraph (8) by—

(A) inserting ", with the United States trustee," after "court" the first place it appears, and

(B) inserting "the United States trustee or" after "information as", and

(2) in paragraph (9) by inserting "and with the United States trustee" before the period at the end thereof.

SEC. 218. CREDITORS' COMMITTEE.

Section 705(b) of title 11, United States Code, is amended—

(1) by inserting "or the United States trustee" after "trustee" each place it appears, and

(2) by inserting "or the United States trustee" immediately after "court".

SEC. 219. DISMISSAL.

(a) GROUND FOR DISMISSAL.—Section 707(a) of title 11, United States Code, is amended—

(1) by striking out "or" at the end of paragraph (1),

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof the following: "; and", and

(3) by adding at the end thereof the following:

"(3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.".

(b) PROCEDURE.—Section 707(b) of title 11, United States Code, is amended by striking out "motion and" and inserting in lieu thereof "motion or on a motion by the United States trustee, but".

SEC. 220. DISCHARGE.

Subsections (c), (d), and (e) of section 727 of title 11, United States Code, are amended to read as follows:

"(c)(1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

"(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

"(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

"(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

"(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; or

"(3) the debtor committed an act specified in subsection (a)(6) of this section.

"(e) The trustee, a creditor, or the United States trustee may request a revocation of a discharge—

"(1) under subsection (d)(1) of this section within one year after such discharge is granted; or

"(2) under subsection (d)(2) or (d)(3) of this section before the later of—

"(A) one year after the granting of such discharge; and

"(B) the date the case is closed.".

SEC. 221. CREDITORS' AND EQUITY SECURITY HOLDERS' COMMITTEES.

Section 1102 of title 11, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

"(a)(1) As soon as practicable after the order for relief under chapter 11 of this title, the United States trustee shall appoint a committee of creditors holding unsecured claims and may appoint additional committees of creditors or of equity security holders as the United States trustee deems appropriate.

"(2) On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee.", and

(2) by repealing subsection (c).

SEC. 222. APPOINTMENT OF TRUSTEE OR EXAMINER.

Section 1104 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting "or the United States trustee" after "party in interest",

(2) in subsection (b), by inserting "or the United States trustee" after "party in interest", and

(3) in subsection (c)—

(A) by striking out "court" the second place it appears and inserting in lieu thereof "United States trustee, after consultation with parties in interest", and

(B) by striking out "one disinterested person" and inserting in lieu thereof ", subject to the court's approval, one disinterested person other than the United States trustee".

SEC. 223. TERMINATION OF TRUSTEE APPOINTMENT.

Section 1105 of title 11, United States Code, is amended by inserting "or the United States trustee" after "party in interest".

SEC. 224. CONVERSION OR DISMISSAL.

Section 1112 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) by inserting "or the United States trustee" after "party in interest",

(B) by striking out "or" in paragraph (8),

(C) by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; or", and

(D) by adding at the end thereof the following:

"(10) nonpayment of any fees or charges required under chapter 123 of title 28.",

(2) by redesignating subsection (e) as subsection (f), and

(3) by inserting after subsection (d) the following:

"(e) Except as provided in subsections (c) and (f), the court, on request of the United States trustee, may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate if the debtor in a voluntary case fails to file, within fifteen days after the filing of the petition commencing such case or such additional time as the court may allow, the information required by paragraph (1) of section 521, including a list containing the names and addresses of the holders of the twenty largest unsecured claims (or of all unsecured claims if there are fewer than twenty unsecured claims), and the approximate dollar amounts of each of such claims.".

SEC. 225. PREREQUISITE TO CONFIRMATION OF PLAN UNDER CHAPTER 11.

Section 1129(a) of title 11, United States Code, is amended by adding at the end thereof the following:

"(12) All fees payable under section 1930, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.”.

SEC. 226. AUTHORITY TO APPOINT TRUSTEE.

Section 1163 of title 11, United States Code, is amended to read as follows:

“§ 1163. Appointment of trustee

“As soon as practicable after the order for relief the Secretary of Transportation shall submit a list of five disinterested persons that are qualified and willing to serve as trustees in the case. The United States trustee shall appoint one of such persons to serve as trustee in the case.”.

SEC. 227. REPEALER.

Section 1202 of title 11, United States Code, as added by section 255 of this Act, is amended by striking out subsections (c) and (d).

SEC. 228. TRUSTEE.

Section 1302 of title 11, United States Code, is amended—

(1) by amending subsection (a) to read as follows:

“(a) If the United States trustee appoints an individual under section 586(b) of title 28 to serve as standing trustee in cases under this chapter and if such individual qualifies under section 322 of this title, then such individual shall serve as trustee in the case. Otherwise, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as a trustee in the case.”, and

(2) by striking out subsections (d) and (e).

SEC. 229. CONVERSION OR DISMISSAL.

Section 1307 of title 11, United States Code, is amended—

(1) in subsection (c)—

(A) by inserting “or the United States trustee” after “party in interest”,

(B) by striking out “or” at the end of paragraph (7) and inserting a semicolon in lieu thereof,

(C) by striking out the period at the end of paragraph (8) and inserting in lieu thereof a semicolon, and

(D) by adding at the end thereof the following:

“(9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521; or

“(10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521 .”, and

(2) in subsection (d) by inserting “or the United States trustee” after “party in interest”.

SEC. 230. PAYMENTS.

Section 1326(b) of title 11, United States Code, is amended to read as follows:

“(b) Before or at the time of each payment to creditors under the plan, there shall be paid—

“(1) any unpaid claim of the kind specified in section 507(a)(1) of this title; and

“(2) if a standing trustee appointed under section 586(b) of title 28 is serving in the case, the percentage fee fixed for such standing trustee under section 586(e)(1)(B) of title 28.”.

SEC. 231. REPEAL OF CHAPTER 15.

Chapter 15 of title 11, United States Code, is repealed.

Subtitle B—Debtors Who Are Family Farmers

SEC. 251. DEFINITIONS.

Section 101 of title 11, United States Code, as amended by section 201 of this Act, is amended—

(1) in paragraph (17) by inserting “(except when such term appears in the term ‘family farmer’)” after “means”,

(2) by redesignating paragraphs (17) through (49) as paragraphs (19) through (51), respectively, and

(3) by inserting after paragraph (16) the following new paragraphs:

“(17) ‘family farmer’ means—

“(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

“(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

“(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;

“(ii) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and

“(iii) if such corporation issues stock, such stock is not publicly traded;

“(18) ‘family farmer with regular annual income’ means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title;”.

SEC. 252. APPLICABILITY OF CHAPTERS.

Section 103 of title 11, United States Code, is amended—

(1) in subsection (a) by striking out “or 13” and inserting in lieu thereof “12, or 13”,

(2) by adding at the end thereof the following:

“(i) Chapter 12 of this title applies only in a case under such chapter.”.

SEC. 253. WHO MAY BE A DEBTOR.

Section 109 of title 11, United States Code, is amended—

(1) in subsection (f)—

(A) by inserting “or family farmer” after “individual”, and

(B) by redesignating such subsection as subsection (g), and

(2) by inserting after subsection (e) the following:

“(f) Only a family farmer with regular annual income may be a debtor under chapter 12 of this title.”.

SEC. 254. INVOLUNTARY CASES.

Section 303(a) of title 11, United States Code, is amended by inserting “, family farmer,” after “farmer”.

SEC. 255. FAMILY FARMERS.

Title 11 of the United States Code is amended by inserting after chapter 11 the following new chapter:

“CHAPTER 12—ADJUSTMENT OF DEBTS OF A FAMILY FARMER WITH REGULAR ANNUAL INCOME

“SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

“Sec.
“1201. Stay of action against codebtor.
“1202. Trustee.
“1203. Rights and powers of debtor.
“1204. Removal of debtor as debtor in possession.
“1205. Adequate protection.
“1206. Sales free of interests.
“1207. Property of the estate.
“1208. Conversion or dismissal.

“SUBCHAPTER II—THE PLAN

“1221. Filing of plan.
“1222. Contents of plan.
“1223. Modification of plan before confirmation.
“1224. Confirmation hearing.
“1225. Confirmation of plan.
“1226. Payments.
“1227. Effect of confirmation.
“1228. Discharge.
“1229. Modification of plan after confirmation.
“1230. Revocation of an order of confirmation.
“1231. Special tax provisions.

“SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

“§1201. Stay of action against codebtor

“(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless—

“(1) such individual became liable on or secured such debt in the ordinary course of such individual's business; or

“(2) the case is closed, dismissed, or converted to a case under chapter 7 of this title.

“(b) A creditor may present a negotiable instrument, and may give notice of dishonor of such an instrument.

“(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

“(1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;

“(2) the plan filed by the debtor proposes not to pay such claim; or

“(3) such creditor's interest would be irreparably harmed by continuation of such stay.

“(d) Twenty days after the filing of a request under subsection (c)(2) of this section for relief from the stay provided by subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the debtor or any individual that is liable on such debt with the debtor files and serves upon such party in interest a written objection to the taking of the proposed action.

“§ 1202. Trustee

“(a) If the United States trustee has appointed an individual under section 586(b) of title 28 to serve as standing trustee in *cases under this chapter and if such individual qualifies as a trustee under section 322 of this title, then such individual shall serve as trustee in any case filed under this chapter. Otherwise, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as trustee in the case if necessary.*

"(b) The trustee shall—

"(1) perform the duties specified in sections 704(2), 704(3), 704(5), 704(6), 704(7), and 704(9) of this title;

"(2) perform the duties specfied in section 1106(a)(3) and 1106(a)(4) of this title if the court, for cause and on request of a party in interest, the trustee, or the United States trustee, so orders;

"(3) appear and be heard at any hearing that concerns—

"(A) the value of property subject to a lien;

"(B) confirmation of a plan;

"(C) modification of the plan after confirmation; or

"(D) the sale of property of the estate;

"(4) ensure that the debtor commences making timely payments required by a confirmed plan; and

"(5) if the debtor ceases to be a debtor in possession, perform the duties specified in sections 704(8), 1106(a)(1), 1106(a)(2), 1106(a)(6), 1106(a)(7), and 1203.

"(c) If the number of cases under this chapter commenced in a particular judicial district so warrants, the court may appoint one or more individuals to serve as standing trustee for such district in cases under this chapter.

"(d)(1) A court that has appointed an individual under subsection (a) of this section to serve as standing trustee in cases under this chapter shall set for such individual—

"(A) a maximum annual compensation not to exceed the lowest annual rate of basic pay in effect for grade GS-16 of the General Schedule prescribed under section 5332 of title 5; and

"(B) a percentage fee not to exceed the sum of—

"(i) not to exceed ten percent of the payments made under the plan of such debtor, with respect to payments in an aggregate amount not to exceed $450,000; and

"(ii) three percent of payments made under the plan of such debtor, with respect to payments made after the aggregate amount of payments made under the plan exceeds $450,000;

based on such maximum annual compensation and the actual, necessary expenses incurred by such individual as standing trustee.

"(2) Such individual shall collect such percentage fee from all payments under plans in the cases under this chapter for which such individual serves as standing trustee. Such individual shall pay annually to the Treasury—

"(A) any amount by which the actual compensation received by such individual exceeds five percent of all such payments made under plans in cases under this chapter for which such individual serves as standing trustee; and

"(B) any amount by which the percentage fee fixed under paragraph (1)(B) of this subsection for all such cases exceeds—

"(i) such individual's actual compensation for such cases, as adjusted under subparagraph (A) of this paragraph; plus

"(ii) the actual, necessary expenses incurred by such individual as standing trustee in such cases.".

"§ 1203. Rights and powers of debtor

"Subject to such limitations as the court may prescribe, a debtor in possession shall have all the rights, other than the right to compensation under section 330, and powers, and shall perform all the functions and duties, except the duties specified in paragraphs (3) and (4) of section 1106(a), of a trustee serving in a case under chapter 11, including operating the debtor's farm.".

"§ 1204. Removal of debtor as debtor in possession

"(a) On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the commencement of the case.

"(b) On request of a party in interest, and after notice and a hearing, the court may reinstate the debtor in possession.

"§ 1205. Adequate protection

"(a) Section 361 does not apply in a case under this chapter.

"(b) In a case under this chapter, when adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by—

"(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;

"(2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of property securing a claim or of an entity's ownership interest in property;

"(3) paying to such entity for the use of farmland the reasonable rent customary in the community where the property is located, based upon the rental value, net income, and earning capacity of the property; or

"(4) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will adequately protect the value of property securing a claim or of such entity's ownership interest in property.

"§1206. Sales free of interests

"After notice and a hearing, in addition to the authorization contained in section 363(f), the trustee in a case under this chapter may sell property under section 363 (b) and (c) free and clear of any interest in such property of an entity other than the estate if the property is farmland or farm equipment, except that the proceeds of such sale shall be subject to such interest.

"§1207. Property of the estate

"(a) Property of the estate includes, in addition to the property specified in section 541 of this title—

"(1) all property of the kind specified in such section that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 of this title, whichever occurs first; and

"(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7 of this title, whichever occurs first.

"(b) Except as provided in section 1204, a confirmed plan, or an order confirming a plan, the debtor shall remain in possession of all property of the estate.

"§1208. Conversion or dismissal

"(a) The debtor may convert a case under this chapter to a case under chapter 7 of this title at any time. Any waiver of the right to convert under this subsection is unenforceable.

"(b) On request of the debtor at any time, if the case has not been converted under section 706 or 1112 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

"(c) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including—

"(1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors;

"(2) nonpayment of any fees and charges required under chapter 123 of title 28;

"(3) failure to file a plan timely under section 1221 of this title;

"(4) failure to commence making timely payments required by a confirmed plan;

"(5) denial of confirmation of a plan under section 1225 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;

"(6) material default by the debtor with respect to a term of a confirmed plan;

"(7) revocation of the order of confirmation under section 1230 of this title, and denial of confirmation of a modified plan under section 1229 of this title;

"(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; or

"(9) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation.

"(d) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter or convert a case under this chapter to a case under chapter 7 of this title upon a showing that the debtor has committed fraud in connection with the case.

"(e) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

"SUBCHAPTER II—THE PLAN

"§1221. Filing of plan

"The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend such period if an extension is substantially justified.

"§1222. Contents of plan

"(a) The plan shall—

"(1) provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan;

"(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and

"(3) if the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest agrees to less favorable treatment.

"(b) Subject to subsections (a) and (c) of this section, the plan may—

"(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

"(2) modify the rights of holders of secured claims, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;

"(3) provide for the curing or waiving of any default;

"(4) provide for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other unsecured claim;

"(5) provide for the curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due;

"(6) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

"(7) provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor;

"(8) provide for the sale of all or any part of the property of the estate or the distribution of all or any part of the property of the estate among those having an interest in such property;

"(9) provide for payment of allowed secured claims consistent with section 1225(a)(5) of this title, over a period exceeding the period permitted under section 1222(c);

"(10) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity; and

"(11) include any other appropriate provision not inconsistent with this title.

"(c) Except as provided in subsections (b)(5) and (b)(9), the plan may not provide for payments over a period that is longer than three years unless the court for cause approves a longer period, but the court may not approve a period that is longer than five years.

"§1223. Modification of plan before confirmation

"(a) The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of section 1222 of this title.

"(b) After the debtor files a modification under this section, the plan as modified becomes the plan.

"(c) Any holder of a secured claim that has accepted or rejected the plan is deemed to have accepted or rejected, as the case may be, the plan as modified, unless the modification provides for a change in the rights of such holder from what such rights were under the plan before modification, and such holder changes such holder's previous acceptance or rejection.

"§1224. Confirmation hearing

"After expedited notice, the court shall hold a hearing on confirmation of the plan. A party in interest, the trustee, or the United States trustee may object to the confirmation of the plan. Except for cause, the hearing shall be concluded not later than 45 days after the filing of the plan.

"§1225. Confirmation of plan

"(a) Except as provided in subsection (b), the court shall confirm a plan if—

"(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

"(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

"(3) the plan has been proposed in good faith and not by any means forbidden by law;

"(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

"(5) with respect to each allowed secured claim provided for by the plan—

"(A) the holder of such claim has accepted the plan;

"(B)(i) the plan provides that the holder of such claim retain the lien securing such claim; and

"(ii) the value, as of the effective date of the plan, of property to be distributed by the trustee or the debtor under the plan on account of such claim is not less than the allowed amount of such claim; or

"(C) the debtor surrenders the property securing such claim to such holder; and

"(6) the debtor will be able to make all payments under the plan and to comply with the plan.

"(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

"(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

"(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.

"(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended—

"(A) for the maintenance or support of the debtor or a dependent of the debtor; or

"(B) for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

"(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.

"§1226. Payments

"(a) Payments and funds received by the trustee shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan. If a plan is not confirmed, the trustee shall return any such payments to the debtor, after deducting—

"(1) any unpaid claim allowed under section 503(b) of this title; and

"(2) if a standing trustee is serving in the case, the percentage fee fixed for such standing trustee.

"(b) Before or at the time of each payment to creditors under the plan, there shall be paid—

"(1) any unpaid claim of the kind specified in section 507(a)(1) of this title; and

"(2) if a standing trustee appointed under section 1202(d) of this title is serving in the case, the percentage fee fixed for such standing trustee under section 1202(e) of this title.

"(c) Except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

"§1227. Effect of confirmation

"(a) Except as provided in section 1228(a) of this title, the provisions of a confirmed plan bind the debtor, each creditor, each equity security holder, and each general partner in the debtor, whether or not the claim of such creditor, such equity security holder, or such general partner in the debtor is provided for by the plan, and whether or not such creditor, such equity security holder, or such general partner in the debtor has objected to, has accepted, or has rejected the plan.

"(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

"(c) Except as provided in section 1228(a) of this title and except as otherwise provided in the plan or in the order confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

"§1228. Discharge

"(a) As soon as practicable after completion by the debtor of all payments under the plan, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(10) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

"(1) provided for under section 1222(b)(5) or 1222(b)(10) of this title; or

"(2) of the kind specified in section 523(a) of this title.

"(b) At any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

"(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

"(2) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

"(3) modification of the plan under section 1229 of this title is not practicable.

"(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

"(1) provided for under section 1222(b)(5) or 1222(b)(10) of this title; or

"(2) of a kind specified in section 523(a) of this title.

"(d) On request of a party in interest before one year after a discharge under this section is granted, and after notice and a

hearing, the court may revoke such discharge only if—

“(1) such discharge was obtained by the debtor through fraud; and

“(2) the requesting party did not know of such fraud until after such discharge was granted.

“(e) After the debtor is granted a discharge, the court shall terminate the services of any trustee serving in the case.

“§1229. Modification of plan after confirmation

“(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, on request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—

“(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

“(2) extend or reduce the time for such payments; or

“(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan.

“(b)(1) Sections 1222(a), 1222(b), and 1223(c) of this title and the requirements of section 1225(a) of this title apply to any modification under subsection (a) of this section.

“(2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.

“(c) A plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

“§ 1230. Revocation of an order of confirmation

“(a) On request of a party in interest at any time within 180 days after the date of the entry of an order of confirmation under section 1225 of this title, and after notice and a hearing, the court may revoke such order if such order was procured by fraud.

“(b) If the court revokes an order of confirmation under subsection (a) of this section, the court shall dispose of the case under section 1207 of this title, unless, within the time fixed by the court, the debtor proposes and the court confirms a modification of the plan under section 1229 of this title.

“§ 1231. Special tax provisions

“(a) For the purpose of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 706 of this title.

“(b) The trustee shall make a State or local tax return of income for the estate of an individual debtor in a case under this chapter for each taxable period after the order for relief under this chapter during which the case is pending.

“(c) The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1225 of this title, may not be taxed under any law imposing a stamp tax or similar tax.

“(d) The court may authorize the proponent of a plan to request a determination, limited to questions of law, by a State or local governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

“(1) the date on which such governmental unit responds to the request under this subsection; or

“(2) 270 days after such request.”.

SEC. 256. CONVERSION FROM CHAPTER 11 TO CHAPTER 12.

Section 1112(d) of title 11, United States Code, is amended—

(1) by inserting “12 or” before “13”,

(2) in paragraph (1) by striking out “and” at the end thereof,

(3) in paragraph (2) by striking out the period at the end thereof and inserting “; and”, and

(4) by inserting after paragraph (2) the following:

“(3) if the debtor requests conversion to chapter 12 of this title, such conversion is equitable.”.

SEC. 257. CONFORMING AMENDMENTS.

(a) Title 11 of the United States Code is amended in the table of chapters by inserting after the item relating to chapter 11 the following new item:

“12. Adjustment of Debts of Family Farmers with Regular Annual Income .... 1201”.

(b) Section 108 of title 11, United States Code, is amended—

(1) in subsection (b) by inserting “1201 or” before “1301”, and

(2) in subsection (c)—

(A) by striking out “section 1301” and inserting in lieu thereof “section 1201 or 1301”, and

(B) by inserting “1201,” after “722,”.

(c) Sections 321(a), 329(b)(1)(B), and 1106(a)(5) of title 11, United States Code, are each amended by striking out “or 13” each place it appears and inserting in lieu thereof “, 12, or 13”.

(d) Sections 322(a) and 546(a)(1) of title 11, United States Code, are each amended by striking out “or 1302” each place it appears and inserting in lieu thereof “1302, or 1202”.

(e) Section 327 of title 11, United States Code, is amended—

(1) in subsection (b) by inserting “, 1202,” after “section 721,”, and

(2) in subsection (c) by inserting “, 12,” after “section 7”.

(f) Section 330(c) of title 11, United States Code, is amended by inserting “12 or” before “13”.

(g) Section 346 of title 11, United States Code, is amended—

(1) in subsection (b) by inserting “, 12,” after “chapter 7”,

(2) in subsection (g)(1)(C) by inserting “or 12” after “chapter 11”, and

(3) in subsection (i)(1) by inserting “, 12,” after “chapter 7”.

(h) Section 347 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting “, 1226,” after “section 726”, and

(B) by inserting “, 12,” after “chapter 7”, and

(2) in subsection (b)—

(A) by striking out “or 11” and inserting in lieu thereof “, 11, or 12”, and

(B) by striking out “or 1173” and inserting in lieu thereof “1173, or 1225”.

(i) Section 348 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) by striking out “and 1328(a)” and inserting in lieu thereof “1201(a), 1221, and 1228(a)”, and

(B) by striking out “or 1307” and inserting in lieu thereof “1307, or 1208”,

(2) in subsections (c) and (e) by striking out “or 1307” each place it appears and inserting in lieu thereof “1307, or 1208”, and

(3) in subsection (d) by striking out “or 1307” and inserting in lieu thereof “, 1307, or 1208”.

(j) Sections 362(c)(2)(C), 365(d)(2), and 502(g) of title 11, United States Code, are each amended by striking out “or 13” each place it appears and inserting in lieu thereof “12, or 13”.

(k) Section 363 of title 11, United States Code, is amended—

(1) in subsection (c)(1) by striking out “or 1304” and inserting in lieu thereof “1304, 1203, or 1204”, and

(2) in subsection (l) by striking out “or 13” and inserting in lieu thereof “, 12, or 13”.

(l) Section 364(a) of title 11, United States Code, is amended by striking out “or 1304” and inserting in lieu thereof “1304, 1203, or 1204”.

(m) Section 365(g) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking out “or 13” and inserting in lieu thereof “12, or 13”, and

(2) in paragraph (2)—

(A) by striking out “or 13” and inserting in lieu thereof “12, or 13”, and

(B) by striking out “or 1307” each place it appears and inserting in lieu thereof “, 1307, or 1208”.

(n) Section 523(a) of title 11, United States Code, is amended by striking out “or 1328(b)” and inserting in lieu thereof “, 1228(a), 1228(b), or 1328(b)”.

(o) Section 524 of title 11, United States Code, is amended—

(1) in subsections (a)(1), (c)(1), and (d) by striking out “or 1328” each place it appears and inserting in lieu thereof “1228, or 1328”, and

(2) in subsection (a)(3) by striking out “or 1328(a)(1)” and inserting in lieu thereof “, 1228(a)(1), or 1328(a)(1)”.

(p) Section 557(d)(3) of title 11, United States Code, is amended by inserting “1202,” after “1104,”.

(q) Section 706 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) by striking out “or 1307” and inserting in lieu thereof “, 1307, or 1208”, and

(B) by striking out “or 13” and inserting in lieu thereof “, 12, or 13”, and

(2) in subsection (c) by inserting “12 or” before “13”.

(r) Section 726(b) of title 11, United States Code, is amended by inserting “1208,” after “section 1112”.

(s) Section 727(a)(9) of title 11, United States Code, is amended by inserting “1228 or” before “1328”.

(t) Section 728(a) of title 11, United States Code, is amended by inserting “or 1208” after “section 1112”.

(u) Section 1306(a) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking out “or 11” and inserting in lieu thereof “, 11, or 12”, and

(2) in paragraph (2) by striking out “or 11” and inserting in lieu thereof “, 11, or 12”.

(v) Section 1307 of title 11, United States Code, is amended—

(1) in subsection (b) by striking out “or 1112” and inserting in lieu thereof “, 1112, or 1208”,

(2) in subsection (d) by inserting “or 12” after “chapter 11”, and

(3) in subsection (e) by striking out "or 11" and inserting in lieu thereof ", 11, or 12".

Subtitle C—Miscellaneous Amendments and Technical Corrections to Title 11

SEC. 281. SUPPORT OBLIGATIONS.

Section 523(a)(5) of title 11, United States Code, is amended—

(1) by striking out "decree," and inserting in lieu thereof "decree", and

(2) by inserting ", determination made in accordance with State or territorial law by a governmental unit," after "record".

SEC. 282. DISCHARGE.

Section 524(d) of title 11, United States Code is amended—

(1) in the first sentence by striking out "shall" the first place it appears and inserting in lieu thereof "may",

(2) in the second sentence by inserting "any" after "At", and

(3) in the third sentence by inserting "the court shall hold a hearing at which the debtor shall appear in person and" after "then".

SEC. 283. TECHNICAL CORRECTIONS.

(a)(1) Section 101(43)(A)(xv) of title 11, United States Code, as amended by section 251, is amended by striking out "secuity" and inserting in lieu thereof "security".

(2) Section 101(51) of title 11, United States Code, as amended by section 251, is amended by striking out the semicolon at the end thereof and inserting in lieu thereof a period.

(b)(1) Section 303(b) of title 11, United States Code, is amended by striking out "subject on" and inserting in lieu thereof "subject of".

(2) Section 303(h)(1) of title 11, United States Code, is amended by striking out "that".

(c) Section 346(j)(7) of title 11, United States Code, is amended by striking out "owned" and inserting in lieu thereof "owed".

(d) Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (6) by striking out "financial institution," each place it appears and inserting in lieu thereof ", financial institutions",

(2) striking "or" after the semicolon in the first paragraph (9),

(3) striking out "(9)" in the second paragraph (9), and "(10)" in paragraph (10) and inserting in lieu thereof "(10)" and "(11)", respectively, and

(4) in paragraph (10), as so redesignated, by striking out the period at the end thereof and inserting in lieu thereof "; or".

(e)(1) Section 365(c) of title 11, United States Code, is amended by—

(1) striking "or and assignee of such contract or lease" in subparagraph (1)(A), and

(2) in paragraph (3) by—

(A) inserting "is" after "lease", and

(B) inserting "and" after "property".

(2) Paragraph (1) of section 365(h) of title 11, United States Code, is amended by inserting "or timeshare plan" after "lease" the fourth place it appears.

(3) Section 365(m) of title 11, United States Code, is amended by striking out "362(b)(9)" and inserting in lieu thereof "362(b)(10)".

(f)(1) Section 502(b)(6)(A)(ii) of title 11, United States Code, is amended by striking out "reposessed" and inserting in lieu thereof "repossessed".

(2) Section 502(i) of title 11, United States Code, is amended by striking out "507(a)(6)" and inserting in lieu thereof "507(a)(7)".

(g) Section 503(b) of title 11, United States Code, is amended—

(1) in subparagraph (1)(B) by striking out "507(a)(6)" and inserting in lieu thereof "507(a)(7)".

(2) in paragraph (5) by inserting "and" after the semicolon, and

(3) in paragraph (6) by striking out "; and" and inserting in lieu thereof a period.

(h) Section 521(4) of title 11, United States Code, is amended by inserting ", whether or not immunity is granted under section 344 of this title" after "estate" the second place it appears.

(i)(1) Section 522(h)(1) of title 11, United States Code, is amended by striking out "tittle" and inserting in lieu thereof "title".

(2) Section 522(i)(2) of title 11, United States Code, is amended by striking out "his" and inserting in lieu thereof "this".

(j)(1) Section 523(a) of title 11, United States Code, is amended—

(A) in subparagraph (1)(A) by striking out "507(a)(6)" and inserting in lieu thereof "507(a)(7)", and

(B) by redesignating the second paragraph (9) as paragraph (10).

(2) Section 523(b) of title 11, United States Code, is amended by striking out "Services" and inserting in lieu thereof "Service".

(k) Section 524(d)(2) of title 11, United States Code, is amended by striking out "subsection" the second place it appears and inserting in lieu thereof "section".

(l) Section 546(e) of title 11, United States Code, is amended by inserting a comma after "stockbroker".

(m) Section 547(b)(4)(B) of title 11, United States Code, is amended by inserting "and" after the semicolon.

(n) Section 548(d)(2)(B) of title 11, United States Code, is amended by striking out "financial institution," and inserting in lieu thereof ", financial institution".

(o) Section 549(b) of title 11, United States Code, is amended—

(1) by striking out "that occurs" and inserting in lieu thereof "made",

(2) by striking out "is valid against the trustee to the extent of" and inserting in lieu thereof "to the extent", and

(3) by inserting "is" before "given".

(p) Section 554(c) of title 11, United States Code, is amended by striking out "521(a)(1)" and inserting in lieu thereof "521(1)".

(q) The items relating to sections 557, 558, and 559 in the table of sections for subchapter III of chapter 5 of title 11, United States Code, are amended to read as follows:

"557. Expedited determination of interests in, and abandonment or other disposition of grain assets.
"558. Defenses of the estate.
"559. Contractual right to liquidate a repurchase agreement.".

(r) Section 724(b)(2) of title 11, United States Code, is amended by—

(1) striking out "or", and

(2) inserting ", or 507(a)(6)" after "507(a)(5)".

(s) Section 726(b) of title 11, United States Code, is amended by striking out "or (6)" and inserting in lieu thereof "(6) or (7)".

(t) Section 743 of title 11, United States Code, is amended by striking out "(d)".

(u) Section 1121(d) of title 11, United States Code, is amended by striking out "subsection" and inserting in lieu thereof "subsections (b) and".

(v) Section 1129(a) of title 11, United States Code, is amended—

(1) in paragraph (7) by striking out "of" the first time it appears,

(2) in subparagraph (9)(B) by striking out "or 507(a)(5)" the first time it appears and inserting in lieu thereof "507(a)(5) or 507(a)(6)", and

(3) in paragraph (9)(C) by striking out "(6)" and inserting in lieu thereof "(7)".

(w) Section 1302(e)(1) of title 11, United States Code, is amended by striking out "fix" and inserting in lieu thereof "set for such individual".

(x) Section 1324 of title 11, United States Code, is amended in the second sentence by striking out "the" the first place it appears.

(y) Section 1325(b)(2)(A) of title 11, United States Code, is amended by striking out "or" after the semicolon and inserting in lieu thereof "and".

(z) Section 1326(a)(2) of title 11, United States Code, is amended by striking out "payments" and inserting in lieu thereof "payment".

(aa) Official Bankruptcy Form No. 1, referred to in Rule 1002 of the Bankruptcy Rules, is amended—

(1) in paragraph (6) by striking out "7 or 13" and inserting in lieu thereof "7, 11, 12, or 13", and

(2) by striking out "7 or 13" and inserting in lieu thereof "7, 11, 12, or 13" in the statement to be made by the attorney in "Exhibit 'B' ".

TITLE III—TRANSITION AND ADMINISTRATIVE PROVISIONS

SEC. 301. INCUMBENT UNITED STATES TRUSTEES.

(a) AREA FOR WHICH APPOINTED.—Notwithstanding any paragraph of section 581(a) of title 28, United States Code, as in effect before the effective date of this Act, a United States trustee serving in such office on the effective date of this Act shall serve the remaining term of such office as United States trustee for the region specified in a paragraph of such section, as amended by this Act, that includes the site at which the primary official station of the United States trustee is located immediately before the effective date of this Act.

(b) TERM OF OFFICE.—Notwithstanding section 581(b) of title 28, United States Code, as in effect before the effective date of this Act, the term of office of any United States trustee serving in such office on the date of the enactment of this Act shall expire—

(1) 2 years after the expiration date of such term of office under such section, as so in effect, or

(2) 4 years after the date of the enactment of this Act,

whichever occurs first.

SEC. 302. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.

(a) GENERAL EFFECTIVE DATE.—Except as provided in subsections (b), (c), (d), (e), and (f), this Act and the amendments made by this Act shall take effect 30 days after the date of the enactment of this Act.

(b) AMENDMENTS RELATING TO BANKRUPTCY JUDGES AND INCUMBENT UNITED STATES TRUSTEES.—Subtitle A of title I, and sections 301 and 307(a), shall take effect on the date of the enactment of this Act.

(c) AMENDMENTS RELATING TO FAMILY FARMERS.—(1) The amendments made by subtitle B of title II shall not apply with respect to cases commenced under title 11 of the United States Code before the effective date of this Act.

(2) Section 1202 of title 11 of the United States Code (as added by the amendment made by section 255 of this Act) shall take effect on the effective date of this Act and before the amendment made by section 227 of this Act.

(3) Until the amendments made by subtitle A of title II of this Act become effective in a

district and apply to a case, for purposes of such case—

(A)(i) any reference in section 326(b) of title 11 of the United States Code to chapter 13 of title 11 of the United States Code shall be deemed to be a reference to chapter 12 or chapter 13 of title 11 of the United States Code,

(ii) any reference in such section 326(b) to section 1302(d) of title 11 of the United States Code shall be deemed to be a reference to section 1302(d) of title 11 of the United States or section 586(b) of title 28 of the United States Code, and

(iii) any reference in such section 326(b) to section 1302(a) of title 11 of the United States Code shall be deemed to be a reference to section 1202(a) or section 1302(a) of title 11 of the United States Code, and

(B)(i) the first two references in section 1202(a) of title 11 of the United States Code (as added by the amendment made by section 255 of this Act) to the United States trustee shall be deemed to be a reference to the court, and

(ii) any reference in such section 1202(a) to section 586(b) of title 28 of the United States Code shall be deemed to be a reference to section 1202(c) of title 11 of the United States Code (as so added).

(d) APPLICATION OF AMENDMENTS TO JUDICIAL DISTRICTS.—

(1) CERTAIN REGIONS NOT CURRENTLY SERVED BY UNITED STATES TRUSTEES.—(A) The amendments made by subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not—

(i) become effective in or with respect to a judicial district specified in subparagraph (B) until, or

(ii) apply to cases while pending in such district before,

the expiration of the 270-day period beginning on the effective date of this Act or of the 30-day period beginning on the date the Attorney General certifies under section 303 of this Act the region specified in a paragraph of section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, that includes such district, whichever occurs first.

(B) Subparagraph (A) applies to the following:

(i) The judicial district established for the Commonwealth of Puerto Rico.

(ii) The District of Connecticut.

(iii) The judicial districts established for the State of New York (other than the Southern District of New York).

(iv) The District of Vermont.

(v) The judicial districts established for the State of Pennsylvania.

(vi) The judicial district established for the Virgin Islands of the United States.

(vii) The District of Maryland.

(viii) The judicial districts established for the State of North Carolina.

(ix) The District of South Carolina.

(x) The judicial districts established for the State of West Virginia.

(xi) The Western District of Virginia.

(xii) The Eastern District of Texas.

(xiii) The judicial districts established for the State of Wisconsin.

(xiv) The judicial districts established for the State of Iowa.

(xv) The judicial districts established for the State of New Mexico.

(xvi) The judicial districts established for the State of Oklahoma.

(xvii) The District of Utah.

(xviii) The District of Wyoming (including those portions of Yellowstone National Park situated in the States of Montana and Idaho).

(xix) The judicial districts established for the State of Alabama.

(xx) The judicial districts established for the State of Florida.

(xxi) The judicial districts established for the State of Georgia.

(2) CERTAIN REMAINING JUDICIAL DISTRICTS NOT CURRENTLY SERVED BY UNITED STATES TRUSTEES.—(A) The amendments made by subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not—

(i) become effective in or with respect to a judicial district specified in subparagraph (B) until, or

(ii) apply to cases while pending in such district before,

the expiration of the 2-year period beginning on the effective date of this Act or of the 30-day period beginning on the date the Attorney General certifies under section 303 of this Act the region specified in a paragraph of section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, that includes such district, whichever occurs first.

(B) Subparagraph (A) applies to the following:

(i) The judicial districts established for the State of Louisiana.

(ii) The judicial districts established for the State of Mississippi.

(iii) The Southern District of Texas and the Western District of Texas.

(iv) The judicial districts established for the State of Kentucky.

(v) The judicial districts established for the State of Tennessee.

(vi) The judicial districts established for the State of Michigan.

(vii) The judicial districts established for the State of Ohio.

(viii) The judicial districts established for the State of Illinois (other than the Northern District of Illinois).

(ix) The judicial districts established for the State of Indiana.

(x) The judicial districts established for the State of Arkansas.

(xi) The judicial districts established for the State of Nebraska.

(xii) The judicial districts established for the State of Missouri.

(xiii) The District of Arizona.

(xiv) The District of Hawaii.

(xv) The judicial district established for Guam.

(xvi) The judicial district established for the Commonwealth of the Northern Mariana Islands.

(xvii) The judicial districts established for the State of California (other than the Central District of California).

(xviii) The District of Nevada.

(xix) The District of Alaska.

(xx) The District of Idaho.

(xxi) The District of Montana.

(xxii) The District of Oregon.

(xxiii) The judicial districts established for the State of Washington.

(3) JUDICIAL DISTRICTS FOR THE STATES OF ALABAMA AND NORTH CAROLINA.—(A) Notwithstanding paragraphs (1) and (2), and any other provision of law, the amendments made by subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not—

(i) become effective in or with respect to a judicial district specified in subparagraph (E) until, or

(ii) apply to cases while pending in such district before,

such district elects to be included in a bankruptcy region established in section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, or October 1, 1992, whichever occurs first.

(B) Any election under subparagraph (A) shall be made upon a majority vote of the chief judge of such district and each bankruptcy judge in such judicial district in favor of such election.

(C) Notice that an election has been made under subparagraph (A) shall be given, not later than 10 days after such election, to the Attorney General and the appropriate Federal Circuit Court of Appeals for such district.

(D) Any election made under subparagraph (A) shall become effective on the date the amendments made by subtitle A of title II of this Act become effective in the region that includes such district or 30 days after the Attorney General receives the notice required under subparagraph (C), whichever occurs later.

(E) Subparagraph (A) applies to the following:

(i) The judicial districts established for the State of Alabama.

(ii) The judicial districts established for the State of North Carolina.

(F)(i) Subject to clause (ii), with respect to cases under chapters 7, 11, 12, and 13 of title 11, United States Code—

(I) commenced before the effective date of this Act, and

(II) pending in a judicial district in the State of Alabama or the State of North Carolina before any election made under subparagraph (A) by such district becomes effective on October 1, 1992, whichever occurs first,

the amendments made by section 113 and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply until October 1, 1993, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first.

(ii) For purposes of clause (i), the amendments made by section 113 and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply with respect to a case under chapter 7, 11, 12, or 13 of title 11, United States Code, if—

(I) the trustee in the case files the final report and account of administration of the estate, required under section 704 of such title, or

(II) a plan is confirmed under section 1129, 1225, or 1325 of such title,

before October 1, 1993, or the expiration of the 1-year period beginning on the date such election becomes effective, whichever occurs first.

(G) Notwithstanding section 589a of title 28, United States Code, as added by section 115 of this Act, funds collected as a result of the amendments made by section 117 of this Act in a judicial district in the State of Alabama or the State of North Carolina under section 1930(a) of title 28, United States Code, before the date the amendments made by subtitle A of title II of this Act take effect in such district shall be deposited in the general receipts of the Treasury.

(H) The repeal made by section 231 of this Act shall not apply in or with respect to the Northern District of Alabama until March 1, 1987, or the effective date of any election made under subparagraph (A) by such district, whichever occurs first.

(I) In any judicial district in the State of Alabama or the State of North Carolina that has not made the election described in subparagraph (A), any person who is appointed under regulations issued by the Judicial Conference of the United States to administer estates in cases under title 11 of the United States Code may—

(i) establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under title 11, United States Code, and

(ii) supervise the administration of cases and trustees in cases under chapters 7, 11, 12, and 13 of title 11, United States Code,

until the amendments made by subtitle A of title II take effect in such district.

(e) Application of United States Trustee System and Quarterly Fees to Certain Cases.—

(1) In general.—Subject to paragraph (2), with respect to cases under chapters 7, 11, 12, and 13 of title 11, United States Code—

(A) commenced before the effective date of this Act, and

(B) pending in a judicial district referred to in section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, for which a United States trustee is not authorized before the effective date of this Act to be appointed,

the amendments made by section 113 and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply until the expiration of the 3-year period beginning on the effective date of this Act, or of the 1-year period beginning on the date the Attorney General certifies under section 303 of this Act the region specified in a paragraph of such section 581(a), as so amended, that includes such district, whichever occurs first.

(2) Amendments inapplicable.—For purposes of paragraph (1), the amendments made by section 113 and subtitle A of title II of this Act, and section 1930(a)(6) of title 28 of the United States Code (as added by section 117(4) of this Act), shall not apply with respect to a case under chapter 7, 11, 12, or 13 of title 11, United States Code, if—

(A) the trustee in the case files the final report and account of administration of the estate, required under section 704 of such title, or

(B) a plan is confirmed under section 1129, 1225, or 1325 of such title,

before the expiration of the 3-year period, or the expiration of the 1-year period, specified in paragraph (1), whichever occurs first.

(3) Rule of construction regarding fees for cases.—This Act and the amendments made by section 117(4) of this Act shall not be construed to require the payment of a fee under paragraph (6) of section 1930(a) of title 28, United States Code, in a case under title 11 of the United States Code for any conduct or period occurring before such paragraph becomes effective in the district in which such case is pending.

(f) Repeal of Chapter 12 of Title 11.—Chapter 12 of title 11 of the United States Code is repealed on October 1, 1993. All cases commenced or pending under chapter 12 of title 11, United States Code, and all matters and proceedings in or relating to such cases, shall be conducted and determined under such chapter as if such chapter had not been repealed. The substantive rights of parties in connection with such cases, matters, and proceedings shall continue to be governed under the laws applicable to such cases, matters, and proceedings as if such chapter had not been repealed.

SEC. 303. CERTIFICATION OF JUDICIAL DISTRICTS; NOTICE AND PUBLICATION OF CERTIFICATION.

(a) Certification by Attorney General.—The Attorney General may certify in writing a region specified in a paragraph of section 581(a) of title 28, United States Code (other than paragraph (16)), as amended by section 111(a) of this Act, to the appropriate court of appeals of the United States, for the purpose of informing such court that certain amendments made by this Act will become effective in accordance with section 302 of this Act.

(b) Notice and Publication of Certification.—Whenever the Attorney General transmits a certification under subsection (a), the Attorney General shall simultaneously—

(1) transmit a copy of such certification to the Speaker of the House of Representatives and to the President pro tempore of the Senate, and

(2) publish such certification in the Federal Register.

SEC. 304. ADMINISTRATIVE PROVISIONS.

(a) Cooperative Arrangements.—The Attorney General and the Director of the Administrative Office of the United States Courts may enter into agreements under which United States trustees may—

(1) use—

(A) the services, equipment, personnel, records, reports, and data compilations, in any form, of the courts of the United States, and

(B) the facilities of such courts, and

(2) cooperate in the use by the courts of the United States of—

(A) the services, equipment, personnel, records, reports, and data compilations, in any form, of United States trustees, and

(B) the facilities of such trustees,

to prevent duplication during the 2-year period beginning on the effective date of this Act.

(b) Information and Documents Relating to Bankruptcy Cases and United States Trustees.—The Director of the Administrative Office of the United States Courts shall make available to United States trustees, at the request of the Attorney General and on a continuing basis, all records, reports, and data compilations relating to—

(1) cases and proceedings under title 11 of the United States Code, and

(2) the duties of United States trustees under titles 11 and 28 of the United States Code.

SEC. 305. APPLICATION OF CERTAIN BANKRUPTCY RULES

(a) Rules Relating to the United States Trustee System.—If a United States trustee is not authorized, before the effective date of this Act, to be appointed for a judicial district referred to in section 581(a) of title 28, United States Code, as amended by section 111(a) of this Act, then part X of the Bankruptcy Rules shall not apply to cases in such district until the amendments made by subtitle A of title II of this Act become effective under section 302 of this Act in such district.

(b) Rules Relating to Chapter 12 of Title 11.—The rules prescribed under section 2075 of title 28, United States Code, and in effect on the date of the enactment of this Act shall apply to cases filed under chapter 12 of title 11, United States Code, to the extent practicable and not inconsistent with the amendments made by title II of this Act.

SEC. 306. SALARY OF INCUMBENT UNITED STATES TRUSTEES.

For service as a United States trustee in the period beginning on the effective date of this Act and ending on the expiration under section 301 of this Act of their respective terms of office, the salary payable to United States trustees serving in such offices on the effective date of this Act shall be fixed in accordance with section 587 of title 28, United States Code, as amended by section 114(a) of this Act.

SEC. 307. PRESERVATION OF UNITED STATES TRUSTEE SYSTEM DURING PENDENCY OF LEGISLATION; REPEALER.

(a) Temporary Delay of Repeal of United States Trustee System.—Effective immediately before November 10, 1986, section 408(c) of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687), is amended by striking out "November 10, 1986" and inserting in lieu thereof "30 days after the effective date of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986".

(b) Conforming Amendment.—Section 408 of the Act of November 6, 1978 (Public Law 95-598; 92 Stat. 2687), is repealed.

SEC. 308. CONSIDERATION OF CURRENT PRIVATE TRUSTEES FOR APPOINTMENT BY UNITED STATES TRUSTEES.

(a) Trustees in Bankruptcy Cases Under Chapter 7.—It is the sense of the Congress that individuals who are serving before the effective date of this Act, as trustees in cases under chapter 7 of title 11, United States Code, should be considered by United States trustees for appointment under section 586(a)(1) of title 28, United States Code, to the panels of private trustees that are established as a result of the amendments made by this Act.

(b) Standing Trustees in Bankruptcy Cases Under Chapter 13.—It is the sense of the Congress that individuals who are serving before the effective date of this Act, as standing trustees in cases under chapter 13 of title 11, United States Code, should be considered by the United States trustees for appointment under section 586(b) of title 28, United States Code, as standing trustees who are appointed as a result of the amendments made by this Act.

SEC. 309. APPOINTMENT OF UNITED STATES TRUSTEES BY THE ATTORNEY GENERAL.

It is the sense of the Congress that individuals otherwise qualified who are serving, before the effective date of this Act, as estate administrators under title 11 of the United States Code should be considered by the Attorney General for appointment under sections 581 and 582 of title 28, United States Code, to new positions of United States trustee and assistant United States trustee resulting from the amendments made by this Act.

SEC. 310. ELECTRONIC CASE MANAGEMENT DEMONSTRATION PROJECT.

(a) Establishment of Project.—Not later than 1 year after the effective date of this Act, the Director of the Executive Office for United States Trustees, in consultation with the Director of the Administrative Office of the United States Courts, shall establish an electronic case management demonstration project to be carried out in 3 Federal judicial districts that have a sufficiently large and varied bankruptcy caseload so as to provide a meaningful evaluation of the cost and effectiveness of such system. A contract for such project shall be awarded—

(1) on the basis of competitive bids submitted by qualified nongovernmental entities that are able to design an automated joint information system for use by the United States courts and by United States trustees, and

(2) in accordance with the Federal Property and Administrative Services Act of 1949, the Office of Federal Procurement Policy Act, and title 31 of the United States Code.

(b) STUDY BY GENERAL ACCOUNTING OFFICE.—Not later than 1 year after the electronic case management system begins to operate in all of the judicial districts participating in the demonstration project carried out under subsection (a), the General Accounting Office shall conduct a study to compare the cost and effectiveness of such system with the cost and effectiveness of case management systems used in Federal judicial districts that are not participating in such project.

(c) TERM OF PROJECT.—The demonstration project required by subsection (a) shall be carried out until—

(1) the expiration of the 2-year period beginning on the date the electronic case management system begins to operate in all of the judicial districts participating in such project, or

(2) legislation is enacted to extend, expand, modify, or terminate the operation of such project,

whichever occurs first.

(d) USE BY CLERKS OF THE COURTS.—The electronic case management system demonstrated under the project required by subsection (a) shall provide the clerk of court in each district in which such system is operated, with a means of—

(1) maintaining a complete electronic case file of all relevant information contained in petitions and schedules (and any amendments thereto) relating to debtors in cases under title 11 of the United States Code, including—

(A) a complete list of creditors in each such case, as listed by the debtor,

(B) a complete list of assets scheduled by the debtor, the value of such asset, and any action taken by the trustee or debtor in possession with regard to such asset during the pendency of such case,

(C) a complete list of debts and, with respect to each debt—

(i) any priority of such debt under title 11 of the United States Code,

(ii) whether such debt is secured or unsecured, and

(iii) whether such debt is contingent or noncontingent, and

(D) the debtor's statements of current expenses and income, and

(2) maintaining all calendars and dockets and producing all notices required to be sent in cases under title 11 of the United States Code.

(e) USE BY UNITED STATES TRUSTEES.—The electronic case management system demonstrated under the project required by subsection (a) shall provide, at a minimum, the United States trustee in each district in which such system is operated with—

(1) complete electronic case files which contain, in addition to the information listed in subsection (d), records of case openings, case closings, hearings, and the filing of all motions, trustee appointments, pleadings, and responses, as well as a record of the responses by the United States trustee to those motions, trustee appointments, and pleadings,

(2) a means to generate standardized forms for motions, appointments, pleadings, and responses,

(3) a means to generate standard management reports and letters on an exception basis,

(4) a means to maintain accounting records, reports, and information required to be maintained by debtors in possession and trustees in cases under title 11 of the United States Code,

(5) a means to calculate and record distribution to creditors, final applications and orders for distribution, and final case closing reports, and

(6) a means to monitor the payment of filing and other required fees.

(f) AVAILABILITY TO CERTAIN GOVERNMENTAL ENTITIES.—Unlimited access to information maintained in the electronic case management system demonstrated under the project required by subsection (a) shall be provided at no charge to the following:

(1) The Congress.

(2) The Executive Office for the United States Trustees.

(3) The Administrative Office of the United States Courts.

(4) The clerks of the courts in judicial districts in which such system is operated and persons who review case information, in accordance with section 107(a) of title 11, United States Code, in the offices of the clerks.

(5) The judges on the bankruptcy and district courts in districts in which such system is operated.

(6) Trustees in cases pending in districts in which such system is operated.

(g) FEES FOR OTHER USERS.—(1) The entity which is awarded a contract to provide the electronic case management system demonstrated under this project may, under guidelines established by the Director of the Executive Office for the United States Trustees in the provisions of such contract, collect reasonable fees from assets of the estate of the debtor in bankruptcy for providing notices and services to the court and trustees under the demonstration project.

(2) Access to information maintained in electronic case files pursuant to the demonstration project may be provided to persons other than those specified in subsection (f), but such access shall be limited to viewing such information only. A reasonable charge for such access may be collected by the entity which is awarded a contract under this section, in accordance with the guidelines established by the Director of the Executive Office for the United States trustees in such contract. A reasonable portion of any charge so collected may be required by the Director to be remitted to the Executive Office for United States Trustees and deposited in the United States Trustee System Fund established in section 589a of title 28, United States Code.

(h) SECURITY.—Access provided under subsection (f) to an entity or an individual shall be subject to such security limitations as may be imposed by the Congress or the head of the affected entity.

SEC. 311. CASES PENDING UNDER THE BANKRUPTCY ACT.

At the end of one calendar year following the date the amendments made by subtitle A of title II of this Act take effect in a district in which any case is still pending under the Bankruptcy Act, the district court shall withdraw the reference of any such case and, after notice and a hearing, determine the status of the case. Such case shall be remanded to the bankruptcy judge with such instructions as are necessary for the prompt closing of the case and with a requirement that a progress report on the case be provided by the bankruptcy judge after such interval as the district court deems appropriate.

And the Senate agree to the same.

PETER W. RODINO,
DON EDWARDS,
WILLIAM J. HUGHES,
MIKE SYNAR,
DAN GLICKMAN,
EDWARD F. FEIGHAN,
HAMILTON FISH, Jr.,
E. CLAY SHAW, Jr.,
CARLOS MOORHEAD,
HENRY J. HYDE,
Managers on the Part of the House.
STROM THURMOND,
ORRIN HATCH,
CHUCK GRASSLEY,
DENNIS DECONCINI,
HOWELL HEFLIN,
Managers on the Part of the Senate

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5316) to amend title 28 of the United States Code to provide for the appointment of additional bankruptcy judges, to provide for the appointment of United States trustees to serve in bankruptcy cases in judicial districts throughout the United States, to make certain changes with respect to the role of United States trustees in such cases, and for other purposes submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

EXEMPTION OF U.S. TRUSTEE PROGRAM EMPLOYEES FROM TITLE 5 PROVISIONS

Section 209(b) of the Senate bill amended 28 U.S.C. 589 to provide that staff employed by the United States trustee would be employed without regard to the provisions of title 5, governing appointments in the competitive service. The Conference Report includes this exemption, but limits its effect to the period ending October 1, 1989.

The exemption from title 5 until October 1, 1989 is expected to assist United States trustees in the "start-up" of the trustee program. Although the exemption is not permanent, the managers do not intend to prohibit the Department of Justice from requesting, or receiving, Office of Personnel Management approval of exemptions from title 5 on an annual basis if such exemption is otherwise appropriate—as is currently the practice.

REDUCTION OF U.S. TRUSTEE'S SALARY DURING TERM OF OFFICE

Section 116 of the House bill prohibited the Attorney General from reducing the salary of a United States trustee during the term of office of such United States trustee. The Senate bill contained no similar provision. The House recedes.

The Senate and the House share the expectation that the United States trustee program, like other Executive branch programs, will be administered fairly and equitably. The House and the Senate conferees believe that the reduction of the salary of a United States trustee during the trustee's term would be an extraordinary action. The conferees can envision very limited circumstances under which such a reduction would be appropriate. For example, budgetary concerns at some time in the future could make reductions necessary on an "across the board" basis in the United States trustee program.

ABILITY OF UNITED STATES TRUSTEE TO FILE A PLAN

Section 225 of the Senate bill created a new section 307 of title 11, United States Code, providing that a United States trustee may not file a plan in a chapter 11 case. The House recedes.

The House and Senate Conferees also agreed that the United States trustee should not file a plan in any other chapter. However, because such action by the trustee would be inconsistent with current policy under other chapters, the Conferees did not believe it necessary to include this prohibition in the language of the statute.

ELIGIBILITY OF THE UNITED STATES TRUSTEE TO SERVE AS A CASE TRUSTEE

Section 227 of the Senate bill clarified that a United States trustee may serve as a trustee in a case. Section 203 of the House bill also provided that a United States trustee could serve as a case trustee, but only upon certification by the United States trustee that such trustee was unable to locate a disinterested person to serve as case trustee. The House recedes.

The House and Senate Conferees agree that it is not their expectation or intent that the United States trustee will use the authority to serve as case trustee frequently. The United States trustee is to make a good faith, diligent effort to locate a disinterested and qualified trustee. Conferees agreed that United States trustees in the pilot program appear to be using their current authority to serve as case trustee in an appropriate manner.

AMENDMENT TO 11 U.S.C. 707(b)

Section 216 of the House bill amended 11 U.S.C. 707(b) to permit a United States Trustee to move the bankruptcy court to dismiss a case filed under Chapter 7 by an individual consumer debtor, where the court finds that the granting of relief would be a substantial abuse of the Chapter 7 process. The Senate bill contained no amendment to Section 707(b), but included a similar provision in Section 238(a)(3). That section amended 11 U.S.C. 704(10) to impose a duty on the panel trustee to bring to the attention of the court information that might enable the court to carry out its responsibilities under 11 U.S.C. 707 and other sections. The Senate recedes.

Under current law, the court may dismiss a Chapter 7 case on grounds of substantial abuse only "on its own motion and not at the request or suggestion of any party in interest." Some question has arisen as to whether United States Trustees and panel trustees are considered "parties in interest" for purposes of this section, and are thus precluded from bringing information to the attention of the court on the issue of substantial abuse, and moving for dismissal of a Chapter 7 case on those grounds. See, e.g., In re Christian, 51 B.R. 118 (Bankr. D.N.J. 1985). The Conference Report clarifies the ability of the U.S. Trustee under Section 707(b) to bring such information to the attention of the court. The original intent of this subsection was to preclude creditors from exercising this function.

The conferees anticipate that the panel trustee will work closely in conjunction with the United States Trustee to assist in the discharge of the specific authority granted under Section 707(b). This would include bringing to the United States trustee's attention any information or evidence of fraud or abuse which may provide the basis for dismissal of a case under Section 707(b). The U.S. Trustee may, in his discretion, bring that information to the attention of the court. The conferees anticipate that panel trustees will frequently appear in court regarding the motions filed by the U.S. Trustee under Section 707(b), as amended. Such appearances will be in their capacity as panel trustee and not as a representative of the U.S. Trustee.

ADMINISTRATION OF UNITED STATES TRUSTEE PROGRAM

It is the sense of the House and Senate Conferees that the primary resources of a nationwide United States trustee program, as has been the case with the pilot program, will be the individuals serving in the program in districts across the country. Although centrally based administration of the program is important, its function is to support the efforts of individuals serving in the field. Care should be taken by the Attorney General to ensure that the operation and staffing of the central Executive Office for United States trustees does not become oversized and overshadow the responsibilities of the individuals in the field.

The staffing of the United States trustee program should be at a level adequate to permit the United States trustees to properly fulfill their responsibilities. If there are substantial increases or decreases in the bankruptcy caseload, it is anticipated that the staffing level of the program will be correspondingly adjusted, within the reasonable level allowed by the self-funding mechanism.

SUPPORT OBLIGATIONS

The House recedes to the Senate provision in Section 103 of its bill relating to support obligations.

The House and Senate Conferees agreed to technical changes that do not restrict the coverage of the Senate provision in any way but rather ensure that support determinations made in accordance with state or territorial law (by a governmental unit as defined in 11 USC 101 (24)) are encompassed fully within the statutory language. Purely redundant words in the Senate provision have been deleted.

This provision will expand the exception to discharge in 11 USC 523(a)(5) to embrace support determinations involving various types of processes or procedures (e.g. administrative, expedited judicial) and various forms of determinations (e.g. rules, orders). Such determinations may be made by hearing officers or commissioners of agencies, subagencies, departments or courts of counties, municipalities or states—to cite some examples only.

OVERVIEW OF THE FAMILY FARM SUBTITLE OF THE CONFERENCE REPORT

Under current law, family farmers in need of financial rehabilitation may proceed under either Chapter 11 or Chapter 13 of the Bankruptcy Code. Most family farmers have too much debt to qualify as debtors under Chapter 13 and are thus limited to relief under Chapter 11. Unfortunately, family farmers have found Chapter 11 needlessly complicated, unduly time-consuming, inordinately expensive and, in too many cases, unworkable.

Accordingly, this subtitle creates a new chapter of the Code—Chapter 12—to be used only by family farmers. It is designed to give family farmers facing bankruptcy a fighting chance to reorganize their debts and keep their land. It offers family farmers the important protection from creditors that bankruptcy provides while, at the same time, preventing abuse of the system and ensuring that farm lenders receive a fair repayment.

This new chapter is closely modeled after existing Chapter 13. At the same time, however, the new chapter alters those provisions that are inappropriate for family farmers—the requirement that the plan be filed within 15 days of the petitions; the requirement that plan payments start within 30 days of the plan confirmation; and the low debt limits found in Chapter 13.

Under this new chapter, it will be easier for a family farmer to confirm a plan of reorganization.

SUNSET PROVISION

A seven-year sunset is provided for Chapter 12. Because this is a new chapter aimed at a specific class of debtors, Congress will want to evaluate both whether the chapter is serving its purpose and whether there is a continuing need for a special chapter for the family farmer When it makes this evaluation, Congress will be able to determine whether or not to make this chapter permanent.

APPLICABILITY OF CHAPTER 12 TO PENDING CHAPTER 11 AND 13 CASES

It is not intended that there be routine conversion of Chapter 11 and 13 cases, pending at the time of enactment, to Chapter 12. Instead, it is expected that courts will exercise their sound discretion in each case, in allowing conversions only where it is equitable to do so.

Chief among the factors the court should consider is whether there is a substantial likelihood of successful reorganization under Chapter 12.

Courts should also carefully scrutinize the actions already taken in pending cases in deciding whether, in their equitable discretion, to allow conversion. For example, the court may consider whether the petition was recently filed in another chapter with no further action taken. Such a case may warrant conversion to the new chapter. On the other hand, there may be cases where a reorganization plan has already been filed or confirmed. In cases where the parties have substantially relied on current law, availability to convert to the new chapter should be limited.

USE OF CASH COLLATERAL

No debtor may use cash collateral unless the secured creditor consents, or the court, after notice and a hearing, authorizes such use.

The Conferees intend that courts will apply existing legal precedents, consistent with this legislation, when considering applications to use cash collateral.

SECTION 1204—DISPOSSESSION OF DEBTOR-IN-POSSESSION

In the event the Chapter 12 debtor is dispossessed and a trustee is substituted for the debtor in possession, the Conferees contemplate that the trustee, or the trustee's designee, will be responsible for operating the farm. This transfer of duties is modeled after provisions in Chapter 11. However, it is important to note that the Conferees do not authorize the Chapter 12 trustee to file a plan of reorganization, as is the case in Chapter 11.

SECTION 1205—ADEQUATE PROTECTION

Under current law, the filing of a bankruptcy petition operates as an automatic stay against any act to create, perfect, or enforce an alien against property of the estate. The secured creditor must file a motion to have the stay lifted in order to proceed with foreclosure. The primary basis for lifting the stay is a lack of adequate protection. This term is not defined in the Bankruptcy Code, but examples of adequate protection are set out in 11 U.S.C. 361.

The Fourth and Ninth Circuits have held that adequate protection requires the debtor to compensate the secured creditor for so-called "lost opportunity costs" in those cases where the value of the collateral is less than the amount of debt secured by the collateral. *In re American mariner Industries, Inc.*, 734 F.2d 426 (9th Cir. 1984); *Grundy National Bank v. Tandem Mining Corp.*, 754 F.2d 1436 (4th Cir. 1985). The payment of lost opportunity costs requires the periodic payment of a sum of cash equal to the interest that the undercollateralized secured creditor might earn on an amount of money equal to the value of the collateral securing the debt.

Lost opportunity costs payments present serious barriers to farm reorganizations, because farmland values have dropped so dramatically in many sections of the country—making for many undercollaterialized secured lenders. Family farmers are usually unable to pay lost opportunity costs. Thus, family farm reorganizations are often throttled in their infancy upon motion to lift the automatic stay.

Accordingly, section 1205 of the conference report provides a separate test for adequate protection in Chapter 12 cases. It eliminates the need of the family farmer to pay lost opportunity costs, and adds another means for providing adequate protection for farmland—paying reasonable market rent. Section 1205 eliminates the "indubitable equivalent" language of 11 U.S.C. 361(3) and makes it clear that what needs to be protected is the value of property, not the value of the creditor's "interest" in property.

It is expected that this provision will reduce unnecessary litigation during the term of the automatic stay, and will allow the family farmer to devote proper attention to plan preparation.

SECTION 1206—SALES FREE OF INTEREST

Most family farm reorganizations, to be successful, will involve the sale of unnecessary property. This section of the Conference Report allows Chapter 12 debtors to scale down the size of their farming operations by selling unnecessary property.

This section modifies 11 U.S.C. 363(f) to allow family farmers to sell assets not needed for the reorganization prior to confirmation without the consent of the secured creditor, subject to approval of the court.

This section also explicity makes clear that the creditor's interest (which includes a lien) would attach to the proceeds of the sale. Of course, the holders of secured claims would have the right to bid at the sale to the extent permitted under 11 U.S.C. 363(k).

SECTION 1224—CONFIRMATION HEARING

Section 1224 requires that Chapter 12 confirmation hearings be concluded within forty-five days after the filing of the plan. The Conferees are aware that this imposes a burden on the bankruptcy courts. Therefore, an exception for cause is provided. While a backlog of cases is sufficient cause for an extension of the forty-five day requirement, the Conferees expect this exception to be used sparingly in order to facilitate the proper operation of Chapter 12—which proper operation depends on prompt action.

SECTION 1225—DISPOSABLE INCOME REQUIREMENT

Section 1225 defines "disposable income" as income which is not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor or for the payment of expenditures necessary for the continuation, preservation, and operation of the debtor's business.

The Conferees recognize that family farmers who are eligible for Chapter 12 may be involved in *minor* businesses not directly related to the farming operation. The Conferees intend that the term "debtor's business" in section 1225 include such businesses.

SECTION 1227—POST-CONFIRMATION CREDIT

The Conferees are concerned that farmers be able to obtain post confirmation credit. The Conferees are in agreement that current law allows Chapter 13 debtors to do so. Because section 1227 is modeled after section 1327, family farmers may provide in their plans for post-confirmation financing secured by assets that have revested in the debtor. The debtor may also use revested property to the extent it is not encumbered by the plan or order of confirmation to secure post-confirmation credit.

PETER W. RODINO,
DON EDWARDS,
WILLIAM J. HUGHES,
MIKE SYNAR,
DAN GLICKMAN,
EDWARD F. FEIGHAN,
HAMILTON FISH, Jr.,
E. CLAY SHAW, Jr.,
CARLOS MOORHEAD,
HENRY J. HYDE,
Managers on the Part of the House.

STROM THURMOND,
ORRIN HATCH,
CHUCK GRASSLEY,
DENNIS DECONCINI,
HOWELL HEFLIN,
Managers on the Part of the Senate.

Mr. EDWARDS of California. Mr. Speaker, I call up the conference report on the bill (H.R. 5316) to amend title 28 of the United States Code to provide for the appointment of additional bankruptcy judges, to provide for the appointment of U.S. trustees to serve in bankruptcy cases in judicial districts throughout the United States, to make certain changes with respect to the role of U.S. trustees in such cases, and for other purposes, and ask unanimous consent for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from California?

Mr. FISH. Mr. Speaker, reserving the right to object, I just wish to say that we have no objection.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. The Clerk will read the conference report.

The Clerk proceeded to read the conference report.

Mr. EDWARDS of California (during the reading). Mr. Speaker, I ask unanimous consent that the statement of the managers be read in lieu of the report.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the statement.

Mr. EDWARDS of California (during the reading). Mr. Speaker, I ask unanimous consent that the statement be considered as read.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. The gentleman from California [Mr. EDWARDS] will be recognized for 30 minutes and the gentleman from New York [Mr. FISH] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to announce that an agreement has been reached with the other body on H.R. 5316, the Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1986. I have filed the conference report on this measure with the House and urge its approval.

H.R. 5316 authorizes the creation of 52 additional bankruptcy judgeships across the country. This will help deal with the mounting bankruptcy caseload in many districts.

The bill establishes a new chapter 12 in the bankruptcy laws to help family farmers. Chapter 12 recognizes some of the problems that are unique to family farmers, while still protecting the rights of creditors. This new chapter will be implemented for a 7-year period.

H.R. 5316 also implements the United States Trustee Program of bankruptcy administration on a nationwide, self-funding basis—at no cost to the taxpayer. This program will separate the administrative functions in bankruptcy cases from judicial functions, and thus further one of the aims of the Bankruptcy Reform Act of 1978. U.S. Trustees will improve the administration of bankruptcy cases, and perform functions such as monitoring payment of witholding taxes by debtors and acting as watchdogs against fraud.

I urge the House to adopt the conference report.

Mr. Speaker, I certainly should mention that the distinguished chairman of the subcommittee and of the full Committee on the Judiciary, the gentleman from New Jersey [Mr. RODINO] did a splendid job, not only in guiding this bill through the House, but in the conference, which was, in many ways, not the easiest conference in the world. The gentleman from Oklahoma [Mr. SYNAR] was of immense help and offered invaluable advice and counsel throughout. And, of course, as always, the gentleman from New York [Mr. FISH] did a splendid job. We should all be very grateful to all the members of the subcommittee.

Mr. Speaker, I reserve the balance of my time.

Mr. FISH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I welcome this opportunity to speak in support of the conference report on H.R. 5316, legislation that authorizes additional bankruptcy judgeships, establishes a nationwide U.S. Trustee Program, and helps family farmers in financial distress. The conferees from the two bodies, in my judgment, fairly resolved the differences in the two versions of this bill and produced a product that can expedite bankruptcy adjudications, improve bankruptcy administration, and permit some family farmers to avoid liquidation.

The two bodies agreed on the need for additional bankruptcy judges to address a burgeoning bankruptcy caseload. The combined effect of dramatic increases in filings and petition termination rates that fall short of new filings has been a steady increase in the pending caseload—with bankruptcy judges falling further and further behind. An appropriate and limited response to the excessive demands on bankruptcy judges in a number of Federal judicial districts has been an objective of both bodies. The conferees agreed that the most heavily burdened judicial districts needed relief—and accepted this body's figure of 52 additional positions rather than the 49 judgeships favored by the other body.

The conference report incorporates a nationwide U.S. Trustee Program to supervise the administration of bankruptcy cases, a feature of both versions of this legislation. The nationwide program will build on the success of the pilot program currently operating in 18 of the 94 Federal judicial districts.

The U.S. Trustee Program is designed to be self-funding—with increases in bankruptcy filing fees and a new quarterly fee in reorganization cases covering the costs of the program. During our committee markup, I sponsored two amendments to improve the self-funding mechanism in an earlier version of this legislation. The first mandated transfer to the general fund of the Treasury of funds not needed for U.S. trustee operations. The second imposed the periodic fee in reorganization cases that varies depending on disbursements—a formula thoroughly studied by the committee. I am pleased that these two provisions are included in the conference committee's recommendation.

The conferees rejected a provision in the version adopted by the other body that would have allowed any Federal judicial district to elect not to participate in the U.S. Trustee Program and to have officers and employees of the courts perform U.S. trustee functions. A single, nationwide program for supervision of bankruptcy administration is essential to uniform application of our bankruptcy laws.

U.S. Trustees, located within the Department of Justice, can function as effective watchdogs of bankruptcy administration—uncovering abuses and providing guidance to private trustees. The National Bankruptcy Conference, in testimony before the Committee on the Judiciary, supported "retention of the (U.S. Trustee) program in the Department of Justice and vigorously oppose[d] its transfer (S.D.N.Y), a former U.S. trustee, emphasized that" it is of paramount importance that there be independence and a clear segregation of duties and responsibilities between the judicial aspects of a case and its administration.

The conferees did agree to an extended transition period for the States of Alabama and North Carolnia as part of a compromise to drop the dual system of supervision of bankruptcy adminstration in the version passed by the other body. A possible delay in extending the U.S. Trustee, Program to these two States is far preferable to a permanent, confusing dual system.

In concluding my discussion of the U.S. Trustee Program, Mr. Speaker, I would like to direct my colleagues' attention to a very important provision of the bill passed by this body and included in the conference committee's recommendation. The provision amends section 707(b) of the Bankruptcy Code to clarify that a motion for dismissal on the ground of substantial abuse may be offered by the U.S. trustee.

The 98th Congress had provided new authority in section 707(b) of title II to assure that debtors, primarily with consumer debts, would not be granted inappropriate relief under the bankruptcy laws. Section 706(b) specifies that the court, after notice and a hearing, can on its own motion, dismiss a case filed by an individual consumer debtor where it finds that granting relief would constitute a "substantial abuse" of chapter 7 provisions. Section 707(b) further stipulates that the court may not make such a dismissal "at the request or suggestion of any party in interest."

Mr. Speaker, this "substantial abuse" provision was never intended to prevent a panel trustee or a U.S. trustee from bringing evidence or information pertaining to "substantial abuse" to the attention of the court. These individuals, after all, are the most likely persons to be familiar with those types of facts in these cases. The "party in interest" phrase in section 707(b) was intended to mean creditors—not panel trustees or U.S. trustees.

Unfortunately, since 1984, many of the cases interpreting section 707(b) have concluded that a panel trustee (or a U.S. trustee) is also prevented from bringing questions of substantial abuse to the attention of the bankruptcy court. This result was simply not the goal of the conference committee or the Congress when that provision was formulated. Because of the confusion surrounding current law on this point, it must be clarified. That is why the conferees agreed to include language in section 707(b) making it clear that the U.S. trustee may move to dismiss based on substantial abuse.

Although the U.S. trustee brings the motion under this new provision, the conferees recognize that panel trustees are in a unique position to become aware of abuses in the course of performing statutory duties. Consequently, the conferees anticipate that frequently panel trustees will appear in support of motions filed by the U.S. trustees under section 707(b) as amended. It is also my hope that the Executive Office for U.S. trustees will issue uniform guidelines to U.S. trustees and panel trustees for identifying cases of substantial abuse and making section 707(b) motions—and for panel trustees to bring evidence of fraud or abuse to the attention of the U.S. trustees.

The conferees, addressing the third major subject of this legislation, resolved many differences in the details of farm bankruptcy provisions passed by the two bodies. The product of the conference committee is consistent with the objective of helping family farmers to keep their farms and satisfy creditors out of future earnings. A new chapter 12 for family farmers, patterned in a number of respects after existing chapter 13, is tailored specifically to the realities of a nationwide farm crisis. Conscious of the needs of farm lenders, the conferees attempted to include provisions that are fair to both creditors and debtors. The new chapter 12 will sunset after 7 years.

I wish to commend the gentleman from New Jersey [Mr. RODINO], the chairman of our Committee on the Judiciary, Senator THURMOND, the chairman of the Senate Committee on the

Judiciary, and the other conferees for their diligent efforts in drafting the final version of this legislation. Permit me specifically to acknowledge with appreciation the contributions of the other Republican conferees from this body, the gentleman from California [Mr. MOORHEAD], the gentleman from Illinois [Mr. HYDE], and the gentleman from Florida [Mr. SHAW]. The product of this effort, in my judgment, merits the support of our colleagues in both bodies.

Mr. Speaker, I reserve the balance of my time.

Mr. EDWARDS of California. Mr. Speaker, I yield 5 minutes to the gentleman from Oklahoma [Mr. SYNAR], who has been of immense help on this bill.

Mr. SYNAR. Mr. Speaker, first of all, let me join with all of those who have spoken before me, as well as those who are not with us this afternoon, to commend not only the gentleman from New Jersey [Mr. RODINO] for his leadership in this area, but most importantly, the gentleman from New York [Mr. FISH], for his leadership in consumer bankruptcy, as well as working with us through the farm bankruptcy legislation.

Let me also join in the accolades to Senator THURMOND, as well as Senator GRASSLEY, for their outstanding leadership, and particularly, CHARLES GRASSLEY, for his outstanding leadership in fashioning what I think is some innovative new bankruptcy law for our family farms.

Two particular features of this bill, I think, are going to be remembered from this session of Congress.

As we come to a close in this session, we will be remembered for a lot of things, including a tax bill, including, hopefully, some attack on the huge deficits which we have accumulated, and some pretty serious talk about trade.

□ 1655

I doubt there will be anything that we do that will have such an immediate impact in the grassroots of our country with respect to the situation that exists in most of the heartland, and that is in the agricultural sector, because with this new bankruptcy legislation we are going to do two things. First of all, with the creation of the bankruptcy judges, States like Oklahoma which are in desperate need of new bankruptcy judges in order to handle the explosive new load of bankruptcies that have occurred in Oklahoma City and Tulsa and throughout our State will have the opportunity hopefully to deal with the backlog. This is a major step in the right direction.

Second and more importantly, those family farmers who are facing that brink of disaster where they would have to be thrown off their farms can now look to this Congress and to this Government for new hope. That new hope is that we are going to give them the same standard that a small businessman or an individual has at this present time, which is the ability to reorganize.

Now, that means that not only are those farmers going to be winners by this legislation, but creditors who would see that they would only be able to get 10 cents on the dollar are going to be winners, and also those family farmers who surround those other farmers are going to be winners because we will not have that collapsing or domino effect from the equity of other farms going down when fellow farmers go bankrupt.

So this legislation is significant. It is important, because I think it is sending a message that we here in the U.S. Congress, we in this Government are sensitive to the family farmers who are facing this very terrible plight at this time.

You know, William Jennings Bryan in his famous speech, the Cross of Gold, almost 60 years ago, stated these words:

> Destroy our cities and they will spring up again as if by magic; but destroy our farms, and the grass will grow in every city in our country.

This legislation will hopefully stem the tide that we have seen so recently in the massive bankruptcies in the family farm area.

This legislation will give us, hopefully, the new bankruptcy judges that will offer the sympathy, the sensitivity and the compassion to deal with this serious problem.

I join with my colleagues and, hopefully, this is the ray of hope that our family farmers have needed.

Mr. FISH. Mr. Speaker, I yield 2 minutes to a member of the committee, the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Speaker, I am pleased that the conferees from the two bodies have reached agreement on legislation that authorizes 52 additional bankruptcy judgeships, provides for a nationwide U.S. Trustee Program, and modifies our bankruptcy law to include family farmer provisions.

We simply do not have enough bankruptcy judges today to keep up with the level of Bankruptcy Code filings. The bankruptcy adjudications problem is particularly acute in the central district of California. I am pleased that 7 of the 52 additional judgeships are designated for that district.

The U.S. Trustee Pilot Program has operated successfully for 7 years in a number of Federal judicial districts—including the central district of California—and merits extension nationwide. U.S. trustees are essential to the supervision of bankruptcy administration. A nationwide program offers the prospect of increased recoveries in bankruptcy cases and increased success in preventing fraud and abuse in the bankruptcy system.

This legislation recognizes the need for additional bankruptcy judgeships, the prospect for improved bankruptcy administration, and the potential for helping family farmers in financial distress to meet obligations out of future income. I urge the Members of this body to agree to the conference report.

Mr. FISH. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Speaker, I am pleased to join with my colleagues in expressing support for the conference report on H.R. 5316, the bankruptcy judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986. Additional bankruptcy judges are needed to respond to dramatically increased backlogs—and resulting court delays—in a number of Federal judicial districts. A nationwide U.S. Trustee Program is essential to improve oversight of bankruptcy cases, prevent abuses by the participants in the bankruptcy process, and increase the numbers of successful reorganizations. Special family farmer provisions of the Bankuptcy Code are necessary to address unique problems facing the agricultural sector of our economy.

I am particularly pleased that this legislation modifies section 523(a)(5) of the Bankuptcy Code—a provision that presently includes an exception to discharge for court-ordered support obligations. The change in this subsection will make support determinations nondischargeable regardless of whether they are made by courts.

Children are dependent on parental support regardless of whether support determinations result from court proceedings, administrative procedures, or expedited judicial processes. The Department of Health and Human Services has pointed out that "[a]llowing support debts established through administrative procedures to be discharged in bankruptcy provides a loophole to certain absent parents to eliminate their financial responsibility and may discourage states from implementing and using these more efficient and effective means of obtaining child support." It doesn't matter to the financially dependent child whether the support determination is made by a judge, hearing officer, or commissioner. The child's needs are the same regardless of whether the governmental entity involved in the determination is an agency, subagency, department, or court of a county, municipality, or State. The form of the determination—whether it is denominated a rule or an order, for example—also is unimportant from the child's standpoint. Paternity determinations in administrative proceedings are no less significant to the welfare of children than paternity determinations in judicial proceedings. The essential point is that our society must recognize the needs of children for support—and must not compromise that important principle for reasons extraneous to a child's welfare.

The modification to 11 U.S.C. 523(a)(5) is a Senate provision with only technical changes that in no way restrict the coverage of the original Senate language. The Senate provision originally took the form of legislation introduced by Senator DENTON for himself and Senator SIMON. They deserve credit for their successful efforts in the other body. I was pleased to have the opportunity to introduce a similar bill in this body, H.R. 4687.

Today I am gratified that the effort to provide additional protection for financially dependent children in our bankruptcy laws is reaching fruition. I urge my colleagues to support this legislation which includes a number of important provisions.

Mr. FISH. Mr. Speaker, I yield such time as he may consume to my colleague, the gentleman from Nebraska [Mr. DAUB].

Mr. DAUB. Mr. Speaker, because Nebraska has one of the highest backlogs of bankruptcy cases, we are the beneficiary in this legislation of an additional judge, for which we are very grateful and that is particularly important because of the farm and agricultural difficulties that we are experiencing. It is for that reason that I rise in support of this legislation.

Mr. FISH. Mr. Speaker, I yield 2 minutes to my friend and colleague, the gentleman from California [Mr. DANNEMEYER].

Mr. DANNEMEYER. Mr. Speaker, I rise in support of the conference report to accompany H.R. 5316, which authorizes additional bankruptcy judgeships nationwide. The need to authorize additional bankruptcy judgeships is undisputed as almost every judicial district has experienced an explosion in bankruptcy filings over the past 8 years.

California's Central Judicial District, of which my congressional district is a part, is one of the busiest in the country in terms of filings, cases pending, and terminations. Currently, the total number of filings per judge is 2,819. That contrasts with a national average of total filings per judge of 1,571. By making this bill a public law, seven additional bankruptcy judges will be added to California's Central District and the average filing per judge will be reduced from 2,819 to 1,780. Nationwide filings per judge will be reduced from 1,571 to 1,302. Clearly, this bill will assist the smooth operation of our bankruptcy system.

One item which was not to be addressed by this bill, was the allotment of the new judges within each judicial district. Orange County, which is a subdivision of California's Central District, has experienced a substantial caseload increase. As of May 1986, even though the two bankruptcy judges in Orange County have been working at a termination rate of 24 cases per day, or 1 every 20 minutes for an 8-hour day, there were still at least 4,278 cases pending per judge. No human can keep up that effort and it boggles the mind that they are able to perform at that level. When I offered the amendment in the Judiciary Subcommittee on Monopolies and Commercial to increase the number of new judgeships for California's Central District from 6 to 7, I wanted to specify that two of the new judgeships would be allotted to Orange County. Since subdistricts are not part of the statutory language and Congress does not choose to interfere with the internal organization of judical districts, I decided only to add one judge, with the understanding that the Judicial Conference or the central district judges themselves would be fair in apportioning the new judges. I am hopeful that the central district judges will agree with me that Orange County should receive 2 of the 7 new judges.

Finaliy, I want to thank the distinguished chairman of the Judiciary Committee, Mr. RODINO, and the distinguished ranking minority member, Mr. FISH, for their efforts to pass this bill. In addition, I would like to thank Mr. MOORHEAD, Mr. BERMAN, and Mr. EDWARDS of California, who are also members of the Judiciary Committee and greatly assisted my effort to add seven additional bankruptcy judges to California's Central District.

Mr. FISH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. EDWARDS of California. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just enacted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 2868, INDIAN LAND CLAIMS IN GAY HEAD, MA

Mr. PEPPER, from the Committee on Rules, submitted a privileged report (Rept. No. 99-959) on the resolution (H. Res. 570) providing for the consideration of the bill (H.R. 2868) to settle Indian land claims in the town of Gay Head, MA, and for other purposes, which was referred to the House Calendar and ordered to be printed.

LEGISLATIVE PROGRAM

(Mr. MICHEL asked and was given permission to address the House for 1 minute.)

Mr. MICHEL. Mr. Speaker, I have asked for this time for the purpose of inquiring of the distinguished majority whip the program for the balance of this week and the program for next week.

Mr. FOLEY. Mr. Speaker, will the distinguished Republican leader yield to me?

Mr. MICHEL. I am happy to yield to the gentleman from Washington.

Mr. FOLEY. Mr. Speaker, this concludes the business for today.

It will be my intention to suggest that we will meet tomorrow in pro forma session. We have discussed this matter with the leadership on the other side and it is our judgment that we will not be in a position to move toward a conference on the conference report on the continuing resolution in sufficient time for the House to appoint conferees tomorrow, so we will have a pro forma session tomorrow.

We will meet at noon on Monday and there will be 12 suspensions, as follows:

H.R. 5536, Agriculture Patent Reform Act;

H.R. 103, trapping at Ozark National Riverways, Missouri;

H.R. 5343, Maurice and Manamauskin Rivers, New Jersey;

H.R. 5555, designate Property in Scranton, PA, as Steamtown National Historic Site;

H.R. 5151, transfer of Land in Waynesboro, MS;

H.R. 5613, Truth in Saving and Credit Care Application Act;

S. 2880, extension of interstate transfer deadline;

H.R. 5617, Federal building in St. Paul named after Warren E. Burger;

H.R. 5602, GSA Administrator authorized re obligations to finance buildings construction;

H.R. 2663, retirement credit for time spent in Cadet Nurse Corps in WW II;

H.R. 5218, competitive status to military Reserve technicians; and

H.R. 2205, Korean War Memorial bill.

On Tuesday and the balance of the week the House will meet at 10 a.m. We will have the Private Calendar and the Suspension Calendar on Tuesday. We have no bills to announce yet.

Recorded votes will be taken on Tuesday on suspensions debated on Monday, the 6th of October.

There may be a possibility, of course, of the appointment of conferees, the likelihood perhaps of the appointment of conferees on the continuing resolution.

Members should expect further action on the debt limit and the Budget Reconciliation Act as well.

Mr. MICHEL. I notice that on that list of suspensions, the bill H.R. 5576, the domestic banking stability and housing bill, which was on a week ago is not back on there. I am wondering if there would be any opportunity for that to be scheduled for next week. I understand the failure to pass the needed recapitalization of the Federal Savings and Loan Insurance Corporation to extend emergency acquisition laws for failing institutions could require a massive bailout next year. Of course, this legislation is rather a self-help industry sponsored program that does not use any taxpayers' dollars.

There was a rather significant article, I believe, in the Wall Street Journal yesterday about this.

I just wonder what the plan of the leadership is on scheduling this legislation.

Mr. FOLEY. Well, it is possible that the bill will be scheduled next week. No decision has been made yet.

Mr. MICHEL. Does the gentleman expect that we will have another suspension day before the Congress adjourns here?

Mr. FOLEY. I assume that we will have more suspensions next week. We have no additional suspensions to announce at this time, but I think it can almost be given as an assurance that additional suspensions will be scheduled. The minority will be notified as soon as those decisions are made.

Mr. MICHEL. Could the distinguished gentleman tell me anything about the drug legislation? It has passed this body and the other body and a conference has been requested. Time is drawing short. What does the gentleman foresee in that area?

Mr. FOLEY. Well, we have had some tentative discussion, as the gentleman knows, with the minority side about the best means to consider this bill. We hope to be able to act in a way that will be conducive to final enactment of an important drug bill before adjournment and that has led us to be concerned not only about the schedule and procedure here, but about events that would take place in the other body, when and if a conference report or other action is returned to them.

Mr. MICHEL. There was some rumor to the effect that might very well be put on suspension with an amendment to the Senate amendments. If that were done or if that course were pursued, it would not be included in that group of suspensions on Monday, would it?

□ 1710

Mr. FOLEY. No, we have no plan to do that on Monday. Again, we have discussed the possibility of such a procedure with the Republican side, and we will notify the Republican side of any intention to proceed on a suspension in that way as soon as the decision is made. We are considering it.

Mr. MICHEL. Is there any possibility that on Monday the continuing resolution would be sent to conference?

Mr. FOLEY. Yes. We have also discussed this matter with the minority side, as the distinguished leader knows. It would be our intention to attempt to appoint conferees as soon as a report or a bill is available from the Senate. As I said earlier, it is most unlikely that that will happen in time for us to act tomorrow, but it is possible that such a bill will be messaged to the House in time for us to act on Monday.

In that event we would be anxious to proceed to appoint conferees on Monday, with the understanding that any motions in connection with such an appointment might by unanimous consent be deferred until Tuesday so that the Members would have an opportunity to be present on any recorded vote and the rights of all Members would be protected.

Mr. MICHEL. I appreciate the gentleman's explanation, because there is some likelihood of a motion to instruct, for example, and if that were the case, then I would surely hope that we would do it at a time when Members were adequately notified to make their presence known.

Mr. FOLEY. I think that if that occurs, we would probably want to advise Members that they should be aware of the possibility of that action on Tuesday.

With the gentleman's indulgence I can repeat that. I think what we are talking about here is taking up the appointment of conferees on Monday if the bill is available and seeking unanimous consent to debate and to vote on any motion to instruct on Tuesday. Since that is not listed on the calendar for Tuesday, Members should be aware that it might be a principal item of business on Tuesday, and Members should accordingly expect that there will be the possibility of additional business beyond the votes on suspensions on Tuesday.

Mr. MICHEL. Might I inquire if there is any word on Superfund legislation for next week?

Mr. FOLEY. Not at this time, but we are very anxious to conclude the work on Superfund before the House adjourns.

I am informed that the conference has been completed, and we will be interested in scheduling that legislation before the end of next week.

The gentleman knows that the Senate is required to act first on the Superfund conference report. If it acts expeditiously, I think that we would be interested in acting promptly when we receive the message from the Senate.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, I am a little concerned with what I am hearing the majority whip tell us about the drug bill. If in fact the process were used as I understood the discussion here, we could well end up then with bringing the Senate bill to the floor, which would preclude the House from any further action on things like the death penalty, on the exclusionary rule, on the military involvement in drug trafficking, and a lot of issues that the House felt very strongly about. Instead, as I understand it, we would be taking up a Senate bill that includes things like the inclusion of the Commercial Motor Vehicle Safety Act, that includes food stamps for street people, that includes testing of infant formula, that includes dial-a-porn, and so on, that we would run that out here under suspension in such a way that the House would not even have a chance to deal with some of these extraneous issues that were added to the bill.

Mr. MICHEL. Mr. Speaker, I would make an observation that I cannot conceive that the majority would be so inclined. There may be some adjustment there, but I cannot imagine that we would be left out of the loop here in making some decision as to what ought to be included when the House gets another opportunity to vote.

There is no question but by significant votes we adopted several provisions to that drug legislation that Members feel very strongly about, and I think that we ought to be taking into the loop. With respect to the extraneous items added over in the other body, my judgment would be that from drug legislation they ought to be stripped out if there is going to be any stripping that we are talking about here.

Mr. FOLEY. Mr. Speaker, will the gentleman yield?

Mr. MICHEL. I yield to the gentleman from Washington.

Mr. FOLEY. As the gentleman knows, the other body rejected the House position on military use, on the death penalty, and so forth. The other body chose not to add those provisions.

I agree with what the gentleman from Illinois has suggested, and the gentleman from Pennsylvania has suggested that they have also added extraneous matter, and I am sure—though I cannot describe what the suspension motion might be—it would undoubtedly eliminate many of those extraneous if not all of those extraneous matters in the Senate, and we will be happy to inform the minority side before offering it what the proposed suspension will be.

Mr. WALKER. Mr. Speaker, will the gentleman yield further?

Mr. MICHEL. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, one of the things that concerns me about the gentleman's statement about the Senate action with regard to these provisions, particularly with regard to the death penalty, one of the reasons why it was said that that would not have to pass the Senate is because it would be a matter that would be taken up in conference.

Now, as I understand it, we are going to bypass the conference procedure and come to the floor, which in fact then would bypass the procedure that basically the Senate was assured might be used to deal with some of these matters.

Now it seems to me that we should obviously pull out some of the extraneous stuff, but we ought to also, as the gentleman from Illinois has indicated, have an opportunity to at least deal with those issues that the House felt strongly about initially when the drug bill was passed.

Mr. MICHEL. I would make the further observation that when that piece of legislation began its way through this House, it was begun on a bipartisan basis, for which we in the minority were very grateful to the majority side for including us in from the very takeoff, and it was a bipartisan product that ended up passing this body.

There were some contentious issues, yes, but that is the legislative process at work, and my feeling would be that if we want to avoid a lengthy conference, well, rather than on suspension, where two-thirds are required and Members might be cast in a position of being against the drug bill simply because we did not get an opportunity to further our bipartisan effort at agreement, a more viable approach would be a rule that would bring it out here with several amendments possibly and give the House an opportunity to work its will, if we do not have that kind of faith in a conference committee.

To put it on a Suspension Calendar with only 40 minutes of debate and taking the significant amendments out I do not think is fair treatment for us.

ADJOURNMENT TO MONDAY, OCTOBER 6, 1986

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that when the House adjourns on Friday, it adjourn to meet at noon on Monday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. FOLEY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from Washington?

There was no objection.

□ 1720

"BIG LIE" DIPLOMACY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa [Mr. LEACH] is recognized for 5 minutes.

Mr. LEACH of Iowa. Mr. Speaker, based on unnamed sources the Washington Post reported today that some 6 weeks ago the Reagan administration launched a policy of disinformation against Libya's potentate, Mu'ammar Qadhafi, implying that all the costly military and diplomatic maneuvers against Libya in late August and early September may have been based on a fraudulently manufactured minicrisis.

If the Post report is valid, the question this House must address is how wise and how appropriate a policy of disinformation—which is strategic parlance for lying—is in circumstance of this Nation.

The reaction of this Member to the Post story is one of profound disappointment. The "big lie" approach to diplomacy simply doesn't fit well a democracy such as our own. It is particularly unneeded in the Qadhafi circumstance. Few characters in world history are less in need of exaggerated dissention. One doesn't need disinformation to describe accurately demagogs of the ilk of Hitler, Stalin, Ho Chi Minh, and Mu'ammar Qadhafi. Their words and acts speak louder and with greater clarity than friends or foes can distort.

Incredibly and ironically by taking the disinformation tact, the administration has lowered itself to the gutter of untruth and thus raised doubts about our own policies and values.

Revelations of the nature reported by the Post will inevitably cause American citizens to ask uncomfortable questions about American policymakers.

How credibly will our emissaries be received in Europe after the disclosure that we may have hyped nonevents?

Will our approaches to dealing with terrorism be more or less sympathetically received?

Will our allies be more or less likely to authorize use of their bases for concerted actions?

At home, how will administration representations be received in Congress and the press when apparently by Presidential decree disinformation has become a key element of policy projections?

Of perhaps the greatest significance in our kind of system which, ultimately, is based on a compact of trust between the people and their government—how will the average citizen respond to statements of policymakers on controversial issues when credibility is at issue?

A case in point is the assessment by our intelligence community that the Soviet Union and Soviet surrogates have violated the 1972 Biological and Toxic Weapons Convention with the disposal of yellow rain in Afghanistan and Southeast Asia. My view is that this evidence is uncontrovertible and should not be doubted by the public, yet when governments formally adopts a policy of lying in one arena, it is not unreasonable for skeptics to wonder whether disinformation may be at issue in others.

With regard to our policy toward Libya, the Post reports that the Chairman of the Joint Chiefs of Staff, Admiral Crowe, has reservations about an escalation of rhetoric against Qadhafi. To make threats without being prepared to back them up, Crowe is reported to have argued, does little for our strategic credibility.

The Post scoop unfortunately puts our credibility flatly on the table and may unintentionally influence future policy options in counterproductive ways. The goal of the President's advisors may have been to further discredit Qadhafi and potentially increase the likelihood of an internal coup. Unfortunately, publishing of this story may have caused greater discrediting in Washington than Tripoli and increased the likelihood of direct American, as contrasted by Libyan intervention, to prove that our words, however fabricated, will be backed by force.

The lessons of this episode are many: democracies aren't good at "big lie" techniques; a free press is likely to be particularly brutal when it feels it is being used; truth is generally more effective than fiction.

There can be broad policy unanimity in the Middle East but only if our leaders lead with the strength of conviction rather than the wink of duplicity—however understandably—prejudices may have been instilled by deed or comment.

Mr. Speaker, untruth is the quicksand of a democracy. Firm policy must be based on firm principle. Let's return to the high ground.

TRIBUTE TO HON. WARREN E. BURGER

The SPEAKER pro tempore [Mr. ABERCROMBIE]. Under a previous order of the House, the gentleman from Wisconsin [Mr. KASTENMEIER] is recognized for 5 minutes.

Mr. KASTENMEIER. Mr. Speaker, the Sun is setting on the 99th Congress. In the rush to finish our business, we are considering many important and pressing political issues such as taxes and trade, drugs and debt ceilings, South African sanctions and the continuing resolution.

But there is one issue that I personally do not want to forget before we adjourn. I, therefore, rise today to speak about the retirement of Warrent E. Burger as Chief Justice of the United States. After 17 years of public service as Chief Justice, and many more as a circuit judge on the Court of Appeals for the District of Columbia and, prior to that, as head of the Justice Department's Civil Division, the Chief chose to leave the High Court to devote himself to the Bicentennial Commission of the Constitution: another public service endeavor.

I have a great deal of respect for individuals who spend their professional careers in serving the public, especially when they could be earning infinitely more elsewhere. Chief Justice Burger ranks at the top of my list of these individuals.

While we may have differences with respect to certain aspects of legal philosophy, I am in total agreement with his time-proven commitment to raise public consciousness about the Federal courts, as well as the State courts, and to improve the delivery of justice nationwide.

My service in Congress roughly approximates Warren Burger's service as a Federal judge. Particularly during the past 15 years, my chairmanship of the House Judiciary Subcommittee on Courts, has caused me to work closely with the Chief Justice, acting as chief spokesman for the judicial branch of government. We saw each other often, had breakfast periodically with members of my subcommittee, traveled to Europe together in 1983 to study corrections, and participated with each other in many conferences, especially the valuable Brookings Conferences on the Administration of Justice.

At his 1969 Senate nomination hearing, then-Judge Burger responded to a question posed by Senator Eastland:

> * * * the Chief Justice of the United States is assigned many other duties, administrative in nature. I would think he has a very large responsibility to try to see that the judicial system functions more efficiently. He should certainly be alert to trying to find these improvements. * * * I would expect to devote every energy and every moment of the rest of my life to that end should I be confirmed.

During his 17 years as Chief Justice, Warren E. Burger has made true his pledge to work energetically "to make our system work better." When he announced his decision to leave the bench, he stated that his biggest disappointment was his failure to convince Congress of the need to assist the Supreme Court in combating its caseload crisis. Earlier this week only 1 day into retirement, he returned to the Court to swear in the members of the State Justice Institute: a recent congressional creation that will improve State court systems.

The Chief Justice worked behind the scenes on many issues of legislative importance. Sometimes he received credit and sometimes he was scorned as meddling in legislative affairs. In all instances, his commitment was the same: to improve this Nation's justice system. I would like to recognize his input and cooperation on several points. First, he was a guiding force behind creation of a judicial discipline mechanism within the judicial branch. Second, by specifically urging that the jurisdiction of magistrates be enlarged, he assisted Congress in enacting that needed reform. Third, the Chief Justice has argued against the proliferation of specialized courts and for the prerogatives of lifetime tenured judges. Fourth, he has been deeply committed to strengthening State courts and to reducing friction between States and Federal courts. Fifth, he implored policymakers and the bar to examine, and wherever possible to implement, alternate methods of dispute resolution. Sixth, he struggled long and hard to improve this country's corrections system. Last, and perhaps most importantly, he worked first to open and then to improve channels of communication between the branches of government. Just last week—along with my colleague from Iowa [Mr. SMITH]—accepted an invitation to appear before the Judicial Conference of the United States, the judiciary's policymaking body. Whenever possible, I have accepted the Chief Justice's invitations because of our mutual feeling that the judicial and legislation branches need to communicate more rather than less.

Although it was his policy not to testify before congressional subcommittees or committees, on several occasions he provided us with written testimony. During hearings on the State of the Judiciary and Access to Justice, he warned the subcommittee about the magnitude of our task as well as the difficulty of achieving it:

> All of us should join in recognizing that there is a long and difficult road ahead before we can make the delivery of justice a reality for all of our citizens. * * * We will need to be concerned with every means to maintain and indeed improve the quality, efficiency and effectiveness of the Federal judicial system itself * * *.
>
> These are goals on which we can really agree. It is harder to agree on the means of achieving them.

These are wise words from a wise man.

Mr. Speaker, Warren E. Burger leaves office in almost the same way he came in 17 years ago: pushing for a more efficient court system, prison reform, higher standards of ethics for his colleagues on the bench, and better understanding between the coordinate branches of government. His voice has not been silenced; the removal of his robe should not mute his voice. He knows that I am listening and that my door is open to him at any time. He also knows that I will continue to call him "Chief Justice of the United States."

Mr. CRANE. Mr. Speaker, will the gentleman yield?

Mr. KASTENMEIER. I am happy to yield to the gentleman from Illinois.

Mr. CRANE. Mr. Speaker, I thank the gentleman from Wisconsin for yielding to me and simply want to associate myself with the remarks the gentleman has just made.

I was honored by being put on the Bicentennial Commission which is chaired by our distinguished Chief Justice. In that capacity there was for a moment a question as to whether Chief Justice Burger would remain at his post on the Supreme Court bench or whether he would assume the responsibilities as the Chairman of the Bicentennial Commission.

□ 1730

He indicated to us that he did not feel he could properly handle both responsibilities simultaneously. I was one of those who urged him, if choice had to be made, to take the role of the Chairman of our Bicentennial Commission; and in part because of the credentials that you have indicated, but in addition to that, the Chief Justice's birthday uniquely is September 17; and that is the day that we will set aside as a national holiday, hopefully next year for one time only, to honor the day that our Constitution was signed by those distinguished patriots in Philadelphia.

I think that the Chief Justice can perform at this station in his life a unique service to the country in the ongoing honoring of not just the Constitution's drafting, the ratification in 1788, the election of the first Congress in 1789 and finally the ratification of the Bill of Rights in 1791.

He has many years of service that he is prepared to give to his country above and beyond the distinguished service he has already provided.

Mr. KASTENMEIER. I thank the gentleman from Illinois [Mr. CRANE], and yield to the gentleman from California [Mr. MOORHEAD], who serves on the committee.

Mr. MOORHEAD. Mr. Speaker, I thank the gentleman for the time. I want to congratulate the gentleman from Wisconsin [Mr. KASTENMEIER] for taking this special order, giving us an opportunity to comment on the very illustrious career of our retiring Chief Justice of the United States, Warren Burger.

He has really devoted his life to improving the quality of justice; and especially he has been concerned with the quality of the bar in the United States, trying to improve the justice that is brought by the lawyers of the United States to their clients and to the Court.

I know we have had many opportunities to meet with the Chief Justice, for breakfast, as a subcommittee, going to Williamsburg, where we have spent the weekend with the Chief Justice, trying to find out ways that we could improve the quality of justice in the United States. This has been a burning issue with Warren Burger throughout his entire 17 years, because he wanted to leave the quality of justice in this country at a better level than he found it; and I think he surely is doing that.

I do not know of any Chief Justice since Chief Justice Taft that has done as much for the quality of justice in our country as this friend of all of ours that is now leaving office; and I certainly join with you in wishing him the very best, and I know that on this commission on the 200th anniversary of the courts, that he is going to do an outstanding job, and he will continue to serve his country.

Mr. KASTENMEIER. Mr. Speaker, I thank my colleague from California [Mr. MOORHEAD] for his contribution.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 3 legislative days in which to revise and extend their remarks on the subject of my special order this evening.

The SPEAKER pro tempore. (Mr. ABERCROMBIE). Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

GUARDING AGAINST UNLAWFUL EXPORTS OF ALASKAN NORTH SLOPE CRUDE OIL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut [Mr. MCKINNEY] is recognized for 5 minutes.

Mr. McKINNEY. Mr. Speaker, recent new accounts remind us once again that we must remain ever vigilant to guard against exports of Alaskan North Slope crude oil for which Congress has not given its consent. One such news account in the Journal of Commerce begins as follows: "A California oil company believes it has found a way to export Alaskan oil to Japan and other Asian nations: refine it and then ship it." This company proposes to circumvent the existing law banning the export of Alaskan North Slope oil by building a refinery in Alaska to process 100,000 barrels a day of North Slope crude solely for export. Those who seek to exploit this loophole would be foolish to assume that Members of Congress concerned about this Nation's energy policy will merely sit back and allow this to happen.

Although the economic impact of allowing 100,000 barrels per day of exports might seem to be limited, they would be uniformly negative. A report submitted earlier this year to the Congress, entitled "National Consequences of Exporting Alaskan North Slope Crude Oil," predicts that such exports would cause 7,000-8,000 job losses, net revenue losses of $115 million for States—principally on the west coast—other than Alaska, reduced Federal receipts of $762 million, and deterioration in the U.S. current account of at least $712 million over the next 3 years.

Who would gain? The State of Alaska, of course, as well as those who will share in the construction of the proposed refinery. I'm sure my colleagues saw the reports this weekend indicating that by Christmas the State of Alaska will provide each of its citizens with $556 from the State's oil supported permanent fund. This represents a 25-percent increase over last year's payment. Now, for the further benefit of the State, we are being asked to impose costs on the rest of the country.

With the United States becoming increasingly dependent on foreign suppliers of crude oil, exports of 100,000 barrels per day cannot conceivably be considered in the national interest. I hope the Congress will correct this loophole in our export laws as part of its continuing effort to help develop a rational energy policy that serves the interests of the entire Nation.

CELEBRATING THE 100TH BIRTHDAY OF THE LATE GENERALISSIMO CHIANG KAI-SHEK

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. CRANE] is recognized for 60 minutes.

Mr. CRANE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and to include extraneous matter on the subject of my special order this evening.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. CRANE. Mr. Speaker, first I submit for the RECORD a letter signed by over 100 of our colleagues on the subject.

It states:

MR. SPEAKER: We wish to join our distinguished colleague, Representative Philip Crane, in sending our congratulations and best wishes to President Chiang Ching-kuo of the Republic of China on Taiwan as the Chinese people get ready to celebrate October 31, 1986, the one hundredth birthday of their national leader: the late Generalissimo Chiang Kai-Shek.

Sincerely,

Bill Emerson, Connie Mack, Dick Armey, Bob Livingston, Tom Bliley, Dan Burton, Barbara Vucanovich, Philip M. Crane, Robert K. Dornan, Bill Cobey, Daniel E. Lungren, Tom DeLay, Pat Swindall, Ron Packard.
Don Sundquist, Duncan Hunter, Bill McCollum, William Carney, Bill Dannemeyer, Mark Siljander, Ron Marlenee, Tom Loeffler, Connie Mack, John E. Porter, Bill Young.
Webb Franklin, Ben Blaz, George W. Gekas, Beau Boulter, Denny Smith, Newt Gingrich, Hank Brown, Bob Walker, Bill Broomfield, Manuel Lujan, Jr., Jim Courter.
Paul B. Henry, Bill Clinger, —— ——, Mike Bilirakis, —— ——, Joseph J. DioGuardi, Joe Skeen, —— ——, Stan Parris, Bill McCollum.
Helen Delich Bentley, Nancy L. Johnson, Mike Strang, Joe McDade, Ben Gilman, John J. Duncan, Dan Schaefer, Gene Chappie, Clarence Miller, Richard T. Schulze.
Duncan Hunter, Dick Armey, Dave McCurdy, Steve Gunderson, Carlos J. Moorhead, —— ——, —— ——, Don Ritter, H. James Saxton, Beau Boulter, Bill Dickinson, Bob Michel.
Norman D. Shumway, Howard C. Nielson, Howard Coble, Delbert Latta, Bill Thomas, Al McCandless, —— ——, Mickey Edwards, Glenn English, Dean Gallo, John Myers, Trent Lott, H.J. Hyde.
Bill Goodling, Tom Tauke, Tom Petri, John Hiler, Bob Lagomarsino, Steve Bartlett, John Paul Hammerschmidt, James H. Quillen, Sherwood Boehlert.
Bill Frenzel, —— ——, Beau Boulter, J.J. Pickle, Buddy Roemer, —— ——, Don Sundquist, Sonny Callahan, —— ——.
Larry J. Hopkins, Chris Smith, John McCain, Gene Snyder, E. Clay Shaw, Jr., John G. Rowland, Dan Daniel, Bob Stump, Charles Wilson.
Beryl Anthony, Jr., Bill Hendon, Toby Roth, Denny Smith, Marjorie Holt, Carroll Hubbard, David Dreier, Jock McKernan, Bob Davis.

Mr. EDWARDS of Oklahoma. Mr. Speaker, will the gentleman yield?

Mr. CRANE. I yield to the gentleman.

Mr. EDWARDS of Oklahoma. Mr. Speaker, it is an honor to join my colleagues in extending to the Republic of China on Taiwan my personal congratulations on the forthcoming centennial birthday of that country's late president, Chiang Kai-shek.

Taiwan today is an impressively prosperous nation. It has shown dramatic industrial, economic, and cultural success. We in the United States look to Taiwan as a model for those countries moving their economies toward free enterprises, and as an example of an evolving democratic society. Without Chiang's leadership, Taiwan would not be what it is today, nor would we have the warm and friendly relationship that exists between the United States and the Republic of China.

Taiwan has many friends in this country. Our friendship goes back many years. The Nationalist Chinese were loyal allies of the United States in World War II, in Korea, and in Vietnam. We in the Congress are keenly aware of our special relationship with the Republic of China and happy to see Taiwan's continued prosperity as an excellent example of free enterprise at work.

Mr. CRANE. Mr. Speaker, I thank my distinguished colleague for his participation in this memorable event.

Mr. Speaker, it is an honor to participate in this special order to mark the 100th anniversary of the birth of Chiang Kai-shek, one of the greatest statesman the world has known in this century. Chiang Kai-shek was born on October 31, 1887, in Fenghua, Chekiang Province, China. China at that time was a backward, impoverished country with many outdated traditions and morals. Its Government was notorious for its corruptions, inefficiency and ruthlessness. Because of these conditions, Chiang began his revolutionary career in 1908 by joining Tung Meng Hui, a revolutionary party led by Dr. Sun Yat-Sen, the founder of the Republic of China.

After years of struggle, Dr. Sun and his fellowers were finally successful in ousting the corrupt Manchu government in 1911. Because of his faithfulness and determination, Chiang became a close friend, adviser and confidant of Dr. Sun shortly thereafter.

After Dr. Sun's death in 1925, Chiang took over the leadership of China. In his first few years in office he foiled several Communist plots to cripple and overthrow the fledgling republic. He correctly perceived communism as a real threat to the rights and liberties the Chinese people were just beginning to enjoy, and called communism the disease of the heart.

By 1928, Chiang had united the entire country of China for the first time in this century by successfully exterminating the numerous war lords who ran the black market and drug traffic throughout the country and actually controlled several provinces. In this same year he was elected chairman of the National Government, and embarked on a program of educating his countrymen and bringing China into the 20th century. Illiteracy, superstition, malnutrition, concubinage, and many other problems were still rampant in many parts of China. Chiang fought to overcome many of these negative characteristics of Chinese society while emphasizing the many positive aspects of Chinese culture and society, including respect for the elderly, piety, decency, and deep familial ties.

Later, Chiang led the fight against the Japanese invasion that began in 1937. The war of resistance lasted for 8 years, the first half of that Chiang's forces fought with almost no outside assistance. The deprivation and suffering of the Chinese people were astounding, as was their courage and perserverance.

In the same year of the Japanese invasion, Chiang Kai-shek and his wife were named "Man and Wife of the Year" by Time magazine for his efforts to unite and strengthen his country and resist Japanese aggression.

After World War II, the Chinese Communists wouldn't allow Chiang and his government even a moment's respite. With captured Japanese weapons supplied to them by the Soviets, the Communists began an all-out rebellion against the Central Government. The Communists finally forced the Government to move its seat from the Mainland to Taipei in 1949.

In Taiwan, Chiang was finally able to implement many of his policies for national success. He governed the Republic of China in accordance with the "Three Principles" first enunciated by Dr. Sun: Nationalism, Democracy, and Social Welfare. He instituted ambitious programs of land reform, capital formation, universal education, and direct democratic participation.

The results of these programs have been self-evident: By 1975, the year of Chiang Kai-shek's death, Taiwan had the second highest standard of living in Asia. From 1952 to 1983 Taiwan achieved a fivefold increase in real income per capita in spite of more than doubling its population—from 8,13 to 18.73 million. Today Taiwan is also the United States' sixth largest trading partner. Its private enterprise system is the envy of the world. All this has been achieved in spite of the fact that Taiwan is a small island of 13,900 square miles with the second highest population density in the world and very few natural resources. Recently, Forbes magazine hailed the Republic of China as a model of economic success, noting that Third World countries still struggling to break the bonds of poverty should follow Taiwan's example. Indeed, even Communist China has been so tempted by Taiwan's success that they have seen fit to experiment with capitalist and free market ideas.

These remarkable successes can be attributed in large part to the capable leadership of Chiang Kai-shek. For that the free Chinese people will forever be grateful. It is a great privilege for me to join with them in honoring the 100th anniversary of the birth of Chiang Kai-shek. He will always be remembered by free people around the world for his tireless efforts on behalf of the Chinese people and freedom everywhere.

I would also like to take this opportunity to thank Dr. Nathan Mao of Shippensburg State University in Pennsylvania for bringing many of Chiang Kai-shek's accomplishments to my attention and for his efforts to appropriately commemorate the birth of this great man.

□ 1740

Mr. Speaker, I yield to the gentleman from New York [Mr. SOLOMON].

Mr. SOLOMON. Mr. Speaker, may I first of all congratulate the gentleman from Illinois for calling this special order to consider the life and achievements of Chiang Kai-shek, one of the giants of 20th-century history.

Chiang Kai-shek was that rare combination of man who can best be described as a Christian warrior, a paradoxical figure whose character embraced elements of both severity and mercy. By profession, Chiang Kai-shek was a man at arms—but his greatest accomplishments were achieved in peacetime. The zeal that he carried into armed conflict against corrupt warlords, Japanese invaders, and Communist insurgents was later directed against other enemies of mankind: poverty, disease, and illiteracy.

Chiang Kai-shek captured the imagination of the American people in a manner that few foreigners ever have. But as fate would have it, it was not his destiny to rule over a unified China. The hopes that he had for that largest and oldest of nations eventually came to be focused on the island of Taiwan—and it was there that Chiang Kai-shek established his most enduring legacy.

As every Member knows who has ever visited Taiwan, it is a beautiful island. But it has very few natural resources and is one of the most densely populated areas on Earth. In the immediate aftermath of World War II, and after 50 years of Japanese occupation, Taiwan was also one of the most impoverished places on Earth. Chiang Kai-shek laid the political, social, and moral foundations that enabled Taiwan to lift itself from the ranks of the world's downtrodden into the ranks of the world's most advanced and egalitarian societies. Moreover, at a time when Mainland China was in the throes of cultural revolution and all of the other calamities wrought by Mao Tse-tung, Taiwan took the job upon itself to serve as the guardian of China's cultural legacy.

Just as Chiang Kai-shek was a paradoxical man, so Taiwan is a paradoxical place. The Republic of China on Taiwan combines modernity and progress with a deep reverence for tradition and culture. And it has proven to be a harmonious mix, to a degree that is probably unequalled anywhere in what has been called the developing world. In truth, very few of these countries have really been developing—but Taiwan is surely one of them, and much of the credit goes to Chiang Kai-shek.

And so I salute the Republic of China on Taiwan on the occasion of the 100th anniversary of the birth of Chiang Kai-shek. His legacy lives on for all the world to see.

As long as there is a Taiwan, my friends, there will always be an American because Taiwan is the very first bastion against the spread of international atheistic deadly communism throughout the world.

I thank the gentleman of yielding.

Mr. CRANE. Mr. Speaker, I thank my colleague for his contribution and would add, based upon our mutual experience, having visited in that fair land and had the privilege of meeting so many good friends that we have made through the years as a result of our contacts with the Chinese, the free Chinese on Taiwan, one of the things that impressed me most was the barrenness, really in terms of natural endowments that that Province of Taiwan has.

Yet the incredible prosperity and the material abundance that the people on Taiwan enjoy.

The thought crossed my mind that there are many provinces on the mainland that are infinitely better endowed, and yet on the mainland people were suffering. One cannot say it was because of overpopulation on the mainland because they had a higher population density in that one Province of Taiwan, and it had to be rationalized in some other way.

What I think the clear explanation proved to be was that the Chinese on the mainland were imposing a system that, aside from its immorality, does not work. That is what communism is all about, a system, a failed system, a system that runs contrary to human nature and runs contrary to those laws of the marketplace that we have managed to enjoy in realizing the greatest material abundance that people on this Earth have ever known. That not belongs to the Province of Taiwan, which is the home of the Republic of China, free China. At last it would appear that some of those lessons are spilling over onto the mainland, that maybe they are looking at Taiwan and, hopefully, they are learning something. When I was a young man planning to become a history major, I at first contemplated studying Chinese history. The further I got into that study, the more inadequate I felt because, as I have told friends on Taiwan, they measure their history not in centuries as we do but in millenia. Because of the sheer immensity of the Chinese culture and tradition and history, I felt totally inadeqate to contemplate making that my major and, instead, focused on something manageable, Mr. Speaker, namely the history of the United States.

When a friend gave me a little carved jade piece over there, she apologized and said that she had given her husband the precious one and that this was not really that old. I said, "How old is it?" And she said, "Well, it is no older than your country." That helps put things into perspective when you realize how old their country is.

But the thing I never understood was how communism managed to achieve a toehold because, of all things communism is, it is a system that is contrary to the concepts of filial piety which is so deeply ingrained into the Chinese culture, respect for parents, that it is a perverse system that I felt, at least, could not long endure in China, if it even established a toehold. But I was amazed that it managed to establish a toehold as long as it did.

The Chinese have a history that is so rich and an acknowledged brilliance and understanding of so many things that I think they are beginning to work their way out from under the dreadful nightmare of the Communist control that prevailed there.

I applaud those on the mainland who are moving in the direction of the example set by the Republic of China. The Republic of China has set an example not just for Chinese but, I think, a proper example for all individuals who are in less developed countries and suffer with the lack of some of the resources that countries such as the United States, which are infinitely better endowed, possess.

Mr. DELAY. Mr. Speaker, October 31, 1986, will be a very special day for the Chinese people on Taiwan. They will be celebrating the 100th birthday of their late President Chiang Kai-shek.

President Chiang Kai-shek was not an ordinary man but a giant of the 20th century. I have always admired Chiang Kai-shek and Mme. Chiang Kai-shek, and I wish to join my colleagues in extending my personal congratulations to President Chiang Ching-kuo, Vice President Lee Teng-hui, and to the Chinese people on Taiwan. I wish them good luck and good cheer.

Why do I admire the late Chiang Kai-shek? Mr. Chiang was a man whose sole interest in life was to serve his nation. His dedication to the revolution; that is, national unification, resistance against the Japanese and Chinese Communists was unwavering and uncompromising. In his diary, he wrote:

> As I am dedicated to the revolution, I have no regard for my life or death or for my fame or notoriety.
>
> As I was born for the cause of the revolution, I shall also die for it.
>
> As I can see that the Republic of China is in danger of extinction, how can I cease to move ahead even through my tears?

His total dedication to the revolution and a strong China made him different from everyone else. He never sought personal gain or comfort. His dedication enabled his people to have a high standard of living and the opportunity to fully develop themselves economically, socially, and politically.

Mr. FRANKLIN. Mr. Speaker, I wish to join my distinguished colleague, Congressman PHIL CRANE, in sending my congratulations and best wishes to President Chiang Ching-kuo of the Republic of China on Taiwan as the Chinese people get ready to celebrate October 31, 1986, the 100th birthday of their national father, the late Generalissimo Chiang Kai-skek.

Mr. ARMEY. Mr. Speaker, after Taiwan was returned to the Republic of China in 1945, Taiwan was in a very depressed economic condition. During World War II, Taiwan had been exploited to feed the Japanese war effort. By the time the Chinese took over Taiwan, rice production had sunk to 45 percent of its peak production. Electric power as well as sugar production were both drastically down from their peak capacities.

The Republic of China Government quickly introduced land reform, built schools, roads, and factories. As a result, the standard of living rose steadily. For instance, the GNP was 400 million U.S. dollars in 1952 but it went up to $57.26 billion by the end of 1984. Even more significantly, the gap between the rich and the poor has been steadily narrowing from the early 1950's. Today what we see in Taiwan is a growing middle class who believe totally in economic and industrial growth.

Taiwan's economic and social successes were due to the efforts of the master builder of Taiwan: The late President Chiang Kai-shek, whose 100th birthday will be on October 31, 1986.

On this occasion, I join my colleagues in wishing the Republic of China Government continued good luck and prosperity.

Mr. DORNAN of California. Mr. Speaker, as the Republic of China on Taiwan prepares to celebrate their late President Chiang Kai-shek's 100th birthday on October 31, 1986, I wish to make a few remarks and observations.

Taiwan is our ally. Even though the United States no longer has official ties with Taiwan, the unofficial relationship is ongoing and getting stronger every day due to the tireless efforts of Dr. Fredrick Chien, Taiwan's top representative in Washington, DC. Dr. Chien and his colleagues have shown the utmost cooperation with our Trade Representative's office in the latest round of trade discussions.

I am pleased to note that Taiwan's 12th special procurement mission is currently in the United States, and in fact in Washington, DC, tonight, purchasing soybeans, maize, and other commodities in different States. No one should ever doubt Taiwan's sincerity and desire to cooperate with us.

It is my belief that we must abide by the Taiwan Relations Act and sell to Taiwan whatever defensive weapons they need. The Communist threat against them is real, and no one should be so naive to take the Communist's peaceful offer as gospel truth.

I wish my Taiwanese friends the best of luck. I admire their courage, their independence, and their industriousness. I am sure they will continue to prosper under the capable leadership of President Chiang Ching-kuo.

Mr. BLAZ. Mr. Speaker, it is indeed a great honor for me to join my colleagues in congratulating the people of Taiwan on the occasion of the centennial birthday of their distinguished leader Chiang Kai-shek.

The late President Chiang did much to unite China for the first time in 1928 and to sow the seeds of democracy in Taiwan, which flourish today in the free, prosperous country that it has become. He was a statesman who warned the United States many times of the treachery of the U.S.S.R. and of the other Communist countries and he was also nationalist, who placed the interests of his people and his nation above everything else.

Chiang Kai-shek helped make Taiwan what it is today. And, so it is with pleasure that I join my distinguished colleagues and the people of Taiwan in commemorating their late President's 100th birthday.

Mr. EMERSON. Mr. Speaker, the free people on Taiwan will commemorate the 100th birthday of their former national leader, President Chiang Kai-shek on October 31, 1986.

From 1950 to 1975, Chiang Kai-shek was President of the Republic and Director-General of the Kuomintang. On April 5, 1975, he died after a long illness. Even though his death had been expected, it was nevertheless a shock to the Chinese people on Taiwan. They greeted his death with a spontaneous outpouring of grief. Two million of them paid their respect as he lay in state.

What Chiang Kai-shek gave his people was confidence in themselves and their ability to face reverses. In fact, Chiang Kai-shek told his people not to be afraid when the Republic of China withdrew from the United Nations in 1971. So when the United States withdrew its diplomatic recognition of the Republic of China in 1979, the Chinese people on Taiwan were ready. They did not panic. They worked even harder in gaining more friends abroad and in promoting their economic growth at home.

I am pleased to say that the unofficial relationship between the Republic of China and the United States has been improving steadily. I trust that the Republic of China will continue to be politically stable and economically strong, and that as our relationship continues we may achieve resolution of outstanding issues between us, particularly that of trade reciprocity.

Mr. AKAKA. Mr. Speaker, October 31, 1986, will be a very rewarding day for the Chinese on Taiwan as the Republic of China celebrates the 100th birthday of their late President Chiang Kai-shek. I wish to join my colleagues in the U.S. Congress in wishing them the best of luck.

Mr. HORTON. Mr. Speaker, we live in a very uncertain world, where true friends are often hard to find. But although we disagree sometimes, one of our largest allies through the years has been the Republic of China.

Taiwan's friendly attitude toward the United States can be largely attributed to the tremendous influence of the late President Chiang Kai-shek. Chiang Kai-shek, many will remember, was the Supreme Commander of the China Theater during World War II. As the leader in that area of the world, He successfully fought millions of Japanese on Chinese soil, thus preventing those Japanese soldiers from venturing elsewhere.

His alliance was again tested during the Korean and Vietnam wars. Again, Taiwan came through with offers of assistance. It seems as though, whenever we need them, the Taiwanese are there.

In our latest round of trade negotiations with that country, the Taiwan team, represented by Vincent Shew and Dr. Fredrick Chien, did everything they could to accommodate the American economic interests. They agreed to lower tariffs and further open their markets to American goods. As we speak, they have a "Buy American" delegation whose sole intent is to purchase U.S.-made goods.

In November 1984, I made a trip to Taiwan. I was very impressed by the beautiful countryside and the people. In keeping with Chiang Kai-shek's goal to modernize Taiwan, he would be very proud of his country today.

On my trip, I found that the Taiwanese take pride in all they do. Research and development are evident in all the industrial areas I visited. Their universities have sent scholars to many countries where they have competed and scored high scholastically. The farms I visited were very productive; farmers are constantly given incentives to do better. It is truly a productive and progressive country.

Mr. Speaker, the United States and Taiwan do not have formal relations. However, there is little doubt that they will come to our assistance if ever needed. My personal greetings go to President Chiang Ching-kuo and Vice President Lee Teng-hui of Taiwan on the forthcoming birthday of their late national leader, Chiang Kai-shek.

Mr. GEKAS. Mr. Speaker, on October 31, 1986, the Chinese people on Taiwan will commemorate the 100th anniversary of the birth of Chiang Kai-shek. In fact, many ceremonies to mark the event have already been held in Japan and in several American cities. I imagine additional ceremonies will be held in the coming weeks in each of the countries. It is a fitting way for the Chinese and other people to express their admiration for the former leader.

Even though Chiang Kai-shek passed away on April 5, 1975, his presence is still felt among the Chinese people. In his article "Thinking of Father" of October 31, 1978, President Chiang Ching-kuo summarized his personal sense of grief:

> Father passed away more than three years ago, and I can no longer hear his strict instructions or bask in his kindness and benevolence. But when I am so engrossed in my work that I can hardly take even a brief moment of respite, I instinctively raise my head and look into the eyes of Father's statue. Suddenly I can hear Father's voice advising me to rally my spirits with an interlude of calm and relaxation. Immediately I am able to brace up again and feel the resurgence of life. When I am pondering a problem and find my mind confused, the brilliant light from the eyes of Father's statue penetrates my heart and opens up the clogged channels of thought. The problem is resolved. In his lifetime he was my leader, my kindly father and my stern teacher. I am still under the influence of his love.

As much as President Chiang was speaking of his own sense of loss and grief, he was also speaking for the Chinese people in general. Whenever they felt circumstances were going against them they would recall their late President Chiang Kai-shek's words and deeds, which would give them the courage and wisdom to face any adversities confronting them. China was fortunate to have Chiang Kai-shek as her leader for three quarters of this century, and I am sure he will be a guiding light for future Chinese generations.

Mr. LIVINGSTON. Mr. Speaker, as the Republic of China on Taiwan prepares to celebrate their late President Chiang Kai-shek's 100th birthday on October 31, 1986, I wish to make a few remarks and observations.

Taiwan is our ally. Even though the United States no longer has official ties with Taiwan, the unofficial relationship is ongoing and getting stronger every day due to the tireless efforts of Dr. Fredrick Chien, Taiwan's top representative in Washington, DC. Dr. Chien and his colleagues have shown the utmost cooperation with our Trade Representative's office in the latest round of trade discussions.

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It is my belief that we must abide by the Taiwan Relations Act and sell to Taiwan whatever defensive weapons they need. The Communist threat against them is real, and no one should be so naive to take the Communist's peaceful offer as gospel truth.

I wish my Taiwanese friends the best of luck. I admire their courage, their independence, and their industriousness. I am sure they will continue to prosper under the capable leadership of President Chiang Ching-kuo.

Mr. COURTER. Mr. Speaker, I rise to join Congressman PHIL CRANE and my other colleagues in the House to extend my best wishes and congratulations to my friends in the Republic of China on Taiwan on their late President Chiang Kai-shek's 100th birthday, October 31, 1986.

How does one remember Generalissimo Chiang Kai-shek? He was a 20th century giant. He helped the Allies in defeating the Japanese during World War II and he helped make the Republic of China one of the five great powers after the war. He helped our country during the Korean war and also during the Vietnam war. In all his years of association with our country, he was our ally and friend.

When we terminated our foreign aid to the Republic of China in the early 1960's, Chiang led his people to economic independence. He gave them moral leadership and he helped them have confidence in themselves. By the time of his death in 1975, the Taiwanese people already enjoyed the second highest standard of living in Asia.

Chiang Kai-shek was a gift to the Chinese people; his personal life was one of courage and dedication. Despite years of war against the Chinese warlords, the Japanese and the Chinese Communists, he was always strong in spirit and faithful to Dr. Sun Yat-sen's three principles aimed at building a strong China.

I salute the late Generalissimo and I wish the people of Taiwan well.

Mr. CRANE. Mr. Speaker, I yield back the balance of my time.

ORDER OF BUSINESS

Mrs. BENTLEY. Mr. Speaker, I ask unanimous consent that my special order follow immediately after that of the gentleman from Illinois [Mr. CRANE].

The SPEAKER pro tempore (Mr. ABERCROMBIE). Is there objection to the request of the gentlewoman from Maryland?

There was no objection.

THE SCANDAL OF IMPORTED SUBSTANDARD COUNTERFEIT BOLTS AND OTHER PARTS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Maryland [Mrs. BENTLEY] is recognized for 30 minutes.

Mrs. BENTLEY. Mr. Speaker, there is a scandal building in this country over the flood of counterfeit bolts coming into our assembly and manufacturing plants. Daily we are receiving more and more evidence in our Washington office of the widespread misuse of 8.2 boron steel bolts as substitutes for the more expensive size 8 bolts which are made of an alloy and can withstand greater stress.

The crime of this is that many of these bolts have been deliberately marked to misrepresent tolerance levels. Manufacturers who have bought—in good faith—hundreds of thousands of these critically essential bolts find themselves with inexplicable breakdowns in equipment causing added expense and sometimes, added risk and liability. And frequently, after investigation, find themselves losing great amounts of money on worthless inventories of fake bolts.

As I say this, I am aware that many of you wonder just why this should be of any special interest to this body or to the American public. Bolts and screws are familiar to most of us only from hardware stores. But like the thumb on our hand which allows four—otherwise useless fingers—to be able to grasp and catch hold of objects, the bolt and the screw are the basic fasteners holding together everything we need and use in a modern society.

Without the strategically placed fastener, everything from ordinary scissors to the piston rod becomes only pieces of useless metal.

If the horseshoe nail was essential to the fielding of all of the armies before 1900, the screw became equally important to mechanized modern warfare.

It's difficult to take something so ordinary and common and taken for granted as a bolt and make it as important as it really is, but Mr. Speaker, bad bolts are killing people in this country and so far, our Government is doing nothing about it.

Jack Anderson's column of July 14, 1986, written by his reporter Jim Lynch, documents several fatal accidents caused by these counterfeit bolts from helicopter crashes to the destruction of a radio tower and the death of four ironworkers who were working on it.

But, of more concern was the report about the nuclear powerplant at Midland, MI, where over half of 67,000 bolts were found to be substandard of the specifications. Fortunately, that plant did not come on stream but the $2 million study which found the bad bolts was prompted by the failure of three main bolts which were anchoring two of the nuclear reactors.

I am going to make an inquiry of the Nuclear Regulatory Agency to see if there is an ongoing investigation into the condition of bolts in operating nuclear facilities. If such critical plants as these are at risk because of the greed and avarice of foreign manufacturers and domestic importers, I suggest Mr. Speaker, that we should consider laws which contain criminal penalties against such fraud.

A study by the Industrial Fastener Institute of Cleveland back in April of this year established that at least 90 percent of all imported grade 8 bolts are counterfeit. Since back in 1982, the U.S. Department of Commerce determined that we were able to manufacture domestically only 40 percent of all fasteners needed by our manufacturers, it stands to reason that a great number of bolts are being imported, and of the number 8 size, 80 percent are fraudulent.

And the grade 8 fasteners seem to be only the beginning. Known cases of fraudulent carriage bolts being imported from abroad are turning up. These are the square neck standard fasteners used in farm implements, furniture, machinery, lawnmowers, children's toys.

There is also evidence of inferior imported SAE grade 5 and ASTM A193 grades B6, B7, B8, B8M bolts along with substandard A 194 grade 2H nuts and counterfeit A325 structural bolts coming in from east Asia.

I mention all of these by numbers not only to alert any business people who might be listening or reading the Journal, but in order to give this House some idea of how very widespread the fraud and the danger is.

In a recent hearing of a committee of this Congress, when the Secretary of Commerce, Mr. Baldrige was asked what his Department would and could do about this massive rip off of our industries by foreign manufacturers, he pretty much said, nothing. He suggested that it was the responsibility of the buyer to beware. That it was up to the manufacturer to handle it in quality control procedures within his own operation and then he suggested that the affected firms could sue.

That is very interesting. I am totally unaware that any American firm can sue into the courts of a foreign country for damages especially when the standards being required are not required inside that country and the laws of that country have not been broken and when most American corporations cannot get together the money required to sue across international lines.

While Mr. Baldrige suggests that our industries swallow sums as large as the $2 million Midland had to put out to test over 67,000 bolts to protect a nuclear facility, the defense industry is being hit by fraudulent product, also.

The company which is manufacturing the Bradley troop carrier in California has a large supply of the bolts. The last my office found out on this situation is that the company, FMC, is asking a waiver from DOD that they may use these bolts even though they are not up to spec. FMC is saying that the bolts are being used in areas of the machine which do not get that much stress.

At Vandenberg Air Force Base, Lockheed had found fraudulent bolts in supplies on hand for work on the space shuttle.

And, as these stories come in we begin to hear about other so-called substitute products which have shown up in the submarine program.

It is so massive that I am forced to wonder about the commercial aircraft industry and the trains I ride, my automobile, everything that we are using.

Maybe I have a particular twist of mind, but as I have been fighting imports over these many months, I keep recalling that the answer to all of our companies has been that they should make the better product. That when American products are as well performing and as breakdown free as all of these other products, that indeed, then the American product will outsell the foreign product.

Now, I ask you, How can be make a better product in this country when the basic components that we are bringing in from abroad, by necessity since we have not protected the fastener industry from being destroyed by these foreign producers, how can be make a better product when our foreign suppliers are loading us up with counterfeits?

Maybe a lot of the breakdowns of American products is due to bad foreign parts. What a way for them to compete.

And how fragile our power becomes when it rests solely upon the goodwill of foreign nations which want our markets and want our jobs.

If I sound harsh, this whole situation is getting out of hand. There is plenty this country can do to protect itself from this kind of risk. There can be a list of importers who qualify by posting a performance bond for their products. I'm having such a law drafted right now.

The Defense Department can certainly have its suppliers and trustworthy suppliers for its contractors cleared for the validity of product. They certainly manage to run security clearances on a host of civilian employees. There would be many fewer clearances needed for importing firms.

The Government can also encourage the opening of closed American fastener manufacturing plants. The evidence is building very quickly that foreign fasteners are indeed cheaper, 80 percent of size 8's, in all ways.

We are certainly a mature enough nation to recognize that we are not going to get "something for nothing."

There has always been a price paid for quality and there will always be a price paid for quality. The cheap fix offered us by the rest of the world for these past few years has turned out in the long run to be very expensive.

We are losing control of our markets. We are losing control of the quality of product, not only from abroad, but with the flood of faked fasteners, we cannot even control the product which we are manufacturing in our own plants and defense industries.

Is this still an independent nation, Mr. Speaker? I am beginning to think not. I, for one, feel very vulnerable when I begin to use a piece of machinery. I hope it will not take a tragedy of the greatest magnitude for us to recognize how very crucial the integrity of a common bolt is.

And, against that horrible possibility, I think we might best prepare by considering legislation in this body which will attach Federal criminal penalties to representatives of any firms which produce or sell any product in international trade which is shown to be deliberately misrepresented and thereby causes maiming or death.

It is time to announce to the world that we will protect and defend our people. It is a constitutional mandate to the offices of this House and should not bring a murmur of shock from anyone in this city. It is after all our duty and anything less than that is a dereliction.

□ 1755

A PLEDGE TO OPPOSE ANY EFFORT TO RAISE TAX RATES AND A PLEDGE TO ELIMINATE DEDUCTIONS BY LOWERING RATES

The SPEAKER pro tempore (Mr. ABERCROMBIE). Under a previous order of the House, the gentleman from Georgia [Mr. GINGRICH] is recognized for 60 minutes.

Mr. GINGRICH. Mr. Speaker, I want to assure the Speaker that representing a very powerful and proud Democratic Party as the gentleman does, I am sure the gentleman is confident that, as we discuss taking the pledge to oppose any tax increases, there will be a considerable number of Democrats who will wish to rush over, some to sign the pledge to oppose raising taxes and others to explain why, from their perspective, raising taxes is a good idea.

I want to say, first of all, and I may have to yield to the distinguished gentleman from Florida who is leading this effort, that we have here two charts for Members to sign. These charts which will be developed, as I understand it, by a bipartisan effort, Americans for Tax Reform, and I have been told that the National Federation of Independent Business is going to be playing a leading role, that the first is a no tax pledge. It says, "I pledge to oppose any effort to increase tax rates from the 15 and 28 percent rates for individuals and the 34 percent rate for business; and (b), to oppose any further reduction or elimination of deductions and credits unless matched dollar for dollar by further reducing tax rates."

I might comment that DUNCAN HUNTER of California has courageously stepped forward and signed the no tax pledge.

Mr. Speaker, I yield to the gentleman from California [Mr. HUNTER].

□ 1805

Mr. HUNTER. Mr. Speaker, I just want to say that I am reflecting the will of my constituents who, have experienced this tax reform package that just passed, are very, very uneasy about the prospects of tax raises in the near future. Particularly, they are concerned and upset about the statements by the chairman of the Ways and Means Committee, Mr. ROSTENKOWSKI, to the effect that there will be taxes in the near future, and also statements by Congressman RICHARD GEPHARDT, the gentleman from Missouri, who is the chairman of the Democratic conference, to the effect that tax increases are imminent. Also statements by the Speaker of the House, the honorable gentleman from Massachusetts, Mr. O'NEILL, to the effect that the Democrat Party still believes that tax increases are going to be necessary.

My constituents, having shed a number of the deductions in the protections the taxpayers had, in this latest tax reform package, are now afraid that we are going to see Democrat leadership coming back in the near future and moving those rates back up or going in through some other angle and increasing their taxes.

I am pleased and proud, and I hope that all Members will be of the Republican conference to sign this particular pledge not to increase taxes. I call on the Democrat leadership to reassure the American people that that is not going to happen, although their statements that continue to come out indicate the opposite.

Mr. GINGRICH. I might comment that several Democrats have already told us they intend to sign the no-tax-increase pledge, and they intend to join us in a bipartisan effort to oppose any tax increase.

On the other hand, we also have here a Mondale truth in taxing pledge which says, like Walter Mondale, I am telling you there will be tax increases in the Congress; taxes will go up. I thought that was particularly appropriate because we had several Democrats yesterday who indicated in their judgment it was appropriate to raise taxes.

We are going to, for the rest of this session, through next week, take special orders and offer opportunities for Members to come over. We hope that a considerable number will come over and sign the no-tax-increase pledge. We are confident that others will want to come over in a spirit of honesty and sign the Walter Mondale truth in taxing pledge.

I yield to the gentleman from Pennsylvania [Mr. WALKER].

Mr. WALKER. I thank the gentleman for yielding.

He partially made the point when he pointed out that there are some Democrats who have already indicated that they are willing to sign the no tax pledge. I would tell the gentleman that in the last 24 hours we have put together a resolution that has been introduced to the House and now is in the process of gathering cosponsors with the no tax pledge included in that.

In the course of that 24 hours, 88 Members of Congress have signed that resolution, including some Democrats. So this is very much a bipartisan effort to make certain that we pledge no new taxes in the 100th Congress.

As the gentleman said, there are some people who believe that taxing our way to our future is the right way to go, and we have, as the gentleman points out, given people an alternative here. They can take the no tax pledge or they can take the truth in taxing pledge which essentially says what so many of the Democratic leadership in the House are saying, and that is that there is going to be a tax increase; it is going to take place in the next Congress. My interpretation of that would certainly be that the election that we are about to see take place in November is very much an election about which of those philosophies is going to hold sway in the next session of Congress.

People can pick candidates who either take the no tax pledge or take the Walter Mondale truth in taxing pledge and they will get exactly what they vote for when the 100th Congress begins meeting in January.

Mr. GINGRICH. I might comment that since we began talking about this yesterday, we have had Democrats from Illinois, Ohio, Florida, and, I believe, California, argue in effect that tax increases are in fact appropriate, and that tax increases are a legitimate answer to the problem of the Federal Government spending too much money. From their standpoint, they think that we are being unfair by arguing that there should not be tax increases.

What we are suggesting is that in addition to five of the leading national Democrats in the House who have been quoted in the news media as saying they were for tax increases, that from at least four States in the last 24 hours, we have had Democrats indicate they would favor tax increases.

I yield to the gentleman from Florida [Mr. MACK].

Mr. MACK. I thank the gentleman for yielding.

Again, I think it is important that we explain that really the Mondale truth in taxing pledge goes a step beyond an individual stating that they are going to, that they would support increasing taxes. I think what we are really saying to those individuals, we would like to know how they are going to do it. I think that is important. We are closing in on the 1986 congressional elections, and I think the American people, the American voter wants to understand exactly what the choices are. Not just whether a candidate is for or against raising taxes, but if those who are saying that they believe that we should raise revenues, and you have indicated there have been several of the leaders of the Democratic Party that have said, kind of looking at each of us saying, "Oh, come on now, you know we are going to have to raise taxes. There is a solution, and raising taxes is the answer to that."

I think what we are saying is, if we are going to continue to hear that kind of rhetoric, we would like to know exactly how they plan to raise those revenues. Are they going to place a higher tax on corporations? I would remind them that we just shifted $120 billion from individuals onto the corporate side. One of the remarks that we heard all during last year was the way they were going to solve the problem on the tax side was to place a minimum tax on individuals and a minimum tax on corporations. I would suggest that has already been done.

I think it is fair to say that the reason for the truth in taxing pledge is not just a statement that an individual supports an increase in taxes, but we want to know how they are going to do that.

Let me make just one other point as to how we really got into this situation. I think all of us were back home in our districts in August when the move, the momentum, for tax reform in the country was really picking up. Then we heard the comments from the chairman of the Ways and Means Committee, Chairman ROSTENKOWSKI, that again there was this attitude that we will get all of these loopholes closed, we will reduce the rates, we will move forward on tax reform, and then next year, we will simply raise the rates on this new tax package.

What has happened since then is, the President has indicated he has made a pledge that he will not allow the rates to be increased and others around the country have become active. The group, the Americans for Tax Reform, have challenged all of us to step forward and agree to no increase in the tax rates. So this is how we got to where we are today. A group of us again, in a bipartisan effort, have come forward to say that we are not going to raise taxes; we are going to take the pledge, and for those who are having trouble making up their mind, as we saw yesterday, there was kind of a feeling that, yeah, I would sign that but I have got to have this agreement or that agreement.

Either you are going to sign it, the no tax pledge, or if you are not going to sign that one, then I think you need to sign the truth in taxing, the Mondale truth in taxing pledge, and then state to the American people, to the voters back home, to those of us here in the Congress exactly how you intend to do that.

Mr. GINGRICH. I would like to pursue that for a second. I found it interesting that when we began talking last night, there were several Democrats who were willing to stand up and say we ought to raise taxes; it is perfectly appropriate to raise taxes. I found later, in talking with a wide range of people, a sense that in watching the dialog that it was hard for them to understand how, after Walter Mondale has lost 49 States in 1984, when clearly the American had said they did not want to solve the problem of the Federal budget by raising taxes, they could not understand why people would want to continue to argue that there was no way to control a trillion-dollar budget; there was no way to get more change in the Federal spending, and, instead, we had to raise taxes.

I think that it is very clear that both parties want to control the budget. That most national Democrats want to protect the Federal budget by defeating, by raising taxes. Well, Republicans want to protect your family budget by opposing tax increases. I think that we have to look at that issue. Because the fact is there is no way that we can, at one and the same time, protect the family budget and raise taxes. If we really think it is important that people have take-home pay, if we really think that it is important that people have a chance to make choices in their family and make choices in their neighborhood and make choices in their lifestyle, then we have to confront the fact that we, in Washington, have an obligation to do our job and to protect the family budget by not raising taxes. But instead, to rethink the entire Federal budget.

Now, that is very hard work. Let me make this clear. I am a former professor of history. I understand that to reform the Pentagon is going to be very hard work. I believe that to rethink the welfare system and shift to a new system of parental responsibility and workfare is going to be hard work. To rethink the civil service laws so that we can in fact manage the civil service and get good administration is going to be hard work. But the challenge I would raise is very simple: Is it not precisely what people pay us for to have us come to Washington to rethink the Federal budget and rethink the Federal Government so we do not have to raise taxes? Is that exactly what people want their Congressmen to do?

We had one Democrat yesterday who defended a $2,100 pay raise while raising taxes on the folks back home. What he is going to do in effect was lower their take-home pay to add it to his pay, while telling them he could not get the job done.

□ 1815

I might point out we have now had four people sign the no-tax-increase pledge. I am going to sign in a minute and that will get us up to five the very first evening.

Someone suggested that we ought to have a pledgathon and encourage people across America to call the Capitol to encourage their Members of Congress to pledge now that they will not raise taxes. I think that is a useful idea.

I think people who want to protect their pocketbook and want to protect their family budget and want to protect their take-home pay, it is a lot better to protect yourself and get the pledge before the election than it is to wait until later to figure whether or not, in fact, the candidate you were thinking about supporting really is not going to raise taxes.

We are going to have over the next few days, I think, a lot of Members fill up these boards. In fact, I suspect this entire board will be full before Congress adjourns next week. I fully expect to have well over the 218, between candidates out across the country and encumbents here in Washington, well over the 218 votes necessary to defeat a tax increase that will have signed on to the pledge not to raise taxes.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Pennsylvania.

Mr. WALKER. Mr. Speaker, does the gentleman not think it might be a good idea to also kind of regularly announce who it is that has signed the no-tax pledge, and I think in all fairness, then, we ought to also announce who has signed the Walter Mondale truth-in-taxing pledge along the way, too.

I think maybe as we have these special orders over the next several days, that the people who have signed in various ways, it might be a nice idea for our colleagues, who may not be able to read the board very clearly, to have an understanding who has been here and has signed the no-tax pledge and the Mondale truth-in-taxing pledge.

While there are only four people there, there is no need to read them this evening, but as we build up that list and so on, I think we may want to tell people just exactly who it is that is taking the two different pledges.

Mr. GINGRICH. In fact, I think it is worth reading this for a moment. We have DUNCAN HUNTER of California, CONNIE MACK of Florida, BOB WALKER of Pennsylvania and TOM DELAY of Texas. We already have four States in very diverse parts of America where individual Members have said that they do not want to raise taxes.

I think it is important to recognize, as I said earlier, this is a bipartisan issue. We have already had several Democrats who came up today and said that they do not want to raise taxes either, and while the Democratic national leadership may be in favor of raising taxes, and while five leading Democrats in the House may come out for raising taxes, there are some conservative Democrats who are very comfortable signing a no-tax-increase pledge.

Mr. WALKER. If the gentleman will yield further, I think also that what we want to do is make certain we have a dialog on this issue.

I think, knowing the gentleman, he would welcome liberals, some of our friends on the left coming out to the floor and explaining to us why they think either Mondale truth-in-taxing pledge is the way to go or that increased taxes are the way to go. The gentleman would be very happy to yield to them to have kind of discussion out here because we think it is important to focus the attention of the House on the division of opinion that exists on this issue.

We would certainly welcome other Members to come to the floor, as there were some last evening, to discuss this issue in some detail and, in fact, would invite our colleagues who may be back in the cloakrooms or elsewhere to come out and engage in this particular issue with us.

Mr. GINGRICH. As the gentleman will remember, I spoke earlier today in a 1-minute speech that we will be doing this particular special order this evening precisely so that those Democrats who believe in tax increase could arrange in their schedule to come over and explain why a tax increase is appropriate.

I say this because I think there is a sad tendency sometimes when politicians have been in Washington too long to hope that if you simply hide and say nothing, that later on you will be able to raise taxes without people noticing it. I think it is very important during this particular election that if people really believe that we should raise taxes, that they attempt to educate the American people into an understanding why higher taxes is a useful thing to do.

Mr. MACK. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Florida.

Mr. MACK. Mr. Speaker, I was struck, I guess, last evening as we were doing special orders, and also earlier today as we were doing 1-minutes, there seemed to be a feeling on the other side, that is, from the Democrats, that somehow or other we were kind of building up this issue, that we were really making a strawman, somebody used the phrase.

I would say it is the evidence that we have talked about, this continual rhetoric on the part of the leadership of the Democratic Party that says we are going to raise taxes.

A couple of quotes:

"I have long been a strong proponent of tax increases to shrink the deficit."

Another quote: "We all know we are going to raise taxes."

Another quote: "Should we pay through the nose by taxation? The answer is 'yes.' "

All we are saying is that many supported the tax reform package because of the lower marginal tax rates on individuals. We believe that we learned a lesson in the 1960's when President Kennedy offered his plan to reduce marginal rates. We received the stimulus of the economy because of those lower rates in the 1960's, and what we are saying is we do not want to see that given up.

We supported the tax reform package, even though it shifted the burden to the corporate side because of the lower marginal tax rate. What we are trying to say is that we want to make every effort to get a sufficient number of people signed up as a no-tax pledge that we can protect those lower marginal rates because that is what is going to stimulate the economy; that is what is going to allow people to start new businesses; that is what is going to allow the new businesses to create new jobs.

I think that is a very real thing that we ought to be involved in and hopefully we will get sufficient support from those on the other side of the aisle.

Mr. HUNTER. Mr. Speaker, will the gentleman yield for a question to the gentleman from Florida?

Mr. GINGRICH. I yield to the gentleman from California.

Mr. HUNTER. Mr. Speaker, I think the gentleman has hit on the important point here, and that is that statements have been made in major forums throughout America by the Democratic leadership to the effect that there are going to be higher taxes and tax increases.

I think the gentleman might point out the particular forums where the chairman of the Committee on Ways and Means this year has stated that there are going to be new taxes. The Speaker of the House has made statements to that effect. The chairman of the Democratic caucus, and I just wonder if there is any reason why those statements would have been made if there was not some meaning behind them.

Why did they make those statements if there is not, in fact, a campaign at this point to condition the American people to accept the idea of tax increases in 1987?

Could the gentleman give us some of the forums where these statements were made? They were not offhand comments that were made in some secluded area; they were made to the major audiences in the United States.

Mr. MACK. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Florida.

Mr. MACK. One of the comments was made by Chairman DAN ROSTENKOWSKI before the National Governors Association. Another one of those reports, also by Mr. ROSTENKOWSKI, was reported by the Chicago Tribune on October 19, 1985. Another comment was made: "Should we pay through the nose by taxation? The answer is yes." That was the Speaker of the House in the Baltimore Sun, October 17.

So I think the history indicates that if you listen to what people have to say, they are telling you what they are going to do, and they eventually do it. What we are trying to do is to raise the awareness level throughout the country that these things are being said.

Here we have gone ahead and passed this major tax reform package, which has lowered the marginal rates on individuals, giving them an opportunity for advancement, and already, there is a move underfoot to raise those rates once again.

That would be a tragedy and it would take away everything that we have gained through the efforts to reform our Tax Code.

Mr. GINGRICH. Let me comment, I had a number of people say to me that they were very worried about tax reform precisely because they thought that tax reform might lead to, first of all, eliminating the deductions and shelters, and then dramatically raising the rate.

I think that it has to be a little frightening for an awful lot of Americans to already hear various House Democrats talking about raising the rates.

Let me carry it a stage further because I want to really emphasize the point that I think has bothered our friends on the left.

□ 1825

I am not suggesting that deficits are acceptable and I am not suggesting that it is a simple process of just cutting spending. In order to get a Federal Government we can afford, we are going to have to rethink a great deal about how we run this country. We are going to have to go from welfare to work fare. We are going to have to continue reforming the Pentagon to get efficient procurement. We are going to have to rethink some of the civil service laws. We are going to have to have more home health care and we are going to have to encourage people to take care of themselves and we are going to have to encourage the kind of changes toward a capital budget that make sense for the future. These are all changes.

The difference is a lot of liberal Democrats want to avoid the change by simply raising your taxes. Their attitude is that if I have to change the behavior of the Federal Government or change the behavior of your family, then the liberal Democrats seem to think it is easier to change the behavior of your family by raising taxes on you, rather than try to do the very hard, very difficult job of changing the Federal Government.

Mr. DELAY. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am glad to yield to the gentleman from Texas.

Mr. DELAY. Mr. Speaker, I thank the gentleman for yielding.

I was not planning on participating in this particular special order, but as I was watching television and saw that the gentleman has brought this tax pledge to the floor of the House to be signed, I ran over here as fast as I could so that I could be one of the first to sign this pledge, pledging that I will not be for a tax increase next year or any other year for that matter, because I feel, at least in Texas and in my district around Houston, that no one in Texas is undertaxed. Now, they may be undertaxed in New York or they may be undertaxed in the Northeast or other parts of the country, but I do not know of anybody in my district, at least, who is undertaxed.

I would just like to turn the gentleman's previous arguments into another light. The reason the left, or I prefer to call them the liberal welfare statists do want a tax increase is because they know that next year, more than ever I think in the history of the United States, we are faced with doing something with the deficit, because the deficit will increase to such magnificent and huge proportions next year that something is going to have to be done, which delights my heart, because I think for the first time in the history of the United States, and even after all the struggling that we have been going through over the last 2 years of cutting spending, for the first time we have got the liberal welfare statists in a box. They have got to come out and sign the Mondale Truth in Taxing Pledge, or they have got to come out and sign the no tax increase pledge and be for cutting the deficit by cutting spending.

If the American people, and I ask the gentleman, if the American people want to take this one chance in a lifetime to finally get control of this Government and finally do the things that the gentleman suggests, a new way of thinking in the Federal Government, a new way of spending in the Federal Government, I would think that the American people would tomorrow, especially when they get their paychecks tomorrow and look at how much is being taken out of their paychecks tomorrow, that tomorrow these same American people would call their Congressman, because he will be here probably, would call their Congressman tomorrow and demand that they do one of two things: To sign this no-tax increase pledge or to sign the Mondale Truth in Taxing Pledge, because I do not know of any other time in the history of America that the people of America have such an excellent opportunity for the first time that I know of, an opportunity to tie these Members and our colleagues to one or the other.

What a wonderful opportunity it is since we have about 34 days until the elections to find out where they really stand.

You know, so many of these Members say one thing back home and come up here and do exactly the opposite; but boy, you cannot escape the view of the American people when they ask you to do one simple thing, either sign this tax pledge or sign Mondale's Truth in Taxing Pledge, one or the other. They are either for raising taxes or they are for cutting spending and this is the time to find out where they really stand.

Mr. GINGRICH. Let me build on that just for a second. People may think that with only our four initial signatures, and I am going to sign it presently when I get a magic marker so I can sign it also.

The gentleman from Pennsylvania is reverting to his earlier role as a member of the congressional staff and rushing forward to sign. He has learned those basic skills.

The point I was going to make is that, first of all, when this idea of a no-tax increase pledge first started, I believe in 1972 in New Hampshire with Governor Thompson, who was then running for Governor of New Hampshire, people said, "Well, that won't catch on. That is a silly pledge."

Well, 14 years later no statewide candidate has been elected in New Hampshire who has not signed the pledge not to raise taxes.

In addition, let me point out——

Mr. MACK. Mr. Speaker, would the gentleman yield?

Mr. GINGRICH. I am glad to yield to the gentleman from Florida.

Mr. MACK. Mr. Speaker, would the gentleman repeat that again?

Mr. GINGRICH. My understanding is that there is a pledge that Governor Thompson began in 1972, which I believe related directly to the income tax, and every election since then you literally were not even considered unless you had signed the pledge.

Mr. MACK. Each of the winning—each of those who served as Governor has signed that pledge?

Mr. GINGRICH. That is my understanding from the people of New Hampshire that again and again that issue has guaranteed, it has eliminated the people who would not sign the pledge.

Mr. MACK. Mr. Speaker, I thank the gentleman.

Mr. GINGRICH. I make this point for two reasons. One is, as everyone who studies American politics knows, New Hampshire plays a peculiarly important role in deciding who the Presidential nominees are.

Now, it seems to me very clear that if the no-tax increase pledge catches on, as we think it will and as the National Federation of Independent Business thinks it will, and as the Americans for tax reform think it will, and the National Taxpayers' Union and others, if this catches on, then the first thing we know is that every Democrat and every Republican running for President in 1988 as they approach New Hampshire is going to be asked immediately, "How do you feel about the no-tax increase pledge?"

Mr. MACK. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am glad to yield to the gentleman from Florida.

Mr. MACK. I cannot help but react and say that maybe one of the things this coalition might do is to request that as each Presidential aspirant enters the New Hampshire race that the first thing they do is sign this no-tax increase pledge.

Mr. GINGRICH. I think that is exactly right. Of course, we already know there are some candidates who will do that very quickly once they announce.

I think it really will be interesting to watch the liberal Democrats who attempt to run around the country saying they are for new ideas when they first approach New Hampshire and they go to that first town hall meeting and people get up and say, "Now, are you going to sign the pledge not to raise taxes or not? Are you going to have enough new ideas that can save money in Washington, or are you going to have a lot of new ideas that spend money in Washington?"

That may be one of the dividing lines between new idea people in 1988, between new idea liberals who have 11 new ideas that they are going to raise taxes, and new idea conservatives who find 11 new ways of saving money.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am glad to yield to the gentleman from Pennsylvania.

Mr. WALKER. I think that the gentleman makes an excellent point in focusing on 1988, the Presidential aspirants going into New Hampshire in 1988; but it does seem to me that the one thing that we want to also emphasize is that people have that opportunity right here in 1986 with regard to the people that they are going to elect to the Senate and to House of Representatives in the November election just ahead, and that is that literally people could take this as an opportunity to say, "We won't seriously consider you for our vote if you haven't taken the no-tax increase pledge." That is really the opportunity that lies ahead for the next 30 days or more to have the American people tell candidates who are running for office, "If you have not signed the no-tax increase pledge, then you are not a serious candidate for office, and if you have signed the Mondale Truth in Taxing Pledge you will have to live with that as a part of the record on which we will judge you."

If the American people hold candidates and hold Congress accountable in that way, it seems to me it changes the dynamics not only then of the 1988 election, it certainly changes the dynamnics of the 1986 election and obviously then the dynamics of the entire Congress to follow.

Mr. GINGRICH. Well, let me carry this a stage further. It seems to me that there is some dignity and some respectability in signing the Mondale Truth in Taxing Pledge. A liberal who gets up and says, as it says in that chart, like Walter Mondale, "I'm telling you there will be a tax increase in the next Congress, taxes will go up," that is at least a legitimate public position.

I mean, the group that I think voters ought to automatically vote against are people who in fact refuse to sign either pledge. If a politician has not got the courage to tell you in advance, "Yes, I will raise taxes," or, "Yes, I will fight against any taxes," but a politician who hides and says, "Oh, don't ask me to tell you now."

I might comment that a very distinguished Member of our Congress, the gentleman from Idaho [LARRY CRAIG] is now signing his pledge. We are delighted to have LARRY sign this and I am confident that the people of Idaho do not want to see taxes increased.

The distinguished gentleman from the Ohio River Valley, [BOB MCEWEN] is also signing.

Mr. CRAIG. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am glad to yield to the gentleman from Idaho.

Mr. CRAIG. I would like to thank my colleague from Georgia for yielding and I would like to thank him for the opportunity to sign such a pledge.

My voting record here in the 6 years that I have served the First Congressional District of Idaho has been consistent with that pledge. It has been consistent for the very reasons that my colleague from Georgia has expressed.

If it is a question that we are not taking enough out of the pockets of the average working man and woman of this Nation to fund this Government, then I think we need to look at the record and the record is that revenues have increased consistently over the last 6 years in the period of time that I have been in service here.

Certainly the spending levels of our Government have increased, even though we have obviously borrowed a great deal more than we know that the taxpayers of this country would be willing to pay for.

So I have always said and I firmly believe that it is certainly not a matter that we are not taking enough from the taxpayers, but we are just simply spending way beyond what we should be. It is truly a question of spending and I would have to agree with all my colleagues who have joined in this special order tonight.

We now hear a ringing cry from the leadership of this House, the Democratic leadership, that we have just taken all we can take out of this budget, even though it is the largest budget ever in the history of this country, and now the only way we will pay ourselves out of the deficit is to ask more from the American public and ask from the economy of this great country at a time when this economy of course is staggering nearly to its knees.

I come from a State that is a primary resource State. Idaho's economy is made up of agriculture, mining, and timber. All three of those economies are in large part hurting right now. They are hurting because of deficits, because of the value of the dollar in an international market that is driven by those deficits. The deficits, of course, as we know are driven by the excessive spending habits of this Congress and projected in the budgets that we have dealt with.

We have passed a new tax reform bill. I happened to have opposed that bill. I did because unless the Idaho Legislature changes, we are going to ask the citizens of Idaho to pay another $28 to $30 million in taxes, because no longer are their sales tax payments refundable. At the same time we are going to see a substantial tax shift and a tax increase as a result of that shift.

In the fiscal year 1988 when we are asked to meet a $109 billion deficit target guideline in Gramm-Rudman, when we look at revenue reductions of about $28 billion and then arrive at nearly an $80 billion requirement in cuts and expenditures to bring that deficit in line with the deficit reduction program of Gramm-Rudman that probably all of us supported, there is no doubt why we hear the drumbeat coming from the chairman of the House Ways and Means Committee, DANNY ROSTENKOWSKI, that the only way out of the mess that this Congress has created for the American people is to increase taxes. That is the drumbeat that we are going to be hearing louder and louder in the days to come.

Nowhere will he suggest that we are spending more money in every area of Government than we have ever spent in the history of Government, because he will argue, as others have argued on the other side, that we have cut it to the bone.

I suggest to you that those bones are well fleshed in meat and in many instances well fleshed in fact.

There is a great more that can be cut. Certainly there is more that we should strive to cut before this body ever attempts to place a greater burden on an economy and on the working men and women out there who are now struggling to survive.

That is why I signed that pledge tonight. That is why I think it is so critical that this Congress stand up and be counted in an election year and say to the American people, and make it a pledge and make it a promise, that we will not raise their taxes.

□ 1840

In fact, we will work increasingly hard to reduce that deficit, to balance the Federal budget, and in any way to reduce their burden and their obligation to the Federal Government in the form of taxes.

I would like to once again thank my colleague from Georgia for yielding and providing us with this opportunity to speak out to the American people and say so loudly and clearly as we must say in these days before an election when they are going to be asked to judge and to vote, where does your candidate for Congress stand? Is it for a Mondale truth-in-taxing pledge, or is it for a no-tax pledge, because we all agree that we have asked already too much of the working men and women of this country.

Mr. GINGRICH. Let me ask the gentleman, he mentioned that Idaho does have economic problems, which we are all very concerned about. I want to ask about the three primary industries that the gentleman describes. In the gentleman's judgment, will a tax increase help agriculture in Idaho? If we raise taxes, is that going to help agriculture in Idaho?

Mr. CRAIG. Of course it will not. The only thing that is going to help agriculture in Idaho at a time when the taxpayers of this country have already said, "We're going to pay out more money to try to support agriculture," when Ronald Reagan has agreed that more money should go out to support agriculture and agricultural programs than ever in the history of Government, the only thing that is going to help agriculture in Idaho is to reduce the $200 billion deficit, reduce the value of the dollar in foreign markets, and once again get the commodities that are produced by our agricultural men and women back out into the world market and selling. And the only way in which we are going to do that is to cut spending and cut deficits.

Mr. GINGRICH. I might comment before I ask the gentleman the next question that the gentleman from Colorado, Mr. MIKE STRANG, a very able and aggressive champion of the Western Slope, has just signed on, and the gentleman from New York, Mr. GERALD SOLOMON, giving us our first signator north of Pennsylvania, has given us yet another additional. I think we are going to see more and more names added to this.

Let me go to the other two industries. The gentleman talked about timber. If the liberal Democrats raise taxes on timber, will that help the timber industry?

Mr. CRAIG. An industry that is now struggling with no profit. In fact, last taxing period, that forest products industry in this country wrote off a loss—I repeat, wrote off a loss—nationwide, of over $300 million. There is nothing to tax out there.

Mr. GINGRICH. So is it not true that if the liberal Democrats had their way and increased taxes on timber, it would just increase the bankruptcies?

Mr. CRAIG. Well, it would do one thing. It would drive the men and women in the forests products industry out, because there would be no jobs, and our supply of timber would then come out of Canada, because we would no longer have a forest products industry in this country.

Mr. GINGRICH. And then the hardworking people of Idaho who had been in forest products would now be on welfare, and that would increase the cost of welfare, and our liberal Democratic friends would rush in and say, "You see, we have to rise taxes even higher."

Mr. CRAIG. I believe that that is the way that the cycle works.

Mr. GINGRICH. Finally, in mining, how much would it help Idaho mining industries if the liberal Democrats raised taxes on mining?

Mr. CRAIG. The mining industry in Idaho, and the minerals and metals industry nationwide, is really at the very bottom of an economic cycle. I know of no mining industry today that will not record in this quarter the greatest loss that they have experienced—I repeat, the greatest financial loss that they have experienced—since the 1930's.

That is quite a statement, but that is a true statement, and the reason it is that way is not unlike agriculture, because they deal in international markets, and because of the high value of the dollar and the deficits that have been generated here, they are simply placed out of competition, they have had to shut their operations down, and to only hope for a better day. There is no money from which they could pay an increased tax.

Mr. GINGRICH. I want to make the point just for a second that the liberal Democrats have no new answers; that all that they can promise is to raise taxes and raise taxes and raise taxes, and that somehow is going to lead to prosperity.

Mr. McEWEN. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Ohio.

Mr. McEWEN. I thank the gentleman for yielding.

If I could just underscore something that was said here, and begin with a quote from Abraham Lincoln, who pointed out that labor is capital, and that whenever we increase taxes on working people, we increase the taxes and the costs of labor. Labor is capital, therefore you make the cost of production of every product in America more expensive.

Why do people work? They work for take-home pay, and when you increase taxes on workers, then you diminish take-home pay. That creates an upward pressure on the cost of production.

Mr. GINGRICH. Let me stop the gentleman just for a second; I have to ask him something.

No liberal Democrat would understand what the gentleman just said, so I want to underline it. He was saying, if I understand him, that in Ohio, the people that he represents do not work for the opportunity to send more money to the liberal Democrats in Washington. Is that what he is saying? They do not work with a sense of joy that they can send even more money to Washington?

Mr. McEWEN. They do not work for Government, they work for what they can provide to put food on the table, to put clothes on their back, and a roof over their heads, and every time Government takes a larger percentage of what they earn and leaves less for them to take home, that creates upward pressure on the costs of production of every product in America, which makes us increasingly less competitive around the world.

The greatest thing that we can do to make America more competitive is to control the costs of production by diminishing taxes, which are definitely in every scenario a cost of production. So therefore in order to keep America moving, to make people more successful and more productive, we need to control this downward pressure that Government bears upon working people.

Mr. GINGRICH. Let me just make a point before I yield to my friend from New York that if I understand the gentleman from Ohio, the point that he is making is, every time you hear a liberal Democrat talk about raising your taxes, not only are you going to have less take-home pay, but they are raising the cost of doing business for America in the world market, and every time a liberal Democrat says, "Let's raise taxes," they are saying, "Let's be less competitive with Japan, let's be less competitive with Germany, let's have even fewer jobs in America, because we're going to put American businesses out of work by raising taxes."

Mr. McEWEN. The gentleman is exactly right, and history has proven it over the years repeatedly.

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from New York.

Mr. SOLOMON. Mr. Speaker, I want to really thank the gentleman from Georgia for holding this special order. Excuse me for being a little out of breath, but I was at a meeting in the Rayburn Building, and I heard one of our good friends from Texas say that maybe the people of New York were not overtaxed, but certainly his people in Texas were.

Let me assure the gentleman that in New York State we are the most overtaxed American citizens in the whole country.

Let me just say that I voted for this tax bill the other day, but I did so with some reservations, because I was afraid of what the gentleman in the well and the others who have spoken here today are afraid of, and that is that next year these liberal big spenders are going to come back and say, "OK, we still have these deficits, the tax bill was revenue-neutral, but now we're going to have to raise taxes to close that deficit."

I voted for the bill, for two reasons. We may never have another chance in the next century to get tax rates down so that there is an incentive for American people to work, for men and women, jointly, man and wife, to work and earn their money and keep it. Second, we have plugged loopholes so that everybody in America pays taxes.

Let me just describe what happened in 1981 and 1982. In 1981 we had a thing called Reaganomics which the national media called a dirty word at the time, but you know it was incentives to put America back to work, and boy, oh boy, did that work. But then something happened in 1982. The liberal spenders in this House, and even in the other House, said, "You know, we have a shortage of funds coming into the U.S. Government, and let's raise taxes."

They promised you and me and the gentleman in the well, and they promised the President of the United States, that if we would give them $1 in new taxes, they would give us $2 in spending cuts.

You know, I can recall going up to Camp David with President Reagan, and President Reagan, as much as I love him, had been sold a bill of goods. he said, "Gerry, I want you to support this tax increase, because it's the only way we're going to get spending cuts."

I said, "Mr. President, I told you once on a plane from Iowa to New Hampshire that I'd follow you to the end of the world, but this is the end of the Earth, and I'm not voting for this tax package."

What do you think happened? Sure as I told him that day up there sitting on a fence at Camp David, we did not get $2 in spending cuts, we got $1.19 additional spending, and we ended up losing money. That is why I rushed over here to sign this pledge. That is why I hope that every one of us signs this pledge, because next year we ain't gonna raise taxes, because what Congress gets, Congress spends, and we are going to do it through spending cuts and revived economy, and not through tax increases out of the pockets of the people.

Mr. GINGRICH. Let me comment to the gentleman, I just have to say that I think that he may have been one of the people who helped to educate the President on this issue, because just a few weeks ago at the White House the President took this very same pledge. The President has said to me and to others that he learned the hard way in 1982, that when liberal Democrats ask you to raise taxes, it ain't to balance the budget, it is not to help the deficit, it is to have more money to spend. So the gentleman may have been one of the folks who helped him begin to understand that when a liberal Democrat says, "Give me more of your money," he is just going to spend more of your money.

Here we have another one of our colleagues, a very distinguished Texas A&M graduate, who ably represents College Station, the gentleman from Texas, Mr. Joe Barton, who may have been one of the people who felt that his folks were not undertaxed.

□ 1850

I want to ask one other thing of the gentleman from New York, because there is a special project we hope the New York delegation will undertake. There has been a great deal of talk about Governor Cuomo running for the nomination as a Democrat. One of the things we are most interested in discovering is whether or not people like Governor Cuomo would be willing to take the no-tax-increase pledge.

We think it is very important the Presidential candidates be approached early and be confronted with the fact that there is going to be a straightforward yes or no, sign the pledge or sign the Walter Mondale truth-and-tax pledge that you will raise taxes. I might mention that the New York delegation at some point might like to seek an opportunity to ask Governor Cuomo if he would like to sign a similar sort of pledge.

Mr. SOLOMON. If the gentleman will yield further, because of the tremendous economic recovery we had in 1981 that continued right straight through for all of these months now, 44 continuous months, unfortunately Governor Cuomo did not return that $750 million windfall that New York State received back to the pockets of the people. Consequently, in this new tax reform bill we just passed, New York State is going to get another $2.5 billion windfall. Let me tell you, he better not only sign this pledge, but he better sign the pledge that is going to return that $2.5 billion so that our business and industry in the Northeast can compete, and we will not have to have these huge trade deficits we have now.

I thank the gentleman for yielding.

Mr. MACK. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Florida.

Mr. MACK. Mr. Speaker, let me just say I could not help but react to that question about what would Cuomo do if he were to be a candidate. I think if John F. Kennedy were around today that he would be an individual that would sign that pledge.

Let me read a couple of his quotes.

> The citizen serves his country's interest by supporting income tax reductions.
>
> * * * * *
>
> The largest single barrier to full employment of our manpower and resources and to a higher rate of economic growth is the unrealistically heavy drag of Federal income taxes on private purchasing power, initiative and incentive.

I think this also is an indication of how far the Democratic Party has come and changed in these 25 years or so.

Mr. GINGRICH. I think it is important, if I might just make that point, and reinforce it for a moment, the old Democratic Party was a Democratic Party that was very much for America's strength in international relations, and very much for frugal government, and very much for cutting taxes. That was the Democratic Party of John F. Kennedy, that was the Democratic Party of Jeane Kirkpatrick, and that was the Democratic Party of Phil Gramm. There were many Democrats who felt comfortable with that party who now see a party that is a Democratic Party of international weakness and a Democratic Party that wants to constantly raise taxes to support the liberal welfare state.

I think a lot of Democrats are just no longer comfortable with the liberal welfare state leadership of their party.

Mr. STRANG. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am glad to yield to our friend, the gentleman from Colorado.

Mr. STRANG. Mr. Speaker, I thank my friend and colleague from Georgia, and my colleagues from Florida and Pennsylvania for doing these special orders. I think they are the most exciting possible thing we can be doing right now, because we are faced with the prospect of a nation full of aspiring leaders, and those leaders need to tell us as Americans whether they are going to take the Mondale Truth in Taxing Pledge and tell us they are going to raise taxes, or to say they are not going to do it.

Two years ago the big issue in the State of Colorado, which I represent, was do not let them raise your taxes, and that issue was overwhelmingly endorsed by the citizens of Colorado, and they supported Ronald Reagan and Bill Armstrong in the efforts.

If you put it into perspective, in 1987 this country will have revenues of approximately a quarter of a trillion dollars greater than they had in 1980, about $265 billion more income than they had in 1980. That is a pretty heavy increase.

Mr. GINGRICH. Will the gentleman repeat that amount again?

Mr. STRANG. About $265 billion new revenues over what they had in 1980 coming into this country in 1987.

I would say to my colleague from Georgia that our problem is not revenues, our problem is spending. Why can we not get at the spending issue? Why can we not get that under control? Because the liberal spending Democrats in the House of Representatives have survived politically by giving away the public treasury. That is their political base and their political support, I would submit. They cannot cut.

So what do you do? You have to raise taxes. That is something that we need to get out on the table, because once we can get the issue out, then the American people have to say we think it is a good thing to take money out of people's paychecks or we do not.

I really thank my colleagues for conducting this special order.

Mr. GINGRICH. Let me reinforce this because the gentleman from Colorado said something very important.

The Government of the United States now has, I believe the gentleman said, $265 billion more in real money to spend than it had in 1980.

Mr. STRANG. That is correct.

Mr. GINGRICH. I know by the standards of the liberal Democrats that is not big money. But $265 billion to a frugal American who has to worry about their paychecks, they probably think they actually hire us to spend that money carefully.

Mr. STRANG. I would think so.

Mr. GINGRICH. I might comment we had a distinguished Democrat last night who was not sure that was the case, and in fact was worried about having to stay here until Christmas if we actually had to worry about managing the Government.

My point would be very simply, as I understand what the gentleman is saying, it is not a question of how much money is coming into Washington, DC. It is a question of whether or not we are going to have Members of the Congress who say I will not raise taxes, I will manage the Federal Government. And if we did that, we would not have to raise taxes.

Mr. STRANG. I agree with my friend, and I thank him for yielding.

Mr. BARTON of Texas. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I yield to the gentleman from Texas.

Mr. BARTON of Texas. Mr. Speaker, I thank the distinguished gentleman from Georgia and want to compliment him on conducting this second special order on this worthwhile event. I have already signed the pledge and sent the pledge to the proper groups.

But I am glad to see that we have a tally board now. Yesterday on the floor we had several of our Democratic colleagues who engaged in the debate, and it was my understanding that they were willing to sign the pledge. I would encourage them to come and do so. I notice we have 13 that have signed it so far. We need, if I am correct, there are 75 blanks, so we are going to need two of those cards. If we can get two cards' worth signed, we will have 150 Members, and it only takes 146 to sustain a Presidential veto of any tax increase. We can let the American people know before we go home for the election break that there will not be any new taxes if we can get two of those cards filled out.

I would like to point out to our colleague from Colorado talking about the $265 billion in new revenues that have come in, I believe our individual income tax right now at the Federal level collects somewhere in the neighborhood of $300 billion, maybe a little more than that. If we balance the budget by raising taxes, we would almost have to double the tax rate on individuals in order to balance the budget.

As my colleague from Colorado pointed out, our problem is not inadequate revenues, our problem is excessive spending. So the answer is not the Mondale truth-in-taxing pledge, the answer is the no tax pledge that we are already getting a sizable number of Members to sign up.

I guess one last thing. I would like to compliment our distinguished Speaker from Hawaii, Mr. ABERCROMBIE, as the newest Member. He has the distinct honor of having to preside over these events, and we certainly appreciate his being here with us and look forward to working with him in the remaining weeks of the U.S. Congress.

Mr. GINGRICH. Let me just comment for a moment on the importance of these two pledges. They force accountability. No candidate for Congress should be allowed to get through this selection without signing one of these two pledges that force accountability, and they are very clear. Either you are pledged not to raise taxes or you say OK, I am going to raise taxes.

I really do believe that the worst of politicians will be those who try to hide behind the two and say, oh, gosh, I cannot quite tell you because it is really much more complicated. It is not more complicated. Either you are in favor of raising taxes or you are in favor of strong tax increases, and what we are saying on our side of the aisle, and we have a number of conservative Democrats beginning to join us, is that it is the job of the 100th Congress to so manage the Federal Government that we will not have to raise taxes, but instead by developing new programs like work fare to replace welfare, by developing better procurement systems in the Pentagon, by having civil service reforms, having more manageable Government that we can, in fact, get a Government that with $265 billion additional in 6 years probably could work its way to a balanced budget without a single dime in tax increase.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. GINGRICH. I am glad to yield to my friend, the gentleman from Pennsylvania.

□ 1900

Mr. WALKER. Mr. Speaker, I thank the gentleman for yielding. I think maybe it might be an appropriate time for the gentleman from Georgia [Mr. GINGRICH] to read the names again of the people who have signed the no tax pledge so that our colleagues might know who has come forward to pledge no taxes in the 100th Congress.

Mr. GINGRICH. In this, our first evening of doing this, we have DUNCAN HUNTER of California; CONNIE MACK of Florida; BOB WALKER of Pennsylvania; TOM DELAY of Texas; NEWT GINGRICH, myself, of Georgia; LARRY CRAIG from Idaho; BOB MCEWEN from Ohio; JOE BARTON from Texas, MIKE STRANG from Colorado, and GERRY SOLOMON from New York.

I might say, Mr. Speaker, if you will notice this is a wide diversity of States. I am convinced that in the next few nights, we will fill up this card and as Mr. BARTON of Texas said, we will probably add a second and maybe even a third card to make sure that every Member who is willing to sign the no-tax increase pledge gets a chance to.

It will be interesting to see how many liberal Democrats have the courage to come out and sign the Walter Mondale Truth in Taxing Pledge, because there are people who have said in the press that they are willing to raise taxes; it will be interesting to see if they are willing to come out here and sign their name.

Mr. WALKER. Mr. Speaker, if the gentleman will yield, I was just going to comment on that. We have had no one come forward this evening willing to sign the truth in taxing pledge that Walter Mondale—and in fact, committed the Democratic Party to in 1984, and that they proudly endorsed as a part of their governance pattern when they nominated Mondale in 1984.

No one has come forward to take that particular pledge this evening; and even more interestingly, no one has come to the floor tonight to challenge the premise that we are taking on the House floor. Last night several Members of the opposition party came forward to debate the issue, and it was my feeling that we did pretty well explaining our side of the issue during that discourse. We must have done better than I expected, because the fact is, no one has come forward this evening to discuss the issue despite the fact that the gentleman from Georgia [Mr. Gingrich] issued an invitation earlier today. We explained earlier in this special order that we would be very glad to yield time and allow Members that kind of discussion.

No one has brought themselves to the floor this evening to suggest that they are willing to defend more taxes as a way for America. Maybe, maybe we are beginning to have an impact; and the real impact would be if the American people then would also tell their Congressmen: "It is time for you to take the pledge, take the pledge for no taxes in the 100th Congress."

Mr. GINGRICH. Mr. Speaker, I am confident that by tomorrow night, I will be able to report a considerably increased number of people signing up.

I yield to our good friend from Illinois [Mr. Crane].

Mr. CRANE. Mr. Speaker, I want to congratulate my colleague again for this initiative, and I cannot imagine, especially as we head into an election year, that any fiscally responsible Member of this body, who knows this spending is hopelessly out of control would fail to go down there and sign that pledge, as I am prepared to do.

In the 17 years I have been here, I have never voted for tax increases. Unfortunately, they have gone up every year. We had that big tax cut in 1981 and a big tax increase in 1982; tax increase in 1983, tax increase in 1984, 1985, 1986, and, under tax reform, Americans are going to get hit with an $11 billion tax increase next year.

So I think it is time for all of us to take the pledge, and I salute you for this initiative, and I will now sign.

Mr. GINGRICH. Mr. Speaker, I do encourage the American people to watch one of the real leaders of the conservative movement sign this, the gentleman from Illinois [Mr. Crane].

FURTHERING THE NO TAX INCREASE PLEDGE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. Walker] is recognized for 60 minutes.

Mr. WALKER. Mr. Speaker, I will not take the whole hour, but I did want to make certain that I, too, had a chance to congratulate the gentleman from Illinois [Mr. Crane], who has long been one of the major leaders of the conservative movement in this country, to thank him for signing the pledge, but also to thank him for his words and for joining in this effort.

It is an important effort, and that adds one more State and one more area of the country to the group that has taken the pledge here this evening.

Mr. GINGRICH. Mr. Speaker, if the gentleman will yield to me, so far we have from the east coast, New York and Pennsylvania; we have from the South, Georgia and Florida; we have from the Midwest now Illinois; and we have from the Southwest, Texas; we have from the Mountain States, Idaho and Colorado; and we have from the west coast California.

So it is beginning to be a geographic diversity here.

I also wanted to say, if I might for just a moment, that Americans for tax reform is going to be leading a nationwide effort all through October to make the no tax increase pledge a major issue and a major concern on a bipartisan basis, of the American people.

Several conservative Democrats have said they are going to take the pledge and sign; we think it is an important question to ask every Presidential candidate; and I would also say that across the country, as I understand it, tomorrow for example, any American citizen who wanted to could call their local congressional office and ask their Member to take the pledge.

They can say, please—anyone who goes to a political meeting over the weekend could say to the candidate at the meeting, whether the incumbent or the challenger or an open seat, both candidates: "Will you sign the pledge?" They could call us and let us know if they were going to sign the pledge and we could put their name here on the honor roll of signing the pledge.

Finally, those people who wanted to, who might have a Member who does not have a local office, as I understand it the House number is 202-224-3121?

Mr. WALKER. I think the gentleman is correct; 202-224-2131, and that allows them to reach their Member of Congress.

Mr. GINGRICH. I would say that people can call Washington, people can call their local office, and that people also can write letters and at townhall meetings and at public events, and I am hoping that in debates across America, as we have questions asked by panels, one of the questions at every debate should be: "Are you willing to sign the pledge not to raise taxes?"

I thank the gentleman.

Mr. WALKER. Mr. Speaker, I will yield to the gentleman from Illinois [Mr. Crane].

Mr. CRANE. Mr. Speaker, I thank my distinguished colleague from Pennsylvania for yielding.

I think it is very important for folks to understand that we are not undertaxed in this country; in fact, as a percentage of gross national product taxes are at virtually an alltime high, higher even than during World War II.

As I indicated, we had a great tax cut in 1981 that, over a 5-year timeframe constituted a $960 billion tax cut; but $660 billion you can subtract from that right off the bat because of the Social Security tax increases during that timeframe, coupled with the absence of indexation until 1985.

That left a $300 billion tax cut. Then, in 1982, the President was promised a $3 reduction in spending for every $1 increase in taxes he would go along with. What he got was $1.46 increase in spending for every $1 increase in taxes that came out of so-called TEFRA, Tax Equity and Fiscal Responsibility Act.

That amounted to a $229 billion tax increase over a 5-year period. So that cut the $300 million tax cut—$300 billion tax cut, rather—we get those figures confused in this body—that cut the $300 billion figure down to $71 billion.

Then in 1983 we passed the $16 billion gas tax increase. That cut it down to 55. Then in 1984 we passed a $50 billion tax increase over a 3-year period; it was closer to $100 billion over 5 years, so by 1985 the 1981 tax cut was all gone.

As I say, taxes went up again this past year with the Social Security tax hike, and with the tax reform projecting next year, an $11 billion tax increase, we are still raising taxes.

Now the thing that is remarkable about that is, every poll I have seen indicates that Americans do not want any more tax increases; but they are profoundly concerned about the red ink spending, and if they are as adamantly opposed as they state in the national polls to tax increases, and they are as adamantly for getting the books in balance, that leaves you one choice: You have to figure out how to reign in the spending excesses.

If we look at the last 4 to 5 years, we have had annual increases in spending in excess of 10 percent; annual increases in taxes in excess of 9 percent; at a time when we have had an inflation rate under 4 percent annually.

So, Mr. Speaker, there is no excuse for the level of irresponsibility on the spending question, and tax increases clearly are not the answer, and I salute the gentleman for his efforts.

Mr. WALKER. I thank the gentleman.

Mr. Speaker, I think the point that he makes is maybe one that needs to be added to what we are doing here, if you take the litany of tax increases that have taken place since 1981, literally the American people are screaming "Enough is enough."

We cannot face any more tax increases; it is time for poeple who are being elected to office in Washington to take a no tax pledge; and so this is really the outcry of the American people: "Enough is enough. No new taxes." And the people who are signing up here are literally saying, "That's our point. We are not going to raise taxes in the 100th Congress, and we are showing that in the pledge that is being taken."

Mr. CRANE. Mr. Speaker, if the gentleman will yield further, I think it is important for all of us to remember that next year is our bicentennial year of the crafting of our Constitution, and that that document was a direct consequence of the excesses in the taxation category of our British former rulers in this country.

□ 1910

The American people at that time rose up in objection to the tax levels and the methods of taxation, and they expressed their displeasure finally by seeking independence and ultimately crafting that document which was designed first and foremost to protect life, liberty, and property.

Your dollars in your pocket are an extension of your life because they are symbols of heartbeats out of your life, minted human energy. When we wage this fight in behalf of the American people we are in the best tradition of 1787 when they crafted that Constitution to protect life, liberty and property and the first place to start is to guarantee to the American taxpayer that his taxes will not go up with our support. We can only encourage with open arms all of our colleagues in the Chamber to join in this salutary effort. I thank the gentleman for yielding

Mr. WALKER. I thank the gentleman for his eloquent words.

Mr. Speaker, with that I yield back the balance of my time.

CONFERENCE REPORT ON H.R. 5233

Mr. NATCHER submitted the following conference report and statement on the bill (H.R. 5233) making appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies for the fiscal year ending September 30, 1987, and for other purposes:

CONFERENCE REPORT (H. REPT. NO. 99-960)

The Committee of Conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5233) "making appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies for the fiscal year ending September 30, 1987, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 2, 5, 14, 17, 18, 19, 22, 29, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 101, 102, 109, 110, 113, 116, 128, 133, 134, 136, 138, 139, 140, 141, 142, 149, 152 and 161.

That the House recede from its disagreement to the amendments of the Senate numbered 6, 7, 8, 9, 11, 13, 16, 20, 28, 44, 46, 51, 52, 54, 61, 85, 86, 87, 88, 91, 99, 100, 104, 105, 106, 108, 111, 115, 121, 122, 123, 125, 131, 132, 135, 143, 150, 153, 157 and 159, and agree to the same.

Amendment numbered 3:

That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$33,656,013,000*; and the Senate agree to the same.

Amendment numbered 4:

That the House recede from its disagreement to the amendment of the Senate numbered 4, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following: *including $4,000,000*; and the Senate agree to the same.

Amendment numbered 15:

That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$167,925,000*; and the Senate agree to the same.

Amendment numbered 21:

That the House recede from its disagreement to the amendment of the Senate numbered 21, and agree to the same with an amendment, as follows:

Restore the matter stricken with the date amended to read as follows: *January 1, 1988*; and the Senate agree to the same.

Amendment numbered 33:

That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$511,124,000*; and the Senate agree to the same.

Amendment numbered 34:

That the House recede from its disagreement to the amendment of the Senate numbered 34, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$490,233,000*; and the Senate agree to the same.

Amendment numbered 36:

That the House recede from its disagreement to the amendment of the Senate numbered 36, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$570,916,000*; and the Senate agree to the same.

Amendment numbered 37:

That the House recede from its disagreement to the amendment of the Senate numbered 37, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$366,780,000*; and the Senate agree to the same.

Amendment numbered 38:

That the House recede from its disagreement to the amendment of the Senate numbered 38, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$216,637,000*; and the Senate agree to the same.

Amendment numbered 39:

That the House recede from its disagreement to the amendment of the Senate numbered 39, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$209,294,000*; and the Senate agree to the same.

Amendment numbered 40:

That the House recede from its disagreement to the amendment of the Senate numbered 40, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$176,931,000*; and the Senate agree to the same.

Amendment numbered 41:

That the House recede from its disagreement to the amendment of the Senate numbered 41, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$138,713,000*; and the Senate agree to the same.

Amendment numbered 43:

That the House recede from its disagreement to the amendment of the Senate numbered 43, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$19,000,000*; and the Senate agree to the same.

Amendment numbered 45:

That the House recede from its disagreement to the amendment of the Senate numbered 45, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$61,838,000*; and the Senate agree to the same.

Amendment numbered 47:

That the House recede from its disagreement to the amendment of the Senate numbered 47, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$1,062,365,000*; and the Senate agree to the same.

Amendment numbered 55:

That the House recede from its disagreement to the amendment of the Senate numbered 55, and agreed to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$7,024,398,000*; and the Senate agree to the same.

Amendment numbered 59:

That the House recede from its disagreement to the amendment of the Senate numbered 59, and agreed to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$939,567,000*; and the Senate agree to the same.

Amendment numbered 60:

That the House recede from its disagreement to the amendment of the Senate numbered 60, and agreed to the same with an amendment, as follows:

Restore the matter stricken, amended to read as follows:

In lieu of the sum named, insert *$110,000,000*

And the Senate agree to the same.

Amendment numbered 64:

That the House recede from its disagreement to the amendment of the Senate numbered 64, and agreed to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$121,819,000*; and the Senate agree to the same.

Amendment numbered 79:

That the House recede from its disagreement to the amendment of the Senate numbered 79, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$3,944,163,000*; and the Senate agree to the same.

Amendment numbered 80:

That the House recede from its disagreement to the amendment of the Senate numbered 80, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$3,937,917,000;* and the Senate agree to the same.

Amendment numbered 81:

That the House recede from its disagreement to the amendment of the Senate numbered 81, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$37,107,000;* and the Senate agree to the same.

Amendment numbered 92:

That the House recede from its disagreement to the amendment of the Senate numbered 92, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$22,500,000;* and the Senate agree to the same.

Amendment numbered 93:

That the House recede from its disagreement to the amendment of the Senate numbered 93, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$9,250,000;* and the Senate agree to the same.

Amendment numbered 94:

That the House recede from its disagreement to the amendment of the Senate numbered 94, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$9,250,000;* and the Senate agree to the same.

Amendment numbered 95:

That the House recede from its disagreement to the amendment of the Senate numbered 95, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$4,000,000;* and the Senate agree to the same.

Amendment numbered 96:

That the House recede from its disagreement to the amendment of the Senate numbered 96, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$529,337,000;* and the Senate agree to the same.

Amendment numbered 97:

That the House recede from its disagreement to the amendment of the Senate numbered 97, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$29,337,000;* and the Senate agree to the same.

Amendment numbered 98:

That the House recede from its disagreement to the amendment of the Senate numbered 98, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted, insert the following: *$1,500,000 shall be used for awards, which, except for educational television programming, are not to exceed a cumulative amount of $1,000,000 to any recipient for national impact demonstration or research projects; $7,800,000;* and the Senate agree to the same.

Amendment numbered 103:

That the House recede from its disagreement to the amendment of the Senate numbered 103, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following:

For carrying out activities authorized under title IX, part C of the Elementary and Secondary Education Act, $3,500,000.

And the Senate agree to the same.

Amendment numbered 112:

That the House recede from its disagreement to the amendment of the Senate numbered 112, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$173,095,000;* and the Senate agree to the same.

Amendment numbered 114:

That the House recede from its disagreement to the amendment of the Senate numbered 114, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$10,370,000;* and the Senate agree to the same.

Amendment numbered 119:

That the House recede from its disagreement to the amendment of the Senate numbered 119, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$980,800,000;* and the Senate agree to the same.

Amendment numbered 120:

That the House recede from its disagreement to the amendment of the Senate numbered 120, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$11,000,000* and the Senate agree to the same.

Amendment numbered 137:

That the House recede from its disagreement to the amendment of the Senate numbered 137, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$43,000,000;* and the Senate agree to the same.

Amendment numbered 145:

That the House recede from its disagreement to the amendment of the Senate numbered 145, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

COMMISSION ON EDUCATION OF THE DEAF

SALARIES AND EXPENSES

For expenses necessary for the Commission on Education of the Deaf as authorized by section 301 of the Education of the Deaf Act of 1986, $750,000, to remain available until expended.

And the Senate agree to the same.

Amendment numbered 146:

That the House recede from its disagreement to the amendment of the Senate numbered 146, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$228,000,000;* and the Senate agree to the same.

Amendment numbered 147:

That the House recede from its disagreement to the amendment of the Senate numbered 147, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$23,523,000;* and the Senate agree to the same.

Amendment numbered 148:

That the House recede from its disagreement to the amendment of the Senate numbered 148, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$3,785,000;* and the Senate agree to the same.

Amendment numbered 151:

That the House recede from its disagreement to the amendment of the Senate numbered 151, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$129,960,000;* and the Senate agree to the same.

Amendment numbered 154:

That the House recede from its disagreement to the amendment of the Senate numbered 154, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$57,756,000;* and the Senate agree to the same.

Amendment numbered 155:

That the House recede from its disagreement to the amendment of the Senate numbered 155, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$14,942,000;* and the Senate agree to the same.

Amendment numbered 156:

That the House recede from its disagreement to the amendment of the Senate numbered 156, and agree to the same with an amendment, as follows:

In lieu of the sum proposed by said amendment insert *$1,267,000;* and the Senate agree to the same.

Amendment numbered 160:

That the House recede from its disagreement to the amendment of the Senate numbered 160, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

SEC. 513. Amounts available under this Act for carrying out the provisions of title II of the Education for Economic Security Act are hereby increased by $36,934,000.

And the Senate agree to the same.

The committee of conference report in disagreement amendments numbered 10, 12, 23, 24, 25, 26, 27, 30, 31, 32, 35, 42, 48, 49, 50, 53, 56, 57, 58, 62, 63, 65, 82, 83, 84, 89, 90, 107, 117, 118, 124, 126, 127, 129, 130, 144 and 158.

William H. Natcher,
Neal Smith,
David R. Obey,
Edward R. Roybal,
Louis Stokes,
Joseph D. Early,
Bernard J. Dwyer,
Steny H. Hoyer,
Jamie L. Whitten,
Silvio O. Conte,
Carl D. Pursell,
John Edward Porter,
C.W. Bill Young,
Managers on the Part of the House.

Lowell P. Weicker, Jr.,
Mark O. Hatfield,
Ted Stevens,
Mark Andrews,
Warren Rudman,
Arlen Specter,
James A. McClure,
Pete V. Domenici,
Robert C. Byrd,
Ernest F. Hollings,
Lawton Chiles,
Quentin Burdick,
Daniel K. Inouye,
Tom Harkin,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5233) making appropriations for the Departments of Labor, Health and Human Services, and Education, and Related Agencies for the fiscal year ending September 30, 1987, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

TITLE I—DEPARTMENT OF LABOR

Employment and Training Administration

PROGRAM ADMINISTRATION

Amendment No. 1: Appropriates $67,363,000 as proposed by the House instead of $66,017,000 as proposed by the Senate.

Amendment No. 2: Makes available $44,763,000 from the Unemployment Trust Fund as proposed by the House instead of $51,882,000 as proposed by the Senate.

TRAINING AND EMPLOYMENT SERVICES

Amendment No. 3: Appropriates $3,656,013,000 instead of $3,517,121,000 as proposed by the House and $3,748,314,000 as proposed by the Senate. The conference agreement includes the following amounts:

Job training block grant	$1,840,000,000
Summer youth employment (1988)	750,000,000
Dislocated workers	200,000,000
Native Americans	61,484,000
Migrants and seasonal farmworkers	59,621,000
Job Corps	656,350,000
Veterans' employment	10,058,000
National activities:	
Pilots and demonstrations	31,620,000
Research, demonstration and evaluation	20,190,000
Labor market information	4,790,000
National Occupational Information Coordinating Committee (NOICC)	4,000,000
Rural concentrated employment programs	10,000,000

Amendment No. 4: Earmarks $4,000,000 for activities conducted by and through the National Occupational Information Coordinating Committee instead of $3,000,000 as proposed by the House and $5,000,000 as proposed by the Senate.

Amendment No. 5: Restores language proposed by the House setting aside $10,000,000 for rural concentrated employment programs.

Amendment No. 6: Appropriations $29,900,000 for trade adjustment activities, including necessary related administrative expenses, as proposed by the Senate instead of $26,000,000 as proposed by the House.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

Amendment No. 7: Modifies legal citation as proposed by the Senate.

Amendment No. 8: Appropriates $23,400,000 as proposed by the Senate instead of $27,300,000 as proposed by the House.

Amendment No. 9: Makes available $2,341,901,000 from the Unemployment Trust Fund as proposed by the Senate instead of $2,485,933,000 as proposed by the House.

Amendment No. 10: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which modifies language concerning extended availability at the State level of unemployment insurance basic allocations.

Amendment No. 11: Makes available $150,910,000 for the unemployment insurance contingency fund as proposed by the Senate, instead of $261,942,000 as proposed by the House.

The conferees request that the General Accounting Office monitor services to the public provided by State Unemployment Insurance Service agencies, and provide periodic reports to the House and Senate Appropriations Committees concerning any adverse effects resulting from this budget reduction.

The conference agreement includes the following breakdown by budget activity for unemployment insurance operations:

State operations	$1,221,865,000
State integrity activities	212,754,000
National activities	2,039,000
Contingency	150,910,000

The conferees are agreed that no funds or staffyears are to be transferred from State base staff allocations to the quality control program.

Employment Standards Administration

SALARIES AND EXPENSES

Amendment No. 12: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following: *and including $1,500,000 which shall be available for transfer to Departmental Management, Salaries and Expenses, $194,209,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes $1,500,000 as proposed by the Senate for the support of eight additional administrative law judges and necessary support staff to hear and decide black lung appeals.

BLACK LUNG DISABILITY TRUST FUND

Amendment No. 13: Inserts language proposed by the Senate to permit the Trust Fund to repay advances from the Treasury when resources are not needed to make benefit payments during the fiscal year. The House bill contained no similar provision.

Mine Safety and Health Administration

SALARIES AND EXPENSES

Amendment No. 14: Appropriates $156,480,000 as proposed by the House instead of $158,680,000 as proposed by the Senate.

Pursuant to the Secretary of Labor's expressed assurances, the conferees expect the Department to provide for 90 additional mine inspectors over the budget request level, assigning the additional inspectors to mines or classes of mines that have a higher probability of fatality or serious injury.

Bureau of Labor Statistics

SALARIES AND EXPENSES

Amendment No. 15: Appropriates $167,925,000 instead of $166,589,000 as proposed by the House and $168,330,000 as proposed by the Senate. The conference agreement includes $1,336,000 for revision of the standard industrial classification (SIC) system.

Amendment No. 16: Provides that $8,286,000 shall remain available until September 30, 1988 as proposed by the Senate instead of $7,206,000 as proposed by the House.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

Amendment No. 17: Earmarks $2,408,000 for the President's Committee on employment of the Handicapped as proposed by the House instead of $2,044,000 as proposed by the Senate.

Amendment No. 18: Appropriates $103,852,000 as proposed by the House instead of $103,488,000 as proposed by the Senate.

ASSISTANT SECRETARY FOR VETERANS EMPLOYMENT AND TRAINING

Amendment No. 19: Makes available $139,510,000 from the Unemployment Trust Fund as proposed by the House instead of $137,655,000 as proposed by the Senate.

SPECIAL FOREIGN CURRENCY PROGRAM

Amendment No. 20: Appropriates $47,000 as proposed by the Senate instead of $67,000 as proposed by the House.

GENERAL PROVISIONS

Amendment No. 21: Provides that no Job Corps center may be closed prior to January 1, 1988, instead of July 1, 1988 as proposed by the House. The Senate bill contained no similar provision.

Amendment No. 22: Inserts section number proposed by the House.

DISAPPROVAL OF DEFERRALS

Amendment No. 23: Reported in technical disagreement. The managers on the part of the House will move to recede and concur in the amendment of the Senate which inserts language to overturn a deferral of $3,911,000 for Employment Service State allocations. This relates to program year 1986 which began on July 1, 1986. The House bill included no similar provision.

TITLE II—DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Amendment No. 24: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the Senate amendment which inserts legal citations.

Amendment No. 25: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate amended to read as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$1,470,763,000 of which $5,000,000 shall be made available until expended to make grants under section 1610(b) of the Public Health Service Act to private nonprofit entities which are receiving support under section 329 or 330 of that Act;*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides $1,470,763,000 for Health Resources and Services activities instead of $1,267,068,000 as proposed by the House and $1,499,753,000 as proposed by the Senate. This includes amounts for the family planning and National Health Service Corps programs which were not considered by the House due to lack of authorizing legislation. The conference agreement includes the following amounts:

Family planning	142,500,000
National Health Service Corps	60,000,000
(Direct loans)	(1,000,000)
National Health Service Corps scholarships	2,300,000
Home health demonstrations	

Native Hawaiian child health initiative	1,000,000
Pediatric emergency care	2,000,000
Pacific Basin initiative	1,500,000
Family medicine/general dentistry	35,960,000
General internal medicine and pediatrics	18,500,000
Area health education centers	18,000,000
Disadvantaged assistance	27,250,000
Health professions special education initiatives	2,500,000
Geriatric training initiative	10,000,000
Advance nurse training	16,750,000
Nursing Traineeships	11,750,000
Nursing Special projects	1,675,000
Nursing Faculty fellowships	825,000
Center for Nursing Research (see NIH)	
Organ transplant program	7,400,000
Facility construction grants (Sec. 1610)	5,000,000
Program management/program support	95,000,000

The conference agreement inserts language proposed by the Senate amended to provide $5,000,000 for facility improvement grants under section 1610(b) but deletes a series of additional legislative earmarks proposed by the Senate but not included by the House. This has been done to simplify the bill language for the Health Resources and Services account and is not intended to affect the conference agreements regarding the various activities. In addition to the amounts specified above, the conference agreement includes $3,300,000 for the Hansen's Disease program in the State of Hawaii, and $1,900,000 for the AIDS training initiative. These amounts were included in both the House and Senate bills.

The conferees have agreed to delete without prejudice Senate bill language earmarking $250,000 for the CARES project in North Dakota. The Department of Health and Human Services has informed the conference that it is their intention to fund this project in fiscal year 1987. Therefore no earmark is required. The conference agreement includes $250,000 for this project.

The conferees have included $1,000,000 for the establishment of a series of Native Hawaiian child development centers in the State of Hawaii in order to address the pressing health care needs of Native Hawaiian children and their families. The Federal funds are to be matched on a 50-50 basis and should be awarded to an organization which has demonstrated a commitment to serving the pressing needs of Native Hawaiians, especially in the early childhood area. The conferees feel that a family education component should be an integral aspect of this program.

Based on recent changes in statutory authority and regulations, the conferees recommend that the Division of Nursing of the Health Resources and Services Administration should again award grants to entities to support nurse practitioner traineeship programs.

The conference agreement includes $10,000,000 for geriatric training programs of which $5,000,000 is for demonstration grants under the authority of section 301 of the Public Health Service Act. The conferees expect that a reasonable share of the funds appropriated in FY 1987 shall be used to improve the training of nurses, dentists and dental and nurse faculty in geriatrics.

With respect to the maternal and child health set-aside for projects of regional and national significance, the conferees expect the Department to support the ongoing efforts and activities of the hemophilia centers program in FY 1987 at the level indicated in the budget request, and encourage the Department to increase support for the program to meet the increased demand for services due to AIDS.

Family planning allocation formula—The conference agreement provides $142,500,000 for family planning activities under sections 1001-1005 of the Public Health Service Act. The managers recognize that reauthorizing legislation for FY 1987 has been reported by the authorizing committee in the Senate. Pending action on that legislation, the conferees express their concern that the program not be changed through administrative action, and direct the Secretary of Health and Human Services to administer the program for FY 1987 in the same manner, and under the same allocation formula which governed program operations during FY 1986.

Amendment No. 26: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate amended to read as follows:

In lieu of the matter proposed by said amendment insert the following: *: Provided further, That during the fiscal year, and within the resources and authority available under section 338 of the Public Health Service Act, gross obligatons for the principal amount of direct loans under sections 335(c), 338C(e)(1), and 338E of that Act shall not exceed $1,000,000: Provided further, That the total principal amount of Federal loan insurance available under section 728 of the Public Health Service Act during fiscal year 1987 shall be granted by the Secretary of Health and Human Services without regard to any apportionment or other similar limitation.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement inserts language proposed by the Senate which provides that not to exceed $1,000,000 of the amount appropriated for the National Health Service Corps may be used for loans to Corps members to help them establish private practices at the end of their service obligations. This language was not considered by the House due to lack of authorizing legislation.

The conference agreement deletes language proposed by the Senate which would have directed that unobligated National Health Service Corps funds be reprogrammed to the community health center program without the prior approval of the Appropriations Committees. This language has been deleted without prejudice and the conferees are agreed that any funds not actually required by the Corps should be transferred to community health centers to offset the cost of private placements.

The conferees understand that the amount provided for the National Health Service Corps may require some reorganization of this program. However, they believe that such a reorganization is not only possible but also desirable. The cost of assignments outside of the traditional Corps structure of Federal employees has risen rapidly over the last few years as the percentage of subsidized private placements has risen and the percentage of unsubsidized private placements has fallen. The President's FY 1987 budget proposes only 50 unsubsidized placements out of almost 1,000 assignments. The conferees are in agreement that the Administration should significantly increase the number of true private placements and should make every effort to reduce the average cost of subsidized assignments.

The conference report inserts language proposed by the Senate which exempts the Health Education Assistance Loans (HEAL) program from the normal apportionment process. In doing so the conferees have further agreed that the full $290,000,000 currently authorized for new loan guarantees should be made available for this program in FY 1987.

CENTERS FOR DISEASE CONTROL

DISEASE CONTROL, RESEARCH AND TRAINING

Amendment No. 27: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment appropriating $539,067,000 instead of $518,254,000 as proposed by the House and $541,862,000 as proposed by the Senate. The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes the following amounts:

Preventive health block grant	$89,525,000
Sexually transmitted diseases: grants	50,000,000
Immunization: grants	75,000,000
Tuberculosis grants	7,000,000
Infectious disease	125,365,000
Chronic and environmental disease prevention	30,425,000
NIOSH: training	9,900,000
Buildings and facilities	11,800,000

The conferees are aware that CDC has substantially reduced its activities with regard to health inspections of cruise ships. The conferees believe that this was an unwise decision. CDC is therefore directed to immediately resume all of its prior activities with regard to cruise ships.

The conferees have included funds for the continuation of the Health Promotion-Disease Prevention Centers initiative. The conferees reaffirm their interest in having CDC establish a center with an international health focus and recommend that such a center be established this fiscal year pursuant to the usual peer review procedures.

Amendment No. 28: Provides that $11,800,000 for buildings and facilities shall remain available until expended as proposed by the Senate instead of $3,810,000 as proposed by the House. This includes $9,800,000 for the planning and construction of new office space and the planning of a new laboratory and $2,000,000 for routine repairs and alterations.

Amendment No. 29: Deletes language proposed by the Senate which would have mandated a minimum employment level for the Centers for Disease Control. The House bill contained no similar provision.

For the past three years the conferees have addressed the matter of employment levels in the Centers for Disease Control. This year, as in past years, the conferees have agreed not to impose a statutory minimum employment level. However, if Congressional intent continues to be ignored and if the employment level in CDC continues to drop as responsibilities continue to increase, the conferees are agreed that it will be necessary to write an employment level into the law. For fiscal year 1987, the conferees intend that CDC maintain a minimum full-time equivalent employment level of 4,290, including the expansion of AIDS, immunization, sexually transmitted disease, and Superfund activities.

National Institutes of Health

The conference agreement provides a total of $6,180,660,000 for programs of the National Institutes of Health instead of $6,169,475,000 as proposed by the House and $6,116,875,000 as proposed by the Senate. Included in the total is $247,943,000 for research on Acquired Immune Deficiency Syndrome as proposed by the Senate.

National Cancer Institute

Amendment No. 30: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which will appropriate $1,402,837,000 instead of $1,346,751,000 as proposed by the House and $1,397,250,000 as proposed by the Senate. The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

National Heart, Lung and Blood Institute

Amendment No. 31: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which will appropriate $930,001,000 instead of $921,410,000 as proposed by the House and $921,502,000 as proposed by the Senate. The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

National Institute of Dental Research

Amendment No. 32: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which will appropriate $117,945,000 instead of $116,275,000 as proposed by the House and $116,553,000 as proposed by the Senate. The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides the full amount of $6,269,000 contained in the House bill for research career programs.

National Institute of Diabetes, Digestive, and Kidney Diseases

Amendment No. 33: Appropriates $511,124,000 instead of $515,455,000 as proposed by the House and $502,628,000 as proposed by the Senate. The amount agreed to by the conferees contains the full amount provided in the House bill for funding of 6 kidney-urology centers to be named for the late Honorable George O'Brien of Illinois.

National Institute of Neurological and Communicative Disorders and Stroke

Amendment No. 34: Appropriates $490,233,000 instead of $491,085,000 as proposed by the House and $487,218,000 as proposed by the Senate.

National Institute of Allergy and Infectious Diseases

Amendment No. 35: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which will appropriate $545,523,000 instead of $403,853,000 as proposed by the House and $541,343,000 as proposed by the Senate. The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees are concerned with the fact that 95 percent of patients with severe hemophilia are seropositive for HIV infection and one out of every 60 of these patients have contracted AIDS. The conferees recognize the importance of responding to this serious situation, and understand that NIAID will be making every effort to include these patients in its treatment and evaluation activities. The conferees recommend that NIAID, through its Treatment and Evaluation Units, utilize to the fullest extent possible the Federally-supported hemophilia treatment centers network.

Because the etiology and natural history of HIV and AIDS are different among hemophilia patients (in comparison with other risk groups), the conferees recommend that NIAID work in collaboration with the national hemophilia organization and its network in establishing a data base on this patient population.

National Institute of General Medical Sciences

Amendment No. 36: Appropriates $570,916,000 instead of $576,562,000 as proposed by the House and $565,271,000 as proposed by the Senate.

National Institute of Child Health and Human Development

Amendment No. 37: Appropriates $366,780,000 instead of $368,509,000 as proposed by the House and $362,866,000 as proposed by the Senate. This amount includes $500,000 for research on Rett syndrome as proposed by the House.

National Eye Institute

Amendment No. 38: Appropriates $216,637,000 instead of $219,091,000 as proposed by the House and $214,080,000 as proposed by the Senate.

National Institute of Environmental Health Sciences

Amendment No. 39: Appropriates $209,294,000 instead of $209,872,000 as proposed by the House and $208,067,000 as proposed by the Senate. The conference agreement provides the full amount contained in the House bill for "other research grants".

National Institute on Aging

Amendment No. 40: Appropriates $176,931,000 instead of $174,279,000 as proposed by the House and $179,582,000 as proposed by the Senate.

The conferees have provided sufficient funding for the National Institute on Aging to initiate a National Alzheimer's Education Program which coordinates and assists public and private research, education, and training activities.

National Institute of Arthritis and Musculoskeletal and Skin Diseases

Amendment No. 41: Appropriates $138,713,000 instead of $140,225,000 as proposed by the House and $129,475,000 as proposed by the Senate. The conference agreement provides the full amount contained in the House bill for research centers.

RESEARCH RESOURCES

Amendment No. 42: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which will appropriate $322,860,000 instead of $317,826,000 as proposed by the House and $319,924,000 as proposed by the Senate. The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides the full amount of $38,301,000 contained in the Senate bill for laboratory animal science and primate research.

National Center for Nursing Research

Amendment No. 43: Appropriates $19,000,000 instead of $20,000,000 as proposed by the Senate. In the House bill this program was funded at the level of $16,700,000 under the appropriation for "Health Resources and Services". The conferees expect that at least $2,000,000 of the funds appropriated will be used for nursing fellowships.

John E. Fogarty International Center

Amendment No. 44: Appropriates $11,420,000 as proposed by the Senate instead of $11,443,000 as proposed by the House.

National Library of Medicine

Amendment No. 45: Appropriates $61,838,000 instead of $61,588,000 as proposed by the House and $62,088,000 as proposed by the Senate.

OFFICE OF THE DIRECTOR

Amendment No. 46: Appropriates $56,708,000 as proposed by the Senate instead of $246,651,000 as proposed by the House.

Alcohol, Drug Abuse, and Mental Health Administration

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH

Amendment No. 47: Appropriates $1,062,365,000 instead of $893,434,000 as proposed by the House and $1,099,113,000 as proposed by the Senate. This amount includes funding for alcohol and drug abuse research programs which were not considered by the House due to lack of authorizing legislation. The conference agreement includes the following amounts:

Alcohol, Drug Abuse and Mental Health Block Grant	$495,000,000
Mental Health:	
Mental Health Research	235,406,000
Research training	19,000,000
Clinical training	15,000,000
Direct operations	33,266,000
Protection and advocacy.	10,500,000
Drug Abuse:	
Research	80,000,000
Research training	2,250,000
Prevention demonstrations	6,500,000
Direct operations	14,437,000
Alcoholism:	
Research	66,075,000
Research training	2,500,000
Direct operations	11,658,000
ADAMHA program management	7,620,000

The conferees are agreed that up to $1,000,000 of the funds for mental health clinical training should be allocated for the continuation of ongoing activities related to alcoholism and drug abuse and that within the clinical training activity priority should be given to prevention oriented proposals.

Of the $10,500,000 provided for the Mental Health Protection and Advocacy program, the conferees expect that an amount not to exceed $200,000 may be expended for technical assistance activities to carry out the Protection and Advocacy program.

The conferees expect that $1,200,000 provided to the National Institute of Mental Health will be used to fund four demonstrations projects in rural mental health as proposed by the Senate.

Office of Assistant Secretary for Health

PUBLIC HEALTH SERVICE MANAGEMENT

Amendment No. 48: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate amended to read as follows:

In lieu of the matter stricken and inserted by said amendment, insert the following: *III, XVII, and XX of the Public Health Service Act, $117,126,000*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes the following amounts:

Health services research:	
Research	$17,266,000
Program support	1,568,000
Health statistics:	
Program operations	49,025,000
Program support	3,056,000
Adolescent family life	14,000,000
Smoking and health	3,471,000
Health promotion	3,641,000
Lister Hill Center for Health Policy	5,000,000
Physical fitness and sports	1,363,000
Health services management	18,736,000

The conference agreement includes $5,000,000 proposed by the Senate for a Federal contribution to endow the Lister Hill Center for Health Policy to be located at the University of Alabama at Birmingham. This Center, named for former Senator Lister Hill of Alabama, will function as a national center for the advancement of disease prevention and health promotion.

Amendment No. 49: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate providing that up to $16,000,000 from amounts available under section 2113 of the Public Health Service Act shall be available to carry out the National Medical Expenditure Survey. The House bill contained no similar provision.

Amendment No. 50: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which earmarks $100,000 for the President's Council on Health Promotion and Disease Prevention. The House bill contained no similar provision.

Health Care Financing Administration

GRANTS TO STATES FOR MEDICAID

Amendment No. 51: Appropriates $19,770,000,000 as proposed by the Senate instead of $19,380,359,000 as proposed by the House.

PROGRAM MANAGEMENT

Amendment No. 52: Appropriates $85,396,000 as proposed by the Senate instead of $84,533,000 as proposed by the House.

Amendment No. 53: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which provides for a limitation on Medicare trust funds of $1,168,520,000 instead of $1,201,494,000 as proposed by the House and instead of $1,171,170,000 as proposed by the Senate.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes the following amounts:

	General funds	Trust funds	Total
Research and demonstrations	$10,000,000	$18,000,000	$28,000,000
Medicare facility certification		54,200,000	54,200,000
End stage renal disease networks		3,400,000	3,400,000
Federal administration	71,871,000	145,920,000	217,791,000

The conferees are agreed that of the $28,000,000 available for research and demonstration activities, $9,500,000 should be used for new studies. This includes $1,200,000 as proposed by the Senate to initiate three respite care demonstration projects to evaluate various alternatives for addressing the care problems of Alzheimers Disease patients and their families. Should additional research activity be authorized by the Congress during its consideration of the 1986 Reconciliation bill, it should be financed within this amount or a supplemental request should be submitted for the review of the Congress. This includes studies done directly by the Health Care Financing Administration as well as studies to be carried out by other agencies within the Department if the research is to be financed from the Medicare trust funds.

The conferees are aware that HCFA is in the process of revising its regulations governing reimbursement for ambulance services under Medicare. Concern has been expressed that three reports used as the data base for implementing this change may be outdated and do not adequately reflect actual costs. The conferees expect HCFA to reconsider this matter in order to make sure that any changes do not reduce payments below levels which are necessary to guarantee access to these essential services. Should a review indicate that the accounting base does not adequately reflect current experience, the rate adjustments should be delayed until this information can be obtained.

Amendment No. 54: Provides a contingency reserve for Medicare claims processing costs of $50,000,000 as proposed by the Senate instead of $15,000,000 as proposed by the House. Both the House and Senate bills have provided a total of $1,102,000,000 for this purpose.

Social Security Administration

ASSISTANCE PAYMENTS PROGRAM

Amendment No. 55: Appropriates $7,024,398,000 instead of $7,023,420,000 as proposed by the House and $7,025,376,000 as proposed by the Senate. This amount will support 640 full-time equivalent positions.

LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

Amendment No. 56: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $1,825,000,000 for low income home energy assistance program (LIHEAP) as proposed by the Senate. The House deferred consideration of this appropriaton in their deliberations on H.R. 5233 due to a lack of authorizing legislation.

The conferees wish to make clear that the amount agreed to for LIHEAP should not be construed as a decline either in support for the program or in the need for such assistance. Rather, it is reflective of the unusual circumstances which exist this year: lower energy prices in general and the availability of substantial oil overcharge funds to the states. The conferees intend to closely monitor the appropriation for this program and will consider supplemental funding should the amount agreed to be inadequate.

LIMITATION ON ADMINISTRATIVE EXPENSES

Amendment No. 57: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which reads as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *$3,840,000,000 of which $64,700,000 for the purchase of ergonomic furniture shall remain available until September 30, 1988 and shall not be obligated prior to September 30, 1987,*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement provides for a limitation on the amount of Social Security trust funds which may be expended for administrative expenses of $3,840,000,000 instead of $4,000,373,000 as proposed by the House and $4,011,373,000 as proposed by the Senate.

Last month, the conferees were informed by the Social Security Administration that they expect to lapse at least $171,000,000 in FY 1986. This results from a number of factors including lower outlays in their computer modernization project, lower use of overtime by Social Security field personnel and the carryover effect of overestimating requirements for FY 1985. This means that the 1986 base used by the executive branch and reviewed by the Congress in making its initial recommendation for FY 1987 was overstated. This is the basis for the reduction recommended by the conferees. This does not change any of the substantive recommendations of the House or Senate related to staffing or office closings, but merely reflects a reestimate of the amount of funding necessary to implement these recommendations. The conferees note that the contingency reserve of $160,000,000 has not been reduced and is available if necessary.

The conference agreement also includes language extending the availability of $64,700,000 proposed in the President's budget for the purchase of "ergonomic furniture" and prohibiting the expenditure of these funds prior to September 30, 1987. The General Accounting Office has recently issued a report which raises serious questions about this procurement. For this reason the conferees have "fenced" this money pending a thorough review of the matter by the executive and legislative branches. The Department should be prepared to discuss this matter in detail when it appears before the Committees to justify the FY 1988 budget.

HUMAN DEVELOPMENT SERVICES

Amendment No. 58: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *Law 98-457), the Native Americans Programs Act, chapter 8-D of title IV-A of the Omnibus Budget Reconciliation Act of 1981 (pertaining to grants to States for planning and development of dependent care programs), the Head Start Act, and the Child Development Associate Scholarship Assistance Act of 1985, $2,097,635,000*

The managers on part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes the following amounts:

Head start	$1,130,542,000
Child development scholarships	1,000,000
Dependent care	5,000,000
Family violence	8,500,000
Programs for the aging:	
Supportive services centers	270,000,000
Congregate meals	348,000,000
Home-delivered meals	74,000,000
Developmental disabilities program:	
State grants	56,500,000
Protection and advocacy	15,500,000
Special projects	2,500,000
University affiliated facilities	9,187,000
Native Americans programs	28,989,000
Program direction	61,069,000

The conferees are concerned with the lack of response from the Administration on Aging on the funding of the long term care gerontology centers and reconfirms its directive to the agency to fund the long term care gerontology centers in existence in 1985 at a level not less than that provided in that year.

The conferees reconfirm their support for funding the national legal services support and demonstration projects at $1,000,000 for fiscal year 1987.

FAMILY SOCIAL SERVICES

Amendment No. 59: Appropriates $939,567,000 instead of $1,005,223,000 as proposed by the House and $889,717,000 as proposed by the Senate. The conference agreement includes the following amounts:

Child welfare assistance	$222,500,000
Child welfare research	11,340,000
Foster care	637,000,000

WORK INCENTIVES

Amendment No. 60: Appropriations $110,000,000 instead of $200,000,000 as proposed by the House. The Senate bill contained no funding for this program.

The conference agreement includes $110,000,000 for the Work Incentives (WIN) Program. This amount is approximately half the level of the current federal contribution to WIN. States are required, pursuant to the Social Security Act, to register AFDC recipients for employment and training services under the WIN Program. The conferees recognize that the Congress is currently considering legislation to replace WIN. Such legislation would provide new authorization for comprehensive AFDC employment training programs. The conferees anticipate that such AFDC employment training legislation will be enacted in the First Session of the next Congress. The conferees agreed to consider the limited WIN level provided by the conference agreement as a transition appropriation to a new comprehensive AFDC employment training program. The conferees therefore direct that the entire amount available for Grants to States be allocated during the first three quarters of FY 1987. This will enable States to continue operating AFDC employment training programs through June 1987 utilizing existing WIN or WIN Demonstration authority. During this transition period the Congress will continue to consider the scope and design of the new AFDC employment training authorization to be enacted.

Office of Community Services

COMMUNITY SERVICES BLOCK GRANT

Amendment No. 61: Inserts heading as proposed by the Senate.

Amendment No. 62: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate, amended to read as follows:

In lieu of the matter proposed by said amendment, insert the following:

COMMUNITY SERVICES BLOCK GRANT

For carrying out the Community Services Block Grant Act, $369,851,000, of which $17,614,000 shall be for carrying out section 681(a)(2)(A), $3,570,000 shall be for carrying out section 681(a)(2)(D), $2,686,000 shall be for carrying out section 681(a)(2)(E), $5,866,000 shall be for carrying out section 681(a)(2)(F), and $1,000,000 shall be for Demonstration Partnership Grants.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes the following amounts:

Grants to States	$335,000,000
Rural housing	3,570,000
Migrant farmworkers	2,686,000
Community economic development	17,614,000
National youth sports program	5,866,000
Demonstration partnership	1,000,000
Program support	4,115,000

COMMUNITY FOOD AND NUTRITION

Amendment No. 63: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $2,500,000. These funds are for carrying out the community food and nutrition programs under section 681A of the Community Services Block Grant Act.

DEPARTMENTAL MANAGEMENT

GENERAL DEPARTMENTAL MANAGEMENT

Amendment No. 64: Appropriates $121,819,000 instead of $108,319,000 as proposed by the House and $127,819,000 as proposed by the Senate.

Amendment No. 65: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment insert the following: *, of which $10,000,000 shall be for grants, under the authority of section 301 of the Public Health Service Act, to continue the four projects authorized in the Department of Health and Human Services Appropriations Act, 1986, to demonstrate the delivery of health care services to victims of acquired immune deficiency syndrome, as well as for so many projects for the same purpose as the Secretary of Health and Human Services finds appropriate, and of which $4,500,000 shall be for an additional construction grant for the Mary Babb Randolph Cancer Center in West Virginia*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

OFFICE OF THE INSPECTOR GENERAL

Amendment No. 66: Appropriates $30,016,000 as proposed by the House instead of $29,716,000 as proposed by the Senate.

POLICY RESEARCH

Amendment No. 67: Appropriates $8,200,000 as proposed by the House instead of $7,200,000 as proposed by the Senate.

GENERAL PROVISIONS

Amendment No. 68: Restores House provision deleted by the Senate, which provides that funds appropriated in this Act for the National Institutes of Health shall be used to support no fewer than 6200 new and competing research project grants.

Amendment Nos. 69-77: Restore section numbers proposed by the House, but changed by the Senate.

Amendment No. 78: Deletes language proposed by the Senate which would have mandated a minimum staffing level for the National Institutes of Health. The House bill contained no similar provision.

For the past three years the conferees have addressed the matter of employment levels in the National Institutes of Health. This year, as in past years, the conferees have agreed not to impose a statutory minimum employment level. However, if Congressional intent continues to be ignored and if the employment level continues to drop as responsibilities continue to increase, the conferees are agreed that it will be necessary to write an employment level into the law. For fiscal year 1987, the conferees intend that NIH maintain a minimum full-time equivalent employment level of 13,507.

TITLE III—DEPARTMENT OF EDUCATION

COMPENSATORY EDUCATION FOR THE DISADVANTAGED

Amendment No. 79: Appropriates $3,944,163,000 for Chapter I of the Education Consolidation and Improvement Act, instead of $3,999,163,000 as proposed by the House and $3,889,163,000 as proposed by the Senate.

Amendment No. 80: Earmarks $3,937,917,000 to become available on July 1, 1987 and remain available until September 30, 1988 instead of $3,992,917,000 as proposed by the House and $3,882,917,000 as proposed by the Senate.

Amendment No. 81: Appropriates $37,107,000 for State administration instead of $38,607,000 as proposed by the House and $35,607,000 as proposed by the Senate.

Amendment No. 82: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment, insert the following: *For carrying out section 418A of the Higher Education Act, $7,500,000.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conferees note, with great concern, that statutory changes in the Chapter 1 program have not been made to reflect the most recent census data for the purposes of making Chapter 1 allocations. As a result, funds for the 1987-1988 school year will be distributed on the basis of the 1970 census poverty criteria and the 1975 Survey of Income and Education data. This outdated information does not accurately reflect Chapter 1 eligible student populations. The conferees, therefore, urge the appropriate authorizing committees to make statutory adjustments to the Chapter 1 program to reflect the most recent census information. Should such adjustment not occur, the conferees agree that they will be obliged to make such changes in the FY 1988 appropriations bill.

IMPACT AID

Amendment No. 83: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which appropriates $695,000,000 instead of $675,000,000 as proposed by the House and $630,000,000 as proposed by the Senate.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 84: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which earmarks $663,000,000 for entitlements under section 3 instead of $643,000,000 as proposed by the House and $598,000,000 as proposed by the Senate.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 85: Earmarks $533,000,000 for entitlements under section 3(a) of the Act of September 30, 1950 as proposed by the Senate instead of $513,000,000 as proposed by the House.

Amendment No. 86: Deletes language proposed by the House providing that payment under section 3(a) to any local educational agency where children determined eligible under section 3(a) amount to at least 48 percent of such agency's total average daily attendance shall be at 100 per centum of entitlement.

Amendment No. 87: Inserts language proposed by the Senate providing that payment under section 3(a) to any local educational agency described in section 3(d)(1)(A) shall be at 100 per centum of entitlement, except that payments on behalf of children who reside on property which is described in section 403(1)(C) shall be at 15 per centum of entitlement, so long as the fiscal year 1987 per pupil payment does not exceed 105 per centum of fiscal year 1986 per pupil payment.

Amendment No. 88: Deletes language proposed by the House providing that children determined eligible under section 3(a) which amount to at least 35 per centum but less than 48 per centum of such agency's total average daily attendance shall be at 95 per centum of entitlement.

Amendment No. 89: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which reads as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *at least 15 per centum but less than 20 per centum*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 90: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which reads as follows:

In lieu of the matter stricken by said amendment insert the following: *at 75 per centum of entitlement, except that payments on behalf of children who reside on property which is described in section 403(1)(C) shall be at 11.25 per centum of entitlement and the fiscal year 1987 local contribution rate for such agency shall not exceed 105 per centum of such agency's fiscal year 1986 local contribution rate: Provided further, That payment with respect to entitlements under section 3(a) to any local educational agency whose children determined eligible under section 3(a) amount to less than 15 per centum of such agency's total average daily attendance shall be*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 91: Deletes language proposed by the House and inserts language proposed by the Senate relating to respective payment levels.

The conferees wish to make clear that, as in the case of section 3(d)(2)(B), the five-percent-increase limitation shall not apply to districts that are eligible for additional funds under section 3(d)(3)(b).

Amendment No. 92: Appropriates $22,500,000 for the Act of September 23, 1950 instead of $25,000,000 as proposed by the House and $20,000,000 as proposed by the Senate.

Amendment No. 93: Earmarks $9,250,000 for awards under section 10 instead of $10,000,000 as proposed by the House and $8,500,000 as proposed by the Senate.

Amendment No. 94: Earmarks $9,250,000 for awards under sections 14(a) and 14(b) instead of $10,000,000 as proposed by the House and $8,500,000 as proposed by the Senate.

Amendment No. 95: Earmarks $4,000,000 for awards under sections 5 and 14(c) instead of $5,000,000 as proposed by the House and $3,000,000 as proposed by the Senate.

SPECIAL PROGRAMS

Amendment No. 96: Appropriates $529,337,000 for Chapter 2 of the Education Consolidation and Improvement Act instead of $544,909,000 as proposed by the House and $526,837,000 as proposed by the Senate.

Amendment No. 97: Earmarks $29,337,000 for the Secretary's discretionary fund instead of $44,909,000 as proposed by the House and $27,837,000 as proposed by the Senate.

Amendment No. 98: Deletes language proposed by the House earmarking $4,000,000 for a rural education program. The conferees understand that funds for this purpose are included under the appropriation headed "Educational Research and Statistics".

Earmarks $1,500,000 for discretionary projects instead of $3,052,000 as proposed by the House. The Senate bill contained no similar provision.

Earmarks $7,800,000 for inexpensive book distribution as proposed by the Senate instead of $7,000,000 as proposed by the House.

Amendment No. 99: Earmarks $3,337,000 for arts in education as proposed by the Senate instead of $3,157,000 as proposed by the House.

Amendment No. 100: Earmarks $3,000,000 for alcohol and drug abuse education as proposed by the Senate instead of $14,000,000 as proposed by the House.

Amendment No. 101: Deletes language proposed by the Senate earmarking $1,000,000 of the $3,000,000 in the bill for law-related education. The conferees are agreed that $1,000,000 is to be used for activities related to the bicentennial celebration of the Constitution, as described in the House report accompanying the bill.

Amendment No. 102: Appropriates $24,000,000 as proposed by the House instead of $25,000,000 as proposed by the Senate for section 403 of the Civil Rights Act of 1964.

Amendment No. 103: Appropriates $3,500,000 instead of $6,000,000 as proposed by the House and $1,000,000 as proposed by the Senate for title IX, part C of the Elementary and Secondary Education Act.

Amendment No. 104: Appropriates $5,000,000 as proposed by the Senate instead of $4,785,000 as proposed by the House for section 1524 of the Education Amendments of 1978.

Amendment No. 105: Appropriates $2,000,000 as proposed by the Senate instead of $1,914,000 as proposed by the House for section 1525 of the Education Amendments of 1978.

Amendment No. 106: Deletes appropriation of $2,392,000 proposed by the House for the Excellence in Education program. The Senate bill contained no similar provision.

Amendment No. 107: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment which earmarks $39,190,060 for State grants under section 204 of title II of the Education for Economic Security Act.

Amendment No. 108: Changes "to" to "shall" as proposed by the Senate.

Amendment No. 109: Restores appropriation of $7,177,000 as proposed by the House for Leadership in Education Administration Development. The Senate bill deleted this appropriation.

BILINGUAL EDUCATION

Amendment No. 110: Restores legal citation proposed by the House and stricken by the Senate regarding title VI of the Education Amendments of 1984.

Amendment No. 111: Deletes legal citation for title IV, part E of the Carl D. Perkins Vocational Education Act, proposed by the House. The conference agreement includes this item under the "Vocational and Adult Education" appropriation as proposed by the Senate.

Amendment No. 112: Appropriates $173,095,000 instead of $179,637,000 as proposed by the House and $138,955,000 as proposed by the Senate.

Amendment No. 113: Earmarks $99,161,000 for part A of title VII of the Elementary and Secondary Education Act as proposed by the House instead of $94,951,000 as proposed by the Senate.

Amendment No. 114: Earmarks $10,370,000 for part B instead of $10,300,000 as proposed by the House and $10,440,000 as proposed by the Senate.

Amendment No. 115: Earmarks $33,564,000 for part C as proposed by the Senate instead of $36,490,000 as proposed by the House.

Amendment No. 116: Restores language proposed by the House but eliminated by the Senate earmarking $30,000,000 for the Emergency Immigrant Education Program.

EDUCATION FOR THE HANDICAPPED

Amendment No. 117: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *as amended by S. 2294, which was presented to the President of the United States on September 26, 1986, $1,741,900,000 of which $1,338,000,000 for section 611 and $180,000,000 for section 619 shall become available for obligation on July 1, 1987, and shall remain available until September 30,* *1988: Provided, That $50,000,000 shall be available for section 685 of said Act.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes the following:

State grants	$1,338,000,000
Early intervention	50,000,000
Preschool grants	180,000,000
Early childhood	24,470,000
Deaf-blind centers	15,000,000
Severely handicapped projects	5,300,000
Innovation and development	18,000,000
Postsecondary	5,900,000
Media services and captioned films	15,000,000
Educational technology and materials	3,500,000
Special educational personnel development	67,730,000
Special studies	3,800,000
Secondary and transitional services	7,300,000
Regional resource centers	6,700,000
Recruitment and information	1,200,000
Total	1,741,900,000

The Committee intends that Staff personnel of Parent Training Centers may assist parents in activities under Part B of the Act.

The conferees intend that, of the funds provided for Education for the Handicapped, no more than $3,500,000 shall be expended for the purpose of carrying out Section 317 of H.R. 5520, as passed by the House and the Senate.

REHABILITATION SERVICES AND HANDICAPPED RESEARCH

Amendment No. 118: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment insert the following: *For carrying out the Rehabilitation Act of 1973 and the Helen Keller National Center Act, as amended by H.R. 4021, as presented to the President, $1,484,758,000, of which $1,281,000,000 shall be for allotments under sections 100(b)(1) and 110(b)(3) of the Rehabilitation Act, and $4,600,000 shall be for the Helen Keller National Center.*

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes the following:

Basic State grants	$1,281,000,000
Supported employment	22,100,000
Service projects:	
Special demonstration programs	18,400,000
Recreational programs	2,330,000
Migratory workers	1,058,000
American Indians	1,500,000
Projects with industry	16,070,000
Helen Keller Center	4,600,000
Client assistance	7,100,000
Independent living:	
Comprehensive services	11,830,000
Centers	24,320,000
Services for older blind	5,290,000
Training	29,550,000
Innovation and expansion	9,000,000
National Institute of Handicapped Research	48,500,000
Evaluation	2,110,000
Total	1,484,758,000

Of the amount appropriated for rehabilitation services and handicapped research the conferees earmark $2,330,000 for special recreational programs under section 316 of the Rehabilitation Act.

The conference agreement provides $2,900,000 for a grant to the University of Alabama at Birmingham for a Comprehensive Head Injury Center which would develop and demonstrate improved methods of post-acute care and rehabilitation for head injury victims, including those with mild and moderate brain trauma. The funds provided would be used to construct and equip the Center, to develop its comprehensive treatment program, and to carry out applied research and evaluation activities.

VOCATIONAL AND ADULT EDUCATION

Amendment No. 119: Appropriates $980,800,000 instead of $1,016,433,000 as proposed by the House and $943,163,000 as proposed by the Senate.

Amendment No. 120: Earmarks $11,000,000 for title IV of the Carl D. Perkins Vocational Education Act instead of $12,000,000 as proposed by the House and $10,000,000 as proposed by the Senate.

Amendment No. 121: Earmarks $7,500,000 for State councils as proposed by the Senate instead of $7,300,000 as proposed by the House.

Amendment No. 122: Earmarks $6,000,000 for Community based organizations as proposed by the Senate instead of $7,500,000 as proposed by the House.

Amendment No. 123: Earmarks $3,686,000 for Bilingual Vocational Training as proposed by the Senate. The House bill includes this provision under the "Bilingual Education" appropriation.

STUDENT FINANCIAL ASSISTANCE

Amendment No. 124: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $5,196,000,000 and inserts language as proposed by the Senate. The House bill includes no funds for this purpose because of a lack of authorization. The conference agreement provides that maximum Pell grants cannot exceed $2,100 per student or 60 percent of the cost of attendance. This is the same maximum level adopted for the previous academic year.

GUARANTEED STUDENT LOANS

Amendment No. 125: Appropriates $3,004,000,000 as proposed by the Senate instead of $3,394,000,000 as proposed by the House.

HIGHER EDUCATION

Amendment No. 126: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter stricken and inserted by said amendment insert the following:

For carrying out title III of the Higher Education Act of 1965, as amended, $146,208,000, of which up to $20,000,000 for part C of title III of said Act shall remain available until expended: Provided, That $50,741,000 of funds appropriated for title III of said Act shall be available only to historically black colleges and universities.

For carrying out subpart 4 of part A of title IV; subpart 2 of part D of title V; titles VI and VIII, parts B, C, E, and F of title IX; subpart 1 of part B and parts A and C of title X; and sections 420A and 1204(c) of the Higher Education Act of 1965, as amended by S. 1965 as passed the Senate on September 25, 1986; title XIII, part H, subpart 1 of the Education Amendments of 1980, as amended by section 502 of S. 1965 as passed the Senate on September 25, 1986; and section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961; $268,420,000: Provided, That $1,000,000 of the amount appropriated under this paragraph and available for part A of title VI of the Higher Education Act of 1965 shall be available for a grant to the Bologna Center of the School of Advanced International Studies of the Johns Hopkins University.

For carrying out subpart 6 of part A of title IV, subpart 1 of part D of title V, part D of title VII, part D of title XI ($2,000,000), and section 771 ($2,000,000) of the Higher Education Act of 1965, as amended by S. 1965 as passed the Senate on September 25, 1986; title II of H.R. 2787 as passed the Senate on June 25, 1986, relating to the Technology Transfer Institute ($5,000,000); H.R. 4244 as passed the Senate on September 30, 1986 ($8,000,000); and H.R. 3598 as passed the House on November 4, 1981 and amended by part I of title XIII of said S. 1965 ($1,000,000); $64,500,000 to remain available until expended: Provided, That $8,000,000 provided herein for carrying out subpart 6 of part A of title IV shall be available notwithstanding sections 419G(b) and 419I(a) of the Higher Education Act of 1965 (20 U.S.C. 1070d-37(b) and 1070d-39(a)).

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

The conference agreement includes the following amounts:

Aid for developing institutions	$146,208,000
International education:	
Domestic programs	25,550,000
Johns Hopkins University	1,000,000
Overseas programs	5,500,000
Fund for the improvement of postsecondary education	13,700,000
Cooperative education	14,400,000
Special programs for the disadvantaged	176,370,000
Veterans' cost of instruction	3,000,000
Academic facilities:	
Interest subsidy grants	23,000,000
Special higher education projects	18,000,000
Graduate programs:	
Graduate professional opportunity fellowships	11,750,000
Public service fellowships	2,500,000
National graduate fellowships	3,400,000
Legal training for disadvantaged	1,500,000
Robert C. Byrd scholarships	8,000,000
Assistance to Guam	500,000
Robert A. Taft Institute	750,000
Carl Perkins scholarships	15,500,000
Talented teachers	2,000,000

The conferees are agreed that $4,000,000 is included for each of the two projects authorized under H.R. 4244 as passed the Senate on September 30, 1986.

The conferees agree that $50,741,000 of the funds provided for the title III program shall be for part B and that section 326 of part B shall be funded at not more than $4,000,000.

The conferees have included $1,000,000 for the Bologna Center of the School of Advanced International Studies. This special award has been agreed to in recognition of the distinguished career of Senator Charles McC. Mathias, Jr. and his life-long commitment to enhancing international cooperation through scholarship and economic linkages.

For the Fund for the Improvement of Postsecondary education, the conferees have included $1,537,000 for part B of title X of the Higher Education Act. This program, "innovative projects for community services and student financial independence", authorizes the Secretary to make grants available to institutions of higher education and other public agencies and non-profit organizations to encourage student participation in community service activities in exchange for financial aid assistance. Funds awarded under this part will help higher education institutions address the problem of growing student indebtedness, develop alternatives to student borrowing on a more comprehensive scale, and encourage student participation in community service activities on their own campuses.

The conferees have provided $8,000,000 for the Robert C. Byrd Honors Scholarship Program. The Secretary of Education shall assign the number of scholarships to a State based on school-age population in the State. No State (including the District of Columbia and Puerto Rico) shall receive fewer than 10 scholarships. The Secretary of Education shall ensure that the State Education Agencies select recipients and award the scholarships such that all parts of the State are fairly represented, and no part of the State has a disproportionate share of the awards of that State. This program is to provide recognition to those students who have demonstrated outstanding academic achievement and who have been accepted for enrollment at an institution of higher learning. These scholarships are based solely on merit and are for the first year of academic study for a 1-year period and are not renewable.

The conferees understand that the Secretary of Education has authority under the Education Department General Administrative Regulations to use the fiscal year 1987 appropriation for Upward Bound to fund fiscal year 1986 applications which were initially rejected, provided that the original decisions are found to be the result of administrative error on the part of Department staff or application reviewers. Should the Secretary determine, upon appeal by any unsuccessful fiscal year 1986 Upward Bound applicant, that a funding decision was made in error, the conferees urge the Secretary to use his authority to fund such an application in fiscal year 1987, thus ensuring equitable treatment of all Upward Bound applicants.

HIGHER EDUCATION FACILITIES LOANS AND INSURANCE

Amendment No. 127: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which inserts language proposed by the Senate appropriating $19,205,000. The House included no funds for this purpose due to lack of authorization.

COLLEGE HOUSING LOANS

Amendment No. 128: Specifies $60,000,000 as proposed by the House instead of $40,000,000 as proposed by the Senate as the gross commitments for the principal amount of direct loans during fiscal year 1987.

The conferees are aware that recent actions by the Congress may cause the sale of the College Housing Loan portfolio over the next several years. Proceeds from such sales will be used to reduce the debt outstanding to the Treasury. But, the conferees are also aware that the newly-reauthorized Higher Education Act adds renovation of academic facilities as a new purpose of the College Housing Loan program. The conferees urge the Secretary to continue the current practice of reserving to the revolving fund those unused funds that result from loan repayments, after deducting the operating costs and payments for interest insufficiencies, and to use those excess funds for new college housing and academic facilities loan commitments as authorized by the Congress.

EDUCATIONAL RESEARCH AND STATISTICS

Amendment No. 129: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $63,578,000 instead of $8,747,000 as proposed by the House; and earmarks $4,000,000 for carrying out a rural education program by the nine regional laboratories as proposed by the Senate. The House deferred consideration of a large portion of this appropriation, because of lack of authorization.

Of the funds made available for educational research and statistics, the conferees agree that $4,000,000 shall be provided to the governing boards of the nine regional educational laboratories for the purpose of initiating a new program that will identify and support further development of promising, rural small-school activities and practices within their regions. The conferees expect that remaining funds for educational research and statistics shall be allocated to each of the authorized activities. To the greatest extent possible, any remaining funds should be used to strenghten and improve the gathering and analysis of education statistics.

Over the past several years, there have been numerous reports on the seriousness of the decline in the American education system. Some efforts have been made to improve basic education but it is evident that there is still a great need for more effective teaching methods for those who have a role in the education of elementary and secondary school students. In this regard, the managers urge the Secretary of Education to implement programs, such as the one developed by the School Effectiveness Training Network, to provide rapid and cost effective transmission of proven effective teaching methods on a large scale basis.

LIBRARIES

Amendment No. 130: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $132,500,000 as proposed by the Senate instead of $130,000,000 as proposed by the House.

Special Institutions

AMERICAN PRINTING HOUSE FOR THE BLIND

Amendment No. 131: Appropriates $5,500,000 as proposed by the Senate instead of $5,510,000 as proposed by the House.

GALLAUDET COLLEGE

Amendment No. 132: Appropriates $62,000,000 as proposed by the Senate instead of $60,737,000 as proposed by the House.

HOWARD UNIVERSITY

Amendment No. 133: Appropriates $170,230,000 as proposed by the House instead of $162,170,000 as proposed by the Senate.

Amendment No. 134: Deletes language proposed by the Senate earmarking $27,106,000 for partial support of the hospital.

Departmental Management

SALARIES AND EXPENSES

Amendment No. 135: Appropriates $234,692,000 as proposed by the Senate instead of $241,692,000 as proposed by the House.

Amendment No. 136: Deletes language inserted by the Senate providing that not more than $90,000 shall be available for travel by the Secretary of Education.

Office for Civil Rights

Amendment No. 137: Appropriates $43,000,000 instead of $38,185,000 as proposed by the House and $44,000,000 as proposed by the Senate.

General Provisions

Amendment Nos. 138, 139, and 140: Restore Sections 303, 304, and 305 inserted by the House but deleted by the Senate prohibiting the use of funds to force the busing of students.

Amendment No. 141: Restores Section 306 inserted by the House but deleted by the Senate prohibiting the use of funds to prevent the implementation of voluntary prayer and meditation in the public schools.

Amendment No. 142: Restores Section number proposed by the House, but changed by the Senate.

Amendment No. 143: Deletes Section 308 inserted by the House but deleted by the Senate prohibiting the use of funds by the Department of Education to collect a refund under the Library Services and Construction Act.

The conferees are extremely concerned by the efforts of the Department to force the State of Illinois to repay its entire allotment of LSCA Title I funds for the period July 1977 through the end of 1980. The conferees urge the Department to abandon this effort.

The conferees note that during this time period, the State's plans for use of these funds were approved by the Secretary on an annual basis. The Department's audit for the Illinois Library System for the period in question made no findings of fraud and made no allegations of criminal wrongdoing under either State or Federal law. Good faith decisions were made by the State in developing a model library program which has greatly improved the delivery of library services to the public. The conferees further note that a 1974 audit of the Illinois libraries found no problems with the State's accounting system, but that the subsequent audit found fault with the same system. Nonetheless, the accounting practices of the State which resulted in the audit determination have been adjusted in order to satisfy the Department. Finally, it is clear to the conferees that the five-year statute of limitations provisions contained in section 452(g) of the General Education Provisions Act (20 U.S.C. 1234a(g)) apply to the first 28 months of the period in question.

The conferees are extremely disappointed by the continuing refusal of the Department to give consideration to all of the relevant facts concerning this audit. The conferees strongly urge the Department to reconsider its decision to oppose an evidentiary hearing before the Education Appeals Board, and remind the Department of its responsibility to abide by the statute of limitations contained in GEPA.

TITLE IV—RELATED AGENCIES

ACTION

Operating Expenses

Amendment No. 144: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate which appropriates $153,287,000 for the Action agency and earmarks $19,000,000 for the VISTA program and $2,000,000 for a new VISTA Literacy Corps.

The conference agreement includes the following amounts:

VISTA operations	$19,000,000
VISTA Literacy Corps	2,000,000
Service learning	1,368,000
Citizen participation and volunteer demonstration	1,801,000
Foster grandparents program	56,100,000
Senior companion program	18,086,000
Retired senior volunteer program	29,620,000
Program support	25,312,000

Commission on Education of the Deaf

salaries and expenses

Amendment No. 145: Appropriates $750,000 instead of $1,000,000 as proposed by the Senate, modifies legal citation, and provides that funds shall remain available until expended as proposed by the Senate. The House bill contained no funding for this agency.

Corporation for Public Broadcasting

public broadcasting fund

Amendment No. 146: Appropriates $228,000,000 for fiscal year 1989 instead of $214,000,000 as proposed by the House and $238,000,000 as proposed by the Senate.

Federal Mediation and Conciliation Service

salaries and expenses

Amendment No. 147: Appropriates $23,523,000 instead of $22,656,000 as proposed by the House and $24,390,000 as proposed by the Senate. The conference agreement includes funding for employee moving and relocation costs.

Federal Mine Safety and Health Review Commission

salaries and expenses

Amendment No. 148: Appropriates $3,785,000 instead of $3,651,000 as proposed by the House and $3,919,000 as proposed by the Senate.

National Commission on Libraries and Information Science

salaries and expenses

Amendment No. 149: Appropriates $660,000 as proposed by the House instead of $690,000 as proposed by the Senate.

National Council on the Handicapped

salaries and expenses

Amendment No. 150: Appropriates $850,000 as proposed by the Senate instead of $732,000 as proposed by the House.

National Labor Relations Board

salaries and expenses

Amendment No. 151: Appropriates $129,960,000 instead of $129,055,000 as proposed by the House and $130,865,000 as proposed by the Senate.

National Mediation Board

salaries and expenses

Amendment No. 152: Appropriates $6,401,000 as proposed by the House instead of $6,540,000 as proposed by the Senate.

Occupational Safety and Health Review Commission

salaries and expenses

Amendment No. 153: Appropriates $5,750,000 as proposed by the Senate instead of $5,647,000 as proposed by the House.

Railroad Retirement Board

limitation on administration

Amendment No. 154: Makes available $57,756,000 from the railroad retirement trust fund instead of $56,634,000 as proposed by the House and $58,877,000 as proposed by the Senate.

limitation on railroad unemployment insurance administration fund

Amendment No. 155: Provides that $14,942,000 shall be apportioned from moneys credited to the railroad unemployment insurance administration fund instead of $15,190,000 as proposed by the Senate and $14,694,000 as proposed by the House.

limitation on review activity

Amendment No. 156: Makes available $1,267,000 from the railroad retirement trust fund and the railroad unemployment administration fund instead of $1,167,000 as proposed by the House and $1,367,000 as proposed by the Senate.

Soldiers' and Airmen's Home

capital outlay

Amendment No. 157: Makes available $16,241,000 from the permanent fund as proposed by the Senate instead of $15,000,000 as proposed by the House.

United States Institute of Peace

Amendment No. 158: Reported in technical disagreement. The managers on the part of the House will offer a motion to recede and concur in the amendment of the Senate with an amendment as follows:

In lieu of the matter proposed by said amendment, insert the following:

United States Institute of Peace

For necessary expenses of the United States Institute of Peace as authorized in the United States Institute of Peace Act, $625,000.

The managers on the part of the Senate will move to concur in the amendment of the House to the amendment of the Senate.

Amendment No. 159: Deletes general provision proposed by the House which prohibited the use of funds to any educational institution which does not have a program for the prevention of drug abuse.

Amendment No. 160: Appropriates an additional amount of $36,934,000 for carrying out the provisions of title II of the Education for Economic Security Act instead of $56,934,000 proposed by the Senate and deletes reduction of $11,000,000 for activities of the National Institutes of Health. The House bill contained no similar provision.

Amendment No. 161: Deletes general provision proposed by the Senate which would have waived the statutory time limit, with respect to one particular group of workers, for filing a petition for assistance under the Trade Act of 1974.

conference total—with comparisons

The total new budget (obligational) authority for the fiscal year 1987 recommended by the Committee of Conference, with comparisons to the fiscal year 1986 amount, the 1987 budget estimates, and the House and Senate bills for 1987 follow:

New budget (obligational) authority, fiscal year 1986	$106,446,471,000
Budget estimates of new (obligational) authority, fiscal year 1987	104,760,059,000
House bill, fiscal year 1987 [1]	103,721,016,000
Senate bill, fiscal year 1987	113,689,908,000
Conference agreement, fiscal year 1987	113,947,638,000
Conference agreement compared with:	
New budget (obligational) authority, fiscal year 1986	+7,501,167,000
Budget estimates of new (obligational) authority, fiscal year 1987	+9,187,579,000
House bill, fiscal year 1987	+10,226,622,000
Senate bill, fiscal year 1987	+257,730,000

[1] The House did not consider budget estimates totaling $7,965,109,000 which were later considered by the Senate and the conference.

William H. Natcher,
Neal Smith,
David R. Obey,
Edward R. Roybal,
Louis Stokes,
Joseph D. Early,
Bernard J. Dwyer,
Steny H. Hoyer,
Jamie L. Whitten,
Silvio O. Conte,
Carl D. Pursell,
John Edward Porter,
C.W. Bill Young,
Managers on the Part of the House.

Lowell P. Weicker, Jr.,
Mark O. Hatfield,
Ted Stevens,
Mark Andrews,
Warren Rudman,
Arlen Specter,
James A. McClure,
Pete V. Domenici,
Robert C. Byrd,
Ernest F. Hollings,
Lawton Chiles,
Quentin Burdick,
Daniel K., Inouye,
Tom Harkin,
Managers on the Part of the Senate.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. Cobey) to revise and extend their remarks and include extraneous material:)

Mr. Leach of Iowa, for 5 minutes, today.

Mr. Gingrich, for 60 minutes, today.

Mr. Walker, for 60 minutes, today.

Mr. Gingrich, for 60 minutes, on October 3.

Mr. Walker, for 60 minutes, on October 3.

Mr. KOLBE, for 60 minutes, on October 8.

Mr. ARCHER, for 60 minutes, on October 7.

Mr. GINGRICH, for 60 minutes, on October 6.

Mr. WALKER, for 60 minutes, on October 6.

Mr. GINGRICH, for 60 minutes, on October 7.

Mr. WALKER, for 60 minutes, on October 7.

Mr. MCKINNEY, for 5 minutes, on October 2.

Mr. LATTA, for 60 minutes, on October 7.

Mr. DORNAN of California, for 5 minutes, on October 2.

(The following Members (at the request of Mr. DONNELLY) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.

Mr. KASTENMEIER, for 5 minutes, today.

Mr. GONZALEZ, for 60 minutes, on October 3.

Mr. DORGAN of North Dakota, for 60 minutes, on October 7.

Mr. GAYDOS, for 60 minutes, on October 7.

Mr. GAYDOS, for 60 minutes, on October 8.

Mr. WISE, for 30 minutes, on October 8.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. COBEY) and to include extraneous matter:)

Mr. CRANE in three instances.
Mr. QUILLEN.
Mr. WYLIE in five instances.
Mr. LEWIS of California.
Mr. CONTE.
Mr. GILMAN in three instances.
Mr. SHUMWAY.
Mr. GUNDERSON.
Mr. SCHUETTE.
Mr. FIELDS.
Mrs. BENTLEY.
Mr. DANNEMEYER.
Mr. LAGOMARSINO.
Mr. CLINGER.
Mr. GREEN.
Mr. KEMP.
Mr. COURTER.
Mr. TAYLOR.

(The following Members (at the request of Mr. DONNELLY) and to include extraneous matter:)

Mr. YATRON.
Mr. RANGEL.
Mr. SOLARZ.
Mr. COELHO.
Mr. COLEMAN of Texas.
Mr. MURPHY.
Mr. BERMAN.
Mr. LANTOS.
Mr. MILLER of California in two instances.
Mr. CROCKETT in two instances.
Mr. DERRICK.
Mr. KOLTER.
Mr. JACOBS.
Mr. MANTON.
Mr. DYMALLY.
Mr. LEVINE of California.
Mr. FAZIO.
Mr. TORRES in two instances.
Mr. ROSTENKOWSKI.
Mr. TALLON in two instances.
Mr. MCHUGH.
Mr. MARTINEZ.
Mr. WYDEN.
Mr. ROE.
Mr. KANJORKSI in three instances.

SENATE BILL AND JOINT RESOLUTIONS REFERRED

Bill and joint resolutions of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 2506. An Act to establish a Great Basin National Park in the State of Nevada, and for other purposes; to the Committee on Interior and Insular Affairs.

S.J. Res. 336. Joint resolution to express the sense of Congress on recognition of the contributions of the seven Challenger astronauts by supporting establishment of a Children's Challenge Center for Space Science; to the Committee on Science and Technology.

S. J. Res. 422. Joint Resolution commemorating the 100th anniversary of the birth of the first Prime Minister of the State of Israel, David Ben-Gurion; to the Committee on Post Office and Civil Service.

ENROLLED BILLS SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 2183. An act to amend title 28 of the United States code to make certain changes with respect to the participation of judges of the Court of International Trade in judicial conferences and for other purposes;

H.R. 2721. An act to amend title 13, United States Code, to require the collection of statistics on domestic apparel and textile industries;

H.R. 2971. An act granting the consent of the Congress to the amendments of the Susquehanna River Basin Compact;

H.R. 4217. An act to provide for the settlement of certain claims of the Papago Tribe of Arizona arising from the construction of Tat Momolikot Dam, and for other purposes;

H.R. 4588. An act to authorize appropriations for the Administrative Conference of the United States, and for other purposes; and

H.R. 5480. An act to extend the expiration of the Defense Production Act to 1950 and to authorize appropriations for purposes of such Act.

SENATE ENROLLED JOINT RESOLUTIONS SIGNED

The SPEAKER announced his signature to enrolled joint resolutions, Senate of the following title:

S.J. Res. 245. Joint resolution designating "National Epidermolysis Bullosa Awareness Week";

S.J. Res. 318. Joint resolution designating November 1986 as "National Diabetes Month";

S.J. Res. 368. Joint resolution to designate the month of October 1986, as "National Spina Bifida Month"; and

S.J. Res. 390. Joint resolution to authorize and request the week of November 23, 1986, to November 30, 1986, as "American Indian Week."

BILLS AND JOINT RESOLUTIONS PRESENTED TO THE PRESIDENT

Mr. ANNUNZIO, from the Committee on House Administration reported that that committee did on the following days present to the President, for his approval, bills and joint resolutions of the House of the following titles:

On October 1, 1986:

H.R. 1246. An act to establish a federally declared floodway for the Colorado River below Davis Dam;

H.R. 5506. An act to amend the International Claims Settlement Act of 1949 to provide that the value of claims be based on the fair market value of the property taken;

H.J. Res. 547. Joint resolution to designate October 1986 as "Polish American Heritage Month";

H.J. Res. 611. Joint resolution to designate the period of December 1, 1986, through December 7, 1986, as "National Aplastic Anemia Awareness Week";

H.J. Res. 710. Joint resolution to designate the week beginning October 12, 1986, as "National Children's Television Awareness Week";

H.J. Res. 721. Joint resolution to designate the week of October 12, 1986, through October 18, 1986, as "National Job Skills Week"; and

H.J. Res. 743. Joint resolution making continuing appropriations for the fiscal year 1987, and for other purposes.

On October 2, 1986:

H.R. 5521. An act to extend until October 13, 1986, the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository Institutions Act of 1982.

ADJOURNMENT

Mr. WALKER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 7 o'clock and 11 minutes p.m.), the House adjourned until tomorrow, Friday, October 3, 1986, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

4289. A letter from the Auditor, District of Columbia, transmitting a copy of his report entitled "Follow-up Review of Request for Proposal No. JA/86040 To Conduct a Comprehensive School-Based Substance Abuse and Prevention Program in the D.C. Public School System," pursuant to D.C. Code section 47-117(d); to the Committee on the District of Columbia.

4290. A letter from the Assistant Secretary of State for Legislative and Intergovernmental Affairs, transmitting notification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14 million or more, pursuant to 22 U.S.C. 2776(c); to the Committee on Foreign Affairs.

4291. A letter from the Director, Defense Security Assistance Agency, transmitting an addendum to the third quarter report on commercial and governmental military exports, together with a list of all security assistance surveys authorized for foreign countries, pursuant to 22 U.S.C. 2776(a); to the Committee on Foreign Affairs.

4292. A letter from the Director, Defense Security Assistance Agency, transmitting the third quarter report on commercial and governmental military exports, together with a list of all security assistance surveys authorized for foreign countries, pursuant to 22 U.S.C. 2776(a); to the Committee on Foreign Affairs.

4293. A letter from the Acting Under Secretary for Small Community and Rural Development, Department of Agriculture, transmitting notification of a proposed altered Federal records system, pursuant to 5 U.S.C. 552a(o); to the Committee on Government Operations.

4294. A letter from the Commander and Division Engineer, Corps of Engineers, Department of the Army, transmitting an advanced copy of the public notice for the final report on flood control and related improvements in the Cuyahoga River Basin, OH, pursuant to Public Law 94-587, Section 150(b) (90 Stat. 2932); to the Committee on Public Works and Transportation.

4295. A letter from the Chairman, U.S. International Trade Commission, transmitting the 47th quarterly report on trade between the United States and the nonmarket economy countries, pursuant to 19 U.S.C. 2440; to the Committee on Ways and Means.

4296. A letter from the Chairman, U.S. International Trade Commission, transmitting the first annual report on impact of the Caribbean Basin Economic Recovery Act on U.S. industries and consumers, pursuant to 19 U.S.C. 2704(c)(1) (Public Law 98-67, section 215(c)(1); to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. FUQUA: Committee of conference. Conference report on H.R. 3773 (Rept. 99-953). Ordered to be printed.

Mr. HAWKINS: Committee of conference. Conference report on H.R. 4116 (Rep. 99-954). Ordered to be printed.

Mr. HAWKINS: Committee of conference. Conference report on H.R. 4021 (Rep. 99-955). Ordered to be printed.

Mr. ST GERMAIN: Committee of conference. Conference report on H.R. 5548 (Rep. 99-956). Ordered to be printed.

Mr. KASTENMEIER: Committee on the Judiciary. Supplemental report on H.R. 5536 (Rept. 99-895, pt. 2). Ordered to be printed.

Mr. UDALL: Committee on Interior and Insular Affairs. H.R. 5555. A bill to designate certain property located in Scranton, Pennsylvania, as the "Steamtown National Historic Site"; with an amendment (Rept. 99-957). Referred to the Committee of the Whole House on the State of the Union.

Mr. RODINO: Committee of conference. Conference report on H.R. 5316 (Rept. 99-958). Ordered to be printed.

Mr. MOAKLEY: Committee on Rules. H. Res. 570. Resolution providing for the consideration of H.R. 2868; a bill to settle Indian land claims in the town of Gay Head, Massachusetts, and for other purposes (Rept. 99-959). Referred to the House Calendar.

Mr. NATCHER: Committee of conference. Conference report on H.R. 5233 (Rept. 99-960). Ordered to be printed.

REPORTED BILLS SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

S. 2880. The Committee of the Whole House on the State of the Union discharged. Referred to the Committee on Merchant Marine and Fisheries for a period ending not later than October 3, 1986, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(n), rule X.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. JONES of Tennessee (for himself, Mr. de la Garza, Mr. Madigan, Mr. Coleman of Missouri, Mr. Bedell, Mr. Brown of California, Mr. Bruce, Mr. Coelho, Mr. Combest, Mr. Emerson, Mr. Evans of Illinois, Mr. Franklin, Mr. Glickman, Mr. Gunderson, Mr. Hatcher, Mr. Huckaby, Mr. Jeffords, Mr. Jones of North Carolina, Mr. Morrison of Washington, Mr. Staggers, Mr. Stallings, Mr. Stangeland, Mr. Stenholm, Mr. Tallon, Mr. Thomas of Georgia, Mr. Akaka, Mr. Alexander, Mr. Anthony, Mr. Barnard, Mr. Bateman, Mr. Bevill, Mr. Boehlert, Mr. Boner of Tennessee, Mr. Breaux, Mrs. Byron, Mr. Cooper, Mr. Darden, Mr. Derrick, Mr. Dowdy of Mississippi, Mr. Durbin, Mr. Dyson, Mr. Edgar, Mr. Flippo, Mr. Ford of Tennessee, Mr. Gaydos, Mr. Gilman, Mr. Gordon, Ms. Kaptur, Mr. Kolter, Mrs. Lloyd, Ms. Mikulski, Mr. Moakley, Mr. Mollohan, Mr. Perkins, Mr. Rahall, Mr. Reid, Mr. Rowland of Georgia, Mr. Shelby, Mr. Sundquist, Mr. Taylor, Mr. Valentine, Mr. Watkins, and Mr. Weaver):

H.R. 5635. A bill to amend the Farm Credit Act of 1971 regarding interest rates charged by farm credit system institutions and financial operations of such institutions; to the Committee on Agriculture.

By Mr. BARNARD:

H.R. 5636. A bill to improve disclosures to consumers of the terms of consumer leases and lease-purchase agreements, and for other purposes; to the Committee on Banking, Finance and Urban Affairs.

By Mr. CRANE:

H.R. 5637. A bill to amend the Internal Revenue Code of 1986 to provide for the taxation of capital gains at a rate of 10 percent; to the Committee on Ways and Means.

By Mr. DANNEMEYER:

H.R. 5638. A bill to prohibit the transfer of body fluids by Federal officers and employees or members of the armed forces of the United States who have acquired immune deficiency syndrome, and for other purposes; jointly, to the Committees on Energy and Commerce, Armed Services, and Post Office and Civil Service.

By Mr. DICKS (for himself, Mr. Foley, Mr. Swift, Mr. Morrison of Washington, Mr. Lowry of Washington, Mr. Chandler, and Mr. Miller of Washington):

H.R. 5639. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for State and local sales tax; to the Committee on Ways and Means.

By Mr. GONZALEZ (for himself and Mr. Lehman of California):

H.R. 5640. A bill to amend the Housing Act of 1949 to restrict the prepayment of rural rental housing loans made by the Secretary of Agriculture; to the Committee on Banking, Finance and Urban Affairs.

By Mr. GONZALEZ (for himself and Mr. Kanjorski):

H.R. 5641. A bill to authorize the Secretary of Housing and Urban Development to provide financial assistance for the development of alternative care facilities for elderly and handicapped persons; to the Committee on Banking, Finance and Urban Affairs.

By Mr. GUNDERSON:

H.R. 5642. A bill to amend the Agricultural Act of 1949 to establish a new program to support the price of milk; to the Committee on Agriculture.

By Mr. MARTINEZ:

H.R. 5643. A bill to establish a 5-year pilot program to collect recreational use fees for facilities and services provided by the Angeles National Forest, CA, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. SHUMWAY:

H.R. 5644. A bill to amend the Federal Mine Safety and Health Act of 1977 to provide that owner-operated mines shall be exempt from certain provisions of such act, and for other purposes; to the Committee on Education and Labor.

By Mr. SMITH of New Jersey:

H.R. 5645. A bill to protect employees from retaliatory actions by employers; to the Committee on Education and Labor.

By Mr. WILSON:

H.R. 5646. A bill to increase the size of the Upper Neches River corridor unit of, and to add the Village Creek unit to, the Big Thicket National Preserve in the State of Texas; to the Committee on Interior and Insular Affairs.

By Mr. WILLIAMS (for himself and Mr. Bartlett):

H. Con. Res. 400. Concurrent resolution to direct the Clerk to make corrections in the enrollment of the bill H.R. 4021; considered and agreed to.

By Mr. WILLIAMS:

H. Con. Res. 401. Concurrent resolution to correct technical errors in the enrollment of the bill S. 2069; considered and agreed to.

By Mr. DANNEMEYER:

H. Con. Res. 402. Concurrent resolution expressing the sense of Congress respecting the enactment by the States of certain laws relating to the acquired immune deficiency syndrome; jointly, to the Committees on Energy and Commerce, and the Judiciary.

By Mr. SCHUMER (for himself, Mr. St Germain, Mr. Frank, Mr. Morrison of Connecticut, Ms. Kaptur, and Mr. Garcia):

H. Con. Res. 403. Concurrent resolution expressing the sense of the Congress that the Federal Reserve Bank of New York should deny any application from a Japanese security firm to become a primary dealer in United States Treasury securities until substantial progress is made in opening the Japanese securities market to United States securities dealers; jointly, to the Committees on Banking, Finance and Urban Affairs, and Ways and Means.

By Mr. WIRTH:

H. Con. Res. 404. Concurrent resolution expressing the sense of the Congress that the Soviet Union should immediately provide for the emigration of Naum Meiman and Inna Kitrosskaya-Meiman and for the resolution of all divided family and emigration cases; to the Committee on Foreign Affairs.

By Mr. BATES:

H. Res. 571. Resolution expressing the sense of the House of Representatives that the President should cooperate fully with the government of the Philippines in its efforts to recover property and funds held by former President Marcos; to the Committee on Foreign Affairs.

By Mr. GREEN (for himself and Mr. DioGuardi):

H. Res. 572. Resolution expressing the sense of the House of Representatives with respect to the unjustified exclusion of the Israeli Chess Federation by the United Arab Emirates from the 1986 Chess Olympiad in Dubai, United Arab Emirates; to the Committee on Foreign Affairs.

By Mr. WALKER (for himself, Mr. Mack, Mr. Gingrich, Mr. Burton of Indiana, Mr. Parris, Mr. Barton of Texas, Mr. Armey, Mr. Smith of New Hampshire, Mr. Crane, and Mr. Hunter):

H. Res. 573. Resolution affirming the intent of the 99th Congress to oppose any increase in individual or corporate tax rates, or the reduction or elimination of deductions and credits without corresponding tax rate reductions, and calling on the 100th Congress to adopt such policy; to the Committee on Ways and Means.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 128: Mr. Gingrich.

H.R. 241: Mr. Wortley.

H.R. 1809: Mr. Hertel of Michigan.

H.R. 2015: Mr. Rudd, Mrs. Johnson, and Mr. Porter.

H.R. 2534: Mr. Petri, Mr. Shumway, Mrs. Vucanovich, and Mr. Fawell.

H.R. 2823: Mr. Price.

H.R. 3305: Mr. Hall of Ohio and Mr. Edwards of California.

H.R. 3505: Mr. Solomon.

H.R. 4279: Mrs. Vucanovich.

H.R. 4439: Mr. Bennett, Mr. Lowery of California, Mr. Spratt, Mr. Kramer, and Mr. DeLay.

H.R. 4565: Mr. Robinson.

H.R. 4943: Mr. Pickle and Mr. Leath of Texas.

H.R. 5067: Mr. Dwyer of New Jersey.

H.R. 5145: Mr. Feighan and Mr. Rangel.

H.R. 5242: Mr. Sweeney.

H.R. 5318: Mr. Schuette.

H.R. 5350: Mr. Whitten, Mr. Lipinski, and Mr. Boucher.

H.R. 5360: Mr. Biaggi and Mr. Levin of Michigan.

H.R. 5396: Ms. Kaptur and Mr. Regula.

H.R. 5463: Mr. Swift and Mr. Garcia.

H.R. 5477: Mr. Daub.

H.R. 5497: Mrs. Vucanovich.

H.R. 5499: Mr. Volkmer, Mr. Tauzin, Mr. Bevill, Mr. Leach of Iowa, and Mr. Schuette.

H.R. 5500: Mr. Akaka, Mr. Biaggi, Mr. Bustamante, Mr. Kasich, and Mr. Kildee.

H.R. 5553: Mr. Traficant, Mr. Smith of Florida, Mr. Tauke, Mr. Lagomarsino, Mr. Atkins, Ms. Kaptur, Mr. Weber, Mr. Abercrombie, Mr. Waldon, Mr. Mitchell, Mr. Bonior of Michigan, Mr. Mrazek, Mr. Towns, Mr. Bevill, and Mr. Brooks.

H.R. 5587: Mr. Garcia.

H.R. 5607: Mr. Tallon and Mr. Gunderson.

H.R. 5620: Mr. Morrison of Connecticut and Mr. Gejdenson.

H.R. 5623: Mr. Wolpe.

H.J. Res. 10: Mr. Abercrombie, Mr. Bilirakis, Mr. Boner of Tennessee, Mr. Borski, Mr. Broomfield, Mr. Campbell, Mr. Chandler, Mr. Cheney, Mr. Dellums, Mr. Dicks, Mr. Durbin, Mr. Fields, Mr. Hammerschmidt, Mrs. Holt, Mr. Hunter, Mr. Kastenmeier, Mr. Kemp, Mr. Leland, Mr. Lent, Mr. Loeffler, Mr. Lowry of Washington, Mr. Molinari, Mr. Mrazek, Mr. Oxley, Mr. Parris, Mr. Schaefer, Mr. Skelton, Mr. Smith of New Jersey, Mr. Smith of Iowa, Mr. Tauke, Mr. Towns, Mr. Walgren, Mr. Wolf, Mr. Bedell, Mr. Blaz, Mr. Akaka, Mr. Alexander, Mr. Annunzio, Mr. Archer, Mr. AuCoin, Mr. Bartlett, Mr. Boulter, Mr. Coble, Mr. Edgar, Mr. Florio, Mr. Gingrich, Mr. Goodling, Mr. Gray of Illinois, Mr. Hawkins, Mr. Jacobs, Mrs. Kennelly, Mr. Kindness, Mr. Latta, Mr. Lujan, Mr. McEwen, Mr. McKinney, Mr. Madigan, Mr. Miller of California, Mr. Nelson of Florida, Mr. Obey, Mr. Saxton, Mr. Seiberling, Mr. Sikorski, Mr. Slaughter, Mr. Stokes, Mr. Strang, and Mr. Synar.

H.J. Res. 410: Mr. Darden, Mr. Gray of Pennsylvania, Mr. Tallon, Mr. Wyden, Mr. Daniel, Mr. Boland, Mr. Torres, Mr. Biaggi, Mr. Boucher, Mr. Mineta, Mr. Schuette, Mr. Anthony, Mr. Hatcher, Mr. Duncan, Mr. Synar, Mr. Denny Smith, Mr. Martinez, Mr. Stump, Mr. McGrath, Mr. Davis, Mr. Porter, Mr. Staggers, Mr. Skelton, Mr. Perkins, Mr. Spence, Mr. Hubbard, Mr. Walker, Mr. Berman, Mr. Florio, Mr. Durbin, Mr. Solarz, Mr. Callahan, Mr. DioGuardi, Mr. Green, Mr. Barnes, Mr. Hartnett, Mr. Frost, Mr. LaFalce, Mr. Hertel of Michigan, Mr. Flippo, Mr. Robinson, Mr. Matsui, Mr. Dellums, Mr. Edwards of California, Mr. Panetta, Mr. Bielenson, Mr. Roybal, Mr. Hawkins, Mr. Gejdenson, Mr. Nelson of Florida, Mr. Lehman of Florida, Mr. Jenkins, Mr. Annunzio, Mr. Bruce, Mr. Bedell, Mr. Dyson, Mr. Kildee, Mr. Sikorski, Mr. Nichols, Mr. Udall, Mr. Bosco, Mr. Miller of California, Mr. Stark, Mr. Coelho, Mr. Lehman of California, Mr. Waxman, Mr. Dixon, Mr. Bates, Mr. MacKay, Mr. Mica, Mr. Thomas of Georgia, Mr. Abercrombie, Mr. Evans of Illinois, Mr. Hamilton, Mr. Slattery, Mr. Studds, Mr. Dingell, Mr. Gephardt, Mr. Wheat, Mr. Howard, Mr. Rodino, Mr. Schumer, Mr. Jones of North Carolina, Mr. Whitley, Mr. Eckart of Ohio, Mr. Borski, Mr. Coyne, Mr. Cooper, Mr. Brooks, Mr. Leath of Texas, Mr. Dicks, Mr. Andrews, Mr. Pickle, Mr. Gordon, Mr. Spratt, Mr. Murtha, Mr. AuCoin, Mr. Hefner, Mr. Volkmer, Mr. Roe, Mr. Downey of New York, Mr. Towns, and Mr. Valentine.

H.J. Res. 524: Mr. Bates, Mr. Dingell, Mr. Sharp, Mr. Martin of New York, Mr. Coelho, Ms. Kaptur, Mr. Hyde, Mrs. Johnson, Mr. Hansen, Mr. Dyson, Mr. Gilman, Mr. Frost, Mr. Lujan, Mr. Gingrich, Mr. Thomas of Georgia, Mr. Gray of Illinois, Mr. Hoyer, Mr. Hammerschmidt, Mr. Gunderson, Mr. Henry, Mr. Hartnett, Mr. Jones of Tennessee, Mr. Hillis, Mr. Gejdenson, Mr. Kastenmeier, Mr. Kemp, Mr. Kleczka, Mr. Leach of Iowa, Mr. Lewis of California, Mr. Chappell, Mr. Murtha, Mr. Huckaby, Mr. Brown of Colorado, Mr. McCollum, Mr. McHugh, Mr. McKinney, Mr. McMillan, Mr. MacKay, Mr. Marlenee, Mr. Miller of Washington, Mr. Miller of Ohio, Mr. Moakley, Mr. Mollohan, Mr. Bartlett, Mr. Mack, Mr. Moore, Mr. Myers of Indiana, Mr. Monson, Mr. Ritter, Mr. Pursell, Mr. Roberts, Mr. Rowland of Georgia, Mr. Rudd, and Mr. Schuette.

H.J. Res. 535: Mr. Gregg.

H.J. Res. 550: Mrs. Byron, Mr. Gilman, Mr. Jacobs, Mr. Lehman of California, Mr. Kleczka, Mr. Rangel, and Mr. Miller of California.

H.J. Res. 584: Mr. Lehman of Florida, Mr. Hertel of Michigan, Mr. Green, Mr. Ireland, Mr. Parris, Ms. Snowe, Mr. Molinari, Mr. Edgar, Mr. Schaefer, Mr. McMillan, Mr. Broomfield, Mr. Chappie, Mr. Cobey, Mr. Conte, Mr. Craig, Mr. Gingrich, Mrs. Johnson, Mr. Lewis of California, Mr. McCollum, Mr. Mica, Mr. Ray, Mr. Ritter, Mr. Roth, Mr. Rowland of Connecticut, Mr. Solomon, Mr. Strang, Mrs. Vucanovich, Mr. Walker, Mr. Latta, Mr. Badham, Mr. Chandler, Mr. Chappell, Mr. Bartlett, Mr. Dreier of California, Mr. Kildee, Mr. Mavroules, Mr. Nelson of Florida, Mr. Siljander, Mr. Edwards of Oklahoma, and Mr. Abercrombie.

H.J. Res. 594: Mr. Waldon.

H.J. Res. 615: Mr. Sweeney, Mr. Derrick, Mr. Barnard, Mr. Bevill, Mr. Daniel, Mr. Kolter, Mr. Durbin, Mr. Synar, and Mr. Abercrombie.

H.J. Res. 651: Mr. Campbell, Mr. Callahan, Mr. Latta, Mr. Loeffler, Mr. Dickinson, Mr. Sikorski, Mrs. Boxer, Mr. Mack, Mr. Price, Mr. Boehlert, Mr. Lundine, Mr. Hoyer, Mr. Skelton, Mr. Tallon, Mr. Yates, Mr. McDade, Mr. Sabo, Mr. Boland, Mr. McGrath, Mr. Roberts, Mr. Blaz, Mr. Dorgan of North Dakota, Mr. Spratt, Mr. Hansen, Mr. Young of Florida, Mrs. Kennelly, Mr. Huckaby, Mr. McMillan, Mr. Mollohan, Mr. Hefner, Mr. Livingston, Mr. LaFalce, Mr. Yatron, Mr. Ritter, Mr. Porter, Mr. Rose, Mr. Mavroules, Mr. Young of Missouri, Mr. Spence, Mrs. Vucanovich, Mr. Traxler, and Mr. Sweeney.

H.J. Res. 681: Mr. Tauke.

H.J. Res. 688: Mr. DioGuardi, Mr. Valentine, Mr. Traxler, Mr. McCloskey, Mr. Coble, Mr. Smith of Florida, Mr. Traficant, Mrs. Kennelly, Mr. Whitley, Mr. Davis, Mr. Owens Mr. Eckert of New York, Mr. Kostmayer, Mr. Skelton, Mr. Biaggi, Mr.

Campbell, Mr. Daniel, Mr. McEwen, Mr. Oberstar, Mr. Ortiz, and Mr. Stratton.

H.J. Res. 693: Mr. Livingston, Mr. Anthony, Mr. Neal, Mr. Frank, Mr. Barnes, Mrs. Bentley, Mr. Boland, Mr. Darden, Mr. Garcia, Mr. Bates, Mr. Abercrombie, Mr. Scheuer, Mr. Daub, Mr. Hutto, Mr. Fish, Mr. Oberstar, Mr. Ackerman, Mr. Borski, Mr. Bustamante, Mr. Conyers, Mr. Lehman of Florida, Mr. Wortley, Mr. Bennett, Mr. Stangeland, Mr. Natcher, Mr. St Germain, Mr. Savage, Mr. Rowland of Georgia, Mr. Sabo, Mr. Robert F. Smith, Mr. Spratt, Mr. Smith of New Hampshire, Mr. Stenholm, Mr. Gray of Illinois, Mr. Gilman, Mr. Boehlert, Mr. Torricelli, Mr. Bruce, Mr. Carney, and Mr. DioGuardi.

H.J. Res. 706: Mr. Siljander and Mr. Young of Florida.

H.J. Res. 709: Mr. Carr, Mr. Kleczka, Mr. Mica, Mr. Sikorski, Mrs. Collins, Mr. Atkins, Mr. Schuette, Mr. Moody, Mr. Ford of Michigan, Mr. Lehman of California, Mr. Bedell, and Mr. Olin.

H.J. Res. 711: Mr. Fuqua, Mr. Thomas of Georgia, and Mr. Monson.

H.J. Res. 718: Mr. St Germain, Mr. McKinney, Mr. McCloskey, Mr. Murtha, Mr. Stokes, Mr. Anthony, Mr. Blaz, Mr. Courter, Mr. Murphy, Mr. Perkins, Mr. Pashayan, Mr. Roberts, Mr. Shelby, Mr. Stenholm, Mr. Lungren, Mrs. Martin of Illinois, Mr. McEwen, Mr. Traxler, Mr. Crockett, Mr. McKernan, Mr. Bevill, Mr. Rangel, Mr. Akaka, Mr. Mavroules, Mr. Smith of Iowa, Mrs. Collins, Mr. LaFalce, Mr. Mollohan, Mr. DeWine, Mr. Conyers, Mr. DioGuardi, Mr. Gephardt, Mr. Conte, Mr. Young of Alaska, Mr. Daniel, Mr. Boner of Tennessee, Mr. Schumer, Mrs. Boxer, Mr. Nielson of Utah, Mr. Morrison of Connecticut, Mrs. Burton of California, Mr. Hughes, Mr. Ralph M. Hall, Mr. Foley, Mr. Fish, Mr. Young of Florida, Mr. Frenzel, Mr. Porter, Mr. Borski, Mr. Sunia, Mr. Hefner, Mr. Flippo, Mr. Lehman of California, Mr. Edgar, Mr. Campbell, Mr. Chappie, Mr. Sabo, Mr. Gilman, Mr. Lehman of Florida, Mr. Skelton, Mr. Tallon, Mr. Natcher, Mr. Price, Mr. Moakley, Mr. Hopkins, Mr. Donnelly, Mr. McDade, Mr. Howard, Mr. Kolter, Mr. Tauke, Mr. Bilirakis, Mr. Barnes, Mr. Bonior of Michigan, Mr. Saxton, Mr. Hamilton, Mr. Abercrombie, Mr. Lujan, Mr. Chapman, Mr. Coble, Mr. Vander Jagt, Mr. Siljander, Mr. Ortiz, Mr. Yatron, Mr. Dicks, Mr. Montgomery, Mr. Cheney, Mr. Mineta, Mr. Mazzoli, Mr. Smith of New Hampshire, Mr. Erdreich, Mr. Lantos, Mr. Feighan, Mr. Moorhead, Mr. Gray of Pennsylvania, Mr. Lowry of Washington, Mr. Waxman, Mr. Rowland of Georgia, Mr. Martin of New York, Mr. Dixon, Mr. Dwyer of New Jersey, Mr. de la Garza, Mr. Lewis of California, Mr. Chappell, Mr. Jones of North Carolina, Mr. Guarini, Mr. Daub, Mr. Rahall, Mr. Lagomarsino, Mr. Hansen, Mr. Wirth, Mr. Breaux, Mr. Hoyer, Mr. Cooper, Ms. Kaptur, Mr. Dorgan of North Dakota, Mr. Oberstar, Mr. Spratt, Mr. Mack, Mr. Scheuer, Mr. Snyder, Mr. Foglietta, Mr. Shumway, Mr. Coleman of Missouri, Mr. McHugh, Mr. Coyne, Mr. Darden, Mr. Miller of California, Mr. Dowdy of Mississippi, Mr. Miller of Ohio, Mr. Manton, Mr. Walgren, Mr. Solarz, Mr. Zschau, Mr. Hartnett, Mr. Wise, Mr. Florio, Mr. Swindall, Mr. Bates, Mr. Frost, Mr. Matsui, Mr. Clay, Mr. Barnard, Mr. Miller of Washington, Mr. Spence, Mr. Moore, Mr. Gekas, Mr. Staggers, Mr. Brown of California, Mrs. Johnson, Mr. Roybal, and Mr. Lowery of California.

H.J. Res. 740: Mr. Atkins, Mr. Solarz, Mr. Waxman, Mr. Daschle, Mr. Bustamante, Mr. Carney, Ms. Mikulski, Mr. Shumway, Mr. Volkmer, Mr. Martin of New York, Mr. Schaefer, Mr. Waldon, Mr. Sunia, Mr. Stenholm, Mr. Tallon, Mr. Guarini, Mr. McDade, Mr. Monson, Mr. Lujan, Mr. Clinger, Mr. Hansen, Mr. Brown of California, Mr. Thomas of Georgia, Mr. Yates, Mr. Bartlett, and Mr. Ortiz.

H. Con. Res. 351: Mr. Gaydos, Mr. Gray of Illinois, Mr. Roybal, Mr. Chappie, and Mr. Boucher.

H. Res. 469: Mr. Leach of Iowa.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 4300

By Mrs. ROUKEMA:

(Amendment in the nature of a substitute)

—Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Family and Medical Leave Act of 1986".

(b) Table of contents.—

TITLE I—GENERAL REQUIREMENTS FOR FAMILY AND TEMPORARY MEDICAL LEAVE
Sec. 101. Definitions.
Sec. 102. Inapplicability.
Sec. 103. Family leave requirement.
Sec. 104. Temporary medical leave requirement.
Sec. 105. Limitation on combined leave periods.
Sec. 106. Certification.
Sec. 107. Employment and benefits protection.
Sec. 108. Prohibited acts.
Sec. 109. Administrative enforcement.
Sec. 110. Enforcement by civil action.
Sec. 111. Investigative authority.
Sec. 112. Relief.
Sec. 113. Reliance in future on administrative ruling.
Sec. 114. Notice.
TITLE II—FAMILY AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES
Sec. 201. Family and temporary medical leave.
TITLE III—MISCELLANEOUS PROVISIONS
Sec. 301. Effect on other laws.
Sec. 302. Effect on existing employment benefits.
Sec. 303. Effective date.
TITLE IV—TASK FORCE ON FAMILY AND MEDICAL LEAVE FOR EMPLOYEES OF SMALL EMPLOYERS
Sec. 401. Appointment of task force.
TITLE V—COVERAGE OF EMPLOYEES OF THE CONGRESS
Sec. 501. Sense of the Congress concerning coverage of employees of the House of Representatives and employees of the Senate.

TITLE I—GENERAL REQUIREMENTS FOR FAMILY AND MEDICAL LEAVE

SEC. 101. DEFINITIONS.

For purposes of this title, the following terms have the following meanings:

(1) The term "industry or activity affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce.

(2) The terms "employ", "person", and "State" have the meanings given such terms in sections 3(g), 3(a), and 3(c), respectively, of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(g), 203(a), 203(c)).

(3) The term "employee"—

(A) means an employee as defined in section 3(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(e)) who is employed by an employer (with respect to whom the benefits provided under this title are sought)—

(i) on the average, for not less than 40 hours per workweek; and

(ii) for not less than 12 consecutive months,

(B) does not include any Federal officer or employee covered under subchapter III of chapter 63 of title 5, United States Code (as added by title II of this Act).

(4) The term "employer"—

(A) means any person who (i) employs 50 or more employees for each working day in each of 20 or more calendar workweeks in the current or preceding calendar year, and (ii) is engaged in commerce or in any industry or activity affecting commerce,

(B) includes any person who acts directly or indirectly in the interest of an employer to one or more employees, and

(C) includes any public agency, as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x)); employees of any such employer shall be deemed to be employees engaged in commerce.

(5) the term "employment benefits" means all benefits provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions regardless of whether such benefits are provided by a policy or practice of an employer or by an employee benefits plan as defined in section 3(3) of the Employee Retirement Income Security Act 1974 (29 U.S.C. 1002(1)).

(6) The term "geographically separate facility" means any facility of an employer which is not located within 50 miles of any other facility of such employer.

(7) The term "health care provider" means—

(A) Any person licensed under Federal, State, or local law to provide health care services, or

(B) any other person determined by the Secretary to be capable of providing health care services.

(8) the term "reduced leave schedule" means leave scheduled for fewer than an employee's usual number of hours per workweek or hours per workday.

(9) The term "Secretary" means the Secretary of Labor.

(10) The term "serious health condition" means an illness, injury, impairment, or physical or mental condition which involves—

(A) inpatient care in a hospital, hospice, or residential medical care facility, or

(B) continuing treatment or continuing supervision by a health care provider.

(11) The term "son or daughter" means a biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis, who is—

(A) under 18 years of age, or

(B) 18 years of age or older and incapable of self-care because of mental or physical disability.

(12) The term "parent" means a biological, foster, or adoptive parent, a stepparent, a parent-in-law, or a legal guardian.

SEC. 102. INAPPLICABILITY.

The rights, remedies, and procedures provided under this title shall not apply with respect to any employer or employee at—

(1) any geographically separate facility at which fewer than 50 employees are employed, or

(2) any facility which employs fewer than 50 employees and is not geographically separate but which is functionally separate and distinct from any other facility of the employer which is located within the same geographic area.

SEC. 103. FAMILY LEAVE REQUIREMENT.

(a) In General.—(1) An employee shall be entitled to 8 workweeks of family leave during any 24-month period—

(A) because of the birth of a son or daughter of the employee,

(B) because of placement with the employee, for adoption or foster care, of a son or daughter who is not of legal school age or has not begun attending a regular elementary school, or

(C) in order to care for the employee's son, daughter, or parent who has a serious health condition.

(2) In any case in which a female employee takes leave because of the birth of a son or daughter—

(A) the first 3 weeks of leave after such birth shall be deemed to be temporary medical leave; and

(B) any additional weeks shall be deemed to be temporary medical leave if supported by certification issued by the employee's health care provider stating that such employee suffers from a serious health condition that prevents the employee from caring for such son or daughter

Any leave under this paragraph shall be in addition to family leave to which the employee is entitled.

(3) The entitlement to leave under subparagraphs (A) and (B) of paragraph (1) shall expire 6 months after the date of such birth or placement.

(b) Reduced Leave.—Upon agreement between the employer and the employee, leave under this section may be taken on a reduced leave schedule.

(c) Intermittent Leave.—In the case of leave under subsection (a)(1)(C), such leave may be taken intermittently when medically necessary, except that, to the extent practicable, such leave shall be scheduled so as not to disrupt unduly the operations of the employer.

(d) Unpaid Leave.—Leave under this section may consist of unpaid leave, except as provided in subsection (e).

(e) Relationship to Paid Leave.—(1) If an employer provides paid family leave for fewer than 8 workweeks, the additional weeks of leave added to attain the 8-week total may be unpaid.

(2) An employee or employer may elect to substitute any of the employee's paid vacation leave, paid personal leave, or other appropriate paid leave for any part of the 8-week period.

(f) Foreseeable Leave.—In any case in which the necessity for leave under subsection (a)(1)(C) is foreseeable based on planned medical treatment or supervision—

(1) the employer may require that the employee schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the employee's health care provider, and

(2) the employee shall provide the employer with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

(g) Spouses Employed by Same Employer.—In any case in which a husband and wife entitled to family leave under this section are employed by the same employer, the aggregate number of workweeks of family leave both may take may not exceed 8 workweeks during any 24-month period.

(h) Simultaneous Leave.—During any period in which the able-bodied spouse of an employee provides at-home care for a son, daughter, or parent, such employee shall not be eligible for family leave.

SEC. 104. TEMPORARY MEDICAL LEAVE REQUIREMENT.

(a) In General.—Any employee who, because of a serious health condition becomes unable to perform the functions of such employee's position, shall be entitled to temporary medical leave. Such entitlement shall continue for as long as the employee is unable to perform such functions, except that the entitlement shall not exceed 13 workweeks during any 12-month period.

(b) Intermittent Leave.—Such leave may be taken intermittently when medically necessary, except that, to the extent practicable, such leave shall be scheduled so as not to disrupt unduly the operations of the employer.

(c) Foreseeable Leave.—In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision—

(1) the employer may require that the employee schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the employee's health care provider, and

(2) the employee shall provide the employer with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

(d) Unpaid Leave.—Such leave may consist of unpaid leave, except as provided in subsection (e).

(e) Relationship to Paid Leave.—(1) If an employer provides paid temporary medical leave or paid sick leave for fewer than 13 weeks, the additional weeks of leave added to attain the 13-week total may be unpaid.

(2) An employee or an employer may elect to substitute accrued paid vacation leave, sick leave, or other appropriate paid leave for any part of the 13-week period.

SEC. 105. LIMITATION ON COMBINED LEAVE PERIODS.

An employer may limit the combined number of workweeks of family leave, temporary medical leave, vacation leave, sick leave, or other leave to not less than 26 workweeks during any 24-month period.

SEC. 106. CERTIFICATION.

(a) In General.—An employer may require that a claim for family leave under section 103(a)(1)(C) or temporary medical leave under section 104 be supported by certification issued by the health care provider of the son, daughter, parent, or employee, whichever is appropriate.

(b) Sufficient Certification.—Such certification shall be sufficient if it states—

(1) the date on which the serious health condition commenced,

(2) the probable duration of the condition,

(3) the medical facts within the provider's knowledge regarding the condition, and

(4)(A) in any case involving leave under section 104, an explanation of the extent to which the employee is unable to work; or

(B) in any case involving leave under section 103(a)(1)(C), an explanation of the extent to which, and the amount of time that, the employee is needed to care for the son, daughter, or parent.

(c) Second Opinion.—In any case in which an employer has reason to doubt the validity of the certification provided under this subsection (a), the employer may require, at its own expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under subsection (b).

(d) Subsequent Periodic Certification.—The employer may require that the employee provide subsequent certifications on a reasonably periodic basis throughout the period of the leave.

SEC. 107. EMPLOYMENT AND BENEFITS PROTECTIONS.

(a) Restoration to Position.—(1) Any employee who exercises any right provided under sections 103 and 104 for its intended purpose shall be entitled, upon return from such leave—

(A) to be restored by the employer to the position held by the employee when the leave commenced, or

(B) to be restored to a position with equivalent benefits, pay, and other terms and conditions of employment.

(2) As a condition to restoration under paragraph (1), the employer may require that the employee receive certification from a health care provider that the employee is able to resume work.

(3) The taking of leave under this title shall not result in the loss of any benefit or seniority accrued before the date on which the leave commenced.

(4) Except as provided in subsection (b), nothing in this section shall be construed to entitle any restored employee to—

(A) the accrual of any seniority or benefits during any period of leave, or

(B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(5) An employer may deny restoration under this subsection with respect to any employee who is among the highest paid 20 percent of the employees employed by the employer in any case in which such denial is necessary to prevent substantial injury to the employer's operations.

(b) Maintenance of Health Benefits.—During any period an employee takes leave under section 103 or 104, the employer shall maintain coverage under any group health plan (as defined in section 162(i)(3) of the Internal Revenue Code of 1954) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave until the date the employee is restored under subsection (a).

(c) No Bar to Agreement Concerning Alternative Employment.—Nothing in this title shall be construed to prohibit an employer and an employee with a serious health condition from mutually agreeing to alternative employment for the employee throughout the duration of such condition. Any such period of alternative employment shall not cause a reduction in the period of temporary medical leave to which the employee is entitled under section 104.

SEC. 108. PROHIBITED ACTS.

(a) INTERFERENCE WITH RIGHTS.—(1) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under this title.

(2) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.—It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual—

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title,

(2) has given or is about to give any information in connection with any inquiry or proceeding relating to any right provided under this title, or

(3) has testified or is about to testify in any inquiry or proceeding relating to any right provided under this title.

(c) CLARIFICATION CONCERNING EMPLOYMENT ACTIONS NOT PROHIBITED.—Nothing in this title shall be construed to prohibit an employer from taking any action affecting the employment of an employee in any case in which such action is based on considerations other than leave taken or requested by such employee.

SEC. 109. ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—The Secretary shall issue such rules and regulations as are necessary to carry out this Act, including rules and regulations concerning service of complaints, notice of hearings, answers and amendments to complaints, and copies of orders and records of proceedings under this section.

(b) CHARGES.—(1) Any person (or person, including a class or organization, on behalf of any person) alleging an act which violates any provision of this title may file a charge respecting such violation with the Secretary. Charges shall be in such form and contain such information as the Secretary shall require.

(2) The Secretary shall serve a notice of the charge on the person charged with the violation not more than 10 days after the Secretary receives such charge.

(3) A charge may not be filed more than 1 year after the last event constituting the alleged violation.

(4) The charging party and the respondent may enter into a settlement agreement concerning the violation alleged in the charge. Such agreement shall bar any civil action under section 110.

(c) INVESTIGATION; COMPLAINT.—(1) Upon receipt of the charge, the Secretary shall promptly investigate the charge and shall promptly issue a complaint based on the charge or dismiss the charge.

(2) If the Secretary determines that there is no reasonable basis for the charge, the Secretary shall dismiss the charge and promptly notify the charging party and the respondent as to the dismissal.

(3) If the Secretary determines that there is a reasonable basis for the charge, the Secretary shall issue a complaint based on the charge and promptly notify the charging party and the respondent as to the issuance.

(4) Upon the issuance of a complaint, the Secretary and the respondent may enter into a settlement agreement concerning a violation alleged in the complaint. Such settlement shall not be entered into over the objection of the charging party, unless the Secretary determines that the settlement provides full compensation to the employee.

(5) If, within 120 days after the filing of the charge, the Secretary—

(A) has not made a determination under paragraph (2) or (3) as to whether there is a reasonable basis for the charge,

(B) has dismissed the charge under paragraph (2), or

(C) has not entered into a settlement agreement under paragraph (4)

the charging party may bring a civil action under section 109.

(6) The Secretary may issue and serve a complaint alleging a violation of this title on the basis of information and evidence gathered as a result of an investigation initiated by the Secretary pursuant to section 111.

(7) The Secretary shall have the power to petition the United States district court for the district in which the violation is alleged to have occurred, or in which the respondent resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition, the court shall cause notice of the petition to be served upon the respondent, and the court shall have jurisdiction to grant to the Secretary such temporary relief or restraining order as it deems just and proper.

(d) RIGHTS OF PARTIES.—(1) In any case in which a complaint is issued under subsection (b), the Secretary shall, not less than 10 days after the complaint is issued, cause to be served on the respondent a copy of the complaint.

(2) Any person filing a charge alleging a violation of this title may elect to be a party to any complaint filed by the Secretary alleging such violation. Such election must be made before the commencement of the hearing.

(e) CONDUCT OF HEARING.—(1) The Secretary shall have the duty to prosecute any complaint issued under subsection (c).

(2) An administrative law judge shall conduct a hearing on the record with respect to any complaint issued under this title.

(f) FINDINGS AND CONCLUSIONS.—After the hearing conducted under this section, the administrative law judge shall promptly make findings of fact and conclusions of law, and, if appropriate, issue an order for relief as provided in section 112.

(g) FINALITY OF DECISION; REVIEW.—(1) The decision and order of the administrative law judge shall become the final decision and order of the agency unless, upon appeal by an aggrieved party taken not more than 30 days after such action, the Secretary modifies or vacates the decision, in which case the decision of the Secretary shall be the final decision.

(2) Not later than 60 days after the entry of such final order, any person aggrieved by such final order may obtain a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(3) Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) COURT ENFORCEMENT OF ADMINISTRATIVE ORDERS.—(1) The Secretary shall have the power to petition a United States court of appeals for the enforcement of the order of the administrative law judge and for appropriate temporary relief or a restraining order.

(2) Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In such a proceeding, the order of the administrative law judge shall not be subject to review.

(3) If, upon appeal of an order under subsection (g)(2), the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

SEC. 110. ENFORCEMENT BY CIVIL ACTION.

(a) RIGHT TO BRING CIVIL ACTION.—(1) Subject to the limitations in this section, an employee or the Secretary may bring a civil action against any employer to enforce the provisions of this title in any appropriate court of the United States or in any State court of competent jurisdiction.

(2) Subject to paragraph (3), a civil action may be commenced under this subsection without regard to whether a charge has been filed under section 109(b).

(3) If the Secretary—

(A) has entered into a settlement agreement under section 109(c)(4), no civil action may be filed under this subsection if such action is based upon a violation alleged in the charge and resolved by the agreement; or

(B) has issued a complaint under section 109(c)(3) or 109(c)(6), no civil action may be filed under this subsection if such action is based upon a violation alleged in the complaint.

(4) Notwithstanding paragraph (3)(A), a civil action may be commenced to enforce the terms of any such settlement agreement.

(5)(A) Except as provided in subparagraph (B), no civil action may be commenced more than 1 year after the date on which the alleged violation occurred.

(B) In any case in which—

(i) a timely charge is filed under section 109(b); and

(ii) the failure of the Secretary to issue a complaint or enter into a settlement agreement based on the charge (as provided under section 109(c)(5)) occurs more than 11 months after the date on which any alleged violation occurred,

the employee may commence a civil action not more than 30 days after the date on which the employee is notified of such failure.

(6) The Secretary may not bring a civil action against any agency of the United States.

(7) Upon the filing a complaint with the court, the jurisdiction of the court shall be exclusive.

(b) VENUE.—An action brought under subsection (a) in a district court of the United States may be brought—

(1) in any appropriate judicial district under section 1391 of title 28, United States Code; or

(2) in the judicial district in the State in which—

(A) the employment records relevant to such violation are maintained and administered; or

(B) the aggrieved person worked or would have worked but for the alleged violation.

(c) NOTIFICATION OF THE SECRETARY; RIGHT TO INTERVENE.—A copy of the complaint in any action by an employee under subsection (a) shall be served upon the Secretary by certified mail. The Secretary shall have the right to intervene in a civil action brought by an employee under subsection (a).

(d) Attorneys for the Secretary.—In any civil action under subsection (a), attorneys appointed by the Secretary may appear for and represent the Secretary, except that the Attorney General and the Solicitor General shall conduct any litigation in the Supreme Court.

SEC. 111. INVESTIGATIVE AUTHORITY.

(a) In General.—To ensure compliance with the provisions of this title, or any regulation or order issued under this title, the Secretary shall have, subject to subsection (c) the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)).

(b) Obligation To Keep and Preserve Records.—Any employer shall keep and preserve records in accordance with section 11(c) of such Act and in accordance with regulations issued by the Secretary.

(c) Required Submissions Generally Limited to an Annual Basis.—The Secretary may not under the authority of this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once in any twelve-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge pursuant to section 109.

(d) Subpoena Powers, Etc.—For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

SEC. 112. RELIEF.

(a) Injunctive.—(1) Upon finding a violation under section 109, the administrative law judge shall issue an order requiring such person to cease and desist from any act or practice which violates this title.

(2) In any civil action brought under section 110, the court may grant as relief any permanent or temporary injunction, temporary restraining order, and other equitable relief as the court deems appropriate.

(b) Relief.—Any employer that violates any provision of this title (other than section 114) shall be liable to the injured person in an amount equal to—

(1) any wages, salary, employment benefits, or other compensation denied or lost to such person by reason of the violation, plus interest on the total monetary damages calculated at the prevailing rate, or

(2) in the case of any willful or egregious violation twice the amount determined under paragraph (1).

(c) Attorneys' Fees.—The prevailing party (other than the United States) may be awarded a reasonable attorneys' fee as part of the costs, in addition to any relief awarded. The United States shall be liable for the costs the same as a private person.

(d) Limitation.—Damages awarded under subsection (b) may not accrue from a date more than 2 years before the date on which a charge is filed under section 109(b) or a civil action is brought under section 110.

SEC. 113. RELIANCE IN FUTURE ON ADMINISTRATIVE RULINGS.

With respect to any action or proceeding brought against an employer under this title, the employer may rely on any written administrative regulation, order, ruling, approval, opinion, interpretation, practice, or enforcement policy of the Department of Labor to the extent provided under section 10(a) of the Portal-to-Portal Act of 1947 (29 U.S.C. 259(a)).

SEC. 114. NOTICE.

(a) In General.—Each employer shall post and keep posted, in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted, a notice, to be prepared by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title.

(b) Penalty.—Any employer who willfully violates this section shall be fined not more than $100 for each separate offense.

TITLE II—FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

SEC. 201. FAMILY AND TEMPORARY MEDICAL LEAVE.

(A) In General.—Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"Subchapter III—Family and Temporary Medical Leave

"§ 6331. Definitions

"For purposes of this subchapter—

"(1) 'employee' means—

"(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia); and

"(B) an individual under clause (v) or (ix) of such section;

whose employment is other than on a temporary or intermittent basis;

"(2) 'serious health condition' means an illness, injury, impairment, or physical or mental condition which involves—

"(A) inpatient care in a hospital, hospice, or residential medical care facility; or

"(B) continuing treatment, or continuing supervision, by a health care provider; and

"(3) 'child' means a biological, adopted, or foster child, stepchild, legal ward, or child of a de facto parent who is—

"(A) under 18 years of age; or

"(B) 18 years of age or older and incapable of self-care because of mental or physical disability.

§ 6332. Family leave

"(a) Leave under this section shall be granted on the request of an employee if such leave is requested—

"(1) because of the birth of a child of the employee;

"(2) because of the placement for adoption or foster care of a child with the employee; or

"(3) in order to care for employee's child or parent who has a serious health condition.

"(b) Leave under this section—

"(1) shall be leave without pay;

"(2) may not, in the aggregate, exceed the equivalent of 18 administrative workweeks of the employee during any 24-month period; and

"(3) shall be in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section—

"(1) immediately before or after (or otherwise in coordination with) any period of annual leave, or compensatory time off, otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or

"(4) any combination thereof.

"§ 6333. Temporary medical leave

"(a) An employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position shall, on request of the employee, be entitled to leave under this section.

"(b) Leave under this section—

"(1) shall be leave without pay;

"(2) shall be available for the duration of the serious health condition of the employee involved, but may not, in the aggregate, exceed the equivalent of 26 administrative workweeks of the employee during any 12-month period; and

"(3) shall be in addition to any annual leave, sick leave, family leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section—

"(1) immediately before or after (or otherwise in coordination with) any period of annual leave, sick leave, or compensatory time off otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or

"(4) any combination thereof.

"§ 6334. Job protection

"An employee who uses leave under section 6332 or 6333 of this title is entitled to be restored to the position held by such employee immediately before the commencement of such leave.

"§ 6335. Prohibition of coercion.

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with such employee's rights under this subchapter.

"(b) For the purpose of this section, 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6336. Health insurance.

"An employee enrolled in a health benefits plan under chapter 89 of this title who is placed in a leave status under section 6332 or 6333 of this title may elect to continue the employee's health benefits enrollment while in such leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909 of this title), through that individual's employing agency, the appropriate employee contributions.

"§ 6337. Regulations.

"The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Family and Medical Leave Act of 1986.".

(2) The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following:

"Subchapter III—Family and Temporary Medical Leave

"6331. Definitions.

"6332. Family leave.
"6333. Temporary medical leave.
"6334. Job protection.
"6335. Prohibition of coercion.
"6336. Health insurance.
"6337. Regulations.".

(b) EMPLOYEES PAID FROM NONAPPROPRIATED FUNDS.—Section 2105(c)(1) of title 5, United States Code, is amended by striking out "53" and inserting in lieu thereof "53, subchapter III of chapter 63,".

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. EFFECT ON OTHER LAWS.

(a) FEDERAL LAWS.—Nothing in this Act shall be construed to modify or affect any Federal law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or handicapped status.

(b) STATE AND LOCAL LAWS.—Nothing in this Act shall be construed to supersede any provision of any State and local law which provides greater employee family or medical leave rights than the rights established under titles I and II.

SEC. 302. EFFECT ON EXISTING EMPLOYMENT BENEFITS.

(a) MORE PROTECTIVE.—Nothing in this Act shall be construed to diminish an employer's obligation to comply with any collective-bargaining agreement or any employment benefit program or plan which provides greater leave rights to employees than the rights provided under titles I and II.

(b) LESS PROTECTIVE.—The rights provided to employees under titles I and II may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

SEC. 303. ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES.

Nothing in this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies which comply with the requirements under this Act.

SEC. 304. EFFECTIVE DATE.

This Act shall take effect 6 months after the date of its enactment.

TITLE IV—TASK FORCE ON FAMILY AND MEDICAL LEAVE FOR EMPLOYEES OF SMALL EMPLOYERS

SEC. 401. APPOINTMENT OF TASK FORCE.

(a) IN GENERAL.—The Secretary of Labor, within 6 months after the date of the enactment of this Act, shall establish a Task Force on Family and Medical Leave For Employees of Small Employers (hereinafter in this section referred to as the "Task Force").

(b) MEMBERSHIP.—The Task Force shall include representatives of small employers and employee organizations.

(c) FUNCTIONS.—The Task Force shall—

(1) study the feasibility of requiring small employers to provide a minimum number of protected family leave and temporary medical leave periods to their employees; and

(2) submit a report of its activities and conclusions, which may include legislative recommendations concerning policies and methods for providing such leave, not later than 2 years after the date of the enactment of this Act.

(d) DEFINITION.—For purposes of this section the term "small employer" means any employer who does not employ at least 50 employees for at least 20 calendar weeks during any current or preceding calendar year.

TITLE V—COVERAGE OF EMPLOYEES OF THE CONGRESS

SEC. 501. SENSE OF THE CONGRESS CONCERNING COVERAGE OF EMPLOYEES OF THE HOUSE OF REPRESENTATIVES AND EMPLOYEES OF THE SENATE.

It is the sense of the Congress that the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate should establish rules and procedures to apply the principles of this title with respect to employees of the House of Representatives and employees of the Senate, respectively.

Amend the title so as to read as follows: "A bill to entitle employees to family leave in cases involving the birth, adoption, or serious health condition of a son, daughter, or parent and temporary medical leave in cases involving inability to work because of a serious health condition, and to establish a task force to study the feasibility of requiring small employers to provide such leave.".

EXTENSIONS OF REMARKS

WORTHINGTON HILLS ELEMENTARY SCHOOL HONORED

HON. CHALMERS P. WYLIE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. WYLIE. Mr. Speaker, Worthington Hills Elementary School in my congressional district was selected recently to receive an elite and distinguished honor from the Secretary of Education, the Honorable William J. Bennett.

May I congratulate Worthington Hills Elementary School, its faculty and students on receiving the Excellence in Education Award attesting to their superlative efforts and extraordinary achievement. Only 210 public schools were so honored nationwide, so it is indeed a source of great pride for me to represent this fine school.

The awards were based primarily on how well the schools used resources at their disposal and how well they met the needs of achievement in reading and mathematics, and on the school's record of overcoming obstacles and sustaining progress.

Among the criteria utilized in selecting the schools were:

School organization, including its mission, goals and philosophy;

The instructional program, including curriculum and the character ethical development;

Instruction, including teacher evaluation and staff development;

School climate;

Efforts to make improvements and maintain high quality programs;

School-community relations; and,

Student achievement.

I think Secretary Bennett said it best when announcing the award winners. "These fine public and private schools are as diverse as America itself," he said, "but they share a common attribute: they're good schools. They provide their young students with a solid foundation for later life. They have helped their students develop a strong core of skills and knowledge, good values and habits, and an enthusiastic attitude toward learning."

Naturally, Worthington Hills Elementary School was quite pleased to receive this prestigious recognition of its educational efforts. Worthington Hills Elementary School was presented with a special flag symbolizing outstanding educational achievement. In addition to the flag, a plaque presentation will be made in ceremonies on Friday, October 3, 1986.

This year, which has been proclaimed by Congress and the President as "The Year of the Elementary School," marks the first time that elementary schools have been awarded this honor. Public secondary schools have received comparable awards the past 3 years and private secondary schools have received comparable awards the past 2 years.

It has become quite clear that American education has no more precious resource than a first-rate elementary school. That is why it is so gratifying that Worthington Hills Elementary School, one of the 210 finest examples nationwide, is in my congressional district. I salute the principal, Kelly Stevens, and wish for your school the very best in educational achievement during the coming year and the years to follow.

HONORING WHITTIER COLLEGE'S CENTENNIAL CELEBRATION

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. TORRES. Mr. Speaker, I would like to bring to the attention of my colleagues the celebration of the centennial anniversary of the founding of Whittier College in Whittier, CA.

Initially starting its educational endeavors in the Quaker tradition, Whittier College has achieved national and international attention for its academic status and accomplishments among its students, faculty, administration, alumni, and board of trustees.

Currently, the college serves some 1,200 students annually, many are from my district and from different parts of the country and world. Whittier College has helped prepare many outstanding individuals in business and government. Its alumni are found throughout the world in every possible facet of government, business, and industry. In fact, one alumnus is a member of my staff.

Under the leadership of its current president, Dr. Eugene S. Mills, Whittier College has received recognition as one of the best independent colleges in the Nation.

It is important to note that Whittier College has one of the highest percentages of Hispanic students among any of California's 123 public or private 4-year institutions. This is due to the initiative and leadership of the college's administration and board of trustees. I particularly want to congratulate the college's Center of Mexican American Affairs for its 18 years of service to Hispanic students. Under the guidance of its founding director, Mr. Martin Ortiz, the center has raised funds for scholarships and has helped recruit hundreds of Hispanic students to Whittier College.

Mr. Speaker, I ask that my colleagues join me in congratulating Dr. Mills, the board of trustees, faculty, administration, and students of Whittier College on their centennial celebration as an outstanding and respected institution of higher learning.

A TRIBUTE TO FELLOW JONG-WON KANG

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. DYMALLY. Mr. Speaker, for all of my time in the Congress, I have sponsored a fellowship program for staff members of the Korean National Assembly. Through the program, top staff members of the Assembly compete for the opportunity to come here for 4 to 6 months to study the Congress and its workings. Presently I have in my office Mr. Jong-Won Kang, who will be with us through December.

Each Fellow comes to the United States with a research project in mind. Mr. Kang's interest is in what is termed the "petition" process in Korea. Here, the practice is known as lobbying. Mr. Kang wants to know how the lobbying process influences the formation and movement of legislation. Through reading, through participation in meetings with lobbyists, and through observation of the process of legislation, Mr. Kang will gather the information and achieve the understanding necessary to write knowledgeably on the topic. I would venture to say that his paper will be something we could all profit from reading.

Mr. Kang comes to us from a distinguished background of service within his own country's legislative branch of government. Unlike our own staff arrangement here, which sees an approximately 40 percent turnover rate annually, National Assembly staffers look on work in the Assembly as a career. And through the years of their service they are able to achieve great legislative skill and a veteran's understanding of issues and procedures. In his nearly 10 years of service, Mr. Kang has served on the staffs of the Foreign Affairs and National Defense Committee, the General Affairs Division of the Assembly, and he now serves as the Assistant Chief of Inter-Parliamentary Relations.

My staff and I have been greatly impressed by Mr. Kang's courtesy. He has been a pleasure to work with because of the regard he has shown for his coworkers in the office. Regardless of the swirl of activity, the deadlines, the late nights, Mr. Kang always has a smile and a good word for everyone. He sets an example we would do well to emulate.

In his time with us, Mr. Kang has learned a good deal about our system by participating in it. And I mean that in a broad sense. Not only has he attended floor proceedings, committee hearings, and markups, but he has also tried to sample the culture of the United States that is evident beyond Capitol Hill. As an apt introduction to the country that loves the automobile, for example, Mr. Kang studied for and obtained a driver's license. He has attended

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

class at the graduate school of agriculture. He has been active in the Baptist Church near his home. I hope he will be able to visit my home district before he concludes his fellowship.

Those of us visiting Korea may be assured that Mr. Kang and his able staff in the Inter-Parliamentary Affairs division will treat our concerns with a sensitivity and understanding that flows from personal experience with our Congress, and with our culture. We are delighted to have Mr. Kang with us. His time with us will most assuredly be to the mutual benefit of our countries.

COLUMBUS DAY

HON. PETER W. RODINO, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. RODINO. Mr. Speaker, on October 12 we will celebrate Columbus Day.

Although Christopher Columbus was Italian, the day that bears his name has become a truly national celebration. Although I share with my fellow Americans of Italian heritage a special pride in Columbus' achievement, Columbus Day is a time for Americans of all ethnic backgrounds to rejoice in the diversity of our country and to appreciate the fact that we are a nation of immigrants. For we not only honor the man responsible for the discovery that changed the world—we honor the land that he discovered. America became a great country because of the millions of individuals who followed Columbus, from all over the world, who sought a better life and were given the opportunity in this country to achieve their full potential.

We celebrate the "father of immigration" and all of those who came after him, as well as his spirit of adventure and willingness to risk tremendous odds for what he believed in. Columbus Day is a tribute to the courage and persistence of the American spirit.

It is a great honor to be a guest at this year's 16th Annual Columbus Day Celebration and Parade in Newark. The festivities are sponsored by the Italian Tribune News.

The Columbus Day activities in Newark are successful each year because of the dedicated service and hard work of my friend Ace Alagna, publisher of the Italian Tribune and executive director of the Columbus Day celebration. I continue to marvel at Ace's ability to give the Columbus Day ceremonies a truly national and diverse spirit, making each year's celebration even more festive and enjoyable than the last.

The grand marshal of this year's parade is Mr. Al Martino, a noted singer and entertainer who appeared in the movie, "The Godfather". Prominent New Jersey officials expected to participate in the parade include Gov. Thomas Kean, Senators Bill Bradley and Frank Lautenberg. Over 350,000 people are expected to attend the celebrations featuring the Knights of Columbus Color Guard.

After the parade, an awards banquet will be held at Biase's Caterers in Newark to honor Mr. Edward J. Rondinelli, "Man of the Year," Dr. Elissa J. Santoro, "Woman of the Year," and Mr. Joseph Zarro, "Humanitarian".

Mr. Speaker, I salute my good friend, Ace Alagna, and this year's Columbus Day award winners. Their commitment and spirit of community service will make this year's Columbus Day celebration a truly spectacular event.

Mr. Speaker, I ask unanimous consent to include in the Record an article about this year's Columbus Day award winners, which was published in the Italian Tribune News.

[From the Italian Tribune News, Sept. 25, 1986]

COLUMBUS COMMITTEE TO HONOR THREE AT AWARDS DINNER

The Italian Tribune News' 16th annual Columbus Day Parade will be held on Sunday, October 12, beginning at 12:00 noon, in the North Ward section of Newark.

Executive Director Ace Alagna, Publisher of the newspaper, announced the festivities will kick-off at 11:30 a.m. with a wreath laying ceremony at the Columbus Monument on Bloomfield Avenue, Newark, with members of the executive board, parade officials and dignitaries.

Leading the Parade will be the United States Military Academy Marching Band of West Point, New York, followed by the 4th Degree Knights of Columbus. In the line of march will be dozens of floats, marching bands, drum and bugle corps, schools, Italian American clubs and organizations from all over the state, police and fire departments and a large military contingent. Joining the parade again this year will be the entire Salaam Temple, Ancient Arabic Order Nobels of the Mystic Shrine of Livingston. And, as a special entry, the internationally famous Ferko String Band, better known as the "Mummers" of Philadelphia, Pa., will be in a place of honor, complete with their fantastic plumed costumes. Miss Columbus, who will be selected next week will also be riding on her own float with her court. To enter your unit or marching group please contact the committee at (201) 485-6000.

To complete the day's activities, the Committee has planned an Awards Banquet scheduled for 7:00 p.m. at Biase's Caterers, Newark.

Three outstanding men and women have been selected to receive awards in recognition of their achievements during the past year. Publisher Ace Alagna has announced Edward J. Rondinelli will receive the "Man of the Year" award; Dr. Elissa J. Santoro, "Woman of the Year" and Joseph Zarro, "Humanitarian."

The evening will also feature a superb dinner, open bar entertainment and dancing.

MAN OF THE YEAR

Edward J. Rondinelli of Holmdel is President of Rondell Construction Corporation, a diversified development and construction company in Clark. A native of Jersey City, Ed attended evening courses for seven years at Fairleigh Dickinson University to earn a Bachelor of Science Degree in Engineering. His dedication has led to many successes, all of which he attributes to the influence of his family. His parents, Edward Sr. and the late Catherine; his lovely wife Alice and their two daughters, Linda and recently married Donna Price, have encouraged him in pursuing his goals with their understanding and support.

As a contractor, the firm specializes in a complete turnkey package. As a developer, the company is a major investment builder. Currently, Rondell is developing on a 160 acre site, Metro Park South at Garden State Parkway, Exit 120 Old Bridge, which will comprise 115,000 square feet of office and high tech space, a hotel and convention center and 400 townhouses, of which he is builder, developer and owner.

Mr. Rondinelli, with over 25 years of construction and development experience has supervised the construction of over a hundred million dollars of office and industrial facilities in varying positions with major construction and development companies until he organized Rondell Construction Corporation in 1975. But to talk with Ed, you would never know this man to be anything but humble. This self-made man quietly sponsors little leagues, scholarship funds and literally hundreds of charitable endeavors. Only recently, he dedicated a Little League field in Lawrence Harbor, a section of Old Bridge, in memory of his mother Catherine. The field, the Catherine Rondinelli Memorial Field is complete with an electronic lighted score board. He has also undertaken the sponsorship of a scholarship fund in his mother's memory, to enable other youngsters the chance to better their education.

Today, Edward J. Rondinelli is one of the nation's leading real estate developers.

WOMAN OF THE YEAR

Dr. Elissa J. Santoro of Irvington is a most celebrated surgeon in the State of New Jersey, specializing in Breast Oncology surgery.

Born in Newark, Dr. Santoro was graduated from Immaculate Conception High School, Montclair with the highest honors. She received an A.B. degree in Chemistry from St. Elizabeth, Convent Station and received a first prize award from the Student American Chemical Society for her research paper on "DNAs Activity in tumors." She was awarded her Doctor of Medicine degree from the Woman's Medical College of Pennsylvania where she did her student research fellowship in Pathology. She interned in Philadelphia at the Straight Surgical Hospital of the Woman's Medical College for one year and was assistant resident in Surgery at the same hospital for another year. For the next three years she was assistant resident in surgery at St. Vincent's Hospital and Medical Center in New York City, senior resident and then Chief Surgical resident. Dr. Sanboro did her post doctoral fellowship in Cancer training from the National Institute of Health at New York Medical College and Metropolitan Hospital Center.

She has received many appointments and honors in her career in medicine including serving as chairman of various organizations, including the Essex Chapter American Cancer Society and the New Jersey Division, American Cancer Society. For seven years, she was Assistant Attending in Surgery and Oncology at Saint Barnabas Medical Center, Livingston and later appointed Full Attending. She was named to the Board of Trustees for the Regional Council for Women in Medicine, Inc., named Clinical Chief of Surgical Oncology at St. Barnabas and was elected as a member of the Board of Trustees of the College of St. Elizabeth, for a five year term. This past March, she was selected to represent the United States as Surgical Oncologist for the month-long "Cancer Update '86" conference held in China as part of the President's People-to-People Citizen Ambassador Program.

Dr. Santoro is also a member of the American Medical Association, Essex County Medical Society, Academy of Medicine of

N.J., Surgical Society of the N.Y. Medical College, Inc., American Medical Women's Assn. of Cancer Education, American Society of Preventive Oncology, Oncology Society of N.J., American Society of Clinical Oncology, N.Y. Metropolitan Breast Cancer Group Inc. and American Cancer Society of N.J.

She is a Diplomat of the American Board of Surgery and the National Board of Medical Examiners.

Dr. Santoro has published five medical papers since 1970 and has been recognized by many outstanding organizations in the country for her fine work in oncology.

IN 1972, Dr. Santoro received the AMITA Award for surgery, and has since been named by the American Cancer Society, UNICO, St. Elizabeth's College, Caldwell College, and a host of other awards.

HUMANITARIAN

The word giving and the name of Joseph Zarro are one and the same. Born in Newark on October 22, 1906, Joe Zarro is the son of Italian immigrants, the late Frank Sr. and Filomena Durante Zarro, who came here in 1871.

In 1904 Joe's father Frank Sr. established the Zarro Funeral Home in Newark. Together with his brother, who is now deceased, Joe moved the business to Bloomfield in 1932, where it is now located at 145 Harrison Street. He attended the McGallisters School of Embalming and received his funeral directors and embalming certificate. Today he is the sole owner of the Zarro Funeral Home.

As Standard Bearer of the Zarro Civic & Welfare Association, Joe has done more for the needy and handicapped than any other one person in the state of New Jersey. His heart and pockets are always open to those who are in need. Together with his late wife, Helen, they raised six daughters. He is the grandfather of 10 grandchildren and two great-grandchildren.

A doer, Joe has been a member of many civic organizations and has been recognized by over 20 such groups. He is a 4th Degree Knight of Columbus, Bloomfield Council, and has sponsored two Babe Ruth Leagues and two Little Leagues for the past 35 years. He received a certificate of appreciation from the Heart Fund for outstanding services and was cited by the Beltsville Park Senior Citizens, as their "Special Citizen." He also was the recipient of the Recognition Award from the Multiple Sclerosis Association, Humanitarian Award from the John Albani Association for the Retarded and was made an honorary member of the Belleville Senior Citizens.

In the 1950's, Mr. Zarro almost singlehandedly raised enough money for St. Anthony's Church in Belleville to completely eradicate the Church debt.

High on his list of priorities is the handicapped or seriously ill child. Each year his organization selects a worthy person and dedicates that year to raising money to help with their medical expenses. Recently, a fund raiser was held for a 5 year old cerebral palsy victim Jennifer Torlucci of Colonia.

He also contributes annually to the Bloomfield Junior Football League, churches in Newark, Bloomfield and East Orange; to schools in Montclair, Newark, Bloomfield and Nutley; Fire and Police departments, locally and statewide and many first aid squads throughout the state. Hospital auxiliaries also benefit from Zarro's fund raising as well as the many war veterans organizations.

Throughout his untiring efforts and tremendous generosity, thousands of unfortunate and worthy causes have been helped.

BIPARTISAN SUPPORT OF H.R. 5591

HON. DOUGLAS APPLEGATE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. APPLEGATE. Mr. Speaker, I would like to take this opportunity to express my strong support of the measure introduced in the House last week by my very good friend and colleague on the congressional steel caucus from Pennsylvania, Representative JOHN MURTHA. This measure, H.R. 5591, has widespread bipartisan support from the members of the steel caucus, will do what needs to be done in assuring steel companies and steel workers all across America that corrective measures and action will be taken in solving the problems of excessive steel imports and a declining domestic steel industry.

The efforts of the Reagan administration to establish voluntary restraint agreements with nations exporting steel to the United States can be commended, but the larger truth is that the important goal of this program—to bring imports down to a total domestic market share of 18.5 percent—is farther from reality today than it was at the beginning of this year. A primary reason underlying this failure is the problem of steel imports coming from Sweden, Taiwan, and Canada, imports that have constantly increased since the inception of the VRA Program in October 1984. This bill would place a real and potent force behind the desires of our Trade Representative, Ambassador Clayton Yeutter, to have these three nations included within the VRA Program.

Besides this provision, this bill, H.R. 5591, also addresses the problem of those steel products that are sent through third-party nations for further processing and transformation and then sent on to the United States. These items would be counted against the originating country that has entered into a voluntary restraint agreement with the United States. This would answer the growing problem of steel being shipped in a way that circumvents the restrictions of the VRA program, either intentionally or unintentionally. Regardless of the intent, it would be in the best interests of our Nation to remove this sizable loophole.

Mr. Speaker, the efforts of this Congress to address the major problem of America's trade deficit—as evidenced in the passage by the House last May of an omnibus trade bill—represents the clear and cogent understanding that most of the Members of this Chamber, as well as many in the other body, have of our trade problem. Unfortunately, these concerns, concerns that I know of all to well as they extend through all regions of my district in eastern Ohio, are not being heard by those in the White House who have the power to turn this situation around and get behind and support the industries and workers of America.

This measure hardly comes close to being as comprehensive and encompassing as the omnibus trade bill that passed the House last May or the textile bill that President Reagan vetoed late last year and which was nearly overriden in August. While I know the position that the President expressed regarding these bills, calling them "protectionist" and vowing to veto them whenever they reach his desk, the fact remains that what we attempt to do with the measure that Representative MURTHA introduced last week, and what we have attempted to do with many other trade bills that have been considered by this Congress, is to protect American industry and American workers, including their families and the communities in which they live.

I do not view our attempts at protection as being wrong, just as I do not believe that the military strength of our Nation—here at home and throughout much of the free world—should be regarded as wrong, even though the protection of America and of our allies underlies the purpose of our defense. What, then, is the difference between the "protectionism" provided by our Armed Forces and the protection that Members of Congress and millions of Americans seek to provide for American industry and American workers when it comes to solving our trade deficit problem? What purpose can there be in guaranteeing that our military strength is second-to-none while permitting our industrial base to deteriorate to the status of a second-rate power?

If there are those in this Chamber who disagree with the approach that we are taking with H.R. 5591, if there are those who feel that efforts to protect the interests of American industry and American workers is deserving of the disparaging labels that the White House uses whenever solutions to our trade situation are considered by Congress, then I must ask you: What will it take for you to comprehend and understand that military "protectionism" on the outside will never compensate for a failure to protect the economic structure that represents the very content and lifeblood of much of our Nation?

For those who feel highly assured of the protections provided by a 600-ship Navy, let me assure you that I can show you hundreds of thousands of American workers whose jobs have already been lost in a battle where no shots were ever fired. For those who confine their views to the power of our military might alone, let me also assure you that there are numerous closed and rusting hulks of steel mills that dot the landscape of America, steel mills that, although they appear to have been bombed and destroyed by an enemy force, never took a shell or missile in battle but, instead, were nevertheless surrendered to foreign powers by the inaction of those who continue to cry "protectionism" whenever we seek to save American industry.

Mr. Speaker, I request that each and every Member of the House give serious consideration to supporting this measure and the many other bills that seek to bring about a remedy to our growing trade deficit—a deficit that has been setting records for the past 5 years and is nearing $170 billion in 1986. Just as I continue to lend my full and unyielding support to the military strength of America and the servicemen and women who stand a constant vigil in our defense, I also want to assure these special Americans and all other Americans that what our military preserves, protects, and defends will continue to exist and function and that we will never permit the loss of what the United States of America represents through a slow but steady erosion of American industry and American jobs to nations beyond our shores. This is, ultimately, our most important defense.

ENDING APARTHEID: WHY WE CAN'T WAIT

HON. GEORGE E. BROWN, JR.

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. BROWN of California. Mr. Speaker, 23 years ago, Martin Luthur King wrote a book titled "Why We Can't Wait," which explained in compelling terms why black Americans, faced in all directions with a racist society, could not—and would not—wait any longer to be granted their constitutional and God-given rights. Today, we face a similar situation in South Africa, where the black majority, trampled by the racist regime of apartheid, is tired of waiting for change. They want apartheid to end. They want to be granted the basic human freedoms and dignities to which they are entitled. Yet President Reagan, in deciding last Friday to veto legislation imposing economic sanctions on South Africa, has sent black South Africans a cruel message: "Keep Waiting."

My colleagues, on Monday, by overriding the sanctions veto, we sent the President a message that we will not join him in his heartless decree. We announced, as I expect the Senate to announce today or tomorrow, that we, too, have waited long enough for South Africa to change its repressive policies. We have witnessed the brutal realities of apartheid for much too long, and we, too, are eager to see apartheid dismantled.

In South Africa, we have a system that overflows with injustice. Apartheid, South Africa's institutionalized system of racism, creates human misery and deprivation almost beyond comprehension. Through apartheid, the white minority of South Africa maintains absolute political and economic domination over a population five times its size. It accomplishes this goal through some of the most violent and disruptive social engineering of human history.

At the core of apartheid is the "homelands" policy, an artificial contrivance designed exclusively to keep humans with black and colored skin separate from, and subservient to, those with white skin. Initiated in 1948, the homelands policy involves cataloging every nonwhite individual in South Africa, then assigning each person to a homeland for residence. Individuals residing elsewhere than their designated homeland have had no choice but to move, or be moved.

While the total number of blacks and coloreds that have been forceably relocated remains uncertain, one estimate puts the total at 3.5 million between 1960 and 1983 alone. Millions of families have thus been uprooted from areas where they and their ancestors had lived for generations. They have been trucked long distances against their wills, and dumped in some of the most arid, worthless tracts of land in the whole of South Africa. Living conditions in these homelands are bleak, with only the barest of facilities.

Each homeland is placed on a pathway toward "independence," which, upon being granted by the State of South Africa, means that the residents of that homeland are stripped of their South African citizenship and thereafter require visas to enter white South Africa for extended periods. Blacks are thereby reduced to the status of foreigners in their own land. As a result of the homelands relocation process, South Africa's 5 million whites control more than 85 percent of the country, while its 25 million blacks and coloreds crowd upon the 15 percent that remains.

Employment opportunities in the homelands are essentially nonexistent, which makes them, in effect, labor camps for the white-run industries of Johannesburg, Cape Town, Port Elizabeth, and elsewhere. The commute to these cities can take up to 4 to 5 hours in each direction, on buses heavily subsidized by a government that would rather pay for the travel than have the blacks live any closer to urban areas. Yet the jobs at the end of each commute amount to little more than slave labor. White South Africans control all white-collar positions in the country, while the average black employee makes one-fourth the pay of a white person. Blacks have essentially no choice, however, but to accept these low wages since black unemployment runs at around 40 percent.

Education for blacks is deliberately kept at a low-level, for in the grand scheme of apartheid, the white minority has no interest in an educated black majority. The South African Government spends seven times as much on the education of a white child as it does on a black.

Fundamentally, the system of apartheid is designed to keep the blacks of South Africa economically, intellectually, and politically subordinate to whites in all respects. But given that blacks outnumber whites 5 to 1, the white regime can only maintain its control through government-sanctioned violence, perpetrated by the government's security forces. And herein lies the darkest side of apartheid.

South Africa's security forces engage in routine abuses of human rights in their attempt to uphold the laws of apartheid. Such abuses are widespread, involving gratuitous beatings, pointblank shootings, unprovoked killings. For example, in early May of this year, South African police broke into a high school after a group of pupils violated the law which bans public demonstrations. Once in the school, the police violently whipped the students with rubber whips with hardened ends. The School Committee reported that the police seemed to take "particular pleasure to damage the faces of the pupils." Five were hospitalized; a number were scarred for life.

Laws banning freedom of assembly, political organizations, and—for all practical purposes—freedom of speech provide the security forces with sufficient pretexts for almost any form of arrest and detention. Groundless detentions and torture are routine. Yet justice remains out of reach for black South Africans. Due process has been regularly denied to blacks. The result is a virtual police state, wherein blacks are constantly intimidated and threatened by the security forces. Fear and anger have become the controlling emotions for many blacks.

This is the harsh reality for the blacks of South Africa. It is a reality that cries for change. South Africa is a society of injustice and inequity that the world simply cannot condone any longer. Yet President Reagan has done precisely that in vetoing the economic sanctions legislation approved by Congress. In taking this position, the President has sided once again with the Pretoria government and not with the better share of world opinion which abhors Pretoria's racist regime.

President Reagan points to recent "reforms" in South Africa, claiming that change is on its way. Yet the reforms that have occurred to date are primarily cosmetic ones, showing no indication of an interest on the part of the Botha government to fundamentally alter in any way the abhorrent nature of the present system. Indeed, some of these "reforms" indicate that the Government of South Africa is solely interested in preserving and entrenching its society based on racial separation. The principle of "one man-one vote" in a unitary system has been outrightly rejected.

Given the existing situation, the world community has no real choice but to apply international pressure in the form of economic sanctions. While some claim that sanctions will not help induce reform in South Africa, plenty of evidence suggests that they will. In the opinion of the so-called Eminent Persons Group [EPG] on South Africa, appointed by leaders of the Commonwealth nations, economic sanctions seem entirely in order. The EPG's report states:

> We are convinced that the South African Government is concerned about the adoption of effective economic measures against it. If it comes to the conclusion that it would always remain protected from such measures, the process of change in South Africa is unlikely to increase in momentum and the descent into violence would be accelerated. In these circumstances, the cost of lives may have to be counted in millions.

It is also charged that sanctions will harm blacks more than whites. While this may be true over the short term, such harm would be quickly dwarfed by the long-term pain and agony of blacks continuing under the apartheid regime. That is why economic sanctions are supported by, among others: South Africa's leading church leaders, Bishop Desmond Tutu and the Reverend Alan Boesak; leading black South African groups such as the African National Congress and the United Democratic Front; and the black trade unions COSATU and CUSA. Economic sanctions are seen as providing leverage on the apartheid regime to engage in the process of dialog essential for bringing about a nonracial, representative government in South Africa. This is what blacks of South Africa are seeking, and this is the goal that United States policy should embrace.

Other initiatives aimed at speeding political and economic reform in South Africa could include: Improving our ties with the principal leaders of black South Africa, including Nelson Mandela; investing in programs aimed at the economic and intellectual development of South African blacks; helping arbitrate a suspension of violence on all sides so that the process of dialog can commence; and assisting in establishing a framework for dialog between the multiple parties of the conflct in South Africa, which could even take the form of a Camp David summit. Certainly other measures could be contemplated, but the last thing that is needed now is inaction such as President Reagan seems to support.

The blacks of South Africa have waited long enough for an end to apartheid, and are unwilling to be told to wait any longer. If given an opportunity to respond to President's Reagan's recent decision, I think many South African blacks would express views along the lines of what Martin Luther King stated in "Why We Can't Wait":

> Perhaps it is easy for those who have never felt the stinging darts of segregation to say, "Wait." But when you have seen vicious mobs lynch your mothers and fathers at will and drown your sisters and brothers at whim; when you have seen hate-filled policemen curse, kick and even kill your black brothers and sisters; when you see the vast majority of your twenty million Negro brothers smothering in an airtight cage of poverty in the midst of an affluent society; . . . when you have to concoct an answer for a 5-year-old son who is asking: "Daddy, why do white people treat colored people so mean?"; when you are humiliated day in and day out by nagging signs reading "white" and "colored"; when you are forever fighting a degenerating sense of "nobodyiness"—then you will understand why we find it difficult to wait. There comes a time when the cup of endurance runs over, and men are no longer willing to be plunged into the abyss of despair.

The world's cup of endurance for the racist society of South Africa has long since run over. The time has come for action. By overriding the President's veto, Congress has declared its unwillingness to passively accept South Africa's injustices any longer. We must now press forward with a broad policy that helps catalyze constructive, peaceful change in that country where the cloud of oppression has lingered for far too long.

WHY THE FEDERAL GOVERNMENT NEEDS GAAP

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. CRANE. Mr. Speaker, the right of the public to monitor the decisions of its elected officials is one of the basic rights of republican government. This right, however, has been taken away by the National Government's method of accounting. The National Government uses the cash basis of accounting, an accounting method designed for small businesses which ignores such vital information as accounts receivable and long-term costs. The National Government is, therefore, able to underreport the true level of the national deficit by billions of dollars. When using generally accepted accounting procedures [GAAP], a sophisticated method of accounting used by large corporations, a much more accurate picture of Government finances is produced. Using GAAP, for instance, the national deficit was actually $148.1 billion higher in 1984 than the Government had reported. This astounding increase derived from adding future obligations which the cash basis of accounting ignores. The National Government has not only obscured its financial figures for years, it also does not require its various entities to publish financial statements.

The present state of affairs benefits both Members of Congress and national bureaucrats. Congressmen are able, in effect, to buy votes by providing benefits to constituents without informing them about the true cost of these programs. Bureaucrats are able to hide the inefficiencies of their programs and plead for ever-increasing amounts of funding. Both groups are able to spend the public's money to further their political and professional careers while the public is forced into ever greater debt. Both groups are not being held accountable by the public and, as a result, self-government is being sullied by the very individuals elected and appointed to serve the people of our great country.

Since 1975, Arthur Andersen & Co. have argued that the National Government must stop using the cash basis of accounting and start using the GAAP method. I would like to share with my colleagues an article by Duane R. Kullberg, CEO of AA&Co., which outlines the AA&Co. thesis. It also makes the subject of accounting comprehensible to the layman. This article should be read by all Members of Congress who believe that self-government is a myth unless the public is free and able not only to choose its Representatives but also able to evaluate their performance.

The article follows:

THE DEFICIT IS WORSE THAN IT LOOKS

CONGRESS AND THE WHITE HOUSE ARE FOCUSING ON THE WRONG NUMBERS IN THE BUDGET DEBATE

(By Duane R. Kullberg)

The manner in which the federal government represents its financial condition is woefully misleading. For all the debate about the exact costs of items in the federal budget and the very precise deficit numbers reported each year, Congress and the voters do not know the real cost of government operations. Nor do they know how much the government owes its citizens in the form of pension obligations and other entitlements. And no one can have a clear idea of the economic impact of decisions by Congress or the Administration. But one thing is clear: the numbers in use today, the government's checkbook balances, grossly understate the cost of government.

The underlying problem is that virtually all debate over the federal budget deficit focuses on the so-called cash deficit. By reporting its financial status only on a cash basis, the government ignores such things as accounts receivable and accounts payable, does not provide reserves for uncollectible debts, treats the sale of assets as income and long-term capital investments as current expenses, does not depreciate or amortize capital assets, and disregards the long-term costs of federal programs.

A wise man once noted that "we might hope to see the finances of the [federal government] as clear and intelligible as a merchant's books, so that every member of Congress and every man of any mind . . . should be able to comprehend them to investigate abuses, and consequently to control them." The man was Thomas Jefferson. Some may say that his comments on government finances are as obsolete today as knee-length britches and powdered wigs. I disagree.

Like any large organization, the federal government cannot get a reliable picture of its financial condition unless it uses the accrual method of accounting. Accrual accounting recognizes financial events as they occur. It would enable federal officials to account for their activities in a manner that reflects the true economic impact of financial transactions, and it would give officials a sound basis for assessing national priorities.

In 1975 my firm prepared prototype consolidated federal financial statements using accrual accounting to set a standard for sound financial reporting. This year we have prepared and are distributing comparative statements again to provide elected officials and citizens the information they need to properly address a decade of deficits, a lack of accountability, and inadequate federal financial management.

The reported federal deficit in fiscal 1974 amounted to $6.1 billion on a cash basis. On an accrual basis the deficit that year was $95.1 billion. By 1984 the annual deficit had risen to $185.3 billion on a cash basis and $333.4 billion on an accrual basis. Along the way the accrual-basis deficit peaked as a percentage of GNP at 12% in 1980; by 1984 it had dropped to 9% of GNP.

From 1974 to 1984 the accumulated deficit (the true national debt) measured on the accrual basis rose to $3.8 trillion. That was roughly double the total market value of all securities traded on the New York and American stock exchanges and over the counter at that time, and nearly three times the reported national debt of $1.3 trillion. The accumulated deficit at the end of fiscal 1984 amounted to approximately $44,500 per household.

The principal reasons for the differences between our figures and the cash-basis figures in the federal budget are that accrual accounting includes the pensions promised to federal employees and the military and the future Social Security benefits that workers have already earned. These are the nation's largest liabilities, and yet they are not acknowledged as real obligations by the U.S. government. Because these programs are financed mostly on a pay-as-you-go basis, political leaders have been able to enhance benefits continually without reporting the cost of those obligations.

The proposition that the government ought to use accrual accounting is not radical. Indeed, Congress passed a law ordering the executive branch to adopt accrual accounting 30 years ago. As long as the Administration ingores that mandate, Congress will continue to adopt programs without fully recognizing the costs it is committing taxpayers to bear. This lack of accountability creates an incentive for elected officials to curry favor with today's voters at the expense of tomorrow's taxpayers—a true generation gap. Until we remedy this, we cannot reasonably expect politicans to meet nonexistent standards of fiscal responsibility.

The Reagan Administration often has asserted its philosophical commitment to sound government financial management. Here are some ways the Administration can replace rhetoric with clear action:

Establish sound financial reporting as a priority. It should be possible to meet this goal by 1990 if not sooner.

Publish and distribute annual financial statements. The federal government, which insists on full disclosure from public companies, should allow the rules it prescribes for others. For the past ten years the Treasury has prepared financial statements based on our prototype. But those statements generally have been prepared about a year late and have been issued with significantly less fanfare than that accompanying the appointment of a deputy under secretary.

Submit federal financial statements to an independent audit. The logical choice would be Congress's General Accounting Office.

Adopt accrual accounting for realistic budgeting. The federal government should finally comply with its own law requiring accrual accounting and use it not only for reporting, but for budgeting and management purposes as well. This accrual-basis budget would come in addition to the cash-flow budget.

As accountants and consultants to business and government, my firm recognizes that fiscal crises often stem from a lack of accountability inadequate or misleading financial information, and a failure to account properly for the full cost of long-term programs. We made this point when we presented the first prototype financial statement of the federal government in 1975.

Soon thereafter, New York City and a number of other large municipal governments began foundering on the rocks of fiscal irresponsibility. Federal officials were quick to recognize the problem and quick to prescribe a cure. In return for the emergency assistance it provided to New York City, the Treasury ordered the city to convert to accrual accounting for financial reporting and budgeting, and to undergo annual audits. Subsequently Congress mandated annual audits for state and local governments receiving federal grants. Yet in the face of a fiscal crisis of its own, and in defiance of the 1956 law, the U.S. government has failed to implement the reforms it imposed on others.

The need to restructure the nation's system of financial management is urgent. It is not simply an issue for debate among accountants or investment bankers; it is a critical question of governance. The representatives of a free society have an obligation to report accurately on the financial affairs of the federal government.

Perhaps the American public would approve of all that Congress has committed it to pay. But whatever the case, the public has an inalienable right to know. At present the public does not know the true state of federal finances. Now is the time for Americans to insist that their government put its financial house in order.

Above all, now is the time for an Administration committed to financial integrity to push for reforms that will create a practical basis for holding public officials accountable for their positive or negative contributions to the economic welfare of the the nation. The gut issue is not accounting; it is accountability, an old idea whose time has come.

CONGRESSIONAL SALUTE TO THE HONORABLE MARIO I. FERRARO OF WEST PATERSON, NJ, 1986 MAN OF THE YEAR, FEDERATION OF ITALIAN SOCIETIES

HON. ROBERT A. ROE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. ROE. Mr. Speaker, on Sunday, October 12, the residents of my congressional district and the State of New Jersey will honor an esteemed businessman, community leader, and good friend—the Honorable Mario I. Ferraro of West Paterson, NJ—whose standards of excellence throughout his lifetime have earned him the highly coveted citizen's award of one of our most prestigious Italian American organizations—the 1986 Man of the Year of the Federation of Italian Societies of Paterson, NJ. I know that you and our colleagues here in the Congress will want to join with me in extending our warmest greetings and felicitations to him, his good wife Anna, and their sons, Mario Jr. and Richard, upon this milestone of achievement in their family endeavors.

Mr. Speaker, as a nation comprised of all people of all nationalities and regions throughout the world, each singularly, and rightfully so, proud of his or her individual heritage and united in common endeavor of freedom, justice, and a good life for all, we can most assuredly be proud of the exemplary achievements that the people of Italian heritage have contributed to America's greatness.

As we all know, Columbus Day is a day of special importance to Americans of Italian heritiage when all Americans should join in recognizing the great contributions of Italian-Americans to our country's cultural, scientific, atheltic, and commercial achievements, and economic vitality. The selection of Mario Ferraro as the Man of the Year of the Federation of Italian Societies during the observance of Columbus Day 1986 is applauded by all of us.

Mr. Speaker, our man of the year, Mario Ferraro, was born on April 8, 1940, in Santa Croce Camerina, Sicily. In 1955, his parents Orazio and Concettina Ferraro, came to the United States and settled in Paterson, NJ. At the time of their departure from Italy, Mario had already completed "Scuola Media" and had been very active in church activities and Boy Scout programs at Santa Croce Camerina.

In Paterson, NJ he attended Public School No. 15 and graduated from Eastside High School. It is interesting to note that he was the recipient of a full-time athletic scholarship that enabled him to pursue his higher educational pursuits at Fairleigh Dickinson University in Teaneck, NJ. He was an outstanding soccer player. In 1956 he was a member of the Paterson Dovers, the best amateur team in the area. On the soccer team of Eastside High School he was selected on the All State Team in 1957 and 1958 and at the college level received All Met League honors and honorable mention on the All American Team. He was a member of the Santa Croce Soccer Team of Paterson from 1959 to 1970.

From 1962 to 1968 he was a member of the National Guard 50th Armored Division in Riverdale, NJ, and participated in two summer camp programs at the NCO Academy at Fort Dix, NJ.

Mr. Speaker, the pleasure of great personal dedication and always working to the peak of one's ability with sincerity of purpose and determination to fulfill a life's dream—that is the success of the opportunity of America—and the mark of distinction in our society of the self-made man.

During his high school and college years Mario always had a part-time job. He worked for his Uncle Angelo at A&J Ferraro in his teens and was an employee at Zenith Dye as a college student.

Upon his graduation from college, he was a teacher for 2 years in the Paterson school system. In 1967 he commenced employment with Leslie Co. in Lyndhurst, NJ, as production control manager and in 1970 moved on to Inter-Continental Dynamics in Englewood, NJ.

In 1971 he began to realize his lifelong ambition to attain success as an entrepreneur in the business world. In 1971, in partnership with his brother-in-law, Sal DiNello, they bought the Farrell Vault Co. in Totowa, NJ. His partner continued to devote full time to his career as an educator leaving the daily operations and management of their business venture to our honoree Mario Ferraro. Their business flourished and in 1980 they acquired Crews Vault Co., Totowa Concrete Products & Imperial Vault Co. Today, trading under the name of Crews-Farrell the business has earned the highest credentials in the industry and gainfully employs 35 persons. Mario is a member of ASPICS [American Production and Inventory Control Society] and has also served 4 years on the board of directors of the National Vault Association.

There is much that can be said of Mario Ferraro and all of his good deeds. Among his many civic and charitable endeavors he is an active participant in the noble goals and objectives of the San Guiseppe Santa Croce Camerina Society. He was one of the charter members when this most prestigious organization, which is highly acclaimed in our community and State for its benevolence, goodwill, and charity, was reorganized and reincorporated in 1974 and has served for two terms as its president. We also commend his outstanding contribution to our youth through his service in the activities of the Boys Club of West Paterson. He is also a prominent member of the St. Anthony's Roman Catholic Church in Paterson.

Mr. Speaker. It is indeed appropriate that we reflect on the deeds and achievements of our people who have contributed to the quality of life here in America. As we join today in saluting Mario Ferraro, may I also take this opportunity to add the deep appreciation and gratitude of all Americans for the wealth of wisdom and cultural enrichment that the people of Italian heritage have contributed to the quality of our way of life here in America.

As we gather together on Sunday, October 12, in tribute to Mario Ferraro's leadership endeavors and personal commitment dedicated to service to people, we do indeed salute the 1986 Man of the Year of the Federation of Italian Societies of Paterson, NJ—the Honorable Mario I. Ferraro of West Paterson, NJ.

NORTH SHORE TODAY

HON. ROBERT J. MRAZEK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. MRAZEK. Mr. Speaker, I rise today to commend Publisher Mark Schlau of North Shore Today on the second anniversary of its publication.

As the name would suggest, "North Shore Today" serves the people of the North Shore of Long Island by providing a lively, informative source of community news and business opportunities and services in the area. In 2 years, the publication has grown to a circulation of about 75,000 in an area from Great Neck to Woodbury, which I am pleased to represent in this body.

Along with a wealth of advertisements of benefit to consumers, North Shore Today offers informative columns on finance, health, and other subjects. Judging from its growth, the publication clearly meets a need on the North Shore, and I wish Mr. Schlau and his associates at North Shore Today continued success in the coming years.

THE MOTHERS OF AMERICA SEND A MESSAGE TO THE KREMLIN

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday October 1, 1986

Mr. GILMAN. Mr. Speaker, anyone who has worked in this Capital City for any length of time, has had the privilege of making the acquaintance of Gertrude Engel. Trudy, as her friends call her, has worked tirelessly over the years to promote peace, love, and understanding between fellow human beings, through her many endeavors as the president of Gertrude Engel Public Relations. Trudy's most recent effort has been the formation of the Mothers of America.

Following is the text of a letter sent by the Mothers of America, to the Soviet President Mikhail Gorbachev, extending an invitation to the Mothers of Russia, to meet with the Mothers of America, in an open dialog aimed at facilitating a greater understanding between the two superpowers. I commend this letter to my colleagues' attention.

GERTRUDE ENGEL PUBLIC RELATIONS,
Washington, DC.

MIKHAIL GORBACHEV and others:
The Kremlin Palace,
Moscow, Russia U.S.S.R.

"Let us be the perpetuator of human survival, peace on earth and let it begin with me."

Thus the creed from the "Mothers of America" with mutual respect and admiration for the "Mothers of Russia" who believe that man has a choice as to which he will embrace during the course of his life's progression.

Since we heard that the Soviet Union is devoted to the cause of peace, we cordially invite the Mothers' members, please, to Washington, D.C., to explain the spirit and issues of war, destruction, and hunger that prevail throughout the world.

Do we have to ennoble brutality to achieve greateness?

We certainly have the capacity to do great things. We are subject to some direction whether it be benign or sinister and for an adjustment from conflict to coopertion. Let us make our contribution to the evolution and the sanctity of life. The Earth is One.

Let us be proud to be human. Let us face the future unafraid. "The will to live is far greater than the will to perish."

Thank you sincerely
Respectfully submitted,

GERTRUDE ENGEL,
Founder, Mothers of America.

UPDATE

Also, as a respected journalist with faith and love, we humbly request please that your open heart and listening ear will consider our petition for the release of Mr. Nicholas Daniloff to leave the Soviet Union.

We held a briefing awhile back at the National Press Club when several of your editors appeared and were treated with respect and dignity. They were very complimentary toward Mothers of America. We exchanged views and appreciated their kindness.

A SONG FOR THE HOMELESS

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. BIAGGI. Mr. Speaker, I recently received a copy of a song from Bob Falcone, a former New York City police officer. Mr. Falcone and M.I.A. Production Co., Ltd., are promoting this song because of its powerful and very moving message about our Nation's homeless. It is written by Toby Lynn and is entitled, "Graffiti on the Wall." The chorus of the song sums up the homeless issue in very compelling terms:

They are human beings, with names and faces. They just slipped off the edge and have taken a fall. They're like you and I, not just hopeless cases. They won't wash away like graffiti on the wall.

There are an estimated 3 million homeless individuals in our country, and this number is on the increase. Particularly alarming is the fact that more and more of our homeless are women, children, entire families, minorities, mental patients, and elderly individuals. And especially our Vietnam veterans who deserve more from our Nation. As the song states:

Some wish to be there, most wish not. Some remember the good life, most just forgot. Some are crazy, most are sane. They themselves are not to blame. They sleep in an alley, or out in the street. They once were strong, but now they're weak. Too far down to climb back alone, They need our help to get back home.

"They need our help to get back home." That is the message for all of us in the public and private sector, who are in a position to help. Earlier this year, I joined my colleagues in this and the other body in approving a resolution designating the week of June 22, 1986, as "National Homelessness Awareness Week." That helped, but legislation that passed the House in June would do even more. That bill, H.R. 1, would establish a National Emergency Food and Shelter Board in HUD to oversee the operation of an existing emergency food distribution and shelter program, and to administer two new shelter programs. The Board would provide continued assistance for the repair and improvement of emergency shelter facilities; and they would initiate a demonstration program to test the effectiveness of assisting nonprofit organiztaions providing housing and support services for those homeless individuals who are mentally ill. In addition, the bill authorizes the use of funds to renovate or maintain existing structures for use as emergency shelters, and up to 15 percent of such funds could be used to provide other services to the homeless.

I am a cosponsor and strong supporter of that measure, and I am disappointed that the other body has failed to approve it and would urge them to act.

Mr. Speaker, I want to commend Bob Falcone, Toby Lynn, and the MIA Production Co., Ltd., for focusing valuable attention on the homeless issue in a very unique and creative way. At this time, I am submitting the words to "Graffiti on the Wall" for the RECORD:

GRAFFITI ON THE WALL

(By Toby Lynn)

Verse 1

A place we would call a danger zone, these poor people call their home.
A cardboard box, no pillow for their head.
On a grate, in a doorway, anyplace they make a bed.

Chorus

They are human beings, with names and faces.
They just slipped off the edge and have taken a fall.
They're like you and I, not just hopeless cases.
They won't wash away like graffiti on the wall.

Verse 2

Some wish to be there, most wish not.
Some remember the good life, most just forgot.
Some are crazy, most are sane.
They themselves are not to blame.
They sleep in an alley, or out in the street.
They once were strong, but now they're weak.
Too far down to climb back alone.
They need our help to get back home.

Chorus

They are human beings, with names and faces.
They just slipped off the edge and have taken a fall.
They're like you and I, not just hopeless cases.
They won't wash away like graffiti on the wall.

Verse 3

Just one slip is all it takes.
To take that tumble, to loose your brakes.
If there's no one there to reach out and catch you, you'll fall to the street, and never come to.

Verse 4

They are victims of a social disaster.

Their numbers are growing faster and faster.
Are we doing what we should.
For those people who thought we would.
Don't close your eyes, don't shake your head.
It could be you lying there instead.
Don't block it out, it won't go away.
It's up to you to help them someway.

Chorus

They are human beings, with names and faces.
They just slipped off the edge and have taken a fall.
They're like you and I, not just hopeless cases.
They won't wash away like graffiti on the wall.

ELAINE E. McCULLOCH

HON. GUY VANDER JAGT

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. VANDER JAGT. Mr. Speaker, on November 1, 1986, after a total of 27 years of outstanding service, Elaine E. McCulloch, director of service to military families and veterans, of the Muskegon-Oceana, MI, Chapter of the American Red Cross, will retire.

Ms. McCulloch started her career with the American Red Cross as a volunteer in the Muskegon Chapter in 1959, where she performed veterans claim work. She joined the staff as a caseworker in October 1964. In 1972, she became director of service to military families and veterans and saw the inclusion of service to Oceana County when the two chapters merged in 1973.

The service to military families and veterans department provides 24-hour service, particularly for active military personnel and their families. In addition, service to veterans and their dependents has always been of special interest to Ms. McCulloch and she has continued her emphasis on veterans claims work to the point that almost $1 million a year comes to the veterans and their families, that she has helped in our community, as a direct result of the efforts of her department. Her department also provides emergency assistance to families who have been affected by disasters.

In 1982, Ms. McCulloch coordinated the inception of the Red Cross Heart Bank, through Michigan Consolidated Gas Co., and 2 years later, the addition of the Federal Emergency Management Agency energy assistance program.

The executive director of the Muskegon-Oceana Chapter of the American Red Cross, Tim Lipan, wrote of Ms. McCulloch that "it is due to Elaine's demand for quality service and personal dignified attention to all clients, particularly disadvantaged minorities, that has won this chapter the respect of cooperating agencies throughout the State, as well as the clients themselves."

I know that my colleagues will agree with me that Elaine McCulloch deserves our special attention upon the occasion of her retirement because of her outstanding work and more importantly because, through her dedication she represents a symbol of hope and good will in a time when these qualities are so important. It is indeed a great honor and privilege for me to pay tribute to Elaine McCulloch who epitomizes the highest standards and traditions of excellence and community service. I wish her every success in all her future endeavors.

A TRIBUTE TO THE REVEREND HOWARD O. VAN SICE

HON. ROY DYSON

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. DYSON. Mr. Speaker, I rise today to salute a man whose eloquent sermons have for 33 years been a source of great pride and comfort to the many people who flocked to his congregations at the First Baptist Church in Elkton, MD. I speak of the Reverend Howard O. Van Sice, who recently retired as pastor after a distinguished career which began in 1953.

In his final sermon, the Reverend Van Sice told his congregation how to enhance their Christian lives not only in preparation for heaven, but as a way "to help us enjoy the best possible life here on Earth." Reverend Van Sice noted that a person does not have to go through hell to appreciate heaven, a common misconception. "You don't have to experience both sides of life," Reverend Van Sice explained. "You can stand on the curb and see all the trash and filth in the gutter. You don't have to wallow around in it to see that it is bad."

Indeed, the community in and around Elkton, MD, has profited enormously from Reverend Van Sice's 33 years of encouragement to keep God's Commandments, avoid practicing sin, and love thy brethren. It is in this vein, Mr. Speaker, that I salute and congratulate Reverend Howard O. Van Sice for all the years of love and guidance he provided for his family, friends and community.

NATIONAL GROUND WATER CONTAMINATION RESEARCH ACT, H.R. 5526

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. MILLER of California. Mr. Speaker, on September 22, 1986, the House of Representatives passed H.R. 5526, the National Ground Water Contamination Research Act. This is an important bill which takes a major first step toward protecting the Nation's ground water resources.

Mr. Speaker, several individuals made significant contributions toward the passage of this legislation. Among them are: Judy Campbell Bird, Environmental and Energy Study Institute; Velma Smith, Environmental Policy Institute; Robbi Savage, Association of State and Interstate Water Pollution Control Administrators; and J. Leonard Ledbetter, Georgia Department of Natural Resources. I want to take this opportunity to thank them for their assistance in obtaining passage of H.R. 5526.

I also appreciate the efforts of Jerry Gilbert, East Bay Municipal Utility District, and Anthony Cortese, Tufts University. As members of the National Academy of Science's Committee on Ground Water Quality Protection, their work played an instrumental part pointing out the need for this bill.

HONORING DR. WILFORD MICHAEL, PRESIDENT OF CERRITOS COMMUNITY COLLEGE

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. TORRES. Mr. Speaker, I ask my colleagues in Congress to join me in recognizing the distinguished service of Dr. Wilford Michael as president of Cerritos Community College. On December 31, 1986, Dr. Michael will be retiring from his duties as president of the college.

His students, friends, and fellow educators will celebrate his service to the community and college at his retirement dinner on November 21, 1986. Under his tenure, Cerritos College enjoys an increasing reputation as one of California's finest community colleges. He is to be commended for his outstanding work on behalf of the students of Cerritos College.

Dr. Wilford has been the president-superintendent at Cerritos College since July 1, 1973. He holds an A.A. degree from Chaffy College, B.A. from La Verne College, M.A. from Claremont Graduate School, and an Ed.D. from the University of California at Los Angeles. Prior to being president-superintendent at Cerritos College, he had served as assistant superintendent of business at Cerritos College, Santa Ana College, and Santa Ana College District.

Dr. Michael began his career in the Chino Unified School District where he served as a teacher, high school and junior high school prinicpal, administrative assistant—personnel—and assistant superintendent of business services.

He is active in the California Community College Chief Executive Officers Association, the Association of California Community Colleges Administrators, and the Rotary Club of Bellflower. He has also served on advisory committees to UCLA and Pepperdine University.

Dr. Michael looks forward to spending more time with his wife, Jean and two daughters, Deborah Sherry and Marcia Totten, and a granddaughter, Amanda. His hobbies center around athletics where he and his wife attend as many college events as possible. He also enjoys playing golf and tennis, when his duties at Cerritos College do not require his attention.

Mr. Speaker, I am proud that Dr. Wilford Michael served as president of Cerritos College. The school has become a better place because of his service. He will be missed and hard to replace. I want to wish him all the best during his retirement.

RUBEN EDGARDO GIMENEZ: ALL THE BEST AND SUCCESS

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. DYMALLY. Mr. Speaker, by the end of this month, Mr. Ruben Edgardo Gimenez will have completed his congressional fellowship in my office. His program began on September 1, 1986.

Mr. Gimenez is a civil engineering student at the Facultad de Ciencias Exactas y Tecnologias, Universidad Nacional de Santiago del Estero, Argentina. He is the first engineering fellow I have arranged to work in my office. His fellowship stemmed out of my concern for infrastructural development in Central America and the Caribbean. Certainly, Argentina is far from being either one of these regions. It is my hope, however, that in the future this program would lead to the invitation of engineers from these regions.

Mr. Gimenez' fellowship focused primarily on the study of civil engineering technology utilized in carrying out our infrastructural projects commissioned by the Federal Government. He visited college campuses to observe civil engineering programs, and visited Government agencies involved in developing our infrastructure. In addition, Mr. Gimenez researched the congressional process by which moneys are allocated to fund these projects.

It has indeed been a pleasure having Mr. Gimenez as a fellow for these 2 months. His dedication and diligence in search of additional knowledge were especially rewarding. I only wish that more time was available for this aspiring engineer to participate in this program, but I know that the knowledge acquired will supplement his understanding of his field.

Mr. Gimenez will be returning to his studies at the university. But not before, Mr. Speaker, these United States have had the opportunity to treat this student to its greatness; namely the opportunity granted through this program.

Mr. Gimenez, I hope this has been a valuable experience for you and one that will assist you in your future endeavors. On that note, the staff and I wish you all the best and success.

INDIA'S NUCLEAR PROGRAM

HON. HOWARD WOLPE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. WOLPE. Mr. Speaker, I would like to draw the attention of my colleagues to an excellent and thought-provoking article by Mr. Gary Milhollin, which recently appeared in the New York Times. The race toward nuclear weapons in Asia has taken several troubling turns over the past year. We simply cannot afford to close our eyes to the dangerous brinksmanship underway between India and her historic rival, Pakistan. It is important to recall that both India and Pakistan have steadfastly refused to sign the Non-Proliferation Treaty which binds nations to the pledge that they will not develop a nuclear weapons capacity. It certainly does not take too much imagination to understand the frightening implications for American security and international stability suggested by a nuclear weapons cache in the subcontinent.

Mr. Milhollin presents compelling evidence which raises serious questions about the direction of India's nuclear program. There are troubling ambiguities and inaccuracies in India's accounting for the nuclear material necessary to run its nuclear powerplants. It appears that India is either diverting nuclear material in violation of international safeguards or is secretly importing such material from China. In either case, India's ability to construct a nuclear bomb has been enhanced.

This issue is timely because right now the executive branch is considering the export of highly sophisticated computer technology to India—technology which could have a nuclear application. Given the unanswered questions about the direction of the nuclear program in India and the serious implications for American security, I urge the President to move cautiously on this computer export and to insist that India provide the necessary clarification to make clear their intentions in the nuclear arena. We cannot afford anything less.

Articles follow:

[From the New York Times, Sept. 8, 1986]

IS INDIA DODGING NUCLEAR CONTROLS?

(By Gary Milhollin)

WASHINGTON,—Do controls on nuclear exports really work? Or are they just a veil behind which nations buy and sell the means to make atomic bombs? India is now forcing these questions on the world. India has either diverted nuclear material from international inspection or imported it secretly from China and is using it to increase dramatically its ability to build a nuclear arsenal.

The material at issue is heavy water (deuterium oxide). It is needed to create a chain reaction in India's reactors fueled by natural uranium.

India asserts that its three newest reactors—two at Madras and one at Trombay—are being operated exclusively with Indian-produced heavy water. Thus, India argues, it should not be subjected to the same international controls on heavy water that India has imported from Canada, the United States and the Soviet Union.

Under controls of the International Atomic Energy Agency, plutonium made by a reactor using imported heavy water is restricted to peaceful uses and open to inspection. By asserting the water is not imported, India could use the plutonium from its reactors to make atomic bombs.

So far, India says it has accumulated only small amounts of plutonium and pledges to use it only for peaceful purposes. The new reactors, however, would not be subject to such a pledge and could produce enough plutonium for 15 bombs a year.

The problem is that India has never made enough heavy water to run these reactors without imports. An analysis of India's heavy water needs, imports and production shows a staggering shortage unexplainable by possible error in data. In effect, India is now dishonestly running five reactors with barely enough heavy water to run three. It is either shifting safeguarded heavy water illegally to a reactor not covered by safeguards or getting secret imports.

India's first reactor at Rajasthan—itself under international safeguards—is suspect. It has been closed each time India has started a new reactor outside such safeguards. At any of these times, the Rajasthan reactor's safeguarded heavy water could have been diverted.

Secret imports could come from Canada, China, the United States or the Soviet Union. These are the only countries that export heavy water in the quantities India needed. But Canada cut off nuclear trade shortly after India detonated a "peaceful nuclear device" in 1974. The Russians are bound by the Non-Proliferation Treaty and Nuclear Suppliers Group guidelines not to export heavy water without safeguards. It is inconceivable that these countries would illegally supply water.

China is the only source remaining and the only supplier that accepts no restrictions. According to published accounts, China has supplied heavy water to Argentina without safeguads and a nuclear weapons design to Pakistan. It is also desperate for foreign exchange and scaled back its nuclear program for lack of it.

China has denied making exports to India, and India has denied receiving any. But India has also denied any diversion from safeguards and refused to provide data to back up the denial.

Canada, the United States and the Soviet Union cannot be sure their heavy water exports are not being used to make bombs. The remedy is to halt nuclear trade with India until the shortages are explained.

The United States should not sell India anything with a possible nuclear application, such as a super-computer now under consideration. A Soviet cutoff of heavy water probably would prevent India from operating one or more of the new reactors it is now constructing.

These remedies, however, could all be defeated by secret shipments from China. China wants to import reactor technology and open its economy to the West. Rather than leap into the new market, foreign suppliers must first insist that China make internationally binding promises to change its export behavior.

If the United States and the Soviet Union acted, India's program could be made accountable. If the suppliers acted as a group against China, it could be forced to accept a responsible export policy. If no one does anything, India can officially thumb its nose at the world and show that nuclear export controls don't work.

[From Science Magazine, Sept. 12, 1986]

HEAVY WATER: WHERE DID INDIA OBTAIN IT?

(By Mark Crawford)

The adequacy of the International Atomic Energy Agency's inspections of nuclear facilities is again under fire. The agency is responsible for monitoring nuclear power research activities to assure that materials and technology provided under treaty for peaceful purposes are not used to develop weapons. IAEA, however, may have failed to detect a diversion of India's heavy water stockpiles for the purpose of opening new reactors capable of producing weapons-grade plutonium. Much of the country's heavy water has been supplied under safeguards by Canada, the Soviet Union, and the United States under agreements that require inspection of some Indian nuclear facilities.

Gary Milhollin of the Natural Resources Defense Council, who is a former consultant for the Nuclear Regulatory Commission, contends that between 1983 and 1985 heavy water must have been obtained from the People's Republic of China, and/or diverted illegally from stocks subject to safeguards. The motivation, he says, was India's desire to start up three new research and power reactors. India's domestic heavy water production could not have supplied but a small portion of the reactors' needs, he says.

These new facilities, the Dhruva research reactor, and the MAPP-I and MAPP-II power reactors are not subject to international inspection under IAEA. The matter is of concern because of the nature of the Indian reactors which, when run with heavy water, can transform unenriched natural uranium into plutonium. Until now, says Milhollin, Indian reactors have produced enough plutonium to produce five to 10 nuclear bombs, but this material is pledged for peaceful use.

The three reactors, however, will produce enough plutonium for 15 bombs per year, he says. This material is not subject to supplier country safeguards. At this moment, Milhollin says, there is no evidence that India actually is building a nuclear arsenal.

At issue are several matters: whether IAEA failed to detect a major diversion of heavy water supplied by IAEA members; conducted by India that could spur the proliferation of nuclear weapons in neighboring states; and whether China is adhering to its public pledges and duty as an IAEA member not to foster weapons proliferation. Although Indian and Chinese government officials have denied Milhollin's accusations, he singles out China as the likely supplier because the Soviet Union and the United States and its Western allies have a strong record of adhering to IAEA safeguards.

India in fact could have started importing heavy water from China as early 1983, or diverting inventories of heavy water subject to international safeguards to the MAPP-I reactor located near Madras, Milhollin claims. Although the Soviets had pledged to provide heavy water supplies during the period, Milhollin calculates India still needed 68 metric tons of heavy water that was not subject to safeguards in 1983. Milhollin concedes that unsafeguarded water from the RAPP-I reactor in Rajasthan province legally could have been shipped to MAPP-I. The Rajasthan reactor was shut down for most of 1983. But Indian officials, he says, have provided no documented explanation of these events.

Similarly, in 1985 when MAPP II and the Dhruva research reactor were coming online, India faced a shortfall of 293 metric tons. It is unlikely, Milhollin says, that any portion of these needs were fulfilled by the diversion of heavy water from RAPP-I, which again operated only a small portion of that year. The MAPP-II reactor alone required 250 metric tons of heavy water and the Dhruva research reactor needed another 78 tons, says Milhollin, whose analysis is detailed in the fall issue of the journal Foreign Affairs Policy.

The IAEA has conducted an investigation of the Indian heavy water issue, says Peter Tempus, the agency's deputy director general for safeguards. Tempus declined to discuss the report's conclusions with *Science*. Although the IAEA officials say the findings were recently presented to United States officials in Vienna, Austria, State Department staffers working in the nuclear nonproliferation area say they have yet to see the report.

Milhollin's assertions are based on data collected from a variety of sources: newspaper accounts, statements of Indian government officials, analyses by American think tanks and federal government records, as well as IAEA documents. Congressional aides familiar with the Indian heavy water issue say Milhollin's assertions are not without merit. Apparently, U.S. intelligence agencies also have examined the matter. But what Congress or the Administration can do about the situation is uncertain.

EXTRAORDINARY ACCOMPLISHMENT BY REPRESENTATIVE BILL RICHARDSON

HON. RICHARD J. DURBIN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. DURBIN. Mr. Speaker, I rise today to bring to the attention of my colleagues an extraordinary accomplishment by the gentleman from New Mexico, Representative BILL RICHARDSON. Over the last 2 years Representative RICHARDSON has held over 600 town meetings. This unofficial record number of town meetings was highlighted in the Albuquerque Journal on September 21, 1986.

As I have traveled my district holding town meetings I have experienced the direct rewards of meeting face to face with the people I represent. There is no substitute for this person-to-person contact. I am confident it is what our Founding Fathers spoke of when they referred to a participatory government.

I call the Albuquerque Journal article to the attention of my colleagues and warn Representative RICHARDSON that if he wants to keep his town meeting record in the 100th Congress he had better keep an eye over his shoulder.

RICHARDSON FINDS VOICE THROUGH TOWN MEETINGS

(By David Staats)

Rep. Bill Richardson, D-N.M., stands before an audience of 12 people, fielding a question by an elderly man who wants to know why the Social Security system provides less money to people born before 1917 than to people born since.

Richardson has heard the question before. There's a move afoot in Congress to change the law, he answers, but it's not likely to get through this year.

He smiles and looks at the woman to the man's left. "It wouldn't apply to your wife, she's much younger than you," he says. The audience chuckles.

It's the type of crowd-pleasing comment Richardson's staff has heard countless times before, and knows they will hear again. This is a town meeting, and Richardson, the U.S. House's self-proclaimed king of town meetings, knows his act cold.

On this particular day, Wednesday, Sept. 3, Richardson has five town meetings scheduled in New Mexico's 3rd Congressional District: Bernalillo, Rio Rancho, Los Lunas, Belen, and the Rio Communities development near Belen. That's in addition to an appearance at Sen. Jeff Bingaman's Santa Fe Field hearing on health care for elderly Indians and a Rotary Club dinner speech.

The schedule is too crowded and Richardson knows it. He postpones the time of the Rio Rancho hearing but still gets there late. Driven by an aide, he zips down Interstate 25 at 80 mph to make the Los Lunas meeting on time, but still winds up apologizing for a late arrival.

By his own count, Richardson has held more than 600 town meetings since his election in 1982. He claims to hold more town meetings per term than any other U.S. representative. Richardson announces several meetings at a time in mass mailings using the congressional franking privilege.

Besides providing a service to his constituents, the meetings "are good politics," Richardson acknowledges. he says he targets areas where his voter support has been relatively weak for extra meetings and mailings. Even people who can't attend know he's making himself available.

The meetings bolster the community liaison efforts of Richardson's large field staff in the sprawling district that covers 15 northern and western New Mexico counties. The congressman has nine people in field offices in Santa Fe, Belen, Las Vegas and Gallup.

Field aides accompany him on his town meetings. Each meeting follows the same basic format:

Richardson begins by asking who in the audience needs to see him privately after the meeting.

He makes announcements about recent actions by his office or Congress, if any, that relate to that town.

He tells the audience that he'll call upon each person—"You all have a purpose in being here," he says—and those who don't want to speak are to say "pass."

Each person is limited to one minute, a restriction that Richardson enforces loosely, if at all. The entire meeting is scheduled to last an hour, but the actual length depends on the size of the crowd.

Richardson often mixes English with Spanish, depending on the audience. He frequently takes polls to gauge audience sentiment on current issues.

The day's meetings begin in Bernalillo. Wearing a gray suit, maroon tie and blue-and-white pinstripe shirt, Richardson quickly combs his wavy black hair before entering the Sandoval County Courthouse.

Inside, some elderly people complain about their deteriorating senior citizens center. Richardson promises to arrange a meeting with the State Agency on Aging, but the seniors remain skeptical. (The meeting later takes place as promised, however).

In Rio Rancho, only eight people show up at the noontime City Hall meeting. That's a small crowd, but Richardson has held some town meetings with an audience of two.

The congressman announces that a subcommittee hearing will soon be held on the city's request to obtain a different census designation that would make it eligible for more federal assistance. He also announces House passage of a measure allowing the New Mexico National Guard to lease facilities in Rio Rancho for training in the operation of Hawk missiles.

One man thanks Richardson for attending the dedication of a school the previous week. Another thanks him for sending a personal reply, instead of a form letter, in response to a request.

City Hall maintenance man Steve Surjan asks Richardson to send him a U.S. flag for the building. "Our flag is all ripped," he says.

"You got it," Richardson responds, adding that he'll be sure to send a flag that has flown over the U.S. Capitol.

After the meeting, Richardson asks a local Democratic Party official to get a telephone bank installed soon for his campaign. "I want to win this area big," he says. Rio Rancho voted Republican in 1984.

In Los Lunas, Richardson tells the Valencia County audience he favors raising the speed limit to 65 mph. He takes a poll, and 12 of the 18 people present agree with him. He takes another poll on the federal tax bill, and finds that eight favor it, one opposes it, and six are unsure. He takes a third poll on amnesty for illegal immigrants: three favor, 12 oppose. His last poll is on South Africa sanctions: 11 favor, four oppose.

He tells a joke about an old man from Albuquerque who told his daughter he wanted to be buried in Valencia County. "I want to be buried in Valencia County because I want to be active in politics after my death," the joke goes, and it gets the desired laugh.

In railroad-minded Belen, Richardson turns over the first portion of his meeting to a Santa Fe Railway official. The official argues against an Interstate Commerce Commission decision to block the merger of the railroad with the Southern Pacific Corp. The audience appears sympathetic, and Richardson says he's considering legislation to allow the merger to proceed.

A city councilor asks about federal funds for a local water project, and Richardson says it doesn't qualify under "my amendment" authorizing $40 million in federal funds for acequias. He doesn't mention the dispute he has with Republican U.S. Sen. Pete Domenici over who should get credit for the acequia funds.

Later, the councilor tells Richardson privately that his support is strong in Belen, and he has nothing to worry about from GOP challenger David Cargo.

A woman cheers Richardson on. "Don't let 'em sidetrack you—be true to your Democratic convictions," she says, drawing applause. "Hang in there!"

"Thank you for these meetings, Bill," says another woman. "We think it's great that you do it for us."

ROBERT I. MILLONZI

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday October 1, 1986

Mr. LAFALCE. Mr. Speaker, Abraham Lincoln said, "Die when I may, I want it to be said of me by those whom knew me best, that I always plucked a thistle and planted a flower when I knew it would grow."

Surely, history records that our Nation flourished as a result of Lincoln's many plucked thistles and planted flowers. So, too, history records that New York State and our Nation flourished from the many plucked thistles and flowers planted by Buffalo attorney and community leader Robert I. Millonzi, who died September 27, 1986,

Mr. Millonzi has left a record of accomplishments and contributions which have enriched the lives of his family, friends and community. He viewed life as a serious, momentous challenge, and with his beloved wife and daughters gave unstintingly of his love, devotion, and commitment to all.

The Nation sought Mr. Millonzi and honored him. He served Presidents Harry S. Truman and John F. Kennedy.

The State of New York sought Mr. Millonzi and honored him. He served Gov. Hugh Carey and Gov. Mario Cuomo.

The western New York community sought Mr. Millonzi and honored him. He was a major force in enhancing the economic vitality of western New York by his contributions to business, civic, cultural and government activities.

We shall miss the spirit, friendship and good acts of Robert I. Millonzi. But, we shall continue to reap benefits from the many flowers he planted.

I invite my colleagues to read about Robert I. Millonzi's exemplary life in the article by Tom Buckham, reporter for the Buffalo News, which follows:

ROBERT I. MILLONZI IS DEAD AT 76; CIVIL LEADER WAS PATRON OF ARTS

(By Tom Buckham)

Robert I. Millonzi, a Buffalo attorney and community leader who was sought out by governors and presidents for his knowledge of public and cultural affairs, died Saturday (Sept. 27, 1986) at age 76.

He suffered an apparent heart attack while playing in a golf tournament at the Buffalo Country Club and was rushed to Millard Fillmore Suburban Hospital in Amherst, where he was pronounced dead.

During a career that spanned more than half a century, the Buffalo born Millonzi became a force in banking and corporate law, a role that led to his 1951 appointment as a member of the Securities & Exchange Commission, and to later service as a consultant to the federal Reconstruction Finance Corp. during the administration of President Harry S. Truman.

It has been said he might easily have risen to the presidency of the New York Stock Exchange, or become a U.S. ambassador, had he chosen to expand his presence on the national and international levels. But he preferred to stay close to his law practice and his hometown.

"I always want to be where I can come back to my office and practice law in Buffalo," Millonzi said in a 1967 interview.

The city and many of its institutions benefited profoundly from his loyalty and expertise.

Foremost among the latter has been the Buffalo Philharmonic Orchestra Society, of which Millonzi, son of a classical musician, was a principal leader and patron for more than three decades. On May 19 he and his wife, Eleanor, were honored with Franz and Katherine Stone at Kleinhans Music Hall dinner that was a high point of the orchestra's 50th anniversary celebration.

For his longtime support of the arts and "tireless' service to the Philharmonic, Millonzi in 1975 was cited as an Outstanding Citizens by The Buffalo News.

Millonzi spent his childhood on Hudson Street on the city's West Side, not far from the site on which Kleinhans later was built. His interest in music was nurtured by his Italian-born father, Philip, who had studied at the Rome Conservatory and played bass with the Buffalo Symphony, the Philharmonic's predecessor.

The son studied piano, but eventually realized as he noted in the 1967 interview, that he "enjoyed listening to music more than playing it."

Millonzi went to the University of Buffalo and graduated with honors in 1932. After finishing UB Law School in 1935, he went to work in the family firm of fellow law student, Charles R. Diebold.

His work in a civil case involving the marketing of milk led to a job as legal counsel to the state Agriculture Department in Buffalo in the early 1940s, but he returned to corporate and banking law with the Diebold firm in 1947, when Charles R. Diebold became president of Western Savings Bank and Millonzi was named the bank's general counsel.

Millonzi was a senior partner in the law firm, which became Diebold & Millonzi, from then until 1981, when it was merged into Damon & Morey. At the time of his death, he was special counsel to the merged firm.

In 1951, the lifelong Democrat was appointed to the Securities and Exchange Commission by Truman. When he begged off reappointment a year later, to return to his Buffalo law practice, Truman reluctantly let him go, writing that Millonzi had done "a first-class job."

The presidential praise earned the attorney subsequent appointments as counsel to the Reconstruction Finance Corp., member of a 1967 U.S. delegation to the Economic and Social Council of the United Nations and trustee of the John F. Kennedy Center for the Performing Arts in Washington.

Millonzi's abilities also were valued by President Jimmy Carter, who in 1979 named him co-chairman of the Kennedy Center Advisory Committee on the Arts; by Gov. Hugh Carey, who named him a trustee of the State Power Authority and a member of task forces on the arts and judicial reform, and by Gov. Cuomo, who in 1983 called on him to head the blue ribbon Millonzi Commission on the statewide allocation of inexpensive hydroelectric power generated at Niagara Falls, and in 1985 named him to the New York State Council on the Arts.

Among the many other business, civic and governmental positions Millonzi held during his diverse career were the following:

Counsel, First Empire State Corp. and Western New York Savings Bank; director and Executive Committee member, M&T Bank; president, Buffalo Philharmonic Orchestra Society (1955-59); chairman, Buffalo Foundation Governing Committee; director, Buffalo Council on World Affairs, Buffalo Chamber Music Society and Community Music School, and chairman, State University of Buffalo Council and Judicial Nominating Committee for the Fourth Department.

Millonzi was the recipient of numerous awards, including the State University of New York's Chancellor's Medal, presented in 1983; UB's 1981 Distinguished Alumnus Award; UB Law School's 1974 Distinguished Alumnus Award; the university's 1979 Samuel P. Capen Alumni Award; its 1975 President's Distinguished Service Award; the Buffalo Council on World Affairs 1968 Annual Citation, and the 1981 Annual Award of the Association of Campus Related Foundations.

Survivors include his wife, the former Eleanor Verduin, and two daughters, Mary M. "Molly" Rainer of Washington and Elizabeth M. Levinson of Concord, Mass.

A Memorial Mass will be offered at 4 p.m. Tuesday in Blessed Sacrament Catholic Church, Delaware Avenue near West Utica Street. Burial will be in Forest Lawn.

TRIBUTE TO JAMES HARRISON GRAY, SR.

HON. CHARLES HATCHER

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. HATCHER. Mr. Speaker, I rise to pay tribute to a man who has had a profound influence on me, on my district, and on the State of Georgia during the past several decades. James Harrison Gray, Sr., who passed away on Friday, September 19, 1986, was the mayor of Albany, GA, at the time of his death, was a former candiadate for Governor of Georgia, and was a former chairman of the State democratic party. He is the person who can claim the most responsibility for the revitalization that Albany has undergone in the last several years; his influence over the city and over the entire south Georgia region is immeasureable.

Having grown up near Albany and having lived in the area most of my life, I came to know James Gray, Sr., as a dear friend and trusted adviser. He hailed from New England but embraced Albany and south Georgia as his home early in his life. Those of us fortunate to have known the man are grateful for that decision.

His son, James H. Gray, Jr., the executive editor of the Albany Herald, published a tribute to his father in the September 23, 1986, edition of the Herald. I submit it for the RECORD today, for it is as fitting a farewell to a great man as no other could write:

JAMES H. GRAY, SR.

He burst upon Albany, Georgia, on the restless heels of World War II, a Twentieth Century carpetbagger, abrim with the unflagging energy, untrammeled spirit, and bracing vigor so characteristic of the New England stock from which he sprang. With his disarming Dutch-boy features and the articulate clipped tones of his Yankee twang, which he never quite managed to tame to the amusement of the citizens of his adopted community, he unerringly carved a distinguished career, first as a newspaper editor and publisher, as a farseeing television pioneer in Southwest Georgia, as a businessman of extraordinary abilities, as a formidable power-broker on the hurly-burly scene of Georgia politics, and finally as mayor of a bustling, progressive city.

James H. Gray, Sr. was, as much as any man could be, the embodiment of Albany. He had a certain style uniquely his own, a transplanted northerner in a town which in the 1940s was to some degree still fighting the War Between The States. But through his captivating charm and boundless talents he won over the community because he had a strong faith in both the Southern character and the Southern spirit. When he spoke, as he did so often and so eloquently, of his new home, his earnest sincerity curbed even the most cynical of his doubters. He had about him an air of magic which was a dynamic coalition of personal attractiveness, acute intelligence, significant money resources, and an uncanny judgment of a man's character. And certainly he possessed that elusive aura of preordained accomplishment which so often distinguishes the victors from the vanquished in life.

The man was no idle, innocent dreamer, instead, he was an ambitious, pragmatic visionary selflessly dedicated to the advancement and well-being of a town and its citizenry.

He, fortunately, was possessed of a probing inquisitiveness that touched the entire spectrum of the varied human scene. He was a scholar, as at ease discussing the complexities of Latin grammar and translation as he was the fortunes (or more aptly misfortunes) of his beloved Boston Red Sox. He appreciated the artistry of a well-turned double play as much as the subtle phrases of a Cicero. He had a deep and absolute respect and affection for the English language, as a flexible instrument for molding thoughts and shaping dreams, as a tool for the day's work or grandiloquent expression. He ever looked forward; the sense of historical continuity was a very real part of his philosophy, but as a crucial part of the evolutionary process, not as a dead hand upon the future. In the turbulence and struggle that have marked our age, he had an unwavering confidence in the ultimate triumph of the principles of freedom and right, a steadfast optimism with no tinge of conplacency.

He was a man as complex as he was complicated. The very nature of his responsibilities bestirred in some circles both resentment and criticism. He was, after all, not infallible. He was a man, beset by the same faults and frailities of character with which all human beings, regardless of their station in life, must continually do combat. He could, on occasion, be authoritarian, petulant, captious, overdemanding and a wee bit vain. But it must be said that in large measure his greatness lay in a forthright determination to hold these all-too-human foibles in check and more than balance the scales with his numerous attributes: an infinite capacity for love; a gentle kindness underlying his sometimes gruff exterior; an all-consuming commitment to a city and its people, and an incisive wit and contagious sense of humor.

Divine Providence has now consigned him to the mists of eternity where in due course he will be assigned his place. However, at this sad time it should be noted that as much as he is Albany's legacy, Albany is truly his legacy. For him, to put it simply, there is no higher tribute.

CALIFORNIA DESERT PROTECTION ACT

HON. GENE CHAPPIE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. CHAPPIE. Mr. Speaker, I would like to take this opportunity to respond to some concerns that have been raised about the California Desert Protection Act, S. 2061.

Over 12 million acres of public land in the California Desert Conservation Area [CDCA] are currently administered by the Bureau of Land Management [BLM]. The CDCA was established under section 601 of the Federal Land Policy and Management Act [FLMPA] in 1976, which recognized the special nature of the desert in southern California and its proximity to millions of residents and users.

BLM prepared with the public, as directed by Congress, a carefully balanced desert plan for "management, use, development, and protection" of the public lands. Preliminarily, the desert plan proposes as suitable about 2 million acres—one third of available BLM desert lands for wilderness—for the National Wilderness System, establishing 75 areas of critical environmental concern, and implementing a zoning system to assure protection, maintenance, and enhancement of the high value desert open space and wildlands.

Despite that record of protection, S. 2061 implies that public lands without park status will not be protected from inevitable increases in visitors. However, the BLM is protecting and managing areas and regions as envisioned by congressional establishment of the CDCA. Many of the broadest wildland and open space values are best maintained and protected under BLM management. Additionally, a network of parks and monuments exists now, fully protecting the major systems in the desert: Southern Great Basin, Mojave, and Colorado or Upper Sonoran.

The desert plan's preliminarily wilderness suitable recommendations of 2 million acres would raise the acreage of the wilderness system in the State of California to 8.3 million acres, approximately 20 percent of all the Federal lands managed by the Bureau of Land Management/Forest Service/National Park Service in California—6.3 million wilderness acres exist now in California. However, S. 2061 would add 8.8 million acres of desert lands into the National Wilderness System, approximately 36 percent of all BLM, Forest Service, and National Park Service lands in California.

S. 2061 proposes to drastically alter the desert plan prepared by BLM and the public by transferring administration of 3 million acres of public land to the National Park Service and designating more than 8 million acres to wilderness. This bill would place close to 70 percent of the BLM lands in the California desert in either park or wilderness status. Based on public comments received to date, the majority of public land users of the desert disagree strongly with legislative proposal S. 2061.

Question 1. Why is wilderness so important? Aren't there other ways we could protect these lands and still have multiple use management?

Answer. Wilderness is an important characteristic of the lands within the California desert, and the 1964 Wilderness Act sets high standard for management of congressionally designated wilderness areas to assure that their character is maintained. The California desert plan, formulated with extensive public participation and approved by both the Carter and Reagan administrations, recommends, as preliminarily suitable, more than one-third of the desert wilderness study area managed by BLM, or about 2 million acres, be designated as part of the National Wilderness System.

In preparing the desert plan, BLM looked regionally at wilderness to assure that all ecosystems would be included within the recommendations. BLM also looked at a variety of current and potential land uses and values as part of the wilderness study program. Some areas were not recommended for inclusion because of duplication, high mineral values, or other kinds of uses. At the same time, wildland, other natural values, and open space were recommended to be protected by stringent guidelines on 6 million acres of public lands—50 percent—associated with class L zoning—limited use—in the desert plan.

BLM follows the laws and regulations set by Congress in the Wilderness Act for lands to be potentially designated wilderness. Since 1978, by law, all areas which have wilderness characteristics, some 5.6 million acres in the CDCA, are protected and managed under the BLM's interim management policy and are fully protected by BLM under stringent conditions to assure that all activities are conducted in a manner which will not impair wilderness values.

Question 2. Will the public have an opportunity to comment on the California Desert Protection Act?

Answer. The public did not have an opportunity to comment on the proposed California Desert Protection Act before it was introduced. Development of the legislation ignored the thousands of publics who participated in the formulation of the desert plan and thousands more of new publics using the public lands today. S. 2061 completely ignored the public process that the Bureau of Land Management undertook for the 4-year period between 1976 and 1980, prior to preparation of the California desert plan. S. 2061 ignored the 50,000 responses received from the public during the planning period and the dedicated work of a blue ribbon public advisory council which guided the desert plan to completion. It ignored the ongoing public comment and interaction which goes on annually during the plan review process. It ignored the desert plan which was reviewed by the Federal district court, Central District of California, and the Ninth Circuit Court of Appeals, who upheld the decisions and process which involved thousands of public land users.

There has been substantial and continuing public comment and input into the management of desert lands. The desert plan was prepared with the oversight of a congressionally required public advisory committee which continues to hold quarterly meetings and provides for an annual review process with the public. Prior to the proposal of S. 2061, the public felt that the BLM had followed a very careful public process in developing the California desert plan and was implementing the land use classes, identified in the desert plan. The desert plan optimizes the use of the desert and meets the needs of all Americans while at the same time protecting those desert lands which are very fragile or have very sensitive values.

Question 3. Have adequate studies been done on the millions of acres designated as wilderness under S. 2061?

Answer. BLM has carried out a substantial number of studies relating to most of the resources on the CDCA. BLM used the information during planning processes to propose recommendations and ensure public support for managing the desert including areas for potential wilderness. S. 2061 does not reflect the use of this information nor the cooperation of the many publics who use the desert and helped formulate the desert plan.

For example, mineral studies are especially important because of the high mineralization of the desert. Mineral studies by the Bureau of Mines [BM] and the U.S. Geological Survey [USGS] are required by the Wilderness Act and FLPMA, and must be completed on those areas preliminarily recommended for wilderness prior to the BLM making its final report and recommendation to Congress. USGS/BM studies required by law have only been completed on 18 of 43 BLM wilderness study areas, and many of the areas have high and significant mineral values. Their studies will be completed in 1987 but will only cover the 2 million acres that are preliminarily recommended for wilderness through the planning/public process. S. 2061 would designate millions of acres as wilderness without further study by USGS or BM and in spite of known mineralization and ultimate impacts upon the economy.

Question 4. If the BLM has spent years of effort and millions of dollars studying the California desert and developing its desert plan, why is this legislation necessary?

Answer. The legislation is not necessary because Congress in 1976 [FLPMA] established the California desert conservation area embracing some 12 million acres of public lands for "management, use, development, and protection" by the Bureau of Land Management. Over the last 10 years, BLM, with public support, has implemented the concept embodied in the FLPMA legislation including formulation of the desert plan and establishment of the desert advisory council. S. 2061 envisions a massive transfer of lands from BLM to NPS, totaling over 3 million acres and more than a doubling of wilderness acreage in the State. This is contrary to the intent of previous congressional action and public involvement, and would remove substantial acreage of public land from use and enjoyment of millions of people and many kinds of appropriate desert land uses.

Question 5. How does S. 2061 affect private property?

Answer. In 1976 Congress directed the BLM through FLMPA to retain and manage the public lands for multiple resource uses. Under 2061, private land in parks and wilderness would be inholdings, which are usually acquired through exchanges. Exchanges with parties who are essentially unwilling are done at a high cost for review and appraisal and assume that private land owners can find other public land which can be acquired and which they want. This is often not the case and private land holders usually perceive a loss in their land values whether they consent to the acquisition or not. Under S. 2061 the remaining 4.5 million acres of public land would be for other public land users and would also be set aside for private land owners to acquire through exchanges. The public would best be served by maintaining the existing public land base and BLM's management of public lands.

Question 6. What will happen to State lands? Aren't they used for the State teachers retirement fund?

Answer. For many years the BLM and the State lands commission have cooperatively worked toward solving the indemnity rights of land owed to the State of California and have cooperated closely to improve their ability to manage their lands. Recently 51,000 acres of State lands in the California desert were exchanged with other BLM lands to improve the management of the two agencies. In addition to this settlement, BLM and the commission are actively working on a wide range of land exchange possibilities, and S. 2061 is not needed for this cooperative effort to continue.

A substantial amount of State school lands which provide revenue for the State teachers retirement system—nearly one half million members—would be directly affected by the elimination of egress or development potential—high mineralization potential.

Question 7. What effect will the California Desert Protection Act have on boating and other uses along the Colorado River?

Answer. It could reduce access to the river and limit opportunties for public boating, hunting, fishing. camping, and other recreational activities.

Question 8. The California desert is used extensively by the military for aircraft training and weapon testing. Would this be changed? What will be the impact on general aviation?

Answer. S. 2061 would have a profound effect on military operations over the desert. Most of the CDCA has controlled airspace now. With the presence of the active bases and testing facilities at both Edwards AFB and the China Lake Naval Weapons Center, airspace use is critical to national defense. Currently, operations are limited or prohibited over the existing Death Valley National Monument. If its boundaries were extended into Panamint, Saline, and Eureka Valleys, air operations would be severely restricted if not prohibited.

Question 9. What will be the impact of S. 2061 on rockhounding?

Answer. Rockhounding would be adversely affected as several important collecting areas are within wilderness study areas and the proposed park and park expansions. Access by vehicle would be prohibited in both wilderness and the parks. Exploration would be limited on millions of acres. Collecting would be prohibited on the 3 million acres proposed for new or expanded parks. Rockhounding is a pursuit enjoyed by thousands, particularly the retired snowbirds who visit the desert in the winter. S. 2061 could severely impact senior citizen recreation in the CDCA as many may not be physically able to hike long distances, particularly in the desert. By definition, wilderness study areas are without roads but have, in fact, thousands of miles of vehicular access over existing ways and trails which are presently open, and under S. 2061 would be closed. It is informative that California mineralogical societies strongly oppose S. 2061.

Question 10. What will the impact of the California Desert Protection Act be on hunting by the public?

Answer. S. 2061 would severely restrict hunting opportunities throughout the desert in three ways. First, the Mojave Park proposal—1.5 million acres—and the Death Valley expansion—1.4 million acres—would eliminate most of the deer hunting opportunities in the desert. Parks plus wilderness will definitely limit access for all kinds of hunting, including the very popular upland game bird experiences. And third, access restrictions will greatly curtail the ongoing efforts by volunteer groups to install and maintain water facilities for wildlife throughout the desert. Many of these have been successful in aiding populations of desert bighorn sheep. The California Wildlife Federation, a citizen group made up of hunters and conservationists, opposes S. 2061.

Question 11. Will the thousands of ORV users still have a place to ride?

Answer. S. 2061 ignores the varied nature of ORV use and users. Expansion of parks and wilderness will curtail general access by all kinds of vehicles, many of which are classed as ORV but which in truth are trucks, campers, vans, and other vehicles which are not capable of leaving regularly maintained roads. The thousands of operators of these vehicles are seeking primitive outdoor experiences, which are not available in the existing park-monument system. S. 2061 would severely limit this kind of motorized access, which uses existing marked ways and trails and which is nondestructive in nature. ORV organizations in southern California strongly oppose S. 2061.

Open areas now exist for intensive all-terrain vehicles, all-terrain cycles, and motorcycle use on 500,000 acres of public lands—4 percent. With larger parks and wilderness, areas now open for OHV use will be difficult to reach and more congested. The open and exploratory experiences of the desert will be lost because over 8 million acres of public lands would lack motor vehicle access. Additionally, S. 2061 directs that the 4.5 million out of 12.1 million acres remaining for other multiple uses be available for consolidating Federal ownership through exchanges with private land owners within the national park units and wilderness areas designated by this act.

Question 12. Will the dirt roads in the California desert be closed by the bill?

Answer. Thousands of miles of ways and washes and access routes will be closed if S. 2061 is enacted. An exact mileage of roads and ways in the CDCA is unknown, but most wilderness study areas contain numerous access routes. Thousands of users of the desert want to leave maintained roads and use the designated primitive desert ways and trails.

BLM is currently completing, with the public, route designation planning and implementation. BLM routes can be left open without harming resources and thousands of miles of routes and ways have already been closed in class L areas—6 million acres or 50 percent of the public lands—and designated areas of critical environmental concern. S. 2061 would close thousands of miles of additional routes creating unneeded and duplicative wilderness additions. BLM management and the desert plan provides a balance of wilderness, limited access with wildland and primitive values, and intensive open area use. S. 2061 would significantly reduce opportunities for primitive motorized access or experience.

Question 13. How will S. 2061 affect the long distance point-to-point motorcycle races in the California desert, including the Barstow to Vegas race?

Answer. Point to point racing is a small use of the desert in the overall management of the CDCA. S. 2061 would affect a small part of the Barstow to Las Vegas race course. Since the desert plan, BLM has limited these kinds of events to only four courses in the entire desert.

Question 14. What happens to grazing under this bill?

Answer. Grazing of public lands would be curtailed by 55 percent. Over half of the active grazing in the CDCA occurs within the proposed Mojave Park and would specifically be phased out, not a small matter to the current users. Grazing is expected to be eliminated on Hunter Mountain since grazing was eliminated years ago on the adjacent area inside the present Death Valley National Monument. Elimination of grazing ignores the application of modern science to range and resource management. Besides providing economic value, grazing users provide extensive water facilities now used by wildlife. Maintenance and expense of those wells, springs, and pipelines would shift to the Federal Government if grazing is eliminated and the area becomes a national park.

Question 15. I have heard that there are millions of dollars of minerals, including critical strategic minerals, in the California desert. Would these be lost to development under the bill?

Answer. Yes. In 1985 California produced 2.2 billion dollars' worth of nonfuel minerals and about $1.2 billion of this came from the California desert—Bureau of Mines Mineral Industry Surveys-Mineral Industry of California, 1985, and Division of Mines and Geology. In the coming decades, the California desert should be an even more important source of the mineral commodities that will aid the economy of California and the Nation. S. 2061 would have major and varied impacts upon future mineral development, existing mining and exploration operations, existing mineral rights holders, private landholders, the State of California, and the BLM.

Examples abound in the desert exemplifying its high mineralization, such as the operations on Searles Lake for sodium and potassium compounds which returned up to $6 million in Federal royalties annually; the Molycorp Mountain Pass operation is the world's largest producer of rare earths; and the new Goldfields-Mesquite operation in Imperial County is one of the most modern gold extraction operations in the world. Throughout the desert, iron, phospates, limestone, and industrial minerals are produced from a variety of sources. For example, geothermal is a new and rapidly developing source of secure, renewable, and benign energy. Much of the desert has not been thoroughly explored for geothermal energy sources, although much of what is known about the geology is highly encouraging. Much would be lost to future development if S. 2061 were enacted. S. 2061 implies that there is nothing left to find or develop and ignores both the economics of mineral production and modern exploration techniques. In August 1986, for example, a new discovery of platinum in Riverside County, never previously known in the desert was announced.

A recent study (1986) "Mineral Impact Study of a 2,000 Square Mile Area of the East Mojave Desert" conducted by BLM with the California Division of Mines and Geology and the State mining and geology board offers substantial evidence of the high value and mineralization of the desert. It gives substantial information on the overall value and long term supply source of mineral commodities for California and the Nation.

Question 16. What will happen to current mining under the California Desert Protection Act?

Answer. BLM would have to do validity determinations, at great cost to the public and U.S. Treasury, on all claims inside both park expansions and formally designated wilderness areas. Mining theoretically could continue on these, but past history reveals that mining is greatly curtailed or eliminated in parks and wilderness areas.

Mining claims and mill sites can present a major issue when establishing a wilderness or a national park. For example, there were about 149,000 claims and mill sites filed in California as of May 1986. If S. 2061 is passed into law, all the claims and mill sites in the desert designated as parks or wilderness, which would be a substantial number, would have to be examined by the BLM for validity. Each claim is conservatively estimated to cost $10,000 for completion of a validity examination. In addition, the estimated cost of purchasing any existing patented or valid unpatented mining claims in the proposed parks must also be provided by Congress within the 2-year period.

Question 17. Will archaeologists and other scientists be able to continue to study the California desert under S. 2061?

Answer. Access to sites and areas will be severely hampered and thus limit archaeological or other scientific study.

Question 18. Is access by the handicapped changed by the California Desert Protection Act?

Answer. Access to all people, particularly handicapped persons, would be severely restricted if S. 2061 were enacted.

Question 19. Will the new parks and wilderness areas change the way other parts of the California desert may be used because of the Clean Air Act?

Answer. S. 2061 does not change classifications, but by adding more land to wilderness or park classification, economic development on adjacent lands will ultimately be affected if not precluded.

Question 20. Are all of these proposed wilderness areas free of roads and do they have those qualities required for wilderness designation?

Answer. S. 2061 proposes that virtually every area meeting minimum characteristics of the Wilderness Act be included in the National Wilderness System. BIM did its wilderness inventory of the CDCA as a pilot program, the first under FLPMA on any of the public lands in the west. Many areas were included which were marginal at best, but BLM wanted to assure that all areas which had potential were fully considered.

BLM considered wilderness values along with other values and uses, as well as potential manageability to assure maintenance of wilderness integrity. BLM recommends about 2 million acres as preliminarily suitable for designated wilderness. These 2 million acres have the highest wilderness qualities and represent the regional diversity of the desert.

S. 2061 considers only wilderness values not other values and uses of the land, its resources, or possible conflicts which could affect long-term integrity of the areas, even if they were designated as wilderness. It also presumes that if land isn't in the National Wilderness System, its intrinsic wildland values will not or cannot be maintained.

It is significant that BLM, since 1968, has been able to retain the essential wildland and wilderness landscape. Transfer of large areas to NPS and placing many more acres in wilderness than the desert plan proposes will do little to retain these values except to keep people from using the land and resources.

Question 21. What happens to mining claims in the new national parks?

Answer. Mining claims were allowed in the Death Valley National Monument until 1976 but exploration and incentives to develop were clearly restricted when the monument was established over 50 years ago. In addition, many adjacent areas were excluded from early national monuments precisely because of mineralization.

For example, in the BLM East Mojave National Scenic Area, which is the proposed new national Mojave Park under S. 2061, approximately 10,000 mining claims exist. Each claim would require a validity examination and, a recommendation within 2 years as to whether any valid or patented claim should be acquired, including the estimated acquisition costs.

Question 22. Do the proposed additions to Joshua Tree National Monument include areas of enormous mineral values?

Answer. It is uncertain if the proposed Joshua Tree National Monument expansion would lock up high mineral values. The USGS/BM report on the Eagle Mountains indicates possible tungsten and molybdenum, previously unknown.

While S. 2061 proposes boundaries to exclude developed areas such as Kaiser's Eagle Mountain Mine and Pinto Basin, it includes land of unknown values but mineralized in the Coxcomb Mountains, an area of checkerboard land pattern dominated by private lands in the Little San Bernardino Mountains.

Question 23. Will entrance fees charged in these new national parks restrict traffic in the surrounding desert communities?

Answer. Congress is currently looking at park fees as a means of augmenting funding. Also, the President's Commission on Americans Outdoors is looking at user fees for parks. Park fees could affect visitation and surrounding desert communities.

Question 24. I'm concerned that the National Park Service [NPS] will block off most dirt roads in the desert and pave all the rest. What about it?

Answer. We cannot predict what the NPS might do in managing expanded parks and a new Mojave Park. It is definitely known that wilderness will limit access and that S. 2061, by trebling the wilderness acreage, would clearly result in more roads blocked than the desert plan. Under the Bureau of Land Management, decisions on dirt roads are developed and made with the advice of the California Desert Advisory Council and public participation.

Question 25. If the new national parks attract thousands of visitors, can the Park Service keep the parks from being overrun and destroying the very values they are supposed to protect?

Answer. It is clear that the thrust of S. 2061 is preservation and limitation of public use and access. Many of the values public land users experience would be lost. For example, the desert back country, which is currently accessible to the public, could probably not be used except by hikers and backpackers.

In addition, the proposed Mojave National Park is traversed by a railroad, powerlines, and pipelines. The area contains ranchers and residents and abundant values for livestock grazing, hunting, rockhounding, exploring, camping, and sightseeing. Those uses that would be allowed would probably be restricted under regulated park visitor management systems.

Question 26. Will the National Park Service restrict camping to a few overcrowded and overdeveloped camping areas?

Answer. Experience would indicate the National Park System camping would be restricted to develop sites rather than the undeveloped camping which is currently permissible by BLM in the CDCA.

Question 27. Will the California Desert Protection Act close the Saline Valley hot springs to public use?

Answer. Access and use of the Saline Valley Warm Springs would probably be controlled as it would lie in the proposed expansion of Death Valley National Monument.

Question 28. Will it be costly to implement the requirements of the California Desert Protection Act?

Answer. S. 2061 assumes that the bill could be implemented with little cost. This is absolutely not true. The exchanges envisioned to block up public lands within the expanded Death Valley and Joshua Tree National Monuments, together with the exchange program necessary within the new Mojave National Park, would be at great Federal cost. It is also doubtful that all the private and State inholdings could be acquired by exchange which could result in large outlays of Federal dollars to acquire the inholdings. In addition, there would be substantive costs if it was decided to acquire potential and valid mining claims in the proposed parks. Also, there is the cost that is associated with determining the validity of all the mining claims within the expanded units plus the new Mojave National Park. These costs would add up to multimillions of dollars.

In addition, signing entrances, staffing, headquarters, housing, and other items which are generally associated with park management are costly. BLM now maintains offices in Ridgecrest, Barstow, and Needles which service the area and provide staffing and ranger patrol on a low-cost, efficient basis.

Question 29. Will the California Desert Protection Act have any effect on county tax bases?

Answer. It will probably affect counties to varying degrees as possessory interests on Federal permits and claims is an important adjunct to some county tax bases. It is informative that more than a dozen counties, local chambers of commerce, the State chamber of commerce, and the Southern Regional Association of Counties have publicly opposed S. 2061.

In conclusion, the Secretary of the Interior has publicly stated he believes the management, protection, and use of the public lands in California desert are best served by the provisions of the existing California desert plan. This plan was formulated with extensive public involvement and consultation with local, county, State, and Federal officials to protect the unique public land resources and ensure that they are prudently used and managed in the future.

The Department of the Interior believes that the California desert plan has proven to be a workable balance to a significant number of diverse constituencies for a large area encompassing an immense wealth of natural resources. The plan also allows multiple land uses which provide good ecosystem balance and protection to special areas with unique values.

Rather than undertake the sweeping action contemplated in the proposed legislation, S. 2061, which would brush aside all that has previously been accomplished, the Department reaffirms its support for the existing California desert plan and its provisions for the management, protection, and use of public lands. I am in complete agreement with this position.

IS THIS A CUP HALF-EMPTY OR HALF-FULL

HON. MARIO BIAGGI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. BIAGGI. Mr. Speaker, a comprehensive study was recently completed to assess the literacy of our adult population. Although Education Secretary William Bennett, who commissioned the study, hailed it as proving that "the United States is not awash in illiteracy," I believe the mixed results of this study prove something different. I wish to share with my colleagues a few results of this study:

Ninety-five out of 100 young adults can read at the fourth-grade level, but less than 20 percent of those people can perform at the eighth-grade level and beyond.

Less than 1 in 100 blacks, 3 in 100 Hispanics, and only 11 in 100 white young adults can read and interpret prose such as news reports, books, and magazines.

Twenty-five in 100 whites, 7 in 100 Hispanics, and 3 in 100 black young adults could use information in documents such as maps, charts, and tables.

Less than 10 percent could interpret a four-line poem; less than 20 percent can effectively deal with a bus schedule; less than 10 percent could properly fill out a catalog form, and less than 40 percent could calculate change due when ordering a simple meal from a menu.

These results indicates to me that this Nation is suffering from a tragedy that cannot be allowed to continue. Our Nation is growing increasingly illiterate, and as a result, we are witnessing the decline of the United States in many different areas. America is grappling with ways to compete effectively in the international marketplace, expand our economy, and gain our once undisputed per-eminence in the world. Yet we are not looking at our most precious and vital natural resource that could very well hold the key to our future. I am speaking, of course, of the minds of our Nation's citizens.

While struggling with the budget deficit and the trade deficit, we are not concentrating on reversing the "brain-drain" that is currently plageing this Nation today. I suggest we look closely at the growing national problem of illiteracy. If we really expect our citizens to take full advantage of the opportunities this Nation offers, if we really expect our citizens to be full contributing members of society, then we must be prepared to concentrate our efforts on enabling citizens to be literate, and rely on the minds of our people to lead us from the many and varied problems our country faces today.

We must examine the results of this study closely. I believe we, as a Nation, cannot afford to ignore that we are in fact a country "awash in illiteracy." Secretary Bennett concludes that this study has mixed results. If that is true, we must judge whether this study shows us a cup half emply or half full. Sadly, I believe all conclusions point to a cup half empty, a cup that is in desperate need of replenishing. I urge all of my colleagues to look at this cup and help in the efforts to fill it.

WILLIAM P. BELLAS: A TRIBUTE

HON. HENRY J. NOWAK

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. NOWAK. Mr. Speaker, the city of Buffalo, NY, which I am privileged to represent in this Congress, prides itself on being known as the City of Good Neighbors. Last week, the Buffalo community was saddened by the death of one its own good neighbors, an exemplary citizen, William P. Bellas.

Professionally, Mr. Bellas was known as a prominent and respected attorney who practiced law in Buffalo for 30 years. Those of us who knew him personally particularly admired the breadth and depth of his participation in a variety of civic and community affairs.

Whether it was lending his legal talents to the State and county bar associations or to the Hellenic Orthodox Church in which he was very active—whether it was seeking to help homeless children on the Island of Cyprus or coaching Little League football players in suburban Buffalo—Bill Bellas was a man to be relied on.

He was a model citizen who was a living example of what community service and good citizenship are all about.

I join his many friends and admirers in expressing our sincere condolences to his family and offer our assurances that we too share their deep sense of loss and sorrow.

Mr. Speaker, at this point, I would like to insert in the RECORD the following obituary which appeared in the Buffalo News on September 26, 1986, detailing Mr. Bellas' career and accomplishments.

WILLIAM P. BELLAS IS DEAD AT 55; EX-HEAD OF BUFFALO LAWYERS CLUB

Funeral services for William P. Bellas, 55, former president of the Lawyers Club of Buffalo, will be conducted at 1 p.m. Saturday in the Hellenic Orthodox Church of the Annunciation, 146 W. Utica St.

Prayers will be said at noon in the Amigone Funeral Home, 5200 Sheridan Drive, Amherst. Burial will be in Elmlawn Cemetery, Town of Tonawanda.

Bellas, of Ponderosa Drive, Amherst, died Wednesday (Sept 24, 1986) in Buffalo General Hospital.

A partner in the law firm Stathacos and Bellas, he met with President Jimmy Carter in the White House in 1978 as Western New York chairman of the Cyprus Children's Fund. The Erie County Bar Association presented him a special service award that year for his decade of service as chairman of its judiciary committee.

A former secretary to the board of the Hellenic Orthodox Church, he was active in the church's acquisition of the rear property where the Hellenic Festival is held each year. The church named him Man of the Year in 1981, and he is listed in the "American Hellenic Who's Who in Business and the Professions."

As a hearing officer with the state Public Employment Relations Board, Bellas presided over hearings on the Buffalo Teachers Federation participation in three city strikes in 1970. He also was a hearing officer for the State Education Department.

Bellas was chairman of the committee on judicial administration of the New York State Bar Association in 1984 and served on the Erie County Bar Association's lawyers' arbitration panel, grievance committee and ethics committee in recent years.

A graduate of Bennett High School, he earned his bachelor's and law degrees from the University of Buffalo. He was admitted to practice before the U.S. Supreme Court.

He was a member of the American Arbitration Association, American Judicature Society, National Association of Defense Lawyers and the Housing Task Force of Buffalo Area Metropolitan Ministries.

He also had been a Willamsville Little League football coach and was a member of the Democratic Lawyers Club, Buffalo Zoological Society, the 100 Club, the American Hellenic Educational Progressive Association, Master Builders Lodge 911, F&AM, and the Buffalo Consistory.

Bellas served in Frankfort, Germany, with V Corps Artillery Group, U.S. Army, from 1954 to 1956, in charge of classification and assignment.

He is survived by his wife, the former Penelope Chambers; a son, Peter W. of Miami, Fla.; a daugther, Chrisanne of Williamsville, and a sister, Xanthe Kapsalis of Depew.

A MARRIAGE OF UNLIKES

HON. JIM KOLBE

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. KOLBE. Mr. Speaker, October 1, 1986, marks the dawn of a new era in the history of banking in America. Arizona becomes the first State with major banks to have fully reciprocal interstate banking.

The Arizona business community welcomes to our State, Chase Manhattan Corp., one of four out-of-State banks to begin operations in our State. Marking this historic event, I invite my colleagues' attention to a recent article in the Arizona Republic about Bill Butcher, the chairman and chief executive officer of Chase Manhattan Corp.

The article follows:

[From the Arizona Republic, June 8, 1986]

A MARRIAGE OF UNLIKES

(By Ira Fine)

Bill Butcher dips into the latest business jargon to describe the acquisition of Continental Bank in Phoenix by his giant Chase Manhattan Corp.

"It's a marriage of unlikes," Butcher says.

That can only be described as an understatement.

As chairman and chief executive of Chase Manhattan, Butcher is one of the most powerful bankers in the world. His company is the third-largest bank in the nation, has operations in 100 countries and is bigger than Continental by about 160 times.

Yet he insists that Chase Manhattan shouldn't be viewed by Arizonans as an outsider, here to soak up the state's money and ship it to New York and around the world.

"Are we outsiders? Yes and no," Butcher said in a recent interview in Phoenix. His formal name is Willard C. Butcher, but he prefers to be called Bill.

"Perhaps in the media, we're portrayed as outsiders," he said.

"But the clients like it. We're bringing a dimension, a financial magnitude" that Arizona hasn't seen before in banking and a capability of operating "on a worldwide basis," Butcher said.

"It's a misnomer that we take the savings of America and lend it to Mexico," he said.

"We are a net importer of funds. Our foreign assets (loans). That's not unusual for large money-center banks."

A.B. "Bob" Robbs, chairman of Continental Bank, said, "The flow of funds will be from New York to here, not the other way around."

Standing alone, Robbs said, Continental "wouldn't have the resources to compete" in the Arizona banking market after the new interstate banking law takes effect Oct. 1, the same day as the acquisition deal between Chase Manhattan and Continental.

"The competition will be cutthroat, The public is the beneficiary," Robbs said.

"Chase will provide an injection of capital and expertise," Robbs said, but there will be a "reverse flow of knowledge."

Butcher said Chase Manhattan will rely on Continental officials to make and implement decisions that can best be done at a local level, such as money-market management.

As for the suggestion that a bank the size of Chase Manhattan could obliterate Continental's identity, Butcher said that isn't the plan.

"We bought a bank in Rochester, N.Y., (one of Chase's few forays to date into expansion)," Butcher said.

"We could have collapsed it and run it out of New York City, but we didn't.

"The bank needed a local presence in Rochester, and we knew we couldn't sit in New York and make decisions like where new branches should be located."

He indicated the story will be the same in Arizona.

"We can't penetrate the community market without Continental," Butcher said. "But if we don't bring some form of expertise, all we've brought is size."

He said Chase Manhattan, along with bringing "efficiencies of scale," can be a conduit to capital markets and foreign investment that now aren't readily available in the state.

Butcher predicted Arizona's high-technology companies could develop into an exporting industry with global markets, therefore "by constraining us, they may get greater risk. Look at Continental-Illinois Bank," which almost collapsed partly because its loans were overextended.

"The law prohibited them from branching, so they became a large business lender," Butcher said.

Over-regulating banks can lead to low returns and high risks, he said.

Regarding Third World debt, in which Chase Manhattan has substantial exposure of nearly $6 billion in loans, or about 7 percent of its assets, Butcher said there have been "a lot of advances" since the crisis started four years ago.

"I'm not saying there is no debt problem there," Butcher said, "but we're establishing sound policies in these countries to finance growth, not deficits, and that's a big start.

"We're not helpless or hopeless. We're in better shape than we were four years ago, even in Mexico, where the real problem is, but I won't guess where it will come out."

PAN AM TRAGEDY UNDERSCORES THE IMPORTANCE OF FLIGHT ATTENDANTS

HON. THOMAS J. MANTON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. MANTON. Mr. Speaker, on September 5, 15 people died and many others were seriously injured when terrorists aboard Pan Am Flight 73 opened fire and exploded grenades without provocation. Before the shooting began, the three ranking crew members followed proper procedure and escaped from the aircraft. When the flight crew escaped, the chain of command left the cabin crew in charge of and responsible for the passengers and equipment. In view of the ever increasing hazards of air travel, the important role flight attendants play in safeguarding the lives of the public must not be overlooked.

Flight attendants are often taken for granted as a mere provider of creature comforts. However, the flight attendant plays a much more important role. During acts of terrorism, the flight attendant must act as a buffer between terrorists and passengers. Federal Aviation Administration [FAA] policy dictates that in the event of a hijacking, the prime objective of the flight crew is to immobilize the aircraft, by exiting if possible. This underscores the need for professional, experienced cabin crew members who are capable of executing their responsibilities under dangerous situations. In addition, flight attendants are responsible for monitoring aircraft safety, handling medical emergencies, and executing evacuations within seconds.

However, recent events indicate that the airline industry and the Federal Government have underestimated the invaluable role flight attendants play in protecting lives and property. Today, nearly 5,000 TWA flight attendants, who have offered to return to work without a contract after a labor dispute that began in March 1986, are being prevented from returning to their jobs. Some of these flight attendants were members of the cabin crew of flight 847 which was hijacked in June 1985. They were honored for their capable handling of an extremely dangerous situation. However, TWA refuses to allow them to return to their positions.

In addition, these experienced flight attendants have been replaced with workers who have not had sufficient training. With the approval of the FAA, the training period for the replacements was reduced to from 5 weeks to only 18 days. These diminished training standards have resulted in at least five mishandled emergencies involving TWA aircraft since March 1986. Hundreds of additional safety violations have also been filed with the FAA by the public. Seventy-five percent of TWA's current flight attendant work force has less than 6 months' experience.

Mr. Speaker, we must recognize flight attendants for the important contributions they make to airline safety. However, we must also make certain that flight attendants are properly trained. Uniform safety training standards for all flight attendants should be established.

Furthermore, it is time for the Department of Transportation to exercise its lawful authority to intervene in the protracted TWA labor dispute. Actions must be taken to ensure that the dispute is resolved in a fair and equitable manner. Such action would alleviate the suffering of more than 5,000 dedicated professionals and restore public confidence in the safety of air travel.

TRIBUTE TO DON FUQUA

SPEECH OF

HON. JACK BROOKS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. BROOKS. Mr. Speaker, our good friend and colleague, DON FUQUA, is leaving Congress to become president of the Aerospace Industries Association. While we will miss him deeply, all of us want to wish him the very best of luck in his new position. As chairman of the House Committee on Government Operations, I can tell you that Congressman FUQUA has been a very important member of my committee team.

I know the people of Florida's Second Congressional District are proud of the record of service Congressman FUQUA has established since entering Congress in 1963. The people of his district have always known that they have a friend here in Washington with whom they could work on many projects of vital importance to the State of Florida.

He has been a hard-working, capable member of the outstanding Florida legislative delegation and he has demonstrated time and again a spirit of independence and determination to pursue goals important to his constituency.

He has been joined in this effort by his lovely and gracious wife, Nancy, who has traveled untiringly and worked diligently to help continue DON's outstanding record in Congress. She will be a tremendous asset as he goes on to new goals.

While we will miss his many contributions to the legislative process and his ability to present arguments on complex scientific and technical issues in a clear and reasoned manner, I can assure you that the people of our country who are so deeply concerned with the future of our Space Exploration Program have gained an outstanding leader who will bring the same skill and dedication to promoting our Nation's Space Program that we have observed here on the floor of the U.S. House of Representatives.

THE PLIGHT OF THE BLACK ELDERLY: A MAJOR CRISIS IN AMERICA

HON. GEO. W. CROCKETT, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. CROCKETT. Mr. Speaker, This Friday, in conjunction with the 16th Annual Congressional Black Caucus Legislative Weekend, the House Select Committee on Aging is holding a hearing on the special status of the black elderly in room 2325 of the Rayburn Building at 9 a.m. Entitled, "The Plight of the Black Elderly: A Major Crisis in America," this hearing is the culmination of a year-long series of seven regional hearings and forums on the black aged, sponsored by the Select Committee and the National Caucus and Center on the Black Aged.

The statement presented at the Atlanta, GA hearing on behalf of the American Association of Retired Persons, which I shall place in the RECORD, indicates generally the failure of Medicare to cope with the special circumstances of the black aged. What we heard during these regional hearings was appalling: Black seniors are three times as likely to be poor as white senior citizens; they are twice as likely to be sick in bed; they die on average 5 to 7 years earlier than whites and they are far more likely to live in substandard housing. These and similar statistics and the recommendations that came out of the regional hearings and forums will be reviewed at Friday's hearing. We urge everyone to attend.

The statement follows.

STATEMENT OF FRED BELL ON BEHALF OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS REGARDING: HEALTH AND LONG-TERM CARE CONCERNS OF OLDER BLACK AMERICANS

EXECUTIVE SUMMARY

The American Association of Retired Persons is concerned that the health and long-term care needs of older black Americans are not being adequately met by this nation's health care delivery system. Statistics indicate that older black Americans have lower average incomes and suffer from a higher incidence of chronic diseases and disability as compared to older whites. Thus, Medicare's gaps in coverage and cost sharing provisions may have a disproportionately negative effect upon older black persons.

Blacks generally receive less health care services (and correspondingly lower reimbursements) under the Medicare system.

They visit a doctor or dentist less often as compared to older white individuals. The system also penalizes the poor and near poor because it reimburses primarily for acute care, and excludes from coverage such items as routine physical examinations, prescription drugs, vision or dental care. These gaps in coverage result in substantial out-of-pocket cost to low income beneficiaries who may simply be forced to go without such services. In addition, increasing deductibles as well as insurance copayments impact heavily on older black Americans, a substantial percentage of whom do not carry Medicare supplement insurance.

Data is also needed to assess the effects of the Medicare prospective payment pricing system upon minority individuals. Variations between states relative to the treatment provided for particular conditions or symptoms also need to be analyzed.

The Medicaid system, which is the primary payor for nursing home care has also underserved older black persons. Although blacks are more dependent upon the Medicaid system than are older whites because of their high poverty rates, approximately 70% of Medicaid reimbursements are made for nursing home care (principally for older, white widows). Additional data is also needed regarding the racial impact of Medicaid eligibility rules and the extent to which minorities are adequately served by community-based health care programs such as those authorized by the Older Americans Act.

UAW-GM NATIONAL MODEL TRAINING PROJECT AT HYDRAMATIC WILLOW RUN PLANT

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. FORD of Michigan. Mr. Speaker, I want to share with my colleagues news about an important job training project that is underway in my district. Last October, the Hydramatic Willow Run Plant in Ypsilanti Township, MI, was selected as the United Auto Workers-General Motors national demonstration model for plant training programs. This project is intended to determine and meet the educational needs of industrial employees and to determine what resources are required and available to meet those needs.

This program is a unique partnership of labor, industry, and government formed by UAW Local 735, General Motors, the Michigan Department of Public Instruction, and the Federal Department of Education.

The key to the success of this program is the ability to assess what training is required for the plant workers. By doing so, program planners are able to stay one step ahead of the training needs of workers at the plant. At the same time, workers are able to maintain and update their skills to meet the changes confronting the automobile industry and its workers.

Last June, John Woods, the personnel director at Willow Run, testified before the Education and Labor Subcommittee on Postsecondary Education, which I chair. At this hearing which examined the involvement of community colleges in economic development, Mr. Woods testified about the unique partnership between Willow Run and Washtenaw Community College in Ann Arbor.

Each program participant underwent an intensive 2-week, 80-hour training session at WCC during a 16-week changeover at the plant last year. The bulk of the training was conducted by selected hourly and salaried employees from Willow Run. Eight hours of this training consisted of learning entirely new technologies taught by experts contracted through the Washtenaw Community College.

The program benefits extend beyond the traditional retraining efforts. Over 4,000 employee-students were exposed to Washtenaw Community College, many of whom have shown interest in further continuing education and training at WCC.

The Willow Run Program is also developing bonds with local educational agencies. This exchange helps Willow Run better address the subject of adult education and also provides school systems with more insight into the skills required by students entering the industrial work force.

The results of the Willow Run Program will be shared with other General Motors facilities as well as educational agencies across the Nation. I am proud of the involvement of members of local 735 and other employees at Hydramatic in this project, and I want to congratulate them for their efforts.

HOLOCAUST PUBLICATIONS—KEEPING ALIVE THE MEMORY

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. LANTOS. Mr. Speaker, as the memory of World War II recedes into the past, surprisingly interest in the Holocaust has increased. Annual Holocaust observances in every State of the Union are attracting greater participation. In the early postwar years only a handful of books were published about the Holocaust, but a recent review noted that "during the past decade publications on the Holocaust have appeared in such numbers as to overwhelm all but the most confirmed specialist."

Mr. Speaker, a great deal of credit—not only for the volume of outstanding materials published on the Holocaust, but also for the intensified interest in the meaning and significance of this nightmare—can be attributed to Holocaust Publications.

Holocaust Publications is the product of a dedicated commitment to keeping the story of the Holocaust alive. The publishing house was founded by Alexander Donat—a survivor of death camps, death marches, and unimaginable torments of body and spirit.

With a legacy of $50,000 and a firm belief that "the Holocaust is not a Jewish problem but a universal concern," Donat launched Holocaust Publications in 1978. Friends thought he would print a few thousand copies of a book or two about the Holocaust, lose the tiny endowment, and that would end the enterprise.

In fact, Holocaust Publications has flourished. After Alexander Donat's death in 1983, his son William took up the cause. William Donat—born in Warsaw in 1937, and like his father a survivor—has shown equal and remarkable dedication to keeping alive the memory and meaning of the Holocaust.

Now, just 8 years after Holocaust Publications was established, the book list numbers more than 30. The collection includes some of the finest scholarly books available on the Holocaust, through and complete collections of documents recording the events and background of the mass murders perpetrated by the Nazis, and a series of memoirs of individual survivors that are among the classics of Holocaust literature. One of the latest outstanding additions to the Holocaust collection is "Against Silence: The Voice and Vision of Elie Wiesel," three-volume selection of the writings of Prof. Elie Wiesel, the conscience of the Holocaust who writes with brilliance, passion, and compassion.

As William Donat, the current president of Holocaust Publications, said: "There are those people who feel the Holocaust is singly a Jewish experience and problem. It is also a Christian and European problem, a problem of Western civilization."

Mr. Speaker, the Holocaust is a problem that should concern all of us. I applaud Holocaust Publications for its outstanding efforts to keep alive the memory and the meaning of the Holocaust. This darkest of nightmares in the history of mankind and what it implies about the capacities of man—both for evil and for good—must never be forgotten. All Americans are indebted to Holocaust Publications for keeping before us the message and meaning of that horror.

HAROLD JENKINS HONORED AS OUTSTANDING TRANSIT MANAGER

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. MURTHA. Mr. Speaker, it is most fitting that the American Public Transit Association has chosen Cambria County Transit Authority General Manager Harold Jenkins as the 1986 Outstanding Transit Manager.

This represents the first time that the manager of a smaller transit system has been selected for the award. In making the announcement, Mr. Jack R. Gilstrap, executive director of the national association, cited Harold's leadership in the transit field as well as his managerial ability.

On a personal note, I would like to emphasize what a pleasure it has been for me to work with Harold over the years.

I remember a couple of years ago when Harold and I testified before the Transportation Appropriations Subcommittee on the need for continued mass transit operational funding. To emphasize the point of uncertainties facing public transit systems, Harold had his testimony printed on the backs of recently out-of-date Cambria County transit schedules. He emphasized that with funding so uncertain, the costs of simply changing the schedules were becoming tough for smaller transit companies to bear.

Harold has consistently been a strong voice reminding us of the varied needs of mass transit in the United States. He recognizes the problems and works with the Philadelphias, the Pittsburghs, the Washingtons, and other large systems, but also reminds Congress, the Pennsylvania State Legislature, and national organizations that throughout Pennsylvania and the country millions of rural and small town Americans also depend on mass transit, and in many cases the financial restrictions and pressures on those systems are at least as great.

Harold has brought to his work with Congress a thorough understanding of the political process, and a realism of government developments and budget restraints that has made him extremely effective as a spokesman for mass transit.

When I think of Harold, I am reminded of lines written some years ago by another western Pennsylvania—"The thing that makes a champion is obvious enought. It isn't any mystic, prestidigitator's stuff. It's nothing more than giving to whatever be the chore, the power that is in you and a small scintilla more."

Those words are extremely true of the work and effort done by Harold Jenkins, and it is my pleasure to add these congratulations to his well-deserved recognition as Outstanding Transit Manager.

TRIBUTE TO RUDY AGUILERA

HON. ROBERT J. LAGOMARSINO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. LAGOMARSINO. Mr. Speaker, my constituent, Rudy M. Aguilera, will be honored on October 10 by the Santa Barbara Hispanic Achievement Council for his accomplishments in public education.

In the 31 years that Rudy M. Aguilera has devoted to public education, he has served as teacher, counselor, migrant education coordinator, title I coordinator, vice principal, and principal. He has also been a member of special education and gifted and talented students program committees and work experience programs through the Neighborhood Youth Core. In addition, he coordinated the UCSB Partnership Program which is designed to assure that minority students fulfill the academic requirements for university entrance. In 1983 he was appointed principal of Santa Barbara Junior High School.

Rudy Aguilera is one of three Hispanic fellow students who were the first to graduate from high school in his neighborhood. He then enrolled at Riverside City College and earned a scholarship to the University of California, Santa Barbara, where he earned a degree.

Rudy Aguilera plays the alto saxophone and clarinet, has participated in two Rose Parades, played in a big band in Los Angeles, and performed on TV in the late fifties. He is a basketball and football referee, officiating in games throughout southern California and is a member of the Channel Coast Officials Association.

In 1985, Santa Barbara Junior High was 1 of 10 junior high schools selected by the State department of education for special honors due to its "exemplary school programs and its academic excellence," including unequaled parent and community involvement and high teacher morale and teamwork.

Rudy and his wife, Ann, married 33 years, have four children, two of whom are college graduates. In both his professional and personal life, he continues to stress strong family values, initiative, teamwork, adherence to school studies, and diligence in pursuing life goals.

As an honorary chairman of the Santa Barbara Hispanic Achievement Council, I would like to extend congratulations to Rudy Aguilera and his family on behalf of the U.S. House of Representatives.

DON FUQUA

SPEECH OF

HON. RICHARD T. SCHULZE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 29, 1986

Mr. SCHULZE. Mr. Speaker, I am pleased to be able to pay tribute to our esteemed colleague, the Congressman from Florida, DON FUQUA.

For over 20 years, DON FUQUA has represented the Florida Panhandle with distinction. His legislative abilities are well known. As the current chairman of the House Committee on Science and Technology, Don has helped guide Congress through the often difficult process of developing legislation for alternative energy resources. Congressman FUQUA also has seen our Space Program land a man on the Moon. For over 10 years, from 1971 to 1981, DON FUQUA was the chairman of the Subcommittee on Space Science and Applications. In this capacity, he has been instrumental in overseeing the development of our current Space Program.

DON FUQUA has always been well-known for his dedication to the people of the Second District, and his command of a vast array of facts and information. I know that every Member in this body wishes DON good fortune in his future pursuits. The House of Representatives will miss DON FUQUA.

SELL CONRAIL IN PUBLIC OFFERING

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. FLORIO. Mr. Speaker, the House has recently approved the Conrail Privatization Act, as part of the budget reconciliation legislation. The Conrail Privatization Act provides for a public offering of Conrail stock.

The Newark Star Ledger, on August 31, 1986, advocated getting the Government out of the railroad business through a public stock offering.

The editorial follows:

CONRAIL SIDETRACKED

After getting a green light in the Senate, the proposed purchase of Conrail by the Norfolk Southern Corp. got a red signal in the House. The merger that would have created the largest rail system in the country has fallen through. But that negative development is not the end of the line for the government-owned Northeast freight line.

Conrail in fact, has a bright future, a greatly improved fiscal status from its critically enfeebled state when it was taken over by the government. It has become a highly profitable freight carrier, the result of a $7 billion federal funding infusion and a more efficient, scaled-back operation.

Conrail turned its first profit in 1981 and has been operating on an increasing profitable basis ever since. The line had net earnings of more than $440 million last year, and its profits have continued at the same pace this year. It also has a billion dollars in cash on hand. This remarkable turnaround has greatly enhanced its sales potential.

The proposed sale of Conrail to Norfolk Southern turned sour in the House, where it was stonewalled because there was concern that it would create an anti-competitive climate. Both lines compete for a number of markets in the Northeast and Midwest; a merger raised fears that rates would increase.

The latter was the principal reason Transportation Secretary Elizabeth Dole and Gov. Thomas Kean supported the amalgamation of the two lines. Mrs. Dole felt that Conrail as a free-standing railroad might experience problems in a shrinking market, an uncertain future that could be made more manageable by a buyer with "deep pockets."

The withdrawal of the sweetened Norfolk Southern $1.9 billion bid leaves the government with another viable alternative—a public stock offering. In a public sale, the government would sell shares to private investors, a sector that already has shown keen interest in acquiring Conrail.

Some investment analysis believe that the government could realize as much as $3 billion from a stock sale, a better financial deal than the Norfolk Southern proposal. Under this arrangement, Conrail would continue to operate as an independent railroad, probably under its same management.

The top priority that remains is getting the government out of the railroad business. And there's no reason why Conrail cannot continue to operate in the black under the changed private corporate setup, a transition that Congress should expeditiously affirm.

PERSONAL EXPLANATION

HON. ROBERT E. BADHAM

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. BADHAM. Mr. Speaker, I was unavoidably detained from Capitol Hill and did not vote on rollcalls 417 and 425. Had I been present, I would have voted "no" on both of them.

U.S. POLICY ON CYPRUS

HON. NICHOLAS MAVROULES

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 1, 1986

Mr. MAVROULES. Mr. Speaker, today marks the first day of fiscal year 1987. As we enter the new fiscal year, unsettled budget questions remain to be answered. And part of this debate will center upon the issue of U.S. foreign aid, which totaled over $14 billion in fiscal year 1986.

Few will question the importance of our commitment to our friends throughout the free world. Nonetheless, we must never forget that this commitment entails more than a simple recognition of the financial needs of our allies. Underlying all of our allied relationships are shared values, and an understanding of basic principles which we agree should govern our actions, both at home and abroad.

Mr. Speaker, our role in the Mediterranean illustrates the manner in which basic values and principles become a critical factor in U.S. foreign policy. Quite frankly, I am afraid that we have not placed enough emphasis upon these values. In particular, I am gravely disappointed with this Government's passive response to the continued Turkish occupation of the Republic of Cyprus.

As we all know, the Republic of Cyprus was invaded and occupied by Turkish troops on July 20, 1974. The invasion resulted in a complete geographical separation of the island, a separation which has not been recognized as legitimate by either the Greek people or the international community. I submit that this occupation and division is an affront to all who cherish and respect the principles of freedom and justice.

The heavily armed Turkish forces that now occupy this sovereign nation are comprised of over 35,000 troops. In addition to this increased military presence, it has been reported that Turkey has also accelerated its settlement of Turkish citizens on the island. Clearly, Turkey is becoming increasingly more aggressive in its efforts to completely annex the occupied area of Cyprus.

Without strong United States efforts to convince Turkey that it cannot continue on this course, I am convinced that the Cyprus dispute will never be resolved. It is for this reason that I wish to share with my colleagues an article which recently appeared in the Christian Science Monitor by my friend EDWARD FEIGHAN of Ohio. I believe that it provides an accurate account of the present situation in Cyprus. More importantly, Mr. FEIGHAN's analysis demonstrates the simple fact that U.S. actions are instrumental to bringing peace to this troubled nation.

[From the Christian Science Monitor, Sept. 25, 1986]

THE CASE FOR STRINGS ON U.S. AID TO TURKEY

(By Edward F. Feighan)

Americans like to believe that our alliances are more than a matter of geopolitical convenience, that shared values and a sense of common purpose carry some weight in foreign policy calculations. But Turkey's strategic location has caused the Reagan administration to ignore a number of troubling actions.

Contrary to American policy, Turkey has stepped up its aggression on Cyprus. In August, Turkish soldiers—using American arms—advanced into the buffer zone dividing the island and placed their flag on an abandoned Greek-Cypriot school, moving out only after United Nations peacekeeping forces moved in. This followed an earlier incident in which Turkish troops—again using American weapons—held UN troops hostage for over a week.

According to the Economist, Turkey has sharply increased the number of occupation troops on Cyprus over the past year. Other international reports indicate that Turkey has also accelerated its settlement of Turkish citizens on Cyprus. Just recently despite numerous diplomatic protests, Prime Minister Turgut Ozal paid an official visit to the Turkish-occupied area of Cyprus, and he has been lobbying fellow Islamic leaders to grant official recognition to that puppet state.

All of these acts clearly contradict America's oft-stated goal of a unfied and democratic Republic of Cyprus, free from the threat of Turkish troops. Ironically, this provocation would not be possible if Turkey were deprived of American arms and aid, which is close to $1 billion a year. And it could not continue if America's response even approached mild protest.

But official silence is, unfortunately, not a new tack for our government to take. In 1985, the administration was remarkably mute when Turkey used US resources to draft a new constitution, print currency, and elect a president and parliament for its refashioned republic in the occupied area of Cyprus. When Turkey reneged on its pledge not to support the creation of a Turkish state on Cyprus in 1983, the US didn't slow the flow of our taxpayers' dollars to Ankara.

It's about time the US learn our lesson about turning a blind eye to Turkish aggression.

Twelve years ago our passive response to the invasion of Cyprus shook the very foundation of the US relationship with countries that had previously been unsurpassed supporters of American policy: Greece and Cyprus. The people of Greece—who so loved our country that 1 out of 4 became American citizens at the turn of the century and who backed us in World War I and sacrificed one-eighth of their people for the Allied cause in World War II—became disenchanted. Now we see the disturbing results of their disillusionment, with public opinion polls showing that more than half of the Greek people now believe that their old ally, the United States, is a threat to Greek security. Greece and Cyprus perceive a US tilt toward Turkey, and the US is doing nothing to dispel that perception.

Earlier this month the leader of the Turkish-Cypriot community, Rauf Denktash, was in the US for meetings with American foreign policy makers. He will no doubt be touting a new UN settlement proposal for Cyprus that gives great advantages to the 18 percent Turkish minority while depriving the majority of its ability to govern effectively. This proposal would also lead to the dissolution of the Republic of Cyprus before the withdrawal of Turkish troops. And it relegates to more "technical" committees the most crucial issue now pending: the withdrawal of Turkish troops and the 60,000 mainland settlers who were brought to the occupied territory.

No wonder the Turkish-Cypriots "accepted" the proposal, albeit conditionally, and no wonder the Greek-Cypriots have proposed a UN-sponsored summit meeting immediately to put the process back on the right track.

What the US should say to Mr. Denktash and his backers is this: We consider Turkey to be an ally, and since you are an integral member of the NATO alliance, we are willing to help you keep your military strong by sending a great deal of money to your country. But we have learned that it is counterproductive to hand our money to Turkey or any other country without comment, at times strong comment, about things that country is doing which fly in the face of America's long-term commitments, interests, and values.

That said, the US should rebuke Turkey for its actions on Cyprus, restate our opposition to the continued military occupation of that island, renew our commitments to all American allies in the Mediterranean—and reinforce that rhetoric with real action if necessary.

STATEMENT OF CHAIRMAN ROSTENKOWSKI ON SENATE FLOOR COLLOQUIES REGARDING H.R. 3838, THE TAX REFORM ACT OF 1986

HON. DAN ROSTENKOWSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 2, 1986

Mr. ROSTENKOWSKI. Mr. Speaker, I want to take this opportunity to state the House position on certain floor colloquies which occurred during Senate debate on the conference report on H.R. 3838, the Tax Reform Act of 1986. As I indicated in my opening remarks to the House on September 25, 1986, I feel that a floor colloquy interpreting a provision of a conference report can only be considered valid by taxpayers and appropriate Government officials at the Treasury Department and IRS if it appears in substantially the same form in both the House and Senate. As I stated on September 25, 1986:

> Otherwise, the views expressed can only be considered the views of one House and not necessarily reflective of the decisions made by the conferees.

In this regard, my statement contained 19 colloquies in the form of understandings and interpretations of this legislation with Members of the House of Representatives. Eight of the House colloquies have been confirmed by the Senate in floor colloquies. The Senate floor debate was silent on the 11 remaining House colloquies. With respect to these 11 understandings that I have reached with House Members, the House conferees continue to believe that the interpretations contained in these 11 colloquies represent the intention of all the conferees on these items.

The Senate floor debate also attempted to rebut two statements I presented as part of my statement regarding this legislation. As chairman of the conference committee, I wish to reaffirm these two important items. First, with respect to the allowability of the "mirror" subsidiary transaction, let me reemphasize that the Senate receded to the House position regarding the repeal of the General Utilities doctrine. Both the House bill committee report and the statement of managers specifically address this issue.

The legislative intent is clear that the so-called "mirror" subsidiary transaction is not permitted under the House bill and the conference agreement. This transaction turns on the application of certain consolidated return regulations—section 1.1502-34—which permit aggregation of the ownership of consolidated group members for certain present law purposes.

The new statute repealing the General Utilities doctrine does not specifically provide aggregation rules. The question arises whether aggregation rules similar to those in the present law regulations should be provided for purposes of the new provisions.

A footnote in the House report, which is repeated in the statement of managers, is intended to permit the Treasury Department to provide such aggregation rules in cases not contrary to the new statute and its purposes. The disposition of assets through the "mirror" transaction, without corporate level tax, is contrary to the statute and the purposes.

Some have speculated that the "mirror" transaction may be allowed, or at least be within the discretion of the Treasury Department to permit, pending a final Treasury Department study of subchapter C which is required by this legislation. That is not the case. The Treasury Department is expected fully to carry out the intent of the Congress in repealing the General Utilities doctrine including preventing the circumvention thereof by allowing mirror subsidiary transactions to take place.

If the "mirror" transaction were permitted while the statute adopted by the conferees is in effect, corporate takeovers would enjoy a significant tax advantage. New owners of a corporation could sell appreciated corporate property without corporate level tax, placing them in a favored position over the old owners. Old owners who believed it would be desirable for business reasons, and in the best interests of shareholders, to dispose of an appreciated subsidiary, could not do so without corporate level tax. New owners could do so if they could use the "mirror" transaction. This would open a loophole for the sole benefit of those engaged in corporate acquisitions. Such a result would be totally contrary to the fundamental purposes of this legislation.

The second issue which Senate floor colloquies attempted to rebut from my statement regarding this legislation deals with the factoring of receivables. I would like to clarify the provision of title 12 of the conference agreement that deals with income equivalent to interest. The provision in question originated in the Senate; however, the House agreed to the provision based on the plain meaning of the language; we did not agree to it based upon an understanding among members of the Senate that was not reflected in the bill, that runs contrary to the bill's language, and that was not discussed by the conferees. Any provision advanced by the other body becomes law only if the provision is in fact considered, debated and adopted by all the conferees; this process means that the House's understanding of what it votes for is as relevant as the other body's to any determination of the meaning of the law.

Now, I want to focus more directly on the provision at issue. It has been suggested that the meaning of a general term used in this year's act must be read restrictively because a more specific provision dealt with a similar problem in the 1984 act. That is, it has been suggested that the term "income equivalent to interest" as used in this bill should not be read to include any factoring income because certain types of factoring income were specifically addressed by the 1984 act.

The reason for the general provision in this year's bill is that we now recognize that the narrower rule of the 1984 act was subject to continuing abuse. In 1984 we dealt with a narrow case; now, we realize that there is a broader problem, and rather than attempting to identify and specify in the bill every case of abuse, we simply set forth a general rule covering all such cases.

There is some overlap between the factoring rules of the 1984 act and the cases addressed by our reading of this bill, but to suggest that any such overlap must be avoided through a constricted reading of this bill contradicts the bill's language and our understanding of its purpose. An existing law does not constrict within its bounds all future laws that deal with similar or overlapping matters.

Let me address myself to the real substance of the issue: the meaning of the term "income equivalent to interest." In order to determine what is equivalent to interest, it is necessary to know first what interest is. It has been said that interest is "compensation for the use or forbearance of money." That is indeed true, but interest is more than that; interest also includes a return to the lender that compensates him for assuming the risk of nonpayment and the costs of collection. If it were not for these latter components of interest income, all borrowers would borrow at the same rate of interest; we know that in fact the interest rate available to a borrower varies dramatically depending on the credit risk and collection costs involved. Thus, bad credit risks must pay higher interest on their borrowings than more dependable debtors. Similarly, consumers generally pay a higher rate of interest than institutional borrowers—even if their credit is excellent—because of the greater administrative costs involved in collecting consumer debts. All interest income thus combines three elements that are inseparably intertwined: Return for the use of money, for risk of nonpayment, and for collection costs. Accordingly, it seems clear that where income arises from these combined elements, whether in a factoring transaction or any other, all that income is equivalent to interest income.

Now, it is certainly possible, as has been suggested, to engage in factoring transactions that do not involve any income for the use or forbearance of money. In such cases, the income earned is not equivalent to interest. That is to say, to the extent that "factoring" income contains no element of time value and is compensation only for collection activities and the assumption of credit risks on receivables, it is not covered under this provision. In some cases, a factor buys receivables at less than their face value, but will not pay the seller of receivables until the due date of the receivables. The factor performs the collection activities and assumes the credit risk on the receivables since it must pay the seller for the receivables on the due date regardless of whether it can collect on them. This activity is referred to as "maturity factoring." Compensation for those activities is the difference between the amount realized by the factor on the receivables and the amount paid by the factor.

On the other hand, where income from factoring transactions is in fact attributable to a combination of the time value of money and the other factors discussed above, such income is indistinguishable from interest, and is equivalent to interest under the bill's rule. For example, one taxpayer lends $100 to a foreign debtor at 1 percent per month simple interest for 3 months, the interest payable at term. A second taxpayer buys a receivable collectible from the same foreign debtor. The receivable, with a face value of $103, is due in 3 months. This second taxpayer pays $100 for the receivable and ultimately collects $103. Both taxpayers' income thus arises from a combination of time value of money, assumption of credit risk, and collection activity. The income of these two taxpayers is the same in nature, and should be treated the same for tax purposes; the act ensures that it is treated the same by treating the second taxpayer's income as equivalent to interest.

With respect to one Senate floor colloquy which is somewhat similiar to understandings contained in the House debate, a clarification is necessary. With respect to the colloquy between Senator DOLE and Senator PACKWOOD regarding the effect of net operating loss rules on certain contingent interests, located on page 26686 of the CONGRESSIONAL RECORD dated September 27, 1986. I would like to clarify that no inference is intended regarding the treatment of such contingent interests under the act, other than to clarify that they are not treated as ownership changes merely by operation of the January 1, 1987 effective date.

The Senate engaged in several floor colloquies which were not contained in the House floor debate. With respect to these Senate colloquies, I wish to make the following statements.

First, the House affirms the following Senate floor colloquies:

I have discussed with Congressman RANGEL several issues relating to the application of new allocation of expense rules to possessions income. We have reached a common understanding which affirms the colloquy held between Senator MOYNIHAN and Senator PACKWOOD, located on page 26678 of the CONGRESSIONAL RECORD dated September 27, 1986 regarding the application of new allocation of expense rules to possessions income.

I have discussed with Congressman SABO several issues relating to section 103 of the code and the Mortgage Subsidy Bond Tax Act of 1980. We have reached a common understanding which affirms the colloquy between Senator DURENBERGER and Senator PACKWOOD, located on page 26679 of the CONGRESSIONAL RECORD dated September 27, 1986, that bonds issued under section 1316(k) will be subject to the same rules as they would have been had they been issued on August 15, 1986.

I have discussed with Congressman MCGRATH several issues regarding installment indebtedness. We have reached a common understanding which affirms the colloquy between Senator DOLE and Senator PACKWOOD regarding certain dispositions on the installment basis, located on page 26686 of the CONGRESSIONAL RECORD dated September 27, 1986.

I have discussed with Congressman GEPHARDT several issues regarding the application of the passive loss rules to closely held corporations. We have reached a common understanding which affirms the colloquy between Senator JOHNSTON and Senator PACKWOOD located on pages 26686 and 26687 of the CONGRESSIONAL RECORD dated September 27, 1986, regarding these issues.

I would like to affirm, with clarifications, the colloquies between Senator WILSON and Senator PACKWOOD, and Senator BOREN and Senator PACKWOOD, regarding interest allocation, located on page 26678 of the CONGRESSIONAL RECORD dated September 27, 1986. I would like to clarify one aspect of the interest allocation provision contained in title 12 of the conference agreement. The conference agreement adopts the general interest allocation transitional rules of the House bill applying the 3, 4, and 5-year transitional rules as set forth in that bill. Further, the agreement adopts a number of 10-year targeted transition rules of the Senate amendment. There is an example on page 380 of the Ways and Means Committee report explaining and illustrating these rules. This example is intended to apply to the final agreement of the conferees—covering all the transitional rules adopted by the agreement governing interest allocation to foreign and U.S. source income. The example illustrating these rules is as follows:

> Thus, for example, under the 3-year "phase-in," if a calendar year taxpayer's, debt outstanding on November 16, 1985, was $100, and its debt outstanding at all times during 1986 is $75, the bill will not affect interest expenses paid or accrued during that second taxable year.

Thus, the phase-in rules apply to a level of indebtedness, and not to a level of interest. However, I also want to clarify a sentence in the statement of managers that contains some clerical errors. It is not intended that the phase-in rules allow taxpayers to reduce their debt below the phase-in amount, thereafter incur new debt, and apply the transition rules to interest on the new debt. In addition, I wish to make it clear that reductions in the aggregate amount of debt outstanding are to be considered as first reducing amounts eligible for the 5-year rule; then, amounts eligible for the 4-year rule; and finally, amounts eligible for the 3-year rule.

Second, with respect to the following Senate floor colloquies, the House wishes to state its position that these colloquies exceed any understanding of the conferees and therefore are not reflective of the common agreement of the conferees. In some instances, these colloquies exceed any understanding with the House, and in other instances are in direct contravention with understandings made in conference with House conferees:

With respect to the colloquy between Senator MOYNIHAN and Senator PACKWOOD regarding a Treasury study located on page 26684 of the CONGRESSIONAL RECORD dated September 27, 1986, I wish to emphasize that the study listed on page 316 of the statement of managers clearly directs the Treasury Department to study and issue a report regarding appropriate criteria to be used to determine if a debt is worthless for Federal income tax purposes. The Treasury Department is directed to consult the statement of managers, which sets forth the parameters of the debt study. The conferees did not intend to express or imply an expansion of this study to include a revisit of the repeal of bad debt reserves for banks.

With respect to the Senate floor colloquy among Senator BENTSEN, Senator DANFORTH, and Senator PACKWOOD regarding interest expense located on page 26678 of the CONGRESSIONAL RECORD dated September 27, 1986, I have previously provided my views earlier in this statement on the provision of title 12 of the conference agreement that deals with income equivalent to interest.

With respect to the colloquy between Senator MOYNIHAN and Senator PACKWOOD found on page 26680 of the CONGRESSIONAL RECORD dated September 27, 1986, relating to the binding contract rule for depreciation and ITC transition relief, I would like to make the following clarifications and modifications. The reference in the conference agreement to a binding contract means a written contract which is enforceable under State law against the taxpayer and does not limit damages to a specified amount. The contract need not be contained solely within the four corners of a single document if all the other requirements set forth in the conference agreement and statement of managers are met. The colloquy does not conform to the intent of the conference agreement relating to the party with whom the taxpayer must effect a binding contract. A written binding contract which qualifies for transition relief must be between the taxpayer and the person who will construct or supply the property.

With respect to the colloquy between Senator GLENN and Senator PACKWOOD found on page 26680 in the CONGRESSIONAL RECORD dated September 27, 1986, the FERC license transition rule for depreciation and ITC is incorrectly stated. The requirements of the general binding contract rule are treated as satisfied with respect to a project if, on or before March 1, 1986, the FERC licensed the project or certified the project as a "qualifying facility" for purposes of the Public Utility Regulatory Policies Act of 1978 [PURPA]. A project related to which an applicant receives a FERC order concerning an issue separate from licensing which simply assumes for purposes of such order that the project will be licensed at some future date is not considered licensed for purposes of qualifying for transition relief. The conference agreement requires that the project, in fact, be FERC-licensed before March 2, 1986.

With respect to the colloquy between Senator HAWKINS and Senator PACKWOOD found on page 26684 in the CONGRESSIONAL RECORD dated September 27, 1986, relating to section 204(a)(2) which provides transition relief for projects which are certified by the Federal Energy Regulatory Commission before March 2, 1986, as a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 [PURPA], the rule applying to modifications of a binding contract is incorrectly described in the second example of a project originally certified on June 27, 1985. The intent of the conference agreement and statement of managers is that a contract which was binding as of March 1, 1986—or December 31, 1985, in the case of the investment tax credit— will not be considered at all times thereafter binding if it is substantially modified after that date. The colloquy describes a case involving a project that was originally certified for one site and user on a geological oil field and is subsequently relocated within the same oil field to another user and the FERC certificate is amended to reflect that change. The case further involves a certification for a project that was originally obtained by a general partnership, but one of the original partners may be replaced by one or more other partners and the FERC certificate is amended to reflect the same. Contrary to what the colloquy states, this case is an example of a contract to which substantial modifications were made after the required binding contract dates thereby rendering the project ineligible for transition relief. The first case described in the colloquy relating to a project originally certified by FERC on April 24, 1985, as a facility that would burn culm to generate steam and electricity, does reflect a binding contract to which only minor modifications were made so that the project remains eligible for transition relief.

Senator DOLE'S colloquy with Senator PACKWOOD regarding the treatment of investors in pre-ERTA straddles, located on page 26684 of the CONGRESSIONAL RECORD dated September 27, 1986, does not reflect the House's interpretation of the conference agreement. The colloquy states that : First, the conference report does not amend the provisions of the 1984 act as they affect investors; second, the statement of managers does not include the language of the House committee report discussing investors; and third, the conference report is the entire agreement of the committee on conference. I strongly disagree with this interpretation of the conferees' decision. In fact, the conference agreement adopts the technical correction in the House bill clarifying the tax treatment of investors in pre-ERTA straddles. In stating my disagreement with this colloquy, I wish to emphasize that the Senate receded to the House on this provision. Consistent with all other decisions of the conferees, where one House has receded to the position of the other, the recession includes not only the statutory provision, but also the complete legislative history evidenced in the committee report, as well as any additional clarifications provided in the statement of managers. Clearly, the legislative history of this provision as embodied in the House committee report is as much a part of this conference agreement as are relevant sections of the Senate committee report in instances where the House has receded to the Senate.

With respect to the colloquies between Senator DOLE and Senator PACKWOOD regarding corporate-owned life insurance located on pages 26684 and 26685 of the Congressional Record dated September 27, 1986, I would like to emphasize that the understandings contained in my statement with Congressman Pickle and Congressman Jones regarding the correct interpretation of this provision, located on page 26208 of the Congressional Record dated September 25, 1986, represent the limits of the agreed upon interpretations of the conferees regarding this provision. I am particularly concerned, among other issues, by statements which seem to validate the ability to substitute insureds under a policy and qualify under the grandfather provisions. This issue was never discussed, and therefore never agreed to, by the conferees. In addition, I would like to clarify that certain factual determinations under this provision would be made by the Internal Revenue Service and the courts.

With respect to the colloquy between Senator Packwood and Senator Chafee on pages 26685 and 26686 of the Congressional Record dated September 27, 1986, relating to the tax treatment of Blue Cross and Blue Shield organizations, I believe that certain aspects of that colloquy do not reflect my understanding of the intent of the conferees. In the portion of the colloquy in which Senator Packwood and Senator Chafee discuss what constitutes a material change in structure or operations which makes an existing Blue Cross or Blue Shield organization ineligible for the special deduction provided for such organizations, there is a discussion of certain changes in business practices and whether or not such changes constitute a "material" change. Specifically, Senator Packwood discusses certain changes in policies, like adding special coverage for nonsmokers or raising premium under an existing premium structure.

It was not the intent of the conferees to prevent an existing Blue Cross and Blue Shield organization from making normal adjustments in their business practices, such as adjustments to reflect new trends in cost containment or adding new coverages. However, it is my understanding that any change in business practice that either eliminates coverage of high-risk individuals or small groups or that has the effect of eliminating such coverage is a material change in structure or operation. For example, a premium increase that reflects normal increases in medical costs is not itself treated as a material change. On the other hand, a premium increase that has the effect of making high-risk coverage unavailable because of the cost of such coverage is treated as a material change.

I have also reviewed the colloquy between Senator Packwood and Senator Moynihan located on page 26208 of the Congressonal Record dated September 27, 1986, regarding the application of the arbitrage rebate rules to proceeds of tax and revenue anticipation notes [TRAN's]. TRAN's are commonly issued by State and local governments to offset cash-flow deficits. As with all other tax-exempt bonds subject to the arbitrage rebate requirements, rebate of all earnings on TRAN's is required unless all gross proceeds of TRAN's are spent for the purpose of the borrowing within 6 months of issuance. Under the arbitrage rebate rules, TRAN proceeds are treated as spent only as actual cash-flow deficits arise and the note proceeds are used to offset these deficits. Proceeds held on hand in governmental treasuries at the end of a determination period are not treated as spent and expenditures occurring when other funds are available are not treated as made from TRAN proceeds. To ease accounting for these note proceeds, the conference agreement provides a special safe harbor. Under this safe harbor, TRAN proceeds are deemed to have been spent if actual cash-flow deficits within 6 months of issuance of the TRAN's for which expenditures are made exceed 90 percent of the TRAN proceeds. Under such circumstances, no rebate payments are required. Governmental units may, of course, elect to trace expenditures of TRAN proceeds under the exact method, described above, rather than availing themselves of the special safe harbor rule.

Third, the House takes no position with respect to the balance of the Senate floor colloquies, upon which I have not commented.

In addition to the House and Senate floor colloquies, certain additional matters have been brought to my attention with respect to which further clarification is appropriate:

Title XIV of the bill simplifies the generation skipping transfer tax. I wish to note that the effective date of the generation skipping transfer tax that is set forth in the conference report is correct, even though a portion of the description of that effective date by the statement of managers is different. Thus, the generation skipping transfer tax does not apply to any generation skipping transfer occurring under wills executed before the date of enactment if the decedent dies before January 1, 1987.

With respect to the rules contained in title XIII of the conference agreement, relating to tax-exempt bonds, I have several comments. First, in reenacting the prohibition on Federal guarantees of tax-exempt bonds, I am aware of certain provisions of other legislation, specifically the conference agreement on S. 1965, that establish Federal entities to guarantee certain types of tax-exempt bonds, while stating that the guarantees are not to be treated as Federal guarantees. The conferees on the tax reform bill [H.R. 3838] intend that the substance of these guarantee transactions as opposed to any statements as to form or intent in the enacting legislation govern their treatment under the tax laws. Thus, as under present law, guarantees by federally chartered and controlled entitles like the new College Construction Loan Insurance Association established in the conference agreement on S. 1965 will be treated as Federal guarantees that are prohibited by the rules governing tax-exempt financing.

Second, I want to elaborate on the new category of private activity bonds for which tax exemption is permitted in the case of such bonds for qualified redevelopment activities. These bonds may be issued for urban redevelopment to permit Government agencies to acquire, clear, and transfer land in blighted areas to private persons for reuse. Bonds for this activity may be issued, subject to the new private activity bond volume cap, in amounts necessary to finance the land, or only for the difference between the cost to the Government and the amount paid by private parties for the land—for example, "gap financing". As under present law, however, such bonds are not private activity bonds if the property is given or transferred for only a nominal amount to private parties, as opposed to being transferred for an amount that satisfies the revised security interest test.

Third, as part of the recodification of Code section 103, the conference agreement also makes a technical amendment to the rules governing qualified scholarship funding corporations. Under the revised rules, all earnings of such corporations must be used to finance additional student loans or rebated to the Federal Government—rather than State or local governments, as under present law. In making this technical modification, it is not the intent of the conferees that existing qualified scholarship funding corporations must cease operations pending modification of their articles of incorporation to reflect the revised Federal law provided that steps are taken to effect those amendments with reasonable speed.

Fourth, page 704 of the statement of managers contains a statement indicating that, for purposes of issuing exempt-facility bonds to finance solid waste disposal facilities, the term solid waste does not include most hazardous waste—including radioactive waste. This statement is not intended to affect the definition of what constitutes solid waste under present law. It is only intended to clarify the definition of solid waste for bonds issued after August 15, 1986, which are not covered by any of the transitional exceptions to the exempt-facility bond provisions contained in the conference agreement.

Fifth, the language at page 749 of the statement of managers provides that more than 10 percent of proceeds from the sale of tax-exempt bonds may be invested in a reasonably required reserve or replacement fund if the master legal document authorizing the bonds was adopted before August 16, 1986, and certain other requirements are satisfied. It is the intent of the conferees that where such requirements are satisfied, a reserve in excess of 10 percent will be permitted without a determination from the Treasury Department with respect to a specific issue—unlike in other cases where specific Treasury determinations are required.

Sixth, the conference agreement provides that the arbitrage rebate requirement will apply to bonds issued for pooled financings if the bonds are issued after 3 p.m., e.d.t., July 17, 1986. In adopting this special effective date, the conferees did not intend to imply that a dedicated pooled financing would fail to satisfy the requirement that bond proceeds be used exclusively to make loans for activities of the issuer and subordinate governmental units to it if: (1) the physical boundaries of the city/issuer are coterminis with those of the county in which it is located; and (2) the bond proceeds are for use by an independent hospital authority serving only the city/issuer except for certain de minimis areas that physically are entirely surrounded by the city, but which legally are independent jurisdictions under applicable State law.

The conference agreement also states that certain military fringe benefits are excludable from taxable income. I wish to clarify that the conferees did not intend that personal use of automobiles be included as a nontaxable fringe benefit under this agreement.

I would also like to clarify the way the extraordinary dividend rules work with respect to qualified preferred dividends. The qualified preferred dividend rule is intended to apply only where fixed dividends within the 2-year holding period would otherwise be extraordinary under the general rule stated in section 1059(a) with reference to the threshold percentages described in section 1059(c). In such a case, the determination whether the dividend is extraordinary is instead made under the qualified preferred dividend provision. Under that provision, if the actual rate of return exceeds 15 percent, no special rule applies. Thus, the normal operation of the basic rule would require reduction of basis for the dividends within the 2-year holding period.

If the actual rate of return does not exceed 15 percent, a special computation applies. In such a case, if the stock is held more than 5 years, no basis reduction under the general 2-year rule will be required. If the stock is held less than 5 years and the actual rate of return does not exceed the stated rate, there would also be no basis reduction. However, if the stock is held for less than 5 years and the actual rate of return during the entire holding period exceeds the stated rate, a basis reduction will occur under the general rule, but limiting the extraordinary dividend amount to the entire excess amount of dividends for the entire holding period. The required basis reduction will thus be the lesser of: (1) the full amount required under the general rule with respect to the dividends within the 2-year holding period; or (2) the amount required if the entire amount of excess dividends for the entire holding period is treated as being an extraordinary dividend declared, announced, or agreed to prior to the expiration of the 2-year holding period. Insofar, as the statement of managers might possibly suggest that basis reduction is required only for the portion of the total excess dividends that is attributed on a pro-rata basis to the dividends that were actually within the 2-year holding period, it is misleading.

I would also like to clarify the application of the 2-year holding requirement rule to preferred stock that by its terms pays a fixed dividend. Although such a fixed dividend is in a sense "announced" by the terms of the stock at the time the stock is acquired, it is not intended that the all such fixed dividends on the stock, however long it is held, would thus be considered to be within the 2-year period. On the other hand, it is intended that the fixed dividends attributable to the first 2 years the stock is held will be considered "announced or agreed to" within the first 2 years, even though a payment date might be missed or there might otherwise be a delay in paying such dividends beyond the first 2 years to which they are attributable.

I would also like to correct a reference in the statement of managers suggesting that taxpayers may elect to have the special qualified preferred dividend computation apply. The statute provides no election; the computation of extraordinary dividends with respect to qualified preferred stock under the basic 2-year rule in the statute is made as I have just described.

Title V of the conference agreement provides expanded transitional relief from the new passive loss limitations for qualified investors in certain low-income rental housing projects. This transitional exception is targeted to investors who are still in the "pay-in" phase of their investment agreements to purchase interest in low-income housing projects. Thus, the relief provided is limited in all cases to investors who are required to pay at least 50 percent of the amount of their orignial obligation after 1986. If an investor and the low-income rental housing project satisfy all requirements of this exception, the passive loss limitations will not apply to the investor's lossess derived from the low-income rental housing project during a period equal to the shorter of 7 years or 1 year after the year in which the last payment required by the investor's original investment agreement is due.

For purposes of this exception, qualified low-income housing projects are projects that met the requirements of clause (i), (ii), (iii), or (iv) of Code section 1250 with respect to the entire project on the date the project was last placed in service before August 17, 1986, or in certain prescribed circumstances, on the date the project is originally placed in service after August 16, 1986. Additionally, these requirements must be satisfied with respect to the entire project on the date of enactment—in the case of projects originally placed in service before or on that date—and at all times after 1986 when the relief provided by the transitional exception is claimed.

Three sets of requirements, determined by reference to when the project is originally placed in service, govern the date by which investors must have acquired their interest in the project to be eligible for this transitional relief. First, subject to a special rule for projects owned by certain specifically described partnerships, if a project was originally placed in service before August 17, 1986, only investors who owned their interests in the project before that date are eligible for the transitional exception, and the exception is limited to losses arising from interests held before that date.

Second, under a special rule provided in the concurrent resolution accompanying the conference agreement, investors in a partnership that owns a project that the partnership placed in service after December 30, 1985, and before August 17, 1986, are eligible for the transitional exception to the extent of partnership interests acquired before January 1, 1987. This special rule is further limited to projects where there is no change in ownership after the project is placed in service and before the end of the period during which passive losses may be claimed. (A termination of a partnership under Code section 708 is treated as a change in ownership for this purpose.) Under this special rule, for example, an investor before January 1, 1987, in a partnership that was formed in February 1986 and acquired a low-income rental housing project in March 1986 and placed that project in service in April 1986 may, in certain cases, be eligible for the transitional exception.

Third, investors in projects that are originally placed in service after August 16, 1986, and before January 1, 1989, are eligible for this transitional exception to the extent of interests in the project acquired by them before January 1, 1987. Further, for purposes of this rule a project is treated as originally placed in service after August 16, 1986, if the property was not in service on that date because of a rehabilitation began on or before August 16, 1986, and completed after that date, which rehabilitation is a substantial rehabilitation within the meaning of Code section 48(g)(1)(C)(i). This latter exception is limited further to projects that are constructed or acquired pursuant to a binding written contract entered into before August 17, 1986. For purposes of this provision, the term binding contract has the meaning given that term under title XIII of the conference agreement.

I also wish to clarify that the foreign currency exchange gains and losses provisions contained in the conference agreement are effective for taxable years beginning after December 31, 1986. Thus, the conference agreement is prospective only; it makes no express or implied reference to the treatment of this issue for prior years, and no such inference was intended by the conferees.

I wish to clarify that the transition rule for Ideal Basic Industries, Inc., in section 621(f)(2)(C) of the conference agreement is intended to provide that the new net operating loss rules added by the conference agreement and the net operating loss rules in the Tax Reform Act of 1976 shall not apply to Ideal's debt restructuring. In addition, the transitional rule is intended to provide that the qualified workout provision added by the Tax Reform Act of 1984 shall apply to Ideal's debt restructuring.

Specifically, subparagraph (ii) of section 621(f)(2)(C) of the conference agreement is intended to read as follows:

> (ii) the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 shall not apply to such debt restructuring, except that the amendment treated as part of such subsections under section 59(b) of the Tax Reform Act of 1984 (relating to qualified workouts) shall apply to such debt restructuring.

This change will be accomplished by a technical corrections act or other legislation as soon as possible.

I wish to clarify a statement made on page 63 of the statement of managers and which is consistent with the House bill, that property which qualifies under the transition rule for "property treated under prior tax acts" should be excepted from the full basis adjustment and 35-percent reduction applicable to the ITC.

This result can be accomplished by adding the following language to the definition of "transition property" in section 211(e)(1) of the act:

> For purposes of subsections (c) and (d), such term shall not include any property described in section 204(a)(4) of the Tax Reform Act of 1986.

I wish to clarify that the conference agreement provides a new low-income rental housing credit which may have a present value as high as 70 percent of the qualifying basis of low-income units contained in low-income housing projects. The credit is limited to 30 percent in the case of existing property and property receiving other Federal assistance. Like other real estate, low-income housing is subject to the at-risk rules. Additionally, like other property receiving tax credits, including the rehabilitation credit, low-income housing receiving the new credit is subject to the at-risk rules that apply to investment credit property. In determining the amount of nonrecourse financing that such a low-income housing project may have under the credit at-risk rules, the eligible basis of the project is treated as the credit base—*see,* section 46(c)(8).